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Presidential Documents

Title 3—

The President

Proclamation 6219 of October 30, 1990

Refugee Day, 1990

By the President of the United States of America

A Proclamation

Ever since the first Europeans came to this country in search of freedom and opportunity, America has been viewed as a safe haven and a source of hope for millions of people around the globe. We take tremendous pride in our leading efforts to assist refugees, and we continue to cherish the great and generous spirit embodied by our magnificent Statue of Liberty. As Emma Lazarus wrote in her timeless sonnet to the famed Mother of Exiles, "from her beacon-hand glows worldwide welcome."

Over the years, the United States has held its doors open to those seeking refuge from tyranny and persecution, and we have encouraged other free nations to do the same. We have proudly received in this country thousands of individuals who—though they arrived with scarcely more than the clothes on their backs—have not only built new lives for themselves and for their families but also made extraordinary contributions to our society. At the same time, we have also worked to overcome those conditions that compel many refugees to flee their homelands. For example, we have steadfastly defended the universal cause of freedom and justice, asserting our conviction that no one should live in fear because of his or her race, nationality, religion, or political belief. We have also strived to promote peace and economic development in countries beset by poverty and strife.

Despite such efforts, however, the population of refugees in the world has increased dramatically during the past few years to its present total of more than 15,000,000 people. Thus, we remain firmly committed to assisting refugees and to advancing respect for individual dignity and human rights around the world. As we continue our own efforts, we call on other nations to increase their assistance to refugees in need. The sad plight of refugees has been brought home to us once again in recent weeks as we have seen hundreds of thousands of refugees fleeing Saddam Hussein's naked aggression in Kuwait and his brutal policies at home.

The Congress, by Senate Joint Resolution 375, has designated October 30, 1990, as "Refugee Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 30, 1990, as Refugee Day. I call upon the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of October, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-26021
Filed 10-30-90; 2:36 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6220 of October 30 1990

National Awareness Month for Children With Cancer, 1990

By the President of the United States of America

A Proclamation

Thanks to the dramatic progress that has been made in early diagnosis and treatment of the disease, young cancer victims and their families no longer need to relinquish their dreams for the future. In many cases, advances in science and technology are bringing hope and healing where there once was only fear and loss.

According to the Department of Health and Human Services, the number of child deaths from cancer in the United States declined by 36 percent between 1973 and 1987—a significant change in a relatively short period of time. Today three out of every four children diagnosed with Hodgkin's disease are being cured. Since 1960, our ability to treat other serious forms of cancer such as Wilm's tumor and non-Hodgkin's lymphoma has improved markedly—nearly 50 percent more children are living for at least five years after diagnosis. The Department also reports that the number of children surviving acute lymphocytic leukemia has risen by 25 percent since 1974.

Nevertheless, despite such encouraging progress, cancer continues to be the leading cause of death by disease among children between the ages of 3 and 14. Families facing the specter of childhood cancer need the best possible medical care and emotional support we can provide. Many need financial help as well. Every family touched by childhood cancer needs the support of its relatives, neighbors, teachers, and clergy. Parents need the understanding and compassion of their employers, and brothers and sisters of young cancer victims need special consideration, both at home and in school. Young cancer patients themselves need every opportunity to express and pursue the fresh, unjaded dreams that are the hallmark of childhood.

Many private organizations and government agencies throughout the United States are working to meet the needs of children with cancer. The National Cancer Institute (NCI), operating within the Department of Health and Human Services, is the Federal Government's principal agency for cancer research. In cooperation with universities and research institutes throughout the Nation, the NCI is engaged in treatment studies for 14 types of childhood cancer. Yielding new and refined methods of treatment, these studies are helping to improve the prognoses for many young cancer victims. For example, many children whose bone cancer, in the past, might have required the amputation of an arm or leg can now benefit from surgical techniques that allow them to keep their limbs without diminished chances of survival.

In addition to advances in research and technology, rehabilitation programs are likewise helping to improve the quality of life enjoyed by young cancer patients. Recent breakthroughs in our understanding of the brain and nervous system, for example, are making it possible for many of those who must use artificial limbs to control them by brain impulses.

Hundreds of private voluntary organizations at both the national and local levels—including the American Cancer Society, the Candlelighters Childhood Cancer Foundation, the Leukemia Society of America, and the Ronald McDonald Foundation—are helping parents and children to cope with the emotional and financial stresses created by cancer treatment and rehabilitation. Through

the generosity of these and other groups, young cancer patients and their parents may obtain free air travel to treatment centers; parents may benefit from low-cost lodging while their little one is receiving treatment far from home; and youngsters themselves may have the opportunity to spend time at a special summer camp or to see an earnest wish fulfilled.

This month we recognize the dedication and hard work of all those scientists, health care professionals, and volunteers who are working to overcome childhood cancer and to assist its victims. We also reaffirm our admiration and support for the courageous youngsters and parents who struggle with this disease.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 1990 as National Awareness Month for Children with Cancer. I encourage all Americans to observe this month through appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of October, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-26054
Filed 10-30-90; 4:14 pm]
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Rules and Regulations

Federal Register
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Thursday, November 1, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF ADMINISTRATION

3 CFR Part 101

Freedom of Information Act Regulations

AGENCY: Office of Administration, Executive Office of the President.

ACTION: Final rule.

SUMMARY: This final rule concerning freedom of information updates the information contained in this part in order to make it consistent with legislative and executive action promulgated since 1973. Specifically, it amends regulation to include certain entities within the Executive Office of the President and to delete references to entities that have been abolished.

EFFECTIVE DATE: December 3, 1990.

FOR FURTHER INFORMATION CONTACT: Bruce L. Overton, Acting General Counsel, (202) 395-2273.

SUPPLEMENTARY INFORMATION: The Office of Administration was created by Executive Order 12028 and Reorganization Plan No. 1 of 1977 and charged with providing administrative support and services to the Executive Office of the President (EOP). The Office of National Drug Control Policy was created by the National Narcotics Leadership Act of 1988 (Pub. L. 100-690 section 1001) and charged with the development of national policy to combat drug abuse through interdiction, enforcement, and treatment. The Office of Science and Technology Policy was created by the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6601) and charged with the study and development of presidential policy in science and technology. The Office of the United States Trade Representative was established by the Trade Act of 1974 (19 U.S.C. 2171, Reorganization Plan No 3 of 1979) and charged with negotiating and administering trade agreements on behalf of the United States. These entities are considered "agencies" for purposes of the Freedom of Information Act (FOIA) (5 U.S.C. 552) as amended, and are subject to its provisions. Finally, the Council on Wage and Price Stability was abolished on January 29, 1981 by Executive Order 12288.

By this notice, the Office of Administration, on behalf of the EOP and with the concurrence of the above-listed EOP agencies, is amending 3 CFR part 101 to reflect the current directory of agencies within the EOP subject to the FOIA and the correct references to each agency's regulations.

Bruce L. Overton,
Acting General Counsel.

List of Subjects in 3 CFR Part 101

Freedom of Information.

PART 101—[AMENDED]

1. The authority citation for part 101 is added to read as follows:

Authority: 5 U.S.C. 552.

2. Section 101.3 is revised to read as follows:

§ 10.13 Office of Administration.

Freedom of Information regulations for the Office of Administration appear at 5 CFR part 2502.

3. New §§ 101.6, 101.7, and 101.8 are added to read as follows:

§ 101.6 Office of National Drug Control Policy.

Freedom of Information regulations for the Office of National Drug Control Policy appear at 21 CFR parts 1400-1499.

§ 101.7 Office of Science and Technology Policy.

Freedom of Information regulations for the Office of Science and Technology Policy appear at 32 CFR parts 2402.

§ 101.8 Office of the United States Trade Representative.

Freedom of Information regulations for the Office of the United States Trade Representative appear at 15 CFR part 2004.

[FR Doc. 90-25903 Filed 10-31-90; 8:45 am]
BILLING CODE 3115-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 932 and 944

[Docket No. FV-90-193FR]

Olives Grown in California and Imported Olives, Establishment of Grade and Size Requirements for Limited Use Styles of California Processed Olives for the 1990-91 Season, and Conforming Changes in the Olive Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of an interim final rule which established grade and size requirements for California processed olives used in the production of limited use styles of olives such as wedges, halves, slices, or segments and established similar requirements in the olive import regulation to bring that regulation into conformity with the domestic requirements. The grade and size requirements are the same as implemented last season. Olives used in limited use styles are too small to be desirable for use as whole or whole pitted canned olives because their flesh-to-pit ratio is too low. However, they are satisfactory for use in the production of limited use styles. Their use in such products over the years has helped the California olive industry meet the increasing market needs of the food service industry. The requirements for domestic olives were unanimously recommended by the California Olive Committee (committee), which works with the Department in administering the marketing order program for olives grown in California. The establishment of such requirements for imported olives is required pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: Novermber 1, 1990.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96458, room 2530-S, Washington, DC 20090-6456; telephone (202) 475-3862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 932 (7 CFR part 932), as amended, regulating the handling of olives grown in California, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Information obtained since the September 4, 1990, publication of the interim final rule indicates that there are now six handlers of California olives subject to regulation under the order and approximately 1,450 producers in California. Approximately 25 importers of olives are subject to the olive import regulation. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Most but not all of the olive producers and importers may be classified as small entities. None of the olive handlers may be classified as small entities.

Nearly all of the olives grown in the United States are produced in California. The growing areas are scattered throughout California with most commercial production coming from inland valleys. In 1989, about 66 percent of the production came from the San Joaquin Valley and 34 percent from the Sacramento Valley.

Olive production has fluctuated from a low of 24,200 tons during the 1972–73 crop year to a high of 146,500 tons during the 1982–83 crop year. The committee indicated that 1989 production totalled about 118,990 tons. The various varieties of olives produced in California have alternate bearing tendencies with high production one year and low the next. The industry expects the 1990–91 crop to be about 90,000 tons.

The primary use of California olives is for canned ripe whole and whole pitted olives which are eaten out of hand as hors d'oeuvres or used as an ingredient in cooking and in salads. The canned ripe olive market is essentially a domestic market. Very few California olives are exported.

This action will allow handlers to market more olives than would be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the California olive supply, facilitate market expansion, and benefit both growers and handlers.

The interim rule was issued August 29, 1990, and was published in the **Federal Register** on September 4, 1990 (55 FR 35891). That rule invited interested persons to submit written comments through October 4, 1990. No comments were received.

The interim rule modified § 932.153 of Subpart-Rules and Regulations (7 CFR 932.108–932.161). The modification established grade and size regulations for 1990–91 crop limited use size olives. The modification was issued pursuant to paragraph (a)(3) of § 932.52 of the order. That rule also made necessary conforming changes in the olive import regulation (Olive Regulation 1; 7 CFR § 944.401). The import regulation is issued pursuant to section 8e of the Act. Section 8e provides that whenever grade, size, quality, or maturity provisions are in effect for specified commodities, including olives, under a marketing order, the same or comparable requirements must be imposed on the imports.

Paragraph (a)(3) of § 932.52 of the marketing order provides that processed olives smaller than the sizes prescribed for whole and whole pitted styles may be used for limited uses if recommended by the committee and approved by the Secretary. The sizes are specified in terms of minimum weights for individual olives in various size categories. The section further provides for the establishment of size tolerances.

To allow handlers to take advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives, the committee recommended that grade and size requirements again be established for limited use olives for the 1990–91 crop year (August 1, 1990, through July 31, 1991). The grade requirements are the same as those applied during the 1989–90 crop year, as are the size tolerances. Permitting handlers to use small olives in the production of limited use style canned olives will have a positive impact on industry returns. In the absence of this action, the undersized fruit would have to be used for non-canning uses, like oil, for which returns are lower. Except for the changes necessary in the effective date, the provisions, hereinafter set forth in § 932.153, are the same as those established last season.

Paragraph (b)(12) of § 944.401 of the olive import regulation allows imported bulk olives which do not meet the minimum size requirements for canned whole and whole pitted ripe olives to be used for limited use styles if they meet specified size requirements. Continuation of the limited use authorization for California olives by this interim rule requires that similar changes be made in paragraph (b)(12) of § 944.401 to keep the import regulation in conformity with the applicable domestic requirements. These conforming changes will benefit importers because they will be able to import small-sized olives for limited use during the 1990–91 season which ends July 31, 1991.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the provisions as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action leaves in effect relaxed requirements currently being applied to California and imported olives under an interim rule; (2) the olive import requirements are mandatory under section 8e of the Act; (3) the interim rule provided a 30-day comment period and no comments were received; and (4) no useful purpose would be served by delaying the effective date of this action.

List of Subjects

7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Limes, Olives and Oranges.

For the reasons set forth in the preamble, 7 CFR parts 932 and 944 are amended as follows.

PART 932—OLIVES GROWN IN CALIFORNIA

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citations for 7 CFR parts 932 and 944 continue to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule revising § 932.153 and § 944.401(b)(12), which was published in the **Federal Register** on September 4, 1990 (55 FR 35892), is adopted without change as a final rule.

Note: These sections will appear in the Code of Federal Regulations.

Dated: October 29, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–25883 Filed 10–31–90; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 90–191]

Restrictions on the Importation of Horses From Saudi Arabia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations by adding Saudi Arabia to the list of countries in which the Animal and Plant Health Inspection Service considers African horse sickness to exist. This action is necessary because the veterinary authorities of Saudi Arabia have confirmed the existence of African horse sickness in Saudi Arabia. The intended effect of this action is to prevent the introduction of African horse sickness, a fatal equine viral disease, into the United States.

DATES: Interim rule effective November 1, 1990. Consideration will be given only to comments received on or before December 31, 1990.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90–191. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Karen James, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations on animal importations in 9 CFR part 92 (referred to below as the regulations) restrict the importation of horses that could introduce various diseases, including African horse sickness (AHS), into the United States. African horse sickness is a fatal equine viral disease not found in the United States.

Section 92.308(a)(2) of the regulations lists the countries in which AHS is considered by the Animal and Plant Health Inspection Service, to exist, and requires horses intended for importation from any of those countries, including horses that have stopped in or transited those countries, to enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, New York, for at least 60 days.

In response to information received from the Government of Saudi Arabia that there have been outbreaks of AHS, we are amending § 92.308(a)(2) to include Saudi Arabia among the countries considered to be affected with AHS.

As a result of this action, horses intended for importation from Saudi Arabia must now enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, New York, for at least 60 days.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of AHS into the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon publication. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12292, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

We are continuing to allow U.S. importers to import horses from Saudi Arabia, although we are requiring these horses to enter through the port of New York and undergo a quarantine of at least 60 days at the New York Animal Import Center. While importers of horses from Saudi Arabia, who would pay costs for a 3-day quarantine under the current regulations, will incur additional costs because of the longer quarantine under the interim rule, we do not expect this to have a significant economic impact on a substantial number of small entities. There has been an average of 30,000 horses imported into the United States annually during the past five years. During this same period, there have been fewer than 5 horses imported into the United States from Saudi Arabia. We have no reason to anticipate any substantial changes in the number of horses imported from Saudi Arabia.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirement under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.308 [Amended]

2. In § 92.308, paragraph (a)(2) is amended by adding "Saudi Arabia," immediately after "Portugal,".

Done in Washington, DC, this 29th day of October 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–25885 Filed 10–31–90; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

Regulations G, T, U and X; Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is comprised of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) represents all foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to or deletions from the OTC List and additions to the Foreign List previously published and effective on August 13, 1990.

EFFECTIVE DATE: November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202) 452–3544.

SUPPLEMENTARY INFORMATION: Two categories of stock information are listed below. The first group represents additions to or deletions from the OTC List. This supersedes the last OTC List which was effective August 13, 1990. Additions and deletions to the OTC List were published on August 2, 1990 (55 FR 31367). A copy of the complete OTC List incorporating these additions and deletions is available from the Federal Reserve Banks.

The OTC List includes those stocks that meet the criteria in Regulations G, T and U (12 CFR parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated under a Securities and Exchange Commission (SEC) rule as qualified for trading in the national market system (NMS security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable at broker-dealers upon the effective date of their NMS designation. The names of these stocks are available at the Board and the SEC and will be incorporated into the Board's next quarterly publication of the OTC List.

The second group of securities, represents additions to the Board's Foreign List that are now eligible for margin treatment at broker-dealers pursuant to a recent amendment to Regulation T (12 CFR Part 220). (*See* **Federal Register** of March 27, 1990, at page 11158 for Board action.) These additional foreign equity securities have met the Board's requirements pursuant to Regulation T and are now eligible for margin at broker-dealers on the same basis as domestic margin securities. A copy of the complete Foreign List incorporating these additions is available from the Reserve Banks.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6 (a) and (b), 220.17 (a), (b), (c) and (d), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the Lists are effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6(c) (Regulation G), 12 CFR 220.2(u) and 220.17(e) (Regulation T), and 12 CFR 221.2(j) and 221.7(c) (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List; and the additions to the Foreign List.

Deletions From the List of Marginable OTC Stocks

Stocks Removed For Failing Continued Listing Requirements

Action Auto Stores, Inc.
No par common
Airship Industries Limited
American Depositary Receipts representing 80 ordinary shares
Al Copeland Enterprises, Inc.
Series 1, 17.5% exchangeable preferred
Altus Bank, a Federal Savings Bank (Alabama)
$.01 par common
American Film Technologies, Inc.
Warrants (expire 06–30–93)
Anthony, Michael Jewelers, Inc.
$.001 par common
ASTEC Industries, Inc.
Warrants (expire 12–29–91)
BANC One Corporation
Series B, no par convertible preferred
Beauty Labs, Inc.
$.01 par common
Brookfield Bancshares Corporation
$1.00 par common
Brooklyn Savings Bank, The
$1.00 par common
Capital Bancorporation
$.55⅝ par common
Care Plus, Inc.
Class A, Warrants (expire 08–13–90)
CCAIR, Inc.
$.01 par common
Chemfix Technologies, Inc.
Warrants (expire 12–15–90)
Codenoll Technology Corporation
Warrants (expire 09–10–90)
Community Financial Corporation
$.01 par common
Coral Gold Corporation
No par common
Cosmo Communications Corporation
$.01 par common
Country Wide Transport Services, Inc.
$.01 par common
CPT Corporation
$.05 par common
10% convertible subordinated debentures
DST Systems, Inc.
$.01 par common
Eliot Savings Bank (Massachusetts)
$.10 par common
First Citizens Bancshares, Inc.
Class B, $1.00 par common
First Executive Corporation
Warrants (expire 11–15–90)
First Savings Bank, F.S.B. (New Mexico)
$1.00 par common
Fleet Aerospace, Inc.
$.01 par common
Fulton Federal Savings Bank
$1.00 par common
General Building Products Corporation
$.05 par common
HEI Corporation
$.10 par common
Heritage Financial Corporation
$.90 par cumulative convertible preferred
Independence Federal Savings Bank
$.01 par common
Institute of Clinical Pharmacology, PLC
American Depositary Receipts for non-restricted B shares (nominal value FIN 20)
Jesup Group Inc., The
$.01 par common
Microwave Laboratories, Inc.
$.01 par common
Novell, Inc.
7¼% convertible subordinated debentures
Osicom Technologies, Inc.
$.01 par common
Pacesetter Homes, Inc.
$.01 par common
Questech, Inc.
$.05 par common
Retailing Corporation of America
$1.00 par common
S.P.I.–Suspension and Parts Industries Limited
Ordinary shares, IS 250 par value
SFE Technologies
$.1.00 par common
Sructofab, Inc.
$.02 par common
SUNF, Inc.
$.50 par common
Symbion, Inc.
$.01 par common
Syntech International, Inc.
$.10 par common
Tele-Optics, Inc.
$.01 par common
United Savings Bank (Virginia)
$5.00 par common
Vikonics, Inc.
$.02 par common
Vinland Property Trust
No par shares of beneficial interest
Vista Organization Partnership, L.P., The
Depositary units of limited partnership interest
Walker Telecommunications Corporation
$.01 par common
Wall to Wall Sound and Video, Inc.
$.01 par common
Washington Bancorporation (Washington, D.C.)
$2.50 par common
Western Microwave, Inc.
$.10 par common
Williams, A.L., Corporation,
7.25% convertible subordinated debentures
World-Wide Technology, Inc.
$.01 par common

Stocks Removed for Listing on a National Securities Exchange Or Being Involved in an Acquisition

Altos Computer System
No par common
Bio-Medicus, Inc.
$.01 par common
Biotech Research Laboratories, Inc.
$.01 par common
Bogert Oil Company
$.10 par common
Cadence Design Systems, Inc.
$.01 par common
Carolina Bancorp, Inc.
$1.00 par common
Church & Swight Co., Inc.
$1.00 par common
CII Financial, Inc.
No par common
Diagnostek, Inc.
$.01 par common
Dycom Industries, Inc.
$.33⅓ par common
Epsilon Data Management, Inc.
$.01 par common
Fidelity Federal Savings Bank (Indiana)
$.01 par common
Finnigan Corporation
$.01 par common
First Home Federal Savings and Loan Association (Florida)
$100 par common
Florida Public Utilities Company
$1.50 par common
Greenery Rehabilitation Group, Inc.
$.01 par common
Henley International, Inc.
$.001 par common
Integon Corporation
$1.00 par common
Intellicall, Inc.
$.01 par common
International Lease Finance Corp.
$.01 par common
Warrants (expire 1994)
JMB Realty Trust
No par shares of beneficial
Mack Trucks, Inc.
$1.00 par common
Martin Lawrence Limited Editions
$.001 par common
Mid-America Bancorp
No par common
Mountain West Savings Bank F.S.B.
$1.00 par common
Mutual Federal Savings And Loan Association (North Carolina)
$1.00 par common
Mutual Federal Savings Bank, A Stock Corp. (Ohio)
$1.00 par common
National Media Corporation
$.10 par common
North-West Telecommunications, Inc.
$5.00 par common
Old Republic International Corp.
$1.00 par common
Pennview Savings Association
$1.00 par common
Pharmacia AB
American Depository Receipts for non-restricted B shares (par value Skr 10)
Primebank, Federal Savings Bank (Michigan)
$1.00 par common
Shelby Federal Saving Bank (Indiana)
$1.00 par common
Stockholder Systems, Inc.
Class A, $.05 par common
Subaru of America, Inc.
$.01 par common
Summa Medical Corporation
$.01 par common
Tecogen, Inc.

$.10 par common
UTL Corporation
$.25 par common
Webster Clothes, Inc.
$.01 par common

Additions to the List of Marginable OTC Stocks

Advanced Logic Research, Inc.
$.01 par common
Allied Clinical Laboratories, Inc.
$.01 par common
American Business Computers Corporation
$.01 par common
Arcus, Inc.
$.01 par common
Astrocom Corporation
$.10 par common
Bird Medical Technologies, Inc.
$.01 par common
Canyon Resources Corporation
Warrants (expire 12-31-94)
Capitol Bancorp Ltd.
No par common
Circuit Systems, Inc.
No par common
CMS/Data Corporation
$.01 par common
Coho Resources, Inc.
$.01 par common
Deprenyl Research Limited
No par common
Dreco Energy Services Ltd.
Class A, no par common
DVI Financial Corporation
$.005 par common
Easel Corporation
$.01 par common
ESB Bancorp, Inc.
$1.00 par common
Failure Group, Inc., The
$.001 par common
Gerrity Oil & Gas Corporation
$.01 par common
Grant-Norpac, Inc.
$.002 par common
Helix Biocore, Inc.
$.01 par common
High Plains Corporation
$.10 par common
IKOS Systems, Inc.
$.01 par common
Illinois Central Corporation
$.001 par common
In-Store Advertising, Inc.
$.01 par common
Keene Corporation
$.0001 par common
London International Group PLC
American Depositary Receipts
Lunar Corporation
$.01 par common
Marcam Corporation
$.01 par common
Matrix Service Company
$.01 par common
Meca Software, Inc.
$.01 par common
Medical Management of America, Inc.
$.01 par common
Micrografx, Inc.
$.01 par common
Modtech, Inc.
$.01 par common
Molex Incorporated
Class A, $.05 par common
NDE Environmental Corporation
$.0001 par common
Nord Pacific Limited
$.01 par common
O'Charley's Inc.
No par common
Orthopedic Services, Inc.
$.01 par common
Park National Corporation
$6.25 par common
Pinnacle Banc Group, Inc.
$6.25 par common
Radius Inc.
No par common
Republic Health Corporation
$.01 par common
Republic Waste Industries, Inc.
$.01 par common
Rocky Mountain Helicopters, Inc.
$.02 par common
Security Savings Bank, FSB
$1.00 par common
Southmark Corporation
$.01 par common
Class A, $.01 par convertible preferred
Suburban Bankshares, Inc. (Florida)
Class A, $.10 par common
Sylvan Foods Holdings, Inc.
$.001 par common
Tinsley Laboratories, Inc.
No par common
Trimble Navigation Limited
No par common
Uranium Resources, Inc.
$.001 par common
Warrants (expire 02-26-94)
Vanguard Real Estate Fund II
No par shares of beneficial interest
VISX, Incorporated
No par common
Vital Signs, Inc.
No par common
Warrantech Corporation
$.0007 par common
Westwood One, Inc.
Warrants (expire 09-04-97)

Additions to the List of Foreign Margin Stocks

Abbey National PLC
Ordinary shares, par value 10 p
All Nippon Airways Co., Ltd.
Y 50 par common
Allied Lyons PLC
Common, par value 25 p
Argyl Group PLC
Ordinary shares, par value 25 p
Asahi Breweries
Y 50 par common
Asahi Chemical Industry
Y 50 par common
Asahi Glass Co., Ltd.
Y 50 par common
ASDA Group PLC
Ordinary shares, par value 25 p
Associated British Foods PLC
Ordinary shares, par value 5 p
B.A.T. Industries Ltd. PLC
Ordinary shares 25 p
Barclays Bank PLC
Common, par value 100 p
Bass PLC
Ordinary shares, par value 25 p
Bet PLC
Common, par value 25 p
Bicc PLC
Ordinary shares, par value 50 p
Blue Circle Industries PLC
Common, par value 50 p
BOC Group PLC
Common, par value 25 p
Boots Company PLC, The
Common, par value 25 p
BPB Industries PLC
Ordinary shares, par value 50 p
Bridgestone Corporation
Y 50 par common
British Airways PLC
Ordinary shares, par value 25 p
British Petroleum Company PLC
Ordinary shares, par value 25 p
British Steel PLC
Common, par value 50 p
British Telecommunications PLC
Common, par value 25 p
BTR PLC
Common, par value 25 p
Burmah Oil PLC, The
Common, par value 100 p
C. Itoh Fuel Company Ltd.
Y 50 par common
Cable & Wireless PLC
Ordinary shares, par value 50 p
Cadbury Schweppes PLC
Ordinary shares, par value 25 p
Carlton Communications PLC
Common, par value 5 p
Commercial Union Assurance Company PLC
Ordinary shares, par value 25 p
Courtaulds PLC
Common, par value 25 p
DAI Nippon Printing
Y 50 par common
DAI-ICHI Kangyo Bank Ltd.
Y 50 par common
Denki Kagaku Kogyo
Y 50 par common
DOWA Mining
Y 50 par common
Ebara Corporation
Y 50 par common
Enterprise Oil PLC
Ordinary shares, par value 25 p
Fisons PLC
Common, par value 25 p
Fuji Bank Ltd.
Y 50 par common
Fuji Electric Company Ltd.
Y 50 par common
Fujita Corporation
Y 50 par common
Fujitsu Ltd.
Y 50 par common
Furukawa
Y 50 par common
Furukawa Electric Company Ltd.
Y 50 par common

General Accident Fire & Life Assurance Corp. PLC
Common, par value 25 p
GKN PLC
Common, par value 100 p
Glaxo Holdings PLC
Common, par value 50 p
Great Universal Stores PLC
"A" Ordinary shares (non-voting), par value 25 p
Guardian Royal Exchange PLC
Ordinary shares, par value 5 p
Hammerson Property Investment and Development Corp. PLC
Common, par value 25 p
Hanson PLC
Ordinary shares, par value 25 p
Harrisons and Crosfield PLC
Common, par value 25 p
Hawker Siddeley Group PLC
Common, par value 25 p
Hillsdown Holdings PLC
Ordinary shares, par value 10 p
Hino Motors Ltd.
Y 50 par common
Honda Motor Company Ltd.
Y 50 par common
Imperial Chemical Industries PLC
Common, par value 100 p
Ishikawajima-Harima Heavy Industries Company Ltd.
Y 50 par common
Isuzu Motors Ltd.
Y 50 par common
Japan Steel Works
Y 50 par common
Jujo Paper Company Ltd.
Y 50 par common
Kajima Corporation
Y 50 par common
Kanebo Ltd.
Y 50 par common
Kansai Electric Power Company Inc.
Y 500 par common
Kawasaki Heavy Industries Ltd.
Y 50 par common
Kawasaki Kisen
Y 50 par common
Kawasaki Steel Corporation
Y 50 par common
Keihin Electric Express Railway
Y 50 par common
Keio Teito Electric Railway
Y 50 par common
Keisei Electric Railway
Y 50 par common
Kikkoman
Y 50 par common
Kingfisher PLC
Ordinary shares, par value 25 p
Kirin Brewery Company Ltd.
Y 50 par common
Kobe Steel
Y 50 par common
Konica Corporation
Y 50 par common
Koyo Seiko
Y 50 par common
Kubota Corporation Ltd.
Y 50 par common
Kuraray Company Ltd.
Y 50 par common
Kyowa Hakko Kogyo Company Ltd.
Y 50 par common
Ladbroke Group PLC
Ordinary shares, par value 10 p
Land Securities PLC
Common, par value 100 p
Lasmo PLC
Common, par value 25 p
Legal and General Group PLC
Common, par value 25 p
Lloyds Bank PLC
Common, par value 100 p
Lonrho Ltd. PLC
Ordinary shares, par value 25 p
Lucas Industries PLC
Ordinary shares, par value 100 p
Marks & Spencer PLC
Ordinary shares, par value 25 p
Marubeni Corporation
Y 50 par common
Matsuzakaya
Y 50 par common
Maxwell Communication Corporation PLC
Ordinary shares, par value 25 p
Mazda Motor Corporation
Y 50 par common
Meidensha Electric
Y 50 par common
Meiji Milk Products
Y 50 par common
Meiji Seika Kaisha Ltd.
Y 50 par common
Mepc PLC
Common, par value 25 p
Midland Bank PLC
Ordinary shares, par value 100 p
Mitsubishi Corporation
Y 50 par common
Mitsubishi Electric Corporation
Y 50 par common
Mitsubishi Estate Company Ltd.
Y 50 par common
Mitsubishi Heavy Industry Ltd.
Y 50 par common
Mitsubishi Kaisei Corporation
Y 50 par common
Mitsubishi Metal Corporation
Y 50 par common
Mitsubishi Oil Company Ltd.
Y 50 par common
Mitsubishi Paper Mills
Y 50 par common
Mitsubishi Rayon Company Ltd.
Y 50 par common
Mitsubishi Steel Manufacturing
Y 50 par common
Mitsubishi Trust &Banking Corporation
Y 50 par common
Mitsubishi Warehouse & Transportation
Y 50 par common
Mitsui & Co. Ltd.
Y 50 par common
Mitsui Mining & Smelting Company Ltd.
Y 50 par common
Mitsui OSK Lines Ltd.
Y 50 par common
Mitsui Real Estate Development Company Ltd.
Y 50 par common
Mitsui Taiyo Kobe Bank
Y 50 par common
Mitsui Toatsu Chemicals
Y 50 par common
Mitsui Trust and Banking Company Ltd.
Y 50 par common
Morinaga and Company
Y 50 par common
Nachi-Fujikoshi
Y 50 par common
National Westminister Bank PLC
Common, par value 100 p
Navix Line
Y 50 par common
NGK Insulators
Y 50 par common
Nichirei Corporation
Y 50 par common
Nihon Cement
Y 50 par common
Nilgata Engineering
Y 50 par common
Nikko Securities Company Ltd.
Y 50 par common
Nikon Corporation
Y 50 par common
Nippon Beet Sugar Manufacturing
Y 50 par common
Nippon Denso
Y 50 par common
Nippon Kayaku Company LTD.
Y 50 par common
Nippon Light Metal Company Ltd.
Y 50 par common
Nippon Mining Company Ltd.
Y 50 par common
Nippon Oil & Fats
Y 50 par common
Nippon Oil Company Ltd.
Y 50 par common
Nippon Seiko.
Y 50 par common
Nippon Sharyo Seizo
Y 50 par common
Nippon Sheet Glass Company Ltd.
Y 50 par common
Nippon Shinpan Company Ltd.
Y 50 par common
Nippon Steel Corporation
Y 50 par common
Nippon Suisan
Y 50 par common
Nippon Yusen
Y 50 par common
Nissan Motors
Y 50 par common
Nisshin Flour Milling Company Ltd.
Y 50 par common
Nisshin Oil Mills
Y 50 par common
NKK Corporation
Y 50 par common
Noritake
Y 50 par common
NTN Toyo Bearing Company Ltd.
Y 50 par common
Obayashi
Y 50 par common
Odakyu Electric Railway
Y 50 par common
OJI Paper Company Ltd.
Y 50 par common
OKI Electric Industry Company Inc.
Y 50 par common
Okuma Machinery Works Ltd.
Y 50 par common
Onoda Cement Company Ltd.
Y 50 par common
Osaka Gas Company Ltd.
Y 50 par common
Pearson PLC
Ordinary shares, par value 25 p
Peninsular and Oriental Steam Navigation Company
(Deferred Stock) Ordinary shares, par value 100 p

Pilkington PLC
Common, par value 50 p
Prudential Corporation PLC
Common, par value 5 p
Rank Organization PLC
Ordinary shares, par value 25 p
Ranks Hovis McDougall PLC
Common, par value 25 p
Reckitt and Colman PLC
Ordinary shares, par value 25 p
Redland PLC
Common, par value 25 p
Reed International PLC
Common, par value 25 p
Reuters Holdings PLC
Common, par value 10 p
RMC Group PLC
Common, par value 25 p
Rolls Royce PLC
Ordinary shares, par value 20 p
Rothmans International PLC
Common, par value 12-½ p
Royal Bank of Scotland Group PLC
Ordinary shares, par value 25 p
Royal Insurance PLC
Common, par value 25 p
RTZ Corporation, The
Common, par value 10 p
Sainsbury, J. PLC
Ordinary shares, par value 25 p
Sankyo Company Ltd.
Y 50 par common
Sanyo Electric Company
Y 50 par common
Sanyo-Kokusaku Pulp
Y 50 par common
Sapporo Breweries
Y 50 par common
Sato Kogyo Company Ltd.
Y 50 par common
Scottish Newcastle Breweries PLC
Ordinary shares, par value 20 p
Sears Holdings PLC
Ordinary shares, par value 25 p
Sharp Corporation
Y 50 par common
Shell Transport & Trading Company PLC
Ordinary shares, par value 25 p
Shimizu Corporation
Y 50 par common
Shinetsu Chemical Company, Ltd.
Y 50 par common
Shochiku
Y 50 par common
Showa Denko K.K.
Y 50 par common
Showa Electric Wire
Y 50 par common
Showa Line Ltd.
Y 50 par common
Showa Shell Oil
Y 50 par common
Smith & Nephew Associated Company PLC
Ordinary shares, par value 10 p
Smithkline Beecham PLC
"A" Ordinary shares, par value 25 p
Standard Chartered Group PLC
Ordinary shares, par value 100 p
STC PLC
Common, par value 25 p
Sumitomo Bank Ltd.
Y 50 par common
Sumitomo Cement Company Ltd.
Y 50 par common
Sumitomo Chemical Company Ltd.
Y 50 par common
Sumitomo Corporation
Y 50 par common
Sumitomo Electric Industries Ltd.
Y 50 par common
Sumitomo Metal Industries
Y 50 par common
Sumitomo Metal Mining Company Ltd.
Y 50 par common
Sun Alliance Group PLC
Ordinary shares, par value 25 p
Suzuki Motor Company Ltd.
Y 50 par common
Taisho Marine & Fire Insurance Company Ltd.
Y 50 par common
Takara Shuzo
Y 50 par common
Takashimaya Company Ltd.
Y 50 par common
Takeda Chemical Industries Ltd.
Y 50 par common
Tarmac PLC
Common, par value 50 p
Taylor Woodrow PLC
Common, par value 25 p
Teijin Ltd.
Y 50 par common
Teikoku Oil
Y 50 par common
Tekken Construction
Y 50 par common
Tesco PLC
Ordinary shares, par value 5 p
Thames Water PLC
Ordinary shares, par value 100 p
Thorn EMI PLC
Common, par value 25 p
Tobu Railway Company Ltd.
Y 50 par common
Tokio Marine & Fire Insurance Company Ltd.
Y 50 par common
Tokyo Department Store
Y 50 par common
Tokyo Electric Power Company Incorporated
Y 500 par common
Tokyo Gas Company Ltd.
Y 50 par common
Tonen Corporation
Y 50 par common
Toray Industries, Inc.
Y 50 par common
Toshiba Corporation
Y 50 par common
Tosoh Corporation
Y 50 par common
Toto Ltd.
Y 50 par common
Toyo Seikan
Y 50 par common
Toyobo Company Ltd.
Y 50 par common
Trafalgar House PLC
Common, par value 20 p
Trusthouse Forte PLC
Common, par value 25 p
TSB Group PLC
Common, par value 25 p
UBE Industries
Y 50 par common
Ultramar PLC
Ordinary shares, par value 25 p
Unilever PLC
Ordinary shares, par value 5 p
United Biscuits Holdings PLC
Ordinary shares, par value 25 p
Unitika
Y 50 par common
Whitbread & Company PLC
Common, par value 25 p
Yasuda Fire & Marine Insurance Company Ltd.
Y 50 par common
Yokogawa Electric Corporaiton
Y 50 par common
Yokohama Rubber Company Ltd.
Y 50 par common
Yuasa Battery
Y 50 par common

By order of the Board of Governors of the Federal Reserve System, acting by its Staff Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(18)), October 26, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-25854 Filed 10-31-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 89C-0203]

Listing of Color Additives for Coloring Contact Lenses; 1,4-Bis[4-(2-Methacryloxyethyl) Phenylamino] Anthraquinone; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of August 27, 1990, for the final rule that amended the color additive regulations to provide for the safe use of 1,4-bis[4-2-methacryloxyethyl) phenylamino] anthraquinone; for coloring contact lenses.

DATES: Effective date confirmed: August 27, 1990.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 25, 1990 (55 FR 30212), FDA amended 21 CFR part 73 of the color additive regulations by adding § 73.3106 to provide for the safe use of 1,4-bis[4-2-methacryloxyethyl) phenylamino] anthraquinone; for coloring contact lenses.

FDA gave interested persons until August 24, 1990, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the final rule published in the **Federal Register** of July 25, 1990, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sections 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 706 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361 362, 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the July 25, 1990, final rule. Accordingly, the amendments promulgated thereby became effective August 27, 1990.

Dated: October 25, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-25829 Filed 10-31-90; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 514

[Docket No. 76N-0358]

New Animal Drug Applications; Approval of Supplemental Applications

AGENCY: Food and Drug Administration; HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing a regulation regarding the approval of supplemental new animal drug applications (NADA's). The regulation provides that FDA will ordinarily approve certain supplemental NADA's without reevaluating the safety or effectiveness data in the parent NADA. For other supplemental NADA's, FDA may reevaluate certain portions or all of the data in the parent NADA and may require submission of new data prior to approval. The regulation will permit FDA to improve internal procedures for processing supplemental applications and will permit expeditious implementation of changes that will provide immediate public health protection. In a separate notice in this issue of the **Federal Register**, FDA is also making available guidelines as aids in the implementation of the new policy.

EFFECTIVE DATE: December 3, 1990.

FOR FURTHER INFORMATION CONTACT: Steven D. Brynes, Center for Veterinary Medicine (HFV-144), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2841.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 23, 1977 (42 FR 64367), FDA proposed new § 514.106 *Approval of supplemental applications*, which sets out principles and criteria for implementing a new policy on the approval of supplemental NADA's. The preamble to the 1977 proposal included FDA's responses to comments submitted in response to an advance notice of proposed rulemaking that had been published in the **Federal Register** of November 12, 1976 (41 FR 50003). An NADA sponsor must submit a supplemental application when the sponsor proposes changes in the original application. The possible changes range from those that would make a significant change in a drug's conditions of use to those that have little or no potential for affecting the drug's safety or effectiveness. FDA has specified when a supplemental application is required and the procedures to be followed in 21 CFR 514.8.

I. Summary of the Proposed and Final Rules

A. The Proposed Rule

The proposed rule provided that FDA would approve certain supplemental NADA's without a complete reevaluation of the underlying safety and effectiveness data when, among other things, the approval posed no increased human risk from exposure to the drug. The proposal represented a change in the agency's policy with regard to supplemental applications. Historically, FDA had viewed the approval of a supplemental NADA as constituting an affirmation that all safety and effectiveness information in the parent application was scientifically adequate by current standards. Accordingly, the agency concluded that it was required to reevaluate all the underlying safety and effectiveness data in the parent NADA when a sponsor submitted a supplemental application and to refuse approval unless current standards were met. However, application of this policy meant delays in FDA's action on supplemental applications for changes that would provide additional public protection. It also meant that the review of safety and effectiveness data in previously approved NADA's was triggered by events beyond the agency's control and did not necessarily occur in a rational, scheduled manner.

The proposed regulation was designed to provide a practical solution to these problems. The proposal provided that the underlying data would not be reviewed if the change proposed by the supplemental application did not increase risk from exposure to the drug. It established three categories of supplemental applications: those that would not require reevaluation of the underlying data; those that would require such reevaluation; and those that might or might not require the reevaluation, depending on the circumstances of the particular application. The agency concluded that, if it did not review the underlying data, approval of the supplement would not imply reaffirmation of the drug's safety and effectiveness by current standards. As part of the decision to revise its supplemental policy, the agency decided to institute a systematic reevaluation of the underlying data that supported all previously approved NADA's; this program was to be known as the cyclic review. The agency also noted that other factors, such as the availability of new information concerning the drug, would continue to trigger a full review of the safety and effectiveness data in an approved NADA (known as a causal review), whether or not a supplemental application had been submitted.

B. Comment, Litigation, and Experience

FDA received two comments on the proposed rule (the comment period closed March 23, 1978 (43 FR 9629; March 10, 1978)). The agency has carefully evaluated the comments, and its response is set forth below. As explained in the preamble to the proposed rule, the agency has, since it issued the advanced notice in 1976, implemented the revised policy on a case-by-case basis. Also, as described further below, the agency has, since publication of the proposed rule, made certain changes in its case-by-case approval of supplemental applications. Further, the evolution of the agency's supplemental policy has been influenced by two cases decided by Federal courts; these cases are also discussed below.

The final rule is based on the comments received, the agency's experience in the implementation of its supplemental policy over more than a decade, the aforementioned litigation, and other considerations as explained in this preamble, in addition to the rationale explained in the advance notice and the preamble to the proposed rule.

During the course of implementing its supplemental policy, FDA has developed guidelines that may be used in deciding whether, when reviewing a supplemental application, it is necessary to review the data in the original

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application and, if so, in deciding upon the extent of the review. One guideline concerns human food safety, and the other effectiveness and target animal safety. These guidelines are available to the public, as explained in a separate notice in this issue of the Federal Register.

The final rule, as in the case of the proposed rule, applies to all new animal drugs, whether approved for use in food animals or nonfood animals.

C. The Final Rule

Principles that underlay the proposed rule remain as foundations for the final rule, although FDA has changed some of the means of implementing these principles. As under the proposal, FDA will under the final rule approve certain supplemental applications without reevaluation of the underlying data. However, the scope of that reevaluation, where it does occur, will be more narrow in that it will concern only the data directly affected by the application, rather than all the data in the original NADA.

The final rule assumes the existence of an independent mechanism for reviewing the data in previously approved NADA's, where such review is needed. Instead of relying on both causal and cyclic reviews, however, the agency will utilize only the causal review mechanism.

As in the proposal, the final rule places supplemental applications in categories for purposes of determining whether underlying data in the NADA will be reviewed. However, the categories will be reduced to two: those for which reevaluation is not ordinarily needed (Category I), and those for which reevaluation may be needed (Category II). Also, the lists of types of supplemental applications that are included in each of the categories have been refined.

The final rule and the assignment of individual supplemental applications to categories do not affect the need for appropriate environmental impact information for each supplemental application. Environmental review of agency actions is mandated by the National Environmental Policy Act and defined by FDA's regulations implementing that act, contained in 21 CFR part 25. Part 25 defines various actions, including supplemental new animal drug applications, the types of environmental information required, and the conditions under which a retroactive, or "for cause" (causal), review of underlying environmental data would be initiated.

II. Discussion of the Final Rule

A. Circumstances and Extent of Review of Underlying Data

The proposed rule stated that whether underlying data would be reviewed would depend on the human risk from exposure to the drug that would be brought about by approval of the supplement. The proposed rule contemplated that, if review of underlying data were necessary, all such data would be reviewed—i.e., human food safety, effectiveness, and target animal safety data—regardless of the scope of the supplemental application.

The final rule itself does not contain explicit reference to human risk from exposure to the drug. Nor does it contain any other specific criteria for determining when review of underlying data will occur, other than the division of supplements into two categories. Moreover, the agency does not contemplate conducting a routine review of all safety and effectiveness data in an NADA when review of underlying data is triggered. Instead, FDA will ordinarily review only the data that are directly related to the nature of the proposed change. For example, if the proposed change concerns only human food safety (*e.g.*, a change in withdrawal time), the agency will not review the effectiveness and animal safety data that are in the original NADA, and may review only a portion of the underlying human food safety data.

The two guidelines that FDA is making available in a separate notice describe examples of circumstances under which FDA may review underlying data, and the scope of that review. The human food safety and target animal safety and efficacy guidelines list the kinds of changes that are most frequently requested, explain for each kind of change the kinds of data that ordinarily are submitted in support of the supplement, and discuss whether and to what extent the underlying data may be reviewed. Generally speaking, the circumstances and scope of the review of underlying human food safety data depend on such factors as the amount, nature, and frequency of exposure to drug residues that would result from approval of the drug. The agency may in turn consider these factors to determine whether the approval of the application will result in an increased exposure of humans to drug residues. It should be understood that "increased exposure" has both a qualitative and a quantitative meaning. That is, the agency may assess the potential effects of the approval of a supplemental application on both the amount and the composition of the residues to which consumers will be exposed.

The changes that the agency has made in adopting the final rule offer greater flexibility in determining whether and to what extent the agency will review the underlying NADA data when a sponsor submits a supplemental application. The changes facilitate the approval of supplemental applications that enhance safety and therefore increase protection of the public health. By narrowing the scope of review of the underlying data to those parts of the original application that are directly affected by the supplemental application, the agency will conserve resources both for itself and for NADA sponsors.

The agency believes that these changes are in character with the proposal and that they are a logical outgrowth of the proposal and the comments on it. As shown in the discussion below, the changes are consistent with several of the comments that were submitted in response to the proposed rule. Further, FDA has implemented these changes on a case-by-case basis in the years since it issued the proposal. NADA sponsors and the public have been informed of the changes, e.g., through the Freedom of Information summaries issued at the time of approval of supplemental applications. There has been no objection to the agency's actions.

With respect to the criteria for determining whether any underlying data will be reevaluated, it should be noted first that the regulation no longer contains specific criteria—e.g., increased risk of human exposure—that would be imposed as a binding rule. Instead, the agency will consider proposed changes on a case-by-case basis using the guidelines mentioned above as aids. The potential factors to be considered have been broadened, thus making clear the agency's position that reevaluation may be triggered by more than a projected increase in the quantity of the drug that would be marketed as a result of approval of a supplemental application. This responds to the decision in *Rhodia, Inc., Hess & Clark Div.* v. *Food and Drug Administration*, 608 F.2d 1376 (D.C. Cir. 1979), in which the court held that FDA was arbitrary and capricious in denying a supplemental application that would add approved suppliers of a bulk drug on the ground that such approval would increase the potential risk of human exposure to drug residues. Although FDA has the authority to define changes bearing on safety so as to invoke a full safety and effectiveness review, denial of the particular supplemental

application at issue in *Rhodia* was inconsistent with agency policies then in effect. The court further held that FDA had not structured its regulations to define the available quantity of a drug as a factor triggering invocation of a safety review.

As for limiting the scope of review to areas directly affected by the supplement, the agency gave notice in the preamble to the proposed rule that it might limit the scope of review of NADA data when it stated that it may need "* * * to sever the review of the effectiveness data from the review of the safety data * * *" (42 FR 64367). Further, as explained below in section III, review of all the underlying data, when review is undertaken, is not legally required.

FDA has also deleted from the proposed regulation paragraph (c), which would have required FDA to explain why approval of a supplemental application would not adversely affect safety or effectiveness. The agency has deleted this provision as unnecessary, because it routinely includes such an explanation in the Freedom of Information Summary that the agency releases when it approves a supplemental application that contains safety or effectiveness data and information. Similarly, the provision of former paragraph (c) requiring expeditious approval of a supplemental application that reduces risk from exposure to a drug has been deleted. Although the agency will make every effort to hasten the approval of those types of changes, the agency may need to closely consider the underlying reason for the requested change. For example, a request for a decreased tolerance or a lengthened withdrawal period may be predicated on adverse findings for residues of a particular drug which the agency may wish to investigate thoroughly.

B. Cyclic and Causal Reviews

As explained in the preamble to the proposed rule, FDA had intended to initiate a systematic, or cyclic, review of the safety and effectiveness data contained in original NADA's. The cyclic review was to have been conducted independently of the submission of supplements, although it was to have compensated for the fact that, under the new supplemental policy, underlying data would not be reviewed in many cases when supplemental applications were submitted.

However, because of resource limitations FDA has not initiated a cyclic review of approved NADA's, and does not intend to start such a review in the foreseeable future. Instead, the agency will rereview data in original NADA's, as appropriate, through causal reviews. A causal ("for cause") review is a review of safety or effectiveness data when a specific safety or effectiveness problem comes to the agency's attention. The agency may initiate a causal review at any time, regardless of whether or not a supplemental NADA has been submitted. The scope and complexity of causal reviews may vary, depending on the nature of the problem and the number of products and sponsors involved. However, the scope will ordinarily be limited to the particular problem that has come to the agency's attention. For example, if FDA obtains new information that raises questions about the safety of a drug to the target animal, the causal review will ordinarily be limited to target animal safety.

The agency has, of course, had authority to conduct causal reviews since the passage of the Federal Food, Drug, and Cosmetic Act (the act) in 1938. The agency noted that authority in the preamble to the proposed rule. In 1979, the agency adopted a written procedure for conducting the more complex causal reviews of approved new animal drugs. These procedures have since been revised and are contained in FDA Staff Manual Guide Issuance 1240.3542, which is available upon request from the Center for Veterinary Medicine. The guide provides that FDA may undertake a review of the data in an NADA if safety or effectiveness concerns regarding a drug product or products arise from new information found in the published literature, unpublished research reports, drug experience reports submitted under 21 CFR 510.300 and 510.301, the FDA/U.S. Department of Agriculture residue monitoring program, or other sources.

"New information" which may trigger a causal review includes factors such as the following: (1) New information that the drug or a closely related compound is carcinogenic, mutagenic, teratogenic, more toxic than shown by the previously available data, or that resistance or hypersensitivity is developing; (2) new information that the drug or a closely related compound is unsafe or ineffective to the target animal; (3) an increase in reports of violative residues from the residue monitoring program; and (4) the occurrence of repeated manufacturing problems.

The agency has concluded that the conduct of a cyclic review is not required as a condition to approval of a supplemental application without reevaluation of the underlying data. Because the proposed regulation did not refer to cyclic review, there will be no change in the regulation itself. Where rereview of the data in the NADA is not necessary, the supplemental application is deemed not to affect safety and effectiveness except those aspects of safety and effectiveness that are the subject of the supplemental application itself. Therefore, approval of the supplemental application does not implicate the underlying safety and effectiveness data, which the cyclic review would have addressed.

Experience since the issuance of the proposed rule supports the position that cyclic review is not necessary for the viability of the final rule. There has been no objection to the fact that FDA has not initiated a cyclic review during the years since the issuance of the proposal, despite public knowledge that FDA was implementing the proposed rule on a case-by-case basis, and has approved many supplemental applications during that period without review of the underlying data.

Moreover, to the extent that a plan for a systematic and comprehensive review of underlying data is required to support the final rule, the causal review is an acceptable alternative to the cyclic review. The causal review is systematic in that it results from continuous surveillance of the sources of new information that is available to the agency, and is comprehensive in that it contemplates a thorough review of all areas that are implicated by the new information. Further, the causal review potentially provides greater benefit to the public because, by being problem oriented, it makes more efficient use of limited resources in taking actions that will protect the public health.

Sections 512(e) and (l) of the act provide authority for casual reviews. The agency discussed casual reviews in the preamble to the 1977 proposal, and as described below a comment was submitted on that discussion. Therefore, the public has had notice and an opportunity to comment on the use of casual reviews in support of supplemental approvals.

C. Categories for the Supplemental Applications

The proposed rule provided for three categories of supplements, i.e., Category I (those that do not ordinarily require review of underlying data), Category II (those that may or may not require such review) and Category III (those that ordinarily require such review). The final regulation provides that FDA will assign a supplemental application to one of two categories: Category I or Category II. Supplemental applications

that had been included in proposed Category III will be assigned to Category II.

The proposed regulation assigned only a few kinds of supplemental applications to Category III. Adding those applications to Category II is consistent with the flexibility that is provided for in the final regulation; the guidelines mentioned above may be used to determine whether and to what extent review of the underlying data will be necessary for the supplemental applications that would have been included in proposed Category III. Accordingly, the agency concludes that eliminating proposed Category III as a separate category will not lessen protection of the public health. Finally, eliminating proposed Category III was supported by one of the comments that was submitted.

FDA will assign to Category I supplemental applications that do not require the submission of new safety or effectiveness data and therefore do not ordinarily require a review of any of the original safety or effectiveness data. Exceptions may be made in unusual circumstances if significant safety concerns for the approved product have previously been identified, and the proposed change could further jeopardize human or animal health. Examples of Category I applications include a corporate change that alters the identity of the sponsor; a change that adds a new facility to manufacture, package, or label the product; or a change in the content of labeling or promotional material without adding a new claim.

FDA will assign to Category II applications that may ordinarily require the submission of new safety or effectiveness data and therefore may require reevaluation of some or all of the original safety or effectiveness data before approval. Examples of Category II applications include changes in ingredients that significantly alter the drug's formulation, the addition of new claims, or other changes in the product's conditions of use. If it is necessary for FDA to review any of the underlying data, the existing data may be adequate to resolve any relevant safety or effectiveness issues. In such cases, FDA will not require the sponsor to conduct new scientific studies. In other cases, however, the agency will require additional data to ensure the safety or effectiveness of the drug before approving the supplemental application. In such cases, the data will be required to meet current scientific standards.

As explained above, FDA is making available guidelines that the agency may use as aids in determining whether, and to what extent the data in the NADA may be reviewed in connection with the submission of Category II supplements.

The listings of supplemental changes that are included in the final rule have been changed in some respects from the proposed rule. The changes have primarily been made in response to the comments that were submitted; these changes are discussed in section IV below. The listings that are included in the final rule are not intended to be all inclusive. The agency will categorize on a case-by-case basis any types of supplemental applications that are not listed in the final rule, using the agency's experience with similar kinds of applications.

III. Statutory Authority

FDA's position that it has authority to review the underlying data in an original NADA, on submission of a supplemental application requesting a change that has a bearing on safety and effectiveness has been found to be reasonable and consistent with language in the act. See *American Cyanamid* v. *Young*, 770 F.2d 1213, 1216–18 (DC Cir. 1985). The statutory basis for the agency's authority to review the original data is section 512(e)(1)(F) of the act which states that a supplemental application will be "treated in the same manner" as an original NADA. See *American Cyanamid, supra*, 770 F.2d at 1216. (Section 512(e)(1)(F) provides that approval of an original application shall be withdrawn if FDA finds "that the applicant has made any changes from the standpoint of safety or effectiveness beyond the variations provided for him in the application unless he has supplemented the application by filing with the Secretary adequate information respecting all such changes and unless there is in effect an approval of the supplemental application. The supplemental application shall be treated in the same manner as the original application."]

Although FDA may therefore review the underlying data whenever a supplemental application is submitted, it is not required to do so. See *American Cyanamid, supra*, 770 F.2d at 1217, referring with approval to the supplemental policy that is the subject of this final rule as an exception to FDA's past policy of full safety and effectiveness review.

The theory behind the proposed rule was that, where there would be an increased risk of human exposure as a result of approval of the supplemental application, the application would be "treated as an original application" in that all data in the NADA would be reviewed, and approval would constitute reaffirmation of the underlying data. Where there would not be an increased risk, the supplemental application would not be deemed to affect safety and effectiveness except with respect to those aspects of safety and effectiveness that were the subject of the application. Therefore, the application would not need to have been treated "as an original application" with respect to the underlying data.

The legal theory that supports the final rule is essentially the same, with two refinements. First, instead of reviewing all the underlying data where such review is appropriate, the agency may review only those areas that are directly affected by the supplemental application. The supplemental application would therefore be "treated as an original application" only with respect to those changes. Second, instead of utilizing only the "increased risk" test, the agency may consider one or more of several relevant factors.

IV. Comments on the 1977 Proposal

Comments were received from the Animal Health Institute (AHI), a trade association representing manufacturers of animal health and nutrition products, and from the Ralston Purina Co. (Ralston). Both organizations endorsed the intent of the proposal but requested that certain revisions be incorporated in its finalization.

1. AHI requested clarification of the phrase "no increased human risk from exposure to the new animal drug." AHI stated that an approval of a parent application is based on FDA's finding, assuming maximum consumption by the target animal population at the approved level, that any residue from a new animal drug in the edible tissue of the target animal is safe to the consuming public. AHI argued that, therefore, "increased human risk from exposure to a new animal drug cannot come about by a new combination of already approved new animal drugs for a given species, a new claim for the same species, or even a new distributor for the same drug." Accordingly, AHI requested that FDA modify the regulation to include a specific outline of the factors that may contribute to an increased risk to people exposed to residues of the drug.

The phrase "no increased human risk from exposure to the new animal drug," which appeared in the 1977 proposed rule, is not included in the revised regulation. As mentioned above, the review of underlying human food safety data will depend on such factors as the amount, nature, and frequency of exposure of humans to drug residues that would result from approval of the supplemental application. The agency will consider these factors to determine whether the approval of the application will result in an increased exposure of humans to drug residues. Although it is true that the agency regulates drugs as if residues occur in the edible tissues of the target animal at the tolerance levels, that fact does not resolve the human food safety issues that are raised by supplemental applications. For example, a proposed addition of a production claim to a drug currently labeled only for therapeutic uses could increase the number of animals, and therefore the number of consumers, that are in fact exposed to the drug. Also, changing the route of administration may result in human exposure to different residues, *e.g.*, different metabolites. In these and other instances, the agency believes that it is necessary to review the available data to determine whether use of the drug under the proposed conditions is safe. The requested data may not have been submitted in the original application, or the agency's data requirements may have changed in the meantime. As a result, it may be necessary for the sponsor to submit new information with the supplement.

The agency does not believe that it is possible or desirable to provide a comprehensive list in the regulation of all conditions that constitute increased exposure to drug residues. Some of the factors that may be considered are mentioned earlier in the preamble.

2. AHI requested that the specific conditions constituting increased human exposure, referred to in § 514.160(b)(3)(iii) of the proposed rule, be listed in the regulation. (This section in the proposed rule referred to Category III supplements, a category that has been eliminated in the final rule.)

As explained above, FDA has decided to delete Category III supplements. Supplemental applications that had been included in the proposed Category III are now assigned to Category II. The agency has responded to AHI's request to specify the conditions constituting increased human exposure in its response to the first comment, above.

3. AHI contended that the four factors discussed in the preamble as grounds for triggering a full review of the safety and effectiveness data of the parent application (causal review) constituted mere "theorizing." (The four factors are listed in section II.B. of this preamble.) AHI requested that these factors be deleted from the final regulation and that the requirements listed in section 512(e)(1) of the act be included instead to serve as a basis for triggering a review.

FDA agrees that the criteria listed in section 512(e)(1) of the act provide the legal basis for a causal review. However, FDA believes that it is in the public interest to identify specific factors which might trigger a rereview of data in the NADA. It has done so in the causal review guideline and in this preamble.

4. AHI also suggested that the agency publish a separate proposal for comment outlining FDA's requirements for the cyclic review of the original NADA's for food-producing animals.

As previously stated in this document, FDA does not foresee initiating a cyclic review of new animal drugs.

5. AHI commented favorably on the discussion of how this regulation may help the agency improve the internal processing of original NADA's by applying the principles contained in the supplemental policy. AHI requested that the two examples contained in the discussion (42 FR 64367 at 64369; comment number (8) be included in § 514.106(b)(2) of the final regulation. The examples included approval of an NADA for a new dosage form of a previously approved drug and an NADA for a combination of drugs previously approved individually. The NADA's would be treated as supplements for purposes of determining the extent to which the underlying data in the original NADA's would be rereviewed.

The request is denied. The discussion in the preamble was in response to a comment that internal procedures for processing NADA's should be improved. The agency agreed with that comment. As an example of the type of improvements envisioned, the agency explained that the supplemental policy concept might be applied to certain kinds of original NADA's. The examples were intended merely to illustrate the agency's willingness to consider more efficient ways of processing NADA's. The agency has, in fact, implemented the practice illustrated by the two examples, on a case-by-case basis in a number of instances. It was not, and is not, the intention of the agency to codify a list of original NADA's that might be treated as supplements.

6. Both AHI and Ralston requested that "changes in active ingredient concentration" be placed in Category I rather than Category II, provided that such change does not constitute a change in dosage.

The agency does not agree with the comment. Changes in active ingredient concentration may affect, among other things, the rate of absorption of a drug and thus, not only affect the amount of human exposure to the drug but also the safety and effectiveness of the drug product. Therefore, any change in the active ingredient concentration may require a review of some of the original underlying safety and effectiveness of the drug product in addition to the review of new data submitted to support the change.

7. Another comment requested that added, new, or revised claims, including production claims, be moved from Category II (§ 514.106(b)(2) (vii) and (viii)) to Category I.

The request is denied. Added, new, or revised claims, including production claims, may not only increase the possibility of exposure of humans to residues (in the case of food-producing animals) but may also influence the safety and effectiveness of the drug for a target species use. In either instance, the request for a new, revised, or added claim will ordinarily require new data to support the claim and may also cause a reevaluation of the original data which pertains to the claim.

8. AHI and Ralston requested that deletion of approved claims or species (proposed § 514.106(b)(2)(x)) be classified a Category I action instead of Category II because such changes would be permitted under proposed § 514.106(b)(1)(xx) (changes permitted by § 514.8(d) in advance of approval).

The agency agrees. Proposed § 514.106(b)(2)(x) has been removed and proposed § 514.106(b)(1)(xx) has been changed to § 514.106(b)(1)(xiii).

9. AHI requested without explanation that proposed § 514.106(b)(2)(xiii) "Change in the withdrawal or milk discard time" be revised to read "A change to decrease the withdrawal or milk discard time." In another related comment, AHI requested that a change in tolerance for drug residues should be included in Category III, under proposed § 514.106(b)(3)(i), only when an increase in the tolerance is proposed.

FDA denies the requests. As stated earlier, FDA has deleted Category III. FDA will assign to Category II any request to change the tolerance, the preslaughter withdrawal period, or the discard time for milk. The decision as to whether to conduct a reevaluation of the data base contained in the original NADA will depend upon the supplemental application's potential for increasing exposure of humans to residues. In those cases for which a lengthened withdrawal time or lowering of the tolerance is requested, the decision as to whether to rereview the original data will, in addition, be based upon the existence of any adverse

information that prompted the proposed change. Proposed § 514.106(b)(2)(xiii) (now § 514.106(b)(2)(x)) has been clarified to read as follows: "A change in the drug withdrawal period prior to slaughter or in the milk discard time." In addition, proposed § 514.106(b)(3)(i) has been redesignated § 514.106(b)(2)(xi), which reads, "A change in the tolerance for drug residues."

10. One comment requested that FDA place in Category I requests for changes in analytical methods for drug residues in tissues that provide a more sensitive assay, unless such changes have an effect upon a determination of the safety and effectiveness of the product. Proposed § 514.106(b)(2)(xiv) placed in Category II all changes in tissue analytical methods.

FDA denies this request. FDA prefers to group all applications requesting a change in analytical methods for residues under Category II. For instance, a revised method may detect higher levels of residues than were previously thought to be present or even detect a different marker residue. Under either circumstance, FDA may choose to reevaluate the underlying human safety data.

11. One comment requested that supplements involving a revised method of synthesis or fermentation of the new animal drug substance (proposed § 514.106(b)(2)(xv)), but not involving any change in specifications, be moved to Category I unless such change affects the safety or effectiveness of the drug.

The request is denied. The agency believes that a change in the synthesis or fermentation process may affect the safety of the drug use and/or the effectiveness of the drug product, even if there is no change in specifications. Therefore, a review of the original data to determine the effect of the change on the safety and effectiveness of the product may be required. The applicable paragraph is adopted as § 514.106(b)(2)(xiii).

12. Two comments suggested that the phrase "safety and effectiveness" in the regulation be revised to read "safety and/or effectiveness".

FDA agrees with the intent of this suggestion and has changed the regulations to read "safety or effectiveness". When FDA determines that a review is required, that review may include an evaluation of safety or effectiveness data, or both.

13. One comment requested that for the sake of consistency between §§ 514.106(b) and 514.8(a)(5), the phrase "and may be placed into effect in advance of approval" be added to the end of the first sentence in § 514.106(b).

FDA has instead deleted the reference to § 514.8(a)(5) from the first sentence of § 514.106(b). The new § 514.106(b)(1)(xiv) now carries the appropriate cross-reference to § 514.8(a)(5).

14. AHI requested a revision of proposed § 514.106(b)(2)(iv) (now listed as § 514.106(b)(2)(ii)). That paragraph concerns changes in the quality, purity, strength, and identity specifications of active and inactive ingredients, except when those changes are more stringent or when they include additional specifications or methods that do not alter the previously approved product standards. AHI suggested that the phrase "except those changes permitted by §§ 514.8(a)(5) or 514.8(d)" be substituted for the statement of exception appearing in the proposed rule.

The changes described in §§ 514.8(a)(5) and 514.8(d) do not constitute as comprehensive an exception as that provided in the proposed and final rules. Accordingly, the request is denied.

15. AHI recognized that the agency included in Category I "most of the kind of changes provided for in § 514.8(a)(5), which may be placed into effect without approval of a supplemental application." AHI noted, however, that those changes specified by § 514.8(a)(5)(vii) (alteration of specifications in accordance with compendial revisions) and § 514.8(a)(5)(x) (changes in label material) were not included in Category I. AHI suggested that those two changes be added to the existing list under Category I, or that a statement be added to the effect that changes permitted under § 514.8(a)(5) may be placed into effect without approval of a supplemental NADA.

Most, if not all, of the changes, discussed in § 514.8(a)(5) do not require the submission of a supplemental application. They may be reported in the next annual drug experience report (DER). However, many sponsors choose to submit such changes in a supplement. As previously discussed, the final regulation deletes those specific changes that are already codified under § 514.8(a)(5) and cross-reference § 514.8(a)(5) changes (in new § 514.106(b)(1)(xiv)) to indicate that they are Category I changes. The two changes identified by AHI are therefore included in Category I.

16. One comment suggested that § 514.106(b)(2)(xvii) of the proposed rule, relating to certain changes in the manufacturing process, is redundant and should be deleted.

The agency disagrees with this comment. Although some manufacturing changes made after the initial approval of an application are included in Category I, there are manufacturing changes that may affect the new drug substance and/or final dosage form; therefore, a review of the product's safety and effectiveness data may be necessary. The review of the proposed change will dictate the need for the safety and effectiveness review. Because of the significance of these kinds of changes, the agency has concluded that they should be specifically provided for in the regulations. The paragraph has been redesignated as § 514.106(b)(2)(xiv).

17. One comment suggested that § 514.106(b)(1)(i), "A corporate reorganization," be revised to read "A corporate change that alters the identity of the applicant."

The requested revision is consistent with language used in the preamble to the proposed rule and § 514.106(b)(1)(i) of the proposed rule is revised to reflect the requested change, as well as to provide for change in address.

18. Another comment recommended that proposed § 514.106(b)(1)(iv) be modified to refer to personnel changes covered in § 514.8(a)(5)(ii).

The agency concurs. This is one of a number of changes covered by § 514.8(a)(5). The regulation has been revised to delete those specific changes and to cover them collectively under § 514.106(b)(1)(xiv).

19. AHI stated in a comment that proposed § 514.106(b)(1)(v), under which a supplement providing for a bulk drug shipment would be classified in Category I, would be clearer if the phrase "bulk drug shipments" was revised to read "change in the manufacturing source of the bulk drug."

The agency does not agree with this contention. Bulk drug shipments can be made during the various stages of drug manufacturing, *e.g.*, processing, packaging, relabeling, etc. A change in the manufacturing source of a bulk drug is different from a bulk drug shipment. As discussed in the preamble to the proposed rule, the term "bulk drug shipments" may refer not only to a bulk shipment of active ingredients but also to bulk shipments of nonfinished drug product, e.g., granulations, or finished products for repackaging, or other manufacturing process operations.

AHI also stated that § 514.106(b)(1)(v) should include changes in active ingredient sources. The agency has determined that a change in the physical source (supplier) for the active ingredient of a drug can be appropriately classified in Category I. Proposed § 514.106(b)(1)(xviii) (alternate

manufacturer has been renumbered to two new paragraphs, § 514.106(b)(1)(xi) (addition of an alternate manufacturer, repackager, or relabeler of the drug product(, and § 514.106(b)(1)(xii) (addition of an alternate supplier of the new drug substance). These sections cover all changes in the site of manufacture, whether that site is under the control of a sponsor or an alternate independent manufacturer, or an independent company or corporation, and all stages of manufacture from manufacture of an active ingredient to the manufacture of a finished drug product. Such a change will not ordinarily require a rereview of safety and effectiveness data. Because the approved NADA manufacturing process must be used, however, FDA will review the supplemental application to determine adherence to current good manufacturing practice regulations at the new location. (This review will be conducted whether the change involves the manufacture of a dosage form or the new drug substance itself). All aspects of the manufacturing process have to be reviewed to determine if required standards (purity, identity, quality, and potency) are being met. However, any change in the active ingredient itself will be classified under Category II, § 514.106(b)(2)(i), (ii), or (xiii) of the final regulation.

20. AHI and Ralston Purina both requested that proposed § 514.106(b)(1)(vii) be revised to make reference to distributor supplements as provided in § 514.8(a)(6). The proposed paragraph referred to distributor supplements that do not significantly increase distribution.

Since 1981, the agency has not handled the addition of a distributor as a change requiring a supplemental application. Sponsors instead are permitted to provide copies of distributor labeling as part of the NADA's periodic DER requirements. Therefore, § 514.106(b)(1)(vii) is deleted.

21. One comment suggested that proposed § 514.106(b)(1)(viii) "Revision of promotional material for prescription drugs" should be amended to refer specifically to the changes not exempted by § 514.8(a)(3)(i) and (ii).

The agency agrees. The paragraph has been changed to read: "A change in promotional material for a prescription drug not exempted by § 514.8(a)(3)(i) and (ii)." The proposed paragraph is now listed as § 514.106(b)(1)(vi).

22. AHI and Ralston requested a revision of proposed § 514.106(b)(1)(x) (change in container style) and commented that change in container size (proposed § 514.106(b)(2)(ii)) should be taken out of Category II.

The agency agrees with these comments. It has revised § 514.106(b)(1)(x), not redesignated as § 514.106(b)(1)(iv), to refer to container style, shape, size, or components and has deleted proposed § 514.106(b)(2)(ii). A change in container style, shape, or size will not affect the safety and efficacy of the drug product. Such changes are physical container changes. It has been the agency's experience that the industry uses FDA-approved packing materials that have previously been approved under food additive regulations. Although information must be submitted to assure that a change in container components does not adversely affect the product, reevaluation of underlying safety and effectiveness data is not required. A change in container material requires a review of existing and/or the development of new, stability data for the drug product in the new container. The agency will assure by this means that the new container material will not affect the safety and effectiveness of the drug or drug product. Current good manufacturing practice regulations (e.g., 21 CFR 211.94 and 211.166), and the Center's stability guidelines, will assure that the container or components cause no adverse affects.

To clarify the meaning of proposed § 514.106(b)(1)(xi), now listed as § 514.106(b)(1)(v), the agency has decided to change the paragraph from "Revision of labeling color or style" to "A change in approved labeling (color, style, format, addition, deletion, or revision of certain statements, e.g., trade name, storage, expiration dates, etc.)." The change clarifies the meaning of the paragraph and provides greater flexibility in making administrative changes. Proposed § 514.106(b)(1)(ix) has been deleted. Its text "A change in the trade name" has been added to § 514.106(b)(1)(v); see above.

23. One comment recommended a change in proposed § 514.106(b)(1)(xii), which placed in Category I "Changes in shipment that do not alter the method of manufacture." The comment suggested that the word "equipment" be used in place of the word "shipment".

"Equipment" is the correct word, and has been substituted for shipment. Section 514.106(b)(1)(xii), which has been redesignated as § 514.106(b)(1)(vii), has also been changed to include changes in manufacturing instructions in addition to changes in equipment, and to include changes that do not change the final dosage form as well as those that do not alter the method of manufacture. The terms "equipment" and "manufacturing instructions" are often mutually inclusive within the context of general manufacturing operations. In addition, manufacturing instructions are often changed to account for current technology or procedures that provide for more efficient process operations. These changes do not ordinarily affect safety and effectiveness. However, changes that would alter the final dosage form or the method of manufacture would not be included. Accordingly, the paragraph has been reworded to state: "Changes in manufacturing processes that do not alter the method of manufacture or change the final dosage form." Also, because repackaging operations are part of the manufacturing process and are included in the text of the phrase "manufacturing process," proposed § 514.106(b)(1)(vi) has been deleted.

24. One comment stated that proposed § 514.106(b)(1)(xiv) and (xv) would be clearer if worded the same as § 514.8(a)(5)(v) and (viii), respectively.

The agency does not agree with the comment. Proposed § 514.106(b)(1)(xiv) includes changes in analytical control procedures other than those specified in § 514.8(a)(5)(v), *e.g.*, changes to more stringent specifications. Section 514.106(b)(1)(xiv) is now listed as § 514.106(b)(1)(ix). Since recordkeeping is a part of the manufacturing process itself, the agency has decided to delete proposed § 514.106(b)(1)(xiv) and place it under the new § 514.106(b)(1)(vii) explained above under comment 23.

25. One comment stated that proposed § 514.106(b)(1)(xix) (changes in sponsor's name or address) is covered under "A corporate reorganization" as previously provided for in proposed § 514.106(B)(1)(i).

The agency agrees, in views of the change in §514.106(b)(1)(i) as explained above. Proposed § 514.106(b)(1)(xix) has been deleted. New § 514.106(b)(1)(i) is intended to include a change in a sponsor's name or address.

26. AHI stated that the specific language of the exception noted in proposed § 514.106(b)(2)(xii) should be deleted. That paragraph states that changes in statements regarding side effects and the like are Category II changes, except when such statements are added to labeling or advertisements. AHI suggested that this paragraph should cross-reference proposed § 514.106(b)(1)(xx), which refers to changes permitted in advance of approval. (Note: § 514.106(b)(2)(xii) of the proposed regulation has been changed to § 514.106(b)(2)(ix).)

The agency disagrees. It believes that new § 514.106(b)(2)(ix) as written is more readily understandable than if the suggested cross-referencing were made.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Economic Impact

The agency has examined the economic effects of this final rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96-354). This final rule does not impose new or different requirements on industry. The agency, therefore, concludes that this rule is not a major rule as defined in Executive Order 12291. Furthermore, the agency certifies that the final rule will not have a significant impact on a substantial number of small business entities, as defined in the Regulatory Flexibility Act.

List of Subjects in 21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 514 is amended as follows:

PART 514—NEW ANIMAL DRUG APPLICATIONS

1. The authority citation for 21 CFR part 514 continues to read as follows:

Authority: Sections 501, 502, 512, 701, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360b, 371, 376, 381).

2. New § 514.106 is added to subpart B to read as follows:

§ 514.106 Approval of supplemental applications

(a) With 180 days after a supplement to an approved application is filed pursuant to § 514.8, the Commissioner shall approve the supplemental application in accordance with procedures set forth in § 514.105(a)(1) and (2) if he/she determines that the appplication satisfies the requirements of applicable statutory provisions and regulations.

(b) The Commissioner will assign a supplemental application to its proper category to ensure processing of the application.

(1) *Category I.* Supplements that ordinarily do not require a reevaluation of any of the safety or effectiveness data in the parent application. Category I supplements include the following:

(i) A corporate change that alters the identity or address of the sponsor of the new animal drug application (NADA).

(ii) The sales, purchase, or construction of manufacturing facilities.

(iii) The sale of purchase of an NADA.

(iv) A change in container, container style, shape, size, or components.

(v) A change in approved labeling (color, style, format, addition, deletion, or revision or certain statements, e.g., trade name, storage, expiration dates, etc).

(vi) A change in promotional material for a prescription drug not exempted by § 514.8(a)(3)(i) and (a)(3)(ii).

(vii) Changes in manufacturing processes that do not alter the method of manufacture of change in the final dosage form.

(viii) A change in bulk drug shipments.

(ix) A change in an analytical method or control procedures that do not alter the approved standards.

(x) A change in an expiration date.

(xi) Addition of an alternate manufacturer, repackager, or relabeler of the drug product.

(xii) Addition of an alternate supplier of the new drug substance.

(xiii) A change permitted in advance of of approval as listed in § 514.8(d).

(xiv) Changes not requiring prior approval which are listed under § 514.8(a)(5) when submitted as supplemental application.

(2) *Category II.* Supplements that may require a reevaluation of certain safety or effectiveness data in the parent application. Category II supplements include the following:

(i) A change in the active ingredient concentration or composition of the final product.

(ii) A change in quality, purity, strength, and identity specifications of the active or inactive ingredients.

(iii) a change in does (amount of drug administered per dose).

(iv) A change in the treatment regimen (shedule of dosing).

(v) Addition of a new therapeutic claim to the approved uses of the product.

(vi) Addition of a new or revised animal production claim.

(vii) Addition of a new species.

(viii) A change in the prescription or over-the-counter status of a drug product.

(ix) A change in statements regarding side effects, warnings, precautions, and contraindications, except the addition of approved statements to container, package, and promotional labeling, and prescription drug advertising:

(x) A change in the drug withdrawal period prior to slaughter or in the milk discard time.

(xi) A change in the tolerance for drug residues.

(xii) A change in analytical methods for drug residues.

(xiii) A revised method of synthesis of fermentation of the new drug substance.

(xiv) Updating or changes in the manufacturing process of the new drug substance and/or final dosage form (other than a change in equipment that does not alter the method of manufacture of a new animal drug, or a change from one commercial batch size to another without any change in manufacturing procedure), or changes in the methods, facilities, or controls used for the manufacture, processing, packaging, or holding of the new animal drug (other than use of an establishment not covered by the approval that is in effect) that give increased assurance that the drug will have the characteristics of identity, strength, quality, and purity which it purports or is represented to possess.

Dated: May 15, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-25830 Filed 10-31-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Docket S-016

RIN 1218-AA32

Electrical Safety-Related Work Practices; Correction

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Final rule; correction.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is correcting the final standard on electrical safety-related work practices published in the **Federal Register** on August 6, 1990 (55 FR 31984).

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, room N3637, 200 Constitution Avenue, NW., Washington, DC 20210 (202-523-8148).

SUPPLEMENTARY INFORMATION: The **Federal Register** published on August 6, 1990, contained OSHA's final standard on electrical safety-related work practices (55 FR 31984). The notice, as published, contained some errors and inaccuracies. The following table lists these errors and the corresponding corrections.

Additionally, due to the recent issuance of new Secretary of Labor's Order No. 1-90 (55 FR 9033), the authority citations for the document itself and for most of the subparts revised in the document are not accurate. This notice also corrects these errors.

This document was prepared under the direction of G.F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

This document is issued under sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 1-90 (55 FR 9033), and 29 CFR part 1911.

Signed at Washington, DC this 25th day of October 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

1. The following corrections are made to the final electrical safety-related work practices standard as it appeared in the **Federal Register** on August 6, 1990 (55 FR 31984-32020):

Section	FR Page	Column and line	Correction
Preamble	31987	Table 2, Total fatalities	Change "126" to "128".
Preamble	31988	2d: 12th from bottom	Change "chapter" to "Chapter".
Preamble	31988	3d: 9th, 16th, 18th, and 33d from bottom	Change "part" to "Part".
Preamble	31989	1st: 13th and 20th from bottom	Change "part" to "Part".
Preamble	31989	2d: 17th and 34th from top, and 13th from bottom	Change "part" to "Part".
Preamble	31989	2d; 15 from bottom	Change "were" to "was".
Preamble	31989	3d: 36th from top	Change "part" to "Part".
Preamble	31991	1st: 18th from top	Change "near" to "directly associated with".
Preamble	31993	1st: 33d from bottom	Change "electrical" to "electric".
Preamble	31993	3d: 6th from bottom	Change "there" to "these".
Preamble	31994	1st: 23d from bottom	Change "subpart" to "Subpart" and "part" to "Part".
Preamble	31994	2d: 6th from top and 2d (in two places), 30th, and 31st from bottom.	Change "subpart" to "Subpart".
Preamble	31994	2d: 30th from bottom	Change "urges" to "argues".
Preamble	31994	3d: 5th from top	Change "1961" to "1971".
Preamble	31994	3d: 14th, 36th, and 37th full text lines from top	Change "subpart" to "Subpart".
Preamble	31995	1st: 25th from bottom	Change "Code Panel 1" to "Code Panel I".
Preamble	31995	1st: 3d, 6th, and 9th from bottom	Change "subpart" to "Subpart".
Preamble	31996	3d: 35th from bottom	Change "are" to "were".
Preamble	31997	2d: 24th line of text from top	This line, which reads, "The definition reads as follows", is not part of the quotation and should not be in fine print.
Preamble	31997	3d: 16th from top	The sentence starting with "It should be noted" begins a new paragraph.
Preamble	31998	3d: 3d from bottom	Change "part" to "Part".
Preamble	31999	2d: 33d from bottom	Change "(Tr. 1-176 to I-" to "(Tr.1-176 to 1-".
Preamble	31999	2d: 25th from bottom	The words "He goes on to note that" are not part of the quotation and should begin a new line in regular type. The remainder of the paragraph is another quotation and should begin with an ellipsis.
Preamble	32000	3d: 19th from top	Change "(Ex. 5)" to "(Ex. 4-5)".
Preamble	32001	2d: 25th from bottom	Change "part" to "Part".
Preamble	32001	2d: 14th from bottom	Change "chapter" to "Chapter".
Preamble	32001	2d: 13th from bottom	Change "subparagraph" to "Subparagraph".
Preamble	32002	3d: 3d from top	Change "part" to "Part".
Preamble	32003	2d: 29th to 25th from bottom	The sentence beginning "He further stated" should begin a new paragraph and should be in regular type. A double quotation mark should end the sentence.
Preamble	32003	3d: 2d from top	Change "July 1, 1972, to June 30, 1988" to "July 1, 1972 to June 30, 1988".
Preamble	32003	3d: 23d to 24th from top	Remove "(Ex. 10; across the entire electric utility industry".
Preamble	32004	2d: 31st from bottom	Change "inspection" to "inspections".
Preamble	32004	2d: 19th from bottom	Place the period after the parenthesis.
Preamble	32005	3d: 8th from top	Add "lines" after "distribution".
Preamble	32006	2d: 39th from top	Change "(Tr. 1-32 to I-" to "(Tr. 1-32 to 1-".
Preamble	32006	2d: 9th from bottom	Change "insulated aerial lifts are used" to "an insulated aerial lift is used".
Preamble	32008	3d: 4th from bottom	Change "1910.335" to "1910.335".
Preamble	32009	1st: 10th from bottom	Change "Hoses" to "Hose".
Preamble	32009	2d: 13th from bottom	Change "1910.331(c)(1)" to "1910.331(c)(1)".
Preamble	32009	3d: 26th from bottom	Change "believe OSHA is" to "believed OSHA would be".
Preamble	32010	1st: 28th from bottom	This line, which reads "They further stated:", is not part of the quotation and should be in regular type.
Preamble	32010	3d: top line	Change "1910.252(a)(6)(iv)(d)(2)" to "1910.253(f)(4)(iv)(B)".
Preamble	32010	3d: 12th line of text from bottom	Change "includes" to "include".
Preamble	32011	1st: 7th line of text from top	Change "(xi)" to "(ix)".
Preamble	32011	2d: 5th from top	Remove comma after "considerations".
Preamble	32012	Table 7	Move "Subtotal" (in two places) and "Total" to the middle column of the table.
Preamble	32014	2d: 20th and 21st from bottom	Change "Secretary of Labor's Order No. 9-83 (48 FR 35736)" to "Secretary of Labor's Order No. 1-90 (55 FR 9033)".
1910.252	32015	3d: top line	Change "1910.252" to "1910.253".
1910.252	32015	3d: 3d from top	Change "1910.252 *Welding, cutting, and brazing*" to "1910.253 *Oxygen-fuel gas welding and cutting*".
1910.331(b)(2)(i)	32017	2d: 23d from top	Add "written" before "copy".
1910.333(b)(2)(v)	32017	3d: 3d from bottom	Change "re-energized" to "reenergized".

Section	FR Page	Column and line	Correction
1910.333(c)(3)	32015	1st. 13th to 11th from bottom	Change "If protective measures are provided such as guarding, isolating, or insulating," to "If protective measures, such as guarding, isolating, or insulating, are provided,".
Table S-5	32019	2d. Title of Table S-5	Add a dash between "Employees" and "Alternating".
1910.334(a)(2)(ii)	32019	2d. 14th and 17th from bottom	Change "necessary repairs and tests" to "repairs and tests necessary".
1910.334(c)(2)	32020	1st. 17th and 18th from top	Change "necessary repairs and tests" to "repairs and tests necessary".
1910.399	32020	3d. 5th from top	Change "1910.398" to "1910.399".
1910.399	32020	3d. 7th from top	Change "1910.397" to "1910.399".

2. On page 32014, 2d column, subpart D, item No. 1 is corrected to read as follows:

1. The authority citation for subpart D of part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

Sections 1910.21, 1910.26, 1910.25, 1910.26, and 1910.28 also issued under 29 CFR part 1911.

3. On page 32014, 3d column, subpart F, item No. 3 is corrected to read as follows:

3. The authority citation for subpart F of part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

Sections 1910.66, 1910.67, 1910.68, and 1910.70 also issued under 29 CFR part 1911.

4. On page 32015, 1st column, subpart G, item No. 6 is corrected to read as follows:

6. The authority citation for subpart G of part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

Sections 1910.94 and 1910.98 also issued under 29 CFR part 1911.

5. On page 32015, 1st column, subpart H, item No. 8 is correctly revised to read as follows:

8. The authority citation for subpart H of part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

Sections 1910.105, 1910.106, 1910.107, 1910.108, and 1910.109 are also issued under 29 CFR part 1911. Section 1910.110 is also issued under 5 U.S.C. 553 and 29 CFR part 1911.

Section 1910.111 is also issued under 29 CFR part 1911. Section 1910.120 is also issued under sec. 126 of the Superfund Amendments and Reauthorization Act of 1986 as amended (29 U.S.C. 655 note), 5 U.S.C. 553, and 29 CFR part 1911.

6. On page 32015, 2d column, subpart N, item No. 12 is corrected to read as follows:

12. The authority citation for subpart N of part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

Section 1910.177 also issued under 5 U.S.C. 553 and 29 CR part 1911.

Sections 1910.176, 1910.178 1910.179, 1910.183, 1910.184, 1910.189, and 1910.190 also issued under 29 CFR part 1911.

7. On page 3015, 3d column, subpart R, item No. 19 is correctly revised to read as follows:

19. The authority citation for subpart R of part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable.

Sections 1910.261, 1910.262, 1910.265, 1910.266, 1910.267, 1910.268, and 1910.269 also issued under 29 CFR part 1911.

Section 1910.272 also issued under 5 U.S.C. 553 and 29 CFR part 1911.

Sections 1910.274 and 1910.275 also issued under 29 CFR part 1911.

8. On page 32015, 3d column, subpart S, item No. 23 is correctly revised to read as follows:

23. The authority citation for subpart S of part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 8–76 (41 FR 25059) or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

[FR Doc. 90–25821 filed 10–31–90; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; correction.

SUMMARY: OSM is correcting an error in the final rule published on Monday, September 24, 1990 (55 FR 38987), approving changes to the Indiana regulatory program pursuant to Indiana Senate Enrolled Act No. 513.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204; Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

On page 38988, third column, second paragraph, line 14, Ohio should be corrected to read Indiana. The corrected sentence reads as follows:

In his oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of only such provisions.

Dated: October 23, 1990.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 90–25828 Filed 10–31–90; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 917

Kentucky Regulatory Program; Mining Modifications

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with one exception, of a proposed amendment to the Kentucky regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1979 (SMCRA). The proposed amendment introduces a subset of minor revisions called "minor field revisions" and provides for the processing of these revisions in the regional offices of the Department of Surface Mining Reclamation and Enforcement (DSMRE), rather than in the DSMRE central office in Frankfort.

EFFECTIVE DATE: November 1, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. William Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, suite 28, Lexington, Kentucky 40504; Telephone (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Kentucky Program

The Secretary of the Interior conditionally approved the Kentucky regulatory program effective May 18, 1982. Information pertinent to the general background and revisions to the permanent program submission as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 30 CFR 917.15, 30 CFR 917.16, and 30 CFR 917.17.

II. Submission of Amendment

By letter dated August 15, 1989, Kentucky submitted proposed regulations to revise Kentucky Administrative Regulations (KAR) at 405 KAR 8:010 section 20 (Administrative Record No. KY–911). The proposed amendment identifies 27 minor revisions that can be processed in the regional offices, rather than the central office, of DSMRE. It also establishes procedures for processing these "minor field revisions." OSM announced receipt of the proposed amendment in the October 2, 1989, **Federal Register** (54 FR 40413), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on November 1, 1989.

On November 30, 1989, Kentucky resubmitted the proposed amendment as modified during the State regulation promulgation process (Administrative Record No. KY–941). This document responds to written comments received during the formal promulgation process. OSM announced receipt of the resubmitted amendment in the January 12, 1990, **Federal Register** (55 FR 1216), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The reopened public comment period ended on February 12, 1990.

III. Director's Findings

Set forth below pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Kentucky program. Only substantive changes are discussed in detail. Revisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal regulations.

1. 405 KAR 8:010 Section 20(3)(a)

Kentucky proposes to amend 405 KAR 8:010 section 20(3)(a) by identifying minor revisions that can be approved in the regional offices, rather than the central office, of DSMRE. These minor revisions are referred to as "minor field revisions." Like the minor revisions of which they are a sub-set, "minor field revisions" are subject to sections 5, 7, 12, 13(1), 13(2), (13)(3), 14(1), through 14(6), 14(10) through 14(16), 14(19) through 14(21), 15, 16(1) through 16(4), 18, and 24 of 405 KAR 8:010. Unlike other minor revisions under the Kentucky program, "minor field revisions" are not subject to the administrative completeness determination of section 13(2) of 405 KAR 8:010, and the time frame for review of these revisions, as established in section 16(1)(a)(3), begins at the time of application submittal rather than after a determination of administrative completeness. The amendment also requires that all minor revisions be submitted on forms prescribed by Kentucky's Natural Resources and Environmental Protection Cabinet (Cabinet).

The Federal regulations at 30 CFR 774.13(b) establish requirements for processing permit revisions. Paragraph (2) of that rule allows the regulatory authority discretion in establishing guidelines for differentiating between those permit revisions for which all of the permit application information requirements and procedures of subchapter G, including notice, public participation, and notice of decision requirements of applicable subsections, shall apply (significant revisions) and those that mandate only partial adherence to the permitting requirements (insignificant revisions).

The Secretary of Interior in his conditional approval of the Kentucky program approved the guidelines and procedures proposed by Kentucky in processing significant and insignificant revisions, referred to as "major" and "minor" revisions respectively in the Kentucky program (47 FR 21435, May 18, 1982). The Director finds that delegation of authority for approval or disapproval of "minor field revisions" by the Frankfort DSMRE office to the DSMRE's regional offices does not alter the basis for the Secretary's conditional approval so long as Kentucky has demonstrated that they have sufficient personnel located in the regional offices, and adequate overview by Frankfort to assure that sound decisions will be made by the regional offices.

On February 8, 1990, in a meeting with representatives of OSM, and the Office of the Solicitor, Kentucky made representations that the DSMRE regional offices have appropriate personnel and procedures to make decisions to approve or disapprove minor field revisions (Administrative Record No. KY–898). In this meeting, Kentucky stated that to qualify as a minor field revision, the revision had to be one which could be decided upon by field personnel without the assistance of technical experts. On February 9, 1990, Kentucky submitted further information to clarify the oversight procedures to be used by the Frankfort DSMRE office in reviewing decisions of the regional offices on minor field revisions and, if necessary, for overruling them. Under the proposed procedures, minor field revisions processed by regional offices would be reviewed by a single individual in the DSMRE central office who would advise the Director of the Division of Field Services on the appropriateness of the decision. If the Director of the Division of Field Services determines that the minor field revision should not have been issued or that it should be modified, or that further information is needed to evaluate the proposal, he informs the Regional Administrator in writing and requests appropriate action. The Regional Administrator may modify or rescind the minor field revision. If the minor field revision is rescinded, the permittee must obtain an ordinary revision

(Administrative Record No. KY-1006). On the basis of the representations and information submitted by Kentucky concerning personnel and oversight procedures, OSM finds the changes proposed at 405 KAR 8:010 section 20(3)(a) to be not inconsistent with the discretion granted States by the Federal regulations at 30 CFR 774.13.

2. 405 KAR 8:010 Section 20(3)(d)

A new paragraph (d) is added to 405 KAR 8:010 section 20(3) to identify 27 minor field revisions. Paragraph (d) provides further that if the number of persons that potentially could have an interest that may be adversely affected by the proposed revision is large enough, the Regional Administrator of DSMRE will determine that the proposed revision is a major revision and that it shall not be processed under this paragraph. Below is a list of the 27 minor revisions proposed to be identified as minor field revisions.

(1) Proposals for minor relocation of underground mine entries are categorized as minor field revisions so long as: (a) No structures or renewable resources overlie the area, (b) the permit boundary does not change, (c) the new entry is on the same face-up area and coal seam as originally permitted and is within the same drainage area, (d) the drainage from the entry is controlled by the same sedimentation pond, and (e) the revision will not result in increased disturbed acreage within the drainage area of that pond.

(2) Proposals to retain concrete platforms and small buildings are categorized as minor field revisions where (a) there is no change in the approved postmining land use and (b) the application for the revision contains a notarized letter from the suface owner requesting the retention of the structure.

(3) Proposals to leave roads as permanent, except roads to impoundments, excess spoil fills, coal mine waste fills, or air shafts; roads within 100 feet of an intermittent or perennial stream; and roads in areas designated unsuitable for mining under KAR 24:040 Section 2.

(4) Proposals to increase the diameter of culverts used as road cross-drains, not including culverts used for stream crossings, provided the same type pipe as previously approved is used.

(5) Proposals to install additional culverts used as road crossdrains, not including culverts used for stream crossings, provided the diameter of the culvert and type of pipe is the same as the nearest downstream cross-drain.

(6) Proposals to relocate on bench sedimentation control structures (dugouts only) in order to locate the structures at low spots on the same bench where: (a) The drainage area to the structure will remain the same as the original design, (b) the proposed new location will not cause short-circuiting of the structure, (c) the proposed permit boundary does not change.

(7) Proposals to retain diversions of overland flow (not including stream diversions) as permanent facilities where: (a) The application contains a notarized letter including a request to retain the diversion from the surface owner who will accept responsibility for maintaining the structure and (b) the diversions were designed to the permanent diversion standards.

(8) Proposals to relocate topsoil storage areas where: (a) There is no change in permit boundary, (b) the new location was previously permitted as a disturbed area within the same drainage area as the original location, controlled by the same sedimentation pond, and (c) there will be no additional disturbed acreage within that drainage area.

(9) Proposals to substitute plant species where: (a) The proposed species is the same vegetative type as the original species, (b) the proposed species will serve the equivalent function of the original species with respect to the previously approved revegetation plan, postmining land use plan, and fish and wildlife protection and end hancement plan, and (c) the proposed species and its application or planting rate are compatible with the remainder of the previously approved plant species mixture to be planted.

(10) Proposals to utilize hydroseeding for trees instead of planting trees where: (a) Hydroseeding is an appropriate method for the tree species being established and (b) the tree species does not change (unless approved in accordance with another provision).

(11)Proposals to change the type and rate of application of mulch to be used.

(12) Proposals to retain small depressions in reclaimed areas.

(13) Proposals to increase the frequency of air-blast

(14) Proposals to increase the frequency of air pollutional monitoring.

(15) Proposals to employ more effective or additional fugitive dust controls.

(16) Proposals to add a portable crusher where: (a) The crusher is completely portable, (b) the crusher is used for crushing coal only from the permit area, (c) no coal mine waste is generated, (d) the permit boundary remains the same, and (e) the equipment is always located in the mining pit or other areas previously permitted as a disturbed area controlled by a previously approved sedimentation pond and no additional disturbed acreage or delayed reclamation will result.

(17) Proposals to change the time periods or types or patterns of warning or all-clear signals when explosives are to be detonated.

(18) Proposals to relocate an explosive storage area within the existing permit area in accordance with Federal mine safety laws.

(19) Proposals for minor relocation of support facilities such as conveyors, hoppers, and coal stockpiles where: (a) There is no proposed change in permit boundary and (b) the proposed new location, previously permitted as disturbed area within the same drainage area as the original location, is controlled by the same sedimentation pond, and there will be no additional disturbed acreage within the drainage area of that sedimentation pond.

(20) Proposals for modification of shared facilities where the modification has been already approved in a revision for one of the permittees by DSMRE's Division of Permits and no additional bond was required for the initial revision.

(21) Proposals to add a hopper to a permitted area where: (a) There is no proposed change in permit boundary and (b) the proposed location was previously permitted as a disturbed area controlled by an approved sedimentation pond and there will be no additional disturbed areas or delayed reclamation within the drainage area of that sedimentation pond.

(22) Proposals to change the brush disposal plan, not including any proposals to bury brush in backfilled areas on steep slopes or in excess spoil fills or coal mine waste fills.

(23) Proposals to cut berms, provided that the cuts will not cause bypassing or short-circuiting of on-bench sedimentation structures.

(24) Proposals to change the basis for evaluating revegetation from reference areas to the technical standards established in 405 KAR chapters 7 through 24.

(25) Proposals for incidental boundary revisions for minor off-permit disturbances where: (a) The total acreage of the minor off-permit disturbance is no more than 1 acre per proposal, (b) the cumulative acreage limitation established in 405 KAR 7:020 is not exceeded, (c) the area does not include wetlands, prime farmlands, stream buffer zones, Federal lands, habitats of unusually high value for fish and wildlife, areas that may contain threatened or endangered species, or areas designated unsuitable for mining under 405 KAR chapter 24, (d) no coal extraction or future coal extracton will occur from the area, (e) there are no structures such as excess spoil fills, coal mine waste disposal fills or impoundments, or water impoundments involved, (f) the surface owner of the area to be permitted is the surface owner of the disturbed area under the existing permit, and (g) an additional performance bond in the amount of $5000 has been filed by the permittee.

(26) Proposals to remove sedimentation ponds previously approved as permanent impoundments where the application for revision contains a notarized letter from the surface owner requesting the elimination of the impoundment, the application contains an acceptable plan for removal, and the criteria for sedimentation pond removal have been met. The removal of a sedimentation pond would not be treated as a minor field revision: (a) Where the structure has a hazard classificaiton of B or C, (b) where the impoundment is a developed water resource land use, (c) where the removal of the structure may cause an adverse affect on significant fish and wildlife habitats or threatened or endangered species, (d) where the impoundment may be a necessary element in the achievement of the previously approved postmining land use, or (e) where the impoundment was originally planned to be left for the purpose of enhancing fish and wildlife and related environmental values.

(27) Proposals to approve exemptions from the requirement to pass drainage through sedimentation ponds for disturbed areas that due to unexpected field conditions will not drain to an approved sedimentation pond where: (a) There has not been any acid drainage or drainage containing concentrations of total iron or manganese from this or nearby areas of the mine that could result in water quality violations if untreated, (b) the application contains justification that it is not feasible to control the drainage by a sedimentation pond, (c) the disturbed area is one acre or less, (d) the application contains a plan to immediately use alternative sedimentation controls, (e) the application contains sufficient plan views and cross sections certified by a professional engineer to clearly illustrate the feasibility of the proposal and the location of alternate control methods, and (f) the application contains a map certified by a qualified registered professional engineer clearly showing the location of the disturbed area and the drainage area.

The Federal regulations at 30 CFR 774.13(b)(2) require that the regulatory authority establish guidelines for the scale or extent of proposals for which all permit application requirements will apply. In his conditional approval of the Kentucky permanent program on May 18, 1982, Federal Register (47 FR 21404) the Secretary of Interior approved the guidelines proposed by Kentucky in differentiating between significant and insignificant permit proposals, which are referred to as major and minor proposals respectively in the Kentucky program. In evaluating the specific list of minor field proposals proposed by Kentucky in this amendment, the Director finds that all proposals conform to the approved Kentucky guidelines as they are set forth in 405 KAR 8:010 section 20(3), except for the revision listed in section 20(3)(d)(23) pertaining to the cutting of berms.

The minor field revision, cutting of berms, as described at 405 KAR 8:010 section 20(3)(d)(23), is not consistent with the approved guidelines since it could result in actions by the permittee to allow water to leave the permit area without first passing through a siltation structure. Cutting berms to relieve ponding is also contrary to the approved Kentucky performance standards at 405 KAR 18:060 section 1(4)(b) 4 and 5, 405 KAR 18:060 section 2, and 405 KAR 18:060 section 3. Allowing the practice of cutting berms to relieve impounded water would render the Kentucky regulations less effective than the Federal regulations at 30 CFR 816/817.46(b)(2) in that it would also allow the permittee to remove ponded water from the permit area without first passing it through a siltation structure. The remaining list of minor field revisions are found to be consistent with the approved Kentucky program and by extension consistent with the Federal program. The Director finds the minor field revisions listed at 405 KAR 8:010 section 20(3)(d), with the exception of the revision listed in paragraph 23 of that proposed Kentucky regulation, to be not inconsistent with the discretion given to the States by the Federal regulations at 30 CFR 774.13(b)(2).

3. 405 KAR 8:010 Section 20(3)(e)

Kentucky proposes to amend 405 KAR 8:010 section 20(3) by adding a new paragraph (e) that provides that proposed minor revisions which seek only to change the engineering design of impoundments and diversions of overland flow where no change in permit boundary is involved shall not be subject to the administrative completeness determination of section 13(2). However, the application shall be processed, and written notice that the application has been determined to be subject to paragraph (e) and is being forwarded for technical review shall be provided to the applicant within 10 working days. Paragraph (e) also provides that the time frame for review as set forth in section 16(1)(a)(3) shall begin at the time of this notice.

The Federal regulations at 30 CFR 774.13(b) establish requirements for processing permit revisions. The Federal regulations at paragraph (2) of this rule allow the regulatory authority the discretion of establishing guidelines for differentiating between those permit revisions for which all of the permit application information requirements and procedures of subchapter G, including notice, public participation, and notice of decision requirements of applicable subsections shall apply (significant revisions) and those that require only partial adherence to the permitting requirements (insignificant revisions). The Director finds that the proposed Kentucky rule at 405 KAR 8:010 section 20(3)(e) is not inconsistent with the discretion afforded to Kentucky under 30 CFR 774.13(b)(2).

4. 405 KDAR 8:010 Section 20(5)

Kentucky proposes to amend its regulations at 405 KAR 8:010 section 20(5) by adding language to except minor field revisions from the requirement to pay the basic permit application fee of $375. The Federal regulations at 30 CFR 777.17 allow the regulatory authority broad discretion in the setting of permit fees. The Director finds the proposed amendment to be no less effective than the Federal regulations at 30 CFR 777.17.

5. 405 KAR 8:010 Section 22(2)(a)(4)

Kentucky proposes to amend its regulations at 405 KAR 8:010 section 22(2)(a) by deleting section (4). Subsection (4) contains the provisions that allow a permittee to transfer waivers obtained by him, in compliance with 405 KAR 24:040 section (2)(5), when transferring, assigning or selling his permit rights.

Since neither SMCRA nor the Federal regulations contain counterpart provisions for the transfer of the waivers described in the amendment, the Director finds the amendment to be not inconsistent with SMCRA or the Federal regulations.

IV. Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments

were solicited from various Federal agencies.

By letter dated October 12, 1989, the U.S. Environmental Protection Agency (EPA) commented that the amendment proposed at 405 KAR 8:010 section 20(3)(d) 9 allowing the substitution of plant species in an approved revegetation plan to be approved as a minor field revision by regional office personnel could jeopardize the success of reclamation efforts on wetlands (Administrative Record No. KY–926).

The Director disagrees with the EPA commenter. As prescribed by 405 KAR 8:010 section 20(3)(d)(9)(b), substitute plant species must serve the equivalent function of the original species with respect to the postmining land use plan and the fish and wildlife protection and enhancement plan. As explained in Findings 1 and 2 of this notice, the Director finds that Kentucky has the appropriate personnel and internal oversight procedures necessary to make sound decisions consistent with the requirements of the Kentucky approved program. Thus, the effects of using substitute species will be considered when wetlands is the approved postmining land use.

Public Comments

The public comment period and opportunity to request a public hearing was announced for the initial submittal of this amendment in the October 2, 1989, **Federal Register** (54 FR 40413). The initial comment period closed on November 1, 1989. Several comments were received. No one requested an opportunity to testify at the scheduled public hearing and no hearing was held.

The public comment period was reopened and the opportunity to request a public hearing on the resubmitted amendment was announced in the January 12, 1990, **Federal Register** (55 FR 1216). The reopened comment period ended on February 12, 1990. No one requested an opportunity to testify at the scheduled public hearing and no hearing was held.

All substantive comments received during both comment periods are discussed below. Comments were received from the Kentucky Coal Association (KCA), the Kentucky Resources Council (KRC), and one concerned citizen representing his own interest.

1. General Comments

a. KRC commented that permit files both in Frankfort and in the regional office must be kept current to assure public access. Public access was believed necessary in order to assure program accountability.

OSM agrees that all public copies of the permit should reflect all revisions approved by the regulatory authority. As stated on page 44377 of the September 23, 1988, **Federal Register** Notice (48 FR 44344), OSM believes that because the permit is the document which authorized the operator to mine, it must be kept accurate. DSMRE has informed OSM that copies of approved minor field revisions will be retained in the files of the inspector, the regional office and the central office (Administrative Record No. KY–911).

b. KRC commented that surface landowners, where different from the permittee and adjouning surface owners, should be given notice of proposed minor field revisions that would result in alterations of temporary environmental conditions or permanent changes to the postmining land configuration or use(s). It was believed that such notice should also be given to that class of persons who initially objected to the issuance of a particular permit. The commenter explained that it is far more rational to enfranchise the public at the front end rather than risk adjudicating challenges after the fact. In regard to public notice, the commenter requested clarification as to the criteria to be used by field offices to make determinations under 405 KAR 8:010 section 20(3)(c). This section of Kentucky's rules requires that the Cabinet provide written notification to those persons, if any, that the Cabinet determines could have an interest that may be adversely affected by a change proposed as a minor permit revision.

Section 511(a)(2) of SMCRA requires public notice of any revisions that propose significant alterations in the reclamation plan. By definition, minor revisions do not involve significant alterations in the reclamation plan and, therefore, are not subject to public notice requirements. Kentucky rules at 405 KAR 8:010 section 20(2) require full public notice as prescribed at 405 KAR 8:010 section 8 for all major revisions. Kentucky has adopted a provision at section 20(3)(c) which also provides for the notice of those persons that have an interest that may be adversely affected by a proposed minor revision as determined by the Cabinet. Kentucky has clarified this provision by stating that it will make case-by-case assessments when determining whether to provide written notification of proposed minor field revisions (Administrative Record No. KY–911). There is no Federal counterpart to these notice requirements for minor field revisions. Therefore, this provision concerning public notice is not inconsistent with SMCRA or the Federal rules.

c. KRC commented that OSM has an obligation to assure that there will be central office oversight of the field offices implementation of procedures to approve minor field revisions and that the State must be required to modify the State program narrative to include a detailed written plan for implementation of this practice.

OSM agrees with the commenter that the central office in Frankfort must provide oversight of field office decisions regarding minor field revisions. As stated in the Director's Finding 1, Kentucky has set forth a plan to conduct oversight of field office decisions. OSM finds that this plan is acceptable. A modification of the State program narrative is believed to be unnecessary since there is ample description of the State's oversight plan in the administrative record for this program amendment approval.

d. KRC had no objection to the proposal to include with the class of minor field revisions those activities which are listed in 405 KAR 8:010 section 20(3)(d) 1, 6, 8, 10, 11, 13, 14, 20, 22, 24, and 26 provided there are adequate procedures for central office review and there is public notice and access to permit files.

As indicated, OSM believes sufficient central office review has been provided for, and that there will be adequate public notification and access to permit files.

e. KCA generally viewed the amendment positively and expressed its feeling that the amendment's implementation would result in savings in terms of manpower, paperwork, and costs for the coal operators and DSMRE, without sacrificing the environment.

f. A citizen of Kentucky commented on her behalf expressing her belief that the regional offices have already been given too much autonomy and that she does not support actions to provide them with more authority.

State regulatory authorities are given considerable flexibility to administer their approved programs provided they demonstrate that they have adequate personnel and funding to achieve the purposes of the approved program. The Kentucky DSMRE has provided convincing evidence that the appropriate personnel are available in its regional offices and that adequate internal controls have been instituted to ensure that decisions reached in the regional offices will conform to the approved provisions of the Kentucky program.

2. Specific Comments on Proposed Minor Field Revisions

a. 405 KAR 8:010 Section 20(3)(d)1

KCA disagreed with the inclusion of the condition that a relocation of an underground entry may be considered a minor field revision only when no renewable resource land overlies the area. KCA argued that if the definition of renewable resource land includes forest land, the proposed provision would be rendered useless since 90 percent of underground mines are overlain with forests. KCA asked for clarification of the term renewable resource lands.

Section 511(a)(2) of SMCRA provides the regulatory authority discretion in determining the scale or extent of a permit revision request for which all permit application information requirements and procedures shall apply. OSM believes that Kentucky has properly exercised this discretion by limiting minor field revisions to those situations where relocation of an underground entry will not affect renewable resource lands. In response to the commenter's request for clarification of the term "renewable resource lands," Kentucky has revised 405 KAR 8:010 section 20(3)(d)1a to reference paragraph (b) in the definition of "renewable resource lands" given in 405 KAR 7:020 section 1. OSM believes this revision has clarified the amendment and its application to situations where underground mines are overlain with forest.

b. 405 KAR 8:010 Section 20(3)(d)2

KRC stated that the retention of structures must be limited to those circumstances where the structures are a component of an approved postmining land use and that Congress in its legislative debates indicated concerns with derelict buildings. KRC points out that the Federal regulations at 30 CFR 816.132(b) provide that structures can only be retained if compatible with the approved postmining land use.

OSM agrees with the commenter in that all structures retained on site must be compatible with the postmining land use. The proposed rule does not change this requirement which is already a part of the State program.

KCA felt that it is an unnecessary burden on the operator to require a notarized letter from the landowner requesting retention of minor structures. The commenter noted that this was not a requirement of the Federal program and suggested that the signatures of two witnesses would serve as a good alternative.

Kentucky has required letters to be notarized for good reason. Notary publics function as quasi-public officials, and their certifications have legal significance. A document may be entered as evidence in an adjudicatory proceeding with the notary certification serving as prima facie evidence that it is authentic. This does not hold true for documents signed by witnesses. The Director therefore believes the State requirement is reasonable and within its discretionary authority.

c. 405 KAR 8:010 Section 20(3)(d)3

KRC stated that leaving roads as permanent features within buffer zone areas established under 405 KAR 24:040 section 2 must be prohibited.

KRC's comment was submitted in response to Kentucky's initial submission of this amendment (Administrative Record No. KY–911). In a Statement of Consideration of the initial amendment, the Cabinet agreed with the commenter and modified the amendment before resubmitting it in its present form to OSM (Administrative Record No. KY–941). The current submission does not contain the provision to which KRC objected. DSMRE has revised the amendment to exclude from consideration as a minor field revision proposals to leave permanent roads within areas designated unsuitable for mining under 405 KAR 24:040 section 2, regardless of previous waivers or approvals.

KCA felt that roads providing access to impoundments, excess spoil fills, coal mine waste fills or air shafts; and roads within 100 feet of an intermittent or perennial stream should be approved as permanent features when requested as minor field revisions. The Director believes that it is within the State's discretionary authority to determine the nature of decisions to be made in the regional offices and those to be made in the DSMRE central office. Kentucky has decided that decisions to retain roads which provide access to impoundments, excess spoil fills, coal waste fills or air shafts; and roads within 100 feet of an intermittent or perennial stream should not be made by regional offices. Such roads are often either not suitable for the postmining land use or cannot be retained for environmental reasons. Accordingly the Director supports DSMRE's decision to process this type of revision in only the central office.

KCA also objected to Kentucky's requirement that an application for a minor field revision that includes a proposal to leave a road as permanent include a notarized letter from the surface owner accepting maintenance responsibility for the road to be retained.

The Kentucky program at 405 KAR 16:20 section 1(4)(b) and 405 KAR 16:230 section 1(4)(b) requires that roads cannot be retained as permanent roads unless maintenance of the road is assured. Requiring a notarized letter from the landowner provides a justifiable basis for the Cabinet to find that road maintenance will be a part of the postmining land use. The Director believes that it is within the State's discretionary authority to require a landowner to accept maintenance responsibilities for a road that is to be retained as a permanent feature.

d. 405 KAR 8:010 Section 20(3)(d)4 and 5

KRC stated that installations of additional or larger diameter culverts may cause significant hydrologic impacts on areas downslope from the culverts and that it is inapproprite to allow such decisions to be made by regional offices. OSM agrees with the commenter that there is a possibility that revisions in the number or size of culverts may be cause significant hydrologic impacts on areas downslope. In these situations, the regional office would be expected to require the permittee to submit a major permit revision which would be evaluated by the DSMRE central office.

KCA objected to the requirement that an operator must seek a permit revision to install additional cross drains or cross drains of a larger size. KCA explained its position by noting that these were elementary mining practices whereby the operator was replacing one structure with a more conservative one.

The State's rules at 405 KAR 8:030 section 24(3)(b)(6) and section 33 require permit applications to show the location and provide a description of each water diversion, collection, and conveyance facility. OSM believes that under 405 KAR 8:010 Section 20(1) the State has authority to require operators to obtain a minor field revision when modifying cross drains. Such revisions help to maintain the veracity and accuracy of the permit file.

e. 405 KAR 8:010 Section 20(3)(d)6

KCA objected to the need for an operator to apply for a minor field revision when on-bench sediment control structures (dugouts only) are to be relocated.

Kentucky regulations at 405 KAR 8:030 require that surface coal mining operations, including sediment control structures, be accurately described, shown and located on maps and plans retained in the permit file. The Director

believes that under 405 KAR 8:010 section 20(1) the State has authority to require operators to obtain a minor field revision when relocating sediment control structures. Such revisions help to maintain the veracity and accuracy of the permit file.

f. 405 KAR 8:010 Section 20(3)(d)7

KRC expressed concern that the proposed minor field revision allowing diversions or overland flow to be retained as permanent facilities would be used to circumvent land restoration and approximate original contour requirements. No further explanation was given by the commenter.

Kentucky is obligated to implement this minor field revision in a manner consistent with the approved State program. This provision will be subject to oversight by the DSMRE central office and by OSM to assure that it is properly applied by the regional offices.

KCA objected to the requirement that surface owners must accept responsibility for maintenance of diversions that are to be retained as permanent structures. There is no Federal counterpart to this regulation. The Director believes that it is within the State's discretionary authority to require that a landowner accept the maintenance responsibility for diversions that are retained as permanent structures. This requirement helps to assure that the diversion, if retained, will become part of the approved postmining land use.

g. 405 KAR 8:010 Section 20(3)(d)8

KCA commented that any type of revision or paperwork required to relocate topsoil storage piles serves very little purpose since mining is a dynamic process. The commenter suggested that the relocation of topsoil storage piles be allowed without obtaining a permit revision.

The Kentucky program at 405 KAR 8:030 section 24(3)(b)5 requires permit applicants to show on maps and plans where soil storage is proposed. Under 405 KAR 8:010 section 20(1), the regulatory authority may require maps and plans in a permit to be updated to reflect actual field conditions and to keep permit information current. The Director believes that this is a valid purpose which is necessary for an effective regulatory program.

h. 405 KAR 8:10 Section 20(3)(d)9

KRC commented that the substitution of plant species by minor field revision should be limited to those species meeting the standards of 405 KAR 16:200, including the controls on use of introduced species. Moreover, KRC felt that the landowner, where different from the permittee, should in all cases be notified and required to consent to a substitution of species since such a change may adversely affect postmining land use capability.

The Director agrees with the commenter that the requirements of 405 KAR 16:200 must be met when considering the substitution of plant species. However, the Director believes that a landowner's consent need not be required since Kentucky has included limitations as to the scope and type of substitutions that may be approved. These limitations which consider vegetative type, functional performance and compatibility of the species should be sufficient to protect the landowner's interest. In cases where there is doubt about a plant species acceptability, the Director advises the permittee to consult with the landowner and regulatory authority prior to seeking a minor field revision.

i. 405 KAR 8:010 Section 20(3)(d)12

KRC commented that the minor field revision which would allow small depressions is far too open-ended and potentially undercuts the obligation to restore mined lands to approximate original contour. The commenter believed that small depressions are authorized only if demonstrated to be needed for retention of moisture, minimization of erosion, or enhancement of fish and wildlife habitat and not as a cure for poor regrading and backfilling practices.

The existing rules at 405 KAR 16:190 section 2(5) and 405 KAR 18:190 section 2(4), which govern small depressions, are applicable to all minor revisions. The Director believes these existing rules provide adequate restrictions to the practice of leaving small depressions to meet the State's obligation to restore mined lands to approximate original contour.

j. 405 KAR 8:010 Section 20(3)(d)13

KCA objected to the proposed minor revision concerning increases in the frequency of air blast monitoring. KCA argued that Kentucky has no legal mandate to require an operator to obtain the State's permission to increase his airblast monitoring frequency.

In response to the KCA comment, Kentucky has revised section 20(3)(d)13 to allow the permittee to increase airblast monitoring of his own accord without obtaining approval from DSMRE. OSM believes this revision has clarified the amendment and adequately addressed KCA concerns. Where increased monitoring is required by the Cabinet to abate a violation, the permittee must obtain a minor field revision in order to maintain an accurate and complete permit file.

k. 405 KAR 8:010 Section 20(3)(d)14

KCA disagreed with the minor field revision which implied that there was a requirement to obtain prior approval from the State regulatory authority to increase air pollution monitoring frequency.

In response to the KCA comment, Kentucky has revised section 20(d)14 to allow a permittee to increase air pollution monitoring on his own accord without obtaining DSMRE approval. Where increased monitoring is required by the Cabinet to abate a violation, the permittee must obtain a DSMRE minor field revision in order to maintain an accurate and complete permit file. OSM believes this revision has clarified the amendment and adequately addressed KCA concerns.

l. 405 KAR 8:010 Section 20(3)(d)15

KRC commented that fugitive dust controls proposed as substitutes should be limited to additional measures and that changes which alter the nature of controls should require a local public notice.

In response to comments, Kentucky has revised section 20(3)(d)15 to allow a permittee to add additional fugitive dust control practices of his own accord without obtaining DSMRE approval. Where additional controls are required by the Cabinet or where more effective controls are proposed as substitutes by the permittee, the permittee must obtain a minor field revision. Kentucky has acknowledged that there are persons that may be adversely affected by a proposed change in fugitive dust controls (Statement of Consideration, page 13). Under 405 KAR 8:010 section 20(3)(c), the Cabinet will provide notice to such persons either by letter or newspaper advertisement. OSM believes this clarification of the amendment adequately addresses the commenter's concerns.

m. 405 KAR 8:010 Section 20(3)(d)16

KRC stated that adding a portable crusher to an existing mine site should not be considered a minor field revision since crushers can be expected to generate significant amounts of noise and dust. KRC explained that such proposals do not qualify as minor field revisions since they must be accompanied by a revised fugitive dust control plan, notice to adjoining landowners and an appropriate permit from Kentucky's Division of Air Quality.

The Director disagrees with the commenter's contention that the addition of a portable crusher to an existing mine site will always result in a significant permit revision. He believes that, although a Division of Air Pollution Control permit will always be required, each case must be evaluated on its own merit to determine what effects, if any, it may have on adjoining landowners and the environmemt. In certain situations, the impact on the environment will be negligible and there will be few, if any, nearby residents that could be affected Kentucky has stated that a case-by-case analysis will be done each proposal to add a coal crusher to determine how it may effect adjacent landowners and the environment, and to determine the type of landowner notice that is appropriate (Administrative Record No. KY-1001). This approach is acceptable given the discretionary powers provided to state regulatory authorities under section 511(a)(2) of SMCRA.

KCA commented that the proposed minor filed revision relating to portable coal crushers was too limited since it would not allow permittees to use the minor revision process to add a portable crusher to crush coal from two adjacent permits or from other permits as well.

The State has justified the restricted use of this revision on the premise that adding a portable crusher to a mine is normally and inconsequential activity relative to the entire mining operation (Adminstrative Record No. KY-911). However, if the crusher is used to process coal from other operations as well as the one where it is located, the crushing operation takes on a new dimension requiring the consideration of access to the site, contemporaneous reclamation and other issues. The State has chosen to handle such proposals from the DSMRE central office. The Director believes that the decision by Kentucky to limit the applicability of minor field revisions to situations where the area on which it is proposed to be located is a proper use of the discretionary authority of the State.

n. 405 KAR 8:010 Section 20(3)(d)(17

KRC commented that to allow open-ended changes in the time periods during which explosives are to be detonated violates 30 CFR 816.64 and 405 KAR 16:120. These regulations require all blasts approved by the regulatory authority to be announced in a blasting schedule that is published and distributed to the public in the vicinity of the operation. Moreover the commenter felt that since such schedules are generally couched in broad ranges of time and that provisions are made for unscheduled emergecy blasts, allowing field revision of such schedules without public notice and publication is, "unnecessary, ill-considered, and illegal."

This proposed minor revision to allow changes in a blasting schedule does not void the existing requirement that a permittee publish and redistribute revised blasting schedules in accordance with 405 KAR 16:120 section 3(c) or 405 KAR 18:120 section 3(c). The same requirement is also found in 30 CFR 816.64(b). Because these provisions of the Federal and State rules remain in effect, OSM disagrees with the commenter's conclusion that this provision is a violation of Federal and State rules.

KCA commented that the amendment should be broadened to allow minor filed revisions for changes in the types and patterns of warning or all-clear signals. In response to the comment, Kentucky has revised the amendment to include the commenter's suggestion. When implementing this provision, Kentucky will require a revised blasting schedule to be published and distributed after the revision is approved. The permittee will be expected to follow the time frames for such publication and distribution which are established in 405 KAR 16:02 section 3 and 405 KAR 120 section 3.

o. 405 KAR 8:010 Section 20(3)(d)18

KRC commented that revisions to allow the relocation of explosive storage areas should be restricted so as to prevent a hazard to life or dwellings in the event stored explosives are detonated.

The proposed regulation allows the relocation of explosive storage areas as long as the regulations at 27 CFR 55.206, 55.218, 55.219, 55.220 and 30 CFR 77.1301(c) are complied with. The incorporation by reference of these requirements of the Bureau of Alcohol, Tobacco, and Firearms and the Mine Safety and Health Administration provides for the regulation of explosive storage in proximity to dwellings, and other considerations. The commenter is specifically referred to the regulations of the Bureau of Alcohol, Tobacco, and Firearms at 27 CFR 55.206 and the table of distance for storage of explosives materials at 27 CFR 55.128. OSM believes these Federal regulations governing the storage of explosives provide the necessary safeguards to prevent loss of life and damage to dwellings.

KCA did not believe a minor field revision should be necessary to relocate an explosive storage area. KCA also objected to the incorporation of MSHA requirements, and the Bureau of Alcohol, Tobacco, and Firearms requirements, in the requirements of the Cabinet.

The commenter's concern regarding relocation of explosive storage areas is addressed at 405 KAR 8:030 section 24(3)(b)10 and 405 KAR 8:040 section 24(3)(b)(9). These rules require that permit applications identify the specific locations of explosive storage areas. Under 405 KAR 8:010 Section 20(1), DSMRE shall require a revision to a permit to be obtained when there are changes in the surface coal mining and reclamation operations described in the existing application and approved under the current permit. OSM believes that a minor field revision is the quickest and most convenient way for operators to comply with this requirement. Furthermore, OSM believes Kentucky's incorporation of Federal controls of explosives into the State's regulatory program adds no additional burden on mine operators since under 405 KAR 16:120(1)(l) they are already required to comply with all applicable local, State and Federal laws and regulations in the use of explosives. This provision of the Kentucky program requiring compliance with Federal, State and local laws and regulations is necessary in order for the State's rules to be as effective as their Federal counterpart.

p. 405 KAR 8:010 Section 20(3)(d)19

KRC questioned the meaning of the term "facilities" and stated that further clarification is needed concerning the treatment of the minor relocation of support facilities and how this will be accomplished to assure that the performance standards of 405 KAR 16:250 section 2 are not compromised. Moreover, KRC felt that any relocation proposal should be accompanied by a demonstration that the alteration will not result in additional contributions of flow or suspended solids beyond the design parameters of the sedimentation pond. Lastly, KRC felt that if such facilities are to be moved closer to dwellings or other buildings, the public should be given notice of the intended move.

KRC's comments were directed at Kentucky's initial amendment submission (Administrative Record No. KY-911). Kentucky's revised amendment (Administrative Record No. KY-941) clarifies that conveyors, hoppers and coal stockpiles are to be considered support facilities under this provision. The amendment makes no change in the permittee's responsibility under the permit for compliance with all of the existing performance standards including those that are concerned with

sediment and drainage control. OSM believes that the limitations provided in the amendment assure that the relocation of a support facility will not result in additional contributions of flow or suspended solids. Kentucky has stated that providing public notice of relocation of support facilities will be considered on a case-by-case basis (Administrative Record No. KY-1001). If relocation is to a site significantly closer to a dwelling, notice will be required. If not, notice may not be necessary. The Director agrees that this is a prudent handling of the minor relocations of conveyors, hoppers, or coal stockpiles.

KCA felt that an operator should be allowed to relocate support facilities without obtaining a minor permit revision. Kentucky rules at 405 KAR 8:030 section 24(2)(b)(5) and 3(b) 1 and 4, and their underground mining counterparts in 405 KAR 8:040 section 24 require permit applications to include the specific location of facilities such as conveyors, hoppers and coal stockpiles. As previously stated, information required in a permit application package and changes to that information require a permit revision to assure the veracity and accuracy of the permit file.

q. 405 KAR 8:010 Section 20(3)(d)20

KCA felt that applying for a minor field revision for modification of shared facilities where that modification has been already approved for one of the permittees served no purpose and should be automatic.

OSM does not believe extensive review and analysis of minor field revisions involving shared facilities will be necessary because the proposed modification has previously been evaluated and found acceptable. However, the permit revision does serve an important purpose and must be required under the terms of the Kentucky program. It serves to assure the veracity and accuracy of each individual permit file. This is to the operator's advantage since it clearly indicates to the inspector and all other persons what is authorized under the permit. By processing these changes as minor field revisions, Kentucky has chosen to minimize the burden on permittees.

r. 405 KAR 8:010 Section 20(3)(d) 21

KRC suggested that the term "hopper" be clarified since no definition exists in the Kentucky program. KRC also expressed a concern that adding a hopper might contribute to increase runoff or to the amount of suspended solids entering a sedimentation pond. Moreover, KRC was concerned with noise and air pollution that might result from the addition of a hopper, and with public participation in the approval process.

"Hopper" is a commonly used term in mining that refers to a storage bin or funnel that is loaded at the top and discharges through a door or chute at the bottom. The Director has not received any indication or has he envisioned any circumstances where that term will be used differently. This amendment makes no change in the permittee's responsibility for compliance with appropriate performance standards, including those related to sediment and drainage control, noise and air pollution, nor does it modify the regulations on public participation in the approval process.

KCA felt that mine operators should be allowed to add a hopper to their mining operations without obtaining a minor field revision. Kentucky rules at 405 KAR 8:030 section 24 (2)(b)3, (2)(b)5, (3)(b)1, and (3)(b)4 and the underground counterparts in 405 KAR 8:040 section 24 require permit applications to contain maps and plans for all mine facilities including hoppers. As previously stated, a permit revision is required whenever there are changes to information that is part of an approved permit application.

s. 405 KAR 8:010 section 20(3)(d)22

KCA did not believe that changes in brush disposal plans need DSMRE approval since such plans are not required under Federal or Kentucky rules.

The commenter is correct in his assertion that brush disposal plans are not specifically mandated by Federal or State rules. However, Kentucky has chosen to apply its rules at 405 KAR 8:030 section 24 (1), (2), and (3) and their underground counterpart at 405 KAR 8:040 section 24 in a broad manner and in certain situations to require a brush disposal plan as part of the permit application package. To maintain an accurate mining and reclamation plan, it is necessary to submit a permit revision whenever there are changes in these plans. OSM believes that under sections 507 and 508 of SMCRA, Kentucky has the authority to require plans for brush disposal and to require changes to these plans to be made by permit revision.

t. 405 KAR 8:010 section 20(3)(d)23

KRC commented that the proposal to cut berms must consider the hydrologic impacts to the receiving streams and adjoining lands. Moreover, KRC states that the proposal fails to require that flows be controlled by a pond, and fails to require engineering documentation that existing ponds or siltation controls can handle the changes in flow.

For the reasons discussed in Finding 2 of this notice, the practice of cutting berms cannot be approved in that it may allow water to leave the permit area without first passing through a siltation structure.

KCA felt that the practice of cutting of berms to relieve ponded water should not require a minor field revision or other State approval. KCA argued that there is rarely sufficient time to give the State adequate notice and that the discharged water would be passed through a siltation structure.

For the reasons discussed in Finding 2 of this notice, the practice of cutting berms cannot be approved in that it may allow water to leave the permit area without first passing through a siltation structure. The Director agrees with KCA that in most cases the discharged water would eventually pass through a siltation structure located downslope from the mine pit. However, before doing so it would leave the permit area and affect unpermitted land. This cannot be allowed.

u. 405 KAR 8:010 section 20(3)(d)25

KRC strongly disagreed with the provision to allow incidental boundary revisions for minor off-permit disturbances to be treated as minor field revisions. KRC stated that this proposed amendment is an obvious attempt to circumvent the mandatory enforcement obligations of the regulatory authority. KRC further stated that any off-site disturbance should result in the regulatory authority issuing an imminent harm cessation order in accordance with 30 CFR 843.11(a)(2).

OSM disagrees with the commenter's position that incidental boundary revisions should not be treated as minor field revisions. Kentucky has placed several conditions to limit the size of the area, the surface ownership and resources that may be affected by a revision. Given these limitations and the limited potential for environmental harm, the Director believes this amendment to be a reasonable effort to balance all of the factors involved. The commenter is correct in his assertion that Kentucky is obligated to take enforcement action when there is unapproved off-site disturbance.

KCA supported the proposed revision and suggested that the size limitations for minor off-site disturbances that may be treated as minor field revisions be raised to include 1 acre plus any undisturbed acreage. Section 511(a)(2) of SMCRA provides the regulatory authority discretion in determining the scale or extent of a permit revision request for which all permit application information requirements and procedures shall apply. Kentucky has reasonably exercised this discretion by limiting minor field revisions to no more than 1 acre combined per proposal.

v. 405 KAR 8:010 section 20(3)(d)26

KCA objected to paragraph (e) of the proposal to treat the removal of sediment ponds previously approved as permanent impoundments as minor field revisions. Paragraph (e) prohibits the use of minor field revisions where the impoundment was originally planned to be left for the purpose of enhancing fish, wildlife and related environmental values. KCA believes that too much emphasis is given to the need for ponds under the fish and wildlife postmining land use and that this unduly restricts the operator's ability to adjust his operations.

Water sources are a very important consideration in fulfilling the mandate of section 515(b)(24) of SMCRA which requires operators to protect and to achieve enhancement of fish, wildlife and related environmental values where practicable. DSMRE believes the evaluation of such proposals will require technical reviews of a scope that would place an undue burden on their regional offices and, therefore, has determined that such proposals must be processed by the central office. OSM believes that this is a reasonable exercise of the discretion provided to states in section 511(a)(2) of SMCRA.

w. 405 KAR 8:010 section 20(3)(d)(27)

KRC characterizes this proposal to approve exemptions from the requirement to pass drainage through sedimentation ponds as overbroad, unclear and in need of further clarification, and suggests that the proposal will undercut the obligation to apply the best technology currently available as required by 30 CFR 816.45(a). The Director believes that, given the conditions provided by Kentucky, the amendment is a reasonable effort to balance all of the factors involved and to maintain the best alternative environmental controls where construction of a pond is not the best practical solution.

X. 405 KAR 8:010 Section 20(3)(e)

One commenter recommended that section 20(3)(e) be clarified to convey that the 15 day working period allowed for action on a minor field revision begin when the revision is assigned for technical review rather than upon receipt. Kentucky agreed with the commenter and has revised the language of the amendment to reflect this.

V. Director's Decision

Based on the above findings, the Director is approving, with the exception of the provision pertaining to the cutting of berms, the proposed amendment as submitted on August 15, 1989, revised and resubmitted on November 30, 1989. As discussed in Finding No. 2, the cutting of berms proposed in 405 KAR 8:010 section 20(3)(d)23 is not consistent with Kentucky's approved program and would result in State regulations that are less effective than the Federal rules.

This final rule is being made effective immediately to expedite the State program amendment process.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In the oversight of the Kentucky program, the Director will recognize only the approved program, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Kentucky of such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relates to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary had determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

This action is exempt from preparation of a regulatory impact analysis and regulatory review because on July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure more timely and efficient processing of permit revisions.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: October 26, 1990.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 917.15, a new paragraph (ee) is added to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(ee) The following amendments pertaining to "minor field revisions" submitted to OSM on August 15, 1989, and revised on November 30, 1989, are approved effective November 1, 1990. Revisions to Kentucky Administrative Regulations at 405 KAR 8:010 section 20(3) and 405 KAR 8:010 section 20(5) are approved except the proposed provision at 405 KAR 8:010 section 20(3)(d)(23) pertaining to cutting of berms.

[FR Doc. 90-25874 Filed 10-31-90; 8:45 am]

BILLING CODE 4310-05-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301-8

[FTR Amdt. 10]

RIN 3090-AD52

Federal Travel Regulation; Worldwide Lodgings-Plus Per Diem System

AGENCY: Federal Supply Services, GSA.

ACTION: Final rule; correction.

SUMMARY: This document corrects certain amendatory language contained in a final rule appearing in the Federal Register of Friday, October 12, 1990 (55 FR 41525). The rule implemented a uniform worldwide lodgings-plus per diem computation system.

FOR FURTHER INFORMATION CONTACT: Doris Jones, Travel Management Division (FBT), Washington, DC 20406, telephone FTS 557-1253 or commercial (703) 557-1253.

Accordingly, beginning on page 41533 the following correction is made to FR Doc. 90-24097 in the issue of October 12, 1990:

PART 301-8—REIMBURSEMENT OF ACTUAL SUBSISTENCE EXPENSES—[AMENDED]

On page 41533, in the first column, the amendatory instruction 8 should read:

"8. Section 301-8.1 is amended by revising the introductory text to read as follows:

§ 301-8.1 General.

This part applies worldwide (both within and outside CONUS) except as specifically provided herein.

* * * * *

Dated: October 25, 1990.

Doona D. Bennett,

Director, Travel Management Division.

[FR Doc. 90-25839 Filed 10-31-90; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 413

[BPD-673-CN]

RIN 0938-AE56

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and FY 1991 Rates; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule; correction.

SUMMARY: In the September 4, 1990 issue of the Federal Register (FR Doc. 90-20877), (55 FR 35990), we made revisions to the Medicare inpatient hospital prospective payment system and set forth the prospective payment rates for FY 1991. This notice corrects errors made in that document.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION, CONTACT: Barbara Wynn, (301) 966-4529.

SUPPLEMENTARY INFORMATION:

On September 24, 1990, we published a notice (55 FR 39775) to correct typographical errors contained in the September 4, 1990 final rule (55 FR 35990). We are now publishing a notice to make additional corrections to the September 4, 1990 final rule.

1. On page 36033, in the first column, in line ten of the second paragraph of the Response, "changes for FY 1991." is changed to read "changes for FY 1992."

2. On page 36035, in the second column, in line four from the top of the page, "37 DRGs" is changed to read "35 DRGs".

3. On page 36049, in the second column, beginning in line seven of the second full paragraph, "we propose to implement a separate market basket for excluded hospitals an units." is changed to read "we are implementing a separate market basket for excluded hospitals and units."

4. On page 36052, in the third column, in line two of the paragraph following the table named Significant Disruptions to Travel Time, "exceeded" is changed to read "met or exceeded".

5. On page 36058, in the second column, delete the second full paragraph from the bottom of the page, the corresponding discharge table and the first full paragraph from the bottom of the page.

6. On page 36076, in the first column, in line three of the fifth full paragraph, the rural outlier adjustment factor of ".997373" is corrected to read ".977373".

7. On page 36076, in the third column, in the ninth line from the top of the page, "Payment + Geometric Mean" is corrected to read "Payment ÷ Geometric Mean".

8. On page 36076, in the third column, in the fourteenth line from the bottom of the page:

"$100,000−[1+(.0744+.1212)]× .80=$66,912.01"

is corrected to read:

"$100,000÷[1+(.0744+.1212)]× .80=$66,912.01".

Table 4f

9. On page 36109, in the third column, in Table 4f, the FY 1991 wage index value of "0.9008" for Tallahassee, FL is corrected to read "0.9140". This value was published incorrectly because the 1984 wage index data that we used to to determine the wage index value did not include a correction submitted by a Tallahassee hospital.

Tables 5, 7A, and 7B

10. We are correcting the information set forth in Tables 5, 7A, and 7B for DRGs 434, 435, 436, and 437. These corrections are necessary because, when we recalibrated the DRG weights for FY 1991, we failed to account for certain changes in diagnosis and procedure codes that were effective October 1, 1989. When ICD-9-CM diagnosis and procedure codes that affect DRG assignment are added, revised, or deleted, we seek to take these changes into account in recalibration. To the extent possible, we convert, or "map," the existing codes into their equivalents under the revised code definitions so that cases including these codes will be classified in their new DRG assignments before recalibration. Because the FY 1991 weights are based on FY 1989 data, it is necessary to map the FY 1989 diagnosis and procedure codes that have been revised into their FY 1991 equivalents. In completing this map for the FY 1991 recalibration, we inadvertently omitted changes that affected the logic for the DRGs in MDC 20 (Alcohol/Drug Use and Alcohol/Drug Induced Organic Mental Disorders). Effective October 1, 1989, procedure codes 94.61 (Alcohol rehabilitation), 94.64 (Drug rehabilitation), and 94.67 (Combined alcohol and drug rehabilitation) replaced diagnosis code V57.89 (Rehabilitation procedure, NEC) in the logic for DRG 436, and procedure codes 94.63 (Alcohol rehabilitation and detoxification), 94.66 (Drug rehabilitation and detoxification), and 94.69 (Combined alcohol and drug rehabilitation and detoxification) replaced diagnosis code V57.89 and procedure code 94.25 (Psychiatric drug therapy) in the logic for DRG 437. Because we did not map the revised codes, in our recalibration, all of the cases that should have grouped to DRGs 436 and 437 grouped instead to DRGs 434 and 435. Therefore, the DRG weights and other information presented in Tables 5, 7A, and 7B in the September 4, 1990 document for those four DRGs were based on incorrectly grouped cases. We have corrected our map and regrouped the affected cases. The revisions are as follows:

Table 5

11. On page 36123, the following lines 14 through 17 of Table 5 are incorrect:

434	20	ALC/drug abuse or dependence, detox or other sympt trt with cc	.8030	7.0	36
435	20	ALC/drug abuse or dependence, detox or other sympt w/o with cc	.7177	7.0	36
436	20	ALC/drug dependence w rehabilitation therapy	.9073	8.1	37
437	20	ALC/drug dependence, combined rehab & detox therapy	1.2005	9.5	33

The corrected lines 14 through 17 are as follows:

434	20	ALC/drug abuse or dependence, detox or other sympt trt with cc	.7649	5.5	35
435	20	ALC/drug abuse or dependence, detox or other sympt trt w/o cc	.5007	4.5	34
436	20	ALC/drug dependence w rehabilitation therapy	.9979	13.5	43
437	20	ALC/drug dependence, combined rehab & detox therapy	1.1437	13.9	43

Table 7A

12. On page 36150, the following lines 15 and 16 of Table 7A are incorrect:

434	22513	10.3661	2	4	7	14	24
435	21013	10.6439	2	4	7	15	27

The corrected lines 15 and 16 of Table 7A and two new lines adding DRGS 436 and 437 are:

434	17241	8.0612	2	3	5	9	16
435	12456	6.7228	2	3	5	7	14
436	3578	17.0143	4	9	16	26	29
437	10251	16.9185	5	9	16	25	29

Table 7B

13. On page 36160, the following lines 14 and 15 of Table 7B are incorrect:

434	22488	10.3266	2	4	7	14	24
435	21020	10.6450	2	4	7	15	27

The corrected lines 14 and 15 of Table 7B and two new lines adding DRGS 436 and 437 are:

434	17223	8.0114	2	3	5	9	16
435	12456	6.7228	2	3	5	7	14
436	3578	17.0143	4	9	16	26	29
437	10251	16.9185	5	9	16	25	29

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: October 24, 1990.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 90-25877 Filed 10-31-90; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 89-114; FCC 90-337]

Billing Protection

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Part 68 of the rules of the Federal Communications Commission (FCC), 47 CFR part 68, governing "Billing protection" is amended as set forth in this Report and Order (R&O). The rule amendment generally conforms to the proposals in the Notice of Proposed Rulemaking (NPRM) in the matter of Petitions for adoption of a new

BEST COPY AVAILABLE

§ 68.314(h) of the Commission's Rules, CC Docket 89–114, FCC 89–152, 4 FCC Rcd 4577 (1989) [54 FR 24721, June 9, 1989]. The NPRM was issued in response to a petition filed by American Telephone and Telegraph Company (AT&T), who requests a means of assurance that customers placing direct-inward-dialing (DID) calls to stations behind private branch exchanges (PBXs) are properly billed. The rule will provide a balanced solution for equipment connected to the network in the future while affording equitable treatment to ratepayers. (The term PBX as used herein includes all customer premises equipment, i.e., key systems, multifunction systems, multiplexers, etc., which employ "reverse battery" for returning answer supervison.)

EFFECTIVE DATE: December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Abraham A. Leib, Chief, Domestic Services Branch, Domestic Facilities Division, Common Carrier Bureau, (202) 634–1816.

SUPPLEMENTARY INFORMATION: The "summary" and "supplementary information" in this notice summarize the amended rule in a concise, nontechnical manner. For an analysis of the issues and comments, and changes adopted by the FCC in this R&O in CC Docket 89–114, FCC 90–337, adopted October 5, 1990 and released October 24, 1990, interested persons should refer to the R&O and comments which are available for inspection and copying during the weekday hours (excluding federal holidays) of 9 a.m. to 4:30 p.m. in the FCC's Public Reference Room, Room 239, 1919 M St., NW., Washington, DC. Copies of the file may be purchased from the duplicating contractor, International Transcription Services, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. The item also will be published in the FCC Record.

Part 68 of the rules, 47 CFR part 68, sets forth the terms and conditions under which subscribers may connect customer premises equipment and wiring to the telephone network. A primary objective of part 68 is to assure consumers, manufacturers and carriers that customer premises equipment attached to the network causes no harm. The term "Harm" defined in § 68.3 ("Definitions") as "Electrical hazards to telephone company personnel, damage to telephone company equipment, malfunction of telephone company billing equipment, and degradation of service to persons . . . ." The NPRM was initiated by a petition for rulemaking filed by AT&T which sought amendment of part 68 because, it alleges, many PBXs are failing to return answer supervision signals to telephone company billing equipment in response to DID calls. According to AT&T, such failure of equipment to return answer supervision signals denies telephone companies of tens of millions of dollars in revenues annually.

Normally, when a called party lifts the telephone handset, Central Office (CO) equipment activates billing mechanisms. When a PBX is used between the CO and called station, however, the PBX must in some way "notify" the CO when the called station answers in order for the billing equipment to be activated. The problem is complicated when calls received at the PBX are rerouted to another number in a distant city.

In the NPRM, the FCC proposed that a new paragraph (h) be added to § 68.314, "Billing protection," the objective being to assure that PBXs will return answer supervision for proper billing on certain DID calls. Fifteen comments and eight reply comments were filed. Based on the record, the FCC is adopting a rule which "addresses the billing fraud issue prospectively and relies on carriers' toll fraud detection efforts and normal PBX retirement and replacement to resolve the problem involving installed and in-the-pipeline equipment." Although this approach will not remove offending equipment from the market immediately, over time the market should be free of noncomplying equipment. Moreover, the FCC views this approach as causing the least disruption in the marketplace while imposing minimal costs on equipment manufacturers, carriers, and suppliers and users, while affording equitable treatment to ratepayers.

Final Regulatory Flexibility Analysis

I. The regulations adopted by this R&O are required to protect the public switched telephone network from harm which, as defined in 47 CFR 68.3, includes malfunction of telephone company billing equipment, e.g., that caused by failure of PBXs to return answer supervision signals. The regulations will require PBXs to provide such signals under a variety of circumstances designed to prevent billing losses to carriers.

II. No comments were filed in response to the Initial Regulatory Flexibility Analysis.

III. The FCC considered the alternatives raised by the parties in this proceeding and considered all timely filed comments directed to those issues. After carefully weighing all aspects of this proceeding, the FCC has adopted the most reasonable course of action under the Communications Act of 1934, as amended.

Paperwork Reduction Act Statement: The new rule contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found not to impose a new or modified information collection requirement on the public.

Ordering Clause

It is ordered, pursuant to sections 1, 4(i), 4(j), 201, 202, 203, 204, 205, 215, 218, 303(r) 313, and 412 of the Communications Act of 1934, as amended, that part 68 of the Commission's Rules and Regulations, 47 CFR part 68, is amended as set forth below. The rule amendment adopted herein shall become effective sixty days after publication in the **Federal Register.**

List of Subjects in 47 CFR Part 68

Definitions, Connection of terminal equipment to telephone network, Registration requirement, Billing protection, Communications equipment (telephone).

Part 68 of the Commission's Rules and Regulations (chapter I of title 47 of the Code of Federal Regulations, part 68) is amended as follows:

1. The authority citation for part 68 continues to read:

Authority: Secs. 4, 201, 202, 203, 204, 205, 206, 215, 218, 313, 314, 403, 404, 410, 602, 48 Stat. 1066, as amended; 47 U.S.C. 154, 201, unless otherwise noted.

2. Section 68.314 is amended by adding paragraph (h) to read as follows:

§ 68.314 Billing protection.

* * * * *

(h) Operating Requirements for Direct-Inward-Dialing ("DID"). (1) Answer supervision for DID calls to stations connected to the telephone company network through a Private Branch Exchange or similar system ("PBX") shall be returned to the central office on all calls which are:

(i) Answered by the called DID station,

(ii) Answered by an attendant,

(iii) Routed to an announcement, except for "number invalid," "not in service," or "not assigned" recordings,

(iv) Routed to a dialing prompt, or

(v) Routed back to the public switched network by the PBX, including calls routed to "number invalid," "not in service," or "not assigned" recordings.

(2) DID calls which do not require the PBX to return answer supervision are those:

(i) which are not routed back to the public switched network and, in addition, are:

(A) Unanswered, i.e., the called DID station receives a ring or other alerting signal, but does not answer, or the DID station to which the call is forwarded receives a ring or other alerting signal, but does not answer,

(B) Routed to a busy signal,

(C) Routed to a reorder signal, or

(D) Routed to a recorded announcement stating "number invalid," "not in service," or "not assigned"; and those

(ii) which are routed back to the public switched network and, in addition, are:

(A) Unanswered, i.e., the called station receives a ring or other alerting signal, but does not answer, or the DID station to which the call is forwarded receives a ring or other alerting signal, but does not answer,

(B) Routed to a busy signal, or

(C) Routed to a reorder signal.

(3) Answer supervision on DID calls shall be provided in accordance with industry engineering standards.

(4) PBX and similar systems manufactured one year from December 31, 1990, shall comply with the paragraph. PBX and similar systems of earlier manufacture shall comply with the paragraph if newly installed or relocated on a customer's premises eighteen months from December 31, 1990, or any time thereafter. Such equipment must be reregistered by the manufacturer or other person responsible for equipment compliance with part 68, if already registered but not compliant with this paragraph (h). Compliance with the paragraph shall require that the equipment be designed, manufactured and installed so that it will return answer supervision in conformity with this rule in a manner which cannot be readily altered by software control or other user controlled media.

(5) As used in this § 68.314(h), "Private Branch Exchange or similar system ("PBX") means customer premises equipment, such as private branch exchanges, key equipment, multifunction systems, multiplexers, and any equipment for which adopted industry standard signalling is the standard mode of returning answer supervision.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 25549 Filed 10–31–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–515; RM–5898]

Radio Broadcasting Services; Clarkesville, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 275C3 for Channel 275A at Clarkesville, Georgia, and modifies the construction permit for Station WMJE(FM) to specify operation on the higher powered channel, at the request of Clara Morris Martin. See 54 FR 48650, November 24, 1989. Channel 275C3 can be allotted to Clarkesville in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 12.3 kilometers (7.7 miles) south of the community. The coordinates for this allotment are North Latitude 34–30–00 and West Longitude 83–30–00. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–515, adopted September 28, 1990, and released October 29, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 275A and adding Channel 275C3 at Clarkesville.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25865 Filed 10–31–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–527; RM–7044]

Radio Broadcasting Services; Valley City, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ingstad Broadcasting, Inc., substitutes Channel 266C1 for Channel 265A at Valley City, North Dakota, and modifies its license for Station KOVC–FM to specify operation on the higher powered channel. See 54 FR 50004, December 4, 1989. Channel 266C1 can be allotted to Valley City in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.2 kilometers (5.1 miles) southwest to avoid a short-spacing to Station KBHP, Channel 266C1, Bemidji, Minnesota. The coordinates for Channel 266C1 at Valley City are North Latitude 46–50–52 and West Longitude 98–03–02. Candian concurrence for the allotment of Channel 266C1 at Valley City has been received since the community is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–527, adopted September 28, 1990, and released October 29, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under North Dakota, is amended by removing Channel 265A

and adding Channel 266C1 at Valley City.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25886 Filed 10-31-90; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 525 and 552

[Acquisition Circular AC-90-2]

General Services Administration Acquisition Regulation; Deviation to FAR Buy American Act—Trade Agreements Act—Balance of Payment Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary rule with request for comments.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5 (ADP 2800.12A), is temporarily amended by revising paragraph (b) of section 525.402; by designating the current text of section 525.407 as paragraph (a) and adding paragraph (b); and by adding section 552.225-8 and section 552.225-9. These changes are made in order to authorize GSA contracting officers to deviate from FAR 52.225-8 and FAR 52.225-9. The class deviation authorizes contracting officers to insert the provision at 552.225-8 and the clause at 552.225-9 in lieu of the FAR provision and clause in procurements subject to the Trade Agreements Act. The intended effect is to provide a provision and clause for use which is consistent with the ruling of the General Services Administration Board of Contract Appeals (GSBCA) in the protest of the *International Business Machines Corporation*, GSBCA No. 10532-P, May 18, 1990.

DATES: Effective date: October 29, 1990; Expiration date: October 29, 1991. *Comment Date:* Comments should be submitted to the Office of GSA Acquisition Policy at the address shown below on or before December 31, 1990, to be considered in the final rule.

ADDRESSES: Comments should be addressed to Ms Marjorie Ashby, Office of GSA Acquisition Policy, 18th and F Streets, NW., Room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward J. McAndrew, Office of GSA Acquisition Policy, (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. *Determination to Issue a Temporary Regulation.* A determination has been made to issue the regulation in GSAR as a temporary rule. This action is necessary to authorize a class deviation from an existing FAR provision and clause consistent with the GSBCA's ruling. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments are solicited and will be considered in formulating a final rule.

B. *Executive Order 12291.* The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. *Regulatory Flexibility Act.* This temporary rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it authorizes a deviation from a FAR provision and clause that will resolve an inconsistency with the current FAR provision and clause based upon the GSBCA's ruling. Therefore, an Initial Regulatory Flexibility Analysis has not been prepared.

D. *Paperwork Reduction Act.* This temporary rule does not contain information collection requirements that require approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

List of Subjects in 48 CFR Parts 525 and 552

Government procurement.

1. The authority citation for 48 CFR parts 525 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR parts 525 and 552 are amended by the following Acquisition Circular:

General Services Administration Acquisition Regulation Acquisition Circular (AC-90-2)

October 24, 1990.

To: All GSA contracting Activities.

Subject: Deviation to FAR 52.225-8, Buy American Act—Trade Agreements Act—Balance of Payment Certificate and 52.225-9, Buy American Act—Trade Agreements Act—Balance of Payment Program

1. *Purpose.* This Acquisition Circular temporarily amends the General Services Administration Acquisition Regulation (GSAR) Chapter 5 (APD 2800.12A) to authorize GSA contracting activities to deviate from the FAR 52.225-8, Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate and FAR 52.225-9, Buy American Act—Trade Agreements Act—Balance of Payment Program, in the manner prescribed in this Acquisition Circular.

2. *Background.*

a. The Federal Acquisition Regulation (FAR) subpart 25.4, the provision at 52.225-8 and the clause at 52.225-9 are intended to implement the provisions of the Buy American Act (BAA) and the Trade Agreements Act (TAA) in acquisitions subject to the TAA. The cited provision and clause require an offeror to supply either a "domestic end product" (i.e., a product manufactured in the United States (U.S.) where more than fifty percent of the cost of components is attributed to components of U.S. origin) or a "designated country end product" (i.e., a product "substantially transformed" in a designated country). Consequently, all offers of end products other than offers of domestic end products or designated country end products must be rejected. Where an offered product is "substantially transformed" in the United States, but fails the fifty percent component cost test, such product cannot be considered a domestic product. Additionally, an offer of such product cannot be considered a product of a designated country because the United States is not a designated country. Accordingly, offers of such products must be rejected because such products are neither domestic products nor designated country end products.

b. The General Services Administration Board of Contract Appeals (GSBCA), in the protest of *International Business Machines Corporation*, GSBCA No. 10532-P, May 18, 1990, ruled that FAR clause 52.225-9 was invalid to the extent that it does not treat certain products made in the United States, as defined by the TAA's rule of origin (i.e., substantial transformation), as exempt from the purchasing prohibition in the TAA. The GSBCA, however, did not rule on the application of the administrative requirements (i.e., the 6 or 12 percent evaluation factors) of the BAA in acquisitions subject to the TAA.

c. As a result of the GSBCA's ruling, a class deviation from the use of FAR provision at 52.225-8 and FAR clause at 52.225-9 has been approved for use by GSA contracting activities in procurements subject to the TAA. In lieu of the FAR provision and clause, this Acquisition Circular prescribes a new provision and clause for use in procurements subject to the TAA.

3. *Effective Date.* October 29, 1990.

4. *Expiration Date.* This Acquisition Circular expires October 29, 1991, unless cancelled earlier.

5. Reference to regulation. Sections 525.402, 525.407, 552.225-8 and 552.225-9 of the GSAR.

6. *Explanation of change.*

Subpart 525.4—Purchases Under the Trade Agreements Act of 1979

a. Section 525.402 is amended to revise paragraph (b) to read as follows:

525.402 Policy.

* * * * *

(b) As a result of the General Services Administration Board of Contract Appeals (GSBCA) decision in the protest of "International Business Machines Corporation," GSBCA No. 10532-P, May 18, 1990, contracting officers are hereby authorized to deviate from the FAR provision at 52.225-8, Buy American Act—Trade Agreements Act—Balance of Payment Program Certificate and FAR clause at 52.225-9, Buy American Act—Trade Agreements Act—Balance of Payment Program, in solicitations and contracts that are subject to the Trade Agreements Act by incorporating the provision and clause prescribed in 525.407(b).

* * * * *

b. Section 525.407 is amended by designating the existing paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

525.407 Solicitation provision and contract clause.

* * * * *

(b) The contracting officer shall insert the provision at 552.225-8, Trade Agreements Act Certificate, and the clause at 552.225-9, Trade Agreements Act, in solicitations and contracts subject to the Trade Agreements Act.

c. Sections 552.225-8 and 552.225-9 are added to read as follows:

552.225-8 Trade Agreements Act Certificate.

As prescribed in 525.407(b), insert the following provision:

552.225-8 Trade Agreements Act Certificate (OCT 1990) (Deviation FAR 52.225-8)

(a) The Offeror hereby certifies that each end product to be delivered under this contract is a U.S. made end product, a designated country end product, or a Caribbean Basin country end product as defined in the clause entitled "Trade Agreements Act" 552.225-9 (Deviation FAR 52.225-9).

(b) Offers will be evaluated in accordance with subpart 25.4 of the Federal Acquisition Regulation except that offers of U.S. made end products shall be evaluated without the restrictions of the Buy American Act or the Balance of Payments Program.

(End of provision)

552.225-9 Trade Agreements Act.

As prescribed in 525.407(b), insert the following clause.

552.225-9 Trade Agreements Act (OCT 1990) (Deviation FAR 52.225-9)

(a) This clause implements the Trade Agreements Act of 1979 (19 U.S.C. 2501-2582) by providing a preference for U.S. made end products, designated country end products, and Caribbean Basin country end products over other products.

"Caribbean Basin country end products," as used in this clause, means an article that: (1) is wholly the growth, product, or manufacture of a Caribbean Basin country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such. The term excludes products that are excluded from duty free treatment from Caribbean countries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of (i) textiles and apparel articles that are subject to textile agreements; (ii) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preference under title V of the Trade Act of 1974; (iii) tuna, prepared or preserved in any manner in airtight containers; (iv) petroleum, or any product derived from petroleum; and (v) watches and watch parts (including cases, bracelets and straps) of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column 2 rates of duty apply.

"Designated country end product," as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of the designated country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR)), or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

"End products," as used in this clause, means those articles, materials, and supplies to be acquired under this contract for public use.

"U.S. made end product," as used in this clause, means an article which (1) is wholly the growth, product, or manufacture of the United States, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

"Nondesignated country end products," as used in this clause, means any end product which is not a U.S. made end product or designated country end product.

"United States," as used in this clause, means the United States, its possessions, Puerto Rico, and any other place which is subject to its jurisdiction, but does not include leased bases or trust territories.

(b) The Contractor agrees to deliver under this contract only U.S. made end products, designated country end products, Caribbean Basin country end product, or, if a national interest waiver is granted under section 302 of the Trade Agreements Act of 1979, nondesignated country end products. Only if such waiver is granted may a nondesignated country end product be delivered under this contract(s).

(c) Offers will be evaluated in accordance with the policies and procedures of part 25 of the FAR except that offers of U.S. made end products shall be evaluated without the restrictions of the Buy American Act or the Balance of Payments Program.

(End of Clause)

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 90-25795 Filed 10-31-90; 8:45 am]

BILLING CODE 6820-61-M

Proposed Rules

Federal Register
Vol. 55, No. 212
Thursday, November 1, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV-90-303]

Fresh Tomatoes; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed action would revise the United States Standards for Grades of Fresh Tomatoes. The proposal would require that when the voluntary U.S. Standards are utilized, the size of the tomatoes in any standard type shipping container be specified and marked on the container; would establish four mandatory size designations each with a 1/32 inch overlap; and would require that only one of the four sizes be marked on the container. This would eliminate the comingling of different sizes within a container. The California Tomato Board, the Florida Tomato Committee, the Florida Tomato Growers Exchange, the Florida Tomato Exchange, and the National Tomato Handler's Association, representing a major part of the fresh market tomato growers, packers, and wholesalers, has jointly requested that the USDA update the size section of the grade standards. The groups recommending this action contend that these changes would promote uniform trading practices. The Agricultural Marketing Service (AMS), has the responsibility to develop and improve standards of quality, condition, quantity, grade, size, and packaging in order to encourage uniformity and consistency in commercial practices.

DATES: Comments must be postmarked or courier dated on or before December 31, 1990.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 2056 South Building, Washington, DC 20090-6456. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marlene M. Betts, at the above address or call (202) 447-2188.

SUPPLEMENTARY INFORMATION: This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "nonmajor" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule for the revision of U.S. Standards for Grades of Fresh Tomatoes will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the application of these standards is voluntary.

The United States Standards for Grades of Fresh Tomatoes were last revised in April 1976. The standards are covered under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). The California Tomato Board, the Florida Tomato Committee, the Florida Tomato Growers Exchange, the Florida Tomato Exchange, and the National Tomato Handler's Association have requested that section 51.1859 of the United States Standards for Grades of Fresh Tomatoes be amended to require that when the voluntary U.S. Standards are utilized, the size of the tomatoes in any standard type shipping container be specified and marked on the container, to establish four mandatory size designations each with a 1/32 inch overlap, and to require that only one size be marked on a container. This would eliminate the commingling of different sizes within a container, if the voluntary U.S. standards were utilized.

The current standards do not require that the size be specified on the container. However, the current standards do provide that when the size of tomatoes is specified according to the size designations of Section 51.1859, the size of the tomatoes must be within the ranges of the diameters specified Current standards have six size designations with no overlap between size designations in that section, and commingling is allowed.

Specifically, the proposed revision would require any standard type shipping container to be marked. This means any container weighing 30 pounds or less, except consumer containers, would have to be marked to one of the size designations set forth in Table I if the voluntary U.S. Standards are being utilized. Since the proposal requires that a container be marked with just one size, this would eliminate commingling of sizes such as medium-large. However, consumer packages and their master containers are exempt. But, if consumer packages or their master containers are marked they can only be marked with a size listed in Table I, and then the same requirements would apply to this package as any other. If consumer packages or master containers are not marked in accordance with Table I, then size would not be determined unless specifically requested.

In addition, because they are too small to meet the size designations of Table I, cherry tomatoes, pear shaped tomatoes, and other similar types are exempt from marking requirements, but may be specified in terms of minimum diameter or minimum and maximum diameter.

Also, when containers are marked either with a size designation or with a minimum, or a minimum and maximum diameter, the markings on at least 85 percent of the containers in a lot must be legible.

The groups recommending these revisions contend that the requested changes would promote more uniform trading practices for the industry. They also assert that the overlapping of sizes would eliminate what they believe to be difficulty in sizing tomatoes to meet existing size requirements. These requirements were developed prior to the introduction of varieties which are characteristically oblong as opposed to the more traditional spherical-shaped varieties.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

PART 51—[AMENDED]

For reasons set forth in the preamble, it is proposed that 7 CFR part 51 be amended to read as follows:

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

2. Section 51.1859 would be revised to read as follows:

§ 51.1859 Size.

(a) The size of tomatoes packed in any standard type shipping container shall be specified and marked according to one of the size designations set forth in Table I. Individual containers shall not be marked with more than one size designation. Consumer packages and their master container are exempt; however, if they are marked, the same requirements would apply.

(1) When containers are marked in accordance with Table I, the markings on at least 85 percent of the containers in a lot must be legible.

(2) In determining compliance with the size designations, the measurement for minimum diameter shall be the largest diameter of the tomato measued at right angles to a line from the stem end to the blossom end. The measurement for maximum diamater shall be the smallest dimension of the tomato determined by passing the tomato through a round opening in any position.

(b) In lieu of marking containers in accordance with paragraph (a) of this section or specifying size in accordance with the dimensions defined in Table I, for Cerasiforme type tomatoes commonly referred to as cherry tomatoes and Pyriforme type tomatoes commonly referred to as pear shaped tomatoes, and other similar types, size may be specified in terms of minimum diameter or minimum and maximum diameter expressed in whole inches, and not less than thirty-second inch fractions thereof or millimeters in accordance with the facts. Tomatoes of these types are exempt from marking requirements. However, when marked to a minimum or minimum and maximum diameter, the markings on at least 85 percent of the containers in a lot must be legible.

(c) For tolerances see § 51.1861

TABLE I

Size designation	Inches	
	Minimum diameter [1]	Maximum diameter [2]
Small	2 1/32	2 6/32
Medium	2 6/32	2 17/32
Large	2 17/32	2 25/32
Extra large	2 25/32	

[1] Will not pass through a round opening of the designated diameter when tomato is placed with the greatest transverse diameter across the opening.
[2] Will pass through a round opening of the designated diameter in any position.

Dated: October 26, 1990.

Kenneth C. Clayton,
Acting Administrator.

[FR Doc. 90-25619 Filed 10-31-90; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 927

[Docket No. FV-90-204]

Winter Pears Grown in Oregon, Washington, and California; Order Directing That Referendum Be Conducted; Determination of Representative Period for Voter Eligibility; and Designation of Referendum Agents To Conduct the Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible growers of winter pears in Oregon, Washington, and California to determine whether they favor continuance of the marketing order regulating the handling of winter pears grown in the production area.

DATES: The representative production period is from July 1, 1989, through June 30, 1990. The referendum will be conducted from November 13 through December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Patrick A. Packnett, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; Telephone: 202-475-3862.

SUPPLEMENTARY INFORMATION: This referendum order directs that a referendum be conducted among producers, under Marketing Order No. 927 (7 CFR part 927), regulating the handling of winter pears grown in Oregon, Washington, and California. The order is effective under the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (17 U.S.C. 601-674), hereinafter referred to as the Act. The referendum is to be conducted among the growers in the production area who, during the period July 1, 1989, through June 30, 1990 (which period is hereby determined to be a representative period for purposes of such referendum), were engaged in the production of winter pears covered by the said marketing order to ascertain whether they favor continuance of the order. The referendum will be conducted during the period November 13 through December 13, 1990.

Section 927.78(d) of the order provides that the Secretary shall conduct a continuance referendum within every six-year period beginning August 28, 1986 (which is the effective date of the most recent order amendment), to determine if continuance of the order is favored by producers.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether growers favor continuation of marketing order programs. The Secretary would consider termination of the order if less than two-thirds of the growers of winter pears voting in the referendum and growers of less than two-thirds of the volume of winter pears represented in the referendum favor continuance. However, in evaluating the merits of continuance versus termination, the Secretary would not only consider the results of the continuance referendum but also all other relevant information concerning the operation of the order and the relative benefits and disadvantages to growers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all growers favor termination, and such majority produced for market more than 50 percent of the commodity covered by such order.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the ballot material that will be used in the referendum herein ordered has been submitted to and approved by the Office of Management and Budget (OMB) and has been assigned OMB No. 0581-0089. It has been estimated that it will take an average of 20 minutes for each of the approximately 1,800 growers who elect to participate in the voluntary referendum balloting.

Teresa Hutchinson and Joseph C. Perrin, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA,

are hereby designated as referendum agents of the Secretary of Agriculture to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR 900.400 *et seq.*).

Copies of the text of the aforesaid marketing order may be examined in the office of the referendum agents at 1220 SW. Third Avenue, room 369, Portland, Oregon 97204 or in the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456.

Ballots to be cast in the referendum may be obtained from the referendum agents and from their appointees.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

Authority: Agricultural Marketing Agreement Act of 1937, as amended: secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: October 25, 1990.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 90–25818 Filed 10–31–90; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 971

[Docket No. FV–90–210]

South Texas Lettuce; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 971 for the 1990–91 fiscal period. Authorization of this budget would allow the South Texas Lettuce Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program would be derived from assessments on handlers.

DATES: Comments must be received by November 13, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–447–2020.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 144 and Marketing Order No. 971 (7 CFR part 971), regulating the handling of lettuce grown in the Lower Rio Grande Valley of South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 10 handlers and 20 producers of South Texas lettuce covered under this marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1990–91 fiscal year was prepared by the South Texas Lettuce Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of lettuce. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

A freeze damaged the South Texas lettuce crop during the 1989–90 season. As a result, some producers have cut back on production for the 1990–91 season to avoid losses similar to last year. This has lowered production and budget estimates for this season.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of lettuce. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on October 4, 1990, and unanimously recommended a 1990–91 budget of $25,864. Last season's budget was $51,531.48. Major decreases in expenses include staff salaries, rent, equipment, travel and marketing development and production research projects.

The committee also unanimously recommended an assessment rate of $0.05 per carton, the same rate as last season's. This would yield $25,800 in assessment revenue, based on anticipated shipments of 516,000 cartons of lettuce. This amount, when added to $64 from the reserve fund, would be adequate to cover budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1990–91 fiscal period began in August, and the marketing order requires that the rate of assessment apply to all assessable lettuce handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The commitee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 971

Lettuce, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 971 be amended as follows:

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

1. The authority citation for 7 CFR part 971 continues to read as follows:

Authority: Sections 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 971.230 is added to read as follows:

§ 971.230 Expenses and assessment rate.

Expenses of $25,864 by the South Texas Lettuce Committee are authorized and an assessment rate of $0.05 per carton of lettuce is established for the fiscal period ending July 31, 1991. Unexpended funds may be carried over as a reserve.

Dated: October 29, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–25884 Filed 10–31–90; 8:45 am]

BILLING CODE 3410–02–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 8]

Designation of Consortium, Exchange-Visitor Program

AGENCY: United States Information Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The present regulations do not provide for the designation of a college or university consortium as a sponsor of an Exchange-Visitor Program. By this notice the Agency will consider public comment as to whether such consortia should be designated as Exchange-Visitor sponsors, and if so, what form the implementing regulations governing such program should take.

DATES: Comments regarding questions raised in this notice should be submitted no later than December 3, 1990, in order to be considered by the Agency.

ADDRESSES: Questions regarding this notice should be addressed to Merry Lymn, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 Fourth Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 Fourth Street SW., Washington, DC 20547, (202) 619–6829.

SUPPLEMENTARY INFORMATION: A consortium of universities has applied for a designation as an Exchange-Visitor sponsor. Because, at this time, there are no regulations providing for consortia as designated sponsors, the Agency has not yet acted on the application. The Agency is now considering whether and under what circumstances consortia should be designated, and if designated what regulations should govern such programs. Modifications to the current system of individual university designation, or reductions in the existing authority and prerogatives of designated universities, are not contemplated.

Preliminarily, the Agency would define a consortium as a form of voluntary interinstitutional cooperation in which three or more accredited institutions of higher education share educational resources, conduct research, and/or develop new programs for the purpose of enriching the opportunities offered by all without duplication of sponsorship of Exchange-Visitor Programs designated by the Agency. The consortium would assist its constituent colleges and universities in the development of exchange programs to promote mutual educational exchange activities.

On the one hand, clear advantages would seem to accrue from the designation of consortia. Certainly, colleges and universities which are not now designated but wish to conduct Exchange-Visitor Programs would benefit directly from participation in a consortium. More importantly, a consortium could yield economies of scale in contacts overseas with foreign governments, educational institutions, scholars and students. A consortium could be an efficient clearinghouse for information and opportunities in the field for member colleges and universities.

On the other hand, the Agency questions the necessity of designating a consortium as an Exchange-Visitor sponsor if each of the member institutions is already designated. The Agency believes that the individual institutions should be making the decisions as to whether particular participants should be invited to their institutions. Thus, if consortia are issuing the Form IAP–66, students should receive prior admissions and faculty members should receive prior placement in a position in which they are to be contributing as an exchange lecturer, professor, or researcher. Where individual members are designated sponsors, the members can issue Form IAP–66 to facilitate the entry of the Exchange-Visitor into the United States after making the appropriate determinations with regard to the proposed participants. Thus, conferring Form IAP–66 issuance authority on the consortium would be duplicative.

The Agency believes that duplication may have deleterious effects upon the efficient administration of the Exchange-Visitor Program. One problem immediately apparent is whether the receiving institution or the consortium would be responsible for the Exchange-Visitor. Which organization would be supervising the Exchange-Visitor's activity? Can proper supervision be administered when the sponsor is removed from the premises? Which organization would be responsible for purchasing insurance, for counselling, for assisting with day-to-day problems, and to help the participants achieve the goals for which they entered the program? Can the responsibilities be divided and still ensure that one organization is ultimately responsible? Will the college or university lose control over decisions affecting the best interests of the Exchange-Visitor and the host institution if the Form IAP–66 issuance authority is conferred upon a consortium?

Initially, the Agency suggests the following plan for consideration and comment by the interested public:

(1) The current system of Exchange-Visitor Program designation for individual colleges and universities would remain unchanged;

(2) Designation will be accorded to a consortium or consortia composed of accredited public or private colleges or universities within a state for issuance

of Form IAP-66 to visiting students and scholars intending to attend constituent institutions which do not have individual designation;

(3) For both consortium and non-consortium exchange students and scholars, the Form IAP-66 would be issued only after the student or scholar has been granted admission or acceptance by the individual college or university applying institutional standards of admissions or acceptance;

(4) Colleges and universities could select whether to participate in the Exchange-Visitor Program individually (assuming the usual requirements are met), or through the consortium by advance notification to USIA. Permission to change status (i.e. operate through individual designation or participation in the consortium) would be liberally granted; and

(5) The consortium would operate on a not-for-profit basis.

The proposed scheme would (1) Preserve the existing university designation system; (2) allow consortia to be designated; (3) allow universities the option to choose between individual or consortia responsibilities for the visiting students and scholars; and (4) not create a consortium designation scheme with overlapping and perhaps conflicting lines of authority vis-a-vis existing universities.

The public is invited to comment upon specific questions posed herein or upon any other matter which may be relevant to the issue of designation of consortia.

List of Subjects in 22 CFR Part 514

Cultural exchange programs; Reporting and recordkeeping requirements.

Authority: United States Information and Educational Exchange Act of 1948, as amended, Pub. L. 80-402, as amended (22 U.S.C. 1431-1442); Mutual Educational and Cultural Exchange Act of 1961, as amended, Pub. L. 87-256, as amended, 75 Stat. 527, 534, 535 (22 U.S.C. 2451-2460 and 8 U.S.C. 1101, 1182, 1258; Pub. L. 97-241, 96 Stat. 291; 66 Stat. 166, 182, 184, 204 (8 U.S.C. 1101(a)(15)(J), 1182(e), 1182(j), 1258); Pub. L. 91-225, 84 Stat. 116, 117, (8 U.S.C. 1101, 1182); Pub. L. 97-116, 95 Stat. 1611, 1612, 1613, (8 U.S.C. 1101, 1182); Reorg. Plan No. 2 of 1977; E.O. 12048 of March 27, 1978; USIA Delegation Order No. 85-5 (50 FR 27393).

Dated: September 26, 1990.

Alberto J. Mora,

General Counsel.

[FR Doc. 90-25787 Filed 10-31-90; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket S-026]

RIN 1218-AB20

Process Safety Management of Highly Hazardous Chemicals

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; announcement of an additional informal public hearing site; additional issues; extension of written comment period.

SUMMARY: This document schedules an additional informal public hearing in Houston, Texas, to begin on February 26, 1991, concerning the notice of proposed rulemaking (NPRM) issued on July 17, 1990 (55 FR 29150), regarding process safety management of highly hazardous chemicals. In order to allow interested parties adequate opportunity to decide to participate in the Houston hearing, OSHA is allowing additional time for the submission of notices of intention to appear, testimony and documentary evidence for that hearing.

Also, additional issues have surfaced during the preliminary stages of this rulemaking and OSHA would like to bring them to the attention of interested parties and organizations as possible points of discussion.

Finally, since the hearing in Houston could not be scheduled until February, OSHA believes it is reasonable to extend the written comment period to allow additional public input.

DATES: The informal public hearings are scheduled to begin in Washington, DC, on November 27, 1990, at 9:30 a.m., and may continue for more than one day based on the number of notices of intention to appear. Once all parties who wish to do so have testified in Washington, DC, the hearing will be recessed and reconvened in Houston, Texas, on February 26, 1991, at 9:30 a.m for the receipt of testimony from parties who prefer to testify at that location. The Houston, Texas, hearings may also continue for more than one day based on the number of notices of intention to appear at that location.

The deadlines for notices of intention to appear (October 15, 1990) and for the submission of testimony and documentary evidence (November 5, 1990) for the Washington, DC, hearing remain as originally scheduled in the July 17 NPRM.

Notices of intention to appear at the hearing in Houston, Texas, must be postmarked by January 22, 1991. Testimony and all documentary evidence which will be offered into the Houston hearing record must be postmarked by February 5, 1991.

Written comments on the proposed standard must be postmarked by January 22, 1991.

ADDRESSES: Four copies of the notice of intention to appear, testimony and documentary evidence which will be introduced into the hearing record must be sent to Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8615. For additional information on how to submit notices of intention to appear, see the section on public participation under Supplementary Information.

The hearings will be held in the Departmental Auditorium in the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 and in the Hilton Southwest, 6780 Southwest Freeway, Houston, Texas 77074.

Four copies of comments on the proposal should be submitted to the Docket Officer, Docket S-026, U.S. Department of Labor, Occupational Safety and Health Administration, room N2625, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Hearing procedures: Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N3647, 200 Constitution Avenue NW., Washington DC 20210, (202) 523-8615.

Proposal and hearing issues: Mr. James F. Foster, Occupational Safety and Health Administration, U.S. Department of Labor, room N3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8151.

SUPPLEMENTARY INFORMATION: On July 17, 1990, OSHA published a notice of proposed rulemaking (NPRM) concerning process safety management of highly hazardous chemicals (55 FR 29150). A public hearing was scheduled in this NPRM to begin on November 27, in Washington, DC.

Since publication of the NPRM, OSHA has been requested by the Oil, Chemical and Atomic Workers International Union, AFl-CIO, to hold a regional hearing in Houston, Texas, in order to facilitate participation in the hearings of individuals in the Houston area. OSHA has agreed to this suggestion and has scheduled a hearing in Houston at the time and address indicated above.

Through these hearings OSHA solicits testimony and evidence pertinent to any aspect of the proposal, including issues raised in the NPRM (see particularly, 55 FR 29157-29159), the public comments, the hearing requests, and the notices of intention to appear. The Agency also specifically solicits testimony, with supporting evidence, on the following additional issues which have surfaced during this rulemaking.

Issues

Issue 1. In paragraph (k) of the proposed rule, OSHA proposed to require that employers issue permits for hot work. It has been suggested that OSHA require employers to issue permits for additional hazardous activities such as line-breaking. It is contended that this would provide greater control of hazardous activities at a facility including contractor activities. OSHA would like comments regarding the use of a broader permit system and what activities should be included in such a permit system.

Issue 2. In the proposal, a process must have the threshold quantity of the highly hazardous chemical to be covered by the requirements of the standard. Some commenters have questioned whether OSHA's use of the plural "processes" in paragraphs (b)(1)(i), (ii), and (v), setting forth the applicable scope of the proposal, means that these listed chemicals' quantities are aggregated for a facility. OSHA did not intend that facilities aggregate quantities of covered chemicals. The important factor is the amount of a listed chemical that could be released at one point in time. If the total amount of a listed chemical in a plant exceeds its threshold quantity of 1000 pounds, for example, but the chemical is used in small quantities around a plant and it not concentrated in one process or in one area, OSHA believes that a catastrophic release of the entire material would be unlikely. However, OSHA is interested in suggestions concerning at what point materials should be aggregated due to their proximity (*e.g.*, two storage tanks located next to each other where the failure of one could lead to the failure of the other).

Issue 3. It has also come to OSHA's attention that some confusion exists regarding the proposal's application to hydrocarbon fuels. Paragraph (b)(1)(ii)(A) excepts from coverage "Hydrocarbon fuels used solely for workplace consumption as a fuel (*e.g.*, propane or oil used for comfort heating)." It has been asked if this includes furnaces used in a process. OSHA believes this needs to be clarified. Should fuel used solely for operation of process furnaces be included in this exception? If not, why not?

Issue 4. In paragraph (b)(1)(ii)(B), OSHA also proposed to except from coverage flammable liquids stored or transferred which are kept below their atmospheric boilding point without benefit of chilling or refrigeration. This could be interpreted to mean by some interested persons as all storage tanks, including those feeding a process or receiving end products and waste products. OSHA invites comment on the appropriateness and scope of this exception. Is there a need to clarify where a process begins and ends, or should the standard address any tanks which have potential for a release that could be affected by a process?

Public Participation

Public hearings. Pursuant to section 6(b)(3) of the Occupational Safety and Health Act, an opportunity for the public to present oral testimony concerning issues related to the proposal is being provided. As previously scheduled in the July 17 NPRM, OSHA will hold a public hearing beginning at 9:30 a.m. on November 27, 1990 The hearing will be held in the Auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

A regional hearing will be held beginning at 9:30 a.m. on February 26, 1991, in Houston, Texas, at the Hilton Southwest, 6780 Southwest Freeway, Houston, Texas 77074, (713) 977-7911.

Notice of intention to appear. Any interested person desiring to participate at the hearing, including the right to question witnesses, must file four copies of a notice of intention to appear. As scheduled in the July 17 NPRM, the notice of intention to appear at the Washington, DC hearing had to be postmarked by October 15, 1990, and is not being changed by this notice. The notices of intention to appear at the Houston hearing must be postmarked by January 22, 1991, and addressed to Mr. Tom Hall, Division of Consumer Affairs, room N3649, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8615. The notice of intention to appear also may be transmitted by facsimile to (202) 523-5986 provided that the original and four copies of the notice are sent to the above address immediately thereafter.

The notice of intention to appear at the Houston hearing must contain the following:

1. The name, address, and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The specific issues that will be addressed;
5. A statement of the position that will be taken with respect to each issue addressed; and
6. Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence.

Filing of testimony and evidence before the haring. Any party requesting more than 10 minutes for presentation at the hearing or who will present documentary evidence, must provide four copies of the complete text of testimony, including all documentary evidence to be presented at the hearing. These materials must be postamrked no later than Februrary 5, 1991, and sent to Mr. Tom Hall Division of Consumer affairs, at the address given above.

Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact. Any party who has not substantially complied with the above requirements, may be limited to a 10 minute presentation and may be requested to return for questioning at a later time. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge who presides at the hearing.

OSHA emphasizes that the hearing is open to the public, and that interested parties are welcome to attend. However, only persons who have filed proper notices of intention to appear at the hearing will be entitled to ask questions and otherwise participate fully in the proceeding.

Notices of intention to appear, testimony and evidence, will be available for inspection and copying at the Docket Office, Docket S-026, room N2625, 200 Constitution Avenue NW., Washington, DC 20210.

Conduct and nature of hearing. The hearings in Washington, DC, and in Houston, Texas, will be conducted in the same manner as described below and as was also described in the July 17 NPRM at 55 FR 29162-29163. The Houston hearing is scheduled to commence at 9:30 a.m. on February 26, 1991. At that time, any procedural matters relating to the proceeding will

be resolved. The informal nature of the rulemaking hearing to be held is established in the legislative history of section 6 of the Act and is reflected by the OSHA hearing regulations (*see* 29 CFR 1911.15(a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, it is clear that the proceeding shall remain informal and legislative in type.

The purpose of the hearing is to provide an opportunity for effective oral presentation by interested persons which can be carried out expeditiously and in the absence of rigid procedures which might unduly impede or protract the rulemaking process.

The hearing will be conducted in accordance with 29 CFR part 1911. The presiding Administrative Law Judge, will have the powers necessary or appropriate to conduct a full and fair informal hearing as provided in 29 CFR part 1911, including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentation to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion, to question and permit the questioning of any witness, and to limit the time for questioning; and
6. In the Judge's discretion, to keep the record open for a reasonable stated time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of a final standard.

The proposal will be reviewed in light of all written submissions and testimony received as part of the rulemaking record. Decisions on the provisions of a final standard will be made by the Assistant Secretary based on the entire record of the proceeding.

Written comments. Interested persons are invited to submit written data, views, and arguments with respect to any issue on this proposal including those discussed in this notice. Comments must be postmarked by January 22, 1991. Four copies of comments must be submitted to the OSHA Docket Officer, Docket S-028, U.S. Department of Labor, Occupational Safety and Health Administration, room N2625, 200 Constitution Avenue NW., Washington, DC 20210. The telephone number of the Docket Office is (202) 523-7894, and its hours of operation are 8:15 a.m. to 4:45 p.m., Monday through Friday. Comments limited to 10 pages or less may also be transmitted by facsimile to (202) 523-5046, provided that the original and four copies of the comment are sent to the Docket Officer thereafter. Written submissions must clearly identify the provisions or issues of the proposal which are addressed and the position taken on each issue.

All materials submitted will be available for inspection and copying at this address. All timely submissions will be part of the record of the proceedings.

Authority

This document has been prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655); Secretary of Labor's Order No. 1-90 (55 FR 9033); and 29 CFR part 1911.

Signed at Washington, DC, on this 26th day of October, 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 90-25822 Filed 10-31-90; 8:[illegible]am]

BILLING CODE 4510-23-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Missouri permanent regulatory program (hereinafter, the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to prime farmlands, signs and markers, topsoil, hydrologic balance, air resources, explosives, excess spoil, coal waste, backfilling and grading, postmining land use, roads and other transportation facilities, revegetation, prohibitions and limitations on mining, coal exploration, requirements for legal, financial, and compliance information, requirements for information on environmental resources, requirements for operation and reclamation plans, review and approval of permit applications, bond requirements, duration and release of reclamation liability, permit revocation, bond forfeiture and authorization to expend reclamation fund monies, definitions, inspection and enforcement, penalty assessment, applicability and general requirements, and revegetation success guidelines. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, incorporate the additional flexibility afforded the revised Federal regulations, and improve operational efficiency.

This notice sets forth the times and locations that the Missouri program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m., c.s.t. December 3, 1990. If requested, a public hearing on the proposed amendments will be held on November 26, 1990. Requests to present oral testimony at the hearing must be received by 4 p.m., c.s.t. on November 16, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to Jerry R. Ennis at the address listed below.

Copies of the Missouri program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte Street, room 500, Kansas City, MO 64105, Telephone: (816) 374-6405.

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102, Telephone: (314) 751-4041.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Director, Kansas City Field Office on telephone number (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Proposed Amendment

By letter dated October 10, 1990, (Administrative Record No. MO-519) Missouri submitted a proposed amendment to its program pursuant to SMCRA. Missouri submitted the proposed amendment (1) in response to a May 11, 1989 letter from OSM in accordance with 30 CFR part 732 requiring certain provisions of the State program to be updated for consistency with the Federal regulations regarding ownership and control, and permit rescission; (2) in response to a November 6, 1989 letter from OSM in accordance with 30 CFR part 732 requiring certain provisions of the State program to be updated for consistency with the Federal regulations through August 30, 1989; (3) in response to a February 7, 1990 letter from OSM in accordance with 30 CFR part 732 requiring certain provisions of the State program to be updated for consistency with the Federal regulations regarding incidental coal extraction; (4) to address previously disapproved State program provisions at 30 CFR 925.10; (5) to address required program amendments at 30 CFR 925.16; (6) to address concerns identified in issue letters sent to the State regarding program amendments submitted to OSM on January 17, 1989 and August 3, 1989; (7) to incorporate into its State program several regulation changes not previously submitted; and (8) at the States own initiative to improve its program.

The regulations that Missouri proposes to amend are: 10 CSR 40-2.110, Prime Farmland Performance Standards; 10 CSR 40-3.010, Signs and Markers—General Requirements; 10 CSR 40-3.030, Requirements for Topsoil Removal, Storage and Redistribution; 10 CSR 40-3.040, Requirements for Protection of the Hydrologic Balance; 10 CSR 40-3.050, Requirements for the Use of Explosives; 10 CSR 40-3.060, Requirements for the Disposal of Excess Spoil; 10 CSR 40-3.080, Requirements for the Disposal of Coal Processing Waste; 10 CSR 40-3.090, Requirements for the Protection of Air Resources; 10 CSR 40-3.110, Backfilling and Grading Requirements; 10 CSR 40-3.120, Revegetation Requirements; 10 CSR 40-6.130, Postmining Land Use Requirements; 10 CSR 40-3.140, Road and Other Transportation Requirements; 10 CSR 40-3.190, Requirements for Topsoil Removal, Storage and Redistribution for Underground Operations; 10 CSR 40-3.200, Requirements for Protection of the Hydrologic Balance for Underground Operations; 10 CSR 40-3.210, Requirements for the Use of Explosives for Underground Operations; 10 CSR 40-3.220, Disposal of Underground Development Waste and Excess Spoil; 10 CSR 40-3.230, Requirements for Disposal of Coal Processing Waste for Underground Operations; 10 CSR 40-3.240, Air Resource Protection; 10 CSR 40-3.250, Requirements for the Protection of Fish, Wildlife and Related Environmental Values and Protection Against Slides and Other Damage; 10 CSR 40-3.260, Requirements for Backfilling and Grading for Underground Operations; 10 CSR 40-3.270, Revegetation Requirements for Underground Operations; 10 CSR 40-3.290, Requirements for Road and Other Transportation Associated with Underground Operations; 10 CSR 40-3.300, Postmining Land Use Requirements for Underground Operations; 10 CSR 40-4.030, Operations on Prime Farmland; 10 CSR 40-5.010, Prohibitions and Limitations on Mining In Certain Areas; 10 CSR 40-6.010, General Requirements for Permits, Permit Applications and Coal Exploration; 10 CSR 40-6.020, General Requirements for Coal Exploration, Permits; 10 CSR 40-6.030, Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance and Related Information; 10 CSR 40-6.040, Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources; 10 CSR 40-6.050, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan; 10 CSR 40-6.070, Review, Public Participation and Approval of Permit Application and Permit Terms and Conditions; 10 CSR 40-6.100, Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance and Related Information; 10 CSR 40-6.110, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources; 10 CSR 40-6.120, Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan; 10 CSR 40-7.011, Bond Requirements; 10 CSR 40-7.021, Duration and Release of Reclamation Liability; 10 CSR 40-7.031, Permit Revocation, Bond Forfeiture and Authorization to Expend Reclamation Fund Monies; 10 CSR 40-8.010, Definitions; 10 CSR 40-8.030, Permanent Program Inspection and Enforcement; 10 CSR 40-8.040, Penalty Assessment; and 10 CSR 40-8.070, Applicability and General Requirements. Missouri is also proposing guidelines on methods for determination of revegetation success prior to phase III bond release as required by the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Missouri program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administration record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., c.s.t. November 16, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all person scheduled to comment having been heard. Persons in the audience who have been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 25, 1990.

Raymond L. Lewis,

Assistant Director, Western Support Center.

[FR Doc. 90-25873 Filed 10-31-90; 8:45 am]

BILLING CODE 4310-05-M

POSTAL SERVICE

39 CFR Part 111

Eligibility Requirements for Automated Rate Categories

AGENCY: Postal Service.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Postal Service published in the **Federal Register** (55 FR 40560-40566) on October 3, 1990, a proposal to amend the Domestic Mail Manual to update the physical preparation, optical character reader (OCR) readability, and barcode preparation requirements for pieces qualifying for current automation based rate categories (First-Class nonpresorted ZIP + 4, ZIP + 4 Presort, ZIP + 4 barcoded; and third-class basic ZIP + 4, 5-digit ZIP + 4 and ZIP + 4 barcoded mail). The Postal Service requested comments by November 2, 1990. Due to the complexity of the proposed changes, and the receipt of requests for additional time, the Postal Service is extending the comment period to November 9, 1990.

DATES: Comments on the proposed rule change must be received on or before November 9, 1990.

ADDRESSES: All written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, room 8430, 475 L'Enfant Plaza SW., Washington, DC 20260-5360. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn Martin, (202) 268-5176, for information on all aspects except addressing requirements for finest level of ZIP + 4 code, standardized or complete addresses, and CASS certification.

Mr. Paul Bakshi, (202) 268-3520, for information concerning the requirements for finest level of ZIP + 4 code, standardized or complete addresses, and CASS certification.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 90-25790 Filed 10-31-90; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-476, RM-7343]

Radio Broadcasting Services; Cordova, Holly Pond & Warrior, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Radio South, Inc., licensee of Station WFFN(FM), Cordova, Alabama, seeking the substitution of Channel 254C3 for Channel 237A at Cordova, and modification of the license accordingly. In order to accommodate its request, petitioner seeks the substitution of Channel 237A for Channel 254A at Warrior, Alabama, for which six applications are pending, as well as the substitution of Channel 260A for Channel 238A at Holly Pond, Alabama, for which one application is pending. The Cordova proposal contemplates an "incompatible channel swap" with Warrior, Alabama, pursuant to the provisions of § 1.420(g)(3) of the Commission's Rules. Therefore, in the absence of a demonstration that the Cordova "incompatible channel swap" proposal should be considered differently, other expressions of interest in the use of Channel 254C3 at that community will not be entertained. Coordinates used for Channel 254C3 at Cordova are 33-46-38 and 87-07-45. Coordinates used for Channel 237A at Warrior are 33-48-14 and 86-56-38. Coordinates used for Channel 260A at Holly Pond are 34-15-40 and 86-35-12.

DATES: Comments must be filed on or before December 20, 1990, and reply comments on or before January 4, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Erwin G. Krasnow, Esq., Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, 901—15th Street, NW., Washington, DC 20005-2301.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-476, adopted September 28, 1990, and released October 29, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this discision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25887 Filed 10-31-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-530; RM-6901; 6948]

Radio Broadcasting Services; Ashdown and DeQueen, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses two mutually-exclusive petitions for rule making in the state of Arkansas, based upon each proponents' withdrawal of interest. The first, filed on behalf of KARQ Radio, Inc., proposed modifications of the facilities of Station KARQ(FM), Channel 221A, Ashdown, Arkansas, to specify operation on Channel 223C3. Also, Channel 225A was proposed as a substitute for Channel 224A, licensed to Jay W. and Anne W. Bunyard ("Bunyards") at DeQueen, Arkansas, for Station KDQN-FM, to accommodate the Ashdown proposal. The second proposal, filed on behalf of the Bunyards, proposed the substitition of Channel 225C3 for Channel 224A and modification of the facilities of Station KDQN-FM, to specify operation on the higher powered channel. See 54 FR 50001, December 4, 1989. With this action, the proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-530, adopted September 28, 1990 and released October 29, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25888 Filed 10-31-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-475, RM-7280, RM-7328]

Radio Broadcasting Services; Dawson and Sasser, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requested comments on two conflicting petitions. The first petition, filed by Dawson Broadcasting Company, licensee of Station WAZE(FM), Channel 221A, Dawson Georgia, seeking the substitution of Channel 299A for Channel 221A at Dawson, Georgia, and modification of the license for Station WAZE to specify the new class A channel. The second petition, filed by Clyde and Scott/d.b.a. EME Communications, requests the allotment of Channel 299C3 to Sasser, Georgia, as the community's first local FM service. The coordinates for Channel 299A at Dawson are North Latitude 31-43-44 and West Longitude 84-20-34. The coordinates for Channel 299C3 at Sasser are North Latitude 31-40-53 and West Longitude 84-25-07.

DATES: Comments must be filed on or before December 20, 1990, and reply comments on or before January 4, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Clyde and Scott/d.b.a. EME Communications, Rt. 3, Box 485-C, Moultrie, Georgia 31768 (petitioner for Sasser, Georgia). amd John M. Spencer, Leibowitz & Spencer, 3050 Biscayne Blvd., suite 501, Miami, Florida 33137 (Counsel for Dawson Broadcasting Co.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-475, adopted September 28, 1990, and released October 29, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25889 Filed 10-31-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-474, RM-7355]

Radio Broadcasting Services; Geneva, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Ray-Mar Broadcasting Company, licensee of Station WDON(FM), Channel 285A, Geneva, Ohio, seeking the substitution of Channel 284A for Channel 285A at Geneva and the modification of its license to specify operation on the alternate Class A channel. The substitution of channels could enable Station WDON(FM) to increase its power from 3 kW to 6 kW. Channel 284A can be allotted to Geneva in compliance with the Commission's minimum distance separation requirements with respect to all domestic allotments with a site restriction of 15 kilometers (9.3 miles) west to accommodate petitioner's desired transmitter site, at coordinates North Latitude 41-48-39 and West Longitude 81-07-33. However, to avoid a conflict with the pending application of Station WEZE-FM, Pittsburgh, Pennsylvania (BPH-900228IA), the Commission alternatively proposes a site restriction of 12.4 kilometers (7.7 miles) northwest at coordinates North Latitude 41-54-07 and West Longitude 81-01-19. Canadian concurrence is required since Geneva is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before December 20, 1990, and reply comments on or before January 4, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the

petitioner, or its counsel or consultant, as follows: Kenneth C. Howard, Jr., Esq., Linda R. Bocchi, Esq., Baker & Hostetler, 1050 Connecticut Avenue, NW., suite 1100, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–474, adopted September 28, 1990, and released October 29, 1990. The full text of this Commission decision is available for inspection and copying during normal busines hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissable *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25860 Filed 10–31–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

[FHWA Docket No. MC–87–17]

RIN 2125–AB91

Qualifications of Drivers; Diabetes

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The FHWA issued a notice of proposed rulemaking (NPRM) which was published in the **Federal Register** on October 5, 1990 (55 FR 41028). The comment period is presently scheduled to close on December 4, 1990. The FHWA has received a written request from the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (IBT) for a 30-day extension of the comment period. In order to give the Medical Advisory Committee of the IBT sufficient time to prepare comments; the FHWA is granting the requested extension. The comment period is, therefore, extended 30 days. No further requests for extensions of this rulemaking action will be considered.

DATES: Comments must be received on or before January 3, 1991.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MV–87–17, room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with either word processing programs, WordPerfect, WordStar, or Microsoft "Word" for MacIntosh. Please indicate which word processing program was used. The software used should be identified by the commenter (e.g., WordPerfect 5.0). All comments received will be available for examiniation at the above address from 8:30 a.m. to 3:30 p.m., ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366–1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., et, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The IBT has requested a 30-day extension to the comment period. The IBT stated that an extension would provide their Medical Advisory Committee, which is scheduled to meet on December 7, 1990, three days after the comment period closes, an opportunity to consult on the NPRM. The IBT also stated that the meeting cannot be rescheduled to an earlier date. The IBT believes that it is important to have the benefit of consultation with this committee before it finalizes its comments on this proposed rule. The IBT believes it is important to include the Committee's documentary record as part of its comments to the docket.

This rulemaking action would, if adopted, eliminate the blanket prohibition against insulin-using diabetics driving commercial motor vehicles in interstate commerce. The FHWA believes that receiving comments from the IBT Medical Advisory Committee will be beneficial. The FHWA, therefore, concludes that the request to extend the comment period has merit. Accordingly, the comment period for this docket is being extended until Thursday, January 3, 1991.

List of Subjects in 49 CFR Part 391

Driver qualifications, Medical standards, Highway safety, Highways and roads, Motor carriers, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, motor carrier safety)

Authority: 49 U.S.C. 504 and 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

Issued on: October 26, 1990.

T.D. Larson,

Administrator.

[FR Doc. 90–25859 Filed 10–31–90; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Findings and Commencement of Status Reviews for Five Petitions to List Six Species as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces 90-day findings on pending petitions to add six species to the Lists of Endangered and Threatened Wildlife and Plants. Five petitions to list six species have been found to present substantial information indicating that the requested actions may be warranted. Through issuance of this notice, the Service is commencing a formal review of the status of these species.

ADDRESSES: Data, information, comments, or questions concerning the status of the petitioned species described below should be submitted to the Assistant Regional Director, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, Oregon 97232. The petitions, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

DATES: The findings announced in this notice were made on October 2, 1990. Comments and materials related to these petition findings may be submitted to the Assistant Regional Director, at the above address until further notice.

FOR FURTHER INFORMATION CONTACT: Karla Dramer, Listing Coordinator, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to bew made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the Service finds that a petition presents substantial information indicating that a requested action may be warranted, then the Service initiaties a status review on that species. The Service announces 90-day findings on five petitions to list six species as endangered or threatened. The Service has, therefore, initiated status reviews on two plants (*Mimulus clivicola* and *Chorizanthe robusta* var. *Hartweigii*), three butterflies (*Speyeria zerene behrensii, Speyeria zerene myrtleae,* and *Coenympha tullia yontocket*), and a fish (*Oregonichthys crameri*). Section 4(b)(3)(B) of the Act requires the Service to make a finding as to whether or not the petitioned actions are warranted, within 1 year of the receipt of a petition that presents substantial information.

The Service has determined that the following petitions present substantial information that the requested actions may be warranted.

On May 11, 1989, the Service received a partial petition from Mr. Steve Paulson, representing Friends of the Clearwater, Lenore, Idaho, to list a plant, *Mimulus clivicola* (bank monkeyflower) as endangered. On June 28, 1989, the petitioner submitted supporting information thereby completing the petition. The petitioner stated that *Mimulus clivicola* is threatened due to its extremely limited occurrence, road construction projects, disturbance by cattle, spraying programs, competition from introduced species, and human disturbance.

The range of *Mimulus clivicola* extends from northern Idaho and adjacent Washington, southward to the southern end of the Snake River Canyon in Union County, Oregon. Prior to 1989, five extant populations of this species were known in Idaho, and six extant sites were known in Oregon; the status of this species in Washington is unclear. A 1989 field effort by the Idaho Department of Fish and Game's Natural Heritage Program on the Nez Perce and Clearwater National Forests confirmed a total of 56 populations at 29 sites. Although a number of new populations were discovered as a result of this survey, the total area known to be occupied by this plant in Idaho is less than 30 acres. The majority of sites contain less than 200 flowering individuals. A 1988 field investigation by the Idaho Natural Heritage Program suggests that many of the historic sites of *M. clivicola* have disappeared, primarily due to habitat modification. The 1989 Heritage report states that seven known populations of bank monkeyflower have been extirpated by road construction and maintenance, invasion and exotic weeds, inundation by Dworshak Reservior, and recreational disturbances. No new sites were found in Oregon in 1989. The Service finds that the petition to list *Mimulus clivicola* presents substantial information because of the plants limited distribution and documented threats facing some sites.

On June 29, 1989, the Service received a petition from Dr. Dennis Murphy of the Standford University Center for Conservation Biology to list Behren's silverspot butterfly (*Speyeria zerene behrensii*) and Myrtle's silverspot butterfly (*Speyeria zerene myrtleae*) as endangered.

The range of Behren's silverspot butterfly extends from the immediate coast of northern Sonoma County to southern Mendocino County, California. Myrtle's silverspot butterfly had a former distribution from the coastal areas of San Francisco Bay and the Pacific Ocean from San Mateo County northward into Sonoma County. The petitioner stated that these two animals merit protection under the Act because they are endangered by natural and anthropogenic factors. The salt spray meadows and coastal dunes inhabited by these butterflies may be threatened by invasive exotic vegetation, levels of fire that are too intensive, livestock grazing, urban development, and other human influences. The taking of specimens by butterfly collectors is an unknown, but potentially damaging activity. Because of the documented threats facing these two animals, the Service finds that the petition presented substantial information that the requested action may be warranted.

On January 8, 1990, the Service received a petition from Dr. Dennis Murphy of the Stanford University Center for Conservation Biology to list the Yontocket ringlet butterfly (*Coenonympha tullia yontocket*) as a threatened or endagered species. The petition stated that the Yontocket ringlet butterfly merits protection under the Act because the butterfly is known only from a single coastal dune locality in Del Norte County, California. The area is used for target shooting, driving off-road vehicles, dumping garbage, and some camping. Invasive exotic vegetation is also likely to threaten the species. The taking of specimens by butterfly collectors is an unknown, but potentially damaging activity. Some of the habitat may be developed for urban housing and/or improved camping facilities. A substantial amount of survey work has been conducted on butterflies in this region, providing a good information base for this group of insects. The Service finds that the petition to list the Yontocket ringlet butterfly has presented substantial information that the petitioned action may be warranted because of the species limited distribution and documented threats to its dune habitat.

On April 10, 1990, the Service received a petition from Dr. Douglas F. Markle of Oregon State University in Corvallis, Oregon, to list the Oregon chub (*Oregonichthys crameri*) as an endagered species and to designate critical habitat. Dr. Markle submitted taxonomic, biological, distributional and historic information and cited numerous scientific articles in support of the petition. The petition and accompanying data described the species as imperiled because of a 98 percent reduction in the range of the species and potential threats at existing known population sites.

The Oregon chub in the Willamette River drainage has had a history of anecdotal consideration as a different taxon from the Umpqua River drainage populations. Recently, the Umpqua chub has been formally described as taxonomically separate from

Oregonichthys crameri. The name Oregon chub therefore, refers only to *Oregonichthys* within the Willamette River drainage.

The Oregon chub formerly inhabited sloughs and overflow ponds throughout the Williamette River drainage, but the only remaining known populations are limited to a 30 kilometer stretch above the Dexter Dam. Decline of the species is attributed to loss and alteration of its backwater habitats. The construction of flood control structures coincides with the period of decline. The introduction of exotic species may have exacerbated the situation and may limit the potential for expansion beyond its present restricted range. Remaining populations occur near rail and highway corridors any may be threatened by potential chemical spills, siltation from logging activities, and changes in water level or flow conditions from construction, diversions, or natural desiccation. The Service finds that the petition to list the Oregon Chub has presented substantial information.

On May 16, 1990, the Service received a petition from Steve McCabe, president, and Randall Morgan, of the Santa Cruz Chapter of the California Native Plant Society to list the Scotts Valley spineflower (*Chorizanthe robusta* var. *hartwegii*) as endangered.

The petition reported that only three populations of the Scotts Valley spineflower are currently known, represented by approximately 10,000 individuals. This taxon is apparently restricted to dry sandy meadows on outcrops of Santa Cruz mudstone and Purisma formation sandstones in the Scotts Valley area of Santa Cruz County, California. The petition indicated that all three populations are threatened by two proposed housing developments on privately owned lands.

Dr. John Hunter Thomas, Professor of Biological Sciences at Stanford University, has questioned the taxonomic validity of var. *hartwegii*. After the rediscovery of this taxon by Morgan in 1989 however, Dr. James L. Reveal, Professor of Botany at the University of Maryland, confirmed the distinctiveness of var. *hartwegii*, and with Morgan, published the new combination *C. robusta* var. *hartwegii*.

Dr. Thomas has also raised the possibility that the taxon occurs at Fort Ord, Monterey County, 40 miles to the south of Scotts Valley. Dr. Reveal has indicated that identification of specimens at Fort Ord cannot be confirmed as *C. robusta* var. *hartwegii*. Although the identify of these specimens has not been clearly determined, a number of environmental factors at the Fort Ord site point to the conclusion that these specimens are unlikely to be *C. robusta* var. *hartwegii*. A review of historical specimens as well as recent fieldwork in what appears to be suitable habitat has failed to locate any other populations of Scotts Valley spineflower. It therefore seems unlikely that additional large or protected sites exist. Because of the ongoing threat of development within this plant's entire known range, the Service finds that the petition has presented substantial information that the petitioned action may be warranted.

Based on scientific and commercial information contained in the above petitions, referenced in the petitions, and otherwise available to the Service at this time, the Service has determined that the petitions to list *Mimulus clivicola* (bank monkeyflower), Behren's silverspot butterfly (*Speyeria zerene behrensii*), Myrtle's silverspot butterfly (*Speyeria zerene myrtleae*), Yontocket ringlet butterfly (*Coenonympha tullia yontocket*), Oregon chub (*Oregonichthys crameri*), and Scotts Valley spineflower (*Chorizanthe robusta* var. *hartwegii*) present substantial information that listing may be warranted for these species.

These findings initiate a status review for each of the above species. The Service would appreciate any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of these species.

Author

This notice was prepared by Robert Parenti (Boise Field Station), Constance Rutherford (Ventura Field Station), Dennis Lassuy (Portland Field Station) and Leslie Propp (Portland Regional Office).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

Dated: October 24, 1990.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 90-25847 Filed 10-31-90; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 900958-0258]

RIN 0648-AD43

Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NOAA proposes to delay the start of the directed fishing season for yellowfin sole, "other flatfish," and turbot in the Bering Sea and Aleutian Islands area until May 1 of any fishing year, and to amend the directed fishing standards for yellowfin sole and "other flatfish." Delaying the fishing season is necessary to allow more groundfish to be harvested by reducing bycatches of Pacific halibut, red king crab, and possibly Tanner crab (*Chionoecetes bairdi*), for which prohibited species catch limits are established. Amending the directed fishing standards is necessary to reduce discards of yellowfin sole and "other flatfish" while fishing for rock sole. These actions are intended to allow fuller utilization of the groundfish optimum yield, thereby promoting the goals and objectives of the North Pacific Fishery Management Council with respect to groundfish management off Alaska.

DATES: Comments are invited until November 28, 1990.

ADDRESSES: Comments may be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Copies of the environmental assessment/regulatory impact review/ initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the same address. Comments on the environmental assessment are particularly requested.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone of the Bering Sea and Aleutian Islands area (BSAI) are managed by the Secretary of Commerce (Secretary) under the Fishery Management Plan for Bering Sea/ Aleutian Islands Groundfish (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR part 675.

At times, regulatory amendments are necessary to resolve problems pertaining to management of the groundfish fisheries. At its June 25–30, 1990, meeting, the Council recommended this regulatory amendment, which would implement two measures pertaining to management issues in the BSAI flatfish fisheries, including fisheries for yellowfin sole, "other flatfish," rock sole, and Greenland turbot. The first measure would delay the start of the directed fishing seasons for yellowfin sole, "other flatfish," and Greenland turbot until May 1 of any fishing year. The purpose of this new season starting date is to reduce incidental catches of fish species important to U.S. fishermen in other fisheries. These fish species include halibut, red king crab, and possibly Tanner crab (*c. bairdi*). The second measure would modify directed fishing standards for yellowfin sole and "other flatfish" while fishing for rock sole. The purpose of these measures is to allow more retention of yellowfin sole and "other flatfish," thereby reducing unnecessary waste of otherwise marketable species of groundfish.

Delay the Start of the Flatfish Fishing Season

The current season in the BSAI for the flatfish fishery is January 1 through December 31, subject to other closures. U.S. fishermen in both domestic annual processing (DAP) and joint venture processing (JVP) operations participate in the flatfish fishery.

This fishery is conducted mostly with bottom trawls. It results in bycatches of halibut, red king crab, and Tanner crab, which are controlled by measures contained in the FMP and implementing regulations.

Amendment 12a to the FMP established a series of prohibited species catch (PSC) limits for halibut, Tanner crab, and red king crab within zones in the BSAI defined at 50 CFR part 675 and listed as follows:

Zone 1—Statistical Areas 511, 512, and 516.
Zone 2—Statistical Areas 513, 517, and 521.
Zone 2H—Statistical Area 517.

This amendment expires December 31, 1990. However, if Amendment 16 to the FMP is implemented, the bycatch zones listed above will be continued indefinitely and PSC limits will be apportioned annually as bycatch allowances to: (1) The "JVP flatfish fishery" (yellowfin sole, rock sole, and "other flatfish"), (2) the "DAP flatfish fishery" (yellowfin sole and "other flatfish"), (3) the "DAP rock sole fishery", (4) the "DAP other fishery", and (5) the "DAP turbot fishery." The "DAP other fishery" would include such species as pollock and Pacific cod.

Further descriptions of the PSC limits are as follows:

Red king crab—An overall PSC limit of 200,000 animals is established in Zone 1.

Tanner crab—Overall PSC limits of 1,000,000 and 3,000,000 animals are established in Zone 1 and Zone 2, respectively.

Halibut—An overall PRIMARY PSC limit of 4,400 metric tons (mt) is established in Zones 1 and 2H, combined. An overall SECONDARY PSC limit of 5,333 mt is established for the BSAI. The PRIMARY PSC limit is a subset of the SECONDARY PSC limit.

During 1990, DAP and JVP flatfish fisheries in the above mangement zones were conducted with unexpectedly high bycatch rates of halibut and red king crab. Weekly reporting requirements were inadequate to monitor the fishery relative to these high rates. By the time information was received indicating that the fishery should be closed, some PSC bycatch allowances had been substantially exceeded. Likewise, the DAP fishery for turbot was conducted with an unexpectedly high bycatch of halibut. The Council had expected that DAP and JVP fishermen would be encouraged actively to avoid prohibited species when it established the PSC allowances, and thus DAP and JVP fishermen would be able to harvest as much flatfish as possible within bycatch constraints. Instead of changing fishing practices to avoid prohibited species, the fishing fleets accelerated harvests to maximize catch before attainment of a PSC allowance closed bottom trawling. As a result, they experienced high bycatch rates of halibut and crab.

For example, JVP fishermen experienced high bycatch rates of red king crab in Zone 1 while fishing for flatfish in early January 1990. The bycatch of red king crab in Zone 1 was 161,816 crabs, which exceeded the JVP bycatch allowance of 50,000 crabs by 224 percent. In early January, bycatch rates of red king crab experienced by JVP fishermen were 4.4 crabs per ton of groundfish, which increased to 7.5 crabs later in January. These rates are high compared to rates experienced by JVP fishermen during the first and second quarters of 1987 and 1988. In 1987, the first and second quarter rates in statistical area 511 within Zone 1 were 0.17 and 3.48 crabs per ton of groundfish. In 1988, the first and second quarter rates in Zone 1 in this statistical area were 0.78 and 0.28 crabs per ton of groundfish.

Although the abundance of red king crab stocks appeared to have increased between 1989 and 1990, the high rates of red king crab bycatch are believed to have occurred as a result of fishing practices by individual vessels. Rather than fishing in a manner to avoid red king crab, and maximize the JVP flatfish catch for all vessels, individual vessels may have attempted to catch as much of the JVP flatfish specification as possible before the red king crab PSC was reached.

During 1990, when JVP flatfish fishing effort shifted west of Zone 1, halibut PSC allowances became constraining. This redirected effort caused the JVP flatfish fishery to close in Zones 1 (statistical areas 511, 512, and 516) and 2H (statistical area 517) on February 27 (55 FR 7337; March 1, 1990), when the primary halibut PSC allowance was reached, and the JVP flatfish fishery in all of the BSAI management area to close on March 5 (55 FR 8954; March 9, 1990), when the secondary PSC allowance for Pacific halibut was reached. Amounts of JVP harvests of yellowfin sole, rock sole, and "other flatfish" that might have occurred in Zone 1 and the BSAI were foregone. About 98,000 mt of yellowfin sole, 22,100 mt of "other flatfish," and 5,900 mt of rock sole were left unharvested.

At $152 per mt, roughly $19 million of exvessel gross revenue was foregone as a result.

Likewise, the 1990 DAP flatfish fishery (primarily rock sole) was closed prematurely when the primary and secondary PSC allowances for halibut for this fishery were reached. Zones 1 and 2H were closed to the DAP flatfish fishery on March 14 (55 FR 10246; March 20, 1990) due to attainment of the primary PSC allowance for halibut. Further fishing outside of Zone 2H occurred, but attainment of the secondary PSC allowance of halibut resulted in the entire BSAI being closed to the DAP flatfish fishery on March 19 (55 FR 10779; March 23, 1990).

Large amounts of the specified total allowable catch (TAC) for yellowfin sole and "other flatfish," as well as TACs for other species, will not be harvested in 1990 due to these closures. This has resulted in substantial losses in gross exvessel revenue for U.S. fishermen and failure to attain optimum yield from the groundfish resource. The Council reviewed the circumstances underlying the JVP and DAP flatfish fishery

closures during its April 24–27, 1990, meeting and again at its June 25–30, 1990, meeting. It noted that much of the flatfish harvest has occurred in the early winter months in Zone 1 just north of the Alaska Peninsula in areas where seasonal concentrations of flatfish, including rock sole, occur. Fishing for flatfish in Zone 1 occurs in early winter, because flatfish are concentrated in this area at that time, and because the southern edge of the ice pack during early winter prohibits fishing farther north. The Council also noted that foreign and JVP fisheries have profitably operated north of Zone 1 from mid-May through June, once the yellowfin sole have migrated into this area.

Because distribution of red king crab occurs mostly in Zone 1, a closure of only that area would address the problem of high red king crab bycatches. However, the Council recognized that fishing effort would then shift into westward areas (e.g., statistical areas 513, 515, and 517), where halibut bycatch problems could be worse. The Council's Ad Hoc Bycatch Committee, after considering information received from NMFS that closure of Zone 1 until later in the year would reduce the bycatch rate of red king crab in the flatfish fishery, recommended that the entire BSAI be closed to directed fishing for flatfish until later in the year. To address the problem of excessive red king crab and halibut bycatches in the flatfish fisheries, the Council recommended that the Secretary implement a regulatory amendment to delay the start of the directed flatfish fisheries until May 1 of any fishing year.

The regulatory amendment's measure to delay the start of the flatfish fishery does not apply to the directed fishery for rock sole, which is a roe fishery conducted by DAP fishermen. Significant amounts of red king crab bycatch also occur in this fishery. Through March 17, 1990, the DAP rock sole fishery caught 79,000 red king crab as bycatch, while catching about 18,000 mt of rock sole. The rock sole roe fishery starts in late December and ends in March of the following fishing year. The potential exvessel value of this fishery is about $70 million a year, even though it lasts only a few months. U.S. fishermen could lose gross revenue equal to this amount if the rock sole roe fishery were prevented due to a mid-year season starting date.

Therefore, the Secretary proposes to delay the yellowfin sole and "other flatfish" directed fishing season until May 1. This proposal is necessary to reduce economic waste in the BSAI groundfish fisheries that is likely to occur again in 1991 and beyond, if these fisheries continue to be closed prior to attainment of TAC due to premature attainment of PSC allowances for red king crab or Pacific halibut. It is intended to further the opportunity to harvest available flatfish while affording continued protection for red king crab.

Delay the Start of the Turbot Fishing Season

During 1990, the DAP turbot fishery was conducted mostly in areas 515 and 540 with some fishing also occurring in area 517. This fishery was conducted in late winter months when closure of the Bering Sea pollock roe fishery was believed imminent. This is a deep water fishery. Because halibut also are found in deep water during late winter months, halibut bycatch rates were high. Halibut bycatches in this fishery were counted against the halibut PSC allowance for the "DAP other fishery." Zones 1 and 2H were closed to bottom trawling for pollock and Pacific cod on May 30 (55 FR 22919; June 5, 1990), when the primary halibut PSC allowance for this fishery was reached. The entire BSAI was closed to the "DAP other fishery" on June 30 (55 FR 27643; July 5, 1990), when the secondary halibut PSC allowance was reached. High bycatch rates of halibut that occurred when fishing for turbot accelerated these closures for the "DAP other fishery".

The Council reviewed the circumstances underlying this closure during its June 25–30, 1990, meeting. It noted that much of the turbot fishery occurred during late winter months when halibut coexist in deep water with turbot. The Council recommended that the turbot-directed fishery be delayed until May 1 on an annual basis, at which time halibut would have migrated into shallower water. Turbot remain in deep water and a directed fishery starting in May would result in lower halibut bycatch rates.

Therefore, the Secretary proposes to delay the turbot directed fishing season until May 1. This proposal is necessary to reduce economic waste in the BSAI groundfish fisheries that is likely to occur again in 1991 and beyond, if these fisheries continue to be closed prematurely. It is intended to further the opportunity to harvest available turbot while affording continued protection for halibut.

Amend the Directed Fishing Standards for Yellowfin Sole and "Other Flatfish"

Some U.S. fishermen requested that the directed fishing standard for yellowfin sole and "other flatfish" be increased to avoid wastage when caught while conducting a directed fishery for rock sole. They explained that bycatch of yellowfin sole and "other flatfish' in the rock sole fishery sometimes occurs at a high rate. Because the current directed fishing standards for both yellowfin sole and "other flatfish" constrain bycatches of these species categories to less than 20 percent, fishermen must discard amounts of yellowfin sole and "other flatfish" that they catch as bycatch while fishing for rock sole. Because a DAP market for yellowfin sole, as well as for "other flatfish," is increasing, being forced by regulations to discard bycatch amounts of these species is an unacceptable waste to these fishermen.

Industry sources were queried to determine rates (proportions) of yellowfin sole in the rock sole fishery. Rates varied from about 1 percent in the western side of statistical area 511 to as high was 45.7 percent in the eastern side. Fishermen move west to east as they harvest rock sole. The unweighted average of the proportions was 19.9 percent. Although some yellowfin sole or "other flatfish" bycatch rates are low, high rates of these categories can occur in a rock sole fishery.

Because yellowfin sole or "other flatfish" stocks are at high levels and would not benefit from lower bycatch levels, the Council recognized that allowing a higher percentage would eliminate waste during times when actual bycatches are large in a rock sole fishery. The council recommended that the directed fishing standard for both yellowfin sole and "other flatfish" in the rock sole trawl fishery be increased from 20 percent to 35 percent.

Therefore, the Secretary proposes a directed fishing standard for both yellowfin sole and "other flatfish" of: (1) 35 percent of the amount of rock sole retained at the same time during the same trip, plus (2) 20 percent of the total amount of other fish species (besides rock sole, yellowfin sole, and "other flatfish") retained at the same time during the same trip.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule is necessary for the conservation and management of the groundfish fishery off Alaska, and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an environmental assessment (EA) for this proposed rule and the Assistant Administrator concluded that no significant impact on the environment will occur as a result of its implementation. You may obtain a copy of the EA from the Regional Director at the above address.

The Assistant Administrator initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis (RIR) under Executive Order 12291. This determination is based on the socioeconomic impacts discussed in the EA/RIR prepared by the Alaska Region, NMFS.

The Alaska Region, NMFS, prepared an initial regulatory flexibility analysis (IRFA) as part of the EA/RIR/IRFA, which concludes that this proposed rule, if adopted, would have significant effects on small entities. A summary of this analysis follows:

A May 1 starting date for the directed flatfish fishery (early-second quarter) is superior to January 1 with respect to reducing bycatch rates of red king crab and possibly Tanner crab and salmon, assuming fishing effort concentrates in area 514 where high flatfish catch rates would occur. A May 1 starting date also is superior to January 1 with respect to reducing bycatch rates of halibut. More herring might be caught if flatfish fishing indeed concentrated in Area 514.

If the starting date for the directed flatfish fishery remains January 1, fishermen would likely begin flatfish fishing in Zone 1 (areas 511 and 516) where high catches of flatfish would occur, but where high bycatch rates of red king crab are likely. This might cause premature closure to flatfish fishing in Zone 1. High bycatch rates of red king crab (1.890–4.069 crab per metric ton of yellowfin sole) experienced in 1990 caused early closure of the JVP flatfish fishery in Zone 1 on January 25. JVP fishermen then moved into westward areas where high halibut bycatch rates (0.012 mt of halibut per metric ton of yellowfin sole) were experienced, resulting in closure of Zone 2H to flatfish fishing and then the entire Bering Sea to JVP flatfish fishing. About 128,000 mt of flatfish with a value of $19 million were foregone. Fewer herring might be caught, depending on the location of the directed flatfish fishing effort.

Likewise, if the starting date for the turbot directed fishery remains January 1, DAP fishermen who participate in the turbot fishery during the first quarter could experience high bycatch rates of halibut. This might cause premature closure to further bottom trawling for pollock and Pacific cod in Zones 1 and 2H and even the entire Bering Sea. High bycatch rates (114 kilograms of halibut per metric ton of turbot) experienced by DAP fishermen in the turbot directed fishery in 1990 contributed to early closure of the DAP pollock and cod bottom trawl fishery in Zones 1 and 2H on May 30, and the entire Bering Sea on June 30.

A May 1 starting date for the tubot directed fishery would allow fishing for turbot at a time when halibut would have moved into more shallow waters, thereby reducing the halibut bycatch in the turbot fishery which is conducted in deeper waters than where halibut would be at that time of year.

A May 1 starting date is superior to a January 1 starting date in terms of better and safer working conditions with the advent of better weather and longer daylight. Better working conditions would increase overall working efficiency and reduce operating costs.

This proposed rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

NOAA has determined that this proposed rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects

50 CFR Part 611

Fisheries.

50 CFR Part 675

Fisheries.

Dated: October 26, 1990.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 611 and 675 are proposed to be amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 611.93, paragraph (b)(3)(i) and the first sentence in paragraph (c)(5) are revised and paragraph (b)(5)(iii) is added to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(b)* * *

(3)* * *

(i) The catching in the management area and retention of any groundfish for which a nation has an allocation is permitted during open seasons specified under § 675.23 of this chapter, except as provided in this section.

* * * * *

(5) * * *

(iii) Receipts of U.S.-harvested yellowfin sole, "other flatfish," and Greenland turbot are permitted during open seasons specified under § 675.23 of this chapter

(c) * * *

(5) *Receipts of fish at sea.* Foreign fishing vessels holding permits to receive U.S.-harvested fish may receive those fish during open seasons specified under § 675.23 of this chapter in the management area between 3 and 12 nautical miles from the baseline from which the United States territorial sea is measured. * * *

* * * * *

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS

3. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 675.20 paragraphs (h)(2), (h)(3), (h)(4), and (h)(5) are redesignated as (h)(3), (h)(4), (h)(5), and (h)(6) respectively; paragraph (h)(1) and newly designated paragraph (h)(6) are revised; and a new paragraph (h)(2) is added to read as follows:

§ 675.20 General limitations

* * * * *

(h) * * *

(1) *Using trawl gear for pollock, Pacific cod, or rock sole.* The operator of a vessel is engaged in directed fishing for pollock, Pacific cod, or rock sole if he retains at any time during a trip an amount of any one of these species caught using trawl gear equal to or greater than 20 percent of the aggregate catch of the other fish retained at the same time during the same trip.

(2) *Using trawl gear for yellowfin sole or "other flatfish."* The operator of a vessel is engaged in directed fishing for yellowfin sole or "other flatfish" if he retains at any time during a trip an aggregate amount of yellowfin sole and "other flatfish" caught using trawl gear equal to or greater than a total of:

(i) 35 percent of the amount of rock sole retained at the same time on the vessel during the same tirp, plus

(ii) 20 percent of the total amount of other fish species (besides rock sole, yellowfin sole, and "other flatfish") retained at the same time by the vessel during the same trip.

* * * * *

(6) *Other.* Except as provided under paragraphs (h)(1) through (h)(5) of this section, the operator of a vessel is engaged in directed fishing for a specific species or species group if he retains at any particular time during a trip that species or species group in an amount equal to or greater than 20 percent of the amount of all other fish species retained

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at the same time on the vessel during the same trip.

* * * * *

5. In § 675.23, paragraph (a) is revised, and paragraph (c) is added to read as follows:

§ 675.23 Seasons.

(a) Fishing for groundfish in the subareas and statistical areas of the Bering Sea and Aleutians Islands is authorized from 00:01 AM on January 1 through 12:00 midnight Alaska local time, December 31, subject to the other provisions of this part, except as provided in paragraphs (b) and (c) of this section.

* * * * *

(c) Directed fishing for yellowfin sole, "other flatfish," and turbot is authorized from 12 noon Alaska local time, May 1 through December 31, subject to the other provisions of this part

[FR Doc. 90-25806 Filed 10-29-90; 10:28 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 212
Thursday, November 1, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 26, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Revision

- Agricultural Stabilization and Conservation Service

Request for Long-Term Agreement and Long-Term Agreement ACP-310 and ACP-311
On occasion
Individuals or households; Farms; 18,000 responses; 9,000 hours; not applicable under 3504(h)
Clayton Furukawa, (202) 475-5571

- Agricultural Marketing Service

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon Marketing Order No. 958
Recordkeeping; On occasion; Biennially
Farms; Businesses or other for-profit; 4557 responses; 327 hours; not applicable under 3504(h)
Richard Schultz, (202) 245-5172

- Food and Nutrition Service

WIC Program Regulations-Reporting and Recordkeeping Burden and New Food Delivery Regulations
Recordkeeping; Monthly; Semi-annually; Annually; Biennially
Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 9,198,843 responses; 1,117,884 hours; not applicable under 3504(h)
Michael T. Buckley, (703) 756-3730

Revision

- Agricultural Marketing Service

Navel Oranges Grown in Arizona and Designated Part of California, Marketing Order No. 907
Recordkeeping; On occasion, Weekly; Annually; Daily
Farms; Businesses or other for-profit; Small businesses or organizations; 210,486 responses; 25,232 hours; not applicable under 3504(h)
Richard Schultz, (202) 245-5172

Extension

- Agricultural Marketing Service

Application for Plant Variety Protection Certificate and Objective Description of Variety
CSSD-470 and CSSD-470 series
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 779 responses; 1,024 hours, not applicable under 3504(h)
Kenneth H. Evans, (301) 344-2518

Reinstatment

- Federal Crop Insurance Corporation

Crop Insurance Acreage Report and Unit Division Option Form FCI-19 and FCI-553
Annually
Individuals or households; Farms; 160,000 responses; 77,500 hours; not applicable under 3504(h)
Garland Westmoreland, (202) 447-5251
Donald E. Hulcher,
Acting Department Clearance Officer.

[FR Doc. 90-25817 Filed 10-31-90; 8:45 am]
BILLING CODE 3410-01-M

Federal Grain Inspection Service

Designation Renewal of the Aberdeen (SD) Agency and the State of Missouri (MO)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Aberdeen Grain Inspection, Inc. (Aberdeen), and the Missouri Department of Agriculture (Missouri), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as amended (Act).

EFFECTIVE DATE: December 1, 1990.

ADDRESSES: Neil E. Porter, Deputy Director, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202-447-8262.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Aberdeen's and Missouri's designations terminate on November 30, 1990, and requested applications for official agency designation to provide official services within specified geographic areas in the June 1, 1990, **Federal Register** (55 FR 22362). Applications were to be postmarked by July 2, 1990. Aberdeen was the only applicant, and applied for the entire area. There were two applicants for the Missouri designation. Missouri applied for designation renewal in the entire area currently assigned to that agency. Anthony L. Marquardt dba Quincy Grain Inspection & Weighing Service applied for designation only in Lewis, Marion, and Pike Counties, Missouri.

The Service announced the applicant names in the August 1, 1990, **Federal**

Register (55 FR 31204) and requested comments on the applicants for designation. Comments were to be postmarked by September 17, 1990. No comments were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that Aberdeen is able to provide official services in the geographic area for which the Service is renewing its designation. The Service also determined that Missouri is better able than the other applicant to provide official services in the entire State of Missouri.

Effective December 1, 1990, and terminating November 31, 1993, Aberdeen and Missouri are designated to provide official inspection services in their specified geographic areas, as previously described in the June 1 Federal Register.

Interested persons may obtain official services by contacting Aberdeen at 605–225–8432, and Missouri at 314–751–5515.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: October 25, 1990.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 90–25734 Filed 10–31–90; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on the Designation Applicant in the Geographic Area Currently Assigned to the State of Alabama (AL)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic area currently assigned to the Alabama Department of Agriculture and Industries (Alabama).

DATES: Comments must be postmarked on or before December 17, 1990.

ADDRESSES: Comments must be submitted in writing to Paul Marsden, RM. FGIS, USDA, room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454. *SprintMail* users may respond to (PMARSDEN/FGIS/USDA). *Telecopier* users may send responses to the automatic telecopier machine at 202–447–4628, attention: Paul Marsden. All comments received will be made available for the public inspection at the above address located at 1400 Independence Avenue SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Paul Marsden, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule of regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic area in the September 4, 1990, Federal Register (55 FR 35912). Applications were to be postmarked by October 4, 1990. Alabama was the only applicant for designation in that area, and applied for the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicant for designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the Federal Register, and the applicant will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et al.)*)

Dated: October 25, 1990.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 90–25735 Filed 10–31–90; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants to Provide Official Services in the Geographic Area Currently Assigned to the Lincoln (NE) and Omaha (NE) Agencies

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic areas currently assigned to the specified agencies. The official agencies are Lincoln Inspection Service, Inc. (Lincoln), and Omaha Grain Inspection Service, Inc. (Omaha).

DATES: Applications must be postmarked on or before December 3, 1990.

ADDRESSES: Applications must be submitted to Neil E. Porter, Deputy Director, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–447–8262.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Lincoln, located at 505 Garfield Street, Lincoln, NE 68502, and Omaha, located at 2525 South 13th Street, Omaha, NE 68108, were designated under the Act on May 1, 1988, as official agencies to provide official inspection services.

The designations of these official agencies terminate on April 30, 1991. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Lincoln, in the States of Iowa and Nebraska, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North (in Nebraska) by the northern York, Seward, and Lancaster County lines; the northern Cass County line east to the Missouri River; the Missouri River south to U.S. Route 34; (in Iowa) U.S. Route 34 east to Interstate 29;

Bounded on the East by Interstate 29 south to the Fremont County line; the northern Fremont and Page County lines; the eastern Page County line south to the Iowa-Missouri State line; the Iowa-Missouri State line west to the Missouri River; the Missouri River south-southeast to the Nebraska-Kansas State line;

Bounded on the South by the Nebraska-Kansas State line west to County Road 1 mile west of U.S. Route 81; and

Bounded on the West (in Nebraska) by County Road 1 mile west of U.S. Route 81 north to State Highway 6; State Highway 6 east to U.S. Route 81; U.S. Route 81 north to the Thayer County line; the northern Thayer County line east; the western Saline County line; the southern and western York County lines.

Exceptions to Lincoln's assigned geographic area are the following locations inside Lincoln's area which have been and will continue to be serviced by the following official agency:

Omaha Grain Inspection Service, Inc.: Fremont Company Coop, McPaul, Fremont County, Iowa; and Lincoln Grain, Murray, Cass County, Nebraska.

The geographic area presently assigned to Omaha, in the States of Iowa and Nebraska, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by Nebraska State Route 91 from the western Washington County line east to U.S. Route 30; U.S. Route 30 east to the Missouri River; the Missouri River north to Iowa State Route 175; Iowa State Route 175 east to Iowa State Route 37; Iowa State Route 37 southeast to the eastern Monona County line;

Bounded on the East by the eastern Monona County line; the southern Monona County line west to Iowa State Route 183; Iowa State Route 183 south to the Pottawattamie County line; the northern and eastern Pottawattamie County lines; the southern Pottawattamie County line west to M47; M47 south to Iowa State Route 48; Iowa State Route 48 south to the Montgomery County line;

Bounded on the South by the southern Montgomery County line; the southern Mills County line west to Interstate 29; Interstate 29 north to U.S. Route 34; U.S. Route 34 west to the Missouri River; the Missouri River north to the Sarpy County line (in Nebraska); the southern Sarpy County line; the southern Saunders County line west to U.S. Route 77; and

Bounded on the West by the U.S. Route 77 north to the Platte River; the Platte River southeast to the Douglas County line; the northern Douglas County line east; the western Washington County line northwest to Nebraska State Route 91.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Murren Grain, Elliot, Montgomery County, Iowa; Hemphill Feed & Grain, and Hansen Feed & Grain, both in Griswold, Cass County, Iowa (located inside Central Iowa Grain Inspection Service, Inc.'s area); Farmers Coop Business Assn., Rising City, Butler County, Nebraska; Farmers Coop Business Assn., Shelby, Polk County, Nebraska (located inside Fremont Grain Inspection Department, Inc.'s area); and Fremont Company Coop, McPaul Fremont County, Iowa; Lincoln Grain, Murray, Cass County, Nebraska (located inside Lincoln Inspection Service, Inc.'s area).

Exceptions to Omaha's assigned geographic area are the following locations inside Omaha's area which have been and will continue to be serviced by the following official agency:

Fremont Grain Inspection Department, Inc.: Farmers Cooperative, and Krumel Grain and Storage, both in Wahoo, Saunders County, Nebraska.

Interested parties, including Lincoln and Omaha, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning May 1, 1991, and ending April 30, 1994. Parties wishing to apply for designation should contact the Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: October 25, 1990.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 90–25736 Filed 10–31–90; 8:45 a.m.]

BILLING CODE 3410–EN–M

Request for Designation Applicants to Provide Official Services in the McGregor, IA, Area

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces that the Service has determined that the designation of McGregor Grain Inspection and Weighing Corporation, Inc. (McGregor), will not be renewed, and is requesting applications for designation to provide official services under the U.S. Grain Standards Act, as Amended (Act) in the area serviced by McGregor.

DATES: Applications must be postmarked on or before December 3, 1990.

ADDRESSES: Applications must be submitted to Neil E. Porter, Deputy Director, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–447–8262.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that McGregor's designation terminates on November 30, 1990, and requested applications for official agency designation to provide official services within a specified geographic area in the June 1, 1990, Federal Register (55 Fr 22362). Applications were to be postmarked by July 2, 1990. McGregor was the only applicant for designation and applied for the entire area currently assigned to that agency.

The Service announced the applicant name in the August 1, 1990, Federal Register (55 FR 31204) and requested comments on the applicant for designation. Comments were to be postmarked by September 17, 1990. No comments were received.

Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially, and may be renewed according to the criteria and procedures prescribed in the Act. Accordingly, the Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and in accordance with the provisions of section 7(f), determined that McGregor's designation will not be renewed. In accordance with the Act

and regulations. McGregor's designation will terminate on November 30, 1990.

The Service is again requesting applications for designation to provide official services in the specified geographic area.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

The geographic area, in the State of Iowa, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the Iowa-Minnesota State line from the western Howard County line east to the Mississippi River;

Bounded on the East by the Mississippi River south-southeast to the southern Clayton County line;

Bounded on the South by the southern Clayton, Fayette, and Bremer County lines; and

Bounded on the West by the western Bremer County line north to State Route 3; State Route 3 east to U.S. Route 218; U.S. Route 218 north to Chickasaw County; the western Chickasaw County line north to Howard County; the western Howard County line north to the Iowa-Minnesota State line.

The following location, outside of the above contiguous geographic area, is part of this geographic area assignment: Paris and Sons Grain Elevator, Masonville, Delaware County (located inside Eastern Iowa Grain Inspection and Weighing Service, Inc.'s area).

Exceptions to McGregor's assigned geographic area are the following locations inside McGregor's area which have been and will continue to be serviced by the following official agency: Central Iowa Grain Inspection Service, Inc.: Nashua Equity Co-op, Nashua, Chickasaw County; and Plainfield Co-op, Plainfield, Bremer County.

Interested parties are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. Accordingly, designation in the specified geographic area is for a period not to exceed 3 years. Parties wishing to apply for designation should contact the Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area

Persons or firms located in this geographic area requiring official inspection service should contact the FGIS Cedar Rapids Field Office at 319–364–0047 to obtain such service beginning December 1, 1990, until such time as an applicant is designated to perform official services.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: October 19, 1990.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 90–25737 Filed 10–31–90; 8:45 am]

BILLING CODE 3410-EN-M

Designation Renewal of the Mid-Iowa (IA) Agency, the State of Oregon (OR), and the South Illinois (IL) Agency

Correction

The purpose of this notice is to correct the September 4, 1990, **Federal Register** notice in which the geographic area which was assigned to Decatur Grain Inspection, Inc. (Decatur), was inadvertently omitted.

In FR Doc. 90–20594, beginning on page 35911 in the issue of Tuesday, September 4, 1990, make the following correction under "**SUMMARY.**" On page 35911, in the third column, in the first complete paragraph of this notice, insert the following as the second sentence:

"This notice also announces that the designation of Decatur Grain Inspection, Inc., is amended to add an additional geographic area."

On page 35912, in the first column, in the first complete paragraph, under "**SUPPLEMENTARY INFORMATION**", the sentence should read:

"Mid-Iowa and Oregon were the only applicants for designation in those areas and each applied for the entire area currently assigned to that agency. There were two applicants for the Southern Illinois designation. Southern Illinois applied for the designation renewal in the entire area currently assigned to that agency, except for Sigel Elevator Co., Inc., Sigel, Illinois. Decatur Grain Inspection, Inc., a neighboring official agency, in whose territory this grain elevator facility is located, applied for designation only for that facility."

On page 35912, in the third column, in the third complete paragraph, insert the following at the end of the first sentence:

"* * * and that Decatur is able to provide official services in the geographic area for which the Service is designating that agency."

On page 35912, in the first column, the fourth complete paragraph should read:

"Effective October 1, 1990, and terminating September 30, 1993, Mid-Iowa and Oregon will provide official inspection services in their specified geographic areas, previously described in the April 2 **Federal Register**. For that same time period, Southern Illinois will provide official inspection services in the specified geographic area previously described in the April 2 **Federal Register**, with the exception of Sigel Elevator Co., Inc., Sigel, Illinois. The Service is designating Decatur to provide official services to Sigel Elevator Co., Inc., Sigel, Illinois. Decatur will provide official inspection services to that point effective October 1, 1990, and terminating December 31, 1990, when that agency's current designation terminates. Decatur's designation is hereby amended by adding the above mentioned geographic area."

On page 35912, in the first column, in the fifth complete paragraph, insert the following as the second sentence:

"Decatur may be contacted at 217–429–2466."

(Pub. L. 94–582, 90 Stat. 2667, as amended (7 U.S.C. 71 *et seq.*))

Dated: October 25, 1990.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 90–25738 Filed 10–31–90; 8:45 am]

BILLING CODE 3410-EN-M

Designation of the Southern Illinois Grain Inspection Service, Inc., in the Paris, Illinois, Geographic Area (IL)

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation of Southern Illinois Grain Inspection Service, Inc. (Southern Illinois), as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act), in the Paris, Illinois, geographic area.

EFFECTIVE DATE: December 1, 1990.

ADDRESSES: Neil E. Porter, Deputy Director, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–447–8262.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that, due to the death of the sole proprietor, Robert R. Beals, the designation of Paris Illinois Grain Inspection (Paris) terminated on March 31, 1990, and requested applications for official agency designation to provide official services within the specified geographic area in the April 4, 1990, **Federal Register** (55 FR 12539).

Applications were to be postmarked by May 4, 1990; a total of six applications were received. Each of the six applicants applied for the entire geographic area. All applicants planned to establish at least one specified service point within the available geographic area to provide official service.

The six applicants were: 1. Champaign/Danville Grain Inspection Departments, Inc., Danville, Illinois (Champaign); 2. Thomas E. Chappell Jr. and Ellen L. Chappell, Decatur, Illinois, proposing to do business as Chappell Grain Inspection, Inc. (Chappell); 3. Ruth E. Eddings, and Ronald D. Eddings, Cerro Gordo, Illinois, proposing to do business as Eddings Grain Inspection Inc. (Eddings); 4. James W. Beals, Hughetta Beals, and Fenton Veach, Paris, Illinois, proposing to do business as Paris Grain Inspection, Inc. (Beals/Beals/Veach); 5. Southern Illinois Grain Inspection Service, Inc., O'Fallon, Illinois (Southern Illinois); and 6. Ruth E. Eddings and Thomas E. Chappell, Jr., Decatur, Illinois, proposing to do business as Terre Haute Grain Inspection, Inc (Terre Haute).

The Service announced the applicant names in the June 1, 1990, **Federal Register** (55 FR 22361) and requested comments on the applicants for designation. Comments were to be postmarked by July 16, 1990. A total of 27 comments were received, with some commenters commenting on more than one applicant.

Champaign received 20 comments: six were from grain firms in Champaign's area commenting on the good service they provide; 12 were from grain firms in the Paris area supporting Champaign (five from different commenters at two separate grain firms); and one was from a neighboring official agency manager supporting Champaign. In addition, Champaign's president/chief inspector sent FGIS a letter regarding what the agency had done in connection with informing grain firms of the services they agency would provide.

Chappell received one comment from a grain firm currently serviced by Decatur Grain Inspection, Inc. (Decatur), the official agency Mr. Chappell is currently employed by, supporting the proposed Chappell agency.

Eddings received one comment from a grain firm currently serviced by Decatur, the agency Ms. Eddings is currently employed by, supporting the proposed Eddings agency.

Beals/Beals/Veach received three comments, all from grain firms which had previously been serviced by the Paris agency and supporting that proposed agency.

Southern Illinois received one comment from a grain firm in Southern Illinois' area commenting on the good service that it provides.

Terre Haute received four comments from grain firms in Decatur's area with two comments supporting the proposed Terre Haute agency, and two comments supporting Ms. Eddings and Mr. Chappell.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that Southern Illinois is better able than any other applicant to provide official services in the geographic area for which the Service is designating it.

Effective December 1, 1990, and terminating upon the end of Southern Illinois' present designation, September 30, 1993, Southern Illinois will provide official inspection services in the specified geographic area previously described in the April 4 **Federal Register**. Southern Illinois' designation is hereby amended by adding the aforementioned geographic area.

Interested persons may obtain official services by contacting Southern Illinois at 618–632–1921.

Authority: Pub. L. 94–582, 90 Stat. 2667, as amended (7 U.S.C. 71 *et seq.*).

Dated: October 23, 1990.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 90–25866 Filed 10–31–90; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Alaska Region; Legal Notice of Appealable Decisions

AGENCY: USDA, Forest Service.

ACTION: Notice.

SUMMARY: This notice supersedes the Alaska Regional Forester's Legal Notice of Appealable Decisions published in the **Federal Register** on April 13, 1990 (55 FR 13923). In accordance with 36 CFR part 217, Deciding Officers in the Alaska Region will publish Notice of Decisions subject to Administrative Appeal in the Legal Notice Section of the newspapers listed in the Supplementary Information Section of this Notice. As provided in 36 CFR 217.5, such notice shall constitute legal evidence that the agency has given timely and constructive Notice of Decisions that are subject to Administrative Appeal. Newspaper publication of Notices of Decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for purposes of publishing legal Notices of Decision subject to Appeal under 36 CFR part 217 shall be effective on October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas J. Sheehy, Regional Appeals Coordinator, Alaska Region, USDA, Forest Service, PP&B, P.O. Box 21628, Juneau, Alaska 99802, Area Code 907–586–8887.

SUPPLEMENTARY INFORMATION: On April 13, 1990, at 55 FR 13823, the Alaska Regional Forester gave notice of the newspapers which will be used to publish decisions made by Deciding Officers of the Alaska Region. In accordance with 36 CFR 217.5(d) which requires at least biannual notification in the **Federal Register**, this notice supersedes the previous notice of April 13, 1990. Deciding Officers in the Alaska Region will give legal Notice of Decisions subject to Appeal in the following newspapers which are listed by Forest Service administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive Notice of Decisions that are subject to Administrative Appeal. As provided in 36 CFR 217.5(d), the timeframe for Appeal shall be based on the date of publication of a Notice of Decision in the primary newspaper.

Decisions by the Regional Forester

"Juneau Empire," published daily, except Saturday, Sunday, and official holidays, in Juneau, Alaska, for decisions affecting National Forest System lands in the State of Alaska and for any decision of Region-wide impact.

"Anchorage Times," published daily in Anchorage, Alaska, for decisions

affecting National Forest System lands in the State of Alaska and for any decisions of Region-wide impact.

Decisions by all Deciding Officers of the Ketchikan Area of the Tongass National Forest, Alaska

"Ketchikan Daily News," published daily except Saturday, Sunday, and official holidays, in Ketchikan, Alaska.

"Island News," published weekly for distribution on Prince of Wales Island, Alaska.

Decisions by Deciding Officers at the following offices

Stikine Area of the Tongass National Forest, Alaska, Forest Supervisor; and Petersburg Ranger District.

"Petersburg Pilot," published weekly in Petersburg, Alaska.

Decisions by the Wrangell District Ranger

"Wrangell Sentinel," published weekly in Wrangell, Alaska.

Decisions by Deciding Officers at the following offices Chatham Area of the Tongass National Forest, Alaska, Forest Supervisor; Hoonah, Juneau, and Yakutat Ranger Districts; and Admiralty Island National Monument.

"Juneau Empire," published daily except Saturday, Sunday, and official holidays in Juneau, Alaska.

Decisions by the Sitka District Ranger

"Sitka Sentinel," published daily except Saturday, Sunday, and official holidays in Sitka, Alaska.

Decisions by all Deciding Officers of the Chugach National Forest

"Anchorage Times," published daily in Anchorage, Alaska.

"Seward Phoenix Log," "Valdez Vanguard," and "Cordova Times," published weekly in Seward, Valdez, and Cordova, Alaska respectively.

"Peninsula Clarion," published daily except Saturday, Sunday, and official holidays in Kenai, Alaska.

Dated: October 23, 1990.

Michael A. Barton,

Regional Forester.

[FR Doc. 90-25800 Filed 10-31-90; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Lost River Watershed, WV; Availability of a Supplemental Information Report

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of supplemental information report.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that a Supplemental Information Report has been prepared for the Lost River Watershed, Hardy County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia, 26505, telephone 304-291-4151.

The project concerns a plan for flood control, recreation, and watershed protection. The planned works of improvement include four single-purpose floodwater retarding dams, one multiple-purpose floodwater retarding and recreation dam, and accelerated technical assistance for land treatment.

The Notice of Availability of a Supplemental Information Report has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the report are available to fill single copy requests at the above address.

"(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)"

Dated: October 25, 1990.

Rollin N. Swank,

State Conservationist.

[FR Doc. 90-25879 Filed 10-31-90; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-090]

Certain Small Electric Motors of 5 to 150 Horsepower From Japan; Intent To Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to terminate suspended investigation.

SUMMARY: The Department of Commerce is notifying the public of its intent to terminate the suspended investigation on certain small electric motors of 5 to 150 horsepower from Japan. Interested parties who object to this termination must submit their comments in writing not later than November 30, 1990.

EFFECTIVE DATE: November 1, 1990.

FOR FURTHER INFORMATION CONTACT: Bruce Harsh or Linda Pasden, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On November 6, 1980, the Department of Commerce ("the Department") published an agreement suspending the antidumping duty investigation on certain small electric motors from Japan (53 FR 52358). The Department has not received a request to conduct an administrative review of the agreement suspending the antidumping duty investigation for the most recent four consecutive annual anniversary months.

The Department may terminate a suspended investigation if the Secretary of Commerce concludes that the suspension agreement is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations (19 CFR 353.25(d)(4)), we are notifying the public of our intent to terminate this suspended investigation.

Opportunity To Object

Not later than November 30, 1990, interested parties, as defined in § 353.2(k) of the Department's regulations (19 CFR 353.2(k)), may object to the Department's intent to terminate this suspended investigation.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by November 30, 1990, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to terminate by November 30, 1990, we shall conclude that the suspended investigation is no longer of interest to interested parties and shall proceed with the termination.

This notice is in accordance with 19 CFR 353.25(d).

Dated: October 30, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance

[FR Doc. 90-26019 Filed 10-31-90; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

Announcing a Meeting of Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer Systems Security and Privacy Advisory Board will meet Tuesday, December 11, 1990, and Wednesday, December 12, 1990, from 8:30 a.m. to 4:30 p.m. This is the seventh meeting of the Advisory Board Established by the Computer Security Act of 1987 (Pub. L. 100-235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems.

DATES: The meeting will be held on December 11 and 12, 1990, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will take place at the Holiday Inn Crown Plaza National Airport, 300 Army/Navy Drive, Arlington, VA 22202. Please contact the individual in the "**FOR FURTHER INFORMATION CONTACT**" section to obtain specific building and conference room assignment. Inquiries regarding the Board meeting should not be directed to the conference facility.

Agenda

—Welcome
—Administrative business
—E-Mail Privacy Issues
—Data Categorization Issues
—Computer Security Personnel Issues
—Review of Board's Work Plan for 1991
—Pending Business and Subcommittee Reports
—Public Participation

PUBLIC PARTICIPATION: The Board Agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer Systems Security and Privacy Advisory Board, National Computer Systems Laboratory, Building 225, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the Board by November 28, 1990. Approximately fifteen seats will be available for the public, including three seats reserved for the media. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security, National Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, room B154, Gaithersburg, MD 20899, telephone: (301) 975-3240.

Dated: October 26, 1990.

Raymond G. Kammer,

Acting Director.

[FR Doc. 90-25848 Filed 10-31-90; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Marine Fisheries Advisory Committee; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

TIME AND DATE: Meeting will convene at 8:30 a.m., November 28, 1990, and adjourn at 4:30 p.m., November 29, 1990.

PLACE: The Tysons Corner Marriott Hotel, 8028 Leesburg Pike, Vienna, Virginia.

STATUS: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of a meeting of the Marine Fisheries Advisory Committee (MAFAC). MAFAC was established by the Secretary of Commerce on February 17, 1971, to advise the Secretary on all living marine resource matters which are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of this Nation are adequate to meet the needs of commercial and recreational fishermen, environmental, state, consumer, academic, and other national interests.

MATTERS TO BE CONSIDERED: November 28, 1990, 8:30 a.m.-5:30 p.m., (1) data management, (2) habitat, (3) NOAA grants management, (4) enforcement, and (5) budget and strategic planning—NMFS needs assessment report, NMFS laboratory consolidation study, NOAA/NMFS strategic plan.

November 29, 1990, 8:30 a.m.-4:30 p.m., (1) fisheries legislation, (2) fisheries management issues—gillnets, by-catch, (3) Wallop-Breaux Trust Fund, (4) fisheries trade, and (5) NMFS budget.

FOR FURTHER INFORMATION CONTACT: Ann Smith, Executive Secretary, Marine Fisheries Advisory Committee, Policy and Coordination Office, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. Telephone: (301) 427-2259.

Dated: October 26, 1990.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA.

[FR Doc. 90-25834 Filed 10-31-90; 8:45 am]

BILLING CODE 3510-01-M

DEPARTMENT OF DEFENSE

Defense Nuclear Facilities Safety Board

[Recommendation 90-5]

Implementation Plan for Recommendation 90-5 at the Department of Energy's (DOE) Rocky Flats Plant, CO

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Implementation plan; acceptance and request.

SUMMARY: The Defense Nuclear Facilities Safety Board has received DOE's implementation plan for recommendation 90-5 and has concluded that it satisfies the Board's criteria for judging the adequacy of DOE's implementation plan and that the plan is acceptable. In addition, the Board has requested that DOE develop an implementation plan for the Savannah River Site's Safety Evaluation Plan and provide it to the Board as soon as practicable.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., suite 700, Washington, DC 20004, or telephone (202) 208-6387, (FTS) 268-6400.

Dated: October 29, 1990.

Robert M. Andersen,

General Counsel.

October 24, 1990.

The Honorable James D. Watkins,
Secretary of Energy, Washington, DC 20585.

Dear Mr. Secretary: By letter dated october 15, 1990, you forwarded the Department of Energy's (DOE) implementation plan for Recommendation 90-5 which calls for development of a Systematic Evaluation Plan at the Rocky Flats Plant. The Board has carefully considered DOE's proposed implementation plan for Recommendation 90-5. We have concluded that it satisfies the Board's criteria for judging the adequacy of DOE's implementation plan and that the plan is acceptable.

We understand that, because your completion date extends beyond one year, you will communicate this schedule to the appropriate congressional committees.

We are pleased that you have directed that an SEP also be initiated for the reactors at the Savannah River Site. The Board requests that you develop an implementation plan for the Savannah River Site SEP and transmit it to the Board as soon as practicable.

Sincerely,

John T. Conway,

Chairman.

[FR Doc. 90-25824 Filed 10-31-90; 8:45 am]

BILLING CODE 6820-KD-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket NOs. ER85-461-012, et al.]

Kansas Gas & Electric, et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Kansas Gas & Electric

[Docket No. ER85-461-012]

October 24, 1990.

Take notice that on October 18, 1990, Kansas Gas and Electric Company (KG&E) tendered for filing in its compliance changes in its FERC Electric Service Tariff Nos. 87, 89, 128, 134, 135, 144, 149, 152, 153, 154, 155, 156, 157, 161, 162, 166, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179 and 181. The compliance rates and requisite contract amendments fulfill the requirements of the Order, issued by the Commission on September 20, 1989 in Docket No. ER85-461-011.

KG&E states that copies of the filing were served upon the affected customers and other parties to these dockets.

Comment date: Novmeber 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. American Ref-Fuel Company of Bergen County

[Docket NO. QF86-917-001

October 25, 1990.

On October 15, 1990, American Ref-Fuel Company of Bergen County (Applicant), of P.O. Box 3151, Houston, Texas 77253, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Ridgefield, New Jersey. The facility will consist of four solid waste-fired boilers and one condensing turbine generating unit. The primary energy source will be biomass in the form of commercial and municipal solid waste.

The certification of the original application was issued on October 29, 1986, 37 FERC ¶ 62,077 (1986). The instant recertification is requested due to changes in the design and configuration, and an increase in the maximum net electric power production capacity of the facility. In addition, Applicant requests a clarification that occasional increases in the net electric power production capacity over 80 MW limit is consistent with section 3(17)(A) of the FPA, as amended by section 201 of PURPA, as long as the maximum net capacity is maintained at 80 MW over any rolling one-hour time period. The number of steam turbine generators has decreased from two to one. Applicant states that in all other respects the facility remains the same as set forth in the original application.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-25807 Filed 10-31-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-196-000, et al.]

El Paso Natural Gas Co., et al.; Natural Gas Certificate Filings

October 25, 1990.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Co.

[Docket No. CP91-196-000]

Take notice that on October 19, 1990, El Paso Natural Gas Company (El Paso) P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP91-196-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) to certificate certain existing meter stations, which were initially installed under section 311(a) of the Commission's Regulations under the Natural Gas Policy Act of 1978 (NGPA), and their continued operation as delivery points, under the authorization issued in Docket No. CP82-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso states that it has constructed a number of delivery points under section 311(a) of the NGPA exclusively for use in the transportation of natural gas under subpart B of part 284 of the Commission's Regulations. El Paso states that the regulatory restriction placed on facilities installed under section 311(a) prohibits El Paso and the shipper(s) from utilizing these delivery points under any transportation arrangement other than a Subpart B transportation arrangement. Since it now renders significant transportation service under its subpart G blanket certificate in Docket No. CP88-433-000 and specific certificates issued under section 7(c) of the NGA, El Paso states that it is imperative that maximum flexibility be attained as to the use of its facilities for the benefit of all customers of El Paso's system. El Paso states that such regulatory restriction limits its flexibility to render service.

El Paso states that, given the Commission's recent Interim Rule and Notice of Proposed Rulemaking (NOPR) issued August 2, 1990, in Docket Nos. RM90-7-000 and RM90-13-000, respectively, wherein the Commission has revised (and may further revise) its definition of the "on behalf of" test, the authority to utilize these meter stations in the future has become uncertain. Moreover, El Paso states that some shippers on its system may no longer qualify under the revised definition. El Paso believes that if these shippers desire to continue to ship gas, they must either convert their arrangements to service under subpart G or request new transportation service agreements on El Paso's system. Therefore, in view of the regulatory restriction associated with delivery point meter stations

[1] These prior notice requests are not consolidated.

constructed under section 311(a), the flexibility limitations imposed on shippers' arrangements utilizing section 311(a) meter stations and the Commission's recent interim rule and NOPR, El Paso states that it is of the opinion that certification of each delivery point meter station originally installed and operated pursuant to section 311(a), under § 157.212 of the Commission's Regulations is now necessary and in the public interest. El Paso states that grant of the requested authorization will allow it to utilize these facilities for any jurisdictional service under the Commission's Regulations.

Comment date: December 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Trunkline Gas Comapny

[Docket Nos. CP91-207-000 and CP91-208-000]

Take notice that on October 19, 1990, Trunkline Gas Company (Applicant), Post Office Box 1642, Houston, Texas 77251-1642, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name	Peak day,[1] average, annual	Points of		Start up date, rate schedule	Related [2] dockets
			Receipt	Delivery		
CP91-207-000 (10-19-90)	Access Energy Corporation.	100,000 100,000	Off TX, Off LA	Off TX	8-15-90, PT	ST91-140-000.
CP91-208-000 (10-19-90)	Enron Gas Marketing, Inc.	50,000 50,000 18,250,000	IL, IN, On LA, Off LA, On TX, Off TX.	IL	8-21-90, PT	ST91-137-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

3. Transcontinental Gas Pipe Line Corporation

[Docket Nos. CP91-108-000, CP91-109-000, CP91-110-000, CP91-111-000, CP91-116-000, CP91-117-000, CP91-122-000, CP91-123-000, CP91-128-000, CP91-129-000, CP91-130-000, CP91-134-000, CP91-135-000, CP91-136-000]

Take notice that on October 10, 11 and 12, 1990, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed 14 requests in the above-referenced dockets pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon, partially, certain sales services to 14 customers, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the customer, the volume of the existing firm sales entitlement, the conversion date, and the volume of the proposed sales reduction has been provided by the applicant and is summarized in the attached appendix.

Comment date: November 15, 1990, in accordance with Standard Paragraph E at the end of this notice.

[2] These requests are not consolidated.

Docket No. (date filed)	Sales customer	Rate schedule	Firm sales entitlement (Mcf)	Conversion date	Proposed firm sales reduction (Mcf)	Revised firm sales entitlement (Mcf)
CP91-108-000 (10/10/90)	Brooklyn Union Gas Company	CD-3	121,696	11/1/89	30,000	91,696
CP91-109-000 (10/10/90)	Consolidated Edison of New York, Inc.	CD-3	227,166	11/1/89	65,000	162,166
CP91-110-000 (10/10/90)	Eastern Shore Natural Gas Company	CD-3	16,030	11/1/89	5,000	11,030
CP91-111-000 (10/10/90)	Delmarva Power & Light Company	CD-3	38,360	11/1/89	5,780	32,580
CP91-116-000 (10/11/90)	Elizabethtown Gas Company	CD-3	39,702	11/1/89	15,000	24,702
CP91-117-000 (10/11/90)	Atlanta Gas Light Company	CD-1	91,460	11/1/89	16,140	75,320
CP91-122-000 (10/11/90)	National Fuel Gas Supply Corporation	CD-3	25,442	11/1/89	25,442	0
CP91-123-000 (10/11/90)	Public Service Electric & Gas Company	CD-3	227,952	11/1/89	70,000	157,952
CP91-128-000 (10/12/90	South Carolina Pipeline Company	CD-2	20,510	11/1/89	6,000	14,510
CP91-129-000 (10/12/90)	Piedmont Natural Gas Company	CD-2	143,640	11/1/89	40,000	103,640
CP91-130-000 (10/12/90)	Public Service Company of North Carolina, Inc.	CD-2	111,020	11/1/89	30,000	81,020
CP91-134-000 (10/12/90)	Washington Gas Light Company	CD-2	38,500	11/1/89	11,000	27,500
CP91-135-000 (10/12/90)	Fort Hill Natural Gas Authority	CD-2	10,115	11/1/89	1,785	8,330
CP91-136-000 (10/12/90)	Commissioners of Public Works of the City of Greenwood, South Carolina.	CD-3	6,020	11/1/89	1,500	4,520

4. Algonquin Gas Transmission Company

[Docket No. CP91-12-000]

Take notice that on October 1, 1990, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP91-12-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by reclaim the Uncasville Meter Station (Uncasville Station), serving Yankee Gas Services Company (Yankee Gas) under the authorization issued in Docket No. CP87-317-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.[3]

Algonquin included in its application a letter dated September 12, 1990, wherein Yankee Gas states that (1) it no longer requires the Uncasville Station to be maintained as an alternative delivery point, (2) it supports Algonquin's abandonment of the station, and (3) it would dismantle the station in accordance with all applicable laws and regulations in the event abandonment authorization is granted by the Commission.

Algonquin explains that on April 19, 1989, the Commission issued an order granting a certificate in Docket No. CP88-436-000, *et al.*, (47 FERC ¶ 61,075 (1989)) to construct and operate the Montville Station, at Montville, Connecticut, as a replacement for the Uncasville Station. It is stated that the Uncasville Station, located approximately 500 feet from the Montville Station, was intended to serve as an alternative delivery point pending satisfactory operation of the Montville Station. It is further stated that the Montville Station has operated satisfactorily and that the parties now desire to remove the Uncasville Station.

Algonquin states that, because the Uncasville Station was operated as an alternative delivery point after the Montville Station was completed, the proposed abandonment would not impair Algonquin's ability to meet its existing contract commitments with its customers.

Algonquin states that Yankee Gas' predecessor, Connecticut Light and Power Company, paid for and owned the Uncasville Station.

Comment date: December 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-25808 Filed 10-31-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 25, 1990.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on October 24, 1990, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective November 1, 1990

46 Rev Sheet No. 201
8 Rev Sheet No. 201A
47 Rev Sheet No. 203
43 Rev Sheet No. 204
40 Rev Sheet No. 205

Algonquin states that it is making the instant Out-of-Cycle Purchased Gas Adjustment filing to revise its estimated cost of purchases to reflect projected increases in costs to be paid to its pipeline suppliers, Texas Eastern Transmission Corporation, National Fuel Gas Supply Corporation and CNG Transmission Corporation.

Algonquin states that the effect of the change in rates is to decrease the demand charges by 9.90¢ per MMBtu and to increase the commodity charges by 14.35¢ per MMBtu under all of Algonquin's firm sales rate schedules from those rates contained in Algonquin's Interim PGA filing of August 31, 1990 in Docket No. TF90-3-20-000. In addition, the rate under Rate Schedule I-1 has increased by 14.35¢ per MMBtu, while Rate Schedule WS-1 excess commodity has increased by 12.37¢ per MMBtu and Rate Schedule E-1 has increased by 14.03¢ per MMBtu. The revised rate sheets filed herein are proposed to be effective on November 1, 1990.

Algonquin notes that copies of this filing were served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Wasington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 2, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-25809 Filed 10-31-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-11-000]

Arka Energy Resources, a Division of Arkla, Inc.; Proposed Changes in FERC Gas Tariff

October 25, 1990.

Take notice that on October 23, 1990, Arkla Energy Resources ("AER"), a division of Arkla, Inc., tendered for filing proposed changes in its FERC Gas Tariff, Volume No. ____. The proposed changes consist of an increase to AER's commodity rates applicable to all jurisdictional throughput on AER's system, over the six-year period from November 1, 1990 through October 31, 1996. AER states that the purpose of its filing is to provide for the recovery of approximately $55 million in take-or-pay buyout and buydown expenses, incurred in order to resolve disputed claims arising out of AER's alleged failure to take gas or to pay for gas not taken.

AER's principal proposal would give AER the opportunity to recover through commodity rates 100% of the costs described above, plus interest. In the alternative, AER proposes to absorb at least 25% of such costs and to be granted the opportunity to recover through commodity rates the remaining 75% of such costs, plus interest.

AER's filing includes certain commercially sensitive data for which AER has requested confidential treatment. Accordingly, AER's filing includes a proposed protective order which, if approved by the Commission, would govern parties' access to the confidential materials. AER states that copies of AER's filing, without this confidential data, have been served upon the company's jurisdictional customers and affected state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 2, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission, and those portions for which AER has not sought confidential treatment are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-25810 Filed 10-31-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-2214-000 and CP91-121-000 (Not Consolidated).]

El Paso Natural Gas Co.; Technical Conference

October 24, 1990.

Take notice that on November 8, 1990, the Commission Staff will hold a technical conference to discuss issues raised by the parties and Staff as a result of El Paso Natural Gas Company's (El Paso) proposals in the above referenced dockets. All parties should be prepared to discuss those technical issues which pertain directly to the proposal and El Paso should be prepared to answer the questions of the parties and Staff. Please bring adequate copies of any further written materials that are to be provided in support of points raised in previous pleadings.

Docket No. CP90-2214-000 was filed on September 17, 1990, and a Notice of Application in that docket was issued by the Commission on September 25, 1990, and published in the **Federal Register** on October 3, 1990, (55 FR 40429).

Docket No. CP91-121-000 was filed on October 11, 1990, and a Notice of Application in that docket was issued by the Commission on October 18, 1990, and will be published in the **Federal Register** on October 26, 1990.

The primary technical issues which will be discussed at the technical conference are:

(1) Criteria for optional certificate treatment,
(2) Proposed incremental rate structure and rate design,
(3) Cost allocation between new and existing facilities,
(4) Cost allocation among directions of natural gas flows,
(5) Capacity allocation, scheduling, and curtailments,
(6) Capacity availability, as shown on flow diagrams,
(7) Impacts on service to full requirements customers, and
(8) Pro forma tariff structure and language.

Environmental issues will not be discussed at this conference.

The technical conference will be held at the Commission's offices in Washington, DC on November 8, 1990, and held over to November 9, 1990, if necessary. The conference will begin at 10 a.m. in one of the Commission's hearing rooms at 810 First Street NE., Washington, DC. Specific room designation will be posted on the day of the conference.

The Commission Staff will provide an agenda for the technical conference. The agenda will include an initial presentation of about 30 minutes by El Paso to summarize their proposal. The Commission Staff will announce any further procedures, as necessary, at the conference.

For further procedural information please contact Richard Foley of the Commission Staff at (202) 208-2245. Please confirm your attendance, the number of persons in your group that will attend, and any special needs by letter to Mr. Richard Foley, FERC/Office of Pipeline and Producer Regulation, PR-21-1, room 7300, 825 North Capitol Street, NE., Washington, DC 20426, by November 6, 1990.

Lois D. Cashell,

Secretary.

[FR Doc. 90-25811 Filed 10-31-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-10-000]

North Penn Gas Co.; Compliance Filing

October 25, 1990.

Take notice that North Penn Gas Company (North Penn) on October 22, 1990 tendered for filing supplemental workpapers and revised Annual PGA schedules in compliance with the Federal Energy Regulatory Commission's (Commission) data request letter dated August 29, 1990, in the above referenced docket.

North Penn has included as a part of this compliance filing, tariff sheets that contain language that includes standby charges, as was stated in North Penn's compliance filing in Docket TQ90-3-27-000.

While North Penn believes that no other waivers are necessary for this filing, as proposed, North Penn respectfully requests waiver of any of

[3] The original application was filed as a case specific application for abandonment authorization under section 7(b) of the Natural Gas Act. By supplement filed October 23, 1990, Algonquin requested that the application be treated as a request for abandonment authorization pursuant to the prior notice procedure and provided additional material to conform the filing to the requirements of § 157.205 of the regulations.

the Commission's Rules and Regulations as may be required for this filing.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and State Commissions shown on the attached service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 2, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-25812 Filed 10-31-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-253-035, RP89-136-021 and CP89-1227-007]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

October 25, 1990.

Take notice that on October 23, 1990, Northern Natural Gas Company, Division of Enron Corp., (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 52C.1
Third Revised Sheet No. 52C.2a
Third Revised Sheet No. 52C.3
First Revised Sheet No. 52C.4
Fourth Revised Sheet No. 52C.5
Second Revised Sheet No. 52C.6
First Revised Sheet No. 52C.7
Third Revised Sheet No. 52C.9
Second Revised Sheet No. 52C.9a
Third Revised Sheet No. 52C.10
First Revised Sheet No. 52F.1
Sixth Revised Sheet No. 52F.3
First Revised Sheet No. 52F.3a
Fourth Revised Sheet No. 52F.4
Second Revised Sheet No. 52F.5
Second Revised Sheet No. 52F.6
Third Revised Sheet No. 52F.7
Second Revised Sheet No. 52F.8
First Revised Sheet No. 52F.9
First Revised Sheet No. 52F.10
First Revised Sheet No. 52F.11
Second Revised Sheet No. 52F.14
Second Revised Sheet No. 52F.15
Fifth Revised Sheet No. 52F.21
First Revised Sheet No. 85O.4
Second Revised Sheet No. 85P.4

Northern states that such tariff sheets are being submitted in compliance with the Commission's Order Approving Settlement Subject To Modifications dated September 19, 1990, in this proceeding. An effective date of December 1, 1990 has been requested for this filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before November 2, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-25813 Filed 10-31-90; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Conversion of Exchange Power to Sales Power From the Navajo Generating Station

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of conversion of power available for exchange to power available for sale from the Navajo Generating Station, Central Arizona Project, and request for applications.

SUMMARY: On May 13, 1988 (53 FR 17102), The Western Area Power Administration (Western) requested applications for power from the Navajo Generating Station (Navajo) (Original Power Allocation). By Federal Register notice dated July 28, 1989 (53 FR 31368), Western allocated 250 megawatts (MW) of power available for sale and 150 MW of the power available for exchange (Navajo Surplus) from Navajo to Arizona applicants. Subsequently, some of these entities have indicated that they do not wish to contract for all or part of the power allocated by Western.

In accordance with the long-term Navajo Power Marketing Plan (Plan) (52 FR 48328, December 21, 1987), any Navajo Surplus not placed under contract may be reoffered for sale by Western in accordance with the order of priority specified in section VI(A) of the Plan. In addition, section VI(C) provides that Western, in consultation with the Central Arizona Water Conservation District (CAWCD) and the Bureau of Reclamation (Reclamation), may determine that any capacity and energy not subscribed to by Arizona entities for exchange may be offered for long-term sale in the order of priority stated in section VI(A) of the Plan, or may be offered to non-Arizona entities for exchange.

Western, after consultation with CAWCD and Reclamation, has determined that it will convert that portion of the Original Power Allocation available for exchange, but not contracted for by Arizona entities, to Navajo Surplus available for sale. It is anticipated that up to 150 MW of the power available for exchange from the Original Power Allocation may be available for sale.

Western will immediately begin accepting applications for any Navajo Surplus converted from power available for exchange to power available for sale. The Navajo Surplus will be offered for sale in the order of priority spacified in section VI(A) of the Plan and in accordance with the other conditions specified in the Request for Applications and Allocation Criteria section of this notice. Because of the type of power being offered and the specific contract terms being required, it in recommended that all interested parties review the Request for Applications and Allocation Criteria section of this notice and contact Western (name and telephone number of contact person is listed below) for further information, a copy of the proposed contract, or a copy of the Navajo Power Marketing Plan before applying. All Original Power Allocation priority 1 and 2 applicants (refer to the July 28, 1989, Federal Register notice) who responded affirmatively to Western's letter of interest in a reoffer of the Navajo Surplus, mailed on August 24, 1990 (Reoffer Letter), do not need to reapply under this notice. All other entities (including all Original Power Allocation applicants) must apply pursuant to this notice.

DATES: Applications will be accepted until December 3, 1990. Applications postmarked after that date will not be accepted.

ADDRESSES: Applications should be submitted to: Mr. Thomas A Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005.

FOR FURTHER INFORMATION CONTACT: Mr. Earl W. Hodge, Assistant Area Manager for Power Marketing, Boulder City Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 294-3255.

SUPPLEMENTARY INFORMATION:

Contents:

A. Background.
B. Request for Applications and Allocation Criteria.
C. Applicant Profile Data.
D. Regulatory Procedural Requirements.

A. Background

Section 107 of the Hoover Power Plant Act of 1984 (98 Stat. 1333, 1339) required the Secretary of the Interior to adopt the plan deemed most acceptable for the purpose of optimizing the availability of Navajo Surplus and providing financial assistance in the timely construction and repayment of construction costs of authorized features of the Central Arizona Project (CAP). The Commissioner of Reclamation adopted the Plan on December 1, 1987, and the Plan was published in the Federal Register on December 21, 1987 (52 FR 48328). The Plan provides that the Secretary of Energy will market and exchange the Navajo Surplus in a manner consistent with the Plan. The Plan provides that 400 MW of capacity, less the capacity used for exchange purposes, would be available for sale on a long-term basis. A maximum of 150 MW of the 400 MW may be used for exchanges on a long-term basis. There will be 760 kilowatthours (kWh) of energy per year for each kilowatt of capacity. Any capacity or energy not sold or exchanges in accordance with the Plan may be sold under appropriate long-term or short-term arrangements or may be integrated with the Federal system.

Consistent with the Plan, Western published requests for applications in the Federal Register on May 13, 1988 (53 FR 17102). The Original Power Allocation of Navajo Surplus was published in the Federal Register on July 28, 1989 (54 FR 31368), which stated that 250 MW of capacity and associated energy available for sale and 150 MW of capacity and associated energy available for exchange was allocated to Arizona applicants. That Federal Register notice further provided that any capacity and associated energy withdrawn or returned to Western may be reallocated without further public process and reoffered by Western in accordance with the order of priority specified in section VI of the Plan. The notice also provided that Western, in consultation with CAWCD and Reclamation, may determine that any capacity and energy not contracted for by Arizona entities for exchange may be offered for long-term sale in the order of priority stated in section VI of the Plan or may be offered to non-Arizona entities for exchange.

Following the allocation, Western, CAWCD, and Reclamation began negotiations with the allottees for contracts that would provide financial assistance in the timely construction and repayment of construction costs of authorized features of the CAP, as provided for in the Hoover Power Plant Act of 1984 (98 Stat. 1333) and the Plan. Subsequently, several Arizona allottees have withdrawn their request for an allocation in whole or in part. Western has contracted for 200 MW of the 250 MW of the Original Power Allocation available for sale. Western, CAWCD, and Reclamation are continuing to negotiate with the remaining allottees for portions of the Navajo Surplus allocated for long-term sale or exchange under the Original Power Allocation. Western has also contacted the priority 1 and 2 Original Power Allocation applicants to determine their interest in the reallocation of such Navajo Surplus. The applicants showing interest will be considered for reallocation of the Navajo Surplus.

In addition, in consultation with CAWCD and Reclamation, Western has determined that it will be necessary to convert the Navajo Surplus not contracted for exchange with the Arizona applicants to Navajo Surplus available for sale. This remaining Navajo Surplus power converted from exchange to sale will be offered to applicants in the order of priority specified in section VI(A) of the Plan. It is anticipated that up to 150 MW may be available for reallocation.

B. Request for Applications and Allocation Criteria

Western is requesting applications for sale of long-term Navajo Surplus for the contract period to commence on October 1, 1992, through September 30, 2011. Up to 150 MW of capacity may be offered for sale. There will be 760 kWh of energy per year available for each kilowatt of capacity, which is less than a 9-percent load factor. Contractors with long-term contracts terminating in 2011 shall be given the first opportunity for new long-term contracts for approximately the same amount of power contained in the terminated contracts with available capacity and energy distributed pro rata among the contractors.

Criteria for the sale of Navajo Surplus are provided in the Plan, a copy of which can be requested from Western's Boulder City Office. The Navajo Surplus will be offered for sale in the following order of priority:

1. Preference entities within Arizona.
2. Preference entities within the Boulder City marketing area.
3. Preference entities in adjacent Federal marketing areas.
4. Nonpreference entities in the Boulder City marketing area.

In the event that a potential contractor fails to execute a contract within the period specified by Western and in accordance with the terms and conditions offered by Western, the allocation to that entity will be withdrawn. Any capacity and associated energy withdrawn may be reallocated without further public process in accordance with the order of priority specified above. In addition, any capacity or energy not allocated and sold under this notice may be sold under appropriate long-term or short-term arrangements or may be integrated with the Federal system and sold by Western under arrangements developed in cooperation with CAWCD and Reclamation, as provided for in section V(C) of the Plan.

New allottees will be offered sale contracts with substantially the same terms and conditions as those offered to allottees under the Original Power Allocation. The allottees must be able to enter into the contract as offered. The contract will be a four-party contract among Western, Reclamation, CAWCD, and the allottee. The power sales contracts will be used to secure the payment of bonds issued by CAWCD. Each contract must be adequate in the judgment of CAWCD to secure the payment of bonds at interest rates and in principal amounts satisfactory to CAWCD. The contractor will be obligated to pay for the contracted capacity amount, at $6 per kilowatt per month ($72 per kilowatt per year), for the full term of the contract. This obligation will be absolute and unconditional and will not be subject to reduction or termination for any reason except as specifically set forth in the contract. The contractor will also pay monthly for the energy scheduled and delivered, at a mills-per-kWh rate based on Western's and Reclamation's costs of supplying the Navajo Surplus power. Contract entitlements will be measured or calculated at the 500-kilovolt (kV) bus of the Navajo Generating Station. Capacity and energy, less losses, will be scheduled and delivered at a voltage of 500 kV to contractors at points on the Navajo transmission systems as agreed by the parties. Any necessary transmission service beyond the agreed-

upon points of delivery will be the responsibility of the contractor. A copy of the proposed contract and a copy of the Navajo Power Marketing Plan may be obtained from Western prior to applying for the power.

If the requests for the power under this notice exceed the power available, Western will allocate the power based on the applicant's 3-year load data, in the same manner that was used in the Original Power Allocation, published in the **Federal Register** on July 28, 1989 (54 FR 31368). The power will be allocated in the order of priority stated above. Western will not allocate in units of less than 1 MW. This minimum allocation may be increased by Western, if Western, in consultation with CAWCD and Reclamation, determines that a delivery of 1 MW to an applicant may create operational problems. An applicant may not be allocated an amount of power greater than its load. To be considered within a priority category, an entity's central headquarters and service areas must be exclusively in the area specified.

To be considered for a reoffer of the Navajo Surplus under this notice, all Original Power Allocation applicants that did not affirmatively respond to Western's Reoffer Letter and all other entities must request an allocation pursuant to this notice. Applicants must supply the following applicant profile data (APD), as approved by the Office of Management and Budget (OMB No. 1910–1200).

C. Applicant Profile Data

An entity requesting an allocation of Navajo Surplus needs to provide the following information. If an entity provided the APD information with an Original Power Allocation application, it is only necessary to submit an application with the information requested in item 5, Service Requested, and update any other information that may be out of date. If an item in the APD does not apply, please state the reason why it does not apply. If an applicant is applying for power on behalf of another organization that is not a member or subsidiary of the applicant, the applicant should provide a statement to that effect, which includes the reason(s) why the other organization is not applying for power on its own behalf. All items of information in the APD should be answered as if prepared by the organization seeking the allocation of Federal power.

1. Applicant Organization

a. Organization name and address.

b. Name, address, title, and telephone number of person(s) who will represent the entity in dealing with Western.

c. Type of organization (municipality, rural electric cooperative, irrigation district, State agency, Federal agency, and other). Parent organization, if applicable. Names of members, if applicable. Applicable law under which organization was established.

d. Organization's geographic service area. If readily available, submit a map of the service area and indicate the date the map was prepared.

e. Number and types of customers served and percentage of load: residential, commercial, industrial, agricultural, military base, etc.

2. Loads

a. Maximum demand (kW) and energy use (kWh) for each month for each year of 1985, 1986, and 1987.

b. Daily peak demands for the peak week in the years, 1985, 1986, and 1987.

3. Resources

a. Operating generating resources, if any, including for each resource, rated capacity, plant factor by month for 1987, type of fuel, and location.

b. If the applicant's loads are served wholly or partially by purchases from others, please provide for each purchase, the name of the power supplier, amounts of firm and nonfirm capacity and energy supplied under the contract, and the termination date.

4. Transmission

a. A brief description of the applicant's transmission and distribution system, including major interconnections.

b. Requested point(s) of delivery on the Navajo transmission system, voltage of service required, and capacity desired at each of the points of delivery.

c. Description of the transmission arrangements necessary to deliver power from the requested point(s) of delivery to the applicant's load. (If transmission service by another entity will be necessary, please describe the arrangements necessary to obtain the service.) Please provide a single-line drawing of the applicant's service arrangements, if one is readily available.

5. Service Requested

a. The amount of capacity requested, up to 150 MW. (The request must be for capacity, not energy.)

6. Other

a. Any other information the applicant wishes to include.

b. The signature and title of an appropriate official who is able to attest to the validity of the information submitted and who is authorized to submit the application.

D. Regulatory Procedural Requirements

Executive Order 12291

Under the provisions of section 3 of Executive Order 12291, dated February 17, 1981, a regulatory impact analysis must be made prior to the publication of a major rule. The proposal is of a technical nature and considered to be a nonmajor rule within the meaning of the Executive order. Western has an exemption from sections 3, 4, and 7 of Executive Order 12291; accordingly, no clearance of this procedure by the Office of Management and Budget is required.

National Environmental Policy Act

In compliance with the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations, and the Department of Energy guidelines for compliance with NEPA, republished and amended in the **Federal Register** on December 15, 1987 (52 FR 47662), Western prepared an environmental assessment of the potential impacts of the marketing of long-term Navajo Surplus. The Department of Energy determined that Western's proposed actions would not lead to any significant environmental impacts and issued a finding of no significant impact on March 18, 1988. As the proposed action falls within the provisions of the Plan, and the total amount of power to be marketed under the Plan has not changed, no further NEPA documentation is required.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), each agency, when required to publish a general notice of proposed rule, shall prepare for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, this proposal relates to particular electric services and rates provided by Western. Under 5 U.S.C. 601(2), such rules and practices relating to services are not considered rules within the meaning of this Act. Accordingly, no regulatory flexibility analysis is required.

Issued at Golden, Colorado, October 23, 1990.

William H. Clagett,

Administrator.

[FR Doc. 90–25871 Filed 10–31–90; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; City of Long Beach/Pacific Maritime Services, Inc.

The Federal Maritime Commissioin hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–004016–003.

Title: City of Long Beach/Pacific Maritime Services, Inc. Terminal Agreement.

Parties: City of Long Beach, Pacific Maritime Services, Inc.

Synopsis: The Agreement amends the basic preferential assignment agreement to provide a new compensation formula to apply through April 30, 1995.

Dated: October 29, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–25855 Filed 10–31–90; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Cunard Line Limited and Cunard Cruise Ships Limited, 555 Fifth Ave., New York, NY 10017.

Vessel: Cunard Princess.

Dated: October 29, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–25856 Filed 10–31–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Banc One Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 22, 1990.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio, and Banc One Wisconsin Corporation, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Marine Bank Chicago, Chicago, Illinois.

B. **Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:**

1. CBT Corporation, Big Timber, Montana; to become a bank holding company by acquiring at least 90 percent of the voting shares of Citizens Bank & Trust Company, Big Timber, Montana.

Greenwood National Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Greenwood National Corporation*, Greenwood, South Carolina; to engage *de novo* in providing management consulting services to client banks, pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of

Board of Governors of the Federal Reserve System, October 26, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–25850 Filed 10–31–90; 8:45 am]

BILLING CODE 6210–01–M

Governors not later than November 20, 1990.

Board of Governors of the Federal Reserve System, October 26, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-25852 Filed 10-31-90; 8:45 am]

BILLING CODE 6210-01-M

NCNB Corp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. NCNB Corporation, Charlotte, North Carolina; to engage through its subsidiaries NCNB Life Insurance Company, Dallas Texas, and NCNB Texas Life Insurance Company, Dallas, Texas, in acting as underwriter and reinsurer for credit life and credit accident and health insurance sold in connection with extensions of credit by all NCNB affiliated banks, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Alpha Financial Group, Inc., Minonk, Illinois; to engage through its subsidiary Dace Insurance Agency, Toluca, Illinois, in general insurance activities pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

2. Comerica Incorporated, Detroit, Michigan; to engage in servicing loans or other extensions of credit for affiliated and nonaffiliated institutions through its wholly owned subsidiary, Comerica Acceptance Corporation, Detroit, Michigan, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 19, 1990.

Board of Governors of the Federal Reserve System, October 26, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-25853 Filed 10-31-90; 8:45 am]

BILLING CODE 6210-01-M

J.C. Van Ginkel, et al., Change in Bank Control Notices, Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 19, 1990.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. J. C. Van Ginkel, Atlantic, Iowa, James Van Ginkel, Atlantic, Iowa, Charles Wendt, Exira, Iowa, and Gary Hested, Jewell, Iowa; to acquire 100 percent of the voting shares of Schroeder Goodonow Management Company, Atlantic, Iowa, and thereby indirectly acquire Exchange State Bank, Exira, Iowa.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Claude Allen Berry, Jr., Eminence, Kentucky, and Claude Allen Berry, III, Eminence, Kentucky; to acquire an additional 9.91 percent (totally 28.02 percent) of the voting shares of Farmers Deposit Bancorp, Eminence, Kentucky, and thereby indirectly acquire Farmers Deposit Bank, Eminence, Kentucky.

Board of Governors of the Federal Reserve System, October 26, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-25851 Filed 10-31-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Revision of Fees For Sanitation Inspections of Cruise Ships

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Revision of fees for sanitation Inspections of cruise ships.

SUMMARY: Revised fees for vessel sanitation inspections are presented to become effective January 1, 1991.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Anderson, Chief, Special Programs Group, Center for Environmental Health and Injury Control (F29), CDC, Atlanta, Georgia, 30333. Telephone: FTS: 236-4595, Commercial: (404) 488-4595.

SUPPLEMENTARY INFORMATION:

Purpose and Background

CDC began collecting fees for sanitation inspections of passenger cruise ships currently inspected under the Vessel Sanitation Program (VSP), on March 1, 1988; the fee schedule was first published in the **Federal Register** on Tuesday, November 24, 1987, (52 FR 45019).

The formula used to determine the fees is as follows:

The average cost per inspection is multiplied by a size/cost factor to determine the fee for vessels in each size category. The size/cost factor was established in the proposed fee schedule published in the **Federal Register** on Friday, July 17, 1987, (52 FR 27060) and revised in a schedule published in the **Federal Register** on Tuesday, November 28, 1989, (54 FR 48942) and is as follows:

	Average cost ×
Extra Small (<3,001 GRT [1])	0.25
Small (3,001-15,000 GRT)	0.5
Medium (15,001-30,000 GRT)	1.0
Large (30,001-60,000 GRT)	1.5
Extra Large (60,000 GRT)	2.0

[1] GRT-Gross Register tonnage in cubic feet, as shown in Lloyd's Register of Shipping.

Fees

The following fee schedule will be effective January 1, 1991, through December 31, 1991. However, should there be a substantial increase in the cost of air transportation, it may be necessary to re-adjust the fees prior to December 31, 1991, since travel constitutes a sizable portion of the costs of this Program. If such a re-adjustment in the fee schedule is necessary, a notice will be published in the **Federal Register** 30 days prior to the effective date.

Vessel sizes	Fee
Extra Small Ship (3,001-15,000 GRT):	$693
Small Ship (3,001-(15,001-30,000 GRT):	1,386
Medium Ship (15,001-30,000 GRT):	2,772
Large Ship (30,001-60,000 GRT):	4,158
Extra Large Ship (>60,000 GRT):	5,544

Inspections and reinspections involve the same procedure, require the same amount of time and will therefore be charged at the same rate.

Applicability

The fees will be applicable to all passenger cruise vessels for which sanitation inspections are conducted as part of the Vessel Sanitation Program, CDC.

$$\text{Average cost per inspection} = \frac{\text{Total Cost of VSP}}{\text{Weighted No. of Annual Inspections}}$$

Dated: October 25, 1990.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 90-25680 Filed 10-3-90; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 90D-0079]

Human Food Safety and Target Animal Safety and Effectiveness Data Requirements for Review of Supplemental New Animal Drug Applications; Guidelines; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two guidelines entitled (1) "Guideline for the Human Food Safety Review of Category II Supplemental New Animal Drug Applications" and (2) "Guideline for the Target Animal Safety and Efficacy Review of Category II Supplemental Applications: New Animal Drug Applications." "Guideline for the Human Food Safety Review of Category II Supplemental New Animal Drug Applications" explains when a supplement to an approved new animal drug application (NADA) may raise human food safety concerns so as to require review of original and new scientific data. "Guideline for the Target Animal Safety and Efficacy Review of Category II Supplemental Applications: New Animal Drug Applications" describes when review of original and new safety and effectiveness data may be triggered by submission of a supplement to an approved NADA. The guidelines are intended to aid in implementing the final rule concerning the approval of supplemental NADA's.

ADDRESSES: Submit written requests for single copies of the "Guideline for the Human Food Safety Review of Category II Supplemental New Drug Applications" and the "Guideline for the Target Animal Safety and Efficacy Review of Category II Supplemental Applications: New Animal Drug Applications" to the Division of Chemistry (HFV-144), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the two guidelines to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. Copies of the two guidelines and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Steven D. Brynes, Center for Veterinary Medicine (HFV-144), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2841.

SUPPLEMENTARY INFORMATION: The guidelines listed above are intended to aid sponsors of supplemental NADA's in understanding how FDA will implement new § 514.106 *Approval of supplemental applications* (21 CFR 514.106). The final rule establishing revised agency policies and procedures governing review and approval of supplements to approved NADA's in § 514.106 is published elsewhere in this issue of the **Federal Register.**

The agency advises that these guidelines represent its current position on the implementation of the final rule concerning the approval of supplemental NADA's, and they may be followed by the sponsors of NADA's. A person may also choose to use alternate procedures even though they are not provided for in the guidelines. If a person chooses to use alternate procedures, that person may wish to discuss the matter further with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable to FDA. These guidelines are not binding, nor do they create or confer any rights, privileges or benefits for or on any person.

Dated: October 26, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-25831 Filed 10-31-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[OACT-36-N]

RIN 0938-AE68

Medicare Program; Inpatient Hospital Deductible and Hospital and Skilled Nursing Facility Coinsurance Amounts for 1991

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and the hospital and skilled nursing facility coinsurance amounts for services furnished in calendar year 1991 under Medicare's hospital insurance program (part A). The Medicare statute specifies the formulae to be used to determine these amounts.

The inpatient hospital deductible will be $628. The daily coinsurance amounts will be: (a) $157 for the 61st through 90th days of hospitalization in a benefit period; (b) $314 for lifetime reserve days; and (c) $78.50 for the 21st through 100th days of extended care services in a skilled nursing facility in a benefit period.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Barbara S. Klees, (301) 966-6388. (For case mix analysis only), Gregory J. Savord, (301) 966-6384.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1813 of the Social Security Act (the Act) provides for an inpatient hospital deductible to be subtracted from the amount payable by Medicare for inpatient hospital services furnished to a beneficiary. It also provides for certain coinsurance amounts to be subtracted from the amounts payable by Medicare for inpatient hospital and extended care services. Section 1813(b)(2) of the Act requires the Secretary to determine and publish between September 1 and September 15 of each year the amount of the inpatient hospital deductible and the hospital and skilled nursing facility (SNF) coinsurance amounts applicable for services furnished in the following calendar year.

II. Computing the Inpatient Hospital Deductible for 1991

Section 1813(b) of the Act stipulates the method for computing the amount of the inpatient hospital deductible for any year, beginning with the deductible for 1969. The inpatient hospital deductible is an amount equal to the inpatient hospital deductible for the preceding calendar year, changed by the Secretary's best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1886(b)(3)(B) of the Act) used for updating the payment rates to hospitals for discharges in the fiscal year (FY) that begins on October 1 of the same preceding calendar year, and adjusted to reflect real case mix. The adjustment to reflect real case mix is determined on the basis of the most recent case mix data available. The amount determined under the formula is rounded to the nearest multiple of $4 (or, if midway between two multiples of $4, to the next higher multiple of $4).

For FY 1991, section 1886(b)(3)(B) of the Act provides that the applicable percentage increase for all hospitals is the market basket percentage increase. This increase, for FY 1991, if 5.2 percent, as announced in the **Federal Register** on September 4, 1990 (55 FR 35990). Thus, the Secretary's best estimate of the payment-weighted average of the increases in the payment rates for FY 1991 is also 5.2 percent. We recognize that Congress has frequently revised the payment rate increase provisions found in section 1886(b)(3)(B) of the Act during the budget reconciliation process, subsequent to the determination and promulgation of the deductible. Such revisions may occur this year as well and may affect the FY 1991 payment rate increase. However, at the time of this determination, we must use the payment rate increase specified in current law to determine the 1991 deductible.

To develop the adjustment for real case mix, an average case mix was first calculated for each hospital that reflects the relative costliness of that hospital's mix of cases compared to that of other hospitals. We then computed the increase in average case mix for hospitals paid under the Medicare prospective payment system in FY 1990 compared to FY 1989. (Hospitals excluded from the prospective payment system were excluded from this calculation since their payments are based on reasonable costs and are affected only by real increases in case mix.) We used bills from prospective payment hospitals received in HCFA as of the end of July 1990. These bills represent a total of about 7.0 million discharges for FY 1990 and provide the most recent case mix data available at this time. Based on these bills, the increase in average case mix in FY 1990 is 0.33 percent. However, since the diagnosis-related group (DRG) relative weights were reduced by 1.22 percent for FY 1990, the 0.33 percent increase in average case mix must be adjusted upward by 1.22 percent, yielding the effective average case mix increase of 1.55 percent for FY 1990.

Although average case mix has increased by 1.55 percent in FY 1990, section 1813 of the Act requires that the inpatient hospital deductible be increased only by that portion of the case mix increase that is determined to be real. We estiamte that the increase in real case mix is about 1 percent. This is based on a study performed by the RAND Corporation which disaggregated the case mix increase in FY 1987 into its components. The RAND study found that about two-thirds of the increase in case mix in FY 1987 was for real changes in case mix severity. Consequently, we estimate that 1 percent of the increase, which is about two-thirds of the 1.55 percent increase for FY 1990, is due to real case mix changes.

Thus, the estimate of the payment-weighted average of the applicable percentage increases used for updating the payment rates is 5.2 percent, and the real case mix adjustment factor for the deductible is 1.0 percent. Therefore, under the statutory formula, the inpatient hospital deductible for services furnished in calendar year 1991 is $628. This deductible amount is determined by multiplying $592 (the inpatient hospital deductible for 1990) by the payment rate increase of 1.052 multiplied by the increase in average real case mix of 1.01, which equals $629.01 and is rounded to $628.

III. Computing the Inpatient Hospital and Skilled Nursing Facility Coinsurance Amounts for 1991

The coinsurance amounts provided for in section 1813 of the Act are defined as fixed percentages of the inpatient hospital deductible for services furnished in the same calendar year. Thus, the increase in the deductible generates increases in the coinsurance amounts. For inpatient hospital and extended care services furnished in 1991, in accordance with the fixed percentages defined in the law, the daily coinsurance for the 61st through 90th days of hospitalization in a benefit period will be $157 (¼ of the inpatient hospital deductible); the daily coinsurance for lifetime reserve days will be $314 (½ of the inpatient hospital deductible); and the daily coinsurance for the 21st through 100th days of extended care services in a SNF in a benefit period will be $78.50 (⅛ of the inpatient hospital deductible).

IV. Cost to Beneficiaries

We estimate that in 1991 there will be about 8.1 million deductibles paid at $628 each, about 3.1 million days subject to coinsurance at $157 per day (for hospital days 61 through 90), about 1.2 million lifetime reserve days subject to coinsurance at $314 per day, and about 6.7 million extended care days subject to coinsurance at $78.50 per day. Similarly, we estimate that in 1990 there will be about 7.8 million deductibles paid at $592 each, about 3.0 million days subject to coinsurance at $148 per day (for hospital days 61 through 90), about 1.2 million lifetime reserve days subject to coinsurance at $296 per day, and about 8.9 million extended care days subject to coinsurance at $74 per day. (The number of extended care days subject to coinsurance is expected to be higher in 1990 than in 1991 due to the "catastrophic transition" provisions of Public Law 101-234, which are in effect for 1990 but not for 1991.) Therefore, the estimated total increase in cost to beneficiaries is about $400 million (rounded to the nearest $10 million), due to (1) The increase in the deductible and coinsurance amounts and (2) the change in the number of deductibles and daily coinsurance amounts paid.

V. Regulatory Impact Statement

This notice merely announces amounts required by legislation. This notice is not a proposed rule or a final rule issued after a proposal and does not alter any regulation or policy. Therefore, we have determined, and the Secretrary certifies, that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612), or section 1102(b) of the Act.

(Section 1813(a)(3) and (b)(2) of the Social Security Act (42 U.S.C. 1395e(a)(3) and (b)(2)))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 28, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: October 15, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-25876 Filed 10-31-90; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-920-91-4111-13; MTM 75440]

Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas lease MTM 75440, Carbon County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 18⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: October 22, 1990.

June A. Bailey,

Chief, Leasing Unit.

[FR Doc. 90-25840 Filed 10-31-90; 8:45 am]

BILLING CODE 4310-DN-M

[E-930-1-4212-13; MTM 75431]

Conveyance and Order Providing for Opening of Public Land in Powell County; MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq (FLPMA), to the operation of the public land laws and the mining laws. It also informs the public and interested state and local governmental officials of the issuance of the conveyance document.

The public interest was well served through completion of this exchange since expanded public recreational opportunities and improved resource management were accomplished in this exchange.

EFFECTIVE DATE: January 9, 1991.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that pursuant to section 206 of FLPMA, the following described lands were transferred to Cominco American Incorporated:

Principal Meridian, Montana

T. 10 N., R. 9 W.,
Sec. 4, SW¼NW¼,S½S½,NE¼SE¼;
Sec. 9, lot 2;
Sec. 10, SW¼SW¼; and
Sec. 20, lot 1, NE¼NW¼.
T. 10 N., R. 10 W.,
Sec. 24, SE¼.
Aggregating 559.27 acres.

2. Inexchange for the above selected land, the United States acquired the following described surface and locatable mineral estate from Cominco American Incorporated:

Principal Meridian, Montana

T. 11 N., R.10 W.,
Sec. 21, N½,NE¼SW¼,N½SE¼.
Containing 440 acres.

3. The values of the Federal public land and the private land were appraised at $375,000 each.

Opening Date

4. At 9 a.m. on January 9, 1991, the lands described in paragraph 2 above that were conveyed to the United States will be opened to the operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications under the public land laws received at or prior to 9 a.m. on January 9, 1991, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. At 9 a.m. on January 9, 1991, the lands described in paragraph 2 above will be opened to location and entry under the United States mining laws. Appropriation of any of the lands described in paragraph 2 of this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempt appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

BEST COPY AVAILABLE

Dated: October 23, 1990.

John E. Moorhouse,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 90-25837 Filed 10-31-90; 8:45 am]

BILLING CODE 4310-DN-M

[E-930-1-4212-13; MTM 76693]

Notice of Conveyance and Order Providing for Opening of Public Land in Beaverhead County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq (FLPMA), to the operation of the public land laws and the mineral leasing laws only. It also informs the public and interested state and local governmental officials of the issuance of the conveyance document.

The public interest was well served through completion of this exchange since the Bureau acquired riverfront lands with high public values and increased management efficiency of the other public lands in the area will result.

EFFECTIVE DATE: January 9, 1991.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, MT 59107, 406-255-2935.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that pursuant to Sec. 206 of FLPMA, the following described lands were transferred to Cherry Creek Angus Ranch:

Principal Meridian, Montana

T. 3S., R. 9 .,
Sec. 3, NW¼SW¼;
Sec. 4, lots 6 and 7, SW¼NE¼, SE¼NW¼, E½SW¼, SW¼SW¼, W½SE¼.
Containing 408.95 acres.

2. Pursuant to Sec. 206 of FLPMA, the following described lands were transferred to the Thelma Thomas Sheltered Trust and the Jack G. Thomas Trust:

Principal Meridian, Montana

T. 13 S., R. 3 W.,
Sec. 17, SW¼SW¼;
Sec. 20, NW¼NE¼, S½NE¼, NW¼, NE¼SE¼.
Containing 360 acres.

3. In exchange for the above selected lands, the United States acquired the following described surface and mineral estate from Cherry Creek Angus Ranch:

Principal Meridian, Montana

T. 3S., R. 9 W.,
Sec. 2, Parcel 1, Certificate of Survey No. 633 filed for record May 24, 1989, under Beaverhead County Clerk and Recorder's Reception No. 201401.
Containing 44.26 acres, more or less.

4. The values of the Federal public land were appraised at $36,700 and the values of the private land were appraised at $35,000. A cash equalization payment of $1,700 was made to the United States.

Opening Date

5. At 9 a.m. on January 9, 1991, the lands described in paragraph 3 above that were conveyed to the United States will be opened to the operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law, and to applications and offers under the mineral leasing laws, but are not open to the mining laws. All valid applications received at or prior to 9 a.m. on January 9, 1991, shall be considered as sumultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: October 23, 1990.

John E. Moorhouse,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 90-25841 Filed 10-31-90; 8:45 am]

BILLING CODE 4310-DN-M

[UT080-91-4212-13, UTU-61935]

Notice of Realty Action; Exchange of Public and Private Lands; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public and private lands, UTU-61935.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Salt Lake Meridian, UT

T. 3 South, R. 21 East, Section 20 Tract 37 containing five (5) acres of public land.

In exchange for these lands, the Federal government will acquire the surface only on the following described private lands in Uintah County from Mr. Barry Gale, 1587 West 1500 North, Vernal, Utah 84078.

Salt Lake Meridian, UT

T. 3 South, R. 21 East, Section 28 SE¼SE¼NW¼ containing five (5) acres of private land.

In addition, Mr. Gale will donate an additional five (5) acres inclusive in the above description.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire non-Federal lands to facilitate recreation management and access to the Red Mountain Recreation Complex. The exchange will also resolve an unauthorized use of public lands by the exchange proponent. The exchange is consistent with the Bureau's planning for the lands involved. The values of the lands to be exchanged are equal.

Lands to be transferred from the United States will be subject to the following reservations and terms and conditions:

1. Reservation of right-of-way for ditches and canals pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. Mineral rights for oil and gas and phosphate shall be reserved to the United States, together with the right to prospect for, mine, and remove minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

Publication of this notice in the **Federal Register** segregates the public lands identified from the operation of the public land laws, including the mining law. The segregation effect will end upon issuance of a patent or two (2) years from the date of publication, whichever occurs first.

DATES: On or before December 17, 1990, interested parties may submit comments to the Vernal District Office. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this proposed realty action. In the absence of any objections, this proposed realty action will become final.

ADDRESSES: Written comments should be addressed to David Little, District Manager, Vernal District Office, Bureau of Land Management, 170 South 500 East, Vernal, Utah 84078.

FOR FURTHER INFORMATION CONTACT: Kathy Stubbs, Realty Specialist, Vernal District Office, 170 South 500 East, Vernal, Utah 84078.

Dated: October 25, 1990.

David E. Little,

District Manager.

[FR Doc. 90-25839 Filed 10-31-90; 8:45 am]

BILLING CODE 4310-DQ-M

[NM 940-00-4730-12]

New Mexico; Filing of Plat of Survey

October 22, 1990.

The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Sante Fe, New Mexico, effective at 10 a.m. on December 14, 1990.

A dependent resurvey of a portion of the Second Standard Parallel South, through Range 12 East, a portion of the North boundary of the Mescalero Apache Indian Reservation, New Mexico Principal Meridian, New Mexico, for Group 730 NM. This survey was requested by the Superintendent, Mescalero Indian Reservation.

A dependent resurvey of a portion of the Fifth Standard Parallel North through Range 10 West, portions of the East and North boundaries, and a portion of the subdivisional lines, and the subdivision of Section 4, and the survey of the boundary of the Chaco Culture National Historical Park in sections 33 and 34, Township 21 North, Range 10 West, New Mexico Principal Meridian, New Mexico for Group 872 NM. This survey was requested by the Regional Director, National Park Service (NPS), Southwest Region, Santa Fe, New Mexico.

A dependent resurvey of portions of the East boundary, the West boundary, and portions of the subdivisional lines, and the survey of the boundary of the Chaco Culture National Historical Park, in Sections 1, 2, 3 and 12, Township 20 North, Range 10 West, New Mexico Principal Meridian, New Mexico for Group 872 NM. This survey was requested by the Regional Director, National Park Service (NPS), Southwest Region, Santa Fe, New Mexico.

The supplemental plat showing a subdivision of lot 22, into lots 33 and 34, Section 18 Township 4 South, Range 1 East, New Mexico Principal Meridian, New Mexico. This plat was requested by the Area Manager, Socorro Resource Area Office, Socorro, New Mexico.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504-1449. Copies may be obtained from this office upon payment of $2.50 per sheet.

John P. Bennett,

Chief, Branch of Cadastral Survey.

[FR Doc. 90-25796 Filed 10-31-90; 8:45 am]

BILLING CODE 4310-FB-M

[OR-942-00-4730-12: GP1-017]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 33 S., R. 1 E., accepted 9/28/90.

Washington

T. 6 N., R. 17 E., accepted 9/28/90.

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: October 23, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-25836 Filed 10-31-90; 8:45 am]

BILLING CODE 4310-33-M

Bureau of Reclamation

Addition to the Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of an additional proposed contractual action pending through December 1990. This notice is an addition to the Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations published in the **Federal Register** on October 16, 1990, Vol. 55, No. 200.

ADDRESSES: Additional information pertaining to this additional contract proposal may be obtained by calling or writing the Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, NV 89005, telephone (702) 293-8536.

FOR FURTHER INFORMATION CONTACT: Dick L. Porter, Chief, Contracts & Repayment Division, Bureau of Reclamation, 1849 C Street NW., Washington, DC 20240; telephone (202) 208-3014, [FTS] 268-3014.

SUPPLEMENTARY INFORMATION: The following information is added to the list of proposed or amendatory repayment contract actions in the Lower Colorado Region:

20. City of Yuma, Gila Project, Arizona: Amendment of current Contract No. 4-07-30-W0055 to add an additional point of diversion and to provide for water treatment by the Yuma Desalting Plant.

Except for the above addition the October 16, 1990, **Federal Register** notice remains the same.

Dated: October 29, 1990.

Dick L. Porter,

Acting Assistant Commissioner.

[FR Doc. 90-25882 Filed 10-31-90; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-752605

Applicant: Gary Thatcher, Payson, UT.

The applicant requests a permit to purchase captive-hatched scarlet-chested parakeets (*Neophema*

splendida), turquoise parakeets (*Neophema pulchella*) and red-capped parrots (*Pionopsitta pileata*) from S.E. Bird & Supply Co., 211 Agostino Road, San Gabriel, California, for captive breeding purposes.

PRT-752527

Applicant: Minnesota Zoological Garden, Apple Valley, MN.

The applicant requests a permit to import one captive born male Amur leopard (*Panthera pardus orientalis*) from the Moscow Zoo, U.S.S.R., for zoological display and captive breeding purposes.

PRT-753031

Applicant: Texas A&M University, College Station, TX.

The applicant requests a permit to import frozen serum, urine and feces collected from one male Asian elephant (*Elephas maximus*) currently held in captivity at the Calgary Zoo, Calgary, Alberta, Canada, for scientific research purposes.

PRT-753410

Applicant: Kurt E. Landig, Fremont, OH.

The applicant requests a permit to import two male and two female white-eared pheasants (*Crossoptilon crossoptilon*) from Mr. Elmo Stoll, RR4, Aylmer, Ontario, Canada, for the enhancement of propagation and survival of the species.

PRT-753408

Applicant: The Lubee Foundation, Inc., Gainesville, FL.

The applicant requests a permit to import one captive-born female black-footed cat (*Felis nigripes*) from the Frankfurt Zoo, Frankfurt, Germany for the purpose of captive breeding.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) room 430, 4401 N. Fairfax Dr., Arlington VA 22203, or by writing to the Director, U.S. Office of Management Authority, 4401 N. Fairfax Drive, room 432, Arlington, VA 22203.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: October 26, 1990.

Karen Willson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 90-25280 Filed 10-31-90; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Recovery Plan for Ring Pink Mussel for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the ring pink mussel (*Obovaria retusa*). This freshwater mussel historically occurred in the Ohio River and its large tributaries in Pennsylvania, West Virginia, Ohio, Indiana, Illinois, Kentucky, Tennessee, and Alabama. Presently, the ring pink mussel is known from four relic, apperently nonreproducing, populations—two reaches of the Tennessee River (one in the State of Kentuchy and one in the State of Tennessee), one reach of the Green River in Kentucky, and one reach of the Cumberland River in Tennessee. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before December 31, 1990 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, room 224, Asheville, North Carolina 28801. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Biggins at the above address (704/259-0321; FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of time and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is the ring pink mussel (*Obovaria retusa*). The area of emphasis for recovery actions are the major tributaries of the Ohio River drainage in Pennsylvania, West Virginia, Ohio, Indiana, Illinois, Kentucky, Tennessee, and Alabama. Habitat protection, reintroduction, and preservation of genetic material are major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: October 24, 1990.

Brian P. Cole,

Field Supervisor.

[FR Doc. 90-25635 Filed 10-31-90; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the One Hundred and Second Meeting of the Board for International Food and Agricultural Development (BIFAD) on November 15, 1:30 p.m. to 6 p.m. and November 16, 1990, 8:30 a.m. to 12 noon.

The purposes of the Meeting are, on November 15: (1) A Business Session, and (2) to discuss (a) the Africa Bureau University Collaboration Program, (b) the S&T/RUR (University Center) University Linkages Program, and, (c) at 4 p.m., a progress report from the Task Force on Development Assistance and Cooperation; and on November 16: Board Orientation and Planning I, to (1) discuss current development issues, (2) consider how BIFADEC and the Universities can constructively relate to these issues, and (3), as time permits, to discuss the Board agenda for the coming year. The Board orientation session will be continued at the next meeting.

Both Meetings will be held in the Department of State, room 1105, Main State Department Building. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent time is available for the meeting permits.

The Bureau for Diplomatic Security has implemented new procedures for being in the Department of State building. All persons, visitors and employees, are required to wear proper identification or a visitor's pass at all times while in the building.

Please let the BIFAD Staff know (tel. nos. 663-2585 or 663-2578) that you expect to attend the meeting and on which days. Provide your full name, name of employing company or organization, address and telephone number not later than Friday, November 9, 1990.

A BIFAD Staff member will meet you at the South Entrance of the Department of State at 2201 C Street with your visitor's pass.

Visitors who are not pre-cleared will have to wait in line and present valid identification with photograph to the receptionist before they can be admitted to the building.

Curtis Jackson, Bureau of Science and Technology, Office of Research and University Relations, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, room 309, SA-18, Washington, DC 20523, or telephone him on (703) 875-4005.

Dated: October 25, 1990.

C. Stuart Callison,

Acting Executive Director, BIFAD.

[FR Doc. 90-25640 Filed 10-31-90; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-335, Sub-No. 2X]

KCT Railway Corporation—Abandonment Exemption—in Franklin, Anderson, and Allen Counties, KS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904, the abandonment by KCT Railway Corporation of its 50.2-mile line of railroad between milepost 58+1368 feet at Ottawa, and milepost 108+2185 feet near Iola, in Franklin, Anderson, and Allan Counties, KS, subject to environmental and standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 1, 1990. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2), must be filed by November 13, 1990, petitions to stay must be filed by November 19, 1990, and petitions for reconsideration must be filed by November 26, 1990.

ADDRESSES: Send pleadings referring to Docket No. AB-335 (Sub-No. 2X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Stephen W. McVearry, suite 600, 1350 New York Ave., NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD Service (202) 275-1721.]

Decided: October 25, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-25662 Filed 10-31-90; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy as set forth in 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Advanced Environmental Technology Corporation*, Civil Action No. 90-3782, has been lodged with the United States District Court of the District of New Jersey on October 23, 1990. The proposed consent decree concerns the clean-up of the Chemical Control Superfund Site in Elizabeth, New Jersey. The proposed concent decree requires the defendants to perform and fund remedial activities at the Site, and to reimburse the United States for certain past costs.

The United States Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States v. Advanced Environmental Technology Corporation*, DJ 90-11-2-293.

The proposed consent decree may be examined at the Office of the United States Attorney, District of New Jersey, Federal Building, 970 Broad Street, room 502, Newark, New Jersey 07102, and at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. A copy of the proposed consent decree and attachments can be obtained in person or by mail at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $31.00 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-25797 Filed 10-31-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Partial Consent Decree Pursuant to Resource Conservation and Recovery Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on October 19, 1990, a proposed Partial Consent Decree in

United States v. *Escambia Treating Company*, was lodged in the United States District Court for the Northern District of Florida. This Decree resolves the United States' claims for injunctive relief and civil penalties for violations of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et. seq., inter alia*, by seven affiliated defendant companies. Under the proposed Partial Consent Decree, the settling companies will perform remedial actions, including closure and post-closure care and implementation of corrective action, at wood treating plants located in Pensacola, Florida, Brookhaven, Mississippi, and Camilla and Brunswick, Georgia.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Partial Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Escambia Treating Co.*, D.J. Ref. No. 90-7-1-454.

The proposed Partial Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Northern District of Florida, 114 East Gregory Street, Pensacola, Florida (contact Assistant U.S. Attorney Samuel A. Alter, Jr.); (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia (contact Assistant Regional Counsel Truly Bracken); and (3) the Environmental Enforcement Section, Environment & Natural Resources Division, U.S. Department of Justice, room 1541, 10th & Pennsylvania Avenue, NW., Washington, DC. Copies of the proposed Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 1333 F Street NW., suite 600, Washington, DC 20004, telephone (202) 347-2072. For a copy of the Partial Consent Decree without attachments please enclose a check in the amount of $12.75 (25 cents per page reproduction charge) payable to Consent Decree Library. For a copy of the Partial Consent Decree with attachments (including memoranda of understanding and scopes of work) please enclose a check in the amount of $78.00 (25 cents per page reproduction charge) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-25798 Filed 10-31-90; 8:45 am]

BILLING CODE 4410-01-M

Consent Judgment in Action to Enjoin Violation of the Clean Air Act ("CAA")

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States* v. *Vanguard Corporation*, Civil Action No. CV-85-0244 was lodged with the United States District Court for the Eastern District of New York on October 23, 1990. The Consent Decree provided for penalties for violation of New York State emission standards on volatile organic compounds and enjoins the Vanguard Corporation from further violations of the Clean Air Act ("CAA"), 42 U.S.C. 7401 *et seq.*, and 40 CFR part 82.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Vanguard Corporation* D.O.J. Ref. No. 90-5-2-1-746.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of New York, 1 Pierrepont Plaza, 11th Floor, Brooklyn, New York 11201; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 1333 F Street, suite 600, NW., Washington, DC 20004, telephone number (202) 347-2072. In requesting a copy, please enclose a check in the amount of $2.75 (25 cents per page reproduction charge) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-25799 Filed 10-31-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Proposed Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a draft consent decree in *United States* v. *Sharon Steel Corp. et al*, Civil Action No. 86-924J (D. Utah), (hereafter referred to as "*Sharon Steel*") is available to the public for review and comment. The draft consent decree resolves litigation in this matter with respect to the Atlantic Richfield Company ("ARCO"). The terms of the draft decree are summarized in this notice to facilitate public review, and a copy of the draft decree is being made available at the Department of Justice in Washington, DC and at the Office of the United States Attorney in Salt Lake City, Utah at the addresses below. The public is invited to submit comments concerning the draft decree to the Department of Justice, at the address specified below, until Monday, November 12, 1990.

The original complaint in *Sharon Steel* was filed by the United states on October 8, 1986 pursuant to sections 106 and 107 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. 9606 and 9607, more commonly known as the "Superfund" statute. The complaint was subsequently amended in 1988 and 1989 and contains a series of allegations which are summarized below. It alleges that Sharon Steel Corporation ("Sharon Steel"), UV Industries Inc. ("UV"), the UV Industries Liquidating Trust ("UV Trust") and ARCO are liable for injunctive relief and for reimbursement of response costs incurred by the United States in connection with the Sharon Steel Midvale Tailings Site, located in Midvale, Utah. It alleges that the Sharon Steel site is a facility from which hazardous substances, in the form of various heavy metals and arsenic, have been released thereby causing the United States to incur response costs. The complaint also alleges that the releases and threatened releases from the site may present an imminent and substantial endangerment to public health or welfare or the environment. Sharon Steel and UV are alleged to be liable as the current and past owner and operator of the Midvale Tailings Site, respectively. ARCO is alleged to be liable as a joint operator of the site and as one who arranged for the disposal of hazardous substances at the site.

Two previous consent decrees have been entered in the *Sharon Steel* matter. The first involves defendant Sharon Steel Corporation. It has been made available for public comment, and the United States District Court has scheduled a hearing on November 13, 1990 to consider the parties' request that the court approve and fianlly entry that decree. The second consent decree involves defendants UV Liquidating Trust and UV Industries, Inc. That decree has also already been subject to public comment, and the District Court will also entertain the parties' request that decree be approved and entered on November 13, 1990.

Consideration by the court of the ARCO consent decree at the same time as the two prior consent decrees would be in the public interest because resolution of the Untied States' claims against ARCO will facilitate the approval of the other two decrees and will also facilitate the confirmation of the Sharon Steel Plan of Reorganization that is scheduled for consideration by the Bankruptcy Court in the Western District of Pennsylvania on November 15, 1990. Accordingly, even though the ARCO consent decree has not yet been finally approved by the Department of Justice, this notice is being published and the draft decree is being made available, in the interests of providing the public with the maximum opportunity to review and comment on the decree consistent with seeking its approval and entry by the District Court in Utah on November 13, 1990.

In summary, the draft decree provides that ARCO, while denying its liability for injunctive relief or response costs, will pay the United States $21 million in settlement of the litigation. The United States and the State of Utah have agreed to provide ARCO releases from environmental claims relating to the Tailings Site and the adjacent Midvale Slag Site (as to which ARCO has not been named a potentially responsible party) and a release from claims for damages to natural resource damages. Pursuant to the requirements of CERCLA, the proposed decree contains "reopener" provisions that permit institution of new proceedings by the United States or the State against ARCO based on previously unknown conditions or new information concerning the Tailings Site or the Slag Site.

The comment period regarding the proposed ARCO decree is being shortened, pursuant to 28 CFR 50.7(c), because the Assistant Attorney General has determined that the public interest will not be compromised by a shortened comment period in these circumstances. The Assistant Attorney General's determination is based on the fact that there is no statutory requirement for public comment on a CERCLA consent decree of this type; a 30 day comment period was provided regarding two similar consent decrees in this matter; and, pursuant to CERLA and EPA regulations, EPA has and will continue to provide for significant public participation in selection of the remedial action at the Sharon Steel Midvale Tailings and Slags Sites. Fianally, consideration and approval of the ARCO decree, with its resulting impact on ARCO's cross claims against Sharon Steel, will significantly enhance the prospects for confirmation of the Sharon Steel Plan of Reorganization, pursuant to which Sharon Steel may be able to emerge from bankruptcy.

The Department of Justice will receive comments relating to the proposed consent decree until November 12, 1990. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sharon Steel Corp. et al.*, DOJ Ref. No. 90-11-2-146.

The draft consent decree may be examined at the office of the United States Attorney, District of Utah, 350 South Main Street, Room 430, Salt Lake City, Utah 84111. Copies of the draft consent decree may also be examined and obtained in person at the Environmental Enforcement Section Document Center, 1333 "F" Street, NW., Suite 600 Washington, DC 20004 (Telephone 202-347-7829). A copy of the draft consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $7.50 (25 cents per page reproduction costs) payable to "Consent Decree Library."

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-25924 Filed 10-31-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department policy, 28 CFR 50.7, and 33 U.S.C. 1251 *et seq.* notice is hereby given that on October 23, 1990, a proposed Consent Decree in *United States* v. *B.P. Oil, Inc.*, Civil Action No. 88-0792, was lodged with the United States District Court for the Eastern District of Pennsylvania. The Consent Decree requires defendant to pay a civil penalty of $2,191,000 for violations of the Clean Water Act at its petroleum refinery in Marcus Hook, Pennsylvania, and to comply with the Act in the future.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *B.P. Oil, Inc.*, DOJ Ref. No. 90-5-1-2439.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 3310 U.S. Courthouse, 601 Market Street, Independence Mall West, Philadelphia, Pennsylvania 19106. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section, Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy please enclose a check in the amount of $2.80 (25 cents per page reproduction costs) payable to "Consent Decree Library".

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-25682 Filed 10-31-90; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Cable Television Laboratories, Inc. and General Instrument Corporation

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") and General Instrument Corporation through its Jerrold Communications Division ("GI") on September 20, 1990, filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identity of the parties to this agreement and (2) the nature and objectives of this agreement. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to this agreement and the general areas of planned activity are given below.

The current parties to this agreement are:

Cable Television Laboratories, Inc., 1050 Walnut Street, suite 500, Boulder, Colorado 80302.

General Instrument Corporation, Jerrold Communications Division, 2200 Byberry Road, Hatboro, PA 19040.

The area of planned activity is cooperation in the conduct of National

Television System Committee (NTSC) visual degradation tests to evaluate the subjective effects of typical impairments and other conditions on NTSC television pictures generated in cable television systems.

Joseph H. Widmar,
Director of Operations, Antitrust Division.
[FR Doc. 90-25833 Filed 10-31-90; 8:45 am]
BILLING CODE 4410-01-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.
ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On June 29, 1990 and September 4, 1990, the National Science Foundation published notices in the **Federal Register** of permit applications received. Permits were issued to Mahlon Kennicutt on October 18, 1990 and John Bengtson on October 19, 1990. A permit was awarded to Mary Olson on October 19, 1990 with the provision that no seal specimens may be taken. This is because the applicant, Mary Olson, does not possess a valid Marine Mammal Protection Act permit to take seals.

Charles E. Myers,
Permit Office, Division of Polar Programs.
[FR Doc. 90-25814 Filed 10-31-90; 8:45 am]
BILLING CODE 7555-01-M

Denial of Permit Application Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.
ACTION: Notice of denial of permit application under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued or denied under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On September 4, 1990, the National Science Foundation published a notice in the **Federal Register** of permit applications received. One applicant, John Bengtson, requested permission to take various bird specimens for scientific research. On October 18, 1990 this application was denied.

Charles E. Myers,
Permit Office, Division of Polar Programs.
[FR Doc. 90-25815 Filed 10-31-90; 8:45 am]
BILLING CODE 7555-01-M

National Science Board

Nominations for Membership November 1, 1990

The National Science Board (NSB) is the policymaking body of the National Science Foundation (NSF). The Board consists of 24 members appointed by the President, with the advice and consent of the Senate, for six-year terms, in addition to the NSF Director *ex officio*, as follows:

Terms Expire May 10, 1992

Dr. Frederick P. Brooks, Jr., Kenan Professor of Computer Science, Department of Computer Science, University of North Carolina, Chapel Hill, North Carolina

Dr. F. Albert Cotton, W.T. Doherty-Welch Foundation Distinguished Professor of Chemistry and Director, Laboratory for Molecular Structure and Bonding, Texas A&M University, College Station, Texas

Dr. Mary L. Good (Chairman, National Science Board), Senior Vice President, Technology, Allied-Signal, Inc., P.O Box 1021R, Morristown, New Jersey

Dr. John C. Hancock, Retired Executive Vice President, United Telecommunications, Inc., Consultant, 4550 Warwick Boulevard, Suite 901, Kansas City, Missouri

Dr. James B. Holderman, Vice Chairman, Koger Properties, Inc., and Koger Equity, Inc., P.O. Box 4520, Jacksonville, Florida

Dr. James L. Powell, President, Reed College, 3203 Southeast Woodstock Boulevard, Portland Oregon

Dr. Frank H.T. Rhodes, President, Cornell University, 300 Day Hall, Ithaca, New York

Dr. Howard A. Schneiderman, Senior Vice President, Research and Development and Chief Scientist, Monsanto Company, 800 N. Lindbergh Boulevard, St. Louis, Missouri

Terms Expire May 10, 1994

Dr. Warren J. Baker, President, California Polytechnic State University, San Luis Obispo, California

Dr. Arden L. Bement, Jr., Vice President, Science and Technology, TRW, Inc., 1900 Richmond Road, Cleveland, Ohio

*Dr. W. Glenn Campbell, Counselor, Hoover Institution, Standford Universtiy, Stanford, California

Dr. Daniel C. Drucker, Graduate Research Professor, Department of Aerospace Engineering, Mechanics and Engineering Science, University of Florida, 231 Aerospace Building, Gainesville, Florida

Dr. Charles L. Hosler, Acting Executive Vice President and Provost of the University, and Senior Vice President for Research and Dean of Graduate School, 201 Old Main, The Pennsylvania State University, University Park, Pennsylvania

Dr. Peter H. Raven, Director, Missouri Botanical Garden, P.O. Box 299, St. Louis, Missouri

Dr. Roland W. Schmitt, President, Rensselaer Polytechnic Institute, Pittsburgh Building, Troy, New York

Dr. Benjamin S. Shen, Reese W. Flower Professor, Department of Astronomy and Astrophysics, University of Pennsylvania, 209 S. 33rd Street, Philadelphia, Pennsylvania

Terms Expire May 10, 1996

Dr. Perry L. Adkisson, Chancellor, The Texas A&M University System, System Admin. Building, Executive Offices, Room 219, College Station, Texas

Dr. Bernard F. Burke, William A. M. Burden Professor of Astrophysics, Massachusetts Institute of Technology, Room 26-335, Cambridge, Massachuestts

Dr. Thomas B. Day (Vice Chairman, National Science Board), President, San Diego State University, 5300 Campanile Drive, San Diego, California

Dr. James J. Duderstadt, President, The University of Michigan, 2074 Fleming Administration Building, Ann Arbor, Michigan

*Mr. Jaime Oaxaca, Vice Chairman, Coronado Communications Corporation, 11340 West Olympic Boulevard, Suite 206, Los Angeles, California

Dr. Howard E. Simmons, Jr., Vice President for Central Research and Development, E. I. du Pont de Nemours & Co., Room D-8038, Wilmington, Delaware

*Dr. Phillip A. Griffiths, Provost, Duke University, 220 Allen Building, Durham, North Carolina

(One Vacancy)

*NSB Nominee.

Member Ex Officio

Dr. Frederick M. Bernthal (Chairman, NSB Executive Committee), Acting Director, National Science Foundation, Washington, DC

Section 4(c) of the National Science Foundation Act of 1950, as amended, states that: "The persons nominated for appointment as members of the Board (1) shall be eminent in the fields of the basic, medical, or social science, engineering, agriculture, education, research management, or public affairs; (2) shall be selected solely on the basis of established records of distinguished service; and (3) shall be so selected as to provide representation of the views of scientific and engineering leaders in all areas of the Nation."

Seven of the members whose terms expire in May 1992 are eligible for reappointment.

The Board and the Director solicit and evaluate nominations for submission to the President. Nominations accompanied by biographical information may be forwarded to the Chairman, National Science Board, Washington, DC, 20550, no later than January 4, 1990.

Any questions should be directed to Mrs. Susan E. Fannoney, Staff Assistant, National Science Board (202/357-7512)

Mary L. Good
Chairman, National Science Board.
[FR Doc. 90-24879 Filed 10-31-90; 8:45 am]
BILLING CODE 7555-01-M

Division of Polar Programs; Meeting

The National Science Foundation announces the following meeting:

Name: Antarctic Pollution Control Task Group.

Date and time: November 5, 1990; 11:00 am to 5:00 pm.

Place: National Science Foundation, 1800 G St., NW. Washington, DC 20550 Room 540B

Type of Meeting: Open/Closed.

Contact Person: Lawrence Rudolph, Deputy General Councel, Office of the General Counsel, Room 501, National Science Foundation, Washington, DC 20550 (202) 357-9435.

Purpose of Meeting: The Committee will advise the Foundation on the designation of pollutants and their disposal or discharge from any source within the Antarctica.

Agenda: * 11:00 am to 12:00 pm—Review of Progress to date (Open). * 1:00 pm to 5:00 pm—Discussion (Closed).

Summary of Agenda: Possible discharge standards and regulatory and policy considerations will be among the topics discussed.

Reason for Closed Portion: This working group will continue to discuss the tasks, issues and framework for permit regulations. Therefore, it is necessary to close the second portion of the meeting to the public pursuant to exemption (9)(B) of the Government Sunshine Act.

Reason for late Notice: Because of the short-term nature of this group and the frequency of meetings required, it is necessary to meet as schedules permit.

Dated: October 30, 1990.

M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 90-25963 Filed 10-31-90; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-245, 50-336 and 50-423]

Northeast Nuclear Energy Co., Millstone Nuclear Power Station, Unit Nos. 1, 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of appendix E to 10 CFR part 50 to Northeast Nuclear Energy Company, et al. (the licensee) for the Millstone Nuclear Power Station, Unit Nos. 1, 2 and 3, located at the licensee's site in New London County, Connecticut.

Environmental Assessment

Identification of Proposed Action

At the present time, there is a full participation emergency preparedness (EP) exercise scheduled for December 1990 and a partial participation EP exercise scheduled for October 1991.

The licensee in a letter dated April 18, 1990 as supplemented by letter dated August 1, 1990, requested an exemption from section IV.F.3 of 10 CFR part 50, appendix E, "Emergency Planning and Preparedness for Production and Utilization Facilities," to allow the December 1990 full participation exercise to be postponed to October 1991. A partial participation exercise would be held in December 1990.

Appendix E to 10 CFR part 50 requires that licensee's emergency plans be exercised at least once a year (10 CFR 50, appendix E, section IV.F.2) and that off-site emergency plans be exercised every other year (10 CFR 50, appendix E, section IV.F.3).

Regarding the Millstone Nuclear Power station, Unit Nos. 1, 2, and 3, full participation exercise scheduled during the month of December 1990, the off-site aspects of the exercise were to be evaluated by the Federal Emergency Management Agency (FEMA). Due to other commitments in Region I, FEMA representatives will not be available during this time frame. Since FEMA cannot evaluate the exercise as planned, Northeast Nuclear Energy Company (NNECO) has requested a schedular exemption from the requirements of 10 CFR part 50, appendix E, section IV.F.3 to allow the December 1990 full participation exercise to be postponed to October 1991. A partial participation exercise would be held in December 1990.

In a July 30, 1990 letter form FEMA to the NRC, granting an exemption from FEMA's schedular requirements in 44 CFR 350.9(c), FEMA states:

> The proposed schedule change results in no adverse public health and safety implications. Millstone and the State of Connecticut have conducted numerous successful exercises since 1982. The State of Connecticut also exercises its offsite emergency response plans with the Connecticut Yankee (Haddam Neck) Nuclear Power Plant on the same biennial cycle as Millstone. Thus, the State's emergency response organization is exercised twice as often as required. This organization was last exercised on May 19, 1990, at Haddam Neck with no deficiencies resulting. Granting NNECO's request for an exemption from the 1990 Millstone exercise until 1991 would allow for annual exercising of the State of Connecticut's plans and promote easier planning for the NRC, FEMA, NNECO, Connecticut Yankee Atomic Power Company, and the State of Connecticut. The next full participation exercise for Millstone would be conducted in October 1991.

The Need for the Proposed Action

The exemption is needed to allow scheduling of emergency plan exercises in a resource-efficient manner.

Environmental Impacts of the Proposed Action

The proposed exemption from the requirements of appendix E to 10 CFR part 50, section IV.F.3 involves no changes in plant operation or any accident and thus involves no changes in plant effluents or any changes in the use of resources. Accordingly, the Commission concludes that the proposed Action would have no impact on the environment.

Alternatives to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption would have either essentially the same or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources different form or beyond

the scope of resources used during normal plant operation, which were assessed in the Final Environmental Statements relating to plant operation, dated June 1973 for Units 1 and 2, and December 1984 for Unit 3.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request that supports the proposed exemption. The staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the request for exemption dated April 18, 1990 and the supplement dated August 1, 1990. A copy is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland this 24th day of October 1990.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-25783 Filed 10-31-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-321, 50-366, 50-424 and 50-425]

Georgia Power Co., Edwin I. Hatch Nuclear Plant and Vogtle Electric Generating Plant; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that attorneys for Messrs. Marvin B. Hobby and Allen L. Mosbaugh submitted to the Chairman of the Nuclear Regulatory Commission (NRC) on September 11, 1990, a "Request for Proceedings and Imposition of Civil Penalties for Improperly Transferring Control of Georgia Power Company's Licenses to the SONOPCO Project and for the Unsafe and Improper Operation of Georgia Power Company Licensed Facilities" (Petition). A supplement to the Petition was also submitted October 1, 1990. The Petitioners are employees or former employees of the Georgia Power Company (GPC) and the Petition makes a number of allegations regarding the management of GPC nuclear facilities, particularly the Vogtle facility. Included were allegations of deliberate misrepresentations by GPC to the NRC and deliberate violations of nuclear safety requirements. The Petition sought immediate and swift action by the NRC based on its allegations. In a letter dated October 23, 1990, acknowledging receipt of the Petitions, I have determined that no immediate action by the NRC, other than certain actions already undertaken, is necessary regarding the matters raised in the Petition.

The Petition has been referred to the Director of the Office of Nuclear Reactor Regulation for the preparation of a Director's Decision pursuant to 10 CFR 2.206. As provided by §2.206, appropriate action will be taken with regard to the Petition within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Rooms for the Hatch facility located at Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513, and the Vogtle facility located at Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830. The supplement to the Petition is being withheld from the Public Document Rooms pending and NRC determination regarding Petitioner's request for withholding.

Dated at Rockville, Maryland this 23rd day of October, 1990.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 90-25864 Filed 10-31-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co. and Cleveland Electric Illuminating Co. (Davis-Besse Nuclear Power Station); Exemption

I

Toledo Edison Company and Cleveland Electric Illuminating Company (the licensees) are the holders of Facility Operating License No. NPF-3, which authorizes operation of the Davis-Besse Nuclear Power Station. The license provides, among other things, that the licensees are subject to all rules, regulations and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensees' site located in Ottawa County, Ohio.

II

Pursuant to 10 CFR 55.59(a)(2), each reactor operator and senior reactor operator shall pass a comprehensive requalification written examination and an annual operating test.

III

By letter dated April 20, 1990, the Toledo Edison Company requested an exemption from the requirements set forth in 10 CFR 55.59(a)(2) for those reactor operators and senior reactor operators selected to take the May 1990 NRC requalification examination so that they be allowed a 6-month, one-time extension to the schedule required for the requalification examinations administered by Toledo Edison Company.

Immediate compliance with 10 CFR 55.59(a)(2) requires those reactor operators and senior reactor operators who have taken the May 1990 NRC requalification examination to take the Toledo Edison-administered requalification examination in November 1990. These two examinations are similar in nature and serve the same purpose.

Pursuant to 10 CFR 55.11, "The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property and are otherwise in the public interest."

IV

Requiring the reactor operators and senior reactor operators who have successfully passed the May 1990 NRC requalification examination to take the November 1990 Toledo Edison requalification examination would duplicate those operators' efforts to prepare for the examination. In order to minimize those duplicating efforts which otherwise can be used in keeping the plant in safe operation, it would be in the public interest to grant this exemption only for those reactor operators and senior reactor operators who have successfully passed the May 1990 NRC requalification examination. Those operators will continue to attend scheduled training and meet all other requirements for satisfactory completion of the requalification programs.

Those reactor operators and senior reactor operators who failed the May 1990 NRC requalification examination are not included in the exemption. They are scheduled to take the November 1990 NRC-administered requalification examination only for those portions (written examination, job performance measures, and dynamic simulator examinations) they failed during the May 1990 examination.

The staff has reviewed the licensee's request for exemption and finds that requiring those operators who passed the May 1990 examinations to take the Toledo Edison requalification examination in November would not enhance the protection of the Toledo Edison environment and would result in an expenditure of licensee resources not required for public health and safety.

The staff also concludes that issuance of this exemption will not endanger life or property and will have no significant effect on the safety of the public or the plant.

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact has been prepared and published in the Federal Register on October 5, 1990 (55 FR 40958). Accordingly, based upon the environmental assessment, the Commission has determined that the issuance of this exemption will not have a significant effect on the quality of the human environment.

Accordingly, the Commission has determined, pursuant to 10 CFR 55.11, that an exemption as described in section III is authorized by law, will not endanger life or property and is otherwise in the public interest. Therefore, the Commission hereby grants the following exemption:

Toledo Edison is granted an exemption for those licensed reactor operators and senior reactor operators who successfully passed the NRC requalification written examination and annual operating test administered in May 1990 from the requirement of 10 CFR 55.59(a)(2) for a period of six months through November 1991. Those reactor operators and senior reactor operators who failed portions of the May 1990 requalification examination will have to be reexamined on that portion of the requalification examination by the NRC in November 1990.

For further details with respect to this action, see the licensee's request dated April 20, 1990 which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the University of Toledo Library, Document Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 25th day of October 1990.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-25863 Filed 10-31-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 030-13584 and 030-31462, License Nos. 52-01946-07 and 52-01946-09(08), EA 90-076]

University of Puerto Rico, San Juan, PR; Order Imposing Civil Monetary Penalties

I

University of Puerto Rico (Licensee) is the holder of Broad Medical and Teletherapy License Nos. 52-01946-07 and 52-01946-09(08) issued by the Nuclear Regulatory Commission (NRC or Commission) on January 3, 1978 and March 8, 1990, respectively. The licenses authorize the Licensee to use byproduct material in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on April 2-3, 1990. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the Licensee by letter dated July 19, 1990. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalties proposed for the violations. The Licensee responded to the Notice by letter dated September 4, 1990. In its response, the Licensee admitted the violations but proposed that the civil penalties be decreased or eliminated.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalties proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay civil penalties in the amount of $12,500 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region II, 101 Marietta Street NW., Atlanta, Georgia 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

Whether on the basis of the violations which were admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 19th day of October 1990.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix. Evaluations And Conclusions

On July 19, 1990, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued for violations identified during an NRC inspection. University of Puerto Rico responded to the Notice on September 4, 1990. In the response the licensee admitted the violations, but requested that the civil penalties be decreased or eliminated. The NRC's evaluation and conclusion regarding the licensee's requests are as follows:

Restatment of Violations

I. Violations of License No. 52-01946-07 (Broad License)

A. 10 CFR 35.415(a)(4) requires, in part, that for each patient receiving implant therapy, a licensee promptly, after implanting the

material, survey the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with the requirements of 10 CFR part 20.

Contrary to the above, on April 13, 1988, October 11, 1988, and January 4, 1990, the licensee did not conduct any surveys for dose rates in the contiguous restricted and unrestricted areas to demonstrate compliance with the requirements of 10 CFR part 20 after implanting the material in a patient receiving implant therapy.

B. 10 CFR 35.404(a) requires, in part, that immediately after removing the last temporary implant therapy source from a patient, a licensee make a radiation survey of the patient to confirm that all sources have been removed.

Contrary to the above, on April 17, 1989, the licensee did not make any survey of an implant therapy patient immediately after the removal of iridium-192 temporary implant therapy sources to confirm that all the sources had been properly removed.

C. 10 CFR 20.207(a) requires that licensed materials stored in an unrestricted area be secured against unauthorized removal from the place of storage. 10 CFR 20.207(b) requires that licensed materials in an unrestricted area and not in storage be tended under the constant surveillance and immediate control of the licensee. As defined in 10 CFR 20.3(a)(17), an unrestricted area is any area access to which is not controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive materials.

Contrary to the above, on April 2, 1990, licensed materials located in the radiopharmaceutical storage and preparation laboratory (hot lab) of the Nuclear Medicine Department, an unrestricted area, was not secured against unauthorized removal and were not under the constant surveillance and immediate control of the licensee in that the laboratory was left open and unattended.

This is a repeat violation (Inspection 88–01).

D. 10 CFR 35.59(b)(2) requires that a licensee in possession of any sealed sources or brachytherapy sources test the sources for leakage at intervals not to exceed six months or other intervals approved by the Commission and described in the manufacturer's label or brochure that accompanies the sealed sources.

Contrary to the above, between June 1989 and April 3, 1990, and interval exceeding six months, the licensee did not test any sealed source of brachytherapy source in its possession for leakage and no other intervals for testing these sources had been approved by the Commission.

This a repeat violation (Inspection 87–01).

E. 10 CFR 35.59(g) requires, in part, that a licensee in possession of any sealed sources of brachytherapy sources shall conduct a quarterly physical inventory of all such sources in its possession.

Contrary to the above, between December 12, 1988 and May 3, 1989 (the 1st quarter of 1989, and between May 3, 1989 and October 6, 1989 (the 3rd quarter of 1989), the licensee did not conduct quarterly physical inventories of any sealed sources and brachytherapy sources in its possession.

This is a repeat violation (Inspection 86–01).

F. 10 CFR 35.59(h) requires, in part, that a licensee in possession of any sealed sources or brachytherapy sources measure the ambient dose rates quarterly in all areas where such sources are stored.

Contrary to the above, between June 1988 and April 3, 1990 (the 3rd and 4th quarter of 1989, and 1st quarter of 1990), the licensee did not measure the ambient dose rates in any areas where sealed or brachytherapy sources are stored.

G. 10 CFR 20.201(b) requires that each licensee make such surveys as may be necessary to comply with the regulations of Part 20, and which are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions. When appropriate, such an evaluation includes physical survey of the location of materials and equipment, and measurements of levels of radiation and concentrations of radioactive material present.

10 CFR 20.103(b)(1) requires, in part, that a licensee, as a precautionary procedure, use process or other engineering controls to limit concentrations of radioactive material in air to the extent practicable.

Contrary to the above, between January 1989 and April 3, 1990, the licensee's survey made to verify compliance with the requirements of 10 CFR 20.103(b)(1) were inadequate in that air flow rates in fume hoods used as process and engineering controls for the handling and storage of multiple dose vials containing millicurie quantities of iodine-131 were not being measured and evaluated.

This is a repeat violation (Inspection 87–01).

H. 10 CFR 35.205(e) requires that a licensee measure the ventilation rates available in areas of radioactive gas use each six months.

Contrary to the above, between January 1989 and April 3, 1990, the licensee did not measure the ventilation rates available in the room where xenon-133 gas was used.

This is a repeat violation (Inspection 87–01).

I. Condition of License No. 52–01946–07 requires that the licensee conduct its program in accordance with the statements, representations, and procedures described in the licensee's application dated August 29, 1988.

Item 10.7, page 30, of the licensee's application dated August 29, 1988, states that packages containing radioactive material will be opened in accordance with the procedures described in Appendix L of Regulatory Guide 10.8, Revision 2, "Guide for the Preparation of Applications for Medical Use Programs" (August 1987) (RG 10.8). Step 2.c of Appendix L requires that radiation dose rate measurements be made at one meter from the package and on contact with the package surface.

Contrary to the above, on April 11, 1990, no radiation survey measurements were made either at one meter from the package or at contact with the package, upon receipt of a package containing iridium-192 implant therapy sources.

This is a repeat violation (Inspection 85–01).

J. 10 CFR 35.22(b)(6) requires that to oversee the use of licensed materials, the Radiation Safety Committee must review annually, with the assistance of the Radiation Safety Officer, the radiation safety program.

Contrary to the above, an annual review of the radiation safety program was not performed by the Radiation Safety Committee and the Radiation Safety Officer for 1988. The last two reviews were performed in March 1990 (for 1989) and in April 1988 (for 1987).

K. 10 CFR 35.50(e) (2), (3), and (4) require that records of dose calibrator accuracy, linearity, and geometric dependence tests, include the signature of the Radiation Safety Officer.

Condition 20 of License No. 52–01946–07 requires that the licensee conduct its program in accordance with the statements, representations, and procedures described in the licensee's application dated August 29, 1988.

Item 9.3 of the application dated August 29, 1988, requires that the model procedures in appendix C, RG 10.8, be followed for calibration of the dose calibrator. Procedure 8. of appendix C requires that the RSO review and sign the records of all geometry, linearity, and accuracy tests.

Contrary to the above, between April 1989 and April 3, 1990, the Radiation Safety Officer did not review or sign the does calibrator accuracy, linearity, and geometric dependence test records.

These violations have been categorized in the aggregate as a Severity Level III problem (Supplements IV and VI).

Cumulative Civil Penalty—$6,250 (assessed equally among the 11 violations).

II. Violations of License Number 52–01946–09 (Teletherapy License)

A. 10 CFR 35.634(a) requires, in part, that a licensee authorized to use teletherapy units for medical use perform output spot checks on each teletherapy unit once in each calendar month. 10 CFR 35.634(e) requires, in part, that a licensee have the teletherapy physicist review the results of each spot check within 15 days.

Contrary to the above, between April 1989 and April 3, 1990, the licensee did not have the teletherapy physicist (Radiation Safety Officer) review the results of each spot check either within the 15 days required or at anytime during the 12-month period from April 1989 to the date of the inspection.

B. 10 CFR 35.632(a)(3) and (f) require, in part, that a licensee authorized to use a teletherapy unit for medical use perform full calibration measurements at intervals not to exceed one year and that these full calibration measurements be performed by the licensee's teletherapy physicist.

License Condition 11.B of License No. 52–01946–09 specifies the licensee's designated teletherapy physicists by name.

Contrary to the above, between April 1, 1987 and April 3, 1990 the designated teletherapy physicist did not perform the annual full calibration measurements of the teletherapy system documented for June 9, 1987, June 9, 1988 and June 9, 1989. Instead, these annual full calibrations were performed by an individual not meeting the qualifications of a teletherapy physicist and not designated by License No. 52–01946–09 to perform such measurements.

C. 10 CFR 35.59(b)(2) requires, in part, that a licensee in possession of any sealed sources test the sources for leakage at intervals not to exceed six months or at other intervals approved by the Commission and described in the label or brouchure that accompanies the sealed sources.

Contrary to the above, between June 1989 and April 3, 1990, an interval exceeding six months, the licensee did not test the teletherapy system sealed source in its possession for leakage and no other intervals for testing this source had been approved by the Commission.

These violations have been categorized in the aggregate as a Severity Level III problem (Supplements IV and VI).

Civil Penalty—$6,250 (assessed $1,500 for Violation A, $4,250 for Violation B and $500 for Violation C).

Summary of Licensee's Request for Mitigation

The licensee requests that the civil penalties be decreased or eliminated due to the fact that the alleged violations were corrected, and the licensee has taken the necessary steps to avoid future violations. The licensee asks that NRC's evaluation consider that the University is a non-profit organization dedicated to higher education and, in particular, the Medical Sciences Campus provides services for medically indigent patients who would otherwise not receive the services anywhere else in Puerto Rico.

NRC Evaluation of Licensee's Request for Mitigation

The correction of identified violations is always required and is not a basis for mitigation of a civil penalty unless the action taken is prompt and comprehensive. As stated in the NRC's July 19, 1990 letter, neither escalation nor mitigation of the base civil penalty for the violations in Section I or II of the Notice was warranted for the licensee's corrective action to prevent recurrence because, although it was considered comprehensive, it was not prompt.

The NRC acknowledges that the University is a non-profit organization that provides essential services for medically indigent patients. As stated in the NRC Enforcement Policy, it is not the NRC's intention that the economic impact of a civil penalty be such that it puts a licensee out of business or adversely affects a licensee's ability to safely conduct licensed activities. In fact, in developing the base civil penalties in Table I.A, consideration was given to the fact that some licensees, such as the University, are non-profit organizations.

NRC Conclusion

The staff concludes that the violations occurred as stated and that the licensee has not provided a sufficient basis for mitigation of the proposed civil penalties. Consequently the proposed civil penalties of $12,500 should be imposed.

[FR Doc. 90–25784 Filed 10–31–90; 8:45 am]

BILLING CODE 7590–01–M

OVERSIGHT BOARD

Oversight Board Meeting

AGENCY: Oversight Board.

ACTION: Meeting.

DATES: Thursday, November 15, 1990, 4 p.m.

ADDRESSES: Office of Personnel Management Auditorium, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Felisa M. Neuringer, Press Officer, Office of Public Affairs, 1777 F Street NW., Washington, DC 20232, (202) 786–9672.

SUPPLEMENTARY INFORMATION: Discussion Agenda:

*Report on the Resolution Trust Corporation's (RTC Affordable Housing Disposition Program.

*Other agenda items to be determined.

Closed session to follow.

Dated: October 30, 1990.

Felisa M. Neuringer,

Press Officer, Office of Public Affairs.

[FR Doc. 90–25938 Filed 10–31–90; 8:45 am]

BILLING CODE 2222–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for Approval of a Collection of Information Under the Paperwork Reduction Act

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested that the Office of Management and Budget approve a new collection of information under the Paperwork Reduction Act. The purpose of this collection of information, which would apply only to companies maintaining single-employer pension plans with large aggregate underfunding, is to verify or correct data presented by PBGC showing the amount of each employer's plans' underfunding (including underfunding for benefits guaranteed by PBGC). This information is used by PBGC to publish annually a list of the 50 companies with the largest pension plan underfunding (aggregating all of a company's underfunded plans), in order to educate the public about major plan underfunding of benefits guaranteed by PBGC. The PBCG has requested expedited review by OMB pursuant to 5 CFR 1320.18, and, therefore, PBGC is publishing with this notice the two versions of the survey letter and response form comprising this new collection of information. The effect of this notice is to advise the public of PBGC's request for OMB approval of, and to solicit public comment on, this collection of information.

DATES: Comments must be submitted on or before November 15, 1990.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 725 17th Street, NW., room 3208, Washington, DC 20503, with a copy to the Pension Benefit Guaranty Corporation, Office of the General Counsel (Code 22500), 2020 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Senor Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: In order to educate the public about major pension plan underfunding of benefits guaranteed by the Pension Benefit Guaranty Corporation (PBGC), the PBGC decided to publish annually a list of the 50 companies with the largest aggregate pension plan underfunding, showing for each company the total underfunding in all of the company's underfunded plans ("Top 50 List"). The PBGC published the first such list in May 1990.

To develop the first Top 50 List, PBGC used data from corporate Annual Reports prepared by plan sponsors and adjusted the data to make it uniform for all companies and to show benefit liabilities at the interest rates used by PBGC to value benefits in underfunded terminated plans. PBGC also used a standard adjustment factor to estimate the portion of vested benefits that are guaranteed by PBGC.

In order to make future Top 50 Lists as accurate as possible, the PBGC plans to solicit the necessary plan funding data from companies that, based on data from their Annual Reports or Form 5500 filings, appear to have large (greater than $25 million) aggregate pension plan underfunding. Specifically, PBGC will send each company a letter informing the company of the data the PBGC has, and asking the firm to verify or correct the data and to provide additional relevant information (*e.g.*, plan mortality assumption used to value benefits). A simple form will be included for the company's response. The information gathered through this survey will be used by the PBGC to determine which companies to include in each year's Top 50 List and the amount of pension plan underfunding to be reported for each company. PBGC will also use the data to identify plans for monitoring because of possible risk to the insurance program.

As noted above, this collection of information will be directed to firms that the PBGC believes maintain plans with more than $25 million in underfunding. (At present, this would cover 110 companies.) Response to this survey is voluntary. This survey will be conducted annually. The PBGC estimates that, assuming all companies reply, the total annual burden of responsing to the survey will be 385 hours.

The PBGC wants to initiate this collection of information as soon as possible in order to be able to publish a new Top 50 List that will update and correct any inaccuracies in the May list. To this end, the PBGC is requesting expedited OMB review of this new collection of information, pursuant to 5 CFR 1320.18(g). As part of the expedited review process, the PBGC is hereby publishing for public comment the two versions of the survey letter and response form that the PBGC plans to use for this collection of information.

Issued at Washington, DC, this 26th day of October, 1990.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

Version #1—To Be Used If Data Taken From Annual Report

Dear _____: In May 1990, the Pension Benefit Guaranty Corporation released a list of the 50 companies that sponsor underfunded pension plans insured by the Pension Benefit Guaranty Corporation that are in aggregate the largest underfunded. That news release was based on information obtained from calendar year 1988 Annual Reports as recorded by Standard and Poor's Compustat Services Inc.'s PC Plus. A copy of that news release is enclosed for your convenience. In developing the Top 50 list, we eliminated non-U.S. based plans and non-qualified (e.g., "Top Hat") plans that we could readily identify from annual report footnotes. Financial Accounting Standard #87 (FASB 87), however, does not require the disclosure of the information necessary to determine whether a plan is insured by the Pension Benefit Guaranty Corporation. Further, FASB 87 does not require disclosure of all the information necessary to allow the values reported in the footnotes to be adjusted to a common interest rate and mortality table, nor does it indicate what portion of vested benefits are guaranteed by the PBGC.

The Pension Benefit Guaranty Corporation intends to issue an updated version of the list this autumn. In developing this year' list, we are reviewing information obtained from corporate annual reports for fiscal years ending from January 1989 through December 1989, and 1987 Form 5500 information. Based on this information, we have determined that your firm may have enough unfunded pension liabilities (when adjusted to a common interest rate and mortality rate) that your firm *may* be included on the list.

More specifically, for your firm we have obtained the information listed below for plans whose accumulated benefits exceed assets as reported in the annual report for the fiscal year ending _____. The figures exclude obligations and assets of non-U.S. based and/or non-covered plans that could be identified from the footnotes to the annual report.

Projected Benefit Obligations.	$_____
Accumulated Benefit Obligations.	$_____
Vested Benefit Obligations	$_____
Plan Assets	$_____
Projected Benefit Obligations in excess of Plan Assets.	$_____
Valuation Date	mm/dd/yy
Interest Rate	_____%

Based on the methodology we used last year, we would report the following figures for your firm.

Adjusted Guaranteed Benefits.	$_____
Assets	$_____
Adjusted Unfunded Guaranteed Liability.	$_____
Funding Ratio	_____%

We would like you to take the opportunity to complete the attached form so we can report your firm's adjusted unfunded guaranteed liability as accurately as possible in the event your firm is included in our Top 50 list. You may if you wish also provide us with an estimate of guaranteed benefits, especially if the benefits that the PBGC would have guaranteed as of the date of valuation would be significantly less than the vested benefits. If you choose to do so, please value them on the same basis (i.e., interest, mortality table) as you used for vested benefits.

If you would like to provide us with this information, please do so within two weeks of the date of this letter. If we do not hear from you, we will base our release on the above information, unless better information becomes available to us.

We will inform you immediately prior to publication if after we analyze this information, it appears your company will be on the list. Please provide us with the name, address, telephone number, and fax number of the person you would like us to contact.

If you have any specific questions, you may contact John Hirschmann at 202-778-8817.

Sincerely,

James B. Lockhart III,

Executive Director.

Attachment

FORM A.—FORM TO GO TO FIRMS BEING QUERIED BASED ON ANNUAL REPORT INFORMATION

[Approved OMB 1212-00xx; Expires 00/00/00]

	PBGC covered plans					Non PBGC covered	Total
Plan Name							
EIN						xxxxxxx	xxxxxxx
Plan Number							
Vested Benefits							
Guaranteed Benefits (optional)							
Plan Assets at Market Value							
Interest Rate Used							
Mortality Table Used							

FORM A.—FORM TO GO TO FIRMS BEING QUERIED BASED ON ANNUAL REPORT INFORMATION—Continued

[Approved OMB 1212-00xx; Expires 00/00/00]

	PBGC covered plans					Non PBGC covered	Total

Person to Contact:

Title:

Phone Number:

Instructions: Include as many columns as necessary. All non-PBGC covered plans may be included in one column. If necessary, use additional sheets for PBGC covered plans.

Version #2—To Be Used If Information Is Taken From 1987 Form 5500's

Dear _____: In May 1990, the Pension Benefit Guaranty Corporation released a list of the 50 companies that sponsor underfunded pension plans insured by the Pension Benefit Guaranty Corporation that are in aggregate the largest underfunded. That news release was based on information obtained from calendar year 1988 Annual Reports as recorded by Standard and Poor's Compustat Services Inc.'s PC Plus. A copy of that news release is enclosed for your convenience. In developing the Top 50 list, we eliminated non-U.S. based plans and non-qualified (e.g., "Top-Hat") plans that we could readily identify from the footnotes shown in PC Plus. Financial Accounting Standard #87 (FASB 87), however, does not require the release of the information necessary to determine whether a plan is insured by the Pension Benefit Guaranty Corporation. Further, FASB 87 does not require disclosure of all the information necessary to allow the values reported in the footnote to be adjusted to a common interest rate and mortality table, nor does it indicate what portion of vested benefits would be guaranteed by the PBGC.

The Pension Benefit Guaranty Corporation intends to issue an updated version of the list this autumn. In developing this year's list, we are reviewing information obtained from corporate annual reports for fiscal years ending from January 1989 through December 1989 and from 1987 Form 5500 information. Based on this information, we have determined that your firm may have enough unfunded pension liabilities (when adjusted to a common interest rate and mortality rate) that your firm *may* be concluded on the list.

For your firm, the following information was obtained from the 1987 Form 5500 filings for the following plans.

	Plan #1	Plan #2	Plan #3	Plan #4
Plan Name				
EIN				
PIN				
(Schedule B Info):				
Plan Assets				
Line 6c				
Retired Liabilities:				
Vested				
Line 6d(i)				
Other Liabilities:				
Vested				
Line 6d(ii)				
Interest Rate Used for:				
Items 6d & 6c				
Line 12c				

Based on the methodology we used last year, we would report the following figures for your firm.

Adjusted Guaranteed Benefits.	$_____
Assets	$_____
Adjusted Unfunded Guaranteed Liabilities.	$_____
Funding Ratio	_____%

Since this information was prepared as of 1987, we would like to be able to present the information as of a more current date. Unfortunately, while we realize you have already filed your Form 5500's for the plan year commencing January 1, 1989 [_____ 1988 for non-calendar year plans], that information will not be available to us for quite some time. Therefore, we would like to give you the opportunity to provide the information to us so that it can be reflected in the autumn update. You can do so either by completing the enclosed form or sending us copies of the appropriate Schedule B's from your Form 5500 filings. You should supply information for all plans insured by the PBGC that are underfunded for vested benefits.

You may if you wish also provide us with an estimate of guaranteed benefits, especially if you believe that the benefits that the PBGC would have guaranteed as of the date of valuation would be significantly less than the vested benefits. If you choose to do so, please value them on the same basis (i.e., interest, mortality table) as you used for vested benefits.

Please send us your information within two weeks of the date of this letter. If we do not hear from you, we will base our release on the above information, unless better information becomes available to us.

We will inform you immediately prior to publication if it appears your company will be on the Top 50 list. Please provide us with the name, address, telephone number, and fax number of the person you would like us to contact.

If you have any specific questions, you may contact John Hirschmann at 202-778-8817.

Sincerely,

James B. Lockhart III

Executive Director

Attachment

FORM B.—FIRMS BEING QUERIED BASED ON 1987 FORM 5500 INFORMATION

[Approved OMB 1212-OOXX; Expires 00/00/00]

	Plan #1	Plan #2	Plan #3	Plan #4
Plan Name				
EIN				
Plan Number				
(Schedule B Info):				
Plan Assets				
Line 6c				
Retired Liabilities:				
Vested				
Line 6d(i)				
Other Liabilities:				
Vested				

FORM B.—FIRMS BEING QUERIED BASED ON 1987 FORM 5500 INFORMATION—Continued

[Approved OMB 1212-OOXX; Expires 00/00/00]

	Plan #1	Plan #2	Plan #3	Plan #4
Line 6d(ii)				
Guaranteed Benefits (Optional)				
Interest Rate Used for:				
Items 6d & 6c				
Line 12c				
Mortality Table Code Used for				
Items 6d & 6e				
Line 12 b(i) (Male)				
Line 12b(ii) (Male)				
Person to Contact:				
Title:				
Phone Number:				

Instructions: Include as many columns as necessary to include all PBGC covered plans. If necessary, use additional sheets.

[FR Doc. 90-25881 Filed 10-31-90; 8:45 am]
BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28583; File No. SR-NASD-89-25]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment to Proposed Rule Change of National Association of Securities Dealers, Inc., Relating to the Automated Confirmation Transaction Service

I. Introduction

On May 31, 1989, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-NASD-89-25), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and rule 19b-4 thereunder, and Amendment Nos. 1, 2, 3, and 4 thereto on June 20, 1989, September 1, 1989, March 22, 1990, and June 6, 1990 respectively, to create new section 2551 entitled "Rules of Practice and Procedures for the Automated Confirmation Transaction Service ("ACT Rules"). ACT is intended to facilitate the comparison and clearing of inter-dealer over-the-counter ("OTC") equity trades by requiring input of trade reports within specific time frames, comparing that trade data, and submitting matched, "locked-in" trades to clearing.

Notice of the original filing and Amendment No. 1 was given in Securities Exchange Act Release No. 26991 (June 29, 1989), 54 FR 28531, and the Commission received seven comment letters in response thereto. In response to those comment letters, the NASD, in Amendment No. 2, separated the ACT Rules into rules applicable to self-clearing firms only, and rules applicable to clearing firms. The Commission provided notice of Amendment No. 2 and granted partial accelerated approval to those ACT Rules applicable to self-clearing firms in Securities Exchange Act Release No. 27229 (September 7, 1989), 54 FR 38484. The Commission did not receive comments on this Amendment. Notice of Amendment No. 3 was given in Securities Exchange Act Release No. 27977 (May 2, 1990), 55 FR 19407. The Commission also did not receive comments on that Amendment. Amendment No. 4 modifies the time frames for reporting and accepting trades within ACT.[1] This order approves the proposal.

II. Background

In its filing with the Commission, the NASD stated that the back office problems experienced by the securities industry in comparing trades and submitting trade reports to clearing agencies following the October 1987 market break highlighted the need for same-day, automated comparison procedures. The rate of uncompared trades in the OTC market rose from an average of 5% to 12% in the month of October, 1987, and NASDAQ and the exchanges closed their markets two hours earlier from October 23 through October 30, 1987, to allow broker-dealers time to complete back office work. The Presidential Task Force on Market Mechanisms, the Commission staff, and the Working Group on Financial Markets, as part of their extensive analyses of the causes and effects of the October 1987 market break, recognized the potential dangers in procedures for comparing and clearing trades, and focused on measures necessary to expedite the process.[2] The NASD noted that the Commission, in its *Report on the 1987 Market Break*, stated that "while the securities industry deserves praise for its fast resolution of an unprecedented number of uncompared trades, the Division staff believes that the (New York Stock Exchange) and the NASD should consider accelerating their efforts * * * to generate same day compared trades, thereby enabling members to know their positions and market exposure before trading commences the next day."

The NASD stated that it developed the ACT system as the primary vehicle for compressing the comparison cycle, thereby reducing the inherent risks of market fluctuations for all OTC inter-dealer trades that are not already subject to system comparison. The NASD maintained that the primary feature of the ACT system is its ability to capture trade information close in time to execution and lock in the details of the trade for submission to clearing.

[1] As amended, the time frames for participants required to submit trade reports into ACT are 90 seconds after execution for reported securities (*i.e.*, NASDAQ/National Market System securities) and 15 minutes after execution for non-reported securities (*i.e.*, NASDAQ-only securities). On the other hand, parties that are not required to submit trade reports, but are permitted to browse through the files, must accept or cancel reports within 20 minutes after execution.

The Commission is publishing notice of and granting accelerated approval to amendment No. 4 in this Release.

[2] *See Report of the Presidential Task Force on Market Mechanisms*, Study VI (January, 1988); Division of Market Regulation, *The October 1987 Market Break*, Chapter 10 (February, 1988); and *Interim Report of the Working Group on Financial Markets*, Appendix D (May 1988).

III. Description

In its filing with the Commission, the NASD stated that the ACT service is designed to facilitate comparison and clearing of inter-dealer OTC equity trades by requiring input of trade reports within specific time frames, comparing that trade data, and submitting matched, locked-in trades to clearing. Participation in ACT will be mandatory for all NASD broker-dealers that are clearing or comparison members of a clearing agency registered pursuant to section 17A of the Act, or that have a clearing or comparison agreement with such a firm. ACT has three primary features: (1) Match processing that will compare trade information and submit locked-in trades for regular way settlement to clearing on a trade date or next day ("T+1") basis; (2) trade reporting for transactions in NMS securities that must be reported pursuant to the NMS Securities Designation Plan with Respect to NASDAQ Securities; and (3) risk management features that will provde firms with a centralized, automated environment for assessment of market exposure during and after the trading day, and that will permit clearing firms to monitor and respond to the ongoing trading activities of their correspondents.

The NASD filed Amendment No. 1 on June 20, 1989, to clarify the trade input responsibilities of ACT participants, and to amend Schedule D and the Small Order Execution System ("SOES") Rules by eliminating the 20-day suspension from SOES and NASDAQ to accommodate ACT participant and NASDAQ/NMS market makers who lose their clearing arrangements and thus are removed from ACT and from NASDAQ-NMS. That Amendment permits market makers that have withdrawn from NASDAQ-NMS because of loss of a clearing arrangement to reenter NASDAQ, SOES and ACT after a clearing arrangement is reestablished.

In order to expedite implementation of the ACT system, the NASD filed Amendment No. 2 on September 1, 1989, which separated the ACT Rules into rules applicable only to self-clearing firms, and rules applicable to clearing firms. As noted above, the Commission granted partial accelerated approval to those rules applicable only to self-clearing firms. That Amendment also modified two of the risk management features—the "Net Trade Threshold" and the "Pre-Alert Threshold"—in response to concerns expressed by the clearing firms.

Initially, ACT's risk management features contained a net trade threshold calculation and provided that the ACT system would offset the value of purchases and sales during the trading day. ACT would aggregate the clearing firms' exposure into one net amount. The clearing firms were concerned about this netting feature, and engaged in many discussions with the NASD about a viable resolution of this issue. In response to the clearing firms' concerns, the NASD filed Amendment No. 3 on March 22, 1990, which created a new section in the ACT Rules to include a "super cap" calculation for risk management purposes. That Amendment also established two gross dollar thresholds for each correspondent firm.

The super cap was designed to enhance notice to ACT participants that certain trades may not compare, and to place a limit on exposure to large trades for firms that clear for correspondent broker-dealers. The super cap calculation is derived from the amount that a clearing firm establishes it would be willing to clear in a single day for its correspondent executing brokers, *i.e.*, the daily gross threshold. If during the trading day, the correspondent firm exceeds twice the daily gross threshold for purchases or sales, with a minimum of $1,000,000, the super cap would be penetrated. When that occurs, ACT will produce a notice to ACT participants that the correspondent has exceeded the cap. Only trades compared by ACT on trade date would accumulate into the super cap calculation, thereby minimizing the chance that a one-sided erroneous or malicious trade entry could cause the super cap to be penetrated.

A. ACT Processing

ACT-processed transactions will be submitted to the National Securities Clearing Corporation ("NSCC") as locked-in trades on trade date or T+1. ACT is designed as an on-line, end-of-day matching system that will allow two participants, usually a market maker and an order entry firm, to lock-in details of a trade within minutes of the transaction. Once the two sides have negotiated an OTC transaction, the market maker participating in ACT will be obligated to inpat the details of the trade, including security identification, unit price, quantity, buy or sell, and contra side—both executing broker and clearing broker, within specific time frames depending on the security and the method of accessing the system.[3]

Transactions in OTC reportable securities, *i.e.*, round lots of NMS securities, must be reported to ACT within 90 seconds after execution, and the ACT system will forward the reports to the NMS high speed tape, the National Trade Reporting System. Firms that access the ACT system through computer interface must report all trades within 90 seconds after execution. Firms that report to ACT through terminal entry, either Harris, Harris emulation or NASDAQ Workstation, must report NMS trades to ACT within 90 seconds, if acting as a selling market maker, and all other trades within 6.5 minutes.

The order entry side, if a terminal entry firm, also may input details of the trade, or utilize the Browse feature of the system and accept or decline the trade as reported, within the 6.5 minute time frame.

Locked-in trades must be guaranteed to settle by the two parties to the transaction, except that clearing firms that allow their names to be given up by executing correspondents also must guarantee the trades of those correspondents. The ACT system utilizes three methods to lock-in trades on trade date: trade-by-trade match, trade acceptance, or aggregate volume match. As both sides of the trade are reported to ACT, or one side is reported and accepted by the other, the ACT system performs on-line match processing, and if all elements match or the trade report has been accepted by the other side, the trade will be locked-in and submitted as such to the NSCC at the end of the day. In addition to matched and accepted trades, ACT processing will run a batch-type comparison at the end of each day that will aggregate volume of previously unmatched trade reports to effect a match. For example, if a market maker enters reports of two trades, 300 shares and 400 shares of the same stock, same price and same contra side, but the order entry side aggregates the volume and reports one 700-share trade, the trades would not match in the trade-by-trade comparison process because the "number of shares" field in the trade reports are not identical. At the end of the day, however, the ACT aggregate volume match cycle will compare the remaining unmatched trade reports, select those in which all the other trade data fields match, aggregate the share volume in the reports, lock those trades in and submit them in clearing.

[3] For ease of description, the Commission has used trades between a market maker and an order entry firm to illustrate how the system would be used. ACT can be used, however, for trades between any two NASD members.

Not all trade reports will be processed and locked-in by ACT on trade date. If a trade report has been declined by the order entry side on trade date, the ACT system will delete the report at the end of the day and the trade report will not be sent to clearing. A participant may decline a trade because there is a mistake in the terms reported, and may enter his version of the transaction into ACT. The market maker also has the opportunity to correct the error that caused the trade to be declined. In addition, any trade report that is "open," *i.e.*, unmatched and not declined at the end of trade date processing, will be carried over to T+1 for further processing.

ACT matching continues on T+1: trade date reports submitted on T+1 will be considered "as-of" trades and will be accepted for matching. Any other corrections or adjustments to trade date input by the entering party will be accepted from either side of the transaction. At the end of the T+1 cycle, declined trades and open "as-of" trades will be removed from the system and not forwarded to NSCC.

ACT T+1 trade acceptance and end-of-day-matching procedures are similar to those described above for trade date, with one notable exception. Those trade date reports that remain open at the end of the T+1 cycle will automatically be treated as locked-in trades and sent as such to NSCC. For example, two ACT participants negotiate a trade for 500 shares of XYZ stock at 20½. The market maker reports the transaction to ACT as 500 shares at 20½; the order entry side, however, reports the trade to ACT as 500 shares at 20⅝. Because match-by-match processing will not lock-in this trade, it will appear in each party's ACT trade file as an open report on trade date and on T+1. If neither the market maker nor the order entry side reviews its open trades on the ACT display and accepts or corrects the open trades, at the end of T+1 processing both trades will be treated as locked-in and both participants will be obligated to clear and settle 1000 shares of XYZ stock. Further, in the example noted above in which one side inputs two trade reports, but the other side aggregates the reports, if one side has input an erroneous number, the system will match and aggregate to the extent possible and display any remaining shares to each side as an open report. Take for example a situation in which there were two trades for 300 and 400 shares, but the market maker erroneously submits trade reports for 500 and 400 shares, for a total of 900 shares, into the system. The order entry side, believing the trades to be for 300 and 400 shares, appropriately aggregates the reports and inputs a trade report of 700 shares into ACT. The end of day aggregate volume process will match and lock-in 700 shares, but the ACT system will now display the remaining 200 shares to each participant as an open trade. If neither party declines this report, at the end of T+1, each will be obligated to accept and clear the 200-share trade.

B. Tape Reporting and Risk Management

The ACT Rules will require participants to report tape-reportable NMS trades to the system within 90 seconds after execution, and the system will transmit the appropriate trade reports, *i.e.*, internalized and inter-dealer NMS trades of round lots, to the NASDAQ/NMS high speed tape. The ACT Rules in no way abolish or abrogate any of the obligations of market makers or reporting members as defined in Schedule D, Part XII, Reporting Transactions in NASDAQ National Market System Designated Securities, except to the extent that participants in ACT will not be obligated to report NMS transactions to two systems. Transactions not reported within 90 seconds after execution shall be reported as late, and the ACT system will transmit the late reports to the high speed tape. In addition, although the NMS reporting rules permit aggregation of trade reports in certain circumstances,[4] the ACT system can only match aggregated reports of transactions with the same contra party. Therefore, if a market maker wishes to aggregate all reports of orders received prior to the opening for tape reporting purposes, he would later be required to amend the reports and distinguish the contra sides for ACT purposes.

The ACT system offers several risk management features designed to enhance firms' back office operations. First, the ACT system has the capacity to compute the dollar value of each trade report entered, thus enabling firms to assess their market exposure during the trading day, if the firm chooses to access ACT through computer interface. Second, even without computer interface, ACT participants will be able to review the details of each trade entered into the system naming their firm as a party to the trade, so that the day's trading is available for review and analysis. Third, clearing firms will, for the first time through ACT, be able to assess dynamically their ultimate market exposure by having the ability to monitor their correspondents' positions, both intra-day and after trading hours.

Further, to be responsive to clearing firms' concerns about immediate liability for correspondent activity in a locked-in trading environment, the Association has developed numerous facilities that will provide them with enhanced risk management capabilities:

(1) Clearing firms will be able to establish daily threshold dollar amounts for each correspondent's trading activity;

(2) The system will alert clearing firms when a correspondent approaches (at 70%) and reaches the daily threshold;

(3) The system will provide clearing firms with intra-day access to correspondents' transactions as well as an end-of-day recap; and

(4) The system will provide clearing firms the ability to remove themselves from a clearing arrangement at any time.

In addition to these risk management applications, the Association has developed a "single trade limit" feature that establishes a 15-minute review period for clearing firms prior to becoming obligated to clear a trade of $1,000,000 or more executed by one of its correspondents. This feature allows a clearing firm 15 minutes to decide whether to accept or decline clearing obligations for a large trade and was designed as an additional risk management tool for clearing firms on large locked-in trades. The Association believes that the risk management features of the ACT system preserve the integrity of a "floor-derived," same-day comparison system, while at the same time offering protections and opportunities for clearing firms to perform risk management analyses unsurpassed in today's marketplace.

C. Implementation of ACT

1. Eligible Securities

Securities eligible for inclusion in the ACT system will be phased in over a long range implementation schedule.[5] Phase 1 will include all NASDAQ securities, NMS and NASDAQ-only, brought on to the system alphabetically as operational considerations permit.[6] Phase 2 will add listed securities traded in the third market. Planning for phases 3 and 4 for ACT-eligible securities include, respectively, non-NASDAQ stocks cleared by a registered clearing agency and all other OTC equity securities, for comparison purposes

[4] *See* Schedule D, part XII, section 2(f).

[5] Self-clearing broker-dealers with NASDAQ compatible equipment, both terminal-based and computer interface, have begun participating and, as of February 2, 1990, all NASDAQ securities have been eligible for inclusion in ACT processing.

[6] Phase I securities have been implemented.

only.[7] During all phases of ACT implementation, the securities available for actual inclusion in the system will be added on a gradual basis, consistent with the system's operational considerations. The Association has no specific timetable for phasing in eligible securities, but will proceed at a pace designed to accommodate the participants and the system's capabilities, and will update the Division of Market Regulation staff periodically as to the status of each phase of implementation.

2. Eligible Participants

Although participation in ACT is mandatory for all NASD members that are members of a registered clearing agency or that have a clearing arrangement with such a member, the system has been designed to support firms that may not be immediately capable of participating in ACT when it becomes operational or that may, from time to time, experience operational difficulties. These various stages of readiness are identified in the system as "availability states":

(1) Not Ready, where a firm is not yet an ACT Participant (e.g., firms that intend to access ACT through computer interface, but whose programming may not be completed);

(2) Unavailable, where an ACT Participant is temporarily unable to participate due to technical malfunctions; and

(3) Available, where the firm is an ACT Participant and all ACT rules and procedures apply.

A firm's ability to interact with the system will determine the scope of its participation. For example, a Not Ready firm, while it is unable to enter trade reports into ACT, may be able to view the trades entered by contra parties naming it as a party to the trade, but the system will not lock-in any such trade. Instead, ACT will submit a one-sided trade report to NSCC at the end of trade date processing on behalf of the firm that made the ACT entry, and NSCC will handle that trade report as it does today, without the Association's identifying it as a locked-in ACT trade. A firm that is "Unavailable" for ACT processing will also be protected from automatic processing; at the end of the T+1 cycle, the open trades entered against an Unavailable firm will not be locked-in, as described above, but will be sent to NSCC as one-sided trade reports.[8] "Available" firms will of course be able to participate in all of the ACT system's features and will be obligated to abide by the rules and procedures of the system.

3. Interaction With Other NASD Systems

As an independent system, ACT was designed initially to compare trade reports and locked-in trades for submission to clearing. Because the membership and the Board decided to make participation in ACT mandatory for firms with clearing arrangements, and because the tape reporting and risk management applications were integrated into the system, ACT necessarily interacts with many other automated systems. For example, all SOES market makers in NMS securities are required to maintain a clearing arrangement with a registered clearing agency and may be penalized with a 20-day suspension for an unexcused withdrawal from SOES. But, if a market maker loses its clearing arrangement because of some activity in ACT, it will be removed from the ACT system and necessarily from NASDAQ/NMS until it establishes another clearing arrangement, the market maker would face the 20-day suspension because of the SOES Rules. The Uniform Practice Committee recommended, and the Board approved, an exception to the 20-day SOES penalty so that a market maker that loses its clearing arrangement in ACT would not be penalized in SOES. The ACT Rules and the amendment to the SOES Rules would therefore allow a market maker to be reinstated in SOES when a clearing arrangement has been reestablished.[9]

One of the back office features available through ACT is the maintenance of a "Net-Amount Traded" file for each executing broker. Every applicable non-systematized inter-dealer OTC equity transaction will be reported to ACT and the system has the capacity to track each firm's activity, thereby offering an on-line risk management monitoring capability as well as offering clearing firms an overview of their correspondents' market activity at any given moment. In order to be truly effective for clearing firms, however, correspondent trades that are occurring in SOES and OCT and in the MSI's Advanced Computerized Execution System ("ACES"), are planned to be interfaced with the ACT system software so that those trades will also be reflected in the firm's "Net-Amount Traded" balances.

D. System Capacity

At its April 1989 meeting, the Board of Directors of Market Services Inc., the NASD subsidiary that operates ACT, authorized the purchase of 24 Tandem VLX processors and associated processing equipment to support the traffic that will be generated by the ACT system. The ACT system operations will use the Association's processing centers in Trumbull, Connecticut and Rockville, Maryland in a shared-load processing environment where the front-end and validation processing in Connecticut will be connected on-line to the back-end application processing in Maryland. Each site will be configured with sufficient hardware to provide disaster recovery back-up in the event the other site becomes inoperable. In the load-sharing mode, the operations and software support staff at both sites will be processing parts of the on-line operations on a daily basis, thus providing the discipline and experience required to support the ACT system and react to effect a complete switch-over, should it ever be necessary. The NASD's technical staff has reviewed and analyzed projected ACT traffic patterns and has represented that the processing equipment being purchased and installed to operate the ACT system will be sufficient to operate the system effectively.[10] As of the date of this order, the NASD had not completed its stress testing of the ACT system. Although the Commission, by this order, has approved the proposed rule change, the NASD is not permitted to implement the new ACT system unless and until it (1) Successfully completes its stress tests and (2) has provided the staff with representations on those tests.

IV. Comments

The Commission received eight comment letters in response to its notice of filing of the original proposal and Amendment No. 1.[11] As stated earlier,

[7] Before implementing each Phase, the NASD would have to submit a proposed rule change for the Commission's review.

[8] A firm that is Unavailable must call the NASD to report that it is unable to use ACT. The NASD is able to verify that the firm is, in fact, Unavailable by sending messages to the firm and having the system reject them as not having been received. In addition, if the NASD were to find that a firm was inappropriately designating itself as Unavailable, the NASD would have the authority to bring a disciplinary action against the firm for a violation of the ACT rules.

[9] The amendment to the SOES rules was approved by the Commission when it granted partial accelerated approval to the ACT Rules applicable to self-clearing firms.

[10] *See* letter from Robert N. Riess, Senior Vice President, NASD, to Alden S. Adkins, Chief, Office of Automation and International Markets, dated September 13, 1990.

[11] *See* letters to Jonathan G. Katz Secretary, SEC, from the following: Eugene E. Eilbacher, Vice President, Broadcourt Capital Corporation, dated August 7, 1990; Richard Brueckner, Chairman, Clearing Firms Committee, Securities Industry Association, dated August 8, 1990; Robert C. Harrison, General Counsel, Dominick & Dominick,

Continued

no comments were received in response to the notices for Amendments No. 2 and 3, which were submitted in response to the comments received on the proposal and which answered the commentators concerns.

Two of the seven commentators supported the NASD's proposal. The Security Traders Association ("STA") stated that it believes the proposal is consistent with the aim of the Group of Thirty in recommending immediate action in the international arena to standardize clearance and settlement procedures. STA also believes that the "fail safe" mechanisms of the proposal appear to provide adequate protection against the concerns expressed by other commentators regarding the risk management features.

Southwest Securities, Inc. ("Southwest") also stated that it supports the proposed ACT Rules and believes that these Rules will give the clearing broker-dealer more protection and control, and will enable clearing firms to monitor transactions entered into the system by introducing firms on an ongoing basis.

The Securities Industry Association ("SIA") stated in its comment letter that it "agrees in principle" with the NASD's statement of purpose in proposing the ACT Rules, *i.e.*, to facilitate comparison and clearing of inter-dealer OTC equity trades. The SIA also stated that it agrees that the proposed ACT Rules will "further systematize and accelerate the matching of OTC trade data and, for the first time, will lock in the contracting broker-dealers to the terms of a transaction within minutes of its execution." The SIA stated that it believes, however, that the ACT Rules go beyond the NASD's statement of purpose by requiring that clearing agents guarantee all trades by their introducing firms without any prior opportunity to review the transactions. SIA therefore recommended that the guarantee feature be rejected or, alternatively, substantially modified, and stated that its suggested modifications (discussed below) would "substantially ameliorate the potential negative impact of the proposed ACT Rules."

Specifically, SIA recommended that the guarantee feature of ACT be modified and enhanced to provide for: (1) Separate daily long and short thresholds; and (2) automatic "no-match" deletion, in whole or in part, whenever and to the extent that either of those thresholds is exceeded, in the aggregate, with the option to match and clear all "above limit" trades on an "as of" basis pursuant to the agreement of the clearing firm on T+1. SIA stated that adoption of these two modifications would "make ACT more equitable for both introducing and clearing firms and, at the same time, would provide the trading community with realistic guarantees in recognition of its need for certainty and reliability in OTC transactions."

Dominick & Dominick, Q & R Clearing Corp., Cowen & Company, and Bear Stearns generally agreed with the SIA's position, *i.e.*, they objected generally to the guarantee feature of the proposed ACT Rules and believed that clearing firms should not be required to guarantee all transactions executed by their correspondents without the ability to review those transactions in advance. Q & R believes that modification of the guarantee aspect of the ACT Rules would be a "fair and equitable one for the industry."

V. Discussion

The Commission has determined to approve the NASD's proposed rule change because it believes that implementation of the ACT system is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires, among other things, that the NASD's rulemaking initiatives be designed to foster cooperation and coordination with persons engaged in clearing, settling and facilitating transactions in securities.

As stated earlier, participation in ACT by self-clearing firms was approved by the Commission on September 7, 1989.[12] Since that time, the NASD and representatives of the clearing firms negotiated the implementation of the ACT Rules for firms that clear for other broker-dealers (correspondent executing brokers).

After a series of lengthy negotiations among the SIA, the NASD and the Commission staff, the NASD and the clearing firms reached a viable compromise on the ACT system. As a result of the NASD's responsiveness to the clearing firms concerns, the NASD modified two of the risk management features in response to the concerns expressed by representatives of the clearing firms.[13] First, the "Net Trade Threshold" was changed to a "Gross Dollar Threshold." This modification will allow clearing firms to establish, on an inter-day or intra-day basis, a gross dollar amount that they would be willing to clear for each executing correspondent.

The NASD's second modification changed the pre-alert threshold from 80% to 70%. The NASD made this change in response to the clearing firms' concerns about liability for correspondent trades. The ACT system now will alert the correspondent and clearing firm when the correspondent reaches or passes 70% of its gross dollar threshold.

In Amendment No. 3, the NASD created a new section in the ACT Rules to include a "super cap" calculation for risk management purposes. The super cap was designed to enhance notice to ACT participants that certain trades may not compare, and to place a limit on exposure to large trades for firms that clear for correspondent broker-dealers.

Treating open trade reports that were input on trade date at the end of T+1 processing as locked-in trades is necessary to maintain the integrity of the system and promote the goals of certainty and finality of trades in the OTC market. Furthermore, ACT has been designed to provide participants with ample opportunities to review trade details, both intra-day and with end-of-day recaps, and a conscientious participant, using the safeguards provided by the system should not be caught unaware and obligated for multiple trade reports.

VI. Conclusion

Based on the foregoing, the Commission has concluded that the proposed rule change is consistent with the requirements of the Act, and that it is appropriate to approve the NASD ACT Rules. The Commission believes that the ACT system will facilitate the prompt and accurate clearance and settlement of trades by performing the comparison automatically and transmitting locked-in trades to the clearing agency.

The Commission finds good cause for approving those portions of the NASD's proposal that were amended by Amendment No. 4 prior to the 30th day after the date of publication of the amendments in the **Federal Register**. The original filing was the subject of a 35-day notice period that generated no comment letters on the subject of the reporting time frames and the amended time frames are less stringent than those originally submitted. In addition, the amendment did not raise significant, new issues. Finally, a corresponding proposed rule change that applied the modified time frames to self-clearing firms for whom the ACT Rules have already been approved was published for comment and no comments were received.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number of the caption above and should be submitted by November 22, 1990.

Based on the foregoing, the Commission has concluded that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that File No. SR–NASD–89–25, be, and hereby is, approved, with implementation of the proposed rule change subject to (1) Successful completion of the stress tests and (2) provision of a report to the Commission on the test results.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: October 26, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–25857 Filed 10–31–90; 8:45 am]

BILLING CODE 8010–01–M

Inc., dated August 10, 1989; Raymond L. Aronson, Managing Director, Bear Stearns, dated August 9, 1989; Peter Quick, Executive Vice President, Q & R Clearing Corp., dated August 10, 1989; Lawrence S. Leibowitz, General Counsel, Cowen & Company, dated August 10, 1989; Austin H. George, Chairman, and John L. Watson, III, President, Security Traders Association, dated August 31, 1989; and Don A. Buchholz, Chief Executive Officer, Southwest Securities, Inc., dated August 17, 1989. In addition, the Commission also received a letter from the NASD responding to the comment letters received. *See* letter from Lynn Nellius, Secretary, NASD, to Jonathan Katz, Secretary, dated August 23, 1989.

[12] Securities Exchange Act Release No. 27229 (September 7, 1989), 54 FR 38494 (Notice of Amendment No. 2 and Order Granting Partial Accelerated Approval).

[13] *See* Amendment No. 2 to the ACT filing.

[Rel. No. 34-28582; File No. SR-NASD-90-47]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Order of Closing Statements in NASD Arbitration Proceedings

The National Association of Securities Dealers, Inc. ("NASD") submitted on September 6, 1990 to the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder.[2] The proposal will be published in the NASD Code of Arbitration Procedure to clarify that it is the practice in NASD arbitration proceedings to allow claimants to proceed first in closing argument with rebuttal argument being permitted. Claimants may reserve their entire closing argument for rebuttal. The hearing procedures may, however, be varied in the discretion of the arbitrators, provided all parties are allowed a full and fair opportunity to present their respective cases.

Notice of the proposal together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 34–28439, September 17, 1990) and publication in the **Federal Register** (55 FR 39222, September 25, 1990). No comments were received regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A [3] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[4]

Dated: October 26, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–25858 Filed 10–31–90; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] 15 U.S.C. 78o–3 (1982).

[4] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice No. 1283]

Eagle Pass, Texas; Application for Bridge Permit

Notice is hereby given that the Department of State has received an application for a permit authorizing construction of a bridge across the Rio Grande River from the City of Eagle Pass, Texas to Piedras Negras, Coahuila, Mexico.

The Department's jurisdiction with respect to this application is based upon Executive Order 11423, dated August 16, 1968, and the International Bridge Act of 1972 (Pub. L. 92–434, 86 Stat. 731, 33 U.S.C. 535 approved September 26, 1972).

As required by E.O. 11423, the Department of State is circulating this application to concerned agencies for comment.

Interested persons may submit their views regarding the application in writing by December 3, 1990, to Mr. Irwin Rubenstein, Border Coordinator, Office of Mexican Affairs, Room 4258, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520.

The application and related documents made part of the record to be considered by the Department of State in connection with this application are available for inspection in the Office of Mexican Affairs during normal business hours.

Any questions relating to this notice may be addressed to the Border Coordinator at the above address or by telephone, No. (202) 647–9894.

Dated: October 24, 1990.

Irwin Rubenstein,

Border Coordinator, Office of Mexican Affairs.

[FR Doc. 90–25868 Filed 10–31–90; 8:45 am]

BILLING CODE 4710–29–M

DEPARTMENT OF TRANSPORTATION

Maritime Insurance Coverage for Commercial Service in the Middle East

October 26, 1990.

Subject: Provision of Maritime Insurance Coverage for commercial service.

By virtue of the authority delegated to me by Presidential Memorandum of August 29, 1990, and by virtue of the authority set forth in section 1202 of the Merchant Marine Act, 1936, as amended (Act), 46 U.S.C. App. 1282, I hereby:

BEST COPY AVAILABLE

Approve, on behalf of the President, the Department of Transportation's provision of insurance or reinsurance of vessels (including cargoes and crew) entering the Middle East region against loss or damage by war risks in the manner and to the extent provided in Title XII of the Act, 46 U.S.C. App. 1281, *et seq.*, for purposes of responding to the current crisis in the Middle East, whenever, after consultation with the Department of State, I determine that such insurance adequate for the needs of the waterborne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States.

This action is taken in consultation with the Secretary of State and the Director of the Office of Management and Budget.

This approval is effective for sixty days. It shall be brought to the attention of all operators and published in the Federal Register.

Samuel K. Skinner,

Secretary of Transportation.

Approved.

Linda W. Senese,

Certifying Officer.

[FR Doc. 90-25785 Filed 10-31-90; 8:45 am]

BILLING CODE 4910-62-M

Maritime Administration

State Street Bank and Trust Co. of Connecticut; Approval of Applicant as Trustee

Notice is hereby given that State Street Bank and Trust Company of Connecticut, National Association, with offices at 100 Constitution Plaza, Hartford, Connecticut, has been approved as Trustee pursuant to Public Law 100-710 and 46 CFR part 221.

Dated: October 26, 1990.

By Order of the Maritime Administrator.

Joel C. Richard,

Assistant Secretary.

[FR Doc. 90-25826 Filed 10-31-90; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; American Honda Motor Co., Inc.

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants the petition by American Honda Motor Co., Inc. (Honda) for an exemption from the parts marking requirements of the vehicle theft prevention standard for a new Honda car line for Model Year (MY) 1992. The agency takes this action under section 605 of the Motor Vehicle Information and Cost Savings Act. The agency has determined that the antitheft device which the petitioner intends to install on this line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts marking requirements.

DATES: The exemption granted by this petition will become effective beginning with the 1992 Model Year.

SUPPLEMENTARY INFORMATION: On July 5, 1990, this agency received from Honda a petition for exemption from the theft prevention standard for a new Model Year (MY) 1992 Honda car line pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard. The agency reviewed the July 5, 1990, submission and concluded that it constituted a complete petition. Accordingly, July 5, 1990 is the date on which the statutory 120 day period for processing Honda's petition began.

On September 18, 1990, NHTSA's Office of Chief Counsel received from Honda a request for confidential treatment of certain information in the petition, filed pursuant to 49 CFR part 512. The agency reviewed the request and in a letter dated October 12, 1990, notified Honda that it was granting confidential treatment of the information.

In its petition, Honda included a detailed description and diagrams of the identity, design, and location of the components of the antitheft device for the new MY 1992 Honda car line.

The antitheft device is a comprehensive security alarm system which includes an engine starter interrupt function and an alarm function. The antitheft device is activated by one of two ways. The first way is by removing the key from the ignition, closing all doors, the engine hood and trunk lid, and locking the driver or passenger door with the key. Honda stated that the new car line is equipped with an automatic lock system as standard equipment. This means that in addition to arming the system, this procedure activates the automatic door lock system for all doors.

The system may also be armed without using a key, by pushing down the button on the driver's door and closing the driver's door. When the driver's door button is pushed down, all other door button(s) go down automatically. When the driver's door button is used to lock the door and arm the system, a security indicator light, located on the driver's door lining, enables one to visually check to see whether the system is armed. The indicator light starts flashing after the arming procedure is completed. The engine starter-interrupt function of the system is armed immediately upon completion of the arming procedure. The alarm is armed 15 seconds after the last door is locked.

Honda states if the last door is locked while a person is left in the vehicle, the person can open any door within fifteen seconds without activating the alarm. Additionally, if any door window were left open after the door is locked, the door button could be pulled up and the door opened without triggering the alarm, if all of this is accomplished within the 15 second time frame. However, upon leaving the vehicle, the operator must ensure all door buttons are down in order to rearm the system.

The alarm monitors the doors, hood, trunk lid, battery terminals, engine starter circuit, battery circuit and radio. If the doors, hood or trunk lid are forced opened, battery terminal(s) removed and reconnected, or the engine starter circuit and battery circuit are bypassed by breaking the ignition switch, the front hood, engine hood, or trunk lid opener located inside the vehicle are forced, or the radio is removed, the alarm will go off. When this happens, the horns will sound, headlights pop up and flash, and sidemarker lamps, position lamps, and tail lamps will flash for about two minutes. These audible and visual alarms will draw the attention of the people around the vehicle to the illegal efforts of the unauthorized person. After the activation of the alarm for about two minutes, the system is automatically rearmed and if any of the conditions described above occur, the alarm will activate again. The system is disarmed when either the driver's side door or front passenger door is unlocked by using the key.

As already noted, the theft deterrent system of the new MY 1992 Honda car line has an engine starter interrupt feature. While the theft deterrent system is armed, the electric line which activates an engine starter motor is kept interrupted by the starter relay. As a result of this, the engine cannot be started by bypassing the engine starter and battery circuit or rotating the ignition switch by means other than the authentic key.

The theft deterrent functions reinforce one another, making theft of the vehicle more difficult. Even if an unauthorized person could enter the vehicle without activating the alarm, Honda states it is impossible to move the vehicle because the new car line is equipped with a steering lock device. If the steering lock device is broken, the engine starter interrupt function is still in operation and makes it impossible to start the engine. If the starter circuit and the battery circuit are bypassed for starting the engine, the alarm is activated.

Honda also states that the system is designed to make attempts to defeat the system difficult. All the switches and wiring activating the system are inaccessible from outside of the vehicle to prevent tampering by an unauthorized person. The battery terminals are not accessible without opening the front hood (if it is opened, an alarm will activate). If the battery terminal(s) could be disconnected from under the vehicle, the alarm will activate when the disconnected terminal(s) is reconnected in order to start the engine. The new MY 1992 Honda car line has two horns, both of which are part of the alarm system. One of them is placed under the front hood compartment where it is more difficult to tamper with than the other horn.

In order to ensure the reliability and durability of the system, Honda conducted the following tests, based on their own specified standards: Instant power source voltage cut test; power source voltage test; surge test; battery reversed connection test; electromagnetic wave test; high and low temperature test; temperature and humidity change test; temperature and humidity resistance test; vibration resistance test; drop test; thermal shock test; operation endurance test; static electricity test; noise resistance test; and walkie talkie test.

Honda stated that since it has no market experience with the theft deterrence system of the type proposed to be installed on the new MY 1992 Honda car line, no theft record has been established and no objective data can be provided to determine that the system is likely to be as effective as compliance with the parts-marking requirements.

Honda made a comparison of the system on the new MY 1992 Honda car line with those systems used on car lines which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. Honda states that the following car lines have similar NHTSA approved theft deterrent systems as the one proposed for the new Honda car line; Chrysler Conquest, Mazda RX-7, Nissan Maxima, Toyota Cressida, and Mitsubishi Starion. In selecting these similar systems, the following criteria were considered by Honda: Similar sensor switches that are incorporated in the doors, door key cylinders, trunk, engine hood, and ignition key of the theft deterrent system to activate the alarm; the kind of audio/visual alarm the system provides; and incorporation of a starter interrupt function.

Honda concludes that the theft deterrent system to be installed on the new MY 1992 Honda car line would not be less effective than those systems in the above car lines for which NHTSA has granted exemptions from the parts-marking requirements.

Based on this substantial evidence, the agency believes that the antitheft device for the new Honda car line to be introduced in MY 1992 is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR part 541).

The agency believes that the device will provide the types of performance listed in 49 CFR 543.6(a)(3): Promoting activation; attracting attention to unauthorized entries; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by section 605(b) of the statute and 49 CFR 543.6(a)(4), the agency also finds that Honda has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Honda provided on its device. This information included a description of reliability and functional tests conducted by Honda for the antitheft system and its components. As was previously stated, Honda asserts that the function and design of the Honda antitheft device is similar to those of other devices, such as that on the Chrysler Conquest, Mazda RX-7, Nissan Maxima, Toyota Cressida, and Mitsubishi Starion that the agency previously has considered likely to be at least as effective as complying with part 541 would be.

For the foregoing reasons, the agency hereby exempts the new MY 1992 Honda car line in whole from the requirements of 49 CFR part 541.

If Honda decides not to use the exemption for the new MY 1992 car line, it should formally notify the agency. If this is the case, these car lines must be marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and those replacement parts).

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs continue to make it difficult to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly invites such a comparison, which the agency has made on the basis of the limited data available.

NHTSA notes that if Honda wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applied only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption was based. Further, § 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

However, the agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change in the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if Honda contemplates making any changes the effects of which might be characterized as *de minimis*, then the company should consult the agency before preparing and submitting a petition to modify.

15 U.S.C. 2025, delegation of authority at 49 CFR 1.50)

Issued on: October 26, 1990.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 90-25793 Filed 10-31-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 25, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex,

1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB number: 1512-0204.
Form number: ATF F 5110.38.
Type of review: Extension.
Title: Formula for Distilled Spirits Under the Federal Alcohol Administration Act.
Description: ATF F 5110.38 is used to determine the classification of distilled spirits for labeling and for consumer protection. The form describes the person filing, type of product to be made, and restrictions to the labeling and manufacture. The form is used by ATF to ensure that a product is made and labeled properly and to audit distilled spirits operations.
Respondents: Small businesses or organizations.
Estimated number of respondents: 200.
Estimated burden hours per respondent: 1 hour.
Frequency of response: On occasion.
Estimated total reporting burden: 4,000 hours.

OMB number: 1512-0469.
Form number: None.
Type of review: Extension.
Title: Labeling of Sulfites in Alcoholic Beverages.
Description: In a final rule published in the **Federal Register** on July 9, 1986 (51 FR 34706) the Food and Drug Administration established 10 parts per million as the threshold for declaration of sulfites in food and wine products. The Bureau of Alcohol, Tobacco and Firearms on September 30, 1986, published a final rule (ATF-236) (51 FT 34706) establishing the same threshold for declaration of sulfites in alcoholic beverages.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated number of respondents: 4,787.
Estimated burden hours per response: 40 minutes.
Frequency of response: On occasion.
Estimated total reporting burden: 3,159 hours
Clearance officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 90-25801 Filed 10-31-90; 8:45 am]
BILLING CODE 4810-KH-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 26, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB number: 1556-0124.
Form number: TA-1.
Type of review: Extension.
Title: Transfer Agent Registration and Amendment Form
Description: This form is used by national banks and national bank subsidiaries for registration and amendment to registration as a transfer agent.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated number of respondents: 55.
Estimated burden hours per response: 28 minutes.
Frequency of response: On occasion.
Estimated total reporting burden: 28 hours.
Clearance officer: John Ference (202) 447-1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.
OMB reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A Morgan,
Departmental Reports, Management Officer.
[FR Doc. 90-25802 Filed 10-31-90; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review.

Dated: October 26, 1990.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB number: Revision.
Form number: 5472.
Type of review: Resubmission.
Title: Information Return of a 25% Foreign Owned Corporation
Description: Form 5472 is filed by U.S. corporations and foreign corporations that are 25% foreign-owned. IRS uses Form 5472 to determine if the transactions between these corporations, and the 25% foreign shareholder and other related parties are correct.
Respondents: Businesses or other for-profit.
Estimated number of respondents: 75,000.
Estimated burden hours per response/recordkeeping
Recordkeeping—11 hours, 29 minutes
Learning about the law or the form—1 hour, 17 minutes
Preparing and sending the form to IRS—1 hours, 32 minutes.
Frequency of response: Annually.
Estimated total recordkeeping/reporting burden: 1,073,250 hours.
Clearance officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 90-25803 Filed 10-31-90; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 26, 1990.

The Department of Treasury has submited the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision

OMB number: 1550-0042.
Form number: None.
Type of review: Reinstatement.
Title: Capital Forbearance.
Description: 12 CFR 567.20 grandfathers capital forbearance granted to savings associations prior to the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Public Law No. 101-73, 103 Stat. 183. Such associations must have entered into a capital plan pursuant to section 10 of the Home Owner's Loan Act or section 416 of the National Housing Act as in effect prior to FIRREA.
Respondents: Businesses or other for-profit.
Estimated number of respondents: 12.
Estimated burden hours per response: 20 hours.
Frequency of response: Semi-annually.
Estimated total reporting burden: 480 hours.
Clearance officer: John Turner (202) 906-6025, Office of Thrift Supervision, 1700 G Street, NW., 3rd Floor, Washington, DC 20552.
OMB reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 90-25804 Filed 10-31-90; 8:45 am]
BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by December 3, 1990.

Dated: October 26, 1990.
By direction of the Secretary.

Frank E. Lalley,
Director, Office of Information Resources Policies.

Extension

1. Veterans Benefits Administration.
2. Statement of Disappearance.
3. VA Form 21-1775.
4. The form is used to gather the necessary information from individuals to determine if a decision of formal presumption of death can be made for benefits payment purposes when a veteran has been missing for seven years. The information is used to determine death benefit entitlement.
5. On occasion.
6. Individuals or households.
7. 2,000 responses.
8. 2¾ hours.
9. Not applicable.

[FR Doc. 90-25891 Filed 10-31-90; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 212
Thursday, November 1, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, November 6, 1990.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The following agenda item is added to the Commission Voting Conference notice published at 55 FR 45718 on October 30, 1990:

Finance Docket No. 30985 (Sub-No. 1) and (Sub-No. 2), *Delaware & Hudson Railway Company—Lease and Trackage Rights Exemption—Springfield Terminal Railway Company*

CONTACT PERSON FOR MORE INFORMATION: Al Dennis Watson, Office of External Affairs, Telephone: (202) 275-7252, TDD: (202) 275-1721.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 90-25985 Filed 10-30-90; 12:40 pm]

BILLING CODE 7035-01-M

Corrections

Federal Register
Vol. 55, No. 212
Thursday, November 1, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

RIN 0580-AA09

Shiplot Inspection Plan (Cu-Sum)

Correction

In rule document 90-11957 beginning on page 24030 in the issue of Wednesday, June 13, 1990, make the following correction:

§ 800.86 [Corrected]

1. In § 800.86(a)(2), on page 24043, in the middle column, in "table 4" corresponding with the "Special grade or factor" entry "smutty", the first entry under "Grade limit" should read "More than 0.20%".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF85-292-004, et al.]

Archbald Power Corp., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 90-25076 appearing on page 42880 in the issue of Wednesday, October 24, 1990, make the following correction:

In the second column, under "2. New England Power Co.", the next line should read "[Docket No. ER91-13-000]".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. TQ91-1-63-000 and TM91-1-63-001]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

Correction

In notice document 90-23601 beginning on page 41129 in the issue of Tuesday, October 9, 1990, the docket heading was inadvertently omitted and should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM91-1-82-002]

Viking Gas Transmission Co.; Filing

Correction

In notice document 90-24967 beginning on page 42764 in the issue of Tuesday, October 23, 1990, the docket number was inadvertently omitted and should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

ENVIRONMENTAL PROTECTION AGENCY

[ATSDR-27]

Fourth List of Hazardous Substances That Will Be the Subject of Toxicological Profiles

Correction

In notice document 90-24362 beginning on page 42067 in the issue of Wednesday, October 17, 1990, make the following corrections:

1. On page 42067, in the second column, in the fifth line from the bottom, "October 26, 1990." should read "October 26, 1989."

2. On the same page, in the third column, in the table, the tenth entry should read "100-44-7 Benzyl chloride"; in the third line from the bottom the CAS number should read, "7647-01-0."; and in the last entry, "Bis(2-chloroisopropyl) ether." should read "Bis(2-chloroisopropyl) ether."

3. On page 42068, in the first column, in the second line, "substance" should read "substances".

4. On the same page, in the second column, in the second full paragraph, in the third line from the bottom, "has" should read "had".

5. On page 42071, in the 1st column, in the 18th line, "The" should read "This".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Reg. No. 4]

RIN AD00

Federal Old-Age, Survivor's, and Disability Insurance Benefits

Correction

In rule document 90-25077 beginning on page 35578 in the issue of Friday, August 31, 1990, make the following correction:

On the beginning page, in the first column, under "SUMMARY", in the fifth line "223(f)" should read "223(g)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-90-4212-13; IDI-26430, et al.]

Issuance of Land Exchange Conveyance Documents; Idaho

Correction

In notice document 90-6470 appearing on page 10893 in the issue of Thursday, March 22, 1990, make the following correction:

In the 2nd column, in the 29th line "S½SE¼" should read "S½NE¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Department Hearing and Appeal Procedures; Indian Probate Proceedings

Correction

In rule document 90-25380 beginning on page 43132 in the issue of Friday, October 26, 1990, make the following corrections:

1. On page 43132, in the second column, under "**SUMMARY**", in the next-to-last line of the paragraph, "later" should read "alter".

2. In the same column, under "**Paperwork Reduction Act**", the last line should read "3501 *et seq.*".

3. On page 43133, in the first column, in amendatory instruction 11, in the first line, "§ 4.320" should read "§ 4.302".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AAL-9]

Proposed Establishment of VOR Federal Airway, AK

Correction

In proposed rule document 90-24082 beginning on page 45144 in the issue of Friday, October 12, 1990, the issue date, at the end of the document, on page 41545 should read "September 12, 1990" not "September 2, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 43

[PS-069-90]

RIN 1545-AP03

Tax on Transportation by Water

Correction

In proposed rule document 90-24050 beginning on page 41545 in the issue of Friday, October 12, 1990, make the following correction:

§ 43.4472-1 [Corrected]

On page 41546, in the first column, in § 43.4472-1, in the sixth line of paragraph (e), "and my" should read "and any".

BILLING CODE 1505-01-D

federal register

Thursday
November 1, 1990

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 201

Specific Requirements on Content and Format of Labeling for Human Prescription Drugs; Proposed Addition of "Geriatric Use" Subsection in the Labeling; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0474]

21 CFR Part 201

Specific Requirements on Content and Format of Labeling for Human Prescription Drugs; Proposed Addition of "Geriatric Use" Subsection in the Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations governing the content and format of labeling for human prescription drug products. The proposal would require such labeling to include information on the use of the drug in the elderly (persons aged 65 years and over). The proposal reflects a growing awareness in FDA and elsewhere of the special concerns associated with prescription drug use in this age group. FDA believes that providing access to information on these issues is necessary for the safe and effective use of the drugs in older populations. The proposal would make this information readily available through a special section in prescription drug labeling providing pertinent information about the drug's use in the elderly.

DATES: Comments by December 31, 1990. FDA proposes that any final rule based on this proposal become effective 1 year after its date of publication in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Diane P. Goyette or Philip L. Chao, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is proposing to amend its regulations pertaining to the content and format for prescription drug labeling (21 CFR 201.57) to require a subsection in the labeling on geriatric use. The proposed labeling would describe available information on geriatric use of the drug or indicate that data on such use are unavailable. This proposal reflects growing recognition, by FDA, Congress, and others, of the special concerns associated with prescription drug use in the elderly. People over 65 constitute approximately 12 percent of the U.S. population and consume over 30 percent of prescription drug products and 40 percent of nonprescription drug products. Although both young and elderly patients can exhibit a range of responses to drug therapy, factors contributing to different responses to drug therapy are comparatively more common among the elderly. For example, elderly patients are more likely to have impaired mechanisms of drug excretion (e.g., decreased kidney function), to be on other medications that can interact with the newly prescribed agent, or to have illness that can interact with drug therapy.

FDA has taken a number of steps regarding prescription drug products and the elderly. In conjunction with major national and community-based organizations, FDA conducted or participated in several workshops devoted to drug development and older citizens. At these workshops, FDA employees discussed tentative guidelines and recommendations pertaining to clinical testing in elderly subjects, and the pharmaceutical industry has adopted many of those proposals.A survey of recent new drug application (NDA) approvals, for example, revealed that elderly patients represented approximately 30 percent of the patients studied, and many NDA submissions now include analyses of the drug's effect on the elderly and specific studies of the drug's pharmacokinetics in elderly subjects. On March 5, 1990 (55 FR 7777), FDA announced, in the **Federal Register** the availability of a final guideline entitled, "Guideline for the Study of Drugs Likely to be Used in the Elderly." The guideline provides detailed advice on the evaluation of new drugs in older patients and is intended to encourage routine and thorough evaluation of the effects of drugs in elderly populations so that physicians will have sufficient information to use drugs properly in their older patients.

FDA has also cooperated with several organizations, such as the American Association for Retired Persons and the National Council of Senior Citizens, to develop patient education materials on prescription drugs. One result of such cooperation is the Medication Information Leaflets for Seniors (MILS) program. MILS leaflets provide elderly patients with information on specific drug products, including indications, routes of administration, and side effects. In addition, FDA has kept health practitioners informed about important developments in geriatric drug therapy through the FDA "Drug Bulletin," "FDA Consumer," and articles in selected medical journals.

A. Description of the Proposed Rule

The proposed rule furthers FDA efforts to promote safe and effective prescription drug use in the elderly. The proposed rule would require a person marketing a prescription drug to collect and disclose available information about the drug's use in the elderly. "Available information" would encompass all information in the applicant's possession that is relevant to an evaluation of the appropriate geriatric use of the drug, including the results from controlled studies or other pertinent premarketing or postmarketing studies or experience (e.g., adverse drug reaction reports) or information obtainable from a literature search. The information would be placed in a separate section of "Precautions" entitled "Geriatric use," with reference, as appropriate, to more detailed discussions in other parts of the labeling, such as the "Warnings" or "Dosage and Administration" sections. FDA emphasizes, however, that information about specific geriatric indications, e.g., "senile dementia," would not be appropriately placed in the proposed "Geriatric Use" section. Specific geriatric indications must appear in the "Indications" section and must be supported by substantial evidence of effectiveness. The proposed rule is not intended to alter the type or amount of evidence necessary to support approval, but to ensure that special information about the use in the elderly of drugs approved for all adults is well-organized, comprehensive, and accessible.

The proposed subsection would contain several kinds of statements about drug use in the elderly reflecting increasing amounts of available information. If clinical studies did not include sufficient numbers of elderly subjects to permit a determination whether elderly subjects responded differently than younger subjects, and other reported clinical experience has not identified such differences, the labeling would declare that no distinction between elderly subjects and younger subjects could be made. The labeling would further advise that dosing for older patients should be cautious, reflecting the greater frequency of concomitant disease and drug therapy and decreased hepatic, renal, and cardiac function in elderly patients. If clinical studies did include sufficient numbers of elderly subjects to have shown a difference between younger and older patients, but no significant differences were seen, and other reported clinical experience has not identified such a difference, the proposal would require disclosure of the number or percentage of elderly subjects in the study, and would require the labeling to note that while no overall safety or effectiveness differences were observed, greater sensitivity in some older individuals cannot be ruled out. If use of a drug is associated with differences (in effectiveness, safety, or dosage) between elderly and younger subjects, the proposal would require disclosure of such differences as well as appropriate statements, descriptions, and references in the "Contraindications," "Warnings," and "Dosage and Administration" portions of the labeling. Finally, in those instances where specific pharmacokinetic or pharmacodynamic studies have been carried out involving elderly subjects, the proposal would require that they be described in the "Clinical Pharmacology" section.

The proposal also would require certain statements advising caution for drugs known to be substantially excreted by the kidney and in other situations where older patients may be at particular risk.

Although FDA encourages further study of drug effects in the elderly, the proposed labeling change is not intended to require additional clinical studies. The "Geriatric use" subsection is intended to establish a place in prescription drug labeling where practitioners can find pertinent information that is already available from clinical experience and investigations. FDA believes that providing this information in a clear and accessible way should promote the safe and effective use of prescription drugs in the elderly.

B. Legal Authority

FDA's proposal to provide for geriatric use labeling is authorized by the Federal Food, Drug, and Cosmetic act (the act). Section 502(f)) of the Act (21 U.S.C. 352(f) states that a drug will be deemed to be misbranded unless its labeling bears "adequate directions for use." Section 201.5 of FDA's general labeling regulations defines "adequate directions for use" as "directions under which the layman can use a drug safely and for the purposes for which it is intended." Because licensed practitioners must supervise the administration of prescription drugs, prescription drug products cannot bear adequate directions for use by laymen within the meaning of section 502(f)(1) of the act. Instead, prescription drug products, under 21 CFR 201.100(d), must bear labeling that contains adequate information under which licensed practitioners can use the drug safely and effectively. Section 201.57 describes specific categories of information, including information for drug use in selected subgroups of the general population, which must be presented to meet the requirements of § 201.100. To ensure the safe and effective use of prescription drugs by practitioners, FDA proposes to amend § 201.57, by adding new paragraph (f)(10) to include appropriate information for the use of drug products in geriatric patients.

In addition to its general authority under the misbranding provisions at section 502 of the act, the premarket approval provisions of the act also authorize FDA to ensure that drug labeling provides the practitioner with adequate information to permit safe and effective use of the drug product. Under section 505 of the act, FDA will approve an NDA only if the drug is shown to be both safe and effective for its intended use under the conditions set forth in the drug's labeling. For biologic drug products, FDA examines labeling pursuant to its authority under section 351 of the Public Health Service Act (42 U.S.C. 262) and FDA regulations.

The proposed rule, if finalized, will be applicable to the labeling of all prescription drug products including biologics.

C. Proposed Implementation Scheme

FDA proposes that any final rule based on this proposal become effective 1 year after its date of publication in the **Federal Register**. After this date, drug products whose labeling is not in compliance with the rule will be misbranded under section 502 of the act.

For products that are subject to section 505 or section 507 of the act, FDA urges manufacturers to consider what labeling revisions, if any, will be necessary before FDA publishes the final rule, and to submit supplements proposing any revised labeling at the earliest opportunity. Changes in or substantive new information about other aspects of drug safety and effectiveness based on clinical studies or other clinical experience, will require prior FDA approval of a supplemental application in accordance with 21 CFR 314.70(b). Changes to add or strengthen contraindications, warnings, precautions, or adverse reactions or to add or strengthen dosage and administration instructions to increase a product's safety may be put into effect at the time a supplement covering the change is submitted to FDA in accordance with § 314.70(c). Minor editorial changes may be made in accordance with § 314.70(d).

FDA anticipates that it may be unable to review all supplements proposing the adoption of revised labeling by the final rule's effective date. The agency may therefore exercise its enforcement discretion not to take action against any product that lacks revised labeling, provided that the applicant has submitted its proposed labeling changes in a timely manner and otherwise acted in good faith to comply with the requirements of the final regulation. FDA does not anticipate that it will request recalls of old labeling.

For products that are the subject of an approved abbreviated application, FDA proposes to require sponsors to adopt revised labeling that is the same as the labeling for the listed product effective 4 months after FDA has approved labeling changes for the listed product. FDA will notify holders of approved abbreviated applications of the approval of the listed product's labeling.

For those products subject to section 351 of the Public Health Service Act, labeling changes should be made in accordance with 21 CFR 601.12. Persons who have questions regarding such changes should contact the Division of Product Certification, Center for Biologics Evaluation and Research (HFB-240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5433.

II. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Economic Impact

FDA has carefully considered the economic impact of this proposed rule and has determined that it requires neither a regulatory impact analysis, as specified by Executive Order 12291, nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96-354). The agency believes that the proposed rule, if finalized, would generate costs that are well below the thresholds that would signify a major rule, and so the proposed rule does not require regulatory impact analysis.

The proposed rule would require a "Geriatric use" section on prescription drug labeling. The rule would enable health professionals and elderly patients

to use human drug products more effectively and thus avoid expensive treatment and hospital care costs for conditions resulting from improper prescription drug use. A recent General Accounting Office report, citing information from a health insurance carrier, estimated that the annual cost of such treatment and hospital care was $4.5 billion in 1983. Consequently, even if the rule prevents only a fraction of these hospitalizations, the economic savings to the nation would be tremendous.

FDA believes that any costs resulting from the rule would be comparatively small in relation to its potential benefits. As stated earlier, approximately 50 percent of existing prescription drug labeling contains some geriatric use information. The cost of compliance for these products would be minimal. The cost of compliance for products whose labeling does not contain geriatric use information would depend upon the type of the geriatric use information to be added, but FDA believes that the costs would be largely offset by savings in treatment and hospitalization costs yielded by the rule's adoption. In addition, the proposed extended effective date would permit manufacturers to defer making any required changes until the next scheduled, routine, labeling revision, thereby reducing the economic impact even further.

For these reasons, the agency concludes that the proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

IV. Request for Comments

Interested persons may, on or before December 31, 1990, submit to the Dockets Management Branch written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 201 be amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 508, 510, 512, 701, 704, 708 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 371, 374, 378); secs. 215, 301, 351, 354–360F, 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b–263n, 264).

2. Section 201.57 is amended by adding new paragraph (f)(10) to read as follows:

§ 201.57 Specific requirements on content and format of labeling for human prescription drugs.

* * * * *

(f) * * *

(10) *Geriatric use:* A specific geriatric indication, if any, shall be described under the "Indications and Usage" section of the labeling, and appropriate geriatric dosage shall be stated under the "Dosage and Administration" section of the labeling. This subsection shall contain specific statements on geriatric use of the drug for an indication approved for adults generally, as distinguished from a geriatric indication. Such statements may be based on: (i) The results of controlled studies or in some instances; (ii) other pertinent premarketing or postmarketing studies and experience. This subsection of the labeling shall contain the following statements, or reasonable alternatives, as applicable:

(*a*) If clinical studies did not include sufficient numbers of patients aged 65 and over to determine whether elderly patients respond differently than younger patients, and other clinical experience has not identified such differences, the following statement is required to be included: "Clinical studies of (name of drug) did not include sufficient numbers of patients aged 65 and over to determine whether they respond differently from younger patients. Other reported clinical experience has not identified differences in responses between the elderly and younger patients. In general, dose selection for an elderly patient should be cautious, usually starting at the low end of the dosing range, reflecting the greater frequency of decreased hepatic, renal, or cardiac function, and of concomitant disease or other drug therapy."

(*b*) If clinical studies included enough elderly patients to make it likely that a difference between elderly and younger patients would have been detected, but no differences in effectiveness or safety were observed, and other clinical experience has not identified such differences, the following statement is required to be included: "Of the total number of patients in clinical studies of (name of drug), ____ percent were 65 and over, while ____ percent were 75 and over. (Alternatively, the labeling may state the total number of patients included in the studies who were 65 and over and 75 and over.) No overall differences in effectiveness or safety were observed between these patients and younger patients, and other reported clinical experience has not identified differences in responses between the elderly and younger patients, but greater sensitivity of some older individuals cannot be ruled out."

(*c*) If use of the drug in elderly patients is associated with differences in effectiveness or safety, or requires specific monitoring or dosage adjustment, the observed differences or specific monitoring or dosage requirements shall be described in this subsection of the labeling, and, as appropriate, in the "Contraindications," "Warnings," or "Dosage and Administration" sections of the labeling This subsection of the labeling shall describe such information briefly, if it is described in detail elsewhere, and refer to the location of the information in full.

(*d*)(*1*) If specific pharmacokinetic or pharmacodynamic studies have been carried out in the elderly, they shall be described briefly in this subsection of the labeling and in detail under the "Clinical Pharmacology" section. The "Clinical Pharmacology" section and "Drug Interactions" section shall contain information on drug-disease and drug-drug interactions that may be particularly relevant to the elderly, who are more likely to have concomitant illness and disease.

(*2*) For drugs that are known to be substantially excreted by the kidney, this subsection shall include the statement "This drug is known to be substantially excreted by the kidney, and the risk of toxic reactions to this drug may be greater in patients with impaired renal function. Because elderly patients are more likely to have decreased renal function, care should be taken in dose selection, and it may be useful to monitor renal function. Creatinine clearance can be measured or can be estimated by using the following formulae:

For males,

$$Cl_cr = \frac{(140 - age) \times \text{weight in kilograms}}{72 \times C_cr\ (\text{milligram per 100 milliliter})}\ (\text{milliliter per minute})$$

where Cl_cr is the creatinine clearance, and C_cr is serum creatinine.

For females,

$$Cl_cr = 0.85 \times \frac{(140 - age) \times \text{weight in kilograms}}{72 \times C_cr\ (\text{milligram per 100 milliliter})}\ (\text{milliliter per minute})$$

where Cl_cr is the creatinine clearance, and C_cr is serum creatinine."

(*e*) Labeling under paragraphs (f)(10)(ii) (*a*) through (*d*) of this section shall include statements, if appropriate, reflecting good clinical practice or past experience in a particular situation, e.g., for a sedating drug, it shall include a statement to the effect that "Many sedating drugs are more likely to cause confusion and oversedation in the elderly; elderly patients should be started on low dosage of (name of drug) and observed closely."

* * * * *

Dated: May 25, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–25481 Filed 10–31–90; 8:45 am]

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Thursday
November 1, 1990

Part III

Office of Personnel Management

5 CFR Part 532

Prevailing Rate Systems; Final Rule

Office of Personnel Management

5 CFR Part 532

RIN 3206-AD70

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to define certain policies, practices, and criteria for fixing and administering the pay of prevailing rate employees. OPM has determined that these policies, practices, and criteria constitute rulemaking under the terms of the Administrative Procedure Act. The final regulations bring OPM into compliance with the Act.

EFFECTIVE DATE: December 3, 1990.

FOR FURTHER INFORMATION CONTACT: Allan Summers, (202) 606-2848.

SUPPLEMENTARY INFORMATION: OPM published proposed regulations (55 FR 6878) on February 27, 1990, with a 60-day comment period. The purpose of this regulatory proposal was to revise and expand the prevailing rate (wage) systems regulations to include a number of longstanding policies, practices, and criteria of the Federal Wage System now described in Federal Personnel Manual (FPM) Supplements 532-1 and 532-2.

OPM received written comments from one employee organization and two agencies. The employee organization did not oppose the proposal, although it expressed concern that FPM Supplements 532-1 and 532-2 not be "depleted" because of the regulatory change. Other than routine updating, there will be no revisions to the two supplements as a result of these regulations. One of the agencies was in favor of the proposed regulations, while the other agency suggested that the five nonappropriated fund (NAF) wage areas in the Washington, DC, area should be combined into one wage and survey area identical to that authorized for appropriated fund employees in the same area. We did not adopt this suggestion because the prevailing rate law requires that NAF wage area boundaries not extend beyond the immediate locality in which NAF employees are employed (5 U.S.C. 5343(a)(1)(B)(i)). Each of the five NAF wage areas meets OPM criteria for establishment of a local wage area.

The final regulations include a number of minor editorial changes to correct technical errors or omissions in the proposed regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulations.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority for part 532 continues to read as follows:

Authority: 5 U.S.C 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502.

2. Section 532.203(d)(2) is revised and § 532.203(d)(3) is added to read as follows:

§ 532.203 Structure of regular wage schedules.

* * * * *

(d) * * *

(2) For grades WS-11 through WS-18, the second rate of WS-10, plus 5, 11.5, 19.6, 29.2, 40.3, 52.9, 67.1, and 82.8 percent, respectively, of the difference between the step 2 rates of WS-10 and WS-19; and

(3) For grade WS-19, the third rate in effect for General Schedule grade GS-14 at the time of the area wage schedule adjustment. The WS-19 rate shall include any cost of living allowance payable for the area under 5 U.S.C. 5941.

* * * * *

3. Section 532.209(d) is revised to read as follows:

§ 532.209 Local wage survey committee.

* * * * *

(d) Recommendations of local wage survey committees shall be developed by majority vote. Any member of a local wage survey committee may submit a minority report to the lead agency relating to any local wage survey committee majority recommendation.

* * * * *

4. In § 532.211, the introductory text to paragraph (d) is revised to read as follows:

§ 532.211 Responsibilities of participating organizations.

* * * * *

(d) Lead agencies are responsible for:

* * * * *

5. Section 532.213 is amended by revising the introductory text to paragraph (b) as set out below and by removing the phrase "and alternate establishments" in paragraph (d).

§ 532.213 Preparation for full-scale wage surveys.

* * * * *

(b) The lead agency shall consider the local wage survey committee's report if:

* * * * *

6. In § 532.215, paragraph (c) is removed, paragraph (d) is redesignated as paragraph (c), and paragraph (b) is revised to read as follows:

§ 532.215 Conduct of full-scale wage survey.

* * * * *

(b) Data collection for a full-scale wage survey shall be accomplished by personal visit to the establishment. The following required data shall be collected:

(1) General information about the size, location, and type of product or service of the establishment sufficient to determine whether the establishment is within the scope of the survey and properly weighted, if the survey is a sample survey;

(2) Specific information about each job within the establishment that is similar to one of the jobs covered by the survey, including a brief description of the establishment job, the number of employees in the job, and their rate(s) of pay to the nearest mill (including any cost-of-living adjustments required by contract or that are regular and customary and monetary bonuses that are regular and customary); and

(3) Any other information the lead agency believes is appropriate and useful in determining local prevailing rates.

* * * * *

7. Section 532.219 is amended by revising paragraph (d) to read as follows:

§ 532.219 Review by the lead agency.

* * * * *

(d) If the lead agency determines a wage area to be inadequate under paragraph (c) of this section, it shall promptly refer the problem to OPM for resolution. OPM shall:

(1) Authorize the lead agency to continue to survey the area if the lead agency believes the survey is likely to be adequate in the next full-scale survey;

(2) Authorize the lead agency to expand the scope of the survey; or

(3) Abolish the wage area and establish it as part of one or more other wage areas.

8. In § 532.221, the heading and paragraphs (a) and (b) are revised to read as follows:

§ 532.221 Analysis of usable wage survey data.

(a)(1) The lead agency shall compute a weighted average rates for each appropriated fund survey job having at least 10 unweighted matches and for each nonappropriated fund job having at least 5 unweighted matches. The weighted average rates shall be computed using the survey job data collected in accordance with §§ 532.215 and 532.227 of this subpart and the establishment weight.

(2)(i) Incentive and piece-work rates shall be excluded when computing weighted average rates if, after establishment weights have been applied, 90 percent or more of the total usable wage survey data reflect rates paid on a straight-time basis only.

(ii) When sufficient incentive and piece-work rate data are obtained, the full incentive rate shall be used in computing the job weighted average rate when it is equal to or less than the average nonincentive rate. If the full incentive rate is greater than the average nonincentive rate, the incentive rate shall be discounted by 15 percent. The discounted incentive rate shall be compared with the guaranteed minimum rate and the average nonincentive rate, and the highest rate shall be used in computing the job weighted average rate.

(b) The lead agency shall compute paylines using the weighted average rates computed under paragraph (a) of this section.

(1) The lead agency shall compute unit and frequency paylines using the straight-line, least squares regression formula: $Y=a+bx$, where Y is the hourly rate, x is grade, a is the intercept of the payline with the Y-axis, and b is the slope of the payline.

(i) The unit payline shall be computed using a weight of one for each of the usable survey jobs and the weighted average rates identified and computed under paragraph (a) of this section.

(ii) The frequency payline shall be computed using a weight equal to the number of weighted matches for each of the usable survey jobs and the weighted average rates identified and computed under paragraph (a) of this section.

(2) Either or both of the lines computed according to paragraph (b)(1) of this section may be recomputed after eliminating survey job data that cause distortion in the lines.

(3) The lead agency may compute midpoint paylines using the following formula: $Y=(a_u+a_f)/2+((b_u+b_f)/2)x$, where Y is the hourly rate, x is the grade, a_u is the intercept of the unit payline, a_f is the intercept of the frequency payline, b_u is the slope of the unit payline, and b_f is the slope of the frequency payline. A midpoint line may be computed using the paylines based on all of the usable survey job data as described in paragraph (b)(1) of this section, and a second midpoint line may be computed using the paylines based on limited survey job data authorized in paragraph (b)(2) of this section.

(4) The lead agency may compute other paylines for the purpose of instituting changes in the scope of the survey.

* * * * *

§ 532.233 [Amended]

9. In § 532.233, paragraphs (c) and (d) are amended by replacing all occurrences of the terms "Payline rates", "payline rate", and "payline rates" with the terms "Step 2 rates", "step 2 rate", and "step 2 rates", respectively.

§ 532.235 [Amended]

10. In § 532.235, paragraphs (c) and (d) are amended by replacing all occurrences of the terms "Payline rates", "payline rate", and "payline rates" with the terms "Step 2 rates", "step 2 rate", and "step 2 rates", respectively.

§§ 532.233 and 532.235 [Redesignated as §§ 532.255 and 532.257]

11. Sections 532.233 and 532.235 are redesignated as §§ 532.255 and 532.257, respectively.

§ 532.234 [Redesignated as § 532.259]

12. Section 532.234 is redesignated as § 532.259.

[Redesignations]

13. The following sections are redesignated as set out below:

Old section	New section
§ 532.207	§ 532.227
§ 532.209	§ 532.229
§ 532.211	§ 532.231
§ 532.213	§ 532.233
§ 532.215	§ 532.235
§ 532.217	§ 532.237
§ 532.219	§ 532.239
§ 532.221	§ 532.241
§ 532.223	§ 532.243
§ 532.225	§ 532.245
§ 532.227	§ 532.247
§ 532.229	§ 532.249
§ 532.231	§ 532.251

14. New §§ 532.207, 532.209, 532.211, 532.213, 532.215, 532.217, 532.219, 532.221, 532.223, and 532.225 are added to read as follows:

§ 532.207 Time schedule for wage surveys.

(a) Wage surveys shall be conducted on a 2-year cycle at annual intervals.

(b) A full-scale survey shall be made in the first year of the 2-year cycle and shall include development of a current sample of establishments and the collection of wage data by visits to establishments.

(c) A wage-change survey shall be made every other year using only the same employers, occupations, survey jobs, and establishment weights used in the preceding full-scale survey. Data may be collected by telephone, mail, or personal contact.

(d) Scheduling of surveys shall take into consideration the following criteria:

(1) The best timing in relation to wage adjustments in the principal local private enterprise establishments;

(2) Reasonable distribution of workload of the lead agency;

(3) The timing of surveys for nearby or selected wage areas; and

(4) Scheduling relationships with other pay surveys.

(e) The Office of Personnel Management may authorize adjustments in the normal cycle as requested by the lead agency and based on the criteria in paragraph (d) of this section or to accommodate special studies or adjustments consistent with determining local prevailing rates.

(f) The beginning month of appropriated and nonappropriated fund wage surveys and the fiscal year during which full-scale surveys will be conducted are set out as Appendices A and B to this subpart and are incorporated in and made part of this section.

§ 532.209 Lead Agency.

(a) The Office of Personnel Management shall select a lead agency for each appropriated and nonappropriated fund wage area based on the number of agency employees covered by the regular wage schedule for that area and the capability of the agency in providing administrative and clerical support at the local level necessary to conduct a wage survey.

(b) OPM may authorize exceptions to these criteria where this will improve the administration of the local wage survey.

(c) The listing in Appendix A to this subpart shows the lead agency for each appropriated fund wage area. The Department of Defense is the lead agency for each nonappropriated fund wage area.

§ 532.211 Criteria for establishing appropriated fund wage areas.

(a) Each wage area shall consist of one or more survey areas along with nonsurvey areas, if any.

(1) *Survey area:* A survey area is composed of the counties, parishes, cities, or townships in which survey data are collected. Except in very unusual circumstances, a wage area that includes a Metropolitan Statistical Area shall have the Metropolitan Statistical Area as the survey area or part of the survey area.

(2) *Nonsurvey area:* Nonsurvey counties, parishes, cities, or townships may be combined with the survey area(s) to form the wage area through consideration of the criteria in paragraph (d)(1) of this section.

(b) Wage areas shall include wherever possible a recognized economic community such as a Metropolitan Statistical Area or a political unit such as a county. Two or more economic communities or political units, or both, may be combined to constitute a single wage area; however, except in unusual circumstances and as an exception to the criteria, an individually defined Metropolitan Statistical Area or county shall not be subdivided for the purpose of defining a wage area.

(c) Except as provided in paragraph (a) of this section, wage areas shall be established when:

(1) There is a minimum of 100 wage employees of one agency subject to the regular schedule and the agency involved indicates that its local installation has the capacity to do the survey; and

(2) There is, within a reasonable commuting distance of the concentration of Federal employment:

(i) A minimum of either 20 establishments within survey specifications having at least 50 employees each; or 10 establishments having at least 50 employees each, with a combined total of 1,500 employees; and

(ii) The total private enterprise employment in the industries surveyed in the survey area is at least twice the Federal wage employment in the survey area.

(d)(1) Adjacent economic communities or political units meeting the separate wage area criteria in paragraphs (b) and (c) of this section may be combined through consideration of:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

(2) When two wage areas are combined, the survey area of either or both may be used, depending on the concentrations of Federal and private employment and locations of establishments, the proximity of the survey areas to each other, and the extent of economic similarites or differences as indicated by relative levels of wage rates in each of the potential survey areas.

(e) Appropriated fund wage and survey area definitions are set out as appendix C to this subpart and are incorporated in and made part of this section.

§ 532.213 Industries included in regular appropriated fund wage surveys.

(a) Industries in the following Standard Industrial Classifications (SIC) shall be included in all wage surveys for regular wage schedules:

Manufacturing	
SIC 20 through 26 and 28 through 38.	All manufacturing classes except SIC 27 (printing, publishing, and allied industries) and SIC 39 (miscellaneous manufacturing industries).
Transportation, Communications, Electric, Gas, and Sanitary Services	
SIC 40	Railroad transportation
SIC 41 (except 412)	Local and suburban transit and interurban highway passenger transportation except taxicabs (SIC 412).
SIC 42	Motor freight transportation and warehousing.
SIC 45	Transportation by air.
SIC 48	Communication.
SIC 49	Electric, gas, and sanitary services.
Wholesale Trade	
SIC 50	Wholesale trade—durable goods.
SIC 51	Wholesale trade—nondurable goods.

(b) A lead agency may add other industry classes to a regular survey in an area where these industries account for significant proportions of local private employment of the kinds and levels found in local Federal employment.

(c) Specifically excluded from all wage surveys for regular wage schedules are food service and laundry establishments and industries having peculiar employment conditions that directly affect the wage rates paid and that are the basis for special wage surveys.

§ 532.215 Establishments included in regular appropriated fund surveys.

(a) All establishments having a total employment of 50 or more employees in the prescribed industries within a survey area shall be included within the survey universe. On rare occasions and as an exception to the rule, OPM may authorize lower minimum size levels based on a recommendation of the lead agency for the wage area.

(b) Establishments to be covered in surveys shall be selected under standard probability sample selection procedures. In areas with relatively few establishments, surveys shall cover all establishments within the prescribed industry and size groups.

(c) A lead agency may not delete from a survey an establishment properly included in an establishment list drawn under statistical sampling procedures.

§ 532.217 Appropriated fund survey jobs.

(a) A lead agency shall survey the following required jobs:

Job title	Job grade
Janitor (Light)	1
Janitor	2
Material Handler	2
Maintenance Laborer	3
Packer	4
Helper (Trades)	5
Warehouseman	5
Forklift Operator	5
Material Handling Equipment Operator	5
Truckdriver (Medium)	6
Truckdriver (Heavy)	7
Machine Tool Operator II	8
Machine Tool Operator I	9
Carpenter	9
Electrician	10
Automotive Mechanic	10
Sheet Metal Mechanic	10
Pipefitter	10
Welder	10
Machinist	10
Electronics Mechanic	11
Toolmaker	13

(b) A lead agency may not omit a required survey job from a regular schedule wage survey.

(c) A lead agency may survey the following jobs on an optional basis:

Job title	Job grade
Aircraft Structures Assembler B	7
Aircraft Structures Assembler A	9
Aircraft Mechanic	10
Electrician, Ship	10
Pipefitter, Ship	10
Shipfitter	10
Shipwright	10
Machinist, Marine	10
Cable Splicer (Electric)	10
Electrical Lineman	10
Electrician (Powerplant)	10
Telephone Installer-Repairer	9
Central Office Repairer	11
Heavy Mobile Equipment Mechanic	10
Heavy Mobile Equipment Operator	10
Air Conditioning Mechanic	10
Rigger	10
Trailer Truck Driver	8
Tool Crib Attendant	6
Painter (Finish)	9
Light Vehicle Operator	5
Boiler Plant Operator	9
Boiler Plant Operator	10
Meat Cutter	8
Equipment Mechanic	10
Boom Crane Operator	9
Boom Crane Operator (Precision)	11
Tool and Parts Attendant	4
Painter (Rough)	7
Industrial Electronic Controls Repairer	10
Electronic Test Equipment Repairer	11
Electronic Computer Mechanic	11
Television Station Mechanic	11

(d) A lead agency may add the following survey jobs to the survey when the Hospital industry is included in the survey:

Job title	Job grade
Laundry Worker	1
Food Service Worker	2
Cook	6

(e) A lead agency must obtain prior approval of OPM to add a job not authorized under paragraph (a), (c), or (d) of this section.

§ 532.219 Criteria for establishing nonappropriated fund wage areas.

(a) Each wage area shall consist of one or more survey areas along with nonsurvey areas, if any, having nonappropriated fund employees.

(1) *Survey area:* A survey area is composed of the counties, parishes, cities, or townships in which survey data are collected.

(2) *Nonsurvey area:* Nonsurvey counties, parishes, or townships may be combined with the survey area to form the wage area through consideration of the criteria in paragraph (c) of this section.

(b) Wage areas shall be established when:

(1) There is a minimum of 26 NAF wage employees in the survey area and local activities have the capability to do the survey; and

(2) There is within the survey area a minimum of 1,600 private enterprise employees in establishments within survey specifications.

(c) Two or more counties may be combined to constitute a single wage area through consideration of:

(1) Proximity of largest activity in each county;

(2) Transportation facilities and commuting patterns; and

(3) Similarities of the counties in:

(i) Overall population;

(ii) Private employment in major industry categories; and

(iii) Kinds and sizes of private industrial establishments.

(d) The nonappropriated fund wage and survey area definitions are set out as appendix D to this subpart and are incorporated in and made part of this section.

§ 532.221 Industries included in regular nonappropriated fund surveys.

(a) Industries in the following Standard Industrial Classifications (SIC) shall be included in all wage surveys for regular wage schedules:

SIC	Title
Wholesale:	
5013	Motor vehicle supplies and new parts.
5122	Drugs, drug proprietaries, and druggists' sundries.
5198	Paints, varnishes, and supplies.
5131	Piece goods and notions.
5136	Men's and boys' clothing and furnishings.
5137	Women's children's and infants clothing and accessories.
5139	Footwear.
5145	Confectionery.
5064	Electrical appliances, television and radio sets.
5065	Electrical parts and equipment.
5072	Hardware.
5171	Petroleum bulk stations and terminals.
5172	Petroleum and petroleum products wholesalers, except bulk stations and terminals.
5194	Tobacco and tobacco products.
5111	Printing and writing paper.
5112	Stationery supplies.
5113	Industrial and personal service paper.
5021	Furniture.
5023	Home furnishings.
5091	Sporting and recreational goods and supplies.
5092	Toys and hobby goods and supplies.
5043	Photographic equipment and supplies.
5094	Jewelry, watches, diamonds, and other precious stones.
5099	Durable goods not elsewhere classified.
b159	Farm-product raw materials not elsewhere classified.
5191	Farm supplies.
5192	Books, periodicals, and newspapers.
5193	Flowers and florists' supplies.
5199	Nondurable goods not elsewhere classified.
Retail:	
5311	Department stores.
5331	Variety stores.
5962	Automatic merchandising machine operators.
5541	Gasoline service stations.
5812	Eating places.
5813	Drinking places (alcoholic beverages).
Services and Recreation:	
7011	Hotels, motels, and tourist courts.
7933	Bowling centers.
7997	Membership sports and recreation clubs (golf and country clubs only).

(b) A lead agency may add other industry classes from within the wholesale, retail, and service industry divisions in an area where these industries account for significant proportions of local private employment of the kinds and levels found in local NAF employment.

(c) Additional industries shall be defined in terms of entire industry classes (fourth digit breakdown).

§ 532.223 Establishments included in regular nonappropriated fund surveys.

(a) All establishments having 20 or more employees in the prescribed industries within a survey area shall be included in the survey universe. Establishments in SIC 5962, SIC 5541, SIC 7933, and SIC 7997 shall be included in the survey universe if they have eight or more employees.

(b) Establishment selection procedures are the same as those prescribed for appropriated fund surveys in paragraphs (b) and (c) of § 532.213 of this subpart.

§ 532.225 Nonappropriated fund survey jobs.

(a) A lead agency shall survey the following required jobs:

Job title	Job grade
Janitor (Light)	1
Food Service Worker	1
Food Service Worker	2
Fast Food Worker	2
Janitor	2
Laborer (Light)	2
Laborer (Heavy)	3
Service Station Attendant	3
Stock Handler	4
Short Order Cook	5
Materials Handling Equipment Operator	5
Warehouseman	5
Service Station Attendant	5

Job title	Job grade
Truck Driver (Light)	5
Truck Driver (Medium)	6
Truck Driver (Heavy)	7
Cook	8
Carpenter	9
Painter	9
Automotive Mechanic	10
Electrician	10

(b) A lead agency may not omit a required survey job from a regular schedule wage survey.

(c) A lead agency may survey the following jobs on an optional basis:

Job title	Job grade
Service Station Attendant	1
Groundskeeper	4
Grill Attendant	4
Tractor Operator	6
Bowling Equipment Mechanic	7
Building Maintenance Worker	7
Vending Machine Mechanic	8
Building Maintenance Worker	8
Air Conditioning Equipment Mechanic	8
Truck Driver (Trailer)	8
Air Conditioning Equipment Mechanic	10

(d) A lead agency must obtain prior approval of OPM to add a job not listed under paragraph (a) or (c) of this section.

15. A new § 532.253 is added to read as follows:

§ 532.253 Special rates or rate ranges for leader, supervisory, and production facilitating positions.

(a) When special rates or rate ranges are established for nonsupervisory positions, a lead agency also shall establish special rates for leader, supervisory, and production facilitating positions, classified to the same occupational series and title, that lead, supervise, or perform production facilitating work directly relating to the nonsupervisory jobs covered by the special rates.

(b) The step rate structure shall be the same as that of the related nonsupervisory special rate or rate range.

(c) The following formulas shall be used to establish a special rate or rate range:

(1) A single rate shall equal the top step of the appropriate leader, supervisory, or production facilitating grade on the regular schedule, plus the cents per hour difference between the top step of the appropriate nonsupervisory grade on the regular schedule and the special nonsupervisory rate.

(2) For a multiple rate range, the step 2 rate shall equal the step 2 rate of the appropriate leader, supervisory, or production facilitating grade on the regular schedule, plus the cents per hour difference between the prevailing rate of the appropriate nonsupervisory grade on the regular schedule and the prevailing rate of the special rate position. Other required step rates shall be computed in accordance with the formula established in § 532.203 of this subpart.

16. New §§ 532.261, 532.263, 532.265, 532.267, 532.269, 532.271, 532.273, 532.275, 532.277, 532.279, 532.281, and 532.283 are added to subpart B to read as follows:

§ 532.261 Special wage schedules for leader and supervisory schedules for leader and supervisory wage employees in the Puerto Rico wage area.

(a) The Department of Defense shall establish special wage schedules for leader and supervisory wage employees in the Puerto Rico wage area.

(b) The step 2 rate for each grade of the leader wage schedule shall be equal to 120 percent of the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the Puerto Rico wage area.

(c) The step 2 rate for the supervisory wage schedule shall be:

(1) For grades WS–1 through WS–10, equal to the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the Puerto Rico wage area, plus 60 percent of the rate for step 2 of WG–10;

(2) For grades WS–11 through WS–18, the second rate of WS–10 plus 5, 11.5, 19.6, 29.2, 40.3, 52.9, 67.1, and 82.8 percent, respectively, of the difference between the step 2 rates of WS–10 and WS–19; and

(3) For grade WS–19, the third rate in effect for General Schedule grade GS–14 at the time of the area wage schedule adjustment. The WS–19 rate shall include any cost of living allowance payable for the area under 5 U.S.C. 5941.

(d) Step rates shall be developed by using the formula established in § 532.203 of this subpart.

§ 532.263 Special wage schedules for production facilitating positions.

(a) The lead agency in each FWS wage area shall establish special nonsupervisory and supervisory production facilitating wage schedules for employees properly allocable to production facilitating positions under applicable Federal Wage System job grading standards.

(b) Nonsupervisory schedules shall have 11 pay levels, and supervisory schedules shall have 9 pay levels.

(c) Pay levels and rates of pay for nonsupervisory (WD) schedules and supervisory (WN) schedules shall be identical to the pay levels and rates of pay for the corresponding grades on the local FWS regular supervisory wage schedule. Pay levels shall be determined in accordance with the following table:

	WN supervisory level	WS grade
WD nonsupervisory Level:		
1		3
2		4
3		5
4		6
5	1	7
6	2	8
7	3	9
8	4	10
9	5	11
10	6	12
11	7	13
	8	14
	9	15

(d) Special production facilitating wage schedules shall be effective on the same date as the regular wage schedules in the FWS wage area.

§ 532.265 Special wage schedules for apprentices and shop trainees.

(a) Agencies may establish special wage schedules for apprentices and shop trainees who are included in:

(1) Formal apprenticeship programs involving training for journeyman level duties in occupations that are recognized as apprenticeable by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or

(2) Formal shop trainee programs involving training for journeyman level duties in nonapprenticeable occupations that require specialized trade or craft skill and knowledge.

(b) Special schedules shall consist of a single wage rate for each training period. Wage rates shall be determined as follows:

(1) Rates shall be based on the current second step rate of the target journeyman grade level on the regular nonsupervisory wage schedule for the area where the apprentice or trainee is employed.

(2) The entrance rate shall be computed at 65 percent of the journeyman level, step 2, rate, or the WG–1, step 1, rate, whichever is greater.

(3) When the WG–1, step 1, rate is used, the apprentice rate shall be increased by a minimum of 5 cents per hour for each succeeding increment interval until the rate obtained by this method equals the rate computed under the formula. No increase shall be less then 5 cents per hour.

(c) Advancement to higher increments shall be at 26-week intervals, regardless of the total length of the training period. Intermediate rates shall be established by subtracting the entrance rate from the journeyman level, step 2 rate, and dividing the difference by the number of 26-week periods of the particular training term. The resulting quotient equals the increment for each succeeding rate.

(d) Agencies may hire at advanced rates or accelerate progression through scheduled wage rates if prescribed by approved agency training standards or programs.

(e) If the employee is promoted to the target job or to a job at the same grade level, the promotion shall be to the second step rate. If the employee is assigned to a job at a grade level that is less than the grade level of the target job, existing pay fixing rules shall be followed.

§ 532.267 Special wage schedules for aircraft, electronic, and optical instrument overhaul and repair positions in Puerto Rico.

(a) The Department of Defense shall conduct special industry surveys and establish special wage schedules for wage employees in Puerto Rico whose primary duties involve the performance of work related to aircraft, electronic equipment, and optical instrument overhaul and repair.

(b) Except as provided in this section, regular appropriated fund wage survey and wage-setting procedures are applicable.

(c) Special survey specifications are as follows:

(1) Surveys shall, as a minimum, include the air transportation and electronics industries in SICs 3571, 3572, 3575, 3577, 3663, 3669, 3679, 3672, 3695, 3812, 4512, 4513, 4522, 4581, 5044, and 5045.

(2) Surveys shall cover all establishments in the surveyed industries.

(3) Surveys shall, as a minimum, include all the following jobs:

Job titles	Job grades
Aircraft Cleaner	3
Fleet Service Worker	5
Aircraft Mechanic	10
Industrial Electronic Controls Repairer	10
Aircraft Instrument Mechanic	11
Electronic Test Equipment Repairer	11
Electronics Mechanic	11
Electronic Computer Mechanic	11
Television Station Mechanic	11

(d) The data collected in a special wage survey shall be considered adequate if there are as many weighted matches used in computing the nonsupervisory payline as there are employees covered by the special wage rate schedules.

(e) Each survey job used in computing the nonsupervisory payline must include a minimum of three unweighted matches.

(f) Special schedules shall have three step rates with the payline fixed at step 2. Step 1 shall be set at 96 percent of the payline rate, and step 3 shall be set at 104 percent of the payline rate.

(g) The waiting period for within-grade increases shall be 26 weeks between steps 1 and 2 and 78 weeks between steps 2 and 3.

(h) Special wage schedules shall be effective on the same date as the regular wage schedules for the Puerto Rico wage area.

§ 532.269 Special wage schedules for Corps of Engineers, U.S. Army navigation lock and dam employees.

(a) The Department of Defense shall establish special wage schedules for nonsupervisory, leader, and supervisory wage employees of the Corps of Engineers, U.S. Army, who are engaged in operating lock and dam equipment or who repair and maintain navigation lock and dam operating machinery and equipment.

(b) Employees shall be subject to one of the following pay provisions:

(1) If all navigation lock and dam installations under a District headquarters office are located within a single wage area, the employees shall be paid from special wage schedules having rates identical to the regular wage schedule applicable to that wage area.

(2) If navigation lock and dam installations under a District headquarters office are located in more than one wage area, employees shall be paid from a special wage schedule having rates identical to the regular wage schedule authorized for the headquarters office.

(c) Each special wage schedule shall be effective on the same date as the regular schedule on which it is based.

§ 532.271 Special wage schedules for National Park Service positions in overlap areas.

(a)(1) The Department of the Interior shall establish special schedules for wage employees of the National Park Service whose duty station is located in one of the following NPS jurisdictions:

(i) Blue Ridge Parkway;

(ii) Natchez Trace Parkway; and

(iii) Great Smoky Mountains National Park.

(2) Each of these NPS jurisdictions is located in (i.e., overlaps) more than one FWS wage area.

(b) The special overlap wage schedules in each of the NPS jurisdictions shall be based on a determination concerning which regular nonsupervisory wage schedule in the overlapped FWS wage areas provides the most favorable payline for the employees.

(c) The most favorable payline shall be determined by computing a simple average of the 15 nonsupervisory second step rates on each one of the regular schedules authorized for each wage area overlapped. The highest average obtained by this method will identify the regular schedule that produces the most favorable payline.

(d) Each special schedule shall be effective on the same date as the regular schedule on which it is based.

(e) If there is a change in the identification of the most favorable payline, the special scheule for the current year shall be issued on its normal effective date. The next special scheule shall be issued on the effective date of the next regular schedule that produced the most favorable payline for the NPS jurisdiction in the previous year.

§ 532.273 Special wage schedules for United States Information Agency Radio Antenna Rigger positions.

(a) The United States Information Agency shall establish special wage schedules for Radio Antenna Riggers employed at transmitting and relay stations in the United States.

(b) The wage rate shall be the regular wage rate for the appropriate grade for Radio Antenna Rigger for the wage area in which the station is located, plus 25 percent of that rate.

(c) The 25 percent differential shall be in lieu of any environmental differential that would otherwise be payable.

(d) The special schedules shall be effective on the same date as the regular wage schedules for the wage area in which the positions are located.

§ 532.275 Special wage schedules for ship surveyors in Puerto Rico.

(a) The Department of Defense shall establish special wage schedules for nonsupervisory ship surveyors and supervisory ship surveyors in Puerto Rico.

(b) Rates shall be computed as follows:

(1) The step 2 rate for nonsupervisory ship surveyors shall be set at 149.5 percent of the WG–10, step 2, rate on the overseas schedule.

(2) The step 2 rate of supervisory ship surveyors shall be set at 166.75 percent

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of the WG–10, step 2, rate on the overseas schedule.

(3) Step rates shall be developed by using the standard formulas established in § 532.203 of this part.

(c) The special wage schedules shall be effective on the same date as the regular wage schedules applicable to the Puerto Rico wage area.

§ 532.277 Special wage schedules for U.S. Navy positions in Bridgeport, California.

(a) The Department of Defense shall establish special wage schedules for prevailing rate employees at the United States Marine Corps Mountain Warfare Training Center in Bridgeport, California.

(b) Schedules shall be established by increasing the step 2 rates on the Reno, Nevada, regular wage schedule by 10 percent.

(c) Step rates shall be developed by using the standard formulas established in § 532.203 of this subpart.

(d) The special wage schedules shall be effective on the same date as the regular wage schedules applicable to the Reno, Nevada, wage area.

§ 532.279 Special wage schedules for printing positions.

(a) The lead agency in a special printing schedule area listed in paragraph (j) of this section shall conduct special printing surveys and establish special printing schedules for positions properly allocable to the 4400 printing job familiy or the 5330 printing equipment repairing job series under FWS job grading standards.

(b) Except as provided in this section, regular appropriated fund wage survey and wage-setting procedures established in §§ 532.213 through 532.227 of this subpart shall be applicable to printing surveys and schedules.

(c) Specifications for printing surveys shall be as follows:

(1) Standard industrial code 2752 shall be included in the printing survey. A lead agency may also add other SICs in Major Group 27 to the survey in light of survey experience.

(2) Surveys shall cover establishments with a total employment of 20 or more.

(3) A lead agency shall survey the following jobs:

Job title	Job grade
Opequer	4
Offset Press Helper	5
Bindery Machine Operator (Helper)	5
Film Assembler-Stripper (Single Flat-Single Color)	5
Platemaker (Single Color)	5
Film Assembler-Stripper (Partial and Composite Flats)	7
Platemaker (Double Exposure and Multi-color Line)	7
Offset Press Operator	8
Bindery Machine Operator (Paper Cutter)	8
Bindery Machine Operator (Power Folder)	8
Film Assembler-Stripper (Multiple Flat-Multiple Color)	8
Platemaker (Multicolor Halftones and Screen Tints)	8
Bindery Machine Operator	9
Offset Operator (15–18 Thru 14–20)	9
Offset Operator (17–22 Thru 19–25)	9
Offset Operator (22–29 Thru 35–39)	9
Offset Operator (35–45 and Larger)	10
Offset Photographer (Halftone)	10
Negative Engraver	10
Bookbinder	10
Lithographic Pressman Multicolor (17–22 Thru 25–39)	10
Lithographic Pressman Multicolor (34–44 and Larger)	11
Offset Photographer (Process Color)	11

(d) The data collected in a special printing survey shall be considered adequate for computing paylines if the unweighted job matches for nonsupervisory jobs include at least 20 matches in the grade 1 through 5 range, 20 matches in the grade 6 through 8 range, 40 matches in the grade 9 and above range, and 60 additional matches at any grade.

(e) Each survey job used in computing printing schedule paylines must include a minimum of three unweighted matches.

(f) Special printing schedules shall have three step rates with the payline fixed at step 2. Step 1 shall be set at 96 percent of the payline rate, and step 3 shall be set at 104 percent of the payline rate.

(g) No step 3 rate on a special printing schedule shall be less than the maximum rate of the corresponding grade on the regular wage schedule for the wage area. If an adjustment is required under this provision, the payline rate of the special schedule shall be adjusted so as to provide a step 3 special schedule rate equal to the maximum rate of the corresponding regular schedule grade when the formula in paragraph (f) of this section is applied. Step 1 shall be set at 96 percent of the adjustment payline rate.

(h) The waiting period for within-grade increases under special printing schedules is 26 weeks between steps 1 and 2 and 78 weeks between steps 2 and 3.

(i) Speical printing schedules shall be effective on the same date as the regular wage schedules for the authorized wage areas.

(j) Special printing schedules are authorized in the following wage areas:

(1) Washington, DC.
(2) St. Louis, Missouri.
(3) Kansas City, Missouri.
(4) Philadelphia, Pennsylvania.
(5) New York, New York.
(6) Atlanta, Georgia.
(7) San Francisco, California.
(8) Los Angeles, California.
(9) San Diego, California.
(10) Detroit, Michigan.
(11) Seattle-Everett-Tacoma, Washington.

§ 532.281 Special wage schedules for Divers and Tenders.

(a) Agencies are authorized to establish special schedule payments for prevailing rate employees who perform diving and tending duties.

(b) Employees who perform diving duties shall be paid 175 percent of the locality WG–10, step 2, rate for all payable hours of the shift.

(c) Employees who perform tending duties shall be paid at the locality WG–10, step 2, rate for all payable hours of the shift.

(d) Employees whose regular scheduled rate exceeds the diving/tending rate on the day they perform such duties shall retain their regular scheduled rate on that day.

(e) An employee's diving/tending rate shall be used as the basic rate of pay for computing all premium payments for a shift.

(f) Employees who both dive and tend on the same shift shall receive the higher diving rate as the basic rate for all hours of the shift.

§ 532.283 Special wage schedules for nonappropriated fund tipped employees classified as Waiter/Waitress.

(a) Tipped employees shall be paid from the regular nonappropriated fund (NAF) schedule applicable to the employee's duty station.

(b) A tip offset may be authorized for employees classified as Waiter/Waitress. For purposes of this section, a tipped employee is one who is engaged in an occupation in which he or she customarily and regularly receives more than $30 a month in tips, and a tip offset is the amount of money by which an employer, in meeting legal minimum wage standards, may reduce a tipped employee's cash wage in consideration of the receipt of tips.

(c) A tip offset may be established, abolished, or adjusted by NAF instrumentalities on an annual basis and at such additional times as new or revised minimum wage statutes require. The amount of any tip offset may vary within a single instrumentality based on location, type of service, or time of service.

(d) If tipped employees are represented by a labor organization holding exclusive recognition, the employing NAF instrumentality shall negotiate with such organization to arrive at a determination as to whether, when, and how much tip offset shall be applied. Changes in tip offset practices may be made more frequently than annually as a result of collective bargaining agreement.

(e) Tip offset practices shall be governed by the Fair Labor Standards Act, as amended, or the applicable statutes of the State, possession or territory where an employee works, whichever provides the greater benefit to the employee. In locations where tip offset is prohibited by law, the requirements of paragraphs (c) and (d) of this section do not apply.

17. Appendices A, B, C, and D to subpart B are added to read as follows:

Appendix A to Subpart B of Part 532—Nationwide Schedule of Appropriated Fund Regular Wage Surveys

This appendix shows the annual schedule of wage surveys. It lists all States alphabetically, each State being followed by an alphabetical listing of all wage areas in the State. Information given for each wage area includes—

(1) The lead agency responsible for conducting the survey;

(2) The month in which the survey will begin; and

(3) Whether full-scale surveys will be done in odd or even numbered fiscal years.

State	Wage area	Lead agency	Beginning month of survey	Fiscal year of full-scale survey odd or even
Alabama	Anniston-Gadsden	DoD	April	Even.
	Birmingham	VA	January	Even.
	Dothan	DoD	July	Odd.
	Huntsville	DoD	April	Even.
Alaska	Alaska	DoD	July	Even.
Arizona	Northeastern Arizona	DoD	March	Odd.
	Phoenix	DoD	March	Odd.
	Tucson	DoD	March	Odd.
Arkansas	Little Rock	DoD	August	Even.
California	Fresno	DoD	February	Odd.
	Los Angeles	DoD	September	Even.
	Sacramento	DoD	February	Odd.
	Salinas-Monterey	DoD	February	Even.
	San Bernardino-Riverside-Ontario	DoD	September	Even.
	San Diego	DoD	September	Odd.
	San Francisco	DoD	September	Odd.
	Santa Barbara	DoD	September	Even.
	Stockton	DoD	February	Odd.
Colorado	Denver	DoD	January	Odd.
	Southern & Western Colorado	DoD	January	Even.
Connecticut	New Haven-Hartford	VA	April	Odd.
	New London	DoD	September	Even.
Delaware	Wilmington	DoD	November	Even.
District of Columbia	Washington, D.C.	DoD	August	Odd.
Florida	Cocoa Beach-Melbourne	DoD	October	Even.
	Jacksonville	DoD	January	Odd.
	Miami	DoD	January	Odd.
	Orlando	DoD	September	Odd.
	Panama City	DoD	September	Even.
	Pensacola	DoD	September	Odd.
	Tampa-St. Petersburg	VA	April	Even.
Georgia	Albany	DoD	August	Odd.
	Atlanta	DoD	May	Odd.
	Augusta	DoD	June	Odd.
	Columbus	DoD	August	Odd.
	Macon	DoD	June	Odd.
	Savannah	DoD	May	Odd.
Hawaii	Hawaii	DoD	June	Even.
Idaho	Boise	DoD	July	Odd.
Illinois	Champaign-Urbana	DoD	September	Odd.
	Chicago	VA	September	Even.
Indiana	Bloomington-Bedford-Washington	DoD	October	Odd.
	Fort Wayne-Marion	VA	November	Odd.
	Indianapolis	DoD	October	Odd.
Iowa	Cedar Rapids-Iowa City	VA	July	Even.
	Davenport-Rock Island-Moline	DoD	October	Even.
	Des Moines	VA	September	Odd.
	Dubuque	DoD	October	Even.
Kansas	Topeka	DoD	November	Even.
	Wichita	DoD	November	Even.
Kentucky	Lexington	DoD	February	Even.
	Louisville	DoD	February	Odd.
Louisiana	Lake Charles-Alexandria	DoD	April	Even.
	New Orleans	VA	February	Odd.
	Shreveport	DoD	May	Even.
Maine	Augusta	VA	May	Odd.
	Central and Northern Maine	DoD	June	Even.
	Portland	DoD	May	Odd.
Maryland	Baltimore	DoD	September	Odd.
	Hagerstown-Martinsburg-Chambersburg	DoD	January	Even.
Massachusetts	Boston	VA	August	Even.
	Central and Western Massachusetts	DoD	June	Even.

State	Wage area	Lead agency	Beginning month of survey	Fiscal year of full-scale survey odd or even
Michigan	Detroit	DoD	January	Odd.
	Northwestern Michigan	DoD	August	Odd.
	Oscoda-Alpena	DoD	August	Odd.
	Southwestern Michigan	VA	October	Even.
Minnesota	Duluth	DoD	June	Odd.
	Minneapolis-St. Paul	VA	March	Odd.
Mississippi	Biloxi	DoD	November	Even.
	Columbus-Aberdeen	DoD	February	Even.
	Jackson	DoD	February	Odd.
	Meridian	DoD	February	Odd.
Missouri	Kansas City	DoD	October	Odd.
	St. Louis	DoD	October	Odd.
	Southern Missouri	DoD	October	Odd.
Montana	Great Falls	DoD	July	Even.
Nebraska	Omaha	DoD	October	Odd.
Nevada	Las Vegas	DoD	September	Even.
	Reno	DoD	March	Even.
New Hampshire	Portsmouth	DoD	September	Even.
New Mexico	Albuquerque	DoD	April	Odd.
New York	Albany-Schenectady-Troy	DoD	March	Odd.
	Buffalo	VA	September	Even.
	Newburg	DoD	March	Even.
	New York	DoD	January	Even.
	Northern New York	DoD	March	Odd.
	Rochester	VA	February	Even.
	Syracuse-Utica-Rome	DoD	March	Even.
North Carolina	Asheville	VA	June	Even.
	Central North Carolina	DoD	May	Even.
	Charlotte	VA	August	Odd.
	Southeastern North Carolina	DoD	January	Odd.
North Dakota	North Dakota	DoD	March	Even.
Ohio	Cincinnati	VA	January	Odd.
	Cleveland	NASA	April	Odd.
	Columbus	DoD	January	Odd.
	Dayton	DoD	January	Even.
Oklahoma	Oklahoma City	DoD	August	Odd.
	Tulsa	DoD	August	Odd.
Oregon	Portland	DoD	August	Odd.
	Southwestern Oregon	VA	May	Even.
Pennsylvania	Harrisburg	DoD	January	Even.
	Philadelphia	DoD	October	Even.
	Pittsburgh	VA	August	Odd.
	Scranton-Wilkes-Barre	DoD	August	Odd.
Puerto Rico	Puerto Rico	DoD	July	Odd.
Rhode Island	Narragansett Bay	DoD	January	Odd.
South Caroline	Charleston	DoD	July	Even.
	Columbia	DoD	May	Even.
South Dakota	Eastern South Dakota	VA	October	Odd.
Tennessee	Eastern Tennessee	VA	February	Odd.
	Memphis	DoD	February	Even.
	Nashville	DoD	February	Even.
Texas	Austin	DoD	June	Even.
	Corpus Christi	DoD	June	Even.
	Dallas-Fort Worth	DoD	October	Odd.
	El Paso	DoD	April	Even.
	Houston-Galveston-Texas City	VA	March	Even.
	San Antonio	DoD	June	Odd.
	Texarkana	DoD	April	Odd.
	Waco	DoD	May	Odd.
	Western Texas	DoD	May	Odd.
	Wichita Falls-Southwestern Oklahoma	DoD	August	Even.
Utah	Utah	DoD	July	Odd.
Virginia	Norfolk-Portsmouth-Newport News-Hampton	DoD	May	Even.
	Richmond	DoD	November	Odd.
	Roanoke	VA	November	Even.
Washington	Seattle-Everett-Tacoma	DoD	September	Even.
	Southeastern Washington-Eastern Oregon	DoD	June	Odd.
	Spokane	DoD	July	Odd.
West Virginia	West Virginia	DoD	March	Odd.
Wisconsin	Madison	VA	July	Even.
	Milwaukee	VA	June	Odd.
	Southwestern Wisconsin	DoD	June	Even.
Wyoming	Wyoming	DoD	January	Even.

Appendix B to Subpart B of Part 532—Nationwide Schedule of Nonappropriated Fund Regular Wage Surveys

This appendix shows the annual schedule of NAF wage surveys. It lists all States alphabetically, each State being followed by an alphabetical listing of all wage areas in the State. Information given for each wage area includes—

(1) The lead agency responsible for conducting the survey;

(2) The month in which the survey will begin; and

(3) Whether full-scale surveys will be conducted in odd or even numbered fiscal years.

State	Wage area	Beginning month of survey	Fiscal year of full-scale survey odd or even
Alabama	Calhoun	April	Even.
	Madison	April	Even.
	Montgomery	August	Odd.
Alaska	Anchorage	July	Even.
Arizona	Maricopa	March	Odd.
	Pima	March	Odd.
	Yuma	October	Even.
Arkansas	Pulaski	August	Odd.
California	Alameda-Contra Costa	September	Odd.
	Imperial	September	Odd.
	Kern	February	Odd.
	Los Angeles	September	Even.
	Marin-Sonoma	September	Odd.
	Merced	February	Odd.
	Monterey	February	Odd.
	Orange	September	Even.
	Riverside	October	Odd.
	Sacramento	February	Odd.
	San Bernardino	October	Odd.
	San Diego	September	Odd.
	San Francisco	September	Odd.
	San Joaquin	February	Odd.
	Santa Barbara	September	Even.
	Santa Clara	September	Odd.
	Solano	September	Odd.
	Ventura	September	Even.
Colorado	Adams-Denver	January	Even.
	El Paso	January	Even.
Connecticut	New London	September	Even.
Delaware	Kent	November	Even.
District of Columbia	Washington, DC	August	Even.
Florida	Bay	September	Odd.
	Brevard	October	Even.
	Dade	January	Odd.
	Duval	January	Odd.
	Escambia	September	Odd.
	Hillsborough	July	Even.
	Monroe	January	Odd.
	Okaloosa	September	Odd.
	Orange	October	Even.
Georgia	Chatham	June	Odd.
	Clayton-Cobb-Fulton	June	Odd.
	Columbus	August	Odd.
	Dougherty	August	Odd.
	Houston	June	Odd.
	Lowndes	August	Odd.
	Richmond	June	Odd.
Guam	Guam	September	Even.
Hawaii	Honolulu	May	Even.
Idaho	Ada-Elmore	July	Odd.
Illinois	Champaign	October	Even.
	Cook	October	Odd.
	Lake	October	Odd.
	Rock Island	October	Even.
	St. Clair	November	Odd.
Indiana	Marion	October	Odd.
Kansas	Leavenworth/Jackson-Johnson	November	Odd.
	Sedgwick	November	Odd.
Kentucky	Christian-Montgomery	February	Even.
	Clark-Hardin-Jefferson	February	Even.
Louisiana	Bossier-Caddo	May	Odd.
	Orleans	February	Odd.
	Rapides	May	Odd.
Maine	Aroostook	July	Odd.
	Cumberland	May	Odd.
Maryland	Anne Arundel	October	Odd.
	Charles-St. Marys	August	Even.
	Harford	October	Odd.
	Montgomery-Prince Georges	August	Even.
	Washington	January	Even.

State	Wage area	Beginning month of survey	Fiscal year of full-scale survey odd or even
Massachusetts	Hampden	July	Odd.
	Middlesex	September	Even.
	Norfolk	September	Even.
Michigan	Macomb	January	Odd.
	Marquette	August	Odd.
Minnesota	Hennepin	March	Odd.
Mississippi	Harrison	October	Even.
	Lauderdale	February	Odd.
	Lowndes	February	Odd.
Montana	Cascade	July	Odd.
Nebraska	Douglas-Sarpy	October	Odd.
Nevada	Churchill-Washoe	March	Odd.
	Clark	October	Odd.
New Hampshire	Rockingham	September	Even.
New Jersey	Burlington	October	Even.
	Monmouth	January	Even.
	Morris	August	Odd.
	Ocean	October	Even.
New Mexico	Bernalillo	April	Odd.
	Dona Ana	April	Odd.
New York	Clinton	March	Even.
	Kings-Queens	January	Even.
	Niagara	January	Odd.
	Oneida	March	Even.
	Orange	March	Even.
North Carolina	Craven	January	Odd.
	Cumberland	May	Even.
	Onslow	May	Odd.
	Wayne	May	Even.
North Dakota	Grand Forks	March	Odd.
	Ward	March	Odd.
Ohio	Franklin	January	Odd.
	Greene-Montgomery	January	Odd.
Oklahoma	Comanche	August	Even.
	Oklahoma	August	Odd.
Pennsylvania	Allegheny	August	Odd.
	Montgomery	October	Even.
	Cumberland	May	Even.
	Franklin	January	Even.
	Lebanon	January	Even.
	Philadelphia	October	Even.
	York	May	Even.
Puerto Rico	Guaynabo-San Juan	July	Odd.
Rhode Island	Newport	January	Odd.
South Carolina	Charleston	July	Even.
	Horry	January	Odd.
	Richland	May	Even.
South Dakota	Pennington	January	Even.
Tennessee	Shelby	February	Even.
Texas	Bell	June	Odd.
	Bexar	June	Even.
	Dallas	November	Odd.
	El Paso	April	Odd.
	Lubbock	June	Odd.
	McLennan	April	Even.
	Nueces	June	Even.
	Tarrant	November	Odd.
	Taylor	June	Odd.
	Tom Green	June	Odd.
	Travis	June	Even.
	Wichita	August	Even.
Utah	Davis-Salt Lake-Weber	March	Odd.
Virginia	Alexandria-Arlington-Fairfax	August	Even.
	Chesterfield-Richmond	November	Even.
	Hampton-Newport News	May	Even.
	Norfolk-Portsmouth-Virginia Beach	May	Even.
	Prince William	August	Even.
Washington	King	July	Even.
	Kitsap	September	Even.
	Pierce	August	Even.
	Spokane	July	Odd.
Wyoming	Laramie	January	Even.

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

This appendix lists the wage area definitions for appropriated fund employees. With a few exceptions, each area is defined in terms of county units, independent cities, or, in the New England States, of entire township or city units. Each wage area definition consists of:

(1) *Wage area title.* Wage areas usually carry the title of the principal city in the area. Sometimes, however, the area title reflects a broader geographic area, such as Wyoming or Eastern Tennessee.

(2) *Survey area definition.* Lists each county, independent city, or township in the survey area.

(3) *Area of application definition.* Lists each county, independent city, or township which, in addition to the survey area, is in the area of application.

Definitions of Wage and Wage Survey Areas

Alabama

Anniston-Gadsden

Survey Area

Alabama:
- Calhoun
- Etowah
- Talladega

Area of Application. Survey area plus:

Alabama:
- Cherokee
- Clay
- Cleburne
- De Kalb
- Randolph

Birmingham

Survey area

Alabama:
- Jefferson
- St. Clair
- Shelby
- Tuscaloosa
- Walker

Area of Application. Survey area plus:

Alabama:
- Bibb
- Blount
- Cullman
- Fayette
- Greene
- Hale
- Lamar
- Marengo
- Perry
- Pickens

Dothan

Survey area

Alabama:
- Dale
- Houston

Georgia:
- Early

Area of Application. Survey area plus:

Alabama:
- Barbour
- Coffee
- Geneva
- Henry

Georgia:
- Clay
- Miller
- Seminole

Huntsville

Survey area

Alabama:
- Limestone
- Madison
- Marshall
- Morgan

Area of Application. Survey area plus:

Alabama:
- Colbert
- Franklin
- Jackson
- Lauderdale
- Lawrence
- Marion
- Winston

Tennessee:
- Franklin
- Giles
- Lawrence
- Lincoln
- Moore
- Wayne

Alaska

Survey area

Alaska:
- Anchorage
- Fairbanks
- Juneau (and the areas within a 15-mile radius of their corporate city limits)

Area of Application. State of Alaska (except special area schedules).

Arizona

Northeastern Arizona

Survey Area

Arizona:
- Apache
- Coconino
- Navajo

New Mexico:
- McKinley
- San Juan

Area of Application. Survey area plus:

Colorado:
- La Plata
- Montezuma

Utah:
- Kane
- San Juan [1]

Phoenix

Survey area

Arizona:
- Gila
- Maricopa

Area of Application. Survey area plus:

Arizona:
- Pinal
- Yavapai

Tucson

Survey area

Arizona:
- Pima

Area of Application. Survey area plus:

Arizona:
- Cochise
- Graham
- Greenlee
- Santa Cruz

Arkansas

Little Rock

Survey Area
- Jefferson
- Pulaski
- Saline

Area of Application. Survey area plus:

Arkansas:
- Arkansas
- Ashley
- Baxter
- Boone
- Bradley
- Calhoun
- Chicot
- Clay
- Clark
- Cleburne
- Cleveland
- Conway
- Dallas
- Desha
- Drew
- Faulkner
- Franklin
- Fulton
- Garland
- Grant
- Greene
- Hot Spring
- Independence
- Izard
- Jackson
- Johnson
- Lawrence
- Lincoln
- Logan
- Lonoke
- Madison
- Marion
- Monroe
- Montgomery
- Newton
- Ouachita
- Perry
- Phillips
- Pike
- Polk
- Pope
- Prairie
- Randolph
- Scott
- Searcy
- Sebastian
- Sharp
- Stone
- Union
- Van Buren
- White
- Woodruff

[1] Does not include the Canyonlands National Park portion.

Yell

California

Fresno

Survey area

California
Fresno
Kings
Tulare

Area of Application. Survey area plus:

California:
Kern [2]
Madera
Mariposa
Merced
Tuolumne [3]

Los Angeles

Survey area

California:
Los Angeles

Area of Application. Survey area plus:

California:
Inyo
Kern [4]
Orange
Riverside [5]
San Bernardino [6]
Ventura

Sacramento

Survey area

California:
Placer
Sacramento
Sutter
Yolo
Yuba

Area of Application. Survey area plus:

California:
Alpine
Amador
Butte
Colusa
Del Norte
El Dorado
Glenn
Humboldt
Lake
Modoc
Nevada
Plumas
Shasta
Sierra
Siskiyou
Tehama
Trinity

[2] Does not include China Lake Naval Weapons Center, Edwards Air Force Base and portions occupied by Federal activities at Boron (City).
[3] Only includes Yosemite National Park portion.
[4] Only includes the China Lake Naval Weapons Center, Edwards Air Force Base and portions occupied by Federal activities at Boron (City).
[5] Only includes the Joshua Tree National Monument portion.
[6] All of San Bernardino County except that portion occupied by, and south and west of the Angeles and San Bernardino National Forests.

Salinas-Monterey

Survey area

California:
Monterey

Area of Application. Survey area plus:

California:
San Benito

San Bernardino-Riverside-Ontario

Survey area

California:
Riverside [7]
San Bernardino [8]

Area of Application. Survey area.

San Diego

Survey area

California:
San Diego

Area of Application. Survey area plus:

California:
Imperial
Arizona:
La Paz
Yuma

San Francisco

Survey area

California:
Alameda
Contra Costa
Marin
Napa
San Francisco
San Mateo
Santa Clara
Solano

Area of Application. Survey area plus:

California:
Mendocino
Santa Cruz
Sonoma

Santa Barbara

Survey area

California:
Santa Barbara

Area of Application. Survey area plus:

California:
San Luis Obispo

Stockton

Survey area

California:
San Joaquin

Area of Application. Survey area plus:

California:
Calaveras
Stanislaus
Tuolumne [9]

[7] Does not include the Joshua Tree National Monument portion.
[8] Only that portion occupied by, and south and west of the Angeles and San Bernardino National Forests.
[9] Does not include the Yosemite National Park portion.

Colorado

Denver

Survey area

Colorado:
Adams
Arapahoe
Boulder
Denver
Douglas
Gilpin
Jefferson

Area of Application. Survey area plus:

Colorado:
Clear Creek
Elbert
Grand
Jackson
Larimer
Logan
Morgan
Park
Phillips
Sedgwick
Summit
Washington
Weld
Yuma

Southern and Western Colorado

Survey area

Colorado:
El Paso
Pueblo
Teller

Area of Application. Survey area plus:

Colorado:
Alamosa
Archuleta
Baca
Bent
Chaffee
Cheyenne
Conejos
Costilla
Crowley
Custer
Delta
Dolores
Eagle
Fremont
Garfield
Gunnison
Hinsdale
Huerfano
Kiowa
Kit Carson
Lake
Las Animas
Lincoln
Mesa
Mineral
Montrose
Otero
Ouray
Pitkin
Prowers
Rio Blanco
Rio Grande
Routt
Saguache
San Juan
San Miguel

Connecticut

New Haven—Hartford

Survey Area

Connecticut:
The following cities and towns in:
Fairfield County
Stratford
Hartford County
Bloomfield
East Granby
East Hartford
East Windsor
Enfield
Glastonbury
Hartford
Manchester
Newington
Rocky Hill
Suffield
West Hartford
Wethersfield
Windsor
Windsor Locks
Middlesex County
Cromwell
Middlefield
New Haven County
Branford
East Haven
Hamden
Meriden
Milford
New Haven
North Branford
North Haven
Orange
Wallingford
West Haven

Area of application. Survey area plus:

Connecticut:
Fairfield County (nonsurvey area part)
Hartford County (nonsurvey area part)
Litchfield County
Middlesex County (nonsurvey area part except Old Saybrook)
New Haven County (nonsurvey area part)
Tolland County (except Somers and Somersville)

New London

Survey Area

Connecticut:
The following cities and towns in:
Middlesex County
Old Saybrook
New London County
Baltic
Bozrah
East Lyme
Gales Ferry
Groton
Hanover
Jewett City
Ledyard
Lisbon
Lyme
Montville
Mystic
New London
Noank
Norwich
Oakdale
Old Mystic
Old Lyme
Pawcatuck
Poquonock Bridge
Preston
Quaker Hill
Stonington
Submarine Base
Uncasville
Versailles
Waterford
West Mystic
Rhode Island:
The following cities and towns in:
Washington County
Hopkinton
Westerly

Area of application. Survey area plus:

Connecticut:
New London (nonsurvey area part)
Windham

Delaware

Wilmington

Survey Area

Delaware:
Kent
New Castle
Maryland:
Cecil
New Jersey:
Salem

Area of Application. Survey area plus:

Delaware:
Sussex
Maryland:
Caroline
Dorchester
Kent
Queen Annes
Somerset
Talbot
Wicomico
Worcester[10]

Distric of Columbia

Washington, DC

Survey Area

District of Columbia:
Washington, D.C.
Maryland:
Charles
Frederick
Montgomery
Prince Georges
Virginia (cities):
Alexandria
Fairfax
Falls Church
Virginia (counties):
Arlington
Fairfax
Loudoun
Prince William

Area of Application. Survey area plus:

Maryland:
Calvert
St. Marys
Virginia:
Fauquier
King George
Stafford

Florida

Cocoa Beach-Melbourne

Survey Area

Florida:
Brevard

Area of Application. Survey area plus:

Florida:
Indian River

Jacksonville

Survey Area

Florida:
Alachua
Baker
Clay
Duval
Nassau
St. Johns

Area of Application. Survey area plus:

Florida:
Bradford
Citrus
Columbia
Dixie
Flagler
Gilchrist
Hamilton
Lafayette
Lake
Levy
Madison
Marion
Putnam
Sumter
Suwannee
Taylor
Union
Georgia:
Brantley
Camden
Charlton
Glynn
Pierce

Miami

Survey Area

Florida:
Dade

Area of Application. Survey area plus:

Florida:
Broward
Collier
Glades
Hendry
Highlands
Martin
Monroe
Okeechobee
Palm Beach
St. Lucie

Orlando

Survey Area

Florida:
Orange
Osceola

[10] Does not include the Assateague Island portion.

Seminole

Area of Application. Survey area plus:

Florida:
Volusia

Panama City

Survey Area

Florida:
Bay
Gulf

Area of Application. Survey area plus:

Florida:
Calhoun
Franklin
Gadsden
Holmes
Jackson
Jefferson
Leon
Liberty
Wakulla
Washington

Pensacola

Survey Area

Florida:
Escambia
Santa Rosa

Area of Application. Survey area plus:

Florida
Okaloosa
Walton
Alabama:
Baldwin
Clarke
Conecuh
Covington
Escambia
Mobile
Monroe
Washington

Tampa-St. Petersburg

Survey Area

Florida:
Hillsborough
Pasco
Pinellas

Area of Application. Survey area plus:

Florida:
Charlotte
De Soto
Hardee
Hernando
Lee
Manatee
Polk
Sarasota

Georgia

Albany

Survey Area

Georgia:
Colquitt
Dougherty
Lee
Mitchell
Worth

Area of Application. Survey area plus:

Georgia:
Atkinson
Baker
Ben Hill
Berrien
Brooks
Calhoun
Clinch
Coffee
Cook
Decatur
Echols
Grady
Irwin
Lanier
Lowndes
Randolph
Sumter
Terrell
Thomas
Tift
Turner
Ware

Atlanta

Survey Area

Georgia:
Butts
Cherokee
Clayton
Cobb
De Kalb
Douglas
Fayette
Forsyth
Fulton
Gwinnett
Henry
Newton
Paulding
Rockdale
Walton

Area of Application. Survey area plus:

Georgia:
Banks
Barrow
Bartow
Carroll
Chattooga
Clarke
Coweta
Dawson
Fannin
Floyd
Franklin
Gilmer
Gordon
Greene
Habersham
Hall
Haralson
Heard
Jackson
Lumpkin
Madison
Morgan
Murray
Oconee
Oglethorpe
Pickens
Pike
Polk
Rabun
Spalding
Stephens
Towns
Union
White
Whitfield

Augusta

Survey Area

Georgia:
Columbia
McDuffie
Richmond
South Carolina:
Aiken

Area of Application. Survey area plus:

Georgia:
Burke
Elbert
Emanuel
Glascock
Hart
Jefferson
Jenkins
Lincoln
Taliaferro
Warren
Wilkes
South Carolina:
Allendale
Bamberg
Barnwell
Edgefield
McCormick

Columbus

Survey Area

Georgia (Counties):
Chattahoochee
Georgia (Consolidated government):
Columbus
Alabama:
Autauga
Elmore
Lee
Macon
Montgomery
Russel

Area of Application. Survey area plus:

Georgia:
Harris
Marion
Meriwether
Quitman
Schley
Stewart
Talbot
Taylor
Troup
Webster
Alabama:
Bullock
Butler
Chambers
Chilton
Coosa
Crenshaw
Dallas
Lowndes
Pike
Tallapoosa
Wilcox

Macon

Survey area

Georgia:
Bibb
Houston
Jones
Laurens
Twiggs
Wilkinson

Area of Application. Survey area plus:

Georgia:
Baldwin
Bleckley
Crawford
Crisp
Dodge
Dooly
Hancock
Jasper
Johnson
Lamar
Macon
Monroe
Montgomery
Peach
Pulaski
Putnam
Telfair
Treutlen
Upson
Washington
Wheeler
Wilcox

Savannah

Survey Area

Georgia:
Bryan
Chatham
Effingham
Liberty

Area of Application. Survey area plus:

Georgia:
Appling
Bacon
Bulloch
Candler
Evans
Jeff Davis
Long
McIntosh
Screven
Tattnall
Toombs
Wayne
South Carolina:
Beaufort [11]
Hampton
Jasper

Hawaii

Survey area

Hawaii:
Honolulu

Area of Application. Survey area plus:

Hawaii:
Hawaii
Kauai [12]
Maui [13]

Idaho

Boise

Survey Area

Idaho:
Ada
Boise
Canyon
Elmore
Gem

Area of Application. Survey area plus:

Idaho:
Adams
Bannock
Bear Lake
Bingham
Blaine
Bonneville
Butte
Camas
Caribou
Cassia
Clark
Custer
Franklin
Fremont
Gooding
Jefferson
Jerome
Lemhi
Lincoln
Madison
Minidoka
Oneida
Owyhee
Payette
Power
Teton
Twin Falls
Valley
Washington

Illinois

Champaign-Urbana

Survey area

Illinois:
Champaign
Menard
Sangamon
Vermilion

Area of Application. Survey area plus:

Illinois:
Christian
Clerk
Coles
Crawford
Cumberland
De Witt
Douglas
Edgar
Ford
Jasper
Logan
McLean
Macon
Moultrie
Piatt
Shelby

Chicago

Survey area

Illinois:
Cook
Du Page
Kane
Lake
McHenry
Will

Area of Application. Survey area plus:

Illinois:
Boone
De Kalb
Grundy
Iroquois
Kankakee
Kendall
La Salle
Lee
Livingston
Ogle
Stephenson
Winnebago
Indiana:
Benton
Jasper
Lake
La Porte
Newton
Porter
Pulaski
Starke

Indiana

Bloomington-Bedford-Washington

Survey area

Indiana:
Daviess
Greene
Knox
Lawrence
Martin
Monroe
Orange

Area of Application. Survey area plus:

Indiana:
Brown
Brawford
Dubois
Gibson
Jackson
Owen
Perry
Pike
Posey
Spencer
Vanderburgh
Warrick
Washington
Illinois:
Edwards
Gallatin
Hardin
Lawrence
Richland
Wabash
White
Kentucky:
Crittenden
Daviess
Hancock
Henderson

[11] The portion south of Broad River.

[12] Kauai county includes the islands of Kauai and Niihau.

[13] Maui county includes the islands of Maui, Molokai, Lanai and Kohoolawe.

Livingston
McLean
Ohio
Union
Webster

Ft. Wayne-Marion

Survey area

Indiana:
Adams
Allen
DeKalb
Grant
Huntington
Wells

Area of Application. Survey area plus:

Indiana:
Blackford
Carroll
Cass
Elkhart
Fulton
Howard
Jay
Kosciusko
Lagrange
Marshall
Miami
Noble
St. Joseph
Steuben
Wabash
White
Whitley
Ohio:
Allen
Defiance
Fulton
Henry
Mercer
Paulding
Putnam
Van Wert
Williams

Indianapolis

Survey area

Indiana:
Boone
Hamilton
Hancock
Hendricks
Johnson
Marion
Morgan
Shelby

Area of Application. Survey area plus:

Indiana:
Bartholomew
Clay
Clinton
Decatur
Delaware
Fayette
Fountain
Henry
Madison
Montgomery
Parke
Putnam
Rush
Sullivan
Tippecanoe
Tipton
Vermillion
Vigo
Warren

Iowa

Cedar Rapids-Iowa City

Survey area

Iowa:
Benton
Black Hawk
Johnson
Linn

Area of Application. Survey area plus:

Iowa:
Allamakee
Bremer
Buchanan
Butler
Cedar
Chickasaw
Clayton
Davis
Delaware
Fayette
Floyd
Grundy
Henry
Howard
Iowa
Jefferson
Jones
Keokuk
Mitchell
Tama
Van Buren
Wapello
Washington
Winneshiek

Davenport-Rock Island-Moline

Survey area

Iowa:
Scott
Illinois:
Henry
Rock Island

Area of Application. Survey area plus:

Iowa:
Des Moines
Lee
Louisa
Muscatine
Illinois:
Adams
Brown
Bureau
Cass
Fulton
Hancock
Henderson
Knox
McDonough
Marshall
Mason
Mercer
Peoria
Putnam
Schuyler
Stark
Tazewell
Warren
Woodford

Des Moines

Survey area

Iowa:
Polk
Story
Warren

Area of Application. Survey area plus:

Iowa:
Adair
Appanoose
Boone
Calhoun
Carroll
Cerro Gordo
Clarke
Dallas
Decatur
Franklin
Greene
Guthrie
Hamilton
Hancock
Hardin
Humboldt
Jasper
Kossuth
Lucas
Madison
Mahaska
Marion
Marshall
Monroe
Poweshiek
Ringgold
Union
Wayne
Webster
Winnebago
Worth
Wright

Dubuque

Survey area

Iowa:
Clinton
Dubuque
Jackson
Illinois:
Carroll
Jo Daviess
Whiteside

Area of Application. Survey area.

Kansas:

Topeka

Survey area

Kansas:
Geary
Jefferson
Osage
Shawnee

Area of Application. Survey area plus:

Kansas:
Brown
Clay
Cloud
Coffey
Dickinson
Jackson
Lyon
Marshall

Morris
Nemaha
Ottawa
Pottawatomie
Republic
Riley
Saline
Webaunsee
Washington

Wichita

Survey area

Kansas:
Butler
Sedgwick

Area of Application. Survey area plus:

Kansas:
Barber
Barton
Chase
Chautauqua
Cheyenne
Clark
Comanche
Cowley
Decatur
Edwards
Elk
Ellis
Ellsworth
Finney
Ford
Gove
Graham
Grant
Gray
Greeley
Greenwood
Hamilton
Harper
Harvey
Haskell
Hodgeman
Jewell
Kearny
Kingman
Kiowa
Labette
Lane
Lincoln
Logan
McPherson
Marion
Meade
Mitchell
Montgomery
Morton
Neosho
Ness
Norton
Osborne
Pawnee
Phillips
Pratt
Rawlins
Reno
Rice
Rooks
Rush
Russell
Scott
Seward
Sheridan
Sherman
Smith
Stafford
Stanton
Stevens
Sumner
Thomas
Trego
Wallace
Wichita
Wilson
Woodson

Kentucky

Lexington

Survey area

Kentucky:
Bourbon
Clark
Fayette
Jessamine
Madison
Scott
Woodford

Area of Application. Survey area plus:

Kentucky:
Anderson
Bath
Bell
Boyle
Breathitt
Casey
Clay
Estill
Fleming
Franklin
Garrard
Green
Harrison
Jackson
Knott
Knox
Laurel
Lee
Leslie
Lincoln
McCreary
Marion
Menifee
Mercer
Montgomery
Morgan
Nicholas
Owen
Owsley
Perry
Powell
Pulaski
Robertson
Rockcastle
Rowan
Taylor
Washington
Wayne
Whitley
Wolfe

Louisville

Survey area

Kentucky:
Bullitt
Hardin
Jefferson
Oldham
Indiana:
Clark
Floyd
Jefferson

Area of Application. Survey area plus:

Kentucky:
Breckinridge
Grayson
Hart
Henry
Larue
Meade
Nelson
Shelby
Spencer
Trimble
Indiana:
Harrison
Jennings
Scott

Louisiana

Lake Charles-Alexandria

Survey area

Louisiana:
Allen
Beauregard
Calcasieu
Grant
Rapides
Sabine
Vernon

Area of Application. Survey area plus:

Louisiana:
Acadia
Avoyelles
Caldwell
Cameron
Catahoula
Concordia
Evangeline
Franklin
Jefferson Davis
Lafayette
La Salle
Madison
Natchitoches
St. Landry
Tensas
Vermilion
Winn

New Orleans

Survey area

Louisiana:
Jefferson
Orleans
Plaquemines
St. Bernard
St. Tammany

Area of Application. Survey area plus:

Louisiana:
Ascension
Assumption
East Baton Rouge
East Feliciana
Iberia
Iberville
Lafourche
Livingston
Pointe Coupee
St. Charles
St. Helena

St. James
St. John the Baptist
St. Martin
St. Mary
Tangipahoa
Terrebonne
Washington
West Baton Rouge
West Feliciana

Shreveport

Survey area

Louisiana:
Bossier
Caddo
Webster

Area of Application. Survey area plus:

Louisiana:
Bienville
Claiborne
De Soto
East Carroll
Jackson
Lincoln
Morehouse
Ouachita
Red River
Richland
Union
West Carroll
Texas:
Cherokee
Gregg
Harrison
Panola
Rusk

Maine

Augusta

Survey area

Maine:
Kennebec
Knox
Lincoln

Area of Application. Survey area.

Central and Northern Maine

Survey area

Maine:
Aroostook
Penobscot

Area of Application. Survey area plus:

Maine:
Hancock
Piscataquis
Somerset
Waldo
Washington

Portland

Survey area

Maine:
Androscoggin
Cumberland
Sagadahoc

Area of Application. Survey area plus:

Maine:
Franklin
Oxford
New Hampshire:
Coos

Maryland

Baltimore

Survey area

Maryland:
Baltimore City
Anne Arundel
Baltimore
Carroll
Harford
Howard

Area of Application. Survey area

Hagerstown-Martinsburg-Chambersburg

Survey area

Maryland:
Washington
Pennsylvania:
Franklin
West Virginia
Berkeley

Area of Application: Survey area plus:

Maryland
Allegany
Garrett
Virginia (cities):
Harrisonburg City
Winchester City
Virginia (counties):
Clarke
Culpeper
Frederick
Greene
Madison
Page
Rappahannock
Rockingham
Shenandoah
Warren
West Virginia
Hampshire
Hardy
Jefferson
Mineral
Morgan

Massachusetts

Boston

Survey Area

Massachusetts:
The following cities and towns in:
Essex County
Beverly
Boxford
Danvers
Hamilton
Lynn
Lynnfield
Manchester
Marblehead
Middleton
Nahant
Peabody
Salem
Saugus
South Hamilton
Swampscon
Topsfield
Wenham
Middlesex County
Acton
Arlington
Ashland
Bedford
Belmont
Boxborough
Burlington
Cambridge
Carlisle
Concord
Everett
Framingham
Holliston
Lexington
Lincoln
Malden
Medford
Melrose
Natick
Newton
North Reading
North Wilmington
Reading
Sherborn
Somerville
Stoneham
Sudbury
Wakefield
Waltham
Watertown
Wayland
West Concord
Weston
Wilmington
Winchester
Woburn
Norfolk County
Bellingham
Braintree
Brookline
Canton
Cohasset
Dedham
Dover
East Walpole
Foxborough
Franklin
Harding
Holbrook
Islington
Medfield
Medway
Millis
Milton
Needham
Norfolk
North Cohasset
Norwood
Quincy
Randolph
Sharon
South Walpole
Stoughton
Walpole
Wellesley
Westwood
Weymouth
Wrentham
Plymouth County
Abington
Duxbury
Hanover
Hanson
Hingham
Hull
Kingston
Marshfield
Marshfield Hills

North Scituate
Norwell
Oceanbluff
Pembroke
Rockland
Scituate
Shore Acres
South Duxbury
South Hingham
West Hanover
Suffolk County

Area of Application. Survey area plus:

Massachusetts:
Barnstable
Dukes
Nantucket
Plymouth (non-survey area part)
The following cities and towns in:
Bristol County
Easton
Essex County
Andover
Essex
Gloucester
Ipswich
Lawrence
Methuen
Rockport
Rowley
Middlesex County
Ayer
Billerica
Chelmsford
Dracut
Dunstable
Groton
Hopkinton
Hudson
Littleton
Lowell
Marlborough
Maynard
Pepperell
Stow
Tewksbury
Tyngsborough
Westford
Norfolk County
Avon

Central and Western Massachusetts

Survey area

Massachusetts:
The following cities and towns in:
Hampden County
Agawam
Chicopee
East Longmeadow
Feeding Hills
Hampden
Holyoke
Longmeadow
Ludlow
Monson
Palmer
Southwick
Springfield
Three Rivers
Westfield
West Springfield
Wilbraham
Hampshire County
Easthampton
Granby
Hadley
Northampton
South Hadley
Worcester County
Warren
West Warren
Connecticut:
Tolland County
Somers
Somersville

Area of Application. Survey area plus:

Massachusetts:
Berkshire
Franklin
Worcester (except Blackstone and Millville)
The following towns and cities in:
Hampshire County
Amherst
Belchertown
Chesterfield
Cummington
Goshen
Hatfield
Huntington
Middlefield
Pelham
Plainfield
Southampton
Ware
Westhampton
Williamsburg
Worthington
Hampden County
Blandford
Brimfield
Chester
Granville
Holland
Montgomery
Russell
Tolland
Wales
Middlesex County
Ashby
Shirley
Townsend
New Hampshire:
Belknap
Carroll
Cheshire
Grafton
Hillsborough
Merrimack
Sullivan
Vermont:
Addison
Bennington
Caledonia
Essex
Lamoille
Orange
Orleans
Rutland
Washington
Windham
Windsor

Michigan

Detroit

Survey area

Michigan:
Lapeer
Livingston
Macomb
Oakland
St. Clair
Wayne

Area of Application. Survey area plus:

Michigan:
Arenac
Bay
Clare
Clinton
Eaton
Genesee
Gladwin
Gratiot
Huron
Ingham
Isabella
Lenawee
Midland
Monroe
Saginaw
Sanilac
Shiawassee
Tuscola
Washtenaw
Ohio:
Lucas
Wood

Northwestern Michigan

Survey area

Michigan:
Delta
Dickinson
Marquette

Area of Application. Survey area plus:

Michigan:
Alger
Baraga
Chippewa
Gogebic
Houghton
Iron
Keweenaw
Luce
Mackinac
Menominee
Ontonagon
Schoolcraft

Oscoda-Alpena

Survey area

Michigan:
Alcona
Alpena
Iosco

Area of Application. Survey area plus:

Michigan:
Antrim
Benzie
Charlevoix
Cheboygan
Crawford
Emmet
Grand Traverse
Kalkaska
Leelanau
Manistee
Missaukee
Montmorency
Ogemaw
Oscoda
Otsego

Presque Isle
Roscommon
Wexford

Southwestern Michigan

Survey area

Michigan:
Barry
Calhoun
Kalamazoo
Van Buren

Area of Application. Survey area plus:

Michigan:
Allegan
Berrien
Branch
Cass
Hillsdale
Ionia
Jackson
Kent
Lake
Mason
Mecosta
Montcalm
Muskegon
Newaygo
Oceana
Osceola
Ottawa
St. Joseph

Minnesota

Duluth

Survey area

Minnesota:
Carlton
St. Louis
Wisconsin:
Douglas

Area of Application. Survey area plus:

Minnesota:
Aitkin
Beltrami
Cass
Cook
Crow Wing
Hubbard
Itasca
Koochiching
Lake
Lake of the Woods
Pine
Wisconsin:
Ashland
Bayfield
Burnett
Iron
Sawyer
Washburn

Minneapolis-St. Paul

Survey area

Minnesota:
Anoka
Carver
Chisago
Dakota
Hennepin
Ramsey
Scott
Washington
Wright
Wisconsin:
St. Croix

Area of Application. Survey area plus:

Minnesota:
Benton
Big Stone
Blue Earth
Brown
Chippewa
Cottonwood
Dodge
Douglas
Faribault
Freeborn
Goodhue
Grant
Isanti
Kanabec
Kandiyohi
Lac Qui Parle
Le Sueur
McLeod
Martin
Meeker
Mille Lacs
Morrison
Mower
Nicollet
Olmsted
Pope
Redwood
Renville
Rice
Sherburne
Sibley
Stearns
Steele
Stevens
Swift
Todd
Traverse
Wadena
Waseca
Watonwan
Yellow Medicine
Wisconsin:
Pierce
Polk

Mississippi

Biloxi

Survey area

Mississippi:
Hancock
Harrison
Jackson
Stone

Area of Application. Survey area plus:

Mississippi:
George
Pearl River

Survey area

Mississippi:
Clay
Lee
Lowndes
Monroe
Oktibbeha

Area of Application. Survey area plus:

Mississippi:
Alcorn
Bolivar
Calhoun
Carroll
Chickasaw
Choctaw
Coahoma
Grenada
Itawamba
Lafayette
Leflore
Montgomery
Noxubee
Panola
Pontotoc [14]
Prentiss
Quitman
Sunflower
Tallahatchie
Tishomingo
Union
Washington
Webster
Winston
Yalobusha

Jackson

Survey area

Mississippi:
Adams
Claiborne
Hinds
Jefferson
Rankin
Warren

Area of Application. Survey area plus:

Mississippi:
Amite
Attala
Copiah
Covington
Franklin
Holmes
Humphreys
Issaquena
Jefferson Davis
Lamar
Lawrence
Lincoln
Madison
Marion
Pike
Scott
Sharkey
Simpson
Smith
Walthall
Wilkinson
Yazoo

Meridian

Survey area

Mississippi:
Forrest
Lauderdale
Alabama:
Choctaw

Area of Application. Survey area plus:

Mississippi:
Clarke
Greene
Jasper

[14] Excluding Holly Springs National Forest.

Jones
Kemper
Leake
Neshoba
Newton
Perry
Wayne
Alabama:
Sumter

Missouri

Kansas City

Survey area

Missouri:
Cass
Clay
Jackson
Platte
Ray
Kansas:
Johnson
Leavenworth
Wyandotte

Area of Application. Survey area plus:

Missouri:
Adair
Andrew
Atchison
Bates
Buchanan
Caldwell
Carroll
Chariton
Clinton
Cooper
Daviess
De Kalb
Gentry
Grundy
Harrison
Henry
Holt
Howard
Johnson
Lafayette
Linn
Livingston
Macon
Mercer
Nodaway
Pettis
Putnam
Saline
Schuyler
Sullivan
Worth
Kansas:
Allen
Anderson
Atchison
Bourbon
Doniphan
Douglas
Franklin
Linn
Miami

Survey area

Missouri:
St. Louis City
Franklin
Jefferson
St. Charles
St. Louis
Illinois:
Clinton
Madison
Monroe
St. Clair

Area of Application. Survey area plus:

Missouri:
Audrain
Boone
Callaway
Clark
Cole
Crawford
Gasconade
Knox
Lewis
Lincoln
Marion
Monroe
Montgomery
Osage
Pike
Ralls
Randolph
St. Francois
Ste. Genevieve
Scotland
Shelby
Warren
Washington
Illinois:
Alexander
Bond
Calhoun
Clay
Effingham
Fayette
Franklin
Greene
Hamilton
Jackson
Jefferson
Jersey
Johnson
Macoupin
Marion
Massac
Montgomery
Morgan
Perry
Pike
Pope
Pulaski
Randolph
Saline
Scott
Union
Washington
Wayne
Williamson

Southern Missouri

Survey area

Missouri:
Christian
Greene
Laclede
Phelps
Pulaski
Webster

Area of Application. Survey area plus:

Missouri:
Barry
Barton
Benton
Bollinger
Butler
Camden
Cape Girardeau
Carter
Cedar
Dade
Dallas
Dent
Douglas
Hickory
Howell
Iron
Jasper
Lawrence
McDonald
Madison
Maries
Miller
Mississippi
Moniteau
Morgan
New Madrid
Newton
Oregon
Ozark
Perry
Polk
Reynolds
Ripley
St. Clair
Scott
Shannon
Stoddard
Stone
Taney
Texas
Vernon
Wayne
Wright
Kansas:
Cherokee
Crawford

Montana

Great Falls

Survey area

Montana:
Cascade
Lewis and Clark
Yellowstone

Area of Application. Survey area plus:

Montana:
Beaverhead
Big Horn
Blaine
Broadwater
Carbon
Carter
Chouteau
Custer
Daniels
Dawson
Deer Lodge
Fallon
Fergus
Flathead
Gallatin
Garfield
Glacier
Golden Valley
Granite

Hill
Jefferson
Judith Basin
Lake
Liberty
Lincoln
McCone
Madison
Meagher
Mineral
Missoula
Musselshell
Park
Petroleum
Phillip
Pondera
Powder River
Powell
Prairie
Ravalli
Richland
Roosevelt
Rosebud
Sanders
Sheridan
Silver Bow
Stillwater
Sweet Grass
Teton
Toole
Treasure
Valley
Wheatland
Wibaux
Wyoming
Big Horn
Park

Nebraska

Omaha

Survey area

Nebraska:
Douglas
Sarpy
Lancaster
Iowa:
Pottawattamie

Area of Application. Survey area plus:

Nebraska:
Adams
Antelope
Arthur
Blaine
Boone
Boyd
Brown
Buffalo
Burt
Butler
Cass
Cedar
Chase
Cherry
Clay
Colfax
Cuming
Custer
Dakota
Dawson
Dixon
Dodge
Dundy
Fillmore
Franklin
Frontier
Furnas
Gage
Garfield
Gosper
Grant
Greeley
Hall
Hamilton
Harlan
Hayes
Hitchcock
Holt
Hooker
Howard
Jefferson
Johnson
Kearney
Keith
Keya Paha
Knox
Lincoln
Logan
Loup
McPherson
Madison
Merrick
Nance
Nemaha
Nuckolls
Otoe
Pawnee
Perkins
Phelps
Pierce
Platte
Polk
Red Willow
Richardson
Rock
Saline
Saunders
Seward
Sherman
Stanton
Thayer
Thomas
Thurston
Valley
Washington
Wayne
Webster
Wheeler
York

Iowa:
Adams
Audubon
Buena Vista
Cass
Cherokee
Clay
Crawford
Fremont
Harrison
Ida
Mills
Monona
Montgomery
O'Brien
Page
Palo Alto
Plymouth
Pocahontas
Sac
Shelby
Sioux
Taylor
Woodbury

Nevada

Las Vegas

Survey area

Nevada
Clark
Nye

Area of Application. Survey area plus:

Nevada
Esmeralda
Lincoln
Arizona:
Mohave

Reno

Survey area

Nevada:
Lyon
Mineral
Storey
Washoe

Area of Application. Survey area plus:

Nevada (cities)
Carson City
Nevada (counties)
Churchill
Douglas
Elko
Eureka
Humboldt
Lander
Pershing
White Pine
California:
Lassen
Mono [15]

Survey area

New Hampshire:
Rockingham (except the following cities and towns: Newton; Plaistow; Salem; and Westville)
Stafford
Maine:
York
Massachusetts:
The following cities and towns in:
Essex County
Amesbury
Georgetown
Groveland
Haverhill
Merrimac
Newbury
Newburyport
North Andover
Salisbury
South Byfield
West Newbury

Area of Application. Survey area plus:

New Hampshire:
The following towns in:
Rockingham County
Newton

[15] Does not cover locations to which Bridgeport, Calif, special schedule applies.

Plaistow
Salem

New Mexico

Albuquerque

Survey area

New Mexico
Bernalillo
Sandoval

Area of Application. Survey area plus:

New Mexico
Catron
Cibola
Colfax
Curry
De Baca
Guadalupe
Harding
Lincoln [16]
Los Alamos
Mora
Quay
Rio Arriba
Roosevelt
San Miguel
Santa Fe
Socorro [16]
Taos
Torrance
Union
Valencia

New York

Albany-Schenectady-Troy

Survey area

New York
Albany
Montgomery
Rensselaer
Saratoga
Schenectady

Area of Application. Survey area plus:

New York:
Columbia
Fulton
Greene
Schoharie
Warren
Washington

Buffalo

Survey area

New York:
Erie
Niagara

Area of Application. Survey area plus:

New York:
Cattaraugus
Chautauqua

Newburgh

Survey area

New York:
Dutchess
Orange
Ulster

Area of Application. Survey area plus:

New York:
Delaware
Sullivan

Survey area

New York:
Bronx
Kings
Nassau
New York
Putnam
Queens
Richmond
Rockland
Suffolk
Westchester
New Jersey:
Bergen
Essex
Hudson
Middlesex
Monmouth
Morris
Passaic
Somerset
Union

Area of Application. Survey area plus:

New Jersey:
Sussex

Northern New York

Survey area

New York:
Clinton
Franklin
Jefferson
St. Lawrence
Vermont:
Chittenden
Franklin
Grand Isle

Area of Application. Survey area plus:

New York:
Essex
Lewis

Rochester

Survey area

New York:
Livingston
Monroe
Ontario
Orleans
Steuben
Wayne

Area of Application. Survey area plus:

New York:
Allegany
Chemung
Genesee
Schuyler
Seneca
Wyoming
Yates

Syracuse-Utica-Rome

Survey area

New York:
Herkimer
Madison
Oneida
Onondaga
Oswego

Area of Application. Survey area plus:

New York:
Broome
Cayuga
Chenango
Cortland
Hamilton
Otsego
Tioga
Tompkins

North Carolina

Asheville

Survey area

North Carolina:
Buncombe
Haywood
Henderson
Madison
Transylvania

Area of Application. Survey area plus:

North Carolina:
Avery
Burke
Caldwell
Cherokee
Clay
Graham
Jackson
McDowell
Macon
Mitchell
Polk
Rutherford
Swain
Yancey

Central North Carolina

Survey area

North Carolina
Cumberland
Durham
Edgecombe
Harnett
Johnston
Orange
Wake
Wayne
Wilson

Area of Application. Survey area plus:

North Carolina
Alamance
Bladen
Caswell
Chatham
Davidson
Davie
Forsyth
Franklin
Granville
Guilford
Halifax
Hoke
Lee
Montgomery
Moore
Nash
Northampton
Person

[16] Does not include White Sands Proving Ground portion

Randolph
Richmond
Robeson
Rockingham
Sampson
Scotland
Stokes
Surry
Vance
Warren
Yadkin
South Carolina:
Dillon
Marion
Marlboro

Charlotte

Survey area

North Carolina:
Cabarrus
Gaston
Mecklenburg
Rowan
Union

Area of Application. Survey area plus:

North Carolina:
Alexander
Anson
Catawba
Cleveland
Iredell
Lincoln
Stanly
Wilkes
South Carolina:
Chesterfield
Lancaster
York

Southeastern North Carolina

Survey area

North Carolina:
Brunswick
Carteret
Columbus
Craven
Jones
Lenoir
New Hanover
Onslow
Pamlico
Pender
South Carolina:
Harry

Area of Application. Survey area plus:

North Carolina:
Beaufort
Bertie
Dare
Duplin
Greene
Hertford
Hyde
Martin
Pitt
Tyrrell
Washington

North Dakota

Survey area

North Dakota:
Burleigh
Cass
Grand Forks
McLean
Mercer
Morton
Oliver
Traill
Ward
Minnesota:
Clay
Polk

Area of Application. Survey area plus:

North Dakota:
Adams
Barnes
Benson
Billings
Bortineau
Bowman
Burke
Cavalier
Dickey
Divide
Dunn
Eddy
Emmons
Foster
Golden Valley
Grant
Griggs
Hettinger
Kidder
La Moure
Logan
McHenry
McIntosh
McKenzie
Mountrail
Nelson
Pembina
Pierce
Ramsey
Ransom
Renville
Richland
Rolette
Sargent
Sheridan
Sioux
Slope
Stark
Steele
Stutsman
Towner
Walsh
Wells
Williams
Minnesota:
Becker
Clearwater
Kittson
Mahnomen
Marshall
Norman
Otter Tail
Pennington
Red Lake
Roseau
Wilkin

Ohio

Cincinnati

Survey area

Ohio:
Clermont
Hamilton
Warren
Kentucky:
Boone
Campbell
Kenton
Indiana:
Dearborn

Area of Application: Survey are plus:

Ohio:
Adams
Brown
Butler
Highland
Indiana:
Franklin
Ohio
Ripley
Switzerland
Kentucky:
Bracken
Carroll
Gallatin
Grant
Mason
Pendleton

Cleveland

Survey area

Ohio:
Cuyahoga
Geauga
Lake
Medina

Area of Application. Survey area plus:

Ohio:
Ashland
Ashtabula
Columbiana
Erie
Huron
Lorain
Mahoning
Ottawa
Portage
Sandusky
Senaca
Stark
Summit
Trumbull
Wayne

Columbus

Survey area

Ohio:
Delaware
Fairfield
Franklin
Licking
Madison
Pickaway

Area of Application. Survey area plus:

Ohio:
Coshocton
Crawford
Fayette
Guernsey
Hancock
Hardin
Hocking
Holmes
Knox

Marion
Morrow
Muskingum
Perry
Richmond
Ross
Union
Wyandot

Dayton

Survey area

Ohio:
Champaign
Clark
Greene
Miami
Montgomery
Preble

Area of Application. Survey area plus:

Ohio:
Auglaize
Clinton
Darke
Logan
Shelby
Indiana:
Randolph
Union
Wayne

Oklahoma

Oklahoma City

Survey area

Oklahoma:
Canadian
Cleveland
McCain
Oklahoma
Pottawatomie

Area of Application. Survey area plus:

Oklahoma:
Alfalfa
Atoka
Beckham
Blaine
Bryan
Caddo
Carter
Coal
Custer
Dewey
Ellis
Garfield
Garvin
Grady
Grant
Harper
Hughes
Johnston
Kingfisher
Lincoln
Logan
Love
Major
Marshall
Murray
Noble
Payne
Pontotoc
Roger Mills
Seminole
Washita
Woods
Woodward

Tulsa

Survey area

Oklahoma:
Creek
Mayes
Muskogee
Osage
Pittsburg
Rogers
Tulsa
Wagoner

Area of Application. Survey area plus:

Oklahoma:
Adair
Cherokee
Choctaw
Craig
Delaware
Haskell
Kay
Latimer
LeFlore
McCurtain
McIntosh
Nowata
Okfuskee
Okmulgee
Ottawa
Pawnee
Pushmataha
Sequoyah
Washington
Arkansas:
Benton
Carroll
Washington

Oregon

Portland

Survey area

Oregon:
Clackamas
Marion
Multnomah
Polk
Washington
Washington:
Clark

Area of Application. Survey area plus:

Oregon:
Clatsop
Columbia
Gilliam
Hood River
Sherman
Tillamook
Wasco
Yamhill
Washington:
Cowlitz
Klickitat
Pacific
Skamania
Wahkiakum

Southwestern Oregon

Survey area

Oregon
Douglas
Jackson
Lane

Area of Application. Survey area plus:

Oregon:
Benton
Coos
Crook
Curry
Deschutes
Jefferson
Josephine
Klamath
Lake
Lincoln
Linn

Pennsylvania

Harrisburg

Survey Area

Pennsylvania:
Adams
Cumberland
Dauphin
Lebanon
Perry
York

Area of Application. Survey area plus:

Pennsylvania:
Berks
Juniata
Lancaster
Lycoming [17]
Mifflin
Montour
Northumberland
Snyder
Union

Philadelphia

Survey Area

Pennsylvania:
Bucks
Chester
Delaware
Montgomery
Philadelphia
New Jersey:
Burlington
Camden
Gloucester

Area of Application. Survey area plus:

Pennsylvania:
Lehigh
Northampton
New Jersey:
Atlantic
Cape May
Cumberland
Hunterdon
Mercer
Ocean
Warren

Pittsburgh

Survey Area

Pennsylvania:
Allegheny:
Beaver
Washington
Westmoreland

[17] Allenwood Federal Prison Camp portion only.

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Area of Application. Survey area plus:

Pennsylvania:
- Armstrong
- Bedford
- Blair
- Butler
- Cambria
- Cameron
- Centre
- Clarion
- Clearfield
- Clinton
- Crawford
- Elk
- Erie
- Fayette
- Forest
- Fulton
- Greene
- Huntingdon
- Indiana
- Jefferson
- Lawrence
- McKean
- Mercer
- Potter
- Somerset
- Venango
- Warren

Ohio:
- Belmont
- Carroll
- Harrison
- Jefferson
- Tuscarawas

West Virginia:
- Brooke
- Hancock
- Marshall
- Ohio

Scranton-Wilkes-Barre

Survey Area

Pennsylvania:
- Lackawanna
- Luzerne
- Monroe

Area of Application. Survey area plus:

Pennsylvania:
- Bradford
- Carbon
- Columbia
- Lycoming [18]
- Pike
- Schuylkill
- Sullivan
- Susquehanna
- Tioga
- Wayne
- Wyoming

Puerto Rico

Survey Area

Puerto Rico (Municipios):
- San Juan
- Bayamon
- Canovanas
- Carolina
- Catano
- Guaynabo
- Juana Diaz
- Loiza
- Penuelas
- Ponce
- Toa Baja
- Trujillo Alto
- Villalba

Area of Application. Puerto Rico

Rhode Island

Narragansett Bay

Survey Area

Rhode Island:
- Bristol
- Newport
- The following cities and towns in:
  - *Kent County*
  - Anthony
  - Coventry
  - East Greenwich
  - Greene
  - Warwick
  - West Warwick
  - *Providence County*
  - Ashton
  - Burrillville
  - Central Falls
  - Cranston
  - Cumberland
  - Cumberland Hill
  - East Providence
  - Esmond
  - Forestdale
  - Greenville
  - Harrisville
  - Johnston
  - Lincoln
  - Manville
  - Mapleville
  - North Providence
  - North Smithfield
  - Oakland
  - Pascoag
  - Pawtucket
  - Providence
  - Saylesville
  - Slatersville
  - Smithfield
  - Valley Falls
  - Wallum Lake
  - Woonsocket
  - *Washington County*
  - Davisville
  - Gallilee
  - La Fayette
  - Narragansett
  - North Kingstown
  - Point Judith
  - Quonset Point
  - Saunerstown
  - Slocum

Massachusetts:
- The following cities and towns in:
  - *Bristol County*
  - Attleboro
  - Fall River
  - North Attleboro
  - Rehoboth
  - Seekonk
  - Somerset
  - Swansea
  - Westport
  - *Norfolk County*
  - Caryville
  - Plainville
  - South Bellingham
  - *Worcester County*
  - Blackstone
  - Millville

Area of Application. Survey area plus:

Rhode Island:
- The following cities and towns in:
  - *Kent County*
  - West Greenwich
  - *Providence County*
  - Foster
  - Glocester
  - Scituate
  - *Washington County*
  - Charlestown
  - Exeter
  - New Shoreham
  - Richmond
  - South Kingstown

Massachusetts
- The following cities and towns in:
  - *Bristol County*
  - Acushnet
  - Berkley
  - Dartmouth
  - Dighton
  - Fairhaven
  - Freetown
  - Mansfield
  - New Bedford
  - Norton
  - Raynham
  - Taunton

South Carolina

Charleston

Survey Area

South Carolina:
- Berkeley
- Charleston
- Dorchester

Area of Application. Survey area plus:

South Carolina:
- Beaufort [19]
- Colleton
- Georgetown
- Williamsburg

Columbia

Survey area

South Carolina:
- Darlington
- Florence
- Kershaw
- Lee
- Lexington
- Richland
- Sumter

Area of Application. Survey area plus:

South Carolina:
- Abbeville
- Anderson
- Calhoun
- Cherokee
- Chester
- Clarendon
- Fairfield
- Greenville
- Greenwood
- Laurens
- Newberry

[18] Excluding Allenwood Federal Prison Camp.

[19] The portion north of Broad River.

- Oconee
- Orangeburg
- Pickens
- Saluda
- Spartanburg
- Union

South Dakota

Eastern South Dakota

Survey Area

South Dakota:
- Minnehaha

Area of Application. Survey area plus:

South Dakota
- Aurora
- Beadle
- Bennett
- Bon Homme
- Brookings
- Brown
- Brule
- Buffalo
- Campbell
- Charles Mix
- Clark
- Clay
- Codington
- Corson
- Davison
- Day
- Deuel
- Dewey
- Douglas
- Edmunds
- Faulk
- Grant
- Gregory
- Haakon
- Hamlin
- Hand
- Hanson
- Hughes
- Hutchinson
- Hyde
- Jackson
- Jerauld
- Jones
- Kingsbury
- Lake
- Lincoln
- Lyman
- McCook
- McPherson
- Marshall
- Mellette
- Miner
- Moody
- Potter
- Roberts
- Sanborn
- Spink
- Stanley
- Sully
- Todd
- Tripp
- Turner
- Union
- Walworth
- Washabaugh
- Yankton
- Ziebach

Iowa:
- Dickinson
- Emmet
- Lyon
- Osceola

Minnesota:
- Jackson
- Lincoln
- Lyon
- Murray
- Nobles
- Pipestone
- Rock

Tennessee

Eastern Tennessee

Survey Area

Tennessee:
- Carter
- Hawkins
- Sullivan
- Unicoi
- Washington

Virginia (City):
- Bristol

Virginia (counties):
- Scott
- Washington

Area of Application. Survey area plus:

Tennessee:
- Cocke
- Greene
- Hancock
- Johnson

Virginia:
- Buchanan
- Grayson
- Lee
- Russell
- Smyth
- Tazewell
- Norton City

North Carolina:
- Alleghany
- Ashe
- Watauga

Kentucky:
- Harlan
- Letcher

Memphis

Survey area

Tennessee:
- Shelby
- Tipton

Arkansas:
- Crittenden
- Mississippi

Mississippi:
- De Soto

Area of Application. Survey area plus:

Tennessee:
- Carroll
- Chester
- Crockett
- Dyer
- Fayette
- Gibson
- Hardeman
- Hardin
- Haywood
- Lake
- Lauderdale
- Madison
- McNairy
- Obion

Arkansas:
- Craighead
- Cross
- Lee
- Poinsett
- St. Francis

Mississippi:
- Benton
- Lafayette [20]
- Marshall
- Pontotoc [20]
- Tate
- Tippah
- Tunica
- Union [20]

Missouri:
- Dunklin
- Pemiscot

Nashville

Survey area

Tennessee:
- Cheatham
- Davidson
- Dickson
- Montgomery
- Robertson
- Rutherford
- Sumner
- Williamson
- Wilson

Kentucky:
- Christian

Area of Application. Survey area plus:

Tennessee:
- Anderson
- Bedford
- Benton
- Bledsoe
- Blount
- Bradley
- Campbell
- Cannon
- Claiborne
- Clay
- Coffee
- Cumberland
- Decatur
- DeKalb
- Fentress
- Grainger
- Grundy
- Hamblen
- Hamilton
- Henderson
- Henry
- Hickman
- Houston
- Humphreys
- Jackson
- Jefferson
- Knox
- Lewis
- Loudon
- McMinn
- Macon
- Marion
- Marshall
- Maury
- Meigs
- Monroe
- Morgan

[20] Holly Springs National Forest portion only.

Overton
Perry
Pickett
Polk
Putnam
Rhea
Roane
Scott
Sequatchie
Sevier
Smith
Stewart
Trousdale
Union
Van Buren
Warren
Weakley
White
Kentucky:
Adair
Allen
Ballard
Barren
Butler
Caldwell
Calloway
Carlisle
Clinton
Cumberland
Edmondson
Fulton
Graves
Hickman
Hopkins
Logan
Lyon
McCracken
Marshall
Metcalfe
Monroe
Muhlenberg
Russell
Simpson
Todd
Trigg
Warren
Georgia:
Catoosa
Dade
Walker

Texas

Austin

Survey area

Texas:
Hays
Milam
Travis
Williamson

Area of Application. Survey area plus:

Texas:
Bastrop
Blanco
Burleson
Burnet
Caldwell
Fayette
Lampasas
Lee
Llano
Mason
San Saba

Survey area

Texas:
Nueces
San Patricio

Area of Application: Survey area plus:

Texas:
Aransas
Bee
Calhoun
Goliad
Jim Wells
Kleberg
Live Oak
Refugio
Victoria

Dallas-Fort Worth

Survey area

Texas:
Collin
Dallas
Denton
Ellis
Grayson
Hood
Johnson
Kaufman
Parker
Rockwall
Tarrant
Wise

Area of Application. Survey area plus:

Texas:
Cooke
Delta
Erath
Fannin
Henderson
Hopkins
Hunt
Jack
Lamar
Montague
Navarro
Palo Pinto
Rains
Smith
Somervell
Van Zandt
Wood

Survey area

Texas:
El Paso
New Mexico:
Dona Ana
Otero

Area of Application. Survey area plus:

New Mexico:
Chaves
Eddy
Grant
Hidalgo
Lincoln [21]
Luna
Sierra
Socorro [21]
Texas:
Culberson
Hudspeth

[21] Only White Sands Proving Ground portions.

Houston-Galveston-Texas City

Survey area

Texas:
Brazoria
Fort Bend
Galveston
Harris
Liberty
Montgomery
Waller

Area of Application. Survey area plus:

Texas:
Angelina
Austin
Chambers
Colorado
Grimes
Hardin
Houston
Jackson
Jasper
Jefferson
Lavaca
Madison
Matagorda
Nacogdoches
Newton
Orange
Polk
Sabine
San Augustine
San Jacinto
Shelby
Trinity
Tyler
Walker
Washington
Wharton

San Antonio

Survey area

Texas:
Bexar
Comal
Guadalupe

Area of Application. Survey area plus:

Texas:
Atascosa
Bandera
Brooks
Cameron
De Witt
Dimmit
Duval
Edwards
Frio
Gillespie
Gonzales
Hidalgo
Jim Hogg
Karnes
Kendall
Kenedy
Kerr
Kinney
La Salle
McMullen
Maverick
Medina
Real
Starr
Uvalde

Val Verde
Webb
Willacy
Wilson
Zapata
Zavala

Survey area

Texas:
Bowie
Arkansas:
Little River
Miller

Area of Application. Survey area plus:

Texas:
Camp
Cass
Franklin
Marion
Morris
Red River
Titus
Upshur
Arkansas:
Columbia
Hempstead
Howard
Lafayette
Nevada
Sevier

Waco

Survey area

Texas:
Bell
Coryell
McLennan

Area of Application. Survey area plus:

Texas:
Anderson
Bosque
Brazos
Falls
Freestone
Hamilton
Hill
Leon
Limestone
Mills
Robertson

Western Texas

Survey area

Texas:
Callahan
Ector
Howard
Jones
Lubbock
Midland
Nolan
Taylor
Tom Green

Area of Application. Survey area plus:

Texas:
Andrews
Armstrong
Bailey
Borden
Brewster
Briscoe
Brown
Carson
Castro
Childress
Cochran
Coke
Coleman
Collingsworth
Comanche
Concho
Cottle
Crane
Crockett
Crosby
Dallam
Dawson
Deaf Smith
Dickens
Donley
Eastland
Fisher
Floyd
Gaines
Garza
Glasscock
Gray
Hale
Hall
Hansford
Hartley
Haskell
Hemphill
Hockley
Hutchinson
Irion
Jeff Davis
Kent
Kimble
King
Lamb
Lipscomb
Loving
Lynn
McCulloch
Martin
Menard
Mitchell
Moore
Motley
Ochiltree
Oldham
Parmer
Pecos
Potter
Presidio
Randall
Reagan
Reeves
Roberts
Runnels
Schleicher
Scurry
Shackelford
Sherman
Stephens
Sterling
Stonewall
Sutton
Swisher
Terrell
Terry
Throckmorton
Upton
Ward
Wheeler
Winkler
Yoakum
Oklahoma:
Beaver
Cimarron
Texas
New Mexico:
Lea

Wichita Falls, Texas—Southwestern Oklahoma

Survey area

Texas:
Archer
Clay
Wichita
Oklahoma:
Comanche
Cotton
Stephens
Tillman

Area of Application. Survey area plus:

Texas:
Baylor
Foard
Hardeman
Knox
Wilbarger
Young
Oklahoma:
Greer
Harmon
Jackson
Jefferson
Kiowa

Utah

Survey area

Utah:
Box Elder
Davis
Salt Lake
Tooele
Utah
Weber

Area of Application. Survey area plus:

Utah:
Beaver
Cache
Carbon
Daggett
Duchesne
Emery
Garfield
Grand
Iron
Juab
Millard
Morgan
Piute
Rich
San Juan [22]
Sanpete
Sevier
Summit
Uintah
Wasatch
Washington
Wayne
Colorado:
Moffat

[22] Only includes the Canyonlands National Park portion.

Virginia

Norfolk-Portsmouth-Newport News-Hampton

Survey area

Virginia (cities):
- Chesapeake
- Hampton
- Newport News
- Norfolk
- Poquoson
- Portsmouth
- Suffolk
- Virginia Beach
- Williamsburg

Virginia (counties):
- Gloucester
- James City
- York

North Carolina
- Currituck

Area of Application. Survey area plus:

Virginia (cities):
- Franklin

Virginia (counties):
- Accomack
- Isle of Wight
- Mathews
- Northampton
- Southampton
- Surry

North Carolina:
- Camden
- Chowan
- Gates
- Pasquotank
- Perquimans

Maryland:
- Assateague Island part of Worcester

Richmond

Survey area

Virginia (cities):
- Colonial Heights
- Hopewell
- Petersburg
- Richmond

Virginia (counties):
- Charles City
- Chesterfield
- Dinwiddie
- Goochland
- Hanover
- Henrico
- New Kent
- Powhatan
- Prince George

Area of Application. Survey area plus:

Virginia (cities):
- Charlottesville
- Emporia
- Fredericksburg

Virginia (counties):
- Albemarle
- Amelia
- Brunswick
- Buckingham
- Caroline
- Charlotte
- Cumberland
- Essex
- Fluvanna
- Greensville
- King and Queen
- King William
- Lancaster
- Louisa
- Lunenberg
- Mecklenburg
- Middlesex
- Northumberland
- Nottoway
- Orange
- Prince Edward
- Richmond
- Spotsylvania
- Sussex
- Westmoreland

Roanoke

Survey area

Virginia (cities):
- Radford
- Roanoke
- Salem

Virginia (counties):
- Botetourt
- Craig
- Montgomery
- Roanoke

Area of Application. Survey area plus:

Virginia (cities):
- Bedford
- Buena Vista
- Clifton Forge
- Covington
- Danville
- Galax
- Lexington
- Lynchburg
- Martinsville
- South Boston
- Staunton
- Waynesboro

Virginia (counties):
- Alleghany
- Amherst
- Appomattox
- Augusta
- Bath
- Bedford
- Bland
- Campbell
- Carroll
- Floyd
- Franklin
- Giles
- Halifax
- Henry
- Highland
- Nelson
- Patrick
- Pittsylvania
- Pulaski
- Rockbridge
- Wythe

Washington

Seattle-Everett-Tacoma

Survey area

Washington:
- King
- Kitsap
- Pierce
- Snohomish

Area of Application. Survey area plus:

Washington:
- Chelan [23]
- Clallam
- Grays Harbor
- Island
- Jefferson
- Lewis
- Mason
- San Juan
- Skagit
- Thurston
- Whatcom

Southeastern Washington-Eastern Oregon

Survey area

Washington:
- Benton
- Franklin
- Walla Walla
- Yakima

Oregon:
- Umatilla

Area of Application. Survey area plus:

Oregon:
- Baker
- Grant
- Harney
- Malheur
- Morrow
- Union
- Wallowa
- Wheeler

Washington:
- Kittitas [24]

Spokane

Survey area

Washington:
- Spokane

Area of Application. Survey area plus:

Washington:
- Adams
- Asotin
- Chelan [25]
- Columbia
- Douglas
- Ferry
- Garfield
- Grant
- Kittitas [25]
- Lincoln
- Okanogan
- Pend Oreille
- Stevens
- Whitman

Idaho:
- Benewah
- Bonner
- Boundary
- Clearwater
- Idaho
- Kootenai
- Latah
- Lewis
- Nez Perce
- Shoshone

[23] North Cascades Park section only.
[24] Only includes the Yakima Firing Range portion.
[25] Excluding North Cascades Park.
[26] Does not include the Yakima Firing Range portion.

West Virginia

Survey area

West Virginia:
- Cabell
- Harrison
- Kanawha
- Marion
- Monogalia
- Putnam
- Wayne

Ohio:
- Lawrence

Kentucky:
- Boyd
- Greenup

Area of Application. Survey area plus:

West Virginia:
- Barbour
- Boone
- Braxton
- Calhoun
- Clay
- Doddridge
- Fayette
- Gilmer
- Grant
- Greenbrier
- Jackson
- Lewis
- Lincoln
- Logan
- McDowell
- Mason
- Mercer
- Mingo
- Monroe
- Nicholas
- Pendleton
- Pleasants
- Pocahontas
- Preston
- Raleigh
- Randolph
- Ritchie
- Roane
- Summers
- Taylor
- Tucker
- Tyler
- Upshur
- Webster
- Wetzel
- Wirt
- Wood
- Wyoming

Ohio:
- Athens
- Gallia
- Jackson
- Meigs
- Monroe
- Morgan
- Noble
- Pike
- Scioto
- Vinton
- Washington

Kentucky:
- Carter
- Elliott
- Floyd
- Johnson
- Lawrence
- Lewis
- Magoffin
- Martin
- Pike

Virginia:
- Dickenson
- Wise

Wisconsin

Madison

Survey area

Wisconsin:
- Dane

Area of Application. Survey area plus:

Wisconsin:
- Columbia
- Dodge
- Grant
- Green
- Green Lake
- Iowa
- Jefferson
- Lafayette
- Marquette
- Rock
- Sauk

Milwaukee

Survey Area

Wisconsin:
- Milwaukee
- Ozaukee
- Washington
- Waukesha

Area of Application. Survey area plus:

Wisconsin:
- Brown
- Calumet
- Door
- Fond du Lac
- Kenosha
- Kewaunee
- Manitowoc
- Outagamie
- Racine
- Sheboygan
- Walworth
- Winnebago

Southwestern Wisconsin

Survey area

Wisconsin:
- Chippewa
- Eau Claire
- La Crosse
- Monroe
- Trempealeau

Area of Application. Survey area plus:

Wisconsin:
- Adams
- Barron
- Buffalo
- Clark
- Crawford
- Dunn
- Florence
- Forest
- Jackson
- Juneau
- Langlade
- Lincoln
- Marathon
- Marinette
- Menominee
- Oconto
- Oneida
- Pepin
- Portage
- Price
- Richland
- Rusk
- Shawano
- Taylor
- Vernon
- Vilas
- Waupaca
- Waushara
- Wood

Minnesota:
- Fillmore
- Houston
- Wabasha
- Winona

Wyoming

Survey area

Wyoming:
- Albany
- Laramie
- Natrona

South Dakota:
- Pennington

Area of Application. Survey area plus:

Wyoming:
- Campbell
- Carbon
- Converse
- Crook
- Fremont
- Goshen
- Hot Spring
- Johnson
- Lincoln
- Niobrara
- Platte
- Sheridan
- Sublette
- Sweetwater
- Teton
- Uinta
- Washakie
- Weston

Nebraska:
- Banner
- Box Butte
- Cheyenne
- Dawes
- Deuel
- Garden
- Kimball
- Morrill
- Scotts Bluff
- Sheridan
- Sioux

South Dakota:
- Butte
- Custer
- Fall River
- Harding
- Lawrence
- Meade
- Perkins
- Shannon

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

This appendix lists the wage area definitions for NAF employees. With a few exceptions, each area is defined in terms of county units or independent cities. Each wage area definition consists of:

(1) *Wage area title.* Wage areas usually carry the title of the county or counties surveyed.

(2) *Survey area definition.* Lists each county or independent city in the survey area.

(3) *Area of application definition.* Lists each county or independent city which, in addition to the survey area, is in the area of application.

DEFINITIONS OF WAGE AND WAGE SURVEY AREAS

Alabama

Calhoun

Survey area
Alabama:
Calhoun

Area of Application. Survey area plus:
Alabama:
Jefferson

Madison

Survey area
Alabama:
Madison

Area of Application. Survey area plus:
Tennessee:
Coffee
Davidson
Hamilton
Rutherford

Montgomery

Survey area
Alabama:
Montgomery

Area of Application Survey area plus:
Alabama
Dale
Dallas
Macon

Alaska

Anchorage

Survey area
Alaska: (Census divisions)
Anchorage

Area of Application. Survey area plus:
Alaska: (Census divisions)
Aleutian Islands
Barrow-North Slope
Bethel
Bristol Bay
Fairbanks
Juneau
Kenai-Cook Inlet
Ketchikan
Kobuk
Kodiak
Kuskokwim
Nome
Outer Ketchikan
Sitka
Southeast Fairbanks
Upper Yukon
Wade Hampton
Yukon-Koyukuk

Arizona

Maricopa

Survey area
Arizona:
Maricopa

Area of Application. Survey area plus:
Arizona:
Coconino
Yavapai

Pima

Survey area
Arizona:
Pima

Area of Application. Survey area plus:
Arizona:
Cochise

Yuma

Survey area
Arizona:

Area of Application. Survey area plus:

Arkansas

Pulaski

Survey area
Arkansas:
Pulaski

Area of Application. Survey area plus:
Jefferson
Sebastian
Washington

California

Alameda-Contra Costa

Survey area
California
Alameda
Contra Costa

Area of Application. Survey area plus:

Imperial

Survey area
California:
Imperial

Area of Application. Survey area plus:

Kern

Survey area
California:
Kern

Area of Application. Survey area plus:
California:
Kings

Los Angeles

Survey area
California:
Los Angeles

Area of Application. Survey area plus:

Marin-Sonoma

Survey area
California:
Marin
Sonoma

Area of Application. Survey area plus:
California:
Del Norte
Humboldt
Mendocino

Merced

Survey area
California:
Merced

Area of Application. Survey area plus:
California:
Fresno

Monterey

Survey area
California:
Monterey

Area of Application. Survey area plus:

Orange

Survey area
California:
Orange

Area of Application. Survey area plus:

Riverside

Survey area
California:
Riverside

Area of Application. Survey area plus:

Sacramento

Survey area
California:
Sacramento

Area of Application. Survey area plus:
California:
Yuba
Oregon:
Jackson
Klamath

San Bernardino

Survey area
California:
San Bernardino

San Bernardino

Area of Application. Survey area plus:

San Diego

Survey area
California:
San Diego

Area of Application. Survey area plus:

San Francisco

Survey area
California:
San Francisco

Area of Application. Survey area plus:

San Joaquin

Survey area
California:
San Joaquin

Area of Application. Survey area plus:

Santa Barbara

Survey area
California:
Santa Barbara

Area of Application. Survey area plus:
California:
San Luis Obispo

Santa Clara

Survey area
California:
Santa Clara

Area of Application. Survey area plus:
California:
San Mateo

Solano

Survey area
California:
Solano

Area of Application. Survey area plus:

Ventura

Survey area
California:
Ventura

Area of Application. Survey area plus:

Colorado

Adams-Denver

Survey area
Colorado:
Adams
Denver

Area of Application. Survey area plus:
Colorado:
Arapahoe
Mesa

El Paso

Survey area
Colorado:
El Paso

Area of Application. Survey area plus:
Colorado:
Bent
Pueblo

Connecticut

New London

Survey area
Connecticut:
New London

Area of Application. Survey area plus:
Connecticut:
New Haven

Delaware

Kent

Survey area
Delaware:
Kent

Area of Application. Survey area plus:
Delaware:
Sussex
Maryland:
Kent

District of Columbia

Survey area
District of Columbia:
Washington, D.C.

Area of Application. Survey area plus:

Florida

Bay

Survey area
Florida
Bay

Area of Application. Survey area.

Brevard

Survey area
Florida:
Brevard

Area of Application. Survey area plus:

Dade

Survey area
Florida:
Dade

Area of Application. Survey area plus:
Florida:
Palm Beach

Duval

Survey area
Florida:
Duval

Area of Application. Survey area plus:
Florida:
Alachua
Clay
Columbia
Georgia:
Camden

Escambia

Survey area
Florida:
Escambia

Area of Application. Survey area plus:
Florida
Santa Rosa

Hillsborough

Survey area
Florida:
Hillborough

Area of Application. Survey area plus:
Florida:
Pinellas
Polk

Monroe

Survey area
Florida:
Monroe

Area of Application. Survey area plus:

Okaloosa

Survey area
Florida:
Okaloosa

Area of Application. Survey area plus:
Walton

Orange

Survey area
Florida:

Area of Application. Survey area plus:

Georgia

Chatham

Survey area
Georgia:
Chatham

Area of Application. Survey area plus:
Georgia:
Glynn
Liberty
South Carolina:
Beaufort

Clayton-Cobb-Fulton

Survey area
Georgia:
Clayton
Cobb
Fulton

Area of Application. Survey area plus:
Georgia:
Bartow
Clarke
De Kalb

Columbus

Survey area
Georgia:
Columbus

Area of application: Survey area plus:
Georgia:
Chattahoochee

Dougherty

Survey area
Georgia:
Dougherty

Area of application. Survey area.

Houston

Survey area
Georgia:
Houston

Area of application. Survey area plus:
Georgia:
Laurens

Lowndes

Survey area
Georgia:
Lowndes

Area of application. Survey area.

Richmond

Survey area
Georgia:
Richmond

Area of application: Survey area plus:
South Carolina:
Aiken

Guam

Survey area
Guam

Area of application: Survey area.

Hawaii

Honolulu

Survey area
Hawaii:
Honolulu

Area of application. Survey area plus:
Hawaii (counties):
Hawaii
Kauai
Maui
Pacific Islands
Midway Island
Johnston Island
American Samoa

Idaho

Ada-Elmore

Survey area
Idaho:
Ada
Elmore

Area of application. Survey area.

Illinois

Champaign

Survey area
Illinois:
Champaign

Area of application. Survey area plus:
Illinois:
Ford
Vermillion

Cook

Survey area
Illinois:
Cook

Area of application. Survey area.

Lake

Survey area
Illinois:
Lake

Area of application. Survey area plus:
Wisconsin:
Dane
Milwaukee

Rock Island

Survey area
Illinois:
Rock Island

Area of application. Survey area plus:
Illinois:
Carroll
Iowa:
Johnson

St. Clair

Survey area
Illinois:
St. Clair

Area of application. Survey area plus:
Illinois:
Madison
Williamson
Missouri: (cities)
St. Louis
Missouri: (counties)
Jefferson
Pulaski

Indiana

Marion

Survey area
Indiana:
Marion

Area of application: Survey area plus:
Allen
Grant
Martin
Miami

Kansas

Sedgwick

Survey area
Kansas:
Sedgwick

Area of application. Survey area plus:
Kansas:
Geary
Saline

Leavenworth/Jackson-Johnson

Survey area
Kansas:
Leavenworth
Missouri:
Jackson
Johnson

Area of application: Survey area plus:
Kansas:
Shawnee
Missouri:
Boone
Camden
Cass

Kentucky

Christian-Montgomery

Survey area
Kentucky:
Christian
Tennessee:
Montgomery

Area of application. Survey area.

Clark-Hardin-Jefferson

Survey area
Indiana:
Clark
Kentucky:
Hardin
Jefferson

Area of application. Survey area plus:
Indiana:
Jefferson
Kentucky:
Fayette
Madison
Warren

Louisiana

Bossier-Caddo

Survey area
Louisiana:
Bossier
Caddo

Area of application. Survey area plus:
Texas:
Bowie

Orleans

Survey area
Louisiana:
Orleans

Area of application. Survey area plus:
Plaquemines

Rapides

Survey area
Louisiana:
Rapides

Area of application. Survey area plus:
Louisiana:
Vernon

Maine

Aroostook

Survey area
Maine:
Aroostook

Area of application. Survey area plus:
Maine:
Washington County

Cumberland

Survey area
Maine:
Cumberland

Area of application. Survey area plus:
Maine:
Hancock
Kennebec
Knoc
Penobscot
Sagadahoc

Maryland

Anne Arundel

Survey area
Maryland:
Anne Arundel

Area of application. Survey area plus:
Maryland: (cities)
Baltimore
Maryland: (counties)
Baltimore

Charles-St. Marys

Survey area
Maryland:
Charles
St. Marys

Area of application. Survey are plus:
Maryland:
Calvert
Virginia:
King George

Harford

Survey area
Maryland:
Harford

Area of application. Survey area plus:
Maryland:
Cecil

Montgomery-Prince Georges

Survey area
Maryland:
Montgomery
Prince Georges

Area of application. Survey area plus:

Washington

Survey area
Maryland:
Washington

Area of application. Survey area plus:
Maryland:
Frederick
West Virginia:
Berkeley

Massachusetts

Hampden

Survey area
Massachusetts:
Hampden

Area of application. Survey area plus:
Connecticut:
Hartford
Massachusetts:
Hampshire

Middlesex

Survey area
Massachusetts:
Middlesex

Area of application. Survey area plus:
New Hampshire:
Hillsborough

Norfolk

Survey area
Massachusetts:
Norfolk

Area of application. Survey area plus:
Massachusetts:
Barnstable
Plymouth
Nantucket
Suffolk

Michigan

Macomb

Survey area
Michigan:
Macomb

Area of application. Survey area plus:
Michigan:
Alpena
Calhoun
Crawford
Grand Traverse
Huron
Iosco
Leelanau
Saginaw
Washtenaw
Wayne
Ohio:
Ottawa

Marquette

Survey area
Michigan:
Marquette

Area of application. Survey area plus:
Michigan:
Chippewa
Dickinson
Houghton
Wisconsin:
Langlade

Minnesota

Hennepin

Survey area
Minnesota:

Hennepin

Area of application. Survey area plus:
Minnesota:
Morrison
Murray
Ramsey
Stearns
St. Louis
Wisconsin:
Juneau
Monroe
Polk

Mississippi

Harrison

Survey area
Mississippi:
Harrison

Area of application. Survey area plus:
Alabama:
Mobile
Mississippi
Forest
Jackson

Lauderdale

Survey area
Mississippi:
Lauderdale

Area of application. Survey area plus:
Mississippi:
Hinds
Rankin
Warren

Lowndes

Survey area
Mississippi:
Lowndes

Area of application area plus:
Alabama:
Tuscaloosa

Montana

Cascade

Survey area
Montana:
Cascade

Area of application. Survey area plus:
Montana:
Fergus
Flathead
Hill
Lewis and Clark
Valley
Yellowstone

Nebraska

Douglas-Sarpy

Survey area
Nebraska:
Douglas
Sarpy

Area of application. Survey area plus:
Iowa:
Marion

Polk
Woodbury
Nebraska:
Hall
Lancaster
Saunders
South Dakota:
Minnehaha

Nevada

Churchill-Washoe

Survey area
Nevada:
Churchill
Washoe

Area of Application. Survey area plus:
California:
Lassen
Mono
Nevada:
Mineral

Clark

Survey area
Nevada:
Clark

Area of Application. Survey area.

New Hampshire

Rockingham

Survey area
New Hampshire:
Rockingham

Area of Application. Survey area plus:
Maine:
York
Vermont:
Windsor

New Jersey

Burlington

Survey area
New Jersey:
Burlington

Area of Application. Survey area plus:
New Jersey:
Atlantic

Monmouth

Survey area
New Jersey:
Monmouth

Area of application. Survey area.

Morris

Survey area
New Jersey:
Morris

Area of Application. Survey area plus:
New Jersey:
Somerset
Pennsylvania:
Monroe

Ocean

Survey area
New Jersey:
Ocean

Area of Application. Survey area.

New Mexico

Bernalillo

Survey area
New Mexico:
Bernalillo

Area of Application. Survey area plus:
New Mexico:
McKinley

Dona Ana

Survey area
New Mexico:
Dona Ana

Area of Application. Survey area plus:
New Mexico:
Chaves
Otero

New York

Clinton

Survey area
New York:
Clinton

Area of Application. Survey area plus:
Vermont:
Chittenden
Franklin

Kings-Queen

Survey area
New York:
Kings
Queens

Area of Application. Survey area plus:
New Jersey:
Essex
Hudson
New York:
Bronx
Nassau
New York
Richmond
Suffolk

Niagara

Survey area
New York:
Niagara

Area of Application. Survey area plus:
New York:
Erie
Genesee
Pennsylvania:
Erie

Oneida

Survey area
New York:
Oneida

Area of Application. Survey area plus:
New York:
Albany
Jefferson
Onondago
Ontario
Saratoga
Schenectady
Seneca
Steuben

Orange

Survey area
New York:
Orange

Area of Application. Survey area plus:
New York:
Dutchess
Westchester

North Carolina

Craven

Survey area
North Carolina:
Craven

Area of Application. Survey area plus:
North Carolina:
Carteret
Dare
Onslow

Cumberland

Survey area
North Carolina:
Cumberland

Area of Application. Survey area plus:
North Carolina:
Durham
Rowan
Onslow

Survey area
North Carolina:
Onslow

Area of Application. Survey area.

Wayne

Survey area
North Carolina:
Wayne

Area of Application. Survey area plus:
North Carolina:
Halifax

North Dakota

Grand Forks

Survey area
North Dakota:
Grand Forks

Area of Application. Survey area plus:
North Dakota:
Cass
Cavalier
Steele

Ward

Survey area
North Dakota:
Ward

Area of Application. Survey area plus:
North Dakota:
Divide

Ohio

Franklin

Survey area
Ohio:
Franklin

Area of Application. Survey area plus:
Ohio:
Licking
Ross
West Virginia:
Cabell
Raleigh

Greene-Montgomery

Survey area
Ohio:
Greene
Montgomery

Area of Application. Survey area plus:
Ohio:
Clinton
Hamilton

Oklahoma

Comanche

Survey area
Oklahoma:
Comanche

Area of Application. Survey area plus:
Oklahoma:
Cotton
Jackson

Oklahoma

Survey area
Oklahoma:
Oklahoma

Area of Application. Survey area plus:
Oklahoma:
Garfield
Muskogee
Pittsburg

Pennsylvania

Allegheny

Survey area
Pennsylvania:
Allegheny

Area of Application. Survey area plus:
Ohio:
Cuyahoga
Trumbull
Pennsylvania:
Butler
Westmoreland
West Virginia:
Harrison

Montgomery

Survey area
Pennsylvania:
Montgomery

Area of Application. Survey area plus:
Pennsylvania:
Bucks
Luzerne

Cumberland

Survey area
Pennsylvania:
Cumberland

Area of Application. Survey area.

Franklin

Survey area
Pennsylvania:
Franklin

Area of Application. Survey area plus:
Pennsylvania:
Blair

Lebanon

Survey area
Pennsylvania:
Lebanon

Area of Application. Survey area plus:
Pennsylvania:
Columbia

Philadelphia

Survey area
Pennsylvania:
Philadelphia

Area of Application. Survey area plus:
Delaware:
New Castle
New Jersey:
Camden
Cape May
Gloucester
Salem
Pennsylvania:
Chester

York

Survey area
Pennsylvania:
York

Area of Application. Survey area.

Puerto Rico

Guaynabo-San Juan

Survey area
Puerto Rico (municipalities)
Guaynabo
San Juan

Area of Application. Survey area plus:
Puerto Rico: (municipalities)
Aguadilla
Isabela
Ponce
Toa Baja
Ceiba
Vieques
U.S. Virgin Islands
St. Croix
St. Thomas

Rhode Island

Newport

Survey area
Rhode Island:
Newport

Area of Application. Survey area.
Rhode Island:
Providence
Washington

South Carolina

Charleston

Survey area
South Carolina:
Charleston

Area of Application. Survey area plus:
South Carolina:
Berkeley

Horry

Survey area
South Carolina:
Horry

Area of Application. Survey area plus:
North Carolina:
New Hanover

Richland

Survey area
South Carolina:
Richland

Area of Application. Survey area plus:
North Carolina:
Buncombe
South Carolina:
Sumpter
Tennessee:
Washington

South Dakota

Pennington

Survey area
South Dakota:
Pennington

Area of Application. Survey area plus:
Montana:
Custer
South Dakota:
Fall River
Meade
Wyoming:
Sheridan

Tennessee

Shelby

Survey area
Tennessee:
Shelby

Area of Application. Survey area plus:
Arkansas:
Mississippi
Missouri:
Butler

Texas

Bell

Survey area
Texas:
Bell

Area of Application. Survey area plus:

Texas:
Coryell
Falls
McLennan

Bexar

Survey area

Texas:
Bexar

Area of Application. Survey area plus:

Texas:
Comal
Kerr
Val Verde

Dallas

Survey area

Texas:
Dallas

Area of Application. Survey area plus:

Texas:
Fannin
Galveston
Harris

El Paso

Survey area

Texas:
El Paso

Area of Application. Survey area.

Lubbock

Survey area

Texas:
Lubbock

Area of Application. Survey area plus:

New Mexico
Curry
Texas:
Potter
McLennan

Survey area

Texas:
McLennan

Area of Application. Survey area.

Nueces

Survey area

Texas:
Nueces

Area of Application. Survey area plus:

Texas:
Bee
Calhoun
Kleberg
Webb

Tarrant

Survey area

Texas:
Tarrant

Area of Application. Survey area plus:

Texas:
Cooke
Palo Pinto
Taylor

Survey area

Texas:
Taylor

Area of Application. Survey area.

Tom Green

Survey area

Texas:
Tom Green

Area of Application. Survey area plus:

Texas:
Howard

Travis

Survey area

Texas:
Travis

Area of Application. Survey area plus:

Texas:
Burnet

Wichita

Survey area

Texas:
Wichita

Area of Application. Survey area.

Utah

Davis-Salt Lake-Weber

Survey area

Utah:
Davis
Salt Lake
Weber

Area of Application. Survey area plus:

Utah:
Box Elder
Tooele
Uintah

Virginia

Alexandria-Arlington-Fairfax

Survey area

Virginia: (cities)
Alexandria
Virginia: (counties)
Arlington
Fairfax

Area of Application. Survey area.

Chesterfield-Richmond

Survey area

Virginia: (cities)
Richmond
Virginia: (counties)—
Chesterfield

Area of Application. Survey area plus:

Virginia: (cities)
Bedford
Charlottesville
Salem
Virginia: (counties)
Caroline
Nottoway
Prince George
West Virginia:
Pendleton

Hampton-Newport News

Survey area

Virginia: (cities)
Hampton
Newport News

Area of Application. Survey area plus:

Virginia: (cities)
Williamsburg
Virginia: (counties)
York

Norfolk-Portsmouth-Virginia Beach

Survey area

Virginia: (cities)
Norfolk
Portsmouth
Virginia Beach

Area of Application. Survey area plus:

North Carolina:
Pasquotank
Virginia: (cities)
Chesapeake
Suffolk
Virginia: (counties)
Accomack
Northampton

Prince William

Survey area

Virginia:
Prince William

Area of Application. Survey area plus:

Virginia:
Fauquier

Washington

King

Survey area

Washington:
King

Area of Application. Survey area plus:

Washington:
Island
Snohomish
Whatcom
Yakima

Kitsap

Survey area

Washington:
Kitsap

Area of Application. Survey area plus:

Clallam

Pierce

Survey area

Washington:
Pierce

Area of Application. Survey area plus:

Oregon:
Clatsop
Coos
Douglas
Multnomah

Tillamook
Washington:
Clark
Grays Harbor

Spokane

Survey area

Washington:
Spokane

Area of Application. Survey area plus:

Oregon:
Umatilla
Washington:
Adams
Walla Walla

Wyoming

Laramie

Survey area

Wyoming:
Laramie

Area of Application. Survey area.

§ 532.307 [Amended]

18. Section 532.307(a) is amended by removing the phrase "in accordance with the instructions issued by the Office of Personnel Management" in the last sentence.

§ 532.311 [Amended]

19. Section 532.311 is amended by removing the phrase "in accordance with instructions in the Federal Personnel Manual" in the first sentence.

§532.313 [Redesignated as § 532.17]

20. Section 532.313 is redesignated as § 532.317, and paragraph (a)(1) is revised to read as follows:

§ 532.317 Use of data from the nearest similar area.

(a)(1) For prevailing rate employees other than those in the Department of Defense, the lead agency shall, in establishing the regular schedule under the provisions of this subpart, analyze and use the acceptable data from the nearest similar wage area together with the data obtained from inside the local wage survey area. The regular schedule for Department of Defense prevailing rate employees shall be based on local wage data only.

* * * * *

21. New §§ 532.313 and 532.315 are added to subpart C to read as follows:

§ 532.313 Private sector industries.

(a) For appropriated fund surveys, a lead agency shall use the following private sector industries in making its determinations for each specialized industry:

Aircraft

SIC 3721 Aircraft
SIC 3724 Aircraft engines and engine parts
SIC 3728 Aircraft parts and auxiliary equipment
SIC 3764 Guided missile and space vehicle propulsion units and propulsion unit parts
SIC 3769 Guided missile and space vehicle parts and auxiliary equipment
SIC 4512 Air transportation, scheduled
SIC 4513 Air courier services
SIC 4522 Air transportaiton, nonscheduled carriers
SIC 4581 Airports, flying fields, and airport terminal services

Ammunition

SIC 2892 Explosives
SIC 3482 Small arms ammunition
SIC 3483 Ammunition, except for small arms

Artillery and combat vehicles

SIC 3273 Ready mixed concrete
SIC 3489 Ordnance and accessories
SIC 351 Engines and turbines
SIC 3523 Farm machinery and equipment
SIC 3531 Construction machinery and equipment
SIC 3536 Hoists, industrial cranes, and monorail systems
SIC 3537 Industrial trucks, tractors, trailers, and stackers
SIC 3711 Motor vehicles and passenger car bodies
SIC 3713 Truck and bus bodies
SIC 3714 Motor vehicle parts an accessories
SIC 3715 Truck trailers
SIC 3795 Tanks and tank components
SIC 4041 Railway express service
SIC 421 Trucking, local and long distance
SIC 4812 Radiotelephone communications
SIC 4813 Telephone communciation, except radiotelphone
SIC 4911 Electric services
SIC 492 Gas production and distribution
SIC 493 Combination electric and other utility services
SIC 501 Motor vehicles and motor vehicle parts and supplies, except SIC 5015—motor vehicle parts, used
SIC 5082 Construction and mining machinery and equipment
SIC 5083 Farm and garden machinery and equipment

Communications

SIC 3612 Power, distribution, and specialty transformers
SIC 3663 Radio and TV broadcasting and communication equipment
SIC 3669 Communication equipment, not elsewhere classified
SIC 3812 Search, navigation, guidance, aeronautical, and nautical systems, instruments, and equipment
SIC 3825 Instruments for measuring and testing of electricity and electrical signals
SIC 4812 Radiotelephone communciations
SIC 4813 Telephone communication, except radiotelphone
SIC 4832 Radio broadcasting
SIC 4833 Television broadcasting
SIC 4841 Cable and other pay TV services
SIC 4899 Communciation services, NEC

Electronics

SIC 3571 Electronic computers
SIC 3572 Computer storage devices
SIC 3575 Computer terminals
SIC 3577 Computer peripheral equipment, not elsewhere classified
SIC 3663 Radio and TV broadcasting and communication equipment
SIC 3669 Communication equipment, not elsewhere classified
SIC 3672 Printed circuit boards
SIC 3674 Semi-conductors and related devices
SIC 3675 Electronic capacitors
SIC 3676 Resistor, for electronic applications
SIC 3677 Electronic coils, transformers, and other inductors
SIC 3678 Connecters, for electronic applications
SIC 3679 Electronic components, not elsewhere classified
SIC 3695 Recording media
SIC 3812 Search, navigation, guidance, aeronautical, and nautical systems, instruments, and equipment
SIC 5044 Office equipment
SIC 5045 Computer and computer peripheral equipment and software

Guided missiles

SIC 3571 Electronic computers
SIC 3572 Computer storage devices
SIC 3575 Computer terminals
SIC 3577 Computer peripheral equipment, not elsewhere classified
SIC 3663 Radio and TV broadcasting and communication equipment
SIC 3669 Communication equipment, not elsewhere classified
SIC 3724 Aircraft engines and engine parts
SIC 3728 Aircraft parts and auxiliary equipment
SIC 3761 Guided missiles and space vehicles
SIC 3764 Guided missile and space vehicle propulsion units and propulsion unit parts
SIC 3769 Guided missile and space vehicle parts and auxiliary equipment
SIC 3812 Search, navigation, aeronautical, and nautical systems, instruments, and equipment
SIC 8711 Engineering services
SIC 8712 Architectural services
SIC 8713 Surveying services

Heavy duty equipment

SIC 3531 Construction machinery and equipment
SIC 3536 Hoists, industrial cranes, and monorail systems
SIC 3537 Industrial trucks, tractors, trailers, and stackers
SIC 5082 Construction and mining machinery and equipment

Shipbuilding

SIC 3731 Shipbuilding and repairing

Sighting and fire control equipment

SIC 3571 Electronic computers
SIC 3572 Computer storage devices
SIC 3575 Computer terminals
SIC 3577 Computer peripheral equipment, not elsewhere classified
SIC 3663 Radio and TV broadcasting and communication equipment

SIC 3669 Communication equipment, not elsewhere classified
SIC 3812 Search, navigation, guidance, aeronautical, and nautical systems, instruments, and equipment
SIC 3827 Optical instruments and lenses

Small arms

SIC 3484 Small arms.

(b) Industries in SICs 3273, 4011, 421, 4612, 4613, 4911, 492 and 493, listed in paragraph (a) of this section are limited in special job coverage to automotive mechanic, diesel engine mechanic, and heavy mobile equipment mechanic.

(c) For nonappropriated fund surveys, the lead agency shall use SIC 581 (eating and drinking places industry) in making its determination for a specialized industry.

§ 532.315 Additional survey jobs.

(a) For appropriated fund surveys, when the lead agency adds to the industries to be surveyed, it shall add to the required survey jobs the specialized survey jobs listed below opposite the industry added:

Specialized industry	Specialized survey jobs	Grade
Aircraft	Electronics Mechanic	WG-11
	Aircraft Structures Assembler B.	WG-7
	Aircraft Structures Assembler A.	WG-9
	Aircraft Mechanic	WG-10
	Aircraft Mechanic includes:	
	Aircraft Electrician	WG-10
	Aircraft Welder	WG-10
	Aircraft Sheetmetal Worker	WG-10
	Hydromechanical Fuel Control Repairer.	WG-10
	Aircraft Engine Mechanic	WG-10
	Aircraft Jet Engine Mechanic.	WG-10
	Flight Line Mechanic	WG-10
	Aircraft Attendant (ground services).	WG-7
Ammunition	Munitions Handler	WG-4
	Munitions Operator	WG-4
	Munitions Operator	WG-6
	Munitions Operator	WG-8
	Munitions Operator	WG-9
	Explosives Operator	WG-9
Artillery and combat vehicles.	Automotive Mechanic (limited to data obtained in special industries).	WG-10
	Heavy Mobile Equipment Mechanic.	WG-10
	Artillery Repairer	WG-9
	Combat Vehicle Mechanic	WG-8
	Combat Vehicle Mechanic (Engine).	WG-10
	Combat Vehicle Mechanic	WG-11
	Diesel Engine Mechanic (limited to data obtained in special industries.	WG-10
Communications.	Telephone Installer-Repairer.	WG-9
	Central Office Repairer	WG-11
	Electronic Test Equipment Repairer.	WG-11
	Television Station Mechanic.	WG-11
Electronics	Electronics Mechanic	WG-11
	Industrial Electronic Controls Repairer.	WG-10
	Electronic Test Equipment Repairer.	WG-11
	Electronic Computer Mechanic.	WG-11
	Television Station Mechanic.	WG-11
Guided missiles.	Electronic Computer Mechanic.	WG-11
	Guided Missile Mechanical Repairer.	WG-11
Heavy duty equipment.	Heavy Mobile Equipment Mechanic.	WG-10
Shipbuilding	Electronics Mechanic	WG-11
	Electrician, Ship	WG-10
	Pipefitter, Ship	WG-10
	Shipfitter	WG-10
	Shipwright	WG-10
	Machinist (Marine)	WG-10
Sighting and fire control.	Electronic Computer Mechanic.	WG-11
	Fire Control Instrument Repairman.	WG-11
	Electronic Fire Control Systems Repairer.	WG-11
	Electronic Fire Control Systems Repairer.	WG-12
	Electronic Fire Control Systems Repairer.	WG-13
Small arms	Small Arms Repairer	WG-8

(b) For nonappropriated fund surveys, a lead agency must obtain prior approval of OPM to add a job not listed in § 532.223 of this subpart.

22. In § 532.401, the definition of "equivalent increase" is revised to read as follows:

§ 532.401 Definitions.

* * * * *

Equivalent increase means an increase or increases in an employee's rate of basic pay equal to or greater than the difference between the rate of pay for the grade and step occupied by the employee and the rate of pay for the next higher step of that grade, except in the situations specified in § 532.417 of this subpart. In the case of a promotion, the grade and step occupied means the grade and step to which promoted.

* * * * *

23. In § 532.417, paragraph (e) is added to read as follows:

§ 532.417 Within-grade increases.

* * * * *

(e) *Equivalent increase.* The following shall not be counted as equivalent increases:

(1) Application of a new or revised wage schedule or application of a new pay or evaluation plan;

(2) Payment of additional compensation in the form of nonforeign or foreign post differentials or nonforeign cost-of-living allowances;

(3) Adjustment of the General Schedule;

(4) Premium payment for overtime and holiday duty;

(5) Payment of night shift differential;

(6) Hazard pay differentials;

(7) Payment of rates above the minimum rate of the grade in recognition of specific qualifications, or in jobs in specific hard-to-fill occupations;

(8) Correction of an error in a previous demotion or reduction in pay;

(9) Temporary limited promotion followed by change to lower grade to the former or a different lower grade;

(10) A transfer or reassignment in the same grade and step to another local wage area with a higher wage schedule;

(11) Repromotion to a former or intervening grade of any employee whose earlier change to lower grade was not for cause and was not at the employee's request; and

(12) An increase resulting from the grant of a quality step increase under the General Schedule.

24. In § 532.511, paragraph (d) is added to read as follows:

§ 532.511 Environmental differentials.

* * * * *

(d) The schedule of environmental differentials is set out as Appendix A to this subpart and is incorporated in and made a part of this section.

25. Appendix A to subpart E is added to read as follows:

Appendix A to Subpart E of Part 532—Schedule of Environmental Differentials Paid for Exposure to Various Degrees of Hazards, Physical Hardships, and Working Conditions of an Unusual Nature

This appendix lists the environmental differentials authorized for exposure to various degrees of hazards, physical hardships, and working conditions of an unusual nature.

PART I.—PAYMENT FOR ACTUAL EXPOSURE

Differential rate (percent)	Category for which payable	Effective date
100	1. *Flying.* Participating in flights under one or more types of the following conditions	Nov. 1, 1970.
	a. Test flights of a new or repaired plane or modified plane when the repair or modification may affect the flight characteristics of the plane;	
	b. Flights for test performance of plane under adverse conditions such as in low altitude or severe weather conditions, maximum load limits, or overload;	
	c. Test missions for the collection of measurement data where two or more aircraft are involved and flight procedures require formation flying and/or rendezvous at various altitudes and aspect angles;	
	d. Flights deliberately undertaken in extreme weather conditions such as flying into a hurricane to secure weather data;	
	e. Flights to deliver aircraft which have been prepared for one-time flight without being test flown prior to delivery flight;	
	f. Flights for pilot proficiency training in aircraft new to the pilot under simulated emergency conditions which parallel conditions encountered in performing flight tests;	
	g. Low-level flights in small aircraft including helicopters at altitude of 500 feet and under in daylight and 1,000 feet and under at night when the flights are over mountainous terrain, or in fixed-wing aircraft involving maneuvering at the heights and times specified above, or in helicopters maneuvering and hovering over water at altitudes of less than 500 feet;	
	h. Low-level flights in an aircraft flying at altitudes of 200 feet and under while conducting wildlife surveys and law enforcement activities, animal depredation abatement and making agricultural applications, and conducting or facilitating search and rescue operations; flights in helicopters at low levels involving line inspection, maintenance, erection, or salvage operations;	
	i. Flights involving launch or recovery aboard an aircraft carrier;	
	j. Reduced gravity light testing in an aircraft flying a parabolic flight path and providing a testing environment ranging from weightlessness up through 2 gravity conditions;	
25	2. *High work.*	Nov. 1, 1970.
	a. Working on any structure of at least 100 feet above the ground, deck, floor or roof, or from the bottom of a tank or pit;	
	b. Working at a lesser height:	
	(1) If the footing is unsure or the structure is unstable; or	
	(2) If safe scaffolding, enclosed ladders or other similar protective facilities are not adequate (for example, working from a swinging stage, boatswain chair, a similar support); or	
	(3) If adverse conditions such as darkness, steady rain, high wind, icing, lightning or similar environmental factors render working at such height(s) hazardous.	
15	3. *Floating targets.* Servicing equipment on board a target ship or barge in which the employee is required to board or leave the target vessel by small boat or helicopter.	Nov. 1, 1970.
4	4. *Dirty work.* Performing work which subjects the employee to soil of body or clothing:	Nov. 1, 1970.
	a. Beyond that normally to be expected in performing the duties of the classification; and	
	b. Where the condition is not adequately alleviated by the mechanical equipment or protective devices being used, or which are readily available, or when such devices are not feasible for use due to health considerations (excessive temperature, asthmatic conditions, etc); or	
	c. When the use of mechanical equipment, or protective devices, or protective clothing results in an unusual degree of discomfort.	
5	5. *Cold work.* a. Working in cold storage or other climate-controlled areas where the employee is subjected to temperatures at or below freezing (32 degrees Fahrenheit).	Nov. 1, 1970.
	b. Working in cold storage or other climate-controlled areas where the employee is subjected to temperatures at or below freezing (32 degrees Fahrenheit) where such exposure is not practically eliminated by the mechanical equipment or protective devices being used.	Mar. 13, 1977.
4	6. *Hot work.* a. Working in confined spaces wherein the employee is subjected to temperatures in excess of 110 degrees Fahrenheit.	Nov. 1, 1970.
	b. Working in confined spaces wherein the employee is subjected to temperatures in excess of 110 degrees Fahrenheit where such exposure is not practically eliminated by the mechanical equipment or protective devices being used.	Mar. 13, 1977.
4	7. *Welding preheated metals.* Welding various metals or performing an integral part of the welding process when the employee must work in confined spaces in which large sections of metal have been preheated to 150 degrees Fahrenheit or more, and the discomfort is not alleviated by protective devices or other means, or discomforting protective equipment must be worn.	Nov. 1, 1970.
4	8. *Micro-soldering or wire welding and assembly.* Working with binocular-type microscopes under conditions which severely restrict the movement of the employee and impose a strain on the eyes, in the soldering or wire welding and assembly of miniature electronic components..	Nov. 1, 1970.
25	9. *Exposure to hazardous weather or terrain.* Exposure to dangerous conditions of terrain, temperature and/or wind velocity, while working or traveling when such exposure introduces risk of significant injury or death to employees; such as the following:	July 1, 1972.
	Examples:	
	—Working on cliffs, narrow ledges, or steep mountainous slopes, with or without mechanical work equipment, where a loss of footing would result in serious injury or death.	
	—Working in areas where there is a danger of rockfalls or avalanches.	
	—Traveling in the secondary or unimproved roads to isolated mountaintop installations at night, or under adverse weather conditions (snow, rain, or fog) which limits visibility to less than 100 feet, when there is danger of rock, mud, or snowslides	
	—Traveling in the wintertime, either on foot or by vehicle, over secondary or unimproved roads or snowtrails, in sparsely settled or isolated areas to isolated installations when there is danger of avalanches, or during "whiteout" phenomenon which limits visibility to less than 100 feet	
	—Working or traveling in sparsely settled or isolated areas with exposure to temperatures and/or wind velocity shown to be of considerable or very great danger on the windchill chart (Exhibit 1 of this appendix), and shelter (other than temporary shelter) or assistance is not readily available	
	—Snowplowing or snow and ice removal on primary, secondary or other class of roads, when (a) there is danger of avalanche or (b) there is danger of missing the road and falling down steep mountainous slopes, because of lack of snow-stakes, "whiteout" conditions, or sloping icepack covering the snow	
25	10. *Unshored work.* Working in excavation areas before the installation of proper shoring or other securing barriers, or in catastrophe areas, where there is a possibility of cave-in, building collapse or falling debris when such exposures introduce risk of significant injury or death to employees, such as the following:	July 1, 1972.
	Examples:	
	—Working adjacent to the walls of an unshored excavation at depths greater than six feet (except when the full depth of the excavation is in stable solid rock, hard slag, or hard shale, or the walls have been graded to the angle of repose; that is, where the danger of slides is practically eliminated), when work is performed at a distance from the wall which is less than the height of the wall	
	—Working within or immediately adjacent to a building or structure which has been severely damaged by earthquake, fire, tornado or similar cause	

PART I.—PAYMENT FOR ACTUAL EXPOSURE—Continued

Differential rate (percent)	Category for which payable	Effective date
	—Working underground in the construction and/or inspection of tunnels and shafts before the necessary lining of the passageway have been installed	
	—Duty underground in abandoned mines where lining of tunnels or shafts is in a deteriorated condition	
15	11. *Ground work beneath hovering helicopter.* Participating in operation to attach or detach external load to helicopter hovering just overhead.	July 1, 1972.
15	12. *Hazardous boarding or leaving of surface craft.* Boarding or leaving vessels or transferring equipment to or from a surface craft under adverse conditions of foul weather, ice, or night when sea state is high (three feet and above), and deck conditions and/or wind velocity in relation to the size of the craft introduce unusual risks to employees.	July 1, 1972.
	Examples:	
	—Boarding or leaving vessels at sea.	
	—Boarding or leaving, or transferring equipment between small boats or rafts and steep, rocky, or coral-surrounded shorelines	
	—Transferring equipment between a small boat and a rudimentary dock by improvised or temporary facility such as an unfastened plank leading from boat to dock	
	—Boarding or leaving, or transferring equipment from or to ice covered floats, rafts, or similar structures when there is danger of capsizing due to the added weight of the ice	
8	13. *Cargo handling during lightering operations.* Off-loading of cargo and supplies from surface ships to Landing Craft-Medium (LCM) boats when swells or wave action are sufficiently severe as to cause sudden listing or pitching of the deck surface or shifting or falling of equipment, cargo, or supplies which could subject the employee to falls, crushing, ejection into the water or injury by swinging cargo hooks.	July 1, 1972.
15	14. *Duty aboard surface craft.* Duty aboard a surface craft when the deck conditions or sea state and wind velocity in relation to the size of the craft introduces the risk of significant injury or death to employees, such as the following:.	July 30, 1972.
	Participating as a member of a water search and rescue team in adverse weather conditions when winds are blowing at 35 m.p.h. (classified as gale winds) or in water search and rescue operations at night	
	—Participating as a member of a weather projects team when work is performed under adverse weather conditions, when winds are blowing at 35 m.p.h., and/ or when seas are in excess of 14 feet, or when working on outside decks when decks are slick and icy when swells are in excess of 3 feet	
	—When embarking, disembarking or traveling in small craft (boat) on Lake Ponchartrain when wind direction is from north northeast or northwest, and wind velocity is over 15 knots; or when travel on Lake Ponchartrain is necessary in small craft, without radar equipment, due to emergency or unavoidable conditions and the trip is made in dense fog run procedures	
	—Participating in deep research vessel sea duty wherein the team member is engaged in handling equipment on or over the side of the vessel when the sea state is high (12-knot winds and 9-foot waves) and the work is done on relatively unprotected deck areas	
	—Transferring from a ship to another ship via a chair harness hanging from a highline between the ships when both vessels are under way	
	—Duty performed on floating platforms, camels, or rafts, using tools equipment or materials associated with ship repair or construction activities, where swells or wave action are sufficiently severe to cause sudden listing or pitching of the deck surface or dislodgement of equipment which could subject the employee to falls, crushing, or ejection into the water	
50	15. *Work at extreme heights.* Working at heights 100 feet or more above the ground, deck, floor or roof, or from the bottom of a tank or pit on such open structures as towers, girders, smokestacks and similar structures:	Oct. 22, 1972.
	(1) If the footing is unsure or the structure is unstable; or	
	(2) If safe scaffolding, enclosed ladders or other similar protective facilities are not adequate (for example, working from a swinging stage, bosun's chair, or a similar support); or	
	(3) If adverse conditions such as darkness, steady rain, high wind, icing, lightning, or similar environmental factors render working at such height(s) hazardous	
6	16. *Fibrous Glass Work.* Working with or in close proximity to fibrous glass material which results in exposure of the skin, eyes or respiratory system to irritating fibrous glass particles or slivers where exposure is not practically eliminated by the mechnical equipment or protective devices being used.	Feb. 28, 1975.
50	17. *High Voltage Electrical Energy.* Working on energized electrical lines rated at 4,160 volts or more which are suspended from utility poles or towers, when adverse weather conditions such as steady rain, high winds, icing, lightning, or similar environmental factors make the work unusually hazardous.	Apr. 11, 1977.
6	18. *Welding, Cutting or Burning in Confined Spaces.* Welding, cutting, or burning within a confined space which necessitates working in a horizontal or nearly horizontal position, under conditions requiring egress of at least 14 feet over and through obstructions including: (1) access openings and baffles having dimensions which greatly restrict movements, and (2) irregular inner surfaces of the structure or structure components.	Jan. 16, 1978.

PART II.—PAYMENT ON BASIS OF HOURS IN PAY STATUS

Differential rate (percent)	Category for which payable	Effective date
50	1. *Duty aboard submerged vessel.* Duty aboard a submarine or other vessel such as a deep-research vehicle while submerged.	Nov. 1, 1970.
8	2. *Explosives and incendiary material—high degree hazard.* Working with or in close proximity to explosives and incendiary material which involves potential personal injury such as permanent or temporary, partial or complete loss of sight or hearing, partial or complete loss of any or all extremities; other partial or total disabilities of equal severity; and/or loss of life resulting from work situations wherein protective devices and/or safety measures either do not exist or have been developed but have not practically eliminated the potential for such personal injury. Normally, such work situations would result in extensive property damage requiring complete replacement of equipment and rebuilding of the damaged area; and could result in personal injury to adjacent employees.	Nov. 1, 1970.
	Examples	
	—Working with, or in close proximity to operations involved in research, in testing, manufacturing, inspection, renovation, maintenance and disposal, such as:	
	—Screening, blending, drying, mixing, and pressing of sensitive explosives and pyrotechnic compositions such as lead azide, black powder and photoflash powder	
	—Manufacture and distillation of raw nitroglycerine	
	—Nitration, neutralization, crystallization, purification, screening and drying of high explosives	

PART II.—PAYMENT ON BASIS OF HOURS IN PAY STATUS—Continued

Differential rate (percent)	Category for which payable	Effective date
	—Manufacture of propellants, high explosives and incendiary materials	
	—Melting, cast loading, pellet loading, drilling, and thread cleaning of high explosives	
	—Manufacture of primary or initiating explosives such as lead azide	
	—Manufacture of primer or detonator mix	
	—Loading and assembling high-energy output flare pellets	
	—All dry-house activities involving propellants or explosives	
	—Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive explosives and incendiary materials	
	—All operations involving fire fighting on an artillery range or at an ammunition manufacturing plant or storage area, including heavy duty equipment operators, truck drivers, etc.	
	—All operations involving regrading and cleaning of artillery ranges	
	—At-sea shock and vibration tests. Arming explosive charges and/or working with, or in close proximity to, explosive-armed charges in connection with at-sea shock and vibration tests of naval vessels, machinery, equipment and supplies	
	—Handling or engaging in destruction operations on an armed (or potentially armed) warhead	
4	3. *Explosives and incendiary material—low degree hazard.* a. Working with or in close proximity to explosives and incendiary material which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation and possible adjacent employees; minor irritation of the skin; minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used.	Nov. 1, 1970.
	b. Working with or in close proximity to explosives and incendiary material which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation and possible adjacent employees; minor irritation of the skin; minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used and wherein protective device and/or safety measures have not practically eliminated the potential for such injury	Mar. 13, 1977.
	Examples	
	—All operations involving loading, unloading, storage and hauling of explosive and incendiary ordnance material other than small arms ammunition. (Distribution of raw nitroglycerine is covered under high degree hazard—see category 2 above.)	
	—Duties such as weighing, scooping, consolidating and crimping operations incident to the manufacture of stab, percussion, and low energy electric detonators (initiators) utilizing sensitive primary explosives compositions where initiation would be kept to a low order of propagation due to the limited amounts permitted to be present or handled during the operations	
	—Load, assembly and packing of primers, fuses, propellant charges, lead cups, boosters, and time-train rings	
	—Weighing, scooping, loading in bags and sewing of ignitor charges and propellant zone charges	
	—Loading, assembly, and packing of hand-held signals, smoke signals, and colored marker signals	
	—Proof-testing weapons with a known overload of powder or charges	
	—Arming/disarming or the installation/removal of any squib, explosive device, or component thereof, connected to or part of a solid propulsion system, including work situations involving removal, inspection, test and installation of aerospace vehicle egress and jettison systems and other cartridge actuated devices and rocket assisted systems or components thereof, when accidental or inadvertent operation of the system or a component might occur	
8	4. *Poisons (toxic chemicals)—high degree hazard.* Working with or in close proximity to poisons (toxic chemicals), other than tear gas or similar irritants, which involves potential serious personal injury such as permanent or temporary, partial or complete loss of faculties and/or loss of life including exposure of an unusual degree to toxic chemicals, dust, or fumes of equal toxicity generated in work situations by processes required to perform work assignments wherein protective devices and/or safety measures have been developed but have not practically eliminated the potential for such personal injury.	Nov. 1, 1970.
	Examples	
	—Handling and storing toxic chemical agents including monitoring of areas to detect presence of vapor or liquid chemical agents; examining of material for signs of leakage or deteriorated material; decontaminating equipment and work sites; work relating to disposal of deteriorated material (exposure to conjunctivitis, pulmonary edema, blood infection, impairment of the nervous system, possible death)	
	—Renovation, maintenance, and modification of toxic chemicals, guided missiles, and selected munitions	
	—Operating various types of chemical engineering equipment in a restricted area such as reactors, filters, stripping units, fractioning columns, blenders, mixers, pumps, and the like utilized in the development, manufacturing, and processing of toxic or experimental chemical warfare agents	
	—Demilitarizing and neutralizing toxic chemical munitions and chemical agents	
	—Handling or working with toxic chemicals in restricted areas during production operations	
	—Preparing analytical reagents, carrying out colorimetric and photometric techniques, injecting laboratory animals with compounds having toxic, incapacitating or other effects	
	—Recording analytical and biological tests results where subject to above types of exposure	
	—Visually examining chemical agents to determine conditions or detect leaks in storage containers	
	—Transferring chemical agents between containers	
	—Salvaging and disposing of chemical agents	
4	5. *Poisons (toxic chemicals)—low egress hazard.* a. Working with or in close proximity to poisons (toxic chemicals other than tear gas or similar irritating substances) in situations for which the nature of the work does not require the individual to be in as direct contact with, or exposure to, the more toxic agents as in the case with the work described under high hazard for this class of hazardous agents.	Nov. 1, 1970.
	b. Working with or in close proximity to poisons (toxic chemicals other than tear gas or similar irritating substances) in situations for which the nature of the work does not require the individual to be in as direct contact with, or exposure to, the more toxic agents as in the case with the work described under high hazard for this class of hazardous agents and wherein protective devices and/or safety measures have not practically eliminated the potential for personal injury	Mar. 13, 1977.
	Example	
	—Handling for shipping, marking, labeling, hauling and storing loaded containers of toxic chemical agents that have been monitored	
8	6. *Micro-organisms—high degree hazard.* Working with or in close proximity to micro-organisms which involves potential personal injury such as death, or temporary, partial, or complete loss of faculties or ability to work due to acute, prolonged, or chronic disease. These are work situations wherein the use of safety devices and equipment, medical prophylactic procedures such as vaccines and antiserums and other safety measures do not exist or have been developed but have not practically eliminated the potential for such personal injury.	Nov. 1, 1970.
	Examples	
	—Direct contact with primary containers of organisms pathogenic for man such as culture flasks, culture test tubes, hypodermic syringes and similar instruments, and biopsy and autopsy material. Operating or maintaining equipment in biological experimentation or production	

PART II.—PAYMENT ON BASIS OF HOURS IN PAY STATUS—Continued

Differential rate (percent)	Category for which payable	Effective date
	—Cultivating virulent organisms on artificial media, including embryonated hen's eggs and tissue cultures where inoculation or harvesting of living organisms is involved for production of vaccines, toxides, etc., or for sources of material for research investigations such as antigenic analysis and chemical analysis	
4	7. *Micro-organisms—low degree hazard.* a. Working with or in close proximity to micro-organisms in situations for which the nature of the work does not require the individual to be in direct contact with primary containers of organisms pathogenic for man, such as culture flasks, culture test tubes, hypodermic syringes and similar instruments, and biopsy and autopsy material	Nov. 1, 1970.
	b. Working with or in close proximity to micro-organisms in situations for which the nature of the work does not require the individual to be in direct contact with primary containers of organisms pathogenic for man, such as culture flasks, culture test tubes, hypodermic syringes and similar instruments, and biopsy and autopsy material and wherein the use of safety devices and equipment and other safety measures have not practically eliminated the potential for personal injury	Mar. 13, 1977.
8	8. *Pressure chamber and centrifugal stress.* Exposure in pressure chamber which subjects employee to physical stresses or where there is potential danger to participants by reason of equipment failure or reaction to the test conditions; or exposure which subjects an employee to a high degree of centrifugal force which causes an unusual degree of discomfort	July 1, 1972.
	Examples	
	—Participating as a subject in diving research tests which seek to establish limits for safe pressure profiles by working in a pressure chamber simulating diving or, as an observer to the test or as a technician assembling underwater mock-up components for the test, when the observer or technician is exposed to high pressure gas piping systems, gas cylinders, and pumping devices which are susceptible to explosive ruptures	
	—Participating in altitude chamber studies ranging from 18,000 to 150,000 feet either as subject or as observer exposed to the same conditions as the subject	
	—Participating as subject in centrifuge studies involving elevated G forces above the level of 5 G's whether or not at reduced atmospheric pressure	
	—Participating as a subject in a rotational flight simulator in studies involving continuous rotation in one axis through 360° at rotation rates greater than 15 r.p.m. for periods exceeding three minutes	
8	9. *Work in fuel storage tanks.* When inspecting, cleaning or repairing fuel storage tanks where there is no ready access to an exit, under conditions requiring a breathing apparatus because all or part of the oxygen in the atmosphere has been displaced by toxic vapors or gas, and failure of the breathing apparatus would result in serious injury or death within the time required to leave the tank	July 1, 1972.
	10. *Firefighting.* Participating or assisting in firefighting operations on the immediate fire scene and in direct exposure to the hazards inherent in containing or extinguishing fires	July 1, 1972.
25	*High degree*	
	—Fighting forest and range fires on the fireline	
8	*Low degree*	
	—All other firefighting	
8	11. *Experimental landing/recovery equipment tests*	July 1, 1972.
	—Participating in tests of experimental or prototype landing and recovery equipment where personnel are required to serve as test subjects in spacecraft being dropped into the sea or laboratory tanks	
8	12. *Land impact or pad abort of space vehicle.* Actual participation in dearming and safing explosive ordnance, toxic propellant, and high-pressure vessels on vehicles that have land impacted or on vehicles on the launch pad that have reached a point in the countdown where no remote means are available for returning the vehicle to a safe condition	July 1, 1972.
4	13. *Mass explosives and/or incendiary material.* Working within a controlled danger area in, on, or around wharves, transfer areas, or temporary holding areas in a transshipment facility when explosives are in the process of being shifted to or from a conveyance	July 1, 1972.
	Such an area shall include land and sea areas within which it has been determined that personnel are subject to an unusual degree of exposure or liability to serious injury or death from potential explosive effect	
	A transshipment facility for this purpose is a port or sea terminal established for the marshalling or temporary assembly of explosives prior to shipment where amounts in excess of 250,000 pounds net explosive weight (NEW) are present on a regular or recurring basis	
4	14. *Duty aboard aircraft carrier.* Duty aboard an aircraft carrier when exposed to hazards connected with aircraft launch and recovery:	July 1, 1972.
	Examples	
	—Participating in carrier suitability trials aboard aircraft carriers when work is performed on the flight deck during launch, recovery and refueling operations	
	—Operating or monitoring camera equipment adjacent to flight deck in the area of maximum hazard during landing sequence while conducting photographic surveys aboard aircraft carriers during periods of heavy aircraft operations	Mar. 4, 1974.
8	15. *Participating in missile liquid propulsion or solid propulsion situations.* Participating in research and development, or preoperational test and evaluation situation involving missile liquid or solid propulsion systems where mechanical, or other equipment malfunction, or accidental combination of certain fuels and/or chemicals, or transient voltage and current buildup on or within the system when the system is in a "go" condition on the test stand, or sled, can result in explosion, fire, premature ignition or failing	
	Examples	
	—Test stand or track tests, when adequate protective devices and/or safety measures either do not exist or have been developed but have not practically eliminated the potential for personal injury, under any of the following conditions:	
	a. Tanks are being pressurized above normal servicing pressure	
	b. Assembly, disassembly, or repair of contaminated plumbing containing inhibited red fuming nitric acid and unsymmetrical dimethylhydrazine or other hypergolic fuels is required	
	c. Fueling and defueling	
	—Hoisting hypergolic liquid fueled systems into, or out of, a test stand, where the working area is confined, and external plumbing is present resulting in a situation where the plumbing may be damaged causing a leak	
	—Tests on foreign missiles where technical data is questionable or not available	
	—Manned test firings of small, close support missiles for which safety performance data are not yet available	
	—Removal of a missile, propulsion system or component thereof from a test stand, fixture, or environmental chamber where there is reason to believe that the item may be unusually hazardous due to damage resulting from the test	
8	16. *Asbestos.* Working in an area where airborne concentrations of asbestos fibers may expose employees to potential illness or injury and protective devices or safety measures have not practically eliminated the potential for such personal illness or injury	Mar. 9, 1975.

Exhibit 1

WINDCHILL CHART

Wind Speed (MPH)	Local temperature (°F)										
	32	23	14	5	−4	−13	−22	−31	−40	−49	−58
Calm	32	23	14	5	−4	−13	−22	−31	−40	−49	−58
5	29	20	10	1	−9	−18	−28	−37	−47	−56	−65
10	18	7	−4	−15	−26	−37	−48	−59	−70	−81	−92
15	13	−1	−13	−25	−37	−49	−61	−73	−85	−97	−109
20	7	−6	−19	−32	−44	−57	−70	−83	−96	−109	−121
25	3	−10	−24	−37	−50	−64	−77	−90	−104	−117	−130
30	1	−13	−27	−41	−54	−68	−82	−97	−109	−123	−137
35	−1	−15	−29	−43	−57	−71	−85	−99	−113	−127	−142
40	−3	−17	−31	−45	−59	−74	−87	−102	−116	−131	−145
45	−3	−18	−32	−46	−61	−75	−89	−104	−118	−132	−147
50	−4	−18	−33	−47	−62	−76	−91	−105	−120	−134	−148
	Little danger		Considerable danger			Very great danger					

For properly clothed persons

Danger from freezing of exposed flesh

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FEDERAL REGISTER PAGES AND DATES, NOVEMBER

46033-46186.....1

CFR PARTS AFFECTED DURING NOVEMBER

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LIST OF PUBLIC LAWS

Last List October 31, 1990

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-375-3030).

H.J. Res. 682/Pub. L. 101-456

Waiving certain enrollment requirements with respect to any reconciliation bill, appropriation bill, or continuing resolution for the remainder of the One Hundred First Congress. (Oct. 27, 1990; 104 Stat. 1064; 2 pages) Price: $1.00

H.J. Res. 667/Pub. L. 101-467

Making further continuing appropriations for the fiscal year 1991, and for other purposes. (Oct. 28, 1990; 104 Stat. 1066; 2 pages) Price: $1.00

TABLE OF EFFECTIVE DATES AND TIME PERIODS—NOVEMBER 1990

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
November 1	November 16	December 3	December 17	December 31	January 30
November 2	November 19	December 3	December 17	January 2	January 31
November 5	November 20	December 5	December 20	January 4	February 4
November 6	November 21	December 6	December 21	January 7	February 4
November 7	November 23	December 7	December 24	January 7	February 5
November 8	November 23	December 10	December 24	January 7	February 6
November 9	November 26	December 10	December 24	January 8	February 7
November 13	November 28	December 13	December 28	January 14	February 11
November 14	November 29	December 14	December 31	January 14	February 12
November 15	November 30	December 17	December 31	January 14	February 13
November 16	December 3	December 17	December 31	January 15	February 14
November 19	December 4	December 19	January 3	January 18	February 19
November 20	December 5	December 20	January 4	January 22	February 19
November 21	December 6	December 21	January 7	January 22	February 19
November 23	December 10	December 24	January 7	January 22	February 21
November 26	December 11	December 26	January 10	January 25	February 25
November 27	December 12	December 27	January 11	January 28	February 25
November 28	December 13	December 28	January 14	January 28	February 26
November 29	December 14	December 31	January 14	January 28	February 27
November 30	December 17	December 31	January 14	January 29	February 28

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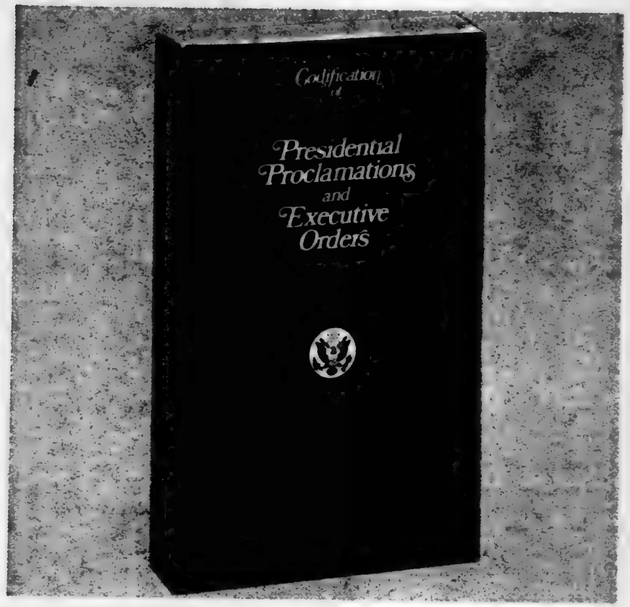

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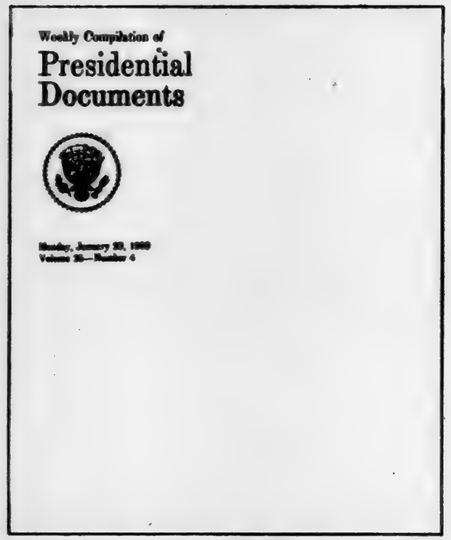

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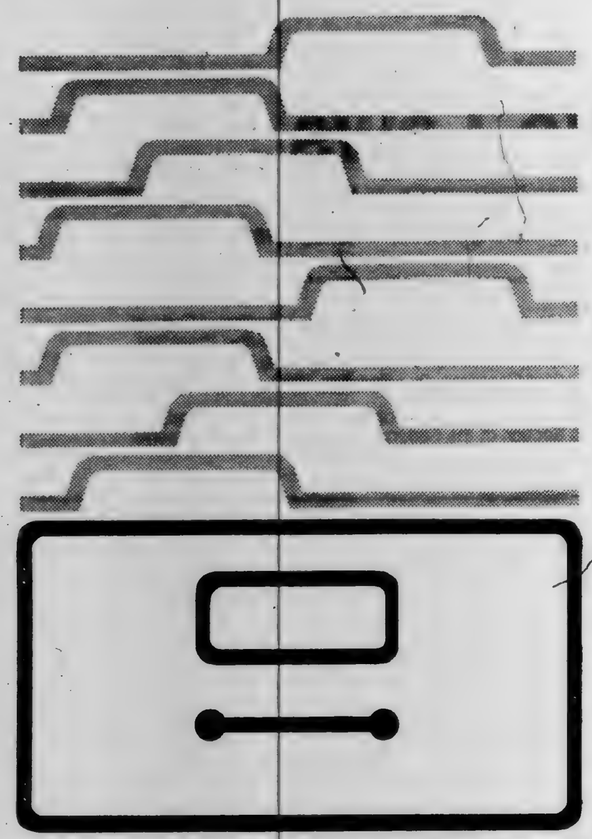

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1910

Receiving and Processing Applications, Securing Credit Reports on Initial Farmer Program and Single Family Housing Loan Applications

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to change the internal processing of applications. This action is necessary to require credit bureau reports on new and rescheduled loan applications and to screen for previous debts with FmHA, using the Current/Past Debt Inquiry and Borrower Cross-Reference Systems. The intended effect of this action is to provide each FmHA office with the necessary credit information to make a sound credit decision, thereby reducing the Government's exposure to losses.

EFFECTIVE DATE: December 3, 1990.

FOR FURTHER INFORMATION CONTACT: Ed Douglas, Financial Analyst, Farmers Home Administration, U.S. Department of Agriculture, room 5507, South Agriculture Building, Washington, DC 20250. Telephone (202) 475–4425.

SUPPLEMENTARY INFORMATION: This rulemaking action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined "non-major" since the annual effect on the economy is less than $100 million and there will be no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Furthermore, there will be no signficant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it will affect only those individuals requesting Farmer Home Administration loans.

Discussion of Background:

Currently the ordering of credit bureau reports is at the discretion of the county supervisor. This revision will require credit bureau reports on all initial and rescheduled Farmer Program, and on all initial Single Family Housing applications, with certain exceptions. Since Farmers Home Administration is the lender of last resort, it is incumbent on FmHA to have sound credit management policies. What is set forth in this final rule is fundamental to all financial institutions that make loans. Obtaining credit reports is standard operating procedure in the credit industry. Since it is incumbent on the lender to determine the history of both the applicant's willingness and ability to repay any and all debts incurred, a credit report is often an excellent source for this type of information. Another very valuable source of this type of information would be prior loan experience with the lender, which this final rule also seeks to impose. These two changes will enhance the decision making ability of FmHA employees, thus reducing the Government's exposure to losses.

Clarification

For the purpose of clarification for Farmer Programs we have added to § 1910.4(b) an item (22) to read "The Current/Past Debt Inquiry System and Borrower Cross-Reference Inquiry System. The Current/Past Debt Inquiry System must be reviewed for each applicant, and copies of the screens must be attached to the applicant's file."

We do not think this clarification requires republishing for comment, since § 1910.5 Evaluating applications, (d) Current/Past FmHA Loan History was published for comment. However, this clarification will serve to remove any doubt that this requirement is not aimed at housing only, but is a requirement for all applications.

Discussion of Comments

A proposed rule was published in the Federal Register (54 FR 27387) on June 29, 1989, and invited comments for 60 days ending August 28, 1989. Three comments were received.

Comment 1. The first comment took exception to the requirement of attaching a "screen print" to the application to show that the Current/Past Debt Inquiry System had been checked.

The Agency has determined that this will allow easier monitoring of this requirement and therefore will make no change to § 1910.4(a)(10). A second comment in the same letter suggests that the word "delinquent" in the first sentence be eliminated. The Agency's response to this is in screening applicants against the Current/Past Debt Inquiry System we are looking for those borrowers who were in fact delinquent. The Agency again will make no change.

Comment 2. The second letter of comment took exception to the mandatory use of credit reports for all FP borrowers. However, it is the Agency's position that a credit report on all loan applications is fundamentally sound credit management and supports OBM policy.

Comment 3. The third letter specifically requested a revision to the regulations to give authorization to obtain credit reports on section 504 grants, and Section 504 loan applications for amounts less than $7,500. These loans and grants are generally made to very low income, elderly residents. FmHA field staff usually already know the circumstances and credit history of these applicants. For these cases, FmHA believes that the cost of the credit report would not be justified by the marginal additional credit information available, and therefore, no revision will be made.

Environmental Impact Statement

This rule has been reviewed in accordance with 7 CFR part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal

action significantly affecting the quality of the human environment and since it is in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

For reasons set forth in the Final Rule related to Notice, 7 CFR part 3015, subpart V (48 FR 29115, June 24 1983), and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this program is related to the following programs that are subject to intergovernment consultation with state and local officials:

10.405—Farm Labor Housing Loan and Grants
10.410—Low Income Housing Loans (Section 502 Rural Housing Loans)
10.411—Rural Housing Site Loans (Section 523 and 524 Site Loans)
10.414—Resource Conservation and Development Loans
10.415—Rural Rental Housing Loans
10.416—Soil and Water Loans
10.418—Water and Waste Disposal System for Rural Communities
10.419—Watershed Protection and Flood Prevention Loans
10.420—Rural Self-Help Housing Technical Assistance (Section 523 Technical Assistance)
10.422—Business and Industrial Loans
10.423—Community Facilities Loans
10.427—Rural Rental Assistance Payment (Rental Assistance)

In turn, the following programs to which this program is also related, are not subject to Executive Order 12372:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.421—Indian Tribes and Tribal Corporation Loans

List of Subjects in 7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan Program—Housing and community development, Moderate income housing, Marital status discrimination, Reporting requirements and Sex discrimination.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1910—GENERAL

1. The authority citation for part 1910 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

Subpart A—Receiving and Processing Applications

2. In § 1910.4, paragraphs (a)(10) and (b)(23) are added to read as follows:

§ 1910.4 Processing applications.

* * * * *

(a) * * *

(10) The Current/Past Debt Inquiry and Borrower Cross-Reference Inquiry Systems. The Current/Past Debt Inquiry System must be reviewed for each applicant and copies of the screens must be attached to the applicant's file.

(b) * * *

(23) The Current/Past Debt Inquiry and Borrower Cross-Reference Systems. The Current/Past Debt Inquiry System must be reviewed for each applicant and copies of the screens must be attached to the applicant's file.

* * * * *

3. In § 1910.5, paragraph (d) is added to read as follows:

§ 1910.5 Evaluating applications.

* * * * *

(d) *Current/Past FmHA Loan History.* Current or previous delinquent FmHA loans, as determined by reviewing the Current/Past Debt Inquiry System or the Borrower Cross-Reference Inquiry System, will be used to help determine the credit history of an applicant.

Subpart B—Credit Reports (Individual)

4. Section 1910.51 is revised to read as follows:

§ 1910.51 Purpose.

This subpart prescribes the policies and procedures of the Farmers Home Administration (FmHA) for individual and joint type credit reports. Credit reports will be ordered to determine the eligibility of applicants requesting Farmers Home Administration (FmHA) loans. A nonrefundable fee will be charged the applicant.

5. Section 1910.53 is added to read as follows:

§ 1910.53 Policy.

The County Supervisor will be responsible for ordering individual credit reports. These will be obtained on initial and rescheduled Farmer Program loans and on all initial Single Family Housing applications, except for those situations outlined in paragraph (c) of this section, to help determine the eligibility of the loan applicant, and when it appears the credit report will not have to be updated before loan closing.

Dated: August 27, 1990.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 90-25916 Filed 11-1-90; 8:45 am]

BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 114

[Docket No. 90-171]

Viruses, Serums, Toxins, and Analogous Products; Shipment of Products Produced Under an Extended Exemption

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This document amends the regulations regarding veterinary biological products, prepared for intrastate distribution or export, under an extension, granted by the Secretary, of the exemption from the requirement that such products be prepared under a USDA license. The current regulations do not allow the preparation or shipment of such products after December 31, 1990, unless the products have been licensed. This interim rule establishes a procedure for manufacturers to obtain authorization for the shipment, intrastate or for export, of finished products until June 30, 1991.

EFFECTIVE DATE: Interim rule effective November 2, 1990. Consideration will be given only to comments received on or before December 3, 1990.

ADDRESSES: To help insure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 90-171. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, telephone number (301) 436-8245.

SUPPLEMENTARY INFORMATION:

Background

The Virus-Serum-Toxin Act of 1913 (21 U.S.C. 151-159) (Act), as amended by the Food Security Act of December 23, 1985, makes it unlawful for any person, other than one exempted by statute, to

ship a veterinary biological product anywhere in or from the United States, unless that product was prepared under and in compliance with regulations prescribed by the Secretary of Agriculture in an establishment licensed by the Secretary. The Act further provides that veterinary biological products, prepared solely for intrastate distribution or for export, during the 12 month period ending on the date of passage of the 1985 amendments, would not be in violation of the Act because they were not prepared pursuant to a license until January 1, 1990, provided an exemption from licensure was obtained from the Secretary of Agriculture. The amendment further provided that an extension of this exemption could be granted by the Secretary of Agriculture for a period of up to 12 months in an individual case on a showing of good cause and a good faith effort to comply with the Act and its requirements for USDA licensure with due diligence. On the issuance by the Secretary of a license to such person, firm, or corporation for such product, or at the end of an extension of the exemption granted by the Secretary, the exemption would terminate with respect to such product.

Thus the 1985 amendments to the Virus-Serum-Toxin Act provided for a 4-year grace period during which manufacturers of unlicensed products could continue to produce products solely for intrastate distribution or export, with an additional one year grace period, provided that the manufacturer demonstrated good cause and a good faith effort to comply with the requirements of the Act with due diligence. It was anticipated that, since the one-year extension of the exemption was granted upon a showing by the manufacturer that licensure could be achieved by the end of the extension period, there would be a minimal amount of unlicensed extended product, produced pursuant to the extension of the exemption period in inventory and available for shipment, at the end of the year.

On August 23-24, 1990, APHIS held a public meeting (announced in 55 FR 9077, July 17, 1990) in Ames, Iowa. The following four options for dealing with inventory produced during the extension to the exemption period were identified at the public meeting: (1) No shipment of unlicensed product after December 31, 1990; (2) the granting of a conditional license to qualifying products for up to one year; (3) limiting shipment of unlicensed products from distributors only; and (4) continued distribution of the finished product for up to one year after review of progress toward licensure. The comments received at the public meeting indicated support for options one and four.

Data were also presented at the public meeting that showed that exemptions were granted to 57 manufacturers for the continued production and distribution intrastate of 2,199 veterinary biological products. Requests for extensions were received from 14 intrastate manufacturers for 164 products. Extensions were granted to 11 establishments for 137 products. All 11 of these intrastate manufacturers are now licensed establishments. To date, five products granted an extension have been licensed and 33 additional extended products are expected to be licensed by December 31, 1990. Three products granted an extension have been withdrawn. This leaves 96 extended products that will not have attained licensure by December 31, 1990.

The purpose of this rule is to amend § 114.2 of the regulations to establish a procedure for manufacturers to obtain authorization for the shipment of inventories of products produced under an extension before January 1, 1991. Such authorization would allow only shipment intrastate or for export and only until June 30, 1991. Continued preparation of the products would not be authorized. We believe that this rule is reasonable and appropriate in light of the purpose of the statutorily-authorized extension period—to achieve full licensure of the extended products.

Without such authorization, producers and other persons in possession of unlicensed products prepared under an extended exemption would not be allowed to ship such products intrastate or for export after December 31, 1990.

APHIS believes, however, that in some cases the prohibition under the Act and current regulations against the shipment of product prepared pursuant to the extension of the exemption may adversely affect the public and the manufacturers that have made a good faith effort to comply with the Act with due diligence during the extended exemption period and are close to completion of the licensing process but, for extraordinary reasons, have failed to achieve licensure. Accordingly, APHIS will consider applications for authorization for shipment on a product-by-product basis based on the submission of data, on or before December 1, 1990, to the person listed under "FOR FURTHER INFORMATION CONTACT." The data to be submitted must address all of the following criteria:

(1) The progress which has been made in completing the work defined in the protocol of research filed in support of the request for extension of the exemption, including dates on which the efficacy studies were initiated (test animals vaccinated);

(2) What remains to be done to complete licensure; and

(3) Any other information requested by the Administrator that is determined to be relevant to the consideration of an authorization for shipment.

Authorization to ship product will be granted by the Administrator based upon a determination that there is a reasonable expectation that licensure will be completed by June 30, 1991. If APHIS determines that authorization is warranted, the applicant may continue to ship a product produced under an extension of the exemption while completing the requirements for licensure of that product. Applications for authorization for shipment must be received by December 1, 1990, and determinations made by December 31, 1990. Authorization for shipment will be granted only for a product that has been finished, as defined in 9 CFR 101.3(d), prior to January 1, 1991. Authorization will be granted on a limited basis for up to six months, not to exceed shipment beyond June 30, 1991. Products not authorized for shipment pursuant to the procedure explained above, may only be shipped through December 31, 1990, or after a product license has been issued in compliance with the Act and regulations. Products produced after December 31, 1990, may only be shipped if produced under USDA license in compliance with the Act and regulations.

The procedures established herein are reasonable and appropriate in light of their finite duration and the fact that the determinations will be based on a product-by-product analysis of the data submitted by the applicant and will not be a blanket application. It is anticipated that about five manufacturers and about 25 products would qualify for authorization for shipment. Information previously submitted by manufacturers indicate that these products are pure and safe and that there is at least a reasonable expectation of efficacy.

Hardships upon manufacturers and users of each product which are on the verge of meeting all requirements for licensure warrant the action in this interim rule. New § 114.2(d)(6) will be added to the regulations to address this issue.

Emergency Action

The end of the statutorily-authorized extension period is December 31, 1990. APHIS has not been able to formulate its policy with respect to implementation of this phase of the 1985 amendments to the Virus-Serum-Toxin Act without first assessing the progress of licensing extended products. Since prior notice with respect to this interim rule is impractical and contrary to the public interest at this time, James W. Glosser, the Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause under 5 U.S.C. 553 to make the rule effective upon publication. We will consider comments received within 30 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The 1985 amendments to the Virus-Serum-Toxin Act provided for an extension of the 4-year period of exemption during which time manufacturers of exempted, unlicensed veterinary biological products could continue to produce such products solely for intrastate distribution or export while attaining USDA licensure for the extended products. The statutorily-authorized extension period will end December 31, 1990.

It is anticipated that some five firms and some 25 products will qualify for authorization for shipment. The grant of a six-month authorization to this small number of products is expected to have minimal impact on the remainder of the industry.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection provisions that are included in this rule will be submitted for approval to the Office of Management and Budget (OMB). Written comments concerning any information collection provisions should be submitted to the Office of Information and Regulatory Affairs, OMB, Attention Desk officer for APHIS, Washington, DC 20503. A duplicate copy of such comments should be submitted to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 114

Animal biologics.

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

1. The authority citation for 9 CFR part 114 will continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 114.2, a new paragraph (d)(6) will be added to read as follows:

§ 114.2 Products not prepared under license.

* * * * *

(d) * * *

(6)(i) Finished products, prepared under an exemption granted pursuant to § 114.2(d)(3) and meeting the requirements of § 101.3(d), may be shipped intrastate or exported after December 31, 1990, and until June 30, 1990, if authorized by the Administrator. Applications must be made, on or before December 1, 1990, to the Deputy Director, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 838, 6505 Belcrest Road, Hyattsville, MD 20782, and must address all of the following criteria:

(A) The progress which has been made in completing the work defined in the protocol of research filed in support of the request for extension of the exemption including dates efficacy studies were initiated (test animals vaccinated);

(B) What remains to be done to complete licensure; and

(C) Any other information requested by the Administrator that is determined to be relevant to the consideration of an authorization for shipment.

(ii) Approval will be granted based upon a determination that there is a reasonable expectation that licensure will be completed by June 30, 1991.

Done in Washington, DC, this 30th day of October 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–25980 Filed 11–1–90; 8:45 am]

BILLING CODE 3410-34-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies; Management and Private Capital Requirements

AGENCY: Small Business Administration.

ACTION: Interim final rule; extension of comment period.

SUMMARY: On October 2, 1990, SBA published in the **Federal Register** an interim final rule increasing the minimum capital requirement for Small Business Investment Companies (SBICs) and requiring a board (in the case of a corporate licensee) or a portfolio valuation committee (in the case of a partnership licensee) of at least five members, 40% of whom are independent from the licensee (See 55 FR 40356). That publication provided that comments will be accepted until November 1, 1990. The present notice extends the comment period until December 31, 1990, in order to provide more time for public comment.

DATES: Comments on the above-referenced interim final rule must be received by December 31, 1990.

ADDRESSES: Written comments should be addressed to Bernard Kulik, Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Room 808, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Joseph L. Newell, Director, Office of Investment, Telephone (202) 653–6584

Authority: 15 U.S.C. 687(c).

Dated: October 25, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90–25931 Filed 11–1–90; 8:45 am]

BILLING CODE 4825–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–43, Special Conditions No. 25–ANM–35]

Special Conditions: McDonnell Douglas MD–11, Lightning and External High Energy Radio Frequency (RF) Protection and Automatic Longitudinal and Lateral Stability Augmentation System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the McDonnell Douglas Model MD–11 airplane. This airplane will have a number of high technology flight and avionic systems such as, cathode ray tube engine and flight information displays, full authority digital engine controls, and inertial reference systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and the susceptibility to external radio frequency (RF) energy sources, nor do they adequately address the longitudinal stability augmentation system and roll control wheel steering provided by the automatic flight system. These special conditions contain safety standards which the Administrator finds necessary to ensure that critical and essential functions of systems in the MD–11 are maintained.

EFFECTIVE DATE: October 12, 1990.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Flight Test and Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, Washington 98055–4056, telephone (206) 227–2135.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 1985, McDonnell Douglas applied for an amendment to its Type Certificate No. A22WE to include the new Model MD–11. The Model MD–11 is a long range derivative of the currently certified DC–10 that will be able to operate at higher maximum gross weights. It will incorporate three high bypass ratio turbofan engines, such as the Pratt & Whitney PW4000 Series, General Electric CF6–80C2 or Rolls Royce RB211–524, with digital electronically-controlled engine and thrust management systems. The Model MD–11 will incorporate simplified and automated cockpit controls, and electronic cockpit displays to facilitate operation by two flight crewmembers. Also, a fuel tank is being installed in the horizontal tail section.

The certification basis established for the Model MD–11 includes part 25 of the Federal Aviation Regulations (FAR) as amended by Amendments 25–1 through 25–61, with the following exceptions:

Sections 25.607, 25.631 (New structure will comply with Amendment 25–61), and 25.1309 (New systems and systems with major changes will comply with Amendment 25–61) as amended by Amendment 25–22; § 25.109 as amended by Amendment 25–42.

The requirement of § 25.858 does not apply to this type design because the original certification basis, which did not include this section, has been determined to be adequate. The type certification basis includes special conditions which are part of the Model DC–10 series certification basis. The TC basis also includes noise and evnironmental requirements; however, they are not pertinent to these special conditions.

Lightning Protection

The McDonnell Douglas MD–11 airplane will be certificated with a number of high technology avionic systems including cathode ray tube displays of engine and flight instruments and full authority digital electronic engine controls. These electronic systems may be vulnerable to lightning induced transients (indirect effects) that could be generated by a lightning strike to, or in the vicinity of, the airplane.

These systems, which may be designed to perform critical as well as essential functions, may be susceptible to disruption to both command/response signals and the operational mode logic as a result of electrical and magnetic interference. To ensure that a level of safety is achieved equivalent to that of existing airplanes, a special condition is issued which requires that systems performing critical and essential functions be designed and installed to preclude component damage and unacceptable interruption of function due to the indirect effects of lightning. In addition, since the possibility of some temporary degradation of essential functions may occur due to the lightning strike event, the effects of interconnected network system failures and the impact of these failures on the flightcrew workload will need to be evaluated.

The following "threat definition" is adopted to be used in demonstrating compliance with the lightning protection special condition. It is based on FAA Advisory Circular (AC) 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated 03/05/90.

The lightning current waveforms (Components A, D and H) defined below, along with the voltage waveforms in AC 20–53A, Protection of Aircraft Fuel Systems Against Fuel Vapor Ignition Due to Lightning, dated 04/12/85, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depends on the system's installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted to obtain the resultant internal threat to the installed systems. These systems may then be evaluated with this internal threat to determine their susceptibility to upset and malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level;

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a significant factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety

objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10ms, and (2) the maximum time between subsequent strokes is 200ms. An analysis or test need to be accomplished to obtain the resultant internal threat environment for the system under evaluation;

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 sets of 20 strokes each, distributed over a period of up to 2 seconds. Each set of 20 strokes is made up of repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10μs, the maximum is 50μs. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10ms, and (2) the maximum time between subsequent strokes is 200ms. The Component H wave form is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H). These components are defined by the following double exponential equation:

$$i(t) = I_o (e^{-at} - e^{-bt})$$

where:

t = time in seconds,

i = current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp =	218,810	109,405	54,703	10,572
a, sec^{-1} =	11,354	22,708	22,708	187,191
b, sec^{-1} =	647,265	1,294,530	1,294,530	19,105,100
This equation produces the following characteristics:				
I_{peak} =	200 KA	100 KA	50 KA	10 KA
and				
$(di/dt)_{max}$ (amp/sec) =	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
$(di/dt)^{(amp/sec)}$ =	1.0×10^{11} @t=.5 μs	1.0×10^{11} @t=.25 μs	0.5×10^{11} @t=.25 μs	
Action Integral = (amp ^{2} sec)	2.0×10^6	0.25×10^6	0.0625×10^6	

Protection from Unwanted Effects of Radio Frequency (RF) Energy

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been shown to be immune from the effects of RF energy from ground-based transmitters. With the trend toward increased power levels from these sources, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, and the use of composite structural materials, the immunity of systems which perform critical functions to RF energy must be established. The airplane systems, such as the Electronic Instrument System displaying airplane attitude information, the Full Authority Digital Engine Control System, and the Inertial Reference System, performing critical functions must be designed and installed to ensure that their operation and operational capabilities are not adversely affected when the airplane is exposed to high energy RF fields. No universally accepted guidance to define the maximum energy level in which civilian airplane system installations must be capable of operating safely has been established.

It is not possible to precisely define the RF energy to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for RF energy, and coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing RF emitters, an adequate level of protection exists when it is shown that each system which performs critical functions is designed and installed to ensure that those functions are not adversely affected when exposed to one of the following threat definitions:

1. A minimum RF threat internal to the airframe of 100 volts per meter average electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements with representative airplane wiring without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. An RF threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–500 KHz	80	80
500 KHz–2 MHz	80	80
2 MHz–30 MHz	200	200
30 MHz–100 MHz	33	33
100 MHz–200 MHz	33	33
200 MHz–400 MHz	150	33
400 MHz–1 GHz	8,300	2,000
1 GHz–2 GHz	9,000	1,500
2 GHz–4 GHz	17,000	1,200
4 GHz–6 GHz	14,500	800
6 GHz–8 GHz	4,000	666
8 GHz–12 GHz	9,000	2,000
12 GHz–20 GHz	4,000	500
20 GHz–40 GHz	4,000	1,000

The RF envelope given in paragraph 2 above is a revision to the envelope used

in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Aviation Authorities.

Automatic Longitudinal and Lateral Control Systems

The Longitudinal Stability Augmentation System (LSAS), Roll Control Wheel Steering (RCWS), autopilot, and automatic pitch trim are among the functions provided by the Automatic Flight System (AFS). The LSAS exercises full-time longitudinal control of the elevators (autopilot off) and is provided with automatic follow-up pitch trim. The RCWS actuates all lateral control surfaces by applying an input through one inboard aileron. The cable mechanism actuates the additional control surfaces. The RCWS may be full time as a type design option. When the LSAS is active, the system provides a proportional pitch rate command in response to the summed control column inputs of the Captain and First Officer. When the summed control column force is less than 1.4 pounds in either longitudinal direction, the current pitch angle is held. The LSAS control laws actively limit the steady-state pitch angle within the range of −10 to +25 degrees, and the LSAS will not command nor hold airplane nose up beyond an angle of attack corresponding to approximately $1.2V_s$, or a nose down beyond V_{MO} / M_{MO}. However, the pilot can maneuver the airplane past these limits through direct control of the elevator. The maximum elevator deflection commanded by the LSAS is limited to 5 degrees in either direction, but the maximum available elevator deflection through direct control of the hydraulic actuator is 37 degrees trailing edge up and 27 degrees trailing edge down.

The LSAS also incorporates an automatic stabilizer trim function which relieves steady state elevator displacement. The trim schedule and stabilizer rate are varied with airspeed to provide optimum performance over the entire flight regime. Autotrim is activated if the elevator command exceeds the defined threshold for more than 3 seconds. The automatic stabilizer trim function is activated during LSAS operation above 50 feet AGL after lift-off and in all autopilot modes except flare. Automatic stabilizer trim is inhibited upon descent through 50 feet AGL, in turning flight, and when the LSAS and pilot are in opposition.

In turning flight up to a bank angle of 25 degrees, the LSAS attempts to maintain a constant pitch attitude. Attitude hold and pitch angle rate command are washed out between 25 and 40 degrees bank angle, requiring pilot force to sustain the higher load factors. The LSAS provides only pitch rate damping above 40 degrees of bank. The pitch rate command and attitude hold gains are reintroduced below 40 degrees of bank. Full LSAS operation is resumed below 25 degrees of bank.

Like the LSAS, the RCWS sums the roll forces on both pilots' control wheels. With less than 1.4 pounds of roll force on the control wheel, the RCWS holds the current bank angle up to a maximum of 30 degrees, which results in neutral static lateral stability (as perceived by the pilot). Beyond 30 degrees of bank, RCWS will oppose pilot inputs, and the force gradient will increase. Roll control force/deflection beyond that required for RCWS (30 degrees of bank) will cause normal deployment of both inboard and outboard ailerons plus lateral spoilers through the cable system. Since the RCWS has the design feature in which roll control force commands roll rate, a stabilized constant heading will require no sustained lateral control force regardless of sideslip angle. Without the RCWS and with autopilot off, control wheel deflection directly activates aileron servos and spoilers for roll control.

Positive static longitudinal and lateral stability have been required by the Federal Aviation Regulations in the past for the following reasons:

1. Provides additional speed change and sideslip cues to the pilot through control force changes.

2. Provides periods of unattended operation which do not result in any significant deviations in attitude, airspeed, load factor, or heading.

3. Provides predictable pitch and roll response.

4. Provides minimal pilot attention (workload) to attain and maintain trim speed, altitude, and heading.

The operation of the LSAS results in neutral static longitudinal stability (as perceived by the pilot) from approximately $1.2V_s$ to V_{MO} / V_{FE}. With the LSAS, static longitudinal stability as defined by § 25.173 cannot be determined for the MD–11 by the methods used in the past. Specifically, the airplane will not demonstrate a tendency to return to the original trim speed when the control force is gradually released. The MD–11 with LSAS, however, will be highly stable to pitch axis inputs, including configuration and thrust changes, and to external atmospheric disturbances. In addition, the LSAS will provide a degree of protection by not maintaining pitch attitudes that would result in penetration of the $1.2V_s$ to V_{MO} / M_{MO} speed boundaries.

The neutral static lateral stability characteristics, with the RCWS operating, will not allow a demonstration of static lateral stability in the manner prescribed in § 25.177. Though the RCWS equipped MD–11 can technically comply with the requirement of § 25.177(b) that static lateral stability "* * * not be negative * * *" over the applicable speed range, the roll rate command nature of the RCWS will not permit the combined lateral-directional test of § 25.177(c) to be evaluated in the traditional sense of rudder and aileron control movements being proportional to the angle of sideslip. The MD–11 with RCWS, however, will be highly stable about the roll axis with respect to external atmospheric disturbances, will be resistant to excessive control inputs, and will have spiral stability.

Though the MD–11 does not lend itself to evaluation of static longitudinal and lateral stability in the manner described in §§ 25.173, 25.175, and 25.177, it still must be shown to fulfill the objectives of those regulations as previously described. This had led to the development of the task oriented test criteria of Special Condition 4. to evaluate the MD–11, with LSAS and RCWS operating, relative to the intent of the aforementioned regulations. As noted previously, the control laws of the LSAS and RCWS will not prevent a traditional speed related longitudinal stability evaluation or control proportionality evaluation of lateral-directional stability, respectively. These flight control systems should, however, enhance controllability and be beneficial to short term flight path stability. The task oriented handling qualities rating system of Special Condition 4. will permit an evaluation of the level of stability of the MD–11 throughout the normal flight envelope, including the airplane's response to various degrees of upset from trimmed flight in unattended operation. Special Condition 4. also includes task oriented handling qualities requirements for flight with the LSAS and RCWS inoperative, both individually and coincidentally, to satisfy the requirements of § 25.672(c) for continued safe flight and landing following a stability augmentation system failure. The task oriented handling qualities rating system will provide an appropriate method of demonstrating compliance with the

intent of the stability requirements of §§ 25.173, 25.175, 25.177, and 25.672(c). The FAA therefore considers the task oriented handling qualities evaluation of Special Condition 4. to provide an equivalent method of demonstrating compliance with the intent of the static longitudinal and lateral stability requirements of part 25 of the FAR.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and may become part of the type certification basis in accordance with § 21.101. In addition to the applicable airworthiness regulations and special conditions, the Model MD–11 must comply with the noise certification requirements of part 36 and the engine emission requirements of Special Federal Aviation Regulations (SFAR) 27.

Discussion of Comments

Notice of proposed special conditions No. SC–90–2–NM was published in the Federal Register on February 21, 1990 (55 FR 6003), for public comment. The following discussion summarizes the comments received and the FAA response to the comments.

Lightning Protection

One commenter recommends that the lightning protection requirement for systems which perform essential functions be deleted. The commenter considers that most FAA required systems are treated as "essential," and that the lightning protection requirement for essential systems appears to add the requirement for redundancy of systems like TCAS and weather radar in order to ensure recovery from a lightning strike to an antenna.

The FAA does not concur that systems which perform essential functions should be exempt from meeting lightning protection requirements. The justification for including systems which perform essential functions is that loss of function would decrease the level of safety of the airplane. Redundancy of TCAS and weather radar systems has not been required by the FAA. The primary concern has been the prevention of the display of misleading information. Applicants have been required to show that display of misleading information is improbable. This has been done without requiring redundant systems.

One commenter suggests rewording paragraph 2c of the lightning special condition to clarify that some degradation of systems which perform essential functions is allowed after exposure to lightning as long as an unacceptable cockpit crew workload does not occur.

The FAA concurs that the intent of paragraph 2c would be clarified by making the suggested change. The paragraph now reads as follows: "Systems which perform essential functions must be protected to ensure that failures due to a lightning strike will not result in unacceptable cockpit crew workload when considering the possible adverse environmental/operational conditions likely to result when a lightning strike may occur."

A comment was made that the definition of "essential functions" goes beyond its equivalent in § 25.1309(b)(2) by adding functions that would "contribute to" a condition that would significantly impact safety. In effect, this could require demonstration of multiple-failure immunity not presently required for essential systems. The commenter suggests that "contribute to" be deleted.

The FAA does not concur that these words should be deleted because a failure by itself may not impact the safety of the airplane, but may be a contributing factor when combinations of failures are considered. Paragraph 25.1309(b) of the FAR requires that " " "The airplane systems and associated components, considered separately and in relation to other systems, must be designed so that." Therefore, the language used in the definition is consistent with existing requirements.

Protection From Unwanted Effects of Radio Frequency (RF) Energy

One commenter considers the RF special condition to be inappropriate because it departs from the normal rulemaking process as given in § 21.16 of the regulations which requires "a novel or unusual design feature" for a special condition to be issued. The commenter does not believe that the digital electronic systems in the MD–11 (such as FADEC, EIS and IRS) are new or unique in the industry.

The FAA does not concur that the special condition is inappropriate. Section 21.16 provides for the issuance of special conditions when the airworthiness regulations do not contain adequate or appropriate safety standards because of a novel or unusual design feature. Contrary to the commenter's assertion, "novel or unusual" is with respect to the applicable airworthiness regulations, not to the industry state-of-the-art. Because the regulations must, of necessity, lag industry practices, there will always be occasional instances in which special conditions are needed even though the features are commonplace in the aircraft industry. The FAA does not consider the existing regulations to be adequate for electronic systems which perform critical functions; therefore, the special condition is necessary. A rulemaking project has, however, been initiated to amend part 25 in this regard.

The same commenter considers the RF special condition to be inappropriate at this time because the understanding of the effects of RF fields on airplane systems requires further development.

The FAA does not concur. The FAA considers that the potential threat of high energy RF transmissions to airplane safety to be increasing, and that protection requirements are necessary at the present time to ensure that the effects of these transmissions are minimized. Delaying these requirements until an exhaustive study on the effects of RF fields on airplane systems has been completed would not be in the best interests of airplane safety.

One commenter considers the RF susceptibility requirements specified to be excessive.

The FAA does not concur. The requirement that systems which perform critical functions are not adversely affected by high energy external RF fields is considered necessary so that continued safe flight and landing is not in jeopardy. It is imperative that the reliability of the critical function is not compromised. Determination of adverse effects would be made on a case-by-case basis by the local Aircraft Certification Office.

A comment was made that radio equipment should be exempt from RF protection requirements because radio equipment cannot tolerate field strengths on "tuned" and perhaps, some "out of band" frequencies when considering either test option 1 or 2.

The FAA concurs with this comment The special condition for RF protection applies only to systems which perform critical functions. Communication and navigation functions are considered essential by the FAA, therefore, systems associated with these functions need not be tested to option 1 or 2 of the special condition.

One commenter expressed a concern that there may be health hazards to tes personnel, flightcrews and airline passengers if exposed to these high energy fields.

The FAA concurs that there could be health hazards to personnel if exposure time is of sufficient length (on the order of minutes). Test personnel are aware of this and take proper precautions. In-flight exposure times for flightcrews and passengers are of short duration; therefore, these fields are not considered a hazard.

One commenter contends that testing the equipment to 100 volts per meter is excessive, and considers that testing to a lower level is adequate. Radiated susceptibility tests used by the commenter require that the equipment exhibit no functional upset when exposed to 10 volts per meter in the 15KHz to 30MHz frequency range, and 5 volts per meter in the 30MHz to 10GHz frequency range.

The FAA does not concur that these lower test levels are sufficient for systems that perform critical functions. The FAA has determined that a higher level must be used. This determination is primarily based on military testing requirements; however, engineering judgment also influenced the level that was set.

One commenter suggests omitting the peak field strength from the table defining the external threat because, according to the commenter, encountering these field strengths during critical stages of flight is highly improbable.

The FAA does not concur with this suggested change. The FAA considers RF to be an environmental condition with a probability of one. Peak values in this table were calculated by the Electromagnetic Compatibility Analysis Center (ECAC) using a set of conservative assumptions to depict the international electromagnetic environment in which civil aircraft are permitted to operate. The calculations made by ECAC have been validated by in-flight measurements.

Due to the limitations in size of the shield room in which RF testing is performed, a commenter suggests that representative airplane wiring be acceptable rather than the actual wiring harness.

The FAA concurs that representative airplane wiring harnesses would be acceptable for laboratory testing for the reason given above.

Automatic Longitudinal and Lateral Control Systems

The applicant considers that the requirements of the special condition exceed those of the FAR subparagraphs that they are intended to replace by requiring handling qualities evaluations outside the operational envelope.

The applicant believes that the intent of the requirement is met by providing deterrence to flight outside the normal envelope. That is, assessment of this envelope protection determines, at least in part, the handling qualities rating for the operational and limit envelopes.

The FAA considers the requirements of this special condition equivalent and not excessive in meeting the intent of the applicable FAR. It is agreed that testing outside the operational envelope will be limited to what has been done traditionally; i.e., compliance testing of § 25.201, Stall demonstrating; § 25.203, Stall characteristics; § 25.251, Vibration and buffeting; § 25.253, High speed characteristics; and § 25.255, Out-of-trim characteristics. Also, in determination of handling quality ratings, consideration will be given to deterrence which inhibits flight outside the normal speed boundary.

The applicant also considers flight in various levels of turbulence to be excessive. The applicant claims that the affected FAR does not require flight in turbulence, let alone at various levels. Traditional practice is to fly in as little turbulence as possible to acquire the most meaningful (i.e., stable) data and to evaluate the effects of turbulence as normally encountered. Recognizing that evaluating operational tasks is not data gathering, it is nonetheless the applicant's intent to confine flight testing in turbulence to within the normal speed range and, to the extent possible, as encountered during other flight test demonstrations, light to moderate turbulence will not be deliberately avoided.

The FAA recognizes that data collection in smooth air is necessary for a majority of the performance and handling qualities tests. However, the FAA insists that turbulence in the moderate range be sought in flight, if not encountered in the course of other flight test demonstrations. This philosophy has been applied in previous programs where evalution of a specific turbulence level was required. In-flight evaluation of the handling qualities throughout the normal speed boundary during moderate turbulence will be sufficient.

In consideration of the potential size of the test program and practical considerations of exposure to turbulence, the applicant offers the following recommendations regarding compliance:

1. Certification demonstrations must be comprised of a reasonable matrix of all aerodynamic and equipment configurations, and flight conditions.
2. Evaluation of pilot tasks is permitted concurrent with other FAR demonstrations to the extent possible, and
3. At the applicants' option and with FAA concurrence, compliance may be shown by analysis, flight tests, simulation or a combination of the three.

The FAA recognizes the potential of an expanded certification program due to the special condition. Therefore, the FAA considers the applicants recommendations (1, 2, and 3) reasonable. The special condition has, therefore, been adopted embodying the applicant's recommendations.

The applicant believes that elaboration is required of the process by which the handling qualities rating is determined. It is widely recognized that application of such schemes as the Cooper-Harper rating scale can yield different ratings from pilots of varying experience and personal preferences. Elaboration of the handling qualities rating and a philosophy for arbitrating differences in pilot ratings are required.

The "scheme" for determining handling qualities ratings was selected for its accuracy, simplicity, and ease of application. The FAA pilots involved in the certification of the handling qualities have appropriate experience and will exercise judgment void of personal preferences. Should any differences arise, a consensus among the FAA pilots participating in the certification may be sought. No elaboration of the handling qualities ratings or a philosophy for arbitrating pilot rating differences is necessary.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of these final special conditions would be 30 days after publication in the Federal Register; however, as the intended type certification date for the MD–11 airplane is October 31, 1990, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4231 et seq.;

E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the McDonnell Douglas Model MD-11 series airplane:

1. *Lightning Protection.*

a. Each electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not affected when the airplane is exposed to lightning.

b. Each essential function of new or modified electronic systems or installations must be protected to ensure that the essential function can be recovered in a timely manner after the airplane has been exposed to lightning.

c. Systems which perform essential functions must be protected to ensure that failures, due to a lightning strike, will not result in unacceptable cockpit crew workload when considering the possible adverse environmental/operational conditions likely to result when a lightning strike may occur.

2. *Protection From Unwanted Effects of Radio Frequency (RF) Energy.* Each electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems perform critical functions are not adversely affected when the airplane is exposed to high energy RF fields.

For the purpose of these special conditions, the following definitions apply:

Critical Functions. Functions whose failure would contribute to or cause a failure condition which could prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flight crew to cope with adverse operating conditions.

4. *Automatic Longitudinal and Lateral Control Systems.*

In lieu of compliance with §§ 25.173, 25.175, 25.177 (b) and (c), and 25.672(c), the airplane must exhibit handling qualities that will produce ratings not lower than those shown in Table 1 for the associated speed boundaries as defined in Table 2. Evaluation of the handling qualities to meet these requirements must be conducted both with and without the RCWS operating. When the effects of atmospheric disturbances (e.g., turbulence, windshear) are considered, the handling qualities are allowed to vary as shown in Table 1. The handling qualities levels shown in Table 1 are based on an LSAS reliability of no less than 10^{-5}. A system reliability less than this level will require adjustments to the criteria shown in Table 1.

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TABLE 1 Handling Qualities Ratings

FLIGHT COND. / MODE		TURBULENCE: NONE			LIGHT			MODERATE			SEVERE		
		SPEED BOUNDARIES											
LSAS	RCWS	N	O	L	N	O	L	N	O	L	N	O	L
ON	ON	S	S	A	S	S	A	A	A	C	C	C	C
ON	OFF	S	S	A	S	S	A	A	A	C	C	C	C
OFF	ON	A	A	C	A	A	C	C	C	C	C	C	X
OFF	OFF	A	A	C	A	A	C	C	C	C	C	C	X

N = NORMAL
O = OPERATIONAL
L = LIMIT

S = SATISFACTORY
A = ADEQUATE
C = CONTROLLABLE
X = NOT REQUIRED

TABLE 2
Speed Boundaries

	V_{MIN}	Stick Shaker	$1.3V_s$* V_{LOF}	V_{FE}/V_{LE}	V_{MO}/M_{MO}	V_{FC}/M_{FC}	V_{DF}/M_{DF}
Flaps Down	Limit	Operational		Normal			
Flaps Up	Limit	Operational		Normal	Operational		Limit

* V_{LOF} for takeoff configuration; 1.3 V_s for all other.

BILLING CODE 4910-13-C

Handling Qualities Rating Definitions

Satisfactory. Full performance criteria are met with routine pilot effort and attention.

Adequate. Adequate for continued safe flight and landing, full or specified performance met, but with heightened pilot effort and attention.

Controllable. Inadequate for continued safe flight and landing, but controllable for return to safe flight condition, a safe flight envelope and/or reconfiguration so that handling qualities are at least adequate.

Compliance with these requirements will be determined by a systematic evaluation of all pilot tasks conducted at the most critical center of gravity and will cover all applicable approved aerodynamic and equipment configurations.

In addition, directional departure from normal unaccelerated flight must be accompanied by adequate control deflections and forces to allow prompt identification of an engine failure. In the absence of adequate control deflections/forces, a suitable indication should be provided which will allow the pilot to rapidly achieve an optimum drag/controllability configuration.

Issued in Seattle, Washington, on October 12, 1990.

Leroy A. Keith, Manager,

Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 90-25344 Filed 11-1-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-ASW-66; Amdt. 39-6777]

Airworthiness Directives; Aerospatiale (Societe Nationale Industrielle Aerospatiale) Model AS 350 and AS 355 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the installation of a protective cover on each main rotor servo control valve on certain Aerospatiale series helicopters. The AD is needed to prevent ice from forming within the servo distribution valve housing during cold weather operations which could result in loss of control of the helicopter.

DATES: Effective date: December 3, 1990. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 1990.

ADDRESSES: The applicable service bulletins may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, or may be examined in the Rules Docket in the Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Building 3B, Room 518, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel E. Brodie, FAA, Rotorcraft Standards Staff, ASW-110, Forth Worth, Texas 76193-0112, telephone (817) 624-5116.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD requiring installation of a protective cover on each main rotor servo control on certain Aerospatiale AS 350 and AS 355 series helicopters was published in the Federal Register on February 16, 1990 (55 FR 5622).

The proposal was prompted by reports of one accident that was attributed to servo control valve icing and nine servo valve malfunctions that were attributed to ice forming within the distributor valve housing during cold weather operations.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received. The commenter objects to the requirement to install protective covers on all affected helicopters as it "could be a detriment" to operators flying in sandy conditions. The FAA disagrees with this comment. The safety improvement provided by the protective cover outweighs the possible inconvenience of removing the cover for cleaning the servos. Further, the commenter failed to provide any substantiating data for his opinion. Therefore, other than a minor editorial change to paragraph (a) to add a service bulletin reference, the amendment is adopted as proposed.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation involves 81 aircraft at an approximate cost of $906 per aircraft, for a total fleet cost estimated at $73,548. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal; and (4) will not have significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106g (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Aerospatiale (Societe Nationale Industrielle Aerospatiale): Applies to Model AS 350 and AS 355 series helicopters, with Dunlop main rotor servo controls, part numbers (P/N) AC 64162, AC 67030, AC 66442, and AC 67034 installed. (Docket Number 89-ASW-66)

Compliance required as indicated, unless already accomplished.

To prevent failure or malfunction of the main rotor servo controls due to icing, which could result in loss of control of the helicopter, accomplish the following:

(a) Within the next 300 hours' time in service, install a protective cover on each main rotor servo control in accordance with the Accomplishment Instructions of Aerospatiale Service Bulletin No. 67.11, dated March 23, 1989, or 67.14, dated April 18, 1990, as applicable.

(b) An alternate method of compliance or adjustment of the compliance times, which provides an equivalent level of safety, may be used if approved by the Manager, Rotorcraft Standards Staff, ASW-110, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193-0110.

The installation procedures shall be done in accordance with Aerospatiale Service Bulletin No. 67.11, dated March 23, 1989, or 67.14, dated April 18, 1990, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005. Copies may be inspected at the Rules Docket in the Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Bldg. 3B, Room 158, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC.

This amendment becomes effective December 3, 1990.

Issued in Forth Worth, Texas, on October 9, 1990.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate Aircraft Certification Service.

[FR Doc. 90-26008 Filed 11-1-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-ANE-08; Amdt. 39-6773]

Airworthiness Directives; General Electric Company (GE) CF6-80A3 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to GE CF6-80A3 engines, which requires inspection of engine aft mount upper and lower beams. This amendment is prompted by one engine aft mount lower beam found in service with a forging lap. This condition, if not corrected, could result in engine aft mount failure and engine separation.

DATES: Effective December 3, 1990. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of December 3, 1990.

ADDRESSES: The applicable service information may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, Ohio 45246. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Thomas Boudreau, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7096.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD), applicable to GE CF6-80A3 engines, which requires inspection of engine aft mount upper and lower beams, was published in the Federal Register on May 7, 1990 (55 FR 18910).

The proposal was prompted by one aft mount lower beam found in service with a forging lap. Further investigation revealed that a required dip etch was omitted from the manufacturing process of all GE CF6-80A3 engine aft mount beam assemblies, thus compromising the effectiveness of the final fluorescent penetrant inspection (FPI). Consequently, forging laps may exist on other GE CF6-80A3 engine aft upper and lower mount beams. The AD is needed to prevent engine aft mount failure and engine separation.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received, which expressed no objection to the adoption of the proposed rule.

Since issuance of the proposal, GE has revised the service bulletin (SB) referenced in the proposed rule. This revision does not alter the accomplishment instructions of the engine aft mount FPI but includes several cautionary notes for clarification. Accordingly, the SB as referenced in the AD has been changed to incorporate the updated revision.

Also, additional information on the economic impact of this AD has been received and the regulatory evaluation has been revised to reflect a reduction of the impact on the U.S. economy.

After review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 92 GE CF6-80A3 engines of the affected design in the worldwide fleet. There are no aircraft of U.S. registry with engines affected by this AD. However, if affected engines are exported to the U.S., it is estimated that it would take approximately 4 workhours per engine to accomplish the required actions, and the average labor cost will be $40 per workhour. Based on these figures, the total cost impact per engine would be $160.00.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List or Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

General Electric Company: Applies to General Electric Company (GE) CF6-80A3 turbofan engines installed on, but not limited to, Airbus A310-200 aircraft.

Compliance required at the next engine removal or within 18 months after the effective date of this AD, whichever occurs first, unless already accomplished.

To prevent failure of the engine aft mount, which could result in engine separation, accomplish the following:

(a) Conduct an "in shop" dig etch and fluorescent penetrant inspection of the engine aft upper mount beam, Part Number (P/N) 224-1608-501 or 224-1606-503, and engine aft lower mount beam, P/N 224-1607-501, in accordance with the accomplishment instructions contained in part 2 of GE CF6-80A Series Service Bulletin (SB) 71-053, Revision 2, dated June 26, 1990.

(b) Remove from service prior to further flight, engine aft upper and lower mounts with crack indications and replace with serviceable parts.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

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(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance (schedule) times specified in this AD may be approved by the Manager, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

The fluorescent penetrant inspection of engine aft mount beam assemblies shall be done in accordance with the following GE document:

Document	Page	Revision	Date
GE SB 71-053	1, 2	2	June 26, 1990.
GE SB 71-053	3-8	1	Feb. 8, 1990.
GE SB 71-053	9, 10, and 11	2	June 26, 1990.
GE SB 71-053	12	1	Feb. 8, 1990.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, room 311, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street NW, room 8301, Washington, DC.

This amendment becomes effective December 3, 1990.

Issued in Burlington, Massachusetts, on September 19, 1990.

Ronald L. Vavruska,

Acting Manager, Engine and Propeller Directorate Aircraft Certification Service.

[FR Doc. 90-26009 Filed 11-1-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-ASW-68; Amdt. 39-6778]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm (MBB) Model BO105C and BO105S Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts an airworthiness directive (AD) that requires installation of a continuous ignition system on all Messerschmitt-Bolkow-Blohm (MBB) Model BO105C and BO105S series helicopters that operate in snow conditions. This AD is needed to prevent possible engine flameouts and loss of engine power due to ingestion of layers of wet snow.

DATES: Effective date: December 3, 1990. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 1990.

ADDRESSES: The applicable service information may be obtained from MBB Helicopter Corporation, 900 Airport Road, P.O. Box 2349, West Chester, PA 19380, or may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Twa, FAA, Rotorcraft Standards Staff, ASW-110, Fort Worth, Texas 76193-0112; telephone (817) 624-5158.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD requiring installation of a continuous ignition system on all MBB Model BO105C and BO105S series helicopters that operate in snow conditions was published in the **Federal Register** on July 3, 1990 (55 FR 27472). The proposal was prompted by reports of engine flameouts that occur during or after flight in snow. Engine flameouts during critical flight maneuvers could result in loss of control of the helicopter. Since this condition is likely to exist or develop on other MBB Model BO105C and BO105S series helicopters of the same type design, it was proposed to require certain preflight inspections, and the installation and use of a continuous ignition system, when operating in snow.

Interested persons have been given an opportunity to participate in this rulemaking; one commenter responded. The commenter recommends replacing the words "atmospheric moisture" with "layers of wet snow" in the introductory text of the AD because only layers of wet snow can cause the problem addressed by the proposal. The FAA agrees, and the amendment is adopted with this change. In addition, a minor clarifying change was made to the introductory text to remove the word "failure." Also, in response to an additional comment, the preamble summary now refers to ingestion of layers of wet snow only, since there have been no problems associated with flight in rain and ice.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation involves approximately 36 aircraft that will be operating in snow conditions and that compliance will require 4-5 manhours per helicopter at a cost of $40 per hour, for a total cost of $5,760 to $7,200 for the affected fleet. Therefore, I certify that this action: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Messerschmitt-Bolkow-Blohm (MBB): Amendment 39-6778. Docket No. 89-ASW-68.

Applicability: All MBB Model BO105C and BO105S series helicopters, certificated in any category, that operate in snow conditions.

Compliance: Required as indicated, unless already accomplished.

To prevent engine flameout resulting from ingestion of layers of wet snow in engine inlets, accomplish the following:

(a) Install a continuous ignition system in accordance with MBB Service Bulletin, SB-BO 105-80-108, "Optional Equipment-Retrofit of Continuous Ignition System," dated May 11, 1990.

(b) Incorporate into the applicable Rotorcraft Flight Manual (RFM) the FAA-approved flight manual Revision 2/16, dated October 1, 1989, which includes the following paragraphs 2.8.2.4 and 2.8.2.5:

2.8.2.4 *Snow Conditions*

Operation in snow is prohibited, except when the *Continuous Ignition System* (OPT 19) is installed and switched on. Prior to takeoff, snow and ice must be removed, particularly from the following areas:

—cabin roof

—transmission cowling interior in front of engine air intakes

—transmission compartment interior

—engine inlet deflector shield.

Note: After engine operation in snow make an entry in the logbook. Maintenance action is required in accordance with the Allison Operation and Maintenance Manual.

2.8.2.5 *Engine Inlet Deflector Shield*

The engine inlet deflector shield must be installed at all times.

The procedures shall be done in accordance with MBB Service Bulletin SB-BO 105-80-108, which incorporates the following pages: 1, 2, and 8, Rev. 1, dated May 11, 1990; 3-7 and 9, Original, dated June 12, 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MBB Helicopter Corporation, 900 Airport Road, P.O. Box 2345, West Chester, PA 19380. Copies may be inspected at the Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas or at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC.

This amendment (39-6778) becomes effective on December 3, 1990.

Issued in Fort Worth, Texas, on October 5, 1990.

James D. Erickson,

Manager, Rotorcraft Directorate Aircraft Certification Service.

[FR Doc. 90-26010 Filed 11-1-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-ANE-11; Amdt. 39-6753]

Airworthiness Directives; Pratt & Whitney (PW) JT9D-3A/-7/-20/-7R4 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to PW JT9D-3A/-7/-7A/-7A(SP)/-7AH/-7F/-7H/-7J/-20/-20J/-7R4D/-7R4D1/-7R4E/-7R4E1/-7R4E4/-7R4H1/-7R4G2 turbofan engines, which establishes an inspection and removal from service program for certain high pressure turbine (HPT) stage one rotating air seals. This amendment is prompted by an uncontained engine failure event attributed to failure of an HPT stage one rotating air seal. This condition, if not corrected, could result in an uncontained engine failure, which could lead to the loss of an aircraft.

DATES: Effective November 23, 1990.

Comments for inclusion in the docket must be received on or before December 3, 1990.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the **Federal Register** as of November 23, 1990.

ADDRESSES: Submit comments in duplicate to the Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Airworthiness Rules Docket No. 90-ANE-11, 12 New England Executive Park, Burlington, Massachusetts 01803, or deliver in duplicate to Room 311, at the above address.

Comments must be marked: Docket No. 90-ANE-11

Comments may be inspected at the above location in Room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Pratt & Whitney, Publications Department, P.O. Box 611, Middletown, Connecticut 06457, or may be examined at the Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Karen Grant, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7087.

SUPPLEMENTARY INFORMATION: The FAA has determined that the fracture of an HPT stage one rotating air seal, Part Number (P/N) 797576, was the primary cause of an uncontained JT9D-7R4H1 engine failure. The air seal fracture originated at the center knife edge and progressed into the HPT air seal body. It has been determined that crack initiation is due either to a heavy rub condition, or misassembly. It has also been determined that a manufacturing process used for certain air seals may yield material properties with relatively fast crack propagation rates.

Therefore, to prevent HPT stage one rotating air seal fracture, which could result in an uncontained engine failure and possible loss of aircraft, this AD requires that certain HPT stage one rotating air seals must be removed from service. This AD also establishes a repetitive inspection program for other affected air seals until such time as these parts are retired from service.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Airworthiness Rules Docket No. 90-ANE-11, 12 New England Executive Park, Burlington, Massachusetts 01803. All communications received by the deadline date indicated above will be considered by the Administrator, and the AD may be changed in light of the comments received.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications

to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It had been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT9D-3A/-7/-7A/-7A(SP)/-7AH/-7F/-7H/-7J/-20/-20J/-7R4D/-7R4D1/-7R4E/-7R4E1/-7R4E4/-7R4H1/-7R4G2 turbofan engines installed on, but not limited to, Boeing 767, Boeing 747, McDonnell Douglas DC10-40, Airbus A300 and Airbus A310 aircraft.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the high pressure turbine (HPT) stage one rotating air seal, which could result in an uncontained engine failure, accomplish the following:

(a) For JT9D-7R4E1 (AI 600 Series)/E4/H1 model engines, remove from service HPT stage one rotating air seal, Part Numbers (P/N) 797576, 797576P48, 793707 and 793707P48, within 60 days from the effective date of this AD, in accordance with Service Bulletin (SB) JT9D-7R4-72-392, Revision 2, dated March 2, 1990.

(b) For JT9D-7R4G2 model engines, remove from service HPT stage one rotating air seal, P/N's 797576, 797576P48, 793707 and 793707P48, at the next engine shop visit or within 2,350 cycles in service (CIS) from the effective date of this AD, whichever occurs first, in accordance with SB JT9D-7R4-72-392, Revision 2, dated March 2, 1990.

(c) For JT9D-7R4D/D1/E/E1(AI 500 Series) model engines, remove from service HPT stage one rotating air seal, P/N's 797576, 797576P48, and 793707, whose part serial numbers (S/N) *are* listed in Tables 1-3 inclusive of JT9D SB JT9D-7R4-72-393, Revision 1, dated December 21, 1989, at the next engine shop visit or within 2,450 CIS from the effective date of this AD, whichever occurs first, in accordance with the above noted SB.

(d) For JT9D-7R4D/D1/E/E1(AI 500 Series) model engines, fluorescent penetrant inspect (FPI) HPT stage one rotating air seal, P/N's 797576, 797576P48 and 793707, whose part S/N's are *not* listed in Tables 1-3 inclusive of SB JT9D-7R4-72-393, Revision 1, dated December 21, 1989, in accordance with the Accomplishment Instructions, part B, of the above noted SB, at the next HPT module exposure or within 2,900 CIS after the effective date of this AD, whichever occurs first. Remove from service parts found cracked and replace with a serviceable air seal. Thereafter, reinspect at each HPT module exposure not to exceed 2,900 cycles since last inspection (CSLI), in accordance with the above noted SB.

(e) For JT9D-3A/-7/-7A/-7A(SP)/-7AH/-7F/-7H/-7J/-20/-20J model engines, remove from service HPT stage one rotating air seal, P/N's 797576, 797576P48 and 793707, whose part S/N's *are* listed in Tables 1-3 inclusive of SB 5873, Revision 1, dated December 21, 1989, at the next engine shop visit or within 2,450 CIS from the effective date of this AD, whichever occurs first.

(f) For JT9D-3A/-7/-7A/-7A(SP)/-7AH/-7F/-7H/-7J/-20/-20J model engines, FPI HPT stage one rotating air seal, P/N's 797576, 797576P48 and 793707, whose part S/N's are *not* listed in Tables 1-3 inclusive of PW SB 5873, Revision 1, dated December 21, 1989, in accordance with the Accomplishment Instructions, part B, of the above noted SB, at the next HPT module exposure or within 2,900 CIS from the effective date of this AD, whichever occurs first. Remove from service parts found cracked and replace with a serviceable air seal. Thereafter, reinspect at each HPT module exposure not to exceed 2,900 CSLI, in accordance with the above noted SB.

(g) For the purpose of this AD, an engine shop visit is defined as the induction of an engine into a shop for the conduct of engine maintenance.

(h) For the purpose of this AD, HPT module exposure is defined as separation of the M Flange.

(i) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(j) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

The removal and inspection procedures shall be done in accordance with the following PW documents:

Document	Page No.	Revision	Date
SB JT9D-7R4-72-392	2	Original	Oct. 25, 1989.
	5, 6, 8, 9, and 10.	Rev. 1	Dec. 21, 1989.
	1, 3, 4, 7	Rev. 2	Mar. 2, 1990.
SB JT9D-7R4-72-393	2-4	Original	Oct. 27, 1989.
	1, 5 thru 15	Rev. 1	Dec. 21, 1989.
SB 5873	2 thru 5	Original	Oct. 30, 1989.
	1, 6 thru 16	Rev. 1	Dec. 20, 1989.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Publications Department, P.O. Box 611, Middletown, Connecticut 06457. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, room 311, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street NW, room 8301, Washington, DC 20591.

This amendment becomes effective November 23, 1990.

Issued in Burlington, Massachusetts, on September 12, 1990.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate Aircraft Certification Service.

[FR Doc. 90-26011 Filed 11-2-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-AGL-6]

Alteration to Transition Area; Rapid City, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects Federal Register Document 90-23598, in the issue of Friday, October 5, 1990. On pages 40822 and 40823 change the sets of coordinates that read "lat. 43°40'00"N., long. 102°16'30"W." and lat. "43°39'00"N., long. 103°55'00"W." to lat. 43°39'57"N., long. 102°16'25"W." and "lat. 43°39'03"N., 103°54'55"W." respectively. Due to an oversight these two sets of coordinates were incorrect in the Federal Register issued on October 5, 1990.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

Issued in Des Plaines, Illinois, on October 23, 1990.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 90-26012 Filed 11-1-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Abandoned Mine Land Reclamation Plan Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: On June 29, 1990, the State of Illinois submitted to OSM a proposed amendment to its Abandoned Mine Land Reclamation Plan (hereinafter referred to as the Illinois AMLR plan). The proposed amendment alters procedures for public participation, for the ranking and selection of reclamation projects, for the placement of liens on reclaimed properties, and for the evaluation and award of bids and contracts. The amendment also updates all phases of the State Reclamation Plan to reflect minor changes which have evolved since the Plan was approved in 1982. The amendment is approved.

EFFECTIVE DATE: November 2, 1990.

ADDRESSES: Copies of the full text of the amendment are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 511 W. Capitol, suite 202, Springfield, Illinois 62704. Telephone (217) 492-4495.

Illinois Abandoned Mined Lands Reclamation Council, 928 South Spring Street, Springfield, Illinois 62704. (217) 782-0588.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office, (217) 492-4495.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Illinois AMLR plan effective June 1, 1982. Information pertinent to the general background of the Illinois AMLR plan submission, as well as the Secretary's findings and the disposition of comments can be found in the June 1, 1982, Federal Register (47 FR 23883 et seq.). A subsequent program amendment approved on June 11, 1984, can be found in the June 11, 1984, Federal Register (49 FR 24021 et seq.). The most recent amendment was approved February 14, 1990, and can be found in the Federal Register of that date (55 FR 5210 et seq.).

Information concerning the previously approved plan and amendments may be obtained from the agency offices listed under "ADDRESSES".

II. Discussion of Proposed Amendment

By letter dated June 29, 1990, Illinois submitted a reclamation plan amendment to OSM (Administrative Record No. IL-300-AML). The proposed amendment consists of a revised narrative to replace several sections of the approved Illinois Plan as provided by 30 CFR 884.13. Specifically the following areas of the plan are being revised:

(1) The State has adopted new regulations describing its Program's goal and objectives. The proposed amendment deletes the original 5-year estimate of accomplishments and no longer sets quantitative goals by AML type (30 CFR 884.13).

(2) The amendment replaces the weighted-score method of the original plan with a more flexible set of 19 criteria including provisions for deferment of high-ranking projects (30 CFR 884.13(c)(2)).

(3) The proposed amendment abolishes the State Reclamation Coordination Committee and establishes procedures for direct coordination between the Abandoned Mined Lands Reclamation Council and the U.S. Soil Conservation Service (30 CFR 884.13(c)(3)).

(4) The amendment proposes more detailed procedures for acquiring, managing, and disposal of land. The amendment improves public participation and provides for competitive bidding when land is sold (30 CFR 884.13(c)(4) and 870).

(5) The amendment proposes more detailed procedures for obtaining appraisals of private lands and for filing liens against private lands. The proposal defines "a significant increase in value" as at least $8,000 or more than 20 percent of the pre-reclamation value (30 CFR 884.13(c)(5) and 882).

(6) The State had adopted regulations governing rights-of-entry. The proposal seeks to have these regulations included in the Reclamation Plan (30 CFR 884.13(c)(6) and 887).

(7) The proposed amendment abolishes the Citizens Advisory Committee and establishes formal rules for public participation (30 CFR 884.13(d)(1)).

(8) The Illinois Abandoned Mine Lands Reclamation Council has been reorganized (30 CFR 884.13(d)(1)).

(9) The amendment revises the description of the personnel staffing policies to be used to conduct the program (30 CFR 884.13(d)(2)).

(10) The amendment establishes rules for the procurement of services through consultants and contracts (30 CFR 884.13(d)(3)).

(11) The amendment updates the description of accounting policies and procedures by making provisions for compliance with the Uniform Administrative Requirements for Grants and Cooperative Agreements, 43 CFR part 12, and the single Audit Act of 1984 (30 CFR 884.11(d)(4)).

(12) The amendment reduces the estimate of lands and waters in need of reclamation to 9,700 acres from the earlier estimates of more than 20,000 acres. The proposal also describes automated methods of documenting eligible lands and waters (30 CFR 884.13(e)).

III. Public Comments

OSM solicited public comment and provided opportunity for a public

hearing on the proposed amendment. No public comments were received as of September 6, 1990, the close of the public comment period. Since no one requested an opportunity to testify at a public hearing, the scheduled hearing was cancelled.

In accordance with 30 CFR 884.15(a), OSM solicited the views of other Federal agencies having an interest in the amendment. The U.S. Department of Agriculture, Soil Conservation Service responded on July 30, 1990, and had no comments on the proposal. The U.S. Environmental Protection Agency responded on August 30, 1990, and had no comments on the proposal. The U.S. Fish and Wildlife Service responded on September 13, 1990, and concurred with the proposal.

IV. Procedural Matters

1. Federal Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507 et seq.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On November 23, 1987, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or disapproval of State/Tribe AMLR reclamation plans and amendments. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). No burden will be imposed upon entities operating in compliance with the Act.

3. National Environmental Policy Act

Approval of State/Tribe AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 6, appendix 8, paragraph 8.4B(29).

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly 30 CFR part 913 is amended as set forth below.

Dated: October 26, 1990.

W. Hord Tipton,

Deputy Director, Operations and Technical Services.

PART 913—ILLINOIS

1. The authority citation for part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.; and Pub. L. 100-34.

2. Section 913.20 is revised to read as follows:

§ 913.20 Approval of Illinois Abandoned Mine Land Reclamation Plan.

The Illinois Abandoned Mine Land Reclamation Plan submitted on July 20, 1980, is approved effective June 1, 1982. (47 FR 23886–23889, June 1, 1982.)

3. A new § 913.25 is revised to read as follows:

§ 913.25 Approval of Abandoned Mine Land Reclamation Plan amendments.

(a) The Illinois Abandoned Mine Land Reclamation Plan amendment submitted on January 19, 1984, is approved effective June 11, 1984. (49 FR 24019–24021, June 11, 1984.)

(b) The Illinois Abandoned Mine Land Reclamation Plan amendment submitted on September 6, 1989, is approved effective February 14, 1990. (55 FR 5209, February 14, 1990.)

(c) The Illinois Abandoned Mine Land Reclamation Plan amendment submitted on June 29, 1990, is approved effective November 2, 1990. Copies of the approved Illinois Abandoned Mine Land Reclamation Plan and amendments are available at the following locations:

(1) Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 511 West Capitol, Suite 202, Springfield, Illinois 62704.

(2) Illinois Abandoned Mined Lands Reclamation Council, 928 South Spring Street, Springfield, Illinois 62704.

[FR Doc. 90-25872 Filed 11-1-90; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Charleston, SC Reg. 90-07]

Safety/Security Zone Regulations; Cooper River, Ordnance Reach and Port Terminal Reach, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a combined safety and security zone in the Cooper River in the vicinity of Ordnance Reach and Port Terminal Reach from Buoy 63 to Daymarker 58. The zone extends across the entire width of the Cooper River. The zone is needed to safeguard personnel, vessels, facilities, and the environment against injury destruction or loss from sabotage or other subversive acts, accidents or other causes of a similar nature, and protect boats and onlookers from harm and to prevent interference with ongoing Department of Defense cargo loading operations. Entry into this zone is prohibited unless authorized by the Captain of the Port, Charleston, SC.

EFFECTIVE DATE: This regulation becomes effective at approximately 12 o'clock p.m. Eastern Daylight Time (e.d.t.), October 15, 1990. It terminates at the conclusion of vessel loading operations, at approximately 12 o'clock p.m. e.s.t., December 1, 1990 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT. Steven J. Boyle, (803) 724-7689.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to safeguard personnel, vessels, waterfront facilities, and the environment against injury, loss, or destruction.

Drafting Information

The drafters of this regulation are LT Steven J. Boyle, project officer for the Captain of the Port, and LT Genelle Tanos, project attorney, Seventh Coast Guard District.

Discussion of Regulation

The incident requiring this regulation will occur on October 15, 1990 through December 1, 1990 when military cargo will be loaded at the Army T.C. Dock and the State Ports Authority North Charleston Terminal. The protection of vital United States assets as well as the safety of unwary boaters and onlookers necessitates the establishment of both a safety and security zone. Coast Guard and other security vessels will patrol and enforce the zone and manage vessel traffic as necessary. Other vessels will not be permitted to enter, transit, or loiter in the safety/security zone without the permission of the Captain of the Port or his on-scene representatives.

Only minor delays to mariners is forseen.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of 33 CFR part 165.

Federalism

The action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. A new § 165.T0792 is added to read as follows:

§ 165.T0792 Safety/Security Zone: Establishment of Temporary Safety and Security Zone, Cooper River, Ordnance Reach and Port Terminal Reach, Buoy 63 to Daymarker 58, Charleston, South Carolina.

(a) *Location.* The following area is a safety/security zone zone: An area encompassing the entire width of the Cooper River, between buoy 63 and daymarker 58.

(b) *Effective Date.* This regulation becomes effective on October 15, 1990 at approximately 12 o'clock p.m. e.d.t. It terminates at the conclusion of vessel loading operations, approximately 12 o'clock p.m. e.s.t., on December 1, 1990 unless sooner terminated by the Captain of the Port.

(c) *Regulations.*

(1) The COTP Charleston will activate this zone or specific portions thereof by means of locally promulgated broadcast notice to mariners. Once implemented, all vessels and persons are prohibited from entering unless authorized by the Captain of the Port Charleston, SC.

(2) The general regulations governing safety and security zones contained in 33 CFR 165.23 and 165.33 apply.

Dated: October 15, 1990.

Robert L. Storch, Jr.

Captain, U.S. Coast Guard, Captain of the Port, Charleston, South Carolina.

[FR Doc. 90-25875 Filed 11-1-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3854-3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving rule 10 CSR 10-5.330 as a revision to the Air Pollution Control State Implementation Plan (SIP) of the state of Missouri. This rule, required by the Clean Air Act, controls emissions of volatile organic compounds (VOC) from industrial surface coating operations in the St. Louis area. VOCs react in the atmosphere to form ozone. A reduction in VOC emissions is necessary for the St. Louis area to meet the National Ambient Air Quality Standards for ozone. EPA's approval will make the rule requirements federally enforceable. EPA is also approving amendments to rule 10 CSR 10-6.020, which defines terminology used in the state's air pollution control rules.

EFFECTIVE DATE: This action is effective December 3, 1990.

ADDRESSES: The state submittal and the EPA's technical support document are available for public review at the following locations: Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101; Environmental Protection Agency, Public Information Reference Unit, room 2922, 401 M Street, SW., Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at (913) 551-7020 (FTS 276-7020.

SUPPLEMENTARY INFORMATION: On January 11, 1990, the state of Missouri submitted a revision to its Air Pollution Control SIP. The state submittal constituted a revision of the St. Louis industrial surface coating rule, 10 CSR 10-5.330; the existing rule was rescinded and a new rule of the same number and title was adopted. The submittal also includes amendments to the definitions rule, 10 CSR 10-6.020. The state's rule actions were adopted by the Missouri Air Conservation Commission after proper notice and public hearing and became effective on November 26, 1989.

On July 5, 1990, EPA published a proposal in the **Federal Register** to approve the state's rule actions as a SIP revision (55 FR 27657); no public comments were received. For a complete discussion of the state's rule actions, the reader is directed to the **Federal Register** notice referenced above.

EPA Action: In today's notice, EPA takes final action to approve the state's January 11, 1990, submittal as a revision to the Missouri SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by January 2, 1991. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, and Ozone.

Note: Incorporation by reference of the State Implementation Plan for the state of Missouri was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: October 10, 1990.

Morris Kay,

Regional Administrator.

40 CFR part 52, subpart AA, is amended as follows:

Subpart AA—Missouri

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1320 is amended by adding paragraph (c)(72) to read as follows:

§ 52.1320 Identification of Plan.

* * * * *

(c) * * *

(72) The Missouri Department of Natural Resources submitted new rule 10 CSR 10–5.330, Control of Emissions from Industrial Surface Coating Operations, and amendments to rule 10 CSR 10–6.020, Definitions, on January 11, 1990.

(i) Incorporation by reference.

(A) New rule 10 CSR 10–5.330, Control of Emissions from Industrial Surface Coating Operations, effective November 26, 1989.

(B) Rescinded rule 10 CSR 10–5.330, Control of Emissions from Industrial Surface Coating Operations, effective November 26, 1989.

(C) Revisions to rule 10 CSR 10–6.020, Definitions, effective November 26, 1989.

3. Section 52.1323 is amended by adding paragraph (e) to read as follows:

§ 52.1323 Approval Status.

* * * * *

(e) The Administrator approves Rule 10 CSR 10–5.330 as identified under § 52.1320, paragraph (c)(72), under the following terms, to which the state of Missouri has agreed: Subsections (5)(B)3 and (7)(B) of the rule contain provisions whereby the director of the Missouri Air Pollution Control Program has discretion to establish compliance determination procedures and equivalent alternative emission limits for individual sources. Any such director discretion determinations under this rule must be submitted to EPA for approval as individual SIP revisions. In the absence of EPA approval, the enforceable requirements of the SIP are the applicable emission limit(s) in subsection (4)(B) and the compliance determination provisions stated in subsection (5)(B)1 or (5)(B)2.

[FR Doc. 90–25976 Filed 11–1–90; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3855–2]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving Ohio's vehicle inspection and maintenance (I/M) regulation (Ohio Administrative Code Chapter—OAC 3745–26) as a revision to the Ohio 1982 Ozone State Implementation Plan (SIP). USEPA will rulemake on Ohio's complete I/M program for Ozone in future **Federal Register** notice(s). USEPA's action is based upon a revision request which was submitted by the State in response to the requirements of part D of the Clean Air Act (Act).

DATES: This action will be effective January 2, 1991, unless notice is received on or before December 3, 1990, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State's submittal and USEPA's evaluations are available for inspection during normal business hours. (It is recommended that you telephone John E. Paskevicz, at (312) 886–6084, before visiting the Region V office.) U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Written comments should be sent to: (Please submit an original and five copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John E. Paskevicz, (312) 886–6084.

SUPPLEMENTARY INFORMATION: The 1977 Amendments to the Act added part D. Under part D, the States were required to reevaluate their pollution control plans for all nonattainment areas and to submit the revisions to USEPA by January 1, 1979. The revised plans were to provide for attainment by December 31, 1982, unless the States demonstrated that despite the implementation of all reasonable control measures, they could not attain either the Ozone or carbon monoxide (CO) standard by that date.

Upon the request of the State, USEPA could approve a plan showing that attainment could not be achieved by December 1982, and could extend the attainment date for Ozone or CO up to December 31, 1987. States receiving such extensions were to submit second SIP revisions that provide for attainment by the new USEPA approved attainment date, and comply with all other part D requirements. These second SIP revisions had to be submitted by July 1, 1982 (1982 plans).

On July 27, 1979, the Ohio Environmental Protection Agency (OEPA) submitted its initial SIP revisions (1979 plans) to USEPA (and later amendments) for the Cleveland and Cincinnati urban Ozone nonattainment areas. In these SIP revisions, Ohio demonstrated that it could not assure attainment of the National Ambient Air Quality Standard (NAAQS) for Ozone in Cleveland and Cincinnati by December 31, 1982. OEPA requested, and USEPA approved, an extension of the attainment date until December 31, 1987. USEPA conditionally approved the 1979 plan revisions in separate actions on October 31, 1980 (45 FR 72122) and June 18, 1981 (46 FR 31881).

In late 1981 and early 1982, Ohio reevaluated certain Ozone air quality data and modeling for the Cleveland and Cincinnati areas. Ohio concluded that these areas could achieve the Ozone NAAQS under the existing SIPs by the end of 1982, and that an extension of the attainment date to 1987 was no longer necessary. Ohio requested that USEPA rescind the attainment date extension.

However, exceedances of the Ozone NAAQS occurred in 1983 and, thus, indicated that the existing SIP did not assure attainment by the end of 1982. On March 26, 1986 (51 FR 10198), USEPA disapproved Ohio's purported demonstration that its SIP assured attainment of the Ozone NAAQS in the Cleveland and Cincinnati areas by December 31, 1982. In that notice, USEPA also disapproved Ohio's request for rescission of the original attainment date extension. This disapproval confirmed that Ohio continued to have an obligation to submit a SIP revision which fulfilled all the requirements for areas which obtained an attainment date extension to December 31, 1987, including implementation of an I/M program.

On February 1, 1988, Ohio implemented a vehicle anti-tamper inspection program in Cuyahoga, Lake, and Lorain Counties (Cleveland area) and in Hamilton and Butler Counties (Cincinnati area). On July 11, 1988, the State of Ohio submitted this as the I/M portion of its Ozone SIP. The July 11, 1988, I/M submittal is the subject of today's rulemaking.[1]

[1] On January 9, 1989, the USEPA published a final rule finding that Ohio's carbon monoxide (CO) SIP for Cuyahoga County did not meet the requirements of part D of the Clean Air Act, because it lacked an I/M program which would meet the minimum emission reduction requirement for CO. The final rule was scheduled to become effective on March 10, 1989, (the effective date was later postponed to March 15, 1989) at which time Federal funding and construction restrictions were to go into effect. The USEPA withdrew the final rule on March 15, 1989, following passage of State legislation authorizing the establishment of a centralized tailpipe emission

Continued

Criteria for the Evaluation of I/M Programs

On January 22, 1981, USEPA published in the **Federal Register** (46 FR 7182) guidance on approval of 1982 Ozone and CO State Implementation Plan revisions, including the I/M portion. USEPA reviewed the I/M portion of Ohio's 1982 Ozone plan based on the requirements in this **Federal Register**, and related Agency policy and guidance document.

The January 22, 1981, **Federal Register** states that all 1982 Ozone/CO SIP revision programs must include rules and regulations and all other I/M elements which could affect the ability of the I/M program to achieve the minimum emission reduction requirement. A 1982 I/M plan submittal must include the items listed below.

1. Inspection Test Procedures;
2. Emission Standards;
3. Inspection Station Licensing Requirements;
4. Emissions Analyzer Specification and Maintenance; Calibration Requirements;
5. Recordkeeping and Record Submittal Requirements;
6. Quality Control, Audit, and Surveillance Procedures;
7. Procedures to Ensure that Noncomplying Vehicles Are Not Operated on the Public Roads;
8. Any Other Official Program Rules, Regulations, and Procedures;
9. A Public Awareness Plan;
10. A Mechanic Training Program if Additional Emission Reduction Credits Are Being Claimed for Mechanic Training; and
11. Reasonably Available Control Technology (RACT) Emission Reduction Demonstration.

Description of Ohio's Ozone SIP I/M Program

The July 11, 1988, submittal included the enabling legislation for the Ohio Automobile Inspection and Maintenance (AIM) program; notices of public hearings in Cleveland and Cincinnati announcing proposed State rulemaking concerning the AIM program; public hearing transcripts for the respective hearings; program rules (OAC 3745–26); Request-for-Proposals for implementation and operation of the AIM program; contract for implementation and operation of the AIM program; and, computer modeling of program effectiveness.

Ohio implemented the AIM program on February 1, 1988. The program is a decentralized, registration enforced, contractor/State operated program which requires an annual visual inspection of emission control components on 1980 and newer vehicles with a weight classification of up to 8500 pounds Gross Vehicle Weight (GVW). The program requires the inspection of the positive crankcase ventilation, evaporative emission control, thermostatic air cleaner, air injection, exhaust gas recirculation, catalytic converter, fuel inlet restrictor, and tailpipe lead deposits (which was subsequently dropped). If the catalytic converter or fuel inlet restrictor has been removed or tampered with, then the catalytic converter must be replaced. A variety of vehicles are exempt from the program including diesel and other non-gasoline fueled vehicles, vehicles over 8500 pounds GVW, and vehicles newly purchased for 1 year after purchase date. No waivers are provided by the program.

USEPA's Evaluation

USEPA's March 3, 1989, technical support document (TSD) provides a detailed analysis of the adequacy of Ohio's Ozone SIP AIM program in relation to the requirements discussed above. USEPA's review indicates four deficiencies associated with the I/M portion of Ohio's 1982 Ozone SIP. The submittal did not contain: (1) A public awareness plan; (2) a commitment to perform quarterly audits; (3) a description of surveillance procedures; and, (4) an adequate demonstration that the program is sufficiently designed to achieve minimum hydrocarbon emission reduction requirements in the Cleveland and Cincinnati area, as specified in USEPA policy and guidance documents. The following is a summary of the four I/M deficiencies:

(1) *Public Awareness Plan:* A public awareness plan is a required element of an I/M program. Ohio has conducted extensive public awareness activities prior to and during start-up of the AIM program. The State continues to conduct public awareness activities related to the AIM program. However, the State has not submitted a public awareness plan as a revision to its SIP.

(2) *Quarterly Audits:* Quarterly audits of all test stations are required elements of an I/M program to ensure that program rules are being properly carried out. Since inception of the program the State has been conducting covert and overt audits to ensure that the program is being operated according to program rules. However, the State must submit as a revision to the SIP its commitment to conduct quarterly audits.

(3) *Surveillance Procedures:* Surveillance procedures which the State will follow in conducting *covert and overt* audits must be developed and submitted as a revision to the SIP. The State has not submitted written surveillance procedures as a revision to the SIP.

(4) *Program Effectiveness:* The July 11, 1988, SIP submittal contained a description of the effectiveness of the I/M program in achieving the minimum hydrocarbon emission reduction requirement, as specified in USEPA policy and guidance documents. The State submitted a MOBILE3 computer modeling analysis which shows that the program as designed meets the minimum hydrocarbon emission reduction requirement for the Cincinnati area, but for the Cleveland area the program falls slightly short of meeting the minimum hydrocarbon emission reduction requirement.

While computer modeling analysis indicates that the design of the program will not achieve the minimum hydrocarbon emission reduction requirements in the Cleveland area, the State has adopted rules and awarded a contract to implement a CO tailpipe exhaust testing program in Cuyahoga County. The CO tailpipe testing program is scheduled to begin operation in late 1990. The tailpipe testing program will provide additional hydrocarbon emission reduction benefits to cover the hydrocarbon shortfall. USEPA will rulemake on the adequacy of the effectiveness of the Ohio Ozone and CO I/M program in future **Federal Register** notice(s).

Conditional Approval

On June 18, 1981, USEPA published a **Federal Register** (46 FR 31881) approving the I/M portion of the Ohio 1979 Ozone/CO SIP on the condition that the State (1) submit an identification of staff and financial resources necessary to carry out and enforce the I/M program; (2) submit an implementation schedule; and (3) submit information on geographic coverage, enforcement procedures, and vehicle categories. Based on the July 11, 1988, submittal, USEPA finds that the State has fulfilled the 1979 Ozone SIP conditional approval items relating to the I/M program requirement.

Rulemaking

USEPA has evaluated the Ohio anti-tampering rule (OAC 3745–26) and finds that, notwithstanding the four deficiencies with the program as a whole enumerated above, the rule itself

testing program in Cuyahoga County. Although the tailpipe emission testing program is being implemented to solve the CO non-attainment problem in the Cleveland area, the program will significantly add to hydrocarbon emission reductions.

is approvable. Therefore, USEPA is approving OAC 3745-26 today.[2]

There remains four deficiencies in the overall Ohio I/M plan for Ozone at this time. Before USEPA will be able to approve the overall Ohio Ozone I/M program for the Cleveland and Cincinnati areas as meeting 1982 Ozone SIP revision requirements, the State must submit as a formal revision to its 1982 Ozone SIP the following: (1) A public awareness plan; (2) a commitment to conduct quarterly audits; (3) written surveillance procedures used to conduct audits; and, (4) a MOBILE4 computer modeling analysis which demonstrates that the I/M program, as ultimately implemented,[3] is sufficiently designed to achieve in the Cleveland and Cincinnati areas minimum hydrocarbon emission reduction requirements as specified in USEPA policy and guidance documents respectively. Upon receipt of these submittals, USEPA will take rulemaking action on Ohio's entire I/M plan for Ozone in future Federal Register notice(s). This final rule addresses only the I/M portion of the State's Ozone SIP. USEPA has not taken final action on the State's entire Ozone SIP. USEPA has issued a post-87 SIP call for both Cincinnati and Cleveland. As a result of todays action, these areas will not have a fully approved Ozone SIP.

USEPA, today, finds that the July 11, 1988, SIP submittal adequately addresses the 1979 Ozone SIP conditional approval items relating to I/M, as cited in the June 18, 1981, Federal Register (46 FR 31661) and is approving this submittal as meeting the June 18, 1981, conditions.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on January 2, 1991. However, if we receive notice by December 3, 1990, that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period. See 47 FR 27073 (June 23, 1982).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in the context of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214-2225).

On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 1991. This action may not be challenged later in proceedings to enforce its requirements. (See 307(B)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Intergovernmental cooperation, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the state of Ohio was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 28, 1990.

Ralph R. Bauer,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Ohio—Subpart KK

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1870 is amended by adding new paragraph (c)(87) to read as follows:

§ 52.1870 Identification of plan.

(c) * * *

(87) On July 11, 1988, Ohio submitted its vehicle inspection and maintenance regulation for Cuyahoga, Lake, Lorain, Hamilton, and Butler Counties.

(i) Incorporation by reference.

(A) Ohio Administrative Code rules 3745-26-01, 3745-26-02, 3745-26-03, 3745-26-04, 3745-26-05, 3745-26-06, 3745-26-07, 3745-26-08, and 3745-26-09, effective July 17, 1987.

[FR Doc. 90-25977 Filed 11-01-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6993]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), but will be suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, then the community will not be suspended and the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: As shown in fourth column.

FOR FURTHER INFORMATION CONTACT: Mr. Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street, SW., Room 416, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at saving lives and protecting new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the Federal Register that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the NFIP criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt, and submit the required documentation of, legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine whether or not a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator, Federal Insurance Administration, FEMA, finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses n both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and community name	County	Community No.	Effective date
Regular Program Communities			
Colorado:			
Archuleta County	Unincorporated Areas	080273	Nov. 2, 1990.
Bayfield, town of	La Plata	080096	Do.
Brush, city of	Morgan	080130	Do.
Craig, city of	Moffat	080115	Do.
Federal Heights, city of	Adams	080240	Do.
Gunnison, city of	Gunnison	080080	Do.
Hayden, town of	Routt	080157	Do.
Las Animas County	Unincorporated Areas	080105	Do.
Limon, town of	Lincoln	080109	Nov. 16, 1990.
Mancos, town of	Montezuma	080123	Do.
Manitou Springs, city of	El Paso	080063	Do.
Ouray, town of	Ouray	080137	Do.
Pierce, town of	Weld	080189	Do.
Wellington, town of	Larimer	080104	Do.
Montana: Miles City, city of	Custer	300014	Do.
North Dakota: Grand Forks, city of	Grand Forks	385365	Do.
West Virginia:			
Paw Paw, town of	Morgan	540252	Nov. 16, 1990.
Peterstown, town of	Monroe	540143	Do.
Pratt, town of	Kanawha	540082	Do.
Preston County	Unincorporated Areas	540160	Do.
Quinwood, town of	Greenbrier	540244	Do.
Reedy, town of	Roane	540184	Do.

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[2] On July 14, 1987, (52 FR 26413), the USEPA proposed to disapprove the Cuyahoga County CO plan because the State's I/M (anti-tampering) program was not designed to achieve the RACT level of CO emission reductions necessary for an approvable plan. Imposition of the highway, funding, and growth sanctions of section 176(a), 176(b), and 179(4), respectively, of the Clean Air Act was proposed at the same time. This notice included a complete regulatory history of the Cleveland and Cincinnati ozone and CO SIP submittals and Federal actions to that time, and the reader is referred to these notices for that information. On January 9, 1989, (54 FR 612), the USEPA disapproved the Cuyahoga CO plan and imposed the sanctions, as proposed. However, contemporaneously the Ohio Legislature adopted a revised (tailpipe) I/M program for Cuyahoga County which the USEPA believed would provide a RACT level of CO emission reductions in the Cleveland area. Based on this State adoption, on March 15, 1989, (54 FR 12620) the USEPA rescinded its January 9, 1989, disapproval of the Ohio plan and imposition of sanctions.

[3] The I/M program on which this analysis is based need not necessarily be the one USEPA is approving today. Instead it could be the combination of the anti-tampering program being approved today and a tailpipe program which Ohio is currently implementing, if Ohio submits this tailpipe program to USEPA as a revision to the Ohio SIP.

Issued: October 25, 1990.
C.M. "Bud" Schauerte,
Administrator, Federal Insurance Administration.
[FR Doc. 90-25872 Filed 11-1-90; 8:45 am]
BILLING CODE 6718-03-M

Federal Insurance Administration; Changes in Flood Elevation Determinations

44 CFR Part 65

[Docket No. FEMA-7065]

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fourth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended, (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Jefferson	City of Birmingham	October 12, 1990; October 19, 1990; "The Birmingham News".	The Honorable Richard Arrington, Jr., Mayor, City of Birmingham, 710 N. 20th Street, Birmingham, Alabama 35203.	Oct. 2, 1990	010116
Florida: Dade	Unincorporated areas	October 12, 1990; October 19, 1990; "Miami Review.".	The Honorable Joaquin Avino, County Manager, Dade County, 111 NW 1st Street, suite 2910, Miami, Florida 33128-1971.	Oct. 1, 1990	125096
Louisiana: Livingston	Unincorporated areas	October 10, 1990; October 17, 1990; "Denham Springs-Livingston Parish News.".	The Honorable J.L. Shilling, President of the Livingston Parish Police Jury, P.O. Box 427, Livingston Parish, Louisiana 70754.	Sept. 26, 1990	220113 B
Maryland: Worcester	Unincorporated areas	October 3, 1990; October 10, 1990; "Maryland Times-Press.".	The Honorable John A. Yankus, Chief Administrative Officer, Worcester County Commissioner's Office, Court House, room 112, Snow Hill, Maryland 21863.	Sept. 21, 1990	240083 B

Issued: October 16, 1990.
C.M. "Bud" Schauerte,
Administrator, Federal Insurance Administration.
[FR Doc. 90-25969 Filed 11-1-90; 8:45 am]
BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency .

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevation for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the Federal Register for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Action 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR part 60. Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of informaton for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
CALIFORNIA	
Fairfield (city), Solano County (FEMA Docket No. 6996)	
Union Creek:	
Just downstream from Air Base Parkway Bridge	*58
Just upstream from Air Base Parkway Bridge	*64
Laurel Creek:	
Approximately 150 feet downstream from Air Base Parkway	*50
Just upstream from Air Base Parkway	*55
Approximately 760 feet upstream from Air Base Parkway	*56
Approximately 1,690 feet upstream from Air Base Parkway	*59
Just upstream from Cement Hill Road	*64
Approximately 200 feet upstream from Cement Hill Road	*67
Just upstream from Gulf Drive	*69
Approximately 300 feet upstream from Gulf Drive	*70
Approximately 1,950 feet upstream from Gulf Drive	*80
Approximately 850 feet downstream from Dickson Hill Road	*93
Just upstream from Dickson Hill Road	*96
Approximately 300 feet upstream from Dickson Hill Road	*99
Approximately 800 feet upstream from Dickson Hill Road	*105
At Putah South Canal	*106
Maps are available for review at City Hall, Department of Public Works, 1000 Webster Street, Fairfield, California.	
COLORADO	
Arapahoe County (unincorporated areas) (FEMA Docket No. 6996)	
Big Dry Creek:	
Approximately 1,400 feet downstream of Colorado Boulevard	*5,6992
Approximately 250 feet downstream of Colorado Boulevard	*5,810
Approximately 300 feet upstream of Colorado Boulevard	*5,820
Approximately 2,300 feet upstream of Colorado Boulevard	*5,835
Maps are available for review at the Arapahoe County Planning Department, 5334 South Prince Street, Littleton, Colorado.	
Westminster (city), Adams and Jefferson Counties (FEMA Docket No. 6996)	
Middle Branch Hylands Creek:	
At the confluence of North Branch Hylands Creek	*5,319
Approximately 400 feet upstream of Sheridan Boulevard	*5,340
Approximately 80 feet downstream of West 101st Place	*5,405
Approximately 50 feet upstream of 88h Green Detention Pond Culvert	*5,433
Approximately 80 feet upstream of Lowell Boulevard, at Lowell Detention Pond	*5,452
Approximately 450 feet upstream of Lowell Boulevard	*5,500
Maps are available for review at the City Engineering Department, 3031 West 76th Avenue, Westminster, Colorado.	
LOUISIANA	
Cameron Parish (unincorporated areas) (FEMA Docket No. 6992)	
Gulf of Mexico:	
Approximately 5.3 miles east of the western intersection of State Route 27 and the northern Cameron Parish boundary	*4
At intersection of State Routes 27/82 and 1142	*11
Entire shoreline of Deep Lake	*13
Approximately 2.3 miles northeast along shoreline from mouth of Sabine Pass	*21
Maps available at the Police Jury Annex, Courthouse Square, Cameron, Louisiana.	
St. Tammany Parish (unincorporated areas), (FEMA Docket No. 6992)	
Lake Pontchartrain:	
Harbor Drive extended south approximately 1,500 feet	*13
At intersection of State Route 434 and Elenore Drive	*12
Approximately 1 mile south of intersection of Oaklawn Drive and Paquet	*13
Along shoreline at Green Point	*17
Maps available for inspection at the Department of Development, Covington, Louisiana.	
OKLAHOMA	
Hulbert (town), Cherokee County (FEMA Docket No. 6992)	
Double Spring Creek:	
Approximately 600 feet downstream of State Route 51	*593
Approximately 700 feet upstream of Birch Street	*611
Maps available for inspection at the City Hall, Hulbert, Oklahoma.	
Tulsa (city), Tulsa, Osage, and Rogers Counties (FEMA Docket No. 6992)	
Little Joe:	
Approximately 200 feet downstream of New Haven Avenue	*681
Approximately 50 feet downstream of Hudson Avenue	*701
South Fork Little Joe Creek:	
At the confluence with Little Joe Creek	*680
Approximately 850 feet upstream of Yale Avenue	*700
North Fork Little Joe Creek:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
At the confluence with Little Joe Creek	*672
Approximately 300 feet downstream of Yale Avenue	*686
Maps available for inspection at the City Hall, 200 Civic Center, Tulsa, Oklahoma.	
TEXAS	
Collin County (unincorporated areas), (FEMA Docket No. 6992)	
White Rock Creek:	
Approximately .52 mile upstream of Parker Road	*640
Approximately 190 feet downstream of State Route 121 bridge	*705
Stream 5825:	
Approximately 1,525 feet upstream of Winding Hollow Lane	*656
Approximately .4 mile upstream of State Route 289 (Preston Road)	*690
Stream 5827:	
Approximately 1,400 feet upstream of Parker Road	*647
Approximately 575 feet downstream of State Route 289	*668
Stream 5836:	
Approximately .53 mile upstream of confluence with White Rock Creek	*684
Approximately 100 feet downstream of State Route 121	*704
Stream 5837:	
Approximately 740 feet upstream of confluence with White Rock Creek	*669
Approximately .55 mile upstream of Rasor Road	*721
Maxwell Creek:	
Approximately 1,100 feet upstream of McMillen Drive	*598
Approximately 0.47 mile upstream of Elsa Lane	*636
Long Branch:	
Approximately 300 feet downstream of downstream County boundary	*520
Approximately 350 feet upstream of upstream County boundary	*526
Wilson Creek:	
Approximately 1.47 miles downstream of Southern Pacific Railroad	*531
Approximately 0.9 mile downstream of Southern Pacific Railroad	*536
Brown Branch:	
At Jupiter Road	*557
Approximately .5 mile upstream of Jupiter Road	*586
Bowman Branch:	
At the confluence with Brown Branch	*569
Approximately 500 feet downstream of Southern Pacific Railroad	*606
Rowlett Creek:	
Upstream side of Parker Road	* 549
Approximately .5 mile downstream of State Route 121	* 629
Watters Branch:	
Approximately 1,150 feet upstream of the confluence with Rowlett Creek	* 585
Just upstream of State Route 121	* 698
Russell Creek:	
Upstream side of Hedgcoxe Road	* 650
Approximately 500 feet downstream of Independence Parkway	* 691
Maps available for inspection at the County Courthouse, Department of Public Works, 210 South McDonald Street, McKinney, Texas.	
Frisco (city), Collin County (FEMA Docket No. 6992)	
White Rock Creek:	
Approximately 1,800 feet downstream of Lebanon Road	* 714
At County Route 20	* 738
Ponding Areas:	
South of County Route 20 on west side of White Rock Creek	* 731
South of County Route 20 on west side of White Rock Creek	* 735
South of County Route 20 on west side of White Rock Creek	* 736
Ponding Areas:	
South of County Route 20 on east side of White Rock Creek	* 725
South of County Route 20 on east side of White Rock Creek	* 739
South of County Route 20 on east side of White Rock Creek	* 740
Cottonwood Branch:	
Approximately 250 feet upstream of Burlington Northern Railroad	* 649
Approximately 50 feet upstream of County Road	* 660
Stream SC-1:	
Approximately 1,725 feet downstream of the corporate limits	* 537
Approximately 100 feet upstream of the corporate limits	* 547
Stewart Creek Tributary 1:	
Just upstream of Burlington Northern Railroad	* 594
Approximately 300 feet downstream of Channel Dam	* 627
Maps available for inspection at the City Hall, 8891 Main Street, Frisco, Texas.	
Henrietta (city), Clay County (FEMA Docket No. 6992)	
Dry Fork Little Wichita River:	
Approximately 350 feet downstream of downstream corporate limits	* 365
At upstream corporate limits	* 860
Maps available for inspection at the City Hall, Henrietta, Texas 76365.	
McKinney (city), Collin County (FEMA Docket No. 6992)	
Wilson Creek:	
Approximately 1.5 miles downstream of Southern Pacific Railroad	* 531
Approximately 1.2 miles downstream of Southern Pacific Railroad	* 534
Approximately 0.5 miles upstream of South Frontage Road	* 562
At Rockhill Road	* 569
Jeans Creek:	
At the confluence with Wilson Creek	* 560
Approximately 106 feet downstream of Rockhill Road	* 573
Quail Creek Channel B:	
At confluence with Lake 3C	* 634
At a point approximately 1,220 feet upstream of Lake Forest Drive	* 667
Maps available for inspection at the City Hall, 130 South Chestnut, McKinney, Texas.	
Wylie (city), Collin County (FEMA Docket No. 6992)	
Muddy Creek (Upper Reach):	
Approximately 70 feet downstream of FM 544	* 499
Approximately 80 feet upstream FM 544	* 500
Maps available for inspection at the City Hall, 2000 Highway 78 North, Wylie, Texas 75098.	

Issued: October 18, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-25970 Filed 11-1-90; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-186; RM-7105]

Radio Broadcasting Services; Merced, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 231A to Merced, California, as that community's fifth local FM broadcast service, in response to a petition for rule making filed by Eric R. Hilding. *See* 55 FR 13811, April 12, 1990. Coordinates used for Channel 231A at Merced are 37-16-20 and 120-24-45. (See Supplementary Information, *infra.*) With this action, the proceeding is terminated.

DATES: Effective December 14, 1990; the window period for filing applications on Channel 231A at Merced, California, will open on December 17, 1990, and close on January 16, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order MM Docket No. 90-186, adopted September 28, 1990, and released October 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 2309), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Interested parties should note that the petition for rule making in this proceeding was filed prior to October 2, 1989, and therefore, applicants for Channel 231A at Merced may avail themselves of the provisions of § 73.213(c) of the Commission's Rules. *See* 47 CFR 73.213(c).

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 231A at Merced.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25954 Filed 11-1-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-585; RM-7034]

Radio Broadcasting Services; Millen, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 235C3 for Channel 235A at Millen, Georgia, and modifies the construction permit for Station WMKO(FM) to specify operation on Channel 235C3, at the request of Radio Millen Broadcasting Co., Inc. *See,* 55 FR 00323, January 4, 1990. Channel 235C3 can be allotted to Millen in compliance with the Commission's minimum distance separation requirements with a site restriction of 12 kilometers (7.5 miles) southeast. The coordinates for this allotment are North Latitude 32-43-10 and West Longitude 81-52-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 14, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-586, adopted October 1, 1990, and released October 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 235A and adding Channel 235C3 at Millen.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25955 Filed 11-1-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 900795-0263]

RIN 0648-AC96

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this rule to implement Amendment 2 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This rule prohibits the harvest or possession of jewfish in or from the exclusive economic zone (EEZ) off the South Atlantic states. The intended effect of this rule is to reduce fishing mortality of jewfish so that the species may be protected and the stock rebuilt.

EFFECTIVE DATE: October 30, 1990.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3722.

SUPPLEMENTARY INFORMATION: Snapper-grouper species in the EEZ off the South Atlantic states are managed under the FMP prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The harvest or possession of jewfish in or from the EEZ off the South Atlantic states is currently banned through October 29, 1990, under an emergency rule (55 FR 18893, May 7, 1990) and an extension of that emergency rule (55 FR 28916, July 16, 1990). Amendment 2 to the FMP continues the ban and contains definitions of overfishing for jewfish and other species in the management unit of the FMP, as required by 50 CFR 602.11(c).

The background and rationale for the ban were contained in the proposed rule (55 FR 31406, August 2, 1990) and are not repeated here. Additional information on jewfish and a discussion of the proposed definitions of overfishing are contained in Amendment 2, the availability of which was announced in the Federal Register on July 17, 1990 (55 FR 29075).

No comments were received on the proposed rule. The Secretary of Commerce (Secretary) has approved Amendment 2, and the proposed rule is adopted as final with no changes.

Classification

The Director, Southeast Region, NMFS, determined that Amendment 2 is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) determined that this rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review/regulatory flexibility analysis that analyzes the economic impacts of this rule and describes its effects on small business entities. A summary of those impacts and effects was included in the proposed rule and is not repeated here.

The Council prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. Based on the EA, the Assistant Administrator concluded that there will be no significant adverse impact on the human environment as a result of this rule.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Florida, South Carolina, and North Carolina. Georgia does not participate in the coastal zone management program. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. None of the states commented within the

statutory time period; therefore, consistent is implied.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator, pursuant to the Administrative Procedure Act (5 U.S.C. 553(d)(3)), finds for good cause, namely, to continue, uninterrupted, the required protection of the jewfish resource in the EEZ off the South Atlantic states, that it is not necessary to delay for 30 days the effective date of this rule.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 29, 1990.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 646 is amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 646.6, in paragraph (1) the reference to "§ 646.24(b)(2) and (c)" is revised to read "§ 646.24 (b) and (c)", and paragraph (m) is revised to read as follows:

§ 646.6 Prohibitions.

* * * * *

(m) Harvest or possess a jewfish in or from the EEZ or fail to release a jewfish taken in the EEZ, as specified in § 646.20(c).

* * * * *

3. In § 646.20, a new paragraph (c) is added to read as follows:

§ 646.20 Harvest limitations.

* * * * *

(c) A jewfish may not be harvested or possessed in or from the EEZ. Jewfish taken in the EEZ incidentally by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water.

4. In § 646.24, paragraph (b) is revised to read as follows:

§ 646.24 Area limitations.

* * * * *

(b) The use of fish traps and bottom longlines is prohibited in all of the SMZs specified in paragraph (a) of this section.

* * * * *

[FR Doc. 90-25994 Filed 10-30-90; 3:12 pm]

BILLING CODE 3510-22-M

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50 CFR Part 669

[Docket No. 900785-0263]

RIN 0648-AD47

Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement Amendment 1 to the Fishery Management Plan for the Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP). This rule (1) increases the minimum allowable mesh size used in fish traps to 2 inches (5.08 centimeters); (2) prohibits the harvest or possession of Nassau grouper; (3) closes an area of approximately 14 square nautical miles (48 km²) in the Exclusive Economic Zone (EEZ) southwest of St. Thomas, U.S. Virgin Islands, to fishing during the spawning season for red hind; and (4) prohibits the possession of dynamite or similar explosive substances on board vessels in the fishery. The intended effects of this rule are to rebuild the declining reef fish species and to enhance enforcement.

EFFECTIVE DATES: November 29, 1990, except that paragraph § 669.24(a)(1) is effective September 14, 1991.

FOR FURTHER INFORMATION CONTACT: William R. Turner, 813-893-3722.

SUPPLEMENTARY INFORMATION: The shallow-water reef fish fishery is managed under the FMP, prepared by the Caribbean Fishery Management Council (Council), and its implementing regulations at 50 CFR part 669, under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 1 to the FMP contains (1) additional management measures to rebuild declining reef fish species, (2) authorization for collection of socio-economic information, (3) definitions of overfishing and overfished, and (4) a revised habitat section. A notice of availability summarizing Amendment 1 was published in the **Federal Register** on June 21, 1990 (55 FR 25346). The additional management measures and the background and rationale for all the changes in Amendment 1, and an additional change to the regulations proposed by NOAA, were discussed in the proposed rule (55 FR 28787, July 13, 1990) and are not repeated here.

Comments and Responses

Twenty-eight sets of comments were received on Amendment 1 during the public comment period, including a form letter signed by 24 members of a fishing organization and a member of the legislature of the U.S. Virgin Islands. A state fisheries research laboratory provided information on trap mesh size and an additional red hind spawning site.

Comment: All commenters supported the spawning season closure for red hind in the specified area off the U.S. Virgin Islands, and two indicated that similar areas also should be closed off Puerto Rico. A state fisheries scientist provided geographical information on such an area of Puerto Rico, and suggested that this area be closed by Amendment 1.

Response: NOAA agrees that closing spawning aggregation areas may be critical to sustaining the red hind resource. However, incorporating the recently defined spawning site off Puerto Rico into Amendment 1 would only serve to delay implementation of the management measures and cause a lapse in the closure off the U.S. Virgin Islands during the forthcoming spawning season. The Council may consider additional spawning area closures, including the area described off Puerto Rico, and make appropriate changes by regulatory amendment using the regulatory adjustment procedure contained in Amendment 1.

Comment: Twenty-six commenters objected to the establishment of two inches, in the smallest dimension, as the minimum mesh size for fish traps and believed that this management measure would increase escapement of certain slender-bodied species that have consumer value. One commenter indicated that regulation of gillnets and prohibiting the use of bait in fish traps should be substituted for this management measure. The others contended that only part (one side) of the traps needs to be constructed of 2-inch mesh to allow juvenile fish to escape, thus, reducing economic impacts associated with rewiring the entire trap. They stated that the life expectancy of coated wire traps is three to four years, and that many fishermen have already purchased replacement mesh for traps destroyed by hurricane Hugo.

Response: The current mesh size of 1¼ inches results in a large bycatch of juvenile reef fish in the trap fishery, thereby, reducing the average size of much of the harvest. NOAA believes that the two-inch mesh size will allow the escapement of juvenile fish that otherwise would be retained in a smaller mesh, thus, contributing to rebuilding of the overfished reef fish species.

Selecting an optimum mesh size for a large complex of species that vary widely in body conformation is exceedingly difficult. The 2-inch mesh size was selected to reduce fishing mortality on juveniles and, at the same time, reverse a trend toward the harvest of less desirable, lower valued species. Scientists knowledgeable about this fishery acknowledge that the larger mesh size may result in the escape of more slender-bodied species but should have little effect on the catch of more robust species. A state fishery scientist submitted information supporting the increased minimum mesh size and indicating that the bycatch, considered to be of minimal economic value but significant in terms of resource recovery, would decrease once the larger mesh size is implemented. These shifts in harvest composition are needed to effect a general rebuilding of the declining reef fish resources. The harvest of the more valuable species at optimum size will outweigh the short-term economic losses resulting from this measure.

Currently, the use of gillnets is uncommon and is a relatively insignificant source of fishing mortality compared to fish traps, which are the prevalent gear in this fishery. Should data indicate that gillnets are a significant source of fishing mortality, restrictions on their use may be implemented.

The use of bait in fish traps may increase the attraction of reef fish, and thereby, increase fishing mortality by this gear. However, a ban on the use of bait is virtually unenforceable. The proposed measures are effective, enforceable means of reducing the mortality of the declining reef fish resources, one of the objectives of the FMP.

Small fish use fish traps as a shelter and when traps are hauled to the surface rapidly, the fish attempt to escape by swimming in all directions. Only by chance would an individual fish move in the direction of the side of the trap with 2-inch mesh. Also, traps are frequently moved about by currents, especially during storms. The exit of fish from a trap would be impeded if that trap comes to rest on the only side that is constructed of 2-inch mesh. NOAA agrees that the construction of traps with 2-inch mesh is the best resolution of the Council's intent to reduce mortality of juveniles and bycatch of small fishes.

Further, the Council has specified a 1-year period of delayed effectiveness to ease the burden of transition to traps with the 2-inch mesh throughout. This gives the fishermen an additional period to use old traps before replacement is required. Delaying the effectiveness of this measure for a longer period of time would have substantial consequences on resources already in need of protection.

Comment: The form letter suggested that the closure of the Nassau grouper fishery be limited to 5 years and then opened for a 6-month period under an 18-inch size limit. The fishermen and the legislator expressed concern that once a fishery is closed, it will not be reopened regardless of stock conditions.

Response: Nassau grouper resources have been diminished to the extent that to catch even one is a rare occurrence, and the fishery should not be reopened, even intermittently, until the population has been restored to a level that will support a controlled harvest. Nassau grouper do not reach maturity until 22 inches in length; therefore, it takes a number of years for this species to attain spawning size. Accordingly, the resource is not expected to rebuild in a short period of time. To reopen the fishery prematurely could cause further damage to the resource and delay the Council's rebuilding efforts. The resource will be assessed periodically, and the fishery will be reopened when the population reaches a level that will support a harvest. At that time, it is likely that the Council will institute a minimum size restriction of 22 inches rather than 18 inches.

Comment: One fisherman indicated that recent residential development and improper sewage disposal have greatly affected the fishery, with far greater negative impacts than those caused by the relatively few fish trappers.

Response: The scientific community and state fishery managers agree that the fishery is showing signs of depletion, in all likelihood, due to overfishing. Although excessive development and waste disposal may have a deleterious effect, it is virtually impossible to quantify these impacts. NOAA believes that the management measures are fair, equitable, and enforceable means of rebuilding the resource and arresting the decline of the fishery.

Approval of Amendment 1

The Secretary of Commerce approved Amendment 1 on September 14, 1990. In accordance with the amendment and to minimize the economic impacts of the increase in minimum allowable mesh size for fish traps, the effectiveness of that measure is delayed for one year.

Changes From the Proposed Rule

In § 669.2, a definition for *Powerhead* is added to clarify the use of that term.

The language in § 669.7(c) is revised to change the prohibition on the possession or harvest in the EEZ of Nassau grouper during the closed season to prohibition in or from the EEZ year round.

The management measures on Nassau grouper are placed under "Harvest limitations" (§ 669.22) in lieu of under "Closed seasons" (§ 669.21).

The phrase "used or possessed in the EEZ" is added to the minimum mesh size limitation for fish traps (§ 669.24(a)(1)) to clarify the scope of that limitation.

Classification

The Director, Southeast Region, NMFS, determined that Amendment 1 is necessary for the conservation and management of the shallow-water reef fish resource of Puerto Rico and the U.S. Virgin Islands and is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this rule is not a "major rule" requiring the preparation of regulatory impact analysis under E.O. 12291. This rule is not likely to have an annual effect on the economy of $100 million or more; result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographical regions; or have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic markets.

The Council prepared a regulatory impact review (RIR) for Amendment 1. A summary of the economic effects was included in the proposed rule.

The Council prepared a Regulatory Flexibility Analysis as part of the RIR that concludes that this rule will have significant impacts on 1500–2000 small business entities. Those impacts were summarized in the proposed rule.

The Council prepared an environmental assessment (EA) that discusses the impact of Amendment 1 on the environment. Based on the EA, the Assistant Administrator concluded that there will be no significant adverse impact on the human environment as a result of this rule.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent

practicable, with the approved coastal zone management programs of Puerto Rico and the U.S. Virgin Islands. These determinations were submitted for review by the responsible agencies under section 307 of the Coastal Zone Management Act. Both Puerto Rico and the U.S. Virgin Islands agreed with the determinations.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 669

Fisheries, Fishing.

Dated: October 29, 1990.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 669 is amended as follows:

PART 669—SHALLOW-WATER REEF FISH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

1. The authority citation for part 669 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 669.2, a definition for *Powerhead* is added in alphabetical order to read as follows:

§ 669.2 Definitions.

* * * * *

Powerhead means any device with an explosive charge, usually attached to a speargun, spear, pole, or stick, which fires a projectile upon contact.

* * * * *

3. In § 669.7, in paragraph (d), the reference "§ 669.22" is revised to read "§ 669.22(b)"; and paragraphs (c), (e), (f), (g), (j), and (k) are revised to read as follows:

§ 669.7 Prohibitions.

* * * * *

(c) Harvest or possess Nassau grouper in or from the EEZ, as specified in § 669.22(a).

* * * * *

(e) Possess a yellowtail snapper smaller than the minimum size limit, as specified in § 669.23(a), or without its head, fins, and tail intact, as specified in § 669.23(b).

(f) Fail to release a Nassau grouper or undersized yellowtail snapper with a minimum of harm, as specified in §§ 669.22(a) and 669.23(a).

(g) Fish in the area during the time specified in § 669.21.

* * * * *

(j) Fish with explosives or possess on board a fishing vessel any dynamite or similar explosive substance, as specified in § 669.24(b)(1).

(k) Fish with poisons, drugs, other chemicals, or a powerhead as specified in § 669.24(b) (2) and (3).

* * * * *

4. Section 669.21 is revised to read as follows:

§ 669.21 Closed seasons.

From December 1 through February 28, each year, fishing is prohibited in the area bounded by rhumb lines connecting the following points in the order listed:

Point	Latitude	Longitude
A	18°13.2'N	65°06.0'W
B	18°13.2'N	64°59.0'W
C	18°11.8'N	64°59.0'W
D	18°10.7'N	65°08.0'W

5. In § 669.22, the existing text is designated as paragraph (b) and a new paragraph (a) is added to read as follows:

§ 669.22 Harvest limitations.

(a) Nassau grouper may not be harvested or possessed in or from the EEZ year round. A Nassau grouper caught in the EEZ must be released immediately with a minimum of harm.

* * * * *

6. Section 669.23 is revised to read as follows:

§ 669.23 Size limitations.

(a) The minimum size limit for the harvest or possession of yellowtail snapper in or from the EEZ is 12 inches (30.48 centimeters) total length. An undersized yellowtail snapper caught in the EEZ must be released immediately with a minimum of harm.

(b) A yellowtail snapper possessed in the EEZ must have its head, fins, and tail intact and a yellowtail snapper taken from the EEA must have its head, fins, and tail intact through landing.

7. In § 669.24, a heading is added to paragraph (a), and paragraph (b) is revised to read as follows:

§ 669.24 Gear limitations.

(a) *Fish traps*—(1) * * *

* * * * *

(b) *Explosives, poisons, and powerheads*—(1) Explosives may not be used to fish for shallow-water reef fish in the EEZ. A vessel in the shallow-water reef fish fishery may not possess any dynamite or similar explosive substances on board.

(2) Poison, drugs, or other chemicals may not be used to fish for shallow water reef fish in the EEZ.

(3) A powerhead may not be used to fish for shallow-water reef fish in the EEZ.

8. Effective September 14, 1991, in § 669.24, paragraph (a)(1) is revised to read as follows:

§ 669.24 Gear limitations.

(a) * * * (1) A fish trap used or possessed in the EEZ must have a minimum mesh size of 2 inches (5.08 centimeters) in the smallest dimension of the mesh opening.

* * * * *

[FR Doc. 90-25995 Filed 10-30-90; 4:06 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 213
Friday, November 2, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Issuance of Quarterly Report on the Regulatory Agency

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of regulatory agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued the NRC Regulatory Agency for the third quarter, July through September, of 1990. The agenda is issued to provide the public with information about NRC's rulemaking activities. The Regulatory Agenda is a quarterly compilation of all rules on which the NRC has recently completed action or has proposed, or is considered action and of all petitions for rulemaking that the NRC has received that are pending disposition.

ADDRESSES: A copy of this report, designated NRC Regulatory Agenda (NUREG-0936) Vol. 9, No. 3, is available for inspection, and copying for a fee, at the Nuclear Regulatory Commission's Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

In addition, the U.S. Government Printing Office (GPO) sells the NRC Regulatory Agenda. To purchase it, a customer may call (202) 275-2060 or (202) 275-2171 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082.

FOR FURTHER INFORMATION CONTACT: Michal T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-7758, toll-free number (800) 368-5642.

Dated at Bethesda, Maryland, this 22nd day of October 1990.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 90-25973 Filed 11-01-90; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies; Portfolio Valuation

AGENCY: Small Business Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On September 27, 1990, SBA published in the **Federal Register** a proposed rule regarding the valuation of Small Business Investment Company (SBIC) portfolios companies, which an independent public accountant must follow in performing an audit on an SBIC (See 55 FR 39421). That publication provided that comments would be received for a period ending October 29, 1990. The present notice extends the comment period pertaining to the proposed rule for an additional 30 days, to November 28, 1990 in order to provide more time for public comments.

DATES: Comments on the above-referenced proposed rule must be received by November 28, 1990.

ADDRESSES: Written comments should be directed to Thomas C. Bresnan. Staff Accountant, Small Business Administration, Office of Investment, 1414 L Street NW., room 808, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Thomas C. Bresnan, Staff Accountant, Telephone (202) 653-6389.

Authority: 15 U.S.C. 687(c).

Dated: October 25, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90-25932 Filed 11-1-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-194-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which would require periodic inspections, repair if necessary, and eventual modification of the Number 4 left and right passenger door upper and lower hinge arm leaf springs to ensure proper opening of the door. This proposal is prompted by reports of fractured hanger arm leaf springs. This condition, if not corrected, could result in pieces of the fractured leaf spring jamming the door hinge arm and preventing the door from opening during an emergency evacuation.

DATES: Comments must be received no later than December 24, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-194-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2783. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such

written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the prospoed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-194-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Two operators of Boeing Model 757 airplanes have reported instances in which the steel leaf springs on passenger door Number 4 had fractured. Investigation has revealed that the springs failed because of fatigue. A piece of broken leaf spring could jam the door hinge arm. This condition, if not corrected, could result in difficulty when opening the door, or could prevent the door from opening when required during an emergency evacuation.

The FAA has reviewed and approved Boeing Alert Service Bulletin 757-52A0049, dated July 5, 1990, which describes procedures for periodic inspections for cracked and broken upper and lower hinge arm leaf springs of the left and right Number 4 passenger doors, and repair, if necessary. The service bulletin also describes a modification, consisting of replacement of the upper and lower hinge arm steel leaf springs with titanium leaf springs for the left and right Number 4 passenger door; once this modification is accomplished, the periodic inspections are no longer necessary and may be terminated.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require repetitive inspections of the Number 4 left and right passenger door upper and lower hinge arm leaf springs, and repair, if necessary; and eventual installation of the terminating modification; in accordance with the alert service bulletin previously described.

There are approximately 296 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 163 airplanes of U.S. registry would be affected by this AD. It would take approximately 1 manhour to accomplish the inspection and 12 manhours per airplane to accomplish the required modification actions. The average labor cost would be $40 per manhour. Required parts are estimated at $161 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $111,003.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes listed in Boeing Alert Service Bulletin 757-52A0049, dated July 5, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure left and right passenger door Number 4 opening when required for emergency use, accomplish the following:

A. Prior to the accumulation of 2,000 flight cycles, or within the next 100 flight cycles after the effective date of this AD, whichever occurs later, inspect the left and right Number 4 passenger door upper and lower hinge arm leaf springs for cracks and fractures, in accordance with Boeing Alert Service Bulletin 757-52A0049, dated July 5, 1990. Replace cracked or fractured leaf springs prior to further flight, in accordance with Section III of the service bulletin.

B. Repeat the inspection required by paragraph A. of this AD at the following intervals.

1. For airplanes with less than 5,000 flight cycles at the time of the last inspection: accomplish the next inspection within the next 500 flight cycles.

2. For airplanes with 5,000 or more flight cycles at the time of the last inspection: accomplish the next inspection within the next 150 flight cycles.

C. Within the next 18 months after the effective date of this AD, replace the upper and lower hinge arm steel leaf springs with titanium leaf springs for the left and right Number 4 passenger door, in accordance with Section III., of Boeing Alert Service Bulletin 757-52A0049, dated July 5, 1990. Such replacement constitutes terminating action for the repetitive inspections required by this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on October 22, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26013 Filed 11-1-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-197-AD]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146 serier airplanes, which would require repetitive detailed visual inspections to detect cracks in the right and left wing outer butt straps at the Rib 2 lower skin joint, and repair, if necessary. This proposal is prompted by reports the, during production, some outer butt straps were installed over unchamfered lower wing skin edges. This condition, if not corrected, could result in failure of the butt strap and reduced structural capability of the wings.

DATES: Comments must be received no later than December 24, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-197-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Tansport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (202) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-197-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe 146 series airplanes. There have been reports that, during production, some wing outer butt straps were installed over lower wing skins with unchamfered skin edges. Fretting of an unchamfered skin edge against the inner face of the outer butt strap could lead to increased stresses on the butt strap. This condition, if not corrected, could result in failure of the butt strap and reduced structural capability of the wings.

British Aerospace has issued service Bulletin 57-36, dated June 8, 1990, which describes producers for detailed visual inspections to detect crack is in the right and left wing outer butt straps at Rib 2 lower skin joint. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive detailed visual inspections to detect cracks in the right and left wing outer butt straps at Rib 2 lower skin joint, in accordance with the service bulletin previously described. Repairs, if necessary, would be required to be performed in a manner approved by the FAA.

It is estimated that 2 airplanes of U.S. registry would be effected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $160.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the perparation of the Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subject in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

BEST COPY AVAILABLE

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 146 series airplanes with Serial Numbers E2133, E3134, E3135, E1337, E2139, E3141, E3142, E3145, E2148, E3151, and E3155; certificated in any category. Compliance is required as indicated, unless perviously accomplished.

To detect cracks and prevent failure of the butt strap and reduced structural capability of the wings, accomplish the following:

A. Prior to the accumulation of 12,000 landings, or within 30 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the right and left wing outer butt straps at Rib 2 lower wing skin joint, in accordance with British Aerospace Service Bulletin 57–6, dated June 8, 1990. Repeat this inspection thereafter at intervals not to exceed 9,000 landings or 4½ years since last inspection, whichever occur first.

B. If cracks are found as a result of the inspection required by paragraph A. of this AD, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM–113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then foward coments or concurrence to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 1744, Dulles International Airport, Washington, DC 20041–0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on October 22, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–28014 Filed 11–1–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–NM–196–AD]

Airworthiness Directives; British Aerospace Model BAe/DH/HS/BH 125 Series Airplanes Equipped With Aircraft Products Company (APC) Warming Oven, Part Numbers 255B–LH–28/115, 255B–RH–28/115, and 255–362

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to British Aerospace Model BAe/DH/HS/BH 125 series airplanes equipped with certain APC warming ovens, which would require an inspection to detect damaged wiring or thermostats, and replacement, if necessary; and the installation of an additional thermostat and a new switch to provide additional overheat protection. This proposal is prompted by reports of uncontrolled warming oven temperatures due to inadequate overheat protection. This condition, if not corrected, could result in overheating of the warming oven and a resultant fire.

DATES: Comments must be received no later than December 24, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–196–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Line Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 227–2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90–NM–196–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe/DH/HS/BH 125 series airplanes, equipped with Aircraft Products Company (APC) warming ovens having part numbers 255B–LH–28/115, 225B–RH–28/115, and 255–362. There have been reports of uncontrolled warming oven temperatures due to inadequate overheat protection. This condition, if not corrected, could result in the warming oven overheating and a subsequent fire.

British Aerospace has issued Service Bulletin 25–54–9758A&B, Revision 1, dated August 14, 1989, which describes procedures for an inspection to detect damage to the wiring and thermostats, and replacement, if necessary; and the installation of an additional thermostat and a new switch to provide additional overheat protection. The British Aerospace service bulletin references APC Service Bulletins 255B–25–002, Revision A, dated June 22, 1989, and 255–25–003, dated May 26, 1989, for additional instructions. The United Kingdom CAA has classified the British Aerospace service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require an inspection to detect damage wiring and thermostats, and replacement, if necessary; installation of an additional thermostat; and replacement of a switch in the warming oven; in accordance with the service bulletins previously described.

It is estimated that 420 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for required parts is $150 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $147,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is continued in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1422; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39–13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to all Model BAe/DH/HS/BH–125 series airplanes, equipped with Aircraft Products Company (APC) warming ovens having part numbers 255B–LH–28/115, 255B–RH–115, or 255–362, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent a warming oven fire and to provide additional overheat protection, accomplish the following:

A. Within 60 days after the effective date of this AD, accomplish the following:

1. Inspect the wire insulation inside the warming oven in accordance with British Aerospace Service Bulletin 25–54–9758A&B, Revision 1, dated August 14, 1989. If the oven wiring or thermostat wiring is damaged, prior to further flight, replace the wiring and/or thermostat, as appropriate, in accordance with the service bulletin.

2. Modify the warming ovens by installing an additional thermostat and a new switch, in accordance with British Aerospace Service Bulletin 25–54–9758A&B, Revision 1, dated August 14, 1989.

Note: British Aerospace Service Bulletin 25–54–9758A&B references Aircraft Products Company (APC) Service Bulletins 255B–25–002, Revision A, dated June 22, 1989, and 255–25–003, dated May 26, 1989, for additional instructions.

B. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standarization Branch, ANM–113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standarization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. These documents may be exaimed at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on October 22, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–28015 Filed 11–1–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 90–ASO–20]

Proposed Revocation of Transition Area, Aurora, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the Aurora, NC, transition area. The transition area was designed to afford additional controlled airspace for protection of instrument flight rules (IFR) aircraft executing a planned nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) to the Lee Creek Airport. The NDB upon which the SIAP was predicted was never placed in service. In the absence of definite plans to establish instrument approach procedures, no requirement exists for the transition area.

DATES: Comments must be received on or before: December 21, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO–530, Manager, System Management Branch, Docket No. 90–ASO–20, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic,

environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ASO-20." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.161 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the Aurora, NC, transition area. The transition area was designed for protection of IFR aeronautical operations at the Lee Creek Airport. An NDB was planned which would have supported an instrument approach procedure. The NDB was never commissioned. In the absence of existing or planned IFR aeronautical operations, no requirement exists for the transition area. Section 71.161 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.161 is amended as follows:

Aurora, NC [Removed]

Issued in East Point, Georgia, on October 23, 1990.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 90-26016 Filed 11-1-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 408

BPO-078-P

RIN 0938-AD97

Medicare Program; Grace Period and Termination for Nonpayment of Supplementary Medical Insurance (Part B) Premiums for Insured and Uninsured Persons

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes to change the termination date for Supplementary Medical Insurance (Part B) enrollees who fail to pay their Medicare Part B premiums. Presently, there is a 90 day grace period for the enrollee during which he or she may pay all overdue premiums and continue Part B coverage uninterrupted. The grace period begins at different times depending on whether the individual is or is not elibible for monthly social security, railroad retirement or civil services retirement benefits. This rule would establish a more uniform timeframe for determining the 90 day grace period.

DATES: To ensure consideration, comments should be received at the appropriate address, as provided below, no later than 5 p.m. on January 2, 1991.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO-078-P, P.O. Box 26676, Baltimore, Maryland 21207

If you prefer you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Please mail a copy of comments on information collection requirements to: Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Allison Heron, room 3208, New Executive Office Building, Washington, DC 20503.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPO-078-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Paul Boerschel (301) 966-5941.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1831 of the Social Security Act (the Act) established the Supplementary Medical Insurance (SMI) Program for the Aged and Disabled as a voluntary insurance program to provide medical insurance benefits. SMI, also known as Medicare Part B, pays for physicians' and other medical services to aged and disabled individuals who choose to enroll under the program. The program is financed by enrollee premium payments matched by funds appropriated by the Federal Government.

Under section 1840 of the Act, Medicare Part B enrollees pay their premiums either by having the premium deducted from their monthly social security, railroad retirement, or civil service retirement check or by a direct payment to HCFA as prescribed in regulations. If an enrollee receives monthly benefits, he or she does not have the option of paying by direct remittance to avoid deductions. If an enrollee's monthly benefits are insufficient to cover the amount of the premium, the enrollee is billed for the difference by the Social Security Administration, acting as an agent for HCFA. Premiums for other enrollees are paid by direct remittance to HCFA or its agents. Our regulations at 42 CFR 408.6 describe the several methods and priorities for premium payment.

Section 1838(b) of the Act requires us to establish in regulations when an individual's coverage ends because of nonpayment of premiums. It also provides a grace period for payment of overdue premiums without loss of coverage. The regulations covering this provision are located in 42 CFR 408.8.

This document proposes changes concerning enrollees who pay their premiums directly to HCFA. These enrollees may be divided into four groups:

(1) Enrollees who meet the eligibility requirements to receive monthly social security cash benefits but their cast benefits are suspended;

(2) Enrollees whose monthly benefit is less than the premium;

(3) Enrollees who do not have sufficient qualifying employment to receive monthly cash benefits; and

(4) Enrollees who are eligible for monthly benefits but who chose to file for Medicare coverage only.

II. Premium Payment Procedures

All individuals who are required to make full premium payments, i.e., those who do not have the total premium automatically deducted from their monthly cash benefits, are billed by HCFA either on a monthly or quarterly basis. The billing statement indicates the date the payment is due and notifies individuals that those who fail to pay their premiums will be terminated from the Part B program for nonpayment of premiums. Section 1838(b) of the Act and our regulations at 42 CFR 408.8 provide for a grace period not to exceed 90 days (if good cause is established, the grace period may be extended up to 180 days). As long as the enrollee pays all overdue premiums before the end of the grace period, Part B coverage continues uninterrupted. During the grace period, HCFA sends out additional notices advising enrollees who have not paid their premiums as scheduled that they will be terminated if payment is not submitted bvy the end of the grace period.

Section 1840(c) of the Act provides that if an individual's monthly cash benefit is less than the monthly premium, then the enrollee may pay the difference to retain Part B coverage. Our regulations at 42 CFR 408.63(a) provide that the Social Security Administration (SSA) notifies enrollees at the beginning of SMI entitlement and at the beginning of each succeeding calendar year concerning the amount of benefits payable and total Part B premiums due for the year. SSA bills the enrollee for the difference between benefits payable and premiums due. Section 408.63(b) provides that these enrollees be notified that they will be terminated for nonpayment of premiums on April 30 of overdue premiums owed on that date equal or excced the amount due for 3 months of premiums for the prior year.

Our regulations at 42 CFR 408.8(a)(1) and (2) specify the ending date of the grace period for enrollees who are not receiving monthly benefits depending on whether premium payments are made monthly or quarterly. Although expressed differently, the length of the grace period is the same, i.e. enrollees are allowed to be delinquent for up to 3 month in premiums. For all initial premium payments (monthly or quarterly) and subsequent monthly payments, the grace period ends on the last day of the third month after the billing month. For subsequent quarterly payments, the grace period ends with the last day of each 3-month period for which the enrollee is billed.

For enrollees with suspended monthly cash benefits, under 42 CFR 408.8(a)(3) the grace period ends on the last day of the fourth month after the end of the enrollee's taxable year. Since most individuals' taxable year is the calendar year, termination usually occurs on April 30.

Under 42 CFR 408.8(a)(4) the grace period for those enrollees whose monthly cash benefit is less than their monthly premium payment ends on April 30 of the year following the calendar year for which the premiums are due.

Because adjustments to premium payment may occur after the close of a beneficiary's taxable year, our regulations at 42 CFR 408.47 discuss various situations involving overdue premiums and give examples of termination dates.

Under existing regulations at § 408.63, an enrollee whose monthly benefits are less than the monthly premiums receives a notice from SSA at the beginning of entitlement and the beginning of each succeeding calendar year. The notice contains the following information: The amount of benefits payable; the premiums due for the same period of time; and the difference between the two. SSA bills the difference to the enrollee. SSA also notifies the enrollee of any arrearages for the prior calendar year and informs the enrollee that if the arrearages for the prior year as of April 30 are equal to or greater than 3 months of premiums and remain unpaid, the enrollee will be terminated from the program effective that date.

III. Provisions of the Proposed Regulations

We no longer believe that we should use receipt or nonreceipt of monthly cash benefits to provide different termination dates for Part B enrollees who are delinquent in the payment of premiums. The termination date for enrollees receiving monthly cash benefits initially was established based on our assumption that arrearages owed by an enrollee with suspended monthly cash benefits would be collected by SSA for HCFA from the first monthly benefit check once the enrollee stops working. The monthly premium amounts initially were only several dollars. It was our belief that, for most enrollees with suspended monthly cash benefits, the suspension was a temporary situation and they would start receiving full benefits within the first or second year after becoming eligible to receive cash benefits. For the enrollees whose monthly benefits are less than their premium payments, the amount of the differences is small; therefore, we granted them the same grace period as individuals whose cash benefits were suspended. At the same time, we did not believe arrearages should be allowed to accrue for enrollees who were not receiving monthly benefits since we could not offset the amount against other Federal benefits.

Currently, our regulations at § 408.8(a)(3) provide that the grace period for enrollees with suspended monthly benefits ends on the last day of the fourth month following the end of the individual's taxable year. This

affords some individuals an opportunity to utilize up to 16 months (e.g. January 1989-April 1990) of Part B medical insurance protection without paying any premiums, resulting in delayed income to the Medicare trust fund. In case the individual should die without receiving retirement benefits, collection of the premiums from the estate or other Federal benefits is not assured.

We propose to revise our regulations at § 408.8(a) to use consistent terminology concerning when the grace period ends and to eliminate the possibility of a long period (up to 16 months) of coverage without payment for those insured enrollees whose monthly benefits have been suspended. Under our proposed change, the grace period for Part B enrollees who make Part B premium payments directly to HCFA, whether on a monthly or quarterly basis, would end on the last day of the third month following the billing month with one exception. There would be no change in the grace period for those enrollees specified in § 408.63 whose monthly benefits are less than the monthly premiums because their termination is already tied to the equivalent of a 3-month delinquency.

Our regulations at § 408.47 specify procedures for billing and payment of overdue premiums for certain enrollees who have overdue premiums for a closed taxable year. This includes enrollees whose social security benefits are suspended or a request for SMI enrollment was adjudicated with coverage retroactive to the enrollee's previous taxable year. Our proposal to eliminate waiting until the end of an enrollee's taxable year to determine the start of the 90-day grace period for Medicare Part B enrollees would make this section obsolete. Therefore, we propose to remove and reserve § 408.47. Also, we propose to make a conforming change to § 408.50(b)(2) by deleting all reference to use of the closed taxable year as a determining factor in establishing the grace period.

Finally, we propose several technical amendments to correct cross-references in §§ 408.1 and 408.10 caused by error or revision of cited references.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive order 12291 (E.O 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The purpose of this proposed rule is to establish consistent timeframes for determining when the grace period begins for Medicare beneficiaries enrolled in Part B who make full premium payments to HCFA, regardless of how they pay their Part B premium. This proposed rule may affect the entitlement status of approximately 344,000 individuals who are being billed for premiums. If these individuals fail to take action regarding their overdue premiums within the proposed 90 day grace period, they will lose their entitlement to Part B coverage at that time, rather than, perhaps, months later. For those who lose their Part B entitlement, the economic consequences may be significant, depending on their need for health care services and availability of other insurance. However, we are unable to determine how many individuals would fail to meet the payment deadline, and how severe the effect of failing to pay timely would be on those individuals. Savings to the Medicare program that we may achieve as a result of this proposed rule are expected to be insignificant.

Since we do not believe this rule would meet any of the criteria for a "major rule" specified in E.O. 12291, we have not prepared a regulatory impact analysis.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians and suppliers are treated as small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We do not believe this rule would have a significant effect on small entities as defined under the RFA or on small rural hospitals. Therefore, we are not preparing either a regulatory flexibility analysis or a rural impact statement since we have determined, and the Secretary certifies that this proposed rule would not have a significant economic impact on small entities or on the operations of a substantial number of small rural hospitals.

V. Paperwork Reduction Act of 1980

Section 408.50(b)(2) of this proposed rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). A notice will be published in the **Federal Register** when approval is obtained. Other organizations and individuals desiring to submit comments on the information collection requirement should follow the directions in the ADDRESS section of this preamble.

VI. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule we will consider all comments and respond to them in the preamble of that rule.

List of Subjects in 42 CFR Part 408

Administrative practice and procedure, Health insurance, Medicare, Premiums.

PART 408—PREMIUMS FOR SUPPLEMENTARY MEDICAL INSURANCE

42 CFR part 408 would be amended as follows:

1. The authority citation for part 408 continues to read as follows:

Authority: Secs. 1102, 1818, 1837–1840, 1843, 1871 and 1881(d) of the Social Security Act (42 U.S.C. 1302, 1395i–2, 1395p, 1395q, 1395r, 1395s, 1395v, 1395hh, and 1395rr(d)), and the Federal Claims Collection Act (31 U.S.C. 3711).

2. The table of contents for subpart C would be amended by removing and reserving the title of § 408.47.

Sec.

* * * * *

408.47 [Reserved]

3. Section 408.8 is amended by revising paragraph (a)(1), removing (a)(2) and (a)(3), and redesignating (a)(4) as (a)(2) to read as follows:

§ 408.8 Grace period and termination date.

(a) *Grace period.* (1) For all initial premium payments (monthly or quarterly), and subsequent monthly or quarterly payments, the grace period ends with the last day of the third month after the billing month.

§ 408.47 [Removed and reserved]

4. Section 408.47 is removed and reserved.

5. In § 408.50, paragraph (b)(2) is revised and paragraph (c) is removed, to read as follows:

§ 408.50 When premiums are considered paid.

* * * * *

(b) *Payment within the grace period.*

* * *

(a) *Annual earnings report or other report submitted during the grace period shows a benefit is due.* (i) Before the end of the grace period, the enrollee submits a report clearly showing that monthly cash benefits, previously withheld, are payable; and

(ii) Those benefits are sufficient to permit deduction of the full amount of the overdue premiums.

Technical Amendments

§ 408.1 [Amended]

6. In § 408.1(b), the reference to "45 CFR part 430" is revised to read "45 CFR part 30".

§ 408.10 [Amended]

7. In § 408.10(b)(2)(ii), the reference to "§ 408.8(a)(3)" is revised to read "§ 408.8(a)".

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance Program)

Dated: June 28, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: September 17, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-25716 Filed 11-1-90; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration; Proposed Flood Elevation Determinations

44 CFR Part 67

[Docket No. FEMA-7004]

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a)..

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; or itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arkansas	Fayetteville, City, Washington County.	Clabber Creek	Approximately 150 feet downstream of the downstream corporate limits.	None	*1,193
		Hamestring Creek	Downstream corporate limits	None	*1,194
			Approximately 0.3 mile upstream of State Route 16.	None	*1,255
		South Fork Hamestring Creek	Confluence with Hamestring Creek	None	*1,251
			At upstream side of Giles Road	None	*1,251

Maps available for inspection at the City Hall, 113 W. Mountain Street, Fayetteville, Arkansas.

Send comments to the Honorable William V. Martin, Mayor of the City of Fayetteville, Washington County, 113 Mountain Street, Fayetteville, Arkansas 72701.

Arkansas	Johnson, City, Washington County.	Clear Creek	Approximately .1 mile downstream of corporate limits.	*1,168	*1,170
			At downstream side of confluence of Johnson County.	*1,172	*1,173
		Tributary 4	Approximately 100 feet downstream of Johnson Road.	None	*1,207
			The upstream side of Johnson Road	None	*1,206

Maps available for inspection at the City Hall, Johnson, Arkansas.

Send comments to the Honorable Tony Bongo, Mayor of the City of Johnson, Washington County, P.O. Box 386, Johnson, Arkansas 72741.

Arkansas	Mountainburg, City, Crawford County.	Warloop Creek	At the U.S. Route 71 and State Route 282	*751	*752
			Approximately 220 feet upstream of U.S. Route 71 and State Route 282.	*751	*752

Maps available for inspection at the City Hall, Highway 71 North, Mountainburg, Arkansas.

Send comments to the Honorable Robert Duggin, Mayor of the City of Mountainburg, Crawford County, P.O. Box 347, Mountainburg, Arkansas 72946.

Arkansas	Mulberry City, Crawford County.	Vine Prairie Creek Tributary	Approximately 0.3 mile upstream of U.S. Route 64.	None	*419

Maps available for inspection at the City Hall, 2nd and Main Street, Mulberry Arkansas.

Send comments to the Honorable Arnold Feller, Mayor of the City of Mulberry, Crawford County, P.O. Box 448, Mulberry, Arkansas 72947.

Arkansas	Springdale, City, Washington and Benton Counties.	Tributary 1	Approximately 20 feet downstream of Burlington Northern Railroad.	*1,322	*1,321
			Approximately 1 mile upstream of Old Missouri Road.	None	*1,401
		Tributary 5	Approximately 1,430 feet upstream of confluence with Tributary 4.	*1,231	*1,230
			Approximately 1,800 feet upstream of confluence with Tributary 4.	*1,234	*1,233
		Brush Creek	Approximately 1,425 feet upstream of most upstream corporate limits.	None	*1,250
			Approximately 530 feet upstream of U.S. Route 412 and State Route 68.	None	*1,344
		Brush Creek Tributary	At confluence with Brush Creek	None	*1,307
			Approximately .4 mile upstream of confluence with Brush Creek.	None	*1,320
		Spring Creek	At County Route 76	None	*1,211
			Approximately 158 feet upstream of County Route 76n.	None	*1,212
			Approximately 100 feet downstream of County boundary.	None	*1,224
			Approximately 1,125 feet upstream of County boundary.	None	*1,230

Maps available for inspection at the City Hall, 201 North Spring Street, Springdale, Arkansas.

Send comments to The Honorable Charles McKinney, Mayor of the City of Springdale, Washington and Benton Counties, 201 North Spring Street, Springdale, Arkansas 72764.

Arkansas	Van Buren, City, Crawford County.	Arkansas River	At downstream corporate limits	*410	*409
			Approximately 1,000 feet downstream of the upstream corporate limits.	*414	*415
		Lee Creek	At the confluence with the Arkansas River	*412	*413
			Approximately 0.07 river mile downstream of Interstate Route 40 (eastbound).	*412	*413

Maps available for inspection at the City Hall, 1000 E. Main, Van Buren, Arkansas.

Send comments to The Honorable Robert Bell, Mayor of the City of Van Buren, Crawford County, P.O. Box 688, Van Buren, Arkansas 72956.

Arkansas	West Fork, City, Washington County.	West Fork White River	Approximately 1.55 miles downstream of Dye Creek Road.	None	*1,270
			Approximately 2 miles upstream of State Route 170.	None	*1,349

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the City Hall, 282 West Main, West Fork, Arkansas.

Send comments to The Honorable Bill Carter, Mayor of the City of West Fork, Washington County, P.O. Box 339, West Fork, Arkansas 72774.

Arizona	City of Avondale, Maricopa County.	Agua Fria River	Approximately 350 feet downstream of Litchfield Road.	*924	*924
			At Broadway Road	*934	*935
			At Lower Buckeye Road	*950	*950
			Approximately 150 feet downstream of Buckeye Road.	*952	*952
			At Van Buren Street	*973	*971
			Approximately 675 feet upstream of Interstate 10 westbound.	*984	*981
			At McDowell Road	*985	*985
			At Thomas Road	*1,000	*998
			Approximately 530 feet upstream of Indian School Road.	*1,012	*1,010
			Shallow flooding at approximately 200 feet upstream of Buckeye Road along east bank of Agua Fria River.	*965	*964
			Shallow flooding at approximately 250 feet upstream of Buckeye Road along West bank of Agua Fria River.	*966	*963

Maps are available for review at the Planning Department, 1211 South Fourth Street, Avondale, Arizona.

Send comments to The Honorable Raymond Bedoya, Mayor, City of Avondale, 525 north Central Avenue, Avondale, Arizona 85323.

Arizona	City of El Mirage, Maricopa County.	Agua Fria River	Approximately 1,320 feet downstream of Glendale Avenue.	*1,049	*1,050
			At Northern Avenue	*1,049	*1,050
			At Olive Avenue	*1,079	*1,082
			Approximately 1,700 feet upsteam of Olive Avenue.	*1,082	*1,085
			At Peoria Avenue	*1,097	*1,094
			Approximately 1,500 feet downstream of Grand Avenue.	*1,117	*1,119
			Approximately 1,200 feet upstream of Grand Avenue.	*1,133	*1,131
			At 115th Avenue	*1,138	*1,137
			Approximately 2,100 feet upstream of Bell Road.	*1,169	*1,165
		Agua Fria River West Split Flow.	Approximately 0.9 mile downstream of Grand Avenue.	*1,110	*1,111
			Approximately 0.5 mile downstream of Grand Avenue.	*1,115	*1,118
			Approximately 0.3 mile upstream of Grand Avenue.	*1,133	*1,131

Maps are available for review at the Engineering Department, City Hall, 14405 North Palm Street, El Mirage, Arizona.

Send comments to The Honorable Robert Robles, Mayor, City of El Mirage, P.O. Box 26, El Mirage, Arizona 85335.

Arizona	City of Glendale, Maricopa County.	Agua Fria River	Approximately 0.5 mile upstream of confluence with New River.	*1,036	*1,039
			Approximately 1,320 feet downstream of Glendale Avenue.	*1,049	*1,050
			At Northern Avenue	*1,065	*1,062
			Approximately 1,700 feet upstream of Olive Road.	*1,082	*1,085

Maps are available at the Engineering Department, Second Floor, 5850 West Glendale Avenue, Glendale, Arizona.

Send comments to The Honorable George Renner, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, Arizona 85301

Arizona	City of Mesa, Maricopa County.	Salt River	At State Highway 87	*1,217	*1,217
			Approximately 2 miles upstream of State Highway 87.	None	*1,223
			At North Gilbert Road	None	*1,254
			Approximately 2 miles upstream of North Gilbert Road.	None	*1,272
			Approximately 4 miles upstream of North Gilbert Road.	None	*1,286

Maps are available for review at the Engineering Department, 20 East Main Street, Mesa, Arizona.

Send comments to The Honorable Peggy Rubach, Mayor, City of Mesa, 55 North Center Street, Mesa, Arizona 85211

Arizona	City of Peoria, Maricopa County.	Agua Fria River	At Northern Avenue	*1,065	*1,062

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1,700 feet upstream of Olive Road.	*1,082	*1,085
			Approximately 6.5 miles upstream of West Rose Garden Avenue.	None	*1,313
			Approximately 1.5 miles downstream of Beardsley Canal.	None	*1,315
			Approximately 2 miles upstream of Granite Reef Aqueduct.	None	*1,378
			Approximately 0.8 miles upstream of Morristown-New River Highway.	None	*1,425
Maps are available for review at the Engineering Department, 8320 West Madison Street, Peoria, Arizona.					
Send comments to The Honorable Ron Travers, Mayor, City of Peoria, P.O. Box. C–4038, Peoria, Arizona 85380					
Arizona	City of Prescott; Yavapai County.	Granite Creek	Approximately 6,800 feet above Watson Lake Dam.	None	*5,164
			Approximately 660 feet downstream of Sun Dog Ranch Road Bridge.	None	*5,222
			Just upstream of Sun Dog Ranch Road Bridge	None	*5,232
			Just downstream of U.S. Highway 89	None	*5,242
Maps are available for review at the Engineering Department, City Hall, 201 South Cortez Street, Prescott, Arizona.					
Send comments to The Honorable Robert C. Morgan, Mayor, City of Prescott, P.O. Box 2059, Prescott, Arizona 86302.					
Arizona	Town of Surprise, Maricopa County.	Agua Fria River	Approximately 2,100 feet upstream of Bell Road.	*1,169	*1,165
			Approximately 1 mile downstream of West Rose Garden Avenue.	*1,191	*1,186
Maps are available for review at the Office of the Town Clerk, 12604 Santa Fe Drive, Surprise, Arizona.					
Send comments to The Honorable Ray Villanueva, Mayor, Town of Surprise, 12604 Santa Fe Drive, Surprise, Arizona 85374.					
Arizona	City of Tempe, Maricopa County.	Salt River	At Scottsdale Road	*1,163	*1,163
			Approximately 740 feet upstream of Hayden Road.	*1,173	*1,174
			Approximately 1,700 feet upstream of Hayden Road.	*1,174	*1,174
Maps are available for review at the Public Works Department, 31 East Fifth Street, Tempe, Arizona.					
Send comments to The Honorable Harry Mitchell, Mayor, City of Tempe, 31 East Fifth Street, Tempe, Arizona 85281.					
Arizona	Town of Youngtown, Maricopa County.	Agua Fria River	Approximately 1,700 feet upstream of Olive Road.	*1,082	*1,085
			At Peoria Avenue	*1,097	*1,094
			Approximately 1,500 feet downstream of Grand Avenue.	*1,117	*1,119
		Agua Fria River West Split Flow.	Approximately 0.9 mile downstream of Grand Avenue.	*1,110	*1,111
			Approximately 0.5 mile downstream of Grand Avenue.	*1,115	*1,118
			Approximately 0.3 mile upstream of Grand Avenue.	*1,133	*1,131
Maps are available for review at the Department of Public Works, 12030 Clubhouse Square, Youngtown, Arizona.					
Send comments to The Honorable James Weaver, Mayor, Town of Youngtown, 12030 Clubhouse Square, Youngtown, Arizona 85363.					
Colorado	City of Delta, Delta County.	Gunnison River	At confluence of Uncompahgre River	*4,918	*4,919
			Approximately 2,400 feet upstream of confluence with Uncompahgre River.	*4,922	*4,923
			Approximately 2,550 feet downstream of U.S. Highway 50 southbound.	*4,927	*4,927
			At U.S. Highway 50 northbound	*4,933	*4,931
Maps are available for review at City Hall, 360 Main Street, Delta, Colorado.					
Send comments to the Honorable Karen Easter, Mayor, City of Delta, City Hall, P.O. Box 19, Delta, Colorado 81416.					
Colorado	Delta County, Unincorporated Areas.	Gunnison River	Approximately 4,000 feet upstream of confluence of Uncompahgre River.	*4,925	*4,926
			Approximately 1,500 feet downstream of U.S. Highway 50 southbound.	*4,930	*4,930
			Just upstream of U.S. Highway 50 northbound	*4,934	*4,931
			Approximately 4,600 feet upstream of U.S. Highway 50 northbound.	*4,940	*4,940

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at the Delta County Planner's Office, 501 Palmer Street, Delta, Colorado.					
Send comments to the Honorable Robert Watson, Chairman, Delta County Board of Commissioners, 501 Palmer Street, Delta, Colorado 81416.					
Louisiana	Florine, Village, Sabine Parish.	Midkiff Creek	At downstream corporate limits	*241	*243
			Approximately 600 feet upstream of U.S. Route 171.	*251	*252
Maps available for inspection at the Village Hall, Florien, Louisiana.					
Send comments to The Honorable John Manasco, Mayor of the Village of Florien, Sabine Parish, P.O. Box 68, Florien, Louisiana 71426.					
Louisiana	Many, Town, Sabine Parish.	Harpoon Bayou	Approximately 1,300 feet downstream of U.S. Route 171.	None	*214
			Approximately 1,800 feet upstream of U.S. Route 171.	None	*219
		Phillips Creek	Approximately .5 mile downstream of State Route 1217.	None	*226
			Approximately 2,000 feet downstream of State Route 1217.	None	*227
		San Jose Creek	Approximately .6 mile downstream of Fairground Street.	None	*219
			At downstream side of U.S. Route 171	None	*236
Maps available for inspection at the Town Hall, San Antonio Avenue, Many, Louisiana.					
Send comments to the Honorable Kenneth Freeman, Mayor of the Town of Many, Sabine Parish P.O. Box 1330, Many, Louisiana 71449.					
New Jersey	Riverton, Borough, Burlington County.	Pompeston Creek	Aproximately .3 mile upstream of Broad Street & CONRAIL	*10	*11
			At upstream corporate limits	*10	*11
		Delaware River (backwater flooding).	Between Elm and Linden Streets north of Fourth Street.	None	*10
Maps available for inspection at the Riverton Municipal Building, 505 A Howard Street, Riverton, New Jersey.					
Send comments to The Honorable Walter E. Engle, Mayor of the Borough of Riverton, Burlington County, P.O. Box 157, Riverton, New Jersey 08077.					
Texas	Bryan, City, Brazos County.	Burton Creek Tributary D	At confluence with Burton Creek	*288	*288
			At approximately 800 feet upstram of confluence with Burton Creek.	*292	*290
Maps available for inspection at the City Hall, 300 S. Texas Avenue, Bryan, Texas.					
Send comments to The Honorable Marvin Tate, Mayor of the City of Bryan, Brazos County, P.O. Box 1000, Bryan, Texas 77805.					
Texas	Denton County, Unincorporated Areas.	Timber Creek	At the upstream corporate limits of the Town of Double Oak.	*629	*626
			Approximately 225 feet upstream of the upstream corporate limits of the Town of Double Oak.	*629	*626
Maps available for inspection at 110 West Hickory, Denton, Texas.					
Send Comments to The Honorable Vic Burgess, Denton County Judge, 110 West Hickory, Denton, Texas 76201.					
Texas	El Paso, City, El Paso County.	Western Freeway Channel	Approximately 1.6 miles downstream of Marcus Uribe Drive.	None	*4,009
			Approximately 3,000 feet downstream of Marcus Uribe Drive.	None	*4,097
		War Road Channel	Approximately 3,000 feet downstream of Marcus Uribe Drive.	None	*4,097
			Approximately 1,400 feet upstream of Marcus Uribe Drive.	None	*4,132
		Detention Basin 1	At confluence of Flow Path No. 49B	None	*4,224
		Detention Basin 2	At confluence of Flow Path No. 13A	None	*4,214
		Arroyo 2	Approximately 875 feet downstream of Lakehurst Road.	None	*3,866
			Approximately 1.8 miles upstream of Ressler Drive.	*4,279	*4,278
Maps available for inspection at the Engineering Department, Two Civic Center Plaza, El Paso, Texas.					
Send comments to The Honorable Suzanne S. Azar, Mayor of the City of El Paso, El Paso County, Two Civic Center Plaza, El Paso, Texs 79901					

Issued: October 18, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-25971 Filed 11-1-90; 8:45 am]

BILLING CODE 6718-05-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-267, DA 90-1468]

Broadcast Services; AM Technical Assignment Criteria

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; additional study.

SUMMARY: The Commission appends to the *Notice of Proposed Rule Making* in this proceeding (55 FR 31607, August 3, 1990, FR Doc. 90-18020) an additional study performed by the Agency's Mass Media Bureau. The proceeding concerns a review of the technical assignment criteria for the AM broadcast services. The new study, designated appendix 3A, complements appendix 3, by further demonstrating the benefits of the expanded AM band migration process. The action is taken because it is believed that this additional study may be helpful in developing comments in response to the *Notice of Proposed Rule Making.*

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Henry Straube, Mass Media Bureau, (202) 254-3394.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Additional Study To Demonstrate Effect on an AM Channel by the Migration of a Single Station to the Expanded Band (MM Docket 87-267)

The Mass Media Bureau has conducted an additional study in an effort to supplement certain data which were presented in the Commission's *Notice of Proposed Rule Making* (*NPRM*) (MM Docket No. 87-267). That *NPRM* addressed the review of the technical assignment criteria for the AM broadcast service.

The new study, shown below as appendix 3A, is similar to appendix 3 of the *NPRM* which used an individual station on a particular frequency to illustrate the effects of the expanded band migration process. Recognizing that such a study may not be representative of all cases, the new study was conducted to further demonstrate the benefits of the migration process. A different frequency and a new migration candidate were selected for this new study, which reveals a more substantial reduction of interference on the subject frequency than that indicated in the previous example in appendix 3. It appears that the migration process could provide added interference reduction in the existing AM band since it is anticipated that more than one station on each channel would move to the expanded band once the process is fully implemented. This additional study may be helpful in developing comments in response to the *NPRM.* For further information on this matter, contact Henry A. Straube at (202) 254-3394.

APPENDIX 3A

Further Illustration of AM Interference Reduction Resulting from Migration of a Station from the Existing AM Band to the Expanded Portion of the AM Band

The following table demonstrates the potential for improvement which could be achieved on an AM channel during nighttime hours by the movement of one station from a frequency within the existing AM band to one of the frequencies within the expanded band, 1605 kHz to 1705 kHz. The situation presented here describes a case where a single station's removal from a frequency would result in a significant improvement to numerous other operations. The frequency used for this study, 1430 kHz, was chosen because the number of stations operating on this channel permits a showing of significant impact a single station's moving to the expanded band could have on the stations remaining on the channel. The station selected, WXTZ, Indianapolis, Indiana was used because of its location relative to other stations and its predicted effect on a large number of these stations. The study was based on the new nighttime standards proposed in MM Docket No. 87-267: The nighttime formulas, the 0% RSS exclusion principle, and the adjacent channel protection ratio.

Call	Location	Including WXTZ		Excluding WXTZ	
		Night limit (mV/m)	Coverage (Sq. mi.)	Night limit (mV/m)	Coverage (Sq. mi.)
KFNI	Fresno, CA	5.81	824	5.76	830
KALI	San Gabriel, CA	26.04	144	26.04	144
KNTA	Santa Clara, CA	24.54	41	24.53	41
KEZW	Aurora, CO	9.89	759	9.63	780
WOIR	Homestead, FL	16.23	74	15.76	77
WLKF	Lakeland, FL	17.21	25	16.35	27
WLTG	Panama City, FL	23.72	204	22.41	234
WWGS	Tifton, GA	38.85	14	37.75	14
WYMC	Mayfield, KY	26.95	17	21.20	25
WXKS	Everett, MA	43.02	9	43.00	9
WNAV	Annapolis, MD	28.82	83	28.60	84
WION	Ionia, MI	36.91	12	27.92	20
WBRB	Mt Clemens, MI	29.86	41	21.40	68
WIL	St Louis, MO	12.27	487	11.41	527
WDEX	Monroe, NC	34.41	25	32.05	27
WMNC	Morganton, NC	32.54	9	28.22	11
KRGI	Grand Isle, NE	19.62	117	18.82	124
WNJR	Newark, NJ	9.16	216	9.08	219
KCRX	Roswell, NM	16.49	110	16.48	110
WENE	Endicott, NY	14.06	104	13.79	106
WFOB	Fostoria, OH	19.65	132	9.01	353
KALV	Alva, OK	15.50	137	15.42	138
KQLL	Tulsa, OK	10.96	679	10.86	686
KYKN	Keizer, OR	14.40	112	14.39	112
WVAM	Altoona, PA	19.03	37	18.89	38
WNVZ	Germantown, TN	35.71	55	23.10	60

Call	Location	Including WXTZ		Excluding WXTZ	
		Night limit (mV/m)	Coverage (Sq. mi.)	Night limit (mV/m)	Coverage (Sq. mi.)
WHNK	Madison, TN	33.29	17	21.95	20
KEES	Gladewater, TX	39.73	28	39.52	28
KLO	Ogden, UT	5.17	1092	4.99	1127
KCLK	Asotin, WA	7.93	181	7.88	182
KBRC	Mt Vernon, WA	13.32	65	13.31	65
WBEV	Beaver Dam, WI	35.35	33	27.26	46
WEIR	Weirton, WV	10.45	75	9.67	90

NOTE: Coverage was Based on FCC Figure M-3 Soil Conductivity Values.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-25053 Filed 11-1-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-473, RM-7392]

Radio Broadcasting Services; Edenton and Scotland Neck, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Lawrence F. and Margaret A. Loesch seeking the substitution of Channel 273C2 for Channel 272A at Edenton, North Carolina, and the modification of their license for Station WZBO-FM to specify operation on the higher powered channel. In addition, they request the substitution of Channel 238A for Channel 274A at Scotland Neck, North Carolina, and the modification of Station WWRT's construction permit to specify the alternate Class A channel. Channel 273C2 can be allotted to Edenton in compliance with the Commission's minimum distance separation requirements with the site restriction of 18.6 kilometers (11.6 miles) southeast to avoid a short-spacing to Station WHLQ Channel 273A, Louisburg, North Carolina, and to accommodate petitioner's desired transmitter site. The coordinates for Channel 273C2 at Edenton are North Latitude 35-55-52 and West Longitude 76-31-34. Channel 238A can be allotted to Scotland Neck in compliance with the Commission's minimum distance separation requirements and can be used at Station WWRT's authorized transmitter site. The coordinates for Channel 238A at Scotland Neck are North Latitude 36-08-09 and West Longitude 77-26-09. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for use of Channel 273C2 at Edenton or require the petitioners to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before December 20, 1990, and reply comments on or before January 4, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark J. Prak, Esq., Tharrington, Smith & Hargrove, P.O. Box 1151, 209 Fayetteville Street Mall, Raleigh, North Carolina 27602 (Counsel to petitioners).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-473, adopted September 28, 1990, and released October 29, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW, suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73.

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25937 Filed 11-1-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-496, RM-7381]

Radio Broadcasting Services; Crawford, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Georgia Family Radio Limited Partnership requesting the substitution of Channel 271C3 for Channel 271A at Crawford, Georgia, and modification of its construction permit (BMPH-891109IC) to specify operation on the higher class channel. Channel 271C3 can be allotted to Crawford in compliance with the Commission's minimum distance separation requirements with a site restriction 17 kilometers (10.5 miles) northeast, in order to avoid a short-spacing to a construction permit for Station WGGA, Channel 270A at Cleveland, Georgia, and a vacant allotment for Channel 271A at Bolingbroke, Georgia. The coordinates are North Latitude 33-57-10 and West Longitude 82-59-30. In accordance with § 1.420(g) of the Commission's Rules, competing expressions of interest in the use of Channel 271C3 at Crawford will not be considered and petitioner will not be required to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before December 21, 1990, and reply comments on or before January 7, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Gary S. Smithwick, Smithwick & Belendiuk, P.C., 2033 M Street, NW., suite 207, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-496, adopted October 1, 1990, and released October 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The compete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25958 Filed 11-1-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-477, RM-7349]

Radio Broadcasting Services; Mattoon and Neoga, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The document requests comments on a petition by The Cromwell Group of Illinois, Inc., permittee of Station WMCI, Channel 267A, Mattoon, Illinois, seeking the substitution of Channel 267B1 for Channel 267A, and a change of community of license from Mattoon, Illinois, to Neoga, Illinois, and modification of the construction permit for Station WMCI to specify operation on Channel 267B1 at Neoga, Illinois. Petitioner's proposed coordinates are North Latitude 39-17-19 and West Longitude 88-16-15.

DATES: Comments must be filed on or before December 21, 1990, and reply comments on or before January 7, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: John F. Garziglia, Howard J. Barr, Pepper & Corzaaini, 1776 K Street NW., suite 200, Washington, DC 20006 (Attorneys for The Cromwell Group of Illinois, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-477, adopted September 28, 1990, and released October 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the mater is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25959 Filed 11-1-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-497, RM-7420]

Radio Broadcasting Services; Garapan, Saipan

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Commonwealth Radio Corp. ("petitioner"), seeking the allotment of Channel 262C2 to Garapan, Saipan, as that community's fourth local FM service. The proposed coordinates are North Latitude 15-11-10 and West Longitude 145-44-26.

DATES: Comments must be filed on or before December 21, 1990, and reply comments on or before January 7, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robyn G. Nietert, Robert J. Rini, Brown, Finn & Nietert, Chartered, 1920 N Street, NW., suite 660, Washington, DC 20036 (Attorneys for Commonwealth Radio Corp.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-497, adopted October 1, 1990, and relesed October 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review all *ex*

parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25960 Filed 11-1-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-495, RM-7405]

Radio Broadcasting Services; Saugerties, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Peter Moncure seeking the allotment of Channel 225A to Saugerties, New York, as the community's first local FM service. Channel 225A can be allotted to Saugerties in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.4 kilometers (4.6 miles) south to avoid short-spacings to Stations WFLY, Channel 222B, Troy, New York, WHYN, Channel 226B, Springfield, Massachusetts, and WRVW, Channel 228A, Hudson, New York. The coordinates for Channel 225A at Saugerties are north latitude 42-01-00 and west longitude 73-59-18. Canadian concurrence is required since Saugerties is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before December 21, 1990, and reply comments on or before January 7, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter Moncure, 1111 Fawn Road, Saugerties, New York 12477 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-495, adopted September 28, 1990, and released October 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permission *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25957 Filed 11-1-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-494, RM-7473]

Radio Broadcasting Services; Cottage Grove, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Paul C. Bjornstad seeking the allotment of Channel 273A to Cottage Grove, Oregon, as the community's first local FM service. Channel 273A can be allotted to Cottage Grove in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.3 kilometers (3.3 miles) south to avoid a short-spacing to unoccupied but applied-for Channel 272A at Brownsville, Oregon. The coordinates for Channel 273A at Cottage Grove are North Latitude 43-45-04 and West Longitude 123-03-42.

DATES: Comments must be filed on or before December 21, 1990, and reply comments on or before January 7, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Margaret L. Tobey, Esq., Mark D. Schneider, Esq., Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-494, adopted October 1, 1990, and released October 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25956 Filed 11-1-90; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 55, No. 213
Friday, November 2, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the Government of Portugal as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low-income families in Portugal. The Government of Portugal has authorized A.I.D. to request proposals from eligible investors. The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers, and the amount of the loan and project number are indicated below:

Government of Portugal

Project: 150–HG–007—$25,000,000,
Attention: Nuno Luz de Almeida/J. Santos Rodrigues, Instituto Nacional de Habitacao, Avenida Columbano Bordalo Pinheiro, 5th-8th Floor, 1000 Lisboa, Portugal, Telex No.: 64641 INH P, Telephone No.: 351/1/726–8209 or 2608, Telefax No.: 351/1/726–0729.

Interested investors should submit their bids to the Borrower's representative on November 14, 1990, 10:00 a.m. Eastern Standard Time. Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. David Leibson, Housing and Urban Development Officer, American Embassy (A.I.D.), Avenida das Forcas Armadas, 1507 Lisboa Codex, Lisbon, Portugal, Telex No.: 12528 AMEMB P, Telephone No.: 351/1/726–6600 or 6659, 8880, 8670, Telefax No.: 351/1/726–9109

Sean P. Walsh, Agency for International Development, APRE/H, room 401, SA–2, Washington, DC 20523–0214, Telex No.: 892703 AID WSA, Telefax No.: 202/663–2552 (preferred communication), Telephone: 202/663–2530.

For your information the Borrower is currently considering the following terms:

(a) *Amount:* U.S. $25 million.
(b) *Term:* Up to 30 years.
(c) *Grace period:* 10 years on repayment of principal.
(d) *Interest rate:* Fixed, or variable, or variable with option to convert to fixed.
(e) *Closing date:* No later than December 31, 1990.
(f) *Fees:* Borrower agrees to pay all closing costs at closing from the proceeds of the loan. Lenders are requested to include all legal fees in their placement fee.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 401, SA–2, Washington, DC 20523–0214, Telephone: 202/663–2530.

Dated: October 30, 1990.

Fredrik A. Hansen,
Deputy Director, Office of Housing and Urban Programs, Agency for International Development.

[FR Doc. 90–26038 Filed 11–1–90; 8:45 am]
BILLING CODE 8114–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Commission on Wildfire Disasters; Nominations

AGENCY: Forest Service, USDA.

ACTION: Notice; extension of nomination period.

SUMMARY: In a notice published Thursday, September 6, 1990, (55 FR 36673), the Department of Agriculture invited nominations of agencies, organizations, and interested persons to serve as members of the National Commission on Wildfire Disasters. This Commission is authorized by the Wildfire Disaster Recovery Act of 1989. In a subsequent notice published Tuesday, October 16, 1990, (55 FR 41870), the deadline for submitting nominations was extended to November 2. Due to further delay in sending the direct notices by mail, the Secretary has now directed that the date for receiving nominations be extended to November 16, 1990.

DATES: Nominations must be received in writing by Friday, November 16, 1990.

ADDRESSES: Send written nominations to Chief (5100), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Dennis W. Pendleton, Fire and Aviation Management Staff, Forest Service (202) 453–9511.

Dated: October 29, 1990.

Allan J. West,
Deputy Chief, State and Private Forestry.

[FR Doc. 90–25982 Filed 11–1–90; 8:45 am]
BILLING CODE 3410–11–M

Forest Service

Northern Region

Exemption of Salvage Timber Sale Project From Appeal, Bitterroot National Forest, MT

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: This is a notification that the decision to implement the Grid Point Salvage Timber Sale in the area of the Grid Point Fire on the Bitterroot National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published January 23, 1989, at Vol. 54, No. 13, pages 3342–3370.

EFFECTIVE DATES: Effective on issuance of the decision notice for the Gird Point Salvage Timber Sale.

FOR FURTHER INFORMATION CONTACT: Bertha C. Gillam, Forest Supervisor, Bitterroot National Forest, 316 North Third Street, Hamilton, MT 59840.

Background

In July 1990 the Gird Point fire burned and killed the timber on approximately 1,700 acres of the Bitterroot National Forest. An additional 900 acres of area on which the timber was not killed is within the exterior perimeter of the fire. Approximately 1,000 acres of the killed timber is within Management Areas of the Bitterroot Forest Plan (September 1987) which provide for timber harvest in the management goals. In July 1990 an interdisciplinary Fire Rehabilitation Team surveyed the fire area and recommended, "that a Watershed Burned Area Rehabilitation funds request if not necessary and that rehab of fire suppression damage should stablilize the area and minimize erosion." In August 1990 a Forest Interdisciplinary Team was assembled to analyze the opportunity to salvage trees that had been killed by the fire.

The Forest Interdisciplinary Team identified the need to quickly salvage the timber which was killed so the trees would remain merchantable for sawlogs. The size of timber in the burned area is quite variable but most is 8–12" in diameter at breast height with limited defect. Rapid drying of the fire-killed trees is resulting in cracking or "checking", especially in the smaller diameter trees. This checking will quickly reduce their utilization as sawlogs.

There is a need to complete tractor and cable logging before the seedlings, which will regenerate naturally, are large enough to be damaged. Some germination of seedlings will occur in the spring of 1991.

Planned Actions

In august 1990 the District Ranger, Darby Ranger District, Bitterroot National Forest, proposed the salvage harvest of the trees which were killed by fire. The environmental analysis of this action was started in August 1990. The Interdisciplinary Team assigned to this analysis began scoping in August 1990. After press releases, letters requesting comments were sent to individuals and organizations thought to have an interest in the area and contracts with personnel from state agencies. Major issues were identified, as follows:

1. Public Safety on the Gird Point Road and the Skalkaho Highway.
2. Is the existing transportation system adequate?
3. Is it appropriate to log in Management Area 5 of the Bitterroot Forest Plan?
4. Will a salvage operation meet Visual quality Objectives?
5. Are there sites within the analysis area that are unsuitable for timber production?
6. How will the salvage sale affect water quality?
7. How much will a salvage sale help the current log shortage in the valley?
8. Will more firewood be available?
9. Will a salvage sale affect the spread of noxious weeds?
10. How will the salvage sale affect sensitive plants?

The Interdisciplinary Team developed seven alternatives to analyze, including the No Action Alternative. The effects of these altrnatives are disclosed in an Environmental Assessment which was prepared for the proposal. the Proposed Action (Modified Alternative 4A) would harvest 650 acres of the fire killed timber and produce an estimated 5MMBF of timber for harvest. This Proposed Action is within Management Areas 1 and 3a as indicated in the Bitterroot Forest Plan, September 1987.

Approximately 1.8 miles of logging roads would be constructed. These roads will be ripped, revegetated, and closed to use after all harvest is complete. Road construction on overly steepened land, wet areas, and excessively rocky areas found to be unsuitable for timber management will be avoided in this alternative. Analysis indicates that this is cost effective in meeting the objectives of salvage.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this sale and the accompanying work, the process according to 36 CFR part 217 is being followed. Under this Regulation the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as, wildfires . . . . when the Regional Forester. . . . determines and gives notice in the Federal Register that good cause exists to exempt such decisions from review under this part.

Upon publication of this notice in the Federal Register, The Decision Notice for the Gird Point Salvage Sale will be signed by the Forest Supervisor, Bitterroot National Forest. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: October 25, 1990.

John Mumma,
Regional Forester, Northern Region.

[FR Doc. 90–25920 Filed 11–1–90; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council; Meetings

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of a closed meeting.

SUMMARY: A swearing in ceremony and dinner meeting wil be held for new members of the President's Export Council. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. export trade. The primary purpose of the meeting is to brief those new members who have been appointed to the Council on the status of U.S. trade policy. Discussion will include relations with our trading partners, trade negotiating strategies, and other sensitive matters properly classified under Executive order 12356.

A Notice of Determination to close meetings or portions of meetings of the council to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, (202) 377–4217.

DATES: November 19, 1990, from 6 p.m.–7.30 p.m.

ADDRESSES: Main Commerce Building, room 5843, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mrs. Wendy H. Smith, Staff Director and Executive Secretary, President's Export Council, room 3215, Washington, DC 20230.

Dated: October 29, 1990.

Wendy H. Smith,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 90–25942 Filed 11–1–90; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Western Pacific Precious Corals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues this notice that the Western Pacific Fishery Management Council (Council) has submitted Amendment 2 to the Precious corals Fishery Management Plan (FMP) of the Western Pacific Region for Secretarial review and is requesting comments from the public. Copies of Amendment 2 may be obtained from the Council at the address below.

DATES: Comments on the amendment should be submitted on or before December 13, 1990.

ADDRESSES: All comments should be sent to E.C. Fullerton, Regional Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the amendment and the environmental assessment are available from the Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, NMFS, Terminal Island, California (213) 514–6660 or Alvin Katekaru, NMFS, Pacific Area Office, Honolulu, Hawaii, (808) 955–8831.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*) requires that each Regional Fishery Management Council submit any fishery management plan or amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon receiving a plan or amendment, immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider all public comments in determining whether to approve the plan or amendment. The Magnuson Act also established seven national standards that fishery management plans must meet to be approvable, and requires the Secretary to publish guidelines for the Councils to use in applying these national standards. The guidelines (50 CFR part 602) were revised in 1989 (54 FR 30711 *et seq.*) to require that the Councils amend their fishery management plans to include definitions of overfishing for the respective fisheries. Amendment 2 to the FMP is intended to address the requirements of the Secretary's guidelines for compliance with national standards 1 and 2 of the Magnuson Act.

Precious corals are slow growing, have low mortality, and have low recruitment rates. The FMP treats individual precious coral beds as distinct management units because of their widely separated distribution, even though recruitment may be dependent on reproduction at other coral beds. There are four categories of coral beds in the FMP: Established, conditional, refugia, and exploratory. The regulations at CFR part 680 prescribe management measures for each class of bed and harvest quotas for some individual beds. Only established beds are fully harvested beds. Established beds are the only beds for which a maximum sustainable yield can be estimated; therefore, overfishing of precious coral is defined with respect to this classification of beds as follows: An established coral bed shall be deemed overfished with respect to recruitment when the total spawning biomass (all species combined) has been reduced to 20 percent of its unfished condition. This definition is based on cohort analysis of pink coral, *Corallium secundum.*

No Federal regulatory action is necessary to implement this amendment. The Council has determined that the proposed amendment is consistent to the maximum extent practicable with the coastal zone programs of the governments of Hawaii, American Samoa, and Guam, and has asked for concurrence with this determination. The amendment incorporates an environmental assessment, which is available upon request (see **ADDRESSES**). It has no direct effect on either the fishery resources or fishery participants and will not require rulemaking; therefore, neither a Regulatory Impact Analysis is necessary. There will be no impact on marine mammals or endangered species. There is no taking under Executive Order 12630. No information collection burdens are imposed. If actions are taken subsequently to implement new conservation and management measures to prevent overfishing, the appropriate analyses and determinations will be made at that time.

Amendment 2 does not contain policies with federalism implications sufficient to warrant prepareation of a federalism assessment under E.O. 12612.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 29, 1990.

Joe P. Clem,

Acting Director, Office of Fishery Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–25918 Filed 10–29–90; 5:06 pm]

BILLING CODE 3510-22-M

Western Pacific Crustacean Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues this notice that the Western Pacific Fishery Management Council (Council) has submitted Amendment 6 to its Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region (FMP) for Secretarial review and approval and is requesting comments from the public. Copies of the amendment may be obtained from the address below.

DATES: Comments on the amendment should be submitted on or before December 13, 1990.

ADDRESSES: All comments should be sent to E. C. Fullerton, Regional Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the amendment and the environmental assessment are available from the Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, NMFS, Terminal Island, California (213) 514–6660 or Alvin Z. Katekaru NMFS, Pacific Area Office, Honolulu, Hawaii (808) 955–8831.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*) requires that each Regional Fishery Management Council submit any fishery management plan or amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon receiving a plan or amendment, immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or amendment. The Magnuson Act also established seven national standards that fishery management plans must meet to be approvable, and requires the Secretary to publish guidelines for the Councils to use in applying these national standards. These guidelines (50 CFR part 602) were revised in 1989 (54 FR 30711 *et seq.*) to require that the Councils amend their fishery management plans to include definitions of overfishing for the respective fisheries. Amendment 6 to the FMP is intended to address the requirements of the Secretary's guidelines for compliance with national standards 1 and 2 of the Magnuson Act.

Amendment 6 defines overfishing in terms of spawning potential ratio (SPR). This is a measure of the reproductive capacity of the spiny and slipper lobster stocks and is calculated as spawning stock biomass per recruit (SSBR) of the fished population divided by the SSBR of the unfished population. The SPR is inversely proportional to fishing mortality and ranges from 1.0 to 0.0. The size limits chosen by the Council to prevent overfishing under the FMP were set to maintain a SPR of 0.5; that is, SSBR when fishing mortality is equal to natural mortality would be 50 percent of the SSBR in the absence of fishing. This is the goal of the FMP. It is recognized, however, that declines in the stock can occur due to natural variability, as well as fishing, such that SPR can drop below 0.5. It is the Council's intent to take action to reverse any downward trend in SPR before the minimum SPR level of 0.2 specified in the overfishing definition is approached or reached. The FMP includes an annual review process under which the Council will evaluate the status of stocks and conditions in the fishery annually to determine the trend of the stocks relative to this definition of overfishing, and to take action before any stock becomes overfished.

No Federal regulatory action is necessary to implement this amendment. The Council has determined that the proposed amendment is consistent to the maximum extent practicable with the coastal zone programs of the governments in the Council's region and has asked for concurrance with this determination. The amendment incorporates an environmental assessment which is available upon request (see **ADDRESSES**). The amendment has no direct effect on either the fishery resources or fishery participants and will not require rulemaking; therefore neither a Regulatory Impact Analysis nor a Regulatory Flexibility Analysis is necessary. There will be no impact on marine mammals or endangered species. There is no taking as defined in Executive Order 12630. No information collection burdens are imposed. If actions are taken subsequently to implement new conservation and management measures to prevent overfishing, the appropriate analyses and determinations will be made at that time.

Amendment 6 does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 29, 1990.

Joe P. Clem,

Acting Director, Office of Fishery Conservation and Management, National Marine Fisheries Services.

[FR Doc. 90–25919 Filed 11–29–90; 5:05 p.m.]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Negotiated Settlement on a Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Fiji

October 30, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending a limit and restraint period.

EFFECTIVE DATE: November 6, 1990.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

During negotiations held October 10–12, 1990 between the Governments of the United States and the Republic of Fiji, agreement was reached, among other things, to establish a bilateral agreement on cotton and man-made fiber textile products in Categories 351/651, produced or manufactured in Fiji and exported during three consecutive one-year periods, beginning on January 1, 1990 and extending through December 31, 1992. A formal exchange of notes will follow. In the letter published below, the Chairman of CITA directs the Commissioner of Customs to control imports for the first agreement period.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 21214, published on May 23, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated October 12, 1990, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

October 30, 1990.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 16, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. This directive concerns imports of cotton and man-made fiber textile products in Categories 351/651, produced or manufactured in the Republic of Fiji and exported during the twelve-month period which began on February 28, 1990 and extends through February 27, 1991.

Effective on November 6, 1990, you are directed to increase the limit for Categories 351/651 to 135,000 dozen [1] for the amended restraint period which began on January 1, 1990 and extends through December 31, 1990.

Also, you are directed to charge the following amounts to the limit for Categories 351/651. These charges are for goods exported and imported during the period January 1, 1990 through February 27, 1990. Charges previously made to Categories 351/651 shall be retained.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1989.

Category	Amount to be charged
351	16,078 dozen.
651	464 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-25943 Filed 11-1-90; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius

October 29, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Mauritius agreed to amend the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated June 3 and June 4, 1985, as amended, to extend through September 30, 1992. In the letter published below, the Chairman of CITA directs the Commissioner of Customs to control limits for the period October 1, 1990 through September 30, 1991.

A copy of the current bilateral textile agreement between the Governments of the United States and Mauritius is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Information regarding the 1991 Correlation will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

October 29, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of June 3 and 4, 1985, as amended, between the Governments of the United States and Mauritius; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 5, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Mauritius and exported during the twelve-month period beginning on October 1, 1990 and extending through September 30, 1991, in excess of the following restraint levels:

Category	12-Mo. restraint level [1]
Knit group: 345, 438, 445, 446, 645 and 646, as a group.	122,075 dozen.
Levels not in a Group:	
237	142,922 dozen.
331	378,742 dozen pairs.
335/835	56,812 dozen.
336	66,854 dozen.
338/339	267,645 dozen.
340/640	428,889 dozen of which not more than 265,144 dozen shall be in Categories 340-Y/640-Y [2].
341/641	301,731 dozen.
342/642/842	196,516 dozen.
347/348	536,553 dozen.
352/652	1,123,600 dozen of which not more than 955,060 dozen shall be in Category 352.
442	11,012 dozen.
604-A [3]	268,269 kilograms.
638/639	307,792 dozen.
647/648/847	441,867 dozen.

[1] The limits have not been adjusted to account for any imports exported after September 30, 1990.

[2] Category 340-Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640-Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[3] Category 604-A: only HTS number 5509.32.0000.

Imports charged to these category limits for the period which began on October 1, 1989 and extended through September 30, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of June 3 and 4, 1985, as amended, between the Governments of the United States and Mauritius.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-25941 Filed 11-1-90; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990: Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1990 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: December 3, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On July 27, August 24 and September 14, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 30745, 34726 and 37929) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1990:

Commodities

Folder, Equipment Record
7510-00-065-0166
Tape, Pressure-Sensitive Adhesive
7510-00-890-9872
7510-00-074-5122
7510-00-074-5157
7510-00-074-5100
7510-00-074-5160
7510-00-890-9874
7510-00-074-5174
7510-00-890-9875
7510-00-074-5178
Cap, Garrison
8405-01-232-5343
8405-01-232-5344
8405-01-232-5345
8405-01-232-5346
8405-01-232-5347
8405-01-232-5348
8405-01-232-5349
8405-01-232-5350
8405-01-232-5351
8405-01-232-5352
8405-01-232-5353
8405-01-232-5354
8405-01-232-5355

Service

Commissary Shelf Stocking and Custodial, Walter Reed Army Medical Center, Silver Spring, Maryland.
Grounds Maintenance, Naval Aviation Depot, Marine Corps Air Station, Cherry Point, North Carolina.
Mailroom Service, U.S. Army Engineer District, L. Mendel Rivers Federal Building, Charleston, South Carolina.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 90-25978 Filed 11-1-90; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990: Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1990 commodities to be produced and services to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 3, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1990, which was published November 3, 1989 (54 FR 46540):

Janitorial/Custodial, NETPMSA, Saufley Field, Florida
Janitorial/Custodial, Federal Building and U.S. Courthouse, 550 West Fort, Boise, Idaho
Janitorial/Custodial at the following Baton Rouge, Louisiana locations:
Federal Building and U.S. Courthouse, 707 Florida
Social Security Building, 350 Donmoor
Restroom Cleaning, Federal Center (Buildings 1, 1A, 1B, 2, 2A and 2C), 74 North Washington, Battle Creek, Michigan

Deletions

It is proposed to delete the following commodities from Procurement List 1990, which was published November 3, 1989 (54 FR 46540):

Brush, Shoe and Stove
7920-00-852-8170
Brush Set, Shoe and Stove
7920-00-205-0200
Sponge, Plastic
7920-00-633-9908, 7920-00-633-9911, 7920-00-633-9915, 7920-00-685-4152
Pencil, Woodcased, with Imprinting
7510-050-8LP-6521

Beverly L. Milkman,

Executive Director.

[FR Doc. 90-25979 Filed 11-1-90; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

October 29, 1990.

The USAF Scientific Advisory Board Logistics Cross-Matrix Panel will meet on 19 November 1990, from 2 p.m. to 5 p.m., 20 November 1990 from 8 a.m., to 5 p.m., and 21 November 1990 from 8 p.m. to 11 a.m. at AGMC, Aerospace Guidance and Metrology Center, Newark AFS, OH. The purpose of the meeting is to indoctrinate LCMP on the mission and programs of the AGMC. The request for the closed meeting is based on the fact that discussions will be held on classified defense information and contractor proprietary information matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) and (4) thereof, and accordingly will be closed to the public.

For futher information, contact the Scientific Advisory Board Secretariat at (202) 697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-25944 Filed 11-1-90; 8:45 am]

BILLING CODE 3910-01-M

BEST COPY AVAILABLE

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 3, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503 Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: James O'Donnell (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from James O'Donnell at the address specified above.

Dated: October 29, 1990.

James O'Donnell,

Acting Director, for Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Extension.
Title: Status Report on Homeless Children and Youth from State Educational Agencies under the Stewart B. McKinney Homeless Assistance Act.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 54.
Burden Hours: 4320.
Recordkeeping Burden:
Recordkeepers: 54.
Burden Hours: 270.
Abstract: State education agencies under the Stewart B. McKinney Homeless Assistance Act will submit annual reports to the Department. The Department uses the information to identify the numbers, locations and specific needs of homeless children and to prepare a report to Congress.

Office of Planning, Budget and Evaluation

Type of Review: New.
Title: Review of Local Title VII Project Evaluation and Improvement Practices.
Frequency: One-time.
Affected Public: Individuals or households; State or local governments; Small businesses or organizations.
Reporting Burden:
Responses: 1480.
Burden Hours: 962.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The goals of this study is to describe local evaluation practices and to assess related materials and technical assistance supported by the Department. The study will lead to recommendations for improving the system.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: IEA Reading Literacy Study.
Frequency: Non-recurring.
Affected Public: Individuals or households; State or local governments; Non-profit institutions; Small businesses or organizations.
Reporting Burden:
Responses: 14000.
Burden Hours: 25083.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This study will collect data on reading skills and activities of fourth and ninth graders. This study is intended to develop a unified definition of literacy and measure the comparative ability of educational systems to teach literacy skills.

[FR Doc. 90–25905 Filed 11–1–90; 8:45 am]

BILLING CODE 4000–1–M

National Advisory Committee on Accreditation and Institutional Eligibility; Meeting

AGENCY: National Advisory Committee on Accreditation and Institutional Eligibility, Education.

ACTION: Notice of public meeting.

SUMMARY: This amends the notice of a public meeting of the National Advisory Committee on Accreditation and Institutional Eligibility, published in the Federal Register on Monday, October 15, 1990, Volume 55, Pages 41745 and 41746.

DATES AND TIMES: November 13, 14, and 15—8:30 a.m. until 5 p.m.

LOCATION: Sheraton National Hotel, Columbia Pike and Washington Boulevard, Arlington, Virginia 22204, Telephone: 703–521–1900.

FOR FURTHER INFORMATION CONTACT: Steven G. Pappas, Executive Director, National Advisory Committee on Accreditation and Institutional Eligibility, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3915, ROB–3, Washington, DC 20202–5151, Telephone: 202–708–5656.

SUPPLEMENTARY INFORMATION: The public is being given less than 15 days' notice due to the delayed selection of the meeting site.

Authority: 5 U.S.C.A. Appendix 2.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90–25921 Filed 11–1–90; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3857–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 15, 1990 through October 19, 1990 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 13949).

Draft EISs

ERP No. D–AFS–J65163–MT Rating EC1, Lakalaho Timber Sale and Road Construction, Implementation, Flathead National Forest, Glacier View Ranger District, Flathead County, MT.

Summary:

EPA believes that since the draft EIS for the Lakalaho Timber Sale incorporates a high degree of sensitivity to impacts on water quality and fisheries, the cumulative effects of this and the other proposed timber sale activities may impact Big Creek and Hallowat Creek. Site-specific plans for water quality, aquatic habitat and biological monitoring should be fully described and presented in the EIS.

ERP No. D–USN–B11011–MA Rating EC2, Naval Air Station South Weymouth Closure and Realignment, Implementation, Plymouth and Norfolk Counties, MA.

Summary:

EPA supports the Navy's decision to tier the current draft EIS. EPA requests that the final EIS and Record of Decision identify the Navy's commitment to conduct additional studies to fully identify the existing environmental conditions at the South Weymouth NAS and to prepare an EIS on closure impacts at South Weymouth and the receiving bases and on re-use options.

ERP No. D–USN–K11043–CA Rating EC2, San Francisco Bay Area Candidate Base Closure/Realignment, Naval Air Station and Naval Aviation Depot, Alameda; Naval Supply Center and Naval Hospital, Oakland; Naval Station, Treasure Island and Naval Air Station, Moffett Field, Implementation, San Francisco, Alameda and Santa Clara Counties, CA.

Summary:

EPA expressed environmental concerns with several direct and indirect (secondary) project impacts on wetlands, air quality, hazardous waste cleanup activities, base reuse actions, and potential environmental impacts at bases which will receive new units or missions. EPA requested that the Navy undertake a commitment to prepare environmental impact statements for all reuse and major realignment actions and the environmentally sensitive resources (wetlands, wildlife habitats) be transferred if possible to agencies such as the National Park Service or the U.S. Fish and Wildlife Service.

ERP No. DS–DOE–A84029–00 Rating LO, Superconducting Super Collider (SSC) Construction and Operation, Design Modifications and Selected Site, Ellis County, TX.

Summary:

EPA has no objection to the proposed action. However, EPA requests additional information in the area of air quality assessment for the PM–10 standard to strengthen the supplemental final EIS.

Final EISs

ERP No. F–AFS–K83000–CA Plumas National Forest Prototype Project, Augmenting Snow Pack by Cloud Seeding Using Ground Based Dispensers, Implementation, Plumas and Sierra Counties, CA.

Summary:

Review of the Final EIS has been completed and the project found to be satisfactory.

ERP No. F–BLM–K67021–CA Castle Mountain Open Pit Heap Leach Gold Mine Project, Construction and Operation, Permit Approval, Regulation Changes and Modifications, San Bernardino County, CA.

Summary:

Review of the Final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. FS–MMS–A02116–00 Mid 1987—Mid 1992 Outer Continental Shelf (OCS) Oil and Gas Lease Sales, 5 Year Program Cumulative Impacts of OCS Development on Migratory Species Lease Offerings, Offshore the Alaska and Pacific Regions, AK, WA, CA and OR.

Summary:

EPA remains concerned that the cumulative impact level definitions did not make a distinction between threatened and endangered species and nonendangered species. The document described the qualitative method, but not the analytical approach that was used to establish the existing levels of impact and the incremental contribution to impact levels from the current and future leasing program and projected non-OCS activities.

Dated: October 30, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90–26007 Filed 11–1–90; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3857–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements Filed October 22, 1990 Through October 26, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900394, Draft EIS, FAA, TX, Stinson Municipal Airport Improvement, Airport Layout Plan, Approval and Funding, City of San Antonio, Bexar County, TX, *Due:* December 17, 1990, *Contact:* John D. Anderson (817) 624–5610.

EIS No. 900395, Second Draft EIS, AFS, PA, Allegheny National Forest Understory Vegetation Management Amendment, Implementation, Warren, McKean, Forest and Elk Counties, PA, *Due:* December 17, 1990, *Contact:* Robert L. White (814) 723–5150.

EIS No. 900396, Draft EIS, AFS, ID, Beartrack Open Pit Heap Leach Gold Mine Project, Construction and Operation, NPDES Permit and section 404 Permit, Salmon National Forest, Lemhi County, ID, *Due:* December 21, 1990, *Contact:* Tom Buchta (208) 756–2215.

EIS No. 900397, Final EIS, SCS, CA, Upper Penitencia Creek Watershed Flood Damage Reduction Plan, Funding, Implementation and 404 Permit, Cities of San Jose and Milpitas, Santa Clara County, CA, *Due:* December 03, 1990, *Contact:* Pearlie S. Reed (916) 449–2861.

EIS No. 900398, Final EIS, FHW, HI, Kahekili Highway/US–83 Widening, Likelike Highway/US–63 to Kamehameha Highway and Interchange Construction at Likelike Highway/US–63, Funding, Island of Oahu, City and County of Honolulu, HI, *Due:* December 03, 1990, *Contact:* William R. Lake (808) 541–2700.

EIS No. 900399, Final EIS, FHW, NC, Northern Wake Expressway, Construction, NC–55 Near Morrisville to US 64 Near Knightdale, Funding and 404 Permit, Wake and Durham Counties, NC, *Due:* December 03, 1990, *Contact:* Nicholas L. Graf (919) 790–2859.

EIS No. 900400, Final EIS, FHW, OH, KY, US 62/68/Ohio River Bridge Construction, Mason County, KY to

Brown County, OH, Funding, US Coast Guard Bridge Permit and COE Section 404 Permit, Mason Co., KY and Brown Co., OH, *Due:* December 12, 1990, *Contact:* Paul E. Toussaint (502) 227–7321.

EIS No. 900401, Draft EIS, FAA, TX, Dallas/Fort Worth International Airport, Construction and Operation, Runway 16/34 East and Runway 16/34 West, Airport Layout Plan, Approval and Funding, Cities of Dallas and Fort Worth, TX, *Due:* December 17, 1990, *Contact:* Ms. Mo Keane (817) 624–5810.

EIS No. 900402, Final EIS, BLM, WY, Grass Creek/Cody Resource Area Wilderness Designation, Suitability or Nonsuitability, Owl Creek, Bobcat Draw Badlands, Sheep Mountain, Red Butte and McCullough Peaks WSAs, Several Counties, WY, *Due:* December 03, 1990, *Contact:* Joe Vessels (307) 347–9871.

EIS No. 900403, Draft EIS, AFS, OR, Mt. Ashland Ski Area Development Plan, Implementation, Additional Alternatives, Special Use Permit, Ashland Ranger District, Rogue River National Forest, Jackson County, OR, *Due:* December 17, 1990, *Contact:* Mary L. Smelcer (503) 482–3333.

Dated: October 30, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90–26008 Filed 11–1–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

October 26, 1990.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 2100 M Street NW, Suite 140, Washington, DC 20037. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Bruce McConnell, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB Number: 3060–0147.

Title: Section 64.804, Extension of Unsecured Credit for Interstate and Foreign Communications Services to Candidates for Federal Office.

Action: Extension.

Respondents: Businesses or other for-profit.

Frequency of Response: On occasion reporting and semi-annually.

Estimated Annual Burden: 26 responses; 208 hours total annual burden; 8 hours average burden per response.

Needs and Uses: Section 64.804 requires communications common carriers with operating revenues exceeding $1 million who extend unsecured credit to a political candidate or person on behalf of such candidate for Federal office to report, twice a year, data including due and outstanding balances. The information is used by FCC staff to monitor the extent of credit extended ot candidates for Federal office.

OMB Number: 3060–0165.

Title: Part 41, Franks § 41.31, Records to be maintained and reported to be filed.

Action: Extension.

Respondents: Businesses or other for-profit.

Frequency of Response: On occasion reporting and recordkeeping requirement.

Estimated Annual Burden: 68 recordkeepers; 408 hours total annual burden; 6 hours average burden per recordkeeper.

Needs and Uses: Section 41.31 requires that common carriers subject to the Communications Act of 1934, as amended, maintain records to reflect the name, address, etc., of persons holding telephone or telegraph franks, so as to enable the Commission to compile, if needed, reports in this area. Though the FCC is not currently requiring the actual periodic reporting of this data, it is information which should continue to be maintained in case the need arises to assure that the franking privileges are being adequately policed by the companies themselves. This information helps to ensure that franks are being addressed fairly. Failure to have the information recorded would prohibit the FCC from being able to respond to complaints and to be able to police the activity.

OMB Number: 3060–0286.

Title: Section 80.302, Notice of discontinuance, reduction, or impairment of service involving a distress watch.

Action: Extension.

Respondents: Individuals or households, State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 160 responses; 160 hours total annual burden; 1 hour average burden per response.

Needs and Uses: The reporting requirement contained in § 80.302 is necessary to ensure that the U.S. Coast Guard is quickly informed when a coast station which is responsible for maintaining a listening watch on a designated marine distress and safety frequency, discontinues, reduces or impairs its communications services. This notification allows the Coast Guard to seek an alternate means of providing radio coverage to protect the safety of life and property at sea or object to the planned diminution of service. The information is used by the U.S. Coast Guard district office nearest to the coast station. Once the Coast Guard is aware that such a situation exists, it is able to inform the maritime community that radio coverage has or will be affected and/or seek to provide coverage of the safety watch via alternate means. When appropriate the Coast Guard may file a petition to deny an application.

OMB Number: 3060–0401.

Title: General Docket No. 87–112, Regional Plans for Public Safety Services.

Action: Extension.

Respondents: State or local governments.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 39 responses; 12,480 hours total annual burden; 320 hours average burden per response.

Needs and Uses: The Commission was directed by the U.S. Congress to develop a plan to ensure that the present and future electromagnetic spectrum requirements of State and local public safety authorities are considered in allocation of the spectrum. The Commission established policies, procedures, and rules that constitute a national plan for public safety services (National Plan). The requirement is for public safety agencies to submit to the FCC, regional plans for their areas. The regional plans will define electromagnetic spectrum requirements and how the agencies plan to use the frequencies allocated for public safety use. The regional plans are used by the FCC in the development of a Public Safety National Plan.

Federal Communications Commission

Donna R. Searcy,

Secretary.

[FR Doc. 90–25961 Filed 11–1–90; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–880–DR]

Amendment to Notice of a Major Disaster Declaration; Georgia

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA–880–DR), dated October 19, 1990, and related determinations.

DATED: October 29, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective October 29, 1990.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90–25964 Filed 11–1–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–880–DR]

Notice of Major Disaster and Related Determinations; Georgia

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–880–DR), dated October 19, 1990, and related determinations.

DATED: October 19, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that, in a letter dated October 19, 1990, the President declared a major disaster under the authority of Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93–288, as amended by Public Law 100–707), as follows:

I have determined that the damage in certain areas of the State of Georgia, resulting from severe storms and flooding beginning on October 11, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 3109(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael J. Polny of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Georgia to have been affected adversely by this declared major disaster:

The counties of Burke, Columbia, Jefferson, and Richmond for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Jerry D. Jennings,

Deputy Director, Federal Emergency Management Agency.

[FR Doc. 90–25965 Filed 11–1–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–880–DR]

Amendment to Notice of a Major Disaster Declaration; Georgia

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA–880–DR), dated October 19, 1990, and related determinations.

DATED: October 22, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Georgia, dated October 19, 1990, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 19, 1990:

The counties of Emanuel, Johnson, McDuffie, and Screven for Individual Assistance and Public Assistance; and Jenkins County for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90–25966 Filed 11–1–90; 8:45 am]

BILLING CODE 6718–02–M

South Carolina; Major Disaster and Related Determinations

[FEMA–881–DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–881–DR), dated October 22, 1990, and related determinations.

DATES: October 22, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

NOTICE: Notice is hereby given that, in a letter dated October 22, 1990, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288, as amended by Pub. L. 100–707), as follows:

I have determined that the damage in certain areas of the State of South Carolina, resulting from severe storms and flooding beginning on October 11, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency

Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of South Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Paul E. Hall of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Carolina to have been affected adversely by this declared major disaster:

The counties of Aiken, Calhoun, Cherokee, Kershaw, Lee, Spartanburg, and Sumter for Individual Assistance and Public Assistance; and

The counties of Darlington and Union for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 90-25967 Filed 11-1-90; 8:45 am]

BILLING CODE 6718-02-M

Board of Visitors for the Emergency Management Institute, Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the Emergency Management Institute (EMI).

Dates of meeting: December 5-8, 1990.

Place: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Emmitsburg, Maryland 21727.

Time: December 5-8:30 a.m. to 5 p.m., December 6-8:30 a.m. to 5 p.m.

Proposed agenda: The agenda will concentrate on status of efforts established within the 1990 Board of Visitors Workplan and preparation of their 1990 Annual Report, which will address issues such as core curriculum, emergency management standards project, use of technology and alternate delivery strategies in training, student stipends, heavy duty search and rescue, and program evaluation.

The meeting will be open to the public with approximately ten seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, Office of Training, 16825 South Seton Avenue, Emmitsburg, Maryland 21727 (telephone number, 301-447-1251) on or before November 26, 1990.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Director's Office, Office of Training, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: October 23, 1990.

Laura Buchbinder,

Acting Director, Office of Training.

[FR Doc. 90-25968 Filed 11-1-90; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Jacksonville Port Authority, *et al.*

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200259-001.

Title: Jacksonville Port Authority, TMT/Amtrans Terminal Agreement.

Parties: Jacksonville Port Authority, TMT/Amtrans.

Synopsis: The Agreement amends the Parties' basic agreement to provide for: (1) Extending the term of the agreement for one year: and (2) rate increases on wharfage, container crane, container stacker or mobile gantry container crane, straddle carrier, and land rental.

By Order of the Federal Maritime Commission.

Dated: October 29, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-25893 Filed 11-1-90; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Forms submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Following is the package submitted to OMB since the last publication.

(For a copy of the package, call the FSA, Report Clearance Officer 202-252-5604.)

Application Requirements for the Low Income Home Energy Assistance Program (LIHEAP)—970-0075—Grantees applying for the Low Income Energy Assistance Program (LIHEAP) block grant funds must submit an application that meets the LIHEAP statute and regulations prior to receiving federal funds.

Respondents: State and local governments.

Number of Respondents: 177.

Frequency of Response: Annually.

Estimated Average Burden per Response: 1 hour for Model State Plan Format or 2 hours if narrative format used.

Estimated Annual Burden: 265 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations for the proposed information collection should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: October 11, 1990.

Naomi B. Marr,

Associate Administrator, Office of Management and Information Systems.

[FR Doc. 90-25634 Filed 11-1-90; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 90N-0370]

Bolar Pharmaceutical Co., Inc.; Withdrawal of Approval of Abbreviated New Drug Applications for Meclofenamate Sodium Capsules

AGENCY: Food and Drug Administraiton, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of two abbreviated new drug applications (ANDA's) for meclofenamate sodium 50 milligrams (mg) and 100 mg capsules held by Bolar Pharmaceutical Co., Inc., 33 Ralph Ave., Copiague, NY 11726-0030 (Bolar). Bolar has requested that approval of the applications be withdrawn, thereby waiving its opportunity for a hearing. FDA has become aware that the applications contain untrue statements of material fact.

EFFECTIVE DATE: November 2, 1990.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Division of Regulatory Affairs (HFD-366), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: Recently, FDA became aware of the submission of false data in support of the approval of ANDA's 70-400 and 70-401 held by Bolar for 50 mg and 100 mg meclofenamate sodium capsules, respectively. Bolar's products are a generic version of Meclomen Capsules manufactured by Parke Davis. The false submission includes the results of bioequivalence studies purportedly performed on a Bolar product that were actually performed on another firm's product. Bolar has ceased marketing these products and has recalled them to the retail level. In addition, by letter dated August 1, 1990, Bolar has requested that approval of its applications be withdrawn, thereby waiving its opportunity for a hearing.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of abbreviated new drug applications 70-400 and 70-401, and all amendments and supplements thereto, is hereby withdrawn, effective November 2, 1990.

Dated: October 26, 1990.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 90-25953 Filed 11-2-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90M-0317]

Wesley-Jessen; Premarket Approval of AQUAFLEX® Litetint™ (Tetrafilcon A) For Daily and Extended Wear Spherical Hydrophilic Contact Lenses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Wesley-Jessen, Chicago, IL, for premarket approval, under the Medical Device Amendments of 1976, of the AQUAFLEX® LiteTint™ (tetrafilcon A) for Daily or Extended Wear Spherical Hydrophilic Contact Lenses. The lenses are to be manufactured under an agreement with CooperVision, Inc., San Jose, CA, which has authorized Wesley-Jessen to incorporate information contained in its approved premarket approval application and related supplements for the AQUAFLEX® (tetrafilcon A) Hydrophilic Contact Lens. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 14, 1990, of the approval of the supplemental application.

DATES: Petitions for administrative review by December 3, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1080.

SUPPLEMENTARY INFORMATION: On October 2, 1989, Wesley-Jessen, Chicago, IL 60610, submitted to CDRH and application for premarket approval of the AQUAFLEX® LiteTint™ (tetrafilcon A) for Daily or Extended Wear Spherical Hydrophilic Contact Lenses in a green visibility tint. The lenses are indicated for daily or extended wear (1 to 7 days between removals for cleaning and disinfection, as recommended by the eye-care practitioner) for the correction of visual acuity in not-aphakic patients with nondiseased eyes that are myopic or hyperopic. The lenses may be worn by persons who may exhibit astigmatism of 2.50 diopters (D) or less that does not interfere with visual acuity. The lenses are indicated in a power range of plano to −10.00 D and are to be disinfected using either a heat or chemical disinfection system. The green tinted lenses contain the color additive phthalocyanine green in accordance with the color additive listing provisions of 21 CFR 73.3124. The application includes authorization from Cooper Vision, Inc., San Jose, CA 95134, to incorporate information contained in its approved premarket approval application and related supplements for the AQUAFLEX® (tetrafilcon A) Hydrophilic Contact Lens.

On September 14, 1990, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above. The labeling of the AQUAFLEX® LiteTint™ (tetrafilcon A) for Daily or Extended Wear Spherical Hydrophilic Contact Lenses states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360(g)), for administrative review of CHRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's

action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 3, 1990, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sections 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR (21 5.53).

Dated: October 25, 1990.

Elizabeth D. Jacobson,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 90–25950 Filed 11–1–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90M–0444]

Incstar Corp.; Premarket Approval of the CYCLO-TRAC® SP Whole Blood Radioimmunoassay for Cyclosporine and the CYCLO-TRAC® SP Serum/Plasma Radioimmunoassay for Cyclosporine

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by INCSTAR Corp., Stillwater, MN, for premarket approval, under the Medical Device Amendments of 1976, of the CYCLO–Trac® SP Whole Blood Radioimmunoassay for Cyclosporine and the CYCLO–Trac® SP Serum-Plasma Radioimmunoassay for Cyclosporine. After reviewing the recommendation of the Clinical Chemistry and Clinical Toxicology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 28, 1990, of the approval of the application.

DATES: Petitions for administrative review by December 3, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kaiser Aziz, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1243.

SUPPLEMENTARY INFORMATION: On November 17, 1989, INCSTAR Corp., Stillwater, MN 55082, submitted to CDRH an application for premarket approval of CYCLO–Trac® SP Whole Blood Radioimmunoassay for Cyclosporine and for CYCLO–Trac® SP Serum/Plasma Radioimmunoassay for Cyclosporine. The CYCLO–Trac® SP Whole Blood Radioimmunoassay for Cyclosporine (Cyclosporin A, Cyclosporin, Sandimmune®) is indicated for the quantitative measurement of cyclosporine in whole blood as an aid in the management of heart, kidney, and liver transplant patients receiving cyclosporine. The CYCLO–Trac® SP Serum/Plasma Radioimmunoassay for Cyclosporine (Cyclosporin A, Cyclosporin, Sandimmune®) is indicated for the quantitative measurement of cyclosporine in serum and plasma as an aid in the management of heart, kidney, and liver transplant patients.

On September 6, 1990, the Clinical Chemistry and Clinical Toxicology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 28, 1990, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Kaiser Aziz (HFZ–440), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 3, 1990, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sections 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 25, 1990.

Elizabeth D. Jacobson,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 90–25951 Filed 11–1–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90M–0333]

Cardiac Control Systems, Inc.; Premarket Approval of the Maestro® SAVVI™ Model 305 VDD Pacing System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Cardiac Control Systems, Inc., Palm Coast, FL, for premarket approval, under the Medical Device Amendments of 1976, of the Maestro® SAVVI™ Model 305 VDD Pacing System. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 25, 1990, of the approval of the application.

DATES: Petitions for administrative review by December 3, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mark D. Kramer, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1220.

SUPPLEMENTARY INFORMATION: On December 8, 1989, Cardiac Control Systems, Inc., Palm Coast, FL 32137, submitted to CDRH an application for premarket approval of the Maestro® SAVVI™ Model 305 VDD Pacing System. The Maestro® SAVVI™ 305 VDD Pacing System, which includes the Maestro® SAVVI™ Model 305 cardiac pulse generator, the PolySafe™ Models AT–333 and AT–334 A–Track™ leads, the Maestro® Model 1006 Release II Pacemaker Programmer, and the Model 1401 Differential Amplifer Adapter, is indicated for patients with various degrees of atrioventricular (A–V) block or intraventricular condition disorders and good sinus node function who require permanent pacing. Specific indications for its primary mode of operation (atrial-synchronous ventricular pacing in the VDD mode) include A–V or intraventricular conduction disorders and an intact sinus response to exercise (adequate chronotropic competence).

On June 15, 1990, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 25, 1990, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Mark D. Kramer (HFZ–450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 3, 1990, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 25, 1990.

Elizabeth D. Jacobson,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 90–25952 Filed 11–1–90; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Consensus Development Conference On Clinical Use of Botulinum Toxin

Notice is hereby given of the NIH Consensus Development Conference on "Clinical Use of Botulinum Toxin" sponsored by the National Institute of Neurological Disorders and Stroke and by the NIH Office of Medical Applications of Research. The conference will be held November 12–14, 1990, in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Botulinum toxin, well known and feared as a major cause of food poisoning, was recently approved by the Food and Drug Administration as a new drug for the treatment of several difficult-to-treat conditions, including blepharospasm, hemifacial spasm, and strabismus. In addition, the use of the toxin for several other conditions—such as spasmodic torticollis, and spasticity—has been investigated and looks promising. For a number of these disorders, such as the focal dystonias, there has not been any effective therapy, and the arrival of botulinum toxin has been met with a great deal of enthusiasm and interest. However, much of the data is new, and there are some controversies. It is important to clarify the state of the art including the indications, the contraindications, and the appropriate techniques for its use.

The conference will bring together neurologists, ophthalmologists, otolaryngologists, speech pathologists, other health care professionals, and the public. Following one-and-a-half days of presentations and discussion by the audience, an independent consensus panel will weigh the scientific evidence and write a draft statement in response to the following key questions:

- What are the mechanisms of action of botulinum toxin?
- What are the indications for botulinum toxin treatment?
- What are the contraindications for botulinum toxin treatment?
- What are the general principles of technique of injection and handling for

safe and effective use of botulinum toxin?

• What are the short-term and long-term side effects and complications of therapy?

• What basic and clinical research is needed on botulinum toxin?

On the final day of the meeting, the consensus panel chairman will read the draft statement to the conference audience and invite comments and questions.

Information on the program may be obtained from: Conference Registrar, Prospect Associates, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 468-6338.

Dated: October 23, 1990.

William F. Raub,

Acting Director, NIH.

[FR Doc. 90-26108 Filed 11-1-90; 8:45 am]

BILLING CODE 4140-01-M

Office of the Inspector General

Privacy Act of 1974; Report on Altered System

AGENCY: Office of the Inspector General (OIG), Department of Health and Human Services.

ACTION: Notification of Altered System of Records.

SUMMARY: In accordance with the requirements in the Privacy Act, the Office of Inspector General is publishing a notice of a major alteration to its system of records notice 09-90-0003 entitled "Criminal Investigative Files of the Inspector General, HHS/OS/OIG." The proposed alternations include substantive changes to the types of individuals included in the system, record retrieval, location of the records, and the routine uses of the information in the system. Other minor changes are being made for clarification or updating.

DATES: OIG has sent a report of the altered system notice to Congress and the Office of Management and Budget on October 26, 1990. Interested parties may submit comments on the proposed alteration on or before January 2, 1991. These changes will be effective 60 days from the date of submission to the Office of Management and Budget, and the proposed routine uses will be effective December 3, 1990.

ADDRESSES: Written comments should be addressed to Office of Inspector General, Department of Health and Human Services, Attention: LRR-30-N, room 5246, 330 Independence Avenue, SW., Washington, DC 20201. Comments received will be available for public inspection in room 5551, at the above address during normal business hours from 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Susan C. Callahan, Office of General Counsel, room 5541, at the above address or call (202) 619-0335.

SUPPLEMENTARY INFORMATION: The Office of Inspector General maintains information in this system of records in order to conduct, document, and track investigations covering a wide range of potential criminal violations involving HHS progams and operations. Since the establishment of the OIG in 1977, its investigative responsibilities have significantly broadened, and its investigative activities have grown increasingly more complex, requiring a major alteration of the notice to reflect these changes. The following summarizes the major changes being proposed:

Categories of Individuals Covered by the System

The current description of the individuals covered by this system, is being revised to more accurately describe the categories of subjects, witnesses, complainants, and other key individuals now in the system of records. This change will expand the categories of individuals, permitting retrieval of information on some additional key individuals who are not described in the current outdated description. This change is necessary in order to better track the status of complaints and investigations, and to facilitate the coordination of multiple cases involving individuals associated with each. This is also necessary because some targets of OIG investigations no longer fall within the categories of individuals described in the current system. For example, OIG investigations of Social Security number violations now often involve individuals who are not recipients under HHS programs.

Routine Uses

Paragraphs (a) and (e) have been combined into a new paragraph (a) which clarifies that disclosures to other law enforcement agencies covered by this provision permit disclosure of any information relevant to a legitimate investigation of the receiving agency regardless of whether the specific records disclosed indicate a particular violation. The purpose of these disclosures is to assist in the enforcement of the laws of other governmental jurisdications, a use consistent with the law enforcement purpose for which these records are maintained.

A new routine use, (b), is being added to more clearly provide for the disclosures necessary to the successful investigation and prosecution of OIG cases. It includes necessary disclosures such as those to grand juries, prosecutors, and judges made in the course of completing a case. Current routine uses (b) and (k), covering disclosures to the Department of Justice, are more limited and will be deleted. Disclosures covered by those provisions fall under the new routine use (b) and revised routine use (k) discussed below.

A new routine use (e) has been added to cover the infrequent situations where it is in the public interest to initiate a general release of information pertaining to an investigation. Such disclosures are necessary to effective law inforcement in order to alter the public and deter future criminal misconduct. Disclosures falling within this routine use include bulletins on particular crimes and announcements of particular actions such as arrests and indictments.

Revised routine use (k) outlines necessary disclosures made in the course of litigation involving HHS, its employees, or the United States. This has been revised based on guidance by the Office of Management and Budget. It is essentially the same type of disclosure provision found in most Federal systems of records and is necessary to the effective administration of justice in such proceedings.

A new routine use (m) is being added to provide for disclosures to third party contacts, including public and private organizations, in order to obtain information relevant to an OIG investigation, to identify violations, or otherwise assist in the conduct of OIG investigations. Such disclosures are necessary to effective law enforcement.

Retrievability

The OIG proposes to use the Social Security number to retrieve records in certain cases. Over the years, OIG has assumed responsibility for a number of responsibility for a number of investigations involving Social Security programs. Since Social Security program information is maintained by Social Security number, the use of the number as an additional retrieval mechanism can greatly facilitate locating specific case files pertaining to these and similar programs.

Other, minor changes are being made to clarify certain provisions and bring the notice into conformity with organizational, legislative, and policy changes. They include the following:

System location

The system location is being revised by adding the locations of Office of Investigations (OI), OIG, field offices to more accurately reflect the fact that the regional offices also maintain the complete investigative record file and are the primary locations for records of on-going OI investigations.

Categories of records in the system

This has been revised to make clear that extracts from the criminal investigative file are maintained in computerized form for case management and tracking purposes. No additional information will be maintained.

Records retention

The retention period for these records is being expanded from 5 years to 10 years to bring it into conformity with the retention period established for records of Offices of Inspectors General by the National Archives and Records Administration.

Systems manager

The notice is being revised to indicate that the Inspector General is the sole system manager.

The entire system notice is being reprinted below for the convenience of the reader.

Dated: October 26, 1990.

Bryan Mitchell,

Acting Inspector General.

09-90-0003

SYSTEM NAME:

Criminal Investigative Files of the Inspector General HHS/OS/OIG.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION(S):

Office of the Inspector General, HHS Room 5250 Wilbur J. Cohen Bldg., 330 Independence Ave., SW., Washington, DC 20201

Region 1, Office of Investigations (OI), OIG, P.O. Box 8767, Government Center Station, Boston, Massachusetts 02114

Region 2, OI, OIG, P.O. Box 3209, Church Street Station, New York, New York 10008

Region 3, OI, OIG, P.O. Box 8049, Philadelphia, Pennsylvania 19101

Region 4, OI, OIG, P.O. Box 2288, Atlanta, Georgia 30301

Region 5, OI, OIG, P.O. Box 2197, Chicago, Illinois 60690

Region 6, Room 4-E-1B, 1100 Commerce Street, Dallas, Texas 75242

Region 7, OI, OIG, P.O. Box 2692, Denver, Colorado 80201

Region 9, OI, OIG, P.O. Box 42516, San Francisco, California 94101

Washington Field Office, Room 5728 Cohen Bldg., 330 Independence Ave., SW., Washington, DC 20201

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals relevant to a criminal investigation, including but not limited to the subjects of an investigation, complainants, and key witnesses where necessary for future retrieval.

CATEGORIES OF RECORDS IN THE SYSTEM:

Criminal investigative files and extracts from that file consisting of a computerized case management and tracking file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, 5 U.S.C. App. 3, authorize Inspectors General to conduct, supervise and coordinate investigations relating to the programs and operations of their respective agencies.

PURPOSE(S):

Pursuant to the Inspector General Act of 1978, 5 U.S.C. App. 3, this system is maintained for the purpose of conducting, documenting, and tracking investigations conducted by the OIG or other investigative agencies regarding HHS programs and operations, documenting the outcome of OIG reviews of allegations and complaints received concerning HHS programs and operations, aiding in prosecutions brought against the subjects of OIG investigations, maintaining a record of the activities which were the subject of investigations, reporting the results of OIG investigations to other Departmental components for their use in operating and evaluating their programs and in imposition of civil or administrative sanctions, and acting as a repository and source for information necessary to fulfill the reporting requirements of 5 U.S.C. App. 3.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

a. Information from this system of records may be disclosed to any other federal agency or any foreign, state, or local government agency responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation where that information is relevant to an enforcement proceeding, investigation, or prosecution within the agency's jurisdiction.

b. Information from this system of records may be disclosed to (1) the Department of Justice in connection with requests for legal advice and in connection with actual or potential criminal prosecutions or civil litigation pertaining to the Office of Inspector General, and (2) a Federal or State grand jury, a Federal or State court, administrative tribunal, opposing counsel, or witnesses in the course of civil or criminal proceedings pertaining to the Office of Inspector General.

c. Information from this system of records may be disclosed to a federal, state, or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a license, grant or other benefit.

d. Information from this system of records may be disclosed to a federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

e. Relevant information may be disclosed from this system of records to the news media and general public where there exists a legitimate public interest, e.g., to provide information on events in the criminal process, such as indictments, and where necessary for protection from imminent threat to life or property.

f. Where federal agencies having the power to subpoena other federal agencies' records, such as the Internal Revenue Service, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

g. When the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system, relevant records will be disclosed to such contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

h. Disclosures may be made to organizations deemed qualified by the Secretary to carry out quality assessments.

i. Information from this system of records may be disclosed in the course of employee discipline of competence determination proceedings.

j. Disclosures may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

k. Information from this system of records may be disclosed to the Department of Justice, to a judicial or administrative tribunal, opposing counsel, and witnesses, in the course of proceedings involving HHS, an HHS employee (where the matter pertains to the employee's official duties), or the United States, or any agency thereof where the litigation is likely to affect HHS, or HHS is a party or has an interest in the litigation and the use of the information is relevant and necessary to the litigation.

l. Information from this system of records may be disclosed to a Federal, State or local agency maintaining pertinent records, if necessary to obtain a record relevant to a Department decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

m. Information from this system of records may be disclosed to third party contacts, including public and private organizations, in order to obtain information relevant and necessary to the investigation of potential violations in HHS programs and operations, or where disclosure would enable the OIG to identify violations in HHS programs or operations or otherwise assist the OIG in pursuing on-going investigations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records, which take the form of index cards, investigative reports, micro computer disks, computer main frame files and computer printed listings are maintained under secure conditions in limited access areas. Written documents and computer disks are maintained in secure rooms, in security type safes or in lock bar file cabinets with manipulation proof combination locks. Computer main frame files are on-line in guarded, combination locked computer rooms.

RETRIEVABILITY:

Records are retrieved by manual or computer search of indices containing the name or Social Security number of the individual to whom the record applies. Records may be cross-referenced by case or complaint number.

SAFEGUARDS:

Records are maintained in a restricted area and accessed only by Department personnel. Access within OIG is strictly limited to authorized staff members. All employees are given instructions on the sensitivity of such files and the restrictions on disclosure. Access within HHS is strictly limited to the Secretary, Under-Secretary, and other officials and employees on a need-to-know basis. All main frame computer files and printed listings are safeguarded in accordance with the provisions of the National Institute of Standards and Technology Federal Information Processing Standards 41 and 31, and the HHS Information Resources Management Manual, Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Investigative files are retained for 10 years after completion of the investigation and/or actions based thereon. Paper and computer indices are retained permanently. The records control schedule and disposal standards may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER AND ADDRESS:

Inspector General, Room 5250 Wilbur J. Cohen Building, Department of Health and Human Services, 330 Independence Avenue, SW., Washington, DC 20201.

NOTIFICATION PROCEDURES:

Exempt, however consideration will be given requests addressed to the system manager. For general inquiries, it would be helpful if the request included date of birth and Social Security number as well as the name of the individual.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the system manager at the address specified above, and reasonably identify the record, specify the information to be contested, and the corrective action sought with supporting justification.

RECORD SOURCE CATEGORIES:

The OIG collects information from a wide variety of sources, including information from the Department and other Federal, State, and local agencies, witnesses, complainants and other nongovernmental sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to subsection (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), the Secretary has exempted this system from the access, amendment, correction, and notification provisions of the Act, 5 U.S.C. 552a(c)(3), (d)(1)–(4), (e)(3), and (e)(4)(G) and (h).

[FR Doc. 90–25981 Filed 11–1–90; 8:45 am]

BILLING CODE 4150–04

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, October 12, 1990.

(Call PHS Reports Clearance Officer on 202–245–2100 for copies of package)

1. Study of Food Label Formats—0910–0268—A sample of household food shoppers will be interviewed in an experimental settting to determine ability to identify nutrient differences between foods under alternative nutrition label formats. The data will provide input to proposed rulemaking to establish a new standardized format.

Respondents: Individuals or households; *Number of Respondents:* 1,550; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .33 hours; *Estimated Annual Burden:* 512 hours.

2. Uncompensated Services Reporting and Recordkeeping (42 CFR 124 subpart F)—0915–0077—Health care facilities which have received funds under titles VI and XVI of the PHS Act are required to provide prescribed amounts of care to persons unable to pay and to submit to the Secretary data and information which reasonably demonstrates compliance with this requirement. Individuals denied such care have a right to appeal that denial to the Secretary. *Respondents:* Individuals or households, State or local governments, nonprofit institutions.

	No. of respondents	No. of hours per response	No. of responses per respondent
Disclosure/notification (42 CFR 124.504 (a) & (c) & 124.507)	2,139	2.35	162
Reporting HRSA form 710 (42 CFR 124.509(a))	1,514	14	1
Complaint information (42 CFR 124.511(a))	100	.4	1
Compliance alternatives (42 CFR 124.513(c), 124.509 (b) & (c), & 124.514(c))	667	.9	1
Recordkeeping (42 CFR 124.510 (a) & (b))	2,139	75	

Estimated annual burden, 995,067 hours.

3. Update Survey of Areas Closed or Otherwise Restricted Because of Toxic Substance Contamination—NEW—All States and territories of the U.S. will be contacted to provide information on closed and restricted areas because of toxic substance contamination. Site description, use limitations, and State agency authorities will be reported.

Respondents: State or local governments; *Number of Respondents:* 37; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 9 hours; *Estimated Annual Burden:* 330 hours.

4. Medical Device Reporting—0910–0201—This regulation requires a manufacturer or importer of medical devices to report to FDA whenever they possess information suggesting a device has caused or contributed to a death, serious injury, or has malfunctioned, and is likely to cause or contribute to a death or serious injury. Importers are required to establish and maintain files or reports and records. *Respondents:* Businesses or other for-profit, small businesses or organizations.

	No. of respondents	No. of hours per response	No. of responses per respondent
Reporting Reports by manufacturers & importers (21 CFR 803.24)	925	4	16
Recordkeeping Complaint files (21 CFR 803.31)	227	8	

Estimated annual burden, 59,540 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address:

Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: October 25, 1990.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 90–25878 Filed 10–1–90; 8:45 am]

BILLING CODE 4150–17–M

Orphan Products Board; Public Meeting

AGENCY: Office of the Assistant Secretary for Health, DHHS.

ACTION: Notice of public meeting; Orphan Products Board.

SUMMARY: The Department of Health and Human Services and the Office of the Assistant Secretary for Health announce that a public meeting of the Orphan Products Board will be held on December 5, 1990 in Washington, DC. During the afternoon session there will be an opportunity for interested persons to present information and views on the issue of orphan products development. The meeting will be chaired by Dr. James O. Mason, Assistant Secretary for Health and Chairman, Orphan Products Board. It will commence at 9 a.m., in room 800, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

ADDRESSES: Written requests to participate should be sent to Dr. John V. Kelsey, Executive Secretary, Orphan Products Board, Food and Drug Administration (HF–35), room 15–61, 5600 Fishers Lane, Rockville, Maryland 20857, and should be received by November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. John V. Kelsey, Executive Secretary, Orphan Products Board, Food and Drug Administration (HF–35), 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4903.

SUPPLEMENTARY INFORMATION: An orphan drug is a drug for the treatment of a rare disease or condition which either (1) has a prevalence in the United States of under 200,000 persons or (2) has a higher prevalence and for which there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug. The Orphan Drug Act, Public Law 97–414 enacted on January 4, 1983, as amended, established a number of incentives to encourage the development and marketing of orphan drugs.

The Act also established an Orphan Products Board to promote the development of drugs and devices for rare diseases or conditions and to assure appropriate coordination among all interested Federal agencies, manufacturers, and organizations representing patients with rare diseases.

The Orphan Products is chaired by the Assistant Secretary for Health. The Board is composed of representatives from the Department of Health and Human Services (DHHS), the Veterans Administration (VA), the National Institute for Disability and Rehabilitation Research (NIDRR), and the Department of Defense (DoD). Within DHHS, representatives from the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), the Centers for Disease Control (CDC), the Food and Drug Administration (FDA), the Health Care Financing Administration (HCFA), the National Institutes of Health (NIH), and the Office of the Assistant Secretary for Health (OASH) serve on the Board. This public meeting will have three purposes;

1. An update will be provided on the activities of the Orphan Products Board, and members of the Board will discuss their agencies' recent orphan product development activities, especially with respect to implementation of the recommendations of the National Commission on Orphan Diseases.

2. A ceremony will be held to honor the recipients of the Public Health Service Award for Exceptional Achievement in Orphan Products Development. This award recognizes the efforts of individuals who have contributed to the development of drugs for rare diseases or conditions. The awards will be presented by the Assistant Secretary for Health.

3. In keeping with its mandate to foster actions within the Department to facilitate the research, development, and approval of orphan products and to coordinate government activities with the private sector in order to achieve these goals, the Board encourages presentations by members of the public on any issues involving the development and availability of orphan products. Those persons wishing to make a presentation at the meeting on the third topic should submit a written request for a time slot to the Executive Secretary of the Orphan Products Board. The request for participation should be submitted before November 23, 1990, and should include:

a. Name, address, and telephone number of the person desiring to make a presentation;

b. Affiliation, if any;

c. A summary of the presentation; and

d. The approximate amount of time required for the presentation (no more than 10 minutes, unless more time can be justified.)

Individuals and organizations with common interests or proposals are urged to coordinate or consolidate their presentations. Joint presentations may be required of persons or organizations with a common interest. The time available will be allocated among the individuals who request an opportunity for a presentation. Formal written statements or extensions of remarks (five copies) may be presented to the Chairman on the day of the meeting for inclusion in the record of the meeting. At the discretion of the Chairman, and as time permits, any person in attendance may be heard. This time will, most likely, be at the end of the scheduled session. For those unable to attend the meeting, comments may be sent to the Executive Secretary of the Orphan Products Board at the address listed above.

Orphan Products Board, Public Forum, Hubert H. Humphrey Building—room 800, December 5, 1990.

Session I—Chairperson: Dr. James O. Mason.

9 a.m.: Introductions and Welcome—Dr. James O. Mason, Assistant Secretary for Health and Chairman, Orphan Products Board

9:15 a.m.: PHS Awards for Exceptional Achievement in Orphan Products Development—Dr. James O. Mason

9:30 a.m.: Implementation of the Recommendations of the National Commission on Orphan Diseases—Agency Representatives to the Orphan Products Board

10:30 a.m.: Break

Session II—Chairperson: Mr. James Friedman.

10:45 a.m.: Access to Health Care/Health Insurance/Reimbursement Policy, Dr. Gail Wilensky, Administrator, HCFA

11:15 a.m.: Disability Determination and Eligibility for Supplemental Security Income—Representative, Social Security Administration

11:45 a.m.: Medical Foods and Medical Devices as Orphan Products: Summary of Reports—Dr. Marlene Haffner—FDA

12:15 p.m.: Lunch

Session III—Chairperson: Mr. James Friedman.

1:30 p.m.: Who International Classification of Diseases (ICD XI) Genetic and Acquired Rare Diseases—Mr. Robert Israel, Deputy Director, NCHS/CDC

2 p.m.: Determining the Prevalence of Rare Diseases—Report from Workshop—Dr. Stephen Groft (NIH/OSPL), Dr. Stephen Heyse and Dr. Kayvon Safavi (NIH/NIAMS)

2:30 p.m.: Open Public Forum

Dated: October 25, 1990.

James O. Mason,

Acting Secretary for Health.

[FR Doc. 90-25992 Filed 11-1-90; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-1917; FR-2606-N-96]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: November 2, 1990.

ADDRESSES: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is the collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the proprties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's Federal Register Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *GSA:* Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501-0067; *U.S. Air Force:* H. L. Lovejoy, Bolling AFB, HQ-USAF/LEER, Washington, DC 20332-5000; (202) 767-191; *Dept. of Agriculture:* Marsha Pruitt, USDA, 14th and Independence Avenue SW., South Bldg., room 1566, Washington, DC 20250; (202) 447-3338. (These are not toll-free numbers.)

Dated: October 25,1990.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Suitable Land (by State)

Kentucky

Martins Fork Lake Property
(See County), KY, Co: Harlan
Landholding Agency: GSA
Property Number: 549040002
Status: Unutilized
Comment: .23 acre; no utility and sewer lines available GSA NO. 4-D-GR-KY-516A

Suitable Buildings (by State)

Maine

White Mountain National Forest
Stoneham, ME
Location: From Bethel, ME: 20 mi. SW on State Hwy 35—10 mi. west on Hwy 5 to Virginia Lake Access Rd.—4 mi. north to property.
Landholding Agency: Agriculture
Property Number: 159040001
Status: Unutilized
Comment: 2256 sq.ft.; 2 story wood frame; needs major rehab; structurally unsound

South Dakota

Bldg. 8471B: Skyway Housing
Ellsworth Air Force Base
501 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040003
Status: Unutilized
Comment: 837 sq. ft.; one story wood frame residence; structurally deteriorated; possible asbestos, potential utilities; secured area with alternate access

Bldg. 8457A: Skyway Housing
Ellsworth Air Force Base
401 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040004
Status: Unutilized

Comment: 1170 sq.ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8457B: Skyway Housing
Ellsworth Air Force Base
403 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040005
Status: Unutilized
Comment: 1114 sq.ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8474B: Skyway Housing
Ellsworth Air Force Base
84 Front Street
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040006
Status: Unutilized
Comment: 1120 sq.ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8462B; Skyway Housing
Ellsworth Air Force Base
43 Front Street
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040007
Status: Unutilized
Comment: 1120 sq.ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8425D; Skyway Housing
Ellsworth Air Force Base
436 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040008
Status: Unutilized
Comment: 963 sq.ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8473C; Skyway Housing
Ellsworth Air Force Base
258 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040009
Status: Unutilized
Comment: 960 sq.ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8438F; Skyway Housing
Ellsworth Air Force Base
240 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040010
Status: Unutilized
Comment: 1213 sq.ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8416B; Skyway Housing
Ellsworth Air Force Base
600 Arnold Lane
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040011
Status: Unutilized
Comment: 921 sq.ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8488A; Skyway Housings
Ellsworth Air Force Base
16 Front Street
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040012
Status: Unutilized
Comment: 1238 sq. ft.; one story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8415D; Skyway Housings
Ellsworth Air Force Base
610 Arnold Lane
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040013
Status: Unutilized
Comment: 960 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8450F; Skyway Housings
Ellsworth Air Force Base
249 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040014
Status: Unutilized
Comment: 1213 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8488B; Skyway Housings
Ellsworth Air Force Base
14 Front Street
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040015
Status: Unutilized
Comment: 1256 sq. ft.; one story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8487C; Skyway Housings
Ellsworth Air Force Base
18 Front Street
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040016
Status: Unutilized
Comment: 963 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8427E; Skyway Housings
Ellsworth Air Force Base
418 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040017
Status: Unutilized
Comment: 963 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8447A; Skyway Housings
Ellsworth Air Force Base

211 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040016
Status: Unutilized
Comment: 1114 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8480A; Skyway Housing
Ellsworth Air Force Base
4 Front Street
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040019
Status: Unutilized
Comment: 963 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8468B; Skyway Housing
Ellsworth Air Force Base
531 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force Property Number: 189040020
Status: Unutilized Comment: 1114 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8475C; Skyway Housing
Ellsworth Air Force Base
79 Front Street
Ellsworth, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040021
Status: Unutilized
Comment: 960 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8475E; Skyway Housing
Ellsworth Air Force Base
77 Front Street
Ellsworth, AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040022
Status: Unutilized
Comment: 960 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8466D; Skyway Housing
Ellsworth Air Force Base
508 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040023
Status: Unutilized
Comment: 1120 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8442C; Skyway Housing
Ellsworth Air Force Base
220 Billy Mitchell
Ellsworth, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040024
Status: Unutilized
Comment: 1120 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8468C; Skyway Housing
Ellsworth Air Force Base
533 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040025
Status: Unutilized
Comment: 1114 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Bldg. 8418A; Skyway Housing
Ellsworth Air Force Base
522 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington
Landholding Agency: Air Force
Property Number: 189040026
Status: Unutilized
Comment: 1114 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access

Universe of Properties
Total = 60
Suitable = 26
Suitable Buildings = 25
Suitable Land = 1
Unsuitable = 34
Unsuitable Buildings = 34
Unsuitable Land = 0
Number of Resubmissions = 0

[FR Doc. 90-25794 Filed 11-1-90; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

DEPARTMENT OF EDUCATION

Call for Nominations to the Advisory Committee for the White House Conference on Indian Education

AGENCY: Office of the Secretary, Department of the Interior and Office of the Secretary, Department of Education.

ACTION: Notice.

SUMMARY: A White House Conference on Indian Education was authorized by sections 5501–5508 of Public Law 100–297, the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 as amended by Public Law 100–427, section 26, September 9, 1988 and Public Law 101–301, section 5, May 24, 1990 (25 U.S.C. 2001 note). The purpose of the White House Conference on Indian Education shall be to: (1) Explore the feasibility of establishing an independent Board of Indian Education that would assume responsibility for all existing Federal programs relating to the education of Indians; and (2) develop recommendations for the improvement of education programs to make the programs more relevant to the needs of Indians.

Both the Secretary of Education and the Secretary of the Interior have designated individuals to an Interagency Task Force which will plan and conduct the Conference. Also, both Departments will jointly name a Director of the Interagency Task Force.

Section 5506 of Public Law 100–297 calls for the establishment of an Advisory Committee of the Conference. The function of the Advisory Committee shall be to assist and advise the Task Force in planning and conducting the Conference. Ten (10) of the 24 individuals who will serve on the Advisory Committee are to be appointed by the President.

The purpose of this notice is to request federally and non-federally recognized Indian tribes, public and private schools serving Indian children, states, tribal organizations, and any other interested parties to nominate individuals for consideration by the President for appointment to the Advisory Committee. Final nominations to the President will include those individuals with demonstrated knowledge and experience in Indian education programs. Such final nominees should possess the qualifications necessary to support the two primary goals of the Conference.

DATES: Nominations will be accepted until December 1, 1990.

ADDRESSES: Nominations should be addressed to the Task Force on the White House Conference on Indian Education, Department of the Interior, 1894 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Benjamin Atencio, 202–208–7167.

Dated: October 23, 1990.
Manuel Lujan, Jr.,
Secretary of the Interior.

Dated: October 23, 1990.
Lauro Cavazos,
Secretary of Education.

[FR Doc. 90-26111 Filed 11-1-90; 8:45 am]
BILLING CODE 4310-02-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-010-01-4332-09; Fes 90-31]

Availability of Final Wilderness Environmental Impact Statement (EIS) for the Owl Creek, Bobcat Draw Badlands, Sheep Mountain, and Red Butte Wilderness Study Area of the Grass Creek Resource Area and the McCullough Peaks Wilderness Study Area of the Cody Resource Area, Worland District, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Grass Creek/Cody Final Wilderness Environmental Impact Statement, Wyoming.

SUMMARY: The Grass Creek/Cody Wilderness Environmental Statement assesses the environmental consequences of managing five wilderness study areas as wilderness or nonwilderness. The alternatives assessed include: (1) A "No Wilderness Alternative" for each wilderness study area; (2) an "All Wilderness Alternative" for each wilderness study area; (3) a "Conflict Reduction Alternative" for three wilderness study areas; and (4) a "Wilderness Manageability Alternative" for four wilderness study areas.

The names of the wilderness study areas, their total acreage and the acreage recommended suitable and nonsuitable under the Proposed Action are:

Owl Creek—710 acres—710 acres suitable for wilderness;
Bobcat Draw Badlands—17,150 acres—18,540 acres suitable for wilderness (includes 1,280 acres recommended for acquisition plus an additional 110 acres of public land);
Sheep Mountain—23,250 acres—23,250 acres nonsuitable for wilderness;
Red Butte—11,250 acres—11,350 acres nonsuitable for wilderness;
McCullough Peaks—25,210 acres—8,020 acres suitable for wilderness and 17,190 acres nonsuitable for wilderness.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and by the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no action on these proposals can be taken by the Secretary of the Interior during the 30 days following the filing of this EIS. This complies with the Council of Environmental Quality Regulations, 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: Copies of the environmental impact statement may be obtained from the District Manager, Bureau of Land Management, Worland District, P.O. Box 119, Worland, Wyoming 82401.

Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, Office of Public Affairs, 1849 C Street, NW., Washington, DC 20240
Bureau of Land Management, Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001
Bureau of Land Management, Worland District Office, 101 South 23rd Street, Worland, Wyoming 82401
Bureau of Land Management, Cody Resource Area Office, 1714 Stampede Avenue, Cody, Wyoming 82414

FOR FURTHER INFORMATION CONTACT: Jim Roseberry, EIS Team Leader, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401 (307) 347–9871.

Dated: October 26, 1990.
Jonathan P. Deason,
Director, Office of Environmental Affairs.

[FR Doc. 90-25713 Filed 11-1-90; 8:45 am]
BILLING CODE 4310-22-M

[CA-010-01-4333.11]

Meeting of the Bakersfield District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Bakersfield District Advisory Council.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and the Federal Land Policy and Management Act of 1976 (sec. 309), the Bakersfield District Advisory Council will meet in Bakersfield, California.

DATES: November 30–December 1, 1990.

ADDRESSES: Field trip to the oil fields of western Kern County leaving from 4301 Rosedale Highway, Bakersfield at 8 a.m. Friday, November 30. Meeting in the Kern Council of Governments meeting room, 2nd floor, 1401 19th Street, Suite 200, Bakersfield, 8 a.m. to 4 p.m. Saturday, December 1.

SUPPLEMENTARY INFORMATION: The Bakersfield District Advisory Council is a 10 member council appointment by the Secretary of the Interior to give counsel and advice regarding planning and management of public lands resources to the District Manager of the Bureau of Land Management Bakersfield District. The Council will meet on Friday for a field trip to the oil fields of western Kern county where numerous federal oil leases are located. The agenda for the Saturday meeting will include a discussion of the planning objectives for the Resource Management Plan (RMP) now being written for the Caliente Resource Area, the potential for oil and gas development and how it may be affected by the RMP, and a report on the Carrizo Plain Natural Area. The meeting is open to the public, and anyone wishing to address the Council about any public land issue may do so during the public comment period from 1 to 2 p.m. Written comments may be submitted to the address below.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, Bakersfield District Office, 800 Truxtun Avenue, room 311, Bakersfield, CA 93301, telephone (805) 861–4229.

Dated: October 24, 1990.
Robert D. Rheiner, Jr.,
District Manager.

[FR Doc. 90-25945 Filed 11-1-90; 8:45 am]
BILLING CODE 4310-40-M

[AZ-020-4332-02]

Phoenix District Advisory Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Phoenix District Advisory Council.

DATE: December 5, 1990.

ADDRESSES: 2015 West Deer Valley Road, Phoenix, Arizona.

SUMMARY: The Phoenix District Advisory Council of the Bureau of Land Management meets December 5 at the Phoenix District Office, 2015 West Deer Valley Road, Phoenix, at 9 a.m. to discuss and make recommendations on various public land issues.

The Council has been established by and will be managed according to the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976, and the Public Rangelands Improvement Act of 1978. The agenda for the meeting includes:

—Kingman Resource Management Plan
—Phoenix Resource Management Plan Amendment
—Santa Maria Allotment AMP and EA
—Land Exchanges
—Southwest Regional Landfill
—Wilderness Legislation
—Barry M. Goldwater Range
—BLM Management Updates
—Business from the Floor
—Public Comments and Statements
—Future Meetings and Agenda Topics

SUPPLEMENTARY INFORMATION: This is a public meeting and the Bureau of Land Management welcomes the presentation of oral statements or the submission of written statements that address the issues on the meeting agenda or related matters.

Dated: October 22, 1990.
Henry E. Bisson,
District Manager.
[FR Doc. 90-25904 filed 11-1-90; 8:45 am]
BILLING CODE 4310-84-M

[WY-030-01-4320-14]

Rawlins District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Rawlins District Grazing Advisory Board.

SUMMARY: Notice is hereby given in accordance with Public Law 92-463 and 94-579 that a meeting of the Rawlins District Grazing Advisory Board will be held. This notice sets forth the schedule and proposed agenda for the meeting.

DATES: December 6, 1990, 10 a.m. to 3 p.m.

ADDRESSES: Bureau of Land Management, Lander Resource Area Office, 125 Sunflower, P.O. Box 589, Lander, Wyoming, 82520.

FOR FURTHER INFORMATION CONTACT: John Spehar, District Range Conservationist, Rawlins District Office, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming, 82301 (307)324-7171.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Introduction and opening remarks
2. Election of a chairman and vice-chairman
3. Opportunity for the public to present information or make comments
4. Improvements proposed for completion in FY91 with range betterment (8100) funds
5. Update on status of Great Divide ROD and Divide RPS Update
6. Update on wild horse program

The meeting is open to the public. Written statements may also be filed for the board's consideration.

Summary minutes of this meeting will be on file in the Rawlins District Office and available for public inspection (during regular business hours) within 30 days of the meeting.

Richard Bastin,
District Manager.
[FR Doc. 90-25897 Filed 11-1-90; 8:45 am]
BILLING CODE 4310-23-M

[AZ-040-01-4320-02]

Meeting for the Safford District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM), Safford District announces a forthcoming meeting of the Safford District Grazing advisory Board.

DATES: Wednesday, December 5, 1990, 9 a.m.

ADDRESSES: BLM Office, 425 E. 4th Street, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Law 92-463. The agenda for the meeting will include:

1. Election of Officers
2. Proposed Range Improvement Projects for Fiscal Year 1991
3. Allotment Management plans Proposed for Fiscal Year 1991
4. Wilderness Issues
5. Safford District Resource Management Plan
6. BLM Management Update
7. Business from the Floor

The meeting will be open to the public. Interested persons may make oral statements to the Board. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th St., Safford, Arizona 85546, by 4:15 p.m., Tuesday, December 4, 1990.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: October 24, 1990.
Ray A. Brady,
District Manager.
[FR Doc. 90-25902 Filed 11-1-90; 8:45 am]
BILLING CODE 4310-32-M

[WY-930-DE-4214-10; WYW 23824]

Opening Order; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order for public land revoke by Public Land Order (PLO) No. 6157 on February 8, 1982.

SUMMARY: This notice opens 22.50 acres of public land to the operation of the public land laws. Executive Order of September 29, 1917, creating Powersite Reserve No. 647, originally protected the Yellowtail (Big Horn Canyon) reservoir site. The land was not needed for the purpose for which it was withdrawn, and was subsequently revoke by PLO 6157 on February 8, 1982. Lot 8 section 6, of T. 56N., R. 95 W., was inadvertently omitted from the list of lands opened to entry by PLO 6157.

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Tamara J. Gertsch, BLM Wyoming State Office, Bureau of Land Management, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003, 307-775-6115.

At 9:30 a.m. on November 5, 1990, the following described public land shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:30 a.m. on November 5, 1990, shall be considered as simulanteously filed at that time. Those received thereafter shall be considered in the order of filing.

Sixth Principal Meridian

T. 56 N., R. 95 W.,
Sec. 6, lot 8.

The area described contains 22.50 acres in Big Horn County.

Dated: October 25, 1990.
Ray Brubaker,
State Director, Wyoming.
[FR Doc. 90-25896 Filed 11-1-90; 8:45 am]
BILLING CODE 4310-23-M

East Mojave National Scenic Area, California; Supplemental Rules Revision/Adoption

AGENCY: Bureau of Land Management, Interior.

ACTION: Revision of supplemental rules regarding firearms use in the East Mojave National Scenic Area.

SUMMARY: The purpose of this revision is to provide a better description of the "No Shooting" safety zones in the East Mojave National Scenic Area and corrects **Federal Register** Notice Vol. 53, No. 240, December 14, 1988.

Firearms Use

1. Except as otherwise provided by statute of the State of California, it shall be unlawful for any person to discharge a firearm in the East Mojave National Scenic Area within 150 yards of any building without having in his/her possession the written permission of the owner or tenant thereof, or within 150 yards of any tent, motor home, house trailer, or other temporary encampment of persons without having in his immediate possession the written permission of the occupants or tenants thereof. (Adoption of San Bernardino County Ordinance 22015).

2. The East Mojave Scenic Area Management Plan recommended establishment of shooting closures at the Piute Creek Area of Environmental Concern (ACEC), Granite Mountains Research Natural Area and adjacent recreation sites, public within the boundary of Providence Mountain Lands State Recreation Area, and within 150 yards of developed recreation sites including but not limited to Hole-in-the-Wall and Midhills campgrounds. Discharging of all firearms, including but not limited to target shooting and the taking of game, is prohibited within and into these areas. The shooting closures are specifically described as all Public Lands within:

a. Piute Creek ACEC: Located approximately 30 miles northwest of Needles, California and approximately 9 miles west of U.S. 95. Legally described as: 150 yards from Fort Piute Recreation Site at the Fort ruins within:

T.12N., R.18E., sections 13, 24, S.B.M.

b. Granite Mountains Research Natural Area: Located approximately 65 miles west of Needles, California and northwest of Interstate 40 off Kelbaker Road. Legally described as:

T.9N., R.12E., sections 35, 36, S.B.M.
T.9N., R.13E., sections 31, S.B.M.
T.8N., R.12E., sections 1, 2, 11, 12, 13, 14, S.B.M.
T.8N., R.13E., sections 4, 5, 6, 7, 8, 9, 10, 17, 18, S.B.M.—west of Kelbaker Road.

3. The discharge of firearms is prohibited across or within 50 yards of either side of the following roads:

a. Kelbaker Road
b. Ivanpah/Lanfair Roads
c. Cedar Canyon Road
d. Cima Road
e. Kelso-Cima Road
f. Black Canyon Road
g. Essex Road (North of Interstate 40)
h. Mojave Road
i. Morningstar Mine Road

EFFECTIVE DATE: These rules and designations will be effective on or before December 3, 1990, and will remain in effect until rescinded or modified by the authorized officer. Enforcement of these rules will be implemented as areas are signed and information made available to the public.

FOR FURTHER INFORMATION CONTACT: Area Manager, Needles Resource Area, 101 W. Spikes Road, P.O. Box 888, Needles, CA 92363 (619) 326-3896.

SUPPLEMENTARY INFORMATION: "No Shooting" safety zones have been established to provide for the protection of person, property, and public land resources in high use areas within the East Mojave National Scenic Area. Authority for establishing supplemental rules is contained in title 43 CFR 8365.1-6. These rules have been recommended and adopted through the development of a comprehensive management plan for the East Mojave National Scenic Area including extensive review by the public and other government agencies. Any person violating this restriction is subject to punishment pursuant to title 43 CFR 8365.1-6.

October 25, 1990.
Ed Hastey,
State Director.
[FR Doc. 25900 Filed 11-1-90; 8:45 am]
BILLING CODE 4310-40-M

[NV-930-91-4212-11; N-52537]

Reality Action; Recreation and Public Purposes Classification; Churchill County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification of public land.

SUMMARY: The following described public lands in Churchill County, Nevada have been examined and found suitable for classification for lease or conveyance to Churchill County under the provisions of the Recreation and Public Purposes Act as amended (43 U.S.C. 869 et seq.):

Mount Diablo Meridian

T. 21 N., R. 28 E.,
Sec. 36, E½W½, E½W½W½.

(containing 240 acres).

Churchill County proposes to use the lands for a motor racing complex.

The subject lands were withdrawn for reclamation purposes in association with the Newlands Reclamation Project and are under Bureau of Reclamation jurisdiction. The Bureau of Reclamation has approved of the determination that the lands are not needed for reclamation or other Federal purposes. Lease or conveyance of the lands would be in the public interest.

The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Carson City District Office.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. The lands will remain closed to operations under the mining laws.

For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Carson City District Office, 1535 Hot Springs Road, Ste. 300, Carson City, NV 89706. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, this classification will become effective 60 days from the date of publication in the **Federal Register**.

Dated this 18th day of October, 1990.
James W. Elliott,
District Manager.
[FR Doc. 90-25898 Filed 11-1-90; 8:45 am]
BILLING CODE 4310-HC-M

[CO-930-01-4214-10; COC-52106]

Proposed Withdrawal and Reservation of Public Land and Public Minerals; Opportunity for Public Meeting; Colorado

October 24, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw public land and public domain minerals near La Junta, Colorado, for 20 years to protect and conserve paleontological, archaeological, and other natural resource values within the Purgatoire River Canyonlands. This notice closes the 40-acres of public land to operation of the public land laws and the entire 6,199 acres of Federal minerals to location and entry under the mining laws for up to two years. The lands remain open to mineral leasing.

DATES: Comments on this proposed withdrawal must be received on or before January 30, 1991.

ADDRESSES: Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, (303) 239-3706.

SUPPLEMENTARY INFORMATION: On October 4, 1990, the Department of Agriculture, Forest Service, filed an application to withdraw the following described public land and these lands containing public domain minerals from location and entry under the United States mining laws (30 U.S.C. Ch. 2):

1. Sixth Principal Meridian

T. 27 S., R. 55 W.,
- Sec. 26, NW¼NE¼, N½NW¼;
- Sec. 27, N½, and SW¼;
- Sec. 28, E½NE¼, NW¼NE¼, NW¼NW¼, SW¼, and S½SE¼;
- Sec. 29, S½NE¼, NW¼, N½SW¼, and SE¼.
- Sec. 33, E½E½, NW¼NE¼, and NE¼ NW¼;
- Sec. 34, NE¼NW¼, and W½W½;
- Sec. 35, S½SW¼.

T. 28 S., R. 55 W.,
- Sec. 3, lots 3 and 4, SE¼NE¼, and S½;
- Sec. 4, Those portions of lots 1, 2, 3, and SW¼NW¼ Southerly of the Pinon Canyon Maneuver Site boundary;
- Sec. 10, N½NW¼, and SW¼NW¼;
- Sec. 20, NE¼NE¼;
- Sec. 29, W½W½, and SW¼SE¼;
- Sec. 30, Lots 3 and 4;
- Sec. 31, Lot 4, E½, NE¼NW¼, and SE¼ SW¼;
- Sec. 32, E½E½, W½NE¼, NW¼NW¼, SE¼NW¼, and SW¼.

T. 29 S., R. 55 W.,
- Sec. 5, lot 4;
- Sec. 6, lots 1 and 2.

T. 28 S., R. 56 W.,
- Sec. 13, SW¼SW¼;
- Sec. 14, Those portions of SE¼SE¼ southerly of the Pinon Canyon Manuever Site boundary;
- Sec. 23, Those portions of NE¼ southerly of the Pinon Canyon Manuever Site boundary;
- Sec. 24, NW¼NW¼;
- Sec. 25, NE¼, E½NW¼, NE¼SW¼, N½ SE¼, and SE¼SE¼.

T. 29 S., R. 56 W.,
- Sec. 2, lot 2, SW¼NE¼, and S½NW¼;
- Sec. 4, Those portions of the W½ southerly of the Pinon Canyon Maneuver Site boundary;
- Sec. 7, Those portions of S½NE¼, SE¼ SW¼, and the SE¼ southeasterly of the Pinon Canyon Maneuver Site boundary;
- Sec. 8, SW¼NW¼, and SW¼SW¼;
- Sec. 14, N½NW¼;
- Sec. 15, N½NE¼, W½NW¼, and SE¼ NW¼;
- Sec. 17, N½W¼.

T. 30 S. R. 57 W.,
- Sec. 17, Those of the S½ lying southerly of the Pinon Canyon Maneuver Site boundary;
- Sec. 19, Those portions of the SE¼NE¼, NE¼SW¼, and NW¼SE¼, lying southerly of the Pinon Canyon Maneuver Site boundary;
- Sec. 20, NW¼NW¼, and SW¼SW¼;
- Sec. 30, Those portions of lot 2, SE¼NE¼, and E½NW¼, lying southerly of the Pinon Canyon Maneuver Site boundary.

The areas described aggregate approximately 6,156 acres of public domain minerals.

2. Sixth Principal Meridian

T. 28 S., R. 55 W.,
- Sec. 17, SE¼NW¼.

The area described contains 40 acres of public land.

The purpose of the withdrawal is to protect and conserve paleontological, archaeological, and other natural resources within the Purgatoire River Canyonlands.

For a period of 90 days from the date of publication of this notice, persons who wish to submit comments in connection with this section should submit their comments or requests in writing to the Colorado State Director at the address shown above.

A public hearing will be scheduled and held on this proposed action as required by regulation and will be conducted in accordance with Bureau of Land Management Manual, section 2351.16B. A notice of the date, time, and place of the meeting will be published in the **Federal Register** at least 30 days prior to the meeting.

This application will be processed in accordance with the regulations set forth in 43 CFR 2310.

On the date of publication in the **Federal Register** the lands described in paragraphs 1 and 2 are segregated from operation of the mining laws; the public land described in paragraph 2 is further segregated from operation of all of the public land laws. The lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. There will be no change in land use other than the closures described above.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 90-25940 Filed 11-1-90; 8:45 am]

BILLING CODE 4310-JB-M

[ID-943-00-4214-11; IDI-15466]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that the withdrawal of 40 acres of public land for the Elk City Administrative Site be continued for an additional 50 years. The lands, which are located outside of National Forest boundaries, are now being used for administrative site purposes. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing under the proposal.

EFFECTIVE DATE: Comments should be received on or before January 31, 1991.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1597.

The U.S. Forest Service proposes that the existing land withdrawal made by Executive Order 3975 of March 21, 1924, be continued for a period of 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

T. 29 N., R. 8 E.,
- Sec. 23, SW¼SE¼.

The area described contains 40 acres in Idaho County.

The withdrawal is essential for protection of substantial capital improvements on the site. The withdrawal closed the land to surface entry and mining, but not to mineral leasing. No changes in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connention with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: June 28, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-25901 Filed 11-1-90; 8:45 am]

BILLING CODE 4310-GG-M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data for Use by the Chlorine Institute, Inc.

The Commission has received a request from The Chlorine Institute, Inc. for permission to use certain data from the Commission's 1989 ICC Waybill Sample.

A copy of the request may be obtained from the ICC Office of Economics.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data (Ex Parte 385 (Sub-No. 2)) are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 275-6864.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-25883 Filed 11-1-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31753]

Acadiana Railway Co.—Acquisition and Operation Exemption—Ogeechee Railway Co.; Exemption

In Finance Docket No. 31570, *Ogeechee Railway Company—Purchase and Trackage Rights—Missouri Pacific Railroad Company Lines in Louisiana* (not printed), served August 2, 1990,[1] the Commission approved the purchase and operation by Ogeechee Railway Company (Ogeechee) of certain assets, including rail lines and trackage rights. Ogeechee and its affiliate, Acadiana Railway Company (Acadiana), have filed a notice of exemption to transfer a substantial portion of these assets from Ogeechee to Acadiana. The lines to be transferred consist of: (1) Approximately 21.6 miles of Missouri Pacific Railroad Company's Crowley Line between Eunice (milepost 570.34) and Crowley (milepost 591.95), LA; (2) the overhead trackage rights between Eunice (milespost 570.3) and Opelousas (milepost 590.2), LA; and (3) approximately 5 miles of Southern Pacific Transportation Company's Alexandria Branch between mileposts 20 and 25, near Opelousas. The transaction was expected to be consummated on or about October 15, 1990.

This notice is related to a notice of exemption filed in Finance Docket No. 31749, *Trac-Work, Inc.—Continuance in Control Exemption—Ogeechee Railway Company and Acadiana Railway Company*, under 49 CFR 1180.2(d)(2), for the continued control of Ogeechee and Acadiana by their corporate parent.

Any comments must be filed with the Commission and served on: John M. Robinson, 9616 Old Spring Road, Kensington, MD 20895.

This notice is filed under 49 CFR 1150.31(a)(2). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 17, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-25860 Filed 11-1-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 359X)]

Exemption; CSX Transportation, Inc., Abandonment Exemption, in Washington County, NC

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 2.41-mile line of railroad between mileposts ABC-186.04 and ABC-188.45, at Plymouth, in Washington County, NC.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant wihtin the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 2, 1990, (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by November 13, 1990.[3] Petitions for reconsideration or requests for public use conditions undr 49 CFR 1152.28 must be filed by November 23, 1990, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Charles M. Rosenberger,
CSX Transportation, Inc.
500 Water Street,
Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 7, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 26, 1990.

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[1] Embracing Finance Docket No. 31571, *Ogeechee Railway Company—Purchase—Southern Pacific Transportation Company Line near Opelousas, LA.*

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

BEST COPY AVAILABLE

By the Commission, David M. Konschnik, Director, Office of Proceedings.
Sidney L. Strickland, Jr.,
Secretary.
[FR Doc. 90-25884 Filed 11-1-90; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-317 (Sub-No. 1X) [1]

Indiana Harbor Belt Railroad Co. Discontinuance of Trackage Rights Exemption—in Lake County, IN; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances of Trackage Rights* to discontinue its trackage rights over a 3-mile line of Consolidated Rail Corporation (CR) between mileposts 7.75 and 10.76, near Gary, in Lake County, IN.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 2, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues [2] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [3] must be filed by November 13, 1990. Petitions for reconsideration must be filed by November 23, 1990, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Roger A. Serpe, Indiana Harbor Belt Railroad Company, 175 West Jackson Boulevard, Chicago, Il 60604.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 7, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 25, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.
Sidney L. Strickland, Jr.,
Secretary.
[FR Doc. 90-25861 Filed 11-1-90; 8:45 am]
BILLING CODE 7035-01-M

[1] This notice of exemption was inadvertently docketed as Finance Docket No. 31752. Since the notice invokes the class exemption for abandonments and discontinuances under 49 CFR 1152 subpart F, it has been redocketed.

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Cercla

In accordance with Departmental Policy, 28 C.F.R. 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Builder's Hardware Finishers Inc., et al.*, Civil Action No. 90-5428-RB(EX) was lodged with the United States District Court for the Central District of California on October 9, 1990. This agreement resolves a judicial enforcement action brought by the United States against the defendants, Bradley Lee Herman and Howard Lando Herman, pursuant to section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9607, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. No. 99-499, for reimbursement of investigative, enforcement nd other response costs incurred by the United States in response to the release and threatened release of hazardous substances into the environment from a facility located at 1846 Sichel Street in the Lincoln Heights District of Los Angeles, California (hereafter referred to as the "Site").

This proposed consent decree provides for payment of $455,005.78 as partial reimbursement of past response costs incurred at the Site. The United States is continuing to pursue other parties for costs unreimbursed by this settlement.

The Department of Justice will receive for a period of (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Streets, Washington, DC 20530, and should refer to *United States* v. *BHFI et al.*, D.J. Ref. 90-11-3-554.

The proposed consent decree may be examined at the office of the United States Attorney, Central District of California, 111 United States Courthouse, 312 N. Spring Street, Los Angeles, California, 90012, and at the offices of the United States Environmental Protection Agency, Region IX, 1235 Mission Street, San Francisco, California, 94103, and at the office of the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, Room 1535, Ninth Street and Pennsylvania Avenue, NW., Washingon, DC 20530. The proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., Suite 600, Washington, DC 20004, 202-347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $8.00 (25 cents per page reproduction costs) payable to Consent Decree Library.

George W. Van Cleve,
Acting Assistant Attorney General Environment and Natural Resources Division.
[FR Doc. 90-25835 Filed 11-1-90; 8:45 am]
BILLING CODE 4410-01-M

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By Notice dated September 5, 1989, and published in the **Federal Regiser** on September 14, 1989, (54 FR 38002), Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substances Import and Export Act and in title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: October 22, 1990.

Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.
[FR Doc. 90-25908 Filed 11-1-90; 8:45 am]
BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated May 17, 1990, and published in the **Federal Register** on June 6, 1990, (55 FR 23144), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Pholcodine (9314)	I
Alphacetylmethadol (9603)	I
Methylphenidate (1724)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (912)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (Pethidine) (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture ((9630)	II
Opium, powdered (9639)	II
Opium, granulated (9640)	II
Oxymorphone (9652)	II
Poppy Straw concentrate (CPS) (9670)	II
Phenazocine (9715)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 22, 1990.

Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.
[FR Doc. 90-25909 Filed 11-1-90; 8:45 am]
BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By notice dated March 20, 1990, and published in the **Federal Register** on April 2, 1990 (55 FR 12299), Stepan Chemical Company, Natural Products Department, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Benzoylegonine (9180)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 22, 1990.

Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.
[FR Doc. 90-25910 Filed 11-1-90; 8:45 am]
BILLING CODE 4410-09-M

Johnson Matthey; Manufacturer of Controlled Substances: Registration, Correction

In notice document 90-22968 beginning on page 39748 in the issue of Friday, September 28, 1990, make the following correction:

On page 90748, the last paragraph should read "The Drug Enforcement Administration erroneously failed to note that a registered manufacturer did file an objection with respect to methylphenidate (1724). Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, section 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above, with the exception of methylphenidate (1724), is granted."

Dated: October 25, 1990.

Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.
[FR Doc. 90-25911 Filed 11-1-90; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 89-25]

James R. Luchs, M.D., Revocation of Registration

On April 10, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to James R. Luchs, M.D. (Registrant) 834 Pacific Avenue, Long Beach, California 90813. The Order to Show Cause proposed to revoke the Registrant's DEA Certificate of Registration, AL7627106. The statutory predicate for the Order to Show Cause was the Registrant's conviction of one felony count relating to controlled substances.

The Order to Show Cause was sent by registered mail to the Registrant where he was participating in a work release program following his conviction. It was delivered on June 6, 1990. Under 21 CFR 1301.54, a registrant has thirty days from

the date of receipt of the Order to Show Cause in which to file a written request for a hearing. In the alternative, a registrant may file a waiver of the opportunity for a hearing together with a written response to the allegations raised in the Order to Show Cause. 21 CFR 1301.54(c). If, however, one fails to timely request a hearing, he shall be deemed to have waived his request for a hearing, unless he shows good cause for such failure. When a registrant is deemed to have so waived his opportunity for a hearing, the Administrator may issue his final order without a hearing. *See* 21 CFR 1301.54 (d), (e).

The Registrant has failed to respond in any way to the Order to Show Cause. More than ample time has been provided for a response. Therefore, the Administrator hereby enters his final order in this matter based upon the investigative file before him. 21 CFR 1301.57.

The Administrator finds that on November 28, 1988, the Registrant was charged with nine felony violations of the California Health and Safety Code. These offenses involved the unlawful sale of Schedule II controlled substances, the issuance of prescriptions for controlled substances for other than a legitimate purpose, and dispensing of Schedule II controlled substances for individuals for other than a legitimate purpose. On March 22, 1989, in the Superior Court of California, County of Los Angeles, the Registrant entered a plea of guilty, and was convicted of one felony count of the sale or transportation of a controlled substance in violation of section 11352 of the California Health and Safety Code. On March 22, 1989, the Registrant was sentenced to three years of confinement in state prison and was fined $100,00.

The Administrator further finds that the Registrant is no longer licensed in the State of California to practice medicine. Following a hearing June 26, 1990, the California Medical Board (Board), pending a final decision, suspended the Registrant's medical license based on his conviction. The Board subsequently revoked his license, and he presently remains unauthorized to practice medicine.

The Administrator finds that the Registrant's conviction alone constitutes sufficient grounds to revoke his registration, under 21 U.S.C. 824(a)(2). The Administrator further finds that additional grounds to revoke the Registrant's registration exist under 21 U.S.C. 824(a)(3) in that he is no longer licensed by the State of California and can no longer handle controlled substances there. Therefore, based on the Registrant's felony conviction relating to controlled substances and his lack of state authorization to handle controlled substances, the Administrator concludes that the registration of James R. Luchs, M.D., must be revoked under the provisions of 21 U.S.C. 824(a).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 824(a) (2) and (3) and 21 CFR 0.100(b), hereby orders that the DEA Certificate of Registration, AL7627108, previously issued to James R. Luchs, M.D., be, and it is hereby, revoked. It is further ordered that any pending applications for renewal of that application be, and they are hereby, denied.

This order is effective November 2, 1990.

Dated: October 24, 1990.

Robert C. Bonner,

Administrator.

[FR Doc. 90-25912 Filed 11-1-90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice on April 28, 1990, Toxi-Lab Inc., 2 Goodyear, Irvine, California 92718, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II
1-piperidinocyclohexanecarbonitrile (PCC) (8603)	II
Benzoylecgonine (9180)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20357, Attention: DEA **Federal Register** Representative (CCR), and must be filed no later than (30 days from publication).

Dated: October 22, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-25907 Filed 11-1-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Committee on Veterans' Employment; Meeting

The Secretary's Committee on Veterans' Employment was established under section 308, title III, Pub. L. 97-306 "Veterans Compensation, Education and Employment Amendments of 1982," to bring to the attention of the Secretary, problems and issues relating to veterans' employment.

Notice is hereby given that the Secretary of Labor's Committee on Veterans' Employment, Subcommittee on Veterans' Employment and Training Policy, will meet on Monday, November 19, 1990 at 1 p.m. in room N-3437A of the Department of Labor Frances Perkins Building.

Written comments are welcome and may be submitted by addressing them to: Robert L. Jones, Chairman, Subcommittee on Veterans' Employment and Training Policy, AMVETS National Headquarters, 4647 Forbes Boulevard, Lanham, MD 20706.

The primary item on the agenda is a preliminary discussion to outline strategies for development of a national veterans' training and employment policy.

The public is invited.

Signed at Washington, DC this 29th day of October, 1990.

Thomas E. Collins,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 90-25993 Filed 11-1-90; 8:45 am]

BILLING CODE 4510-79-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and firings benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Corrections to General Wage Determination Decisions

Pursuant to the provisions of the Regulations set forth in title 29 of the Code of Federal Regulations, part 1, § 1.6(d), the Administrator of the Wage and House Division may correct any wage determination that contains clerical errors.

Corrections being issued in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are indicated by Volume and are included immediately following the transmittal sheet(s) for the appropriate Volume(s).

Volume I

Wage Decision No. NY89-3,
Modification Nos. 1 through 9
Wage Decision No. NY90-3, through
Modification No. 1
Wage Decision No. NY89-17,
Modification Nos. 7 through 11
Wage Decision No. NY90-17, through
Modification NO. 1

Pursuant to the Regulations, 29 CFR part 1, § 1.6(d), such corrections shall be included in any bid specifications containing the wage determinations, or in any on-going contracts containing the wage determinations in question, retroactively to the start of construction.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut CT90-1 (Jan. 5, 1990). p. 63, pp. 64-67.
Georgia GA90-3 (Jan. 5, 1990). p. 217, pp. 217-220
New York NY90-10 (Jan. 5, 1990). p. 831, p. 832

Volume II

Illinois:
IL90-9 (Jan. 5, 1990) ..... p. 143, p. 145
IL90-12 (Jan. 5, 1990) .... p. 161, p. 161, pp. 162,167
Kansas, KS90-11 (Jan. 5, 1990). p. 374c, p. 374d
Missouri, MO90-1 (Jan. 5, 1990). p. 627, pp. 629-630
Texas, TX90-10 (Jan. 5, 1990). p. 1011, p. 1012

Volume III

Oregon, OR90-1 (Jan. 5, 1990). p. 309, p. 310
Washington, WA90-5 (Jan. 5, 1990). p. 413, p. 414.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC. 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 26th day of October 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90-25733 Filed 11-1-90; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-90-156-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241, has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Loveridge No. 22 Mine (I.D. No. 46-01433) located in Marion County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petitioner wishes to amend the Petition for Modification (Docket No. M-79-58-C) granted August 17, 1978, which allows them to plug and mine through oil and gas wells.

2. The statement regarding a Federal mine inspector's being present during mining operations would be deleted, and a statement that the district manager or designee would be notified by the operator in sufficient time prior to the mining through operation to have an opportunity to have representatives present would be substantiated.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 3, 1990. Copies of the petition are available for inspection at that address.

Dated: October 25, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-25988 Filed 11-1-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-154-C]

Consolidation Coal Co., Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241, has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Blacksville No. 2 Mine (I.D. No. 46-01968) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use belt air to ventilate active working places.

3. In support of this request, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide detection system in all belt entries used as intake aircourses and to monitor the air at each belt drive and tailpiece. The warning time provided by the system would be maximized. The CO monitoring system would initiate the fire alarm signals at a surface location where a responsible person, having two-way communications with all working sections, would be located. This person would notify the working sections and other personnel who may be endangered when the permanently established alert and alarm levels are reached. The CO system would be capable of identifying any activated sensor.

4. The CO system would be visually examined at least once each shift and tested weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly. A record of all inspections would be maintained on the surface. The inspection record would show the time and date of each weekly inspection and monthly calibration.

5. If the CO monitoring system is deenergized, the belt conveyor would be allowed to continue operation and qualified persons would patrol and monitor the belt conveyor using handheld CO detecting devices. A CO detection device would also be available for use on each working section in the event the monitoring system is deenergized or fails.

6. Petitioner states that the proposed alternate method will at all times guarantee no less than the same measure of protection to the miners as would be provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 3, 1990. Copies of the petition are available for inspection at that address.

Dated: October 25, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-25989 Filed 11-1-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-152-C]

Rawl Sales & Processing Co.; Petition for Modification of Application of Mandatory Safety Standard

Rawl Sales & Processing Company, P.O. Box 702, Matewan, West Virginia 25678, has filed a petition to modify the application of 30 CFR 75.900 (low- and medium-voltage circuits serving threephase alternating current equipment; circuit breakers) to its Tall Timber Mine (I.D. No. 15-13720) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage power circuits serving three-phase alternating current equipment be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained and that such breakers be equipped with devices to provide undervoltage protection.

2. The mine is currently using undervoltage release breakers to meet the requirements for undervoltage protection. After each power outage, it is necessary for an employee to travel to each belt drive and reset the low-voltage breakers before the belts can start and production can resume.

3. As an alternate method, petitioner proposes to use a shunt-trip circuit breaker and relays to obtain undervoltage protection.

4. In support of this request, petitioner states that:

(a) Only the stationary belt drive installations would be affected by this petition;

(b) A lower than normal control voltage would be used, which would decrease the shock hazard to operators;

(c) An audible alarm would be sounded along the full length of the conveyor flight prior to startup.

5. Petitioner states that the proposed alternate method would at all times guarantee no less than the same measure of protection as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 3, 1990. Copies of the petition are available for inspection at that address.

Dated: October 25, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-25990 Filed 11-1-90; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Office of Records Administration, National Archives and Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before December 17, 1990. Once the appraisal of the records is completed, NARA will send a copy of the schedule the requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivision. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable record and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1-AFU-91-3). Routine administrative records relating to courier services for classified documents.

2. Department of the Air Force (N1-AFU-91-4). Routine records related to graphics production.

3. Department of the Air Force (N1-AFU-91-5). Photographic services work orders.

4. Office of the Secretary of Defense (N1-330-90-3). Routine records relating to emergency preparedness.

5. Office of the Secretary of Defense (N1-330-90-5). Routine application for identify card files.

6. Defense Contract Audit Agency (N1-372-90-1). Records relating to agency information resources management matters.

7. Defense Logistics Agency (N1-361-90-4). Equal Employment Opportunity records.

8. Department of Agriculture, Forest Service (N1-95-90-2). Internal tracking and control documents for the Timber Sale Accounting System.

9. Department of Agriculture, Agricultural Stabilization and Conservation Service (N1-145-90-2; N1-145-90-3; N1-145-90-4; N1-145-90-5). Routine checks, commodity certificates, and check accounting records.

10. Department of Commerce, Bureau of Economic Analysis (N1-375-88-2). Subject files of the Unit Costs and Emissions Branch and Measures of Economic Well-Being Branch, 1988-1980.

11. Department of Commerce, Bureau of Export Administration, Assistant Secretary for Export Administration (N1-476-90-5). Comprehensive records schedule.

12. Department of Energy, Oak Ridge Operations Office (N1-434-90-7). Uncaptioned photographic records relating to plant and animal studies.

13. Federal Emergency Management Agency, National Emergency Training Center (N1-311-90-1). Working papers relating to the compilation of approved minutes of meetings.

14. Federal Emergency Management Agency, Office of Public Affairs (N1-311-90-2). Speeches given by minor agency officials.

15. General Accounting Office (N1-411-90-9). Facilitative background files for oral history publications.

16. Department of Health and Human Services, Public Health Service (N1-90-90-7). Grant case files and administrative reference files, 1962-67

17. Department of Health and Human Services, Public Health Service (N1-90-90-8). Personnel Travel Documents, and National Conference on Air Pollution Subject File, 1961-66.

18. Department of Health and Human Services, Public Health Service, Office of the Assistant Secretary for Health (N1-90-90-14). Change in retention period for **Federal Register** documents.

19. Housing and Urban Development, Federal Disaster Assistance and Federal Insurance Administrations (N1-207-90-3). Applications for disaster relief, 1971-73, and flood insurance program records, 1970.

20. Department of the Interior, Bureau of Mines (N1–70–90–1). Research and development records.

21. International Boundary and Water Commission—United States and Mexico, United States Section (N1–76–90–2). Excess property files.

22. Interstate Commerce Commission, Bureau of Accounts (N1–134–90–2). Records relating to the valuation of railroads, including records pertaining to the tallying of data about railroads, the cost of railroad products, cost studies done for other Federal agencies, and correspondence of the Bureau of Valuation (permanently valuable valuation records have been designated for transfer to the National Archives.

23. Department of Justice, Immigration and Naturalization Service (N1–85–90–7). Procurement litigation case files.

24. Department of Justice, Immigration and Naturalization Service (N1–85–90–6). Planning files for automated information systems, and requests for changes and upgrades to existing systems.

25. Department of Labor, Office of Economic Opportunity (N1–381–90–1). Facilitative records relating to Job Corps operations, including reading files, contract files, general correspondence, and audit reports, 1963–72.

26. Department of Labor, Bureau of Labor Statistics (N1–257–90–3). Routine administrative records, including correspondence, working papers, unpublished reports, pre-printed forms and tabulations, 1934–72.

27. Department of Labor, Employment and Training Administration (N1–369–90–2). Building specifications for Job Corps sites, 1966–75.

28. National Aeronautics and Space Administration, Kennedy Space Center (N1–255–90–1). Records pertaining to testing, inspection, maintenance, scheduling, check out and verification of on board systems and ground support.

29. National Aeronautics and Space Administration, Kennedy Space Center (N1–255–90–7). Case files documenting excess personal property returned to NASA by onsite contractors.

30. National Aeronautics and Space Administration, Kennedy Space Center (N1–255–90–8). Case files of employees referred to counseling under the Employee Assistance Program.

31. National Aeronautics and Space Administration, Kennedy Space Center (N1–255–91–1). Technical engineering operations and support documents for the Space Shuttle Program.

32. National Archives and Records Administration (N1–GRS–91–1). Addition to General Records Schedule 9, Travel and Transportation Records, to cover records relating to applications for official passports.

33. Department of State, Bureau of Diplomatic Security (N1–59–90–25). Drawings pertaining to the physical security of facilities.

34. Department of State, Foreign Service Institute, School of Language Studies (N1–59–90–30). Language training textbooks.

35. Administrative Office of the United States Courts (N1–116–90–3). Project files and other records relating to administrative and housekeeping matters.

36. United States Postal Service (N1–28–90–2). "Workroom" posters determined during archival processing to lack sufficient archival value to warrant permanent retention by the National Archives.

Dated: October 29, 1990.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 90–25930 Filed 11–1–90; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (90–90)]

NASA Advisory Council (NAC), Space Station Science and Applications Advisory Subcommittee (SSSAAS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Science and Applications Advisory Subcommittee (SSSAAS).

DATES: November 28, 1990, 8:30 a.m. to 5:30 p.m.; November 29, 1990, 8 a.m. to 5:30 p.m.; and November 30, 1990, 8 a.m. to 2 p.m. (to be held at NASA Headquarters); November 28, 1990, 7:30 p.m. to 10 p.m.; and November 29, 1990, 7:30 p.m. to 10 p.m. (to be held at the Capitol Hill Hotel).

ADDRESSES: National Aeronautics and Space Administration, room 226A, 600 Independence Avenue, SE., Washington, DC 20546; and the Capitol Hill Hotel, 200 C Street, SW., Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Rhome, Code S, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1425).

SUPPLEMENTARY INFORMATION: The Space Station Science and Applications Advisory Subcommittee (SSSAAS) reports to the Space Science and Applications Advisory Committee (SSAAC) and consults with and advises the NASA Office of Space Science and Applications (OSSA) on the new capabilities to be made available by the Space Station program and how these may be most effectively utilized. It also advises the NASA Spacer Station Freedom Office on how the Space Station program may most effectively support potential science and applications users. The Subcommittee will meet to receive reports from NASA Division representatives and discuss issues relating to Space Station Freedom. The Subcommittee is chaired by Dr. Robert J. Bayuzick and is composed of 20 members. The meeting will be closed on Thursday, November 29, 1990, at 7:30 p.m.–10 p.m. to allow for a discussion on qualifications of individuals being considered for membership to the Space Station Science and Applications Advisory Subcommittee. Such a discussion would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 50 people including members of the Group). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of meeting: Open—except for a closed meeting, as noted in the agenda below.

Agenda

Wednesday, November 28

8:30 a.m.—Opening Remarks.
9 a.m.—Outlook of Space Science and Applications Outlook-Fiscal Year 1991.
9:30 a.m.—Reports on Space Station Freedom (SSF).
11 a.m.—Science Utilization Management Support of the SSF Preliminary Design Review Process.
11:30 a.m.—Multilateral Science Working Group Status.
1 p.m.—Bartering and Cooperative Programs Status.
1:30 p.m.—Exploration and Technology SSF Utilization Plans.
2:15 p.m.—Office of Commercial Programs SSF Utilization Plans.
3 p.m.—Splinter Group Sessions.
7:30 p.m.—Continuation of Splinter Group Sessions.

10 p.m.—Adjourn.

Thursday, November 29

8 a.m.—Utilization Technical Working Group.
8:45 a.m.—Small Attached and Rapid Response Project Status.
9:45 a.m.—Robotics Laboratory Briefing.
1 p.m.—SSF Data Management System Briefing.
3:30 p.m.—Reports on Office of Space Science and Applications Data Issues Update.
4 p.m.—Science Operations Workshop, Plenary Discussions and Findings.
7:30 p.m.—Closed Session.
10 p.m.—Adjourn.

Friday, November 30

8 a.m.—Woods Hole Response Plan.
9 a.m.—Splinter Group Sessions.
10:30 a.m.—Early Utilization of SSF.
12 noon—Splinter Group Sessions.
2 p.m.—Adjourn.

John W. Gaff,

Dated: October 30, 1990.

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90–25922 Filed 11–1–90; 8:45 am]

BILLING CODE 7510–01–M

[Notice (90–91)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC).

DATES: November 29, 1990, 1 p.m. to 5 p.m.; and November 30, 1990, 8:30 a.m. to 3 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 7002, Federal Office Building 6, 400 Maryland Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia D. Fries, Code ADA–2, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–8766.

SUPPLEMENTARY INFORMATION: The NAC was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Dr. John McLucas and is composed of 25 members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, aerospace medicine, space science and applications, space systems and technology, space station, commercial programs, and history, as they relate to NASA's activities.

The meeting will be open to the public up to the seating capacity of the room, which is approximately 60 persons including Council members and other participants. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Type of meeting: Open.

Agenda

Thursday, November 29, 1990

1 p.m.—Introductory Remarks.
1:30 p.m.—Unfinished Business from July NAC Meeting.
2:30 p.m.—NASA Program Status Reports.
5 p.m.—Adjourn.

Friday, November 30, 1990

8:30 a.m.—Overview of NASA Fiscal Year 1991 Budget and Discussion of Impact on NASA Programs.
1 p.m.—Update and Discussion.
—Advisory Committee on the Future of the U.S. Space Program.
—Exploration Outreach Synthesis Group.
—U.S./U.S.S.R. Cooperation.
2:30 p.m.—Council Planning.
3 p.m.—Adjourn.

Dated: October 29, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90–25923 Filed 11–1–90; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Advanced Scientific Computing Program Advisory Panel; Meeting During November 19–20, 1990

The National Science Foundation announces the following meeting:

Name: Program Advisory Panel for Advanced Scientific Computing.

Date and Time:
November 19—9 a.m.–5:30 p.m.,
November 20—9 a.m.–12 p.m.

Place: Room 543, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting:
Open November 19—9 a.m.–4:30 p.m.,
November 20—9 a.m.—12 p.m.
Closed November 19—4:30 a.m.–5:30 p.m.

Contact Person: Dr. Thomas Weber, Director, Division of Advanced Scientific Computing, room 417, National Science Foundation, 202/357–7560.

Purpose of Meeting: To provide advice and recommendations concerning NSF support of advanced scientific computing.

Agenda:
Open
- DASC Overview
- CISE Overview
- Meeting with NSF Director
- Subcommittee Organization and Functions
- Committee of Visitor Report

Closed
- In-depth Discussion of Committee of Visitors Report

Reason for Closing: Discussion of declinations that may be in included in the Committee of Visitors Report. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–25894 Filed 11–1–90; 8:45 am]

BILLING CODE 7555–01–M

Geography and Regional Science Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Geography and Regional Science.

Date/Time: November 19, 1990, 8:30 a.m. to 6 p.m. November 20, 1990, 8:30 a.m. to 5 p.m.

Place: Room 1243, National Science Foundation, 1800 G St., Washington, DC 20550.

Type of Meeting: Part Open—Open 11/20/90 2–3 p.m. Remainder Closed.

Contact Person: Dr. Thomas J. Baerwald, Program Director, Geography and Regional Science, National Science Foundation, 1800 G St., NW.; room 336, Washington, DC 20550, Telephone: 202/357–7328.

Purpose of Meeting: To provide advice and recommendations concerning research proposals in Geography and Regional Science.

Agenda: To review and evaluate research proposals as part of the selection process for awards. (Open) 11/20/90 2–3 p.m.—discussion of Trends and Opportunities

Reason for Closing: The proposals reviewed contained information of a proprietary or confidential nature, including technical information, financial data (such as salaries), and personal information concerning individuals associated with the proposals. These matters are within the exemptions (4) and (6) of 5 U.S.C. 552b, Government in the Sunshine Act. February 18, 1977.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–25895 Filed 11–1–90; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-280 and 50-281]

Virginia Electric and Power Company; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 147 to Facility Operating License No. DRP-32 and Amendment No. 143 to Facility Operating License No. DRP-37, issued to the Virginia Electric and Power Company (the licensee), which revised the Technical Specifications for operation of the Surry Plant, Units 1 and 2 (the facilities), located in Surry County, Virginia. The amendments were effective as of the date of issuance, to be implemented within 30 days.

The amendments revised the Technical Specifications for the heatup and cooldown curves to be effective to 15 effective full power years of operation.

The application for amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 13, 1988 (53 FR 12210).

Also in connection witht this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact, which was published in the **Federal Register** on October 24, 1990 (55 FR 42919).

For further details with respect to the action, see (1) the application for amendments dated January 29, 1988, as supplemented February 20, 1989, (2) Amendment No. 147 to License No. DPR-32, and Amendment No. 143 to License No. DRP-37, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document room, 2120 L Street, NW., Washington DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland this 24th day of October, 1990.

For the Nuclear Regulatory Commission.

Bart C. Buckley,

Project Manager, Project Directorate II-2, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 90-25974 Filed 11-1-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the National Critical Technology Panel

The National Critical Technology Panel will meet on November 19, 1990. This meeting will be held at the offices of The Analytic Sciences Corporation (TASC), located at 1101 Wilson Blvd., suite 1500, Arlington, Virginia. The Panel will start its deliberations at 9 a.m., Monday, November 19th, and will conclude its activities at approximately 5 p.m.

The purpose of this Panel is to prepare and submit to the President a biennial report on national critical technologies on even-numbered years. These are to be the product and process technologies the Panel deems most critical to the United States, and shall not exceed 30 in number in any one year.

This meeting will be closed to the public, since discussions will take place in matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and in fact properly classified pursuant to such Executive order, according to 5 U.S.C. 522b.(c)(1). Discussions will also involve privileged information according to 5 U.S.C. 522b.(c)(4).

For further information, please call Tom Russell, at the Office of Science and Technology Policy, Executive Office of the President, (202) 395-5736.

Dated: October 29, 1990.

Damar W. Hawkins,

Executive Assistant, Office of Science and Technology Policy.

[FR Doc. 90-26096 Filed 11-1-90; 8:45 am]

BILLING CODE 3170-01-M

POSTAL SERVICE

Implementation of Service and Rate Changes for International Surface Air Lift (ISAL)

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: The Postal Service, after studying the comments submitted in response to its request in 55 FR 27915 for comments on proposed International Surface Air Lift (ISAL) service and rate changes, hereby gives notice that it is implementing changes in Internal Surface Air Lift service and rates effective at 12:01 a.m., January 12, 1991.

EFFECTIVE DATE: 12:01 a.m., January 12, 1991.

FOR FURTHER INFORMATION CONTACT: John F. Alepa (202) 268-2650.

SUPPLEMENTARY INFORMATION: International Surface Air Lift (ISAL) is a bulk mailing service for international shipment of printed matters, such as publications, advertising materials, catalogs, directories, and books. This service is available from designated acceptance cities to approximately 125 countries. To use ISAL, a mailer must send at least 50 pounds of printed matter at one time, presorted by country of destination. Identical piece mailings are not required to qualify. Postage for ISAL mailings is currently calculated solely by weight, without regard to the number of pieces contained within a mailing. Full-service rates for ISAL currently range from $2.22 to $3.90 per pound, depending on the country of destination. For rate-setting purposes, destination countries eligible to receive ISAL are divided into five rate groupings (A through E). A 30-cent per-pound discount is currently given to ISAL mail tendered at the John F. Kennedy Airport-the New York gateway, and a 20% discount to M Bags (mail to a single addressee sacked in specially-labeled bags and subject to a minimum weight limit).[1]

On July 6, 1990, the Postal Service published in the **Federal Register** (55 FR 27915) a notice of proposed service and rate changes for ISAL. These changes included: (1) New rates for ISAL service with both per-piece and per-pound elements to recover costs that vary with volume, and costs that vary with weight; (2) the addition of San Francisco and Miami as gateways where mailers may tender ISAL mailings and receive a "drop-ship" discount; (3) a direct-shipment option for mailers who present for a designated single destination country at least 750 pounds of mail that can be transported on a direct international flight or flight with on-line service from a designated acceptance point; (4) a discount of 20 cents per pound for mail tendered at a gateway or qualifying for direct shipment; and (5) the reconfiguration of rate groupings of destination countries from five to three, *i.e.,* the Pacific Rim, Europe, and the rest of the world. The Postal Service requested comments on the proposed service and rate changes by August 6, 1990.

[1] ISAL M Bags may be sent to all countries except Ethiopia.

Twenty-two comments were submitted by August 6, 1990, from a total of nineteen organizations. These comments addressed a number of issues, including the proposed piece-pound rate structure, rate discounts, country rate groupings, service and preparation requirements. Most respondents were highly satisfied with current ISAL rates and service. Although several respondents generally agreed with or expressed an understanding of the rate proposals, most criticized the proposed change in structure, particularly that part of the proposed rate increase which established a piece rate. Most opposition to replacing the current pound structure with a combined piece-pound structure came from mailers of lightweight ISAL pieces. Several respondents suggested alternative rate structures and other modifications to the Postal Service's proposals.

In setting international postage rates, the Postal Service must assure that such rates (1) Do not apportion the costs of the service so as to impair the overall value of the service to the users; (2) are fair and reasonable; and (3) are not unduly or unreasonably discriminatory or preferential. The ISAL rate changes announced herein satisfy these criteria.

Upon careful consideration of the many comments received, the Postal Service has chosen to modify its original proposal in several important respects. First, instead of the piece-pound structure originally proposed, the Postal Service will implement a "break-point" pricing structure, under which ISAL mail weighing more than two ounces will be charged only a pound rate, and ISAL mail weighing two ounces or less will be charged only a piece rate. This piece rate will be the same for all rate groups. Second, the discount for mail tendered at any of the three gateway cities will remain at its current level of 30 cents per pound. The new direct-shipment discount for qualifying mail will also be 30 cents per pound. Third, the proposed rate groups have been redefined, resulting in a group consisting of countries of the Western Hemisphere. Finally, the service and rate changes announced today will be effective January 12, 1991. Each modification to the original proposal is discussed below, along with a discussion of comments and did not result in changes to the original proposal.

I. The Basic ISAL Rate Structure

The Postal Service is restructuring the rates for ISAL service to reflect more accurately the way in which ISAL costs are incurred. The July 6 **Federal Register** notice proposed rates for ISAL service with both per-piece and per-pound elements. The per-piece rate was designed to recover those costs that vary by piece volume, while the per-pound rate was designed to recover those costs that vary by weight. According to the original proposal, the postage for every piece of ISAL mail would contain a volume and weight rate component.

Despite some reconition by respondents that a change in the ISAL rate structure was justified, many respondents objected to the proposed piece charge. These respondents, mostly mailers of lightweight pieces, objected to the disproportionate impact of the proposed rate change on lightweight mail. Two developments directly bear on this issue.

First, mailers have astutely recognized that, with the current pound-rate structure, they could increase the number of pieces per unit of weight mailed without incurring additional postage costs.[2] This adaptation by mailers to use the current ISAL rates to their advantage has accelerated the growth in ISAL costs disproportionately to the increases in the pound-related costs. This condition has altered the current ISAL cost structure.

Second, when current ISAL rates were developed, they were based exclusively on what was then a pound-related cost structure. Postal administrations receiving ISAL mail sought terminal dues compensation for their handling and delivery of this mail solely on the basis of weight. This is no longer the case. Those postal administrations that now receive a majority of our outbound ISAL tarffic seek compensation based either on an implicit average number of items per unit of weight or on an explicit piece-pound charge.

The proposed rate changes announced by the Postal Service on July 6 and the final rule announced today recognize, for example, that one pound of ISAL mail consisting of forty items, costs the Postal Service considerably more money to deliver than one pound consisting of only four items. These new rates will more equitably allocate to the full range of ISAL users their appropriate share of costs for ISAL service.

[2] The current postage for ISAL is in pound units. The Postal Service does not currently offer or charge ISAL rates on a piece basis.

At least three respondents proposed continuing the pound structure by either increasing the pound rate or adding a per-pound surcharge for letter mail. The Postal Service has determined that neither of these proposals adequately recognizes cost causation due to pieces. Adoption of either proposal would result in an inquitable impact on those mailers whose traffic is already paying compensatory rates.[3]

Several proposals were also offered which incorporated a piece rate into their designs. One respondent proposed adding a 10-cent per-piece surcharge for lightweight mail weighing a half-ounce or less. Mail weighing more than a half-ounce would continue to be charged on a pound rate under this suggestion. A variation of this proposal offered by another respondent would retain the pound rate, but would add a minimum piece rate of 17 cents. Another respondent suggested a dual rate structured in which pieces weighing less than four ounces would be charged a per-piece and per-pound rate. For pieces weighing more than four ounces, the mailer would have the option to use a piece *and* a pound rate or a pound rate only. This proposal would require a separate mailing revenue statement (PS Form 3850, *Mailing Revenue Statement—International Surface Air Lift for Publications and Printed Matter)* for each option selected by the mailer. Another respondent suggested a break-point structure, with one rate for lightweight pieces and another for heavier pieces. This respondent did not provide specific rates. Common to these proposals was the recognition that very lightweight ISAL mail does not currently bear its fair share of postal costs.

Rate levels notwithstanding, a majority of those commenting objected to the original proposal because it not only reduced the simplicity of the existing pound structure, but it also was administratively onerous for mail preparation. Respondents ojected to being required to calculate both a piece and a pound component for each mailing and being required to count and affix postage to mailings containing pieces of nonidenical weights. The Postal Service agrees with these criticisms and believes they are equally applicable to most of the alternative proposals outlined above. Considerations of this nature prompted the suggestion for the break-point structure discussed in the preceding paragraph, or some other system, which would recognize the per-piece and per-pound cost component of

[3] Compensatory rates are those rates which recover attributable costs.

ISAL while at the same time minimizing the administrative burdens for both mailers and the Postal Service. For ease of applying metered postage to traffic tendered at the piece rate, it was also suggested that the piece rate be the same for each rate group.

The Postal Service has considered the various alternative structures and adopts a break-point system with a uniform piece rate as part of its final rule. From its own analysis of costs and known traffic patterns, the Postal Service establishes a break point at two ounces, above which only a pound rate will continue to apply. At or below this break point, a single piece rate of 24 cents will apply. This structure requires that an ISAL mailing be separated according to the volume over and under the break point. ISAL volume entered at the piece-rate would be eligible for a direct-shipment discount on the basis of total weight tendered. Likewise, such volumes taken to a gateway facility would also be discounted on the basis of tendered weight. The structure hereby adopted retains as much of the simplicity of the current system as possible, consistent with better alignment of ISAL rates with ISAL costs and the allocation of those costs to the full range of ISAL users.

The Postal Service acknowledges that this final rule will not satisfy the concerns of all mailers, and, in some situations, may result in an even greater rate impact than the rule proposed on July 6. Although cognizant of this impact, the Postal Service finds that it is not possible to avoid the situation entirely, while at the same time setting fair, reasonable, and compensatory rates for this service.

Two respondents suggested, as an alternative aproach, that a minimum weight be established for ISAL mail. The Postal Service believes such action to be inappropriate, and that no mailer should be excluded from using ISAL based upon the weight characteristics of its pieces. The final rule adopted today does not exclude any mailer from using ISAL, but rather ensures that costs are apportioned equitably among all ISAL users.

Three respondents observed that the proposed piece-pound structure, as it would be applied to very lightweight mail, would result in much of this mail becoming as expensive, on a unit basis, as the premium International Priority Airmail (IPA) product. Although this observation is not incorrect, the observed anomaly is largely the consequence of how mailers have availed themselves of the current ISAL rate structure. This observed anomaly is less significant than the condition which allows some ISAL mailers to enjoy postage rates lower than rates for any comparable domestic service. Absent changes to the ISAL rate structure, the latter anomaly would continue to exist.

One respondent observed that if the ISAL structure were to change for the reasons stated, then the IPA rates should also be adjusted to reflect these same considerations. Although the original proposal addressed only ISAL service, it is appropriate to advise that the mailpiece characteristics and pound rates for IPA do not warrant a change in rate structure at this time. However, the Postal Service is aware that rate adjustments may be required for IPA service in the future.

At least two respondents proposed a gradual phase-in of the new ISAL rates, to allow businesses using the service to absorb the rate increases over a period of time. If the intent of these comments is to suggest that it is preferable to raise rates incrementally on an annual basis, such annual increases can be considered in the future. The current ISAL rates have been in effect since July 1987; the idea of annual increases to reflect costs as they currently exist cannot be entertained in the manner suggested.

II. Rate Discounts

The July 6 notice proposed reducing from 30 to 20 cents per pound the discount applied to mail tendered at a gateway facility. Five respondents opposed this reduction, proposing that the discount remain at 30 cents per pound or even be increased. These respondents observed that reductions in the discount levels would be inconsistent with the worksharing concept in which mailers undertake some of the transportation in return for rate incentives. The Postal Service believes that the proposed 20-cent per-pound discount would still be consistent with the concept of worksharing. However, in response to the suggestion, the Postal Service will retain the current gateway discount and also apply it to the new direct-shipment option previously announced. Postal cost savings do not justify an increase in the gateway drop-shipment discount above the existing level, as suggested by one respondent.

One respondent suggested a greater discount for M Bags, viewing the proposed 20% discount as insufficient in light of the favorable terminal dues treatment this mail receives. This suggestion cannot be adopted at present because the Universal Postal Union Convention stipulates that a discount for M-Bags cannot exceed 20% of the non M-Bag rate.

Three respondents proposed some version of volume or frequency-of-mailing discounts that would benefit large-volume mailers. Although such discounts offer some appeal from a marketing perspective, ISAL, as a bulk mailing service, offers rates that already represent volume discounts, as compared with the single piece rates for both surface and air printed matter set forth in the *International Mail Manual*. Furthermore, the new direct-shipment discount incorporated into the final rule is a form of volume discount since, to qualify for it, mailers must present at least 750 pounds of mail for a designated single destination country.

One respondent proposed a discount for ISAL shipments to countries where post-office-box delivery rather than residential delivery is the norm. This suggestion not only would introduce undesirable complexity into the ISAL system, but also would depend upon most differentials not always recognized by other postal administrations.

Another respondent suggested a new worksharing discount for sortations finer than those just by destination country. The discount would apply to mail sorted by zones for foreign countries using zone delivery similar to the ZIP Code system in the United States. This proposal would rely on the willingness of destination countries to recognize the cost savings from finer presortation and to pass on those savings to the Postal Service. This suggestion would also complicate the acceptance and verification process, a concern expressed by most other respondents.

III. Rate Groups

Respondents who addressed the issue of country groupings agreed with the reduction in the number of rate groups (currently at five), but some respondents expressed differences regarding the proposed reconfiguration. Three respondents proposed separating Central and South American countries from the third rate group proposed on July 6, because transportation costs to those countries are usually less than costs to the rest of the countries of the proposed group. This observation is correct. Accordingly, the Postal Service will increase its proposed three rate groups to four. They will consist of Europe (rate group 1) and the Pacific Rim (rate group 3), as originally proposed, and two groups separately recognizing the Western Hemisphere (rate group 2) and Africa/Asia [4] (rate group 4).

[4] Except for the Pacific Rim countries which comprise rate group 3.

One respondent suggested combining two proposed rate groups (groups 1 and 3) and charging an average pound rate to achieve greater simplicity. The Postal Service is confident that the rate structure announced today is adequate and aligned with costs.

IV. Service Improvements

Respondents generally approved of the ISAL service improvements proposed by the Postal Service on July 6. Respondents who addressed this issue agreed with the opening of additional gateway facilities. One respondent proposed substituting Chicago for Miami as a gateway. However, operational constraints preclude the immediate designation of Chicago as a gateway facility. Additional gateway cities, such as Chicago, may later become feasible as operational issues are resolved.

Two respondents expressed concern as to the viability of the new direct-shipment option. These respondents doubted that cost savings could be realized by the Postal Service from this form of worksharing. They contended that acceptance city employees would be relatively unknowledgeable about ISAL and that duplication in operations would occur, resulting in higher costs and slower service. The Postal Service is confident that acceptance city employees will be able to implement the ISAL procedures efficiently, and that direct shipment will significantly benefit the Postal Service and mailers whose volumes and air traffic patterns qualify them for this discount.[5]

One respondent, whose Texas-based company mails ISAL from the Dallas/Ft. Worth Air Mail Facility, objected to what he preceived as a new regional zone structure that would require his company to truck mail at least 1,500 miles to one of the three gateway cities. This objection stems from a misunderstanding of the gateway concept. Nothing in the final rule affects this particular company's use of the Dallas/Ft. Worth Air Mail Facility, either at the full-service rate, or, should its volumes and traffic patterns permit, at the new discounted direct-shipment rate. Rates announced today actually provide this respondent the opportunity to qualify for direct-ship discounts.

V. Preparation and Acceptance Procedures

Most respondents who addressed this issue objected to the July 6 proposal on the grounds that it transformed ISAL's simple preparation and acceptance procedures into a more complicated system involving the metering of individual mailpieces. The Postal Service believes that the modifications made to the original proposal retain most of the simplicity of the product and do not impose unnecessary preparation or acceptance requirements.

Because ISAL users sending mail weighing more than two ounces will pay a pound rate only, such users can continue to use the imprint method of postage payment. Imprints can be used for a sack containing identical or nonidentical pieces. The weight-based postage structure for pieces weighing more than two ounces ensures that these generally larger and bulkier pieces will not require meter strips individually applied to them.

For shipments containing identical pieces weighing two ounces or less, mailers may use either permit imprints or metered postage.

Only for shipments containing nonidentical pieces weighing two ounces or less will preparation deviate from current practice. In this situation, metering rather than permit imprint will generally be required. However, mailers may use permit imprint with nonidentical pieces if authorized to use postage payment programs currently described under § 145.7, § 145.8, or § 145.9 of the *Domestic Mail Manual*.

One respondent expressed the fear that the July 6 proposal would be impossible to control. The Postal Service believes that the modifications made to the original proposal will facilitate verification and enforcement.

VI. Procedural Comments

Several respondents offered their opinions regarding the process by which these changes have been developed. Other respondents expressed concern over having sufficient time to implement the ISAL service and rate changes.

One respondent observed that the July 6 proposal was drafted in imprecise terms. From the many thoughtful comments the Postal Service received regarding this proposal, it is apparent that the proposal was sufficently clear, specific, and understandable. The Postal Service values the range of helpful suggestions, many of which have been adopted.

One respondent contended that it was unfair to all mailers that the Postal Rate Commission not be allowed to oversee, at least on a voluntary basis, the ISAL service and rate changes. The Postal Service has not submitted these changes to the Postal Rate Commission because that independent agency does not have rate-review jurisdiction over international mail.

Two other respondents suggested that the increases proposed on July 6 be delayed while alternatives were explored. The Postal Service has benefited from the comments it has received to examine alternatives and adopt modifications to its original proposal. No further delay in announcing this final rule would serve any useful purpose.

Of concern to at least three of the respondents were the issue of effective date. The Postal Service did not propose an implementation date for the proposed ISAL service and rate changes, preferring to receive comments on the merits of the proposal. Those respondents raising the issues requested that sufficient time be provided for operational and administrative adjustments, as well as certain budgetary considerations within their own businesses. In view of these concerns, the Postal Service announces that this rule will take effect on January 12, 1991.

VII. Conclusion

Accordingly, the Postal Service hereby adopts the ISAL rate and service changes set forth in the two schedules below. These rate and service changes shall take effect at 12:01 a.m., on January 12, 1991.

(Authority: 39 U.S.C. 407, 410)

[5] To be eligible for the new direct-shipment discount, mailers must present at least 750 pounds of ISAL mail designated for a single destination country. Eligibility for this discount depends on the availability of a direct flight or flight with on-line service, as determined by the ISAL coordinator at the acceptance city. A mailer must contact the ISAL coordinator at the acceptance city before presenting its shipment to determine the availability of qualifying air service from that acceptance city and, thus, its eligibility for this discount.

ISAL RATE GROUPS

Group 1, Europe	Group 2, Western Hemisphere	Group 3, Pacific Rim	Group 4, Africa/Asia
Albania, Austria, Belgium, Bulgaria, Czechoslovakia, Denmark, Finland, France, Germany, Great Britain and Northern Ireland, Greece, Hungary, Iceland, Ireland, Italy [1], Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Spain [2], Sweden, Switzerland [3], Turkey, USSR, Yugoslavia	Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, French Guiana, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Netherland Antilles and Aruba, Nicaragua, Panama, Paraguay, Peru, Surinama, Trinidad and Tobago, Uruguay, Venezuela	Australia, China, Fiji Islands, Hong Kong, Indonesia, Japan, Korea, Republic of, Malaysia, New Zealand, Papua New Guinea, Philippines, Singapore, Taiwan, Thailand	Algeria, Angola, Bahrain, Bangladesh, Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Congo, Cote d'Ivoire [4], Egypt, Ethiopia [5], Gabon, Ghana, India, Iran, Iraq [6], Israel, Jordan, Kenya, Kuwait [6], Lebanon, Liberia [6], Libya, Madagascar, Mali, Mauritania, Mauritius, Morocco, Mozambique, Niger, Nigeria, Oman, Pakistan, Qatar, Reunion, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Somalia, South Africa, Sri Lanka, Sudan, Syria, Tanzania, Togo, Tunisia, Uganda, United Arab Emirates, Yemen, Republic of [7], Zaire, Zambia, Zimbabwe

[1] Includes San Marino.
[2] Includes Canary Islands.
[3] Includes Liechtenstein
[4] Ivory Coast.
[5] There is no M-Bag service to Ethiopia.
[6] Due to current conditions, all mail service to these countries is suspended until further notice.
[7] Prior to January 1, 1991, the Republic of Yemen was two separate countries: the Yemen Arab Republic and the People's Democratic Republic of Yemen.

INTERNATIONAL SURFACE AIR LIFT (ISAL)

Rate group	Rate per piece [1] (cents)	Rate Per Pound [2] (dollars)			
	Drop ship, direct ship, or full service regular	Drop ship and direct ship [3]		Full service [4]	
		Reg	M-bag	Reg	M-bag
1	24	2.55	2.04	2.65	2.28
2	24	2.95	2.36	3.25	2.60
3	24	3.20	2.56	3.50	2.80
4	24	3.90	3.12	4.20	3.36

[1] For ISAL pieces weighing 2 ounces or less, only a piece rate of 24 cents per piece applies (except for M Bags). This piece rate is the same for drop ship, direct ship, and the full service option for regular ISAL mailings. M-Bag service is available for pieces posted to a single address under the applicable pound rates. Discounts for mailings consisting of pieces at or below the 2-ounce break point that qualify for drop ship or direct-ship discount are based on the total weight of the mailing. A discount of 30 cents per pound applies to these mailings.
[2] For ISAL pieces weighing more than 2 ounces, a pound rate applies to the total weight of the mailing. Mail entered at a gateway facility or qualifying for a direct-ship discount from designated ISAL acceptance cities costs 30 cents per pound below the full-service pound rates. M-Bag rates are offered at 20% below the corresponding regular pound rates.
[3] For ISAL mail tendered at the John F. Kennedy Air Mail Facility, San Francisco Air Mail Facility, and Miami Air Mail Facility. Direct-ship service from designated ISAL acceptance cities qualifies for these rates only when a 750-pound minimum weight mailing is tendered by the mailer and appropriate transportation to the destination or transit hub is available.
[4] For ISAL mail tendered at any acceptance city when the mailing does not qualify for direct-ship service.

Stanley F. Mires,
Assistant General Counsel, Legislative Division.
[FR Doc. 90-25906 Filed 11-1-90; 8:45 am]
BILLING CODE 7710-05-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.
ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Statement of Authority to Act for Employee.
(2) *Form(s) submitted:* SI-10
(3) *OMB Number:* 3220-0034.
(4) *Expiration date of current OMB clearance:* Three years from date of approval.
(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
(6) *Frequency of response:* On occasion.
(7) *Respondents:* Individuals or households, Businesses or other for-profit.
(8) *Estimated annual number of respondents:* 400.
(9) *Total annual responses:* 400.
(10) *Average time per response:* .1 hour.
(11) *Total annual reporting hours:* 40.
(12) *Collection description:* Under 20 CFR 335.102, the Railroad Retirement Board (RRB) accepts claims for sickness benefits executed by other than the sick or injured employees, provided the RRB has the information needed to satisfy itself that the delegation should be made.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the informaiton collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,
Clearance Officer.
[FR Doc. 90-25899 Filed 11-1-90; 8:45 am]
BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28584; File No. SR-PSE-90-38]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Transaction Fees and Charges Waiver

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 19, 1990, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to rule 19b-4 of the Act, submitted a proposed rule change to amend its Schedule of Rates and Charges in order to waive certain transaction fees and charges for all equity trades of NIKE (stock symbol NKE). The waiver shall cover the time period of October 17, 1990 through January 17, 1991.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Although fully confident that its specialists will provide superior markets in NKE, the Exchange believes that a three-month waiver of certain fees and charges is necessary and appropriate for the Exchange to remain on a competitive footing with other exchanges.

The statutory basis for the proposed rule change is section 6(b)(5) of the Act in that it will increase competition and the quality of markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that a three-month waiver of certain transaction fees and charges will increase competition among marketplaces.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act rule 19b-4. At any time within 30 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-90-38 and should be submitted by November 23, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 26, 1990.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 90-25948 Filed 11-1-90; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 34-28585; File No. SR-PHLX-89-48]

Self-Regulatory Organizations; Amendment to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Its Revised Cash Index Participation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 10, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the amendment to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX hereby submits an amendment to proposed rule change SR-PHLX-89-48 regarding its revised Cash Index Participation ("CIP") filing. The text of the rule change, as amended, is attached as *Exhibit A.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The PHLX submitted SR-PHLX-89-48 on August 29, 1989. In this filing, the PHLX gave notice of its intent to reduce to zero all open interest in its then current CIP contracts, which had been

approved by the Commission in SR-PHLX-88-07. The PHLX also announced its exclusive license to file for and receive trading privileges in a new CIP contract that permits a holder to exercise the cash-out-privilege on a daily basis without a penalty and receive the next day's opening index value of the Pertinent index.

After consultation with the Stock Clearing Corporation of Philadelphia ("SCCP"), the licensor of the revised CIP contract specifications, it has been determined that the proposed instrument's appeal and utility to public investors can be heightened if a holder exercising the cash-out privilege can receive the same day's closing index value. To accommodate this change, rule 1008B is being amended to provide an exercise of the cash-out privilege cut-off time for notices to be tendered to the Options Clearing Corporation ("OCC"). The cut-off time will be established as 3 p.m., Philadelphia time. Because an exercise notice may be tendered to the OCC only by the clearing member in whose account with the OCC the CIP is carried, members and member organizations, to the extent that they do not conflict with the rules and policies of the Exchange and the OCC, may established fixed procedures as to the lastest hour at which they will accept exercise notices from their customers.

SCCP and PHLX have entered into an amendment of their preexisting licensing agreement whereby PHLX receives the exclusive rights to use these unique and key concept modifications in connection with PHLX's CIP instrument.

The proposed rule change is consistent with section 6(b)(5) of the Exchange Act, which provides in pertinent part that the rules of the exchange are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The proposal, if approved, also assures the removal of impediments to and the perfection of the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

The proposed rule change is intended to underscore the spot characteristic and exclusive security's nature of the CIP instrument. The Exchange believes that, particularly in light of the proposed CIP enhancements, CIPs will be very attractive to the investing public and thereby may ameliorate some of the volatility that has been associated with investor trading in the more highly leveraged derivative index products.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The PHLX has prepared this rule change in close coordination with the Options Clearing Corporation and the SCCP.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determined whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-PHLX-89-48 and should be submitted by November 23, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 29, 1990.

Exhibit A

The following text assumes that the revisions made in SR-PHLX-89-48, as filled on August 29, 1989, are incorporated. Accordingly, only the revisions made pursuant to this filing are denoted with new text italicized and deleted text bracketed:

Rules Applicable to Trading of Cash Index Participations.

Applicability and Definitions

Rule 1000B.
(a) No change.
(b) No change.

Designation of the Index

Rule 1001B. No change.

CIP Index Calculation.

Rule 1002B. No change.

Dissemination of Information

Rule 1003B. (a) The Exchange shall assure that the current index value is disseminated from time-to-time on days on which transactions in CIPs are made on the Exchange and that the [opening] *closing* index value is disseminated as promptly as it is available.
(b) No change.

Cash-Out Privilege

Rule 1004B. The purchaser of a CIP may exercise the CIP cash-out privilege at any time after establishing a CIP position. Exercise of the CIP cash-out privilege entitles the holder of a long CIP position to obtain the CIP [opening] *closing* index value as specified in Rule 1008B relating to exercise of the cast-out privilege.

Position Limits

Rule 1005B. No change.

Exercise Limits

Rule 1006B. No change.
Rule 1007B. No change.

Exercise of Cash-Out Privilege

Rule 1008B. (a) Exercise of the cash-out privilege shall entitle the holder of the CIP to receive the CIP index value as calculated at the [open] *close* of trading on the *same* business day [following] *as* the date of the exercise of the cash-out privilege.

(b) Notice of exercise of the CIP cash-out privilege must be [provided by a purchaser of a CIP in accordance with the rules and procedures of the Options Clearing Corporation.] *Tendered to The Options Clearing Corporation by the clearing member in whose account with The Options Clearing Corporation the CIP is carried no later than 3:00 P.M., Philadelphia time, to be effective for the date on which the exercise is made.* An exercise notice may be tendered to The Options Clearing Corporation only by the clearing member in whose account with The Options Clearing Corporation the CIP is carried. Members and member organizations, to the extent that they do not conflict with the rules and procedures of the Exchange and The Options Clearing Corporation, shall establish fixed procedures as to the latest hour at which they will accept exercise notices from their customers.

Delivery and Payment

Rule 1008B-1. No change.

Allocation of CIP Exercise Notices

Rule 1009B. No change.

Bids and Offers

Rule 1010B. No change.

Limitation of Exchange Liability

Rule 1011B. Neither the Exchange, the Reporting Authority nor any Agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, of delays in calculating or disseminating the current index value or the [opening] *closing* index value and tracking dividend payout dates or computing proportionate dividend payouts resulting from an act, condition or cause beyond the reasonable control of the Exchange or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; any error; omission or delay in the reports of transactions in one or more underlying securities; or any error; omission or delay in the reports of the current index value or the [opening] *closing* index value by the Exchange or the Reporting Authority.

Reserve Authority

Ruel 1012. No change.

[FR Doc. 90-25949 Filed 11-1-90; 8:45 am]
BILLING CODE 8010-01-M

(Rel. No. 35-25178)

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 26, 1990.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 20, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Mississippi Power Co., et al. (70-7528)

Alabama Power Company ("Alabama Power), 600 North 18th Street, Birmingham, Alabama 35291, Georgia Power Company ("Georgia Power"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, Gulf Power Company ("Gulf Power"), 500 Bayfront Parkway, Pensacola, Florida 32520, and Mississippi Power Company ("Mississippi Power"), 2992 West Beach, Gulfport, Mississippi 39501, each a wholly owned electric-utility subsidiary company of The Southern Company ("Southern"), a registered holding company, have filed an application under sections 9(a) and 10 of the Act.

On March 9, 1989 (HCAR No. 24833), the Commission issued a notice (the "Notice") of a proposal by Mississippi Power, Georgia Power and Gulf Power to lease or sublease to nonaffiliate companies, from time-to-time on or prior to December 31, 1992, coal hopper railroad cars owned or leased by Mississippi Power, Georgia Power or Gulf Power such that any nonaffiliate lease or sublease will not exceed one year in duration and will give Mississippi Power, Georgia Power or Gulf Power, as the case may be, the right of termination, upon reasonable notice, to permit the return of the cars to customer service if needed earlier.

It is now stated that Alabama Power proposes to lease its railcars under the same circumstances and pursuant to the same terms and conditions as stated in the Notice.

In addition, Alabama Power, Georgia Power, Gulf Power and Mississippi Power propose to extend the term during which they may lease or sublease to nonaffiliate companies from December 31, 1992 to December 31, 1993. Finally, the amendment states that no more than 500 railcars will be leased or subleased at any one time pursuant to the authority granted hereunder.

Indiana Michigan Power Company (70-7715)

Indiana Michigan Power Company ("I&M), 1 Riverside Plaza, Columbus, Ohio 43215, a subsidiary of American Electric Power Company, Inc., a registered holding company, has filed an application under sections 9(a) and 10 of the Act.

By orders dated November 1, 1978 and March 21, 1977 (HCAR Nos. 20759 and 19950, respectively), I&M was authorized to lease the nuclear fuel ("Nuclear Fuel") required for use at its Donald C. Cook Nuclear Plant ("Cook Plant") from PruLease, Inc. In order to restructure its leasing arrangements. I&M now proposes to enter into a lease ("Lease") of the Nuclear Fuel with DCC Fuel Corporation, a special purpose corporation to be formed under the laws of Ohio ("Corporation"), all the stock of which will be held by The Huntington Trust Company, N.A., as Trustee ("Trustee") of DCC Fuel Trust ("Trust"). The Trust will be formed under the laws of the State of Ohio pursuant to a trust agreement among I&M, as trustor, the Trustee and I&M, as trust beneficiary. The Trustee is not affiliated with I&M or any of its affiliated companies.

Under the terms of the Lease, which is substantially the same as the present lease except for the determination of the monthly lease payments, the Corporation will be responsible for all payments to suppliers, processors and manufacturers necessary to provide Nuclear Fuel for th Cook Plant for the lease period of three years. The maximum value of Nuclear Fuel to be under the Lease will not be in excess of $175 million, the maximum value under the current lease with PruLease. Under the Lease, I&M will be responsible for operating, maintaining, repairing, replacing, and insuring the Nuclear Fuel and for paying all taxes and costs arising out of the ownership, possession or use thereof.

Eastern Edison Company et al. (70-7730)

Eastern Edison Company ("Eastern Edison"), 110 Mulberry Street, Brockton, Massachusetts 02107, a subsidiary company of Eastern Utilities Associates, a registered holding company, and its

subsidiary company Montaup Electric Company ("Montaup"), both located at P.O. Box 2333, Boston, Massachusetts 02107, have filed a declaration under sections 6(a), 6(b), 7, 9(a), 10, 12(b) and 12(c) of the Act and rules 40, 42, 43, 45 and 50(a)(5) thereunder.

Eastern Edison proposes to issue and sell from time-to-time, through September 30, 1992: (a) Up to $100 million aggregate principal amount of one or more series of First Mortage and Collateral Trust Bonds of Eastern ("Additional Bonds"); (b) up to $100 million aggregate principal amount of one or more series of medium term securities either as first mortgage bonds ("Secured MTN") or unsecured notes ("Unsecured MTN") (collectively, "MTNs"); and (c) up to $100 million aggregate principal amount of unsecured notes ("Unsecured Notes"); provided that the aggregate principal amount of all the Additional Bonds, MTNs and Unsecured Notes will not exceed $100 million (collectively, "Debt").

The Additonal Bonds and the Secured MTNs will be issued under Eastern Edison's Indenture of First Morgage and Deed of Trust dated as of September 1, 1948 as supplemented. Unsecured MTNs will be issued under an indenture between Eastern Edison and a trustee to be selected. The Unsecured Notes will be issued under note agreements to financial institutions and will mature in not more than 10 years.

Each series of Additional Bonds will mature in not less than five, nor more than thirty years from the first day of the month of issuance and will be sold at a price of not less than 98%, nor more than 102.75% of the principal amount of such series. Additional Bonds of each series will be redeemable at the option of Eastern Edison at general redemption prices, except that during the first five years after issuance, no such redemption may be made for the purpose of refunding at an effective interest or dividend cost less than the effective interest cost to Eastern Edison of such series. Additional Bonds of each series may also be redeemable at special redemption prices through the use of sinking fund and replacement fund monies and for other limited purposes.

The MTNs will mature in 9 months to 35 years as determined by agreement between Eastern Edison and the respective purchaser or its agent. Under certain circumstances, MTNs would not be redeemable for a period of up to ten years, as determined from time-to-time, by Eastern Edison and the purchaser or its agent, after which time they would be redeemable at Eastern Edison's option at par or at various premiums above the principal amount.

Eastern Edison proposes to issue and sell the Additional Bonds and MTNs either in accordance with the competitive bidding requirements of rule 50 or under an exemption from the competitive bidding requirements under subsection (a)(5), and requests authorization to begin negotiating the sale of these securities.

Eastern Edison requests an exception, with regards to the Secured MTNs, from the standards required under the Statement of Policy Regarding First Mortgage Bonds Subject to the Act by orders dated February 16, 1956 (HCAR No. 13105) and May 8, 1969 (HCAR No. 16369), regarding sinking funds and redemption provisions.

The net proceeds of the Debt will be used by Eastern Edison to: (1) Repay outstanding short-term bank borrowings; (2) reduce the need for such borrowings in the future; (3) invest in Montaup through capital contributions or the purchase of Montaup Debenture Bonds; (4) pay underwriting costs and other issuance expenses of the Additional Bonds and the MTNs; and (5) for general corporate purposes. The proceeds of the Debt or any part thereof may be temporarily invested in securities.

Montaup proposes to issue and sell Eastern Edison Debenture Bonds in a principal aggregate amount not in excess of the amount of Debt proposed to be issued by Eastern Edison ("New Debenture Bonds"). Eastern Edison also proposes to make capital contributions to Montaup and to purchase the New Debenture Bonds at their principal amount plus accrued interest in an aggregate principal which, together, will not exceed the amount of the Debt. The New Debenture Bonds themselves will contain all of their terms and there will be no indenture or similar instrument governing them. The net proceeds of the New Debenture Bonds will be used by Montaup to: (a) Repay outstanding short-term bank borrowings; (b) reduce the need for such borrowings in the future; and (c) for general corporate purposes.

Entergy Corp. (70–7801)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, has filed an application-declaration under sections 9(a), 10 and 12(c) of the Act and rule 42 thereunder.

By order dated November 8, 1989 (HCAR No. 24981), the Commission authorized Entergy to acquire, in negotiated or open market transactions or through tender offers from time-to-time through December 31, 1991, not to exceed an aggregate of 20,458,109 shares of its issued and outstanding common stock, $5 par value ("Common Stock"). As of September 10, 1990, Entergy has acquired 14,857,600 shares of Common Stock pursuant to such authorization.

In addition, to the 20,458,109 shares previously authorized, Entergy now proposes to acquire for its own account additional shares of its common stock, not to exceed 10% of the shares issued and outstanding as of October 31, 1990, in negotiated or open market transactions or through tender offers from time-to-time through December 31, 1992.

Consolidated Natural Gas Co. et al. (70–7804)

Consolidated Natural Gas Company ("CNG"), CNG Tower, Pittsburgh, Pennsylvania 15222, a registered holding company, and CNG's wholly-owned subsidiary companies, CNG Development Company ("CNGD"), One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244, and CNG Producing Company ("CNGP"), CNG Tower, 1450 Poydras Street, New Orleans, Louisiana 70112, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), and 12(f) of the Act and rules 43 and 45 thereunder.

CNG proposes that CNGD and CNGP be merged, with CNGP as the surviving company, succeeding to all powers, privileges, and franchises and subject to all restrictions, disabilities, liabilities, and duties of both companies. Under the Agreement and Plan of Merger ("Agreement"), the following will occur: (1) CNGP's Certificate of Incorporation will be amended to change the total authorized common stock of CNGP from five million shares of $100 par value each to 70,000 shares of $10,000 each; (2) each issued and outstanding share of CNGP common stock will be converted into one-one hundredth of a share of CNGP common stock; (3) each issued and outstanding share of CNGD common stock, $100 par value per share, will be converted into one-one hundredth of a share of CNGP common stock, $10,000 par value; and (4) in lieu of any fractional share of CNGP common stock which CNG, as sole shareholder of CNGD, would otherwise have been entitled to receive, CNG will be entitled to receive cash in an amount equal to the fraction times $10,000.

CNG and CNGD also are requesting Commission approval for CNGP to assume CNGD's unused financing amounts at the date of the proposed merger. As of September 30, 1990, CNGD's only outstanding financing consisted of $23,350,000 in open account advances from CNG. Therefore, CNGP and CNG request approval to engage in open account advances in an amount up to CNGD's unused open account advances as of the date of the proposed merger.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–25917 Filed 11–1–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17824; 811–4493]

Schafer Value Trust, Inc.; Application

October 29, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Schafer Value Trust, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N–8F was filed on October 3, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 26, 1990, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 645 Fifth Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Law Clerk, (202) 272–2190, or Jeremy N. Rubenstein, Branch Chief, (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 738–1400).

Applicant's Representations

1. Applicant is a closed-end diversified management company organized as a corporation under the laws of the State of Maryland. On June 4, 1986, applicant filed a registration statement pursuant to section 8(b) of the 1940 Act. On that date, applicant also filed a registration statement pursuant to the Securities Act of 1933, which registered 28,000,000 shares of common stock. The registration statement became effective on October 1, 1986.

2. At a meeting held on March 28, 1990, applicant's board of directors adopted a plan of liquidation and dissolution and called for consideration of the plan at applicant's annual meeting of shareholders. On May 4, 1990, applicant filed proxy materials with the Commission relating to the proposed dissolution. Applicant's shareholders approved the liquidation and dissolution at the annual shareholders' meeting held on May 29, 1990.

3. Pursuant to the liquidation, the stock held in applicant's portfolio was sold through brokers or market makers at no less than the market price on the date of the sale. Brokerage commissions incurred in the liquidation totalled $123,382. The balance of applicant's portfolio consisted of cash and cash equivalents.

4. As of September 17, 1990, pursuant to applicant's plan of liquidation and dissolution, applicant had distributed $3,227,270.79 in cash to the shareholders of applicant in redemption of their shares. Each shareholder received $.425 per share, representing the net asset value per share on the distribution date. Applicant redeemed a total of 7,593,577 shares.

5. At the time of filing, applicant had retained $26,964.98 to be distributed to 139 shareholders who had not presented their shares for redemption. On September 26, 1990, applicant mailed a notice to the shareholders who had not redeemed their shares informing them of their right to redemption. Applicant will continue its efforts to notify these shareholders.

6. Applicant had retained $166,455.03 to pay the expenses of liquidation (including payment for expenses billed but not yet paid by the applicant totalling $44,106.83).

7. Applicant has filed Articles of Dissolution with the Secretary of State of Maryland. The Articles became effective on July 12, 1990. Applicant mailed a notice of dissolution to all its known creditors.

8. As of the date of the application, the applicant had no debts, or liabilities (other than those described above), and was not a party to any litigation or administrative proceeding.

9. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 25946 Filed 11–1–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17826; 811–407]

State Bond and Mortgage Company; Application for Deregistration

October 29, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: State Bond and Mortgage Company ("Applicant").

RELEVANT 1940 ACT SECTION: Order requested under section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks a conditional order declaring that it has ceased to be an investment company under the 1940 Act because, among other things, it has become primarily engaged, through wholly-owned subsidiaries, in businesses that are excepted from the definition of an investment company under sections 3(c)(3) and 3(c)(6) of the 1940 Act.

FILING DATE: The application was filed on June 27, 1990, and amended on September 28, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued, unless the SEC orders a hearing, upon Applicant notifying the SEC, by amending the application, that Applicant's restructuring, as described in the application, has been consummated. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 26, 1990, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature

of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 8500 Normandale Lake Boulevard, Suite 1650, Minneapolis, Minnesota 55437.

FOR FURTHER INFORMATION CONTACT: Robert A. Robertson, Staff Attorney, at (202) 504–2283, or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 738–1400).

Applicant's Representations

1. Applicant represents that it is a registered investment company under the 1940 Act presently engaged in, among other things, the business of issuing face-amount certificates (as defined in section 2(a)(15) of the 1940 Act) of the single payment type. Applicant has issued and has outstanding both installment and single payment type face-amount certificates.

2. Applicant believes it is primarily engaged in the life insurance business through a wholly owned subsidiary that is an insurance company as defined in section 2(a)(17) of the 1940 Act (the "Insurance Subsidiary"). In addition, Applicant is engaged in the banking business through a wholly owned subsidiary that is a bank as defined in section 2(a)(5) of the 1940 Act (the "Bank Subsidiary"). Applicant also is engaged in the securities and insurance brokerage business through another wholly owned subsidiary (the "Broker/Dealer Subsidiary"), and it is a registered investment adviser for several affiliated open-end investment companies.

3. In connection with the filing of the application, and as contemplated by section 13(a)(4) of the 1940 Act, Applicant held a Special Meeting of Shareholders on October 17, 1990 where the Applicant's shareholders considered and approved the proposed plan to restructure it (the "Restructuring"). The Restructuring would include the termination of Applicant's registration under the 1940 Act.

4. Under the Restructuring, a wholly owned subsidiary of Applicant, which is registered under the 1940 Act (the "Face-Amount Certificate Subsidiary"), will assume all of Applicant's obligations to all certificate holders under Applicant's currently outstanding face-amount certificates (the "SB&M Certificates"). In consideration of the Face-Amount Certificate Subsidiary assuming these obligations and issuing of all of its common stock to Applicant, Applicant will transfer to the Face-Amount Certificate Subsidiary assets, which constitute qualified investments under the provisions of section 28(b) of the 1940 Act, having an aggregate value at least equal to the then aggregate amount of Applicant's face-amount certificate reserves plus $250,000. The book value of the assets to be transferred totaled approximately $64.4 million on December 31, 1989. The assets and liabilities transferred will be as of the date of the transfer, but Applicant does not expect them to be substantially different from those presented. Upon the transfer of the face-amount certificate business to the Face-Amount Certificate Subsidiary, Applicant will cease to issue new face-amount certificates. However, Applicant will remain liable for the SB&M Certificates until their maturity or surrender and payment in accordance with their terms.

5. Applicant also plans to sell all of the outstanding capital stock of its Bank Subsidiary, and contribute the entire net proceeds to the capital of its Insurance Subsidiary. This increased capital will allow the Insurance Subsidiary to increase its business.

Applicant's Legal Analysis

1. Section 6(f) of the 1940 Act provides, in pertinent part, that whenever the SEC, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the effectiveness of such order, the registration of such company shall cease to be in effect. If necessary for the protection of investors, such an order may be made subject to appropriate conditions.

2. After the Restructuring, Applicant will continue to come within the definition of an investment company under section 3(a)(2) of the 1940 Act because the SB&M Certificates will remain outstanding. Section 3(a)(2) provides that an "investment company" includes any issuer that "is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificates outstanding." However, notwithstanding section 3(a)(2), Applicant believes that it is excepted from the definition of an investment company by virtue of sections 3(c)(3) and 3(c)(6) of the 1940 Act.

3. Section 3(c)(6) of the 1940 Act excepts from the definition of an investment company, among other things, "[a]ny company primarily engaged, directly or through majority owned subsidiaries, in one or more of the businesses described in (section 3(c)(3) of the 1940 Act), or in one or more of such businesses (from which not less than 25 per centum of such company's gross income during its last fiscal year was derived) together with an additional business or businesses other than investing, reinvesting, owning, holding or trading in securities." Section 3(c)(3) of the 1940 Act excludes from the definition of an investment company "(a)ny bank or insurance company; * * *."

4. The business that a company is "primarily engaged" in is a question of fact. *SEC* v. *Fifth Avenue Coach Lines, Inc.*, 289 F.Supp. 2 (S.D. N.Y. 1968), *affirmed* 435 F.2d 510 (2nd Cir.1970). In determining the primary business in which a company is engaged, the SEC considers, among other things: (a) The issuer's historical development, (b) the issuer's public representations of policy, (c) the activities of the issuer's officers and directors, (d) the nature of the issuer's present assets, and (e) the sources of the issuer's present income. *Tonopah Mining Company of Nevada*, 26 S.E.C. 426 (1947); *The Great American Life Underwriters, Inc.*, 41 S.E.C. 1 (1960).

5. The development of Applicant's life insurance, banking, brokerage and investment management businesses has occurred over the past 24 years, and these non-investment company businesses, particularly life insurance, have, over that time, become the most significant factor in Applicant's financial condition and performance. Applicant's Insurance Subsidiary accounted for 70% of its total assets, 74% of its gross income and 80% of its net income for the year ended December 31, 1989. By including the financial results of the bank Subsidiary, these percentages rise to 89%, 88% and 95%, respectively. Management of the insurance business and other businesses not regulated by the 1940 Act consumes essentially all of the time of Applicant's directors, officers and employees. Applicant believes that its business activities, therefore, except it from the definition of an investment company under section 3(c)(3) and section 3(c)(6).

6. In addition to Applicant's reliance on being primarily engaged solely in section 3(c)(3) businesses, section 3(c)(6) provides an alternative approach for establishing that an entitity is not an investment company within the meaning of the 1940 Act. The second portion of section 3(c)(6) includes, among other things, a company primarily engaged in a business or businesses excepted by sections 3(c)(3), from which the company derived at least 25% of its gross income in the last fiscal year, and other businesses, other than investing, reinvesting, owning, holding or trading in securities. This alternative approach of section 3(c)(6) encompasses diversified companies, primarily engaged in excepted and other businesses, as long as the primary engagement of the company does not involve investment company activities.

7. Applicant, through a wholly owned subsidiary, is engaged in the life insurance business. As stated above, Applicant's Insurance Subsidiary, a section 3(c)(3) excepted business, accounted for 74% of its gross income in 1989. Moreover, its Bank Subsidiary, also a 3(c)(3) excepted business, with the Insurance Subsidiary accounted for 86% of Applicant's gross income. In addition to life insurance and banking, Applicant is engaged in managing investment companies. When this non-investment company business is added to the insurance and banking businesses, they account for 89% of Applicant's total assets, 89% of its gross income and all of its net income for the year ended December 31, 1989. When the brokerage business, excepted from the definition of an investment company by section 3(c)(2) of the 1940 Act, is added together with the insurance, banking and investment company management businesses, such businesses collectively account for 89% of Applicant's total assets and 92% of its gross income for the year ended December 31, 1989. Thus, under this alternative approach of section 3(c)(6), Applicant believes it also would be excepted from the definition of an investment company.

8. In addition to Applicant's belief that it is excepted from the definition of an investment company, it believes that the holders of the SB&M Certificates will continue to be sufficiently protected as investors in the SB&M Certificates. The Face-Amount Certificate Subsidiary, which will be registered under the 1940 Act, will have capital in excess of the legal requirements, and in an amount sufficient for the needs of a face-amount certificate business. Applicant presently has these assets on deposit with First Bank, National Association, as custodian, pursuant to section 28(c) of the 1940 Act, as certificate reserves on the SB&M Certificates. The Face-Amount Certificate Subsidiary will maintain these assets on deposit in a similar manner with the same custodian. The book value of the assets to be transferred totaled approximately $64.4 million on December 31, 1989.

9. The Face-Amount Certificate Subsidiary will comply with the applicable provisions of state and federal law, including the 1940 Act. It intends to operate its face-amount certificate business in the same manner as Applicant has over the past several years. Moreover, Applicant's personnel who are familiar with the face-amount certificate business will continue to oversee the business of the Face-Amount Certificate Subsidiary.

10. In light of the above, in conjunction with the conditions to which Applicant has agreed, Applicant believes that its request for an order under section 8(f) that it has ceased to be an investment company is warranted and is consistent with the protection of investors.

Applicant's Conditions

Applicant agrees to the following conditions in connection with the relief requested:

1. Applicant will not issue any additional "face-amount certificates" as defined in section 2(a)(15) of the 1940 Act.

2. Applicant will maintain 100% ownership of the Face-Amount Certificate Subsidiary so long as any SB&M Certificates are outstanding and the Face-Amount Certificate Subsidiary is a registered investment company under the 1940 Act.

3. Applicant will require the Face-Amount Certificate Subsidiary to maintain reserves for the SB&M Certificates as required by section 28 of the 1940 Act and require the Face-Amount Certificate Subsidiary to comply with all other applicable provisions of the 1940 Act so long as SB&M Certificates outstanding and the Face-Amount Certificate Subsidiary is a registered investment company under the 1940 Act.

4. Until released from such obligation by the holders thereof or such obligations are paid in accordance with their terms upon maturity or surrender, Applicant will remain liable to the SB&M Certificate holders for all amounts due them under the SB&M Certificates.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–25947 Filed 11–1–90; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council Meeting; Correction

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Boston, will hold a public meeting at 10 a.m. on Monday, November 5, 1990, at the U.S. Small Business Administration, 155 Federal Street, 9th Floor, Boston, Massachusetts, to discuss such matters as may be presented by members, staff of the Small Business Administration or others present. The first notice of this meeting, published at 55 FR 42143 (October 17, 1990), incorrectly stated the meeting date as November 15, 1990.

For further information, write or call Raymond R. Arruda, Special Assistant to the Regional Administrator, U.S. Small Business Administration, 155 Federal Street, 9th Floor, Boston, Massachusetts 02110, telephone (617) 451–2030.

Dated: October 26, 1990.

Veronica De Nardo,

Acting Director, Office of Advisory Councils.

[FR Doc. 90–25930 Filed 11–1–90; 8:45 am]

BILLING CODE 8025–01–M

Region I Advisory Council Meeting; Massachusetts

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Boston, will hold a public meeting at 10 a.m. on Tuesday, November 13, 1990, in the Conference Room in the Thomas P. O'Neill, Jr., Federal Building, 10 Causeway Street, room 265, Boston, Massachusetts, to discuss such matters as may be presented by members, staff of the Small Business Administration or others present.

For further information, write or call John J. McNally, Jr., District Director, U.S. Small Business Administration, 10 Causeway Street, room 265, Boston, Massachusetts 02222–1093, telephone (617) 565–5561.

BEST COPY AVAILABLE

Dated: October 26, 1990.
Veronica De Nardo,
Acting Director, Office of Advisory Councils.
[FR Doc. 90-25926 Filed 11-1-90; 8:45 am]
BILLING CODE 8025-01-M

Region VII Advisory Council Meeting, Missouri

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of St. Louis, will hold a public meeting at 9 a.m. on Tuesday, December 4, 1990, at the District Office of the U.S. Small Business Administration, 815 Olive Street, room 242, St. Louis, Missouri, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert L. Andrews, District Director, U.S. Small Business Administration, 815 Olive Street, room 242, St. Louis, Missouri 63101; telephone (314) 539-6600.

Dated: October 26, 1990.
Veronica De Nardo,
Acting Director, Office of Advisory Councils.
[FR Doc. 90-25927 Filed 11-1-90; 8:45 am]
BILLING CODE 8025-01-M

Region II Advisory Council Meeting; Puerto Rico

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of Hato Rey, will hold a public meeting at 9 a.m. on Wednesday, November 7, 1990, at the Buccaneer Hotel on St. Croix, U.S. Virgin Islands, to discuss such matters as may be presented by members, staff of the Small Business Administration or others present.

For further information, write or call Mrs. Doris Staszeski, Chairperson, Cond. Santa Ana, A Street Corner 19, apt. 4C, Guaynabo, Puerto Rico, 00657, telephone (809) 750-8405/8605, 781-0710.

Dated: October 26, 1990.
Veronica De Nardo,
Acting Director, Office of Advisory Councils.
[FR Doc. 90-25928 Filed 11-1-90; 8:45 am]
BILLING CODE 8025-01-M

Region X Advisory Council Meeting; Washington

The U.S. Small Business Administration Region X Advisory Council, located in the geographical area of Seattle, will hold a public meeting at 9:30 a.m. on Tuesday, December 4, 1990, at the Henry M. Jackson Federal Building, 915 Second Avenue, room 1792, Seattle, Washington, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert P. Meredith, Acting District Director, U.S. Small Business Administration, 915 Second Avenue, room 1792, Seattle, Washington 98174, phone (206) 442-704.

Dated: October 29, 1990.
Veronica De Nardo,
Acting Director, Office of Advisory Councils.
[FR Doc. 90-25928 Filed 11-1-90; 8:45 am]
BILLING CODE 8025-01-M

[License No. 09/09-0386]

First Commerce & Loan Limited Partnership; Issuance of a Small Business Investment Company License

On August 31, 1989, a notice was published in the **Federal Register** (54 F.R. 36087) stating that an application has been filed by First Commerce & Loan L.P. with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1990)) for a license as a small business investment company.

Interested parties were given until close of business October 1, 1989 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-0386 on October 19, 1990, to First Commerce & Loan L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 26, 1990.
Bernard Kulik,
Associate Administrator for Investment.
[FR Doc. 90-25934 Filed 11-1-90; 8:45 am]
BILLING CODE 8025-01-M

[License No. 02/02-0539]

IBJS Capital Corp.; Issuance of a Small Business Investment Company License

On November 30, 1989, a notice was published in the **Federal Register** (54 FR 49384) stating that an application has been filed by IBJS Capital Corporation, One State Street, New York, New York 10004, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.103 (1989)) for a license as a small business investment company.

Interested parties were given until close of business January 2, 1990 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-0539 on May 25, 1990, to IBJS Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 25, 1990.
Bernard Kulik,
Associate Administrator for Investment.
[FR Doc. 90-25933 Filed 11-1-90; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-90-44]

Petitions for Exemption, Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections.

The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 23, 1990.

ADDRESSES: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on October 25, 1990.

Denise Donohue Hall,
Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 23653.
Petitioner: University of North Dakota.
Sections of the FAR Affected: 14 CFR part 141, appendix D, paragraph 3(c).
Description of Relief Sought: To amend Exemption No. 3825E to allow aviation students allowable credit for more than the present 50-hour limitation.

Docket No.: 26313.
Petitioner: Pan American World Airways.
Sections of the FAR Affected: 14 CFR 121.417(c).
Description of Relief Sought: To allow petitioner to receive credit for the training conducted with its flight attendants in the use of protective breathing equipment. A grant of exemption would preclude petitioner from conducting additional fire drills in accordance with a recent FAA interpretation of the regulation.

Docket No.: 26350.
Petitioner: Cummings Rigging Works.
Sections of the FAR Affected: 14 CFR 65.127(a).
Description of Relief Sought: To allow Mr. Cummings, President of Cummings Rigging Works, to exercise the privileges of his Master Parachute Rigger certificates without having available a smooth top table at least 3 feet wide by 40 feet long.

Dispositions of Petitions

Docket No.: 18324.
Petitioner: American Airlines Maintenance & Engineering Center.
Sections of the FAR Affected: 14 CFR 43.3 and 121.709(b)(3).
Description of Relief Sought/Disposition: To extend Exemption No. 2678F that allows petitioner's certificated flight engineers to stow passenger supplemental oxygen masks during flight and to make an entry in the aircraft maintenance logbooks in reference to that function.

Grant, October 16, 1990, Exemption No. 2678G

Docket No.: 25588.
Petitioner: The Soaring Society of America, Inc.
Sections of the FAR Affected: 14 CFR 45.11(a) and (d) and 45.29(h).
Description of Relief Sought/Disposition: To extend Exemption No. 4988 that allows owners, operators, and manufacturers of gliders to forego the requirement to secure an identification plate or display and model and serial number on the exterior of the aircraft at specified locations.

Grant, October 18, 1990, Exemption No. 4988A

Docket No.: 25775.
Petitioner: Petroleum Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 43.3.
Description of Relief Sought/Disposition: To allow appropriately trained flight crewmembers to remove, replace, and service patient oxygen systems that are installed on petitioner's fleet of emergency medical aircraft.

Denial, October 15, 1990, Exemption No. 5244

Docket No.: 26152.
Petitioner: Sierra Academy of Aeronautics.
Sections of the FAR Affected: 14 CFR part 141, appendix F, paragraph (c)(III)(a).
Description of Relief Sought/Disposition: To allow petitioner to conduct its Commercial Pilot, Helicopter Course, utilizing helicopters only, with 80 hours of flight instruction and 70 hours of directed solo training versus 50 hours of flight instruction and 100 hours of directed solo training as required by the regulations.

Grant, October 22, 1990, Exemption No. 5245

[FR Doc. 90-26017 Filed 11-1-90; 8:45 am]
BILLING CODE 4910-01-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

CitySavings and Loan Association, F.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for CitySavings and Loan Association, F.A., San Antonio, Texas, on October 26, 1990.

Dated: October 26, 1990.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
[FR Doc. 90-25907 Filed 11-1-90; 8:45 am]
BILLING CODE 6720-01-M

Rancho Bernardo Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Rancho Bernardo Federal Savings Bank San Diego, California, on October 26, 1990.

Dated: October 26, 1990.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
[FR Doc. 90-25998 Filed 11-1-90; 8:45 am]
BILLING CODE 6720-01-M

CitySavings and Loan Association, Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(C) and of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for CitySavings and Loan Association, San

Antonio, Texas, Docket No. 8227, on October 26, 1990.

Dated: October 26, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-25990 Filed 11-1-90; 8:45 am]

BILLING CODE 6720-01-M

First State Savings Bank, F.S.B.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First State Savings Bank, F.S.B., Mountain Home, Arkansas, Docket No. 6401, on October 26, 1990.

Dated: October 26, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-26000 Filed 11-1-90; 8:45 am]

BILLING CODE 6720-01-M

Rancho Bernardo Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Rancho Bernardo Savings Bank, San Diego, California on October 26, 1990.

Dated: October 26, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-26001 Filed 11-1-90; 8:45 am]

BILLING CODE 6720-01-M

Southeastern Savings Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Southeastern Savings Association, Dayton, Texas, Docket No. 7593, on October 26, 1990.

Dated: October 26, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-26002 Filed 11-1-90; 8:45 am]

BILLING CODE 6720-01-M

Southmost Savings and Loan Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Southmost Savings and Loan Association, Brownsville, Texas, with the Resolution Trust Corporation as sole Receiver for the Association on October 26, 1990.

Dated: October 26, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-26003 Filed 11-1-90; 8:45 am]

BILLING CODE 6720-01-M

Summit First Saving and Loan Association, F.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Summit First Savings and Loan Association, F.A., Summit, Illinois, Docket No. 8870, with the Resolution Trust Corporation as sole Receiver for the Association on October 26, 1990.

Dated: October 26, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-26004 Filed 11-1-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-61; OTS No. 4586]

Millington Savings Bank, SLA, Millington, NJ; Final Action; Approval of Conversion Application

Notice is hereby given that on October 22, 1990, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Millington Savings Bank, SLA, Millington, New Jersey, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, New York District Office, 10 Exchange Place Centre, 17th Floor, Jersey City, New Jersey 07302.

Dated: October 24, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-26005 Filed 11-1-90; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 213
Friday, November 2, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552(e)(3)), that the regular meeting of the Farm Credit Administration Board (Board) scheduled for Tuesday, November 6, 1990, will not be held.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean Virginia 22102-5090.

Dated: October 30, 1990.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 26120 Filed 10-31-90; 2:15 pm]

BILLING CODE 6705-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Forwarded to Federal Register on October 31, 1990.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, November 7, 1990.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such open item(s) was added:

Proposals regarding the Federal Reserve System's seasonal credit program. (This item was originally considered at an open meeting on October 31, 1990.)

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: October 31, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26136 Filed 10-31-90; 3:25 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, November 7, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed amendment to Regulation Y (Bank Holding Companies and Change in Bank Control) to permit reduced-rate credit cards under section 106 of the Bank Holding Company Act Amendments of 1970.

Discussion Agenda

2. Publication for comment of proposed modification to the Board's guidelines establishing tiered pricing for check collection services.
3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: October 31, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26073 Filed 10-31-90; 10:38 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Wednesday, November 7, 1990, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 31, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26074 Filed 10-31-90; 10:38 am]

BILLING CODE 6210-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:50 p.m. on Tuesday, October 30, 1990, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to the resolution of failed thrift institutions.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, NW., Washington, DC.

Dated: October 30, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90-26115 Filed 10-31-90; 12:57 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register

Vol. 55, No. 213

Friday, November 2, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children (WIC); Review of Food Packages

Correction

In proposed rule document 90-25129 beginning on page 42856, in the issue of Wednesday, October 24, 1990, make the following corrections:

1. On page 42857, in the third column, in the first full paragraph, in the second line from the bottom, "instruction" should read "introduction".

2. On page 42858, in the first column, in the second full paragraph, in the first line, "Specially" should read "Specifically"; and in the 10th line from the bottom of the page, after "to" insert "the".

3. On the same page, in the second column, in the second full paragraph, in the fifth line, after "of" insert "a".

4. On the same page, in the third column, in the paragraph numbered 2, in the fifth and sixth lines, remove the phrase"(i.e., high nutrient to calorie rate) and bioavailable sources"; and the paragraph numbered 3, in the third, fourth and fifth lines, remove the phrase "and maximum monthly allotments of foods within each packages,".

5. On page 42859, in footnote 2, in the second line, "100 milligrams" should read "10 milligrams".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90F-0297]

Anitox Corp.; Filing of Food Additive Petition

Correction

In notice document 90-24564 beginning on page 42272, in the issue of Thursday, October 18, 1990, make the following correction:

On page 42273, in the first column, under "SUPPLEMENTARY INFORMATION:", in the 10th line, "to 2.65", should read "to 2.64".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-90-4214-11;IDI-05280]

Proposed Continuation of Withdrawal; Idaho

Correction

In notice document 90-11484 beginning on page 20537 in the issue of Thursday, May 17, 1990, make the following corrections:

1. On page 20537, in the second column, in the 24th line, "W½W¼E ¼E¼" should read "W½SW¼ SE¼SE¼".

2. On the same page, in the same column, in the 28th and 30th lines, "Kiwanas" was misspelled.

3. On the same page, in the same column, in the 21st line from the bottom, "E¼NE¼SW¼SE¼" should read "E½NE¼SW¼SE¼".

4. On the same page, in the same column, in the fifth line from the bottom, delete the second comma (,).

5. On the same page, in the third column, in the 33rd line, "Sturgil" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-00-4212-14; N-45233]

Realty Action; Non-Competitive Sale of Public Lands in Clark County, NV

Correction

In notice document 90-21629 appearing on page 37979, in the issue of Friday, September 14, 1990, make the following correction:

On page 37979, in the second column, in the second line, "SE½NE½" should read "SE¼NE¼".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Annual List of Labor Surplus Areas

Correction

In notice document 90-24751 beginning on page 42509, in the issue of Friday, October 19, 1990, make the following corrections:

1. On page 42514, in the second column, in the 44th line, after "Saginaw City" insert "Saginaw Township".

2. On page 42515, in the fifth column, in the 13th line, "Nobel" should read "Noble".

3. On the same page, in the sixth column, in the 19th line, "Nobel" should read "Noble".

4. On page 42517, in the third column, in the 14th line from the last, "Tutus" should read "Titus".

5. On the same page, in the fifth column, under "WASHINGTON", in the third line, "Beton" should read "Benton".

6. On the same page, in the sixth column, in the 27th line from the bottom, "Beton" should read "Benton".

BILLING CODE 1505-01-D

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federal register

Friday
November 2, 1990

Part II

Securities and Exchange Commission

17 CFR Part 200 et al.

Multijurisdictional Disclosure and Modifications to the Current Registration and Reporting System for Canadian Issuers; Proposed Revisions to Rules and Forms and Request for Comments

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 210, 229, 230, 239, 240, 249, 260 and 269

[Release No. 33-6879; 34-28511; 39-2254; IC-17812; Intl Series Release No. 180; File No. S7-19-89]

RIN 3235-AC64

Multijurisdictional Disclosure and Modifications to the Current Registration and Reporting System for Canadian Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Revised proposed rules, forms and schedules, proposed revisions to rules and forms and request for comment.

SUMMARY: The Securities and Exchange Commission (the "Commission") is publishing for comment revised proposed rules, forms and schedules intended to facilitate cross-border offerings of securities and continuous reporting by specified Canadian issuers. To remove unnecessary impediments to transnational capital formation, the multijurisdictional disclosure system would permit Canadian issuers meeting eligibility criteria to satisfy certain securities registration and reporting requirements in the United States by providing disclosure documents prepared in accordance with the requirements of Canadian regulatory authorities.

In connection with the multijurisdictional disclosure system, the Commission also is publishing for comment revisions to existing rules and forms to permit registration and reporting under the Securities Act of 1933 and the Securities Exchange Act of 1934 by Canadian foreign private issuers on an equal basis with all other foreign private issuers.

DATES: Comments should be received on or before December 15, 1990.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-19-89. All comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Anita Klein, Office of International Corporate Finance, Division of Corporation Finance at (202) 272-3246; David Sirignano and Catherine Dixon, Office of Tender Offers, Division of Corporation Finance at (202) 272-3097; Michael Hyatte, Office of Chief Counsel, Division of Corporation Finance at (202) 272-2573; Robert Bayless, Office of the Chief Accountant, Division of Corporation Finance at (202) 272-2553; Nancy Sanow and Ethan Corey, Office of Legal Policy and Trading Practices, Division of Market Regulation at (202) 272-2880; Securities and Exchange Commission, 450 Fifth Street N.W., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment revised new Forms F-7, F-8, F-9 and F-10 under the Securities Act of 1933 (the "Securities Act"); revised new Form 40-F and revised new Schedules 14D-1F, 14D-9F and 13E-4F under the Securities Exchange Act of 1934 (the "Exchange Act"); revised new Form T-5 under the Trust Indenture Act of 1939 (the "Trust Indenture Act") and revised new Form F-X under both the Securities Act and the Exchange Act. The Commission further is proposing revised new Rule 467, changes to Rules 158, 175, 424 and 502 and changes to Forms S-4, S-8, S-11, F-1, F-2, F-3 and F-4 under the Securities Act; new Rules 13a-3, 13e-4(h), 14d-1(b), 14e-2(c), 15d-4, and 15d-5(c), changes to Rules 3a12-3(b), 3b-6, 12g-3, 12g3-2, 13a-10, 13a-16, 15d-5(b), 15d-10 and 15d-16, and changes to Forms 20-F and 6-K under the Exchange Act; revised new Rules 4d-1 through 4d-6 and changes to Rule 0-11 under the Trust Indenture Act; changes to Rules 3-01, 3-02, 3-13, and 3-19 of Regulation S-X; changes to Rules 302, 402, and 404 of Regulation S-K; and changes to Rule 30-1(f) of the Commission's Rules Delegating Functions to Division Directors, Regional Administrators and the Secretary of the Commission.

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I. EXECUTIVE SUMMARY

On July 24, 1989, the Commission published for comment proposed rules, forms, and schedules that would have provided the foundation for a multijurisdictional disclosure system ("MJDS") to facilitate cross-border securities offerings by certain Canadian issuers.[1] The Ontario Securities Commission ("OSC") and the Commission des valeurs mobilieres du Quebec ("CVMQ") concurrently issued for comment proposals that would establish a MJDS in Canada.[2] The MJDS would permit issuers to make public offerings and tender offers in Canada and the United States using disclosure documents prepared in accordance with home country requirements.

The MJDS is a hybrid of two approaches for enhancing the efficiency of multinational capital-raising: mutual recognition and harmonization of disclosure standards. While the multijurisdictional disclosure effort is based on the concept of mutual recognition, Canada was chosen as the first partner for the United States in part because of the similarities between the U.S. and Canadian investor protection mandates and disclosure requirements. The existence of a well-developed, sophisticated and reliable system for administering Canadian disclosure requirements also was critical, given the Commission's reliance on Canadian definitions, procedures, application of disclosure standards, and day-to-day administration of those standards.

As originally proposed, the MJDS would have permitted certain Canadian issuers that, depending on the nature of the offering, met certain market value, public float and Canadian reporting history tests to register securities in the United States using disclosure documents prepared according to the requirements of Canadian regulatory authorities. In addition, in certain circumstances, specified Canadian issuers would have been permitted to use such documents to satisfy U.S. periodic disclosure requirements, U.S. proxy requirements, Section 16 reporting requirements, and U.S. tender offer regulations regarding third-party and issuer exchange and cash tender offers (where a limited percentage of the class of securities were held of record by U.S. residents).

The Commission has reviewed the comments received on the original proposal,[3] which were generally supportive but suggested refinements, and is proposing a revised MJDS for comment. The revised MJDS proposed today, like the original proposal, would permit single-jurisdiction regulation of certain securities offerings and continuous reporting obligations, so that cross-border securities offerings in the United States and Canada could be made more efficiently and at less expense. Like the original proposal, the reproposal would constitute a first step in that it is limited to large Canadian issuers or to certain types of offerings, rather than providing for multijurisdictional registration and disclosure for any offering by a Canadian issuer.

The reproposal would continue to cover registration of offerings by "substantial" [4] Canadian foreign private issuers and crown corporations.[5] Primarily because of concerns regarding exclusion of U.S. investors from such investment opportunities, registration also would continue to be permitted under the reproposal for certain rights and exchange offers by Canadian foreign private issuers and crown corporations.[6] In addition, compliance with Canadian law would be deemed to satisfy the requirements of the Williams Act in the case of tender offers made for the securities of a Canadian issuer where less than 20 percent of the target's securities are held by U.S. residents.

Under both the original proposal and the reproposal, to be eligible to register securities under the Securities Act in connection with the MJDS, a Canadian issuer generally would be required to have a three-year reporting history in Canada,[7] and to be in compliance at the time of filing with the Canadian reporting requirements as administered by Canadian securities regulatory authorities. Issuers also would be required, except in the case of rights offerings, to meet tests of minimum market value or public float.

Continuous reporting under the reproposal differs from the original proposal in two limited ways. Under the reproposal, continuous reporting by use of home jurisdiction documents would be extended to substantial Canadian issuers who have reporting obligations arising from Securities Act registration outside the MJDS. The information-supplying exemption from Exchange Act reporting requirements provided by Rule 12g3-2(b) would be extended to cover Canadian issuers who have registered securities on MJDS forms.

As reproposed today, the scope of the MJDS would be extended in two significant ways. First, under the reproposal the MJDS would be extended in scope by eliminating one of the requirements for registration under the Securities Act on Form F-7. As originally proposed, securities to be offered in a rights offering could have been registered on Form F-7 only if less than 20 percent of the class of such securities were held of record by U.S. residents. No such ceiling on U.S. ownership would be imposed under the reproposal.

The other significant extension in the MJDS's scope involves Form F-8, which only would have encompassed Securities Act registration involving exchange offers under the original proposal. Form F-8 has been expanded under the reproposal to cover registration of securities in connection with Canadian statutory amalgamations, mergers, arrangements and other reorganizations that require the vote of shareholders of the participating companies ("business combinations"). With limited exceptions, registration on Form F-8 of such a transaction would be permitted if: The participants are Canadian-organized or incorporated; the predecessor participants [8] have been listed on The Montreal Exchange ("ME") or The Toronto Stock Exchange ("TSE") for 36 months, and each has a public float of (CN) $75 million; and less than 20 percent of the class of the securities being registered by the successor would be held of record by U.S. residents other than U.S. affiliates,[9] as if measured upon completion of the business combination. The information provided to Canadian regulatory authorities in satisfaction of the Canadian proxy requirements would be filed with the Commission under

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[1] Securities Act Release No. 6841 (July 24, 1989) [54 FR 32226] (the "original proposal").

[2] *See* "Multijurisdictional Disclosure System-Request for Comments" at 12 O.S.C.B. 2919 (July 28, 1989) and 30 Q.S.C. Bulletin No. 29, at 1 (July 21, 1989).

[3] Thirty-five comment letters on the original proposal were received. Those letters and a summary of the comments are available for public inspection and copying in File No. S7-19-89 at the Commission's Public Reference Room in Washington, DC.

[4] In the context of investment grade debt and preferred stock, a "substantial" issuer is defined as one that meets the eligibility requirements for Form F-9, including a market value of at least (CN) $160 million in the case of certain convertible securities. In the case of other securities, (CN) $360 million would be required to meet the designation as a "substantial" issuer.

[5] A Canadian crown corporation is a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or a territory of Canada.

[6] Foreign issuers making rights or exchange offers frequently do not extend such offers to U.S. holders because they are unwilling to bear the costs and other obligations of registering securities in the United States. To avoid filing a registration statement in the United States, Canadian exchange offerors may exclude U.S. shareholders or restrict them to receiving cash. U.S. holders of securities are thereby denied the opportunity to realize full value on their investments. In the case of exchange offers, investors are relegated either to selling into the market at less than the full tender offer consideration, and incurring transactional costs not imposed in the tender offer, or remaining minority shareholders subject to the risk of being "cashed out" in a subsequent merger or arrangement subject to Canadian corporate law. In the case of rights offers, U.S. investors may be given cash which amounts to less than the market value of the right or may be excluded entirely.

[7] In the case of rights offerings, business combinations and exchange offers, issuers would be required to have listed securities on The Montreal Exchange or The Toronto Stock Exchange for the 36 months prior to the offering. Pursuant to Canadian rules, they thus would have been reporting to the OSC or CVMQ for that period. *See* Securities Act (Ontario) ("OSA") section 1(1)(38); Securities Act (Quebec) ("QSA") 66.

[8] Two Canadian companies wishing to engage in business combinations generally form a third company that will be the sole survivor upon completion of such business combination.

[9] The Canadian definition of affiliate is proposed to be used. As defined under the MJDS, "affiliate" means any person who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the registrant. Thus, Canadian registrants can identify their affiliates under the definition they are accustomed to applying. Adoption of the Canadian definition of "affiliate" for this purpose is neither intended to alter the definition of affiliate otherwise applied under the Securities Act nor to bear upon the interpretation or application of such definition.

cover of Form F–8 in satisfaction of the Securities Act registration requirements.

In connection with the treatment of cash tender or exchange offers under the MJDS,[10] revisions are proposed to clarify that the U.S. ownership threshold would be determined by reference to holdings of U.S. residents other than U.S. affiliates of the issuer. While the reproposal retains 20 percent as the U.S. ownership threshold, comment also is sought as to whether the 20 percent threshold should be raised to 40 percent (or, alternatively, to 33 or 25 percent), so long as the United States is not the single largest market for such class of securities.

The original proposal would have required compliance with the auditor independence rules of each jurisdiction in which the offer was made. The reproposal would require the auditor's compliance with U.S. independence rules only commencing with the audited financial statements for the most recent fiscal year included in the initial registration statement under the Securities Act or Exchange Act on a MJDS form. The ethics and independence standards of the home jurisdiction would be applicable with respect to financial statements relating to periods prior to such fiscal year (unless U.S. rules were previously otherwise applicable to such financial statements). U.S. independence rules would apply to audited financial statements for periods subsequent to such fiscal year which are contained in all MJDS Securities Act and Exchange Act registration statements and Exchange Act reports subsequently filed by the issuer.

The MJDS reproposed today would make clear that while it would not be available with respect to offers and sales of securities issued by investment companies registered or required to register under the Investment Company Act of 1940 (the "Investment Company Act"),[11] it would be available to investment companies exempt from registration under the Investment Company Act. The original proposal would not have been available to any investment company, as defined in Section 3 of the Investment Company Act.[12]

In addition to the modifications to the original proposal, the Commission is proposing revisions to existing rules and forms that would affect all Canadian issuers. The reproposal would eliminate existing restrictions imposed upon many Canadian foreign private issuers that prevent their use of Form 20–F to meet their Exchange Act registration and reporting obligations. Those Canadian issuers have been precluded by such restrictions from use of the Commission's foreign integrated disclosure system under the Securities Act and the Exchange Act and effectively have been required to use the same Commission forms as U.S. issuers. Proposed revisions to rules and forms under those Acts would establish treatment equal to that of other foreign private issuers for all Canadian foreign private issuers registering and reporting, whether or not they do so under the MJDS. Additionally, as with foreign private issuers of all other foreign jurisdictions, all Canadian foreign private issuers would be exempt from the U.S. proxy requirements and from application of Section 16 of the Exchange Act.[13]

The Commission anticipates that shortly after publication of this reproposal the Canadian securities authorities will be publishing for comment a draft National Policy Statement that would propose a method for the implementation of the MJDS in Canada.[14]

While Canada is the first partner for the United States in this initiative, the MJDS was designed with the intention of mitigating difficulties posed by multinational offerings on a broader scale. In recognition that, notwithstanding the Commission's efforts to accommodate U.S. offerings by foreign issuers, U.S. requirements continue to deter such entry into the U.S. securities markets, the Commission is continuing its work with securities regulators of other foreign jurisdictions with a view toward extending the multijurisdictional disclosure system.

II. THE REVISED MULTIJURISDICTIONAL DISCLOSURE SYSTEM

A. Overview

As discussed below, each of the proposed Securities Act and Exchange Act MJDS forms has been refined to some degree. In addition, all of the MJDS forms have been modified to indicate that only "Canadian foreign private issuers" [15] and Canadian crown corporations are eligible to rely upon the reproposal. The original proposal referred simply to Canadian issuers. The "foreign private issuer" definition performs the function of determining when non-governmental issuers, despite their incorporation or organization in a foreign country, ought to be viewed as U.S. issuers. Such issuers who do not meet the definition of "foreign private issuer" must use the same forms as U.S. issuers for purposes of registration and reporting under the Securities Act and Exchange Act. Commenters are requested to address whether the shift in scope to foreign private issuers and crown corporations would exclude any group of Canadian issuers who should be able to use the MJDS.

B. Securities Act Registration

The Securities Act rules in Regulation C mandating standards for the preparation and form of prospectuses would be inapplicable under the MJDS, unless otherwise specified in the MJDS forms.[16] As clarified in the reproposal, however, Securities Act rules regarding other aspects of the U.S. sale of securities generally would apply. For example, requirements for prospectus delivery [17] would apply to MJDS offerings in the United States, as would safe harbor provisions relating to advertisements and other notices regarding MJDS offerings.[18] In addition, publication of recommendations, opinions or other information with respect to a MJDS registrant or its securities would be permitted to the extent provided by Securities Act safe harbor rules.[19]

Reliance upon Securities Act rules other than those in Regulation C would be appropriate in connection with MJDS offerings unless the MJDS form specifies otherwise or the rule, by its terms, is inapplicable. Where appropriate, Securities Act rules are proposed to be amended to allow application to MJDS offerings.[20]

In light of the absence of requirements for such disclosure under Canadian law, each of the MJDS Securities Act registration forms has been revised to require information regarding indemnification provisions relating to directors, officers or controlling persons of the registrant.[21] A statement regarding the Commission's opinion that indemnification against Securities Act liabilities is against public policy and is therefore unenforceable also would be required.

As reproposed, all of the MJDS Securities Act registration forms under the reproposal also have been revised to permit registration by an issuer who is the product of a recent statutory business combination.[22] Such issuers might have been ineligible to register under the MJDS as originally proposed due to the 36-month listing or reporting history requirement. To determine eligibility under the reproposal, the listing or reporting history of the registrant would be combined with each of its predecessor companies in turn. For example, if A had been reporting for 4 years in Canada, and B had been reporting for 2 years in Canada, and A and B in a business combination formed C, which has been reporting for 1 year in Canada, C would be deemed to meet the three-year reporting history requirement. The one year of reporting by C when added to the reporting history of A and when added to the reporting history of B in each case would be 3 years or more. If, however, either A or B had been reporting for under 2 years, C would not be deemed to satisfy the 3-year reporting history test. The listing or reporting history test would disregard any predecessor whose assets and income would contribute less than 20 percent of the assets and income from the continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years prior to the business combination.

Comment is requested regarding the proposed method by which a newly-formed company resulting from a business combination is able to use the revised MJDS Securities Act forms. Should a minimum period of time during which the successor registrant has been listed or reporting be imposed? Should the listing or reporting period of the successor be added instead to the listing or reporting period of each predecessor, regardless of size, to determine satisfaction of the 36-month reporting history requirement? Should the threshold for disregarding listing or reporting histories of smaller predecessors be higher (e.g., 25 percent) or lower (e.g., 15 or 10 percent)? Should the revised measurement of the listing or reporting histories apply only to some of the MJDS Securities Act registration forms and, if so, to which ones?

1. Offerings by Substantial Issuers

a. Form F–10 offerings. Offerings of any type of securities for cash or in connection with exchange offers or business combinations could be registered on proposed Form F–10 by "substantial" Canadian issuers. The eligibility requirements for use of Form F–10 in the reproposal would remain substantially as proposed. "Substantial" in the context of Form F–10 would include those issuers with a common stock market value of at least (CN) $360 million and a public float [23] of (CN) $75 million. Compliance for 36 months with Canadian continuous disclosure requirements would still be required of the registrant. In response to commenters' requests for clarification regarding the types of securities to be included in the market value and public float measurements, such tests would be based on the issuer's equity shares under the reproposal,[24] rather than the issuer's common stock as originally proposed. In addition, the measurement of market value would differ slightly under the reproposal in that it could be computed as of a date within 60 days prior to the date of filing, rather than within 30 days as originally proposed.[25] Comment is solicited regarding whether the measurement of market value within the last 60 days would present difficulties for any issuer and, if so, whether measurement should be made instead as of the end of the issuer's last fiscal year.

In order to take account of the effect of a guarantee on investors' evaluation of an issuer's securities, and in response to public comment, Form F–10 eligibility would be extended to the registration of non-convertible debt or non-convertible preferred securities of a Canadian-organized, majority-owned subsidiary. Where a Canadian parent satisfies the three-year reporting history, the (CN) $360 million market value and the (CN) $75 million public float tests, and fully and unconditionally guarantees the securities as to principal and interest (if debt) or liquidation preference, redemption price and dividends (if preferred securities), such a subsidiary would be deemed to meet such eligibility requirements.[26]

As originally proposed, banks registering securities on proposed Form F–10 would have been required to disclose additional industry-specific information prescribed by Securities Act Industry Guide 3.[27] Upon further review of applicable Canadian law and reports by Canadian banks thereunder, it appears that sufficient disclosure would be required in Canada. The reproposal therefore would not require supplemental disclosure of any industry-specific information from Guide 3. Comment is solicited on the adequacy of the Canadian disclosure for banks.

b. Offerings of investment grade debt and preferred stock (Form F–9). Form F–9, as initially proposed, would have permitted registration of offerings by substantial issuers of investment grade debt securities [28] or investment grade preferred stock, provided such securities either were not convertible or were convertible only after one year elapsed from the date of issuance. As generally defined in the United States, securities would have been "investment grade"

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[10] It should be noted that, in addition to tender offer regulation under the Exchange Act, Rules 10b–5 (17 CFR 240.10b–5), 10b–7 (17 CFR 240.10b–7), and 10b–8 (17 CFR 240.10b–8) under the Exchange Act apply to offers or sales of securities pursuant to transactions covered by the MJDS reproposed today.

[11] U.S.C. 80a–1—80a–52.

[12] U.S.C. 80a–3.

[13] That exemption is currently available only to non-Canadian foreign private issuers and those few reporting Canadian foreign private issuers eligible to use the Commission Form 20–F by virtue of their limited activity in the U.S. capital markets.

[14] *See infra* Section II.J.

[15] "Foreign private issuer" is defined in Rule 3b–4 under the Exchange Act and Rule 405 under the Securities Act to include all foreign issuers other than (i) foreign governments, and (ii) foreign issuers with more than 50 percent of their outstanding voting securities held of record by U.S. residents who also have: U.S. citizens or residents making up a majority of their executive officers and directors; more than 50 percent of their assets located in the United States; or the business administered principally in the United States.

[16] Certain exceptions to the waiver of rules under Regulation C have been noted in the MJDS forms.

[17] See Rule 174, 17 CFR 230.174.

[18] See Rules 134, 135 and 135A, 17 CFR 230.134, 230.135 and 230.135A.

[19] See Rules 138 and 139, 17 CFR 230.138 and 230.139.

[20] *See, e.g.*, proposed revisions to Rules 158 and 175, 17 CFR 230.158 and 230.175. Similarly, Rule 3b–6 under the Exchange Act, 17 CFR 240.3b–6, and Rule 0–11 under the Trust Indenture Act would be amended to allow reliance thereon by MJDS issuers.

[21] The newly required indemnification disclosure is based on the requirements of Item 510 of Regulation S–K, 17 CFR 229.510.

[22] Such revisions would not apply with respect to registration on Form F–8 in connection with a business combination.

[23] The market value of the "public float" is the market value of all outstanding equity securities owned by non-affiliates, and would be determined according to Canadian practice. In the MJDS, Canadian (but not U.S.) issuers would include non-voting common stock in the calculation of public float.

[24] "Equity shares" would be defined to include common shares, non-voting equity shares, and subordinate or restricted voting equity shares, but would not include preferred shares.

[25] Conforming changes in the measurement of market value have been made in other MJDS forms using a market value test. *See* proposed Forms F–9, F–8 and 40–F. A date within sixty days is also used in existing Form S–3.

[26] Similar treatment for registration of guaranteed securities is contemplated in existing Securities Act forms. See General Instruction I.A.6 of Form F–3, General Instruction I.C. of Form S–3, and General Instructions I.C. of Forms S–2 and F–2.

[27] Canadian banks and bank holding companies using Form F–10 would have been required to disclose in the prospectus the information set out under Item III.C., "Risk Elements," and Item IV., "Summary of Loan Loss Experience" of Industry Guide 3.

[28] It should be noted that where debt securities are to be offered pursuant to the system, a trust indenture relating to such securities must be qualified under the Trust Indenture Act. See infra Section II.G.

under the original proposal if, at the time of effectiveness of the registration statement, at least one nationally recognized statistical rating organization [29] had rated the security in one of its generic rating categories that signifies investment grade: typically the four highest rating categories.[30] To provide for uniform treatment in Canada and the United States in connection with the MJDS, only the three highest of such rating categories would be recognized as signifying investment grade under the reproposal.[31] Comment is requested regarding whether the four highest rating categories should be used to signify investment grade, whether or not the fourth highest rating is recognized in Canada as signifying investment grade.

As originally proposed, an issuer of eligible investment grade securities would have been required to be incorporated or organized under the laws of Canada or any Canadian province or territory, have a total market value for its common stock of at least (CN) $180 million, and have a public float of (CN) $75 million. As noted by commenters, Form F–9 as originally proposed would not have been available to captive finance subsidiaries, crown corporations and other wholly-owned subsidiaries due to their unique inability to meet the public float and market value tests. To avoid such a result, the eligibility requirements for Form F–9 in the reproposal have been changed with respect to investment grade securities with no conversion right. When such securities are offered, the issuer would not have to meet the market value or public float tests to use Form F–9. The public float and market value tests would continue to apply to eligible convertible securities given the likelihood of publicly held equity. Form F–9 would continue to require in all cases that the issuer (or, in the case of guaranteed securities, its parent) have a 36–month reporting history.

Comment is requested regarding the deletion of the public float and market value tests for non-convertible securities.[32] In place of the public float and market value tests, should an issuer have some minimum amount of debt securities or preferred equity securities outstanding in order to be eligible to use Form F–9 to register an offering of such securities, and, if so, what should such minimum amount be? Should convertible securities registrable on Form F–9 (*i.e.*, securities convertible only after 1 year from issuance) be subject to the same test as non-convertible securities? In light of the deletion of the market value and public float tests, should the 36–month reporting requirement be changed to a 36-month listing requirement (as in Forms F–7 and F–8) for non-convertible investment grade securities?

In a parallel fashion to Form F–10, Form F–9 has been expanded to allow its use by certain issuers of guaranteed securities. A majority-owned subsidiary issuing non-convertible, Form F–9-eligible securities would not have to satisfy the 36-month reporting requirement if its parent does and its parent fully and unconditionally guarantees the securities.

2. Exchange Offers and Business Combinations (Form F–8)

a. *Exchange offer registration.* As originally proposed, Form F–8 would have been available solely for exchange offers [33] that are primarily Canadian in character, in which the securities being registered would be all or a portion of the consideration offered, less than 20 percent of the securities of the target class was held of record by U.S. residents, and the aggregate market value of the public float of the registrant's common stock equaled or exceeded (CN) $75 million.[34] Registrants also would have been required to have their securities listed on the TSE or the ME for the 36 months immediately preceding the offering. Except as noted below, those requirements would remain unchanged in the reproposal.

Comment is solicited with respect to both exchange offer and business combination requirements regarding whether a 36-month listing of a class of securities on the Vancouver Stock Exchange ("VSE") and membership on the VSE Senior Board should be added as an alternative to the 36-month listing on the ME or TSE. In addition, comment is requested regarding whether the 36-month listing requirement should be changed to a requirement for a 36-month reporting history with any securities commission or equivalent regulatory authority in Canada.

As discussed more fully below in connection with tender offers,[35] commenters have suggested that the 20 percent ceiling for U.S. record ownership of securities be raised or eliminated. The Commission is considering raising the threshold for reliance on Canadian tender offer regulation up to a level of 40 percent. Assuming the Commission determines to raise the tender offer threshold, comment is solicited as to the appropriateness of raising the threshold level for use of Form F–8 to an equivalent level. Given the lack of reconciliation of financial statements to U.S. generally accepted accounting principles, should the Form F–8 threshold remain at 20 percent notwithstanding a change in the MJDS tender offer threshold? What would the relative costs and benefits be to those exchange offerors that, because of the existence of two separate ownership thresholds or otherwise, would be able to comply with U.S. tender offer rules under the MJDS by satisfying Canadian tender offer requirements, but would be ineligible to use a MJDS form to meet U.S. securities registration requirements by using Canadian disclosure documents?

Commenters on the original proposal noted the difficulty Canadian affiliates of U.S. corporations may encounter in satisfying the U.S. record ownership requirements applicable to exchange offers conducted under the MJDS. Canadian companies controlled by a single majority U.S. shareholder would be unable to use the MJDS for such offers, even where a minimal amount of securities otherwise was held publicly in the United States.[36] This result would appear to undermine the Commission's intent to ensure full participation by U.S. residents who own only a small percentage of all Canadian securities sought in a cross-border offer. Accordingly, in the reproposal, the percentage threshold would be calculated by reference to that percentage of the issuer's securities held of record by U.S. residents other than U.S. affiliates of the issuer.[37] Comment is requested on the appropriateness of using such a modified public float test.

The reproposal also has been revised to clarify that, in measuring the percentage of the class of securities held in the United States, securities convertible into or exchangeable for securities of such class are not included. Comment is requested as to the appropriateness of excluding those types of securities.

b. *Business combination registration.* Under the reproposal, Form F–8 would be expanded to allow registration in connection with business combinations.[38] When securities are part of the consideration in such a business combination, generally an exemption is granted from the prospectus requirements under Canadian law in light of the disclosure provided in the information circular required by Canadian proxy solicitation rules.[39] Under existing rules, Ontario does not set forth specific disclosure requirements for such circular, but does require the transaction to be described "in sufficient detail to permit security holders to form a reasoned judgment concerning the matter." [40] Such rules refer to prospectus and takeover bid forms for guidance as to materiality. Quebec's rules are similar to Ontario's rules, although Quebec requires clearance or non-objection from the CVMQ as a condition to the prospectus exemption. [41] Other provinces and territories also have requirements similar to the Ontario rules.

Canadian securities regulators have indicated that they will take action in order to require prospectus-level disclosure in information circulars used for such business combinations. Contingent upon such action being taken, the Commission is proposing to recognize the adequacy of Canadian disclosure in the information circulars by allowing use of Form F–8 (or Form F–10 where the requirements are satisfied) in such cases to satisfy Securities Act registration requirements.[42] All information circulars and other disclosure documents required to be delivered by companies participating in business combinations to securityholders whose votes are being solicited in connection therewith would be filed under cover of Form F–8 and delivered to securityholders in the United States.

Proposed eligibility requirements for use of Form F–8 in connection with such business combinations are similar to the F–8 exchange offer requirements. Each company participating in the business combination would have to be incorporated or organized in a Canadian jurisdiction and be a foreign private issuer or a crown corporation. Each company participating in the business combination, other than the registrant, would be required to have had a class of its securities listed on the ME or TSE for 36 months prior to filing the Form F–8.[43] Each participating company, other than the registrant, would also be required to have a public float of at least (CN) $75 million. In addition, as in the case of exchange offers on Form F–8, the securities to be registered in connection with a business combination must be offered to U.S. residents upon the same terms and conditions as offered to residents of Canada.

In order to allow the use of Form F–8 for second-step business combinations occurring after an exchange offer, a participating company whose equity shares were the subject of an exchange offer registered on Form F–8, Form F–9 or Form F–10 that terminated during the last six months would be presumed to satisfy the public float test if such test was satisfied by the participating company immediately prior to commencement of the exchange offer.[44] Otherwise, the reduction in the participating company's public float resulting from the exchange offer might prevent the satisfaction of the public float test for purposes of the second-step business combination. Comment is solicited regarding whether six months is an appropriate measure to ensure that the exchange offer and the subsequent business combination are part of a single transaction.

Eligibility for Form F–8 in terms of U.S. shareholdings would be assessed on the basis of securities to be offered by the successor registrant; where less than 20 percent of the class of securities to be offered by the successor registrant would be held of record, as if measured upon completion of the business combination, by U.S. residents other than U.S. affiliates of the registrant, Form F–8 would be available. Comment is solicited on whether the 20 percent threshold for business combinations should be raised if the threshold is raised for exchange offers on Form F–8. Under the reproposal, the calculation of U.S. record holders would be made as of a participant's last fiscal quarter or, if such quarter ended within the last 60 days, as of the participant's preceding quarter. Comment is requested regarding whether such calculation should be made instead as of a particular date within the last 60 days, and whether all participants should use the same date for calculation.

In order not to preclude use of the MJDS when a smaller participant is participating in a business combination, Form F–8 would not impose a public float or listing requirement on a participating company if its assets and income, respectively, would contribute less than 20 percent of the successor registrant's total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles, as measured based on pro forma combination of the participating companies' most recently completed fiscal years. Comment is solicited regarding whether the 20 percent limitation reflects a contribution small enough to justify disregarding such requirements. Should the percentage instead be lower (for example, no more than 10 percent or 15 percent), or higher (for example, no more than 25 percent)? Should the test be based on a measurement other than

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[29] Nationally recognized statistical rating organization ("NRSRO") is used herein as that term is used in Rule 15c3–1(c)(2)(vi)(F) under the Exchange Act, 17 CFR 240.15c3–1(c)(2)(vi)(F). A rating agency organized in a country other than the United States may seek a no-action position from the Commission with regard to its status as an NRSRO in the same manner as U.S. rating agencies. Information regarding that process may be obtained through the Office of Compliance and Financial Responsibility within the Division of Market Regulation.

[30] There may be subcategories indicating relative standing within such categories.

[31] To the extent the fourth highest rating category is recognized in the future by Canadian regulatory authorities as signifying investment grade under the MJDS, the Commission would give parallel recognition.

[32] Form 40–F has been revised to allow satisfaction of reporting obligations in connection with non-convertible F–9-eligible securities without reference to a public float or market value test. Comment is accordingly requested as to whether a Canadian issuer should be permitted to meet Exchange Act reporting obligations in connection with non-convertible investment grade debt or non-convertible preferred stock by filing home jurisdiction documents without being required to meet any size test.

[33] "Exchange offers," as the term is used in the MJDS, would not include exchange offers undertaken to accomplish a business combination.

[34] Exchange offer securities also could be registered on Form F–9 or F–10 if the offeror were eligible to use such forms, without regard to the number of shares held by U.S. residents. *See* 54 FR at 32242, n.183. Unlike Form F–8 registered offerings, however, Exchange Act tender offer requirements in connection with an exchange offer registered on Form F–9 or F–10 because the U.S. ownership threshold of Form F–8 is exceeded could not be satisfied by use of proposed Schedules 14D–1F or 13E–4F.

[35] *See infra* section II.B.2.d.

[36] But see infra n.49.

[37] Canadian securities regulators propose to adopt a similar approach with respect to predominantly U.S. tender and exchange offers qualifying under the MJDS. In calculating the percentage threshold (number of securities of subject class held of record by U.S. non-affiliates divided by total number of outstanding securities of the subject class), the number of securities held by affiliates would not be excluded from the denominator, or total number of outstanding securities of the subject class.

[38] *See*, e.g., Business Corporations Act, 1982 (Ontario) Sections 173–178, 181–182.

[39] *See* OSA Sections 71(1)(l) and 88.

[40] See OSC Form 30, Item 11.

[41] See Q&A Section 88.

[42] Reliance on the reproposal to satisfy the Securities Act registration obligations in connection with business combinations would not eliminate an issuer's obligation to file a Schedule 13E–3, if such business combination involved a "going private" effect within the meaning of Rule 13e–3, or to satisfy other Exchange Act requirements. See infra Sections II.B.2.d.–e. Also, Rule 10b–5 under the Exchange Act would continue to apply to an offer and sale of securities pursuant to a business combination "that is distinguished from ordinary trading transactions by the magnitude of the offerings and the presence of special selling efforts and selling methods." Rule 10b–6(c)(5), 17 CFR 240.10b–6(c)(5). See Securities Exchange Release No. 19505 (March 4, 1983) (48 FR 10886). *See infra* Section II.B.2.e.

[43] *See supra* n.34.

[44] Form F–10 has been revised similarly to allow for its use in connection with second-step business combinations.

the total assets and income test described above? Should the test be based on a comparison of the sizes of the predecessor companies, rather than the contribution to assets and income based on a pro forma combination of the participating companies? Alternatively, should the public float and listing requirements be applied to all participants, whether or not small participants are involved in the business combination?

Registrants participating in business combinations who are ineligible to use Form F–8 because, for example, the limitation on securities held by U.S. residents would be exceeded, may register on Form F–10 if each participant accounting for more than 20 percent of assets or income meets the Form F–10 eligibility requirements. Amendments have been made to Form F–10 to accommodate business combinations, as well as exchange offers. [46] Unlike Form F–8, however, Form F–10 would require a reconciliation of both historical and pro forma statements to U.S. GAAP. Comment is requested on the extension of Form F–10 to business combinations. Comment is also requested as to whether a reconciliation should be required for a business combination registered on Form F–10 because the U.S. shareholdings threshold has been exceeded.

c. *Proxy regulation.* Any solicitation of U.S. shareholders involved in the offer and sale of securities registered on Form F–8, whether in connection with a business combination or an exchange offer, would be exempt from Exchange Act proxy information and filing requirements pursuant to proposed revisions to the foreign private issuer exemption rule. [46]

d. *Tender offer regulation under the MJDS.* Offerings under proposed Form F–8 also raise the question of the need for compliance with the U.S. regulatory scheme relating to tender offers. [47] As proposed, the MJDS would have enabled any cash tender or exchange offer that was primarily Canadian in character to comply with the provisions of the Williams Act by meeting applicable Canadian tender offer requirements. [48] Pursuant to amendments proposed to the Commission's tender offer rules and schedules, third-party and issuer tender offer filings in connection with offers made in both jurisdictions for a class of securities of a Canadian issuer, less than 20 percent of which was held of record by U.S. residents, would have been permitted to proceed in the United States in accordance with all relevant Canadian federal, provincial and territorial rules and regulations, provided the offer were extended to all holders of the class of securities in the United States and Canada and the transaction itself were covered by and not exempt from substantive provisions of Canadian law governing the terms and conditions of the offer. In the case of an exchange offer conducted within the framework of the MJDS, a Canadian bidder or issuer also would have been required to register the securities either on Form F–8 or another appropriate Securities Act form.

Commenters addressing the tender offer issues have focused primarily on the appropriateness of the 20 percent limitation to be imposed on U.S. record ownership, the method for calculating this percentage, and the effect of discretionary exemptive orders granted by Canadian securities regulators. Upon consideration of the comments submitted, the following revisions are being proposed.

As with Form F–8, the Commission proposes that the percentage limitation set forth in the MJDS tender offer rules and schedules [49] be calculated by reference to securities held of record by U.S. residents other than U.S. affiliates of the issuer. Canadian securities regulators propose to adopt a similar approach under their respective tender offer rules with respect to predominantly U.S. tender and exchange offers qualifying under the MJDS.

Several commenters have urged relaxation or elimination of the 20 percent ceiling proposed for U.S. record ownership in connection with tender and exchange offers to be covered by the MJDS. [50] Although the reproposal retains the proposed 20 percent limitation, the Commission will consider the appropriateness of raising the ownership threshold. Comment therefore is sought on the costs and benefits of establishing an ownership threshold of 40 percent of the subject class of securities held by U.S. residents unaffiliated with the issuer, so long as the United States is not the largest market for such securities. Alternatively, should the threshold be raised only to 25 or 33 percent of the subject class held by non-affiliated U.S. residents? Whether or not the United States would be deemed the largest market for the subject securities would be determined by reference to the relative trading volume of the securities in the United States, Canada and any other world market on which the securities are traded. More specifically, the United States would be regarded as the largest market for securities subject to a MJDS tender or exchange offer where the securities exchanges and inter-dealer quotation systems in this country in the aggregate constitute the single largest market for the subject class of securities in the shorter of the offeree's prior fiscal year or the period since the offeree's incorporation. [51]

Commenters have pointed out that, under the proposal, an issuer or third-party bidder competing with an initial offer launched under the MJDS might be unable to avail itself of the advantages of filing a single set of home-jurisdiction disclosure documents, given the risk that the prescribed threshold might be exceeded due to arbitrage activity and other share transfers triggered by the initial offer. To address this concern, the reproposal provides that the date of the first bid made under the MJDS would be determinative of U.S. record ownership for all subsequent, competing bids. The operative date for determining U.S. ownership in connection with the first bid will continue to be either the end of the issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of the issuer's preceding quarter. [52] Proposed Schedules 14d–1F and 13e–4F and Form F–8 have been revised to stipulate that a bidder or issuer that commences an offer during the pendency of an earlier offer conducted under the MJDS would determine the percentage of the class of subject shares held by unaffiliated U.S. recordholders as though the subsequent offer were filed on the same date as the initial third-party or issuer offer already in progress.

Commenters also questioned how, particularly in an unsolicited bid situation, the bidder would be able to ascertain the level of U.S. record ownership. In light of these comments, the reproposal would create a safe harbor that would afford third-party bidders commencing an unsolicited offer the benefit of a conclusive presumption that U.S. record ownership of the subject class of securities does not exceed the prescribed level, unless the aggregate trading volume of that class in the U.S. markets in the prior 12 months exceeded its aggregate trading volume in Canadian markets, or unless documents publicly filed by the issuer with Canadian or U.S. securities regulators within 18 months of the commencement of the offer disclose that U.S. persons held more than the threshold amount of subject securities, or the offeror otherwise possesses such knowledge. [53] Comment is sought on the appropriateness of the proposed safe harbor; specifically, is the presumption too broad with respect to a 20 percent threshold, when triggered, so long as the U.S. market does not exceed the Canadian market? Should the bidder be required in addition to certify that, after reasonable investigation, it believes that less than 20 percent of the target's shares is held in the United States?

An important condition to use of the MJDS to effect cross-border tender and exchange offers would be the non-availability of a transactional exemption in the home jurisdiction. By way of illustration, the Commission noted in the proposing release that an exempt takeover or issuer bid conducted on the TSE or ME would be governed by the Williams Act and the rules thereunder, since such a bid would not be regulated by Canada's federal, provincial or territorial securities laws. [54] Nonetheless, as a commenter suggested, a grant of a discretionary order exempting a Canadian bidder or issuer from one or more of the applicable takeover rules, rather than a blanket transactional exemption, should not disqualify *per se* that bidder or issuer from proceeding under the MJDS with a tender or exchange offer in the United States. A bidder's obligation to comply with all provisions of the Williams Act in the event a Canadian exemptive order is granted with respect to a cross-border offering will be determined on a case-by-case basis by Commission order entered by the Division of Corporation Finance (or, in the case of an issuer tender offer, the Division of Market Regulation) pursuant to delegated authority, based upon a determination whether, in light of the exemption from Canadian regulatory provisions, application of the Williams Act is necessary or appropriate to protect the public interest. [55] All requests for entry of such orders with respect to routine matters would be resolved on an expedited basis either on the day of the Commission's receipt of the request or the following business day, and would be granted in the ordinary course. A Commission order would not be necessary if the offer remains fully subject to the laws or regulations governing tender offers of Canada or any one of its provinces or territories. Commenters are invited to address the feasibility of this approach.

Modifications to proposed Rule 14e–1(b) have been made to clarify that tender offers, including issuer tender offers, that are subject only to section 14(e) of the Exchange Act and Regulation 14E, but otherwise would satisfy the requirement of proposed Rules 13e–4(h) and 14d–1(b) with respect to the percentage of the Canadian target shares held in the United States, can take advantage of the MJDS without the necessity of filing any schedule or offering documents with the Commission.

e. *Exchange Act Provisions Affecting the Activities of Participants in Tender and Exchange Offers.* Canadian procedures permit participants in transactions contemplated by proposed Form F–8 and Schedules 14D–1F and 13E–4F to engage in certain activities that are prohibited by Rules 10b–6 [56] and 10b–13. [57] In connection with the original proposal, the Commission requested comment regarding proposed no-action positions with respect to such Rules. The contemplated no-action positions would have applied solely to exchange and tender offers on Form F–8 and Schedules 14D–1F and 13E–4F, and would have permitted securities purchases in Canada under certain conditions. [58] The Commission is reproposing the no-action positions and solicits additional comment on them. [59]

3. Rights Offers (Form F–7)

Form F–7 would be used by Canadian issuers making rights offerings in the United States. [60] To be eligible to use Form F–7 under the original proposal, the issuer would have to have been incorporated in Canada, and have had a class of securities listed on the TSE or the ME for the 36 months immediately

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[46] While amendments to Form F–8 have been made under the reproposal in contemplation of its use in connection with exchange offers, since business combinations generally would not involve F–8-eligible securities, no parallel amendments have been made for business combinations.

[47] *See infra* Section III for a detailed discussion of the revisions. *See also* proposed Rule 3a12–3(b).

[48] It should be noted that Rule 10b–6 under the Exchange Act (17 CFR 240.10b–6) applies to tender or exchange offers undertaken pursuant to the MJDS reproposed today.

[49] As such, the MJDS is one of a number of Commission initiatives designed to ensure the inclusion of U.S. securityholders in foreign-based tender and exchange offers without compromising fundamental securityholder protections mandated by the federal securities laws. Most recently, the Commission issued a release soliciting public comment on a conceptual approach to encouraging foreign bidders to extend multinational tender and exchange offers to their U.S. securityholders on the basis of foreign disclosure, procedural and accounting requirements, where such securityholders own a small percentage of the securities subject to the offer. *See Concept Release on Multinational Tender and Exchange Offers*, Securities Act Release No. 6866 (June 6, 1990) (55 FR 23571). Other Commission initiatives addressing the exclusion of U.S. securityholders from international tender and exchange offers include ongoing efforts by the Commission to administer its rules in a flexible manner, on a case–by-case basis, to accommodate foreign tender offer rules and practices while assuring to the extent feasible both the equal treatment of U.S. and foreign investors and the provision to U.S. investors of the basic protections of the Williams Act regulatory scheme; and vigorous assertion of U.S. regulatory jurisdiction where available and appropriate to protect U.S. investors.

[50] Proposed Rules 14d–1(b), 13e–4(h); General Instruction I.A. to Schedules 14D–1F and 13E–4F. As discussed in the original proposal (54 FR at 32238–39) this level of equity ownership was suggested based on the Commission's observation that, where less than 20 percent of a class of securities to which an offer related is held of record by U.S. residents, Canadian issuers generally find that the benefits of extending primarily Canadian offers into the United States are outweighed by the costs of compliance with applicable U.S. securities regulations. Selection of this ownership threshold is not indicative, however, of any belief on the part of the Commission that it may lack the jurisdiction to compel extension into the United States of a predominantly Canadian offer in the event less than 20 percent of the subject securities is held of record by U.S. residents.

[51] Compare Rule 902(n) of Regulation S.

[52] *See* 54 FR at 32230.

[53] Note to proposed Rule 14d–1(b).

[54] Proposing Release at n.195 and accompanying text.

[55] The Commission is proposing an amendment to Rules 30–1(f) and 30–3(a)(35) of its Rules of Delegating Functions to Division Directors, Regional Administrators and the Secretary of the Commission (17 CFR 200.30–1(f) and 200.30–3(a)(35)) to provide for delegation of this authority to the Division of Corporation Finance or the Division of Market Regulation.

[56] Rule 10b–6 generally prohibits a distribution participant from, directly or indirectly, bidding for or purchasing, or attempting to induce others to purchase, the securities in distribution or any security of the same class and series or any right to purchase such security ("related securities"), until the participant's role in the distribution has terminated.

[57] Rule 10b–13 prohibits a person who is making a cash tender offer or exchange offer for any equity security from, directly or indirectly, purchasing or making any arrangement to purchase such security (or any other security which is immediately convertible into or exchangeable for such security) otherwise than pursuant to the tender offer or exchange offer, from the time of announcement of the offer until its expiration, including any extensions thereof.

[58] See 54 FR at 32244, n.211 and accompanying text.

[59] The no-action positions as reproposed would permit: (1) with respect to cash tender offers, purchases of the securities which are the subject of the offer and any other security that is immediately convertible into or exchangeable for such security ("target securities"); and (2) with respect to exchange offers, purchases of target securities and bids for and purchases of the securities offered by the bidder or issuer ("offered securities"), and any security of the same class and series or any right to purchase any such offered securities (collectively, "subject securities").

[60] The securities to be registered on Form F–7 would be those issuable upon the exercise of rights. The rights themselves generally are not required to be registered based on a "no-sale" theory. Cf. Securities Act Release No. 929 (July 29, 1936) (11 FR 10957). If the rights were required to be registered, the issuer would be permitted to register them on Form F–7.

preceding the offering.[61] Those requirements remain in the reproposal. Comment is requested regarding whether a 36-month listing of a class of securities on the Vancouver Stock Exchange ("VSE") and membership on the VSE Senior Board should be added as an alternative to the 36-month listing on the ME or TSE.

To exclude major financings, the original proposal would have provided that an eligible offer could not increase the capital of the class of securities offered by more than 25 percent. That percentage test was based upon the Canadian regulatory formulation of rights offerings that are exempt from prospectus requirements. To parallel Canadian requirements, the percentage test in the reproposal has been changed to measure whether the number of the outstanding securities of the class to be issued upon exercise of the rights or, in the case of debt, the principal amount of the outstanding long-term debt of the issuer (or a class of securities into which such securities are convertible) would increase by more than 25 percent if all rights issued as part of the same offering and within the last 12 months were exercised (and, if applicable, all such securities were converted).

As with exchange offers on Form F-8, the original proposal would have provided that U.S. residents must hold of record [62] less than 20 percent of the class of securities to which the rights offering related. Commenters suggested that the 20 percent ceiling be eliminated or at least increased. To permit U.S. investors in Canadian issuers with a larger percentage of U.S. shareholders to obtain the benefit of participation in a rights offering, particularly since investors already holding the securities can be expected to make a further investment based on the same type of information on which they relied when they bought the securities previously, the Commission has deleted the 20 percent threshold requirement.[63] Comment is solicited regarding such deletion.

To preclude a public offering being made indirectly to new investors by an issuer not eligible to make such an offering, the original proposal would have provided that the rights issued in connection with Form F-7 could not be transferable to U.S. residents.[64] That requirement would be retained under the reproposal. In response to comments regarding whether that requirement would preclude transfers outside the United States, Form F-8 has been revised to clarify that the prohibition on transferability to U.S. residents would not preclude resales of such rights outside the United States in accordance with Rule 904 of Regulation S under the Securities Act.[65]

Consistent with Canadian regulations, a further condition of Form F-7 as proposed and reproposed is that the exercise period of the rights not exceed 90 days. To parallel the Canadian MJDS, the reproposal also would provide that the rights be exercisable immediately upon issuance.

C. Exchange Act Registration and Reporting

Canadian issuers that make a registered offering of securities in the United States on MJDS forms or acquire a certain number of shareholders of record resident in the United States [66] in connection with the MJDS would be subject to registration and reporting requirements under the Exchange Act.[67] Similarly, MJDS issuers wishing to list securities on a national securities exchange or have them quoted on NASDAQ would be subject to the Exchange Act requirements.[68] The reproposal would continue to extend to reporting obligations under the Exchange Act covered under the original proposal, but also would extend to other limited reporting obligations. In addition, the reproposal would preclude disruption of Canadian issuers' reliance on an existing exemption from such reporting obligations.

1. Section 15(d) Obligations

Both the original proposal and the reproposal would allow any continuous reporting obligation resulting solely from registration on MJDS Securities Act forms to be satisfied by having the Canadian issuer file with the Commission its home jurisdiction periodic disclosure documents. The reproposal, however, would go further. A Canadian issuer eligible to use Form F-10 could satisfy a reporting obligation arising from registration of securities on non-MJDS Securities Act forms by filing its home jurisdiction periodic disclosure documents together with a reconciliation as required by Item 17 of Form 20-F. Similarly, a Canadian issuer eligible to use Form F-9 could satisfy a reporting obligation arising from registration of F-9-eligible securities on non-MJDS Securities Act forms by filing home jurisdiction periodic disclosure documents, in which case no reconciliation would be required. Thus, a substantial Canadian issuer would not be prevented from choosing to register on non-MJDS forms because of its resultant inability to rely upon the MJDS continuous reporting forms.

2. Non-NASDAQ-Related Section 12(g) Obligations

The reproposal, like the original proposal, would provide that substantial Canadian issuers incurring registration and reporting obligations due to the number of their U.S. resident shareholders could comply with such obligations in most instances by filing their home jurisdiction periodic disclosure documents. Otherwise, Canadian issuers would fulfill such obligations by filing the Commission's periodic disclosure documents.[69]

Existing Rule 12g3-2(b) [70] provides an exemption from Commission continuous reporting requirements to foreign issuers furnishing information made public in their home jurisdictions.[71] Since Rule 12g3-2(b) is generally not available to an issuer who has registered securities under the Securities Act,[72] under the

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[61] Pursuant to the securities laws of Ontario or Quebec, such issuers thus would have three-year reporting histories with the OSC or CVMQ. *See OSA section 3(1)(32); QSA § 68.*

[62] *See* Rule 12g3-2 (17 CFR 240.12g3-2).

[63] When more than 50 percent of the issuer's outstanding voting securities is held of record by residents of the United States, however, the issuer may not be a foreign private issuer eligible to use the MJDS. *See* Rule 405 under the Securities Act, 17 CFR 230.405.

[64] The underlying securities, however, could be so transferable.

[65] 17 CFR 230.904. Resales otherwise made in compliance with Rule 904 may be executed in, on or through the facilities of the ME, TSE and the VSE, among other markets.

[66] Foreign private issuers are exempt from the requirements of section 12(g) if they have fewer than 300 U.S. holders. Rule 12g3-2(b) exempts from Section 12(g) issuers that furnish to the Commission the documents that they either make public, are required to make public, file with their home regulatory agency, or distribute to their security holders. Rule 12g3-2(b) is not available to issuers quoted on NASDAQ.

[67] TSee sections 12(g), 13(a) and 15(d) of the Exchange Act, 15 U.S.C. 78*l*(g), 78m(a), 78*o*(d).

[68] *See* section 12(a) of the Exchange Act, 15 U.S.C. 78m(a).

[69] *See* section 12(g) of the Exchange Act, 15 U.S.C. 78*l*(g). Currently, Form 20-F is used to register under section 12(g) and for annual reports, and Form 6-K is used for other periodic reports, by Canadian issuers that have not registered an offering under the Securities Act, listed securities on a national exchange or acquired an issuer reporting on Form 10-K. *See* General Instruction A(b) to Form 20-F. Other Canadian issuers generally register on Form 10 and report on Forms 10-K, 8-K and 10-Q along with domestic issuers. The use of domestic issuers' forms would be eliminated by the reproposal. *See infra* section III.

[70] 17 CFR 240.12g3-2(b).

[71] Under the original proposal, Rule 12g3-2(b) would not have been amended except to extend relief in connection with certain exchange offers. *See* proposed Rule 12g3-2(d)(2) at 54 FR 32252.

[72] Rule 12g3-2(d)(1) (17 CFR 240.12g3-2(d)(1)) provides, *inter alia*, that issuers with a reporting obligation under section 15(d) (either suspended or current) during the past eighteen months are ineligible to rely upon the exemption provided by Rule 12g3-2(b).

original proposal a Canadian issuer would have become ineligible for such exemption if it registered an offering in the United States under the MJDS. Without the exemption, such a Canadian issuer generally would have had to file Commission continuous disclosure documents (Forms 20-F and 6-K) to satisfy its section 12(g) reporting obligations. To avoid disruption of Canadian issuer's reliance on that exemption, which could have acted as a disincentive for such issuers to make offerings under the MJDS, the Commission is proposing revisions to the Rule 12g3-2(b) exemption. Under the reproposal, Canadian foreign private issuers would not be precluded from relying upon that exemption if they acquire a reporting obligation by virtue of registration on Forms F-7, F-8, F-9 and F-10. Moreover, Canadian issuers who are reporting under the Exchange Act by filing home jurisdiction disclosure documents would be allowed to satisfy the 12g3-2(b) exemption simultaneously by indicating on the cover page of the Forms 40-F and 6-K that the information is being filed for both purposes.[73]

3. Section 12(b) Obligations and NASDAQ-Related section 12(g) Obligations

The treatment of Canadian issuers who have a reporting obligation arising from listing their securities on a national stock exchange or having them quoted on NASDAQ is essentially unchanged in the reproposal. Canadian issuers that have a class of securities listed or quoted generally would file Commission-mandated registration and continuous disclosure documents. Under the MJDS, issuers eligible to use Form F-10, and issuers eligible to use Form F-9 who are listing or having quoted on NASDAQ certain F-9-eligible securities, would be able to comply with such reporting obligations by filing home jurisdiction disclosure documents.

4. Revisions to Forms 40-F and 6-K

Form 40-F has been refined in several ways to reflect its multiple uses. As reproposed, Form 40-F has been clarified to provide that an issuer registering securities under section 12 would file home jurisdiction information of the same type required to be furnished under Rule 12g3-2(b) that it has made public since the beginning of its last full fiscal year. Revisions also have been made to Forms 40-F and 6-K in the reproposal to clarify that Canadian issuers satisfying their continuous reporting obligations through the MJDS would file their Annual Information Forms under cover of Form 40-F and would furnish all other material home jurisdiction information under cover of Form 6-K. In light of the absence of requirements for such information in the Annual Information Forms, Form 40-F also would require a description of the securities based on Item 202 of Regulation S-K under the Securities Act, if such information actually is not contained in the home jurisdiction documents furnished.

There are three principal differences to an issuer in filing documents under cover of Form 6-K rather than under cover of Form 40-F. First, annual information filed under cover of Form 40-F would have to be filed the same day it is made public in the home jurisdiction. Information sent for MJDS purposes under cover of Form 6-K would have to be provided to the Commission "promptly" after it is made public in the home jurisdiction. Second, registration statements and annual reports filed under cover of Form 40-F would have to be in English, and exhibits and other documents filed therewith in a foreign language would have to be accompanied by an English summary, version or translation. English versions or summaries of Form 6-K documents in a foreign language need only be provided if the documents are distributed directly to securityholders of any class to which a reporting obligation under section 13(a) or 15(d) of the Exchange Act relates or if the documents are in the form of a press release. Finally, information and documents furnished on Form 6-K are not deemed to be "filed" for the purposes of section 18 of the Exchange Act or otherwise subject to the liabilities of that section. Information is "filed" under cover of Form 40-F and would be subject to section 18 liability. Comment is requested as to whether such changes in timing, translation and liability with respect to information proposed to be furnished under Form 6-K rather than Form 40-F would have a material adverse effect on investors.

Finally, Form 40-F has been revised to address in greater detail the extent to which Exchange Act rules would apply. As originally proposed, Form 40-F was silent on the subject, but proposed new Exchange Act rules would have stated that Regulations 13A and 15D do not apply to registrants using Form 40-F. Such rules would be retained under the reproposal,[74] but Form 40-F would clarify that, unless specified therein, all other Exchange Act rules would apply. Specific provisions have been added to Form 40-F to clarify that Exchange Act rules regarding fees, amendments and effectiveness of registration statements would apply. The Form also would specify rules that would not apply, particularly those contained in Regulation 12B relating to the preparation and form of Exchange Act reports and registration statements.

5. Proxy and Insider Reporting Obligations

Under the original proposal, the Commission would have amended its proxy rules to allow proxy material for an annual meeting at which the only matters being voted upon were routine items to be prepared in accordance with Canadian requirements.[75] In addition, any Canadian issuer subject to U.S. proxy rules that complied with applicable Canadian shareholder proposal rules would have been deemed to have complied with the requirements of the Commission proxy rule relating to shareholder proposals.[76] As discussed more fully below, such limited relief for routine proxies and shareholder proposals is unnecessary under the reproposal given the exemption from Commission proxy rules that would be provided for Canadian foreign private issuers.[77]

Similarly, the original proposal contained relief for Canadian issuers from the operation of the reporting provisions of section 16 of the Exchange Act. Commission insider reports would have been required only from persons required to report their securities holdings in Canada, and reports filed with the Canadian authorities could have been furnished to satisfy the reporting obligations with the Commission.[78] Such limited relief is unnecessary under the reproposal, because proposed revisions (discussed in detail below) would exempt holders

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[73] As reproposed, Forms 40-F and 6-K would allow the person filing to indicate that it is also providing the information pursuant to Rule 12g3-2(b) by virtue of such filing.

[74] *See* proposed Rules 13a-3 and 15d-4, which clarify that Regulations 13A and 15D would be deemed satisfied by an issuer eligible to file Forms 40-F and 6-K that reports in accordance with such Forms.

[75] Such matters as the election of directors and ratification or approval of accountants would have been considered routine. *See* proposed Rule 14a-6(m) at 54 FR 32255.

[76] *See* proposed Rule 14a-8(f) at 54 FR 32255.

[77] *See* proposed revisions to Rule 3e12-3 discussed *infra* in Section III.

[78] An exemption from section 16 for Canadian foreign private issuers also was contemplated in a Commission release proposing revisions to section 16. *See* 54 FR 35867, 35879 (Aug. 29, 1989).

of equity securities of Canadian foreign private issuers from section 16.[79]

D. Accounting Considerations

1. Reconciliation of Financial Statements

Reconciliation requirements originally proposed generally have been retained in the reproposal. In the case of offerings on Form F-10, reconciliation to U.S. GAAP would be required as specified in Item 18 of Commission Form 20-F. For registration on other Securities Act MJDS forms, including registration in connection with business combinations on Form F-8 as newly proposed, reconciliation would not be mandated.

With regard to continuous reporting requirements, no reconciliation of financial statements would be required for documents filed to meet a reporting obligation under section 15(d) existing solely because of an offering under the MJDS on Forms F-7, F-8 or F-9. The reproposal clarifies that reconciliation as specified in Item 18 of Form 20-F would be required to meet reporting obligations arising from use of Form F-10. Reconciliation to Item 17 [80] of Form 20-F generally would be required for Canadian documents filed to meet reporting requirements under section 13 and otherwise under section 15(d). The reproposal clarifies that reconciliation of financial statements would not be required to satisfy a continuous reporting obligation that arose in connection with securities that would be eligible for registration on Form F-9.

Commenters expressed diverse views with respect to the reconciliation requirements of the original proposal. Several commenters objected to the reconciliation requirement or stated that reconciliation was unnecessary. The most common argument against reconciliation was based upon the broad comparability of Canadian accounting and auditing standards to those of the United States, which such commenters contend results in non-material differences. A discussion of the differences between U.S. and Canadian GAAP that would be material to the issuer's financial statements was proposed by several of those commenters as an alternative to reconciliation. One commenter noted that financial analysts around the world comprehend the financial positions of companies without reconciliation of financial statements, relying instead on free cash flow to compare companies' values. Other commenters cited a company's trends in earnings and return on capital as more important information than the comparison of earnings between companies facilitated by reconciliation.

In contrast, some commenters were of the opinion that differences between U.S. and Canadian GAAP are sufficient to warrant reconciliation. Segment and supplemental oil and gas disclosures in accordance with U.S. GAAP were cited specifically as reasons to require reconciliation. Full reconciliation in cases where material differences would exist in reported results was suggested. Other commenters noted that antifraud provisions would be operative and require complete and accurate financial statement disclosures not misleading to U.S. investors. The loss of useful information of specific types, such as information regarding pensions, post-employment benefits, income taxes and business combinations, was cited as another reason to require reconciliation.

Commenters were divided with regard to whether U.S. issuers would be unduly disadvantaged if reconciliation were not required of Canadian MJDS issuers. Commenters were also divided on the issue of whether Item 17 reconciliation would provide clear and consistently applied treatment.

After reviewing the comments, as well as the potential differences arising under the two different GAAPs, the Commission does not propose to eliminate the reconciliation requirements as originally proposed. Commenters are invited nonetheless to provide any further suggestions or information to the Commission that bears on the need for reconciliation, the costs of reconciliation, and the effects on U.S. issuers of not requiring a reconciliation as proposed.

2. Auditing Standards

Audits conducted in accordance with generally accepted auditing standards in Canada would be accepted in the United States pursuant to the reproposal, as they would have been under the original proposal. Canadian auditors would be required specifically to follow the existing Canadian professional guidelines [81] regarding additional comments for U.S. readers that may be appropriate with respect to contingencies and going-concern considerations.

3. Auditor Independence Issues

As originally proposed, auditor independence requirements would not have been affected by the MJDS and accountants would have continued to have been required to satisfy the independence rules of the jurisdiction in which an offer were made. The rules on ethics and independence adopted by the provincial institutes differ from the Commission's rules on auditor independence. The Commission's rules more extensively address such areas as non-audit services and financial interests associated with the client.[82] Canadian regulatory bodies have not developed independence rules similar to those of the Commission.

Several commenters suggested that it would be unreasonable to bar a Canadian issuer from use of the MJDS because its Canadian auditor, who observed all Canadian independence requirements, did not anticipate the U.S. offering and thus comply fully with the more extensive U.S. independence rules for the earlier periods presented in the prospectus.

The Commission continues to believe that all auditors reporting on financial statements filed in its jurisdiction should be independent in fact, and the staff is currently re-evaluating the efficacy of its present rules and practices in this regard on a broader basis. In response to comments raised, the reproposal would require compliance by auditors with U.S. independence requirements only commencing with their report on financial statements for the most recent fiscal year (the balance sheet at year-end and the statements of operations and cash flows for the year then ended) included in the initial registration statement under the Securities Act or the Exchange Act on a MJDS form. With respect to reports for periods prior to such fiscal year, compliance with the ethics and independence standards of the home jurisdiction would be required (unless U.S. independence rules were previously otherwise applicable to financial statements for such prior periods). U.S. independence rules would apply to audited financial statements contained in all MJDS Securities Act and Exchange Act registration statements and Exchange Act reports for periods subsequent to such fiscal year. With respect to continuous

[79] *See* proposed revisions to Rule 3a12-3 discussed *infra* in Section III.

[80] Item 17 requires quantitative reconciliation of net income and material balance sheet items, but other disclosures prescribed by U.S. generally accepted accounting principles and Regulation S-X are not required.

[81] *See* Canadian Institute of Chartered Accountants Auditing Guidelines, "Canada-United States reporting conflict with respect to contingencies and going concern considerations" (December 1989).

[82] *See* See 2-01 of Regulation S-X, 17 CFR 210.2-01; Financial Reporting Codification section 601-602.

reporting, for example, the first year an issuer reported on Form 40-F compliance with the U.S. independence requirements would be necessary only for the most recent year's financial statements; in the second year of reporting, compliance would be required for the most recent two years' financial statements (since compliance was required previously for the earlier year). The Commission requests comments on the appropriateness of not requiring independence standards to be met for the full period covered by an auditor's report.

It should be noted that a Canadian auditor would not necessarily be precluded from continuing as auditor for a client because U.S. rather than Canadian independence rules apply. Auditors who anticipate any difficulties in complying with U.S. independence rules under the MJDS are encouraged to contact the Division of Corporation Finance to discuss such matters.

E. Mechanics of the MJDS

An issuer using the MJDS would prepare a disclosure document according to the requirements of its home jurisdiction and use that document for securities offerings in the United States. Review of the disclosure document generally would be that customary in Canada, and the Canadian regulatory authorities would be responsible for applying disclosure standards.[83] The Securities Act registration forms initially proposed under the MJDS have been revised to clarify that a prospectus used in the United States need not contain any disclosure applicable solely to Canadian offerees or purchasers that would not be material to U.S. offerees or purchasers.[84]

1. Incorporation by Reference

In response to commenters' requests for clarification, the reproposal addresses when information filed under cover of Form 40-F or furnished on Form 6-K in connection with the MJDS may be incorporated by reference in Securities Act registration statements. Forms F-2, F-3, F-4 and S-8 would be amended to allow such incorporation by reference on the same basis that Form 20-F information may be so incorporated, provided the registrant would be eligible to use Form F-10 or, if the securities being registered on Form F-2, F-3, F-4 or S-8 would be F-9-eligible securities, the registrant would be eligible to use Form F-9. In addition, Forms F-2, F-3 and F-4 are proposed to be amended to allow incorporation of Forms 10-K, 10-Q and 8-K information by Canadian issuers who have been reporting under such forms.

Incorporation by reference of Form 40-F information would be limited to issuers eligible to use Form F-10, or Form F-9 (with regard to Form F-9-eligible securities), because allowing other MJDS issuers to incorporate by reference would be tantamount to converting them into Form F-10 issuers without applying a size test. Such issuers would not have sufficient restrictions on the type of securities they could register under Form F-2 or F-3. Key parts of the disclosure would come from the Canadian documents incorporated from Form 40-F. To maintain the integrity of the issuer distinctions made in Forms F-7 through F-10, no other issuers could incorporate Form 40-F and 6-K information filed in connection with MJDS.

Forms S-2 and S-3 need not be amended in light of the fact that proposed MJDS changes to existing forms and rules would allow Canadian private issuers to use the foreign integrated disclosure system on the same basis as other foreign private issuers. Thus, Canadian issuers would no longer be likely to use Forms S-2 and S-3. Furthermore, it would not be appropriate to revise Forms S-2 and S-3 to allow incorporation by reference from MJDS forms because incorporation of information from the foreign integrated disclosure system is generally not allowed in the U.S. issuer integrated disclosure forms.[85] Comment is requested with regard to the proposed system of incorporating MJDS Exchange Act forms.

2. Form F-X

Under both the original proposal and the reproposal, the forms and schedules would be accompanied by a Form F-X, which includes not only a consent to service of process and appointment of a U.S. person as agent for process, but also a consent to service of an administrative subpoena and an undertaking to assist the Commission with administrative investigations. In recognition of the proposed exemptive procedures under the MJDS that would allow a Canadian person to act as sole trustee under an indenture, Form F-X has been expanded to cover the consents, undertaking and appointment of agent that would be required of such a trustee.[86] Form F-X also has been modified in response to commenters' concerns about undue expense and burden to require signature of a corporate entity, rather than signature of a majority of the members of the board of directors of a corporation. In addition, the requirement that signatures be notarized has been eliminated.

Form F-X has been revised to eliminate the reference to a specific period (*i.e.*, for as long as any of the securities involved in a MJDSs transaction are outstanding) for a consent to service of process or administrative subpoena and an appointment of agent for service of process. Comment is solicited on the appropriateness of omitting this reference. Should the original reference be retained or should a fixed period of years—for example 5, 10 or 15 years—be used either alone or in conjunction with a reference to the life of the outstanding security?

3. Time of Filing

As originally proposed, registration statements on the MJDS forms were to be filed with the Commission on the same day as the filing of a prospectus or other document with the securities authorities of the jurisdiction identified by the registrant on the cover of the form as the principal jurisdiction regulating the offering. Any amendment to the document filed with that jurisdiction similarly would have been filed on the same day with the Commission. In response to commenters' concerns about the practicability of filing documents simultaneously in two countries, the reproposed Securities Act registration forms (Forms F-7, F-8, F-9 and F-10) would no longer require same-day filing as a prerequisite to reliance on the MJDS. The Commission notes, however, that regardless of the absence of such a requirement, offers and sales may not be made until requisite filings have been made and, in the latter case, declared effective. Where a single offering is being made under the MJDS in Canada and the United States, no offers may be made prior to filing of a registration statement with the Commission and no sales may be made prior to the effective date of such registration statement.[87]

[83] Thus, except in the unusual case where the Commission staff had reason to believe there was a problem with the filing or the offering, the documents generally would be given a "no review" status.

[84] *See, e.g.*, Item 1 to proposed Form F-10.

[85] Form S-8 is an exception to the general rule since no separate form for registration in connection with employee benefit plans is provided for foreign private issuers.

[86] *See infra* section II.G. *See also* proposed Rule 4d-8 under the Trust Indenture Act.

[87] *See* Section 5 of the Securities Act, 15 U.S.C. 77e.

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Form 40–F has been amended under the reproposal to clarify that, in connection with annual reporting, the form shall be filed with the Commission the same day the information is due to be filed with the home jurisdiction securities regulatory authority.

4. Effective Date

As originally proposed, registration statements and post-effective amendments would have been deemed effective on the date the securities legally could be sold in the principal Canadian jurisdiction.[88] With respect to exchange offers, which commence in Canada upon dissemination of offering documents to target company shareholders, filings on Form F–8 would have become effective upon filing with the Commission.[89]

Under the reproposal, the effectiveness provision has been revised with regard to Forms F–7 and F–8 (and for securities offered in an exchange offer or business combination on Forms F–9 or F–10) to reflect the fact that a principal jurisdiction is not always designated for Canadian rights and exchange offers. As revised, the effective date for registration of securities on such Forms would be upon written or oral notification of the Commission by the registrant or the applicable Canadian securities regulators that the securities legally may be sold in Ontario and Quebec or, if the securities are being offered in only one of such provinces, such securities legally may be sold in Ontario or Quebec. Similarly, post-effective amendments to such forms would become effective upon such notification of the Commission by the registrant or the applicable Canadian securities regulators that the amendment to home jurisdiction documents legally may be used in Ontario and Quebec or, if filed in only one of such provinces, such amendment legally may be used in either Ontario or Quebec.[90]

The effectiveness provision relating to Forms F–9 and F–10 for offerings not in connection with exchange offers or business combinations also has been amended to clarify that such forms would become effective upon written or oral notification of the Commission by the registrant or the applicable Canadian securities regulator that the securities legally may be sold in the designated principal jurisdiction. Similarly, post-effective amendments to such forms would become effective upon such a notification that the amendment legally may be used in the principal jurisdiction.

In the case of a U.S.-only offering on Form F–9 or Form F–10, the registration statement would have been made effective under the original proposal on the date specified by the registrant, but in no event before seven days after the date the registration statement was filed with the Commission.[91] This seven-day period corresponded to the average time that is required for a registration statement to be reviewed in Canada. The reproposal would clarify that such seven-day period need not elapse prior to effectiveness with the Commission, if the principal jurisdiction's securities regulator issued a receipt or notification of clearance of the registration statement or post-effective amendment; in such case the effective date with the Commission would be the date of issuance of the receipt or clearance notification.[92]

Two additional clarifying revisions are reflected in the reproposed effective date provisions. First, to reflect the fact that documents possibly may be filed later with the Commission than with the Canadian regulatory authorities, a registration statement or post-effective amendment could not become effective until all disclosure documents filed with the Canadian jurisdictions on or before the time the securities could be legally sold there had been filed with the Commission.[93] Second, since the effectiveness of a registration statement or post-effective amendment may be postponed under the circumstances noted in such clarifying revision, the reproposal would provide that effectiveness would occur at the time such delaying conditions are no longer applicable.[94]

Comment is solicited regarding the method under the reproposal by which the effective date of an MJDS registration statement or post-effective amendment is determined.

5. Shelf Offerings and Post-Effective Pricing Procedures

As originally proposed, registrants on the MJDS forms would have been able to make a delayed or continuous offering to the same extent foreign private issuers currently may make such offerings pursuant to Rule 415.[95] Prospectus updating would have been accomplished in compliance with Canadian law.[96] In addition, registrants on the MJDS forms would have been able to rely upon the Commission's Rule 430A [97] to omit from a registration statement to be declared effective certain information with respect to the offering price, delivery dates and terms of the securities dependent upon the offering date. Since the date of the original MJDS proposal, Canadian regulatory authorities have proposed rules for shelf prospectus offerings and for pricing of offerings after the final prospectus is receipted.[98] In anticipation of the adoption of such rules and in order to bring together both the home jurisdiction's procedural and substantive rules, the reproposal would no longer allow MJDS offerings by Canadian issuers in reliance upon Rule 415 or Rule 430A. Canadian MJDS issuers would instead rely upon home jurisdiction shelf and pricing procedures, whether or not a U.S.-only offering would be made.[99] Supplements to the home jurisdiction disclosure documents would be filed with the Commission within one business day after filed with the relevant Canadian jurisdiction, but would not be deemed amendments to the Commission registration statement.

Similarly, it is anticipated that under the Canadian's multijurisdictional disclosure system for U.S. issuers, the home country shelf and pricing procedures (*i.e.* Rules 415 and 430A) would apply. In connection therewith, clarifying revisions would be made to Commission rules to ensure that U.S. issuers file a supplement with the Commission whenever a tranche is to be sold only in Canada under the Canadian regulators' multijurisdictional disclosure system.[100]

F. Exclusion of Investment Companies

The original proposal would have provided that MJDS forms are not available to registrants who are investment companies, as defined in Section 3 of the Investment Company Act of 1940.[101] Commenters requested that the exclusion of investment companies be revised in light of the Commission's interpretation of the definition of investment company to include Canadian banks and certain other financial institutions.

Since the date of the original proposal, the Commission has published for comment amendments to Rule 6c–9 Rule 6c–9 currently provides an exemption from the registration provisions of that Act for foreign banks offering their debt securities and non-voting preferred stock within the United States, either directly or through finance subsidiaries. The proposed amendments would expand the exemption to foreign banks offering equity securities and foreign insurance companies and finance subsidiaries of foreign banks and insurance companies offering their securities. The proposed rule would specifically include Canadian trust companies and loan companies within the definition of "foreign bank."

In light of the exemptive approach taken in the recent Rule 6c–9 proposal, the MJDS as reproposed would be available to Canadian issuers if they are not registered or required to be registered as investment companies under the Investment Company Act, either in reliance on an individual exemptive order or on an exemptive rule. Basing the exclusion on whether registration is required would allow Canadian issuers, for example, within the definition of "investment company" but exempted from registration under an expanded version of Rule 6c–9 to take advantage of the MJDS.

G. Trust Indenture Act

The original proposal included rules and forms designed to provide exemptions under Section 304(d) of the Trust Indenture Act of 1939 [102] from the required appointment of a U.S. trustee under a qualified indenture. [104] Exemptions under the proposed rules would have allowed a Canadian institutional trustee to act as sole trustee under a qualified indenture if the securities under the indenture were eligible for registration on Form F–7, F–8, F–9 or F–10, and if the indenture provided for a Canadian institutional trustee authorized by law to exercise trust powers and subject to supervision or examination by governmental authority.

The proposed Trust Indenture Act rules and form,[105] which are reproposed largely unchanged, would provide alternative procedures for the exemptive application. Form T–5 would allow an obligor to apply for an exemption from the U.S. trustee requirement in isolation from a registered public offering in the United States.[106] Forms F–7, F–8, F–9 and F–10 would allow application for an exemption from the U.S. trustee requirement by indication on the facing sheet that the registration statement constitutes such an application. Part II of such forms would call for the same substantive information required by Form T–5. Unlike the original proposal, the reproposal would require a Canadian trustee benefiting from an exemptive application to file a Form F–X in connection with such application.

With one exception, exemptive orders granted under the new rules would be permanent as to the obligor and trust indenture described in the application.[107] Orders granted for securities that the applicant reasonably expects to issue within two years from the date of the application,[108] would remain in effect for those two years, unless the applicant files a registration statement relating to the securities described in the earlier exemptive order. In the latter event, the exemptive order would become permanent without further action by the applicant. Substitution of the identified trustee after the Commission's issuance of an exemptive order would not cause a need to seek a further exemption. To ensure the presence of a suitable trustee, however, the obligor would be required to undertake that any substitute trustee would satisfy the conditions of Rule 4d–1(c)(2) and would consent to service of process.[109]

In response to public comment, the reproposal would allow exemptive applications in relation to unissued securities reasonably expected to be issued within two years of the date of application, a change from the one-year standard originally proposed. The two-year standard of the reproposal is similar to the standard used in Rule 415(a)(2).[110] Adoption of a two-year standard would allow better coordination between Trust Indenture Act procedures and delayed or continuous offerings.

Notice procedures for exemptive applications relating to indentures under which securities are outstanding also have been modified in the reproposal.[111] In response to public comment suggesting that a requirement of notice to all holders by first-class mail might be overly burdensome, the reproposal would require notice to such holders by means of publication in a daily newspaper of general circulation.[112] In addition, the reproposal would dispense with any requirement of notice to holders for certain indentures under which securities of other series are outstanding if the terms of the outstanding series are such that they may be considered as if issued under a different indenture. In such a circumstance, there would be no clear legal interest of holders of the outstanding series that would require notice to them that a Canadian trustee may serve as indenture trustee under a different series. "Series" would be defined with reference to the presence or absence of the right of holders in common to vote to direct the trustee to take action.[113] Where securities holders of an outstanding series will have no right to vote or consent together with a distinct series under the same indenture, no notice to the holders under the first series will be required regarding the service of a Canadian trustee under the second series. Public comment is requested on the adequacy of the notice procedures prescribed by the reproposal.

The Trust Indenture Reform Act, which has been passed by both houses of the Congress but has yet to be considered by a conference of such houses, would eliminate the need for the proposed rules and forms under the Trust Indenture Act. If enacted, such Act would conditionally permit foreign persons to act as sole trustees under qualified indentures. Pending final passage of the Act, the rules and forms discussed above are proposed.

H. Liability

Commenters on the original proposal requested clarification that an offering document prepared in accordance with MJDS forms would not be considered misleading solely because information required by existing Commission forms is omitted based on applicable Canadian rules. By adopting the MJDS, the Commission in essence would adopt

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[88] *See* proposed Rule 467(a), 54 FR at 32249.

[89] 54 FR at 32236, n.123 and accompanying text.

[90] *See* proposed Rule 467(a).

[91] *See* proposed Rule 467(b).

[92] *See* proposed Rule 467(d).

[93] *See* proposed Rule 467(e)(i).

[94] *See* proposed Rule 467(f).

[95] 17 CFR 230.415.

[96] Canadian law requires a prospectus to be amended to reflect any material change in the information contained therein not described in a material change report incorporated by reference into the prospectus.

[97] 17 CFR 230.430A.

[98] *See* Draft National Policy Statement No. 44, 13 O.S.C.B. 2567 (June 22, 1990).

[99] Accordingly, the cover pages of Forms F–7, F–8, F–9 and F–10 have been revised to require that the registrant indicate whether the offering is being made on a delayed or continuous basis under home jurisdiction rules.

[100] *See* proposed revisions to Rule 424, 17 CFR 230.424.

[101] 15 U.S.C. 80a–3.

[102] *See* Investment Company Act Release No. 17682 (Aug. 17, 1990) [55 FR 34000].

[103] 15 U.S.C. 77ddd(4).

[104] Section 310(a)(1), 15 U.S.C. 77jj(a).

[105] *See* proposed Rules 4d–1 to 4d–6 and Form T–6.

[106] For the convenience of the parties, Form T–5 would allow exemptions from the U.S. trustee requirement under Section 304(d) to be perfected in anticipation of an offering in the United States. Form T–5 also could be used to permit service by a Canadian trustee as the sole indenture trustee under a qualified indenture already having securities outstanding.

[107] Issuances by the obligor under a different indenture would require a new exemptive application under Rule 4d–1.

[108] *See* proposed Rule 4d–1(b)(ii).

[109] *See* proposed Rule 4d–6.

[110] 17 CFR 230.415(a)(2).

[111] *See* proposed Rule 4d–4.

[112] Id.

[113] The definition of "series" used in reproposed Rule 4d–4 is similar to that used in Section 402 of the Trust Indenture Reform Act of 1989 (title IV of S. 1712, 101st Cong., 1st Sess.), the Commission's proposal for modernization of the Trust Indenture Act.

as its own requirements the disclosure requirements of Canadian forms. The effect would be the same as if the Commission had set forth each Canadian requirement within the MJDS forms.

The fact that different disclosure would be required under forms available to different issuers that are used for similar purposes is clearly not without precedent in Commission practice. Separate sets of forms exist today under the Securities Act and the Exchange Act for foreign and U.S. issuers. Thus, identical disclosure is not required now with respect to similar U.S. and foreign issuers given the variations in the applicable form requirements. The risks associated with omitting to disclose information required under forms that are inapplicable to the issuer would be no greater under the MJDS than it would be under any other Commission form.

Describing the disclosure requirements of a particular form by reference to the requirements of foreign securities regulatory authorities is a new approach for the Commission. Commenters focusing on that unique aspect of the MJDS should not lose sight, however, of the fact that the fundamental aspects of creating a set of disclosure requirements for a group of issuers under the MJDS remain unchanged from similar past Commission disclosure initiatives like the formulation of the Commission's foreign integrated disclosure system. Whether or not looking to foreign requirements, the Commission makes a determination that the required items of information should be set forth by a particular group of issuers to provide adequate disclosure to protect U.S. investors. In this case, the Commission has conducted a comprehensive examination of Canadian requirements and concluded they are appropriate for Canadian issuers under the MJDS. Given that determination, the fact that another form requires information different from, or in addition to, the MJDS forms does not indicate or suggest the disclosure provided under the MJDS forms is inadequate.

I. The Canadian Multijurisdictional Disclosure System

The Canadian MJDS for U.S. issuers is very similar in scope to the MJDS for Canadian issuers proposed by the Commission. Under the MJDS as it would operate in Canada, U.S. issuers would be able to make public offerings of securities in all provinces of Canada on the basis of prospectuses prepared in accordance with U.S. law. Such prospectus disclosure would be updated in accordance with U.S. requirements, and U.S. documents would be used to comply with continuous reporting requirements. Tender offers meeting eligibility criteria similar to those set forth in this reproposal would be deemed to comply with applicable Canadian regulations if they were conducted in accordance with the provisions of the Williams Act. Like the U.S. MJDS as set forth in this reproposal, the Canadian MJDS is expected to be extended to include business combinations meeting similar eligibility criteria. Other MJDS revisions set forth in this reproposal, such as the removal of a 20 percent U.S. ownership ceiling for rights offerings and the removal of public float and market value requirements for non-convertible investment grade securities, also are expected to be reflected similarly in the Canadian MJDS.

The Canadian MJDS for U.S. issuers would be implemented in Canada through publication of a national policy statement by the Canadian Securities Administrators ("CSA"), together with the issuance of blanket orders and rulings by the securities regulatory authority of each Canadian province and territory. It is anticipated that the CSA will be releasing for comment shortly after publication of this reproposal Draft National Policy Statement No. 45, which would set out the proposed rules governing the use of the MJDS.[114]

J. Monitoring Efforts in Connection With the MJDS

The CSA has considered the potential impact which the proposed system may have on the Canadian capital markets. The CSA believes the system will benefit the Canadian capital markets and all of the participants in it.

However, there is a Canadian concern that the U.S. Glass-Steagall Act may put bank-owned dealers at a disadvantage in competing for underwriting assignments when Canadian issuers use the MJDS to finance in the United States. As a result of the Glass-Steagall Act, bank-owned dealers are currently subject to various restrictions on their U.S. underwriting activities, including, most importantly, a limit on the dollar volume of U.S. underwritings. The bank-owned dealers are particularly concerned about the effect the MJDS may have on their equity underwriting business.

Given the importance to the CSA of having a strong dealer community knowledgeable of and committed to the Canadian capital markets, the CSA believes the MJDS should include a "safety valve" to be available if the system does prove to substantially harm the Canadian dealer community. The CSA will monitor the effect of the system. The CSA will obtain input from the Canadian dealers and otherwise monitor the effects of the MJDS on the Canadian dealer community. In addition, the CSA will, if appropriate, hold hearings after an initial period following the implementation of the MJDS (*e.g.*, two years) to review the MJDS, including its impact on bank-owned dealers. If the hearings demonstrate that the MJDS has had and will continue to have a material adverse effect on the Canadian dealer community, the CSA and the SEC would commence rulemaking proceedings to seek comment on such changes to the MJDS as are needed to alleviate such adverse effect on the dealers and to ensure that the MJDS achieves its policy goals.

III. Modifications to the Current Registration and Reporting System for all Canadian Issuers

While other foreign private issuers are distinguished from U.S. issuers for purposes of registration and reporting under the Securities Act and Exchange Act, Canadian foreign private issuers in some circumstances are treated the same as U.S. issuers. The Commission's reasons for establishing different treatment for Canadian issuers have not always been articulated, but reflected the inter-relationship of U.S. and Canadian capital markets and the geographical proximity of the two countries.[115] Recently, the Commission has been reevaluating the policy of distinguishing Canadian issuers from other foreign issuers.[116] The continuing trend towards internationalization of the world's securities markets, and the resultant availability in the United States of securities of issuers from many countries, undermines the logic of differentiating Canadian issuers based on the proximity of Canada to the United States.[117] The high standards of disclosure required by Canadian law [118] and the principles of fairness and comity also militate against unequal treatment of Canadian issuers relative to other foreign issuers. Moreover, the Commission's present foreign integrated disclosure system is designed to facilitate transactional disclosure and periodic reporting by foreign private issuers through standardized forms established with consideration of specific needs and practices of foreign issuers.[119] The ineligibility of certain Canadian issuers to avail themselves fully of that system needlessly complicates the otherwise parallel disclosure systems for U.S. and foreign private issuers. In light of such considerations, the Commission now proposes elimination of the distinction between Canadian and other foreign private issuers for purposes of the Securities Act and the Exchange Act registration and reporting systems.[120]

Generally, foreign private issuers who register or file reports under the Exchange Act use forms specifically designed for them.[121] Any non-Canadian private issuer may use Form 20–F as a registration statement or as an annual report under the Exchange Act.[122] A Canadian foreign private issuer, on the other hand, currently may use that form as a registration statement (other than in connection with listing on a national securities exchange) or as an annual report,[123] only if such issuer does not have (and has not had during the previous twelve months) any class of securities registered under the Exchange Act in connection with a listing on a national securities exchange [124] or a reporting obligation under the Exchange Act arising from registration of securities under the Securities Act.[125] Additionally, a Canadian issuer may not use that form if it issued its securities in a transaction to acquire by merger, consolidation, exchange of securities or acquisition of assets an issuer that filed annual reports under the Exchange Act on the form prescribed for U.S. issuers.[126] Those Canadian issuers who may not use Form 20–F must file annual reports, quarterly reports [127] and other current reports [128] on forms prescribed for U.S. issuers.

Use of Securities Act registration forms designed for foreign issuers is contingent on the registrant's eligibility for use of Form 20–F. Thus, those Canadian foreign private issuers ineligible to use Form 20–F are excluded from using Securities Act forms for foreign issuers. Generally, under the current system, a Canadian issuer is able to use Form F–1 the first time it registers securities under the Securities Act.[129] Thereafter, due to the existence of its section 15(d) reporting obligation, it must use Securities Act forms for U.S. issuers.

Under the reproposal, the Form 20–F restrictions on use by Canadian issuers would be deleted. In addition, revisions to Rules 12g–3,[130] 13a–10,[131] 13a–16,[132] 15d–5,[133] 15d–10 [134] and 15d–16 [135] under the Exchange Act, to Rule 502 [136] and to Forms S–4,[137] S–8,[138] S–11,[139] F–1,[140] F–2,[141] F–3,[142] and F–4,[143] under the Securities Act, to Rules 3–01,[144] 3–02,[145] 3–12,[146] and 3–19 [147] of Regulation S–X, and to Rules 302,[148] 402 [149] and 404 [150] of Regulation S–K would be made to reflect the removal of such restrictions. Those changes would allow Canadian issuers equal access to Commission forms for foreign issuers. Despite the proposed revisions, Canadian foreign private issuers (like other foreign issuers) would continue to be eligible to use forms prescribed for U.S. issuers, if they so elected. Since Canadian foreign private issuers would no longer be subject to the disclosure requirements pertaining to U.S. issuers, they would no longer have to comply with full industry segment reporting,[151] to meet different filing time requirements than other foreign issuers [152] or to provide more details regarding management remuneration and related party transactions than other foreign issuers.[153]

The proposed revisions also would affect the application to Canadian private issuers of the U.S. proxy and insider reporting requirements. Rule 3a12–3 under the Exchange Act [154] exempts foreign private issuers eligible to use Form 20–F from sections 14(a), 14(b), 14(c), 14(f) and 16 of the Exchange Act.[155] Under the reproposal, the exemption would be made available to all foreign private issuers without reference to form eligibility. As a result of the exemption, the Commission's shareholder communications rules would not apply to securities of

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[114] Copies of such policy statement will be made available in Canada and will also be made available at the Commission's Public Reference Room at 450 Fifth Street, N.W., Washington, DC 20549. Comments regarding such policy statement may be directed to the CSA on or before November 30, 1990 at Canadian Securities Administrators, International Market Subcommittee, c/o Office of the Secretary, Ontario Securities Commission, Suite 800, Box 55, 20 Queen Street West, Toronto, Ontario, M5H 3S8.

[115] In the 1977 release adopting Form 20–F, however, the Commission stated that the new form would be unavailable to what were characterized as "essentially U.S. companies." Exchange Act Release No. 16371, n.19 (Nov. 29, 1979) (44 FR 70132). The Release notes that any "North American issuer" having certain characteristics is not eligible to use Form 20–F, but must use the form appropriate for United States issuers.

[116] *See, e.g.*, Securities Act Release No. 6779 (June 10, 1988) (53 FR 22661, 22665 n.64) (Regulation S initial proposing release); Securities Act Release No. 6863, (May 2, 1990) (55 FR 18308, 18308 n.21) (Regulation's adopting release).

[117] *See, e.g., Internationalization of the Securities Markets*, Report of the Staff of the U.S. Securities and Exchange Commission to the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Energy and Commerce (July 27, 1987); Bank for International Settlements, *Annual Reports* (1988, 1987 & 1986); International Monetary Funds, *International Capital Markets Developments and Prospects* (1988); and Organization for Economic Cooperation and Development, *Financial Market Trends* (various issues).

[118] *See* Securities Act Release No. 6841 (July 24, 1989).

[119] *See* Securities Act Release No. 6437 (Nov. 19, 1982) (47 FR 54764).

[120] Eligibility of Canadian issuers to use Form S–18 or rely upon Regulation A, however, would not be affected by the proposals contained herein.

[121] Forms 20–F and 6–K under the Exchange Act, together with Forms F–1, F–2, F–3 and F–4 under the Securities Act, constitute the basic framework of the Commission's foreign integrated disclosure system. *See* Securities Act Release No. 6360 (Nov. 20, 1981) (46 FR 58511).

[122] See 17 CFR 249.220f(a)

[123] See 17 CFR 249.220f(b)

[124] See section 12(b) under the Exchange Act, 15 U.S.C. 78*l*(b).

[125] See section 15(d) under the Exchange Act, 15 U.S.C. 78*o*(d).

[126] Form 10–K, 17 CFR 249.310.

[127] Form 10–Q, 17 CFR 249.308a.

[128] Form 8–K, 17 CFR 249.308.

[129] See General Instruction I.A. to Form F–1.

[130] 17 CFR 240.12g–3.

[131] 17 CFR 240.13a–10.

[132] 17 CFR 240.13a–16.

[133] 17 CFR 240.15d–5.

[134] 17 CFR 15d–10.

[135] 17 CFR 240.15d–16.

[136] 17 CFR 230.502.

[137] 17 CFR 239.25.

[138] 17 CFR 239.16b.

[139] 17 CFR 239.18.

[140] 17 CFR 239.31.

[141] 17 CFR 239.32.

[142] 17 CFR 239.33.

[143] 17 CFR 239.34.

[144] 17 CFR 210.3–01.

[145] 17 CFR 210.3–02.

[146] 17 CFR 210.3–12.

[147] 17 CFR 210.3–19.

[148] 17 CFR 229.302.

[149] 17 CFR 229.402.

[150] 17 CFR 229.404.

[151] Unless financial statements are required under Item 18, Form 20–F requires industry segment disclosure only on a revenue basis, accompanied by a narrative discussion of revenue and profit contributions if the respective segments differ significantly. *See* Item 1 of Form 20–F; Exchange Act Release No. 16371, *supra* n.115. This differs from Form 10–K, which requires full segment disclosure. *See* Item 8 of Form 10–K. It should be noted, however, that segment data substantially similar to that furnished by U.S. companies will be furnished routinely by Canadian issuers since it is required under Canadian GAAP.

[152] For example, annual reports on Form 20–F must be filed within six months after the end of the fiscal year covered by such report. *See* General Instruction A.(c) to Form 20–F. Annual reports on Form 10–K must be filed within 90 days after the end of the fiscal year covered by the report. *See* General Instruction A to Form 10–K.

[153] Form 20–F requires only summary information as to remuneration of certain officers and directors unless the issuer makes such information public on an individual basis. *See* Item 11 of Form 20–F. Form 10–K requires disclosure of remuneration of executive officers on both an individual and collective basis. *See* Item 11 of Form 10–K and Item 402 of Regulation S–K [17 CFR 229.402].

[154] 17 CFR 240.3a12–3.

[155] 15 U.S.C. 78n(a), 78n(b), 78n(c), 78n(f) and 78p.

Canadian issuers.[156] Nevertheless, the Commission would expect U.S. brokers, dealers, voting trustees, banks, associations, and other entities that exercise fiduciary powers in nominee name or otherwise, to treat in the same manner a request from a Canadian issuer for information regarding U.S. beneficial holders of its securities in connection with its solicitations of proxies, consents or authorizations as similar requests from U.S. issuers are treated. Comment is solicited regarding whether any regulatory requirement should be imposed by the Commission to ensure such a result.

Comment is solicited regarding the proposed revisions to the Commission's foreign integrated disclosure system with regard to Canadian issuers.

IV. State Securities Regulation

In addition to complying with the federal securities laws, issuers selling their securities in the United States are subject to state securities laws (including the District of Columbia and Puerto Rico) in those jurisdictions where offers and sales are made. The North American Securities Administrators Association ("NASAA"), which represents all state securities regulators as well as Canadian provincial regulators and the securities authorities of Mexico, passed a resolution on September 14, 1989 endorsing the MJDS as originally proposed. The NASAA resolution called upon its membership to take any action necessary to accommodate MJDS offerings within state securities laws. NASAA also formed a special task force to work with the Commission and Canadian regulators to determine what accommodations would be appropriate at the state level.

NASAA conducted a survey of securities administrators in all states, Puerto Rico and the District of Columbia to gather information regarding how such administrators planned to accommodate MJDS offerings in their jurisdictions and the number of state exemptions from registration that may be available to MJDS issuers.[157]

Based upon the information obtained from the survey, on August 30, 1990 NASAA adopted four Model Rules to the Uniform Securities Act (1956) and recommended their adoption, where necessary, to the membership. Some states already have adopted those rules or similar measures. The Model Rules provide, inter alia, for: (a) Harmonization of state review periods with Canadian review periods; (b) acceptance of Form F-7 in lieu of any state form that may be required to claim an exemption from registration for a rights offering under MJDS to existing security holders; (c) acceptance of financial information presented in the registration statement in conformity with Canadian generally accepted accounting principles to the extent permitted under MJDS; and (d) an exemption from registration for secondary trading of securities which are the subject of an MJDS offering and for which a registration statement on Form F-8, F-9 or F-10 has become effective with the Commission.

[156] See Rules 14b-1 and 14b-2 under the Exchange Act, 17 CFR 240.14b-1 and 240.14b-2.

[157] Results of the survey may be obtained from NASAA at Suite 750, 555 New Jersey Avenue, N.W., Washington, DC 20008.

V. Request for Comments

Any interested person wishing to submit written comments on any aspect of the revised Rules, Forms or Schedules proposed today, or the revised multijurisdictional disclosure system as a whole, is requested to do so.

VI. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with the reproposed MJDS, the Commission requests commenters to provide views and data as to the costs and benefits associated with multijurisdictional offerings and tender offers and continuous disclosure requirements under current law as compared to such costs and benefits under the reproposed MJDS. The Commission is not aware of any additional costs that would result from the reproposed MJDS, but as eligible issuers would be able to avoid expenses associated with the preparation of more than one disclosure document benefits are expected to result for such issuers. With respect to the proposed revisions to existing rules and forms to treat Canadian foreign private issuers like all other foreign private issuers, additional costs are also not anticipated. Since use of the foreign integrated disclosure system would be voluntary for Canadian issuers currently using Commission forms, the costs of converting from one system to the other would not be mandated. In fact, in light of the expansion of the exemption from the proxy rules and the operation of section 16, some benefit may be expected to result. U.S. issuers would be unaffected by such changes.

VII. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission has certified that the reproposed MJDS and the revisions to the registration and reporting procedures for Canadian issuers will not, if adopted, have a significant impact on a substantial number of small entities. That certification, including the reasons therefor, is attached to this release as appendix B.

VIII. Table of Contents of Rule, Form and Schedule Proposals and Changes

1. 17 CFR Part 200—Authority—
   Rule 30-1(f) of Rules on Delegating Functions to Division Directors, Regional Administrators and the Secretary of the Commission—
   Rule 30-3(a)(35) of Rules on Delegating Functions to Division Directors, Regional Administrators and the Secretary of the Commission—
2. 17 CFR Part 210—Authority: Rules 3-01, 3-02, 3-12 and 3-19 of Regulation S-X
3. 17 CFR Part 229—Authority: Items 302, 402, and 404 of Regulation S-K

Securities Act

4. 17 CFR Part 230—Authority
5. Rule 158—Definitions for Section 11(a)
6. Rule 175(b)(1)(i)—Liability for Certain Statements by Issuers
7. Rule 424—Filing of Prospectuses, Number of Copies
8. Rule 467—Effectiveness of Registration Statements and Post-effective Amendments thereto on Forms F-7, F-8, F-9 and F-10
9. Rule 502—General Conditions to be Met
10. 17 CFR Part 239—Authority
11. Form S-4—Instruction F
12. Form S-8—General Instructions C, G and Items 3, 9
13. Form S-11—General Instruction E
14. Description of Form F-1
15. Description of Form F-2
16. Description of Form F-3
17. Description of Form F-4
18. Description of New Forms:
    Form F-7—Registration Statement
    Form F-8—Registration Statement
    Form F-9—Registration Statement
    Form F-10—Registration Statement
    Form F-X—Appointment of Agent

Exchange Act

19. 17 CFR Part 240—Authority
20. Rule 3a12-3—Exemptions from Sections 14(a) 14(b), 14(c) and 14(f) and Section 16
21. Rule 3b-6—Liability for Certain Statements by Issuers
22. Rule 12g-3—Registration of Securities of Successor Issuers
23. Rule 12g3-2—Exemption for ADRs and Certain Foreign Securities—
24. Rule 13a-3—Reporting by Form 40-F Registrant
25. Rule 13a-10—Transition Reports
26. Rule 13a-16—Reports of Foreign Private Issuers on Form 6-K
27. Rule 13e-4(h)—Tender Offers by Issuers
28. Schedule 13e-4F—Tender Offer Statement
29. Rule 14d-1(b)—Scope of and Definitions Applicable to Regulations 14D and 14E
30. Schedule 14d-1F—Tender Offer Statement
31. Schedule 14d-9F—Recommendation of Subject Company
32. Rule 14e-2(c)—Position of Subject Company
33. Rule 15d-4—Reporting by Form 40-F Registrants
34. Rule 15d-5(b), (c)—Reporting by Successor Issuers
35. Rule 15d-10(g)(1)—Transition Reports
36. Rule 15d-16—Reports of Foreign Private Issuers on Form 6-K
37. 17 CFR Part 249—Authority
38. Form 20-F—Registration of Foreign Private Issuers
39. Form 40-F—Registration of Securities of Certain Canadian Issuers
40. Form F-X—Appointment of Agent for Service of Process
41. Form 6-K—Report of Foreign Private Issuers

Trust Indenture Act

42. 17 CFR Part 260—Authority
43. Rule 0-11—Liability for Certain Statements by Issuers
44. Rule 4d-1—Application for Exemption from Section 310(a)(1)
45. Rule 4d-2—Application for Appointment of a Foreign Trustee
46. Rule 4d-3—General Requirements for Applications
47. Rule 4d-4—Nature of application under Rule 4d-1
48. Rule 4d-5—Waiver of Hearing; Designation of Record
49. Rule 4d-6—Consent of Trustee to Service of Process
50. 17 CFR Part 269—Authority
51. Form T-5—Application for Exemption Pursuant to Rule 4d-1

IX. Statutory Basis of Rule, Form and Schedule Proposals and Rule and Form Changes

These revisions are being proposed pursuant to section 19 of the Securities Act,[158] sections 12, 13, 14, 15, 16, and 23 of the Exchange Act,[159] and section 304 of the Trust Indenture Act.[160]

List of Subjects in 17 CFR Parts 200, 210, 229, 230, 239, 240, 249, 260 and 269

Authority delegations, Accounting, Reporting and recordkeeping requirements, Securities, Trusts and trustees.

X. Text of Rule, Form and Schedule Proposals and Rule and Form Changes

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—ORGANIZATION: CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1 The authority citation for part 200 continues to read in part as follows:

[158] 15 U.S.C. 77s

[159] 15 U.S.C. 78l, 78m, 78n, 78o, 78p, and 78w

[160] 15 U.S.C. 77ddd(d)

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended; sec. 20, 49 Stat. 833; sec. 319, 53 Stat. 1173; secs. 38, 211, 54 Stat. 841, 855; sec. 308, 101 Stat. 1254 (15 U.S.C. 77s, 78d-1, 78d-2, 78w, 79t, 77sss, 80a-37, 80b-11), unless otherwise noted.

2. By amending § 200.30-1 to add paragraph (f)(14) (introductory text of paragraph (f) is republished) to read as follows:

§ 200.30-1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(f) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*):

* * * * *

(14) To determine whether, in light of any exemptive order granted by a Canadian federal, provincial or territorial regulatory authority with respect to a tender or exchange offer otherwise eligible to be made pursuant to Rule 14d-1(b) (§ 240.14d-1(b) of this chapter), application of certain tender offer provisions of the Exchange Act (Sections 14(d)(1) through 14(d)(7), Regulation 14D and Schedules 14D-1 and 14D-9 thereunder, and Rule 14e-1 of Regulation 14E) is necessary or appropriate in the public interest.

* * * * *

3. By revising paragraph (a)(35) of § 200.30-3 to read as follows:

§ 200.30-3 Delegation of authority to Director of Division of Market Regulation

* * * * *

(a) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*):

* * * * *

(35)(i) To grant exemptions from Rule 13e-4 (§ 240.13e-4 of this chapter) pursuant to Rule 13e-4(g)(7) (§ 240.13e-4(g)(7) of this chapter);

(ii) To determine whether, in light of any exemptive order granted by a Canadian federal, provincial or territorial regulatory authority with respect to a tender or exchange offer otherwise eligible to be made pursuant to Rule 13e-4(h) (§ 240.13e-4(h) of this chapter), application of certain tender offer provisions of the Exchange Act (section 13(e)(1), and Rule 13e-4 and Schedule 13e-4 thereunder) is necessary or appropriate in the public interest.

* * * * *

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

4. The authority citation for part 210 continues to read in part as follows:

Authority: Secs 6, 7, 8, 10, 19 and Schedule A of the Securities Act of 1933 (15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25)(26); secs 12, 13, 14, 15(d) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*, 78m, 78n, 78o(d), 78w(a)); secs. 5(b), 10(a), 14 and 20(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79e(b), 79j(a), 79n, 79t(a)); and secs. 8, 20, 30, 31 and 38(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-8, 80a-20, 80a-29, 80a-30, 80a-37a), unless otherwise noted.

5. By revising paragraph (h) of § 210.3-01 to read as follows:

§ 210.3-01 Consolidated balance sheets.

* * * * *

(h) Any foreign private issuer, other than a registered management investment company or an employee plan, may file the financial statements required by § 210.3-19 in lieu of the financial statements specified in this rule.

6. By revising paragraph (d) of § 210.3-02 to read as follows:

§ 210.3-02 Consolidated statements of income and changes in financial position.

* * * * *

(d) Any foreign private issuer, other than a registered management investment company or an employee plan, may file the financial statements required by § 210.3-19 in lieu of the financial statements specified in this rule.

7. By revising paragraph (f) of § 210.3-12 to read as follows:

§ 210.3-12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

* * * * *

(f) Any foreign private issuer may file financial statements whose age is specified in § 210.3-19.

8. By revising paragraph (a) of § 210.3-19 to read as follows:

§ 210.3-19 Special provisions as to financial statements for foreign private issuers.

(a) A foreign private issuer, as defined in Rule 405 (§ 240.405 of this chapter), other than a registered management investment company or an employee

plan, shall include the following financial statements for the registrant and its subsidiaries consolidated and, where appropriate, its predecessors:

(1) Audited balance sheets as of the end of each of the two most recent fiscal years.

(2) Audited statements of income and changes in financial position for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

9. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78*l*, 78m, 78n, 78*o*, 78w, 80a–8, 80a–29, 80a–30 and 80a–37, as amended, unless otherwise noted.

10. By revising paragraph (a)(5) of § 229.302 to read as follows:

§ 229.302 (Item 302) Supplementary financial information.

(a) * * *

(5) This paragraph (a) applies to any registrant, except a foreign private issuer, that meets both of the following tests:

* * * * *

11. By revising General Instruction 1. to § 229.402 to read as follows:

§ 229.402 (Item 402) Executive compensation.

* * * * *

General Instructions to Item 402

1. **Foreign private issuers.** A foreign private issuer may respond to all of Item 402 by indicating the aggregate payments or benefits paid or to be paid to all executive officers as a group unless such registrants disclose to their security holders or otherwise make public the information specified in this section for individually named executive officers, in which case such information also shall be disclosed.

* * * * *

12. By revising Instruction 3 to § 229.404 to read as follows:

§ 229.404 (Item 404) Certain relationships and related transactions.

* * * * *

Instructions to Item 404.

* * * * *

3. A foreign private issuer may respond to Item 404 only to the extent that the registrant discloses to its security holders or otherwise makes public the information specified in that Item.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

13. The authority citation for part 230 is amended by adding the following citation:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78*o*, 78w, 79t, and 80a–37, as amended, unless otherwise noted.

Section 230.175 is also issued under 15 U.S.C. 78t, 79e, 79n, 80a–8, 80a–29, 80a–30(c), 42 U.S.C. 6383 and 12 U.S.C. 241.

14. The authority citations following §§ 230.158 and 230.175 are removed.

15. By revising paragraphs (a) and (b) of § 230.158 to read as follows:

§ 230.158 Definitions of certain terms in the last paragraph of section 11(a).

(a) An "earning statement" made generally available to securityholders of the registrant pursuant to the last paragraph of section 11(a) of the Act shall be sufficient for the purposes of such paragraph if:

(1)There is included the information required for statements of income contained either:

(i) In Item 8 of Form 10–K (§ 249.310 of this chapter), Part I, Item 1 of Form 10–Q (§ 249.308a of this chapter), or Rule 14a–3(b) (§ 240.14a–3(b) of this chapter) under the Securities Exchange Act of 1934;

(ii) In Item 17 of Form 20–F (§ 249.220f of this chapter), if appropriate; or

(iii) In Form 40–F (§ 249.240f of this chapter); and

(2) The information specified in the last paragraph of section 11(a) is contained in one report or any combination of reports either: (i) On Form 10-K, Form 10-Q, Form 8-K (§ 249.308 of this chapter), or in the annual report to securityholders pursuant to Rule 14a–3 under the Securities Exchange Act of 1934; or (ii) On Form 20–F, Form 40–F or Form 6–K (§ 249.306 of this chapter).

A subsidiary issuing debt securities guaranteed by its parent will be deemed to have met the requirements of this paragraph if the parent's income statements satisfy the criteria of this paragraph and information respecting the subsidiary is included to the same extent as was presented in the registration statement. An "earning statement" not meeting the requirements of this paragraph may otherwise be sufficient for purposes of the last paragraph of section 11(a).

(b) For purposes of the last paragraph of Section 11(a) only, the "earning statement" contemplated by paragraph (a) of this section shall be deemed to be "made generally available to its securityholders" if the registrant (1) is required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and (2) has filed its report or reports on Form 10–K, Form 10–Q, Form 8–K, Form 20–F, Form 40–F, or Form 6–K, or has supplied to the Commission copies of the annual report sent to securityholders pursuant to Rule 14a–3(c), containing such information. A registrant may use other methods to make an earning statement "generally available to its securityholders" for purposes of the last paragraph of section 11(a).

* * * * *

16. By revising paragraph (b)(1)(i) of § 230.175 to read as follows:

§ 230.175 Liability for certain statements by issuers.

* * * * *

(b) * * *

(1) * * *

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a–1 or 15d–1 thereunder, if applicable, to file its most recent annual report on Form 10–K, Form 20–F or Form 40–F; or if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Act or pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934, and

* * * * *

17. By revising existing paragraph (b)(3) and by adding a new paragraph (b)(6) to § 230.424 to read as follows:

§ 230.424 Filing of prospectuses, number of copies.

* * * * *

(b) * * *

(3) A form of prospectus that reflects facts or events other than those covered in paragraphs (b) (1), (2) and (6) of this section that constitute a substantive change from or addition to the information set forth in the last form of prospectus filed with the Commission under this section or as part of a registration statement under the Securities Act shall be filed with the Commission no later than the fifth business day after the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

* * * * *

(6) A form of prospectus used in connection with an offering of securities under Canada's National Policy Statement No. 45 pursuant to Rule 415 under the Securities Act (§ 230.415 of this chapter) made only in Canada shall be filed with the Commission no later than the date it is first used in Canada, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

* * * * *

18. By adding § 230.467 to read as follows:

§ 230.467 Effectiveness of registration statements and post-effective amendments thereto made on Forms F-7, F-8, F-9, and F-10.

(a) A registration statement on Form F–7 or Form F–8 (§ 239.37 or § 239.38 of this chapter) or a registration statement on Form F–9 or Form F–10 (§ 239.39 or § 239.40 of this chapter) relating to securities offered in connection with an exchange offer or a business combination, shall become effective upon notification of the Commission by the registrant or the applicable Canadian securities regulatory authorities that such securities legally may be sold in Ontario and Quebec or, if such securities are being offered in only one of such provinces, at the time such securities legally may be sold in Ontario or Quebec. A post–effective amendment to such registration statement shall become effective upon notification of the Commission by the registrant or the applicable Canadian securities regulatory authorities that the amendment to home jurisdiction document(s) legally may be used in Ontario and Quebec or, if filed in only one such province, at the time such amendment legally may be used in Quebec or Ontario.

(b) A registration statement on Forms F–9 or F–10 relating to securities other than those offered in connection with an exchange offer or a business combination, filed in connection with a contemporaneous offering of securities in the registrant's home jurisdiction, shall become effective upon notification of the Commission by the registrant or the applicable Canadian securities regulatory authorities that such securities legally may be sold in the jurisdiction identified on such Form as the principal jurisdiction regulating such offering (the "principal jurisdiction"). A post-effective amendment to such registration statement shall become effective upon notification of the Commission by the registrant or the applicable Canadian securities regulatory authorities that the amendment to the home jurisdiction document(s) legally may be used in the principal jurisdiction.

(c) Where no contemporaneous offering is being made in the registrant's home jurisdiction, a registrant filing on Form F–9 or Form F–10 may designate on the facing page of the registration statement, or a post-effective amendment thereto, a date and time for such filing to become effective, and such registration statement or post-effective amendment shall become effective in accordance with such designation; *Provided, however,* That

(1) Such registration statement or post-effective amendment shall not become effective prior to seven calendar days after the date of filing with the Commission unless the securities regulatory authority in the principal jurisdiction issued a receipt or notification of clearance; and

(2) If such registration statement or post-effective amendment is selected for review by a regulatory authority in the principal jurisdiction, it shall not become effective prior to issuance by such regulatory authority of a receipt or notification of clearance.

(d) Notwithstanding the provisions of paragraphs (a), (b) and (c) of this section:

(1) A registration statement shall not become effective prior to the time of filing with the Commission of all disclosure documents relating to the securities being offered that were filed with any securities regulatory authority in Canada on or before the time the securities legally could be sold in all provinces and territories in which such securities are being offered;

(2) A post-effective amendment shall not become effective prior to the time of filing with the Commission of all disclosure documents relating to the securities being offered that were filed with any securities regulatory authority in Canada on or before the time the amendment legally could be used in all provinces and territories in which such securities are being offered; and

(3) A registration statement or post-effective amendment relating to an issue of debt securities shall not become effective until the provisions of the Trust Indenture Act of 1939 (15 U.S.C. 78aaa et seq.) have been satisfied or an exemption from any provisions of that Act that have not been satisfied has been granted pursuant to Section 304(d) (15 U.S.C. 78ddd(d)) or Rule 4d–5 (17 CFR 240.4d–5) under that Act.

(e) When the effectiveness of a registration statement or a post-effective amendment is postponed pursuant to the proviso in paragraph (c) or pursuant to paragraph (d)(1), (d)(2) or (d)(3) of this section, such registration statement or post-effective amendment shall become effective at the time the registrant notifies or demonstrates to the Commission that such provisions are no longer applicable.

19. By revising paragraphs (b)(2)(i)(D) and (b)(2)(ii)(D) of § 230.502 to read as follows:

§ 230.502 General conditions to be met.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(D) If the issuer is a foreign private issuer, the issuer shall disclose the same kind of information required to be included in a registration statement filed under the Act on the form that the issuer would be entitled to use. The financial statements need be certified only to the extent required by paragraph (b)(2)(i)(B) or (C) of this section, as appropriate.

(ii) * * *

(D) If the issuer is a foreign private issuer, the issuer may provide in lieu of the information specified in paragraphs (b)(2)(ii)(A) or (B) of this section, the information contained in its most recent filing on Form 20–F or Form F–1 (§ 239.31 of the chapter).

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

20. The authority citation for part 239 is amended by adding the following citation:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

Sections 239.31, 239.32 and 239.33 are also issued under 15 U.S.C. 78*l*, 78m, 78*O*, 78w, 80a–8, 80a–29, 80a–30, 80a–37 and 12 U.S.C. 241.

* * * * *

21. The authority citations following §§ 239.31, 239.32 and 239.33 are removed.

22. By revising General Instruction F to Form S–4 to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations

Form S–4

* * * * *

General Instructions

* * * * *

F. Transactions Involving Foreign Private Issuers.

If a U.S. registrant is acquiring a foreign private issuer, as defined by Rule 405 (§ 230.405 of this chapter), such registrant may use this Form and may present

information about the foreign private issuer pursuant to Form F-4. If the registrant is a foreign private issuer, such registrant may use Form F-4 and

1. If the company being acquired is a foreign private issuer, may present information about such foreign company pursuant to Form F-4 or

2. If the company being acquired is a U.S. company, may present information about such company pursuant to this Form.

* * * * *

23. By revising General Instructions C.1., C.2.(a) and G(2), paragraph (a) of Item 3, and Note (2) to Item 9 of Form S-8 to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.

Form S-8

* * * * *

General Instructions

* * * * *

C. Reoffers and Resales.

1. *Securities.* Reoffers and resales of the following securities may be made on a continuous or delayed basis in the future, as provided by Rule 415 (§ 230.415), pursuant to a registration statement on this form by means of a separate prospectus ("reoffer prospectus"), which is prepared in accordance with the requirements of Part I of Form S-3 (or, if the registrant is a foreign private issuer, in accordance with Part I of Form F-3), filed with the registration statement on Form S-8 or, in the case of control securities, a post-effective amendment thereto:

(a) *Control securities,* which are defined for purposes of this General Instruction C as securities acquired under a Securities Act registration statement held by affiliates of the registrant as defined in Rule 405 (§ 230.405). Control securities may be included in a reoffer prospectus only if they have been or will be acquired by the selling securityholder pursuant to an employee benefit plan; or

(b) *Restricted securities,* which are defined for purposes of this General Instruction C as securities issued under any employee benefit plan of the registrant meeting the definition of "restricted securities" in Rule 144(a)(3) (§ 230.144(a)(3)), whether or not held by affiliates of the registrant. Restricted securities may be included in a reoffer prospectus only if they have been acquired by the selling securityholder prior to the filing of the registration statement.

2. *Limitations.* The reoffer prospectus may be used as follows:

(a) If the registrant, at the time of filing such prospectus, satisfies the registrant requirements for use of Form S-3 (or if the registrant is a foreign private issuer, the registrant requirements for use of Form F-3), then control and restricted securities may be registered for reoffer and resale without any limitations.

* * * * *

G. Updating

Updating of information constituting the Section 10(a) prospectus pursuant to Rule 428(a) (§ 230.428(a)) during the offering of the securities shall be accomplished as follows:

(1) * * *

(2) Registrant information shall be updated by the filing of Exchange Act reports, which are incorporated by reference in the registration statement and the Section 10(a) prospectus. Any material changes in the registrant's affairs required to be disclosed in the registration statement but not required to be included in a specific Exchange Act report shall be reported on Form 8-K (§ 249.308) pursuant to Item 5 thereof (or, if the registrant is a foreign private issuer, on Form 6-K (§ 249.306)).

* * * * *

Item 3. Incorporation of Documents by Reference.

* * * * *

(a) The registrant's latest annual report, and where interests in the plan are being registered, the plan's latest annual report, filed pursuant to Section 13(a) or 15(d) of the Exchange Act, or in the case of the registrant either: (1) the latest prospectus filed pursuant to Rule 424(b) under the Act that contains audited financial statements for the registrant's latest fiscal year for which such statements have been filed, or (2) the registrant's effective registration statement on Form 10, Form 20-F or, in the case of registrants described in General Instruction A.(2) of Form 40-F, on Form 40-F filed under the Exchange Act containing audited financial statements for the registrant's latest fiscal year.

* * * * *

Item 9. Undertakings

* * * * *

Notes to Item 9: (1) * * *

(2) With respect to registration statements filed on this form, foreign private issuers are not required to furnish the Item 512(a)(4) undertaking.

* * * * *

24. By revising General Instruction E to Form S-11 to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations

Form S-11

* * * * *

General Instructions

* * * * *

E. Foreign Issuers

A foreign private issuer may comply with Items 19, 20, 21, 22 and 26 of this Form by furnishing the information specified in Items 3, 4, 10, 11, and 18, respectively, of Form 20-F (§ 249.220f of this chapter).

* * * * *

25. By revising paragraph (a) of § 239.31 and revising General Instruction I.A. of Form F-1 to read as follows:

§ 239.31 Form F-1, registration statement under the Securities Act of 1933 for securities of certain foreign private issuers.

(a) Form F-1 shall be used for registration under the Securities Act of 1933 ("Securities Act") of securities of all foreign private issuers, as defined in Rule 405 (§ 230.405 of this chapter) for which no other form is authorized or prescribed.

* * * * *

Note: The Forms do not appear in the Code of Federal Regulations.

Form F-1

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form F-1

A. Form F-1 shall be used for registration under the Securities Act of 1933 ("Securities Act") of securities of all foreign private issuers as defined in Rule 405 (§ 230.405 of this chapter) for which no other form is authorized or prescribed.

* * * * *

26. By revising paragraphs (a), (b)(2), (d), (e) and (g) of § 239.32, revising General Instructions I.A., I.D., I.E. and I.G. of Form F-2, and revising paragraphs (a) and (b)(2) of Item 11, Item 12 and Instructions 1 and 4 thereto of Form F-2 to read as follows:

§ 239.32 Form F-2, for registration under the Securities Act of 1933 for securities of certain foreign private issuers.

* * * * *

(a) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 (the "Exchange Act") or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act and has filed annual reports on Form 20-F (§ 249.220f of this chapter), or, in the case of certain Canadian registrants, on Form 10-K (§ 249.310 of this chapter) or, in the case of registrants described in General Instruction A.(2) of Form 40-F, on Form 40-F (§ 249.240f of this chapter) under the Exchange Act.

(b) * * *

(2) The provisions of paragraph (b)(1)(i) of this section do not apply to any registrant if (i) the aggregate market value worldwide of the voting stock of the registrant held by non-affiliates is the equivalent of $300 million or more, or if non-convertible debt securities that are "investment grade debt securities," as defined below, are being registered and (ii) the registrant has filed at least one Form 20-F, Form 40-F or Form 10-K that is the latest required to have been filed.

* * * * *

(d) The financial statements in the registrant's latest filing on Form 20-F, Form 40-F or Form 10-K comply with Item 18 of Form 20-F.

(e) The provisions of paragraphs (b)(1)(i) and (d) of this section do not apply if the Registrant has filed at least one Form 20-F, Form 40-F or Form 10-K that is the latest required to have been filed and if the only securities being registered are to be offered:

(1) Upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted pro rata to all existing securityholders of the class of securities to which the rights attach;

(2) Pursuant to a dividend or interest reinvestment plan; or

(3) Upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer.

The exemptions in this paragraph (e) are unavailable if securities are to be offered or sold in a standby underwriting in the United States or similar arrangement.

* * * * *

(g) If a registrant is a majority-owned subsidiary which does not meet the conditions of these eligibility requirements, it nevertheless shall be deemed to have met such conditions if its parent meets the conditions and if the parent fully guarantees the securities being registered as to principal and interest. **Note:** In such an instance the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities. Both the parent-guarantor and the subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the subsidiary will not be eligible to file annual reports on Form 20-F or Form 40-F after the effective date of the registration statement, then it shall disclose the information specified in Form S-2 (§ 239.12 of this chapter). Rule 3-10 of Regulation S-X (§ 210.3-10 of this chapter) specifies the financial statements required.

Note: The Forms do not appear in the Code of Federal Regulations.

Form F-2

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form F-2

* * * * *

A. The Registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act and has filed annual reports on Form 20-F (§ 249.220f of this chapter), in the case of certain Canadian registrants, on Form 10-K (§ 249.310 of this chapter) or, in the case of registrants described in General Instruction A.(2) of Form 40-F, on Form 40-F (§ 249.240f of this chapter) under the Exchange Act.

* * * * *

D. The financial statements in the registrant's latest filing on Form 20-F, Form 40-F or Form 10-K comply with Item 18 thereof.

E. The provisions of paragraphs (B)(1)(a) and (D) do not apply if the Registrant has filed at least one Form 20-F, Form 40-F or Form 10-K that is the latest required to have been filed and if the only securities being registered are to be offered: (1) Upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted pro rata to all existing securityholders of the class of securities to which the rights attach; or (2) pursuant to a dividend or interest reinvestment plan; or (3) upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants, issued by the issuer of the securities to be offered, or by an affiliate of such issuer. The exemptions in this paragraph (E) are unavailable if securities are to be offered or sold in a standby underwriting in the United States or similar arrangement.

* * * * *

G. If a registrant is a majority-owned subsidiary which does not meet the conditions of these eligibility requirements, it shall nevertheless be deemed to have met such conditions if its parent meets the conditions and if the parent fully guarantees the securities being registered as to principal and interest. **Note:** In such an instance the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities. Both the parent-guarantor and the subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the subsidiary will not be eligible to file annual reports on Form 20-F or Form 40-F after the effective date of the registration statement, then it shall disclose the information specified in Form S-2 (§ 239.12 of this chapter). Rule 3-10 of Regulation S-X (§ 210.3-10 of this chapter) specifies the financial statements required.

* * * * *

Item 11. Material Changes

(a) Describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest filing on Form 20-F, Form 40-F or Form 10-K under the Exchange Act.

(b)(1) * * *

(2) If the financial statements incorporated by reference from the registrant's latest Form 20-F, Form 40-F or Form 10-K in accordance with Item 12 are not sufficiently current to comply with the requirements of Rule 3-19 of Regulation S-X (§ 210.3-19 of this chapter), financial statements necessary to comply with that rule shall be presented either in the prospectus or in an amended Form 20-F, Form 40-F or Form 10-K.

* * * * *

Item 12. Information with Respect to the Registrant

The registrant shall incorporate by reference and deliver with the prospectus the latest Form 20-F, Form 40-F or Form 10-K filed pursuant to the Exchange Act that contains certified financial statements for the registrant's latest fiscal year for which a Form 20-F, Form 40-F or Form 10-K was required to have been filed and any report on Form 10-Q or Form 8-K filed since the end of the fiscal year covered by such annual report. The registrant may incorporate by reference and deliver with the prospectus any other Form 10-Q or Form 8-K, and any Form 6-K containing information meeting the requirements of this Form.

Instructions

1. Reference is made to General Instruction I.D. that, in some cases, requires the financial statements in the Form 20-F, Form 40-F or Form 10-K to comply with Item 18 of Form 20-F as a condition for eligibility to use Form F-2.

2. * * *

3. * * *

4. The Form 20-F, Form 40-F or Form 10-K shall be delivered with the preliminary prospectus but need not be redelivered with the final prospectus to a recipient that had previously received the Form 20-F, Form 40-F or Form 10-K with the preliminary prospectus.

* * * * *

27. By revising paragraphs (a)(1) and (a)(6)(iii), the Note following (a)(6)(iii), paragraphs (b)(1) and (b)(3) of § 239.33, and revising General Instructions I.A.1., I.A.6.(iii), I.B.1. and I.B.3., and paragraphs (a) and (b)(2) of Item 11 and paragraphs (a) and (b) of Item 12 of Form F-3 to read as follows:

§ 239.33 Form F-3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

* * * * *

(a) * * *

(1) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act and has filed annual reports on Form 20-F, in the case of certain Canadian registrants, on Form 10-K (§ 240.310 of this chapter) or, in the case of registrants described in General Instruction A.(2) of Form 40-F,

on Form 40–F (§ 249.240f of this chapter) under the Exchange Act.

* * * * *

(6) *Majority owned Subsidiaries.* If a registrant is a majority-owned subsidiary, security offerings may be registered on this Form if:

* * *

(iii) The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement and fully guarantees the securities being registered as to principal and interest.

Note: In the situations described in paragraphs (a) (6) (i), (ii), and (iii) of this section, the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities. Both the parent-guarantor and the subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the subsidiary will not be eligible to file annual reports on Form 20–F or Form 40–F after the effective date of the registration statement, then it shall disclose the information specified in Form S–3 (§ 239.13 of this chapter). Rule 3–10 of Regulation S–X (§ 210.3–10 of this chapter) specifies the financial statements required.

(b) *Transaction requirements.* Security offerings meeting any of the following conditions and made by registrants meeting the Registrant Requirements above may be registered on this Form:

(1) *Primary offerings by certain registrants.* Securities to be offered for cash by or on behalf of a registrant, if the financial statements in the registrant's latest filing on Form 20–F, Form 40–F or Form 10–K comply with Item 18 of Form 20–F.

(2) * * *

(3) *Transactions involving secondary offerings.* Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities. In addition, Form F–3 may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S–8 (§ 239.16b of this chapter) if the financial statements in the registrant's latest filing on Form 20–F, Form 40–F or Form 10–K comply with Item 18 of Form 20–F.

* * * * *

Note: The Forms do not appear in the Code of Federal Regulations.

Form F–3

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form F–3

* * * * *

A. Registrant Requirements

* * * * *

1. The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act and has filed annual reports on Form 20–F (§ 249.220f of this chapter), or, in the case of certain Canadian registrants, on Form 10–K (§ 249.310 of this chapter) or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F (§ 249.240f of this chapter) under the Exchange Act.

* * * * *

6. *Majority owned subsidiaries.* If a registrant is a majority-owned subsidiary, security offerings may be registered on this Form if:

* * * * *

(iii) The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirements and fully guarantees the securities being registered as to principal and interest.

Note: In the situations described in (i), (ii) and (iii) above, the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities. Both the parent-guarantor and the subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the subsidiary will not be eligible to file annual reports on Form 20–F or Form 40–F after the effective date of the registration statement, then it shall disclose the information specified in Form S–3 (§ 239.13 of this chapter). Rule 3–10 of Regulation S–X (§ 210.3–10 of this chapter) specifies the financial statements required.

B. Transaction Requirements

Security offerings meeting any of the following conditions and made by registrants meeting the Registrant Requirements above may be registered on this Form:

1. *Primary offerings by certain registrants.* Securities to be offered for cash by or on behalf of a registrant; if the financial statements in the registrant's latest filing on Form 20–F, Form 40–F or Form 10–K comply with Item 18 of Form 20–F.

2. * * *

3. *Transactions involving secondary offerings.* Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities. In addition, Form F–3 may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S–8 (§ 239.16b of this chapter) if the financial statements in the registrant's latest filing on Form 20–F, Form 40–F or Form 10–K comply with Item 18 of Form 20–F.

* * * * *

Item 11. Material Changes

(a) Describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest filing on Form 20–F, Form 40–F or Form 10–K under the Exchange Act.

(b)(1) * * *

(2) If the financial statements incorporated by reference from the registrant's latest Form 20–F, Form 40–F or Form 10–K in accordance with Item 12 are not sufficiently current to comply with the requirements of Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule shall be presented either in the prospectus or in an amended Form 20–F, Form 40–F or Form 10–K in which case the prospectus shall disclose that the Form 20–F, Form 40–F or Form 10–K has been so amended.

* * * * *

Item 12. Incorporation of Certain Information by Reference

(a) The registrant's latest Form 20–F, Form 40–F or Form 10–K filed pursuant to the Exchange Act that contains certified financial statements for the registrant's latest fiscal year for which a Form 20–F, Form 40–F or Form 10–K was required to have been filed and any report on Form 10–Q or Form 8–K filed since the end of the fiscal year covered by such annual report shall be incorporated by reference. If capital stock is to be registered and securities of the same class are registered under section 12 of the Exchange Act, the description of such class of securities which is contained in a registration statement filed under the Exchange Act, including any amendment or reports filed for the purpose of updating such description shall be incorporated by reference.

Instruction: If the registrant's latest filing on Form 20–F, Form 40–F or Form 10–K is amended to include the information specified in Item 18 of Form 20–F, the prospectus shall state that the Form 20–F, Form 40–F or Form 10–K has been so amended. Reference is made to the Transaction Requirements in General Instruction I.B. that, in some cases, require the financial statements in the Form 20–F, Form 40–F or Form 10–K to comply with Item 18 of Form 20–F as a condition for eligibility to use Form F–3.

(b) The prospectus also shall state that all subsequent filings on Form 20–F, Form 40–F, Form 10–K, Form 10–Q or Form 8–K filed by the registrant pursuant to the Exchange Act, prior to the termination of the offering, shall be deemed to be incorporated by reference into the prospectus.

* * * * *

28. By revising § 239.34 and revising General Instructions A.1. and C.1.(d), paragraphs (a) and (b) of Item 10, paragraphs (a)(1) and (b) of Item 11, Instructions 1. and 2. following (a)(3) of Item 11, Item 12 and Item 13, and paragraph (b)(2) of Item 17 of Form F–4 to read as follows:

§ 239.34 Form F–4, for registration of securities of certain foreign private issuers issued in certain business combination transactions.

This form may be used by any foreign private issuer, as defined in Rule 405 (§ 230.405 of this chapter), for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued:

(a) In a transaction of the type specified in paragraph (a) of Rule 145 (§ 230.145 of this chapter);

(b) In a merger in which the applicable law would not require the solicitation of the votes or consents of all of the securityholders of the company being acquired;

(c) In an exchange offer for securities of the issuer or another entity;

(d) In a public reoffering or resale of any such securities acquired pursuant to this registration statement; or

(e) In more than one of the kinds of transactions listed in paragraphs (a) through (d) of this section registered on one registration statement.

Note: The Forms do not appear in the Code of Federal Regulations.

Form F–4

* * * * *

General Instructions

A. Rule as to Use of Form F–41. This Form may be used by any foreign private issuer, as defined in Rule 405 (§ 230.405 of this chapter), for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued: (1) In a transaction of the type specified in paragraph (a) of Rule 145 (§ 230.145 of this chapter); (2) in a merger in which the applicable law would not require the solicitation of the votes or consents of all of the securityholders of the company being acquired; (3) in an exchange offer for securities of the issuer or another entity; (4) in a public reoffering or resale of any such securities acquired pursuant to this registration statement; or (5) in more than one of the kinds of transactions listed in (1) through (4) registered on one registration statement.

* * * * *

C. Information With Respect to the Company Being Acquired

1. * * *

(d) If the company to be acquired is a U.S. company, the registrant shall present information about such other company pursuant to Instructions C and F of Form S–4 (239.25 of this chapter).

* * * * *

Item 10. Information With Respect to F–3 Companies

If the registrant meets the requirements for use of Form F–3 and elects to furnish information in accordance with the provisions of this Item, furnish information as required below:

(a) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest annual report on Form 20–F or, in case of certain Canadian registrants, on Form 10–K or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F and that have not been described in a report on Form 6–K (§ 249.306 of this chapter), Form 10–Q (§ 249.308a of this chapter) or Form 8–K (§ 249.308 of this chapter) filed under the Exchange Act;

(b) If the financial statements incorporated by reference from the registrant's latest Form 20–F or, in the case of certain Canadian registrants, Form 10–K or, in the case of registrants described in General Instruction A.(2) of Form 40–F, Form 40–F in accordance with Item 11 are not sufficiently current to comply with the requirements of Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule shall be presented either in the prospectus, in an amended Form 20–F, Form 40–F or Form 10–K, in which case the prospectus shall disclose that the Form 20–F, Form 40–F or Form 10–K has been so amended, or in a Form 6–K, Form 10–Q or Form 8–K; and

* * * * *

Item 11. Incorporation of Certain Information by Referenceif the registrant meets the requirements of Form F–3 and elects to furnish information in accordance with the provisions of Item 10 of this Form:

(a) Incorporate by reference into the prospectus, by means of a statement to that effect listing all documents so incorporated, the documents listed in paragraph (1) below and, if applicable, (2) and (3) below.

(1) The registrant's latest annual report on Form 20–F or, in the case of certain Canadian registrants, Form 10–K or, in the case of registrants described in General Instruction A.(2) of Form 40–F, Form 40–F filed pursuant to section 13(a) or 15(d) of the Exchange Act which contains financial statements for the registrant's latest fiscal year for which a Form 20–F, Form 40–F or Form 10–K was required to be filed;

(2) * * *

(3) * * *

Instructions

1. All annual reports on Form 20–F, on Form 10–K or on Form 40–F filed by the registrant applicable to Items 11 (a) and (b) herein shall contain financial statements that comply with Item 18 of Form 20–F except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are investment grade debt as defined in the General Instructions to Form F–3.

2. Where common equity securities are being issued, the information required by Item 5 of Form 20–F, nature of trading markets, should be updated, to cover any subsequent interim periods for which interim financial statements are required to be included to comply with Rule 3–19 to Regulation S–X. Such updating may be made in the prospectus, in an amended Form 20–F or, in the case of certain Canadian registrants, on Form 10–K or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F, or in a Form 6–K, Form 10–Q or Form 8–K, as applicable.

* * * * *

(b) The prospectus also shall state that all annual reports on Form 20–F or, in the case of certain Canadian registrants, on Form 10–K or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F and all Forms 10–Q and 8–K, and any Form 6–K so designated, subsequently filed by the registrant pursuant to sections 13(a), 13(c) or 15(d) of the Exchange Act, prior to one of the following dates, whichever is applicable, shall be deemed to be incorporated by reference into the prospectus:

(1) If a meeting of securityholders is to be held, the date on which such meeting is held;

(2) If a meeting of securityholders is not to be held, the date on which the transaction is consummated;

(3) If securities of the registrant are being offered in exchange for securities of any other issuer, the termination of the offering; or

(4) If securities are being offered in a reoffering or resale of securities acquired pursuant to this registration statement, the termination of such reoffering.

Instruction

Attention is directed to Rule 439 (§ 230.439 of this chapter) regarding consent to the use of material incorporated by reference.

Item 12. Information with Respect to F–2 or F–3 Registrants

If the registrant meets the requirements for use of Form F–2 or F–3 and elects to comply with this Item, furnish the information required by either paragraph (a) or (b) of this Item. *However,* the registrant shall not provide prospectus information in the manner allowed by paragraph (a) of this Item if the financial statements in the registrant's latest annual report on Form 20–F or, in the case of certain Canadian registrants, on Form 10–K or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F do not reflect: (1) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements; (2) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant

pursuant to Rule 11-01(b) of Regulation S-X; or (3) any financial information required because of a material disposition of assets outside of the normal course of business.

(a) If the registrant elects to deliver this prospectus together with its latest annual report on Form 20-F or, in the case of certain Canadian registrants, on Form 10-K or, in the case of registrants described in General Instruction A.(2) of Form 40-F, on Form 40-F, or a complete and legible facsimile of such Form 20-F, Form 10-K or Form 40-F:

(1) Indicate that the prospectus is accompanied by the registrant's latest annual report on Form 20-F, Form 10-K or Form 40-F.

(2) If the financial statements incorporated by reference from the registrant's latest Form 20-F, Form 10-K or Form 40-F in accordance with Item 13 are not sufficiently current to comply with the requirements of Item 3-19 of Regulation S-X, provide the information required by Rule 10-01 of Regulation S-X and Item 9 of Form 20-F by one of the following means:

(i) Including such information in the prospectus;

(ii) Providing without charge to whom a prospectus is delivered a copy of the registrant's Form 10-Q, Form 8-K or Form 6-K report that contains such later information; or

(iii) In an amended Form 20-F, Form 40-F or Form 10-K in which case the prospectus shall disclose that the Form 20-F, Form 40-F or Form 10-K has been so amended.

(3) If not reflected on the registrant's latest Form 20-F, Form 10-K or Form 40-F annual report, provide information required by Rule 3-05 and Article 11 of Regulation S-X with respect to transactions other than that pursuant to which the securities being registered are to be issued.

(4) Describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest filing on Form 20-F, Form 10-K or Form 40-F and that have not been described in a report on Form 6-K, Form 10-Q or Form 8-K delivered with the prospectus in accordance with paragraph (2)(ii) of this Item.

(5) Where common equity securities are being issued, the information required by Item 5 of Form 20-F, nature of trading markets, should be updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with Rule 3-19 of Regulation S-X. Such updating may be made in the prospectus, in an amended Form 20-F, Form 10-K or Form 40-F, or in a Form 6-K, Form 10-Q or Form 8-K.

(b) If the registrant does not elect to deliver its latest Form 20-F or, in the case of certain Canadian registrants, Form 10-K or, in the case of registrants described in General Instruction A.(2) of Form 40-F, Form 40-F annual report to the securityholders of the company to be acquired:

(1) Furnish a brief description of the business done by the registrant and its subsidiaries during the most recent fiscal year based on the requirements of Items 1 and 2 of Form 20-F. The description shall also take into account changes in the registrant's business that have occurred between the end of the latest fiscal year and the effective date of the registration statement.

(2) Include financial statements and information as required by Item 18 of Form 20-F. In addition, provide:

(i) The interim financial information as required by Rule 10-01 of Regulation S-X sufficient to meet the requirements of Rule 3-19 of Regulation S-X;

(ii) Financial information required by Rule 3-05 and Article 11 of Regulation S-X with respect to transactions other than that pursuant to which the securities being registered are to be issued;

(iii) Restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S-X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(iv) Restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S-X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11-01(b) of Regulation S-X; and

(v) Any financial information required because of a material disposition of assets outside the normal course of business.

Instruction: Reference is made to Item 4-01(a)(2) of Regulation S-X.

(3) Furnish the information required by the following:

(i) Items 1 (a)(3) and (a)(4) of Form 20-F, principal products, principal markets, methods of distribution, sales and revenues by categories of activity and into geographical markets;

(ii) Item 2 of Form 20-F, properties if the registrant is engaged significantly in extractive industries;

(iii) Item 6 of Form 20-F, exchange controls and other limitations on securityholders;

(iv) Item 7 of Form 20-F, taxation;

(v) Item 8 of Form 20-F, selected financial data;

(vi) Item 9 of Form 20-F, management's discussion and analysis of financial condition and results of operations;

(vii) Financial statements required by Item 18 of Form 20-F (Schedules required under Regulation S-X shall be filed as "Financial Statement Schedules" pursuant to Item 21 of this Form, but need not be provided with respect to the company being acquired if information is being furnished pursuant to Item 17(a) of this Form), and financial information required by Rule 3-05 and Article 11 of Regulation S-X with respect to transactions other than that pursuant to which the securities being registered are to be issued; and

(viii) Where common equity securities are being issued, Item 5 of Form 20-F, nature of trading markets, updated to cover any subsequent interim periods for which interim financial statements are required to comply with Rule 3-19 of Regulation S-X.

Item 13. Incorporation of Certain Information by Reference

If the registrant meets the requirements of Form F-2 or F-3 and elects to furnish information in accordance with the provisions of Item 12 of this Form:

(a) Incorporate by reference into the prospectus, by means of a statement to that effect in the prospectus listing all documents so incorporated, and deliver with the prospectus the documents listed in paragraphs (1) and, if applicable, (2) below:

(1) The registrant's latest annual report on Form 20-F or, in the case of certain Canadian registrants, on Form 10-K or, in the case of registrants described in General Instruction A.(2) of Form 40-F, on Form 40-F filed pursuant to section 13(a) or 15(d) of the Exchange Act which contains audited financial statements for the registrant's latest fiscal year for which a Form 20-F, Form 10-K or Form 40-F was required to be filed; and

(2) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in paragraph (a)(1) of this Item.

Instructions

1. All annual reports on Form 20-F, Form 10-K or Form 40-F filed by the registrant applicable to Item 13 (a) or (b) herein shall contain financial statements that comply with Item 18 of Form 20-F.

2. Where common equity securities are being issued, the information required by Item 5 of Form 20-F, nature of trading markets, should be updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with Rule 3-19 of Regulation S-X. Such updating may be made in the prospectus, in an amended Form 20-F, Form 10-K or Form 40-F, or in a Form 6-K, Form 10-Q or Form 8-K.

3. The registrant may incorporate by reference and deliver with the prospectus any Form 6-K, Form 10-Q or Form 8-K containing information meeting the requirements of Form F-2. See Rules 4-01(a)(2) and 10-01 of Regulation S-X and Item 18 of Form 20-F.

4. Attention is directed to Rule 439 regarding consent to the use of material incorporated by reference.

(b) The registrant also may state, if it so chooses, that specifically described portions of its annual reports on Form 20-F or, in the case of certain Canadian registrants, on Form 10-K or, in the case of registrants described in General Instruction A.(2) of Form 40-F, on Form 40-F, or reports on Form 6-K, Form 10-Q or Form 8-K are not part of the registration statement. In such case, the description of portions that are not incorporated by reference or that are excluded shall be made with clarity and in reasonable detail.

* * * * *

Item 17. Information With Respect to Foreign Companies Other Than F-2 or F-3 Companies.

* * * * *

(b) If the company being acquired is not subject to the reporting requirements of either section 13(a) or 15(d) of the Exchange Act,

furnish the information that would be required by the following if securities of such company were being registered.

(1) * * *

(2) Where common equity securities are being issued, the information required by Item 5 of Form 20-F, nature of trading markets, updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with Rule 3-19 of Regulation S-X. Such updating may be made in the prospectus, in an amended Form 20-F or, in the case of certain Canadian registrants, on Form 10-K or, in the case of registrants described in General Instruction A.(2) of Form 40-F, on Form 40-F, or in a Form 6-K, Form 10-Q or Form 8-K;

* * * * *

29. By adding §§ 239.37, 239.38, 239.39, 239.40 and 239.41 to read as follows:

Note: See appendix of this release for text of proposed Forms. The Forms do not appear in the Code of Federal Regulations.

§ 239.37 Form F-7, for registration under the Securities Act of 1933 of securities of certain Canadian issuers offered for cash upon the exercise of rights granted to existing securityholders.

(a) Form F-7 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of the registrant's securities offered for cash upon the exercise of rights granted to its existing securityholders.

(b) Form F-7 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) Is a foreign private issuer or a crown corporation; and

(3) Has had a class of its securities listed on The Montreal Exchange or The Toronto Stock Exchange for the 36 calendar months immediately preceding the filing of a registration statement on this Form, and currently is in compliance with the obligations arising from such listing.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

(c) If the registrant is a successor registrant subsisting after a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), the registrant shall be deemed to meet the requirements of paragraph (b)(3) of this section if:

(1) The time the successor registrant has been listed on one of such exchanges, when added separately to the time each predecessor had been so listed at the time of the business combination, in each case equals at least 36 calendar months, *Provided, However,* That the listing history of the successor registrant and any predecessor whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years immediately prior to the business combination, need not be combined for purposes of satisfying such 36-month listing requirement; and

(2) The successor registrant has had a class of its securities listed on at least one of such exchanges since the business combination and is currently in compliance with the obligations arising from such listing.

(d) The rights shall be exercisable immediately upon issuance and the exercise period for the rights granted to any securityholder in connection with the transaction shall be 90 days or fewer. The rights in connection with the transaction granted to securityholders that are resident in the United States shall be granted upon the same terms and conditions as those granted to such holders resident in the registrant's jurisdiction of incorporation or organization, *Provided,* That the securities offered upon exercise of such rights may not be registered on this Form if such rights are transferable to U.S. residents. Notwithstanding the foregoing, such rights may be resold outside the United States in accordance with Rule 904 of Regulation S under the Securities Act.

Instruction

For purposes of this Form, the term "U.S. resident" shall mean any person whose address appears on the records as being located in the United States.

(e) This Form shall not be used if the number of the outstanding securities of the class to be issued upon exercise of the rights or, in the case of debt, the principal amount of the outstanding long-term debt of the issuer (or a class into which such securities are convertible) would increase by more than 25 percent if all rights issued as a part of the offering and within the 12 months prior to the offering were exercised (and, if applicable, all such securities were converted).

(f) This Form shall not be used if the registrant is registered or required to register under the Investment Company Act of 1940.

(g)(1) Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

(2) If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33—[insert file numbers of previous registration statements]."

(h) Registrants shall file a Form F-X (§ 249.250 of this chapter) with the Commission together with this Form.

§ 239.38 Form F-8, for registration under the Securities Act of 1933 of securities of certain Canadian issuers to be issued in exchange offers or a business combination.

(a) Form F-8 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"). Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer or business combination, or are offered in conjunction with cash.

(b) In the case of an exchange offer, Form F-8 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada, or any Canadian province or territory;

(2) Is a foreign private issuer or a crown corporation;

(3) Has had a class of its securities listed on The Montreal Exchange or The Toronto Stock Exchange for the 36

calendar months immediately preceding the filing of the registration statement on this Form, and currently is in compliance with the obligations arising from such listing; and

(4) Has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

3. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

4. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

5. For purposes of this Form, "affiliate" shall mean any person who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the registrant. The determination of affiliates shall be made as of the end of the registrant's most recent completed fiscal year.

6. For purposes of this Form, the market value of the public float of the registrant's outstanding equity shares shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing.

(c) In the case of an exchange offer, the securities to be registered on Form F–8 shall be offered to U.S. residents upon the same terms and conditions as they are offered to residents of Canada.

(d) In the case of an exchange offer, if the registrant is a successor registrant subsisting after a business combination, it shall be deemed to meet the requirements of paragraph (b)(3) of this section if:

(1) The time the successor registrant has had a class of its securities listed on The Montreal Exchange or The Toronto Stock Exchange, when added separately to the time each predecessor had been so listed at the time of the business combination, in each case equals at least 36 calendar months, *Provided, however,* That the listing history of the successor registrant and any predecessor whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years immediately prior to the business combination, need not be combined for purposes of satisfying such 36-month listing requirement; and

(2) The successor registrant has had a class of its securities listed on at least one of such exchanges since the business combination, and is currently in compliance with the obligations arising from such listing.

(e) In the case of an exchange offer, the issuer of the securities to be exchanged (the "subject securities") for securities of the registrant shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer or a crown corporation, and less than 20 percent of the class of subject securities shall be held of record by U.S. residents other than U.S. affiliates of the issuer.

Instructions

1. For purposes of this Form, the term "U.S. resident" shall mean any person whose address appears on the records as being located in the United States. With respect to any unsolicited tender offer, including any exchange offer, otherwise eligible to proceed in accordance with Rule 14d–1(b) under the Securities Exchange Act of 1934 (the "Exchange Act"), U.S. residents unaffiliated with the issuer will be presumed to hold of record less than 20 percent of the subject class of securities, unless (a) the aggregate trading volume of that class on any securities exchange and in any inter-dealer quotation system in the United States exceeded its aggregate trading volume on any securities exchange and in any inter-dealer quotation system in Canada over the 12-month period prior to commencement of this offer; (b) disclosure has been made in documents that were filed publicly by the issuer with Canadian federal, provincial or territorial securities regulators, or with the Commission or any state securities authority in the United States, within 18 months of the date of commencement of this offer, disclose that U.S. residents unaffiliated with the issuer held of record more than 20 percent of the subject class of securities; or (c) the offeror has actual knowledge that the level of unaffiliated U.S. record ownership of the subject class of securities exceeds 20 percent.

2. If this Form is filed during the pendency of one or more ongoing third-party or issuer cash tender or exchange offers for securities of the class subject to the offer that was commenced on Schedule 13E–4F, Schedule 14D–1F, and/or Form F–8, the date for calculation of U.S. record ownership for purposes of this Form shall be the same as that date used by the initial bidder or issuer.

3. For purposes of this Form, "held of record" shall be construed in accordance with Rule 12g5–1 under the Exchange Act.

4. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

5. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.

(f) In the case of a business combination, Form F–8 is available to any registrant if:

(1) Each company participating in the business combination, including the registrant, is incorporated or organized under the laws of Canada or any Canadian province or territory and is a foreign private issuer or a crown corporation;

(2) Each company participating in the business combination has had a class of its securities listed on The Montreal Exchange or The Toronto Stock Exchange for the 36 calendar months immediately preceding the filing of this Form and is currently in compliance with the obligations arising from such listing; *Provided, however,* That neither the registrant nor any participating company whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, shall be required to meet such listing requirement; and

(3) The aggregate market value of the public float of the outstanding equity shares of each company participating in the business combination is (CN) $75 million or more; *Provided, however,* That neither the registrant nor any participating company whose assets and income, respectively, would contribute less than 20 percent of the total assets or income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, shall be required to meet such public float requirement; and, *Provided further,* That such market value requirement shall be deemed satisfied in the case of a participant whose equity shares were the subject of an exchange offer registered on Form F–8, Form F–9 or Form F–10 that terminated within the last six months, if the participant would have satisfied such market value requirement immediately prior to commencement of such exchange offer.

(g) In the case of a business combination, less than 20 percent of the class of securities to be offered by the successor registrant shall be held of record by U.S. residents other than U.S. affiliates of the registrant, as if measured immediately after completion of the business combination.

Instruction: For purposes of business combinations, the calculation of U.S. record holders shall be made by a participant as of the end of such participant's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such participant's preceding quarter.

(h) In the case of a business combination, the securities to be registered on this Form shall be offered to U.S. residents upon the same terms and conditions as they are offered to residents of Canada.

(i) This Form shall not be used if the registrant is registered or required to register under the Investment Company Act of 1940.

(j)(1) Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

(2) If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33–[insert file numbers of previous registration statements]."

(k) Registrants shall file a Form F–X (§ 249.250 of this chapter) with the Commission together with this Form.

§ 239.39 Form F–9, for registration under the Securities Act of 1933 of certain investment grade debt or preferred securities of certain Canadian issuers.

(a) This Form F–9 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of investment grade debt or preferred securities that are:

(1) Offered for cash or in connection with an exchange offer; and

(2) Either non-convertible or not convertible for a period of at least one year from the date of issuance and thereafter only convertible into a security of another class of the issuer.

Instruction

Securities shall be "investment grade" if, at the time of effectiveness of the registration statement, at least one nationally recognized statistical rating organization (as that term is used in relation to Rule 15c3–1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (the "Exchange Act") (§ 240.15c3–1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically the four highest rating categories signify investment grade, but for purposes of this Form, only the three highest rating categories (within which there may be subcategories or gradations indicating relative standing) shall signify investment grade.

(b) Form F–9 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada, or any Canadian province or territory;

(2) Is a foreign private issuer or a crown corporation;

(3) Has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of the registration statement on this Form, and that is currently in compliance with such obligations;

(4) Has an aggregate market value of its outstanding equity shares of (CN) $160 million or more; and

(5) Has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more; *Provided, however,* That the requirements set forth in paragraphs (b)(4) and (5) of this section shall not apply if the securities being registered on this Form do not carry any conversion right.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For purposes of this Form, "affiliate" shall mean any person who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the registrant. The determination of affiliates shall be made as of the end of the registrant's most recent completed fiscal year.

5. For purposes of this Form, "equity shares" shall mean common shares, non-voting shares and subordinate or restricted voting equity shares, but excludes preferred shares.

6. For purposes of this Form, the market value of the registrant's outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing.

(c) In the case of an exchange offer, the securities to be registered on Form F–9 shall be offered to U.S. residents upon the same terms and conditions as they are offered to residents of Canada.

(d) If the registrant is a majority-owned subsidiary offering non-convertible debt securities or non-convertible preferred shares, it shall be deemed to meet the requirements of paragraph (b)(3) of this section if the parent of the registrant-subsidiary meets the requirements of paragraph (b) of this section, as applicable, and fully and unconditionally guarantees the securities being registered as to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred securities).

(e) If the registrant is a successor registrant subsisting after a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), the registrant shall be deemed to meet the requirements of paragraph (b)(3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *Provided, however,* That the reporting history of the successor registrant and any predecessor whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the successor registrant, as measured based on pro

forms combination of the participating companies' most recently completed fiscal years immediately prior to the business combination, need not be combined for purposes of satisfying such 36-month reporting requirements; and

(2) The successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

(f) This Form shall not be used if the registrant is registered or required to register under the Investment Company Act of 1940.

(g) (1) Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

(2) If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33—[insert file numbers of previous registration statements]."

(h) If the offering to be registered on this Form is not being made contemporaneously in Canada, the registration statement on this Form and any amendments hereto shall be prepared and filed as if the offering were being made contemporaneously in Canada. The Commission has been advised that the principal jurisdiction in Canada designated by the registrant in connection with such an offering will require the filing of such documents and may select them for review.

(i) Registrants shall file a Form F–X (§ 249.250 of this chapter) with the Commission together with this Form.

§ 239.40 Form F–10, for registration under the Securities Act of 1933 of securities of certain Canadian issuers.

(a) This Form F–10 may be used for the registration of securities under the Securities Act of 1933 (the "Securities Act").

(b) Form F–10 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) Is a foreign private issuer or a crown corporation;

(3) Has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of the registration statement on this Form, and is currently in compliance with such obligations, *Provided, however,* That in case of a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), each participating company must meet such 36-month reporting obligation, except that neither the registrant nor any participating company whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, shall be required to meet such reporting requirement;

(4) Has an aggregate market value of its outstanding equity shares of (CN) $360 million or more, *Provided, however,* That in the case of a business combination, the aggregate market value of the outstanding shares of each company participating in the business combination is (CN) $360 million or more, except that neither the registrant nor any participating company whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, shall be required to meet such market value requirement; and

(5) Has an aggregate market value of the public float of such equity shares held by non-affiliates of (CN) $75 million or more; *Provided, however,* That in the case of a business combination, the aggregate market value of the public float of the outstanding equity shares of each company participating in the business combination is (CN) $75 million or more, except that neither the registrant nor any participating company whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, shall be required to meet such public float requirement; and, *Provided, further,* That in the case of a business combination, such public float requirement shall be deemed satisfied in the case of a participant whose equity shares were the subject of an exchange offer registered on Form F–8, Form F–9 or Form F–10 that terminated within the last six months, if the participant would have satisfied such public float requirement immediately prior to commencement of such exchange offer.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For purposes of this Form, "affiliate" shall mean any person who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the registrant. The determination of affiliates shall be made as of the end of the registrant's most recent completed fiscal year.

5. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

6. For purposes of this Form, the market value of the registrant's outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing.

(c) In the case of an exchange offer, the issuer of the securities to be exchanged (the "subject securities") for securities of the Registrant shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer or a crown corporation.

(d) In the case of a business combination, each company participating in the business combination shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer or a crown corporation.

(e) In the case of an exchange offer or a business combination, the securities to be registered on Form F–10 shall be offered to U.S. residents upon the same terms and conditions as they are offered to residents of Canada.

(f) With respect to registration of non-convertible debt securities or non-convertible preferred securities on this Form, if the registrant is a majority-owned subsidiary, it shall be deemed to meet the requirements of paragraphs (b)(3), (b)(4), and (b)(5) of this section if the parent of the registrant-subsidiary meets the requirements of paragraph (b) of this section and fully and unconditionally guarantees the securities being registered as to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred shares).

(g) If the registrant is a successor registrant subsisting after a business combination, it shall be deemed to meet the requirements of paragraph (b)(3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time a predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *Provided, however,* That the reporting history of the successor registrant and any predecessor whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years immediately prior to the business combination, need not be combined for purposes of satisfying such 36-month reporting requirement; and

(2) The successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

(h) This Form shall not be used if the registrant is registered or required to register under the Investment Company Act of 1940.

(i) (1) Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

(2) If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33—[insert file numbers of previous registration statements]."

(j) If the offering to be registered on this Form is not being made contemporaneously in Canada, the registration statement on this Form and any amendments hereto shall be prepared and filed as if the offering were being made contemporaneously in Canada. The Commission has been advised that the principal jurisdiction in Canada designated by the registrant in connection with such an offering will require the filing of such documents and may select them for review.

(k) Registrants shall file a Form F–X (§ 249.250 of this chapter) with the Commission together with this Form.

§ 239.41 Form F–X, for appointment of agent for service of process by issuers registering securities on Forms F–7, F–8, F–9 or F–10 (§§ 239.37, 239.38, 239.39 or 239.40 of this chapter), or registering securities or filing periodic reports on Form 40–F (§ 249.240f of this chapter), or by any person filing tender offer documents on Schedule 13E–4F, 14d–1F or 14D–9F (§§ 240.13e–102, 240.14d–102 or 240.14d–103 of this chapter).

Form F–X shall be filed with the Commission:

(a) By any issuer registering securities on Forms F–7, F–8, F–9 or F–10 under the Securities Act of 1933;

(b) By any issuer registering securities on Form 40–F under the Securities Exchange Act of 1934;

(c) By any issuer filing an annual report on Form 40–F, if it has not previously filed a Form F–X in connection with the class of securities in relation to which the obligation to file a report on Form 40–F arises;

(d) By any issuer or other person filing tender offer documents on Schedules 13E–4F, 14d–1F or 14d–9F; and

(e) By any trustee for which an exemption from the requirements of section 310(a)(1) of the Trust Indenture Act of 1939 has been applied pursuant to Rule 4d–1 thereunder.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

30. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 78w, as amended, unless otherwise noted. • • •

31. By revising paragraph (b) to § 240.3a12–3 to read as follows:

§ 240.3a12–3 Exemptions from sections 14(a), 14(b), 14(c), 14(f) and 16 for securities of certain foreign issuers.

• • • • • •

(b) Securities registered by a foreign private issuer, as defined in Rule 3b–4 (§ 240.3b–4 of this chapter), shall be exempt from sections 14(a), 14(b), 14(c), 14(f) and 16 of the Act.

32. By revising paragraph (b)(1)(i) of § 240.3b–6 to read as follows:

§ 240.3b–6 Liability for certain statements by issuers.

• • • • • •

(b) • • •

(1) • • •

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a–1 or 15d–1 thereunder, if applicable, to file its most recent annual report on Form 10–K or Form 20–F or Form 40–F; or if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933 or pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934, and

• • • • • •

33. By revising paragraphs (a), (b) and (c)(2) and removing paragraph (c)(3) to § 240.12g–3 to read as follows:

§ 240.12g–3 Registration of securities of successor issuers.

(a) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of an issuer, not previously registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another issuer which is registered pursuant to section 12 of the Act, the class of securities so issued shall be deemed to be registered under section 12 of the Act unless upon consummation of the succession such class is exempt from such registration other than by Rule 12g3–2 (§ 240.12g3–2 of this chapter) or all securities of such class are held of record by less than 300 persons or the securities issued in connection with the succession were registered on Form F–8 (§ 239.38 of this chapter) and following the succession the successor would not be required to register such class of securities under section 12 but for this section.

(b) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of an issuer, which are not registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another issuer which is required to file a registration statement pursuant to section 12 but has not yet done so, the duty to file such statement shall be deemed to have been assumed by the issuer of the class of securities so issued and such issuer shall file a registration statement pursuant to section 12 of the Act with respect to such class within the period of time the predecessor issuer would have been required to file such a statement unless upon consummation of the succession such class is exempt from such registration other than by Rule 12g3–2 or all securities of such class are held of record by less than 300 persons or the securities issued in connection with the succession were registered on Form F–8 and following the succession the successor would not be required to register such class of securities under section 12 but for this section.

(c) An issuer that is deemed to have a class of securities registered pursuant to section 12 according to either paragraph (a) or (b) of this section shall file reports on the same forms and such class of securities shall be subject to the provisions of sections 14 and 16 to the same extent as the predecessor issuer, except as follows:

(1) * * *

(2) A foreign private issuer shall be eligible to file on Form 20–F and to use the exemption in Rule 3a12–3.

* * * * *

34. By revising paragraphs (b)(4), (d)(1) and (d)(2) of § 240.12g3–2 to read as follows:

§ 240.12g3–2 Exemptions for American depositary receipts and certain foreign securities.

* * * * *

(b) * * *

(4) Only one complete copy of any information or document need be furnished under paragraph (b)(1) of this section. Such information and documents need not be under cover of any prescribed form and shall not be deemed to be "filed" with the Commission or otherwise subject to the liabilities of section 18 of the Act. Press releases and all other communications or materials distributed directly to securityholders of each class of securities to which the exemption relates shall be in English. English versions or adequate summaries in English may be furnished in lieu of original English translations. No other documents need be furnished unless the issuer has prepared or caused to be prepared, English translations, versions, or summaries of them. If no English translations, versions, or summaries have been prepared, a brief description in English of any such documents shall be furnished. Information or documents in a language other than English are not required to be furnished. If practicable, the Commission file number shall appear on the information furnished or in an accompanying letter. Any information or document previously sent to the Commission under cover of Form 40–F or Form 6–K need not be furnished under paragraph (b)(1) of this section.

* * * * *

(d) * * *

(1) Securities of a foreign private issuer that has or has had during the prior eighteen months any securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act (other than arising solely by virtue of the use of Form F–7, F–8, F–9 or F–10);

(2) Securities of a foreign private issuer issued in a transaction (other than a transaction registered on Form F–8 or Form F–10) to acquire by merger, consolidation, exchange of securities or acquisition of assets, another issuer that had securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act; and

* * * * *

35. By adding § 240.13a–3 to read as follows:

§ 240.13a–3 Reporting by Form 40–F registrant.

A registrant that is eligible to use Forms 40–F and 6–K and files reports in accordance therewith shall be deemed to satisfy the requirements of Regulation 13A (§§ 240.13a–1 through 240.13a–17 of this chapter).

36. By revising paragraph (g)(1) and the Note following paragraph (i) to § 240.13a–10 to read as follows:

§ 240.13a–10 Transition reports.

* * * * *

(g)(1) Paragraphs (a) through (f) of this section shall not apply to foreign private issuers.

* * * * *

(i) * * *

Note: In addition to the report or reports to be filed pursuant to this section, every issuer, except a foreign private issuer or an investment company required to file reports pursuant to Rule 30b1–1 under the Investment Company Act of 1940, that changes its fiscal closing date is required to file a report on Form 8–K responding to Item 8 thereof within the period specified in General Instruction B.1. to that form.

37. By revising paragraph (a) of § 240.13a–16 to read as follows:

§ 240.13a–16 Reports of foreign private issuers on Form 6–K (17 CFR 249.306).

(a) Every foreign private issuer which is subject to Rule 13a–1 (17 CFR 240.13a–1) shall make reports on Form 6–K, except that this rule shall not apply to:

(1) Investment companies required to file reports pursuant to Rule 30b1–1 (17 CFR 270.30b1–1); or

(2) Issuers of American depositary receipts for securities of any foreign issuer.

* * * * *

38. By adding paragraph (h) to § 240.13e–4 to read as follows:

§ 240.13e–4 Tender offers by issuers.

* * * * *

(h) The requirements of section 13(e)(1) of the Act and Rule 13e–4 and Schedule 13e–4 thereunder shall be deemed satisfied with respect to any issuer tender offer, including any exchange offer, where the issuer is incorporated or organized under the laws of Canada or any Canadian province or territory, is a foreign private issuer or a crown corporation, and is not registered or required to register under the Investment Company Act of 1940, if less than 20 percent of the class of securities that is the subject of the tender offer is held of record by U.S. residents other than U.S. affiliates of the issuer, and the tender offer is subject to, and the issuer complies with, the laws, regulations and policies of Canada and/or any of its provinces or territories governing the conduct of the offer (and the issuer is not entitled to a transactional exemption from such laws, regulations and policies), *Provided*, That:

(1) Where the consideration for an issuer tender offer subject to this paragraph consists solely of cash, the entire disclosure document or documents required to be furnished to holders of the class of securities to be acquired shall be filed with the Commission on Schedule 13e–4F (17 CFR 240.13e–102) and disseminated to shareholders residing in the United States in accordance with such Canadian laws, regulations and policies; or

(2) Where the consideration for an issuer tender offer subject to this paragraph includes securities to be issued pursuant to the offer, any registration statement and/or prospectus relating thereto shall be filed with the Commission along with the Schedule 13E–4F referred to in paragraph (h)(1) of this section, and shall be disseminated, together with the home jurisdiction document(s) accompanying such Schedule, to shareholders of the issuer residing in the United States in accordance with such Canadian laws, regulations and policies.

Note: Notwithstanding the grant of an exemption from one or more of the applicable Canadian regulatory provisions, the issuer tender offer will be eligible to proceed in accordance with the requirements of this section if the Commission by order determines that the applicable Canadian regulatory provisions are adequate to protect the interest of investors.

39. By adding § 240.13E–102 to read as follows:

§ 240.13e–102 Schedule 13E–4F. Tender offer statement pursuant to section 13(e)(1) of the Securities Exchange Act of 1934 and § 240.13E–4 thereunder.

Schedule 13E–4F

U.S. Securities and Exchange Commission, Washington, DC 20549

OMB Approval
OMB Number: 3235–0375
Expires: Approval Pending
Estimated average burden hours per response 2.0

Issuer Tender Offer Statement Pursuant to Section 13(e)(1) of the Securities Exchange Act of 1934 (Amendment No. ——.)

(Exact name of Issuer as specified in its charter)

(Translation of Issuer's Name into English (if applicable))

(Jurisdiction of Issuer's Incorporation or Organization)

(Name(s) of Person(s) Filing Statement)

(Title of Class of Securities)

(CUSIP Number of Class of Securities) (if applicable)

(Name, address (including zip code) and telephone number (including area code) of person authorized to receive notices and communications on behalf of the person(s) filing)

(Date tender offer first published, sent or given to securityholders)

Calculation of Filing Fee*

Transaction Valuation
Amount of Filing Fee

*Set forth the amount on which the filing fee is calculated and state how it was determined. See General Instruction II.C. for rules governing the calculation of the filing fee.

General Instructions

I. Eligibility Requirements for Use of Schedule 13E–4F

A. Schedule 13E–4F may be used by any foreign private issuer or crown corporation if: (1) the issuer is incorporated or organized under the laws of Canada or any province or territory thereof; (2) the issuer is making a cash tender or exchange offer for the issuer's own securities; and (3) less than 20 percent of the class of such issuer's securities that is the subject of the tender offer is held of record by U.S. residents other than U.S. affiliates of such issuer. The calculation of U.S. record holders shall be made as of the end of the issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of the issuer's preceding quarter.

Instructions

1. For purposes of this Schedule, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Schedule, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

3. For purposes of this Schedule, the term "U.S. resident" shall mean any person whose address appears on the records as being located in the United States.

4. For purposes of this Schedule, "held of record" shall be construed in accordance with Rule 12g5–1 under the Securities Exchange Act of 1934 (the "Exchange Act").

5. For purposes of this Schedule, "affiliate" shall mean any person who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the issuer. The determination of affiliates shall be made as of the end of the issuer's most recently completed fiscal year

6. If this Schedule is filed during the pendency of one or more ongoing third-party or issuer cash tender or exchange offers for securities of the class subject to this offer that was commenced on Schedule 14D–1F and/or Form F–8, the date for calculation of U.S. record ownership for purposes of this Schedule shall be the same as that date used by the initial bidder or issuer.

7. For purposes of this Schedule, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

B. Any issuer using this Schedule must extend the cash tender or exchange offer to holders of the class of securities subject to the offer residing in the United States upon the same terms and conditions as it is extended to securityholders residing in Canada, and must comply with the requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer.

C. This Schedule shall not be used if the issuer is registered or required to register under the Investment Company Act of 1940.

II. Filing Instructions and Fees

A. Eight copies of this Schedule and any amendment thereto (see Part I, Item 1(b)), including all exhibits and any other paper or document filed as part of the Schedule, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the Schedule and any amendment thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

B. The original and at least one copy of this Schedule and any amendments thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

C. At the time this Schedule is filed with the Commission, the issuer shall pay to the Commission in U.S. dollars, by a U.S. postal money order, certified check, bank cashier's check or bank money order, a fee of one-fortieth of one percent of the aggregate of the cash or of the value of the securities or other non-cash consideration offered by the issuer to shareholders residing in the United States.

(1) Where the issuer is offering securities or other non-cash consideration for some or all of the securities to be acquired, whether or not in combination with a cash payment for the same securities, the value of the consideration shall be based on the market value of the securities to be acquired by the issuer as established by paragraph 3 of this section.

(2) If there is no market for the securities to be acquired by the issuer, the book value of such securities computed as of the latest practicable date prior to the date of filing the Schedule shall be used, unless the issuer is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

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(3) When the fee is based upon the market value of the securities, such market value shall be calculated upon the basis of either the average of the high and low prices reported on the consolidated reporting system (for exchange-traded securities and last sale reported over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within 5 business days prior to the date of filing the Schedule.

D. If at any time after the initial payment of the fee the aggregate consideration offered is increased, an additional filing fee based upon such increase shall be paid with the required amended filing.

E. Subject to the requirements of Item 1, if any part of this Schedule, or any exhibit or other paper or document filed as part of the schedule, is in a foreign language, it shall be accompanied by a summary, version or translation in the English language.

F. The manually signed original of the Schedule or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

G. Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registrant.

III. Compliance with the Exchange Act

A. Pursuant to Rule 13e–4(h) under the Exchange Act, the issuer shall be deemed to comply with the requirements of Section 13(e)(1) of the Exchange Act and Rule 13E–4 and Schedule 13E–4 thereunder in connection with a cash tender or exchange offer for securities that may be made pursuant to this Schedule; *Provided* That, if a transactional exemption from the requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer is applicable, the issuer (absent an order from the Commission) shall comply with the provisions of Section 13(e)(1) and Rule 13E–4 and Schedule 13E–4 thereunder.

B. Any cash tender or exchange offer made pursuant to this Schedule is not exempt from the antifraud provisions of Section 10(b) of the Exchange Act and Rule 10b–5 thereunder, Section 13e–1 of the Exchange Act and Rule 13e–4[b](1) thereunder, and Section 14(e) of the Exchange Act and Rule 14e–3 thereunder, and this Schedule shall be deemed "filed" for purposes of Section 18 of the Exchange Act.

C. The issuer's attention is directed to Rule 10b–6 under the Exchange Act, in the case of an issuer exchange offer, and Rule 10b–13 under the Exchange Act, in the case of an issuer cash tender offer or issuer exchange offer. [*See Note following Part III.1.* for an explanation of the no-action positions taken under Rules 10b–6 and 10b–13.]

Part I—Information Required To Be Sent to Shareholders

Item 1. Home Jurisdiction Documents

(a) This Schedule shall be accompanied by the entire disclosure document or documents required to be delivered to holders of securities to be acquired by the issuer in the proposed transaction pursuant to the laws, regulations or policies of the Canadian jurisdiction in which the issuer is incorporated or organized, and any other Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer. The Schedule need not include any documents incorporated by reference into such disclosure document(s) and not distributed to offerees pursuant to any such law, regulation or policy. If any part of the document or documents to be sent to shareholders is in a language other than English, it shall be accompanied by a translation in English.

(b) Any amendment made by the issuer to a home jurisdiction document or documents shall be filed with the Commission under cover of this Schedule, which must indicate on the cover page the number of the amendment.

(c) In an exchange offer where securities of the issuer have been or are to be offered or cancelled in the transaction: (i) such securities shall be registered under the laws of the issuer's jurisdiction on the Commission's Form F–8, and (ii) the home jurisdiction prospectus shall be included in this registration statement.

Item 2. Informational Legends

The following legend shall appear on the outside front cover page of the home jurisdiction document(s) in bold-face roman type at least as high as ten-point modern type and at least two-points leaded:

"This tender offer is made by a foreign issuer for its own securities, and while the offer is subject to disclosure requirements of the country in which the issuer is incorporated or organized, prospective investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have not been prepared in accordance with United States generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the issuer is located in a foreign country, and that some or all of its officers and directors are residents of a foreign country.

"Prospective investors should be aware that the issuer or its affiliates, directly or indirectly, may bid for or make purchases of the securities of the issuer subject to the offer, or of its related securities, during the period of the issuer tender offer, as permitted by applicable Canadian laws or provincial laws or regulations."

Part II—Information not Required To Be Sent to Shareholders

The exhibits specified below shall be filed as part of the Schedule, but are not required to be sent to shareholders unless so required pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories. Exhibits shall be lettered or numbered appropriately for convenient reference.

(1) File any reports or information that, in accordance with the requirements of the home jurisdiction(s), must be made publicly available by the issuer in connection with the transaction, but need not be disseminated to shareholders.

(2) File copies of any documents incorporated by reference into the home jurisdiction document(s).

(3) If any name is signed to the Schedule pursuant to power of attorney, manually signed copies of any such power of attorney shall be filed. If the name of any officer signing on behalf of the issuer is signed pursuant to a power of attorney, certified copies of a resolution of the issuer's board of directors authorizing such signature also shall be filed.

Part III—Undertaking and Consent to Service of Process

1. Undertaking

The issuer undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to this Schedule or to transactions in said securities.

The issuer also undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to applicable Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise discloses, information regarding purchases of the issuer's securities during the cash tender or exchange offer covered by this Schedule.

Note: No-action position taken under Rule 10b–13 in the case of an issuer cash tender offer:

The staff of the Division of Market Regulation has taken a no-action position under Rule 10b–13 under the Exchange Act to allow certain purchases by the issuer of the issuer's securities in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, during the period of an issuer tender offer filed on Schedule 13e–4F. With respect to an issuer cash tender offer filed on Schedule 13e–4F, the staff will not recommend that the Commission take enforcement action under Rule 10b–13 for purchases by the issuer in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, of the security that is the subject of the offer (or any security which is immediately convertible into or exchangeable for such security), subject to the conditions that: (i) the issuer discloses on Schedule 13e–4F the possibility of, or the intent to make, such purchases; and (ii) the issuer submits an undertaking to disclose in the United States information regarding such purchases on the same basis as it is required to be disclosed in Canada pursuant to Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise is disclosed.

Note: No-action position taken under Rules 10b–6 and 10b–13 in the case of an issuer exchange offer:

The staff of the Division of Market Regulation has taken no-action positions under Rules 10b–6 and 10b–13 under the Exchange Act to allow certain purchases by the issuer of the issuer's securities in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, during the period of an issuer exchange offer filed on Schedule 13e–4F. With respect to an issuer exchange offer filed on Schedule 13e–4F, the staff will not recommend that the Commission take enforcement action under Rules 10b–6 and 10b–13 for bids and purchases by the issuer in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, of the security being distributed (or any security of the same class and series, or any right to purchase any such security), or of the security that is the subject of the offer (or any security which is immediately convertible into or exchangeable for such security), subject to the conditions that: (i) Such purchases are not made for the purpose of creating actual, or apparent, active trading in or raising the price of such securities; (ii) the issuer discloses on Schedule 13e–4F the possibility of, or the intent to make, such purchases; and (iii) the issuer submits an undertaking to disclose in the United States information regarding such purchases on the same basis as it is required to be disclosed in Canada pursuant to Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise is disclosed.

2. Consent to Service of Process

At the time of filing this Schedule, the issuer shall furnish to the Commission on Form F–X a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in

(1) Any investigation or administrative proceeding conducted by the Commission; and

(2) Any civil suit or civil action brought against the issuer or to which the issuer has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States,

where the investigation, proceeding or cause of action arises out of or relates to or concerns any issuer tender or exchange offer made or purported to be made using this Schedule, or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Part IV

A. Signatures

The Schedule shall be signed by each person on whose behalf the Schedule is filed or its authorized representative. If the Schedule is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the company), evidence of the representative's authority shall be filed with the Schedule.

B. The name of each person who signs the Schedule shall be typed or printed beneath his signature.

C. By signing this Schedule, the person(s) filing the Schedule consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the filing on Schedule 13e–4F or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature) _____

(Name and Title) _____

(Date) _____

40. By amending § 240.14d–1 to redesignate paragraph (b) as (c) and to add a new paragraph (b) and Notes thereto to read as follows:

§ 240.14d–1 Scope of and definitions applicable to Regulations 14D and 14E.

* * * * *

(b) The requirements imposed by sections 14(d)(1) through 14(d)(7) of the Act, Regulation 14D and Schedules 14D–1 and 14D–9 thereunder, and Rule 14e–1 of Regulation 14E under the Act, shall be deemed satisfied with the respect to any tender offer, including any exchange offer, for the securities of an issuer incorporated or organized under the laws of Canada or any Canadian province or territory, if such issuer is a foreign private issuer or a crown corporation and is not registered or required to register under the Investment Company Act of 1940, if less than 20 percent of the class of securities that is the subject of the tender offer is held of record by U.S. residents other than U.S. affiliates of the subject company, and the tender offer is subject to, and the bidder complies with, the laws, regulations and policies of Canada and/or any of its provinces or territories governing the conduct of the offer (and the bidder is not entitled to a transactional exemption from such laws, regulations and policies), *provided that:*

(1) In the case of tender offers subject to section 14(d)(1) of the Act, where the consideration for a tender offer subject to this section consists solely of cash, the entire disclosure document or documents required to be furnished to holders of the class of securities to be acquired shall be filed with the Commission on Schedule 14D–1F (17 CFR 240.14d–102) and disseminated to shareholders of the subject company residing in the United States in accordance with such Canadian laws, regulations and policies; or

(2) Where the consideration for a tender offer subject to this section includes securities of the bidder to be issued pursuant to the offer, any registration statement and/or prospectus relating thereto shall be filed with the Commission along with the Schedule 14D–1F referred to in paragraph (b)(1) of this section, and shall be disseminated, together with the home jurisdiction document(s) accompanying such Schedule, to shareholders of the subject company residing in the United States in accordance with such Canadian laws, regulations and policies.

Notes: 1. For purposes of any unsolicited tender offer, including any exchange offer, otherwise eligible to proceed in accordance with Rule 14d–1(b) under the Act, U.S. residents unaffiliated with the issuer will be presumed to hold of record less than 20 percent of the subject class of securities, unless (a) the aggregate trading volume of that class on any securities exchange and in any inter-dealer quotation system in the United States exceeded its aggregate trading volume on any securities exchange and in any inter-dealer quotation system in Canada over the 12-month period prior to commencement of this offer; (b) disclosure has been made in documents that were filed publicly by the issuer with Canadian federal, provincial or territorial securities regulators, or with the Commission or any state securities authority in the United States, within 18 months of the date of commencement of this offer, disclose that U.S. residents unaffiliated with the issuer held of record more than 20 percent of the subject class of securities; or (c) the offeror has actual knowledge that the level of unaffiliated U.S. record ownership of the subject class of securities exceeds 20 percent.

2. Notwithstanding the grant of an exemption from one or more of the applicable Canadian regulatory provisions, the tender offer will be eligible to proceed in accordance with the requirements of this section if the Commission by order determines that the applicable Canadian regulatory provisions are adequate to protect the interest of investors.

* * * * *

41. By adding § 240.14d–102 to read as follows:

§ 240.14d–102 Schedule 14D–1F. Tender offer statement pursuant to rule 14d–1(b) under the Securities Exchange Act of 1934.

U.S. Securities and Exchange Commission, Washington, DC 20549

Schedule 14D–1F

OMB Approval

OMB Number: 3235–0375
Expires: Approval Pending
Estimated average burden hours per response—2.0

Tender Offer Statement Pursuant to Rule 14d–1(b) Under the Securities Exchange Act of 1934

(Amendment No. _____)

(Name of Subject Company [Issuer])

(Translation of Subject Company's [Issuer's] name into English (if applicable))

(Jurisdiction of Subject Company's [Issuer's] Incorporation or Organization)

(Bidder)

(Title of Class of Securities)

(CUSIP Number of Class of Securities (if applicable))

(Name, address (including zip code) and telephone number (including area code) of person(s) authorized to receive notices and communications on behalf of subject company)

(Date tender offer first published, sent or given to securityholders)

Calculation of Filing Fees

Transaction Valuation
Amount of Filing Fee *

* Set forth the amount on which the filing fee is calculated and state how it was determined. See General Instruction II.C. for rules governing the calculation of the filing fee.

General Instructions

I. Eligibility Requirements for Use of Schedule 14D–1F

A. Schedule 14D–1F may be used by any person making a cash tender or exchange offer (the "bidder") for securities of any issuer incorporated or organized under the laws of Canada or any Canadian province or territory that is a foreign private issuer or a crown corporation, where less than 20 percent of the class of such issuer's securities that is the subject of the offer is held of record by U.S. residents other than U.S. affiliates of such issuer. The calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.

Instructions

1. For purposes of this Schedule, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Schedule, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

3. For purposes of this Schedule, the term "U.S. resident" shall mean any person whose address appears on the records as being located in the United States. With respect to any unsolicited tender offer, including any exchange offer, otherwise eligible to proceed in accordance with Rule 14d–1(b) under the Securities Exchange Act (the "Exchange Act"), U.S. residents unaffiliated with the issuer will be presumed to hold of record less than 20 percent of the subject class of securities, unless (a) the aggregate trading volume of that class on any securities exchange and in any inter-dealer quotation system in the United States exceeded its aggregate trading volume on any securities exchange and in any inter-dealer quotation system in Canada over the 12-month period prior to commencement of this offer; (b) documents that were filed publicly by the issuer with Canadian federal, provincial or territorial securities regulators, or with the Commission or any state securities authority in the United States, within 18 months of the date of commencement of this offer, disclose that U.S. residents unaffiliated with the issuer held of record more that 20 percent of the subject class of securities; or (c) the offeror has actual knowledge that the level of unaffiliated U.S. record ownership of the subject class of securities exceeds 20 percent.

4. For purposes of this Schedule, "held of record" shall be construed in accordance with Rule 12g5–1 under the Exchange Act.

5. For purposes of this Schedule, "affiliate" shall mean any person who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the issuer. The determination of affiliates shall be made as of the end of the issuer's most recently completed fiscal year.

6. If this Schedule is filed during the pendency of one or more ongoing third-party or issuer cash tender or exchange offers for securities of the class subject to this offer that was commenced on Schedule 13E–4F, Schedule 14D–1F and/or Form F–8, the date for calculation of U.S. record ownership for purposes of this Schedule shall be the same as that date used by the initial bidder or issuer.

7. For purposes of this Schedule, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

B. Any bidder using this Schedule must extend the cash tender or exchange offer to U.S. residents of the subject company upon the same terms and conditions as it is extended to securityholders residing in Canada, and must comply with the requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer.

C. This Schedule shall not be used if the subject company is registered or required to register under the Investment Company Act of 1940.

D. This Schedule shall not be used to comply with the reporting requirements of section 13(d) of the Exchange Act. Issuers using this Schedule are reminded of their obligation to file or update a Schedule 13D where required by Section 13(d)(1) of the Exchange Act and the Commission's rules and regulations thereunder.

II. Filing Instructions and Fee

A. Eight copies of this Schedule and any amendment thereto (see Part I, Item 1(b)), including all exhibits and any other paper or document filed as part of the Schedule, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the Schedule and any amendment thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

B. The original and at least one copy of this Schedule and any amendments thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

C. At the time this Schedule is filed with the Commission, the bidder shall pay to the Commission in U.S. dollars, by a U.S. postal money order, certified check, bank cashier's check or bank money order, a fee of one-fortieth of one-percent of the aggregate of the cash or of the value of the securities or other non-cash consideration offered by the bidder to shareholders of the subject company residing in the United States.

(1) Where the bidder is offering securities or other non-cash consideration of some or all of the securities to be acquired, whether or not in combination with a cash payment for the same securities, the value of the consideration shall be based on the market value of the securities to be received by the bidder as established by paragraph 3 of this section.

(2) If there is no market for the securities to be acquired by the bidder, the book value of such securities computed as of the latest practicable date prior to the date of filing the Schedule shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) When the fee is based upon the market value of the securities, such market value shall be calculated upon the basis of either the average of the high and low prices reported in the consolidated reporting system (for exchange traded securities and last sale reported for over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within five business days prior to the date of filing the Schedule.

D. If at any time after the initial payment of the fee the aggregate consideration offered is increased, an additional filing fee based upon such increase shall be paid with the required amended filing.

E. Subject to the requirements of Item 1, if any part of this Schedule, or any exhibit or other paper or document filed as part of the Schedule, is in a language other than English, it shall be accompanied by a summary, version or translation in the English language.

F. The manually signed original of the Schedule or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

G. Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registrant.

III. Compliance with the Exchange Act

A. Pursuant to Rule 14d–1(b) under the Exchange Act, the bidder shall be deemed to comply with the requirements of Sections 14(d)(1) through 14(d)(7) of the Exchange Act, Regulation 14D of the Exchange Act and Schedule 14D–1 thereunder, and Rule 14e–1 under Regulation 14E of the Exchange Act, in connection with a cash tender or exchange offer for securities that may be made pursuant to this Schedule; *Provided* That, if a transactional exemption from such requirements is applicable, the bidder (absent an order from the Commission) shall comply with the provisions of Sections 14(d)(1) through 14(d)(7), Regulation 14D and Schedule 14D–1 thereunder, Rule 14E–1 of Regulation 14E, and any other applicable U.S. statute or rule.

B. Any cash tender or exchange offer made pursuant to this Schedule is not exempt from the antifraud provisions of Section 10(b) of the Exchange Act and Rule 10b–5 thereunder, and Section 14(e) of the Exchange Act and Rule 14e–3 thereunder, and this Schedule shall be deemed "filed" for purposes of Section 18 of the Exchange Act.

C. The bidder's attention is directed to Rule 10b–6 under the Exchange Act in the case of an exchange offer, and to Rule 10b–13 under the Exchange Act for any exchange or cash tender offer. [See Note following Part III.1. for an explanation of the no-action positions taken under Rules 10b–6 and 10b–13.]

Part I—Information Required To Be Sent to Shareholders

Item 1. Home Jurisdiction Documents

(a) This Schedule shall be accompanied by the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction by the bidder pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories governing the conduct of the tender offer. It shall not include any documents incorporated by reference into such disclosure document(s) and not distributed to offerees pursuant to any such law, regulation or policy. If any part of the document or documents to be sent to shareholders is in a foreign language, it shall be accompanied by a translation in English.

(b) Any amendment made by the bidder to a home jurisdiction document or documents shall be filed with the Commission under cover of this Schedule, which must indicate on the cover page the number of the amendment.

(c) In an exchange offer where securities of the bidder have been or are to be offered or cancelled in the transaction, such securities shall be registered on forms promulgated by the Commission under the Securities Act of 1933 including, where available, the Commission's Form F–8 providing for inclusion in that registration statement of the home jurisdiction prospectus.

Item 2. Informational Legends

The following legends shall appear on the outside front cover page of the home-jurisdiction document(s) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This tender offer is made for the securities of a foreign issuer and while the offer is subject to disclosure requirements of the country in which the subject company is incorporated or organized, prospective investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have not been prepared in accordance with United States generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the subject company is located in a foreign country, and that some or all of its officers and directors are residents of a foreign country.

"Prospective investors should be aware that the bidder or its affiliates, directly or indirectly, may bid for or make purchases of the issuer's securities subject to the offer, or of the issuer's related securities, during the period of the tender offer, as permitted by applicable Canadian laws or provincial laws or regulations."

In the case of an exchange offer:

"Prospective investors should be aware that the bidder or its affiliates, directly or indirectly, may bid for or make purchases of the issuer's securities subject to the offer or of the issuer's related securities, or of the bidder's securities to be distributed or of the bidder's related securities, during the period of the tender offer, as permitted by applicable Canadian laws or provincial laws or regulations."

Part II—Information Not Required To Be Sent to Shareholders

The exhibits specified below shall be filed as part of the Schedule, but are not required to be sent to shareholders unless so required pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) File any reports or information that, in accordance with the requirements of the home jurisdiction(s), must be made publicly available by the bidder in connection with the transaction but need not be disseminated to shareholders.

(2) File copies of any documents incorporated by reference into the home jurisdiction document(s).

(3) If any name is signed to this Schedule pursuant to power of attorney, manually signed copies of any such power of attorney shall be filed. If the name of any officer signing on behalf of the bidder is signed pursuant to a power of attorney, certified copies of the bidder's board of directors authorizing such signature also shall be filed.

Part III—Undertaking and Consent to Service of Process

1. Undertaking

a. The bidder undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to this Schedule or to transactions in said securities.

b. The bidder undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to applicable Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise discloses, information regarding purchases of the issuer's securities during the cash tender or exchange offer covered by this Schedule.

In the case of an exchange offer:

The bidder undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to any applicable Canadian federal and/or provincial or territorial law, regulation or policy, or otherwise discloses, information regarding purchases of the issuer's or bidder's securities during the offer.

Note: No-action position taken under Rule 10b–13 in the case of a third party or affiliate cash tender offer:

The staff of the Division of Market Regulation has taken a no-action position under Rule 10b–13 under the Exchange Act to allow certain purchases by the bidder of the issuer's securities in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, during the period of a tender offer filed on Schedule 14D–1F. With respect to a cash tender offer filed on Schedule 14D–1F, the staff will not recommend that the Commission take enforcement action under Rule 10b–13 for purchases by the bidder in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, of the security that is the subject of the offer (or any security which is immediately convertible into or exchangeable for such security), subject to the conditions that: (i) the bidder discloses on Schedule 14D–1F the possibility of, or the intent to make, such purchases; and (ii) the bidder submits an undertaking to disclose in the United States information regarding such purchases on the same basis as it is required to be disclosed in Canada pursuant to Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise is disclosed.

No-action positions taken under Rules 10b–6 and 10b–13 in the case of a third party or affiliate exchange offer:

The staff of the Division of Market Regulation has taken no-action positions under Rules 10b–6 and 10b–13 under the Exchange Act to allow certain purchases by the bidder of the issuer's or bidder's securities in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, during the period of an exchange offer filed on Schedule 14D–1F. With respect to an exchange offer filed on Schedule 14D–1F, the staff will not recommend that the Commission take enforcement action under Rules 10b–6 and 10b–13 for bids and purchases by the bidder in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, of the security being distributed (or any security of the same class and series, or any right to purchase any such security), or of the security that is the subject of the offer (or any security which is immediately convertible into or exchangeable for such security), subject to the conditions that: (i) such purchases are not made for the purpose of creating actual, or apparent, active trading in or raising the price of such securities; (ii) the bidder discloses on Schedule 14D–1F the possibility of, or the intent to make, such purchases; and (iii) the bidder submits an undertaking to disclose in the United States information regarding such purchases on the same basis as it is required to be disclosed in Canada pursuant to Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise is disclosed.

2. Consent to Service of Process

At the time of filing this Schedule, the bidder shall furnish to the Commission on Form F–X a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in:

(1) Any investigation or administrative proceeding conducted by the Commission; and

(2) Any civil suit or action brought against the bidder or to which the bidder has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States,

where the investigation, proceeding or cause of action arises out of or relates to or concerns any tender offer made or purported to be made using this Schedule, or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Part IV

A. Signatures

The Schedule shall be signed by each person on whose behalf the Schedule is filed or its authorized representative. If the Schedule is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the bidder), evidence of the representative's authority shall be filed with the Schedule.

B. The name and any title of each person who signs the Schedule shall be typed or printed beneath his signature.

C. By signing this Schedule, the bidder consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the filing on Schedule 14D–1F or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature) _____

(Name and Title) _____

(Date) _____

42. By adding § 240.14d–103 to read as follows:

§ 240.14d–103 Schedule 14d–9F—Solicitation/recommendation statement pursuant to rules 14d–1(b) and 14e–2(c) under the Securities Exchange Act of 1934.

U.S. Securities and Exchange Commission,
Washington, DC 20549

Schedule 14d–9F

OMB Approval

OMB Number: 3235–0382
Expires: Approval Pending Estimated average burden hours per response. 2.0

Solicitation/Recommendation Statement Pursuant to Rules 14d–1(b) and 14e–2(c) Under the Securities Exchange Act of 1934

(Amendment No. _____)

Recommendation of the Subject Company [Issuer's] Board of Directors, Director or Officer

_____

(Name of Subject Company [Issuer])

_____

(Translation of Subject Company's [Issuer's] Name into English (if applicable))

_____

(Jurisdiction of Subject Company's [Issuer's] Incorporation or Organization)

_____

(Name(s) of Person(s) Filing Statement)

_____

(Title of Class of Securities)

_____

(CUSIP Number of Class of Securities (if applicable))

_____

(Name, address (including zip code) and telephone number (including area code) of person(s) authorized to receive notices and communications on behalf of the person(s) filing statement)

General Instructions

I. Eligibility Requirements for Use of Schedule 14d–9F

A. Schedule 14d–9F is used by any issuer incorporated or organized under the laws of Canada or any Canadian province or territory that is a foreign private issuer or a crown corporation (the "subject company"), or by any director or officer of such issuer, where the issuer is the subject of a cash tender or exchange offer for a class of its securities filed on Schedule 14d–1F.

1. For purposes of this Schedule, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Schedule, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

B. Any person(s) using this Schedule must comply with the requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to a recommendation by the subject issuer's board of directors, or any director or officer thereof, with respect to the offer.

C. This Schedule shall not be used if the subject company is registered or required to register under the Investment Company Act of 1940.

II. Filing Instructions

A. Eight copies of this Schedule and any amendment thereto (see Part I, Item 1(b)), including all exhibits and any other paper or document filed as part of the Schedule, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the Schedule and any amendment thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

B. The original and at least one copy of this Schedule and any amendments thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

C. Subject to the requirements of Item 1, if any part of this Schedule, or any exhibit or other paper or document filed as part of this Schedule, is in a language other than English, it shall be accompanied by a summary, version or translation in the English language.

D. The manually signed original of the Schedule or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

E. Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registrant.

III. Compliance with the Exchange Act

A. Pursuant to Rule 14e–2(c) under the Securities Exchange Act of 1934 (the "Exchange Act"), this Schedule shall be filed by an issuer, a class of the securities of which is the subject of a cash tender or exchange offer filed on Schedule 14d–1F, and may be filed by any director or officer of such issuer.

B. Any recommendation with respect to a cash tender or exchange offer for a class of securities of the subject company made pursuant to this Schedule is not exempt from the antifraud provisions of section 10(b) of the Exchange Act and Rule 10b–5 thereunder and section 14(e) of the Exchange Act and Rule 14e–3 thereunder, and this Schedule shall be deemed "filed" with the Commission for purposes of section 18 of the Exchange Act.

Part I—Information Required To Be Sent to Shareholders

Item 1. Home Jurisdiction Documents

(a) This Schedule shall be accompanied by the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories governing the conduct of the offer. It shall not include any documents incorporated by reference into such disclosure document(s) and not distributed to offerees pursuant to any such law, regulation or policy. If any part of the document or documents to be sent to shareholders is in a language other than English, it shall be accompanied by a translation in English.

(b) Any amendment made to a home jurisdiction document or documents shall be filed with the Commission under cover of this Schedule, which must indicate on the cover page the number of the amendment.

Item 2. Informational Legends

The following legends shall appear on the outside front cover page of the home jurisdiction document(s) in bold–face roman type at least as high as ten-point modern type and at least two points leaded:

"This tender offer is made for the securities of a foreign issuer and while the offer is subject to disclosure requirements of the country in which the subject issuer is incorporated or organized, prospective investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have not been prepared in accordance with United States generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the issuer is located in a foreign country, and that some or all of its officers and directors are residents of a foreign country."

Part II—Information Not Required To Be Sent to Shareholders

The exhibits specified below shall be filed as part of the Schedule, but are not required to be sent to shareholders unless so required pursuant to the laws, or regulations or policies of Canada and/or any of its provinces or territories. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) File any reports or information that, in accordance with the requirements of the home jurisdiction(s), must be made publicly available by the person(s) filing this Schedule in connection with the transaction, but need not be disseminated to shareholders.

(2) File copies of any documents incorporated by reference into the home jurisdiction document(s).

(3) If any name is signed to the Schedule pursuant to power of attorney, manually signed copies of any such power of attorney shall be filed. If the name of any officer signing on behalf of the issuer is signed pursuant to a power of attorney, certified copies of a resolution of the issuer's board of directors authorizing such signature also shall be filed.

Part III—Undertaking and Consent to Service of Process

1. Undertaking

The person(s) filing this Schedule undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to this Schedule or to transactions in said securities.

2. Consent to Service of Process

At the time of filing this Schedule, the person(s) so filing shall furnish to the Commission on Form F–X a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in:

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) any civil suit or action brought against such person(s) or to which such person(s) has or have been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States,

where the investigation, proceeding or cause of action arises out of or relates to or concerns any tender offer made or purported to be made for the securities of the subject issuer, or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Part IV

A. Signatures

The Schedule shall be signed by each person on whose behalf the Schedule is filed or its authorized representative. If the Schedule is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the subject company), evidence of the representative's authority shall be filed with the Schedule.

B. The name and any title of each person who signs the Schedule shall be typed or printed beneath his signature.

C. By signing this Schedule, the subject company consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with filing on this Schedule 14D–9F or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature) _____

(Name and Title) _____

(Date) _____

43. By adding paragraph (c) to § 240.14e–2 to read as follows:

§ 240.14e–2 Position of subject company with respect to a tender offer.

* * * * *

(c) Any issuer, a class of the securities of which is the subject of a tender offer filed with the Commission on Schedule 14D–1F and conducted in reliance upon and in conformity with Rule 14d–1(b) under the Act, and any director or officer of such issuer where so required by the laws, regulations and policies of Canada and/or any of its provinces or territories, in lieu of the statements called for by paragraph (a) of this section and Rule 14d–9 under the Act, shall file with the Commission on Schedule 14D–9F the entire disclosure document(s) required to be furnished to holders of securities of the subject issuer by the laws, regulations and policies of Canada and/or any of its provinces or territories governing the conduct of the tender offer, and shall disseminate such document(s) in accordance with such laws, regulations and policies.

44. By adding § 240.15d–4 to read as follows:

§ 240.15d–4 Reporting by Form 40–F Registrants.

A registrant that is eligible to use Forms 40–F and 6–K and files reports in accordance therewith shall be deemed to satisfy the requirements of Regulation 15D (§§ 240.15d–1 through 240.15d–21 of this section).

45. By revising paragraph (b) of § 240.15d–5 and adding paragraph (c) to § 240.15d–6 to read as follows:

§ 240.15d–5 Reporting by successor issuers.

* * * * *

(b) An issuer that is deemed to be a successor issuer according to paragraph (a) of this section shall file reports on the same forms as the predecessor issuer except as follows:

(1) An issuer that is not a foreign issuer shall not be eligible to file on Form 20–F (§ 249.220f of this chapter).

(2) A foreign private issuer shall be eligible to file on Form 20–F.

(c) The provisions of paragraph (a) of this section shall not apply to an issuer of securities in connection with a succession that was registered on Form F–8 (§ 239.38 of this chapter) or Form F–10 (§ 239.40 of this chapter).

46. By revising paragraph (g)(1) and the Note following paragraph (i) of § 240.15d–10 to read as follows:

§ 240.15d–10 Transition reports.

* * * * *

(g)(1) Paragraphs (a) through (f) of this section shall not apply to foreign private issuers.

* * * * *

(i) * * *

Note: In addition to the report or reports required to be filed pursuant to this section, every issuer, except a foreign private issuer or an investment company required to file reports pursuant to Rule 30b1–1 under the Investment Company Act of 1940, that changes its fiscal closing date is required to file a report on Form 8–K responding to Item 8 thereof within the period specified in General Instruction B.1. to that form.

47. By amending § 240.15d–16 to remove existing paragraph (a)(2) and to redesignate existing paragraph (a)(3) as (a)(2) to read as follows:

§ 240.15d–16 Reports of foreign private issuers on Form 6–K [17 CFR 249.306].

(a) Every foreign private issuer which is subject to Rule 15d–1 (17 CFR 240.15d–1) shall make reports on Form 6–K, except that this rule shall not apply to:

(1) * * *

(2) Issuers of American depositary receipts for securities of any foreign issuer.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

48. The authority citation for Part 249 continues to read in part as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

49. By revising paragraph (a), removing existing paragraph (b), redesignating existing paragraphs (c) as (b) and (d) as (c) of § 249.220f; and revising General Instruction A.(a), removing existing General Instruction A.(b), redesignating existing General Instructions A.(c) as A.(b) and A.(d) as A.(c) to Form 20–F to read as follows:

§ 249.220f Form 20–F, registration of securities of foreign private issuers pursuant to section 12(b) or (g) and annual and transition reports pursuant to sections 13 and 15(d).

(a) Any foreign private issuer may use this form as a registration statement under section 12 of the Securities Exchange Act of 1934 (the "Exchange Act") or as an annual or transition report filed under Section 13(a) or 15(d) of the Exchange Act.

(b) An annual report on this form shall be filed within six months after the end of the fiscal year covered by such report.

(c) A transition report on this form shall be filed in accordance with the requirements set forth in § 240.13a–10 or § 240.15d–10 applicable when the issuer changes its fiscal year end.

Note: The Forms do not appear in the Code of Federal Regulations.

Form 20–F

* * * * *

General Instructions

A. Rule as to Use of Form 20–F

(a) Any foreign private issuer may use this form as a registration statement under section 12 of the Securities Exchange Act of 1934 (the "Exchange Act") or as an annual or transition report filed under section 13(a) or 15(d) of the Exchange Act.

(b) An annual report on this form shall be filed within six months after the end of the fiscal year covered by such report.

(c) A transition report on this form shall be filed in accordance with the requirements set forth in § 240.13a–10 or § 240.15d–10 applicable when the issuer changes its fiscal year end.

* * * * *

50. By adding § 249.240f and 249.250 to read as follows:

Note: See appendix of this release for text of Forms. The Forms do not appear in the Code of Federal Regulations.

§ 249.240f Form 40–F, for registration of securities of certain Canadian issuers pursuant to section 12 (b) or (g) and for reports pursuant to section 15(d) and Rule 15d–4 (§ 240.15d–4 of this chapter).

(a) Form 40–F may be used to file reports with the Commission pursuant to section 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 15d–4 (17 CFR 240.15d–4) thereunder by registrants that are subject to the reporting requirements of that section solely by reason of their having filed a registration statement on Form F–7, F–8, F–9 or F–10 under the Securities Act of 1933 (the "Securities Act").

(b) Form 40–F may be used to register securities with the Commission pursuant to section 12(b) or 12(g) of the Exchange Act, to file reports with the Commission pursuant to section 13(a) of the Exchange Act and Rule 13a–3 (17 CFR 240.13a–3) thereunder, and to file reports with the Commission pursuant to section 15(d) of the Exchange Act if:

(1) The registrant is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) The registrant is a foreign private issuer or a crown corporation;

(3) The registrant has been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form and is currently in compliance with such obligations;

(4) The market value of the outstanding equity shares of the registrant is:

(i) (CN) $180 million or more if a report or registration statement filed on this Form relates to convertible securities of a Form F–9-eligible issuer that would be eligible for registration under the Securities Act on Form F–9; or

(ii) (CN) $360 million or more in the case of all other reporting requirements; *Provided, however,* That no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F–9; and

(5) The aggregate market value of the public float of such equity shares is (CN) $75 million or more; *Provided, however,* That no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F–9.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For the purposes of this Form, "affiliate" shall mean any person who beneficially owns directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the registrant. The determination of affiliates shall be made as of the end of the registrant's most recent completed fiscal year.

5. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

6. For purposes of this Form, the market value of the registrant's outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which the shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing.

(c) If the registrant is a successor registrant subsisting after a business combination, it shall be deemed to meet the requirements of paragraph (b)(3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *Provided, however,* That the reporting history of the successor registrant and any predecessor whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years immediately prior to the business combination, need not be combined for purposes of satisfying such 36–month reporting requirement; and

(2) The successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

(d) This Form shall not be used if the registrant is registered or required to register under the Investment Company Act of 1940.

(e) An annual report on this Form or any amendment thereto shall be filed on the same day the information included herein is due to be filed with the securities commission or equivalent regulatory authority of the jurisdiction of incorporation of the registrant.

(f) Registrants registering securities on this Form and registrants filing annual reports on this Form who have not previously filed a Form F–X (§ 249.250 of this chapter) in connection with the class of securities in relation to which the obligation to file this report arises, shall file a Form F–X with the Commission together with this Form.

(g) Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registrant.

§ 249.250 Form F–X, for appointment of agent for service of process by issuers registering securities on Forms F–7, F–8, F–9 or F–10 (§§ 239.37, 239.38, 239.39 or 239.40 of this chapter), or registering securities or filing periodic reports on Form 40–F (§ 249.240f of this chapter), or by any person filing tender offer documents on Schedule 13e–4F, 14d–1F or 14d–9F (§§ 240.13e–102, 240.14d–102 or 240.14d–103 of this chapter).

Form F–X shall be filed with the Commission:

(a) By any issuer registering securities on Forms F–7, F–8, F–9 or F–10 under the Securities Act of 1933;

(b) By any issuer registering securities on Form 40–F under the Securities Exchange Act of 1934;

(c) By an issuer filing an annual report on Form 40–F if it has not previously filed a Form F–X in connection with the class of securities in relation to which the obligation to file a report on Form 40–F arises;

(d) By any issuer or other person filing tender offer documents on Schedules 13E–4F, 14D–1F or 14D–9F; and

(e) By any trustee for which an exemption from the requirements of Section 310(a)(1) of the Trust Indenture Act of 1939 has been applied pursuant to Rule 4d–1 thereunder.

51. By revising General Instructions A and B and revising the cover page of Form 6–K to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.

Form 6–K—Report of Foreign Private Issuer Pursuant to Rules 13a–16 and 15d–16 Under the Securities Exchange Act of 1934

* * * * *

General Instructions

A. Rule as to Use of Form 6–K

This form shall be used by foreign private issuers which are required to furnish reports pursuant to Rule 13a–16 or 15d–16 under the Securities Exchange Act of 1934.

B. Information and Document Required to be Furnished

Subject to General Instruction D herein, an issuer furnishing a report on this form shall furnish whatever information, not required to be furnished on Form 40–F or previously furnished, such issuer (i) makes or is required to make public pursuant to the law of the jurisdiction of its domicile or in which it is incorporated or organized, or (ii) files or is required to file with a stock exchange on which its securities are traded and which was made public by that exchange, or (iii) distributes or is required to distribute to its securityholders.

The information required to be furnished pursuant to (i), (ii) or (iii) above is that which is material with respect to the issuer and its subsidiaries concerning: changes in business; changes in management or control; acquisitions or dispositions of assets; bankruptcy or receivership; changes in registrant's certifying accountants; the financial condition and results of operations; material legal proceedings; changes in securities or in the security for registered securities; defaults upon senior securities; material increases or decreases in the amount outstanding of securities or indebtedness; the results of the submission of matters to a vote of securityholders; transactions with directors, officers or principal securityholders; the granting of options or payment of other compensation to directors or officers; and any other information which the registrant deems of material importance to securityholders.

This report is required to be furnished promptly after the material contained in the report is made public as described above. The information and documents furnished in this report shall not be deemed to be "filed" for the purposes of Section 18 of the Act or otherwise subject to the liabilities of that section.

If a report furnished on this form incorporates by reference any information not previously filed with the Commission, such information must be attached as an exhibit and furnished with the form.

* * * * *

Form 6–K—Report of Foreign Private Issuer

Pursuant to Rule 13a–16 or 15d–16 of the Securities Exchange Act of 1934

For the month of _____, 19____

(Translation of Registrant's name into English)

(Address of principal executive office)

[Indicate by check mark whether the registrant files or will file annual reports under cover Form 20–F or Form 40–F.

Form 20–F _____ Form 40–F _____

[Indicate by check mark whether the registrant by filing the information contained

in this Form is also thereby furnishing the information to the Commission pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934.

Yes ——

No ——

[If "Yes" is marked, indicate below the file number assigned to the registrant in connection with Rule 12g3-2(b): 82-——]

Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

(Registrant)
By ——
(Signature)*
Date ——

*Print the name and title under the signature of the signing officer.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

52. The authority citation for part 260 continues to read in part as follows:

Authority: Sections 305, 307, 314, 319, 53 Stat. 1154, 1158, 1167, 1173; 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss.

53. By revising paragraph (b)(1)(i) of § 260.0-11 to read as follows:

§ 260.0-11 Liability for certain statements by issuers.

* * * * *

(b) * * *
(1) * * *

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a-1 or 15d-1 thereunder, if applicable, to file its most recent annual report on Form 10-K or Form 20-F or Form 40-F; or if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933 or pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934, and

* * * * *

54. By adding § 260.4d-1 to read as follows:

§ 260.4d-1 Application for exemption from section 310(a)(1).

An application for an exemption from the requirements of section 310(a)(1) of the Act may be filed pursuant to section 304(d) of the Act and this section, provided the application relates to:

(a) Securities registered or to be registered on Forms F-7, F-8, F-9 or F-10 (§§ 239.37, 239.38, 239.39 or 239.40 of this chapter);

(b) Securities that have been issued or securities that the applicant reasonably expects to issue within two years from the date of application; and

(c) Securities that have been or will be issued under an indenture that (1) has been or will be qualified under the Act, and (2) requires there to be at all times one or more trustees thereunder, at least one of whom is a corporation or other person that is (i) organized and doing business under the laws of Canada or any province thereof, (ii) is authorized under such laws to exercise corporate trust powers, and (iii) is subject to supervision or examination by governmental authority.

55. By adding § 260.4d-2 to read as follows:

§ 260.4d-2 Application for appointment of a foreign trustee.

(a) Form T-5 shall be used for applications for exemption pursuant to Rule 4d-1 (§ 260.4d-1 of this chapter), except as provided in paragraph (b) of this section.

(b) Application may be made pursuant to Rule 4d-1 by filing a registration statement under the Securities Act of 1933 on Form F-7, F-8, F-9 or F-10 (§§ 239.37, 239.38, 239.39 or 239.40 of this chapter) indicating on the facing page of the registration statement that such application is being made, and responding to the applicable Item of Part II of such form.

56. By adding § 260.4d-3 to read as follows:

§ 260.4d-3 General requirements as to form and content of applications.

Rule 4c-3 (§ 260.4c-3 of this chapter) and Rules 7a-15 through 7a-37(§§ 260.7a-15 through 7a-37 of this chapter) shall be applicable to applications on Form T-5.

57. By adding § 260.4d-4 to read as follows:

§ 260.4d-4 Notice of application under Rule 4d-1.

(a) If an applicant under Rule 4d-1 (§ 260.4d-1 of this chapter) files an application relating to securities issued or issuable under an indenture under which any other securities are outstanding, the applicant shall at the time of such filing cause to be published in a daily newspaper of general circulation notice of such application. A copy of such notice also shall be filed with the Commission as part of the application. The notice shall advise holders of the filing of the application and the date of such filing, and shall further advise that any interested person may, by written request filed with the Commission within 20 days of the application date set forth on such notice, request that a hearing be held on such matter. Such request shall also indicate the nature of such person's interest and the reason for such request. A subsequent notice shall be published if any hearing on the application is to be held by the Commission. Such subsequent notice shall set forth the time, place and nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held, and the asserted matters of fact and law.

(b) The requirement of notice under paragraph (a) of this section shall not apply to an application relating to an indenture under which the outstanding securities are issued in a series distinct from the series to which the application relates. For the purpose of this rule, "series" shall mean a series, class or group of securities issuable under an indenture pursuant to whose terms holders of one such series may vote to direct the indenture trustee, or otherwise take action pursuant to a vote of such holders, separately from holders of another series.

58. By adding § 260.4d-5 to read as follows:

§ 260.4d-5 Waiver of hearing; Designation of record.

(a) An applicant under § 260.4d-1 may waive a hearing and request the Commission to decide the application without a formal hearing on the basis of the application and such other information and documents as the Commission shall designate as part of the record. The Commission may order a hearing notwithstanding that the applicant shall have filed such a waiver and request whenever, in the judgment of the Commission, such a hearing is necessary or appropriate in the public interest.

(b) At the request of the Commission, the applicant shall furnish such additional information or documents as the Commission may deem necessary to decide the application. The Commission may make a part of the record any pertinent information or documents filed with the Commission by the applicant or by any other person. The Commission shall, in its order deciding the application, designate and describe the information and documents comprising the record on which the decision is based.

59. By adding § 260.4d-6 to read as follows:

§ 260.4d-6 Consent of trustee to service of process.

At the time of filing an application pursuant to § 260.4d-1, the applicant shall furnish to the Commission in a form prescribed by or acceptable to it, a written irrevocable consent of the trustee and power of attorney that designates an agent upon whom may be served any process, pleadings, or other papers in any civil suit or action brought against the trustee or to which the trustee has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States, where the cause of action arises out of any offering made or purported to be made in connection with the securities that are the subject of the application pursuant to § 260.4d-1, or any purchase or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action may be commenced by the service of process upon said agent for service for process, and that the service as aforesaid shall be taken and held in all courts to be as valid and binding as if due personal service thereof had been made.

Part 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

60. The authority citation for part 269 continues to read as follows:

Authority: Secs. 304(c), 305, 307, 308, 309, 310, 319, 53 Stat. 1153, 1154, 1156, 1157, 1173; 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss.

61. By redesignating existing §§ 269.5, 269.6 and 269.7 as 269.6, 269.7 and 269.8; and adding a new § 269.5 to read as follows:

Note: See appendix of this release for text of proposed Forms. The Forms do not appear in the Code of Federal Regulations.

§ 269.5 Form T-5, for application for exemption pursuant to Rule 4d-1 under the Act.

This Form shall be used for applications for exemptions filed pursuant to Rule 4d-1 under the Trust Indenture Act of 1939, except those filed pursuant to subparagraph (b) of Rule 4d-2 under the Trust Indenture Act of 1939.

Dated: October 22, 1990.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A—Proposed Forms Under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939

Form F-7
Form F-8
Form F-9
Form F-10
Form 40-F
Form F-X
Form T-5

Note: These Forms are not contained in the Code of Federal Regulations.

U.S. Securities and Exchange Commission, Washington, DC 20549

OMB Approval

OMB Number: 3235-0383
Expires: Approval Pending Estimated average burden hours per response—2.0

Form F-7

Registration Statement Under the Securities Act of 1933

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English (if applicable))

(Province or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number (if applicable))

(I.R.S. Employer Identification Number (if applicable))

(Address and telephone number of Registrant's principal executive offices)

(Name, address (including zip code) and telephone number (including area code) of agent for service)

Approximate date of commencement of proposed sale of the securities to the public ——

(Principal jurisdiction regulating this offering (if applicable))

This registration statement and any post-effective amendment thereto shall become effective in accordance with Rule 467.

Check if appropriate:

[ ] This filing constitutes an application for exemption under Section 304(d) of the Trust Indenture Act of 1939 from Section 310 of that Act

[ ] There are existing securityholders under the indenture to which such application relates

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to the home jurisdiction's shelf procedures, check the following box. [ ]

Calculation of Registration Fee*

Title of each class of securities to be registered
Amount to be registered
Proposed maximum offering price per unit
Proposed maximum aggregate offering price
Amount of registration fee

* See General Instruction II.E. for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this registration statement.

The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registration statement shall become effective as provided in Rule 467 under the Securities Act of 1933 or on such date as the Commission, acting pursuant to Section 8(a) of the Act, may determine.

General Instructions

I. Eligibility Requirements for Use of Form F-7

A. Form F-7 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of the Registrant's securities offered for cash upon the exercise of rights granted to its existing securityholders.

B. Form F-7 is available to any Registrant that:

(1) is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) is a foreign private issuer or a crown corporation; and

(3) has had a class of its securities listed on The Montreal Exchange or The Toronto Stock Exchange for the 36 calendar months immediately preceding the filing of a registration statement on this Form, and currently is in compliance with the obligations arising from such listing.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

C. If the Registrant is a successor registrant subsisting after a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), the Registrant shall be deemed to meet the requirements of I.B.(3) above if: (1) the time the successor registrant has been listed on one of such exchanges, when added separately to the time each predecessor had been so listed at the time of the business combination, in each case equals at least 36 calendar months, *provided however,* that the listing history of the successor registrant and any predecessor whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years immediately prior to the business

combination, need not be combined for purposes of satisfying such 36-month listing requirement; and (2) the successor registrant has had a class of its securities listed on at least one of such exchanges since the business combination and is currently in compliance with the obligations arising from such listing.

D. The rights shall be exercisable immediately upon issuance and the exercise period for the rights granted to any securityholder in connection with the transaction shall be 90 days or fewer. The rights granted in connection with the transaction to securityholders that are resident in the United States shall be granted upon the same terms and conditions as those granted to such holders resident in the Registrant's jurisdiction of incorporation or organization, *provided*, that the securities offered upon exercise of such rights may not be registered on this Form if such rights are transferable to U.S. residents. Notwithstanding the foregoing, such rights may be resold outside the United States in accordance with Rule 904 of Regulation S under the Securities Act.

Instruction: For purposes of this Form, the term "U.S. resident" shall mean any person whose address appears on the records as being located in the United States.

E. This Form shall not be used if the number of the outstanding securities of the class to be issued upon exercise of the rights or, in the case of debt, the principal amount of the outstanding long-term debt of the issuer (or a class into which such securities are convertible) would increase by more than 25 percent if all rights issued as a part of the offering and within the 12 months prior to the offering were exercised (and, if applicable, all of such securities were converted).

F. This Form shall not be used if the Registrant is registered or required to register under the Investment Company Act of 1940.

G. Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

II. Application of General Rules and Regulations

A. The Rules comprising Regulation C under the Securities Act shall not apply to filings on this Form unless specifically referred to in this Form. Instead, the rules and regulations applicable in the home jurisdiction regarding form and method of preparation of disclosure documents shall apply to filings on this Form. A registration statement or amendment thereto on this Form shall be deemed to be filed on the proper form unless objection to the Form is made by the Commission prior to the effective date. Securities Act rules and regulations other than Regulation C apply to filings on this Form unless specifically excluded in this Form.

B. Rule 408 under the Securities Act, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

C. Three copies of the complete registration statement and any post-effective amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or post-effective amendment thereto, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any amendments thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

D. At least one copy of every registration statement and any post-effective amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

E. In accordance with Rule 111 under the Securities Act, at the time of filing this registration statement, the Registrant shall pay to the Commission in U.S. dollars a fee of one-fortieth of one per centum of the maximum aggregate price at which the securities registered on this Form are proposed to be offered in the United States, but in no case less than $100. The amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering.

The registration fee is to be calculated at the price at which the rights may be exercised if known at the time of filing the registration statement, or, if not known, at the market value of outstanding securities of the same class included in the registration statement. If the fee is to be calculated upon the basis of the price at which the rights may be exercised and they are exercisable over a period of time at progressively higher prices, the fee shall be calculated on the basis of the highest price at which they may be exercised.

Instruction

The market value of the Registrant's outstanding securities shall be the average of the bid and asked price of such securities, in the principal market for such securities as of a date within 60 days prior to the date of filing.

F. Subject to the requirements of Item 1 of Part I, if any part of the registration statement or an amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or amendment, is in a language other than English, it shall be accompanied by a summary, version or translation in the English language.

G. One manually signed original of the registration statement or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of such document through the last page of such document, including any exhibits or attachments thereto. Further, the total number of pages contained in such numbered original shall be set forth on the first page of the document.

H. Any change to the name or address of a Registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the relevant registration statement.

I. Where the offering registered on this Form is being made pursuant to the home jurisdiction's shelf procedures or procedures for pricing offerings after the final receipt has been issued, three copies of each supplement to, or supplemented version of, the home jurisdiction disclosure document(s) prepared under such procedures shall be filed with the Commission within one business day after such supplement or supplemented version is filed with any Canadian jurisdiction. Such filings shall be deemed not to constitute amendments to this registration statement. Each such filing shall contain in the upper right corner of the cover page the following legend, which may be set forth in longhand if legible: "Filed pursuant to General Instruction II.I. of Form F-7; File No. 33-[insert number of the registration statement]."

Note: Offerings registered on this Form, whether or not made contemporaneously in Canada, may be made pursuant to National Policy Statement No. 44 shelf procedures and procedures for pricing offerings after the final receipt has been issued. Rules 415 and 430A under the Securities Act are not available for offerings registered on this Form.

III. Compliance with Exchange Act, Trust Indenture Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 15d-6 under the Securities Exchange Act of 1934 (the "Exchange Act"), reporting obligations under Section 15(d) of the Exchange Act arising solely from an offering of securities registered on this Form may be met by filing with the Commission, under cover of Form 40-F, certain home jurisdiction documents. The Registrant's attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of Sections 12(b) and 12(g) of the Exchange Act and Rules 10b-6, 10b-7 and 10b-8 under the Exchange Act.

B. Pursuant to Rule 4d-2(b) under the Trust Indenture Act of 1939 (the "Trust Indenture Act"), a Registrant registering debt securities on this Form may apply for exemption from the U.S. trustee provisions of Section 310(a) of that Act by so indicating on the facing page of this Form and including the information specified by Item (6) of Part II hereof. Pursuant to Rule 4d-5 under the Trust Indenture Act, the application will be deemed to be granted unless, within seven days after such filing, the Commission orders a hearing thereon. The Registrant's attention is directed to other provisions of the Trust Indenture Act that may be applicable.

C. The Commission's rules on auditor independence, as codified in Section 600 of the Codification of Financial Reporting Policies, apply to auditor reports on all financial statements that are included in this registration statement, except that such rules do not apply with respect to periods prior to the most recent fiscal year for which financial statements are included in the registration statement under the Securities Act filed by the issuer on Form F-7, Form F-8, Form F-9 or Form F-10 or under the Exchange Act filed by the issuer on Form 40-F. Notwithstanding the exception in the previous sentence, such rules do apply with respect to any periods prior to the most recent fiscal year if the issuer previously was required to file with the Commission a report or registration statement containing an audit report on financial statements for such prior periods as to which the Commission's rules on auditor independence applied.

D. Independent accountants reporting on financial statements included in the registration statement should consider Canadian auditing guidelines pertaining to the Canada-U.S. reporting conflict with respect to contingencies and going concern considerations. If additional comments for U.S. readers are appropriate under those guidelines but are not included in the prospectus itself, those comments should be included with the legends required by Item 2 of Part I hereof. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

Part I—Information Required To Be Sent to Shareholders

Item 1. Home Jurisdiction Document

The prospectus shall consist of the entire disclosure document or documents required to be delivered to holders of the securities with respect to which rights are distributed pursuant to the laws of the jurisdiction in which the Registrant is incorporated or organized including, where applicable, the rules of any stock exchange in such jurisdiction upon which the Registrant has any class of securities listed or has applied for such listing. Except as noted hereinafter, such disclosure document(s) shall be prepared in accordance with the disclosure requirements of such jurisdiction as interpreted and applied by the securities commission or other regulatory authority in such jurisdiction.

The prospectus used in the United States shall contain additional information and legends required by this Form. It need not include any documents incorporated by reference into home jurisdiction disclosure documents and not required to be delivered to securityholders pursuant to the laws of such jurisdiction. If any part of the document(s) to be delivered to securityholders is in a language other than English, it shall be accompanied by a translation in the English language.

Notwithstanding the foregoing, the prospectus used in the United States need not contain any disclosure applicable solely to Canadian offerees or purchasers that would not be material to offerees or purchasers in the United States, including, without limitation, (i) any Canadian "red herring" legend; (ii) any discussion of Canadian tax considerations other than those material to U.S. offerees or purchasers; (iii) the names of any Canadian underwriters not acting as underwriters in the United States or a description of the Canadian plan of distribution (except to the extent necessary to describe the material facts of the U.S. plan of distribution); (iv) any description of offerees' or purchasers' statutory rights under applicable Canadian, provincial or territorial securities legislation (except to the extent such rights are available to U.S. offerees or purchasers); or (v) certificates of the issuer or any underwriter.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus (or on a sticker thereto) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This offering is made by a foreign issuer, that is permitted, under a multijurisdictional disclosure system adopted by the United States, to prepare this prospectus in accordance with the disclosure requirements of its home country. Prospective investors should be aware that such requirements are different from those of the United States. Financial statements included or incorporated herein, if any, have not been prepared in accordance with United States generally accepted accounting principles and thus may not be comparable to financial statements of United States companies."

"Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the home country of the Registrant. Such consequences for investors who are resident in, or citizens of, the United States may not be described fully herein."

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the Registrant is incorporated or organized under the laws of a foreign country, that some or all of its officers and directors may be residents of a foreign country, that some or all of the underwriters or experts named in the registration statement may be residents of a foreign country, and that all or a substantial portion of the assets of the Registrant and said persons may be located outside the United States."

"These securities have not been approved or disapproved by the securities and exchange commission nor has the commission passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense."

Any prospectus to be used before the effective date of the registration statement shall contain, on the outside front cover page (or on a sticker thereto) the following statement printed in red ink in type as large as that generally used in the body of the prospectus:

"Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State."

The Registrant should also include in the prospectus any legend or information required by the laws of any jurisdiction in which the securities are to be offered.

Item 3. List of Documents Filed with the Commission

There shall be set forth in or attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

Part II—Information Not Required to be Sent to Shareholders

Provide a brief description of the indemnification provisions relating to directors, officers and controlling persons of the Registrant against liability arising under the Securities Act (including any provision of the underwriting agreement which relates to indemnification of the underwriter or its controlling persons by the Registrant against such liabilities where a director, officer or controlling person of the Registrant is such an underwriter or controlling person thereof or a member of any firm which is such an underwriter), together with a statement in substantially the following form:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, the Registrant has been informed that in the opinion of the U.S. Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) Any reports or information that, in accordance with the requirements of the jurisdiction of the Registrant, must be made publicly available in connection with the transaction.

(2) Copies of any documents incorporated by reference into, or filed with any other regulatory authority concurrently with, the prospectus.

(3) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any

part of the offering document, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the written consent of such person.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person, unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437.

Any other consent required by Rule 436 or 438. Every amendment relating to a certified financial statement shall include the consent of the certifying accountant to the use of his certificate in connection with the amended financial statements in the registration statement or prospectus and to being named as having certified such financial statements.

Note: The consents required by this item shall specifically indicate consent regarding use of the report or valuation in the registration statement filed in the United States.

(4) If any name is signed to the registration statement or amendment pursuant to a power of attorney, manually signed copies of such power of attorney and, if the name of any officer signing on behalf of the Registrant is signed pursuant to a power of attorney, certified copies of a resolution of the Registrant's board of directors or similar governing body authorizing such signature.

(5) A copy of any indenture relating to the registered securities and, if such indenture is to be qualified under the Trust Indenture Act, a cross-reference sheet to the location in the indenture of information included pursuant to Sections 310–318(a) of the Trust Indenture Act and a table of contents and, if any such indenture is to be qualified under the Trust Indenture Act, the statement of eligibility of the trustee on Form T–1 and, if applicable, for individual trustee(s) on Form T–2.

(6) If debt securities are to be registered and an exemption from the U.S. trustee provisions of Section 310(a) of the Trust Indenture Act is sought pursuant to General Instruction III.B. or has been sought with respect to the securities to be registered, the information specified in Items 3, 5, 6, 7, and 8, (if applicable) of Form T–5, or any Form T–5 filed with the Commission not more than one year prior to the date of this filing, provided that such Form T–5 may be incorporated by reference.

Part III—Undertaking and Consent to Service of Process

1. Undertaking

Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to the securities registered pursuant to Form F–7 or to transactions in said securities.

2. Consent to Service of Process

(a) At the time of filing Form F–7, the Registrant shall furnish to the Commission on Form F–X a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in connection with:

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) any civil suit or action brought against the Registrant or to which the Registrant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico,

where the investigation, proceeding or cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered on Form F–7 or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

(b) At the time of filing Form F–7, any trustee for which an exemption pursuant to Rule 4d–1 under the Trust Indenture Act is being applied by virtue of filing this Form shall furnish to the Commission on Form F–X a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in connection with:

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) any civil suit or action brought against the trustee or to which the trustee has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States, or of the District of Columbia or Puerto Rico,

where the investigation, proceeding or cause of action arises out of or relates to or concerns the securities in connection with which the trustee acts as trustee pursuant to an exemption under Rule 4d–1 under the Trust Indenture Act and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Signatures

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F–7 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State (Province or Territory) of _____, on _____, 19____.

Registrant _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Name and Title) _____

(Date) _____

Instructions

A. The registration statement shall be signed by the Registrant, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where the Registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors or any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which the registration statement is signed.

C. By signing this form, the Registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F–7 or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant's designated agent.

U.S. Securities and Exchange Commission, Washington, DC 20549

Form F–8

OMB Approval

OMB Number: 3235–0378

Expires: Approval Pending Estimated average burden hours per response—2.0

Registration Statement Under the Securities Act of 1933

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English (if applicable))

(Province or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number (if applicable))

(I.R.S. Employer Identification Number (if applicable))

(Address and telephone number of Registrant's principal executive offices)

(Name, address (including zip code) and telephone number (including area code) of agent for service)

Approximate date of commencement of proposed sale of the securities to the public ——

This registration statement and any post-effective amendment thereto shall become effective in accordance with Rule 467.

Check if appropriate:

[ ] This filing constitutes an application for exemption under Section 304(d) of the Trust Indenture Act of 1939 from Section 310 of that Act

[ ] There are existing securityholders under the indenture to which such application relates

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to the home jurisdiction's shelf procedures, check the following box. [ ]

Calculation of Registration Fee *

Title of each class of securities to be registered

Amount to be registered

Proposed maximum offering price per unit

Proposed maximum aggregate offering price

Amount of registration fee

* See General Instruction IV.E. for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this registration statement.

The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registration statement shall become effective as provided in Rule 467 under the Securities Act of 1933 or on such date as the Commission, acting pursuant to Section 8(a) of the Act, may determine.

General Instructions

I. General Eligibility Requirements for Use of Form F–8

A. Form F–8 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"). Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer or business combination, or are offered in conjunction with cash.

B. This Form shall not be used if the Registrant is registered or required to register under the Investment Company Act of 1940.

C. Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33–[insert file numbers of previous registration statements]."

II. Eligibility Requirements for Exchange Offers

A. In the case of an exchange offer, Form F–8 is available to any Registrant that:

(1) is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) is a foreign private issuer or a crown corporation;

(3) has had a class of its securities listed on The Montreal Exchange or The Toronto Stock Exchange for the 36 calendar months immediately preceding the filing of the registration statement on this Form, and currently is in compliance with the obligations arising from such listing; and

(4) has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

3. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

4. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

5. For purposes of this Form, "affiliate" shall mean any person who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the Registrant. The determination of affiliates shall be made as of the end of the Registrant's most recent completed fiscal year.

6. For the purposes of this Form, the market value of the public float of the Registrant's outstanding equity shares shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing.

B. In the case of an exchange offer, the securities to be registered on Form F–8 shall be offered to U.S. residents upon the same terms and conditions as they are offered to residents of Canada.

C. In the case of an exchange offer, if the Registrant is a successor registrant subsisting after a business combination, it shall be deemed to meet the requirements of II.A.(3) above if: (1) the time the successor registrant has had a class of its securities listed on The Montreal Exchange or The Toronto Stock Exchange, when added separately to the time each predecessor had been so listed at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that the listing history of the successor registrant and any predecessor whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years immediately prior to the business combination, need not be combined for purposes of satisfying such 36–month listing requirement; and (2) the successor registrant has had a class of its securities listed on at least one of such exchanges since the business combination, and is currently in compliance with the obligations arising from such listing.

D. In the case of an exchange offer, the issuer of the securities to be exchanged (the "subject securities") for securities of the Registrant shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer or a crown corporation, and less than 20 percent of the class of subject securities shall be held of record by U.S. residents other than U.S. affiliates of the issuer.

Instructions

1. For purposes of this Form, the term "U.S. resident" shall mean any persons whose address appears on the records as being located in the United States. With respect to any unsolicited tender offer, including any exchange offer, otherwise eligible to proceed in accordance with Rule 14d–1(b) under the Securities Exchange Act of 1934 (the "Exchange Act"), U.S. residents unaffiliated with the issuer will be presumed to hold of record less than 20 percent of the subject class of securities, *unless* (a) the aggregate trading volume of that class on any securities exchange and in any inter-dealer quotation system in the United States exceeded it aggregate trading volume on any securities exchange and in any inter-dealer quotation system in Canada over the 12-month period prior to commencement of this offer; (b) disclosure has been made in documents that were filed publicly by the issuer with Canadian federal, provincial or territorial

securities regulators, or with the Commission or any state securities authority in the United States, within 18 months of the date of commencement of this offer, disclose that U.S. residents unaffiliated with the issuer held of record more that 20 percent of the subject class of securities; or (c) the offeror has actual knowledge that the level of unaffiliated U.S. record ownership of the subject class of securities exceeds 20 percent.

2. If this Form is filed during the pendency of one or more ongoing third-party or issuer cash tender or exchange offers for securities of the class subject to the offer that was commenced on Schedule 13E–4F, Schedule 14D–1F, and/or Form F–8, the date for calculation of U.S. record ownership for purposes of this Form shall be the same as that date used by the initial bidder or issuer.

3. For purposes of this Form, "held of record" shall be construed in accordance with Rule 12g5–1 under the Exchange Act.

4. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

5. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.

III. Eligibility Requirements for Business Combinations

A. In the case of a business combination, Form F–8 is available if:

(1) each company participating in the business combination, including the Registrant, is incorporated or organized under the laws of Canada or any Canadian province or territory and is a foreign private issuer or a crown corporation;

(2) each company participating in the business combination has had a class of its securities listed on The Montreal Exchange or The Toronto Stock Exchange for the 36 calendar months immediately preceding the filing of this Form and is currently in compliance with the obligations arising from such listing, *provided, however,* that neither the Registrant nor any participating company whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, shall be required to meet such listing requirement; and

(3) the aggregate market value of the public float of the outstanding equity shares of each company participating in the business combination is (CN) $75 million or more; *provided, however,* that neither the Registrant nor any participating company whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, shall be required to meet such public float requirement; and, *provided further,* that such market value requirement shall be deemed satisfied in the case of a participant whose equity shares were the subject of an exchange offer registered on Form F–9, Form F–9 or Form F–10 that terminated within the last 6 months, if the participant would have satisfied such market value requirement immediately prior to commencement of such exchange offer.

B. In the case of a business combination, less than 20 percent of the class of securities to be offered by the successor Registrant shall be held of record by U.S. residents other than U.S. affiliates of the Registrant, as if measured immediately after completion of the business combination.

Instruction: For purposes of business combinations, the calculation of U.S. record holders shall be made by a participant as of the end of such participant's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such participant's preceding quarter.

C. In the case of a business combination, the securities to be registered on this Form shall be offered to U.S. residents upon the same terms and conditions as they are offered to residents of Canada.

IV. Application of General Rules and Regulations

A. The rules comprising Regulation C under the Securities Act shall not apply to filings on this Form unless specifically referred to in the Form. Instead, the rules and regulations applicable in the home jurisdiction regarding the form and method of preparation of disclosure documents shall apply to filings on this Form. A registration statement or amendment thereto on this Form shall be deemed to be filed on the proper form unless objection to the Form is made by the Commission prior to the effective date. Securities Act rules and regulations other than Regulation C shall apply to filings on this Form unless specifically excluded in this Form.

B. Rule 408 under the Securities Act, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

C. Three copies of the complete registration statement and any post-effective amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or post-effective amendment, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any amendments thereto, similarly bound, shall also be filed. No exhibits are required to accompany such additional copies.

D. At least one copy of every registration statement and any post-effective amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

E. In accordance with Rule 111 under the Securities Act, at the time of filing this registration statement, the Registrant shall pay to the Commission in U.S. dollars a fee of one-fortieth of one per centum of the maximum aggregate price at which the securities registered on this Form are proposed to be offered in the United States, but in no case shall such fee be less than $100. The amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering.

F. In the case of an exchange offer, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the securities that may be received by the Registrant or cancelled in the exchange offer from United States residents as established by the price of securities of the same class, as determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities to be received by the Registrant or cancelled in the exchange offer, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the Registrant from United States residents in connection with the exchange offer, the amount thereof shall be added to the value of the securities to be received by the Registrant or canceled as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the exchange offer, the amount thereof shall be deducted from the value of the securities to be received by the Registrant in exchange as computed in accordance with paragraph (1) or (2) of this section.

(4) The market value of the Registrant's outstanding common stock shall be the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

G. In the case of a business combination, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the equity securities of the predecessor companies held by United States residents being offered the Registrant's securities, as established by the price of the predecessors' securities of the same class determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities of the predecessor companies, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the Registrant from United States residents in connection with the business combination, the amount thereof shall be added to the value of the securities as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the business combination, the amount thereof shall be deducted from the value of the securities as computed in accordance with paragraph (1) or (2) of this section.

(4) The market value of a predecessor's outstanding equity securities shall be the average of the bid and asked prices of such securities, in the principal market for such securities as of a date within 60 days prior to the date of filing.

H. Subject to the requirements of Item 1 of Part I, if any part of the registration statement or an amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or amendment, is in a language other than English, it shall be accompanied by a summary, version or translation in the English language.

I. One manually signed original of the registration statement or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of such document through the last page of such document, including any exhibits or attachments thereto. Further, the total number of pages contained in such numbered original shall be set forth on the first page of the document.

J. Any change to the name or address of a Registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the relevant registration statement.

K. Where the offering registered on this Form is being made pursuant to the home jurisdiction's shelf procedures or procedures for pricing offerings after the final receipt has been issued, three copies of each supplement to, or supplemented version of, the home jurisdiction disclosure document(s) prepared under such procedures shall be filed with the Commission within one business day after such supplement or supplemented version is filed with any Canadian jurisdiction. Such filings shall be deemed not to constitute amendments to this registration statement. Each such filing shall contain in the upper right corner of the cover page the following legend, which may be set forth in longhand if legible: "Filed pursuant to General Instruction IV.K. of Form F–8; File No. 33–[insert number of the registration statement]."

Note: Offerings registered on this Form, whether or not made contemporaneously in Canada, may be made pursuant to National Policy Statement No. 44 shelf procedures and procedures for pricing offerings after the final receipt has been issued. Rules 415 and 430A under the Securities Act are not available for offerings registered on this Form.

V. Compliance with Exchange Act, Trust Indenture Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 13e–4(h) under the Exchange Act, the provisions of Rule 13e–4 are not applicable, and pursuant to Rule 14d–1(b) under the Exchange Act, the provisions of Sections 14(d)(1) through 14(d)(7) of the Exchange Act, Regulation 14D under the Exchange Act and Schedule 14d–1 thereunder, and Rule 14e–1 under Regulation 14E, are not applicable to a transaction involving offerings of securities that may be registered on this Form in connection with exchange offers, *provided that,* if no substantive requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offering apply, or if a transactional exemption from such requirements is applicable, the Registrant shall comply with such provisions of the Exchange Act. Such transaction is not exempt from the antifraud provisions of Sections 10(b), 13(e) or 14(e) of the Exchange Act or Rules 10b–5, 13e–4(b)(1) or 14e–3 thereunder, if the transaction otherwise is subject to those sections.

B. Pursuant to Rule 15d–4 under the Exchange Act, reporting obligations under Section 15(d) of the Exchange Act arising solely from an offering of securities registered on this Form may be met by filing with the Commission, under cover of Form 40–F, certain home jurisdiction documents. Registrants' attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of Sections 12(b) and 12(g) of the Exchange Act and Rules 10b–6, 10b–7 and 10b–13 under the Exchange Act. [See Note following Part III.1. for an explanation of the no-action positions taken under Rules 10b–6 and 10b–13.]

C. Pursuant to Rule 4d–2(b) under the Trust Indenture Act of 1939 (the "Trust Indenture Act"), a Registrant registering debt securities on this Form may apply for exemption from the U.S. trustee provisions of Section 310(a) of that Act by so indicating on the facing page of this Form and including the information specified by Item (7) of Part II hereof. Pursuant to Rule 4d–5 under the Trust Indenture Act, the application will be deemed to be granted unless, within seven days after such filing, the Commission orders a hearing thereon. The Registrant's attention is directed to other provisions of the Trust Indenture Act that may be applicable.

D. The Commission's rules on auditor independence, as codified in Section 600 of the Codification of Financial Reporting Policies, apply to auditor reports on all financial statements that are included in this registration statement, except that such rules do not apply with respect to periods prior to the most recent fiscal year for which financial statements are included in the registration statement under the Securities Act filed by the issuer on Form F–7, Form F–8, Form F–9 or Form F–10 or under the Exchange Act filed by the issuer on Form 40–F. Notwithstanding the exception in the previous sentence, such rules do apply with respect to any periods prior to the most recent fiscal year if the issuer previously was required to file with the Commission a report or registration statement containing an audit report on financial statements for such prior periods as to which the Commission's rules on auditor independence applied.

E. Independent accountants reporting on financial statements included in the registration statement should consider Canadian auditing guidelines pertaining to the Canada-U.S. reporting conflict with respect to contingencies and going concern considerations. If additional comments for U.S. readers are appropriate under those guidelines but are not included in the prospectus itself, those comments should be included with the legends required by Item 2 of Part I hereof. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

Part I—Information Required to be Delivered to Offerees or Purchasers

Item 1. Home Jurisdiction Document

In the case of an exchange offer, the prospectus shall consist of the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction by the Registrant pursuant to the laws of the jurisdiction in which the Registrant is incorporated or organized including, where applicable, the rules of any stock exchange in such jurisdiction upon which the Registrant has any class of securities listed, or has applied for such listing. Except as noted hereinafter, such disclosure document(s) shall be prepared in accordance with the disclosure requirements of such jurisdiction as interpreted and applied by the securities commission or other regulatory authority in such jurisdiction.

In the case of a business combination, the prospectus shall consist of the entire disclosure document or documents required to be delivered to holders of securities whose votes are being solicited in connection with the proposed business combination pursuant to the laws of the jurisdiction(s) governing such solicitation including, where applicable, the rules of any stock exchange in such jurisdictions upon which the securities of the participating companies are listed, or application for listing has been made. Except as noted hereinafter, such disclosure documents(s) shall be prepared in accordance with the disclosure requirements of the jurisdiction(s) governing such solicitation as interpreted and applied by the securities commission or other regulatory authority in such jurisdiction(s).

The prospectus used in the United States shall contain additional information and legends required by this Form. It need not include any documents incorporated by reference into the home jurisdiction disclosure document(s) and not required to be delivered to offerees or purchasers (in the case an exchange offer) or securityholders being solicited (in the case of a business combination) pursuant to the laws of such jurisdiction(s). If any part of the document(s) to be delivered is in a language other than English, it shall be accompanied by a translation in the English language.

Notwithstanding the foregoing, the prospectus used in the United States need not contain any disclosure applicable solely to Canadian offerees or purchasers that would not be material to offerees or purchasers in the United States, including, without limitation (i) any Canadian "red herring" legend; (ii) any discussion of Canadian tax considerations other than those material to U.S. offerees or purchasers; (iii) the names of any Canadian underwriters not acting as underwriters in the United States or a description of the Canadian plan of distribution (except to the extent necessary to describe the material facts of the U.S. plan of distribution); (iv) any description of offerees' or purchasers' statutory rights under applicable Canadian, provincial or territorial securities legislation (except to the extent such rights are available to U.S. offerees or purchasers); or (v) certificates of the issuer or any underwriter.

Item 2. Informational Legends

The following legend, to the extent applicable, shall appear on the outside front cover page of the prospectus (or on a sticker thereto) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This offering is made by a foreign issuer that is permitted, under a multijurisdictional disclosure system adopted by the United States, to prepare this prospectus in accordance with the disclosure requirements of its home country. Prospective investors should be aware that such requirements are different from those of the United States. The financial statements included or incorporated herein, if any, have not been prepared in accordance with United States generally accepted accounting principles and, thus, may not be comparable to financial statements of United States companies."

"Prospective investors should be aware that acquisition of the securities described herein may have tax consequences both in the United States and in the home country of the Registrant. Such consequences for investors who are resident in, or citizens of, the United States may not be described fully herein."

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the Registrant is incorporated or organized under the laws of a foreign country, that some or all of its officers and directors may be residents of a foreign country, that some or all of the underwriters or experts named in the registration statement may be residents of a foreign country, and that all or a substantial portion of the assets of the Registrant and said persons may be located outside the United States."

"These securities have not been approved or disapproved by the Securities and Exchange Commission nor has the Commission passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense."

The following legend shall appear in the manner noted above in any prospectus relating to an exchange offer.

"Prospective investors should be aware that, during the period of the exchange offer, the Registrant or its affiliates, directly or indirectly, may bid for or make purchases of the securities to be distributed, certain related securities of the Registrant, the securities to be exchanged or certain related securities of the issuer, as permitted by applicable Canadian laws or provincial laws or regulations."

Any prospectus to be used before the effective date of the registration statement shall contain, on the outside front cover page (or on a sticker thereto) the following statement printed in red ink in type as large as that generally used in the body of the prospectus:

"Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State."

The Registrant should also include in the prospectus any legend or information required by the laws of any jurisdiction in which the securities are to be offered.

Item 3. List of Documents Filed with the Commission

There shall be set forth in or attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

Part II—Information Not Required to be Delivered to Offerees or Purchasers

Provide a brief description of the indemnification provisions relating to directors, officers and controlling persons of the Registrant against liability arising under the Securities Act (including any provision of the underwriting agreement which relates to indemnification of the underwriter or its controlling persons by the Registrant against such liabilities where a director, officer or controlling person of the Registrant is such an underwriter or controlling person thereof or a member of any firm which is such an underwriter), together with a statement in substantially the following form:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, the Registrant has been informed that in the opinion of the U.S. Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) Any reports or information that, in accordance with the requirements of the home jurisdiction of the subject issuer or, in the case of an business combination, in accordance with the requirements of the home jurisdiction(s) of companies involved in the transaction other than the Registrant, must be made publicly available by the Registrant in connection with the transaction.

(2) A copy of any agreement relating to the proposed acquisition or business combination, as applicable.

(3) Copies of any documents incorporated by reference into, or filed with any other regulatory authority concurrently with, the prospectus.

(4) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the written consent of such person.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person, unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437.

Any other consent required by Rule 436 or 438. Every amendment relating to a certified financial statement shall include the consent of the certifying accountant to the use of his certificate in connection with the amended financial statements in the registration statement and to being named as having certified such financial statements.

Note: The consents required by this item shall specifically indicate consent regarding use of the report or valuation in the registration statement filed in the United States.

(5) If any name is signed to the registration statement pursuant to power of attorney, manually signed copies of such power of attorney and, if the name of any officer signing on behalf of the Registrant is signed pursuant to a power of attorney, certified copies of a resolution of the Registrant's board of directors or similar governing body authorizing such signature.

(6) A copy of any indenture relating to the registered securities and, if such indenture is to be qualified under the Trust Indenture Act, a cross-reference sheet to the location in the indenture of Sections 310–318(a) of the Trust Indenture Act and a table of contents and, if any such indenture is to be qualified under the Trust Indenture Act, the statement of eligibility of the trustee on Form T–1 and, if applicable, for individual trustee(s) on Form T–2.

(7) If debt securities are to be registered and an exemption from the U.S. trustee provisions of Section 310(a) of the Trust Indenture Act is sought pursuant to General Instruction III.C. or has been sought with respect to the securities to be registered, the information specified in Items 4, 5, 6, 7, and 8 (if applicable) of Form T–5, or any Form T–5 filed with the Commission not more than one year prior to the date of this filing, provided

that such Form T–5 may be incorporated by reference.

Part III—Undertakings and Consent to Service of Process

1. Undertakings

a. Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to the securities registered pursuant to Form F–8 or to transactions in said securities.

b. In the case of an exchange offer, Registrant further undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to any applicable Canadian federal and/or provincial or territorial law, regulation or policy, information regarding purchases of the Registrant's securities or of the subject issuer's securities during the exchange offer.

Note: No-action positions taken under Rules 10b–6 and 10b–13:

The staff of the Division of Market Regulation has taken no-action positions under Rules 10b–6 and 10b–13 under the Exchange Act to allow the Registrant to make certain purchases of securities in Canada, as permitted by Canadian federal, provincial or territorial laws, regulations or policies, during the period of an exchange offer registered on Form F–8.

With respect to an exchange offer registered on Form F–8, the staff will not recommend that the Commission take enforcement action under Rules 10b–6 and 10b–13 for bids and purchases by the Registrant in Canada, as permitted by Canadian federal, provincial or territorial laws, regulations, or policies, of the security being distributed (or any security of the same class and series, or any right to purchase any such security), or of the security that is the subject of the offer (or any security which is immediately convertible into or exchangeable for such security), subject to the conditions that: (i) such bids or purchases are not made for the purpose of creating actual, or apparent, active trading in or raising the price of such securities; (ii) the Registrant discloses on Form F–8 the possibility of, or the intent to make, such purchases; and (iii) the Registrant submits an undertaking to disclose in the United States information regarding such purchases on the same basis as it is required to be disclosed in Canada pursuant to Canadian federal, provincial or territorial laws, regulations or policies, or otherwise is disclosed.

2. Consent to Service of Process

(a) At the time of filing Form F–8, the Registrant shall furnish to the Commission on Form F–X a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in connection with:

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) any civil suit or action brought against the Registrant or to which the Registrant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico—

where the investigation, proceeding or cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered on Form F–8 or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

(b) At the time of filing Form F–8, any trustee for which an exemption pursuant to Rule 4d–1 under the Trust Indenture Act is being applied by virtue of filing this Form shall furnish to the Commission on Form F–X a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in connection with:

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) any civil suit or action brought against the trustee or to which the trustee has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States, or of the District of Columbia or Puerto Rico,

where the investigation, proceeding or cause of action arises out of or relates to or concerns the securities in connection with which the trustee acts as trustee pursuant to an exemption under Rule 4d–1 under the Trust Indenture Act and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Signatures

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F–8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State (Province or Territory) of _____, on _____, 19____.

Registrant _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Name and Title) _____

(Date) _____

Instructions

A. The registration statement shall be signed by the Registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where the Registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which the registration statement is signed.

C. If the securities to be offered are those of a corporation not yet in existence at the time the registration statement is filed and which will be a party to a consolidation involving two or more existing corporations, then each such existing corporation shall be deemed a Registrant and shall be so designated on the cover page of this Form, and the registration statement shall be signed by each such existing corporation and by the officers and directors of each such existing corporation as if each such existing corporation were the sole Registrant.

D. By signing this form, the Registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F–8 or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant's designated agent.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

OMB Approval

OMB Number: 3235–0377
Expires: Approval Pending
Estimated average burden hours per response—2.0

Form F–9

Registration Statement Under the Securities Act of 1933

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English (if applicable))

(Province or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number (if applicable))

(I.R.S. Employer Identification Number (if applicable))

(Address and telephone number of Registrant's principal executive offices)

(Name, address (including zip code) and telephone number (including area code) of agent for service)

Approximate date of commencement of proposed sale of the securities to the public ——

(Principal jurisdiction regulating this offering)

It is proposed that this filing will become effective (check appropriate box)

[ ] pursuant to Rule 467(a) (if in connection with an exchange offer)

[ ] pursuant to Rule 467(b) on the date on which the securities legally may be sold in the Registrant's principal jurisdiction

[ ] pursuant to Rule 467(c) on (date) at (time) (designate a time not sooner than 7 days after filing)

Check if appropriate:

[ ] This filing constitutes an application for exemption under Section 304(d) of the Trust Indenture Act of 1939 from Section 310 of that Act

[ ] There are existing securityholders under the Indenture to which such application relates

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to the home jurisdiction's shelf procedures, check the following box. [ ]

Calculation of Registration Fee *

Title of each class of securities to be registered
Amount to be registered
Proposed maximum offering price per unit
Proposed maximum aggregate offering price
Amount of registration fee

* See General Instruction II.E. for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this registration statement.

The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registration statement shall become effective as provided in Rule 467 under the Securities Act of 1933 or on such date as the Commission, acting pursuant to Section 8(a) of the Act, may determine.

General Instructions

I. Eligibility Requirements for Use of Form F–9

A. This Form F–9 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of investment grade debt or preferred securities that are: (1) offered for cash or in connection with an exchange offer; and (2) either non-convertible or not convertible for a period of at least one year from the date of issuance and thereafter only convertible into a security of another class of the issuer.

Instruction: Securities shall be "investment grade" if, at the time of effectiveness of the registration statement, at least one nationally recognized statistical rating organization (as that term is used in relation to Rule 15c3–1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (the "Exchange Act") (§ 240.15c3–1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically the four highest rating categories signify investment grade, but for purposes of this Form only the three highest rating categories (within which there may be subcategories or gradations indicating relative standing) shall signify investment grade.

B. Form F–9 is available to any Registrant that:

(1) is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) is a foreign private issuer or a crown corporation;

(3) has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of the registration statement on this Form, and is currently in compliance with such obligations;

(4) has an aggregate market value of its outstanding equity shares of (CN) $180 million or more; and

(5) has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more;

provided, however, that the requirements set forth in (4) and (5) above shall not apply if the securities being registered on this Form do not carry any conversion right.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For purposes of this Form, "affiliate" shall mean any person who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the Registrant. The determination of affiliates shall be made as of the end of the Registrant's most recent completed fiscal year.

5. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

6. For purposes of this Form, the market value of the Registrant's outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing.

C. In the case of an exchange offer, the securities to be registered on Form F–9 shall be offered to U.S. residents upon the same terms and conditions as they are offered to residents of Canada.

D. In the case of an exchange offer, the issuer of the securities to be exchanged (the "subject securities") for securities of the Registrant shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer or a crown corporation. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

E. If the Registrant is a majority-owned subsidiary offering non-convertible debt securities or non-convertible preferred shares, it shall be deemed to meet the requirements of I.B.(3) above if the parent of the Registrant-subsidiary meets I.B. above, as applicable, and fully and unconditionally guarantees the securities being registered as to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred securities).

F. If the Registrant is a successor registrant subsisting after a statutory amalgamation, merger, arrangement, or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), the Registrant shall be deemed to meet the requirements of I.B.(3) above if: (1) the time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that the reporting history of the successor registrant and any predecessor whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years immediately prior to the business combination, need not be combined for purposes of satisfying such 36-month reporting requirement; and (2) the successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

G. This Form shall not be used if the Registrant is registered or required to register under the Investment Company Act of 1940.

H. A Registrant statement on this Form, and any post-effective amendment thereto, shall become effective in accordance with Rule 467.

I. Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33–[insert file numbers of previous registration statements]."

J. If the offering to be registered on this Form is not being made contemporaneously in Canada, the registration statement on this Form and any amendments hereto shall be prepared and filed as if the offering were being made contemporaneously in Canada. The Commission has been advised that the principal jurisdiction in Canada designated by the Registrant in connection with such an offering will require the filing of such documents and may select them for review.

II. Application of General Rules and Regulations

A. The rules comprising Regulation C under the Securities Act shall not apply to filings on this Form unless specifically referred to in the Form. Instead, the rules and regulations applicable in the home jurisdiction regarding the form and method of preparation of disclosure documents shall apply to filings on this Form. A registration statement or amendment thereto on this Form shall be deemed to be filed on the proper form unless objection to the Form is made by the Commission prior to the effective date. Securities Act rules and regulations other than Regulation C shall apply to filings on this Form unless specifically excluded in this Form.

B. Rule 408 under the Securities Act, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

C. Three copies of the complete registration statement and any amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or post-effective amendment, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any amendments thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

D. At least one copy of every registration statement and any post-effective amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

E. In accordance with Rule 111 under the Securities Act, at the time of filing this registration statement, the Registrant shall pay to the Commission in U.S. dollars a fee of one fortieth of one per centum of the maximum aggregate price at which the securities registered on this Form are proposed to be offered in the United States, but in no case shall such fee be less than $100. The amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering.

F. In the case of an exchange offer, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the securities that may be received by the Registrant or cancelled in the exchange offer from United States residents as established by the price of securities of the same class, as determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities to be received by the Registrant or cancelled in the exchange offer, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the Registrant from United States residents in connection with the exchange offer, the amount thereof shall be added to the value of the securities to be received by the Registrant or cancelled as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the exchange offer, the amount thereof shall be deducted from the value of the securities to be received by the Registrant in exchange as computed in accordance with paragraph (1) or (2) of this section.

(4) The market value of the Registrant's outstanding common stock shall be the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

G. Subject to the requirements of Item 1 of Part I, if any part of the registration statement or an amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or amendment is in a language other than English, it shall be accompanied by a summary, version or translation in the English language.

H. One manually signed original of the registration statement or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of such document through the last page of such document, including any exhibits or attachments thereto. Further, the total number of pages contained in such numbered original shall be set forth on the first page of the document.

I. Any change to the name or address of a Registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the relevant registration statement.

J. Where the offering registered on this Form is being made pursuant to the home jurisdiction's shelf procedures or procedures for pricing offerings after the final receipt has been issued, three copies of each supplement to, or supplemented version of, the home jurisdiction disclosure document(s) prepared under such procedures shall be filed with the Commission within one business day after such supplement or supplemented version is filed with the principal jurisdiction. Such filings shall be deemed not to constitute amendments to this registration statement. Each such filing shall contain in the upper right corner of the cover page the following legend, which may be set forth in longhand if legible: "Filed pursuant to General Instruction II.I. of Form F–9; File No. 33–[insert number of the registration statement]."

Note: Offerings registered on this Form, whether or not made contemporaneously in Canada, may be made pursuant to National Policy Statement No. 44 shelf procedures and procedures for pricing offerings after the final receipt has been issued. Rules 415 and 430A under the Securities Act are not available for offerings registered on this Form.

III. Compliance with Exchange Act, Trust Indenture Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 13e–4(h) under the Exchange Act, the provisions of Rule 13e–4 are not applicable, and pursuant to Rule 14d–1(b) under the Exchange Act, the provisions of Sections 14(d)(1) through 14(d)(7) of the Exchange Act, Regulation 14D under the Exchange Act and Schedule 14D–1 thereunder, and Rule 14e–1 under Regulation 14E, are not applicable to a transaction involving offerings of securities that may be registered on this Form in connection with exchange offers; *provided that,* if no substantive requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offering apply, or if a transactional exemption from such requirements is applicable, the Registrant shall comply with such provisions of the Exchange Act. Such transaction is not exempt from the antifraud provisions of Sections 10(b), 13(e) or 14(e) of the Exchange Act or Rules 10b–5, 13e–4(b)(1) or 14e–3 thereunder, if the transaction otherwise is subject to those sections.

B. Pursuant to Rule 15d–4 under the Exchange Act, reporting obligations under Section 15(d) of the Exchange Act arising solely from an offering of securities registered on this Form may be met by filing with the Commission, under cover of Form 40–F,

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certain home jurisdiction documents. Registrants' attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of Sections 12(b) and 12(g) of the Exchange Act and Rules 10b–6 and 10b–7 under the Exchange Act

C. Pursuant to Rule 4d–2(b) under the Trust Indenture Act of 1939 (the "Trust Indenture Act"), a Registrant registering debt securities on this Form may apply for exemption from the U.S. trustee provisions of Section 310(a) of that Act by so indicating on the facing page of this Form and including the information specified by Item (8) of Part II hereof. Pursuant to Rule 4d–5 under the Trust Indenture Act, the application will be deemed to be granted unless, within seven days after such filing, the Commission orders a hearing thereon. The Registrant's attention is directed towards other provisions of the Trust Indenture Act that may be applicable.

D. The Commission's rules on auditor independence, as codified in Section 600 of the Codification of Financial Reporting Policies, apply to auditor reports on all financial statements that are included in this registration statement, except that such rules do not apply with respect to periods prior to the most recent fiscal year for which financial statements are included in the registration statement under the Securities Act filed by the issuer on Form F–7, Form F–8, Form F–9 or Form F–10 or under the Exchange Act filed by the issuer on Form 40–F. Notwithstanding the exception in the previous sentence, such rules do apply with respect to any periods prior to the most recent fiscal year if the issuer previously was required to file with the Commission a report or registration statement containing an audit report on financial statements for such prior periods as to which the Commission's rules on auditor independence applied.

E. Independent accountants reporting on financial statements included in the registration statement should consider Canadian auditing guidelines pertaining to the Canada-U.S. reporting conflict with respect to contingencies and going concern considerations. If additional comments for U.S. readers are appropriate under those guidelines but are not included in the prospectus itself, those comments should be included with the legends required by Item 2 of Part I hereof. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

Part I—Information Required To Be Delivered to Offerees or Purchasers

Item 1. Home Jurisdiction Document

In the case of an exchange offer, the prospectus shall consist of the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction by the Registrant pursuant to the laws of the jurisdiction in which the Registrant is incorporated or organized including, where applicable, the rules of any stock exchange in such jurisdiction upon which the Registrant has any class of securities listed, or has applied for such listing. Except as noted hereinafter, such disclosure document(s) shall be prepared in accordance with the disclosure requirements of such jurisdiction as interpreted and applied by the securities commission or other regulatory authority in such jurisdiction.

In all other cases, the prospectus shall consist of the entire disclosure document or documents required to be delivered to offerees or purchasers by the Registrant in connection with the transaction pursuant to the laws of the principal jurisdiction (or, if the offering is not being made contemporaneously in Canada, pursuant to such laws if the offering were made in Canada) including, where applicable, the rules of any stock exchange in such jurisdiction upon which the Registrant has any class of securities listed, or has applied for such listing. Except as noted hereinafter, such disclosure document(s) shall be prepared in accordance with the disclosure requirements of such jurisdiction as interpreted and applied by the securities commission or other regulatory authority in such jurisdiction.

The prospectus used in the United States shall contain additional information and legends required by this Form. It need not include any documents incorporated by reference into home jurisdiction disclosure document(s) and not required to be delivered to offerees or purchasers pursuant to the laws of the principal jurisdiction. If any part of the document(s) to be delivered to offerees or purchasers is in a language other than English, it shall be accompanied by a translation in the English language.

Notwithstanding the foregoing, the prospectus used in the United States need not contain any disclosure applicable solely to Canadian offerees or purchasers that would not be material to offerees or purchasers in the United States, including, without limitation, (i) any Canadian "red herring" legend; (ii) any discussion of Canadian tax considerations other than those material to U.S. offerees or purchasers; (iii) the names of any Canadian underwriters not acting as underwriters in the United States or a description of the Canadian plan of distribution (except to the extent necessary to describe the material facts of the U.S. plan of distribution); (iv) any description of offerees' or purchasers' statutory rights under applicable Canadian, provincial or territorial securities legislation (except to the extent such rights are available to U.S. offerees or purchasers); and (v) certificates of the issuer or any underwriters.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus (or on a sticker thereto) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This offering is made by a foreign issuer that is permitted, under a multijurisdictional disclosure system adopted by the United States, to prepare this prospectus in accordance with the disclosure requirements of its home country. Prospective investors should be aware that such requirements are different from those of the United States. The financial statements included or incorporated herein, if any, have not been prepared in accordance with United States generally accepted accounting principles and thus may not be comparable to financial statements of United States companies."

"Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the home country of the Registrant. Such consequences for investors who are resident in, or citizens of, the United States may not be described fully herein."

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the Registrant incorporated or organized under the laws of a foreign country, that some or all of its officers and directors may be residents of a foreign country, that some or all of the underwriters or experts named in the registration statement may be residents of a foreign country and that all or a substantial portion of the assets of the Registrant and said persons may be located outside the United States."

"These securities have not been approved or disapproved by the securities and exchange commission nor has the commission passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense."

The following legend shall appear in the manner noted above in any prospectus relating to an exchange offer.

"Prospective investors should be aware that, during the period of the exchange offer, the Registrant or its affiliates, directly or indirectly, may bid for or make purchases of the securities to be distributed, certain related securities of the Registrant, the securities to be exchanged or certain related securities of the issuer, as permitted by applicable Canadian laws or provincial laws or regulations."

Any prospectus to be used before the effective date of the registration statement shall contain, on the outside front cover page (or on a sticker thereto) the following statement printed in red ink in type as large as that generally used in the body of the prospectus:

"Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State."

The Registrant should also include in the prospectus any legend or information required by the laws of any jurisdiction in which the securities are to be offered.

Item 3. List of Documents Filed with the Commission

There shall be set forth in or attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

Part II—Information Not Required To Be Delivered to Offerees or Purchasers

Provide a brief description of the indemnification provisions relating to directors, officers and controlling persons of the Registrant against liability arising under the Securities Act (including any provision of the underwriting agreement which relates to indemnification of the underwriter or its controlling persons by the Registrant against such liabilities where a director, officer or controlling person of the Registrant is such an underwriter or controlling person thereof or a member of any firm which is such an underwriter), together with a statement in substantially the following form:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, the Registrant has been informed that in the opinion of the U.S. Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) Any reports or information that in accordance with the requirements of the principal jurisdiction must be made publicly available in connection with the offering (or, if the offering is not being made contemporaneously in Canada, the reports or information that would be required to be made publicly available by the principal jurisdiction if the offering were made in Canada).

(2) In connection with an exchange offer, a copy of any agreement relating to the proposed acquisition.

(3) Copies of any documents incorporated by reference into, or filed with the principal jurisdiction concurrently with, the prospectus.

(4) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the offering document, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the written consent of such person.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person, unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437.

Any other consent required by Rule 436 or 438. Every amendment relating to a certified financial statement shall include the consent of the certifying accountant to the use of his certificate in connection with the amended financial statements in the registration statement or prospectus and to being named as having certified such financial statements.

Note: The consents required by this item shall specifically indicate consent regarding the use of the report or valuation in the registration statement filed in the United States.

(5) If any name is signed to the registration statement or amendment pursuant to power of attorney, manually signed copies of such power of attorney and, if the name of any officer signing on behalf of the Registrant is signed pursuant to a power of attorney, certified copies of a resolution of the Registrant's board of directors or similar governing body authorizing such signature.

(6) A copy of any indenture relating to the registered securities and, if such indenture is to be qualified under the Trust Indenture Act, a cross-reference sheet to the location in the indenture of Sections 310–318(a) of the Trust Indenture Act and a table of contents and, if any such indenture is to be qualified under the Trust Indenture Act, the statement of eligibility of the trustee on Form T–1 and, if applicable, for individual trustee(s) on Form T–2.

(7) If debt securities are to be registered and an exemption from the U.S. trustee provisions of Section 310(a) of the Trust Indenture Act is sought pursuant to General Instruction III.B. or has been sought with respect to the securities to be registered, the information specified in Items 4, 5, 6, 7, and 8 (if applicable) of Form T–5, or any Form T–5 filed with the Commission not more than one year prior to the date of this filing, provided that such Form T–5 may be incorporated by reference.

Part III—Undertaking and Consent to Service of Process

1. Undertaking

Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to the securities registered pursuant to Form F–9 or to transactions in said securities.

2. Consent to Service of Process

(a) At the time of filing Form F–9, the Registrant shall furnish to the Commission on Form F–X a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in connection with:

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) any civil suit or action brought against the Registrant or to which the Registrant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States, or of the District of Columbia or Puerto Rico,

where the investigation, proceeding or cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered on Form F–9 or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

(b) At the time of filing Form F–9 any trustee for which an exemption pursuant to Rule 4d–1 under the Trust Indenture Act is being applied by virtue of filing this Form shall furnish to the Commission on Form F–X a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in connection with:

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) any civil suit or action brought against the trustee or to which the trustee has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States, or of the District of Columbia or Puerto Rico,

where the investigation, proceeding or cause of action arises out of or relates to or concerns the securities in connection with which the trustee acts as trustee pursuant to an exemption under Rule 4d–1 under the Trust Indenture Act and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Signatures

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F–9 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State (Province or Territory) of _____, on _____, 19____.

Registrant _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Name and Title) _____

(Date) _____

Instructions

A. The registration statement shall be signed by the Registrant, its principal executive officer or officers, its principal

financial officer, its controller or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where the Registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement.

C. By signing this Form, the Registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F–9 or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant's designated agent.

D. Where eligibility for use of this Form is based on the assignment of a security rating, the Registrant may sign the registration statement notwithstanding the fact that such security rating has not been assigned by the filing date, provided that the Registrant reasonably believes, and so states, that the security rating requirement will be met by the time of effectiveness.

U.S. Securities and Exchange Commission
Washington, D.C. 20549
OMB Approval
OMB Number: 3235-0380
Expires: Approval Pending
Estimated average burden hours per response 2.0

Form F–10

Registration Statement Under the Securities Act of 1933

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English (if applicable))

(Province or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number (if applicable))

(I.R.S. Employer Identification Number (if applicable))

(Address and telephone number of Registrant's principal executive offices)

(Name, address (including zip code) and telephone number (including area code) of agent for service)

Approximate date of commencement of proposed sale of the securities to the public ——

(Principal jurisdiction regulating this offering (if applicable))

It is proposed that this filing will become effective (check appropriate box)

[ ] pursuant to Rule 467(a) (if in connection with an exchange offer or business combination)

[ ] pursuant to Rule 467(b) on the date on which the securities legally may be sold in the Registrant's principal jurisdiction

[ ] pursuant to Rule 467(c) on (date) at (time) (designate a time not sooner than 7 days after filing)

Check if appropriate:

[ ] This filing constitutes an application for exemption under Section 304(d) of the Trust Indenture Act of 1939 from Section 310 of that Act

[ ] There are existing securityholders under the indenture to which such application relates

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to the home jurisdiction's shelf procedures, check the following box. [ ]

Calculation of Registration Fee*

Title of each class of securites to be registered
Amount to be registered
Proposed maximum offering price per unit
Proposed maximum aggregate offering price
Amount of regisration fee

*See General Instruction II.E. for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this registration statement.

The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registration statement shall become effective as provided in Rule 467 under the Securities Act of 1933 or on such date as the Commission, acting pursuant to Section 8(a) of the Act, may determine.

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form F–10

A. This Form F–10 may be used for the registration of securities under the Securities Act of 1933 (the "Securities Act").

B. Form F–10 is available to any Registrant that:

(1) is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) is a foreign private issuer or a crown corporation;

(3) has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of the registration statement on this Form, and is currently in compliance with such obligations, *provided, however,* that in case of a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), each participating company must meet such 36-month reporting obligation, except that neither the Registrant nor any participating company whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, shall be required to meet such reporting requirement;

(4) has an aggregate market value of its outstanding equity shares of (CN) $360 million or more, *provided, however,* that in the case of a business combination, the aggregate market value of the outstanding shares of each company participating in the business combination is (CN) $360 million or more, except that neither the Registrant nor any participating company whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, shall be required to meet such market value requirement; and

(5) has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more; *provided, however,* that in the case of a business combination, the aggregate market value of the public float of the outstanding equity shares of each company participating in the business combination is (CN) $75 million or more, except that neither the Registrant nor any participating company whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, shall be required to meet such public float requirement; and, *provided further,* that in the case of a business combination, such public float requirement shall be deemed satisfied in the case of a participant whose equity shares were the subject of an exchange offer registered on Form F–8, Form F–9 or Form F–10 that terminated within the last six months, if the participant would have satisfied such public float requirement immediately prior to commencement of such exchange offer.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For purposes of this Form, "affiliate" shall mean any person who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the Registrant. The determination of affiliates shall be made as of the end of the Registrant's most recent completed fiscal year.

5. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

6. For purposes of this Form, the market value of the Registrant's outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing.

C. In the case of an exchange offer, the issuer of the securities to be exchanged (the "subject securities") for securities of the Registrant shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer or a crown corporation.

D. In the case of a business combination, each company participating in the business combination shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer or a crown corporation.

E. In the case of an exchange offer or a business combination, the securities to be registered on Form F–10 shall be offered to U.S. residents upon the same terms and conditions as they are offered to residents of Canada.

F. With respect to registration of non-convertible debt securities or non-convertible preferred securities on this Form, if the Registrant is a majority-owned subsidiary, it shall be deemed to meet the requirements of I.B. (3), (4) and (5) above if the parent of the Registrant-subsidiary meets the requirements of I.B. above and fully and unconditionally guarantees the securities being registered as to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred shares).

G. If the Registrant is a successor registrant subsisting after a business combination, it shall be deemed to meet the requirements of I.B. (3) above if: (1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that the reporting history of the successor registrant and any predecessor whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years immediately prior to the business combination, need not be combined for purposes of satisfying such 36-month reporting requirement and (2) the successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

H. This Form shall not be used if the Registrant is registered or required to register under the Investment Company Act of 1940.

I. A registration statement on this Form, and any post-effective amendment thereto, shall become effective in accordance with Rule 467.

J. Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33—[insert file numbers of previous registration statements]."

K. If the offering to be registered on this Form is not being made contemporaneously in Canada, the registration statement on this Form and any amendments hereto shall be prepared and filed as if the offering were being made contemporaneously in Canada. The Commission has been advised that the principal jurisdiction in Canada designated by the Registrant in connection with such an offering will require the filing of such documents and may select them for review.

II. Application of General Rules and Regulations

A. The rules comprising Regulation C under the Securities Act shall not apply to filings on this Form unless specifically referred to in the Form. Instead, the rules and regulations applicable in the home jurisdiction regarding the Form and method of preparation of disclosure documents shall apply to filings on this Form. A registration statement or amendment thereto on this Form shall be deemed to be filed on the proper form unless objection to the Form is made by the Commission prior to the effective date. Securities Act rules and regulations other than Regulation C shall apply to filings on this Form unless specifically excluded in this Form.

B. Rule 408 under the Securities Act, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

C. Three copies of the complete registration statement and any amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or any post-effective amendment thereto, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any amendments thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

D. At least one copy of every registration statement and any amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

E. In accordance with Rule 111 under the Securities Act, at the time of filing this registration statement, the Registrant shall pay to the Commission in U.S. dollars a fee of one fortieth of one per centum of the maximum aggregate price at which the securities registered on this Form are proposed to be offered in the United States, but in no case shall such fee be less than $100. The amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering.

F. In the case of an exchange offer, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the securities that may be received by the Registrant or cancelled in the exchange offer from United States residents as established by the price of securities of the same class, as determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities to be received by the Registration or cancelled in the exchange offer, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the Registrant from United States residents in connection with the exchange offer, the amount thereof shall be added to the value of the securities to be received by the Registrant or cancelled as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the exchange offer, the amount thereof shall be deducted from the

value of the securities to be received by the Registrant in exchange as computed in accordance with paragraph (1) or (2) of this section.

(4) The market value of the Registrant's outstanding common stock shall be the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

G. In the case of a business combination, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the equity securities of the predecessor companies held by United States residents being offered the Registrant's securities, as established by the price of the predecessors' securities of the same class determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities of the predecessor companies, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the Registrant from United States residents in connections with the business combination, the amount thereof shall be added to the value of the securities as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the business combination, the amount thereof shall be deducted from the value of the securities as computed in accordance with paragraph (1) or (2) of this section.

(4) The market value of a predecessor's outstanding equity securities shall be the average of the bid and asked prices of such securities, in the principal market for such securities as of a date within 60 days prior to the date of filing.

H. Subject to the requirements of Item 1 of Part I, if any part of the registration statement or an amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or amendment, is in a language other than English, it shall be accompanied by a summary, version or translation in the English language.

I. One manually signed original of the registration statement or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of such document through the last page of such document, including any exhibits or attachments thereto. Further, the total number of pages contained in such numbered original shall be set forth on the first page of the document.

J. Any change to the name or address of a Registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the relevant registration statement.

K. Where the offering registered on this Form is being made pursuant to the home jurisdiction's shelf procedures or procedures for pricing offerings after the final receipt has been issued, three copies of each supplement to, or supplemented version of, the home jurisdiction disclosure document(s) prepared under such procedures shall be filed with the Commission within one business day after such supplement or supplemented version is filed with the principal jurisdiction. Such filings shall be deemed not to constitute amendments to this registration statement. Each such filing shall contain in the upper right hand corner of the cover page the following legend, which may be set forth in longhand if legible: "Filed pursuant to General Instruction II.K. of Form F-10; File No. 33—[insert number of the registration statement]."

Note: Offerings registered on this Form, whether or not made contemporaneously in Canada, may be made pursuant to National Policy Statement No. 44 shelf procedures and procedures for pricing offerings after the final receipt has been issued. Rules 415 and 430A under the Securities Act are not available for offerings registered on this Form.

III. Compliance with Exchange Act, Trust Indenture Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 15d–4 under the Securities Exchange Act of 1934 (the "Exchange Act"), reporting obligations under Section 15(d) of the Exchange Act arising solely from an offering of securities registered on this Form may be met by filing with the Commission, under cover of Form 40–F, certain home jurisdiction documents. Registrants' attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of Sections 12(b) and 12(g) of the Exchange and Rules 10b–6 and 10b–7 under the Exchange Act.

B. Pursuant to Rule 4d–2(b) under the Trust Indenture Act of 1939 (the "Trust Indenture Act"), a Registrant registering debt securities on this Form may apply for exemption from the U.S. trustee provisions of Section 310(a) of that Act by so indicating on the facing page of this Form and including the information specified by Item (8) of Part II hereof. Pursuant to Rule 4d–5 under the Trust Indenture Act, the application will be deemed to be granted unless, within seven days after such filing, the Commission orders a hearing thereon. The Registrant's attention is directed towards other provisions of the Trust Indenture Act that may be applicable.

C. The Commission's rules on auditor independence, as codified in Section 600 of the Codification of Financial Reporting Policies, apply to auditor reports on all financial statements that are included in this registration statement, except that such rules do not apply with respect to periods prior to the most recent fiscal year for which financial statements are included in the registration statement under the Securities Act filed by the issuer on Form F–7, Form F–8, Form F–9 or Form F–10 or under the Exchange Act filed by the issuer on Form 40–F. Notwithstanding the exception in the previous sentence, such rules do apply with respect to any periods prior to the most recent fiscal year if the issuer previously was required to file with the Commission a report or registration statement containing an audit report on financial statements for such prior periods as to which the Commission's rules on auditor independence applied.

D. Independent accountants reporting on financial statements included in the registration statement should consider Canadian auditing guidelines pertaining to the Canada-U.S. reporting conflict with respect to contingencies and going concern considerations. If additional comments for U.S. readers are appropriate under those guidelines but are not included in the prospectus itself, those comments should be included with the legends required by Item 3 of Part I hereof. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

E. Pursuant to Rule 13e–4(h) under the Exchange Act, the provisions of Rule 13e–4 are not applicable and pursuant to Rule 14D–1(b) under the Exchange Act, the provisions of Sections 14(d)(1) through 14(d)(7) of the Exchange Act, Regulation 14D under the Exchange Act and Schedule 14d–1 thereunder, and Rule 14e–1 under Regulation 14E, are not applicable to a transaction involving offerings of securities that may be registered on this Form in connection with exchange offers; *provided that,* if no substantive requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offering apply, or if a transactional exemption from such requirements is applicable, the Registrant shall comply with such provisions of the Exchange Act. Such transaction is not exempt from the antifraud provisions of Sections 10(b), 13(e) and 14(e) of the Exchange Act or Rules 10b–5, 13e–4(b)(1) or 14e–3 thereunder, if the transaction otherwise is subject to those sections.

Part I—Information Required To Be Delivered To Offerees or Purchasers

Item 1. Home Jurisdiction Document

In the case of an exchange offer, the prospectus shall consist of the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction by the Registrant pursuant to the laws of the jurisdiction in which the Registrant is incorporated or organized including, where applicable, the rules of any stock exchange in such jurisdiction upon which the Registrant has any class of securities listed, or has applied for such listing.

In the case of a business combination, the prospectus shall consist of the entire disclosure document or documents required to be delivered to holders of securities whose votes are being solicited in connection with the proposed business combination pursuant to the laws of the jurisdiction(s) governing such solicitation including, where applicable, the rules of any stock exchange in such jurisdictions upon which the securities of the participating companies are listed, or application for listing has been made.

In all other cases, the prospectus shall include the entire disclosure document or documents required to be delivered to offerees or purchasers by the Registrant in connection with the transaction pursuant to the laws of the principal jurisdiction (or, if the offering is not being made contemporaneously in Canada, pursuant to such laws as if the offering were made in Canada) including, where applicable, the rules of any stock exchange in such jurisdiction upon which the Registrant has any class of securities listed, or has applied for such listing. Except as noted hereinafter, such disclosure document(s) shall be prepared in accordance with the disclosure requirements of such jurisdiction as interpreted and applied by the securities commission or other regulatory authority in such jurisdiction.

The prospectus used in the United States shall contain additional information and legends required by this Form. It need not include any documents incorporated by reference into home jurisdiction disclosure document(s) and not required to be delivered to offerees or purchasers or securities being solicited (in the case of a business combinations) pursuant to the laws of the principal jurisdiction. If any part of the document(s) to be delivered to offerees or purchasers is in a language other than English, it shall be accompanied by a translation in the English language.

Notwithstanding the foregoing, the prospectus used in the United States need not contain any disclosure applicable solely to Canadian offerees or purchasers that would not be material to offerees or purchasers in the United States, including, without limitation, (i) any Canadian "red herring" legend; (ii) any discussion of Canadian tax considerations other than those material to U.S. offerees or purchasers; (iii) the names of any Canadian underwriters not acting as underwriters in the United States or a description of the Canadian plan of distribution (except to the extent necessary to describe the material facts of the U.S. plan of distribution); (iv) any description of offerees' or purchasers' statutory rights under applicable Canadian, provincial or territorial securities legislation (except to the extent such rights are available to U.S. offerees or purchasers); or (v) certificates of the issuer or any underwriter.

Item 2. Additional Information

The following information also shall be provided to offerees as part of the prospectus.

Financial Statements.

Financial statements included in the home jurisdiction document should be supplemented to the extent necessary to satisfy the requirements of Item 18 of Form 20–F under the Exchange Act.

Item 3. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus (or on a sticker thereto) in bold–face roman type at least as high as ten-point modern type and at least two points leaded:

"This offering is made by a foreign issuer that is permitted, under a multijurisdictional disclosure system adopted by the United States, to prepare this prospectus in accordance with the disclosure requirements of its home country. Prospective investors should be aware that such requirements are different from those of the United States. Financial statements included or incorporated herein, if any, have not been prepared in accordance with United States generally accepted accounting principles and thus may not be comparable to financial statements of United States companies."

"Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the home country of the Registrant. Such consequences for investors who are resident in, or citizens of, the United States may not be described fully herein."

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the Registrant is incorporated or organized under the laws of a foreign country, that some or all of its officers and directors may be residents of a foreign country, that some or all of the underwriters or experts named in the registration statement may be residents of a foreign country, and that all or a substantial portion of the assets of the Registrant and said persons may be located outside the United States."

"These Securities have not been Approved or Disapproved by the Securities and Exchange Commission nor has the Commission Passed upon the Accuracy or Adequacy of this Prospectus. Any Representation to the Contrary is a Criminal Offense."

The following legend shall appear in the manner noted above in any prospectus relating to an exchange offer.

"Prospective investors should be aware that, during the period of the exchange offer, the Registrant or its affiliates, directly or indirectly, may bid for or make purchases of the securities to be distributed, certain related securities of the Registrant, the securities to be exchanged or certain related securities of the issuer, as permitted by applicable Canadian laws or provincial laws or regulations."

Any prospectus to be used before the effective date of the registration statement shall contain, on the outside front cover page (or on a sticker thereto) the following statement printed in red ink in type as large as that generally used in the body of the prospectus:

"Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State."

The Registrant should also include in the prospectus any legend or information required by the laws of any jurisdiction in which the securities are to be offered.

Item 4. List of Documents Filed with the Commission

There shall be set forth in or attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

Part II—Information Not Required To Be Delivered to Offerees or Purchasers

Provide a brief description of the indemnification provisions relating to directors, officers and controlling persons of the Registrant against liability arising under the Securities Act (including any provision of the underwriting agreement which relates to indemnification of the underwriter or its controlling persons by the Registrant against such liabilities where a director, officer or controlling person of the Registrant is such an underwriter or controlling person thereof or a member of any firm which is such an underwriter), together with a statement in substantially the following form:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, the Registrant has been informed that in the opinion of the U.S. Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) In the case of an exchange offer or business combination, any reports or information that, in accordance with the requirements of the home jurisdiction of the subject issuer or, in the case of a business combination, in accordance with the requirements of the home jurisdiction(s) of companies involved in the transaction other than the Registrant, must be made publicly available by the Registrant in connection with the transaction.

(2) In the case of an exchange offer or a business combination, a copy of any agreement relating to the proposed acquisition or business combination, as applicable.

(3) In all other cases, any reports or information that in accordance with the requirements of the principal jurisdiction must be made publicly available in connection with the offering (or, if the offering is not being made contemporaneously in Canada, the reports or information that would be required to be made publicly available by the principal jurisdiction if the offering were made in Canada).

(4) Copies of any documents incorporated by reference into, or filed with the principal jurisdiction or any other regulatory authority concurrently with, the prospectus.

(5) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the offering document, or is named as having prepared or certified a report or

valuation for use in connection with the offering document, the written consent of such person.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person, unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437.

Any other consent required by Rule 436 or 438. Every amendment relating to a certified financial statement shall include the consent of the certifying accountant to the use of his certificate in connection with the amended financial statements in the registration statement or prospectus and to being named as having certified such financial statements.

Note: The consents required by this item shall specifically indicate consent regarding use of the report or valuation in the registration statement filed in the United States.

(6) If any name is signed to the registration statement or amendment pursuant to power of attorney, manually signed copies of such power of attorney and, if the name of any officer signing on behalf of the Registrant is signed pursuant to a power of attorney, certified copies of a resolution of the Registrant's board of directors or similar governing body authorizing such signature.

(7) A copy of any indenture relating to the registered securities and, if such indenture is to be qualified under the Trust Indenture Act, a cross-reference sheet to the location in the indenture of information included pursuant to Sections 310–318(a) of the Trust Indenture Act and a table of contents and, if any such indenture is to be qualified under the Trust Indenture Act, the statement of eligibility of the trustee on Form T–1 and, if applicable, for individual trustee(s) on Form T–2.

(8) If debt securities are to be registered and an exemption from the U.S. trustee provisions of Section 310(a) of the Trust Indenture Act is sought pursuant to General Instruction III.B. or has been sought with respect to the securities to be registered, the information specified in Items 4, 5, 6, 7, and 8 (if applicable) of Form T–6, or any Form T–6 filed with the Commission not more than one year prior to the date of this filing, provided that such Form T–6 may be incorporated by reference.

Part III—Undertaking and Consent to Service of Process

1. Undertaking

Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to the securities registered pursuant to Form F–10 or to transactions in said securities.

2. Consent to Service of Process

(a) At the time of filing Form F–10, the Registrant shall furnish to the Commission on Form F–X a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in connection with:

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) any civil suit or action brought against the Registrant or to which the Registrant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico,

where the investigation, proceeding or cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered on Form F–10 or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

(b) At the time of filing Form F–10, any trustee for which an exemption pursuant to Rule 4d–1 under the Trust Indenture Act is being applied by virtue of filing this Form shall furnish to the Commission on Form F–X a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in connection with:

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) any civil suit or action brought against the trustee or to which the trustee has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States, or of the District of Columbia or Puerto Rico,

where the investigation, proceeding or cause of action arises out of or relates to or concerns the securities in connection with which the trustee acts as trustee pursuant to an exemption under Rule 4d–1 under the Trust Indenture Act and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Signatures

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F–10 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State (Province or Territory) of _____, on _____, 19____.

Registrant _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Name and Title) _____

(Date) _____

Instructions

A. The registration statement shall be signed by the Registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where the Registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which the registration statement is signed.

C. If the securities to be offered are those of a corporation not yet in existence at the time the registration statement is filed and which will be a party to a consolidation involving two or more existing corporations, then each such existing corporation shall be deemed a Registrant and shall be designated on the cover page of this Form, and the registration statement shall be signed by each such existing corporation and by the officers and directors of each such existing corporation as if each such existing corporation were the sole Registrant.

D. By signing this form, the Registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F–10 or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant's designated agent.

U.S. Securities and Exchange Commission,
Washington, D.C. 20549

OMB Approval

OMB Number: 3235–0405.
Expires: Approval Pending
Estimated average burden hours per response—2.0

Form 40–F

[Check one]

[ ] Registration Statement Pursuant to Section 12 of the Securities Exchange Act of 1934

or

[ ] Annual Report Pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934

For the fiscal year ended _____

Commission File Number _____

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English (if applicable))

(Province or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number (if applicable))

(I.R.S. Employer Identification Number (if applicable))

(Address and telephone number of Registrant's principal executive offices)

(Name, address (including zip code) and telephone number (including area code) of agent for service)

Securities registered or to be registered pursuant to Section 12(b) of the Act.

Title of each class

Name of each exchange on which registered

Securities registered or to be registered pursuant to Section 12(g) of the Act.

(Title of Class)

(Title of Class)

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act.

(Title of Class)

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report.

Indicate by check mark whether the Registrant by filing the information contained in this Form is also thereby furnishing the information to the Commission pursuant to Rule 12g3–2(b) under the Securities Exchange Act of 1934 (the "Exchange Act"). If "Yes" is marked, indicate the file number assigned to the Registrant in connection with such Rule.

Yes_____ 82–_____

No_____

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days.

Yes_____ No_____

GENERAL INSTRUCTIONS

A. Rules As To Use of Form 40–F

(1) Form 40–F may be used to file reports with the Commission pursuant to Section 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 15d–4 [17 CFR § 240.15d–4] thereunder by Registrants that are subject to the reporting requirements of that Section solely by reason of their having filed a registration statement on Form F–7, F–8, F–9 or F–10 under the Securities Act of 1933 (the "Securities Act").

(2) Form 40–F may be used to register securities with the Commission pursuant to Section 12(b) or 12(g) of the Exchange Act, to file reports with the Commission pursuant to Section 13(a) of the Exchange Act and Rule 13a–3 [17 CFR § 240.13a–3] thereunder, and to file reports with the Commission pursuant to Section 15(d) of the Exchange Act if: (i) the Registrant is incorporated or organized under the laws of Canada or any Canadian province or territory; (ii) the Registrant is a foreign private issuer or a crown corporation; (iii) the Registrant has been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this Form and be currently in compliance with such obligations; (iv) the aggregate market value of the outstanding equity shares of such Registrant is: (a) (CN) $180 million or more if a report or registration statement filed on this Form relates to convertible securities of a Form F–9-eligible issuer that would be eligible for registration under the Securities Act on Form F–9; or (b) (CN) $360 million or more in the case of all other reporting requirements; *provided, however,* that no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F–9; and (v) the aggregate market value of the public float of such equity shares is (CN) $75 million or more; *provided, however,* that no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F–9.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For purposes of this Form, "affiliate" shall mean any person who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the Registrant. The determination of affiliates shall be made as of the end of the Registrant's most recent completed fiscal year.

5. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

6. For purposes of this Form, the market value of the Registrant's outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which the shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing.

(3) If the Registrant is a successor registrant subsisting after a business combination, it shall be deemed to meet the requirements of A.(2)(iii) above if: (1) the time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, *provided, however,* that the reporting history of the successor registrant and any predecessor whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years immediately prior to the business combination, need not be combined for purposes of satisfying such 36-month reporting requirement and (2) the successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

(4) This Form shall not be used if the Registrant is registered or required to register under the Investment Company Act of 1940.

(5) An annual report on this Form or any amendment thereto shall be filed the same day the information included therein is due to be filed with the securities commission or equivalent regulatory authority of the jurisdiction of incorporation of the Registrant.

(6) Registrants registering securities on this Form, and Registrants filing annual reports on this Form who have not previously filed a Form F–X (17 CFR §§ 239.41, 249.50) in the class of securities in relation to which the obligation to file this report arises, shall file a Form F–X with the Commission together with this Form.

(7) Any change to the name or address of a Registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the Registrant.

B. Information To Be Filed on this Form

(1) Except as hereinafter noted, Registrants registering securities under Section 12 shall file with the Commission on this Form all information material to an investment decision that the Registrant, since the beginning of its last full fiscal year: (i) made

or was required to make public pursuant to the law of the jurisdiction of its domicile or in which it is incorporated or organized, (ii) filed or was required to file with a stock exchange on which its securities are traded and which was made public by such exchange, or (iii) distributed or was required to distribute to its securityholders. A list of all documents filed with the Commission as a part of the registration statement shall be set forth in or attached to the Form.

(2) Unless otherwise furnished in information provided pursuant to General Instruction B.(1), all registration statements on this Form shall include a brief description of the securities to be registered based on the requirements of Item 202 of Regulation S–K under the Securities Act.

(3) Registrants reporting pursuant to Section 13(a) or 15(d) of the Exchange Act should file under cover of this Form the annual information form required under Canadian law. All other information material to an investment decision that a Registrant (i) makes or is required to make public pursuant to the law of the jurisdiction of its domicile, (ii) files or is required to file with a stock exchange on which its securities are traded or (iii) distributes or is required to distribute to its securityholders shall be filed by Registrants under cover of Form 6–K.

(4) Registration statements and annual reports shall be in the English language. If any exhibit or any other paper or document filed with a registration statement or annual report on this Form is in a language other than English, it shall be accompanied by a summary, version or translation in the English language.

(5) If a report filed on this Form incorporates by reference any information not previously filed with the Commission, such information must be attached as an exhibit and filed with this Form.

C. Compliance with Auditor Independence and Reconciliation Requirements

(1) The Commission's rules on auditor independence, as codified in Section 600 of the Codification of Financial Reporting Policies, apply to auditor reports on all financial statements that are included in this registration statement, except that such rules do not apply with respect to periods prior to the most recent fiscal year for which financial statements are included in the registration statement under the Securities Act filed by the issuer on Form F–7, Form F–8, Form F–9 or Form F–10 or under the Exchange Act filed by the issuer on Form 40–F. Notwithstanding the exception in the previous sentence, such rules do apply with respect to any periods prior to the most recent fiscal year if the issuer previously was required to file with the Commission a report or registration statement containing an audit report on financial statements for such prior periods as to which the Commission's rules on auditor independence applied.

(2) Registrants reporting on this Form pursuant to the provisions of Section 13(a) or 15(d) of the Exchange Act shall, when filing with the Commission any annual report required by any Canadian federal and/or provincial or territorial securities commission or equivalent agency, additionally furnish financial statements in the form required by Item 17 of Form 20–F under the Exchange Act (17 CFR § 249.220f) unless this Form is filed with respect to securities that would be eligible for registration under the Securities Act on Form F–9, in which case no such financial statements are required, or unless this Form is filed with respect to a reporting obligation under Section 15(d) that arose solely as a result of a filing made on Form F–7, F–8 or F–9, in which case no such financial statements are required.

D. Application of General Rules and Regulations

(1) Rules 12b–2, 12b–5, 12b–10, 12b–11, 12b–12, 12b–13, 12b–14, 12b–21, 12b–22, 12b–23, 12b–25, 12b–33 and 12b–37 under the Exchange Act shall not apply to filings on this Form. The rules and regulations applicable in the home jurisdiction regarding the form and method of preparation of disclosure documents shall apply to filings on this Form. Exchange Act rules and regulations other than Rules 12b–2, 12b–5, 12b–10, 12b–11, 12b–12, 12b–13, 12b–14, 12b–21, 12b–22, 12b–23, 12b–25, 12b–33 and 12b–37 shall apply to filings on this Form unless specifically excluded in this Form. A registration statement on this Form shall be deemed to be filed on the proper form unless objection to the Form is made by the Commission prior to the effective date.

(2) A registration statement filed pursuant to Section 12 of the Exchange Act on this Form shall become effective in accordance with Section 12(d) and Rule 12b–6 or Section 12(g)(1) of such Act, as applicable.

(3) In accordance with Rule 0–10 under the Exchange Act, at the time of filing a registration statement pursuant to Section 12 on this Form, the Registrant shall pay to the Commission in U.S. dollars a fee in the amount specified in Rule 12b–7 or Rule 13a–1 under the Exchange Act, as applicable.

(4) Rule 12b–20, which provides that in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

(5) Pursuant to Rule 12b–15, all amendments to this Form shall be filed under cover of Form 8.

(6) Three copies of the complete registration statement or report, including exhibits, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled, or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement or report, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

(7) At least one copy of every registration statement or report filed on this Form shall be signed manually by an authorized officer of the Registrant. Unsigned copies shall be conformed.

(8) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement or annual report, or is named as having prepared or certified a report or valuation for use in connection with the registration statement or annual report, the written consent of such person shall be filed.

If any person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement or annual report, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement or annual report, the written consent of such person also shall be filed unless the Commission dispenses with such filing as impracticable or as involving undue hardship.

Any other consent required by Rule 12b–36 also shall be filed. Every amendment relating to a certified financial statement shall include the consent of the certifying accountant to the use of such accountant's certificate in connection with the amended financial statements in the registration statement or annual report and to being named as having certified such financial statements.

Note: The consents required by this item shall specifically indicate consent regarding use of the report or valuation in the registration statement filed in the United States.

Undertaking and consent to service of process

1. Undertaking

Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to: the securities registered pursuant to Form 40–F; the securities in relation to which the obligation to file an annual report on Form 40–F arises (unless the Registrant has previously filed Form F–X for such purposes); or transactions in said securities.

2. Consent to Service of Process

At the time of filing Form 40–F, the Registrant shall furnish to the Commission on Form F–X a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in connection with

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) any civil suit or action brought against the Registrant or to which the Registrant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico,

where the investigation, proceeding or cause of action arises out of or relates to or concerns the securities registered pursuant to Form 40–F or transactions in said securities, the securities in relation to which the obligation to file an annual report on Form 40–F arises or transactions in said securities (unless the Registrant has previously filed Form F–X for such purposes), and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Signatures

Pursuant to the requirements of the Exchange Act, the Registrant certifies that it meets all of the requirements for filing on Form 40–F and has duly caused this registration statement [annual report] to be signed on its behalf by the undersigned, thereto duly authorized.

Registrant _____

By (Signature and Title)_____

Date _____

Instructions

A. The name and title of the officer who signs the registration statement shall be typed or printed beneath such person's signature. Any such person who occupies more than one position shall indicate each capacity in which the registration statement is signed.

B. By signing this form, the Registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any purchases or sales of any security registered pursuant to Form 40–F on the securities in relation to which the obligation to file an annual report on Form 40–F arises, or transactions in said securities, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant's designated agent.

U.S. Securities and Exchange Commission,
Washington, D.C. 20549

Form F–X

OMB Approval
OMB Number: 3235–0379
Expires: Approval Pending
Estimated average burden hours per response.. 2.0

Appointment of Agent for Service of Process by Issuers Registering Securities on Forms F–7, F–8, F–9 or F–10, or Registering Securities or Filing Annual Reports on Form 40–F, or by Any Person Filing Tender Offer Documents on Schedules 13E–4F, 14D–1F or 14D–9F, or by Any Trustee for Which an Exemption Pursuant to Rule 4d–1 Under the Trust Indenture Act of 1939 has Been Applied

General Instructions

I. Form F–X shall be filed with the Commission: (a) by any issuer registering securities on Forms F–7, F–8, F–9 or F–10 under the Securities Act of 1933; (b) by any issuer registering securities on Form 40–F under the Securities Exchange Act of 1934; (c) by any issuer filing an annual report on Form 40–F, if it has not previously filed a Form F–X in connection with the class of securities in relation to which the obligation to file a report on Form 40–F arises; (d) by any issuer or other person filing tender offer documents on Schedules 13E–4F, 14D–1F or 14D–9F under the Securities Exchange Act of 1934; and (e) by any trustee for which an exemption from the requirements of Section 310(a)(1) of the Trust Indenture Act of 1939 has been applied pursuant to Rule 4d–1 thereunder.

II. Form F–X shall be filed in duplicate original.

1. Name of issuer or person filing ("Filer"):

_____

2. This is [check one]

[ ] an original filing for the Filer

[ ] an amended filing for the Filer

3. The Filer is incorporated or organized under the laws of (Name of the jurisdiction under whose laws the issuer is organized or incorporated) _____ and has its principal place of business at (Address in full and telephone number)

_____

_____

4. The Filer designates and appoints (Name of United States person serving as agent) _____ ("Agent") located at (Address in full in the United States and telephone number)

_____

_____

as the agent of the Filer upon whom may be served any process, pleadings, subpoenas, or other papers in

(a) any investigation or administrative proceeding conducted by the Commission; and

(b) any civil suit or action bought against the Filer or to which the Filer has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States or of the District of Columbia or Puerto Rico,

where the investigation, proceeding or cause of action arises out of or relates to or concerns (i) any offering made or purported to be made in connection with the securities registered by the Filer on Form (Name of form) _____ on (Date) _____ or any purchases or sales of any security in connection therewith; (ii) the securities in relation to which the obligation to file an annual report on Form 40–F arises, or any purchases or sales of such securities; (iii) any tender offer for the securities of a Canadian issuer with respect to which filings are made with the Commission on Schedules 13E–4F, 14D–1F or 14D–9F; or (iv) the securities in relation to which the Filer acts as trustee pursuant to an exemption under Rule 4d–1 under the Trust Indenture Act of 1939. The Filer stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon such agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be valid and binding as if personal service thereof had been made

5. The Filer stipulates and agrees to appoint a successor agent for service of process and file an amended Form F–X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer. The Filer further undertakes to advise the Commission promptly in writing of any change to the Agent's name or address.

The Filer certifies that it has duly caused this power of attorney, consent, stipulation and agreement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____ Province (or State of) _____ this _____ day of _____ 19____ A.D. _____

_____

_____

Filer:

By (Signature and Title)

This statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Title)_____

(Date)_____

Instructions

1. The power of attorney, consent, stipulation and agreement shall be signed by the Filer and its authorized Agent in the United States.

2. The name of each person who signs Form F–X shall be typed or printed beneath such person's signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which such person signs Form F–X. Each copy shall be manually signed. If any name is signed pursuant to a board resolution, a certified copy of the resolution shall be filed with each copy of Form F–X. If any name is signed pursuant to a power of attorney, a manually signed copy of the power of attorney shall be filed with each copy of Form F–X.

U.S. Securities and Exchange Commission,
Washington, DC 20549

OMB Approval
OMB Number: 3235–0384
Expires: Approval Pending
Estimated average burden hours per response. 2.0

Form T–5

Application for Exemption Pursuant to Rule 4d–1 Under the Trust Indenture Act of 1939

_____

(Name of Applicant)

_____

(Translation of Applicant's name into English (if applicable)

_____

(Jurisdiction of incorporation)

_____

(Address and telephone number of Applicant's principal executive offices)

_____

(Name, address (including zip code) and telephone number (including area code) of Applicant's agent for service)

_____

(Exact name of Trustee as specified in its charter)

_____

(Translation of Trustee's name into English (if applicable))

_____

(Jurisdiction of incorporation)

(Address and telephone number of Trustee's principal executive offices)

(Name, address (including zip code) and telephone number (including area code) of Trustee's agent for service)

General Instructions

1. Rule as to Use of Form t–5. Form t–5 shall be used for applications for exemption filed pursuant to Rule 4d–1 under the Trust Indenture Act of 1939 (the "Act") [17 CFR § 260.4d–1], except those filed pursuant to subparagraph (b) of Rule 4d–2 [17 CFR § 260.4d–2].

2. General Rules and Regulations. The General Rules and Regulations under the Act contain provisions governing applications on this Form. Attention is particularly directed to Rules 4d–1 through 4d–6 under Section 304(d) of the Act [17 CFR §§ 260.4d–1 through 260.4d–6].

3. Incorporation by Reference. Attention is directed to Rules 7a–28 through 7a–32 [17 CFR §§ 260.7a–28 through 260.7a–32], inclusive, regarding incorporation by reference. In addition to matters which may be incorporated by reference pursuant to Rules 7a–28 [17 CFR § 260.7a–28] and 7a–29 [17 CFR § 260.7a–29]) the applicant may incorporate by reference, by answer to any item of the form, any item or items of a registration statement, or application for qualification of an indenture, filed with the Commission.

4. Change of Agent's Name or Address. The applicant should promptly inform the Commission in writing of any change to the name or address of the applicant's agent for service.

Item 1: Specify which of Forms F–7, F–8, F–9 or F–10 the applicant is eligible to use.

Item 2: State whether the applicant expects to issue the securities that are the subject of this application within two years from the date of the application. If the securities that are the subject of this application are outstanding, a statement to that effect shall be made.

Item 3: Describe the securities that are the subject of the application and identify the indenture under which issued or to be issued.

Instructions

1. There shall be given such information as will indicate the type and general character of the securities. The applicant may provide a non-specific description of the securities, such as "unsecured debentures or notes."

2. The application may relate to different types or classes of securities issued or to be issued under different indentures, but appropriate description should be given, such as: "unsecured debentures to be issued under an indenture between the applicant and trustee x," and "mortgage bonds to be issued under an indenture and deed of trust between the applicant and trustee y."

3. To the extent known at the time of application, indicate the date of maturity or, if the issue matures serially, a brief indication of the serial maturities, such as "maturing serially from 1990 to 1996;" if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of issue and, if convertible or callable, a statement to that effect. If the securities are or will be secured by the mortgage or pledge of property, to the extent known, identify the property and indicate its general location.

Item 4: Indicate whether this application relates to securities issued or issuable under an indenture under which any other securities are outstanding. If any securities are outstanding under the indenture, appropriate details shall be given as to compliance with Rule 4d–4 [17 CFR § 260.4d–4].

Item 5: File the following information as to each trustee who proposes to serve as trustee with respect to the securities specified in the application:

(a) The name of the trustee and the address of its principal executive offices.

(b) The form and date of organization.

(c) The name and address of each examining or supervising authority to which it is subject.

(d) Whether it is authorized to exercise corporate trust powers.

(e) The amount of the combined capital and surplus of the trustee as of the end of its most recent fiscal year.

Item 6: Give a brief description of the nature and extent of supervision and examination of the trustee by regulatory authorities in the jurisdiction in which the trustee is organized and doing business.

Item 7: If the applicant does not desire an opportunity for a hearing it may include in the application the waiver and request provided for in Rule 4d–5 [17 CFR § 260.4d–5].

Item 8: Listing of Exhibits. List below all exhibits filed as a part of this application.

Undertaking and Consent to Service of Process

1. *Undertaking.*

The undersigned applicant undertakes that, if any indenture trustee is substituted for the indenture trustee identified in this application, such substitute trustee shall

(1) be a corporation or other person that is (i) organized and doing business under the laws of Canada or any province thereof; (ii) be authorized under such laws to exercise corporate trust powers; and (iii) be subject to supervision or examination by governmental authority; and

(2) consent to service of process to the extent prescribed in Rule 4d–6 [17 CFR § 260.4d–6].

2. *Consent to Service of Process.*

At the time of filing Form T–5, any trustee for which an exemption pursuant to Rule 4d–1 under the Trust Indenture Act of 1939 is being applied by virtue of filing this Form shall furnish to the Commission on Form F–X a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in connection with

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) any civil suit or action brought against the trustee or to which the trustee has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States, or of the District of Columbia or Puerto Rico, where the investigation, proceeding or cause of action arises out of or relates to or concerns the securities in connection with which the trustee acts as trustee pursuant to an exemption under Rule 4d–1 under the Trust Indenture Act of 1939 and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Signature

The applicant, _____, a _____ organized and existing under the laws of _____, has duly caused this application to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of _____ and State (Province or Territory) of _____, on the _____ day of _____, 19____.

(Applicant)_____.

(Name and Title) By:_____, _____

Instruction as to Signature: The name of each person signing the application shall be typed or printed beneath the signature.

Exhibits

Subject to rules permitting incorporation of exhibits by reference, the following exhibits are to be filed as part of the application. Such exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may be referred to by the designation given in the previous filing. Where the exhibits are incorporated by reference, the reference shall be made in the list of exhibits called for under Item 8.

1. A copy of the articles of association of the trustee as now in effect.

2. A copy of the certificate of authority of the trustee to commence business, if not contained in the articles of association.

3. A copy of the authorization of the trustee to exercise corporate trust powers, if such authorization is not contained in the documents specified in paragraph (1) or (2) above.

4. A copy of the existing bylaws of the trustee, or instructions corresponding thereto.

5. A copy of each indenture to which reference is made in Item 3, if available at the time of application.

6. A copy of the latest report of condition, if any, of the trustee published pursuant to law or the requirements of its supervising or examining authority.

7. The consent of the trustee and power of attorney required by Rule 4d–6 [17 CFR § 260.4d–6].

Appendix B—Securities and Exchange Commission Regulatory Flexibility Act Certification

I, Richard C. Breeden, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that: proposed Forms F–7, F–8, F–9 and F–10 under the Securities Act of 1933 (the "Securities Act"); proposed Form 40–F and proposed Schedules 14D–1F, 14D–9F and 13E–4F under the Securities Exchange Act of 1934 (the "Exchange Act"); proposed Form T–5 under the Trust Indenture Act of 1939 (the "Trust Indenture Act"); proposed Form F–X under both the Securities Act and the Exchange Act; proposed Rule 467, proposed changes to Rules 158, 175, 424 and 502, and proposed changes to Forms S–4, S–8, S–11, F–1, F–2, F–3 and F–4 under the Securities Act; proposed Rules 13a–3, 13e–4(h), 14d–1(b), 14e–2(c), 15d–4, and 15d–5(c), proposed changes to Rules 3a12–3(b), 3b–6, 12g–3, 12g3–2, 13a–10, 13a–16, 15d–5(b), 15d–10 and 15d–16, and proposed changes to Forms 20–F and 6–K under the Exchange Act; proposed Rules 4d–1 through 4d–6 and proposed changes to Rule 0–11 under the Trust Indenture Act; proposed changes to Rule 3–01, 3–02, 3–12 and 3–19 under Regulation S–X; proposed changes to Rule 30–1 of the Commission's Rules Delegating Functions to Division Directors, Regional Administrators and the Secretary of the Commission; and proposed changes to Items 302, 402 and 404 under Regulation S–K, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are as follows:

The proposed rules, forms and schedules noted above are intended primarily to facilitate multijurisdictional and cross-border offerings of securities by Canadian issuers. The resulting reduction in the expense, time and effort of making such offerings will benefit Canadian entities that issue securities, rather than U.S. entities. In connection with the multijurisdictional system, the Securities and Exchange Commission (the "Commission") also is proposing revisions to existing rules and forms to permit their use by Canadian foreign private issuers, for registration and reporting under the Securities Act and the Exchange Act on an equal basis with all other foreign private issuers. Such revisions also would benefit Canadian entities registering securities and reporting with the Commission, rather than U.S. entities.

It is anticipated that the Canadian securities regulatory authorities will propose changes in rules and policies that, if adopted, will permit the implementation of a corresponding multijurisdictional system permitting U.S. entities to make public offerings and file reports in Canada with disclosure documents prepared according to the requirements of U.S. federal securities law. As the adoption of the Commission's proposed rules, forms and schedules and its proposed amendments to rules and forms discussed herein is not expressly dependent upon the adoption of a multijurisdictional system by the Canadian securities regulatory authorities, and as the changes to Canadian law would not, in any event, be a part of the proposed Commission rulemaking to be evaluated in terms of its impact on small entities, the effect of any Canadian securities regulatory authority's proposals should not be taken into account.

An expected result of adoption of the proposed rules, forms and schedules is that offerings by Canadian companies would be made in the United States in situations where hitherto investors in the United States would have been excluded due to the time and expense of compliance with the regulatory requirements of more than one jurisdiction. The resulting increase in U.S.-registered offerings by Canadian issuers can be expected to increase ease of investment for small United States entities acting as investors. In addition, small U.S. entities who act as financial intermediaries, such as investment banks, can be expected to be affected by the increased number of offerings being made in the United States. Small U.S. entities are not more likely than large U.S. entities, however, to be affected by the greater ease of investment in offerings of Canadian issuers; nor are small entities who act as intermediaries more likely than large entities who act in that capacity to be affected by the increase in U.S.-registered offerings. These effects, in any case, are not expected to be significant for a substantial number of small entities in the United States.

With respect to tender offers, exchange offers and business combinations, the proposed rules, forms and schedules generally facilitate such offers in the United States when less than 20 percent of the class of the securities involved are held of record by U.S. persons other than U.S. affiliates of the issuer. Since U.S. holdings are relatively small, the likelihood of such increased offerings in the U.S. significantly affecting a substantial number of small U.S. entities is minimized.

With respect to shelf offerings, a clarifying change to Rule 424 has been made in connection with the Canadian MJDS in order to ensure that U.S. issuers taking a tranche off the shelf, even if selling only in Canada, would file a Rule 424 prospectus with the Commission. Such revision may have a minimal effect on small U.S. entities. Nevertheless, since the amendment is more in the nature of a clarification and most U.S. issuers using the MJDS would be substantial in size, it is not likely that the effect on small U.S. entities would be significant.

The proposed new rules, forms and schedules and the proposed amendments to rules and forms are summarized in the attached memorandum.* That their primary effect is on Canadian entities is apparent from such document.

Dated: October 16, 1990.

Richard C. Breeden,

Chairman.

[FR Doc. 90–25460 Filed 11–1–90; 8:45 am]

BILLING CODE 8010–01–M

*Note: The above-referenced memorandum is not included in this release.

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federal register

Friday
November 2, 1990

Part III

Environmental Protection Agency

40 CFR Parts 261, 271 and 302
Hazardous Waste Management Systems: Identification and Listing of Hazardous Waste; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 271, and 302

[FRL-3807-1]

RIN 2050-AB70

Hazardous Waste Management Systems: Identification and Listing of Hazardous Waste; CERCLA Hazardous Substance Designation—Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038)

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today promulgating regulations under the Resource Conservation and Recovery Act (RCRA) to add two wastes to the list of hazardous wastes under 40 CFR 261.31. These wastes, designated F037 and F038, are generated in the separation of oil/water/solids from petroleum refinery process wastewaters and oily cooling wastewaters.

EPA is also amending Appendix VII of 40 CFR 261 to add the organic and inorganic constituents for which these wastes are listed. In addition, EPA is adding these wastes to the list of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and setting their reportable quantities at the statutory level of one pound.

EPA is taking this action because these wastes, when improperly treated, stored, transported, disposed of, or otherwise managed, are potentially capable of posing a substantial hazard to human health or the environment. Today's rulemaking will extend RCRA and CERCLA coverage to all oil/water/solids separation sludges and floats generated from wastewaters from petroleum refineries regardless of the type of device used to separate the wastes from the process wastewaters and oily cooling wastewaters and regardless of where treatment takes place.

The effect of listing these wastes will be to subject them to the hazardous waste regulations of 40 CFR 124, 262 through 266, 270, and 271 of this Chapter; the notification requirements of section 3010 under RCRA; and the notification requirements of section 103 under CERCLA.

EFFECTIVE DATE: This final rule is effective May 2, 1991.

ADDRESSES: The official record for this rulemaking is identified as Docket Number F-90-PTSF-FFFFF and is located in the EPA RCRA Docket, Room M2427, 401 M Street SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except Federal holidays. To review docket materials, the public must make an appointment by calling (202) 475-9327. The public may copy a maximum of 100 pages of material from any one regulatory docket at no cost; additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information about this rulemaking contact the RCRA/Superfund Hotline at (800) 424-9346 or (202) 382-3000. For technical information, contact John Austin, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 or by telephone at (202) 382-4789. For further information on the CERCLA portions of this rule, contact Barbara Hostage, Office of Emergency and Remedial Response (WH-548), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; (202) 382-2198.

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I. Background

With the promulgation of today's listings, the EPA reaches the last stage in a ten-year Agency commitment to list as hazardous waste under section 3001 of the Resource Conservation and Recovery Act (RCRA), as amended, all sludges generated in the primary treatment of process wastewaters and oily cooling wastewaters in the petroleum refining industry. The objective of this protracted dialogue with the public and regulated community has been to ensure

equivalent regulatory treatment for all sludges of similar composition. As EPA has explained from the beginning of this process, the sludges proposed for listing as hazardous are those generated from primary, not secondary wastewater treatment. The search for language to express this intention and the effort to dispel confusion about the scope of the listings, however, has proved a challenging exercise for the Agency.

Todays decision to list primary treatment sludges does not constitute a decision not to list wastes from secondary wastewater treatment. The Agency maintains that secondary biological sludges were not within the scope of the proposed listings. Such sludge may warrant listing, but EPA has not fully studied it nor provided notice of any intended listings of the secondary (biological) sludges. The limited data (noticed in 53 FR 12162) and engineering knowledge available to the Agency suggest that there are differences in the composition and level of constituents in secondary (biological) sludges, when compared to primary treatment sludges.

On May 19, 1980, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published a list of hazardous wastes (40 CFR 261.32 Subpart D), which included five wastes generated by the petroleum refining industry (see 45 FR 33123). Among these were the following:

—"Dissolved Air Flotation (DAF) Float from the Petroleum Refining Industry" (K048); and

—"API Separator Sludge from the Petroleum Refining Industry" (K051).

The other three petroleum refining wastes included slop oil emulsion solids (K049), heat exchanger bundle cleaning sludge (K050), and leaded tank bottoms (K052). These five listings were promulgated in final form on November 12, 1980 (45 FR 74884).

The K048 and K051 wastes are generated in units used for the primary treatment of process wastewater and oily cooling wastewaters at petroleum refineries. Petroleum refining industry wastewater is treated in two phases: primary treatment and secondary (biological) treatment.

Primary treatment is distinguished by the physical and/or chemical separation of oil, water and solids from the wastewater stream. Primary treatment is conducted in two stages: (1) Primary (gravitational) oil/water/solids separation, and (2) secondary (emulsified) oil/water/solids separation.[1]

Secondary biological treatment follows primary treatment. Secondary treatment relies on microorganisms to digest and degrade dissolved oil and soluble biodegradable wastewater pollutants to levels suitable for reuse or discharge. While there may be some incidental biological degradation during primary treatment [2], secondary treatment is distinguished from primary treatment by active measures to promote and increase naturally occurring biological activity. Active biological treatment requires agitation of the wastewater to ensure an oxygen-rich environment for efficient microbial degradation of pollutants. Biological units include activated sludge units, trickling filters, rotating biological contactors and other units employing active measure to increase biological processes.

Subsequent to the May 19, 1980, proposed listings of the petroleum refining wastes, the Agency received a petition from Envirex, Inc., requesting that the Agency amend the K048 and K051 listings because they were underinclusive and specific to particular types of equipment, i.e., the DAF and API separators. Envirex asked that EPA amend the listings to list as hazardous all those petroleum refining sludges resulting from primary or secondary oil/water/solids separation regardless of the equipment or process used in the separation step because all such sludges would be similar in composition. Envirex cited EPA's Effluent Guidelines Development Document for the petroleum refining category [3] as support for the contention that other processes and equipment produced a similar solids residue.

After evaluating the rulemaking petition, the Agency proposed (on November 2, 1980, at 45 FR 74893) that the K051 and K048 listings be amended to read, respectively: "Primary oil/water/solids separation sludge in the petroleum refining industry"; and "Secondary (emulsified) oil/water/solids separation sludge in the petroleum refining industry." EPA tentatively concluded that the K051 and K048 listings were too narrow and that they omitted other petroleum wastes, generated in processes and equipment other than API separators and DAF equipment, with composition similar to the listed wastes. Consequently, the Agency proposed to amend the listings to reflect the hazardous character of the wastes and to include all oily separation sludges generated in the physical or chemical treatment of petroleum refinery wastewaters, regardless of the specific type of separation unit or process used.

Commenters on the 1980 proposal raised a number of concerns emphasizing two major issues. First, they believed the proposed amendment to the K048 listing was unclear and, as a result, the proposal could be read to apply equally to secondary (biological) treatment sludges, and not just to primary treatment systems using primary and secondary oil/water/solids separation equipment and processes. Second, commenters believed that the Agency had not demonstrated that the various categories of units potentially subject to the expanded listing contained lead and chromium—the hazardous constituents on which the listings were based—at levels of concern.

To address these issues, the Agency embarked on a comprehensive review of petroleum refining wastewater treatment processes and a waste characterization effort to further substantiate the bases for the expansion of the listings. For example, EPA gathered data on the levels of toxic inorganic and organic hazardous constituents that would be found in the wastes subject to the proposed listing. As part of this effort, the Agency also conducted extensive work to improve the precision and accuracy of methods for the analysis of organic constituents in oily wastes.

On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 (HSWA) were enacted. Section 3001(e)(2), one of the many provisions added by HSWA, directed EPA to make a decision on whether to list as hazardous, several wastes, including refining wastes. HSWA also prohibits the land disposal of certain hazardous wastes that have not been treated to specified levels. It requires the Agency to set levels or methods of treatment that substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that threats to human health and the environment are minimized. Hazardous wastes that meet the treatment standards are not prohibited and may be disposed in a land disposal facility

[1] The preamble uses the terms "primary oil/water/solids separation" and "secondary oil/water/solids separation" to distinguish these stages of primary treatment (sedimentation, flocculation) from secondary biological treatment. For further discussion see April 13, 1988 Notice of Data Availability in this rulemaking, 53 FR 12162, 12164-65.

[2] To the extent that biological matter is present in the wastewater during primary treatment, biological activity will occur, though at a low level.

[3] Development Document for Effluent Limitations, Guidelines and Standards for the Petroleum Refining Point Source Category (EPA 440/1-82/014) October, 1982.

meeting the requirements of subtitle C of RCRA. Under EPA regulations, the treatment standards are based on the performance of the best demonstrated available technologies (BDAT) to treat the waste. For a waste identified or listed after HSWA was enacted, HSWA provides that the Agency has 6 months to determine whether to prohibit the waste from one or more methods of land disposal and promulgate BDAT standards simultaneously with any prohibitions. RCRA 3004(g)(4), 3004(m)(1).[4]

Based on the Agency's data gathering effort, a Notice of Data Availability was published in the **Federal Register** on February 11, 1985 (50 FR 5637), presenting data collected from 1981 to 1984 from petroleum refining wastewater treatment systems. The compositional data identified the types and concentrations of organic and metal constituents detected in sludges and floats from the following types of units and sources:

- storm runoff ponds
- primary settling ponds
- flocculation tanks
- sumps
- emulsion tanks
- induced air flotation tanks
- evaporation ponds
- equalization ponds
- primary clarifiers
- cleaning chemical pits
- ponds with an oil skimmer

The data showed that sludges from these various sources contain lead and chromium at levels similar to the levels found in sludges from DAF units (K048) and API separators (K051). In addition, benzene and toluene were detected in the sludges at concentrations as high as 4,600 and 11,000 ppm, respectively (dry weight basis). Specific polynuclear aromatic hydrocarbons (PAHs), such as benzo(a)pyrene, chrysene, and pyrene were also detected at maximum concentrations ranging between 600 and 1,700 ppm (dry weight basis).

Commenters were uncertain about the scope of the listing description "secondary (emulsified) oil/water/solids separation sludge" and indicated confusion about its applicability to secondary (biological) treatment sludges. The Agency also reaffirmed that the scope of any final listings. EPA explained that the final listings would apply only to wastes from primary wastewater treatment processes (which include both primary and secondary oil/water/solids separation units), and not to wastes from secondary (*i.e.*, biological) wastewater treatment processes, such as biological oxidation sludges. In addition, EPA identified activated sludge and trickling filters as specific examples of biological wastewater treatment processes that generate sludges that were not proposed for listing. The notice also solicited comments on the replacement of the K048 and K051 listings with a single, consolidated listing of "sludge from primary wastewater treatment in the petroleum refining industry."

The Agency received comments on the 1985 Notice of Data Availability stating that the scope of the listing continued to be unclear and controversial. Much of the debate centered on the inclusion of "incidentally" generated sludge in the listing.[5] These comments reflect the challenges the Agency has faced in crafting the listing definitions finalized today so as to distinguish clearly the second step of primary wastewater treatment from secondary treatment. Specifically, many refineries use a series of settling/oxidation ponds in their wastewater treatment system. Whether these ponds are primary wastewater treatment units performing secondary oil/water/solids separation or are secondary (biological) treatment units depends on (a) the efficiency of the primary treatment units preceding the ponds, and (b) the refinery's effectiveness in keeping suspended and emulsified oil out of the units.

As a result of the comments received in the 1985 Notice, the Agency conducted additional sampling and analysis in order to characterize the differences between settling/oxidation ponds used for secondary oil/water/solids separation and those performing secondary (biological) treatment. EPA sought to identify an indicator parameter to correlate the wastewater treatment system's transition from oil/water/solids separation to predominantly biological treatment. Such an indicator would clearly distinguish biological—and therefore non-listed—secondary treatment sludge from primary treatment sludge. The Agency evaluated a number of alternatives to incorporate this type of indicator parameter in the listing definition (a) to distinguish between secondary separation sludges and secondary treatment (biological) sludges and (b) to ensure that wastewater treatment units that were clearly performing biological oxidation would not be regulated as hazardous waste treatment units by this listing.

The American Petroleum Institute (API), whose membership includes a significant number of petroleum refineries likely to be affected by today's action, expressed considerable interest in this approach to resolving confusion over the scope of the listing. At the Agency's request, API provided information on phenolic removal efficiencies (percent removal of total phenolic compounds in the wastewater) achieved in different types of wastewater treatment units. Specifically, API provided data that suggested that a total phenolic removal efficiency of 80 percent or higher for a given unit would indicate that biological treatment of the wastewaters had occurred. Because only minimal levels of biological treatment occur in primary treatment units,[6] API believed this test would offer a clear indication of when secondary (biological) treatment had commenced in a particular system. Thus, API suggested that EPA distinguish listed primary separation wastes from secondary biological sludges by phenolic removal efficiency.

Believing that the API proposal had merit, the Agency initiated another sampling program in the fall of 1987 to validate the phenolic removal efficiency data provided by API. As part of that sampling effort, the Agency also collected information on the oil, water, and solids contents of the sludges. The Agency published a Notice of Data Availability on April 13, 1988, describing the data collected (53 FR 12182). The 1988 Notice also restated the Agency's definitions of primary oil/water/solids and secondary oil/water/solids separation sludges and of segregated stormwater units. EPA again sought to explain the scope of the proposed listings by restating its intention in the proposed listings to extend regulatory coverage to all primary wastes with composition similar to wastes generated from processes and equipment other than API separators and DAF equipment (K051 and K048). The Agency also reaffirmed that only sludges and floats generated in the primary and secondary oil/water/solids separation stage of primary wastewater treatment were subject to the proposed listings.

The Agency recognized that some of the commenters in certain cases still had difficulty under the language of its proposed listings in distinguishing secondary separation sludge units from secondary (biological) units.[7] The Agency explained that it had not itemized the factors distinguishing the two because the distinction was clear at most refineries. In the case of inadequate primary treatment, primary treatment might be prolonged so as to make it difficult to pinpoint clearly those units in which biological treatment was taking place.

> Failure to remove oils and emulsions prolongs the primary treatment process since the presence of significant quantities of oil in the wastewaters inhibits bacterial growth and delays the onset of biological treatment. As a consequence, multiple units covering many acres may be used for primary treatment. Past and present data demonstrate that regardless of the number of acres and/or units dedicated to primary treatment, all units will continue to generate sludges which are similarly composed to the currently listed wastes. Because only the primary treatment units are covered by the original proposal, it is critical that individual refineries have a clear picture of where biological treatment commences in their systems. 52 FR 12165.

Because of this uncertainty, EPA considered two approaches that relied on alternative indicator parameters for describing units that generate sludge similar to the already listed wastes.

The first approach was to develop definitions based on the suggestion of API to identify biological treatment units as measured by phenolic removal efficiency. The second approach defined biological treatment in terms of the percent oil content of the sludges computed on a dry weight basis (i.e., moisture free basis). The objective of both definitions was to identify the units within a given treatment train that generated secondary oil/water/solids separation sludge from those that generated secondary (biological) treatment sludge.

While hopeful that the first approach would provide an accurate means for distinguishing primary from secondary (biological) sludges, EPA saw several problems with the proposal including how to implement it for multipurpose units. The Agency also explained its concern that the use of activated carbon and oxidizing agents in clearly primary treatment units would boost phenolic removal to the level of the suggested approach. This might result in a unit that clearly generated primary sludge escaping regulation.

Most of the refineries responding to the 1988 Notice of Data Availability favored the phenolic removal efficiency approach to distinguish secondary oil/water/solids separation sludges from secondary (biological) treatment sludges, provided the Agency used a specific value (*e.g.*, <70 percent) for establishing a phenolic removal efficiency test as an indicator parameter in the listing definition.

The Agency received other comments, however, that identified several problems with the phenolic removal efficiency approach. In particular, the phenolic removal efficiency approach could inappropriately identify intermittent flow basins as secondary (biological) wastewater treatment units. This approach could also encourage the use of larger primary surface impoundments so that the initial treatment step would attain the criteria for biologically treated wastewaters. Phenolic pretreatment could also be used in the production area to drop phenolic levels to below the detection limit in order to circumvent the intent of the listing. Thus, facilities could escape listing while generating sludges and floats with the same constituents as those proposed for regulation, a result clearly at odds with the EPA's expressed intention to ensure equal treatment for all primary treatment units and processes generating sludges of the same composition. Therefore, the Agency has abandoned the phenolic removal efficiency approach as a means to distinguish secondary oil/water/solids separation sludges from secondary (biological) treatment sludges.

The second approach considered in defining the scope of the listing (based on the percent oil content of the sludge) also received extensive comment. A number of commenters supported the use of this approach to differentiate between primary treatment sludges and secondary (biological) treatment sludges, provided that the Agency modify the baseline oil level determination (the Agency proposed using the lowest percent oil content of K051 sludges generated at each facility as a baseline). In particular, these commenters suggested that the average oil content of K051 sludges at each refinery be used as a baseline. Other commenters believed the approach to be workable but pointed out that certain refinery specific waste generation practices may result in the misclassification of secondary (biological) treatment sludges as primary treatment sludges. For example, the sludges from an API separator receiving largely surface runoff from the process area may have very low oil content because most of the solids are surface dirt that will release free oil to the separator surface, and then settle to form a low oil content sludge. Thus, with the low oil content sludge of this hypothetical API separator as the basis for comparison, secondary (biological) sludges may be misclassified as listed primary treatment sludges. Many of the commenters also expressed concern about the precision and accuracy of the analytical methods required for the percent oil content approach. But, the commenters offered no data to substantiate their concerns and did not suggest alternate methods for determining the percent oil content of sludge.

As a result of comments on the precision and accuracy of the proposed analytical methods, the Agency re-analyzed the noticed data. The findings of this effort, which are presented in the rulemaking docket for the 1988 Notice (See **ADDRESSES**), suggest that method variability is outside of the acceptance criteria established in EPA publication SW–846, 3rd Edition, November 1986. Therefore, a definition based on percent oil content of the sludge was not considered implementable at this time.

Because analytical tests proved unreliable indicators for distinguishing secondary separation sludges and floats from biological treatment sludges, the Agency has decided not to adopt such an approach. The Agency has decided instead to adopt comprehensive listing descriptions for primary wastewater treatment sludges in order to respond to the commenters' clearly expressed desire for listings that clearly differentiate primary from secondary (biological) sludges. Consequently, the listings first indicate the treatment process (whether primary gravitational or secondary (emulsified) separation) generating the listed sludges, then identifies specific units generating the sludges without limiting the listing to sludges from such units. Finally, the listings identify those sludges not included in the listings and identify units or processes that would not generate the listed sludges. Only sludges and floats from units using aggressive biological treatment methods are not included in

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[4] Under RCRA section 3004(g)(5), EPA must prohibit a method of hazardous waste disposal unless the Administrator finds the method will be protective of human health and the environment for as long as the waste remains hazardous.

[5] Today's preamble contains references to "intentionally" and "incidentally" generated sludges. Commenters used these terms to distinguish sludges that were deposited in a device designed to remove oil and solid wastes "intentionally" (the commenters cited an API separator in this regard) from those sludges that were deposited "incidentally" in devices designed for another function (the commenters cited sump and flow equalization sludges as examples). As this preamble makes clear, the Agency views the distinction as irrelevant for purposes of the listing because of the absence of any demonstration that sludge composition is different.

[6] Primary treatment units separate oil/water/solids through physical and chemical processes and any biological activity is incidental to active separation processes.

[7] The Agency did identify units that were clearly recognized as performing biological treatment. These were activated sludge systems, trickling filters, and biodisc. 53 FR 12185. These same systems were explained in the Development Document that Environ had referenced in its original petition to expand the K048 and K051 listings. See Development Document, p. 159.

today's listings. This ensures that sludges generated in systems with passive, incidental biological activity that are, in fact, relying on gravity separation for oil/water/solids, that generate a sludge similar in composition to other primary wastewater treatment sludges, do not escape regulation.

In order to address commenters' concern that the listings should clearly identify factors distinguishing secondary separation from biological oxidation, the listing defines the unlisted secondary (biological) sludges as those generated in "aggressive biological treatment units".[8] The listings identify aggressive biological treatment units (and hence units not generating the listed sludges) as units employing one of four treatment methods: activated sludge, trickling filter, rotating biological contactor (RBC), or high rate aeration. Both the 1985 and 1988 Notices had earlier identified activated sludge, trickling filters and RBCs as units performing a clearly biological function (50 FR 5638, 53 FR 12164, 12166).

The fourth category, high-rate aeration, is a general description of other secondary treatment processes that promote biological activity by introducing additional oxygen to the treatment system through mechanical aeration. (53 FR 12165) The Agency has adapted the definitions of RCRA section 3005(j)(12)(A) for clarifying the inapplicability of the listings to secondary (biological) treatment sludges. Thus, the Agency defines high-rate aeration as a system of impoundments or tanks in which intense mechanical aeration is used to completely mix the waste in order to enhance biological activity. In order to clarify that only true biological systems fall outside of the listings, the listing describes "high-rate aeration" in terms of a required level of mechanical aeration and the total retention time in the tank or impoundment. This guarantees against primary wastewater treatment systems purporting to be secondary systems based on minimal aeration.[9] Thus, the requirement for 6 horsepower aeration per million gallons of treatment capacity ensures that a refinery could not escape the listings through such minimal aeration.

In addition to the comments discussed above, the Agency received a number of other comments on the 1988 Notice of Data Availability. These comments, all other comments on previous notices, and comments on the original proposal have been reviewed by the Agency. All comments identified by the Agency as major comments are discussed in section IV of this Preamble; the remaining comments are addressed in the Response to Comment Background Document, which is available in the EPA RCRA Docket supporting today's rule.

In summary, after a careful review and analysis of the available information, the Agency is today promulgating two new listings, identified as F037 and F038, for wastes generated from the treatment of petroleum refining wastewaters. The Agency is listing the following wastes as hazardous under 40 CFR 261.31:

F037 Petroleum refinery primary oil/water/solids separation sludge—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing.

F038 Petroleum refinery secondary (emulsified) oil/water/solids separation sludge—Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing.

In addition, for the F037 and F038 listings, the Agency is providing the following listing specific definitions under 40 CFR 261.31(b):

(b) Listing Specific Definitions and Requirements.

(1) For the purposes of the F037 and F038 listings, oil/water/solids is defined as oil and/or water and/or solids.

(2)(i) For the purposes of the F037 and F038 listings, aggressive biological treatment units are defined as units which employ one of the following four treatment methods: activated sludge; trickling filter; rotating biological contactor for the continuous accelerated biological oxidation of wastewaters; or high-rate aeration. High-rate aeration is a system of surface impoundments or tanks, in which intense mechanical aeration is used to completely mix the wastes, enhance biological activity, and (A) the unit employs a minimum of 6 hp per million gallons of treatment volume; and either (B) the hydraulic retention time of the unit is no longer than 5 days; or (C) the hydraulic retention time is no longer than 30 days and the unit does not generate a sludge that is a hazardous waste by the Toxicity Characteristic.

(ii) Generators and treatment, storage and disposal facilities have the burden of proving that their sludges are not included in the listing as F037 and F038 wastes under this definition. Generators and treatment, storage and disposal facilities must maintain, in their operating or other onsite records, documents and data sufficient to prove that: (A) the unit is an aggressive biological treatment unit as defined in this subsection; and (B) the sludges not included in the descriptions of F037 and/or F038 were actually generated in the aggressive biological treatment unit.

(3)(i) For the purposes of the F037 listing, sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement.

(ii) For the purposes of the F038 listing, (A) sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement, and (B) floats are considered to be generated at the moment they are formed in the top of the unit.

By listing these wastes as hazardous EPA achieves its expressed intention to treat sludges and floats of similar composition in the same manner regardless of the primary wastewater treatment unit generating the waste. The Agency is returning to the structure of the listings proposed in November 1980 and is providing a clarification as to which wastewater treatment sludges and which sludge-generating units will be covered under today's rule. The Agency is distinguishing oil/water/solids separation sludges from biological treatment sludges—the listed primary sludges from the unlisted secondary sludges—by defining the aggressive biological treatment units and the sludges (biosludges or digested biomass) generated from these units that are not included in today's listings. These listings are discussed further in today's rule.

II. Summary of Today's Rule

In today's action, the Agency is finalizing two new listings for sludges generated from primary treatment of petroleum refining wastewaters: F037, primary oil/water/solids separation sludges, and F038, secondary oil/water/solids separation sludges. In this section, the Agency will (1) describe industry and wastewater treatment systems that generate these sludges; (2) further clarify the scope of the listings; (3) discuss the basis for listing for these wastes; and (4) summarize the anticipated impacts of this rule.

A. Industry Overview

1. Industry Description

Petroleum refineries are defined as "establishments primarily engaged in the production of gasoline, kerosene, distillate fuel oils, residual fuel oils, naphtha, liquified refinery gases, and lubricants through the integration of fractionation and/or straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking, or other processes" (Office of Management and Budget (OMB), 1987). The Standard Industrial Classification (SIC) code for petroleum refineries is 2911, which excludes establishments producing gasoline from natural gas or organic chemicals. The major products of petroleum refineries are motor gasoline, kerosene, diesel, aviation fuels, distillate fuel oil, residual fuel oil, liquified petroleum gases, jet fuel, lubricants, petroleum coke, and asphalt (DPRA, 1985).

At the beginning of 1989, there were 204 operating refineries in the U.S. (excluding U.S. territories) with a total crude oil distillation capacity of 15.7 million barrels per calendar day.[10] Petroleum refineries are located across the country with at least one installation in each of 35 states. Three states—Texas with 34, California with 32, and Louisiana with 22—dominate the distribution, with a combined total of 43 percent of all refineries and 57 percent of U.S. capacity. Another 12 states had six or more refineries within their borders.

The refineries were owned by 106 companies. Of these companies, nine possessed over half (57 percent) of the crude distillation capacity, and another 21 companies controlled an additional 30 percent. The remaining 75 companies accounted for only 9 percent of the total U.S. capacity. Of these 75 companies, most had less than 50,000 barrels per calendar day capacity and generally owned only one refinery, although one company owned three. In addition, these 75 companies were generally non-integrated. That is, they did not produce their own crude oil but purchased it from other companies, or that they did not market their products but sold their products to other companies for distribution to the public. In contrast, the 31 largest companies were mainly integrated companies with the largest 24 being exclusively integrated companies. These 24 companies represent some of the largest corporations in the nation.

A petroleum refinery can be characterized according to the refining processes employed by the facility. Refineries may be categorized as follows:

Refinery Type	Processes
A	Crude Topping Primarily Crude Distillation Units.
B	Topping and Cracking.
C	Topping, Cracking, and Petrochemicals.
D	Topping, Cracking, and Lubricating Oil Processing.
E	Topping, Cracking, Lubricating Oil Processing, and Petrochemicals.

This characterization is based on ascending process complexity and has been used as a basis for subsequent characterization of waste generation.

Petroleum refining may involve several manufacturing operations and processes, including crude desalting, atmospheric and vacuum distillation, hydrotreating, catalytic cracking, thermal processing and residual upgrading, light hydrocarbon processing, hydrocracking, catalytic reforming, extraction, isomerization, lubricating oil processing, sulfur removal and recovery, and product blending and inventory. A spectrum of products is manufactured from petroleum refining including hydrogen, fuel gas, sulfur, liquified petroleum gas, butane, aromatic feedstocks, leaded and unleaded motor gasolines, jet fuel, kerosene, diesel, heating oil, fuel oil, asphalt, and coke.

2. Petroleum Refining Wastewater Treatment

Petroleum refining operations generate large amounts of wastewater that require treatment in order to reduce wastewater pollutants and produce effluents that meet discharge requirements specified under Clean Water Act (CWA) programs. In general, these wastewaters are either treated in an on-site wastewater treatment facility and discharged to surface waters or are pretreated on site and discharged to an off-site wastewater treatment facility, e.g., a Publicly Owned Treatment Works (POTW). Discharges to surface waters are controlled under the National Pollutant Discharge Elimination System (NPDES) and require an NPDES permit, while discharges to a POTW are subject to State and national pretreatment standards.

Treatment systems must be designed to accommodate wastewaters from a variety of sources. Wastewaters may be generally classified as process, oily cooling, oil-free, and sanitary wastewaters. Sanitary wastewaters generated from locker rooms and lavatories throughout the plant generally are managed in a refinery sewage plant or sent to a municipal sewage system. The other three types of wastewaters are treated in wastewater treatment systems. Sludges generated from the treatment of completely segregated oil-free and sanitary wastewaters are not affected by today's listings.

Wastewater treatment systems at petroleum refineries generally consist of the following elements: (1) A drainage and collection system to collect and carry wastewaters to treatment units, (2) a primary treatment system to separate oil/water/solids (o/w/s), and (3) a secondary (biological) treatment system to remove soluble biodegradable wastewater pollutants. Figures 1 and 2 present flow diagrams for two generalized wastewater treatment systems. Figure 1 represents a treatment system that would be impacted only

[8] The term "aggressive biological treatment units" derives from section 3005(j)(3)(A) of RCRA. This section provides that certain surface impoundments are not subject to the minimum technology requirement of RCRA section 3004(o)(1)(A) if they contain "treated waste water during the secondary or subsequent phases of an aggressive biological treatment facility." 42 U.S.C. § 6925(j)(3).

[9] In the Senate discussion concerning the adoption of section 3005(j)(3)(A), Senator Bentsen discussed the differences between primary and secondary wastewater treatment processes (130 Cong. Rec. S9183, July 25, 1984): The exclusion for wastewater treatment surface impoundments applies only to the secondary or tertiary phases. It does not apply to primary treatment operations. The exclusion would not apply to primary treatment operations which someone would attempt to make appear to be secondary treatment, such as putting an aerator in a primary operation in the hope that some biological activity would take place * * *.

Another issue which has been raised is what constitutes an "aggressive biological treatment facility." This term is used to describe a facility which has biological treatment as a planned and primary function of its operation. An example would be an impoundment system in which some or one of the ponds would include aeration. Thus the use of the word "aggressive" is included to distinguish between the types of facilities and impoundment systems where biological activity is an incidental rather than primary purpose of the impoundment system. An example of where a biological activity is an incidental purpose would be evaporation ponds that rely upon extended retention periods during which some biological activity will occur * * *.

[10] Draft Regulatory Impact Analysis, DPRA, June 15, 1990.

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minimally by today's rule. Figure 2 represents a system that would be more significantly impacted by today's rule. While the Agency understands that there is no typical refinery wastewater treatment system, discussion of the differences between these two generalized treatment systems will help clarify the scope of today's listings.

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FIGURE 1

MINIMALLY IMPACTED REFINERY WASTEWATER TREATMENT SYSTEM

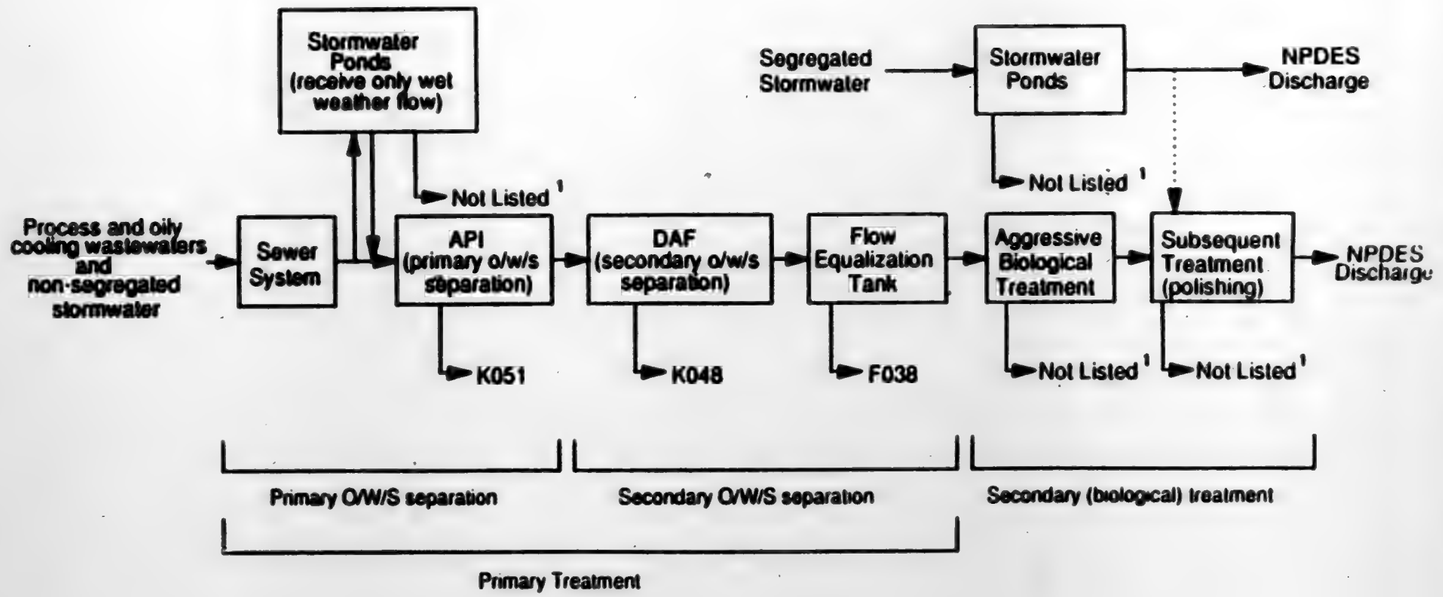

[1] Specifically excluded from the listing definitions of F037 and F038.

FIGURE 2

SIGNIFICANTLY IMPACTED REFINERY WASTEWATER TREATMENT SYSTEM

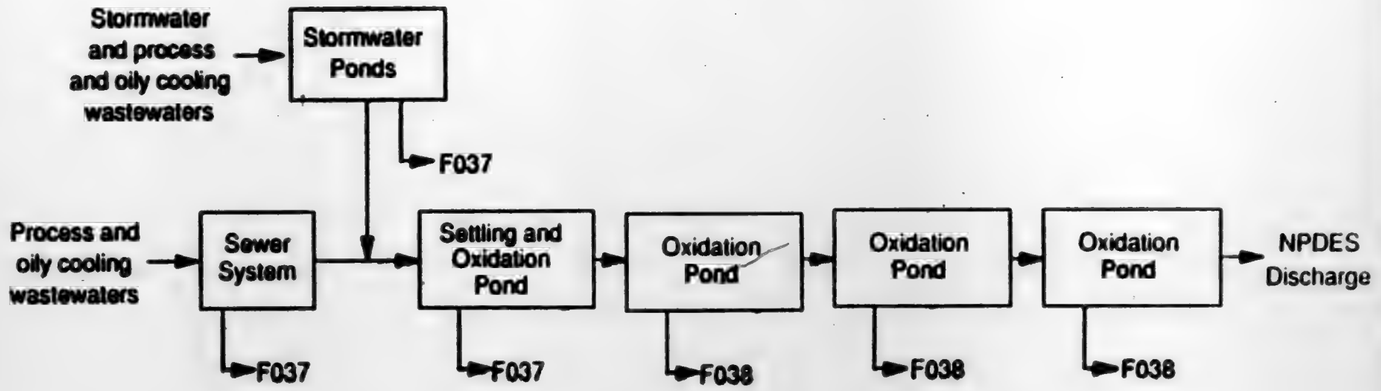

Wastewater drainage and collection systems may be segregated to allow for treatment by waste class, or may be nonsegregated, routing all wastewaters to common wastewater treatment. A facility as depicted in Figure 1 will segregate oil-free wastewaters from process wastewaters and oily cooling wastewaters to the fullest extent possible. Such facilities will also minimize the generation of emulsions in the drainage and collection system by avoiding turbulent flow and mixing, and will minimize accumulation of sludges in the drainage and collection system by incorporating properly sloped collection systems. Sludges deposited from process wastewaters and oily cooling wastewaters in drainage and collection systems are listed under today's rule as hazardous waste F037.

Using a segregated collection system, stormwater, the largest contributor to the oil-free wastewater stream, is handled in segregated stormwater ponds that receive flow only during storm events. Waters routed to these ponds during storm events either are discharged under an NPDES permit when the effluent quality is high enough or are returned to the wastewater treatment system. In cases where stormwater cannot be collected in storm sewers (e.g., process sewers are used to collect stormwater), stormwater ponds are used to receive surge flow from the process sewers during storm events. Such facilities will route only wet weather flow (mixed process and stormwater) to these segregated ponds. Sludges generated from segregated stormwater ponds that do not receive dry weather flow (*i.e.*, any process wastewaters or oily cooling wastewaters) are not included in today's listings.

On the other hand, a facility (as depicted in Figure 2) may route process wastewaters and oily cooling wastewaters to stormwater ponds during dry weather. Nonsegregated stormwater ponds that receive dry weather flow of process wastewaters and oily cooling wastewaters generate sludges that meet the listing description of F037.

Primary treatment may be divided into two stages: primary oil/water/solids separation, which is based on gravitational separation, and secondary oil/water/solids separation, which uses other physical or chemical processes to separate emulsified oil/water/solids that are not amenable to gravitational separation. Primary (gravitational) oil/water/solids separation for process wastewaters and oily cooling wastewaters is necessary in almost all cases to meet effluent standards and to recover oil for reprocessing. The extent to which secondary oil/water/solids separation (separation of emulsified solids) is required depends on the amount of emulsified oils in the wastewater.

Primary oil/water/solids separation is conducted in gravitational separators designed to allow sufficient time under low turbulence conditions for oil to rise to the top and coalesce for removal by skimming, and for solids to settle to the bottom. Properly designed primary oil/water/solids separators provide for the removal of the majority of the nonemulsified oil and settleable solids. Separators used at earlier points (i.e., regional separators) may be employed to treat individual waste streams prior to commingling at the main wastewater treatment system. While the API separator is most widely used, there exist other types of effective primary oil/water/solids separators (for example, corrugated plate interceptor (CPI) separators and separators of circular design). API separator sludge currently is regulated as hazardous waste K051. Gravitational separation sludges generated in all other primary oil/water/solids separators meet the F037 listing description.

Secondary oil/water/solids separation uses physical or chemical methods to separate emulsified oils from refinery wastewaters. Where such treatment is used, many facilities utilize systems for secondary oil/water/solids separation that involve air flotation. Air flotation achieves separation of emulsified oils and suspended solids from wastewater by introducing air into the bottom of a unit. As this air passes up through the wastewater it agglomerates oil and suspended solids to form an intimate mixture of gas (air) and particulates that is lighter than water. This mixture floats to the top of the unit where it is skimmed as surface float for treatment and disposal. The two types of air flotation units are dissolved air flotation (DAF) and induced air flotation (IAF), which differ in the means by which air is introduced in the unit. In each case, chemicals may be added to the wastewater influent to improve emulsion breaking and removal and agglomeration of particulates. Float generated from DAF units is currently regulated as hazardous waste K048. In addition, under today's listing, all sludges and other floats generated from induced air flotation and other secondary oil/water/solids separation units meet the F038 listing definition.

Facilities may also conduct secondary oil/water/solids separation in a series of settling ponds where extended holding times are used to break emulsions. Such facilities also may pass wastewaters that still have settleable solids from a primary oil/water/solids separator to these ponds. Serial settling ponds may have skimming devices to remove oil that rises to the surface or may rely on oxidation and photodegradation to degrade these oils. Some biological activity may occur within these units in addition to secondary oil/water/solids separation, depending on the number of treatment units included in a treatment train and the length of time wastewater is retained in each treatment unit to complete separation of oil and solids from wastewater.

Sludges from the treatment of process wastewaters and oily cooling wastewaters that are clearly biological treatment sludges, K048, or K051 are not included in today's listings. For the purposes of today's rule, sludges that are clearly biological treatment sludges are defined as those sludges generated from aggressive biological treatment. The four types of treatment considered aggressive biological treatment by the Agency in this rule are described below. All sludges (except for K048 and K051) that are generated in treatment units prior to aggressive biological treatment of wastewater and that are not primary oil/water/solids separation (gravitational) sludges (F037) are considered to meet the listing definition for F038.

To meet effluent discharge limitations, refinery wastewaters (primarily process wastewater streams) require biological treatment to reduce soluble (organic) wastewater pollutants. Aggressive biological treatment allows a facility to minimize the size of required treatment units while maximizing treatment efficiency. For purposes of today's listings, the Agency recognizes the following four types of treatment as aggressive biological treatment: activated sludge, trickling filter, rotating biological contactor units, and high-rate aeration. These technologies, described below in further detail, facilitate the detoxification and digestion of organic chemicals in wastewaters.

The Agency has reviewed the wastewater treatment systems for the majority of the U.S. refineries and is unaware of any other biological treatment processes that achieve equivalent levels of organic chemical removal and thus would qualify as aggressive biological treatment. Solids generated following the aggressive biological treatment of process wastewaters and oily cooling

wastewaters are "true" biological sludges because they contain acclimatized bacteria and dead biomass. However, if a facility believes it has a treatment process that should be considered as aggressive biological treatment, the facility may submit a rulemaking petition under 40 CFR 260.20. Facilities may also petition the Agency to delist specific wastes under 40 CFR 260.22.

The activated sludge process is a biological treatment technique primarily used for removal of organic materials from wastewater. This process is characterized by a suspension of aerobic and facultative microorganisms maintained in a relatively homogenous condition by mechanical mixing or by the turbulence induced by mechanical aeration in an aeration basin. These microorganisms oxidize soluble organic materials and agglomerate colloidal and particulate solids in the presence of dissolved oxygen. The aeration step is followed by clarification to separate biological sludge from the treated wastewater. Most of the biological mass is recycled to the aeration basin to be combined with incoming wastewater while the remaining sludge is routed to a sludge treatment and disposal facility.

The trickling filter operates by passing wastewater over a stationary bed of microorganisms. The filter consists of a suitable containment structure packed with a medium (usually rock, wood, or plastic) on which a biological mass (slime) is grown. Wastewater is distributed over the packing and biomass by a spray system. As wastewater flows over the slime, organic compounds are degraded to CO_2 and water, and suspended particulate and colloidal materials are removed by sorption processes. The sorbed material is oxidized by microorganisms in the presence of oxygen. Oxygen is provided to the trickling filter by convection of air through the unit. A thin film of water is maintained on the slime, which allows absorption of oxygen from the air and rapid transfer of oxygen to the microorganisms. Treated water may be recycled to the filter to control sloughing of the biomass and hydraulic and organic loading to the unit and to obtain the desired organic concentration reduction.

The rotating biological contactor passes a thin film of wastewater over a biological mass growing on a medium that is dipped into the wastewater stream. The contactor consists of a disk of suitable material mounted on a horizontal shaft that is supported so that the disk is approximately 50 percent immersed in the wastewater stream. The disk slowly rotates so that the water forms a thin film across the biomass. Oxygen from the air is easily absorbed by the water film and is rapidly transferred to the microorganism mass on the disk. Organics in the wastewater are assimilated and oxidized by the biomass during their life cycle. Excess microorganisms and solids are removed continuously from the disk by shearing forces created by rotation of the disk in the water.

High-rate aeration usually occurs in an earthen pond or other basin, with (or without) an impervious lining, in which adequate aerators are provided both to mix the contents of the pond and to provide dissolved oxygen to support biological activity. Adequate aeration devices ensure uniform concentration of dissolved oxygen and suspended solids throughout the basin to maximize the biological treatment efficiency. The biomass created by assimilation of the organic components in the wastewater is discharged from the pond with the treated water and requires a clarification unit downstream for separation of solids from the treated water. Normally, biomass is not recycled to the lagoon. Based on general Agency [11] and industry [12] design criteria, high-rate aeration employs a minimum of 6 hp per million gallons of treatment volume for mixing, and has a hydraulic detention time of up to 5 days under normal operating condition. Hydraulic detention times of up to 30 days are also allowed, provided the units do not generate a sludge that is a hazardous waste by the Toxicity Characteristic. Units which fail to meet the above description would not be considered aggressive biological treatment and, thus, are subject to today's rule.

For the purposes of this rule, waste stabilization ponds that do not employ mechanical aeration, and those ponds that employ only minimal mechanical (*i.e.*, low rate) aeration are termed nonaggressive biological treatments. These nonaerated ponds, often called "facultative" lagoons, use both algae and bacteria for the reduction of organic matter, and may employ some mechanical stirring to mix the liquid but not to supply oxygen. Hydraulic detention times generally range from 10 to 30 days. The Agency considers these units to provide largely gravitational treatment, and to form similarly hazardous sludges. Thus, sludges generated in these types of units are subject to today's rule.

Secondary (biological) treatment may be followed by nonaggressive treatment involving polishing of wastewaters prior to final discharge. Any sludges generated from treatment that follows aggressive biological treatment are not included in today's listings.[13]

B. Scope of the Listings

Today's listings for primary oil/water/solids separation (gravitational) sludges (F037) and secondary oil/water/solids separation (emulsified) sludges (F038) effectively regulate as hazardous waste all separation sludges generated from petroleum refining process wastewaters and oily cooling wastewaters that are not already regulated as either API separator sludge (K051) or DAF float (K048). These wastes are being added to the list of wastes from nonspecific sources in 40 CFR 261.31 in order to regulate sludges generated at wastewater treatment facilities on site at petroleum refineries as well as sludges generated at off-site wastewater treatment facilities [14].

F037 and F038 sludges are generated from the treatment of process wastewaters and oily cooling wastewaters. Process wastewaters include, but are not limited to, the following:

1. Desalter water;
2. Tank emulsion and water draw-offs;
3. Condensate from steam stripping operations;
4. Pump gland cooling water;
5. Barometric condenser water containing emulsions;
6. Intermediate and product treating plant wash water; and
7. Other wastewaters containing emulsions, heavy oils, or tar.

Oily cooling wastewaters include, but are not limited to, the following:

1. Once through cooling water from C_6 (six-carbon) hydrocarbons and heavier operations;
2. Blowdown from cooling towers servicing C_6 and heavier operations;
3. Uncontrolled oily storm water from refinery processing and tankage areas; and
4. Controlled oily storm water released from diked areas or surge ponds.

[11] USEPA. 1983. U.S. Environmental Protection Agency. Treatability manual. Volume III. EPA 600/2-82/001C. January 1983. pp.III 3.2.1-1 to 3.2.1-57

[12] American Petroleum Institute. 1969. Manual on Disposal of Refinery Wastes. Volume on Liquid Wastes API 789.7 man. Ch. 13.

[13] It should be noted that units not included in today's rule could be regulated under other RCRA provisions either because they are generating or receiving characteristically hazardous wastes or sludges.

[14] It should be noted that if wastewaters generated at petroleum refineries are discharged to a POTW and such wastewaters are mixed with domestic sewage from nonindustrial sources, the sludges generated in the POTW are covered under the domestic sewage exclusion and are not included in today's listings.

Sludges subject to today's listing may be generated in units that are designed to perform primary treatment (e.g., CPI separator or IAF unit) or may be generated incidentally in sumps, conveyances, equalization units, nonaggressive biological treatment units, or other wastewater treatment units prior to aggressive biological treatment. The intent of today's listings is to capture all primary treatment (separation) sludges, including gravitational and emulsified sludges wherever they are generated.

The Agency has defined those sludges that it believes are clearly biological treatment sludges—and not included in today's listings—as sludges generated from aggressive biological treatment units. In addition, sludges generated in units downstream of aggressive biological treatment units that do not receive any process wastewaters or oily cooling wastewaters that have not undergone aggressive biological treatment are also not included in today's listings.

Data collected and noticed in 1988 by the Agency and supplemented by data provided by commenters indicate that sludges generated in stormwater units that only receive rain water or storm flow during storm events do not generate sludges similar in composition to those generated in primary treatment units. Thus, sludges that are generated in stormwater units that do not receive dry weather flow are also not being included in today's listings. Sludges generated in stormwater units that do receive dry weather flow, however, meet the listing definition for F037.

While the Agency is unaware of any facilities that currently utilize spray irrigation as a disposal technique for petroleum refining wastewaters, such disposal of petroleum wastewaters prior to aggressive biological treatment would result in the generation of one of today's listed hazardous wastes. Wastewater solids forming a residual layer on the soil surface and the underlying soil layer following spray irrigation of wastewaters would also become or contain listed wastes under today's rulemaking.

C. Basis of Listing

Many commenters questioned the Agency's basis for listing these wastes as hazardous. This section summarizes the basis of listing today's wastes as hazardous, and section IV addresses the major concerns raised by commenters; all other comments are addressed in the Response to Comments Background Document that is available in the docket to this rulemaking.

Section 3001(a) requires the Agency to promulgate criteria for identifying the characteristics of hazardous wastes and for listing certain hazardous wastes. 42 U.S.C. 6921(a). The criteria promulgated by EPA for listing a waste as hazardous are presented in 40 CFR 261.11, which states in part:

(a) The Administrator shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria * * *;

(3) It contains any of the toxic constituents listed in Appendix VIII unless, after considering the following factors, the Administrator concludes that the waste is not capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed * * *.

The sampling and analysis data collected in support of these listings and noticed in the February 11, 1985 (50 FR 5637) and April 13, 1988 (53 FR 12182) **Federal Register** notices clearly demonstrate that primary treatment sludges routinely and consistently contain 40 CFR 261, Appendix VIII constituents. For example, the wastes consistently contained metals such as lead, chromium, nickel, and arsenic, and organics including benzene, toluene, and numerous PAHs such as benzo(a)pyrene, benzo(a)anthracene, dibenz(a,h)anthracene, chrysene, pyrene, and phenanthrene; five of these constituents, benzene, benzo(a)pyrene, chrysene, lead and chromium, consistently were found at sufficiently high concentrations to warrant inclusion in Appendix VII as the basis of listing for these wastes. Table A summarizes the range and average concentrations for these five constituents. While some of these sludges may contain low or non-detectable amounts of certain of the hazardous constituents, these sludges almost always contain one or more of the hazardous constituents at levels that may pose risk to human health and the environment.

In order to evaluate the criteria for listing these wastes as hazardous, the Agency considered each of the factors specified in CFR 261.11(a)(3) (i) through (xi) to determine if these wastes were indeed capable of posing a substantial threat to human health and the environment. The results of this evaluation are presented below.

TABLE A.—PRIMARY TREATMENT SLUDGE CONSTITUENTS OF CONCERN AND RANGE OF MEASURED CONCENTRATIONS

[All Values in PPM; Wet Weight Basis]

Constituent	F037				F038			
	No. of samples analyzed	No. of samples with detectable levels	Range[a]	Average[b]	No. of samples analyzed	No. of samples with detectable levels	Range[a]	Average[b]
Benzene	20	18	ND–200	31	15	8	ND–80	12
Benzo(a)pyrene	20	15	ND–83	49	24	16	ND–66	10
Chrysene	20	16	ND–136	26	24	12	ND–125	23
Lead	8	8	3–4570	562	6	6	1–3900	515
Chromium	14	14	3–2290	702	14	14	15–1950	522

[a] ND—not detected
[b] Arithmetic averages are based on ½ the practical quantitation limit for constituents detected below quantitation limits and for constituents not detected.

1. Toxic Nature of the Constituents

Each of the constituents presented in Table A is highly toxic. For these constituents, EPA has developed chronic toxicity reference levels and/or, in some cases, cancer potency factors for two human exposure routes (inhalation and oral). For the purpose of listing wastes as hazardous under RCRA, the Agency customarily uses three basic types of toxicity data from animal studies and epidemiological studies when analyzing the toxic potential of a constituent: (1) Maximum Contaminant Levels (MCLs); (2) Risk Specific Doses (RSDs); and (3) Reference Doses (RfD's). Based on different criteria, each of these types of data estimate the maximum doses or

acceptable human exposure levels. Exposure to chemicals below these levels is not likely to cause detectable health effects, but exposure to chemicals above these concentrations can be toxic or detrimental and may pose significant risk to human health. The criteria for establishing the toxicity levels are outlined below.

MCLs are final Drinking Water Standards under section 1412 of the Safe Drinking Water Act of 1974, as amended in 1984 for both carcinogenic and noncarcinogenic compounds. In setting MCLs, EPA considers a range of pertinent factors cited in 52 FR 25697–25698, July 8, 1987.

For certain carcinogenic compounds, the Agency has not promulgated MCLs but has developed RSDs. The RSD is a dose that corresponds to a specific level of risk to an individual of contracting cancer over a 70-year lifetime because of the intake of contaminated drinking water. Modeling procedures are used to extrapolate low-exposure levels to levels expected from human contact with the carcinogen in the environment. The slope of the line from this extrapolation is used to develop a cancer potency factor for the carcinogen. The cancer potency factor is used with a specific risk level to develop an RSD. The oral and inhalation RSDs for carcinogenic agents are established at the 10^{-6} risk level, which means that one in one million people could develop cancer if exposed to the carcinogen at the specified dosage for a lifetime. This approach is consistent with the risk levels used to delist specific waste streams as part of the RCRA delisting process. Based on the quality and adequacy of epidemiological data and experimental animal data demonstrating carcinogenic responses, constituents are assigned to five classes via a weight-of-evidence system developed by the Agency.

With respect to the "weight-of-evidence" system, the Agency promulgated guidelines for carcinogenic risk assessment (see 51 FR 32856, September 24, 1986), which incorporate an assessment of the quality of experimental data for the overall hazard assessment for carcinogens. These guidelines specify the following five classifications:

Class A: Human carcinogen (sufficient evidence from epidemiologic studies)
Class B: Probable human carcinogen
  Class B_1: Limited evidence of carcinogenicity in humans
  Class B_2: A combination of sufficient evidence in animals and adequate or no evidence in humans
Class C: Possible human carcinogen (limited evidence of carcinogenicity in the absence of human data)
Class D: Not classifiable as to human carcinogenicity (inadequate human and animal evidence of carcinogenicity or no data available)
Class E: Evidence of noncarcinogenicity for humans (no evidence of carcinogenicity in at least two adequate animal tests in different species or both in adequate epidemiologic and animal studies).

The Agency regards constituents classified in Class A or B as suitable for quantitative risk assessment. The suitability of Class C constituents for quantitative risk assessment requires a case-by-case review because some Class C constituents do not have a data base of sufficient quality or quantity to perform a quantitative carcinogenicity risk assessment. The weight-of-evidence basis was used to eliminate Group D and E constituents from further consideration as carcinogens.

Based on these guidelines, four of the five constituents are either "carcinogenic to humans" or are considered to be probable human carcinogens. The carcinogenic constituents of concern that are present in F037 and F038 for which there are no MCLs are either known (Class A) or probable human carcinogens (Class B1 and B2). Table B identifies the cancer potency factors for carcinogens present in these waste streams. EPA's Carcinogen Risk Assessment Endeavor Workgroup (CAVE) has determined that there is sufficient evidence to suggest that benzene, and chromium (VI) are carcinogens (Class A), and that benzo(a)pyrene (BaP), chrysene, and lead are probable carcinogens (Class B_2).

TABLE B.—CONSTITUENTS OF CONCERN AND CORRESPONDING TOXICITY VALUES (CANCER POTENCY FACTORS)

Hazardous constituents	CAG[a] Cancer Potency Factors	
	Oral (mg/kg/day)$^{-1}$	Inhalation mg/kg/day)$^{-1}$
Inorganic:		
Chromium VI	N.A.	4.1×10^{1}
Organic:		
Benzene	2.9×10^{-2}	2.9×10^{-2}
Benzo(a)pyrene	11.5	6.1[b]
Chrysene[b]	11.5	6.1

[a] Carcinogen Assessment Group.
[b] Class C carcinogen, however, the Agency is basing the cancer potency of chrysene on that of Benzo(a)pyrene based on structure relationships. The cancer potency factor of Benzo(a)pyrene is assumed for other polynuclear aromatic hydrocarbons.

Oral and inhalation RfD's, on the other hand, are established for noncarcinogens (systemic toxicants). An RfD is an estimate of daily exposure of the human population (including sensitive subgroups such as children) to a substance that would not represent an appreciable risk of deleterious effects during a lifetime. If frequent exposures that exceed the RfD occur, the probability that adverse effects may be observed increases. The method for estimating the RfD endpoints for noncarcinogenic constituents was described in the proposal for the Toxicity Characteristic rule (51 FR 21648, June 13, 1988).

Constituents exhibiting carcinogenic or other chronic systemic effects on humans or laboratory animals have been determined to be present in today's wastes. These toxicants are present in sufficiently high concentrations (*i. e.*, concentrations greater than the EPA established RfDs, RSDs, or MCLs) to pose a substantial threat to human health and the environment under plausible mismanagement scenarios. A brief summary of the toxicity of these constituents is presented below. For additional information on the toxicity of the hazardous constituents, see the Health and Environmental Effects Profiles (HEEPs) (available at the EPA Headquarters and EPA Regional Libraries).

Benzene is a Class A carcinogen. Benzene is carcinogenic in rats following exposure through gavage and in mice following inhalation exposure (IARC, 1982). An epidemiological study that correlated benzene exposure with the incidence of leukemia provided sufficient evidence to demonstrate that benzene is carcinogenic in humans (NTP, 85–002).

Benzo(a)pyrene (BaP) is a Class B_2 carcinogen. BaP is perhaps one of the most potent, known animal carcinogens. Microgram quantities have been shown to induce tumors in a number of experimental animal species through various routes of exposure, including oral, inhalation, and dermal application (IARC, 1973). The types of tumors seen after exposure to BaP include mammary tumors in rats (IARC, 1973); squamous cell papillomas and/or carcinomas of the forestomach in mice (Rigdon and Neal, 1966); and skin tumors in mice (Poel, 1963). BaP can also act as a transplacental carcinogen in mice (Bulay and Wattenberg, 1971).

In addition to their ability to act as carcinogens, several of the PAH compounds (*e.g.* chrysene), plus others (*e.g.* dibenz(a,h)anthracene) that display no carcinogenicity on their own, have been found to act as co-carcinogenic agents (initiators or promoters) causing skin tumors in mice following dermal exposure. This indicates that health-based numbers developed for certain PAHs are extremely conservative estimates of the toxicity of these compounds but, that when present in the wastes as mixtures of PAHs containing both carcinogens and cocarcinogens, these mixtures may collectively induce tumor formation at lower concentrations.

Benzene and BaP have also been shown to be embryotoxic and/or teratogenic in experimental animals (IARC, 1982 and Shum *et al.*, 1979).

Chrysene is classified a Class B_2 carcinogen, however sufficient data are not available to make a quantitative estimate of cancer potency. The Agency has established cancer potency factors for selected PAHs (benzo(a)pyrene) only. The conservative approach that the Agency follows for assessing health risks for exposure to the PAHs belonging to Class B_2 or C carcinogens is to use the cancer potency factor for benzo(a)pyrene, and to assign an order of magnitude less risk to the estimate.

Among the inorganic constituents of concern, hexavalent chromium has been classified as a known human carcinogen (Class A) by the inhalation route. EPA developed an inhalation cancer potency factor for hexavalent chromium based on an increased incidence of lung cancer in workers exposed to chromium over a 6-year period and followed for approximately 40 years.[15] EPA derived an oral RfD of 5.0×10^{-3} mg/kg/day for hexavalent chromium based on a study by MacKenzie *et al.* (1958) in which no observable adverse effects were observed in rats exposed to less than 2.4 mg/kg/day of hexavalent chromium in drinking water for 1 year.[16] Rats receiving a dose corresponding to 2.4 mg/kg/day showed an approximate 20 percent reduction in water consumption and an abrupt rise in tissue chromium concentration.

With respect to lead, recent information indicates that physiological and/or biochemical effects in humans caused by lead can occur at blood concentration levels that are lower than the 25 ug/L value established by the Centers for Disease Control, which is used as an acceptable level of blood lead. Therefore, the Agency has established a provisional oral RfD of 5×10^{-4} mg/kg/day and a provisional inhalation RfD of 4.3×10^{-4} mg/kg/day for adults based on the long-term acceptable daily intakes (ADIs) and National Ambient Air Quality Standards, respectively.[17, 18] The Agency has established an MCL for lead of 50 parts per billion (ppb) and has proposed reducing the MCL to 5 ppb (see 53 FR 31516). Although these RfD's for lead have not been verified through the formal EPA peer review process, after considering the toxicity data summarized above, the Agency believes that lead is clearly an appropriate basis for listing these wastes as hazardous.

2. Concentration of Toxic Constituents in Wastes

Table A presents concentration ranges and average values for each of the five constituents that form the basis of listing for the F037 and F038 waste streams. This table also identifies the number of samples analyzed and the number of samples in which detectable concentrations (*i.e.*, concentrations greater than the analytical detection limits) were measured. As shown in the table, lead and total chromium were detected in every waste sampled, while the remaining constituents of concern were each detected in over 50 percent of the samples analyzed. In addition, the Agency identified other Appendix VIII constituents in both types of sludge samples. These include arsenic, nickel, benzo(a)anthracene, dibenz(a,h)anthracene, pyrene, and phenanthrene.

Tables C and D present the health-based levels for the water consumption exposure scenario for the hazardous constituents detected in F037 and F038, respectively. The first four columns in each table present the constituents, the average measured concentrations of those constituents, their respective water health-based levels, and the bases used to calculate those levels. The remaining six columns provide an exposure assessment analysis that is discussed further in this section and section II.C.3. The health-based levels presented in these tables are based on two exposure assumptions: (1) The average exposed individual weighs 70 kg and, (2) the exposed individual drinks, on average, 2 liters of water daily. The resultant acceptable water intake concentrations range from 3.0×10^{-6} ppm (BaP and chrysene) to 5.0×10^{-3} ppm (lead and chromium). That is, in the case of BaP and chrysene, consumption of 2 liters of water daily with a concentration of 3.0×10^{-6} ppm would not threaten human health. Two of the five constituents of concern (benzene, and chromium VI) are known human carcinogens. BaP, chrysene, and lead are probable human carcinogens. Lead is also a systemic toxicant.

[15] Mancuso, T.F. 1975. International Conference on Heavy Metals in the Environment, Toronto, Canada.
[16] Mackenzie, R.D., Byerum, R.V., Decker, C.F., Hopport, C.A., and Longham, F.L. 1958. Chronic Toxicity Studies II. Hexavalent and trivalent chromium administered in drinking water to rats. Arch. Ind. Health 18:232–234.
[17] EPA. 1988. Drinking Water Regulations. Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper. 53 FR 31516–31577, August 18, 1988.
[18] EPA. 1986. Air Quality Criteria for Lead. Environmental Criteria and Assessment Office. EPA, Research Triangle Park, NC.

TABLE C. BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN F037

Hazardous constituent	Average measured waste concentration (ppm)	Water concentration (health-based) limits (ppm)	Basis[c]	Estimated drinking well concentrations[a] (ppm)			Estimated well concentration to health-based level ratios[b]		
				DA 100	DA 1,000	DA 10,000	DA 100	DA 1,000	DA 10,000
Benzene	39	5.0×10^{-3}	MCL (Class A)	0.39	0.039	0.0039	78	7.8	0.78
Benzo(a)pyrene	14	3.0×10^{-6}	RSD (Class B_2)	0.14	0.014	0.0014	46,600	4,600	460
Chrysene	26	3.0×10^{-3}	RSD (Clams B_2)	0.26	0.026	0.0026	9,000	900	90
Lead	552	5.0×10^{-3}	MCL (Class B_2)	5.52	0.552	0.0552	110	11	1.1
Chromium[d]	702	5.0×10^{-3}	MCL (Class A)	7.02	0.702	0.0702	140	14	1.4

[a] Calculated for three dilution/attenuation (DA) factors of 100, 1,000, and 10,000.
[b] Ratio obtained by dividing estimated drinking well concentration column by water concentration (health-based) limit column, for all three dilution/attenuation (DA) levels.
[c] Reference Dose (RfD), Risk Specific Dose (RSD), and Maximum Contaminant Level (MCL) are explained elsewhere in the preamble, as are the classes of RSDs. Benzo(a)pyrene is based on an exposure limit at a 10^{-6} risk level. Chrysene, a Class B_2 carcinogen, is based on an exposure limit at a 10^{-6} risk level, and the health limit is assumed to be that of Benzo(a)pyrene based on structure activity relationships.
[d] Concentration limits are for total chromium only.

TABLE D.—BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN F038

Hazardous constituent	Average measured waste concentration (ppm)	Water concentration (health-based) limits (ppm)	Basis [a]	Estimated drinking well concentrations [b] (ppm)			Estimated well concentration to health-based level ratios [b]		
				DA 100	DA 1,000	DA 10,000	DA 100	DA 1,000	DA 10,000
Benzene	12	5.0×10^{-3}	MCL (Class A)	0.12	0.012	0.0012	24	2.4	0.24
Benzo(a)pyrene	10	3.0×10^{-6}	RSD (Class B_2)	0.10	0.010	0.0010	33,300	3,300	330
Chrysene	23	3.0×10^{-3}	RSD (Class B_2)	0.23	0.023	0.0023	7,600	760	77
Lead	515	5.0×10^{-2}	HCL (Class b_2)	5.15	0.515	0.0515	103	10.3	1.03
Chromium [c]	522	5.0×10^{-2}	MCL (Class A)	5.22	0.522	0.0522	104	10.4	1.04

[a] Calculated for three dilution/attenuation (DA) factors of 100, 1,000, and 10,000.
[b] Ratio obtained by dividing estimated drinking well concentration column by water concentration (health-based) limit column, for all three dilution/attenuation (DA) levels.
[c] Reference Dose (RfD), Risk Specific Dose (RSD), and Maximum Contaminant Level (MCL) are explained elsewhere in the preamble, as are the classes of RSDs. Benzo(a)pyrene is based on an exposure limit at a 10^{-6} risk level. Chrysene, a Class B_2 carcinogen, is based on an exposure limit at a 10^{-3} risk level, and the health limit is assumed to be that of Benzo(a)pyrene based on structure activity relationships.
[d] Concentration limits are for total chromium only.

As shown in the last three columns of Tables C and D, the concentrations of constituents of concern in F037 and F038 are at least four orders of magnitude greater than the corresponding health-based limits. If mismanaged, therefore, given the potential for migration and persistence discussed below, the Agency believes that the constituents of concern are present in these wastes at levels clearly capable of posing a threat to human health and the environment.

The Agency has also evaluated potential environmental damages for API and DAF sludges based on data submitted by refiners as part of their delisting petition applications. The Agency, using this industry data and a variety of ground-water transport models (including the Organic Leaching Model (OLM), Vertical and Horizontal Spread (VHS) dispersion model, and the Land Treatment Model (LTM)), has concluded that concentrations of the constituents of concern in wastes (K048 and K051) are capable of migrating to the receptor points. The concentrations of the constituents of concern in the drinking water wells at receptor points exceed the corresponding drinking water standards. This is one of the reasons the Agency decided to deny many of the delisting petitions submitted by the petroleum refineries. Since the wastes listed today are similar to the previously listed wastes, the Agency believes that the constituents of concern in the wastes listed today can potentially reach receptor points and can pose risks to human health. A summary of the **Federal Register** notices announcing the Agency's action on each of the delisting petitions has been placed in the Regulatory Docket supporting this rule.

3. Fate and Transport of Toxic Constituents in the Environment

The Agency evaluated the mobility and persistence of the F037 and F038 constituents of concern in the environment. To assess mobility, the Agency considered the physical and chemical characteristics of the constituents of concern. The factors considered include the physical state of the sludges, their water solubility, the octanol-water partition coefficient (K_{ow}), and the soil-sorption coefficient (K_{oc}).

Table E summarizes these quantitative measures of mobility for each of the organic constituents, as well as a qualitative assessment of these data in terms of each constituent's potential for migration and persistence in the event of waste mismanagement. Compared to other constituents in the sludges, some of these constituents (*e.g.*, benzene) are more degradable than others. Chemical and biological degradation may occur in soil, if physical (*e.g.*, soil temperature, humidity and moisture, particle size, and water holding capacity of soil), chemical (*e.g.*, soil pH), and biological (*e.g.*, types of microorganisms) characteristics are conducive to facilitate degradation of chemical constituents. However, as evidenced by the contamination of soil and ground water, typically degradation is insufficient to prevent environmental damage if the wastes are mismanaged.

TABLE E.—Ground Water Mobility and Persistence of Organic Constituents of Concern

Constituents of concern	Water concentration (health-based) limits (ppm)	Water solubility (ppm)	Log K_{ow} [b]	K_{oc} [c]	Mobility [a]		Persistence
					Slightly [d] contaminated medium	Highly [e] contaminated medium	
Benzene	5.0×10^{-3}	1.75×10^{-2}	2.13	83	moderate	moderate	low.
Benzo (a) pyrene	3.0×10^{-6}	3.8×10^{-3}	6.25	5,500,000	low	high	high.
Chrysene	3.0×10^{-3}	2×10^{-3}	5.61	200,000	not known	not known	not known.

[a] Qualitative relative evaluation of mobility and persistence, based on water solubility, log K_{ow}, and K_{oc}. For more details, see the Background Document.
[b] K_{ow} = Octanol-water partition coefficient; see Background Document for data sources.
[c] K_{oc} = Soil-sorption coefficient; see Background Document for data sources.
[d] Slightly contaminated medium represents a mismanagement scenario where release of hazardous constituents does not result in saturation of the underlying soil by organic hazardous constituents.
[e] Highly contaminated medium represents a mismanagement scenario where release of hazardous constituents results in saturation of the underlying soil by organic hazardous constituents.

Because some of the constituents of concern (particularly benzene) are water soluble to some extent, they can (1) leach out of the wastes in a water-soluble form, (2) be transported through the subsurface environment from the waste, (3) eventually reach ground-water bodies, and (4) contaminate drinking-water wells. One measure of migration potential is the ability of a given constituent to partition between octanol and water. If a compound is not easily soluble in water but is soluble in octanol, it is slightly mobile in soil. Table E gives the logarithm of the octanol-water partition coefficient (log K_{ow}) values for the constituents of concern. A log K_{ow} of 2.13 for benzene indicates that it is moderately soluble in water and, hence, moderately mobile in soil. On the other hand, all the PAHs found in F037 and F038 have high log K_{ow} values suggesting that they would be relatively immobile (*i.e.*, less mobile than benzene) in the soil. However, evidence exists that these constituents may move more readily in soil with low organic content or if codisposed with other solvents or oils. Because wastes listed today typically contain high concentrations of oils, the mobility of the PAHs is expected to be quite high due to cosolvent effects. Therefore, it is reasonable to assume that wastes containing these constituents could pose a significant threat to human health via ground-water contamination if mismanaged.

In order to conduct a more qualitative evaluation of fate and transport of F037 and F038, the Agency evaluated potential risks to human health posed by exposure to a drinking water/waste mixture. EPA examined hypothetical ground-water concentrations by assuming that, through subsurface transport, dilution and attenuation (DA) processes will reduce the concentrations of the hazardous constituents of concern by a given factor. The Agency evaluated three DA factors: 100; 1,000; and 10,000. These three values correspond to drinking-well water-contaminant concentrations at 1, 0.1, and 0.01 percent of the contaminant's original concentration in the waste.

The three DA factors used in this analysis are intended to encompass a broad range of possibilities. While the DA factors were not selected to represent any particular environmental condition or range of environmental conditions, they represent assumptions varying from a moderate amount of dilution and attenuation to a high degree of dilution and attenuation. As shown in Tables C and D, the wastes examined pose a potential threat to human health and the environment across this wide range of assumptions.

The Agency believes that the DA factors used in assessing the potential migration of the constituents of concern in petroleum separation sludges are not unrealistic. To assess the effectiveness of the hypothetical concentrations (by assuming a set of three DA factors) in representing the real-life leaching and migration processes, the Agency compared average concentrations of certain constituents (chromium, fluoranthene, pyrene, anthracene, and naphthalene) in wood preserving wastes and ground-water contamination data from the damage cases related to the wood preserving industry. The Agency assumed that, in the past, wood preserving wastes containing high concentrations (higher than averages calculated for the rulemaking activity) were disposed of on land, which resulted in contaminated ground water as evidenced by the damage cases. The comparison provided the Agency with a mechanism to determine the potential migration of toxic and hazardous constituents from oily wastes in soil.

The results of the comparison suggested that metals such as chromium and semivolatile compounds such as anthracene, fluoranthene, chrysene, and pyrene are released from the oily wastes and, hence, are capable of contaminating ground water. The calculated DA factors for these semivolatile compounds in oily waste range from 10 to 100,000. Based on this preliminary comparison, the Agency concludes that the constituents of concern in oily wastes can be carried over to receptor points as agueous leachates at concentrations ranging from 10 to 0.001 percent and 1 to 0.01 percent of the original concentration of semivolatile compounds and metals respectively, in the oily wastes.

As shown in Tables C and D, for each of the organic constituents, the ratio of drinking-water well concentrations to health-based levels is greater than 1 in all cases except for the DA factor of 10,000 for benzene, the most mobile of the organic constituents. For F037 sludges, the ratios range from a low of about 0.76 (benzene at 10,000 DA) to a high of over 46,000 (B(a)P at 100 DA), and for F038, these values range from 0.24 (benzene at 10,000 DA) to over 33,000 (B(a)P at 100 DA). The Agency, therefore, believes that the potential for human exposure is significant and provides a basis for listing these wastes as hazardous.

These DA factor-derived estimates of potential significant human exposure are further substantiated by Agency-collected data from petroleum refining sites. For example, the Agency has information for down-gradient ground-water contamination from a petroleum refinery suggesting that the constituents of concern identified in F037 and F038 wastes have been released from a sludge pile and have reached ground water at concentrations that exceed the health-based numbers. The Agency believes that the data are convincing and support its conclusion that the current disposal practices used at this refinery are not acceptable and given the contaminants, may not represent management of waste consistent with protection of human health and the environment. There are numerous instances of ground-water contamination at petroleum refineries; and in some cases the contamination is of such magnitude that oil is recovered from the aguifer. Environmental damage at refineries is extensive and is generally attributable to the following contaminant sources (or combinations thereof): crude oil spills, refined product spills, and waste management. The Agency reviewed 21 refinery sites in Region VI and found at 17 of the facilities that groundwater contamination could not be traced solely to waste management. However, the Agency expects that waste management in unlined surface impoundments significantly contributed to the environmental damage based on our modeling. At the remaining four facilities clear evidence of groundwater damage as a result of waste management was detected. This provides additional evidence of the mobility of oily materials and wastes. Additional instances of environmental damage resulting from mismanagement are presented in Appendix I of the Background Document supporting todays rule. The data demonstrate that the hazardous constituents in these wastes are sufficiently mobile and persistent to pose a threat to human health and the environment when the wastes are mismanaged.

4. Potential for Bioaccumulation

Under the Clean Water Act, the Agency has established acceptable fish tissue concentrations for approximately 50 ecologically significant chemicals that tend to either bioconcentrate in fatty tissue and/or bioaccumulate in aquatic species and are likely to be transferred to higher organisms at different trophic levels (*i.e.*, in the food web). For each of the chemicals, the Agency has established a bioconcentration factor (BCF) that may be used to estimate the concentration of the chemical in biological tissue following exposure to a contaminated medium (*i.e.*, food or water). This list of 50 chemicals includes the three organic constituents of concern present in the F037 and F038 wastes. To protect humans from the consumption of contaminated fresh water and salt water species, the Agency has also established chronic water quality criteria for a large number of chemicals including all five of the constituents of concern for F037 and

F036 wastes. Table F presents BCFs and the chronic water quality criteria for the primary constituents of concern for today's listings. The BCF of a chemical represents the potential for its bio-uptake, its accumulation in tissue, and the degree of its metabolism and biotransformation; and is balanced by the excretion of the chemical. The higher the BCF value, the more readily the chemical will be taken up and stored, and m be degraded nor excreted.

TABLE F.—EPA-ESTABLISHED VALUES FOR POTENTIAL BIOCONCENTRATION IN AQUATIC SPECIES

Constituents	BCF	Chronic water quality criteria (µg/L)	
		Fresh water	Salt water
Benzene	5.2	N/A	700
Benzo(a)pyrene	28,200	N/A	*300
Chrysene	11,700	N/A	*300
Lead	N/D	3.2	5.6
Chromium VI	N/D	11	50

*For all PAHs, only one acute water quality criterion is established.
N/A—Not available.
N/D—Not developed.

The BCF is estimated as the concentration of the chemical in biological tissue following exposure to contaminated food and/or water divided by concentration of the chemical in the exposure medium. For example, chrysene has a BCF value of 11,700 indicating that if the concentration in salt water were 3 µg/L (one-one hundredth of the chronic water quality criteria value), it would be likely that salt water organisms would show chrysene concentrations of 35,100 µg/kg (35.1 ppm) in the tissues of their bodies. A BCF of 1000 indicates a potential for bioaccumulation, and both chrysene and benzo(a)pyrene are an order of magnitude or more higher than a value of 1,000, which is indicative of bioaccumulation in fish tissue.

Animal toxicity data available in the literature also shows that the constituents of concern, especially metals, remain in the edible animal tissue. The National Academy of Sciences (NAS) has established mineral tolerance levels for domestic animals.[19] These levels are referred to as maximum tolerable levels (defined as the dietary level that, when fed for a limited period, will not impair animal performance and should not produce unsafe residues in human food derived from the animal). The limits were established following the evaluation of the literature relating to 35 dietary minerals of both essential and "toxic" nature. Information such as the form of element, length of study, criteria for response, and species of test animals were taken into consideration. In establishing these limits, the adverse health affects to the domestic animals were also considered as the primary criteria for response.

The NAS limits are recommended for use during formulation of diet for domestic animals used as supplemental food in addition to forages, a primary food source for grazing animals.

Dietary mineral levels for selected metals such as cadmium, lead, and mercury were also based on human food considerations (*i.e.*, their potential for bioaccumulation in edible tissue used for human consumption). For example, cadmium accumulates in the liver and kidney tissue where it has a very long biological half-life, *i.e.*, is retained without any significant degradation. Domestic animals grazing on forage grown on soil contaminated with high levels of constituents of concern in petroleum wastes may be toxic to animals and may in turn accumulate in animal tissue at levels higher than those acceptable for human consumption.

These data, obtained from fish studies and animal tissue analyses, suggest that all the primary constituents present in F037 and F038 could pose significant risks to human health and environment via bioaccumulation.

5. Types of Mismanagement

Management practices for F037 and F038 sludges include storage in wastewater treatment tanks and surface impoundments, and final disposal in land disposal units including subtitle D landfills and land farms. However, sludges may remain in surface impoundments for very long periods. Only about 30 percent of the refineries have conducted periodic clean-out of at least some of their sludge generating ponds as of 1983. During wastewater treatment (i.e., settling, sedimentation, and gravity separation), solids deposit at the bottom of settling ponds, surface impoundments, or treatment lagoons. Many of these units are in locations where the soil is highly permeable and the ground-water table is relatively high. The solids settled in these units pose a significant risk to human health and the environment because (1) the settled solids typically contain significant levels of PAHs, benzene, lead, chromium, and other hazardous constituents; (2) these constituents have demonstrated mobility in the environment; and (3) these units typically are not fitted with leachate control measures. The site specific data collected by the Agency indicate that toxic constituents in the deposited solids have been transported from the source and have reached and contaminated ground water (see Response to Comments Background Document in the docket for this rulemaking).

6. Quantities of Waste Generated

EPA estimates that approximately 408,000 metric tons of F037 and F038 sludge are generated annually by the 204 petroleum refineries in the United States. Of this amount EPA estimates that between 256,000 and 300,000 metric tons per year are not covered by the Toxicity Characteristic. The original listings for K048 and K051. captured approximately 610,000 MT/yr of sludges (310,000 and 300,000 MT/yr, respectively).

7. Severity of Damage

The data available to the Agency indicate that the mismanagement of separation sludges has resulted in damage to the environment. Detailed damage information is presented in Appendix I in the Background Document Supporting today's rule. The damage incidents have shown ground-water contamination at levels in excess of health-based limits, soil migration and contamination of surface waters, and mortality of wildlife attracted to treatment lagoons.

8. Other Environmental Regulations

During the development of the F037 and F038 listings, the Agency evaluated the potential for other environmental regulations to provide protection for human health and the environment from mismanagement of petroleum refining primary treatment sludges. The Toxicity Characteristic, which was being developed at the same time as the expanded listings, was identified as having potential to identify the primary treatment sludges as hazardous and thus provide such protection. Specifically, a number of commenters to the April 13, 1988 Notice of Data Availability (53 FR 12182) expressed their belief that the TC rule would provide adequate protection from these wastes.

The Agency analyzed wastewater treatment sludges collected during the waste characterization effort for the expanded listings to determine the extent to which the TC would regulate primary treatment sludges. The results of these analyses were published in the April 13, 1988 Notice of Data Availability. The Agency has identified two major problems in relying on the TC to identify primary treatment sludges as hazardous. The first is that there exist significant levels of hazardous constituents not covered by the TC. Specifically, neither benzo(a)pyrene nor chrysene, both constituents which form the basis of listing for today's F037 and F038 listings, are covered by the TC. Second, Agency studies[20] have shown that the EP test, as well as the newly developed TCLP, tends to underestimate the leachability of hazardous constituents from oily wastes.

For these reasons, the EPA has decided that no other existing regulations would protect human health and the environment from the mismanagement of primary treatment sludges from the petroleum refining industry to the extent of today's listings for F037 and F038. The Agency previously developed regulations (listing of K048 and K051 wastes) to control hazardous wastes generated from the primary treatment of petroleum refinery wastewaters. Today's action will extend RCRA and CERCLA coverage to all similar wastes, providing a significant increase in controls on petroleum refinery waste management practices and further protection of human health and the environment.

9. Other Factors

The Agency is unaware of any other factors which would rebut the presumption that these wastes are hazardous.

10. Conclusion

In summary, after evaluating the criteria specified in 40 CFR 261.11(a)(3), the Agency has determined that the wastes are capable of posing a substantial present or potential hazard to human health and the environment when improperly managed. The Agency today concludes that F037 and F038 sludges should be added to the list of hazardous wastes at 40 CFR 262.31 because these wastes typically and frequently contain high concentrations of Appendix VIII constituents and after considering the factors specified in 40 CFR 261.11(a)(3) (i)–(xi), the Agency has reason to believe that these wastes are capable of posing a substantial present or potential hazard to human health or the environment when mismanaged.

[19] National Academy of Sciences, 1980. Mineral Tolerance of Domestic Animals. National Academy Press, National Academy of Sciences, Washington, DC, July 1980.

[20] Research Triangle Institute, *Evaluation and Modification of Method 1311 for Determining the Release Potenital of Difficult-to-Filter Wastes*, Final Report, April, 1990.

III. Interaction with Other Regulations

A. Characteristics of Hazardous Waste

As one of the mandates of HSWA, the Agency revised the Toxicity Characteristic (TC) (see 55 FR 11796, March 29, 1990). Some of the EP toxic metals and several of the constituents added to the TC rule are likely to be found in the wastes listed today. Some of the wastes listed today may fail the EP or the revised TC due to the presence of TC-listed constituents, or may exhibit the characteristic of ignitability and, therefore, may already be regulated as characteristic hazardous wastes. After the effective date of today's rule, as discussed below, these wastes will be regulated as listed hazardous wastes in addition to being regulated as characteristic wastes in some cases.

Furthermore, characteristically hazardous sludges that meet today's listing and that were previously not considered solid wastes when reclaimed (under the exclusion for reclaimed materials of 40 CFR 261.2(c)(3)) will become RCRA-regulated hazardous wastes by virtue of this listing. Consequently, generators conducting oil reclamation from any newly listed wastes that were previously characteristically hazardous may now require a permit for storage of these materials prior to processing the sludges.

Today's rule will regulate certain wastes generated from petroleum refinery wastewaters as listed hazardous wastes. Wastes that were already hazardous by virtue of exhibiting any of the characteristics of hazardous waste, including the revised TC, will continue to be regulated as characteristic wastes after the effective date of this listing. However, after the effective date, these wastes will require a new hazardous waste number to reflect the fact that they are listed hazardous wastes.

B. Minimum Technology Requirements for Surface Impoundments

RCRA section 3004(o)(1)(A) specifies minimum technology requirements (MTRs) for new, replacement, or lateral expansions of surface impoundments that contain hazardous wastes. RCRA section 3005(j)(1) requires surface impoundments that were in existence and that qualified for interim status on the date of enactment of HSWA [November 8, 1984] cease receiving, storing, or treating hazardous waste or comply with the minimum technology requirements of section 3004(o)(1)(A) within four years of the date of enactment, i.e., November 8, 1988. RCRA section 3005(j)(6)(A) also provides that surface impoundments that become eligible for interim status after November 8, 1984, as a result of receiving wastes that are hazardous due to additional listings or characteristics authorized by section 3001, must either comply with MTRs of section 3004(o)(1)(A) within 4 years of promulgation of the new listing or characteristic, or must cease receiving hazardous wastes no later than that date (see discussion in next section on the effective dates for land disposal restrictions). Requirements for closure of impoundments that cease to receive hazardous wastes are set forth in 40 CFR 264113 and 265.113 (see 54 FR 33376, August 14, 1989).

C. Land Disposal Restrictions

HSWA mandated that the Agency promulgate land disposal prohibition determinations for wastes identified prior to the enactment of HSWA under a specific schedule (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). If the Agency failed to promulgate land disposal restrictions by the dates specified in section 3004(g)(4), the wastes are prohibited from land disposal after May 8, 1990. HSWA also requires the Agency to make a land disposal prohibition determination for any hazardous waste that is newly identified or listed in 40 CFR 261 after November 8, 1984, within 6 months of the date promulgating the new listing (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). However, the statute does not provide for automatic restriction or prohibition of the land disposal of such wastes if EPA fails to meet this deadline.

DAF float and API separator sludge from the petroleum refining industry (K048 and K051) were evaluated as part of the First Third land disposal prohibition determination, and treatment standards were promulgated for these wastes on August 17, 1988 (see 53 FR 31138). However, in the Third Third final rule (published in the Federal Register on June 1, 1990, 55 FR 22520), the Agency rescheduled these wastes to the third third of the schedule and established revised treatment standards. In addition, the Agency granted these wastes a six-month national capacity extension from the effective date of the rule (May 8, 1990).

Although the wastes covered by today's notice are being listed because of the presence of hazardous constituents at levels similar to those found in K048 and K051, F037 and F038 are newly listed wastes, and therefore, the treatment standards for K048 and K051 do not apply to today's newly

listed wastes. The Agency has not yet completed treatability and capacity analyses for these newly listed wastes. For this reason, the Agency will address land disposal restrictions for the wastes listed today at a later date. Until that time, these wastes are not subject to 40 CFR 268, unless they exhibit one or more of the characteristics of hazardous waste, namely corrosivity, ignitability, reactivity, or EP toxicity. Wastes that exhibit the newly promulgated Toxicity Characteristic are considered newly identified as hazardous and are not covered by the LDR (unless also EP Toxic) (see the Third Third Land Disposal Restrictions Rule, June 1, 1990, 55 FR 22520).

The following discussion of requirements that may be imposed under the land disposal restrictions is provided to assist facilities managing the wastes listed today in preparing for requirements that may become applicable in the future. The Agency recommends that facility owner/operators begin taking the actions necessary to come into compliance with these requirements in anticipation of future effective dates.

The Land Disposal Restrictions program may restrict the management of the wastes listed today in various ways, depending on the timing and substance of a number of future regulatory actions. It should be noted that because the statute does not provide for automatic restriction or prohibition of land disposal of newly identified wastes until such restrictions are promulgated, land disposal of these wastes will not be restricted or prohibited until the Agency promulgates land disposal restrictions (unless the wastes exhibit one of the restricted hazardous characteristics or are subject to other land disposal restrictions).

Finally, it should be noted that several other RCRA rulemaking actions may affect the regulatory status of units managing the wastes listed today; including the Toxicity Characteristic (55 FR 11798), the Third Third land disposal restrictions rule (55 FR 22520), and promulgation of land disposal restrictions for TC hazardous wastes. The net effect of these regulations for any specific unit will be determined by the wastes managed in the unit, whether the wastes are hazardous due to being listed or exhibiting a characteristic, the effective dates of rules that cause each waste to be regulated as hazardous, and the treatment levels and effective dates promulgated for each hazardous waste managed in the unit. Each facility owner/operator must evaluate the applicable current and future regulations for each unit to determine the appropriate regulatory and technical actions for that unit.[21]

D. "Mixture" and "Derived From" Rules

The mixture rule (40 CFR 261.3(a)(2)(iv)) provides that any mixture of a listed waste and a solid waste is itself a RCRA hazardous waste with certain limited exceptions. Wastewater flowing downstream from units generating the listed sludges will not ordinarily be hazardous by virtue of the mixture rule in the absence of some activity, such as scouring, that causes the settled listed sludge to be reintroduced into the wastewater.

The "derived from" rule (40 CFR 261.3(c)) states that any waste derived from the treatment, storage, or disposal of a listed hazardous waste is itself a hazardous waste. Often water from dewatering of wastewater treatment sludges is recycled to process operation or returned to the treatment system. It is the Agency's position that such a wastewater is not a "derived from" hazardous waste if it can be demonstrated that the water removed from the sludge is no more contaminated than the original influent to the treatment unit from which the sludge was removed for dewatering.

E. Corrective Action

Under sections 3008(h) and 3004(u) of RCRA, all solid waste management units that are located at facilities subject to interim status or permitting are subject to RCRA corrective action requirements for releases of hazardous waste or constituents to the environment. It should be noted 'that regulated hazardous waste management units are also solid waste management units. Under these provisions, units that managed sludges that would have met today's listings in the past but that cease managing these wastes prior to the effective date of today's listings are solid waste management units and, if located at facilities subject to interim status or permitting under subtitle C of RCRA, are subject to the corrective action provisions. Wastewater treatment units that are exempt from the standards of 40 CFR 264 and 265 are also solid waste management units and, if they are located at facilities subject to interim status or permitting under subtitle C of RCRA, are also subject to the corrective action provisions.

[21] Particularly, it is possible that wastewaters from which the wastes listed today are generated will be identified as hazardous waste prior to the effective date of this rule through the revised Toxicity Characteristic (TC) (see 55 FR 11798, March 29, 1990). Thus, the applicability of unit-specific requirements such as the technical standards of 40 CFR 264 and 265, the MTR retrofitting requirements, and the requirements imposed by land disposal restrictions to units managing both the wastes listed today, and wastewaters that exhibit the Toxicity Characteristic, will be driven by requirements associated with TC wastes as well as those associated with the wastes listed today. As previously noted, any inconsistencies that may arise among these requirements will be addressed in future rulemakings which concern these issues.

IV. Response to Comments

The Agency is responding in this preamble to all major comments received in response to the original proposal and subsequent notices. The major issues raised by the commenters that are addressed in this section are:

- Scope of the listing
- Data adequacy
- Demonstration of hazard
- Implementation issues.

Other comments received by the Agency are addressed in the Response to Comments Background Document that is available in the docket associated with this rulemaking.

A. Scope of the Listings

Since the Agency originally proposed these listings, numerous comments have been received regarding the types of wastewater treatment units that would be subject to the listing.[22] Comments on the scope of the oil/water/solids separation sludge listings that are being finalized today have been subdivided into three major categories:

- Incidental versus Intentional Generation
- Applicability to Stormwater Basins
- Alternative Definitions.

The Agency's responses to these comments are presented below.

1. Incidental versus Intentional Generation

Many commenters suggested that the Agency restrict applicability of the listing to units that were designed and operated for the primary separation of oil, water, and solids from wastewaters. Commenters believed intentional generation of waste (*i.e.*, generation in units functionally similar to API separators and DAFs) was the premise of the original Envirex petition and that the Agency should limit the listing to these types of primary sludge-generating devices. Several commenters responding to the 1985 and 1988 Notices of Data Availability maintained that the Agency, until the 1985 notice, had not provided any indication that units (located upstream of the secondary biological treatment unit) that accumulated sludge incidentally (*i.e.*, deposition in devices that were intended to transport or store wastewater rather than deposit sludge) were to be covered by the listing. The Agency, thus, had not provided an opportunity for comment on the full scope of the listing. However, some of the same commenters had expressed concern in their comments on the original listing proposal of 1980 that the original listing proposal could potentially apply to incidentally generated sludges. One commenter maintained that the 1985 clarification was essential to ensuring consistent application of the original proposal.

The Agency disagrees with the commenters' contention that the original intent of the listing was to capture only those primary sludge separator units that were functionally equivalent to API separators and DAF units. The following quotes from the preamble to the 1980 proposal (see 45 FR 74893) illustrate that the Agency's intent on the scope of the primary sludge listings has been consistent:

> * * * *any* petroleum refinery sludge resulting from primary and secondary oil/water/solids separation will be comparably composed regardless of the type of equipment used in the separation step.
>
> Likewise, the API separator is only one of the many equipment types which function as a primary oil/water/solids separator (other processes producing similar sludges include * * * storm equalization lagoons and ballast water-holding tanks.)
>
> * * * the Agency agrees that the listings must be modified to reflect the hazardous character of the wastes themselves, rather than the type of equipment or processes generating the waste.

Based on comments received since the 1980 and subsequent proposals, it appears that some commenters' understanding of when a listed hazardous waste is generated and becomes subject to regulation has changed. Originally, some commenters failed to realize that the Agency considers sludge generation to occur when oily wastewater is treated by physical and/or chemical processes to segregate oil and solids from the wastewater. The solids formed at the bottom of a sludge-generating unit are wastes potentially subject to the RCRA regulations. As a consequence of their misinterpretation, some commenters erroneously concluded that the original proposal did not include sump sludges and other incidentally deposited sludges. A commenter responding to the 1988 notice acknowledged that EPA has provided a satisfactory clarification of which sludge-generating units would be covered by the proposed rule.

Commenters identified a number of "incidental" accumulators of primary oil/water/solids separation sludge that the commenters believed were inappropriately included in the listing scope. These included sumps, concrete sewers, pits, pipes and pipelines, emulsion tanks, separation tanks and impoundments, gravity separators, ditches, storm-water basins, flow equalization basins, chemical cleaning pits, and oil skimmers as well as oil retention units not used for the emergency spill control. The Agency has collected samples from all major incidental accumulator units at a variety of refineries and compiled analytical data on the sampled sludges. Analyses of these samples demonstrate that these sludges are similar to oil/water/solids separation sludges from API separators and/or DAFs at the same refinery (see docket number F-88-PTSA-S0005 included in the regulatory docket for the analytical results). This outcome is not surprising, inasmuch as the sludges are generated from the treatment of similarly composed wastewaters through gravity sedimentation. While commenters expressed the belief that units operated for different purposes would produce sludges of different characteristics and that the Agency should require and conduct specific analyses of unintentionally (*i.e.*, incidentally) generated sludges before regulating such sludges as hazardous, they failed to provide data to substantiate their claims. Furthermore, no valid theoretical basis has been put forth in support of the claims that the API separator sludge and the sludges generated in the incidental units are dissimilar.

A comparison of the data generated by the Agency for the sludges from the incidental units and the API separator sludge indicates that both types of sludges are similar in composition and contain hazardous constituents at significant concentrations (see document number F-88-PTSA-S0005 included in the regulatory docket). The Agency, therefore, disagrees with the commenters and is applying these listings to the sludge-generating units with sludge deposits that are incidental to the primary wastewater treatment system regardless of the location of these units. In the Agency's opinion all the incidental units identified earlier in this section and intentional units such as API separators and DAF's used to separate oil, water, and solids from process wastewaters and oily cooling wastewaters physically and/or chemically are covered by today's rule.

The Agency, therefore, is finalizing the proposed listings for F037 and F038 wastes that capture sludges generated in both the incidental and intentional sludge-generating units. The F037 listing definition includes the sludges generated from gravitational separation during storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, at a minimum, those generated in oil/water/solids separators, tanks and impoundments, ditches and other conveyances, sumps, and stormwater units receiving dry weather flow. The F038 listing definition includes, at a minimum, sludges generated in secondary oil/water/solids separation units, such as IAF units, and tanks or impoundments not covered in the definition of either F037, K048, or K051.

The F037 and F038 listing definitions, however, do not include the following sludges:

—The sludges included in the hazardous waste listings K048 and K051;
—The sludges generated in stormwater units that do not receive dry weather flow; and
—The sludges generated in the aggressive biological treatment units and units that do not receive any process wastewaters or oily cooling wastewaters that have not undergone aggressive biological treatment.

The Agency believes that today's listings and the previous listings of K048 and K051 cover all types of oil/water/solids separation sludges generated using either primary or secondary separation in primary treatment units. In other words, the petroleum refinery sludges not covered either in today's listings or the previous listings are not included in the intended scope of the original listings because they are not similar in composition to the listed wastes and are not generated in the primary or secondary oil/water/solids separation processes (*i.e.*, physical and chemical separation).

The Agency believes that the scope of today's listing definitions provides an incentive to refiners to use and properly maintain a well-designed wastewater treatment system, thus minimizing the

[22] As discussed in section II.A of this preamble, the Agency differentiates between primary wastewater treatment sludges (oil/water/solids separation sludge) and secondary wastewater treatment sludges (sludges generated in aggressive biological treatment units) as follows:

- Oil/water/solid separation sludges are generated during primary physical and/or chemical treatment of wastewaters to separate oil, water, and solids. These sludges typically come either from gravitational units (*e.g.*, API separators) generating primary oil/water/solids separation sludges or emulsion breaking units (*e.g.*, DAF units) generating secondary oil/water/solids separation sludges. Oil/water/solids separator sludge also includes sludges generated "incidentally" in units such as sumps, sewers, and oil skimmers that are upstream of aggressive biological treatment units. All of these sludges are within the scope of today's new listings.
- Biological sludges or digested biomass solids are sludges generated in aggressive biological treatment units.

potential generation of separation sludges in incidental units. During sampling site visits, the Agency noted that at many locations the primary wastewater treatment systems are operated inefficiently. This increases the quantities of sludges generated in downstream separator ponds and impoundments. The Agency believes that a wastewater treatment system could be better maintained and operated to (a) improve treatment efficiencies, (b) minimize sludge quantities especially in the incidental units, and (c) reduce the need for potential compliance with the RCRA-imposed minimum technology requirements.

2. Applicability to Stormwater Retention Basins

Numerous commenters expressed concern that stormwater retention basins generally handle a high volume of storm or rain water run-off and a relatively low volume of contaminated wastewaters. These commenters believed that these units should be distinguished from other primary treatment units. Commenters expressed the belief that the sludges generated in these units would be different from those in units which typically and frequently receive oily process wastewaters and/or oily cooling wastewaters. Commenters indicated that the use of oil skimmers in association with these units is necessitated by Spill Prevention Control and Countermeasure (SPCC) plans instituted by many refineries and does not necessarily reflect an expectation that the stormwater retention basin will receive an oily wastewater influent. One commenter submitted TCLP data that, according to the commenter, substantiated differences between primary oil/water/solids separation sludge and stormwater retention basin sludge.

The Agency examined a number of stormwater and flow equalization units in the course of its data collection efforts. These data were noticed on February 11, 1985 (see 50 FR 5637) and April 13, 1988 (see 53 FR 12102). The compositional data demonstrated that sludges from units that received dry weather flows were similar to other primary treatment sludges at the refinery. The similarity between sludges generated in stormwater retention units used exclusively for stormwater flow equalization and sludges generated in units used for primary treatment is less clear. Refineries generally collect the stormwater that falls on and runs off the surface of process areas of their operations. The stormwater is retained in basins for treatment and possible discharge. Some refineries collect stormwater in the process sewer system during storm events and thus may send some process wastewater along with their stormwater to stormwater retention basins. The Agency agrees with the commenters that stormwater units that receive process wastewaters in this manner, and do not receive any process wastewaters or oily cooling wastewaters during dry weather flow, do not routinely generate sludges that are similar in composition to the primary treatment sludges subject to today's listings. Thus, for the purposes of these listings, any stormwater unit that receives process or oily cooling wastewaters during non-storm events (*i.e.*, dry weather flow) will be considered to be generating a listed sludge.

One commenter submitted TCLP data that, while lacking important total waste compositional information, provided some additional confirmation for the Agency's view that units that are used for process and/or oily cooling water flow equalization in *addition* to stormwater retention will be significant accumulators of sludge, and that those sludges will be similar in composition to other primary treatment sludges generated at the refinery. The Agency, therefore, has concluded that sludge generated in stormwater collection devices that receive dry weather flows (*i.e.*, units used for wastewater flow equalization) are within the scope of the listing. Those devices not receiving dry weather flow and used exclusively for stormwater retention are not included in today's listings.

3. Alternative Definitions

In the 1988 proposal to list oil/water/solids separation sludges as hazardous, the Agency discussed the potential use of phenolic removal efficiency and percent oil content as criteria to differentiate between the sludges from primary and secondary oil/water/solids separation and sludges generated from biological treatment of wastewaters. Several commenters supported the use of phenolic removal efficiency as an indicator of when sludges are biological treatment sludges. A few commenters also supported the use of percent oil content in combination with phenolic removal efficiency as an appropriate indicator to differentiate between primary and secondary oil/water/solids separation sludges and secondary (biological) treatment sludges. After a careful review of the Agency-collected data and the public comments, the Agency concluded that it is not feasible to define the scope of the sludge listing based on chemical differences between the primary and secondary (biological) treatment sludges. The Agency believes that the available data are not adequate to apply either of these parametric tests to differentiate between secondary oil/water/solids separation and secondary (biological) treatment sludges. Specifically, these tests yielded both false negative and false positive results at a frequency unacceptable for regulatory decision-making (see section I, Background above). The Agency believes that the final listing definitions clearly identify affected units and are more easily implementable and enforceable because they do not impose additional testing and data interpretation requirements for the regulated community.

B. Data Adequacy

This section covers two major issues raised by commenters: (1) Sampling protocols, and; (2) data variability and representativeness of the samples. Commenters raised questions concerning the adequacy of the Agency's sampling procedures. They also maintained that sludges included in the previous listings and those proposed for the new listings are not comparable and equivalent in terms of constituents and their concentrations; hence, these sludges are not similar to K048 and K051 wastes and cannot be classified as K048 and K051 wastes. Each of these issues is discussed further below.

1. Sampling Protocols

Commenters raised a number of questions regarding the sampling and analytical procedures used to collect sludge data in support of today's listing. The major comment on sampling protocols of relevance to today's listings relates to the Agency's use of grab samples to characterize wastewater treatment sludges. Commenters expressed concern that the concentration of sludge constituents would vary temporally and spatially within a sludge-generating unit (particularly impoundments and conveyances). Commenters felt that the Agency's sludge sampling activity did not reflect and adhere to the SW-846 sampling protocols.

The Agency disagrees with these commenters. For example, when sampling surface impoundments, the sampling teams typically probed the unit to determine the extent of sludge accumulation prior to taking a set of samples. The sludges sampled generally reflected long-term (longer than one year) deposition and, thus, were temporally significant, that is, reflective of long-term concentrations. Also, samples were obtained from predetermined sampling locations (*i.e.*, grid approach) within the impoundment to ensure spatial representativeness, thus, the Agency considered the potential for both spatial and temporal variability of sludge within the unit and designed the sampling approach to ensure that representative samples were obtained. Aliquoting of subsamples, when necessary, was performed in accordance with the SW-846 protocols. When surface impoundments were sampled from the banks of the unit (usually because the refinery refused to allow the sampling team on the impoundment), grab samples were collected around the perimeter of the unit.

Great care also was taken to sample incidental sludge-generation units, both those units that serviced small portions of the refinery and those that centrally serviced the refinery's wastewater treatment needs. Ditches where sludges accumulated incidentally were sampled to compare with sludges intentionally generated in separators. Surge basins that performed varying degrees of stormwater retention versus flow equalization also were sampled. The result of this extensive sampling program was the collection of samples from the entire spectrum of wastes potentially subject to the listings.

In a small number of cases, grab samples were collected from a single operating cycle of units that generated sludges on a continuous basis. However, when the hazardous constituent levels of these wastes were examined on a dry basis, the observed values were well within the concentration ranges for similar classes of sludge-generating units and for other units at the refinery. Therefore, the Agency believes that it was successful in obtaining samples that are representative of the long-term waste-generation practices of sludges from the treatment of petroleum refining wastewaters.

2. Data Variability and Class Representativeness

Numerous commenters responding to the 1980 and 1985 **Federal Register** notices expressed concern that the Agency had not provided data on large classes of units that were subject to the listing (*e.g.*, stormwater and flow equalization basins and the other sources specifically mentioned in the February 11, 1985, notice). To address the commenters' concerns, the Agency had included in the 1988 notice docket the relevant data (see docket number F-88-PTSA-S0005 included in the regulatory docket).

Commenters responding to the April 13, 1988, notice expressed concerns regarding the adequacy of the Agency's data collection effort. Commenters also raised several new concerns. Among the commenters' concerns with the data noticed in 1988 were:

—Variability of constituent levels within a given unit throughout the class of wastes,
—Whether the data established quantitatively the equivalency of the proposed sludges to K048 and/or K051 waste listings, and
—Whether lead and chromium levels were still of concern in any refinery sludges.

These comments are discussed below.

a. *Constituent Level Variability.* The response to the above comments about the extent of sampling and adherence to the SW-846 sampling protocols explain the rationale for the Agency's conclusion that collected samples were representative and that a comprehensive sample collection activity was undertaken. Similarly, the Agency stresses that an extensive sampling effort was completed to illustrate the similarity between the F037 and F038 sludges, and the API separator sludge (K051) and the DAF float (K048). Care was taken to obtain samples from possible sludge-generating units servicing small portions of the refinery as well as those centrally servicing the refinery's wastewater treatment needs. For example, ditches that incidentally accumulated sludges were sampled for comparison with sludges intentionally generated in separators. Surge basins that performed varying degrees of stormwater retention versus flow equalization were also sampled. The objective of this sampling program was to determine the constituent level variability and/or similarity in support of the potential listings.

Considering the diverse population of sludge-generating units and operating conditions, it was not unexpected that lead and chromium concentrations varied over three orders of magnitude. Similar variations in inorganic contents were seen in the analytical values used as the basis for the original API separator sludge listing. Likewise, API separators sampled at different refineries over the past several years also exhibited three orders of magnitude variation in metals concentrations. Despite this apparent inter- and intra-facility diversity, side-by-side comparison of API separator sludge and primary oil/water/solids separation sludge concentrations showed consistent and strong similarity in terms of the sample means, concentration ranges, and variances (see document number F-88-PTSA-S0005 included in the regulatory docket). Data obtained during the development of Land Disposal Restrictions for K048 and K051 shows similar variability. Despite this variability, most samples analyzed by the Agency showed high concentrations of one or more toxic constituents.[23]

The Agency views the strong similarities among the characterization results for the sludges generated in these many types of units with varying degrees of sludge-generating capacities as clear support for the premise that a similar class of units is being addressed in today's listings. Similarity of organic hazardous constituent levels in the sampled sludges further supports the Agency's contention that all of these sludges belong to the same category of primary wastewater sludges.

b. *Equivalency to K048 and K051 Listings.* In 1980, Envirex petitioned the Agency to extend the K048 and K051 listings to all similarly composed sludges, regardless of the unit type in which the sludges were generated. When the Agency proposed to list primary and secondary oil/water/solids separation sludges on November 12, 1980 (see 45 FR 74893), it did so to ensure that all primary treatment sludges would be regulated in similar fashion. As discussed in the previous section, the Agency believes that the data noticed in 1988 clearly validate the premise of the original Envirex petition. The Agency compared the lead and chromium levels found in the API separator sludges and DAF floats with those levels in wastes listed today and concludes that the two sets of compositional data are equivalent with over 99 percent confidence based on the use of a standard "t" test on the log-normally distributed data (see document number F-88-PTSA-S0005 included in the regulatory docket).

c. *Changes in Lead and Chromium Levels.* Several commenters responding to the proposed rule expressed the opinion that lead and chromium levels have decreased in API separator sludges since the original rulemaking. Commenters reasoned that these changes have resulted from the phase-out of lead in gasoline and from the reduced usage of chromium in cooling water. Commenters concluded that the Agency should reexamine the need for the existing listings rather than adding new ones.

In response, the Agency evaluated all of the data noticed to date on API

[23] If the concentrations of each Appendix VIII constituent is sufficiently low, the refiner may elect to delist the waste under the procedures specified in 40 CFR 260.22.

separator sludges. Three groups of analytical data were considered: the original data collected in the mid-1970's in support of the K051 listing, data on API separator sludges collected in the early 1980's and noticed in the February 11, 1986 Federal Register, and additional data collected from units sampled in 1987 and noticed in 1988. The Agency believes that these data offer an opportunity to examine the chronological changes in sludge composition over a period of 15 years.

First, it should be noted that the Agency does not believe that the lead in gasoline is the major contributor to the lead observed in wastewater treatment sludges. As can be seen from Table G, average lead values have not decreased with time in API separator sludge (K051), rather, they have increased by at least three fold since 1985, and by more than eight fold since the-mid 1970's. The Agency is uncertain as to the precise cause of this phenomena but based on the data the Agency concludes that the concentrations of lead in the sludges is not a strong function of gasoline lead concentrations.

TABLE G.—API SEPARATOR SLUDGE COMPOSITION DATA

Constituent	Average concentration (mg/kg)		
	Mid-1970	1985	1987
Lead	26	75	222
Chromium	190	370	197

The chromium values presented in Table G, on the other hand, suggest that recently sampled and analyzed sludges contain lower chromium levels than those analyzed in the early 1980's. However, the average 1987 chromium levels (197 mg/kg) are virtually identical to those measured in the mid-1970's (190 mg/kg) that warranted the original listing of the API separator sludge. Whatever the variability in the chromium values, the data show the levels remain high. Therefore, the Agency believes that both lead and chromium continue to be present in API separator sludges at levels of concern, and API separator sludges will continue to be listed as hazardous wastes.

C. Demonstration of Hazard

Commenters from the regulated community generally opposed the expansion of the K048 and K051 listings, while the environmental and regulatory community uniformly favored the expansion "to reflect the hazardous character of the wastes themselves." Opposition to the expansion of the listings was based on a variety of factors that generally reflect a concern that the Agency has not adequately demonstrated that the wastes pose a hazard to human health or the environment. The commenters, however, neglected the fact that the Agency had already made such a determination of hazard as required by 40 CFR 261.11 in its original decision to list API separator sludge (K051) and DAF float (K048) (see 46 FR 4618, January 16, 1981). Furthermore, the importance of regulating the primary wastewater treatment sludges as hazardous is increased by the fact that these wastes may be generated in surface impoundments and land-based conveyances, posing a threat to human health and the environment if these land-based units are not properly designed or operated. This section discusses the following four issues:

1. Hazard of currently listed wastes
2. Differences in management practices
3. Inadequate ground-water data for hazard assessment
4. Establishment of pass/fail criteria

1. Hazard of Currently Listed Wastes

Several commenters believe that the extraction procedure (EP) toxicity characteristic data specific to the currently listed wastes (*i.e.*, K048 and K051) suggest that the wastes do not pose a hazard to human health or the environment. In addition, commenters reasoned that because the wastes only occasionally exhibited a hazardous (EP toxic) characteristic and because the delisting process is complex and resource intensive, the Agency should promulgate a "properly designed" unit as the criterion for listing of wastes.

The Agency disagrees with the commenters' contentions that the currently listed wastes do not pose a hazard. In 1980, the Agency finalized the listing of K051 and K048 without challenge to the original bases for listing. Since 1980, the data collected by the Agency have demonstrated not only that lead and chromium levels are high and have remained at similar levels, but that the wastes also contain significant levels of hazardous organic constituents including benzene, benzo(a)pyrene, and chrysene. Commenters, on the other hand, have provided no new waste composition information that would refute the original determination or the more recent proposals. To the contrary, the only compositional information provided to the Agency has come by way of delisting petitions submitted under 40 CFR 260.20 and 260.22 and data submitted in response to the Land Disposal Restrictions for K048 and K051. In every instance the data show that untreated wastes contain high levels of toxic constituents. To date, none of the K048 or K051 delisting petitions for untreated wastes (which consist of more than 35 petitions) submitted by refineries have met the delisting criteria because they contain significant levels of the Appendix VIII constituents.

In addition, the commenters claim that leaching data do not suggest any potential hazard to human health and the environment. These commenters overlooked several points relevant to the mobility of oily wastes in the environment. The Agency developed 40 CFR 261.21 through 261.24 characteristics to identify those wastes that clearly pose a significant threat to human health and the environment. The Agency has always maintained that wastes that do not exhibit any of the promulgated characteristics may still be hazardous for other reasons (*e.g.*, mismanagement scenarios unaccounted for in the TC). The Agency's leaching test (as described in 40 CFR 261.24) models constituent mobility in a slightly acidic (pH at or below 5.0) aqueous leaching environment. Agency studies have shown that the EP test, as well as the newly developed TCLP, tends to underestimate the leachability of hazardous constituents from oily wastes.[24] The potential shortcomings of the existing tests for oily wastes and the presence of significant levels of hazardous constituents not covered by the TC are major reasons why the Agency cannot rely solely on the characteristics to identify primary treatment sludges as hazardous. (EPA is continuing to investigate, however, whether the existing tests may be adjusted to more accurately reflect the leaching potential of oily wastes. For instance, in the context of its used oil lising decision, EPA will soon notice for public comment data on the characteristics of oily wastes using a modified TC protocol.)

Several commenters expressed interest in the Agency's perspective on the significance of leaching data for releases of metals from oily wastes. The Agency did develop an oily waste extraction procedure (OWEP) to evaluate the EP toxic metals in petitioned oily wastes. In response to the commenters, the Agency reviewed industry-submitted OWEP data on API separator sludge (K051) and included a

[24] Research Triangle Institute. *Evaluation and Modification of Method 1311 for Determining the Release Potential of Difficult-to-Filter Waste.* Final Report. April, 1990.

report on this review in the 1985 notice docket.[25]

The OWEP data must be evaluated within the context of its intended use in the evaluation of delisting petitions for oily wastes. In evaluating delisting petitions, the Agency considers, among other factors, the appropriateness of a ground-water modeling approach and alternative disposal scenarios and identifies a reasonable worst-case management scenario.

The modeling approach used for delisting generally includes a ground-water transport scenario, incorporating conservative, generic hydrogeologic parameters to predict reasonable worst-case contaminant levels at the point of exposure (*i.e.*, concentrations in ground water at a hypothetical receptor well). The use of conservative, generic modeling parameters to determine potential human health exposure rather than extensive site-specific factors is premised on the fact that once the waste is delisted, it will no longer be subject to hazardous waste control. Conservative modeling assumptions, therefore, assure public health protection even when the waste may be poorly managed.

In delisting evaluations for large-volume oily wastes, inorganic constituent leachate levels (as determined by the OWEP) that exceeded the health-based levels were used as one of the criteria to support decisions to deny delisting petitions. Based on models that have been used in these delisting evaluations, EPA predicted the levels of hazardous constituents in the oily waste leachate and compared these with health-based levels. Applying these health-based criteria to the sludge data reported in the ERM report cited earlier, the Agency determined that 10 out of 11 sludges leached either lead or chromium at levels exceeding the compliance-point concentrations.

The waste composition data for API separator sludge (K051) cited in the ERM report are similar to the composition data for primary oil/water/solids separation sludges cited in the docket for the 1988 notice (see document number F–88–PTSA–S0005 included in the regulatory docket). Because these wastes are similar in composition, the Agency believes that the hazardous constituents in the waste proposed for listing should, therefore, leach from the waste and migrate to ground water in similar fashion. Consequently, the inference by the commenters that leaching data suggest that the wastes are not hazardous and would generally be delisted is contradicted by the Agency's assessment of the potential leaching and migration of API separator sludge-containing hazardous constituents to the ground water. Through the analysis of available data, the Agency has determined that the sludges listed today pose unreasonable risks to human health and the environment because of the presence of unacceptable levels of inorganic and organic constituents.

In commenting on the hazard posed by K048 and K051 sludges, commenters also took issue with the inclusion of total chromium as a constituent of concern. Commenters asserted that the Agency's movement away from regulating trivalent chromium, the lack of evidence to substantiate that the chromium contained in the sludges was hexavalent, and the Agency's misrepresentation of the hazards associated with exposure to sludges containing 1,000 mg/kg of trivalent chromium, were all reasons for the Agency to reconsider the basis for the original listings of K048 and K051.

The Agency believes that its approach to regulating chromium-bearing wastes is sound. While the Agency acknowledges that trivalent chromium is less toxic than hexavalent chromium, trivalent chromium can be converted to the hexavalent form under certain plausible mismanagement conditions. Recent evidence suggests that the trivalent to hexavalent chromium conversion may occur in a number of environmental situations (see 51 FR 28420, July 23, 1986). For example, chromium has been found to oxidize readily in the presence of catalyst such as manganese dioxide found in many field soils and sediments. Moreover, it has been shown that process-water treatment involving chlorination (not an uncommon practice in the refining industry to reduce phenol levels) [12] will effectively transform trivalent chromium to its hexavalent form. Also, the normal presence of residual oxidizing capacity in treated water throughout municipal water treatment systems is capable of maintaining dissolved chromium in the higher valence state (see 50 FR 46966, November 13, 1985). Thus, if trivalent chromium is present in high concentrations in well water, chlorination can result in correspondingly high concentrations of hexavalent chromium at the point of exposure (i.e., at the tap). For these reasons the Agency elected to promulgate TC based on hexavalent chromium, but requires that total chromium be measured when performing the TCLP.

For all of the above reasons, EPA is concerned with the potential for trivalent chromium to be converted to hexavalent chromium. Furthermore, beyond the Agency's concerns about trivalent chromium, a significant possibility exists that some portion of the chromium present in the sludges is in the hexavalent form. Unfortunately, the oily matrix interferes with the Agency's analytical methods for determining what portion of the chromium is present in the hexavalent form. When the Agency first proposed to modify the K048 and K051 listings in 1980, the basis of listing cited hexavalent chromium as one of the constituents of concern. Commenters have provided no data to establish that hexavalent chromium is absent from primary separation sludge. On the contrary, the Agency's background information has provided ample justification for the assumption that hexavalent chromium is present in refinery wastewaters. Hexavalent chromium is used at many refineries, and it has been frequently observed in the water phase of refinery wastewater treatment systems.

2. Differences in Management Practices

Several commenters believed that typical management practices for K048 and K051 differ from those for the surface impoundment sludges captured by the new listings. They asserted that the sludges posed no appreciable risk when managed *in situ* because the sludges are infrequently removed from the impoundments (see document number F–88–PTSA–00009 included in the regulatory docket). Commenters further claimed: (1) That the differences in typical management practices necessitated. consideration of factors beyond constituent level equivalency between wastes identified in the listing proposal and K048 and K051, and (2) that EPA must demonstrate that the wastes proposed for listing can pose risks to human health and the environment as required under 40 CFR 261.11(a)(3) and under sections 1004(5)(B) and 3001(a) of HSWA. Commenters stated that the Agency should consider additional parameters, such as quantities of waste managed, potential of constituents to leach and migrate, and/or degradation of hazardous constituents into nonharmful constituents, under the plausible types of mismanagement. Commenters also suggested that, even if the Agency did not agree with the need for consideration of additional factors to make a listing determination, it should

[25] Multi-Participant study for establishing Threshold Concentrations for Delisting Oil Refinery Wastes, ERM-Southwest, Inc., Houston, Texas, 1984.

consider these factors as a basis for making a determination that the sludges, even though generated, would not be regulated until they were removed from the sludge-generating units.

As discussed previously, the Agency has considered all factors specified under 40 CFR 261.11(a)(3) and has also considered these factors as part of the original K048 and K051 listing decisions. Contrary to the commenters' contention, the Agency believes that the sludges do pose an appreciable risk to human health and the environment.

The first issue raised by the commenters was whether or not the Agency has realistically identified total quantities of sludges requiring disposal and plausible types of mismanagement practices for the waste of interest. Some commenters expressed the opinion that the sludges have always been managed in the ponds where they were generated and that the sludges accordingly, should be evaluated under different mismanagement scenarios than those used for K048 and K051.

The Agency disagrees with the commenters. The 1982 survey of refinery waste management practices conducted for the API, which is included in the 1985 Notice of Data Availability docket, and RCRA section 3007 questionnaire responses to the petroleum refinery survey conducted by EPA clearly indicate that primary oil/water/solids separation sludges are generated in significant volumes. EPA estimates that approximately 408,000 MT/yr of F037 and F038 are generated annually from the petroleum refining industry. Much of this waste remains in surface impoundments in the refinery wastewater treatment system. On-site landfarming and off-site land disposal are the predominant methods of disposal for these wastes when they are removed from the wastewater treatment units. The Agency, therefore, believes that it is entirely reasonable to consider the types of waste management practices to which the primary separation sludges are currently subjected and as "plausible types of mismanagement" to which these sludges might be subjected if they were not listed.

Turning to the question of an exemption for surface impoundments that manage wastes listed in today's rule and that are used for *in situ* treatment, the Agency sees no basis for making this distinction. The Geraghty and Miller report cited by the commenters and included in the regulatory docket as document number F–88–PTSA–00009 concludes, among other things, that "The ratings of the ten refinery sites . . . show a moderately high ground water contamination potential from many sites. . . ." Furthermore, the sites were uniformly found to have inadequate ground-water monitoring systems. Also, the report states that many refinery impoundments have been constructed in highly permeable alluvial zone or fill materials. In some regions of the country (*e.g.*, the Western Alluvial Basins), the report concludes that leachate will move downward without much attenuation and that "major endangerment problems could arise because of the dependence of much of the [Western] region on the ground water resources." The Agency has concluded that the commenter-cited report provides no decisive evidence that would lead the Agency to reconsider its assessment that the storage and *in situ* treatment of hazardous wastes in unlined surface impoundments may pose a significant risk to human health and the environment. To the contrary, the report's findings confirm the Agency's previous findings and substantiate its assessment that these wastes are likely to be mismanaged if not listed.

3. Inadequate Ground Water Data for Hazard Assessment

Commenters argued that the noticed data did not establish that the wastes posed a health hazard due to the presence of contaminated ground water in wells downgradient from the units. Commenters asserted that the Agency should not move forward with the listing until data were presented for comment that substantiated impoundment releases and corresponding contamination of ground water at levels that posed a risk to human health and the environment.

The Agency disagrees with the commenters about the need to prove that active, health-threatening ground-water contamination is occurring before deciding to list a waste as hazardous. To the contrary, the criteria specified in 40 CFR 261.11(a)(3) require only that the Agency assess potential for health-threatening ground-water contamination. The Agency must evaluate the presence of hazardous constituents in a waste and consider specified factors such as type of waste management, waste quantities, and generic hydrogeologic characteristics. The ground-water data included in the 1988 Notice of Data Availability docket illustrate the highly mobile nature of organic hazardous constituents associated with the oily waste matrix. These data also indicate the presence of persistent metals such as lead and chromium in the oily waste matrix. The Agency also has collected additional data (see Appendix I of the Background Document in the docket supporting today's rule) demonstrating that the wastes pose a threat to human health and the environment. This reaffirms the Agency's determination that these wastes are hazardous.

4. Establishment of Pass/Fail Criteria

Several commenters maintained that the Agency had not established criteria for what constituted a hazard for any of the constituents in the subject wastes. Commenters expressed an opinion that specification of pass/fail criteria was essential to the evaluation of the class of refinery wastes because hazardous constituent concentrations in several of the wastes were below the levels that lead the Agency to list the wastes in the first place.

The Agency disagrees with the commenters on the need to establish pass/fail criteria as part of the listing process. The Agency promulgated its listing criteria in 1980 at 40 CFR 261.11. These criteria are based on the requirements of section 3001 of the statute. Using these RCRA listing criteria, the data presented by the Agency clearly demonstrate that the hazardous constituents are routinely and typically present in the wastes at levels well in excess of the health-based levels. The RCRA statute allows the Agency to list wastes as hazardous even if only one hazardous constituent is demonstrated to be present at a significant concentration (*i.e.*, a level "many times" greater than health-based level) in a waste. If a refinery believes that his waste is not hazardous (*i.e.*, contains low concentration of hazardous constituents) he may petition the Agency through the procedures specified in 40 CFR 260.22).

D. Implementation Issues

Commenters raised a number of concerns regarding the timing of various regulatory requirements that would be imposed as a consequence of listing primary treatment sludges and the industry's ability to comply with these regulations. Central to the arguments of several commenters is the premise that continuous operation of the refinery is only possible with continued use of primary treatment surface impoundments for wastewater treatment for a 4- to 6-year period. The commenters further indicated that any disruption in the wastewater treatment systems (*e.g.*, retrofitting of primary treatment surface impoundments to comply with MTRs specified on July 15, 1985) would result in shutdown of the operation. They requested that the Agency extend (1) the effective date of listing beyond a 6-month period and (2) the MTR compliance period for surface impoundments beyond 4 years.

The following four major issues are discussed in this section.

—Effective date of listing
—Water Quality impact
—New versus amended listings
—Impact of land disposal restriction determination

1. Effective Date of Listing

A number of commenters requested an extension of the effective date of the listing. Several commenters were concerned that refineries that cannot complete closure of impoundments containing the primary oil/water/solids separation sludge before the effective date of the listing would be forced to expend considerable resources needlessly in subtitle C closure efforts. Commenters reasoned that these unnecessary costs could be avoided by extending the effective date of the listing, which would enable refineries to close impoundments under the less costly subtitle D closure requirements.

HSWA sets forth a requirement that the effective date be no later than 6 months from the promulgation of the new listing. A period of 6 months from the effective date of the listing is generally adequate time for the removal of sludges from impoundments and for cleanup of incidental sludge-generating units. It also should be an adequate amount of time for the industry to undertake the following corrective steps:

—"Fine tune" wastewater systems to prevent future generation of the sludges in stormwater and flow equalization impoundments.
—Implement improved operation, inspection, and maintenance steps as part of standard operating procedures to guarantee that most of the sludge would be generated in units intended for the wastewater treatment and not in the incidental units identified in this preamble.

The Agency realizes that refiners using devices other than API separators, DAF units, and aggressive biological treatment units may not be able to complete all remedial activities within a 6-month period. These refineries may have been managing potentially hazardous wastes in an inadequate fashion for quite some time and may already have experienced releases of hazardous constituents into soils and ground water. Future releases at refineries that do not use API separators, DAF units or aggressive biological treatment technologies have a significant potential to pose a hazard to human health and the environment. Therefore the Agency believes that resources expended in ensuring the proper closure of these units under Subtitle C provide a necessary step towards mitigating future impacts on human health and the environment.

A second concern of the commenters was that refineries choosing to continue operation of affected surface impoundments that contain the wastes listed today may not be able to retrofit impoundments within the 4-year period specified for the compliance with MTRs. These commenters requested that the Agency consider delaying the effective date as a means of deferring the imposition of the MTRs.

The 4-year compliance deadline for the MTRs is a statutory requirement and is beyond the Agency's power to change. Regardless of this point, however, the Agency disagrees with the commenters about the impact of a 4-year MTR compliance period. The Agency believes that refineries could retrofit their wastewater treatment systems by selecting one or more of the following options:

—Operating properly designed flow equalization tanks and segregated stormwater units.
—Using properly maintained primary oil/water/solids separation systems.
—Converting to a more aggressive form of biological treatment to eliminate future generation of the listed wastes.
—Removing both the wastes in the sludge-generating units and the underlying contaminated soils (if present), thus, eliminating the need for MTR compliance.

Following the application of the first two retrofitting options, all the sludges would be generated and deposited upstream of affected ponds. The selection of the third option would totally eliminate the need for future storage or treatment ponds/impoundments. Similarly, under the last option, one-time removal of the preexisting sludges and contaminated soils would allow refineries to avoid the MTR compliance costs and to perform closure under the less-costly Subtitle D requirements. If none of these options appear to be feasible, then refineries must retrofit units within the 4-year compliance period. For further discussion of MTR compliance requirements, see also section V.D.4., Impact of Land Disposal Restrictions Determinations.

2. Water Quality Impacts

Three commenters expressed concern that the listing of primary separation sludge would leave some refineries with no option but to shut down affected impoundments. Commenters were concerned that the listing could force refineries into NPDES noncompliance and result in surface water deterioration.

As stated earlier in this preamble, the Agency does not believe that surface impoundment closure will necessarily lead to increases in water pollutant discharges. Rather, the Agency believes that conscientious upgrading and use of a well-operated and maintained wastewater treatment system will eliminate the potential generation of hazardous wastes in incidental and downstream units. The listings will, consequently, provide an incentive to the industry to improve the ability of primary wastewater treatment systems and secondary biological treatment units to treat the wastewaters with improved efficiencies. Therefore, the Agency believes that the impact of the listing will be to improve surface water quality.

3. New versus Amended Listings

Numerous commenters requested that the Agency consider wastes subject to the listings to be newly listed wastes, rather than amending the existing listings of DAF float (K048) and API separator sludge (K051). Commenters' concerns were also related to the many additional requirements for hazardous waste management imposed by the HSWA. Commenters reasoned that the subject wastes were not generally managed as hazardous at the present time and, therefore, consolidation of the listings could be erroneously construed to imply retroactive application of the listings. At a minimum, commenters were concerned that the situation would be a confusing one.

EPA agrees, in part, with the commenters. Inasmuch as the listing adopted today is a listing promulgated pursuant to section 3001 of RCRA and offered in satisfaction of the requirements of section 3001(e)(2), the Agency clearly will consider it to be a new listing and is assigning the proposed wastes new RCRA hazardous waste numbers. This distinction between existing wastes and newly listed wastes eliminates confusion and will facilitate RCRA listing compliance.

4. Impact of Land Disposal Restrictions Determinations

Commenters responding to the proposed rulemaking repeatedly expressed concern about the potential impact of land disposal restrictions determinations that follow the promulgation of a new listing. HSWA requires that the Agency make a land disposal prohibition determination for newly listed hazardous wastes within 6 months of the date of listing (RCRA

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section 3004(g)(4), 42 U.S.C. § 6924(g)(4)). However, the statute does not provide for an automatic prohibition of the land disposal of such wastes if EPA fails to meet this statutory deadline. Nevertheless, the commenters presumed that the Agency would meet the 6-month deadline because the wastes involved in this listing are similar in composition to K048 and K051 for which a land disposal restrictions determination has already been made. Commenters raised three issues that assume a similar determination would be made for primary separation sludge.

First, some commenters contended that the land disposal restrictions (LDRs) should not apply until sludges were removed from the generating impoundments or incidental sludge-generating units. These commenters maintained that the Agency does not consider the sludges to be generated until they are removed from the unit and disposed on the land.

The Agency disagrees with the commenters. The Agency has always maintained that sludges are generated at the moment of their deposition at the bottom of a unit. The commenters have apparently misunderstood the exclusion from certain regulations for hazardous sludges generated in product storage tanks (40 CFR 261.4(c)), which does not apply either to other waste management units or to surface impoundments used in any manner. Furthermore, the commenter's belief that 40 CFR 261.4(c) states that the sludges are not generated is in error; 40 CFR 261.4(c) states that sludges are not subject to regulation until removed from the product storage tanks.

Second, the commenters requested that the Agency verify that the land disposal restrictions would not apply to sludges at the time of generation in impoundments because the sludges had not actually been placed upon the land. The commenters reasoned that: (1) The deposited wastes did not meet the criteria for listing until they were removed from the bottom of the impoundment and (2) the land disposal restrictions only prohibit placement of a hazardous waste on the land, not its formation on the land or in land-based units.

The Agency disagrees with the commenters and again notes that the wastes listed today are generated through gravitational separation and/or chemical or physical deemulsification of oil/water/solids from refinery wastewaters. Consistent with the K048 and K051 listings, these wastes are considered to be generated at the moment of deposition in the unit. Note that deposition is defined as a condition where there has been at least a temporary cessation of lateral particle movement (OSW Policy Directive 9441.29 (85)). When land disposal restrictions are promulgated for these newly identified hazardous wastes, surface impoundments in which these newly identified wastes are generated must either comply with the MTRs of 3004(o)(l)(A) within four years of promulgation of the new listing or characteristic or must cease receiving hazardous waste no later than that date. Additional requirements imposed by the land disposal restrictions will be addressed when land disposal restrictions are promulgated for these newly listed wastes.

The third point raised by the commenters relates to imposition of MTRs on surface impoundments storing listed hazardous wastes subject to the LDRs. Commenters stated that the 6-month compliance deadline for imposition of the MTRs would necessitate an immediate shutdown of the impoundments and, as a consequence of CWA regulations, closure of the refinery. Commenters expressed the opinion that shutdowns should be unnecessary, especially because a 6-month timetable for imposition of the MTRs would be in direct conflict with Congressional intent (suggested by section 3005(j)(6) of RCRA, which allows 4 years for impoundment retrofitting).

The Agency believes that it is unlikely that refinery closures would result from a 6-month timetable for imposition of the MTRs. As stated previously, many refineries will require only minor modifications to their wastewater treatment systems to prevent future generation of today's wastes in any large impoundment or in incidental sludge-generating units. Most other refineries will have a broad range of options available that could be implemented in this time frame to avoid impoundment retrofitting and refinery closure. For example, petroleum refineries typically have huge volumes of tank storage capacity. Refineries that are unable to complete primary wastewater treatment in an existing treatment system could temporarily convert product storage tank capacity to storage of wastewater awaiting further treatment until the wastewater treatment system upgrade is completed or until surface impoundments have been retrofitted to comply with MTRs. Review of RCRA section 3007 questionnaire responses suggests that no refinery would have to convert more than 10 percent of its crude and product storage capacity to handle the surface impoundment-based primary wastewater treatment operation at a given site. Given that refineries typically maintain a large excess of tank capacity over daily needs, negligible impact on production capacity would be expected to result from temporary conversion of tank capacity.

Regardless of the compliance strategies ultimately adopted by the various refineries, it is important to keep in mind that today's notice does not in any way set land disposal restrictions for these wastes. Consequently, the potential statutory conflict referred to by commenters does not yet exist (i.e., there is not conflict between the statutory deadlines imposed by land disposal restrictions and minimum technology requirements until the Agency develops land disposal restrictions for the wastes). Therefore, the Agency notes the commenter's concern and will address the issue in the proposed determination on the land disposal restrictions.

V. Compliance and Implementation

A. State Authority

1. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under RCRA sections 3008, 3013, and 7003, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more-stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent requirements within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. § 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in unauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted interim or final authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim. Today's rule is promulgated pursuant to section 3001 of RCRA (42 U.S.C. 6921). Therefore, this rule has been added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in Table 1, as discussed in the following section.

2. Effect on State Authorizations

As noted above, EPA will implement today's rule in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that HSWA interim authorization will expire on January 1, 1993 (see § 271.24(c)).

40 CFR 271.21(e)(2) requires States that have final authorization to modify their programs to reflect Federal program changes and, subsequently, to submit the modification to EPA for approval. State program modifications must be made by July 1, 1992, if only regulatory changes are necessary or July 1, 1993, if statutory changes are necessary. These deadlines can be extended in exceptional cases (see 40 CFR 271.21(e)(3)).

States with authorized RCRA programs may have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these standards in their applications. However, the State must modify its program by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

B. Effective Date

The effective date of today's rule is May 2, 1991. As discussed above, since today's rule is issued pursuant to HSWA authority, EPA will regulate the management of F037 and F038 until States are authorized to regulate these wastes. Thus, EPA will apply Federal regulations to these wastes and to their management in both authorized and unauthorized States.

C. Section 3010 Notification

Pursuant to RCRA section 3010, the Administrator may require all persons who handle hazardous wastes to notify EPA of their hazardous waste management activities within 90 days after the wastes are identified or listed as hazardous. This requirement may be applied even to those generators, transporters, and treatment, storage, and disposal facilities (TSDF's) that have previously notified EPA with respect to the management of other hazardous wastes. The Agency has decided to waive this notification requirement for persons who handle wastes that are covered by today's listings and have already (1) notified EPA that they manage other hazardous wastes; and (2) received an EPA identification number. The Agency has waived the notification requirement in this case because it believes that most, if not all, persons who manage these wastes have already notified EPA and received an EPA identification number. However, any person who generates, transports, treats, stores, or disposes of these wastes and has not previously received an EPA identification number, must obtain an identification number pursuant to 40 CFR 262.12 to generate, transport, treat, store, or dispose of these hazardous wastes by January 31, 1991.

D. Generators and Transporters

Persons that generate F037 and F038 wastes may be required to obtain an EPA identification number, if they do not already have one (as discussed in section V.C, above). In order to be able to generate or transport these wastes after the effective date of this rule generators of the wastes listed today will be subject to the generator requirements set forth in 40 CFR 262. These requirements include standards for hazardous waste determination (40 CFR 262.11), compliance with the manifest (40 CFR 262.20 to 262.23), pretransport procedures (40 CFR 262.30 to 262.34), generator accumulation (40 CFR 262.34), recordkeeping and reporting (40 CFR 262.40 to 262.44), and import/export procedures (40 CFR 262.50 to 262.60). It should be noted that the generator accumulation provisions of 40 CFR 262.34 allow generators to accumulate hazardous wastes without obtaining interim status or a permit only in units that are container storage units or tank systems; the regulations also place a limit on the maximum amount of time that wastes can be accumulated in these units. If these wastes are managed in surface impoundments or other units that are not tank systems or containers, these units are subject to the permitting requirements of 40 CFR 264 and 265, and the generator is required to obtain interim status and seek a permit (or modify interim status or a permit, as appropriate). Persons who transport F037 and F038 wastes will be required to obtain an EPA identification number as described above and will be subject to the transporter requirements set forth in 40 CFR 263.

E. Facilities Subject to Permitting

1. Facilities Newly Subject to RCRA Permit Requirements

Facilities that treat, store, or dispose of F037 and F038, but have not received a permit pursuant to section 3005 of RCRA and are not currently operating pursuant to interim status, might be eligible for interim status under HSWA (see section 3005(e)(1)(A)(ii) of RCRA, as amended). In order to operate pursuant to interim status, eligible facilities will be required to provide any required notice under section 3010 by, and to submit a Part A permit application not later than May 2, 1991. Such facilities are subject to regulation under 40 CFR 265 until a permit is issued.

In addition, under section 3005(e)(3), not later than May 4, 1992 land disposal facilities qualifying for interim status under section 3005(e)(1)(A)(ii) also must

submit a Part B permit application and certify that the facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements. If the facility fails to submit these certifications and a permit application, interim status will terminate on May 4, 1992.

2. Interim Status Facilities

Pursuant to 40 CFR 270.72(a)(1), all existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of F037 and F038 and are currently operating pursuant to interim status under section 3005(e) of RCRA must file an amended Part A permit application with EPA no later than May 2, 1991. By doing this, the facility may continue managing the newly listed wastes. If the facility fails to file an amended Part A application by May 2, 1991, the facility will not receive interim status for management of the newly listed wastes, and may not manage F037 or F038 until the facility receives either a permit or a change in interim status allowing such activity (40 CFR 270.10(g)).

3. Permitted Facilities

Under regulations promulgated by EPA on September 28, 1988, (see 53 FR 37912), a hazardous waste management facility that has received a permit pursuant to section 3005 of RCRA and is "in existence" as a hazardous waste facility for the newly listed wastes, may be eligible to continue managing the new wastes under 40 CFR 270.42(g) while steps necessary to obtain a permit modification to allow the facility to manage the wastes are taken. To continue to manage the newly listed F037 and F038 wastes, eligible facilities must be in compliance with 40 CFR 265 requirements with respect to management of the newly listed wastes and submit a Class I modification request no later than May 2, 1991. This modification is essentially a notification to the Agency that the facility is handling the waste. As part of the procedure, the permittee must also notify the public within 90 days of submittal to the Agency.

The permittee must then submit a Class 2 or 3 permit modification to the Agency by 180 days after the effective date of the listing. A Class 2 modification is required if the newly listed wastes will be managed in existing permitted units or in newly regulated tank or container units and will not require additional or different management practices than those authorized in the permit. A Class 2 modification requires public notice by the facility owner of the modification request, a 60 day public comment period, and an informal meeting between the owner and the public within the 60 day period. The Class 2 process includes a "default provision," which provides that if the Agency does not reach a decision within 120 days, the modification is automatically authorized for 180 days. If the Agency does not reach a decision by the end of that period, the modification is permanently authorized.

A Class 3 modification is required if management of the newly listed wastes requires additional or different management practices than those authorized in the permit or if newly regulated landbased units are involved. The initial public notification and public meeting requirements are the same as for Class 2 modifications. However, after the end of the 60 day public comment period, the Agency will develop a draft permit modification, open a public comment period of 45 days, and hold a public hearing if requested. There is no default provision for Class 3 modifications.

Under 40 CFR 270.42(g)(1)(v), for newly regulated land disposal units, permitted facilities must certify that the facility is in compliance with all applicable 40 CFR 265 ground-water monitoring and financial responsibility requirements no later than May 4, 1992. If the facility fails to submit these certifications, authority to manage the newly listed wastes under 40 CFR 270.42(g) will terminate on that date.

F. Compliance Options for Specific Units

Facilities that treat, store, or dispose F037 and F038 wastes will have several options for complying with the RCRA regulatory requirements. Facilities may alter existing wastewater treatment systems to limit the units in which these wastes will be generated and managed and, thereby, may control which units will be subject to RCRA Subtitle C regulation. For example, wastewater treatment surface impoundments, which are subject to RCRA Subtitle C regulation, could be replaced with wastewater treatment tanks, which are excluded from regulation as long as the provisions under 40 CFR 264.1(g)(8) and 265.1(c)(10) are met. Alternatively, facilities may cease managing these wastes in units that would be subject to regulation (such as surface impoundments) prior to the effective date of today's rule in order to avoid the application of RCRA permitting standards. These options are discussed in more detail in the following sections.

1. Tank Systems

Because the wastes listed today are generated from the treatment of wastewaters, it is likely that, in the future, much of the waste will be generated in tanks that are part of wastewater treatment systems. Under 40 CFR 264.1(g)(6) and 265.1(o)(10), tanks and tank systems that meet the definition of wastewater treatment unit in 40 CFR 260.10 are not subject to the permitting and interim status requirements of 40 CFR 264 and 265. The wastewater treatment unit definition includes devices that (1) are part of a wastewater treatment facility that is subject to section 402 or 307(b) of the Clean Water Act; and (2) treat or store an influent wastewater that is a hazardous waste, or that generate and accumulate a wastewater treatment sludge that is a hazardous waste, or that treat or store a wastewater treatment sludge which is a hazardous waste; (3) meet the definition of tank or tank system in 40 CFR 260.10 (see 53 FR 34079). Therefore, all tanks and tank systems that meet the wastewater treatment unit definition, and in which the newly listed wastes are generated, accumulated, treated, or stored, are exempt from the regulatory requirements of 40 CFR 264 and 265. Because the definition of tank system includes all connected ancillary equipment as defined in 40 CFR 260.10, which includes piping, fittings, flanges, valves, and pumps, any such equipment that is part of an exempt wastewater treatment unit in which the newly listed wastes are generated, accumulated, treated, or stored is also excluded from the requirements of 40 CFR 264 and 265. (See 53 FR 34079 for further discussion of the scope of the exemption.) However, the listed sludges, once removed from the excluded units in which they are generated, are subject to all applicable Subtitle C regulations.

It should also be noted that wastes being generated at treatment, storage, or disposal facilities may qualify for the permit exemption under 40 CFR 262.34 (see discussion in section C.1 above). This exemption applies only to tank and container units for specified periods of time.

Any tanks or tank systems that manage the newly listed wastes but that do not meet the wastewater treatment unit definition or other permit exemption will be subject to the applicable requirements of 40 CFR 264 and 265, including requirements for secondary containment and leak detection, as well as closure and financial responsibility.

2. Surface Impoundments

Because the wastes listed today are generated from the treatment of wastewaters, it is likely that those sludges not generated in exempt wastewater treatment units will be generated in surface impoundments that are part of wastewater treatment systems. Because surface impoundments are not excluded from regulation under the wastewater treatment unit exemption, and in addition are "land disposal" units for purposes of the land disposal restrictions (under section 3004(k), all surface impoundments are land disposal), the regulatory status of these units for permitting purposes is dependent on several factors. Surface impoundments generating F037 and F038 wastes are subject to the same regulations applicable to surface impoundments managing RCRA hazardous wastes in any other manner. The factors which determine the surface impoundment regulatory status for permitting purposes and their compliance options are discussed below.

Facilities with impoundments in which F037 and F038 wastes currently are generated and/or disposed may cease operation of the units prior to the effective date of today's listings. If all sludges containing F037 and F038 are removed from the surface impoundments prior to the effective date of today's listing, the units will not be subject to RCRA Subtitle C. If the removed sludges are not actively managed after the effective date of today's listing, they will also not be subject to Subtitle C. If operation of these units ceases prior to the effective date, these inactive units would not be subject to regulation under 40 CFR 264 or 265. However, any sludges that meet the listing descriptions contained in the inactive units, and that are actively managed after the effective date would be subject to regulation. For example, if the sludges were excavated for treatment and disposed of elsewhere, they would be regulated as hazardous wastes at the time of excavation and would be required to be managed at a RCRA subtitle C facility. It should be noted that any inactive units that are located at facilities otherwise subject to RCRA interim status or permitting are considered to be solid waste management units subject to corrective action requirements under sections 3008(h) and 3004(u) of RCRA (see corrective action discussion in section III.D.).

However, facilities with surface impoundments in which F037 and F038 wastes have been generated and/or managed may also choose to redesign or reconfigure the existing wastewater treatment system such that F037 and F038 wastes are no longer generated or managed in some or all units of the treatment train after the effective date of this listing. Under this scenario, there may be surface impoundments containing F037 and F038 sludges which were deposited prior to the effective date, and which cease to receive hazardous wastes after the effective date. If (1) any sludge or waste that meets the description of F037 or F038 remains in the surface impoundment on the effective date of today's listings, and (2) the unit does not receive or generate any other hazardous wastes on or after the effective date, and (3) the impoundment is the final disposal site for the wastes, then the impoundment is not subject to RCRA Subtitle C. The Agency does not view one time removal of waste as part of a closure as changing the status of the unit, as long as there has not been ongoing management of the waste in the impoundment. Removal of waste in the context of a closure provides human health and environmental benefits since it eliminates potential sources of ground water pollution. This approach is consistent with current operational procedures for landfills under identical circumstances with respect to newly regulated TC wastes.

A unit not receiving hazardous wastes may, however, generate hazardous wastes. For example, even if the unit containing the newly listed sludge is not considered to be actively managing the sludge, if any influent to the unit, including that which is nonhazardous, causes that sludge to be scoured from the unit, any effluent from the unit would be considered hazardous, because the "mixture rule" would be applicable. Thus, any surface impoundment receiving that hazardous effluent would be subject to the Subtitle C management standards and would need to be under interim status or obtain a permit.

Facilities with units in which F037 and F038 wastes are generated and/or managed after the effective date of the listings may continue to use these units to manage F037 and F038 wastes if all applicable RCRA Subtitle C requirements are satisfied. These facilities will be required to obtain interim status and apply for a permit (or modify interim status or a permit, if appropriate) in accordance with the compliance dates discussed in section IV.B, above. The units will be subject to the applicable requirements of 40 CFR 264 and 265 as of the effective date of the listing.

With regard to the land disposal restrictions (LDR), treatment or storage in a land based unit is considered land disposal and potentially subject to LDR prohibitions. The key to LDR applicability is whether there has been placement of the hazardous waste into a land-based unit after the effective date of the LDR regulations.

3. Other Units

Units in which F037 and F038 are generated or managed will be subject to all applicable requirements of 40 CFR 264 and 265, unless the unit is excluded from such permitting by other provisions such as the wastewater treatment tank exclusions (40 CFR 264.1(g)(6) and 265.1(c)(10)), and the product storage tank exclusion (40 CFR 261.4(c)). Examples of units to which these exclusions could never apply include landfills, land treatment units, waste piles, incinerators, and any other miscellaneous units in which these wastes may be generated or managed.

4. Closure

All units in which F037 and F038 wastes are treated, stored, or disposed after the effective date of this regulation that are not excluded from the requirements of 40 CFR 264 and 265 are subject to both the general closure and post-closure requirements of Subpart G and the unit-specific closure requirements set forth in the applicable unit technical standards Subpart of 40 CFR 264 or 265. Additionally, EPA recently promulgated a final rule that allows, under limited circumstances, regulated landfills, surface impoundments, or land treatment units to cease managing hazardous waste but to delay Subtitle C closure to allow the unit to continue to manage non-hazardous waste for a period of time prior to closure of the unit (see 54 FR 33376, August 14, 1989). Units for which closure is delayed continue to be subject to all applicable 40 CFR 264 and 265 requirements. Dates and procedures for submittal of necessary demonstrations, permit applications, and revised applications are detailed in 40 CFR 264.113(c) through (e) and 265.113 (c) through (e).

VI. Regulatory Impact Analysis

Pursuant to Executive Order 12291, the Agency has determined that today's rule may constitute a "major regulation" since it could result in an annual cost to the economy in excess of $100 million. Consequently, the Agency has conducted a regulatory impact analysis

(RIA) in support of today's rule. The complete RIA document, *Regulatory Impact Analysis for the Listing of Primary and Secondary Oil/Water/Solid Separation Sludges from the Treatment of Petroleum Refinery Wastewaters* (hereafter, "RIA Document"), is available for review in the public docket for today's rule, and also was submitted to the Office of Management and Budget for review as required by E.O. 12291. EPA's response to OMB's views is available in the docket supporting today's rule.

This section of the preamble summarizes the RIA in three parts. The first part provides an overview of the U.S. petroleum refining industry and identifies and profiles the affected management practices, estimated sludge quantities, number of refineries, and expected subtitle C compliance scenarios for affected refineries. The second part provides an overview of estimated compliance costs, including general methods employed, expected national economic impacts, and direct industry impacts. The third part illustrates the types of human health and ecological hazards likely to be associated with these separation sludges under baseline management practices and typical petroleum refinery environmental settings. It also provides results from EPA's effort to quantify the major baseline damages and regulatory benefits.

A. Industry Overview and Profile of Affected Facilities

1. The U.S. Petroleum Refining Industry

At the beginning of 1989 (the base year for this analysis), there were 204 operating petroleum refineries in the United States with a combined capacity of 15.7 million barrels per calendar day (BPCD) of crude oil distillation capacity. Following a 5-year period of contraction from an historical peak of 324 refineries and 18.6 million BPCD of capacity at the end of 1980, the industry has been relatively stable, with moderately increasing capacity since 1985. As an industry, petroleum refining is distributed widely across the country, with at least one installation in each of 35 states, and 12 states having six or more refineries.[36] The top three states—Louisiana with 22, California with 32, and Texas with 34—dominate, representing 43 percent of all refineries and 57 percent of U.S. capacity.

[36] Unless otherwise noted, general refinery and petroleum statistics are from the U.S. Department of Energy, *Petroleum Supply Annual 1989* (May 1990).

2. Profile of Affected Refineries

As discussed, today's rule would require all primary and secondary oil/water/solids separation sludges generated in treatment of process wastewaters and oily cooling wastewaters from petroleum refineries to be managed as hazardous waste under RCRA Subtitle C regulations.

As background for rule development as well as for the regulatory impact analysis, the Agency conducted a detailed evaluation of refinery wastewater treatment practices, unit processes, and system configurations to develop an understanding of pond types and sizes, sludge characteristics and generation rates, and current baseline sludge management practices. The principal source of empirical information for these evaluations was the Agency's 1984 (and subsequent follow-up) mail survey of the refining industry which provided 1983 data on a total of 182 refineries. Using current U.S. Department of Energy data, individual refining capacities were updated and closed facilities were deleted from the original data base. After these changes, the Agency had data on 167 refineries, which represents 82 percent of the operating refineries and over 94 percent of operating crude distillation capacity as of the beginning of 1989.

Based on this data and evaluation of individual refinery wastewater system flowsheets, the Agency estimates that almost 90 percent of the 204 operating U.S. refineries, or 182 refineries, generated at least some oil/water/solids separation sludge from primary wastewater treatment in 1989. These affected refineries vary enormously in size and complexity, from less than 5,000 to more that 400,000 BPCD of crude oil processing capacity.

Many of the sludges subject to today's rule, however, are also hazardous wastes under the Toxicity Characteristics (TC) rule which was promulgated on March 29, 1990. In addition to the sludges, oily wastewaters at a majority of petroleum refineries are also expected to be TC hazardous wastes due to benzene concentrations. Refineries where either the sludges or wastewaters or both would be captured by the TC rule will need to modify their wastewater treatment systems to achieve compliance with RCRA. These modifications, which typically include constructing additional wastewater treatment tanks and bringing surface impoundments into compliance, are very similar to modifications that would otherwise be needed for today's rule. Therefore, the prior promulgation of the TC rule substantially reduces the impact attributable to today's rule.

Based on EPA Toxicity Characteristics Leaching Procedure (TCLP) data for petroleum refinery wastes, the Agency estimates that about 84 percent of refineries (about 150, termed "Group A") have wastewaters and/or sludges that exceed the new TC regulatory level for benzene. The remaining 16 percent of refineries (29 refineries, termed "Group B") that generate oil/water/solids separation sludges are estimated to be unaffected by the TC rule. Similar to the compliance response for the TC rule, these Group B facilities will need to modify their wastewater treatment systems by bringing surface impoundments into compliance and constructing wastewater treatment tanks. Extrapolating from the mail survey data, EPA estimates that these 29 refineries generate about 48,000 metric tons per year of primary treatment sludges, utilizing approximately 65 unlined surface impoundments with a combined surface area of 225 acres nationwide, subject to today's listing. These impoundments are also estimated to contain 430,000 metric tons of accumulated sludges.

Although the TC rule accounts for most of the compliance activities at Group A facilities, these refineries may still generate, after completion of wastewater treatment system modifications, non-TC sludges that are subject to today's rule. Although the wastewaters are characteristic hazardous wastes under the TC rule, a substantial but highly uncertain portion of the oily sludges generated from these waste waters may not test TC hazardous using the standard TCLP laboratory procedures for reasons discussed above. Because the Agency does not have adequate data on the amount of sludge that would be captured by the TC rule after TC rule compliance modifications at the 153 Group A refineries, EPA bounded the impact estimates by assuming two scenarios: (1) 30 percent of the sludges are not captured by TC, and; (2) 70 percent of these sludges are not captured by TC. This results in a range of 108,000 to 252,000 metric tons at Group A refineries estimated to be affected by today's listing. Adding the 48,000 metric tons from Group B facilities gives a combined range of sludge quantities affected by today's rule of 156,000 metric tons for the 30 percent scenario and 300,000 metric tons for the 70 percent scenario.

3. Baseline Waste Management Practices and Assumed Compliance Scenarios

Sludges subject to today's listing can be deposited at virtually any point in the oily wastewater collection and oil/water/solids separation system upstream or prior to aggressive biological treatment units. However, the principal sources of such sludge generation and accumulation will include a variety of small or large ponds and, to a lesser extent, flow equalization basins or non-regulated primary treatment tanks located at various points in typical refinery wastewater flow system configurations. Characteristic pond types include:

- stormwater runoff retention ponds that are also used for primary treatment;
- flow equalization ponds upstream of primary treatment units (API separator or dissolved air flotation (DAF) units); and
- wastewater treatment ponds downstream of, or used instead of, secondary oil/water/solids separation, but before biological treatment, or before offsite discharge in the absence of biological treatment.

Current Sludge Management Practices. The bulk of the sludges subject to today's listing have historically been deposited and stored in unlined ponds. According to the EPA survey data, about 30 percent of the refineries had conducted periodic clean-out of at least some of their sludge generating ponds as of 1983. However, most of the ponds in the survey had not been dredged up to 1983, and thus were serving as indefinite sludge accumulation and storage impoundments. As these ponds continue to accumulate solids, it is likely that many more would eventually require sludge clean-out in order to operate adequately in a primary wastewater treatment capacity. Historically, dredged primary sludge has been disposed in landfill or land treatment units, either on-site or off-site, primarily under unregulated or State-regulated Subtitle D conditions. A few states, such as California, may be treating some of these sludges as Subtitle C hazardous wastes when removed from primary treatment ponds, although this was not accounted for in the present cost assessment due to lack of specific data.

Regulatory compliance scenarios. Under Subtitle C of RCRA, oil/water/solids separation sludges can no longer be generated or managed in unlined surface impoundments. As a result, refineries with non-compliance sludge ponds would be required to alter current waste generation and management practices in two manners:

(1) To reconfigure oily wastewater treatment systems to eliminate the use of unlined surface impoundments for primary or secondary oil/water/solids separation; and

(2) To retrofit, close, or otherwise convert existing primary sludge impoundments to other uses, under various possible options.

For regulatory compliance purposes, the Agency anticipates that oily wastewater treatment systems at affected refineries will be redesigned to capture all oil/water/solids separation sludges in tank or basin units, including the possible use of additional mechanical separation equipment. Although some small ponds may be excavated and retrofitted as settling basins with liners meeting Subtitle C specifications, this will probably be the exception.

Therefore, for cost estimating purposes, the Agency assumed the refinery wastewater redesign strategy will typically involve: (1) Construction of flow equalization tanks or basins to improve the performance of existing mechanical sludge separation equipment; (2) the construction of new DAF flotation devices for oil removal; and (3) the separation of stormwater runoff ponds from oily wastewater sources to eliminate their use as primary oily-sludge settling ponds. This engineering design approach was applied systematically to a sample of 24 Group B refineries in EPA's refinery database assumed not affected by the TC rule to determine equipment needs and sizing as a basis for estimating the capital and operating costs of wastewater treatment system modifications.

In addition to wastewater treatment system modifications and new sludge management requirements, compliance with Subtitle C also will require that existing impoundments containing these sludges be closed or otherwise brought into compliance with current regulations to prevent or control hazardous releases. For purposes of estimating compliance costs the Agency assumed that, by the effective date of this listing, all refineries will have responded in one of three ways as possible compliance strategy options for managing existing oil/water/solids separation ponds:

(1) Dredging listed sludges from pond storage areas *prior to* the effective date of the rule and disposing them as Subtitle D wastes. Pond sites would then be converted to another use or left idle. This is the minimum cost compliance option considered in this regulatory impact assessment.

(2) Closing the pond as a Subtitle C land unit. Pond sludge is first solidified *in situ* with fly ash. The impoundment is then filled to grade with native soil, and an EPA-recommended cover, consisting of a drainage system, a synthetic membrane, and two feet of compacted clay, is added. Groundwater monitoring and post-closure care are provided. This is an intermediate cost option.

(3) "Clean closure," in which the sludge and two feet of underlying soil are dredged and disposed as a Subtitle C hazardous waste. The Agency assumed, for present purposes, that this disposal would occur prior to implementation of land disposal restrictions for this sludge. Soil analysis and groundwater monitoring are provided during the closure period. Closed pond areas are convertible to other impoundment uses or other nonwater system uses. This is the high cost option for purposes of this assessment.

The Agency estimated compliance costs for all three options, recognizing that individual site conditions and company compliance policies will underlie choices at individual refineries. However, it should be noted that Option 1 (dredge and dispose as Subtitle D waste prior to effective date of listing) could engender future removal or damage cost liabilities, either on-site or off-site, where local disposal conditions allow contaminant migration. Possible additional costs of this type have not been included under Option 1.

Oil/water/solid separation sludges generated after wastewater system modifications, both in response to this rule and the TC rule, will be subject to today's listing if not captured by the TC rule. For present cost estimation purposes, EPA is expecting the listed sludge to be subject to the same land disposal restrictions as other refinery sludges under EPA's "First Thirds Rule" (53 FR 31138) and "Third Thirds Rule" (55 FR 22520). Sludge incineration and solvent extraction in Subtitle C permitted units are the standard "best demonstrated available technologies" (BDAT) under these restrictions. Although incineration was investigated in most detail, due to the recent promulgation of solvent extraction as an acceptable option, the Agency also conducted a less extensive evaluation of solvent extraction and oil recovery as the more likely choice by industry. Other state-of-the-art recycling and waste minimization technologies as alternatives to Subtitle C incineration were also investigated but not specifically costed. The results of this analysis are summarized in the RIA document.

B. Economic Costs and Impacts

Based on individual refinery wastewater system flowsheets and EPA engineering cost functions for basic unit processes, the Agency estimated baseline and Subtitle C regulatory compliance costs for 24 randomly-chosen refineries in the EPA Survey database likely to be subject to this sludge listing but not to the TC rule (Group B refineries). Three compliance scenarios, following the descriptions outlined in the previous section, were simulated to account for possible variations in company decisions regarding initial impoundment closure or conversion options. Capital costs were calculated for wastewater treatment system modifications, pond closure (including sludge clean-out, landfill closure or clean closure), and (for Options 1 and 3 only) disposal of initial cleanout sludge. Operating and maintenance costs for the new wastewater treatment system installations and annual cost of sludge removal, treatment, and disposal for future sludge generation were the other principal costs estimated. Engineering assumptions for waste management involved on-site sludge dewatering and solvent extraction followed by cement stabilization of sludge residues as the principal treatment technology, followed by off-site land disposal in Subtitle C commercial facilities. On-site sludge treatment and off-site disposal was sized on the basis of total refinery sludge generation including previously listed, TC, and newly listed Subtitle C sludges.

In addition to total compliance costs for the Group B refineries, EPA also estimated treatment and disposal costs for the 30 to 70 percent of non-TC sludges generated at a large sample of over 100 Group A (TC-affected) refineries, using the same BDAT waste management assumptions as for Group B.

All costs were extrapolated from the EPA data-base to the total universe of operating U.S. refineries using relative refinery capacity as the basis for extrapolation.

1. Nationwide Economic Costs

Table H summarizes the total national costs of today's sludge listing for the three alternative impoundment closure options studied by the Agency. National costs were extrapolated upwards from the Agency's sample data base of individual facility cost estimates, based on the data base coverage of 94% of total U.S. refinery capacity. Compliance costs in Table H represent total resource or social costs of this regulation, measured before any business expense tax write offs available to affected companies. Capital investment costs are annualized here over a 20-year lifetime at a real discount rate of 3.0 percent.

As seen in Table H, the Agency estimates compliance costs for initial investment at Group B refineries to range between $42 and $407 million, and total annualized costs for all refineries to be in the range of $57 to $131 million per year, depending on company decisions relating to pond closure options and percent of affected future sludge at Group A refineries attributed to this listing rule rather than the TC rule. Pond closure options have the dominant influence on total initial investment costs. The total annual cost estimates, however, are more influenced by the amount of future sludge which is or is not captured by the TC rule.

TABLE H.—TOTAL NATIONAL COMPLIANCE COSTS, BY POND CLOSURE OPTION

[Dollars in millions]

	Option 1: Dredge only; subtitle D disposal		Option 2: Subtitle C landfill closure		Option 3: Clean Closure	
Capital Costs (Dollars in millions)						
1. Wastewater Treatment System [1]	$29		$29		$29	
2. Impoundment dredge and closure [1]	2		185		231	
3. Sludge disposal [1]	11		0		147	
Total initial cost [1]	$42		$214		$407	
Annual Costs (Dollars in millions)						
1. Annualized Capital [1]	$3		$14		$27	
2. Annual O & M [1]	1		5		1	
3. Annual Sludge Disposal [2]						
30% non-TC sludges	53		53		53	
70% non-TC sludges		102		102		102
Total annual cost	$57	$106	$72	$121	$81	$130

[1] For "Group B" refineries unaffected by the TC Rule. Capital costs annualized over 20 years at 3 percent.
[2] Includes non-TC sludges at refineries both unaffected and affected by the TC Rule.

Other Waste Management Options. The costs presented here for annual future sludge disposal are based on the assumption that companies will choose to meet land disposal restrictions regulations by treating the newly listed wastes by solvent extraction instead of incineration. Generally, the Agency's cost evaluations indicate that incineration would be a slightly higher cost option. Solvent extraction recycles recovered oil back to the refinery for reprocessing at an estimated rate of about one barrel of oil per metric ton of sludge. Other waste minimization or recycling options, not addressed in this analysis due to the site specific nature of these options, could also reduce the cost of the rule. Examples of such options might include reducing oily waste inflow to the oily wastewater treatment system by waste segregation, using efficient over design to manage process upsets, incorporating better operating practices such as spill prevention and proper materials handling, and recycling sludge to the coking oven (potentially available at about one quarter of the refineries).

Potential Corrective Action Costs. The Agency did not include potential corrective action costs for on-site solid waste management units (under Section 3004(u) of RCRA) within the scope of the RIA for today's rule. The Corrective Action Rule itself is still under development and methods and assumptions for assessing costs are highly uncertain. The Agency's best present estimate is that, as an upper bound, approximately 9 to 12 refineries would be likely to become subject to corrective action as a direct consequence of this listing rule, with a combined total annual cost of about $4 million to $22 million per year.

This estimate is based on the observation that 60 to 70 percent of U.S. refineries are already subject to corrective action based on current Subtitle C on-site management permitting data, and assumes that only "Group B" refineries could be newly subject to corrective action as a consequence of this listing rule. It also assumes that all 9 to 12 refineries would chose to manage the newly listed sludge on-site (requiring a new permit and hence triggering Section 3004(u)). Unit costs of facility-wide corrective action of $400 thousand to $1.8 million per year per refinery (a provisional estimate from the draft Corrective Action RIA) [37] were used to derive the $4 to $22 million per year total national cost estimate for the 9 to 12 refineries.

2. Industry Impacts

As a principal measure of this rule's impact on individual refinery competitiveness, the Agency compared annual incremental compliance costs to annual product revenue for each of the 149 refineries in EPA's database that generate sludges of the type subject to today's rule. Product revenue was calculated using individual facility product line proportions from the 1983 survey, together with 1989 reported U.S. average refinery-level product prices, and scaling each refinery's total production to a normalized 1989 refinery utilization rate of 86 percent of its reported crude oil refining capacity.

For purposes of evaluating annual compliance costs as a percent of annual sales (cost/sales ratio), the Agency recomputed compliance costs on an after-tax basis, allowing for private company cost savings attributable to corporate tax deductions for pollution control capital depreciation and operating expenses. In reformulating private costs of compliance, EPA used a private sector discount rate for analyzing capital costs of 10.6 percent, based on recent estimates of the real cost of capital for petroleum industry investment.

Based on an analysis of private compliance cost-to-sales ratios, the impact on the refining industry is assessed to be modest, although not necessarily insignificant. A small number of refineries in the EPA database showed cost/sales ratios exceeding one or two percent, a level which has often been taken as a first stage indicator of significant adverse impact in EPA regulatory analyses.[38] Comparing the low and high TC affected sludge scenarios, 4 to 8 refineries show ratios greater than one percent of sales; but only three refineries exceed two percent, even under the highest cost scenario. Conversely, nine out of ten affected refineries in the highest cost scenario fall below 0.5 percent, and over three-quarters fall below 0.25 percent according to the Agency's calculations.

For the small number of refineries that might become competitively vulnerable based on the cost/sales ratio criterion, the Agency also evaluated the type of vertical integration of the companies owning the potentially vulnerable refineries. The assumption here is that fully or partially integrated companies (i.e., those with ownership of crude oil production, petrochemical, and/or product marketing interests) would be in a position to absorb refinery compliance costs more readily than companies operating only at the refining stage. Of the potentially vulnerable refineries with cost/sales ratios greater than one percent under the highest cost scenario, as many as seven refineries are operated by non-integrated petroleum companies and could therefore be considered possibly more vulnerable than the others in this group.

The Agency was not able to conduct a more extensive analysis of potential facility closures or possible direct employment effects because of a lack of plant-specific information on costs, cash flows, and balance sheet items that would be required for such an evaluation. However, based on the analysis performed, the Agency projects only small overall impacts on the U.S. refining industry with a few facilities possibly incurring substantial adverse financial impacts to the point of closure.

3. Product Prices

The Agency does not believe that today's rule will have any measurable impact on consumer-level product prices for products including gasoline, diesel fuels, heating oils, or petrochemicals. For those refineries most affected by this rule (Group B), the average after-tax compliance cost is barely 0.2 percent of total refinery sales revenue. For Group A facilities (the majority), average costs attributable to today's rule will be much less; and it appears that many refineries (at least 1 percent or more) will not be directly affected by this rule because of prior commitment to closed system wastewater management and recycling of oily sludges. As a result of both of these factors, plus the presence of some foreign competition in refined products, it seems unlikey that companies incurring compliance costs would be able under existing competitive conditions to pass these costs forward to final product prices to any significant degree. However, even if all costs were to be passed thru, equivalent price increases at retail would be about 0.05 percent.

4. International Trade

Although in principal a domestic cost increase will tend to favor foreign refinery competition, the Agency does not anticipate a measurable impact from this rule on international trade flows or the U.S. balance of payments. Since 1984, net refined petroleum product imports have been relatively constant at about 1.4 million barrels per day, or about 9 percent of domestic U.S. refined product supply. Under the conditions described above, with many U.S. refineries unaffected by this listing regulation and the most affected group of refineries (Group B) incurring an average compliance cost of only 0.2 percent of sales revenue under the high cost option, a measurable loss of refined product market to foreign competition due to this regulation is unlikely.

C. Benefits of Primary Sludge Listing

The Agency used a two-stage approach to estimate the total national benefits attributable to today's rule. First, EPA conducted a general assessment of a number of factors relating to primary wastewater treatment sludge characteristics, management practices, and the environmental settings typical of petroleum refinery locations in the United States. The Agency then conducted limited quantitative modeling in order to estimate the magnitude of potential damages associated with baseline sludge management practices.

Based on this general assessment and modeling study, the Agency concluded that there is a high probability that

[37] *Draft Regulatory Impact Analysis for the Proposed Rulemaking on Corrective Action for Solid Waste Management Units*, September 13, 1990.

[38] Many RIA's have used 5% as the cutoff for determining significant adverse impacts.

historical and current generation and management of this waste degrades the environment and poses potential human health risks at a significant number of U.S. petroleum refineries. Material for this section of the preamble is presented in more detail in Chapter 4 and Appendices D, E, and F of the RIA Document.

1. General Assessment of Hazardous Potential

In assessing the damage potential from primary refinery wastewater treatment sludges the Agency conducted extensive evaluations of toxic constituent concentrations, sludge management practices, geophysical settings, and other factors affecting potential pollutant release, transport, and fate for typical petroleum refineries.

Sludge Quantities and Characteristics. As noted above, U.S. refineries generate a total of 156,000 to 300,000 metric tons per year of primary and secondary oil/water/solids separation sludges that will be affected by today's rule.[29] Although quantities vary greatly at individual refineries, approximately 70 percent of generators produce more than 500 metric tons per year, approximately 30 percent generate more than 2,000 metric tons per year, and 2 to 6 refineries (2 to 4 percent) generate over 10,000 metric tons per year. On-site accumulations in ponds at individual refineries may amount to up to ten years or more of waste generation, depending on pond dredging frequency and sludge disposal histories. On-site landfills and land farms may also contain sludge quantities equivalent to many years' waste generation. The substantial sludge generation rates and accumulations provide one indication that these wastes have the potential to threaten human health and the environment.

Further evidence of the potential hazard posed by these sludges is found in the toxicity of constituents present in the sludges. As discussed above, today's listing is based on the high concentrations of five Appendix VIII constituents (benzene, benzo(a)pyrene, chrysene, lead, and chromium) frequently detected in the waste. Results from the Agency's 1987 field survey on chemical constituents from sludges in 44 units at 11 typical refineries (see 53 FR 12162) document the pervasive presence of these five hazardous constituents and seven other toxic constituents at levels warranting further evaluation from a hazardous waste perspective.[30]

In particular, lead, chromium, benzene, benzo(a)pyrene, and chrysene, as well as arsenic, nickel, toluene, benzo(a)anthracene, and dibenzo(a,h)anthracene, were commonly tested at concentrations that are tens to thousands of times higher than standard EPA health-based and ecological protection reference levels. These levels strongly indicate potentials for damages to human health, aquatic ecosystems, and ground-water quality under a variety of plausible mismanagement scenarios.

Baseline Management Practices and Release Potential. Given implementation of the Toxicity Characteristics Rule as a baseline assumption, sludge subject to today's rule would be generated in wastewater treatment tanks or cement-lined basins at all Group A refineries, or in unlined ponds at a smaller number of Group B refineries. As discussed above, many oily wastewaters and wastewater treatment sludges at petroleum refineries are hazardous wastes under the TC rule, and the Agency has assumed for purposes of this RIA that refineries currently using unlined primary settling ponds would modify their wastewater treatment systems (i.e., construct wastewater treatment tanks) to comply with design and operating requirements under the TC rule.

Based on these assumed wastewater treatment system modifications and assumptions about the amount of sludge subject to today's regulation that will not exhibit the toxicity characteristic, EPA estimates that approximately 53 to 114 refineries would generate non-characteristic sludge subject to today's rule in tanks and approximately 22 refineries would generate non-TC-Characteristic sludge subject to today's rule in unlined impoundments. EPA assumes that the refineries with wastewater treatment tanks would generate an average of up to 2,600 metric tons of non-characteristic, affected sludge in tanks each year, and the refineries with unlined impoundments would generate an average of 2,200 metric tons of sludge per year in ponds averaging about 10 acres in total area per facility.

EPA estimates that the entire quantity of sludge generated in tanks and a portion of that generated in ponds, an average of 2,600 metric tons per year at approximately 63 to 124 refineries, would be removed periodically from the wastewater treatment units and disposed in landfills or land farms under typical Subtitle D conditions in the absence of today's rule.

Wastewater treatment tanks in which sludge is generated are typically concrete-lined and do not accumulate and store large quantities of sludge over long periods of time. Although the Agency has not investigated potential releases of sludge constituents from these tanks in detail, EPA believes these units pose a relatively small hazard because of their engineered containment and relatively small accumulated sludge quantities. In contrast, the traditional unlined settling ponds and land disposal units that accumulate the majority of the sludge affected by today's listing are generally not equipped with protective liners, caps, leachate collection or ground-water monitoring systems, or other protective measures during their operating or post-closure periods. To the extent these ponds and land disposal units lack protective controls during operating or post-closure periods, they may be subject to toxic constituent releases in a variety of possible forms. These could include leaching into ground water, migration from groundwater into surface water, direct erosion or surface runoff from storm events, or volatile emissions from pond or land farm surfaces. Migration and transport pathways could thus involve ground water to water-supply wells or to surface waters, land surface to surface waters, or air transport directly to human receptors or other environmental media or points in the food chain.

EPA's damage assessment focused principally on the groundwater pathway, and in this respect the leachability of sludge constituents from unlined ponds or land management units is of particular importance. Although subject to scientific debate regarding specific predictive processes, there is substantial evidence that considerable quantities of toxic constituents from oily wastes can and do leach through containing walls or bottoms of unlined land storage or disposal facilities. For example, recent EPA column leachate studies have documented substantial release potentials for several oily wastes similar to the sludges affected by today's rule, including API separator sludge.[31] Depending on solubilities and other factors, various sludge constituents may migrate out of containment units either directly in an oil phase, or as an oil/water emulsion, or dissolved in an aqueous leachate.

Mobility in Ground Water. Sludge constituents in ground water may be transported and/or attenuated in several complex ways.

A fraction of the more water soluble constituents, such as arsenic and chromium, is expected to seep from management units in an aqueous phase. In this form, the constituents will tend to travel with the ground-water flow, but will become diluted and, to varying degrees, removed from the flow by sorption to soil particles, as they are transported from the source.

Other constituents, such as the polynuclear aromatic hydrocarbons (PAHs) will tend to be concentrated more in an oily phase, which can form as a layer upon or near the ground-water table. An oily layer can move at varying speeds relative to ground-water flow itself, and may be subject to less dilution or attenuation by sorption or other mechanisms. As oil continues to migrate from the management units and move on the surface of the water table, the sorptive capacity of the soil will be decreased, and toxic constituents in the oily phase may move downgradient with the ground water in a largely unretarded fashion. The migrating oil also will tend to retain a high concentration of contaminants because the immiscibility of oil and water precludes dilution.[32] That is, the oil phase will spread, becoming thinner, rather than mixing with the ground water and becoming more dilute. Intermediate oil/water emulsions may also be involved in the transport/decay process, as toxic constituents move from a source towards receptors.

Because of the complexities involved in these multi-phase leaching and transport processes, predictive modeling of oily waste migration is extremely difficult, and results are subject to great uncertainty. However, a growing body of empirical evidence indicates that oily waste constituents can and do travel in groundwater systems over substantial distances and often at relatively high concentrations. For example, in its Report to Congress on oil and gas production wastes, EPA described several damage cases involving the migration of hydrocarbons from unlined waste pits into ground water.[33] In one case in New Mexico, hydrocarbons were detected in ground water 50 meters downgradient from unlined produced water pits. Sands above the water table were found to be stained with oil, and a black, oily film was discovered on the water itself.

In a separate study of petroleum refinery wastewater treatment sludges, EPA found concentrations of PAHs (phenanthrene, pyrene, and chrysene) of up to 2,000 parts per million (ppm) in a well located 200 meters downgradient from primary wastewater treatment units.[34] At a coal-tar waste site in Minnesota, municipal wells drilled 1,000 meters away were found to be contaminated with several organic compounds, including several of the PAHs commonly present in oil/water/solids separation sludge.[35] The coal-tar waste was oily in composition and most of the compounds detected downgradient from this site were slightly more concentrated in an oily phase. These and other documented cases of oily phase migration substantiate the Agency's concern about potential for sludge constituents to be released into and migrate through the environment.

Environmental settings. Several factors relating to the environmental settings of petroleum refineries contribute to the general potential for damages from toxic sludges, as borne out by EPA survey and file data, as well as research by the American Petroleum Institute.

First, refineries and their impoundments tend to overlie relatively shallow aquifers. An EPA mapping study of 20 refinery locations, using available hydrogeologic maps, showed 90 percent of the sites with ground-water tables 20 meters or less from the land surface and 75 percent with water tables that are less than 7 meters deep. Similar, more precise field data from thirteen EPA site visits have documented the distance between the bottoms of surface impoundments and the ground-water table. Over half of the impoundments at these refineries extended either into or within 1.5 meters of the water table; and the water table was within 6 meters (20 feet) of the base of all the ponds at 12 out of 13 refineries in the sample.

The American Petroleum Institute (API) also found that the water table underlying petroleum refinery wastewater treatment impoundments was very shallow at a sample of 10 refineries and, more generally, in several regions where refineries tend to be concentrated.[36] In addition, API found that these refineries and regions generally are underlain by unconsolidated soil that has a high permeability. Short distances to ground water and high subgrade permeability enhance migration potential for leachate and thus enhance the probability of ground-water contamination and other damages.

Distances to typical receptors are also important locational considerations, affecting both time of travel and extent of dilution or attenuation of toxic constituents between points of release and points of exposure. The EPA site visits referenced above also measured distances from impoundments to surface waters at 31 refineries. Seventy-five percent had distances under 1,200 meters, and 50 percent were within 250 meters. These distances are all generally within the range at which various toxic constituents can be transported by ground water, in either an aqueous or oily phase, at concentrations that can be damaging to natural resources and human health.

Little data are readily available on distances from refineries to active drinking water wells, a principal indicator of direct human health threats. However, the Agency reviewed U.S. Geological Survey (USGS) maps for a sample of 40 representative refinery sites to identify the presence and location of downgradient residences that appear to be outside the range of public water systems (PWSs). Residences outside of PWS service areas are likely to have private wells. For the same sample of 40 sites, the Agency also used the USGS maps along with data from the Federal Reporting Data System (FRDS) to identify the location of PWS wells.

At 18 of the 40 refineries mapped (45 percent), residences that are expected to have private wells were present within 1,600 meters (1 mile), and at 9 of 40 refineries (23 percent), residences that

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[29] The range of sludge quantities reflects the Agency's assumption, in the absence of adequate data on the amount of sludge captured by the Toxicity Characteristic (TC) rule, that 30 to 70 percent of the sludge at facilities that currently generate a wastewater or wastewater treatment sludge that exhibits the TC will not be captured by the TC and will be affected by today's rule.

[30] Constituent concentration data for primary wastewater treatment sludges are presented in *Summary of Data and Engineering Analyses Performed for Petroleum Refining Wastewater Treatment Sludges* (prepared by MRI for the Office of Solid Waste, U.S. EPA), April 1988.

[31] For example, see: *Evaluation of Method 1311 for Determining the Release Potential of Oily Wastes.* Draft final report prepared by Research Triangle Institute for the Office of Solid Waste, U.S. EPA, November 1988.

[32] Alfoldi, L., "Movement of Oils in Ground Water and in Rocks," in *Proceedings of International Symposium on Ground Water Pollution by Oil Hydrocarbons.* Prague, June 1976.

[33] U.S. EPA, *Report to Congress: Management of Wastes from the Exploration, Development, and Production of Crude Oil, Natural Gas, and Geothermal Energy.* Volume 2, EPA/530-SW-88-003, December 1987.

[34] *Summary of Data and Engineering Analyses Performed for Petroleum Refining Wastewater Treatment Sludges,* prepared by MRI for the Office of Solid Waste, U.S. EPA, April 1988.

[35] Rostad, C.E., Pereira, W.E., and M.F. Hult, "Partitioning Studies of Coal-Tar Constituents in a Two-Phase Contaminated Ground-Water System", *Chemosphere,* Vol. 14, No. 8, pp 1023–1036, 1985.

[36] American Petroleum Institute, *Assessment of Potential Hazards to Ground Water Posed by Refiner Wastewater Impoundments.* March 1980.

are expected to have private wells were within 400 meters. Four of the 40 refineries (10 percent) have a public well within 1,600 meters downgradient. Using current census data on the average number of people per residence (2.6) and data from FRDS on the total population dependent on potentially affected PWSs, and extrapolating the sample results across the universe of affected refineries, EPA estimates that from 9,500 to 66,000 people could be exposed to the sludge contaminants via either private or public wells within 1,600 meters downgradient of 39 to 71 refineries. Although certainly not conclusive, these data suggest the potential for drinking water contamination at a substantial proportion of refineries and the potential for a large number of people to be exposed.

Overall, of the 40 refinery sites evaluated by mapping, 90 percent showed either downgradient residences that may have drinking water wells, or surface waters, or both within 1,200 meters.

Conclusions from General Assessment. Based on (1) the substantial quantities of primary and secondary oil/water/solids separation sludge in unlined impoundments and land disposal units, (2) the high concentrations of several toxic constituents in the raw sludge, (3) the demonstrated capability of these sludge constituents to migrate out of containment units, (4) the shallow ground-water tables and high soil permeabilities beneath most refineries, and (5) the relatively short distances to surface waters and/or drinking water wells at a substantial proportion of locations, the Agency concludes that there is a high probability that these sludges are contributing substantially to environmental degradation and possible human health damage under current management practices at a significant number of U.S. petroleum refineries.

2. Quantitative Damage Estimates

In an effort to quantify the benefits from this regulation, the Agency undertook a modeling study of the ground-water damage pathway to estimate baseline toxic constituent concentrations at receptor points and to evaluate potential damages associated with this contamination.

Approach and Methods. The approach used sample data for representative refineries to estimate typical damage potentials for all refineries producing primary wastewater treatment sludge. The principal data included: (1) Sludge quantity estimates for 149 refineries; (2) field data on toxic constituents in sludges sampled at 44 waste management units at 11 refineries; (3) downgradient distance to surface water for 31 representative refineries; (4) downgradient distance to nearest residence (as a proxy for drinking water wells) for 40 representative refineries; and (5) total population potentially exposed to ground-water contamination via private and public water supply wells located within one mile downgradient of 40 representatives refineries.

To develop modeling inputs from the data on toxic constituent concentrations in the sludge, the Agency estimated leachate concentrations using all available sludge sampling data and accounting for the oily nature of the sludge. The Agency did not use toxicity characteristic leaching procedure (TCLP) direct data in this analysis because only limited sample data were available and the TCLP may underestimate actual leaching due to the oily nature of the sludges.[37] Instead, the Agency estimated leachate concentrations for all 44 sludge samples using available EPA methods that account for the oily character of these sludges.[38] The estimated leachate concentrations are many times higher than leachate concentrations that would be expected from the TCLP. However, while this approach may appear to be conservative (i.e., may overstate aqueous phase leaching from the sludge), it is designed to more realistically account for leaching from a mobile oily phase, which is not well simulated by the TCLP.

Because the sludge that is affected by today's rule only includes that which does not exhibit the TC, the Agency based this analysis only on samples that the Agency considered likely to pass TC regulatory levels using standard laboratory test procedure. By comparing measured TCLP concentrations to estimated leachate concentrations from sludge samples taken from the same units, the Agency identified a small number of sludge samples that would likely exceed TC regulatory levels using the TCLP test and excluded these from the data base, leaving estimated leachate concentrations for 30 sludge management sources from 9 refineries. Although TCLP test method concentrations for these 30 samples would likely lie below TC regulatory levels, the approach used to estimate leachate concentrations produces concentrations that exceed the TC regulatory levels for benzene, chromium, or lead for 16 of the 30 samples. For model input, the Agency used facility-level leachate concentration estimates derived by averaging constituent concentrations across all samples at a given refinery.

These baseline data were used as input into the Agency's VHS ground-water model [39] to produce probabilistic frequency distributions of expected risks representative of all affected sludge generators. Downgradient ground-water concentrations were thus estimated both for landfills (or land farms) at 63 to 124 refineries and for impoundments at 22 refineries.

From these ground-water concentrations, EPA developed estimates of two types of damages:

(1) *Human health effects* (both carcinogenic and noncarcinogenic) through drinking water well contamination for "maximally exposed individuals," based on distances to nearest residences, and for total exposed populations, based on both private residences and public wells; and

[37] In particular, the TCLP appears to underestimate the contribution of the mobile oily phase, which is likely to contain most of the sludge's hydrophobic PAHs, to the extent that any portion of the oil phase passes through the filtering step of the TCLP. In such cases, the filterable oil is treated as part of the "initial liquid" during the remainder of the procedure. Also, there is evidence that the oil fraction decreases the exposure of the solid fraction of the waste to the TCLP leaching medium.

[38] Concentrations of metals in sludge leachate were calculated using a conservative procedure developed for the delisting program. Concentrations of organics in sludge leachate were calculated by different methods to distinguish between the character of leachate generated from impoundments and landfills/land farms. Both approaches account for the contribution of a mobile oily phase to the concentrations of organic constituents in the leachate. (See Chapter 4 of the RIA document for additional detail on the leachate estimation procedures.)

[39] The Vertical and Horizontal Spread (VHS) model (50 FR 48897) was used to estimate the dilution of ground-water contamination caused by impoundments, landfills, and land treatment units. EPA recognizes that the VHS model does not account for an unsaturated zone, in which dilution due to dispersion can occur. This would tend to underestimate the dilution of constituents in the aqueous phase (i.e., overpredict the exposure point concentrations) in cases where an unsaturated zone exists. However, since the depth to ground water at refineries is relatively small, this error is not expected to be especially large. On the other hand, the model will overestimate the dilution that will be experienced by constituents that are mobilized in the oil phase and are subsequently released to the aqueous phase as the oil phase degrades. This is because the area of the degrading oil phase will be larger than the leachate source assumed by the model. (The area of the degrading oil phase will be equal to the leachate source area plus the area over which the oil phase spreads before it degrades). Additionally, the constituents in the oil phase will be released at points closer to the receptor point than the assumed leachate source. While the Agency believes that the magnitude of the error introduced by these factors cannot be accurately quantified due to the complex site-specific nature of the issues involved, it is noted that the factors act in opposite directions on the model's results and are thus, to some extent, offsetting.

(2) *Concentration of toxic constituents entering surface water bodies,* through ground water, based on distances to surface water, for those constituents that are damaging to fresh and saline water ecosystems.

The estimated health risks may be over estimated because they are calculated on the assumption that exposed populations would drink untreated water even though it might exceed taste and odor thresholds for oil and certain constituents, and because PWSs may routinely treat water to meet drinking water standards. These issues are discussed below, together with estimates of costs for providing alternate drinking water supplies.

Ground-Water Resource Damages. An upper bound dollar value of the cost of avoiding the health effects described above can be obtained by estimating the cost of replacing drinking water that comes from affected down-gradient wells. Ground-water resource damages were defined in this analysis by exceedences of maximum contaminant levels (MCL's) defined by primary drinking water standards established under the Safe Drinking Water Act for five potential contaminants, including three metals (arsenic, chromium, and lead) and two organic compounds (benzene and toluene).[40] Contaminant concentrations were estimated at fixed distances between 200 and 1,200 meters from sludge management units.

All told, 70 to 80 percent of the refineries that manage affected sludge in landfills or land farms showed exceedences for at least one contaminant, even at the 1,200 meter distance, with the figure rising to 90 to 95 percent having exceedences at 200 meters. For refineries managing sludges in impoundments, 95 percent showed exceedences for at least one contaminant at 1,200 meters, and all showed exceedences at 200 meters. This translates into about 70 to 130 refinery sites producing damages to ground water at 200 meters and 60 to 110 sites showing damages at 1,200 meters. The total area of ground water contaminated above MCLs at these refineries is estimated to be 13 to 25 square miles. Multiple MCL exceedences (up to four contaminants) were typical for a majority of cases at all distances up to 1,200 meters.

The predicted *magnitudes* of the MCL exceedences were also substantial for a large percentage of refineries. For example, for 60 percent of landfill and land farm sites and for 95 percent of the impoundment sites, MCL exceedences were greater than a factor of 10 at 200 meters. At 1,200 meters, the proportion of sites with MCL exceedences greater than a factor of 10 declined to 25 to 40 percent of landfill/land farm sites and 75 percent of impoundment sites. MCL exceedences at 200 meters were greater than a factor of 100 for at least one contaminant at 10 to 20 percent of landfill/land farm sites and at 60 percent of impoundment sites. MCL exceedences at 1,200 meters were greater than a factor of 100 for 30 percent of refineries that have impoundments containing affected sludge.

In general, chromium accounted for the largest number of MCL threshold exceedences across all refineries and produced the greatest absolute MCL exceedance levels—up to 2,500 times the threshold—at more than 90 percent of the affected refineries that dispose of sludge in landfills and land farms and all 22 refineries that accumulate the sludge in impoundments. Lead exceedences were predicted for 70 to 80 percent of the facilities with landfills and land farms and all 22 refineries with impoundments containing the affected sludge. Benzene exceedences were predicted at 10 to 50 percent of the affected refineries, depending on distance. Only toluene among the five constituents did not result in an exceedance of the MCL at any sites within the 200 to 1,200 meter range of distances modeled.

In addition to the ground-water damage estimates from modeled exceedance of MCLs, current sludge management may also contaminate ground water with levels of oil that can be tasted, smelled, or even seen. In this analysis, the Agency has assumed that sludge constituents are released, in part, in an oil phase that migrates in ground water. Given the assumption of a mobile oil phase, it is likely that ground water downgradient of sludge management units will not be usable because oil concentrations in the ground water will be well above taste and odor thresholds.

Human Health Damages. To quantify potential human health damages, the Agency modeled cancer risks.[41] and noncarcinogenic (lead and chromium) health effect threshold exceedance levels as a function of sludge characteristics and distances to drinking water wells. The Agency estimated both maximally exposed individual (MEI) risks at individual refineries and total population risks. Virtually all refineries estimated to have drinking water wells at distances under 1,200 meters (45 percent of refineries) indicated potential cancer risks and also exceedences of health effect thresholds for both lead (neurotoxic effects in sensitive populations) and chromium (liver and kidney damages). Because of the simplified nature of the VHS model and uncertainties in predicting contaminant concentrations far from a release source the Agency modeled concentrations only out to 1,200 meters. Therefore, results for the remainder of refineries (55 percent with the nearest downgradient residence beyond 1,200 meters or beyond an intervening surface water body) were either inconclusive or assumed to yield low risks.

EPA's carcinogenic risk modeling results for the sludges affected by today's listing predicted MEI risks greater than 10^{-5} for all refineries with residences within 1,200 meters (45 percent of all refineries), and greater than 10^{-4} for 40 percent of all affected refineries. For up to 25 percent of affected refineries with the greatest predicted risks—i.e., those with higher carcinogenic constituent concentrations, larger sludge volumes, and closer distances to wells—EPA predicted MEI lifetime risks equal to or greater than 10^{-3} (one case in 100 similar lifetime exposures) for these wastewater sludges under current management practices and distances to existing residences. Multiplying the median individual lifetime cancer risk estimates at three downgradient distances by the total population potentially exposed via downgradient drinking water wells at those distances, the Agency predicts that baseline sludge management practices could cause anywhere from one to three cancer cases per year.

Neurotoxicological damage to sensitive persons (infants or pregnant women) can occur at threshold concentration levels of lead greater than 0.02 ppm in drinking water. [42] Levels exceeding two times this amount are predicted by the EPA modeling results at up to 30 percent of refineries that manage sludge in landfills or land farms and 40 percent of refineries managing affected sludge in impoundments. Levels exceeding 100 times this concentration are predicted at up to 5 percent of refineries with landfills and land farms and 15 percent of refineries with impoundments. Kidney and/or liver damage from chromium ingestion can occur at drinking water concentrations

[40] For toluene the analysis used the proposed MCL of 2.0 mg/L.

[41] Carcinogenic constituents included arsenic, benzene, and various PAHs [benzo(a)pyrene, benzo(a)anthracene, dibenz(a,h)anthracene, and chrysene].

[42] Based on an MCLG of 0.02 mg/liter previously proposed by EPA's Office of Drinking Water (50 FR 46936, November 13, 1985).

of chromium greater than 0.18 ppm.[43] The EPA model results for all refineries suggest that this threshold may be reached at 25 to 30 percent of refineries that manage sludge in landfills or land farms and 40 percent of refineries managing affected sludge in impoundments. According to the modeling results, this threshold would be exceeded by 100 times at about 10 percent of all refineries managing affected sludges in impoundments.

Overall, the model results indicate that up to an estimated 6,400 to 32,000 people could be exposed to drinking water concentrations of lead and/or chromium in excess of their respective health effect thresholds as described above.

Taste and odor. In cases where taste and odor thresholds in tap water are exceeded, households or public water systems may take a variety of actions to avoid exposures to contaminated supplies and thus avoid any health effects. Our analysis has shown that benzene and toluene are sometimes in this range where taste or odor threshold exceedences could tend to preclude use of water. Highly sensitive persons can detect toluene (the more critical of the two constituents) in water at 0.024 mg/L, and our ground-water modeling results indicate that this concentration level could be reached at the MEI risk locations (nearest residential user) at about 20 percent of refineries with current downgradient private residences. However, for less sensitive persons at MEI residences and/or for other (non-MEI) residences further downgradient, taste and odor for toluene could be much less a factor in forestalling health risks for private well users.

In addition, if the oil phase is mobile and reaches exposure points (as is assumed in estimating health effects), it is possible that oil could be tasted and smelled in drinking water at any of the facilities where the Agency estimated cancer risk or lead or chromium threshold exceedences. However, since the oily phase of the contaminant plume is generally expected to occur at the surface of the contaminated aquifer, wells would have to be withdrawing from the aquifer surface for users to detect the oil itself.

Replacement Costs For Contaminated Water Supplies. As an alternate measure of damages, the Agency estimated the costs of replacing ground water that is currently used as a drinking water supply and that may be contaminated by baseline sludge management practices. We estimated these costs using a standardized resource damage model,[44] along with our estimates of potentially exposed populations and the frequency of exceedences of MCLs in downgradient ground water.

Based on the Agency's projections, the nationwide annualized cost of replacing contaminated ground water that is currently used at downgradient locations ranges from $4.2 to $7.8 million, depending on the proximity of alternative water sources and the number of refineries affected by today's rule.[45] The estimated total number of people placed on alternative water supplies ranges from 7,600 to 14,000. These replacement costs are based on the assumption that ground water, from either nearby or distant locations, will provide the replacement water supply. If surface water is used as the replacement supply, the annualized replacement costs would be from 8 to 28 percent higher than presented above. Similarly, if the Agency considered the replacement of ground water contaminated above taste and odor thresholds rather than MCLs the annualized replacement costs could also be slightly higher than presented above.[46] In addition, these estimates only include replacement costs for current water demand and do not include replacement or treatment costs for future growth in demand.

Surface Water Pollution. The EPA modeling effort estimated concentration levels of toxic constituents predicted to reach nearby rivers, lakes, estuarine, or coastal water bodies through ground water. As noted above, EPA estimates that 75 percent of refineries are within 1,100 meters, and 50 percent within 250 meters, of a surface water body. In addition, 25 percent are within 800 meters of other wetland areas (swamps or bogs).

Results from modeling predict that constituent *concentrations* reaching these surface waters may be substantially higher than standard water quality criteria for ecological protection (i.e., acute ambient water quality criteria and criteria developed from toxicity test results presented in EPA water quality criteria documents). Although the results are not conclusive because they do not provide quantitative estimates on the mass flows of pollutants, they provide an indication of the potential for ecological harm. In addition, it may be noted that several of these sludge constituents, particularly lead, chromium, the PAHs, and (to a lesser extent) nickel and arsenic, could tend to bioaccumulate in aquatic organisms or, under certain circumstances, deposit in benthic sediments. Damages to surface water through ground-water transport were not estimated in terms of total acreage or number of stream miles damaged.

3. Regulatory Benefits

Regulatory benefits from today's rule can be measured in terms of reductions in current damages (or prevention of increased future damages) to ground-water resources, human health risks (potential mortality or illnesses due to cancer and other organ dysfunctions), and ecological damage avoided through reduced pollutant loadings to fresh and saline surface waters or other wetlands near refineries or near off-site sludge disposal areas.

Basically, Subtitle C regulations will require that current sludge management units be closed (generally in a manner that will reduce future constituent releases) and that future sludge generation be managed either by incineration, solvent extraction, or by some other means that precludes the migration of toxic pollutants into ground waters or surface waters. No new unlined primary oily sludge treatment or storage ponds would be constructed, either at existing or future new refineries, and no future oil/water/solids separation sludge would be disposed of under uncontrolled conditions in land management units. Instead, the sludge would accumulate and be stored in tanks or basins in accord with containment controls, and final disposal would occur under best demonstrated available technology (BDAT) specifications.

As an example of the damage reductions to be expected, the analysis has considered future health risks from carcinogens and metals. The Agency has estimated that damages to human health via contaminated drinking water may be occurring presently at up to 52 percent of U.S. refineries currently generating these sludges, or at between 39 and 71 locations. If the 22 refineries with impoundments adopt either of the two more likely Subtitle C closure scenarios for existing surface impoundments (closure in place or clean closure), toxic

[43] Based on the reference dose from EPA's Integrated Risk Information System.

[44] ICF Incorporated, *Subtitle D Risk Model: Droft Appendix E. Resource Damage Submodel*, September 1988.

[45] These values were calculated from the sum of all discounted costs incurred over 90 years with a discount rate of 3 percent and a payment period of 20 years.

[46] Because the taste and odor thresholds for principal sludge contaminants are lower than the MCLs, the volume and replacement costs of water contaminated above taste and odor thresholds could be larger than those corresponding to MCL exceedances alone.

releases will either be essentially eliminated or future monitoring and corrective actions should substantially protect against future off-site migration at all of these 22 locations. Future oil/water/solids separation sludge management at all sites will be regulated according to BDAT—i.e., solvent extraction or incineration under Subtitle C, Subpart O conditions. This typically results in hazardous organic constituents being recycled, destroyed, or removed at levels greater than 99.995 percent. In addition, cement stabilization of solvent extraction treatment residuals and proposed metals emission regulations are designed to control carcinogenic MEI risks below 10^{-5} levels, and noncarcinogenic metals risks to levels below MEI health effect threshold levels. Thus, the Agency anticipates that MEI health risks due to cancer would be reduced from present levels, ranging from 10^{-4} to 10^{-2} at 35 to 60 locations, down to a maximum of 10^{-5} (most likely substantially below 10^{-5}) under expected regulated conditions. An estimated one to three cancer cases per year would be avoided. Noncarcinogenic effect levels would be similarly controlled, under BDAT regulations, to levels below health risk thresholds. The number of people potentially exposed to lead and chromium concentrations above noncarcinogenic effect thresholds in drinking water, as a result of contaminant migration from the sludge, would be reduced by 6,400 to 32,000.

An alternative measure of benefits is the reduction of costs of treating or replacing contaminated ground water from private and public wells. These replacement costs would be reduced or prevented at almost all of the estimated 75 to 136 affected petroleum refineries as a result of this regulation. This would result in an annual savings of more than $4.2 to $7.8 million per year that would otherwise have to be spent to replace existing drinking water supplies.

An additional benefit, not quantified in this RIA, is that pollutant loadings to surface waters and wetlands through groundwater migration and transport at 56 to 102 refineries (about 75 percent of sludge generators) should also be substantially reduced or eliminated as a result of this rule.

D. Summary of Analytical Limitations and Qualifications

As described above, the benefit assessment has estimated benefits alternatively in terms of reduced health risks/damages and water supply cost savings. Many uncertainties and assumptions made in developing the quantitative estimates could lead to over- or underestimates. Specific factors noted in the analysis are summarized below. Paragraphs or factors in this section marked with * relate to health risk factors that would be precluded or obviated by groundwater source supply replacement or public system drinking water treatment.

1. Factors That Tend To Overestimate Benefits

Simplified VHS Model used in groundwater transport. The VHS model is a steady state model that projects long-term equilibrium groundwater plume contaminant levels based on the assumption that contaminant releases are continuous (i.e., the site acts as an infinite source). Although steady state modeling is efficient, it ignores many important temporal factors and can tend to overestimate the geographical extent, duration, and maximum contaminant levels. In addition, the VHS model, by failing to address specific retardation factors and dilution in an unsaturated zone, can tend to substantially overestimate contaminant levels for certain chemicals in the aqueous phase of the oil/water plume.

*Agency dose-response functions.** The Agency's procedures for estimating dose-response relationships, upon which the health benefit estimates are based, result in an upper limit of health risks. Carcinogenic potency factors are conservative, tending to overstate risk. Furthermore, with respect to the carcinogenic potency of PAHs the Agency used the potency factor for benzo(a)pyrene (the PAH for which there is a potency assessment, albeit a relatively high potency among carcinogenic PAHs) for all the analyzed carcinogenic PAHs in the sludge data base. Similarly, the reference level used for lead represents a level that could result in neurotoxicological damage to sensitive persons (infants or pregnant women), not an average population. The estimates also assume that individuals in the exposed populations drink 2 liters of untreated contaminated ground water per day over 70 years. To the extent that the average person consumes less water and/or obtains liquids from other sources over a lifetime, actual risks will be lower. Thus the benefits do not represent "most likely" or "best" estimates of risk in this respect.

Assumed hydraulic connection with drinking water wells. The Agency's health benefit estimates are based on the assumption that downgradient drinking water wells withdraw water from a geologic zone that can be contaminated by waste ponds, landfills, or land treatment units at petroleum refineries. Moreover, the estimates assume that wells are located along the downgradient centerline of a contaminant plume and that they draw water from the surface layer of the plume, which would have higher contaminant concentrations than locations on either side of the centerline or deeper in the aquifer. Downgradient drinking water wells may actually be protected from contamination by impervious geologic strata and/or may be located in less concentrated areas of a contaminant plume.

*Other intervening regulations.** EPA's health benefit estimates do not take into account contemporaneous or future regulatory actions initiated by other regulatory authorities, including other EPA offices. In particular EPA's Office of Drinking Water has promulgated or proposed major rules that require the installation of treatment technologies at public water systems. The health risks that are estimated to be avoided in this rulemaking may be already substantially prevented for the populations of public water users as a result of these or future regulatory actions. There still can be risks, however, for private well users, not protected under the Safe Drinking Water Act. In addition, some constituents may not yet be covered by the current regulations.

*Taste and odor.** In cases where taste and odor thresholds in contaminated tap water are exceeded, households or public water systems may take a variety of actions to avoid exposures to contaminated supplies and thus preclude any health effects. Our analysis has shown that benzene and toluene are sometimes in this range where taste or odor threshold exceedances could tend to preclude use of water. Highly sensitive persons can detect toluene (the more critical of the two constituents in the present analysis) in water at 0.024 mg/l, and our groundwater modeling results indicate that this threshold concentration level could be exceeded at the MEI risk location (nearest residential user) at about 20 percent of refineries with estimated MEI risks.

However, for persons of more average taste and odor sensitivity at MEI residences and/or for other (non-MEI) residences further downgradient, taste and odor for individual constituents like toluene or benzene rapidly diminish as factors protecting against consumption of contaminated drinking water. For residences using private wells where taste and odor thresholds are *not* exceeded, substantial health risks can still be present, either for other constituents like lead or arsenic where

taste and odor are not a factor, or for constituents like benzene, for example, where the taste and odor threshold even for the most sensitive persons averages 0.07 mg/l, about 14 times higher than the benzene MCL (0.005). For oil itself, the taste and odor threshold is particularly low; and since oil tends to stay at or very near the surface of the contaminant plume, households withdrawing from the surface of the contaminated aquifer may thus detect the plume at substantial distances and avoid using contaminated water.

2. Factors That May Underestimate Benefits

Toxic constituents not included in the analysis. The risk modeling was based on a limited list of constituent chemicals expected to be present. Additional chemicals may be present that were not analyzed or for which health-risk factors have not yet been developed. For example, there is very recent evidence that dioxins are present in some refinery sludges at levels that could pose health risks. In addition, lead has recently been listed as a Class B–2 carcinogen, but was not so treated in the risk assessment.

Background response not included in the analysis. The health risk analysis did not account for segments of the population exposed to background doses of carcinogenic or noncarcinogenic toxicants from work place or other sources. Segments of the population already subject to significant background doses of either carcinogens or noncarcinogenic toxicants from work place or other exposures were not included in the analysis.

Pathways not explored or quantified. The risk assessment did not attempt to quantify any health risk pathways other than groundwater-to-drinking water ingestion. Other health risk pathways would include: dermal absorption and inhalation via water supply (showering, for example)*; inhalation of volatiles or dust particles from landfarming of sludges; food chain ingestion via crops grown on contaminated land surfaces; food chain via contaminated surface waters (fish and shellfish).

Ecological damages not quantified. Damages to natural ecosystems—either through overland flows during flooding or erosion or via groundwater contamination and seepage to land or surface waters—were not quantified in this study. It was shown however, that surface waters exist downgradient within 1200 meters at 75 percent of refineries and that other wetlands (swamps, bogs, etc.) are equally nearby at over 25 percent of refineries. Modeling results indicated that contaminants could migrate over these distances and several chemicals present in the sludge are known to bioaccumulate and/or concentrate in the benthic layer which is critical to the invertebrate elements of the food chain.

Fractured flow systems. The VHS model assumes a homogeneous isotropic subsurface. Certain sites are subject to fractures or are particularly porous, leading to exceptionally rapid transport and less dilution than predicted by the model.

Risk/damages related to future population growth or regional development were not counted. The Agency has only attempted to estimate health risks or groundwater resource damages for existing populations and water use patterns. No account has been made for possible future residential development or other future growth in water resource demands upon aquifers presently contaminated or subject to future contamination by these petroleum refinery sludges.

Only benefits within one mile are quantified. Due to data limitations and modeling constraints, the Agency only considered the health risks and resource damages prevented within one mile downgradient from refineries. The Agency acknowledges, however, that contamination from the sludge could extend for greater distances, making the overall benefits from this rulemaking greater than estimated.

VII. Regulatory Flexibility Act Screening Assessment

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 90–34), which amends the Administrative Procedures Act, requires Federal regulatory agencies to consider "small entities" throughout the regulatory process. The RFA requires, in section 603, an initial screening analysis to be performed to determine whether a substantial number of small entities will be significantly affected by a regulation. If so, regulatory alternatives that eliminate or mitigate the impacts must be considered.

According to EPA's guidelines and criteria for conducting regulatory flexibility analyses, if over 20 percent of the population of small businesses is likely to experience financial adversity based on the costs of a rule, then the Agency is required to consider that the rule will have a significant economic effect on a substantial number of entities and to perform a formal RFA assessment. The Agency has conducted an initial screening analysis to evaluate the potential economic effect of today's final rule on small entities and has concluded that the rule will not have a significant adverse effect on a substantial number of small petroleum refining companies.

A. Definition of Affected Small Entities

EPA has identified the enterprises directly affected by this rule as petroleum refineries that use primary settling ponds or other non-regulated structures for oil/water/solids sludge separation from oily wastewaters. The Agency has estimated in the Regulatory Impact Analysis (RIA) for this regulation that about 182 out of 204 U.S. refineries produced such sludges at the beginning of 1989, primarily under unregulated conditions, and could therefore incur costs for new regulatory controls under Subtitle C of RCRA. However, as noted, a substantial portion of these sludges—possibly the major part—would come under the recently promulgated Toxicity Characteristic Rule (55 FR 11798) and would therefore be subject to regulation prior to the effective date of today's regulation.

According to current U.S. Department of Energy (DOE) records, these 204 U.S. refineries are owned and operated by 106 identifiable business entities, primarily U.S. corporations (Petroleum Supply Annual, 1989). These 106 companies vary widely in size and general character. The largest 25 companies are either fully integrated petroleum companies or broadly based natural resource or other conglomerates ranking high among the nation's top 100 or 500 largest corporations. The majority are smaller, nonintegrated companies that typically operate only one petroleum refinery.

For purposes of this regulatory analysis, the Agency has chosen to define affected small entities as those small petroleum refining companies that control company-level crude oil refining capacity of under 50,000 barrels per day (BPD). This definition of small company was chosen for the following reasons:

(1) A capacity level of 50,000 BPD represents 60 percent of the total number of companies (64 out of 106), but these 64 companies together control only 9 percent of capacity.

(2) Companies operating at less than 50,000 capacity BPD are predominantly nonintegrated, independent companies that operate only one refinery each.

(3) The 50,000 BPD cutoff is consistent with one of the Small Business Administration's (SBA) criteria for defining small businesses in the petroleum refining industry (SIC Code 2911), as published in SBA's Small Business Size Regulations (13 CFR 121).

The Agency has chosen not to use SBA's second criterion, which would define a small business as one that has less than 1,500 employees, because (a) very few refineries employ more than 1,500 employees, and (b) data on the number of employees per facility/refinery are much less readily available than are production capacity data.

It may be noted that the concept of a small entity as applied to petroleum refining companies is a strictly relative concept. For example, the 50,000 BPD company used as our cutoff criterion would, under current market conditions, generate an average annual sales revenue of about $350 million per year. This revenue level would rank such a company well above 95 percent of all U.S. corporations in annual sales. A company with 5,000 BPD capacity would generate about $35 million in annual sales.

B. Impact Screening Analysis

In conducting the RIA for this rule, the Agency used a data file that included 167 of the 204 operable refineries in the United States. Compliance costs and annual sales were estimated for all facilities in this data base, including 46 refineries operated by 40 companies meeting the Agency's criterion as small petroleum refining companies with under 50,000 BPD of crude oil refining capacity. The Agency has based its screening analysis for small business impacts on a review of the compliance cost and sales estimates for these 40 companies, which comprise 63 percent of all small refining companies.

Using a criterion of annual compliance costs greater than 1 percent of annual sales as the measure of "substantial" adverse impact, the Agency estimates that no more than 13 or so small refining companies (20%) would experience substantial impacts from today's rule even under the highest cost set of costing assumptions used in the RIA. Conversely, using lower cost assumptions from the RIA, the number of firms with compliance cost-to-sales ratios greater than one percent approaches zero. Given unexploited potentials for waste minimization and recycling as a preferred option to incineration for sludge disposal, the Agency's best estimate is that less than six (10%) of the small (less than 50,000 BPD) refining companies would be adversely affected at the one percent of sales criterion level.

Based on this screening analysis and the criteria presented, the Agency has concluded that this regulation will not have a substantial adverse impact on a significant proportion of small companies in the petroleum refining industry. The Agency has not, therefore, conducted a formal Regulatory Flexibility Analysis for this rule.

VIII. Cercla Designation and Reportable Quantities

All hazardous wastes listed in 40 CFR 261.31 through 261.33, as well as any solid waste that meets one or more of the characteristics of a RCRA hazardous waste (as defined at 40 CFR 261.21 through 261.24), are hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, pursuant to CERCLA section 101(14). Therefore, the waste streams listed as hazardous in today's notice will, on the effective date of the final rule, automatically become hazardous substances. CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). CERCLA section 103(a) requires that the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that is equal to or exceeds its RQ shall immediately notify the National Response Center of the release. In addition, section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires the owner or operator of a facility to report the release of a CERCLA hazardous substance or a SARA Title III extremely hazardous substance to the appropriate state emergency response commission (SERC) and local emergency planning committee (LEPC) when the amount released equals or exceeds the RQ for the substance (or one pound where no RQ has been set).

The release of a hazardous waste to the environment must be reported when the amount released equals or exceeds the RQ for the waste, unless the concentrations of the constituents of the waste are known (48 FR 23566, May 25, 1983). If the concentrations of the constituents of the waste are known, then the mixture rule may be applied. According to the "mixture rule" used in notification under CERCLA and SARA (40 CFR 302.6(b)), the release of mixtures and solutions containing hazardous waste would need to be reported to the NRC, and to the appropriate LEPC and SERC, when the RQ of any of its component hazardous substances is equalled or exceeded. RQs of different hazardous substances are not additive under the mixture rule (except for radionuclides, see 54 FR 22536, May 24, 1989), so that spilling a mixture containing half an RQ of one hazardous substance and half an RQ of another hazardous substance does not require a report.

Under section 102(b) of CERCLA, all hazardous wastes newly designated under RCRA will have a statutory RQ of one pound unless and until the RQ is adjusted by regulation under CERCLA. In order to coordinate the RCRA and CERCLA rulemakings with respect to new waste listings, the Agency today is adding the wastes F037 and F038 to 40 CFR 302.4, the codified list of CERCLA hazardous substances, and listing their statutory RQs of one pound. In a Notice of Proposed Rulemaking published elsewhere in today's Federal Register, the Agency proposes to adjust the statutory RQs for waste streams F037 and F038 to one pound pursuant to section 102(a) of CERCLA.

IX. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects

40 CFR Part 261

Hazardous wastes, hazardous constituents, recycling.

40 CFR Part 271

Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply, Interim and final State authorizations.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous substances, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 19, 1990.

F. Henry Habicht, II,

Deputy Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6922.

2. Section 261.31 is amended by adding in alphanumeric order the following hazardous waste listings:

§ 261.31 Hazardous wastes from non-specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
F037	Petroleum refinery primary oil/water/solids separation sludge—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are exempted from this listing..	(T)
F038	Petroleum refinery secondary (emulsified) oil/water/solids separation sludge—Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are exempted from this listing..	(T)

3. Section 261.31 is amended by designating the introductory text and the table as paragraph (a) and by adding paragraph (b) to read as follows:

§ 261.31 Hazardous wastes from non-specific sources.

(b) Listing Specific Definitions: (1) For the purposes of the F037 and F038 listings, oil/water/solids is defined as oil and/or water and/or solids.

(2) (i) For the purposes of the F037 and F038 listings, aggressive biological treatment units are defined as units which employ one of the following four treatment methods: activated sludge; trickling filter; rotating biological contactor for the continuous accelerated biological oxidation of wastewaters; or high-rate aeration. High-rate aeration is a system of surface impoundments or tanks, in which intense mechanical aeration is used to completely mix the wastes, enhance biological activity, and (A) the units employs a minimum of 6 hp per million gallons of treatment volume; and either (B) the hydraulic retention time of the unit is no longer than 5 days; or (C) the hydraulic retention time is no longer than 30 days and the unit does not generate a sludge that is a hazardous waste by the Toxicity Characteristic.

(ii) Generators and treatment, storage and disposal facilities have the burden of proving that their sludges are exempt from listing as F037 and F038 wastes under this definition. Generators and treatment, storage and disposal facilities must maintain, in their operating or other onsite records, documents and data sufficient to prove that: (A) the unit is an aggressive biological treatment unit as defined in this subsection; and (B) the sludges sought to be exempted from the definitions of F037 and/or F038 were actually treated in the aggressive biological treatment unit.

(3) (i) For the purposes of the F037 listing, sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement. (ii) For the purposes of the F038 listing, (A) sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement and (B) floats are considered to be generated at the moment they are formed in the top of the unit.

4. Section 261 is amended by amending Appendix VII to add the following waste streams in alphanumeric order as follows:

APPENDIX VII.—BASIS FOR LISTING HAZARDOUS WASTE

EPA hazarous waste No.	Hazarous constituents for which listed
F037	Benzene, benzo(a)pyrene, chrysene, lead, chromium.
F038	Benzene, benzo(a)pyrene chrysene, lead, chromium.

PART 271—REQUIREMENT FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

5. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

6. Section 271.1(j) is amended by adding at the end the following entry to Table 1.

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
November 2, 1990	Petroleum refinery primary and secondary oil/water/solids separation sludge listings.	(Insert Federal Register page citation)	May 2, 1991.

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

7. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

8. Section 302.4 is amended by adding in alphanumeric order the waste streams F037 and F038 to Table 302.4. The appropriate footnotes to Table 302.4 are republished without change.

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code	Statutory RCRA waste No.	Proposed RQ category	Proposed RQ Pounds (kg)
F037 Petroleum refinery primary oil/water/solids separation sludge—Any sludge generated from the gravitational seperation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are exempted from this listing.			*1	4	F037	X	1 (0.454)
F038 Petroleum refinery secondary (emulsified) oil/water/solids separation sludge—Any sludge and/or float generated from the physical and/or chemical seperation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are exempted from this listing.			*1	4	F038	X	1 (0.454)

*Indicates the statutory source as defined by 4 below.
4 Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001.
1 *Indicates that the 1-pound RQ is a CERCLA statutory RQ.

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Friday
November 2, 1990

Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Part 46, et al.
Hazard Communication; Proposed Rule

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 48, 56, 57, and 77

RIN 1219-AA47

Hazard Communication

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a Mine Safety and Health Administration (MSHA) standard entitled "Hazard Communication" (30 CFR part 46). The standard would require mine operators to assess the hazards of chemicals they produce or use, and provide information to their employees concerning chemical hazards by means of a written hazard communication program, labeling containers of hazardous chemicals, access to material safety data sheets (MSDSs), and employee training.

DATES: Written comments and requests for public hearings on the proposed rule must be received on or before February 1, 1991.

ADDRESSES: Send comments to the Office of Standards, Regulations, and Variances; MSHA: room 631; Ballston Tower No. 3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey; Director, Office of Standards, Regulations and Variances; MSHA; (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

Although the Occupational Safety and Health Administration (OSHA) has established a hazard communication standard (HCS) for the manufacturing and nonmanufacturing sectors, no similar comprehensive standard exists for the mining industry. The United Mine Workers of America and the United Steelworkers of America jointly petitioned MSHA on November 2, 1987, to propose the OSHA HCS and adapt the rule to both coal and metal/nonmetal mines. Subsequently, MSHA issued an advance notice of proposed ruelmaking (ANPRM) on hazard communication on March 30, 1988 (53 FR 10256). In the ANPRM, MSHA indicated it would use the OSHA HCS as a basis for an MSHA standard, and specific comments were requested on a number of related issues.

The OSHA HCS was promulgated on November 25, 1983 (48 FR 53280). At that time, the rule only applied to OSHA regulated chemical manufacturers, importers, and employers in the manufacturing sector, that is, Standard Industrial Classification (SIC) Codes 20 through 39.

On August 24, 1987, (52 FR 31852) OSHA revised its HCS to expand the scope of the industries covered by the rule to all industries regulated by OSHA where employees are exposed to hazardous chemicals. OSHA has been enforcing all provisions of its standard in all industries under its jurisdiction since March 17, 1989. OSHA also issued a notice on August 8, 1988, (53 FR 29822) proposing to modify its final rule based upon public comment, including a determination by the Office of Management and Budget (OMB) under the Paperwork Reduction Act regarding the information collection requirements of the final rule. MSHA has considered the merits of these proposed modifications in developing this proposal and will be closely observing further developments in OSHA's standard.

The comment period on MSHA's ANPRM was extended twice (53 FR 19314 and 53 FR 23286) and closed on July 31, 1988. MSHA received a total of 50 comments in response to the ANPRM. However, several were from industry associations representing a large number of individual operators, and several were received from major labor organizations.

This proposal is based on considerations of the comments received in response to the ANPRM, MSHA's experience in the mining industry, applicable MSHA legislation and standards, and the applicability of the OSHA HCS. MSHA solicits comments on each of the proposed provisions of this standard.

II. Discussion of Proposed Rule

A. Scope and Application

Evidence collected by MSHA indicates that exposure to chemicals occurs in every type of mine (although every employee may not be exposed). MSHA's experience suggests that many mine operators and employees are not sufficiently aware of the presence and nature of hazardous chemicals in their workplaces. This lack of knowledge increases the risk of contracting occupationally-related chemical source illnesses and injuries, since appropriate protective measures can only be used when the presence of a hazard is known. MSHA believes that the development of a single mining HCS, applicable to both coal and metal/nonmetal mines, is the best method to ensure that the necessary information is provided.

Although the need for apprising workers of the hazards of the chemicals they work with has long been recognized by occupational safety and health professionals, as well as representatives of industry, labor, academia, and the Government, the difficulties encountered in attempting to define hazards in mining and determining the appropriate means of communication have delayed implementation of a systematic approach. In the interim, a number of existing MSHA regulations address informing miners of specific hazards, and State HCSs have been developed and enforced in the mining industry in some areas of the country. Some of the State HCSs are quite comprehensive, while others incorporate a cursory approach to the problem. It should be noted, however, that to MSHA's knowledge the effectiveness of these programs in reducing injuries and illnesses has not been evaluated.

Under this proposed standard, each employee in the mining industry who is exposed to hazardous chemicals at levels that would involve a safety or health risk would receive information about them through a comprehensive hazard communication program. Operators would be required to determine the hazards of chemicals produced and used on mine property, obtain MSDSs on those chemicals imported onto their property, and transmit this information to employees by means of labels on containers, access to MSDSs, and appropriate training.

The standard is designed to ensure that all operators obtain the information they need to inform their employees properly and to design and implement employee protection programs. It would also ensure that operators provide necessary hazard information to employees so that the employees can better understand the protective measures instituted in their workplaces and where appropriate, assist in their proper use and operation.

Communicating this information to employees is intended to reduce the incidence of chemical source illnesses and injuries in the mining industry by changing the workplace behavior of employees to reduce the risk of harmful exposures. In order to achieve this goal, a balance must be attained between transmitting too little information and too much information. MSHA is interested in all comments and information that will assist in drafting a final rule that effectively brings about safer work practices in the mining industry.

Some commenters responding to MSHA's ANPRM suggested that small mines should not be required to comply with an HCS. MSHA has no authority to exempt small mines from overall compliance with this standard; however, the performance-oriented nature of this standard would enable small operators to design their hazard communication program to suit their particular needs. This approach, along with other Agency policies to assist small mine operators, will aid them in complying with the standard.

Other commenters indicated that the degree of risk in their particular industry warranted either an exemption or limited coverage. Several commenters questioned the benefit of including certain minerals, such as limestone and coal, under the rule's coverage because the hazards of these minerals are common knowledge and are well known to employees. Additionally, they indicated that employees are currently informed of the hazards of these minerals during training conducted under 30 CFR part 48.

MSHA solicits further comments regarding specific exemptions to certain minerals. Based upon comments received in response to its ANPRM, MSHA is considering exempting from this rule minerals containing less than 5% silica and no other hazardous chemicals, and certain common minerals, such as coal, sand and gravel aggregates, crushed stone aggregates, and clay. In evaluating such an exemption, MSHA does not intend to disregard or ignore any potential health risk, such as pneumoconiosis, that exposure to respirable silica or coal in these minerals could pose. If such an exemption were promulgated, MSHA would continue to require miner training on the health hazards of these minerals under its existing part 48 regulations.

If MSHA were to adopt an exemption for such common minerals, it could develop MSDSs and other information on the potential hazards of these minerals and provide them upon request to operators and to employers in general industry receiving these minerals. Additionally, MSHA could develop an out-reach program to communicate the hazards of these common minerals to the mining industry and to the employers in general industry using these products. Such a program could include the distribution by MSHA of written and audio/visual materials explaining the potential hazards of these common minerals to workers not already aware of their hazards.

MSHA believes that given the limited number of minerals such an exemption would address and the amount of information already available on the hazards of these minerals, it could readily develop and provide any needed information regarding their hazards. MSHA's presence on mine property is such as to ensure that this information, if not already provided, is communicated to mine operators and employees.

MSHA also believes that the risk posed to employees in general industry by these minerals is lower than that experienced in mining due to the way these minerals are handled and used by downstream employers. Also, many of these minerals either have a naturally large particle size, or are washed or screened, eliminating many of the finer particulates that might pose an airborne hazard. In addition, these minerals are often shipped or used wet, which would reduce any respirable dust hazard they might pose.

Due to their higher degree of risk, MSHA is not considering including silica flour or certain industrial sands among the minerals exempted. Silica flour and some industrial sands are sized, ground, and processed to a high degree of purity with respect to silica content and to a small particle size. They can be used in a wide range of applications, such as sandblasting, glass and ceramic manufacturing, fillers in paint and other products, and foundry operations. These minerals can pose a significant respiratory hazard to those exposed, as opposed to the less refined sands that are used primarily as aggregates in construction. Should the exemption for certain minerals be adopted by MSHA, a potential difficulty could arise in distinguishing between different types of industrial sands and deciding which would warrant coverage under the rule. Consequently, MSHA requests specific comment regarding appropriate criteria for making such a determination.

Minerals such as coal, sand and gravel aggregates, crushed stone aggregates, and clay comprise over 90% of the chemicals produced by mine operators. Typically, operators producing these minerals produce no other hazardous chemical. Additionally, the majority of these operators employ fewer than 20 workers. Excluding such minerals from coverage under this rule could significantly lessen the regulatory burden of this rule on these operators.

MSHA acknowledges that the time and expense required for operators to develop and distribute hazard information on such common minerals may be better directed at addressing more serious or less recognized chemical hazards. In considering an exemption for these minerals, MSHA requests specific information on the degree to which mine employees are aware of the hazards of these minerals, the level of silica in such minerals necessary before the mineral would be considered hazardous, how these minerals are used and handled by downstream employers including any relative exposure data, and how MSHA could best publicize and provide hazard information on these substances to employers and employees in mining and general industry.

The OSHA HCS only partially applies to laboratories. OSHA's standard requires that labels on incoming containers of hazardous chemicals used in laboratories not be removed or defaced, that MSDSs received with the chemicals be maintained and made accessible to employees, and that employees be trained on the chemical's hazards. In OSHA's 1988 proposed rule, this limited application was initially intended to apply only to chemicals being developed and used in research laboratories. However, a number of commenters indicated to OSHA that laboratories in the chemical manufacturing industry are generally supervised by highly trained, technically qualified individuals. Additionally, on January 31, 1990, OSHA issued a final rule entitled "Occupational Exposure to Toxic Substances in Laboratories," which comprehensively covers laboratories.

MSHA believes that laboratories found in the mining industry differ in several respects from those common to general industry, such as research facilities. Although there may be a few large-scale laboratories in the mining industry where trained chemists may be employed, it is MSHA's experience that most laboratories in mining are small-scale operations devoted to quality control or process control. Additionally, relatively few laboratory workers in mining are highly trained chemists; many merely receive on-the-job training regarding their tasks. Compared to research facilities or laboratories in the chemical manufacturing industry, laboratories in the mining industry use relatively few chemicals and analytical methods. MSHA has not proposed developing a separate standard to comprehensively address laboratory hazards. At this state of the rulemaking, MSHA believes that laboratories in mining should be subject to the full scope of the standard, with no specific exemptions. Comments are requested on this issue.

OSHA's HCS does not require labeling of portable containers into which hazardous chemicals are

transferred from labeled containers and which are intended only for the immediate use of the employee who performs the transfer. MSHA proposes to do likewise.

For hazardous chemicals in sealed containers which are not opened under normal conditions of use, such as those found in marine cargo warehousing and retail sales, OSHA limits the coverage of its rule to requiring that labels on these containers not be removed or defaced, obtaining and maintaining MSDSs for the hazardous chemicals in these containers, and providing employee access to MSDSs. MSHA has not included this provision in this proposal because the Agency is not aware of any mine that handles sealed containers of hazardous chemicals in this manner.

The MSHA HCS would not require operators to label containers of the raw material being mined or milled while it is on mine property. MSHA believes that labeling containers of the ore itself is both impractical and of little benefit to employees on mine property. Operators would, however, be required to provide labeling information with the initial shipment of a raw material sent to a downstream employer, to the extent that the raw material is a hazardous chemical under this standard. This issue is discussed in detail in the labeling section.

The Agency intends to exempt the following chemicals from the standard's labeling requirements which, except as noted, are consistent with the OSHA HCS:

(1) Pesticides which are labeled in accordance with the requirements of the Environmental Protection Agency (EPA).

(2) Foods, food additives or color additives which are labeled in accordance with the requirements of the Food and Drug Administration or Department of Agriculture. The exemption found in the OSHA HCS for drugs, cosmetics, and medical or veterinary devices, including materials intended for use as ingredients in such products (for example, flavors and fragrances), has not been included in MSHA's proposal because the Agency is not aware of their occurrence on mine properties.

(3) Consumer products and hazardous substances which are subject to consumer product safety standards or labeling requirements of the Consumer Product Safety Commission.

MSHA has not included the labeling exemption found in the OSHA HCS on distilled spirits (beverage alcohols), wines, and malt beverages intended for nonindustrial use when subject to the labeling requirements of the Bureau of Alcohol, Tobacco and Firearms. MSHA believes that most operators expressly prohibit the use of these substances in their workplace; and, in addition, their labeling would not be required under the exemption on substances intended for personal consumption by employees. Existing regulations for metal/nonmetal mines also prohibit intoxicating beverages from in and around mines (30 CFR 56.20001 and 57.20001).

The applicable definitions of the substances addressed in these exemptions are those provided by the governing statutes and regulations. In providing exemptions from the labeling requirements of this standard for these substances, MSHA is mindful of the fact that most are already being labeled under the authorities of other Federal agencies. In the case of pesticides, the purpose of such labeling is mainly the protection of workers exposed to the pesticide. In the case of the other substances, the purpose of the labels is more general consumer protection. Nevertheless, the required labels generally provide for the listing of chemical identities and, in some cases, hazard warnings as well. Because of the nature of the substances, they are regulated by the other Federal agencies to ensure that they are safe for consumer use, and to the extent that workers are exposed to the substances in a manner comparable to that of ordinary consumers, MSHA does not believe there is a need for additional labeling requirements.

MSHA recognizes, however, that there may be situations where employee exposure is significantly greater than that of consumers and that, under these circumstances, substances which are safe for contemplated consumer use may pose unique hazards in the workplace. For this reason, the standard's exclusion is limited in such cases to labeling. It does not exempt operators from the MSDS and training requirements of the standard with respect to these substances, provided of course that the substance otherwise meets the standard's definition of hazardous chemical. Moreover, it should be stressed that these labeling exclusions are only for the listed substances. To the extent that an operator uses other chemicals, such as in the manufacture or processing of these substances, they are fully subject to the requirements of this standard.

MSHA proposes to exempt from both the labeling and MSDS requirements, any "hazardous waste" as the term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901. *et seq.*) (Solid Waste Disposal Act), when subject to regulations issued under that Act by the Environmental Protection Agency. Under EPA regulations, a waste analysis is required as part of the permit to burn or dispose of hazardous waste. However, EPA does not require the waste analysis to specify the chemicals' hazards or provide that it be made available to employees. A number of mine operators have EPA permits to burn hazardous waste in their kilns as supplemental fuel sources, or they dispose of hazardous waste in tailings. MSHA is requesting comments on the appropriateness of exempting other hazardous waste not regulated by EPA from the labeling and MSDS requirements of this rule.

OSHA has excluded hazardous waste regulated by EPA from coverage under its rule. MSHA's proposal would exempt such hazardous waste from the labeling and MSDS requirements because the chemical components of waste often vary from shipment to shipment and new labels and MSDSs would be needed with many shipments. Given the variability of the components in the waste and the large number of such chemicals, MSHA believes at this time that chemical-specific MSDSs would not be practical or necessary. Instead, miners need general training about the hazards associated with this waste and, unlike OSHA's HCS, MSHA's proposal would require operators to train employees on the hazards of such waste. MSHA believes that, although EPA requires training of personnel at a hazardous waste facility, this training appears to be directed primarily at ensuring that the facility is run in compliance with EPA regulations and that personnel are able to respond effectively in emergencies to limit environmental impact. MSHA believes that EPA's regulations on hazardous waste, together with MSHA's proposed training requirement for hazardous waste would provide adequate hazard notification to employees on mine property.

Although OSHA's HCS excludes coverage of hazardous waste regulated by EPA, OSHA has other specific regulations directed to hazardous waste operations (29 CFR 1910.120). OSHA was required to issue these regulations by section 162, title 1 of the Superfund Amendments and Reauthorization Act of 1986 (as amended) (SARA) (29 U.S.C. 655 note). MSHA does not have similar statutory requirements or standards regarding hazardous waste operations. MSHA requests specific comments on the appropriateness of requiring training under its HCS for those employees who

are exposed to EPA regulated hazardous waste.

The proposed standard provides complete exclusion for the following categories of substances:

(1) Wood or wood products which do not release or otherwise result in exposure to a hazardous chemical under normal conditions of use.

(2) Articles (as defined in proposed § 46.2).

(3) Foods, drinks, drugs, cosmetics, and tobacco or tobacco products intended for personal consumption or use by employees while in the workplace.

(4) Consumer products or hazardous substances that are used in the workplace in the same manner as normal consumer use, and such results in a duration and frequency of exposure that is no greater than exposures experienced by consumers.

(5) Nuisance particulates that do not pose any covered physical or health hazard.

(6) Ionizing or nonionizing radiation.

(7) Biological hazards.

Consistent with OSHA's standard, MSHA proposes to exclude the majority of consumer products found in nonmanufacturing workplaces from coverage under its rule. However, the Office of Management and Budget (OMB), in a letter to the Department of Labor, published December 4, 1987 (52 FR 46075), made several comments regarding the specific language of OSHA's consumer products exclusion. OMB stated that this exemption is limited to consumer products that are used under certain circumstances, and hence the HCS would continue to apply to numerous consumer products present in workplaces.

OMB also stated that this exemption would continue to place under the HCS large numbers of consumer products for which MSDSs would have little practical utility, and for which the burden of compliance would be substantial.

MSHA requests comments on its provision exempting consumer products and the concerns raised by OMB with the identical provision in OSHA's rule. The OMB letter cited the three following concerns with OSHA's exclusion on consumer products:

—Consumer product labeling already provides information to identify significant hazards that may result from use of the product and to enable users to avoid those hazards. For the overwhelming majority of consumer products that would remain subject to the standard, there is no evidence in the record that the MSDS would have practical utility beyond the information already included on the label.

—The exemption imposes a burden on the employer to "demonstrate" that exposures for each substance are the same as "normal consumer use," a burden that may be difficult to meet. More importantly, such a trigger would not exclude many situations where risks are very low. For example, is an employee who cleans and waxes floors once a week using a supermarket product exposed at the same duration and frequency as consumers? If not, should the employee be trained in the hazards of floor wax? Under OSHA's language, the employee may well be treated exactly like a worker on a chemical production line.

—The exemption does not allow upstream suppliers to determine which products are exempted, because they do not know how downstream employers will use them. In fact upstream suppliers who want to ensure compliance will have no practical alternative but to assume that downstream employers are covered, and therefore ship MSDSs and labels along with all consumer products. Thus, upstream suppliers will continue to bear all of the costs and distribution/retail sector will continue to receive all of the hazard information for all consumer product. This is exactly where the consumer product exemption should be designed to avoid. The number of MSDSs involved is very large. The National Paint and Coatings Association calculated that paint manufacturers would be required to supply 7,000,000 MSDSs initially to downstream establishments.

OMB therefore disapproved effective May 23, 1988, (52 FR 46075), coverage under OSHA's HCS of any consumer product excluded by Congress from the definition of "hazardous chemical" under section 311(e)(3) of the Superfund Amendments and Reauthorization Act of 1986 (SARA): "Any substance to the extent it is used for personal, family for household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public." This language would exempt any substance packaged in the same form and concentration as a consumer product whether or not it is used for the same purpose as the consumer product. EPA concluded in its final rule on sections 311 and 312 of SARA (52 FR 38344) that this exemption is appropriate for household or consumer products in commercial and industrial as well as household use because "the public is generally familiar with such substances, their hazards and their likely locations [hence], the disclosure of such substances is unnecessary for right-to-know purposes."

OMB stated that this alternative consumer products exemption would address the concern that OSHA's HCS imposes unnecessary paperwork in many situations in which exposures and risks are trivial, and would reduce and simplify the paperwork requirements. OSHA stayed the enforcement of its consumer products provision after receiving OMB's letter (52 FR 46075) stating their concerns and their disapproval of the paperwork requirements regarding this provision. However, due to subsequent court and administrative actions, OSHA issued a technical amendment to its rule on February 15, 1989, (54 FR 6886), indicating that it would enforce its consumer products provisions as written in its 1987 final rule. The language in MSHA's proposal is identical.

OMB also stated that using the same exemption in both OSHA and EPA right-to-know paperwork requirements, which are closely linked, would make them mutually consistent. It would avoid the situation in which employers must separate the paperwork for their "consumer products" into two groups: an OSHA "consumer product" and an EPA "consumer product."

OMB also believed that it would establish objective criteria that would enable upstream and downstream employers to determine what is exempted and what is included. Upstream suppliers would not be forced to speculate about the identity of the final user (consumer or employer) in determining whether the product is subject to the HCS. The flow of MSDSs and labels would be restricted to unpackaged substances or substances packaged for industrial or commercial use, for which detailed hazard information would be expected to have practical utility.

MSHA requests comments on the need to exclude from coverage any consumer product excluded by Congress from the definition of "hazardous chemical" under section 311(e)(3) of SARA.

The exclusion of "articles" in MSHA's proposal, and the definition of "article," are consistent with OSHA's HCS. MSHA has not adopted OSHA's 1988 proposed revision to this definition. MSHA believes the definition of "article" in OSHA's existing rule provides a better assessment of the environment in the mining community.

MSHA seeks comment on its proposed definition.

With respect to the exclusions from coverage of nuisance particulates, ionizing or nonionizing radiation and biological hazards, MSHA's provisions would be consistent with those proposed by OSHA in its August 1988 proposed rule. OSHA takes the position that nuisance particulates, ionizing and nonionizing radiation, and biological hazards are not covered under its existing HCS and is proposing to add these specific exemptions primarily to clarify this point.

MSHA's existing metal/nonmetal air quality standards, 30 CFR 56.5001 and 57.5001, establish exposure limits for nuisance particulates through incorporation by reference of the 1973 American Conference of Governmental Industrial Hygienists (ACGIH), "Threshold Limit Values" (TLVs). Page 53, appendix E of the 1973 TLVs specifically list a number of substances which are nuisance particulates. The current edition of the ACGIH TLVs does not specifically list those substances which are nuisance particulates. Under MSHA's August 24, 1988, proposed revision to its air quality standards (54 FR 35760), nuisance particulates would be regulated by a 5 mg/m³ respirable mine dust limit which would apply to all nonspecific dusts including currently regulated nuisance particulates. In this HCS proposal MSHA would exclude nuisance particulates that do not pose any covered physical or health hazard. MSHA also would not consider nonspecific respirable mine dust as a hazardous chemical for hazard communication proposes. MSHA requests comments on whether nuisance particulates and nonspecific respirable mine dust should be specifically excluded from coverage under the Agency's HCS and, if so, how should MSHA identify those chemicals that are nuisance particulates posing little or no health hazards to exposed employees. Additionally, MSHA requests comment on the utility of such a provision and whether MSHA should exempt common minerals including those that contain less than 5% silica and no other hazardous chemical.

OSHA has also proposed to exempt radiation and biological hazards from coverage under its rule. In response to MSHA's ANPRM, the National Institute for Occupational Safety and Health (NIOSH) commented that MSHA should require operators to provide MSDSs to their employees for all hazardous substances found on the property (naturally occurring or imported) and to others receiving hazardous substances from the property. MSHA was asked to expand the MSDSs to include information concerning physical agents and safety hazards, including noise, radiation, vibration, and hot environments. At this time however, consistent with the OSHA 1988 proposed rule, MSHA does not propose to cover such hazards under this rulemaking and would consider the appropriations of hazard communication provisions when developing or revising standards covering these specific hazards. Many of MSHA's existing safety regulations include employee hazard notification provisions, such as warning signs and posting.

MSHA's proposal also excludes from coverage foods, drinks, drugs, cosmetics, and tobacco or tobacco products intended for personal consumption or use by employees while in the workplace. This represents a consolidation and simplification of several exclusions found in OSHA's standard on these substances. MSHA believes the proposed provision is more appropriate, given the use and occurrence of these products in mining. Under this exclusion, items such as aspirin in a first aid kit or food served at a mine cafeteria or vending machine would be excluded from coverage.

The exclusion of wood or wood products would exempt such items as plywood or untreated mine timber but would not apply to wood dusts, creosote, or hazardous chemicals used in treating or preserving the wood when it could result in exposure under normal conditions of use.

B. Definitions

This proposal includes a number of definitions that address which employees are covered by the standard, what substances are covered by the standard, how the standard defines hazards, and how MSHA defines other key terms for the purposes of the standard, such as what constitutes a trade secret. Since a number of these definitions are unique to this standard, they should be consulted to ensure the provisions are properly understood.

The standard applies to all operators that produce or use hazardous chemicals. The term "operator" is defined, consistent with its definition in the 1977 Federal Mine Safety and Health Act (Mine Act), as any owner, lessee, or other person who operates or supervises a mine, or any independent contractor performing services or construction at a mine. A "hazardous chemical" is defined as any chemical which is a physical hazard or health hazard. The terms "physical hazard" and "health hazard" themselves are further defined. MSHA's definitions of these terms differ slightly from the definitions in the OSHA HCS. OSHA's definitions of physical and health hazard include phrases which describe the validity of the evidence needed in determing these hazards. MSHA has not included such language because it is unlikely that most operators would have the technical knowledge needed to assess the "scientific validity" or "statistical significance" of the data they would review in determining a hazard.

MSHA's hazard determination procedures are based primarily on information contained in an MSDS received with a chemical. For chemicals produced by the operator, an operator could determine if they are health hazard by simply seeing if the chemical is listed in Table 1 under the hazard determination section of the preamble to this proposed rule. This table lists the chemicals found in the four sources referenced in the standard's hazard determination procedures. MSHA would periodically update the table as chemicals are added to or deleted from these sources.

MSHA's hazard determination procedure requires much less judgment for operators in making a hazard determination than is required of a chemical manufacturer under the OSHA HCS. Unlike chemical manufacturers, few, if any, operators are involved in creating new or unique chemicals that would not be listed in the table. Therefore, MSHA believes that, given the types of chemicals produced on mine property, the results of determinations made under MSHA's proposal would be consistent with those made under OSHA's standard. MSHA requests specific comments on its definitions of the terms "health hazard" and "physical hazard."

"Produce" means to manufacture, process, formulate, or repackage. "Use" means to package, handle, react, or transfer. These definitions are intentionally broad to include any situation where a chemical is present in such a way that employees may be exposed. The Agency also requests comments on the utility of defining these terms as well as on the contents of the terms.

The standard would also apply to any chemical known to be present in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency. A "chemical" is broadly defined as any element, chemical compound, or mixture of these. The definition of "employee" is similar to that found in OSHA's HCS. An "employee" is defined as any individual working in a mine who may be exposed to a hazardous chemical under normal operating condition or in foreseeable emergencies. Individuals such as office workers who encounter hazardous chemicals only in non-routine, isolated instances would not be covered.

Consistent with OSHA's definition, "exposed" means that an employee is subjected to, or potentially subjected to, a hazardous chemical through any route of entry during normal operating conditions or in a foreseeable emergency. The definition includes current and potential (accidental and possible) exposures and exposures through any route of entry, such as inhalation, ingestion, skin contact, or absorption. A "foreseeable emergency" is one which operators would normally plan for as a presumed potential occurrence, determined by the nature of the operation, such as equipment failure, rupture or spill of containers, or failure of control equipment which could result in an uncontrolled release of hazardous chemicals into the workplace.

"Articles" are excluded under the scope of the standard from being covered as a chemical. MSHA's definition of "article" is similar to the existing OSHA definition. MSHA would define an "article" to be a manufactured item other than a fluid or a particle—

(i) That is formed to a specific shape or design during manufacture;

(ii) That has end-use functions dependent upon its shape or design; and,

(iii) That under normal conditions of use releases no more than very small quantities (that is, minute or trace amounts) of a hazardous chemical and does not pose a physical or health risk to employees.

This definition is also similar to that used by EPA for purposes of excluding articles from certain reporting requirements under the Toxic Substances Control Act in 40 CFR 704.95(c)(1). It is intended to exclude those items that pose no or only trivial risks to employees under normal conditions of use. An example of an article would be a piece of equipment or furniture. These obviously do not meet the common conception of a chemical and are not appropriate objects for an HCS directed at chemical hazards.

The hazard determination procedures of this proposal apply to mixtures of chemicals as well as to individual chemicals. A "mixture" is defined as any combination of two or more chemicals that is not the result of a chemical reaction. This definition is similar to that used by OSHA.

If a container of hazardous chemical is present in the workplace, it must be labeled with an identity and hazard warning. A "container" is anything that holds hazardous chemicals. Pipes or piping systems, conveyors, and engines, fuel tanks, or other operating systems or parts in a vehicle are not considered to be containers. A "label" is any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals. The "identity" is the chemical's common or chemical name used on the label, the MSDS, and the list of hazardous chemicals in the workplace. The name used should allow cross-references to be made among these sources. The "hazard warning" conveys the hazards of the chemical in the container to employees. Consistent with OSHA's proposed modification to this definition, a "hazard warning" means any words, pictures, symbols, or combination of these appearing on a label or other appropriate form of warning that conveys the specific physical and health hazards, including target organ effects, of the chemicals in the containers. A "material safety data sheet (MSDS)" is defined as any written or printed material concerning a hazardous chemical which an operator prepares in accordance with the requirements in proposed § 46.6 or which an employer subject to OSHA prepares under 29 CFR 1910.1200.

Under this proposal, operators are not required to label containers of raw material while on mine property, regardless of the hazards, unless the raw material is mixed with another hazardous chemical. "Raw material" is defined as a mineral or combination of minerals that is extracted from natural deposits by mining or is upgraded through milling. The term applies to the ore and valuable minerals extracted, as well as the worthless material, gangue, or overburden removed during the mining or milling process. The term is intentionally broad and would cover the majority of the commodities produced for sale by operators. It does not encompass mixtures of the raw material and other hazardous chemicals. For example, in leaching gold ore, if a cyanide solution is added to a process container holding the ore, the container must then be labeled to identify the hazardous mixture and to provide an appropriate hazard warning.

MSHA's definition of "combustible liquid" in the proposal includes Class III B liquids—those having flash points at or above 200 °F (93.3 °C). OSHA excepts from its definition of "combustible liquids" any mixture having components with flash points of 200 °F (93.3 °C), or higher. The total volume of the components must make up 99 percent or more of the total volume of the mixture. MSHA's definition of "combustible liquid" is consistent with how this term is defined in existing MSHA fire prevention standards. Likewise, the term "flammable" has been modified slightly from that found in the OSHA HCS to be more consistent with its meaning in existing MSHA standards.

MSHA's proposed rule provides employees and their designated representative with access to various written information required under the standard. "Access" is defined as the right to examine and copy records. MSHA defines "designated representative" as being any individual or organization to whom an employee gives written authorization to exercise a right of access to records, or a representative of miners under 30 CFR part 40.

Definitions for other terms not specifically addressed in this section are generally consistent with their meaning as found in the OSHA HCS. MSHA has made slight modifications to some of these terms for the sake of clarification or to make them more applicable to the mining industry. The Agency specifically solicits comments on the utility of these proposed definitions, some of which are highly technical and may be slightly different from definitions of the same terms used in other subparts of MSHA standards.

C. Hazard Determination

The proposed standard would require operators to evaluate all chemicals produced or used on mine property to determine if they are hazardous. Because the majority of the provisions in the standard are applicable only to those chemicals found to be "hazardous," the hazard determination process is critical to the successful implementation of an effective hazard communication program.

MSHA recognizes that under the OSHA HCS, a great number of chemicals have been evaluated by chemical manufacturers, importers, and professional occupational health groups, such as the American Conference of Governmental Industrial Hygienists (ACGIH). Under the OSHA HCS, operators receiving hazardous chemicals from either the chemical manufacturer or the supplier of chemicals would receive an MSDS with the initial shipment of the chemical. Operators would be required to rely upon the evaluation performed by the chemical manufacturer or by the supplier of chemicals in determining the chemicals hazards. Information on the specific health hazards of chemicals received by the operator will be listed on the MSDS accompanying these chemicals in

accordance with the OSHA HCS requirements.

Under this proposal, when a chemical is received without an MSDS or label indicating a hazard, the operator can assume that it is not hazardous. An exception would be for hazardous waste received by an operator. OSHA's HCS does not require employers to distribute MSDSs or container labels to downstream users for hazardous waste regulated by the Environmental Protection Agency. MSHA would require operators to evaluate such hazardous waste in accordance with proposed § 46.3, hazard determination, if an MSDS was not voluntarily provided by the supplier of the waste.

Under this proposal, operators would also have to determine the hazards of chemicals which they produce. Operators making this hazard determination would be required to base their determination on the available evidence concerning the chemicals' physical hazards. In establishing that a chemical is a health hazard, a carcinogen, or a potential carcinogen for hazard communication purposes, the operators would rely on the following sources:

(1) MSHA standards in 30 CFR parts 56, 57, 70, 71, and 75.

(2) The American Conference of Governmental Industrial Hygienists' (ACGIH), "Threshold Limit Values and Biological Exposure Indices" (latest edition).

(3) The National Toxicology Program's (NTP), "Annual Report on Carcinogens" (latest edition).

(4) The International Agency for Research on Cancer's (IARC), Supplemental 7, "Overall Evaluations of Carcinogenicity—An Updating of IARC Monographs Volumes 1 to 42"; and any subsequent IARC Monographs or Supplements.

These sources are basically identical to those listed in the OSHA HCS with the exception that MSHA standards regulating exposure to and use of hazardous substances are referenced instead of OSHA's standards. Currently, applicable MSHA standards are found in 30 CFR parts 56, 57, 70, 71, 75 and 77. However, in August 1989, MSHA issued a proposal (54 FR 35760) that would recodify the Agency's air quality standards into parts 58 and 72. MSHA anticipates that when the proposed air quality standards are finalized, they will be referenced in MSHA's hazard communication standard.

A major difference between MSHA's proposal and the OSHA HCS is that operators would not have to look beyond these sources to determine if the chemical is a health hazard or a carcinogen or potential carcinogen. This would modify the OSHA approach, which, in addition to requiring that specified lists be consulted, also requires employers to consider all available evidence, even if based on only one valid study, in determining whether the chemical is hazardous. Several commenters objected to this one study criterion.

MSHA believes that its hazard determination approach would achieve essentially the same degree of safety at our nation's mines as the requirements in OSHA's standard, with reduced burden on operators. MSHA requests specific information relating to any chemical found on mine property for which the results of MSHA's hazard determination procedures might yield results significantly different from those arrived at under OSHA's standard.

While an Agency goal is to develop a rule which is consistent with OSHA's, MSHA recognizes that the primary community affected by this rule is smaller, and with respect to hazard communication, more homogeneous than the industries regulated by OSHA. While mining conditions vary enormously within a mine, from mine to mine, and from commodity to commodity, the number and variety of chemicals used on mine properties are nowhere as vast or as novel as those which OSHA must be concerned with in general industry.

In addition, many mines are small operations having fewer than ten employees. It could pose a significant burden on these operators to research each potentially hazardous chemical mined or produced on mine property to determine if there exists one scientific study which would necessitate the development of a MSDS for that chemical. Many operators are located in remote, sparsely populated areas of the country where literature on chemical health hazards may be limited. Additionally, many operators could not be expected to have the professional expertise for reviewing and determining the "statistical significance" of such data. MSHA believes that specifying source lists of chemicals that would be considered health hazards and specifically listing the chemicals found in these sources will greatly assist such operators and have no adverse impact on employee safety and health.

In addition, MSHA's proposed revision to its air quality standards would expand the number of chemicals currently addressed by MSHA, while the other three sources (ACGIH, NTP, and IARC) referenced in MSHA's hazard determination procedures would address additional chemicals.

The following table (Table 1) lists the chemicals found in the four sources referenced in the hazard determination section (§ 46.3) of the proposed rule. MSHA believes this listing will aid operators in determining which chemicals are health hazards. Operators may use this table rather than refer to the four sources listed in the standard. Many operators may not have access to copies of the ACGIH TLVs, NTP Annual Reports, or IARC Monographs and Supplements and would have difficulty keeping apprised of changes to them. MSHA inspectors would also use this listing to identify hazardous chemicals on mine property and enforce the requirements of this standard. MSHA would periodically update this table as chemicals are added to or deleted from the four sources and make it available to the mining community.

The chemicals found in Table B-1 of MSHA's proposed rule on Air Quality, Chemical Substances, and Respiratory Protection Standards (54 FR 35760) are listed in Table 1 of this HCS proposal rather than those chemicals found in existing MSHA air quality standards. MSHA's proposed air quality standards are likely to be finalized before MSHA's HCS. However, Table 1 will be modified to reflect the MSHA air quality standards in place at the time the HCS is finalized.

All chemicals listed in Table 1 are considered health hazards for hazard communication purposes. The table identifies those chemicals considered by the four sources to be carcinogens or potential carcinogens, and which are to be regarded as such for purposes of this standard. Excluded from the table are occupational exposures and production processes in which no specific chemical is identified as being hazardous or carcinogenic. Nonspecific "respirable mine dust," which is listed in MSHA's proposed revision to its air quality standards, and "welding fumes—not otherwise classified" which is listed in the TLV booklet and MSHA's proposed air quality standards are also excluded from the table. Additionally, MSHA has excluded chemicals that are not produced or used in mining, such as grain dust, cotton dust, and therapeutic substances, such as estrogens and steroids. Additionally, nuisance particulates, and chemicals intended for personal consumption or use by employees, such as tobacco and saccharin, are excluded from the table because they are expressly excluded from coverage under § 46.1 of the proposed standard. An explanation of the notations under each of the four columns in Table 1 is listed under key codes at the end of the table.

TABLE 1—HAZARD COMMUNICATION CHEMICALS

Substance IARC [4]	MSHA [1]	ACGIH [2]	NTP [3]	IARC
A-α-C[2-Amino-9H-pyrido[2,3-b]indole)	—	—	—	2B
Acetaldehyde	X	X	—	2B
Acetamide	—	—	—	2B
Acetic acid	X	X	—	—
Acetic anhydride	X	X	—	—
Acetone	X	X	—	—
Acetonitrile	X	X	—	—
2-Acetylaminofluorene	C	—	A	—
Acetylene	X	X	—	—
Acetylene dichloride, see 1,2-dichloroethylene				
Acetylene tetrabromide	X	X	—	—
Acetylsalicylic acid	X	X	—	—
Acrolein	X	X	—	—
Acrylamide	C	A2	—	2B
Acrylic acid	X	X	—	—
Acrylic fibres	—	—	—	—
Acrylonitrile	C	A2	A	2A
AF-2[2-(2-Furyl)-3-(5-nitro-2-furyl)acrylamide]	—	—	—	2B
Aflatoxins	—	—	A	1
Aldrin	X	X	—	—
Allyl alcohol	X	X	—	—
Allyl chloride	X	X	—	—
Allyl glycidyl ether	X	X	—	—
Allyl propyl disulfide	X	X	—	—
α-Alumina, see Aluminum—Oxide				
Aluminum:				
Metal & Oxide	X	X	—	—
Pyro powders	X	X	—	—
Welding fumes	X	X	—	—
Soluble salts	X	X	—	—
Alkyls (not otherwise classified)	X	X	—	—
2-Aminoanthraquinone	—	—	A	—
para-Aminoazobenzene	—	—	—	2B
ortho-Aminoazotoluene	—	—	A	2B
1-Amino-2-methylanthraquinone	—	—	A	—
4-Aminobiphenyl, see 4-Aminodiphenyl				
4-Aminodiphenyl	C	A1	K	1
2-Aminoethanol, see Ethanolamine				
2-Amino-5-(5-nitro-2-furyl)-1,3,4-thiadiazole	—	—	—	2B
2-Aminopyridine	X	X	—	—
3-Amino 1,2,4-triazole, see Amitrole				
Amitrole	C	X	A	2B
Ammonia	X	X	—	—
Ammonium chloride fume	X	X	—	—
Ammonium perfluorooctanoate	X	X	—	—
Ammonium sulfamate	X	X	—	—
Amosite, see Asbestos				
n-Amyl acetate	X	X	—	—
sec-Amyl acetate	X	X	—	—
Aniline & homologues	X	X	—	—
Anisidine (o-p-isomers)	X	X	—	—
ortho-Anisidine	—	—	—	2B
o-Anisidine hydrochloride	—	—	A	—
Antimony & compounds (as Sb)	X	X	—	—
Antimony trioxide (as Sb)	—	X	—	—
ANTU	X	X	—	—
Argon (simple asphyxiant)	X	X	—	—
Arsenic (as As)	X	X	K	1
Certain arsenic compounds	—	—	K	1
Soluble compounds, (as As)	X	X	—	—
Arsine	X	X	—	—
Asbestos	C	—	K	1
Amosite	—	A1	—	—
Chrysotile	—	A1	—	—
Crocidolite	—	A1	—	—
Other forms	—	A1	—	—
Asphalt (petroleum) fumes	X	X	—	—
Atrazine	X	X	—	—
Auramine (technical grade)	—	—	—	2B
Azaserine	—	—	—	2B
Azinphos-methyl	X	X	—	—
Barium, soluble compounds (as Ba)	X	X	—	—
Barium sulfate	X	X	—	—
Benomyl	X	X	—	—
Benz(a)anthracene, see Polycyclic aromatic hydrocarbons	X	X	—	—
Benzene	C	A1	K	1
Benzidine	C	A1	K	1
Benzidine-based dyes	—	—	—	2A
Benzo(b)fluoranthene, see Polycyclic aromatic hydrocarbons				
Benzo(j)fluoranthene, see Polycyclic aromatic hydrocarbons				

TABLE 1—HAZARD COMMUNICATION CHEMICALS—Continued

Substance IARC [4]	MSHA [1]	ACGIH [2]	NTP [3]	IARC
Benzo(k)fluoranthene, see Polycyclic aromatic hydrocarbons				
Benzo(a)pyrene, see Polycyclic aromatic hydrocarbons				
p-Benzoquinone, see Quinone				
Benzotrichloride	—	—	A	—
Benzoyl peroxide	X	X	—	—
Benzyl chloride	X	X	—	—
Benzyl violet 4B	—	—	—	2B
Beryllium & compounds	C	A2	A	2A
Biphenyl	X	X	—	—
N,N-bis(2-chloroethyl)-2-naphthylamine (Chlornaphazine)	—	—	—	1
Bis (chloromethyl) ether and technical grade clormethyl methyl ether	—	—	K	1
Bismuth telluride	—	X	—	—
Undoped	X	—	—	—
Se-doped	X	X	—	—
Bitumens, extracts of steam-refined and air-refined	—	—	—	2B
Borates, tetra, sodium salts	X	—	—	—
Anhydrous	—	X	—	—
Decahydrate	—	X	—	—
Pentahydrate	—	X	—	—
Boron oxide	X	X	—	—
Boron tribromide	X	X	—	—
Boron trifluoride	X	X	—	—
Bromacil	X	X	—	—
Bromine	X	X	—	—
Bromine pentafluoride	X	X	—	—
Bromochloromethane, see Chlorobromomethane				
Bromoform	X	X	—	—
1,3-Butadine	C	A2	A	2B
Butane	X	X	—	—
Butanethiol, see Butyl mercaptan				
2-Butanone, see Methyl ethyl ketone (MEK)				
2-Butoxyethanol	X	X	—	—
n-Butyl acetate	X	X	—	—
sec-Butyl acetate	X	X	—	—
tert-Butyl acetate	X	X	—	—
Butyl acrylate	X	X	—	—
n-Butyl alcohol	X	X	—	—
sec-Butyl alcohol	X	X	—	—
tert-Butyl alcohol	X	X	—	—
Butylamine	X	X	—	—
Butylated hydroxyanisole (BHA)	—	—	—	2B
tert-Butyl chromate (as CrO_3	X	X	—	—
n-Butyl glycidyl ether	X	X	—	—
n-Butyl lactate	X	X	—	—
Butyl mercaptan	X	X	—	—
o-sec-Butylphenol	X	X	—	—
p-tert-Butyltoluene	X	X	—	—
β-Butyrolactone	—	—	—	2B
Cadmium & compounds, as Cd	C	A2	A	2A
Calcium chromate	—	A2	—	—
Calcium cyanamide	X	X	—	—
Calcium hydroxide	X	X	—	—
Calcium oxide	X	X	—	—
Camphor, synthetic	X	X	—	—
Caprolactam dust & vapor	X	X	—	—
Captafol	X	X	—	—
Captan	X	X	—	—
Carbaryl	X	X	—	—
Carbofuran	X	X	—	—
Carbon black	X	X	—	—
Carbon-black extracts	—	—	—	2B
Carbon dioxide	X	X	—	—
Carbon disulfide	X	X	—	—
Carbon monoxide	X	X	—	—
Carbon tetrabromide	X	X	—	—
Carbon tetrachloride	C	A2	A	2B
Carbonyl chloride, see Phosgene				
Carbonyl fluoride	X	X	—	—
Carrageenan degraded	—	—	—	2B
Catechol	X	X	—	—
Cesium hydroxide	X	X	—	—
Chloroacetyl chloride	—	X	—	—
Chloramphenicol	—	—	—	2B
Chlordane	X	X	—	—
Chlordecone, see Kepone				
Chlorendic acid	—	—	A	—
Chlorinated camphene	X	X	A	2B
Chlorinated diphenyl oxide	X	X	—	—
Chlorinated paraffins (C_{12}, 60% Chlorine)	—	—	A	—
α-Chlorinated toluenes	—	—	—	2B

TABLE 1—HAZARD COMMUNICATION CHEMICALS—Continued

Substance IARC [4]	MSHA [1]	ACGIH [2]	NTP [3]	IARC
Chlorine	X	X	—	—
Chlorine dioxide	X	X	—	—
Chlorine trifluoride	X	X	—	—
Chloroacetaldehyde	X	X	—	—
Chloroacetone	X	X	—	—
α-Chloroacetophenone	X	X	—	—
Chloroacetyl chloride	X	X	—	—
Chlorobenzene	X	X	—	—
o-Chlorobenzylidene malononitrile	X	X	—	—
Chlorobromomethane	X	X	—	—
2-Chloro-1,3-butadiene, see β-Chloroprene				
Chlorodifluoromethane	X	X	—	X
Chlorodiphenyl, see Polychlorinated biphenyls				
1-Chloro,2,3-epoxy-propane, see Epichlorohydrin				
2-Chloroethanol, see Ethylene chlorohydrin				
Chloroethylene, see Vinyl chloride				
Chloroform	C	A2	A	2B
bis(Chloromethyl) ether	C	A1	K	1
Chloromethyl methyl ether	C	A2	—	—
Chloromethyl methyl ether (technical grade)	—	—	K	1
3-Chloro-2-methylpropene	—	—	A	—
1-Chloro-1-nitropropane	X	X	—	—
para-Chloro-ortho-toluidine	—	—	—	2B
Chloropentafluoroethane	X	X	—	—
4-Chloro-o-phenylenediamine	—	—	A	2B
Chlorophenols	—	—	—	2B
Chlorophenoxy herbicides	—	—	—	2B
Chloropicrin	X	X	—	—
βChloroprene	X	X	—	—
2-Chloropropionic acid	—	X	—	—
o-Chlorostyrene	X	X	—	—
o-Chlorotoluene	X	X	—	—
2-Chloro-6-(trichloromethyl) pyridine, see Nitrapyrin				
Chlorpyrifos	X	X	—	—
Chromium and certain chromium compounds	—	—	K	—
Chromium metal	X	X	—	—
Chromium (II) compounds (as Cr)	X	X	—	—
Chromium (III) compounds (as Cr)	X	X	—	—
Chromium (VI) compounds (as Cr)	X	—	—	1
Water soluble	—	X	—	—
Certain water insoluble	—	A1	—	—
Chromyl chloride	X	X	—	—
Chrysene	C	A2	—	—
Chrysotile, see Asbestos				
C.I. Basic Red 9 Monohydrochloride	—	—	A	—
Citrus Red No. 2	—	—	—	2B
Clopidol	X	X	—	—
Coal dust (respirable)	X	X	—	—
Coal tars	—	—	K	1
Coal-tar pitches	—	—	K	1
Coal tar pitch volatiles (as benzene solubles)	C	A1	—	—
Cobalt metal, dust & fume (as Co)	X	X	—	—
Cobalt carbonyl (as Co)	X	X	—	—
Cobalt hydrocarbonyl (as Co)	X	X	—	—
Coke oven emissions	—	—	K	—
Copper				
Fume	X	X	—	—
Dusts & mists (as Cu)	X	X	—	—
p-Crediding	—	—	A	—
Cresol (all isomers)	X	X	—	—
Creosotes	—	—	K	2A
para-Cresidine	—	—	—	2B
Cristobalite, see Silica—Crystaline				
Crocidolite, see Asbestos				
Crotonaldehyde	X	X	—	—
Cruformate	X	X	—	—
Cumene	X	X	—	—
Cupferron	—	—	A	—
Cyanamide	X	X	—	—
Cyanides (as CN)	X	X	—	—
Cyanogen	X	X	—	—
Cyanogen Chloride	X	X	—	—
Cycasin	—	—	—	2B
Cyclohexane	X	X	—	—
Cyclohexanol	X	X	—	—
Cyclohexanone	X	X	—	—
Cyclohexene	X	X	—	—
Cyclohexylamine	X	X	—	—
Cyclonite	X	X	—	—
Cyclopentadiene	X	X	—	—

TABLE 1—HAZARD COMMUNICATION CHEMICALS—Continued

Substance IARC [4]	MSHA [1]	ACGIH [2]	NTP [3]	IARC
Cyclopentane	X	X	—	—
Cyhexatin	X	X	—	—
2,4-D	X	X	—	—
Daunomycin	—	—	—	2B
DDT (Dichlorodiphenyl-trichloroethane	X	X	A	2B
Decaborane	X	X	—	—
Demeton	X	X	—	—
Diacetone alcohol	X	X	—	—
N,N'-Diacetylbenzidine	—	—	—	2B
2,4-Diaminoanisole	—	—	—	2B
2,4-Diaminoanisole sulfate	—	—	A	—
4,4'-Diaminodiphenyl ether	—	—	—	2B
1,2-Diaminoethane, see Ethylenediamine				
2,4-Diaminotoluene	—	—	A	2B
Diatomaceous earth (uncalcined), see Silica—Amorphous				
Diazinon	X	X	—	—
Diazomethane	X	X	—	—
Dibenz(a,h)acridine, see Polycyclic aromatic hydrocarbons				
Dibenz(a,j)acridine, see Polycyclic aromatic hydrocarbons				
Dibenz(a,h)anthracene, see Polycyclic aromatic hydrocarbons				
7H-Dibenzo(c,g)carbazole, see Polycyclic aromatic hydrocarbons				
Dibenzo(a,e)pyrene, see Polycyclic aromatic hydrocarbons				
Dibenzo(a,h)pyrene, see Polycyclic aromatic hydrocarbons				
Dibenzo(a,i)pyrene, see Polycyclic aromatic hydrocarbons				
Dibenzo[(a,l]pyrene, see Polycyclic aromatic hydrocarbons				
Diborane	X	X	—	—
1,2-Dibromo-3-chloropropane	—	—	A	2B
1,2-Dibromoethane, see Ethylene dibromide (EDB)				
2-N-Dibutylaminoethanol	X	X	—	—
Dibutyl phenyl phosphate	X	—	—	—
Dibutyl phosphate	X	X	—	—
Dibutyl phthalate	X	X	—	—
Dichloroacetylene	X	X	—	—
o-Dichlorobenzene	X	X	—	—
p-Dichlorobenzene	X	X	—	2B
1,4-Dichlorobenzene	—	—	A	—
3,3'-Dichlorobenzidine	C	A2	A	2B
3,3'-Dichlorobenzidine dihydrochloride	—	—	A	—
3,3'-Dichloro-4,4'diaminodiphenyl ether	—	—	—	2B
Dichlorodifluoromethane	X	X	—	—
1,3-Dichloro-5,5-dimethy hydantoin	X	X	—	—
1,1-Dichloroethane	X	X	—	—
1,2-Dichloroethane, see Ethylene dichloride				
1,1-Dichloethylene, see Vinylidene chloride				
1,2-Dichloroethylene	X	X	—	—
Dichloroethyl ether	X	X	—	—
Dichlorofluoromethane	X	X	—	—
Dichloromethane, see Methylene chloride				
1,1-Dichloro-1-nitroethane	X	X	—	—
1,2-Dichloropropane, see Propylene dichloride				
Dichloropropene	X	X	—	—
1,3-Dichloropropene (technical grade)	—	—	A	2B
2,2-Dichloropropionic acid	X	X	—	—
Dichlorotetrafluoroethane	X	X	—	—
Dichlorvos	X	X	—	—
Dicrotophos	X	X	—	—
Dicyclopentadiene	X	X	—	—
Dicyclopentadienyl iron	X	X	—	—
Dieldrin	X	X	—	—
Diepoxybutane	—	—	A	2B
Diethanolamine	X	X	—	—
Diethylamine	X	X	—	—
2-Diethylaminoethanol	X	X	—	—
Diethylene triamine	X	X	—	—
Diethyl ether, see Ethyl ether				
Di(2-ethylhexyl)phthalate, see Di-sec-octyl phthalate				
1,2-Diethylhydrazine	—	—	—	2B
Diethyl Ketone	X	X	—	—
Diethyl phthalate	X	X	—	—
Diethyl sulfate	—	—	A	2A
Difluorodibromomethane	X	X	—	—
Diglycidyl ether	X	X	—	—
Diglycidyl resorcinol ether	—	—	A	2B
Dihydrosafrole	—	—	—	2B
Dihydroxybenzene, see Hydroquinone				
Diisobutyl ketone	X	X	—	—
Diisopropylamine	X	X	—	—
3,3'-Dimethoxybenzidine (ortho-Dianisidine)	—	—	A	2B
Dimethoxymethane, see Methylal				
Dimethyl acetamide	X	X	—	—

TABLE 1—HAZARD COMMUNICATION CHEMICALS—Continued

Substance IARC [4]	MSHA [1]	ACGIH [2]	NTP [3]	IARC
Dimethylamine	X	X	—	—
4-Dimethylaminoazobenzene	C	—	A	—
para-Dimethylaminoazobenzene	—	—	—	2B
Dimethylaminobenzene, see Xylidence				
trans-2-[(Dimethylamino)methylimino]-5-[2-(5-nitro-2-furyl)vinyl]-1,3,4-oxadiazole	—	—	—	2B
N,N-Dimethylaniline	X	X	—	—
Dimethylbenzene, see Xylene				
3,3'Dimethylbenzidine, see o-Tolidine				
Dimethyl carbamoyl chloride	C	A2	A	2A
Dimethyl-1,2-dibromo-2,2-dichloroethyl phosphate, see Naled				
Dimethylformamide	X	X	—	—
2,6-Dimethyl-4-heptanone, see Diisobutyl ketone				
1,1-Dimethylhydrazine	C	A2	A	2B
1,2-Dimethylhydrazine	—	—	—	2B
Dimethylnitrosoamine, see N-Nitrosodimethylamine				
Dimethylphthalate	X	X	—	—
Dimethyl sulfate	C	A2	A	2A
Dimethylvinyl chloride	—	—	A	—
Dinitolmide	X	X	—	—
Dinitrobenzene (all isomers)	X	X	—	—
3,5-Dinitro-o-toluamide, see Dinitolmide				
Dinitro-o-cresol	X	X	—	—
Dinitrotoluene	X	X	—	—
Dioxane	X	X	A	2B
1,4-Dioxane, see Dioxane				
Dioxathion	X	X	—	—
Diphenyl, see Biphenyl				
Diphenylamine	X	X	—	—
Diphenylamine diisocyanate, see Methylene biepheynl isocyanate				
Dipropylene glycol methyl ether	X	X	—	—
Dipropyl ketone	X	X	—	—
Diquat	X	X	—	—
Direct black 38	—	—	A	—
Dirct blue 6	—	—	A	—
Di-sec-octyl pthalate	X	X	A	2B
Disulfiram	X	X	—	—
Disulfoton	X	X	—	—
2,6-Di-tert-butyl-p-cresol	X	X	—	—
Diuron	X	X	—	—
Divinyl benzene	X	X	—	—
Endosulfan	X	X	—	—
Endrin	X	X	—	—
Enflurane	X	X	—	—
Enzymes, see Subtilisins				
Epichlorohydrin	X	A2	A	2A
EPN	X	X	—	—
1,2-Epoxypropane, see Propylene oxide				
2,3-Epoxy-1-propanol, see Glycidol				
Erionite	—	—	—	1
Ethane (simple asphyxiant)	X	X	—	—
Ethanethiol, see Ethyl mercaptan				
Ethanol, see Ethyl alcohol				
Ethanolamine	X	X	—	—
Ethion	X	X	—	—
2-Ethoxyethanol	X	X	—	—
2-Ethoxyethyl acetate	X	X	—	—
Ethyl acetate	X	X	—	—
Ethyl acrylate	C	X	A	2B
Ethyl alcohol	X	X	—	—
Ethylamine	X	X	—	—
Ethyl amyl ketone	X	X	—	—
Ethyl benzene	X	X	—	—
Ethyl bromide	X	A2	—	—
Ethyl butyl ketone	X	X	—	—
Ethyl chloride	X	X	—	—
Ethylene (simple asphyxiant)	X	X	—	—
Ethylene chlorohydrin	X	X	—	—
Ethylenediamine	X	X	—	—
Ethylene dibromide (EDB)	C	A2	A	2A
Ethylene dichloride	C	X	A	—
Ethylene glycol, vapor	X	X	—	—
Ethylene glycol dinitrate	X	X	—	—
Ethlene glycol methyl ether acetate, see 2-Methoxyethyl acetate				
Ethylene oxide	C	A2	A	2A
Ethylene thioures	—	—	A	2B
Ethylenimine	C	X	—	—
Ethyl ether	X	X	—	—
Ethyl formate	X	X	—	—
Ethylidene chloride, see 1,1-Dichloroethane				
Ethylidene norbornene	X	X	—	—

TABLE 1—HAZARD COMMUNICATION CHEMICALS—Continued

Substance IARC [4]	MSHA [1]	ACGIH [2]	NTP [3]	IARC
Ethyl mercaptan	X	X	—	—
Ethyl methanesulphonate	—	—	—	2B
N-Ethylmorpholine	X	X	—	—
N-Ethyl-N-nitrosourea	—	—	—	2A
Ethyl silicate	X	X	—	—
Fenamiphos	X	X	—	—
Fensulfothion	X	X	—	—
Fenthion	X	X	—	—
Ferbam	X	X	—	—
Ferrovanadium dust	X	X	—	—
Fibrous glass dust	X	X	—	—
Fluorides (as F)	X	X	—	—
Fluorine	X	X	—	—
Fluorotrichloromethane, see Trichlorofluoromethane				
Fonofos	X	X	—	—
Formaldehyde	C	A2	A	2A
Formamide	X	X	—	—
Formic acid	X	X	—	—
2-(2-Formylhydrazino)-4-(5-nitro-2-furyl)thiazole	—	—	—	2B
Furfural	X	X	—	—
Furfuryl alcohol	X	X	—	—
Gasoline	X	X	—	—
Germanium tetrahydride	X	X	—	—
Glass, fibrous or dust, see Fibrous glass dust				
Glu-p-2(2-Aminodipyrido [1,2-a:3',2',-d]imidazole	—	—	—	2B
Glu-p-1(2-Amino-6-methyldipyrido)[1,2-a:3',2',-d]imidazole	—	—	—	2B
Glutaraldehyde	X	X	—	—
Glycerin (mist)	X	X	—	—
Glycidaldehyde	—	—	—	2B
Glycidol	X	X	—	—
Glycol monoethyl ether, see 2-Ethoxyethanol				
Graphite (all forms)	X	—	—	—
Graphite (all forms except graphite fibers)	—	X		
Griseofulvin				2B
Hafnium	X	X	—	—
Halothane	X	X	—	—
Helium (simple asphyxiant)	X	X	—	—
Heptachlor	X	A2	—	—
Heptachlor epoxide	—	A2	—	—
Heptane (n-Heptane)	X	X	—	—
2-Heptanone, see Methyl n-amyl ketone				
3-Heptanone, see Ethyl butyl ketone				
Hexachlorobenzene	—	—	A	2B
Hexachlorobutadiene	C	A2	—	—
Hexachlorocyclohexanes, see Lindane				
Hexachlorocyclopentadiene	X	X	—	—
Hexachloroethane	X	A2	—	—
Hexachloronaphthalene	X	X	—	—
Hexafluoroacetone	X	X	—	—
Hexamethylene diisocynate	X	X	—	—
Hexamethyl phosphoramide	C	A2	A	2B
Hexane:				
n-Hexane	X	X	—	—
Other isomers	X	X	—	—
2-Hexanone, see Methyl n-butyl ketone				
Hexone, see Methyl isobutyl ketone				
sec-Hexyl acetate	X	X	—	—
Hexylene glycol	X	X	—	—
Hydrazine	C	A2	A	2B
Hydrazine sulfate	—	—	A	—
Hydrazobenzene	—	—	A	—
Hydrochloric acid, see Hydrogen chloride				
Hydrogen (simple asphyxiant)	X	X	—	—
Hydrogenated terphenyls	X	X	—	—
Hydrogen bromide	X	X	—	—
Hydrogen chloride	X	X	—	—
Hydrogen cyanide	X	X	—	—
Hydrogen fluoride (as F)	X	X	—	—
Hydrogen peroxide	X	X	—	—
Hydrogen selenide (as Se)	X	X	—	—
Hydrogen sulfide	X	X	—	—
Hydroquinone	X	X	—	—
4-Hydroxy-4-methyl-2-pentanone, see Diacetone alcohol				
2-Hydroxypropyl acrylate	X	X	—	—
Indene	X	X	—	—
Indeno (1,2,3-cd) pyrene, see Polycylic aromatic hydrocarbons				
Indium & compounds (as In)	X	X	—	—
Iodine	X	X	—	—
Iodoform	X	X	—	—
IQ (2-Amino-3-methylimidazo [4,5-f] quinoline)	—	—	—	2B
Iron oxide fume (Fe_2O_3) (as Fe)	X	X	—	—

TABLE 1—HAZARD COMMUNICATION CHEMICALS—Continued

Substance IARC [4]	MSHA [1]	ACGIH [2]	NTP [3]	IARC
Iron pentacarbonyl (as Fe)	X	X	—	—
Iron salts, soluble (as Fe)	X	X	—	—
Isoamyl acetate	X	X	—	—
Isoamyl alcohol	X	X	—	—
Isobutyl acetate	X	X	—	—
Isobutyl alcohol	X	X	—	—
Isooctyl alcohol	X	X	—	—
Isophorone	X	X	—	—
Isophorone diisocyanate	X	X	—	—
Isopropoxyethanol	X	X	—	—
Isopropyl acetate	X	X	—	—
Isopropyl alcohol	X	X	—	—
Isopropylamine	X	X	—	—
N-Isopropylaniline	X	X	—	—
Isopropyl ether	X	X	—	—
Isopropyl glycidyl ether	X	X	—	—
Kepone	—	—	A	2B
Ketene	X	X	—	—
Lasiocarpine	—	—	—	2B
Lead:				
Inorganic dusts & fumes, (as Pb)	X	X	—	2B
Inorganic lead & compounds	—	—	—	2B
Lead acetate	—	—	A	—
Lead arsenate, as Pb_3 $(AsO_4)_2$	X	X	—	—
Lead chromate, as Cr	X	A2	—	—
as Pb	—	A2	—	—
Lead phosphate	—	—	A	—
Lindane	X	X	A	2B
Other hexachlorocyclo-hexane isomers	—	—	A	2B
Lithium hydride	X	X	—	—
L.P.G. (liquified petroleum gas)	X	X	—	—
Magnesium oxide fume	X	X	—	—
Malathion	X	X	—	—
Maleic anhydride	X	X	—	—
Manganese (as Mn):				
Dust & compounds	X	X	—	—
Fume	X	X	—	—
Manganese cyclopentadienyl tricarbonyl (as Mn)	X	X	—	—
MeA-α-C(2-Amino-3-methyl-9H-pyrido[2,3-b]indole)	—	—	—	2B
Medroxyprogesterone acetate	—	—	—	2B
Mercury (as Hg):				
Alkyl compounds	X	X	—	—
All forms except alkyl Vapor	X	X	—	—
Aryl & inorganic compounds	X	X	—	—
Merphalan	—	—	—	2B
Mesityl oxide	X	X	—	—
Methacrylic acid	X	X	—	—
Methane	X	X	—	—
Methanethiol, see Methyl mercaptan				
Methanol, see Methyl alcohol				
Methomyl	X	X	—	—
Methoxychlor	X	X	—	—
2-Methoxyethanol	X	X	—	—
2-Methoxyethyl acetate	X	X	—	—
4-Methoxyphenol	X	X	—	—
5-Methoxypsoralen	—	—	—	2A
Methyl acetate	X	X	—	—
Methyl acetylene	X	X	—	—
Methyl acetylene-propadiene mixture (MAPP)	X	X	—	—
Methyl acrylate	X	X	—	—
Methylacrylonitrile	X	X	—	—
Methylal	X	X	—	—
Methyl alcohol	X	X	—	—
Methylamine	X	X	—	—
Methyl amyl alcohol, see Methyl isobutyl carbinol				
Methyl n-amyl ketone	X	X	—	—
N-Methyl aniline	X	X	—	—
2-Methylaziridine, see Propylene imine				
Methylazoxymethanol and its acetate	—	—	—	2B
Methyl bromide	X	X	—	—
Methyl n-butyl ketone	X	X	—	—
Methyl chloride	X	X	—	—
Methyl chloroform	X	X	—	—
Methylchrysene	—	—	—	2B
5-Methylchrysene, see Polycylic aromatic hydrocarbons				
Methyl 2-cyanocrylate	X	X	—	—
Methylcyclohexane	X	X	—	—
Methylcyclohexanol	X	X	—	—
o-Methylcyclohexanone	X	X	—	—
2-Methylcyclopentadienyl manganese tricarbonyl (as Mn)	X	X	—	—

TABLE 1—HAZARD COMMUNICATION CHEMICALS—Continued

Substance IARC [4]	MSHA [1]	ACGIH [2]	NTP [3]	IARC
Methyl demeton	X	X	—	—
Methylene bisphenyl isocyanate	X	X	—	—
Methylene chloride	C	A2	A	2B
4,4'-Methylene bis (2-chloroaniline)	C	A1	A	2A
Methylene bis (4-cyclohexylisocyanate)	X	X	—	—
4,4'-Methylenebis (N,N-dimethyl) benzenamine	—	—	A	—
4,4'-Methylene bis (2-methylaniline)	—	—	—	2B
4,4'-Methylene dianiline	C	A2	A	2B
4,4'-Methylene dianiline dihydrochloride	—	—	A	—
Methyl ethyl ketone	X	X	—	—
Methyl ethyl ketone peroxide	X	X	—	—
Methyl formate	X	X	—	—
5-Methyl-3-heptanone, see Ethyl amyl ketone				
Methyl hydrazine	C	A2	—	—
Methyl iodide	C	A2	A	—
Methyl isoamyl ketone	X	X	—	—
Methyl isobutyl carbinol	X	X	—	—
Methyl isobutyl ketone	X	X	—	—
Methyl isocyanate	X	X	—	—
Methyl isopropyl ketone	X	X	—	—
Methyl mercaptan	X	X	—	—
Methyl methacrylate	X	X	—	—
Methyl methanesulphonate	—	—	—	2B
2-Methyl-1-nitroanthraquinone (uncertain purity)	—	—	—	2B
N-Methyl-N'-nitro-N-nitroso guanidine (MNNG)	—	—	—	2A
N-Methyl-N-nitrosourea	—	—	—	2A
N-Methyl-N-nitrosourethane	—	—	—	2B
Methyl parathion	X	X	—	—
Methyl propyl ketone	X	X	—	—
Methyl silicate	X	X	—	—
α-Methyl styrene	X	X	—	—
Methylthiouracil	—	—	—	2B
Metribuzin	X	X	—	—
Mevinphos	X	X	—	—
Mica	X	X	—	—
Michler's ketone	—	—	A	—
Mineral oils, untreated and mildly treated	—	—	K	1
Mineral wool fiber	X	X	—	—
Mirex	—	—	A	2B
Mitomycin C	—	—	—	2B
Molybdenum (as Mo)				
Soluble compounds	X	X	—	—
Insoluble compounds	X	X	—	—
Monochlorobenzene, see Chlorobenzene				
Monocrotophos	X	X	—	—
Monocrotaline	—	—	—	2B
Morpholine	X	X	—	—
5-(Morpholinomethyl)-3-[(5-nitrofurfurylidene)amino]-2-oxazolidinone	—	—	—	2B
Muriatic acid, see Hydrogen chloride				
Mustard gas	—	—	K	1
Nafenopin	—	—	—	2B
Naled	X	X	—	—
Naptha (Coal Tar)	X	—	—	—
Naphthalene	X	X	—	—
α-Naphthylamine	C	—	—	—
β-Naphthylamine	C	A1	K	1
2-Naphthylamine, see β-Naphthylamine				
Neon (simple asphyxiant	X	X	—	—
Nickel and certain nickel compounds	—	—	A	1
Metal	X	A1	—	—
Insoluble compounds (as Ni)	—	A1	—	—
Soluble compounds (as Ni)	X	A1	—	—
Nickel carbonyl (as Ni)	X	—	—	—
Nickel sulfide roasting, fume & dust (as Ni)	C	—	—	—
Nicotine	X	X	—	—
Nindazole	—	—	—	2B
Nitrapyrin	X	X	—	—
Nitric acid	X	X	—	—
Nitric oxide	X	X	—	—
Nitrilotriacetic acid	—	—	A	—
p-Nitroaniline	X	X	—	—
5-Nitroacenaphthene	—	—	—	2B
5-Nitro-o-anisidine	—	—	A	—
Nitrobenzene	X	X	—	—
p-Nitrochlorobenzene	X	X	—	—
4-Nitrodiphenyl	C	A1	—	—
Nitroethane	X	X	—	—
Nitrofen	—	—	A	2B
1-[(5-Nitrofurfurylidene) amino]-2-imidazolidinone	—	—	—	2B
N-[4-(5-Nitro-2-furyl)-2-thiazolyl]acetamide	—	—	—	2B
Nitrogen	X	X	—	—

TABLE 1—HAZARD COMMUNICATION CHEMICALS—Continued

Substance IARC [4]	MSHA [1]	ACGIH [2]	NTP [3]	IARC
Nitrogen dioxide	X	X	—	—
Nitrogen mustard N-oxide	—	—	—	2B
Nitrogen trifluoride	X	X	—	—
Nitroglycerin	X	X	—	—
Nitromethane	X	X	—	—
1-Nitropropane	X	X	—	—
2-Nitropropane	C	A2	A	2B
N-Nitrosodi-n-butylamine	—	—	A	2B
N-Nitrosodiethanolamine	—	—	A	2B
N-Nitrosodiethylamine	—	—	A	2A
N-Nitrosodimethylamine	C	A2	A	2A
p-Nitrosodiphenylamine	—	—	A	—
N-Nitrosodi-n-propylamine	—	—	A	2B
N-Nitroso-N-ethylurea	—	—	A	—
3-(N-Nitrosomethylamino) propionitrile	—	—	—	2B
4-(N-Nitrosomethylamino)-1-(3-pyridyl)-1-butanone (NNK)	—	—	—	2B
N-Nitrosomethylethylamine	—	—	A	2B
N-Nitroso-N-methylurea	—	—	A	—
N-Nitrosomethylvinylamine	—	—	A	2B
N-Nitrosomorpholine	—	—	A	2B
N-Nitrosonornicotine	—	—	A	2B
N-Nitrosopiperidine	—	—	A	2B
N-Nitrosopyrroline	—	—	A	2B
N-Nitrososarcosine	—	—	A	2B
Nitrotoluene (o-,m-,p-isomers)	X	X	—	—
Nitrotrichloromethane, see Chloropicrin				
Nitrous oxide	X	X	—	—
Nonane	X	X	—	—
Octachloronaphthalene	X	X	—	—
Octane	X	X	—	—
Oil mist, mineral	X	X	—	—
Oil orange SS	—	—	—	2B
Osmium tetroxide (as Os)	X	X	—	—
Oxalic acid	X	X	—	—
4,4'-Oxydianiline	—	—	A	—
Oxygen difluoride	X	X	—	—
Ozone	X	X	—	—
Panfuran S (containing dihydroxymethylfuratrizine)	—	—	—	2B
Paraffin wax fume	X	X	—	—
Paraquat, respirable dust	X	X	—	—
Parathion	X	X	—	—
Particulate polycyclic aromatic hydrocarbons (PPAH), see Coal tar pitch volatiles				
Pentaborane	X	X	—	—
Pentachloronaphthalene	X	X	—	—
Pentachloronitrobenzene	—	X	—	—
Pentachlorophenol	X	X	—	—
Pentane	X	X	—	—
2-Pentanone, see Methyl propyl ketone				
Perchloroethylene	X	X	—	—
Perchloryl fluoride	X	X	—	—
Perfluoroisobutylene	—	X	—	—
Perlite	X	X	—	—
Petroleum distillates, see Gasoline; Stoddard solvent; VM&P naphtha				
Phenacyl chloride, see α-Chloroacetophenone				
Phenol	X	X	—	—
Phenothiazine	X	X	—	—
N-Phenyl-β-naphthylamine	C	A2	—	—
m-Phenylenediamine	—	X	—	—
o-Phenylenediamine	—	X	—	—
p-Phenylenediamine	X	X	—	—
Phenyl ether vapor	X	X	—	—
Phenylethylene, see Styrene, monomer				
Phenyl glycidyl ether	X	X	—	—
Phenylhydrazine	C	A2	—	—
Phenyl mercaptan	X	X	—	—
Phenylphosphine	X	X	—	—
Phorate	X	X	—	—
Phosdrin, see Mevinphos				
Phosgene	X	X	—	—
Phosphine	X	X	—	—
Phosphoric acid	X	X	—	—
Phosphorus (yellow)	X	X	—	—
Phosphorus oxychloride	X	X	—	—
Phosphorus pentachloride	X	X	—	—
Phosphorus pentasulfide	X	X	—	—
Phosphorus trichloride	X	X	—	—
Phthalic anhydride	X	X	—	—
m-Phthalodinitrile	X	X	—	—
Picloram	X	X	—	—
Picric acid	X	X	—	—

TABLE 1—HAZARD COMMUNICATION CHEMICALS—Continued

Substance IARC [4]	MSHA [1]	ACGIH [2]	NTP [3]	IARC
Pindone	X	X	—	—
Piperazine dihydrochloride	X	X	—	—
2-Pivalyl-1, 3-indandione, see Pindone				
Platinum				
Metal	X	X	—	—
Soluble salts (as Pt)	X	X	—	—
Polybrominated biphenyls	—	—	A	2B
Polychlorobiphenyls, see Polychlorinated biphenyls				
Polychlorinated biphenyls				
(42% Chlorine)	X	X	A	2A
(54% Chlorine)	X	X	A	2A
Polychlorinated camphene, see Chlorinated camphene				
Polycyclic aromatic	—	—	A	—
hydrocarbons, 15 listings				
Benz(a)anthracene	—	—	A	2A
Benzo(b)fluoranthene	—	—	A	2B
Benzo[j]fluoranthene	—	—	A	2B
Benzo(k)fluoranthene	—	—	A	2B
Benzo(a)pyrene	C	A2	A	2A
Dibenz(a, h)acridine	—	—	A	2B
Dibenz(a, j)acridine	—	—	A	2B
Dibenz(a, h)anthracene	—	—	A	2A
7H-Dibenzo(c, g)carbazole	—	—	A	2B
Dibenzo(a, e)pyrene	—	—	A	2B
Dibenzo(a, h)pyrene	—	—	A	2B
Dibenzo(a, i)pyrene	—	—	A	2B
Dibenzo (a,1) pyrene	—	—	A	2B
Indeno (1,2,3-cd) pyrene	—	—	A	2B
5-Methylchrysene	—	—	A	2B
Ponceau 3R	—	—	—	2B
Ponceau MX	—	—	—	2B
Portland cement	X	X	—	—
Potassium bromate	—	—	—	2B
Potassium hydroxide	X	X	—	—
Precipitated silica, see Silica—Amorphous				
Progestins	—	—	—	2B
Propane	X	X	—	—
Propane sultone	C	A2	A	2B
1,3-Propane sultone, see Propane sultone				
Propargyl alcohol	X	X	—	—
β-Propiolactone	C	A2	A	2B
Propionic acid	X	X	—	—
Propoxur	X	X	—	—
n-Propyl acetate	X	X	—	—
Propyl alcohol	X	X	—	—
Propylene (simple asphyxiant)	X	X	—	—
Propylene dichloride	X	X	—	—
Propylene glycol dinitrate	X	X	—	—
Propylene glycol monomethyl ether	X	X	—	—
Propylene imine	C	A2	A	2B
Propylene oxide	X	X	A	2A
n-Propyl nitrate	X	X	—	—
Propyne, see Methyl acetylene				
Pyrethrum	X	X	—	—
Pyrocatechol, see Catechol				
Quartz, see Silica—Crystalline				
Quinone	X	X	—	—
Rhodium:				
Metal	X	X	—	—
Insoluble compounds (as Rh)	X	X	—	—
Soluble compounds (as Rh)	X	X	—	—
Ronnel	X	X	—	—
Rosin core solder pyrolysis products (as formaldehyde)	X	X	—	—
Rotenone (commercial)	X	X	—	—
Rubber solvent	X	X	—	—
Selenium compounds (as Se)	X	X	—	—
Selenium hexafluoride (as Se)	X	X	—	—
Sesone	X	X	—	—
Shale-oils	—	—	—	1
Silane, see Silicon tetrahydride				
Silica—Amorphous Diatomaceous earth (uncalcined)	X	X	—	—
Fume	—	X	—	—
Fused	—	X	—	—
Gel	X	X	—	—
Precipitated	X	X	—	—
Silica—Crystalline	X	X	—	2A
Cristobalite	X	X	—	—
Fused	X	X	—	—
Quartz	X	X	—	—
Tridymite	X	X	—	—
Tripoli	X	X	—	—
Silicon	X	X	—	—

TABLE 1—HAZARD COMMUNICATION CHEMICALS—Continued

Substance IARC [4]	MSHA [1]	ACGIH [2]	NTP [3]	IARC
Silicon carbide	X	X	—	—
Silicon tetrahydride	X	X	—	—
Silver:				
Metal, dust & fume	X	X	—	—
Soluble compounds (as Ag)	X	X	—	—
Soapstone:				
Respirable	X	X	—	—
Total	X	X	—	—
Sodium azide:	—	X	—	—
as HN_3 vapor	X	—	—	—
as NaN_3	X	—	—	—
Sodium bisulfite	X	X	—	—
Sodium 2,4-dichloro-phenoxyethyl sulfate, see Sesone				
Sodium fluoracetate	X	X	—	—
Sodium hydroxide	X	X	—	—
Sodium metabisulfite	X	X	—	—
Sodium ortho-phenylphenate	—	—	—	2B
Soots	—	—	K	1
Sterigmatocystin	—	—	—	2B
Stibine	X	X	—	—
Stoddard solvent	X	X	—	—
Strontium chromate	—	A2	—	—
Strychnine	X	X	—	—
Styrene, monomer	X	X	—	2B
Styrene oxide	—	—	—	2A
Subtilisins (Proteolytic enzymes as 100% pure crystalline enzyme)	X	X	—	—
Sulfallate	—	—	A	2B
Sulfotep	X	X	—	—
Sulfur dioxide	X	X	—	—
Sulfur hexafluoride	X	X	—	—
Sulfuric acid	X	X	—	—
Sulfur monochloride	X	X	—	—
Sulfur pentafluoride	X	X	—	—
Sulfur tetrafluoride	X	X	—	—
Sulfuryl fluoride	X	X	—	—
Sulprofos	X	X	—	—
Systox, see Demeton 2,4,5–T	X	X	—	—
Talc:				
Containing no asbestos fibers	X	X	—	—
Containing asbestos fibers	X	A1	—	—
Containing asbestiform fibers	—	—	—	1
Tantalum	X	X	—	—
Tars, see Coal tars				
TEDP, see Sufotep				
Tellurium & compounds (as Te)	X	X	—	—
Tellurium hexafluoride (as Te)	X	X	—	—
Temephos	X	X	—	—
TEPP	X	X	—	—
Terphenyls	X	X	—	—
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)	—	—	A	2B
1,1,1,2-Tetrachloro-2,2-difluoroethane	X	X	—	—
1,1,2,2-Tetrachloro-1,2-difluoroethane	X	X	—	—
1,1,2,2-Tetrachloroethene	X	X	—	—
Tetrachloroethylene, see Perchloroethylene				
Tetrachloromethane, see Carbon tetrachloride				
Tetrachloronaphthalene	X	X	—	—
Tetraethyl lead (as Pb)	X	X	—	—
Tetrahydrofuran	X	X	—	—
Tetramethyl lead (as Pb)	X	X	—	—
Tetramethyl succinonitrile	X	X	—	—
Tetranitromethane	X	X	—	—
Tetrasodium pyrophosphate	X	X	—	—
Tetryl	X	X	—	—
Thallium, soluble compounds (as T1)	X	X	—	—
Thioacetamide	—	—	A	2B
4,4'-Thiobis(6-tert-butyl-m-cresol)	X	X	—	—
4,4'-Thiodianiline	—	—	—	2B
Thioglycolic acid	X	X	—	—
Thionyl chloride	X	X	—	—
Thiourea	—	—	A	2B
Thiram	X	X	—	—
Thorium dioxide	—	—	K	—
Tin:				
Metal	X	X	—	—
Organic compounds (as Sn)	X	X	—	—
Oxide & inorganic compounds, except SnH_4 (as Sn)	X	X	—	—
o-Tolidine	C	A2	A	2B
Toluene	X	X	—	—
Toluene diisocyanate	—	—	A	2B
Toluene-2,4-diisocyanate	X	X	—	2B

TABLE 1—HAZARD COMMUNICATION CHEMICALS—Continued

Substance IARC [4]	MSHA [1]	ACGIH [2]	NTP [3]	IARC
o-Toluidine	C	A2	A	2B
m-Toluidine	X	X	—	—
p-Toluidine	C	A2	—	—
o-Toluidine hydrochloride	—	—	A	—
Toluol, see Toluene				
Toxaphene, see Chorinated camphene,				
Tributyl phosphate	X	X	—	—
Tricholoracetic acid	X	X	—	—
1,2,4-Trichlorobenzene	X	X	—	—
1,1,1-Trichloroethane, see Methyl chloroform				
1,1,2-Trichloroethane	X	X	—	—
Tricholoroethylene	X	X	—	—
Trichlorofluoromethane	X	X	—	—
Trichloromethane, see Chloroform				
Tricholoronaphthalene	X	X	—	—
Tricholoronitromethane, see Chloropicrin				
2,4,6-Tricholorophenol	—	—	A	—
1,2,3-Trichloropropene	X	X	—	—
1,1,2-Trichloro-1,2,2-trifluoroethane	X	X	—	—
Tricyclohexyltin hydroxide, see Cyhexatin				
Tridymite, see Silica—Crystaline				
Triethanolamine	—	A2	—	—
Triethylamine	X	X	—	—
Trifluorobromomethane	X	X	—	—
Trimellitic anhydride	X	X	—	—
Trimethylamine	X	X	—	—
Trimethyl benzene	X	X	—	—
Trimethyl phosphite	X	X	—	—
2,4,6-Trinitrophenol, see Picric acid				
2,4,6-Trinitrophenylmethylnitramine, see Tetryl				
2,4,6-Trinitrotoluene	X	X	—	—
Triorthocreayl phosphate	X	X	—	—
Triphenyl amine	X	X	—	—
Triphenyl phosphate	X	X	—	—
Tripoli, see Silica—Crystaline				
Tris(2,3-dibromopropyl) phosphate	—	—	A	2A
Trp-P-1(3-Amino-1,4-dimethyl-5H-pyrido[4,3-b]indole	—	—	—	2B
Trp-P-2(3-Amino-1-methyl-5H-pyrido[4,3-b]indole	—	—	—	2B
Trypan blue	—	—	—	2B
Tungsten (as W):				
Insoluble compounds	X	X	—	—
Soluble compounds	X	X	—	—
Turpentine	X	X	—	—
Uranium (as U):				
Soluble compounds	X	X	—	—
Insoluble compounds	X	X	—	—
Urethane	—	—	A	2B
n-Valeraldehyde	X	X	—	—
Vanadium compounds (as V)	X	—	—	—
Vanadium metal & vanadium carbide (as V)	X	—	—	—
Vanadium respirable dust & fume (as V_2O_5)	—	X	—	—
Vinyl acetate	X	X	—	—
Vinyl benzene, see Styrene				
Vinyl bromide	C	A2	—	2A
Vinyl chloride	C	A1	K	1
Vinyl cyanide, see Acrylonitrile				
Vinyl cyclohexene dioxide	C	A2	—	—
Vinylidene chloride	X	X	—	—
Vinyl toluene	X	X	—	—
VM & Naphtha	X	X	—	—
Warfarin	X	X	—	—
Wood dust:				
Hard wood	X	X	—	—
Soft wood	X	X	—	—
Xylene o-,m-,p-isomers)	X	X	—	—
m-Xylene α,α'-diamine	X	X	—	—
Xylidine	X	X	—	—
Yttrium	X	X	—	—
Zinc chloride fume	X	X	—	—
Zinc chromate (as Cr)	C	A1	—	—
Zinc oxide fume	X	X	—	-
Zirconium compounds (as Zr)	X	X	—	—

[1] Air Quality Proposal.
[2] 1990–1991 Threshold Limit Values.
[3] 1989 Summary.
[4] Supplement No. 7 (only IARC groups 1, 2A, and 2B are listed).
Key Codes: X=Listed chemical, C=Carcinogen, A1=Confirmed human carcinogen, A2=Suspected human carcinogen, K=Known to be carcinogenic, A=Anticipated to be carcinogenic, 1=The agent is carcinogenic to humans, 2A=The agent is probably carcinogenic to humans, 2B=The agent is possibly carcinogenic to humans.

For operators evaluating chemicals, MSHA proposes that chemicals be considered carcinogens for hazard communication purposes if they are identified by the NTP as "known to be carcinogenic" or "reasonably anticipated to be carcinogenic" or identified in the ACGIH TLV's as "confirmed" or "suspected" human carcinogens.

IARC and NTP evaluate the carcinogenic potential of chemicals, manufacturing processes, and occupational exposures. For the purpose of hazard communication, only their findings on specific chemicals need be considered. For example, NTP does not identify a specific chemical as being a causative factor in its finding that underground hematite mining is carcinogenic, therefore that finding would not fall under the scope of this rule.

The individual IARC monographs contain evaluations of specific chemicals and processes. At the conclusion of each evaluation, IARC provides a summary evaluation for the individual chemical. Periodically, IARC publishes supplements in which chemicals that have already been evaluated in previous monographs are reevaluated. In cases where a chemical has been reevaluated, it is proposed that the operator must incorporate the most recent IARC evaluations within three months of publication.

In their Supplement 7, IARC provides a summary of the chemicals which have been evaluated by IARC in Volumes 1–42. Table I of Supplement 7 provides a summary evaluation of all chemicals for which there was some human and animal data considered.

Table I of Supplement 7 also provides the following classification of a chemical's carcinogenic risk:

Group 1—The agent is carcinogenic to humans.
Group 2A—The agent is probably carcinogenic to humans.
Group 2B—The agent is possibly carcinogenic to humans.
Group 3—The agent is not classifiable as to its carcinogenicity to humans.
Group 4—The agent is probably not carcinogenic to humans.

Under this proposal, all IARC listed chemicals in Groups 1, 2A, and 2B would be considered carcinogenic for the purposes of this standard.

The inclusion of these lists of chemicals identified as being carcinogenic is intended to inform employees exposed to such chemicals that they may pose some degree of carcinogenic risk. Documents such as the IARC Supplement and Monographs, or the NTP Annual Report on Carcinogens, do not attempt to quantify the degree of risk. Their findings summarize large numbers of studies and include conclusions made by groups that peer review the data submitted as evidence about a chemical's carcinogenic risk. MSHA feels that the findings of these groups provide sufficient evidence to warrant informing employees of the hazard, even though in some cases the data may not be sufficient to support further regulatory action, such as establishing specific exposure levels and control technology.

Although some commenters suggested that MSHA or NIOSH make the hazard determination for the chemicals produced or used on mine property, other commenters strongly opposed this. Some commenters suggested that MSHA limit hazardous chemicals to those listed in MSHA's standards or to those posing a significant risk. They objected to the classification of a chemical as carcinogenic based on the "one study" criterion found in OSHA's HCS. A number of commenters, who currently comply with the OSHA HCS or with similar State HCSs, favored an approach consistent with OSHA's standard. The Agency is aware of the importance of fashioning a rule which is as consistent with the OSHA HCS as possible and is attempting to do so.

Several commenters suggestetd that MSHA base the hazard determination criteria on a finding of significant risk. One of the greatest difficulties in developing this rule has been in attempting to distinguish between those chemicals that pose a significant health risk and those that are innocuous or of low risk.

As discussed under the scope and application section of this preamble, MSHA is considering exempting some common minerals believed to pose a low degree of risk and for which the hazards are common knowledge. MSHA requests specific comments concerning possible criteria for expanding this consideration of risk to other chemicals (for example, tests that might be performed to determine if a chemical is hazardous, tests that indicate that the potentially hazardous component in mixtures of common minerals are not releasable in sufficient quantities to be hazardous to miners or downstream employers, studies that downstream employees face no risk from exposures to common minerals, etc.) and how such criteria might apply to the specific chemicals produced in the mining industry.

In considering the degree of risk posed by a chemical, the general intent of hazard communication under OSHA's standard and MSHA's proposal is to warn employees of potential hazards from exposure to chemicals as opposed to limiting exposure and requiring control technology. It is hoped that such a warming would reduce the risks involved. It is possible that chemicals which pose a low risk due to the way they are currently being used, or are intended to be used, could pose a significant risk if misused or improperly handled by an employee not adequately informed or trained as to the hazardous properties of that chemical.

On May 17, 1990, OHSA published a notice in the **Federal Register** (55 FR 20580) requesting information and comment on a number of issues relating to improving the presentation and quality of hazard information transmitted under its HCS. Among these issues, OSHA solicited comment on whether *de minimis* considerations should be established for hazardous chemical exposure in general. *De minimis* or trivial risks are those below the threshold of regulatory concern. MSHA also requests comments on this issue, including specifically:

(1) Should MSHA's HCS have a *de minimis* threshold to define what level of exposure to a hazardous chemical would trigger a need for MSDSs and labels?

(2) Should MSHA set a *de minimis* level for chemicals that have an MSHA PEL or ACGIH TLV?

(3) What criteria should MSHA use to set *de minimis* thresholds for chemicals for which specific regulated levels have not been established?

(4) If MSHA does not set a *de minimis* level should operators be allowed to do this?

(5) What criteria could operators use to set *de minimis* thresholds where specific regulated levels have not been established?

(6) Do operators that currently implement a hazard communication program apply it to chemicals which pose little or no risk to employees?

(7) Is there sufficient information on labels and MSDSs for operators to adequately distinguish between high-risk and low-risk chemicals?

(8) Is it sufficient for the preparer to state on the labels and MSDSs only that a hazard exists?

(9) Should the MSDS and label provide specific information on exposure levels at which the chemical poses a risk?

(10) What would you recommend as a safe level of risk for a chemical to be exempt from the HCS?

This proposal includes requirements similar to those in the OSHA HCS for determining the physical hazards of a chemical. Under this proposal operators

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would be required to consider available evidence in determining if a chemical is a physical hazard. Although this implies an open-ended research obligation on the part of operators, MSHA believes that information on physical hazards is generally more commonly known and available than is information on the health hazards of chemicals and should not pose as difficult a research burden.

OSHA requires that employers describe, in writing, the procedures they use to determine the hazards of chemicals they evaluate. MSHA has not proposed a similar requirement because MSHA's proposed hazard determination procedures are more clearly defined and less judgmental than OSHA's. For health hazards, hazard determination would be based simply on determining if a chemical is listed on a table (Table 1). This table is in the hazard determination section of the preamble to this rule and will be updated periodically by MSHA and made available to the mining community.

The proposal also addresses the coverage of hazardous chemicals which are mixtures, consistent with the provisions addressing mixtures in OSHA's HCS. Mixture coverage would be applicable in several circumstances. First of all, if the operator has objective test data on the mixture, that data would be used to determine the hazards. If such data are unavailable for the health hazard determination, then the operator must consider the mixture to have the health hazards of components which comprise one percent or more of the total composition.

If any of the components are carcinogens, the mixture would be considered to be carcinogenic if the component is present in concentrations of 0.1 percent or more. However, if the operator has evidence to indicate that a component which comprises less than 1 percent of a mixture, or less than 0.1 percent in the case of carcinogens, could be released in concentrations which would exceed an established MSHA permissible exposure limit or ACGIH Threshold Limit Value, or could present a health hazard to employees in those concentrations, the mixture would have to be assumed to present the same hazard.

If the operator has reason to believe that the component could be released in quantities hazardous to the health of employees, it would have to be identified, even though present in quantities less than 1 percent of the total weight or volume, or less than 0.1 percent in the case of a carcinogen.

Lastly, if the mixture has not been evaluated to determine its physical hazard potential, the operator would use whatever information is available to assess the potential hazards.

D. Written Hazard Communication Program

The written hazard communication program provisions of this proposed standard are essentially the same as those in the OSHA HCS. A majority of the commenters who responded to the ANPRM favored this approach. However, it should be noted that MSHA, in an effort to ensure uniformity and consolidation of related subject matter, has reorganized a few of the provisions found in this section of OSHA's standard. MSHA would move the OSHA written program requirement, which describes the methods used to inform employees of chemical hazards associated with nonroutine tasks and unlabeled unmarked pipes, to § 46.7, employee training. This provision would be expanded to address the chemical hazards associated with hazardous chemicals transported on conveyors and in unlabeled containers of the raw material being mined or milled.

This proposal would require each operator to develop, implement, and maintain a written hazard communication program for the workplace. At a minimum, the written program would have to include a description of how the operator met the requirements specified in § 46.3 (hazard determination), § 46.5 (labels and other forms of warning), § 46.6 (material safety data sheets), and § 46.7 (employee training). In addition, the written program would have to include a list of hazardous chemicals known to be present in the mine and the procedures used to inform and coordinate hazard information such as MSDSs and labeling procedures with other operators working at the mine. "Other operators" would include independent contractors, service companies, etc. who may have employees exposed to hazardous chemicals on mine property.

The standard is performance oriented, and operators would have considerable flexibility in the development and implementation of the written program. The written program would not have to be lengthy or complicated but would have to address each required component. A number of commenters suggested that MSHA publish compliance guidelines or a written generic program to assist operators in establishing a written program. Various organizations have developed guidance such as this for the general industry in complying with the OSHA HCS. Because of the similarity between OSHA's standard and MSHA's proposed rule, operators may find much of this information to be applicable and helpful in developing their program. Additionally, Appendix C of this proposal provides general guidance to operators on the development of written programs.

The hazardous chemical list that would be required by § 46.4(a) could be a master list covering hazardous chemicals used throughout the mine, or it may be a separate list for individual work areas. With either type of list, the chemicals would have to be identified in a manner that allows easy cross-referencing with the appropriate MSDS and label for each chemical. In other words, if a chemical is identified by a trade name on an MSDS, the hazardous chemical list would have to be indexed and identified using the same trade name. The inventory must be kept current. Operators may also find it helpful to identify the location and quantity of the hazardous chemical on the inventory, since § 46.7 (employee training) requires operators to provide employees with information on any operations or locations in their work area where hazardous chemicals are present.

The intent of the multioperator provision in § 46.4(b) is to ensure that employees are provided with information on hazardous chemicals produced or used by other operators that may be working at the mine. An example of this would be where employees of an independent contractor performing services or construction at a mine are exposed to a hazardous chemical produced or used by the mine owner, or conversely, employees of the mine owner being exposed to hazardous chemicals produced or used by the independent contractor. At multioperator workplaces, each operator's written program would have to include the methods to be used to coordinate the exchange of hazardous chemical information with other operators working at the mine. At a minimum, they would have to address procedures for sharing precautionary information and the information on MSDSs and labels. This exchange of information would be limited only to those situations where one operator's employees are exposed to the chemicals that another operator produces or uses.

MSHA's provisions on multioperator worksites are similar to those found in OSHA's standard. OMB had questioned the practicality of these provisions in OSHA's standard and had suggested as an acceptable option that OSHA require employers at multiemployer worksites to keep labels intact on any containers they bring onto the worksite, provide

MSDSs to other employers upon request, and train their employees regarding: The hazards of chemicals with which they work directly; the need to observe the requirement of hazard labels on containers at the worksite; and the need to request MSDSs when further information is required (See OMB letter to the Department of Labor, published December 4, 1987 (52 FR 46075); and the substantive contents of OSHA's 1988 proposed rule. MSHA seeks comments on the merits of each approach to multioperator workplaces.

As in the OSHA HCS, MSHA's proposal requires operators to provide access to the written hazard communication program to employees, their designated representatives, and to authorized representatives of the Secretary of Labor and Secretary of Health and Human Services. Under MSHA's proposal, operators would have to retain a written program as long as a chemical is known to be present in the workplace in such a manner that employees are exposed. Given the broad scope of this proposed rule and the extent of chemical usage in the mining industry, MSHA believes that practically all operators would need to have a written program.

E. Labels and Other Forms of Warning

This section would require operators to label containers of hazardous chemicals in the workplace. The label is required to list the "identity" of the hazardous chemical and a "hazard warning." The term "container" does not include pipes or piping systems, conveyors, and engines, fuel tanks, or other operating systems or parts in a vehicle. A room or an open area is also not to be considered a container and therefore a hazardous chemical such as silica flour on the floor of a mill, or a stockpile of coal or sand, would not have to be labeled under this standard.

The purpose of labels under this standard would be to serve as an immediate visual warning and as a reminder of the more detailed information provided on the MSDS. The label is not intended to be either the sole, or the most complete, source of information regarding the nature or identity of the hazardous chemical in the workplace.

The labeling provisions are written in broad, performance-oriented language so that many of the existing labeling systems could continue to be used. Those labels that meet the minimal informational requirements established could continue to be used regardless of their formats.

The proposal requires that the identity of the hazardous chemical be listed on the label. The identity could be any term the operator wishes to use, as long as it also appears on the chemical inventory list and permits cross-references with the MSDS. Under this plan, the operator can use common terms, familiar to employees, while more extensive information, including the specific chemical identity, could be found on the MSDS.

A "hazard warning" is also required to be listed on the label. This warning can be any words, pictures, or symbols which convey to the employee the specific physical or health hazard of the chemical, such as "causes lung damage," "flammable," or "suspected human carcinogen."

The MSDS addresses essentially everything that is known about the chemical. It is not necessary to warn on the label about every hazard listed in the MSDS. The selection of hazards to be highlighted on the label will involve some assessment of the weight of the evidence regarding each hazard reported on the data sheet. However, this does not mean that only acute hazards are to be covered on the label or that well-substantiated hazards can be left off the label because they appear on the data sheet.

Phrases such as "caution," "danger," or "harmful if inhaled" are precautionary statements, not hazards. The definition of "hazard warning" states that the warning must convey the hazard of the chemical and is intended to include the target organ effects, if such information is available. If, when inhaled, the chemical causes lung damage, then that is the appropriate warning. Lung damage is the hazard, not inhalation. There are some situations where the specific target organ effect is not known. Where this is the case, the more general warning statement would be permitted. For example, if the only information available is an LC50 test result, "harmful if inhaled" may be appropriate.

Appendix A and B of this proposed rule include additional information and reference sources for determining hazard information to be conveyed on the label.

MSHA is also proposing to require that operators provide labeling information with the initial shipment of a hazardous chemical to a downstream employer. The label information transmitted to a downstream employer would have to include the chemical's identity, a hazard warning, and the operator's name and address or the name and address of a responsible party who can provide additional information on the hazardous chemical. This labeling information may be included with the chemical's shipping papers rather than posted on the hazardous chemical's container.

MSHA recognizes that many operators may already be providing labels on containers of hazardous chemicals they produce and distribute in commerce, either due to applicable state hazard communication laws or due to pressure from the buyers of their products. Several commenters indicated that hazardous chemicals shipped from a mine be covered consistent with the OSHA HCS. There were, however, a number of commenters that objected to any requirements covering chemicals shipped off mine property. MSHA believes that the proposed requirements are within its authority and contribute to an effective Federal hazard communication program covering all industries. MSHA requests further comments regarding the issue of whether MSHA should require labeling information with only the initial shipment of a hazardous chemical shipped to a downstream employer, or whether every container of a hazardous chemical shipped to a downstream employer should be labeled, consistent with the OSHA HCS.

MSHA also recognizes the existence of the numerous labeling systems that are currently used in industry. Many of the systems rely on a numerical and/or alphabetic code to convey the hazards. Although these labeling systems may not convey the target organ effects, the intent of the standard is to permit the use of these systems as long as the entire hazard communication program is effective. An effective program is one that ensures that employees are aware of the hazardous effects (including target organ effects) of the chemicals they are exposed to, as well as meets the other basic requirements of the standard.

Although a rating system is acceptable for labeling within an operator's workplace, it would not be acceptable on the labeling information sent to downstream users unless additional information is included indicating the specific hazards in a narrative form.

The information required to be listed on a label under MSHA's proposed rule is identical to that required in the OSHA HCS. Therefore, operators receiving hazardous chemicals already labeled by general industry in accordance with the OSHA HCS would not have to modify the label. Operators would not be held responsible for inaccurate information on labels which they did not prepare and which they had accepted in good faith from the chemical manufacturer or

supplier. However, if the operator were aware that such information is inaccurate or incomplete, the responsible party identified on the label should be contacted to obtain a corrected copy. MSHA anticipates developing procedures whereby the Agency could refer to OSHA any cases that operators report to MSHA regarding chemical manufacturers or suppliers failing to provide accurate or complete labels.

Also, consistent with the OSHA HCS, MSHA's proposal requires that operators not remove or deface existing labels on incoming containers of hazardous chemicals unless the container is immediately marked with the required information. Additionally, the operator is required to ensure that labels or other forms of warning are legible, in English, and are prominently displayed on the container or are readily available in the work area throughout each work shift. Operators who have employees who cannot read English may add information in the language of the employees to the material presented on the label as long as the information is also listed in English.

The standard's intent would be met as long as the placement of the label permits it to be seen before employees are potentially exposed to the hazardous chemical. If, for instance, the product were flammable or shock sensitive, then the label warnings would have to be visible before handling so that special care, if necessary, can be taken. On the other hand, for a product that only presents a toxicity hazard when a bag is opened, then a label that is visible when the bag is readied for opening would be acceptable.

The proper placement of labels is dependent on product characteristics and the ways and means employees may be exposed to them. Labeling, therefore, must be considered on a case-by-case basis. Obviously, however, the more visible a label, the better the chance that it will be effective.

Several commenters objected to MSHA's proposing any labeling requirement beyond that found in existing MSHA standards (30 CFR 56.16004, 57.16004, 56.20012, 57.20012, and 77.208(c)). Although these existing MSHA standards require labeling, they do not define the terms "hazardous materials" or "toxic materials" used in them. Additionally, these standards do not provide any exemptions from their labeling requirements, nor do they provide for the use of other forms of warning. MSHA is proposing to revoke §§ 56.20012 and 57.20012 in this rulemaking and revise §§ 56.20004, 57.20004 and 77.208(c) to remove the labeling requirements from these standards. These deletions are discussed further below.

Other commenters indicated they were already complying with OSHA's labeling provisions regarding hazardous chemicals and the MSHA's labeling requirements should be consistent with OSHA's. In reviewing and considering these comments, MSHA believes that labeling provisions generally consistent with the OSHA HCS are appropriate for this rulemaking.

This proposed rule lists several exemptions from the container labeling requirements. Operators may use signs, placards, process sheets, batch tickets, operating procedures, or other such written materials instead of affixing labels to individual stationary process containers, as long as such materials include the information that would have otherwise been required on the label. The operators would also have to provide employees with immediate access to these written materials while in their work area throughout each work shift.

Such written materials would have to be in a prominent location within the employees' immediate work area and readily accessible by them. In addition to including information that would have otherwise been required on the label, such materials would have to identify clearly the container holding the hazardous chemical. Particular emphasis should be placed in the employees' training on the location and availability of this written material.

An MSDS could possibly be used to convey this information to employees; however, the MSDS would have to identify the location of the container of the hazardous chemical and be posted in a readily accessible location in the work area where the chemical is used. When used in this manner, it would not be acceptable to keep the MSDS in a central location outside of the employees' immediate work area.

The proposal would also provide access to any written materials used instead of labels to the employees' designated representatives and to authorized representatives of the Secretary of Labor and Secretary of Health and Human Services. "Access" as defined in this proposal means the right to examine and copy records. The proposal would require operators to provide, without cost, a copy of any written materials use instead of labels, when requested by employees and their designated representatives.

The proposal would not require operators to label containers of the raw material being mined or milled while on mine property, regardless of its hazards. "Raw material" is defined in the rule as a mineral, or combination of minerals, that is extracted from natural deposits by mining or is upgraded through milling. The term applies to the ore and valuable minerals extracted, as well as to the worthless material, gangue, or overburden removed during the mining or milling process. However, the container would be required to be labeled if a hazardous chemical were added to the raw material. For example, if a solution of hydrochloric acid were added to a process container of sand to remove iron impurities, then the container would have to be labeled to identify the hazardous mixture and to provide an appropriate hazard warning. NIOSH stated in its comments to MSHA that labeling of the mining products while in process or in transit in the milling operation—for example, in haulage cars or on conveyor belts or in augers—would seem to be superfluous when the miners have been trained properly. Several other commenters have also stated that labeling of the raw material is impractical and unnecessary. However, a few commenters did express the view that containers of the raw material should be labeled, if hazardous, consistent with OSHA's standard.

MSHA's proposed exemption of a labeling requirement for containers of the raw material mined also recognizes that it would be exceedingly difficult to maintain labels in a legible condition on such containers as ore cars, haulage trucks, chutes, bins, or hoppers that are subject to the often severe use conditions found in mines. If such labels were required they would quickly be covered with dust or debris from the mining process, or worn away, making them illegible to employees.

MSHA agrees with these commenters to the extent that employees working at a mine can readily identify those containers in the mine which hold raw material, and that labeling of these would serve little practical benefit. However, although employees can readily identify containers of the raw material, they may not be as aware of its hazards. Therefore, MSHA proposes to exempt containers of the raw material mined or milled from the labeling requirements while on mine property, but would require that the hazards of the raw material be determined in accordance with § 46.3. If the material were found to be hazardous, MSHA would require an operator to develop an MSDS and conduct employee training on the hazards.

Although this proposal would not require labeling of the raw material while on mine property, it would require

that labeling information be provided to the downstream user with the initial shipment of any raw material that is determined to be hazardous.

MSHA proposes a number of exemptions, consistent with the OSHA HCS, to avoid duplicative coverage on products which are already labeled under rules of another federal agencies. It should be emphasized that these exemptions only apply to the labeling requirements—all other provisions of the rule are applicable.

Consistent with the OSHA HCS, MSHA proposes exemptions on consumer products and hazardous substances labeled under regulations issued by the Consumer Products Safety Commission (CPSC) and pesticides labeled under EPA regulations. These specific exemptions are listed both in § 46.1, scope and application, and § 46.5, labels and other forms of warnings.

With regard to the exemption from the labeling requirements for consumer products and hazardous substances already labeled under CPSC regulations, MSHA believes that protection of workers would be served by allowing the CPSC labels to suffice but requiring that MSDSs be obtained and training conducted as for any other hazardous chemicals. These requirements would apply to the extent these products were used in a manner that resulted in a duration and frequency of exposure greater than that experienced by consumers; otherwise they would be excluded from coverage under § 46.1(d)(4) of this proposal. (See discussion of this exclusion under the scope and application section of this preamble).

There appears to be some misconception that by virtue of being permitted to be marketed to consumers, consumer products are inherently safe and do not require that any additional information be given to workers using them. MSHA does not believe this is the case. Consumer product labels generally do not include the type of specific hazard information MSHA would require on the labels of containers of hazardous chemicals which operators produce. Although some consideration is given to chronic hazards, the basic emphasis is on acute effects. In addition, the labels focus on precautionary statements and routes of exposure rather than informing the user of the specific hazards. For example, a label for lead solder purchased in a hardware store may indicate that it is "fatal if swallowed" and "causes severe burns," but may give no indication of the fact that lead overexposure can result in not only lead poisoning but also severe effects on a number of body systems, including damage to blood-forming, nervous, and reproductive systems.

Furthermore, the primary route of entry for occupational exposure to lead would normally be inhalation—the consumer label may not indicate that inhalation of the soldering fumes generated is of concern. Conversely, an MSDS for the same material will indicate the full range of health effects, the appropriate protective measures, the fact that there is an exposure limit for the material, and other useful information for both the operator and the employee being exposed.

MSHA nevertheless is proposing that the CPSC labels would suffice so as not to disrupt the extensive labeling conducted in accordance with their regulations. MSHA believes that this is justified on the basis that some information is provided on the labels that would be useful to workers and that MSDSs would provide information necessary to supplement the labels. This additional information ensures that training can be properly conducted and that adequate protective measures are used in the workplace.

The OSHA HCS also exempts from their labeling requirements any food, food additive, color additive, drug, cosmetic, or medical or veterinary device or product that is subject to Food and Drug Administration (FDA) or the Department of Agriculture (DOA) labeling requirements. MSHA proposes to modify this exemption to exempt only foods, food additives, and color additives labeled under FDA or DOA regulations. MSHA is not aware of any operators that produce or use drugs, cosmetics, or medical or veterinary devices. MSHA does have jurisdiction over operations at several salt mines where salt is processed and packaged for consumer sale and subsequently may be subject to the FDA labeling regulations. MSHA requests specific comments on this exemption and the use and occurrence of such products in mining.

MSHA has not proposed the specific labeling exemptions found in the OSHA HCS on distilled spirits, wine or malt beverages intended for nonindustiral use. MSHA believes that most operators expressly prohibit the use of these substances in their workplace, in addition, labeling them would not be required under the exemption on substances intended for personal consumption by employees. Existing regulations for metal/nonmetal mines also prohibit intoxicating beverages from in and around mines (30 CFR 56.20001 and 57.20001).

An exemption from the labeling requirements is also proposed for portable containers into which hazardous chemicals are transferred from labeled containers and which are intended only for immediate use of the employee who performs the transfer. This exemption is consistent with that found in OSHA's rule. In addition, a number of commenters specifically requested that MSHA include such an exemption in the standard.

As discussed earlier, MSHA proposes that the container labeling requirements of this rule not apply to any hazardous waste as such term is defined by the Solid Waste Disposal Act, when subject to regulations issued under that Act by EPA.

F. Material Safety Data Sheets

In the proposal, an MSDS would serve as the primary vehicle for transmitting detailed hazard information to operators and employees. An MSDS is essentially a technical bulletin, generally two to four pages in length, which conveys information about a hazardous chemical, such as its chemical composition, chemical and physical characteristics, health and safety hazards, and precautions for safe handling and use.

As a result of the OSHA HCS, the use and availability of MSDSs have become widespread in general industry. Consequently, many operators voluntarily obtain and use MSDSs. Additionally, some States, that have their own hazard communication regulations requiring MSDSs, apply their standards to mining operations within that State. These State laws are often identical to the OSHA HCS and require the use and distribution of MSDSs. Many operators are currently supplying MSDSs with their product to downstream employers as a good business practice, or in response to demands from the buyers of their products, rather than in response to legal requirements.

A number of comments were received in response to MSHA's ANPRM indicating that the Agency should adopt MSDSs requirements identical to OSHA's. This appeared to be one of the least controversial issues in MSHA's ANPRM. Consequently, MSHA's provisions on MSDSs are substantially similar to those in OSHA's standard. A few commenters questioned the utility of MSDSs, stating that much of the technical information in MSDSs would be of little benefit to employees. MSHA believes that MSDSs are beneficial, particularly to operators in developing their employee training programs and in addressing the hazards of chemicals with which they are not familiar.

Properly completed MSDSs can serve as excellent, concise sources of information regarding the hazard of a chemical. Several commenters endorsed their use as a primary component of a hazard communication program and indicated they were currently using them in their employee training.

Under MSHA's proposal, the Agency would require operators to maintain a copy of MSDSs received with each hazardous chemical that enters mine property. If an operator does not have an MSDS for a chemical that has been labeled as hazardous, the operator would have to request one from the chemical manufacturer or supplier prior to using the chemical. If there are no hazards indicated on the label, the operator can assume the product is not hazardous and a data sheet would not have to be requested. MSHA believes that it is appropriate to require that operators request an MSDS when one is not received with a chemical labeled as hazardous because in some situations, such as operators receiving chemicals from retail distributors, the retail distributor under the OSHA HCS is only required to provide an MSDS upon request. In it 1988 proposed rule, OSHA proposed that if an operator does not have a commercial account with a retail distributor, that the retail distributor only be required to provide, upon request, the name, address, and telephone number of the chemical supplier from which the MSDS can be obtained. Commenters indicated that it is common practice for operators to request and receive MSDSs from chemical manufacturers and producers.

Under MSHA's proposal, operators would not be responsible for the accuracy of MSDSs they receive with shipments of hazardous chemicals. However, if MSDSs are received which are obviously inaccurate or incomplete, they should bring this to the attention of the party responsible for preparing the MSDSs.

MSHA expects operators to contact the Agency for assistance in obtaining accurate and complete MSDSs, if not provided by the chemical manufacturer or supplier when requested. MSHA anticipates referring such cases to OSHA to ensure that requested MSDSs are provided to operators.

OSHA's standard places the primary responsibility for preparing an MSDS on the manufacturer of the hazardous chemical. Consistent with this approach, MSHA's proposal requires operators to develop MSDS on hazardous chemicals which they produce. The rationale for this is that the chemical manufacturer or operator is most likely to have the best access to information about the product, and thus should be responsible for disseminating this information to users of the material.

Completed data sheets for various chemicals are available from a number of informational services. Operators using data sheets obtained from such sources, rather than developing them, still retain responsibility for their accuracy and completeness.

For operators developing MSDSs, specific requirements are included in the proposal for the information to be provided on the MSDS. Such information would have to be in English, and include the chemical's identify, as well as chemical and common names for the hazardous chemical if it is a single substance. Operators who have employees who cannot read English might also want to provide MSDSs in their language. However, a copy must be available in English as well.

Special provisions apply to the listing of ingredients for hazardous chemicals which are mixtures. For mixtures which have been tested as a whole, the operator would have to list the chemical and common names of those ingredients which contribute to known hazards, and the mixture's common name. For the chemicals not tested as a whole, the operator would have to list each component which comprises 1% or more, and which is itself a health hazard. Any chemical determined to be a carcinogen would have to be listed, if present in quantities of 0.1% or greater. Operators would also have to list ingredients present in concentrations of less than 1% (0.1% for carcinogens) if there is evidence that the permissible exposure limit may be exceeded, or if it could present a health hazard in those concentrations. Also, the chemical and common names of all ingredients which have been determined to present a physical hazard must be listed.

If the operator assumes the mixture has the same hazard as its hazardous components, such as when there is no test data on the mixture as a whole, the data sheets for the components would satisfy the requirement of the standard for a data sheet for the mixture. These MSDSs should be physically attached to one another and identified in a manner where they can be cross-referenced with the label.

If a hazardous chemical is present in the mixture in reportable quantities (0.1 percent for carcinogens, and 1 percent for other health hazards), it would have to be reported on the MSDS unless the mixture has been tested as a whole or unless the material is bound in such a way that employees cannot be exposed. If there really is *no* exposure (and the standard defines exposure as including *potential* as well as measurable exposure), either under normal conditions of use or in a foreseeable emergency, then the chemical would not be covered by the standard. In the case of mixtures that are liquid, this provision has to be considered very carefully. For example, if silica is present in a wet mixture it is possible that, if the mixture dries upon application, there is a potential for the silica to become airborne, and thus a potential for exposure. The presence of silica must be indicated on the MSDS for the liquid mixture in this situation. MSHA requests comments concerning the appropriateness of *de minimis* exemptions for mixtures that release only small amounts of hazardous chemicals.

In some situations, operators may have a mixture of chemicals in which the hazards and chemical ingredients are basically the same but the percentage of composition varies from mixture to mixture, for example coal with varying percentages of silica. In such cases, operators could prepare one MSDS to apply to all of these similar mixtures.

In addition to chemical identity information, the operator would have to provide the following information on the MSDS: information specified on the physical and chemical characteristics of the hazardous chemical; known acute and chronic health effects, and related health information; information concerning exposure limits; whether the chemical is considered to be a carcinogen by NTP, IARC, ACGIH, or MSHA; precautionary measures; applicable control measures; emergency and first aid procedures; the date the MSDS was prepared or last changed; and the name, address and telephone number of the party responsible for preparing the MSDS.

Operators would be free to develop MSDS in any format they wish (as long as it contains the required information) because the standard is performance-oriented. The MSDS format would not have to include spaces for listing information that does not apply to the chemicals for which it is being used.

OSHA has developed a voluntary MSDS form (form number OSHA–174), that operators may wish to sue. MSHA requests specific comment on whether the Agency should make OSHA's form available to operators or develop a similar one of MSHA's own.

In completing an MSDS, if an operator could not find the appropriate information to complete a specified category, then the MSDS would have to be marked to indicate that no information was found. In other words, the operator would not be permitted to leave blank spaces on the MSDS which would then be open to interpretations as to the significance of not having an entry in them. If the category is not applicable to the chemical involved, the space would be marked not applicable or N/A.

The proposal would require operators to ensure that MSDSs which they develop accurately reflect the scientific evidence which formed the basis for the determination that the chemical in question is hazardous. Appendix B provides sources of information that operators could use in researching the health hazards of chemicals which they produce and in finding the required information to accurately complete an MSDS. An inaccurate MSDS can be worse than no MSDS at all. The MSDS is the cornerstone to the entire standard. The label, employee training, and the written hazard communication program all reflect the information provided in the MSDS.

MSHA would also require that operators provide a copy of the MSDS, upon request, to downstream employers receiving hazardous chemicals produced by the operator. MSHA received a number of comments indicating that operators are already either voluntarily providing copies of MSDSs upon request to downstream employers or are doing so under state administered hazard communication laws. MSHA also proposes that labeling information be provided with the initial shipment of a hazardous chemical from an operator to a downstream employer. This labeling information would indicate to the downstream employer that the chemical is hazardous. The downstream employer could then request the MSDS if desired.

OSHA's standard requires that MSDSs be provided with the initial shipment to a downstream employer rather than upon request. MSHA is considering this as an alternative to providing MSDSs only on request and seeks specific comment on this issue. MSHA also requests comments on the utility of developing and providing MSDSs on minerals such as sand and gravel, crushed stone, or coal that are the only hazardous chemicals produced by many operators under MSHA's jurisdiction. Comment is also requested on whether MSHA should develop MSDSs for such common minerals and provide them on request to all interested parties as an alternative to operators providing this information.

Consistent with the OSHA, HCS, MSHA would require operators to provide employees with access, during each workshift while they are in their work areas, to the MSDSs maintained by the operator for hazardous chemicals to which the employees are exposed. In order for the MSDS to serve as a source of detailed information on hazards, it must be located close to workers and readily available to them during each workshift. OSHA provides the following exception to this requirement in their standard:

> Where employees must travel between workplaces during a workshift, i.e., their work is carried out at more than one geographical location, the material safety data sheets may be kept at a central location at the primary workplace facility. In this situation, the employer shall ensure that employees can immediately obtain the required information in an emergency.

Although this provision does provide some flexibility in locating the MSDS, it only applies when employees must travel between different geographically located workplaces during their workshift. MSHA received several comments that this approach was not flexible enough for the mining industry where environmental conditions might make it exceedingly difficult and impractical to maintain a copy of the MSDS in the employees' immediate work area, such as at the face in a coal mine or in work areas within a quarry or pit where there is no office or facility to keep the MSDS. One commenter suggested that an MSHA standard should require that MSDSs be readily accessible and the worker be trained on how to access the MSDSs rather than mandate a uniform location on mine property because of the unique conditions in a mine. Another commenter stated that they currently obtain MSDSs from chemical manufacturers before placing a purchase order for such chemicals; thereafter, the MSDSs are placed in catalogs which are indexed using a computer program by product name, manufacturer name, stock number and assigned MSDS number. MSDS catalogs are then made available for employee use at the warehouse issue window, the safety office, environmental office and purchasing department. The information is updated periodically (usually at a frequency of at least every 3 months) and pertains to both direct order and warehouse stock items.

In response to commenters, MSHA proposes to allow an operator, in areas where it is not practical to maintain the MSDS in the employee's work area, to keep them at a central location provided employees have access to them at some time during their workshift and the operator can ensure that employees can obtain required information immediately in an emergency. MSHA believes that this provision is practical, yet still effective in providing employees the hazard information they need. Specific comments are requested on this issue.

Under this proposal, operators would also be required to provide access to MSDSs to employees' designated representatives and to authorized representatives of the Secretary of Labor and the Secretary of Health and Human Services. Upon request, operators would also be required to provide, without cost, a copy of the MSDS to the employee and the employee's designated representative. These provisions are consistent with the access provisions in OSHA's standard and are supported by several commenters responding to MSHA's ANPRM.

Employers under OSHA are required to maintain MSDSs for at least 30 years, in accordance with OSHA's medical records access standard (29 CFR 1910.20). However, OSHA's access standard does offer the alternative of not retaining MSDSs for any specified period as long as some record of the chemicals' identity, where it was used and when it was used, is retained for at least 30 years. MSHA proposes that operators retain each MSDS required by the standard only as long as the chemical is present in the workplace. At least 3 months prior to the disposal of any required MSDS, operators would have to notify employees of their right to access the MSDS and of their plans to eliminate the chemical from their workplace and dispose of the MSDS. MSHA believes this will provide employees ample opportunity to obtain information on the hazardous chemical while relieving the operator from maintaining, for 30 years, a record of the identity of the chemical and the location of use.

As discussed earlier, MSHA proposes that the MSDS requirements of this rule not apply to any hazardous waste as such term is defined by the Solid Waste Disposal Act, when subject to regulations issued under that Act by EPA.

G. Employee Training

MSHA believes that employee training is critical to an effective hazard communication program—it is the forum in which hazard information can best be presented to result in workers taking protective action and thus decrease the possibility of occupationally related chemical source illnesses and injuries. Commenters expressed considerable support for the concept of employee training on hazardous chemicals and endorsed the need to include such

requirements in this standard. However, commenters differ in their opinions as to how this can best be accomplished.

The majority of commenters suggested that hazard communication training be incorporated into existing MSHA training programs under 30 CFR part 48 (Training and Retraining of Miners). A significant number of commenters suggested that the training not be limited to part 48 in order to allow flexibility in the HCS and to credit applicable part 48 training toward required training under part 46 (Hazard Communication). There were a few commenters who believe that current MSHA training regulations are adequate and new standards are not necessary.

Among the related training provisions in existing part 48 are ones requiring training on hazard recognition and avoidance, health and safety aspects of the tasks to which new miners will be assigned, health standards pertinent to such tasks, and warning labels. Annual retraining is also required under part 48 on the health provisions of the Mine Act and warning labels. The OSHA HCS, used as the basis for this rule, has more specific training requirements regarding hazardous chemicals, in addition to defining what a hazardous chemical is. MSHA anticipates that under the proposed HCS, the number and types of hazardous chemicals included in the training will increase beyond those which may currently be addressed under part 48. Current part 48 training programs would in most cases require revision and additional training if they are to be credited toward complying with the more specific hazard communication training requirements in this proposal. For example, part 48 does not currently require training for exposure to a new chemical hazard in the manner prescribed by the HCS, and this factor would have to be addressed. Nevertheless, the training in part 48 that involves hazard recognition and avoidance, health standards, and warning labels would be directly applicable to the hazard training that MSHA would require under part 46. Retraining would not be required if training under part 48 has already met the requirements of proposed HCS training.

After considering the comments received and the applicability of existing part 48 training requirements, MSHA believes that hazard communication can best be accomplished by establishing employee training requirements separate from part 48. This would allow operators the flexibility to either conduct their hazard communication training independent of part 48 or to modify their part 48 training by addressing the more specific hazard communication training requirements in this proposal.

Under this proposal, operators are required to train employees at the time they are initially assigned to work with a hazardous chemical. The intent of this provision to provide employees with information prior to exposure in order to prevent the occurrence of adverse health effects. This purpose cannot be met if training is delayed until a later date. Part 48 does not require such immediate training.

Additionally, training would have to be done whenever a new *chemical hazard* is introduced into the work area, not necessarily a new *chemical*. For example, if a new solvent is brought into the workplace and it has hazards similar to existing chemicals for which training has already been conducted, then no new training is required other than to inform the employees of the location or operation within their work area where the hazardous chemical will be used. The chemical's MSDS or container labeling would serve to identify the specific chemical hazards to the employee. If the newly introduced solvent is a suspected carcinogen, and there has never been a carcinogenic hazard in the workplace before, then new training for the particular carcinogen hazards would have to be conducted.

Specifically, under MSHA's proposal operators would be required to train employees on: (1) The requirements of the HCS; (2) operations or locations in the employees work areas where hazardous chemicals are present; (3) the location and availability of the written hazard communication program (including the required list of hazardous chemicals) and the MSDSs; (4) the chemical hazards in the employees work areas associated with nonroutine tasks, unlabeled pipes and conveyors containing hazardous chemicals, and unlabeled containers of raw material mined or milled; (5) methods and observations for detecting the presence or release of hazardous chemicals in the work area; (6) the physical and health hazards associated with hazardous chemicals in the work area; (7) the measures employees can take to protect themselves from hazardous chemicals; and (8) details of the operator's hazard communication program. MSHA intends to credit appropriate training conducted under part 48 toward operator training requirements under the MSHA HCS, provided that part 48 training is expanded to cover these specific elements and requirements.

Appendix B of this part provides a listing of informational sources that operators could consult to determine the specific hazards of chemicals they produce. The hazards of chemicals received by operators will be described on the MSDS for the chemical.

Several commenters indicated that they are already implementing the OSHA HCS training requirements in their MSHA training programs. In such cases, MSHA expects that operators would have to make relatively few changes to their training programs in order to comply with the MSHA HCS. The only significant difference between the MSHA HCS training provisions and OSHA's is that MSHA would require certification that training had been conducted. This certification is consistent with the certification requirements found in 30 CFR part 48.

The following are some of the minor differences between MSHA's proposed training requirements and those in OSHA's HCS. OSHA's HCS separates the provisions for providing information to employees from those requiring employee training. MSHA believes that for the purpose of educating employees on the hazards of chemicals, there is not a clear distinction between informational and training requirements. In order to simplify this portion of the rule, MSHA proposes to combine these separate requirements under one heading entitled "employee training." Only the separate headings in OSHA's rule would be eliminated. The provisions in the OSHA HCS that provide employees with specific information would be included in MSHA's proposal under the broader heading of "employee training".

Under OHSA's written hazard communication program requirements, there is a provision requiring employers to describe the methods they will use to inform employees of the hazards of nonroutine tasks and the hazards associated with chemicals contained in unlabeled pipes in their work areas. However, OHSA's standard does not include a provision under its employee information and training section specifically requiring that employees be informed of these hazards. MSHA believes it would be more appropriate to include this requirement in proposed § 46.7, employee training, rather than in proposed § 46.4, Written Hazard Communication Program. Additionally, MSHA has expanded this provision to require that operators also train employees on the hazards associated with chemicals transported on conveyors and with unlabeled containers of the raw material mined or milled.

Though it would not be required, MSHA strongly recommends that operators periodically review the information on hazardous chemicals with exposed employees. Additionally, due to the complexity and variety of the procedures for handling and using various hazardous chemicals, operators should review with employees the appropriate MSDS for any hazardous chemical with which they have not had recent experience before working with that chemical.

Under MSHA's proposed HCS, operators would have to certify in writing that the required initial training has been conducted. Operators would have to list the names of employees trained, the date of the initial training, and the signature of the person responsible for conducting the initial training. The operator could choose to use MSHA Form 5000–23, required under part 48, to satisfy the certification requirement of this section.

It has been suggested that the operator certify that employees have been trained in all MSDSs accompanying chemicals newly introduced into the work area and in all updated MSDSs for chemicals already in use. MSHA has not chosen to require the frequent recertification of employee training that this suggestion would entail. MSHA requests comments concerning whether certification of training is necessary in these situations.

The certification would have to be maintained by the operator as long as the employee is exposed to the hazardous chemical. The certification would be available at the mine site for examination by the employee, the employee's designated representative, and by any authorized representative of the Secretary of Labor.

Certification is an aid to the operator in tracking completed training and upcoming training for employees. Additionally, MSHA's 15 years of experience with training in the mining industry have demonstrated that certification of industrial training is essential because it provides documentation for the operator, employee, and MSHA that training has been conducted. Section 110(f) of the Mine Act imposes severe penalties on anyone who knowingly makes a false certification in any document maintained pursuant to the Act.

Certification may be of particular concern to independent contractors working at both MSHA and OSHA regulated operations. For example, if an employee of an independent contractor is exposed to the same chemical hazards at both an OSHA and MSHA site, MSHA could credit training given the employee at the OSHA site as meeting MSHA's requirements. This credit would be provided if contractor certified that the training had been conducted and that the training has met all the specific requirements under proposed § 46.7.

Training under the HCS is intended to be performance oriented. Its goal is to have employees know how to identify and protect themselves from hazards associated with chemicals in the workplace. If employees at a mine are exposed to a small number of hazardous chemicals, their training could be conducted specifically on each chemical. If employees at a mine are exposed to a large number of hazardous chemicals, training could be conducted by categories of hazards and by referring employees to the substance-specific information on the labels and MSDSs and the locations or operations within their work areas where such chemicals are used.

Giving an employee a data sheet to read would not satisfy the intent of the standard with regard to training. The training is to be a forum for explaining to employees not only the hazards of the chemicals in their work areas but also how to use the information generated in the operators hazard communication program. This could be accomplished in many ways (audiovisuals, classroom instruction and discussion, interactive video) and ideally should include an opportunity for employees to ask questions to ensure that they understand the information presented to them.

As a result of the OSHA HCS, various organizations have developed a variety of informational materials, training aids, and model training programs to assist industry in complying with the standard. Due to the similarity between the OSHA HCS and MSHA's proposal, operators should also be able to use much of this material to assist them in conducting their own employee training.

MSHA solicits comments on additional ways to simplify hazard communication training, especially for small operators and independent contractors, while retaining or improving the effectiveness of the training.

H. Trade Secrets

MSHA's proposal includes provisions that would permit employees and their designated representatives access to trade secrets. If a substance or mixture could be readily identified through reverse engineering, a trade secret claim would not be legitimate. MSHA believes that existence of laboratory evidence in this regard would be compelling. In addition, this proposal would permit health professionals such as physicians, industrial hygenists, and occupational health nurses access to trade secret information. The Agency specifically solicits comments concerning the appropriateness and effectiveness of this approach.

The *Restatement of Torts* § 757, comment b (1939), with modifications, was published by the American Law Institute (ALI) in 1939 as an "orderly statement of the general common law of the United States * * *." The *Restatement* indicates that there are at least six factors that are well accepted in common law as determining whether a trade secret claim is legitimate. The factors include:

(1) The extent to which the information is known outside of the business;

(2) The extent to which information is known by employees and others involved in the business;

(3) The extent of measures taken by the business to guard the secrecy of the information;

(4) The value of the information to the business and its competitors;

(5) The amount of effort and money expended in developing the information; and

(6) The ease or difficulty with which the information could be properly acquired or duplicated by others.

These factors would provide significant guidance to operators in order to comply with the standard and to MSHA personnel in determining the validity of trade secret claims. The discussion in the *Restatement* does not indicate that any one of these criteria is more important than the others. Operators would have the responsibility of carefully considering the criteria in the *Restatement* before claiming that information is protected under the standard. The Agency requests comments on whether the *Restatement* should be made an appendix to the rule as OSHA has done in its HCS.

MSHA expects that there would be few trade secret claims under this rule; the Agency believes that most operators produce single substances and are marketing their products by specific name and not under some unidentified proprietary name. Operators involved in chemically treating or processing their products are more likely to claim that identities of chemicals used in their process are trade secrets. The proposal would not require that information be disclosed for hazardous chemicals in small concentrations (less than 1 percent for health hazards in general.

less than 0.1 percent for carcinogens). The standard also would not require disclosure of the specific percentage of various chemicals in a mixture or details of the industrial process in which it is used. Many trade secrets involve these types of process and percentage information, rather than just the specific chemical identity. Additionally, if a chemical in a mixture is not hazardous, its disclosure would not be required.

Currently operators provide such chemical information on a voluntary basis only. For the first time, operators would have to provide this information in response to Agency regulation. The requirements of the OSHA HCS, combined with the increased desire of customers to receive full information on a purchased product, have caused many employers to reevaluate and limit their trade secret claims.

The proposal would permit operators to withhold specific chemical identity information if it is a bona fide trade secret. However, the standard would also require this information to be disclosed to health professionals under certain conditions of need and confidentiality. In medical emergencies, a treating physician or nurse would be entitled to receive the information immediately. After the emergency is abated, the holder of the trade secret could require the treating physician or nurse to sign a written statement of need and a confidentiality agreement, but the determination would be left to the health professional as to whether an emergency exists that necessitates disclosure.

In nonemergency situations, a health professional providing medical or other occupational health service to exposed employees would be entitled to the trade secret information under certain conditions, in addition to physicians, industrial hygienists, toxicologists, and epidemiologists. The request for the disclosure of trade secret information would have to be submitted in writing to the holder of the trade secret, specifying the occupational health need for the information, explaining why disclosure of the specific chemical identity is necessary and why other information would not allow the health professional to provide the necessary services, and describing the procedures that would be used to maintain the confidentiality of the information. The requestor would have to agree to keep the information confidential.

MSHA proposes to allow designated representatives access to trade secret chemical identities under the same conditions as health professionals. Consequently, employees and their designated representatives would have to submit written requests establishing a need-to-know basis for the information and be willing to sign a confidentiality agreement. "Designated representative" is defined in the proposal as any individual or organization to whom an employee gives written authorization to exercise a right of access to records. A representative of miners, under 30 CFR part 40, automatically would be considered a designated representative under this definition. While miners representatives would be given access to trade secret information, nothing in the standard is meant to restrict employees, whether they are organized or not, from appointing representatives of their choice to secure their rights under the standard and to help them effectively use the information obtained. MSHA does not believe that the designated representative access provision will weaken trade secret protection.

I. Effective Dates

MSHA believes that all operators can be in compliance with the provisions of this part within one year of its publication. Operators purchasing hazardous chemicals from the general industry should already be receiving MSDSs and labels for them. As stated in the comments received on this rulemaking, many operators indicated that they are already complying with the OSHA HCS. Subsequently, due to the similarity between MSHA's and OSHA's standards, these operators could be in compliance with MSHA's rule well before the effective date.

One year would allow time for operators to determine what hazardous chemicals are on mine property, request MSDSs and labels for hazardous chemicals received without these, label containers of hazardous chemicals on mine property, develop a written hazard communication program, and train employees exposed to the hazardous chemicals.

This time frame also recognizes that there is a variety of available reference materials, such as generic written hazard communication programs developed by numerous organizations subsequent to the OSHA HCS, which would also be applicable to MSHA's standard and helpful to operators in complying with MSHA's rule.

MSHA requests specific comments as to the appropriateness of this date.

J. Appendices

The proposed MSHA HCS contains four appendices. Appendices A and B are practically identical to those found in the OSHA HCS. Appendix C, although similar to that proposed by OSHA in its August 1988 proposal, has been revised to address the specific differences in MSHA's rule.

Appendix A, which is mandatory, provides further definitions and explanations of the scope of health hazards covered by this part. It is intended to ensure that the appropriate health hazard information is conveyed to employees.

Advisory appendix B is intended to assist operators in determining the specific health and physical hazards of a particular chemical by providing a comprehensive list of sources that could be referred to find such information.

Advisory appendix C is included to provide additional guidance to operators complying with the HCS. This appendix suggests the steps an operator should follow to achieve compliance and provides some information regarding how MSHA will be enforcing the requirements of the HCS. This should assist operators in designing and implementing an effective program.

MSHA requests comments on the utility of the appendices in general and the utility of the appendices to small operators in particular.

K. Deletions.

MSHA is proposing to delete existing metal/nonmetal standards 30 CFR 56.20012 and 57.20012, which require that toxic materials used in conjunction with or discarded from mining or milling of a product be plainly marked or labeled so as to positively identify the nature of the hazard and the protective action required. MSHA believes that the proposed HCS addresses this issue in a more comprehensive and protective manner. Under the proposed standard, containers of hazardous chemicals are required to be labeled with the chemicals' identity and an appropriate hazard warning. Although the hazard warning may not indicate the protective action required, the chemicals MSDS would include information on applicable precautions for safe handling and use and applicable control measures including appropriate personal protective equipment. Additionally, employees are required to receive training on such protective measures. Under the proposal, operators are also to ensure that employees can immediately obtain the information contained on MSDSs.

MSHA is also proposing to delete the labeling requirements from 30 CFR 56.16004 and 57.16004 (applicable to metal and nonmetal mines) and 30 CFR 77.208(c) (applicable to coal mines). These standards currently require that hazardous materials be stored in containers of a type approved for such use by recognized agencies and that such containers be labeled appropriately. MSHA believes the proposed HCS more comprehensively addresses the labeling of containers. As revised, the standards would still require that hazardous materials be stored in an appropriate container, an issue that is not covered under the scope of the MSHA HCS.

III. Executive Order 12291 and the Regulatory Flexibility Act

Executive Order 12291 requires that a Regulatory Impact Analysis (RIA) be performed for any rule that would have a $100 million or more annual effect on the economy or a major increase in costs or prices for consumers or individual industries. MSHA has determined that this proposed rule would not result in these effects. In order to justify this determination, MSHA has provided a preliminary RIA (PRIA) for this proposed rule. This PRIA is available from the MSHA upon request and is summarized below.

A. Population-at-Risk

MSHA has determined that hazardous chemicals are found in all mining environments. Thus, all mining operations and employees working at mines would be affected by the proposed rule. MSHA data incdicate that the population-at-risk involves about 350,000 employees of whom about 151,000 are coal miners, 170,000 are meta/nonmetal miners, and 29,000 are employees of independent contractors. The number of mines and employers affected would be approximately 4,900 coal mines, 11,500 metal/nonmetal mines, and 3,300 independent contractors. Some of these mining operations have developed hazard communication programs due to requirements of individual State employee right-to-know laws. Many of these State laws provide much of the protection for mine employees contained in the proposed MSHA rule. MSHA estimated that about 25 percent of the coal miners and 33 percent of the metal/nonmetal miners are affected by these individual State employee right-to-know laws. In addition, when employees of independent contractors work at sites other than mines, these contractors and their employees are covered by the OSHA HCS. As most independent contractors perform such work as construction of buildings on mine sites, dam construction, etc., that also occurs at sites other than mines, MSHA estimated that 80 percent of these contractors and their employees are covered at some point by the OSHA HCS and would benefit from training received under that standard.

B. Benefits

Rather than directly control exposure levels in the workplace, MSHA's HCS is designed to enhance operator and employee awareness of the safety and health hazards associated with chemical substances. This hazard recognition should produce responses by operators and employees that would translate into a reduced incidence of chemically related occupational injuries and illnesses. The proposed standard will also provide benefits from the avoidance of multiple and redundant searches for information on chemical ingredients and hazards that are incurred by operators. This section highlights these expected benefits, which are described in greater detail in Chapter III of the PRIA.

The primary benefits of the proposed rule are the expected prevention, due to operators and employees following the provisions of the proposed rule, of employee fatalities, acute injuries and illnesses, chronic disabling illnesses, and cancer cases and deaths.

This rule is expected to increase employee use of personal protective devices and other precautionary measures when handling hazardous substances as well as improve work practices. Improved hazard communication is expected to generate early treatment of chronic disease and reduce future health care costs.

As there is no definitive data source that directly provides the numbers of occupational fatalities, injuries, and illnesses due to exposures to hazardous chemicals, MSHA has estimated the number of these cases. For example, although the current number of acute injuries due to chemical sources can be reliably estimated from data required to be submitted to MSHA by operators under 30 CFR part 50, this data source likely underreports chronic occupational illness cases. In addition, OSHA suggested in its Hazard Communication RIA that chronic occupational illness may be underreported by as much as a factor of 50 because of variables such as latency periods which obscure the connection between occupational exposure and the onset of disability. MSHA similarly has adjusted the chemical source illness data to account for such underreporting. Finally, there is considerable scientific controversy over the specific fraction of cancers associated with occupational exposure to chemicals. Estimates of the percentage of cancers that are occupationally related range from 1 percent to 20 percent. In light of this controversy and because can be multiple casual agents of carcinogenicity, MSHA has used an estimate of 5 percent of all cancers as being occupationally related.

A second source of difficulty involves assessing the likely risk reduction benefits resulting from an improved flow of information as distinct from measuring the benefits of lowered exposures. With current information, it is simply not possible to estimate precise impact on risk, although the OSHA Hazard Communication RIA reported significant changes in various indicators of health improvement as a consequence of implementation of some component of a hazard communication program. MSHA has used the best available evidence to base its estimates of risk reduction.

OSHA had estimated that, in comparison with the minimal employee training and industry hazard communication programs then existing, 20 percent of the chemically related acute injuries and illnesses could be prevented by the proposed HCS, that the rate of chronic illness is expected to decrease by 1 percent for each year up to an annual average of 20 percent in the 20th year, and that the rate of cancer cases and deaths from cancer will decline by 2 percent a year starting at the 10th year to an annual average of 20 percent in the 20th year.

The current mining community situation, however, differs from the situation that existed in the industries regulated by OSHA when OSHA performed its analyses. Unlike OSHA, MSHA has existing training standards in its 30 CFR part 48 that require employees to be trained about the health hazards in mining, and many mines have established hazard communication programs. On that basis, MSHA estimates that the expected reduction in these illnesses and fatalities would be three-quarters of those expected by OSHA. That is, 15 percent of the chemically related acute injuries and illnesses and, in the 20th year, 15 percent of the chronic illnesses, cancer cases, and deaths from cancer are expected to be prevented by compliance with the proposed MSHA rule.

Finally, all of the assumptions and possible sources of data error have been carefully analyzed in terms of their influence on the benefit estimates. Chapter III of the PRIA contains a detailed description of the data limitations and the procedures used to estimate these potential benefits.

On that basis, MSHA estimated that compliance with the proposed rule is

expected to prevent about 75 annual acute injuries and illnesses of which 50 would be lost workday injuries and illnesses involving 1,750 lost workdays and 25 would be nonlost workday injuries. The proposed rule is also expected to prevent about 200 chronic disabling illnesses during the next 20 years and, starting in the 20th year, is expected to prevent about 15 chronic disabling illnesses. In addition, during the next 20 years the proposed rule is expected to prevent, as an upper-bound estimate, about 200 cancer cases of which about 100 would have resulted in death. Finally, starting in the 20th year, the proposed rule is expected to prevent, as an upper-bound estimate, about 40 annual cancer cases of which about 20 would have resulted in death. MSHA cautions that these are inexact estimates; the cancer estimates are particularly uncertain and, to the extent that cancer risks in mines have been reduced in recent years, may be overestimates.

C. Compliance Costs

The compliance costs are estimated from the baseline of current industry practices. These current industry practices include the expected costs for mining operations to comply with all State employee right-to-know laws that affect mining operations. On that basis, the five general areas of the proposed rule that would impose costs of compliance are: Preparation of a written hazard communication program (including a hazard determination of all chemicals); employee training; development, maintenance and distribution of MSDSs; container labeling; and provision of some trade secrets information. MSHA estimates that the total first-year compliance cost with the proposed MSHA rule will be about $32.561 million, of which $14.432 million will be spent by coal mines, $16.638 million will be spent by metal/nonmetal mines and $1.492 million will be spent by independent contractors.

On an annualized basis, the costs to comply with the proposed MSHA HCS will be about $10.324 million, of which $3.076 million will be spent by coal mine operators, $5.756 million will be spent by metal/nonmetal mine operators, and $1.492 million will be spent by independent contractors.

With respect to the approximate costs of individual provisions of the proposed rule, MSHA estimates that the written hazard communication program (including hazard determination) will have an annualized cost of $812,000, the employee training will have an annualized cost of $7.001 million; the maintenance of MSDSs will have an annualized cost of $674,000; the development and distribution of MSDSs to downstream employers upon request will have an annualized cost of $1.030 million; labeling containers of hazardous chemicals in the mine will have an annualized cost of $380,000; providing labeling information with the initial shipment of a hazardous chemical to a downstream employer will have an annualized cost of $423,000; and providing access to certain trade secrets information will have an annualized cost of $23,000.

MSHA also estimated an average cost per mine based on commodity mined and mine size. Using 20 miners to distinguish large mines from small mines, MSHA estimated that the average annualized cost per mine will be about $1,750 for a large coal mine, $375 for a small coal mine, $2,420 for a large metal/nonmetal mine, and $440 for a small metal/nonmetal mine.

On a per-employee basis, the average annualized cost will be about $22 in large coal mines; $49 in small coal mines, $35 in large metal/nonmetal mines, and $78 in small metal/nonmetal mines.

D. Economic Impacts

Using the 1989 U.S. Industrial Outlook data, coal mining generated a total value of shipments of $21.355 billion and metal/nonmetal mining generated a total value of shipments of $29.200 billion in 1988. As approximately 25 percent of the coal mines and 33 percent of the metal/nonmetal mines are already partially affected by State and local employee right-to-know laws, the annualized cost of the proposed MSHA rule will be about 0.02 percent of the value of coal shipments and about 0.03 percent of the value of metal/nonmetal shipments. On the basis of these relatively small compliance costs in relation to revenue, MSHA believes that its proposed HCS will have little economic impact on typical mining operations.

E. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980, MSHA analyzed the impact of the proposal upon small mining operations. MSHA has preliminarily determined that the proposed HCS will not have a significant adverse impact upon a substantial number of small mining operations. Although the per-employee cost is higher in small mines than it is in large mines, the total cost per employee is not substantial. That lack of substantial cost per employee, in conjunction with the fact that similar hazards from chemicals exist in both large and small mining operations, indicates that regulatory relief is not warranted for small mining operations.

IV. Paperwork Reduction Act

This proposed rule contains no information collection requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 30 CFR Parts 46, 56, 57, and 77

Mine safety and health, Hazard communication, Hazardous chemicals, Hazard determination, Labeling, Material safety data sheets, Employee training

Accordingly, it is proposed to amend chapter I of title 30, Code of Federal Regulations as set forth below.

Dated: October 26, 1990.

John B. Howerton,

Deputy Assistant Secretary for Mine Safety and Health.

PART 56—[AMENDED]

A. It is proposed to amend 30 CFR part 56 as follows:

1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. Section 56.16004 is revised to read as follows:

§ 56.16004 Containers for hazardous materials.

Hazardous materials shall be stored in containers of a type approved for such use by recognized agencies.

§ 56.20012 [Removed]

3. Section 56.20012 is removed.

PART 57—[AMENDED]

B. It is proposed to amend 30 CFR part 57 as follows:

1. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. Section 57.16004 is revised to read as follows:

§ 57.16004 Containers for hazardous materials.

Hazardous materials shall be stored in containers of a type approved for such use by recognized agencies.

§ 57.20012 [Removed]

3. Section 57.20012 is removed.

PART 77—[AMENDED]

C. It is proposed to amend 30 CFR part 77 as follows:

1. The authority citation for part 77 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. Paragraph (c) of § 77.206 is revised to read as follows:

§ 77.206 Storage of materials.

* * * * *

(c) Hazardous materials shall be stored in containers of a type approved for such use by recognized agencies.

* * * * *

D. It is proposed to add a new part 46 to subchapter G in chapter I, title 30 of the Code of Federal Regulations to read as follows:

PART 46—HAZARD COMMUNICATION

Subpart A—General Provisions

Sec.
46.1 Scope and application.
46.2 Definitions.

Subpart B—Performance Requirements

46.3 Hazard determination
46.4 Written hazard communication program.
46.5 Labels and other forms of warning.
46.6 Material safety data sheets. (MSDSs).
46.7 Employee training.
46.8 Trade secrets.
46.9 Effective date.

Appendix A to section 46.2—Mandatory—Health Hazard Definitions

Appendix B to Section 46.3—Advisory—Information Sources

Appendix C—Advisory—Guidelines for Operator Compliance

Authority: 30 U.S.C. 811.

Subpart A—General

§ 46.1 Scope and application

(a) This part applies to all operators who produce or use hazardous chemicals in their workplaces. Operators must establish a hazard communication program to transmit information on the hazards of chemicals to exposed employees by means of labels on containers, material safety data sheets (MSDSs), and employee training. This action is intended to reduce the incidence of chemically related occupational illnesses and injuries in the mining industry.

(b) This part applies to any chemical which is known to be present in the workplace in such a manner that employees are exposed under normal conditions of use or in a foreseeable emergency.

(c) This part does not require operators to label containers of the following chemicals:

(1) The raw material being mined or milled while on mine property, regardless of whether it is determined to be a hazardous chemical under this part. Containers shall be labeled if they hold a mixture of the raw material and another hazardous chemical, and the mixture is determined to be hazardous under § 46.3(c) of this part.

(2) Any pesticide as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136), when subject to the labeling requirements of that Act and the labeling regulations issued under that Act by the Environmental Protection Agency.

(3) Any food, food additive, or color additive as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301) and regulations issued under that Act, when subject to the labeling requirements under that Act by the Food and Drug Administration or the Department of Agriculture.

(4) Any consumer product or hazardous substance as defined in the Consumer Product Safety Act (15 U.S.C. 2051) and Federal Hazardous Substances Act (15 U.S.C. 1261) respectively, when subject to a consumer product safety standard or labeling requirement of those Acts, or regulations issued under those Acts by the Consumer Product Safety Commission.

(5) Portable containers into which hazardous chemicals are transferred from labeled containers, and which are intended only for the immediate use of the employee who performs the transfer.

(d) This part does not require operators to label containers of, or to meet the MSDS requirements in § 46.6, for any hazardous waste as such term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901 *et seq.*), when subject to regulations issued under that Act by the Environmental Protection Agency.

(e) This part does not apply to the following:

(1) Wood or wood products which do not release or otherwise result in exposure to a hazardous chemical under normal conditions or use.

(2) Articles.

(3) Foods, drinks, drugs, cosmetics, tobacco or tobacco products intended for personal consumption or use by employees while in the workplace.

(4) Any consumer product or hazardous substance, as defined in the Consumer Product Safety Act (15 U.S.C. 2051) and Federal Hazardous Substance Act (15 U.S.C. 1261), respectively, when subject to a consumer product safety standard or labeling requirement of those Acts, or regulations issued under those Acts by the Consumer Product Safety Commission, where the operator can demonstrate that it is used in the workplace in the same manner as in normal consumer use and the use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers.

(5) Nuisance particulates that do not pose any covered physical or health hazard.

(6) Ionizing or nonionizing radiation.

(7) Biological hazards.

§ 46.2 Definitions.

The following definitions apply in this part.

Article. A manufactured item other than a fluid or a particle that—

(a) Is formed to a specific shape or design during manufacture;

(b) Has end-use functions dependent upon its shape or design; and

(c) Under normal conditions of use, releases no more than very small quantities (that is, minute or trace amounts) of a hazardous chemical and does not pose a physical or health risk to employees.

Access. The right to examine and copy records.

Chemical. Any element, chemical compound, or mixture of these.

Chemical name. The scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rule of nomenclature, or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.

Combustible liquid. Liquids having a flash point at or above 100 °F (37.8 °C). They are divided into the following classes:

(a) Class II liquids—those having flash points at or above 100 °F (37.8 °C) and below 140 °F (60 °C).

(b) Class III A liquids—those having flash points at or above 140 °F (60 °C) and below 200 °F (93.4 °C).

(c) Class III B liquids—those having flash points at or above 200 °F (93.4 °C).

Common name. Any designation or identification such as a code name, code number, trade name, brand name, or generic name used to identify a chemical other than by its chemical name.

Compressed gas. (a) A contained gas or mixture of gases having an absolute pressure exceeding—

(1) 40 psi at 70 °F (21.1 °C); or

(2) 104 psi at 130 °F (54.4 °C)

regardless of the pressure at 70 °F (21.1 °C).

(b) A liquid having a vapor pressure exceeding 40 psi at 100 °F (37.8 °C) as determined by ASTM D–323–72.

Container. Any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like that contains a hazardous chemical. Pipes or piping systems, conveyors, and engines, fuel tanks, or other operating systems or parts in a vehicle are not considered to be containers.

Designated representatives. Any individual or organization to whom an employee gives written authorization to exercise a right of access to records, or a representative of miners under 30 CFR part 40.

Employee. Any individual working in a mine who may be exposed to a hazardous chemical. Individuals such as office workers who encounter hazardous chemicals only in non-routine instances are not covered.

Employer. A person engaged in a business where chemicals are either used, distributed, or are produced for use or distribution, including a contractor or subcontractor.

Explosive. A chemical that causes a sudden release of pressure, gas, and heat when subjected to shock, pressure, or high temperature and is classified as an explosive in 49 CFR 173.53, 173.88, or 173.100, or as a blasting agent in 49 CFR 173.114(a).

Exposed. Being subjected, or potentially subjected, to a hazardous chemical in the course of employment through any route of entry, such as inhalation, ingestion, skin contact or absorption, during normal operating conditions or in a foreseeable emergency.

Flammable. A chemical that falls into one of the following categories:

(a) An aerosol that, when tested by the method described in 16 CFR 1500.45, yields a flame projection exceeding 18 inches at full valve opening, or a flashback (a flame extending back to the valve) at any degree of valve opening.

(b) A gas that will burn at ambient temperature and pressure in the normal concentration of oxygen in the air.

(c) A Class I liquid—liquid having a flash point below 100 °F (37.8 °C), a vapor pressure not exceeding 40 psi (absolute) at 100 °F (37.8 °C).

(d) A solid, other than a blasting agent or explosive as classified in 49 CFR 173.53, 173.88, 173.100 or 173.114(a), that is liable to cause fire through friction, absorption of moisture, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious hazard. A chemical shall be considered to be a flammable solid if, when tested by the method described in 16 CFR 1500.44, it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

Flash point. The minimum temperature at which a liquid gives off a vapor in sufficient concentration to form an ignitible mixture with air near the surface of the liquid.

Foreseeable emergency. Any potential occurrence for which operators would normally plan such as equipment failure, rupture or spill of containers, or failure of control equipment that could result in an uncontrolled release of a hazardous chemical into the workplace.

Hazardous chemical. Any chemical that is a physical hazard or a health hazard.

Hazardous waste. Any chemical regulated by the Environmental Protection Agency as a hazardous waste, as such term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901 *et seq.*).

Hazard warning. Any words, pictures, or symbols appearing on a label or other appropriate forms of warning, that convey the specific physical and health hazards of the chemical in the container, including target organ effects. (See the definitions for "physical hazard" and "health hazard" for examples of the hazards that must be conveyed.)

Health hazard. A chemical for which acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which may be carcinogenic, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. Appendix A (Mandatory) provides further definitions and explanations of the scope of health hazards covered by this section. Appendix B (Advisory) describes various sources of information on the health hazards of chemicals.

Identity. A chemical's common or chemical name. The identity used must permit cross-references to be made among the required list of hazardous chemicals, the label, and the MSDS.

Immediate use. Use of a hazardous chemical during the work shift in which it was transferred from a labeled container, by the employee performing the transfer.

Label. Any written, printed, or graphic material, displayed on or affixed to containers of hazardous chemicals.

Material safety data sheet (MSDS). Written or printed material concerning a hazardous chemical which an operator prepares under the requirements in § 46.6 of this part, or which an employer subject to the Occupational Safety and Health Act prepares under the requirements of 29 CFR 1910.1200.

Mixture. Any combination of two or more chemicals which is not the result of a chemical reaction.

Operator. Any owner, lessee, or other person who operates or supervises a mine, or any independent contractor performing services or construction at a mine.

Organic peroxide. An explosive, shock sensitive compound. An oxide that contains a high proportion of oxygen-superoxide.

Oxidizer. A chemical other than a blasting agent or explosive as classified in 49 CFR 173.53, 173.88, 173.100 or 173.114(a), that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases.

Physical hazard. A chemical which is a combustible liquid, a compressed gas, an explosive, flammable, an organic peroxide, an oxidizer, a pyrophoric, unstable (reactive) or water-reactive. Appendix B lists some information sources that can be used in determining whether a chemical is a physical hazard.

Produce. To manufacture, process, formulate, or repackage.

Pyrophoric. A chemical that will ignite spontaneously in air at a temperature of 130 °F (54.4 °C) or below.

Raw material. A mineral, or combination of minerals, that is extracted from natural deposits by mining or is upgraded through milling. The term applies to the ore and valuable minerals extracted, as well as to the worthless material, gangue, or overburden removed during the mining or milling process.

Specific chemical identity. The chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

Trade secret. Any confidential formula, pattern, process, device, information, or compilation of information that is used by the operator and that gives the operator an opportunity to obtain an advantage over competitors who do not know or use it.

Unstable (reactive). A chemical which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or become self-reactive under conditions of shock, pressure, or temperature.

Use. To package, handle, react, or transfer.

Water-reactive. A chemical that reacts with water to release a gas that is either flammable or a health hazard.

Work area. A room or defined space in a workplace where hazardous chemicals are produced or used and where employees are present.

Workplace. A mine, establishment, job site, or project at one geographical location containing one or more work areas.

Subpart B—Performance Requirements

§ 46.3 Hazard determination.

(a) Operators who produce chemicals shall determine the chemicals' hazards based on—

(1) Available evidence concerning the chemicals' physical hazards; and

(2) The following sources for establishing for hazard communication purposes, that a chemical listed in them is a health hazard:

(i) MSHA standards in 30 CFR parts 56, 57, 70, 71, and 75.

(ii) American Conference of Governmental Industrial Hygienists (ACGIH), "Threshold Limit Values and Biological Exposure Indices" (latest edition).

(iii) National Toxicology Program (NTP), Annual Report on Carcinogens (latest edition).

(iv) International Agency for Research on Cancer (IARC), Supplement 7, "Overall Evaluations of Carcinogenicity—An Updating of IARC Monographs Volumes 1 to 42," or in any subsequent IARC Monographs or Supplements.

(b) Operators who receive chemicals shall determine their hazards based on the chemicals' material safety data sheets and container labels, except that the procedures in paragraph (a) of this section shall be followed for hazardous waste received by operators when a material safety data sheet cannot be obtained.

(c) Operators evaluating chemicals shall determine the hazards of mixtures of chemicals as follows:

(1) From the results of testing the mixture as a whole.

(2) If not tested as a whole, the mixture shall be assumed to pose the same health hazards as the components that comprise 1 percent (by weight or volume) or greater of the mixture, except that the mixture shall be assumed to present a carcinogenic hazard if it contains a component, in concentrations of 0.1 percent or greater, that is considered to be carcinogenic under paragraph (a) of this section.

(3) If the operator has evidence to indicate that a component present in the mixture, in concentrations of less than 1 percent (or in the case of chemicals considered to be carcinogenic under paragraph (a) of this section, less than 0.1 percent), could be released in concentrations that would exceed an established MSHA permissible exposure limit or ACGIH Threshold Limit Value, or could present a health risk to employees in those concentrations, the mixture shall be assumed to present the same hazard.

(4) If not tested as a whole, the operator shall use whatever scientifically valid evidence is available to determine the mixture's physical hazard.

§ 46.4 Written hazard communication program.

(a) Operators shall develop, implement, and maintain a written hazard communication program which describes how the requirements are met for § 46.3, hazard determination; § 46.5, labels and other forms of warning; § 46.6, material safety data sheets (MSDSs); and § 46.7, employee training. This program must also include, in writing, a list of the hazardous chemicals known to be present using an identity that permits cross-references to be made among a chemical's label and the MSDS. This list may be compiled for the mine as a whole or for individual work areas.

(b) When there is more than one operator at a mine—for example, where there are independent contractors performing services or construction at a mine—any operator who produces or uses hazardous chemicals in such a way that the employee of other operators on the mine property are exposed shall include the following information in the written hazard communication program:

(1) The methods that will be used to provide the other operators with access to MSDSs and information on hazardous chemicals to which their employees are exposed while working at the mine.

(2) The methods that will be used to inform the other operators of any precautionary measures that need to be taken to protect employees during the workplace's normal operating conditions and in foreseeable emergencies.

(3) The methods that will be used to inform the other operators of the labeling systems used on containers of hazardous chemicals to which their employees are exposed while working at the mine.

(c) Upon request, the operator shall provide access to the written hazard communication program to employees, their designated representatives, and authorized representatives of the Secretary of Labor and Secretary of Health and Human Services.

(d) Upon request, a copy of the written hazard communication program shall be provided without cost to employees and their designated representatives.

(e) The operator shall retain a written hazard communication program, as required by this section, as long as a hazardous chemical is known to be present in the workplace in such a manner that employees are exposed under normal conditions of use or in a foreseeable emergency.

§ 46.5 Labels and other forms of warning.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, the operator shall ensure that each container of hazardous chemical in the workplace is labeled, tagged, or marked with the following information:

(1) The identity of the hazardous chemical contained.

(2) Appropriate hazard warnings. Operators are not responsible for inaccurate information on a label which they did not prepare and have accepted in good faith from the chemical manufacturer or supplier.

(b)(1) The operator may use signs, placards, process sheets, batch tickets, operating procedures, or other such written materials instead of affixing labels to individual stationary process containers, provided—

(i) The written materials identify the containers to which such information applies and conveys the information required by this section;

(ii) Employees have immediate access to the written materials while in their work area throughout each work shift; and

(iii) The employee's designated representative and authorized representatives of the Secretary of Labor and the Secretary of Health and Human Services have access to this written material.

(2) Upon request, the operator shall provide a copy of the written materials, without cost, to employees and their designated representatives.

(c) Operators are not required to label containers of the following chemicals:

(1) The raw material being mined or milled, while on mine property, regardless of whether it is a hazardous chemical. However, containers shall be labeled in accordance with paragraph (a) or (b) of this section, if they hold a mixture of the raw material and another hazardous chemical, and the mixture is determined to be hazardous under § 46.3(c) of this part.

(2) Any pesticide as such term is defined in the Federal Insecticide,

Fungicide, and Rodenticide Act (7 U.S.C. 136), when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Environmental Protection Agency.

(3) Any food, food additive, or color additive, as such terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301) and regulations issued under that Act, when subject to the labeling requirements under that Act by the Food and Drug Administration or the Department of Agriculture.

(4) Any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 2051) and Federal Hazardous Substances Act (15 U.S.C. 1261), respectively, when subject to a consumer product safety standard or labeling requirement of those Acts, or regulations issued under those Acts by the Consumer Product Safety Commission.

(5) Hazardous chemicals that are in portable containers, having been transferred from labeled containers and intended only for the immediate use of the employee who performs the transfer.

(6) Any hazardous waste as such term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901 *et seq.*), when subject to regulations issued under that Act by the Environmental Protection Agency.

(d) If the hazardous chemical is required to be labeled by MSHA in a substance-specific standard, the operator shall ensure that the label or other forms of warning are in accordance with the requirements of that standard.

(e) The operator shall not remove or deface existing labels on incoming containers of hazardous chemicals unless the container is immediately marked with the required information.

(f) If an operator becomes informed of any significant changes concerning the hazards of a chemical, this new information shall be incorporated as appropriate into a new label within three months.

(g) The operator shall ensure that labels or other forms of warning are legible, in English, and prominently displayed on the container, or readily available in the work area throughout each work shift. Operators who have employees who cannot read English may add information to the label in the employee's language, provided the information is also presented in English.

(h) Operators shall provide a copy of the labeling information required under § 46.5(a) of this part, with the initial shipment of a hazardous chemical to an employer. If an operator becomes informed of any significant changes concerning the hazards of a chemical, this new information shall be incorporated as appropriate into a new label within three months and shall be provided with the next shipment of the chemical to the employer. Operators shall also provide their name and address or the name and address of a responsible party who can provide additional information on the hazardous chemical. This labeling information may be included with the chemical's shipping papers rather than posted on the hazardous chemical's container.

§ 46.6 Material safety data sheets (MSDSs).

(a) Operators shall maintain the MSDS received with each hazardous chemical brought onto mine property as long as the chemical is present in the workplace.

(b) If an operator does not receive an MSDS with a chemical that is labeled as being hazardous, the operator shall request one from the chemical manufacturer or supplier before the chemical is used.

(c) Operators shall develop an MSDS for each hazardous chemical they produce. Each MSDS developed by the operator shall be in English and include at least the following information:

(1) The identity used on the label, and, except as provided for in § 46.6 of this part on trade secrets—

(i) If the hazardous chemical is a single substance, its chemical and common name;

(ii) If the hazardous chemical is a mixture that has been tested as a whole to determine its hazards, the chemical and common names of the ingredients which contribute to known hazards, and the common name of the mixture; or,

(iii) If the hazardous chemical is a mixture that has not been tested as a whole—

(A) The chemical and common names of all ingredients that have been determined to be health hazards, and that comprise one percent or greater of the composition, except that carcinogens under § 46.3(a) of this part shall be listed if the concentrations are 0.1 percent or greater;

(B) The chemical and common names of all ingredients that have been determined to be health hazards, and which comprise less than one percent (0.1 percent for carcinogens under § 46.3(a) of this part) of the mixture, if there is evidence that the ingredients could be released from the mixture in concentrations that would exceed an established MSHA permissible exposure limit, ACGIH Threshold Limit Value, or could present a health hazard to employees; and,

(C) The chemical and common names of all ingredients which have been determined to present a physical hazard when present in the mixture.

(2) The physical and chemical characteristics of the hazardous chemical (such as vapor pressure, flash point, etc.).

(3) The physical hazards of the hazardous chemical, including the potential for fire, explosion, and reactivity.

(4) The health hazards of the hazardous chemical, including signs and symptoms of exposure, and any medical conditions which are generally recognized as being aggravated by exposure to the chemical.

(5) The primary routes of entry,

(6) The MSHA permissible exposure limit, ACGIH Threshold Limit Value, and any other exposure limit used or recommended by the preparer of the MSDS, where available.

(7) Whether the chemical is listed as a carcinogen or potential carcinogen in the sources specified in § 46.3(a) of this part.

(8) Applicable precautions for safe handling and use including appropriate hygienic practices, protective measures during repair and maintenance of contaminated equipment, and procedures for clean-up of spills and leaks.

(9) Applicable control measures, such as appropriate engineering controls, work practices, or personal protective equipment.

(10) Emergency and first aid procedures.

(11) The date of preparation of the MSDA or the last change to it.

(12) The name, address and telephone number of the operator or responsible party preparing the MSDS, who can provide additional information on the hazardous chemical and appropriate emergency procedures.

(d) If no applicable information is found for any given category on the MSDS, the operators preparing the MSDS shall mark it to indicate that no applicable information was found.

(e) Where complex mixtures have similar hazards and contents, such as the chemical ingredients are essentially the same but the specific composition varies from mixture to mixture, one MSDS may be prepared to apply to all of these similar mixtures.

(f) MSDSs may be kept in any form and may be designed to cover groups of hazardous chemicals in a work area where it may be more appropriate to address the hazards of a process rather than individual hazardous chemicals. However, the operator shall ensure that in all cases the required information is provided for each hazardous chemical.

(g) Operators developing MSDSs shall ensure that the information recorded accurately reflects the chemicals' hazards. If the operator who developed an MSDS becomes aware of any new and significant information regarding the hazards of a chemical, or ways to protect against the hazards, this new inforamation shall be added to the MSDS within three months.

(h) Operators shall provide employers, upon request, with a copy of the MSDS for each hazardous chemical they ship to an employer.

(i) Operators shall provide employees with access, while in their work area during each workshift, to MSDSs for the hazardous chemicals to which they are exposed.

(j) In areas or operations where it is not practical to maintain the MSDSs in the work area of the employees, the MSDSs may be kept at a central location at the mine, provided employees have access to them at some time during their workshift and the operator can ensure that employees can immediately obtain the required information in an emergency.

(k) The operator shall provide access to the MSDSs to designated representatives of employees and to authorized representatives of the Secretary of Labor and the Secretary of Health and Human Services.

(l) Upon request, the operator shall provide a copy of the MSDS, without cost, to employees and their designated representatives.

(m) At least 3 months prior to the disposal of any MSDS required by this section, operators shall notify employees of the right of access to the MSDSs and of their plans to dispose of these records.

(n) The requirements of this section (§ 46.6) do not apply to any hazardous waste as the term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901 *et seq.*), when subject to regulations issued under that Act by the Environmental Protection Agency.

§ 46.7 Employee training.

(a) Operators shall provide exposed employees with training on hazardous chemicals in their work area prior to their initial assignment to that area and whenever a new chemically related hazard is introduced into their work area. Employee training shall include the following:

(1) Information on the requirements of this part.

(2) Information on any operations or locations in their work area where hazardous chemicals are present.

(3) The location and availability of the written hazard communication program (including the required list of hazardous chemicals) and MSDSs required by this part.

(4) The chemical hazards in the employee's work area associated with nonroutine tasks (for example, the cleaning of a storage tank that had contained hazardous chemicals); unlabeled pipes and conveyors containing hazardous chemicals, and unlabeled containers of the raw material mined or milled.

(5) Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area, such as the results of monitoring conducted by the operator, the use of continuous monitoring devices, and the visual appearance or odor of hazardous chemicals when being released.

(6) The physical and health hazards of the hazardous chemicals in the work area.

(7) The measures employees can take to protect themselves from these hazardous, including specific procedures the operator has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used.

(8) The details of the hazard communication program developed by the operator, including an explanation of the labeling system and the MSDSs and how employees can obtain and use the appropriate hazard information.

(b)(1) At the completion of any training required under this section, the operator shall certify the date and type of training given each employee. The certification shall be signed by the person responsible for conducting the training.

(2) The certification shall be maintained by the operator as long as the employee is exposed to the hazardous chemical.

(3) The certification shall be available at the mine site for examination by the employee, the employee's designated representative, and by authorized representatives of the Secretary of Labor.

§ 46.8 Trade secrets.

(a) Operators may withhold the specific chemical identity, including the chemical name and other specific identification of a hazardous chemical, from the written hazard communication program, label, and MSDS, provided that—

(1) The claim can be supported that the information withheld is a trade secret;

(2) The chemical is given some identifier for reference purposes which will not disclose its specific chemical makeup;

(3) Information contained in the MSDS concerning the properties and effects of the hazardous chemical is disclosed;

(4) The MSDS indicates that the specific chemical identity is being withheld as a trade secret; and

(5) The specific chemical identity is made available to health professionals, employees, and designated representatives in accordance with the applicable provisions of this section.

(b) Where is treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a hazardous chemical is necessary for emergency or first-aid treatment, the operator shall immediately disclose the specific chemical identity of a trade secret chemical to that treating physician or nurse, regardless of the existence of a written statement of need of a confidentiality agreement. The operator may require a written statement of need and confidentiality agreement, in accordance with the provisions of paragraphs (c) and (d) of this section, as soon as circumstances permit.

(c) In nonemergency situations, upon request, an operator shall disclose a specific chemical identity, otherwise permitted to be withheld under paragraph (a) of this section, to a health professional (such as a physician, industrial hygienist, toxicologist, epidemiologist, or occupational health nurse) providing medical or other occupational health services to exposed employees, or their designated representatives, under the following conditions:

(1) The request is in writing.

(2) The request describes with reasonable detail one or more occupational health needs for the information, as follows:

(i) To assess the hazards of the chemicals to which employees will be exposed.

(ii) To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels.

(iii) To conduct reassignment or periodic medical surveillance of exposed employees.

(iv) To provide medical treatment to exposed employees.

(v) To select or assess appropriate personal protective equipment for exposed employees.

(vi) To design or assess engineering controls or other protective measures for exposed employees.

(vii) To conduct studies to determine the health effects of exposure.

(3) The request explains in detail why the disclosure of the specific chemical identity is essential and that the disclosure of the following information to the health professional, employee, or designated representative would not satisfy the purposes described in paragraph (c)(2) of this section:

(i) The properties and effects of the chemical.

(ii) Measures for controlling employees' exposure to the chemical.

(iii) Methods of monitoring and analyzing employee exposure to the chemical.

(iv) Methods of diagnosing and treating harmful exposures to the chemical.

(4) The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information.

(5) The health professional, the employer or contractor of the services of the health professional (such as a labor organization or an individual employee), employee, or designated representative enter a written confidentiality agreement that the health professional, employee, or designated representative will not use the trade secret information for any purpose other than the health needs asserted and agree not to release the information under any circumstances other than to MSHA as provided in paragraph (f) of this section, except as authorized by the terms of the agreement or by the operator.

(d) The confidentiality agreement authorized by paragraph (c)(4) of this section—

(1) May restrict the use of the information to the health purposes indicated in the written statement of need;

(2) May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and,

(3) May not include requirements for the posting of a penalty bond.

(e) Nothing in this standard is meant to preclude the parties from pursuing noncontractual remedies to the extent permitted by law.

(f) If the health professional, employee, of designated representative receiving the trade secret information decides that there is a need to disclose it to MSHA, the operator who provided the information shall be informed by the health professional, employee, or designated, representative prior to, or at the same time as, such disclosure.

(g) If the operator denies a written request for disclosure of a specific chemical identity, the denial must—

(1) Be provided to the health professional, employee, or designated representatives, within 30 calendar days of the request;

(2) Be in writing;

(3) Include evidence to support the claim that the specific chemical identity is a trade secret;

(4) State the specific reasons why the request is being denied; and

(5) Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.

(h)(1) The health professional, employee, or designated representative whose request for information is denied under paragraph (c) of this section may refer the request and the written denial of the request to MSHA for consideration.

(2) When a health professional, employee, or designated representative refers the denial to MSHA, MSHA shall consider the evidence to determine if—

(i) The operator has supported the claim that the specific chemical identity is a trade secret;

(ii) The health professional, employee, or designated representative has supported the claim that there is a medical or occupational health need for the information; and

(iii) The health professional, employee, or designated representative has demonstrated adequate means to protect the confidentiality.

(i)(1) If MSHA determines that the specific chemical identity requested under paragraph (c) of this section is not a bona fide trade secret, or that it is a trade secret, or that it is a trade secret but the requesting health professional, employee, or designated representative has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means to protect the confidentiality of the information, the operator shall be subject to citation by MSHA.

(2) If an operator demonstrates to MSHA that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of a trade secret specific chemical identity, MSHA may issue such orders or impose such additional limitations or conditions upon the disclosures of the requested chemical information as may be appropriate to ensure that the occupational health services are provided without an undue risk of harm to the operator.

(j) If a citation for a failure to release specific chemical identity information is contested by the operator, the matter will be adjudicated before the Mine Safety and Health Review Commission (Commission) in accordance with the Mine Act's enforcement scheme and the applicable Commission rule of procedure. In accordance with the Commission rules, when an operator continues to withhold the information during the contest, the Administrative Law Judge may review the citation and supporting documentation in camera or issue appropriate orders to protect the confidentiality on such matters.

(k) Notwithstanding the existence of a trade secret claim, an operator shall, upon request, disclose to MSHA any information which this section requires the operator to make available. Where there is a trade secret claim, the claim shall be made no later than at the time the information is provided to MSHA so that suitable determinations of trade secret status can be made and the necessary protection can be implemented.

(l) Nothing in this paragraph shall be construed as requiring the disclosure under any circumstances of process or percentage of mixture information which is a trade secret.

§ 46.9 Effective date.

Operators shall be in compliance with the provisions of this part within 1 year of its publication.

Appendix A to Section 46.2—Mandatory—Health Hazard Definitions

Although safety hazards related to the physical characteristics of a chemical can be objectively defined in terms of testing requirements, such as flammability, health hazard definitions are less precise and more subjective. Health hazards may cause measurable changes in the body, such as decreased pulmonary function. These changes are generally indicated by the occurrence of signs and symptoms in the exposed employees, such as shortness of breath, which is a nonmeasurable, subjective feeling. Employees exposed to such hazards must be apprised of both the change in body function and the signs and symptoms that may occur to signal that change.

The determination of occupational health hazards is complicated by the fact that many of the effects or signs and symptoms occur commonly in nonoccupationally exposed populations. Therefore, effects of employee exposure are difficult to separate from normally occurring illnesses. Occasionally a substance causes an effect that is rarely seen in the population at large, such as black lung

caused by exposure to respirable coal mine dust, thus making it easier to ascertain that the occupational exposure was the primary causative factor. More often, however, the effects are common, such as lung cancer. The situation is further complicated by the fact that most chemicals have not been tested adequately to determine their health hazard potential, and data do not exist to substantiate these effects.

There have been many attempts to categorize effects and to define them in various ways. Generally, the terms "acute" and "chronic" are used to delineate between effects on the basis of severity or duration. "Acute" effects usually occur rapidly as a result of short-term exposures and are of short duration. "Chronic" effects generally occur as a result of long-term exposure and are of long duration.

The acute effects referred to most frequently by the American National Standards Institute (ANSI) standard for Precautionary Labeling of Hazardous Industrial Chemicals (Z129.1–1982) are irritation, corrosivity, sensitization, and lethal dose. Although these are important health effects, they do not adequately cover the considerable range of acute effects that may occur as a result of occupational exposure, such as narcosis.

Similarly, the term chronic effect is often used to cover such health effects as carcinogenicity, teratogenicity, mutagenicity, and pneumoconiosis. These effects are obviously a concern in the workplace but do not adequately cover the area of chronic effects, excluding, for example, blood dyscrasias (such as anemia) chronic bronchitis, and liver atrophy.

The goal of defining precisely, in measurable terms, every possible health effect that may occur in the workplace as a result of chemical exposure cannot realistically be accomplished. This does not negate the need for employees to be informed of such effects and protected from them.

The following is a listing of various health hazards to be communicated to employees on a label's hazard warning, in a chemical's MSDS, and in employee training. A chemical's specific health hazards may be found in the literature sources listed in appendix B to § 46.3 of this part.

(a) *Carcinogenic:* A chemical considered to be carcinogenic by one of the following:

(1) The International Agency for Research on Cancer (IARC) has evaluated and categorized it as being carcinogenic to humans, probably carcinogenic to humans, or possibly carcinogenic to humans.

(2) The "Annual Report on Carcinogens" published by the National Toxicology Program (NTP) (latest edition) lists it as being carcinogenic, or reasonably anticipated to be carcinogenic.

(3) The American Conference of Governmental Industrial Hygienists (ACGIH) identifies it as a confirmed or suspected human carcinogen in the "Threshold Limit Values and Biological Exposure Indices" (latest edition).

(4) MSHA regulates it as a carcinogen.

(b) *Corrosive:* A chemical that causes visible destruction of, or irreversible alterations in, living tissue by chemical action at the site of contact. For example, a chemical is considered to be corrosive if, when tested on the intact skin of albino rabbits by the method described by the U.S. Department of Transportation in appendix A to 49 CFR part 173, it destroys or changes irreversibly the structure of the tissue at the site of contact following an exposure period of 4 hours. This term does not refer to action on inanimate surfaces.

(c) *Highly toxic:* A chemical falling within any of the following categories:

(1) A chemical that has a median lethal dose (LD50) of 50 milligrams or less per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each.

(2) A chemical that has a median lethal dose (LD50) of 200 milligrams or less per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between 2 and 3 kilograms each.

(3) A chemical that has a median lethal concentration (LC50) in air or 200 parts per million by volume or less of gas or vapor, or 2 milligrams per liter or less of mist, fume, or dust, when administered by continuous inhalation for 1 hour (or less if death occurs within 1 hour) to albino rats weighing between 200 and 300 grams each.

(d) *Irritant:* A chemical which is not corrosive but which causes a reversible deleterious effect on living tissue by chemical action at the site of contact. A chemical is a skin irritant if, when tested on the intact skin of albino rabbits by the methods of 16 CFR 1500.41 for 4 hours exposure or by other appropriate techniques, it results in an empirical score of 5 or more. A chemical is an eye irritant if so determined under the procedure listed in 16 CFR 1500.42 or other appropriate techniques.

(e) *Sensitizer:* A chemical that causes a substantial proportion of exposed people or animals to develop an allergic reaction in normal tissue after repeated exposure to the chemical.

(f) *Toxic:* A chemical falling within any of the following categories:

(1) A chemical that has a median lethal dose (LD50) of more than 50 milligrams per kilogram but not more than 500 milligrams per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each.

(2) A chemical that has a median lethal dose (LD50) of more than 200 milligrams per kilogram but not more than 1,000 milligrams per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between 2 and 3 kilograms each.

(3) A chemical that has a median lethal concentration (LC50) in air of more than 200 parts per million but not more than 2,000 parts per million by volume of gas or vapor, or more than two milligrams per liter but not more than 20 milligrams per liter of mist, fume, or dust, when administered by continuous inhalation for 1 hour (or less if death occurs within 1 hour) to albino rats weighing between 200 and 300 grams each.

(g) *Target organ effects:* The following is a target organ categorization of effects that may occur, including examples of signs and symptoms and chemicals that have been found to cause such effects. These examples are presented to illustrate the range and diversity of effects and hazards found in the workplace and the broad scope operators must consider in this area but are not intended to be all-inclusive:

(1) *Hepatotoxins:* Chemicals that produce liver damage;
Signs & Symptoms: Jaundice; live enlargement;
Chemicals: Carbon tetrachloride; nitrosamine;

(2) *Nephrotoxins:* Chemicals that produce kidney damage;
Signs & Symptoms: Edema; proteinuria;
Chemicals: Halogenated hydrocarbons; uranium;

(3) *Neurotoxins:* Chemicals that produce their primary toxic effects on the nervous system;
Signs & Symptoms: Narcosis; behavioral changes; decrease in motor functions;
Chemicals: Mercury; carbon disulfide;

(4) *Agents that act on the blood or hematopoietic system:* Decrease hemoglobin function; deprive the body tissues of oxygen;
Signs & Symptoms: Cyanosis; loss of consciousness;
Chemicals: Carbon monoxide; cyanides;

(5) *Agents that damage the lung:* Chemicals that irritate or damage the pulmonary tissue;
Signs & Symptoms: Cough; tightness in chest; shortness of breath;
Chemicals: Silica; asbestos;

(6) *Reproductive toxins:* Chemicals that affect the reproduction capabilities including chromosomal damage (mutations) and effects on fetuses (teratogenesis);
Signs & Symptoms: Birth Defects; sterility;
Chemicals: Lead; Gasoline; Ethyleneoxide;

(7) *Cutaneous hazards:* Chemicals that affect the dermal layer of the body;
Signs & Symptoms: Defatting of the skin; rashes; irritation;
Chemicals: Ketones; chlorinated compounds; and,

(8) *Eye hazards:* Chemicals that affect the eye or visual capacity;
Signs & Symptoms: Conjunctivitis; corneal damage;
Chemicals: Organic solvents; acids.

Appendix B to Section 46.3—Advisory—Information Sources

The following is a list of available data sources that the operator may wish to consult to evaluate the physical hazards of chemicals and determine the specific health effects:

—Any information in the operator's files, such as chemical analysis, toxicity testing results or illness experience of employees.

—Any information obtained from the chemical suppliers, such as MSDSs or product safety bulletins.

—Any pertinent information obtained from the following sources (latest editions should be used):

Condensed Chemical Dictionary, Van Nostrand Reinhold Co., 135 West 50th Street New York, NY 10020.

The Merk Index: An Encyclopedia of Chemicals and Drugs, Merk and Company, Inc., 126 E. Lincoln Ave. Rahway, NJ 07065.

IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Man, Geneva: World Health Organization, International Agency for Research on Cancer, 1972-Present. (Multivolume work). 49 Sheridan Street, Albany, NY 12210. Summaries are available in supplement volumes.

Industrial Hygiene and Toxicology, by F.A. Patty, John Wiley & Sons, Inc., New York, NY (Mutivolume work).

Clinical Toxicology of Commercial Products, Gleason, Gosselin, and Hodge.

Casarett and Doull's Toxicology: The Basic Science of Poisons, Doull, Klaassen, and Amdur, Macmillan Publishing Co., Inc., New York, NY.

Industrial Toxicology, by Alice Hamilton and Harriet L. Hardy, Publishing Sciences Group, Inc., Action, MA.

Toxicology of the Eye, by W. Morton Grant, Charles C. Thomas, 301–327 East Lawrence Avenue, Springfield, IL.

Recognition of Health Hazards in Industry, William A. Burgess, John Wiley and Sons, 605 Third Avenue, New York, NY 10158.

Chemical Hazards of the Workplace, Nick H. Proctor and James P. Hughes, J.P., Lipincott Company, 6 Winchester Terrace, New York, NY 10022.

Handbook of Chemistry and Physics, Chemical Rubber Company, 18901 Cranwood Parkway, Cleveland, OH 44128.

Threshold Limit Values and Biological Exposure Indices, American Conference of Governmental Industrial Hygienists (ACGIH), 6500 Glenway Avenue, Bldg. D–5, Cincinnati, OH 45211. Information specifically on the physical hazards of chemicals may be found in publications of the National Fire Protection Association, Boston, MA.

The following documents may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402:

Occupational Health Guidelines, NIOSH/OSHA (NIOSH Pub. No. 81–123).

NIOSH Pocket Guide to Chemical Hazards, NIOSH Pub. No. 85–114.

Registry of Toxic Effects of Chemical Substances, NIOSH Pub. No. 80–102.

Miscellaneous Documents published by the National Institute for Occupational Safety and Health:

Recommendations for Occupational Safety and Health Standards

Special Hazard Reviews.

Occupational Hazard Assessments.

Current Intelligence Bulletins.

MSHA Standards (30 CFR parts, 56, 57, 70, 71, 75 and 77).

NTP Annual Report on Carcinogens and Summary of the Annual Report on Carcinogens, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. (703) 487–4650.

BIBLIOGRAPHIC DATA BASES

Service provider	File name
Bibliographic Retrieval Services, (BRS), 1200 Route 7, Latham, NJ 12110.	Biosis Previews, CA Search, Medlars, NTIS, Hazardline, American Chemical Journal, Excerpta Medica, IRCS Medical Science Journal, Pre-Med, Intl Pharmaceutical Abstracts, Paper Chem.
Lockheed—DIALOG Information Service, Inc. 3460 Hillview Avenue, Palo Alto, CA 94304.	Biosis Prev. Files, CA Search Files, CAB Abstracts, Chemical Exposure, Chemname, Chemsis Files, Chemzero, Embase Files, Environmental Bibliographies, Enviroline, Federal Research in Progress, IRL Life Science Collection, NTIS, Occupational Safety and Health (NIOSH), Paper Chem.
SDC—Orbit, SDC Information Service, 2500 Colorado Avenue, Santa Monica, CA 90406.	CAS Files, Chemdex, 2, 3, NTIS.
National Library of Medicine, Department of Health and Human Services, Public Health Services, National Institute of Health Bethesda, MD 20209.	Hazardous Substances Data Bank (NSDB), Medline files, Toxline files, Cancerlit, RTECS, Chemline.
Pergamon International Information Corp., 1340 Old Chain Bridge Rd., McLean, VA 22101.	Laboratory Hazard Bulletin.
Questel, Inc., 1625 Eye Street, NW., Suite 818 Washington, DC 20006.	CIC/ILO, Cancernet.
Chemical Information System ICI (ICIS), Bureau of National Affairs, 1133 15th Street, NW., Suite 300, Washington, DC 20005.	Structure and Nomenclature Search System (SANSS), Acute Toxicity (RTECS), Clinical Toxicology of Commercial Products, Oil and Hazardous Materials Technical Assistance Data System, CCRIS, CESARS.

BIBLIOGRAPHIC DATA BASES—Continued

Service provider	File name
Occupational Health Services, 400 Plaza Drive, Secaucus, NJ 07094.	MSDA, Hazardline.

Appendix C—Advisory—Guidelines for Operator Compliance

The Hazard Communication Standard (HCS) is based on a simple concept—that employees have both a need and right to know the hazards and identities of the chemicals they are exposed to when working. They also need to know what protective measures are available to prevent adverse effects from occurring. The HCS is designed to provide employees with the information they need.

Knowledge acquired under the HCS will help operators provide a safer workplace for their employees. Where operators have information about the chemicals being used, they can take steps to reduce exposures, substitute less hazardous materials, and establish proper work practices. These efforts will help prevent the occurrence of work-related illnesses and injuries caused by chemicals.

The HCS addresses the issues of evaluating and communicating hazards to employees. Evaluation of chemical hazards involves a number of technical concepts and is a process that requires professional judgment and expertise. However, most chemicals used by operators are not produced by them, and the HCS does not require operators to evaluate chemicals that have already been evaluated by the chemical supplier or manufacturer.

This appendix is as a general guide for operators to help them determine what would be required under a final rule. It does not supplant or substitute for the regulatory provisions but rather would provide a simplified outline of the steps a typical operator would follow to meet the requirements.

(a) Becoming Familiar With the Rule

The standard is long, and some part of it are technical, but the basic concepts are simple. In fact, the requirements reflect what many operators have been doing for years. You may find that you are already largely in compliance with many of the provisions and will simply have to modify your existing program. If you are operating in a State which has an OSHA or EPA approved state plan agreement, you may have to comply with the State's hazard communication or right-to-know requirements, which may be very similar to those of MSHA's rule.

The HCS requires information to be prepared and transmitted to employees regarding hazardous chemicals to which they are exposed. The HCS covers both physical hazards (such as flammability) and health hazards (such as irritation, lung damage, and cancer). Most chemicals used in the workplace have some hazard potential, and this is covered by the rule.

This rule is intended to be performance oriented. That means that you have the flexibility to adapt the rule to the needs of your particular workplace, rather than having to follow specific, rigid requirements. It also means that you have to exercise more judgment to implement an appropriate and effective program.

The standard's design is simple. As an operator, you must evaluate the hazards of chemicals you produce or use. That information is then used in preparing required labels for containers, the written hazard communication program, material safety data sheets (MSDSs), and the employee training program.

Under the HCS promulgated by OSHA, chemical manufacturers, importers, and distributors of hazardous chemicals are all required to provide appropriate labels and MSDSs to downstream users when they ship the chemicals. Every container of a hazardous chemical you receive from these sources should be labeled, tagged, or marked with the required information. They should also send you an MSDS at the time of the first shipment of the chemical and with the next shipment after the MSDS is updated with new and significant information about the hazards. Under the MSHA HCS, you are required to rely on the information received from the chemical supplier on the chemical's MSDS and container label. You are not responsible for inaccurate information on MSDSs that you receive with hazardous chemicals, and you have no independent duty under this standard to analyze chemicals you receive or to evaluate their hazards beyond considering the information that is contained on the chemical's MSDS and container label.

Operators that "use" hazardous chemicals must have a program to ensure the information is provided to exposed employees. "Use" means to package, handle, react, or transfer. This is an intentionally broad scope and includes any situation where a chemical is present in such a way that employees may be exposed.

The requirements of the rule that deal specifically with the hazard communication program are found in the standard in § 46.4 (hazard communication program), § 46.5 (labels and other forms of warning), § 46.6 (material safety data sheets), and § 46.7 (employee training). The requirements of these sections should be the focus of your attention. Concentrate on becoming familiar with them, using § 46.1 (scope and application), § 46.2 (definitions), and this appendix for reference when needed to help explain the provisions.

(b) Identify Responsible Staff

Hazard communication will be a continuing program in your operation. In order to have a successful program, it will be necessary to assign responsibility for both the initial and ongoing activities that have to be undertaken to comply with the rule. In some cases, these activities may already be part of current job assignments. For example, mine foremen or shift bosses are frequently responsible for on-the-job training sessions. Early identification of the responsible employees and involvement of them in the development of your plan of action will result in a more effective program design. Evaluation of the effectiveness of your program will also be enhanced by involvement of affected employees.

For any safety and health program, success depends on commitment at every level of the organization. This is particularly true for hazard communication, where success requires a change in behavior. This will occur only if operators understand the program are are committed to its success and if employees are motivated by the people presenting the information to them.

(c) Identify Hazardous Chemicals in the Workplace

The standard requires a list of hazardous chemicals in the workplace as part of the written hazard communication program. Preparing the list will help you complete the rest of the program, since it will give you some idea of the scope of the program required for compliance at your mine.

The best way to prepare a comprehensive list is to survey the workplace. Purchasing records may also help, and certainly operators should establish procedures to ensure that, in the future, purchasing procedures result in an MSDS being received before a material is used in the workplace.

The broadest possible perspective should be taken when doing the survey. Sometimes people think of "chemicals" as being only liquids in containers. The HCS covers chemicals in all physical forms—liquids, solids, gases, vapors, fumes, and mists—whether or not they are "contained." The hazardous nature of the chemicals and the potential for exposure are the factors which determine whether a chemical is covered. If it's not hazardous, it is not covered. If there is no potential for exposure—for example, the chemical is inextricably bound and cannot be released—the rule does not cover the chemical.

Operators should examine their workplace and identify chemicals in containers, pipes, and on conveyors, as well as those generated in work operations. For example, welding fumes, dusts, exhaust fumes, and blasting gases are all sources of chemical exposures. Read labels provide by suppliers for hazard information. Make a list of all chemicals in the workplace that are potentially hazardous. For use in informing and training the employee, you may also want to note on the list the locations of the chemicals within the workplace, the amount of the chemical, and an indication of the hazards as found on the label. This will help you as you prepare the rest of your program.

Section 46.1, scope and application, includes exemptions for various chemicals or workplace situations. After compiling the complete list of chemicals, you should review this section to determine if any of the items can be eliminated from the list because they are exempted materials. For example, food, drink, drugs, cosmetics, tobacco, and tobacco products intended for employee consumption or use are exempt. Consequently, rubbing alcohol in the first aid kit would not be covered.

Once you have compiled as complete a list as possible of the potentially hazardous chemicals in the workplace, the next step is to determine if you have received MSDSs for all of them. Check your files against the inventory you have just compiled. If any are missing, contact your supplier and request one. It is a good idea to document these requests either by copy of a letter or a note regarding telephone conversations. If you have HSDSs for chemicals that are not on your list, figure out why. Maybe you don't use the chemical anymore, or maybe you missed it in your survey. Some suppliers do provide MSDSs for products that are not hazardous. These do not have to be maintained by you. You may wish to dispose of outdated chemicals or chemicals you no longer intend to use to lessen your obligations under this standard.

The standard does not allow employees to use any hazardous chemicals brought into your workplace for which you have not received or requested an MSDS. The MSDS provides information you need to ensure that proper protective measures are implemented prior to exposure.

(d) Preparing and Implementing a Written Hazard Communication Program

All workplaces where employees are exposed to hazardous chemicals must have a written program which describes how the standard will be implemented in that operation. Preparation of a program is not just a paper exercise—all of the elements must be implemented in the workplace in order to be in compliance with the rule. See § 46.4 of the standard for the specific requirements regarding written hazard communication programs.

The program does not have to be lengthy or complicated. It is intended to be a blueprint for implementation of your program as an assurance that all aspects of the requirements have been addressed. Under existing State and OSHA HCSs, many general industry trade associations and other professional groups have developed sample programs and other assistance materials. Because of the similarity between the MSHA and OSHA rule, you may find many of these programs very helpful. Although you may wish to use such general guidance, you must remember that the written program has to reflect what you are doing in your workplace. Therefore, if you use a generic program, it must be adapted to address your specific operation. For example, the written program must list the chemicals present at your mine and where the required written materials will be made available to employees.

When MSHA inspects your workplace for compliance with the HCS, MSHA inspectors may ask to see your written program at the outset of the inspection. The written program must describe how the requirements for labels and other forms of warning, MSDSs, and employee training, are going to be met in your facility. The following discussion provides the type of information MSHA inspectors would be looking for to decide whether these elements of the hazard communication program have been properly addressed.

(1) Labels and Other Forms of Warning

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Containers of hazardous chemicals in the workplace must be labeled, tagged, or marked with the identity of the chemical and appropriate hazard warnings. Sections 46.1 and 46.5 indicate containers and chemicals that are exempted from the labeling requirements. Operators purchasing chemicals can rely on the labels provided by their suppliers. If the hazardous chemical is subsequently transferred by the operator from a labeled container to another container, the operator will have to label that container, unless it is subject to the portable container exemption in § 46.5. (See § 46.5 for specific labeling requirements.)

The primary information to be obtained from a required label is an identity for the chemical and appropriate hazard warnings. The identity is any term which appears on the label, the MSDS, and the list of chemicals and thus links these three sources of information. The identity used on the label may be a common or trade name ("Black Magic Formula") or a chemical name (1,1,1,-1—trichloromethane). The hazard warning is a brief statement of the hazardous effects of the chemical ("flammable," "causes lung damage," "possibly carcinogenic to humans"). Labels frequently contain other information, such as precautionary measures ("do not use near open flame"), but this information is not required by the rule, although it may be required under several other MSHA standards. For example, 30 CFR 56.4101 requires readily visible signs prohibiting smoking and open flames to be posted where a fire or explosion hazard exists.

Labels must be legible, in English, and prominently displayed. There are no specific requirements for size, color, or any specified text. Operators having employees who do not read English should add information in their language to the material presented.

With these requirements in mind, the MSHA inspector will be looking for the following types of information to ensure that labeling is properly implemented at your operation:

(i) Designation of persons responsible for ensuring labeling of in-plant containers.

(ii) Designation of persons responsible for ensuring labeling of any received containers.

(iii) Description of labeling systems used.

(iv) Description of written alternatives to labeling of in-plant containers, if used.

(v) Procedures to review and update labeling information, when necessary.

Operators that are purchasing and using hazardous chemicals—rather than producing them—will primarily be concerned with ensuring that every purchased container is labeled. If materials are transferred into other containers, the operator must ensure that these are labeled as well, unless they fall under the portable container exemption in § 46.5. In terms of labeling systems, you can simply choose to use the labels provided by your suppliers on the containers. These will generally be verbal text labels and do not usually include numerical rating systems or symbols that require special training. The most important thing to remember is that it is a continuing duty to ensure that all in-plant containers of hazardous chemicals brought into your workplace are labeled. Therefore, it is important to designate someone to be responsible for ensuring that the labels are maintained as required on the containers in your operation and that newly purchased materials are checked for labels prior to use.

Operators are required to provide labeling information, indicating the chemical hazards, with the initial shipment of a hazardous chemical to a downstream employer. This information may be included with the chemicals shipping papers rather than posted on the chemical's container. The labeling information will serve to notify the downstream employer of the chemical's hazards and provide a name and address to contact for the chemical's MSDS.

(2) Materials Safety Data Sheets (MSDSs)

Operators are required to maintain MSDSs received with each hazardous chemical brought onto mine property and to develop MSDSs for chemicals they product. Suppliers of hazardous chemicals, subject to the OSHA HCS, are responsible for ensuring that their customers are provided a copy of these MSDSs or informed of where they could obtain them. You are required to rely on the information in the MSDS received from your suppliers. If you do not receive an MSDS with a shipment that has been labeled as a hazardous chemical, you are responsible for requesting one from them. If you receive one that is obviously inadequate—for example, one having blank spaces that are not completed—you should request an appropriately completed one. If your request for a data sheet does not produce the information needed, you should contact your local MSHA office for assistance in obtaining the MSDS.

There is no specified format for MSDS under the rule, although there are specific information requirements. OSHA has developed a non-mandatory format, OSHA Form 174, which may be used by operators to comply with the rule. Similar forms are also sold by firms marketing generic hazard communication program materials. MSHA anticipates developing a non-mandatory form comparable to OSHA's to supply to operators upon request. The MSDS must be in English. If you have employees who do not read English you should prepare an MSDS in their language as well. The specific requirments for developing MSDSs are in § 46.6

The role of MSDSs under the rule is to provide detailed information on each hazardous chemical, including its potential hazardous effects, its physical and chemical characteristics, and recommendations for appropriate protective measures. This information should be useful to you when designing protective programs, as well as to your employees. If you are not familiar with MSDSs and chemical terminology, you may need to learn to use them yourself. Generally speaking, most operators using hazardous chemicals primarily will be concerned with MSDS information regarding hazardous effects and recommended protective measures. Focus on the sections of the MSDS that are applicable to your situation.

Under § 46.6, operators must provide employees with access, while they are in their work areas during their workshift, to the MSDS received for each hazardous chemical to which they are exposed. This may be accomplished in many different ways. You must decide what is appropriate for your particular workplace. Some operators may choose to keep the MSDS in a binder in the employees' lunch area, at the foreman's work station, in a control room, or in some other location readily accessible to employees while in their work area. The MSDSs could even be entered on a computer, providing employees could have direct access to it and were given sufficient information to be able to retrieve the data.

When it is not practical for an operator to keep the MSDS in the employees' work area, operators may keep it at a central location such as the mine office or where the employees clock-in, provided that employees can immediately obtain the information contained on the MSDS when needed and have access to it during their workshift.

In order to ensure that you have a current MSDS for each chemical received in the mine as required, and that employee access is provided, the MSHA inspector will be looking for the following types of information in your written program:

(i) Designation of persons responsible for obtaining and maintaining the required MSDSs.

(ii) How such sheets are to be maintained in the workplace, (such as in notebooks in the work areas), and how employees can obtain access to them during their work shift.

(iii) Procedures to follow when the MSDS is not received at the time of the first shipment.

(iv) Description of alternatives to having the actual MSDSs in the work area, if used.

(v) Procedures to update MSDSs, for hazardous chemicals the operator produces, when new and significant health information is found.

For operators using hazardous chemicals, the most important aspect of the written program in terms of MSDSs is to ensure that someone is responsible for obtaining and maintaining the MSDSs for every hazardous chemical received in the workplace. The list of hazardous chemicals required to be maintained as part of the written program will serve as an inventory but must also include hazardous chemicals produced at the mine. As new chemicals are purchased, the list should be updated. Operators may find it convenient to include on their purchase orders the name and address of the person designated at their operation to receive MSDSs.

(3) Employee Training

Section 46.7, Employee Training, requires operators to provide employees with training on hazardous chemicals in their work area prior to their initial assignment to that area and whenever a new chemically related hazard is introduced into their work area. These training provisions may be satisfied by training conducted in a properly designed 30 CFR part 48 training program which meets all the requirements under part 46. Training may be done either by individual chemical or by categories of hazards. If there are only few chemicals in the workplace, then you may want to discuss each one individually. Where there are large numbers of chemicals or the chemicals change frequently, you will probably want to train generally based on the hazard categories—for example, flammable liquids, corrosive materials, or carcinogens. Employees will have access to the substance-specific information on the labels and MSDSs.

Training is a critical part of the hazard communication program. Through effective training, employees will learn to read and understand MSDSs, determine how they can be obtained and used in their own workplaces, and understand the risks of exposure to the chemicals in their workplaces as well as the ways to protect themselves. A properly conducted training program will ensure comprehension and understanding. It is not sufficient to merely read material to employees or simply hand them material to read. You want to create a climate where employees feel free to ask questions. This will help you to ensure that the information is understood. You must always remember that the underlying purpose of the HCS is to reduce the incidence of chemical source illnesses and injuries. This will be accomplished by modifying behavior through providing employees with training on hazards and protective measures. If your program works, you and your employees will better understand the chemical hazards within the workplace. The procedures you establish regarding, for example, purchasing storage, and handling of these chemicals will improve and thereby reduce the risks posed to employees exposed to the chemical hazards involved. Furthermore, your employees' comprehension will also be increased, and proper work practices will be followed in your operation.

If you are going to do the training yourself, you will have to understand the material and be prepared to motivate the employees to learn. This is not always an easy task, but the benefits are worth the effort.

In reviewing your written hazard communication program with regard to training, the following items need to be considered:

(i) Designation of person responsible for conducting training.

(ii) The program format and training materials to be used, such as classroom instruction, or audiovisuals.

(iii) Elements of the training program (must be consistent with the elements in § 46.7).

(iv) Procedures to train employees prior to their initial assignment to work with a hazardous chemical and when a new chemical hazard is introduced into the workplace.

The written hazard communication program should include enough details about your plans in this area to assess whether or not a good faith effort is being made to train employees. MSHA does not expect that every employee will be able to recite all of the information about each chemical they are exposed to. In general, the most important aspects of training under the HCS are to ensure that employees are aware that they are exposed to hazardous chemicals, that they know how to read and use the required labels and MSDSs, and that, as a consequence of learning this information, they are following the appropriate protective measures established by the chemical manufacturer. MSHA inspectors will ask to review the operator's certification that training has been done. MSHA inspectors will also be talking to employees to determine if they have received the required training, know the operations in their work area where hazardous chemicals are present, and know where to obtain substance-specific information on labels, MSDSs, and the written hazard communication program required under this standard.

If you already have a training program, you may simply have to supplement it with whatever additional information is required under the HCS. For example, operators that conduct employee training under part 48, would need to include in their existing training program only the information required under § 46.7. You can provide employee training through whatever means found appropriate and protective. Although there may always have to be some training on-site, specific to your particular operation (such as informing employees of the location and availability of the written program and MSDSs), employee training could be satisfied in part by general training about the requirements of the HCS and about chemical hazards on the job which is provided by, for example, trade associations, unions, colleges, and professional schools. Regardless of the method relied upon, the operator is always ultimately responsible for ensuring that employees are adequately trained. If the MSHA inspector finds that the training is deficient, the operator will be cited for the deficiency regardless of who actually provided the training on behalf of the operator.

(4) Other Requirements

In addition to these specific items, MSHA inspectors will also be asking the following questions in assessing the adequacy of your hazard communication program:

(i) Has a list been developed of the hazardous chemicals known to be present in the workplace using the chemicals known to be present in the workplace using the chemicals identity?

(ii) Do employees have access to the list of the hazardous chemicals on mine property?

(iii) On multioperator worksites, are the methods described for providing other operators working at the mine, such as independent contractors, with information about the labeling systems, MSDSs, and information on your hazardous chemicals to which their employees may be exposed?

(iv) Do employees and their designated representatives have access to the written hazard communication program?

(e) Checklist for Compliance

The following checklist will help to ensure you are in compliance with the rule:

Prepared an inventory of chemicals..... ____
Ensured containers of hazardous chemicals brought onto mine property are labeled. ____
Obtained MSDSs for each hazardous chemical brought onto mine property. ____
Developed MSDSs for hazardous chemicals produced on the mine property. ____
Evaluated all chemicals produced or used to determine if they are hazardous. ____
Developed a written hazard communication program. ____
Made MSDSs and written hazard communication program available to employees. ____
Conducted training of employees..... ____

(f) Further Assistance

Operators having questions regarding compliance with the HCS will be able to contact their local MSHA office for assistance. It is anticipated that free consultation services will also be available through MSHA to assist operators, and information regarding these services will be made available through your local MSHA office and MSHA's Office of Information and Public Affairs, located in Arlington, Virginia

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Part V

Department of Energy

10 CFR Part 1021
National Environmental Policy Act
Implementing Procedures; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 1021

National Environmental Policy Act Implementing Procedures

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) proposes to revise the existing rule at 10 CFR part 1021, entitled "Compliance with the National Environmental Policy Act," to incorporate revised provisions of DOE's Guidelines for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA). The DOE NEPA Guidelines were last published in full in the Federal Register on December 15, 1987 (52 FR 47662). The proposed new rule incorporates changes required by certain policy initiatives instituted by the Secretary of Energy to facilitate participation of the public and affected states in the NEPA process for proposed DOE actions, and to develop a revised and expanded list of typical classes of actions, including categorical exclusions. A categorical exclusion is a class of actions that normally do not require the preparation of either an environmental impact statement or an environmental assessment.

DATES: Written comments on the proposed rule (revising the DOE NEPA Guidelines) should be submitted on or before December 17, 1990, to ensure their consideration. A public hearing will be held on Wednesday, December 5, 1990, beginning at 9:30 a.m. local time at the address indicated below. Requests to speak at the hearing should be received by 4:30 p.m. local time on Monday, December 3, 1990. Later requests will be accommodated to the extent practicable.

ADDRESSES: Written comments on the proposed rule and requests to speak at the public hearing should be submitted to Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; or may be hand-delivered to the same address on workdays between the hours of 8 a.m. and 4:30 p.m.

The public hearing will be held at the U.S. Department of Energy, room GJ–015, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. Speakers are requested to bring two copies of their statement to the hearing. Copies of the transcript of the public hearing, and any additional public comments received, may be reviewed at the DOE Freedom of Information Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–6020.

FOR FURTHER INFORMATION CONTACT: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600.

SUPPLEMENTARY INFORMATION:

I. Background

DOE originally published its NEPA Guidelines on March 28, 1980 (45 FR 20694). These Guidelines implemented the procedural provisions of NEPA as required by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508). The Guidelines were subsequently revised a number of times and were republished in their entirety on December 15, 1987 (52 FR 47662). The Guidelines were further amended on March 27, 1989 (54 FR 12474) and on September 7, 1990 (55 FR 37174).

DOE's existing regulations at 10 CFR part 1021 were published as a final rule on August 6, 1979 (44 FR 45918). They adopted the then recently-promulgated CEQ Regulations (published on November 29, 1978 (43 FR 55978)) and revoked the NEPA regulations previously promulgated by DOE's predecessor agencies, because they were inconsistent with the CEQ Regulations.

On June 27, 1989, the Secretary of Energy announced a ten-point initiative to ensure that all DOE activities are carried out in full compliance with the letter and spirit of environmental statutes and regulations. In order to implement this initiative as it relates to NEPA, the Secretary issued Secretary of Energy Notice (SEN) 15–90 on February 5, 1990. SEN–15–90 directed significant changes in DOE policies and procedures for complying with NEPA, including revising provisions of the DOE NEPA Guidelines and publishing the revised provisions for public comment as proposed regulations using the notice and comment as proposed regulations using the notice and comment procedures of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

II. Purpose

The purpose of the proposed rule is to revise the provisions of the DOE NEPA Guidelines to incorporate the changes directed by SEN–15–90 and other changes to provide more specificity and detail to the Guidelines; and to codify the results as regulations at 10 CFR part 1021. By issuing its NEPA Guidelines as regulations that will be published in the *Code of Federal Regulations*, DOE will ensure that its NEPA procedures are more accessible to the public.

The changes to the Guidelines directed by SEN–15–90 focus on improving the clarity and consistency of DOE NEPA policies and procedures, and on facilitating public participation, including that of affected states, in DOE's NEPA compliance activities. In particular, SEN–15–90 directed that the Guidelines be revised to include:

- A new agency policy for developing and updating site-wide NEPA documents (a site-wide NEPA document is defined in proposed § 1021.104(b) as a broad-scope environmental impact statement (EIS) or environmental assessment (EA) that identifies and assesses the individual and cumulative impacts of the continuing and reasonably foreseeable future actions at a DOE site);
- A revised and expanded list of categorical exclusions formulated to minimize the need for subjective judgment;
- The elimination of a DOE document generally referred to as a NEPA "memorandum-to-file," which DOE has used to document a determination (other than a categorical exclusion) that neither an EIS nor and EA is required for a proposed action;
- A requirement that DOE hold public scoping meetings for all EISs and public hearings for all draft EISs;
- Provisions for the public availability of all EIS implementation plans and all analyses made to determine whether a supplement to an EIS is required;
- Provisions for notifying states of determinations to prepare an EA or an EIS for all proposed DOE projects in the states; and
- Provisions allowing states an opportunity to comment on EAs for proposed DOE projects in the state prior to DOE approval of the EA.

The proposed rule published today reflects these changes. The proposed rule also includes revisions to the DOE NEPA Guidelines that provide more detail; and specificity to the DOE NEPA process.

III. Discussion

This section briefly describes the contents of each subpart of the proposed rule, followed by a discussion of the major differences between the subpart and its counterparts in the DOE NEPA Guidelines and the existing regulations at 10 CFR part 1021.

Subpart A—General

Proposed subpart A states the purpose, policy, and applicability of the proposed regulations. It also adopts the CEQ Regulations and defines the terms and acronyms used in the proposed rule. Proposed subpart A corresponds to the "Purpose" sections of the Guidelines and of the existing regulations at 10 CFR part 1021.

Proposed § 1021.101 contains a policy statement in which DOE makes a commitment to follow the letter and the spirit of NEPA, to comply fully with the CEQ Regulations, and to apply NEPA early in the planning stages of proposed DOE actions. Proposed § 1021.102(b) limits the application of the proposed rule to DOE actions affecting the environment of the United States and its territories and possessions, and identifies those regulations and the Executive Order that control actions having environmental effects outside the United States, its territories and possessions. Proposed § 1021.104 defines the terms, abbreviations, and acronyms used in the proposed rule, and incorporates the definitions used in the CEQ Regulations.

DOE is proposing to revise the existing regulations at 10 CFR part 1021 by striking the current text and replacing it with the proposed rule. The proposed rule does not incorporate the provisions of existing § 1021.1 that restate basic NEPA legislative policy or the provision of the existing § 1021.3 that revokes the NEPA regulations of DOE's predecessor agencies.

Subpart B—DOE Planning and Decisionmaking

Proposed subpart B establishes NEPA requirements for the planning stage of proposed DOE actions, and specifies how DOE will coordinate its NEPA review with respect to general and specific types of decisionmaking. The specific types of decisionmaking covered by this subpart are interim actions (40 CFR 1506.1); research, development, demonstration, and testing; rulemaking; adjudicatory proceedings; the applicant process; and procurements and financial assistance. Proposed Subpart B defines, with respect to each of these decisionmaking activities, the timing requirements for initiating the NEPA process and for completing an EIS or EA, if required, as well as requirements for including NEPA documentation in records of decisionmaking.

Proposed subpart B sets forth substantially the same requirements as are now found in section B and § A.1 (DOE Process) and § A.2 (Applicant Processes) of the Guidelines, which are combined into a single subpart and separated from the procedural requirements that are grouped in proposed subpart C.

Section 1021.211—Interim Actions

This proposed section contains requirements not present in the Guidelines. This section would prohibit any action being taken on a DOE proposal that is the subject of an EIS, before issuance of the record of decision (ROD), unless the action qualifies as an interim action under 40 CFR 1506.1. Further, this section prohibits the categorical exclusion of any action that is covered by, or is a part of, a DOE proposal that is the subject of an EIS unless such action qualifies as an interim action under 40 CFR 1506.1 or is otherwise covered by an existing EIS or EA.

Section 1021.215—Applicant Process; Section 1021.216—Procurement and Financial Assistance

These proposed sections would reorganize the requirements of the Guidelines to separate DOE regulatory actions from actions involving the transfer of funds. Proposed § 1021.215 includes the same requirements set forth in § B.3(c)(3) of the Guidelines regarding regulatory matters, while proposed § 1021.216 includes the same requirements set forth in § B.3(c)(2) of the Guidelines regarding "major system acquisition projects involving selection of sites and/or process by competitive procurements." In addition, proposed § 1021.216 would apply these requirements to applications for financial assistance. Certain of the requirements would be applicable as well to sole and limited source procurements and noncompetitive awards of financial assistance. Proposed § 1021.216 also introduces new terminology. The "environmental critique" referred to in proposed § 1021.216(d) is identical to the "environmental impact analysis" referred to in § B.3(c)(2)(iii) of the Guidelines, and the term "environmental synopsis" used in proposed § 1021.216(h) denotes the same document referred to in § B.3(c)(2)(iv) of the Guidelines as a "selection statement."

Subpart C—Implementing Procedures

Proposed subpart C contains procedural requirements for compliance with NEPA. It details requirements for the public availability of documents and for public participation in the NEPA process; the preparation of EAs and findings of no significant impact; and the preparation of EISs, including requirements for scoping, implementation plans, mitigation plans, records of decisions, supplements to EISs, the programmatic and site-wide EISs. Proposed subpart C also describes procedures to be followed when classified or confidential information is present in NEPA documentation, and establishes standards for the coordination of NEPA compliance with other environmental review requirements and with other Federal agencies. Finally, proposed subpart C describes the circumstances under which variances from the proposed rule may be permitted, and the requirements associated with such variances.

Proposed subpart C contains provisions that are similar to § A.4 (Scoping) and section C of the Guidelines. In response to SEN–15–90, it omits the provisions in § A.3 of the Guidelines, under which a determination not to prepare an EIS or an EA for a proposed DOE action not categorically excluded could be documented by a NEPA memorandum-to-file. The Secretary of Energy announced in SEN–15–90 that the use of such memoranda-to-file would terminate on September 30, 1990. As a result of this directive, all proposed DOE actions that are not listed as categorical exclusions, and for which an EIS is not required, will be the subject of an EA.

One additional provision in section C of the Guidelines is not carried over into the proposed rule. § C.8 (Revisions to the Guidelines) has been eliminated because revision of the DOE NEPA Regulations will be governed by the Administrative Procedure Act.

Because of the number of significant additional procedural requirements proposed in subpart C, and other differences between the procedures proposed in subpart C and the Guidelines, each section of subpart C is discussed below, excluding only those sections that reflect no substantive changes.

Section 1021.300—General Requirements

Paragraph (b) of this proposed section contains a new provision that would permit the discretionary preparation of NEPA documents for any DOE action "to further the purposes of NEPA" and requires that such documents conform to the same standards as required NEPA documents.

Section 1021.301—Agency Review and Public Participation

This proposed section contains new provisions not present in the Guidelines. It would implement the CEQ Regulations

at 40 CFR 1506.6 regarding public involvement and also would implement 40 CFR 1502.8 by requiring, wherever feasible, that DOE NEPA documents explain technical, scientific, or military terms or measurements in plain language.

Proposed § 1021.301 would implement the SEN–15–90 requirement to encourage greater participation by states that would host proposed DOE actions. It would require that host states be notified of a DOE determination to prepare an EA or an EIS. Adjacent states or other states may also be notified if DOE determines that they would be affected by the proposed action. This section also would require that host states be given an opportunity to comment on an EA before it is approved by DOE. Other affected states may be invited to comment on the EA prior to approval if DOE determines that it would be appropriate.

Section 1021.311—Notice of Intent and Scoping

This proposed section includes the following procedures not found in the Guidelines:

1. Publication, at DOE's discretion, of an advance notice of intent (NOI) where there will be a lengthy delay between the time DOE decides to prepare an EIS and the beginning of the public scoping process;

2. A minimum comment period of 30 days following the publication of a NOI (The Guidelines provide that the comment period will "normally be 20 days.");

3. At least one public scoping meeting for every EIS (excluding supplemental EISs);

4. Public notice if additional meetings are held or an announced public scoping meeting is changed; and

5. A provision making a public scoping process optional for a supplemental EIS but requiring that, when such a public scoping process is elected, it conform to the requirements of this section.

Section 1021.312—EIS Implementation Plan

The significant change proposed in this section is a requirement that EIS implementation plans be made available to the public and that, at DOE's discretion, they be placed in public reading rooms. There are minor changes in the wording of the requirements for the content of implementation plans. For example, proposed § 1021.312 does not refer to the implementation plan as a "brief" document as do the Guidelines, and the proposed rule would require that the plan include the "planned scope and content of the EIS," rather than a "detailed outline of the EIS," as required by the Guidelines.

Section 1021.313—Public Review of Environmental Impact Statements

This proposed section has no counterpart in the Guidelines. It would implement 40 CFR 1506.10(c) by providing for a public comment period on a DOE draft EIS of not less than 45 days and implements the requirements of 40 CFR 1503.4 (Response to comments). It would require at least one public hearing for every draft DOE EIS after at least 15 days notice. It also would provide that, at DOE's discretion, publication of notice of the availability of draft and final EISs and of public hearings on a draft EIS may be accomplished by other means in addition to those defined in this section.

Section 1021.314—Supplemental Environmental Impact Statements

This proposed section corresponds to § C.2 of the Guidelines. In addition to implementing the CEQ Regulations, proposed § 1021.314 would require that a determination regarding whether an EIS should be supplemented, as well as the Supplement Analysis supporting that decision, be made available to the public and, at DOE's discretion, be placed in DOE public reading rooms. It authorizes the use of an optional scoping process for supplements to EISs. (The CEQ Regulations do not require public scoping for EIS supplements.) Proposed § 1021.314(c) also would include DOE guidance on when a supplemental EIS would not be required.

Section 1021.315—Records of Decision

Procedures for records of decisions (RODs) are not included in the Guidelines. Proposed § 1021.315 tracks the procedures for RODs set forth in the CEQ Regulations and contains additional proposed requirements for the inclusion in the ROD of any necessary determinations required by 10 CFR part 1022 (Compliance with Floodplain/Wetlands Environmental Review Requirements) and publication of the ROD in the **Federal Register**.

Section 1021.321—Requirements for Environmental Assessments

This proposed section also covers procedures not included in the Guidelines, and adds to those set forth in the CEQ Regulations by providing that when appropriate, an EA will include assessments and analyses required to satisfy other environmental requirements; that DOE may consult with other agencies or interested parties regarding the scope of an EA; and that an EA must assess a no-action alternative even when the proposed action is required by law or court order.

Section 1021.322—Findings of No Significant Impact

The Guidelines do not include procedures for findings of no significant impact (FONSIs). Proposed § 1021.322 would provide more detailed requirements for the contents of a FONSI than do the CEQ Regulations, and would make mandatory the inclusion in the FONSI of a summary of the supporting EA and information regarding any mitigation commitments.

Section 1021.330—Programmatic NEPA Documents

Programmatic NEPA documents are not addressed in the Guidelines. Proposed § 1021.330 would require the preparation of programmatic EISs when necessary to support a decision on connected actions, and would authorize the preparation of discretionary programmatic documents to further the purposes of NEPA. The section also states that DOE programmatic NEPA documents are subject to the same requirements as any other NEPA documents.

Section 1021.331—Site-Wide NEPA Documents

As indicated above, SEN–15–90 required the development of a new DOE policy for site-wide EISs. Site-wide EISs are not addressed in the Guidelines. Proposed § 1021.331 would require, as a matter of policy, the preparation of site-wide EISs for certain large, multiple-facility DOE sites and an evaluation of these EISs every five years to determine if they should be supplemented. The preparation of site-wide EISs for other DOE sites would be optional under this proposed section.

Section 1021.332—Mitigation Action Plans

This proposed section, which was developed in response to SEN–15–90, would require mitigation action plans for all EISs and for each EA that will result in a FONSI based in significant part on DOE's commitment to take mitigation measures. Proposed § 1021.332 requires that a mitigation action plan be prepared, in the case of an EIS, prior to DOE taking any action that may have an adverse environmental impact, and, when required for a FONSI, prior to the issuance of the FONSI. The proposed section would also require that mitigation action plans address all mitigation commitments that are made in the ROD or that are necessary to support the issuance of a FONSI. There is no counterpart to this section in the Guidelines.

Section 1021.340—Classified, Confidential, or Otherwise Exempt Information

This proposed section differs from its counterpart in the Guidelines, § C.1, by requiring that interagency memoranda transmitting a federal agency's comments on the environmental impacts of a DOE proposal be disclosed even if exempted from mandatory disclosure by the Freedom of Information Act (5 U.S.C. 552). It would also require that NEPA documents withheld in their entirety because of the presence of classified, confidential, or other protected information otherwise conform to all the requirements of the CEQ and DOE NEPA Regulations.

Section 1021.342—Interagency Cooperation

This proposed section, which is a counterpart to § A.2(d) of the Guidelines, would express DOE's policy of cooperation with other agencies in complying with NEPA.

Section 1021.343—Variances

Paragraph (a) of this proposed section (Emergency Actions) would implement 40 CFR 1506.11 (Emergencies); emergencies are not covered in the Guidelines.

Paragraph (b) (Reduction of Time Periods) is significantly different from its counterpart provision in the Guidelines. § C.3, which authorizes the reduction of time periods established by the CEQ Regulations where necessary to comply with other specific statutory requirements. The proposed provision, on the other hand, would permit the reduction of only those time periods not established by the CEQ Regulations. The procedure set forth in this proposed section for a permissible reduction in a time period is publication of a notice announcing the reduction in the **Federal Register**.

Proposed paragraph (c) of this section corresponds to the Purpose statement and § C.7 of the Guidelines, concerning the circumstances under which a variance from the provisions of DOE's NEPA procedures may be authorized. The Guidelines allow such deviations if DOE's Under Secretary determines them to be "soundly based." This section of the proposed rule would implement the directive of SEN–15–90 that deviations must be approved by the Secretary of Energy. This proposed section also would clarify the grounds for any deviations by requiring that they be "soundly based on the interests of national security or the public health, safety, or welfare." This section also makes clear that the Secretary may not approve a variance from any provision of the CEQ Regulations except as provided for in those regulations.

Subpart D—Typical Classes of Action

Proposed subpart D would provide requirements and guidance for determining the appropriate level of NEPA review for proposed DOE actions, and would establish criteria for determining the eligibility of specific actions for categorical exclusion. Four appendices to subpart D set forth the classes of actions that normally would be categorically excluded from preparation of an EIS or an EA (appendices A and B), actions that normally would require preparation of an EA but not necessarily an EIS (appendix C), and actions that normally would require preparation of an EIS (appendix D).

Subpart and its appendices correspond to § A.3. (Whether to Prepare an Environmental Impact Statement) and section D (Typical Classes of Actions) of the Guidelines. There are major changes proposed in subpart D and its appendices. Most significant is the revision and expansion of the list of actions which would be categorically excluded.

In considering these revisions, commenters should bear in mind that the classes of actions listed in these appendices do not constitute a conclusive determination regarding the appropriate level of NEPA review. Rather, the listing creates a presumption that the defined level of review is appropriate for the listed actions. As indicated in proposed § 1021.400, that presumption can be overcome when "extraordinary circumstances related to the specific proposal (including issues raised in public comments or other information available to DOE) cause DOE to have a reasonable question as to whether the categorization is appropriate for the specific proposal."

Appendices A and B—Categorical Exclusions

As discussed above, SEN–15–90 mandates the elimination of the NEPA memorandum-to-file on September 30, 1990. A NEPA memorandum-to-file was previously used to document a determination that a proposed DOE action, not included in the list of categorical exclusions, would have clearly insignificant impacts, and therefore did not require either an EA or an EIS. The result of the elimination of the memorandum-to-file is that all proposed DOE actions not included in the list of categorical exclusions must be the subject of an EA or an EIS. Because the list of categorical exclusions in the Guidelines is relatively small, this situation could in turn result in DOE preparing EAs for actions that clearly have no potential for significant effects on the human environment.

Therefore, SEN–15–90 also mandated that a revised and expanded list of categorical exclusions be developed in part to retain efficiency of NEPA compliance for insignificant actions. Another reason for the requirement to develop a revised and expanded list, as expressed in SEN–15–90, is to formulate the lists of classes of actions in a manner that minimizes the need for subjective judgment. To further this purpose, SEN–15–90 immediately eliminated use of the Guidelines' so-called "catch-all" exclusion, which applied to:

> Actions that are substantially the same as other actions for which the environmental impacts have already been assessed in a NEPA document and determined by DOE to be clearly insignificant and where such assessment is still valid.

In order to develop a list of categorical exclusions that would be sufficiently detailed to eliminate the preparation of clearly unnecessary EAs, and that would be sufficiently specific to eliminate the need for subjective judgment, DOE solicited the assistance of its program and field offices in identifying the types of actions that they routinely perform and the evaluation of which has consistently resulted in a determination that the actions do not individually or cumulatively have a significant effect on the human environment.

The lists of 121 actions set forth in proposed appendices A and B to subpart D are the result of that effort. Not only is the number of proposed excludable classes of actions much greater than that included in the Guidelines, but every effort has been made to define the actions with specificity. For example, the list of categorical exclusions in the Guidelines includes "Actions involving routine maintenance of DOE-owned or operated facilities." In the proposed rule (appendix A, 1.26), routine maintenance is defined and 20 examples of actions that fall within the definition are set forth. DOE believes that this approach will lead to a more objective determination of the application of the categorical exclusion for routine maintenance.

As another example, the Guidelines include General Plant Projects (defined by DOE as miscellaneous minor new

construction projects costing less than $1.2 million) as a class of actions that are categorically excluded. The proposed rule instead lists a number of specific activities that normally are performed as General Plant Projects. This change recognizes that the impact of an action, not its cost, is the appropriate basis for categorical exclusion.

Two other revisions to the classes of categorically excluded actions are significant. The most recent amendments to section D of the Guidelines, adopted on September 7, 1990 (55 FR 37174), established screening criteria to limit the scope of certain additions to the list of categorically excluded actions. Proposed § 1021.410(b) includes those same criteria and makes them applicable to all actions included in appendices A and B. Finally, the list of classes of categorically excluded actions has been divided into two parts. The list in appendix A can be applied to particular proposed DOE projects without any requirement to document the application. The application of a class of action in appendix B to a particular proposed action, on the other hand, must be documented. (Pursuant to SEN-15-90, that documentation will be reviewed by the DOE Office of NEPA Oversight staff, who will have 14 days to object to the determination made on the basis of that documentation.)

Appendix C—Classes of Actions that Normally Require EAs But Not Necessarily EISs

The list in proposed appendix C contains 18 items, seven of which are taken from the corresponding 14-item list in the Guidelines. Only one of those seven items contains a noteworthy change. The action (which consolidates two overlapping items in the Guidelines) is described in the proposed rule as

> Establishment and implementation of contracts, policies, marketing plans, or allocation plans for the long-term allocation (five years or longer) of power.

The similarly described items in the Guidelines defines long term as "greater than one year."

The new actions proposed in appendix C are derived from the same experience-based process used to develop proposed appendices A and B. The revised and expanded list is more specifically worded, and more accurately reflects the types of activities that DOE and its contractors currently perform.

Appendix D—Classes of Actions that Normally Require EISs

The list in proposed appendix D includes all but one of the seven actions described in the corresponding list in section D of the Guidelines. The action that is not proposed to be retained is:

> DOE actions which cause energy conservation on a substantial scale including those where effects are primarily on the indoor environment (e.g., indoor air quality).

DOE's experience indicates that NEPA review requirements for substantial energy conservation actions should be decided on a case-by-case basis; environmental assessments may be adequate for some large scale energy conservation projects. One of the retained items has been significantly changed. The action described in the Guidelines as, "DOE actions which are expected to result in the construction and operation of a large scale project," has been revised in the proposed appendix D to read, "Major System Acquisitions, as designated by DOE Order 4240.1 'Designation of Major System Acquisitions and Major Projects.'" DOE has revised the description of this action because it believes that the phrase "large scale project" is too vague. On the other hand "major system acquisitions" are designated as such on the basis of specific criteria set forth in DOE Order 4240.1.

Proposed appendix D lists 5 new actions, related to the siting, construction, and operation of major nuclear facilities, and facilities for storing and disposing of hazardous and radioactive wastes.

IV. Revocation of Existing Guidelines and Replacement of Regulations

If the proposed rule is issued as a final rule, DOE intends to revoke the existing DOE NEPA Guidelines, and to revise the existing regulations at 10 CFR part 1021 by striking the current text and replacing it with the proposed rule, effective on the date of publication of the final rule, which DOE intends also to be the effective date of the final rule. DOE believes that there is good cause for making the final rule immediately effective because prompt use of the new and expanded list of categorical exclusions will make DOE resources (time and money) that would otherwise be spent preparing unnecessary documentation available for more productive purposes. DOE invites the public to comment on this intention.

V. Environmental Review

The proposed rule consists of the revision and consolidation of the existing NEPA Guidelines and the existing part 1021. Its purpose is primarily to establish procedures without substantially changing their environmental effect. Thus, these revisions are not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, but rather are categorically excluded under section D of the Guidelines. Consequently, neither an EIS nor an EA is required for the proposed rule.

VI. Review Under Executive Order 12291

The proposed rule has been reviewed in accordance with Executive Order 12291, which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, on individuals, or public or private organizations, or on state and local governments. The Executive Order also requires that a regulatory impact analysis be prepared for a "major rule." The Executive Order defines "major rule" as any regulation that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, and local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed rule would amend and codify already existing policies and procedures for compliance with NEPA. The proposed rule contains no substantive changes in the requirements imposed on applicants for a DOE license, financial assistance, permit, or other similar actions, which is the area where one might anticipate an economic effect. Therefore, DOE has determined that the incremental effect of today's proposed rule, if finalized, will not have the magnitude of effects on the economy to bring the proposed rule within the definition of a "major rule."

Pursuant to the Executive Order, the proposed rule was submitted to the Office of Management and Budget (OMB) for pre-publication regulatory review.

VII. Review Under Executive Order 12612

Executive Order 12612 requires that rules be reviewed for Federalism effects on the institutional interest of states and local governments, and if the effects are sufficiently substantial, preparation of a Federalism assessment is required to assist senior policymakers. The rulemaking to revise DOE's NEPA Guidelines and 10 CFR part 1021 will not have any substantial direct effects on state and local governments within the meaning of the Executive Order; it will, however, allow states the opportunity to play a more significant role in DOE's NEPA process. The final rule will affect Federal NEAP compliance procedures, which are not subject to state regulation.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act, Public Law 96-345 (5 U.S.C. 601-612), requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. The requirement (which appears in section 603 of the Act) does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." This proposed rule would modify existing policies and procedural requirements for DOE compliance with NEPA. It makes no substantive changes to requirements imposed on applicants for DOE licenses, permits, financial assistance, and similar actions as related to NEPA compliance. Therefore, DOE certifies that this rule, if promulgated, would not have a "significant economic impact on a substantial number of small entities."

IX. Public Comment Procedures

Written Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting information, views, or arguments with respect to the proposed regulations set forth in this Notice. Comments should be submitted to the address indicated in the **ADDRESSES** section of this Notice and should be identified on the outside of the envelope and on documents submitted to DOE with the designation "Comments on Proposed NEPA Rule." Two copies should be submitted, if possible. All comments received by the date indicated in the **DATES** section will be considered by DOE before final action is taken on the proposed rule. Late comments will be considered to the extent practicable.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and three copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Public Hearing

In addition to receiving written comments, DOE will conduct a public hearing on the proposed rule. The time and place of the public hearing are indicated at the beginning of this Notice under **DATES** and **ADDRESSES**, respectively. DOE invites any person who has an interest in today's proposed rule, or who represents a group of people that have an interest in the proposed rule, to make an oral presentation.

1. Procedures for submitting Requests to Speak

Requests to speak should be directed to the address indicated in the **ADDRESSES** section of this Notice. Requests should be labeled: NEPA Rule Hearing. The person making the request should give a telephone number where he or she may be contacted. People who have not requested to speak in advance will be accommodated to the extent practicable.

DOE asks that each speaker submit two copies of any written statement at the hearing registration desk.

2. Conduct of Hearing

DOE reserves the right to schedule the speakers and to establish the procedures governing the conduct of the hearing.

A representative of the DOE Office of General Counsel will be designated to preside at the hearing. The presiding official will establish the order of speakers and provide any additional procedures necessary for conduct of the hearing. A panel of DOE representatives will assist in conducting the hearing. The hearing will not be conducted as a judicial or evidentiary hearing, but will be conducted in accordance with 5 U.S.C. 553.

To ensure that all persons wishing to make a presentation can be heard, each presentation may be limited to 10 minutes. Speakers who wish to provide further information for the record should submit such information in writing as described above.

People who do not make advance arrangements may register to speak at the time of the hearing; after all previously scheduled speakers have been given an opportunity to make their presentations, an opportunity will be provided to these registrants to speak, as time permits.

DOE reserves the right to change the location, date, and procedures for this hearing. Such changes would be announced in the appropriate media, such as the **Federal Register**.

The entire record of the hearing, including a transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday. Any person may make a copy of the transcript at the DOE Freedom of Information Reading Room or purchase a copy of the hearing transcript from the court reporter.

List of Subjects in 10 CFR Part 1021

Environmental assessment, Environmental impact assessment, National Environmental Policy Act.

Issued in Washington, DC, October 29, 1990.

Paul L. Ziemer,

Assistant Secretary, Environmental, Safety and Health.

For reasons set out in the preamble, it is proposed to revise 10 CFR part 1021 to read as set forth below:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTATION PROCEDURES

Subpart A—General

Sec.

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1021.314 Supplemental environmental impact statements.
1021.315 Records of decision.
1021.320 Environmental assessments.
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1021.322 Findings of no significant impact.
1021.330 Programmatic NEPA documents.
1021.331 Site-wide NEPA documents.
1021.332 Mitigation action plans.
1021.340 Classified, confidential and otherwise exempt information.
1021.341 Coordination with other environmental review requirements.
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Subpart D—Typical Classes of Action

1021.400 Level of NEPA review.
1021.410 Application of categorical exclusions (classes of actions that normally do not require EAs or EISs).

Appendix A to Subpart D—Categorical Exclusions that Do Not Require Documentation

Appendix B to Subpart D—Categorical Exclusions that Require Documentation

Appendix C to Subpart D—Classes of Action that Normally Require EAs but Not Necessarily EISs

Appendix D to Subpart D—Classes of Action that Normally Require EISs

Authority: Sec. 644 of the Department of Energy Organization Act (42 U.S.C. 7254); and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Subpart A—General

§ 1021.100 Purpose.

The purpose of this part is to establish procedures that the Department of Energy (DOE) shall use to comply with section 102(2) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332(2)) and the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). This part supplements, and is to be used in conjunction with, the CEQ Regulations.

§ 1021.101 Policy.

It is the Department of Energy's policy to follow the letter and spirit of NEPA; comply fully with the CEQ Regulations; and apply the NEPA review process early in the planning stages for DOE proposals.

§ 1021.102 Applicability.

(a) This part applies to all organizational elements of DOE except the Federal Energy Regulatory Commission.

(b) This part applies to any DOE action affecting the environment of the United States, its territories or possessions. DOE actions having environmental effects outside the United States, its territories or possessions are subject to the provisions of Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions" (3 CFR, 1979 Comp., p. 356; 44 FR 1957, Jan 4, 1979), DOE guidelines implementing that Executive Order (46 FR 1007, January 5, 1981) and the Department of State's "Unified Procedures Applicable to Major Federal Actions Relating to Nuclear Activities Subject to Executive Order 12114" (44 FR 65560, November 13, 1979).

§ 1021.103 Adoption of CEQ NEPA Regulations.

The Department of Energy adopts the regulations for implementing NEPA published by the Council on Environmental Quality at 40 CFR parts 1500 through 1508.

§ 1021.104 Definitions.

(a) The definitions set forth in 40 CFR part 1508 are referenced and used in this part.

(b) In addition to the terms defined in 40 CFR part 1508, the following definitions apply to this part:

Action means a DOE endeavor regarding a project, program, plan, or policy, as discussed at 40 CFR 1508.18.

Adjacent state means a state that has a common boundary with a host state.

Advance NOI means a formal public notice of DOE's intent to prepare an EIS, which is published in advance of a NOI in order to facilitate public involvement in the NEPA process.

Categorical exclusion means a category of actions, as defined at 40 CFR 1508.4 and listed in appendix A and B to subpart D of this part, for which neither an EA nor an EIS is normally required.

CEQ means the Council on Environmental Quality as defined at 40 CFR 1508.6.

CEQ Regulations means the regulations issued by CEQ (40 CFR parts 1500–1508) to implement the procedural provisions of NEPA.

Contaminant means a substance identified within the definition of contaminant in section 101(33) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C 9601.101(33)).

Day means a calendar day.

DOE means the United States Department of Energy.

DOE decision (or *decision*) means a final DOE determination to take a given course of action, as discussed at 40 CFR 1508.18; the action may commence as soon as a decision is issued.

DOE proposal (or *proposal*) means a proposal, as discussed at 40 CFR 1508.23, for an action, as discussed at 40 CFR 1508.18 (whether initiated by DOE, another Federal agency, or an applicant), if the proposal requires a DOE decision.

Documentation (of a categorical exclusion listed in appendices A and B to subpart D of this part) means a record of DOE's decision that a proposed action or group of proposed actions meet eligibility criteria for categorical exclusions and that a DOE categorical exclusion has been applied to a proposed action or group of proposed actions.

EA means an environmental assessment as defined at 40 CFR 1508.9.

EIS means an environmental impact statement as defined at 40 CFR 1508.11, or, unless this part specifically provides otherwise, a Supplemental EIS.

EIS Implementation Plan means a document that explains and supports the scope and approach DOE will use to prepare an EIS.

Eligibility screening means the process of comparing a proposed action or group of proposed actions to criteria that must be met before an action can be considered for a categorical exclusion; "eligibility criteria" refers to those criteria listed in § 1021.410 of this part.

EPA means the United States Environmental Protection Agency.

FONSI means a Finding of No Significant Impact as defined at 40 CFR 1508.13.

Host state means a state within whose boundaries DOE proposes an action at an existing facility or construction or operation of a new facility.

Hazardous substance means a substance identified within the definition of hazardous substances in section 101(14) of CERCLA (42 U.S.C 9601.101(14)).

Interim action means an action that is within the scope of an ongoing EIS and that DOE proposes to take before the ROD is issued, and that is permissible under 40 CFR 1506.1.

Mitigation Action Plan means a document that describes the plan for implementing commitments made in a DOE EIS and its associated ROD, or when appropriate, an EA or FONSI, to mitigate adverse environmental impacts associated with an action.

NEPA means the National Environmental Policy Act of 1969 (42 U.S.C. 4231 *et seq.*).

NEPA document means a DOE NOI, EIS, ROD, EA, FONSI, any documentation of a categorical exclusion, or any other document prepared pursuant to a requirement of NEPA or the CEQ Regulations.

NEPA review means the process used to comply with section 102(2) of NEPA.

NOI means a Notice of Intent to prepare an EIS as defined at 40 CFR 1508.22.

Notice of Availability means a formal notice, published in the Federal Register, that announces the issuance and public availability of a draft or final EIS. The Environmental Protection Agency (EPA) Notice of Availability is the official public notification of an EIS; a DOE Notice of Availability is an optional notice used to provide information to the public.

Pollutant means a substance identified within the definition of pollutant in section 101(33) of CERCLA (42 U.S.C. 9601.101(33)).

Program means a sequence of connected or related DOE actions or projects as discussed at 40 CFR 1508.18(b)(3) and 1508.25(a).

Programmatic NEPA document means a broad-scope EIS or EA that identifies and assesses the environmental impacts of a DOE program; it may also refer to an associated NEPA document such as a NOI, ROD or FONSI.

Project means a specific DOE undertaking, which may include design, construction and operation of an individual facility; research, development, demonstration, and testing for a process or product; funding for a facility, process, or product; or similar activities, as discussed at 40 CFR 1508.18(b)(4).

ROD means a Record of Decision as described at 40 CFR 1505.2.

Scoping means the process described at 40 CFR 1501.7; "public scoping process" refers to that portion of the scoping process where the public is invited to participate, as described at 40 CFR 1501.7 (a)(1) and (b)(4).

Site-wide NEPA document means a broad-scope EIS or EA that identifies and assesses the individual and cumulative impacts of continuing and reasonably foreseeable future actions at a DOE site; it may also refer to an associated NEPA document such as a NOI, ROD or FONSI.

Supplement Analysis means a DOE document used to determine whether a supplemental EIS should be prepared pursuant to 40 CFR 1502.9(c), or to support a decision to prepare a new EIS or a revised ROD.

Supplemental EIS means an EIS prepared to supplement a prior EIS as provided at 40 CFR 1502.9(c).

The Secretary means the Secretary of Energy.

§ 1021.105 Oversight of Agency NEPA activities.

The Assistant Secretary for Environment, Safety and Health, or his/her designee, is responsible for overall review of DOE NEPA compliance. Further information on DOE's NEPA review procedures and status reports on individual NEPA reviews may be obtained upon request from the Office of NEPA Oversight, EH–25, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Subpart B—DOE Planning and Decisionmaking

§ 1021.200 DOE planning.

(a) DOE shall provide for adequate and timely NEPA review of DOE proposals, including those for any program, policy, project, regulation, or legislation, in accordance with 40 CFR 1501.2 and this section. In its planning for each proposal, DOE shall include adequate time and funding for proper NEPA review and for preparation of anticipated NEPA documents.

(b) DOE shall begin its NEPA review as soon as possible, in DOE's judgment, after the time that DOE proposes an action or is presented with a proposal.

(c) DOE shall determine the level of NEPA review required for a proposal in accordance with § 1021.300 and subpart D of this part.

(d) During the development and consideration of a DOE proposal, DOE shall review any relevant planning and decisionmaking documents, whether prepared by DOE or another agency, to determine if the proposal or any of its alternatives are considered in a prior NEPA document. If so, DOE shall consider adopting the existing document, or any pertinent part thereof, in accordance with 40 CFR 1506.3.

§ 1021.210 DOE decisionmaking.

(a) For each DOE proposal, DOE shall coordinate its NEPA review with its decisionmaking. Sections 1021.211 through 1021.214 of this part specify how DOE will coordinate its NEPA review with decision points for certain types of proposals (40 CFR 1505.1(b)).

(b) For each DOE proposal, DOE shall complete its NEPA review before making a decision on the proposal, except as provided in 40 CFR 1506.1 and §§ 1021.211 and 1021.216 of this part.

(c) For each DOE proposal, during the decisionmaking process DOE shall consider the relevant NEPA documents, public and agency comments (if any) on those documents, and DOE responses to those comments, as part of its consideration of the proposal (40 CFR 1505.1(d)).

(d) If any EIS or EA is prepared for a DOE proposal, DOE shall consider the alternatives analyzed in that EIS or EA before rendering a decision on that proposal; the decision on the proposal shall be within the range of alternatives analyzed in the EA or EIS (40 CFR 1505.1(e)).

(e) For each DOE proposal, DOE shall include the relevant NEPA documents, public and agency comments (if any) on those documents, and DOE responses to those comments as part of the ROD or other administrative record (40 CFR 1505.1(c)).

(f) When DOE uses a broad decision (such as one on a policy or program) as a basis for a subsequent narrower decision (such as one on a project or other site-specific proposal), DOE may use tiering (40 CFR 1502.20) and incorporation of material by reference (40 CFR 1502.21) in the NEPA review for the subsequent narrower proposal.

§ 1021.211 Interim actions.

While DOE is preparing an EIS that is required under § 1021.300(a) of this part, DOE shall take no action on the proposal, or any part thereof, that is the subject of the EIS before issuing a ROD (except as provided at 40 CFR 1506.1). Actions that are covered by, or are a part of, a DOE proposal for which an EIS is being prepared shall not be categorically excluded from preparation of a EA or EIS under supbart D or this part unless they qualify as interim actions under 40 CFR 1506.1 or are covered by an existing EA or EIS.

§ 1021.212 Research, development, demonstration, and testing.

(a) This section applies to the adoption and application of programs that involve research, development, demonstration and testing for new technologies (40 CFR 1502.4(c)(3)). Adoption of such programs might also lead to commercialization or other broad-scale implementation by DOE or another entity.

(b) For any proposed program described in paragraph (a), DOE shall begin its NEPA review (if otherwise required by this part) as soon as, in DOE's judgment, environmental effects can be meaningfully evaluated, and before DOE has reached the level of investment or commitment likely to determine subsequent development or restrict later alternatives, as discussed at 40 CFR 1502.4(c)(3). Normally, DOE will complete any relevant NEPA document in advance of, and for use in reaching, a decision to proceed with the detailed design, except as provided in 40 CFR 1506.1 and § 1021.211 of this part.

(c) For subsequent phases of development and application, DOE shall prepare one or more additional NEPA documents (if otherwise required by this part).

§ 1021.213 Rulemaking.

(a) This section applies to regulations promulgated by DOE.

(b) DOE shall begin its NEPA review of a proposed rule (if otherwise required by this part) while drafting the proposed regulation, and as soon as, in DOE's judgment, environmental effects can be meaningfully evaluated.

(c) DOE shall include any relevant NEPA documents, public or agency comments (if any) on those documents, and DOE responses to those comments, as part of the administrative record (40 CFR 1505.1(c)).

(d) If an EIS is required, DOE will normally publish the draft EIS at the time it publishes the proposed rule (40 CFR 1502.5(d)). DOE will normally combine any public hearings required for a proposed rule with the public hearings required on the draft EIS under § 1021.313 of this part. The draft EIS needs not accompany notices of inquiry or advance notices of proposed rulemaking that DOE may use to gather information during early stages of regulation development. When engaged in rulemaking for the purpose of protecting the public health and safety, DOE may issue the final rule simultaneously with publication of the EPA Notice of Availability of the final EIS in accordance with 40 CFR 1506.10(b).

(e) If an EA is required, DOE will normally complete the EA and issue any related FONSI prior to or simultaneously with issuance of the proposed rule; however, if the EA leads to preparation of an EIS, the provisions of paragraph (d) shall apply.

§ 1021.214 Adjudicatory proceedings.

(a) This section applies to DOE proposed actions that involve DOE adjudicatory proceedings, excluding judicial or administrative, civil or criminal enforcement actions.

(b) DOE shall begin its NEPA review (if otherwise required by this part) before rendering any final adjudicatory decision. If an EIS is required, the final EIS will normally be completed at the time of or before final staff recommendation, in accordance with 40 CFR 1502.5(c).

(c) For formal adjudicatory proceedings, DOE shall include any relevant NEPA documents, public or agency comments (if any) on those documents, and DOE responses to those comments, as part of the administrative record (40 CFR 1505.1(c)).

§ 1021.215 Applicant process.

(a) This section applies to actions that involve application to DOE for a permit, license, exemption or allocation, or other similar actions, unless the action is categorically excluded from preparation of an EA or EIS under subpart D of this part.

(b) An applicant described in paragraph (a) shall:

(1) Consult with DOE as early as possible in the planning process to obtain guidance with respect to the appropriate level and scope of any studies or environmental information that DOE may require to be submitted as part of, or in support of, the application;

(2) Conduct studies that DOE deems necessary and appropriate to determine the environmental impacts of the proposed action;

(3) Consult with appropriate Federal, state, regional and local agencies, Indian tribes, and other potentially interested parties during the preliminary planning stages of the proposed action to identify environmental factors and permitting requirements;

(4) Notify DOE as early as possible of other Federal, state, regional, local or Indian tribal actions required for project completion to allow DOE to coordinate the Federal environmental review, and fulfill the requirements of 40 CFR 1506.2 regarding elimination of duplication with state and local procedures, as appropriate;

(5) Notify DOE of private entities and organizations interested in the proposed undertaking, in order that DOE can consult, as appropriate, with these parties in accordance with 40 CFR 1501.2(d)(2); and

(6) Notify DOE if, before completing the DOE environmental review and decisionmaking process, the applicant plans or is about to take an action in furtherance of an undertaking within DOE's jurisdiction that may have an adverse environmental impact or limit the choice of alternatives, in accordance with 40 CFR 1506.1(a).

(c) For major categories of DOE actions involving a large number of applicants, DOE may prepare generic guidelines describing the level and scope of environmental information expected from the applicant and will make such guidelines available to applicants upon request.

(d) DOE shall begin its NEPA review (if otherwise required by this part) as soon as possible after receiving an application described in paragraph (a), and shall independently evaluate and verify the accuracy of information received from an applicant in accordance with 40 CFR 1506.5(a). At DOE's option, an applicant may prepare an EA in accordance with 40 CFR 1506.5(b). If an EIS is prepared, the EIS shall be prepared by DOE or by a contractor that is selected by DOE and that may be funded by the applicant, in accordance with 40 CFR 1506.5(c). The contractor shall provide a disclosure statement in accordance with 40 CFR 1506.5(c), as discussed in § 1021.312(b)(4) of this part. DOE shall complete any NEPA documents (or evaluation of any EA prepared by the applicant) before rendering a final decision on the application and shall consider the NEPA document in reaching its decision, as provided in § 1021.210 of this part.

§ 1021.216 Procurement and Financial Assistance.

(a) This section applies to DOE competitive and limited-source procurements, and to awards of financial assistance by a competitive process, unless the action is categorically excluded from preparation of an EA or EIS under subpart D of this part. Paragraphs (b), (c), and (i) of this section apply as well to DOE sole source procurements of sites, systems, or processes, and to noncompetitive awards of financial assistance, unless the action is categorically excluded from preparation of an EA or EIS under subpart D of this part.

(b) Where relevant in DOE's judgment, DOE shall require that offerors submit environmental data and analyses as a discrete part of the offeror's proposal. DOE shall specify in its solicitation document the type of information and level of detail for environmental data and analyses so required. The data will be limited to those reasonably available to offerors.

(c) DOE shall independently evaluate and verify the accuracy of environmental data and analyses submitted by offerors.

(d) For offers in the competitive range, DOE shall prepare and consider an environmental critique before the selection.

(e) The environmental critique will be subject to the confidentiality requirements of the procurement process.

(f) The environmental critique will evaluate the environmental data and analyses submitted by offerors; it may also evaluate supplemental information developed by DOE as necessary for a reasoned decision.

(g) The environmental critique will focus on environmental issues that are pertinent to a decision on proposals and will include:

(1) A brief discussion of the purpose of the procurement and each offer, including any site, system, or process variations among the offers having environmental implications;

(2) A discussion of the salient characteristics of each offeror's proposed site, system, or process as well as alternative sites, systems or processes;

(3) A brief comparative evaluation of the potential environmental impacts of the offers, which will address direct and indirect effects, short-term and long-term effects, proposed mitigation measures, adverse effects that cannot be avoided, areas where important environmental information is incomplete and unavailable, unresolved environmental issues, and practicable mitigating measures not included in the proposal; and

(4) To the extent known for each offer, a list of Federal, state, and local government permits, licenses, and approvals that must be obtained.

(h) DOE shall prepare a publicly available environmental synopsis, based on the environmental critique, to document the consideration given to environmental factors and to record that the relevant environmental consequences of reasonable alternatives have been evaluated in the selection process. The synopsis will not contain business, confidential, trade secret or other information that DOE otherwise would not disclose pursuant to 18 U.S.C. 1905, the confidentiality requirements of the competitive procurement process, 5 U.S.C. 552(b), or § 1021.340 of this part. After a selection has been made, the environmental synopsis shall be filed with EPA, shall be made publicly available, and shall be incorporated in any NEPA document prepared under paragraph (i) of this section.

(i) If an EA or EIS is required, DOE shall prepare, consider and publish the EA or EIS in conformance with the CEQ Regulation and other provisions of this part before taking any action pursuant to the contract or award of financial assistance (except as provided at 40 CFR 1506.1 and § 1021.211 of this part). The provisions of § 1021.340 shall apply to such NEPA documents. If the NEPA process is not completed before the award of the contract or financial assistance, then the contract or financial assistance shall be contingent on completion of the NEPA process (except as provided at 40 CFR 1506.1 and § 1021.211 of this part). DOE shall phase subsequent contract work to allow the NEPA review process to be completed in advance of a go/no-go decision.

Subpart C—Implementing Procedures

§ 1021.300 General requirements.

(a) DOE shall determine, under the procedures in the CEQ Regulations and this part, whether any DOE proposal:

(1) Requires preparation of an EIS;

(2) Requires preparation of an EA; or

(3) Is categorically excluded from preparation of either an EIS or an EA.

DOE shall prepare any pertinent NEPA documents as required by NEPA, the CEQ Regulations, or this part.

(b) At its discretion, DOE may prepare a NEPA document for any DOE action at any time in order to further the purposes of NEPA. This may be done to analyze the consequences of ongoing activities, support DOE planning, assess the need for mitigation, or fully disclose the potential environmental consequences of DOE actions. Documents prepared under this paragraph shall be prepared in the same manner as DOE documents prepared under paragraph (a) of this section.

§ 1021.301 Agency review and public participation.

(a) DOE shall make its NEPA documents available to other Federal agencies, states, local governments, Indian tribes, and the general public, in accordance with 40 CFR 1506.6, except as provided in § 1021.340 of this part.

(b) Wherever feasible, DOE NEPA documents shall explain technical, scientific or military terms or measurements using terms familiar to the general public, in accordance with 40 CFR 1502.8.

(c) DOE shall provide any host state with an opportunity to comment on any DOE EA prior to DOE's approval of the EA. At DOE's discretion, this review period shall be from 14 to 30 days. If a host state does not respond during the review period, waives the opportunity for prior review, or provides a response before the end of the comment period, DOE may proceed to approve the EA. DOE shall provide an adjacent state with the same opportunity to review and comment on a DOE EA before approval if, in DOE's judgment, the adjacent state may be affected by the proposed action. At its discretion, DOE may also extend an opportunity to review and comment on a DOE EA to other states that may be affected by a proposal.

(d) DOE shall notify any host state of a DOE determination to prepare an EA or EIS for the DOE proposal, and any adjacent state that, in DOE's judgment, may be affected by the proposal. At its discretion, DOE may also notify other states of a DOE determination to prepare an EA or EIS if, in DOE's judgment, those states may be affected by a proposal.

§ 1021.310 Environmental impact statements.

DOE shall prepare and circulate EISs and related RODs in accordance with the requirements of the CEQ Regulations, as supplemented by this subpart.

§ 1021.311 Notice of intent and scoping.

(a) DOE shall publish a NOI in the Federal Register, in accordance with 40 CFR 1501.7, as soon as practicable, in DOE's judgment, after a decision is made to prepare an EIS, except as provided in § 1021.340 of this part. If there will be a lengthy period of time between its decision to prepare an EIS and the time of actual preparation, DOE may defer publication of the NOI until a reasonable point in time before preparing the EIS, provided that DOE allows a reasonable opportunity for interested parties to participate in the EIS process. Through the NOI, DOE shall invite comments and suggestions on the scope of the EIS. DOE shall disseminate the NOI in accordance with 40 CFR 1506.6.

(b) If there will be a lengthy delay between the time DOE has decided to prepare an EIS and the beginning of the public scoping process, at its discretion DOE may publish an Advance NOI in the Federal Register to provide an early opportunity to inform interested parties of the pending EIS or to solicit early public comments. This Advanced NOI does not serve as a substitute for the NOI provided for in paragraph (a).

(c) Publication of the NOI in the Federal Register shall begin the public scoping process. The public scoping process for a DOE EIS shall allow a minimum of 30 days for the receipt of public comments.

(d) Except as provided in paragraph (g), DOE shall hold at least one public scoping meeting as part of the public scoping process for a DOE EIS. DOE shall announce the location, date and time of public scoping meetings in the NOI or by other appropriate means, such as additional notices in the Federal Register, news releases to the local media, or letters to affected parties. Public scoping meetings shall not be held until at least 15 days after public notification. Should DOE change the location, date or time of a public scoping meeting, or schedule additional public scoping meetings, DOE shall publicize these changes in the Federal Register or in other ways as appropriate.

(e) In determining the scope of the EIS, DOE shall consider all comments received during the announced comment period held as part of the public scoping process. At DOE's discretion, DOE may choose to consider comments received after the close of the announced comment period.

(f) The results of the scoping process shall be documented in the EIS Implementation Plan as provided in § 1021.312 of this part.

(g) A public scoping process is optional for DOE supplemental EISs (40 CFR 1502.9(c)(4)). If DOE initiates a public scoping process for a supplemental EIS the provisions of paragraphs (a) through (f) of this section shall apply.

§ 1021.312 EIS implementation plan.

(a) DOE shall prepare an EIS Implementation Plan to provide guidance for the preparation of an EIS and record the results of the scoping process. DOE shall complete the EIS Implementation Plan as soon as possible after the close of the public scoping process; but in any event before issuing the draft EIS. At its option, DOE may amend the EIS Implementation Plan to incorporate changes in schedules, alternatives, or other content.

(b) The EIS Implementation Plan shall include:

(1) A statement of the planned scope and content of the EIS;

(2) The purpose and need for the proposed action;

(3) A description of the scoping process and the results (as needed to document DOE compliance with 40 CFR 1501.7), including a summary of comments received, and their disposition; and

(4) A disclosure statement executed by any contractor (or subcontractor) under contract with DOE to prepare the EIS document in accordance with 40 CFR 1506.5(c).

(c) A DOE's option, the Implementation Plan may include target page limits and schedules for the EIS, planned work assignments, anticipated consultation with other agencies and organizations, or any other information to support the approach to be used in preparing the EIS.

(d) DOE shall makes the EIS Implementation Plan and any formal revisions available to the public for information. Copies of these documents shall be provided upon written request; at its discretion, DOE may make copies available for inspection in DOE public reading rooms or other appropriate locations for a reasonable time.

§ 1021.313 Public review of environmental impact statements.

(a) The public review and comment period on a DOE draft EIS shall be no less than 45 days (40 CFR 1506.10(c)). The public comment period begins when EPA publishes a Notice of Availability of the document in the **Federal Register.**

(b) DOE shall hold at least one public hearing on DOE draft EISs. Such public hearings shall be announced at least 15 days in advance. The announcement shall identify the subject of the draft EIS, and include the location, date, and time of the public hearings.

(c) DOE shall prepare a final EIS following the public comment period and hearings on the draft EIS. The final EIS shall respond to oral and written comments received during public review of the draft EIS, as provided at 40 CFR 1503.4.

(d) In addition to the formal announcements provided for in paragraphs (a) and (b) of this section, at its discretion DOE shall publicize the availability or draft and final EISs, and the time and place for public hearings on a draft EIS, in other ways as appropriate, such as news releases to the local media.

§ 1021.314 Supplemental environmental impact statements.

(a) DOE shall prepare a supplemental EIS if there are substantial changes to the proposal or significant new information relevant to environmental concerns, as discussed in 40 CFR 1502.9(c)(1).

(b) DOE may supplement a draft EIS or final EIS at any time, to further the purposes of NEPA, in accordance with 40 CFR 1502.9(c)(2).

(c) A supplemental EIS is not required when:

(1) Changes to the proposed action, new information, or new circumstances would not result in significant changes to the environmental impacts analyzed in the EIS, and would not cause significant, reasonably foreseeable environmental impacts that were not considered in the EIS; or

(2) After issuance of a ROD, DOE decides to proceed with an alternative that was fully evaluated in an EIS but not part of the initial decision; in such a case, a revised ROD shall be prepared and circulated in accordance with § 1021.315 of this part.

(d) Where it is unclear whether or not an EIS supplement is required, DOE shall prepare a Supplement Analysis.

(1) The Supplement Analysis shall discuss the circumstances that might lead to the preparation of a supplemental EIS, pursuant to 40 CFR 1502.9(c).

(2) Supplement Analysis shall contain sufficient information for DOE to determine whether:

(i) An existing EIS should be supplemented;

(ii) A new EIS should be prepared;

(iii) An existing ROD should be revised; or

(iv) No further NEPA documentation is required.

(3) DOE shall make the determination, and the related Supplement Analysis available to the public for information. Copies of these document shall be provided upon written request; at its discretion, DOE may make copies available for inspection in DOE public reading rooms or other appropriate locations for a reasonable time.

(e) DOE shall prepare, circulate and file a supplement to a draft or final EIS in the same manner as any other draft and final EISs, except that scoping is optional for a supplement. If DOE decides to take action on a proposal covered by a supplemental EIS, DOE shall either prepare a new ROD or revise the existing ROD.

(f) When applicable, DOE will incorporate an EIS supplement, or the determination and supporting Supplement Analysis made under paragraph (d) of this section, into any related formal administrative record on the action that is the subject of the EIS supplement or determination (40 CFR 1502.9(c)(3)).

§ 1021.315 Records of decision.

(a) If DOE decides to take action on a proposal covered by an EIS, a ROD shall be prepared as provided at 40 CFR 1505.2 (except as provided at 40 CFR 1506.1 and § 1021.211 of this part).

(b) In addition to the requirements at 40 CFR 1505.2, a DOE ROD shall include any determination required by 10 CFR part 1022, "Compliance with Floodplain/ Wetlands Environmental Review Requirements."

(c) DOE RODs shall be published in the **Federal Register** and made available to the public as specified in 40 CFR 1506.6, except as provided in 40 CFR 1507.3(c) and § 1021.340 of this Part.

(d) For the purposes of 40 CFR 1506.1, the date of issuance of a ROD is the date of signature, rather than the date that the ROD is published in the **Federal Register.**

(e) Except as provided at 40 CFR 1506.1 and 1506.10(b) and § 1021.211 of this part, no decision may be made on a proposal during a 30-day "waiting period" following completion of the final EIS; this is not considered a public comment period.The 30-day period starts when the EPA Notice of Availability for the final EIS is published in the **Federal Register.**

(f) DOE may revise a ROD at any time, so long as the revised decision is supported by a existing EIS. A revised ROD is subject to the provisions of paragraphs (a) through (d) of this section.

§ 1021.320 Environmental assessments.

DOE shall prepare and circulate EAs and related FONSIs in accordance with the requirements of the CEQ Regulations, as suppplemented by this subpart.

§ 1021.321 Requirements for environmental assessments.

(a) *When to prepare an EA.* As required by 40 CFR 1501.4(b), DOE shall prepare an EA for a proposed DOE action that is described in the classes of actions listed in Appendix C to subpart D of this part, and for a proposed DOE action that is not described in any of the classes of actions listed in appendices A, B, or D to subpart D, except that an EA is not required if DOE has decided to prepare an EIS. DOE may prepare an EA on any action at any time in order to assist agency planning and decisionmaking.

(b) *Scope.* A DOE EA shall focus on the environmental consequences necessary to determine whether to prepare an EIS or a FONSI. If appropriate, a DOE EA shall include any floodplain/wetlands assessment prepared under 10 CFR 1022.12; and may include analyses needed for other envoronmental determinations.

(c) *Comment.* A DOE EA shall comply with the requirements found at 40 CFR 1508.9. In addition to any other alternatives, DOE shall assess the no action alternative (40 CFR 1502.14(d)) in an EA, even when the proposed action in specifically required by legislation or a court order

§ 1021.322 Findings of no significant impact.

(a) DOE shall prepare a FONSI only if the finding can be supported by the analysis of environmental impacts in the related EA. If a required DOE EA cannot support a FONSI, DOE shall prepare an EIS and issue a ROD before taking action on the proposal addressed by the EA, except as permitted under 40 CFR 1506.1 and § 1021.211 of this part.

(b) In addition to the requirements found at 40 CFR 1508.13, a DOE FONSI shall include the following:

(1) A summary of the supporting EA, including a brief description of the proposed action and alternatives considered in the EA, environmental factors considered and projected impacts;

(2) Any mitigation commitments incorporated into a DOE decision to proceed with the proposed action;

(3) Reference to any Mitigation Action Plan prepared under § 1021.332 of this part;

(4) Any determination required by 10 CFR part 1022, "Compliance with Floodplain/Wetlands Environmental Review Requirements";

(5) The date of issuance; and

(6) The signature of the DOE approving official.

(c) DOE shall make FONSIs available to the public as provided at 40 CFR 1501.4(e)(1) and 1506.6.

(d) DOE shall issue a proposed FONSI for public review and comment before making a final determination on the FONSI if required by 40 CFR 1501.4(e)(2); at its discretion, DOE may issue a proposed FONSI for public review and comment in other situations as well.

(e) Upon issuance of the FONSI, DOE may proceed with the proposed action subject to any mitigation commitments included in the FONSI.

(f) DOE may revise a FONSI at any time, so long as the revision is supported by an existing EA. A revised FONSI is subject to all provisions of paragraph (d) of this section.

§ 1021.330 Programmatic NEPA documents.

(a) When required to support a DOE decision on connected actions (40 CFR 1508.25(a)(1)), or, at DOE's discretion, when the purposes of NEPA would be furthered, DOE shall prepare a programmatic EIS or EA (40 CFR 1502.4).

(b) A DOE programmatic NEPA document shall be prepared, issued, and circulated in accordance with the requirements for any other NEPA document, as established by the CEQ Regulations and this part.

§ 1021.331 Site-wide NEPA documents.

(a) As a matter of policy, to further the purposes of NEPA DOE will prepare site-wide EISs for certain large, multiple-facility DOE sites; DOE may prepare EISs or EAs for other sites to assess the impacts of all or selected functions at those sites.

(b) DOE will evaluate site-wide NEPA documents at least every five years by means of a Supplement Analysis, as provided in § 1021.314. Based on the Supplement Analysis, DOE will determine whether previous NEPA documents remain adequate, or whether to prepare a new site-wide EIS or EA, supplement the existing EIS or EA, or revise the ROD or FONSI as appropriate.

§ 1021.332 Mitigation action plans.

(a) Following completion of each EIS and its associated ROD, and each EA for which, in DOE's judgment, the FONSI would be based, in significant part, on DOE's commitment to take mitigative actions, DOE shall prepare a Mitigation Action Plan. The Mitigation Action Plan shall explain how measures designed to mitigate adverse environmental impacts associated with the proposed action will be planned and implemented.

(b) In the case of an EIS, the Mitigation Action Plan shall be prepared before DOE takes any action under the ROD that may have an adverse environmental effect. The Plan shall address all mitigation commitments expressed in the ROD.

(c) In the case of an EA described in paragraph (a), the Mitigation Action Plan shall be prepared before issuing, and shall be referenced in, the associated FONSI. The Plan shall address all mitigation commitments expressed in the FONSI that are necessary, in DOE's judgment, to render the impacts of the proposed action not significant.

(d) Each Mitigation Action Plan shall be as complete as possible, commensurate with the information available regarding the proposed action. DOE may revise the Plan as more specific and detailed information becomes available.

§ 1021.340 Classified, confidential, or otherwise exempt information.

(a) Notwithstanding other sections of this part, DOE shall not disclose classified, confidential, restricted, or other information that DOE otherwise would not disclose pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. 552), and 10 CFR 1004.10(b) of DOE's regulations implementing FOIA (provided, however, that DOE shall disclose any interagency memoranda that transmit a Federal agency's comments on the environmental impacts of a DOE proposal (40 CFR 1506.6(f)).

(b) Wherever possible, in DOE's judgment, DOE shall prepare any information that is exempt from disclosure requirements as an appendix, or otherwise segregate the exempt information to allow public review of the remainder of a NEPA document.

(c) If exempt information cannot be segregated, or if segregation would leave essentially meaningless material, DOE shall withhold the entire NEPA document from the public; however, DOE shall prepare the NEPA document, in accordance with the CEQ Regulations and this part, and use it in DOE decisionmaking.

§ 1021.341 Coordination with other environmental review requirements.

(a) In accordance with 40 CFR 1502.25, DOE shall integrate the NEPA process and coordinate NEPA compliance with other environmental review requirements, to the fullest extent possible in DOE's judgment.

(b) To the extent possible, DOE shall determine the applicability of other environmental requirements early in the planning process to ensure compliance and to avoid delays, and shall incorporate any such relevant requirements as early in the NEPA review process as possible in DOE's judgment.

§ 1021.342 Interagency cooperation.

For DOE programs that involve another Federal agency or agencies in related decisions subject to NEPA, DOE shall cooperate with the other agencies in developing environmental information and in determining whether a proposal requires preparation of an EIS or EA, or can be categorically excluded from preparation of either. Where appropriate and acceptable to the other agencies, DOE shall develop or cooperate in the development of interagency agreements to facilitate coordination and to reduce delay and duplication.

§ 1021.343 Variances.

(a) *Emergency actions.* DOE may take emergency actions without observing all provisions of this part or the CEQ Regulations, in accordance with 40 CFR 1506.11, in extraordinary situations that demand immediate action. DOE shall consult with CEQ as soon as possible regarding emergency actions having significant environmental impacts. DOE shall document emergency actions covered by this paragraph within two weeks after such action occurs; this documentation shall identify any adverse impacts from the actions taken, further mitigation necessary, and any NEPA documents that may be required.

(b) *Reduction of time periods.* On a case-by-case basis, DOE may reduce time periods established in this part that are not required by the CEQ Regulations. If DOE determines that such reduction is necessary, DOE shall publish notice in the Federal Register specifying the revised time periods and the rationale for the reduction.

(c) *Other.* Any variance from the requirements of this part, other than under paragraphs (a) and (b) of this section, must be soundly based on the interests of national security or the public health, safety, or welfare and must have the advance written approval of the Secretary; however, the Secretary shall not waive or grant a variance from any provision of the CEQ Regulations (except as provided for in those regulations).

Subpart D—Typical Classes of Actions

§ 1021.400 Level of NEPA review.

(a) This subpart identifies DOE actions that normally:

(1) Do not require preparation of either an EIS or an EA (are categorically excluded from preparation of either document);

(2) Require preparation of an EA, but not necessarily an EIS; or

(3) Require preparation of an EIS.

(b) If a DOE proposal has been adequately analyzed in an existing EIS or EA, and is covered by an existing ROD or FONSI, no additional NEPA documentation is needed.

(c) If a DOE proposal is encompassed within a class of actions listed in the appendices to this subpart D, DOE shall proceed with the level of NEPA review indicated for that class of actions, unless extraordinary circumstances related to the specific proposal (including issues raised in public comments or other information available to DOE) cause DOE to have a reasonable question as to whether the categorization is appropriate for the specific proposal.

(d) If a DOE proposal is not encompassed within the classes of action listed in the appendices to this subpart D, or if extraordinary circumstances raise a reasonable question as to the appropriateness of the categorization, before taking action on the proposal (except as provided at 40 CFR 1506.1 and § 1021.211 of these regulations) DOE shall either:

(1) Prepare an EA, and on the basis of that EA determine whether to prepare an EIS or a FONSI; or

(2) Prepare an EIS and ROD.

§ 1021.410 Application of categorical exclusions (classes of actions that normally do not require EAs or EISs).

(a) *General.* The actions listed in appendices A and B to this subpart D are classes of actions that normally do not require EAs or EISs (categorical exclusions). All categorical exclusions may be applied by any element of DOE. The sectional divisions in appendices A and B are only for purposes of organization of these Appendices.

(b) *Eligibility criteria for categorical exclusions.* (1) To be eligible for a categorical exclusion listed in appendix A or B, a proposed action must be one that:

(i) Would not threaten a violation of applicable statutory, regulatory, and permit requirements, including requirements of DOE Orders;

(ii) Would not require siting and construction or major expansion of waste disposal, recovery, or treatment facilities (including incinerators and facilities for treating wastewater, surface water, and groundwater); and

(iii) Would not adversely affect environmentally sensitive areas. An action may be categorically excluded if, although sensitive areas are present on a site, the action would not adversely affect those areas (e.g. construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands).

(2) For purposes of paragraph (b)(1)(iii), environmentally sensitive areas include:

(i) Property (e.g., sites, buildings, structures, objects) of historic, archeological, or architectural significance designated by Federal, state, or local governments or property eligible for listing on the National Register of Historic Places;

(ii) Habitat (including critical habitat) of Federally-listed endangered, threatened, proposed, or candidate species, or of state-listed endangered and threatened species;

(iii) Floodplains and wetlands;

(iv) Natural areas such as Federally and state-designated wilderness areas, National Parks, National Natural Landmarks, Wild and Scenic Rivers, state and Federal wildlife refuges, and marine sanctuaries;

(v) Prime agricultural lands; and

(vi) Special sources of water (such as sole-source aquifers, wellhead protection areas and other water sources that are vital in a region).

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1.2 Routine financial transactions, including payment of salaries, expenses, or fees.

1.3 Grants, contracts (that is, procurements), cooperative agreements or other authorizations for actions that are (a) categorically excluded in appendix A or in appendix B to this subpart, or (b) permitted by § 1021.211 of this part and 40 CFR 1506.1(a).

1.4 Contract interpretations, amendments, and modifications, including replacements and assignments, that are clarifying or administrative in nature.

1.5 Ministerial actions to implement congressionally-mandated funding for actions not proposed by DOE as to which DOE has no discretion (that is, "pass-throughs").

1.6 Rate increases for products or services marketed by parts of DOE other than Power Marketing Administrations and approval of rate increases for non-DOE entities that do not exceed the change in the overall price level in the economy (inflation), as measured by the Gross National Product (GNP) fixed weight price index published by the Department of Commerce, during the period since the last rate increase.

1.7 Administrative enforcement actions, including investigations, conferences, hearings, and notices of probable violations.

1.8 Adjustments, exceptions, exemptions, appeals, and stays, modifications, or rescissions of orders issued by the Office of Hearings and Appeals.

1.9 Interpretations and rulings with respect to existing regulations, or modifications or rescissions of such interpretations and rulings.

1.10 Promulgation of rules and regulations that are clarifying in nature, or that do not change the environmental effect of the regulations being amended.

1.11 Rulemaking (under 48 CFR part 9) establishing procedures for technical and pricing proposals, and establishing contract clauses and contracting practices for the purchase of goods and services.

1.12 Rulemaking (under 10 CFR part 600) establishing application and review procedures for, and administration, audit, and closeout of, grants and cooperative agreements.

1.13 Rulemaking for actions that are categorically excluded in this subpart.

1.14 Rulemakings that are strictly procedural.

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1.16 Personnel actions and contracts for personal services, including technical support contracts and contracts for the management and operation of a DOE facility.

1.17 Actions consisting solely of document preparation (including, but not

limited to, conceptual design, feasibility, energy supply and demand, and other studies).

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1.19 Reports or recommendations on legislation or rulemaking that is not proposed by DOE.

1.20 Technical advice and planning assistance to international, national, state, and local organizations.

1.21 Classroom training and informational programs.

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1.23 Training exercises and simulations (including, but not limited to, firing-range training, emergency response training, fire-fighter and rescue training, and spill cleanup training).

1.24 Administrative, organizational, or procedural changes in inspection, surveillance, or maintenance requirements.

1.25 Support activities for the normal conduct of business (such as document copying and making identification badges).

1.26 Routine maintenance activities and custodial services for buildings, structures, and equipment. Routine maintenance activities, both corrective (that is, repair) and preventive, are required to maintain and preserve buildings, structures, or equipment in a condition suitable for a facility to be used for its designated purpose. Routine maintenance may result in replacement to the extent that the replacement is in kind and is not a substantial upgrade or improvement. Routine maintenance does not include replacement of a major component that significantly extends the originally intended useful life of a facility (for example, it does not include the replacement of a reactor vessel near the end of its useful life). Routine maintenance activities include, but are not limited to:

(a) Repair of facility equipment such as lathes, mills, pumps, and presses;

(b) Door and window repair or replacement;

(c) Wall or basement repair;

(d) Reroofing;

(e) Plumbing, electrical utility, and telephone service repair;

(f) Routine replacement of high efficiency particulate air filters;

(g) Inspection and treatment of currently installed wood utility poles;

(h) Repair of road embankments;

(i) Repair or replacement of fire protection sprinkler systems;

(j) Road and parking area resurfacing, including construction of temporary access to facilitate resurfacing;

(k) Erosion control and soil stabilization measures (such as reseeding and revegetation);

(l) Surveillance and maintenance of surplus facilities in accordance with DOE Order 5820.2A, "Radioactive Waste Management";

(m) Repair and maintenance of transmission facilities, including replacement of conductors of the same nominal voltage, poles, circuit breakers, transformers, crossarms, insulators, and downed transmission lines; and

(n) Removal and/or replacement of above- or below-ground tanks and related piping if there is no evidence of leakage. This includes activities taken under 40 CFR part 280, subparts B, C, and D for underground storage tanks.

Custodial services are activities to preserve facility appearance, working conditions, and sanitation, and include, but are not limited to:

(a) Moving furniture;

(b) Window washing;

(c) Lawn mowing;

(d) Trash collection;

(e) Indoor and outdoor painting, including surface preparation; and

(f) Snow removal.

1.27 Siting, construction (and/or modification), and operation of a storage area for supplies and equipment for administrative services, and maintenance and repair activities.

1.28 Replacement of existing utility systems (for example, electrical, sewer, septic, water supply, fire suppression, communication, data processing) or extension of utility systems required as a result of actions categorically excluded in this subpart.

1.29 Installation or modification of air conditioning systems required for temperature control for operation of existing equipment.

1.30 Minor improvements to cooling water systems within an existing building or structure if the improvements would not: (1) Create new sources of water or involve new receiving waters, (2) adversely affect water withdrawals or the temperature of discharged water, or (3) increase introductions of or involve new introductions of hazardous substances, pollutants, or contaminants.

1.31 Installation of, or improvements to, liquid retention tanks, small (normally, under 5 acres) basins, and piping. Installations and improvements include, but are not limited to, increasing retention capacity or installing liners or covers.

1.32 Acquisition, installation, and operation of communication systems, data processing equipment, and similar electronic equipment.

1.33 Modifications to screened water intake structures that result in intake velocities and volumes that are within existing permit limits.

1.34 Routine testing and calibration of facility components or subsystems (including, but not limited to, control valves, in-core monitoring devices, transformers, capacitors) within nationally recognized engineering code requirements and if testing would not release hazardous substances, pollutants, or contaminants.

1.35 Routine decontamination (radioactive and nonradioactive) of equipment, rooms, hot cells, or the surfaces (interior or exterior) of buildings, if the action is not part of a decommissioning project.

1.36 Airway safety markings and painting (but excluding lighting) of existing electrical transmission line and antenna structures in accordance with Federal Aviation Administration standards.

1.37 On-site storage at an existing facility (that is, no construction required) of activated material (including lead) or equipment used at that facility that is not waste to allow for radioactive decay.

1.38 Installation of fencing, including that for border marking, that will not adversely affect wildlife movements.

1.39 Actions to conserve energy that do not affect the exchange of indoor and outdoor air and do not increase the concentrations of potentially harmful substances (for example, programmed lowering of thermostat settings, placement of timers on hot water heaters, installation of solar hot water systems, installation of efficient lighting).

1.40 Detonation of high explosives in areas reserved for this purpose to avoid hazards of transportation and/or handling, if done within the requirements of any existing permit issued by the state or local authorities and in accordance with DOE Orders.

1.41 Acquisition or minor relocation of existing access roads serving existing facilities if the traffic they are to carry will not change substantially.

1.42 Routine transportation of nonhazardous materials and nonradioactive, nonwaste hazardous materials (hazardous materials as designated in 49 CFR 172.101).

1.43 Routine transportation to an existing treatment, storage or disposal facility of:

(a) Hazardous waste (as designated in 40 CFR part 261) that is nonradioactive;

(b) Low-level radioactive waste (LLW) (waste that contains radioactivity and is not classified as high-level waste, transuranic (TRU) waste, spent nuclear fuel, or byproduct material as defined in 11(e)(2) of the Atomic Energy Act (AEA));

(c) Low-level radioactive mixed waste (LLW also containing hazardous waste as designated in 40 CFR part 261);

(d) Nonhazardous solid waste (as designated in 40 CFR 261.4(b); or

(e) Byproduct material as defined in AEA 11(e)(2).

1.44 Temporary shutdown (that is, for up to approximately two years) and subsequent restart of a facility (such as a nuclear reactor, chemical processing plant, electrical substation, or oil and gas well) for inventory and for routine maintenance (both corrective and preventative) actions.

1.45 Temporary shutdown (that is, for up to approximately two years) of a nuclear reactor for refueling and subsequent restart.

1.46 Shutdown of an operating facility, including temporary shutdown (that is, for up to approximately two years) for safety and/or environmental improvements or in response to safety and/or environmental requirements. (See also appendix B, 1.8.)

2. *Categorical Exclusions Applicable to Safety and Health*

2.1 Modifications of an existing structure to enhance workplace habitability (including, but not limited to, improvements to lighting, radiation shielding, or heating/ventilating/air conditioning and its instrumentation; noise reduction).

2.2 Installation of, or improvements to, building and equipment instrumentation (including, but not limited to, building monitors, remote control panels, remote monitoring capability, alarm and surveillance systems, and control systems to provide automatic shutdown and fire protection and detection).

2.3 Establishment of, or improvements to, announcement and emergency warning systems, criticality and radiation monitors and alarms, safeguards and security equipment, and on-site evacuation routes.

2.4 Activities related to the promotion and maintenance of employee health, including installation of eye washes, safety showers, and radiation monitoring devices.

2.5 Development and implementation of Equipment Qualification Programs (under DOE Order 5480.6, "Safety of DOE-owned Nuclear Reactors") to augment information on safety-related system components or to improve systems reliability.

3. *Categorical Exclusions Applicable to Site Characterization, Monitoring, and General Research*

3.1 Site characterization and environmental monitoring, including siting, construction, operation, and dismantlement or closing (abandonment) of characterization and monitoring devices, if the activities would not introduce or cause the inadvertent or uncontrolled movement of hazardous substances, pollutants, or contaminants, or non-native organisms. Activities covered include, but are not limited to:

(a) Geological and engineering surveys and mapping, including the establishment of survey marks;

(b) Installation and operation of field instruments, such as stream-gauging stations or flow-measuring devices, telemetry systems, geochemical monitoring tools, geophysical exploration tools, and drilling of slim core holes;

(c) Drilling of groundwater or vadose (unsaturated) zone sampling and monitoring wells;

(d) Well logging;

(e) Aquifer response testing;

(f) Installation and operation of water-level recording devices in wells;

(g) Installation and operation of ambient air monitoring equipment;

(h) Sampling and characterization of water, soil, rock or contaminants;

(i) Sampling and characterization of water effluents, air emissions, or solid waste streams;

(j) Installation and operation of meteorological towers and associated activities, including assessment of potential wind energy resources; and

(k) Sampling of flora or fauna.

3.2 Geochemical surveys, geological mapping, and gravity, magnetic, electrical, seismic, radar and geophysical investigations for resource evaluation and site characterization.

3.3 Archaeological, historical, and cultural resource identification in compliance with 36 CFR part 800 performed by professionals who meet the qualifications set forth in 43 CFR 7.8(a)(1) (i)–(v).

3.4 Aviation activities for survey, monitoring, or security purposes that comply with Federal Aviation Administration regulations.

3.5 Research, inventory, and information collection activities that are directly related to the conservation of fish and wildlife resources and that involve only negligible animal mortality or habitat destruction, and if the activities would not introduce or cause the inadvertent or uncontrolled movement of hazardous substances, pollutants, or contaminants, or non-native organisms.

3.6 Drop, puncture, water-immersion, thermal, and fire tests of transport packaging for radioactive or hazardous materials to certify that designs meet the requirements of 49 CFR 173.411 and 173.412 and requirements of severe accident conditions as specified in 10 CFR 71.73.

3.7 Tank car tests under 49 CFR part 179 (including, but not limited to, tests of safety relief devices, pressure regulators, and thermal protection systems).

3.8 Indoor bench-scale research projects and conventional laboratory operation (for example, preparation of standards and sample analysis).

4. *Categorical Exclusions Applicable to the Power Marketing Administrations and to all of DOE With Regard to Power Resources.*

4.1 Establishment and implementation of contracts, marketing plans, policies, annual operating plans, or allocation plans for the short term (less than five years) or seasonal disposition, allocation, or acquisition of excess power, if transmission would occur over existing transmission systems.

4.2 Leasing of existing transmission facilities if the leases would not involve any change in operation.

4.3 Export of electricity over existing transmission lines as provide by section 202(e) of the Federal Power Act.

4.4 Changes in rates for electric power, power transmission, and other products or services provided by a Power Marketing Administration that are based on a change in revenue requirements that does not exceed the change in the overall price level in the economy (inflation), as measured by the GNP fixed weight price index published by the Department of Commerce, during the period since the last rate adjustment for that product or service or, if the rate change does exceed the change in the GNP fixed weight price index, the rate change would have no potential for affecting the operation of power generation resources.

4.5 Power marketing services, including storage, load shaping, seasonal exchanges, or other similar activities if the operations of hydroelectric projects would remain within normal operating limits and would not alter the existing environmental conditions.

4.6 The acquisition of additional rights-of-way at existing transmission facilities to establish buffer areas.

4.7 Minor substation modifications and expansions, including minor realignments and modifications to approach-structures, that would not involve the construction of new transmission lines or the integration of a major new resource.

4.8 Temporary adjustments to river operations to accommodate day-to-day river fluctuations, power demand changes, fish and wildlife conservation program requirements, and other external events if the adjustments would result in only minor changes to reservoir levels or stream flows.

4.9 Additions, or modifications, to transmission facilities that would not affect the environment beyond the previously developed facility area, including tower modifications, changing insulators, and replacement of poles, circuit breakers, transformers, and crossarms.

4.10 Adding fiber optic cable to transmission structures or burying fiber optic cable in existing transmission line rights-of-way.

5. *Categorical Exclusions Applicable to Fossil, Conservation, and Renewable Energy Activities*

5.1 Modifications to oil, gas, and geothermal facility pump and piping configurations, manifolds, metering systems, and other instrumentation that would not change design process flow rates or affect permitted air emissions.

5.2 Modification (but not expansion) or abandonment (including plugging), which is not part of site closure, or crude oil storage access wells, bring injection wells, or geothermal wells.

5.3 Repair or replacement of sections of a crude oil, produced water, brine, or geothermal pipeline, if the actions are determined by the Army Corp of Engineers to be within the maintenance provisions of DOE's permit under section 404 of the Clean Water Act.

5.4 Removal of drilling fluids, produced waters, or other oil field wastes not subject to regulation under subtitle C of RCRA that are recovered in the course of routine facility operation, are not mixed with hazardous waste, and would be disposed of in a state-approved oil field waste disposal facility.

6. *Categorical Exclusions Applicable to International Activities*

6.1 Approval of technical exchange arrangements for information, data, or personnel with other countries or international organizations, including, but not limited to, assistance in identifying and analyzing another country's energy resources, needs and options.

6.2 Approval of DOE participation in international "umbrella" agreements for cooperation in energy research and development activities that (a) would not commit the U.S. to any specific projects or activities, or (b) would commit the U.S. only to specific projects or activities that fall within the classes of actions categorically excluded in this Subpart.

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1.1 Siting, construction (and/or modification), and operation of buildings and support structures (including butler buildings and trailers) on an existing DOE site and in accordance with any site development plan, for office purposes, parking, cafeteria services, education and training, visitor reception, computer and data processing services, employee recreation, maintenance, security (including security posts), and fire protection.

1.2 Removal of contaminated material and equipment (other than fuel or special nuclear material in reactors), if the action is not part of a decommissioning project.

1.3 Removal of abestos-containing materials from existing buildings in accordance with 40 CFR part 61 (National Emission Standards for Hazardous Air Pollutants), subpart M (National Emission Standard for Asbestos); 40 CFR part 763 (Asbestos), subpart G (Asbestos Abatement Projects); 29 CFR part 1910, subpart I (Personal Protective Equipment), § 1910.134 (Respiratory Protection); subpart Z (Toxic and Hazardous Substances), § 1910.1001 (Asbestos, tremolite, anthophyllite and actinolite); and 29 CFR part 1926 (Safety and Health Regulations for Construction), subpart D (Occupational Health and Environmental Controls), § 1926.58 (Asbestos, tremolite, anthophyllite, and actinolite), other appropriate Occupational Safety and Health Administration standards in title 29, chapter XVII of the CFR, and appropriate state and local requirements, including certification of removal contractors and technicians.

1.4 Removal of polychlorinated biphenyl (PCB)-containing items, such as transformers or capacitors, PCB-containing oils flushed from transformers, PCB-flushing solutions, and PCB-containing spill materials from buildings or other above-ground locations in accordance with 40 CFR part 761 (Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions).

1.5 Construction and operation of additional water supply wells (or replacement wells) within an aquifer already accessed by operating wells, if there would be no drawdown other than in the immediate vicinity of the well, and no degradation of the freshwater aquifer as a result of the new or replacement wells.

1.6 Construction and operation of microwave and radio communication towers and associated facilities, if such actions would not prejudice future site selection decisions for substations or other facilities.

1.7 Actions to conserve energy, demonstrate potential energy conservation, and promote energy-efficiency that may affect the exchange of indoor and outdoor air but do not increase the concentrations of potentially harmful substances. These actions may involve financial and technical assistance to individuals (such as builders, owners, consultants, designers), organizations (such as utilities), and state and local governments. Covered actions include, but are not limited to: Improvements in generator efficiency and appliance efficiency ratings, development of energy-efficient manufacturing or industrial practices, and small-scale conservation and renewable energy research and development and pilot projects. The actions could involve building renovations or new structures in commercial, residential, agricultural, or industrial sectors. These actions do not include rulemakings, standard-settings, or proposed DOE legislation.

1.8 Small-scale activities undertaken to protect, restore or improve fish and wildlife habitat, fish passage facilities (such as fish ladders or minor diversion channels), or fisheries.

1.9 Restart of a facility (such as a nuclear reactor, chemical processing plant, electrical substation, or oil and gas well) after a temporary shutdown (that is, for up to approximately two years) for safety or environmental improvements, if the improvements are categorically excluded in this subpart. (See also appendix A, 1.46 and section 2; and appendix B, 2.1 and 6.3.)

2. *Categorical Exclusions Applicable to Safety and Health*

2.1 Improvement of a facility or replacement/upgrade of facilitye components (such as control valves, in-core monitoring devices, and facility air filtration systems; adding structural bracing to meet earthquake standards and/or to sustain high wind loading; transformers or capacitors or other components of a substation). These actions do not include replacement of a reactor vessel, and do not result in a significant extension of the expected useful life or design capacity of the facility.

3. *Categorical Exclusions Applicable to Site Characterization, Monitoring, and General Research*

3.1 Siting, construction, and operation of a small-scale laboratory building or renovation of a room is an existing building for analysis of water, soil, air, biota, geological, geochemical, geophysical and other samples obtained for site characterization and environmental monitoring activities.

3.2 New infill exploratory and experimental (test) oil, gas, and geothermal wells, which are to be drilled in a geological formation that has existing operating wells.

3.3 Outdoor ecological and environmental research activities including waste treatability, stabilization and disposal studies in a small area (generally less than five acres), which (1) would not involve construction that is not categorically excluded in this Subpart, and (2) would not introduce or cause the inadvertent or uncontrolled movement of hazardous substances, pollutants, or contaminants. These actions also would not result in any permanent change to the ecosystem, except for environmental restoration experiments concerned with waste (for example, in situ vitrification, experiments with clay liners or water treatment).

3.4 Demonstration actions proposed under the Clean Coal Technology Demonstration Program, if the actions would not increase the quantity or rate of air emissions. These demonstration actions include, but are not limited to:

(a) Test treatment of 20 percent or less of the throughput product (solid, liquid, or gas) generated at an existing and fully operational coal-fired power producing facility;

(b) addition or replacement of equipment for reduction or control of sulfur dioxide or oxides of nitrogen that require only minor modification to the existing structures at an existing coal-fired power producing facility for which the existing use remains unchanged;

(c) addition or replacement of equipment for reduction or control of sulfur dioxide of nitrogen that involves no permanent change in the quantity or quality of coal being burned and involves no permanent change in the capacity factor of the coal-fired power producing facility, other than for demonstration purposes of two years or less in duration.

3.5 Research and development and pilot-scale testing actions that (1) do not involve special nuclear materials, high-level or TRU waste, irradiated nuclear fuel, or highly toxic substances (substances that present an unreasonable risk of injury to health or the environment), (2) are conducted in an existing facility not requiring major structural modification, and (3) are conducted to verify a concept before demonstration actions. These actions include, but are not limited to:

(a) Fossil energy research and development activities for enhanced oil and unconventional gas recovery, coal preparation, flue gas cleanup, coal liquefaction, advanced combustion, alternative fuels, and magnetohydrodynamics;

(b) Geothermal energy research and development activities;

(c) Routine tritium research and development activities for reactor fuel and target fabrication, irradiation, and extraction;

(d) Waste treatability tests;

(e) Projects to improve the capability or efficiency of existing accelerators; and

(f) projects using accelerators whose beams have insufficient energy to produce neutrons when impacting the intended targets.

3.6 Outdoor reliability, quality assurance, and developmental tests and experiments (including, but not limited to, burn tests, such as tests of electric cable fire resistance and weapons safety features; impact tests of weapon system components, such as pneumatic ejector tests using earthen embankments or concrete slabs) under controlled conditions and not involving radioactive materials.

4. *Categorical Exclusions Applicable to Power Marketing Administrations and to all of DOE With Regard to Power Resources*

4.1 New electricity transmission agreements and modifications to existing transmission arrangements (such as the use of a transmission facility of one system to transfer power of and for another system) if system operation would continue within normal operating limits, no new generation projects would be involved, and no physical changes in the transmission system would be made beyond the previously developed facility area.

4.2 Grant or denial of requests for multiple use of DOE transmission facility rights-of-way if DOE has ownership or jurisdiction, such as grazing permits and crossing agreements including electric lines, water lines, and drainage culverts.

4.3 Dismantling and removal of transmission lines and right-of-way abandonment.

4.4 Construction or modification of customer service substations (that is, power delivery at 230 kV or below).

4.5 Construction of tap lines (less than 10 miles in length) that are not for the integration of major new sources of generation into DOE's main transmission systems.

4.6 Minor relocations of existing transmission lines (less than 10 miles in length) made to enhance existing environmental and land use conditions. Such actions include relocations to avoid right-of-way encroachments, resolve conflict with property development, accommodate road/highway construction, allow for the construction of facilities such as canals and pipelines, or reduce existing impacts to environmentally sensitive areas.

4.7 Minor noise abatement measures, such as construction of noise barriers and installation of noise control materials.

5. *Categorical Exclusions Applicable to Fossil, Conservation, and Renewable Energy Activities*

5.1 Construction and subsequent operation of short offsite crude oil or geothermal pipeline segments between DOE and existing commercial crude oil transportation, storage, or refining facilities, or geothermal transportation or storage facilities, within a single industrial complex, if the pipeline segments are within existing rights-of-way.

5.2 Removal of oil and contaminated materials recovered in oil spill cleanup operations in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and disposed of in accordance with local contingency plans in accordance with the NCP.

5.3 Approval of new authorization or amendment of existing authorization to import/export natural gas under section 3 of the Natural Gas Act that does not involve new construction and ony requires operational changes, such as an increase in natural gas throughput, change in transportation, or change in storage operations.

5.4 Approval of new authorization or amendment of existing authorization to import/export natural gas under section 3 of the Natural Gas Act involving a new cogeneration powerplant (as defined in the Powerplant and Industrial Fuel Use Act) that will only require short gas pipeline segments within a single industrial complex, if the pipeline segments are within existing rights-of-way.

5.5 The grant or denial of any temporary exemption under the Powerplant and Industrial Fuel Use Act of 1978 for any electric powerplant or major fuel-burning installation.

5.6 The grant or denial of any permanent exemption under the Powerplant and Industrial Fuel Use Act of 1978 of any existing electric powerplant or major fuel-burning installation, other than an exemption (1) under section 312(c), relating to cogeneration; (2) under section 312(1), relating to scheduled equipment outages; (3) under section 312(b), relating to certain state or local requirements; and (4) under section 312(g), relating to certain intermediate load powerplants.

5.7 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for any new electric powerplant or major fuel-burning installation to permit the use of certain fuel mixtures containing natural gas or petroleum.

5.8 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for any new peak-load powerplant.

5.9 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for any new electric powerplant or major fuel-burning installation to permit operation for emergency purposes only.

5.10 The grant or denial of a permanent exemption from the prohibitions of Titles II and III of the Powerplant and Industrial Fuel Use Act of 1978 for any new or existing major fuel-burning installation for purposes of meeting scheduled equipment outages not to exceed an average of 28 days per year over a three-year period.

5.11 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for any new major fuel-burning installation which, in petitioning for an exemption due to lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum, certifies that it will be operated less than 600 hours per year.

5.12 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for new cogeneration powerplant.

6. *Categorical Exclusions Applicable to Environmental Restoration and Waste Management*

6.1 Removal actions under CERCLA (including those taken as final response actions and those taken before remedial action) and actions similar in scope under RCRA and other authorities (including those taken as partial closure actions and those taken before corrective action). These actions include, but are not limited to:

(a) Excavation or consolidation of contaminated soils or materials from drainage channels, retention basins, ponds, and spill areas that are not receiving contaminated surface water or waste water, if surface water or groundwater would not collect, and if such actions would reduce the spread of, or direct contact with, the contamination;

(b) Removal of bulk containers (for example, drums, barrels) that contain or may contain hazardous substances, pollutants, contaminants, or hazardous wastes (designated in 40 CFR part 261), if such actions would reduce the likelihood of spillage, leakage, fire, explosion, or exposure to humans, animals, or the food chain;

(c) Removal of an underground storage tank including its associated piping and underlying containment systems in compliance with 40 CFR part 280, subparts F and G, if such action would reduce the likelihood of spillage, leakage, or the spread of, or direct contact with, contamination;

(d) Repair or replacement of leaking containers;

(e) Capping or other containment of contaminated soils or sludges if the capping or containment would not affect future groundwater remediation and if needed to reduce migration of hazardous substances, pollutants, or contaminants into soil, groundwater, surface water, or air;

(f) Drainage or closing of man-made surface impoundments if needed to maintain the integrity of the structures;

(g) Confinement or perimeter protection using dikes, trenches, ditches, or diversions, if needed to reduce the spread of, or direct contact with, the contamination;

(h) Stabilization, but not expansion, of berms, dikes, impoundments, or caps if needed to maintain integrity of the structures;

(i) Drainage controls (for example, run-off or run-on diversion) if needed to reduce migration offsite of hazardous substances, pollutants, or contaminants, or to prevent precipitation or run-off from other sources from entering the release area from other areas;

(j) Segregation of wastes that react with one another to result in adverse environmental impacts;

(k) Use of chemicals and other materials to neutralize the pH of wastes;

(l) Use of chemicals and other materials to retard the spread of the release or to mitigate its effects, if the use of such chemicals would reduce the spread of, or direct contact with, the contamination;

(m) Installation and operation of gas ventilation systems in soil to remove methane or petroleum vapors without any toxic or radioactive co-contaminants, and if appropriate filtration or gas treatment is in place;

(n) Installation of fences, warning signs, or other security or site control precautions, if humans or animals have access to the release;

(o) Provision of an alternative water supply that would not create new water sources if necessary immediately to reduce exposure to contaminated household or industrial use water and continuing until such time as local authorities can satisfy the need for a permanent remedy; and

(p) Transportation to, and treatment (including incineration), recovery, storage, or disposal of wastes at, existing facilities permitted for the type of waste resulting from the removal action, if needed to reduce the likelihood of human, animal, or food chain exposure.

6.2 The siting, construction, and operation of temporary (generally less than 2 years) pilot-scale waste collection and treatment facilities if the action: (1) Supports remedial investigations/feasibility studies under CERCLA, and similar studies under RCRA, such as RCRA facility investigations/corrective measure studies, (2) would not unduly limit the choice of reasonable remedial alternatives (by permanently altering substantial site area or by committing large amounts of funds relative to the scope of the remedial alternatives), and (3) would not introduce or cause the inadvertent or uncontrolled movement of hazardous substances, pollutants, or contaminants.

6.3 Improvements to environmental control systems (for example, changes to scrubbers in air quality control systems or ion-exchange devices and other filtration processes in water treatment systems) that reduce the amounts or concentrations of regulated substances in air emissions or water effluents, if: (1) The improvements would be conducted within an existing building or structure; (2) any substance captured or produced thereby during subsequent operations of the environmental control systems would be recycled, released, or otherwise disposed of within existing permitted facilities; and (3) for any such hazardous substance that is collected or produced in increased quantity or was not previously collected or produced, there are applicable statutory or regulatory requirements or permit conditions for its disposal, release, or recycling.

6.4 Siting, construction (or modification or expansion), and operation of an onsite waste storage facility or staging area (that is, area involving waste repackaging) for:

(a) Hazardous waste (as designated in 40 CFR part 261) that is nonradioactive;

(b) Low-level radioactive waste (LLW) (waste that contains radioactivity and is not classified as high-level waste, transuranic (TRU) waste, spent nuclear fuel), or byproduct material as defined in section 11(e)(2) of the Atomic Energy Act (AEA));

(c) Low-level radioactive mixed waste (LLW) also containing hazardous waste was designed to 40 CFR part 261);

(d) Nonhazardous solid waste (as designated in 40 CFR 261.4(b); or

(e) Byproduct material as defined in AEA section 11(e)(2).

6.5 Modification (excluding expansion) of an existing structure currently used as a waste storage facility or staging area (that is, area involving waste repackaging) for TRU waste or TRU mixed waste (TRU waste also containing hazardous waste as designated in 40 CFR part 261).

6.6 Under the Low-Level Radioactive Waste Policy Amendments Act of 1985 (5 (c)(5)), granting of a petition qualified under 10 CFR 730.6 for allocation of commercial disposal capacity for an unusual or unexpected volume of commercial low-level radioactive waste, or denying such a petition when adequate storage capacity exists at the petitioner's facility.

6.7 Relocation of buildings, or demolition and subsequent disposal of buildings and support structures (including, but not limited to, smoke stacks and parking lot surfaces), if there would be no releases of hazardous substances, pollutants, or contaminants.

6.8 Modification and implementation of operating and administrative procedures at an existing facility for minimizing waste generation and for reuse of materials. These modifications include, but are not limited to: Adding filtration and recycle piping to allow reuse of machining oil, setting up a sorting area to improve process efficiency, and segregating two waste streams previously mingled and assigning new identification codes to the two resulting wastes.

7. *Categorical Exclusions Applicable to International Activities*

7.1 Approval of import or export of small quantities of special nuclear materials or isotopic materials in accordance with the Nuclear Non-Proliferation Act of 1978 and the "Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978" (43 FR 25326, June 9, 1978).

7.2 Approval, in accordance with the Nuclear Non-Proliferation Act of 1978, of retransfers of source, special nuclear, or byproduct materials that will not involve transport within the United States or its territorial seas.

Appendix C to Subpart D—Classes of Actions that Normally Require EAs but Not Necessarily EISs

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1. Major Projects, as designated by DOE Order 4240.1, "Designation of Major System Acquisitions and Major Projects."

2. Protection, restoration, or improvement of fish and wildlife habitat, fish passage facilities, and fish hatcheries if the proposed action may adversely affect an environmentally sensitive area.

3. Rate increases for products or services marketed by DOE, except for electric power, power transmission, and other products or services provided by the Power Marketing Administrations, and approval of rate increases for non-DOE entities, that exceed the change in the overall price level in the economy (inflation), as measured by the GNP fixed weight price index published by the Department of Commerce, during the period since the last rate increase for that product or service.

4. Rate changes for electric power, power transmission, and other products or services provided by Power Marketing Administrations that are based on changes in revenue requirements that exceed the change in the overall price level in the economy (inflation), as measured by the GNP fixed weight price index published by the Department of Commerce, during the period since the last change for that power or service and are tied to changes in operations of power generation projects.

5. Siting, construction (or major modification), and operation of a synchrotron radiation (light source) or low- and medium-energy particle-scattering accelerator facility.

6. Siting, construction, and operation of energy system prototypes including, but not limited to, wind resource, hydro, geothermal, fossil fuel, biomass, and solar energy pilot projects.

7. Upgrading (reconstructing) an existing transmission line.

8. Implementation of a system-wide vegetation management program for a Power Marketing Administration.

9. Implementation of a system-wide erosion control program for a Power Marketing Administration.

10. Establishment and implementation of contracts, policies, marketing plans, or allocation plans for the long-term allocation (five years or longer) of power.

11. Approval or disapproval of an application to import/export natural gas under section 3 of the Natural Gas Act involving minor new construction (other than a cogeneration powerplant) such as adding new connections, looping, or compression to an existing natural gas pipeline or converting an existing oil pipeline to a natural gas pipeline using the same right-of-way.

12. Siting, construction (or expansion), and operation of water treatment facilities, including facilities for wastewater, potable water, and sewage.

13. Siting, construction (or expansion), and operation of research and development incinerators for any type of waste and of any other incinerators that would treat nonhazardous solid waste (as designated in 40 CFR 261.4(b)).

14. Siting, construction (or expansion), and operation of onsite storage facilities and staging areas (that is, areas involving waste repackaging) for TRU waste and TRU mixed waste (TRU waste also containing hazardous waste as designated in 40 CFR part 261).

15. Siting, construction (or expansion), and operation of a waste disposal facility for the types of wastes listed below, in an area in or adjacent to an area contaminated with any of these wastes:

(a) Hazardous waste (as designated in 40 CFR part 261) that is nonradioactive;

(b) Low-level radioactive waste (LLW) (waste that contains radioactivity and is not classified as high-level waste, transuranic (TRU) waste, spent nuclear fuel, or byproduct material as defined in section 11(e)(2) of the Atomic Energy Act (AEA));

(c) Low-level radioactive mixed waste (LLW also containing hazardous waste as designated in 40 CFR part 261);

(d) Nonhazardous solid waste (as designated in 40 CFR part 261.4(b); or

(e) Byproduct material as defined in AEA section 11(e)(2).

16. Field demonstration projects for wetlands mitigation, creation, and restoration.

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3. Siting/construction/operation/decommissioning of uranium enrichment facilities
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5. Main transmission system additions
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7. Import/export of natural gas, involving major new facilities
8. Import/export of natural gas, involving significant operational change
9. Siting/construction/operation of major high-level waste treatment, storage, disposal facilities
10. Siting/construction/expansion of waste disposal facility for transuranic waste;
11. Siting/construction/expansion of waste disposal facility in uncontaminated area (not transuranic or high-level waste)
12. Siting/construction/operation of incinerators (other than research and development, other than nonhazardous solid waste)

1. Major System Acquisitions, as designated by DOE Order 4240.1, "Designation of Major System Acquisitions and Major Projects."

2. Siting, construction, operation, and decommissioning of nuclear fuel reprocessing facilities.

3. Siting, construction, operation, and decommissioning of uranium enrichment facilities.

4. Siting, construction, operation, and decommissioning of power reactors, nuclear weapons material production reactors, and test and research reactors.

5. Main transmission system additions (that is, additions of new transmission lines) to a Power Marketing Administration's main transmission grid.

6. Integrating transmission facilities (that is, transmission system additions for integrating major new sources of generation into a Power Marketing Administration's main grid).

7. Approval or disapproval of an application to import/export natural gas under Section 3 of the Natural Gas Act involving major new natural gas pipeline construction or related facilities, such as construction of new liquid natural gas (LNG) terminals, regasification or storage facilities; or a significant expansion of an existing pipeline or related facility, or LNG terminal, regasification, or storage facility.

8. Approval/disapproval of an application to import/export natural gas under section 3 of the Natural Gas Act involving a significant operational change, such as a major increase in the quantity of liquid natural gas imported or exported.

9. Siting, construction operation, and decommissioning of major treatment, storage and/or disposal facilities for high-level waste and/or spent nuclear fuel, such as spent fuel storage facilities and geologic repositories.

10. Siting, construction (or expansion), and operation of a disposal facility for TRU waste and TRU mixed waste (TRU waste also containing hazardous waste as designated in 40 CFR part 261).

11. Siting, construction (or expansion), and operation of a disposal facility for types of wastes listed below, at a location that is not in or adjacent to an area that has been previously contaminated with any of these wastes:

(a) Hazardous waste (as designated in 40 CFR part 261) that is nonradioactive;

(b) Low-level radioactive waste (LLW) (waste that contains radioactivity and is not classified as high-level waste, transuranic (TRU) waste, spent nuclear fuel, or by-product material as defined in section 11(e)(2) of the Atomic Energy Act (AEA));

(c) Low-level radioactive mixed waste (LLW) also containing hazardous waste as designated in 40 CFR part 261);

(d) Nonhazardous solid waste (as designated in 40 CFR 261.4(b); or

(e) Byproduct material as defined in AEA section 11(e)(2).

12. Siting, construction, operation of incinerators, other than research and development incinerators or incinerators for nonhazardous solid waste (as designated in 40 CFR 261.4(b)).

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November 2, 1990

Part VI

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Part 522
Employment of Learners; Final Rule

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 522

Employment of Learners

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Fair Labor Standards Act (FLSA) permits the employment of certain inexperienced workers (learners) at wage rates below the statutory minimum under certificates issued by the Department of Labor. Amendments to the FLSA were enacted in 1989 which, among other things, increased the statutory minimum wage from $3.35 an hour to $3.80 an hour effective April 1, 1990, and to $4.25 an hour effective April 1, 1991. It is necessary to increase the wage rates contained in the regulations which govern the employment of learners at less than the minimum wage to reflect the increases in the statutory minimum wage rate.

EFFECTIVE DATE: This rule is effective November 2, 1990.

FOR FURTHER INFORMATION CONTACT: Samuel D. Walker, Acting Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

Section 14(a) of the FLSA (29 U.S.C. 214(a)) authorizes the Secretary of Labor, to the extent necessary to prevent curtailment of opportunities for employment, to provide for the employment of learners at wage rates lower than the minimum wage applicable under section 6 of the FLSA. Such employment is permitted only under certificates which are issued pursuant to regulations or orders of the Secretary. These regulations, 29 CFR part 522, contain, among other provisions, those wage rates which are less than the applicable minimum contained in section 6 of the FLSA and at which learners in certain occupations in certain industries may be employed. These wage rates have historically varied from 15 to 2½ cents below the statutory minimum wage.

On November 17, 1989, the 1989 Amendments to FLSA (Pub. L. 101-157) were enacted. These Amendments provide, in part, that the statutory minimum wage required under section 6(a)(1) of FLSA increases to $3.80 an hour effective April 1, 1990, and to $4.25 an hour effective April 1, 1991. It is necessary to amend §§ 522.24, 522.35, 522.43, 522.65, and 522.65 of Regulations, 29 CFR part 522, to reflect the increase in the statutory minimum wage rate.

II. Paperwork Reduction Act

The rule imposes no reporting or recordkeeping requirements on the public.

III. Summary of Rule

The wage rates specified for certain occupations in certain industries contained in §§ 522.24, 522.35, 522.43, 522.65, and 522.85 of Regulations, 29 CFR part 522, are increased by 45 cents effective November 2, 1990, and by 45 cents effective April 1, 1991, to reflect increases in the statutory minimum wage contained in the 1989 Amendments to FLSA. These wage rates traditionally vary from 15 to 2½ cents below the statutory minimum wage.

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b) the requirements of the Regulatory Flexibility Act, Public Law 96-354, 94 Stat. 1165, 5 U.S.C. 601 *et seq.*, pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2).

Administrative Procedure Act

The Secretary has determined that the public interest requires the immediate issuance of these regulations in order to reflect the 1989 Amendments, as these Amendments relate to the employment of learners under Regulations, 29 CFR part 522. Insufficient time existed between the enactment of the Amendments and the effective date of the first increase in the minimum wage rate of April 1, 1990, for the Department of Labor (the Department) to issue a proposal for comments, review the comments, and promulgate a final rule.

Accordingly, the Secretary, for good cause, finds, pursuant to 5 U.S.C. 553(b)(3)(B), that prior notice and public comment are impracticable and contrary to the public interest.

The Secretary also for good cause finds, pursuant to 5 U.S.C. 553(d)(3), that this rule cannot be published 30 days before its effective date.

This document was prepared under the direction and control of Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 522

Employment, Labor, Law enforcement, Learners.

For the reasons set forth above, 29 CFR part 522 is amended as set forth below.

Signed at Washington, DC, on this 30th day of October, 1990.

Samuel D. Walker,

Acting Administrator, Wage and Hour Division.

Accordingly, title 29 chapter V, subchapter A, of the Code of Federal Regulations is amended as follows:

PART 522—EMPLOYMENT OF LEARNERS

Part 522 is amended to read as follows:

1. The authority citation for part 522 is revised to read as set forth below and the authority citations following all of the sections in part 522 are removed.

Authority: Secs. 14, 52 Stat. 1062, 1064 (29 U.S.C. 214); secs. 2-12, 60 Stat. 237-244; (5 U.S.C. 1001-1011).

§ 522.24 [Amended]

2. In § 522.24, paragraphs (a), (b), (c), and (d) are revised to read as follows:

(a) The special minimum wage rates of learners employed in occupations for which a 320-hour period is authorized under § 522.23(a) shall during that period be not less than $3.20 an hour through November 2, 1990; not less than $3.65 an hour through March 31, 1991; and not less than $4.10 an hour thereafter.

(b) The rates for experienced workers in any one of the occupations shown in § 522.23(a) for which a 320-hour learning period is authorized, who are being retrained under the terms of a learner certificate in any other occupation shown in that paragraph having such a 320-hour maximum period, shall not be less than $3.20 an hour for the first 160 hours and not less than $3.25 an hour for the remaining 160 hours through November 2, 1990; not less than $3.65 an hour for the first 160 hours and not less than $3.70 an hour for the remaining 160 hours through March 31, 1991; and not less than $4.10 an hour for the first 160 hours and not less than $4.15 an hour for the remaining 160 hours thereafter.

(c) The rates for learners employed in the occupation of final inspection of assembled garments under § 522.23(b) shall be not less than $3.25 and hour during the authorized 160-hour learning period through November 2, 1990; not less than $3.70 an hour during such authorized learning period through March 31, 1991; and not less than $4.15 an hour during such authorized learning period thereafter.

(d) The rates for learners employed in any occupation, other than final inspection of assembled garments, for which a 160-hour learning period is authorized in § 522.23 (a) or (b) shall be not less than $3.20 an hour through November 2, 1990; not less than $3.65 an hour through March 31, 1991; and, not less than $4.10 and hour thereafter.

* * * * *

§ 522.35 [Amended]

3. In § 522.35, paragraph (a) is revised to read as follows:

(a) The special minimum rate which may be authorized in special certificates issued in the knitted wear industry shall be not less than $3.25 and hour through November 2, 1990; not less than $3.70 an hour through March 31, 1991; and, not less than $4.15 an hour thereafter.

* * * * *

§ 522.43 [Amended]

4. In § 522.43, paragraphs (a) and (d) are revised to read as follows:

(a) A person who has had no previous experience in any of the following occupations in the hosiery industry may be employed as a learner in any of the occupations for the maximum number of hours and at the special rates set out in paragraphs (a) (1) through (9) of this section.

(1) In the seamless branch, knitting (transfer top only) and looping, for 960 hours, at not less than $3.20 an hour for the first 480 hours and at not less than $3.275 for the remaining 480 hours through November 2, 1990; not less than $3.65 an hour for the first 480 hours and not less than $3.725 for the remaining 480 hours through March 31, 1991; and not less than $4.10 an hour for the first 480 hours and not less than $4.175 for the remaining 480 hours thereafter.

(2) In the seamless branch, pairing (women's nylon) and mending (women's nylon), for 720 hours at not less than $3.20 an hour for the first 360 hours and at not less than $3.275 an hour for the remaining 360 hours through November 2, 1990; not less than $3.65 an hour for the first 360 hours and not less than $3.725 an hour for the remaining 360 hours through March 31, 1991; and not less than $4.10 an hour for the first 360 hours and not less than $4.175 an hour for the remaining 360 hours thereafter.

(3) In the seamless branch, topping, welting, and mending (other than women's nylon), for 480 hours at not less than $3.20 an hour through November 2, 1990; not less than $3.65 an hour through March 31, 1991; and, not less than $4.10 an hour thereafter.

(4) In the seamless branch, boarding (women's nylon), folding (women's nylon and rayon) and pairing (other than women's nylon), for 360 hours, at not less than $3.20 an hour through November 2, 1990; not less than $3.65 and hour through March 31, 1991; and not less than $4.10 an hour thereafter.

(5) In the seamless branch, knitting (except transfer top), seaming, examining and inspection, folding (other than women's nylon and rayon), and boarding (other than women's nylon), for 240 hours, at not less than $3.20 an hour through November 2, 1990; at not less than $3.65 an hour through March 31, 1991; and not less than $4.10 an hour thereafter.

(6) In the full-fashioned branch, seaming (leg and foot), for 960 hours, at not less than $3.25 an hour for the first 480 hours and $3.325 an hour for the remaining 480 hours through November 2, 1990; at not less than $3.70 an hour for the first 480 hours and $3.775 an hour for the remaining 480 hours through March 31, 1991; and, at not less than $4.15 an hour for the first 480 hours and at not less than $4.225 an hour for the remaining 480 hours thereafter.

(7) In the full-fashioned branch, pairing and mending, for 720 hours at not less than $3.25 an hour for the first 360 hours and not less than $3.325 an hour for the remaining 360 hours through November 2, 1990; at not less than $3.70 an hour for the first 360 hours and at not less than $3.775 an hour for the remaining 360 hours through March 31, 1991; and, at not less than $4.15 an hour for the first 360 hours and at not less than $4.225 an hour for the remaining 360 hours thereafter.

(8) In the full-fashioned branch, boarding and folding for 360 hours, at not less than $3.25 an hour through November 2, 1990; at not less than $3.70 an hour through March 31, 1991, and, at not less than $4.15 an hour thereafter.

(9) In the full-fashioned branch, examining and inspecting, and seaming (sewing-other than leg and foot), for 240 hours at not less than $3.275 an hour for the remaining 360 hours through November 2, 1990; not less than $3.65 an hour for the first 360 hours and not less than $3.725 an hour for the remaining 360 hours through March 31, 1991; and not less than $4.10 an hour for the first 360 hours and not less than $4.175 an hour for the remaining 360 hours thereafter.

(d) A worker who has had full training in any authorized learner occupation may be transferred to any other learner occupation for a period not to exceed one-half of the learning period authorized for the occupation at not less than $3.275 an hour in the seamless branch and at not less than $3.325 an hour in the full-fashioned branch through November 2, 1990; at not less than $3.725 an hour in the seamless branch and at not less than $3.775 an hour in the full-fashioned branch through March 31, 1991; and at not less than $4.175 an hour in the seamless branch and at not less than $4.225 an hour in the full-fashioned branch thereafter. A worker who has partial training in any authorized learner occupation may be transferred to any other learner occupation for either: (1) A period not to exceed one-half of the learning period authorized for that occupation, at not less than $3.275 an hour in the seamless branch and at not less than $3.325 an hour in the full-fashioned branch through November 2, 1990; at not less than $3.725 an hour in the seamless branch and at not less than $3.775 an hour in the full-fashioned branch through March 31, 1991; and, at not less than $4.175 an hour in the seamless branch and at not less than $4.225 an hour in the full-fashioned branch thereafter; or, (2) the balance of the number of hours permitted as a learning period for the occupation to which the learner is being transferred, at the applicable special minimum rates set for in paragraph (a) of this section: *Provided, however,* That (i) no worker may be employed as a learner at learner rates in more than two authorized occupations; (ii) no worker who has completed the authorized learning period in the occupation of pairing may be employed as a learner at learner rates in the occupation of folding or inspection; and, (iii) no worker who has completed the authorized learning period may be employed as a learner at learner rates when transferring from the seamless branch of the hosiery industry to the full-fashioned branch or from the full-fashioned branch to the seamless branch, if the worker is employed in the same occupation as that in which the worker has been previously employed.

§ 522.65 [Amended]

5. In § 522.65, paragraph (a) is revised to read as follows:

(a) The special minimum wage rates which may be authorized in special certificates issued in the glove industry shall be as follows: (1) In the leather glove, woven or knit fabric glove, and knitted glove branches of the industry, not less than $3.20 an hour for the first 320 hours and at not less than $3.30 an hour for the remaining 160 hours through November 2, 1990; at not less than $3.65 an hour for the first 320 hours and at not less than $3.75 an hour for the remaining 160 hours through March 31, 1991; and, at not less $4.10 an hour for the first 320 hours and not less than $4.20 an hour for the remaining 160 hours thereafter. (2) In the work glove branch of the industry, not less than $3.20 an hour for the first 320 hours and not less than $3.25 an hour for the remaining 160 hours through November 2, 1990; at not less than $3.65 an hour for the first 320 hours and not less than $3.70 an hour for the remaining 160 hours through March 31, 1991; and, at not less than $4.10 an hour for the first 320 hours and not less than $4.15 an hour for the remaining 160 hours.

* * * * *

§ 522.85 [Amended]

6. In § 522.85, paragraph (a) is revised to read as follows:

(a) The special minimum wage rates which may be authorized in special certificates issued in the cigar industry shall be as follows: (1) In the occupations of cigar machine operating and cigar packing, not less than $3.20 an hour through November 2, 1990; not less than $3.65 an hour through March 31, 1991; and, not less than $4.10 an hour thereafter. (2) In the occupations of hand rolling and hand bunch making, not less than $3.20 an hour for the first 480 hours and $3.275 an hour for the second 480 hours through November 2, 1990; at not less than $3.65 an hour for the first 480 hours and $3.725 an hour for the second 480 hours through March 31, 1991; and, at not less than $4.10 an hour for the first 480 hours and $4.175 an hour for the second 480 hours thereafter. (3) In the occupation of hand making Italian Stogies, not less than $3.20 an hour for the first 320 hours and $3.275 an hour for the second 320 hours through November 2, 1990; not less than $3.65 an hour for the first 320 hours and $3.725 an hour for the second 320 hours through March 31, 1991; and, not less than $4.10 an hour for the first 320 hours and $4.175 and hour for the second 320 hours thereafter. (4) In the occupations of hand stripping and machine stripping, not less than $3.20 an hour through November 2, 1990; not less than $3.65 an hour through March 31, 1991; and, not less than $4.10 an hour thereafter.

* * * * *

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November 2, 1990

Part VII

Environmental Protection Agency

40 CFR Parts 22 and 761
Polychlorinated Biphenyls; Criteria and Procedures for Terminating Storage and Disposal Approvals; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 22 and 761

[OPTS-62065; FRL 3668-3]

RIN 2070-AB61

Polychlorinated Biphenyls; Criteria and Procedures for Terminating Storage and Disposal Approvals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing amendments to its storage and disposal rules for polychlorinated biphenyls (PCBs) (40 CFR part 761, subpart D). EPA is also proposing amendments to its Consolidated Rules of Practice at 40 CFR part 22, which govern the conduct of formal adjudicatory proceedings arising out of enforcement actions under the Toxic Substances Control Act (TSCA). This document proposes criteria and procedures that will govern the suspension and revocation of PCB storage and disposal approvals. These criteria and procedures are proposed under authority of section 6(e)(1) of TSCA, 15 U.S.C. 2605(e), which authorizes EPA to promulgate rules prescribing methods of disposal for PCBs.

DATES: Written comments must be received by December 17, 1990. If persons request time for oral comment, EPA will hold an informal hearing in Washington, DC, on January 8, 1991. The exact time and location of the hearing can be obtained by telephoning the Environmental Assistance Division at the telephone number listed under FOR FURTHER INFORMATION CONTACT. Written requests to participate in the informal hearing must be received by the Environmental Assistance Division or postmarked not later than December 17, 1990.

ADDRESSES: Submit written comments, in triplicate, marked with the document control number OPTS 62065, by mail to: TSCA Docket Office, (TS-793), Rm. NE-G004, Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. EPA does not anticipate that any persons will need to submit CBI to comment effectively on this proposed rule. All written comments, except for those claimed confidential, will be available for public inspection and copying in Rm. NE-G004, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Rm. E-543B, Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202 554-1404). TDD: (202 554-0551).

SUPPLEMENTARY INFORMATION:

I. Authority

This proposed rule is issued under the authority of section 6(e)(1) of TSCA. Section 6(e)(1)(A) gives EPA the authority to promulgate rules prescribing the methods for disposal of PCBs (15 U.S.C. 2605(e)(1)(A)). Consistent with this authority, EPA has promulgated rules at 40 CFR 761.60 et seq. requiring persons who own or operate disposal facilities to obtain approvals from EPA. EPA has also published rules requiring commercial storers of PCB wastes to obtain approvals for their storage activities. (See 54 FR 52716, Dec. 21, 1989.) EPA now proposes procedures for suspending and revoking these approvals and the criteria that will trigger such actions.

II. Background

A. Purpose of this Proposed Rule

The purpose of this proposed rule is to set out criteria and procedures for suspending and revoking PCB storage and disposal approvals. For purposes of this proposed rule, suspension refers to the immediate shutting down of a facility's PCB operations when EPA determines that further operation of the facility may present an immediate risk. Revocation refers to final termination of a facility's approval to operate. A person whose approval has been revoked by EPA must reapply for an approval to recommence operations.

Current EPA rules require persons operating PCB disposal facilities to obtain an approval for such activity. These rules do not, however, prescribe when or how such approvals may be suspended or revoked. EPA has also published rules at [54 FR 52716] which require commercial storers of PCB wastes to obtain approvals.

The purpose of this proposed rule is to announce the basic criteria and procedures which EPA's regional and Headquarters permitting offices will use when suspending and revoking PCB approvals they issue. EPA may also establish conditions in specific approvals that describe when suspension and revocation will occur, so long as these more specific conditions fall within the basic criteria set forth in this proposed rule.

EPA is proposing standard procedures for suspending or revoking PCB storage and disposal approvals to ensure consistency and clarity nationwide. For purposes of this rulemaking, the terms "licenses", "permits", and "approvals" are equivalent. The procedural and substantive standards proposed for suspension and revocation of approvals provide adequate notice and an opportunity to respond to EPA's actions and therefore comply with the applicable constitutional and Administrative Procedure Act (APA) requirements. These standards are also consistent with Executive Order 12630.

For convenience, throughout the preamble of this proposed rule, the term "EPA" is used to mean either the Administrator or a designee, the Administrator of the Regional Office, the Assistant Administrator, Office of Pesticides and Toxic Substances, or the Director, Exposure Evaluation Division. The proposed codified language defines more specifically which office is responsible for the stated activity.

This proposed rule is not intended to limit EPA's discretion in suspending or revoking approvals. Furthermore, EPA assumes no obligation to suspend or revoke approvals. EPA retains complete discretion in choosing whether to exercise its authority within the bounds of this rule. This rule is not intended to restrict EPA's authority or discretion to take any other enforcement action under sections 6, 7, 16, or 17 of TSCA.

B. Statutory Authority

Section 6(e)(1) of TSCA confers broad authority upon the EPA to issue rules that prescribe the methods for disposal of PCBs. EPA first exercised its disposal authority for PCBs by issuing PCB storage, marking, and disposal requirements in a rule published in the **Federal Register** of February 17, 1978 (43 FR 7150). This rule, "The Disposal and Marking Rule," was amended in part and recodified in a rule which EPA issued in the **Federal Register** of May 31, 1979 (44 FR 31542).

The existing PCB disposal rules at 40 CFR 761.60 et seq. prescribe specific disposal options for defined classes of

PCB wastes contaminated with PCBs at a level of 50 parts per million (ppm) or greater. The PCB wastes regulated for disposal under TSCA must generally be disposed of in facilities approved by EPA for the disposal of PCBs. Provisions in the PCB disposal rules describe the administrative process by which persons may obtain approvals for various types of PCB disposal processes, including high-temperature incinerators, high-efficiency boilers, chemical waste landfills, and alternative methods of disposal. The current rules, however, provide no specific guidance on suspending or revoking these approvals. Also, under TSCA section 6(e)(1), EPA has published rules which require commercial storers of PCB wastes to obtain approvals from EPA (54 FR 52716, December 21, 1989). These requirements became effective February 5, 1990, and the procedures and criteria proposed in this rule apply to the suspension and revocation of these approvals as well.

III. Discussion of This Proposed Rule

A. Overview

This document proposes criteria for making decisions to suspend and revoke PCB storage and disposal approvals. This proposal defines the standards for:

(1) Commencement of revocation proceedings and issuance of revocation orders after notice to the affected facility and an opportunity to correct the violations.

(2) Immediate commencement of revocation proceedings and issuance of revocation orders under 40 CFR part 22 without notice and opportunity to correct violations prior to initiation of revocation proceedings.

(3) Suspensions preceded by a pre-suspension review.

(4) Immediate suspensions followed by a post-suspension review.

The following diagram is provided as an interpretation of the regulatory procedures to assist the reader in understanding this rule. It is not a substitute for the rule itself. In the event that the text of the rule differs from the diagram, the text will govern. After this rule is promulgated, permitting authorities would determine on a case-by-case basis whether to suspend or revoke an approval using the standards in this proposal.

REVOCATION AND SUSPENSION PROCEDURES

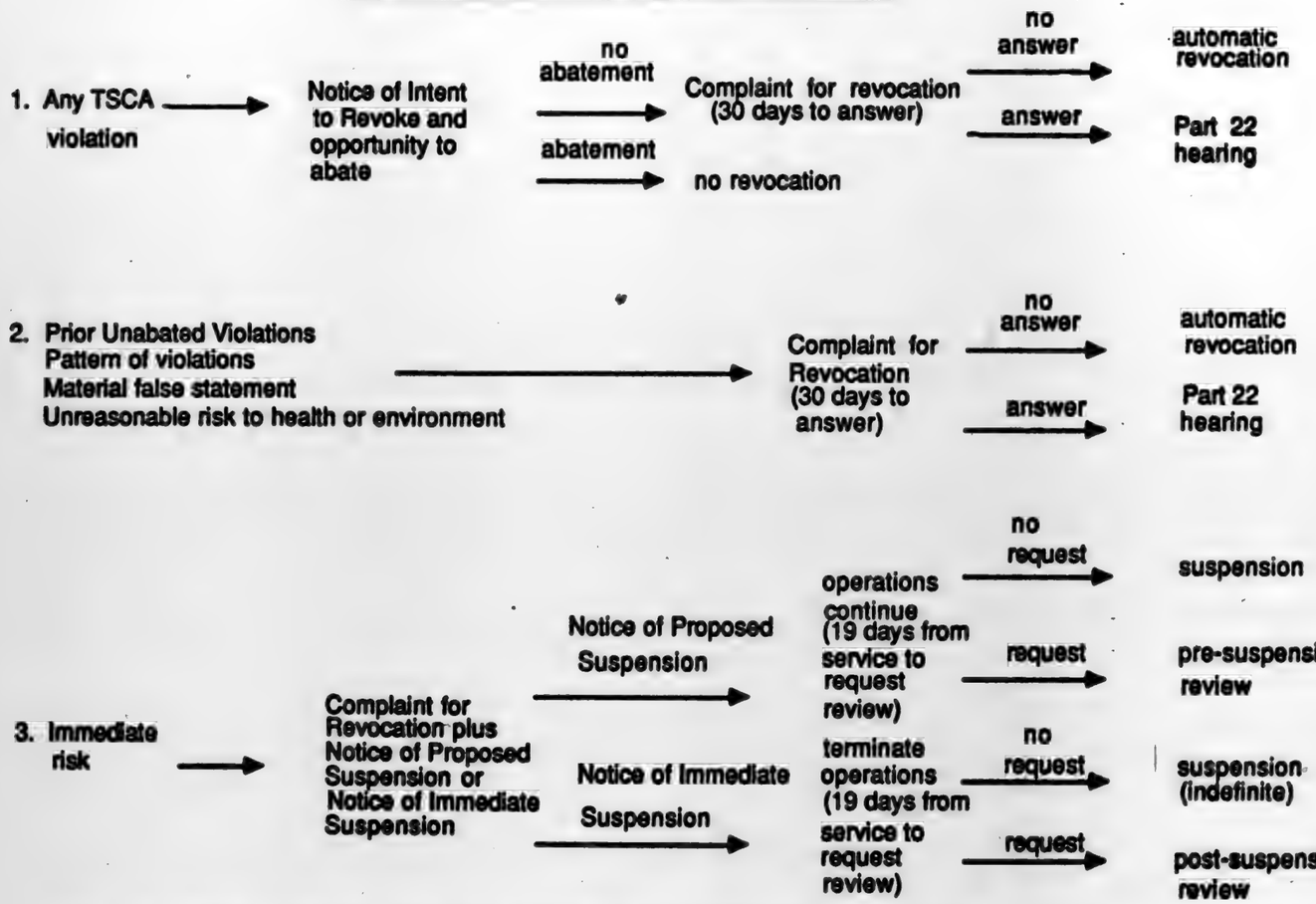

Note: This diagram is intended merely as an overview of the procedures contained in this proposed rule and does not include all procedural mechanisms provided for in the text. Where this diagram differs from the text of this proposal, the text will govern.

1. *Revocation actions.* Under these rules, EPA would formally commence revocation proceedings by filing a Complaint for Revocation under 40 CFR 22.33(d). The filing of such a complaint initiates the formal administrative process which may conclude with a final Agency decision to revoke a PCB storage or disposal approval. In the typical revocation action (see Unit III.B.1. of this preamble), EPA would provide the owner or operator of the facility with a written Notice of Intent to Revoke prior to commencing the formal revocation proceedings. The Notice of Intent to Revoke would include a written warning notice (with subsequent opportunity to demonstrate or achieve compliance) prior to the initiation of proceedings to revoke an approval.

In exceptional circumstances, EPA would dispense with the Notice of Intent to Revoke and immediately file a Complaint for Revocation (see Unit III.B.2. of this preamble). When a revocation proceeding is commenced, the operations of the facility would not be curtailed, unless there is a concern for immediate risks, until after EPA has made a final decision on the record to revoke the facility's approval.

2. *Suspension actions.* There may be situations where the continued operation of the facility during the revocation process may pose an immediate risk to health or the environment. In such cases, EPA may take immediate action to terminate a facility's operations pending the conduct of the formal revocation proceedings. The circumstances under which EPA would take action to quickly shut down a facility's operations are described in Unit III.C.1. of this preamble, which discusses the "immediate risks" which justify the suspension of operations. The suspension of operations action would typically be used to supplement formal revocation procedures in those cases where, due to the immediacy of the risk to health or the environment, the facility's operations should not be allowed to continue pending the resolution of the formal hearing process pursuant to 40 CFR part 22.

B. Criteria for Revoking Approvals

EPA will initiate action to revoke PCB storage and disposal approvals when it has reason to believe that the permitted facility should no longer be in the business of storing or disposing of PCBs. EPA may reach this preliminary conclusion because of violations of TSCA or the PCB rules by the permitted party, violations of approval conditions, conditions at the facility which pose unreasonable risks, or material misrepresentations of fact in an application for approval. In most situations, EPA's action to initiate revocation will be preceded by a warning notice and an opportunity to come into compliance. In other situations this will not be the case.

1. *Violations justifying commencement of revocation proceedings following warning notice.* EPA proposes that it have the option of issuing a Notice of Intent To Revoke prior to commencing revocation proceedings for any violation of TSCA, requirements of 40 CFR part 761, or an approval issued under the TSCA. EPA believes that persons who violate applicable requirements, or who are technically incapable of meeting those requirements, are not entitled to the privilege of operating a facility with an EPA approval.

The notice would apprise the affected party of the intent to revoke and the violations that are the basis for the action. The permittee would then have an opportunity to remedy the violations prior to issuance of a complaint.

2. *Expedited commencement of revocation proceedings under 40 CFR part 22.* In certain cases, EPA proposes to commence revocation proceedings without giving advance notice to the affected facility or providing an opportunity for the facility to correct violations of the applicable requirements. EPA intends to use those expedited revocation procedures in cases where there are unabated violations, a material false statement in an application for approval, a pattern of violations, or other conditions at the facility that pose an unreasonable risk to health or the environment. In each case, the cited conduct is attended by an element of willfulness or an unreasonable risk to health or the environment, which justifies dispensing with a prior written warning. In these cases, the subsequent abatement of the violation need not cause EPA to withdraw a Complaint for Revocation, or prevent EPA from ultimately revoking the approval. Absent grounds for a suspension (Unit III.C. of this preamble), the facility may continue operating during the course of the revocation proceeding.

a. *Prior unabated violations.* A permittee who has previously received a Notice of Intent To Revoke and has failed to remedy the violations within the time allotted in the notice is presumed to be willfully violating the applicable requirements. Therefore, EPA may commence revocation proceedings under 40 CFR part 22 when the deadline in the notice for abatement of the violation has passed. A second warning is not required.

In some cases, an unabated violation at a facility could also result in a situation that requires immediate action. For example, a facility which is storing wastes beyond the period authorized in the rules or continues to accept additional wastes for disposal without correcting the violation may constitute an immediate risk justifying issuance of a Notice of Proposed Suspension or a Notice of Immediate Suspension. Immediate risk is discussed in Unit III.C.1. of this preamble. The suspension remedy would be pursued in addition to the revocation remedy.

b. *Material false statements.* EPA proposes to commence a revocation proceeding under 40 CFR part 22 without advance notice when it finds that a permittee made a material false statement in the application for an approval. A false statement will be deemed material under the proposed rule if, for example, a truthful version of that statement would have warranted a denial of the original approval application. Making a material false statement in one's application for approval is presumed to be a willful violation justifying issuance of a Complaint for Revocation without prior notice. In some cases, EPA may also find that a material misrepresentation is so serious that it results in an immediate risk to health or the environment, justifying issuance of a Notice of Proposed Suspension or a Notice of Immediate Suspension.

c. *Pattern of violations.* The proposed rule provides that when a pattern of violations is caused by the failure of the permittee to comply with applicable requirements, EPA may immediately commence revocation proceedings, without providing advance notice and an opportunity to correct the violations. When such a pattern exists, EPA will presume that the violations are willful.

The rule proposes that EPA may determine that a pattern of violations exists or has existed after considering the total circumstances, which include, but are not limited to, the citation on three or more occasions of violations of any requirement of TSCA, any requirements of part 761, or any approval conditions. At least one of these cited violations must be of a requirement in part 761. EPA may also consider any other evidence of a pattern of violations.

Examples of situations in which EPA may find a pattern of violations constituting grounds for immediate commencement of revocation proceedings under 40 CFR part 22

include, but are not limited to the following:

i. EPA performs several inspections of a facility holding a storage and disposal approval. On each inspection, EPA determines that the facility is storing wastes in excess of the 1-year limit. EPA may find a pattern of violations and proceed to revoke the approval under 40 CFR part 22, without issuing a prior warning.

ii. EPA inspects a permitted TSCA landfill and finds that it is failing to monitor its leachate collection system. On the next inspection of the facility, EPA finds that the fence that is required to surround the facility has fallen down so that persons and animals have easy access to the facility. On the third inspection, the inspector discovers a worker placing ignitable wastes in the landfill. EPA may find a pattern of violations and proceed to revoke the approval under 40 CFR part 22.

iii. A mobile incinerator fails on several different occasions to provide notice of commencement of operations as required by the terms of its approval. EPA may find a pattern of violations and proceed to revoke the approval under 40 CFR part 22.

In cases where the pattern of violations also constitutes an immediate risk, EPA may also issue a Notice of Proposed Suspension or a Notice of Immediate Suspension as appropriate; see the discussion at Unit III.D.3.a. and b. of this preamble.

d. *Unreasonable risk to health or the environment.* If EPA determines that the continued operation of a facility may pose an unreasonable risk to health or the environment, EPA may commence proceedings to revoke the approval without issuing a prior Notice of Intent to Revoke. For example, after EPA issues an approval, EPA may learn of circumstances or data which show that the continued operation of the facility may pose an unreasonable risk to health or the environment. In such cases, EPA could proceed immediately with revocation proceedings under 40 CFR part 22. EPA could take such action even if there has been no violation of the applicable TSCA requirements. The following is an example of such a case: EPA issues an approval to a disposal facility employing an alternative technology to destroy PCBs. After EPA issues the approval, scientific evidence is presented showing that byproducts of the destruction process employed at the facility are highly reactive and may result in explosions under certain conditions. Although the permittee has not violated any of the applicable TSCA requirements, EPA may proceed to revoke the approval under 40 CFR part 22 because the continued operation of the facility may pose an unreasonable risk to health or the environment.

In cases where the unreasonable risk to health or the environment also constitutes an immediate risk, EPA may also issue a Notice of Proposed Suspension or a Notice of Immediate Suspension as appropriate.

C. Criteria for Suspending Approvals

EPA is justified in suspending an approval without first conducting a 40 CFR part 22 hearing in cases in which an "immediate risk" exists. The rule proposes two mechanisms for such a suspension: the Notice of Proposed Suspension and the Notice of Immediate Suspension. In both cases an immediate risk must be present. The meaning of immediate risk is discussed in Unit III.C.1. of this preamble. The Notice of Proposed Suspension would provide a prompt, informed opportunity for the permittee to challenge the suspension prior to its taking effect. It may be issued when the injury caused by the risk is unlikely to occur before a pre-suspension review of the suspension is held. The Notice of Immediate Suspension would provide an opportunity to contest the suspension only after the suspension takes effect, but within 30 days of issuance of the suspension, and would be issued if the injury is likely to occur before a pre-suspension review can be held.

1. *Immediate risk defined.* EPA is proposing to suspend a facility's approval without first conducting a formal hearing in certain situations. In the PCB context, such a situation exists when an "immediate risk" exists. "Immediate risk" is defined as any situation posed by any condition, practice, or violation of TSCA, or its regulations, or a condition of an approval issued under TSCA, which the Administrator determines presents a risk to health or the environment that is not likely to be adequately abated before the completion of revocation of the approval under 40 CFR parts 22 and 761.

The Agency will only seek suspension where a Complaint for Revocation has been, or is being simultaneously issued. A complaint for revocation will only be issued if one or more of the criteria in § 761.107 are met. Each of those criteria presupposes the existence of an unreasonable risk to health or the environment. Moreover, a suspension will be sought only where the risk to health or the environment is not likely to be adequately abated before the completion of the revocation proceedings.

2. *Examples of immediate risk.* Because there are countless combinations of circumstances which may constitute an immediate risk, this term is defined broadly in this proposed rule. EPA provides the following examples to demonstrate, but not exhaust, the types of situations in which it may find an immediate risk:

a. A facility holds an EPA approval to store and dispose of PCB wastes. The facility accumulates large amounts of wastes and stores them in excess of the 1-year regulatory limit on storage. In addition, the facility continues to accept and store wastes from its customers in excess of its disposal capacity. EPA may find an immediate risk in such a case.

b. An inspector discovers that a facility is accepting and disposing of wastes which substantially exceed the maximum concentration of PCBs authorized in its approval. EPA may find an immediate risk in such a case.

c. An inspector finds that a facility is failing to properly dispose of wastes generated during disposal, for example, by dumping the wastes in a ditch behind the facility. EPA may find an immediate risk in such a case.

d. A facility submits as part of its approval application specifications regarding protective clothing for workers and a list of safety measures to be observed by workers in particular parts of the facility. An inspector finds a written notice posted by management at the site stating that employees can disregard certain of these requirements. The inspector determines that the employees are indeed disregarding these requirements. EPA may find an immediate risk in each case.

The above examples are by no means a complete list of cases in which EPA may find an immediate risk. They are merely illustrative of conditions and circumstances which could justify issuance of a Notice of Proposed Suspension or a Notice of Immediate Suspension based on a finding of immediate risk.

D. Discussion of Procedural Requirements

1. *Procedures for revocation—in general.* Many types of violations of the applicable requirements may cause EPA to initiate revocation proceedings against a permittee. In certain cases, there will be no "immediate risk" justifying issuance of a Notice of Proposed Suspension or a Notice of Immediate Suspension. Nor will there be grounds for immediate commencement of revocation proceedings. In such instances, the following procedures are proposed to govern the revocation action. This proposed rule would amend 40 CFR part 22 to make it applicable to proceedings for revocation of PCB approvals.

a. *Notice of Intent to Revoke—* i. *Service of notice.* EPA would commence a revocation action under this rule by issuing a Notice of Intent To Revoke. Under the proposal, service of a copy of the signed original of the Notice of Intent To Revoke, together with a copy of the applicable regulations (40 CFR part 761, subpart F), would be made personally or by certified mail, return receipt requested, upon the permittee of the facility or a designated agent or other representative. Service would be complete upon tender or mailing, and would not be deemed incomplete because of any refusal to accept the notice or failure to sign the return receipt. Service upon a permittee which is a domestic or foreign corporation or a partnership or other unincorporated association which is subject to suit under a common name, would be made to an officer, a partner, a managing or general agent, or any other person authorized by appointment or by Federal or State law to receive service of process. Service upon an officer or agency of the United States would be made to the officer or agency, or in any manner prescribed by applicable regulations. If the agency is a corporation, it would be served as a corporation. Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentality would be made by serving a copy of the complaint in the manner prescribed by the law of the state for the service of process of any such person.

ii. *Contents of notice.* The proposed procedures would require that a Notice of Intent To Revoke be in writing, and signed by the Administrator or a designee, and state:

(1) The nature of the violation.

(2) A reasonable description of the portion of the operation to which the violation applies.

(3) The remedial action required to abate the violation, which may include interim steps.

(4) A schedule for the permittee to abate the violation.

(5) A warning that if the permittee fails to abate the violation within the specified schedule, the EPA may issue a Complaint for Revocation.

(6) A warning that if the EPA discovers that the criteria in §§ 761.110 or 761.114 are met, the EPA may issue either a Notice of Proposed Suspension or a Notice of Immediate Suspension to suspend the facility's approval pending the outcome of revocation proceedings.

The proposed requirement that EPA state the remedial action required to abate the violation in the Notice of Intent To Revoke is intended to give notice to the permittee of the conditions which must be met before EPA would find that compliance has been achieved. EPA would not be required to prescribe specific actions the permittee must take to correct the violation. EPA need only set out the standard it will use to determine whether compliance has been achieved. A citation of the applicable regulations would fulfill this requirement.

iii. *Termination of the notice where violations are remedied.* To give the permittee a chance to prevent any revocation action by remedying the violation, this proposal provides that EPA would be required to withdraw a Notice of Intent To Revoke in writing to the permittee when EPA determines that all violations listed in the Notice of Intent to Revoke have been abated. Issuance or withdrawal of this notice would not affect EPA's right to assess penalties or remedies for the violations described in this notice, or to commence revocation proceedings for violations not listed in the Notice of Intent to Revoke.

This proposal provides that EPA extend the time set for abatement if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee and the violation does not present an unreasonable risk of injury to health or the environment. Any such extension would be in writing.

The total time for abatement, including all extensions, would not exceed 90 days, unless the permittee can make a good faith showing that it is not feasible to abate the violation, using best efforts, within 90 days for reasons not within the permittee's control.

iv. *Reservation of right to issue Notice of Proposed Suspension or Notice of Immediate Suspension.* Circumstances which initially warrant issuance of a Notice of Intent to Revoke may worsen after revocation proceedings have begun. In such a case, EPA may wish to exercise its power to issue a Notice of Proposed Suspension or a Notice of Immediate Suspension. Therefore, this proposal provides that issuance of a Notice of Intent to Revoke would not limit EPA's right to issue a Notice of Immediate Suspension or Notice of Proposed Suspension, where the criteria for a suspension are also satisfied.

b. *Revocation under 40 CFR part 22 where violation is unabated.* To ensure that the threat posed by the violation in question is remedied promptly, the proposed rule would set a limit on the time the permittee has to achieve compliance. This proposal provides that the total time for remedying the violations would not exceed 90 days, unless the facility can make a good faith showing that it is not feasible to meet this deadline, using best efforts, for reasons not within its control. Therefore, this proposal provides that when a Notice of Intent To Revoke has been issued and the affected facility fails to abate the violation within the abatement period fixed or subsequently extended by EPA, EPA could commence revocation proceedings under proposed subpart F (40 CFR part 761 subpart F) and part 22.

2. *Procedures for revocation without advance notice to the permittee.* Where a violation is willful or where a violation, practice, or condition of the permittee constitutes an unreasonable risk to public health or the environment, EPA would immediately commence a revocation proceeding by issuing a Complaint for Revocation under 40 CFR part 22, without providing the permittee with Notice of Intent to Revoke or an opportunity to correct the violation. Grounds for immediate commencement of revocation under 40 CFR part 22 are proposed in § 761.107.

Because EPA has already promulgated formal hearing procedures for assessment of civil penalties under TSCA at 40 CFR part 22, EPA has decided it would be appropriate to use these procedures for revocation proceedings as well. To make these procedures applicable to PCB approval revocations, the proposal would amend the part 22 revocation procedures as discussed later in this Unit.

a. *Issuance of Complaint for Revocation.* The proposed rule would amend part 22 by specifying the required contents of a Complaint for Revocation. The rule also would amend part 22 to add to the definition of "permit" an approval for PCB storage or disposal issued under section 6(e) of the TSCA. The proposal provides that such a Complaint for Revocation would be in writing, would be signed by the Administrator or a designee, and would set forth with reasonable specificity:

i. The nature of the violation or condition that is the basis for revoking the approval.

ii. A reasonable description of the portion of the facility's operation to which revocation applies.

iii. A warning that if the permittee fails to answer the Complaint for Revocation under this section within 30 days after receipt of the Complaint for Revocation, the approval shall be automatically revoked.

iv. Any provisions deemed necessary by EPA to govern the termination of activities under the approval.

b. *Automatic revocation where permittee fails to answer.* The proposed rule would provide that unless a Complaint for Revocation is withdrawn by EPA, EPA would automatically revoke the approval 31 days after service of the Complaint for Revocation unless the permittee files an answer in a timely manner to the Complaint for Revocation. In such a case the proposal would require the permittee to comply with the provisions for termination of activities under the approval described in the Complaint for Revocation.

c. *Withdrawal of Complaint for Revocation.* EPA wishes to preserve its flexibility in negotiating a settlement with a facility which would allow the facility to remain in business once EPA has initiated a revocation action. The proposal thus provides that EPA may withdraw the complaint, or any part thereof, without prejudice one time before the answer has been filed. After one withdrawal before the filing of an answer, or after the filing of an answer, EPA may withdraw the complaint, or any part thereof, only upon motion granted by the judicial officer. In addition, if the violation or condition that is the basis for the Complaint for Revocation was not caused by lack of diligence on the part of the permittee, and the violation or condition could be mitigated through the imposition of modified approval conditions, EPA may, without prejudice and without consent of the judicial officer, issue a modified approval to require the permittee to take action to mitigate any unreasonable risk caused by the violation, condition, or practice. The modified approval may contain additional terms and conditions as determined by EPA to be necessary to ensure that the facility's operations will not pose an unreasonable risk of injury to health or the environment. The Complaint for Revocation would be withdrawn by written notice to the permittee. Termination of the Complaint for Revocation would not affect EPA's right to assess penalties or remedies for the violations in question.

EPA's policy is to publicize enforcement actions. EPA would therefore publicize actions to revoke an approval at the time EPA issues a Complaint for Revocation. However, there is no requirement in the rule that EPA publicize revocation actions.

3. *Procedures where an immediate risk justifies suspension prior to a formal hearing—a. Notice of Proposed Suspension.* i. *Issued only in conjunction with Complaint for Revocation.* A situation serious enough to warrant suspension of operations under an approval (because an immediate risk is posed) will also warrant revocation of the approval. Therefore, the proposal requires that a Notice of Proposed Suspension would only be issued together with or after a Complaint for Revocation under proposed §§ 761.108 and 22.33. The revocation and suspension actions would proceed concurrently.

ii. *Service of the notice.* The proposed requirements for service are the same as those for a Notice of Intent To Revoke.

iii. *Content of the notice.* Because a Notice of Proposed Suspension would only be issued in cases involving immediate risks, it is particularly important that the notice require that the permittee remedy the violation to avoid an immediate risk to health or the environment. Therefore, the proposal provides that the Notice of Proposed Suspension be in writing, be signed by the Administrator or a designee, and set forth with reasonable specificity:

(1) The nature of the condition, practice, or violation that has caused the immediate risk.

(2) A reasonable description of the portion of the facility's operation to which it applies.

(3) The remedial actions or affirmative obligations required for abatement of the immediate risk and actions to be taken to avoid the suspension.

(4) The schedule established for abatement of the immediate risk.

(5) Any steps which EPA deems necessary to secure the facility from any hazards which might arise during the period of cessation of operations, including steps necessary to close the facility or affected portion of operations, if closure requirements are not included in the facility's approval.

(6) A statement that if the permittee requests a pre-suspension hearing in writing within 19 days after service of the Notice of Proposed Suspension, a representative of the appropriate EPA Office will conduct an expedited hearing under proposed § 761.112 solely on the question of whether an immediate risk exists. The statement would also state that if the permittee fails to submit a written request for review of the suspension within 19 days after service of the notice, the approval would be automatically suspended. The statement would also provide the name and address of the EPA official to contact to request review of the suspension.

The proposed requirement that EPA state the remedial action required to abate the violation in the Notice of Proposed Suspension is intended to give notice to the permittee of the conditions which must be met before EPA will find that compliance has been achieved. EPA would not be required to prescribe specific actions the permittee must take to correct the condition or violation. EPA need only set out the standard it will use to determine whether compliance has been achieved. A citation of the applicable regulations would fulfill this requirement.

iv. *Suspension if no request for pre-suspension review.* The proposal provides that unless the Notice of Proposed Suspension is terminated by the Administrator, the approval would be suspended automatically 20 days after service of the Notice of Proposed Suspension unless the permittee requests a pre-suspension review within 19 days after service of the Notice of Proposed Suspension. The proposal would require that the permittee comply with the provisions for suspension of activities described in the Notice of Proposed Suspension.

v. *Termination of the notice.* EPA may modify or terminate a Notice of Proposed Suspension by written notice to the permittee upon a determination that any or all conditions, practices, or violations listed in the Notice have been abated. Termination would not affect EPA's right to revoke the approval and/or assess penalties or remedies for the conditions, practices, or violations in question.

vi. *Pre-suspension review—(1) Scope of review.* Because the pre-suspension review is intended to be an opportunity for the permittee to challenge the suspension, and not the ultimate revocation of the approval, the proposal provides that the scope of review of a Notice of Proposed Suspension would be limited to whether the criteria for suspension are met.

(2) *Timeframe and location.* The proposal provides that the appropriate EPA Office will give notice of the time, place and subject matter of the pre-suspension review to the permittee within 7 days of receipt of a request for such review. The pre-suspension review can be held either in the county where the permittee resides or conducts business which the hearing concerns, in a city where the relevant EPA Regional Office is located, or in Washington, DC. Upon a showing of good cause, the location can be changed to any other site, or to a site reasonably close to the facility if there is a need for a site visit to resolve any issues raised.

(3) *Conduct of the review.* If a hearing is conducted, it will not be a formal hearing under section 554 of Title 5 of the United States Code (5 U.S.C. 554). The proposal provides that the pre-suspension review would be conducted by a representative of the appropriate EPA Office. To ensure that the person presiding at the review is unbiased, the representative conducting the pre-suspension review would not be the individual who issued the Notice of Proposed Suspension and Complaint for Revocation. Oral or written comments and arguments may be presented at the hearing and will be included in the written record of the proceeding. A written transcript of the proceedings will be taken. Any written evidence EPA uses to support the suspension, along with any written evidence the permittee uses to defend against issuance of a suspension would be included in the record of the proceeding.

(4) *Decision.* The proposal provides that within 10 days after completion of the pre-suspension review, the appropriate EPA Office who conducted the review would render a written decision. If the appropriate EPA Office decides to issue a suspension, the decision would state the basis for this decision and would require termination of operations. The decision would be sent to:

(a) The permittee.

(b) The Administrator.

(c) Any State or local regulatory authority having jurisdiction over the affected facility.

(5) *Effect of suspension.* The proposal provides that if a suspension is issued, it would remain in effect pending completion of the revocation proceeding or until the immediate risk which resulted in the issuance of the suspension has been abated to the satisfaction of EPA as communicated to the permittee in writing.

(6) *Waiver by the permittee of the pre-suspension review—(a) What constitutes waiver.* The proposal provides that if the permittee fails to appear at the pre-suspension review and the Notice of Proposed Suspension was properly served, the permittee would be deemed to have waived the right to a hearing.

(b) *Effect of waiver.* The proposal provides that if the pre-suspension review is waived the suspension would automatically take effect.

The suspension and revocation of the approval are two distinct actions. Therefore, the proposal provides that the granting or waiver of the pre-suspension review would not affect the right of a permittee to a formal adjudication under 40 CFR part 22 with respect to a Complaint for Revocation. There are two exceptions to this provision:

(i) The permittee to whom the Notice of Proposed Suspension and Complaint for Revocation were issued could respond by submitting a signed and notarized statement to EPA waiving all rights to review of the Notice of Proposed Suspension and a hearing on the Complaint for Revocation, and consenting to the revocation of the facility's approval, including compliance with conditions for the closure of the facility's operations (or affected portion) as deemed necessary by EPA to close and secure the facility and abate any immediate health or environmental risks posed by the facility's operations. The effect of such a statement would be a final revocation of the approval, except as permitted under the terms of the closure approval.

(ii) The permittee to whom the Notice of Proposed Suspension was issued could also respond to the notice by submitting to EPA a signed and notarized statement waiving all rights to review of the notice, and consenting to the indefinite suspension of the facility's approval. The effect of such a statement would be to extend the term of the suspension indefinitely, pending a final decision on revocation.

(iii) Effect of failure to comply with the terms of the suspension. The proposal provides that failure to comply with the terms of any suspension would, under section 15(1) of TSCA, constitute a "prohibited act" since it would violate a rule promulgated under section 6(e) of TSCA. This would render the violator subject to actions under sections 16 and 17 of TSCA. In addition, if failure to comply with the suspension constitutes an imminent hazard under section 7 of TSCA, the violator could be subject to sanctions authorized by that section, including, but not limited to, injunctions and seizure.

b. *Notice of Immediate Suspension—* i. *Issued only in conjunction with a Complaint for Revocation.* A Notice of Immediate Suspension could only be issued together with or after a Complaint for Revocation under §§ 761.108 and 22.33. The suspension and revocation actions would proceed concurrently.

ii. *Service of the notice.* Under the proposal, the same service requirements would apply to a Notice of Immediate Suspension and a Notice of Intent To Revoke.

iii. *Content of the notice.* As in the case of a Notice of Proposed Suspension, a Notice of Immediate Suspension could only be issued in cases involving immediate risk to health or the environment. Again, it is important that the notice require that the permittee remedy the violation to avoid any immediate risks to health or the environment. The proposal, therefore, provides that a Notice of Immediate Suspension be in writing, be signed by the Administrator or a designee, and set forth with reasonable specificity:

(1) The nature of the condition, practice, or violation that has caused the immediate risk.

(2) A reasonable description of the portion of the facility's operation to which the suspension applies.

(3) The remedial actions or affirmative obligations required for abatement of the immediate risk and actions to be taken to comply with the suspension.

(4) The time established for abatement of the immediate risk and actions to be taken to comply with the suspension.

(5) Any steps which EPA deems necessary to secure the facility from any hazards which might arise during the period of cessation of operations, including steps necessary to bring about the closure of the facility or affected portion of operations, where appropriate, if closure requirements are not included in the facility's approval.

(6) A statement that if the permittee requests a post-suspension review in writing within 19 days after service of the Notice of Immediate Suspension, a representative of the appropriate EPA Office would conduct an expedited review solely on the question of whether an immediate risk exists. The statement would also advise that, if the permittee fails to submit a written request for review of the suspension within 19 days after service of the notice, the permittee would be deemed to have waived any right to review the suspension, and that the suspension would remain in effect pending revocation or withdrawal of the notice by EPA. The statement would also provide the name and address of the appropriate EPA official to contact to request the post-suspension review.

As in the case of the Notice of Proposed Suspension, the proposed requirement that EPA state the remedial action required to abate the violation in the Notice of Immediate Suspension is intended to give notice to the permittee of the conditions which must be met before EPA will find that compliance has been achieved. EPA would not be required to prescribe specific actions the permittee must take to correct the condition or violation. EPA need only set out the standard it will use to determine whether compliance has been achieved. A citation of the applicable regulations would fulfill this requirement.

iv. *Effect of the notice—(1) Effective immediately.* Under the proposal, a Notice of Immediate Suspension would be effective immediately upon service of the permittee. That is, all operations

affected by the notice must cease immediately.

(2) *Not a final revocation.* Under this proposed rule, the Notice of Immediate Suspension is a mechanism for discontinuing operations at a facility that is presenting an immediate risk to health or the environment. The immediate suspension, however, would not revoke the approval, but acts to temporarily close the facility which poses an immediate risk.

v. *Term of the notice.* The proposal provides that the suspension would remain in effect pending a final order on revocation or until the immediate risk which caused the issuance of the notice has been abated to the satisfaction of EPA, as communicated to the permittee in writing, or until the Notice of Immediate Suspension is terminated in writing by EPA or expires.

(1) *Termination of the notice.* This proposal would authorize EPA to modify or terminate a Notice of Immediate Suspension in writing to the permittee upon a determination that all conditions, practices, or violations listed in the Notice have been timely abated. Termination would not affect EPA's right to revoke the approval and/or assess penalties or remedies for those conditions, practices, or violations.

(2) *Expiration of a Notice of Immediate Suspension.*—(a) *When notice will expire.* The proposal provides that a Notice of Immediate Suspension would expire 30 days after it is served unless a post-suspension review has been held within that time, or for good cause.

(b) *Exceptions.* Because the burden is on the permittee to request a review of the suspension, this proposal provides that Notice of Immediate Suspension would not expire if the permittee waives post-suspension review, or if, with the consent of the permittee, the post-suspension review is held later than 30 days after the notice was served. The permittee would waive the right to a post-suspension review if the permittee was properly served with a notice that contained the required statement concerning waiver of the right to a post-suspension review, and failed to request a post-suspension review within 19 days after service.

(c) *Effect of expiration of the Notice of Immediate Suspension.* The immediate suspension is terminated once EPA determines that the immediate risk which lead to its issuance is abated, or it may expire if EPA fails to hold a hearing within 30 days (unless agreed otherwise) of service of the notice. In such a case, the facility's operations may resume. However, the violation, condition, or practice which lead to the suspension may nevertheless warrant assessment of penalties or permanent revocation of the approval.

Thus, the proposal provides that the expiration of the Notice of Immediate Suspension would not affect a Complaint for Revocation or a complaint to assess penalties or remedies with respect to the violations, conditions, or practices cited in the notice.

vi. *Post-suspension review*—(1) *No review if abatement or waiver.* When the immediate risk which lead to the suspension is abated to EPA's satisfaction, and the suspension notice is terminated in writing, operations could resume. Therefore, under the proposal, a post-suspension review need not be held in such a case. Similarly, if the permittee waives the right to a post-suspension review, there would be no review.

(2) *Scope of the review.* The proposal provides that the post-suspension review of a Notice of Immediate Suspension would be limited to consideration of whether the criteria for suspension are met. Revocation proceedings are the proper forum to address all other issues regarding the approval.

(3) *Timeframe and location.* A hearing would be held after immediate suspension of a license or approval to review promptly the correctness of the suspension. The proposal requires that within 7 days of receipt of a request for a post-suspension review, the appropriate EPA Office would give notice of the time, place, and subject matter of the post-suspension review to the permittee. The post-suspension review can be held either in the county where the permittee resides or conducts business which the hearing concerns, in the city where the relevant EPA Regional Office is located, or in Washington, DC. Upon a showing of good cause the location can be changed to any other site, or to a site reasonably close to the facility if there is a need for a site visit to resolve any issues raised by the post-suspension review.

(4) *Conduct of the review.* The purpose of the post-suspension review is to provide a meaningful opportunity for the permittee to present its case to EPA promptly after the suspension takes effect, and thus reduce the chance that EPA will act without considering all the relevant facts and circumstances. There is no requirement that this proceeding be a formal hearing governed by APA requirements, since the affected party will have the opportunity to challenge the revocation of the approval in a formal hearing. Therefore, the proposal provides that section 554 of Title 5 of the United States Code (5 U.S.C. 554), regarding the requirements for formal adjudicatory hearings, would not govern post-suspension reviews. The post-suspension review would be conducted by a representative of the appropriate EPA Office, who could accept oral or written arguments and any other relevant information from any person attending. To ensure fairness in the review, the proposal provides that the representative conducting the post-suspension review would not be the individual who issued the Notice of Immediate Suspension and Complaint for Revocation.

(5) *Decision.* The proposal provides that within 10 days after the close of the post-suspension review, the appropriate EPA Office who conducted the post-suspension review would affirm or vacate the Notice of Immediate Suspension in writing.

If the appropriate EPA Office who conducted the post-suspension review affirms the suspension, or affirms the suspension with modifications, the written decision would state briefly the basis for the decision. The decision would be sent to:

(a) The permittee.

(b) The Administrator.

(c) Any State or local regulatory authority having jurisdiction over the affected facility.

If the suspension is affirmed, the suspension would remain in effect pending completion of the revocation proceeding or until the immediate risk which resulted in the issuance of the suspension has been abated to the satisfaction of EPA as communicated to the permittee in writing.

If the representative who conducted the post-suspension review vacates the suspension, the written decision would state briefly the basis for the decision. The decision would state that operations affected by the Notice of Immediate Suspension may resume immediately. The vacating of the suspension would not affect the revocation proceedings already underway.

(6) *Waiver of post-suspension review*—(a) *What constitutes a waiver.* The proposal provides that if a permittee fails to submit a written request for review of a suspension within 19 days after receipt of the Notice of Immediate Suspension, this would constitute waiver of any right to review of the suspension. In such a case, the suspension shall remain in effect pending revocation, or withdrawal of the notice by EPA.

(b) *Effect of waiver.* Because the suspension and revocation actions would be separate proceedings, the granting or waiver of the post-suspension review would not affect the right of a permittee to a formal adjudication under 40 CFR part 22 with respect to a Complaint for Revocation with two exceptions as follows:

(i) The permittee to whom the Notice of Immediate Suspension and Complaint for Revocation were issued could submit to EPA a signed and notarized statement waiving all rights to review of the notice and a hearing on the Complaint for Revocation, and consenting to the revocation of the facility's approval. Such waiver includes compliance with all conditions for the closure of the facility's operations (or affected portion) as deemed necessary by EPA to close and secure the facility and abate any hazards posed by the facility's previous operations. The effect of such a statement would be a final revocation of the approval, except as permitted under the terms of the closure approval.

(ii) The permittee to whom the Notice of Immediate Suspension and Complaint for Revocation were issued could respond by submitting to EPA a signed and notarized statement waiving all right to review of the notice and a hearing on the Complaint for Revocation and consenting to the indefinite suspension of the facility's approval. The effect of such a statement would be to extend the term of the suspension indefinitely, pending a final decision on revocation, or withdrawal of the notice of suspension by EPA.

(c) *Effect of failure to comply with the Notice of Immediate Suspension.* Under the proposal, failure to comply with the terms of the Notice of Immediate Suspension would be a violation of TSCA section 15(1) as it would violate a rule under section 6(e) of TSCA. The violator would be subject to the appropriate sanctions under TSCA sections 16 and 17. In addition, if failure to comply with the suspension constitutes an imminent hazard under section 7 of TSCA, the violator could be subject to actions authorized by that section, including, but not limited to, injunctions and seizure.

4. *Alternative procedures for revocation proceedings.* As an alternative to using 40 CFR part 22 for permit revocation procedures, which are outlined in Unit III.D.1. and 2. of this preamble, EPA is proposing two additional procedures. EPA invites comments on which of the three proposed procedures is best suited for permit revocation proceedings. Following review of the comments received, EPA will choose the procedures it deems most appropriate.

a. *Modified part 22 Procedure.* The first alternative procedure proposed to revoke a permit is a modified part 22 hearing. Section 22.33 contains supplemental rules of practice which alter part 22 hearing procedures for TSCA civil penalty assessments. For the purpose of a permit revocation proceeding, § 22.33 would be amended to allow:

i. The Presiding Officer to be an attorney who is an employee or authorized representative of EPA, and who has had no prior connection with the case, including the performance of any investigative or prosecutorial function.

ii. The Presiding Officer to schedule any prehearing conference, pursuant to § 22.19(a), on a date not later than 21 days after the answer is filed.

iii. The parties to file any exchange of witness lists and documents, pursuant to § 22.19(b), not later than 21 days after the answer is filed.

iv. The Presiding Officer to schedule any hearing, pursuant to § 22.21(b), on a date not later than 45 days after the answer is filed.

v. The Presiding Officer to issue and file the initial decision, pursuant to § 22.27(a), within 30 days after the period for filing reply briefs under § 22.26 has expired.

vi. The Administrator to issue a final order on appeal, pursuant to § 22.31(a) within 30 days after the filing of all appellate briefs or oral argument, whichever is later.

b. *Using proposed suspension procedures to revoke an approval.* The second alternative to using part 22 procedures in approval revocation actions is to use the same procedures now proposed for approval suspension proceedings, which are outlined in Unit III.D.3. of this preamble.

The three proposed revocation procedures offer different mixes of procedural requirements. The "suspension procedure" option would allow EPA to revoke an approval using a relatively streamlined hearing process. The "part 22 hearing" option would require that all current part 22 procedural requirements be met before an approval could be revoked. Finally, the modified part 22 option would amend current part 22 procedures with respect to certain time limits and by eliminating the requirement that the presiding officer be an Administrative Law Judge. If the modified part 22 procedures are adopted, EPA would retain the option of using full part 22 procedures in circumstances where, upon EPA's discretion, permit revocation and civil penalty actions are brought at the same time.

IV. Official Rulemaking Record

EPA has not identified any documents used in this rulemaking to include in the official record. However, EPA is in the process of establishing a rulemaking record, and all public comments will be included in the rulemaking record which can be viewed in Rm. NE G004 at the times and location stated earlier in this proposal.

V. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared.

EPA has determined that this rule is not a major rule as defined in section 1(b) of the Executive Order. The proposed rule would not effect the economy, because it imposes no additional obligations upon the regulated community. The purpose of this rule is to clarify the circumstances in which EPA may suspend or revoke PCB approvals, and to set out procedures by which this may be done. EPA has authority to suspend or revoke the approvals it issues even in the absence of such a rule. Therefore, the rule would have no economic consequences and is not a major rule under the Executive Order. A regulatory impact analysis is therefore not required. This rule was submitted to the Office of Management and Budget (OMB) under Executive Order 12291 for review.

B. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA may certify that a rule will not, if promulgated, have a significant impact on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis.

The effect of this rule, if promulgated, will be to make public the criteria upon which EPA will base its decisions to suspend or revoke PCB disposal and storage approvals, as well as the procedures EPA will use to suspend or revoke these approvals. Because EPA already has authority to suspend and revoke the approvals it issues, this rule has no impact on small entities.

I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

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C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. authorizes the Director of the Office of Management and Budget (OMB) to review certain information collection requests by Federal agencies. There are no requirements in this rule that qualify as a "collection of information" as defined in 44 U.S.C. 3502(4).

List of Subjects in 40 CFR Parts 22 and 761

Administrative practice and procedure, Environmental protection, Hazardous chemicals, Hazardous substances, Hazardous waste, Labeling, Penalties, Polychlorinated biphenyls (PCBs), Reporting and recordkeeping requirements, Superfund.

Dated: October 11, 1990.

William K.Reilly,
Administrator.

Therefore, 40 CFR chapter I is proposed to be amended as follows:

1. In part 22:

PART 22—[AMENDED]

a. By revising the authority for part 22 to read as follows:

Authority: 7 U.S.C. 136(l) and (m); 15 U.S.C. 2005, 2615; 33 U.S.C. 1361, 1319, 1415, and 1418; 42 U.S.C. 6912, 6928, 6991(e), 6992(d), 7545 and 7601 9009, and 11045.

b. In § 22.01 by revising paragraph (a)(5) to read as follows:

§ 22.01 Scope of these rules.

(a) * * *

(5) The assessment of any civil penalty conducted under section 16(a), or the revocation of any approval conducted under section 6(e), of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2605(e)).

* * * * *

c. In § 22.03, paragraph (a) by revising the definition for "permit," and by adding a definition for "permittee" to read as follows:

§ 22.03 Definitions.

(a) * * *

Permit means a permit issued under section 102 of the Marine Protection, Research, and Sanctuaries Act or an approval for storage and/or disposal of PCBs and PCB waste issued under section 6(e) of the Toxic Substances Control Act.

Permittee means the person to whom a PCB approval was issued under part 761 of this chapter.

* * * * *

d. By revising § 22.33 to read as follows:

§ 22.33 Supplemental rules of practice under the Toxic Substances Control Act.

(a) *Scope of these supplemental rules.* These rules of practice shall govern, in conjunction with the consolidated rules of practice in §§ 22.01 through 22.32, all formal adjudications for the assessment of any civil penalty conducted under section 16(a) of the Toxic Substances Control Act (15 U.S.C. 2615(a)), and proceedings for the revocation of any approval issued under part 761 of this chapter. Where inconsistencies exist between provisions of this § 22.33 and the consolidated rules (§§ 22.01 through 22.32), the provisions of this § 22.33 shall apply.

(b) *Assessment of civil penalties*—(1) *Subpoenas.* (i) The attendance of witnesses or the production of documentary evidence may be required by subpoena. The Presiding Officer may grant a request for a subpoena upon a showing of (A) the grounds and necessity therefor, and (B) the materiality and relevancy of the evidence to be adduced. Requests for the production of documents shall describe the evidence sought as specifically as practicable.

(ii) Subpoenas shall be served in accordance with § 22.05(b)(1).

(iii) Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears. Where a witness appears pursuant to a request initiated by the Presiding Officer, fees shall be paid by EPA.

(2) [Reserved]

(c) *Definitions.* For purposes of revocation of an approval under this section, the term "Complaint for Revocation" shall mean the document used to initiate revocation of any approval for storage and disposal of PCBs and PCB waste under this section.

(d) *Complaint for Revocation*—(1) *Issuance and content of Complaint for Revocation.* A Complaint for Revocation issued under part 761 of this chapter and this section shall be in writing, shall be signed by the Administrator, and shall set forth with reasonable specificity:

(i) The nature of the violation or condition that is the basis for revoking the approval.

(ii) A reasonable description of the portion of the facility's operation to which revocation applies.

(iii) A warning that if the permittee fails to answer in writing the Complaint for Revocation within 30 days after receipt of the Complaint for Revocation, the approval shall be automatically revoked.

(iv) Any provisions deemed necessary by the Administrator to govern the termination of activities under the approval.

(2) *Automatic revocation.* Unless a Complaint for Revocation is dismissed or withdrawn by the Agency under paragraph (d)(3) of this section, or unless the permittee timely answers the Complaint for Revocation, an approval shall be revoked automatically 31 days after service of the Complaint for Revocation. The permittee shall comply with the provisions for termination of activities under the approval described in the Complaint for Revocation.

(3) *Withdrawal of Complaint for Revocation.* (i) The Agency may in its discretion dismiss or withdraw a Complaint for Revocation and any resulting proceeding under this section without prejudice one time before the answer has been filed. After one withdrawal before the filing of an answer, or after the filing of an answer, the Agency may withdraw the complaint, or any part thereof, only upon motion granted by the judicial officer. If the violation or condition set forth as the basis for the Complaint for Revocation was not caused by lack of diligence on the part of the permittee, and the violation or condition could be mitigated through the imposition of modified approval conditions, the Agency may, without prejudice and without consent of the judicial officer, issue a modified approval to require the permittee to take action to mitigate any harm caused by the violation, condition, or practice. Such modified approval may contain additional terms and conditions as determined by the Agency to be necessary to ensure that the facility's operations will not pose an unreasonable risk of injury to health or the environment.

(ii) The Agency shall withdraw a Complaint for Revocation by written notice to the permittee. Dismissal or withdrawal of the notice shall not affect the Agency's right to assess penalties or remedies for violations of the Act under sections 16 and 17.

2. In part 761:

PART 761—[AMENDED]

a. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, 2615 and 2616.

b. By adding new subpart F, consisting of §§ 761.100, 761.103, 761.105, 761.106, 761.107, 761.108, 761.110, 761.111, 761.112, 761.114, 761.115, and 761.117, to read as follows:

Subpart F — Suspension and Revocation of PCB Approvals

Sec.

761.100 General.
761.103 Definitions.
761.105 Criteria for issuance of Notice of Intent to Revoke.
761.106 Notice of Intent to Revoke.
761.107 Criteria for commencement of revocation action.
761.108 Complaint for Revocation.
761.110 Criteria for issuance of Notice of Proposed Suspension and suspension order.
761.111 Notice of Proposed Suspension.
761.112 Pre-suspension review.
761.114 Criteria for issuance of Notice of Immediate Suspension and Immediate Suspension Order.
761.115 Notice of Immediate Suspension.
761.117 Post-suspension review.

Subpart F — Suspension and Revocation of PCB Approvals

§ 761.100 General.

(a) This subpart F sets forth the criteria and procedures which govern the suspension or revocation of PCB storage and/or disposal approvals issued pursuant to §§ 761.60, 761.70, or 761.75 (or other such provision as is designated by rule). The procedural rules included herein supplement the rules of practice in part 22 of this chapter which govern adjudicatory proceedings for the assessment of civil penalties under section 16(a) of TSCA (15 U.S.C. 2615(a)) and the revocation of approvals issued under section 6(e) of TSCA (15 U.S.C. 2605(e)). Where inconsistencies exist between the provisions of this subpart F and part 22 of this chapter, the provisions of this subpart F shall apply, in addition to EPA's other rights and powers under sections 6, 7, 16, and 17 of TSCA.

(b) In cases where the permittee has met the criteria for revocation set forth in § 761.107, EPA will use formal hearing procedures to revoke the approval. The revocation hearing will determine whether the revocation criteria have been met and will be the forum for assessing civil penalties. Except as provided in § 761.107, EPA shall give the permittee prior notice of a revocation action and a chance to correct the conditions or violations warranting approval revocation. In emergency situations, EPA may suspend the approval, pending revocation, by giving the permittee a hearing before suspension, or suspending first and then providing an expedited post-suspension review. The suspension hearing will determine whether the suspension criteria are met.

§ 761.103 Definitions.

For the purposes of this subpart, the following definitions apply:

Administrator means: (1) The Administrator of the Environmental Protection Agency or a designee; or

(2) The Regional Administrator who issued the permit which is the subject of the revocation or suspension action, if the permit was issued by the EPA regional office; or

(3) The Assistant Administrator, Office of Pesticides and Toxic Substances, who issued the approval which is the subject of the revocation or suspension action, if the approval was issued by the Assistant Administrator, Office of Pesticides and Toxic Substances; or

(4) The Director, Exposure Evaluation Division who issued the approval which is the subject of the revocation or suspension action, if the approval was issued by the Director, Exposure Evaluation Division.

Approval or *facility approval* mean PCB permits and approvals issued pursuant to §§ 761.60, 761.70, or 761.75 or other such provision as is designated by rule.

Approved facility means a PCB storage or disposal facility operating with a permit or approval issued pursuant to §§ 761.60, 761.70, or 761.75 or other such provision as is designated by rule.

EPA means the Environmental Protection Agency.

EPA Office means: The EPA Regional Administrator, the EPA Assistant Administrator for Pesticides and Toxic Substances, or the Director, Exposure Evaluation Division, depending on who issued the approval which is the subject of the suspension or revocation action.

Federally-authorized inspection means any inspection:

(1) Authorized by EPA.

(2) Authorized by a state pursuant to an agreement with or a grant from EPA for the purpose of conducting TSCA inspections.

(3) By a state authorized to conduct inspections under section 3006 of the Solid Waste Disposal Act, (42 U.S.C. 6926).

Immediate risk means any situation posed by any condition, practice, or violation of TSCA or its regulations, or a condition of an approval issued under TSCA, which the Administrator determines presents a risk to health or the environment that is not likely to be adequately abated before the completion of revocation of the approval under this part 761 and part 22 of this chapter.

Permittee means the person to whom the PCB approval was issued, or transferred to with EPA approval.

TSCA means the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

Violation of TSCA means a failure to comply with any requirement under TSCA, or any requirement, provision or condition in an approval issued pursuant to this part 761.

§ 761.105 Criteria for issuance of Notice of Intent to Revoke.

The Administrator may issue a Notice of Intent to Revoke if the Administrator finds, on the basis of any federally-authorized inspection, a violation of TSCA.

§ 761.106 Notice of Intent to Revoke.

(a) A Notice of Intent to Revoke issued under this section shall be in writing, be signed by the Administrator, and include the following:

(1) The nature of the violation.

(2) A description of the portion of the operation to which the violation applies.

(3) The remedial action required to abate the violation, which may include interim steps.

(4) A schedule for the permittee to abate the violation.

(5) A warning that if the permittee fails to abate the violation within the specified schedule, the Administrator may issue a Complaint for Revocation to revoke the facility's approval under this part 761 and part 22 of this chapter.

(6) A warning that if the Administrator discovers that the criteria in §§ 761.110 or 761.115 are met, the Administrator may issue either a Notice of Proposed Suspension or a Notice of Immediate Suspension to suspend the facility's approval.

(b) The Administrator may extend the time set for abatement in a notice under this section, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee, and the violation does not present an immediate risk of injury to health or the environment. Any such extension shall be in writing. The total time for abatement, including all extensions, shall not exceed 90 days, unless the permittee makes a good faith showing that it cannot abate the violation within 90 days using its best efforts.

(c) The Administrator shall withdraw a Notice of Intent to Revoke in writing to the permittee when the Administrator determines that all violations listed in the Notice of Intent to Revoke have been abated within the stated period of time. Issuance or withdrawal of this notice shall not affect EPA's right to assess

penalties or remedies for the violations described in this notice under sections 16 and 17 of TSCA and part 22 of this chapter, or to commence revocation proceedings for violations not listed in the Notice of Intent to Revoke under § 761.109 and part 22 of this chapter.

(d) Issuance of a Notice of Intent to Revoke shall not limit EPA's right to issue a Notice of Immediate Suspension under § 761.115 or a Notice of Proposed Suspension under § 761.111.

(e) Service of a Notice of Intent to Revoke, together with a copy of this subpart F, shall be made personally or by certified mail, return receipt requested. Service shall be complete upon tender or mailing, and shall not be deemed incomplete because of refusal to accept.

(1) Service shall be made upon the permittee of the facility or his representative.

(2) A permittee, which is a domestic or foreign corporation or a partnership or other unincorporated association which is subject to suit under a common name, shall have service made to an officer, a partner, a managing or general agent, or any other person authorized by appointment or by Federal or State law to receive service of process.

(3) An officer or agency of the United States shall be served by delivering a copy of the notice to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the notice shall be served as in § 761.106(e)(2).

(4) Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentality shall be made by serving a copy of the complaint in the manner prescribed by the law of the state for the service of process of any such person.

§ 761.107 Criteria for commencement of revocation action and issuance of revocation order.

(a) *Failure to abate violation.* When a Notice of Intent to Revoke has been issued under § 761.106 and the facility fails to abate the violation within the required prescribed abatement period, as confirmed by an inspection, the Administrator may commence revocation proceedings and issue a revocation order under this subpart F and part 22 of this chapter without issuing a second Notice of Intent to Revoke.

(b) *Material false statements.* Whenever the Administrator discovers that a permittee made a false statement in its application for approval, or in a supplemental statement required of the applicant, and the false statement is material to the Administrator's decision to grant the approval, the Administrator may commence revocation proceedings and issue a revocation order under this subpart F and part 22 of this chapter without issuing a Notice of Intent to Revoke.

(c) *Pattern of violations.* (1) If the Administrator determines that a pattern of violations of any requirements imposed under TSCA, any requirements in this part 761, or any conditions of an approval exists, or has existed, the Administrator may commence revocation proceedings and issue a revocation order under this subpart F and part 22 of this chapter without issuing a Notice of Intent to Revoke.

(2) The Administrator may determine that a pattern of violations exists or has existed after considering the total circumstances, which include, but are not limited to, the citation on three or more occasions of violations of any requirement of TSCA, any requirements in part 761, or any approval condition. At least one of these cited violations must be of a requirement in part 761. EPA may also consider any other evidence of a pattern of violations.

(d) *Unreasonable risk to health or the environment.* If the Administrator determines that the continued operation of a facility poses an unreasonable risk to health or the environment, the Administrator may commence revocation proceedings and issue a revocation order under this subpart F and part 22 of this chapter without issuing a Notice of Intent to Revoke.

§ 761.108 Complaint for Revocation.

If any of the criteria set forth in § 761.107 are met, the Administrator may initiate the revocation procedures set forth in part 22 of this chapter by issuing a Complaint for Revocation pursuant to § 22.33 of this chapter.

§ 761.110 Criteria for issuance of Notice of Proposed Suspension and Suspension Order.

The Administrator may issue a Notice of Proposed Suspension of approved operations or the relevant portion of approved operations, and may issue a Suspension Order if the Administrator finds, on the basis of any federally authorized inspection, that an immediate risk exists, as defined in § 761.103.

§ 761.111 Notice of Proposed Suspension.

(a) A Notice of Proposed Suspension may only be issued together with or after a Complaint for Revocation has been issued under § 761.106 and § 22.33 of this chapter.

(b) The Notice of Proposed Suspension shall be in writing, shall be signed by the Administrator, and shall set forth:

(1) The nature of the condition, practice, or violation that has caused the immediate risk.

(2) A reasonable description of the portion of the facility's operation to which it applies.

(3) The remedial actions or affirmative obligations required for abatement of the immediate risk and actions to be taken to avoid the suspension.

(4) The schedule established for abatement of the immediate risk.

(5) Any steps which the Administrator deems necessary to secure the facility from any immediate risks which might arise during the period of cessation of operations, including steps necessary to bring about the closure of the facility or affected portion of operations.

(6) A statement advising the permittee that, if the permittee requests in writing a pre-suspension hearing within 19 days after service of the Notice of Proposed Suspension, a representative of the appropriate EPA Office shall conduct an expedited hearing under § 761.112 solely on the question of whether an immediate risk exists. The statement shall also advise the permittee that if the permittee fails to submit a written request for review of the suspension within 19 days after service of the notice, the approval shall be automatically suspended. The statement shall also provide the name and address of the EPA official to contact to request review of the suspension under § 761.112.

(c) Service of a Notice of Proposed Suspension, together with a copy of this subpart F, shall be made personally or by certified mail, return receipt requested. Service shall be complete upon tender or mailing, and shall not be deemed incomplete because of refusal to accept.

(1) Service shall be made upon the permittee of the facility or his representative.

(2) A permittee, which is a domestic or foreign unincorporated association which is subject to suit under a common name, shall have service made to an officer, partner, a managing or general agent, or any other person authorized by Federal or State law to receive service of process.

(3) An officer or agency of the United States shall be served by delivering a copy of the notice to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the notice shall be served as in § 761.111(c)(2).

(4) Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentality shall be made by serving a copy of the notice in the manner prescribed by the law of the state for the service of process of any such person.

(d) Unless a Notice of Proposed Suspension is terminated by the Administrator under paragraph (e) of this section, an approval shall be suspended automatically 20 days after service of the Notice of Proposed Suspension unless the permittee requests a review under § 761.112 within 19 days after service of the Notice of Proposed Suspension. The permittee shall comply with the provisions for suspension of activities described in the Notice of Proposed Suspension.

(e) The Administrator may modify or terminate a Notice of Proposed Suspension at any time by notifying the permittee in writing. The Administrator may modify or terminate a Notice of Proposed Suspension if the permittee abates to the Administrator's satisfaction, the condition, practice, or violation which caused the immediate risk. Termination shall not affect EPA's right to revoke the approval and/or assess penalties or remedies for those conditions, practices or violations pursuant to § 761.106 and part 22 of this chapter and sections 16 and 17 of TSCA.

(f) Failure to comply with the terms of any suspension issued under this section shall constitute a violation of section 6(e) and 15 of TSCA, subject to the penalties and remedies of sections 16 and 17 of TSCA. If such failure to comply constitutes an imminent hazard under section 7 of TSCA, the violator may be subject to any penalties and remedies authorized by section 7, including, but not limited to, injunctions and seizure.

§ 761.112 Pre-suspension review.

(a) The pre-suspension review of a Notice of Proposed Suspension under § 761.111 shall be limited solely to whether the criteria for suspension under § 761.110 are met.

(b) Within 7 days of receipt of a written request for a pre-suspension review, the appropriate EPA Office shall give notice of the time, place, and subject matter of the pre-suspension review to the permittee.

(c) The pre-suspension review shall be held either in the county where the permittee resides or conducts the business which the hearing concerns, in the city where the relevant EPA Regional Office is located, or in Washington, D.C. Upon a showing of good cause, the location can be changed to any other site, or to a site reasonably close to the facility if there is a need for a site visit to resolve any issues raised.

(d) Section 554 of Title 5 of the United States Code (5 U.S.C. 554), regarding the requirements for formal adjudicatory hearings, shall not govern pre-suspension reviews conducted under this section. The pre-suspension review shall be conducted by a representative of the appropriate EPA Office. The representative conducting the pre-suspension review shall not be the individual who issued the Notice of Proposed Suspension and the Complaint for Revocation. Oral or written comments and arguments may be presented at the review and shall be included in the written record of the proceeding. A written transcript of the proceedings shall be taken. Any written evidence the Administrator uses to support the suspension, along with any written evidence the permittee uses to defend against issuance of a suspension, shall be included in the record for the proceeding.

(e) If the permittee fails to appear at the hearing and the notice was properly served under § 761.111, the permittee shall be deemed to have waived the right to a hearing, and the suspension shall automatically take effect.

(f) Within 10 days after completion of the pre-suspension review, the appropriate EPA office shall render a written decision. If the EPA Office decides to issue a suspension, the decision shall state the basis for the suspension and shall require the suspension of operations. The decision shall be sent to:

(1) The permittee.

(2) The Administrator of EPA.

(3) Any State or local regulatory authority having jurisdiction over the facility.

(g) If a suspension is issued, the suspension shall remain in effect pending completion of the revocation proceeding or until the immediate risk which resulted in the issuance of the suspension has been abated to the satisfaction of the Administrator as communicated to the permittee in writing.

(h) The Administrator may modify or terminate a suspension by written notice to the permittee when the Administrator determines that any or all conditions, practices, or violations listed in the Notice of Proposed Suspension have been abated. Termination shall not affect the right of EPA to revoke the approval and/or assess penalties or remedies for those conditions, practices or any other violation of TSCA pursuant to part 22 of this chapter and sections 16 and 17 of TSCA.

(i) The granting or waiver of the pre-suspension review under this section shall not affect the right of a permittee to a formal adjudication under part 22 of this chapter with respect to a Complaint for Revocation, except that:

(1) The permittee to whom the Notice of Proposed Suspension and the Complaint for Revocation are issued may answer by submitting to the Administrator a signed and notarized statement waiving all rights to review of the Notice of Proposed Suspension and a hearing on the Complaint for Revocation, and consenting to the revocation of the facility's approval, including compliance with conditions for the closure of the facility's operations (or the portion thereof affected by the notice) as deemed necessary by the Administrator to close and secure the facility and abate any immediate risks to health or the environment by the facility's operations. The effect of such a statement shall be a final revocation of approval to conduct storage and/or disposal operations at the facility or the affected portion thereof, except as permitted under the terms of the closure approval.

(2) The permittee to whom the Notice of Proposed Suspension is issued may answer the Notice of Proposed Suspension by submitting to the Administrator a signed and notarized statement waiving all rights to review the Notice of Proposed Suspension, and consenting to the indefinite suspension of the facility's approval. The effect of such a statement shall be to extend the term of the suspension indefinitely, pending revocation of the approval, or withdrawal by the Administrator of the Notice of Proposed Suspension.

(j) Failure to comply with the terms of any suspension issued under this section shall constitute a violation of sections 6(e) and 15 of TSCA, subject to the penalties and remedies of sections 16 and 17 of TSCA. If such failure to comply constitutes an imminent hazard under section 7 of TSCA, the violator may be subject to any remedies authorized by section 7, including but not limited to injunctions and seizures.

§ 761.114 Criteria for issuance of Notice of Immediate Suspension and Immediate Suspension Order.

The Administrator may issue a Notice of Immediate Suspension of approved operations or the relevant portion of approved operations, and issue an Immediate Suspension Order if the Administrator finds, on the basis of any federally-authorized inspection, that an immediate risk exists, as defined in § 761.103, and that the immediate risk

may occur and may not be adequately abated before a pre-suspension review under § 761.112 may be held.

§ 761.115 Notice of Immediate Suspension.

(a) A Notice of Immediate Suspension may only be issued together with or after a Complaint for Revocation has been issued under § 761.108 and § 22.33 of this chapter.

(b) A Notice of Immediate Suspension shall be effective immediately upon service of the permittee.

(c) A Notice of Immediate Suspension shall be in writing, shall be signed by the Administrator, and shall set forth:

(1) The nature of the condition, practice, or violation that has caused the immediate risk.

(2) A reasonable description of the portion of the facility's operation to which the suspension applies.

(3) The remedial actions or affirmative obligations required for abatement of the immediate risk and actions to be taken to avoid the suspension.

(4) The schedule established for abatement of the immediate risk and actions to be taken to avoid the suspension.

(5) Any steps which the Administrator deems necessary to secure the facility from any hazards which might arise during the period of cessation of operations, including steps necessary to bring about the closure of the facility or affected portions of operations.

(6) A statement advising the permittee that if the permittee requests in writing a post-suspension review within 19 days after service of the Notice of Immediate Suspension, a representative of the appropriate EPA Office shall conduct an expedited review under § 761.117 solely on the question of whether an immediate risk exists. The statement shall also advise that if the permittee fails to submit a written request for review of the suspension within 19 days after service of the Notice of Immediate Suspension, the permittee shall be deemed to have waived any right to review of the suspension and that the suspension shall remain in effect pending revocation or withdrawal of the Notice of Immediate Suspension by EPA. The statement shall also provide the name and address of the appropriate EPA official to contact to request the post-suspension review under § 761.117.

(d) Service of a Notice of Immediate Suspension, together with a copy of this subpart F, shall be made personally or by certified mail, return receipt requested. Service shall be complete upon tender or mailing and shall not be deemed incomplete because of refusal to accept.

(1) Service shall be made upon the permittee of the facility or his representative.

(2) A permittee, which is a domestic or foreign corporation or a partnership or other unincorporated association which is subject to suit under a common name, shall have service made to an officer, partner, a managing or general agent, or any other person authorized by Federal or State law to receive service of process.

(3) An officer or agency of the United States shall be served by delivering a copy of the notice to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the notice shall be served as in § 761.115(d)(2).

(4) Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentality shall be made by serving a copy of the complaint in the manner prescribed by the law of the state for the service of process of any such person.

(e) The suspension shall remain in effect pending revocation or until the immediate risk which resulted in the issuance of the Notice of Immediate Suspension has been abated to the satisfaction of the Administrator as communicated to the permittee in writing, or until terminated in writing by the Administrator, or until the Notice of Immediate Suspension expires under § 761.115(f).

(f) Except as provided in paragraph (g) of this section or for good cause, a Notice of Immediate Suspension shall expire 30 days after it is served unless a post-suspension review under § 761.117 has been held within that time.

(g) A Notice of Immediate Suspension shall not expire under paragraph (f) of this section if the permittee waives post-suspension review, or if, with the consent of the permittee, the post-suspension review is held later than 30 days after the Notice of Immediate Suspension was served. For purposes of this paragraph, the permittee will be deemed to have waived the post-suspension review if the permittee:

(1) Was properly served under this subpart F with a notice that contained the required statement concerning waiver of the right to a post-suspension review, and

(2) Fails to request a post-suspension review within 19 days after service.

(h) The expiration of the Notice of Immediate Suspension shall not affect a Complaint for Revocation or a complaint to assess penalties in accordance with proceedings commenced under § 761.108 and part 22 of this chapter with respect to the violations, conditions, or practices cited in the notice.

(i) No post-suspension review shall be held under § 761.117 where the immediate risk in question has been abated to the satisfaction of the Administrator, or where the post-suspension review has been waived.

(j) The Administrator may modify or terminate a Notice of Immediate Suspension in writing to the permittee when the Administrator determines that all conditions, practices, or violations listed in the Notice have been abated. Termination shall not affect the EPA's right to revoke the approval and/or assess penalties or remedies for those conditions, practices, or violations cited in the notice pursuant to § 761.108 and part 22 of this chapter, and sections 16 and 17 of TSCA.

(k) Failure to comply with the terms of the Notice of Immediate Suspension shall constitute a violation of sections 6(e) and 15 of TSCA, subject to the penalties and remedies of section 16 and 17 of TSCA. If such failure to comply constitutes an imminent hazard under section 7 of TSCA, the violator may be subject to any remedies authorized by section 7, including but not limited to injunctions and seizures.

§ 761.117 Post-suspension review.

(a) The post-suspension review of a Notice of Immediate Suspension under § 761.115 shall be limited to whether the criteria for suspension are met.

(b) Within 7 days of receipt of a request for a post-suspension review, the appropriate EPA Office shall give notice of the time, place, and subject matter of the post-suspension review to the permittee.

(c) The post-suspension review shall be held either in the county where the permittee resides or conducts business which the hearing concerns, in the city where the relevant EPA Regional Office is located, or in Washington, DC. Upon a showing of good cause the location can be changed to any other site, or to a site reasonably close to the facility if there is a need for a site visit to resolve any issues raised by the pre-suspension hearing.

(d) Section 554 of Title 5 of the United States Code (5 U.S.C. 554), regarding the requirements for formal adjudicatory hearings, shall not govern post-suspension reviews conducted under this section. The post-suspension review shall be conducted by a representative of the appropriate EPA Office. The representative conducting the post-suspension review shall not be the individual who issued the Notice of Immediate Suspension and the

Complaint for Revocation. Oral or written comments and arguments may be presented at the review and shall be included in the written record of the proceeding. A written transcript of the proceedings shall be taken. Any written evidence the Administrator uses to support the suspension, along with any written evidence the permittee uses to defend against issuance of a suspension, shall be included in the record for the proceeding.

(e) Within 10 days after the close of the post-suspension review, the appropriate EPA office shall affirm or vacate the Notice of Immediate Suspension in writing. If the EPA office affirms the suspension, or affirms the suspension with modifications, the decision shall state briefly the basis for the decision. The decision shall be sent to:

(1) The permittee.

(2) The Administrator.

(3) Any State or local regulatory authority having jurisdiction over the affected facility.

(f) If the suspension is affirmed, the suspension shall remain in effect pending completion of the revocation proceeding or until the immediate risk which resulted in the issuance of the suspension has been abated to the satisfaction of the Administrator as communicated to the permittee in writing.

(g) If the EPA office vacates the suspension, the decision shall state briefly the basis for the decision. The decision shall state that operations affected by the Notice of Immediate Suspension may resume immediately upon the vacating of the suspension. The vacating of the suspension shall not affect the revocation proceedings under § 761.108 and part 22 of this chapter.

(h) The Administrator may modify or terminate a suspension by written notice to the permittee when the Administrator determines that any or all conditions, practices, or violations listed in the Notice of Proposed Suspension have been abated. Termination shall not affect the right of EPA to revoke the approval and/or assess penalties or remedies for those conditions, practices or violations pursuant to part 22 of this chapter and sections 16 and 17 of TSCA.

(i) The granting or waiver of the post-suspension review under this section shall not affect the right of a permittee to a formal adjudication under part 22 of this chapter with respect to a Complaint for Revocation, except that:

(1) The permittee to whom the Notice of Immediate Suspension and the Complaint for Revocation were issued may answer by submitting to the Administrator a signed and notarized statement waiving all rights to review of the Notice of Immediate Suspension and the Complaint for Revocation, and consenting to the revocation of the facility's approval, including compliance with conditions for the closure of the facility's operations (or the portion thereof affected by the notice) as deemed necessary by the Administrator to close and secure the facility and abate any immediate risks to health or the environment posed by the facility's operations. The effect of such a statement shall be a final revocation of approval to conduct storage and/or disposal operations at the facility or the affected portion thereof, except as permitted under the terms of the closure approval.

(2) The permittee to whom the Notice of Immediate Suspension was issued may answer the Notice of Immediate Suspension by submitting to the Administrator a signed and notarized statement waiving all rights to review the Notice of Immediate Suspension, and consenting to the indefinite suspension of the facility's approval. The effect of such a statement shall be to extend the term of the suspension indefinitely, pending a final decision on revocation, or withdrawal by the Administrator of the Notice of Immediate Suspension.

(j) Failure to comply with the terms of any suspension issued under this section shall constitute a violation of sections 6(e) and 15 of TSCA, subject to the penalties and remedies of sections 16 and 17 of TSCA. If such failure to comply constitutes an imminent hazard under section 7 of TSCA, the violator may be subject to any remedies authorized by section 7, including, but not limited to, injunctions and seizure.

[FR Doc. 90-25986 Filed 11-1-90; 8:45 am]
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federal register

Friday
November 2, 1990

Part VIII

The President

Executive Order 12732—International Fund for Agricultural Development

Department of Education; Delegation of Authority
Memorandum of August 17, 1990

Federal Register
Vol. 55, No. 213
Friday, November 2, 1990

Presidential Documents

Title 3—

The President

Executive Order 12732 of October 31, 1990

International Fund for Agricultural Development

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 1 of the International Organizations Immunities Act (22 U.S.C. 288), and in order to facilitate participation in the International Fund for Agricultural Development, it is hereby ordered as follows:

Section 1. The International Fund for Agricultural Development, which was established by an agreement to which the United States is a party and which entered into force on November 30, 1977, is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act. This designation is not intended to abridge in any respect the privileges, exemptions, or immunities that such organization has acquired by international agreement or by Act of Congress.

Sec. 2. This order shall be effective immediately.

George Bush

THE WHITE HOUSE,
October 31, 1990.

[FR Doc. 90-26195
Filed 11-1-90; 11:12 am]
Billing code 3195-01-M

Presidential Documents

Memorandum of August 17, 1990

Memorandum for the Secretary of Education

By virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, including section 208 of title 18 of the United States Code and section 301 of title 3 of the United States Code, I hereby delegate to the Secretary of Education my authority to make determinations under subsection (b) of section 208 of title 18, United States Code, for the members of the President's Board of Advisors on Historically Black Colleges and Universities, established pursuant to Executive Order 12677 of April 28, 1989.

This memorandum shall be published in the **Federal Register**.

George Bush

[FR Doc. 90-26159
Filed 11-1-90; 9:14 am]
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Reader Aids

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Vol. 55, No. 213
Friday, November 2, 1990

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S.J. Res. 270/Pub. L. 101-468

To designate the period commencing February 17, 1991, and ending February 23, 1991, as "National Visiting Nurse Associations Week". (Oct. 30, 1990; 104 Stat. 1086; 2 pages) Price: $1.00

S.J. Res. 323/Pub. L. 101-469

Designating November 11 through 17, 1990, as "Geography Awareness Week". (Oct. 30, 1990; 104 Stat. 1090; 2 pages) Price: $1.00

S.J. Res. 347/Pub. L. 101-470

Designating April 7 through 13, 1991, as "National County Government Week". (Oct. 30, 1990; 104 Stat. 1092; 1 page) Price: $1.00

S.J. Res. 351/Pub. L. 101-471

To designate the month of May, 1991 as "National Trauma Awareness Month". (Oct. 30, 1990; 104 Stat. 1093; 1 page) Price: $1.00

S.J. Res. 362/Pub. L. 101-472

To designate the period commencing on November 18, 1990, and ending on November 24, 1990, as "National Adoption Week". (Oct. 30, 1990; 104 Stat. 1094; 2 pages) Price: $1.00

S.J. Res. 366/Pub. L. 101-473

To designate March 30, 1991, as "National Doctors Day". (Oct. 30, 1990; 104 Stat. 1096; 1 page) Price: $1.00

H.R. 4174/Pub. L. 101-474

Administrative Office of the United States Courts Personnel Act of 1990. (Oct. 30, 1990; 104 Stat. 1097; 5 pages) Price: $1.00

H.R. 5578/Pub. L. 101-475

To amend section 28(w) of the Mineral Leasing Act, and for other purposes. (Oct. 30, 1990; 104 Stat. 1102; 1 page) Price: $1.00

S. 1824/Pub. L. 101-476

Education of the Handicapped Act Amendments of 1990. (Oct. 30, 1990; 104 Stat. 1103; 49 pages) Price: $1.50

S. 2167/Pub. L. 101-477

To reauthorize the Tribally Controlled Community College Assistance Act of 1978 and the Navajo Community College Act. (Oct. 30, 1990; 104 Stat. 1152; 5 pages) Price: $1.00

S. 3091/Pub. L. 101-478

To amend the Act incorporating the American Legion so as to redefine eligibility for membership therein. (Oct. 30, 1990; 104 Stat. 1157; 1 page) Price: $1.00

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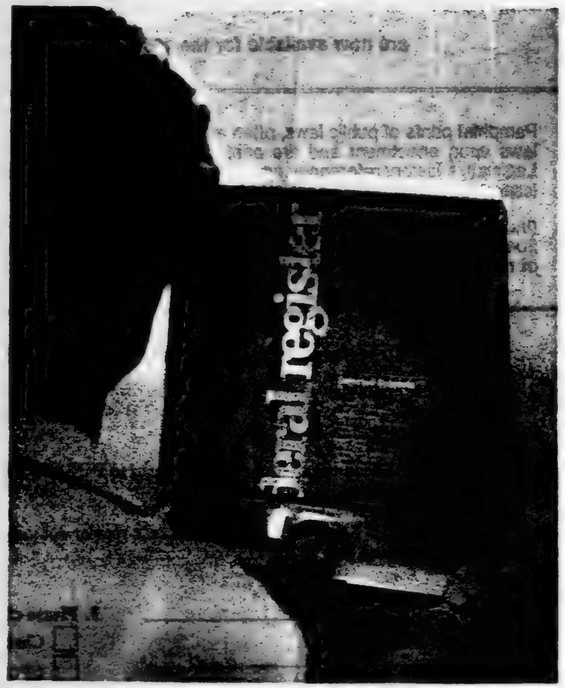

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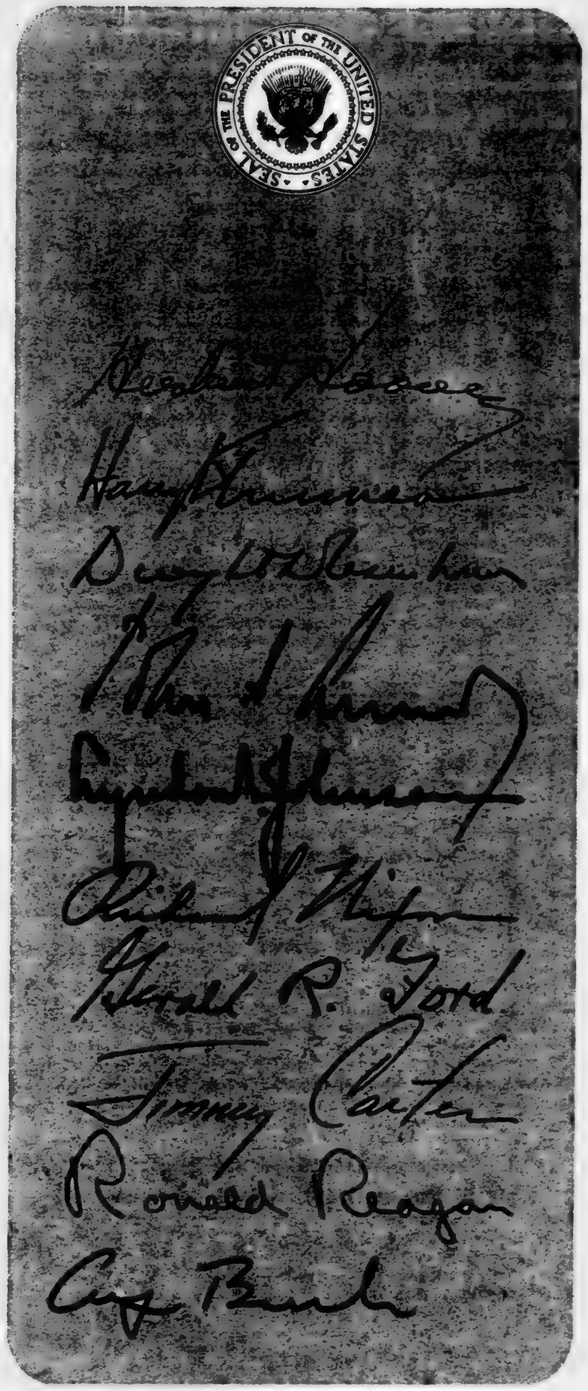

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Vol. 55 No. 214

federal register

Monday
November 5, 1990

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November 5, 1990

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 742]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona lemons that may be shipped to domestic markets during the period from November 4 through November 10, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh lemons with the demand for such lemons during the period specified. This action was recommended by the Lemon Administrative Committee (Committee), which is responsible for local administration of the lemon marketing order.

EFFECTIVE DATE: Regulation 742 (7 CFR part 910) is effective for the period from November 4 through November 10, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriquez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), Room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,000 lemon producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

The California-Arizona lemon industry is characterized by a larger number of growers located over a wide area. The Committee's estimate of the 1990–91 production is 42,140 cars (one car equals 1,000 cartons at 38 pounds net weight each), compared to 37,881 cars during the 1989–90 season. The production area is divided into three districts which span California and Arizona. The Committee estimates District 1, central California, 1,990–91 production at 6,600 cars compared to the 4,158 cars produced in 1989–90. In District 2, southern California, the crop is expected to be 24,700 cars compared to the 24,292 cars produced last year. In District 3, the California desert and Arizona, the Committee estimates a production of 10,840 cars compared to the 9,436 cars produced last year. According to the National Agricultural Statistics Service, 1990–91 lemon production is expected to total 40,200 cars, 8 percent above the 1989–90 season and 1 percent more than the crop utilized in 1988–89.

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona lemons. Based on its crop estimate of 42,140 cars, the Committee estimates that about 42.5 percent of the 1990–91 crop will be utilized in fresh domestic channels (17,900 cars), compared with the 1989–90 total of 16,600 cars, about 44 percent of the total production of 37,881 cars in 1989–90. Fresh exports are projected at 20.1 percent of the total 1990–91 crop utilization compared with 22 percent in 1989–90. Processed and other uses would account for the residual 37.4 percent compared with 34 percent of the 1989–90 crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 910 are intended to provide benefits to growers and consumers. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of lemons in the market throughout the marketing season and to avoid unreasonable fluctuations in supplies and prices.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the lemon marketing order are required by the Committee from handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

The Committee submitted its marketing policy for the 1991–91 season to the Department on June 19. The marketing policy discussed, among other things, the potential use of volume and

size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Rodriguez. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on October 30, 1990, in Newhall, California, to consider the current and prospective conditions of supply and demand and unanimously recommended that 320,000 cartons is the quantity of lemons deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, the preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1990–91 marketing policy. This recommended amount is the same as the estimated projections in the Committee's current shipping schedule.

During the week ending on October 27, 1990, shipments of lemons to fresh domestic markets, including Canada, totaled 309,000 cartons compared with 280,000 cartons shipped during the week ending on October 28, 1989. Export shipments totaled 217,000 cartons compared with 193,000 cartons shipped during the week ending on October 28, 1989.

Fresh domestic shipments to date for the 1990–91 season total 3,975,000 cartons compared with 3,788,000 cartons shipped by this time during the 1989–90 season. Export shipments total 1,871,000 cartons compared with 2,021,000 cartons shipped by this time during 1989–90. Processing and other use shipments total 3,151,000 cartons compared with 1,990,000 cartons shipped by this time during 1989–90.

For the week ending on October 27, 1990, regulated shipments of lemons to the fresh domestic market were 309,000 cartons on an adjusted allotment of 360,000 cartons which resulted in net undershipments of 51,000 cartons. Regulated shipments for the current week (October 28 through November 3, 1990) are estimated at 315,000 cartons on an adjusted allotment of 362,000 cartons. Thus, undershipments of 47,000 cartons could be carried over into the week ending on November 10, 1990.

The average f.o.b. shipping point price for the week ending on October 27, 1990, was $12.99 per carton based on a reported sales volume of 311,000 cartons compared with last week's average of $13.08 per carton on a reported sales volume of 307,000 cartons. The 1990–91 season average f.o.b. shipping point price to date is $13.14 per carton. The average f.o.b. shipping point price for the week ending on October 28, 1989, was $14.07 per carton; the season average f.o.b. shipping point price at this time during 1989–90 was $14.59 per carton.

The Department's Market News Service reported that, as of October 30, the demand for lemons is "fairly light;" the market for first grade lemons, sizes 165 to 200, is slightly lower and the market for all other grades and sizes is "about steady." At the meeting, several Committee members indicated that demand had declined somewhat. Two members commented that inventory levels had increased. One Committee member commented that business should improve in November due to the anticipated holiday trade and promotional activities. The Committee unanimously recommended volume regulation for the period from November 4 through November 10, 1990.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the California-Arizona 1990–91 season average fresh on-tree price is estimated at $8.83 per carton, 107 percent of the projected season average fresh on-tree parity equivalent price of $8.24 per carton. The California-Arizona 1989–90 season average fresh on-tree price is estimated at $9.02, 121 percent of the projected season average fresh on-tree parity equivalent price of $7.47 per carton.

Limiting the quantity of lemons that may be shipped during the period from November 4 through November 10, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of lemons to market.

Based on considerations of supply and market conditions, it is found that this action will tend to effectuate the declared policy of the Act.

Based on the above information, the Administrator of the AMS has determined that issuance of this rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until October 30, 1990, and this action needs to be effective for the regulatory week which begins on November 4, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Sections 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.1042 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.1042 Lemon Regulation 742.

The quantity of lemons grown in California and Arizona which may be handled during the period from November 4 through November 10, 1990, is established at 320,000 cartons.

Dated: October 31, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–26156 filed 11–2–90; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 360, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, and 396

Removal of Regulations Transferred from Federal Savings and Loan Insurance Corporation (Federal Home Loan Bank Board)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is removing certain regulations relating to the conduct of conservatorships and receiverships, the provision, rates or cancellation of insurance of accounts, and the administration of the former Federal Savings and Loan Insurance Corporation (FSLIC) insurance fund, which were transferred to the FDIC, because they are redundant with other FDIC regulations, or conflict with statutory law, or are unnecessary.

EFFECTIVE DATE: This action is effective on November 5, 1990.

FOR FURTHER INFORMATION CONTACT: J. William Via, Jr., Counsel, Legal Division (202/898–3733) (issues other than conservator-receiver); Carl Gold, Counsel, Legal Division (202/416–7327) (conservator-receiver issues re thrifts); or Thomas C Bahlo, Counsel, Legal Division (202/416–7073), (conservator-receiver issues re banks); Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

A. General

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), signed into law on August 9, 1989 (Public Law No. 101–73), immediately abolished the FSLIC, and abolished the Federal Home Loan Bank Board (FHLBB) 60 days after enactment. Although these agencies have been abolished, FIRREA provides that FHLBB or FSLIC regulations and orders that relate to functions transferred by FIRREA and that were in effect on August 9, 1989 shall continue in effect according to their terms. These rules and regulations are enforceable by or against the FDIC, the Director of the Office of Thrift Supervision (OTS), the Federal Housing Finance Board, or the Resolution Trust Corporation (RTC), as the case may be, until the responsible agency modifies, terminates, sets aside, or supersedes them in accordance with applicable law, or until the rules and regulations are modified, terminated, set aside, or superseded by operation of law. Pursuant to sections 401(i) and 402(b) of FIRREA, the Chairperson of the FDIC and the Director of the OTS were required to identify those FHLBB or FSLIC regulations and orders relating to the conduct of conservatorships and receiverships, the provision, rates or cancellation of insurance of accounts, and the administration of the FSLIC Insurance Fund which would be enforceable by the FDIC and the OTS, and publish notice of the allocation of these regulations in the **Federal Register**. This was accomplished in a separate notice document jointly issued by the two agencies and published in the **Federal Register** on October 6, 1989 (54 FR 41359). Subsequently the FDIC formally transferred those regulations which were allocated to it from 12 CFR chapter V to 12 CFR chapter III, and redesignated them to conform to the current structure of the FDIC's regulations in 12 CFR chapter III. This was accomplished in another rule document issued by the FDIC and published in the **Federal Register** on October 18, 1989 (54 FR 42799). At that time no technical changes were made to the regulations in order that the transfer could be made in the most expeditious manner.

An examination of 12 U.S.C. 1821(d), as amended by section 212 of FIRREA, reveals that FIRREA provides a comprehensive statutory scheme for the conduct of conservatorships and receiverships, which the FDIC concludes was meant to supersede the FHLBB's regulations on these matters, subject to the power of the FDIC and/or RTC to supplement the statute as necessary, either by internal procedures or such regulations as the FDIC or RTC find to be necessary and consistent with the statutory framework. Subsection (d)(2) of 12 U.S.C. 1821 sets forth in detail the powers and duties of the FDIC/RTC as conservator or receiver. Subsection (d)(3) provides a detailed, comprehensive procedure for the receiver's determination of claims. This includes procedures and deadlines for issuing notification to creditors and receipt of creditor claims; standards for the allowance or disallowance of claims; deadlines for the receiver's determination of a claim; procedures by which a claimant may obtain an agency or judicial hearing on the merits of a disallowed claim; and procedures for the distribution of receivership proceeds. Subsection (e) sets forth comprehensive standards governing a receiver's or conservator's authority to repudiate contracts, including the measure of damages to which the other contracting party may be entitled in the event of repudiation. Subsection (e) also treats the authority of a conservator or receiver to enforce certain contracts notwithstanding the appointment of the conservator or receiver, and contains provisions governing the treatment of security interests by conservators or receivers. Subsection (i) provides for the valuation of claims in default and establishes the maximum liability of the Corporation, in its receivership or other capacity, to any claimant. Section 501(b)(4) of FIRREA, 12 U.S.C. 1441a(b)(4), authorizes the RTC as conservator or receiver to utilize the conservator and receiver powers provided to the FDIC by 12 U.S.C. 1821.

By this action, the FDIC is removing certain of the transferred regulations (original designation shown in brackets) relating not only to conservatorships and receiverships, but to other matters as well, to promote conformity with current FDIC regulations and to eliminate conflicts with law.

B. Summary of Comments

On August 22, 1990, the FDIC published in the **Federal Register** (55 FR 34281) a notice of the proposed removal of the regulations that are the subject of this action and invited comments, even though it was concluded that such notice and comment period were not required. No comments were received.

C. The Regulations Being Removed

Part 384 [562] (Application for Insurance of Accounts) sets out the application procedures for new state chartered savings institutions to obtain insurance of accounts. It is being removed since these or comparable procedures have been incorporated into amendments recently made to part 303 of the FDIC regulations. See 54 FR 53551 (Dec. 29, 1989).

Sections 385.1 [563.29–1] (Continuation of insurance) and 385.3 [563.31] (Other insurance or guaranty) are being removed as redundant with existing law. Section 385.1 provides that an insured institution may change its name or charter to become a state savings bank-type institution and retain insured status if its authority would not be significantly changed. Section 385.3 provides that an insured institution may not acquire any insurance on, or guaranty of, all or part of its insured accounts in addition to that provided by the FSLIC (or the FDIC in the case of an FDIC-insured federal association), and specifies that the giving of bond or security pursuant to 12 CFR 545.16 and 545.103 are exceptions to this prohibition.

Section 385.4 [563.36] (Equal Opportunity in Employment) is being

removed as inconsistent with law, as amended by FIRREA. This section is based on a finding by the FHLBB that deposit insurance as provided by the FSLIC under prior law is a contract and that insured institutions are before government contractors under Executive Order 11246. These institutions are not insured under the Federal Deposit Insurance Act, and the FDIC has consistently held that deposit insurance provided thereunder is not a contract and that insured institutions are not government contractors solely by reason of being FDIC-insured.

Section 385.5 [563.8–2] (Corporation's right of purchase), is being removed as unnecessary. This provision applies, except in limited circumstances, when an institution insured by the former FSLIC borrows money and gives collateral as security. In applicable cases, the security agreement must provide that, upon default by such institution, the FSLIC will be notified and have an opportunity to purchase the collateral before it is liquidated or otherwise disposed of.

Sections 385.6 [563.15], 385.7 [563.16] and 385.8 [563.16–2] (Premiums), which govern the method and amount of premium payments by former FSLIC insured institutions to the former FSLIC, are being removed since the FDIC has established Part 327 to bring the premiums assessed by FSLIC into conformity with the assessment procedures and requirements of the FDIC. Section 208 of FIRREA establishes a new assessment schedule and procedures for insured institutions which part 327 implements.

Section 385.2 [563.30] by which the former FSLIC reserved the right to prescribe the form in which insurance of accounts may be advertised, is being removed as redundant.

Section 385.9 [563.28] (Advertising of insurance of accounts), is being removed since savings associations are not longer "members" of the FSLIC.

Parts 382 [546], 383 [549] 388 [569a], 392 [575], 394 [576], 395 [577], and 396 [578] relate to the conduct of conservatorships and receiverships and are being removed as displaced by existing law and in light of the conservatorship and receivership provisions of FIRREA found in section 212. Part 389 [569c], which also applies to receivership rules, is also removed, except section 389.11 (Priorities) (excluding paragraph (c)), which sets forth the order in which unsecured claims against a depository institution insured under the Savings Association Insurance Fund, (formerly the FSLIC) or the receiver, proved to the satisfaction of the receiver, have priority, and except section 389.8 (Federal Home Loan Banks as secured creditors; see 54 FR 19155).

Part 393 [575a] consists of procedural regulations which address the statutory requirement that before pursuing a receivership claim against the FDIC as receiver or the RTC as receiver, a party must exhaust its administrative remedies. It was originally indicated that this regulation might be retained, but upon further consideration it is deemed to be unnecessary; accordingly, it is being removed.

Section 386.1(d) [564.1(d)], which prescribes a lengthy, formal administrative appeal process that must be exhausted before a claimant can obtain judicial review of a denied deposit insurance claim, is being removed as unnecessary. This removal does not preclude informal staff review of denied claims upon request, as is now the FDIC practice. A claimant who has invoked the review or appeal process of this provision before the effective date of its removal may continue to rely on, and comply with it until resolution of the claim. The balance of part 386 [564] (Settlement of Insurance) has been displaced by part 330 as revised, pursuant to section 402(c)(3) of FIRREA (requiring the FDIC to prescribe uniform deposit insurance regulations), which was the subject of a separate rulemaking (see 55 FR 20111).

Part 387 [565] (Termination of Insured Status) is being removed as redundant with section 8 of the Federal Deposit Insurance Act, as amended by FIRREA, and with part 308.

Part 390 [572] (Net Worth Certificates) and Part 391 [572a] (Voluntary Assisted-Merger Program) are being removed because these matters are governed by section 13 of the Federal Deposit Insurance Act, as amended by FIRREA.

D. Administrative Procedure Act

The transferred regulations were promulgated by the former Federal Home Loan Bank Board. All of the regulations being removed are in conflict with, or redundant with, statutory law or FDIC regulations, or are unnecessary. Therefore, a notice of proposed rulemaking and ensuing comment period is not required. However, due to the unusual circumstances attendant upon a transfer of authority from one agency to another, and to insure public awareness, a comment period of thirty (30) days was provided.

E. Regulatory Flexibility Act

No notice of proposed rulemaking is required for this action, so the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* do not apply.

F. Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are required by this section. Consequently, no information has been submitted to the Office of Management and Budget for review.

List of Subjects

12 CFR Parts 380, 382, 383, 388, 389, 391

Savings and loan associations.

12 CFR Parts 384, 385, 387

Bank deposit insurance, Savings and loan associations.

12 CFR Part 386

Bank deposit insurance, Reporting and recordkeeping requirements, Savings and loan associations.

12 CFR Part 390

Administrative practice and procedure, Savings and loan associations.

12 CFR Parts 392, 393, 394, 395

Claims, Savings and loan associations.

12 CFR Part 396

Bank deposit insurance.

Accordingly, under the authority of sections 401(h) of FIRREA, the FDIC hereby amends title 12, chapter III, of the Code of Federal Regulations as set forth below.

PARTS 382, 383, 384, 385, 387, 388, 390, 391, 392, 393, 394, 395, and 396—[REMOVED]

1. Parts 382, 383, 384, 385, 387, 388, 390, 391, 392, 393, 394, 395, and 396 are removed.

PART 386—[AMENDED]

§ 386.1 [Removed]

2. Section 386.1(d) is removed.

3. Part 360 is added to subchapter C and §§ 389.8–1 and 389.11 are redesignated as §§ 360.1 and 360.2, respectively, as follows:

PART 360—RECEIVERSHIP RULES

Sec.

360.1 Federal Home Loan banks as secured creditors.
360.2 Priorities.

Authority: Sec. 401(h), Public Law 101–73, 103 Stat. 357.

PART 360—[AMENDED]

§ 360.2 [Amended]

4. Newly designated § 360.2 is amended by removing and reserving paragraph (c).

PART 389—[REMOVED]

5. Part 389 is removed.

By order of the Board of Directors.

Dated at Washington, DC, this 30th day of October 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90–26101 Filed 11–2–90; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–NM–138–AD; Amdt. 39–6797]

Airworthiness Directives; Aerospatiale Model ATR42–300 and ATR42–320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–300 and –320 series airplanes, which requires modification of the emergency lighting control wiring. This amendment is prompted by reports which indicate that the emergency lighting system will not illuminate automatically if normal airplane power is lost. This condition, if not corrected, could result in failure of the emergency lights to operate when required in an emergency situation.

EFFECTIVE DATES: December 10, 1990.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 227–2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes, which requires modification of the emergency lighting control wiring, was published in the **Federal Register** on August 14, 1990 (55 FR 33122), and a correction was published in the **Federal Register** on August 27, 1990 (55 FR 34985).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule but noted the compliance time of "10 minutes" was possibly a typographical error. The FAA concurs. A correction was published in the **Federal Register** on August 27, 1990, to correct the compliance time to "10 months".

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 56 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The required parts will be supplied to the operators by the manufacturer at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $13,440.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR42–300 and –320 series airplanes, Serial Numbers 003 through 150, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure the operation of the emergency lighting system when required during an emergency situation, accomplish the following:

A. Within 10 months after the effective date of this AD, modify the emergency lighting control wiring in Zones 212, 210, and 214, in accordance with the Accomplishment Instructions of Aerospatiale Service Bulletin ATR42–33–0017, Revision 1, dated March 2, 1990.

B. Immediately after installing the modification, perform an operational test of the emergency lighting system, in accordance with paragraph D. of Aerospatiale service Bulletin ATR42–33–0017, Revision 1, dated March 2, 1990.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM–113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective December 10, 1990.

Issued in Renton, Washington, on October 24, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26067 Filed 11-2-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-208-AD; Amdt. 39-6793]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Industrie Model A320 series airplanes, which requires a weekly functional test of SEC 1 and SEC 2 electrical pitch control, and repair, if necessary. This amendment is prompted by recent reports of jamming of the trimmable horizontal stabilizer (THS) actuator control. This condition, if not corrected, could result in the loss of pitch control and resultant reduced controllability of the airplane.

EFFECTIVE DATE: November 19, 1990.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Airbus Industrie Model A320 series airplanes. There have been reports of jamming of the trimmable horizontal stabilizer (THS) actuator. Simulator tests and analysis have revealed that, if the electrical pitch trim actuator jams, loss of all pitch control can occur, when combined with latent failures of the SEC 1 and SEC 2 elevator servo control mode selector valve transducer or electro valve reconfiguration logic. This condition, if not corrected, could result in reduced controllability of the airplane.

Airbus Industrie has issued Service Bulletin A320-27-1031, Revision 1, dated August 15, 1990, which describes procedures for a weekly functional check of the ability of SEC 1 and SEC 2 to control pitch, and repair, if necessary. The French DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 90-138-014(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires a weekly check of the ability of SEC 1 and SEC 2 to control pitch, and repair, if necessary, in accordance with the service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, Feburary 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to all Model A320 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent the loss of pitch electronic control and resultant reduced controllability of the airplane in the event of the trimmable horizontal stabilizer (THS) actuator control jamming, accomplish the following:

A. Within 7 days after the effective date of this AD, and thereafter at intervals not to exceed 7 days, perform a test to check the availability of pitch control through both the SEC 1 and SEC 2, in accordance with Airbus Industrie Service Bulletin A320-27-1031, Revision 1, dated, August 15, 1990.

B. If electrical pitch control is not available through both SEC 1 and SEC 2, repair prior to further flight and test again, in accordance with Airbus Industries Service Bulletin A320-27-1031, Revision 1, dated August 15, 1990. Following repair, repeat the test required by paragraph A. of this AD at intervals not to exceed 7 days.

C. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective November 19, 1990.

Issued in Renton, Washington, on October 23, 1990.

Darrell M. Pederson,

Acting Mungaer, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26091 Filed 11-2-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-220-AD; Amdt. 39-6794]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing telegraphic airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which currently requires close visual inspections of the trailing edge wedges on the leading edge slats to detect delamination and physical damage, and replacement or repair of defective parts, if necessary. This condition, if not corrected, could result in separation of one or more trailing edges wedges from the airplane, which could adversely affect controllability of the airplane. This amendment increases the applicability by 67 additional airplanes and establishes a threshold of 11,000 flight hours for the initial inspection. This amendment is prompted by a review of Boeing records, which indicate that leading edge slats with trailing edge wedges that are susceptible to delamination were installed on more airplanes than originally determined.

EFFECTIVE DATE: November 19, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Rodriguez, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2779. Mailing Address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: On September 21, 1990, the FAA issued Telegraphic AD T90-20-51, applicable to Boeing Model 757 series airplanes with line numbers 001 through 091, to require inspection of the trailing edge wedges on the leading edge slats, and repair or replacement, if necessary. That action was prompted by reports that eight Boeing Model 757 series airplanes were found with delaminated trailing edge wedges on the leading edge slats. The delamination problem has been traced to a specific type of adhesive (BMS-5-104) that was used in the production of the slat wedges installed on these airplanes. This condition, if not corrected, could result in separation of one or more slat wedges from the airplane, which could adversely affect the controllability of the airplane.

Since issuance of that AD, the FAA has received and reviewed data which indicate that leading edge slats with trailing edge wedges that are susceptible to delamination were also installed on airplanes with line numbers 92 through 158. Therefore, the addressed unsafe condition may exist on these additional 67 airplanes.

Additionally, the data have substantiated that delamination incidents have occurred only after the airplane/slat has accumulated 11,000 flight hours. Therefore, the FAA has determined that it is appropriate to establish an 11,000 flight hour threshold for accomplishment of the initial inspection.

The FAA has reviewed and approved Boeing Alert Service Bulletin 757-57A0038, Revision 2, dated October 10, 1990, which describes procedures for a close visual inspection of the trailing edge wedges on the leading edge slats.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD supersedes telegraphic AD T90-20-51 to require the inspection of 67 additional airplanes for delamination of the trailing edge wedge of the leading edge slat in accordance with the service bulletin previously described, and establishes an 11,000 flight hour threshold for accomplishment of the intitial inspection.

The inspections required by this AD are considered to be interim action until replacement with new parts is accomplished, or until the manufacturer develops a non-destructive testing procedure, at which time the FAA may consider further rulemaking.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Telegraphic AD T90-20-51 issued on September 21, 1990, with the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, line number 1 through 158, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent separation of trailing edge wedges from the airplane, accomplish the following:

A. For airplanes line number 001 through 091, prior to the accumulation of 11,000 flight hours, or within the next 10 calendar days after September 21, 1990 (the effective date of telegraphic AD T90-20-51), whichever occurs later, perform a close detailed visual inspection of the trailing edge wedges on all the leading edge slats for delamination and physical damge in accordance with Boeing Alert Service Bulletin 757-57A0038, Revision 2, dated October 10, 1990, or earlier FAA-approved revisions.

B. For airplanes line number 092 through 158, prior to the accumulation of 11,000 flight hours, or within the next 10 calendar days of the effective date of this AD, whichever occurs later, perform a close detailed visual inspection of the trailing edge wedges on all the leading edge slats for delamination and physical damage in accordance with Boeing Alert Service Bulletin 757-57A0038, Revision 2, dated October 10, 1990, or earlier FAA-approved revisions.

C. Repeat the inspections required by paragraphs A. or B. of htis AD, as applicable, at intervals not to exceed 300 flight hours.

D. If delamination and/or physical damage are found, prior to further flight, repair in accordance with an FAA-approved procedure or replace with new parts.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Seattle ACO.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes telegraphic AD T90-20-51, issued September 21, 1990.

This amendment becomes effective November 19, 1990.

Issued in Renton, Washington, on October 23, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26080 Filed 11-2-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-121-AD; Amdt. 39-6796]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-80, series airplanes, which requires replacement of the oxygen mask and hose assemblies at the mid attendant's station. This amendment is prompted by reports of oxygen mask hoses which are too short to permit the desired mobility for the mid attendant. This condition, if not corrected, could result in the mid attendant's oxygen mask not staying properly positioned if the attendant is required to move; this situation could lead to a temporary loss of oxygen to the flight attendant.

EFFECTIVE DATE: December 10, 1990.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications, C1-HCW (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Walter S. Eierman, Aerospace Engineer, ANM-130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California, telephone (213) 988-5336.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC-9-81, -82, and -83 series airplanes, which requires replacement of the oxygen mask and hose assemblies at the mid attendant's station, was published in the **Federal Register** on July 10, 1990 (55 FR 28226).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requested that the compliance time be extended from the proposed one year to 1½ years to allow accomplishment during a regularly scheduled light "C" check. The FAA does not concur. The replacement of an oxygen mask hose assembly is a simple operation and the additional time is not considered to be warranted.

Two commenters questioned what was meant by "desired mobility" in the statement in the NPRM preamble which indicated that the manufacturer had advised the FAA that the mid flight attendant's station oxygen hose was "too short to permit desired mobility." These commenters suggested that this matter be studied further so that specific criteria could be formulated. The FAA does not concur. The desired mobility is that the flight attendant, while seated, be able to look about the cabin while wearing the oxygen mask. This is not considered to be an unusual or complicated requirement which would require study.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 268 Model MD-80 series airplanes of the affected design in the worldwide fleet. It is estimated that 251 airplanes of U.S. registry will be affected by this AD, that it will take approximately one-half manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. There is no cost for the required parts. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,020.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(e), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9-81, -82, and -83 (MD-81, -82, -83) series airplanes, serial numbers as listed in McDonnell Douglas MD-80 Service Bulletin 35-18, dated May 15, 1990, certified in any category. Compliance required as indicated, unless previously accomplished.

To ensure the mid attendant's oxygen mask stays properly positioned during the attendant's movements, accomplish the following:

A. Within one year after the effective date of this AD, replace the oxygen mask and hose assemblies at the mid attendant's station in accordance with the Accomplishment Instructions of McDonnell Douglas MD-80 Service Bulletin 35-18, dated May 15, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications, C1-HCW (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective December 10, 1990.

Issued in Renton, Washington, on October 24, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26086 Filed 11-2-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-215-AD; Amdt. 39-6798]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 Series Airplanes and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-80 series airplanes and Model MD-88 airplanes, which currently requires repetitive replacement of eight valve body attachment screws of the power transfer unit shutoff (PTU S/O) valve. That action was prompted by reports of two cases of dual hydraulic system failure during flight. This condition, if not corrected, could result in landing without normal hydraulic systems, necessitating the use of backup, non-powered control systems. This amendment requires that certain PTU S/O valves be removed from service and that an improved valve be installed.

EFFECTIVE DATE: December 10, 1990.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90801, ATTN: Business Unit Manager, Technical Publications, C1-HCW (54-60) or from Whittaker Controls, 12838 Saticoy Street, North Hollywood, California 91605. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Robert T. Razzeto, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-131L, FAA, Aircraft Certification Directorate, 3229 East Spring Street, Long Beach, California; telephone (213) 988-5355.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 89-22-02, Amendment 39-6356 (54 FR 41960, October 13, 1989), applicable to McDonnell Douglas Model DC-9-80 series airplanes and Model MD-88 airplanes, to require repetitive replacement of eight valve body attachment screws of the power transfer unit shutoff (PTU S/O) valve, was published as a Supplemental NPRM in the **Federal Register** on July 17, 1990 (55 FR 29062).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Several commenters requested that the rule be revised to provide a one year compliance time. They contended that the 90-day or 180-day compliance time may ground airplanes. Two operators expressed lack of confidence that the sole supplier for the replacement valve can meet demand, and also expressed concern that there may be further internal valve damage involving parts which have a long lead time for procurement. One of these operators stated that it will have to expend $100,000 for spares to accommodate the 90-day/18-day compliance time. The FAA does not concur that an extension of the compliance time is necessary. The manufacturer has confirmed that an ample number of valves will be available in a timely manner. In addition, paragraph C. of the final rule allows for use of an alternate means of compliance should any unforseen circumstances arise.

One operator commented that removal of the -1 valve from service should not be required in this AD. The failure mode of the 240695-1 valve, in which hydraulic fluid is not lost, does not in itself constitute an unsafe condition, since there will continue to be one operable hydraulic system. The FAA does not concur. The -1 valve has had a high failure rate in service (five instances since July 1990). The FAA has determined that corrective action is necessary to remove it from service in order to eliminate potential landings without normal hydraulic systems (should the valve fail).

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 732 Model

DC-9-80 series airplanes and Model MD-88 airplanes of the affected design in the worldwide fleet. It is estimated that 374 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost of parts to accomplish the required modification is estimated to be $5,830 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,255,220.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6356 (54 FR 41960, October 13, 1989), AD 89-22-02, with the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), and DC-9-87 (MD-87) series airplanes and Model MD-88 airplanes; equipped with Whittaker Controls power transfer unit shutoff (PTU S/O) valve, part number (P/N) 240695 or P/N 240695-1; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent dual hydraulic system failure, accomplish the following:

A. For those airplanes with Whittaker Controls PTU S/O valve P/N 240695 installed,

1. Prior to the accumulation of 2,000 landings, or within 200 landings after October 23, 1989 (the effective date of Amendment 39-6356, AD 89-22-02), whichever occurs later, unless accomplished within the last 1,800 landings, replace the PTU S/O valve body attachment screws, P/N NAS 1101E-14, with new screws of the same part number, in accordance with the installation instructions of McDonnell Douglas Telex MD-80-COM-24/JCE, dated September 18, 1989. Thereafter, replace the attachment screws at intervals not to exceed 2,000 landings until replacement of the valves in accordance with paragraph A.2. of this AD is accomplished. Replacement of Whittaker Controls PTU S/O valve P/N 240695, with PTU S/O valve P/N 240695-2 constitutes terminating action for the requirements of this paragraph.

2. Within 90 days after the effective date of this amendment, replace all Whittaker Controls PTU S/O valves P/N 240695, with Whittaker Controls PTU S/O valves P/N 240695-2; or modify the valves P/N 240695 to the P/N 240695-2 configuration in accordance with Whittaker Controls Service Bulletin 240695-29-1, dated March 15, 1988, and Service Bulletin 240695-29-3, dated May 14, 1990. (Accomplishment of the procedures specified in both service bulletins is required.)

B. For those airplanes with the Whittaker Controls PTU(S/O valve P/N 240695-1 installed, within 180 days after the effective date of this amendment, replace all Whittaker Controls PTU S/O valve P/N 240695-1, with PTU S/O valve P/N 240695-2; or modify the valve P/N 2406795-1 to the P/N 240695-2 configuration in accordance with Whittaker Controls Service Bulletin 240695-29-3, dated May 14, 1990.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90801, ATTN: Business Unit Manager, Technical Publications, C1-HCW (54-60); or from Whittaker Controls, 12838 Saticoy Street, North Hollywood, California 91605. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment supersedes Amendment 39-6356, AD 89-22-02.

This amendment becomes effective December 10, 1990.

Issued in Renton, Washington, on October 24, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26086 Filed 11-2-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-139-AD; Amdt. 39-6795]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administation (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAC 1-11 200 and 400 series airplanes, which requires incorporation of certain structural modifications. This amendment is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. These conditions, if not corrected, could result in a degradation in the structural capabilities of the affected airplanes. This action also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspections.

EFFECTIVE DATE: December 10, 1990.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This informaton may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standarization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model BAC 1-11 200 and 400 series airplanes, which require incorporation of certain structural modifications, was published in the **Federal Register** on August 14, 1990 (55 FR 33129).

Interested pesons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

This is considered to be interim action. The manufacturer is currently developing additional modifications. Once these are developed, the FAA may consider further rulemaking to revise this AD to require additional necessary action.

It is estimated that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately 387 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for required parts and modification kits is $10,315. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,805,650.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1-11 200 and 400 series airplanes, as listed in British Aerospace Service Bulletin 5-A-PM5995, Issue 2, dated July 2, 1990, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the airplane, accomplish the following:

A. In accordance with the schedule below, install the structual modifications listed in each Item, except Items 6, 12, and 13, in Table 1 of British Aerospace Alert Service Bulletin 5-A-PM5995, Issue No. 2, dated July 1, 1990.

1. Accomplish the modifications at the later of the following:

a. Prior to reaching the "Not Exceed Time" interval specified in Table 1 of the alert service bulletin; or

b. Within 15 months after the effective date of this AD.

2. The modifications shall be done in accordance with the appropriate service bulletin specified for each Item on Table 1, listed under "Service Bulletin No."

Note: Item 6 in Table 1 of British Aerospace Alert Service Bulletin 5-A-PM5995 is not included in the rule because the service bulletin was not available at the time the proposal was issued: Item 12 is required by AD 87-15-01, Amendment 39-401; and Item 13 is required by AD 87-14-04, Amendment 39-397.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

This amendment becomes effective December 10, 1990.

Issued in Renton, Washington, on October 24, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26089 Filed 11-5-90; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 772, 774, 775, and 787

[Docket No. 90912-9212]

Elimination of Submission Requirement for Certain Supporting Documents

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Export Administration Regulations have required that a person applying for an export license, reexport authorization, or an amendment obtain supporting documentation in accordance with the provisions of parts 772, 774, and 775 of the Regulations and submit such documentation to the Office of Export Licensing (OEL) with the export license application, reexport authorization request, or amendment request

This rule, which retains all existing requirements relating to the applicant's responsibility for obtaining supporting documentation, eliminates the submission requirement when the commodity to be exported is not a supercomputer and the country of ultimate destination is located in Country Group S or V (excluding the People's Republic of China). While

applicants are no longer required to submit the supporting documents to OEL under these circumstances, they must now retain the original copies of the supporting documents in their files for a period of five years, as provided by § 787.13(e)(2). Section 787.13(e) is revised to include a five-year retention period for documents formerly submitted to OEL and retained in its files. To ensure compliance with the recordkeeping requirement, the Office of Export Licensing will require applicants on a random basis, to submit specific supporting documents that have been retained on file. Applicants may also be required by OEL to submit supporting documents when the particular circumstances presented by their applications make this necessary.

Required supporting documents must still be submitted to OEL if the commodity to be exported is a supercomputer or the country of ultimate destination is the People's Republic of China or a destination in Country Group Q, W, Y, or Z. Supporting documents are still not required for applications to export to destinations in Country Group T.

For those applications where the supporting document may be retained on file, the applicant may deliver the application to OEL after receiving a facsimile of the document, provided that the original document is obtained and retained in the applicant's files prior to any shipment against the license.

This rule makes the documentation requirements contained in the Regulations more compatible with the recently published provisions governing the electronic submission of export license applications (52 FR 48808) and the use of Optical Character Recognition (OCR) forms by the Office of Export Licensing (54 FR 6643).

DATES: *Effective date:* This rule is effective February 4, 1991. *Comment date:* Comments must be received by December 5, 1990.

ADDRESSES: Written comments (six copies) should be sent to: Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, room 1622, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Bureau of Export Administration, telephone: (202) 377–3856.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce published two final rules that amended the Export Administration Regulations to permit the electronic submission of export license applications (52 FR 48808) and to implement the use of Optical Character Recognition (OCR) forms (54 FR 6643). The implementation of the electronic submission procedures and the use of OCR forms has made submission of supporting documentation impractical, in certain cases, because the Form BXA–629P and Import Certificates are not compatible with the OCR forms used in the electronic licensing process.

This interim rule is designed to achieve a balance between OEL's need to require that applicants obtain supporting documentation and the exporters' interest in retaining the benefits of the electronic licensing process (*e.g.*, significant decreases in processing times, fewer processing errors). The rule eliminates the requirement that supporting documentation be submitted with applications for certain destinations, provided that exporters obtain the documents and retain them on file prior to submitting their applications. In addition, the applicant may deliver the application to OEL after receiving a facsimile of the supporting document, provided that the original document is obtained and retained in the applicant's files prior to any shipment against the license. Therefore, the exporter benefits from the electronic licensing process and from a reduction in the number of supporting documents that must be submitted to OEL.

In return, the exporter is now required to keep on file the supporting documents that were formerly submitted to OEL and retained in its records. The retention period for these documents is five years. This is identical to the statute of limitation for criminal actions brought under the Export Administration Act of 1979, as amended, and represents the minimum period of time that OEL has maintained such records.

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule contains reporting and recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The reporting requirement found at 15 CFR 775.9 (e)(1) and (e)(2) and the new recordkeeping requirement have been submitted to OMB for review under the Paperwork Reduction Act. Other collections that are affected by this action have been approved by the Office of Management and Budget under control numbers 0694–0001, 0694–0002, 0694–0005, 0694–0006, 0694–0007, 0694–0010, 0694–0012, 0694–0014, 0694–0015, and 0694–0021. Public burden for the uncleared requirements is estimated to average 30 minutes for the reporting requirement and 1 minute for the recordkeeping requirement. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing this burden, to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503—ATTN: Paperwork Reduction Project (0694–XXXX).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a foreign and military affairs function. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close December 5, 1990. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4086, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–2593.

List of Subjects

15 CFR Parts 772, 774, and 775

Exports, Reporting and recordkeeping requirements.

15 CFR Part 787

Boycotts, Exports, Law enforcement, Penalties, Reporting and recordkeeping requirements.

Accordingly, parts 772, 774, 775, and 787 of the Export Administration Regulations (15 CFR parts 768–799) are amended as follows:

1. The authority citation for 15 CFR parts 772 and 787 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 100–418 of August 23, 1988, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986). Secs. 203, 205, Pub. L. 95–223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704); Executive Order No. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

2. The authority citation for 15 CFR parts 774 and 775 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 100–418 of August 23, 1988, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Secs. 203, 205, Pub. L. 95–223, title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704); Executive Order No. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

PART 772—[AMENDED]

3. Section 772.4 is amended by adding a new paragraph (a)(1)(iv) to read as follows:

§ 772.4 How to apply for a validated license.

(a) * * *

(1) * * *

(iv) *Supporting documents.* Supplement No. 1 to part 772 contains instructions on how to prepare export license applications when supporting documents are required. Part 775 of this subchapter indicates when supporting documents are required for export license applications.

* * * * * *

4. Section 772.11 is amended by revising paragraphs (k) and (l) to read as follows:

§ 772.11 Amending export licenses.

* * * * * *

(k) *License covered by an Import Certificate or End-Use Certificate*—(1) *Change in party or increase in net quantity not in accordance with current supporting document.* The applicant shall obtain a new or appropriately amended International Import Certificate (§ 775.3 of this subchapter), Swiss Blue Import Certificate (§ 775.4 of this subchapter), Yugoslav End-Use Certificate (§ 775.5 of this subchapter), People's Republic of China End-User Certificate (§ 775.6 of this subchapter), or Indian Import Certificate (§ 775.7 of this subchapter) before submitting a request to amend an export license by proposing to change any party to the transaction named on the license or by increasing the net quantity set forth on the license if the proposed change is not in accordance with the current supporting document covering the license. The original copy of the new or amended certificate shall be—

(i) Submitted to the Office of Export Licensing, along with the amendment request, if the commodity described on the license is a supercomputer or if the country of ultimate destination is the People's Republic of China or a country in Country Group Q, W, Y, or Z, or

(ii) Retained in the applicant's files in accordance with the provisions of part 775 of this subchapter, if the country of ultimate destination is a country in Country Group S or V (excluding the People's Republic of China) and the commodity described on the license is not a supercomputer. However, the applicant shall submit, with the amendment request, a statement certifying that—

(A) The original copy of the new or amended certificate (include certificate number, if any, and date) has been received and will be retained in the applicant's files or

(B) A facsimile of the new or amended certificate (include certificate number, if any, and date) has been received and the original copy of the certificate will be obtained and retained in the applicant's files prior to any shipment against the license.

(2) *Change in net quantity in accordance with current supporting document.* If a proposed quantitative amendment is in accordance with the current supporting document covering the license, the request for amendment shall include the following certification:

I (We) certify that this request for amendment of export license number _____ if granted, will not exceed the total quantity authorized under the (Name of country) (Import Certificate) (End-Use Certificate) number _____

(l) *License covered by consignee/purchaser statement*—(1) *Change in party or increase in net quantity not in accordance with current consignee/purchaser statement.* The applicant shall obtain a new consignee/purchaser statement before submitting a request for an amendment of an export license that proposes a change in the consignee or purchaser in the transaction named in the export license or increases the net quantity set forth on the license, if the proposed change is not in accordance with the current statement covering the license. The original copy of the new consignee/purchaser statement shall be—

(i) Submitted to the Office of Export Licensing, along with the amendment request, if the commodity described on the license is a supercomputer or if the

country of ultimate destination is the People's Republic of China or a country in Country Group Q, W, Y, or Z, or

(ii) Retained in the applicant's files in accordance with the provisions of part 775 of this subchapter, if the country of ultimate destination is a country in Country Group S or V (excluding the People's Republic of China) and the commodity described on the license is not a supercomputer. However, the applicant shall submit, with the amendment request, a statement certifying that—

(A) The original copy of the new supporting document (cite date of document) has been received and will be retained in the applicant's files or

(B) A facsimile of the new supporting document (cite date of document) has been received and the original copy of the document will be obtained and retained in the applicant's files prior to any shipment against the license.

Where the amendment request contains only a proposed increase in the net quantity set forth on the license and this proposed change is not in accordance with the current statement covering the license, the applicant has the option of substituting, in lieu of a consignee/purchaser statement, a letter, wire, or cable from the ultimate consignee and purchaser citing the original consignee/purchaser statement and confirming the proposed increase in net quantity.

(2) *Increase in net quantity covered by current consignee/purchaser statement*—(i) *Single transaction statement.* If a request for an amendment of an export license proposes a change in net quantity in the license that is in accordance with the quantity noted on the current consignee/purchaser statement covering the license, the exporter need not obtain a new consignee/purchaser statement. However, the following certification shall be entered on or submitted with the Form BXA-685P:

I (We) certify that this request for amendment of export license number _____, if granted, will not exceed the total covered by the consignee/purchaser statement against which the export license was issued.

(ii) *Multiple transactions statement.* Where the export license is covered by a current Form BXA-629P, Statement by Ultimate Consignee and Purchaser, with Item 2b completed, the applicant does not need to obtain a new consignee/purchaser statement to support a proposed license amendment for an increase in quantity. In lieu thereof, the following certification shall be entered on the Form BXA-685P:

I (We) certify that the license(s) described in Item 3 (is) (are) supported by a statement by consignee and purchaser covering multiple transactions.

5. Section 772.12 is amended by revising the section heading and paragraphs (a)(2) and (b)(2) (i) and (ii) to read as follows:

§ 772.12 Special provisions for an amendment to extend the validity period of a license.

* * * * *

(a) *Procedure for requesting an extension.* * * *

(2) In the space entitled "Facts Necessitating Amendment," state the circumstances that provide the basis for the new validity period request and attach a detailed justification. Also include all supporting documents and any certifications relating to those documents that must be submitted to the Office of Export Licensing in accordance with the provisions of this part 772.

* * * * *

(b) *New license application to replace expiring or expired license.* * * *

(2) Comply with new documentation requirements in the following circumstances:

(i) If current Export Administration Regulations require the application to be supported by a consignee/purchaser statement, import certificate, or end-use certificate, the applicant shall obtain the new supporting document and submit it with the application or retain it on file, as appropriate, (see part 775 of this subchapter on documentation requirements), unless:

(A) The applicant already has retained on file or filed with the Office of Export Licensing, as appropriate, a current supporting document that covers the transaction described in the new license application; and

(B) The applicant submits, with the application, a statement certifying the existence of such a supporting document and citing the number (if any) and date of the supporting document.

(ii) If current Export Administration Regulations require the application for a new license to be supported by any document other than, or in addition to, a consignee/purchaser statement, import certificate, or end-use certificate and that document was not submitted with the application upon which the expiring or expired license was based, that supporting document shall be furnished.

* * * * *

6. Supplement No. 1 to part 772 is amended by adding a second undesignated paragraph at the end of "*Item 15*" to read as follows:

Supplement No. 1 to Part 772—Instructions for Preparing an Application for a Validated License

* * * * *

Item 15. * * *

Where part 775 of this subchapter permits a supporting document to be retained in the applicant's files, the applicant shall certify in Item 15 on the application form, or on an attachment thereto, either: (1) That the appropriate supporting document (cite document number, if any, and date) has been received and will be kept on file or (2) that a facsimile of the supporting document (cite document number, if any, and date) has been received and that the original will be obtained and retained in the applicant's files prior to any shipment against the license. Where the applicant is required to submit a supporting document to the Office of Export Licensing, this document must be attached to the application form and a statement referencing the attached document should be included in Item 15.

* * * * *

PART 774—[AMENDED]

7. In § 774.3, paragraph (a)(3), paragraph (b)(3), and paragraph (c)(1) are revised to read as follows:

§ 774.3 How to request reexport authorization.

(a) *Requests for reexport authorization for commodities not yet exported.* * * *

(3) *Shipment to specified destinations.* If the reexport is to be made to any of the countries listed in § 774.3(c)(1)(i), the applicant shall—

(i) Include the name and address of the consignee in that country on the export license application or the amendment request; and

(ii) Submit supporting documentation with the license application or amendment, or retain supporting documents on file, as appropriate (see § 774.3(c)). Where § 774.3(c) permits a supporting document to be retained in the applicant's files, the applicant shall certify on the application or amendment that—

(A) The supporting document—or reproduced copy of the supporting document, as permitted by § 774.3(c)(1)(ii)—has been received (include the document number, if any, and date) and will be kept on file; or

(B) A facsimile of the supporting document (include the number, if any, and date) has been received and the original will be obtained and retained in the applicant's files prior to any shipment against the license; or

(C) A facsimile of the supporting document (include the number, if any, and date) has been received and will be retained in the applicant's files—as a reproduced copy of the supporting document—in accordance with § 774.3(c)(1)(ii).

(b) *Request for reexport authorization for commodities previously exported.* * * *

(3) *Shipment to specified destinations.* If a reexport is to be made to any of the countries listed in 774.3(c)(1)(i), the applicant shall—

(i) Submit the supporting documentation, along with the Form BXA-699P or letter request, to the Office of Export Licensing when the new destination is any country identified in § 774.3(c)(1)(i)(A) (*1*) or (*2*) or the commodity described on the application is a supercomputer; or

(ii) Retain the supporting document on file when the new destination is any country listed in § 774.3(c)(1)(i)(B), except that a supporting document must be submitted when the commodity described on the application is a supercomputer

* * * * *

(c) *Documentation requirements.* The applicant is not required to obtain supporting documentation covering a request for reexport authorization except, as required for certain special commodities under the provisions of part 776 of this subchapter or when one of the following conditions applies:

(1) *Reexports to specified destinations.*—(i) The consignee/purchaser statement or other documentation from the new ultimate consignee that would be required by part 775 of this subchapter if the reexport were a direct export from the United States to the new destination—

(A) Shall be submitted with the request for reexport authorization if the new destination is—

(*1*) Any destination in Country Group Q, W, Y, or Z (see Supplement No. 1 to part 770 of this subchapter for the countries included in each country group); or

(*2*) The People's Republic of China.

(B) Shall be retained in the applicant's records, in accordance with the requirements of parts 775 and 787 of this subchapter, if the new destination is a country in Country Group S or one of the following countries in Country Group V:

Afghanistan, India, Liechtenstein, Singapore, South Africa, Republic of, Sweden, Switzerland, Yugoslavia

However, if the commodity described on the application is a supercomputer, the supporting document must be submitted with the request for reexport authorization—not retained in the applicant's records.

(ii) If the required document is a Yugoslav End-Use Certificate, a Swiss Blue Import Certificate, a People's Republic of China End-User Certificate, a Singapore Import and Delivery Verification Certificate or an Indian Import Certificate and the same document must be furnished to the export control authorities of the country from which reexport will be made, the Office of Export Licensing will permit the applicant to submit or to retain on file, as appropriate (see § 774.3(c)(1)(i)), a reproduced copy of the document being furnished to the country of reexport. If the required documentation cannot be obtained, waiver may be requested in accordance with the applicable provisions of the Export Administration Regulations. (See § 775.4(c) of this subchapter for waiver of a Swiss Blue Import Certificate, § 775.5(c) of this subchapter for waiver of a Yugoslav End-Use Certificate, and § 775.7(c) of this subchapter for waiver of an Indian Import Certificate.)

* * * * *

8. In § 774.5, the concluding text of paragraph (b)(2) is revised to read as follows:

§ 774.5 Validity period.

* * * * *

(b) *Extension of validity period.* * * *

(2) *Letter request for extension.* * * *

The documentation normally required to support certain reexport requests under the provisions of § 774.3(c) is not needed to support a request for the extension of the validity period of a reexport authorization, provided that the original documents are still valid and remain in the possession of the Office of Export Licensing or in the applicant's files, as appropriate.

PART 775—[AMENDED]

9. Section 775.1 is amended by designating the paragraph preceding the chart as paragraph (b) and the text following the chart as paragraph (c), by adding a new paragraph (a), and by removing the first sentence of newly designated paragraph (b) to read as follows:

§ 775.1 Introduction.

(a) Most export license applications and certain reexport authorization requests must be supported by documents designed to elicit information concerning the disposition abroad of the goods intended for export or reexport. Supporting documents for export license applications and reexport authorization requests where the country of ultimate destination is the People's Republic of China or a country in Country Group Q, W, Y, or Z must be submitted to the Office of Export Licensing along with the license applications or reexport requests. Supporting documents where the country of ultimate destination is a country in Country Group S or V (excluding the People's Republic of China) generally shall not be submitted to the Office of Export Licensing, but shall be retained in the applicant's files in accordance with the recordkeeping provisions of this part 775. However, if the commodity described on the application is a supercomputer, the supporting document shall be submitted to the Office of Export Licensing along with the application. Supporting documents are not required for Country Group T, unless the Office of Export Licensing specifically requests a supporting document.

(b) * * *

(c) * * *

10. Section 775.2 is amended by revising the section heading and paragraphs (a), (c), and (d)(4), by revising the heading of paragraph (e) and the first four sentences in paragraph (e)(6), and by adding a new paragraph (k) to read as follows:

§ 775.2 Form BXA-629P, statement by ultimate consignee and purchaser.

(a) *Scope*—(1) *Submission to OEL required.* A Form BXA-629P, Statement by Ultimate Consignee and Purchaser, shall be submitted to the Office of Export Licensing in support of each individual export license application when the commodity described on the application is a supercomputer or where the country of ultimate destination is located in Country Group Q, W, Y, or Z, unless one or more of the exemptions set forth in paragraph (b) of this section apply. Where § 775.6(c) permits substitution of a Form BXA-629P for the PRC End-User Certificate, a Form BXA-629P must be submitted in support of export license applications, unless one or more of the exemptions set forth in paragraph (b) of this section apply.

(2) *Retention in applicant's files.* When the country of ultimate destination is in Country Group S or V (except for the People's Republic of China) and the commodity described on the application is not a supercomputer, a Form BXA-629P shall be retained in the applicant's files, in accordance with § 775.2(k) and § 787.13 of this subchapter, unless one or more of the exemptions set forth in paragraph (b) of this section apply. When the applicant retains a Form BXA-629P on file, that fact, as well as the date of the Form BXA-629P, shall be clearly noted on the appropriate license application form. The applicant may submit a license application after receiving a facsimile of the completed Form BXA-629P, provided that this fact is noted on the

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application form together with a statement indicating that no shipment will be made against the license until the original copy of the Form BXA–629P is received and retained in the applicant's files.

* * * * *

(c) *Filing of applications where no statement is attached or on file with the applicant.* When a consignee/purchaser statement is not submitted in support of an application, as required in paragraph (a) of this section, the application will be returned without action to the applicant. An application will also be returned without action when the applicant, though required by paragraph (a) of this section to retain a consignee/purchaser statement on file, fails to certify on the application form that this has been done. However, if an applicant can show that diligent efforts have been made to obtain such a statement, without success, the applicant may advise the Office of Export Licensing in the space provided for additional information on the application or on an attachment to the application, giving the reasons stated by the ultimate consignee or purchaser for failing or refusing to supply the statement. If satisfied by the evidence presented, the Office of Export Licensing will consider waiving the supporting documentation requirement and accepting the application for processing.

(d) Single/Multiple Transactions

* * *

(4) *Number of copies to be submitted.* When applicants are required to submit copies of Form BXA–629P to the Office of Export Licensing, as indicated in paragraph (a) of this section, only the original Form BXA–629P need be submitted for a single transaction. The original and one copy must be submitted for multiple transactions.

(e) *Information required on Form BXA–629P* * * *

(6) *Validity period.* The first application to be supported by a Form BXA–629P that is prepared as a single transaction statement must be submitted to the Office of Export Licensing within 180 days after the Form BXA–629P is signed by the consignee or purchaser, whichever date is later. There is no specific time limit for submitting the first application supported by a Form BXA–629P prepared as a multiple transactions statement, but any license applications suported by a multiple transactions Form BXA–629P must be received by the Office of Export Licensing prior to the termination date as shown in Item 2 of the form. The form will expire on June 30 of the second year following the year in which it is signed, unless the consignee or purchaser enters an earlier date in Item 2. * * *

* * * * *

(k) *Procedures for retaining Form BXA–629P in applicant's files.*—(1) Any applicant required to retain Form BXA–629P on file pursuant to the requirements of paragraph (a) of this section must adhere to all of the recordkeeping provisions contained in § 787.13 of this subchapter, except that reproductions may not be substituted for original documents as permitted under § 787.13(d)(2) of this subchapter.

(2) The fact that the applicant has a Form BXA–629P on file, as well as the date of the Form BXA–629P, must be clearly noted on all export license applications suported by the consignee/purchaser statement. If the consignee/purchaser statement is a multiple transactions statement, the certification provided in paragraph (j)(2) of this section shall be included on the application or on an attachment thereto.

(3) An applicant may submit an application before obtaining the original copy of the Form BXA–629P, provided that—

(i) The applicant has recevied a facsimile of the Form BXA–629P at the time the license application is filed; and

(ii) The applicant states on the application that a fascimile of the Form BXA–629P has been received and that no shipment will be made against the license prior to obtaining the original Form BXA–629P and retaining it on file.

11. Section 775.3 is amended by revising paragraph (a)(1) and paragraph (g); by revising the heading of paragraph (h) and the first sentence of paragraph (h)(1); and by revising paragraphs (h)(3), (4), and (5) to read as follows:

§ 775.3 International import certificate and delivery verification certificate.

(a) *Scope*—(1) *International Import Certificate.* An International Import Certificate (IC) is an undertaking by the government of the country of ultimate destination (the issuing government) to exercise legal control over the disposition of the commodities covered by the IC. The governments that issue ICs are listed in § 775.3(b). The IC is obtained by the importer (ultimate consignee or purchaser) and transmitted to the exporter (applicant). The exporter (applicant) must obtain an IC and retain it on file, in accordance with the provisions of § 775.3(g)(1) and § 787.13 of this subchapter, for any license application to export a commodity(ies) identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List to one of the destinations listed in § 775.3(b). If the commodity described on the application is a supercomputer, the IC must be submitted to the Office of Export Licensing along with the application—not retained in the applicant's files. The IC is not required if one of the exemptions in § 775.3(d) applies. An IC may also be required for transactions not involving an export from the United States. (See § 768.2(a)(0) of this subchapter.)

* * * * *

(g) *Retention of International Import Certificate*—(1) Any applicant required to retain an International Import Certificate on file pursuant to paragraph (a)(1) of this section must adhere to all of the recordkeeping provisions contained in § 787.13 of this subchapter, except that reproductions may not be substituted for the officially authenticated original as permitted under § 787.13(d)(2) of this subchapter.

(2) The applicant must clearly note the number (if any) and the date of the International Import Certificate on all export license applications supported by that Certificate. The applicant must also indicate that the IC has been received and will be retained on file as required by paragraph (g)(1) of this section. However, the applicant may submit an application before obtaining the original copy of the IC, provided that—

(i) The applicant has received a facsimile of the IC at the time the license application is filed; and

(ii) The applicant states on the application that a facsimile of the IC has been received and that no shipment will be made against the license prior to obtaining the original IC and retaining it on file.

(3) If an International Import Certificate is used in support of more than one export license application, the applicant must include, in the space entitled "Additional Information" or on an attachment to each application following the first application submitted against that Certificate, one of the following certifications bearing the original signature of the applicant—(i) if quantity or value is shown on the Certificate:

I (We) certify that the quantities (values) of commodities shown on all export licenses based on the (*name of country*) International Import Certificate Number _____, when added to the quantities (values) shown on all additional applications pending in the Office of Export Licensing based on the same Import Certificate, including the present application, do not total more than the quantities (values) shown on that Import Certificate. This Import Certificate was obtained in support of application number (*insert application number or, if application number is unknown, the applicant's reference number, date of submission of the application supported by the Import Certificate, and Export Control Commodity Numbers and Processing Code shown on that application*).

or

(ii) If quantity or value is not shown on the Certificate:

I (We) certify that this application is supported by the (*name of country*) multiple transactions International Import Certificate Number _____, which was obtained in support of application number (*insert application number or, if application number is unknown, the applicant's reference number, date of submission of the application supported by the Import Certificate, and Export Control Commodity Numbers and Processing Code shown on that application*).

(h) *Other requirements applicable to both single and multiple transactions Import Certificates*—(1) *Parties named on Import Certificate.* The International Import Certificate may be used in support of an export license application when the Certificate is made out to either the ultimate consignee or the purchaser, even though they are different parties, as long as both are located in the same country. * * *

* * * * *

(3) *Validity period.* When an International Import Certificate is obtained in support of one or more export license applications, the applicant must submit the first application to be supported by this Certificate to the Office of Export Licensing (OEL) within the validity period shown on the Certificate or 6 months from the date the Certificate was issued by the foreign government, whichever is shorter. In addition, any subsequent export license application supported by such a Certificate must be submitted to OEL within 12 months from the date that the first export license application supported by the Certificate was submitted to OEL. The expiration of the validity period of an International Import Certificate, after the submission of the first export license application supported by the Certificate, will in no way affect the validity period of the resultant export license(s).

(4) *Triangular transactions.* Whenever an International Import Certificate bearing a triangular symbol is used in support of an export license application, the applicant must identify—on the application—all parties to the transaction, including parties located outside the country that issued the Import Certificate. If the importer objects to giving this information to the U.S. exporter, the importer may submit it directly to the Office of Export Licensing through a U.S. Foreign Service post or in a sealed envelope to the exporter, marked "To be opened by the Office of Export Licensing only."

(5) Issuance of an International Import Certificate does not relieve the parties to the transaction from compliance with the reexport provisions of part 774 of this subchapter.

* * * * *

12. Section 775.4 is amended by revising paragraph (a) to read as follows:

§ 775.4 Swiss Blue Import Certificate.

(a) *Requirement*—(1) *General.* A license application for export of commodities to Switzerland or Liechtenstein, regardless of value, must be supported by a Swiss Blue Import Certificate. This certificate is issued to the importer by the Swiss Federal Department of Public Economy, Division of Commerce, Import and Export Control, covering the proposed export from the United States.

(2) *Retention of certificate in applicant's files*—(i) Except as provided by paragraph (a)(2)(iii) of this section, the applicant must retain on file the original copy of the Swiss Blue Import Certificate issued in support of any license application for export to Switzerland or Liechtenstein. All the recordkeeping provisions of § 787.13 of this subchapter apply to this requirement except that reproductions may not be substituted for the officially authenticated original as permitted under § 787.13(d)(2) of this subchapter.

(ii) The applicant must clearly note the number and the date of the Swiss Blue Import Certificate on all export license applications support by that Certificate. The applicant must also indicate that the Certificate has been received and will be retained on file in accordance with paragraph (a)(2)(i) of this section. However, the applicant may submit an application before obtaining the original copy of the Certificate, provided that—

(A) The applicant has received a facsimile of the Certificate at the time the license application is filed; and

(B) The applicant states on the application that a facsimile of the Certificate has been received and that no shipment will be made against the license prior to obtaining the original Certificate and retaining it on file.

(iii) If the commodity described on the application is a supercomputer, the Certificate must be submitted to the Office of Export Licensing along with the application—not retained in the applicant's files.

(3) *Certificate covering multiple transactions.* The certificate may cover more than one purchase order and more than one commodity. Where the Certificate includes commodities for which more than one license application will be submitted, the applicant must include, in the space entitled "Additional Information" or on an attachment to each application following the first application submitted against that Certificate, the following certification:

I (We) certify that the quantities of commodities shown on all export licenses based on the Swiss Blue Import Certificate No. _____, when added to the quantities shown on all additional applications pending in the Office of Export Licensing based on the same Certificate, including the present application, do not total more than the quantities shown on that Certificate. This Certificate was obtained in support of application number (*insert application number or, if application number is unknown, the applicant's reference number, date of submission of the application supported by the Swiss Blue Import Certificate, and Export Control Commodity Numbers and Processing Code shown on that application*).

* * * * *

13. Section 775.5 is amended by revising paragraph (a) to read as follows:

§ 775.5 Yugoslav End-Use Certificate.

(a) *Requirements*—(1) *General.* A license application for export of commodities to Yugoslavia, regardless of value, must be supported by a Yugoslav End-Use Certificate issued to the Yugoslav importer by the Yugoslav Chamber of Economy in Belgrade covering the proposed export or reexport.[8] The applicant must obtain the original Certificate from the Yugoslav importer along with a supplement on the letterhead of the Yugoslav Chamber of Economy giving the End-Use Certificate number, the end-use, and end-user information.

(2) *Retention of certificate in applicant's files.*—(i) Except as provided by paragraph (a)(2)(iii) of this section, the applicant must retain on file the original copy of the Yugoslav End-Use Certificate and supplement issued in support of any license application for export to Yugoslavia. All the recordkeeping provisions of § 787.13 of this subchapter apply to this requirement except that reproductions may not be substituted for the officially authenticated originals as permitted under § 787.13(d)(2) of this subchapter.

(ii) The applicant must clearly note the number and the date of the Yugoslav End-Use Certificate on all export license applications supported by that Certificate. The applicant must also indicate that the Certificate has been

[8] Foreign consignees may obtain End-Use Certificates from the Yugoslav Chamber of Economy, Knez Mihailova 10, Belgrade.

received and will be retained on file in accordance with paragraph (a)(2)(i) of this section. However, the applicant may submit an application before obtaining the original copy of the Certificate, provided that—

(A) The applicant has received a facsimile of the Certificate at the time the license application is filed; and

(B) The applicant states on the application that a facsimile of the Certificate has been received and that no shipment will be made against the license prior to obtaining the original Certificate and retaining it on file.

(iii) If the commodity described on the application is a supercomputer, the Certificate must be submitted to the Office of Export Licensing along with the application—not retained in the applicant's files.

(3) *Certificate covering multiple transactions.*—The End-Use Certificate may cover more than one purchase order and more than one commodity. Where the Certificate includes commodities for which more than one license application will be submitted, the applicant must include, in the space entitled "Additional Information" or on an attachment to each application following the first application submitted against the Certificate, the following certification:

I (We) certify that the quantities of commodities shown on all export licenses (reexport authorizations) based on the Yugoslav End-Use Certificate No. _____ when added to the quantities shown on all additional applications pending in the Office of Export Licensing based on the same End-Use Certificate, including the present application, do not toal more than the quantities shown on that certificate. This End-Use Certificate was obtained in support of application number (*insert application number or, if application number is unknown, the applicant's reference number, date of submission of the application supported by the End-Use Certificate, and Export Control Commodity Numbers and Processing Code shown on that application).

* * * * *

14. Section 775.7 is amended by revising paragraph (a) and paragraphs (b) (1), (3), and (4) to read as follows:

§ 775.7 Indian Import Certificate.

(a) *Requirement.*—(1) *General.* A license application to export or reexport commodities to India, regardless of consignee, must be supported by a Government of India (GOI)-certified copy of the Indian Import Certificate. The Import Certificate, inter alia, places certain obligations on the Indian importer against reexport or transfer of the commodities. The Import Certificate requirement applies to all commodities identified by the code letter "A" on the Commodity Control List (CCL), and to those commodities identified by the code letter "B" that include "National security" in the Reason for Control portion of the CCL entry.

(i) *Responsibility of Indian importer.* The Indian importer is responsible for determining the appropriate GOI issuing agency. The issuing agencies include:

(A) For small scale industries and entities, and those not elsewhere specified, Office of Chief Controller of Imports and Exports;

(B) For the "organized" sector, except for computers and related equipment, Directorate General of Technical Development;

(C) For Defense organizations, Ministry of Defense; and

(D) For computers and related electronic items, Department of Electronics.

In addition, any of the agencies listed above has the authority to instruct the Embassy of India in Washington, DC to issue the Import Certificate on its behalf.

(ii) *Responsibility of the U.S. exporter or the reexporter.* The U.S. exporter, and where appropriate, the reexporter, should inform the Indian customer that:

(A) The GOI-certified copy of the Import Certificate is required documentation in order to apply for a U.S. export license or reexport authorization; and

(B) The Indian customer should limit the request for issuance of the Indian Import Certificate solely to those commodities that are subject to this Import Certificate procedure, i.e., commodities under national security control.

The exporter should clearly identify those commodities covered by this procedure. For example, where the Indian order is for a mixture of commodities, some requiring an Import Certificate under this procedure, some requiring a Consignee/Purchaser Statement, and some exportable under general license G-DEST, the request for the certified copy of the Indian Import Certificate should be limited to cover only those commodities that are subject to the Import Certificate requirement as described in paragraph (a)(1) of this section.

(2) *Retention of Indian Import Certificate in applicant's files*—(i) Except as provided by paragraph (a)(2)(iii) of this section, the applicant must retain on file the original copy of the Indian Import Certificate issued in support of any license application for export to India. All the recordkeeping provisions of § 787.13 of this subchapter apply to this requirement except that reproductions may not be substituted for the officially authenticated original as permitted under § 787.13(d)(2) of this subchapter.

(ii) The applicant must clearly note the number and the date of the Indian Import Certificate on all export license applications supported by that Certificate. The applicant must also indicate that the Certificate has been received and will be retained on file in accordance with paragraph (a)(2)(i) of this section. However, the applicant may submit an application before obtaining the original copy of the Certificate, provided that—

(A) The applicant has received a facsimile of the Certificate at the time the license application is filed; and

(B) The applicant states on the application that a facsimile of the Certificate has been received and that no shipment will be made against the license prior to obtaining the original Certificate and retaining it on file.

(iii) If the commodity described on the application is a supercomputer, the Certificate must be submitted to the Office of Export Licensing along with the application—not retained in the applicant's files.

(3) *Certificate covering multiple transactions.* Where the Indian Import Certificate includes commodities for which more than one license application will be submitted, the applicant must include, in the space entitled "Additional Information" or on an attachment to each application following the first application submitted against that Import Certificate, the following certification:

**I (We) certify that the quantities of commodities shown on all export licenses based on the Indian Import Certificate No._____ when added to the quantities shown on all additional applications pending in the Office of Export Licensing based on the same Import Certificate, including the present application and any licenses already issued, do not total more than the quantities shown on the Import Certificate. This Import Certificate was obtained in support of application number _____ (*insert application number, or, if application number is unknown, the applicant's reference number, date of submission of the application supported by the Indian Import Certificate, and the Export Control Commodity Numbers and Processing Code shown on that application.*

(b) *Exemptions*—(1) *Shipments with a total value of less than $5,000.* An Indian Import Certificate is not required for a license application to export commodities classified in a single entry on the Commodity Control List, the total value of which, as shown on the export order, is less than $5,000. However, if a lesser transaction is part of a larger export order that is subject to this

Import Certificate procedure, the Import Certificate shall be retained in the applicant's files in support of the application and cited in a certification as required by paragraph (a)(3) of this section. In limited circumstances, the Office of Export Licensing may require the applicant to obtain an Indian Import Certificate for an order valued under $5,000. In such an event, the exporter will be specifically notified by the Office of Export Licensing.

* * * * *

(3) *Temporary export.* An Indian Import Certificate is not required for a license application to export commodities for temporary exhibition, demonstration, or testing purposes in India (see § 772.8(c) of this subchapter).

(4) *Applications for Special Licenses.* An Indian Import Certificate is not required to support an application for a special license as described in part 773 of this subchapter, that is supported by a Form BXA–6052P or BXA–6026P.

15. Section 775.8 is amended by revising paragraphs (a) and (b) to read as follows:

§ 775.8 Documents accompanying applications.

(a) *Copies in lieu of originals.* Documents required by this part 775 to accompany an application for an individual or other validated license must be submitted in the original; copies will not be accepted. A document submitted in support of an application for an individual or other validated license will not be returned to the applicant or the applicant's agent, except when the application is returned without action. The original of a document, other than one required by this part 775, which an exporter may subsequently need, does not have to be submitted unless specifically required by the provisions of another section of the Export Administration Regulations. A copy of an original document is acceptable. An individual certification of a copy as an original is not required by the Office of Export Licensing. In lieu thereof, by signing the application, the applicant is deemed to certify and represent that any copy of a document submitted with the application, or at any time before or after it is filed, is a true copy of the original document. The applicant's signature also certifies and represents that the information contained in such document is true, correct, and complete to the best of the applicant's knowledge and belief.

(b) *Availability of original.* The Bureau of Export Administration may demand the original of any document retained in the applicant's files as required by this part 775. Such original must be kept and made available for inspection in accordance with the provisions of § 787.13 of this subchapter. To ensure compliance with this recordkeeping requirement, the Office of Export Licensing will require applicants, on a random basis, to submit specific supporting documents that have been retained on file.

* * * * *

16. In the first sentence of § 775.9(c), the phrase "In submitting" is revised to read "In obtaining".

17. Section 775.9 is amended by revising paragraphs (e) and (f) to read as follows:

§ 775.9 Special provisions.

* * * * *

(e) *Request for return of certificates.* A U.S. exporter may be requested by a foreign importer to return an unused or partially used International Import Certificate, Swiss Blue Import Certificate, Yugoslav End-Use Certificate, People's Republic of China End-User Certificate or Indian Import Certificate. To meet such requests, exporters should adhere to the following procedures:

(1) *Certificate on file in the Office of Export Licensing.* In order to request the return of a People's Republic of China End-User Certificate or any Certificate that was submitted in support of an application to export a supercomputer, the exporter must send a letter containing the request addressed to:

Office of Export Licensing, P.O. Box 273, Washington, DC 20044

The letter should include the name and address of the importer, the case number(s) to which the Certificate applies, the Certificate number, and, when the Certificate covers a quantity greater than the total quantity identified on the license application(s) submitted against it, a statement that the Certificate will not be used in connection with another license application. When the U.S. exporter does not intend to make any additional shipments under a license covered by the Certificate or is holding an expired license covered by the Certificate, this fact should be mentioned in the letter requesting the return of the Certificate. The Office of Export Licensing will place an appropriate notation on the Certificate before returning it to the exporter.

(2) *Certificates retained in the exporter's files.* Notwithstanding the provisions of this part 775 regarding the 5 year period for retaining original supporting documents in the applicant's files, a U.S. exporter may return an unused or partially used Certificate at the request of a foreign importer provided that the exporter adheres to the procedures listed in paragraph (e)(2)(i) and (ii) of this section.

(i) The exporter must submit the original Certificate—accompanied by a letter of explanation and a copy of each license (Form BXA–628) covered by the Certificate, including a copy of the reverse side of the license showing the "record of shipments"—to:

Office of Export Licensing, P.O. Box 273, Washington, DC 20044

The U.S. exporter must include the following information in the letter:

(A) A statement citing the foreign importer's request for the return of the Certificate;

(B) The license number(s) that have been issued against the Certificate (including expired and unexpired licenses); and

(C) A statement that the Certificate will not be used in connection with another license application. (This statement is necessary only when the Certificate covers a quantity greater than the total quantity identified on the license applications submitted against it.)

(ii) The exporter must make a copy of the Certificate after the original has been returned by the Office of Export Licensing and before the original is sent to the foreign importer. This copy must show all the information contained on the officially authenticated original, including any notation made on the Certificate by the Office of Export Licensing. The U.S. exporter must retain this copy on file in accordance with the recordkeeping provisions of this part 775.

(f) *Request for amendment of export license.*—[4] (1) *Change in consignee or purchaser.* The applicant must obtain a new Statement by Ultimate Consignee and Purchaser, or an appropriately amended International Import Certificate, Swiss Blue Import Certificate, Yugoslav End-Use Certificate, People's Republic of China End-User Certificate, or Indian Import Certificate before submitting a request for an amendment of an export license that proposes a change in the consignee or purchaser in the transaction named in the export license if the proposed amendment is not in accordance with the Statement or Certificate already on file with the applicant or the Office of Export Licensing. The original copy of

[4] Section 772.11(l) of this subchapter contains other provisions applicable to amendments of licenses covered by a consignee/purchaser statement.

the new Statement or Certificate must be—

(i) Submitted to the Office of Export Licensing, along with the amendment request, if—

(A) The country of ultimate destination is the People's Republic of China or a country in Country Group Q, W, Y, or Z, or

(B) The commodity described on the license is a supercomputer; or

(ii) Retained in the applicant's files in accordance with the provisions of this part 775 if the country of ultimate destination is a country in Country Group S or V (except for the People's Republic of China) and the commodity described on the license is not a supercomputer.

(2) *Increase in quantity*—(i) *Increase not supported by existing Statement or Certificate obtained in support of license application.* The applicant shall obtain a new Statement by Ultimate Consignee or Purchaser, or an appropriately amended International Import Certificate, Swiss Blue Import Certificate, Yugoslav End-Use Certificate, People's Republic of China End-User Certificate, or Indian Import Certificate before submitting a request for an amendment of an export license that proposes any increase in the quantity set forth in the export license if the proposed amendment is not in accordance with the Statement or Certificate already on file with the applicant or with the Office of Export Licensing. The original copy of the new Statement or Certificate shall be—

(A) Submitted to the Office of Export Licensing, along with the amendment request, if—

(*1*) The country of ultimate destination is the People's Republic of China or a country in Country Group Q, W, Y, or Z, or

(*2*) The commodity described on the license is a supercomputer; or

(b) Retained in the applicant's files in accordance with the provisions of this part 775 if the country of ultimate destination is a country in Country Group S or V (except for the People's Republic of China) and the commodity described on the license is not a supercomputer.

(ii) *Increase supported by existing Statement or Certificate obtained in support of license application.*—(A) If a proposed quantitative amendment is in accordance with the single transaction Statement by Ultimate Consignee and Purchaser or Certificate obtained by the applicant in support of the original export license application, the amendment request shall include the following certification as appropriate:

I (We) certify that this request for amendment of export license number _____, if granted, will not exceed the total quantity covered by the Statement by Ultimate Consignee and Purchaser against which this export license was issued.

or

I (We) certify that this request for amendment of export license number _____, if granted, will not exceed the total quantity authorized under the (*name of country*) International Import Certificate, Swiss Blue Import Certificate, Yugoslav End-Use Certificate, People's Republic of China End-User Certificate, or Indian Import Certificate number _____.

(B) Where the export license is based on a multiple transactions Statement by Ultimate Consignee and Purchaser, an additional Statement is not required from the consignee or purchaser to support a proposed license amendment for an increase in quantity. In lieu thereof, the following certification shall be placed on the amendment request:

I (We) certify that the license listed above is supported by a Statement by Ultimate Consignee and Purchaser.

* * * * *

18. Section 775.9(g) is amended by revising the introductory text of paragraph (g)(1), by revising paragraph (g)(2)(ii), and by revising paragraphs (g)(2)(iii)(G) and (H), and by republishing the introductory text of paragraph (g)(2)(iii) as follows:

§ 775.9 Special provisions.

* * * * *

(g) *Request for exception.*—(1) *Types of requests.* A request for exception to a requirement for obtaining an International Import Certificate, Swiss Blue Import Certificate, Yugoslav End-Use Certificate, People's Republic of China End-User Certificate, or Indian Import Certificate,[5] may involve either a single transaction or, where the reason necessitating the request is continuing in nature, multiple transactions.

* * * * *

(2) *How to submit request* * * *

(ii) Each request for exception shall be by letter in duplicate, addressed to: Office of Export Licensing, P.O. Box 273, Washington, D.C. 20044. It shall be accompanied by a Statement of Ultimate Consignee and Purchaser bearing the original signature(s) of the parties identified thereon, unless such statement is already on file in the Office of Export Licensing or the applicant has the statement on file in accordance with § 775.2.

[5] See § 775.2(c) for exceptions to the consignee/purchaser statement requirement where applicant is unable to obtain the statement.

(iii) As a minimum, the letter request shall include:

* * * * *

(G) Whether the exporter has previously submitted to the Office of Export Licensing or retained on file, in accordance with § 775.2, a Certificate issued in the name of the importer and a listing of the case number(s) to which the certificate(s) applied;

(H) Whether a Statement by Ultimate Consignee and Purchaser is on file with the Office of Export Licensing or in the applicant's files, in accordance with § 775.2;

* * * * *

PART 787—[AMENDED]

19. In § 787.13, paragraph (c) is amended by adding the phrase "774.3," following the reference "773.8," in the second sentence and paragraph (e) is revised to read as follows:

§ 787.13 Recordkeeping.

* * * * *

(c) *Period of retention.*—(1) *Two-year general requirement.* Except as indicated in paragraph (e)(2) of this section, records required under this section shall be kept for a period of two years from the latest of the following times:

(i) The export from the United States; or

(ii) Any known reexport, transshipment, or diversion; or

(iii) Any other termination of the transaction, whether formally in writing or by any other means. It may be advisable to maintain records longer than the mandatory two-year retention period because the statute of limitations for criminal actions brought under the Export Administration Act of 1979 and its predecessor Acts is five years (18 U.S.C. 3282). The statute for administrative compliance proceedings is also five years (28 U.S.C. 2462).

(2) *Retention requirements exceeding two years.*—(i) *Three years.* Records relating to restrictive trade practice or boycott requests must be kept for a period of three years from the latest of the times indicated in paragraph (e)(1) of this section. (See § 769.6(b)(8) of this subchapter.)

(ii) *Five years.* The following records must be kept for a period of five years from the latest of the times indicated in paragraph (e)(1) of this section:

(A) Shipper's Export Declarations covering exports made under a Project License, as required by § 773.2(f)(1) of this subchapter—the three-year retention period specified in § 30.11 of the Foreign Trade Statistics Regulations (15 CFR 30.11) does not apply to Declarations covering exports made under a Project License;

(B) Swiss Blue Import Certificates, Yugoslav End-Use Certificates, and other records required for exports under a Distribution License, as required by § 773.3(h)(1) of this subchapter;

(C) Swiss Blue Import Certificates, Yugoslav End-Use Certificates, and other records required for exports under the Service Supply Procedure, as required by § 773.7(e) of this subchapter;

(D) Supporting documentation that must be retained in the applicant's files, as required by § 772.11 and § 774.3 and part 775 of this subchapter.

(3) *Destruction or disposal of records.* If the Department of Commerce or any other Government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the agency concerned. This prohibition applies even if such records have been retained for a period of time exceeding that required by paragraph (e)(1) or (e)(2) of this section.

* * * * *

Dated: October 26, 1990.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 90-25846 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration, HHS.

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Roxarsone

AGENCY: Food and Drug Administration, HHS

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Rhone-Poulenc, Inc. The NADA currently provides for use of Type A medicated articles containing several concentrations of roxarsone in making Type C medicated animal feeds. The supplemental NADA provides for changing the existing potency assay limits for roxarsone in those Type A medicated articles.

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Howard Meyers, Center for Veterinary Medicine (HVC-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3044.

SUPPLEMENTARY INFORMATION: Rhone-Poulenc, Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852, holds approval for NADA 92-953. The application provides for use of Type A medicated articles containing several concentrations of roxarsone in making Type C medicated animal feeds. The Category II table in § 558.4(d) (21 CFR 558.4(d)) currently specifies the potency assay limits for roxarsone in Type A medicated articles as 95 to 103 percent of the amount claimed on the label. The firm has filed a supplemental NADA providing for widening the assay limits to 90 to 110 percent. The supplemental NADA is approved and the Category II table in § 558.4(d) is amended to reflect the approval.

Approval of this supplement is an administrative action that does not require generation of new effectiveness or safety data. Therefore, a freedom of information summary pursuant to 21 CFR 514.11(e)(2)(ii) is not required.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.4 [Amended]

2. Section 558.4 Medicated feed applications is amended in paragraph (d), in the Category II table, at each of the seven entries for "Roxarsone", under the hearing "Assay limits percent[1] Type A" by removing "95-103" and inserting in its place "90-110".

Dated: October 29, 1990.

Andrew J. Beaulieu,

Director Division of Surveillance, Center for Veterinary Medicine.

[FR Doc. 90-26121 Filed 11-2-90; 8:45 am]

BILLING CODE 4160-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21, 43, 74, 78

[Gen. Docket No. 90-54, Gen. Docket No. 80-113; DA 90-1521]

Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, Private Operational-Microwave Fixed Service, and Cable Television Relay Service

AGENCY: Federal Communications Commission.

ACTION: Correction.

SUMMARY: This correction rectifies the effective date of the final rule in Gen. Docket Nos. 90-54 and 80-113, published on October 31, 1990 (55 FR 46006), regarding wireless cable service.

EFFECTIVE DATE: October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley, Mass Media Bureau, Policy and Rules Division, (202) 632-7792; Bruce Romano, Mass Media Bureau, Policy and Rules Division, (202) 632-5414; Lynne Milne, Common Carrier Bureau, (202) 634-1772; or Mike Lewis, Private Radio Bureau, (202) 632-6940.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Erratum in Gen. Docket Nos. 90-54 and 80-113, released October 30, 1990. The complete text of this Erratum is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of Erratum

On October 26, 1990, the Commission released a Report and Order (FCC 90-341) in the above-captioned proceeding, and published a synopsis of that Report and Order and a final rule on October 31, 1990, on page 46006.

1. Paragraph 9 of the synopsis on page 46007 should read as follows:

9. *It is further ordered* that this Report and Order will be effective 30 days after publication in the **Federal Register**, except as follows:

(1) Sections 1.227(b)(4), 21.28(e), 21.901(d)(2), 21.912, and 21.914 of the Commission's Rules, 47 CFR 1.227(b)(4), 21.28(e), 21.901(d)(2), 21.912, 21.914, are effective upon publication of a summary of this Report and Order in the **Federal Register**.

(2) * * *

2. On page 46006, the effective date of the final rule is corrected to read as follows:

EFFECTIVE DATE: November 30, 1990, except §§ 1.227(b)(4), 21.28(e), 21.901(d)(2), 21.912, and 21.914 are effective on October 31, 1990, and §§ 1.1307(b), 21.901(d)(1), 21.902(i), 21.905(c), 21.911, 21.913, 74.903(a)(2), 74.961(c), and 74.985 are effective on January 24, 1991.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 90-26246 Filed 11-2-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 80

[FCC 90-235]

Maritime Services Rules To Redesignate Vessel Traffic Services (VTS) Channels in the Port Area of New York for Exclusive VTS System Use; Cancellation of Conditional Grants of Operating Authority

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's rules to redesignate two VHF frequencies in the New York Vessel Traffic Services (VTS) area for exclusive use of the VTS system, and cancels the pertinent conditional grants of operating authority issued under a previous Commission Order.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Eric Malinen, Private Radio Bureau (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 90-235, adopted September 26, 1990, and released October 11, 1990. The complete text of this Commission action, including the rule amendment, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC 20554. The complete text of this action, including the rule amendment, may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

SUMMARY OF ORDERS:

1. The maritime services rules have been amended to redesignate the use of two VHF maritime channels in the port area of New York City. In a previous Order released February 15, 1989, 4 FCC Red 1590 (1989) 54 FR 8745, March 2, 1989, the Commission permitted, *inter alia,* the use of two Vessel Traffic Services (VTS) system channels by eligible users for other than VTS operations, pending possible future use for VTS communications. The Commission took its previous action because the U.S. Coast Guard had discontinued the New York VTS system due to budgetary constraints, pending the system's possible re-establishment at a later date. On April 30, 1990, the Coast Guard informed the Commission that, as a result of a Congressional directive and appropriation of funds, the New York VTS system would be re-established. This present action redesignates the use of the two VHF maritime channels for exclusive VTS system use in the port area of New York City.

2. VTS systems are ship movement reporting systems designed to prevent damage to ships, bridges, and other structures in high vessel traffic areas of the United States. The systems are also used to minimize environmental damage associated with navigational accidents. The systems use VHF marine radiotelephone equipment to exchange voice communications on specific VHF channels that are dedicated to VTS operations.

3. In its previous Order, the Commission specified that if the New York VTS system were to be re-established, any coast station licensees authorized as a result of the Order would be required to cease operation. Consequently, the present Order requires operations conducted under those licenses to cease. The Commission has already notified the five affected private coast station licensees individually of the Coast Guard's plans and of this present Commission action. Therefore, the conditional grants of operating authority pertaining to the New York VTS system channels have been cancelled for the following five licensees, effective October 1, 1990: Harbor Ready Marine, Inc, call sign WHU941; Little Toot Marine, Inc., KMC918; Marine Rescue Services, Inc., KTD486; Seatow, Inc., KVF897; and Frank H. Wetmore, Inc., WHW673.

4. The amended rule is set forth at the end of this document.

5. The rule amendment contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to contain no new or modified form, information collection or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

6. Because the Commission found that the rule amendment contained herein constitutes a minor amendment to the Commission's Rules in which the public is not likely to be interested, the Commission found for good cause that compliance with the notice and comment procedures of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), was unnecessary. Furthermore, in light of both the Coast Guard's intent to re-establish the New York VTS system by October 1, 1990, and the immediate increase in vessel traffic safety that would thereby result, the Commission found good cause to expedite the effective date of his Order. Therefore, the rule amendment was made effective October 1, 1990.

7. The amended rule is issued under the authority contained in §§ 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

List of Subjects in 47 CFR Part 80

Coast stations, Radio, Ship stations, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amended Rule

Part 80 of chapter 1 of title 47 of the Code of Federal Regulations is amended, as follows:

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. Section 80.383(a) is amended by revising the table and the text of footnote 1 below the Table, to read as follows:

§ 80.383 Vessel Traffic Services (VTS) system frequencies.

* * * * *

(a) *Assigned frequencies:*

VESSEL TRAFFIC CONTROL FREQUENCIES

Carrier frequencies (MHz)	Geographic areas
156.250	Seattle.
156.550	New York, New Orleans,[1] Houston.
156.600	New York, New Orleans,[1] Houston.
156.700	New York, New Orleans,[1] Seattle.

[1] Until further notice, this frequency is available for use as permitted by § 80.373(f), notwithstanding the provisions of footnote 3 that are applicable to the VTS system. Availability is a result of the closure of the VTS system for the port area of New Orleans. If the United States Coast Guard re-establishes this system, the Commission may require operations pursuant to such conditional licenses for this frequency to cease, or may choose not to renew such conditional licenses. All licenses for this frequency will be expressly conditioned upon the continued availability of the frequency for non-VTS use.

* * * * *

[FR Doc. 90-25936 Filed 11-2-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 90778-0275]

RIN 0648-AD07

Endangered and Threatened Species; Sacramento River Winter-run Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS has determined that the winter run of chinook salmon in the Sacramento River, California, should be listed as a threatened species under the Endangered Species Act (ESA) of 1973. On March 20, 1990, NMFS published a proposed rule to list this species as threatened. NMFS is listing the species based on information received in response to the proposed rule and on information available on the status of the run.

In a separate rulemaking, the U.S. Fish and Wildlife Service (FWS), which is responsible for the List of Endangered and Threatened Wildlife, is adding the Sacramento River winter-run chinook salmon to the list.

EFFECTIVE DATE: This rule will become effective November 30, 1990.

FOR FURTHER INFORMATION CONTACT: James H. Lecky, NMFS, Southwest Region, Protected Species Management Branch, 300 S. Ferry Street, Terminal Island, CA 90731, telephone (213) 514-6664 or FTS 795-6664, or Margaret Lorenz, NMFS, Office of Protected Resources, 1335 East West Highway, Silver Spring, MD 20910, telephone (301) 427-2322.

SUPPLEMENTARY INFORMATION:

Background

Winter-run chinook salmon are a unique population of chinook salmon in the Sacramento River and are distinguishable from the other runs in the river based on timing of their upstream migration and spawning season. For the most part, the winter-run chinook population is comprised of three year-classes, each of which returns to spawn as 3-year-old fish.

The best measure of trends in abundance of winter-run chinook is a series of counts of run size conducted by the California Department of Fish and Game (CDFG) at Red Bluff Diversion Dam. The CDFG began conducting these counts in 1986, the year that the dam began operating. These counts show a persistent decline in run size from a 3-year average of about 84,000 fish for the years 1967 through 1969 to a 3-year average of about 2,000 fish for the years 1982 through 1984 (see Table 1).

On November 7, 1985, NMFS received a petition from the American Fisheries Society to list the winter-run of chinook salmon in the Sacramento River as a threatened species under the Endangered Species Act of 1973 (ESA). NMFS reviewed the petition and determined that it contained substantial information indicating that the petitioned action might be warranted.

On February 13, 1986, NMFS announced (51 FR 5391) its intention to conduct a review of the status of the run to determine whether or not listing the run was appropriate. The status review was based on a consideration of available information on the run relative to the five criteria specified in section 4(a)(1) of the ESA and a consideration of the conservation efforts of the State of California and Federal resource management agencies to restore the run, as required by section 4(b)(1)(A) of the ESA. Information was provided by the petitioner, the State, Federal agencies that affect the run or its habitat, and the public. The results of the status review, along with the Notice of Determination, were published on February 27, 1987 (52 FR 6041).

NMFS concluded that the Sacramento River winter-run chinook was a species in the context of the ESA and recognized that the run had declined by more than 97 percent over a period of less than two decades. The definable causal agents in this decline were the construction and operation of Red Bluff Dam, adverse temperature conditions created by the operation of Shasta Dam (particularly in dry years), and other human activities that had collectively degraded spawning and rearing habitat in the Sacramento River to the point that productivity of the run declined.

Based on its assessment that restoration and conservation efforts being implemented or planned by State and Federal resource management agencies adequately provided for the rebuilding of the population, NMFS decided not to list winter-run chinook in the Sacramento River as a threatened species under the ESA. Subsequent to this determination, these restoration actions were incorporated in a Ten-point Winter-run Restoration Plan and implemented by means of a Cooperative Agreement signed on May 20, 1988, by the CDFG, the Bureau of Reclamation (Bureau), FWS, and NMFS. The Restoration Plan is reviewed in NMFS' original decision not to list the run (52 FR 6041, Feb. 27, 1987) and again after a reconsideration of that decision (53 FR 49722, Dec. 9, 1988). Among the ten points, the tasks expected to be of most immediate benefit to winter-run chinook are raising the gates at Red Bluff Dam from December 1 through April 1 to allow free passage of adult winter-run chinook to suitable spawning habitat and maintaining water temperatures at levels below lethal limits in the reach of river above Red Bluff Dam that is used for spawning. Other points in the plan that are expected to benefit winter-run chinook in the near future are a propagation program at the FWS' Coleman Hatchery and several studies to quantify and identify mitigation options for other activities affecting the run.

In the spring of 1988, prevailing weather patterns indicated that the drought conditions that had developed in the spring and summer of 1987 would persist through 1988. These conditions caused concern among the resource agencies that the conservation measures in place to enhance the run might not be adequate to address the adverse effects of anticipated drought conditions. Specifically, water forecasts indicated that river temperatures might reach levels lethal to developing winter-run chinook eggs. NMFS decided to review its decision to not list the run and evaluate the adequacy of the Ten-point Winter/run Restoration Plan for protecting the run during drought conditions.

On June 2, 1988 (53 FR 20155), NMFS announced its intent to reconsider its decision not to list the run and opened a public comment period to ensure that all information on the status of the run and factors affecting it was available for the reconsideration.

Based on the information considered during the review, NMFS found that the status of the winter-run chinook population had not deteriorated since the original determination not to list the run as threatened; none of the comments received during the reconsideration provided substantial new information indicating listing was necessary; the Ten Point Winter-run Restoration Plan was being implemented; and unprecedented actions were being carried out to

minimize the adverse effects of the drought.

On December 9, 1988 (53 FR 49722), NMFS reaffirmed its determination that the actions of State and Federal agencies to restore the winter-run chinook salmon population and its habitat adequately addressed the threats to the population and that the population was not likely to become in danger of extinction throughout all or a significant portion of its range in the foreseeable future. Therefore, listing was considered not appropriate under the conditions at the time (53 FR 49722).

Simultaneous with NMFS' review of the status of the winter-run chinook population, the CDFG was conducting an independent review pursuant to a petition for listing the run under the State's Endangered Species Act. The CDFG concluded its review in February 1989, and recommended to the California Fish and Game Commission that the run not be listed because the restoration actions underway or planned for the future had a high probability of restoring the run (CDFG undated status review).

Precipitation and runoff were again below normal for the water-year beginning October 1988. In February 1989, the Bureau announced cuts in the water supply of up to 50 percent for central valley project water contractors because of the persistence of dry conditions. Heavy precipitation in March 1989 in the northern Sacramento River drainage basin restored Lake Shasta's storage equal to the storage in October 1987. As a result of the heavy March rains, the Bureau was able to restore water supplies to contractors and maintain sufficient storage to manage water temperatures in the river. The Bureau was also able to leave the gates at Red Bluff Dam out of the water 2 weeks beyond the April 1 deadline agreed to in the Cooperative Agreement. This provided an additional 2 weeks of unrestricted access for returning winter-run chinook to suitable spawning habitat, but lower than expected returns of winter-run chinook were in the river to benefit from this additional period of unrestricted passage.

For undetermined reasons, the 1988 run returned at much lower levels than expected. The CDFG estimated run size for 1989 was about 533 fish, roughly 75 percent below the expected run size. Since 1982, the run has varied about a mean run size of 2382 fish, and resource agencies had expected the 1989 run to be near that level.

Based on the poor return of fish in 1989 and the fact that the Fish and Wildlife Service's hatchery program (a task in the Ten-point Winter-run Restoration Plan) for augmenting natural production was still developmental and not likely to produce substantial numbers of juvenile fish for several years, the CDFG reversed its position and recommended at the May 1989 meeting of the California Fish and Game Commission that the Commission list the winter-run chinook as a threatened species under the California Endangered Species Act. The Commission considered the CDFG's recommendation, but voted to list the run as endangered under State law. The run was listed as endangered under State law in August 1989.

NMFS also believed that the 1989 run size was dangerously low, but felt that the restoration actions taken by the Bureau at Red Bluff Dam and in managing water temperatures, spawning gravel restoration program initiated by the CDFG, and other restoration actions that had been or were planned for implementation were likely to contribute to a rebuilding of the run. Therefore, NMFS decided that a listing as threatened under Federal law would be appropriate, and on August 4, 1989, published an emergency rule listing the winter-run as a threatened species (54 FR 149). A proposed rule to list the species as threatened was published March 20, 1990 (55 FR 10260). The emergency rule was republished on April 2, 1990 (55 FR 12191) to ensure there would be no break in coverage of the run under the ESA while the final rule was developed. The second emergency rulemaking expires November 28, 1990.

TABLE 1—ANNUAL ESTIMATED RUN SIZE AT RED BLUFF DIVERSION DAM

Year	Number of Fish
1967	57,306
1968	84,414
1969	117,808
1970	40,409
1971	55,088
1972	37,133
1973	28,059
1974	21,897
1975	23,430
1976	35,096
1977	10,214
1978	24,862
1979	2,364
1980	1,358
1981	20,041
1982	11,242
1983	1,831
1984	2,863
1985	3,962
1986	2,422
1987	2,256
1988	2,088
1989	558
1990	[1] 443

[1] Preliminary estimate.

Summary of Comments

State agencies, county governments, Federal agencies, and other interested parties were notified and requested to comment. A newspaper notice inviting public comment was published in the Sacramento Bee on April 2, 1990. Eight comments were received in response to the proposed rule. Three supported the proposal, two did not support the proposal, and three were neutral.

Two commenters supported the listing but recommended that the run be reclassified as endangered if poor returns persist. NMFS agrees that if the run continues to decline, its classification should be reconsidered. NMFS is monitoring the status of the run and the effectiveness of recovery actions. If information becomes available indicating the run should be reclassified, NMFS will initiate the rulemaking procedures to do so.

The California Department of Water Resources indicated that the incidental take provisions provided in section 10 of the ESA do not automatically apply to threatened species and recommended that the rule be modified to include an explicit exception to the prohibitions on taking for section 10 permits.

There are a number of non-Federal projects on the Sacramento River or in the Sacramento-San Joaquin Delta that take winter-run chinook incidentally to their activities. NMFS intends to manage and mitigate the take of winter-run chinook incidentally to these projects through the section 10 incidental take permit process. The proposed rule and this final rule contain exceptions for research and incidental take according to the procedures set in 50 CFR part 222.

Two commenters stated that the 1989 run size estimate made by CDFG are biased low. Based on winter-run chinook fry captured in a trap at the Glenn Colusa Irrigation District's diversion facility, the commenters estimated the 1989 run size in excess of 8,000 adults.

NMFS and CDFG agree that the run size estimates are tenuous to make, but believe the CDFG method is more accurate than the method used by the commenters. The commenters are relying on an estimate produced by back calculating a total spawning population from 354 winter-run chinook fry captured at the CDFG trap at the Glen-Colusa Irrigation District's fish screen. This back calculation requires assumptions about the proportion of fry present in the river that are captured at the trap, survival of eggs, and sex ratio of the population, none of which have been tested for winter-run chinook. The number of untested assumptions necessary to make this extrapolation make it less reliable than the method used by the CDFG. The back calculation also produces results that conflict with the information on number of redds (area where eggs are laid) observed.

Raising the gates at the Red Bluff Diversion Dam during December through March removes an impediment to the upstream migration of winter-run chinook, but it eliminates the opportunity to count salmon passing through the fish ladders. Run size estimates are based on an extrapolation of counts made at the ladders after the gates are placed back in the river. This extrapolation is based on a run timing curve created by averaging the proportion of the run that passed Red Bluff Dam each week during the run over the years 1982–1988. While this method does not produce a precise estimate of run size, NMFS and CDFG believe that it accurately reflects the magnitude of the run and its recent decline in abundance. In addition, information collected by CDFG on number and distribution of redds corroborates the run size estimate made by extrapolation of the counts at the ladders after the gates are lowered.

One commenter opposed the listing because the current size of the run is equal to or larger than the natural run that existed prior to the construction of Shasta Dam.

Information concerning historic population size of winter-run chinook, is ambiguous. Numerous fishery researchers have cited Slater (1963) to indicate that the winter-run chinook population may have been fairly small and limited to the spring-fed areas of the McCloud River before the construction of Shasta Dam in the 1940s. However, recent CDFG research in California State Archives has cited several fishery chronicles from the 1870s that indicate that the winter-run chinook population may have been much larger than previously thought. According to these qualitative and anecdotal accounts, the winter-run chinook reproduced in the McCloud, Pitt, and Little Sacramento Rivers and may have numbered over 200,000 spawners (Rectenwald, 1989).

The current status of the run is more relevant to the decision to list than the historic run size. NMFS has concluded that the run has declined to such a low level that it may become endangered if factors adversely affecting the population are not remedied or if natural events reduce the population further. Therefore, listing the run as threatened is appropriate.

The commenter also opposed the listing because there appears to be no biological reason why the run should not recover to the levels of the 1960s given sufficient time and continuation of the commitment to complete current and planned restoration measures.

This is essentially the conclusion NMFS reached in the original status review (52 FR 6041, Feb. 27, 1987). The additional decline of the run in 1989, poor return in 1990, persistence of adverse weather conditions, and continued presence of factors inhibiting recovery of the run, place it in a more precarious position than as recently as 1988. The listing will aid in obtaining the funding to implement the actions necessary to rebuild the run.

One commenter indicated that the 1989 fry population is encouraging and the measures to improve fish passage at Red Bluff Dam should considerably enhance the survival and production of winter-run chinook.

Generally, NMFS agrees with this statement. FWS studies have documented the benefit of raising the gates at Red Bluff Dam during the upstream migration of winter-run chinook and the production of fry was apparently higher in 1989 than in 1987 or 1988. This may result in a better return in 1991. Nevertheless, NMFS believes the population is at a precariously low level and measures are necessary to prevent it from becoming endangered.

Several commenters provided technical comments to clarify, update, or correct facts contained in the proposed rule. NMFS has accepted these comments and incorporated them in the preamble to the rule.

Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA specifies five criteria to be evaluated in reviewing the status of a species or population proposed for listing. These criteria were reviewed in the first Notice of Determination published on February 27, 1987, (52 FR 6041) and again in the subsequent Notice of Determination published on December 9, 1988 (53 FR 49722). The criteria for evaluating the status of the run are reviewed again to present a complete document containing the current information for reviewers.

1. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Modification and loss of spawning and rearing habitat likely has been a major factor contributing to the decline of the winter-run chinook. Essential elements of suitable spawning habitat are the availability of clean gravel (which provides a substrate for redd construction), adequate flow of oxygenated water through the gravel to aerate the eggs, and water temperatures between 42.5 and 57.5 °F (which are optimal for egg development (Combs and Burrough 1957)). However, studies reviewed in a literature survey conducted by the California Department of Water Resources indicate that the optimum range of temperatures for development through the emerged fry stage may be bound by 55 °F on the upper end (Seymour 1956 cited in Boles 1988). Historically, winter-run chinook found and used this type of habitat in the cold spring-fed headwaters of the tributaries to the Sacramento River. For example, they were reported to have spawned in the McCloud River (Slater 1963) and may have spawned in the upper reaches of the Pit and Sacramento Rivers (Rectenwald 1989) before access to those locations was blocked by the construction of Shasta Dam.

Shasta and Keswick Dams. In the 1940s, the Bureau initiated its Central Valley Project with the construction of Shasta and Keswick Dams on the Sacramento River. These dams blocked access to the winter-run chinook's spawning habitat. However, operations of these dams created new habitat by releasing cold hypolimnitic waters into the mainstem of the Sacramento. During the late spring and summer when the winter-run chinook are spawning, the cold water released from Shasta and Keswick Dams decreases ambient water temperatures downstream to about Red Bluff which contributes to suitable spawning and rearing conditions in most normal water years. During dry years, less cold water is available for release from Shasta Dam compared to normal years. Consequently, river temperatures are not as low for as long a period as they are in normal years. This temperature increase over time, progressively reduces the availability of suitable spawning and rearing conditions. The design of the Shasta Dam spill gates and intake to the powerhouse penstocks limits the Bureau's ability to draw cold water from below the thermocline, particularly in dry years.

In dry years, as Shasta Lake is depleted, the thermocline falls below the intake to the powerhouse. Unless the Bureau operates low-level releases and bypasses the powerhouse, warm surface water is released into the river where it adversely affects spawning habitat.

In May 1987, the Bureau predicted lethal temperatures below incubating and juveniles would be developing. These temperature conditions would likely have contributed to substantial mortality of the 1987 winter-run chinook

year class. The Bureau initiated a water management strategy to lower river temperatures that included opening, for the first time since the dam was constructed, a low-level outlet in Shasta Dam that draws deep, cold water, but requires the Bureau to forego the opportunity to generate power.

With the drought conditions persisting into 1990, the Bureau again agreed to open the low-level release, at the expense of power generation to maintain suitable river temperatures. Even employing these extraordinary measures, the Bureau was only able to maintain suitable spawning and incubation conditions down stream to Cottonwood Creek, about 20 river miles upstream from Red Bluff. The Bureau also made low-level releases in 1989 and is continuing to do so in 1990.

The Bureau has committed to constructing a permanent temperature control structure at Shasta Dam that will allow water to be drawn into the power penstocks from varying levels in the lake. This will allow better control of river temperatures without foregoing the opportunity to generate power from the water released through the dam. In addition to releasing cold water in the summer, the structure will allow the Bureau to selectively release warm water in the spring to attract winter-run chinook well up into their spawning habitat prior to spawning.

On May 7, 1990, the California State Water Resources Control Board amended a number of permits, licenses, and applications by adding conditions that require, among other things, operation of Shasta Dam, Keswick Dam, and the Spring Creek Power Plant to meet a daily average water temperature of 56 °F in the Sacramento River at RBDD during periods when higher temperatures will be detrimental to the fishery (order WR 90-5). If factors beyond the reasonable control of the Bureau prevent the Bureau from maintaining 56 °F at RBDD, the point at which 56 °F may be moved upstream to a point agreed to after the Bureau consults with the CDFG, NMFS, FWS, and the U.S. Western Area Power Administration.

Spawning habitat has also been degraded by decreases in the rate of replenishment of gravel suitable for spawning. Construction of Shasta and Keswick Dams precluded the recruitment of new gravel from the river and its tributaries above those dams, and gravel mining in the tributary streams below those dams has slowed the recruitment of new gravel into the Sacramento (CDWR 1986). Consequently, the amount of suitable spawning habitat has been shrinking, and, in 1985, the CDFG began a spawning gravel replenishment program. The CDFG and the Bureau are purchasing gravel and the CDFG is placing it in the river to restore degraded spawning riffles in areas of the river used by the winter-run chinook. In 1988 and 1989, CDFG and the Bureau placed about 12,000 cubic yards of gravel in the Sacramento River near Keswick Dam. In the fall of 1990, the CDFG plans to place a total of 80,000 cubic yards of gravel at several locations with the winter-run chinook's spawning range. As additional funding becomes available, the CDFG plans to add up to 1 million cubic yards of gravel to the upper Sacramento over the next decade.

In addition to replenishing spawning riffles, the CDFG is working with the California Department of Water Resources to modify gravel mining permits to ensure that gravel of the appropriate size for salmon spawning habitat is left in the river bed for natural distribution to the main stem or that it be made available for transport to areas where it may be used to restore degraded spawning habitat.

Red Bluff Diversion Dam. An equally important problem has been the impediment that the dam presents to upstream migrants. The dam was built to provide a head of water for diversion to farm lands and wildlife refuges in the northern portion of California's Central Valley. It began operating in August 1966. The dam was designed with fish ladders to allow passage of upstream migrants, but these are not adequate, particularly during high flows that occur in the winter when winter-run chinook are migrating upstream. Hallock *et al.* (1982) and Vogel *et al.* (1988) investigated the effect of the dam on upstream migrants and found that nearly 40 percent of tagged upstream migrants were blocked by the dam. Fish that are blocked spawn downstream from the dam where river temperatures commonly exceed 57.5 °F and mortality of incubating eggs is nearly complete. In addition, the physiological stress associated with delays and repeated attempts to get past the dam may contribute to reduced fecundity of fish that do get past the dam and spawn in suitable habitat.

At the recommendation of the fishery resource agencies, the Bureau agreed to an experimental period during which the gates at the dam would be raised (opened) between December 1 and April 1, with the caveat that the gates may have to be lowered (closed) to deliver water for irrigation or maintenance of canals. The period of migration of the four chinook runs past the dam has been characterized by averaging the cumulative number of fish that passed the dam from 1971 through 1982. Based on these data, raising the gates through April 1, should allow about 68 percent of the winter-run chinook free access to its spawning habitat.

From December 1 to April 1, 1986–87 the gates at Red Bluff Dam were raised for a period of 94 days. The FWS conducted a study of fish passage during the period the gates were opened. The results of that study showed that 11 radio-tagged salmon were delayed an average of 3.19 hours or 28 times less than when the gates were down. Also, none of the tagged salmon that approached the dam, while the gates were raised, backed downstream away from the dam (FWS 1987). During the 1986–87 winter, approximately 95 percent spawned above the dam, indicating the relative effectiveness of raising the gates in improving winter-run chinook passage.

The Bureau has continued this operational procedure in subsequent winters. During the winter of 1987–88, the gates were raised for 68 consecutive days before being lowered to provide irrigation water to the Tehama-Colusa Canal users. Eighty-four percent of the run spawned above Red Bluff Dam in 1988. During the winter of 1988–89, the Bureau was able to keep the gates up for a longer period and CDFG estimated that 97.8 percent of the run spawned upstream from the dam. During the 1989–90 spawning migration, the Bureau held the gates out of the river for the entire period and CDFG estimated that 89.6 percent of the spawning took place above the dam.

The FWS has recommended that the Bureau construct new state-of-the-art fish passage facilities at Red Bluff Dam that would resolve fish passage problems and allow the dam to operate during the winter. The Bureau is evaluating alternatives for new fish passage facilities and has agreed to continue the practice of raising the gates during the winter until new passage facilities are in place.

The dam and its associated diversion facilities also have an adverse effect on downstream migrating winter-run chinook. The Tehama-Colusa Canal, which diverts Sacramento River water at Red Bluff Dam, was protected by an inefficient fish screening facility. Consequently, outmigrating juvenile salmon and fry have been entrained and lost. Although the effect of this mortality on the winter-run population has not been specifically quantified, studies by the FWS (Vogel *et al.* 1988) indicate that an estimated 0.6 percent of the outmigrating juvenile salmon (all runs) are lost at these screens. As part of the Bureau's efforts to improve operation of the dam and the canal, and to mitigate impacts to fish populations, the Bureau has constructed a new fish screen and bypass system at the canal. The design and placement of the new fish screens was developed in consultation with NMFS, FWS, and the CDFG. These screens are a state-of-the-art design and intended to eliminate entrainment of salmon and other fish into the canal. Validation studies are being conducted to ensure the screens are as efficient as planned.

Additional water marketing. The Bureau has expressed its intent to market an additional 1.1 million acre-feet of water from the Central Valley Project and is preparing an environmental impact statement on its marketing plan. However, the Bureau has stated that it may not go forward with additional marketing until the State Water Resources Control Board has completed a comprehensive review of water rights that affect San Francisco Bay and the Sacramento-San Joaquin Delta. If the additional water is marketed, it will likely exacerbate the problem of maintaining suitable temperatures throughout the spawning habitat now judged to be suitable for winter-run chinook by increasing the frequency of years when critical temperature limits are exceeded.

Anderson Cottonwood Irrigation District Diversion Dam. The Anderson-Cottonwood Irrigation District Diversion Dam is an antiquated structure built in 1917. The gates consist of a series of flashboards that are put in place and manipulated manually. Because the dam is generally operational between mid-March and mid-April, the flashboards are not in place during the early part of the winter-run chinook's upstream migration and about 40 percent of the run should pass the dam prior to March 15. There is a fish ladder at the dam but it is inadequate to facilitate passage of all the salmon that encounter the dam. This excludes some fish from spawning habitat that exists above the dam (U.S. Bureau 1983a). Blockage at the Anderson-Cottonwood Dam is not as severe a problem as blockage at the Red Bluff Dam because suitable spawning habitat exists below this dam. Consequently, the problem has not been fully investigated and the effect of the blockage on the population remains unquantified.

However, seasonal operation of the dam creates another problem. When salmon migrate past the dam before it is put into operation and spawn immediately upstream of the dam, the small reservoir created by the dam when it is put into operation covers the salmon redds. This reduces the flow of aerated water over the eggs and may reduce their survival. The effect of this problem on winter-run chinook also has not been quantified.

A third problem is created by the operational and structural limitations of the dam. The flashboards can be manipulated in flows of 6,000 cubic feet per second (cfs) or less, and they can withstand flows of no more than 12,000 cfs. Because of these limitations, the operations of this dam and Keswick dams are coordinated through an informal agreement between the Bureau and the Anderson Cottonwood Irrigation District. Any time the flash boards have to be manipulated, the Bureau reduces the flow in the river to 6,000 cfs by reducing the releases from Keswick. When releases from Keswick must exceed 12,000 cfs, the Bureau first reduces the flows to 6,000 cfs so the flashboards may be configured appropriately and the flow is increased to the necessary level. These fluctuating flows adversely affect the run by dewatering redds that were constructed at high flows, reducing the flow or aerated water through the redds to inadequate levels, and stranding juvenile fish. Since the winter-run chinook spawning season is encompassed by the irrigation season, it is likely that this problem has an adverse effect on the run.

In 1987 the Bureau and the Irrigation District modified their operations to minimize the need for inseason adjustments to the ACID dam, thereby reducing the magnitude of this problem. In January 1989, the Irrigation District, the State (Departments of Fish and Game and Water Resources), NMFS, and the Bureau of Reclamation met to discuss options for improving the dame. The preferred solution is to redesign and modernize the existing dam with adequate ladders and gates that would eliminate the flow problems, but other alternatives, including relocation of the dam will be considered. In the interim, CDFG is pursuing temporary remedies such as a temporary ladder in the dam to improve passage.

Pollution Pollution also has degraded the spawning habitat of the winter-run chinook. Runoff from inactive mining operations at Iron Mountain Mines in the vicinity of Spring Creek, a tributary to the upper Sacramento, leaches heavy metals which can reach levels lethal to juvenile fish, alevins, and eggs. A debris dam was constructed on Spring Creek in 1963 to collect debris eroded from the mine sites and to control the release of toxic water into the mainstem of the Sacramento River. Under normal conditions, release from Spring Creek Dam are diluted by water made available through the Bureau's operation of the Central Valley Project so that concentrations of heavy metals in the Sacramento remain below toxic levels. During years of heavy precipitation, spills from Spring Creek Reservior result in uncontrolled releases of toxic water. Generally, this occurs in the winter when fall-run chinook alevins are hatching and fry are emerging from the gravel. These are the life stages most sensitive to pollution and large kills of these life stages have been attributed to spills of toxic water. Winter-run chinook adults are subjected to these spills, and, while kills of adult fish have not been reported, sublethal effects such as reduced fecundity are probable.

The Environmental Protection Agency (EPA) has placed the site on its Superfund Priority List; they have completed a Remedial Investigation/Feasibility Study of the problem. EPA has identified a combination of source control, treatment, and water management as the most cost-effective remedial solution. The EPA and the Bureau are cooperating in efforts to resolve the Spring Creek toxicity problem. The EPA is funding these remedial activities through its Superfund Program and serves as the managing agency for the restoration. The Bureau will be responsible for design and construction of the water management components that protect most of the Spring Creek Basin drainage from being contaminated and will reduce the possibility of a spill from Spring Creek Reservoir. The first phase of this plan, a structure to divert the North Fork of Spring Creek away from contaminated areas and around Spring Creek Reservoir, is under construction. This structure will divert up to 40 percent of the runoff from the Spring Creek Drainage and release the uncontaminated water into Keswick Reservoir.

Hydroelectric Projects. The Federal Energy Regulatory Commission (FERC) is considering licensing applications for two hydroelectric projects which, if authorized, would adversely affect the winter-run chinook. These are the Lake Redding Project and the Lake Red Bluff Project, which was recently reactivated by the FERC. If built, these projects would result in loss of winter-run chinook habitat and aggravated fish passage problems. Section 18 of the Federal Power Act (19 U.S.C. 791 *et seq.*) grants NMFS authority to prescribe

standards for fish passage. These standards must be met before the projects can be authorized. These provisions, combined with the FERC's responsibilities under section 7 of the ESA, will ensure no new threats to the winter-run chinook population will be allowed to develop as a result of hydroelectric projects on the upper Sacramento River.

Bank Stabilization. Much of the Sacramento River has been riprapped, leveed, or otherwise channeled to prevent erosion of agricultural lands and contain flood waters. Studies of bank protection projects in the upper Sacramento River have demonstrated that juvenile salmon show a marked preference for non-riprapped areas (Schaffter *et al.* 1983, Michny and Hampton 1984). Therefore, bank stabilization may effect the quality of rearing habitat. The COE and the FWS are cooperating in the investigation of methods to restore riparian habitat on stabilized banks so that the quality of the habitat for rearing fish can be maintained.

2. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Winter-run chinook are probably subjected to a harvest rate that is less than that for the other three races of chinook in the Sacramento River. This generalization is based on two observation. First, the separation in timing of the adult spawning migration from the ocean between the winter-run chinook and the fall-run chinook (the target run for the ocean fishery) is almost couplete. Consequently, winter-run chinook are not available to the ocean fishery for as long as fall-run chinook. This should contribute to a lower harvest rate. Second, winter-run chinook return to the Sacramento River at a younger age and at a smaller size than the other three runs. According to Hallock and Fisher (1985), winter-run chinook mature almost exclusively as 2 and 3-year-old fish. Age composition of a typical run is 25 percent 2-year-olds, 67 percent 3-year-olds, and 8 percent 4-year-olds. Fall-run chinook tend to mature somewhat later than winter-run chinook. Since fall-run Chinook return at an older ager, they are generally larger. This indicates that the winter-run chinook are available to the ocean sport and commercial fisheries for a shorter period of time than the other runs and receive greater protection from the size limits imposed by the Pacific Fishery Management Council (PFMC).

Ocean fishing regulations limit sport caught chinook to 20 inches or greater and commercial caught chinook to 26 inches or greater. Since winter-run chinook return at a smaller size they are more available to the sport fishery than the commercial fishery. This explains why the ocean sport fishery catches 71 percent of the ocean harvest of winter-run chinook and the catch consists of mostly 2-year-old fish. The commercial fishery is responsible for about 29 percent of the ocean catch of winter-run chinook and their catch consists mostly of 3-year-old fish.

Hallock and Fisher (1985) report hook-scarring percentages for chinook that were released in the ocean fishery. Hook scars occur when fish under legal size limits are released alive. Of the fish examined at the trapping facility at Red Bluff Dam, the spring, fall, and late-fall runs experienced 38 percent greater hook-scarring than the winter run. Hook-scarring cannot easily be used to infer harvest rates or even "shaker mortality" (associated with the release of undersized fish), but it does show a reduced interaction between winter-run chinook and the ocean fisheries.

Nearly all data about the time, growth, distribution, and mortality of salmon in the ocean come from tagging experiments at hatcheries using coded wire tages. Because winter-run chinook are a naturally spawning race, there have been no coded wire tags studies on them. However, Hallock and Fisher (1985) report a marking study, conducted in 1969–71, in which juveniles from three brood stocks were seined from the Sacramento River, fin-clipped, and released. Recoveries of the adults from these releases were tabulated and estimates made of age at harvest and harvest rate. Their results confirmed that winter-run chinook mature almost exclusively as 2 and 3-year-olds and produce an estimated catch-to-escapement ratio of 0.53:1.0 and an ocean havest rate of 34.6 percent.

These are likely conservative estimates because a duplicate mark was used unintentionally in other California and Oregon chinook studies during the same period. Consequently, the mark returns in the ocean fishery that were attributed to the Sacramento River winter-run chinook were too high by some unknown amount. Also the harvest rate for winter-run chinook has likely declined since the study was completed, because ocean fishing regulations are currently more restrictive than they were during the early 1970s. The effect of each of these factors is an over estimation of the ocean harvest of winter-run chinook.

Data on inland sport harvest of adult winter-run chinook are scarce: estimates are available from 1968-1973 and 1975. Hallock and Fisher (1985) report data for these years that show Sacramento River sport harvest rates for winter-run chinook averaging 8.5 percent of the in-river harvest.

Hallock and Fisher (1985) Reported that 85 percent of the total catch winter-run chinook from the 1969–71 broods were caught in the ocean and 15 percent were caught in the river. Based on the data discussed above, they estimated the total catch-to-escapement ratio was 0.58.1.0, and the total harvest rate was 38 percent.

The harvest rate of winter-run chinook is substantially below that managed for any other chinook stock on the Pacific coast. The PFMC reports an index of ocean fishery harvest rates south of Point Arena for California Central Valley chinook. The 16-year average for the index is 64 percent. The CDFG (L.B. Boydstun, CDFG, personal communication) estimates that the total harvest rate for the stocks (including areas north of Point Arena) is about 30 percent greater than that reported in the index or about 82 percent. This represents a catch-to-escapement ratio greater than 4:1 In Washington State where, in addition to conservation management, the ocean fishery is restricted to achieve court-ordered allocations of chinook to inside Indian fisheries, the ocean catch-to-escapement ratios are managed between 2;1 and 1:1 (J. Coon, PFMC staff, Personal communication).

NMFS believes that even a marginally healthy stock should be able to maintain stable population levels and even growth at the moderate harvest levels to which winter-run chinook have been subjected, and that harvest have not been instrumental in the decline of winter-run chinook in the Sacramento River. Nevertheless, in 1987 the CDFG implemented seasonal closures in the upper Sacramento and a quota of 175 fish and began monitoring the catch. The estimated take was 28 fish in 1987 and 91 fish in 1988. After the poor return of winter-run chinook in 1989, the CDFG has implemented even more restrictive sport fishing measures in the river and the ocean adjacent to the Golden Gate. NMFS agrees that these measures are prudent and necessary to maximize the probability that the adults that survive and return to the spawning grounds have the opportunity to spawn.

In the proposed rule, NMFS include and exception to the prohibition on taking for fishermen that catch winter-run chinook while fishing legally under State or Federal Fishing regulations. NMFS has reconsidered the appropriateness of this exception given

other mechanisms in the ESA to provide for an incidental take. While there is sufficient information to conclude that the commercial and recreational salmon fisheries were not substantial contributors to the decline of the winter-run chinook, the effect of take in the fisheries on the recovery of the run needs to be evaluated. The PFMC is currently consulting with NMFS on the fishery management plan which includes fishing in state waters. The salmon fishery is closed until February 1991, and, by that time, the Section 7 consultation should be completed.

If the results of the consultation indicate that the level of incidental taking will not jeopardize the continued existence of the species, NMFS can provide the PFMC with an incidental take statement that will allow fishermen to catch winter-run chinook incidental to fishing for other stocks of salmon. Therefore, NMFS has deleted the exception to the prohibition on taking.

Winter-run chinook are also captured for scientific purposes. The FWS captures adults for radio tagging to monitor the effectiveness of raising the gates at Red Bluff Diversion Dam on upstream migration of adults and to provide brood stock for an experimental enhancement project. Juvenile winter-run chinook are captured in experiments to determine where winter-run fry rear, when they migrate to sea, and monitor the impacts of diversions. These studies are expected to continue under research permits which have been excepted from the prohibition on taking. These studies will likely be identified as essential components of a recovery plan and would not constitute over use of the species.

3. Disease or Predation

The magnitude and extent of predation throughout the Sacramento River has not been determined. However, observations indicate substantial predation may occur at certain locations. For example, losses of fall-run salmon to predation can be significant at Red Bluff Dam (Vogel *et al.* 1988 and Hall 1977 cited in Garcia 1989). In addition, there is a potential for high levels of predation at the Glenn-Colusa Irrigation District's diversion facility near Hamilton City where squawfish and striped bass have been observed preying on salmonids salvaged from Sacramento-San Joaquin Delta diversions. Garcia (1989) reviewed the impacts of squawfish predation on juvenile chinook salmon at Red Bluff Dam and other locations in the Sacramento River. Although the potential for a substantial loss of winter-run chinook juveniles exists at the dam, Garcia concluded that because information on the timing of the winter-run chinook downstream migration and the biology of the squawfish was lacking, impacts could not be quantified. Even so, raising the gates at Red Bluff Dam from December through March likely has a beneficial impact on the problem of predation at the dam. When the gates are raised, there is no barrier to movements of squawfish and they should not concentrate below the dam. Also, disturbance to the normal flow of the river is minimal so that downstream migrating juvenile salmon should not become disoriented by turbulence thus making them less susceptible to predation.

NMFS has funded an experimental fishery for squawfish in the vicinity of Red Bluff Dam to assess the feasibility of establishing a fishery as a means of squawfish population control. Although squawfish may be catchable in commercial quantities and development of the fishery would likely reduce impacts of predation, recent analysis of squawfish flesh has shown dioxin contamination from paper mills on tributary streams. Consequently, squawfish may not be sold for human consumption.

4. The Inadequacy of Existing Regulatory Mechanisms

Relevant laws that comprise the existing regulatory mechanisms were listed in the Notice of Determination (52 FR 6041, Feb. 27, 1987) and described as providing adequate mechanisms for restoring the winter-run chinook in the Sacramento River. However, the decline in the size of the run since the late 1960s indicates that these regulatory mechanisms were not applied effectively with respect to the winter-run. NMFS now believes the ESA is needed to augment and enhance the effectiveness of the existing regulatory mechanisms.

5. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

In addition to the Red Bluff Dam and the Tehama-Colusa Canal (discussed under criterion 1), there are large diversions of water at the Glen-Colusa Irrigation District's diversion facility and at the Sacramento-San Joaquin Delta pumping plants that likely entrain juvenile salmon as well. There are also numerous small, unscreened diversions on the Sacramento River. Presumably, the cumulative effect of entrainment at these diversions and delays in outmigration of smolts caused by reduced flows has an effect on the winter-run chinook. This effect has not been quantified because of uncertainties of where juvenile winter-run chinook rear in the River and when they migrate to the sea. Presently, the fisheries agencies presume that winter-run chinook fry seldom get to the Delta during the fall rearing period unless high flows are present in the late fall to early winter period. This suggests that the fry rear between Red Bluff and Sacramento, since most young winter-run chinook appear to pass Red Bluff by mid-fall. During these early rearing stages, winter-run chinook fry are susceptible to entrainment because they are likely using habitat near shore.

Based on FWS and CDFG sampling, winter-run smolts appear to travel through the delta between December and April (with the extremes of the seaward migration being September and May) (Stevens 1989). Should exports of water from the delta increase during this period and diversions to the central delta from the Sacramento River remain unscreened, the winter-run chinook smolts would be more vulnerable to delta losses.

The impact of these diversions needs to be quantified and remedial measures need to be pursued and implemented. Regulations under section 4 and consultations under section 7 of the ESA are available to mitigate the affects of diversions.

Natural factors of greatest concern are periodic droughts and the oceanographic phenomenon known as El Niño. The 1976–77 drought severely reduced the size of two consecutive cohorts leaving the 1978 brood as the only large spawning cohort (Table 1). The strong El Niño event during 1982–83 contributed to the decline of the last strong cohort. The only measure to mitigate the profound impact of a strong El Niño is hatchery rearing to increase smolt production from the returning spawners that survive the poor ocean conditions.

Drought conditions, such as those that existed during the past four dry years in Northern California, most directly threaten the winter-run chinook by causing elevated water temperatures on the spawning grounds. This problem was resolved using interim measures in 1987, 1988, 1989, and 1990. However, a permanent temperature control facility at Shasta Dam is needed to solve this problem for the long term.

Conclusion. The 1989 and 1990 runs were significantly reduced, and if such poor returns persist, NMFS believes the population will begin losing genetic diversity through genetic drift and inbreeding. Further, a small population is vulnerable to major losses from random environmental events such as

droughts. Based on the size of the 1989 and 1990 runs and the continuing threats to the population, NMFS believes that the winter-run of chinook salmon in the Sacramento River is likely to become an endangered species in the foreseeable future. Therefore, NMFS concludes that the run should be listed as threatened under the ESA and that the various agencies affecting the run and its habitat should continue to ensure that conditions are maintained in the river for maximum production from the fish that return to spawn annually.

Available Conservation Measures. Conservation measures provided to species that are listed as threatened under the ESA include recognition, recovery actions, implementation of certain protective measures, and designation and protection of critical habitat. Some of the most useful protective measures are contained in section 7 of the ESA. Pursuant to section 7, all Federal agencies are required to conduct conservation programs for threatened and endangered species and to consult with NMFS regarding the potential effects of their actions on species under NMFS' jurisdiction.

Pursuant to the emergency listing on August 4, 1989, NMFS has initiated section 7 consultations with the Federal agencies whose actions affect the continued existence of the winter-run. Among the agencies with which NMFS is or will be consulting are the Bureau on various aspects of the Central Valley Project, the U.S. Army Corps of Engineers on gravel mining operations and flood control projects, and the Pacific Fishery Management Council on the effect of sport and commercial fishing.

NMFS is charged with implementing the Magnuson Fishery Conservation and Management Act (Magnuson Act) and publishes and administers regulations to implement fishery management plans developed by Regional Fishery Management Councils. Generally, interjurisdictional fisheries or fisheries that occur primarily in Federal waters are candidates for management under the Magnuson Act. The Pacific Fishery Management Council manages salmon fisheries off the coasts of Washington, Oregon, and California. The Council manages the fishery generally by consensus among the Federal and state fishery management agencies so that state regulations in state waters are consistent with Federal regulations in Federal waters. NMFS expects that through these consultations under the respective state and Federal laws, a State/Federal regulatory regime will be developed that will ensure that the winter-run chinook population is not adversely affected by sport or commercial fishing.

Although a direct take of winter-run chinook salmon by sport or commercial fishermen will not be allowed, an incidental take of a listed species may be allowed through the ESA section 7 consultation process or the incidental take provisions of section 10.

Also, NMFS will continue coordination with the State of California in managing the winter-run chinook and its habitat. The state's Endangered Species Act contains a provision for interagency consultation among state agencies similar to section 7 of the ESA. The CDFG will be reviewing impacts of state actions on the winter-run chinook to see if there are actions beyond the Ten-point Restoration Plan that can be taken. They will be reviewing the state's water project for opportunities for improved water conservation as well as their own sport and commercial fishing regulations to ensure those fisheries will not jeopardize the continued existence of winter-run chinook.

NMFS has appointed a Recovery Team to develop a recovery plan for winter-run chinook. The first meeting of the team was held on November 28, 1989. The team is reviewing the ten-point restoration plan as a basis for generating a more comprehensive recovery plan.

Critical Habitat

Section 4(a)(3)(A) of the ESA contains the requirement that, to the extent that it is prudent and determinable, critical habitat be designated concurrently with the listing of a species as an endangered or a threatened species. However, unlike designating a species as threatened or endangered, NMFS is required to consider economic impacts when designating critical habitat, and is authorized to exclude any area from the designation if it is determined that the benefits of such an exclusion outweigh the benefits of including the area as critical habitat, and the exclusion will not result in the extinction of the species.

In the emergency rules, NMFS designated the portion of the Sacramento River between Red Bluff Diversion Dam, Tehama County (River Mile 243), and Keswick Dam, Shasta County (River Mile 302), including the adjacent riparian zones, the water in the river, and the river bottom as critical habitat for winter-run chinook. The economic impact analysis was cursory because the designation was to last only 240 days. A more rigorous analysis of the economic impacts is being conducted to ensure compliance with the requirement of section 4(b)(2). Since this analysis has not been completed, NMFS has not yet determined the extent of critical habitat. However, within 1 year of this final rule, NMFS will propose in a separate rulemaking the designation of critical habitat. When analyzing the economic impacts, NMFS will evaluate other alternatives for critical habitat including habitat in which winter-run chinook has spawned successfully during exceptionally good water years.

NMFS believes that deferring the designation of critical habitat should not be detrimental to the conservation of the run because section 7 consultations conducted by NMFS under the ESA will identify any Federal (including Federally permitted or funded) actions that harm the species including modifying or destroying its habitat. The prohibitions on taking the species will continue to be in effect, and actions likely to adversely modify or destroy habitat could be considered a take, and will be addressed by NMFS.

Classification

The 1982 amendments to the ESA (Pub. L. 97-304), in section 4(b)(1)(A), restricted the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 657 F. 2d 829 (6th cir., 1981), NMFS has categorically excluded all endangered species listing from environmental assessment requirements of the National Environmental Policy Act (48 FR 4413, February 6, 1984).

As noted in the Conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act are not applicable to the listing process.

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List of Subjects in 50 CFR Part 227

Threatened fish and wildlife.

Dated: October 30, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

For the reasons described in the preamble, 50 CFR part 227 is amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.4, paragraph (e) is added to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(e) Sacramento River winter-run chinook salmon (*Oncorhynchus tschawytscha*).

Subpart C—Threatened Marine and Anadromous Fish

3. The title of subpart C is revised to read as set forth above.

4. Under subpart C, a new § 227.21 is added to read as follows:

§ 227.21 Sacramento River winter-run chinook salmon.

(a) *Prohibitions.* The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to the Sacramento River winter-run chinook salmon except as provided in paragraph (b) of this section.

(b) *Exception.* The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under paragraph (a) of this section in accordance with and subject to the same provisions that apply to endangered species under Part 222—Subpart C—Endangered Fish and Wildlife Permits.

[FR Doc. 90-26102 Filed 10-31-90; 4:58 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 214
Monday, November 5, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-215-AD]

Airworthiness Directives; Boeing Model 737-100, 737-200, and 737-200C Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to Boeing Model 737-100, 737-200 and 737-200C series airplanes, which currently requires periodic inspections for missing, worn, or damaged aft engine mount cone bolts, nuts, and secondary supports, and replacement, if necessary. Failure of these components of the aft engine mount assembly could result in an engine separating from the wing. This proposed action would allow certain worn secondary suport load limiter through-bolts to continue to be used on the airplane as long as more frequent inspections of the aft mount cone bolt indicator are performed. This proposal is prompted by inadequate stocks of the required load limiter through-bolt.

DATES: Comments must be received no later than December 24, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-215-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Seattle Aircraft Certificate Office, Airframe Branch, ANM-120S; telephone (206) 227-2775. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-215-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On January 19, 1990, the FAA issued AD 90-03-16, Amendment 39-6497 (55 FR 3041, January 30, 1990), to require either repetitive ultrasonic inspections for cracks of the aft engine mount cone bolt, and replacement, if necessary; or a repetitive visual inspection for missing nuts, worn bolts, or disbonded honeycomb core of the improved secondary support, and repair, if necessary. That action was prompted by reports from several operators of Boeing Model 737 series airplanes who found the aft engine mount improved secondary support installation (required by a previous AD) to have missing nuts, worn bolts, and disbonded honeycomb structure. This condition, if not corrected, could result in an engine separating from the wing.

Since issuance of that AD, recent reports from the manufacturer indicate that spare load limiter through-bolts are scarce and that an alternative schedule for inspection of the aft cone bolt is needed until replacement of these bolts can be accomplished, the FAA has reviewed the available data and has determined that secondary support load limiter through-bolts that are worn within certain limits may continue to be used on the airplane if the currently required repetitive inspections of the aft mount cone bolt indicator and torque checks of the cone bolt are conducted at more frequent intervals. The FAA has determined that safety will not be compromised if these more frequent inspections are performed.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-71A1212, dated December 22,1987, which describes procedures for ultrasonic and magnetic particle inspections of the aft engine mount cone bolts on Model 737 series airplanes, and replacement, if necessary.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede Ad 90-03-16 with a new AD that would require more frequent inspection so the aft mount cone bolt indicator for proper alignment, and replacement if necessary; and visual inspections of the aft mount cone bolt improved secondary supports, and replacement of any missing nuts, disbonded honeycomb cores, and load limiter through-bolts worn beyond a certain limit. If replacement hardware is not immediately available, this action would also require repetitive ultrasonic inspections for cracks in the engine aft mount cone bolt, and more frequent torque checks of the cone bolt, until replacement can be accomplished. Certain of these inspections would be required to be accomplished in accordance with the service bulletin previously described.

This is considered to be interim action until a new terminating modification is designed and available, at which time the FAA may consider further rulemaking.

There are approximately 1,144 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 432 airplanes of U.S. registry would be affected by this AD and that it would take approximately 0.1 manhour per airplane to accomplish the additional required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total additional cost impact of the AD on U.S. operators is estimated to be $1,728.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6497 (55 FR 3041, January 30, 1990), AD 90-03-16, with the following new airworthiness directive:

Boeing: Applies to Model 737-100, -200, and -200C series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent engine separation as a result of the improved secondary support not sustaining engine loads if the aft engine mount cone bolt were to fail, accomplish the following:

A. Within the next 45 landings after the effective date of this AD, accomplish the following:

1. Inspect the aft mount cone bolt indicator for proper alignment. Improper alignment indicates a broken aft cone bolt. Broken cone bolts must be replaced, prior to further flight, with bolts that have been inspected in accordance with Boeing Alert Service Bulletin 737-71A1212, dated December 22, 1987, using magnetic particle inspection techniques. Repeat the inspection of the indicator at intervals thereafter not to exceed 45 landings.

2. Inspect the aft mount cone bolt improved secondary support for missing nuts, evidence of bolt wear, and disbonded honeycomb core in accordance with the instructions below. Missing nuts, worn bolts, or disbonded honeycomb core must be replaced, prior to further flight, with new or repaired identical parts. Repeat the inspection at intervals not to exceed 300 landings.

a. Visually inspect the self-locking nut on the upper end of the load limiter through-bolt to verify that at least two complete threads protrude beyond the nut. If the nut is missing or backed off, prior to further flight, replace the nut.

b. Visually inspect the load limiter through-bolt for grooves or wear patterns at the lower edge of the retainer. Ensure that groove or wear depth does not exceed .022 inch. Replace any bolt which exceeds this limit prior to further flight.

c. Visually inspect the rectangular shaped honeycomb core segment of the load limiter for disbonding. The core is bonded to the end place at the lower end and to the top of the housing at the upper end. Replace the load limiter, prior to further flight, if the core is disbonded at either end.

B. Perform the following inspections if discrepant hardware is found during the inspections required by paragraph A.2. of this AD, and replacement hardware is not immediately available:

1. Prior to further flight, and thereafter at intervals not to exceed 300 landings, inspect for cracks in the aft engine mount cone bolt, in accordance with Boeing Alert Service Bulletin 737-71A1212, dated December 22, 1987, using ultrasonic inspection techniques. Replace cracked cone bolts, prior to further flight, with bolts that have been inspected in accordance with the above service bulletin, using magnetic particle inspection techniques. Replacement (newly installed) cone bolts must be ultrasonically inspected for internal cracking in accordance with the provisions of this paragraph at intervals not to exceed 300 landings.

2. At the next ultrasonic inspection, as required by paragraph B.1. of this AD, unless previously accomplished within 150 to 300 landings after cone bolt installation, accomplish a torque check to verify that the cone bolt is torqued to the proper torque limit specified in the appropriate Boeing maintenance manual. This check is to be accomplished without loosening the bolt. After every cone bolt installation, accomplish the torque check procedure required by this paragraph, between 150 landings and 300 landings following installation.

a. If the cone bolt torque is below one-half the specified torque, remove the cone bolt and replace it with a serviceable bolt.

b. If the cone bolt torque is equal to, or above one-half the specified torque, but below the specified torque, re-torque to the specified level and re-check the torque within the next 150 to 300 landings. If, at that time, the torque is below 90 percent of the specified torque, replace the cone bolt with a serviceable bolt.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Northwest Mountain Region.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

Issued in Renton, Washington, on October 23, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26092 Filed 11-2-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-212-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to Boeing Model 757 series airplanes, which currently requires modification; one-time and periodic inspections; and repair, if necessary, of passenger doors to ensure proper operation of the emergency power assist door opening system. That action was prompted by reports of fractured emergency power

assist triggers. This condition, if not corrected, could result in an inoperative emergency power assist door opening system during an emergency evacuation. This proposed action would require additional modification; terminating inspections; and repair, if necessary, of passenger door emergency power assist opening system.

DATES: Comments must be received no later than December 24, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-212-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Pliny Brestel, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2783. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-212-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On November 20, 1989, the FAA issued AD 89-25-09, Amendment 39-6407 (54 FR 49964, December 4, 1989), to require modification; one-time and periodic inspections; and repair, if necessary, of the power assist door opening system of passenger doors on Boeing Model 757 series airplanes. That action was prompted by reports of fractured emergency power assist triggers. This condition, if not corrected, could result in an inoperative emergency power assist door opening system during an emergency evacuation.

Since issuance of that AD, the manufacturer has developed a modification that provides terminating action for required periodic inspections. This terminating modification consists of the installation of lockout links and a new trigger guard, and modification of the trigger spring cylinder end cap, along with a functional inspection of adjacent assemblies. The FAA has reviewed and approved Boeing Service Bulletin 757-52-0042, Revision 1, dated April 26, 1990, which describes procedures for inspection repair, and modification of the passenger door emergency power assist trigger mechanism.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 89-25-09 with a new airworthiness directive that would also require eventual installation of the terminating modification of the passenger door emergency power assist trigger mechanism, with follow-on inspection and rework, if necessary, in accordance with the service bulletin previously described.

The FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with that policy decision.

There are approximately 254 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 143 airplanes of U.S. registry would be affected by this AD, that it would take approximately 51 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $291,720.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6407 (54 FR 49964, December 4, 1989), AD 89-25-09, with the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, as listed in Boeing Service Bulletin 757-52-0042, Revision 1, dated April 26, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure passenger door power assist opening when required for emergency opening, accomplish the following:

A. For airplanes identified as Group 1 in Boeing Service Bulletin 757-52-0042 dated March 30, 1989, or Revision 1, dated April 26, 1990: Within the next 350 flight hours after January 6, 1990 (the effective date of Amendment 39-6407, AD 89-25-09), accomplish the following in accordance with section III, part II, of the Service Bulletin. Any interference or improper clearance detected as a result of the required inspections must be repaired prior to further flight, in accordance with the Service Bulletin.

1. Modify the forward right-hand door.
2. Inspect all doors for evidence of interference between the trigger support housing and the upper hinge arm.
3. Inspect all doors for proper clearance between the power assist trigger and the door and fuselage skin.

B. For all airplanes listed in Boeing Service Bulletin 757-52-0042, dated March 30, 1989, or Revision 1, dated April 26, 1990: Within the next 350 flight hours after January 6, 1990 (the effective date of Amendment 39-6407, AD 89-25-09), and thereafter at intervals not to exceed 6 months, accomplish the following inspection in accordance with section III, part I, of the Service Bulletin. Any damage or improper adjustment or operation detected as a result of the inspections must be repaired prior to further flight, in accordance with the Service Bulletin.

1. Inspect the forward doors for proper adjustment of the lockout mechanism of the door emergency power assist system.
2. Inspect all passenger door emergency power assist triggers for wear marks, damage, or fracture.
3. Inspect trigger spring cylinders for proper operation.
4. Inspect roller arms for damage.

C. For all airplanes identified in Boeing Service Bulletin 757-52-0042, Revision 1, dated April 26, 1990: Within the next 18 months after the effective date of this AD, accomplish the following in accordance with section III, part III, of the Service Bulletin. Any damage, defects, improper adjustments, or improper operation detected as a result of the inspections required by this paragraph must be repaired prior to further flight, in accordance with the Service Bulletin. Accomplishment of the actions required by this paragraph constitutes terminating action for the periodic inspections required by paragraph B. of this AD.

1. On forward doors, install the lockout link and inspect the lockout mechanism for proper adjustment.
2. On all passenger doors, install the new trigger guard and inspect the emergency power assist triggers for wear marks, damage, or fracture.
3. On all passenger doors, modify the trigger spring cylinder end cap and inspect the spring cylinder for proper operation.
4. On all passenger doors, inspect roller arms for damage.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on October 23, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26093 Filed 11-2-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-ANE-19]

Airworthiness Directives; EROS, Quick Donning Mask-Regulators, MA 10-[ ]-[ ], MB 10-[ ]-[ ], and MC 10-[ ]-[ ]

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would require the inspection and modification of the EROS Company Quick Donning Oxygen Mask-Regulators, Models MA10-[ ]-[ ], MB10-[ ]-[ ], and MC10-[ ]-[ ]. The proposal is prompted by reports of oxygen mask shells found separated from their regulator valves. This condition, if not corrected, could result in incapacitation of the crew member using the mask and impair aircraft flight safety.

DATES: Comments must be received on or before December 5, 1990.

ADDRESSES: Comments on the proposal may be mailed in duplicate to Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 90-ANE-19, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to room 311, at the above address.

Comments must be marked: Docket No. 90-ANE-19.

Comments may be inspected at the above location in room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service bulletin may be obtained from EROS, Equipments Respiratoires a Oxygene de Secours, P.O. Box 10, 78370 Plaisir, France, or may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Francis X. Walsh, Systems and Propulsion Branch, ANE-153, Boston Aircraft Certification Office, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7088.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before any final action is taken on the proposed rule. The proposals contained in this notice maybe changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 90-ANE-19. The postcard will be date/time stamped and returned to the commneter.

Discussion

The FAA has determined that the EROS oxygen masks can separate from their valve regulators, and that this potential mask regulator separation could affect the safety of the operation of the aircraft because it renders the oxygen masks unusable when needed. Oxygen valve regulators had separated from the mask shells on three occasions while testing the oxygen

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masks on a Boeing Model 747–400 airplane for quick donning capability. The locking tab device for the mask face piece was found inadequate to retain the regulator in place. Also, the FAA has received a report that the crew oxygen masks were found defective approximately 5 percent to 10 percent of the time upon removal from the cockpit storage containers in Boeing Model 737–300 airplanes. These defective oxygen masks were reported to have tested properly in the storage containers prior to their removal; however, the masks separated from the regulators upon removal from the containers.

Since this condition is likely to exist or develop on other aircraft that have these mask-regulators installed, the proposed AD would require an inspection and a replacement of these crew oxygen masks.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves between 3,000 and 4,000 crew masks, and the approximate cost would be $18 to $20 per mask replacement. Based on these figures, the total cost is estimated to be between $54,000 and $80,000. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1323; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Equipments Respiratoires a Oxygene de Secours (EROS): Applies to EROS Crew Mask-Regulators Models MA10-[ ]-[ ], MB10-[ ]-[ ], and MC10-[ ]-[ ] series equipped with plastic mask lock part Number (P/N) 412571, installed on, but not limited to, Boeing 737–300 and 747–400 aircraft.

Compliance is required as follows:

To prevent crew member incapacitation from the use of damaged crew masks accomplish the following:

(a) Within the next 30 days after the effective date of this AD conduct a visual inspection of all currently installed EROS Crew Mask-Regulators for damaged or broken mask locks. Replace any locks found damaged or broken with serviceable mask locks.

(b) Within the next twelve calendar months after the effective date of this AD, unless already accomplished, remove the existing plastic mask lock P/N 412571 from the crew mask, and replace it with a new aluminum alloy metallic mask lock P/N 416611.

Note: EROS Service Bulletin No. MA/B/C 10–35–29, Revision 1, dated March 8, 1988, contains replacement guidance.

(c) Alternatively, upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, may approve an equivalent means of compliance or an adjustment of compliance schedule specified in this AD which provides an equivalent level of safety.

Issued in Burlington, Massachusetts, on October 11, 1990.

Jack A. Sain,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90–26094 Filed 11–2–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–ANE–23]

Airworthiness Directives; General Electric (GE) CT58–140–1 Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to GE CT58–140–1 turboshaft engines, which would require a one-time removal and inspection of certain gas generator (GG) turbine rotor parts and power turbine wheels. This proposal is prompted by the report of inadvertent shotpeening of those parts during overhaul by H & S Aviation, Division 3 (Formerly Hants & Sussex), Portsmouth, England, between March 14, 1989, and August 21, 1989. This condition, if not corrected, could result in an uncontained engine failure.

DATES: Comments must be received no later than December 5, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Airworthiness Rules Docket No. 90–ANE–23, 12 New England Executive Park, Burlington, Massachusetts 01803

The applicable service bulletin may be obtained from GE, 1000 Western Avenue, Lynn, Massachusetts 01910, or may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Karen M. Grant, Engine Certification Branch, ANE–142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7087.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 90–ANA–23." The postcard will be date/time stamped and returned to the commenter.

Discussion

The FAA has determined that during a walnut shell cleaning process at H & S Aviation, Portsmouth, England, between March 14, 1989, and August 21, 1989, a number of GE CT58–140–1 turboshaft engine GG rotor turbine parts and power turbine wheels may have been inadvertently shotpeened by walnut shells contaminated with steel shot. This condition, if not corrected, could result in failure of those parts due to reduced low cycle fatigue life and subsequent uncontained engine failure.

Since this condition is likely to exist or develop on other engines of the same type design, an AD is proposed which would require a one-time removal, inspection, and reidentification of all suspect GG turbine rotor parts and power turbine wheels on CT58–140–1 turboshaft engines, in accordance with the compliance section of this AD.

There are approximately 15 parts on 5 engines of the affected design in the worldwide fleet. H & S Aviation will provide overhaul shop labor to remove, inspect and reidentify unaffected parts, at no cost to the operator. H & S Aviation will replace those parts which were inadvertently shotpeened, at no extra charge to the operator.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[Amended]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

General Electric Company: Applies to General Electric Company (GE) CT58–140–1 turboshaft engines overhauled by H & S Aviation, Division 3 (Formerly Hants and Sussex), Portsmouth, England, between March 14, 1989, and August 21, 1989. The affected parts are identified by serial number (S/N) and installed in engines with S/N's, as follows:

Engine S/N	Part name	Part S/N
295235	Stage 1 forward cooling plate.	BJWTMS 7732
	Stage 1 aft cooling plate.	BJWTMS 6649
	Stage 2 forward cooling plate.	ASVA 3663
	Stage 2 aft cooling plate.	ASVA 0125
	Power turbine (PT) wheel & shaft.	GAT 59510
295206	Stage 1 turbine wheel.	GATBK 483
	Stage 2 turbine wheel.	GATFE 352
280326	Stage 2 turbine wheel.	GATL 2835
	PT wheel and shaft	GAT 59722
280218	PT wheel and shaft	GAT 59692
280294	Stage 1 forward cooling plate.	BJWTMS 7663
	Stage 1 aft cooling plate.	BJWTMS 5778
	Stage 2 forward cooling plate.	BJWTMS 5951
	Stage 2 aft cooling plate.	BJWTMS 7356
	Stage 2 turbine wheel.	GATEL 092

Compliance is required as indicated, unless already accomplished.

To prevent failure of suspect gas generator (GG) turbine rotor parts and power turbine (PT) wheels, which may have a reduced low cycle fatigue life due to inadvertent shotpeening, which could result in an uncontained engine failure, remove and inspect all surfaces of GG turbine rotor parts and PT wheels identified above by 20x microscope as follows:

(a) Part S/N's BJWTMS 7732, BJWTMS 6649, ASVA 3663, ASVA 0125, and GAT 59510, prior to accumulating 5,853 cycles since new (SCN).

(b) Part S/N's GATBK 483, and GATFE 352, prior to accumulating 5,249 CSN.

(c) Part S/N GATL 2835, prior to accumulating 10,792 CSN.

(d) Part S/N GAT 59722, prior to accumulating 10,856 CSN.

(e) Part S/N GAT 59692, prior to accumulating 9,680 CSN.

(f) Part S/N's BJWTMS 7663, BJWTMS 5778, BJWTMS 5951, BJWTMS 7356, and GATEL 092, prior to accumulating 5,696 CSN

(g) Remove from service parts found with evidence of shotpeening and replace with a serviceable part. Reidentify parts found with no evidence of shotpeening prior to return to service.

Note: GE Alert Service Bulletin CT58 A72–173, contains information in reference to paragraphs (a) through (g) above.

All persons affected by this directive who have not already received the appropriate alert service bulletin from the manufacturer may obtain copies upon request to GE Aircraft Engines, 1000 Western Avenue, Lynn, Massachusetts 01910. These documents may be examined at the Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on October 16, 1990.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90–26095 Filed 11–2–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–4–73]

RIN 1545–AC37

One Class of Stock Requirement

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed

rulemaking (PS–4–73), which was published Friday, October 5, 1990, (55 FR 40870). The proposed regulations relate to the requirement that a small business corporation have only one class of stock.

FOR FURTHER INFORMATION CONTACT: David R. Haglund (202) 343–8459 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections contains amendments to the Income Tax Regulations (26 CFR part 1) under section 1361 of the Internal Revenue Code. These amendments are proposed to implement section 1361(b)(1)(D) and (c) (4) and (5) as added by the Subchapter S Revision Act of 1982.

Need for Correction

As published, the proposed regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (PS–4–73) which was the subject of FR Doc. 90–23533, is corrected as follows:

Paragraph 1. In the preamble, page 40872, column 1, second paragraph, line eleven, line twenty-one, and line twenty-seven, remove the date "January 3, 1991", and add the language "[Insert date that is 90 days after the publication of the final regulations in the **Federal Register**]" in each location.

§ 1.1361–1 [Corrected]

Par. 2. In § 1.1361–1, page 40874, column 3, paragraph (l)(5) under Example 5, line nine, the word "field" is corrected to read "filed".

§ 1.1361–1 [Corrected]

Par. 3 In § 1.1361–1, page 40875, column 1, paragraph (l)(7), line twelve, line twenty-one, and line twenty-seven, remove the date "January 3, 1991", and add the language "[Insert date that is 90 days after the publication of the final regulations in the **Federal Register**]" in each location.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90–26022 Filed 11–2–90; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3857–6]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule; withdrawal.

SUMMARY: On June 28, 1990, (55 FR 26470), USEPA proposed to disapprove revisions to the Minnesota State Implementation Plan (SIP) concerning a Sulfur Dioxide Plan for portions of Dakota County. This action was based on a revision request submitted by Minnesota on August 19, 1987. On July 20, 1990, the State withdrew this submittal from further Federal rulemaking. Therefore, today USEPA is withdrawing its June 29, 1990, proposed action on the revision.

DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, Minnesota Regulatory Specialist, (312) 353–3849.

Authority: 42 U.S.C. 7401–7642.

Dated: October 22, 1990.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 90–26116 Filed 11–2–90; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1094–AA40

White Earth Reservation Land Settlement Act of 1985

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Hearings and Appeals is proposing to add new regulations for determining, through intestate succession, the heirs of those persons who died entitled to receive compensation pursuant to section 8(c) of the White Earth Reservation Land Settlement Act of 1985, Public Law 99–264 (100 Stat. 61), as amended by Public Law 100–153 (101 Stat. 886) and Public Law 100–212 (101 Stat. 1433). The proposed regulations cite the authority and enunciate the policy and procedures to be followed in making such heirship determinations. The time-sensitive requirements of the White Earth Reservation Land Settlement Act of 1985 also make it necessary and desirable for the Secretary to promulgate regulations which will afford efficient and expeditious determination while at the same time maintaining the existing system integrity.

DATES: Comments should be received on or before December 5, 1990.

ADDRESSES: Written comments should be mailed or delivered to James L. Byrnes, Acting Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Howard Piepenbrink, Chief, Branch of Titles and Research, Bureau of Indian Affairs, U.S. Department of the Interior, 18th and C Streets, NW, Washington, DC 20245; Telephone (202) 208–5473 (not toll free).

SUPPLEMENTARY INFORMATION: The White Earth Reservation Land Settlement Act of 1985, Public Law 99–264, as amended by Public Law 100–153 and Public Law 100–212, provides a method of resolving disputes concerning the title to certain allotments of land on the White Earth Chippewa Indian Reservation in Minnesota. The Act defines circumstances by which title to an allotment may have been lost through a questionable tax forfeiture, sale, mortgage or other taking or transfer during the applicable trust period. The Act directs the Secretary of the Interior to (1) identify the allotments or interests therein which were lost under such circumstances, (2) determine the individuals entitled to compensation for the loss of such allotments or interests therein, (3) ascertain the amount of the compensation to which each such individual is entitled, and (4) pay them such amounts plus interest.

Pursuant to section 8(c) of the Act, it is incumbent upon the Secretary to establish the process whereby the compensation is to be distributed. Writing on behalf of the White Earth Reservation Business Committee on May 20, 1986, the Chairman of that Committee asked that the Office of Hearings and Appeals be made responsible and accountable for determining the heirs of those persons who died entitled to receive compensation under the terms of the Act. This position has the support of the Bureau of Indian Affairs.

At present, there are no general or specific regulations governing such determinations. This proposal would add new regulations §§ 4.350 through 4.357, within subpart D of part 4, title 43 of the Code of Federal Regulations, to

set forth the authority, policy, and procedures to be followed in determining allowable compensation pursuant to the White Earth Reservation Land Settlement Act of 1985, as amended. Because the compensation authorized by the White Earth Reservation Land Settlement Act of 1985 is to be paid to all entitled persons, including non-Indians and non-citizens where they are found entitled, and because such compensation is not trust property, existing §§ 4.203 through 4.282, subpart D of title 43 of the Code of Federal Regulations, are not applicable to these proceedings.

Following is a discussion of the proposed rules and the reasons for each of them.

Section 4.350(a). This paragraph sets forth the authority for the proposed rules. Section 8(c) of the White Earth Reservation Land Settlement Act of 1985, Public Law 99–264 (100 Stat. 61), requires the Secretary of the Interior to proceed to make such heirship determinations as are necessary in order to determine who should receive compensation under the Act. Since no procedures currently exist which can be utilized to accomplish this end, it is necessary to establish such a process. The first amendment to the Act, Public Law 100–153 (101 Stat. 886), amended section 3(1) of the Act to include within the definition of "heir" one who is determined "by the application of the inheritance laws of Minnesota in effect of March 26, 1986, to be entitled to receive compensation payable under section 8." The use of the phrase "inheritance laws," in contrast with the use of the phrase "testate or intestate succession" as used earlier in the amendment, has been interpreted by the Office of the Solicitor, U.S. Department of the Interior, to limit the process for determining heirs to that of intestate succession only, thus dictating the inclusion of that phrase in this subsection.

Section 4.350(b). This paragraph designates the appropriate official within the Office of Hearings and Appeals who shall render the decision in each case. Also reiterated is the limitation on the applicable law to the inheritance laws of the State of Minnesota which were in effect on March 26, 1986, as is indicated by the first amendment to the White Earth Reservation Land Settlement Act of 1985, Public Law 99–264 (100 Stat. 61), which amendment was included within Public Law 100–153 (101 Stat. 886). The regulation also acknowledges the applicability of existing heirship determinations which meet the standards of section 5(a) and 5(b) of the Act, as amended, which include heirship determinations rendered by the courts of the State of Minnesota which had been filed with the county recorders, registrars of titles, or probate courts of Becker, Mahnomen, or Clearwater Counties prior to May 9, 1979, and proper heirship determinations rendered by the Secretary of the Interior pursuant to the Act of June 25, 1910 (36 Stat. 855). As set forth in section 5(a) of the Act, where there would be conflicting results between an heirship determination by a court of the State of Minnesota which meets the statutory filing requirements and an heirship determination by the Secretary of the Interior, the former will be recognized unless the latter was dated prior to March 24, 1986, and was filed with the county recorders or registrars of title of Becker, Mahnomen, or Clearwater Counties prior to September 24, 1986.

Section 4.350(c). This paragraph sets forth definitions to be used throughout the regulations, including defining the "Act" as the White Earth Reservation Land Settlement Act of 1985 as amended. Consistent with the balance of the regulations set forth in §§ 4.203 through 4.282, subpart D, of title 43 of the Code of Federal Regulations, the term "Board" is defined as the Board of Indian Appeals of the Office of Hearings and Appeals within the Department. The officer in charge of the White Earth Reservation Land Settlement Branch of the Minneapolis Area Office, Bureau of Indian Affairs, which is the office designated specifically to implement the White Earth Reservation Land Settlement Act of 1985, is denominated "Project Director" for purposes of these regulations. The term "party (parties) in interest" is defined to include all presumptive or actual heirs of a deceased individual or the lineal descendents of those presumptive or actual heirs. This definition serves to define the range of individuals to whom notices will be sent at various points throughout the procedures. Finally, the definition of the term "compensation" refers back to section 8(c) of the Act providing for specified sums to be paid to eligible individuals.

Section 4.351. This section designates the Project Director as the official who must make the initial request for the determination of the heirs of a deceased individual. The records which should accompany such a request include (1) a copy of the decedent's death certificate or an equivalent document; (2) data normally included with a request for other Office of Hearings and Appeals heirship determinations, including marriages, separations, and divorces of the decedent, names, birth dates, and last known addresses of children, grandchildren, parents, siblings, and othe possible and probable heirs of the decedent; and information about the relationships of those individuals to the decedent, such as whether they were related by blood, adoption, or marriage; and copies of supporting documents establishing those facts; copies of heirship determinations rendered by other tribunals (other than those which are already recognized as binding under the Act, as outlined in the discussion of paragraph 4.350(b) above), including courts of other counties in Minnesota, courts of other states, tribal courts of the Minnesota Chippewa Tribe or other Indian tribes, bands, or communities or Alaska Native Corporations, and tribunals of other countries which may have determined the heirs of the decedent and which documents may contain relevant data; and (4) the amount of compensation which the Project Director has determined was due and owing to the decedent at the time of his or her death, including a complete outline of the real property derivation of those amounts, the valuation assigned to that real property at the date it was improperly taken or transferred, any amounts deducted from that valuation by virtue of establishment of compensation actually received by the decedent or his or her ancestor, the interest accrued on the amount, and any heirships which might have intervened between the individual holding the interest at the time of taking or transfer an the inheritance of the interest by the decedent. The information relating the amount of compensation to which the decedent was entitled at the date of death and the background on derivation of that amount is to be provided solely for information and explanation purposes, since the process of heirship determination does not provide an avenue to question or protest facts or assumptions upon which such computations will be based. Those appeal routes will be provided through specific processes set forth in the Act.

Section 4.352(a). This paragraph begins the process of the actual review and determinations of heirs, setting forth the initial evaluation of the documents and data submitted to the administrative judge and the ascertainment of the existence of possible disputed facts.

Section 4.352(b). This paragraph delineates the process by which the administrative judge shall reach an initial determination when no apparent disputed facts exist. The subsection

specifies, in accordance with section 3(1) of the White Earth Reservation Land Settlement Act of 1985, Public Law 99-264 (100 Stat. 61), as amended by Public Law 100-153 (101 Stat. 886), that the laws applied to the process must be the inheritance laws of the State of Minnesota which governed intestate succession and were in effect on March 26, 1986. The regulation directs that the preliminary determination, in the case of the absence of factual disputes, will be rendered without a hearing. It dictates that certain data, to wit: the names, birth dates, relationships to the decedent, and shares attributable to each heir, must be included in the preliminary determination, or, in the alternative, the fact that the decedent died without heirs must be so stated therein. The procedure following the issuance of such preliminary deterination is further set forth in the regulation, requiring distribution of a notice, with the preliminary determination attached thereto, to all parties in interest, which notice will state that all such persons have thirty (30) days within which they may show cause in writing why the preliminary determination should not become final. The process set forth also requires that the notice of preliminary determination is to be posted in certain places determined to be those most likely to be seen by persons who may be affected thereby. Finally, the process established by this regulation directs that, after the expiration of the initial thirty (30) days, in any instance where no written objection to the preliminary determination are received and no requests for hearing are received, the administrative judge shall issue a final order stating that the preliminary determination will become final thirty (30) days from the date on which the final order is mailed to all the parties in interest.

Section 4.352(c). This paragraph sets forth the instances in which a hearing may be held or some less formal process may be conducted, in the discretion of the administrative judge and in aid of receiving further evidence and testimony in order to resolve factual disputes. Such instances include whenever a party in interest responds to the notice provided for in paragraph 4.352(b) by objecting to the results of the preliminary determination, or when such individual responds to such notice by requesting a hearing in the heirship determination proceeding, or when the administrative judge had determined initially, in the context of the process set forth at paragraph 4.352(a), that there are factual issues which must be determined in aid of the process of determining heirs. The regulation dictates that the administrative judge may schedule and conduct either a hearing or a prehearing conference or both, using procedures applicable to other hearings under this part and the general rules in subpart B of this part, or may proceed in a more informal manner. Finally, the regulation declares that, following whichever procedure or procedures are followed, the administrative judge shall enter the final order determining heirs, which order is to become final thirty (30) days from the date on which such final order is mailed to each party in interest.

Section 4.352(d). This paragraph dictates that the final order shall contain certain information consistent with that to be contained in the preliminary determination described in paragraph 4.353(b). This is to include the names, birth dates, relationships to the decedent and the shares attributable to each individual determined to be an heir, or, in the alternative, the fact that the decedent died without heirs must be stated in the final order.

Section 4.353. This section dictates that the original record of each heirship determination shall be submitted to the Project Director of the White Earth Reservation Land Settlement Branch of the Minneapolis Area Office, Bureau of Indian Affairs. The section further sets forth the documents and data to be included in the record, including, where applicable, a copy of the notice of preliminary determination and of the preliminary determination which was posted, and the posting certifications; a copy of each notice served on each party in interest, the evidentiary record, including any transcripts of testimony taken, the data and documentation originally submitted by the Project Director with the request for heirship determination, and the final order determining the heirs of the decedent.

Section 4.354(a). This paragraph authorizes the initiation of a process seeking reconsideration of the final order determining heirs, including the possibility of a rehearing. The process requires the individual seeking such reconsideration to file, with the administrative judge, a written petition, under oath, seeking such reconsideration and stating specifically and concisely the grounds on which the petition is based. The regulation requires that the petition be accompanied by affidavits of witnesses, in the event that there is newly-discovered evidence, setting forth the reasons why there had been a previous failure to discover the evidence. The regulation also requires that the petition must be filed within thirty (30) days after the date on which the final decision was mailed.

Section 4.354(b). This paragraph sets forth two bases upon which the administrative judge may issue an order denying the petition described in paragraph 4.354(a), being, first, if the petition does not set forth proper grounds for reconsideration or rehearing, and, second if the petition is not filed within the prescribed thirty (30) days following mailing of the final order determining heirs. Finally, the regulation requires the administrative judge to serve copies of the order denying the petition to all parties in interest.

Section 4.354(c). Set forth in this paragraph is the process to be followed in the event that the administrative judge considers the petition for reconsideration or rehearing to show sufficient merit. The regulation also contemplates a process of reconsideration in the event that the administrative judge becomes aware, even without the filing of a petition, of the existence of additional evidence which might alter the original conclusions. The process requires the petition, supporting documents, and other data to be served on all parties in interest, allowing a specified time, to be determined in the discretion of the administrative judge, within which such parties may respond, either with answers or legal briefs, following which the administrative judge may determine whether or not to hold a hearing and shall proceed to decide the issues of fact and to issue a final order. The final order upon reconsideration may affirm the original decision, may modify the original decision in certain respects, or it may vacate entirely the original decision and replace it with other orders. Finally, consistent with the final order required under regulations 4.352(b) and4.352(c) and described in regulation 4.352(d), the final order upon reconsideration must be served on all parties in interest.

Section 4.354(d). This paragraph prohibits the filing of more than one round of petitions for reconsideration or rehearing. The regulation also exempts from the prohibition any proceeding in which an appeal, as provided by § 4.356, has resulted in an order of remand from the Interior Board of Indian Appeals.

Section 4.355. This section describes the administrative process to be followed when it is discovered, subsequent to the completion of an heirship proceeding, that the decedent had died entitled to compensation in addition to that which had been described in the report contemplated by regulation 4.351(b)(4). The section requires the Project Director of the White Earth Reservation Land Settlement Branch to modify that report administratively and to provide a copy of such modified report to all heirs, as previously determined, and to the administrative judge.

Section 4.356(a). This paragraph describes the filing of an appeal from a final order of an administrative judge rendered under § 4.352 or from a final order upon reconsideration of an administrative judge rendered under § 4.354. The regulation specifies that the appeal must be filed with the Interior Board of Indian Appeals at 4015 Wilson Boulevard, Arlington, Virginia 22203. It further requires that a copy of the notice of appeal must be sent both to the Project Director of the White Earth Reservation Land Settlement Branch and to the appropriate administrative judge.

Section 4.356(b). This paragraph specifies the time limits within which the notice of appeal must be filed, being thirty (30) days from the mailing of the final order of the administrative judge, or, if there had been a petition for reconsideration or rehearing filed, then thirty (30) days from the mailing of the final order upon reconsideration by the administrative judge. The regulation further provides that notices of appeal which are not filed within the stated time limits will be dismissed.

Section 4.356(c). This paragraph requires the administrative judge to forward the record of the heirship determination to the Interior Board of Indian Appeals in prompt fashion following receipt of a copy of a notice of appeal.

Section 4.356(d). This paragraph sets forth the process for handling the appeal, requring initially that the individual filing the appeal file, within thirty (30) days following filing the initial notice of appeal, a statement of reasons for filing the appeal, including a description of the portion or portions of the final order or final order upon reconsideration which the appellant believes to be in error. The process then contemplates a review by the Board of Indian Appeals and a determination of whether or not the statement filed by the appellant has set forth a sufficient basis for causing a review of the previous order. If the Board finds that a sufficient basis has been stated, then an order will be issued to all parties in interest, giving each of them an opportunity to respond within a stated time period, followed by a consideration of all submitted materials and a decision by the Board. If the Board determines that the appellant has not set forth a sufficient basis for reviewing the final order, the decision of the Board will be issued without permitting the additional submissions by other parties in interest.

Section 4.356(e). This paragraph describes the range of possible decisions by the Board of Indian Appeals, including affirming the final order or final order upon reconsideration from which the appeal was taken, modifying that order in some respect, or vacating that order. The regulation declares that the decision on appeal either affirming the prior order or modifying it is to be final for the Department of the Interior. In the event that the decision is to vacate that order, the matter is to be remanded to the appropriate administrative judge for further proceedings, either reconsideration or rehearing or both.

Section 4.357. This section permits the appearance of a guardian for any party in interest who is a minor or suffers from other legal incapacity, and also permits the appointment of a guardian *ad litem* for such individual by the administrative judge.

Paperwork Reduction Act

This proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined this document is not a major rule under Executive Order 12291 (Feb. 17, 1981), and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* These determinations are based on the fact that the proposed rule only sets forth procedures for such heirship determinations as are necessary in order to determine who should receive compensation under the White Earth Reservation Land Settlement Act of 1985, as amended.

National Environmental Policy Act

This proposed rulemaking is categorically excluded from the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 through 4347, process because it is of an administrative, financial, legal, technical, and procedural nature, and therefore neither an environmental assessment nor an environmental impact statement is required. 40 CFR 1508.4; 516 DM 2.3A.

Takings Implication Assessment

The proposed rules do not pose any takings implications requiring preparation of a Takings Implication Assessment under Executive Order No. 12630 of March 18, 1988.

Drafting

The primary author of this proposed rule is Howard Piepenbrink, Chief, Branch of Titles and Research, Bureau of Indian Affairs, U.S. Department of the Interior.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Indians.

Accordingly, 43 CFR part 4, subpart D, is proposed to be amended as set forth below.

Dated: August 17, 1990.

James L. Byrnes,

Acting Director.

PART 4—[AMENDED]

Subpart D—Rules Applicable in Indian Affairs Hearings and Appeals

1. The authority for 43 CFR part 4, subpart D, is revised to read as follows:

Authority: Sections 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 586, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022; R.S. 463, 465; 5 U.S.C. 301; 25 U.S.C. secs. 2, 9, 372, 373, 374, 373a, 373b; 100 Stat. 61, as amended by 101 Stat. 886 and 101 Stat. 1433, 25 U.S.C. 331 note.

2. New §§ 4.350 through 4.357, and a new heading, are proposed to be added to subpart D to read as follows:

White Earth Reservation Land Settlement Act of 1985; Authority of Administrative Judges; Determinations of the Heirs of Persons Who Died Entitled To Compensation

Sec.

4.350 Authority and scope.
4.351 Commencement of the determination process.
4.352 Determination of administrative judge and notice thereof.
4.353 Record.
4.354 Reconsideration or rehearing.
4.355 Omitted compensation.
4.356 Appeals.
4.357 Guardians for minors and incompetents.

White Earth Reservation Land Settlement Act of 1985; Authority of Administrative Judges; Determinations of the Heirs of Persons Who Died Entitled To Compensation

§ 4.350 Authority and scope.

(a) The rules and procedures set forth in §§ 4.350 through 4.357 apply only to the determination through intestate

succession of the heirs of persons who died entitled to receive compensation under the White Earth Reservation Land Settlement Act of 1985, Public Law 99–264 (100 Stat. 61), amended by Public Law 100–153 (101 Stat. 886) and Public Law 100–212 (101 Stat. 1433).

(b) Administrative judges shall determine such heirs by applying the inheritance laws of Minnesota in effect on March 28, 1986, in accordance with the White Earth Reservation Land Settlement Act of 1985 as amended, notwithstanding the decedent may have died testate, unless such heirs have already been determined by valid, existing heirship determinations recognized by the Act.

(c) As used herein, the following terms shall have the following meanings:

(1) The term "Act" means the White Earth Reservation Land Settlement Act of 1985 as amended.

(2) The term "Broad" means the Board of Indian Apeals in the Office of Hearings and Appeals, Office of the Secretary.

(3) The term "Project Director" means the officer in charge of the White Earth Reservation Land Settlement Branch of the Minneapolis Area Office, Bureau of Indian Affairs, at Cass Lake, Minnesota.

(4) The term "party(parties) in interest" means the Project Director and any presumptive or actual heirs of the decedent, or of any issue of any subsequently deceased presumptive or actual heir of the decedent.

(5) The term "compensation" means a monetary sum, as determined by the Project Director, pursuant to section 8(c) of the Act.

(6) The term "administrative judge" means an administrative judge of the Office of Hearings and Appeals to whom the Director of the Office of Hearings and Appeals has redelegated his authority, as designee of the Secretary, for making heirship determinations as provided for in these regulations.

§ 4.351 Commencement of the determination process.

(a) The Project Director shall commence the determination of the heirs of those persons who died entitled to receive compensation by filing with the administrative judge all data, identifying the purpose for which they are being submitted, shown in the records relative to the family of the decedent.

(b) The data shall include but are not limited to:

(1) A copy of the death certificate or its equivalent;

(2) Data for heirship finding and family history, certified by the Project Director. Such data shall contain:

(i) The facts and alleged facts of the decedent's marriages, separations and divorces, with copies of necessary supporting documents;

(ii) The names and last known addresses of probable heirs at law and other known parties in interest;

(iii) Information on whether the relationships of the probable heirs at law to the decedent arose by marriage, blood, or adoption.

(3) Known heirship determinations other than those recognized by the Act, including those rendered by courts from Minnesota or other states, by tribal courts, or by agencies authorized by the laws of other countries.

(4) A report of the compensation due the decedent, including interested calculated to the date of death of the decedent, and an outline of the derivation of such compensation, including its real property origins and the succession of the compensation to the deceased, citing all of the intervening heirs at law, their fractional shares, and the amount of compensation attributed to each of them.

(5) A certification by the Project Director or his designee that the addresses provided for the parties in interest were furnished after having made a due and diligent search.

§ 4.352 Determination of administrative judge and notice thereof.

(a) Upon review of all data submitted by the Project Director, the administrative judge will determine whether or not there are any apparent issues of fact that need to be resolved.

(b) If there are no issues of fact requiring determination, the administrative judge will enter a preliminary determination of heirs based upon the inheritance laws of Minnesota in effect on March 26, 1986, in accordance with the Act. Such preliminary determination will be entered without a hearing, and, when possible and based upon the data furnished and/or information supplementary thereto, shall include the names, birth dates, relationship to the decedent, and shares of the heirs, or the fact that decedent died without heirs.

(1) Upon issuing a preliminary determination, the administrative judge shall issue a notice of such action and shall mail a copy of said notice, together with a copy of the preliminary determination, to each party in interest allowing thirty (30) days in which to show cause in writing why the determination should not become final.

(2) The Project Director shall also cause, within five (5) days of receipt of such notice, the notice of the preliminary determination to be posted in some or all of the following sites plus other sites as may be deemed appropriate by the Project Director:

Elbow Lake Community Center, R.R. #2, Waubun, Minnesota 56589
Postmaster, Callaway, Minnesota 56521
Community Center, Route 2, Bagley, Minnesota 56621
Community Center, Star Route, Mahnomen, Minnesota 56557
Postmaster, Mahnomen, Minnesota 56557
Rice Lake Community Center, Route 2, Bagley, Minnesota 56621
Postmaster, Ogema, Minnesota 56569
Pine Point Community Center, Ponsford, Minnesota 56575
Postmaster, White Earth, Minnesota 56591
White Earth IHS, White Earth, Minnesota 56591
Postmaster, Ponsford, Minnesota 56575
American Indian Center, 1113 West Broadway, Minneapolis, Minnesota 55411
American Indian Center, 1530 East Franklin Avenue, Minneapolis, Minnesota 55404
American Indian Center, 341 University Avenue, St. Paul, Minnesota 55103
Little Earth of United Tribes Community Services, 2501 Cedar Avenue South, Minneapolis, Minnesota 55404
The Minnesota Chippewa Tribe, Box 217, Cass Lake, Minnesota 56633
Naytahwaush Community Center, Naytahwaush, Minnesota 56566

The Project Director shall provide a certificate showing when the notice of the preliminary determination was forwarded for posting, and to which locations, and the certificate shall be made a part of the original file in his custody.

(3) If no written request for hearing or written objection is received in the office of the administrative judge within the thirty (30) days of issuance of the notice, the administrative judge shall issue a final order declaring the preliminary determination to be final thirty (30) days from the date on which the final order is mailed to each party in interest.

(c) When the administrative judge determines either before or after issuance of a preliminary determination that there are issues which require resolution, or when a party objects to the preliminary determination and/or request a hearing, the administrative judge may either resolve the issues informally or schedule and conduct a prehearing conference and/or a hearing. Any prehearing conference, hearing, or rehearing, conducted by the administrative judge shall be governed insofar as practicable by the regulations applicable to other hearings under this part and the general rules in subpart B of this part. After receipt of the testimony and/or evidence, if any, the administrative judge shall enter a final order determining the heirs of the decedent, which shall become final thirty (30) days from the date on which the final order is mailed to each party in interest.

(d) The final order determining the heirs of the decedent shall contain, where applicable, the names, birth dates, relationships to the decedent, and shares of heirs, or the fact that the decedent died without heirs.

§ 4.353 Record.

(a) The administrative judge shall lodge his original record with the Project Director.

(b) The record shall contain, where applicable, the following materials:

(1) A copy of the posted public notice of preliminary determination and/or hearing showing the posting certifications;

(2) A copy of each notice served on parties in interest, with proof of mailing;

(3) The record of evidence received, including any transcript made of testimony;

(4) Data for heirship finding and family history, and data supplementary thereto;

(5) The final order determining the heirs of the decedent and the administrative judge's notices thereof; and

(6) Any other material or documents deemed relevant by the administrative judge.

§ 4.354 Reconsideration or rehearing.

(a) Any person aggrieved by the final order of the administrative judge may, within thirty (30) days after the date of mailing such decision, file with the administrative judge a written petition for reconsideration and/or rehearing. Such petition must be under oath and must state specifically and concisely the grounds upon which it is based. If it is based upon newly-discovered evidence, it shall be accompanied by affidavits of witnesses stating fully what the new evidence or testimony is to be. It shall also state justifiable reasons for the prior failure to discover and present the evidence.

(b) If proper grounds are not shown, or if the petition is not filed within the time prescribed in paragraph (a) of this section, the administrative judge shall issue an order denying the petition and shall set forth therein the reasons therefor. The administrative judge shall serve copies of such order on all parties in interest.

(c) If the petition appears to show merit, or if the administrative judge becomes aware of sufficient additional evidence to justify correction of error even without the filing of a petition, or upon remand from the Board following an appeal resulting in vacating the final order, the administrative judge shall cause copies of the petition, supporting papers, and other data, or in the event of no petition an order to show cause or decision of the Board vacating the final order in appropriate cases, to be served on all parties in interest. The parties in interest will be allowed a reasonable, specified time within which to submit answers or legal briefs in opposition to the petition or order to show cause or Board decision. The administrative judge shall then reconsider, with or without hearing, the issues of fact and shall issue a final order upon reconsideration, affirming, modifying, or vacating the original final order and making such further orders as are deemed warranted. The final order upon reconsideration shall be served on all parties in interest and shall become final thirty (30) days from the date on which it is mailed.

(d) Successive petitions for reconsideration and/or rehearing shall not be permitted. Nothing herein shall be considered as a bar to the remand of a case by the Board for further reconsideration, hearing, or rehearing after appeal.

§ 4.355 Omitted compensation.

When, subsequent to the issuance of a final order determining heirs under § 4.352, it is found that certain additional compensation had been due the decedent and had not been included in the report of compensation, the report shall be modified administratively by the Project Director. Copies of such modification shall be furnished to all heirs as previously determined and to the appropriate administrative judge.

§ 4.356 Appeals.

(a) A party aggrieved by a final order of an administrative judge under § 4.352, or by a final order upon reconsideration of an administrative judge under § 4.354, may appeal to the Board (address: Board of Indian Appeals, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203). A copy of the notice of appeal must also be sent to the Project Director and to the administrative judge whose decision is being appealed.

(b) The notice of appeal must be filed with the Board no later than thirty (30) days from the date on which the final order of the administrative judge was mailed, or, if there has been a petition for reconsideration or rehearing filed, no later than thirty (30) days from the date on which the final order upon reconsideration of the administrative judge was mailed. A notice of appeal that is not timely filed will be dismissed.

(c) The Project Director shall ensure that the record is expeditiously forwarded to the Board.

(d) Within thirty (30) days after the notice of appeal is filed, the appellant shall file a statement of the reasons why the final order or final order upon reconsideration is in error. If the Board finds that the appellant has set forth sufficient reasons for questioning the final order or final order upon reconsideration, the Board will issue an order giving all parties in interest an opportunity to respond, following which a decision shall be issued. If the Board finds that the appellant has not set forth sufficient reasons for questioning the final order, the Board may issue a decision on the appeal without further briefing.

(e) The Board may issue a decision affirming, modifying, or vacating the final order or final order upon reconsideration. A decision on appeal by the Board either affirming or modifying the final order or final order upon reconsideration shall be final for the Department of the Interior. In the event the final order or final order upon reconsideration is vacated, the proceeding shall be remanded to the appropriate administrative judge for reconsideration and/or rehearing.

§ 4.357 Guardians for minors and incompetents.

Persons less than 18 years of age and other legal incompetents who are parties in interest may be represented at all hearings by legally appointed guardians or by guardians *ad litem* appointed by the administrative judge.

[FR Doc. 90–25845 Filed 11–2–90; 8:45 am]
BILLING CODE 4310–79–M

Notices

Federal Register
Vol. 55, No. 214
Monday, November 5, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Special Committee on Financial Services Regulations; Public Meeting and Proposed Statement

SUMMARY: This notice of a committee meeting is given pursuant to the Federal Advisory Committee Act (5 U.S.C. App. 2, Pub. L. No. 92-463). Attendance at each meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

DATE: Friday, November 9, 1990.

TIME: 9:30 a.m.

LOCATION: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC (Library 5th floor).

AGENDA: The Committee will meet to discuss a draft statement on Improving the Supervision of the Safety and Soundness of Government-Sponsored Enterprises, based on a draft report to the Conference by Thomas H. Stanton, Esquire, of Washington, DC, on Federal Supervision of Safety and Soundness of Government-Sponsored Enterprises.

FOR FURTHER INFORMATION CONTACT: Brian C. Murphy, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC, telephone: (202) 254-7020.

Jeffrey S. Lubbers,
Research Director.

[FR Doc. 90-26194 Filed 11-2-90; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Snapping Shoals Electric Membership Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact related to the construction of new headquarters facilities in Newton County, Georgia.

SUMMARY: Notice is hereby given that the Rural Electrification Administration, pursuant to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR parts 1500-1508) and the Rural Electrification Administration Environmental Policies and Procedures (7 CFR part 1794), has prepared an Environmental Assessment and made a Finding of No Significant Impact with respect to the construction of new headquarters facilities in Newton County, Georgia. Snapping Shoals Electric Membership Corporation has requested the Rural Electrification Administration's approval to construct the project.

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Jr., Director, Southeast Area—Electric, room 0270, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382-8436.

SUPPLEMENTARY INFORMATION: The proposed new headquarters facilities project will consist of a 74,209 square foot headquarters building, a 19,488 square foot garage, a 11,400 square foot apparatus building, two 13,650 square foot truck storage buildings, a 12,000 square foot material storage building, an 1,800 square foot gasoline and diesel fuel island, 65 visitor and employee parking spaces and 64 truck parking spaces. The proposed site location is located at the west corner of Magnet Road and Browns Bridge Road in southwest Newton County. The size of the proposed new headquarters facilities site is approximately 30 acres.

Alternatives considered to constructing the new headquarters facilities as proposed were no action, expand, expanding the existing headquarters facilities in Covington, Georgia, and maintaining the existing headquarters facilities in Covington and constructing a western district office approximately 500 feet north of the intersection of Highway 155 and Mays Road in Henry County, Georgia.

Copies of the Environmental Assessment and Finding of No Significant Impact are available for review at, or can be obtained from, the Rural Electrification Administration at the address provided herein or at the office of Snapping Shoals Membership Corporation, P.O. Box 509, Covington, Georgia 30209.

Dated: October 29, 1990.

John H. Arnesen,
Assistant Administrator—Electric Rural Electrification Administration, United States of America.

[FR Doc. 90-26109 Filed 11-2-90; 8:45 am]
BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Publication of Legal Texts of Central and Eastern European Countries

AGENCY: Office of the General Counsel, Commerce.

ACTION: Notice.

SUMMARY: This notice provides details of the Department of Commerce's plans to announce, archive, and make available to the public legal texts from central and eastern Europe through the National Technical Information Service (NTIS), in coordination with the Eastern Europe Business Information Center (EEBIC).

The Department published a notice requesting comments on the proposed service on June 28, 1990 in the **Federal Register** (55 FR 25992). Virtually all comments received strongly supported the proposed plan and offered a variety of suggestions to make the service of greatest practical use to the American business and legal communities. The Department is proceeding to implement the proposed service, details of which are given below.

FOR FURTHER INFORMATION CONTACT: Texts may be ordered from NTIS. For details see Appendix to this notice.

SUPPLEMENTARY INFORMATION: EEBIC already distributes commercial and economic information on central and eastern Europe through NTIS. A list of

information available through NTIS may be obtained from EEBIC on (202) 377-2645. In addition, the Department receives numerous requests for up-to-date legal texts from those countries. Such inquiries and the comments received in response to the Department's June 26 **Federal Register** notice have emphasized the lack of a timely, reliable private source for such materials from all the central and eastern European countries. The Department's legal text information service will provide copies of such texts as soon as they become available to the U.S. government from the governments of those countries.

Form and Content:

Documents available through the service will include typewritten or printed versions of the texts of current and newly issued commercial laws and regulations of general interest to the American business community as those texts are transmitted to the U.S. government by the governments of Poland, Hungary, Czechoslovakia, Yugoslavia, Romania, and Bulgaria. Texts will be available immediately in the language in which they are received from the relevant government; translations into English will be available as soon as possible thereafter.

Materials available through this service may be ordered in three ways (1) As individual documents; (2) as a standing order for all documents pertaining to one country (available in either original language or English versions); or (3) as a standing order for all documents pertaining to all six countries, in English or in the original languages.

A single page legal texts bulletin will also be published on a regular basis. The legal texts bulletin, which will go to all those who have placed standing orders of type (2) or (3) above and to all others who request a copy, will provide information about significant legislation or regulations introduced or adopted for which texts are expected to be available in the near future. The legal texts bulletin will be accompanied by ordering information for texts already available.

Texts available through the service will also be announced in the NTIS bibliographic database, which is searchable online. Orders may be placed by telephone or mail.

Frequency and Price of Service

Materials will be delivered as promptly as possible after receipt of orders by NTIS. Those who have placed standing orders will receive individual texts as soon as those texts are available, rather than on a periodic basis. Prices will be determined on a cost recovery basis.

Dated: October 30, 1990.

Wendell L. Willkie, II,
General Counsel.

Appendix

How to Order Central and Eastern European Legal Texts from NTIS

Standing orders may be placed in any of the following categories:

Materials in English:	Standing Order No.
Czechoslovakia	PB 91960200
Bulgaria	PB 91960400
Hungary	PB 91960600
Romania	PB 91960800
Poland	PB 91961000
Yugoslavia	PB 91961200
Materials in Original Language:	**Standing Order No.**
Czechoslovakia	PB 91960300
Bulgaria	PB 91960500
Hungary	PB 91960700
Romania	PB 91960900
Poland	PB 91961100
Yugoslavia	PB 91961300

An NTIS deposit account is required for standing orders. The minimum deposit for each of the above standing order categories is $150; the minimum deposit for a standing order of materials from all six countries in English *or* in the original languages is $500. Requests for standing orders must be in writing. If you or your firm already have an NTIS deposit account, please cite the number. Send orders to the NTIS Subscriptions Department, 5285 Port Royal Road, Springfield, VA 22161, telephone 703-487-4630, fax 703-321-8547.

Individual texts currently available are as follows:

Polish Law on Termination of Labor Relationship between Workers and Workplace, order no. PB 91-961001, price $8.00.

Polish Law Establishing Office of Minister for Ownership Transformation and Privatization Law, order no. PB 91-961002, price $11.00.

Polish Law No. 445 Governing Tariffs, order no. PB 91-961003, price $15.00.

Polish Law on Taxes on Increments to Remunerations, order no. PB 91-961004, price $8.00.

Polish Law on the Regulation of Credit Relationships and Amended Law on National Bank of Poland, order no. PB 91-961005, price $15.00.

Polish Law No. 325 Governing Economic Activities with the Participation of Foreign Parties (Joint Venture Law), order no. PB 91-961006, price $15.00.

Polish Law on Financial Management of State Enterprises, order no. PB 91-961007, price $11.00.

Polish Law Governing Chances in the Organization and Activities of Cooperatives, order no. PB 91-961008, price $8.00.

Polish Executive Order of Ministry of Finance on General Terms of Foreign Exchange Authorization, order no. PB 91-961009, price $11.00.

Law on Agricultural Cooperatives of Czech and Slovak Federal Republic, order no. PB 91-960201, price $15.00.

Czechoslovakian Decree No. 195/1989 of Labor Ministry on Security for Employees in Connection with Organizational Changes and for Unemployed citizens, order no. PB 91-960202, price $15.00.

Czechoslovakian Law No. 176/1990 on Housing, Consumer, Production or Other Cooperatives, order no. PB 91-960203, price $15.00.

Law of Czechoslovakia Modifying Relationships between Trade Unions and Employees, order no. PB 91-960204, price $8.00.

Decree of Czechoslovakian Federal Ministry of Foreign Trade on Noncommercial Imports and Exports, order no. PB 91-960205, price $8.00.

Law on Foreign Trade of Yugoslavia, order no. PB 91-961201, price $15.00.

Hungarian Law No. 5 of 1990 on Individual Enterprise and Legislative Intent Accompanying the Law, order no. PB 91-960601, price $15.00.

Hungarian Law No. VII/1988 on Taxing Entrepreneurial Profit, order no. PB 91-960602, price $11.00.

To order individual texts, contact the NTIS sales desk at telephone 703-487-4650 between 8:30 a.m. and 5:30 p.m. EST. First class or equivalent service is provided. Express mail and overnight delivery are available for an additional fee.

[FR Doc. 90-26063 Filed 11-2-90; 8:45 am]
BILLING CODE 3510-DW-M

International Trade Administration

[A-533-502]

Certain Circular Welded Carbon Steel Standard Pipes and Tubes From India; Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On July 6, 1990, the Department of Commerce initiated an administrative review of the antidumping duty order on circular welded carbon steel standard pipes and tubes from India. The Department is now terminating this review.

BACKGROUND: On July 6, 1990, the Department of Commerce published a notice of initiation of administrative review of the antidumping duty order on

circular welded carbon steel standard pipes and tubes from India. This notice stated that we would review information submitted by the Tata Iron and Steel Co., Ltd. ("TISCO") for the period May 1, 1989 through April 30, 1990. TISCO subsequently withdrew its request for review on October 4, 1990. Since no interested party other than TISCO has requested an administrative review for that period, the Department is terminating this review.

EFFECTIVE DATES: November 5, 1990.

FOR FURTHER INFORMATION: Contact Alain Letort or Richard Weible, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telefax (202) 377–3793 or telephone (202) 377–1388.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended, 19 U.S.C. 1675(a)(1), and § 353.22(a)(5) of the Commerce Department's regulations, 19 CFR 353.22(a)(5).

Dated: October 23, 1990.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 90–26039 Filed 11–2–90; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–008]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan; Preliminary Results and Termination in Part of Antidumping Duty Administrative Review and Intent Not To Revoke in Part

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results and termination in part of an antidumping duty administrative review and intent not to revoke in part.

SUMMARY: In response to a request by petitioners, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan. The review covers shipments of this merchandise to the United States from four exporters during the period from May 1, 1987 through April 30, 1988. Preliminary results of the review indicate that no manufacturers or exporters in Taiwan made any shipments of the subject merchandise to the United States during the period of review. In addition, in response to a request by petitioners, the Department is terminating this review with respect to Kao Hsing Chang Iron and Steel Corp. only. Finally, the Department intends not to revoke in part the antidumping duty order with respect to Yieh Hsing Enterprise Co., Ltd.

Interested parties are invited to comment on the preliminary results of this administrative review and intent not to revoke in part.

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Jonathan Freilich or Alain Letort, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3793 or telefax (202) 377–1388.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 1989, the Department published in the **Federal Register** the final results of its last administrative review, covering the period from May 1, 1986 to April 30, 1987, of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan (53 FR 46432). On May 13, 1988, we published in the **Federal Register** a notice of opportunity to request an administrative review of this order for the period from May 1, 1987 to April 30, 1988 (53 FR 17138). On May 31, 1988, the Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports, petitioners, requested an administrative review of this order. We initiated the review, covering the period beginning on May 1, 1987 and ending on April 30, 1988, on June 29, 1988 (53 FR 24470). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act"). This review covers four exporters of circular welded carbon steel pipes and tubes from Taiwan to the United States. The exporters covered by this review are An Mau Steel Co., Ltd. ("An Mau"), Far East Machinery Co., Ltd. ("FEMCO"), Kao Hsing Chang Iron and Steel Corp. ("KHC"), and Yieh Hsing Enterprise Co., Ltd. ("Yieh Hsing").

Subsequent to the initiation, petitioners withdrew their request for review with respect to KHC on July 25, 1988. On August 25, 1988, the Department received a request for revocation in part of the antidumping duty order from Yieh Hsing. On November 16, 1988, the Department published a tentative determination to revoke the order in part with respect to Yieh Hsing and invited interested parties to comment (53 FR 46102). On July 25, 1989, as a result of Yieh Hsing's request for revocation in part of the order, we initiated another review, with respect to Yieh Hsing only, covering the period beginning on May 1, 1988 and ending on November 16, 1988 (54 FR 30915). The Department received comments from petitioners on its tentative determination to revoke the order on December 1, 1989 and January 8, 1990.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the *Tariff Schedules of the United States, Annotated* (TSUSA) to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption, on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of certain circular welded carbon steel pipes and tubes. The Department defines such merchandise as welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch, and 0.375 inch or more but not over 4½ inches in outside diameter. Until January 1, 1989, this merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, and 610.3252 of the TSUSA. Since that date, standard pipe has been classifiable under HTS item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. As was the case with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written products description remains dispositive.

Preliminary Results of the Review

On July 29, 1988, we requested the Customs Information Exchange ("CIE") to report to the Department any shipments of the subject merchandise made by the respondents to the United States during the period of review. We received no report of any such shipments from the CIE. We also reviewed Special Steel Summary Invoice data, which confirmed the absence of any such shipments.

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Ad valorem margin (percent)
An Mau	05/01/87–4/30/88	[1] 0.66
FEMCO	05/01/87–4/30/88	[1] .00
Yieh Hsing	05/01/87–11/16/88	[1] .00

[1] No shipments during the period. Rates noted are from the last antidumping duty administrative review in which there were shipments.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each export directly to the Customs Service.

Furthermore, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any shipments of this merchandise produced or exported by the remaining known producers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for those firms. For any future entries of this merchandise from a new producer and/or exporter not covered in this or prior administrative reviews, whose first shipment occurred after April 30, 1988, and which is unrelated to the reviewed firms or any previously reviewed firm, the Customs Service will require a cash deposit of 0.66 percent *ad valorem*. These deposit requirements are effective for all shipments of certain circular welded carbon steel pipes and tubes from Taiwan which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the final results of this administrative review.

Termination in Part

In accordance with petitioners' withdrawal on July 25, 1988, of their request for review of KHC, we are terminating this review with respect to KHC only.

Determination Not to Revoke in Part

Yieh Hsing has requested a partial revocation of the order based on the fact that it had no sales at less than fair value for two years. On November 16, 1988, the Department published a tentative determination to revoke the order in part with respect to Yieh Hsing and invited interested parties to comment (53 FR 46102). In cases such as this, where the Department has issued a tentative revocation of an order prior to the effective date of the Department's new regulations, published on March 28, 1989 (54 FR 12742), we have stated that we would complete the procedure under the Department's previous regulations. Under § 353.54(a) of the old regulations (19 CFR 353.54 (1988)), the Secretary must be "satisfied that there is no likelihood of sales at less than fair value" in order to revoke an antidumping duty order. Two facts on the record of this and other cases involving Yieh Hsing indicate a strong possibility that Yieh Hsing would resume sales at less than fair value in the United States if the order was revoked.

First, Yieh Hsing has a consistent history of selling pipe and tube products at less than fair value in the United States. The most recent antidumping duty order, covering light-walled rectangular carbon steel pipe and tube ("LWRT") manufactured by Yieh Hsing, was issued on March 27, 1989 (54 FR 12467). Second, we believe that Yieh Hsing has a strong incentive to shift its production from LWRT to circular pipes and tubes since (1) Both LWRT and circular welded carbon steel pipes and tubes can be produced on the same equipment; (2) the market for circular pipe is much larger than the market for LWRT; and (3) LWRT from Taiwan is currently subject to a very high antidumping duty deposit rate.

For the above reasons, the Department intends not to revoke in part the antidumping order with respect to Yieh Hsing.

Public Comment

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested parties may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this preliminary notice or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: October 29, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–26040 Filed 11–2–90; 8:45 am]

BILLING CODE 3510–DS–M

[A–428–037]

Drycleaning Machinery From The Federal Republic of Germany; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on drycleaning machinery from the Federal Republic of Germany. The review covers two manufacturers/exporters of this merchandise to the United States for the period November 1, 1987 through October 31, 1988. One of the companies, Seco Maschinenbau & Co. GmbH (Seco), failed to respond to our questionnaire. For this company we used the best information available.

In this review, the Department preliminarily found margins of 1.73 percent for Boewe Reinigungstechnik GmbH (Boewe) and 4.44 percent for Seco.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–8312/3601.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1988, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (54 FR 43913) of the antidumping finding on drycleaning machinery from the Federal Republic of Germany (37 FR 23715, November 8, 1972). On November 23, 1988, the petitioner, Vic Division of Waltron, Inc., requested an administrative review of the antidumping finding. We initiated the review, covering November 1, 1987 through October 31, 1988, on March 8, 1989 (54 FR 868). The Department has

now conducted this review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act). The final results of the last administrative review in this case were published in the Federal Register on February 29, 1988 (53 FR 6020).

Scope of the Review

Imports covered by the review are shipments of drycleaning machinery currently classifiable under item number 8451.10.10 of the Harmonized Tariff Schedules (HTS). During the review period this merchandise was classifiable under item number 764.4100 of the Tariff Schedules of the United States Annotated (TSUSA). TSUSA and HTS item numbers are provided for convenience and for Customs purposes. The written descriptions remain dispositive.

The review covers two German manufacturers/exporters of this merchandise to the United States and the period November 1, 1987 through October 31, 1988. One of the companies, Seco, failed to respond to our questionnaire. For this company we used the best information available. The best information available for Seco is its most recent rate of 4.44 percent.

United States Price

In calculating United States price, we used purchase price or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and ESP were based on the delivered, packed price to unrelated purchasers in the United States. We made adjustments, where applicable, for discounts, ocean freight and marine insurance, U.S. customs duties, brokerage charges, commissions to unrelated parties, advertising expenses, and the U.S. subsidiary's and indirect selling expenses. Where applicable, we made an adjustment for any increased value resulting from further assembly performed on the imported merchandise after importation and before its sale to an unrelated purchaser in the United States. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used either home market price when sufficient quantities of such or similar merchandise were sold in the home market or constructed value, as defined in section 773 of the Tariff Act.

Constructed value was calculated as the sum of materials, fabrication costs, general expenses, profit, and U.S. packing. For general expenses the Department used actual general expenses because they were higher than the statutory minimum of ten percent of the sum of materials and fabrication costs. Because actual profit was less than eight percent, the Department used the statutory minimum of eight percent of the sum of materials, fabrication costs, and general expenses.

Home market price was based on the packed ex-factory or delivered price to unrelated purchasers. We made adjustments, where appropriate, for foreign inland freight, cash discounts, guarantees, certain directly-related sales office expenses, technical service expenses, and certain miscellaneous payments incurred in credit expenses, commissions to unrelated parties, packing costs, and, where appropriate, for indirect expenses to offset indirect U.S. selling expenses for ESP calculations.

For those categories where there were no identical products in the home market with which to compare products sold to the United States, we made adjustments to similar merchandise to account for options or other differences in the physical characteristics of the merchandise. These adjustments were based on the costs of direct materials, direct labor, and direct factory overhead.

We disallowed claimed adjustments for warranty expenses because we do not consider such repair work performed outside the warranty period to be true warranty expenses, but rather goodwill. We disallowed Boewe's claims for circumstance-of-sale (COS) adjustments for research and development and product maintenance costs because they were not directly related to the reviewed sales. We disallowed Boewe's claim for COS adjustments for advertising, traffic department, management, and general and administrative expenses because these either were not directly related to the sales used for comparison purposes or were not selling expenses. Alternatively, to the extent that we disallow any of these expenses as COS adjustments, Boewe contends that we should allow them, as well as certain bad debt and indirect sales office expenses, as representing differences in levels of trade (LOT). We have disallowed these expenses as LOT adjustments since Boewe did not adequately quantify what portions of these expenses could be attributed to LOT differences. We also disallowed claimed adjustments for "trade-in losses" as price reductions. We do not consider the amounts deducted from the price of a new machine for a trade-in to be a discount. No other adjustments were claimed or allowed.

Preliminarily Results of Review

As a result of our review, we preliminary found the following margins:

Manufacturer exporter	Time period	Margin (per-cent)
Boewe	11/1/87-10/31/88	1.73
Seco	11/1/87-10/31-88	4.44

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication, and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first workday thereafter. Pre-hearing briefs from interested parties may be submitted not later than 14 days before the date of the hearing or the first workday thereafter. Rebuttal briefs and rebuttal comments, limited to issues raised in the initial round of comments, may be filed not later than 7 days after submission of the initial round of comments. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Custom Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins will be required for the above firms. For any future entries of this merchandise from a new exporter not covered in this or in prior reviews, whose first shipments of this merchandise occurred after October 31, 1988, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 1.73 percent shall be required. These deposit requirements are effective for all shipments of German drycleaning marchinery entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 29, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-28041 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-433-064]

Railway Track Maintenance Equipment From Austria; Preliminary Results of Antidumping Duty Administrative Review and Determination Not To Revoke

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and determination not to revoke.

SUMMARY: In response to a request from an interested party, Kershaw Manufacturing Company (Kershaw), the Department of Commerce (the Department) has conducted an administrative review of the antidumping finding on railway track maintenance eqiupment, limited to ballast regulators and tamping machines, from Austria. The review covers one manufacturer and/or exporter of this merchandise to the United States and the period February 1, 1989 through January 31, 1990. The review indicates no shipments of this merchandise during the period.

As a result of the review, the Department has preliminarily determined that the cash deposit rate will remain at zero percent.

On February 9, 1990 we published a notice of intent to revoke this finding; however, since we received objections from Kershaw we have determined not to revoke the antidumping finding on railway track maintenance equipment from Austria.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-8312/3601.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1990, the Department published a notice of intent to revoke this antidumping finding (55 FR 4646). On February 28, 1990, Kershaw, one of the original petitioners and an interested party, opposed the revocation and requested an administrative review of the antidumping finding. We initiated the review, covering the period February 1, 1989 through January 31, 1990, on March 22, 1989 (55 FR 10642). The final results of the most recent administrative review in this case were published in the Federal Register on April 10, 1984 (49 FR 14159).

Scope of the Review

Imports covered by this review are limited to ballast regulators and tamping machines, two specific types of railway track maintenance equipment from Austria. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item 8604.00.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one exporter of this merchandise to the United States, Plasser and Theurer, GmbH (Plasser) and the period February 1, 1989 through January 31, 1990.

Preliminary Results of the Review

Plasser reported no shipments of the covered merchandise, either ballast regulators or tamping machines, during the review period February 1, 1989 through January 31, 1990.

Therefore, we preliminarily determine that for cash deposit purposes the margin remains at zero percent for the period.

On February 9, 1990, we published a notice of intent to revoke this finding pursuant to § 353.25(d)(4) of the Department's regulations. Kershaw objected to the proposed revocation and requested that the Department conduct an administrative review. Plasser argued that Kershaw does not produce tamping machines and, therefore, lacks standing to object to revocation or request a review with respect to tamping machines. We disagree. The statute requires that an "interested party" manufacture the "like product." *See* section 771(9)(C) of the Tariff Act of 1930, as amended (the Tariff Act). Kershaw manufactures ballast regulators. Since ballast regulators and tamping machines constitute a single "like product" (*See* USITC Pub. No. 844 at 5, 11 (November 1977)), Kershaw is an interested party with respect to tamping machines within the meaning of section 732(b) and section 771(9)(C) of the Tariff Act. Accordingly, based upon an objection from an interested party, we have determined not to revoke the antidumping finding on railway track maintenance equipment from Austria.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication, and may request a hearing within 10 days of the date of publication.

Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication, or the first workday thereafter. Pre-hearing briefs from interested parties may be submitted not later than 14 days before the date of the hearing or the first workday thereafter. Rebuttal briefs and rebuttal comments, limited to issues raised in the initial round of comments, may be filed not later than 7 days after submission of the initial round of comments. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of zero percent shall be required for this firm. For any future entries of ballast regulators or tamping machines from a new exporter not covered in this or in prior reviews, whose first shipment occurred after January 31, 1990, and who is unrelated to the reviewed firm, a cash deposit of zero percent shall be required. These deposit requirements are effective for all shipments of Austrian railway track maintenance equipment entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(a) and 353.25(d)(4).

Dated: October 29, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-28042 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-DS-M

University of Arizona, et al.; Consolidated Decision on Applications for Duty-free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 90-026. *Applicant:* University of Arizona, Tucson, AZ 85721. *Instrument:* Mass Spectrometer,

Model VG 5400. *Manufacturer:* VG Isotope Ltd., United Kingdom. *Intended use: See* notice at 55 FR 8164, March 7, 1990. *Reasons:* The foreign instrument provides a sensitivity of 1.5×10^{-3} amps/torr for argon and xenon and 2.0×10^{-4} amps/torr for helium at a mass resolution of 600. *Advice submitted by:* National Institute of Science and Technology, September 21, 1990.

Docket number: 90-074. *Applicant:* Johns Hopkins University School of Medicine, Baltimore, MD 21205. *Instrument:* NMR Spectrometer, Model MSL-500. *Manufacturer:* Bruker Instruments, West Germany. *Intended use: See* notice at 55 FR 19295, May 9, 1990. *Reasons:* The foreign instrument operates at 500 MHz and provides a bore width of 89 mm with a field strength of 11.746 tesla. *Advice submitted by:* National Institutes of Health, August 30, 1990.

Docket number: 90-075. *Applicant:* University of Utah, Salt Lake City, UT 84112. *Instrument:* Mass Spectrometer, Model Delta S. *Manufacturer:* Finnigan, MAT, West Germany. *Intended use: See* notice at 55 FR 19295, May 9, 1990. *Reasons:* The foreign instrument provides computer-controlled analysis of up to 48 samples per run with an internal precision of 0.006% for 10 bar μl samples of CO_2. *Advice submitted by:* National Institutes of Health, August 30, 1990.

Docket number: 90-085. *Applicant:* California Institute of Technology, Pasadena, CA 91125. *Instrument:* Mass Spectrometer System, Model BIOION 20. *Manufacturer:* BIO-ION, Sweden. *Intended use: See* notice at 55 FR 21420, May 24, 1990. *Reasons:* The foreign instrument provides plasma desorption with a mass range to 20 000. *Advice submitted by:* National Institutes of Health, August 30, 1990.

Docket number: 90-101. *Applicant:* Harvard University, Cambridge, MA 02138. *Instrument:* Gas Chromatograph/Mass Spectrometer, Model JMS-AX505. *Manufacturer:* JEOL, Japan. *Intended use: See* notice at 55 FR 30952, July 30, 1990. *Reasons:* The foreign instrument provides FAB ionization and a scan rate to 0.1 second per decade. *Advice submitted by:* National Institutes of Health, September 18, 1990.

The National Institutes of Health and National Institute of Standards fand Technology advise that (1) The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-26043 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-DS-M

National Eye Institute, et al.; Consolidated Decision on Applications for Duty-free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket numbers: 90-090 and 90-091. *Applicant:* National Eye Institute, Bethesda, MD 20892. *Instrument:* S.P.1 Optometer. *Manufacturer:* A.J. Neuro-Instruments, United Kingdom. *Intended use: See* notice at 55 FR 28080, July 9, 1990. *Reasons:* The foreign instrument provides: (1) A total range of 10.0 diopters with linearity to at least 6.0, (2) operation at a viewing distance to 20 cm; and (3) minimized perturbation from electromagnetic fields.

Docket number: 90-092. *Applicant:* Lamont-Doherty Geological Observatory of Columbia University, Palisades, NY 10964. *Instrument:* ^{3}He Vacuum Extraction System & Tritium Sample Preparation System. *Manufacturer:* Institut Fur Umweltphysik, West Germany. *Intended use: See* notice at 55 FR 28080, July 9, 1990. *Reasons:* The foreign instrument provides quantitative extraction of helium concentrations of 5×10^{-8} cm^3 STP/g and tritium concentrations of 0 to 30 TU.

Docket number: 90-094. *Applicant:* National Institutes of Health, NCI/DCT/COP/ROB, Bethesda, MD 20892. *Instrument:* Stopped Flow Spectrofluorimeter, SF 17m. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended use: See* notice at 55 FR 28080, July 9, 1990. *Reasons:* The foreign instrument provides a biocompatible, low dead volume sample flow circuit with anaerobic capability that can process samples as small as 25 μl.

Docket number: 90-099. *Applicant:* University of California, Los Angeles, CA 90024. *Instrument:* Mass Spectrometer, Model VG 3600. *Manufacturer:* VG Isotopes, United Kingdom. *Intended use: See* notice at 55 FR 30952, July 30, 1990. *Reasons:* The foreign instrument provides a mass 36 background of 3.0×10^{-14} STP and a sensitivity of 1.5×10^{-3} amps/torr for argon at a resolving power of 250.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc 90-26044 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-DS-M

Texas A&M Research Foundation; Withdrawal of Application for Duty-free Entry of Scientific Instruments

Texas A&M Research Foundation has withdrawn Docket Number 90-063 an application for duty-free entry of a Deep Sea Camera with Underwater Strobe. We have discontinued processing in accordance with Section 301.5(g) of 15 CFR part 301.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-26045 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-DS-M

Harvard Medical School et al.; Application for Duty-free Entry of Scientific Instruments: Corrections

In the **Federal Register** of October 15, 1990, the following corrections should be made:

In FR Doc. 90-24252, column 1, page 41737, Docket Number 90-170 should also read: *Application received by commissioner of customs:* August 29, 1990.

In FR Doc. 90-24253 on page 41738, docket number 90-157 appearing in column 3, should read: *Applicant:* University of Florida, Department of Geology.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-26046 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Gulf of Alaska and Bering Sea/Aleutian Islands groundfish plan teams will hold a public meeting on November 13-16, 1990, at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Building 4, room 2039, Seattle, WA. The meeting will begin at 9 a.m., on November 13. If necessary, the Teams may continue the meeting on November 17.

The Teams will work on the final Stock Assessment and Fishery Evaluation documents and develop recommendations for 1991 groundfish specifications for the groundfish species under the Council's jurisdiction.

For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: October 30, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-26071 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Public Display Permit for Marine Animal Productions, Inc.

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Modification #1 to public display permit No. 649 (P108I).

Notice is hereby given that pursuant to the provisions of § 216.33(d) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. 649, issued to Marine Animal Productions, Inc. (MAP), Gulfport, Mississippi, on August 25, 1988 (53 FR 35104) is modified as follows:

Add to section A:

2. Two (2) Atlantic bottlenose dolphins (*Tursiops truncatus*), identified as "MAP 148" male and "MAP 151" female, collected under the Hagenbeck Tierpark Permit #521, heretofore in the possession of MAP in Gulfport, Mississippi, shall be placed under the care and custody of MAP for an indefinite period of time. These two dolphins will count against MAP's outstanding take under Permit No. 649 as the 4th and 5th authorized take under this permit.

This modification is effective on November 5, 1990.

Documents submitted in connection with the above modification are available for review in the Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7330, Silver Spring, Maryland 20910.

Dated: October 26, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90-26122 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Scott D. Kraus (P466)

On August 6, 1990, notice was published in the **Federal Register** (55 FR 31872) that an application had been filed by Scott D. Kraus, Edgerton Research Laboratory, New England Aquarium, Central Wharf, Boston, Massachusetts 02110-3309, for a scientific research permit to take right whales (*Balaena glacialis*) by harassment for the purposes of obtaining photographs for individual identification and to collect samples and/or the entire specimen from any right whale that dies and strands.

Notice is hereby given that on October 29, 1990, and as authorized the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act, and on a finding that such permit;

(1) Was applied for in good faith;

(2) Will not operate to the disadvantage of the endangered species which is the subject of this permit;

(3) And will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973.

This permit was issued in accordance with and is subject to part 216 and parts 220-222 of title 50 CFR, the National Marine Fisheries Service regulations governing marine mammal and endangered species permits. The Service has determined that this research satisfies the issuance criteria for scientific research permits. The taking is required to further a bona fide scientific purpose and does not involve unnecessary duplication of research. No lethal taking is authorized.

The Permit is available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910 (301/427-2289);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893-3141); and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281-9200)

Dated: October 29, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90-26123 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 4 to Permit No. 629]

Marine Mammals; Permit Modification: Sea Life Park, Inc. (P10D)

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. 629 issued to Sea Life Park, Inc., Makapuu Point, Waimanalo, Hawaii 96795 is modified as follows:

Section B.3 is changed to read:

B.3 The authority to capture or otherwise acquire these marine mammals shall extend from the date of issuance through December 31, 1991. The terms and conditions of this Permit (sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification became effective upon publication in the **Federal Register**.

Documents pertaining to the Permit and its modifications are available for review in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Honolulu, Hawaii 96822-2396

Dated: October 29, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90-26124 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

October 30, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATES: October 30, 1990.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased by application of swing, reducing the limits for the donor categories to account for the swing applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 52047, published on December 20, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee For the Implementation of Textile Agreements

October 30, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive of December 14, 1989, issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the period January 1, 1990 through December 31, 1990.

Effective on October 30, 1990 you are directed to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted 12-mo limit [1]
Levels not in a Group:	
219	1,664,367 square meters.
226	9,365,641 square meters.
300/301	2,588,848 kilograms.
340	788,978 dozen of which not more than 394,489 dozen shall be in Category 340-Z.[2]
345	118,154 dozen.
363	24,245,012 numbers.
410	1,363,660 square meters of which not more than 1,493,923 square meters shall be in Category 410-A[3] and not more than 1,493,923 square meters shall be in Category 410-B.[4]
607	2,456,995 kilograms.
615	19,379,088 square meters.
617	13,166,563 square meters.
634	515,149 dozen.
635	553,395 dozen.
659-C[5]	263,940 kilograms.
670-L[6]	13,393,530 kilograms.
840	320,480 dozen.
Group II: 300, 332, 349, 353, 354, 359-O[7], 431, 432, 439, 459, 630, 632, 633, 643, 644, 654, 654 and 659-O[8], as a group.	111,304,309 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

[2] Category 340-Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[3] Category 410-A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.6001, 5111.30.6001, 5111.90.3000, 5111.90.7000, 5112.11.1010, 5112.12.1010, 5112.13.1010, 5112.14.1010, 5112.15.1010, 5112.21.1010, 5112.22.1010, 5112.23.1010, 5112.24.1010, 5112.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.34.0510 and 6301.20.0020.

[4] Category 410-B: HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.6011, 5112.19.6021, 5112.19.6030, 5112.19.6041, 5112.19.6051, 5112.19.6060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.6011, 5112.90.6091, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.2120, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520, and 5516.34.0520.

[5] Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6104.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, and 6211.43.0010.

[6] Category 670-L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020.

[7] Category 359-O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6122.42.0010 (Category 359-C); 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.004, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070 (Category 359-V).

[8] Category 659-O all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1010, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659-C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6080, 6505.90.7060, 6505.90.8060 (659-H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 6211.12.1020 (Category 659-S).

The Committee for the Implementation of Textile Agreements has determined that these actions fall with the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-28084 Filed 11.2.90; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of an Import Limit for Certain Cotton, Wool and Man-Made Fiber Sweaters Assembled in the Commnwealth of the Northern Mariana Islands (CNMI) Form Imported Parts

October 30, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit for the new agreement year.

EFFECTIVE DATE: November 1, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On November 9, 1989, a notice was published in the **Federal Register** (54 FR 47107) announcing that cotton, wool and man-made fiber sweaters in Categories 345, 445, 446, 645 and 646, determined by the U.S. Customs Service to be products of foreign conntries or foreign territories and exported from the Commonwealth of the Northern Mariana islands (CNMI), and certified to have been assembled in the CNMI, may be entered into the United States for consumption, or withdrawn from warehouse for consumption, in an amount not to exceed 87,540 dozen. This limited exception was to be effective for sweaters exported from the CNMI during the period November 1, 1989 through October 31, 1990.

The purpose of this notice is to advise the public that this exception is being continued for goods exported during the period November 1, 1990 through October 31, 1991 at a level of 46,000 dozen, in accordance with the terms of the administrative arrangement, as extended, between the Governments of the United States and the Commonwealth of the Northern Mariana Islands.

A certification will continue to be required and will be issued by the authorities in the CNMI prior to exportation as verification of assembly in the CNMI. A facsimile of the certification stamp was published in the **Federal Register** on August 12, 1988 (53 FR 30456).

For those sweaters properly certified, no export visa or license will be required from the country of origin of the merchandise, and imports entered under this procedure will not be charged to limits established for exports from the country of origin. Exports of sweaters in Categories 345, 445, 446, 645 and 646, which are not accompanied by a certification and those in excess of 46,000 dozen, will require the appropriate visa or export license from the country of origin and will be subject to any other applicable restriction.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Hanmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Information on the 1991 Correlation will be published in the **Federal Register** at a later date.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 30, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: Under the terms of Section 204 of the Agriculatural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, effective on November 1, 1990, you are directed to permit entry or withdrawal from warehouse for consumption in the United States in an amount not to exceed 46,000 dozen cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645 and 646, the product of any foreign country or foreign territory, as determined under 19 C.F.R. Part 12.130 and which have been certified as assembled in the Commonwealth of the Northern Mariana Islands (CNMI) and exported to the United States during the twelve-month period beginning on November 1, 1990 and extending through October 31, 1991. You are directed not to require any otherwise applicable export visa or license and not to charge against any otherwise applicable import restriction sweaters subject to this provision. A certification will be issued by the authorities in the CNMI prior to exportation as verification of assembly in the CNMI. A facsimile of the certification stamp has been provided.

You are directed to require the appropriate visa or export license from the country of origin and charge any shipments of cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645 and 646 to the country of origin if (a) the 46,000 dozen limit has been filled, or (b) the products are not accompanied by certification, or (c) the products are not assembled in the Commonwealth of the Northern Mariana Islands.

Imports charged to the category limit for the period November 1, 1989 through October 31, 1990 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-28085 Filed 11-2-90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of revised rates.

SUMMARY: This notice provides the updated adjusted standardized amounts, DRG relative weights, outlier thresholds, and beneficiary cost-share per diem rates to be used for FY 1991 under the CHAMPUS DRG-based payment system. It also describes the non-regulatory changes made to the CHAMPUS DRG-based payment system in order to conform to changes made to the Medicare Prospective Payment System (PPS).

EFFECTIVE DATE: The rates and weights contained in this notice are effective for admissions occurring on or after October 1, 1990.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

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FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Office of Program Development, OCHAMPUS, telephone (303) 361-4005.

To obtain copies of this document, see the "**ADDRESSES**" section above. Questions regarding payment of specific claims under the CHAMPUS DRG-based payment system should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION: The final rule published on September 1, 1987, (52 FR 32992) set forth the basic procedures used under the CHAMPUS DRG-based payment system. This was subsequently

amended by final rules published on August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331), December 16, 1988 (53 FR 50515), and May 30, 1990 (55 FR 21863). In addition, a final rule is pending which is based on the proposed rule published on March 16, 1990 (55 FR 9921).

An explicit tenet of these final rules, and one based on the statute authorizing use of DRGs by CHAMPUS, is that the CHAMPUS DRG-based payment system is modeled on the Medicare PPS, and that, whenever practicable, the CHAMPUS system will follow the same rules that apply to the Medicare PPS.

We are not initiating any changes to the CHAMPUS DRG-based system, but this notice describes certain changes effective for the fourth year of its operation which are necessary in order to conform to changes to the Medicare PPS. These changes were published as a proposed rule on May 9, 1990 (55 FR 19426), and the final rule was published on September 4, 1990 (55 FR 35990). We refer the reader to these rules for detailed discussions of the changes. In addition, this notice updates the rates and weights in accordance with our previous final rules. The actual changes we are making, along with a description of their relationship to the Medicare PPS, are detailed below.

I. Medicare PPS Changes Which Affect the CHAMPUS DRG-based Payment System

Following is a discussion of the changes the Health Care Financing Administration (HCFA) has made to the Medicare PPS which affect the CHAMPUS DRG-based payment system.

A. DRG Classification

Under both the Medicare PPS and the CHAMPUS DRG-based payment system, cases are classified into the appropriate DRG by a Grouper program. The Grouper classifies each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). The Grouper used for the CHAMPUS DRG-based payment system is the same as the current Medicare Grouper with two modifications. The CHAMPUS system has replaced Medicare DRG 435 with two age-based DRGs (900 and 901), and we have implemented thirty-four (34) neonatal DRGs in place of Medicare DRGs 385 through 390. Grouping for all other DRGs under the CHAMPUS system is identical to the Medicare PPS.

For FY 1991 HCFA will implement a number of classification changes, including surgical hierarchy changes, refinements to the complications and comorbidities list, and coding changes in the Grouper. The CHAMPUS Grouper will duplicate all changes made to the Medicare Grouper. In addition, HCFA has added thirteen new DRGs, deleted two DRGs, and renamed eleven DRGs. The CHAMPUS system also will duplicate these changes.

It is important to note that these DRG changes will affect neither our existing coverage requirements nor the DRG exemption status of certain procedures. However, they will improve the payment precision of our DRG system, since certain specific cases will now be grouped together and will no longer distort the payment levels for the other procedures in the previous DRG.

For example, we will continue to exempt liver transplantation cases from DRG-based payments, even though all such cases will now be grouped to DRG 480. We will consider including them under our DRG system in the future—perhaps next year—and we welcome any comments regarding this. We will consider the same for heart transplants which group to DRG 103.

B. Wage Index

The CHAMPUS DRG-based payment system will continue to use the same wage index amounts used for the Medicare PPS. This includes all updates to the wage indexes which are effective on or after October 1, 1990, as well as any delays in implementing those updates. Since we use the wage index amounts calculated by HCFA, any changes which are phased in over several years for the Medicare PPS also will be phased in for CHAMPUS. In addition, we will duplicate all changes with regard to the wage index for rural counties whose hospitals are deemed urban.

C. Hospital Market Basket

We will use the revised and updated hospital market basket used for the Medicare PPS. This includes the change in the labor-related and nonlabor-related portions of the adjusted standardized amounts.

D. Outliers

We will use the same outlier thresholds effective for the Medicare PPS. For long-stay outliers this will be the geometric mean length of stay plus the lesser of twenty-nine (29) days or three standard deviations. For cost outliers the threshold will be the greater of two times the DRG-based amount or $35,000.

II. Updated Rates and Weights

Tables 1 and 2 provide the rates and weights to be used under the CHAMPUS DRG-based payment system during FY 1991 and which are a result of the changes described above. The implementing regulations for the CHAMPUS DRG-based payment system are in 32 CFR part 199.

Dated: October 30, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Effective for admissions occurring on or after October 1, 1990.

The following summary provides the adjusted standardized amounts and the cost-share per diem for beneficiaries other than dependents of active-duty members.

TABLE 1—NATIONAL URBAN AND RURAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR, AND COST-SHARE PER DIEM

National Large Urban Adjusted Standardized Amounts	$3,067.59
Labor portion	2,172.47
Nonlabor portion	895.12
National Other Urban Adjusted Standardized Amount	2,996.47
Labor portion	2,122.10
Nonlabor portion	874.37
National Rural Adjusted Standardized Amount	2,958.16
Labor portion	2,237.26
Nonlabor portion	720.90
Cost-share per diem for beneficiaries other than dependents of active-duty members	266.00

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DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD (A)	LONG STAY THRESHOLD (B)
1	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.8296	13.2	10.1	1	39	27
2	CRANIOTOMY FOR TRAUMA AGE >17	4.7208	13.4	9.4	1	38	26
3	CRANIOTOMY AGE 0-17	2.8052	9.5	5.9	1	34	22
4	SPINAL PROCEDURES	2.1169	8.6	6.4	1	35	23
5	EXTRACRANIAL VASCULAR PROCEDURES	1.7360	5.5	4.7	1	26	14
6	CARPAL TUNNEL RELEASE	0.6616	2.4	2	1	14	7
7	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.3772	10.8	6.7	1	35	23
8	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	0.8947	3.4	2.4	1	24	10
9	SPINAL DISORDERS & INJURIES	3.2092	24.6	11.9	1	40	28
10	NERVOUS SYSTEM NEOPLASMS W CC	1.5659	10.4	6.4	1	35	23
11	NERVOUS SYSTEM NEOPLASMS W/O CC	0.9788	6	3.6	1	32	20
12	DEGENERATIVE NERVOUS SYSTEM DISORDERS	1.9710	13	7.2	1	36	24
13	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	0.9247	7.1	5.3	1	34	22
14	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.5377	8.7	5.9	1	34	22
15	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	0.7414	3.8	3.1	1	21	10
16	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.6854	14.1	6.3	1	35	23
17	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	1.0644	6	3.9	1	32	20
18	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	0.9274	6.2	4.6	1	33	21
19	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.6960	4.8	3.3	1	32	16
20	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.8427	9.6	7.4	1	36	24
21	VIRAL MENINGITIS	0.6273	4.1	3.5	1	18	10
22	HYPERTENSIVE ENCEPHALOPATHY	0.8183	4.5	3.3	1	29	13
23	NONTRAUMATIC STUPOR & COMA	0.6934	2.8	2.2	1	16	8
24	SEIZURE & HEADACHE AGE >17 W CC	0.8443	4.6	3.6	1	31	14
25	SEIZURE & HEADACHE AGE >17 W/O CC	0.5386	3.6	2.8	1	22	10
26	SEIZURE & HEADACHE AGE 0-17	0.5357	3.2	2.4	1	19	9
27	TRAUMATIC STUPOR & COMA, COMA >1 HR	2.2539	9.1	4.3	1	33	21
28	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.2917	6.8	4.6	1	33	21
29	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	1.2370	7.5	3.5	1	32	20
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	0.5955	3.1	2	1	23	10
31	CONCUSSION AGE >17 W CC	0.6317	3.2	2.2	1	21	9
32	CONCUSSION AGE >17 W/O CC	0.4484	2.4	1.8	1	13	6
33	CONCUSSION AGE 0-17	0.2882	1.4	1.3	1	4	2
34	OTHER DISORDERS OF NERVOUS SYSTEM W CC	2.1045	9.5	5.3	1	34	22
35	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	1.1231	8.3	3.7	1	32	20
36	RETINAL PROCEDURES	0.7892	2.4	2	1	10	5
37	ORBITAL PROCEDURES	0.8711	2.9	2.2	1	21	9
38	PRIMARY IRIS PROCEDURES	0.3614	0	2.2	1	17	17
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	0.7245	1.5	1.3	1	5	3
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	0.6147	2.1	1.6	1	12	6
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	0.4929	1.5	1.2	1	5	3
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	0.8275	2.6	2.1	1	14	7
43	HYPHEMA	0.2827	3.6	2.9	1	23	11
44	ACUTE MAJOR EYE INFECTIONS	0.4690	3.9	3.4	1	16	9
45	NEUROLOGICAL EYE DISORDERS	0.6138	3.7	2.8	1	27	12
46	OTHER DISORDERS OF THE EYE AGE >17 W CC	0.8169	5.6	3.1	1	32	20
47	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	0.5074	3.2	2.2	1	24	10
48	OTHER DISORDERS OF THE EYE AGE 0-17	0.4422	2.8	2.2	1	16	7
49	MAJOR HEAD & NECK PROCEDURES	2.2905	9.1	6.2	1	35	23
50	SIALOADENECTOMY	0.7318	1.9	1.7	1	6	4

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DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD (A)	LONG STAY THRESHOLD (B)
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	0.5854	1.6	1.5	1	5	3
52	CLEFT LIP & PALATE REPAIR	0.7219	2.5	2.1	1	12	6
53	SINUS & MASTOID PROCEDURES AGE >17	0.6953	1.9	1.6	1	9	4
54	SINUS & MASTOID PROCEDURES AGE 0-17	0.7170	1.9	1.5	1	9	5
55	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	0.5870	1.6	1.3	1	6	3
56	RHINOPLASTY	0.5429	1.5	1.3	1	4	3
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.6521	2.5	2.1	1	12	6
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.4267	1.3	1.1	1	3	2
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.3712	1.3	1.2	1	3	2
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.3380	1.1	1.1	1	2	1
61	MYRINGOTOMY W TUBE INSERTION AGE >17	0.7306	2.3	1.7	1	14	6
62	MYRINGOTOMY W TUBE INSERTION AGE 0-17	0.6121	3	1.9	1	24	10
63	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.0597	3.1	2.4	1	17	8
64	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.0437	4.8	3.3	1	32	19
65	DYSEQUILIBRIUM	0.4794	3	2.6	1	14	7
66	EPISTAXIS	0.4247	3.1	2.5	1	18	9
67	EPIGLOTTITIS	1.1018	4.2	3.5	1	25	12
68	OTITIS MEDIA & URI AGE >17 W CC	0.6452	4.1	3.4	1	19	10
69	OTITIS MEDIA & URI AGE >17 W/O CC	0.4838	3.4	2.8	1	17	9
70	OTITIS MEDIA & URI AGE 0-17	0.4017	3	2.6	1	13	7
71	LARYNGOTRACHEITIS	0.3395	2.3	1.9	1	10	5
72	NASAL TRAUMA & DEFORMITY	0.4875	1.9	1.7	1	7	4
73	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	0.5217	3.1	2.4	1	20	9
74	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	0.5155	3.2	2.2	1	23	10
75	MAJOR CHEST PROCEDURES	3.3687	11.4	9.3	1	38	26
76	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.4441	10.2	7.2	1	36	24
77	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.4745	5.7	3.5	1	32	20
78	PULMONARY EMBOLISM	1.6011	9.1	7.8	1	36	24
79	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	2.3529	10.9	8.7	1	37	25
80	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	1.2360	7.8	6.1	1	35	22
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	2.2189	8.1	5.6	1	34	22
82	RESPIRATORY NEOPLASMS	1.5896	8.6	5.6	1	34	22
83	MAJOR CHEST TRAUMA W CC	1.2621	6.2	4.8	1	33	21
84	MAJOR CHEST TRAUMA W/O CC	0.5709	3.2	2.6	1	20	9
85	PLEURAL EFFUSION W CC	2.3385	9.4	6.7	1	35	23
86	PLEURAL EFFUSION W/O CC	0.9208	4.9	3.9	1	28	14
87	PULMONARY EDEMA & RESPIRATORY FAILURE	2.3477	8.7	6.2	1	35	23
88	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.1219	6.3	5	1	34	18
89	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.4110	7.2	#	1	35	19
90	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.8243	5.2	4.4	1	24	13
91	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	0.6512	4.1	3.5	1	18	10
92	INTERSTITIAL LUNG DISEASE W CC	1.6108	6.9	5.6	1	34	21
93	INTERSTITIAL LUNG DISEASE W/O CC	0.8937	5	3.8	1	32	15
94	PNEUMOTHORAX W CC	1.4480	7.7	5.9	1	34	22
95	PNEUMOTHORAX W/O CC	0.6670	4.9	3.9	1	30	14
96	BRONCHITIS & ASTHMA AGE >17 W CC	1.0585	5.8	4.8	1	30	16
97	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.6940	4.2	3.5	1	21	11
98	BRONCHITIS & ASTHMA AGE 0-17	0.5411	3.3	2.8	1	15	8
99	RESPIRATORY SIGNS & SYMPTOMS W CC	0.9752	4.3	3.2	1	30	13
100	RESPIRATORY SIGNS & SYMPTOMS W/O CC	0.5765	2.7	2.2	1	15	7

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101	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	1.2262	5.7	4	1	32	20
102	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.6718	3.9	2.5	1	31	12
103	HEART TRANSPLANT	-	-	-	-		
104	CARDIAC VALVE PROCEDURES W CARDIAC CATH	8.2233	16.6	14.2	2	43	31
105	CARDIAC VALVE PROCEDURES W/O CARDIAC CATH	6.5293	12	10.4	2	39	27
106	CORONARY BYPASS W CARDIAC CATH	5.9450	12.1	11.2	3	36	24
107	CORONARY BYPASS W/O CARDIAC CATH	5.1343	9.8	9	2	31	20
108	OTHER CARDIOTHORACIC PROCEDURES	5.3402	10.6	8.9	1	37	25
109	NO LONGER VALID	-	-	-	-		
110	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.0800	10.6	8.9	1	37	25
111	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.8974	7.6	6.4	1	35	22
112	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	2.2669	4.9	3.9	1	31	14
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	3.8962	19.6	15.2	1	44	32
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.8468	11.4	7.3	1	36	24
115	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK	4.7169	11.8	10.9	3	38	24
116	PERM CARDIAC PACEMAKER IMPLANT W/O AMI, HEART FAILURE OR SHOCK	3.1189	6.3	4.8	1	33	19
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.2330	4.1	3.7	1	17	9
118	CARDIAC PACEMAKER DEVICE REPLACEMENT	2.5920	5	3.5	1	32	19
119	VEIN LIGATION & STRIPPING	0.7276	2.8	2.1	1	16	7
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.6051	11.8	7.3	1	36	24
121	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	2.1210	7.8	6.7	1	35	21
122	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	1.5015	6.1	5.1	1	34	18
123	CIRCULATORY DISORDERS W AMI, EXPIRED	2.1589	4	2.5	1	31	15
124	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.4304	4.6	3.5	1	32	15
125	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	0.9079	2.9	2.1	1	19	8
126	ACUTE & SUBACUTE ENDOCARDITIS	3.0086	19.3	14	1	42	30
127	HEART FAILURE & SHOCK	1.2961	6.5	5.1	1	34	20
128	DEEP VEIN THROMBOPHLEBITIS	0.8768	7.3	6.4	1	31	17
129	CARDIAC ARREST, UNEXPLAINED	2.1715	6	2.7	1	31	19
130	PERIPHERAL VASCULAR DISORDERS W CC	1.2637	7.3	5.5	1	34	22
131	PERIPHERAL VASCULAR DISORDERS W/O CC	0.7082	4.9	3.6	1	32	19
132	ATHEROSCLEROSIS W CC	1.5879	5.2	3.7	1	32	19
133	ATHEROSCLEROSIS W/O CC	1.2139	4.2	3	1	31	15
134	HYPERTENSION	0.6142	3.9	3.1	1	23	11
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	1.8256	5.1	3.1	1	32	18
136	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	0.6080	2.4	2	1	11	6
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	1.3828	3.7	2.2	1	29	11
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	0.9300	4.4	3.3	1	30	13
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.6046	3.1	2.4	1	18	8
140	ANGINA PECTORIS	0.7859	3.4	2.7	1	18	9
141	SYNCOPE & COLLAPSE W CC	0.6765	3.7	3	1	23	11
142	SYNCOPE & COLLAPSE W/O CC	0.5384	2.9	2.3	1	16	8
143	CHEST PAIN	0.5914	2.6	2.1	1	12	6
144	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.4044	5.7	4.2	1	33	19
145	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.8652	3.5	2.6	1	25	11
146	RECTAL RESECTION W CC	2.7840	11.9	11.1	3	34	23
147	RECTAL RESECTION W/O CC	1.7057	8.9	8.1	2	28	18
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.5149	13.4	11.4	2	40	28
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.9082	9	8	1	37	21
150	PERITONEAL ADHESIOLYSIS W CC	2.7060	11.1	9.1	1	38	26

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD (A)	LONG STAY THRESHOLD (B)
151	PERITONEAL ADHESIOLYSIS W/O CC	1.2523	6.6	5.6	1	34	18
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	2.0675	10.4	8.2	1	37	25
153	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.1429	6.1	5.4	1	28	15
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC	3.6369	12.4	10	1	38	26
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	1.7915	7.9	6.9	1	31	18
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	1.2797	6.7	4.6	1	33	21
157	ANAL & STOMAL PROCEDURES W CC	0.9030	4.3	3.5	1	27	13
158	ANAL & STOMAL PROCEDURES W/O CC	0.5648	2.6	2.2	1	12	6
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	1.1940	5.3	4.1	1	33	15
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	0.7927	3.4	2.8	1	18	9
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	0.6996	2.6	2.1	1	14	7
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	0.5294	1.8	1.6	1	7	4
163	HERNIA PROCEDURES AGE 0-17	0.4506	1.5	1.3	1	5	3
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.1141	9.6	8.5	1	37	22
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.1890	5.8	5.1	1	24	14
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.0452	4.7	4.1	1	19	11
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	0.7118	3.2	2.9	1	10	6
168	MOUTH PROCEDURES W CC	0.9555	4.4	3.1	1	32	15
169	MOUTH PROCEDURES W/O CC	0.6523	2.4	1.8	1	15	7
170	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.8657	12.6	8.4	1	37	25
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.0559	5	3.8	1	32	17
172	DIGESTIVE MALIGNANCY W CC	1.8335	9.5	6.3	1	35	23
173	DIGESTIVE MALIGNANCY W/O CC	1.1363	7.1	4.6	1	33	21
174	G.I. HEMORRHAGE W CC	1.0641	5.1	4.2	1	25	13
175	G.I. HEMORRHAGE W/O CC	0.6538	3.7	3.1	1	18	9
176	COMPLICATED PEPTIC ULCER	1.0141	6.2	4.7	1	33	19
177	UNCOMPLICATED PEPTIC ULCER W CC	0.8330	4.6	3.9	1	24	12
178	UNCOMPLICATED PEPTIC ULCER W/O CC	0.5983	3.7	3	1	20	10
179	INFLAMMATORY BOWEL DISEASE	1.2394	7.8	5.7	1	34	22
180	G.I. OBSTRUCTION W CC	1.0375	6.5	4.8	1	33	20
181	G.I. OBSTRUCTION W/O CC	0.5908	4	3.1	1	25	12
182	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC	0.7183	4.4	3.4	1	26	12
183	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	0.5362	3.4	2.7	1	19	9
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	0.3535	2.8	2.3	1	14	7
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	0.7433	4	3.1	1	30	13
186	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	0.4058	2.8	2.4	1	14	7
187	DENTAL EXTRACTIONS & RESTORATIONS	0.6438	2.1	1.7	1	11	5
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	0.9747	5.6	4.1	1	33	19
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	0.5002	3.2	2.3	1	23	10
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	0.3911	2.3	1.8	1	12	6
191	PANCREAS, LIVER & SHUNT PROCEDURES W CC	5.1119	16.4	13.1	1	42	30
192	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	2.9142	12.5	10.3	1	39	27
193	BILIARY TRACT PROC EXCEPT ONLY TOT CHOLECYST W OR W/O C.D.E. W C	3.3941	15	12	1	41	29
194	BILIARY TRACT PROC EXCEPT ONLY TOT CHOLECYST W OR W/O C.D.E. W/O	1.7502	8.5	7	1	36	24
195	TOTAL CHOLECYSTECTOMY W C.D.E. W CC	1.8708	8.8	7.8	1	32	19
196	TOTAL CHOLECYSTECTOMY W C.D.E. W/O CC	1.4161	7.2	6.7	2	20	13
197	TOTAL CHOLECYSTECTOMY W/O C.D.E. W CC	1.5080	6.9	6.1	1	25	15
198	TOTAL CHOLECYSTECTOMY W/O C.D.E. W/O CC	0.9790	4.8	4.4	1	15	9
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.3765	11.3	8.6	1	37	25
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	1.9349	8.1	5.9	1	34	22

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DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD (A)	LONG STAY THRESHOLD (B)
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.6187	8.8	6.1	1	35	23
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.7418	9.3	6.5	1	35	23
203	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.3748	8.1	5.3	1	34	22
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.1765	6.8	5.3	1	34	20
205	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	1.6793	8	5.4	1	34	22
206	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	0.5886	3.6	2.5	1	31	12
207	DISORDERS OF THE BILIARY TRACT W CC	1.0638	5.3	4.2	1	33	16
208	DISORDERS OF THE BILIARY TRACT W/O CC	0.6209	3.3	2.6	1	21	10
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES	2.9407	9.8	9.1	2	28	18
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	2.6268	12	10.3	1	39	27
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	1.8461	9.6	7.8	1	36	24
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.5130	6.7	4.6	1	33	21
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	2.2234	13.5	8.5	1	37	25
214	BACK & NECK PROCEDURES W CC	1.9361	8.1	6.6	1	35	21
215	BACK & NECK PROCEDURES W/O CC	1.2615	5.7	4.8	1	26	14
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1.7244	8.5	4.7	1	33	21
217	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS	2.6197	12.8	7.1	1	36	24
218	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC	1.6089	7.1	5.6	1	34	19
219	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC	1.0345	4.3	3.6	1	21	11
220	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17	0.7933	3.1	2.3	1	18	8
221	KNEE PROCEDURES W CC	1.5331	6.7	4.4	1	33	21
222	KNEE PROCEDURES W/O CC	0.9868	3	2.5	1	14	7
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	0.8830	3.4	2.6	1	19	9
224	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	0.7380	2.5	2	1	11	6
225	FOOT PROCEDURES	0.7363	2.6	2.1	1	13	7
226	SOFT TISSUE PROCEDURES W CC	1.2258	5.7	3.9	1	32	20
227	SOFT TISSUE PROCEDURES W/O CC	0.7549	2.9	2.3	1	17	8
228	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	0.7922	2.5	2	1	12	6
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	0.6084	1.9	1.6	1	[illegible]	4
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	0.6759	2.7	2	1	14	7
231	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	0.9585	3.6	2.4	1	27	11
232	ARTHROSCOPY	0.9692	3	2	1	22	9
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	2.6703	10	6.6	1	35	23
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	1.0374	4	3	1	27	12
235	FRACTURES OF FEMUR	1.2218	13	7.5	1	36	24
236	FRACTURES OF HIP & PELVIS	1.1903	9.6	6.6	1	35	23
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	0.5372	3.9	2.4	1	31	16
238	OSTEOMYELITIS	1.3621	8.9	7	1	35	23
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	1.5201	10.2	6.8	1	35	23
240	CONNECTIVE TISSUE DISORDERS W CC	1.5434	7.8	5.6	1	34	22
241	CONNECTIVE TISSUE DISORDERS W/O CC	0.7234	5.2	3.6	1	32	18
242	SEPTIC ARTHRITIS	1.4697	9.2	6.5	1	35	23
243	MEDICAL BACK PROBLEMS	0.6259	4.5	3.2	1	32	16
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	1.3405	6.5	4.4	1	33	21
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	0.9556	5.7	3.9	1	32	20
246	NON-SPECIFIC ARTHROPATHIES	0.6660	4.9	4.1	1	27	14
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	0.6295	4.7	3.3	1	32	15
248	TENDONITIS, MYOSITIS & BURSITIS	0.5841	3.7	2.7	1	24	11
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	0.8265	6.6	3.6	1	32	20
250	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	0.8391	4.2	2.8	1	31	16

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251	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	0.5148	2.2	1.7	1	12	6
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	0.3638	1.5	1.3	1	5	3
253	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC	0.9303	6.2	4.5	1	33	20
254	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	0.5219	3.4	2.6	1	20	9
255	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	0.4191	2.4	1.8	1	14	6
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	0.6718	3.9	2.6	1	31	13
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC	1.0889	4.6	4.1	1	18	10
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.8870	3.8	3.4	1	14	8
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	1.3701	5.1	3.5	1	32	17
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.7378	2.5	2.2	1	10	6
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	0.9349	2.4	2.1	1	10	5
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	0.5475	2	1.7	1	9	5
263	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	3.0170	18	11.5	1	40	28
264	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.8895	13.5	6.8	1	35	23
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.7689	7.4	5.2	1	34	22
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O C	0.9502	3.7	2.8	1	26	12
267	PERIANAL & PILONIDAL PROCEDURES	0.5309	2.1	1.6	1	10	5
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	0.7786	2.1	1.6	1	12	6
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.8459	9.1	5.7	1	34	22
270	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	0.7323	3.2	2.3	1	22	10
271	SKIN ULCERS	1.4933	12	7.9	1	36	24
272	MAJOR SKIN DISORDERS W CC	1.3829	7.5	5.1	1	34	22
273	MAJOR SKIN DISORDERS W/O CC	0.7546	5.7	4.2	1	33	18
274	MALIGNANT BREAST DISORDERS W CC	2.0838	11.8	6.6	1	35	23
275	MALIGNANT BREAST DISORDERS W/O CC	1.6268	7	3.6	1	32	20
276	NON-MALIGANT BREAST DISORDERS	0.6935	3.5	2.6	1	25	11
277	CELLULITIS AGE >17 W CC	0.9297	6.5	5.2	1	33	17
278	CELLULITIS AGE >17 W/O CC	0.6602	4.9	4.1	1	25	13
279	CELLULITIS AGE 0-17	0.4934	3.7	3.1	1	17	9
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	0.7382	4.1	2.9	1	31	14
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.5108	3	2	1	21	9
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	0.3787	2	1.6	1	10	5
283	MINOR SKIN DISORDERS W CC	0.7419	5.3	3.7	1	32	17
284	MINOR SKIN DISORDERS W/O CC	0.5032	3.7	2.6	1	29	12
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	2.7431	16.7	13.6	1	42	30
286	ADRENAL & PITUITARY PROCEDURES	2.1104	7.7	6.6	1	33	18
287	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	2.2301	13.8	9.1	1	38	26
288	O.R. PROCEDURES FOR OBESITY	1.7266	5.3	5	1	14	9
289	PARATHYROID PROCEDURES	0.8712	3.1	2.7	1	13	7
290	THYROID PROCEDURES	0.7487	2.6	2.3	1	9	5
291	THYROGLOSSAL PROCEDURES	0.5076	1.4	1.2	1	4	2
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	3.1150	14.8	10.6	1	39	27
293	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	0.9387	4.3	3.5	1	29	13
294	DIABETES AGE >35	0.7571	5.7	4.8	1	28	15
295	DIABETES AGE 0-35	0.5850	4.2	3.4	1	21	11
296	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	1.1324	6.9	4.7	1	33	21
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.5699	4.3	3	1	31	13
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	0.4416	3.5	2.6	1	20	10
299	INBORN ERRORS OF METABOLISM	1.0326	10.6	4.5	1	33	21
300	ENDOCRINE DISORDERS W CC	1.0508	5.9	3.9	1	32	20

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301	ENDOCRINE DISORDERS W/O CC	0.6318	3.7	2.6	1	27	11
302	KIDNEY TRANSPLANT	6.7453	17.9	15.6	3	44	32
303	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	2.5181	9.8	8	2	32	20
304	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC	2.0428	8.5	7.3	1	36	22
305	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	1.2256	5.3	4.4	1	32	16
306	PROSTATECTOMY W CC	1.5412	7.3	5.2	1	34	22
307	PROSTATECTOMY W/O CC	0.8123	4.4	3.5	1	23	12
308	MINOR BLADDER PROCEDURES W CC	1.4083	5.9	4.7	1	33	19
309	MINOR BLADDER PROCEDURES W/O CC	0.9558	3.8	2.9	1	26	12
310	TRANSURETHRAL PROCEDURES W CC	1.0151	3.9	3.1	1	24	11
311	TRANSURETHRAL PROCEDURES W/O CC	0.7609	2.8	2.3	1	15	7
312	URETHRAL PROCEDURES, AGE >17 W CC	0.7523	3.6	2.6	1	31	13
313	URETHRAL PROCEDURES, AGE >17 W/O CC	0.6544	2.3	1.8	1	14	6
314	URETHRAL PROCEDURES, AGE 0-17	0.5581	1.9	1.5	1	10	5
315	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.2736	9.9	6.4	1	35	23
316	RENAL FAILURE	1.9648	8.2	5.7	1	34	22
317	ADMIT FOR RENAL DIALYSIS	0.3499 *	0	2.2	1	21	21
318	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.5489	8.7	5.6	1	34	22
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	1.1492	5.6	3.5	1	32	20
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	0.9528	5.8	4.7	1	31	16
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.6311	4.2	3.6	1	18	10
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	0.5536	4.1	3.5	1	19	10
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	0.7595	2.8	2.2	1	16	7
324	URINARY STONES W/O CC	0.4629	2.1	1.7	1	9	5
325	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	1.0265	5.3	3.7	1	32	17
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	0.5236	3.2	2.5	1	21	10
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	0.3690	2.3	1.9	1	11	6
328	URETHRAL STRICTURE AGE >17 W CC	0.6346 *	0	3.8	1	33	33
329	URETHRAL STRICTURE AGE >17 W/O CC	0.4135	1.7	1.5	1	7	4
330	URETHRAL STRICTURE AGE 0-17	0.2754 *	0	1.6	1	9	9
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	0.9348	5.1	3.8	1	32	17
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.6318	3.9	2.8	1	29	12
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	0.8659	4.6	3	1	32	15
334	MAJOR MALE PELVIC PROCEDURES W CC	2.2792	8.8	8.3	3	22	15
335	MAJOR MALE PELVIC PROCEDURES W/O CC	1.6317	7.3	6.8	1	26	16
336	TRANSURETHRAL PROSTATECTOMY W CC	1.0504	4.8	4.3	1	18	10
337	TRANSURETHRAL PROSTATECTOMY W/O CC	0.7266	3.6	3.3	1	10	6
338	TESTES PROCEDURES, FOR MALIGNANCY	0.8927	3.8	2.5	1	31	14
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	0.5388	2	1.5	1	9	5
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	0.4871	1.6	1.4	1	5	3
341	PENIS PROCEDURES	0.9275	3.3	2.5	1	22	10
342	CIRCUMCISION AGE >17	0.4971 *	0	2.3	1	24	24
343	CIRCUMCISION AGE 0-17	0.4229	1.2	1.2	1	2	2
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.4182	6.6	5.6	1	31	17
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	0.5393	2.3	2.1	1	8	5
346	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	1.2738	7.4	4.5	1	33	21
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	1.1618	4.8	4.1	1	25	13
348	BENIGN PROSTATIC HYPERTROPHY W CC	0.5046	2.2	1.8	1	12	6
349	BENIGN PROSTATIC HYPERTROPHY W/O CC	0.4598	2.4	1.9	1	13	6
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	0.6208	4.2	3.5	1	22	11

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351	STERILIZATION, MALE	0.3293	0	1.3	1	5	5
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	0.5722	2.9	2.1	1	22	9
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	2.2394	10.2	8.6	1	37	23
354	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	1.4736	6.8	6.1	1	23	14
355	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	0.9082	4.5	4.2	1	12	8
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	0.8425	4.4	3.9	1	14	9
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	1.8611	8.3	7.1	1	35	20
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.1552	5.1	4.7	1	14	9
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	0.9099	4.1	3.9	1	11	7
360	VAGINA, CERVIX & VULVA PROCEDURES	0.6866	3.1	2.5	1	20	9
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	0.7317	3.1	2.4	1	21	9
362	ENDOSCOPIC TUBAL INTERRUPTION	0.3886	1.6	1.4	1	5	3
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	0.6316	2.9	2.4	1	14	7
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY	0.4676	2	1.6	1	10	5
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.2792	6	4.7	1	33	17
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.4437	10	6.1	1	35	23
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	0.8564	4.9	2.8	1	31	19
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	0.5769	3.8	3.3	1	17	9
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	0.4701	2.8	2.2	1	15	7
370	CESAREAN SECTION W CC	0.9633	5	4.6	1	14	9
371	CESAREAN SECTION W/O CC	0.7694	4	3.9	1	8	6
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	0.5779	3.4	2.8	1	14	8
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	0.3916	2.2	2	1	6	4
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C	0.6281	2.6	2.4	1	8	4
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	0.6221	3.1	2.5	1	15	8
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	0.4706	3	2.5	1	15	8
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	0.7002	2.9	2.1	1	19	7
378	ECTOPIC PREGNANCY	0.7821	3.4	3.1	1	11	5
379	THREATENED ABORTION	0.3666	3	2.1	1	19	7
380	ABORTION W/O D&C	0.3207	1.7	1.4	1	6	3
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	0.4018	1.4	1.2	1	4	2
382	FALSE LABOR	0.1700	1.5	1.2	1	5	3
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	0.3524	3.1	2.5	1	16	8
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	0.3282	2.6	1.9	1	17	7
385	NO LONGER VALID	.	.	.	.	.	.
386	NO LONGER VALID	.	.	.	.	.	.
387	NO LONGER VALID	.	.	.	.	.	.
388	NO LONGER VALID	.	.	.	.	.	.
389	NO LONGER VALID	.	.	.	.	.	.
390	NO LONGER VALID	.	.	.	.	.	.
391	NORMAL NEWBORN	.	.	.	.	.	.
392	SPLENECTOMY AGE >17	0.1222	2.4	2.1	1	8	5
393	SPLENECTOMY AGE 0-17	1.9746	8.2	7.6	2	23	15
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	2.5411	9.9	7.2	1	36	24
395	RED BLOOD CELL DISORDERS AGE >17	1.0923	4.8	3.3	1	32	18
396	RED BLOOD CELL DISORDERS AGE 0-17	0.9163	5	3.6	1	32	18
397	COAGULATION DISORDERS	0.5717	3.5	2.7	1	24	11
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	1.1130	4.9	3.4	1	32	16
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	1.5915	8.2	5.9	1	34	22
400	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	0.7367	4.6	3.3	1	32	16
		2.5465	10.1	6.9	1	35	23

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DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD (A)	LONG STAY THRESHOLD (B)
401	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	3.0313	13	9	1	37	25
402	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	1.1805	5	3.2	1	32	19
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	2.8842	12	7.7	1	36	24
404	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	1.0922	5.6	4	1	32	19
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	2.2086	7.9	5.1	1	34	22
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	3.5461	16.1	10.5	1	39	27
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	1.9867	9	6.5	1	35	23
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	1.4324	6.1	3.7	1	32	20
409	RADIOTHERAPY	0.8028	4.4	3	1	31	14
410	CHEMOTHERAPY	0.7157	3.1	2.4	1	17	8
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY	0.2978	1.4	1.3	1	4	2
412	HISTORY OF MALIGNANCY W ENDOSCOPY	0.4072	0	2.2	1	21	21
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	1.6973	9.8	5.9	1	34	22
414	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	1.0757	5.7	3.9	1	32	20
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.5417	15.3	10.3	1	39	27
416	SEPTICEMIA AGE >17	1.9758	8.8	6.8	1	35	23
417	SEPTICEMIA AGE 0-17	0.8770	5.4	4.4	1	31	15
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	0.9502	6.4	5.1	1	34	19
419	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	1.0225	6.2	5	1	33	17
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	0.7472	4.8	3.4	1	31	14
421	VIRAL ILLNESS AGE >17	0.5912	3.8	3.1	1	20	10
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	0.4437	3.1	2.7	1	13	7
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.4288	6.8	5	1	33	21
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.3511	19.8	14.8	1	43	31
425	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	1.0797	12	6.5	1	35	23
426	DEPRESSIVE NEUROSES	1.2920	12.4	9.2	1	38	26
427	NEUROSES EXCEPT DEPRESSIVE	1.8114	12.6	7.3	1	36	24
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL	3.5325	14.8	9.8	1	38	26
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	1.9377	33.3	13.4	1	42	30
430	PSYCHOSES	1.5425	12.8	8.9	1	37	25
431	CHILDHOOD MENTAL DISORDERS	2.8787	16.4	11	1	40	28
432	OTHER MENTAL DISORDER DIAGNOSES	2.0099	21.1	13.1	1	42	30
433	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.7189	7.7	4.8	1	33	21
434	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC	1.3210	13.2	8.2	1	37	25
435	NO LONGER VALID	.	.	.	.	.	.
436	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	0.9873	0	8.1	1	37	37
437	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY	1.6812	22.2	20.7	6	49	37
438	NO LONGER VALID	.	.	.	.	.	.
439	SKIN GRAFTS FOR INJURIES	2.3198	7.2	4.2	1	33	21
440	WOUND DEBRIDEMENTS FOR INJURIES	1.9133	9.4	5.2	1	34	22
441	HAND PROCEDURES FOR INJURIES	0.8430	2.8	2.2	1	17	8
442	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.4978	8.8	5.6	1	34	22
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	1.0625	4	2.6	1	31	14
444	TRAUMATIC INJURY AGE >17 W CC	0.9504	6	4.1	1	33	20
445	TRAUMATIC INJURY AGE >17 W/O CC	0.5651	4.1	2.7	1	31	13
446	TRAUMATIC INJURY AGE 0-17	0.4562	2.7	2	1	17	8
447	ALLERGIC REACTIONS AGE >17	0.5197	2.9	2.1	1	18	8
448	ALLERGIC REACTIONS AGE 0-17	0.2790	2	1.5	1	11	5
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	0.9098	4.4	2.8	1	31	15
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	0.5039	3.2	2	1	24	9

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451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	0.4245	2.2	1.6	1	11	5
452	COMPLICATIONS OF TREATMENT W CC	1.4527	6.4	4.4	1	33	>1
453	COMPLICATIONS OF TREATMENT W/O CC	0.5390	3.2	2.3	1	23	10
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	1.0135	3	2.1	1	21	9
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	0.3647	1.8	1.5	1	8	4
456	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.5138 *	0	4.1	1	33	33
457	EXTENSIVE BURNS W/O O.R. PROCEDURE	6.2203	11.9	8.4	1	37	25
458	NON-EXTENSIVE BURNS W SKIN GRAFT	3.1577	15.5	11.1	1	40	26
459	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC	2.0217	11.4	7.2	1	36	24
460	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	0.8559	5.5	3.9	1	32	20
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	1.2987	7.4	3	1	32	20
462	REHABILITATION	3.1031	22.4	15.6	1	44	32
463	SIGNS & SYMPTOMS W CC	0.8566	6	3.8	1	32	20
464	SIGNS & SYMPTOMS W/O CC	0.5388	3.9	2.9	1	26	12
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.3995 *	0	1.9	1	21	21
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.7089	4.9	2.4	1	31	15
467	OTHER FACTORS INFLUENCING HEALTH STATUS	0.4605	2.6	1.9	1	16	7
468	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.2231	9.3	5.3	1	34	22
469	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	.	.	.	.		
470	UNGROUPABLE	.	.	.	.		
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	4.8206	14.6	13.5	3	42	30
472	EXTENSIVE BURNS W O.R. PROCEDURE	11.7637 *	0	21	1	50	50
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	5.3447	19.3	9.9	1	38	26
474	NO LONGER VALID	.	.	.	.		
475	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	4.3450	11.1	7.6	1	36	24
476	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.4861	14.1	9.6	1	38	26
477	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.3297	6.3	3.8	1	32	20
478	OTHER VASCULAR PROCEDURES W CC	3.0829	10.7	6.9	1	35	23
479	OTHER VASCULAR PROCEDURES W/O CC	1.7071	5.3	3.8	1	32	18
480	LIVER TRANSPLANT	.	.	.	.		
481	BONE MARROW TRANSPLANT	12.4485 *	0	36.6	1	66	66
482	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	3.2711	11.3	10	2	39	27
483	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	11.7630	24.7	19	1	48	36
484	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	6.9972 *	0	13.5	1	43	43
485	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT T	4.8581	17.6	14.4	2	43	31
486	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	5.3864	14.8	11.1	1	40	28
487	OTHER MULTIPLE SIGNIFICANT TRAUMA	2.8580	10.6	7	1	36	24
488	HIV W EXTENSIVE O.R. PROCEDURE	4.1296 *	0	18.8	1	48	48
489	HIV W MAJOR RELATED CONDITION	3.6808	13.4	10.8	1	39	27
490	HIV W OR W/O OTHER RELATED CONDITION	2.1449	7.2	4.4	1	33	21
600	NEONATE, DIED W/IN ONE DAY OF BIRTH	0.7679	1	1	1	1	1
601	NEONATE, TRANSFERRED <5 DAYS OLD	0.3424	2	1.7	1	8	4
602	NEONATE, BIRTHWT <750G, DISCHARGED ALIVE	4.1115	14.2	5	1	34	22
603	NEONATE, BIRTHWT <750G, DIED	6.6799	4.5	3.7	1	25	13
604	NEONATE, BIRTHWT 750-999G, DISCHARGED ALIVE	10.6475	47.8	25.7	1	54	42
605	NEONATE, BIRTHWT 750-999G, DIED	4.6898	8.6	6	1	34	22
606	NEONATE, BIRTHWT 1000-1499G, W SIGNIF OR PROC, DISCHARGED ALIVE	13.7310	66	61.5	17	90	78
607	NEONATE, BIRTHWT 1000-1499G, W/O SIGNIF OR PROC, DISCHARGED ALIV	6.1938	31.6	22.8	1	51	39
608	NEONATE, BIRTHWT 1000-1499G, DIED	5.6951	9.6	6.9	1	35	23
609	NEONATE, BIRTHWT 1500-1999G, W SIGNIF OR PROC, W MULT MAJOR PROB	6.1661	23	19	1	47	35

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DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD (A)	LONG STAY THRESHOLD (B)
610	NEONATE, BIRTHWT 1500-1999G, W SIGNIF OR PROC, W/O MULT MAJOR PR	7.9709	33.3	32.2	12	61	49
611	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W MULT MAJOR PR	5.2900	21.7	14.3	1	43	31
612	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W MAJOR PROB	3.9789	19.6	15.2	1	44	32
613	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W MINOR PROB	2.3547	17.8	13.2	1	42	30
614	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W OTHER PROB	1.4099	12.5	9.9	1	38	26
615	NEONATE, BIRTHWT 2000-2499G, W SIGNIF OR PROC, W MULT MAJOR PROB	6.3399	22.4	18.3	2	47	35
616	NEONATE, BIRTHWT 2000-2499G, W SIGNIF OR PROC, W/O MULT MAJOR PR	9.2240	20.8	14.1	1	43	31
617	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W MULT MAJOR PR	3.7257	12.9	10.4	1	39	27
618	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W MAJOR PROB	2.3618	11.7	8.9	1	37	25
619	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W MINOR PROB	1.4565	9.6	7.5	1	36	24
620	NO LONGER VALID	.	.	.	.	.	.
621	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W OTHER PROB	0.4882	4.9	3.8	1	31	14
622	NEONATE, BIRTHWT >2499G, W SIGNIF OR PROC, W MULT MAJOR PROB	8.4813	24.6	17.6	1	46	34
623	NEONATE, BIRTHWT >2499G, W SIGNIF OR PROC, W/O MULT MAJOR PROB	3.2339	11.1	6.6	1	35	23
624	NEONATE, BIRTHWT >2499G, W MINOR ABDOM PROCEDURE	0.9017	4.8	3.6	1	26	13
625	NO LONGER VALID	.	.	.	.	.	.
626	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W MULT MAJOR PROB	3.7213	12.3	7.7	1	36	24
627	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W MAJOR PROB	1.1313	5.9	4	1	33	19
628	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W MINOR PROB	0.6175	4.7	3.7	1	26	13
629	NO LONGER VALID	.	.	.	.	.	.
630	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W OTHER PROB	0.1917	2.9	2.6	1	11	6
631	BPD AND OTH CHRONIC RESPIRATORY DISEASES ARISING IN PERINATAL PE	5.5959	15.4	9.2	1	38	26
632	OTHER RESPIRATORY PROBLEMS AFTER BIRTH	0.7807	5.9	3.6	1	32	20
633	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W CC	0.3328	1	1	1	1	1
634	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W/O CC	2.4083	5	5	4	5	5
635	NEONATAL AFTERCARE FOR WEIGHT GAIN	1.2606	5.7	4.8	1	33	21
636	NEONATAL DIAGNOSIS, AGE > 28 DAYS	5.1998	16.2	9	1	37	25
900	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT AGE <= 21 W/O	2.0032	22.1	14.6	1	43	31
901	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT AGE > 21 W/O	1.4233	15.6	10.3	1	39	27

NOTE: Long stay threshold B is used for children's hospital discharges.

* CHAMPUS weight is the same as the Medicare weight due to a low number of observations.

[FR Doc. 90-28062 Filed 11-2-90; 8:45 am]
BILLING CODE 3810-01-C

Equal Opportunity Management Institute Board of Visitors; Meeting

AGENCY: Defense Equal Opportunity Management Institute Board of Visitors (DEOMI BOV).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Defense Equal Opportunity Management Institute Board of Visitors (DEOMI BOV). The purpose of the DEOMI BOV is to serve as an external source of expertise to ensure periodic review of the objectives, policies, and operations of DEOMI. The Board meets annually.

DATES: November 28, 1990 (Agenda follows).

ADDRESSES: The Defense Equal Opportunity Management Institute, Patrick Air Force Base, Florida.

AGENDA: Sessions will be conducted and will be open to the public as indicated below.

Wednesday, November 28, 1990

8 a.m.—11 a.m. Review of minutes from last meeting Presentation of New Business
1 p.m.—4:30 p.m. General Conference Activities

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret P. Nagel, Director of Support, Defense Equal Opportunity Management Institute, Patrick AFB, FL 32925–6685; telephone (407) 494–6017.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the Public at the Board of Visitors meeting:

(1) Members of the public are permitted to attend all Board sessions conducted in pursuit of the Board's charter.

(2) Interested persons may submit written statements for consideration by the Board and/or make oral presentations of same during the meeting.

(3) Persons desiring to make oral presentations or submit written statements to the Board must notify the point of contact no later than November 21, 1990.

(4) Length and number of oral presentations to be made will depend on the number of such requests received.

(5) Persons submitting written statements only for inclusion in the minutes of the meeting must submit one copy no later than five days after the meeting adjourns.

(6) Other new items from members of the public may be presented in writing to any DEOMI BOV member for transmittal to the BOV Chair or Commandant, DEOMI, to consider.

(7) Members of the public will not be permitted to enter into oral discussions conducted by the Board members at any of the meeting sessions; however, they will be permitted to reply to any questions directed to them by the members of the Board.

(8) Members of the public will be permitted to orally question any scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

Dated: October 31, 1990.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–26110 Filed 11–2–90; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Troop Support Command; Patent Availability

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or nonexclusive licenses under the following patent. Any licenses granted shall comply with 34 U.S.C. 209 and 37 CFR part 404.

Issued patent	Title	Issued date
4,868,940	Cushioning mat for use as portable bedding.	09/26/90

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans in Natick Research, Development, and Engineering Center's Office of Research and Technology Applications on 508–651–5296, or write to: U.S. Army Natick Research, Development and Engineering Center, Kansas Street, STRNC–EML (ATTN: Robert Rosenkrans), Natick, MA 01760–5014.

John Roach,

Department of the Army Liaison, Office with the Federal Register.

[FR Doc. 90–26037 Filed 11–2–90; 8:45 am]

BILLING CODE 3710–08–M

ROTC Affairs Advisory Panel Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following panel meeting:

NAME OF PANEL: Army Advisory Panel on ROTC Affairs.

DATE OF MEETING: February 19—20, 1991.

PLACE: Radisson Hotel, Hampton, Virginia.

TIME: 9 a.m.—5 p.m.—February 20, 1991; 9 a.m.—12 p.m.—February 21, 1991.

PROPOSED AGENDA: The meeting will consist of briefings and discussions. The meeting is open to the public. Any interested person may appear before or file a statement with the Panel at the time, and in the manner, permitted by the Panel. It is projected that the following events will take place during the meeting.

After opening remarks by Major General Wallace C. Arnold and the Chairman of the Panel, Dr. Anthony F. Ceddia, any administrative matters requiring attention will be resolved. The meeting will then proceed with a variety of recent ROTC Cadet Command initiatives. Major General Arnold will provide an overview of the significant changes since the June 1990 meeting at Fort Bragg, North Carolina. Briefings on February 20–21 will include: Scholarship Update, Missioning Update, Advertising Strategy, Marketing Operation Citizen Soldier, Spring Gold, Green to Gold Update, Campus Update, Cadet Professional Development Training, and the High School Program Update. On February 21 the Army Advisory Panel on ROTC Affairs will meet in general session to formulate recommendations, consider progress made on previous Panel recommendations, and to select a date for the next Panel meeting.

FOR FURTHER INFORMATION CONTACT: For further information contact the Commander, U.S. Army Training and Doctrine Command, ATTN: ATCC–TE/Colonel Kenneth A. Harris, Fort Monroe, Virginia 23651–5000.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 90–26029 Filed 11–2–90; 8:45 am]

BILLING CODE 3710–08–M

National Board for the Promotion of Rifle Practice, Department of the Army; Open Meeting

In accordance with section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

NAME OF THE COMMITTEE: National Board for the Promotion of Rifle Practice Budget Committee.

DATE OF MEETING: 12 December 1990.

PLACE: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 22314.

TIME: 0930–1130.

PROPOSED AGENDA:

1. Federal Register Notice of the Meeting
2. Roll Call
3. Approval of previous Board minutes
4. Review of Fiscal Year 1990 Budget
5. Fiscal Year 1991 Budget and Obligation Plan
6. Fiscal Year 1991–92 and Out-Year Budgets
7. Approval of Budget

This meeting is open to the public.

Persons desiring to attend the meeting should contact Mr. Dennis W. Galoci or Mrs. Rita G. Cooper-Williams at (202) 272–0810 prior to 15 November 1990.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 90–26030 Filed 11–2–90; 8:45 am]

BILLING CODE 3710–08–M

National Board for the Promotion of Rifle Practice; Open Meeting

In accordance with section 10 (1) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

NAME OF THE COMMITTEE: National Board for the Promotion of Rifle Practice.

DATE OF MEETING: 12 December 1990.

PLACE: Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 22314.

TIME: 1345–1600.

PROPOSED AGENDA:

1. Open Prayer and Pledge of Allegiance to the Flag
2. Federal Register Notice of the Meeting
3. Roll Call
4. Approval of previous Board minutes
5. Report on the 1990 National Matches
6. Report on the Budget review/presentation
7. Old Business
8. New Business.

This meeting is open to the public.

Persons desiring to attend the meeting should contact Mr. Dennis W. Galoci or Mrs. Rita G. Cooper-Williams at (202) 272–0810 prior to 15 November 1990.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 90–26031 Filed 11–2–90; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Intent To Prepare Draft Environmental Impact Statement (DEIS) For The Central and Southern Florida Flood Control Project, West Palm Beach Canal, C–51, Western Section, Florida

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The purpose of the project is to provide a minimum of 1 in 10 years storm flood protection for the Western Palm Beach Canal basin. The project consists of the construction of a new pumping station, control structure, new levee construction, improvements to the existing levees and channel, and proposed storm water detention area.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Mr. William J. Fonferek, (904) 791–1690, Environmental Resources Branch, Planning Division, P.O. Box 4970, Jacksonville, Florida 32232–0019.

INFORMATION: 1. The West Palm Beach Canal improvements were partially authorized in the Flood Control Act of 1948. The remainder was authorized by Public Laws 87–874 and 90–483. The purpose of this DEIS is to address modifications to the design of the project.

2. *Scoping:* The scoping process involves Federal, State, the South Florida Water Management District, the US Fish and Wildlife Service—Loxahatchee Wildlife Refuge [Water Conservation Area No. 1(WCA–1)] and other local agencies, and other interested persons and organizations. A scoping letter was sent to all interested parties requesting their comments and concerns. Any person and organizations wishing to participate in the scoping process should contact the Corps of Engineers at the above address.

3. Consultation with the State Historic Preservation Officer (SHPO) during scoping indicated that no historical and archaeological resources would be present in the project area.

4. Consultation with the U.S. Fish and Wildlife Service (USFWS) has been initiated in compliance with Section 7 of the Endangered Species Act. The original project plan called for the direct pumping of stormwater into WCA–1. USFWS determined that this plan could impact the snail kite, *Rostrhamus sociabilis sociabilis*, a species listed by the USFWS as endangered. A no effect determination was reached after the plan was modified to exclude direct discharges into WCA–1 and create a stormwater detention area as a mitigation feature. Coordination required by applicable Federal and State laws and policies will also be conducted. Since the project could require the discharge of material into waters of the United States, that discharge must comply with the provisions of Section 404 of the Clean Water Act as amended.

5. *DEIS preparation:* It is estimated that the DEIS will be available to the public in the 2nd quarter, FY 91.

Dated: October 15, 1990.

A.J. Salem,

Chief, Planning Division.

[FR Doc. 90–28032 Filed 11–2–90; 8:45 am]

BILLING CODE 3710–AJ–M

Termination of Preparation of a Supplemental Environmental Impact Statement (SEIS) for Proposed Mill Creek Lake Seepage Control Project Near Walla Walla, WA

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of termination of preparation of an SEIS.

SUMMARY: The Walla Walla District, Corps of Engineers, is withdrawing its intent to complete preparation of an SEIS for a seepage control project for Mill Creek Lake Flood Control Project near Walla Walla, Washington. Further studies and analysis conducted by the Corps indicate that the dam is not in imminent danger of failure as originally believed, and that control of the seepage from the lake is not needed at this time. The Corps is discontinuing studies relating to controlling the seepage problem and is resuming normal operation of the project. The Corps will implement a monitoring program at the lake following the next diversion of floodflows into the lake.

FOR FURTHER INFORMATION CONTACT: Comments concerning the seepage control project or SEIS should be addressed to Chief, Environmental Resources Branch, Corps of Engineers, Walla Walla District, Walla Walla, WA 99362–0265. Comments or questions can be telephoned to Ms. Sandra Shelin at (509) 522–6626.

SUPPLEMENTARY INFORMATION: 1. Mill Creek Lake is part of a flood control project protecting the city of Walla Walla, Washington. The lake has a chronic seepage problem that was believed to be causing internal erosion of the dam. The Walla Walla District, Corps of Engineers, was concerned that the structural safety of the dam was in jeopardy, and prepared a report recommending that a high density polyethylene liner be placed on the lake bottom to prevent further seepage. In December 1988, the Corps issued a draft SEIS discussing the seepage problem at Mill Creek Lake and evaluating the impacts of several actions the Corps could take to address the problem, including installing the liner. Subsequent

studies and analysis conducted by the Corps in 1989 and 1990 indicate that the dam is not in imminent danger of collapse and the liner is not needed. The Corps is terminating all studies related to controlling the seepage problem and is resuming normal operation of the flood control project, including filling the lake for environmental reasons and to provide recreational opportunities. Following the next use of the lake for storing floodflows, the Corps will implement a monitoring program that will probably include borings and/or geophysical methods.

2. The Corps is notifying all interested parties by mail of the decision to terminate the seepage control project and the SEIS.

Dated: October 12, 1990.

Donald P. Kurkjian,

Major, EN, Acting Commander.

[FR Doc. 90-26033 Filed 11-2-90; 8:45 am]

BILLING CODE 3710-GC-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting.

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming teleconference meetings of the National Assessment Governing Board and two of its committees. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of the meetings.

DATES: *November 28, 1990*—Executive and Achievement Levels Joint Committee—11 a.m. to 2 p.m. (closed). *November 29, 1990*—National Assessment Governing Board—3 p.m. to 6 p.m. (open).

LOCATION: National Assessment Governing Board, suite 7322, 1100 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Excecutive Director, National Assessment Governing Board, Suite 7322, 1100 L Street NW., Washington, DC, 20005-4013, Telephone: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III-C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297), (20 U.S.C. 1221e-1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. On November 28, a joint teleconference between the Achievement Levels Committee and the Executive Committee of the National Assessment Governing Board will begin at 11 a.m. and end at 2 p.m., and will be closed to the public. The teleconference will be closed under the authority of the Federal Advisory Committee Act (5 U.S.C. App 2) and exemption 9(B) of the Government in the Sunshine Act (5 U.S.C.A. 552b(c)). During the teleconference, the joint committees will review preliminary data from the 1990 Mathematics Assessment in preparation for making recommendations to the Board. Discussions will include references to specific items from the 1990 Mathematics Assessment, the disclosure of which would significantly frustrate implementation of the National Assessment of Educational Progress (NAEP). Further, premature disclosure of preliminary data have serious consequences for third parties, whose performance could be misinterpreted, leading to decisions being taken by the Department and/or others, that would be based upon incomplete, confusing, or erroneous inferences being drawn from preliminary data. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C.

On November 29, 1990, a teleconference involving the full Board will begin at 3 p.m. and end at 6 p.m. The Board will review the recommendations from the joint Executive and Achievement Levels Committees and take final action on the achievement levels for reporting the 1990 NAEP math results. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Board's deliberations.

A summary of the activities and related matters, which are informative to the public and consist with the policy of 5 U.S.C. 552b, will be available to the public within fourteen days after the meeting. Records of kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 7322, 1100 L Street NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90-26132 Filed 11-2-90; 8:45 am]

BILLING CODE 4000-01-M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the National Assessment Governing Board and its committees. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meeting.

DATES: November 15, 16, and 17, 1990.

TIMES: *November 15, 1990*—Achievement Levels Committee—4 p.m. to 6:30 p.m. (closed). Ad Hoc Committee on Issues Resolution—4 p.m. to 6:30 p.m. (open). Executive Committee—7 p.m. to 10 p.m. (open). *November 16, 1990*—*National Assessment Governing Board—9 a.m. to 5 p.m. (open); 5 p.m. to 6 p.m. (closed). November 17, 1990*—Full Board—9 a.m. until adjournment, approximately 1 p.m. (open).

LOCATION: Colony Square Hotel, Peachtree at 14th Street, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, U.S. Department of Education, 1100 L Street NW., suite 7322, Washington, DC 20005-4013. TELEPHONE: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board (NAGB) is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III-C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297); (20 USC 1221e-1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. On November 15, three committees of the National Assessment Governing Board will be in session: the Ad Hoc Committee on Issues Resolution, the Committee on Achievement Levels, and the Executive Committee. A meeting of the Ad Hoc Committee from 4 p.m. to 6:30 p.m., and of the Executive Committee 7 p.m. to 10 p.m. will be open to the public. The meeting of the Committee on Achievement Levels will begin at 4 p.m. and end at 6:30 p.m., and will be closed to the public. The proposed agenda for the meetings are as follows: the Ad Hoc Committee on Issues Resolution will consider positions the Board should take on issues related to the NAEP procurement for 1994 through 1998; the Achievement Levels Committee will review the entire achievement levels process; the Executive Committee, in addition to hearing status reports from various committees, will attend to NAEP reauthorization issues, and adding non-mandated subjects to NAEP.

The Achievement Levels Committee will be closed under the authority of 10 (d) of the Federal Advisory Committee Act (5 U.S.C.A. App 2) and under exemption 9(B) of the Government in the Sunshine Act (5 U.S.C.S. 552b(c)). During the closed portion of the meeting, the Committee will review preliminary data from the 1990 Mathematics Assessment which will include discussion of specific items from the 1990 Mathematics Assessment, the disclosure of which would significantly frustrate implementation of the National Assessment of Educational Progress. Further, premature disclosure of preliminary data from the 1990 Mathematics Assessment may be misleading and could have serious consequences for third parties, whose performance could be misinterpreted, leading to decisions being taken by the Department and/or others, that would be based upon incomplete, confusing, or erroneous inferences being drawn from preliminary data. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C.

On Friday, November 16, the full Board will meet in open session from 9 a.m. to 5 p.m. The proposed agenda for the open meeting includes briefings on the NAEP contract and preliminary results reported on several studies: Linking Study, Alternative Assessments Study, International Assessment of Mathematics and Science, and the Evaluation of the NAGB Achievement Levels Setting Activity.

Following the open session, the full Board will meet in closed session from 5 p.m. to 6 p.m. During the closed portion of the meeting, the Achievement Levels Committee will report to the full Board on the preliminary data from the Mathematics Assessment. Premature disclosure of preliminary data from the 1990 Mathematics Assessment would significantly frustrate implementation of the NAEP. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C.

The full Board meeting will conclude with an open session on Saturday, November 17, 9 a.m. until adjournment, approximately 1 p.m. when reports from the NAGB committees will be heard. A summary of the activities at the closed session and related matters, which are informative to the public and consistent with the policy of 5 U.S.C. 552b, will be available to the public within fourteen days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, 1100 L Street NW., suite 7322, Washington, DC, from 8:30 a.m. to 5 p.m.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc.k 90-26133 Filed 11-2-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER91-42-000, et al.]

Central Power and Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 26, 1990.

Take notice that the following filings have been made with the Commission:

1. Central Power and Light Co.

[Docket No. ER91-42-000]

Take notice that on October 24, 1990, Central Power and Light Company ("CPL") tendered for filing: (1) A Transmission Service Agreement ("Agreement"), dated August 15, 1990, between CPL and Texas-New Mexico Power Company ("TNP"); and (2) a revised Master ERCOT Transmission Facility Charge Rate Schedule.

Comment date: November 13, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Co.—Wisconsin

[Docket No. ER91-24-000]

Take notice that on October 23, 1990, Northern States Power Company—Wisconsin (NSP) tendered for filing copies of rate sheets which NSP requests be substituted for the rate sheets previously filed on October 11, 1990 in this docket. NSP states that the rate sheets filed October 23, 1990 are identical to the compliance rate sheets filed in response to the Commission's Opinion No. 345 in Docket No. ER88-72-000.

Comment date: November 13, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will noy serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26057 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10612-000]

Daniel Nelson Evans, Jr.; North Carolina; Availability of Environmental Assessment

October 29, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's)

regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Henrietta Mills Hydroelectric Project located on the Second Broad River in Rutherford County, in Henrietta, North Carolina, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26053 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10225-000]

WV Hydro, Inc.; Availability of Environmental Assessment

October 26, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a major license for the proposed Cannelton Hydroelectric Project located on the Ohio River in Hancock County near Hawesville, Kentucky, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-26061 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-637-005, et al.]

ANR Pipeline Co., et al.; Natural Gas Certificate filings

October 29, 1990.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Co.

[Docket No. CP89-637-005]

Take notice that on October 23, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-637-005 an amendment to its pending application in said docket for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate facilities necessary to perform new transportation services, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Specifically, ANR requests authorization to construct and operate 7.4 miles of 20-inch pipeline lateral extending from ANR's Farmersville Meter Station,[1] to be located on ANR's jointly-owned (with Trunkline Gas Company) 36-inch Lebanon Extension, to an interconnection with Dayton Power & Light Company (Dayton), in Montgomery County, Ohio. The estimated cost of the facilities is $5,262,989 to be financed from funds on hand. ANR proposes to transport up to 30.8 MMcfd on a firm basis for Dayton under part 284, subpart G of the Commission's Regulations. This transportation will take place under Rate Schedule FTS-1 or Original Volume No. 1-A of ANR's FERC Gas Tariff.

Comment date: November 19, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Co.

[Docket No. CP91-212-000]

Take notice that on October 22, 1990, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77152-1642, filed in Docket No. CP91-212-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct a six-inch tap and valve on existing right-of-way located in Marion County, Indiana, under its blanket certificate issued in Docket No. CP83-83-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to construct such tap, at an estimated cost of $7,802, to provide DowBrands, Inc. (Dow) a more economical way of receiving gas supplies to their new facilities in Marion County, Indiana. It is stated that Dow is an existing customer of Panhandle. It is further stated that the total volumes delivered to Dow through both taps would not exceed existing certificated levels, and therefore, no transportation authority is requested by Panhandle. Additionally, there would be no impact on Panhandle's peak and annual deliveries.

Comment date: December 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Co.

[Docket No. CP91-242-000]

Take notice that on October 24, 1990, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP91-242-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to replace 2.0 miles of 10-inch lateral pipeline, abandon in place 0.38 miles of 10-inch lateral pipeline, and reclaim 1.6 miles of 10-inch pipeline so as to replace and relocate the KPL Gas Service Lone Elm town border setting, all located in Jasper County, Missouri, under the certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that the projected volume of delivery through the replacement facilities is not expected to exceed the volumes currently being delivered, 1,762,567 Mcf per year with a maximum peak load of 17,882 Mcf per day. It is stated that WNG estimates the reclaim costs to be $27,900 with a salvage value of $24,597. It is further stated that WNG estimates the cost of construction to be $424,558, which will be paid from funds on hand.

WNG maintains that the herein change is not prohibited by an existing tariff and that WNG has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Comment date: December 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] The Farmersville Meter Station is to be built under either section 311 of the Natural Gas Policy Act or section 7(c) authorization in Docket Nos. CP89-637-002 and CP88-178-002.

4. Pacific Offshore Pipeline Co.

[Docket No. CP91-248-000]

Take notice that on October 25, 1990, Pacific Offshore Pipeline Company (POPCO), P.O. Box 60043, Los Angeles, California 90060, filed in Docket No. CP91-248-000 a petition pursuant to rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207), requesting the Commission to issue a declaratory order to determine POPCO's rights and obligations with respect to Exxon Corporation (Exxon) under their agreements entered into on August 9, 1978, which were later modified and certificated by the Commission in two orders issued in 1981 (14 FERC 61,239A and 15 FERC 61,235).

POPCO requests that the Commission promptly order that: (1) POPCO's contractual obligations to support Exxon, under agreements previously submitted to the Commission for approval, do not extend to actions by Exxon that are inconsistent with the Commission's certificates; (2) Exxon may not construct any gas processing or gas treating facilities until such time as POPCO is operating its facilities at 50 MMcf per day as ordered by this Commission's certificates. Therefore, Exxon's construction now of the gas processing and treating facility as proposed by Exxon is inconsistent with the Commission's certificates; (3) If Exxon is allowed to construct any gas treating and processing facilities, such facilities should be strictly sized to treat no more than 3 MMcf per day to accommodate maximum oil producing capability and to be available only to treat volumes not covered by the Gas Sales and Purchase Agreement (GS&P) dated August 9, 1978, and the Gas Purchase Option Agreement (GPO) dated August 9, 1978; (4) In the event Exxon is allowed to construct its processing and treating facilities, Exxon should be precluded from later complaining that POPCO's transportation tariffs provide a single delivery point at POPCO's plant outlet and Exxon must accept all gas transported to such point unless mutually agreed to by the parties; and (5) In the event the Commission does not agree with POPCO and removes or modifies the proscription that Exxon may not construct its own gas treating facilities, POPCO urges that the GS&P, GPO and the Construction and Operating Agreement, dated August 9, 1978, must be reformed. In that regard, POPCO requests that the Commission direct that POPCO and Exxon, within 30 days of the Commission's determination, submit reformed agreements to achieve the purpose of the Commission's original orders and to reallocate the risks, costs and economics of the project to reflect that Exxon will treat gas and that POPCO's expansion to 60 MMcf per day will be further delayed or canceled altogether.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, not later than 7 days after publication of this notice in the **Federal Register.** All protests filed will be considered but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with rule 214. Copies of the petition filed in this proceeding are on file with the Commission and available for public inspection.

5. United Gas Pipe Line Co., et al.

[Docket Nos. CP91-213-000, CP91-214-000, CP91-215-000 and CP91-216-000]

Take notice that on October 22, 1990, the above referenced companies (Applicants) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Reuglations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

	Docket No.	Applicant	Shipper name Peak day [1] average annual	Points of Receipt	Points of Delivery	Start up date rate schedule	Related [2] dockets
CP91-213-000	United Gas Pipeline Company, P.O. Box 1478, Houston, Texas 77251.	Gulf States Gas Corp..	41,200 41,200 15,038,000	TX, LA	LA	9-24-90, ITS	CP88-6-000, ST91-0074-000.
CP91-214-000	U-T Offshore System, P.O. Box 1396, Houston, Texas 77251.	Neches Pipeline System.	[3] 100,000 100,200 36,500,000	Off LA	LA	8-22-90, IT	RP89-99-000, ST90-4811-000.
CP91-215-000	U-T Offshore System, P.O. Box 1396, Houston, Texas 77251.	Brooklyn, Inter. Nat. Gas Corp..	[3] 100,000 100,000 36,800,000	Off LA	LA	8-22-90-IT	RP89-99-000, ST90-4809-000.

	Docket No.	Applicant	Shipper name Peak day [1] average annual	Points of Receipt	Points of Delivery	Start up date rate schedule	Related [2] dockets
CP91-216-000	U-T Offshore System, P.O. Box 1396, Houston, Texas 77251.	P.S.I., Inc.	[3] 100,000 100,000 36,500,000	Off LA	LA	8-21-90, IT	RP89-99-000, ST90-4798-000.

[1] Quantities are show in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.
[3] Volumes in Mcf.

6. Northern Natural Gas Co. Division of Enron Corp.

[Docket No. CP91-165-000]

Take notice that on October 18, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP91-165-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon service under Rate Schedules X-89 and to fully abandon Rate Schedule X-40 and service thereunder, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that it is currently providing service under X-89 and X-40 to West Texas Gas Inc. (WTG), a gas utility customer, serving certain customers in Texas. Northern also states that WTG has determined that it needs only 100 Mcf per day of firm sales entitlements under Rate Schedule X-89 and that it no longer needs service under Rate Schedule X-40.

Comment date: November 13, 1990, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26058 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-165-000, et al.]

Trunkline Gas Co., et al., Natural Gas Certificate Filings

October 26, 1990.

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Co.

[Docket No. CP91-165-000]

Take notice that on October 16, 1990, Trunkline Gas Company (Trunkine), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP91-165-000 an application pursuant to section 7(b) of the Natural Gas Act, for authority to abandon the firm transportation service provided to Amoco Production Company (Amoco Production) that was authorized in Docket No. CP78-540-000, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Trunkline states that the authorization provides for the firm transportation of up to 3,000 Mcf of natural gas per day from a point of receipt on Amoco Production's platform in South Timbalier Block 156, offshore Louisiana to a point of interconnection between the facilities of Trunkline and Amoco Production in Calcasieu Parish, Louisiana, pursuant to Trunkline's Rate Schedule T-57. It is stated that Trunkline and Amoco Production mutually agreed, by written statement, to terminate the underlying transportation agreement effective April 30, 1989, as provided by article V of the agreement. Trunkline asserts that the subject tansportation volumes will instead be transported on an interruptible basis under its Rate Schedule PT. Accordingly, the proposed abandonment is not expected to detrimentally impact the customers of Trunkline or Amoco Production.

Comment date: November 16, 1990, in accordance with Standard Paragraph F at the end of this notice.

2. Pacific Gas Transmission Co.

[Docket No. CP91-131-000]

Taken notice that on October 12, 1990, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94105-1570, filed in Docket No. CP91-131-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon sales service to Northwest Pipeline Corporation (Northwest), all as more fully set forth in the application which is one file with the Commission and open to public inspection.

PGT states that by Commission order issued August 2, 1977, in Docket Nos. CP77-389, CP77-390 and CP77-436 PGT and Northwest were authorized to transport and exchange gas and that PGT was also authorized to sell gas to Northwest. PGT further states that it has been providing this sales service to Northwest pursuant to a Gas Transportation and Exchange Agreement filed as its Rate Schedule S-1. PGT asserts that it and Northwest have agreed to eliminate the sale of gas and have so amended the Gas Transportation and Exchange Agreement by letter dated July 25, 1990. PGT also states that it would cancel its Rate Schedule S-1 and requests an effective date of August 1, 1990.

Comment date: November 16, 1990, in accordance with Standard Paragraph F at the end of this notice.

3. Natural Gas Pipeline Co. of America

[Docket No. CP91-202-000]

Take notice that on October 22, 1990, Natural gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP91-202-000 a request pursuant to §§ 157.205 and 157.211(b) of the Commission's Regulations under the Natural Gas Act for authorization to operate a delivery point which is currently being installed under section 311 of the Natural Gas Policy Act under its blanket authorization issued in Docket No. CP82-402-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural states that it has commenced construction of two 10-inch taps on its Amarillo mainlines in Cass County, Nebraska, 7.1 miles of 12-inch pipeline in Cass and Sarpy Counties, Nebraska, and one 6-inch meter station in Sarpy County, Nebraska on September 24, 1990. Natural states that these facilities will be used to transport gas on both a firm and interruptible basis to Arcadian Corporation's fertilizer plant in Sarpy County. Natural explains that the extimated cost of these facilities is $2,233,000.

Natural requests authority to operate these delivery facilities as a sales tap to provide jurisdictional services, including transportation services under subpart G of part 284 of the Commission's Regulations.

Comment date: December 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. ANR Pipeline Co.

Docket Nos. CP91-237-000, CP91-238-000, CP91-239-000, CP91-240-000

Take notice that on October 24, 1990, ANR Pipeline Company (Applicant), 500 Rennaissance Center, Detroit, Michigan 48243, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day [1] average day annual	Receipt [2] points	Delivery points	Start up date rate schedule service type	Related [3] docket, contract date
CP91-237-000 (10-24-90)	Hadson Gas Systems, Inc.	75,000 75,000 27,375,000	LA, OK, KS, TX, OLA, OTX.	LA	9-8-90, ITS, Interruptible.	ST91-0025-000, 8-9-90.
CP91-238-000 (10-24-90)	Texpar Energy, Inc. Inc	50,000 50,000 16,250,000	LA, OK, KS, TX, OLA, OTX.	WI	9-13-90, ITS, Interruptible.	ST91-0130-000, 1-5-90.
CP91-239-000 (10-24-90)	Coastal Gas Marketing Co.	150,000 150,000 54,750,000	LA, OK, KS, TX, IL, IN, MI, WI, OH, OLA, OTX.	IL	9-8-90, ITS, Interruptible.	ST91-0024-000, 7-20-90.
CP91-240-000 (10-24-90)	Union Texas Petroleum Corp.	100,000 100,000 36,500,000	LA, OK, KS, TX, IL, IN, MI, WI, OH, KY, OLA, OTX.	WI, MI	9-5-90, ITS, Interruptible.	ST91-0026-000, 8-14-90.

[1] Quantities are shown in dt.
[2] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[3] If an ST docket is shown, 120-day transportation service was reported in it.

5. ANR Pipeline Co.

[Docket No. CP91-236-000]

Take notice that on October 24, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP91-236-000 a request pursuant to § 157.205 of the Commission's Regulations to construct and operate a pipeline loop for delivery of natural gas to Wisconsin Fuel and Light Company (Wisconsin) at the North Wausau Meter Station to provide gas needs of industrial, commercial and residential end-users in Wisconsin's service area, under ANR's blanket certificate issued in Docket No. CP82-480-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR states that it would construct and operate 1.6 miles of 4-inch pipeline loop adjacent to and parallel with the ANR lateral pipeline extending from the North Wausau Meter Station 1.6 miles in an easterly direction interconnecting with ANR system in Marathon County, Wisconsin. ANR states that it sells gas to Wisconsin pursuant to a service agreement dated August 1, 1989, from its general system supply under ANR's Rate Schedule CD-1. ANR indicates that the volumes to be delivered at the North Wausau Meter station are within Wisconsin's current and proposed peak day and annual entitlements and would have no impact on ANR's existing or proposed peak day and annual deliveries.

ANR states that its tariff does not prohibit the new pipeline loop and it has sufficient capacity to render the proposed service without detriment or disadvantage to its other customers.

Comment date: December 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. Texas Eastern Transmission Corporation, et al.

[Docket No. CP91-229-000, CP91-230-000, and CP91-234-000]

Take notice that Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77252-2521, and U-T Offshore System, P.O. Box 1396, Houston, Texas 77251, (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP88-136-000, as amended and Order No. 509, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: December 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt [1] points	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-229-000 (10-23-90)	Appalachian Gas Sales (Marketer).	50,000 50,000 18,250,000	Various	NJ	6-14-90, IT-1, Interruptible.	ST91-76-000, 8-15-90.
CP91-230-000 (10-23-90)	O & R Energy Development, Inc. (Marketer).	80,000 80,000 29,200,000	Various	NJ	1-22-90, IT-1, Interruptible.	ST90-4719-000, 8-17-90.
CP91-234-000 (10-24-90)	Superior Natural Gas Corporation (Marketer).	50,000Mcf 50,000Mcf 18,250,000Mcf	OLA	LA	7-1-90, IT-1, Interruptible.	ST90-4730-000, 8-23-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

7. Texas Eastern Transmission Corp. and Algonquin Gas Transmission Co.

[Docket Nos. CP88-180-010 and CP88-185-004]

Take notice that on October 25, 1990, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, and Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, jointly referred to as Applicants, filed in Docket Nos. CP88-180-010 and CP88-185-004, respectively, a petition to amend the certificate of public convenience and necessity, pursuant to sections 7 (b) and (c) of the Natural Gas Act, issued July 2, 1990 in this proceeding, so that Applicants, for an interim period, may render the level of service authorized by the July 2, 1990 order by means of alternative interim arrangements, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Applicants state that by Order Issuing Certificates and Approving Abandonment issued July 2, 1990 [3] (Order), Applicants were authorized to render sales and transportation services scheduled to commence November 1, 1990 and construct related facilities. It is indicated that Texas Eastern was authorized to sell up to 150,000 Dth per day to thirteen distributors under Rate Schedules CD-1 and SGS, and to provide a firm transportation service with standby sales totalling 74,699 Dth per day to eleven distributors under Rate Schedule FT-1. It is further indicated that Texas Eastern was authorized to construct and operate $68.4 million of associated facilities. It is submitted that Algonquin was authorized to render firm transportation service to six distributors under Rate Schedule FTP. Applicants state that the Order authorized transportation service by Algonquin of up to 54,560 MMBtu per day on a delivered basis and up to 67,078 MMBtu per day on a delivered basis was authorized in Phase I and II respectively. It is further submitted that Algonquin was authorized to construct and operate Phase I and Phase II facilities.

[3] Texas Eastern Transmission Corporation, et al., Docket No. CP88-180-000, et al., Order Issuing Certificates and Approving Abandonment.

Applicants state that Texas will have all facilities athorized by the Order completed and available for service by December 1, 1990, with the exception of approximately 5 miles of the 6.95 miles of 36-inch pipeline in Morris County, New Jersey (Hanover Loop). Applicants further state that, in order to provide full certificated level of service as authorized by the Order, Texas Eastern has entered into a firm transportation agreement with Algonquin for service to commence December 1, 1990. It is indicated that Algonquin will provide 50,000 Dth per day equivalent of firm transportation service for Texas Eastern under its Rate Schedule AFT-1, pursuant to its blanket certificate issued in Docket No. CP89-948-000. Applicants state that the transportation agreement between Texas Eastern and Algonquin dated October 23, 1990, has a 1-month primary term to coincide with the anticipated completion of the Hanover Loop, and will continue month-to-month thereafter as needed.

Applicants indicate that the annualized cost of the transportation service is estimated to be $4.6 million. Applicants further indicate that the transportation arrangement is an interim measure that will allow Texas Eastern to commence full deliveries of its certificated level of service on December 1, 1990. It is submitted that, upon completion and in-service of the Hanover Loop, Texas Eastern will terminate the interim firm transportation arrangement with Algonquin.

Applicants submit that the interim arrangement in no way precludes the need for the permanent facilities authorized by the Order. Applicants further submit that, in light of the fact that the service will not commence until December 1, 1990, Texas Eastern's proposed rates in Exhibit P-1 herein are subject to the outcome of Texas Eastern's pending rate proceeding in Docket No. RP90-119 *et al.* Texas Eastern proposes that, due to the fact that the cost of entering into interim arrangements exceeds the cost of certificated facilities not yet available for service, the underlying cost and the rates for the service proposed in Docket No. RP90-119 should not be adjusted.

Applicants state that Algonquin has encountered certain problems with constructing a portion of the remaining authorized Phase I pipeline facilities. Applicants indicate that Algonquin's 1.5 mile 24-inch Malden lateral; retest 13 miles of J-System from Waltham to Everett, Massachusetts, and the new metering facility at Malden, Massachusetts will not be completed by December 1, 1990. Applicants submit that Algonquin's measuring station at Bristol, Connecticut may not be completed by December 1, 1990. It is indicated that, due to operational and safety reasons, Algonquin will only be able to complete the first 1.2 miles of the 3.1 mile 16-inch pipeline loop of its C-System.

Applicants state that Algonquin has entered into interim alternative arrangements with its customers to make deliveries of its Rate Schedule FTP Phase I quantities. It is indicated that Algonquin has made arrangements with Boston Gas Company to accept on an interim basis delivery at existing delivery points at existing service agreement minimum pressures in lieu of the 200 psig delivery at the proposed Malden, Massachusetts meter station. Further, it is indicated that Algonquin has made interim arrangements with Yankee Gas Services (Yankee Gas) to make full deliveries of 2,060 MMBtu per day equivalent to Yankee Gas at existing stations until the Bristol measuring station is complete. It is submitted that Algonquin and Southern Connecticut Gas Company (Southern Connecticut) have entered into interim arrangements for Algonquin to deliver to Southern Connecticut the full 16,634 MMBtu per day equivalent authorized by the Order. Algonquin proposes to provide the following to Southern Connecticut:

Delivery point	Per 7/2/90 order	12/1/90 interim	1/1/91 interim
North Haven	15,634	13,634	13,634
Cheshire	1,000	-	3,000
Total	16,634	13,634	16,634

It is indicated that the construction of the Cheshire, Connecticut measuring station will be completed by January 1, 1990.

Applicants state that, effective on December 1, 1990, upon receipt of the authorization requested, Algonquin will be able to deliver 51,560 MMBtu per day equivalent of the 54,560 MMBtu per day equivalent certificated by the Order. Further, Applicants state that, effective on January 1, 1991, Algonquin will be able to deliver the remaining 3,000 MMBtu equivalent, bring the total deliveries to be made by Algonquin to the 54,560 MMBtu per day equivalent certificated level.

Algonquin proposes to charge an interim initial rate on December 1, 1990 to reflect the facilities and level of service to be provided. Algonquin further proposes to adjust these rates January 1, 1991 to reflect the additional facilities and level of service to be provided on that date. The following is a summary of those modifications:

Rates/MMBtu	Commission order	12/1/90 interim arrangement	1/1/91 interim arrangement
Monthly demand charge	$4.8495	$3.287	$3.419
Commodity charge	0.2458	0.1669	0.1692
Overrun charge	0.4052	0.2750	0.2816
Facility costs (1000's)	$28,068	$16,234	$20,572
Level of service (MMBtu)	54,560	51,560	54,560

Applicants state that Algonquin's interim arrangements rates are less than the initial rates approved for Phase I service by the Order.

Comment date: November 16, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a

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proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26059 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP91-151-000]

Arizona Corp. Commission et al.-v-El Paso Natural Gas Co. et al.; Complaint

October 29, 1990.

In the matter of: Arizona Corporation Commission, Arizona Electric Power Cooperative and City of Willcox, Arizona, Arizona Public Service Company, El Paso Municipal Customer Group, Gas Company of New Mexico, Pacific Gas and Electric Co., Phelps Dodge Corporation, Public Service Commission of Nevada, Public Utilities Commission of the State of California, Salt River Project Agricultural Improvement and Power District, Southern California Gas Co., Southern Union Gas Company, Southwest Gas Corporation v. El Paso Natural Gas Company, Meridian Oil Hydrocarbons Inc., Meridian Oil Production, Inc., Meridian Oil Trading, Inc., Amoco Energy Trading Corporation, Williams Gas Marketing Company.

On October 12, 1990, the 13 complainants named above filed a complaint under Rule 206 [1] of the Commission's Rules of Practice and Procedure against the following six defendants: El Paso Natural Gas Company (El Paso); Meridian Oil Hydrocarbons, Inc. (Meridian Hydrocarbons), Meridian Oil Production, Inc. (Meridian Production), Meridian Oil Trading, Inc. (Meridian Trading) (collectively, Meridian); Amoco Energy Trading Corporation (Amoco); and Williams Gas Marketing Company (Williams). Complainants challenge certain natural gas transportation services that El Paso is providing for Amoco, Williams, and the Meridian companies (which are affiliated with El Paso), asserting that the new services commit previously subscribed firm pipeline capacity to these shippers, and, moreover, ignore existing claims to additional capacity. Complainants further charge that El Paso has violated certain standards of conduct governing interstate pipelines with marketing affiliates.[2]

According to complainants, the transportation services can be described as follows. On May 1, 1990, El Paso commenced firm transportation for Meridian, pursuant to Section 311 of the Natural Gas Policy Act (NGPA), from receipt points in the San Juan Basin to various locations in Colorado, New Mexico, Utah, and Texas. The parties' transportation contract permits maximum daily firm deliveries of 360,500 MMBtu.[3] ON June 15, 1990, El Paso commenced firm transportation for Williams, pursuant to its blanket certificate, from receipt points in the San Juan Basin to various locations in Texas. Their contract calls for daily firm deliveries of 25,750 MMBtu.[4] Lastly, on July 1, 1990, El Paso commenced firm transportation for Amoco, under Section 311 of the NGPA, from receipt points in the San Juan Basin to various locations in New Mexico, Oklahoma, and Texas. The parties' contract permits maximum daily firm deliveries of 280,100 MMBtu. Complaints allege that these firm transportation services utilize forward haul capacity through constraint points on El Paso's San Juan Basis system (most notably at the Valve City interconnect in McKinley County, New Mexico), even though the services are denominated firm backhaul transactions.

Complainants assert that El Paso's jurisdictional San Juan Basin transmission facilities have been fully subscribed for years. They cite numerous statements by El Paso to support this claim, most recently a statement in its application filed on September 17, 1990 in Docket No. CP90-2214-000 seeking authorization to construct and operate incremental facilities on its San Juan Basin system. There, El Paso stated that, historically, virtually all of the firm capacity on its system was utilized to support its ability to provide certificated sales service at delivery points in east Texas, New Mexico, Arizona, southern Nevada, and at the Arizona-California border. Even with the advent of open access transportation on its system and the related decline in its customers' demands for sales service, its full delivery capacity to those points remained committed to the performance of its historic firm sales service function. Consequently, it stated, it has been unable to commit system capacity to provide firm transportation for the movement of gas to its historic delivery points for shippers that are not firm sales customers.

According to complainants, El Paso's service to existing sales customers is provided as either firm sales service or grandfathered interruptible transportation. Shippers under grandfathered transportation arrangements effectively utilize capacity otherwise reserved for them as sales customers since, under El Paso's FERC Gas Tariff, grandfathered interruptible transportation is in a priority position in the first-come, first-served transportation queue. Complainants assert, however, that under El Paso's allocation plan, the firm transportation service for Meridian, Williams, and Amoco is given a priority over service to existing firm customers utilizing grandfathered transportation rights. As a result, Meridian, Williams, and Amoco enjoy a preference to the capacity on El Paso's system.

Complainants assert that the total volumes associated with El Paso's transportation for Meridian, Amoco, and Williams constitute approximately 40 percent of the constrained capacity at the bottleneck into the San Juan Basin system at Valve City. Thus, by committing to transort gas for these new shippers, El Paso allegedly has reduced its ability to provide service to its existing customers, who consequently are being harmed in at least two ways. First, they are being forced to purchase gas supplies from other producing basins to maintain their certificated level of service. They thus have to pay higher transportation costs because the alternative basins are farther from their sales markets. Second, by having to obtain supplies from other producing basins, they are being forced out of the San Juan Basin, which has promising future supply prospects due to substantial, new coal seam gas production.

Complainants thus charge that El Paso's transportation contracts with Meridian, Amoco, and Williams violate its own tariff,[5] Commission regulations,[6] the Commission's open access policies, and possibly El Paso's transportation log, because the contracts give these shippers preferential treatment by dedicating to them firm service subject to prior claims.

Finally, complainants charge that, in providing the Meridian companies with the transportation services described above, El Paso violated several of the standards of conduct governing interstate pipelines with marketing affiliates set forth in part 161 of the Commission's regulations, specifically §§ 161.3(b),[7] (c),[8] and (f).[9] Complainants allege that Meridian Hydrocarbons and Meridian Trading are marketing affiliates of El Paso.

In conclusion, complainants ask the Commission to: (1) Consolidate with the instant proceeding El Paso's application in Docket No. CP90-1920-000 to continue service for Williams; (2) deny that application; and (3) order El Paso to terminate immediately its transportation service for Meridian, Williams and Amoco.

Any person desiring to be heard or to intervene should file a motion to intervene or protest in accordance with Rules 214 [10] or 211 [11] of the Commission's Rules of Practice and Procedure. All motions to intervene or protests should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before November 28, 1990. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with rule 214. Copies of the complaint are on file with the Commission and are available for public inspection. Answers to the complaint are due on or before November 28, 1990.

Lois D. Cashell.

Secretary.

[FR Doc. 90-26048 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-52-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 29, 1990.

Take notice that on October 25, 1990, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Eleventh Revised Sheet No. 6
Eleventh Revised Sheet No. 9

Carnegie states that pursuant to § 154.308 of the Commission's regulations and the Commission's Order Nos. 483 and 483-A, it is proposing an Out-of-Cycle PGA to reflect significant rate changes in the cost of spot gas supplies and to track recent changes in the sales rates of its pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern"), as filed by Texas Eastern on October 22, 1990. The revised rates are proposed to become effective November 1, 1990, and reflect the following changes from Carnegie's last fully-supported Out-of-Cycle PGA filing in Docket No. TQ91-1-63-000: A $0.4354 per Dth increase in the commodity component of its LVWS and CDS rate schedules; a $0.4329 per Dth increase in the commodity component of its LVES rate schedule; a $0.0298 per Dth decrease in the D1 component of its LVWS and CDS rate schedules; a $0.0003 per Dth decrease in the D2 component of its LVWS and CDS rate schedules; and a $0.0002 per Dth decrease in the DCA component. No Standby Charge Adjustment is stated in this filing.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before November 5, 1990. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 90-26049 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-105-005]

Columbia Gas Transmission Corp, Proposed Changes in FERC Gas Tariff

October 29, 1990.

Take notice that on October 26, 1990 Columbia Gas Transmission

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[1] 18 CFR 385.206 (1990).

[2] Meridian Hydrocarbons is a wholly owned subsidiary of El Paso. Meridian Trading and Meridian Production are wholly owned subsidiaries of Meridian Oil Holding Inc., which, in turn, is a wholly owned subsidiary, as is El Paso, of The El Paso Company.

[3] It is not clear on the face of the complaint to what extent each Meridian defendant is involved in this transportation arrangement. At most places in the complaint, complainants refer collectively to the "Meridian Companies." At other places, they describe the transportation contract as being between El Paso nd Meridian Trading. However, in Appendix E to the complaint, which is a copy of the Commission's "Notice of Self-Implementing Transactions" issued on July 5, 1990, the recipient of the transportation service is identified as Meridian Hydrocarbons. Because of this ambiguity, we usually refer here simply to "Meridian."

[4] El Paso has sought to continue this service beyond the initial 120-day period in its application filed on August 7, 1990 in Docket No. CP90-1920-000. Complainants seek here to consolidate that proceeding with the instant.

[5] FERC Gas Tariff, First Revised Volume No. 1-A, Orginal Sheet No. 235, section 20 of "Operating Provisions for Firm Transportation Service."

[6] 18 CFR 284.8(a)(3) (1990) (" 'Service on a firm basis' means that the service is not subject to a prior claim by another customer or another class of service and receives the same priority as any other class of firm service."); and 18 CFR 284.8(b) (1990) ("An interstate pipeline * * * that offers transportation service on a firm basis under subpart B * * * (or) C * * * must provide such service without undue discrimination, or preference * * *.")

[7] 18 CFR 161.3(b) (1990) ("(An interstate pipeline with a marketing affiliate) must strictly enforce a tariff provision for which there is no discretion in the application of the provision.")

[8] 18 CFR 161.3(c) (1990) ("(An interstate pipeline) may not, through a tariff provision or otherwise, give its marketing affiliate preference over nonaffiliated customers in matters relating to part 284 transportation including, but not limited to * * * transportation * * *.")

[9] 18 CFR 161.3(f) (1990) ("To the extent (an interstate pipeline) provides to a marketing affiliate information related to transportation of natural gas, or gas sales or gas marketing it must provide that information contemporaneously to all potential shippers, affiliated and nonaffiliated, on its system.")

[10] 18 CFR 385.214 (1990).

[11] 18 CFR 385.211 (1990).

Corporation (Columbia) filed a motion to place its suspended rates in this proceeding into effect on November 1, 1990, and tendered for filing the revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2, listed in Appendix A attached hereto. The revised tariff sheets bear an issue date of October 26, 1990, and a proposed effective date of November 1, 1990.

The revised filing is being made in accordance with the Commission's orders issued May 31, 1990, and July 13, 1990, in these proceedings and § 154.67(a) of the Commission's Regulations.

Columbia requests a waiver of § 154.63(e)(2) of the Commission's Regulations in order to include costs associated with certain "Global Settlement" facilities that will not be in service on October 31, 1990. Columbia further requests a waiver of such regulations to the extent necessary to include the Commonwealth Gas Pipeline Corporation facilities and related costs in its rates. Columbia states that the requested waivers are justified in light of the Global Settlement between Columbia, its customers, and other parties, which was approved by the Commission on October 19, 1989.

Columbia states that copies of the filing were served by the company upon each of its wholesale customers, interested stated commissions and each of the parties set forth on the Official Service List in the consolidated proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before November 5, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26050 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-107-007]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

October 29, 1990.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on October 26, 1990 tendered for filing revised changes in its FERC Gas Tariff, First Revised Volume No. 1 to become effective November 1, 1990.

Columbia Gulf states that it is filing the referenced tariff sheets in order to place into effect the rates and tariff provisions suspended by Commission Order issued May 31, 1990 in this proceeding.

The tariff sheets encompass Columbia Gulf's rate filing herein of April 30, 1990, with adjustments to its cost of service to (1) Reflect only the costs of facilities which are projected to be in service by October 31, 1990; and (2) reflect the level of purchased gas costs in the most recent Purchased Gas Cost Adjustment filing of Columbia Gulf Transmission Corporation (Columbia Transmission), filed in Docket No. TQ91-1-21 on October 1, 1990.

Columbia states that copies of this filing were served upon all Columbia Gulf's jurisdictional customers, interested state commissions and to each of the parties set forth on the Official Service List in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before November 5, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26051 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-70-000]

Equitrans, Inc.; Informal Settlement Conference

October 29, 1990.

Take notice that a conference will be convened in the above-captioned proceeding on November 7, 1990 at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Arnold H. Meltz (202) 208-0737 or Jennifer B. Corwin (202) 208-0740.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26052 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP90-14-000]

Exon Corp.; Petition to Reopen and Withdraw Well Category Determination

October 26, 1990.

Take notice that on September 4, 1990, Exxon Corporation (Exxon) filed with the Federal Energy Regulatory Commission (Commission), pursuant to § 275.205 of the Commission's regulations, a petition to reopen and a request to withdraw its determination that gas produced from the Frank J. Skoda No. 1 well, located in the Sooner Trend Field, Kingfisher County, Oklahoma, qualifies under section 108 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301;-3432 (Supp. V. 1982).

Exxon filed an application for a section 108 category determination on the subject well with the Oklahoma Corporation Commission (Oklahoma) on September 3, 1985. An affirmative determination was made by Oklahoma. A copy of this determination was received by the Commission on July 15, 1986 and became final on August 29, 1986, pursuant to § 275.202(a) of the Commission's regulations.

Exxon states that the original qualification of the Frank J. Skoda No. 1 well was based on production of 1,595 Mcf in 58 production days, resulting in an average production of 27.5 Mcf per production day. A review of the production records indicated that these data were erroneous. According to Exxon, the well actually produced in excess of 60 Mcf per production day. Exxon states that if the determination is reopened and Exxon is permitted to withdraw its filing, Exxon will not be required to make refunds to Oklahoma Natural Gas Company because collections were based on the otherwise applicable maximum lawful price.

Any person desiring to be heard or protest this petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests filed will be considered, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules. Copies of this petition are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-26060 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA91-2-000]

Seagull Energy Corp.; Petition for Adjustment

October 29, 1990.

Take notice that on October 24, 1990, Seagull Energy Corporation (Seagull) filed pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), a petition for adjustment from § 284.123(b)(1)(ii) of the Commission's regulations to permit Seagull to use its tariff on file with the Railroad Commission of Texas (Railroad Commission) for services performed pursuant to section 311 of the NGPA. Seagull asserts that since it render city-gate service the Commission should issue this adjustment under section 502(c) of the NGPA to prevent special hardship and inequity that would otherwise result if Seagull were required to submit a § 284.123(b)(2) filing.

In support of its petition Seagull states that it is an intrastate pipeline which operates natural gas pipeline facilities located in offshore Texas waters known as the Shipwreck-Brazos and is engaged in the transportation, gathering and sale of gas for resale and to direct end-users, subject to the jurisdiction of the Railroad Commission. Seagull's transportation rates are subject to regulation by the Railroad Commission and have been filed with the Railroad Commission in form of tariffs. Specifically, Seagull seeks an adjustment to allow it to use an existing tariff currently on file with the Railroad Commission that has been found by the Railroad Commission to be a cost based rate for the system, as the fair and equitable rate for transportation service to be performed under section 311 of the NGPA on the system.

The Regulations applicable to this proceeding are found in subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this proceeding must file a motion to intervene in accordance with the provisions of subpart K. Motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**. The petition for adjustment is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26055 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-42-003]

Transwestern Pipeline Co.; Refund

October 29, 1990.

Take notice that on October 12, 1990, Transwestern Pipeline Company (Transwestern) filed with the Federal Energy Regulatory Commission its report verifying that it has made refunds required by Ordering Paragraph (B) of the Commission's August 28, 1990 order in the above referenced docket.

Transwestern states that it was not aware of the Commission's denial of its request for an extension of time until October 1, 1990. Transwestern states that it has made refunds, together with interest, as quickly as possible for its administrative staff. Transwestern is therefore requesting waiver of the thirty-day period for the making of refunds set forth in Ordering Paragraph (B).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before November 5, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26056 Filed 11-2-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Docket No. FE C&E 91-01; Certification Notice—59]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended, ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Two owners and operators of proposed new electric base load powerplants have filed self certifications in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies have filed self certifications:

Name	Date received	Type of facility	Megawatt capacity	Location
Nassau District Energy Corp., White Plains, NY	10-16-90	Combine Cycle	50	Garden City, NY.
New York Power Authority, New York, NY	10-22-90	Combine Cycle	150	Ramapo, NY.

Amendments to the FUA on May 21, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Copies of this self certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC on October 30, 1990.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 90-26117 Filed 11-2-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3863-5]

Decision; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of decision and response to comments.

SUMMARY: On September 28, 1990, EPA, Region IX, issued its final decision on the lists of impaired waters, point sources, and pollutants; and Individual Control Strategies (ICSs) for the State of California developed pursuant to section 304(1) of the Clean Water Act. Copies of this decision and EPA's response to comments can be obtained from the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Doug Eberhardt by telephone at (415) 705-2181 (prior to October 1, 1990) or (415) 744-2010 (beginning October 1, 1990), or by mail at: Environmental Protection Agency, Region IX (W-3-2), 1235 Mission Street, San Francisco, CA 94103.

SUPPLEMENTARY INFORMATION: Section 304(1) of the Clean Water Act, as amended by the Water Quality Act of 1987, requires every State to develop lists of impaired waters, identify certain point sources and amounts of pollutants causing toxic impact, and to develop individual control strategies (ICSs) for each point source.

On June 5, 1989, EPA issued a proposed decision on the lists of waters, point sources and amounts of pollutants, and on ICSs submitted by the State of California. At that time, EPA solicited comments from the public on its decision. EPA, pursuant to section 304(1)(1)(3), also solicitied petitions from the public to make additions to the waters already listed under section 304(1)(1). Notice of these actions appeared in the **Federal Register** on June 9, 1989 (54 FR 24748).

The public comment and petition period closed on October 13, 1989. EPA subsequently issued a public notice on May 17, 1989 opening a second public comment and petition period, which closed on June 1, 1990. This public notice appeared in the **Federal Register** on May 17, 1990 (55 FR 20523).

EPA received 40 comments, including seven petitions, on the State of California's 304(1) lists and ICSs during the public comment period. EPA has prepared a response to comments responding to these comments and petitions.

The administrative record containing EPA's decision on the State of California's lists and ICSs and the documentation supporting its decisions are on file and may be inspected at the EPA, Region IX, office between the hours of 9 a.m. and 5 p.m., Monday through Friday, except holidays. To make arrangements to examine these records, or to obtain copies of the decision and response to comments, contact the person named above.

Dated: October 26, 1990.

Keith Takata,

Acting Director, Water Management Division, U.S. EPA Region IX.

[FR Doc. 90-26119 Filed 11-2-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; North Carolina State Ports Authority, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washinton, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224-200372-001

Title: North Carolina State Ports Authority/Lauritzen Reefers A/S Terminal Agreement.

Parties: North Carolina State Ports Authority Lauritzen Reefers A/S.

Synopsis: The Agreement extends the term of the basic agreement for one year; and provides for a 28 percent reduction in the initial throughput rate for empty units, if the total number of empty units exceed 50 percent of the total number of containers, full plus empty, loaded to or discharged from a vessel.

By Order of the Federal Maritime Commission.

Dated: October 30, 1990.

Joseph C. Polking,

Secretary.

FR Doc. 90-26024 Filed 11-2-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; Sea-Land Service, Inc., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washinton, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested person should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 217-011303.

Title: Sea-Land Service, Inc./Hanjin Shipping Co., Ltd. Reciprocal Space Charter Agreement.

Parties: Sea-Land Service, Inc., Hanjin Shipping Co., Ltd.

Synopsis:: The proposed agreement would permit each party to make available container space to the other party on its vessels in the trade between ports in Asia and ports on the West Coast of the United States.

Agreement No.: 217-011304.

Title: FMG/PDN/CSAV/NACL Space Charter Agreements.

Parties: Flota Mercante Grancolombiana, Promotora De Navegacion, Compania Sud Americana de Vapores, North American Caribbean Line Ltd.

Synopsis: The proposed Agreement would permit the parties to charter space to one another on their respective vessels and interchange equipment related to the carriage of cargo in the trade between United States Atlantic and Gulf ports and ports and points in Mexico, Centeral America, Bolivia, Chile, Peru, Ecuador and Colombia. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: October 30, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-26025 Filed 11-2-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Request for public comment on draft Fiscal Year 1991 Program Guidelines/Application Solicitation for Labor-Management Committees.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing the draft Fiscal Year 1991 Program Guidelines/Application Solicitation for the Labor-Management Cooperation program to inform the public and obtain public comments. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations.

DATES: Comments are due on or before December 1, 1990.

ADDRESSES: Send comments to: Peter L. Regner, Director, Labor-Management Grants and Projects FMCS, 2100 K Street, NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, 202/653-5320.

A. Introduction

The following is the draft solicitation for the Fiscal Year (FY) 1991 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in FY81. The Act generally authorizes FMCS to provide assistance in the establishment and operation of plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their jobs, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in section I. A copy of the Labor-Management Cooperation Act of 1978 follows this solicitation and should be reviewed in conjunction with this solicitation.

B. Program Description Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (worksite), area, industry, or public sector levels. A plant or worksite committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor unions producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and managers in one or more units of a local or state government. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY91, competition will be open to plant, area, private industry, and public sector committees. In-plant committee applications should offer an innovative or unique effort. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities

that are clearly available under other Federal programs (*e.g.*, job training, mediation of contract disputes, *etc.*). In addition, $77,000 will be reserved for a continuation grant to the State and Local Government Labor-Management Committee for support of the Sixth National Labor-Management Conference.

Required Program Elements

1. *Problem Statement*—The application, which should have numbered pages, must discuss in detail what specific problem(s) face the plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses why the effort is needed.

2. *Results or Benefits Expected*—By using specific goals and objectives, the application must discuss in detail what the labor-management committee as a demonstration effort will accomplish during the life of the grant. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in measurable terms. Applicants should focus on the impacts or changes that the committee's efforts will have. Existing committees should focus on expansion efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts.

3. *Approach*—This section of the application specifies how the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g., members represent 70% of the area or plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (*i.e.*, in existence at least 12 months prior to the submission deadline), a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones*—This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for when they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using October 1991 as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation*—Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives.

An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment*—Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. Union letters should be submitted on union letterhead.

7. *Other Requirements*—Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and measurable goals and objectives have been developed to address the problems/needs of the area. For existing committees, the extent to which the committee will focus on expanded efforts.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. For in-plant applicants, this section will address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and,

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include State and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applicants from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exceptions apply to third-party grantees who seek funds on behalf of an entirely different committee.

D. Allocations

FMCS has been given a tentative allocation of $1 million for this program. However, this amount may be reduced by federally mandated budget reductions. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least two awards will be made in each category (plant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category.

FMCS reserves the right to retain up to 5 percent of the FY91 appropriation to contract for program support purposes other than administration. In FY91, approximately $77,000 will be reserved to support the Sixth National Labor-Management Conference.

E. Dollar Range and Length of Grants and Continuation Policy

Awards to continue and expand existing labor-management committees (i.e., in existence 12 months prior to the submission deadline) will be for a period of 12 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 12 months at double the initial cash match ratio. The total project period can thus normally be no more than 24 months.

Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 18 months at double the initial cash match ratio. The total project period can thus normally be no more than 36 months.

The dollar range of awards is as follows:

—Up to $35,000 in FMCS funds per annum for existing in-plant applicants;
—Up to $50,000 over 18 months for new in-plant committee applicants;
—Up to $75,000 in FMCS funds per annum for existing area, industry and public sector committees applicants;
—Up to $100,000 per 18-month period for new area, industry, and public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources.

F. Match Requirements and Cost Allowability

Applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants for existing committees must provide at least 25 percent of the total allowable project costs. All matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs as well as "in-kind" match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for time spent at committee meetings or time spent in training sessions. Applicants generally will not be allowed to claim all or a portion of existing staff time as an expense or match contribution.

For a more complete discussion of cost allowability, applicants are encouraged to consult the FY91 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applications should be signed by both a labor and management representative and be postmarked no later than May 11, 1991. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application containing numbered pages, plus three copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street, NW., Washington, DC 20427. FMCS will not consider videotaped submissions or attachments to submissions.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more FMCS Grant Review Boards. The Board(s) will decide which applications will be recommended for funding consideration. The Director, Labor-Management Grant Programs, will finalize the scoring and selection process for those applications recommended by the Board(s). The individual listed as contact person in Item 6 on the application form will be the only person with whom FMCS will communicate during the application review process.

All FY91 grant applicants will be notified of results and all grant awards will be made before September 30, 1991. Applications submitted after the May 11 deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Grant Programs.

H. Application Development Training

In FY91, FMCS will offer a free half-day training program to assist potential applicants with the development and writing of an FMCS grant application. This training session will be conducted in Washington, DC, on January 23, 1991. Individuals interested in attending the session should contact FMCS to reserve a space. See section I for contact information.

I. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits, as well as additional information or clarification, can be obtained free of charge by contacting Lee A. Buddendeck or Peter L. Regner, Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street, NW., Washington, DC 20427; or by calling 202/653-5320.

Bernard E. DeLury,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 90-26064 Filed 11-2-90; 8:45 am]

BILLING CODE 6732-01-M

FEDERAL RESERVE SYSTEM

Mark R. Abate, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 19, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mark R. Abate*, to acquire 8.7 percent of the voting shares of Elgin State Bancorp, Inc., Elgin, Illinois, and thereby indirectly acquire Elgin State Bank, Elgin, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Keith C. Miller*, to acquire 0.77 percent of the voting shares of Commercial Bancshares, Inc., Mitchell, South Dakota, and thereby indirectly acquire Commercial Trust & Savings Bank, Mitchell, South Dakota, and Sanborn County Bank, Woonsocket, South Dakota.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Leo Van Dittie Revocable Trust*, Leo Van Dittie, Trustee, Rancho Mirage, California; to acquire 100 percent of the voting shares of Burlington Bancshares, Inc., Burlington, Colorado, and thereby indirectly acquire The Bank of Burlington, Burlington, Colorado.

Board of Governors of the Federal Reserve System, October 30, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26075 Filed 11-2-90; 8:45 am]

BILLING CODE 6210-01-M

El-Yam Ships Ltd., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 26, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *El-Yam Ships Ltd.*; Financial Holding El-Yam Ltd., Tel Aviv, Israel; Israel Investment and Finance Corporation Ltd.; Israel Financial Holdings Ltd.; Gov Financial Holdings Ltd.; and Naftali Financial Holdings Ltd.; to acquire 51 percent of the voting shares of IDB Bankholding Corporation Ltd., Tel Aviv, Israel, and thereby indirectly acquire Israel Discount Bank of New York, New York, New York. In connection with this application, El-Yam Ships Ltd. and Financial Holdings El-Yam Ltd. have also applied to become bank holding companies.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Keystone Financial, Inc.*, Harrisburg, Pennsylvania; to acquire 100 percent of the voting shares of Ambassador Bank of the Commonwealth, Allentown, Pennsylvania.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Bancshares of Stevenson, Inc.*, Stevenson, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of the First National Bank of Stevenson, Stevenson, Alabama.

D. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *KSAD, Inc.*, Council Bluffs, Iowa; to acquire 32.92 percent of the voting shares of 304 Corporation, Omaha, Nebraska, and thereby indirectly acquire Mid City Bank, Inc., Omaha, Nebraska.

2. *Mid-America National Bancorp, Inc.*, Chicago, Illinois; to become a bank holding company by acquiring 98.5 percent of the voting shares of Mid-America National Bank of Chicago, Chicago, Illinois, 100 percent of the voting shares of Security Chicago Corp., Chicago, Illinois; and thereby indirectly acquire First Security Bank of Chicago, Chicago, Illinois, and 20 percent of the voting shares of First State Bancorp of Princeton, Princeton, Illinois, and thereby indirectly acquire First State Bank of Princeton, Princeton, Illinois, and First Bank and Trust Company, Gridley, Illinois.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Jacob Schmidt Company* and American Bancorporation, Inc., St. Paul, Minnesota; to acquire 100 percent of the voting shares of Farmers State Bank of Rothsay, Rothsay, Minnesota.

F. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Geneva State Company*, Geneva, Nebraska; to become a bank holding company by acquiring at least 90.4 percent of the voting shares of Geneva State Bank, Geneva, Nebraska.

Board of Governors of the Federal Reserve System, October 30, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26076 Filed 11-2-90; 8:45 am]

BILLING CODE 6210-01-M

Norwest Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this Notice has applied under § 225.23(a) (2) or (f) of the Board's Regulation Y (12 CFR § 225.23(a) (2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR § 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 1990.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire Spectrum Properties, Inc., Denver, Colorado, and thereby engage in making and servicing loans pursuant to § 225.259b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 30, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26077 Filed 11-2-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council on Health Care Policy, Research, and Evaluation.

DATES: The meeting will be open to the public on Monday, November 26, from 1 to 5:30 p.m., and on Tuesday, November 27, from 8 a.m. to 12 noon.

ADDRESSES: The meeting will be at the Hyatt Regency Hotel, 7400 Wisconsin Avenue, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Judith D. Moore, Executive Secretary of the Advisory Council at the Agency for Health Care Policy and Research, 5600 Fishers Lane, room 18A-30, Rockville, Maryland 20857, (301) 443-9405.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council shall provide advice to the Secretary and the Administrator, Agency for Health Care Policy and Research, on matters related to the actions of the Agency to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and the organization, financing, and delivery of health care services.

The Council is composed of 17 members appointed by the Secretary. These members are:

Linda H. Aiken, Ph.D; George A. Beller, M.D.; Mr. Edward C. Bessey; Joseph F. Boyle, M.D.; Linda Burnes Bolton, Dr. P.H.; Joseph T. Curti, M.D.; Martin G. Dillard, M.D.; Gary L. Filerman, Ph.D.; Juanita W. Fleming, Ph.D.; David Hayes-Bautista, Ph.D.; William S. Kiser, M.D.; Kermit B. Knudsen, M.D.; Norma M. Lang, Ph.D.; Mr. Walter J. McNerny; Lawrence H. Meskin, D.D.S., Ph.D.; Barbara Starfield, M.D.; and Sister M. Eileen Wilhelm.

There also are 7 Federal Ex Officio Members. These members are:

Administrator, Alcohol, Drug Abuse and Mental Health Administration; Director, National Institutes of Health; Director, Centers for Disease Control; Administrator, Health Care Financing Administration; Commissioner, Food and Drug Administration; Assistant Secretary of Defense (Health Affairs); and Chief Medical Director, Department of Veterans Affairs.

II. Agenda

This is the first meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation. This meeting of the Advisory Council will be primarily for organization and orientation purposes. On November 26, following welcome and introductions, the members will hear descriptions of the organization and structure of the Agency for Health Care Policy and Research. On November 27, descriptions of Agency organization and structure will continue. Also to be discussed on November 27 are meeting dates and processes for grant review during 1991.

Agenda items are subject to change as priorities dictate.

Dated: October 29, 1990.

J. Jarrett Clinton, M.D.

Assistant Surgeon General, Acting Administrator.

[FR Doc. 90-26078 Filed 11-2-90; 8:45 am]

BILLING CODE 4160-90-M

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards to Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, room 9–A–53, 5600 Fishers Lane, Rockville, Maryland 20857; tel.: (301)443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are not to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Alpha Medical Laboratory, Inc., 405 Alderson Street, Schofield, WI 54476, 800–627–8200

American BioTest Laboratories, Inc., Building 15, 3350 Scott Boulevard, Santa Clara, CA 95054, 408–727–5525

American Medical Laboratories, Inc., 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703–691–9100

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Bio-Analytical Technologies, 2356 North Lincoln Avenue, Chicago, IL 60614, 312–500–8900

CBC Clinilab, 140 East Ryan Road, Oak Creek, WI 53154, 800–365–3840 (name changed: formerly Chem-Bio Corporation)

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810

Center for Human Toxicology, 417 Wakara Way—Room 290, University Research Park, Salt Lake City, UT 84108, 801–581–5117

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412–488–7500

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919–549–8263

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 1215–½ Jackson Ave., Oxford, MS 38655, 601–236–2609

Environmental Health Research & Testing, Inc., 1075 South 13th St., Birmingham, AL 35205–9996, 205–934–0885

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267

Harris Medical Laboratory, P.O. Box 2981, 1401 Pennsylvania Avenue, Fort Worth, TX 76104, 817–878–5800

HealthCare/Preferred Laboratory, 3011 W. Grand Boulevard, Detroit, MI 48202, 313–875–2112

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961

Laboratory Specialists, Inc., P.O. Box 4350, Woodland Hills, CA 91365, 800–331–8670

Massey Analytical Laboratories, Inc., 2214 Main Street, Bridgeport, CT 06606, 203–334–6187

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 800–533–1710/507–284–3631

Med Arts Lab, 5419 South Western, Oklahoma City, OK 73109, 800–251–0089

Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515

MedTox Laboratories, Inc., 402 W. County Road D, St Paul, MN 55112, 612–636–7466

Mental Health Complex Laboratories, 9455 Watertown Plank Road, Milwaukee, WI 53226, 414–257–7439

Methodist Medical Center, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 309–672–4928

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 312–595–3888 ext.671

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000

MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 301–247–9100

National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492

National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250

Nichols Institute Substance Abuse Testing (NISAT), 8985 Balboa Avenue, San Diego, CA 92123, 800–446–4728/619–694–5050

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361

PDLA, Inc., 100 Corporate Court, So. Plainfield, NJ 07060, 201–769–8500

PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177

Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600

Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400

Roche Biomedical Laboratories, 6370 Wilcox Road, Dublin, OH 43017, 614–889–1061

Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–3537

Roche Biomedical Laboratories, Inc., 1912 Alexander Drive, P.O. Box 13973, Research Triangle Park, NC 27709, 919–361–7770

The certification of this laboratory (Roche Biomedical Laboratories, Inc., Research Triangle Park, NC) is suspended from conducting confirmatory testing of amphetamines. The laboratory continues to meet all requirement for HHS/NIDA certification for testing urine specimens for marijuana, cocaine, opiates and phencyclidine. For more information, see 55 FR 43219 (Oct. 26, 1990).

Roche Biomedical Laboratories, Inc., 101 Inverness Drive East, Englewood, CO 80112, 303–799–2822

Roche Biomedical Laboratories, Inc., 1 Roche Drive, Raritan, NJ 08869, 800–631–5250

Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286

SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010

SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447

SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520

South Bend Medical Foundation, Inc., 530 North Lafayette Boulevard, South Bend, IN 46601, 219–234–4176

Southgate Medical Laboratory, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137, 800–338–0166

St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 North Lee Street, Oklahoma City, OK 73102, 405–272–7052

St. Louis University Forensic Toxicology Laboratory, 3610 Rutgers Avenue, St. Louis, MO 63104, 314–577–8628

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 90–26108 Filed Nov. 2, 1990; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 90P–0340]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to W.H. Braum, Inc., to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 4, 1991.

FOR FURTHER INFORMATION CONTACT: Joanne Travers, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0106.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of food deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to W.H. Braum, Inc., P.O. Box 25429, 3000 Northeast 63d, Oklahoma City, OK 73125.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent; and (2) sufficient vitamin A palmitate is added to ensure that a 4-fluid-ounce (118.5–milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer consumers a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calaries" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog".

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50–percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 321,740 half-gallons (608,925 liters) of the test product. The test product will be manufactured at W.H. Braum, Inc., Tuttle, OK 73089, and distributed in Arkansas, Kansas, Missouri, Oklahoma, and Texas.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. The permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 4, 1991.

Dated: October 26, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90–26079 Filed 11–2–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90P–0325]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Muller-Pinehurst Dairy, Inc., to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 4, 1991.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0343.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Muller Pinehurst Dairy, Inc., 2110 Ogilby Rd., Rockford, IL 61102.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog."

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food

labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 68,150 32-ounce (946-milliliter) cartons of the test product. The product will be manufactured at Muller-Pinehurst Dairy, Inc., 2110 Ogilby Rd., Rockford, IL 61102, and distributed in Illinois and Wisconsin.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 4, 1991.

Dated: October 26, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-26060 Filed 11-2-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90P-0329]

Sour Cream Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Wells' Blue Bunny to market test a product designated as "lite sour cream" that deviates from the U.S. standard of identity for sour cream (21 CFR 131.160). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 4, 1991.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0343.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Wells' Blue Bunny, One Blue Bunny Dr., Le Mars, IA 51031.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for sour cream in 21 CFR 131.160 in that: (1) The fat content of the product is reduced from 18 percent to 6 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 2-tablespoon (28.35-ounce) serving of the product contains 4 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to sour cream but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "lite sour cream." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "1/2 fewer calories" and "2/3 less fat than sour cream."

The product complies with the reduced calories labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fact content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the termporary marketing of 625,000 16-ounce (454-gram) units of the test product. The product will be manufactured at Well's Dairy, 12th and Lincoln Sts. SW., Le Mars, IA 51301, and distributed in Iowa, Kansas, Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 4, 1991.

Dated: October 26, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-26061 Filed 11-2-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90N-0448]

Quantum Pharmics, Ltd., et al.; Withdrawal of Approval of Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 40 abbreviated new drug applications (ANDA's). The holders of the ANDA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: December 5, 1990.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8038.

SUPPLEMENTARY INFORMATION: The holders of the ANDA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

ANDA no.	Drug	Applicant
70-200	Loraz (Lorazepam) Tablets, USP, 0.5 mg.	Quantum Pharmics, Ltd., 10 Edison St. East, Amityville, NY 11701.
70-201	Loraz (Lorazepam) Tablets, USP, 1 mg.	Do.
70-294	Clopra (Metoclopramide Hydrochloride) Tablets, USP, 10 mg (White).	Do.
70-547	Temaz (Temazepam) Capsules, 30 mg.	Do.
70-564	Temaz (Temazepam) Capsules, 15 mg.	Do.
70-632	Clopra (Metoclopramide Hydrochloride) Tablets, USP, 10 mg (Yellow).	Do.
70-931	Doxepin Hydrochloride Capsules, USP, 50 mg.	Do.
70-972	Doxepin Hydrochloride Capsules, USP, 10 mg.	Do.
71-255	Haloperidol Tablets, USP, 0.5 mg.	Do.
71-256	Haloperidol Tablets, USP, 2 mg.	Do.
71-257	Haloperidol Tablets, USP, 5 mg.	Do.
71-269	Haloperidol Tablets, USP, 1 mg.	Do.
72-296	Oxybutynin Chloride Tablets, USP, 5 mg.	Do.
72-375	Doxepin Hydrochloride Capsules, USP, 100 mg.	Do.
72-376	Doxepin Hydrochloride Capsules, USP, 150 mg.	Do.
72-384	Clopra (Metoclopramide Hydrochloride) Tablets, USP, 5 mg.	Do.
80-746	Vitamin A Capsules, 50,000 USP units.	Chase Chemical Co., L.P., 290 Chestnut St., Newark, NJ 07105.
80-747	Vitamin D (Ergocalciferol Capsules USP), 50,000 USP units.	Do.
83-059	Prednisone Tablets, 5 mg.	L. Perrigo Co., 117 Water St., Allegan, MI 49010.
83-060	Isoniazid Tablets, 100 mg.	Do.
83-061	Diphenhydramine Hydrochloride Capsules, 25 mg and 50 mg.	Do.
83-207	Vitamin A Capsules, 15 mg (50,000 USP units).	Chase Chemical Co., L.P.
83-351	Vitamin A Capsules, 15 mg (50,000 USP units).	Do.
84-542	Prednisolone Tablets, 5 mg.	L. Perrigo Co.
84-543	Propylthiouracil Tablets, 50 mg.	Do.
84-546	Meprobamate Tablets, 200 mg.	Do.
84-547	Meprobamate Tablets, 400 mg.	Do.
84-560	Sodium Pentobarbital Capsules, 100 mg.	Do.
84-581	Sodium Secobarbital Capsules, 100 mg.	Do.
85-322	Quinidine Sulfate Tablets, 200 mg.	Do.
88-514	Benztropine Mesylate Tablets, USP, 0.5 mg.	Quantum Pharmics, Ltd.
88-529	Hydroxyzine Hydrochloride Tablets, USP, 50 mg.	Do.
88-540	Hydroxyzine Hydrochloride Tablets, USP, 10 mg.	Do.
88-603	Doxylamine Succinate Tablets, 25 mg.	Do.
88-657	Hydralazine Hydrochloride Tablets, USP, 25 mg.	Do.
88-671	Hydralazine Hydrochloride Tablets, USP, 10 mg.	Do.
88-686	Hydralazine Hydrochloride Tablets, USP, 100 mg.	Do.
88-740	Q-Gesic (Meprobamate 200 mg w/Aspirin 325 mg) Tablets.	Do.
88-972	Butalbital with Aspirin & Caffeine.	Do.
89-120	Phentermine Resin Complex Slow-Release Capsules, 30 mg.	Do.

The agency has determined under 21 CFR 25.24(d)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the new drug applications listed above, and all supplements thereto, is hereby withdrawn, effective December 5, 1990.

Dated: October 26, 1990.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 90-26062 Filed 11-2-90; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Tetranitromethane

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of tetranitromethane, a volatile contaminant formed during the manufacture of TNT which has been used as a rocket fuel and biochemical reagent.

Toxicology and carcinogenesis studies of tetranitromethane were conducted by exposing groups of 50 rats of each sex to air containing tetranitromethane at target concentrations of 0 (chanber controls), 2, or 5 ppm, 6 hours per day, 5 days per week for 103 weeks. Groups of 50 mice of each sex were exposed to tetranitromethane at concentrations of 0, 0.5, or 2 ppm on the same schedule.

Under the conditions of these 2-year inhalation studies, there was clear evidence of carcinogenic activity [1] of tetranitromethane for male and female F344/N rats and male and female B6C3F1 mice, based on increased incidents of alveolar/bronchiolar neoplasms in both species and squamous cell carcinomas of the lung in rates. Chronic inflammation of the nasal mucosa was related to exposure in rats and female mice, and hyperplasia and squamous metaplasia of the respiratory epithelium were increased in exposed male rates.

The study scientist for these studies is Dr. John Bucher. Questions or comments about this Technical Report should be directed to Dr. Bucher at P.O. Box 12233, Research Traingle Park, NC 27709 or telephone (919) 541-4532.

Copies of Toxicology and Carcinogenesis Studies of Tetranitromethane in F344/N Rats and B6C3F1 Mice (Inhalation Studies) (TR 386) are available from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Traingle Park, NC 27709.

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); one category for experiments that because of major flaws cannot be evaluated ("indadequate study").

Dated: October 29, 1990.
David G. Hoel,
Acting Director, National Toxicology Program.
[FR Doc. 90-26107 Filed 11-2-90; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-90-3168]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to:

Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 23, 1990.
John T. Murphy,
Director, Information Policy and Management Division.

Proposal: Title I Monthly Statement Reconcilment of Insurance Charges.
Office: Housing.
Description of the need for the information and its proposed use: Form HUD-646 is used by HUD-approved Title I lending institutions as a vehicle for reconciling differences that occur between lender's and the Department's monthly billing statement.
Form number: HUD-646.
Respondents: Businesses or Other For-Profit.
Frequency of submission: Recordkeeping and On Occasion.
Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-646	500		12		1		6,000
Recordkeeping	500		1		.17		85

Total estimated burden hours: 6,085.
Status: Extension.
Contact: Linda J. Stowes, HUD, (202) 708-0283, Scott Jacobs, OMB, (202) 395-6880.

Dated: October 23, 1990.
Proposal: Miscellaneous Requirements for Section 8 Project-Based Certificate Program, 24 CFR part 882—subpart G.
Office: Housing.
Description of the need for the information and its proposed use: 24 CFR Part 882 requires the Department to permit a public housing agency (PHA) to attach to structures up to 15 percent of Section 8 Existing housing assistance provided by the PHA.
Form number: HUD-9880.
Respondents: State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions.
Frequency of submission: Recordkeeping and On Occasion.
Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting:							
PHA	2,000		1		20		40,000
PHA	100		1		15.6		1,563
Owners	100		1		40.6		4,065
Recordkeeping	100		1		.25		25

Total estimated burden hours: 45,653.
Status: Revision.
Contact: Michael Dennis, HUD, (202) 708-3887, Scott Jacobs, OMB, (202) 395-6880.

Date: October 23, 1990.
Proposal: Relocation Payment Claim Forms.
Office: Community Planning and Development.
Description of the need for the information and its proposed use: These forms will be used by eligible displaced persons to make proper application for relocation assistance payments. Displaced persons' forms will be used to apply for payments for moving expenses and residential occupants' forms will be used to apply for replacement housing payments.
Form number: HUD-40054, 40055, 40056, 40057, 40058, 40061, 40072.
Respondents: Individuals or Households, State or Local Governments, Farms, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations.
Frequency of submission: Other.
Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-40054	9,000		1		.5		4,500
HUD-40055	400		1		1.5		600
HUD-40056	400		1		1.0		400
HUD-40057	1,250		1		1.0		1,250
HUD-40058	5,750		1		1.0		5,750
HUD-40061	9,000		1		1.0		9,000
HUD-40072	2,000		1		1.0		2,000

Total estimated burden hours: 23,500.
Status: Reinstatement.
Contact: Melvin Geffner, HUD, (202) 708-0336, Scott Jacobs, OMB, (202) 395-6880.

Date: October 23, 1990.
Proposal: Section 8 Random Digit Dialing Fair Market Rent Telephone Surveys.
Office: Policy Development and Research.
Description of the need for the information and its proposed use: This telephone survey will provide the Department with a fast, inexpensive way of estimating Section 8 Fair Market Rents (FMR). The survey will be used to derive FMR updating factor and to test the accuracy of FMRs in selected areas.
Form number: None.
Respondents: Individuals or Households.
Frequency of submission: On Occassion.
Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Interviews	61,710		9		.008		4,454

Total estimated burden hours: 4,454.
Status: New.
Contact: Joseph Riley, HUD, (202) 708-0577; Scott Jacobs, OMB, (202) 395-6880.

Date: October 23, 1990.

[FR Doc. 90-28066 Filed 11-2-90; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. N-90-3167]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 26, 1990.
John T. Murphy,
Director, Information Policy and Management Division.

Proposal: Public Housing Affirmative Compliance Actions Program (PHACA) Self-Assessment Instruments for PHAs.
Office: Fair Housing and Equal Opportunity.
Description of the need for the information and its proposed use: Public Housing Authorities will use the PHACA Self-Assessment Instrument to document their performance related to Title VI of the 1964 Civil Rights Act. The Department will use the results to provide a formal compliance review for PHAs who participate in this voluntary program.
Form number: None.
Respondents: State or Local Governments and Non-Profit Institutions.
Frequency of submission: One-Time.
Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
PHACA Self-Assessment Instrument	80		1		120		9,600

Total estimated burden hours: 9,600.
Status: New.
Contact: Eleanor Clagett, HUD, (202) 708–0404; Scott Jacobs, OMB, (202) 395–6880.

Date: October 26, 1990.

[FR Doc. 90–26067 Filed 11–2–90; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. D–90–835]

Office of the Manager, Richmond Office, Designation

AGENCY: Department of Housing and Urban Development.
ACTION: Designation of order of succession.

SUMMARY: The Manager is designating officials who may serve as Acting Manager during the absence, disability or vacancy in the position of the Manager.

EFFECTIVE DATE: This designation is effective immediately.

FOR FURTHER INFORMATION CONTACT: Peter M. Campanella, Regional Counsel, Philadelphia Regional Office, Department of Housing and Urban Development, Liberty Square Building, 105 South 7th Street, Philadelphia, PA 19106–3392. Phone number (215) 597–2655 (This is not a toll free number).

DESIGNATION: Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability or vacancy in the position of the Manager, with all the powers, functions and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Manager
2. Director, Housing Management Division
3. Director, Community Planning & Development Division

This designation supersedes all previous designations.

Authority: Delegation of Authority by the Secretary, 50 FR 18742, May 2, 1985.

Dated: October 15, 1990.

Mary Ann E.G. Wilson,
Acting Manager.

[FR Doc. 90–26066 Filed 11–2–90; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–01–5101–8002]

Intent To Prepare an EIS Proposed Specified Hazardous Waste Facility

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) in coordination with the County of San Bernardino will prepare a joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) fot the proposed Specified Hazardous Waste Facility at Broadwell Dry Lake, approximately 60 miles east of Barstow and approximately 8 miles north of Ludlow, California.

The applicant, Broadwell Corporation, has applied to the County for a Conditional Use Permit and a General Plan Amendment to develop a specified hazardous waste facility on land owned by Broadwell for the permanent storage and treatment of hazardous wastes.

Broadwell has applied to BLM for a right-of-way for an access road utilizing the existing Crucero Road from Interstate 40 in Ludlow to the site. The proposed 60 foot right-of-way would be approximately 8 miles in length, half of which would be across public lands. The existing road would be realigned for approximately one and one-half miles slightly west of its present location to be above the 100 year flood line. This realignment would involve lands within the Sleeping Beauty Mountains Wilderness Study Area (#252). Broadwell has also applied to BLM for two mineral material sales involving clay and coarse material for construction and operating purposes. These sites cover 227 acres and 363 acres, respectively.

The proposed specified hazardous waste facility would accept, treat, and dispose of hazardous wastes and other solid wastes that meet state and federal treatment standards. The facility would receive an estimated 2,000 tons per day of wastes. A range of alternatives to be analyzed include alternative access routes, facility designs, disposal methods, and site locations, as well as the no action alternative.

PUBLIC PARTICIPATION: Pre- and post-application public scoping meetings were held by the County in Newberry Springs, California. Comments presented during these meetings serve to define the scope of the EIR/EIS. Issues identified at the scoping meetings included the need for interagency/regional planning, the relationship to adjacent land uses; impacts to wilderness qualities, water, air, and threatened and endangered species; risk assessment; health and safety; geology and faults in the area; means of transportation; flooding problems; and construction of storage containers. Agencies and individuals that have already submitted comments or input during the previous public scoping periods need not submit the same comments again because the issues raised in previous comments will be incorporated into the EIR/EIS being prepared for this project.

A Local Assessment Committee (LAC) was established which meets on the second and fourth Mondays of each month in Newberry Springs, 20 miles east of Barstow, to discuss with the proponent details of the project. The LAC reports to the County Board of Supervisors and generally represents the interests of the residents of the County and adjacent communities. The LAC meetings are open to the public and provide for continual public involvement in the scoping and analysis process of this proposal.

Public meetings on this proposal will be held upon release of the draft EIR/EIS and will be announced in a Notice of Availability in the **Federal Register** and also in County notices.

Formal comments on this Notice will be accepted by BLM for 30 days after date of publication. Comments are specifically requested on issues, concerns, and alternatives, which will be considered in the EIR/EIS. As noted above, comments already submitted as part of the ongoing County review process do not need to be repeated.

ADDRESSES: Send comments to BLM, Barstow Resource Area, 150 Coolwater Lane, Barstow, California 92311, Attn: Sharon Paris. For further information on this proposal or on the LAC meetings, or to be placed on the mailing list for the EIR/EIS contact BLM at the above address or by telephone at (619) 256–3591.

Dated: October 30, 1990.
Michael J. DeKeyrel,
Acting Area Manager.

[FR Doc. 90–26116 Filed 11–2–90; 8:45 am]
BILLING CODE 4310–40–M

[WO–650–4120–02]

Federal-State Coal Advisory Board: Meeting

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice of meeting.

SUMMARY: This notice is to inform the public that the Federal-State Coal Advisory Board (Board) will meet in Denver, Colorado, December 11, 1990. The public is invited to attend. The Board will (1) Review the status of regional coal activities, (2) discuss the market outlook for coal, and (3) formulate a recommendation on a long-range lease sale plan for Federal coal.

DATES: The Board will meet at 8:30 a.m. on December 11, 1990.

ADDRESSES: The Board meeting will be held at the Registry Hotel, 3203 Quebec Street, Denver, Colorado 80207, telephone (303) 321–3333.

SUPPLEMENTARY INFORMATION: The Board will review the status of coal leasing activities. Regional coal team representatives will present an update of coal leasing activities within their respective regions, including the outlook for lease sales and the current status of preference right lease applications and lease exchanges, where applicable. In addition, Headquarters Bureau of Land Management personnel will present for discussion information on current activities and issues that impact on the coal management program.

The Board will review the long-range outlook for coal markets and its potential impact on the demand for Federal coal. This information will be used to assist the Board in formulating a recommendation on a long-range Departmental lease sale plan at this meeting.

The public will have an opportunity to address the Board on agenda topics during the public comment period noted on the agenda below. Written copies of a speaker's remarks would be appreciated. Any comments will become a part of the record of the Board meeting. The Chairperson may impose a time limit on comments to ensure that everyone wishing to address the Board is able to do so.

Agenda—Federal-State Coal Advisory Board Meeting

December 11, 1990

Denver, Colorado
Welcome and Introductions
—BLM Director
—Assistant Director, Energy and Mineral Resources
—Other Staff
—Review and Approval of Meeting Agenda
—Approval of 1989 Meeting Minutes
—Director's Remarks
—Regional Coal Team Reports
—Washington Office Report
—Long-Range Market Outlook
—Long-Range Lease Sale Plan
—Discussion
—Public Comments
—Board Recommendation
Adjourn

FOR FURTHER INFORMATION CONTACT: Stan McKee or Dan Wedderburn, Bureau of Land Management (650), MS 3559, 1849 C Street, NW., U.S. Department of the Interior, Washington, DC 20240. Telephone: (202) 208–4636.

Cy Jamison,
Director.

[FR Doc. 90–26105 Filed 11–2–90; 8:45 am]
BILLING CODE 4310–84–M

[WO–250–4370–02]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice of meeting of the Wild Horse and Burro Advisory Board.

SUMMARY: Notice is hereby given that the Wild Horse and Burro Advisory Board recently appointed by the Secretary of Agriculture and the Secretary of the Interior will hold their first meeting December 5 to 7, 1990, in Reno, Nevada. The meeting will take place at the Sands Regency Hotel, 345 North Arlington Avenue, from 8 a.m. to 4:30 p.m., except on the afternoon of December 6, when the Board will attend a field tour at the Bureau of Land Management's Palomino Valley Wild Horse and Burro Placement Center, and December 7, when the meeting will adjourn at 3:30 p.m.

DATES: December 5–7, 1990.

ADDRESSES: Director (250), Bureau of Land Management, Premier Building room 901, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION OR TO SCHEDULE OR SUBMIT TESTIMONY, CONTACT: John S. Boyles, Chief, Division of Wild Horses and Burros, at the above address; telephone (202) 653–9215.

SUPPLEMENTARY INFORMATION: The purpose of the Board, which was chartered in May 1990, is to advise the Secretary of the Interior, the Director, Bureau of Land Management, the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild free-roaming horses and burros on the Nation's public lands.

The meeting will be open to the public. Members of the public may make oral statements to the Board on December 6, 1990, in the morning. Persons wishing to make statements should notify the Bureau of Land Management at the address or telephone number given above by November 21, 1990, so that time can be scheduled for their presentations. Depending on the number of speakers, it may be necessary to limit the length of each presentation. Speakers should address specific wild horse and burro issues and must submit a written copy of their testimony to the address given above or bring a written copy to the meeting. Persons who wish to provide testimony but who are unable to attend the meeting may submit a written statement to the address above.

Members of the public who wish to attend the field trip on December 6 must make their own arrangements for transportation to the Palomino Valley Wild Horse and Burro Placement Center.

The proposed agenda for the meeting is:

Wednesday, December 5: Morning: Introduction of the Board and Agency personnel; review of the Board's charter, Public Law 92–195, as amended, 43 CFR 4700, and wild horse and burro policies.

Afternoon: Briefing/discussion—the land use planning process and the administrative appeals process.

Thursday, December 6: Morning: Briefing on wild horses and burros in Nevada; public comments and issue identification.

Afternoon: Field trip to Palomino Valley Wild Horse and Burro Placement Center to observe preparation and care of captured wild horses and burros.

Friday, December 7: Morning: Fiscal Year 1991 budget briefing; legislative initiative; administrative matters.

Afternoon: Board goals and objectives; plans for next meeting.

Cy Jamison,
Director, Bureau of Land Management.

[FR Doc. 90–26072 Filed 11–2–90; 8:45 am]
BILLING CODE 4310–84–M

[UT-060-01-4333-10]

Off-Road Vehicle Designations; Price River Resource Area, Utah

October 26, 1990.

AGENCY: Bureau of Land Management, Moab, Interior.

ACTION: Notice of off-road vehicle (ORV) designation decisions and implementation of ORV closures and limitations for the Bureau of Land Management, Price River Resource Area.

SUMMARY: Notice is hereby given relating to the use of ORVs on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR part 8340. The following described lands under administration of the Moab District of the Bureau of Land Management are designated as closed, limited, or open to off-road motorized vehicle use.

The 1,067,357 acres of public land affected by the designations are within the Price River Resource Area in Carbon and Emery Counties, Utah. The designations are a result of resource management decisions made in the Price River Resource Area Management Framework Plan (MFP), 1983. Public comments were received and considered throughout the MFP process. Public comments concerning the adequacy of the implementation plan environmental assessment were accepted during the 30 day public comment period in 1989.

These designations for the public land located within the areas listed below are effective immediately and will remain in effect until modified or rescinded by the Authorized Officer.

SUPPLEMENTARY INFORMATION: ORV designations are effective for the following areas.

A. *Closed Designation*—all motorized vehicle use is prohibited year-round.

1. *Price Canyon Recreation Area*—160 acres located 15 miles northwest of Price, Utah.

2. *Cleveland Lloyd Dinosaur Quarry*—80 acres located 30 miles south of Price, Utah.

3. *Cedar Mountain Recreation Area*—205 acres located 40 miles south of Price, Utah.

B. *Limited Designations*—1. *Emma Park*—4,270 acres located 15 miles north of Price, Utah. No competitive or organized ORV events will be allowed, to protect sage grouse nesting habitat.

2. *West Benches*—44,280 acres located 5 miles west of Price, Utah. Seasonal closure between December 15 and March 15 to protect the critical winter range for deer and elk. No competitive or organized events will be allowed, to protect raptor nesting habitat and forage for wintering deer and elk.

3. *Nine Mile Canyon*—10,326 acres located 20 miles northeast of Price, Utah. Limited to designated existing roads and trails to protect archaeological and historical sites of potential National Register quality.

4. *Desolation/Turtle Canyons*—244,300 acres located 40 miles east of Price, Utah. Limited to designated existing roads and trails to protect primitive, scenic, natural, archaeological, and recreational values. The Range Creek jeep trail is closed at a point 1 and ¼ miles from the Green River to protect riparian values as well as the above-mentioned values.

5. *Mancos Shale*—212,700 acres located between Price, Huntington, and Green River, Utah. No competitive or organized events will be allowed between March 1 and May 15 (soil condition dependent) to protect sensitive watershed areas from excessive erosion.

6. *Mexican Mountain*—30,600 acres located 40 miles south of Price, Utah. Limited to designated existing roads and trails to protect primitive, scenic, natural, and recreational values.

7. *Old Spanish Trail*—1,020 acres located 35 miles south of Price, Utah. Limited to designated existing roads and trails to protect archaeological and historical sites of potential National Register quality.

*There is an overlap of 6,120 acres between the West Benches and the Mancos Shale designation areas.

C. *Open Designation*—Motorized vehicles may be operated on the remaining 545,536 acres of public lands within the Price River Resource Area, subject to the operating regulations and vehicle standards set forth in the Code of Federal Regulations (43 CFR part 8340).

FOR FURTHER INFORMATION CONTACT: Mark Bailey, Area Manager, Price River Resource Area, 900 North 700 East, Price, Utah 84501.

Gene Nodine,

District Manager.

[FR Doc. 90-26026 Filed 11-2-90; 8:45 am]

BILLING CODE 4310-DQ-M

[(NV-930-01-4212-14); N-53355]

Realty Action; Direct Sale of Public Land in Elko County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action proposed direct sale of public lands.

SUMMARY: The following described public lands administered by the Bureau of Land Management have been examined and identified as suitable for sale to the city of Carlin under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713) at no less than fair market value:

T. 33 N., R. 52 E.

Section 22, SW¼NE¼, N½NW¼, E½E½SW¼NW¼, S½SW¼SW¼NW¼, SW¼SE¼SW¼NW¼, SE¼NW¼, N½SW¼, E½SE¼SW¼, SE¼

Containing 437.50 acres.

The described lands will be offered by direct sale to the city of Carlin. The lands have been specifically identified as suitable for disposal for community expansion purposes by the Elko Resource Management Plan. The lands are not needed for any resource program and are not suitable for management by the Bureau of any other federal department or agency.

The locatable and salable mineral estates have been determined to have no value. The land is prospectively valuable for oil and gas; therefore, the mineral estate, excluding oil and gas, can be conveyed simultaneously with the surface estate in accordance with section 209(b)(1) of FLPMA. Acceptance of a direct sale offer will constitute an application for conveyance of the mineral interests. The city of Carlin will be required to submit a $50.00 nonrefundable fee with the purchase price for conveyance of the mineral interests specified above. Failure to submit the purchase money and the nonrefundable filing fee for the mineral estate within the time frame specified by the authorized officer will result in cancellation of the sale.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States; Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. Oil and gas.

And will be subject to:

1. Those rights for telephone purposes which have been granted to Nevada Bell, its successors or assignees, by right-of-way grant Elko-01655 under the authority of the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).

2. Those rights for telephone line purposes which have been granted to Nevada Bell, its successors or assignees, by right-of-way grant CC-021080 under the authority of the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).

3. Those rights for gas pipeline purposes which have been granted to the Southwest Gas Corporation, its successors or assignees, by right-of-way grant Nev-064954 under the authority of the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 185, section 28).

4. Those rights for highway purposes which have been granted to the Nevada Department of Transportation, its successors or assignees, by right-of-way grant Nev-067173 under the authority of the Act of August 27, 1958 (72 Stat. 916; 23 U.S.C. 317).

5. Those rights for powerline purposes which have been granted to Wells Rural Electrical Co., its successors or assignees, by right-or-way grant N-3863 under the authority of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961).

6. Those rights for substations and access road purposes which have been granted to Wells Rural Electric Co., its successors or assignees, by right-of-way grant N-38134 under the authority of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

7. Those rights for a buried telephone cable which have been granted to CP National, its successors or assignees, by right-of-way grant N-41621 under the authority of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

8. Those rights for powerline purposes which have been granted to Sierra Pacific Power Co., its successors or assignees, by right-of-way grant N-48186 under the authority of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

9. Those rights for a buried fiber optic communications cable which have been granted to A&TT, its successors or assignees, by right-of-way grant N-46266 under the authority of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

10. Those rights for a buried telephone cable which have been granted to CP National, its successors or assignees, by right-of-way grant N-51955 under the authority of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

In addition, the described lands would be conveyed subject to the privileges of Lee and Betty Taylor to graze domestic livestock on the lands according to the terms and conditions of Grazing Permit number 01587 for 28 AUMs within the Taylor Carlin Grazing Allotment which shall be continued until termination of the Grazing Permit on February 28, 1992. The city of Carlin will be entitled to receive annual grazing fees up until the expiration date of the Grazing Permit of Lee and Betty Taylor for the use of the Taylor Carlin Grazing Allotment at a rate not to exceed that which would be authorized in the grazing fee schedule published annually in the **Federal Register**.

Although addressed in previous Notices of Realty Action regarding sale of the land to the city of Carlin, it has been determined after further analysis that no direct loss of AUMs will result within the Marys Mountain Grazing Allotment to Melvin Jones Ranches (16 AUMs) and Elko Land and Livestock Co. (4 AUMs which are currently leased to Lee and Betty Taylor) as a result of this land disposal action.

On August 2, 1990, a Notice of Realty Action was published in the **Federal Register** segregating the subject lands from all appropriations under the public land laws, the mining laws, but not the mineral leasing laws, for a period of 270 days. Therefore, this segregation will terminate 270 days after the August 2, 1990, publication date in the **Federal Register**, or upon publication of a Termination of Segregation in the **Federal Register**, whichever comes first.

The land will be offered for sale no earlier than 60 days after date of publication of this notice in the **Federal Register**. For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 3900 E. Idaho Street, Elko, Nevada 89801. Any adverse comments will be reviewed by the Nevada State Director, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of timely filed objections this realty action will become the final determination of the Department of the Interior.

Dated: October 26, 1990.

Nancy Phelps-Dalley,

Acting District Manager.

[FR Doc. 90-26023 Filed 11-2-90; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of Application for Incidental Take Permit for Robert Edgar's Proposed Turkey-Raising Facility Near Allensworth, Tulare County, CA.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Robert Edgar has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a) of the Endangered Species Act (Act). The proposed permit would authorize, for a period of 50 years, the incidental take of three endangered species, the San Joaquin kit fox (*Vulpes macrotis mutica*), blunt-nosed leopard lizard (*Gambelis silus*), and Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*). Notice of receipt of the application and Habitat Conservation Plan was previously published on August 20, 1990. The Service has prepared an environmental assessment (EA) for the incidental take permit application. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA should be received on or before December 5, 1990.

ADDRESSES: Comments regarding the adequacy of the EA should be addressed to: Mr. Wayne S. White, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Station, 2800 Cottage Way, room E-1803, Sacramento, California 95825-1846. Interested parties may comment on the application by submitting written views, arguments, or data to: Director, U.S. Office of Management Authority, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Nadine R. Kanim, U.S. Fish and Wildlife Service, Sacramento Field Station, 2800 Cottage Way, room E-1803, Sacramento, California 95825-1846 (916/978-4866 or FTS 460-4866). Individuals wishing copies of the EA for review should immediately contact the above individual.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species, like the San Joaquin kit fox, blunt-nosed leopard lizard, and Tipton kangaroo rat. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Robert Edgar proposes to construct and operate a turkey-raising facility on a 210-acre parcel, which is located approximately one-half mile southeast of the community of Allensworth, in Tulare County, California. The parcel is comprised of the eastern ¼ of Section 16 and a portion of the eastern ¼ of Section 9 in Township 24 South, Range 24 East (Mount Diablo Baseline Meridian). The proposed turkey-raising facility would require the construction and operation of three brooder houses, 18 grow-out houses, storage pits, roads,

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one modular and two mobile homes, a workshop, and possibly a permanent residence on the site. These structures will permanently eliminate up to 210 acres of endangered species habitat. Robert Edgar proposes to mitigate for this incidental take via several off-site and on-site mitigation measures. Such measures include off-site acquisition of 630 acres of native habitat within the boundaries of the California Department of Fish and Game's (Department) Allensworth Ecological Reserve Conceptual Area, transfer of $63,000 to the Department to provide fencing around off-site mitigation lands, a maintenance endowment in the amount of $94,000 to manage the conveyed lands in perpetuity, and various on-site measures to avoid take of listed species to the maximum extent possible during construction and operation of the facility.

The EA considers the environmental consequences of the proposed action and the no action alternative. Two other alternative sites were rejected prior to the Service's receipt of the permit application because of endangered species concerns, lack of accessibility, and the absence of utilities and water connections. The proposed action would result in the extirpation of isolated populations of three listed species on the proposed project site and the preservation and enhancement of 630 acres of listed species habitat in the Allensworth Ecological Reserve Conceptual Area. Although the no action alternative would not permit the take of the three listed species on the proposed project site, periodic inundation by flood waters, illegal hunter trespass, competition and predation by feral pets, and other human activities would prevent the long-term maintenance of endangered species on the parcel.

Dated: October 31, 1990.

Richard K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 90-28112 Filed 11-2-90; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting Jeane Kalas at 303-231-3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget Paperwork Reduction Project (1010-0064), Washington, DC 20503, telephone 202-395-7340.

Title: Auditing and Financial System Reports on Solid Minerals.

Abstract: The information used in the Auditing and Financial System (AFS) is collected from lessees and leased operators producing minerals from leased Indian lands or from leased Federal lands. The information provides comprehensive data on solid mineral sales and royalties and is necessary to document payments, maintain royalty accounts, and audit. The AFS, a revenue accounting system, is used as a cross-check with the Production Accounting and Auditing System, which tracks mineral production. The data comparison also aids in tracking losses caused by carelessness, fraud, and theft.

Bureau Form Number: MMS-4014, MMS-4030.

Frequency: Monthly, quarterly, annually, or on occasion.

Description of Respondents: Solid mineral companies and lease operators producing minerals from leased Federal and Indian lands.

Annual Responses: 22,480 report lines.

Annual Burden Hours: 1,439.

Bureau Clearance Officer: Dorothy Christopher 703-787-1239.

Dated: July 13, 1990.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 90-26028 Filed 11-2-90; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Gulf Islands National Seashore Advisory Commission: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of advisory commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. app. 1 s 10), that a meeting of the Gulf Islands National Seashore Advisory Commission is scheduled for Friday, December 7. The Commission was established pursuant to Public Law 91-660, January 8, 1971. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Gulf Islands National Seashore, and on matters relating to zoning within the seashore. The meeting will convene on December 7 at the Davis Bayou Visitor Center auditorium in Ocean Springs, Mississippi, at 1 p.m.

The matters to be discussed at this meeting will include:

(1) Purpose and function of Advisory Commission.

(2) Superintendent's Annual Report.

(3) Status of Natural Resource Management Projects.

(4) Status of Cultural Resource Management Projects.

(5) Other business.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and it is expected that not more than 20 persons will be able to attend the meeting in addition to the Commission members. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent. Further information concerning this meeting may be obtained from the Superintendent, Gulf Islands National Seashore, 1801 Gulf Breeze Parkway, Gulf Breeze, Florida 32561.

Dated: October 19, 1990.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 90-26020 Filed 11-2-90; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0088), Washington, DC 20503, telephone 202-395-7340.

Title: Revision; Renewal; and Transfer, Assignment or Sale of Permit Rights 30 CFR 774.

OMB Number: 1029-0088.

Abstract: Sections 506(d), 511(a)(1) and 511(b) of Pub. L. 95-87 provide that persons seeking permit revisions, renewals, transfer, sale or assignment of permit rights for coal mining activities, submit relevant information to the regulatory authority to allow the regulatory authority to determine whether the applicant meets the requirements for the action anticipated.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Coal mine operators.

Annual Responses: 8,065.

Annual Bureau hours: 75,520.

Estimated Completion time: 9 hours.

Bureau clearance officer: Andrew F. DeVito (202) 343-5150.

Dated: October 2, 1990.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 90-28027 Filed 11-2-90; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-341X]

Southwestern Railroad Co., Inc.—Abandonment Exemption—in Hansford and Hutchinson Counties, TX

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 18-mile line of railroad between milepost 85 + 2449 feet, near Spearman, and milepost 103 + 1685.6 feet, near Morse, in Hansford and Hutchinson Counties, TX.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 5, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by November 15, 1990.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by November 26, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: David L. Miller, Durbano & Associates, 4185 Harrison Blvd., No. 320, Ogden, UT 84403.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 9, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Decided: October 23, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-28114 Filed 11-2-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Michigan State Standards; Request for Public Comment

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Request for Comment; Michigan State Standards.

SUMMARY: This notice invites comment on the State of Michigan's occupational safety standards for fixed Fire Equipment. These State-initiated standards constitute Amendment 2, adopted March 1, 1984, to the Michigan General Industry Safety Standards, part 9, adopted August 17, 1974, and approved by OSHA on December 3, 1976 (41 FR 53078). Where a State standard, adopted pursuant to an OSHA-approved State plan, differs significantly from a comparable Federal standard or is a State-initiated standard, the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) requires that the State Standard must be "at least as effective" as the corresponding Federal standard in providing safe and healthful employment and places of employment. The different State standard encompasses topic material covered by seven OSHA standards (29 CFR 1910.158 through 1910.164). In addition, if the standard is applicable to a product distributed or used in interstate commerce, it must be required by compelling local conditions and must not impose any undue burden of interstate commerce. OSHA, therefore, seeks public comment as to whether the Michigan standards meet these requirements.

DATES: Written comments should be submitted by December 5, 1990.

ADDRESSES: Written comments should be submitted in quadruplicate to the Director, Directorate of Federal-State Operations Occupational Safety and Health Administration, U.S. Department of Labor, room N3700, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health

Administration, room N3647, 200 Constitution Avenue NW., Washington, DC 20210, Telephone: (202) 523–8148.

SUPPLEMENTARY INFORMATION:

A. Background

The requirements for the adoption and enforcement of safety and health standards by a State with a State plan approved over section 18(b) of the Act are set forth in section 18(c)(2) of the Act and in 29 CFR part 1902, 29 CFR 1952.7, and 29 CFR 1953.21, 1953.22, and 1953.23. OSHA regulations require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register** (29 CFR 1953.23(a)); a 30-day response time is required for State adoption of a standard comparable to a Federal emergency temporary standard (29 CFR 1953.22(a)(1)]. Independent State standards must be submitted for OSHA's review and approval. Newly State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in 29 CFR 1953, but are enforceable by the State prior to Federal review and approval. Section 18(c)(2) of the Act provides that if State standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the "product clause.")

On October 3, 1973, notice was published in the **Federal Register** (38 FR 27338) of the approval of the Michigan Plan and the adoption of subpart T to part 1952 containing the decision. The Michigan State Plan provides for the adoption of State safety standards in the following manner. In the Michigan Department of Labor, action on a new standard or an amendment to an existing standard is initiated by either the General Industry Safety Standards Commission or the Construction Safety Standards Commission, as is appropriate, in response to a Federal standards change or to the need for a State-initiated standards change recognized after research and consultation with persons knowledgeable in the field for which the standard is being considered. The Michigan Plan provides for the adoption of a standard as an enforceable State standard after due public notice and hearing and administrative review, in accordance with the Michigan Administrative Procedures Act and the Michigan Occupational Safety and Health Act (Act No. 154 of the Public Acts of 1974, as amended).

Michigan has submitted a State-initiated Plan change, which incorporated the subject standards as part of its occupational safety and health Plan. By letter of March 15, 1988, Amendment 2 of the Michigan General Industry Safety Standards, part 9, Fixed Fire Equipment, was submitted by Douglas R. Earle, Director, Bureau of Safety and Regulation, Michigan Department of Labor, to Frank K. Strasheim, Regional Administrator, OSHA Region V. The standards had been subjected to normal public hearing and review, were finalized on February 15, 1984, and became effective on March 1, 1984.

B. Issues for Determination

While OSHA enforces comparable standards (29 CFR 1910.158 through 1910.164), the State amendment dealt with herein is intended to make the Michigan standards for Fixed Fire Equipment more explicit, detailed, and comprehensive. They are now under review by the Assistant Secretary to determine whether they meet the requirements of section 18(c)(2) of the Act and 29 CFR 1902 and 1953. Accordingly, public comment is being sought by OSHA on the following issues.

1. "At least as effective" requirement. OSHA has evaluated the State standards contained in the amendment in comparison with corresponding Federal standards and has preliminarily determined that they meet the "at least as effective" criterion of section 18(c)(2) of the Act. In many instances the Federal requirements are exceeded. For example, the State has adopted by reference the following NFPA standards: 11, 11a, 11b, 12, 13, 14, 16, 17, 72a, and 72e, thereby rendering its standards more comprehensive. Several requirements in the State standards have no Federal counterparts; e.g., that "the water supply for standpipe and hose systems shall provide a minimum of 100 gallons per minute for not less than 30 minutes" (Michigan Rule 937(4). Also, the State amendment includes clarified and expanded definitions largely absent in the Federal standards. Public comment is solicited for consideration in OSHA's final decision whether to approve the State's standards.

2. Product clause requirement. OSHA is also seeking through this notice public comment as to whether the standards:

(a) Are applicable to products which are distributed or used in interstate commerce;

(b) If so, whether they are required by compelling local conditions; and

(c) Whether they unduly burden interstate commerce.

C. Public Participation

Interested persons are invited to submit written data, opinions, and arguments with respect to the issues described above. These comments must be postmarked on or before December 5, 1990, and submitted in quadruplicate to the Director, Directorate of Federal-State Operations, room N3700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Written submissions must clearly identify the issues which are addressed and the position taken with respect to each issue. The Occupational Safety and Health Administration will consider all relevant comments, arguments, and requests submitted concerning these standards and will thereafter publish notice of the decision approvinig or disapproving them.

D. Location of the Supplement for Inspection and Copying

A copy of Michigan standards applicable to Fixed Fire Equipment, along with approved State provisions for the adoption of standards, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 230 South Dearborn, room 3244, Chicago, Illinois 60604; Office of the Director, Bureau of Safety and Regulation, Michigan Department of Labor, 7150 Harris Drive, Lansing, Michigan 48909; and Office of the Director, Directorate of Federal-State Operations, 200 Constitution Avenue NW., room N3700, Washington, DC 20210.

Authority: Sections 8, 18, Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; 29 CFR 1953.4.

Signed this 29th day of October, 1990, in Washington, DC.

Gerard F. Scannell,
Assistant Secretary.

[FR Doc. 90–26113 Filed 11–2–90; 8:45 am]
BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittees on Containment Systems and Structural Engineering; Meeting Rescheduled

The ACRS Subcommittees on Containment Systems and Structural Engineering scheduled to hold a joint meeting on November 7, 1990, 8:30 a.m., room P–110, 7920 Norfolk Avenue, Bethesda, MD has been rescheduled to Tuesday, December 4, 1990. All other items pertaining to this meeting remain the same as previously published in the **Federal Register** on Tuesday, October 23, 1990 (55 FR 42788).

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairmen's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: October 30, 1990.
Gary R. Quittschreiber,
Chief, Nuclear Reactors Branch.
[FR Doc. 90–26097 Filed 11–2–90; 8:45 am]
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State of Illinois: Discontinuance of Certain Regulatory Authority and Responsibility Within the State

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of amended agreement with the State of Illinois.

SUMMARY: Notice is hereby given that the Honorable Kenneth M. Carr, Chairman of the United States Nuclear Regulatory Commission, and the Honorable James R. Thompson, Governor of the State of Illinois, signed an Amendment to the existing section 274b Agreement between NRC and the State of Illinois pursuant to section 274 of the Atomic Energy Act of 1954, as amended. The Amendment permits the State to regulate 11e.(2) byproduct material and the facilities that produce 11e.(2) byproduct material.

The Commission has determined that the Illinois program for regulation of 11e (2) byproduct material and the facilities that produce 11e.(2) byproduct material generally is compatible with the Commission's program for the regulation of like materials and adequate to protect the public health and safety with respect to the materials covered by the proposed Amendment. However, certain standards adopted by Illinois differ from the standards adopted and enforced by the Commission for the same purpose. In accordance with the requirements of section 274o of the Atomic Energy Act, as amended, the Commission evaluated those differing standards in general, without reference to a particular site, and determined that those standards are adequate for purposes of amending the Commission's agreement with Illinois. If, at some time in the future, the State seeks to apply those or other differing standards to a particular site, including the West Chicago Rare Earths Facility site, section 274o requires the Commission to provide further notice and opportunity for a public hearing and to determine whether the State's differing standards will achieve a level of stabilization and containment of that site, and a level of protection for public health, safety and the environment from both radiological and nonradiological hazards associated with the site, which is equivalent to, or more stringent than, the level which would be achieved by any requirements adopted and enforced by the Commission for the same purpose.

The proposed Amendment to the existing section 274b Agreement was published in the **Federal Register** for public comment for four consecutive weeks beginning March 28, 1990 (55 FR 11459).

The Amendment is hereby published in accordance with the requirements of Public Law 86–373.

FOR FURTHER INFORMATION CONTACT: Vandy L. Miller, State Programs, United States Nuclear Regulatory Commission, Washington, DC 20555 (telephone 301–492–0326).

SUPPLEMENTARY INFORMATION: *Public Comments:* In response to the FR Notice, the NRC received 166 letters with two commenters (Kerr-McGee and the State of Illinois) submitting supplemental comments. The commenters included local residents (9708 total number of signatures), businesses (20), community leaders (9), the Environmental Protection Agency, the State of Illinois, and Kerr-McGee Chemical Corporation (the only licensee in the State affected by this amendment). Of the letters received, all except Kerr-McGee's were in support of the amendment and transfer of regulatory authority for 11e.(2) byproduct material to the State of Illinois. Kerr-McGee opposed the granting of the amendment and requested that a hearing be held. A list of all commenters was provided to the Commission along with an analysis of the major comments which was prepared by the staff. All comments except for those presented by Kerr-McGee Chemical Corp. supported the proposed amendment to the Agreement and all comments were carefully considered by the Commission in its deliberations on the Illinois request. The comments and the staff's analysis of the major comments are available in the Commission's Public Document Room at 2120 L Street, NW, Washington, DC.

Amendment Number One to the Agreement Between the United States Nuclear Regulatory Commission and the State of Illinois for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to section 274 of the Atomic Energy Act of 1954, as Amended.

Whereas, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in sections 11e. (1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, the Governor of the State of Illinois is authorized under Illinois Revised Statutes, 1987, ch. 111½, par. 216b and ch. 111½, par. 241–19 to enter into this Agreement with the Commission; and

Whereas, on June 1, 1987, an Agreement between the Commission and the State of Illinois became effective which provided for State assumption under State law regulatory authority over byproduct material as defined in section 11.e(1) of the Act, source materials, special nuclear materials in quantities not sufficient to form critical mass, and the land disposal of source, byproduct, and special nuclear material received from other persons; and

Whereas, article III of that Agreement provides that the Agreement may be amended upon application by the State and approval by the Commission, to include the extraction or concentration of source material from source material

ore and the management and disposal of the resulting byproduct material; and

Whereas, the Governor of the State of Illinois certified on April 11, 1989 that the State of Illinois (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and that the State of Illinois desires to assume regulatory responsibility for such materials; and

Whereas, the Commission found on October 17, 1990 that the program of the State for the regulation of the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and

Whereas, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and where necessary compatible; and

Whereas, the Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to Amendment Number One to the Agreement; and

Whereas, Amendment Number One to the Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, it is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

(1) Article I of the Agreement is hereby amended to expand the scope of the Agreement to include the extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in section 11e.(2) of the Act. As amended, article I now reads as follows:

Article I

Subject to the exceptions provided in articles II, IV and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under chapters 6, 7, and 8, and section 161 of the Act with respect to the following:

A. Byproduct material as defined in section 11e.(1) of the act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass; and

D. The land disposal of source, byproduct, and special nuclear material received from other persons.

Pursuant to article III, and subject to the exceptions provided in articles II, IV and V, the Commission shall discontinue, as of the effective date of this Amendment Number One to this Agreement, the regulatory authority of the Commission in the State under chapters 6, 7, and 8, and section 161 of the Act with respect to the following:

E. The extraction or concentration of source material from any ore processed primarily for its source material content and the management and disposal of the resulting byproduct material as defined in section 11e.(2) of the Act.

(2) Article II of the Agreement is hereby amended by inserting "A." before "This Agreement," by redesignating paragraphs A. through D. as subparagraphs 1. through 4., by deleting paragraph E., relating to the extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material, and by adding a new paragraph B., relating to authorities that will be retained by the Commission. As amended, Article II now reads as follows:

Article II

A. This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

1. The construction and operation of any production or utilization facility;

2. The export from or import into the United States of byproduct, source, or special nuclear material, or utilization facility;

3. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission; and

4. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.,

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct materials as defined in section 11e.(2) of the Atomic Energy Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as a disposal site for such material. Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger the public health, safety, welfare, or the environment;

d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or a State;

e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custory of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety, and other actions as the Commission deems necessary; and

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian tribe or land owned by an Indian tribe and subject to a restriction against alienation imposed by the United States.

(3) Article IX of the Agreement is hereby amended by redesignating it article X and by inserting a new article IX. As amended, articles IX and X now read as follows:

Article IX

In the licensing and regulation of byproduct material as defined in section 11e.(2) of the Act, or of any activity which results in production of such material, the State shall comply with the provisions of section 274o of the Act. If in such licensing and regulation, the State requires financial surety arrangements for the reclamation or long-term surveillance and maintenance of such material,

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and

B. Such State surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

Article X

This Agreement shall become effective on June 1, 1987, and shall remain in effect unless and until such time as it is terminated pursuant to article VIII.

(4) The Agreement effective June 1, 1987 remains in effect except as modified by amendments contained in paragraphs (1), (2), and (3) of this Amendment Number One.

(5) This Amendment Number One to the June 1, 1987 Agreement shall become effective on November 1, 1990 and shall remain in effect until such time as it is terminated pursuant to article VIII.

Done at Rockville, Maryland, in triplicate, this 18th day of October, 1990.

For the United States Nuclear Regulatory Commission.

Kenneth M. Carr,

Chairman.

Done at Springfield, Illinois, in triplicate, this 23rd day of October, 1990.

For the State of Illinois.

James R. Thompson,

Governor.

Dated at Rockville, MD this 26th day of October, 1990.

For the the United States Nuclear Regulatory Commission.

Carlton Kammerer,

Director, State Programs, Office of Governmental and Public Affairs.

[FR Doc. 90-26098 Filed 11-2-90; 8:45 am]

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[Materials License No. 29-14150-01; Docket No. 030-12145-CivP; ASLBP No. 91-622-01-CivP]

Certified Testing Laboratories, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

Certified Testing Laboratories, Inc.
Material License No. 29-14150-01, EA 89-079

This Board is being established pursuant to the request of the Licensee for an enforcement hearing regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, dated August 29, 1990, entitled "Order Imposing A Civil Monetary Penalty" (55 FR 36729, September 6, 1990).

An Order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Administrative Judge Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Cadet H. Hand, Jr., Member, University of California, P.O. Box 247, Bodega Bay, California 94923

Administrative Judge Elizabeth B. Johnson, Oak Ridge National Laboratory, P.O. Box X, Building 3500, Oak Ridge, Tennessee 37830.

Issued at Bethesda, Maryland, this 30th day of October 1990.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 90-26099 Filed 11-2-90; 8:45 am]

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[Docket No. 50-443]

Public Service Co. of New Hampshire; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-86 issued to The Public Service Company of New Hampshire (the licensee) for operation of the Seabrook Station located in Rockingham County, New Hampshire.

The proposed amendment would revise Technical Specification Surveillance Requirements 4.8.2.1d, 4.8.2.1e, and 4.8.2.1f by deleting the phrase "during shutdown" from these Surveillance Requirements. The design of vital DC systems at Seabrook Station incorporates two 100% capacity battery banks in each train. Technical Specification 3.8.3.2, DC Sources—Operating currently allows one battery bank to be inoperable for up to 30 days. Removing one of the battery banks from service while at power does not degrade the system capabilities to a level less than that currently allowed by this Technical Specification. Additionally, in accordance with Technical Specification requirements, the alternate battery and charger in the same train and both battery banks and chargers in the opposite train will be OPERABLE during the performance of this testing.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR

50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed change in accordance with the criteria specified in 10 CFR 50.92 and has determined that the proposed change would not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated. The proposed change deletes the requirement that certain surveillances be performed "during shutdown." The Seabrook design for vital DC systems incorporates two 100% capacity battery banks for each train. Technical Specifications currently allow one battery bank in one train to be inoperable for up to 30 days. Removal of one battery bank in one train from service of the performance of surveillance testing does not decrease the functional capability of the DC system below the level currently allowed by the Technical Specifications. Additionally, in accordance with Technical Specification requirements, both battery banks and chargers in the train will be OPERABLE during the performance of this testing. Performance of the surveillance testing at power with the battery removed from service will not affect any other system, structure, or component; therefore, the proposed change does not increase the probability of an accident previously evaluated. Assuming an additional single failure (e.g., failure of the opposite DC train), a minimum of one 100% capacity battery bank will remain available during any postulated accident. With this minimum capability, sufficient instrumentation and control capability exists for monitoring and maintaining the unit status following an accident. Therefore, the consequences of an accident previously evaluated will not be increased.

2. Create the possibility of a new or different kind of accident from any previously evaluated. During the performance of this testing, the battery will be isolated from the vital DC system. No other system will be affected by this testing. Additionally, in accordance with the Technical Specifications, the alternate battery of the same train and both opposite train batteries will remain OPERABLE during this testing. Therefore, the possibility of an accident of a different type than any previously evaluated is not created by this change.

3. Involve a significant reduction in a margin of safety. The Seabrook design incorporates two 100% capacity battery banks for each train; removing a battery bank from service while operating will not decrease the functional or safety capabilities of the DC system below the level currently specified by the Technical Specifications. The allowed outage time for the battery banks is based upon the guidance of Regulatory Guide 1.93. Though the Regulatory Guide indicates that a battery should only be removed from service for the performance of corrective maintenance, the recommendations of this Regulatory Guide are based upon a system design encompassing only 100% of capacity per train. With a battery bank removed from service, the affected train continues to meet assumed 100% capacity. Therefore, the proposed change does not reduce the margin of safety for any Technical Specification.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:14 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 5, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Pulic Document Room located at the Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with the particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in providing the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expected that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. When petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephoone call to Western Union at 1-(800) 325-6000, (in Missouri 1-(800) 342-6700). The Western Union operator should be given the Datagram Identification Number 3737 and the following message addressed to Richard Wessman: (Petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of the **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John A. Ritscher, Esq. Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110 attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 19, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local Public Document Room located at Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 29th day of October, 1990.

For the Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Project Directorate I-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-26100 Filed 11-2-90; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28587; Int. Series Rel. No. 162; File No. SR-CBOE-90-16]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Listing of Index Warrants Based on the CAC-40 Index

On June 21, 1990, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commissioner"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to list warrants based on the Cotation Assistée en Continu 40 Index ("CAC-40" or "Index")—a broad-based index of French stocks traded on the Paris Bourse.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 28225 (July 12, 1990), 55 FR 30770. No comments were received on the proposed rule change.

The Exchange proposes to list index warrants [4] based on the CAC-40,[5] an internationally recognized, capitalization-weighted index consisting of 40 leading stocks listed and traded on the Paris Bourse and calculated by the Societe des Bourses Francaises ("SBF").[6]

[1] 15 U.S.C. section 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] In France, securities may be listed on only one of seven stock exchanges. Together these bourses or stock exchanges—Paris, Bordeaux, Lille, Lyons, Marseilles, Nancy and Nantes—for a single exchange system operating under the same principles, headed by the same authorities and subject to the same rules and regulations. For purposes of calculating the CAC-40 Index, however, only securities traded on the Paris Bourse are considered. For a more complete description of the regulatory structure in France, *See* Securities Exchange Act Release No. 28544 (October 17, 1990) ("CAC-40 Warrant Approval Orders"), at note 6.

[4] Warrants on stock index are securities that incorporate certain characteristics of both stocks and options. Like stock, they are issued by a corporation that serves as guarantor of the warrant obligation. Like a stock index option, however, an index warrant is based on the performance of an underlying index and has a fixed expiration date. Index warrants are also cash-settled and, just as with options, the risk to a buyer is known and limited. For a description of how index warrants are cash-settled, see *infra* text accompanying note 10.

[5] The Index is composed of stocks of companies from eight different industry groups, no one of which dominates the Index, and the poercentage weighing of the five largest issues, as of June 28, 1990, accounted for approximately 31.36% of the Index's value. The total capitalization of the CAC-40, as of June 28, 1990, was $166.6 billion or approximately 60% of the capitalization of the CAC-240 General Index, a benchmark of French listed-securities. In addition, the average daily trading voluem during the first six months of 1990 for the five most heavily weighted stocks in the CAC was 652,980 shares collectively and 130,986 individually. The total average daily trading volume of the 40 CAC stocks for the same period was 2,874,523 shares. The Index is administered by the Scientific Advisory Commission ("SAC"), a committee composed of experts appointed by the SBF. The SAC is responsible for, among other things, the calculation of the Index, as well as a review of its composition.

[6] The SBF is a "specialized financial institution," under the direction of the Conseil des Bourses de Valeurs or Stock Exchange Council. It implements decisions taken by the Stock Exchange Council, such as day-to-day administation of French securities markets, development and promotion, and provides investors and the general public with comprehensive information on market activities. In

Continued

The CAC–40 is calculated based on 40 French stocks chosen by the SBF to provide an indication of the performance of the French stock market.[7] In particular, the Index is designed so that the economic sectors contained in the Index receive approximately the same weighing as the overall French market, for both market value and trading volume.[8]

The CAC is continuously calculated using the last sale price of each of the 40 quoted stocks comprising the Index and disseminated at 30-second intervals throughout the Paris Bourse trading day from 10 a.m. to 5.m. (Paris time) (4 a.m. to 11 p.m. Eastern Standard Time). The Index is published daily in, among other places, the Wall Street Journal, as well as being available real-time on Telefax, Reuters and other market information systems which disemminate information on a minute-by-minute basis. To calculate the CAC, the SBF takes the sum of the market values of the 40 stocks in the Index and divides this number by a base adjusted market value or divisor. In order to provide continuity for the Index's value, the divisor is adjusted periodically to reflect events such as new issuances of stock and other capitalization changes.

In addition, whenever there is stale last sale information for a large percentage of component securities in the Index, the CAC–40 Index is replaced with an "éclaireur." [9] The "éclaireur" provides the following information as a substitute for the CAC–40 Index when the CAC–40 would not be a meaningful measure of the French equity market: (1) The number of CAC–40 component stocks still being traded; (2) the relative weight of stocks still traded, expressed as a percentage of the aggregate market capitalization of the component CAC–40 stocks; and (3) the percentage change in market capitalization of stocks still traded with respect to their market capitalization as of the last published index. The "éclaireur" has not been used often. According to the SBF, the use of the "éclaireur" has been limited to episodes of dramatic price movement, as well as cases of technical difficulty which arise to hinder the dissemination of last sale information.

The CBOE proposes to trade CAC–40 warrants pursuant to requirements approved by the Commission when the Exchange was approved to trade stocks, warrants and other securities.[10] Among other things, the Index Warrant Approval Order permits the CBOE to list index warrants based on established market indexes, both foreign and domestic.

Specifically, consistent with the Index Warrant Approval Order, the Exchange represents that the CAC–40 warrant issue will conform to their respective index warrant listing guidelines.[11] The listing guidelines of the CBOE require that: (1) The issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the Exchange's size and earnings requirements; (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

The Exchange also represents that the CAC–40 warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the CAC–40 Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the CAC–40 Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Because index warrants are derivative in nature and closely resemble index options, the Exchange will impose several safeguards designed to meet the investor protection concerns raised by the trading of CAC–40 index warrants. First, the Exchange proposes to apply its options suitability standards to Index warrant recommendations. Second, discretionary orders in Index warrants must be approved on the day entered by a Senior Registered Options Principal ("SROP") or a Registered Options Principal ("ROP"). Third, the Exchange has recommended that the CAC–40 warrants only be sold to options approved accounts. Fourth, the Exchange, prior to commencement of trading of CAC–40 warrants, will distribute a circular to its membership calling attention to the specific risks associated with warrants on the CAC–40.

Finally, to ensure that there is a mechanism for sharing surveillance information with respect to the Index's component stocks, the CBOE has entered into a Memorandum of Understanding with the SBF.[12] The memorandum will allow the CBOE to obtain trading data and other market-based information from the SBF regarding the component securieties of the CAC–40 Index.[13] The Exchange

addition, the SBF monitors and supervises the market and exchange member firms under delegated authority by the Exchange Council. The Stock Exchange Council is the regulatory authority similar to a self-regulatory organization in the United States, charged with formulating the rules under which the French market and brokerage firms operate. The rules of the Stock Exchange Council, called the Règlement Général du Conseil des Bourses de Valeurs, set forth terms and conditions for the creation of new brokerage houses, security listings, removals from listing and suspension, and takeover bids and established a code of conduct for exchange members. In addition, the Council ensures member compliance with its rules by bringing disciplinary action if necessary. The French regulatory body known as the Commission des Operations de Bourse ("COB") approves the rules of the Stock Exchange Council. The COB is an autonomous administrative body patterned after the U.S. Securities and Exchange Commission. It functions as the French market regulator with authority to undertake investigations, notify French judicial authorities, and levy fines.

[7] The CAC–240 General Index represents the total French equity market value. Calculations by the SBF show that the correlation of the monthly price settlement between the CAC–40 and the CAC–240 General Index is 97%. Moreover, the index's component stocks are highly capitalized as the mean and median capitalization for the 40 firms (as of June 29, 1990) was 23.44 billion French franc ($4.71 billion dollars) and 15 billion francs ($2.67 billion dollars), respectively. The U.S.dollar/French franc exchange rate used for these calculations was $.17808 per French franc on June 29, 1990.

[8] *See* CAC–40 Warrant Approval Orders, *supra* note 3.

[9] The "éclaireur" is a collection of indicators used to show the trend of the market based on the component stocks that are actually trading. The éclaireur is disseminated at the start of each daily trading session, prior to the establishment of an initial quoted price for each component stock, and in the event that trading has been suspended in stocks representing more than 35% of the total market capitalization of the component stocks.

[10] Securities Exchange Act Release No. 28558 (October 19, 1990) (approval of file no. SR–CBOE–90–08) ("Index Warrant Approval Order").

[11] *See* CBOE Rule 31.5(E).

[12] *See* Memorandum of Understanding Between the CBOE and the SBF Concerning the Listing of Securities Linked with an Index and the Furnishing of Information for the Purpose of Regulation and Enforcement between the CBOE and SBF, dated October 9, 1990 ("Memorandum").

[13] Specifically, the Memorandum provides for the exchange of information concerning any security traded through the facilities of the CBOE, any security underlying a derivative instrument traded through the facilities of the CBOE, or any derivative instrument based upon or including a security traded through the facilities of the CBOE. Accordingly, the Memorandum allows for the provision of information relating to the CAC–40 warrants or any securities underlying the CAC–40 warrants. In addition, this Memorandum obligates the Exchange and SBF to resolve in "good faith" any disagreements regarding requests for information.

believes that this Memorandum, together with the cooperative efforts of the CEC and the COB,[14] is an appropriate and sufficient informational sharing arrangement for surveilling trading in CAC–40 warrants on the Exchange.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[15] Specifically, the Commission believes that CAC–40 warrants are innovative securities instruments that can provide investors a means by which to hedge against investment decisions made in the French equity market.[16] In particular, CAC–40 warrants will benefit U.S. investors by allowing them to obtain differential rates of return on a capital outlay if the CAC–40 moves in a favorable direction within a specified time period. Of course, if the CAC–40 moves in the wrong direction or fails to move in the right direction, the warrants will expire worthless and the investors will have lost their entire investment. Thus, the trading of warrants on the CAC–40 Index will provide investors with a valuable hedging vehicle that should reflect accurately the overall movement of the French equity market.

The Commission also believes that the CAC–40 warrants are consistent with the guidelines set forth in the Index Warrant Approval Order. Because the CAC–40 is a broad-based index of actively traded, highly-capitalized stocks, the index does not raise unique regulatory concerns.[17] The Commission notes that the CBOE rules and procedures that address the special concerns attendant to the secondary trading of index warrants will be applicable to the CAC–40 warrants. In particular, by imposing the special suitability, disclosure, and compliance requirements noted above, the CBOE has addressed adequately potential public customer problems that could arise from the derivative nature of CAC–40 warrnts. Moreover, the CBOE plans to distribute a circular to its membership calling attention to the specific risks associated with warrants on the CAC–40 and, pursuant to the CBOE listing guidelines, only substantial companies capable of meeting their warrant obligations will be eligible to issue CAC–40 warrants.

In light of the fact that the CAC–40 is a foreign stock index, the Commission believes an adequate surveillance sharing agreement between the CBOE and the SBF is a necessary prerequisite to deter and detect potential manipulation or other improper or illegal trading involving the warrants. To address this concern, the CBOE entered into a Memorandum of Understanding with the SBF to provide for the sharing of market information related to the trading of CAC–40 warrants on the CBOE.[18] Despite the surveillance sharing agreement between the CBOE and SBF, however, the SBF asserts that a French blocking statute [19] restricts its ability to supply the CBOE with necessary customer trading information related to trading on the Paris Bourse.[20] Therefore, in order to obtain customer information, the Commission and the COB have exchanged letters that establish a mechanism for the exchange of information, including customer information, for transactions involving a derivative security or the stocks underlying such security when that derivative security is traded in U.S. or French markets and the underlying securities are traded in the other country's markets.[21]

This SEC/COB letter exchange confirms that the SEC will be able to secure information from the COB that the CBOE may not be able to obtain from the SBF, and thus ensure that an investigation into the trading of CAC–40 warrants can occur with access to all necessary surveillance information.[22] Accordingly, the Commission believes the arrangement made pursuant to the SEC/COB exchange of letters, together with the agreement consummated by the Exchange with the SBF, is adequate to allay Commission concerns regarding the CBOE's ability to obtain information necessary to take appropriate regulatory action regarding alleged manipulation or other trading abuses between markets involving the trading of CAC warrants.

Finally, the Commission believes that trading in CAC–40 warrants will not have an adverse impact on U.S. financial markets. In fact, the Commission believes that CAC–40 warrants will benefit U.S. markets by providing U.S. issuers more flexibility in raising capital at potentially lower costs and allowing U.S. investors an opportunity to better hedge against stock market fluctuations in France.

It there is ordered, pursuant to section 19(b)(2) of the Act,[23] that the proposed rule change (SR–CBOE–90–16) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Dated: October 30, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–26103 Filed 11–2–90; 8:45 am]

BILLING CODE 8010–01–M

[14] *See supra* notes 20–22 and accompanying test for a description of an agreement reached between the SEC and the COB to provide necessary surveillance information despite the existence of a French Blocking Statute that would otherwise have limited the CBOE's surveillance of trading in CAC warrants.

[15] 15 U.S.C. 78f(b)(5) (1982).

[16] Pursuant to section 6(b)(5) of the Act the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[17] The Commission has previously examined the CAC–40 in the context of proposed rule changes submitted by the American, New York, Pacific and Philadelphia Stock Exchanges to list and trade Index warrants based on the CAC–40. At that time, the Commission found that the CAC–40 was not readily susceptible to manipulation because of the representative nature of the various industry segments included in the Index, the relative weighted value of the Index's component stocks, and the substantial capitalization and trading volume of the component stocks. *See* CAC–40 Index Warrant Approval Orders, *supra* note 3.

[18] *See supra* notes 12–14 and accompanying text.

[19] A blocking statute prohibits the disclosure, inspection, copying or removal of documents located in the enacting state in compliance with orders of foreign authorities. *See*, The 1980 French Law on Documents and Information, Law No. 80–538 (1980) J.O. 1799.

[20] In this regard, the SBF asserts that it does not have the legal capacity to obtain specific customer information, but instead, must rely on the COB. The COB is prohibited from furnishing customer information to a non-governmental body, such as the CBOE. As described below, pursuant to a letter exchange between the SEC and the COB, the COB confirms that it will furnish customer information directly to the Commission.

[21] *See* letter from Richard Ketchum, Director, Division of Market Regulation, SEC, to Patrick Mordacq, Secretary General, COB, dated September 18, 1990; and letter from Patrick Mordacq, Secretary General, COB, to Richard Ketchum, Director, Division of Market Regulation, SEC, dated September 18, 1990.

[22] The SEC entered into an Administrative Agreement with the COB on December 14, 1988. *See*, CAC–40 Warrant Approval Orders for a description of this agreement.

[23] 15 U.S.C. 78s(b)(2) (1982).

[24] 17 CFR 200.30–3(a)(12) (1990).

[Release No. 34–28586; File No. SR–NYSE–90–46]

Self-Regulatory Organizations; Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Procedures for Competing Specialists

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),

15 U.S.C. 78s(b)(1), notice is hereby given that on September 27, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the following: (1) Amendments to item numbers 11 and 12 of the NYSE's Procedures for Competing Specialists ("Procedures"); (2) a request for the Commission's permanent approval of the Procedures as amended; [1] and (3) the Exchange's responses to nine specific questions the Commission had posed in a prior order temporarily approving the Procedures.[2] These responses consist principally of what the Exchange believes are "stated policies, practices or interpretations" that are "reasonably and fairly implied" by existing NYSE rules and policies, and do not require the formal amendment of any Exchange rule.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*—The proposed rule change consists of 12 procedures for competing specialists. The first 10 of these are unchanged from the procedures used by the Exchange from May 1986 to April 1988.[4] The Exchange is proposing to make several changes to Procedures 11 and 12. The proposed amendment to Procedure number 11 would allow for the orderly termination of a competing specialists situation where either the specialist organization to whom a stock was originally assigned ("original specialist"), or a competitor which subsequently received approval to compete with the original specialist, requests that it be relieved of the stock(s) that are the subject of competition. This procedure is designed to allow members to withdraw from competition in an orderly manner without unduly prejudicing their future ability to compete, and, at the same time, to enable the Exchange to maintain the efficiency, stability and continuity of its marketplace.

Specifically, the specialist organization wishing to withdraw from the competing specialists situation would have to notify the Market Performance Committee prior to the desired date of such withdrawal. When the original specialist requests to be relieved of a stock and the Market Performance Committee is satisfied that the remaining specialist can continue to maintain a fair and orderly market in such stock, it will approve the request to be relieved as of a specified date. Where the Market Performance Committee is not so satisfied, it will refer the stock to the Allocation Committee for designation of an additional specialist.

The Market Performance Committee's review is necessary to ensure that the competing specialist can maintain market quality as the sole specialist. Unlike the original specialist's application, the competing specialist's application did not receive a prospective analysis of performance and ability to maintain market quality since only capital, manpower and experience are considered for an application to compete under Procedure numbers three, four, five and seven.

The proposed amendment to Procedure number 11 would also lengthen the time period a specialist organization which withdraws its registration in a stock would be barred from applying to compete in that same stock. Such a bar would be lengthened from three months to one year following the effective date of withdrawal. In the case of extenuating circumstances, the Market Performance Committee may waive this one year restriction at the time of withdrawal where imposition of the restriction would be inappropriate and would work to weaken rather than strengthen Exchange markets.

The Exchange endorses the concept of competing specialists and wishes to impose as few restrictions as possible upon the free entry and withdrawal of competitors. However, the Exchange also recognizes the need to make some provision for the efficient and orderly operation of its marketplace. In fairness to the original specialist, the Exchange does not think it unreasonable, and feels it will contribute to the orderly handling of competing situations, to require of a competing specialist wishing to withdraw from competition that his request not be based upon the transient events of the day, but rather that it be based upon his knowledge that he will be restricted from re-entry for a one year period. Thus, the Exchange feels that the one year re-entry restriction does not unduly restrict competition, but rather provides for a more efficient and orderly competitive environment.

The proposed amendment also consists of a "housekeeping" change to Procedure number 12 of the Exchange's Procedures to reflect the correct Article and Section, as a result of the recodification of the Exchange Constitution in 1986,[5] under which a specialist may request a review by the Board of Directors of a decision of the Market Performance Committee pursuant to Procedure number 12. Procedure number 12 reminds members that decisions of the Market Performance Committee are reviewable by the Exchange's Quality of Markets Committee, and the Exchange Constitution provides for a member to appeal to the Board of Directors any decision of the Market Performance Committee.

Finally, the purpose of this filing also is to respond to the Commission's nine specific requests for information concerning the application of specified Exchange rules and policies as to competing specialist situations.[6]

[1] The Commission approved the Procedures for a six-month period, which was subsequently extended several times but then expired on April 30, 1988. *See* Securities Exchange Act Release No. 23202 (May 5, 1988), 51 FR 17424 (May 12, 1988) (File No. SR-NYSE-87-06); Securities Exchange Act Release No. 23869 (December 9, 1986), 51 FR 45417 (December 18, 1986) (File No. SR-NYSE-86-31); Securities Exchange Act Release No. 24183 (March 5, 1987), 52 FR 7721 (March 12, 1987) (File No. SR-NYSE-87-02); Securities Exchange Act Release No. 25342 (February 11, 1988), 53 FR 5086 (February 19, 1988) (File No. SR-NYSE-88-01). At the present time, the NYSE does not have a competing specialists program.

[2] *See* Securities Exchange Act Release No. 23202, *supra* note 1.

[3] The entire text of the responses is available for inspection and copying at the Commission's Public Reference Section and at the principal office of the NYSE.

[4] *See supra* note 1.

[5] *See* Securities Exchange Act Release No. 22989 (February 28, 1986), 51 FR 8060 (March 7, 1986) (File No. SR-NYSE-86-47).

[6] The Exchange's response to the Commission's request for information is available at the

Continued

The interpretations contained in the Exchange's response to the Commission reflect the Exchange's position that competing specialists are responsible for what is, ultimately, a single auction market on the NYSE Floor in the securities in which they are specializing, and that competing specialists do not make separate NYSE markets requiring the adoption of new rules, or the formal amendment of existing rules. These interpretations have been applied in prior years whenever there have been competing specialists situations on the Exchange.

These interpretations reflect the Exchange's analysis of current market conditions and market structure. The Exchange has reviewed other rules and policies, in addition to the ones covered in the Commission's specific requests for information, and does not believe modifications or any other special interpretations or clarifications are necessary at this time. Given the natural evolution of the securities markets, however, it is reasonable to assume that these interpretations may require some subsequent modifications in appropriate cases or that new interpretations or rule changes may be required.

2. *Statutory Basis*—The procedures and policies as to competing specialists situations are designed to facilitate and enable the implementation of a system of competing specialists. As such, they are based on section 11(b) of the Act which provides for Exchange rules to permit members to be registered as specialists and section 11A(a)(1)(C)(ii) which states that the Congress finds that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed procedures for competing specialists do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

Commission's Public Reference Section and at the NYSE. *See supra* note 3.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-90-46 and should be submitted by November 26, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 29, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-28104 Filed 11-2-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended October 26, 1990

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47228. *Date filed:* October 24, 1990. *Parties:* Members of the International Air Transport Association. *Subject:* South Atlantic-Africa Expedited Reso 002i. *Proposed effective date:* November 1, 1990.

Docket Number: 47229. *Date filed:* October 24, 1990. *Parties:* Members of the International Air Transport Association. *Subject:* Canada Europe Resolution LA109 et al. *Proposed effective date:* January 1, 1990.

Docket Number: 47230. *Date filed:* October 26, 1990. *Parties:* Members of the International Air Transport Association. *Subject:* SNATC Mail Vote No. 84 (Texas-London Fares), SNATC Mail Vote No. 85 (Texas-London Fares). *Proposed effective date:* December 1, 1990.

Docket Number: 47231. *Date filed:* October 26, 1990. *Parties:* Members of the International Air Transport Association. *Subject:* Expedited Resolutions. *Proposed effective date:* January 1, 1990.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90-28069 Filed 11-2-90; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ended October 26, 1990

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming applications, or motion to notify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket number: 37559. *Date filed:* October 26, 1990. *Due date for answers, conforming applications, or motion to modify scope:* November 23, 1990. *Description:* Application of Thai Airways International Limited, pursuant to section 402 of the Act and subpart Q of the Regulations, requests renewal of its foreign air carrier permit which authorizes it to provide scheduled foreign air transportation between: The terminal point Bankok, Thailand via the intermediate points Tokyo, Japan and

Seattle, Washington, and the coterminal points Los Angeles, California and one additional point in the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90-26070 Filed 11-2-90; 8:45 am]

BILLING CODE 4810-43-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 29, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Office, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Review Service

OMB number: New
Form number: None
Type of review: New collection
Title: Opinion Survey of Taxpayers Contacted by the EP/EO Examination Program
Description: The data collected will be used to evaluate the level of satisfaction of taxpayers contacted by the IRS EP/EO Examination Program, to identify possible areas of program improvement, and thereby improve the effectiveness of EP/EO activities.
Respondents: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated number of respondents: 4,000
Estimated burden hours per respondent: 10 minutes
Frequency of response: One time only
Estimated total reporting burden: 667 hours
Clearance officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90-26035 Filed 11-2-90; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements for OMB review and approval, and to publish a notice in the Federal Register notifying the public that the agency ahs made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency in accordance with Public Law 98-111 as amended by Public Law 101-246. USIA is requesting approval of the extension of OMB 3116-0197 entitled "Surveys, Interviews and other audience research for Radio and TV Marti conducted by the Office of Audience Research of Radio Marti; Interviews by the Miami Research Office of Radio Marti." Estimated burden hour per response averages 1.684 hours.

DATES: On or before December 5, 1990.

COPIES: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Inforamtion and Regulatory Affairs of OMB, Attention: Desk Office for USIA; and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ASP, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 619-5503; and OMB review; Mr. C. Marshall Mills, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average 1.684 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the United States Information Agency, M/ASP, 301 Fourth Street SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for USIA.

Title: Surveys, Interviews and other audience research for Radio and TV Marti.

Form number: No form used for this information collection.

Abstract: The Office of Cuba Broadcasting needs to conduct research among recent Cuban arrivals in the United States and abroad to determine audience reaction to its radio and TV programming and to collect information about the situation in Cuba. Information gathered is used to improve Radio and TV Marti broadcasts in providing the Cuban people with news, information and other programming that is relevant, interesting, timely and appealing.

Proposed frequency of responses:

No. of respondents	7,792
Recordkeeping hours	0
Total annual burden	13,124

Dated: October 30, 1990.

Rose Royal,

Federal Register Liaison.

[FR Doc. 90-26047 Filed 11-2-90; 8:45 am]

BILLING CODE 8230-01-M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed additions to sentencing guidelines, policy statements, and commentary relating to the sentencing of organizations; request for public comment; Notice of public hearing.

SUMMARY: The Commission is considering amendments to its guidelines, policy statements, and commentary that would govern the sentencing of organizations in federal courts. Except for one guideline dealing with fine calculations for antitrust violations, the sentencing guidelines currently in effect do not apply to the sentencing of organizations. The Commission's proposed guidelines, policy statements, and accompanying commentary are set forth below. The Commission may report these amendments to Congress on or before May 1, 1991. Public comment is sought on these proposals and any other aspect of the sentencing guidelines, policy statements, and commentary as they apply to the sentencing of organizations. Public comment is also sought on the suggested organizational guidelines prepared by the U.S. Department of Justice which are also set forth below.

DATES: Written comment should be received by the Commission no later than December 10, 1990. A public hearing is scheduled for December 13, 1990, at 9:30 am. in the Ceremonial Courtroom, 6th floor, United States Courthouse, Washington, DC.

ADDRESSES: Comments should be sent to the United States Sentencing Commission, 1331 Pennsylvania Avenue NW., suite 1400, Washington, DC. 20004. Attention: Communications Director.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications Director, telephone (202) 662-8800.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal courts.

Ordinarily, the Administrative Procedure Act rulemaking requirements are inapplicable to judicial agencies; however, 28 U.S.C. 994(x) makes the rulemaking provisions of 5 U.S.C. 553 applicable to the promulgation of sentencing guidelines by the Commission.

Background of Proposed Amendments

The proposed guidelines, policy statements, and commentary are the products of an extended period of analysis, consultation, and public comment. In 1988, the Commission completed a study of the sentencing of organizations in the federal courts from 1984 to 1987 and a survey of the literature relating to sanctions for organizations. In July 1988, the Commission distributed for public comment a discussion draft of sentencing materials. In 1989, the Commission updated its empirical analysis with a study of the sentencing of organizations and associated individuals in the federal courts in 1988. In November 1989, the Commission published for public comment Preliminary Draft Sentencing Guidelines for Organizational Defendants. Public hearings have been held on October 11, 1988, in New York City, on December 2, 1988, in Pasadena, California, and on February 14, 1990 in Washington, DC. In addition to comment from the general public, the Commission has received recommendations regarding organizational sanctions from the United States Department of Justice, from a working group of private defense attorneys appointed by the Commission's Chairman to advise the Commission regarding practical principles for sentencing organizations, and from the Commission staff. The draft guidelines, policy statements, and commentary draw upon, and have benefitted from, staff work, aid from outside experts, and the extensive public comment that has been received to date.

Availability of Background Materials

Background materials regarding the proposed guidelines, policy statements, and commentary are available for inspection at the Commission's offices. The background materials include empirical studies, a memorandum by the Commission staff working group on organizational sanctions regarding the methodology used to develop offense level tables and assign weights for mitigating factors in draft chapter eight, and public comment received by the Commission.

Format of Proposed Amendments

The proposed amendments are presented as a new chapter to the United States Sentencing Commission Guidelines Manual: Chapter Eight—Sentencing of Organizations. For certain guideline sections, alternatives are set forth. Commentators are encouraged to comment upon these alternatives. In addition, the Commission has listed Specific Issues for Comment at the end of the draft Chapter Eight to focus special attention on particular issues.

At the request of the Attorney General, an ex-officio member of the Commission, a draft of organizational guidelines prepared by the Department of Justice is printed below. Comments on all aspect of this proposal are also welcome.

Scope of Public Comment

Public comment is requested regarding any aspect of current or proposed guidelines, policy statements, and commentary that apply to the sentencing of convicted organizations. In addition, the Commission requests comment regarding the specific alternatives set forth in the proposed amendments, the Specific Issues for Comment listed at the end of the draft Chapter Eight, and the proposed organizational guidelines prepared by the Department of Justice.

William W. Wilkins, Jr.,

Chairman.

CHAPTER EIGHT—SENTENCING OF ORGANIZATIONS

Introductory Commentary

The guidelines and policy statements in this Chapter apply when the convicted defendant is an organization. Organizations can act only through agents and, under federal criminal law, generally are held to a strict standard of vicarious criminal liability for offenses committed by their agents. At the same time, the individual agents remain responsible for their own criminal conduct. Federal prosecutions of organizations therefore frequently involve individual co-defendants who are agents of the organization. If convicted, individual agents of organizations are sentenced in accordance with the guidelines and policy statements in the preceding chapters. This chapter is designed so that the sanctions imposed upon organizations and their agents, taken together, will provide just punishment for offenses committed by organizations, adequate deterrence to organizational criminal conduct, and incentives for organizations to maintain internal mechanisms for deterring, detecting, and reporting criminal conduct.

Part A—General Application Principles

§ 8A1.1. Applicability of Chapter Eight

This chapter applies to the sentencing of all organizations.

Commentary

Application Note:

1. "Organization" means "a person other than an individual." 18 U.S.C. 18. Organizations include corporations, unions, associations, and partnerships.

§ 8A1.2. Application Instructions—Organizations

(a) Determine the guideline section in chapter Two most applicable to the offense of conviction. See § 1B1.2 (Applicable Guidelines). The Statutory Index (appendix A) provides a listing to assist in this determination.

(b) Determine the base offense level and apply any appropriate specific offense characteristics contained in the particular guideline in chapter Two in the order listed.

(c) If there are multiple counts of conviction, repeat steps (a) and (b) for each count. Apply part D of chapter Three (Multiple Counts) to group the various counts and adjust the offense level accordingly.

(d) Determine from part B of this chapter (Remedying Harm from Criminal Conduct) the sentencing requirements and options relating to

restitution, remedial orders, community service, and notice to victims.

(e) Determine from part C of this chapter (Fines) the sentencing requirements and options relating to fines.

(f) Determine from part D of this chapter (Organizational Probation) the sentencing requirements and options relating to probation.

(g) Determine from part E of this chapter (Special Assessments, Forfeitures, and Costs) the sentencing requirements relating to special assessments, forfeitures, and costs.

(h)(1) The provisions of chapter One, part B (General Application Principles) apply to determinations under this chapter, except that subsections (a)–(g) above apply in lieu of § 1B1.1 (Application Instructions).

(2) The provisions of chapter Six (Sentencing Procedures and Plea Agreements) apply to proceedings in which the defendant is an organization.

Commentary

Guidelines and policy statements set forth in this chapter apply when the defendant is an organization. Guidelines and policy statements from other chapters that apply when the defendant is an organization are referenced in this chapter. Guidelines and policy statements not referenced in this chapter, directly or indirectly, do not apply when the defendant is an organization; e. g., the policy statements in chapter Seven (Violations of Probation and Supervised Release) do not apply to organizations.

Part B—Remedying Harm From Criminal Conduct

Introductory Commentary

As a general principle, the court should require that the defendant take all necessary steps to provide compensation to victims and otherwise remedy the harm caused or threatened by the instant offense.

A restitution order or an order of probation requiring restitution can be used to compensate identifiable victims of the offense. A remedial order or an order of probation requiring community service can be used to reduce or eliminate the harm threatened, or to repair the harm caused by the offense, when that harm or threatened harm would otherwise not be remedied. An order of notice to victims can be used to notify unidentified individual victims of the offense.

§ 8B1.1. Restitution—Organizations

(a) Except as provided in subsection (b) below, the court shall—

(1) enter a restitution order pursuant to 18 U.S.C. 3663–3664; or

(2) if a restitution order would be authorized pursuant to 18 U.S.C. 3663–3664 but for the fact that the offense of conviction was not an offense under title 18 or 49 U.S.C.1472 (h), (i), (j), or (n), sentence the organization to probation with a condition requiring restitution.

(b) Subsections (a) (1) and (2) above do not apply when full restitution or other equivalent compensation to the victims of the offense has already been made, or to the extent the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of a restitution requirement outweighs the need to provide restitution to victims through the criminal process.

Commentary

This guideline provides for restitution either as a sentence under 18 U.S.C. 3663–3664 or as a condition of probation. The provisions of 18 U.S.C. 3663–3664 require a sentence of restitution for convictions under title 18 or under 49 U.S.C. 1472 (h), (i), (j), or (n), except to the extent "the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order under this section outweighs the need to provide restitution to any victims," 18 U.S.C. 3663(d). This guideline extends the requirement of restitution to offenses other than Title 18 and Title 49, section 1472 (h), (i), (j) and (n) offenses. In such cases, restitution shall be provided as a condition of a sentence of probation.

Restitution is not required to the extent that the fashioning of an order would unduly complicate and prolong the sentencing process relative to the need to provide restitution to any victims. In determining whether the complication and prolongation of the sentencing process outweigh the need to provide compensation to victims through the criminal process, the court may consider civil or administrative remedies available. However, since 18 U.S.C. 3663(e) (2) provides that restitution ordered under that provision would be set off against a later recovery of compensatory damages in a civil proceeding, a court should order restitution to provide compensation if it is uncertain about compensation through administrative or civil proceedings, so long as the fashioning of a restitution order would not unduly complicate and prolong the sentencing process.

In a case involving multiple defendants, restitution may be apportioned on the basis of relative culpability so long as the ability of the victims to obtain restitution is not thereby compromised. In order to protect victims' ability to obtain compensation, the court should ordinarily make the obligation to pay restitution joint and several. If the court decides to apportion restitution, each defendant's restitution order should be conditional and subject to revision by the court, so that the court can revise the restitution orders in the event that one or more defendants is unable to pay the restitution ordered.

§ 8B1.2. Remedial Orders—Organizations (Policy Statement)

(a) To the extent not addressed under § 8B1.1 (Restitution—Organizations), a remedial order, imposed as a condition of probation, may require the organization to remedy the harm caused by the instant offense and to reduce or eliminate the risk that the instant offense will cause further harm. Such an order should be entered unless:

(1) Available civil or administrative remedies appear more appropriate; or

(2) The expected cost of the remedial action is not justified in light of the nature of the harm caused or, in the case of threatened future harm, the nature of the harm and the likelihood of that harm resulting.

(b) If the magnitude of expected future harm can be reasonably estimated, the court may require the defendant to create a trust fund sufficient to address that expected harm.

Commentary

The purposes of a remedial order are to remedy harm that has already occurred and to prevent future harm to victims. A remedial order requiring corrective action by the defendant may be necessary to prevent future injury from the instant offense, e.g., product recalls for food and drug violations or cleanup orders for environmental violations.

§ 8B1.3. Community Service—Organizations (Policy Statement)

An organization may be ordered to perform community service as a condition of probation where such community service is reasonably designed to repair the harm caused by the offense.

Commentary

An organization can perform community service only by employing its resources or paying its employees or others to do so. Thus, an order that an organization perform community service is essentially an indirect monetary sanction, and therefore generally less desirable than a direct monetary sanction. In some instances, however, the convicted organization may possess knowledge, facilities, or skills that uniquely qualify it to repair damage caused by the offense. Community service directed at repairing damage may, in lieu of, or in connection with, a restitution or remedial order, provide an efficient means of remedying the harm caused.

In the past some forms of community service imposed on organizations have not been related to the purposes of sentencing. Requiring a defendant to endow a chair at a university or to contribute to a local charity would not be authorized by this section unless such community service provided a means for preventive or corrective action directly related to the offense and served one of the purposes of sentencing set forth in 18 U.S.C. 3553(a) (2).

§ 8B1.4. Order of Notice to Victims—Organizations

Apply § 5F1.4 (Order of Notice to Victims).

Commentary

The provisions of § 5F1.4 (Order of Notice to Victims) are applicable to organizational defendants.

Part C—Fines

1. Determining the Fine—Criminal Organizations

§ 8C1.1. Determining the Fine—Criminal Organizations

If, upon consideration of the nature and circumstances of the instant offense and the history and characteristics of the defendant, the court determines that the organization operated primarily for a criminal purpose or primarily by criminal means, the fine shall be set (subject to the statutory maximum) at an amount sufficient to divest the organization of all of its net assets. When this section applies, §§ 8C2.1 (Determining the Fine Guideline Range—Organizations), 8C2.2 (Determination of the Fine Within the Guideline Range), and 8C4.1 (Fines Paid by Owners of Closely Held Organizations) do not apply.

Commentary

Application Note:

1. "Net assets," as used in this section, means the assets remaining after legitimate claims against assets by known bona fide creditors.

Background:

This provision addresses the case in which the court, based upon an examination of the nature and circumstances of the instant offense taken together with the history and characteristics of the defendant, determines that the organization was operated as a front for a criminal scheme (e.g., a scheme that was designed to commit fraud) or operated primarily by criminal means (e.g., a hazardous waste disposal business that had no legitimate means of disposing of hazardous waste).

2. Determining the Fine—Non-Criminal Organizations

§ 8C2.1. Determining the Guideline Fine Range—Organizations

(a) The guideline fine range shall be determined under subsections (b)–(f) below.

(b) (1) The minimum of the guideline fine range shall be calculated by multiplying the amount determined under subsection (c) below by the minimum fine multiplier determined under subsection (e) below, and by adding thereto the amount, if any, from subsection (f) below.

(2) The maximum of the guideline fine range shall be calculated by multiplying the amount determined under subsection (c) below by the maximum fine multiplier determined under subsection (e) below, and by adding thereto the amount, if any, from subsection (f) below.

(c) Subject to subsection (d), determine the greater of:

(1) The amount from the table below corresponding to the offense level determined under § 8A1.2 (Application Instructions-Organizations); [1]

(2) The gross pecuniary loss caused by the offense conduct of the defendant; or

(3) The gross pecuniary gain to the defendant from the offense.

Alternative A: Upper Bound Offense Level Amounts

(mandates the maximum single-count statutory fine absent mitigating factors at offense levels 4, 16, and 38; at these offense levels the court would be required, even when using the minimum multiplier, to impose the statutory maximum fine whenever no mitigating factors applied)

Offense level	Amount
4 or less	$5,000
5	7,000
6	10,000
7	14,000
8	19,500
9	27,000
10	37,500
11	52,000
12	71,000
13	98,000
14	135,000
15	185,000
16	250,000
17	340,000
18	460,000
19	620,000
20	830,000
21	1,100,000
22	1,500,000
23	2,000,000
24	2,850,000
25	3,550,000
26	4,850,000
27	5,100,000
28	8,100,000
29	10,500,000
30	14,000,000
31	18,000,000
32	23,500,000
33	30,000,000
34	39,500,000
35	50,000,000
36	64,000,000
37	82,000,000
38	105,000,000
39	130,000,000
40 or more	165,000,000

Alternative B: Lower Bound Offense Level Amounts

(minimally accommodates the maximum single-count statutory fine at offense levels 4, 16, and 38; at these offense levels, the court would be able, when using the maximum multiplier, to impose the statutory maximum fine so long as no mitigating factor applied)

Offense level	Amount
4 or less	$3,300
5	4,850
6	6,600
7	9,300
8	13,000
9	18,000
10	25,500
11	35,000
12	48,500
13	66,000
14	91,000
15	125,000
16	165,000
17	225,000
18	300,000
19	400,000
20	535,000
21	710,000
22	930,000
23	1,200,000
24	1,600,000
25	2,100,000
26	2,700,000
27	3,450,000
28	4,450,000
29	5,700,000
30	7,200,000
31	9,100,000
32	11,500,000
33	14,500,000
34	18,000,000
35	22,000,000
36	27,000,000
37	33,500,000
38	41,000,000
39	50,000,000
40 or more	60,000,000

Alternative C: Average Offense Level Amounts

(Values derived by averaging and rounding off the numbers calculated in constructing the upper and lower bound offense level tables)

Offense level	Amount
4 or less	$4,150
5	5,900
6	8,000
7	11,500
8	16,000
9	22,500
10	31,500
11	43,500
12	60,000
13	82,000
14	110,000
15	160,000
16	210,000
17	280,000
18	380,000
19	510,000
20	685,000
21	910,000
22	1,200,000
23	1,600,000
24	2,100,000
25	2,800,000
26	3,700,000
27	4,800,000
28	6,300,000
29	8,100,000
30	10,500,000

[1] Three alternatives for offense level amounts are shown.

Offense level	Amount
31	13,500,000
32	17,500,000
33	22,000,000
34	28,500,000
35	36,000,000
36	45,500,000
37	57,500,000
38	72,500,000
39	91,000,000
40 or more	115,000,000

(d) (1) Neither gross pecuniary loss nor gross pecuniary gain shall be used for the determination of the guideline fine range if the calculation of loss or gain would unduly complicate or prolong the sentencing process.

(2) [2][See footnote.]

(e) (1) The minimum and maximum fine multipliers are those specified in the table below corresponding to the applicable mitigation score as determined under subsection (e)(2).

Multiplier	Mitigation score	Minimum multiplier	Maximum
	0	2.00	3.00
	1	1.80	2.70
	2	1.60	2.40
	3	1.40	2.10
	4	1.15	1.80
	5	0.95	1.50
	6	0.75	1.15
	7	0.55	0.85
	8	0.35	0.55
	9	0.15	0.25

(2) The mitigation score is determined by totaling the points specified for each of the applicable factors set out in subdivisions (A) through (D) below.

(A) If both apply, use the greater:

(i) Add 4 points if the management of the organization voluntarily and promptly reported the offense to appropriate governmental authorities prior to public disclosure, the commencement of a government investigation, and the imminent threat of disclosure of the wrongdoing; or

(ii) Add 3 points if the organization prior to the offense had, and after the offense continues to maintain, an effective program to prevent and detect violations of law.

(B) Add 2 points if, despite due diligence by the organization to detect violations of law, the offense occurred without the knowledge of any person who held a policy-setting or legal compliance position within the organization or who exercised substantial managerial authority in carrying out the policies of the organization.

Provided, that no points shall be added pursuant to this subdivision if any person who held a policy-setting or legal compliance position within the organization or who exercised substantial managerial authority in carrying out the policies of the organization became aware of the offense and the organization subsequently failed to make a timely report of the offense to appropriate government authorities.

(C) Add 2 points if the organization cooperated fully with the government's investigation of the offense.

(D) Add 1 point if the organization, in a timely manner prior to adjudication of guilt, accepted responsibility for the offense, and took prompt and reasonable steps to remedy the harm caused by the offense.

(f) Gross Pecuniary Gain not Subject to Disgorgement. Determine the amount of any gross pecuniary gain to the defendant from the offense that has not been and will not otherwise be disgorged or taken from the defendant. In determining whether the gain will be disgorged, the fine determined under subsections (c), (d), and (e) above is not to be counted.

Commentary

Application Notes:

1. The court is not required to base the fine on the greater of gross pecuniary loss or gross pecuniary gain if the determination of loss or gain would unduly complicate or prolong the sentencing process. 18 U.S.C. 3571(d). Nevertheless, in certain types of cases (e.g., fraud, theft, and tax offenses), the court must ordinarily approximate the loss caused by the offense in order to determine the applicable offense level. See Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).

2. "Gross pecuniary loss," as used in subdivision (c) (1) (A) derives from 18 U.S.C. 3571(d) and is equivalent to the term "loss" as used in chapter Two (Offense Conduct). See Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft). In a case of an attempted or partially completed offense, or a conspiracy to commit an offense, "gross pecuniary loss" is to be determined in accordance with the principles of § 2X1.1 (Attempt, Solicitation, or Conspiracy).

3. If the offense involved multiple participants (i.e., multiple organizations, or an organization and unassociated individuals) and the causation of the loss can be apportioned among the participants, the amount of the loss calculated pursuant to subsection (c) (1) is the amount of the loss caused by the defendant and its agents. In many cases involving multiple organizational offenders (e.g., price-fixing cases), attribution of loss among the various offenders based on causation will be determinable. If, however, there were multiple offenders and there is no clear causative link between each organization's conduct and the magnitude of harm caused, loss shall, to the extent feasible, be apportioned on the basis of relative culpability. If apportionment of loss on the basis of causation or culpability is not feasible, in part or in whole, any portion of the loss that cannot be apportioned shall be attributed to each participant.

4. "Gross pecuniary gain," as used in subsections (c) (2) and (f) derives from 18 U.S.C. 3571(d) and means the additional before-tax profit to the defendant resulting from the relevant offense conduct. The gain can result either from additional revenue or from cost savings. An example of pecuniary gain resulting from additional revenue is provided by a case of odometer tampering. In such a case, the gross pecuniary gain is the additional revenue earned because the automobiles appeared to have less mileage, i.e., the difference between the price received or expected for the automobiles with the apparent mileage and the fair market value of the automobiles with the actual mileage. An example of pecuniary gain resulting from cost savings is provided by a case involving illegal disposal of hazardous waste. In such a case, the gross pecuniary gain is the amount saved because the hazardous waste was disposed illegally rather than in accordance with legal requirements.

5. In a case involving multiple wrong-doers (in addition to the defendant and its agents) in which the gain has not been divided among the wrong-doers or the manner of the division is unknown, the gross pecuniary gain to all participants shall be attributed to each participant.

6. In order for subdivision (e)(2)(A)(i) to apply, the report must be timely and must be made under the direction of the management of the organization. Timeliness will depend on when the organization was able to determine with diligent inquiry and a reasonable degree of certainty that an offense had been committed.

7. An "effective program to prevent and detect violations of the law," as used in subdivision (e) (2) (A) (ii), means a program that has been reasonably designed, implemented, and enforced so that it will generally be effective in preventing and detecting criminal conduct. Failure to prevent or to detect the instant offense does not, by itself, mean that the program was not effective.

The hallmark of an effective program under subdivision (e) (2) (A) (ii) is that the organization exercised, prior to the offense, and continues to exercise due diligence in seeking to prevent and detect criminal conduct by its agents. Due diligence requires at a minimum that the organization has taken at least seven general types of steps to assure compliance with the law. First, the organization must have had policies defining the standards and procedures to be followed by its agents and employees. Second, a specific high-level person within the organization must have been designated and assigned ultimate responsibility to ensure compliance with those standards and procedures. Third, the organization must have used due care not to delegate significant discretionary authority to persons whom the organization knew, or should have known, had a propensity to engage in illegal activities. Fourth, the organization must have effectively communicated its standards and procedures to agents and employees, e.g., by requiring participation in training programs and by the dissemination of publications. Fifth, the organization must have taken reasonable steps to achieve compliance with its standards, e.g., by utilizing monitoring and auditing systems reasonably designed to ferret out criminal conduct by its agents and employees and by having in place and publicizing a reporting system whereby agents and employees can report criminal conduct within the organization without fear of retribution. Sixth, the standards must have been consistently enforced through appropriate disciplinary mechanisms. Seventh, after an offense has been detected, the organization must have taken all reasonable steps to prevent further similar offenses. Such steps should include any necessary modifications to the organization's program to prevent and detect violations of law and appropriate discipline of individuals responsible for the offense and, as appropriate, the individuals responsible for the failure to detect the offense. Discipline of the individuals responsible for the offense is a necessary step to prevent a recurrence of similar offenses, but the form of discipline that will be appropriate will depend on the facts of the case and can range from discharge to verbal or written censure.

In determining whether an organization has exercised due diligence in preventing and detecting criminal conduct, the court should also consider any applicable industry practice and any relevant guidelines issued by regulatory agencies.

The precise steps necessary for an organization to qualify for the mitigating factor under subdivision (e) (2) (A) (ii) will depend upon a number of factors, e.g., the size of the organization, the nature of its business, and the past history of the organization. The requisite degree of formality of the program to prevent and detect violations of law will depend upon the size of the organization; the larger the organization, the more formal the program to prevent and detect violations of law would typically be expected to be. Normally, organizations should have had written policies defining the standards and procedures to be followed by its employees. If, because of the nature of the organization's business, there was a substantial risk that certain types of offenses would occur, management must have taken steps to prevent and detect those types of offenses. For example, if an organization dealt with toxic substances, it must have had standards and procedures designed to ensure that those substances were properly handled at all times. If the organization had sales personnel who had significant flexibility in setting prices, the organization must have had standards and procedures designed to prevent and detect price-fixing, allocation of markets, etc. This mitigating factor will not [ordinarily] apply if the organization has been guilty of prior similar misconduct; such an organization was on notice that such misconduct could occur within the organization and recurrence of similar misconduct [ordinarily] means that the organization has not taken reasonable steps to ensure that future similar misconduct was not committed.

An organization will not ordinarily qualify for the mitigating factor under subdivision (e) (2) (A) (ii) unless it also qualifies for the mitigating factor set forth in subdivision (e)(2)(B).

8. An organization does not qualify for the reduction under subdivision (e) (2) (B) if a person within the organization holding a policy-setting or legal compliance position, or a person within the organization who exercised substantial managerial authority in carrying out the policies of the organization, either knew or, through the exercise of due diligence, should have known of the offense. Either willful lack of knowledge or lack of diligence in seeking to detect crimes precludes the applicability of this mitigating factor.

Persons within the organization holding legal compliance positions include inside counsel and any other person who has significant responsibility for ensuring that the organization complies with requirements imposed by law.

An organization cannot qualify for the mitigating factor set forth in subdivision (e) (2) (B) unless it also meets the conditions for the mitigating factor set forth in subdivision (e) (2) (A) (ii). Failure to have an effective program to prevent and detect violations of law means that the organization has not used due diligence to detect violations of law.

9. The proviso to subdivision (e) (2) (B) is applicable when an offense is detected but not reported in a timely manner. Timeliness will depend on when the organization was able to determine with diligent inquiry and a reasonable degree of certainty that an offense had been committed.

10. In order for subdivision (e)(2)(C) to apply, cooperation must be both timely and thorough. To be timely, the cooperation must begin essentially at the same time as the organization is officially notified of a criminal investigation. To be thorough, the cooperation should generally be sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the criminal conduct. If, despite some degree of cooperation, there is substantial remaining uncertainty regarding the role of management in the commission of the offense, subdivision (e) (2) (C) generally will not apply.

11. The conditions that will satisfy the requirements for the mitigating factor specified by subdivision (e) (2) (D) will vary from case to case. In most cases, the defendants should have made full voluntary restitution in advance of sentencing. In some cases, however, making full voluntary restitution may not be reasonable because, for example, the amount of injury may legitimately be disputed or identification of all victims may require additional time. In such cases, the organization should have taken all necessary steps to make restitution not subject to reasonable dispute or delayed due to a lack of information.

In a case that does not involve identifiable harm that can be remedied, an organization can nevertheless qualify for the mitigating factor specified by subdivision (e) (2) (D) if it clearly demonstrates a recognition and affirmative acceptance of responsibility for the offense.

Entry of a plea of guilty prior to the commencement of trial, combined with truthful admission of involvement in the offense and related conduct, will satisfy the requirement of a recognition and affirmative acceptance of responsibility for the purposes of subdivision (e) (2) (D), unless outweighed by conduct of the defendant that is inconsistent with such acceptance of responsibility. The requirement of a recognition and affirmative acceptance of responsibility is not satisfied by a defendant that puts the government to its burden of proof at trial by denying the essential elements of guilt, is convicted, and only then admits guilt and expresses remorse. Conviction by trial, however, does not automatically preclude a defendant from consideration for this mitigating factor. In rare situations, a defendant may clearly demonstrate an acceptance of responsibility for its criminal conduct even though it exercises its constitutional right to a trial. This may occur, for example, where a

[2] This is a place marker for a section that will identify sets of cases in which the purposes of punishment would not ordinarily be advanced by basing a fine on the amount of gross pecuniary loss caused by an offense. Alternative approaches could be used. One alternative is:

"[2] Gross pecuniary loss shall not be used for the determination of the guideline fine range if:

(A) The organization qualifies for the mitigating factor set forth in subdivision (e)(2)(A)(ii); or

(B) The offense conduct that triggered the organization's criminal liability involved neither intentional, knowing, nor reckless criminal conduct."

A second alternative is:

"(2) Gross pecuniary loss shall not be used for the determination of the guideline fine range if:

(A) The extent of the gross pecuniary loss was substantially greater than would have been anticipated by a reasonable person acting under the circumstances in which the [organization] [individual agent or agents of the organization who committed the offense] acted; or

(B) The offense conduct that triggered the organization's criminal liability involved neither intentional, knowing, nor reckless criminal conduct."

A third alternative is to revise § 8C2.1(c)(1) to give courts greater flexibility in setting fines based on gross pecuniary loss, gross pecuniary gain, or the amount derived from the offense level table. For example, the following language might be used:

"(c) Select, from the following three amounts, the amount most appropriate to achieve the purposes of sentencing as set forth in 18 U.S.C. 3553 (a)(2):

(1) The amount from the table below corresponding to the offense level determined under § 8A1.2 [Application Instructions-Organizations];

(2) The gross pecuniary loss caused by the offense conduct of the defendant; or

(3) The gross pecuniary gain to the defendant from the offense."

Finally, the Commission might specify particular offenses or types of offenses for which a fine based on gross pecuniary loss would not ordinarily be appropriate to achieve the purposes of sentencing.

defendant goes to trial to assert and preserve issues that do not relate to factual guilt (e.g., to make a constitutional challenge to a statute or a challenge to the applicability of a statute to its conduct). In each such instance, however, a determination that a defendant has accepted responsibility will be based primarily upon pretrial statements and conduct.

12. Subsection (f) is designed to ensure that the amount of any gain that has not previously been disgorged or that will not otherwise be taken from the defendant is added to the punitive portion of the fine calculated pursuant to subsections (c), (d), and (e). Subsection (f) will typically apply in cases in which the defendant received gain from an offense but restitution or remedial efforts will not be required because the offense did not result in harm to identifiable victims, e.g., money laundering offenses, obscenity offenses, regulatory-reporting offenses, and violations of export controls. Money spent to remedy the adverse effects of the offense, e.g., clean-up costs for an environmental offense, should be considered as disgorged gain. Thus, if the cost of remedial efforts equals or exceeds the gain from the offense, the organization has realized no net gain from the offense and no addition should be made under subsection (f).

Background: This guideline provides for the determination of the upper and lower limits of the fine guideline range. The general design of the section is to set fine ranges based upon a combination of the seriousness of the offense (as measured by the loss caused by the offense, the gain from the offense, or the applicable offense level) and factors that indicate the organization's degree of culpability of the organization (as indicated by the applicability or inapplicability of the various mitigating factors). The mitigating factors are designed to reflect the organization's culpability both prior to and subsequent to the commission of an offense and to provide incentives for organizations to take steps to prevent and detect offenses, report offenses detected by the organization, cooperate with government investigations, accept responsibility for the offense, take prompt and reasonable steps to remedy the harms caused by offenses, and take all reasonable steps to prevent a recurrence of similar offenses.

Note: The Commission is also considering the following alternative to § 8C2.1(e) and related alternatives in the guidelines and policy statements governing probation. The Commission welcomes comment on the following alternatives.

Alternative § 8C2.1(e):

(e) (1) The minimum and maximum fine multipliers are those specified in the table below corresponding to the applicable mitigation score as determined under subsection (d) (2).

Maximum multiplier	Mitigation score	Minimum multiplier	
	0	2.00	3.00
	1	1.50	2.70
	2	1.60	2.40
	3	1.40	2.10
	4	1.15	1.80
	5	0.95	1.50
	6	0.75	1.15
	7	0.55	0.85
	8	0.35	0.55

(2) The mitigation score is determined by totaling the points specified for each of the applicable factors set out in subdivisions (A) through (C) below.

(A) If more than one applies, use the greatest:

(i) Add 4 points if the management of the organization voluntarily and promptly reported the offense to appropriate governmental authorities prior to public disclosure, the commencement of a government investigation, and the imminent threat of disclosure of the wrongdoing; or

(ii) Add 2 points if the organization prior to the offense had, and after the offense continues to maintain, an effective program to prevent and detect violations of law, and no policy-setting or legal compliance official within the organization or other person who exercised substantial managerial authority in carrying out the policies of the organization had knowledge of the offense, or would have had such knowledge had such person performed his or her responsibilities as contemplated by the compliance plan; or

(iii) Add 1 point if other factors suggest that the organization exercised due diligence to prevent and detect violations of law of a character reasonably similar to the instant offense.

(B) Add 2 points if the organization cooperated fully with the government's investigation of the offense.

(C) Add 2 points if the organization:

(i) In a timely manner, prior to the adjudication of guilt, accepted responsibility for the offense, and took prompt and reasonable steps to remedy the harm caused by the offense; and

(ii) Commenced, prior to sentencing, an internal investigation into responsibility for the offense, pursuant to which it commits to take appropriate disciplinary action against officers, employees, or other agents found to have been responsible, including through negligent inattention, for the commission of the offense.

Note: As a part of the foregoing alternative, the following possible additions to the guideline sections dealing with probation (see below) are being considered.

Alternative: Additional Subsection § 8D1.1(a)(4):

(4) If any fine imposed (or which would have been imposed) on the organization is reduced based on the presence of mitigating factors specified in §§ 8C2.1(e)(2)(A)(ii), 8C2.1(e)(2)(A)(iii), 8C2.1(e)(2)(c), or 8C5.18.

Alternative: Additional Subsection § 8D1.3(f):

(f) If probation is ordered under § 8d1.1(a)(4), it is recommended that the following conditions be imposed:

(1) The organization shall develop and submit to the court a compliance plan as provided in § 8D1.3(e)(1), shall make periodic reports to the court or probation officer as provided in § 8D1.3(e)(3), and shall submit to reasonable inspections and interrogations as provided in § 8d1.3(e)(4).

(2) The organization shall comply with all lawful regulations and orders promulgated by those federal, public, or state administrative agencies or other public authorities specified by the court whose regulatory concerns are reasonably related to the offense.

(3) The organization shall complete in good faith any internal investigation undertaken pursuant to § 8C2.1(e)(2)(C)(ii) and shall notify the court of any actions taken based on it and explain why it deems such actions sufficient.

Alternative: Additional Subsection to § 8d1.4:

(b) If probation is ordered under § 8d1.1(a)(4) and a new offense is committed within twenty-four months of the conviction of the instant offense, the Commission recommends that probation be revoked and a fine be imposed equal to the amount by which the fine was reduced because of the organization's steps to prevent and detect violations of law.

End of Alternative to § 8C2.1(e) and Related Alternatives Regarding Probation

§ 8C2.2. Determination of the Fine Within the Guideline Range (Policy Statement)

(a) Under 18 U.S.C. 3553(a) and 3572(a), the court, in determining the amount of the fine within the applicable guideline range, is required to consider:

(1) The nature and circumstances of the offense and the history and characteristics of the defendant;

(2) The need for the sentence to reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence, and protect the public from further crimes of the defendant;

(3) The defendant's income, earning capacity, size, and financial resources;

(4) The burden that the fine will impose upon the defendant or any person who is financially dependent on the defendant;

(5) Any pecuniary loss inflicted upon others as a result of the offense;

(6) Whether the defendant can pass on to consumers or other persons the expense of the fine; and

(7) Any measure taken by the defendant to discipline any officer, director, employee, or agent of the organization responsible for the offense and to prevent a recurrence of such an offense.

(b) In addition, the court, in determining the amount of the fine within the guideline range, should consider:

(1) The extent to which steps were taken by the defendant to prevent detection of the offense;

(2) Any prior criminal, civil, or administrative adjudication of misconduct;

(3) The defendant's role in the offense;

(4) Partial, but incomplete, satisfaction of the requirements for one of the mitigating factors set forth in § 8C2.1 (Determining the Fine Guideline Range—Organizations);

(5) Any collateral consequences of conviction, including civil obligations arising from the defendant's conduct;

(6) Any nonpecuniary loss caused or threatened by the offense;

(7) The degree of culpability of the organization's agents who committed the offense as evidenced by their mental state with respect to the offense, i.e., whether the organization's agents acted intentionally, knowingly, recklessly, negligently, or triggered the organization's criminal liability solely on a strict liability basis; and

(8) Any other pertinent equitable considerations.

Commentary

Background: Subsection (a) reflects factors that the court is required to consider under 18 U.S.C. 3553(a) and 3572(a). 18 U.S.C. 3572(a) lists two other factors—whether restitution is ordered or made and the amount of such restitution; and the need to deprive the defendant of illegally obtained gains from the offense—that are not listed in this guideline because they are fully taken into account by other guidelines, specifically § 8B1.1 (Restitution—Organizations) and § 8C2.1(e) (Gross Pecuniary Gain not Subject to Disgorgement).

Subsection (b) reflects additional factors set forth by the Commission.

Subsection (b)(1) provides that the court should consider, among other factors, the degree of difficulty of detecting the violation due either to the defendant's efforts to conceal the offense or to the inherent difficulty of detecting that particular type of offense. For purposes of general deterrence, offenses that are particularly difficult to detect should receive greater punishment.

A fine should be set that reflects both the seriousness of the offense and the culpability of the defendant. In some cases, neither the loss, gain, nor offense level may adequately measure the seriousness of the offense. In such cases, an upward departure from the applicable fine range may be appropriate. Subpart 5 of this chapter lists aggravating factors that the Commission has identified that may warrant an upward departure from the applicable guideline fine range. Similarly, in some cases the applicable mitigating factors may not adequately measure the lack of culpability of the organization. Subpart 5 of this chapter also lists mitigating factors that the Commission has identified that may warrant a downward departure from the applicable guideline fine range.

3. Implementing the Sentence of a Fine

§ 8C3.1. Imposing a Fine

(a) Except to the extent restricted by the maximum fine authorized by statute, or any minimum fine required by statute, the fine range required by the guidelines shall be that determined under § 8C1.1 (Determining the Fine—Criminal Organizations) or § 8C2.1 (Determining the Fine Guideline Range—Organizations), as applicable.

(b) Where the minimum guideline fine is greater than the maximum fine authorized by statute, the maximum fine authorized by statute shall be the guideline fine.

(c) Where the maximum guideline fine is less than a minimum fine required by statute, the minimum fine required by statute shall be the guideline fine.

Commentary

This section sets forth the interaction of the fine guideline range with the maximum fine authorized by statute and any minimum fine required by statute for the count or counts of conviction. The general statutory provisions governing a sentence of a fine are set forth in 18 U.S.C. 3571(c).

When the defendant is convicted on multiple counts, the maximum fine authorized by statute may increase. For example, in the case of a defendant convicted of two felony counts related to a $200,000 fraud, the maximum fine authorized by statute will be $500,000 on each count (an aggregate maximum authorized fine of $1,000,000).

§ 8C3.2. Payment of the Fine—Organizations

Immediate payment of the fine shall be required unless the court finds that the defendant is financially unable to make such payment or that such payment would pose an undue burden on the defendant. If the court permits other than immediate payment, it shall endeavor to require full payment at the earliest possible date, either by requiring payment on a date certain or by establishing an installment schedule.

Commentary

When the court permits other than immediate payment, the period provided for payment shall, in no event, exceed five years. 18 U.S.C. § 3572(d).

§ 8C3.3. Reduction of Fine Based on Inability to Pay

(a) The court may impose a fine below that otherwise required by the applicable guideline if the court finds that:

(1) Imposition of the fine required by § 8C1.1 or § 8C2.1, as applicable, would impair its ability to make restitution to victims; or

(2) (A) The organization is not a criminal organization under § 8C1.1 (Determining the Fine—Criminal Organizations); and

(B) The organization is not able and, even with the use of a reasonable installment schedule, is not likely to be able to pay the minimum fine required under § 8C2.1 (Determining the Fine Guideline Range—Organizations).

(b) The court may reduce the fine under this section only to the extent necessary to take into account the factors set forth in subsections (a)(1) and (a)(2)(B).

Commentary

Application Note:

1. For purposes of this section, an organization is not able to pay the minimum fine if, even with an installment schedule under § 8C3.2 (Payment of the Fine—Organizations), the payment of that fine would substantially jeopardize the continued existence of the organization.

Background: Subsection (a)(1) carries out the requirement in 18 U.S.C. 3572(b) that the court impose a fine or other monetary penalty only to the extent that such fine or penalty will not impair the ability of the defendant to make restitution for the offense.

4. Offset

§ 8C4.1. Fines Paid by Owners of Closely Held Organizations

The fine imposed upon a closely held organization shall be offset by the amount of any fines paid by the owners of the organization arising out of the offense conduct from which the instant offense arose.

Commentary

Application Note:

1. For purposes of this section, an organization is closely held, regardless

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of its size, when a small number of individuals own a controlling interest in an organization. In order for an organization to be closely held, there need not be complete overlap between ownership and management.

Background: Many organizational defendants are closely held corporations. For practical purposes, most closely held organizations are the alter egos of their owner-managers. In the case of criminal conduct by a closely held corporation, the organization and the culpable individual(s) may both be convicted. As a general rule, the allocation of appropriate punishment may be achieved by offsetting the fine imposed upon the organization by the amount of any fines paid by the owner-managers in their individual capacities.

5. Departures

Introductory Commentary

18 U.S.C. § 3553(b) sets forth the general statutory provisions governing departures. Departure may be warranted if the court finds "that there exists an aggravating or mitigating circumstance of a kind, or to a degree not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described." This subpart sets forth certain factors that, in connection with certain offenses, may not be adequately taken into consideration. Departure is not necessarily warranted, however, merely because one of these factors is present. In deciding whether departure is warranted, the court should consider the extent to which that factor is already adequately taken into consideration by the guidelines.

§ 8C5.1. Grounds for Departure Listed in Chapter Five (Policy Statement)

To the extent that any policy statement from chapter Five, part K (Departures) is relevant to the defendant, a departure from the applicable guideline range may be warranted.

Commentary

Factors listed in chapter Five, part K (Departures) that are particularly applicable to organizational defendants are also listed in this subpart. Other factors listed in chapter Five, part K may also be applicable in particular cases.

§ 8C5.2. Risk of Death or Serious Bodily Injury (Policy Statement)

If the offense resulted in death or serious bodily injury or involved a foreseeable risk of death or serious bodily injury of a kind, or to a degree, not adequately taken into account by the applicable offense guideline, an upward departure from the applicable guideline range may be warranted.

§ 8C5.3. Threat to National Security (Policy Statement)

If the offense constituted a risk to national security of a kind, or to a degree, not adequately taken into account by the applicable offense guideline, an upward departure from the applicable guideline range may be warranted.

§ 8C5.4. Threat to the Environment (Policy Statement)

If the offense presented a threat to the environment of a kind, or to a degree, not adequately taken into account by the applicable offense guideline, an upward departure from the applicable guideline range may be warranted.

Commentary

If an environmental offense resulted in limited pecuniary loss and gain but created a threat to the environment, an upward departure from the applicable guideline range may be warranted if that threat is not adequately measured by the offense level. If an upward departure is warranted, the extent of the departure should depend, among other factors, on the extent to which the harm was intended or knowingly risked.

§ 8C5.5. Threat to a Market (Policy Statement)

If the offense presented a substantial risk to the integrity or continued existence of a market of a kind, or to a degree, not adequately taken into account by the applicable offense guideline, an upward departure from the applicable guideline range may be warranted.

Commentary

This section is potentially applicable to both private markets (e.g., a financial market or a market for consumer goods) and governmentally created markets (e.g., government contracting).

§ 8C5.6. Violation of Judicial Order or Condition (Policy Statement)

If the offense constituted a violation of a judicial order or injunction, or a condition of probation of a kind, or to a degree, not adequately taken into account by the applicable offense guideline, an upward departure from the applicable guideline range may be warranted.

§ 8C5.7. Obstruction of Justice (Policy Statement)

If an agent of the organization who held a policysetting or legal compliance position or who exercised substantial managerial authority in carrying out the policies of the organization willfully obstructed, or willfully aided, abetted, or encouraged obstruction of the investigation or prosecution of the offense and that conduct is of a kind, or to a degree, not adequately taken into account by the applicable offense guideline, an upward departure from the applicable guideline range may be warranted.

Commentary

Section 3C1.1 (Willfully Obstructing or Impeding Proceedings) is not applicable to organizations. If a high-level agent of the defendant engages in conduct that, in the case of an individual defendant, would result in an increase in the offense level under § 3C1.1, an upward departure may be warranted.

§ 8C5.8. Official Corruption (Policy Statement)

If the defendant, in connection with the offense, bribed or unlawfully gave a gratuity to a public official, or attempted or conspired to bribe or unlawfully give a gratuity to a public official and that conduct is of a type, or to a degree, not adequately taken into account by the applicable guideline range, an upward departure from the applicable guideline range may be warranted.

§ 8C5.9. Criminal Record (Policy Statement)

If the defendant had a prior criminal record, an upward departure from the applicable guideline range may be warranted.

Commentary

[The extent to which a criminal record may justify departure will depend upon a number of factors, including, for example, the degree of similarity between the conduct upon which the instant offense is based and the conduct upon which the prior offense was based, the recentness of the prior offense, and the extent to which the organization failed to take steps to prevent similar future criminal conduct.]

§ 8C5.10. Prior Similar Misconduct (Policy Statement)

If the defendant had previously engaged in similar misconduct, an upward departure from the applicable guideline range may be warranted.

Commentary

[The extent to which prior similar misconduct may justify departure will depend upon a number of factors, including, for example, the recentness of the prior misconduct and the extent to which the organization failed to take steps to prevent similar future misconduct. For this upward departure to apply, the court should be satisfied by reliable evidence of the previous misconduct e.g., a prior civil or administrative adjudication.]

§ 8C5.11. Vulnerable Victims (Policy Statement)

If the offense targeted vulnerable victims, an upward departure from the applicable guideline range may be warranted.

Commentary

Section 3A1.1 (Vulnerable Victim) is not applicable to organizations. Accordingly, an upward departure may be warranted in cases in which § 3A1.1 would be applicable if the defendant were an individual.

§ 8C5.12. Aggravating Role in the Offense (Policy Statement)

If the defendant and its agents took a leading role relative to other participants, an upward departure from the applicable guideline range may be warranted.

Commentary

Section 3B1.1 (Aggravating Role) is not applicable to organizations. In circumstances analogous to those in which § 3B1.1 would be applicable, an upward departure may be warranted. An upward departure based upon this factor is more likely to be appropriate when the guideline fine range is determined from the offense level table, rather than from gross pecuniary loss or gross pecuniary gain, because a defendant's role in the offense may be adequately reflected by its pecuniary gain from the offense or the amount of loss caused by its involvement in the offense.

§ 8C5.13. Public Entity (Policy Statement)

If the defendant is a public entity, a downward departure from the applicable guideline range may be warranted.

§ 8C5.14. Offenses of Which Members or Beneficiaries of the Defendant are Victims (Policy Statement)

If the members or beneficiaries of the organization are direct victims of the offense, a downward departure from the applicable guideline range may be warranted.

Commentary

If the members or beneficiaries of an organization are direct victims of an offense, imposing a punitive fine upon the organization may increase the burden upon the victims of the offense without achieving an offsetting deterrent effect. In such cases, a punitive fine may not be appropriate. For example, departure may be appropriate if a labor union is convicted for embezzlement of pension funds. This policy statement does not apply merely because, as will commonly occur, the organization's commission of the offense has brought about harm to the organization's members or beneficiaries (e.g., a decline in the value of an organization because of criminal sanctions imposed or because of the indirect injury to the organization's reputation resulting from public awareness of the criminal conduct). Rather, it is intended to address only the unusual situation in which the members or beneficiaries were the direct victims of the offense itself.

§ 8C5.15. New Owners (Policy Statement)

If an organization is owned entirely by persons who acquired the organization subsequent to the occurrence of the offense without any knowledge that the offense had occurred, a downward departure from the applicable guideline range may be warranted.

Commentary

In a case in which the ownership of an organization has changed completely subsequent to the occurrence of an offense and the new owners had no knowledge of the prior offense, a fine within the guideline range may not be necessary to achieve just punishment and adequate deterrence. In such cases, a downward departure may be appropriate. The new owners' conduct following the discovery of the offense would, however, be relevant to the determination of whether to depart and the extent of any departure.

§ 8C5.16. Mitigating Role in the Offense (Policy Statement)

If the organization and its agents were minor or minimal participants in the offense, a downward departure from the guideline fine range may be warranted.

Commentary

Section 3B1.2 (Mitigating Role) is not applicable to organizations. In circumstances analogous to those in which § 3B1.2 would be applicable, a downward departure may be warranted. A downward departure is more likely to be appropriate in cases in which the guideline fine range is determined by the offense level since fines calculated on the basis of gain or loss may reflect the role of the defendant in the offense.

§ 8C5.17. Punitive Civil or Administrative Sanctions (Policy Statement)

If a punitive civil or administrative sanction payable to the federal, or a state or local, government has already been imposed upon the organization in connection with the conduct constituting the offense conduct, a downward departure from the applicable guideline range of up to the amount of the prior punitive sanction may be warranted.

Commentary

Application Note:

1. The magnitude of any departure under this section should not be greater than the amount of the punitive component of the previously imposed civil or administration sanction. Remedial damages designed to make the government whole, including the costs of investigation and prosecution, should not provide a basis for departure.

Background: Departure is not necessarily appropriate merely because a prior punitive civil or administrative sanction has been imposed upon the defendant. The court should consider whether Congress intended courts to impose multiple punitive sanctions, whether the imposition of multiple punitive sanctions would violate the protection against double jeopardy, and whether multiple punitive sanctions are necessary to achieve just punishment and adequate deterrence. For example, in the case of antitrust violations Congress has provided for both criminal penalties and private treble damages, as an incentive for private litigation. Accordingly, a downward departure because of an earlier private treble damage recovery would not be appropriate in the unlikely event that a private antitrust action were to precede a criminal prosecution for an antitrust violation.

§ 8C5.18. Organizations Meeting Conditions for All Mitigating Factors (Policy Statement)

If an organization meets the conditions for all mitigating factors set forth in § 8C2.1(e), including both prongs of § 8C2.1(e) (2) (A), a downward departure from the applicable guideline range may be warranted.

Commentary

The mitigating factors set in § 8C2.1(e)(2)(A)(i) and (ii) are in the alternative. Thus, an organization can qualify for the reduction under § 8C2.1(e)(2)(A)(i) even if it did not have an effective program to prevent and detect violations of the law. The reductions are set in the alternative to ensure that firms have a substantial incentive to report offenses. If an organization both has an effective program to prevent and detect violations of law and also reports an offense, its degree of culpability is less than that of an organization that failed to have an effective program to prevent and detect violations of law but nevertheless detected and reported the offense. Accordingly, if both prongs of § 8C2.1(e) (2) (A) are satisfied and a firm also qualifies for all other mitigating factors, a downward departure may be warranted.

Part D—Organizational Probation

§ 8D1.1. Imposition of Probation

(a) The court shall order a term of probation:

(1) If such sentence is necessary as a mechanism to impose restitution (§ 8B1.1), a remedial order (§ 8B1.2), or community service (§ 8B1.3);

(2) If the organization is sentenced to pay a monetary penalty (e.g., restitution, fine, or special assessment), the penalty is not paid in full at the time of sentencing, and restrictions appear reasonably necessary to safeguard the defendant's future ability to make payments; or

(3) If such sentence is necessary to ensure that changes are made within the organization to reduce the likelihood of future criminal conduct.

(b) (Policy Statement) The court may order a term of probation in any other case upon a finding that such a term is

necessary to accomplish one or more of the purposes of sentencing set forth in 18 U.S.C. 3553(a) (2).

§ 8D1.2. Term of Probation

When a sentence of probation is imposed—

(a) In the case of a felony, the term of probation shall be at least one year but not more than five years.

(b) In any other case, the term of probation shall be not more than five years.

Commentary

Within the limits set by the guidelines, the term of probation should be sufficient, but not more than necessary, to accomplish the court's specific objectives in imposing the term of probation.

§ 8D1.3. Conditions of Probation (Policy Statement)

(a) Any sentence of probation shall include the condition that the organization not commit, or attempt to commit, another Federal, state, or local crime during the term of probation. See 18 U.S.C. 3563(a) (1).

(b) The court may impose other conditions that (1) are reasonably related to the nature and circumstances of the offense, the history and characteristics of the defendant, and the purposes of sentencing; and (2) involve only such deprivations of liberty or property as are necessary to effect the purposes of sentencing.

(c) When appropriate, the court may order the defendant to publicize, at its expense and in a format and in the media specified by the court, the nature of the offense committed, the fact of conviction, the nature of the punishment imposed, and the steps that will be taken to prevent the recurrence of similar offenses.

(d) If probation is imposed under § 8D1.1(a)(2), it is recommended that the following conditions be imposed to the extent that they appear necessary to secure the defendant's obligation to pay any deferred portion of an order of restitution or fine:

(1) The organization shall make periodic submissions to the court or probation officer, at intervals specified by the court, reporting on the organization's financial condition and results of business operations and accounting for the disposition of all funds received.

(2) The organization shall submit: (A) To a reasonable number of regular or unannounced examinations of its books and records by the probation officer or auditors engaged by the court; and (B) interrogation of knowledgeable individuals within the organization.

(3) The organization shall be required to notify the court or probation officer immediately upon learning of any (A) material adverse change in its business or financial condition or prospects, or (B) the commencement of any bankruptcy proceeding, major civil litigation, criminal prosecution, or administrative proceeding against the organization, or any investigation or formal inquiry by government authorities regarding the organization.

(4) The organization shall be required to make periodic payments, as specified by the court, in the following priority: (1) The unpaid amount of the organization's restitution; (2) any fine; or (3) any other monetary sanction.

(e) If probation is ordered under § 8D1.1(a)(3), it is recommended that the following conditions be imposed:

(1) The organization shall develop and submit to the court a compliance plan to prevent and detect a recurrence of the criminal behavior for which it was convicted.

(2) The organization shall notify its employees and shareholders of the criminal behavior and its compliance plan. Such notice shall be in a form to be prescribed by the court.

(3) The organization shall make periodic reports to the court or probation officer, at intervals and in a form specified by the court, regarding the organization's progress in implementing its compliance plan. Such reports (A) shall disclose any criminal prosecution, civil litigation, or administrative proceeding commenced against the organization, or any investigations or formal inquires by government authorities of which the organization learned since its last report, and (B) shall not require disclosure of any trade secrets or other confidential business information, including future business plans.

(4) In order to monitor whether the organization is following its compliance plan, the organization shall submit: (A) to a reasonable number of regular or unannounced examinations of the books and records by the probation officer or experts engaged by the court; and (B) interrogation of knowledgeable individuals within the organization.

Commentary

Application Notes:

1. In determining the conditions to be imposed when probation is ordered under § 8D1.1(a)(3), the court should consider the views of any government regulatory body that oversees conduct of the defendant relating to the offense of conviction and may employ appropriate experts to assess the efficacy of a plan submitted by the defendant. The organization should not be required to adopt a compliance measure unless such measure is reasonably necessary to avoid a recurrence of the type of criminal behavior involved in the offense.

2. Periodic reports submitted in accordance with subdivision (e) (2) should be provided to any government regulatory body that oversees conduct of the defendant relating to the offense of conviction.

Background: Subsection (a) sets forth the statutory requirement that each sentence of probation contains a condition that the defendant not commit another Federal, state, or local crime.

Subsection (b) authorizes the court to impose other conditions that (1) are reasonably related to the nature and circumstances of the offense, the history and characteristics of the defendant, and the purposes of sentencing; and (2) involve only such deprivations of liberty or property as are necessary to effect the purposes of sentencing. In meeting these requirements, the court should tailor such conditions of probation to the circumstances of the case.

In addition, 18 U.S.C. 3563(a) provides that if a sentence of probation is imposed for a felony, the court shall impose at least one of the following as a condition of probation: A fine, restitution, or community service, unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more other conditions set forth in 18 U.S.C. 3563(b).

§ 8D1.4. Violations of Conditions of Probation (Policy Statement)

Upon a finding of a violation of a condition of probation, the court may extend the term of probation, impose more restrictive conditions of probation, or revoke probation and resentence the organization.

Commentary

In the event of repeated, serious violations of conditions of probation, the appointment of a master or trustee may be appropriate when necessary to ensure compliance with court orders.

Part E—Special Assessments, Forfeitures, and Costs

§ 8E1.1. Special Assessments—Organizations

Apply § 5E1.3 (Special Assessments).

Commentary

The provisions of § 5E1.3 (Special Assessments) are applicable to organizational defendants.

§ 8E1.2. Forfeiture—Organizations

Apply § 5E1.4 (Forfeitures).

Commentary

The provisions of § 5E1.4 (Forfeitures) are applicable to organizational defendants.

§ 8E1.3. Assessment of Costs

The court may, as provided in 28 U.S.C. 1918, order that the defendant pay the costs of prosecution.

Commentary

Statutory authority for the court to order defendants to pay the costs of prosecution is provided in 28 U.S.C. 1918.

*Proposed Guidelines Drafted by the Department of Justice and Published at its Request**

[*The Attorney General is by statute an ex-officio member of the United States Sentencing Commission]

Chapter Eight—Sentencing of Organizations

Introductory Commentary

The guidelines and policy statements in this Chapter apply when the convicted defendant in a federal criminal case is an organization rather than an individual. In these cases individuals may or may not simultaneously have been convicted of offenses growing out of the same scheme or plan of criminal conduct.

The goals and purposes of sentencing for organizations are identical to those for individuals. They are: Just punishment, deterrence, protection of the public from further crimes of the defendant, and rehabilitation. See 18 U.S.C. 3553(a) (2). Thus, sentencing of a convicted organization can be instrumental in achieving a number of objectives. Restitution, notice to victims, and other corrective measures can be used to remedy harm to victims or otherwise alleviate the consequences of criminal conduct. Imposition of a fine or probation can punish the owners of an organization for its criminal conduct and induce owners and managers to take necessary steps to prevent criminal conduct by agents of the organization. Probation can also be imposed where necessary to enforce any of the above sanctions or to ensure that an organization institutes a remedial compliance program to prevent further criminal conduct by its agents.

As in the case of the guidelines for individuals, the Commission envisions an evolutionary process in which the guidelines will be subject to modification and refinement in light of experience.

Part A—General Application Principles

§ 8A1.1. Applicability of Chapter Eight

This chapter applies to the sentencing of all organizations.

Commentary

Application Note:

1. "Organization" means "a person other than an individual." 18 U.S.C. 18. Organizations include corporations, unions, associations, and partnerships.

§ 8A1.2. Application Instructions—Organizations

(a) Determine the guideline section in chapter Two most applicable to the offense of conviction. See § 1B1.2 (Applicable Guidelines). The Statutory Index (appendix A) provides a listing to assist in this determination.

(b) Determine the base offense level and apply any appropriate specific offense characteristics contained in the particular guideline in chapter Two in the order listed.

(c) If there are multiple counts of conviction, repeat steps (a) and (b) for each count. Apply part D of chapter Three to group the various counts and adjust the offense level accordingly.

(d) Determine from part B of this chapter the sentencing requirements and options relating to restitution, remedial orders, community service, and notice to victims.

(e) Determine from part C of this chapter the sentencing requirements and options relating to fines.

(f) Determine from part D of this chapter the sentencing requirements and options relating to probation.

(g) Determine from part E of this chapter the sentencing requirements relating to special assessments and forfeitures.

(h) The provisions of chapter One, part B (General Application Principles) apply to determinations under this chapter, except that subsections (a)–(g) above apply in lieu of § 1B1.1(a)–(i).

Part B—Remedying Harm From Criminal Conduct

Introductory Commentary

As a general principle, a convicted organization should, as a first priority, be required to make restitution to identifiable victims of its criminal conduct and to take other remedial actions necessitated by that criminal conduct.

§ 8B1. Restitution—Organizations

(a) Except as provided in subsection (b) below, the court shall—

(1) enter a restitution order pursuant to 18 U.S.C. 3663–3664; or

(2) if a restitution order would be authorized pursuant to 18 U.S.C. 3663–3664 but for the fact that the offense of conviction was not an offense under title 18 or 49 U.S.C. 1472 (h),(i), (j), or (n), sentence the organization to probation with a condition requiring restitution, in which case the amount, recipients, and other terms of the restitution condition are to be determined in accordance with 18 U.S.C. 3663(b),(c), and (e) and 3664.

(b) Subsections (a) (1) and (2) above do not apply when full restitution or other equivalent compensation to the victims of the offense has already been made, or to the extent the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of a restitution requirement outweigh the need to provide compensation to any victims.

Commentary

This guideline provides for restitution either as a sentence under 18 U.S.C. 3663–3664 or as a condition of probation. The provisions of 18 U.S.C. 3663–3664 require a sentence of restitution for convictions under title 18 or under 49 U.S.C. 1472 (h), (i), (j), or (n), except to the extent "the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order under this section outweighs the need to provide restitution to any victims." 18 U.S.C. 3663(d). This guideline, in addition, extends the requirement of restitution to offenses other than title 18 and title 49, section 1472 (h), (i), (j), and (n) offenses. In such cases restitution, which is to be determined under standards equivalent to those embodied in 18 U.S.C. 3663–3664, shall be provided as a condition of a sentence of probation. Under those standards, restitution in certain cases may be awarded to a third party who already has provided compensation to the victim. See 18 U.S.C. 3663(e) (1).

Restitution is not required to the extent that the fashioning of an order would unduly complicate and prolong the sentencing process, relative to the need to provide compensation to victims.

§ 8B1.2. Remedial Orders—Organizations (Policy Statement)

A remedial order, imposed as a condition of probation, may require the organization to correct harm caused by its conduct or to reduce or eliminate the risk that its criminal conduct will cause further harm. Such an order generally will be appropriate unless:

(a) available civil or administrative remedies are adequate and sufficiently expeditious; or

(b) the cost to reduce or eliminate the threat of future harm is not justified in light of the likelihood and seriousness of injury that may result.

Commentary

The purpose of a remedial order is to prevent future harm to victims or to correct harm already caused. A remedial order requiring corrective action by the defendant may include, e.g., product recalls for food and drug violations or "clean-up orders" for environmental violations.

§ 8B1.3. Community Service—Organizations (Policy Statement)

An organization may be ordered to perform community service, as a condition of probation, where such

community service consists of preventive or corrective action directly relating to the instant offense and serves one of the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2). Community service is not a substitute for a fine or restitution.

Commentary

In some instances the convicted organization may possess knowledge, facilities, or skills that uniquely qualify it to repair damage caused by the offense or to take preventive action. Community service directed at repairing damage may provide an efficient means of remedying the harm caused. See §§ 8B1.1 (Restitution—Organizations) and 8B1.2 (Remedial Orders—Organizations).

In the past some forms of community service imposed on organizations have not been related to the purposes of sentencing. Requiring a defendant to endow a chair at a university or to contribute to a local charity would not be authorized by this section unless such community service provided a means for preventive or corrective action directly related to the offense and served one of the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2). For example, a condition of probation requiring an organization to make its laboratory facilities available to a university would be authorized if it were subject to the limitation that the facilities be used for research to develop new anti-pollution or clean-up techniques related to the instant offense.

§ 8B1.4. Order of Notice to Victims—Organizations

Apply § 5F1.4 (Order of Notice to Victims).

Commentary

The provisions of § 5F1.4 (Order of Notice to Victims) are applicable to organizational defendants.

Part C—Fines

1. Determining the Fine—Criminal Organizations

§ 8C1.1. Determining the Fine—Criminal Organizations

If the court determines that the organization operated primarily for a criminal purpose, the fine shall be set (subject to the statutory maximum) at an amount sufficient to divest the organization of its assets. When this section applies, §§ 8C2.1 (Determining the Fine Guideline Range—Organizations), 8C2.2 (Determination of the Fine Within the Guideline Range), and 8C4.1 (Fines Imposed upon Owners of Closely Held Organizations) do not apply.

Commentary

Section 8C1.1 provides that where the court determines that an organization operated primarily for a criminal purpose, the fine shall be set at an amount sufficient to remove all of the organization's assets. If the extent of the assets of the organization is unknown, this may be achieved by imposing the greatest fine authorized by statute.

2. Determining the Fine—Other Than Criminal Organizations

§ 8C2.1. Determining the Fine Guideline Range—Organizations

(a) The guideline fine range shall be determined under subsections (b)–(d) below, except where the offense guideline in chapter Two expressly provides a different rule for determining the guideline range.

(b) Adjust the offense level determined pursuant to § 8A1.2 (Application Instructions—Organizations) for each aggravating and mitigating factor set forth below:

(1) Aggravating Factors:

(A) If high-level management aided or abetted, knowingly encouraged, or condoned the offense, add 2 levels.

(B) If the defendant within 15 years of the commencement of the current offense has one or more prior convictions (other than a conviction for a petty offense) or within 10 years of the commencement of the current offense engaged in similar misconduct, as determined by a prior civil or administrative adjudication, add 1 level.

(C) If the commission of the offense constituted a violation of a judicial order or injunction, or of a condition of probation, add 2 levels.

(D) If high-level management aided or abetted, or encouraged obstruction of the investigation or prosecution of, the offense or, with knowledge thereof, failed to take reasonable steps to prevent such obstruction, add 1 level.

(E) If the defendant, in connection with the offense or its concealment, bribed or unlawfully gave a gratuity to a public official, or attempted or conspired to bribe or unlawfully give a gratuity to a public official, add 1 level.

(F) If the offense targeted a vulnerable victim as defined in § 3A1.1, add 1 level.

(G) If the offense presented a substantial risk to the continued existence of a financial or consumer market, add 1 level.

(H) If the offense created a substantial risk to national security, add 2 levels.

(2) Mitigating Factors.

(A) If the organization, promptly upon discovering the offense, and prior to the commencement of a government investigation, the imminent threat of a government investigation, or the imminent threat of disclosure of the wrongdoing, reported the offense to government authorities, subtract 1 level.

(B) If high-level management did not have knowledge of the offense and the lack of knowledge was reasonable, subtract 1 level.

(C) If the offense represented an isolated incident of criminal activity that was committed notwithstanding bona fide policies and programs of the organization reflecting a substantial effort to prevent conduct of the type that constituted the offense, subtract 1 level.

(D) If the organization substantially cooperated in the investigation, or if the organization has taken substantial steps to prevent a recurrence of similar offenses, such as implementing appropriate monitoring procedures, subtract 1 level.

Do not apply an adjustment from this subsection if the offense guideline specifically incorporates it or if such factor is inherent in the offense.

(c) The fine guideline range is the amount set forth below corresponding to the adjusted offense level determined above; plus the amount, if any, from subsection (d) below.

Offense level	Fine table guideline range
1	$250–$500
2	500–1,000
3	850–2,000
4	1,500–3,500
5	2,500–6,000
6	3,200–8,000
7	4,000–10,000
8	7,500–18,000
9	14,000–34,000
10	25,000–64,000
11	45,000–103,000
12	70,000–160,000
13	90,000–206,000
14	108,000–240,000
15	160,000–400,000
16	300,000–700,000
17	525,000–1,000,000
18	700,000–1,520,000
19	1,100,000–2,850,000
20	2,100,000–4,750,000
21	3,250,000–9,000,000
22	6,500,000–18,000,000
23	13,000,000–36,000,000
24	24,000,000–65,000,000
25	48,000,000–136,000,000
26	80,000,000–170,000,000
27	100,000,000–204,000,000

If the offense level is greater than 27, the court shall extend the above table using, for each offense level, the dollar increments used between levels 26 and 27.

(d) Loss or Gain not Subject to Restitution or Disgorgement. Determine the greater of—

(1) Any loss caused by the offense that exceeds the amount of restitution made or ordered, or

(2) Any gain to the defendant from the offense that exceeds the amount that will otherwise be disgorged by the defendant.

Add the amount from this subsection to the minimum and maximum of the applicable range from subsection (c) above.

Commentary

Application Notes:

1. "Similar misconduct," as used in subsection (b)(1)(B), means conduct that is similar in nature to the conduct underlying the instant offense, without regard to whether or not such conduct violated the same statutory provision. For example, a defendant convicted of improperly disposing of waste by burning has committed similar misconduct if the defendant in the past improperly disposed of waste by discharge into water. The past misconduct is similar to the present offense despite the fact that two different federal statutes proscribe these wrongful waste-disposal activities.

2. "Prior conviction," as used in subsection (b) (1) (B), means conviction by verdict; a plea of guilty, including an Alford plea; or plea of nolo contendere.

3. "High-level management," as used in subsection (b), means a person who is an officer; a director; a partner; or any other agent or employee of an organization having duties of such responsibility that the conduct of such person may fairly be assumed to represent the policy of the organization. This definition is derived closely from the Model Penal Code, § 2.07 (1962). The definition is relevant to the application of certain aggravating and mitigating factors as well as to the imposition of probation under § 8D1.1. In practical effect, the definition includes such persons as an organizational president or general manager, but not a foreman in a large plant, in the absence of participation at higher levels of organizational authority. "High-level management" does not apply in the case of an organization composed of 5 or fewer individuals, including employees.

4. "Aided or abetted," as used in subsection (b), includes all conduct proscribed by 18 U.S.C. 2.

5. Under subsection (b) (1) (E) an enhancement is applicable where the relevant conduct (whether or not charged in the count of conviction) included bribing or unlawfully giving a gratuity to a public official, or conspiring or attempting to do so. This enhancement applies, for example, to conduct prescribed by 18 U.S.C. 201, 205, 212, 213, 292, and 1726.

6. Subsection (d) is designed to ensure that any loss caused by the offense that is not subject to restitution (e.g. where the victims are not identifiable) or gain to the defendant that will not otherwise be disgorged by the defendant is taken into account by the fine guideline range. "Restitution," as used in subsection (d)(1), includes the defendant's expenditures for remedial action under § 8B1.2 (Remedial Orders), § 8B1.3 (Community Service), and § 8B1.4 (Order of Notice to Victims). "Any gain to the defendant," as used in subsection (d)(2), means any profit attributable to the offense.

7. "Loss" as used in this section is to be construed broadly and includes, for example, damage to the environment and natural resources and negative health consequences.

Background: This section provides for the determination of the upper and lower limits of the fine guideline range.

Subsection (a) provides that the guideline fine range for organizations is determined under subsections (b)–(d) except where chapter Two provides a different rule. Currently, chapter Two, part R (Antitrust Offenses) has a separate provision for establishing the fine guideline range for these offenses.

§ 8C2.2. Determination of the Fine Within the Guideline Range

(a) Under 18 U.S.C. 3553(a) and 3572(a), the court, in determining the amount of the fine within the applicable guideline range, is required to consider:

(1) The nature and circumstances of the offense and the history and characteristics of the defendant;

(2) The need for the sentence to reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence, and protect the public from further crimes of the defendant;

(3) The defendant's income, earning capacity, size, and financial resources;

(4) The burden that the fine will impose upon the defendant or any person who is financially dependent on the defendant;

(5) Any pecuniary loss inflicted upon others as a result of the offense;

(6) Whether restitution is ordered or made and the amount of such restitution;

(7) The need to deprive the defendant of illegally obtained gains from the offense;

(8) Whether the defendant can pass on to consumers or other persons the expense of the fine; and

(9) Any measure taken by the defendant to discipline any officer, director, employee, or agent of the organization responsible for the offense and to prevent a recurrence of such an offense.

(b) In addition, the court, in determining the amount of the fine within the guideline range, should consider:

(1) The degree of difficulty of detecting the violation;

(2) Any collateral consequences of conviction, including civil obligations arising from the defendant's conduct; and

(3) Any other pertinent equitable considerations, including the aggravating and mitigating factors set forth in § 8C2.1.

(c) The amount of the fine should always be sufficient to ensure that the fine, taken together with other sanctions imposed, is punitive. 1

Commentary

Subsection (a) reflects factors that the court is required to consider under 18 U.S.C. 3553(a) and 3572(a).

Subsection (b) reflects additional factors set forth by the Commission.

Subsection (b) (1) provides that the court should consider, among other factors, the degree of difficulty of detecting the violation due either to the defendant's efforts to conceal the offense or to the inherent difficulty of detecting that particular type of offense. For purposes of general deterrence, offenses that are particularly difficult to detect should receive greater punishment.

3. Implementing the Sentence of a Fine

§ 8C3.1. Imposing a Fine

(a) Except to the extent restricted by the maximum fine authorized by statute, or any minimum fine required by statute, the fine required by the guidelines shall be that determined under § 8C1.1 or § 8C2.1, as applicable.

(b) Where the minimum guideline fine is greater than the maximum fine authorized by statute for the count of conviction (or aggregate maximum fine authorized for the counts of conviction), the maximum fine authorized by statute shall be the guideline fine.

(c) Where the maximum guideline fine is less than a minimum fine required by statute for the count of conviction (or aggregate minimum fine required for the counts of conviction), the minimum fine required by statute shall be the guideline fine.

Commentary

This section sets forth the interaction of the fine guideline range with the maximum fine authorized by statute for the count or counts of conviction and any minimum fine required by statute for the count or counts of conviction. Maximum fine levels are set forth in 18 U.S.C. 3571.

When the defendant is convicted on multiple counts, the maximum fine authorized by statute may increase. For example, in the case of a defendant convicted of two felony counts related to a $200,000 fraud, the maximum fine authorized by statute will be $500,000 on each count (an aggregate maximum authorized fine of $1,000,000). If however, the offense conduct covered by the two felony counts resulted in a total loss of $750,000, the maximum authorized fine would be $1,500,000 (twice the loss).

§ 8C3.2. Payment of the Fine—Organizations

Immediate payment of the fine shall be required unless the court finds that the defendant is financially unable to make such payment or that such payment would pose an undue burden on the defendant. If the court permits other than immediate payment, it shall endeavor to require full payment at the earliest possible date, either by

requiring payment on a date certain or by establishing an installment schedule.

Commentary

When the court permits other than immediate payment, the period provided for payment shall, in no event, exceed five years. 18 U.S.C. 3572(d).

§ 8C3.3. Reduction of Fine Based on Inability to Pay

(a) The court shall impose a fine below that otherwise required by the applicable guideline if the court finds that:

(1) (A) The primary purpose of the organization was to conduct a lawful activity; and

(B) It is not able and, even with the use of a reasonable installment schedule, is not likely to be able to pay the fine required under § 8C2.1; or

(2) imposition of the fine required by § 8C1.1 or § 8C2.1, as applicable, would impair its ability to make restitution ordered as a result of conviction.

The court shall impose a reduced fine under this section only to the extent necessary to address the issues set forth in subdivisions (1) (B) and (2) above.

(b) If the court imposes a reduced fine under this section, it shall place the defendant on probation in accordance with part D of this chapter.

Commentary

Background: Subsection (a) (2) carries out the requirement in 18 U.S.C. 3572(b) that the court impose a fine or other monetary penalty only to the extent that such fine or penalty will not impair the ability of the defendant to make restitution for the offense.

4. Offsets

§ 8C4.1. Fines Imposed Upon Owners of Closely Held Organizations

The fine imposed upon a small, closely held organization may be partially or totally offset by the amount of any criminal fines imposed upon the owners of the organization arising out of the conduct for which the organization was convicted, provided (1) there is substantial identity between the organization and the individual owners who have been convicted of offenses for such conduct, and (2) a majority of owners has been convicted of such offenses.

Commentary

Application Note:

1. For purposes of this section, an organization is closely held when a small number of individuals own a controlling interest in an organization. In order for an organization to be closely held, there need not be complete overlap between ownership and management.

Background: Many organizational defendants are closely held corporations, which for practical purposes, are the alter egos of their owner-managers.

The goal of this section is fairness. In cases in which there is substantial identity between the convicted organization and its convicted owners, a majority of whom have been convicted of offenses arising out of the conduct for which the organization was convicted, the fines against the organization may be offset by the individual fines. In making a determination under this section, the court should consider the likelihood of the government's collecting the fines imposed on the individual owners.

Only in a case of absolute identity between the organization and convicted individual owners should an offset completely obliterate the organization's fine.

5. Departures

§ 8C5.1. Substantial Assistance to Authorities (Policy Statement)

(a) Upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of the individuals responsible for the offense for which the organization is sentenced, a downward departure may be warranted.

(b) The appropriate reduction shall be determined by the court for reasons it states that may include consideration of the following:

(1) The court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;

(2) The nature and extent of the defendant's assistance; and

(3) The timeliness of the defendant's assistance.

§ 8C5.2. Risk of Death or Serious Bodily Injury (Policy Statement)

If the offense resulted in a foreseeable and substantial risk of death or serious bodily injury and the kind or degree of that risk was not adequately taken into consideration in setting the fine guideline range, an upward departure may be warranted. In making this determination, the court should take into account both the seriousness of the potential injury and the probability of its occurring.

§ 8C5.3. Other Grounds for Departure (Policy Statement)

To the extent that any policy statement from chapter 5, part K, Subpart 2 is relevant to the defendant, a departure from the applicable guideline range may be warranted.

Part D—Organizational Probation

§ 8D1.1. Imposition of Probation

An organization shall be sentenced to probation:

(a) If such sentence is necessary as a mechanism to impose restitution (§ 8B1.1), a remedial order (§ 8B1.2), or community service (§ 8B1.3);

(b) If the organization is sentenced to pay a monetary penalty, whether restitution, fine, or special assessment, and full payment is not to be completed within 30 days after sentence is imposed; if probation is imposed solely under this subsection, such probation shall terminate when the organization makes full payment of the penalty;

(c) If the court imposes a fine below the fine range, in accordance with § 8C3.3; or

(d) In the following circumstances:

(1) The court finds that at the time sentence is imposed the organization or a member of its high-level management had a criminal conviction within the previous five years for similar misconduct to that involved in the instant offense and any part of the instant offense occurred after that conviction; or

(2) The court finds that the offense indicated a significant problem with the organization's policies or procedures for preventing crimes, as evidenced, for example, by (A) high-level management involvement in, or encouragement or countenance of, the offense; (B) inadequate internal accounting or monitoring controls; or (C) a sustained or pervasive pattern of criminal behavior, unless the court finds that the problem has already been remedied, or that there is clear assurance that the problem will be remedied (e.g., where the defendant will be under intensive supervision by a regulatory agency); or

(3) The court finds that probation is necessary to ensure that changes are made within the organization to reduce the likelihood of future criminal conduct.

Commentary

Application Notes:

1. "High-level management," as used in this section, has the same meaning as in Application Note 3 of the Commentary to § 8C2.1

2. "Similar misconduct," as used in this section, has the same meaning as in Application Note 1 of the Commentary to § 8C2.1.

3. Unlawful activity that has been pervasive throughout the organization or a component of the organization within the meaning of subsection (d) (2) need not be limited to the type of unlawful activity resulting in the offense of conviction.

Background: This section sets forth the circumstances under which a sentence of probation is authorized as a substantive sanction or as a means to enforce another sanction, such as a fine or restitution.

§ 8D1.2. Term of Probation

When a sentence of probation is imposed, the term of probation shall be sufficient to accomplish the purposes for which probation is imposed but in no event more than five years, and in the case of a felony, at least one year

Commentary

Within the limits set by the guidelines, the term of probation should not extend beyond the court's immediate objectives in imposing the term of probation.

§ 8D1.3. Conditions of Probation (Policy Statement)

(a) Any sentence of probation shall include the condition that the organization not commit, or attempt to commit, another Federal, state, or local crime during the term of probation. See 18 U.S.C. 3563(a) (1).

(b) The court may impose other conditions that (1) are reasonably related to the nature and circumstances of the offense, the history and characteristics of the defendant, and the purposes of sentencing; and (2) involve only such deprivations of liberty or property as are reasonably necessary to effect the purposes of sentencing.

(c) If probation is imposed under § 8D1.1(b) or (c), it is recommended that the following conditions be imposed to the extent that they appear necessary to secure the defendant's obligation to pay any deferred portion of an order of restitution or fine:

(1) The organization shall make periodic submissions to the court or probation officer, at intervals specified by the court, reporting on the organization's financial condition and results of business operations and accounting for the disposition of all funds received.

(2) The organization shall submit to: (A) A reasonable number of regular or unannounced examinations of its books and records by the probation officer or auditors engaged by the court; and (B) interrogation of knowledgeable individuals within the organization.

(3) The organization shall be required to notify the court or probation officer immediately upon learning of any (A) material adverse change in its business or financial condition or prospects; or (B) the commencement of any criminal investigation or prosecution, bankruptcy proceeding, or major civil litigation or administrative proceeding against the organization.

(4) The organization shall be required to make periodic payments, as specified by the court, in the following priority: (1) The unpaid amount of the organization's restitution; (2) any fine; or (3) any other monetary sanction.

(d) If probation is ordered under § 8D1.1(d), it is recommended that the following conditions be imposed:

(1) The organization shall be required to develop and submit for approval by the court a. compliance plan for avoiding a recurrence of the criminal behavior for which it was convicted. The court may employ appropriate experts, including government agency experts, to assess the efficacy of a submitted plan, if necessary. The experts shall be afforded access to all material possessed by the organization that is necessary to a comprehensive assessment of the compliance plan. The court shall approve any plan that appears reasonably calculated to avoid recurrence of the criminal behavior, provided it is consistent with any applicable statutory or regulatory requirement.

(2) Upon approval of a compliance plan by the court, the organization shall notify its employees and shareholders of the criminal behavior and the compliance plan. Such notice shall be in a form to be prescribed by the court.

(3) The organization shall be required to make periodic reports to the court or probation officer, at intervals specified by the court, regarding the organization's progress in (A) implementing any compliance plan required and approved by the court under this subsection; and (B) avoiding the commission of future criminal offenses. Such reports shall be in a form to be prescribed by the court, and (A) shall disclose any criminal investigation or prosecution, and (B) shall not require disclosure of any trade secrets or other confidential business information, including future business plans. Such reports shall be available for review by a government agency with regulatory responsibility over the organization.

(4) In order to monitor whether the organization is following the approved compliance plan, the organization shall submit to: (A) A reasonable number of regular or unannounced examinations of its books and records by the probation officer or experts engaged by the court; and (B) interrogation of knowledgeable individuals within the organization.

Commentary

Subsection (a) sets forth the statutory requirement that each sentence of probation contain a condition that the defendant not commit another Federal, state, or local crime.

Subsection (b) authorizes the court to impose other conditions that (1) are reasonably related to the nature and circumstances of the offense, the history and characteristics of the defendant, and the purpose of sentencing; and (2) involve only such deprivations of liberty or property as are reasonably necessary to effect the purposes of sentencing. In meeting these requirements, the court should tailor such conditions of probation to the circumstances of the case. For example, the court may determine that a condition of probation is necessary to assure that a defendant not avoid the impact of a fine by inappropriately passing the costs thereof to consumers or other persons.

In addition, 18 U.S.C. 3563(a) provides that if a sentence of probation is imposed for a felony, the court shall impose at least one of the following as a condition of probation: a fine, restitution, or community service, unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more other conditions set forth in 18 U.S.C. 3563(b).

Part E—Special Assessments and Forfeitures

§ 8E1.1. Special Assessments—Organizations

Apply § 5E1.3 (Special Assessments).

Commentary

The provisions of § 5E1.3 (Special Assessments) are applicable to organizational defendants.

§ 8E1.2. Forfeiture—Organizations

Apply § 5E1.4 (Forfeitures).

Commentary

The provisions of § 5E1.4 (Forfeitures) are applicable to organizational defendants.

[FR Doc. 90-25915 Filed 11-2-90; 8:45 am]
BILLING CODE 2210-40-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 214
Monday, November 5, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, November 2, 1990.
PLACE: 2033 K St., NW., Washington, DC, 8th floor hearing room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 90–26209 Filed 11–1–90; 11:46 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, November 9, 1990.
PLACE: 2033 K St., NW., Washington, DC, 8th floor hearing room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 90–26210 Filed 11–1–90; 11:46 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, November 16, 1990.
PLACE: 2033 K St., NW., Washington, DC, 8th floor hearing room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 90–26211 Filed 11–1–90; 11:46 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, November 23, 1990.
PLACE: 2033 K St., NW., Washington, DC, 8th floor hearing room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 90–26212 Filed 11–1–90; 11:46 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Tuesday, November 27, 1990.
PLACE: 2033 K St., NW., Washington, DC, 5th floor hearing room.
STATUS: Open.
MATTERS TO BE CONSIDERED:

Application of the Chicago Board of Trade for contract designation in Three Month ECU Interest Rate Futures.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 90–26213 Filed 11–1–90; 11:47 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday November 30, 1990.
PLACE: 2033 K St., NW., Washington, DC, 6th floor hearing room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 90–26214 Filed 11–1–90; 11:47 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday November 30, 1990.
PLACE: 2033 K St., NW., Washington, DC, 8th floor hearing room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 90–26215 Filed 11–1–90; 11:47 am]
BILLING CODE 6351–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:02 p.m. on Tuesday, October 30, 1990, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Application of Kentucky Bank, F.S.B., a proposed new federal savings bank to be located at 1304 Paris Pike, Georgetown, Kentucky, for Federal deposit insurance.

Matters relating to the probable failure of certain insured banks.

Recommendation concerning administrative enforcement proceedings.

Recommendation regarding an assistance agreement with a depository institution.

Matters relating to the Corporation's assistance agreements with insured banks.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Vice Chairman Andrew C. Hove, Jr., Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: October 31, 1990.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 90–26158 Filed 10–31–90; 5:08 pm]
BILLING CODE 6714–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the National Museum Services Board

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government in the Sunshine Act (Public Law 94–409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIME & DATE: 8 a.m., Friday, November 16th, 1990.

STATUS: Open.

ADDRESS: Old Post Office Pavilion, 1100 Pennsylvania Avenue, NW., Main Floor—Room M09, Washington, DC 20506, (202) 786–0536.

FOR FURTHER INFORMATION CONTACT: William Laney, Executive Assistant to the National Museum Services Board and Deputy for Administration, Room 510, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786–0536.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting of November 16, 1990 will be open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum Services, Room 510—1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786–0536, TDD (202) 786–9136 at least seven (7) days prior to the meeting.

I. NMSB Chairman's Report & Approval of Minutes of July 27, 1990 Meeting
II. IMS Director's Report
III. Agency Agenda Reports
A. IMS Appropriation Issues
B. IMS Program Reports
C. IMS Public Affairs Update
D. IMS Legislative Affairs

Dated: October 29, 1990.

Daphne Wood Murray,
Director, Institute of Museum Services.
[FR Doc. 90–26034 Filed 11–1–90; 11:45 am]
BILLING CODE 7036–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [55 FR 45719, October 30, 1990].

STATUS: Closed meeting.

PLACE: 450 Fifth Street NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, October 25, 1990.

CHANGE IN THE MEETING: Deletions.

The following items were not considered at a closed meeting on Tuesday, October 30, 1990, at 2:30 p.m.

Formal orders of investigation.
Institution of administrative proceedings of an enforcement nature.

Commissioner Lochner, as duty officer, determined that Commission business required the above changes.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Daniel Gray at (202) 272–2300.

Dated: November 1, 1990.

Jonathan G. Katz,
Secretary.
[FR Doc. 90–26264 Filed 11–1–90; 4:04 pm]
BILLING CODE 8010–01–M

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federal register

Monday
November 5, 1990

Part II

Department of Education

Office of Special and Rehabilitative Services

Reauthorization of the Early Intervention Program for Infants and Toddlers With Disabilities; Notice of Public Meeting

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Reauthorization of the Early Intervention Program for Infants and Toddlers With Disabilities

AGENCY: Education.

ACTION: Notice of public meeting.

SUMMARY: The Secretary of Education announces a public meeting on the reauthorization of the Early Intervention Program for Infants and Toddlers with Disabilities under part H of the Education of the Handicapped Act, as amended. The purpose of the meeting is for the Federal Interagency Coordinating Council to receive input on the issues to be considered in developing proposals for the reauthorization of this Program.

Meeting Information: The public meeting is scheduled to be held from 10 a.m. to 3 p.m. on Wednesday, November 28, 1990 at the Wilbur J. Cohen Building, (North Building) First Floor Auditorium, 330 Independence Avenue, SW., Washington, DC 20202.

The Secretary encourages interested parties to attend the public meeting and requests that those parties participating provide a written copy of their comments. The meeting facilities and proceedings will be accessible to individuals with disabilities.

Comments: The Secretary also invites written comments regarding the issues to be considered in developing proposals for the reauthorization of part H of the Education of the Handicapped Act, as amended: Early Intervention Program for Infants and Toddlers with Disabilities. Comments must be received on or before the date of the public meeting.

ADDRESSES: Written comments should be addressed to Judy Schrag, Office of Special Education and Rehabilitative Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, room 3086), Washington, DC 20202–2651. Telephone: (202) 731–1007; deaf and hearing-impaired persons may also call (202) 732–1054 for TDD services.

FOR FURTHER INFORMATION CONTACT: Persons desiring to participate or seeking additional information should contact Judy Schrag, Office of Special Education and Rehabilitative Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue (Switzer Building, room 3086), SW., Washington, DC 20202–2651. Telephone: (202) 732–1007; deaf and hearing-impaired persons may also call (202) 732–1054 for TDD services.

Dated: October 30, 1990.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 90–26036 Filed 11–2–90; 8:45 am]

BILLING CODE 4000–01–M

federal register

Monday,
November 5, 1990

Part III

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Heavy Light-Duty Trucks; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-3816-5]

RIN 2060-AC39

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Heavy Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this rule, EPA is announcing the availability of and rates for nonconformance penalties (NCPs) for heavy-duty vehicles (references to vehicles are intended to include engines, and vice versa), as well as upper emission limits for heavy-duty vehicles subject to the 1991 and later model year emission standards for oxides of nitrogen and particulate matter. The availability of NCPs will allow a manufacturer of heavy-duty engines (HDEs) or heavy-duty vehicles (HDVs, which include heavy light-duty trucks) whose engines or vehicles fail to conform with certain applicable emission standards, but do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty.

EPA is also finalizing several revisions and additions to the generic NCP rule (50 FR 35374, August 30, 1985) that were included in the Notice of Proposed Rulemaking (55 FR 17532, April 25, 1990) for this final rule. These include:

- Defining the interaction between the NCP and emission averaging programs,
- Specifying the method of calculating the NCP usage factor (FRAC),
- Revising the annual production data and quarterly reporting requirements,
- Allowing the refund of NCP overpayments,
- Specifying rounding procedures used in NCP calculations,
- Defining the selection of configurations for Production Compliance Audit (PCA) testing,
- Specifying the interest calculations for delayed NCP payments, and
- Stipulating a special labeling requirement for 1991 and 1993 model year heavy-duty diesel engines.

DATES: This final rule will become effective on December 5, 1990.

Petitions for judicial review must be filed on or before January 4, 1991.

ADDRESSES: Materials relevant to this final rule are contained in Public Docket EN-87-02 at the Air Docket of the U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC, 20460, and are available for review in Room M-1500 between the hours of 8:30 a.m. to noon and 1:30 to 3:30 p.m. on weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT:

Mr. H. Scott Rauenzahn, U.S. Environmental Protection Agency, Manufacturers Operations Division (EN-340F) 401 M Street SW., Washington, DC 20460, telephone: (202) 382-2496.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

Section 206(g) of the Clean Air Act (the Act), 42 U.S.C. 7525(g), requires EPA to issue a certificate of conformity for HDEs or HDVs which exceed an applicable section 202(a) emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays an NCP established by rulemaking. In enacting section 206(g) as part of the Clean Air Act amendments of 1977, Congress intended NCPs as a response to perceived problems with technology-forcing heavy-duty emissions standards. (It should be noted, however, that the existence of NCPs does not change the criteria under which HDV standards have been and will be set under section 202.) Following *International Harvester* v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards were likely to cause. If strict standards were maintained, then some manufacturers, "technological laggards," might be unable to comply initially and would be forced out of the marketplace. NCPs were intended to remedy this potential problem. The laggards would have a temporary alternative to permit them to sell their engines or vehicles through payment of a penalty, yet leaders would not suffer an economic disadvantage compared to nonconforming manufacturers, because the NCP would be based, in part, on the amount of money the laggard and his customer saved from the nonconforming engine or vehicle.

Under section 206(g)(1), NCPs may be offered for HDVs or HDEs, which are engines to be installed in HDVs. The penalty may vary by pollutant and by class or category of vehicle or engine.

HDVs are defined by section 202(b)(3)(C) as vehicles in excess of 6,000 pounds gross vehicle weight rating (GVWR). HDVs include the part of the light-duty truck (LDT) class between 6,001 and 8,500 pounds GVWR (the heavy light-duty trucks, or HLDTs). It is important to note that HLDTs are not synonymous with another category referred to as light-duty trucks—category 2 (LDT2s). LDT2s are trucks with loaded vehicle weight greater than 3,750 pounds, while HLDTs are that portion of the LDT2 category which have a GVWR greater than 6,000 pounds. It is possible to have a LDT2 with GVWR less than or equal to 6,000 pounds. Such trucks are not HDVs and are not eligible for NCPs.

Section 206(g)(3) requires that NCPs:

- Increase with the degree of emission nonconformity;
- Increase periodically to provide incentive for nonconforming manufacturers to achieve the emission standards; and
- Remove any competitive disadvantage to conforming manufacturers.

Section 206(g) authorizes EPA to require testing of production vehicles or engines in order to determine the emission level on which the penalty is based. If the emission level of a vehicle or engine exceeds an upper limit of nonconformity established by EPA through regulation, the vehicle or engine would not qualify for an NCP under section 206(g) and no certificate of conformity could be issued to the manufacturer. If the emission level is below the upper limit but above the standard, it becomes the "compliance level," which is also the benchmark for warranty and recall liability; the manufacturer who elects to pay the NCP is liable for vehicles or engines that exceed the compliance level in-use. The manufacturer using an NCP does not have in-use warranty or recall liability for emissions levels above the standard but below the compliance level.

II. Background

A. NCP Availability and Penalty Rates

The generic NCP rules governing availability and use of NCPs (Phase I) were published in a previous rulemaking (50 FR 35374, August 30, 1985). In Phase I, EPA published regulations covering how NCPs will be made available for emission standards, how upper limits will be chosen, the general formula for calculating the penalties, and procedures for testing the degree of emissions nonconformity. Phase I requires EPA to make NCPs available if: (1) An emission standard becomes more difficult to meet; (2) substantial work is required to meet the standard; and (3) a technological laggard is likely to develop.

In a separate NCP rulemaking (Phase II, 50 FR 53454, December 31, 1985), NCPs were offered and penalty rates and upper limits established for five emission standards. They were:

- 1987 and later model year light-duty diesel trucks exceeding 6,000 lbs. GVWR, also referred to as heavy light-duty diesel trucks (HLDDTs), particulate matter (PM) standard of 0.26 grams per vehicle mile (g/mi),
- 1987 and later model year light heavy-duty gasoline-fueled engine (LHDGE) hydrocarbon (HC) standard of 1.1 grams per brake horsepower-hour (g/BHP-hr),
- 1987 and later model year light LHDGE carbon monoxide (CO) standard of 14.4 g/BHP-hr,
- 1990 model year heavy-duty diesel engine (HDDE) oxides of nitrogen (NO_x) standard of 6.0 g/BHP-hr, and
- 1988 through 1990 model year HDDE PM standard of 0.60 g/BHP-hr.

As discussed in the Notice of Proposed Rulemaking (NPRM) (55 FR 17532, April 25, 1990), EPA has applied the generic NCP concepts to the emission standards which become more stringent in the 1991 model year and is identifying emissions standards for which NCPs will be available, the upper limits for those standards and the numerical values for the variables in the penalty rate formula for particular subclasses of engines.

There are several emission standards which will become more stringent and will be offered NCPs in the 1991 model year. The more stringent standards are:

- 1991 and later model year petroleum-fueled HDDE NO_x emission standard of 5.0 g/BHP-hr,
- 1991 through 1993 model year petroleum-fueled HDDE PM emission standard of 0.25 g/BHP-hr,
- 1991 and later model year petroleum-fueled urban bus engine PM emission standard of 0.10 g/BHP-hr, and
- 1991 and later model year petroleum-fueled light-duty diesel trucks greater than 3750 lbs. loaded vehicle weight (LDDT2s) PM emission standard of 0.13 g/mi.

EPA addressed availability of NCPs for the methanol-fueled heavy-duty diesel engine and heavy-duty gasoline engine standards in the NPRM and concluded that those standards did not meet the eligibility criteria established in the generic rule. Also, NCPs for 1994 model year standards will be addressed in a future rulemaking.

B. Interaction Between NCP and Emission Averaging Programs

Also, as part of the final rule (50 FR 10606, March 15, 1985) establishing more stringent HDE NO_x and PM emission standards, EPA instituted a new program called emissions averaging. Under the averaging program, heavy-duty engine manufacturers can certify engine families both above and below emission standard(s) set by EPA and still be in compliance as long as the production weighted average of the engine families' emissions are at or below the standard. Industry has raised the question of whether they could use both credits from the averaging program and NCPs concurrently to certify an engine. EPA held a public workshop on May 4, 1987, to address the issue of how best to interrelate the NCP and averaging programs. As a result of that workshop, EPA proposed in the NPRM that engine families participating in the NCP program will be excluded from participating in the averaging program. EPA's final decision regarding the interaction between NCPs and averaging is described below.

Recently, EPA promulgated the trading and banking final rule (55 FR 30584, July 26, 1990), which expands the averaging program to include intermanufacturer and intertemporal trades. The interaction between NCPs and the trading and banking program was explained in that rulemaking.

C. Other Issues

Below is a discussion of other issues addressed in the NPRM.

1. Use of NCPs To Remedy In-Use Noncompliance

Prior to the publication of the NPRM, manufacturers requested that EPA reconsider allowing the payment of NCPs as a remedy for in-use noncompliance. Specifically, manufacturers wanted the ability to pay an NCP rather than recalling and fixing in-use HDEs from engine families which failed Selective Enforcement Audits or Recall Program testing. In the NPRM, EPA reviewed manufacturers arguments and concluded that the statute does not permit NCPs to be used as a remedy for in-use noncompliance. EPA received no further comments on this issue.

2. NCP Usage Factor (FRAC)

The usage factor (FRAC) increases the NCP each year depending on the extent of NCP usage the previous year. When EPA attempted to calculate the usage factor, an issue arose regarding whether optionally certified vehicles (engines certified in accordance with § 86.087-10(a)(3) and vehicles certified in accordance with § 86.085-1(b)) should be counted in the subclass in which they were certified or in the subclass in which they were intended to be used based on GVWR. IN the NPRM, EPA proposed that for the purposes of the FRAC calculation, optionally certified vehicles (engines or vehicles) certified under § 86.085-1(b) and § 86.087-10(a)(3)(i) should be included in the subclass in which they were certified, and requested comments on that proposal. EPA received no comments on this issue; thus, EPA is finalizing the provision as proposed for the reasons stated in the NPRM.

3. Annual Production Data Reporting Requirements

Another problem that arose in calculating the FRAC was lack of information. In order to calculate the FRAC, EPA needs as many manufacturers as possible to submit production data and production estimates. EPA accordingly proposed that manufacturers participating in the NCP program be required by April 30 of each year to report actual production of all (both NCP and non-NCP) engine families produced through March 31 of the model year and to estimate production of all engine families for the remainder of the current model year. These manufacturers would also be required to include in this report actual year-end NCP and non-NCP production from the previous model year. For those manufacturers who do not participate in the NCP program, EPA proposed the voluntary reporting of production by April 30 of each model year. EPA received no comments on this issue; thus, the provision is being finalized as proposed for the reasons stated in the NPRM.

4. Quarterly NCP Reporting Requirements

When administering the NCP program, EPA found that it could not always confirm that the interest payments made were accurate or verify whether an NCP payment was due. To obtain the necessary information, EPA proposed that manufacturers using NCPs for the model year include the interest payment calculation, if applicable, in the quarterly report and submit it even if the manufacturer has no NCP production in a given quarter. There were no comments on this provision, and it is being finalized as proposed for the reasons stated in the NPRM.

5. Refund of NCP Overpayments

One manufacturer overpaid the NCP penalty in the 1987 model year. The

manufacturer informed EPA of its mistake and asked that the overpayment be refunded. To address this type of situation, EPA proposed that the regulations be changed to allow an overpayment to be refunded to a manufacturer or offset by withholding future payment. The manufacturer would have the choice of the option. EPA received no comments on this issue, so its proposal is being finalized for the reasons stated in the NPRM.

6. Rounding of Values Used in NCP Calculations

Another problem discovered during the implementation of the NCP program was the inconsistency in rounding procedures. EPA accordingly proposed that the values COC_{60}, COC_{90}, and MC_{90} continue to be rounded to the nearest dollar and that the other predefined terms (CL, S, UL, F, and A_1) have unrounded values at least five figures after the decimal point. The Agency received no comments on this issue, and is finalizing the provision as proposed for the reasons stated in the NPRM.

7. Selection of Configuration for PCA Testing

EPA proposed to allow PCA testing on a configuration other than the configuration used for certification testing in appropriate cases, such as when the configuration used in certification is not being produced in sufficient numbers to be tested in a PCA. Further, EPA proposed that this alternate configuration be the one expected to have the highest level of emissions for the pollutant(s) for which the NCP is to be paid. EPA received no comment on this issue and is finalizing the provision as proposed for the reasons stated in the NPRM.

8. Interest Payments

EPA found during the implementation of the NCP program that the regulations did not cover the payment of interest in the case of an approved alternate payment plan. Also, the Agency discovered that the interest rate specified in § 86.1113–87(g)(2) is not consistent with the Debt Collection Act of 1982. EPA proposed to revise the regulations to indicate that the current regulations pertaining to interest payments also pertain to delayed payments resulting from an alternate payment plan and to amend the regulations so that the interest charged is the interest rate published annually by the Secretary of the Treasury pursuant to the Debt Collection Act of 1982. EPA received no comments on this provision and is finalizing the provision as proposed for the reasons stated in the NPRM.

9. Special Labeling Requirements for 1991 to 1993 Model Year Heavy-Duty Diesel Engines (HDDEs)

For the 1991 to 1993 model years, the PM standard which applies to HDDEs depends on the type of vehicle into which the engine is installed. HDDEs installed in urban buses must meet a 0.10 gram per brake horsepower-hour (g/BHP–hr standard. To eliminate any confusion as to which HDDE can be installed on a particular vehicle, EPA proposed that manufacturers be required to include specific language on the emission label indicating the application for which the engine has been certified. EPA received two comments on this issue and has modified the original proposal to allow waiving the labeling requirements for heavy-duty engines not used in urban bus applications in appropriate cases. This issue is discussed further in section (D)(2) of the Summary and Analysis of Comments, below.

III. Summary and Analysis of Comments

A public hearing was not requested and, therefore, was not held for this rulemaking. Several comments were received after May 25, 1990, which was the close of the comment period, and have been incorporated in this discussion. Comments were received from seven entities: the Engine Manufacturers Association (EMA), the City of New York Department of Environmental Protection (NYCDEP), the American Public Transit Association (APTA), the Manufacturers of Emission Controls Association (MECA), General Motors Corporation (GM), the Metro-Dade Transit Agency (MDTA), and The Fixible Corporation (Fixible). Comments will be addressed below by topic.

A. Availability of Nonconformance Penalties

Most parties supported the NCP availability determinations EPA announced in the April 25, 1990 NPRM. MECA stated that "EPA has correctly applied the eligibility criteria for determining for which 1991 standards NCPs will be available." MDTA indicated "the approach outlined in the notice is reasonable and satisfactory." However, MDTA stated that "the proposed rule may be unnecessary in light of the provisions of the new clean air act." APTA supported the NCP proposal, but "believes that NCPs should be available regardless of any controls that may be placed on diesel fuel sulfur." EMA has "no specific comments concerning the technical aspects of the proposed rulemaking" but took "issue with EPA for delaying promulgation of nonconformance penalties for 1991 model year emissions standards beyond the point when they can offer engine manufacturers an opportunity to make a reasoned business decision concerning their use." GM "strongly supports the implementation of nonconformance penalty (NCP) programs for the 1991 model year heavy-duty engine and vehicle standards proposed in the NPRM." GM also supported EMA's comments. Fixible also "supports EPA's proposed regulations on NCPs."

One party, NYCDEP, stated: "If indeed not one manufacturer can meet the 1991 model year emission standard, a penalty is preferable to no program at all." NYCDEP also stated that "if the emission standards still cannot be met after the 1991 model year, the NCP program should only be utilized upon a determination that not one manufacturer is able to meet the standards, and the penalty should be increased for each model year of application."

EPA believes that MDTA may have been looking at the proposed rule too narrowly when it stated that "the proposed rule may be unnecessary in light of the provisions of the new Clean Air Act." It is true that the proposed Clean Air Act Amendments would delay the 0.10 g/BHP-hr urban bus PM standard. However, this rule also applies to diesel-fueled heavy-duty engines to be used in trucks, and the Agency has made a determination that these engines meet the NCP eligibility criteria for the 1991 model year HDE PM and NO_x standards. Also, Congress has yet to pass the final version of the Clean Air Act amendments. The Agency cannot rely on proposed changes to the Act which may affect this rule. Instead, the Agency must act on current statutory and regulatory requirements. If the Clean Air Act amendments as eventually enacted do affect the basis for decisions reached in this rulemaking, those decisions will be revisited in a later rulemaking.

In response to NYCDEP, EPA notes that Congress intended NCPs to be available when some manufacturers could meet the revised standard. The statute and the legislative history make clear that Congress contemplated that some manufacturers would be meeting the standards while other manufacturers, lagging in their development of necessary technology, would be paying NCPs. EPA joined manufacturers, environmental groups, other individuals, and government agencies in a negotiated rulemaking to implement section 206(g). EPA believes that the NCP eligibility criteria contained in the generic NCP rule (50 FR 35374) achieve the goals of that section.

With regard to APTA's comment that "NCPs should be available regardless of any controls that may be placed on diesel fuel sulfur," EPA believes APTA misinterpreted the Agency's intentions when APTA assumed the use of low sulfur diesel fuel in the calculation of the urban bus PM penalty rate. The Agency agrees with APTA and did not intend to legally mandate the use of low sulfur fuel at this time when it proposed penalty rates based on low sulfur fuel. Rather, EPA believes that the use of low sulfur fuel on a captive fleet such as urban buses is a cost effective step that could be taken to lower PM emissions from urban buses. Also, since a low sulfur diesel-fueled engine would accumulate less sulfur-based particulate matter (which is not regenerated), trap replacement would be less frequent with a low sulfur diesel-fueled engine, reducing maintenance costs. Largely for these two reasons, and EPA's belief that low sulfur diesel fuels will become more readily available in the coming years, EPA expects low sulfur fuel to be used in urban buses, especially trap-equipped urban buses.

B. Penalty Rate Costs

EPA received comments on the Penalty Rates from three groups. MDTA stated that "the same standards and penalties should apply to trucks and buses, as well as truck and bus engines." MECA stated that "EPA's estimates of the cost of diesel particulate trap oxidizers (MC–50 and MC–90) are low in light of public statements made by engine manufacturers and others regarding the cost of these controls." GM stated that EPA's "late publication" of this rule may cause late NCP payments. GM noted that "under the proposed changes in § 86.113–87(g)(5)(i), we become responsible for an interest payment on the late payments." GM stated that "such a result is unreasonable" and suggested "that provisions be included that would allow late payments, without interest, if they are the result of situations beyond the control of the manufacturer."

Regarding MDTA's statement, in the case of NO_x penalties, where both truck and bus engines must meet the same emission standard, the same penalties do apply to both truck and bus engines. However, in the case of PM, truck and bus engines must meet different standards, and the bus engine cost of compliance takes into account the added costs associated with meeting the more stringent standard. The question of whether truck and bus engines should meet the same standards is beyond the scope of this rule.

To support its statement that EPA underestimated particulate trap oxidizer costs, MECA included in its comments cost figures supplied by member trap manufacturers, as well as briefing papers presented by Cummins Engine Company (Cummins) to APTA at APTA's 1990 Bus Clean Air Workshop in Los Angeles, California on April 17–20, 1990. MECA indicated that EPA's cost calculation was incorrect in four ways: (1) It underestimated the cost of trap hardware for HLDDTs, (2) it failed to take into account that a replacement filter would be necessary, (3) it failed to take into account warranty costs, and (4) it underestimated the cost of manufacturing trap for urban buses.

In Attachment I of its submittal, MECA stated its belief that EPA's trap hardware cost for HLDDTs of $440 is too low and should be increased to $1,200. From the context of MECA's comments, EPA understands MECA as referring to trap hardware costs for the heavy light-duty diesel truck (HLDDT) class. EPA based its cost estimates on information from GM, the only producer of HLDDTs, on the particulate trap it is developing for that class, and on additional information submitted by Sierra Research as part of the development of the NPRM (see Appendix 1 of the support document of the NPRM, Item III–B–1 in Docket EN–87–02). EPA's close look at the GM trap program gives the Agency confidence in the cost estimates it used in the NPRM. MECA's estimates, on the other hand, are not substantiated in any way. Consequently, EPA continues to believe that its cost estimates are the best available.

In Attachment II of its comment, MECA mentioned that a replacement filter would be necessary every 150,000 miles at a cost of $1,500 to $2,000. EPA, in fact, included the cost of a replacement filter in its assessment of maintenance costs. The Agency estimated maintenance costs to be $1,200, discounted over ten years. However, EPA did detect a typographical error in this maintenance cost. Endnote 8 on page 24 of the attachment to the support document (item III–B–1 in docket EN–87–02) should have read "$300/year and $1800/vehicle for transit buses" and not "$300/year and $1200/vehicle for transit buses." Discussion of this matter is further explained in the support document for the Final Rule (item IV–B–1). Both the COC_{60} and COC_{90} values for the urban bus PM standard NCP have been increased $600 to correct this error.

Attachment II also stressed that "full warranty costs to meet proposed federal requirements in 1991 will be necessary" and that "estimates for those warranty costs * * * are not currently available." As in past NCP rulemakings, EPA did not break out warranty costs in its calculation of the proposed penalty rates. EPA does not believe warranty costs will be considered because the Agency assumes manufacturers will adequately develop their products to assure general reliability in use. Moreover, warranty costs would be difficult to predict. MECA itself could not provide warranty cost estimates, nor could it, until after manufacturers gain in-use experience with the traps. EPA, however, must make penalty rate decisions now, so that manufacturers can make plans for the upcoming model year. Since warranty costs are likely to be small in comparison to development and manufacturing costs and cannot be accurately predicted in any event, EPA believes it is reasonable not to account for them separately in determining penalty rates. For the reasons stated above, EPA continues to believe that its estimate of trap oxidizer costs accurately reflect the cost of this equipment.

MECA provided two estimates from unnamed trap manufacturers of the cost of manufacturing a trap that would permit compliance with the urban bus standard: $5,000 and $4,000 to $8,000. It also forwarded the Cummins paper that estimates that an engine with a trap system used for the 0.10 g/BHP-hr standard "will cost approx[imately] 2 times what today['']s diesel engine costs." EPA had previously estimated the manufacturing cost of a particulate trap system for urban buses to be approximately $1,000. Based on MECA's comment, EPA reevaluated its original analysis included in the proposal. EPA contacted MECA and several industry sources to obtain cost estimates for manufacturing the components of a trap system for urban buses. MECA was unable to provide a breakdown of its cost estimates. However, after discussions with industry sources EPA believes it underestimated the cost of the ceramic filter element in particulate trap for urban buses. In this final rule EPA is revising its estimate of the manufacturing cost of a particulate trap system for urban buses from $1,000 to an average cost of $1,585 and a high cost of $2,000. As a result EPA is revising the COC_{60}, COC_{90} and MC_{90} values for urban buses as follows:

COC_{50} = $4,500
COC_{90} = $7,165
MC_{50} = $22,971 per g/BHP-hr

The basis for this revised cost is detailed in the support document for the final rule (Docket EN–87–02, Item IV–B–1.)

GM expressed concern that the late publication of this rule may cause it to be responsible for interest on NCP payments due prior to the publication of the rule. EPA agrees that manufacturers should not be responsible for interest on NCP payments due before this rule is published. EPA expects to publish this rule in time for manufacturers to make NCP payments prior to the final date these payments are due. However, if this rule is not published by that date, manufacturers will not be held responsible for interest on NCP payments for standards covered under this rule if those payments are received within 60 days after the date the rule is published.

C. Averaging/Credit Use Issues

MECA was the only party to comment on this aspect of the rulemaking. MECA stated that "averaging should not be available for subclasses eligible for NCPs or, at a minimum unavailable if a manufacturer elects to use NCP for any engine in that subclass." MECA then said that EPA's proposal was not acceptable because it would "allow manufacturers to pay NCPs on some engine families" and that this would lead to a compliance program in which ". . . emission reductions are achieved on paper, but real world reductions are not."

EPA does not agree. MECA does not explain why emission reductions "would be achieved on paper," but not in the "real world," and EPA sees no basis for believing the proposed rule would have such an effect. The averaging program has been constructed to assure that emission levels that exceed the standard are offset by emission levels below the standards, so that required emission reductions are achieved with or without averaging.

In the case of NCPs, Congress contemplated that their use would result in emissions levels in excess of those permitted by the standards. Allowing such temporary exceedances, however, was Congress' answer to the dilemma posed by technology-forcing emission standards: if standards were to be based on what most manufacturers could accomplish in the available leadtime, the potential existed for such standards to drive technologically lagging manufacturers out of the market. NCPs thus provide technological laggards with more time to comply, but at an ever-increasing price, so that they have no incentive to comply as quickly as possible.

The proposed interrelationship between the averaging and NCP programs (prohibiting engine families which use NCPs from participating in the averaging program) preserves the purposes and safeguards of both, while affording manufacturers maximum flexibility to meet the standards. The proposed interrelationship would also benefit the environment by encouraging manufacturers to offset a noncompliance by manufacturing cleaner engines, and reducing fleetwide emissions that would have occurred if only NCPs were available. For the reasons given here and in the NPRM, the Agency has decided to make final its proposal without change.

The trading and banking rule (55 FR 30584, July 26, 1990) also restricts the manufacturers ability to generate credits from averaging sets in which the manufacturer is using an NCP. Section 86.091–15(g)(4) of the trading and banking rule forbids a manufacturer that has any engine family in a given averaging set which is using NOx and/or particulate NCPs from generating credits for banking and trading from any engine family in the averaging set.

D. Administrative Issues

1. APTA's Petition for the Repeal of the 1991 Urban Bus PM Standard

In February 1989, APTA filed a petition with the Agency requesting that the Agency relax the 1991 urban bus particulate matter standard because APTA believes that manufacturers of HDDEs will not be able to meet the standards, citing a lack of existing technology to address the problem. In APTA's comments on this rulemaking, APTA urged "that EPA act swiftly on our (APTA's) petition." Also, Flxible requested EPA to "grant APTA's petition." EPA recognizes APTA's and Flxible's concern, however, the issue of whether the urban bus standard should be relaxed is outside the scope of this rulemaking and cannot be dealt with here.

2. Labeling Requirement

Two parties, APTA and GM, addressed the proposed labeling requirement to distinguish urban bus engines from other heavy duty diesel engines. EPA proposed that engines certified to the urban bus requirements be labeled to indicate they are certified for use in urban buses and that other heavy duty diesel engines be labeled as not certified for use in urban buses. APTA and GM commented that it is necessary only to label the urban bus engines. However, EPA has received a number of inquiries regarding the purchase of other engines for use in urban buses and believes that the dual labeling requirement is appropriate to help reduce potential confusion by the purchaser over what is and what is not a certified urban bus engine. GM also commented that its 1991 heavy duty engine labels had already been printed and that it would be unfair at this late date to require new labels. To address this concern (which we believe may affect other manufacturers as well as GM), we have included a provision in the regulatory language in the final rule indicating that EPA will consider temporarily waiving the labeling requirement for non-urban bus engines in cases such as this.

3. Trading and Banking of Emission Credits

MECA commented "that EPA's trading and banking program is inconsistent with the requirements of the Clean Air Act, will impede the development and use of control technology, and result in less emission control than otherwise would be achieved."

MECA's comment is outside the scope of this rulemaking and is addressed in the preamble to the Trading and Banking final rule (55 FR 30584, July 26, 1990).

4. Terminology Used in This Rulemaking

Flxible mentioned that it thought EPA's term petroleum-fueled heavy-duty diesel engine was "redundant at best, and at worst misleading" and suggested that the term heavy-duty diesel engine (HDDE) be used instead. EPA does not agree that this term is misleading. The term diesel refers, not to the fuel type, but to the thermodynamic cycle under which the engine operates. The term petroleum-fueled refers to the acceptable petroleum based fuel(s) outlined in the CFR for engines operating under that particular thermodynamic cycle. For instance, the term petroleum-fueled heavy-duty diesel engine refers to an engine which is fueled by DF–1 or DF–2 and operates using the diesel thermodynamic cycle while the term methanol-fueled heavy duty Otto cycle engine would refer to an engine which is fueled by methanol and operates under the Otto thermodynamic cycle.

This distinction is necessary because the engine family, the applicable standard(s), and the status under the NCP, averaging, and trading and banking programs are determined by what type of fuel the engine family uses and what thermodynamic cycle it operates under. If EPA were to use the term HDDE in this rulemaking, as Flxible has requested, it would not be clear whether EPA is referring to methanol- or petroleum-fueled engines. Since EPA has determined that methanol fueled engines do not meet the eligibility requirements for NCPs but petroleum-fueled engines do, this distinction is particularly warranted in this case. For these reasons, EPA rejects Flxible's arguments.

IV. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement that a Regulatory Impact Analysis (RIA) be prepared. Major regulations are defined as any regulation that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individuals, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation will not have an annual effect on the economy in excess of $100 million and will not cause a major increase in the price of HDEs above those that would otherwise occur from compliance with the emission standards themselves. This regulation is intended to assist manufacturers that are having difficulty developing and marketing vehicles which comply with the 1991 and later model year emission standards. Without this rule a manufacturer experiencing difficulty in complying with the 1991 model year emission standards (after the use of credits) has only two alternatives: fix the nonconforming engines or prevent their introduction into commerce. A manufacturer would be prevented from introducing nonconforming engines into commerce if a fix was not readily available. NCPs provide relief from these disruptions.

In addition, NCPs are calculated to deprive nonconforming manufacturers of any cost savings and competitive advantages stemming from marketing a nonconforming engine. Thus, NCPs will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Administrator has determined that this proposal does not constitute a "major" regulation according to these established criteria and that a RIA is not required.

V. OMB Review

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any written EPA response to those comments are available in the public docket (EN–87–02).

VI. Impact on Small Entities (Compliance With the Regulatory Flexibility Act)

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, the Administrator is required to certify whether this regulation will have a significant impact on a substantial number of small business entities. None of the affected manufacturers could be classified as small. Even if some were small, there would not be a substantial number of those. Moreover, as already discussed, the NCP program can be expected to benefit manufacturers.

VII. Information Collection Requirements

This rule requires that manufacturers perform certain recordkeeping and submit certain reports to EPA. The Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, provides that reporting and recordkeeping requirements be approved by OMB before they can be imposed on the public. The information collection requirements in this proposed rule have been addressed in previous rulemaking and approved by OMB (OMB control no. 2060–0132). However, any person wishing to comment on these requirements is invited to do so. Comments on these requirements should be submitted to OMB, Office of Information and Regulatory Affairs, 728 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA."

VIII. Judicial Review

The final actions described in this notice are made under the authority of section 202, 203, 206, 207, 208, and 301(a) of the Clean Air Act, and are nationally applicable. Under section 307(b)(1) of the Clean Air Act, judicial review may be sought only in the United States Court of Appeals for the District of Columbia.

Petitions for judicial review must be filed on or before January 4, 1991. Judicial review may not be obtained in subsequent enforcement proceedings.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Gasoline, Motor vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: October 24, 1990.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 86 is amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Sections 202, 203, 206, 207, 208, and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a).

2. Paragraphs (a)(1)(iii)(C) and (a)(1)(iv)(C) of § 86.091–9 of subpart A are revised to read as follows:

§ 86.091–9 Emission standards for 1991 and later model year light-duty trucks.

(a)(1) * * *

(iii) * * *

(C) A manufacturer may elect to include any light-duty truck engine families in the NO_x averaging program, provided that it does not elect to pay an NCP for noncompliance with any emission standard applicable to that light-duty truck family. Trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas. Petroleum-fueled and methanol-fueled engine families may not be averaged together. Otto-cycle and diesel engine families may not be averaged together. If the manufacturer elects to participate in the NO_x averaging program, individual family NO_x emission limits may not exceed 2.3 grams per mile. If the manufacturer elects to average together NO_x emissions of light-duty trucks subject to the standards of paragraphs (a)(1)(iii)(A) and (a)(1)(iii)(B) of this section, its composite NO_x standard applies to the combined fleets of light-duty trucks up to and including, and over, 3750 lbs loaded vehicle weight included in the average, and is calculated as defined in § 86.088–2.

* * * * *

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(iv) * * *

(C) A manufacturer may elect to include any diesel light-duty truck engine families in the appropriate particulate averaging program (petroleum and methanol), provided that it does not elect to pay an NCP for noncompliance with any emission standard applicable to that light-duty truck family. Trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas, and light-duty trucks subject to the standard of paragraph (a)(1)(iv)(B) of this section may be averaged only with other light-duty trucks subject to the standard of paragraph (a)(1)(iv)(B) of this section. Averaging is not permitted between fuel types. If the manufacturer elects to average both light-duty trucks subject to the standards of paragraphs (a)(1)(iv)(A) of this section and light-duty vehicles together in the appropriate particulate averaging program, its composite particulate standard applies to the combined set of light-duty vehicles and light-duty trucks that are included in the average and is calculated as defined in § 86.088-2.

* * * * *

3. Paragraphs (g)(2) and (g)(3) of § 86.091-15 of subpart A are revised to read as follows:

§ 86.091-15 HC, and particulate averaging, trading, and banking for heavy-duty engines.

* * * * *

(g) * * *

(2) Engine families paying an NCP for noncompliance of any emission standard *may not*:

(i) Participate in the averaging program,

(ii) Generate emission credits for any pollutant under banking and trading, and

(iii) Use emission credits for any pollutant from banking and trading.

(3) If a manufacturer has any engine family to which application of NCPs and averaging, banking, and trading credits is desired, that family must be separated into two distinct families. One family, whose FEL equals the standard, must use NCPs only, while the other, whose FEL does not equal the standard, must use emission credits only.

* * * * *

4. Section 86.091-35 of subpart A is amended by adding paragraph (a)(3)(iii)(N) to read as follows:

§ 86.091-35 Labeling.

(a) * * *

(3) * * *

(iii) * * *

(N) For diesel engines which have been certified to comply with the urban bus particulate standard of 40 CFR 86.091-11(a)(1)(iv), the statement "This engine is certified for use in an urban bus as defined at 40 CFR 86.091-2." Unless waived by the Administrator on the basis of impracticality, for diesel engines not certified to comply with the urban bus particulate standard, the statement "This engine is not certified for use in an urban bus as defined at 40 CFR 86.091-2. Sales of this engine for use in an urban bus is a violation of Federal law under the Clean Air Act."

* * * * *

5. Paragraph (b) of § 86.1102-87 of subpart L is revised to read as follows:

§ 86.1102-87 Definitions.

* * * * *

(b) As used in this subpart, all terms not defined herein have the meaning given them in the Act.

Compliance level means the deteriorated pollutant emissions level at the 60th percentile point for a population of heavy-duty engines or heavy-duty vehicles subject to Production Compliance Audit testing pursuant to the requirements of this subpart. A compliance level for a population can only be determined for a pollutant for which an upper limit has been established in this subpart.

Configuration means a subdivision, if any, of a heavy-duty engine family for which a separate projected sales figure is listed in the manufacturer's Application for Certification and which can be described on the basis of emission control system, governed speed, injector size, engine calibration, or other parameters which may be designated by the Administrator, or a subclassification of light-duty truck engine family emission control system combination on the basis of engine code, inertia weight class, transmission type and gear ratios, rear axle ratio, or other parameters which may be designated by the Administrator.

NCP means a nonconformance penalty as described in section 206(g) of the Clean Air Act and in this subpart.

PCA means Production Compliance Audit as described in § 86.1106-87 of this subpart.

"Subclass" means a classification of heavy-duty engines of heavy-duty vehicles based on such factors as gross vehicle weight rating, fuel usage (gasoline-, diesel-, and methanol-fueled), vehicle usage, engine horsepower or additional criteria that the Administrator shall apply. Subclasses include, but are not limited to:

(i) Light-duty gasoline-fueled Otto cycle trucks (6,001–8,500 lb. GVW)

(ii) Light-duty methanol-fueled Otto cycle trucks (6,001–8,500 lb. GVW)

(iii) Light-duty petroleum-fueled diesel trucks (6,001–8,500 lb. GVW)

(iv) Light-duty methanol-fueled diesel trucks (6,001–8,500 lb. GVW)

(v) Light heavy-duty gasoline-fueled Otto cycle engines (for use in vehicles of 8,501–14,000 lb. GVW)

(vi) Light heavy-duty methanol-fueled Otto cycle engines (for use in vehicles of 8,501–14,000 lb. GVW)

(vii) Heavy heavy-duty gasoline-fueled Otto cycle engines (for use in vehicles of 14,001 lb and above GVW)

(viii) Heavy heavy-duty methanol-fueled Otto cycle engines (for use in vehicles of 14,001 lb. and above GVW)

(ix) Light heavy-duty petroleum-fueled diesel engines (see § 86.085-2(a)(1))

(x) Light heavy-duty methanol-fueled diesel engines (see § 86.085-2(a)(1))

(xi) Medium heavy-duty petroleum-fueled diesel engines (see § 86.085-2(a)(2))

(xii) Medium heavy-duty methanol-fueled diesel engines (see § 86.085-2(a)(2))

(xiii) Heavy heavy-duty petroleum-fueled diesel engines (see § 86.085-2(a)(3))

(xiv) Heavy heavy-duty methanol-fueled diesel engines (see § 86.085-2(a)(3))

(xv) Petroleum-fueled Urban Bus engines (see § 86.091-2)

(xvi) Methanol-fueled Urban Bus engines (see § 86.091-2).

For NCP purposes, all optionally certified engines and/or vehicles (engines certified in accordance with § 86.087-10(a)(3) and vehicles certified in accordance with § 86.085-1(b)) shall be considered part of, and included in the FRAC calculation of, the subclass for which they are optionally certified.

Test Sample means a group of heavy-duty engines or heavy-duty vehicles of the same configuration which have been selected for emission testing.

Upper limit means the emission level for a specific pollutant above which a certificate of conformity may not be issued or may be suspended or revoked.

6. Section 86.1105-87 of subpart L is amended by revising paragraphs (c) and (d) to read as follows:

§ 86.1105-87 Emissions standards for which nonconformance penalties are available.

* * * * *

(c) Effective in the 1991 model year, NCPs will be available for the following emission standards:

(1) Petroleum-fueled diesel urban bus engine [as defined in § 86.091-2]

particulate matter emission standard of 0.10 grams per brake horsepower-hour.

(i) The following values shall be used to calculate an NCP for the standard set forth in § 86.091-11(a)(1)(iv)(A) in accordance with § 86.1113-87(a):

(A) COC_{86}: $4,500
(B) COC_{90}: $7,165
(C) MC_{86}: $22,971 per gram per brake horsepower-hour.
(D) F: 1.2
(E) UL: 0.60 grams per brake horsepower-hour

(ii) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.091-11(a)(1)(iv)(A) in accordance with § 86.1113-87(h): 0.05

(2) Petroleum-fueled diesel heavy-duty engine particulate matter emission standard of 0.25 grams per brake horsepower-hour.

(i) For petroleum-fueled light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113-87(a):

(1) COC_{86}: $1,480
(2) COC_{90}: $1,513
(3) MC_{86}: $5,833 per gram per brake horsepower-hour.
(4) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113-87(h): 0.07

(ii) For petroleum-fueled medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113-87(a):

(1) COC_{86}: $905
(2) COC_{90}: $2,169
(3) MC_{86}: $7,083 per gram per brake horsepower-hour.
(4) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113-87(h): 0.11

(iii) For petroleum-fueled heavy heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113-87(a):

(1) COC_{86}: $930
(2) COC_{90}: $1,630
(3) MC_{86}: $22,500 per gram per brake horsepower-hour.
(4) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113-87(h): 0.11

(3) Petroleum-fueled diesel heavy-duty engine oxides of nitrogen standard of 5.0 grams per brake horsepower-hour.

(i) For petroleum-fueled light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113-87(a):

(1) COC_{86}: $830
(2) COC_{90}: $946
(3) MC_{86}: $1,167 per gram per brake horsepower-hour.
(4) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113-87(h): 0.12

(ii) For petroleum-fueled medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.113-87(a):

(1) COC_{86}: $905
(2) COC_{90}: $1,453
(3) MC_{86}: $1,417 per gram per brake horsepower-hour.
(4) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113-87(h): 0.11

(iii) For petroleum-fueled heavy heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113-87(a):

(1) COC_{86}: $930
(2) COC_{90}: $1,590
(3) MC_{86}: $2,250 per gram per brake horsepower-hour.
(4) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113-87(h): 0.11

(4) Petroleum-fueled diesel light-duty trucks (between 6,001 and 14000 lbs GVW) particulate matter emission standard of 0.13 grams per vehicle mile.

(i) The following values shall be used to calculate an NCP in accordance with § 86.1113-87(a):

(A) COC_{86}: $711
(B) COC_{90}: $1,398
(C) MC_{86}: $2,960 per gram per vehicle mile.
(D) F: 1.2

(ii) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113-87(h): 0.01

(d) The values of COC_{86}, COC_{90}, and MC_{86} in paragraphs (a) and (b) of this section are expressed in December 1984 dollars. The values of COC_{86}, COC_{90}, and MC_{90} in paragraphs (c) of this section are expressed in December 1989 dollars. These values shall be adjusted for inflation to dollars as of January of the calendar year preceding the model year in which the NCP is first available by using the change in the overall Consumer Price Index, and rounded to the nearest whole dollar in accordance with ASTM E29-67.

* * * * *

7. Section 86.1106-87 is amended by revising paragraph (a)(2) to read as follows:

§ 86.1106-87 Production compliance auditing.

* * * * *

(a) * * *

(2) PCA testing must be conducted on the same configuration tested during Certification, unless an alternate configuration is approved by the Administrator.

* * * * *

8. Section 86.1113-87 is amended by revising paragraphs (a)(3)(iv), (a)(6), (g)(3) introductory text, (g)(3)(i), and adding paragraphs (g)(5) and (g)(6) to read as follows:

§ 86.1113-87 Calculation and payment of penalty.

(a) * * *

(3) * * *

(iv) In calculating the NCP for year n, the value $frac_{i=1}$ for i=n will include actual NCP usage through March 31 of model year n-1 and EPA's estimate of additional usage for the remainder of model year n-1 using manufacturer input. All manufacturers using NCPs must report by subclass actual NCP and non-NCP production numbers through March 31, an estimate of NCP and non-NCP production for the remainder of the model year, and the previous year's actual NCP and non-NCP production to EPA no later than April 30 of the model year. If EPA is unable to obtain similar information from manufacturers not using NCPs, EPA will use projected sales data from the manufacturers' application for certification in computing the total production of the subclass and the $frac_{i=1}$. The value of $frac_{i=1}$ will be corrected to reflect actual year-end usage of NCPs and a corrected AAF will be used to establish NCPs in future years. The correction of previous year's AAF will not affect the previous year's penalty.

* * * * *

(6) In calculating the NCP, appropriate values of the following predefined terms should be used: CL, S, UL, F, and A_i. For all other terms, unrounded values of at least five figures beyond the decimal point should be used in calculations leading up to the penalty amount. Any NCP calculated under paragraph (a) of this section will be rounded to the

nearest dollar in accordance with ASTM E29–67.

* * * * *

(g) * * *

(3) A manufacturer making payment under paragraph (g)(1) or (g)(2) of this section shall submit the following information by each quarterly due date to: Director, Manufacturers Operations Division, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. This information shall be submitted even if a manufacturer has no NCP production in a given quarter.

(i) Corporate identification, identification and quantity of engines or vehicles subject to the NCP, certificate identification (number and date), NCP payment calculations and interest payment calculations, if applicable.

* * * * *

(5)(i) Interest shall be assessed on any nonconformance penalty for which payment has been withheld under § 86.113–87(g) (1) or (2). Interest shall be calculated from the due date for the first quarterly NCP payment, as determined under § 86.1113–87(g)(1), until either the date on which the Presiding Officer or the Administrator renders the final decision of the Agency under § 86.1115–87 or the date when an alternate payment schedule (approved pursuant to § 86.1113–87(g)(1)) ends.

(ii) The combined principal plus interest on each quarterly NCP payment withheld pursuant to § 86.1113–87(g) (1) or (2) shall be calculated according to the formula:

$$QNCP(1+R)^{.25n}$$

where:

QNCP = the quarterly NCP payment
R = the interest rate applicable to that quarter
n = the number of quarters for which the quarterly NCP payment is outstanding.

(ii) The number of quarters for which payment is outstanding for purposes of this paragraph shall be the number of quarterly NCP payment due dates, as determined under § 86.1113–87(g)(1), which have elapsed throughout the duration of a hearing request, or alternate payment schedule.

(iv) The interest rate applicable to a quarter for purposes of this paragraph shall be the rate published by the Secretary of the Treasury pursuant to the Debt Collection Act of 1982 and effective on the date on which the NCP payment was originally due.

(6) A manufacturer will be refunded an overpayment, or be permitted to offset an overpayment by withholding a future payment, if approved in advance by the Administrator. The government shall pay no interest on overpayments.

* * * * *

§ 86.1115–87 [Amended]

9. In § 86.1115–87, paragraph (z) is removed, and (aa) is redesignated as (z).

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federal register

Monday
November 5, 1990

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200
Changes to the Minimum Property Standards; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-90-1495; FR-2599-P-01]

RIN 2502-AE64

Changes to the Minimum Property Standards

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Minimum Property Standards (MPS) in 24 CFR part 200, subpart S by (1) referencing the latest editions of private sector standards now in the MPS; (2) standardizing requirements to control termites and wood decay; (3) removing Federal agency standards for thermal insulation standards and referencing a model energy code instead; and (4) revising the time for periodic changes to the MPS and by making changes of an editorial nature. These changes to the MPS are needed to keep referenced standards current, to eliminate unnecessary duplicate and confusing federal standards, and to protect the Department's insurance fund.

DATES: Comment Due Date: January 4, 1991.

ADDRESSES: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Each comment should include the commenter's name and address and must refer to the docket number indicated in the heading of this document. A copy of each comment will be available for public inspection during regular business hours at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708-2084). (These are not toll-free numbers.).

FOR FURTHER INFORMATION CONTACT: Donald Fairman, Manufactured Housing and Construction Standards Division, Room 6270, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone, voice: (202) 708-0718; (TDD) (202) 708-4594 (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The National Housing Act, 12 U.S.C. 1702 *et seq.* authorizes the Secretary of Housing and Urban Development (Secretary) to prescribe standards for determining the acceptability of one and two family residential structures, multifamily residential structures, and care-type facilities (nursing home, intermediate care facility, combined nursing home and intermediate care facility, board and care home, hospital or group practice facility). See *e.g.*, 12 U.S.C. 1715*l*(f). Some general statutory guidelines govern the nature of these standards. For example, the standards are "to establish the acceptability of * * * propert(ies) for mortgage insurance * * *." 12 U.S.C. 1715*l*(f). In addition, the standards must be consistent with the declared national housing policy of realizing "the goal of a decent and suitable living environment for every American family * * *", 42 U.S.C. 1441.

Accordingly, the Secretary prescribed Minimum Property Standards (MPS) in 24 CFR part 200, subpart S, for determining the acceptability of one and two family, multifamily and care-type housing. 24 CFR part 200, subpart S, in turn, currently references additional MPS in HUD Handbooks 4910.1 and 4930.2 which are incorporated into the Department's regulations by authority of 24 CFR 200.927. The current MPS for multifamily housing and one and two family dwellings were last revised at 53 FR 11270 on April 6, 1988; and the MPS for care-type housing were last revised at 51 FR 28696 on August 11, 1986.

These revisions to the MPS were adopted in light of section 526 of the National Housing Act, 12 U.S.C. 1735f-4, as amended by the Housing and Urban-Rural Recovery Act of 1983, Public Law 98-181, section 405, 97 Stat. 1153 (1983). As amended, section 526(b) permits the Secretary to require, with respect to health and safety, that properties, other than manufactured homes, "comply with one of the nationally recognized model building codes, or with a State or local building code based on one of the nationally recognized model building codes or their equivalent." The Secretary is "responsible for determining the comparability of the State and local codes to such model codes * * *".

The current MPS were also adopted in light of OMB Circular A-119 published at 47 FR 49496 on November 1, 1982. The Circular establishes a Federal policy that, whenever feasible, model codes and standards developed by private organizations should be adopted by the government when their use will eliminate the necessity for separate Federal agency standards covering the same technical issues.

The current MPS, therefore, represent a change in the basic structure of previous MPS. The MPS were changed by eliminating all but a few necessary standards not generally found in the private sector and instead relying, by reference, on acceptable private sector model building codes and standards for health, safety and welfare, or on comparable State or local building codes and standards that covered the same technical issues.

Since 1984, 1985 and 1986, most of the private sector model building codes and standards that were then referenced in the MPS have been changed. The Department has, therefore, proposed these MPS revisions to be consistent with section 526 of the National Housing Act, OMB Circular A-119, and the goals of the Department.

In this proposal, the Department has made a singular exception to the use of a material accepted for use in building codes. In the codes, the use of fire retardant plywood is permitted in the construction of roofs for town or row houses. During the past several years, there has been increasing evidence that some of the fire retardant plywood has suffered severe structural deterioration resulting in millions of dollars expended in replacement costs. Given these problems and due to a lack of standards and a need for acceptable testing and quality control protocols, the Department feels there is not sufficient protection for the mortgage insurance fund to continue acceptance of this technology. The Department is, however, in close touch with industry and is studying ways to provide for acceptance of this product where HUD's financial responsibilities can be adequately protected.

I. The Proposed Rule

A. Referenced Standards

Unless noted elsewhere in this proposed rule, the Department is proposing to adopt current editions of public and private sector model codes or standards now referenced in the MPS at §§ 200.925-200.933 and in HUD Handbook 4910.1. Those now referenced in HUD Handbook 4910.1 are also listed in appendix A to 24 CFR part 200. Those now referenced in § 200.926 are also listed in appendix B in part 200, and the few remaining are now listed in § 200.925 and § 200.929. In addition, the Department is proposing changes that have occurred in the addresses of the approximately 36 sources where copies of the referenced codes or standards are now available.

The Department is also proposing to reference an additional nationally recognized model plumbing code—the National Standard Plumbing Code.

In some cases, the proposed standards or source addresses will be the same as those now referenced in the MPS, but in most cases the model code or standard edition now in the MPS is no longer available and would be replaced by the current edition listed in this proposed rule. In other cases, the standards now referenced in the MPS have been combined with others, have been adopted by the model codes, or are available from a different source. In some cases the standard may have a new publisher. These changes are reflected in appendix A.

B. Termite and Decay Protection Standards

The Wood Protection Council of the National Institute of Building Sciences reports that Americans spend $750 million every year replacing or repairing wood in their houses and buildings as a result of decay and termite attack. Therefore, in 1984 when the MPS for multifamily housing were last revised, the Department retained Federal agency standards for the control of termites and wood decay rather than relying on model or State or local building standards, which often lack a standard for termite barriers and the chemical treatment of soil and wood as recommended in the Department of Agriculture Publications referenced in appendix A to 24 CFR part 200. The current MPS that reference those publications (and which now apply to care-type housing as well) can be found in section 606 of HUD Handbook 4910.1.

When the MPS for one and two family housing units or townhouses were revised in 1985, a reference in § 200.926(b)(3)(i) to the MPS in section 606 of HUD Handbook 4910.1 for termites and wood decay was inadvertently omitted. The Department, therefore, is proposing to include such a reference to assure uniform housing requirements in the MPS.

C. Solar and Thermal Insulation Standards

In 1984, 1985 and 1986, acceptable private sector standard were found that could be referenced in place of the Federal agency MPS that covered the same technical issues, except for one—the thermal insulation standards for one and two family dwellings. Section 526(a) of the National Housing Act requires the Secretary to "promote the use of energy saving techniques through the MPS" and assure that the MPS are "at least as effective in performance as the energy performance requirements incorporated in the minimum property standards that were in effect under this subsection on September 30, 1982." A private sector standard, the Model Energy Code used widely by States and local jurisdictions, was found to have thermal insulation standards for multifamily and care-type housing that comply with section 526(a). They are now referenced in HUD Handbook 4910.1, section 607-1.1, in lieu of the previous Federal agency standards. However, no such comparable standards were found at that time for one and two family dwellings.

In 1987 and 1988, after years of national debate that included HUD, Farmers Home Administration, and many national, State and local experts, the Model Energy Code became the first such private sector standard to "promote the use of energy saving techniques" for one and two family dwellings and became "at least" as effective as the standards in the MPS for one and two family dwellings. The Department, therefore, is proposing to withdraw the Federal agency standards at § 200.926d(e) and instead to reference the thermal insulation standards in the current Model Energy Code developed by the private sector for States and local jurisdictions.

In a related action, the Department of Energy in 1980 funded the development of a document entitled "Recommended Requirements to Code Officials for Solar Heating, Cooling and Hot Water Systems", DOE/CS/34281-01, to be used in conjunction with existing model building codes on which the Department now relies.

The Department is also replacing the standards in HUD handbook 4930.2, titled Intermediate Minimum Property Standards Supplement for Solar Heating and Domestic Hot Water Systems, with non-mandatory guidelines that are contained in the 1989 edition of the same HUD handbook. The 1989 revision reflects a joint effort by HUD and the solar heating industry represented by the National Institute of Standards and Technology to incorporate current technology. Copies of the revised edition are available from the HUD user at P.O. Box 6091, Rockville, Maryland 20850.

D. Proposed Changes to Minimum Property Standards for Housing 4910.1: Chapter 1

At the time this proposed rule is published as a final rule, HUD Handbook 4910.1 will be changed to be consistent with the rule and will be published by the Government Printing Office as the 1990 edition of the Minimum Property Standards for Housing.

The proposed changes to the Minimum Property Standards for Housing (MPS) 4910.1; chapter 1 are as follows:

Section 100-1.2 Housing for the Elderly

The first two paragraphs from 100.1.2 would be removed. These requirements are in § 100.1.3 of the handbook and in the Uniform Federal Accessibility Standard (UFAS) (24 CFR part 40), which is referenced at 100-1 in appendix E. This change eliminates unnecessary duplication. This subsection would then start with subsection "a. Handrails."

Section 100-1.2 Paragraph b.1

The requirement for covered walks would be eliminated. Covered walks have not been considered a necessary requirement for some time. They are, in fact, an expensive luxury that frequently has been waived at the local level, and they are not required by the Uniform Federal Accessibility Standard (UFAS). Removal will eliminate confusion and still provide for sidewalk accessibility requirements consistent with those called for in section 4 of the UFAS.

Section 100.1.2c

The requirement for Community Social Rooms would be removed. The removal of this section is required to eliminate possible conflicts and unnecessary duplication. Social room requirements are addressed by the various program requirements.

Section 100-1.2d(6); (7); (8); (i); (ii) and (iv)

These paragraphs would be revised to read as follows:

(6) Central Dining—Where required by the program requirements, space shall be provided for meals.

(7) Central Kitchen Facilities—The first sentence would be deleted.

(8) Central Bathing Facilities—(A) Place a period after the word "served." (B) Paragraphs (i) and (iv) would be eliminated. Paragraph (ii) would be revised to read as follows: Space for

dressing and for the movement of wheelchairs shall be provided in accordance with the requirements of UFAS, section 4. (These changes are editorial. They eliminate tub and shower optional requirements and they clarify space requirements where required for the movement of wheelchairs.) The present (ii) and (iii) would be redesignated as (i) and (ii) respectively.

Section 100.1.2f. Bathrooms

Paragraphs 1. and 2. would be revised to read as follows:

1. Bathtubs shall be provided with grab bars as specified in section 4.26 of the UFAS.

2. A stall shower, when installed, shall meet the requirements of the UFAS section 4.21, Shower Stalls.

These changes are editorial and are intended to clarify the Department's requirements for housing for the elderly. The M.F/C–86 edition includes requirements for the UFAS at 24 CFR part 40, and variations, additions and exceptions to the MPS when housing is for the elderly. (See § 100–1.2.)

Section 100–1.2i. Elevators

This paragraph would be revised to read as follows:

(1) Elevators complying with UFAS shall be provided in buildings of three or more stories or two stories if any accessible living unit is located on a floor which does not have all common facilities.

This revision would comply with section 4.10 of the UFAS. Paragraph 2 of § 100–1.2i would be removed. The requirements removed from this section are covered in the UFAS and are therefore unnecessary. This is an editorial change intended to clarify the requirements by referencing the standards adopted for use by the Department. The elevator requirements for minimum car size and load capacity are specified in the UFAS and in ANSI A17.1.

Section 100–1.3. Requirements for Accessibility to Physically Handicapped People

(A) The first paragraph of 100–1.3 would be eliminated.

(B) The word "housing" in the first line of the second paragraph be changed to "living."

(C) The third paragraph would be replaced by the following: Accessible housing units shall comply with the requirements of UFAS. Projects with accessible units shall also meet all of the facility accessibility requirements of UFAS.

This proposed revision eliminates recommendations for accessibility in non-assisted projects where they are not currently required. However, where financial assistance programs are involved and projects are constructed under HUD insured programs, accessible housing units for the physically handicapped are required to comply with the requirements of UFAS. The number of housing or living units will be determined on a project-by-project basis, based upon program.

This change is considered editorial, in that it removes a recommendation and clarifies the accessibility requirements for the physically handicapped in accordance with HUD policy.

Readers should note that the Fair Housing Amendments Act of 1988 (Amendments Act) provides that unlawful discrimination includes a failure to design and construct covered multifamily dwellings available for first occupancy after March 31, 1991, in accordance with stated requirements associated with accessibility to the handicapped. On January 23, 1989 (54 FR 3232) HUD published a final rule implementing the Amendments Act. At 24 CFR 100.205(c), this final rule contains the following language:

(c) All covered multifamily dwellings for first occupancy after March 13, 1991 with a building entrance on an accessible route shall be designed and constructed in such a manner that—

(1) The public and common use areas are readily accessible to and usable by handicapped persons;

(2) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(3) All premises within covered multifamily dwelling units contain the following features of adaptable design:

(i) An accessible route into and through the covered dwelling unit;

(ii) Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;

(iii) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided; and

(iv) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

The final rule of January 23, 1989 stated that HUD would publish accessibility guidelines to provide builders and developers with guidance on how to comply with the specific accessibility requirements of the Act. On June 15, 1990 (55 FR 24370) HUD published the Accessibility Guidelines for public comment. When today's proposed rule revising the MPS reaches final rule stage, HUD proposes to incorporate 24 CFR 100.205(c) (see text above) into the MPS by conforming the material now appearing at paragraph 100–1.3 to the Amendments Act rule's requirements. When the final Accessibility Guidelines are published, they will be cross-referenced in this rule making as one acceptable means of satisfying the requirements of § 100.205(c) and paragraph 100–1.3.

Section 100–1.3a. Variation Procedures

In the last line, the phrase "the Secretary" would be changed to "Headquarters". This change is editorial.

Section 100–1.3f. Emergency Call Systems

This paragraph would be removed. Emergency call systems are not typically specified or required for physically handicapped people. Their requirements are for accessibility and availability to meet particular needs. Emergency call systems today are generally required for care type housing. Recognizing this, a new section for care type facilities has been included as § 100–1.4.

A new § 100–1.4 for Construction of Care Type Facilities would be added as follows.

Section 100–1.4 Requirements for Care Type Facilities

a. Construction

Care Type Facilities shall comply with the requirements of The Guidelines for Construction and Equipment of Hospitals and Medical Facilities as published by the AIA press, 1987 edition.

b. Housing Units and Patient Rooms

At least 50 percent of living units, patient rooms or bedrooms and associated facilities shall comply with the requirements of UFAS.

This is a new section that recognizes the special requirements for Care Type Facilities and provides for that need.

Section 100–3. Rehabilitation Construction

This section is outlined or detailed in the various program regulations, eliminating the need for it here. It would therefore be removed.

Chapter 6 Construction

Section 603–1.2(i) Add Footnote to Paragraph 603–1.2(i)

Note: Acceptable base course materials are gravel, slag, crushed rock, sand, cinders and certain types of earth when approved by the local HUD field office. See ASTM C–33–86, Table 2. Base course material shall be clean, washed and free from deleterious substances, consistent with ASTM C–33, with 100% of the material passing a 1" sieve and less than 2% passing a #4 sieve.

Section 607–1.1 Energy Efficiency

Revise the 3rd and 4th lines to update the standard to the "1989 edition except sections 101.3.1, 101.3.2, 104 and 105," but including the appendix.

Appendix "E" 4910.1 Section 607—Thermal and Moisture Protection

Update the CABO Model Energy Code, 1983 edition to the, "1989 Edition", including the 1990 amendments.

G. *MPS Changes*

Private sector codes now incorporated in the MPS publish new editions every 3 years, and most, but not all, publish amendments yearly. Private sector standards now incorporated in the MPS publish reaffirmed or revised editions every 5 years in no particular sequence. The Department is therefore proposing to change the time interval in § 200.933 for periodically publishing new editions of the MPS from 3 months to 3 years, to be consistent with the appearance of significant numbers of new editions of referenced private sector codes. This publishing schedule will not, however, preclude changes for the purpose of adopting standards in more frequent amendments, where they are considered urgent.

II. Comments Requested

The Department invites comments concerning each of the private organizations whose model codes or standards are now used or proposed to be used in lieu of Federal agency standards previously in the MPS, as to the adequacy of the standards adopted and the accuracy of the reference to the standard in the proposed rule.

III. Miscellaneous Information

This proposed rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 11291 on Federal Regulations issued by the President on February 17, 1981. The rule does not: (1) Have an annual effect on the economy of one hundred million dollars or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Consistent with the provisions of 5 U.S.C. 605(b) the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule would not alter the current practice by which housing is designed or constructed. It would reduce the burden of compliance which already exists for both small and large entities. In all cases, housing must be built in compliance with local codes. Upon the effective date of this rule, the Department generally would accept such compliance as satisfying the Department's concerns relating to the health and safety aspects of those structures.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of Rules Docket Clerk at Room 10278, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500.

This rule was listed in the Department's Semiannual Agenda of Regulations published on April 23, 1990 (55 FR 16227, 16239) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. This rule only revises HUD's Minimum Property Standards, and presents no discernible likelihood of any conflict with State or local law.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potentially significant impact on family formation, maintenance and general well-being, and, thus, is not subject to review under the Order. This rule has no significant relationship to family-related issues.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs: Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum property standards, Incorporation by reference.

Accordingly, HUD proposes to amend 24 CFR part 200 as follows:

PART 200—INTRODUCTION

1. The authority citation for part 200 would continue to read as follows:

Authority: Titles I and II of the National Housing Act (12 U.S.C. 1701 through 1715z–18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 200.925a would be amended by revising paragraph (d)(3)(iii) to read as follows:

§ 200.925a Multifamily and care-type minimum property standards.

* * * * *

(d) * * *

(3) * * *

(iii) Each Regional Office will maintain a current list of jurisdictions with accepted building codes and a current list of jurisdictions with partially accepted building codes. The lists will state the most recent date of each code's acceptance or partial acceptance and will be available to any interested party upon request. In addition, the list of jurisdictions whose codes have been partially accepted shall identify those portions of the codes listed at § 200.925c(a) with which the property must comply.

* * * * *

3. Section 200.925b would be amended by revising paragraph (k)(1) to read as follows:

§ 200.925b Residential and institutional building code comparison items.

* * * * *

(k) * * *

(1) Reference ANSI Standard A 17.1–1987;

* * * * *

4. Section 200.925c would be amended by revising paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and (a)(2); by adding a paragraph (a)(3); and by revising paragraphs (c)(1), (c)(2) and (c)(3) to read as follows:

§ 200.925c Model codes.

(a) * * *

(1) * * *

(i) The BOCA National Building Code, 1990 Edition, excluding Article I, Administration and Enforcement and the words "or fire retardant treated wood for a distance of 4 feet (1219 mm) from the wall in exception number 1 of paragraph 905.6 and 907.6.2 number 2 (Article 9), place a period after the word materials in the 2nd line and omit rest of sentence, but including the appendices of the Code. Available from Building Officials and Code Administrators International, Inc., 4051 West Flossmoor Road, Country Club Hills, Illinois 60477.

(ii) Standard Building Code, 1988 Edition, including the 1989 amendments but excluding Chapter I—Administration and the phrase "or fire retardant treated wood" in reference note (a) of table 600 (Chapter VI), but including appendices C, E, M and R of the Code. Available from the Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213.

(iii) Uniform Building Code, 1988 Edition, including the 1990 supplements but excluding part I—Administrative, and the reference to fire retardant treated plywood in section 2504(c)3 and to fire retardant treated wood in 1–HR type III and V construction referenced in paragraph 4203.2., but including the appendix of the Code. Uniform Plumbing Code, 1988 Edition, excluding part I—Administrative, but including the appendix of the Code. Uniform Mechanical Code, 1988 Edition, excluding Part I—Administrative, but including the appendix of the Code. All available from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(2) National Electrical Code, NFPA 70, 1990 Edition, including appendices. Available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(3) National Standard Plumbing Code, 1990 Edition, including appendices. Available from the National Association of Plumbing-Heating-Cooling Contractors, P.O. Box 6808, Falls Church, Virginia 22046.

(b) * * *

(c) * * *

(1) The BOCA National Building Code, 1990 Edition.

(2) Standard Building Code, 1988 Edition, including the 1989 amendments and the National Electrical Code, 1990 Edition.

(3) Uniform Building, Plumbing and Mechanical Codes, 1988 Editions, including amendments through 1990 and the National Electrical Code, NFPA 70, 1990 Edition.

* * * * *

5. Section 200.926 would be amended, by revising paragraphs (d)(1)(i)(B)(*2*), (d)(1)(i)(C)(*1*), (d)(1)(ii)(B)(*2*)(*ii*), and paragraph (d)(3) to read as follows:

§ 200.926 Minimum property standards for one and two family dwellings.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(B) * * *

(*2*) Those portions of the CABO One and Two Family Dwelling Code designated by the HUD Field Office in accordance with § 200.926c; and

* * * * *

(C) * * *

(*1*) The CABO One and Two Family Dwelling Code as identified in § 200.926b(a); and

(ii) * * *

(B) * * *

(*2*) * * *

(*ii*) Those portions of the CABO One and Two Family Dwelling Code designated by the HUD Field Office in accordance with § 200.926c; and

* * * * *

(3) *Notification of decision.* (i) Fire Retardant Treated plywood, where approved by a State or local code, shall not be permitted for use in roof construction unless a technical suitability bulletin has been issued by the Department for that product.

(ii) The Secretary shall review the material submitted under § 200.926(d). Following that review, the Secretary shall issue a written notice (except where there is a previously accepted or partially accepted code which has not been changed) to the submitting party stating whether the local building code is acceptable, partially acceptable, or not acceptable. Where the local building code is not acceptable, the notice shall also state whether the State code is acceptable, partially acceptable or not acceptable. The notice shall also contain the basis for the Secretary's decision and a notification of the submitting party's right to present its views concerning the denial of acceptance if the code is neither accepted nor partially accepted. The Secretary may, in his discretion, permit either an oral or written presentation of views.

* * * * *

5. Section 200.926b would be amended by revising paragraphs (a)(1) and (a)(2), and (c), to read as follows:

§ 200.926b Model codes.

(a) * * *

(1) *CABO one and two family dwelling code,* 1989 Edition, including the 1990 amendments, excluding Chapter I–Administration, and the phrase "or fire retardant wood" contained in the exception of paragraph R–202.4(2), but including the Appendices of the Code. (Available from the Council of American Building Officials, Suite 708, 5203 Leesburg Pike, Falls Church, VA 22041.)

(2) *Electrical code for one and two family dwellings,* NFPA 70A, 1990 Edition, including appendices. Available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

* * * * *

(c) *Designation of model codes.* When a one or two family dwelling or townhouse is to comply with portions of the model code or the entire model code, the dwelling shall comply with the CABO One and Two Family Dwelling Code 1989 Edition including the 1990 supplements or portion thereof as modified by § 200.926e and designated by the HUD Field Office serving a jurisdiction in which a property is located. In addition, the property shall comply with all of the standards which are referenced for any designated portions of the model code, and with the Electrical Code for One and Two Family Dwellings, NFPA 70A/1990.

§ 200.926c [Amended]

7. Section 200.926c would be amended in the schedule (table) by revising the heading in the second column now reading "Portions of the CABO 1- and 2-family dwelling code/1989 with 1984 and 1985 amendments with which property must comply" and "Electrical code for 1- and 2-family dwellings (NFPA 70A–1984)", to read as follows: "Portions of the CABO One and Two Family Dwelling Code, 1989 Edition including the 1990 supplements with which a property must comply" and "Electrical code for 1- and 2-family dwellings (NFPA 70A–1990)."

8. Section 200.926d would be amended by revising paragraph (a)(1), by revising paragraph (b)(3)(i) to reference a termiticide standard in the last sentence, and by revising all of paragraph (e) to reference a nationally recognized model energy code.

§ 200.926d Construction requirements.

(a) * * *

(1) *General.* These standards cover the agency requirements for accessibility to physically handicapped people, variations to standards, real estate entity, trespass and utilities, site conditions, access, site design, streets, dedication of utilities, drainage and flood hazard exposure, special construction and product acceptance, thermal requirements, and water supply system.

* * * * *

(b) * * *

(3) * * *

(i) The property shall be free of those foreseeable hazards and adverse conditions which may affect the health and safety of occupants or the structural soundness of the improvements, or which may impair the customary use and enjoyment of the property. The hazards include toxic chemicals, radioactive materials, other pollution, hazardous activities, potential damage from soil or other differential ground movements, ground water, inadequate surface drainage, flood, erosion, or other hazards located on or off site. The site must meet the standards set forth in 24 CFR part 51, and HUD Handbook 4910.1, section 606 for termite and decay protection.

* * * * *

(d) * * *

(3) *Standard features.* These features include methods of construction, systems, sub-systems, components, materials and processes which are covered by national society or industry standards. For a list of standards and practices to which compliance is required, *see* HUD Handbook 4910.1, appendix C and appendix E.

(e) *Energy efficiency.* All detached one and two family dwellings and one-family townhouses not more than three stories in height shall comply with the CABO Model Energy Code, 1989 Edition including the 1990 supplements for Type A–1 Group R, Residential Buildings, except for §§ 101.3.1, 101.3.2, 104 and 105, but including the appendix, and HUD intermediate MPS Supplement 4930.2 Solar Heating and Domestic Hot Water Systems, 1989 edition.

* * * * *

9. Section 200.929 would be amended by revising paragraph (b)(2) and by removing paragraph (b)(3) without substitution, to read as follows:

§ 200.929 Description and identification of minimum property standards.

* * * * *

(b) * * *

(2) MPS for Housing 4910.1, 1989 edition. This volume applies to buildings and sites designed and used for normal multifamily occupancy, including both unsubsidized and subsidized insured housing, and to care-type housing insured under the National Housing Act. In also includes, in Appendix K, a reprint of the MPS for One and Two Family Dwellings identified in paragraph (1).

10. Section 200.933 would be amended by revising the first sentence to read as follows:

§ 200.933 Changes in minimum property standards.

Changes in the Minimum Property Standards will generally be made every three years. * * *

11. Appendix A to part 200 would be amended by listing the standards and sources that would be unchanged, updated, added or removed and incorporated by reference in the Minimum Property Standards for Housing (HUD Handbook 4910.1). As revised, Appendix A to part 200 reads as follows:

Appendix A to 24 CFR part 200

Standards incorporated by reference in the Minimum Property Standards for Housing (HUD Handbook 4910.1).

The following standards contained in HUD Handbook 4910.1, are incorporated by reference in the HUD Minimum Property Standards (MPS) (24 CFR 200.927). Copies of the Handbook may be purchased from the U.S. Government Printing Office, Washington, DC 20402. The Handbook is also available for public inspection at the HUD Program Information Center, room 8141, 451 Seventh Street SW., Washington, DC, at each HUD Regional and Field Office, and at the Office of the Federal Register, 1100 L Street NW., Washington, DC.

The individual standards referenced in the list below are available at the addresses contained in the following table. They are also available for public inspection at HUD, Manufactured Housing and Construction Standards Division, room 6270, 451 Seventh Street SW., Washington, DC, and the Office of the Federal Register.

Aluminum Association, 900 19th Street NW., Washington, DC 20006. Telephone (202) 862–5100
- AA–ASM 35–88—Specifications for Aluminum Sheet Metal Work in Building Construction

American Concrete Institute, P.O. Box 19150, Redford Station, Detroit, Michigan 48219. Telephone (313) 532–2600
- ANSI/ACI 211, 1–1—Practice for Selecting Proportions for Normal, Heavyweight, and Mass Concrete (Revised 1985)
- ANSI/ACI 211.2–81—Practice for Selecting Proportions for Structural Lightweight Concrete
- ACI 213R–79—Guide for Structural Lightweight Aggregate Concrete (Reaffirmed 1983)
- ANSI/ACI 214–77—Recommended Practice for Evaluation of Strength Test Results of Concrete (Reaffirmed 1983)
- ANSI/ACI 301–84—Specifications for Structural Concrete for Buildings (Revised 1988)
- ACI 302.1R–80—Guide for Concrete Floor and Slab Construction
- ANSI/ACI 304R–73—Recommended Practice for Measuring, Mixing, Transporting and Placing Concrete
- ACI 305R–77—Hot Weather Concreting (Revised 1982)
- ACI 306R–78—Cold Weather Concreting (Revised 1988)
- ACI 311.4R–80—Guide for Concrete Inspection (Revised 1988)
- ACI SP–66–80—ACI Detailing Manual
- ANSI/ACI 318–83—Building Code Requirements for Structural Plain Concrete (Revised 1987)
- ANSI/ACI 347–78—Recommended Practice for Concrete Formwork (Revised 1984)
- ACI 504R–77—Guide to Joint Sealants for Concrete Structures
- ANSI/ACI 506–66—Recommended Practice for Shotcreting (Revised 1983)
- ACI 515.1–79—A Guide to the Use of Waterproofing, Dampproofing, Protective, and Decorative Barrier Systems for Concrete (Revised 1985)
- ACI 533.1r–69—Quality Standards and Tests for Precast Concrete Wall Panels
- ACI 533.2r–69—Selection and Use of Materials for Precast Concrete Wall Panels
- ACI 533.3r–70—Fabrication, Handling and Erection of Precast Concrete Wall Panels

American Hardboard Association, 520 North Hicks Road, Palatine, Illinois 60067. Telephone (708) 934–8800
- ANSI/AHA A135.4–82—Basic Hardboard (Revised 1988)
- ANSI/AHA A135.6–89—Hardboard Siding
- ANSI/AHA A194.1–85—Cellulosic Fiber Insulation Board

American National Standards Institution, 1430 Broadway, New York, New York 10018. Telephone (212) 354–3300
- ANSI/APA 1–84—Mosaic-Parquet Hardwood Slat Flooring
- ANSI A108.1–85—Installation of Glazed Wall Tile, Ceramic Mosaic Tile, Quarry Tile and Paver Tile with Portland Cement Mortar
- ANSI A117.1–86—Buildings and Facilities—Providing Accessibility and Useability for Physically Handicapped People
- ANSI 17.1–87—Elevators, Escalators & Moving Walks
- ANSI A137.1–80—Ceramic Tile
- ANSI A156.2–89—Locks and Lock Trim
- ANSI A161.1–85—Recommended Construction and Performance Standards for Kitchen and Vanity Cabinets
- ANSI A208.1–89—Mat Formed Wood Particleboard (Revised 1989)
- ANSI Z34.1–87—American National Standard for Certification, Third Party Certification Program
- ANSI Z 124.5–89—American National Std. for Plastic Seats (water closet seats)

American Society of Heating, Refrigerating and Air Conditioning Engineers, 1791 Tullie Circle, NE, Atlanta, Georgia 30329. Tel. 404–636–8400

ASHRAE Handbook of Fundamentals—1985
ASHRAE Handbook of HVAC Systems and Applications—1987
ASHRAE Handbook of Equipment—1983
ASHRAE Cooling and Heating Load Calculations Manual—GRP 158–1979
American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103. Tel. 215–299–5400
ASTM C 12–80—Installing Vitrified Clay Pipe Lines
ASTM C 208–82—Insulating Board (Cellulosic Fiber), Structural and Decorative (Reaffirmed 1982)
ASTM C 209–84—Methods of Testing Insulating Board (Cellulosic Fiber), Structural and Decorative
ASTM C 220–84—Flat Asbestos-Cement Sheets (Reaffirmed 1984)
ASTM C 221–84—Corrugated Asbestos-Cement Sheets
ASTM C 223–84—Asbestos-Cement Siding (Reaffirmed 1984)
ASTM C 509–84—Cellular Elastomeric Preformed Gasket and Sealing Material
ASTM C 516–85—Vermiculite Loose Fill Thermal Insulation (Reaffirmed 1985)
ASTM C 549–86—Perlite Loose Fill Insulation (Reaffirmed 1986)
ASTM C 578–87a—Insulation Board, Thermal (Polystyrene)
ASTM C 640–83—Insulation Board, Thermal (Cork)
ASTM C 728–81—Mineral Fiber and Mineral Fiber Rigid Cellular Polyurethane Composite Roof Insulation Board
ASTM C 739–86—Insulation Thermal (Loose Fill for Pneumatic or Poured Application)
ASTM C 754–88—Installation of Steel Framing Members to Receive Screw Attached Gypsum Wallboard, Backing Board or Water Resistant Backing Board
ASTM C 834–86—Latex Sealing Compounds (Reaffirmed 1988)
ASTM C 841–87—Installation of Interior Lathing and Furring
ASTM C 842–85—Application of Interior Gypsum Plaster
ASTM C 843–85—Application of Gypsum Veneer Plaster (Reaffirmed 1985)
ASTM C 844–85—Application of Gypsum Base to Receive Gypsum Veneer Plaster
ASTM C 845–82—Application of Structural Insulating Board (Fiberboard) Sheathing (Reaffirmed 1982)
ASTM C 864–84—Specification for Dense Elastomeric Compression Seal-gaskets setting Blocks and Spacers
ASTM C 926–86—Application of Portland Cement-Based Plaster
ASTM C 1036–85—Glass, Float or Plate, Sheet, Figured (Flat, For Glazing, Mirrors and Other Uses)
ASTM D 1037–87—Wood-Base Fiber and Particle Panel Materials
ASTM C 1048–88—Glass, Plate (Float), Sheet, Figured, and Spandrel (Heat Strengthened and Fully Tempered)
ASTM D 1557–78—Moisture-Density Relations of Soils, and Soil-Aggregate Mixtures Using 10-lb (4.5 kg) Rammer and 18-in. (457 mm) Drop
ASTM D 2316–84—Installing Bituminized Fiber Drain and Sewer Pipe (Reaffirmed 1984)
ASTM D 2321–83a—Underground Installation of Flexible Thermoplastic Sewer Pipe
ASTM D 3656–83—Insect Screening and Louver Cloth Woven From Vinyl-Coated-Glass Fiber Yarn
ASTM D 3679–86—Rigid Polyvinyl Chloride (PVC) Siding
ASTM E 72–80—Methods of Conducting Strength Tests of Panels for Building Construction
ASTM E 283–84—Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors
ASTM E 330–84—Structural Performance of Exterior Windows, Curtain Walls, and Doors by Uniform Static Air Pressure Difference
ASTM E 331–86—Water Penetration of Exterior Windows, Curtain Walls, and Doors by Uniform Static Air Pressure Difference
ASTM E 380–86—Metric Practice
American Welding Society, 550 NW Le Jeune Road, P.O. Box 351040, Miami, Florida 33126, Telephone (305) 443–9353
ANSI/AWS D1.1–86—Structural Welding Code—Steel
ANSI/AWS D1.4–79—Structural Welding Code—Reinforcing Steel
American Architectural Manufacturers Association, Suite 118, 2700 River Road, Des Plaines, Illinois 60018, Telephone (305) 699–7310
ANSI/AAMA 101–85—Aluminum Prime Windows and Sliding Glass Doors
ANSI/AAMA 1002.10–83—Aluminum Insulating Storm Products
ANSI/AAMA 1102.7–83—Aluminum Storm Doors and Frames
AAMA 1402–86—Aluminum Siding, Soffits and Fecia
AAMA–1503.1–88—Voluntary Test Method for Thermal Transmittance, Condensation Resistance of Windows, Doors and Glazed Wall Sections
AAMA 1504–88—Thermal Performance of Windows, Doors, and Glazed Wall Sections
ANSI/ASHE A 112.18.1M89—Plumbing Fixture Fitings, P.O. Box 1405z, Lexington, KY 40512, Telephone (606) 288–4960
The Asphalt Institute, Asphalt Institute Building, College Park, Maryland 20740, Telephone (301) 277–4258
MSI–1–81—Thickness Design-Full-Depth Asphalt Pavement Structures for Highways and Streets
Asphalt Roofing Manufacturers Association, 6288 Montrose Road, Rockville, Maryland 20852, Telephone (301) 231–9050
Residential Asphalt Roofing Manual—1988
Carpet and Rug Institute, 310 Holiday Avenue, Box 2048, Dalton, Georgia 30722–0048, Telephone (404) 278–3176
How to Specify Commercial Carpet Installation, 1984
Council of American Building Officials, Suite 708, 5203 Leesburg Pike, Falls Church, Virginia 22041, Telephone (703) 931–4533
Model Energy Code—1988 Edition
Flat Glass Marketing Association, White Lakes Professional Building, 3310 Harrison Street, Topeka, Kansas 66611, Telephone (913) 266–7013
FGMA Glazing Manual—1986
FGMA Sealant Manual—1983
Hardwood Plywood Manufacturers Association, P.O. Box 2789, 1825 Michael Faraday Drive, Reston, Virginia 22090 Telephone (703) 435–2900
ANSI/HPMA LHF–1987 Laminated Hardwood Flooring
Insect Screening Weavers Assn., 2000 Maple Hill Street, P.O. Box 309, Yorktown Heights, NY 10598
IWS–089 Insect Wire Screening (wire fabric)
National Academy of Sciences, 2101 Constitution Avenue, NW., Washington, DC 20418
Publication 1571 Criteria for Selection and Design of Residential Slabs-on-Ground, Report #33, Building Research Advisory Board (BRAB)
National Association of Home Builders, Research Center, 400 Prince Georges Boulevard, Upper Marlboro, Maryland 20772, Telephone (301) 249–4000
Insulation Manual for Homes and Apartments—1979

National Assn. of Plumbing-Heating & Cooling Contractors, P.O. Box 6808, Falls Church, VA 22040 Telephone (703) 237–8100
National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269, Telephone 1–800–344–3555
NFPA 54–88 National Fuel Gas Code (ANSI Z223.1—1988)
NFPA 70–90 National Electrical Code
ANSI/NFPA 58–86 Standard for the Storage and Handling of Liquefied Petroleum Gases
National Oak Flooring Manufacturers Association, 22 North Front Street, Memphis, Tennessee 38103
Official Grading Rules for Oak, Beech, Birch,
Hard Maple and Pecan (OFGR/Vol. 1, No. 1/1986 and the 1988 Addendum)
Hardwood Flooring Finishing/Refinishing Manual, 1986
Hardwood Flooring Installation Manual, 1986
National Roofing Contractors Association, One O'Hare Centre, 6250 River Road, Rosemont, Illinois 60018, Telephone (708) 318–6722
NRCA Roofing and Waterproofing Manual, 1989
National Terrazzo and Mosaic Association, 3166 Des Plaines, Avenue, Suite 132, Des Plaines, Illinois 60018, Telephone (708) 635–7744
NTMA Specifications, Details and Technical Data,
Terrazzo Ideas & Design Guide 1990
National Wood Window and Door Association, 205 West Touhy Avenue, Park Ridge, Illinois 60068, Telephone (703) 299–5200
ANSI/NWWDA IS 1–87 Industry Standard for Wood Flush Doors
ANSI/NWWDA IS 2–87 Industry Standard for Wood Window Units
ANSI/WWDA IS 3–88 Industry Standard for Wood Sliding Patio Doors
ANSI/NWWDA IS 6–86 Industry Standard for Wood Doors
Post-tensioning Institute, 301 West Osborn, Suite 3500, Phoenix, Arizona 85013, Telephone (602) 870–7540
Design and Construction of Post-tensioned Slabs-on-Ground—1980
Prestressed Concrete Institute, 175 West Jackson Boulevard, Suite 1859, Chicago, Illinois 60604
PCI MNL 116 Manual for Quality Control for Plants and Production of Precast Prestressed Concrete Products—1985
PCI MNL 117 Manual of Quality Control for Plants and Production of Architectural Precast Concrete Products—1977
Resilient Floor Covering Institute, 966 Hungerford Drive, Suite 12–B, Rockville, Maryland 20850, Telephone (301) 340–8580
Recommended Installation Specifications for Vinyl Composition, Solid Vinyl and Asphalt Tile Floorings, 1978
Safety Glazing Certification Council, c/o ETL Testing Laboratories, Industrial Park, Route 11, Cortland, New York 13045, Telephone (607) 753–6711
Certified Products Directory—1990
Steel Door Institute, 712 Lakewood Center North, 14600 Detroit Avenue, Cleveland, Ohio 44107, Telephone (216) 226–7700
ANSI/SDI A123.1–82 Nomenclature for Steel Doors and Steel Door Frames
Southern California Association of Cabinet Manufacturers, 1933 South Broadway, L. 39, Los Angeles, California 90007, Telephone (213) 749–4355
Certified Construction Standards and Specifications, Guide for Uniform Cabinet Specifications—1973 (Revised 1985)
Tile Council of America, Inc., Box 326, Princeton, New Jersey 08542–0326, Telephone (609) 921–7050
Handbook for Ceramic Tile Installation—1990
Underwriters Laboratories, 333 Pfingsten Road, Northbrook, Illinois 60062, Telephone (708) 272–8800
Electrical Appliance and Utilization Equipment Directory, 1989
U.S. Department of Agriculture, Publications Division, 14th and Independence Avenue, SW., Washington, DC 20050, Telephone (202) 447–3957
Agriculture Handbook No. 73, Wood Frame House Construction Handbook, 1989
Home and Garden Bulletin No. 73, Wood Decay in Houses, How to Prevent and Control It, 1986
U.S. Department of Commerce, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, Telephone (301) 975–4025
NBS SP 330 The International System of Units, 1986
PS 1–83 Product Standard for Plywood
U.S. Department of Defense, Naval Publication and Forms Center, 5801 Taber Road, Philadelphia, PA 19120, Telephone (215) 697–2179
Federal Specifications:
L–S–125B—Screening, Insect, Non-metallic and Notice 1
L–F–001641—Floor Covering, Translucent or Transparent Vinyl Surface with Backing and Amendment 1—1971
L–F–475A—Backed Vinyl Plastic Sheet or Tile and Amendment 2—1971
HH–I–521F—Insulation Blankets, Thermal (Mineral Fiber-for-Ambient Temperatures—1988)
HH–I–526C—Insulation Board, Thermal (Mineral Fiber)—1968
HH–I–529B—Insulation Board, Thermal (Mineral Aggregate)—1971
HH–I–530B—Insulation Board, Thermal, Unfaced, Polyurethane or Polyisocyanurate and Interim I—1982
HH–I–551E—Insulation Block and Boards, Thermal (Cellular Glass) Fiber, for Ambient Temperatures
HH–I–558B—Insulation Blocks, Boards, Blankets, Felts Sleeving (Pipe and Tube Covering), and Pipe Fitting Covering, Thermal (Mineral Fiber, Insulation Type) and Amendment 3—1976
HH–I–574B—Insulation, Thermal (Perlite) and Interim Amendment—1976
HH–I–1030B—Insulation, Thermal (Mineral Fiber, for Pneumatic or Poured Application)—1980
HH–I–1972/Gen; 1, 2, 3, 4, 5 & 6—Insulation Board, Thermal, Faced, Polyurethane and Polyisocyanurate and Amendments—1985
SS–S–346C—Siding (Shingles, Clapboards, and Sheets) 1968
SS–T–312B—Tile, Floor: Asphalt, Rubber, Vinyl-Composition and Interim Amendment—1979
4940.3–1972—Minimum Design Standards for Community Sewage Systems
4950.1–1979—Technical Suitability of Products Program, Technical and Processing Procedures
Commercial Standards:
CS 138–55—Insect Wire Screening
Federal Specifications:
L–F–00450A (GSAFSS)—Flooring, Vinyl Plastic
HH–I–585C—Insulation, Thermal (Vermiculite) and Interim Amendment 1—1976
HH–I–1252B—Insulation, Thermal Reflective, (Aluminum Foil) and Interim Amendment 1—1976
LLL–I–535B—Insulation Board, Thermal, Cellulosic Fiber
U.S. Environmental Protection Agency, Office of Drinking Water, 401 M Street SW., Washington, DC 20460, Telephone (202) 382–5533
EPA 570/9–82–004 Manual of Individual Water Supply (NTIS–PB 85242279) Systems (Reprinted 1982)
Water Quality Association, 4151 Naperville Road, Lisle, Illinois 60532, Telephone (708) 505–0160

WQA S-100—Water Softeners—1985
WQA S-200—Water Filters—1988
Wood Molding and Millwork Producers, P.O. Box 25278, Portland, OR 97225, Telephone (503) 292-9288
WM 3-79—Exterior Wood Door Frames

12. Appendix B to part 200 would be amended by listing the standards and sources that would be unchanged, updated, added or removed and incorporated by reference in the Minimum Property Standards for One and Two Family Dwellings and Townhouses (200.929, 200.926a-e). As revised, Appendix B to 24 CFR part 200 reads as follows:

Appendix B to 24 CFR Part 200—Standards Incorporated by Reference in the Minimum Property Standards for One and Two Family Dwellings and Townhouses

The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) for One and Two Family Dwellings and Townhouses in 24 CFR 200.926 and 24 CFR 200.926 a-e. The MPS for One and Two Family Dwellings and Townhouses have also been reprinted as appendix K in the HUD Handbook 4910.1. The MPS in either the CFR or HUD Handbook may be purchased from the U.S. Government Printing Office, Washington, DC 20402. The MPS are also available for public inspection at the HUD Program Information Center, Room 8141, 451 Seventh Street SW., Washington, DC, at each HUD Regional, and Field Office and at the Office of the Federal Register, 1100 L Street NW., Washington, DC. The individual standards referenced in the MPS are available at the addresses contained in the following table. They are also available for public inspection at HUD, Manufactured Housing and Construction Standards Division, Room 9156, 451 Seventh Street SW., Washington, DC and at the Office of the Federal Register.

American National Standards Institute, 1430 Broadway, New York, New York 11018, Telephone (212) 354-3300.
ANSI A58.1-82—Minimum Design Loads in Building and other Structures
American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103, Telephone (215) 299-5400
ASTM C 62-87—Standard Specification for Building Brick (Solid Masonry Units Made from Clay or Shale)
Council of American Building Officials, 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041, Telephone (703) 931-4533
CABO One and Two Family Dwelling Code, 1989 Edition, including the 1990 amendments, excluding Chapter 1—Administrative Conservation, but including the Appendices of the Code
CABO Model Energy Code, 1989 Edition, including the 1990 amendments, excluding sections 101.3.1, 101.3.2, 104 and 105, but including the appendix
U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, Telephone (202) 755-5590
Handbooks:
4040.2-1973—Minimum Design Standards for Community Water Supply
4950.1-1988—Technical Suitability of Products Program, Technical and Processing Procedures. (Rev. 2) HUD's Intermediate MPS Supplement for Solar Heating & Domestic Hot Water Systems 1989
U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Telephone (202) 382-5533
EPA 570/9-82-004 Manual of Individual Water Supply Systems (NTIS-PB 8542279)
(Reprinted 1982)

Dated: September 14, 1990.

Arthur J. Hill,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90-26068 Filed 11-2-90; 8:45 am]

BILLING CODE 4210-27-M

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 3888/Pub. L. 101-479

To allow a certain parcel of land in Rockingham County, Virginia, to be used for a child care center. (Oct. 31, 1990; 104 Stat. 1158; 2 pages) Price: $1.00

H.R. 5749/Pub. L. 101-480

American University Incorporation Amendments Act of 1990. (Oct. 31, 1990; 104 Stat. 1160; 2 pages) Price: $1.00

H.J. Res. 519/Pub. L. 101-481

Designating August 29, 1990, as "National Sarcoidosis Awareness Day". (Oct. 31, 1990; 104 Stat. 1162; 1 page) Price: $1.00

H.J. Res. 566/Pub. L. 101-482

Acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 19, 1990, as "National Military Families Recognition Day". (Oct. 31, 1990; 104 Stat. 1163; 2 pages) Price: $1.00

H.J. Res. 587/Pub. L. 101-483

Committing to the private sector the responsibility for support of the Civic Achievement Award Program in Honor of the Office of Speaker of the House of Representatives, and for other purposes. (Oct. 31, 1990; 104 Stat. 1165; 2 pages) Price: $1.00

S. 1747/Pub. L. 101-484

Ponca Restoration Act. (Oct. 31, 1990; 104 Stat. 1167; 4 pages) Price: $1.00

S. 2059/Pub. L. 101-485

Wier Farm National Historic Site Establishment Act of 1990. (Oct. 31, 1990; 104 Stat. 1171; 3 pages) Price: $1.00

S. 2203/Pub. L. 101-486

Zuni Land Conservation Act of 1990. (Oct. 31, 1990; 104 Stat. 1174; 3 pages) Price: $1.00

S. 3032/Pub. L. 101-487

To designate the planned Department of Veterans Affairs Medical Center in Honolulu, Hawaii, as the "Spark M. Matsunaga Department of Veterans Affairs Medical Center". (Oct. 31, 1990; 104 Stat. 1177; 1 page) Price: $1.00

S. 3216/Pub. L. 101-488

To designate the Department of Veterans Affairs Medical Center in Charleston, South Carolina, as the "Ralph H. Johnson Department of Veterans Affairs Medical Center". (Oct. 31, 1990; 104 Stat. 1178; 1 page) Price: $1.00

S.J. Res. 293/Pub. L. 101-489

To designate November 16, 1990, as "National Philanthropy Day". (Oct. 31, 1990; 104 Stat. 1179; 1 page) Price: $1.00

S.J. Res. 307/Pub. L. 101-490

Designating November 11 through November 17, 1990, as "National Women Veterans Recognition Week". (Oct. 31, 1990; 104 Stat. 1180; 1 page) Price: $1.00

S.J. Res. 324/Pub. L. 101-491

Designating June 2 through 8, 1991, as a "Week for the National Observance of the 50th Anniversary of World War II". (Oct. 31, 1990; 104 Stat. 1181; 1 page) Price: $1.00

S.J. Res. 353/Pub. L. 101-492

To designate September of 1991 as "National Rice Month". (Oct. 31, 1990; 104 Stat. 1182; 2 pages) Price: $1.00

H.R. 5209/Pub. L. 101-493

Drug and Household Substance Mailing Act of 1990. (Oct. 31, 1990; 104 Stat. 1184; 1 page) Price: $1.00

H.R. 5933/Pub. L. 101-494

To provide for the temporary extension of the certain laws relating to housing and community development. (Oct. 31, 1990; 104 Stat. 1165; 2 pages) Price: $1.00

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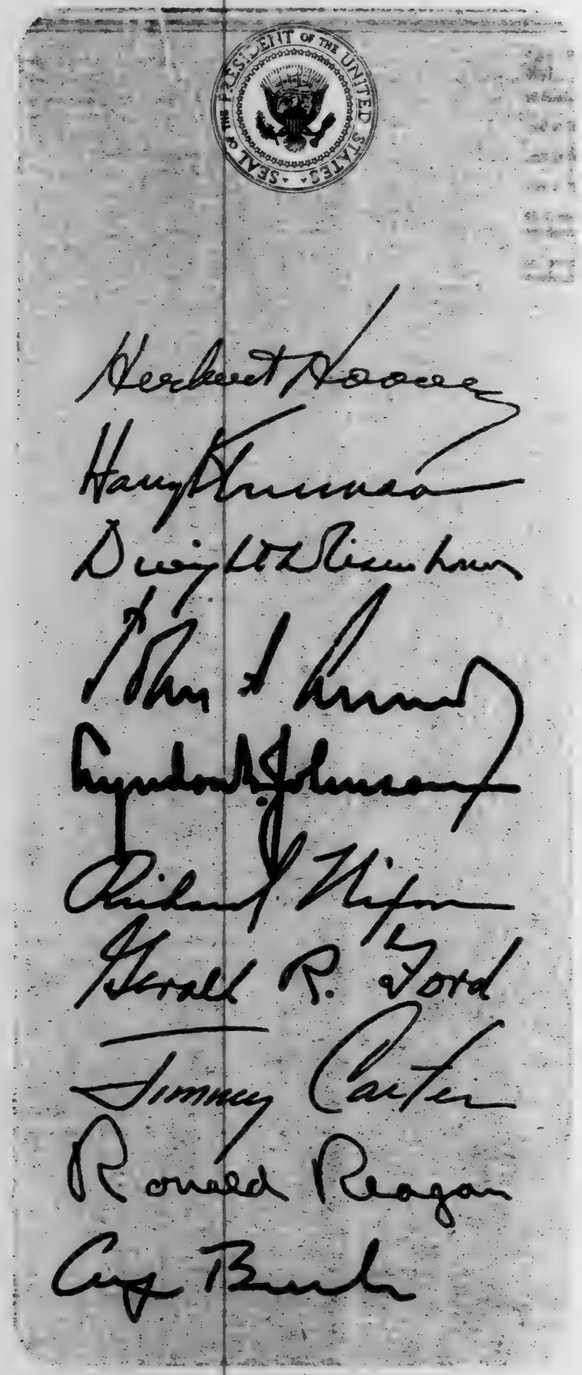

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Rules and Regulations

Federal Register
Vol. 55, No. 215
Tuesday, November 6, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

[FV-89-067 FR]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Revision of the Administrative Rules and Regulation on By-Product Oranges

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises administrative rules and regulations under the California-Arizona navel and Valencia orange marketing orders which exempt the handling of navel and Valencia oranges for processing into by-products from volume regulations and assessment obligations under these orders. This action was recommended by the Navel and Valencia Orange Administrative Committees (committees), which are responsible for local administration of the orders. This action will: Define the term "processing into by-products;" allow approved by-products manufacturers, and require by-products manufacturers (processors) to sell up to 5 percent of their orange food by-products at the retail level; add authority for the committees to perform initial and periodic inspections of by-products manufacturers' premises; add additional criteria by which a by-products manufacturer could be suspended or removed from the committees' approved lists of by-products manufacturers; and require by-product manufacturers to submit additional information on their operations to the committees. These changes will assist the committees' compliance personnel in determining if processors' by-products operations are in accord with the by-products exemption.

EFFECTIVE DATE: December 6, 1990.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, MOAB, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–8139.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order Nos. 907 and 908 (7 CFR parts 907 and 908), both as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act have small entity orientation and compatibility.

There are approximately 130 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under their respective orders and approximately 4,070 producers of navel oranges and 3,500 producers of Valencia oranges in California and Arizona. In addition, there are approximately 45 by-products manufacturers which will be affected by this rule. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms, which include handlers and by-products manufacturers, are defined as those whose annual receipts are less than $3,500,000. The majority of California-Arizona navel and Valencia orange growers, handlers, and processors may be classified as small entities.

It is estimated that approximately 30 processors per week during the navel and Valencia orange marketing seasons will complete the new weekly report discussed in this rule. In addition, it will take approximately 0.33 hour for each respondent to complete the new report.

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection and reporting provisions that are included in this final rule have been approved by the Office of Management and Budget (OMB) and assigned OMB Control Nos. 0581–0116 (naval oranges) and 0581–0121 (Valencia oranges).

A proposed rule was published in the March 14, 1990, issue of the **Federal Register** (55 FR 9453). Comments were requested from interested persons until April 13, 1990. Three comments were received. The commenters were: Mr. Richard J. Pescosolido of Foothill Farms (Foothill); Mr. James A. Moody representing Farmers Alliance for Improved Regulation (FAIR); and Mr. Billy J. Peightal, manager of the Navel and Valencia Orange Administrative Committees (committees).

Several objections submitted on the proposed rule were raised by more than one commenter. Where objections have been duplicated by more than one party, the content of such comments are discussed together. Other comments are addressed individually. In addition, several of the comments have been adopted in this final rule and are discussed herein.

This rule defines the term "processing into by-products;" allows approved by-products manufacturers (processors) to sell up to 5 percent of their orange food by-products at the retail level; adds authority for the committees to perform initial and periodic inspections of by-products manufacturers' premises; adds additional bases upon which a by-products manufacturer could be suspended or removed from the committees' approved lists of by-products manufacturers; and requires by-products manufacturers to submit additional information on their operations to the committees.

Sections 907.67 and 908.67 of the navel and Valencia orange marketing orders,

respectively, exempt the handling of oranges from certain regulations for specified purposes, including the handling of oranges to commercial processors for processing into products including juice. For example, the handling of such oranges is not subject to volume regulations or assessments. These sections also authorize the committees to review and prescribe, with the approval of the Secretary, rules, regulations, and safeguards they deem necessary to prevent oranges shipped into by-product channels from entering into domestic fresh fruit channels.

Sections 907.131 and 908.131 of the rules and regulations of the orders describe procedures whereby by-products manufacturers may apply for inclusion on the committees' approved lists of by-products manufacturers; the methods whereby the committees approve processors' applications; the terms under which an approved by-products manufacturer could be removed or suspended from the approved lists; the forms used by the by-products manufacturers and handlers to report the quantity of navel or Valencia oranges diverted to by-products; and other pertinent information. Navel or Valencia oranges handled to processors on the committees' approved lists of by-products manufacturers are exempt from volume regulation and assessment obligations.

Processors wishing to be included on the committees' approved lists of by-products manufacturers supply information on their by-products' operations on their applications to be on the approved lists. In order to remain on the committees' approved lists, processors are required to submit information to the committees concerning the source of the navel or Valencia oranges received and the quantity of by-products produced.

Sections 907.131 and 908.131 currently do not contain a definition of what "processing into by-products" includes. In the past, this exemption has been applied to fruit which has been subjected to such processes as juicing, freezing, canning, dehydrating, pulping, or heating, as well as fruit used for animal feed. However, recent trends in the California-Arizona orange industries have caused some confusion among handlers and processors as to what other activities processing could include.

For example, a change in food service trends has occurred in which oranges are being sliced, diced, or peeled for use in food service industries. Such navel or Valencia oranges in the past have been considered exempt under the by-product exemption; that is, handlers could handle such oranges to processors without paying assessments on the oranges, and there was no limitation on the amount they could handle to a processor. However, the absence of a definition of by-products has caused some misunderstanding among processors and handlers as to what "processing into by-products" includes. The committees, therefore, recommended that the term "processing into by-products" be clearly defined to reflect such current industry practices.

By-products were thus proposed to be defined as products of navel or Valencia oranges which are altered in form through such means as freezing, canning, dehydrating, pulping, slicing, dicing, peeling, juicing, or heating, as well as oranges used as animal feed.

FAIR commented that the definition of by-products in the proposed rule should be clarified and expanded to include shrink-wrapped oranges. The commenter stated that heating is included in the shrink-wrapped process and, thus, shrink-wrapped oranges should be considered by-products.

The shrink-wrapped process, while it does use heat to shrink wrap the fruit, does not physically or chemically alter the form of the fruit as occurs when fruit is dehydrated, pulped, sliced, diced, peeled, juiced or heated. Shrink-wrapped oranges are considered fresh oranges and, therefore, are subject to volume regulation and assessments under the marketing orders.

FAIR also questioned if the proposed definition would change current law and, if so, have any handlers in the past or are processors currently violating the existing definition. This rule is not changing a law, merely adding a definition to the regulations to reflect current practices in the navel and Valencia orange industries. The addition of a definition of by-products and the contents of this final rule are applicable only to by-products manufacturers who apply for inclusion on or are on the committees' approved lists of by-products manufacturers. As aforementioned, the term "processing into by-products" has never been defined in the navel and Valencia orange marketing orders. Record evidence from the promulgation hearings for the navel and Valencia orange marketing orders indicates that oranges are considered processed into by-products when the fruit has been chemically or physically altered in form. As new markets, which require new "processes," have developed in the food service industry, it has become evident that a definition of by-products is necessary to reflect current industry practices.

The addition of a definition of "processing into by-products" will also assist the committees' compliance personnel in determining if a processor's by-products operations are in accord with the by-products exemption in the rules and regulations of the navel and Valencia orange marketing orders. Therefore, this rule revises §§ 907.131(a) and 908.131(a) to include a definition of by-products.

The current procedures for applying for approved by-products manufacturer status and for suspension of such status are found in §§ 907.131 and 908.131 of the rules and regulations. Specifically, paragraph (b)(1) of §§ 907.131 and 908.131 of the rules and regulations of the navel and Valencia orange marketing orders, respectively, require processors applying to be placed on the committees' approved lists of by-products manufacturers to submit to the committees an application on N.O.A.C./V.O.A.C. Forms No. 14. These forms include the name and address of the applicant; the proposed type of by-product(s) to be made or derived from oranges; the approximate quantity of oranges to be used annually; a description of the by-product(s) to be manufactured, the equipment to be used in manufacturing such by-products and the capacity per hour thereof; the intended disposition of unused components of the oranges; a statement describing the manner in which the by-product(s) will be sold, whether at the wholesale or retail level (in the case of animal feed), or both; a statement whether orange juice will be pasteurized and, if so, a description of the manner in which such pasteurization will be accomplished; the location of the plant(s); a statement that the exempt oranges acquired will be used for by-products manufacturing only and will not be resold or disposed of in fresh fruit channels; and an agreement to submit such reports as may be required by the committees.

Paragraph (b)(2) of §§ 907.131 and 908.131 explains the criteria for approving a processor's application. An application is first referred to the committees' Compliance Departments for investigation, and the results of the investigation are reported to the committees. The applicable committee approves the application if, in its opinion: The applicant's principal occupation is manufacturing food by-products, including orange by-products, except in the case of those applicants providing oranges or by-products for animal feeding purposes; all orange by-products, including juice, will be sold at the wholesale level only or will be used for animal feed; the applicant agrees to submit such reports as may be required by the committees; the oranges obtained under this exemption will not be resold or disposed of in fresh fruit channels; and approval of the application will not be contrary to the purposes of the navel or Valencia orange marketing orders.

Paragraph (b)(3) of §§ 907.131 and 908.131 currently lists four criteria for removing or suspending a by-products manufacturer from the approved lists. These criteria are: Failure to commercially process navel or Valencia oranges into by-products for a period of one year or more; selling or otherwise disposing of any navel or Valencia orange by-product(s) manufactured from navel or Valencia oranges at the retail level other than for animal feeding; selling or otherwise disposing of oranges obtained under this exemption in fresh fruit channels; or failing or refusing to submit reports required by the committees.

The changes in the application for approved by-products manufacturer status and the suspension or removal of such by-products manufacturers from the approved list of by-products manufacturers are as follows: The committees recommended revising paragraph (b)(1)(vi) of §§ 907.131 and 908.131 to require processors to include on their applications a projection of the percentage of by-products which would be sold in each outlet, wholesale or retail. In addition, paragraph (b)(2)(ii) of §§ 907.131 and 908.131 is revised to include a provision that by-products manufacturers may sell up to 5 percent of their orange by-products, other than those used for animal feed, at the retail level. Allowing processors to sell at retail up to 5 percent of their food by-products could allow more processors to be accepted for inclusion on the committees' lists as a few of the processors applying for exemption already sell a small percentage of their by-products to occasional walk-in business. In addition, the 5 percent or less of by-products going into retail outlets will not impact the industry negatively. Therefore, these revisions will provide an opportunity for by-products manufacturers to sell by-products at the retail level and still qualify for placement on the committees' approved lists of by-products manufacturers. There will continue to be no limit on the amount of by-products which could be sold at retail for use as animal feed. Further miscellaneous changes to paragraph (b)(2) of §§ 907.131 and 908.131 are proposed for clarity.

Comments were received from the committees, Foothill, and FAIR concerning the retail sale of 5 percent of a processor's orange by-products sales volume.

The committees stated that paragraph (b)(2)(i) of §§ 907.131 and 908.131 of the proposed rule did not reflect the committees' intent. The committees' recommendation, which parallels the current rules and regulations, stated that the application for inclusion on a committee's approved list of by-products manufacturers would be approved if, among other considerations, the committee determines that the applicant's by-products facility's principal occupation is manufacturing food by-products, including orange by-products, except those applicants providing oranges or by-products for animal feeding purposes, i.e., applicants or by-products plants providing oranges or by-products for animal feeding purposes can have another primary occupation whereas by-products facilities producing food by-products can only manufacture food by-products as a primary occupation. The March 14 proposed rule, which slightly modified the committees' recommendation, stated that a by-products facility's principal occupation must be manufacturing food by-products or manufacturing by-products for animal feeding purposes, i.e, a processor who manufactures by-products for animal feeding purposes. The Department's modification misinterpreted the committees' original recommendation. It is the committees' intent that the principal occupation of the processing plant be food products, except if the plant manufactures animal by-products. In that case, the plant that manufactures animal by-products may have another principal occupation. Therefore, paragraph (b)(2)(i) of §§ 907.131 and 908.131 of the proposed rule is modified to reflect the committees' intent as stated in their recommendation.

FAIR's comment questions paragraph (b)(2)(i) of §§ 907.131 and 908.131. The commenter states that the proposed rule implies that processors must be independent of other citrus activities, i.e., a grower, handler, or marketing company could not own a by-products manufacturing company. This rule does not preclude a handler, grower, or marketing company from owning or having a major interest in a processing company. However, as aforementioned, the principal operation of the processing facility must be manufacturing food by-products.

FAIR also stated that handlers who are also processors should be more stringently audited and inspected than other processors because the risk of diversion to fresh sales is so much greater. The new procedures discussed in this rule are expected to strengthen compliance and reduce the risk of undetected diversions of by-product oranges to fresh sales by any processing facility. In addition, there is no evidence that handlers who are processors pose a greater risk of diversion than other handlers.

The committees objected to the Department's modification of their recommended change of paragraph (b)(2)(ii) of §§ 907.131 and 908.131. They stated that the proposed language should be changed back to that which was recommended by the committees. The committees' original recommendation stated that: "All orange by-products, including juice, will be sold primarily at wholesale with no more than 5 percent of the applicant's by-products sales volume resulting from retail sales, or will be used in animal feeding." The Department modified the language as follows: "All orange by-products, other than by-products used for animal feeding, will be sold at wholesale except that not more than 5 percent of such by-product sales shall result from retail sales." The Department's modification does not change the substance of the committees' recommendation, rather, it clarifies the intent. Therefore, the committees' exception is denied.

Foothill and FAIR also commented on paragraph (b)(2)(ii) of §§ 907.131 and 908.131 and objected to the provision in the proposed rule that would have allowed up to 5 percent of the processors' by-product oranges to be sold in the retail market. Specifically, the discussion contained in the supplementary information of the proposed rule stated that "* * * by-products manufacturers [may] sell by-product oranges at the retail level * * *" Foothill and FAIR commented that such a provision could allow processors to sell 5 percent of their by-product oranges in the domestic market. This was an inadvertent error and was not the intent of the proposal. By-products manufacturers may only sell up to 5 percent of their orange by-products sales volume, not by-products oranges, at the retail level.

FAIR also questioned the basis for the 5 percent calculation, i.e., whether this percent will be based on value, volume, weight, or by-product category. As noted above, the 5 percent limitation refers to the total orange by-products sales volume, i.e., pounds or gallons. In addition, FAIR questioned the difference

between wholesale and retail markets and stated that a prohibition against the retail sale of by-products would destroy a growing outlet for retail sales of by-products. Further, in contradiction to the commenter's suggestion, allowing processors to sell 5 percent of their orange by-products sales volume will allow more processors to apply and be approved for the committees' approved lists and could have a positive impact on the industry as it would tend to facilitate the utilization of more navel and Valencia oranges. In response to the difference between wholesale and retail markets, by-products sold at retail are sold directly to the consumer whereas by-products sold at wholesale are sold to an entity for resale to the consumer. Further, processors voluntarily apply to be on the committees' approved lists of by-products manufacturers. Those processors will be subject to the rules and regulations of the marketing orders concerning by-products. However, processors who are not on the committees' approved lists of by-products manufacturers are not subject to the marketing orders and may sell any amount of their by-products in the retail market.

Currently, §§ 907.131 and 908.131 do not provide explicit authority for the performance of initial and periodic inspections of the by-products manufacturers' facilities. An initial inspection of the processor's facilities is necessary to ensure that the processor has the necessary equipment to process navel or Valencia oranges into by-products and that oranges shipped under the by-products exemption would not be entering the fresh fruit market. Periodic inspections of the by-products manufacturer's premises will allow the committees to be assured that the processor is operating as an approved by-products manufacturer.

The committees recommended that authority to perform periodic inspections of by-products manufacturers' premises be added to the requirements for approval as an authorized by-products manufacturer. The Department modified the committees' proposal to specify that such authority include authority for an initial inspection. The modified proposal will aid the committees in ensuring that processors on the committees' approved lists of by-products manufacturers would be in compliance with the rules and regulations of the navel and Valencia orange marketing orders.

The committees objected to the inclusion of an initial inspection in paragraph (b)(2) of §§ 907.131 and 908.131 of the proposed rule. The comment stated that this is superfluous as an inspection of a processor's facilities is part of any investigative process. As aforementioned, an initial inspection of the processor's facilities is required to ensure that the processor has the necessary equipment to process navel or Valencia oranges and that oranges shipped under the by-products exemption would not be entering the fresh fruit market. Therefore, the language in the proposed rule is adopted without modification in this final rule.

The committees' comment also suggested replacing the phrase "immediately upon request" in paragraphs (b)(1)(xi), (b)(2)(iv), and (b)(3)(iv) of §§ 907.131 and 908.131 with the phrase "at any time" to be consistent with §§ 907.73(c) and 908.73(c) of the navel and Valencia orange marketing orders. However, §§ 907.73(c) and 908.73(c) refer to handler records, not by-products manufacturers' records, or inspection of by-products manufacturers' facilities. Therefore, there is no need for §§ 907.131 and 908.131 to be consistent with §§ 907.73(c) and 908.73(c) in this instance, as the sections refer to different reports. Thus, the language in the proposed rule is adopted without modification in this final rule.

Foothill and FAIR commented that inspections and audits of processors must be mandatory. In addition, those commenters stated that audits should be performed on all incoming and outgoing products, and inspections should be performed quarterly. Requiring quarterly audits of all by-products manufacturers would be both time-consuming and expensive and are considered unnecessary at this time. The additional reporting requirements and periodic inspections of the by-products manufacturers' premises will allow the committees to ensure that processors are operating as approved by-products manufacturers.

Therefore, paragraphs (b)(1), (b)(2) and (b)(3) of §§ 907.131 and 908.131 of the rules and regulations of the navel and Valencia orange marketing orders, respectively, are revised as modified herein. The revision adds authority for the performance of initial and periodic inspections of the by-products manufacturer's premises immediately upon request at any time during reasonable business hours of the processor.

Paragraph (b)(3) of §§ 907.131 and 908.131 is further revised by adding additional bases upon which a processor could be suspended or removed from the list of approved by-products manufacturers. The additional bases include: Selling or disposing of more than 5 percent of navel or Valencia orange by-products, other than by-products used as animal feed, at the retail level; failing to permit inspection of processing facilities; failing to disclose the origin of all oranges that are acquired by timely submitting copies of N.O.A.C./V.O.A.C. Forms No. 38 to the appropriate committee; and failing to confirm the receipt of navel or Valencia oranges obtained under the by-products exemption by submitting a copy of N.O.A.C./V.O.A.C. Forms No. 15 to the appropriate committee. These additional criteria will help the committees determine processors' compliance with the by-products requirements in the rules and regulations of the orders.

Paragraph (c) of §§ 907.131 and 908.131 of the rules and regulations of the navel and Valencia orange marketing orders, respectively, currently require approved by-products manufacturers to submit to the committees, upon request, on or before the tenth day of the month, a report of the navel or Valencia oranges used during the preceding calendar month. The committees have indicated that this procedures does not provide sufficient information to allow the committees to determine whether the by-products manufacturer is in compliance with the orders and their rules and regulations.

Therefore, this action revises paragraph (c) of §§ 907.131 and 980.131 to require processors to submit new N.O.A.C./V.O.A.C. Forms No. 38 to the appropriate committees on a weekly basis, no later than 72 hours following the end of the period covered by the report. These forms will be required during each crop year, from the date on which oranges are first received for processing through the final date of processing for such crop year. Forms No. 38 contain information as to the quantity and source of production area and non-production area navel or Valencia oranges, e.g., California, Arizona, Texas, Florida, received for processing and a list of the different types of by-products manufactured, including the quantity of such whole navel or Valencia oranges used to produce each by-product, and the quantity of by-product produced.

The additional information will aid the committees in ensuring that California-Arizona navel and Valencia oranges exempted under the by-products exemption do not enter the fresh fruit market. Comparisons of the total amount of oranges received by processors and the total amounts of by-products manufactured would give the committees a method to verify that all oranges received were manufactured into by-products.

The committees objected to the Department's modification of their proposed language in paragraph (c) of §§ 907.131 and 908.131. The Department modified the committees' recommendation by omitting the authority for the committees to specify another reporting period other than weekly and the provision that processors may select another reporting period ending date other than Thursday of each week. The committees stated that nearly all orange by-products manufacturers gather their yield data information when their plants are shut down, normally on a weekend. The committees were of the view that a Thursday deadline for sending in the reports could yield incomplete information. Therefore, the processors should be given the opportunity to select another, more convenient reporting period. In addition, the committees were of the view that they should have the authority to establish another reporting period as, over a period of time, it may become evident that weekly reports from processors are not necessary.

Foothill's comment objected to the committees' comment concerning a different reporting period for processors. The commenter stated that the reporting period should match that of the handlers in order to monitor or match records between the handlers and by-products manufacturers.

A weekly reporting period could be a useful tool in increasing the committees' ability to maintain compliance with the orders and could also help generate data that could be used later to determine trends in the industry. In addition, a weekly reporting date is consistent with the requirement for handlers to report weekly on their shipments of oranges. As to processors selecting another reporting date, it could happen that each by-products manufacturer would require a different reporting date. Thus, some processors would have a reporting date on Thursday, others on Friday, or any other day of the week. This could cause the committees difficulty in compliance as it would be difficult to compare handler reports with processor reports. In addition, a review of the committees' minutes relative to this issue demonstrates support for a weekly reporting period. Therefore, a reporting period and date similar to that required of handlers is deemed necessary in order to effectively utilize this information to enforce compliance. However, if the Thursday reporting period ending date proves unfeasible, the committees may recommend another reporting period ending date for approval by the Secretary.

Therefore, paragraph (c) of §§ 907.131 and 908.311 is revised as published in the March 14, 1990, proposed rule to require processors to submit a new report, N.O.A.C./V.O.A.C. Forms No. 38, to the appropriate committee.

Finally, the Department has revised §§ 907.131 and 908.131 of the rules and regulations of the navel and Valencia orange marketing orders to provide gender neutral language.

The committees' comment also suggested several minor changes, two of which were due to misprints in the **Federal Register**. In the March 14, 1990, proposed rule, "applicant" was inadvertently substituted for "application" in paragraph (b)(2) of § 907.131. In addition, "act" was inadvertently substituted for "part" in paragraph (b)(2)(vi) of § 907.131. This final rule reflects the correct language as proposed by the committees.

Foothill and FAIR commented that the committees' recommendations were submitted by the committees without benefit of public meetings to discuss the proposals and, further, handlers, processors, and the general public did not have any opportunity to comment on the proposals and that the rule should not be implemented.

The committees met on May 23, June 6, and July 18, 1989, to discuss these recommendations. These meetings were open to the public. The proposed rule, which was published in the March 14, 1990, issue of the **Federal Register**, notified by-products manufacturers, handlers, growers and the general public of the proposed changes and offered a 30-day comment period. Therefore, FAIR's and Foothill's comments are denied.

Foothill's and FAIR's comments also objected to volume regulations in general. However, the proposed rule does not address volume regulations, and, therefore, their comments concerning this subject are not discussed in this final rule.

FAIR stated that the committees should not be allowed to approve initial by-products applications and to remove or suspend processors from the approved list as most of the committee members have financial interests in processing plants. The committees are composed of growers and handlers, nominated by growers and handlers, and selected by the Secretary. Under the oversight of the Department, the committees perform their duties in an equitable and fair manner, applying objective criteria. Thus, this comment is without merit.

This final rule will also apply to all processors currently on the committees' approved lists of by-products manufacturers. On and after the effective date of this rule, new applicants should apply on N.O.A.C./V.O.A.C. Forms No. 14. Processors already on the approved lists on the effective date of this rule will be required to reapply using these forms. However, such processors will remain on the approved lists for 60 days after the effective date of the rule in order to allow the committees to investigate and review all the reapplications without unnecessary operational disruptions. During the 60-day period, such processors will be required to comply with the other new by-products regulations (paragraphs (a), (b)(3), (c), and (d) of §§ 907.131 and 908.131).

Therefore, except as noted above, the comments are denied.

Based on available information, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the comments received, and other available information, it is found that the amendment of §§ 907.131 and 908.131, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, and Reporting and recordkeeping requirements.

List of Subjects in 7 CFR Part 908

Marketing agreements, Oranges, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 907 and 908 are amended as follows:

1. The authority citation for 7 CFR parts 907 and 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Subpart—Rules and Regulations

2. Section 907.131 is revised to read as follows:

§ 907.131 By-product oranges.

(a) *Notice to committee.* No person shall handle oranges for commercial processing into by-products unless (1)

such oranges are, or have been, handled pursuant to an allotment therefor; or (2) the processor is an approved by-products manufacturer, as prescribed in paragraph (b) of this section. For the purposes of this section, "processing into by-products" means that such oranges are altered in form through such means as freezing, canning, dehydrating, pulping, slicing, dicing, peeling, juicing, or heating of the product, or is used for animal feeding purposes.

(b) *Approved by-products manufacturer.* (1) Except as provided in paragraph (b)(4) of this section, any person who desires to acquire oranges as an approved by-products manufacturer for commercial processing into by-products exempt from regulation pursuant to § 907.67(b) must first apply to and obtain approval from the committee. Applicants for such exemption shall submit to the committee an application on N.O.A.C. Form No. 14 containing the following information.

(i) The name and address of the applicant;

(ii) The proposed type of by-product(s) to be made or derived from oranges;

(iii) The approximate quantity of oranges to be used annually;

(iv) A description of the by-product(s) to be manufactured, the equipment to be used in manufacturing such by-products, and the capacity per hour thereof;

(v) The intended disposition of unused components of the oranges;

(vi) A statement describing the manner in which the by-product(s) will be sold, whether at wholesale, retail, or both, with a projection of the percentages to be sold in each outlet;

(vii) A statement whether orange juice will be pasteurized and, if so, a description of the manner in which such pasteurization will be accomplished;

(viii) The location of the plant(s);

(ix) A statement that the oranges acquired will be used for by-products manufacturing only and will not be resold or disposed of in fresh fruit channels;

(x) An agreement to submit such reports as may be required by the committee; and

(xi) An agreement to allow inspection of the by-products manufacturers' facilities immediately upon request during reasonable business hours.

(2) Such application shall be referred to the committee's Compliance Department for investigation, which includes an inspection of the by-products manufacturers' facilities, and reported to the committee. The committee shall approve the application if it determines that:

(i) The applicant's by-products facility's principal occupation is manufacturing food by-products, including orange by-products, except those applicants providing oranges or by-products for animal feeding purposes;

(ii) All orange by-products, other than by-products used for animal feeding, will be sold at wholesale except that not more than 5 percent of such by-product sales shall result from retail sales;

(iii) The applicant has agreed to submit such reports as may be required by the committee;

(iv) The applicant has agreed to permit inspections of all facilities immediately upon request during reasonable business hours;

(v) The oranges obtained under this exemption will not be resold or disposed of in fresh fruit channels; and

(vi) Approval of the application will not be contrary to the purposes of this part.

If an application is denied, the committee shall within a reasonable time inform the applicant in writing of the facts and reasons therefor, and afford the applicant an opportunity, either orally or in writing, to present opposing facts and reasons. If the application is approved, the applicant's name shall be placed on the list of approved by-products manufacturers. The applicant shall be informed of the committee's determination in a timely manner.

(3) A commercial processor on the list of approved by-products manufacturers who:

(i) Fails to commercially process oranges into by-products for a period of one year or more;

(ii) Sells or otherwise disposes of more than 5 percent of orange by-products, other than by-products used for animal feeding, at the retail level;

(iii) Sells or otherwise disposes of oranges obtained under this exemption in fresh fruit channels;

(iv) Fails to permit inspection of facilities immediately upon request, during reasonable business hours;

(v) Fails to disclose the origin of all oranges that are acquired by timely submitting N.O.A.C. Form No. 38;

(vi) Fails to confirm receipt of oranges obtained under this exemption by submitting copies of N.O.A.C. Form No. 15 with the actual net weight or number of cartons received recorded thereon; or

(vii) Fails or refuses to submit such other reports required by the committee, may be determined by the committee to be ineligible to acquire oranges under this exemption, and the committee may suspend or remove its name from the list of approved by-products manufacturers for such time as the committee deems appropriate under the circumstances.

Prior to making such determination, the committee shall give the processor reasonable advance notice in writing of its intention and the facts and reasons therefor and afford the processor an opportunity, either orally or in writing, to present opposing facts and reasons. After a processor's name has been removed from the list of approved by-products manufacturers, it must submit a new application and secure approval of the committee in order to acquire oranges pursuant to § 907.67(b).

(4) Any processor on the list of approved by-products manufacturers on December 6, 1990, shall be required to submit a new application in accord with paragraphs (a), (b) (1) and (2) of this section, but shall automatically remain on the list until February 4, 1991. However, from December 6, 1990 through February 4, 1991, paragraphs (a), (b)(3), (c), and (d) of this section shall be applicable to such processors.

(c) *Certification by by-products manufacturers.* During each crop year, from the date on which oranges are first received for processing through the final date of processing for such crop year, each approved by-products manufacturer shall submit, on N.O.A.C. Form No. 38, a report of its operations during the reporting period. Such report shall contain information as to the quantity and source of oranges including any oranges grown outside of the production area received for processing and as to the quantity of each type of by-product produced from such oranges. The report shall be submitted weekly. It shall be submitted to the committee no later than seventy-two (72) hours following the end of the period covered by the report with each reporting period ending on a Thursday. Each report shall contain a certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information therein.

(d) *Orange diversion report.* Each handler shall, with respect to each quantity of oranges diverted for commercial processing into by-products to charitable organizations, or eliminated from the channels of human consumption, report to the committee, on N.O.A.C. Form No. 15:

(1) The name and address of the by-products plant or charitable organization to which the oranges were diverted;

(2) The district in which the oranges were produced;

(3) The respective quantities of oranges in terms of the number of cartons (i) diverted to by-products, (ii) diverted to charitable organizations, and (iii) eliminated;

(4) The net weight of such oranges; and

(5) If oranges were eliminated, the place and means of elimination.

This report shall be prepared in quadruplicate. One copy signed by the handler shall be submitted to the committee promptly upon the diversion or elimination of the oranges covered thereby. One copy may be retained by the handler, and two copies shall be forwarded by the handler to the by-products manufacturer or charitable organization with the understanding that the by-products manufacturer or charitable organization will record, on one copy thereof, the actual net weight or number of cartons of oranges received, and forward such copy to the committee.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Subpart—Rules and Regulations

3. Section 908.131 is revised to read as follows:

§ 908.131 By-product oranges.

(a) *Notice to committee.* No person shall handle oranges for commercial processing into by-products unless (1) such oranges are, or have been, handled pursuant to an allotment therefor; or (2) the processor is an approved by-products manufacturer, as prescribed in paragraph (b) of this section. For the purposes of this section, "processing into by-products" means that such oranges are altered in form through such means as freezing, canning, dehydrating, pulping, slicing, dicing, peeling, juicing, or heating of the product, or is used for animal feeding purposes.

(b) *Approved by-products manufacturer.* (1) Except as provided in paragraph (b)(4) of this section, any person who desires to acquire oranges as an approved by-products manufacturer for commercial processing into by-products exempt from regulation pursuant to § 908.67(b) must first apply to and obtain approval from the committee. Applicants for such exemption shall submit to the committee an application on V.O.A.C. Form No.14 containing the following information:

(i) The name and address of the applicant;

(ii) The proposed type of by-product(s) to be made or derived from oranges;

(iii) The approximate quantity of oranges to be used annually;

(iv) A description of the by-product(s) to be manufactured, the equipment to be used in manufacturing such by-products, and the capacity per hour thereof;

(v) The intended disposition of unused components of the oranges;

(vi) A statement describing the manner in which the by-product(s) will be sold, whether at wholesale, retail, or both, with a projection of the percentages to be sold in each outlet;

(vii) A statement whether orange juice will be pasteurized and, if so, a description of the manner in which such pasteurization will be accomplished;

(viii) The location of the plant(s);

(ix) A statement that the oranges acquired will be used for by-products manufacturing only and will not be resold or disposed of in fresh fruit channels;

(x) An agreement to submit such reports as may be required by the committee; and

(xi) An agreement to allow inspection of the by-products manufacturers' facilities immediately upon request during reasonable business hours.

(2) Such application shall be referred to the committee's Compliance Departemnt for investigation, which includes an inspection of the by-products manufacturers facilities, and reported to the committee. The committee shall approve the application if it determines that:

(i) The applicant's by-products facility's principal occupation is manufacturing food by-products, including orange by-products, except those applicants providing oranges or by-products for animal feeding purposes;

(ii) All orange by-products, other than by-products used for animal feeding, will be sold at wholesale except that not more than 5 percent of such by-product sales shall result from retail sales;

(iii) The applicant has agreed to submit such reports as may be required by the committee;

(iv) The applicant has agreed to permit inspections of all facilities immediately upon request during reasonable business hours;

(v) The oranges obtained under this exemption will not be resold or disposed of in fresh fruit channels; and

(vi) Approval of the application will not be contrary to the purposes of this part.

If an application is denied, the committee shall within a reasonable time inform the applicant in writing of the facts and reasons therefor, and afford the applicant an opportunity, either orally or in writing, to present opposing facts and reasons. If the application is approved, the applicant's name shall be placed on the list of approved by-products manufacturers. The applicant shall be informed of the committee's determination in a timely manner.

(3) A commercial processor on the list of approved by-products manufacturers who:

(i) Fails to commercially process oranges into by-products for a period of one year or more;

(ii) Sells or otherwise disposes of more than 5 percent of orange by-products, other than by-products used for animal feeding, at the retail level;

(iii) Sells or otherwise disposes of oranges obtained under this exemption in fresh fruit channels;

(iv) Fails to permit inspection of facilities immediately upon request, during reasonable business hours;

(v) Fails to disclose the origin of all oranges that are acquired by timely submitting V.O.A.C. Form No. 38;

(vi) Fails to confirm receipt of oranges obtained under this exemption by submitting copies of V.O.A.C. Form No. 15 with the actual net weight or number of cartons received recorded thereon; or

(vii) Fails or refuses to submit such other reports required by the committee; may be determined by the committee to be ineligible to acquire oranges under this exemption, and the committee may suspend or remove its name from the list of approved by-products manufacturers for such time as the committee deems appropriate under the circumstances.

Prior to making such determination, the committee shall give the processor reasonable advance notice in writing of its intention and the facts and reasons therefor and afford the processor an oportunity, either orally or in writing, to present opposing facts and reasons. After a processor's name has been removed from the list of approved by-products manufacturers, it must submit a new application and secure approval of the committee in order to acquire oranges pursuant to § 908.67(b).

(4) Any processor on the list of approved by-products manufacturers on December 6, 1990 shall be required to submit a new application in accord with paragraphs (a), (b)(1) and (2) of this section, but shall automatically remain on the list until February 4, 1991. However, from December 6, 1990 through February 6, 1991, paragraphs (b)(3), (c), and (d) of this section shall be applicable to such processors.

(c) *Certification by by-products manufacturers.* During each crop year, from the date on which oranges are first

received for processing through the final date of processing for such crop year, each approved by-products manufacturer shall submit, on V.O.A.C. Form No. 39, a report of its operations during the reporting period. Such report shall contain information as to the quantity and source of oranges received for processing and as to the quantity of each type of by-product produced. The report shall be submitted weekly. It shall be submitted to the committee no later than seventy-two (72) hours following the end of the period covered by the report with each reporting period ending on a Thursday. Each report shall contain a certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information therein.

(d) *Orange diversion report.* Each handler shall, with respect to each quantity of oranges diverted for commercial processing into by-products to charitable organizations, or eliminated from the channels of human consumption, report to the committee, on V.O.A.C. Form No. 15:

(1) The name and address of the by-products plant or charitable organization to which the oranges were diverted;

(2) The district in which the oranges were produced;

(3) The respective quantities of oranges in terms of the number of cartons (i) diverted to by-products, (ii) diverted to charitable organizations, and (iii) eliminated;

(4) The weight of such oranges; and

(5) If oranges were eliminated, the place and means of elimination. This report shall be prepared in quadruplicate. One copy signed by the handler shall be submitted to the committee promptly upon the diversion or elimination of the oranges covered thereby. One copy may be retained by the handler, and two copies shall be forwarded by the handler to the by-products manufacturer or charitable organization with the understanding that the by-products manufacturer or charitable organization will record, on one copy thereof, the actual net weight or number of cartons of oranges received, and forward such copy to the committee.

Dated: October 31, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-26157 Filed 11-5-90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-202-AD; Amdt. 39-6802]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which requires repetitive ground tests of the ram air turbines, and overhaul of the ram air turbine. This amendment is prompted by reports that, during ground and flight tests of the ram air turbine, the blades remained in the feathered pitch of initial spin-up, instead of progressively moving to the operating pitch, due to corrosion in the blade bearing and operating pin assembly. This condition, if not corrected, could result in failure of the ram air turbine system to provide hydraulic power in an emergency situation.

EFFECTIVE DATE: December 17, 1990.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A300 series airplanes, which requires repetitive ground tests of the ram air turbines (RAT) and overhaul of the ram air turbine, was published in the **Federal Register** on May 9, 1990 (55 FR 19269).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter stated that paragraph D. of the proposed rule would require that all of its RATs be overhauled within 3,000 hours of the effective date of the AD. The commenter requested that the compliance time be extended because there was no practical way to accomplish the overhaul within that time, since the vendor required 60 days per unit to perform the overhaul. The FAA does not concur that an extension is warranted. Paragraph D. requires that the RATs be overhauled prior to the later of (1) 20,000 hours or 10 years since new or overhauled, or (2) 12 months or 3,000 hours time-in-service after the effective date of the rule. The FAA considers that, especially in the case of the "oldest" RATs, 12 months is ample time for accomplishment of the overhaul, even with the 60-day lead time that is necessary for the vendor (as the commenter has indicated). The FAA has also determined that the compliance time, as proposed, represents the maximum interval of time allowable wherein the overhaul can reasonably be accomplished and an acceptable level of safety can be maintained.

The same commenter stated that the procedures described in Dowty Rotol Service Bulletin 29-125 R1 are terminating action for the French AD corresponding to the proposed rule. The commenter requested that the proposed rule be revised to include similar provisions for terminating action. The FAA partially concurs. The modification described in Dowty Rotol Service Bulletin 29-125 R1 is terminating action for the French AD, but only when the modifications specified in both Dowty Rotol Service Bulletins 29-76 and 29-101 have also been accomplished. The FAA concurs that accomplishment of the procedures specified in all three of these Dowty Rotol service bulletins constitutes terminating action and has revised the final rule to include a new paragraph to indicate this.

A second commenter requested that the interval for repetitive ground tests be increased to 3,800 flight hours or 15 months so that it could be accomplished during a regularly scheduled "C" check. The FAA does not concur. The FAA has determined that the established intervals are the maximum allowable limits that will ensure continued safe operation. However, under the provisions of paragraph F. of the final rule, an operator may apply for an extension of the compliance periods as an alternate means of compliance if that operator can provide data to justify that longer limits would not adversely impact safety.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

It is estimated that 66 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the ram air test, and that the average labor cost will be $40 per manhour. The estimated cost for overhauling the RAT is approximately $35,000 per unit. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,312,640.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, Serial Numbers 001 through 305, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent failure of the ram air turbine system to provide hydraulic power in an emergency situation, accomplish the following:

A. For ram air turbines on which neither modification No. RM 370 (Dowty Rotol Service Bulletin 29-76) nor modification No. RM 401 (Dowty Rotol Service Bulletin 29-104) has been accomplished; or on which one, but not both, of those modifications has been accomplished: Perform a ground test of the ram air turbines, in accordance with Dowty Rotol Service Bulletin 29-124, Revision 3, dated March 29, 1989, as follows:

1. Prior to a. or b., below, whichever occurs later:

a. 4,000 hours time-in-service or 24 months since new or overhaul, whichever occurs first, or

b. 600 hours time-in-service or 6 months after the effective date of this AD, whichever occurs first.

2. Repeat the ground test at intervals not to exceed 600 hours time-in-service or 6 months, whichever occurs first.

B. For ram air turbines on which both modification No. RM 370 (Dowty Rotol Service Bulletin 29-76) and modification No. RM 401 (Dowth Rotol Service Bulletin No. 29-104) have been accomplished: Perform a ground test of the ram air turbines, in accordance with Dowty Rotol Service Bulletin 29-124, Revision 3, dated March 29, 1989, as follows:

1. Prior to a. or b., below, whichever occurs later:

a. 7,500 hours time-in-service or 30 months since new or overhaul, whichever occurs first, or

b. 1,500 hours time-in-service or 6 months after the effective date of this AD, whichever occurs first.

2. Repeat the ground test at intervals not to exceed 3,000 hours time-in-service or 12 months, whichever occurs first.

C. If the ram air turbine fails to function properly during the ground tests required by paragraphs A. or B. of this AD, prior to further flight, replace with a serviceable unit, or overhaul the unit, in accordance with Dowty Rotol Overhaul Manual 29-21-24.

D. Prior to 1. or 2., below, whichever occurs later, perform an overhaul of the ram air turbine system in accordance with Dowty Rotol overhaul manual 29-21-24:

1. 20,000 hours time-in-service or 10 years since new or overhauled, whichever occurs first, or

2. 12 months or 3,000 hours time-in-service after the effective date of the AD, whichever occurs first.

E. Accomplishment of the modifications described in all three Dowty Rotol Service Bulletins 29-125 R1, 29-76, and 29-101 constitutes terminating action for the requirements of this AD.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective December 17, 1990.

Issued in Renton, Washington, on October 29, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26169 Filed 11-5-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-202-AD; Amdt. 39-6792]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires a one-time inspection of the two landing gear selector valve installations, and correction of improper configurations, if necessary. This amendment expands the applicability to add one additional airplane and revises the source for service information to reflect the latest version of the manufacturer's service bulletin. This amendment is prompted by a determination that the referenced service bulletin specifies incorrect torque values and that the applicability statement omitted one airplane. This condition, if not corrected, could result in partial gear-up or all gear-up landing incidents.

EFFECTIVE DATE: November 12, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest

Mountain Region, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. David Herron, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2672. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: On September 7, 1990, the FAA issued AD 90-19-10, Amendment 39-6743 (55 FR 37856, September 14, 1990) to require a one time inspection of the two landing gear selector valve installations, and correction of improper configurations, if necessary. That action was prompted by a recent incident in which a Boeing Model 747-400 series airplane made a partial gear up landing with the two body gear and the nose gear retracted. Ground investigation determined that the crew was unable to extend the nose and body gear due to a missing bolt and nut in the mechanical linkage between the nose and body gear selector valve and the selector valve input quadrant. This also prevented alternative extension due to hydraulic pressure being applied continuously to the gear up ports of the affected gear retract actuators. Further investigation revealed that the attachment nut of the input crank mechanism to the wing gear selector valve was also missing; however, the bolt was in place. This condition, if not corrected, could result in partial gear-up or all gear-up landings.

Since issuance of that AD, the manufacturer has informed the FAA that (1) airplane line position 806 was delivered to a customer without the selector valve installation inspected and needed to be added to the applicability list; (2) the selector valve installation torque value for the self locking nut should be 50 to 80 inch-pounds in lieu of 30 to 50 inch-pounds, as specified in Boeing Service Bulletin 747-32-2361, dated September 7, 1990; and (3) a variable grip length bolt should be listed in the stated service bulletin as an optional part number. Revision 1 of the Boeing Telegraphic Service Bulletin 747-32-2361, dated September 28, 1990, includes these changes.

The FAA has reviewed and approved Boeing Telegraphic Service Bulletin 747-32-2361, Revision 1, dated September 28, 1990, which describes the procedures for a one-time inspection and correction of any improper configurations, if necessary, of the nose/body and wing landing gear selector valve installations. This revised service bulletin adds one airplane to the applicability, corrects the torque values for the selector valve installation, and provides for use of a variable grip length bolt.

Since this condition is likely to exist on other airplanes of the same type design, this AD expands the applicability for a one-time inspection of the landing gear selector valve installations, and correction of any improper configurations, if necessary, in accordance with the service bulletin previously described. Additionally, this amendment incorporates new service information provided by the revised service bulletin.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6743 (55 FR 37856), AD 90-19-10, with the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, line position 002 through 803, and 806 certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent partial gear-up or all gear-up landings, accomplish the following:

A. For airplanes, line position 002 through 803: Within 30 days of October 30, 1990 (the effective date of AD 90-19-10, Amendment 39-6743), inspect the nose and body gear selector valve installation and the wing gear selector valve installation in accordance with Boeing Service Bulletin 747-32-2361, dated September 7, 1990.

1. Prior to further flight, correct any discrepancies found in the installation, in accordance with Boeing Service Bulletin 747-32-2361, dated September 7, 1990, or Boeing Telegraphic Service Bulletin 747-32-2361, Revision 1, dated September 28, 1990.

2. Within 30 days after the effective date of this AD, for airplanes that have had discrepancies corrected in accordance with paragraph A.1. of this AD, retorque the self locking nut to 50 to 80 inch-pounds, in accordance with Boeing Telegraphic Service Bulletin 747-32-2361, Revision 1, dated September 28, 1990.

B. For airplane, line position 806: Within 30 days after the effective date of this AD, inspect the nose and body gear selector valve installation and the wing gear selector valve installation in accordance with Boeing Telegraphic Service Bulletin 747-32-2361, Revision 1, dated September 28, 1990. Correct any discrepancies found in the installation prior to further flight, in accordance with Boeing Telegraphic Service Bulletin 747-32-2361, Revision 1, dated September 28, 1990.

C. Within 10 days after completion of the inspection required by this AD, submit a report of finding any improper configuration to the FAA, Seattle Manufacturing Inspection District Office, ANM-168S, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The report must include the line number of the airplane inspected, the number of cycles, and the inspection findings.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Inspector (PI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to The Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39-6743, AD 90-19-10.

This amendment becomes effective November 12, 1990.

Issued in Renton, Washington, October 22, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26165 Filed 11-5-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-134-AD; Amendment 39-6799]

Airworthiness Directives: Boeing Model 737-300 and 737-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD); applicable to all Model 737-400 series airplanes, which currently requires modification of the auxiliary power unit (APU) instrumentation wiring. That action was prompted by reports that the APU exhaust gas temperature (EGT) indication incorrectly read "zero" following an APU shutdown, including an APU shutdown associated with an aborted APU start. This condition, if not corrected, could result in undetected overtemperature damage to the APU rotor structure, which could then result in rotor failure and possible structural damage to the airplane. This action requires the same APU modification on certain Boeing 737-300 series airplanes, since these airplanes may exhibit the same operational deficiency.

EFFECTIVE DATE: December 11, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2681. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-09-05, Amendment 39-6583 (55 FR 15220, April 23, 1990), applicable to Boeing Model 737-300 and -400 series airplanes, to require modification of the APU EGT instrumentation was published in the **Federal Register** on July 19, 1990 (55 FR 29381).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the only comment received.

The Air Transport Association (ATA) of America, on behalf of its members, expressed no objection to the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 823 Model 737-300 and -400 series airplanes of the affected design in the worldwide fleet. It is estimated that 380 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost of modification parts is considered negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $136,800.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6583 (55 FR 15220, April 23, 1990), AD 90-09-05, with the following new airworthiness directive:

Boeing: Applies to Model 737-300 and 737-400 series airplanes, listed in Boeing Service Bulletin 737-49-1071, dated May 10, 1990, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent auxiliary power unit (APU) rotor failure resulting from an undetected EGT overtemperature condition, accomplish the following:

A. For Model 737-400 series airplanes: Within 1,000 hours time-in-service after May 29, 1990 (the effective date of Amendment 39-6583, AD 90-09-05), modify the APU instrumentation wiring in a manner that will assure continuous flight-compartment APU exhaust gas temperature (EGT) indication following a shutdown. The modification must be accomplished in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate; or in accordance with Boeing Service Bulletin 737-49-1071, dated May 10, 1990.

B. For Model 737-300 series airplanes: Within 1,000 hours time-in-service after the effective date of this amendment, modify the APU instrumentation wiring in accordance with Boeing Service Bulletin 737-49-1071, dated May 10, 1990.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager,

Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39-6583, AD 90-09-05.

This amendment becomes effective December 11, 1990.

Issued in Renton, Washington, on October 25, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26171 Filed 11-5-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-110-AD; Amendment 39-6801]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires inspection of the fuselage skin lap splice between body station (BS) 340 and BS 400 at stringers (S)-6L and S-6R, and repair, if necessary. This action deletes the option of reinspecting known small cracks in lieu of repairing them before further flight, and reduces the repetitive inspection interval. This amendment is prompted by further FAA consideration of the crack repair deferral option in the existing AD, and analysis results which indicate that a reduction of the inspection interval is warranted. This condition, if not corrected, could result in sudden loss of cabin pressurization and the inability of the fuselage to withstand failsafe loads.

EFFECTIVE DATE: December 11, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2777. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 85-17-05, Amendment 39-5123 (50 FR 3335, August 19, 1985), applicable to Boeing Model 747 series airplanes, to require inspection of the fuselage skin lap splice between body station (BS) 340 and BS 400 at stringers S-6L and S-6R, and repair, if necessary, was published in the **Federal Register** on June 28, 1990 (55 FR 28219).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

A foreign operator of Boeing Model 747 airplanes and the manufacturer commented that the rule should be revised to reflect that flights with pressurization of 1.5 psi or below need not be counted as flight cycles and that a 1.2 adjustment factor be used for the initial and repetitive inspections for Boeing Model 747SR airplanes based on continued mixed operation at lower cabin pressure differentials. The FAA concurs and the final rule has been revised by adding two new paragraphs, C. and D., to specify that flights with cabin pressure differentials of 1.5 psi or below need not be counted as flight cycles, and that a 1.2 adjustment factor may be used for the initial and repetitive inspections for Boeing Model 747SR airplanes based on continued mixed operation at lower cabin pressure. (These factors have been included in similar AD's previously issued.)

One Air Transport Association (ATA) of America member operator requested that the proposed initial inspection period be increased from 250 landings to 1,000 landings so that this inspection could be accomplished at a scheduled C-check. The FAA does not concur. The intent of this rule was to reduce the inspection interval from 5,000 to 3,000 flight cycles, based on the 747 Aging Fleet Structures Working Group's recommendation. The 250 landings initial inspection was based on allowing the maximum credit (2,750 cycles) from the time the last previous inspection required by AD 85-17-05 was accomplished.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described above. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 603 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 191 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $61,120.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 85-17-05, Amendment 39-5123 (50 FR 3335, August 19, 1985), with the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, identified in Boeing Service Bulletin 747-53-2253, Revision 2, dated March 29, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent sudden loss of cabin pressurization and the inability to withstand fail-safe loads, accomplish the following:

A. For airplanes that have not been modified in accordance with Boeing Service Bulletin 747-53-2253, Revision 2, dated March 29, 1990: In accordance with the schedule indicated below, perform a high frequency eddy current inspection of the fuselage lap joint for cracks between body station (BS) 340 and BS 400, or aft as far as the crew door, at stringer (S)-6L and S-6R, in accordance with Boeing Service Bulletin 747-53-2253, Revision 2, dated March 29, 1990.

1. Inspection schedule:

a. Unless previously accomplished within the last 2,750 landings, perform the initial inspection within the next 250 landings after the effective date of this AD, or prior to the accumulation of 10,000 landings, whichever occurs later.

b. Repeat the inspection thereafter at intervals not to exceed 3,000 landings.

2. If cracks are found, repair prior to further flight, in accordance with Boeing Service Bulletin 747-53-2253, Revision 2, dated March 29, 1990.

B. For airplanes that have been modified in accordance with Boeing Service Bulletin 747-53-2253, Revision 2, dated March 29, 1990: In accordance with the schedule below, perform a high frequency eddy current inspection of the fuselage lap joint for cracks between BS 340 and BS 400, or aft as far as the crew door, at stringers (S)-6L and S-6R, in accordance with Boeing Service Bulletin 747-53-2253, Revision 2, dated March 29, 1990.

1. Inspection schedule:

a. Unless previously accomplished within the last 2,750 landings, perform the initial inspection within the next 250 landings after the effective date of this AD, or prior to the accumulation of 10,000 landings after the modification, whichever occurs later.

b. Repeat the inspection thereafter at intervals not to exceed 3,000 landings.

2. If cracks are found, repair prior to further flight, in accordance with Boeing Service Bulletin 747-53-2253, Revision 2, dated March 29, 1990.

C. For purposes of complying with this AD, the number of landings may be determined to be equal to the number of pressurization cycles where the cabin pressure differential was greater than 1.5 psi.

D. For Model 747SR airplanes only: Based on a continued mixed operation of lower cabin differentials, the initial inspection thresholds and the repetitive inspection intervals specified in this AD may be multiplied by a 1.2 adjustment factor.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective December 11, 1990.

Issued in Renton, Washington, on October 25, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26170 Filed 11-5-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-122-AD; Amendment 39-6800]

Airworthiness Directives; British Aerospace Model DH.125-1A Series Airplanes, Equipped with Hawker Siddeley Dynamics Air Conditioning System and Rolls Royce Viper Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model DH.125-1A series airplanes, which requires a one-time detailed visual inspection to detect damage in the rear pressure bulkhead, a subsequent dye penetrant inspection and dial indicator measurement to determine the extent of damage, and repair, if necessary; and an adjustment of the clearance between the air conditioning duct and rear pressure bulkhead. This amendment is prompted by reports of chafing between the air conditioning duct and the rear pressure bulkhead. This condition, if not corrected, could lead to rupture of the rear pressure bulkhead and subsequent rapid decompression of the airplane.

EFFECTIVE DATE: December 11, 1990.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model DH.125-1A series airplanes, which requires a one-time detailed visual inspection to detect damage in the rear pressure bulkhead, a subsequent dye penetrant inspection and dial indicator measurement to determine the extent of damage, and repair, if necessary; and an adjustment of the clearance between the air conditioning duct and rear pressure bulkhead, was published in the **Federal Register** on August 14, 1990 (55 FR 33128).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately one manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $120.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model DH.125-1A series airplanes, equipped with Hawker Siddeley Dynamics Air Conditioning System and Rolls Royce Viper Engines, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent chafing between the air conditioning duct and the rear pressure bulkhead, and subsequent rapid decompression of the airplane, accomplish the following:

A. Within 30 days after the effective date of this AD, perform a detailed visual inspection for chafing on the aft face of the rear pressure bulkhead, in accordance with the Accomplishment Instructions of British Aerospace Service Bulletin 53-71, dated November 1, 1989.

B. If defects are found, prior to further flight, perform a dye penetrant inspection to detect cracks in the vicinity of the affected area; and perform a dial test indicator measurement to determine the depth of damage in the rear pressure bulkhead, in accordance with British Aerospace Service Bulletin 53-71, dated November 1, 1989.

1. If the damage to the rear pressure bulkhead is less than 0.003 inch deep, prior to further flight, carefully blend out, polish, and then restore protective treatment in accordance with the service bulletin.

2. If the damage to the rear pressure bulkhead is greater than 0.003 but less than 0.010 inch deep, within 100 landings, repair in accordance with appendix B of the service bulletin.

3. If the damage to the rear pressure bulkhead is greater than 0.010 inch deep, prior to further flight, repair in accordance with Appendix B of the Service Bulletin.

C. Within 30 days after the effective date of this AD, adjust the clearance between the air conditioning duct clamp and the rear pressure bulkhead so there is at least a ¾-inch clearance. This can be accomplished by rotating and adjusting the duct position.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

This amendment becomes effective December 11, 1990.

Issued in Renton, Washington, on October 25, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26172 Filed 11-5-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-219-AD; Amendment 39-6803]

Airworthiness Directives; Fokker Model F-28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F-28 Mark 0100 series airplanes, which require the installation of a placard in the cockpit, certain operational limitations and autopilot restrictions until the autopilot primary servomotors have been inspected to detect missing jumper wires, and replaced with modified units, if necessary. This amendment is prompted by reports of a potential failure situation in the automatic flight control augmentation system (AFCAS) servomotors due to two missing jumper wires. This condition, if not corrected, could result in loss of flight path control during automatic flight if another AFCAS single failure occurs.

EFFECTIVE DATE: November 26, 1990.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Fokker Model F-28 Mark 0100 series airplanes. There have been recent reports of a potential failure situation in the automatic flight control augmentation system (AFCAS) servomotors due to two missing jumper wires. This condition, if not corrected, could result in loss of flight path control during automatic flight if another AFCAS single failure occurs.

Fokker has issued Service Bulletin F100-22-021, dated August 22, 1990, which describes procedures for an interim action to impose certain operational limitations and autopilot restrictions. Fokker's long-term solution is a one-time inspection of the servomotors to detect any missing jumper wires, and replacement of the affected servomotor(s) with a modified unit, if necessary. The RLD has classified this service bulletin as mandatory, and has issued Airworthiness Directive 069 addressing this subject.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires the fabrication and installation of a placard in the cockpit, and an Airplane Flight Manual (AFM) revision which imposes certain operational limitations and autopilot restrictions. Subsequently, operators are required to inspect the autopilot primary servomotors to detect missing jumper wires, and replace affected servomotor(s) with a modified unit, if necessary, in accordance with the service bulletin previously described. Once the inspection/replacement has been accomplished, the placard and AFM revision may be removed.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Applies to Model F-28 Mark 0100 series airplanes, Serial Numbers 11244 through 11286, 11289, 11291 through 11293, 11295, 11297, 11300, 11303, 11306, 11308, 11310, 11312, and 11314, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent loss of flight path control during automatic flight, accomplish the following:

A. Within 5 days after the effective date of this AD, incorporate the following changes into the Limitation Section of the FAA approved Airplane Flight Manual. This may be accomplished by inserting a copy of this AD in the AFM.

1. *Section 2.01.01*—Delete the following statements if incorporated in the "Kinds of Operation" paragraph in this section.

—CAT II approach. Compliance with FAA AC 120-29 has been demonstrated.

—CAT IIIA approach. Compliance with FAA AC 120-28C has been demonstrated.

—Autoland. Compliance with FAA AC 20-57A has been demonstrated.

2. *Section 2.08.01*—

a. Delete the following paragraphs:

—Autopilot.

—CAT II Approach (AP Coupled Only).

—ILS Approach.

b. If a "GA MODE" paragraph is incorporated, delete the following text: "During approach, after land 2/3 is annunciated until 500 feet above ground level (AGL), certain autopilot (AP) monitors are not available. It is the pilot's responsibility to monitor the AP performance during this phase. In case of a go-around (GA) during this phase, the AP shall be disconnected before triggering the TOGA lever."

c. If an "Aircraft Equipment" paragraph is incorporated, this paragraph must be deleted.

d. The following limitations must be *added* to Section 2.08.01: "AUTOPILOT—The autopilot must not be used in the take-off mode. The autopilot must not be used below 1,500 feet AGL."

B. Within 5 days after the effective date of this AD fabricate a placard which states: "The autopilot must not be used in the take-off mode. The autopilot must not be used below 1,500 feet AGL."

Install this placard in full view of the pilot in the cockpit.

C. Within 14 days after the effective date of this AD, perform an inspection of the autopilot primary servomotors in accordance with Fokker Service Bulletin F100-22-021, dated August 22, 1990. If the jumper wires are missing, prior to further flight, replace the affected servomotor with a modified unit, in accordance with the Fokker service bulletin.

Note: The Fokker service bulletin references Collins Alert Service Bulletin SVO-1000-22-A05, Revision 1, dated August 22, 1990, for additional instructions.

D. Following the inspection required by paragraph C. of this AD, and modification, if necessary, the changes to the flight manual and the placard required by paragraphs A. and B. of this AD may be removed.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective November 26, 1990.

Issued in Renton, Washington, on October 29, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26168 Filed 11-5-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-ANE-06; Amdt. 39-6754]

Airworthiness Directives; General Electric Co. (GE) CF6-50/-45 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

BEST COPY AVAILABLE

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to GE CF6–50/–45 series engines, which currently requires initial and repetitive inspections of the turbine mid-frame (TMF) case installed in GE CF6–50/–45 series engines. This amendment carries forth all existing AD 90–06–07 inspection requirements, except for the extension of repetitive inspection intervals for certain engines. This amendment is prompted by new field service data which indicates that certain inspection intervals can be extended.

DATES: Effective December 6, 1990.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of December 6, 1990.

ADDRESSES: The applicable service information may be obtained from the General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. This information may be examined at the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Engine Certification Branch, ANE–142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7085.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to supersede AD 90–06–07, Amendment 39–6449 (55 FR 8124, March 7, 1990), was published in the **Federal Register** on June 29, 1990 (55 FR 26703). The proposed amendment is to carry forth all existing AD 90–06–07 inspection requirements, except for the extension of repetitive inspection intervals for certain engines. The FAA has determined that new field service data indicates that certain inspection intervals can be extended.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. One comment was received. The commenter suggested that since only the outer case assembly is inspected, it would be more accurate to refer to the part number of the case assembly instead of the module assembly. The FAA does not concur, due to the desire to be consistent with the "Effectivity" paragraph of the manufacturers inspection instructions, which refers to the TMF module assembly part numbers.

After review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 517 CF6–50/–45 series engines of the affected design in the domestic fleet. It is estimated that it would take one manhour per inspection to accomplish the required actions, that the average labor cost would be $40 per manhour, and that approximately 830 required inspections will be conducted annually. Based on these figures, the total cost impact of the AD on the domestic fleet is estimated to be $35,000 annually.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423, 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39–6449 (55 FR 8124, March 7, 1990), AD 90–06–07 as follows:

General Electric Company: Applies to General Electric Company (GE) CF6–50/–45 series turbofan engines installed on, but not limited to, McDonnell-Douglas DC–10, Boeing 747, and Airbus A300 type aircraft.

Compliance is required as indicated, unless previously accomplished.

To prevent turbine mid-frame (TMF) cracks which can cause the release of hot gas, increased nacelle temperature, activation of the fire warning system, and an inflight shutdown, accomplish the following:

(a) Inspect the TMF, Part Numbers (P/N) 9128M52 and 9137M92 that do not incorporate GE CF6–50/–45 Service Bulletin (SB) 72–973 or 72–975, in accordance with GE CF6–50/–45 SB 72–957, Revision 2, dated January 9, 1990, as follows:

(1) Inspect TMF cases with 1,050 or greater cycles since new (CSN) on the effective date of this AD, at the next shop visit or prior to accumulating the next 450 cycles in service (CIS) after the effective date of this AD, whichever occurs first.

(2) Inspect TMF cases with less than 1,050 CSN on the effective date of this AD, prior to accumulating 1,500 CSN.

(3) Remove from service, prior to further flight, TMF cases which exceed the serviceable limits specified in Tables 1–4 inclusive of GE SB 72–957, Revision 2, dated January 9, 1990.

(4) Thereafter, for TMF cases used in CF6–50 engines, reinspect cases with no cracks or indications at intervals not to exceed 600 CIS since previous inspection. Reinspect TMF cases with cracks or indications in accordance with the schedules and limits specified in Tables 1–4 inclusive of GE SB 72–957, Revision 2, dated January 9, 1990.

(5) Thereafter, for TMF cases used exclusively in CF6–45 engines, reinspect cases with no cracks or indications at intervals not to exceed 750 CIS since previous inspection. Reinspect TMF cases with cracks or indications in accordance with the schedules and limits specified in Tables 1–4 inclusive of GE SB 72–957, Revision 2, dated January 9, 1990.

(b) Inspect the TMF, P/N 9128M52 and 9137M92 that incorporate GE CF6–50/–45 SB 72–973, Revision 1, dated April 20, 1990, in accordance with GE CF6–50/–45 SB 72–957, Revision 2, dated January 9, 1990 as follows:

(1) Inspect TMF cases prior to accumulating 6,000 CIS since incorporation of GE SB 72–973, Revision 1, dated April 20, 1990.

(2) Remove from service, prior to further flight, TMF cases which exceed the serviceable limits specified in Tables 1–4 inclusive of GE SB 72–957, Revision 2, dated January 9, 1990.

(3) Thereafter, for CF6–50/–45 engines, reinspect TMF cases with no cracks or indications at each engine shop visit, not to exceed 2,400 CIS since last inspection. Reinspect TMF cases with cracks or indications, in accordance with the schedules and limits specified in Tables 1–4 inclusive of GE SB 72–957, Revision 2, dated January 9, 1990.

(c) Inspect the TMF, P/N 9128M52 and 9137M92 that incorporate GE CF6–50/–45 SB 72–975, dated December 11, 1989, in accordance with GE CF6–50/–45 SB 72–957, Revision 2, dated January 9, 1990, as follows:

(1) For TMF cases used in CF6–50 engines, inspect cases prior to accumulating 1,200 CIS since incorporation of GE SB 72–975, dated December 11, 1989. Thereafter, reinspect TMF cases with no cracks or indications at each engine shop visit, not to exceed 1,200 CIS since last inspection.

(2) For TMF cases used exclusively in CF6–45 engines, inspect cases prior to accumulating 1,500 CIS since incorporation of GE SB 72–975, dated December 11, 1989. Thereafter, reinspect TMF cases with no cracks or indications at each engine shop visit, not to exceed 1,500 CIS since last inspection.

(3) Remove from service, prior to further flight, TMF cases which exceed the serviceable limits specified in Tables 1–4 inclusive of GE SB 72–957, Revision 2, dated January 9, 1990.

(4) For CF6–50/–45 engines, reinspect TMF cases with cracks or indications in accordance with the schedules and limits specified in Tables 1–4 inclusive of GE SB 72–957, Revision 2, dated January 9, 1990.

(d) Inspections previously performed in accordance with AD 90–06–07, are considered to be in compliance with the corresponding requirements of this AD.

(e) For the purpose of this AD, shop visit is defined as the introduction of an engine into a shop for the conduct of engine maintenance.

(f) For the purpose of this AD, applicable limits are those limits associated with the highest engine rating under which the TMF case has operated.

(g) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(h) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

The initial and repetitive inspection program shall be done in accordance with the following GE documents:

Document	Page	Revision	Date
GE SB 72–957.	All	2	Jan. 9, 1990.
GE SB 72–973.	All	1	Apr. 20, 1990.
GE SB 72–975.	All	Original	Dec. 11, 1989.

This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, New England Region, 12 New England Executive Park, room 311, Burlington, Massachusetts 01803, or at the Office of the **Federal Register**, 1100 L Street, NW., room 8301, Washington, DC 20591.

This amendment supersedes Amendment 39–6449, AD 90–06–07.

This amendment becomes effective December 6, 1990.

Issued in Burlington, Massachusetts, on September 13, 1990.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90–26166 Filed 11–5–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–ASW–10; Amendment 39–6784]

Airworthiness Directives; McDonnell Douglas Helicopter Company (MDHC) Model 369D, 369E, and 369F/FF Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), which requires a one-time inspection of main rotor transmission cover attachment bolts and retaining nuts, and their removal and replacement with airworthy parts, if necessary, on MDHC Model 369D, 369E and 369F/FF series helicopters. This AD is needed to prevent failure of main rotor transmission cover containment bolts which could result in loss of control of the helicopter.

EFFECTIVE DATE: December 10, 1990.

ADDRESSES: The applicable service information may be obtained from: McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Attention: Publications Department, MS543/D213, Mesa, Arizona 85205, or may be examined at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Roy McKinnon, Aerospace Engineer, ANM–143L, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425, telephone (213) 988–5247.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring a one-time inspection of main rotor transmission cover attachment bolts and retaining nuts and their removal and replacement with airworthy parts, if necessary, on MDHC Model 369D, E, and F/FF Series helicopters, was published in the **Federal Register** on June 28, 1990 (55 FR 26455).

The proposal was prompted by two reports of failures of the main rotor transmission cover, part number (P/N) 369D25174, attachment bolts. A bolt failure could result in the retaining nut falling into the ring gear of the transmission with subsequent loss of power to the main rotor and an unplanned autorotation. Since this condition is likely to exist or develop on other helicopters of the same type design, it was proposed to require a one-time inspection and replacement of parts, as necessary, to assure that certain bolts, manufactured by Air Industries, are not installed on MDHC Model 369 series helicopters.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposed amendment is adopted without change.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation involves approximately 64 helicopters and 165 transmissions, as identified by the manufacturer, with minimum cost to the operator because of warranty considerations. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

McDonnell Douglas Helicopter Company (MDHC): Amendment 39-6784. Docket Number 90-ASW-10.

Applicability: All MDHC Model 369D, 369E, and 369F/FF series helicopters certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent possible failure of the main rotor transmission drive assembly, which could result in loss of control of the helicopter, accomplish the following:

(a) Within the next 300 hours' time in service after the effective date of the AD or at the next annual inspection or the next time the transmission is removed, whichever occurs first, after the main rotor transmission is removed inspect the MS21250-04036 bolts which retain the debris cover, P/N 369D25174. Remove any bolts with the head inscription shown as unacceptable in Figure 1, and replace with MS21250-04038 bolts, which have a length of 2.887 ±0.010 inch.

Note: MDHC Service Information Notice (SIN) DN-166.1, EN-57.1, and SIN FN-45.1, dated March 14, 1990, or later revisions pertain to this subject.

(b) Inspect the thread protrusion of all bolts. Remove any bolt which does not protrude through the H14-4 nut for a length equivalent to two full threads (0.071 inch minimum), including the chamfer. Replace removed bolts with MS21250-04038 bolts. Torque the bolts to 50-70 inch pounds. Verify that the bolts protrude through the nut for a length equivalent to two full threads (0.071 inch minimum), including the chamfer. If more than four threads protrude through the nut, add AN960C416L or AN960C416 washers under the nut as required. Remove and reinstall parts in accordance with the manufacturer's instructions.

(c) Apply a white dot to the main transmission data plate to indicate that the transmission has been inspected and reworked in accordance with the manufacturer's instructions, and record compliance with this AD in the rotorcraft log book.

(d) In accordance with FAR §§ 21.197 and 21.199, flight is permitted to a base where the requirements of this AD may be accomplished.

BILLING CODE 4910-13-M

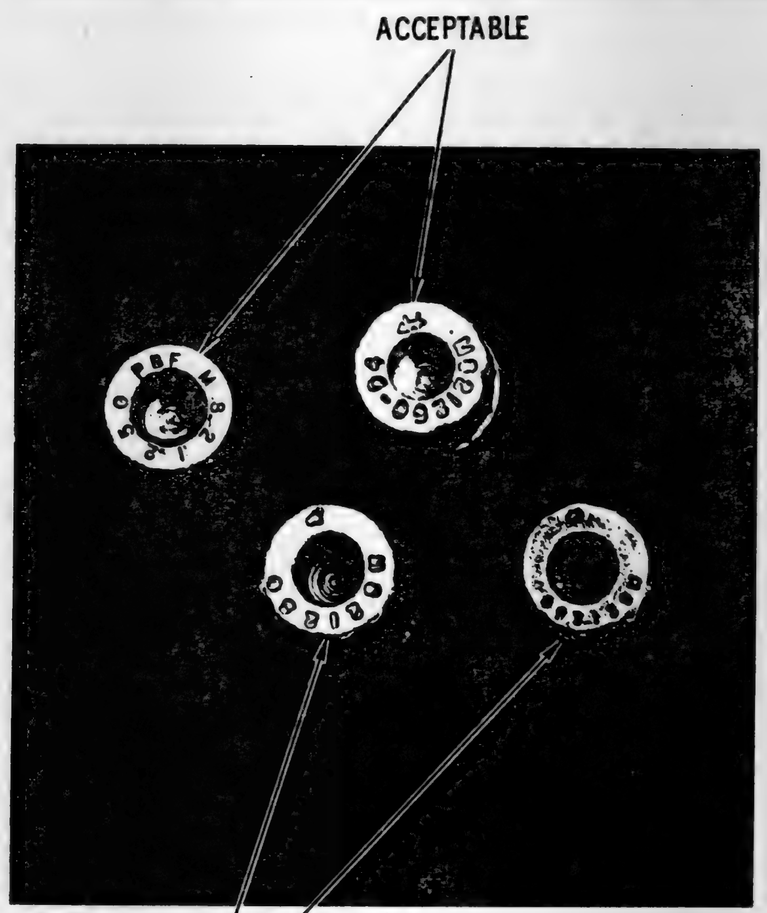

Figure 1. Inspection/Definition of Bolt Heads.

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(e) An alternate method of compliance or adjustment of the compliance time which provides an equivalent level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, ANM-100L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90808-2425.

Amendment 39-6784 becomes effective on December 10, 1990.

Issued in Fort Worth, Texas, on October 16, 1990.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-26167 Filed 11-5-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80-53]

Maximum Lawful Price and Inflation Adjustments Under the Natural Gas Policy Act

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule; order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(c)(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under title I of the Natural Gas Policy Act (NGPA) for the months of November, December, 1990 and January, 1991. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: November 1, 1990.

FOR FURTHER INFORMATION CONTACT: Garry L. Penix, (202) 208-0622.

SUPPLEMENTARY INFORMATION:

Order of the Director, OPPR

Issued October 31, 1990

In the matter of Publication of Prescribed Maximum Lawful Prices Under the Natural Gas Policy Act of 1978.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in title I of the NGPA before the beginning of any month for which such figures apply.

Pursuant to this requirement and § 375.307(c)(1) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of November, December, 1990 and January, 1991, are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to November, 1990, are found in the tables in §§ 271.101 and 271.102.

List of Subjects in 18 CFR Part 271

Natural gas.

Kevin P. Madden,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

1. The authority citation for part 271 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717-717w; Department of Energy Organization Act, 42 U.S.C. 7101-7352; E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432.

§ 271.101 [Amended]

2. Section 271.101(a) is amended by adding the maximum lawful prices for November, December, 1990 and January, 1991, in Tables I and II.

TABLE I.—NATURAL GAS CEILING PRICES (OTHER THAN NGPA SECTIONS 104 AND 106(a))

Subpart of part 271	NGPA section	Category of gas	Maximum lawful price per MMBtu for Deliveries in—		
			Nov. 1990	Dec. 1990	Jan. 1991
B	102	New natural gas, certain OCS gas [1]	$5.868	$5.904	$5.940
C	103(b)(1)	New onshore production wells [2]	3.623	3.634	3.645
E	105(b)(3)	Intrastate existing contracts	5.567	5.597	5.627
F	106(b)1(B)	Alternative maximum lawful price for certain intrastate rollover gas [3].	2.073	2.079	2.085
G	107(c)(5)	Gas produced from tight formation [4]	7.246	7.268	7.290
H	108	Stripper gas	6.284	6.322	6.361
I	109	Not otherwise covered	2.998	3.007	3.016

[1] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) was deregulated. (See part 272 of the Commission's regulations.)

[2] Commencing January 1, 1985, and July 1, 1987, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 was deregulated. (See part 272 of the Commission's regulations.) Thus, for all months succeeding June 1987 publication of a maximum lawful price per MMBtu under NGPA section 103(b)(2) is discontinued.

[3] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in the row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas was deregulated. (See part 272 of the Commission's regulations.)

[4] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in subpart C of part 271. The incentive ceiling price does not apply to certain gas after May 12, 1990, as a result of Commission Order No. 519-A. (See § 271.703 of the Commission's regulations.)

TABLE II.—NATURAL GAS CEILING PRICES: NGPA SECTIONS (104 AND 106(a)) (SUBPART D, PART 271)

Category of natural gas and type of sale or contract	Maximum lawful price per MMBtu for deliveries in—		
	Nov. 1990	Dec. 1990	Jan. 1991
Post-1974 gas: [2] All producers	$2.998	$3.007	3.016
1973-1947 Biennium gas:			
Small producer	2.529	2.536	2.543
Large producer	1.940	1.946	1.952
Interstate rollover gas: All producers	1.112	1.115	1.118
Replacement contract gas or recompletion gas:			
Small producer	1.425	1.429	1.433
Large producer	1.088	1.091	1.094
Flowing gas:			
Small Producer	0.718	0.720	0.722
Large producer	0.605	0.607	0.609
Certain Permian Basin gas:			
Small producer	0.847	0.849	0.852
Large producer	0.750	0.752	0.754
Certain Rocky Mountain gas:			
Small producer	0.847	0.849	00.852
Large producer	0.750	0.752	0.754
Certain Appalachian Basin gas:			
North subarea contracts dated after 10-7-69	0.664	0.666	0.668
Other contracts	0.634	0.636	0.638
Minimum rate gas: [1] All producers	0.372	0.373	0.374

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.

[2] This price may also be applicable to other categories of gas (see §§ 271.402 and 271.602).

§ 271.102 [Amended]

3. Section 271.102(c) is amended by adding the inflation adjustment for the months of November, December, 1990 and January, 1991 in Table III.

TABLE III.—INFLATION ADJUSTMENT

Month of delivery	Factor by which price in preceding month is multiplied
1990	
November	1.00295
December	1.00295
1991	
January	1.00295

[FR Doc. 90-26146 Filed 11-5-90; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 422

RIN 0960-AC34

Social Security Number Cards

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: In these final regulations, we are amending our rules on issuing Social Security number (SSN) cards. We explain the role of the States in accepting applications for SSN cards from persons applying for or receiving welfare benefits and update our rules on applying for SSN cards outside the United States. We also discuss the role of the Immigration and Naturalization Service (INS) in accepting applications for SSN cards from aliens who have applied to legalize their status under the Immigration Reform and Control Act of 1986 (Pub. L. 99-603). Additionally, we are clarifying and updating our rules on the evidence an applicant, including a U.S. citizen, must submit in support of an application for an SSN card.

EFFECTIVE DATES: These rules are effective November 6, 1990.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-8471.

SUPPLEMENTARY INFORMATION:

Section 205(c)(2)(B)(iii)) of the Social Security Act (the Act) (42 U.S.C. 405(c)(2)(B)(iii) directs the Secretary of Health and Human Services to enter into agreements with State and local welfare agencies in order to carry out his duty to assure that SSNs will be assigned to appropriate individuals. We are, therefore, adding a provision to § 422.106 to indicate that the Social Security Administration (SSA) has entered into agreements with some States under which State employees may accept applications for SSN cards from persons applying for or receiving welfare benefits under a State-administered Federal program. The State employees are also authorized to certify the application to show that they have reviewed the required supporting evidence. This provision will codify a practice we have developed with individual States for the mutual benefit of applicants, SSA, and the States.

We are revising § 422.103 to explain that individuals outside the United States may apply for an SSN not only at the Department of Veterans Affairs Regional Office in Manila, but also at any U.S. foreign service post or at any U.S. military post outside the United States.

The amended rules also update our procedures for issuing SSN cards under section 205(c)(2)(B)(i) of the Act. That section requires the Secretary of Health and Human Services to assure that SSNs are assigned to aliens at the time of their lawful admission to the United States either for permanent residence, or under other authority permitting them to work, and to other aliens at such time as their status is changed to make it lawful for them to work. Under this authority, we are amending our current rules (§ 422.106) concerning the issuance of SSN cards.

In the amended § 422.106, we explain procedures, prompted by the Immigration Reform and Control Act of 1986 (IRCA) (Pub. L. 99-603), for assigning SSNs to aliens when they apply for lawful admission to the United States. Among other things, the IRCA established a program whereby an alien who showed continuous residence in the United States since January 1, 1982, or who met the requirements for special

agricultural workers, could legalize his or her status. The INS grants legalization applicants temporary authority to work as part of the legalization process. Pursuant to section 205(c)(2)(B)(iii) of the Act, SSA entered into an agreement with INS to facilitate the assignment of SSNs to the large number of aliens who applied to legalize their status and to assure that leglization applicants were assigned SSNs at the time their status changed to make it lawful for them to work. Under the agreement, INS employees accepted applications for SSN cards in the course of interviewing legalization applicants.

Although much of the legalization work and assigning SSNs to aliens has been completed, there are still some cases being processed. We are, therefore, revising § 422.106 of the regulations to reflect the role of INS in obtaining SSN applications in connection with the legalization process.

We are also revising our rules in § 422.107(c) of the regulations on annotating records of aliens. In the past, we have annotated records of aliens in order to report work activity to INS when earnings were reported to an SSN which had been issued for a nonwork purpose. These final rules provide that we may now also annotate records of aliens in order to report work activity to INS in cases where the SSN card had been originally issued for work purposes, but the work authority granted by the INS has expired or has been terminated by that agency.

Additionally, we are making minor changes to revise and clarify our rules on the evidence that must be provided by an applicant, including a U.S. citizen, in support of an SSN card application, and to update the explanation of how we process applications.

On September 30, 1988, proposed rules were published in the **Federal Register** at 53 FR 38302 with a 60-day comment period. We received comments from 14 organizations, 2 State officials, 2 county officials, and 2 individuals. We have responded to comments we received, including those that resulted in changes in the rules, as well as those that were not adopted. Several commenters addressed the same issue, and these comments are addressed together in the responses.

Discussion of Comments

Comment: The primary goal of State public assistance agencies is to pay benefits quickly, while SSA's goal in these regulations (§ 422.106(c)) is to maintain accurate records. Which goal should be favored?

Response: Some State welfare offices have been processing SSN card applications for several years and the evidence requirements have not changed since 1978. Generally, individuals who apply for State benefits have or can provide enough documentation which can be used to support their requests for SSN cards. Since States do not pay certain benefits until a number is provided or applied for, the SSN requirements must be met regardless of where the individual applies. Thus, there should be no delay in benefit payment simply because a State assisted with the SSN card application. These regulations are not intended to favor either a State's benefit program or SSA's process. Rather, they should complement each other.

Comment: Do these regulations prohibit State welfare agencies from using, for purposes of SSN card applications, the same kinds of evidence that are acceptable for public assistance purposes?

Response: The required review and verification of evidence documents is the same regardless of where the individual applies for an SSN card. States which agree to process SSN card applications are expected to follow the Federal rules on acceptable types of evidence. SSA provides to the States instructions similar to those used by SSA employees. These instructions explain which documents are acceptable. The commenter asked about a practice in one particular State whereby the State Department of Social and Health Services has direct terminal online access to birth records in the Bureau of Vital Statistics. Since the printout comes directly from the vital statistics data base and there are sufficient safeguards to prevent tampering and unauthorized use of the data base, SSA accepts it as sufficient evidence of age and citizenship.

Comment: Will States be required to institute quality control procedures for State agency certifications of applications for SSN?

Response: SSA does not require States to institute quality control procedures for State agency certification of SSN card applications. SSA does not expect State employees to follow the same guidelines SSA employees use when accepting applications and reviewing evidence.

Comment: Will States be reimbursed for the man-hours needed to process SSN card applications under these regulations?

Response: States usually agree to assist in taking SSN card applications only when it benefits them as well as the individuals involved. SSA does not reimburse States which volunteer to participate in this program because it is mutually beneficial.

Comment: How should State agencies handle complaints that delays attributed to these regulations are a hardship?

Response: This should not be an issue. Any delays caused by evidence verification would occur regardless of which agency handles the SSN card application. The process should actually benefit SSN card applicants because they can take care of both needs in a single visit to the State welfare office.

Comment: The former provision for providing a temporary SSN card should be retained in § 422.103(c) of the regulations and the term "reasonable time" in § 422.103(d) should be defined to ensure that an SSN card is available to a legalized alien at the same time that INS makes form I–688 (temporary residence card) available to him or her.

Response: The term "temporary card" referred to the SSA–5028 (Receipt for Application for a Social Security Number) which is a receipt to show that someone has applied for a card. Although this term has been deleted, § 422.103(c) still provides for the receipt process and states that "If the applicant requests evidence to show that he or she has filed an application for a Social Security number card, a receipt or equivalent document may be furnished." We changed the language of the regulation to reflect both our current process, which is to issue the manually completed SSA–5028 document or the SSA–2853 that is issued during the enumeration-at-birth process, and the process we may use in the future to issue electronically produced documents.

We have not defined the term "reasonable time" because the amount of time it will take us to issue an SSN card will vary according to the situation. In situations where INS accepts an application for an SSN card from an alien and sends the application to us pursuant to § 422.106(b), INS will generally receive the SSN card in about 2 weeks. Thus, the SSN card should be available when INS issues the I–688. Any delays in this process are usually caused because the electronic system we use rejected the application data sent to us by INS, requiring further investigation about the data, and the applicant either does not cooperate in providing the additional data we need, or does not respond timely to attempts to contact him or her about the matter.

Comment: The cross-reference in 20 CFR 422.105 should be 8 CFR 274a.12.

Response: We have made this correction.

Comment: The regulations should contain a statement that, under the limitation of section 245A(c)(5) of the Immigration and Nationality Act, as amended by section 201 of IRCA, SSA will not use the information given by the alien in connection with the legalization process for any purpose other than processing the form SS–5.

Response: Section 245A(c)(5) of the Immigration and Nationality Act directs the Attorney General and the Department of Justice not to use information provided pursuant to an application for legalization for any purpose other than to make a determination on such application. Regulatory authority for this provision lies with the Attorney General, not the Secretary of Health and Human Services. However, we will continue our efforts to assure that information we receive will not be disclosed in a manner contrary to applicable law.

Comment: Many aliens are not able to submit a birth record as evidence of age. Therefore, a document issued in accordance with INS regulations should be acceptable evidence of age.

Response: INS records are one of many alternative evidence documents which can be used for evidence of age when other preferred documents are not available. We have added a cross-reference to § 404.716, which provides a more extensive list of acceptable evidence of age.

Comment: Since many aliens do not have the identity documents listed in § 422.107(c) of the regulations, immigration documents should be acceptable evidence of identity for persons age 7 or older.

Response: We have added INS documents to the list of acceptable evidence of identity so that there is no doubt that such documents are acceptable.

Comment: Proposed § 422.107(e) states that our records may be annotated to show that an alien's authorizaton to work is temporary or subject to termination by INS. The commenter assumes that only SSA records will be annotated since annotations to the SSN card could result in frequent replacements. Another commenter suggests that we annotate SSN cards to reflect restricted employment authorization.

Response: Under current procedure, the assumption is correct. However, if Congress specifically provides funds for a project authorized under IRCA and recommended by the General Accounting Office, we plan to annotate certain SSN cards with a legend, indicating that the cards can be used only for work purposes with INS documents showing authorization to work. As required under IRCA, notice of any new legend will be published in the **Federal Register** and the new legend will not be used unless and until Congress provides funding for this change.

Comment: Proposed § 422.107(e) also states that we may annotate the record with other remarks. The commenter believes that this could extend to annotations on race, national origin, and other items irrelevant to assigning SSNs.

Response: This provision was added to the regulations to allow for any expanded documentation that may be needed in the future. We have not deleted the provision, since any future documentations we may make will be made only to the extent that they are consistent with applicable law.

Comment: The provision in § 422.107(e) that SSA may notify INS if earnings are reported for an alien whose work authorization has been terminated raises some concerns about the confidentiality provisions of IRCA and could lead to deportation proceedings. Therefore, legalized aliens should be expected from this policy.

Response: If an alien is legalized, there would be no reason to report his or her earnings to INS because the alien would have work authorization. We are retaining this provision because we could become aware of unauthorized work as a result of investigations not connected with IRCA.

Comment: If SSA does not issue an SSN card, the applicant should be notified in writing of the reasons for our action and advised that he or she may request formal administrative review of our action.

Response: Most of the time, nonissuance of an SSN card is the result of the applicant's failure to present the necessary evidence because he or she was unaware of the requirements. Our current policy is that we provide an applicant who is not issued an SSN card with either an oral or a written explanation of our action via form SSA L–676. Whether the explanation is done orally or in writing, we tell these applicants what additional evidence we need to issue an SSN card. Because the applicant can submit this additional evidence at any time at any SSA office and obtain an SSN card, we believe that there is no need for the applicant to submit a formal written request for administrative review. We are, however, implementing new procedures in this Department's Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin) which may subsequently be applied nationwide. Under the new procedures, whenever SSA is unable to assign an SSN, the applicant will receive a written notice explaining why a number could not be assigned, what additional evidence is required, and that a review of the evidence submitted may be requested.

Comment: The term "Subject to termination" in the proposed § 422.107(e) should be defined.

Response: We do not believe such a definition is necessary in these regulations because we rely on INS to determine when work authorization is temporary or subject to termination.

Comment: Because of the confidentiality provisions of IRCA, the regulations must describe the precise situations in which SSA will notify INS of earnings posted to Social Security accounts.

Response: We believe that § 422.107 provides this information and explains that the information we report to INS concerns aliens who were issued SSN cards for a nonwork purpose and those whose work authorization has expired.

Comment: The Internal Revenue Service (IRS) instructed illegal aliens, who are subject to Federal taxes, how to complete the space for an SSN on tax returns. Similar information should be in SSA's regulations, as should legal procedures which discourage illegal use of SSNs.

Response: We believe that § 422.107(e) goes far enough by providing that we will not issue an SSN card if the alien does not submit adequate documentation. Since IRS provides sufficient instructions to aliens about reporting their SSNs for tax purposes, placing such information in SSA regulations is unnecessary and inappropriate.

Comment: SSA should improve the durability of SSN cards by laminating them or otherwise making them more durable and waterproof.

Response: We believe that with reasonable care the current SSN card is very durable. This is evidenced by the fact that in most years most of the requests we receive for replacement cards are beause of name changes. We do not laminate cards because they contain certain security features which could not be detected satisfactorily under lamination. In accordance with section 205(c)(2)(F) of the Act, SSN cards are now made of banknote paper and, to the maximum extent practicable, they are made in a way that they cannot be counterfeited.

Comment: If a resident alien can apply for an SSN card for a non-resident dependent, it would be helpful for the regulations to specify the correct procedure, including a statement of

whether a personal interview is required.

Response: It is our policy that a U.S. resident may apply on behalf of a non-resident dependent who needs an SSN (*e.g.*, for tax purposes), except that an individual must apply for himself or herself when a personal interview is required. We have amended § 422.103(b) to reflect this policy.

Comment: Legalization applicants who cannot present a Form I–688A or other acceptable evidence of alien status as listed in SSA instructions are denied SSN cards and told to return to INS for proper identification. SSA should verify the validity of any document issued by INS and issue the alien a temporary card (receipt).

Response: Legalization applicants who have not received their form I–688A should have an I–689. If the I–689 authorizes work and the alien provides us with the other required evidence of age and identity, we will process an application for an SSN card. Our operating instructions concerning acceptable documents are based on INS guidelines. Whenever that agency's central office advises us that other documents are being issued, we revise our instructions. If an applicant gives us INS documents we are not familiar with, we refer the applicant back to that agency for additional documentation.

Comment: After INS has revised its regulations on the status of B–1 nonimmigrants (22 CFR 41.25), SSA should amend its operating instructions to permit issuance of unrestricted SSN cards to ministers who are not authorized to work but who are authorized to receive contributions for their support.

Response: SSA's instructions concerning acceptable evidence of employment authorization for unrestricted SSN cards are based on INS guidelines. That agency recently informed us that we could issue unrestricted cards to certain B–1 visa holders (personal and domestic employees and foreign airline employees), and we incorporated that change into our instructions. If that agency provides similar guidelines for ministers who are B–1 visa holders, we will revise our instructions accordingly.

Comment: The proposed regulation allows State employees to process SSN applications from welfare recipients. However, staff shortages and increased workloads make participation in the SSN application process impractical in some States unless Federal and State money is provided.

Response: Some States do not process SSN applications. These States refer clients to a Social Security office. Those States that do process SSN applications do so voluntarily because it is an advantageous procedure for administering the State's programs.

Comment: There is no need for a regulation on the role of the State in processing applications for SSNs from welfare recipients because SSA has terminated these agreements.

Response: SSA and some States have terminated their welfare enumeration agreement which authorized the State to accept and certify applications for SSNs. However, such agreements have not been terminated with all States.

Except as indicated above in our responses to the comments on the proposed rules, we are publishing the proposed rules essentially unchanged as final regulations.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because the regulations do not meet any of the threshold criteria for a major rule. These changes are expected to save the Federal Government $7 million each year. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only the issuing of SSN cards to individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations contain reporting requirements in §§ 422.107 and 422.110. However, the Office of Management and Budget (OMB) approval of these regulations has already been obtained. The OMB approval number is 0960–0066.

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13–805, Social Security-Survivors Insurance)

List of Subjects in 20 CFR Part 422

Administrative practice and procedure; Freedom of information; Organization and functions (Government agencies); Social Security.

Dated: August 16, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: October 18, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subpart B of part 422 of 20 CFR chapter III is amended as follows:

PART 422—ORGANIZATION AND PROCEDURES

1. An authority citation for subpart B is added to read as follows:

Authority: Sections 205 and 1102, Social Security Act (42 U.S.C. 405 and 1302).

2. Section 422.103 is revised to read as follows:

§ 422.103 Social security numbers.

(a) *General.* The Social Security Administration (SSA) maintains a record of the earnings reported for each individual assigned a social security number. The individual's name and social security number identify the record so that the wages or self-employment income reported for or by the individual can be properly posted to the individual's record. Additional procedures concerning social security numbers may be found in Internal Revenue Service, Department of the Treasury regulation 26 CFR 31.6011(b)–2.

(b) *Applying for a number*—(1) *Form SS–5.* An individual needing a social security number may apply for one by filing a signed form SS–5, "Application for A Social Security Number Card," at any social security office and submitting the required evidence. Upon request, the social security office may distribute a quantity of form SS–5 applications to labor unions, employers, or other representative organizations. An individual outside the United States may apply for a social security number card at the Department of Veterans Affairs Regional Office, Manila, Philippines, at any U.S. foreign service post, or at a U.S. military post outside the United States. (*See* § 422.106 for special procedures for filing applications with other government agencies.) Additionally, a U.S. resident may apply for a social security number for a nonresident dependent when the number is necessary for U.S. tax purposes or some other valid reason, the evidence requirements of § 422.107 are met, and we determine that a personal interview with the dependent is not required. Form SS–5 may be obtained at:

(i) Any local social security office;

(ii) The Social Security Administration, 300 N. Greene Street, Baltimore, MD 21201;

(iii) Offices of District Directors of Internal Revenue;

(iv) U.S. Postal Service offices (except the main office in cities having a social security office);

(v) U.S. Employment Service offices in cities which do not have a social security office;

(vi) The Department of Veterans Affairs Regional Office, Manila, Philippines;

(vii) Any U.S. foreign service post; and

(viii) U.S. military posts outside the U.S.

(2) *Birth registration document.* SSA may enter into an agreement with officials of a State, including, for this purpose, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and New York City, to establish, as part of the official birth registration process, a procedure to assist SSA in assigning social security numbers to newborn children. Where an agreement is in effect, a parent, as part of the official birth registration process, need not complete a form SS–5 and may request that SSA assign a social security number to the newborn child.

(c) *How numbers are assigned*—(1) *Request on form SS–5.* If the applicant has completed a form SS–5, the social security office, the Department of Veterans Affairs Regional Office, Manila, Philippines, the U.S. foreign service post, or the U.S. military post outside the United States that receives the completed form SS–5 will require the applicant to furnish documentary evidence, as necessary, to assist SSA in establishing the age, U.S. citizenship or alien status, true identity, and previously assigned social security number(s), if any, of the applicant. A personal interview may be required of the applicant. (See § 422.107 for evidence requirements.) After review of the documentary evidence, the completed form SS–5 is forwarded or data from the SS–5 is transmitted to SSA's central office in Baltimore, Md., where the data is electronically screened against SSA's files. If the applicant requests evidence to show that he or she has filed an application for a social security number card, a receipt or equivalent document may be furnished. If the electronic screening or other investigation does not disclose a previously assigned number, SSA's central office assigns a number and issues a social security number card. If investigation discloses a previously assigned number for the applicant, a duplicate social security number card is issued.

(2) *Request on birth registration document.* Where a parent has requested a social security number for a newborn child as part of an official birth registration process described in paragraph (b)(2) of this section, the State vital statistics office will electronically transmit the request to SSA's central office in Baltimore, MD, along with the child's name, date and place of birth, sex, mother's maiden name, father's name (if shown on the birth registration), address of the mother, and birth certificate number. This birth registration information received by SSA from the State vital statistics office will be used to establish the age, identity, and U.S. citizenship of the newborn child. Using this information, SSA will assign a number to the child and send the social security number card to the child at the mother's address.

(d) *Social security number cards.* A person who is assigned a social security number will receive a social security number card from SSA within a reasonable time after the number has been assigned. (See § 422.104 regarding the assignment of social security number cards to aliens.) Social security number cards are the property of SSA and must be returned upon request.

(e) *Replacement of social security number card.* In case of loss of or damage to the social security number card, a duplicate card bearing the same number may be issued. (See § 422.107 for evidence requirements.)

§ 422.105 [Amended]

3. Section 422.105 is amended by changing the cross-reference from 22 CFR 41.12 to 8 CFR 274a.12.

4. Section 422.106 is revised to read as follows:

§ 422.106 Filing applications with other government agencies.

(a) *Agreements.* In carrying out its responsibilities to assign social security numbers, SSA enters into agreements with the United States Attorney General and other Federal officials, and with State and local welfare agencies and school authorities. Examples of these agreements are discussed in paragraphs (b) and (c) of this section.

(b) *Immigration and Naturalization Service.* In connection with the legalization procedures established pursuant to the Immigration Reform and Control Act of 1986, the Immigration and Naturalization Service may accept an application for a social security number card from an alien. Immigration and Naturalization Service employees who accept such applications are authorized to certify that they have reviewed the evidence required to be submitted in support of the application. The employees will verify age, identity, alien status and work authorization of the applicants, and obtain evidence to assist SSA in determining the existence of any previously assigned social security number. The Immigration and Naturalization Service will then send the application to SSA for the issuance of a social security number card.

(c) *States.* SSA and a State may enter into an agreement that authorizes employees of a State or one of its subdivisions to accept social security number card applications from some individuals who apply for or are receiving welfare benefits under a State-administered Federal program. Under such an agreement, a State employee is also authorized to certify the application to show that he or she has reviewed the required evidence of the applicant's age, identity, and U.S. citizenship. The employee is also authorized to obtain evidence to assist SSA in determining whether the applicant has previously been assigned a number. The employee will then send the application to SSA which will issue a social security number card.

5. Section 422.107 is revised to read as follows:

§ 422.107 Evidence requirements.

(a) *General.* An applicant for an original social security number card must submit documentary evidence which the Secretary of Health and Human Services regards as convincing evidence of age, U.S. citizenship or alien status, and true identity. An applicant for a duplicate or corrected social security number card must submit convincing documentary evidence of identity and may also be required to submit convincing documentary evidence of age and U.S. citizenship or alien status. An applicant for an original, duplicate, or corrected social security number card is also required to submit evidence to assist the SSA in determining the existence and identity of any previously assigned number(s). A social security number will not be assigned, or an original, duplicate, or corrected card issued, unless all the evidence requirements are met. An in-person interview is required of all applicants of age 18 or older who apply for an original social security number. An in-person interview may also be required of other applicants. All documents submitted as evidence must be originals or certified copies of the original documents and are subject to verification with the custodians of the original records.

(b) *Evidence of age.* An applicant for an original social security number is required to submit convincing evidence of age. An applicant for a duplicate or corrected social security number card may also be required to submit evidence of age. Examples of the types of evidence which may be sumitted are a birth certificate, a religious record showing age or date of birth, a hospital record of birth, or a passport. (*See* § 404.716.)

(c) *Evidence of identity.* An applicant for an original social security number or a duplicate or corrected social security number card is required to submit convincing documentary evidence of identity. Documentary evidence of identity may consist of a driver's license, identity card, school record, medical record, marriage record, passport, Immigration and Naturalization Service document, or other similar document serving to identify the individual. It is preferable that the document contain the applicant's signature for comparison with his or her signature on the application for a social security number. A birth record is not sufficient evidence to establish identity. Where the applicant is a child under 7 years of age applying for an original social security number card and there is no documentary evidence of identity available, the requirement for evidence of identity will be waived if there is no reason to doubt the validity of the birth record, the social security number application, and the existence of the individual.

(d) *Evidence of U.S. citizenship.* Generally, an applicant for an original, duplicate, or corrected social security number card may prove that he or she is a U.S. citizen by birth by submitting a birth certificate or other evidence, as described in paragraphs (b) and (c) of this section, that shows a U.S. place of birth. Where a foreign-born applicant claims U.S. citizenship, the applicant for a social security number or a duplicate or corrected social security number card is required to present documentary evidence of U.S. citizenship. If required evidence is not available, a social security number card will not be issued until satisfactory evidence of U.S. citizenship is furnished. Any of the following is generally acceptable evidence of U.S. citizenship for a foreign-born applicant:

(1) Certificate of naturalization;
(2) Certificate of citizenship;
(3) U.S. passport;
(4) U.S. citizen identification card issued by the Immigration and Naturalization Service;
(5) Consular report of birth (State Department form FS–240 or FS–545); or
(6) Other verification from the Immigration and Naturalization Service, U.S. Department of State, or Federal or State court records confirming citizenship.

(e) *Evidence of alien status.* When a person who is not a U.S. citizen applies for an original social security number or a duplicate or corrected social security number card, he or she is required to submit, as evidence of alien status, a current document issued by the Immigration and Naturalization Service in accordance with that agency's regulations. The document must show that the applicant has been lawfully admitted to the United States, either for permanent residence or under authority of law permitting him or her to work in the United States, or that the applicant's alien status has changed so that it is lawful for him or her to work. If the applicant fails to submit such a document, a social security number card will not be issued. If the applicant submits an unexpired Immigration and Naturalization Service document(s) which shows current authorization to work, a social security number will be assigned or verified and a card which can be used for work will be issued. If the authorization of the applicant to work is temporary or subject to termination by the Immigration and Naturalization Service, the SSA records may be so annotated. If the document(s) does not provide authorization to work and the applicant wants a social security number for a work purpose, no social security number will be assigned. If the applicant requests the number for a nonwork purpose, *e.g.*, an Internal Revenue Service purpose, the number may be assigned and the card issued will be marked with a nonwork legend. The SSA record will be annotated to show that a number has been assigned and a card issued for a nonwork purpose. In that case, if earnings are later reported to SSA, the Immigration and Naturalization Service will be notified of the report. SSA may also notify that agency if earnings are reported for a social security number that was valid for work when assigned but for which work authorization expired or was later terminated by the Immigration and Naturalization Service. SSA may also annotate the record with other remarks, if appropriate.

(f) *Failure to submit evidence.* If the applicant does not comply with a request for the required evidence or other information within a reasonable time, SSA may attempt another contact with the applicant. If there is still no response, a social security number card will not be issued.

(g) *Invalid or expired documents.* SSA will not issue an original, duplicate, or corrected social security number card when an applicant presents invalid or expired documents. Invalid documents are either forged documents that supposedly were issued by the custodian of the record, or properly issued documents that were improperly changed after they were issued. An expired document is one that was valid for only a limited time and that time has passed.

6. Section 422.110 is revised to read as follows:

§ 422.110 Individual's request for change in record.

Form SS–5 should be completed and signed by any person who wishes to change the name or other personal identifying information previously submitted in connection with an application for a social security number card. The person must prove his or her identity and may be required to provide other evidence. (*See* § 422.107 for evidence requirements.) Form SS–5 may be obtained from any local social security office or from one of the sources noted in § 422.103(b). The completed request for change in records may be submitted to any SSA office, or, if the individual is outside the U.S., to the Department of Veterans Affairs Regional Office, Manila, Philippines, or to any U.S. foreign service post or U.S. military post. If the request is for a change in name, a new social security number card with the new name and bearing the same number previously assigned will be issued to the person making the request.

§ 422.112 [Amended]

7. Section 422.112 is amended in paragraph (a) by changing "Secretary of Health, Education, and Welfare" to "SSA".

§§ 422.112, 422.115, and 422.120 [Amended]

8. In addition to the amendments and revisions set forth above, remove the words "Bureau of Data Processing and Accounts" and add in their place the words "Office of Central Records Operations" in the following places:

(a) Section 422.112(a);
(b) Section 422.115; and
(c) Section 422.120.

[FR Doc. 90–26134 Filed 11–5–90; 8:45 am]
BILLING CODE 4190–11–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 43

[T.D. 8314]

RIN 1545–AO67

Temporary Regulations Regarding the Tax on Transportation by Water

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains corrections to the temporary regulations that implement the tax on the transportation of passengers on covered voyages by certain vessels under section 4471 of the Internal Revenue Code as enacted by section 7504 of the Revenue Reconciliation Act of 1989.

FOR FURTHER INFORMATION CONTACT: Edward B. Madden, Jr., 202–566–4077 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these corrections implement the tax on the transportation of passengers on covered voyages by certain vessels under section 4471 of the Internal Revenue Code enacted by section 7504 of the Revenue Reconciliation Act of 1989 (Pub. L. 101–239, 103 Stat. 2106, 2362).

Need for Correction

As published, the temporary regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

§ 43.6071(a)–1T [Corrected]

Accordingly, the publication of the temporary regulations published October 12, 1990 (55 FR 41519) FR Doc. 90–24049, is corrected as follows:

On page 41521, column 1, § 43.6071(a)–1T(c), lines 2 and 5, the date "November 15" is removed and "September 30" is added in its place.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90–26125 Filed 11–5–90; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Ambulance Transfers

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule will revise DoD 6010.8–R (32 CFR part 199) which implements the Civilian Health and Medical Program of the Uniformed Services. The rule allows inpatient cost-sharing for otherwise covered ambulance transfers between hospitals. This will preserve continuity of care and reduce out-of-pocket costs for CHAMPUS beneficiaries.

EFFECTIVE DATE: This final rule is effective November 6, 1990.

FOR FURTHER INFORMATION CONTACT: David E. Bennett, Office of Program Development, OCHAMPUS, Aurora, Colorado 80045–6900, telephone (303)–361–3537.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulations, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as part 199 of this title. DoD Regulation 6010.8–R was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

In FR Doc. 90–11060 appearing in the **Federal Register** on May 25, 1990 (55 FR 21624), the Office of the Secretary of Defense published for public comment a proposed amendment allowing for inpatient cost-sharing of ambulance transfers between hospitals.

Background

This change was initiated to alleviate some of the financial burden experienced by CHAMPUS beneficiaries in medically isolated areas. These excessive out-of-pocket expenses were due in part to the current CHAMPUS rule of outpatient cost-sharing of ambulance transfers.

Under current regulation, all ambulance transfers are cost-shared on an outpatient basis. Dependents of active duty members are responsible for a $50 annual deductible and 20 percent of the CHAMPUS-determined allowable amount beyond the annual fiscal year deductible. Retirees and their dependents are subject to the same deductible as active duty dependents, but must pay 25 percent of the CHAMPUS-determined allowable amount. If the provider does not accept assignment on a claim, the beneficiary must also pay the difference between billed charges and the CHAMPUS-determined allowed amount.

This rule revises the cost-sharing provisions for otherwise covered ambulance transfers between hospitals. Transfers between hospitals will be cost-shared on an inpatient basis. This is consistent with § 199.4(a)(4) which states,

Status of patient controlling for purposes of cost-sharings. Benefits for covered services and supplies described in this chapter will be extended either on an inpatient or outpatient cost-sharing basis in accordance with the status of the patient at the time the covered services and supplies were provided * * *.

This will preserve continuity of care and reduce out-of-pocket costs for active duty dependents. Under the inpatient cost-sharing provisions, the transferred active duty dependent will only be responsible for the difference, if any, between billed charges and the CHAMPUS-determined allowable charge if the provider does not accept assignment. No cost-share will be taken for ambulance transfers rendered in conjunction with an inpatient-stay.

The revised cost-sharing provisions will have minimal impact on retirees and their dependents since their cost-share remains twenty-five percent whether a service is provided on an inpatient or outpatient basis. The change will, however, eliminate application of the outpatient deductible requirement for ambulance transfers for this beneficiary category.

Under current policy, emergency room (ER) services are cost-shared as inpatient when an immediate inpatient admission for acute care follows the outpatient ER services. In order to be consistent with this policy, medically necessary ambulance transfers from an ER to a hospital more capable of providing the required level of care will also be cost-shared on an inpatient basis.

Review of Comments

As a result of the publication of the proposed rule, two comments were received from a coordinating agency. The first comment dealt with the expansion of ambulance benefit to air charter services with or without accompanying attendant. It was felt that this would offer greater availability and result in a better match of resources and needs than having the choices be limited solely to surface ambulance or full-fledged air ambulance.

The coverage of ambulance services is based solely on the condition of the patient and various geographic considerations outlined under § 199.4(d)(3)(v)(D) of the Regulation. The type of ambulance vehicle is further defined under the definitions section (section 199.2) of the Regulation as "A specially designed vehicle for transporting the sick or injured that contains a stretcher, linens, first aid supplies, oxygen equipment, and such lifesaving equipment required by state and local law, and that is staffed by personnel trained to provide first aid treatment."

The use of ambulance services is covered solely for the emergency transfer of patients where no other means of transportation would be appropriate and where actual medical care is provided in transit. Opening the benefit up to air charter services would be totally inconsistent with this concept and would be provided solely for the convenience of the patient. Because of current budgetary constraints, it would be fiscally irresponsible to expand the ambulance benefit at this time.

The other comment dealt with covering ambulance services between Uniformed Services Medical Treatment Facilities (USMTFs). Under Cooperative Care guidelines agreed upon by CHAMPUS and the Services, CHAMPUS benefits may only be extended for civilian ambulance services to a USMTF when ordered by other than direct care personnel. Since there is no disengagement upon transferring patients between USMTFs, coverage cannot be extended for ambulance services. The transferring USMTF is responsible for payment of the ambulance transfer under Supplemental Care.

Regulatory Procedures

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would result in an annual effect on the national economy of $100 million or more or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities. In light of the above, no regulatory impact analysis is required.

This rule does not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR, part 199, is amended as follows:

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301, Pub. L. 101–165, section 9100.

2. Section 199.4 is amended by revising paragraph (d)(3)(v) introductory text and adding a note at the end of paragraph (d)(3)(v) introductory text.

§ 199.4 Basic program benefits.

* * * * *

(d) * * *

(3) * * *

(v) *Ambulance.* Civilian ambulance service to and between hospitals is covered when medically necessary in connection with otherwise covered services and supplies and a covered medical condition. Ambulance service is also covered for transfers to a Uniformed Service Medical Treatment Facility (USMTF). For the purpose of CHAMPUS payment, ambulance service is an outpatient service (including in connection with maternity care) with the exception of otherwise covered transfers between hospitals which are cost-shared on an inpatient basis. Ambulance transfers from a hospital based emergency room to another hospital more capable of providing the required care will also be cost-shared on an inpatient basis.

Note: The inpatient cost-sharing provisions for ambulance transfers only apply to otherwise covered transfers between hospitals, i.e., acute care, general, and special hospitals; psychiatric hospitals; and long-term hospitals.

* * * * *

Dated: October 30, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–26063 Filed 11–5–90; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6814

[OR–943–00–4214–10; GP0–088; OR–20313]

Revocation of the Secretarial Order Dated July 10, 1935; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in its entirety a Secretarial order which withdrew 280 acres of public land for the Bureau of Reclamation's Deschutes Project. The Bureau of Reclamation has determined that the land is no longer needed for the purpose for which it was withdrawn. The revocation is needed to permit disposal of the land by conveyance to the State of Oregon. This action will open 149.20 acres to surface entry and mining and 130.80 acres to disposal by conveyance to the State of Oregon subject to the provisions of section 24 of the Federal Power Act.

EFFECTIVE DATE: December 6, 1990.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by section 24 of the Act of June 10, 1920, as amended, 16 U.S.C. 818, and pursuant to the determination by the Federal Energy Regulatory Commisssion in DVOR–611, it is ordered as follows:

1. The Secretarial Order dated July 10, 1935, which withdrew the following described land, is hereby revoked in its entirety:

Willamette Meridian

T. 12 S., R. 12 E.,
Sec. 11, N½SW¼ and SW¼SW¼;
Sec. 14, NW¼.

The area described contains 280 acres in Jefferson County.

2. At 8:30 a.m., on December 6, 1990, those portions of secs. 11 and 14 within the boundary of Power Project 2030 will be opened to disposal by conveyance to the State of Oregon subject to the provisions of section 24 of the Federal Power Act as specified in Federal Energy Regulatory Commission determination DVOR–611, valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

3. At 8:30 a.m., on December 6, 1990, the land described in paragraph 1, except as described in paragraph 2, will be opened to operation of the public land laws generally, subject to valid existing rights; the provisions of existing withdrawals; the provisions of section 24 of the Federal Power Act, where applicable; any segregations of record; and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., December 6, 1990, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 8:30 a.m., on December 6, 1990, the land described in paragraph 1, except as described in paragraph 2, will be opened to location and entry under the United States mining laws, subject, where applicable, to the provisions of section 24 of the Federal Power Act. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: October 29, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90–26143 Filed 11–5–90; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket No. 45428 Notice No. 90–29]

Procedures for Transportation Workplace Drug Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of end of transition period for required drug testing custody and control form.

SUMMARY: In its December 1, 1989, final rule establishing Procedures for Transportation Workplace Drug Testing Programs (49 CFR part 40); the Department allowed a transition period from the drug testing custody and control form required in the November 21, 1988 Interim final rule to the form required by the December 1, 1989 final rule. This notice establishes the ending date for that transition period.

EFFECTIVE DATE: This notice establishes December 1, 1990, as the date employers must use the standardized 6 or 7 part drug testing custody and control form in accordance with 49 CFR part 40, December 1, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Smith, Office of Drug Enforcement and Program Compliance, Department of Transportation, 400 7th Street, SW., room 10200, Washington, DC 20590 (202) 366–3784).

SUPPLEMENTARY INFORMATION: In November 1988, the Department of Transportation published rules requiring drug testing programs in the aviation, maritime, railroad, mass transit, pipeline and motor carrier industries. The November 21, 1988, interim final rule published by the Office of the Secretary of Transportation required a five part form that conformed to the interim final rule requirements. The revised final rule, on this subject, published December 1, 1989, allowed "employers to continue using forms complying with the interim rule for a reasonable time." All new printings of forms were to conform to the revised final rule and the revised six or seven part form. Transition was urged as soon as possible. This notice establishes December 1, 1990, as the final date for transition to the six or seven part form which conforms to the revised 49 CFR part 40. As established in the final rule, employers are not required to "photocopy" the form at appendix A; and may gather the information in a somewhat different format. Experience with the use of the form over the past year, has demonstrated, however, that forms which present the data in the same order as the sample form in appendix A, are easier for collection facilities to complete accurately.

Employers are required to gather the information called for in § 40.23(a) and may not gather information inconsistent with that called for in the rule. Strict compliance must be assured in the following areas: The format must be either a six or seven part carbonless form designed to go to the locations specified in the rule; employee identification data that goes to the lab is restricted to SSN or employee ID number only; employee, collector, MRO and laboratory certification statements must be *verbatim* as presented in the rule; the donor medical information provision must conform exactly to the rule requirements; and the MRO identification data must be as the rule requires.

Drug testing custody and control forms that do not conform to the provisions of 49 CFR part 40, December 1, 1989, after December 1, 1990 are not in compliance with the rule.

Issued this thirty-first day of October, 1990, at Washington, DC.

Terrance W. Gainer,

Special Assistant to the Secretary.

[FR Doc. 90–26127 Filed 11–5–90; 8:45 am]

BILLING CODE 4910–62–M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 69–24; Notice 2]

RIN 2127–AC77

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This rule deletes the prohibition against optical combinations of clearance lamps and identification lamps. The purpose of this action is to eliminate a requirement deemed no longer necessary for safety.

This notice responds to a petition by the Truck Safety Equipment Institute (TSEI), and adopts a proposal published in December 1989.

EFFECTIVE DATE: The rule is effective December 6, 1990.

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Rulemaking, NHTSA (202–366–5271).

SUPPLEMENTARY INFORMATION: This notice completes rulemaking on one of the proposals published on December 5, 1989, which had as its purpose the deletion of all references to "optical combinations" of lamps (54 FR 50254). Because comments did not support other aspects of the proposal, NHTSA will issue a supplementary notice proposing adoption of the definition of the Society of Automotive Engineers.

From its very beginning, Motor Vehicle Safety Standard No. 108, in one version or another, has allowed two or more lamps, reflective devices, or items of associated equipment to be combined, if the requirements for each are met, provided that certain specified lamps were not "optically combined" (*See, e.g.*, sections S3.3, S3.4.4.3, 23 CFR 255.21 revised as of January 1, 1968,

Motor Vehicle Safety Standard No. 108). The current provisions addressed by this rule are contained in section S5.4.1.

Specifically, section S5.4.1 permits lighting equipment to be "combined", provided that "no clearance lamp may be combined optically with any taillamp or identification lamp, and no high mounted stop lamp shall be combined with any other lamp or reflective device." The agency has never adopted a definition of "optically combined", but has over the years attempted to clarify the term by issuing a variety of interpretations.

On June 14, 1988, the Truck Safety Equipment Institute ("TSEI") petitioned the agency for rulemaking to amend Standard No. 108 to adopt the Society of Automotive Engineers' (SAE) definition of the term "combined optically" as set forth in SAE Information Report J387 OCT88 "Terminology—Motor Vehicle Lighting." Until the revision of SAE J387 in 1988, the term had been undefined, though appearing in the two SAE standards for many years, as well as Standard No. 108. TSEI had examined the opinion letters issued by NHTSA and concluded that they were inconsistent, alleging, for example, that one had "apparently been used to justify designs which have the clearance lamp bulb mounted in close proximity to the dual filament stop/tail lamp bulb * * *. Both use a common lens area for the output of the tail and clearance functions. It does not appear that this is in keeping with either the spirit or the intent of FMVSS 108." The petitioner also mentioned that Canada had adopted, effective September 2, 1987, a definition of "combined optically" which is substantially similar to that of the SAE.

In considering TSEI's petition, NHTSA examined the existing prohibitions against lamp combinations. The agency tentatively concluded that it is no longer necessary to forbid the "optical combination" of clearance lamps and identification lamps. The locational requirements of Standard No. 108 with respect to each are so dissimilar that they could not be met with an "optically combined" lamp. Under Table II of Standard No. 108, the three lamp cluster of identification lamps are to be mounted within a narrow space around the vertical centerline on vehicles whose overall width is 80 inches or more, while clearance lamps must be mounted to indicate the overall width of that vehicle. Further, under paragraph S5.3.1.4, when the rear identification lamps are mounted at the extreme height of the vehicle, the rear clearance lamps need not be located as close as practicable to the top of the vehicle. In the judgment of the agency, the likelihood of "optical combination" of identification and clearance lamps was infinitesimal.

Accordingly, the agency proposed a revision of the requirement under which lighting equipment could be "combined if the requirements for each * * * are met, except that a taillamp shall not share a light source, lens, or lamp body with a clearance lamp, and a center highmounted stop lamp shall not share a light source, lens, or lamp body with any other lamp or reflective device."

Comments were received from White/GMC Trucks, Chrysler Corporation, General Motors Corporation, Truck Safety Equipment Institute (TSEI), Peterson Manufacturing Company, Grote Manufacturing Company, Ford Motor Company, Truck-Lite Company, and Dry Launch. Commenters supported the deletion of the prohibition against optical combination of clearance lamps and identification lamps, for the reasons given by NHTSA in its proposal. However, all commenters other than Chrysler specifically objected to the terminology used by NHTSA to substitute clarifying language for "optical combination". In their views, adoption of the proposed language would prohibit use of currently-permissible lamps that share a lamp body. Each of the commenters who objected urge NHTSA to consider adoption of the SAE definition, as TSEI had originally requested.

The agency also considered the prohibition against optically combining other lamps. Similarly, the commenters objected to these proposals, and recommended adoption of the SAE definition. NHTSA will address these comments in a supplemental notice of proposed rulemaking, Notice 3.

Because the rule will remove an existing restriction, it is hereby found for good cause shown that an effective date earlier than 180 days after issuance is in the public interest. Accordingly, the amendment is effective 30 days after its publication in the **Federal Register**.

Impacts

NHTSA has considered the impacts of this rulemaking action and has determined that it is neither major within the meaning of Executive Order 12291 "Federal Regulations," nor significant under Department of Transportation regulatory policies and procedures. The primary effect of the rule is to relieve a restriction. Therefore, the agency has not prepared a full regulatory evaluation.

NHTSA has analyzed this rule for purposes of the National Environmental Policy Act. It is not anticipated that the rule will have a significant effect upon the environment because its effect is to remove a restriction.

The agency has also considered the effects of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic effect upon a substantial number of small entities. Lamp and vehicle manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Furthermore, small organizations and governmental jurisdictions will not be significantly affected as the price of new vehicles should not be impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 "Federalism," and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, motor vehicle safety, motor vehicles.

In consideration of the foregoing, 49 CFR part 571, § 571.108 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1407; delegations of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. In § 571.108, S5.4 of Standard No. 108 is revised to read as follows:

S5.4 *Equipment combinations.* Two or more lamps, reflective devices, or items of associated equipment may be combined if the requirements for each lamp, reflective device, and item of associated equipment are met, except that no clearance lamp may be optically combined with any taillamp, and no high-mounted stop lamp shall be combined with any other lamp or reflective device.

3. S5.4.1 of Standard No. 108 is removed.

Issued on: October 31, 1990.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 90-26232 Filed 11-5-90; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 55, No. 215
Tuesday, November 6, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-226-AD]

Airworthiness Directives; Aerospatiale Model ATR42-300 and ATR42-320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42-300 and ATR42-320 series airplanes, which would require modification of the cockpit voice recorder (CVR). This proposal is prompted by reports that the CVR, in its present configuration, may continue to record and possibly lose information following an accident. This condition, if not corrected, could affect air safety if important information provided by the CVR is not available following an accident to facilitate the determination of probable cause and the subsequent development of necessary corrective action or design changes to prevent future accidents.

DATES: Comments must be received no later than January 2, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, attention: Airworthiness Rules Docket No. 90-NM-226-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-226-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Aerospatiale ATR42-300 and ATR42-320 series airplanes. There have been recent reports that the cockpit voice recorder (CVR), in its present configuration, may continue to record and progressively erase data following an accident. This condition, if not corrected, could affect air safety if important information provided by the CVR is not available following an accident to facilitate determination of probable cause and the subsequent development of necessary corrective action or design changes to prevent future accidents.

Aerospatiale has issued Service Bulletin ATR42-23-0018, dated July 13, 1989, which describes procedures to modify the CVR, which includes rewiring of relay 9RK, to restore the automatic shut-off feature. The French DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 89-093-022(B).

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require modification of the cockpit voice recorder in accordance with the service bulletin previously described.

It is estimated that 8 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required parts will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $320.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR42-300 and ATR42-320 series airplanes, Serial Numbers 123 through 142, which have been fitted with Modification 1848 and have not incorporated Modification 2311, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent loss of cockpit voice recorder (CVR) information, accomplish the following:

A. Within 30 days after the effective date of this AD, restore the automatic shut-off feature to the CVR by rewiring relay 9RK, in accordance with Aerospatiale Service Bulletin ATR42-23-0018, dated July 13, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on October 30, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26176 Filed 11-5-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-225-AD]

Airworthiness Directives; Airbus Industrie Model A310-200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Airbus Industrie Model A310-200 series airplanes, which would require repetitive high frequency eddy current (HFEC) rototest inspections to detect cracks in the wing rear spar at certain bolt holes where the main landing gear (MLG) forward pick-up fittings are attached to the rear spar, and repair, if necessary. This proposal is prompted by full-scale fatigue testing by the manufacturer, which revealed cracks in the wing rear spar emanating from certain bolt holes at the attachment of the MLG forward pick-up fitting. This condition, if not corrected, could result in reduced structural integrity of the wings.

DATES: Comments must be received no later than January 2, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANN-103, Attention: Airworthiness Rules Docket No. 90-NM-225-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-225-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Airbus Industrie Model A310-200 series airplanes. During full-scale fatigue testing by the manufacturer, cracks were found in the rear spar, emanating from certain bolt holes at the attachment of the main landing gear (MLG) forward pick-up fitting. This condition, if not corrected, could result in reduced structural integrity of the wings.

Airbus Industrie has issued Service Bulletin A310-57-2046, dated March 5, 1990, which describes procedures for repetitive high frequency eddy current (HFEC) rototest inspections to detect cracks in the wing rear spar at certain bolt holes where the MLG forward pick-up fittings are attached to the rear spar, and repair, if necessary. The French DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 90-043-105(B)R1 addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of

§ 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive HFEC rototest inspections to detect cracks in the wing rear spar at certain bolt holes where the MLG forward pick-up fittings are attached to the rear spar, and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 7 airplanes of U.S. registry would be affected by this AD, that it would take approximately 180 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $50,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to all Model A310-200 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect cracks in the wing rear spar and prevent reduced structural integrity of the wings, accomplish the following:

A. Prior to the accumulation of 12,000 landings, or within 1,000 landings after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) rototest inspection of the wing rear spar at certain bolt holes where the main landing gear (MLG) forward pickup fittings are attached to the rear spar, in accordance with Airbus Industrie Service Bulletin A310-57-2046, dated March 5, 1990.

1. If no cracks are found at the first inspection and no cold working of the holes concerned is carried out: repeat the HFEC rototest inspection at intervals not to exceed 4,500 landings.

2. If no cracks are found at the first inspection and a spar life extension by cold working of the holes concerned is carried out in accordance with the paragraph 2.3.(1)(b) of the Accomplishment Instructions of the service bulletin, repeat the HFEC rototest inspection within the next 18,000 landings, and thereafter at intervals not to exceed 12,000 landings.

B. If cracks are found, repair prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Repeat the HFEC rototest inspection at an interval approved by the Manager, Standardization Branch, ANM-113.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on October 30, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26173 Filed 11-5-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-200-AD]

Airworthiness Directives; Airbus Industrie Model A300-B4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300-B4 series airplanes, which would require a one-time detailed visual inspection to detect cracks in the pylon rear attachment sealing angles, and repair, if necessary. This proposal is prompted by reports of premature cracking found on in-service airplanes in the vertical flange of the pylon rear attachment sealing angles. This condition, if not corrected, could result in reduced structural capability of the engine pylon.

DATES: Comments must be received no later than January 2, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-200-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications

should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-200-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A300-B4 series airplanes with high-time flight cycles. There have been recent reports of premature fatigue cracks found on in-service airplanes in the vertical flange of the pylon rear attachment sealing angles. The cracks initiated from either the second or third bolt hole in the vertical flange of the sealing angle, outboard of Rib 8. Initial propagation was upward to the free edge, followed shortly by the crack growing downward into the corner and then across the horizontal flange. This condition, if not corrected, could result in reduced structural capability of the engine pylon.

Airbus Industrie has issued All Operators Telex (AOT) 57-01, dated July 30, 1990, which describes procedures for a detailed visual inspection to detect cracks in the pylon rear attachment sealing angles, followed by a dye penetrant inspection if cracks are suspected, and repair, if necessary. The DGAC has classified this AOT as mandatory, and has issued Airworthiness Directive T-89-189-097(B)R2 addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require a one-time detailed visual inspection to detect cracks in the pylon rear attachment sealing angles; a dye penetrant inspection if cracks are found; and repair, if necessary; in accordance with the AOT previously described.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

It is estimated that 8 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,840.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to certain Model A300-B4 series airplanes, as listed in Airbus Industrie All Operators Telex (AOT) 57-01, dated July 10, 1990, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect cracks in the pylon rear attachment sealing angles and prevent reduced structural capability of the engine pylon, accomplish the following:

A. Within 250 landings after the effective date of this AD, perform a detailed visual inspection of the vertical flanges of the pylon rear attachment sealing angles, in accordance with AOT 57-01, dated July 10, 1990. If cracks are indicated, prior to further flight, perform a dye penetrant inspection to confirm any suspected findings in accordance with the AOT.

B. If cracks are found as a result of the dye penetrant inspection required by paragraph A. of this AD, prior to further flight, repair in accordance with AOT 57-01, dated July 10, 1990.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on October 30, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26174 Filed 11-5-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-229-AD]

Airworthiness Directives; Airbus Industrie Model A300, A310, and A300-600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300, A310, and A300-600 series airplanes, which would require the identification and removal of faulty hydraulic power fire shut-off valves and replacement with modified valves. This proposal is prompted by reports of inoperative hydraulic power fire shutoff valves discovered during aircraft production tests. This condition, if not corrected, could result in the inability to close the valves, and the loss of hydraulic powered systems due to the loss of hydraulic fluid.

DATES: Comments must be received no later than January 2, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-229-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-229-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A300, A310, and A300-600 series airplanes. There have been recent reports of inoperative hydraulic power fire shut-off valves discovered during production testing. Further investigation revealed a maladjustment of the valve actuator end-of-travel limit switches due to a change in the actuator adjustment procedures. This condition, if not corrected, could result in the inability to close the valves, and the loss of hydraulic powered systems due to the loss of hydraulic fluid.

Airbus Industrie has issued the following service bulletins, which describes procedures to identify the affected hydraulic power fire shut-off valves and replacement with new modified valves:

Model	Service bulletin number and issue date
A300	A300-29-096, dated January 29, 1990.
A310	A310-29-2025, dated January 29, 1990.
A300-600	A300-29-6017, dated January 29, 1990.

Note: The above-listed service bulletins reference Lucas Air Equipment Service Bulletin No. B38LC15-29-05, Revision 1, dated February 1990, for additional instructions.

The French DGAC has classified the above service bulletins as mandatory, and has issued Airworthiness Directive 90-042-104(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require identification and removal of faulty hydraulic power fire shut-off valves, and replacement with new modified hydraulic power fire shut-off valves, in accordance with the service bulletins previously described.

It is estimated that 113 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The modified hydraulic power fire shut-off valves will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $38,420.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

BEST COPY AVAILABLE

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to all Model A300, A310, and A300-600 series airplanes, on which Airbus Industrie Modification 8135 has not been accomplished, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent the inability of the hydraulic power fire shut-off valves to close during emergency conditions, accomplish the following:

A. Within 180 days after the effective date of this AD, conduct an inspection of the hydraulic power fire shut-off valves to identify faulty valves, as specified in Airbus Industrie Service Bulletins A300-29-086 (for Model A300 series airplanes), A310-29-2025 (for Model A310 series airplanes), and A300-29-6017 (for Model A300-600 series airplanes), all dated January 29, 1990. Any faulty valve identified must be removed and replaced with a modified valve prior to further flight, in accordance with the appropriate service bulletin.

Note: The Airbus Industrie service bulletins reference Lucas Air Equipment Service Bulletin No. B38LC15-29-05, Revision 1, dated February 1990, for additional instructions.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on October 30, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26175 Filed 11-5-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-22-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Boeing Model 727 series airplanes, which would require inspection for cracking of the inboard trailing edge flap inboard track, repair if necessary, and eventual replacement of previously repaired tracks. This proposal is prompted by reports of cracking of the flap tracks. This condition, if not corrected, could result in failure of the flap track and possible separation of the inboard trailing edge flap.

DATES: Comments must be recieved no later than December 31, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-22-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi N. Ishimaru, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2778. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-22-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

There have been several reports of cracks in the inboard trailing edge flap inboard track on Boeing Model 727 airplanes. Cracks have been attributed to fatigue. Such cracks, if not detected, could lead to failure of the flap track and possible separation of the affected inboard trailing edge flap.

The FAA has reviewed and approved Boeing Service Bulletin 727-32-0340, Revision 3, dated May 24, 1990, which describes procedures for inspection, repair if necessary, and modification, of the inboard trailing edge flap inboard tracks.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection for cracks of the inboard trailing edge flap inboard tracks, repair if necessary, and eventual replacement of previously repaired tracks, in accordance with the service bulletin previously described.

There are approximately 1,695 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,172 airplanes of U.S. registry would be affected by this AD, that it would take approximately 29 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,359,520.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the rules docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 727 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent separation of an inboard trailing edge flap due to cracking, accomplish the following:

A. Except as provided in paragraph E. of this AD, prior to the accumulation of 7,000 flight cycles, or within the next 1,000 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed visual inspection for cracks in the inboard trailing edge flap inboard track at the main landing gear door forward hinge fitting attachment holes. Repeat the inspections at intervals not to exceed 3,000 flight cycles. The hinge fitting bolts do not have to be removed to accomplish this inspection.

B. If cracked forward hinge fittings are found, prior to further flight, replace the fittings.

C. If cracked flap tracks are detected that do not exceed the limits specified in Figure 1 of Boeing Service Bulletin 727-32-0340, Revision 3, dated May 24, 1990, (hereafter referred to as "the service bulletin"), prior to further flight, repair in accordance with the service bulletin or replace the flap track.

D. If cracked flap tracks are detected that exceed the limits specified in Figure 1 of the service bulletin, prior to further flight, replace the track.

E. Flap tracks repaired in accordance with Boeing Drawing 65-68420 must be replaced within the time interval specified in subparagraph 1. or 2., below, whichever occurs later.

1. Within 2,000 flight cycles or 1 year since repair, whichever occurs first; or

2. Within 1,000 flight cycles or 6 months after the effective date of this AD, whichever occurs first.

F. Inspection and modification in accordance with Figure 1 of the service bulletin constitutes terminating action for the inspections required by paragraph A. of this AD.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

H. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on October 29, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26177 Filed 11-5-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-211-AD]

Airworthiness Directives: Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Boeing Model 727 series airplanes, which would require inspection for cracks of the No. 2 cargo doorway forward and aft frames, and repair, if necessary. This proposal is prompted by reports of cracks in the forward and aft frame webs. This condition, if not corrected, could result in failure of the No. 2 cargo doorway frames and depressurization of the airplane.

DATES: Comments must be received no later than December 28, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-211-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi N. Ishimaru, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2778. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-211-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

There have been several reports of cracks in the web of the No. 2 cargo doorway forward and aft frames of Boeing Model 727 series airplanes. In one case, the full web and inner chord of the frame were cracked. This condition, if not corrected, could result in failure of the doorway frames and depressurization of the aircraft.

The FAA has reviewed and approved Boeing Alert Service Bulletin 727-53A0199, dated July 5, 1990, which describes procedures for inspection and repair of the No. 2 cargo doorway frames.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection for cracks and repair, if necessary, of the No. 2 cargo doorway forward and aft frames, in accordance with the service bulletin previously described.

There are approximately 1,202 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 961 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $192,200

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39:

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes, listed in Boeing Alert Service Bulletin 727-53A0199, dated July 5, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the No. 2 cargo doorway frames and depressurization of the airplane, accomplish the following:

A. Prior to accumulating 22,000 total flight cycles or within the next 500 flight cycles after the effective date of this AD, whichever occurs later, conduct a visual inspection and an eddy current inspection of the No. 2 cargo doorway forward and aft frames for cracks, in accordance with Figure 1 of the Boeing Alert Service Bulletin 727-53A0199, dated July 5, 1990. Repeat the inspections at intervals not to exceed 3,000 flight cycles.

B. If cracks are found, prior to further flight, repair in accordance with Boeing Alert Service Bulletin 727-53A0199, dated July 5, 1990.

C. Incorporation of repairs in accordance with Figure 2 or modification in accordance with Figure 3 of Boeing Alert Service Bulletin 727-53A0199, dated July 5, 1990, constitutes terminating action for the inspection requirements of paragraph A. of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Issued in Seattle, Washington, on October 26, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26178 Filed 11-5-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-213-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to 757 series airplanes, which would require the installation of a bracket to hold hydraulic tubing associated with the landing gear alternate extension system and prevent it from chafing on a floor beam. This proposal is prompted by a report that omission of this bracket can result in a hole being chafed in the tubing and subsequent loss of hydraulic fluid from the alternate gear extension system. This condition, if not corrected, could result in a latent failure of the alternate gear extension system that would render this system inoperative in the event that it was required due to a failure of the normal gear extension system. If this occurred, the airplane would be forced to land with the gear fully or partially up.

DATES: Comments must be received no later than December 28, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-213-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Letcher, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2670. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-213-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The manufacturer has reported that certain Model 757 series airplanes have been delivered without a bracket which prevents the hydraulic tubing of the alternate landing gear extension system from chafing on a floor beam. This chafing can result in loss of fluid from the alternate gear extension system. The damage to the tubing and the loss of fluid may not be detected until the alternate extension system is actually needed due to a malfunction of the normal extension system. The latent failure of the alternate extension system could result in an aircraft landing with the gear fully or partially retracted.

The FAA has reviewed and approved Boeing Service Bulletin 757-29-0042, dated August 9, 1990, which describes procedures for installing a bracket to hold the hydraulic tubing in place and prevent it from rubbing on the floor beam.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require the bracket installation in accordance with the service bulletin previously described.

There are approximately 10 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 8 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of parts is estimated at $53 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,624.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, listed in Boeing Service Bulletin 757-29-0042, dated August 9, 1990, certificated in any category. Compliance required within 3,000 hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent a latent failure of the alternate landing gear extension system, accomplish the following:

A. Install a bracket and attach the hydraulic tubing in accordance with Boeing Service Bulletin 757-29-0042, dated August 9, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on October 25, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26179 Filed 11-5-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-141-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes, which would require inspection of certain nacelle strut midspar fuse pins, and replacement, if necessary. This proposal is prompted by a report of a 2.55-inch long crack in a new style fuse pin, on which necessary primer and corrosion preventive compound had not been applied. This condition, if not corrected, could result in failure of the pin and separation of the engine from the airplane.

DATES: Comments must be received no later than December 28, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-141-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Satish K. Pahuja, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2761. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-141-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

An operator of a Boeing Model 747 series airplane reported finding a 2.55-inch long crack in a new style nacelle strut midspar fuse pin on which primer and corrosion preventive compound had not been applied. The FAA has determined that some new style fuse pins were not manufactured correctly in that necessary primer and corrosion preventive compound were not applied. Corrosion and/or cracking may result if primer and corrosion preventive compound are not applied. Failure to detect and repair cracks could result in failure of the pin and separation of the engine from the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 747-54-2063, Revision 7, dated March 29, 1990, which describes procedures for inspection for corrosion, cracks, and the presence of primer and corrosion preventive compound on the engine strut midspar fuse pins; replacement, if necessary; and application of corrosion preventive compound and primer on undamaged engine strut midspar fuse pins on certain Boeing Model 747 airplanes.

Since this condition is likely to exist on other airplanes of this same type design, a new AD is proposed that would require inspections of the new style nacelle strut midspar fuse pins for primer, corrosion preventive compound, corrosion and cracking; modifications; and replacement, if necessary, in accordance with the service bulletin previously described.

There are approximately 700 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 174 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $27,840.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 747-100, -200, and -300 series airplanes, Line number 001 through 827, certificated in any category, equipped with the new style nacelle strut midspar fuse pins, Part Numbers 69B89611-1, 69B89611-2, 69B90340-4, 69B90340-8, 69B90409-5, and 69B90409-9, installed in accordance with Boeing Service Bulletin 747-54-2063, Revision 6, dated July 20, 1989, or previous FAA-approved revisions, or installed during the manufacture of the airplane. Compliance required as indicated, unless previously accomplished.

To prevent failure of the new style nacelle strut midspar fuse pin and separation of the engine from the airplane, accomplish the following:

A. Prior to the accumulation of 12,000 total flight hours, or within the next 2,000 flight hours after the effective date of this AD, whichever occurs later, inspect the new style nacelle strut midspar fuse pins for the presence of primer and corrosion preventive compound, in accordance with Boeing Service Bulletin 747-54-2063, Revision 7, dated March 29, 1990.

1. If primer and corrosion preventive compound are present, no further action is required.

2. If primer and corrosion preventive compound are missing, prior to further flight, inspect the pin for corrosion and cracks, in accordance with Boeing Service Bulletin 747-54-2063, Revision 7, dated March 29, 1990.

a. If corrosion or cracks are found, prior to further flight, replace the fuse pin, in accordance with Boeing Service Bulletin 747-54-2063, Revision 7, dated March 29, 1990.

b. If no corrosion or cracks are found, the fuse pin may be returned to service after application of primer and corrosion preventive compound, in accordance with Boeing Service Bulletin 747-54-2063, Revision 7, dated March 29, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on October 26, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26180 Filed 11-5-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-209-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires inspection for cracks in the fuselage station 2598 upper bulkhead, which supports the horizontal stabilizer; and repair, if necessary. This action would require installation of the terminating modification for the inspections required by the current airworthiness directive. This proposal is prompted by reports of additional cracking detected by the inspections required by the current airworthiness directive. This condition, if not corrected, could result in loss of the horizontal stabilizer.

DATES: Comments must be received no later than December 27, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-209-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2777. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-209-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On April 13, 1990, the FAA issued AD 90-07-11, Amendment 39-6556 (55 FR 11161, March 27, 1990), applicable to certain Boeing Model 747 series airplanes, to require inspection for cracks in the fuselage station 2598 upper bulkhead, which supports the horizontal stabilizer, and repair, if necessary.

That action was prompted by a report of three cracks found in an upper bulkhead web. This condition, if not corrected, could result in loss of the horizontal stabilizer.

Since issuance of that AD, several additional cracks of the bulkhead web have been reported as a result of the required inspections. In light of this, the FAA has determined that, the previously optional terminating modification must be installed to provide an acceptable level of safety. Failure to detect and repair cracks could result in loss of the horizontal stabilizer.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-53A2332, dated March 8, 1990, which describes procedures for visual and eddy current inspections to detect cracks in the fuselage station 2598 upper bulkhead web, repairs, and a terminating modification comprised of the addition of doublers that strengthen the bulkhead.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 90-07-11 with a new airworthiness directive that would also require incorporation of the terminating modification of the fuselage station 2598 bulkhead web within 2 years, in accordance with the service bulletin previously described.

There are approximately 224 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 174 airplanes of U.S. registry would be affected by this AD, that it would take approximately 150 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,044,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6556 (55 FR 11161, March 27, 1990), AD 90-07-11, with the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, line numbers 002 through 226, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of the horizontal stabilizer, accomplish the following:

A. Within the next 30 days after April 13, 1990 (the effective date of Amendment 39-6556), perform either a close detailed visual inspection or a high frequency eddy current (HFEC) inspection of the fuselage station 2598 bulkhead upper web in the corners of the access cut-out, in accordance with Boeing Alert Service Bulletin 747-53A2332, dated March 8, 1990. Repeat these inspections as follows:

1. If the immediately preceding inspection was accomplished visually, the next inspection must be conducted within 250 landings.

2. If the immediately preceding inspection was accomplished using HFEC, the next inspection must be conducted within 1,000 landings.

B. If cracks less than 1.5 inches are found, repair prior to further flight, in accordance with repair procedures defined in Boeing Alert Service Bulletin 747-53A2332, dated March 8, 1990, or accomplish the terminating modification specified in paragraph E. of this AD. Inspect repairs for cracks in accordance with paragraph A. of this AD, until the terminating modification specified in paragraph E. of this AD, is accomplished.

C. If cracks are found that are 1.5 inches or longer, modify prior to further flight by installing the terminating modification specified in paragraph E. of this AD.

D. Within the next 30 days after April 13, 1990 (the effective date of Amendment 39-6556), remove the fastener common to the web and the tab on the vertical stiffener, at each corner of the upper bulkhead cut-out, and perform a high frequency eddy current inspection of the open hole in accordance with Boeing Alert Service Bulletin 747-53A2332, dated March 8, 1990. If no cracks are found, replace the fastener with a ½-inch oversized equivalent fastener. If any cracks are found, prior to further flight, accomplish the repair and inspections required by paragraph B. of this AD, or modify prior to further flight in accordance with the terminating modification specified in paragraph E. of this AD.

E. Within the next 2 years after the effective date of this AD, accomplish the terminating modification specified in Boeing Alert Service Bulletin 747-53A2332, dated March 8, 1990. Installation of the modification constitutes terminating action for the inspections required by this AD.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

Note: Any alternate means of compliance previously approved for paragraph G. of AD 90-07-11, Amendment 39-6556, constitutes an alternate means of compliance with paragraph F. of this AD.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on October 25, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26161 Filed 11-5-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-216-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes Equipped With Forward and/or Aft Auxiliary Fuel Tanks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which would require either the installation of a check valve and a pressure actuated shutoff valve in the center wing fuel tank, or the deactivation of the auxiliary fuel system. This proposal is prompted by a report of an uncontrollable fuel leak from the fuel manifold in the center wing tank into a damaged auxiliary fuel tank that resulted in a large spill of fuel into the cargo compartment. This condition, if not corrected, could result in a fire.

DATES: Comments must be received no later than December 28, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-216-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2686. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-216-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

A recent incident, involving cracking of the honeycomb panels used for the aft auxiliary fuel tank on a Boeing Model 727 series airplane, permitted cabin air to pressurize the fuel tank box, which subsequently damaged the bladder cell. This event resulted in the uncontrolled leakage of fuel from the fuel manifold in the center wing tank into the damaged auxiliary fuel tank, which resulted in a massive spill of fuel in the aft cargo compartment. Investigation of the incident indicated there was no shutoff means to prevent such a spill. This condition, if not corrected, could lead to a fire in the cargo compartment.

The FAA has reviewed and approved Boeing Alert Service Bulletin 727-28A0067, Revision 1, dated July 5, 1990, which describes procedures for the installation of a check valve and a pressure actuated shutoff valve on the auxiliary fuel line in the center wing tank to prevent fuel leakage in the event of an auxiliary fuel system failure. The service bulletin also describes procedures for deactivation of the auxiliary fuel tank system.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require installation of a check valve and a pressure-actuated shutoff valve in accordance with the service bulletin previously described. In lieu of the installation, operators would be given the option to deactivate the auxiliary fuel tank system and to insert a placard in the cockpit indicating that the auxiliary fuel tanks are inoperative.

There are approximately 350 Boeing Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 210 airplanes of U.S. registry would be affected by this AD. Should an operator elect to accomplish the proposed installation, it would take approximately 240 manhours per airplane to accomplish the required actions, and the average labor cost would be $40 per manhour. Cost of required parts is estimated to be $18,460 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators who accomplish the installation is estimated to be $28,060 per airplane, or $5,892,600 for the U.S. fleet.

Should an operator elect to install the placard and deactivate the auxiliary fuel tank system, it would take approximately 17 manhours to accomplish the required actions, and the average labor cost would be $40 per manhour. The cost of required parts (a placard) is negligible. Based on these figures, the total cost impact of the AD on U.S. operators who accomplish the placarding and deactivation is estimated to be $680 per airplane, or $142,800 for the U.S. fleet.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13—[Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes equipped with forward and/or aft auxiliary fuel tanks listed in Boeing Alert Service Bulletin 727-28A0067, Revision 1, dated July 5, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To eliminate the potential for a fire due to rupture of the auxiliary fuel tank, accomplish the following:

A. Within the next 180 days after the effective date of this AD, accomplish either subparagraph 1. or 2., below:

1. Install a check valve and a pressure actuated shutoff valve in the center wing tank in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727-28A0067, Revision 1, dated July 5, 1990; or

2. Deactivate the auxiliary fuel system and insert a placard in the cockpit to indicate that the auxiliary fuel tank is inoperative, in accordance with Boeing Service Alert Bulletin 727-28A0067, Revision 1, dated July 5, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on October 26, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26182 Filed 11-5-90; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3857-8]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Logan Airport and East Boston Parking Freeze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the State Implementation Plan (SIP) submitted by the Commonwealth of Massachusetts. The intent of the SIP revision is to reduce vehicular emissions of carbon monoxide, hydrocarbons and nitrogen oxides. The pollutants contribute to the carbon monoxide and ozone air pollution problems in the Boston urbanized area. This SIP revision amends the Logan Airport Parking Freeze by increasing the types of parking spaces included, by committing to implement transportation control measures and by increasing the number of commercial spaces by 2,000 spaces, plus an amount equal to the number of employee parking spaces removed from use. The SIP revision also changes the area of coverage of parking freeze to include parts of East Boston adjacent to Logan Airport. The intended effect of this action is to propose approval of the changes to Massachusetts' SIP. This action is being taken under Section 110 of the Clean Air Act.

DATES: Comments must be received on or before December 6, 1990. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th Floor, Boston, MA 02203; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20560; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Thomas F. Wholley (617) 565-3233; FTS 835-3233.

SUPPLEMENTARY INFORMATION: In submittals dated August 4, 1989, December 6, 1989 and March 23, 1990, the Massachusetts Department of Environmental Protection (DEP) proposed a revision to its State Implementation Plan (SIP) amending the Logan Airport Parking Freeze, 310 CMR 7.30, and inserting provisions for an East Boston Parking Freeze at 310 CMR 7.31.

Background

The Logan Airport Parking Freeze program was established on June 12, 1975 when EPA promulgated an amendment to the transportation control plan regulations for the Metropolitan Boston Intrastate Air Quality Control Region (40 FR 25152). The parking freeze was developed as one part of a comprehensive strategy to reduce air pollution caused by automobile emissions. The Boston Metropolitan Planning Organization (MPO) submitted to Massachusetts DEP the Logan Airport Parking Freeze program to be incorporated in the 1979 SIP (45 FR 61293) and again in the 1982 SIP (48 FR 51480). The Massachusetts Port Authority (Massport) was delegated the authority to implement the Logan Airport Parking Freeze by the Commonwealth of Massachusetts on October 8, 1975. Since the delegation, Massport has operated the program and submitted reports to EPA describing the implementation of the parking freeze.

The proposed SIP revision was submitted by the Boston MPO to the Massachusetts DEP in November of 1988. DEP proposed regulations in July of 1989 and held a hearing in August of 1989. A technical amendment regarding the boundary of the East Boston freeze area was proposed in December of 1989 and a hearing was held in January of 1990. In submittals to EPA dated August 4, 1989, December 6, 1989 and March 23, 1990, the Massachusetts DEP proposed a revision to its SIP.

Summary of SIP Revision

Types of Parking Spaces Included in the Freeze

The proposed SIP revision covers commercial, employee, Park and Fly and Rental Motor Vehicle parking spaces. Only commercial parking spaces were covered by the 1982 SIP parking freeze. But because each motor vehicle generates air pollution, regardless of the type of parking space it uses, it appears appropriate to include all airport-related parking in the freeze. EPA is interested in receiving comments on the types of parking spaces to be included in the parking freeze.

Number of Parking Spaces

The proposed SIP revision limits the number of commercial and employee parking spaces at Logan Airport to 19,315. No more than 7,100 spaces shall be employee spaces and no fewer than 12,215 shall be commercial. The SIP revision increases the existing number of commercial parking spaces (10,215) at Logan Airport by 2,000 and allows Massport to eliminate 2,000 employee spaces by relocation outside of the freeze area, or by promoting the use of alternate transportation by employees, within a three year period. The number of commercial spaces at Logan Airport can then be increased by a number equal to the number of employee parking spaces eliminated. The Park and Fly and Rental Motor Vehicle spaces will be frozen in East Boston at the number of spaces identified in an inventory prepared by the City of Boston and submitted to Massachusetts DEP. In addition, the SIP revision creates a category of restricted use parking spaces. These spaces can only be made available free of charge on up to ten days per calendar year during extreme peak travel periods. Each year, Massport must report on the use of restricted use parking spaces by dates, locations and numbers. If restricted use parking spaces are used on more than ten days in a calendar year, Massport must submit a plan and schedule for initiating actions to eliminate future need for restricted parking spaces. In the East Boston Parking Freeze area, the proposed SIP revision would freeze the number of Park and Fly and Rental Motor Vehicle spaces at existing levels. EPA is interested in receiving comments on the numbers and types of parking spaces allowed under the parking freeze, on the conversion of employee to commercial parking and on the restricted use parking provisions.

Parking Freeze Area

The proposed SIP revision expands the area of the parking freeze to include all of Logan Airport and all of East Boston except for two northern parcels. The 1982 State Implementation Plan (SIP) only included Logan Airport in the parking freeze area. As a result, airport-related parking activities have developed in East Boston outside of Logan Airport, increasing traffic congestion and air pollution. EPA is interested in receiving comments on the area proposed to be covered by the parking freeze.

Transportation Management Programs

The 1982 SIP included limited transportation control measures for Logan Airport. Over the past several years, Massport has voluntarily implemented several transportation management programs, such as the water shuttle to Boston and bus service to remote lots south and west of Boston. The proposed SIP revision incorporates these measures and imposes additional obligations by requiring Massport to identify, analyze and implement specific transportation management programs which discourage vehicle travel to Logan Airport. These measures and programs include fringe parking lots, water shuttle service, mass transit improvements and pricing strategies. Each year, Massport will submit a status report on the transportation management programs to the City of Boston, the Boston Metropolitan Planning Organization, Massachusetts DEP and EPA. EPA solicits comments on the proposed transportation management program provisions.

Air Quality Impacts

The proposed SIP revision is designed to reduce vehicle miles of travel (VMT) by restricting the number of parking spaces serving Logan Airport and by providing alternative means of travel to Logan Airport. Employees and travellers will be encouraged to use alternative transportation to Logan Airport, leading to reduced VMT in the area. To the extent that reductions in local and regional VMT improve traffic flow, subsequent reductions in carbon monoxide and ozone may be achieved. Air quality improvements can be achieved by the proposed SIP revision for the following reasons. First, the inclusion of all airport-related parking spaces will impose a limit on the number of parking spaces available. Second, the area of the parking freeze will be expanded. Finally, the transportation management programs will provide alternative modes of travel to Logan Airport.

The proposed SIP revision allows employee spaces at Logan Airport to be replaced by commercial spaces. Traffic studies have revealed that employee spaces generate more vehicle trips to and from Logan Airport than commercial spaces. In addition, the implementation of transportation management programs will ensure that alternative modes of transportation to Logan Airport will be available. Convenient and reliable transportation, other than automobiles, is essential to minimizing VMT. EPA is interested in receiving comments on the air quality impacts of the proposed parking freeze measures.

EPA's review of this material indicates that the proposed SIP revision will result in improved air quality. EPA is therefore proposing to approve the Massachusetts SIP revision for the Logan Airport and East Boston Parking Freeze. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the *Addresses* section of this notice.

Proposed Action

EPA is proposing to approve the SIP revision to the Logan Airport and East Boston Parking Freeze.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for SIP revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Oxides.

Authority: 42 U.S.C. 7401-7642.

Dated: October 26, 1990.

Paul Keough,

Acting Regional Administrator Region I.

[FR Doc. 90-26234 Filed 11-5-90; 8:45 am]

BILLING CODE 8560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BPO-066-P]

RIN 0938-AE45

Medicare Program; Offset Medicare Payments to Individuals to Collect Past-Due Obligations Arising From Breach of Scholarship and Loan Contracts

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth the procedures to be followed for collection of past due amounts owed by individuals who breached contracts under certain scholarship and loan programs. The programs that would be affected are the National Health Service Corps Scholarship, the Physician Shortage Area Scholarship, and the Health Education Assistance Loan. These procedures would apply to those individuals who breached contracts under the scholarship and loan programs and who—

- Accept Medicare assignment for services;
- Are employed by or affiliated with a provider, Health Maintenance Organization, or Comprehensive

Medical Plan that receives Medicare payment for services; or

• Are members of a group practice that receives Medicare payment for services.

The regulation would implement section 4052 of the Omnibus Budget Reconciliation Act of 1987.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 7, 1991.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPO–088–P, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC., or

Room 132, East high Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPO–088–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Marvin Dunkleberger (301) 966–7519.

SUPPLEMENTARY INFORMATION:

I. Background

The National Health Service Corps Scholarship (NHSCS), Physician Shortage Area Scholarship (PSAS), and the Health Education Assistance Loan (HEAL) programs are scholarship and loan programs sponsored by the Public Health Service (PHS). The NHSCS and PSAS programs provide scholarship funds for individuals training in health professions in exchange for a promise to serve in a health manpower shortage area for a specified period of time (one year for each year of scholarship received). If this agreement is breached, a financial obligation is incurred.

The HEAL program insures loans provided by non-Federal lenders to students in health professions schools. Students in various health-professions schools are eligible to participate. Borrowers are required to begin repayment of principle 9 months after they complete training. There is a maximum repayment period of 25 years. The Federal government is required to repay lenders in the case of default by borrowers under this program.

Section 4052 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), added a new section 1892 to the Social Security Act (the Act), that authorizes the Secretary of Health and Human Services to enter into a repayment agreement with any individual who fails to repay his or her obligation to the NHSCS, PSAS, and HEAL programs. Under the terms of the agreement, the individiual agrees to accept assignment for all Medicare services and have deductions made to repay the obligation according to a formula agreed to by the Secretary. The term "assignment" is used when an individual agrees to accept Medicare's determination of the reasonable charge amount as payment in full for covered services. The term "provider" includes all entities eligible to receive Medicare payment in accordance with an agreement under § 1866 of the Act.

Additionally, section 1892(a)(2)(C) and (a)(3) of the Act provides that if the individual refuses to enter into an agreement or breaches any provisions of the agreement, or if Medicare payment is insufficient to maintain the offset collection according to the agreed upon formula, the Secretary will immediately inform the Attorney General, who will pursue collection. The Secretary is required to exclude the individual from the Medicare program until the entire past due obligation has been repaid, unless the individual is a sole community practitioner or the sole source of essential specialized services in a community and the State requests that the individual not be excluded.

Section 1892(d) of the Act states that if the individual who enters into a repayment agreement is employed by or affiliated with a provider, Health Maintenance Organization (HMO), Comprehensive Medical Plan (CMP), or is a member of a group practice that submits bills under Medicare as a group rather than by individual physician, the Secretary will deduct amounts due from Medicare payments to the provider, HMO, CMP or group practice six months after it is given notification. The repayment agreement will be made in accordance with a formula and schedule agreed to by the Secretary, the individual and, in the case of an individual who is an employee of, or affiliated by a medical service agreement with such entities, the provider, organization, plan or group. The statute specifies that the provider having an agreement under section 1866 of the Act, or a CMP or HMO having a contract under sections 1833 or 1876 of the Act, respectively, has a right to collect the deducted amount, including accumulated interest, from the individual. In a separate provision, the statute also gives the same right to group practices.

Section 1892(e) of the Act also specifies that Medicare payment amounts that would otherwise be made to the individual, provider or other entity will be transferred from the trust fund to the general fund in the Treasury to be credited as payment of the individuals' past-due obligations.

II. Provisions of the Regulations

In accordance with section 1892 of the Act, we would set forth the procedures concerning the collection of past due amounts owed by individuals who breached contracts under the NHSCS, PSAS, and HEAL programs; and who receive Medicare payments for services or are employed by or affiliated with a provider that receives Medicare payment for services.

These proposed rules pertain only to the provisions HCFA would implement. The PHS will implement the establishment of the repayment agreements and will forward to the Medicare intermediaries and carriers, through the Health Care Financing Administration, the signed agreements that provide for the particulars of the offset of past due obligations arising from the breach of scholarship and loan contracts against Medicare payments.

We would amend 42 CFR part 405, subpart C to include the policies and procedures for repayment of scholarships and loans by adding a new § 405.380. Section 405.380(a) would specify the basis and purpose of the section (that is, to implement section 1892 of the Act regarding deductions from Medicare payments for services to offset amounts considered as past-due obligations under the NHSCS, PSAS, and HEAL programs).

In § 405.380(b), we would specify that if an individual has signed a repayment agreement with PHS and either accepts Medicare assignment for services or is employed by or affiliated with a provider that has an agreement or contract with Medicare, the intermediary or carrier would deduct amounts according to the formula and schedule as specified in the repayment agreement with PHS, the individual who breached the scholarship or loan obligation, and, if applicable, the provider.

In § 405.380(c)(1), we would specify that the Medicare carriers would begin to offset payments to the individuals 40 days after the date the repayment agreement is signed by PHS and the individual. In § 405.380(c)(2), we would specify that Medicare intermediaries would begin to offset payments to the providers six months after the intermediaries notify the providers of the amount to be deducted and the particular individuals to whom the deductions are attributable. Offset of payments would be made in accordance with the terms of the repayment agreement. If the individual ceases to be employed by the provider, HMO, or CMP, or leaves the group practice, no deduction would be made. Although not specified in the text of this proposed rule, the statute states that the provider has a right to collect the deducted amount, including accumulated interest, from the individual in accordance with the agreement.

In § 405.380(d), we would specify that if the individual refuses to enter a repayment agreement, or breaches any provision of the agreement, of if Medicare payment is insufficient to maintain the offset collection according to the agreed upon formula, the Secretary, within 30 days if feasible, informs the Attorney General. The statute states that the Secretary will immediately inform the Attorney General, who will pursue collection. For purposes of this regulation, we have determined that the statutory term "immediately" means as soon as possible, that is, generally within 30 days if feasible.

We would also specify that, in the same circumstances, the Secretary would exclude the individual from Medicare until the past-due obligation has been repaid, unless the individual is a sole community practitioner the sole source of essential specialized services in a community and the State requests that the individual not be excluded. If the State believes that an individual should not be excluded from the Medicare program, the State should forward a written justification to the following address:

Health Services and Resources Administration, Director, Division of Fiscal Services, Parklawn Building, room 1605, 5600 Fishers Lane, Rockville, Maryland 20857.

Finally, § 405.380(e) specifies that Medicare payment amounts that would otherwise be made to the individuals or providers would be transferred from the trust funds to the general fund in the Treasury to be credited as payment of the individuals' past-due obligations.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

• Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed regulation sets forth the procedures concerning the collection of past due amounts owed by individuals who breached contracts under the NHSCS, HEAL, or PSAS programs and who receive Medicare payments for services or are employed by or affiliated with a provider that receives Medicare payment for services.

The Public Health Service estimates that the total amount owed to the Federal government as a result of breached contracts under the NHSCS was approximately $193 million and under the HEAL program approximately $133 million and under the PSAS program approximately $3 million, as of June 30, 1990. (Most of the individuals who were awarded scholarships under the PSAS program have repaid their obligations, and we expect to receive very few cases under this program.) We are unable to determine how much of the past due $329 million would be recouped annually because we do not know the number of repayment agreements that will be negotiated and because the terms of each can vary. The issuance of this proposed rule may encourage those individuals who have breached contracts under any one of these scholarship or loan progams to repay the financial obligation by some other means. Some individuals may continue to refuse to repay their obligation and thus would potentially be excluded from Medicare and be subject to further action by the Attorney General's Office.

We have determined that a regulatory impact analysis is not required for this rule because it would not have an annual imapct of $100 million or more, or meet any of the other E.O. 12291 criteria.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, physicians, providers, HMOs, and CMPs, and group practices are considered to be small entities. We also consider nurses who work on a consulting basis or who are self-employed to be small entities.

The provisions of this regulation would affect those individuals who have past due obligations under the NHSCS, HEAL or PSAS programs. As of June 30, 1990, there were approximately 1,344 individuals who had a past due obligation under the NHSCS; 4,316 individuals who had a past due obligation under the HEAL program; and 71 individuals who had a past due obligation under the PSAS program.

The NHSCS program provides service-conditional financial awards for students of allopathic and osteopathic medicine, dentistry, and other health professions. The average loan for the 1989–1990 school year was $24,551.54 and this figure changes annually. The HEAL program is a program of Federal insurance and provides educational loans in the school of medicine, dentistry, veterinary medicine, optometry, and podiatry. Loans for these academic fields of study are limited to a total of $80,000 for all years of education. The academic fields of pharmacy, public health and allied health are limited to a total of $50,000 for all years. No one has been awarded a loan under the PSAS program since 1977. Since the average amount owed by a physician under these programs is approximately $25,000 to $80,000 not including any accrued interest on the principle amount, the financial burden to these individuals may be large; however, the repayment agreement would stipulate how much is to be offset from each Medicare payment until the full oblgiation is repaid. The financial impact is, therefore, expected to be much less significant on a monthly or annual basis.

These provisions would also affect Medicare providers, HMOs, CMPs, or group practices that employ or have a medical services agreement with an individual who has breached a contract under the NHSCS, HEAL, or PSAS program. If that individual has agreed to have their Medicare payments reduced this will affect their employer's

Medicare earnings. The employer can offset the individual's salary, as stipulated in the repayment agreement, in order to recover the amount that is offset by Medicare. This could require additional payroll recordkeeping effort on the part of the employer. If the organization does not recoup these monies from the individual, however, they will not realize their full earnings. The employer is also affected if an individual is excluded from Medicare because of his/her refusal to enter into a repayment agreement. We are unable to determine the number of providers, HMOs, CMPs, or group practices that would be affected by this proposal; however, the individual's financial responsibility does not shift from the individual to his or her employer.

Since the number of individuals who would be affected by this proposed rule is relatively small and because the employer is afforded the right to collect the amounts offset plus interest from the individual, we believe this proposal would not have a significant impact on a substantial number of providers, HMOs, CMPs, or group practices.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Since this proposed rule would potentially affect certain individuals and their providers, HMOs, CMPs, or members of group practices, this proposal would also affect rural hospitals since they are also considered providers. We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

IV. Information Collection Requirement

The proposed notice does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

V. Responses to Comments

Because of the large number of items of correspondence we normally receive on proposed regulations, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of this proposed rule, and, if we proceed with a final rule, we will respond to the comments in the final rule.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Cost-based reimbursement, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers Reasonable charges, Reporting requirements, Rural areas, Prospective payment system, X-rays.

42 CFR part 405, subpart C would be amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The authority citation for part 405, subpart C is revised to read as follows:

Authority: Sections 1102, 1815, 1833, 1842, 1866, 1870, 1871, 1879, and 1892 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395cc, 1395gg, 1395hh, 1395pp and 1395ccc) and 31 U.S.C. 3711.

Subpart C—Suspension of Payment, Recovery of Overpayments, and Repayment of Scholarships and Loans

2. The title of subpart C is revised to read as set forth above.

3. A new undesignated center heading a new § 405.380 are added to read as follows:

Repayment of Scholarships and Loans

§ 405.380 Collection of past-due amounts on scholarship and loan programs.

(a) *Basis and purpose.* This section implements section 1892 of the Act, which authorizes the Secretary to deduct from Medicare payments for services amounts considered as past-due obligations under the National Health Service Corps Scholarship program, the Physician Shortage Area Scholarship program, and the Health Education Assistance Loan program.

(b) *Offsetting against Medicare payment.* Medicare carriers and intermediaries offset against Medicare payments in accordance with the signed repayment agreement between the Public Health Service and individuals who have breached their scholarship or loan obligations and who—

(1) Accept Medicare assignments for services;

(2) Are employed by or affiliated with a provider, HMO, or Comprehensive Medical Plan (CMP) that receives Medicare payment for services; or

(3) Are members of a group practice that receives Medicare payment for services.

For purposes of this section, "provider" includes all entities eligible to receive Medicare payment in accordance with an agreement under section 1866 of the Act.

(c) *Beginning of offset.* (1) The Medicare carrier offsets Medicare payments 40 days after the agreement is signed by PHS and the individual.

(2) The Medicare intermediary offsets payments beginning six months after it notifies the provider, HMO, CMP or group practice of the amount to be deducted and the particular individuals to whom the deductions are attributable. Offset of payments is made in accordance with the terms of the repayment agreement. If the individual ceases to be employed by the provider, HMO, or CMP, or leaves the group practice, no deduction is made.

(d) *Refusal to offset against Medicare payment.* If the individual refuses to enter into a repayment agreement, or breaches any provision of the agreement, or if Medicare payment is insufficient to maintain the offset collection according to the agreed upon formula, then—

(1) The Secretary, within 30 days if feasible, informs the Attorney General; and

(2) The Secretary excludes the individual from Medicare until the entire past-due obligation has been repaid, unless the individual is a sole community practitioner the sole source of essential specialized services in a community and the State requests that the individual not be excluded.

(e) *Disposition of funds withheld.* Medicare payment amounts, collected under paragraph (b) of this section, that would otherwise be made to the individual, provider, HMO, CMP or group practice, are transferred by the intermediary or carrier from the trust funds to the general fund in the Treasury to be credited as payment of the individuals' past-due obligations in accordance with PHS instructions on transferring payment amounts to the Treasury.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 18, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: October 4, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-26137 Filed 11-5-90; 8:45 am]

BILLING CODE 4120-01-M

42 CFR Part 413

[BPD-649-P]

RIN 0938-AE76

Medicare Program; Limit on Payment for the Cost of Intraocular Lens Furnished by a Hospital on Outpatient Basis

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth a limit on payment for the reasonable cost of an intraocular lens inserted on an outpatient basis during or subsequent to cataract surgery at a hospital.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, by 5 p.m. on January 7, 1991.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-649-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD-649-P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Linda McKenna (301) 966-4530.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9343(a) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) amended section 1833(a)(4) of the Social Security Act (the Act) and added section 1833(i)(3) to the Act which, taken together, specify that payment to hospitals for facility servcies furnished in connection with performing ambulatory surgical center (ASC) procedures is to be based, in part, on the prospectively determined rates the Medicare program pays for the same procedures when performed in an ASC (in accordance with section 1833(i)(2)(A) of the Act). Aggregate payment to hospitals for facility services furnished during a cost reporting period in connection with ASC procedures is equal to the lesser of the following—

- The lower of the hospital's reasonable costs or customary charge for the services, reduced by deductibles and coninsurance (generally referred to as the hospital-specific amount); or
- A blended payment amount, 50 percent of which is comprised of the hospital-specific amount, and the other 50 percent is comprised of 80 percent of the ASC standard overhead amounts (referred to as the ASC payment amount), net of deductible amounts.

Section 4063(b) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) amended section 1833(i)(2)(A) of the Act to require that payment of an intraocular lens (IOL) inserted during or subsequent to cataract surgery performed in an ASC be included in the ASC facility payment rate. The amendment also required that the payment amount for the IOL be reasonable and related to the cost of acquiring certain types of lenses.

On February 8, 1990, we published a final notice in the **Federal Register** (55 FR 4526). In that notice, we revised the ASC payment rates and incorporated into the payment rates a $200 allowance for IOLs inserted during or subsequent to cataract surgery. In another notice with comment that was simultaneously published on February 8, 1990 in the **Federal Register** (55 FR 4577), we updated the ASC payment rates but the IOL allowance remained $200. The revised payment rates became effective for procedures performed on or after March 12, 1990. The ASC payment rates have been revised, effective for services furnished on or after July 1, 1990, as published in the **Federal Register** (55 FR 27690) on July 5, 1990.

Prior to the implementation of section 4063 of Public Law 100-203, IOLs were not considered to be a facility service that was paid under the ASC payment rates for an ASC, or subject to the blended payment method for hospitals. Payment for IOLs furnished by ASCs was based on reasonable charges and payment for IOLs furnished by hospitals was based on reasonable costs.

As a result of the February 8, 1990 final notice (55 FR 4526), IOLs furnished on or after March 12, 1990 are considered to be ASC facility services and, as such, are paid under the ASC payment rates when furnished by ASCs and under the blended payment method when furnished by hospitals. Although payment to hospitals for IOLs is limited to $200 in calculating the ASC portion of the blend, the hospital-specific portion of the blend, which is not subject to this $200 limit, continues to recognize the hospitals' reasonable cost of furnishing the IOL.

In addition, we published a proposed notice in the **Federal Register** (55 FR 2150) on May 23, 1990, under which we would withdraw Medicare payment for certain investigational IOLs. However, under that notice, we would continue to pay for IOLs that have been approved by the Food and Drug Administration (FDA) and IOLs in "adjunct studies" (investigations that are made after the basic safety adn effectiveness of an IOL has been established by the FDA, which involve large numbers of patients for the purpose of collecting data on infrequently occurring complications) that are awaiting FDA approval.

II. Provisions of this Proposed Rule

Section 1861(v)(1)(A) of the Act (implemented by regulations at 42 CFR 413.30) authorizes the Secretary to establish limits on allowable costs incurred by a provider of services that may be paid under the Medicare program, based on costs estimated by HCFA to be necessary for the efficient delivery of needed health services. The limits may be applied to direct or indirect overall costs or to the costs incurred for specific items or services furnished by the provider. Under this authority, the limit on payment to a hospital on an outpatient basis for the reasonable cost of an IOL inserted during or subsequent to cataract surgery would equal the amount paid to an ASC for furnishing an IOL (currently $200).

The $200 allowance for IOLs incorporated into the ASC payment rates is based on a sample study of ASCs in which the Office of the Inspector General (OIG) determined that the majority of the sampled facilities had negotiated an average lens price of $200. OIG has continued to study the pricing of IOLs and has issued three more recent reports of its findings, one in late 1989 and two early in 1990. In the

first study, OIG found that prices for IOLs on the Federal Supply Schedule (FSS) ranged from $95 to $198 and that the Department of Veterans Affairs (VA) medical centers and military hospitals could purchase IOLs for under $200 outside of the FSS. In the second study, OIG found that the Indian Health Service hospitals paid on average $155 for IOLs from manufacturers not on the FSS. In the third study, OIG concluded that Canadian hospitals can purchase IOLS from American manufacturers for an average price of $110 (U.S. dollars). We see no reason why hospitals cannot purchase IOLs at the same or lower price as ASCs. Hospitals and ASCs purchase IOLs from the same manufacturers; therefore, we believe that hospitals should be able to purchase IOLs at prices that are comparable to those paid by separately certified ASCs.

This rule, therefore, proposes the establishment of a cost limit (that equals the IOL allowance included in the ASC facility payment rate) on a hospital's reasonable cost for obtaining an IOL when an ASC procedure, requiring the insertion of an IOL, is performed in a hospital on an outpatient basis. Hospitals, like ASCs, should be able to purchase safe and effective IOLs for $200. ASCs are limited to a $200 allowance for IOLs, without exceptions. Therefore, we would add a new paragraph (i) to § 413.30 and revise § 413.118 to establish this limit on reasonable cost, and provide that there would be no exemptions or exceptions to this reasonable cost limit.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule such as this one that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy if $100 million or more;
- A major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed cost limit of $200 for IOLs furnished in hospitals on an outpatient basis is not expected to produce any economic effects that would meet the E.O. 12291 criteria for a major rule. Therefore, we have not prepared a regulatory impact analysis.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule such as this one would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule such as this one may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds and its located outside of a Metropolitan Statistical Area.

In the notice of February 8, 1990 (55 FR 4526) that revised the payment methodology for ambulatory surgical centers (ASCs), we estimated that hospials acquire IOLs for an average cost of $350. Now, we estimate that hospitals are acquiring IOLs at an average cost of $240. Based on a payment blend of 50 percent of the hospital-specific amount and 50 percent of the $200 ASC allowance for an IOL, the Medicare program is paying an average of $220 for each IOL inserted during or subsequent to cataract surgery.

While many hospitals perform procedures involving IOLs, the impact of the proposed $200 limit on the cost of purchasing IOLs is expected to reduce Medicare payments to hospitals by about $20 per IOL. Therefore , we have determined, and the Secretary certifies that this proposed rule would not have a significant effect on the operations of a substantial number of small rural hospitals or on other hospitals. Accordingly, we have not prepared a regulatory flexibility analysis.

IV. Other Required Information

A. Paperwork Reduction Act

This proposed rule does not impose information collection requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520).

B. Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that are received by the date and time specified in the "DATE" section of this preamble, and, if we proceed with a final rule, we will respond to the proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects in 42 CFR Part 413

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV would be amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Subchapter B—Medicare Programs

Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES.

A. The authority citation for 413 is revised to read as follows:

Authority: Sections 1102, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1883 and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 13951(a), 1395x(v), 1395hh, 1395rr, 1395tt and 1395ww) and sec. 104(c) of Pub. L. 100–360, as amended by sec. 608(d)(3) of Pub. L. 100–485 (42 U.S.C. 1395ww (note)) and sec. 101(c) of Pub. L. 101–234.

B. In subpart C, § 413.30, a new paragraph (i) is added to read as follows:

Subpart C—Limits on Cost Reimbursement

§ 413.30 Limitations on reimbursable costs.

* * * * *

(i) *Intraocular lens furnished on a hospital outpatient basis.* Provisions governing limits on reasonable costs incurred by a hospital for furnishing an intraocular lens inserted on an outpatient hospital basis during or subsequent to cataract surgery are located at § 413.118(c)(3). The provisions concerning exemptions and exceptions in paragraphs (e) and (f) of this section, respectively, do not apply to cost limits established under § 413.118(c)(3).

C. In subpart F, § 413.118, paragraph (a) is revised, paragraph (c)(3), added, and paragraph (C) introductory text, (c)(1) and (c)(2) are republished to read as follows:

Subpart F—Specific Categories of Costs

§ 413.118 Payment for facility services related to covered ASC surgical procedures performed on an outpatient basis.

(a) *Basis and scope.* (1) This section implements section 1833(i)(3) of the Act and establishes the method for determining Medicare payments for services related to covered ambulatory surgical center (ASC) procedures performed in a hospital on an outpatient basis.

(2) Paragraph (c)(3) of this section, implements section 1861(v)(1)(A) of the Act and established a limit on a hospital's reasonable costs for Medicare payment for an intraocular lens inserted on an outpatient hospital basis during or subsequent to cataract surgery.

(3) This section does not apply to services furnished by an ASC operated by a hospital that has an agreement with HCFA to be paid in accordance with § 416.30 of this chapter. (For regulations governing ASCs see part 416 of this chapter.)

* * * * *

(c) *Payment principle.* The aggregate amount of payments for facility services, furnished in a hospital on an outpatient basis, that are related to covered ASC surgical procedures (covered under § 416.65 of this chapter) is equal to the lesser of—

(1) The hospital's reasonable cost or customary charges, as determined in accordance with § 413.13, reduced by deductibles and coinsurance; or

(2) The blended payment amount as described in paragraph (d) of this section, which is based on hospital-specific cost and charge data and rates paid to free-standing ASCs.

(3) *Special rules for determining the reasonable cost of an intraocular lens.* (i) For purposes of paragraph (c)(1) of this section, a hospital's "reasonable cost" is subject to a cost limit established under § 413.30 and paragraph (c)(3)(ii) of this section, for cost incurred for an intraocular lens.

(ii) The limit on payment to a hospital for the reasonable cost of an intraocular lens inserted on an outpatient basis during or subsequent to cataract surgery equals the amount payable to an ASC for an intraocular lens, as published in the **Federal Register**. That amount constitutes the amount of the limit established under this paragraph. A separate notice in the **Federal Register** to establish the amount of this limit is not required.

(iii) Neither an exemption under § 413.30(e) of this part nor an exception under § 413.30 (f) of this part is available in determining the payment amount under paragaph (c)(3)(ii) of this section.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplemental Medical Insurance)

Dated: July 26, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved August 29, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90–26135 Filed 11–5–90; 8:45 am]

BILLING CODE 4120–01–M

Notices

Federal Register
Vol. 55, No. 215
Tuesday, November 6, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Members of Performance Review Boards

AGENCY: U.S. Department of Agriculture.

ACTION: Notice.

SUMMARY: This document cancels the list of Performance Review Board members published November 7, 1989 54 FR 46754, as amended December 19, 1989, 54 FR 51906, and gives notice of new Performance Review Board members.

EFFECTIVE DATE: November 6, 1990.

FOR FURTHER INFORMATION CONTACT: Mary Ellen Recchia, Chief, Compensation, Employment and Performance Management Staff, Office of Personnel, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC 20250, (202) 447–2830.

The membership of the U.S. Department of Agriculture's Performance Review Boards For Fiscal Year 1990 include:

Duane C. Acker
Rolland E. Anderson, Jr.
Joan M. Arnoldi
LaVerne G. Ausman
Franklin E. Bailey
Catherine A. Bertini
Keith D. Bjerke
Gary R. Blumenthal
Angelena V. Bracht
Gary C. Byrne
Mary E. Carter
James E. Cason
Charles E. Caudill
Kenneth C. Clayton
Keith J. Collins
Kathleen H. Connelly
Lester M. Crawford
Richard T. Crowder
Kenneth L. Deavers
Stephen B. Dewhurst
James R. Donald
John C. Foltz
James R. Franks
James Frazier, Jr.
John Frydenlund
David R. Galliart
Bruce L. Gardner
William E. Gardner, Jr.
Margaret O'K. Glavin
James W Glosser
John T. Golden
Roy M. Gray
Earl C. Hadlock
Daniel D. Haley
James V. Hansen
Glenn J. Hertzler, Jr.
Charles E. Hess
Joseph H. Howard
William J. Hudnall
Jo Ann C. Jenkins
Allan S. Johnson
Myron D. Johnsrud
John Patrick Jordon
James M. Kelly
Fay S. Landers
John E. Lee, Jr.
Linda P. Massaro
Terry L. Medley
John A. Miranowski
James R. Moseley
Everett L. Moseley
Harry C. Mussman
Betty Jo Nelsen
Jack C. Parnell
Ronald D. Plowman
Alan C. Raul
F. Dale Robertson
Bobby H. Robinson
Eldon W. Roes
Jeffery Rush, Jr.
Judith A. Segal
Carol M. Seymour
Robert E. Sherman
Kelly Shipp
Larry B. Slagle
Dallas R. Smith
Jo Ann R. Smith
Leon Snead
W. Scott Steele
Daniel A. Sumner
Roland R. Vautour
Ann M. Veneman
Adis M. Vila
Jetit B. Wilds, Jr.
Edward M. Wilson
Larry Wilson, Jr.
Jane A. Wittmeyer

Alternates

Stephen N. Abrams
Richard D. Allen
John H. Arnesen
Gerald A. Bange
Donald M. Bay
Louis G. Bennett
Joe Bruce Blanton
John S. Bottum
George A. Braley
Sally Buikema
John B. Cambell
Ann C. Carey
William D. Carlson
David T. Chen
Kenneth L. Deavers
Rachel Dobshia-Scioscia
Rosina B. Ducrest
John L. Evans
Susan B. Fertig-Dyks
Mitchell R. Geasler
Charles R. Gillum
Clare I. Harris
Paula F. Hayes
Donald F. Husnik
Jonathan I. Kislak
Edward B. Knipling
John P. Kratzke
Joseph J. Leo
George M. Leonard
Richard Long
Gary K. Madson
Philip L. Mackie
Kenneth O. McDougall
Robert B. Melland
Susan K. Nelson
Patrick M. O'Brien
John L. Okay
Floy E. Payton
Ronald J. Prucha
William L. Rice
William J. Riley, Jr.
Virgil M. Rosendale
Sarita G. Schotta
John A. Stevenson
Alejandro B. Thiermann
Lawrence Wachs
Marilyn G. Wagner

Dated: October 31, 1990.

Clayton Yeutter,

Secretary.

[FR Doc. 90–26216 Filed 11–5–90; 8:45 am]

BILLING CODE 3410–96–M

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for Pacific Northwest Region, Oregon and Washington

AGENCY: Forest Service, USDA.

ACTION: Correction notice.

SUMMARY: On February 26, 1990 the Secretary of Agriculture signed an interim rule amending the administrative appeal procedures 36 CFR part 217 of the Forest Service to require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The list of newspapers that would be used by all ranger districts, forests, and the Regional Office of the Pacific Northwest Region to publish legal notice of all decisions subject to appeal under 36 CFR part 217 was printed in the **Federal Register** March 14, 1990 (55 FR 9476). Two correction notices were subsequently printed in the **Federal Register** on April 23, 1990 (55 FR 15256) and on June 13, 1990 (55 FR 23954).

This correction notice updates the list of the newspapers that will be used by Forest Supervisor and District Rangers on the Ochoco National Forest to inform interested members of the public of all decisions subject to appeal under 36 CFR part 217.

With this correction notice and the previous mentioned notices the listed newspapers to be used for publication of legal notices of appealable decisions for the Pacific Northwest Region is hereby established for fiscal year 1991.

DATES: Part 217.5(d) states, that Forest Service shall through **Federal Register** notice, advise the public of the principal newspaper to be utilized for publishing legal notices and additional newspapers expected to use for purposes of providing additional notice, at least twice annually, in April and in October.

FOR FURTHER INFORMATION CONTACT: Elton Thomas, Regional Appeals Coordinator, Pacific Northwest Region, P.O. Box 3623, Portland, Oregon 97208–3623, phone: (503) 326–2322.

SUPPLEMENTARY INFORMATION: Ochoco National Forest Forest Supervisor and District Rangers will publish legal notices of their respective decisions in the following newspapers:

Ochoco Forest Supervisor decisions:
The Bulletin, Bend, Oregon
Newspaper providing additional notice of Ochoco Forest Supervisor decisions:
Burns Times/Herald, Burns, Oregon
Central Oregonian, Prineville, Oregon
Big Summit District Ranger decisions:
The Bulletin, Bend, Oregon
Crooked River National Grassland District Ranger decisions:
The Bulletin, Bend, Oregon
Newspaper providing additional notice of Grassland decisions:
Madras Pioneer, Madras, Oregon
Paulina District Ranger decisions:
The Bulletin, Bend, Oregon
Newspaper providing additional notice of Paulina decisions:
Blue Mountain Eagle, John Day, Oregon
Prineville District Ranger decisions:
The Bulletin, Bend, Oregon
Newspaper providing additional notice of Prineville decisions:
Central Oregonian, Prineville, Oregon
Snow Mountain District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Snow Mountain decisions:
Burns Times/Herald, Burns, Oregon

Dated: October 26, 1990.

Mary Jo Lavin,

Acting Regional Forester.

[FR Doc. 90–26203 Filed 11–5–90; 8:45 am]

BILLING CODE 3410–11–M

Eagle Rock and Granite Timber Sales, Colville National Forest, Ferry County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) on a proposal to harvest and regenerate timber and to construct and reconstruct roads. The proposed projects will be in compliance with the Forest Land and Resource Management Plan (The Plan) which provides the overall guidance for management of this area for the next ten years. The projects are proposed within portions of the South Fork O'Brien Creek, Rabbit Creek, and South Fork Rabbit Creek drainages on the Republic Ranger District in fiscal year 1993. The Colville National Forest invites written comments and suggestions on the scope of the analysis. The agency will give notice of the full environmental analysis and decision making process that will occur on the proposal so as to provide interested and affected people awareness as to how they may participate and contribute in the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by February 1, 1991.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Patricia Egan, District Ranger, P.O. Box 468, Republic, WA 99166.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project work and EIS should be directed to Harv Skjerven, Timber Management Assistant, P.O. Box 468, Republic, WA 99166 (telephone: (509) 775–3305).

SUPPLEMENTARY INFORMATION: The proposal includes harvesting timber and constructing roads on Eagle and Granite timber sales. This analysis will evaluate a range of alternatives addressing the Forest Service proposal to harvest 5.0 MMBF of timber from approximately 500 acres while constructing 6.0 miles of roads in the Eagle Rock timber sale and to harvest 5.0 MMBF of timber from approximately 500 acres while constructing 7.0 miles of road in the Granite timber sale. The area being analyzed is approximately 20,000 acres. The Forest Service is the Lead Agency. Edward L. Schultz, Forest Supervisor, Colville National Forest is the responsible official.

The Draft EIS will be tiered to The Plan (December 1988). The Forest Land and Resource Management Plan's Management Area direction for this analysis area is approximately 60% Wood/Forage, 15% Scenic/Timber, 10% Recreation, 5% Winter Range and 5% Scenic/Winter Range. The proposed project includes portions of the Thirteen Mile, Bald Snow and Cougar Mountain Roadless Areas which were considered but not selected for Wilderness designation. The analysis area is adjacent to a large area designated Recreation/Wildlife in Chapter IV of the Plan.

Preliminary issues identified are unroaded areas, recreation trails sensitive plants and animals, visuals, water quality, timber production, and noxious weed control.

A range of alternatives will be considered, including a no-action alternative. Based on the issues gathered through scoping, the action alternatives will vary in (1) the amount and location of acres considered for treatment, (2) the amount of road constructed for access, (3) the silvicultural and post-harvest treatment prescribed, and (4) the number, type and location of other integrated resource projects.

Initial scoping began in September, 1990. Scoping will include identifying issues; determining alternative driving issues; and identifying the objectives for the alternatives. An informal public meeting will be held at the Republic Ranger District office on October 22, 1990. The Forest Service is seeking information, comments, and assistance from other agencies, organization or individuals who may be interested in or affected by the proposed projects. This input will be used in preparation of the draft EIS. Your comments are appreciated throughout the analysis process. The draft EIS is to be filed with the Environmental Protection Agency (EPA) and to be available for public review by January 1992. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is important that those interested in the management of the Colville National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon v Hodel*, 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

The final EIS is scheduled for completion by June, 1992. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. Edward L. Schultz, Forest Supervisor, is the Responsible Official. He will decide which, if any, of the proposed project alternatives will be implemented. His decision and reasons

for the decision will be documented in the Record of Decision, which will be subject to Forest Service Appeal Regulations (36 CFR part 217).

Dated: October 23, 1990.

Patrick J. Gallagher,

Acting Forest Supervisor.

[FR Doc. 90-26196 Filed 11-5-90; 8:45 am]

BILLING CODE 3410-11-M

Ed, North Slope Helicopter, Saddle, and Spanish Timber Sales, Ochoco National Forest, Grant and Wheeler Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) for the North Slope Timber Sales. The purpose of the EIS will be to develop and evaluate a range of alternatives for timber harvest and road construction for four different timber sale proposals. The alternatives will include a no action alternative which will defer the entry into this area for this planning period and additional alternatives responding to issues generated during the scoping process. The proposed project will be in compliance with the direction in the Ochoco National Forest Land and Resource Managment Plan which provides the overall guidance for management of the area and the proposed projects for the next ten to fifteen years. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected parties are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of this proposal must be received by January 15, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to David Poucher, District Ranger, Paulina Ranger District, HC 68 Box 6015, Paulina, OR 97751.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Rick Metzger, District Resource Officer, Paulina Ranger District, phone (503) 447-3713.

SUPPLEMENTARY INFORMATION: The Paulina Ranger District is beginning the process of implementing the management direction found in the Ochoco National Forest Land and Resource Management Plan for the Rock Creek and Cottonwood Creek drainages. Portions of these two drainages have been allocated to management areas from which timber outputs are scheduled. Harvesting scenarios will be developed for the next 10 to 15 year period to access the area, supply timber outputs and implement other resource projects to achieve the desired future condition for the affected management areas.

The Rock Creek area has twice been considered for wilderness designation; once under RARE II and again during the proceedings for the Oregon Wilderness Act of 1984. In both cases, the result was nonwilderness. Prior to the Wilderness Act of 1984, the Cottonwood area was part of the much larger parcel referred to as the Canyons Roadless Area. This larger area also contained the now officially designated Black Canyon Wilderness. The Canyon Roadless Area was subdivided into Cottonwood and Black Canyon because of a major developed road that bisected it. The Cottonwood area was included in the RARE II inventory, but was not included in the 1984 Act.

The Ochoco National Forest Land and Resource Management Plan made the determination of how lands are to be managed in these drainages for the next 10 to 15 year period. Direction for these areas includes management area allocations with definitions of resource emphasis and desired future condition. A large portion of these two drainages were allocated to unroaded management (MA-F8 Rock Creek/Cottonwood Creek, 11,820 acres) which emphasizes recreation, soil, water and fishery resources. There are also a total of five different management areas in these drainages from which timber outputs are scheduled over the next 10 to 15 years. These management areas and their emphasis are as follows:

1. MA-F9 (Rock Creek/Cottonwood Creek Unroaded Helicopter Area), Allow timber harvest while protecting the anadromous fishery, sensitive soils on steep slopes, and big game habitat.
2. MA-F14 (Dispersed Recreation), Provide and maintain a near-natural setting for people to utilize while pursuing outdoor recreation experiences.
3. MA-F15 (Riparian), Manage streamside vegetation and habitat to maintain or improve water quality.
4. MA-F22 (General Forest), Produce timber and forage while meeting the Forest-Wide Standards and Guidelines for all resources. In ponderosa pine stands, management will emphasize production of high value (quality) timber.
5. MA-F26 (Visual Management Corridors), Maintain the natural appearing character of the Forest along major travel routes, where management activities are usually not evident or are visually subordinate to the surrounding landscape.

The makeup of the proposed timber sale areas, with respect to the management areas involved, is as follows: Ed, 100 percent (MA-F22); North Slope Helicopter 98 percent (MA-F9), 1 percent (MA-F15), 1 percent (MA-F22); Saddle 98 percent (MA-F22), 1 percent (MA-F26),1 percent (MA-F14); and Spanish 98 percent (MA-F22), 1 percent (MA-F15), 1 percent (MA-F14).

The District has done some preliminary scoping and has developed a tentative list of issues which include the following: Soils, water quality, anadromous fisheries, potential wild and scenic river eligibility for Cottonwood Creek, roads, old growth, wildlife, visual quality, and trails.

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental process.
4. Exploring additional alternatives and scheduling scenarios for the generation of timber outputs from these areas.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

A draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by Sept. 1991. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is very important that those interested in the management of the Ochoco National Forest participate again at that time. To assist the Forest Service in identifying

and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *Civy of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate both in the development of issues at the scoping stage and DEIS comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible.

The final EIS is scheduled to be completed by July 1992. in the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. The Forest Supervisor, Ochoco National Forest, is the responsible official. As the responsible official he/she will document the decision and reasons for the decision in a record of decision. That decision will be subject to Forest Service appeal regulations (36 CFR part 217).

Dated: October 29, 1990.

Glenda L. Wilson,

Acting Forest Supervisor.

[FR Doc. 90-26197 Filed 11-5-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 41-90]

Foreign-Trade Zone 39; Dallas/Fort Worth, TX; Application for Subzone GM Auto Assembly Plant, Arlington, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Dallas/Fort Worth International Airport Board, grantee of FTZ 39, requesting special-purpose subzone status for the automobile assembly plant of General Motors Corporation (GM) located in Arlington, Texas, adjacent to the Dallas/Fort Worth Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 22, 1990.

The plant (248 acres) is located on Highway 360 at Abram Street in Arlington, Texas, some 16 miles west of Dallas. The facility employs 4,500 persons and is used to produce full-size passenger automobiles. Some 2 percent of vehicle value consists of dutiable components, such as radios, wire harnesses, instrument panel pads, and steering wheels. About 7 percent of the vehicles are exported.

Zone procedures would exempt GM from Customs duty payments on the foreign components used in its exports. On domestic sales, the company would be able to choose the duty rate on finished autos (2.5%) for the foreign-sourced components (average duty rate 4.3%). The application indicates that the savings would help reduce costs and improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been approved to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Houston, Texas 77057-3012; and Colonel William D. Brown, District Engineer, U.S. Army Engineer District Fort Worth, P.O. Box 17300, Fort Worth, Texas 76102-0300.

Comments concerning the proposed zone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before December 21, 1990.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Room 7A5, 1100 Commerce Street, Dallas, TX 75242

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Room 4213, Washington, DC 20230.

Dated: October 31, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90-26187 Filed 11-5-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-201-601]

Preliminary Results of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers From Mexico

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In response to a request by the Floral Trade Council, the petitioner, and three producers/exporters in Mexico, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain fresh cut flowers from Mexico. The review covers Tzitzic Tareta, Florex, and Visaflor, producers/exporters of this merchandise to the United States during the period April 1, 1988, through March 31, 1989. The review indicates the existence of dumping margins for the three firms during the period. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 6, 1990.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Steve Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-4103 or (202) 377-1766, respectively.

BEST COPY AVAILABLE

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 13491) an antidumping duty order on certain fresh cut flowers from Mexico. On April 5, 1990, the Department published in the **Federal Register** (55 FR 12686) the final results of the administrative review of the antidumping duty order on certain fresh cut flowers from Mexico covering the period November 3, 1986, through March 31, 1988.

On April 28, 1989, three producers/exporters, Tzitzic Tareta, Florex, and Visaflor, and the petitioner, the Floral Trade Council, requested in accordance with § 353.22(a) of the Commerce Regulations (1989) that we conduct this administrative review. We published a notice of initiation on May 24, 1989 (54 FR 22465). The Department is now conducting the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act"). This review covers three producers/exporters of certain fresh cut flowers, Tzitzic Tareta, Florex and Visaflor, and the period April 1, 1988, through March 31, 1989.

On July 6, 1989, Visaflor, asserting that it had no entries of the subject merchandise during the period of review, requested that it be excluded from this administrative review. Consequently, it did not respond to the Department's questionnaire. See the "Preliminary Results of the Review" section of this notice. Responses to the Department's questionnaire were received from Tzitzic Tareta and Florex on July 14, 1989. Deficiency letters were sent to both companies on September 5, 1989. Deficiency responses were received from both companies on September 21, 1989. Additional deficiency letters were sent to both companies on September 25, 1990. A deficiency response was received from Tzitzic Tareta on October 10, 1990. Florex did not respond to this deficiency letter. Sales below cost investigations were initiated on December 5, 1989, with respect to Tzitzic Tareta and Florex, and the responses to the cost of production section of the Department's questionnaire (section D) were received on January 26, 1990. Deficiency responses were received on March 26, 1990.

As evidenced by the Department's need to request numerous clarifications regarding respondents' submissions, the responses were found to be deficient and ambiguous in many regards. Although deficiency responses were submitted, as noted below, we were compelled to use best information available in many instances where information remained incomplete or unclear.

Scope of Review

Certain fresh cut flowers are defined as standard carnations, standard chrysanthemums, and pompom chrysanthemums. During the period of review, such merchandise was classifiable under the Tariff Schedules of the United States Annotated (TSUSA) items 192.2130 (standard carnations), 192.2120 (standard chrysanthemums), and 192.2110 (pompom chrysanthemums). After January 1, 1989, the subject merchandise was also classifiable under Harmonized Tariff Schedule (HTS) numbers 0603.10.7010 (pompom chrysanthemums), 0603.10.7020 (standard chrysanthemums), and 0603.10.7030 (standard carnations). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Fair Value Comparisons

To determine whether sales of certain fresh cut flowers from Mexico to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

As in the original fair value investigation and in the first administrative review, all United States prices were weight-averaged on a monthly basis in order to account for the perishability of the product.

Tzitzic Tareta

We based United States price on exporter's sales price (ESP) for all of Tzitzic Tareta's sales, in accordance with section 772(c) of the Act, because these sales were made to unrelated purchasers after the date of importation into the United States. These ESP transactions include Tzitzic Tareta's U.S. sales made through an unrelated consignee which were incorrectly reported as purchase price sales.

We calculated ESP for Tzitzic Tareta's consignment sales based on packed, f.o.b. Houston airport prices through an unrelated consignee in the United States. We made deductions from these prices for foreign inland freight, U.S. and foreign brokerage and handling charges, air freight, and U.S. duty.

We calculated ESP for Tzitzic Tareta's sales through its related U.S. subsidiary based on packed, f.o.b. Mexico City airport, packed, f.o.b. Houston airport, packed, f.o.b. subsidiary offices, and packed, f.o.b. customer's offices, prices. We made deductions from these prices for foreign inland freight, U.S. and Mexican brokerage and handling charges, air freight charges, U.S. duty, and U.S. inland freight. As best information available, we assumed that U.S. inland freight charges for those sales with terms "packed, f.o.b. subsidiary offices" and "packed, f.o.b. customer's offices" are included in the indirect selling expenses reported by Tzitzic Tareta for its related subsidiary. We reclassified these freight expenses as movement charges and allocated them over all stems sold f.o.b. subsidiary and f.o.b. customer. In some cases Tzitzic Tareta reported terms of sale as f.o.b. Houston Airport, f.o.b. subsidiary's offices or f.o.b. customers, offices, but did not report the corresponding air freight, U.S. duty, and U.S. brokerage and handling charges. In those cases where Tzitzic Tareta reported no air freight, U.S. duty, or U.S. brokerage and handling, the Department applied, as best information available, the weighted-average of these charges reported for all other U.S. transactions having similar terms of sale. In accordance with § 353.41(e) of the Department's regulations, we made further deductions to ESP for credit expenses and commissions.

For those sales through Tzitzic Tareta's related subsidiary, a deduction was made for those indirect selling expenses incurred on U.S. sales both by the related subsidiary in the United States and those incurred by Tzitzic Tareta in Mexico. Given that Tzitzic Tareta did not report indirect selling expenses incurred in Mexico for U.S. sales, we estimated those expenses using the selling expenses contained in Tzitzic Tareta's Section D response, less commissions. For those sales made through an unrelated consignee, we deducted only those indirect selling expenses associated with Tzitzic Tareta in Mexico.

Florex

We based United States price on both purchase price and ESP because sales were made to unrelated purchasers both before and subsequent to importation. Those sales made subsequent to importation were made through unrelated consignees in the United States. These sales were incorrectly reported as purchase price sales.

When sales were made to unrelated purchasers prior to importation, we calculated purchase price for Florex based on f.o.b. Mexico City airport prices. We made deductions for foreign inland freight. It appears that Florex uses its own transportation to ship the merchandise from its offices in Puebla, Mexico, to the Mexico City airport, and that these expenses are included in the Mexican freight expenses reported in section D. As best information available, we totalled all home market freight costs reported in the "Sales in the Home Market or to Third Countries" section of the Department's questionnaire (section B) and deducted that amount from the total freight reported in section D. We assumed that the balance accounts for foreign inland freight from Puebla to the Mexico City airport. We then allocated this amount over total bunches sold to the United States.

Where sales were made subsequent to importation, we calculated ESP based on delivered prices. We made deductions for discounts, foreign inland freight, other freight charges, and U.S. duty. As best information available, we are assuming that the other freight charges reported by Florex include air freight, brokerage and handling charges, and U.S. inland freight charges. We calculated foreign inland freight using the same methodology discussed above for sales made prior to importation.

Because Florex reported that its terms of sale were f.o.b. consignee's offices, in those cases where Florex reported no freight charges, the Department used as best information available, the weighted-average of freight charges reported for all other consignment sales.

In accordance with § 353.41(e) of the Department's regulations, we made further deductions to ESP for credit expenses and commissions. We also deducted indirect selling expenses incurred by the parent company in Mexico, in accordance with § 353.41(e). Although Florex did not report these indirect selling expenses in its sections B and C (Sales to the United States) responses, it appears from Florex's section D response that Florex did incur such expenses. Therefore, the Department used Florex's section D response to estimate indirect selling expenses.

Foreign Market Value

Foreign market value (FMV) was calculated based on home market prices or constructed value (CV), as appropriate.

Petitioner alleged that home market sales of both Tzitzic Tareta and Florex were made at prices below the cost of production (COP). Based on petitioner's allegation, we gathered and analyzed data on respondents, production costs.

If over 90 percent of a respondent's sales were at prices above the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities over an extended period of time. If between 10 and 90 percent of a respondent's sales were at prices above the COP, we disregarded only the below cost sales. In such cases, we determined that the respondent's below-cost sales were made in substantial quantities over an extended period of time. If less than 10 percent of a respondent's sales were at prices above the COP, we determined that there were an insufficient number of sales to serve as the basis for determining FMV. Instead, we used constructed value as the basis for determining FMV for these sales.

In all cases except for Tzitzic Tareta's sales of standard carnations, we determined that there were a sufficient number of sales above the COP to permit the continued use of home market sales as the basis for determining FMV. Accordingly, we used constructed value as the basis for determining FMV for Tzitzic Tareta's sales of standard carnations.

Tzitzic Tareta

In order to determine whether home market sales were above the COP, we calculated the COP on the basis of Tzitzic Tareta's cost of materials, labor, fabrication, and general expenses. The COP data submitted by Tzitzic Tareta was relied upon in our analysis, except in the following instances where the costs were not appropriately quantified or valued.

General and administrative expenses, as well as interest expenses reported in section D, were incorrectly valued because they were allocated over total flowers produced rather than total flowers sold. Therefore, we used Tzitzic Tareta's financial statements to value general and administrative expenses as well as interest expenses. However, selling, general and administrative expenses were reported as a single amount on Tzitzic Tareta's financial statements. We were, therefore, unable to use the selling expenses reported by Tzitzic Tareta in its section B response. We therefore used the total GS&A amount reported in Tzitzic Tareta's financial statements for constructed value.

We used the quantity of sales of standard and pompom chrysanthemums as the denominator to compute a cost per unit for chrysanthemums rather than quantity of production as reported by the respondent. In addition, we used the quantity of sales of standard carnations as the denominator to compute a unit cost for carnations rather than quantity of production, as reported by the respondent.

We found that over 90 percent of standard chrysanthemums sold by Tzitzic Tareta in Mexico were sold at prices above the COP. Accordingly, we used all sales as the basis for determining FMV for this category of such-or-similar merchandise. Because we found that less than 90 percent but more than 10 percent of Tzitzic Tareta's sales of pompom chrysanthemums in Mexico were made at prices above the COP, we disregarded the below-cost sales in our analysis and considered only the above-cost sales as the basis for determining FMV.

We calculated FMV for both standard and pompom chrysanthemums based on packed, ex-hacienda prices to unrelated purchasers in Mexico. Because FMV is being compared to ESP, we made deductions for home market credit expenses.

Where monthly weighted-average commissions were paid in both markets, we deducted home market commissions paid to unrelated parties, pursuant to § 353.56(a)(2) of our regulations, and home market indirect selling expenses up to the amount of indirect selling expenses incurred on exporter's sales price sales, in accordance with § 353.56(b)(2) of the Department's regulations. Where monthly weighted-average commissions were paid on sales only in the U.S. market, we deducted home market indirect selling expenses up to the amount of the sum of indirect selling expenses and commissions incurred on ESP sales. Where monthly weighted-average commissions were paid on sales only in Mexico, we deducted the sum of home market commissions paid to unrelated parties and home market indirect selling expenses up to the amount of indirect selling expenses incurred on ESP sales. Where monthly weighted-average commissions were paid in neither market, we deducted the home market selling expenses up to the amount of indirect selling expenses incurred on ESP sales.

Because Tzitzic Tareta reported only indirect selling expenses incurred by its related U.S. subsidiary, the Department used best information available to estimate indirect selling expenses incurred in Mexico. Best information available was based on total selling expenses reported in Tzitzic Tareta's section D response, less commissions.

We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Act.

We found that less than 10 percent of Tzitzic Tareta's sales of standard carnations in Mexico were made at prices above the COP. Accordingly, we disregarded all sales as the basis for determining FMV. In accordance with section 773(e) of the Act, we calculated FMV based on constructed value (CV). CV includes cost of materials, fabrication, general expenses, profit, and packing. Actual general expenses were used since these exceeded the statutory minimum requirement of ten percent of the sum of materials and fabrication. The CV data submitted by Tzitzic Tareta was relied on, except in the following instances where costs were not appropriately quantified or valued.

General and administrative expenses, as well as interest expenses reported in section D, were incorrectly valued because they were allocated over total flowers produced rather than total flowers sold. Therefore, we used Tzitzic Tareta's financial statements to value general and administrative expenses as well as interest expenses. However, selling, general and administrative expenses were reported as a single amount on Tzitzic Tareta's financial statements. We were, therefore, unable to use the selling expenses reported by Tzitzic Tareta in its section B response. We therefore used the total GS&A amount reported in Tzitzic Tareta's financial statements for constructed value.

Because profit was not submitted, the statutory minimum of eight percent of the sum of general expenses and cost of materials and fabrication was used.

Packing expenses were reported in both section C and section D of Tzitzic Tareta's response. We used packing expenses as reported in section D for the calculation of CV, as best information available, because these appeared to be more complete than those reported in section C.

We deducted credit expenses from CV in accordance with § 3053.56(a)(2) of the Department's regulations. Where monthly weighted-average commissions were paid on sales in the U.S. market, we deducted home market commissions paid to unrelated parties, pursuant to § 353.56(a)(2) of our regulations, and home market indirect selling expenses up to the amount of the indirect selling expenses incurred on ESP sales, in accordance with § 353.56(b)(2) of the Department's regulations. Where no monthly weighted-average commission was paid on sales in the U.S. market, we deducted the sum of home market commissions and indirect selling expenses up to the amount of the indirect selling expenses incurred on ESP sales.

Because Tzitzic Tareta reported only indirect selling expenses for its related U.S. subsidiary, the Department used best information available to estimate indirect selling expenses incurred in Mexico. Best information available was based on total selling expenses reported in Tzitzic Tareta's section D response, less commissions.

Florex

In order to determine whether home market sales were above the COP, we calculated the COP on the basis of Florex's cost of materials, fabrication, and general expenses. The COP data submitted by Florex was relied on in our analysis, except in the following instances where the costs were not appropriately quantified or valued.

We adjusted the selling, general and administrative expenses to reflect the ratio of such expenses to the cost of sales on the company's income statements. Because Florex's section D response indicated indirect selling expenses not reported in its section B response, we used the selling expenses reported by Florex in its section D response.

We adjusted the interest expense to reflect the ratio of interest expense to the cost of sales on the company's income statements.

We found that over 90 percent of Florex's sales were made at prices above the COP and used all sales as the basis for determining FMV. We calculated foreign market value based on delivered prices to unrelated purchasers. We made deductions for inland freight.

Where U.S. price was based on purchase price, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses. Because Florex did not report a short-term interest rate, home market credit expenses were calculated using the ranged, publicly available short-term Mexican interest rates reported by Tzitzic Tareta, as best information available. We also offset commissions incurred on home market sales with indirect selling expenses incurred on U.S. sales, pursuant to § 353.56 of the Department's regulations.

Although Florex did not report any indirect selling expenses in its sections B or C responses, it appears from Florex's section D response that Florex did incur such expenses. Therefore, using best information available, we estimated indirect selling expenses for Florex based on its section D response.

Where FMV was compared to ESP, we made deductions from the home market price, where appropriate, for credit expenses. Because Florex did not report a short-term interest rate, home market credit expenses were calculated using the ranged, publicly available short-term Mexican interest rates reported by Tzitzic Tareta, as best information available. Pursuant to § 353.56(a)(2) of the Department's regulations, we deducted commissions paid to unrelated parties. We also deducted indirect selling expenses capped by indirect selling expenses incurred on ESP sales, in accordance with § 353.56(b)(2) of the Department's regulations. These expenses were calculated as described above for purchase price sales.

Florex reported no packing expenses in its sections B and C responses. However, Florex did report total packing materials expenses in its section D response. As best information available, we are assuming that the packing expenses reported by Florex in section D are associated solely with sales to the United States. Therefore, we are adding U.S. packing expenses to FMV in accordance with section 773(a)(1)(B) of the Act.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period April 1, 1988, through March 31, 1989:

Manufacturer/exporter	Margin (percent)
Tzitzic Tareta	46.31
Florex	36.00
Visaflor	29.40

Visaflor certified that it did not export any of the subject merchandise under review to the U.S. during the period of investigation, and requested that it be excluded from this review. However, the Department received notification from U.S. Customs Service field offices in Miami, Florida, and Dallas, Texas that subject merchandise produced by Visaflor may, in fact, have been entered during the period from May through July of 1988. Visaflor maintains that these entries consisted of flowers grown by other companies that were merely consolidated on a Visaflor invoice to share transportation expenses. Although Visaflor submitted actual invoices associated with these entries, it remains unclear whether entries of Visaflor's flowers were made during the period of review. Because Visaflor has so far attempted to cooperate with the Department, we are assigning to Visaflor, as best information available, the margin calculated for it in the original less than fair value investigation rather than the highest margin calculated for any responding firm in this review. If further evidence substantiating Visaflor's claim is submitted in a timely manner, the Department will reconsider this issue in the final results of this administrative review.

The Department will issue appraisement instructions concerning Tzitzic Tareta, Florex, and Visaflor directly to the Customs Service upon completion of this administrative review.

Furthermore, the following deposit requirements will be effective upon publication of our final results of this administrative review for all shipments of the subject merchandise from Mexico entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipments of this merchandise manufactured or exported by the remaining known manufacturers/exporters not covered in this review will continue to be at the rate published in the final determination of sales at less than fair value or the final results of the first administrative review for these firms; (2) the cash deposit rate for Tzitzic Tareta, Florex and Visaflor will be that established in the final results of this administrative review; and (3) the cash deposit rate for any future entries of this merchandise from a new producer and/or exporter, not covered in this administrative review, the original investigation, or the last administrative review, whose first shipments occurred after March 31, 1989, and who is unrelated to a reviewed firm or any firm that was subject to the original investigation will be the same as the rate established for Tzitzic Tareta. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

In accordance with § 353.38 of the Department's regulations, case briefs or any other written comments must be submitted in at least ten copies to the Assistant Secretary for Import Administration no later than 30 days after the publication of this determination, and rebuttal briefs no later than 37 days after publication of this determination. In accordance with § 353.38(b) of the Department's regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Such hearing will be held 44 days after the publication of this determination at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with § 353.38(b) of the Department's regulations, an interested party may make an affirmative oral presentation only on arguments included in its briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), and § 353.22(c)(5) of the Department's regulations.

Dated: October 30, 1990.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-26186 Filed 11-5-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-403-801, C-403-802]

Correction of Date for Postponement of Final Antidumping Duty and Final Countervailing Duty Determinations; Fresh and Chilled Atlantic Salmon from Norway

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public of the correct date for the final determinations in the antidumping duty and countervailing duty investigations of fresh and chilled Atlantic salmon from Norway. The correct date for these final determinations is February 15, 1991.

EFFECTIVE DATE: November 6, 1990.

FOR FURTHER INFORMATION CONTACT: Louis Apple, (202) 377-1769, Office of Antidumping Investigations, or Rick Herring (202) 377-3530, Office of Countervailing Duty Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On October 26, 1990, we published a notice in the **Federal Register** (55 FR 43154) announcing the date of the final determinations of these countervailing duty and antidumping duty investigations. That notice made mistaken references to these final determinations being postponed until not later than February 8, 1991. The Department had postponed the final determinations until not later than February 15, 1991.

The other dates referred to in the October 26, 1990, notice are correct. The case briefs in the antidumping duty investigation are due on January 14 and rebuttal briefs are due on January 22, 1991. The hearing will be held on January 23, 1991. The public hearing for the countervailing duty investigation will be held on December 17, 1990, at 10 a.m. at the U.S. Department of Commerce, room 1412, 14th Street and Constitution Avenue NW., Washington DC. Case briefs in the countervailing duty investigation are due on December 10, and rebuttal briefs are due on December 14, 1990.

The U.S. International Trade Commission has been advised of the postponement of these determinations. This notice is published pursuant to sections 705(d) and 736(d) of the Act and 19 CFR 355.20(c)(3) and 353.20(b)(2).

Dated: October 31, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-26243 Filed 11-5-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-533-063]

Preliminary Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that net subsidies are being provided to manufacturers or exporters in India of certain iron-metal castings (castings), as described in the "Scope of the Review" section of this notice. We invite interested parties to comment on these preliminary results. If this review proceeds as expected, we will issue final results on or before January 11, 1991.

EFFECTIVE DATE: November 6, 1990.

FOR FURTHER INFORMATION CONTACT: Michelle L. O'Neill or Margot Paijmans,

Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230 on (202) 377–1673 or (202) 377–1442.

SUPPLEMENTARY INFORMATION:

Preliminary Results

We preliminarily determine that net subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers or exporters in India of certain iron-metal castings. This review covers the period of January 1, 1986 through December 31, 1986 and the following programs:

- International Price Reimbursement Scheme
- Cash Compensatory Support Scheme
- Pre-Shipment Export Loans
- Income Tax Reductions
- Market Development Assistance Grants
- Sales of Import Replenishment Licenses
- Extension of Free Trade Zones
- Preferential Freight Rates
- Import Duty Exemptions Available to 100 Percent Export-Oriented Units
- Post-Shipment Financing

The weighted-average net subsidies are shown in the "Preliminary Results of Administrative Review" section of this notice.

Case History

On October 16, 1980, the Department published its countervailing duty order in its investigation of certain iron-metal castings from India. On December 22, 1986, the Department published the final results of its most recently completed administrative review for the period January 1, 1984 through December 31, 1984 (51 FR 45780). The preliminary results of the administrative review for the period January 1, 1985 through December 31, 1985 were published on April 5, 1990 (55 FR 12702).

Since the notice of initiation for this administrative review (52 FR 441614, November 18, 1987), the following events have occurred. On June 10, 1988, we presented the questionnaire to the Government of India and the manufacturers and exporters of the subject merchandise. On October 4, 1988, we received the government and company responses. On May 23, 1990, we delivered a supplemental/deficiency questionnaire to the Government of India and the manufacturers and exporters of the subject merchandise. We received responses to this supplemental/deficiency questionnaire on August 8, August 24, August 28, September 28, October 2, October 3, and October 22, 1990.

Scope of Review

The imports covered by this review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. These articles are commonly called municipal or public works castings and are used for access or for drainage for public utility, water, and sanitary systems. During the review period, this merchandise was classifiable under "Tariff Schedules of the United States Annotated" item numbers 657.0950 and 657.0990. This merchandise is currently classifiable under "Harmonized Tariff Schedule" (HTS) item numbers 7325.10.0010 and 7325.10.0050. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Programs

Based on our analysis of the responses to our questionnaires, we preliminarily find the following:

I. Programs Preliminarily Found to Confer Subsidies

A. International Price Reimbursement Scheme (IPRS)

On February 9, 1981, the Government of India introduced the IPRS for exporters of products with steel inputs. The purpose of the program is to rebate the difference between higher domestic and lower international prices of steel. On September 28, 1983, the Government of India extended the IPRS to include pig iron.

The rebate is funded through collection of a levy on all domestic purchases of steel, pig iron and scrap. The Joint Plant Committee (JPC), a government-directed organization comprised largely of pig iron and steel producers, sets domestic steel and pig iron prices. The JPC also determines the specific levy for each pig iron and steel product based on the anticipated need for these inputs in exported products.

The Engineering Export Promotion Council (EEPC), a non-profit organization funded by the Government of India and private firms, processes the claims for, and disburses, the IPRS rebate. The IPRS rebate is based on the differential between domestic and international prices of pig iron, using a standard pig iron consumption factor of 110 percent, which includes a ten percent allowance for waste. Based on our analysis of questionnaire responses, we preliminarily determine that all castings exporters covered by this review obtained IPRS rebates for pig iron.

We consider a government program that results in the provision of an input to exporters at a price lower than to producers of domestically sold products to confer a subsidy within the meaning of section 771(5)(A) of the Act. We consider the benefit to be the entire IPRS rebate between the domestic and international price of pig iron. Therefore, we preliminarily determine the IPRS program to confer a countervailable export subsidy.

Respondents reported IPRS rebates as received on a shipment-specific basis for exports of the subject merchandise to the United States. Therefore, we allocated the total amount of rebates received by each firm during the period of review over total exports of the subject merchandise to the United States.

Where the information provided by a respondent company was incomplete or insufficient, we relied on best information available in accordance with 776(c) of the Act. For Govind Steel Co. Ltd. (Govind), the response did not state whether IPRS rebates received were for exports of the subject merchandise to the United States. As best information available, we have allocated the total amount of the IPRS rebates received over the firm's exports of subject castings to the United States. For RSI India Pvt. Ltd., we did not receive data regarding IPRS rebates received during 1986 for which claims were made prior to 1986. Therefore, in addition to benefits received in 1986 pursuant to claims filed in 1986, as best information available, we have included IPRS rebates received in 1987 pursuant to claims filed in 1986.

Where responding firms made different presentations of IPRS rebate information, we have used the most recent and/or the most specific data available.

We preliminarily determine the net subsidy from this program to be 21.16 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings except for those firms listed below which have significantly different aggregate benefits. The net subsidy for these firms is the following:

Company	Net ad valorem subsidy (percent)
1. R.B. Agarwalla & Company	16.35
2. Crescent Foundry Co. Pvt. Ltd	14.81
3. Govind Steel Co. Ltd	223.40

Company	Net ad valorem subsidy (percent)
4. Kejriwal Iron & Steel Works	44.42

At verification in the 1985 review, we established that the EEPC stopped accepting any IPRS claims filed on shipments of the subject merchandise exported to the United States after July 1, 1987. Therefore, for purposes of the cash deposit of estimated countervailing duties, we preliminarily determine the benefit from this program to be zero.

B. Cash Compensatory Support (CCS) Program

In 1986, the Government of India established the CCS program as a mechanism by which to rebate indirect taxes on exported merchandise. The rebates are paid as a percentage of the f.o.b. invoice price. In "Certain Iron-Metal Castings From India; Final Results of Administrative Review of Countervailing Duty Order" (48 FR 56092, December 19, 1983), we found that the Government of India satisfactorily demonstrated the requisite linkage between the indirect tax incidence on the subject merchandise and the CCS rebate. We have no information indicating any change in this requisite linkage.

The Government of India rebates various indirect taxes upon export through the CCS program. However, the Department allows an adjustment for a rebate only when the following criteria are met: (1) The indirect taxes are borne by inputs that are physically incorporated into the exported product; and (2) the indirect taxes are assessed only at the final stage of production. If a rebate exceeds the total amount of allowable indirect taxes as defined above, the Department considers the difference to be an overrebate of indirect taxes and, therefore, a subsidy that provides a countervailable benefit.

We consider pig iron, scrap iron, paint and packing materials to be raw material inputs that are physically incorporated into the subject merchandise. The allowable indirect taxes on these materials include Central and West Bengal sales taxes, octroi tax, central excise tax, turnover tax, and stamp duties for bills of lading, letters of credit, receipts and drafts.

To determine the average taxes incurred on the subject merchandise, we calculated taxes incurred on a company-specific basis for each input mentioned above. Where companies reported volume and value of opening and closing inventories and purchases of pig iron during the review period, we calculated an average price per metric ton and then calculated the tax incidence on these inputs. For those companies that did not report specific taxes incurred, the average price per metric ton for pig iron and scrap was increased by ten percent to allow for wastage. We divided total taxes incurred by the value of one metric ton of the subject merchandise to arrive at the total tax incidence, expressed as a percentage. We then compared this tax incidence percentage to the CCS rebate, including the excise tax drawback.

Where the information provided by a respondent company was incomplete or insufficient, we applied best information available in accordance with 776(c) of the Act. One company, Super Castings (India), provided only the value, but not the volume, of opening and closing inventories and purchases. Another company, Govind Steel Co. Ltd., provided only the volume, but not the value, of opening and closing inventories and purchases. Therefore, we based the calculation of Super Castings' and Govind's tax incidence on the average domestic price of pig iron reported by the Government of India in its original questionnaire response.

Although its response indicated use of the CCS program, Select Steels Ltd. did not provide any data regarding this program. Therefore, as best information available, we are assigning Select Steels Ltd. the overrebate found in the administrative review for the period, January 1, 1982 to December 31, 1982, the most recent review in which an overrebate was found under this program.

For all companies, except Select Steels Ltd., the average indirect tax incidence on the subject merchandise for the period of review exceeded the five percent CCS payment. Therefore, we preliminarily determine the net subsidy from this program to be 0.44 percent *ad valorem*, which is *de minimis*, for all manufacturers and exporters in India of certain iron-metal castings except for those firms listed below which have significantly different aggregate benefits. The net subsidy for these firms is the following:

Company	Net ad valorem subsidy (percent)
1. R.B. Agarwalla & Company	0.00
2. Crescent Foundry Co. Pvt. Ltd	0.00
3. Govind Steel Co. Ltd	0.00
4. Kejriwal Iron & Steel Works	0.00

C. Pre-Shipment Export Loans

The Reserve Bank of India, through commercial banks, provides pre-shipment or "packing" credits to exporters. With these pre-shipment loans, exporters may purchase raw materials and packing materials based on presentation of a confirmed order or letter of credit. In general, the pre-shipment loans are granted for a period of 90 to 180 days, with penalty charges for late interest payments. During the review period, the interest rate under this program was 12 percent per annum for the period of January through July 1986, and 9.5 percent per annum for the period of August through December 1986, for 90-day, 135-day, and up to 180-day loans. Because only exporters are eligible for these pre-shipment loans, we determine that they are countervailable to the extent that they are provided at preferential rates.

We did not receive information regarding the comparable commercial interest rate during the review period as requested in the original and supplemental questionnaires. In accordance with section 776(c) of the Act, as best information available, we have used the benchmark applied in the 1985 review, 16.50 percent. (See, "Certain Iron-Metal Castings From India: Preliminary Results of Countervailing Duty Administrative Review"55 FR 12702, April 5, 1990.) This was the comparable commercial interest rate during fiscal year 1985–1986 for small-scale industries with loans from 200,000 to 2,500,000 rupees, as quoted by the Reserve Bank of India in its bulletin entitled "Report on Trend and Progress of Banking in India" for fiscal year 1985–1986. This was also the short-term interest rate for India listed in the "IMF International Financial Statistics" for 1986. Since all castings manufacturers and exporters subject to this review are characterized as small-scale industries and because no castings firms reported pre-shipment loans exceeding 2,500,000 rupees during the review period, we have used 16.50 percent as our benchmark interest rate. Therefore, the interest differential for these loans ranged from 4.5 to 7.0 percent.

To calculate the benefit on loans for which interest was paid during 1986, we followed the short-term loan methodology which has been applied consistently in our past determinations and is described in more detail in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty

Order" (49 FR 18006, April 26, 1984); see also, Alhambra Foundry v. United States, 626 F. Supp. 402 (CIT, 1985).

Accordingly, we compared the amount of interest actually paid during the review period to the amount that would have been paid at the benchmark rate. Depending on the manner in which respondent companies reported these loans, we allocated the benefit to either total exports or total exports of the subject merchandise to the United States.

We preliminarily determine the net subsidy from this program to be 1.18 percent for all manufacturers and exporters in India of certain iron-metal castings except for those firms listed below which have significantly different aggregate benefits. The net subsidy for these firms is the following:

Company	Net ad valorem subsidy (percent)
1. R. B. Agarwalla & Company	0.59
2. Crescent Foundry Co. Pvt. Ltd	0.00
3. Govind Steel Co. Ltd.	2.93
4. Kejriwal Iron & Steel Works	0.19

D. Income Tax Reductions

Under section 80HHC of the Finance Act of 1983, the Government of India allows exporters to deduct one percent of taxes paid on export sales and five percent of taxes paid on the incremental increase of export sales over the previous fiscal year during assessment years 1983–84, 1984–85 and 1985–86. However, section 80VVA of the Finance Act of 1983 limits the tax deduction to 70 percent of net income. Because the tax deduction allowable under section 80HHC is contingent upon export performance and available only to exporters, we preliminarily determine that it is countervailable.

To calculate the benefit, we multiplied the income tax deductions each company claimed by the corporate income tax rate and divided the result by its total exports. For those companies that did not provide their tax rate, we used the corporate tax rate reported by the Government of India. One company's allowable deductions exceeded 70 percent of net income. However, the Government of India, pursuant to section 80VVA of the Finance Act, allows only those deductions up to 70 percent of net income. Therefore, for this company, we calculated the benefit to be 70 percent of the total deduction taken under section 80HHC.

We preliminarily determine the net subsidy from this program to be 0.73 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings except for those firms listed below which have significantly different aggregate benefits. The net subsidy for these firms is the following:

Company	Net ad valorem subsidy (percent)
1. R. B. Agarwalla & Company	0.40
2. Crescent Foundry Co. Pvt. Ltd	3.26
3. Govind Steel Co. Ltd.	0.12
4. Kejriwal Iron & Steel Works	0.15

E. Market Development Assistance (MDA) Grants

The Federation of Indian Export Organization administers, and the Ministry of Commerce, approves all MDA grants. The purpose of the program is to provide grants-in-aid to approved organizations (i.e., export houses) to promote the development of markets for Indian goods abroad. Such development projects may include market research, export publicity, and participation in trade fairs and exhibitions.

Because these MDA grants are available only to export houses, we preliminarily determine that such grants are countervailable.

Of the 11 known exporters, only Kejriwal Iron and Steel Works received MDA grants related to exports of the subject merchandise to the United States during the review period. Because the grant represented less than 0.5 percent of export sales during the review period, we allocated the value of the grant to the firm's total exports to the United States in 1986. To calculate the benefit, we divided the value of the grant received by the value of Kejriwal's total export sales to the United States in 1986.

We preliminarily determine the net subsidy from this program to be 0.00 percent *ad valorem* for all manufacturers and exporters in India of certain iron-metal castings except for those firms listed below which have significantly different aggregate benefits. The net subsidy for these firms is the following:

Company	Net ad valorem subsidy (percent)
1. R. B. Agarwalla & Company	0.00
2. Crescent Foundry Co. Pvt. Ltd	0.00
3. Govind Steel Co. Ltd.	0.00
4. Kejriwal Iron & Steel Works	0.09

II. Programs Preliminarily Determined to be Not Used

We examined the following programs and preliminarily determine that manufacturers or exporters of certain iron-metal castings did not use the following programs during the review period:

A. Sales of Import Replenishment Licenses
B. Extension of the Free Trade Zones
C. Preferential Freight Rates
D. Import Duty Exemptions Available to 100 Percent Export-Oriented Units
E. Post-Shipment Financing

Preliminary Results of Review

In accordance with section 355.22(d), we preliminarily determine that the following net subsidies exist for the period January 1, 1986 through December 31, 1986:

Manufacturer/exporter	Net ad valorem subsidy (percent)
R. B. Agarwalla and Company	17.34
Crescent Foundry Co. Pvt. Ltd.	16.07
Govind Steel Co. Ltd.	226.45
Kejriwal Iron and Steel Works	44.85
All Other Manufacturers or Exporters	23.51

Upon completion of this administrative review, the Department will issue appraisement instructions to the U.S. Customs Service. The Department also intends to instruct the U.S Customs Service to collect the following cash deposit of estimated countervailing duties of the f.o.b. invoice price on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review:

Manufacturer/exporter	Net ad valorem subsidy (percent)
Carnation Enterprise Pvt. Ltd.	0.00
Kejriwal Iron and Steel Works	0.00
All Other Manufacturers or Exporters	2.33

Public Comment

In accordance with 19 CFR 355.38 of the Commerce Department's regulations, we will hold a public hearing, if requested, on December 12, 1990, at 2:00 p.m. in room 3708, to afford interested parties the opportunity to comment on this preliminary determination. Interested parties who wish to request or to participate in the hearing must submit a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, ten copies of the business proprietary version and five copies of the nonproprietary version of case briefs must be submitted to the Assistant Secretary no later than November 26, 1990. Ten copies of the business proprietary version and five copies of the nonproprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than December 5, 1990. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal brief. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal briefs. Written argument should be submitted in accordance with § 355.38 of the Commerce Department's regulations and will be considered if received within the time limits specified in this notice.

This administrative review and notice are published in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: October 31, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–26184 Filed 11–5–90; 8:45 am]

BILLING CODE 3510–DS–M

INTERNATIONAL TRADE ADMINISTRATION

[C–508–601]

Oil Country Tubular Goods From Israel; Final Results Of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On June 13, 1989, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on oil country tubular goods from Israel. We have now completed that review and determine the net subsidy to be 4.30 percent ad valorem for the period June 11, 1986 through December 31, 1986 and 4.30 percent ad valorem for the period January 1, 1987 through December 31, 1987.

EFFECTIVE DATE: November 6, 1990.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 25145) the preliminary results of its administrative review of the countervailing duty order on oil country tubular goods from Israel (52 FR 6999; March 6, 1987). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of Review

Imports covered by the review are shipments of Israeli oil country tubular goods (OCTG), in both finished and unfinished condition. OCTG consists of hollow steel products of circular cross-section intended for use in drilling for oil or gas. These products include oil well casing and tubing, of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (such as proprietary) specifications. During the review period such merchandise was classifiable under the following "Tariff Schedules of the United States Annotated" (TSUSA) item numbers:

610.3216	610.3925	610.4955
610.3219	610.4025	6104956
610.3233	610.4035	610.4957
610.3234	610.4210	610.4966
610.3242	610.4220	610.4967
610.3243	610.4225	610.4968
610.3249	610.4230	610.4969
610.3252	610.4235	610.4970
610.3254	610.4240	610.5221
610.3256	610.4310	610.5222
610.3258	610.4320	610.5234
610.3262	610.4325	610.5240
610.3264	610.4335	610.5242
610.3721	610.4942	610.5243
610.3722	610.4944	610.5244
610.3751	610.4954	

This merchandise is currently classifiable under the following "Harmonized Tariff Schedule" (HTS) item numbers:

7304.20.10.00	7305.20.60.00
7304.20.20.00	7305.20.80.00
7304.20.30.00	7306.20.10.30
7304.20.40.00	7306.20.10.90
7304.20.50.10	7306.20.20.00
7304.20.50.50	7306.20.30.00
7304.20.60.10	7306.20.40.10
7304.20.60.50	7306.20.60.10
7305.20.20.00	7306.20.80.10
7305.20.40.00	7306.20.80.50

The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period June 11, 1986 through December 31, 1987 and eighteen programs:

(1) Investment Grants under the Encouragement of Capital Investment Law (ECIL)
(2) Insurance from Israel Foreign Trade Risk Insurance Corporation (IFTRIC)
(3) Long-term Industrial Development Loans
(4) Bank of Israel Export Loans
(5) Export Production Fund (EPF)
(6) Export Shipment Fund (ESF)
(7) Import-for-Export Fund (IEF)
(8) Dividends and Interest Tax Benefits Under Section 46 of the ECIL
(9) Drawback Grants
(10) ECIL Interest Subsidy Payments
(11) ECIL Loans
(12) ECIL Preferential Accelerated Depreciation
(13) Encouragement of Industrial Research and Development Law
(14) Equity Maintenance Allowance
(15) Labor Training Grants
(16) Special Export Financing
(17) Reduced Corporate and Income Tax Rates Under Section 47 of the ECIL
(18) Tax Deductible Inventory Adjustment

The only known exporter of OCTG to the United States during the period of review was Middle East Tube Co. (METCO).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from Lone Star Technologies, Inc., and CF&I Steel Corporation, petitioners, and from METCO.

Comment 1: Petitioners contend that the Department's method of calculating the benefit from the Exchange Rate Risk Insurance Scheme (EIS) operated by the Israel Foreign Trade Risk Insurance Corporation (IFTRIC) is erroneous. Petitioners claim that item (j) of the Illustrative List of Exports Subsidies, annexed to the "Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and

Trade" (the Subsidies Code), not only gives guidance for identifying a subsidy but describes the most accurate measurement of the subsidy; item (j) requires the Department to compare the prices charged for the good or service in question to a benchmark price. Specifically, the benefit should be the difference between the premiums paid by the recipient and the premiums that the recipient would have paid if total premiums collected equaled the program's operating costs and losses. Since the provision of insurance by a government is no different from the provision of any other service, the Department should calculate the benefit from EIS according to the methodology prescribed under § 355.44(f)(2) of "Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments" (54 FR 23366; May 31, 1989). Petitioner further contends that under this section, which requires the Department to consider alternative benchmarks, the most appropriate benchmark is the government's cost of providing this service. This benchmark is appropriate for export insurance programs when their premiums are below the cost of providing the insurance coverage.

The respondent, on the other hand, argues that the Department was correct in using the methodology prescribed under 355.44(d) of the proposed rulemaking, which explicitly sets forth the methodology for measuring the benefit from an export insurance program like EIS. Furthermore, the methodology not only is consistent with the Department's current practice but also measures the precise benefit received by the firm. Respondent further contends that the methodology set forth under 355.44(f) of the proposed rulemaking applies only to domestic programs and points out that, although the cost approach advocated by the petitioner in this instance has been proposed by the Department under § 355.44(f)(2) as one means of measuring preferentiality under domestic programs, it is to be used only if better methods are unavailable. Because the benefit can be directly measured, the Department should not use such a surrogate method.

Department's Position: The Department considers the benefits from a subsidy program to be the benefit to the recipient. Based on this standard, which is consistent with past practice in calculating the benefit from the EIS, the Department measures the actual benefit to a company by looking at the difference between what the company paid into the program and what it received in return. See, "Final Affirmative Countervailing Duty Determination; Industrial Phosphoric Acid from Israel" (52 FR 25447; July 7, 1987); "Final Affirmative Countervailing Duty Determination; Certain Fresh Cut Flowers from Israel" (52 FR 3317; February 3, 1987); and "Fresh Cut Roses From Israel; Preliminary Results of Countervailing Duty Administrative Review" (54 FR 10395; March 13, 1989). With our methodology, we can precisely measure the benefit on exports of the subject merchandise to the United States as a result of the respondent's participation in this program. This methodology has also been incorporated in § 355.44(d) of the proposed rulemaking, which explicitly sets forth our standard for determining whether a government export insurance program provides a countervailable benefit.

Comment 2: Petitioners disagree with the Department's reliance on "Final Affirmative Countervailing Duty Determination; Industrial Phosphoric Acid from Israel" (52 FR 25447; July 7, 1987) in determining that short-term financing from the Export Production Fund, Export Shipment Fund and the Import-for-Export Fund was not countervailabie. In that determination, the Department found that Israel's foreign currency export loans were not provided at preferential rates after July 1, 1985. Petitioner claims that the Department should have determined whether METCO continued to have access to short-term foreign currency financing from foreign sources and whether financing received was at preferential rates during the period of review. To the extent that METCO paid a premium on non-subsidized loans, the appropriate benchmark should reflect the same premium. If METCO had no unsubsidized short-term loans during the period of review, the benchmark should then reflect lending to firms in the same risk category.

The respondent, on the other hand, states that the Department had already found that Bank of Israel export loans made under the same programs as those under review were not countervailable. Therefore, the burden is on the petitioners to present new evidence establishing that these programs had changed and the prior determinations were no longer applicable. In the absence of such evidence or new allegations, the Department correctly relied on earlier cases to find these programs not to be countervailable. Furthermore, the respondent states that the use of a company-specific benchmark for short-term loans is contrary to the Department's practice of using a national average benchmark to measure the benefit from short-term loans.

Department's Position: Generally, we do not reinvestigate programs previously found not countervailable unless there is evidence of a change in that program or its application. In "Industrial Phosphoric Acid from Israel," we determined that short-term export loans provided by the Bank of Israel under the Export Production Fund, Export Shipment Fund and the Import-for-Export Fund programs were not countervailable after July 1985. Petitioners did not provide any new evidence to indicate that the terms of these programs had changed and that new benefits were provided during the period of review. Because we did not reinvestigate this program, the issue of the appropriate benchmark is moot.

Final Results of Review

After considering the comments received, we determine the net subsidy to be 4.30 percent ad valorem for the period June 11, 1986 through December 31, 1986 and 4.30 percent ad valorem for the period January 1, 1987 through December 31, 1987.

Section 707 of the Tariff Act provides that the difference between the amount of a cash deposit, or the amount of any bond or security, for an estimated countervailing duty and the duty determined under a countervailing duty order shall be disregarded to the extent that the estimated duty is lower than the duty determined under the order, which was published on March 6, 1987. The rate in our preliminary determination (51 FR 21201; June 11, 2986) was 2.12 percent *ad valorem*.

In accordance with section 705(a)(1) of the Tariff Act, the final determination in this case was extended to coincide with the final antidumping determination on the same products from Israel. Because, pursuant to Article 5.3 of the Subsidies Code, we cannot require suspension of liquidation for more than 120 days without the issuance of a countervailing duty order, we terminated the suspension of liquidation on the subject merchandise entered, or withdrawn from warehouse, for consumption on or after October 9, 1986. We reinstated the suspension of liquidation and required the collection of cash deposits of estimated countervailing duties for the subject merchandise entered, or withdrawn from warehouse, for consumption on or after March 6, 1987, the date of publication of the countervailing duty order.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 2.12 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after June 11, 1986 and on or before October 8, 1986. Entries or withdrawals made on or after October 9, 1986 and or before March 5, 1987 are not subject to countervailing duties. Further, the Department will instruct the Customs Service to assess countervailing duties of 4.30 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after March 6, 1987 and exported on or before December 31, 1987.

The Department will also instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 4.30 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement will remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: October 1, 1990.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-26185 Filed 11-5-90; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit for Certain Cotton, Wool and Man-Made Fiber Sweaters Assembled in Guam From Imported Parts

October 31, 1990

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit for a new agreement year.

EFFECTIVE DATE: November 1, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on revenues and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The provision for sweaters assembled in Guam from imported parts and exported from Guam to the United States is being continued for the period November 1, 1990 through October 31, 1991. The limit established for the previous period is being increased to 200,262 dozen.

A certification will continue to be required and will be issued by the authorities in Guam prior to exportation as verification of assembly in Guam. A facsimile of the certification stamp was published in the **Federal Register** on March 4, 1985 (50 FR 8649).

For those sweaters properly certified, no export visa or license will be required from the country of origin of the "merchandise, and imports entered under this procedure will not be charged to limits established for exports from the country of origin. Exports of sweaters in Categories 345, 445, 446, 645 and 646, which are not accompanied by a certification and those in excess 200,262 dozen, will require the appropriate visa or export license from the country of origin and will be subject to any other applicable restriction.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 46103, published on November 1, 1989. Information regarding the 1991 Correlation will be published in the **Federal Register** at a later date.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation Textile Agreements.

Committee For the Implementation of Textile Agreements

October 31, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, effective on November 1, 1990, you are directed to permit entry or withdrawal from warehouse for consumption in the United States of 200,262 dozen cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645 and 646, the product of any foreign country or foreign territory, as determined under CFR 12.130 and which have been certified as assembled in Guam and exported to the United States during the twelve-month period beginning on November 1, 1990 and extending through October 31, 1991. You are directed not to require any otherwise applicable export visa or license and not to charge against any otherwise applicable import restriction sweaters subject to this provision. A certification will be issued by the authorities in Guam prior to exportation as verification of assembly in Guam. A facsimile of the certification stamp has been provided.

Imports of cotton, wool and man-made fiber textile products in Categories 345, 445, 446, 645 and 646 assembled in Guam, but not of Guam origin, which are not accompanied by a certification and those in excess of 200,262 dozen exported during the twelve-month period beginning on November 1, 1990 and extending through October 31, 1991 will require the appropriate visa or export license from the country of origin and will be charged to any applicable quota.

Imports charged to the category limit for the period November 1, 1989 through October 31, 1990 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-26183 Filed 11-5-90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices, Advisory Committee Meeting

SUMMARY: Working Group C (mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday and Wednesday, 11 & 12 December 1990.

ADDRESSES: The meeting will be held at the Naval Ocean Systems Center, Bldg. 111, room 266, San Diego, CA 92152.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011

Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opt-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92-463, as amended, (5 U.S.C. app. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: November 1, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-26218 Filed 11-5-90; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices, Advisory Committee Meeting

SUMMARY: Working Group A (mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, 6 December 1990.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Becky F. Terry, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92-463, as amended, (5 U.S.C. app. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly, this meeting will be closed to the public.

Dated: November 1, 1990.

L.M. Bynum

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-26219 Filed 11-5-90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Active Duty Service Determinations for Civilian or Contractual Groups

Under the provisions of section 401, Public Law 95-202 and DOD Directive 1000.20, "Active Duty Service Determinations for Civilian or Contractual Groups," the Secretary of the Air Force, acting in accordance with authority delegated to him by the Secretary of Defense, determined on October 5, 1990, that the service of the group known as "U.S. Civilian Employees of American Airlines Who Served Overseas as a Result of American Airlines' Contract with the Air Transport Command During the Period December 14, 1941 through August 14, 1945," shall be considered "active duty" for the purposes of all laws administered by the Department of Veterans Affairs (VA).

To be eligible for VA benefits, each member of the group must establish they:

1. Were employed by American Airlines as flight crew personnel (pilot, copilot, navigator, flight engineer, radio operator) or
2. Were employed by American Airlines as aviation ground support personnel (aircraft mechanic, station manager, dispatcher) and
3. Served outside the continental United States in direct support of Air Transport Command-directed flight operations during the period December 14, 1941 through August 14, 1945

Qualifying periods of time are computed from the date of departure from the continental United States to the date of return to the continental United States.

Application Procedures

Before an individual can receive any VA benefits, the person must first apply for an Armed Forces Discharge Certificate by filling out a DD Form 2168 and sending it to the following address:

(**Note:** Do *not* use the Air Force address on the DD Form 2168): HQ AFMPC/DPMARS2, Randolph AFB, TX 78150-6001, *Attn:* TSgt Williamson.

Important: Applicants must attach supporting documents to their DD Form 2168 application. Considered of primary importance will be employment records from American Airlines headquarters. To request any existing records, write to: Mr. John P. Champlin, Manager, Employee Information Center Administration, American Airlines, Inc., 4135 S. 100th East Avenue, Mail Drop K27, Tulsa, OK 74146.

Other supporting documentation might include copies of passports with appropriate entries, flight log books, Army Air Force Identification Forms 133, any personal employment records such as commendations regarding ATC performance, employee expense reports of charges to USAAF contracts, medical certifications prior to departure from US, USAAF passes to leave the limits of an oversea base, military orders, miscellaneous USAAF papers, etc.

DD Forms 2168 are available from VA offices or from the U.S. Air Force offices in this notice.

For further information contact Lt. Col. Larry Harris at the Secretary of the Air Force Personnel Council (AFPC), Washington DC 20330-1000, telephone (703) 692-4747.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-26138 Filed 11-5-90; 8:45 am]

BILLING CODE 3910-01-M

Active Duty Service Determinations for Civilian or Contractual Groups

Under the provisions of section 401, Pub. L. 95-202 and DOD Directive 1000.20, "Active Duty Service Determinations for Civilian or Contractual Groups," the Secretary of the Air Force, acting in accordance with authority delegated to him by the Secretary of Defense, determined on October 10, 1990, that the service of the group known as "U.S. Civilian Employees of the Philippine Air Depot Who Served During the Period December 8, 1941 to February 23, 1945," should not be considered "active duty" for the purposes all laws administered by the Department of Veterans Affairs (VA).

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-26139 Filed 11-5-90; 8:45 am]

BILLING CODE 3910-01-M

Active Duty Service Determinations for Civilian or Contractual Groups

Under the provisions of section 401, Public Law 95-202 and DOD Directive 1000.20, "Active Duty Service Determinations for Civilian or Contractual Groups," the Secretary of the Air Force, acting in accordance with authority delegated to him by the Secretary of Defense, determined on August 30, 1990, that the service of:

U.S. Civilians of the American Field Service (AFS) Who Served Overseas Operationally in World War I During the Period August 31, 1917 to January 1, 1918

and

U.S. Civilians of the American Field Service (AFS) Who Served Overseas Under U.S. Armies and U.S. Army Groups in World War II during the period December 7, 1941 through May 8, 1945

shall be considered "active duty" for the purposes all laws administered by the Department of Veterans Affairs (VA).

To be eligible for VA benefits, each member of the group must meet the following eligibility criteria:

World War I

1. Served as a U.S. citizen in an AFS unit overseas as evidenced by a formal, signed enlistment paper or roster enrollment; and
2. Served honorably during the period August 31, 1917 to January 1, 1918. AFS personnel who failed to complete their enlistments honorably were dropped from published rosters of the AFS. Persons who are not on these rosters are therefore deemed to have not served honorably unless they offer conclusive evidence that such an omission was erroneous.

World War II

1. Served as a U.S. citizen in an AFS unit overseas as evidenced by a formal, signed enlistment paper or roster enrollment; and
2. Served honorably under any of the following U.S. Army organizations during the period described for each:

5th U.S. Army, January 5, 1943 to December 16, 1944
15th Army Group, December 16, 1944 through V-E Day, May 8, 1945
7th U.S. Army, July 10, 1943 to August 1, 1944
6th Army Group, August 1, 1944 through V-E Day, May 8, 1945
12th Army Group, July 14, 1944 through V-E Day, May 8, 1945
1st U.S. Army, October 20, 1943 through V-E Day, May 8, 1945

As in the case of WW I AFS personnel, WW II AFS personnel who failed to complete their enlistments honorably were dropped from published rosters of the AFS. Persons who are not on these rosters are therefore deemed to have not served honorably unless they offer conclusive evidence that such an omission was erroneous.

Application Procedures

All known members of both groups will be contacted imminently by the American Field Service Archives with instructions for obtaining a certified description of their AFS service and a DD Form 2168 on which to apply to the U.S. Army for discharge documents. Anyone who believes they are a member of either of these two groups, and who has not been contacted in writing by November 30, 1990, should obtain a DD Form 2168 from and VA office and mail the completed form to the U.S. Army at the following address: Commander, U.S. Army Reserve Personnel Center, Attention: DARP-PAS-EN, 9700 Page Boulevard, St. Louis, MO 63132-5200.

Note: Those individuals not contacted by AFS Archives should include as much supporting documentation as possible when making application.)

For further information contact Lt. Col. Larry Harris at the Secretary of the Air Force Personnel Council (AFPC), Washington, DC 20330-1000, telephone (703) 692-4747.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 90-26140 Filed 11-5-90; 8:45 am]

BILLING CODE 3910-01-M

Acceptance of Group Application Under

In the matter of "Honorably Discharged Members of the American Volunteer Group (Flying Tigers) Who Served During the Period December 7, 1941 to July 4, 1942."

Under the provisions of section 401, Public Law 95-202 and DOD Directive 1000.20, the Department of Defense Civilian/Military Service Review Board has accepted an application on behalf of the group known as: "Honorably Discharged Members of the American Volunteer Group (Flying Tigers) Who Served During the Period December 7, 1941 to July 4, 1942." Persons with information or documentation pertinent to the determination of whether the service of this group is to be considered equivalent to active military service to the Armed Forces of the United States are encouraged to submit such information or documentation within 60 days to the DOD Civilian/Military Service Review Board, Secretary of the Air Force (AFPC), Washington, DC 20330-1000. Copies of documents or other materials submitted cannot be returned. For further information, contact LtCol Harris, (202) 692-4747.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-26188 Filed 11-5-90; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army, DOD.

Privacy Act of 1974; New Record System

AGENCY: Department of the Army, DOD.

ACTION: Addition of a record system.

SUMMARY: The Department of the Army proposes to add one record system to its inventory of record systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a). The system notice for the new system is set forth below.

DATES: The action will be effective December 6, 1990, unless comments are received which would result in contrary determinations.

ADDRESSES: Send comments to Mrs. Alma A. Lopez, HQ, U.S. Army Information Systems Command, ATTN: ASOP-MP, Fort Huachuca, AZ 85613-5000.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 522a), have been published in the Federal Register as follows:

50 FR 22090, May 29, 1985 (DoD Compilation, changes follow)
51 FR 23576, Jun. 30, 1986
51 FR 30900, Aug. 29, 1986
51 FR 40479, Nov. 7, 1986
51 FR 44361, Dec. 9, 1986
52 FR 11847, Apr. 13, 1987
52 FR 18798, May 19, 1987
52 FR 25905, Jul. 9, 1987
52 FR 32329, Aug. 27, 1987
52 FR 43932, Nov. 17, 1987
53 FR 12971, Apr. 20, 1988
53 FR 16575, May 10, 1988
53 FR 21509, Jun. 8, 1988
53 FR 28247, Jul. 27, 1988
53 FR 28249, Jul. 27, 1988
53 FR 28430, Jul. 28, 1988
53 FR 34576, Sep. 7, 1988
53 FR 49586, Dec. 8, 1988
53 FR 51580, Dec. 22, 1988
54 FR 10034, Mar. 9, 1989
54 FR 11790, Mar. 22, 1989
54 FR 14835, Apr. 13, 1989
54 FR 45779, Oct. 31, 1989

54 FR 46065, Nov. 8, 1989
54 FR 50268, Dec. 5, 1989
55 FR 13935, Apr. 13, 1990
55 FR 21897, May 30, 1990 (Army Address Directory)

The new and altered record system reports, as required by the Privacy Act of 1974, as amended, 5 U.S.C. 522a(r) was submitted on October 29, 1990, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of appendix I to OMB Circular No. A-230, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985).

Dated: November 1, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0351d-1aTRADOC

SYSTEM NAME:

Automated Instructional Management System (AIMS).

SYSTEM LOCATION:

The systems are located at Headquarters, Training and Doctrine Command (TRADOC); TRADOC Service Schools; and Army Training Centers. Addresses for the above may be obtained from the Commander, U.S. Army Training and Doctrine Command, ATTN: ATOM-T, Fort Monroe, VA 23651-5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members of the Army, Navy, Marine Corps, and Air Force, and civilians employed by the U.S. Government, and approved foreign military personnel enrolled in a resident course at a U.S. Army service school.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain personnel, Program of Instruction, scheduling, testing, academic, graduation, recycle, and attrition data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and Executive Order 9397.

PURPOSE(S):

This is the TRADOC standard resident student training management system which automates those processes associated with the scheduling, management, testing, and tracking of resident students. The system is composed of several subsystems which perform functions for personnel, student load management, academic records management, test creation, scoring and grading, student critique, resource scheduling and utilization, electronic mail, and query.

The sole users are the personnel responsible for the administration of personnel enrolled in the resident student training programs at U.S. Army service schools and Army training centers. Course completion data on active Army enlisted personnel is supplied to the Army-American Council on Education Registry Transcript System (AARTS) in magnetic media. Course completion data on active Army officer personnel is supplied to the U.S. Army Research Institute (ARI) in magnetic media. All student transactions are supplied to the Army Training Requirements and Resources System (ATRRS) through a daily electronic interface.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Army's "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes, computer discs, and paper printouts.

RETRIEVABILITY:

Retrieved by Social Security Number and course/class number.

SAFEGUARDS:

Different user identification sign-on codes are assigned each person with authorized access to the database. Each sign-on is authenticated by system software. Identification sign-on codes are changed every six months, additions or deletions occur at any time a new person is assigned or someone leaves. The above meet Army's Information System Security Regulation requirements.

RETENTION AND DISPOSAL:

Machine records are retained during student's active enrollment, after which they are classified as history records, written to magnetic tape, and stored indefinitely for reference. Paper records are destroyed after 40 years as follows: Army elements serviced by a records holding area (RHA) hold records for 2 years in the current files area (CFA), transfer to RHA for 1 year; the RHA retires the records to the National Personnel Records Center (NPRC), St. Louis, MO, for the remaining 37 years. Army elements not serviced by a RHA, hold records for 2 years in CFA, then retire to NPRC for the remaining 38 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Training and Doctrine Command, ATTN: ATOM-T, Fort Monroe, VA 23651-5000.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this records system should address written inquiries to the Commander, U.S. Army Training and Doctrine Command, ATTN: ATOM-T, Fort Monroe, VA 23651-5000.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Training and Doctrine Command, ATTN: ATOM-T, Fort Monroe, VA 23651-5000.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from the individual, DoD staff, Personnel and Training systems, and staff and faculty.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 90-26217 Filed 11-5-90; 8:45 am]
BILLING CODE 3810-01-M

Privacy Act of 1974; Amend a Record System

AGENCY: Department of the Army, DOD.

ACTION: Amendment of a Record System.

SUMMARY: The Department of the Army proposes to amend one record system in its inventory of record systems subject to the Privacy Act of 1974, as amended. (5 U.S.C. 552a).

DATES: This action will be effective on December 6, 1990, unless comments are received which would result in contrary determinations.

ADDRESSES: Send comments to Mrs. Alma A. Lopez, HQ, U.S. Army Information Systems Command, ATTN: ASOP-MP, Fort Huachuca, AZ 85613-5000.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 522a), have been published in the **Federal Register** as follows:

50 FR 22090, May 29, 1985 (DoD Compilation, changes follow)
51 FR 23576, Jun. 30, 1986
51 FR 30900, Aug. 29, 1986
51 FR 40479, Nov. 7, 1986
51 FR 44361, Dec. 9, 1986
52 FR 11847, Apr. 13, 1987
52 FR 18798, May 19, 1987
52 FR 25905, Jul. 9, 1987
52 FR 32329, Aug. 27, 1987
52 FR 43932, Nov. 17, 1987
53 FR 12971, Apr. 20, 1988
53 FR 16575, May 10, 1988
53 FR 21509, Jun. 8, 1988
53 FR 28247, Jul. 27, 1988
53 FR 28249, Jul. 27, 1988
53 FR 28430, Jul. 28, 1988
53 FR 34576, Sep. 7, 1988
53 FR 49586, Dec. 8, 1988
53 FR 51580, Dec. 22, 1988
54 FR 10034, Mar. 9, 1989
54 FR 11790, Mar. 22, 1989
54 FR 14835, Apr. 13, 1989
54 FR 45779, Oct. 31, 1989
54 FR 46965, Nov. 8, 1989
54 FR 50268, Dec. 5, 1989
55 FR 13935, Apr. 13, 1990
55 FR 21897, May 30, 1990 (Army Address Directory)

The specific changes to the record system being amended are set forth below, followed by the system notice as amended, published in its entirety. The amended notice is not within the purview of subsection (r) of the Privacy Act, as amended (5 U.S.C. 552a), which requires the submission of a new or altered system report.

Dated: November 1, 1990.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0145-1 TRADOC

System name:

Army Reserve Officers Training Corps LEADS Referral Card System (50 FR 22175, May 29, 1985)

Changes:

System name:

Delete entire entry and replace with "Army Reserve Officers' Training Corps Gold QUEST Referral System"

System location:

Delete entire entry and replace with "Primary system exists at MCRB Service Bureau, 11633 Victory Boulevard, North Hollywood, CA 91609. Segments exist at MCRB Service Bureau, 7447 Candlewood Road, Hanover, Maryland, 21076; WATS Telemarketing Center, Omaha, Nebraska; Wunderman Worldwide, 575 Madison Avenue, New York, NY 10022; Headquarters, U.S. Army ROTC Cadet Command, Fort Monroe, VA 23651-5000; Army ROTC Region Headquarters (4); ROTC Cadet Battalions (315) and ROTC Goldminer Teams (18)."

* * * * *

Categories of records in the system:

Delete entire entry and replace with "Records of current and former prospect referrals showing: name, address, telephone number, Social Security Number (optional), sex, citizenship, prior military service, name of high school, high school graduation date, grade point average, SAT/ACT test score, college expected to attend, admissions status to college, academic major, and date of birth."

* * * * *

Purpose(s):

Delete entire entry and replace with "To provide a central database of potential prospects for enrollment in the Senior ROTC program; assist prospects by providing information concerning educational institutions having ROTC programs; scholarship information and applications; information regarding other Army enlistment, Reserve or National Guard Programs; to render recruitment management information reports; to refer qualified prospects, a Professor of Military Science at or nearest to their college of choice."

* * * * *

Retrievability:

Add to the end of the entry "* * * or peculiar identification number assigned by the system.

* * * * *

Retention and disposal:

Change "2 years" to "3 years" in the entry.

* * * * *

Record source categories:

Delete the entire entry and replace with "Source categories for prospects include the Army ROTC toll-free telephone number, magazines, newspapers, poster advertising coupons, mail-back reply cards, letters, walk-ins, referrals from parents, relatives, counselors, teachers, coaches, friends, associates, college registrars, dormitory directors, national testing organizations, honor societies, boys' clubs, boy scout organizations, Future Farmers of America, minority and civil rights organizations, fraternity and church organizations; neighborhood youth centers, YMCA, YWCA, social clubs, athletic clubs, boys state/girls state/ scholarship organizations, U.S. Army Recruiting Command, Military Academy Liaison officers, West Point non-select listing, previous employers, trade organizations, military service, and other organizations and commands comprising the Department of Defense."

* * * * *

A0145-1TRADOC

System name:

Army Reserve Officers' Training Corps Gold QUEST Referral System.

System location:

Primary system exists at MCRB Service Bureau, 11633 Victory Boulevard, North Hollywood, California 91609. Segments exist at MCRB Service Bureau, 7447 Candlewood Road, Hanover, Maryland 21076; WATS Telemarketing Center, Omaha, Nebraska; Wunderman Worldwide, 575 Madison Avenue, New York, New York 10022; Headquarters, U.S. Army ROTC Cadet Command, Fort Monroe, VA 23651-5000; Army ROTC Region Headquarters (4); ROTC Cadet Battalions (315) and ROTC Goldminer Teams (18).

Categories of individuals covered by the system:

Potential enrollees in the Senior ROTC program.

Categories of records in the system:

Records of current and former prospect referrals showing: name, address, telephone number, Social Security Number (optional), sex, citizenship, prior military service, name of high school, high school graduation date, grade point average, SAT/ACT test score, college expected to attend, admissions status to college, academic major, and date of birth.

Authority for maintenance of the system:

10 U.S.C., Chapter 103, sections 2101-2111.

Purpose(s):

To provide a central database of potential prospects for enrollment in the Senior ROTC program; assist prospects by providing information concerning

educational institutions having ROTC programs; scholarship information and applications; information regarding other Army enlistment, Reserve or National Guard Programs; to render recruitment management information reports; to refer qualified prospects, a Professor of Military Science at or nearest to their college of choice.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

The Army's "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

storage:

Paper records and cards in file cabinets; on magnetic tape, disks, and computer printouts.

Retrievability:

By prospects surname or peculiar identification number assigned by the system.

safeguards:

Records are maintained in secured areas within protected buildings, and accessible by only designated, authorized individuals having official need.

Retention and disposal:

Records are retained for 3 years and then destroyed.

System manager(s) and address:

Commander, Headquarters, U.S. Army Training and Doctrine Command, Fort Monroe, VA 23651–5000.

Notification procedure:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, Headquarters, U.S. Army ROTC Cadet Command, ATTN: Marketing Directorate, Fort Monroe, VA 23651–5000.

Individuals should provide their full name, current address, telephone number and signature.

Record access procedures:

Individuals seeking access to information about themselves contained in this record system should address written inquiries to the Commander, Headquarters, U.S. Army ROTC Cadet Command, ATTN: Marketing Directorate, Fort Monroe, VA 23651–5000.

Contesting record procedures:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the Commander, Headquarters, U.S. Army ROTC Cadet Command, ATTN: Marketing Directorate, Fort Monroe, VA 23651–5000.

Record source categories:

Source categories for prospects include the Army ROTC toll-free telephone number, magazines, newspapers, poster advertising coupons, mail-back reply cards, letters, walk-ins, referrals from parents, relatives, counselors, teachers, coaches, friends, associates, college registrars, dormitory directors, national testing organizations, honor societies, boys' clubs, boy scout organizations, Future Farmers of America, minority and civil rights organizations, fraternity and church organizations; neighborhood youth centers, YMCA, YWCA, social clubs, athletic clubs, boys state/girls state/ scholarship organizations, U.S. Army Recruiting Command, Military Academy Liaison officers, West Point non-select listing, previous employers, trade organizations, military service, and other organizations and commands comprising the Department of Defense.

Exemptions claimed for the system:

None.

[FR Doc. 90–26220 Filed 11–5–90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 21, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: James O'Donnell (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from James O'Donnell at the address specified above.

Dated: October 31, 1990.

James O'Donnell,

Acting Director, for Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Extension.
Title: Application for assistance for State educational agencies under the Stewart B. McKinney Homeless Assistance Act, title VII, subtitle B, sections 721, 722, 723.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 54.
Burden Hours: 562.
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by state education agencies to apply for funding under the Stewart B. McKinney Homeless Assistance Act program. The Department uses the information to make grant awards.

[FR Doc. 90–26130 Filed 11–5–90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Announcement of Dates, Locations and Times for Public Scoping Meetings on the Programmatic Environmental Impact Statement (PEIS) for the Department of Energy's Proposed Intergrated Environmental Restoration and Waste Management Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announced on October 22, 1990, (55 FR 42633–8) that it intends to prepare a PEIS on the Department's proposed Integrated Environmental Restoration and Waste Management Program pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, et seq.) as amended, and to conduct a series of public scoping meetings nationwide. Today's Notice supplements the October 22, 1990, issuance and provides the dates, locations, times and DOE points-of-contact for the scoping meetings to be held in December 1990. The first two meetings will be held in Columbia, South Carolina, and in Richland, Washington, on December 3, and December 4, 1990, respectively. Subsequent meetings will be held in the following locations: Atlanta, Georgia; St. Louis, Missouri; and Spokane, Washington, on December 6, 1990; Amarillo, Texas, on December 10, 1990; Oak Ridge, Tennessee; Portland, Oregon; and Chicago, Illinois, on December 11, 1990; and Seattle, Washington, on December 13, 1990. The dates and locations of scoping meetings to be held in January and February 1991 will be published in a subsequent **Federal Register** notice.

Background

The PEIS will assess the potential environmental consequences of alternatives for implementing an integrated environmental restoration and waste management program. This program is expected to provide a broad, systematic approach to addressing cleanup activities and waste management practicers. The Department is committed to ensuring that potential risks to human health and the environment from the cleanup of contamination resulting from past operations and future waste management activities are at safe levels. DOE is further committed to full compliance with environmental regulations and to the goal of completing environmental restoration by 2019.

ADDRESSES AND FURTHER INFORMATION: Written comments on the scope of the PEIS, questions concerning the program, and requests for copies of the draft PEIS should be directed to: Mr. William E. Wisenbaker, Acting Director, Division of Program Support, Office of Environmental Restoration (EM–43), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (301) 353–2950.

For further information on the DOE NEPA process please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600.

PUBLIC SCOPING MEETINGS AND INVITATION TO COMMENT: For the reader's convenience, the following is repeated from the October 22, 1990, Notice referenced above. DOE is committted to providing opportunities for the involvement of interested individuals and groups in this and other DOE planning activities. The public scoping process began with the October 22, 1990 **Federal Register** announcement that DOE will prepare a PEIS on its environmental restoration and waste management activities; this process will continue until February 19, 1991.

The public is invited to present oral or written comments concerning: (1) The scope of the PEIS, (2) the issues that should be addressed, and (3) the alternative integrated approaches to be analyzed in the PEIS. Written comments may be addressed to Mr. William E. Wisenbaker or the contract for the specific scoping meetings. These comments should be postmarked by February 19, 1991, to ensure consideration. The Department is also holding scoping meetings to facilitate receipt of public comment on the PEIS. These meetings will begin in December 1990; a total of 23 scoping meetings will be held nationwide. The schedule for the December scoping meeting is shown below.

Oral and written comments will be given equal consideration. Instructions for submitting written comments are given above. People desiring to speak at the public scoping meetings should submit their requests to do so to the contact persons designated for that meeting. Oral presentation requests for each meeting should be received by DOE at least two days before the meeting.

The meetings will be chaired by a presiding officer. They will be conducted as evidentiary hearings. Speakers will not be cross-examined, although the DOE representatives present may ask them clarifying questions.

[CFDA No. 84.087]

Indian Fellowship Program; Inviting Applications for New Awards for Fiscal Year (FY) 1991

Purpose of Program: To provide fellowships enabling Indian students to pursue postbaccalaureate degrees in medicine, psychology, law, education, clinical psychology, and related fields, or undergraduate or postbaccalaureate degrees in business administration, engineering, natural resources, and related fields.

Deadline for Transmittal of Applications: January 11, 1991.

Applications Available: November 9, 1990.

Available Funds: The Congress has appropriated approximately $1,570,000 for this program in FY 1991. Approximately $600,000 will be available for new awards.

Estimated Range of Awards: $1,000–$30,000.

Estimated Number of Awards: 50.

Average Award: $12,000.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 82 (published at 55 FR 6736, February 26, 1990), 85, and 86 (published at 55 FR 33580, August 16, 1990); and (b) The regulations for this program in 34 CFR part 263.

FOR APPLICATIONS OR INFORMATION CONTACT: Dr. John Derby, Branch Chief, Indian Education Fellowship Program, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 2171, Washington, DC 20202. Telephone (202) 401–1902.

Program Authority: 20 U.S.C. 2623.

Dated: October 30, 1990.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 90–26130 Filed 11–5–90; 8:45 am]

BILLING CODE 4000-01-M

To ensure everyone an adequate opportunity to speak, five minutes will be allotted for each speaker. Depending on the number of persons requesting to speak, the presiding officer may allow more time for speakers representing multiple parties or organizations. Persons wishing to speak on behalf of organizations should identify the organization in their request. Persons who have not submitted a timely request to speak may register at the meetings, and will be called on to speak if time permits. Written comments also will be accepted at the meetings, and speakers are encouraged to provide written versions of their oral comments for the record.

DOE will make a transcript of each meeting. Copies will be made available for inspection at the DOE Freedom of Information Reading Room (room (1E-190), Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, during business hours, Monday through Friday and in local DOE reading rooms. Locations of local reading rooms for the December meetings are included in this Notice. The Reading Rooms for the January and February meetings will be provided in the subsequent **Federal Register** notice regrading these scoping meetings.

Issued in Washington, DC, this 2nd day of November 1990.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

Scoping Meeting Schedule

Meeting: Columbia, SC
Date: Monday, December 3, 1990
Time: 9 am–9:30 pm
Location: Park Inn International, 773 St. Andrews Road, Columbia, SC 29210, (803) 772–7275
Meeting: Atlanta, GA
Date: Thursday, December 6, 1990
Time: 9 am–9:30 pm
Location: Holiday Inn, Atlanta Peachtree Corners, 6050 Peachtree Industrial Blvd., Norcross, GA 30071, (404) 448–4400
Contact for the Two Meetings Above:
Mr. Stephen R. Wright, Director Environmental Division, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, 1–800–242–8269
Public Reading Rooms for the Two Meetings Above:
Aiken—Public Reading Room—DOE, Gregg Graniteville Library, 171 University Parkway, Aiken, SC 29801
Hours: 8 am–6 pm, Mon.–Fri. 12 pm–6 pm, Sat.
Oak Ridge—U.S. Department of Energy, Oak Ridge Operation Office, Public Reading Room, P.O. Box 2001, Oak Ridge, TN 37831
Hours: 8:30 am–4:30 pm, Mon.–Fri.
Meeting: St. Louis, MO
Date: Thursday, December 6, 1990
Time: 9 am–9:30 pm
Location: Clayton Plaza, 7730 Bonhomme Avenue, St. Louis, MO 63105
Meeting: Oak Ridge, TN
Date: Wednesday, December 11, 1990
Time: 9 am–9:30 pm
Location: American Museum of Science and Energy, 300 South Tulane Avenue, Oak Ridge, TN 37830
Contact for the Two Meetings Above:
Oak Ridge—Nelson Lingle, U.S. Department of Energy, Oak Ridge Operations Office, 200 Administration Road, Mail Stop EW–91, Oak Ridge, TN 37831–8541, (615) 576–0727
Public Reading Room for the Two Meetings Above:
Oak Ridge—U.S. Department of Energy, Oak Ridge Operations Office, Public Reading Room, P.O. Box 2001, Oak Ridge, TN 37831, Hours: 8:30 am–4:30 pm, Mon.–Fri.
St. Louis, MO—St. Louis County Library, 1640 S. Lindbergh Blvd., St. Louis, MO 63131, Hours: 8:30 am–9 pm, Mon.–Fri.; 8:30 am–9 pm, Sat.
St. Charles, MO—St. Charles County Library, Kisker Road Branch, Kisker Road, St. Charles, MO 63305; Hours: 8:30 am–9 pm, Mon.–Thurs.; 8:30 am–6 pm, Sat.
Meeting: Richland, WA
Date: Tuesday, December 4, 1990
Time: 9 am–9:30 pm
Location: Federal Building Auditorium 825 Jadwin Avenue, Richland, WA 99352
Meeting: Spokane, WA
Date: Thursday, December 6, 1990
Time: 9 am–9:30 pm
Location: Ridpath Hotel, W. 515 Sprague Avenue, Spokane, WA
Meeting: Portland, OR
Date: Tuesday, December 11, 1990
Time: 9 am–9:30 pm
Location: City Hall Council Chambers, 1220 SW Fifth Avenue, Portland, Oregon
Meeting: Seattle, WA
Date: Thursday, December 13, 1990
Time: 9 am–9:30 pm
Location: Henry M. Jackson Federal Building; North Auditorium 915 Second Avenue, Seattle, WA
Contact for the Four Meetings Above:
Richland— Ken Morgan, U.S. Department of Energy, 825 Jadwin, Mail Stop A775, Richland, WA 99352, (509) 376–7162
Pubic Reading Room for the Four Meetings Above:
Richland—Department of Energy, Richland Operations Public Reading Room, Federal Building, room 157 825 Jadwin Avenue, Richland, WA 99325 (509) 376–8583
Hours: 8 am–12 pm, and 1 pm; 4:30 pm, Mon.–Fri.; 9 am–1 pm, Sat.
Spokane—Crosby Library, Gonzaga University, E. 502 Boone, Spokane, WA 99258, (509) 328–4220 Hours: 8 am–12 am, Mon.–Thurs.
Thurday—8 am–9 pm, Fri.; 9 am–9 pm,; Sat. 11 am–12 am, Sun.
Portland—Portland State University Library, 934 S. W. Harrison, Portland, OR 97207, (503) 464–4617, Hours: 8 am–5 pm, Mon.–Fri; Closed Saturdays and Sundays
Seattle—University of Washington, Suzzalo Library, FM–25 Government Publications, Seattle, WA 98195, (206) 543–4664 Hours: 10 am–5 pm, Mon.–Fri.; Closed Saturdays and Sundays—8 am–8 pm, Mon,–Fri.; 8 am–8 pm, Fri.; 10 am–5 pm, Sat.
Meeting: Chicago, IL
Date: Tuesday, December 11, 1990
Time: 9 am – 9:30 pm
Location: Sheraton International Hotel at O'Hare, 6810 N. Mannheim Road, Rosemont, IL 60018
Contact for the Meeting Above:
Argonne, IL—Ms. Kimberly Phillips, U.S. Department of Energy, Chicago Operations Office, 9800 S. Cass Avenue, Argonne, IL 60439, (708) 972–2028
Public Reading Room:
Argonne, IL—U.S. Department of Energy, 9800 S. Cass Avenue, Argonne, Ill 60439, Hours: 8:30 am–5 pm, Mon.–Fri.
Meeting: Amarillo, TX
Date: Monday, December 10, 1990
Time: 9 am–9:30 pm
Location: Amarillo Civic Center, 401 S. Buchanan, Amarillo, TX 79101
Contact: Patrick J. Higgins, Jr., Division Director, Environmental Management Staff, Albuquerque Operations Office, Department of Energy, P.O. Box 5400, Albuquerque, NM 87115, (800) 633–7156 (24 Hours)
Public Reading Room: DOE Public Reading Room, Reference Department, Lynn Library and Learning Center, Amarillo College, 2201 South Washington, 4th Floor, Amarillo, TX 79109, 806–371–5400; Hours: 7:45 am–10 pm, Mon.–Thur.; 7:45 am–5 pm, Fri.; Closed Sat.; 2–6 pm, Sun.

[FR Doc. 90–28295 Filed 11–2–90; 11:56 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER90–568–000, et al.]

PSI Energy, Inc., et al.; Electric rate, Small power production, and Interlocking Directorate filings

October 30, 1990.

Take notice that the following filings have been made with the Commission:

1. PSI Energy, Inc.

[Docket No. ER90–568–000]

Take notice that on October 25, 1990, PSI Energy, Inc. tendered for filing its response to a request from the staff of the Commission for additional information in this docket. The information concerns various generation units of PSI Energy, Inc. and the rate proposed by PSI Energy, Inc. in this docket.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Dayton Power and Light Co.

[Docket No. ER91–45–000]

Take notice that on October 26, 1990, Dayton Power and Light Company (Dayton) tendered for filing an executed Purchase and Resale Agreement between Dayton and the Village of New Bremen, dated October 1, 1990.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Louisiana Energy and Power Authority v. Central Louisiana Electric Co.

[Docket No. EL91–3–000]

Take notice that on October 22, 1990, Louisiana Energy and Power Authority (LEPA) tendered for filing a complaint against Central Louisiana Electric Company (CLECO) requesting initiation of an investigation to determine whether certain of the rates and terms and conditions under which CLECO provides firm transmission service to LEPA are unjust, unreasonable, unduly discriminatory and anticompetitive. LEPA requests the Commission to set a refund effective date of not more than 60 days after the filing of the complaint. LEPA also moves to consolidate this docket with Docket No. ER90–39–000, in which CLECO is seeking an increase in its firm transmission rate.

Comment date: November 29, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Co.

[Docket Nos. ER89–265–009 and EL89–26–007]

Take notice that on October 29, 1990, Arizona Public Service Company tendered for filing a Revision to the Compliance Refund Report filed in accordance with the Commission's letter of approval dated September 19, 1990.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. PSI Energy, Inc.

[Docket No. ER91–58–000]

Take notice that on October 29, 1990, PSI Energy, Inc. ("PSI") tendered for filing a supplement to Service Schedule D—Supplemental Power and Energy of the Power Coordination Agreement, dated August 27, 1982, as amended, between PSI and the Indiana Municipal Power Agency (IMPA), in order to provide certain Economic Development incentives under section 5 of said Service Schedule.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Maine Public Service Co.

[Docket No. ER91–57–000]

Take notice that on October 26, 1990, Maine Public Service Company (MPS) tendered for filing a proposed initial rate schedule pertaining to agreements entered into with Houlton Water Company (Houlton) covering transmission and back-up services by MPS for Houlton's entitlement in the Maine Yankee Atomic Power Plant. MPS has requested that the rate schedule become effective October 1, 1990, in accord with the terms of the agreements.

Comment date: November 14, 1990, in accordance with Standard Paragraph E end of this notice.

7. Dayton Power and Light Co.

[Docket No. ER91–55–000]

Take notice that on October 26, 1990, Dayton Power and Light Company ("Dayton") tendered for filing an executed Purchase and Resale Agreement between Dayton and the Village of Eldorado, Ohio.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Dayton Power and Light Co.

[Docket No. ER91–54–000]

Take notice that on October 26, 1990, Dayton Power and Light Company ("Dayton") tendered for filing an executed Purchase and Resale Agreement between Dayton and the Village of Yellow Springs, Ohio.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. Dayton Power and Light Co.

[Docket No. ER91–52–000]

Take notice that on October 26, 1990, Dayton Power and Light Company ("Dayton") tendered for filing an executed Purchase and Resale Agreement between Dayton and the Village of Waynesfield, Ohio.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

10. Dayton Power and Light Co.

[Docket No. ER91–53–000]

Take notice that on October 26, 1990, Dayton Power and Light Company ("Dayton") tendered for filing an executed Purchase and Resale Agreement between Dayton and the Village of Versailles, Ohio.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Co.

[Docket No. ER91–56–000]

Take notice that on October 26, 1990, New England Power Company ("NEP") tendered for filing a copy of a letter agreement with Boston Edison Company, dated Feburary 21, 1990, regarding a change in duration of the contract of August 1, 1982 for the sale of unit power from the NEP Bear Swamp Units and related transmission agreement. Under the terms of the letter agreement the previous contract termination date of November 5, 1990 will be changed to October 31, 1990.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

12. Dayton Power and Light Co.

[Docket No. ER91–50–000]

Take notice that on October 26, 1990, Dayton Power and Light Company ("Dayton") tendered for filing an executed Purchase and Resale Agreement between Dayton and the Village of Mendon, Ohio.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

13. Dayton Power and Light Co.

[Docket No. ER91–49–000]

Take notice that on October 26, 1990, Dayton Power and Light Company (Dayton) tendered for filing an executed Purchase and Resale Agreement between Dayton and the Village of Arcanum, dated October 1, 1990.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

14. Dayton Power and Light Co.

[Docket No. ER91-47-000]

Take notice that on October 26, 1990, Dayton Power and Light Company (Dayton) tendered for filing an executed Purchase and Resale Agreement between Dayton and the Village of Jackson Center, dated October 1, 1990.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

15. Dayton Power and Light Co.

[Docket No. ER91-48-000]

Take notice that on October 26, 1990, Dayton Power and Light Company (Dayton) tendered for filing an executed Purchase and Resale Agreement between Dayton and the Village of Lakeview, dated October 1, 1990.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

16. Dayton Power and Light Co.

[Docket No. ER91-46-000]

Take notice that on October 26, 1990, Dayton Power and Light Company (Dayton) tendered for filing an executed Purchase and Resale Agreement between Dayton and the Village of Minister, dated October 1, 1990.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

17. Minnesota Power and Light Co.

[Docket No. ER91-44-000]

Take notice that on October 25, 1990, Minnesota Power & Light Company tendered for filing its notice of termination of Supplement No. 2 to Rate Schedule FERC No. 124. The filing company states that the rate schedule, setting forth conditions for the purchase by it of standby capacity from the City of Two Harbors, Minnesota, with the payment to be reflected as a credit on the bill of Minnesota Power & Light Company to the city, has expired and been replaced by a separate agreement not subject to the jurisdiction of the Commission.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

18. El Paso Electric Co.

[Docket No. ER91-1-000]

Take notice that on October 29, 1990, El Paso Electric Company ("El Paso") tendered for filing a letter which amends its October 1, 1990 submittal of a Firm Transmission Service Agreement between El Paso and Salt River Project Agricultural Improvement and Power District. The letter establishes a ceiling on charges under the Agreement.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

19. Kansas City Power & Light Company

[Docket No. ER91-41-000]

Take notice that on October 24, 1990, Kansas City Power & Light Company tendered for filing a coordinating agreement among Associated Electric Cooperative, Inc., St. Joseph Light & Power Company, Nebraska Public Power District, Omaha Public Power District, City of Lincoln, Iowa Power Inc., and Kansas City Power & Light Company.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

20. Dayton Power and Light Co.

[Docket No. ER91-51-000]

Take notice that on October 26, 1990, Dayton Power and Light Company ("Dayton") tendered for filing an executed Purchase and Resale Agreement between Dayton and the City of Tipp City, Ohio.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

21. Gulf Power Co.

[Docket No. EL91-40-000]

Take notice that on October 24, 1990, Gulf Power Company submitted a revised page 7 of its request for waiver of FAC Regulations and revised pages for attachments 1, 2, 3, and 6 of its earlier filing in this docket. Gulf Power Company states that copies of the filed material have also been sent to those parties served with copies of its original filing in this docket.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

22. Minnesota Power & Light Co.

[Docket No. ER91-43-000]

Take notice that on October 25, 1990, Minnesota Power & Light Company tendered for filing its notice of termination of Rate Schedules FERC Nos. 147, 148, and 149. The filing company states that the rate schedules were filed in connection with an earlier proposed, but never completed, sale by Minnesota Power & Light Company to Northern States Power Company of a 40 percent interest in certain transmission and substation facilities associated with the Clay Boswell Steam Electric Generating Station, Unit No. 4, and the sale by Minnesota Power & Light Company to Northern States Power Company of its entitlement to capacity and energy from Square Butte's Young 2 generating unit and accompanying transmission leases.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

23. Arizona Public Service Co.

[Docket Nos. ER89-265-008 and EL89-26-006]

Take notice that on October 23, 1990, Arizona Public Service Company tendered for filing its compliance refund report resulting from the rate settlement agreement between Arizona Public Service Company and the Town of Wickenburg.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

24. American Electric Power Service Corp.

[Docket No. ER91-40-000]

Take notice that on October 24, 1990, American Electric Power Service Corporation tendered for filing Supplement No. 11, dated September 21, 1990, to the Agreement, dated April 1, 1974, between American Municipal Power-Ohio, Inc. ("AMP-Ohio") and Ohio Power Company. According to the filing company, the proposed Supplement No. 11 provides for the long-term sale of 100 megawatts of power and associated energy by Ohio Power Company to AMP-Ohio.

Comment date: November 14, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26149 Filed 11-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP91-1-000]

Meridian Oil, Inc.; Petition to Reopen Final Determination and Withdraw Section 108 Well Category Application

October 30, 1990.

Take notice that on October 1, 1990, Meridian Oil, Inc. (Meridian) filed with the Federal Energy Regulatory Commission (Commission), pursuant to § 275.205 of the Commission's regulations, a petition to reopen a final determination and a request to withdraw its application that gas produced from the Huerfano Unit #108 well, located in San Juan County, New Mexico, qualifies under seciton 108 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (Supp. V. 1982).

By letter dated August 30, 1990, Meridian requested the withdrawal of the petition for continued stripper qualification filed under NGPA § 271.805(e)(1)(II)(C) for temporary pressure buildup for the 90 day period ending March 31, 1989. According to Meridian, the actual producing days for the 90 day period ending March 31, 1989 were inaccurately reported by Meridian's field personnel and a subsequent adjustment to the record triggered a review of the record. Such review indicated a change to zero shut-in days for the period, that the well remained in a qualified state, and that no action was necessary for the period. Finally, Meridian states that if the determination is reopened, Meridian will not be required to make refunds because Meridian did not collect NGPA rates in excess of the otherwise applicable maximum lawful price.

Any person desiring to be heard or protest this petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 20, 1990. All protests filed will be considered, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26154 Filed 11-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-12-000]

Granite State Gas Transmission, Inc.; Tariff Filing Restating Base Tariff Rates

October 30, 1990.

Take notice that on October 26, 1990, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts, tendered for filing with the Commission the revised tariff sheets, listed below, in its FERC Gas Tariff, Second Revised Volume No. 1 and First Revised Volume No. 2, for effectiveness on November 27, 1990:

Second Revised Volume No. 1

First Revised Sheet No. 21
First Revised Sheet No. 36
First Revised Sheet No. 123

First Revised, Volume No. 2

First Revised Sheet No. 28

According to Granite State, the revised tariff sheets comprise the restatement of its Base Tariff Rates in compliance with § 154.303(e) of the Commission's Regulations. Granite State's filing is accompanied by a cost of service study and supporting data to support the restated Base Tariff Rates. Granite State further states that the study shows that, on the basis of annualized costs for the 12 months ending July 31, 1990, the existing rates do not recover its cost of service and no change is proposed in existing rate levels for jurisdictional services.

Granite State states that its existing Base Tariff Rates were established in a settlement of its last section 4 rate filing in Docket No. RP87-87-000. According to Granite State, the filing in Docket No. RP87-87-000 was accepted, subject to refund, on September 18, 1987 and Granite State moved the suspended rates into effect on November 27, 1987, thus establishing the date for the commencement of the 36-month period for the restatement of the Base Tariff Rates.

It is further stated that the restated Base Tariff Rates are applicable to the jurisdictional sales services that Granite State renders to its two affiliated distribution company customers, Bay State Gas Company and Northern Utilities, Inc., and to a transportation service provided for Northern Utilities.

Granite State further states that copies of its filing have been served on the customers and the regulatory commissions of the states of Maine, New Hampshire and Massachusetts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 6, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26150 Filed 11-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE90-25-006]

Pacific Gas and Electric Co.; Application for Exemption

October 30, 1990.

Take notice that Pacific Gas and Electric Co. (PG&E), filed an application on September 10, 1990, for a modified compliance with the filing requirements of part 290 of the Federal Energy Regulatory Commission's (FERC) regulations, pertaining to the collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act of 1978, specified in subparts B, C, D, and E of part 290 (*See* Order No. 48, 44 FR 58687, October 11, 1979). PG&E requests a modified form of compliance, in lieu of the biennial filing requirements, coincident with the filing date and time established by the California Public Utilities Commission's Rate Case Plan.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal

Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on: Mr. John T. Guardalabene, Pacific Gas and Electric Co., P.O. Box 7442, San Francisco, CA 94120.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26147 Filed 11-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-2-28-002, TM91-3-28-002]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

October 30, 1990.

Take notice that on October 26, 1990 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Docket No. TM91-2-28-000

2nd Sub Second Revised Sheet No. 3-C.4
2nd Sub Second Revised Sheet No. 3-C.5
2nd Sub Second Revised Sheet No. 3-C.6

Docket No. TM91-3-28-000

2nd Sub Second Revised Sheet No. 3-C.7
2nd Sub Second Revised Sheet No. 3-C.8
2nd Sub Second Revised Sheet No. 3-C.9

The proposed effective date of these revised tariff sheets is October 1, 1990.

Panhandle states that revised tariff sheets were filed on October 10, 1990, in Docket Nos. TM91-2-28-000 and TM91-3-28-000 which reflected actual payments by its customers during August and September 1990, and from Michigan Consolidated Gas Company (MichCon) in November and December 1989, as directed by Commission Letter Orders dated September 28, 1990.

Panhandle further states that the revised tariff sheets listed above reflect the correction of the second year interest reconciliation adjustment calculation included in the October 10, 1990 filing.

Panhandle states that copies of this letter and enclosures are being served on all affected jurisdictional sales customers and appropriate state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before November 6, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26151 Filed 11-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE80-12-002]

San Diego Gas & Electric Co.; Application for Exemption

October 30, 1990.

Take notice that the San Diego Gas & Electric Co. filed an application on September 14, 1990, for exemption from requirements of part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act of 1978 (PURPA), Order No. 48 (44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1990, information on the costs of providing electric service as specified in subparts B, C, D, and E of part 290. In addition, San Diego Gas & Electric Co. requests a waiver of the requirement that an application for exemption from the June 30, 1990 filing requirement be filed at least 18 months prior to the filing due date (*i.e.*, December 31, 1988), as specified in section 290.601(a). *See* 18 CFR 290.601(a) 1990.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before 45 days following the date this notice is published in the **Federal Register**. Within that 45 day period, such person must also serve a copy of such comments on: Mr. William L. Reed, Director, Regulatory Affairs Departments, San Diego Gas & Electric Co., P.O. Box 1831, San Diego, CA 92112.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26148 Filed 11-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ91-1-8-002, TM91-1-8-002, and TF91-1-8-002]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

October 30, 1990.

Take notice that on October 26, 1990, South Georgia Natural Gas Company (South Georgia) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Second Substitute Sixty-Fifth Revised Sheet No. 4
Second Substitute Sixty-Sixth Revised Sheet No. 4

The foregoing tariff sheets are submitted in compliance with the Commission's letter order of September 27, 1990 in Docket Nos. TQ91-1-8-000 and TM91-1-8-000 (September 27 Order). South Georgia states that the proposed tariff sheets are being filed with a proposed effective date of October 1, 1990. South Georgia states Second Substitute Sixty-Fifth Revised Sheet No. 4 and Second Substitute Sixty-Sixth Revised Sheet No. 4 reflect South Georgia's currently effective underlying base tariff rates and contract demand pursuant to the September 27 Order.

South Georgia states that copies of the filing will be served upon all of South Georgia's purchasers, shippers, interested state commissions and interested parties as well as on all parties of record in the subject proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washingon, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before November 6, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26152 Filed 11-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-2-30-002]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

October 30, 1990.

Take notice that on October 26, 1990 Trunkline Gas Company (Trunkline) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Docket No. TM91-2-30-000

Sub Second Revised Sheet No. 3-A.5
Sub Second Revised Sheet No. 3-A.6

The proposed effective date of these revised tariff sheets is October 1, 1990.

Trunkline states that revised tariff sheets were filed on August 31, 1990 in Docket Nos. TM91-2-30-000 which reflected the second annual adjustment to carrying charges and monthly TOP Fixed Surcharges as provided in § 21.4(c) of Trunkline's FERC Gas Tariff, Original Vol. No. 1. These tariff sheets were approved by Commission Letter Order dated September 28, 1990.

Trunkline further states that the revised tariff sheets listed above reflect the correction of the second year interest reconciliation adjustment calculation included in the August 31, 1990 filing.

Trunkline states that copies of this letter and enclosures are being served on all affected jurisdictional sales customers and appropriate state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before November 6, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26153 Filed 11-5-90; 8:45 am]

BILLING CODE 6717-01-M

Office of the Deputy Secretary

U.S. Alternative Fuels Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: United States Alternative fuels Council.

Date and Time: Thursday, November 15, 1990 9 a.m.-4:30 p.m. Friday, November 16, 1990, 8 a.m.-11:30 a.m.

Location: Hotel Atop The Bellevue, 1415 Chancellor Court, Philadelphia, Pennsylvania.

Contact: Mark Bower, Office of Policy, Planning and Analysis, U.S. Department of Energy, Mail Stop PE-50, Washington, DC 20585, Phone: (202) 586-3881.

Purpose of the Council: To provide advice to the interagency Committee on Alternative Motor Fuels to help:

1. "* * * coordinate Federal agency efforts to develop and implement a national alternative motor fuels policy."

2. "* * * ensure the development of a long-term plan for the commercialization of alcohols, natural gas, and other potential alternative motor fuels."

3. "* * * ensure communication among representatives of all Federal agencies that are involved in alternative motor fuels projects or that have an interest in such projects."

4. "* * * provide for the exchange of information among persons working with, or interested in working with, the commercialization of alternative motor fuels."

U.S. Alternative Fuels Council Agenda Outline

November 15, 1990.

9 a.m.-10:30 a.m.
Pipeline Gas (U.S. and Canada)
10:45 a.m.-12:15 p.m.
Foreign Gas for Methanol
1:15 p.m.-2:45 p.m.
Domestic Bio Feedstocks
3:00 p.m.-4:30 p.m.
LPG Feedstocks

Agenda Outline

November 16, 1990.

8 a.m.-11 a.m.
Consensus-Building on Alternative Fuels Issues
11 a.m.-11:30 a.m.
Public Comment Period

Public Participation: The meeting is open to the public. Written statements may be filed with the council either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda items should contact Mark Bower at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairpersons of the Council are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: Available for public review and copying approximately 30 days following the meeting at the Public Reading room, room 1E190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on November 1, 1990.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 90-26230 Filed 11-5-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 90-86-NG]

Neste Trading (USA), Inc.; Application to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on September 28, 1990, of an application filed by Neste Trading (USA), Inc. (Neste), for blanket authority to import up to 50 Bcf of Canadian natural gas over a two-year period beginning on the date of the first delivery. Neste intends to utilize existing pipeline facilities for the transportation of the volumes imported and proposes to submit quarterly reports giving details of individual sales transactions. Neste also requests that an import authorization be granted on an expedited basis.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:40 p.m. e.s.t., December 6, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Engergy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-9478.

BEST COPY AVAILABLE

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-6667.

SUPPLEMENTARY INFORMATION: Neste, a Delaware corporation with its principal place of business in Houston, Texas, is an indirect wholly owned subsidiary of Neste Oy, a foreign corporation organized under the laws of Finland. Neste conducts natural gas marketing and other marketing activities in the United States as agent for Neste Oy.

Under the blanket authority sought, Neste, acting either for its own account or for the account of others, would import natural gas from a variety of Canadian suppliers for resale to suitable purchasers, including local distribution companies, pipelines, and commercial and industrial end-users. The specific terms of each import transaction would be negotiated on an individual basis in response to prevailing gas market conditions. In support of its application, Neste asserts that prices will not remain fixed in any of its contracts for a period of more than a year.

The decision on the application for import authority will be made consistent with the DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the requested import authority. The applicant asserts that imports made under this requested arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket import application is granted, the authorization may permit the import of the gas at any international border point where existing transmission facilities are located. A decision on Neste's request for expedited treatment of its application will not be made until all responses to this notice have been received and evaluated.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices on intervention, and written comments must meet the requirements that are specified by the rgulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trail-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Neste's application is available for inspection and copying in the Office of Fuels Programs Docket room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 31, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-26237 Filed 11-5-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-62-NG]

Northridge Petroleum Marketing U.S., Inc.; Order Granting Blanket Authorization to Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an Order granting blanket authorization to export natural gas to Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Northridge Petroleum Marketing U.S., Inc. (Northridge U.S.) blanket authorization to export from the United States to Canada up to 300 Bcf of natural gas over a two-year period commencing with the date of first delivery

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 31, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-26240 Filed 11-5-90; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-06-NG]

Tennessee Gas Pipeline Company; Order Amending Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an Order amending a previous authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order in ERA Docket No. 86-06-NG amending an authorization previously granted to Tennessee Gas Pipeline Company (Tennessee). The amendment permits Tennessee to export at St. Clair, Michigan and subsequently reimport at Niagara Falls, New York, some or all of the 75,000 Mcf per day of Canadian natural gas it is presently authorized to import from ProGas Limited at Emerson, Manitoba. No new pipeline construction is required.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday throug Friday, except Federal holidays.

Issued in Washington, DC, October 31, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-26236 Filed 11-5-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearing and Appeals

Cases Filed During the Week of August 31 Through September 7, 1990

During the week of August 31 through September 7, 1990, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 31, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 31 to Sept. 7, 1990]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 6, 1990	Virgin Islands Energy Office, Frederiksted, St. Croix, USVI.	LEE-0017	Application for exception. If granted: The Virgin Islands Energy Office would be granted an exception from the provision of 10 CFR part 455 which requires that energy conservation grant funds for Schools and Hospitals which are unobligated at the end of Federal Fiscal Year be reallocated among all eligible U.S. states, territories, and possessions in the next Fiscal Year.
Sept. 6, 1990	Texaco/H & H Texaco, Hardin, Kentucky	RR321-15	Request for modification/rescission in the Texaco refund proceeding. If granted: The July 5, 1990 Decision and Order (Case No. RF321-1581) issued to H & H Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
8/31/90 thru 9/7/90.	Crude Oil Refund Applications Received.	RF272-81203 thru RF272-81358.
8/31/90 thru 9/7/90.	Texaco Oil Refund Applications Received.	RF321-9334 thru RF321-9446.
8/31/90 thru 9/7/90.	Gulf Oil Refund Applications Received.	RF300-11785 thru RF300-11908.
9/4/90	Corn Construction Co.	RF328-1.
9/4/90	Crowell Oil	RF323-11.
9/4/90	G.L. Finney, Inc	RF323-12.
9/4/90	Ford Wholesale Co., Inc.	RF327-1.
9/4/90	Consolidated Fiberglass Prod.	RF327-2.

[FR Doc. 90-26238 Filed 11-5-90; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed: Jackson Port Authority, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200433.

Title: Jacksonville Port Authority/Empresa Lineas Maritimas Argentinas, S.A. Terminal Agreement.

Parties: Jacksonville Port Authority (Port) Empresa Lineas Maritimas Argentinas (Empresa).

Synopsis: The Agreement provides Empresa certain tariff discounts for wharfage and receiving/delivery services for container and chassis. Empresa guarantees 24 annual vessel calls at the Port.

Agreement No.: 224-200434.

Title: Jacksonville Port Authority/Companhia De Navegacao Maritima Netumar Terminal Agreement.

Parties: Jacksonville Port Authority (Port) Companhia De Navegacao Maritima Netumar (Netumar).

Synopsis: The Agreement provides Netumar certain tariff discounts for wharfage and receiving/delivery services for container and chassis. Netumar guarantees 20 annual vessel calls at the Port.

By Order of the Federal Maritime Commission.

Dated: October 31, 1990.
Joseph C. Polking,
Secretary.
[FR Doc. 90-26161 Filed 11-5-90; 8:45 am]
BILLING CODE 6730-01-M

[Petition No. P4-90]

Tropical Shipping & Construction Co., Ltd. Application for Section 35 Exemption; Filing

Notice is hereby given that Tropical Shipping & Construction Co., Ltd. ("Tropical") has applied for an exemption pursuant to section 35 of the Shipping Act, 1916, 46 U.S.C. app. 833a, and Rule 69 of the Commission's Rules of Practice and Procedure, 46 CFR 502.69. Specifically, Tropical seeks an order from the Federal Maritime Commission exempting carriers providing all-water transportation in the United States/United States Virgin Islands trade from compliance with certain provisions of section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, to allow new or reduced individual commodity rates to be published on one day's notice.

In order for the Commission to make a thorough evaluation of the application for exemption, interested persons are requested to submit views or arguments on the application no later than December 7, 1990. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001 in an original and 15 copies. Responses shall also be served on Paul D. Coleman, Esq., Hoppel, Mayer & Coleman, 1000 Connecticut Avenue, NW., Washington, DC 20036.

Copies of the application are available for examination at the Washington, DC office of the Commission, 1100 L Street, NW., room 11101.

Joseph C. Polking,
Secretary.
[FR Doc. 90-26162 Filed 11-5-90; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0710]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Approval of a private sector adjustment factor and fee schedules for Federal Reserve Bank priced services for 1991.

SUMMARY: The board has approved a Private Sector Adjustment Factor ("PSAF") for 1991 of $85.8 million. This represents an increase of $6.4 million or 8.1 percent over the PSAF of $79.4 million targeted for 1990. The PSAF is a computation of imputed costs that takes into account the taxes that would have been paid and the return on capital that would have been provided had the Federal Reserve's priced services been furnished by a private business firm. The board has also approved 1991 fee schedules for Federal Reserve check collection, automated clearing house, wire transfer of funds and net settlement, book-entry securities, definitive safekeeping, and noncash collection services, and for electronic connections to the Federal Reserve. These actions were taken in accordance with the requirements of the Monetary Control Act of 1980, which requires that fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the PSAF.

EFFECTIVE DATE: The PSAF and the fee schedules become effective January 1, 1991, with the exception of certain changes in the automated clearing house fee schedule, which become effective April 1, 1992.

FOR FURTHER INFORMATION CONTACT: For questions regarding the Private Sector Adjustment Factor: Paul Bettge, Manager, (202/452-3174) or Gregory Evans, Accounting Analyst, (202/452-3945), Division of Federal Reserve Bank Operations; for questions regarding fee schedules: Margaret Weimer, Financial Services Project Leader, Electronic Payments (202/452-3341), Nalini Rogers, Senior Financial Services Analyst, Check Payments (202/452-3601), or Felicia Cataldo, Financial Services Analyst, Securities (202/452-2223), Division of Federal Reserve Bank Operations, for the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

Copies of the 1991 fee schedules for check collection, automated clearing house, funds transfer and net settlement, book-entry securities, electronic connections, definitive safekeeping, and noncash collection are available from the local reserve Banks.

SUPPLEMENTARY INFORMATION:

Private Sector Adjustment Factor ("PSAF")

The board has approved a 1991 PSAF for the Federal Reserve Bank priced services of $85.8 million. This amount represents an increase of $6.4 million or 8.1 percent over the PSAF of $79.4 million targeted for 1990.

The Monetary Control Act of 1980 requires that fee schedules for the Federal Reserve's priced services include an allocation of imputed costs for "taxes that would have been paid and the return on capital that would have been provided had the services been furnished by a private business firm." These imputed costs are based on data developed in part from a model comprised of the nation's 50 largest bank holding companies (BHCs).

Briefly stated, the methodolgy, which is unchanged from last year, first entails determining the value of Federal Reserve assets that will be used directly in producing priced services during the coming year, including the net effect of assets planned to be acquired or disposed of during the year. Short-term assets are assumed to be financed by short-term liabilities; long-term assets are assumed to be financed by a combination of a long-term debt and equity.

Imputed capital costs are determined by applying related interest rates and rate of return on equity derived from the bank holding company model to the assumed debt and equity values. The rates drawn from the BHC model are based on consolidated financial data for the 50 largest BHCs (in terms of asset size) in each of the last five years. Because short-term debt, by definition, matures within one year, only data for the most recent year are used for computing the short-term debt rate.

Capital costs, together with imputations for estimated sales taxes, FDIC insurance assessment on clearing balances held with the Federal Reserve to settle transactions, and expenses of the Board of Governors related to priced services, comprise the PSAF.

Details regarding the derivation of the PSAF are as follows:

Asset base. The estimated value of Federal Reserve assets to be used in providing priced services in 1991 is reflected in Table 1. Table 2 shows that the value of assets assumed to be financed through debt and equity are projected to total $530.7 million. This represents an increase of $43.0 million or 8.8 percent from 1990. This increase results largely from an increase in short and long-term prepayments of equipment maintenance costs as well as anticipated 1991 capital expenditures for bank premises and equipment.

Cost of capital, taxes and other imputed costs. Table 3 shows the financing and tax rates as well as the other required PSAF recoveries for 1991 and compares them with the rates used for developing the PSAF for 1990. The $4.9 million increase in the imputed FDIC insurance assessment is largely attributable to an increase in the rate assessed against deposits.

Capital adequacy. As shown on table 4, the amount of capital imputed for the 1991 PSAF totals 28 percent of risk-weighted assets, well above the 8 percent capital guideline for state member banks and BHCs.

1991 Fee Schedules

The Monetary Control Act requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs incurred in providing the priced services, including the PSAF. Total revenue for all Federal Reserve services, must, in the aggregate, recover all costs, including the PSAF. The Board's pricing principles state that fees will be set so that the revenues match costs (including the PSAF) for major service categories. The Board may set fees for a service line that do not fully recover costs, in the interest of providing an adequate level of services nationwide. The fees for each service line, however, must recover all operating costs, float costs, and certain imputed costs of providing that service, as well as contribute to the pre-tax return on equity.

Last year the Board approved fees that were set to recover 100.7 percent of the cost of providing priced services in 1990, including the PSAF and the cost of float. Through the first eight months of 1990, the System recovered 104.4 percent of total costs. The Reserve Banks estimate that total 1990 costs, including the PSAF, will be $734.9 million. Total revenue is estimated to be $754.9 million, resulting in a 102.7 percent recovery rate.[1]

In 1991, total priced services costs, including the PSAF, are projected to be $771.7 million. Total revenue is projected to be $777.2 million, resulting in a 100.7 percent recovery rate. The majority of the 1991 fees are the same as those currently in effect. Since 1984, as the table below shows, the System performance in matching costs and revenues has moved closer to its target of a 100 percent recovery.

[Dollar amounts in millions]

	Total priced financial services			Variation from 100 percent
	Total cost	Total revenue	Recovery rate (percent)	
1984	$519.1	$559.8	107.8	7.8
1985	571.2	603.8	105.7	5.7
1986	599.3	627.7	104.7	4.7
1987	627.3	649.7	103.5	3.5
1988	674.7	667.7	99.0	1.0
1989	730.3	718.7	98.4	1.6
1990 Estimated	734.9	754.9	102.7	2.7
1991 Projected	771.7	777.2	100.7	0.7

Following is a discussion of estimated 1990 and projected 1991 financial performance, and 1991 fees for the individual priced services.

Check collection. Comparisons of estimated 1990 and projected 1991 cost recovery performance for the commercial check service are shown in the table below.

[Dollar amounts in millions]

	Check collection		
	Total cost	Total revenue	Recovery rate (percent)
1990	$564.4	$578.1	102.4
1991	591.2	597.0	101.0

The total costs in the table do not include special projects, which would reduce the 1990 and 1991 recovery rates to 102.2 percent and 100.7 percent, respectively. Overall, 1991 check collection costs, including PSAF, are projected to increase 4.7 percent. Total check collection volume is projected to increase 1.9 percent.

Sixty-three percent of the 1991 fees for check services are the same as those currently in effect. The 1991 fees result in a 2.2 percent increase in forward and return check collection fees; the increase in forward collection fees is 1.2 percent while the increase in return item fees is 8.9 percent. Systemwide, 521 "processed" forward collection per item fees will remain unchanged, 189 fees will increase, and 49 fees will decrease. Forward check collection processed volume is projected to increase 1.2 percent in 1991, compared to an estimated 1.4 percent increase in 1990.

The processed forward collection per item fees include new tiered Regional Check Processing Center (RCPC) and country fees in seven Federal Reserve offices. Under tiered pricing, different fees are assessed depending on whether a check is presented to a high- or low-cost endpoint in a particular check collection zone. The Board approved tiered pricing as a permanent fee structure in the Minneapolis and Kansas City offices in 1986. At that time, the Board determined that other Federal Reserve districts could introduce tiered pricing if the following criteria were met: (1) The Board must approve the adoption of tiered pricing by any additional Federal Reserve office; (2) each office must offer tiered pricing as an option to the depositor in addition to an alternative fixed per item fee; (3) each office demonstrates clear cost differences between groups of items within a collection zone; and (4) each office anticipates potential net savings for a substantial amount of deposited volume or a substantial number of depositing institutions as a result of the implementation of the tiered pricing structure. The Board has approved the introduction of RCPC tiered pricing in 1991 for the Lewiston, Philadelphia, Cleveland, Cincinnati, Pittsburgh, and Columbus offices, and country tiered pricing in the Denver office. Each of these offices meets the criteria that have been established by the Board.

The increase in returned check fees is 8.9 percent, compared to a weighted average increase in 1990 fees of 15.2 percent. Of the 630 returned check fees, 259 will remain unchanged; 355 will increase; and 16 will decrease. Return

[1] The magnitude of the revenue and cost data reflected in this notice differs from that reported in the Board's Annual Report in that income on clearing balances and the cost of earnings credits are included on a net basis in income in this notice and are reflected in gross amounts in the Annual Report. In addition, the credit to expenses resulting from accounting for pensions in accordance with Financial Accounting Standards Board (FASB) Statement 87 "Employer's Accounting for Pensions," is not reflected in price setting for individual services and is not included in this notice.

item volume is projected to increase 1.4 percent, with the percentage of total returns that are qualified, rather than deposited as raw returns, increasing slightly from an estimated 9[illegible]1 percent in 1990 to 88.6 percent [illegible].

A decrease of 3.0 per[illegible] in weighted average fine sort fees for both forward collection and return items was also approved. Of the fine sort fees, 155 will remain unchanged, 6 will increase, and 83 will decrease. Fine sort volume is projected to increase 4.0 percent in 1991, compared to 3.3 percent in 1990, due in part to lower fine sort fees.

Five Federal Reserve districts will partially or fully implement in 1991 a new payor bank services fee structure approved in June. The new structure, which will be implemented by all districts by January 1, 1992, will result in uniform pricing of payor bank services, including extended Magnetic Ink Character Recognition (MICR) capture and truncation services, and will encourage the transition from basic MICR services to extended MICR capture and truncation.[2] The Cleveland, Richmond, St. Louis, Minneapolis, and Dallas districts will implement the new structure in 1991.

The Board also has approved modifying 31 check collection deadlines for 1991. Most deadline changes will extend the current deadlines by times ranging from 15 minutes to 75 minutes.

Automated clearing house (ACH). Comparisons of estimated 1990 and projected 1991 cost recovery performance for the commercial ACH service are shown in the table below.

[Dollar amounts in millions]

	Automated clearing house		
	Total cost	Total revenue	Recovery rate (percent)
1990	$53.5	$52.8	98.7
1991	56.6	57.9	98.9

The total costs in the table do not include special projects, which would reduce the Reserve Banks' 1990 recovery rate estimate to 98.2 percent; no special project costs related to the ACH service are budgeted for 1991. The Board believes that the Reserve Bank estimated 1990 cost recovery is conservative and that the Reserve Banks will more fully recover costs in 1990 than estimated. Total ACH costs, including PSAF, are projected to increase $5.1 million or 9.5 percent in 1991, while commercial ACH volume is projected to increase 22.8 percent, which is comparable to the current year's rate of volume increase. The Board believes that it is difficult to predict accurately 1991 volume activity in light of the plans of a number of banks to begin a private, national exchange of ACH payments sometime in 1991. Consequently, the actual 1991 volume, and possible cost recovery, could be lower than budgeted.

Non-automated ACH fee revenue continues to decline as more depository institutions originate and receive ACH transactions electronically. The Board has approved the retention of most 1991 non-automated fees at the 1990 levels, with the exception of an increase in the magnetic tape input fee from $4.50 to $6.00, to more accurately reflect the cost of tape handling and the implementation of new security procedures for tape originators.

The Board has reduced the interdistrict transaction per item fee from 1.6 cents to 1.5 cents in 1991, continuing the trend of prior years to narrow the difference between local and interdistrict processing fees in recognition of the evolution of interstate banking. The Board has increased the fee for processing return items by 4.0 cents to 5.0 cents for an intradistrict transaction and to 5.5 cents for interdistrict transactions. The higher return item processing fees reflect the higher cost of same-day accounting and settlement for these transactions. Also, return items are frequently deposited in small batches, which increases automated processing costs.

The Board has approved a new ACH fee of $10 per month to cover the administrative costs of maintaining ACH participant records. The fee will be assessed on each depository institution routing number contained in the Reserve Banks' central information files identifying an ACH participant. The fee will cover the administrative costs of adding ACH participants to and deleting them from the files, updating the participants' records periodically, and preparing accounting and statistical reports. The fee also will encourage depository institutions to delete routing numbers that are obsolete as a result of mergers or processing consolidation at the depository institutions, which would improve overall processing efficiency. The fee is nominal in light of the amount of fixed cost associated with ACH participation.

All fees will become effective on January 1, 1991, with the exceptions of the new interdistrict transaction fee, the new return item fees, and the new ACH participant fee, which will become effective on April 1, 1991. Some of the price changes will require modifications to the Federal Reserve's ACH software. The April 1 implementation date will coincide with a new software release and will also provide depository institutions additional time to delete routing numbers that are obsolete as a result of mergers or processing consolidation.

Funds transfer and net settlement. Comparisons of estimated 1990 and projected 1991 cost recovery performance for the funds transfer and net settlement service are shown in the table below.

[Dollar amounts in millions]

	Funds transfer and net settlement		
	Total cost	Total revenue	Recovery rate (percent)
1990	$75.7	$80.2	106.0
1991	80.5	82.4	102.3

The total costs in the table do not include special projects, which would reduce the Reserve Banks' 1990 recovery rate estimate to 105.3 percent; no special project costs related to the funds transfer service are budgeted for 1991. The Board believes that the actual 1990 recovery will be higher than the Reserve Bank estimate, based on year-to-date experience. Total funds transfer costs, including the PSAF, are projected to increase $4.8 million or about 6.4 percent in 1991. The volume of funds transfers originated is expected to increase 5.8 percent in 1991, compared to an estimated increase of 5.7 percent in 1990.

The Board recently approved the implementation of a telephone notice service for funds transfers sent to off-line receiving banks, effective January 1, 1991. (55 FR 40711, October 4, 1990) Under the new service, off-line receiving banks will be notified of incoming third-party funds transfers, including non-value messages related to a transfer of funds. In addition, notice will be provided for settlement transfers (and related non-value messages) if the off-line receiving bank has advised its Reserve Bank that it acts in a correspondent capacity for another bank. The Board has approved maintaining the telephone notice surcharge at the 1990 level of $4.00 and assessing this fee for the new telephone notice service.

For 1991, the Board will maintain all funds transfer and net settlement service fees at their current levels.

Book-entry securities. Comparisons of estimated 1990 and projected 1991 cost recovery performance for the book-entry securities service[3] are shown in the table below.

[Dollar amounts in millions]

		Book-Entry	
	Total cost	Total revenue	Recovery rate (percent)
1990	$10.2	$10.8	106.4
1991	11.2	11.2	100.1

The total costs in the table do not include special projects, which would reduce the estimated 1990 recovery rate to 104.9 percent; no special project costs related to the book-entry securities service are budgeted for 1991. Book-entry securities volume is projected to increase 4.3 percent in 1991 while costs will increase approximately 9.8 percent. Cost increases for the book-entry service are attributed primarily to changes in the methodology for distributing overhead and support costs as well as the costs of maintaining the current book-entry system.

The book-entry fees will remain unchanged in 1991. This is consistent with Treasury's decision to maintain the same fees for 1991 for book-entry transfers of its securities.

Electronic connections. Fees are charged for electronic connections to the Reserve Banks for Federal Reserve priced services. Cost and revenue associated with electronic access are allocated to the various priced services, based on usage.

The Board increased the fee for dedicated leased line connections from $600 to $700 for 1991, in order to more accurately reflect the cost of dedicated leased line circuits. The Board also has approved charging a new "gateway" access fee in 1991. Under gateway access, depository institutions with operations in different Federal Reserve districts can funnel their data communications traffic through one physical access point or gateway; Federal Reserve software will then handle the appropriate routing. The district in which the depository institution accesses the Federal Reserve will charge a monthly connection fee, and each district affected by gateway data transmissions will assess a $100 monthly surcharge to recover additional interdistrict data communications cost.

The Board also has increased the maximum amount the Reserve Banks can charge for computer-interface software certification from $4,000 to $8,000. The Reserve Banks charge depository institutions actual cost on a time and materials basis for software certification up to the maximum amount.

Definitive safekeeping and noncash collection. Comparisons of estimated 1990 and projected 1991 cost recovery performance for the definitive safekeeping and noncash collection service are shown in the table below.

[Dollar amounts in millions]

	Definitive safekeeping and noncash collection		
	Total cost	Total revenue	Recovery rate (percent)
1990	$16.2	$16.0	98.9
1991	15.7	15.4	98.1

Definitive safekeeping and noncash collection costs are expected to decrease by 3.4 percent in 1991 as Reserve Banks continue to monitor closely and adjust costs to volume declines. Definitive safekeeping volume in 1991 is expected to fall 26.2 percent and noncash collection volume is expected to decrease by approximately 9.8 percent. Volumes will continue to decline in this service, as no new bearer securities have been issued since 1983. Moreover, the significant volume decline in definitive safekeeping is also attributable to loss of customers and depository holdings and normal vault maturities. Noncash volume at the Federal Reserve and throughout the industry is decreasing as a result of continued depository immobilization of municipal securities, normal maturities of bearer securities, and issue of new securities in book-entry form.

In light of the significant decline in volumes, the System is developing a long-range plan for the Federal Reserve's continued involvement in the definitive safekeeping service and is beginning efforts to consolidate the noncash collection service. Specifically, the Board has approved the consolidation of the Minneapolis District's noncash collection service in two other districts effective January 1, 1991. Also, efforts to consolidate noncash collection processing across district lines have begun.

The Board has approved definitive safekeeping fee increases in six districts primarily to offset volume declines. The increases range from $3.00 to $8.00 for deposit and withdrawal fees; from $.45 to $1.00 for receipts/issues maintained; from $1.00 to $10.00 for purchases and sales and reregistrations; and, from $0.003 to $0.004 per month per $1,000 par value maintained. The Board has approved noncash collection fee increases in seven districts ranging from $.10 to $1.00 per envelope for collection of coupons and from $2.00 to $10.00 for processing return items and collection of matured or called bonds.

As previously indicated, the Board has approved the consolidation of the Federal Reserve Bank of Minneapolis' noncash collection service with two other districts on January 1, 1991. The consolidation of Minneapolis' noncash collection volume was prompted by that district's projected significant under recovery of costs in the upcoming years. Further cost reductions are not possible; further fee increases will only accelerate the decline in volume and increase the revenue shortfall. The Minneapolis District, therefore, will consolidate its noncash collection service at the Federal Reserve Bank of Cleveland and its Twelfth District noncash collection service[4] at the Jacksonville Branch of the Federal Reserve Bank of Atlanta. These consolidations will provide a Federal Reserve alternative to service users with items payable in the Ninth and Twelfth Districts; it will also avoid disruptions in service to Reserve Banks and depository institutions currently collecting items through the Federal Reserve System. Depository institutions will experience little change to the service received as a result of the consolidation.

Cash. Special cash services that are priced by the Federal Reserve Banks include (1) Cash transportation, (2) coin wrapping, (3) nonstandard packaging of currency orders and deposits, and (4) nonstandard frequency of access to cash services. Comparisons of the estimated 1990 and projected 1991 cost-recovery performance of the special cash services are shown in the table below.

[2] Under the extended MICR capture service, presentment is made to the paying bank by electronic delivery of the MICR-line data. The physical checks are retained by the Federal Reserve Bank office by several days prior to delivery to the paying bank so the Federal Reserve can return those checks that have not been paid, per instructions of the paying bank. Under the truncation service, presentment to the paying bank is also made by electronic delivery of the MICR-line data, and the Federal Reserve provides return services. Unlike the extended MICR capture service, the physical checks are not delivered to the paying bank other than on an exception basis under the Federal Reserve's retrieval service.

[3] These financial data relate only to book-entry transfers of Government agency securities, which are priced by the Federal Reserve.

[4] Twelfth District and Ninth District noncash collections has been consolidated at Minneapolis a few years ago.

[Dollar amounts in millions]

	Cash		
	Total cost	Total revenue	Recovery rate (percent)
1990	$14.0	$14.7	105
1991	15.2	15.8	103

There will be no 1991 price changes for cash services.

Competitive impact analysis. The Board conducts a competitive impact analysis when considering an operational or legal change, if that change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints or due to a dominant market position of the Federal Reserve deriving from such legal differences. All operational or legal changes having a substantial effect on payments system participants are subject to a competitive impact analysis.

The Board believes that the only proposed change that may have a substantial effect on payment system participants is the imposition of a new ACH participation fee. The Board believes that the ACH monthly participation fee will have no adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services. While other service providers do not currently charge an explicit participation fee, they recover their administrative costs directly through the imposition of other fixed fees, for example, access fees. Imposition of a participation fee, which reflects the Federal Reserve's ACH product function, will not provide the Federal Reserve a competitive advantage over other service providers.

By order of the Board of Governors of the Federal Reserve System, October 31, 1990.

William W. Wiles,

Secretary of the Board.

TABLE 1—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES

[Millions of dollars—average for year]

	1991	1990
Short-term assets:		
Imputed reserve requirement on clearing balances	$244.1	$286.3
Investment in marketable securities	1,790.4	2,099.4
Receivables [1]	32.8	32.0
Materials and supplies [1]	8.2	7.1
Prepaid expenses [1]	13.7	9.8
Items in process of collection	3,637.5	3,638.9
Total short-term assets	5,726.7	6,273.3
Long-term assets:		
Premises [1 2]	305.3	295.5
Furniture and equipment [1]	146.8	141.5
Leasehold improvements and long-term prepayments [1]	23.9	2.0
Capital leases	0.3	1.9
Total long-term assets	476.3	440.9
Total assets	6,203.0	6,714.2
Short-term liabilities:		
Clearing balances and balances arising from early credit of uncollected items	2,466.7	2,838.7
Deferred credit items	3,205.3	3,385.9
Short-term debt [3]	54.7	48.7
Total short-term liabilities	5,726.7	6,273.3
Long-term liabilities:		
Obligations under capital leases	.3	2.0
Long-term debt [3]	154.8	139.1
Total long-term liabilities	155.1	141.0
Total liabilities	5,881.8	6,414.3
Equity [3]	321.2	299.9
Total liabilities and equity	6,203.0	6,714.2

[1] Financed through PSAF; other assets are self-financing.
[2] Includes allocations of Board of Governors' assets to priced services of $0.5 million for 1991 and $0.3 million for 1990.
[3] Imputed figures; represent the source of financing for certain priced services assets.
Note: Details may not add to totals due to rounding.

TABLE 2—DERIVATION OF THE 1991 PSAF

[Millions of dollars]

A. Assets to be Financed: [1]	
Short-term	$54.7
Long-term [2]	476.0
Total	530.7
B. Weighted Average Cost:	
1. Capital Structure [3]	
Short-term Debt	10.3 (percent)

TABLE 2—DERIVATION OF THE 1991 PSAF—Continued

[Millions of dollars]

Long-term Debt	29.2 (percent)
Equity	60.5 (percent)
2. Financing Rates/Costs [3]	
Short-term Debt	8.6 (percent)
Long-term Debt	9.4 (percent)
Pre-tax Equity [4]	14.5 (percent)
Elements of Capital Costs:	
Short-term Debt	$54.7× 8.6% = $4.7
Long-term Debt	154.8×9.4% = 14.5
Equity	321.2×14.5% = 46.7
Total	$65.9
C. Other Required PSAF Recoveries:	
Sales Taxes	$8.7
Federal Deposit Insurance Assessment	9.2
Board of Governors Expenses	2.0
	19.9
D. Total PSAF Recoveries	$85.8
As a percent of capital (percent)	16.2
As a percent of expenses [5] (percent)	14.7

[1] Priced service asset base is based on the direct determination of assets method.
[2] Consists of total long-term assets less capital leases, which are self-financing.
[3] All short-term assets are assumed to be financed by short-term debt. Of the total long-term assets, 33 percent are assumed to be financed by long term debt and 67 percent by equity.
[4] The pre-tax rate of return on equity is based on the average after-tax rate of return on equity, adjusted by the effective tax rate to yield the pre-tax rate of return on equity for each bank holding company for each year. These data are then averaged over five years to yield the pre-tax return on equity for use in the PSAF.
[5] Systemwide 1991 budgeted priced service expenses less shipping are $582.6 million.

TABLE 3—CHANGES BETWEEN 1991 AND 1990 PSAF COMPONENTS

	1991	1990
A. Assets to be Financed (millions of dollars):		
Short-term	$54.7	$48.7
Long-term	476.0	439.0
B. Cost of Capital:		
Short-term Debt Rate (percent)	8.6	7.3
Long-term Debt Rate (percent)	9.4	9.6
Pre-tax Return on Equity (percent)	14.5	15.5
Weighted Average Long-term Cost of Capital (percent)	12.9	13.6
C. Tax Rate (percent)	30.5	27.8
D. Capital Structure:		
Short-term Debt (percent)	10.3	10.0
Long-term Debt (percent)	29.2	28.5
Equity (percent)	60.5	61.5
E. Other Required PSAF Recoveries (millions of dollars):		
Sales Taxes	$8.7	$8.9
Federal Deposit Insurance Assessment	9.2	4.3
Board of Governors Expenses	2.0	1.7
F. Total PSAF:		
Required Recovery	$85.8	$79.4
As Percent of Capital (percent)	16.2	16.3
As Percent of Expenses (percent)	14.7	14.2

TABLE 4—COMPUTATION OF CAPITAL ADEQUACY FOR FEDERAL RESERVE PRICED SERVICES

[Millions of dollars]

	Assets	Risk weight	Weighted assets
Imputed reserve requirement on clearing balances	$244.1	0	0
Investment in marketable securities	1,790.4	0	0
Receivables	32.8	0.2	$6.6
Materials and supplies	8.2	1.0	8.2
Prepaid expenses	13.7	1.0	13.7
Items in process of collection	3,637.5	.2	727.5
Premises	305.4	1.0	305.4
Furniture and equipment	146.8	1.0	146.8
Leases and long-term prepayments	24.2	1.0	24.2
Total	$6,203.1		$1,232.4
Imputed Equity for 1991	$321.2		

TABLE 4—COMPUTATION OF CAPITAL ADEQUACY FOR FEDERAL RESERVE PRICED SERVICES—Continued

[Millions of dollars]

	Assets	Risk weight	Weighted assets
Capital to Risk-Weighted Assets (percent)	26.1		

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BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[File No. 902 3010]

Miles Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an Indiana coporation from making any benefit claims relating to the consumption of any vitamin or mineral supplement, and from making any representation concerning the need for, or benefit from, consumption of any One-A-Day vitamin product, unless respondent possesses competent and reliable scientific evidence to substantiate such claim or representation.

DATES: Comments must be received on or before January 7, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mark Kindt, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Ave., suite 520-A, Cleveland, OH, (216) 522-4210.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with the accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Miles Inc., a corporation ("proposed respondent"), and it now appearing that proposed respondent is willing to enter into an agreement containing an Order to Cease and Desist from the use of the acts or practices being investigated,

It is hereby agreed by and between proposed respondent, by its duly authorized officer and its attorney and counsel for the Federal Trade Commission that:

1. Proposed respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 1127 Myrtle Street, Post Office Box 40, Elkhart, Indiana 46515.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft Complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's Decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review and otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the draft Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Aggreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and Decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft Complaint here attached.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its Complaint corresponding in form and substance with the draft Complaint and its Decision containing the following Order to Cease and Desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order to Cease and Desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall became final upon service. Delivery by the United State Postal Service of the Complaint and Decision containing the agreed-to Order to proposed respondent's address as stated in this Agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The Complaint attached hereto may be used in construing the terms of the Order. No agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed Complaint and Order contemplated hereby. Proposed respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violaton of the Order after it becomes final.

Order

I

It is ordered That respondent Miles Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of vitamin and/or mineral supplements, do forthwith cease and desist from representing, directly or by implication, that consumption of any such product:

(A) Affords any protection or benefit to human lungs;

(B) Is necessary or beneficial in replacing any vitamin and/or mineral lost through physical exercise;

(C) Is necessary or beneficial in replacing any vitamins and/or minerals lost as a result of, or provides any benefit with regard to, the stress of daily living;

unless, at the time such representation is made, respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence to substantiate the representation; competent and reliable scientific evidence shall mean those tests, analyses, research, studies or other evidence, conducted and evaluated in an objective manner by persons qualified to do so using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

II

It is further ordered That respondent Miles Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of One-A-Day brand vitamins, including specifically, but not limited to, One-A-Day Maximum Formula, One-A-Day Stressgard, One-A-Day Essential, One-A-Day Plus Extra C, and One-A-Day Within, do forthwith cease and desist from making any representation, directly or by implication, concerning the need for or benefits to be derived from consumption of such product unless, at the time such representation is made, respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence to substantiate the representation; competent and reliable scientific evidence shall mean those tests, analyses, research, studies or other evidence, conducted and evaluated in an objective manner by persons qualified to do so using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

III

It is further ordered That, for three (3) years from the date that the representations are last disseminated, respondent shall maintain and upon request make available to the Commission for inspection and copying:

(A) All materials relied upon to substantiate any claim or representation covered by this Order; and

(B) All tests, reports, studies, surveys or other materials in its possession or control that contradict, qualify or call into question such representation or the basis upon which respondent relied for such representation.

IV

It is further ordered That respondent shall distribute a copy of this Order to each officer and other person responsible for the preparation or review of advertising material for products subject to this Order.

V

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

VI

It is further ordered That respondent shall, within sixty (60) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed Consent Order from Miles Inc., a corporation.

The proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed Order contained in the agreement.

This matter concerns advertisements by Miles Inc. for its One-A-Day brand multiple vitamins.

The Complaint alleges that Miles Inc. engaged in deceptive advertising in violation of sections 5 and 12 of the Federal Trade Commission Act by falsely implying that it had scientific substantiation for three advertising claims made for One-A-Day vitamins:

(A) Consumption of vitamins A, C and E in the form and amount contained in One-A-Day protects human lungs against the adverse effects caused by typical air pollution;

(B) The stress of daily living depletes vitamin B in the body so that consumption of a daily vitamin supplement, such as One-A-Day, is necessary or beneficial;

(C) Ordinary rigorous physical exercise depletes essential minerals in the body so that consumption of a daily vitamin supplement, such as One-A-Day, is necessary or beneficial.

The Consent Order contains provisions designed to ensure that in the future Miles Inc. has substantiation for the types of claims at issue here. Part I of the Order prohibits Miles Inc. from claiming that consumption of any vitamin and/or mineral supplements affords any protection or benefit to human lungs; is necessary or beneficial in replacing any vitamins and/or minerals lost through physical exercise; or is necessary or beneficial in replacing any vitamins and/or minerals lost as a result of, or provides any benefit with regard to, the stress of daily living, unless at the time the representation is made Miles Inc. possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence to substantiate the representation.

Part II of the Order prohibits Miles Inc. from making any representation concerning the need for, or benefits to be derived from, consumption of any One-A-Day vitamin product unless at the time such representation is made Miles Inc. possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence to substantiate the representation.

The remainder of the Order contains standard record-retention and notification provisions.

The purpose of this analysis is to facilitate public comment on the proposed Order. It is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 90-26221 Filed 11-5-90; 8:45 am]
BILLING CODE 6750-01-M

[File No. 891 0071]

Pepsico, Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a soft drink concentrate manufacturer and bottler to divest, within a nine-month period, the soft drink business of the Twin Ports

Bottling Company, which respondent acquired from MEI Corporation in 1986. Respondent would also be required, for a period of ten years, to seek prior Commission approval before acquiring any soft drink distribution rights to non-Pepsi brands, in the Duluth, Minnesota area.

DATES: Comments must be received on or before January 7, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580).

FOR FURTHER INFORMATION CONTACT: Marc Schildkraut, FTC/S–3302, Washington, DC 20580. (202) 326–2822.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission (the "Commission"), having initiated an investigation into the 1986 acquisition by PepsiCo, Inc. ("PepsiCo") of the Twin Ports Seven-Up Bottling Company ("Acquisition") from MEI Corporation; and is now appearing that PepsiCo, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing consent order ("agreement") to divest certain assets and to cease and desist from certain acts and practices,

It is hereby agreed by and between PepsiCo, by its duly authorized officers and its attorneys, and counsel for the Commission, that:

1. Proposed respondent PepsiCo is a corporation organized, existing, and doing business under and by virtue of the laws of the State of North Carolina, with its executive offices and principal place of business located at 700 Anderson Hill Road, Purchase, New York 10577.

2. PepsiCo admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. PepsiCo waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) All rights under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft of complaint hereto attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to PepsiCo, (a) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order in disposition of the proceeding, and (b) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to PepsiCo at its address as stated in this agreement shall constitute service. PepsiCo waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. PepsiCo has read the proposed complaint and Order contemplated hereby. PepsiCo understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. PepsiCo further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

For purposes of this Order, the following definitions shall apply:

A. "PepsiCo" means PepsiCo, Inc., a North Carolina corporation, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates controlled by PepsiCo, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

B. "Twin Ports" means the Twin Ports Seven-Up Bottling Company, an unincorporated division of the Pepsi-Cola Bottling Company of Minneapolis and St. Paul, a wholly-owned subsidiary of PepsiCo, which unincorporated entity is engaged in the soft drink business.

C. "Acquisition" means PepsiCo's acquisition of Twin Ports.

D. "Commission" means the Federal Trade Commission.

E. "Duluth area" means the Duluth, Minnesota area as described in Exhibit 2 to this Order.

F. "Person" means any natural person or any corporate entity, partnership, association, joint venture, governmental entity, trust or any other organization or entity.

G. "Twin Ports Soft Drink Business" means the carbonated and noncarbonated soft drink assets, as described in Exhibit 1 to this Order, acquired by PepsiCo through the Acquisition.

H. "Soft drink" means a carbonated soft drink, as classified under the four-digit Standard Industrial Classification industry code 2086.

I. "Primary bottler of PepsiCo-brand soft drinks" means the bottler that distributes or sells more PepsiCo-brand soft drinks by volume than any other bottler in the area.

J. "Obligations" means all actual and contingent liabilities of Twin Ports.

II

It is ordered That:

A. Within nine (9) months from the date this Order becomes final, PepsiCo shall divest, absolutely and in good faith, the Twin Ports Soft Drink Business. The purpose of the divestiture is to reestablish Twin Ports as an independent competitor and to remedy the alleged lessening of competition resulting from the Acquisition, as stated in the draft complaint.

B. The divestiture shall be made only to an acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission.

C. Pending divestiture, PepsiCo shall take all measures necessary to maintain the Twin Ports Soft Drink Business and to prevent any deterioration, except for normal wear and tear, of any part of the Twin Ports Soft Drink Business, so as not to impair the operating or competitive viability or market value of the Twin Ports Soft Drink Business.

III

It is Further ordered That:

A. At the time of the divestiture required by this Order or at any time thereafter, PepsiCo shall not interfere with any attempt by the acquirer of the Twin Ports Soft Drink Business to employ, in connection with the operation of the business to be divested, any personnel previously or currently employed by Twin Ports, or currently employed by PepsiCo and having significant responsibilities for the Twin Ports Soft Drink Business in the Duluth area, nor seek to enforce any employment contract against such personnel.

B. The Twin Ports obligations transferred by PepsiCo, if any, shall be either those carried by Twin Ports at the time of its acquisition by PepsiCo, or those carried by Twin Ports at the time of its divestiture by PepsiCo, whichever is smaller in amount.

IV

A. If PepsiCo has not divested the Twin Ports Soft Drink Business within the nine-month period provided by paragraph II of this Order, PepsiCo shall consent to the appointment of a trustee by the Commission to divest the Twin Ports Soft Drink Business. In the event the Commission or the Attorney General brings an action pursuant to section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1) or any other statute enforced by the Commission, PepsiCo shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties and any other relief available to it, including a court-appointed trustee, pursuant to section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by PepsiCo to comply with this Order.

B. PepsiCo shall execute the trust agreement within sixty (60) days of the appointment of a trustee.

C. If a trustee is appointed by the Commission or a court pursuant to this Paragraph, PepsiCo shall consent to the following terms and conditions regarding the trustee's powers, authority, duties, and responsibilities:

(1) The Commission shall select the trustee, subject to the consent of PepsiCo, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisition and divestitures.

(2) The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest the Twin Ports Soft Drink Business. The trustee shall have fifteen (15) months from the date of appointment to accomplish the divestiture. If, however, at the end of the fifteen-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission and, in the case of a court-appointed trustee, by the court.

(3) The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to PepsiCo's absolute and unconditional obligation to divest and the purpose of the divestiture as stated in Paragraph II of this Order and subject to the prior approval of the Commission. If the trustee receives bona fide offers from more than one prospective acquirer, and if the Commission approves more than one such acquirer, the trustee shall divest to the acquirer selected by PepsiCo from among those approved by the Commission.

(4) The trustee shall have full and complete access to the personnel, books, records and facilities of the Twin Ports Soft Drink Business, or any other information relevant to the Twin Ports Soft Drink Business, as the trustee may reasonably request. PepsiCo shall cooperate with the trustee and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by PepsiCo shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

(5) The trustee shall serve, without bond or other security, at the cost and expense of PepsiCo on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of PepsiCo, such consultants, attorneys, investment bankers, business brokers, accountants, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for monies derived from the divestiture and for all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to PepsiCo, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a Commission arrangement contingent on the trustee divesting the Twin Ports Soft Drink Business.

(6) PepsiCo shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order, except for any losses, claims, damages, or liabilities resulting from the trustee's negligence or willful misconduct.

(7) Within sixty (60) days after appointment of the trustee and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, PepsiCo shall, consistent with provisions of this Order, transfer to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

(8) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in this Order.

(9) The Commission and, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

(10) The trustee shall have no obligation or authority to operate or maintain the Twin Ports Soft Drink Business.

(11) The trustee shall report in writing to PepsiCo and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

V

It is further ordered That, for a period commencing on the date this Order becomes final and continuing for ten (10) years, PepsiCo shall not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, (1) any right to distribute any soft drink in the Duluth area; (2) any interest in, or any stock or share capital of any entity that owns or otherwise has any right to distrubite any soft drink in the Duluth area. Provided, however, the prohibitions of this Paragraph V, shall not apply to any right to distribute any soft drink held by, or any interest in, or any stock or share capital of the primary bottler of PepsiCo-brand soft drinks in the Duluth area.

VI

It is further ordered That on the first anniversary of the date this Order becomes final, on every anniversary thereafter for the following ten (10) years, and at such other times as the Commission or its staff may request, PepsiCo shall submit a verified written report setting forth in detail the manner and form of its compliance with Paragraph V. of this Order. Such reports filed by PepsiCo shall include a listing of all acquisitions in the Duluth area made by PepsiCo without the prior approval of the Commission under Paragraph V. of this Order.

VII

It is further ordered That PepsiCo shall notify the Commission at least thrity (30) days prior to any proposed corporate change in respondent, such as dissolution, assignment or sale resulting in the emergence of a successor entity, the creation or dissolution of subsidiaries or any other change in the corporation, that may affect compliance with the obligations arising out of this Order.

Exhibit 1—Twin Ports Soft Drink Business

The Twin Ports Soft Drink Business includes all franchises, licenses, bottling appointments, distribution and other agreements with respect to the Seven-Up, Dr Pepper, A&W, Squirt, and Lipton brands distributed or sold in the Duluth area; together with four (4) trucks, three (3) forklifts, three (3) vans, vending machines, visi-coolers, fountain equipment, full goods inventory, and point-of-sale marketing materials dedicated to those products in the Duluth area; funded employee benefit

pension plans for employees of the Twin Ports Soft Drink Business in the Duluth area; supply arrangements; customer lists; trade names and goodwill relating to the Twin Ports Soft Drink Business in the Duluth area. The Twin Ports Soft Drink Business in the Duluth area also includes all customers agreements or understandings, whether formal or informal in effect at the time of divestiture, and all customer records and files existing at the time of divestiture.

Exhibit 2—Duluth, Minnesota Area

The Duluth, Minnesota area shall consist of: (1) Cook County and Lake County, Minnesota, (2) Douglas County, Wisconsin; (3) Carlton County, Minnesota, except for the town of Moose Lake for A&W, Dr Pepper, Lipton, and Seven-Up; and the following additional counties or portions thereof for the products specified:

A. Lipton

1. Aitkin County, Minnesota

That portion east of a line commencing at the junction of the south boundary of Lakeside township and Mille Lacs, drawn north to the northwest corner of Lakeside township; thence east to the northeast corner of Lakeside township, thence north to the northwest corner of Jevne township; thence east to the northeast corner of McGregor township; thence north to the Aitkin-Itasca County line.

2. St. Louis County, Minnesota

That portion south and east of an east-west line from the junction of the St. Louis-Lake County line and the south boundary of Easset township, due west to the northwest corner of Colvin township, thence south to the southeast corner of Ellsburg township, thence west to the St. Louis-Itasca County line.

B. Squirt

1. Aitkin County, Minnesota

That portion of Aitkin county north of an east-west line drawn through a point two miles south of the town of Aitkin.

2. St. Louis County, Minnesota

That portion of St. Louis County south of an east-west line drawn through a point two miles north of the town of Cotton.

3. Bayfield County, Wisconsin

All of Bayfield County, except that portion east of a line beginning at a point where Highway #13 crosses the Ashland-Bayfield county line and extending from this point north along with highway to the town of Red Cliff and excepting the town of Red Cliff and all stops, towns and outlets on said highway.

C. A&W

1. Itasca County, Minnesota

2. Cass County, Minnesota

All of Cass county except that portion bounded on the south by the southern boundary of Deerfield, Powers, and Ponto Lake townships and on the east by the eastern boundary of Ponto Lake, Woodrow and Pike Lake townships and a continuation of this north-south line to the northern boundary of the county.

3. Crow Wing County, Minnesota

All of Crow Wing County except the Village of Fort Ripley.

4. Koochiching County, Minnesota

The town of Cragville only.

5. St. Louis County, Minnesota

That portion of St. Louis County south and east of a line starting at a point on the northern boundary of St. Louis due north of east edge of Finsted Lake, thence south to the east edge of Finsted Lake, thence southwest to a point two miles due south of Gheen Corner, then due west to Koochiching-St. Louis Line.

6. Bayfield County, Wisconsin

7. Ashland County, Wisconsin

The townships of Ashland, Gingles, La Pointe, Marengo, Morse, Sanborn, and White River only.

D. Dr Pepper

1. Itasca County, Minnesota

2. Aitkin County, Minnesota

That portion north of an east-west line running through the most northern point on the boundary of the town of McGregor. It is intended by this description to exclude from the Duluth territory the town of McGregor and all other dealer outlets located on the east-west line described herein. This description is as so located on February 3, 1965.

3. St. Louis County, Minnesota

That portion south of an east-west line drawn through the most southern point on the boundary of the town of Cotton, Minnesota. It is intended by this description to exclude from the Duluth franchised territory the towns of Ore, Cotton, and Toivola and all other towns and dealer outlets located on the above described east-west line. This description is as so located on September 24, 1963.

4. Cass County, Minnesota

That portion north of an east-west line running through the most northern point on the boundary of the town of Walker and east of a line beginning at the most northern point on the boundary of the town of Walker; thence, northeast on a straight line to the point U.S. Highway No. 2 intersects the west boundary of Bena; thence, northwest on a straight line to the Beltrami County line due east of the town of Pennington. It is intended by this description to exclude from the Duluth territory the towns of Walker and Bena and all other dealer outlets located on the line described herein. This entire description is as so located on February 3, 1965.

E. Seven-Up

1. Aitkin County, Minnesota

That portion east of a line commencing at the junction of the south boundary of Lakeside township and Mille Lacs, drawn north to the northwest corner of Lakeside township; thence east to the northeast corner of Lakeside township; thence north to the northwest corner of Jevne township; thence east to the northeast corner of McGregor township; thence north to the Aitkin-Itasca County line.

2. Itasca County, Minnesota

Goodland and Wawina townships only.

3. St. Louis County, Minnesota

That portion south and east of an east-west line from the junction of the St. Louis-Lake County line and the south boundary of Basset township, due west to the northwest corner of Colvin township, thence south to the southwest corner of Ellsburg township, thence west to the St. Louis-Itasca County line.

4. Bayfield County, Wisconsin

5. Ashland County, Wisconsin

That portion north of the northern boundary of Gordon Township.

Analysis to Aid Public Comment on Provisionally Accepted Consent Order

The Federal Trade Commission has accepted for public comment from PepsiCo, Inc. ("PepsiCo"), an agreement containing a proposed consent order.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and comments received, and will decide whether it should withdraw from the agreement, make final the agreement's order or modify the order.

The Commission's investigation of this matter concerns the 1986 acquisition of Twin Ports Bottling Company by PepsiCo from MEI Corporation. PepsiCo is a soft drink concentrate manufacturer. PepsiCo supplies Pepsi-brand syrup or concentrate to its franchised bottlers operating in local markets in the United States. PepsiCo's franchised bottlers also sell other soft drinks. PepsiCo is a bottler of Pepsi-brand and other soft drinks in a number of these local markets.

The agreement containing the proposed consent order, if issued by the Commission, would settle the complaint. The complaint alleges that PepsiCo's acquisition of Twin Ports in Duluth, Minnesota and a twelve-county area in and around Duluth would substantially lessen competition in all or branded carbonated soft drinks in that area and would violate section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates the anticompetitive effects. The Duluth area includes the following counties or portions of counties: Cook and Lake Counties, Minnesota; Douglas County, Wisconsin; parts of Carlton, Aitkin, St. Louis, Itasca, Cass, Crow, and Koochiching Counties, Minnesota; and parts of Bayfield and Ashland Counties, Wisconsin.

PepsiCo sells non-Pepsi brands in competition with the Pepsi brands sold by its franchised bottler in these counties. The risk of inter-brand collusion is increased in these counties. Absent the Commission's order, PepsiCo would remain both a bottler of other soft drink brands and a supplier of concentrate to its Pepsi bottler.

The proposed consent order requires PepsiCo to divest Twin Ports within a nine-month period. The proposed order also contains a requirement that PepsiCo seek prior Commission approval for a period of ten years from the date the order becomes final before acquiring the rights to distribute non-Pepsi brands or before acquiring any person with such rights in the Duluth area.

The proposed order would resolve the competitive problems alleged in the complaint. The purpose of this analysis is to invite public comment concerning the proposed order to assist the Commission in its determination to make final the order contained in the agreement.

This analysis is not intended to constitute an official interpretation of the agreement and the proposed order or to modify its terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 90-26222 Filed 11-5-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0373]

Drug Export; PHOTOFRIN® Porfimer Sodium 15 MG and 75 MG Vials

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Lederle Laboratories, a Divison of American Cyanamid Co., has filed an application requesting approval for the export of the human drug PHOTOFRIN® porfimer sodium 15 mg and 75 mg vials to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frank R. Fazzari, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Lederle Laboratories, a Division of American Cyanamid Co., Pearl River, NY 10965, has filed an application requesting approval for the export of the human drug PHOTOFRIN® porfimer sodium 15 mg and 75 mg vials to Canada. This drug is indicated for use in the treatment of lung, bladder, and esophageal cancers. The application was received and filed in the Center for Drug Evaluation and Research on September 20, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by November 16, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: October 24, 1990.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 90-26193 Filed 11-5-90; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92-463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

Advisory Council on Nurses Education.

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading room, room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC, or weekdays between 9 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Law Library, HHS North Building, room G-619, 330 Independence Avenue, SW., Washington, DC, telephone (202) 245-6791. Copies may be obtained from: Dr. Mary S. Hill, Executive Secretary, Advisory Council on Nurses Education, room 5C-14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-6193.

Dated: November 1, 1990.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 90-26245 Filed 11-5-90; 8:45 am]

BILLING CODE 4160-15-M

Health Education Assistance Loan Program, "Maximum Interest Rates for Quarter Ending December 31, 1990"

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

Section 60.13(a)(4) of the program's implementing regulations (42 CFR part 60, previously 45 CFR part 128) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending December 31, 1990, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 11¼ percent. Using the regulatory formula (45 CFR 126.13(a)), in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter (7.74 percent), and rounding the result (11.24 percent) upward to the nearest ⅛ percent (11¼ percent).

However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending December 31, 1990, is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 11⅛ percent for the quarter ending March 31, 1990; 11⅝ percent for the quarter ending June 30, 1990; and 11⅝ percent for the quarter ending September 30, 1990.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 11¼ percent. Using the regulatory formula (42 CFR 60.13 (a)) in effect for that time period, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (7.74 percent); adding 3.50 percent (11.24 percent); and rounding that figure to the next higher one-eighth of 1 percent (11¼ percent).

3. For fixed rate loans executed during the period of October 1, 1990 through December 31, 1990, and for variable rate loans executed on or after October 22, 1985, the interest rate is 10¾ percent. The Health Professions Training Assistance Act of 1985 (Pub. L. 99–129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a)), the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (7.74 percent); adding 3.0 percent (10.74 percent) and rounding that figure to the next higher one-eighth of 1 percent (10¾ percent).

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: October 31, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90–26192 Filed 11–05–90; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

The 1990 State/Federal Natural Resource Damage Assessment and Restoration Plan for the Exxon Valdez Oil Spill

AGENCY: Department of Interior.

ACTION: The 1990 State/Federal Natural Resource Damage Assessment and Restoration Plan for the *Exxon Valdez* Oil Spill; extension of comment period to November 30, 1990.

SUMMARY: This Notice announces a 30 day extension of time for comments on the 1990 State/Federal Natural Resource Damage Assessment and Restoration Plan. This joint State/Federal plan has been prepared by the Trustee Council and was made available to the public on September 15, 1990.

DATES: All comments concerning the plan must be written and submitted to the following address by November 30, 1990: Trustee Council, P.O. Box 22755, Juneau, Alaska 99802.

ADDRESSES: A copy of the 1990 assessment and restoration plan may be obtained by contacting the Trustee Council at one of the following addresses: Trustee Council, c/o U.S. Forest Service Public Affairs (telephone (907) 586–8806, P.O. Box 22755, Juneau, Alaska 99802 or Trustee Council c/o Deputy Director, U.S. Fish and Wildlife Service, room 3340, 1849 C Street, NW., Washington, DC 20240 (telephone (202) 208–6286).

FOR FURTHER INFORMATION CONTACT: U.S. Forest Service Public Affairs Office (907) 586–8806.

SUPPLEMENTARY INFORMATION: The March 24, 1989 grounding of the tanker *Exxon Valdez* resulted in the discharge of approximately 11 million gallons of North Slope crude oil into Alaska's Prince William Sound. The oil moved through the southwestern portion of the Sound and along the coast of the western Gulf of Alaska, affecting natural resources.

The natural resources Trustees (the State of Alaska, U.S. Departments of Agriculture and the Interior, and the National Oceanic and Atmospheric Administration) instituted a natural resource damage assessment process to estimate the damages for injury, loss or destruction of trustee resources as a result of the tanker accident, as authorized under section 311 of the Clean Water Act (CWA) and section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). To accomplish this task, the Trustees established a Trustee Council, based in Alaska, to manage the assessment process. The Environmental Protection Agency (EPA) is an advisor to the Trustees and Trustee Council and has been designated by the President to coordinate the overall long-term restoration of the affected area on behalf of the Federal Trustees. The Trustees, through the Trustee Council, have prepared the 1990 State/Federal Natural Resource Damage Assessment and Restoration Plan for the *Exxon Valdez* Oil Spill. The studies in the 1990 plan build upon the 1989 damage assessment studies. These studies are designed to identify the nature and extent of the injury to, loss of, or destruction of natural resources and will lead to a determination of damages as compensation for that injury, loss or destruction. The plan also includes several restoration feasibility projects.

The Trustee Council has received comments requesting that the comment period be extended for an additional 30 days. This notice announces extension of the comment period until November 30, 1990.

Dated: October 31, 1990.

Martin J. Suuberg,

Deputy Solicitor.

[FR Doc. 90–26129 Filed 10–31–90; 3:08 pm]

BILLING CODE 4310-10-M

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On August 27, 1990, a notice was published in the **Federal Register** (Vol. 55, FR #166) that an application had been filed with the Fish and Wildlife Service by the Fish & Wildlife Service, Alaska Fish & Wildlife Research Center, PRT–690038, for a permit to continue take activities with Polar bears (*Ursus maritimus*) through 1995 for scientific research purposes.

Notice is hereby given that on October 15, 1990, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

The permits are available for public inspection during normal business hours at the Office of Management Authority, 4401 N. Fairfax Dr., Arlington VA., 22203, room 432.

Dated: October 31, 1990.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 90–26144 Filed 11–5–90; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18).

Applicant

Name: U.S. Fish and Wildlife Service, Alaska Fish & Wildlife Research Center, 1011 East Tudor Road, Anchorage, Alaska 99503; File No. PRT–740507.

Type of permit: Scientific Research.

Name of animals: Alaska sea otters (*Enhydra lutris*).

Summary of activity to be authorized: Amendment of current permit to allow the import of parts of deceased otters that were previously placed in zoos or aquaria in other countries.

Period of activity: At least through 1991.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the amendment request, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), 4401 N. Fairfax Dr., room 432, Arlington, VA 22203, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) at 4401 N. Fairfax Drive, room 430, Arlington, VA 22203.

Dated: October 31, 1990.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 90–26145 Filed 11–5–90; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Atlantic Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of the availability of environmental documents prepared for an outer continental shelf (OCS) minerals exploration proposal on the Atlantic OCS.

SUMMARY: The MMS, in accordance with Federal regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of a NEPA-related Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) prepared by the MMS for oil and gas exploration activities proposed on the Atlantic OCS.

Proposal

Mobil Oil Exploration and Producing Southeast Incorporated (designated as the operator of a 21-block exploration unit by the other lessees, Amerada Hess, Chevron, Conoco, Marathon, Occidental, Shell, and Union) proposes to drill a single exploratory well on OCS Block NI 18–2–487 (Lease OCS–A 0236). The proposed well would be located approximately 39 miles due east of Salvo, NC in 2,690 feet of water. The proposal is to drill the well from the SONAT drillship *Discoverer 534* or like vessel over an approximate 114-day period during the first favorable weather window (*i.e.*, May through October) following receipt of all permits and approvals.

The 21 blocks comprising the Manteo Prospect and included in the Manteo Unit were leased during OCS Lease Sale 56 (September 1981) and OCS Lease Sale 78 (September 1983). All of these leases have primary lease terms of 10 years and are currently covered by a Suspension of Operations.

The EA and FONSI prepared for the proposed action of drilling a single exploratory well on Block 487 were completed by the Atlantic OCS regional office of the MMS on September 28, 1990. Persons interested in reviewing environmental documents for the proposal listed above or obtaining information about EA's and FONSI's prepared for activities on the Atlantic OCS are encouraged to contact the MMS in the Atlantic OCS Region.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Atlantic OCS Region, Office of the Regional Supervisor, for Leasing and Environment, 381 Elden Street, suite 1100, Herndon, VA 22170–4817, telephone: (703) 787–1110, FTS 393–1110.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for oil and gas resources on the Atlantic OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA 102(2) (C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This Notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: October 29, 1990.

Bruce G. Weetman,

Regional Director, Atlantic OCS Region.

[FR Doc. 90–26142 Filed 11–5–90; 8:45 am]

BILLING CODE 4310-MR-M

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for

which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
GFS Company, Geophysical Exploration for Mineral Resources, SEA No. L89-123.	Eugene Island Area, Blocks 37, 38, and 58; 4 miles offshore Louisiana; Ship Shoal Area, Blocks 2, 8, 9, 10, 11, 12, 13, 14, 28, and 29; 4 miles offshore Louisiana.	6/29/90
Transcontinental Gas Pipe Line Corporation, Pipeline Activity, SEA No. OCS-G 12318.	High Island Area, East Addition, South Extension, Blocks A-384, A-379, A-383, and A-382, and High Island Area, South Addition, Block A-573, Lease OCS-G 12318, 110 miles southeast of the nearest coastline in Texas.	8/20/90
Phillips Petroleum Company, one exploratory well, SEA No. N-3652.	High Island Area, East Addition, South Extension, Block A-377, Lease OCS-G 11406, 110 miles southeast of the nearest coastline on Galveston Island, Texas.	7/18/90
Mobil Exploration & Producing Inc., structure removal operations, SEA No. ES/SR 90-033.	West Cameron Area, Block 583, Lease OCS-G 5349, 60 miles southwest of Leaville, Louisiana.	7/23/90
Marathon Oil Company, structure removal operations, SEA No. ES/SR 90-045.	West Delta Area, Block 86(N/2), Lease OCS-G 2934, 15 miles southwest of Plaquemines Parish, Louisiana.	8/06/90
CNG Producing Company, structure removal operations, SEA No. ES/SR 90-055.	High Island Area, Block A-257, Lease OCS-G 7330, 80 miles south of Cameron Parish, Louisiana.	8/27/90
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 90-069.	South Timbalier Area, Block 63, Lease OCS 0599, 24 miles south of Lafourche Parish, Louisiana.	8/20/90
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 90-075.	South Timbalier Area, Block 37, Lease OCS-G 2625, 11 miles south of Lafourche Parish, Louisiana.	8/17/90
Elf Exploration Inc., structure removal operations, SEA No. ES/SR 90-088.	East Cameron Area, Block 196, Lease OCS-G 5379, 60 miles south of Cameron Parish, Louisiana.	9/11/90
CNG Producing Company, structure removal operations, SEA No. ES/SR 90-095.	West Cameron Area, Block 600, Lease OCS-G 5354, 120 miles south of Cameron Parish, Louisiana.	9/06/90
OXY USA Inc., structure removal operations, SEA No. ES/SR 90-036.	Brazos Area, South Addition, Block A-76, Lease OCS-G 1752, 39 miles southeast of Matagorda County, Texas.	8/14/90
Texaco USA, structure removal operations, SEA Nos. ES/SR 90-037 and 90-038.	Vermilion Area, Block 57, Lease OCS 0554, 14 miles south of Vermilion Parish, Louisiana; South Marsh Island Area, North Addition, Block 217, Lease OCS 0310, 10 miles south of Vermilion Parish, Louisiana.	5/25/90
Walter Oil & Gas Corporation, structure removal operations, SEA No. ES/SR 90-046.	Matagorda Island Area, Block 585, Lease OCS-G 4138, 11 miles southeast of Matagorda Island, Calhoun County, Texas.	6/28/90
Exxon Company, U.S.A., structure removal operations, SEA No. ES/SR 90-048.	Vermilion Area, South Addition, Block 372, Lease OCS-G 2576, 99 miles south of Vermilion Parish, Louisiana.	6/28/90
Conoco Inc., structure removal operations, SEA No. ES/SR 90-053.	East Cameron Area, Block 97, Lease OCS-G 3294, 25 miles south of Cameron Parish, Louisiana.	8/10/90
Conoco Inc., structure removal operations, SEA No. ES/SR 90-054.	West Cameron Area, Block 459, Lease OCS-G 3383, 87 miles south of Cameron Parish, Louisiana.	7/17/90
Apache Corporation, structure removal operations, SEA No. ES/SR 90-055.	Matagorda Island Area, Block 652, Lease OCS-G 4701, 29 miles south of Port O'Connor, Texas.	7/18/90
Mesa Operating Limited Partnership, structure removal operations, SEA No. ES/SR 90-056.	South Pelto Area, Block 18, Lease OCS-G 3589, 14 miles south of Terrebonne Parish, Louisiana.	8/13/90
Hall-Houston Oil Company, structure removal operations, SEA No. ES/SR 90-061.	Galveston Area, Block A-97, Lease OCS-G 7257, 56 miles southeast of Brazoria County, Texas.	8/03/90
Samedan Oil Corporation, structure removal operations, SEA No. ES/SR 90-062A.	East Cameron Area, Block 215, Lease OCS-G 3297, 64 miles south of Cameron Parish, Louisiana.	7/17/90
Samedan Oil Corporation, structure removal operations, SEA No. ES/SR 90-063R.	East Cameron Area, Block 215, Lease OCS-G 3297, 64 miles south of Cameron Parish, Louisiana.	7/12/90
BHP Petroleum (Americas) Inc., structure removal operations, SEA No. ES/SR 90-066.	Galveston Area, South Addition, Block A-131, Lease OCS-G 2342, 70 miles south of Galveston County, Texas.	8/27/90
Kerr-McGee Corporation, structure removal operations, SEA No. ES/SR 90-067.	Ship Shoal Area, Block 214, Lease OCS 0828, 60 miles southwest of Leaville, Louisiana.	7/12/90
Kerr-McGee Corporation, structure removal operations, SEA No. ES/SR 90-069.	East Cameron Area, Block 34, Lease OCS-G 2855, 6 miles south of Cameron Parish, Louisiana.	7/17/90
Exxon Company, U.S.A., structure removal operations, SEA No. ES/SR 90-070.	Grand Isle Area, Blocks 23, 22, 21; Leases OCS 034, OCS 031, and OCS-G 3597; 9 miles south of Lafourche Parish, Louisiana.	8/27/90
Texaco USA, structure removal operations, SEA No. ES/SR 90-073.	South Marsh Island Area, Block 218, Lease OCS 0310, 9 miles south of Vermilion Parish, Louisiana.	7/12/90
Amoco Production Company, structure removal operations, SEA No. ES/SR 90-074.	High Island Area, East Addition, South Extension, Block A-305, Lease OCS-G 7357, 93 miles southeast of Galveston Island, Galveston County, Texas.	7/03/90
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA Nos. ES/SR 90-075 and 076.	East Cameron Area, Block 64, Lease OCS 069, 24 miles south of Cameron Parish, Louisiana.	8/02/90
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA Nos. ES/SR 90-077 and 078.	West Cameron Area, Blocks 149 and 176, Leases 0253 and 0762, between 20 and 25 miles south of Cameron Parish, Louisiana.	7/17/90
Texaco USA, structure removal operations, SEA No. ES/SR 90-079.	Eugene Island Area, Block 26, Lease OCS-G 3147, 10 miles south of St. Mary Parish, Louisiana.	7/17/90
Gulfstar Operating Company, structure removal operations, SEA No. ES/SR 90-080.	Ship Shoal Area, Block 52, Lease OCS-G 5532, 12 miles south of Terrebonne Parish, Louisiana.	8/26/90
Diamond Shamrock Offshore Partners, Limited Partnership, structure removal operations, SEA No. 90-081.	West Cameron Area, Block 64, Lease OCS-G 4383, 8 miles south of Cameron Parish, Louisiana.	7/12/90
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 90-082.	Eugene Island Area, Block 129, Lease OCS 054, 20 miles south of St. Mary Parish, Louisiana.	8/06/90
Chevron U.S.A. Inc., structure removal operations, SEA Nos. ES/SR 90-083 and 90-084.	Ship Shoal Area, Blocks 97 and 107, Leases OCS-G 6737 and OCS 070, approximately 13 and 20 miles south of Terrebonne Parish, Louisiana.	8/03/90
AEDC (USA) Inc., structure removal operations, SEA No. ES/SR 90-086.	Ewing Bank Area, Block 991, Lease OCS-G 5816, 70 miles south of Terrebonne Parish, Louisiana.	7/23/90
Chevron U.S.A. Inc., structure removal operations, SEA Nos. ES/SR 90-090.	Vermilion Area, Block 75, Lease OCS-G 3978, 21 miles south of Vermilion Parish, Louisiana.	8/06/90
Amoco Production Company, structure removal operations, SEA No. ES/SR 90-091.	South Marsh Island Area, Block 38, Lease OCS-G 5456, 51 miles south of Iberia Parish, Louisiana.	7/27/90
Chevron U.S.A. Inc., structure removal operations, SEA Nos. ES/SR 90-092 and 90-093.	West Cameron Area, Block 41, Lease OCS-G 2531, 8 miles south of Cameron Parish, Louisiana.	9/06/90

Activity/Operator	Location	Date
Diamond Shamrock, structure removal operations, SEA No. ES/SR 90-095.	Main Pass Area, Block 117, Lease OCS-G 4912, 18 miles east of St. Bernard Parish, Louisiana.	8/14/90
Diamond Shamrock Offshore Partners Limited Partnership, structure removal operations, SEA No. ES/SR 90-096.	Main Pass Area, Block 114, Lease OCS-G 3418, 20 miles west of the Breton Islands and the Breton National Wildlife Refuge, offshore Louisiana.	8/21/90
Chevron U.S.A. Inc., structure removal operations, SEA No. ES/SR 90-097.	Brazos Area, Block A-16, Lease OCS-G 5174, 44 miles south of Brazoria County, Texas.	9/11/90
Phillips Petroleum Company, structure removal operations, SEA No. ES/SR 90-098.	High Island Area, East Addition, South Extension, Block A-298, Lease OCS-G 2405, 105 miles south of Jefferson County, Texas.	9/07/90
Union Pacific Resources, structure removal operations, SEA No. ES/SR 90-099.	Ship Shoal Area, Block 184, Lease OCS-G 5553, 34 miles south of Terrebonne Parish, Louisiana.	9/07/90

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, Telephone (504) 736-2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources and structure removals on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: October 29, 1990.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 90-26141 Filed 11-5-90; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 27, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register Criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by November 21, 1990.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

Tolland County

Columbia Green Historic District, Along CT 87 at jct. with CT 66, Columbia, 90001759.

FLORIDA

Charlotte County

Big Mound Key—Boggess Ridge Archeological District, Address Restricted, Placida vicinity, 90001764.

Villa Bianca, 2330 Shore Dr., Punta Gorda, 90001760.

Pinellas County

Tarpon Springs Historic District, Roughly bounded by Read St., Hibiscus St., Orange St., Levis Ave., Lemon St. & Spring Bayou, Tarpon Srpongs, 90001762.

Volusia County

Spruce Creek Mound Complex, Address Restricted, Port Orange Vicinity, 90001761.

INDIANA

Allen County

Bash Building, 126 W. Columbia St., Fort Wayne, 90001787.

Randall Building, 616 & 618 S. Harrison St., Fort Wayne, 90001786.

Daviess County

Washington Commercial Historic District, Roughly bounded by Fourth, Hefron & Meridian Sts. & the Chessie System RR, Washington, 90001780.

Elkhart County

Coppes, Frank and Katharine, House, 302 E. Market St., Mappanee, 90001783.

Fountain County

Brady Street Historic District, Roughly bounded by S. Perry, E. Jackson, S. Council & E. Pike Sts., Attica, 90001785.

Old East Historic District, 400 block of E. Washington St. & the 400 & 500 blocks of E. Monroe St., Attica, 90001784.

Montgomery County

Darlington Covered Bridge, Co. Rds. 500N & 500E over Sugar Cr., Darling vicinity, 90001782.

Linden Depot, 202 M. James St., Linden, 90001781.

Parke County

Mansfield Roller Mill, (Grain Mills in Indiana MPS), Mansfield Rd. at Big Raccoon Cl., Mansfield, 90001788.

Vigo County

Highland Lawn Cemetery, 4520 Wabash Ave., Terre Haute, 90001790.

Washington County

Beck's Mill, (Grain Mills in Indiana MPS), Beck's Mill Rd. at Mill Cr., Salem, 90001789.

LOUISIANA

St. Landry Parish

Ray Homestead, 378 W. Bellevue St., Opelousas, 90001758.

NEBRASKA

Box Butte County

City of Alliance Central Park Fountain, Jct. of 10th St. & Miobrara Ave., Alliance, 90001772.

Deuel County

Sudman, Fred and Minnie Meyer, House, 490 Vincent Ave., Chappell, 90001770.

Douglas County

Columbian School, 3819 Jones St., Omaha, 90001769.

Lancaster County

Beattie, James A., House, 6706 Colby St., Lincoln, 90001773.

Madison County

Warrick, John Wesley and Grace Shafer, House, 4th St., Meadow Grove, 90001767.

Platte County

Monroe Congregational Church and New Hope Cemetary, Rt. 1, about 7.5 mi. NW of Monroe, E of Looking Glass Cr., Monroe vicinity, 90001768.

St. Michael's Catholic Church, jct. of Third & Cedar Sts., Tarnov, 90001769.

Seward County

Jones, Harry T., House, 136 N. Columbia Ave., Seward, 90001771.

York County

York Public Library, 306 E. Seventh St., York, 90001765.

OHIO

Ashland County

Crumrine, John, Farm, 792 Co. Rd. 40, Nova vicinity, 90001778.

Crumrine, Michael, Farm, 871 Co. Rd. 40, Nova vicinity, 90001779.

Fulton County

Old US Post Office, 169 E. Church St., Marion, 90001777.

Summit County

O'Neil's Department Store, 226-250 S. Main St., Akron, 90001776

TENNESSEE

Shelby County

Fleming, John M., Home Place, 1545 S. Byhalia Rd., Collierville vicinity, 90001763.

WEST VIRGINIA

Cabell County

Ritter Park Historic Distict, Ritter Park, including northern boundary streets, Huntington, 90001774.

Wyoming County

Itmann Company Store and Office, WV 10/16, Itmann, 90001775.

[FR Doc. 90-26244 Filed 11-5-90; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31643 Sub-No. 1 [1]]

Angelina and Neches River Railroad Company—Acquisition Exemption—St. Louis Southwestern Railway Company Lufkin Yard

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, retroactively exempts from the requirements of 49 U.S.C. 11343, *et seq.*, the purchase by Angelina and Neches River Railroad Company (A&NR) from St. Louis Southwestern Railway company (SSW), and its parent Southern Pacific Transportation Company (SPT), of 1.49 miles of track, and an accompanying easement, between Cotton Belt milepost 635.64 at or near Abney Street and Cotton Belt milepost 637.13, in Lufkin, Angelina County, TX. The exemption is granted subject to standard labor protective conditions.

DATES: This exemption will become effective upon completion of the Commission's environmental review and a further decision. Petitions for reconsideration must be filed by December 3, 1990.

ADDRESSES: Send pleadings referring to Finance Docket No. 31643 (Sub-No. 1) to: Office of the Secretary, Case Control Branch, Att'n: Finance Docket No. 31643 (Sub-No. 1), Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicants' representatives:

Gary A. Laakso, St. Louis Southwestern Railway Company, and Southern Pacific Transportation Company, One Market Plaza, San Francisco, CA 94105.

Peter A. Greene, Angelina and Neches River Railroad Company, Thompson, Hine and Flory, 1920 N Street, NW., suite 700, Washington, DC 20036-1601.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) ge 275-1721.]

Decided: October 29, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-28223 Filed 11-5-90; 8:45 am]

BILLING CODE 7035-01-M

[1] In the decision granting this exemption, the Commission in Finance Docket No. 31643 (formerly No. 40315), also granted a complaint filed by United Transportation Union against defendants Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, and Angelina and Neches River Railroad Company.

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration.

Study of Youth Employment Competency Programs in JTPA (Job Training Partnership Act).

Questionnaire	Affected public	Respondents	Frequency	Average time per response
SDA Questionn.	SDA Director	300	One-time	45 min.
Preemploy/Wrk Maturity	YEC Trng. Provider	300	One-time	15 min.
Basic Skills	YEC Trng. Provider	300	One-time	15 min.
Job Skill	YEC Trng. Provider	300	One-time	15 min.

450 total hours.

Evaluation of Service Delivery Area (SDA) programs which provide youth employment competency (YEC) training to determine quality/consistency of YEC programs; to determine extent of differences in YEC systems reflected in needs of local economies/populations; and to determine how SDAs manage said YEC systems.

Bureau of Labor Statistics.

Cognitive and Psychological Laboratory Research.

One time only.

Individuals or households.

1,000 respondents; 1,000 total hours; 60 minutes per response; 1 form.

The proposed laboratory research will improve the quality of data collection by examining the psychological and cognitive aspects of methods and procedures such as: questionnaire construction, survey technology and interview processes.

The planned research and development activities will be conducted during FY1991 through FY1993 with the goal of improving data quality through improved procedures.

Revision

Bureau of Labor Statistics, Laboratory Research on the CPS, BLS 1220-0114.

Study	Affected public	Respondents	Frequency	Avg. time
Dependent Interviewing	Individuals	300	Twice	60 min.
Delayed Recall	Individuals	300	Once	45 min.
Coverage Improvement	Individuals	100	Once	10 min.
Control Card	Individuals	300	Once	10 min.
CATI Effects	Individuals	300	Once	30 min.
Questionnaire Development	Individuals	100	Once	60 min.

1400 total respondents, 1150 total hours (rounded figure).

The proposed research will be conducted using volunteer participants to determine whether or not the CPS questions are still relevant, are properly understood, and are answered without difficulty, bias, or unacceptable levels of error. The studies are designed to enhance the quality of the CPS labor force data, which are widely used within and outside the government.

Extension

Mine Safety Health Administration.

Fire Protection—Escape and Evacuation (30 CFR 77.1101).

1219-0051.

On occasion.

Businesses or other for-profit; Small businesses or organizations: 473 recordkeepers; 1,834 total burden hours; 2.6088 average hours per response.

Requires mine operators to establish and keep current a specific escape and evacuation plan to be following in the event of a fire. The plan is used to instruct employees in the proper method of exiting work areas when fire occurs.

Employment and Training Administration.

Annual Plans for State Employment Service Activities.

1205-0209; no forms.

Annually.

State or local government.

54 respondents; 4,860 burden hours; no forms.

Regulations under 20 CFR 652 implement Public Law 97-300 amendments to the Wagner-Peyser Act. Information collection requirements pertain to those sections of the Act which require States to submit plans concerning operations and expenditures prescribed by the Secretary of Labor.

Signed at Washington, DC this 31st day of October, 1990.

Theresa M. O'Malley,

Acting Clearance Officer.

[FR Doc. 90-26230 Filed 11-5-90; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period October 1990.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

BEST COPY AVAILABLE

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,740; Friendship Foundry, Inc., Friendship, NY

TA-W-24,644; The Lion Knitting Mill Co., Cleveland, OH

TA-W-24,754; Maas & Waldstein Co., Newark, NJ

TA-W-24,773; CNG Development Co., Pittsburgh, PA

TA-W-24,734; Crane Defense Systems, St. Louis, MO

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-24,742; GTE Sylvania, Salem, MA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,771; Whitehall Laboratories, American Home Products, Elkhart, IN

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,848; General Motors SPO, North Brunswick, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,752; Land & Marine Rental Co., San Antonio, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,783; N.I. (Norris) Industries Roverbank Army Ammunition Depot, Riverbank, CA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,787; Sherwood Medical Co., Waterbury, CT

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,777; Evanite Fiber Corp., Corvallis, OR

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,788; Slawson Exploration Co., Inc., Amarillo, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-24,758; MLC Co., Inc., Midland, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-24,785; Red Eagle Resources Corp., Oklahoma City, OK

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA-W-24,730; B & P Cedar Products, Pe Ell, WA

A certification was issued covering all workers separated on or after July 26, 1989 and before August 31, 1990.

TA-W-24,779; Gear Drilling Co., Headquartered in Denver, CO & Operating at Various Locations in the Following States: TA-W-24,779A; CO TA-W-24,779B; NE

A certification was issued covering all workers separated on or after August 17, 1989.

I hereby certify that the aforementioned determinations were issued during the month of October 1990. Copies of these determinations are available for inspection in room C4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: October 29, 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-26228 Filed 11-5-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,649]

Package Machinery Co., Reed Division, Stafford Springs, CT; Negative Determination Regarding Application for Reconsideration

By an application dated October 10, 1990, counsel for Local #220 of the International Union of Electrical, Radio and Machine Workers requested administrative reconsideration of the subject petition for trade adjustment assistance.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Counsel states, among other things, that the subject firm suffered from foreign competition, pre-tax operating losses and decreased orders in the period relevant to the petition.

Workers at Stafford Springs produce plastic injection molding machines.

Operating losses and decreased orders are not a sufficient basis for a worker certification. In order for a worker group to become certified eligible to apply for trade adjustment assistance it must meet all three of the Group Eligibility Requirements of the Trade Act—a significant decrease in employment, an absolute decrease in sales or production and an increase in imports "contributing importantly" to worker separations and declines in sales or production. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers.

The Department's denial was based on the fact that the "contributed importantly" test was not met. The Department's survey of Package Machinery's major customers accounting for a significant proportion of its sales decline showed that none of the respondents which reduced their purchases from the subject firm reported increased purchases of imported plastic injection molding machines during the applicable period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 26th day of October 1990.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, UIS.

[FR Doc. 90-26227 Filed 11-5-90; 8:45 am]

BILLING CODE 4510-30-M

TDC Supply, Inc., TA-W-24,301 San Angelo, TX, TA-W-24,301A Kermit, TX, TA-W-24,301B Big Lake, TX, TA-W-24,301C Andrews, TX, TA-W-24,301D Odessa, TX, TA-W-24,302, Tucker Drilling Co., Inc., San Angelo, TX; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligiblity to Apply for Worker Adjustment Assistance on June 8, 1990, applicable to all workers of Tucker Drilling Company, Inc., and its affiliate TDC Supply, Inc., both of San Angelo, Texas. The notice was published in the **Federal Register** on July 26, 1990 (55 FR 26035). An amended certification was issued on October 15, 1990 to include TDC Supply's other locations in Texas.

New data from the company was submitted showing worker separations at TDC Supply beyond the November 17, 1990 termination date. Accordingly, the certification is amended by deleting the November 17, 1990 termination date for workers of TDC Supply.

The amended notice applicable to TA-W-24,301 and TA-W-24,302 is hereby issued as follows:

All workers of TDC Supply, Inc., San Angelo, Texas; Big Lake, Texas; Kermit, Texas; Andrews, Texas and Odessa, Texas and all workers of the Tucker Drilling Company, Inc., San Angelo, Texas who became totally or partially separated from employment on or after March 30, 1989 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 26th day of October 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-26225 Filed 11-5-90; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Certifications

On October 31, 1990, the Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 *et seq.*, thereby enabling employers to make contributions to State unemployment funds to obtain certain credits for their liability for the Federal unemployment tax. By letter of the same date the certifications were transmitted to the Secretary of the Treasury. The letter and the certifications are printed below.

Dated: October 31, 1990.

Roberts T. Jones,

Assistant Secretary of Labor.

The Honorable Nicholas F. Brady
Secretary of the Treasury, Washington, DC 20220

Dear Nick: Transmitted herewith are an original and one copy of the certifications of the States and their unemployment compensation laws for the 12-month period ending October 31, 1990. One is required with respect to normal Federal unemployment tax credit by Section 3304 of the Internal Revenue Code of 1986, and the other is required with respect to additional tax credit by Section 3303 of the Code.

The certification pursuant to Section 3304 lists all 53 jurisdictions, except New Jersey. As was the case last year, New Jersey is omitted from both certifications because of issues arising under the requirements of Section 3304(a) of the Internal Revenue Code of 1986. An agreement has been reached with the State of New Jersey, and, as the State fulfills its obligations under this agreement, I will forward to you the certifications with respect to New Jersey as appropriate. The certification pursuant to Section 3303 also omits Puerto Rico because the unemployment compensation law of this jurisdiction contains no experience rating provisions and permits no reduced rates of contributions.

Please disregard my October 19 letter to you on this matter which I now hereby withdraw.

With my warmest regards,

Sincerely,

Elizabeth Dole.

Enclosures

Certification of State Unemployment Compensation Laws to the Secretary of the Treasury Pursuant to Section 3303(b)(1) of the Internal Revenue Code of 1986

In accordance with the provisions of paragraph (1) of section 3303(b) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named States, which heretofore have been certified pursuant to paragraph (3) of section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 1990.

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Florida
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Maine
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum additional credit allowable under section 3302(b) of the Code.

Signed at Washington, DC, on October 31, 1990.

Elizabeth Dole,

Secretary of Labor.

Certification of States to the Secretary of the Treasury Pursuant to Section 3304 of the Internal Revenue Code of 1986

In accordance with the provisions of section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following named States to the Secretary of the Treasury for the 12-month period ending on October 31, 1990, in regard to the unemployment compensation laws of those States which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
District of Columbia
Florida
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Louisiana
Maine
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Virgin Islands
Washington
West Virginia
Wisconsin
Wyoming

This certification is for the maximum normal credit allowable under section 3302(a) of the Code.

Signed at Washington, DC, on October 31, 1990.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 90-26229 Filed 11-5-90; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; New Extended Benefit Period in the State of Puerto Rico

This notice announces the beginning of a new Extended Benefit Period in Puerto Rico, effective on September 30, 1990, and remaining in effect for at least 13 weeks after that date.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by part 615 of title 20 of the Code of Federal Regulations (20 CFR part 615).

Each State unemployment compensation law provides that there is a State "on" indicator (triggering on an Extended Benefit Period) for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equaled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit period will be in effect for a minimum of 13 weeks, and will end the third week after there is an "off" indicator.

Determination of an "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State, for the 13-week period ending on September 15, 1990, equals or exceeds 5 percent and is 20 percent higher than the corresponding 13 week period in the prior two years, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on September 30, 1990. This period will continue for no less than 13 weeks, and until three weeks after a week in which there is an "off" indicator in the State.

Information for Claimants

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(c)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State employment compensation law to regular benefits during the Extended Benefit Period. 20 CFR 615.13(c))(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC on October 26, 1990.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 90-26224 Filed 11-5-90; 8:45 am]

BILLING CODE 4510-30-M

Commission on Achieving Necessary Skills; Open Meeting

AGENCY: Employment and Training Administration, Labor.

SUMMARY: The Secretary's Commission on Achieving Necessary Skills (SCANS) was established in accordance with the Federal Advisory Committee Act (Pub. L. 92-463) on February 20, 1990. The SCANS is to advise the Secretary on National competency guidelines for the skills required of high school graduates for entry into employment. The Commission has the practical task of specifying and quantifying levels of skills' attainment to perform different types of jobs adequately.

TIME AND PLACE: The third meeting will be held Thursday, November 29, 1990 from 9 a.m. until 4:30 p.m. at the Capitol Hill Hyatt Regency 400 New Jersey Avenue NW., Yorktown Conference Room (Ballroom level), Washington, DC 20001.

AGENDA: The agenda for the meeting follows:

1. Report from the SCANS Technology Committee
2. Report from the SCANS Dissemination Committee
3. Report on Skills Definition

Lunch by Task Force groupings

4. Relation to Other Business/Education Efforts
   a. American Business Conference
   b. US Chamber of Commerce
   c. National Alliance of Business
   d. National Governors' Association
5. General Discussion
6. Public Comment
8. Adjourn

PUBLIC PARTICIPATION: The meeting will be open to the public. Time will be set aside for public comments. Seating will be available for the public on a first-come, first-serve basis. Five seats will be reserved for the media. Handicapped individuals wishing to attend should contact the Commission to obtain appropriate accommodations.

Individuals or organizations wishing to submit written statements should send 10 copies to Dr. Arnold Packer, Executive Director SCANS—room C-2318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Papers received on or before November 10, 1990 will be included in the record of the meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Packer, Exec. Dir., SCANS—room C-2318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-4840.

Signed At Washington, DC this 1st day of November, 1990.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 90-26228 Filed 11-5-90; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (90-92)]

Fiscal Year 1990 Report of Closed Meeting Activities of Advisory Committees

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of reports.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92-463, the NASA advisory committees that held closed or partially closed meetings in Fiscal Year 1990, consistent with the policy of 5 U.S.C. 552b(c), have prepared reports on activities of these meetings. Copies of the reports have been filed and are available for public inspection at the Library of Congress, Federal Advisory Committee Desk, Washington, DC 20540; and the National Aeronautics and Space Administration, Headquarters Information Center, Washington, DC 20546. The names of the committees are: NASA Advisory Council (NAC), NAC Aeronautics Advisory Committee, NAC Aerospace Medicine Advisory Committee, NAC Commercial Programs Advisory Committee, NAC Space Science and Applications Advisory Committee, and the NASA Wage Committee.

FOR FURTHER INFORMATION CONTACT: Kathryn Newman, Code NA, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2880).

Dated: November 1, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90-26241 Filed 11-5-90; 8:45 am]

BILLING CODE 7510-01-M

[Notice 90-93]

NASA Advisory Council (NAC), Aerospace Medicine Advisory Committee (AMAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aerospace Medicine Advisory Committee.

DATES: November 19, 1990, 8:30 a.m. to 5 p.m., and November 20, 1990, 8:30 a.m. to 3:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, room 226A, 600 Independence Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. J. Richard Keefe, Code SBF, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1525).

SUPPLEMENTARY INFORMATION: The Aerospace Medicine Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range planning of aerospace medicine research. The committee will meet to discuss the establishment of toxicological standards, Space Station Freedom status and radiation standards, Life Science and Life Support Branch status, and OSSA status and future planning. The Committee is chaired by Dr. Harry C. Holloway and is composed of 24 members. The meeting will be closed on Tuesday, November 20, 1990, from 2:30 p.m. to 3:30 p.m., to allow for a discussion on qualifications of individuals being considered for membership to the Aerospace Medicine Advisory Committee. Such a discussion would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 40 people including members of the Committee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the participants.

TYPE OF MEETING: Open—except for a closed session, as noted in the agenda below.

Agenda:

Monday, November 19
- 8:30 a.m.—Introductory Remarks.
- 9 a.m.—Establishing Toxicological Standards and Spacecraft Maximum Allowable Concentration (SMAC's) Values.
- 1 p.m.—Space Station Freedom Status and Plans.
- 2 p.m.—Space Station Freedom Radiation Standards.
- 3:30 p.m.—AMAC Working Groups and Subcommittee Reports.
- 5 p.m.—Adjourn.

Tuesday, November 20
- 8:30 a.m.—Life Science Division Status.
- 9:30 a.m.—Office of Space Science and Applications (OSSA) Program Status.
- 10:45 a.m.—Life Support Branch Status.
- 11:15 a.m.—Strategic Planning/OSSA Future Planning.
- 1 p.m.—Extended Duration Orbiter Medical Program Status.
- 2:30 p.m.—Closed Session.
- 3:30 p.m.—Adjourn.

Dated: November 1, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90-26242 Filed 11-5-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On September 24, 1990, the National Science Foundation published a notice in the Federal Register of permit applications received. Permits were issued to William R. Fraser and W. Scott Drieschman on October 30, 1990.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 90-26155 Filed 11-5-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30-29010, License No. 49-26808-01, EA 90-104]

High Mountain Inspection Services, Inc., Mills, WY; Order Imposing Civil Monetary Penalty

I

High Mountain Inspection Service, Inc. (HMIS or Licensee) is the holder of Materials License No. 49-26808-01 issued by the Nuclear Regulatory Commission (NRC or Commission) on May 25, 1988, and scheduled to expire on January 31, 1991. The license authorizes the Licensee to use NRC-licensed radioactive materials to conduct industrial radiography activities.

II

An inspection of the Licensee's activities was conducted April 18, 1990, and May 9-10, 1990. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated July 23, 1990. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice in a Reply and Answer both dated August 22, 1990. In its

response, the Licensee admitted the three violations that formed the basis for the proposed civil penalty, denied one violation among those that were not assessed a civil penalty, and requested that the NRC withdraw the proposed civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the notice should be imposed by Order.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered, that:*

The Licensee pay a civil penalty in the amount of $2,500 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, attn: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, attn: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same addresses and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at the hearing shall be:

Whether, on the basis of the violations which the Licensee has admitted, this Order should be sustained

Dated at Rockville, Maryland this 29th day of October 1990.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix—Evaluations and Conclusions

On July 23, 1990, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violation identified during an NRC inspection. High Mountain Inspection Service, Inc. (HMIS) responded to the Notice on August 22, 1990. The NRC's evaluation and conclusion regarding the licensee's response follow:

Restatement of Violations Assessed a Civil Penalty

A. 10 CFR 34.43(b) states, in part, that the licensee shall ensure that a survey with a calibrated and operable radiation survey instrument is made after each exposure to determine that the sealed source has been returned to its shielded position.

Contrary to the above, on April 16, 1990, at a refinery in Casper, Wyoming, the licensee's radiographer, after each of two exposures, did not perform a survey with a radiation survey instrument to determine that the sealed source had been returned to its shielded position.

B. 10 CFR 34.44 states, in part, that whenever a radiographer's assistant uses radiographic exposure devices, he shall be under the personal supervision of a radiographer, and that the personal supervision shall include, in part, the radiographer's watching the assistant's performance of the radiographic operations.

Contrary to the above, on April 18, 1990, a radiographer's assistant used a radiographic exposure device and he was not under the personal supervision of a radiographer. The radiographer, although present at the facility at which the radiography was being conducted, did not watch the assistant perform the exposures.

C. 10 CFR 34.33(a) states, in part, that pocket dosimeters used by radiographers or radiographer's assistant shall be recharged at the start of each shift.

Contrary to the above, on April 18, 1990, pocket dosimeters used by a radiographer and a radiographer's assistant while performing radiography at a refinery in Casper, Wyoming, had not been recharged before the start of the shift.

This is a Severity Level III problem (Supplement IV). Cumulative Civil Penalty—$2,500 (assessed equally among the violations).

Restatement of Violations Not Assessed a Civil Penalty

A. 10 CFR 34.31(c) states, in part, that records of training required by 10 CFR 34.31 for radiographers and radiographer's assistants, including copies of written tests and dates of oral tests and field examinations, shall be maintained for 3 years.

Contrary to the above, as of May 10, 1990, records of training required by 10 CFR 34.31 for radiographer's assistants, including copies of written tests and dates of oral tests and field examinations, were not being maintained for three individuals who were trained and worked as radiographer's assistants from November 1989 to March 1990.

This is a Severity Level V violation (Supplement VI).

B. 10 CFR 71.5(a) requires, in part, that each licensee who transports licensed material outside of the confines of its plant or other place of use, or who delivers licensed material to a carrier for transport comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation (DOT) in 49 CFR parts 170–189.

1. 49 CFR 172.203(d) requires, in part, that the description on shipping papers for a shipment of radioactive material must include the category of label applied to each package in the shipment and the transport index assigned to each package in the shipment bearing RADIOACTIVE YELLOW–II labels.

Contrary to the above, on four occasions from August 1989 to April 1990, the licensee delivered licensed material to a carrier for transport with descriptions on shipping papers that did not include the category of label applied to the package or the transport index assigned to each package that was labeled RADIOACTIVE YELLOW–II.

This is a Severity Level V violation (Supplement V).

2. 49 CFR 172.403(g) requires, in part, that the contents, activity, and the transport index be entered in the blank spaces on the RADIOACTIVE label.

Contrary to the above, on April 18, 1990, an overpack that was used to transport a radiographic exposure device containing licensed material was labeled with a RADIOACTIVE YELLOW–II label that did not record the contents, the activity, or the transportation index in the label's blank spaces.

This is a Severity Level V violation (Supplement V).

Summary of Licensee's Response to Notice of Violation

The Licensee admitted the three violations that formed the basis for the civil penalty, denied one violation (Violation II.A) among those not assessed a civil penalty and discussed its view of the significance of one other violation (Violation I.C).

1. In response to Violation I.C, the Licensee admitted that the pocket dosimeters were not recharged; however, the licensee contended that recording the initial readings on the pocket dosimeters had the effect of recharging them. The Licensee argued that what happened in no way affected the operation of the pocket dosimeters or radiation safety.

2. In response to Violation II.A, the Licensee denied the violation, stating that two of the three individuals identified were used as helpers and not assistant radiographers. The Licensee also stated that the other individual identified was an assistant radiographer and asserted that his training documentation was complete because the inspection report only noted that he lacked the required hours of on-the-job training.

NRC Evaluation of Licensee's Response to Notice of Violation

1. In regard to Violation I.C, the NRC does not dispute the fact that not recharging the dosimeters did not affect the operation of the dosimeters. However, the fact remains that the dosimeters were not recharged before the start of the shift as required by NRC regulations which reflects a lack of attention to matters involving personal safety. Furthermore, the pocket dosimeters in question had readings of 130 mR and 140 mR when radiographic operations began. Since the maximum reading possible on these devices is 200 mR, there was not sufficient leeway before the dosimeter could have gone off scale and erroneously caused concern about possible overexposures. The NRC staff concludes that the violation occurred as stated and that the explanation offered by the licensee does not warrant reducing the severity level of the violation.

2. In regard to Violation II.A, the NRC notes, as stated in the inspection report dated May 21, 1990, that the individuals who were identified as not having complete training records had worked as radiographer's assistants. This was identified by reviewing the licensee's site survey records, which indicated that the three individuals worked as radiographer's assistants, and by discussing the matter with the Assistant Radiation Safety Officer (ARSO). The ARSO stated that these individuals had taken the required examinations before they worked as radiographer's assistants, but records of these exams had been destroyed.

Concerning the third individual's lack of training records, the notation in the inspection report as to this individual not having the required number of hours of on-the-job training as a assistant radiographer before being designated as a radiographer in no way indicates that the individual's training records were complete. To the contrary, the training documents that were supplied by the licensee did not indicate that the individual was administered a practical examination.

The NRC staff concludes that the violation occurred as stated

Summary of Licensee's Request for Mitigation

The Licensee admitted the violations that formed the basis for the proposed civil penalty. HMIS requested full mitigation of the civil penalty based on contentions that: (1) Violations I.A and I.B were the independent actions of and individual; (2) Violation I.C. should not have been classified at Severity Level III; (3) the NRC has not shown the HMIS failed to conduct a satisfactory radiation safety program, therefore, imposition of a fine cannot cause an improvement in HMIS' program; (4) HMIS took prompt and effective disciplinary action against the individual responsible for two of the violations and did so in a manner that did not shift the problem to other radiography licensees; (5) the NRC did not consider enforcement action against the individuals pursuant to section V.E. of the Enforcement Policy; and (6) the NRC has not provided an effective regulatory mechanism for controlling violations solely caused by the independent actions of radiography personnel. Moreover, HMIS argued that the violations were committed by individuals who had been properly trained, equipped and instructed by HMIS management and that those individuals' actions were contrary to proper instructions and established procedures provided by HMIS. In short, the licensee argued that absent an indication that it failed in its responsibilities to adequately administer its radiation safety program or failed to take action against employees who violated safety requirements, it should not be fined for violations beyond its reasonable control.

NRC Evaluation of Licensee's Request for Mitigation

The NRC's "General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR part 2, appendix C (1990), (Enforcement Policy) states in Section V.A. that licensees are not ordinarily cited for violations resulting from matters, not within their control. However, the Policy states explicitly that licensees are held responsible for the acts of their employees and that the policy should not be construed to excuse personnel errors. In *Atlantic Research Corp.*, CLI–80–7, 11 NRC 413 (1980) the Commission explicitly rejected a position virtually identical to the Licensee's:

> The effect of the [decision below] is that where no specific conduct by a licensee contributed to the commission of a violation, * * * the licensee is necessarily free from any culpability and the imposition of any civil penalties. Under that approach, the responsibility for infractions of license provisions or Commission regulations would be divided between the licensee's management and its employees. We believe that this would be an unsound enforcement policy because management's freedom from culpability could be interpreted as freedom from responsibility * * * *. We find that such a division of responsibility between a licensee and its employees has no place in the NRC regulatory regime which is designed to implement our obligation to provide adequate protection to the health and safety of the public in the commercial nuclear field. Id. at 421–2 (citation omitted).

The Commission has left no doubt that licensees are responsible for violations of NRC regulatory requirements, even if committed by licensees' employees or other agents. Accordingly, mitigation of the civil penalty on the basis proposed by HMIS is not warranted.

In response to the licensee's six specific arguments set out above, NRC notes:

1. As described above, the Enforcement Policy provides that licensees are responsible for the acts of their employees. As stated in section V.B of the Enforcement Policy, published at 10 CFR part 2, appendix C, while management involvement in a violation may lead to an increase in a civil penalty, lack of that involvement may not be used to mitigate a civil penalty, because allowance of mitigation could encourage lack of management involvement in licensed activities and decrease protection of the public health and safety. The Commission has previously considered and resolved the question of whether responsibility for violations should be divided between licensees' management and its

employees. *Atlantic Research Corporation*, 11 NRC 413 (1980). More recently, in publishing the proposed rule on Willful Misconduct by Unlicensed Persons on April 3, 1990, 55 Fed Reg 12374, the Commission concluded that a strong enforcement policy dictates that a licensee be held accountable for violations committed by its employees in the conduct of licensed activities.

2. The NRC consider the failure to conduct a radiation survey following a radiographic exposure a significant violation of radiation safety requirements; these surveys are fundamental to ensuring the health and safety of both radiographic personnel and others in the vicinity of such work. Failure to survey has resulted in most radiographer overexposures, some of which have been serious. The NRC believes that it is well within the bounds of the Enforcement Policy in classifying this violation, as well as the associated violations, at Severity Level III as a indication of a significant regulatory concern.

3. The NRC does not have to show that the licensee failed to conduct a satisfactory radiation safety program in order to propose a civil penalty for what NRC considers to be a specific significant violation of its radiation safety requirements. If the licensee did not have at least a satisfactory program, an order would have been considered to suspend licensed activities.

4. HMIS disciplined the individual responsible for the failure to survey by reducing his pay and requiring requalification. The fact that HMIS did discipline the responsible individual was taken into consideration by NRC in determining the proposed civil penalty amount. However, HMIS's corrective action in total was no more prompt and extensive than NRC would expect of any licensee following a violation of this nature. The responsibility to develop an effective mechanism for precluding violations of this nature in the future rests with the licensee, not with the NRC, as the licensee suggests. It is the licensee who is in a position to retain, counsel, or discipline including but not limited to docking pay, demotion, suspension, or dismissal, and then providing a candid reference about an employee.

5. A decision by the NRC whether to take enforcement action against a particular individual who has violated NRC requirements while engaging in licensed activities is independent of any action taken against the licensee. Section V.E. of the Enforcement Policy states that enforcement actions against individuals are significant personnel actions which will be closely controlled and judiciously applied. It also provides that most transgressions of individuals at the level of Severity Level III, IV or V violations will be handled by citing only the facility licensee. NRC has not conducted an investigation to determine whether the assistant radiographer's acts were deliberate violations justifying and order removing his from licensed activity. In that regard, it is noted that the licensee has not removed the individual from licensed activities since it has confidence in him to comply in the future. Again, even if an order had been issued, a civil penalty would have been assessed against the licensee. The purpose of the penalty is to emphasize to the licensee's management and employees as well as other licensees that licensees are responsible for the safe use of radiactive material in their possession. A licensee cannot delegate that responsibility to its employees.

6. The NRC is concerned about the above issue and is developing regulations that would provide for taking action against individuals in cases of willfull violations of NRC requirements. However, any such revision of the Commission's regulations would not relieve licensees of their responsibility for the acts of their employees. Nor would the changes preclude the NRC from taking action against the licensee for the acts of its employees. Any alleged deficiency in the Commission's enforcement regime does not excuse a specific violation committed during licensed activities. Any alleged deficiencies, even if real, do not change the facts that: (a) a violation occurred, and (b) as described above, licensees are responsible for all violations occurring during licensed operations authorized by their licenses.

NRC Conclusion

The NRC concludes that the Licensee has not provided a sufficient basis for mitigation of the proposed civil penalty. Further, the Licensee admits the violations which formed the basis for the proposed civil penalty. The NRC concludes that a civil penalty of $2,500 should be imposed by order.

[FR Doc. 90-26199 Filed 11-5-90; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 40-08027-MLA; ASLBP No. 91-623-01-MLA]

Sequoyah Fuels Corp.; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the presiding officer to conduct the hearing in the event that an informal adjudicatory hearing is ordered in the following Materials Licensing proceeding.

Sequoyah Fuels Corporation

Source Material License No. SUB-1010

The Presiding Officer is being designated pursuant to 10 CFR 2.1207 of the Commission's Regulations, "Informal Hearing Procedures for Materials Licensing Adjudications," published in the **Federal Register**, 54 FR 8269 (1989). This action is in response to requests for an adjudicatory hearing submitted by the Native Americans for a Clean Environment (NACE) and Earth Concerns of Oklahoma (ECO).

The requestors desire a hearing on the license renewal application of the Sequoyah Fuels Corporation submitted on August 29, 1990.

The presiding officer in this proceeding is Administrative Judge James P. Gleason.

Following consultation with the Panel Chairman, pursuant to the provisions of 10 CFR § 2.722, the Presiding Officer has appointed Administrative Judge Glenn O. Bright to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Gleason and Judge Bright in accordance with 10 CFR § 2.701. Their addresses are:

Administrative Judge James P. Gleason, Presiding Officer 513 Gilmoure Drive, Silver Spring, Maryland 20901
Administrative Judge Glenn O. Bright, Special Assistant, 6009 McKinley Street, Bethesda, Maryland 20827.

Issued at Bethesda, Maryland, this 30th day of October 1990.

B. Paul Cotter, Jr.,
Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 90-26198 Filed 11-5-90; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF NATIONAL DRUG CONTROL POLICY

President's Drug Advisory Council; Meeting

AGENCY: President's Drug Advisory Council; Office of National Drug Control Policy.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. appendix), of the fourth meeting of the President's Drug Advisory Council.

DATE AND TIME: November 16, 1990 from 10 a.m. to 4 p.m. (with a 90-minute lunch break at 12 noon).

PLACE: Room 180, Old Executive Office Building (OEOB), Washington DC 20500.

FOR FURTHER INFORMATION CONTACT: Mr. Nelson Cooney, Staff Assistant, President's Drug Advisory Council, Executive Office of the President, Washington, DC 20503, (202) 466-3100.

SUPPLEMENTARY INFORMATION: The President's Drug Advisory Council was created by Executive Order 12696 of November 13, 1989 (54 FR 47507, November 15, 1989), with the general purpose of advising the President and the Director of the Office of National Drug Control Policy on the development, dissemination, explanation and promotion of national drug policy.

At the November 16 meeting, the Council will receive a follow-up report from the National Coalition Subcommittee, regarding the National Leadership Forum which it will conduct on November 9 and 10, 1990. The Council will also receive reports from the Volunteer Organizations Subcommittee, the Demand Reduction Subcommittee, and the Drug-Free Workplace Subcommittee, regarding their recent accomplishments and issues of concern to each Subcommittee.

Members of the public interested in attending the meeting should contact the President's Drug Advisory Council, (202) 466-3100, at least one day prior to the meeting. Callers should be prepared to give their birthdate and social security number over the telephone, in order to facilitate clearance into the Old Executive Office Building. Due to unforeseen scheduling difficulties, notice of this meeting has been delayed.

John Walters
Chief of Staff, Office of National Drug Control Policy.

[FR Doc. 90-26131 Filed 10-31-90; 4:24 pm]
BILLING CODE 3180-02-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Cincinnati Stock Exchange, Inc.

October 31, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Allstate Municipal Inc. Opportunity Trust III
Common Stock, $0.01 Par Value (File No. 7-6365)
American Adjustment Rate Term Trust, Inc.
Common Stock, $0.01 Par Value (File No. 7-6366)
Banner Aerospace, Inc.
Common Stock, $1.00 Par Value (File No. 7-6367)
Barclays Bank Plc
American Depository Shares (File No. 7-6368)
BJ Services, Co.
Common Stock, $.10 Par Value (File No. 7-6369)
Cadence Design Systems, Inc.
Common Stock, $0.01 par Value (File No. 7-6370)
Compania de Telefonos de Chile SA
American Depository Shares (File No. 7-6371)
Countrywide Credit Industries, Inc.
Dep. Conv. Pfd. Stock, $0.05 Par Value (File No. 7-6372)
C&S/Sovran Corp.
Common Stock, $1.00 Par Value (File No. 7-6373)
Diagnostek, Inc.
Common Stock, $0.01 Par Value (File No. 7-6374)
Dreyfus Invest. Grade Municipal Fund, Inc.
Common Stock, $0.001 Par Value (File No. 7-6375)
Emerging Mexico Fund, Inc.
Common Stock, $0.10 Par Value (File No. 7-6376)
European Warrant Fund, Inc.
Common Stock, $0.001 Par Value (File No. 7-6377)
Genenteck, Inc.
Common Stock, $0.02 Par Value (File No. 7-6378)
Germany Fund, Inc.
Common Stock, $0.001 Par Value (File No. 7-6379)
Live Entertainment, Inc.
Common Stock, $0.01 par Value (File No. 7-6380)
Offshore Pipelines, Inc.
Common Stock, $0.01 par Value (File No. 7-6381)
Old Republic International Corp.
Common Stock, $1.00 Par Value (File No. 7-6382)
Policy Management Systems Corp.
Common Stock, $0.01 Par Value (File No. 7-6383)
Transcontinental Realty Investors, Inc.
Common Stock, No Par Value (File No. 7-6384)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 23, 1990, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-26200 Filed 11-5-90; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

October 31, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 2(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following security:

Rhone-Poulence S.A.
Contingent Value Rights (File No. 7-6385)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 23, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC

20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-26202 Filed 11-5-90; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 31, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

C&S/Sovran Corporation
Common Stock, $1 Par Value (File No. 7-6386)
Crawford & Company
Class A Common Stock, $1 Par Value (File No. 7-6387)
Germany Fund, Inc.
Common Stock, $0.001 Par Value (File No. 7-6388)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 23, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-26201 Filed 11-5-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17830; File No. 812-7585]

Alliance Variable Products Series Fund, Inc.

October 30, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Alliance Variable Products Series Fund, Inc. ("Fund").

RELEVANT 1940 ACT SECTIONS: Exemptions requested under section 6(c) from sections 9(1), 13(a), 15(a), and 15(b) of the Act and rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order to permit its shares to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies.

FILING DATE: The application was filed on September 4, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by 5:30 p.m., on November 26, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Alliance Variable Products Series Fund, Inc., c/o Edmund P. Bergan, Jr., Esq., Vice President and Assistant General Counsel, Alliance Capital Management Corporation, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Joyce Pickholz, Staff Attorney at (202) 272-3046 or Heidi Stam, Assistant Chief, at (202) 272-2060 (Office of Insurance Products and Legal Compliance, Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Fund is a Maryland corporation registered under the Act as an open-end management investment company of the series type. It is anticipated that the assets allocated to each investment sub-account of separate accounts under the variable life insurance and variable annuity contracts of participating insurance companies will be invested in shares of a corresponding portfolio of the Fund. The Fund currently has eight portfolios. It is anticipated that portflios may be added or deleted from time to time. To date, no shares in the Fund's portfolios have been sold. It is expected that each of the participating insurance companies will invest in the Fund pursuant to a participation agreement that will require compliance with any order obtained pursuant to the application.

2. The participating insurance companies and their separate accounts will rely, as appropriate, on Rules 6e-2 or 6e-3(T) under the Act, or Rule 6e-3 when adopted, in connection with the issuance of variable life insurance. Rule 6e-2(b)(15) provides a separate account, organized as a unit investment trust, partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the Act to the extent those sections require "pass-through" voting with respect to an underlying fund's shares. Rule 6e-2(b)(15) provides these exemptions only where all of the assets of the unit investment trust are shares of management investment companies "which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company". The conditions of Rule 6e-2(b)(15) relate to the type of insurance products being supported by an underlying fund ("mixed funding") and to the entities offering the iftsurance products supported by the underlying fund ("shared funding"). Rule 6e-3(T)(b)(15) permits mixed funding of variable annuity contracts and variable life insurance contracts. It restricts shared funding, however, in that it limits its exemptive relief to situations where a unit investment trust of a life insurer may invest in only registered management investment companies which offer their shares solely to separate accounts of affiliated insurers. Applicant, therefore, requests exemptive relief from sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder, to the extent necessary to permit mixed funding and shared funding with separate accounts of unaffiliated partipating insurance companies offering variable annuity contracts and variable life insurance contracts, whether single premium, scheduled premium or flexible premium.

3. Applicant submits that granting the requested relief will benefit all variable contractowners by eliminating a significant portion of the costs of establishing and administering separate funds. In addition, Applicant states that there is no policy reason to prohbit the separate accounts of unaffiliated insurance comanies from investing in the same fund. According to Applicant, the unit trust mechanism has been employed to accumulate shares of mutual funds that have not been affiliated with the depositor or sponsor and each participating insurance company will have the legal obligation of satisfying all requirements applicable to it under state insurance law and under the federal securities laws. Applicant also submits that mixed and shared funding is in the public interest and consistent with the protection of investors, because it should result in an increased amount of assets available for investment by the Fund, which may in turn benefit contractowners by promoting economies of scale. Furthermore, permitting the Fund to be used by separate accounts of unaffiliated as well as affiliated insurance companies may enable a greater number of companies to enter the field and thus stimulate broader industry competition. Broader competition could result in more product variation and lower charges.

4. Section 9(a)(3) of the Act provides that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a) (1) or (2). Rule 6e-2(b)(15) (i) and (ii) and rule 6e-3(T)(b)(15) (i) and (ii) provide exemptions from section 9(a)(3) under certain circumstances, subject to the limitations dicussed above on mixed and shared funding. These exemptions limit the applicability of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management company.

The Applicant believes that the partial exemption from the requirement that funds monitor the affiliates of participating insurance companies for compliance with section 9(a) is included because the Commission determined that it is necessary to exclude disqualified persons only from the management or administration of the investment company. Accordingly, Applicant asserts that there would be no regulatory purpose in applying the full monitoring requirements if other separate accounts established by the participating insurance companies, whether affiliated or unaffiliated with one another, invested in the Fund. Applicant further states that it is not expected that affiliated persons of the unaffiliated participating insurance companies will serve on the Board of Directors of the Fund or that unaffiliated participating insurance companies will otherwise participate in the management or administration of the Fund. Also, applying the requirements of section 9(a) as a result of investment by separate accounts merely because such accounts supported variable annuity contracts or flexible premium variable life insurance contracts, or because the participating insurance company involved was unaffiliated with one or more of the other participating insurance companies, would be unjustified and would not serve any regulatory purpose.

5. Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) provide partial exemptions from sections 13(a), 15(a), and 15(b) of the Act to the extent that those sections have been deemed to require "pass-through" voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its contractowners in certain circumstances. Rules 6e-2(b)(15)(iii)(B) and 6e-3(T)(b)(15)(iii)(B) provide that the insurance company may disregard contractowners' voting instructions if the contractowners initiate any change in such company's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraph (b)(5)(ii) and (b)(7)(ii) (B) and (C) of the Rules).

6. Applicant submits that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. In this regard, Applicant states that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its contracts. Accordingly, Applicant submits that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

7. Applicant states that the right under rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) of the insurance company to disregard the voting instructions of its contractowners does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts and that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contractowners. Applicant states that the potential for disagreement is limited by the requirements in rules 6e-2 and 6e-3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations.

8. According to the application, pass-through voting privileges will be extended to contractowners to the extent required by applicable federal securities laws, regulations or interpretations. Fund shares held in any investment sub-account of the separate accounts of participating insurance companies attributable to contracts and for which voting instructions are not actually received will be voted for, against, or withheld from voting in the same proportion as shares for which voting instructions are received. Also, Fund shares not attributable to variable contracts will be voted in the same proportion as the shares for which voting instructions are received. With respect to the tax consequences, if any, of mixed and shared funding, Applicant states that the Internal Revenue Code of 1986 (the "Code") has in effect, applied the prohibition of I.R.S. Ruling 81-225 against the use of public funds as an investment medium to all variable contracts. The Code provides, in section 817(h), for the promulgation of regulations governing the standards for portfolio diversifications for both variable annuity contracts and variable life insurance contracts. If those standards are not met, the variable annuity contracts or variable life insurance contracts do not receive tax benefitted status. The section, in effect, precludes investment of variable life insurance separate accounts in publicly available funds. Section 817(h) of the Code generally permits mixed and

shared funding. The language of paragraph (4) of section 817(h) does not distinguish between variable annuity separate accounts and variable life insurance separate accounts or between affiliated and unaffiliated insurance companies.

Applicant's Conditions

Applicant agrees that the requested order may be expressly conditioned upon the following:

1. A majority of the Board of Directors of the Fund shall consist of persons who are not "interested persons" of the Fund, as defined by section 2(a)(19) of the Act and the rules thereunder, and as modified by any applicable order of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any director, then the operation of this condition shall be suspended: (i) For a period of 45 days, if the vacancy or vacancies may be filled by the Board of Directors; (ii) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Fund for the existence of any material irreconcilable conflict between the intereats of the contractowners participating in all separate accounts investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, or any similar action by insurance, tax or securities regulatory authorities: (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any portfolio are being managed; (e) a difference in voting instructions given by variable annuity contractowners and variable life insurance contractowners; or (f) a decision by a participating insurance company to disregard the voting instructions of contractowners.

3. Participating insurance companies and the investment adviser to the Fund will report any potential or existing conflicts to the Board of Directors of the Fund. Participating insurance companies and the investment adviser will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for it to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contractowner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contractowners.

4. If it is determined by a majority of the Board of the Fund, or a majority of the disinterested directors, that a material irreconcilable conflict exists, the relevant participating insurance companies shall, at their own expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any portfolio and reinvesting such assets in a different investment medium, including another portfolio of the Fund, or submitting the question of whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any particular group (*i.e.*, annuity contractowners or life insurance contractowners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contractowners the option of making such a change; and (b) establishing a new registered management investment company or management separate account. If a material irreconcilable conflict arises because of an insurance company's decision to disregard contractowner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurance company may be required, at the Fund's election, to withdraw its separate account's investment in the Fund and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund and these responsibilities will be carried out with a view only to the interests of the contractowners.

For the purposes of this condition (4), a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund or the investment adviser be required to establish a new funding medium for any variable contract. No participating insurance company will be required by this condition (4) to establish a new funding medium for any variable annuity or variable life insurance contract if an offer to do so has been declined by vote of a majority of contractowners materially adversely affected by the material irreconcilable conflict.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications shall be promptly made known in writing to all participating insurance companies.

6. Participating insurance companies will provide pass-through voting privileges to all variable contractowners so long as the Commission continues to interpret the Act as requiring pass-through voting privileges for variable contractowners. Participating insurance companies shall be responsible for assuring that each of their separate accounts participating in the Fund calculates voting privileges in a manner consistent with other participating insurance companies. Accordingly, any Fund shares that are not attributable to variable contracts, or for which voting instructions are not received, will be voted in proportion to instructions received from contractowners. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund.

7. The Fund will notify all participating insurance companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. The Fund shall disclose in its prospectus that (a) Its shares are offered to insurance company separate accounts that fund both annuity and life insurance contracts of affiliated and unaffiliated participating insurance companies, (b) due to differences of tax treatment or other considerations, the interests of various contractowners participating in the Fund might at some time be in conflict, and (c) the Board of Directors will monitor for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board of Directors of the Fund of potential or existing conflicts, and all Board action with respect to determining the existence of a conflict, notifying participating insurance companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent rule 6e–2 and rule 6e–3(T) are amended, or rule 6e–3 is adopted, to provide exemptive relief from any provision of the Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this application, then the Fund and/or the participating insurance companies, as appropriate, shall take such steps as may be necessary to comply with rule 6e–2 or rule 6e–3(T), as amended, and rule 6e–3, as adopted, to the extent such rules are applicable.

10. The Fund will comply with all provisions of the Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Fund), and in particular the Fund will either provide for annual meetings (except insofar as the Commission may interpret section 16 not to require such meetings) or comply with section 16(c) of the Act (although the Fund is not a trust of the type specified in section 16(c)) as well as with Section 16(a) and, if and when applicable, 16(b). Further, the Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

11. The participating insurance companies and/or the investment adviser shall at least annually submit to the Board of Directors of the Fund such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by the conditions contained in this application, and said reports, materials and data shall be submitted more frequently if deemed appropriate by such Board. The obligations of the participating insurance companies to provide these reports, materials and data to the Board of Directors of the Fund when it so reasonably requests, shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–26204 Filed 11–5–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17833; International Series No. 184 (812–6719)]

Permanent Trustee Company Limited; Application

October, 31, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Permanent Trustee Company Limited ("Permanent Trustee").

RELEVANT 1940 ACT SECTION: Exemption requested under section 6(c) from the provisions of section 17(f).

SUMMARY OF APPLICATION: Permanent Trustee seeks an order exempting it, and each registered management investment company for which it serves as custodian or subcustodian, from the provisions of section 17(f) of the Act. If granted, the order would permit Permanent Trustee to maintain the securities and other assets of such registered investment companies in its custody, notwithstanding the fact that it is not an "eligible foreign custodian," as defined in rule 17f–5 under the Act.

FILING DATES: The application was filed on May 15, 1987 and amended on December 22, 1989 and September 25, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SECs Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 26, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, c/o Richard T. Prins, Esq., Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney (202) 272–7820, or Max Berueffy, Branch Chief (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 738–1400).

Applicant's Representations

1. Permanent Trustee is an Australian statutory trustee company incorporated under the laws of New South Wales. For over 100 years, Permanent Trustee has served as executor and trustee for inter vivos trusts and estates. Since 1954, the company has also served as executor, trustee, agent and attorney for leading banks, insurance companies, industrial companies, and financial intermediaries located throughout Australia and overseas. The company provides estate management, financial management, and tax services for personal and corporate trusts. These duties include acting as trustee for public debt issues by corporations, trustee and custodian for publicly-offered unit trusts, investment manager for its clients' portfolios, and trustee and custodian for issuers of secondary mortgage market and other securitized products.

2. Permanent Trustee is publicly-owned and its shares have been continuously listed on the Sydney Stock Exchange since 1987. It has 650 shareholders who own 12 million shares of the company's stock, a market capitalization of $58.2 million, and approximately $33.5 million in shareholders' equity.[1] The company has declared a profit and paid a dividend every year since 1896.

3. Fourteen statutory trust companies operate in Australia. Combined, they have approximately $7 billion in personal assets and $70 billion in corporate assets under administration. Permanent Trustee is the second largest statutory trustee company. It currently administers approximately 1,200 personal trusts, estates and settlements with a total value of $435 million and 469 corporate trusts with a total value of $26.9 billion.

4. Statutory trustee companies in Australia are extensively regulated by

[1] All references herein are to United States dollars. The rate of exchange is $0.7760 = $A1.00 for September 28, 1990. Wall St. J., October 2, 1990, at C–15, col. 4 (Eastern ed.).

the individual states in which they are authorized to do business in order to ensure their soundness, reliability and independence. Permanent Trustee is regulated by the governments of New South Wales and Victoria. In New South Wales, the Trustee Companies Act of 1964 (the "NSW Act") and the Trustee Act of 1925 (the "Trustee Act") empower Permanent Trustee to act as trustee. These statutes restrict its borrowing activities, and limit concentration of control in the company by restricting the acquisition of more than 10% of its shares by any person or group. The Trustee Act limits investment of trust assets to certain approved securities. The NSW Act also limits Permanent Trustee's liabilities to three times its net tangible assets.

5. The NSW Act provides that the company's managing director and officers are individually and collectively liable for damages arising from mismanagement of assets in its care, and the government of New South Wales requires Permanent Trustee to maintain at least $19.4 million of professional indemnity insurance. Permanent Trustee actually carries professional indemnity coverage of $27.2 million, directors and officers coverage of $7.8 million, and employer fidelity coverage of $1.6 million. Its total insurance coverage of $36.8 million thus exceeds the required minimum. To date, the company has never paid any claims out of these coverages. Moreover, this insurance coverage significantly exceeds the maximum $2.5 million bonding coverage required for registered investment companies by rule 17f–5 under the Act.

6. The Trustee Companies Act of 1984 (the "Victorian Act") regulates Permanent Trustee's operations in Victoria in a similar fashion except that it requires Permanent Trustee to maintain a debt-to-equity ratio of no greater than 1:1, in contrast to the 3:1 imposed by the NSW Act. In addition, the Victorian Act requires the company to maintain a separate reserve fund greater than the value of the trust estates in Victoria that it manages.

7. Permanent Trustee is also subject to The Companies Code in New South Wales and, as a listed company on the Sydney Stock Exchange, it must comply with the listing requirements of the Australian Associated Stock Exchanges. The company is thus subject to various audit, financial reporting and capitalization requirements. The company has a continuous internal audit program which samples practices in all of its operating departments. The internal auditor reports to the company's Audit Committee which includes three external directors, the company's four most senior executives, and the managing director.

8. Permanent Trustee represents that, by virtue of the regulatory scheme in Australia, statutory trust companies play a major role in the financial marketplace. They are the usual trustees and custodians for Australian public unit trusts, a term covering a variety of investment vehicles that are functionally equivalent to open end investment companies in the United States. In addition, trust companies, together with other qualifying financial institutions such as life insurance companies and banks, are the only entities permitted by statute to serve as trustee on behalf of holders of public debt issues. Permanent Trustee has served as a trustee and custodian for public unit trusts and corporate debt since 1954. Its 1989 Annual Report indicates that it had $26.9 billion in corporate assets under administration, including $13.3 billion in public unit trust assets.

9. Applicant states that it has extensive and longstanding expertise in providing custodial services and has received a number of indications of interest from United States money managers and registered open-end investment companies in having it serve as their Australian custodian.

Applicant's Legal Analysis

1. Section 17(f) of the Act provides, in pertinent part, that every registered investment company shall place its portfolio securities and similar investments in the care of specified types of custodial agents, all of which are located in the United States. Rule 17f–5 under the Act permits registered management investment companies to maintain in the care of an "eligible foreign custodian" their foreign securities, cash and cash equivalents in amounts reasonably necessary to effect the company's foreign securities transactions, provided certain provisions of the Rule are satisfied. An "eligible foreign custodian" is defined, in pertinent part, as "(a) banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by that country's government or an agency thereof and that has shareholders' equity in excess of $200,000,000 (U.S. or the equivalent of U.S. $) * * * ."

2. Permanent Trustee is not an "eligible foreign custodian" because it does not have shareholders' equity in excess of $200 million. It has only $33.5 million in shareholders' equity. Accordingly, it requests an order exempting it from section 17(f) of the Act so that it may act as a custodian for securities of United States registered investment companies.

3. In support of the exemptive relief requested, Permanent Trustee states that it and the registered investment companies which is may serve as custodian or subcustodian would meet all requirements of rule 17f–5 except the shareholders' equity requirement. The company believes that its entry into the ranks of foreign custodians for United States investment companies would benefit the public by providing better services at lower costs than are presently available.

4. Permanent Trustee submits that the requested relief is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Neither it nor any of the other statutory trustee companies in Australia can satisfy the $200 million shareholders' equity requirement in rule 17f–5. Consequently, registered investment companies must rely on Australian banks to provide custodial services, rather than statutory trustee companies, which are more experienced custodians.

5. In addition, Applicant submits that the $200 million shareholders' equity requirement, as applied to Permanent Trustee, is inappropriate and unnecessary for the protection of investors. The company is required by law to maintain a debt-to-equity ratio of no greater than 1:1. In fact, Permanent Trustee currently has a debt-to-equity ratio of 0.12:1, whereas banks in the United States typically operate with significantly higher leverage. Applicant claims that, although the $200 million equity requirement may be appropriate for entities having a more risk-prone capital base, such a requirement is unnecessary as a minimum threshold for a company devoted solely to the trustee and custodianship business.

6. Moreover, Permanent Trustee's total insurance coverage of $36.4 million is an adequate safeguard against any loss of investment company assets. The fact that the company has never paid any claims out of its insurance coverage is additional evidence of its custodial competence.

7. Permanent Trustee also believes that the $200 million shareholders' equity requirement is not necessary to meet the purposes of section 17(f) or justified by any of the problems associated with foreign custodianship of investment company assets.

Applicant's Conditions

If the requested order is granted, Permanent Trustee and, to the extent applicable, any registered investment company seeking to rely on the order will agree to the following conditions to the order:

1. Any and all investment companies registered under the Act for which Permanent Trustee serves as custodian or subcustodian must comply with all of the requirements of section 17(f) of the Act and paragraphs (a) and (b) of rule 17f–5 thereunder, except to the extent such Rule requires Permanent Trustee to maintain shareholders' equity in excess of $200 million;

2. Permanent Trustee's debt-to-equity ratio will not exceed the amount permitted under current regulations governing the operation of statutory trustee companies in Australia;

3. Permanent Trustee will not expand its operations beyond those permitted by its Articles of Incorporation and current Australian law governing the operation of statutory trustee companies in Australia;

4. Permanent Trustee will maintain professional indemnity insurance, in lieu thereof, a bank guarantee in an amount equal to $25 million or such greater amount as specified by the Government of New South Wales for the protection of persons entrusting assets with Permanent Trustee;

5. Permanent Trustee will maintain at least its current levels of insurance available to cover claims arising out of or in connection with the performance of its responsibilities as a foreign custodian; and,

6. Permanent Trustee consents to the jurisdiction of any and all United States federal and state courts and, prior to the issuance of the requested order, will appoint the Commission as its United States agent to accept service of process in any suit, action or proceeding brought in any such court in connection with Permanent Trustee's activities as custodian or subcustodian of securities or other assets of investment companies registered under the Act. Such appointment and consent to jurisdiction will be in the form attached as Exhibit C to this application.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–26205 Filed 11–5–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17832; International Series Release No. 183; 812–7554]

Security Pacific National Bank; Application

October 31, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANT: Security Pacific National Bank ("Security Pacific").

RELEVANT SECTIONS OF THE ACT: Exemption requested under section 6(c) from the provisions of section 17(f).

SUMMARY OF APPLICATION: Applicant seeks an order to permit it to maintain foreign securities and other assets of U.S. registered investment companies in the custody of (i) Certain foreign subsidiaries of Security Pacific Corporation, and (ii) Frankfurter Kassenverein A.G. ("Frankfurter Kassenverein"), a West German securities depository.

FILING DATE: The Application was filed on July 5, 1990 and amended on October 16, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 27, 1990, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington DC 20549. Applicant, c/o Richard E. Nathan, Dechert Price & Rhoads, 477 Madison Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Staff Attorney, at (202) 272–3035, or Max Berueffy, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 738–1400).

Applicant's Representations

1. Applicant seeks an order to exempt it, any investment company registered under the Act (other than an investment company registered under section 7(d) of the Act) (a "U.S. Investment Company") for which Applicant acts as custodian, and any custodian for a U.S. Investment Company for which Applicant acts as subcustodian to the extent necessary to permit them to maintain Foreign Securities (as defined in the Application), cash and cash equivalents (collectively, "Foreign Assets") with the following foreign custodians: (a) Banco Security Pacific (located in Chile), (b) Security Pacific Bank S.A. (located in Switzerland), (c) Security Pacific Bank (France) SNC (located in France), and (d) Security Pacific Bank Canada (located in Canada) (collectively, the "Foreign Subsidiaries").

2. Each Foreign Subsidiary is a majority-owned direct or indirect subsidiary of Security Pacific Corporation, a bank holding company organized and existing under the laws of Delaware. Each Foreign Subsidiary is also a banking institution or trust company incorporated under the laws of a country other than the United States and regulated as such by that country's government or an agency thereof.

3. Applicant also seek relief so that Frankfurter Kassenverein may maintain custody of Foreign Assets of U.S. Investment Companies. Frankfurter Kassenverein is one of the seven depositories which collectively operate the central system for handling of securities or equivalent book-entries in West Germany, and each of those depositories services a particular stock exchange. Frankfurter Kassenverein services the Frankfurt Stock Exchange, the largest and most active exchange in West Germany. Consequently, Frankfurter Kassenverein handles the most significant percentage of all securities transactions within West Germany.

4. In connection with Applicant's proposed foreign custody arrangements, Applicant will generally provide custodial services for a U.S. Investment Company (or a custodian of the securities of a U.S. Investment Company for which Applicant acts as subcustodian) in accordance with a "Custodian Agreement" between Applicant and each U.S. Investment Company (or custodian) customer. Applicant will deposit Foreign Assets with a Foreign Subsidiary only in accordance with the three-party

"Subcustodian Agreement" defined below.

5. Neither Applicant nor the Foreign Subsidiaries will be responsible for losses resulting from the political and other risks implicit in the investment decision made by the U.S. Investment Company (or the custodian for the U.S. Investment Company) to acquire Foreign Assets and to maintain those Foreign Assets in a country other than the United States. These risks include, but are not necessarily limited to, exchange control restrictions, seizure, expropriation, nationalization, insurrection, revolution, acts of war, or terrorism. Nor will Applicant or the Foreign Subsidiaries be liable for losses resulting from matters beyond their control (despite their exercise of the appropriate standard of care), such as loss due to Acts of God, nuclear incident and the like.

Applicant's Legal Analysis

1. Section 17(f) of the Act provides, among other things, that every registered management company shall place and maintain its securities in similar investments in the custody of a bank, a member of a national securities exchange or such registered company. "Bank" is defined in section 2(a)(5) of the Act to include, in essence, only banks that are regulated by the U.S. Government or by a U.S. State. As such, none of the Foreign Subsidiaries come within the definition of "bank" under the Act.

2. Rule 17f–5 under the Act permits any domestic management investment company that is registered under the Act to place and maintain its foreign securities and certain other assets in the custody of an "eligible foreign custodian" (as defined in the Rule). Among other things, Rule 17f–5 prescribes certain conditions that must be included in the foreign custody contract, and also describes four types of entities that meet the definition of "eligible foreign custodian." In essence, an "eligible foreign custodian" means (a) a foreign banking institution or trust company regulated as such by its home country that has shareholders' equity in excess of $200,000,000, (b) a foreign entity that has shareholders' equity in excess of $100,000,000 and is a majority-owned direct or indirect subsidiary of a "qualified U.S. bank" or bank-holding company, (c) a foreign securities depository or clearing agency which operate the central system for handling of securities or equivalent book-entries in its home country, or (d) a foreign securities depository or clearing agency which operates a transnational system for the central handling of securities or equivalent book-entries.

3. Applicant represents that except for the minimum shareholders' equity requirements, each of the Foreign Subsidiaries would come within the definition of an "eligible foreign custodian." Applicant further represents that each Foreign Subsidiary is experienced, capable, and well-qualified to provide custodial and sub-custodial services to U.S. Investment Companies, and that under the foreign custody arrangement proposed, the protection of investors would not be diminished.

4. Frankfurter Kassenverein, as one of several depositories in West Germany, does not come within the definition of "eligible foreign custodian" because it does not meet Rule 17f–5's requirement that a securities depository or clearing agency operate either "the central system for handling of securities or equivalent book-entries" (emphasis added), or "a transnational system for the central handling of securities or equivalent book-entries." Applicant states that there is no single central depository in West Germany. Applicant represents, however, that virtually all domestic and foreign banks engaged in the securities business in Frankfurt are members of Frankfurter Kassenverein. Applicant further represents that if Frankfurter Kassenverein could not be employed as a foreign subcustodian, the German Foreign Assets of its customers would have to be kept in a bank vault and transferred by physical delivery, increasing custody costs and the risks of loss. Applicant therefore argues that an exemption to allow custody by Frankfurter Kassenverein is entirely appropriate and consistent with the purposes served by Rule 17f–5.

5. The Commission has issued several orders allowing United States investment companies to place and maintain their foreign securities and other assets in the custody of Frankfurter Kassenverein. *E.g.*, Barclays Bank PLC, Investment Company Act Release No. 17268 (Dec. 19, 1989).

Applicant's Conditions

1. Security Pacific will deposit Foreign Assets with a Foreign Subsidiary only in accordance with a three-party Subcustodian Agreement among (a) a U.S. Investment Company for which Security Pacific acts as custodian, or a custodian of the securities of a U.S. Investment Company for which Security Pacific acts as subcustodian, (b) Security Pacific, and (c) a Foreign Subsidiary. The Subcustodian Agreement will remain in effect at all times during which the Foreign Subsidiary fails to meet the shareholders' equity requirements of Rule 17f–5. Pursuant to the terms of each Subcustodian Agreement, Security Pacific will delegate to a Foreign Subsidiary such of its custodial duties and obligations as will be necessary to permit the Foreign Subsidiary to hold the Foreign Assets in the foreign country in which it is located. The Subcustodian Agreement will set forth the extent of Security Pacific's guarantee, under which Security Pacific will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance by the Foreign Subsidiary of its responsibilities under the Subcustodian Agreement to the same extent as if Security Pacific had been required to provide custody services under such agreement.

2. The custody arrangements with the Foreign Subsidiaries will comply with Rule 17f–5 in all respects except for the minimum shareholders' equity requirements of that Rule.

3. Any foreign custody arrangement with Frankfurter Kassenverein will comply with Rule 17f–5 in all respects other than the requirement that a foreign securities depository or clearing agency operate either (a) the central system for handling of securities or equivalent book-entries in that country or (b) a transnational system for the central handling of securities or equivalent book-entries.

4. Applicant currently satisfies, and will continue to satisfy, the minimum shareholders' equity requirement set out in Rule 17f–5(c)(2)(ii) under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–26206 Filed 11–5–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–17831/File No. 812–7583]

October 30, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Manufacturers Life Insurance Company of America (the "Company"), Separate Account Four of The Manufacturers Life Insurance Company of America ("Separate Account Four") and ManEquity, Inc., (the "Underwriter").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to section 11(a) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order pursuant to section 11 of the 1940 Act approving an exchange offer in which certain flexible premium variable life insurance policies or variable universal life insurance policies (the "VUL Policies") issued by the Company through Separate Account Four may be exchanged for certain scheduled premium variable life insurance policies (the "Scheduled Policies") issued by the Company through Separate Account One.

FILING DATE: The application was filed on August 27, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m. on November 26, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicants with the request either personally or by mail, and also send a copy to the Secretary of the SEC along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, The Manufacturers Life Insurance Company of America, One Meridian Place, Philadephia, PA 19102. ManEquity, Inc., 200 Bloor Street East, Toronto, Ontario, Canada M4W 1E5.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Staff Attorney, at (202) 272–2058 or Heidi Stam, Assistant Chief, Office of Insurance Products and Legal Compliance, at (202) 272–2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants Representations

1. The Company is a stock life insurance company organized under the laws of Pennsylvania on April 11, 1977. It is an indirectly wholly-owned subsidiary of the Manufacturers Life Insurance Company ("Manufacturers Life"), a mutual life insurance company based in Toronto, Canada.

2. Separate Account Four was established by the Company on March 17, 1987, to support the VUL Policies. Separate Account Four is registered with the Commission as a unit investment trust (File No. 811–5130). Separate Account Four currently has six sub-accounts, each of which invests in the shares of one of the six portfolios that presently comprise the Manulife Series Fund, Inc. (the "Series Fund").

(3) The Underwriter, a registered broker-dealer and member of the National Association of Securities Dealers, Inc. ("NASD"), is an indirect wholly-owned subsidiary of Manufacturers Life. The Underwriter acts as the principal underwriter for variable life insurance and variable annuity contracts issued by the Company, including the VUL Policies.

4. The Company, through another of its separate accounts ("Separate Account One"), has outstanding certain scheduled premium variable life insurance policies (the "Scheduled Policies") that rely upon the exemptive and other relief granted in Rule 6e–2 under the the 1940 Act. The Scheduled Policies are registered under the Securities Act of 1933 (the "1933 Act") on Form S–6 (File No. 2–88607). There are 259 Scheduled Policies outstanding. Although new sales of the Scheduled Policies have been terminated, payments continue to be received on Policies sold prior to 1988. The underlying funding vehicle for the Scheduled Policies is the Series Fund. Only one death benefit option is offered under the Scheduled Policies. The death benefit is never less than the face amount of the Policy, assuming all premiums have been paid when due and there is no outstanding Policy loan. The face amount of a Scheduled Policy may not be increased nor decreased.

5. Sales charges under the Scheduled Policies are deducted from premium payments a rate of 30% in the first year, 10% in years two through four and 7.5% thereafter. Total sales charges may not exceed 9% of the sum of the basic premiums to be paid during a period equal to the lesser of 20 years or the anticipated life expectancy of the life insured based upon the 1958 Commissioners Standard Ordinary Mortality Tables ("1958 CSO Tables"). Policies of less than $25,000 are charged $1.50 per $1000 of face amount each year because of the greater mortality risks involved in such policies. A mortality and expense risk charge at an annual rate of 0.10% is deducted daily from the assets of Separate Account One. Policy loans are permitted under the Scheduled Policies in amounts up to 90% of cash value. Loans incur charges at a rate of .30% annually (0.20% loan administration fee plus .10% mortality and expense risk charge).

6. The VUL Policies are registered under the 1933 Act (File No. 33–13774) and rely upon the exemptive and other relief granted in Rule 6e–3(T) under the 1940 Act. The underlying funding vehicle for the VUL Policies is also the Series Fund. In addition, a guranteed interest account is available under the VUL Policies, pursuant to which all, or a portion of, cash values and net premiums may be allocated to the Company's general account.

7. Two death benefit options are offered under the VUL Policies. Under the first option, the death benefit is the face amount of the Policy at the time of death. Under the second, the death benefit is the face amount at the time of death plus the Policy's cash value at the time of death. After a VUL Policy has been in force for two years and provided that the Policy would continue to meet the tax law definition of life insurance, the death benefit option may be changed.

8. The VUL Policies permit a Policy owner to increase or decrease the face amount of his or her VUL Policy, subject to certain conditions and provided that the change would not cause the Policy to fail to meet the tax law definition of life insurance. Increases in face amount are subject to new evidence of insurability and (except in certain circumstances involving a prior decrease) result in an increase in applicable surrender charges. Decreases that do not reduce face amount below the minimum face amount initially offered are permitted, provided two Policy years have elapsed after the Policy anniversary or, if there has been an increase in face amount, after the date of the most recent increase.

9. During the first two Policy years, a VUL Policy can lapse only if the Policy owner fails to pay at least the required minimum payments to those two years. Subsequently, lapse can occur only if both (1) aggregate payments have been less than the minimum payments required to maintain the guaranteed death benefit, and (2) the cash value is insufficient to support the next monthly deduction.

10. Each VUL Policy has both a front-end sales load of 3% or premiums received throughout the life of the Policy and a deferred sales load of 47% of premiums paid up to the first two "Target Premiums." Target Premiums are always less than Guideline Annual Premiums, as defined in Rule 6e–3(T)(c)(8). In most cases, the full deferred sales load would be deducted from any surrender during the first five Policy years and then would be reduced by ten percent per year over the next ten years so that after the end of fifteen Policy years there would be no deferred

sales load. The deferred sales load also applies in the event of increases in face amount, with the charges computed as permitted under Rule 6e-3(T)(d)(2).

11. A charge of $6 per month is deducted from cash value to pay for administration of the VUL Policies. In addition, a charge for the administrative costs of underwriting and issuing a Policy that varies with the age of the insured at issuance (between $2 and $6 per $1000 of face amount) is accrued and assessed as a deferred charge this is graded down to zero over fifteen years on the same basis described above for deferred sales loads.

12. Cost of insurance charges under the VUL Policies are guaranteed to be no more than based upon the 1980 Commissioners Standard Ordinary Smoker/Nonsmoker Mortality Tables ("1980 CSO Tables"). The 1980 CSO Tables reflect increases in longevity that will translate into lower guaranteed cost of insurance charges for all of the existing Scheduled Policy owners. Further, current cost of insurance charges under the VUL Policies are even less than those permitted under the 1980 CSO Tables. A charge for mortality and expense risks assumed by the Company under the VUL Policies is deducted daily from cash value at an annual rate of 0.85%.

13. Policy loans are permitted under the VUL Policies in amounts up to the "loan value" of the Policy. The "loan value" is the Policy's cash value on the date of the loan minus monthly charges to be paid through the next Policy anniversary. Loans are charged at an annual rate of .50%, up to the "loan tier amount." The loan tier amount is 25% of an amount derived by subtracting aggregate minimum payments from cash value at the time of the loan. Loan amounts in excess of the "loan tier amount" are charged at a rate of 1.25%.

The Exchange Offer

14. Applicants propose to offer owners of Scheduled Policies the opportunity for a period of six to nine months to exchange their Scheduled Policies for VUL Policies. No direct or deferred sales charges will be imposed on the cash values rolled over into the VUL Policies by those Scheduled Policy owners who accept the exchange offer. All costs associated with the administration on the exchange offer will be borne solely by the Company. No deferred load will be imposed in connection with any payments under the VUL Policies except in connection with a surrender following an increase in face amount.

15. The face amount of each VUL Policy acquired through the exchange will be identical to that of the Scheduled Policy exchanged. No new evidence of insurability will be required in order to exchange Policies. As part of the exchange, smokers will receive nonsmokers' cost of insurance rates for a period of two years after the exchange and no charge will be made for the extra mortality risks associated with Policies having a face amount of less than $25,000. The Policy date of the VUL Policy received in exchange for a Scheduled Policy will be the date of the exchange. However, those who accept the exchange offer will be permitted to increase their face amount after only one month rather than having to wait a year, as provided in the VUL Policies.

16. The cash values rolled over from as Scheduled Policy to a VUL Policy will count as payments for purposes of computing the minimum payments needed to maintain the VUL Policy's guaranteed death benefit.

17. The fact that loans under the VUL Policies are on less favorable terms than under the Scheduled Policies will be noted in the sales literature that accompanies the offer of exchange. Scheduled Policy owners and participants who have outstanding Policy loans will receive personalize illustrations that reflect the impact of the less favorable loan feature of the VUL Policies. A Scheduled Policy owner with an outstanding loan who accepts the exchange offer will be permitted to choose between paying off his or her loan at the time of the exchange or continuing the loan under the terms of the VUL Policy.

18. The exchange offer will be made by means of a letter to owners of the Scheduled Policies, accompanied by a prospectus for the VUL Policies, personalized hypothetical illustrations which show the effect of the overall Policy costs to the owner of a Scheduled and a VUL Policy and a brief sales piece that compares the two Policies. Because of the disclosure materials provided, Policy holders will be able to make the choice of whether to accept or reject the exchange offer based on the relative value that the particular offeree places on the addition of a guaranteed interest investment option and the enhanced flexibility of the VUL Policies as compared to the additional expense that could be incurred. Disclosure materials will be delivered by representatives of the Underwriter who will solicit exchanges. While those representatives will be compensated by the Underwriter for exchanges effected, the cost of the commission payments will be borne solely by the Company rather than passed on to the Scheduled Policy owners who accept the exchange offer. Further, in the event that any Scheduled Policy owner for whom the personalized illustrations indicate that the Scheduled Policy would necessarily be less expensive that the VUL Policy, the materials will be mailed rather than delivered by a sales representative and no commission will be paid to a sales representative in connection with an effected exchange.

19. Because both the Scheduled and the VUL Policies are funded by investment in the Series Fund, no change in either the cost or provider of investment management will result from the exchange. Only if, after the exchange, a VUL Policy owner voluntarily elects to take advantage of the VUL Policies' option to allocate Policy values to the guaranteed interest account could there be any difference in the investment aspects of the two Policies. Accordingly, to the extent that there are differences in the Policies, those differences relate to insurance features and charges that are fully described in the prospectuses for the two Policies. Sales literature will highlight these difference for Scheduled Policy owners. The sales literature actually used will be submitted to the NASD for its review and approval.

20. The exchanges will constitute tax-free changes pursuant to section 1035 of the Internal Revenue Code. Any possibility that a VUL Policy could become treated as a modified endowment contract would be subsequent to the exchange, pursuant to the voluntary actions of the Policy owner, fully disclosed in the VUL Policy prospectus and highlighted in the letter transmitting the exchange offer to Scheduled Policy owners.

21. Applicants assert that, rather than being more expensive than the Scheduled Policies, the VUL Policies are likely to provide better life insurance protection at lower cost than the Scheduled Policies.

Applicant's Legal Analysis

22. Applicants assert that the legislative history of section 11 demonstrates that its purpose is to prevent the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company solely for the purpose of exacting additional selling charges, practice found by Congress to be widespread in the 1930's prior to adoption of the 1940 Act. As a result, applications under section 11(a) and orders granting those applications have focused on sales loads or sales load differentials and administrative fees to be imposed as a result of a proposed exchange.

23. The literal wording of Rule 11a-2 may preclude reliance upon it for approval of the terms of the proposed exchange offer because the VUL Policies are designed with both a front-end and a deferred sales load. However, the terms of the proposed offer satisfy the substantive concerns of section 11 and of Rule 11a-2. Because no deferred loads will be imposed as a result of the exchange, the presence of both front-end and deferred sales loads should not affect the propriety of permitting the exchange. The effect of the exchange on a Scheduled Policy owner who decides to accept the offer would be precisely the same at the time of the exchange as if the VUL Policy acquired had no deferred load, a circumstance in which the exchange would have been permitted under Rule 11a-2. In addition, no sales load of either type will ever be imposed upon the Policy values rolled over in the exchange and no deferred load will ever be imposed on any subsequent payments under the VUL Policy acquired unless the Policy owner decides, after the exchange, to increase the face amount of his or her VUL Policy.

24. Adoption of Rule 11a-3, which takes a similar approach to that of Rule 11a-2, represents the most recent Commission action under section 11 of the 1940 Act. As with Rule 11a-2, the Commission, in constructing Rule 11a-3, focused primarily on the charges that would be incurred by investors solely as a result of the exchange. The terms of the proposed offer are consistent with the Commission's recent substantive approach in Rule 11a-3, because no additional sales or administrative charges will be incurred as a result of the exchange. However, because the investment companies involved in the proposed exchange offer are separate accounts and because they are organized as unit investment trusts rather than management investment companies, Applicants may not rely upon Rule 11a-3 despite the fact that their proposal would satisfy its substantive provisions.

25. Applicants assert that those who accept their exchange offer will pay even less sales load than they would pay if they reject the offer. Rather than paying a sales load of 7.5% of ongoing premium payments under the Scheduled Policies, they would pay only 3% under the VUL Policies. Those who would otherwise have incurred the 10% sales load applicable in years two through four under the Scheduled Policies would experience even greater savings of sales load. In addition, under a VUL Policy, lower or less frequent payments may be made than under a Scheduled Policy. Accordingly, an exchanging Policy owner may choose to make smaller payments for which sales load may be deducted. Finally, no immediate or deferred, direct or indirect administrative charge will be imposed in connection with the exchange.

26. The cash value of the VUL Policy received will be precisely the same immediately after the exchange as that of the Scheduled Policy exchanged immediately prior to the exchange. Accordingly, the exchanges will, in effect, be relative net asset value exchanges that would be permitted under section 11(a) if the separate accounts were not registered as unit investment trusts and thus subject to the requirements of section 11(c) that they obtain Commission approval of the terms of the exchange.

27. Applicants assert that their proposed offer is similar to others approved by Commission order and that they have satisfied the standards for an order under section 11(a) approving the terms of their offer.

Conditions

If the requested order is granted the Applicants agree to the following conditions:

1. The proposed exchange offer will entail full disclosure of difference in the two Policies and will include individualized comparisons of the overall impact of the different charge structure on the particular offeree. Each offeree with an outstanding loan will receive illustrations that reflect the results on continuing the loan under each Policy or paying it off at the date of exchange. If, for any offeree, the exchange will necessarily result in higher overall charges (including any loan administration fees) imposed at the separate account level, the hypothetical illustrations provided will fully disclose that fact.

2. Commission paid to representative of the Underwriter in connection with the exchanges will be paid solely by the Company and not by the Policy holders. In the event that a set of personalized illustrations reveal that the VUL Policy would always be more expensive than the Scheduled Policy for a particular Scheduled Policy owner, there will be no personal solicitation by a salesman and no commission paid in connection with the exchange.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-26207 Filed 11-5-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17829; 812-7593]

New England Funds, et al.; Application

October 30, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The New England Funds ("NEF Trust"), Investment Trust of Boston Funds ("ITB Trust" and together with NEF Trust, the "Trusts"), New England Securities Corporation ("NEF Distributor"), and Investment Trust of Boston Distributors, Inc. ("ITB Distributor").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to section 6(c) which would grant an exemption from the provisions of sections 2(a) (32), 2(a) (35), 22(c) and 22(d) and rule 22c-1.

SUMMARY OF APPLICATION: Applicants seek an order under section 6(c) of the 1940 Act which would permit the Trusts to assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares.

FILING DATE: The Application was filed on September 19, 1990 and amendments were filed on October 4, 1990 and October 24, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 26, 1990, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Applicants, 399 Boylston Street, Boston, MA 02116.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Law Clerk, (202) 272-

2190, or Jeremy N. Rubenstein, Branch Chief, (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

Applicants' Representations

1. The Trusts are registered open-end diversified management investment companies organized as Massachusetts business trusts. NEF Trust distributes seven series of shares through NEF Distributor, which is NEF Trust's principal underwriter. ITB Trust distributes six series of shares through ITB Distributor, which is ITB Trust's principal underwriter. The series of each Trust are referred to below as "Funds."

2. NEF Trust currently offers its shares for sale at net asset value plus a traditional front-end sales charge which decreases as the quantity of shares purchased by any person increases. ITB Trust currently offers its shares (other than shares of its Liquid Reserves Portfolio, which is a money market fund sold without a sales load) for sale at net asset value plus a traditional front-end sales charge on transactions involving less than $5,000,000.

3. NEF Trust and ITB Trust each propose to eliminate the sales charge on all purchases of $1,000,000 or more, and to pay their respective Distributors a CDSC from the proceeds of certain redemptions of shares initially sold without a sales charge. The CDSC would be imposed only on shares issued on or after the date the order requested by the applicants is granted and only in the event of a redemption transaction within twelve months following the share purchase. The charge will be equal to 1% of the lesser of (a) the net asset value of the shares redeemed, or (b) the original cost of the investment being redeemed. No CDSC will be imposed when the investor redeems: (a) Amounts derived from increases in the value of the account above the original cost of the investment being redeemed due to increases in the net asset value per share of the relevant Fund; (b) shares acquired through reinvestment of dividend income and capital gains distributions; or (c) an investment that the investor has held for more than 12 months.

4. In determining whether a contingent deferred sales charge is payable, applicants propose to assume that shares, or amounts representing shares, that are not subject to any deferred sales load are redeemed first, and other shares are then redeemed in the order purchased, consistent with applicants undertaking to comply with proposed rule 6c–10 under the 1940 Act in the form proposed or as it may eventually be adopted.

5. No CDSC will be imposed on exchanges of shares of any Fund for shares of other Funds of the same Trust or on exchanges from either Trust into New England Cash Management Trust or New England Tax Exempt Money Market Trust, which are money market funds distributed by NEF Distributor. If, however, the shares acquired in an exchange are redeemed (other than in connection with a re-exchange) within twelve months following the original investment, a CDSC will be assessed at the rate of 1% of the lesser of (a) the net asset value of the shares redeemed or (b) the original cost of the shares initially purchased which were then exchanged and redeemed. Applicants will comply with rule 11a–3 under the 1940 Act, to the extent it is applicable, with respect to exchanges of shares that are subject to a CDSC.

6. Applicants intend to waive the CDSC on redemptions in connection with (a) distributions from retirement plans qualified under Internal Revenue Code ("Code") section 401(a) when such redemptions are necessary to make distributions to plan participants; (b) distributions from a custodial account under Code section 403(b)(7) or an individual retirement account (an "IRA") due to death, disability or attainment of age 59½; (c) a tax-free return or an excess contribution to an IRA; (d) distributions by other employee benefit plans to pay benefits; and (e) distributions from a retirement plan qualified under Code section 401(a) due to death.

7. Applicants propose to provide a credit for any CDSC paid in connection with a redemption of shares followed by a reinvestment effected within 30 days after the redemption.

Applicants' Legal Analysis

1. Applicants assert that the proposed CDSC is fair and is in the best interests of those shareholders upon whom it is imposed. The proposal allows such shareholders to have the advantage of greater investment dollars working for them at the time of their purchase of shares. The CDSC would not apply to shares held more than 12 months and would not apply to increases in the value of the shares acquired through reinvestment of distributions or increases in net asset value per share.

2. Applicants assert that the imposition of the CDSC would not cause shares of any Fund to fall outside the definition of "redeemable security" in section 2(a)(32) of the Act. Section 2(a)(32) defines redeemable security to be a security that, upon presentation to the issuer or to a person designated by the issuer, entitles the shareholder to receive approximately his proportionate share of the issuer's current net assets. Applicants assert that the imposition of the CDSC will not restrict a shareholder of any Fund from receiving a proportionate share of the current net assets of such Fund, but will merely defer the deduction of a sales charge and make it contingent upon an event which may never occur. However, to avoid uncertainty in this regard, applicants request an exemption from the operation of section 2(a)32) of the Act to the extent necessary to permit the imposition of the proposed CDSC.

3. Applicants assert that the charge is consistent with the intent of the definition of "sales load" in section 2(a)(35). Section 2(a)(35) defines sales load to be the amount properly chargeable to sales or promotional expenses that are paid at the time the securities are purchased. In this case, applicants will pay the CDSC to the relevant distributor to reimburse it for expenses related to the sale of shares; therefore, applicants submit that this arrangement is within the section 2(a)(35) definition of sales load, but for the timing of the imposition of the charge. Applicants contend that the deferral of the sales charge, and its contingency upon the occurrence of an event which may not occur, does not change the basic nature of this charge, which is in every other respect a sales charge.

4. Applicants assert that the implementation of the proposed CDSC would not violate section 22(c) of the Act or rule 22c–1 thereunder. Section 22(c) of the Act and rule 22c–1 thereunder require that the price of a redeemable security issued by an open-end management company for purposes of sale, redemption, and repurchase be based on the company's current net asset value. Applicants contend that the redemption price of the shares of the Funds is based on current net asset value. The CDSC charge is then deducted from this redemption price. However, to avoid any question as to the potential applicability of section 22(c) and rule 22c–1, applicants request an exemption from rule 22c–1 to the extent necessary or appropriate to permit applicants to impose the proposed CDSC.

5. Applicants request an exemption from the provisions of section 22(d) of the Act to permit the waiver of the CDSC as described in this notice. Section 22(d) requires a registered investment company, principal underwriter, or dealer in redeemable securities to sell these securities only at a current public offering price described in the company's prospectus. Subject to certain conditions, rule 22d–1 provides an exemption from section 22(d) allowing investment companies to charge different loads to different classes of investors. Traditionally, rule 22d–1 has applied to sales loads at the time of purchase. Applicants contend, however, that the policies underlying rule 22d–1 are equally applicable to waivers of a deferred sales load. Therefore as long as the conditions of rule 22–1 have been satisfied, waivers of a CDSC for certain classes of shareholders will be consistent with the rule's policy. Applicants contend that they will satisfy all conditions set forth in rule 22d–1 with respect to any such waivers.

Applicant's Condition

If the request to issue the order is granted, applicants expressly consent to the following condition:

The applicants will comply with the provisions of proposed rule 6c–10 under the 1940 Act (including any modifications that are proposed prior to the adoption of such rule) until such rule is adopted, and after such adoption will comply with such rule in the form in which it is in effect from time to time.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–26208 Filed 11–5–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to OMB on October 26, 1990

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on October 26, 1990, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson or Susan Pickrel, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, telephone, (202) 366–4735, or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "**FOR FURTHER INFORMATION CONTACT**" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "**FOR FURTHER INFORMATION CONTACT**" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on October 26, 1990.

DOT No: 3400

OMB No: 2115–0007.
Administration: U.S. Coast Guard.
Title: Application for Vessel Inspection and Waiver.
Need for Information: This requirement provides basic information which is necessary for the initial planning and scheduling of a vessel inspection. Also, the information collection allows certain vessel owners and operators to apply for a waiver from the inspection laws based on national defense considerations.
Proposed Use of Information: Coast Guard uses this information to schedule and plan vessel inspections and to analyze the request for waiver.
Frequency: On occasion and triennially.
Burden Estimate: 1,511 hours.
Respondents: Owners, operators and agents of commercial vessels.
Form(s): CG–2633 and CG–3752.
Average Burden Hours Per Respondent: 15 minutes.

DOT No: 3401

OMB No: 2153–0111.
Administration: U.S. Coast Guard.
Title: Course Approvals for Merchant Marine Training Schools.
Need for Information: This is a recordkeeping requirement necessary to ensure that schools desiring to have a course approved by Coast Guard meet minimal statutory requirements.
Proposed Use of Information: Coast Guard uses this information to approve the curriculum, facility and faculty for these training schools.
Frequency: Five (5) years for reporting; one (1) year for recordkeeping.
Burden Estimate: 2,120 hours.
Respondents: Merchant Marine Training Schools.
Form(s): None.
Average Burden Hours Per Respondent: 4 hours for reporting and 30 hours for recordkeeping.

DOT No: 3402

OMB No: New.
Administration: Federal Aviation Administration.
Title: J.F.K. Stop Bar Demonstration/Evaluation.
Need for Information: This information is needed to make a reliable decision regarding the adequacy of the "Stop Bar lighting system."
Proposed Use of Information: The FAA will be using the requested information in a final report based largely on pilot response to the questionnaire.
Frequency: One-time questionnaire.
Burden Estimate: 8 hours.
Respondents: Individuals (Pilots using the runway equipped with that lighting system at John F. Kennedy International Airport.)
Form(s): Questionnaire.
Average Burden Hours Per Response: 5 minutes.

DOT No: 3403

OMB No: 2127–0547.
Administration: National Highway Traffic Safety Administration.
Title: 49 CFR Part 544—Insurer Reporting Requirements—Motor Vehicle Theft Law Enforcement Act of 1984.
Need for Information: To aid in implementing and evaluating the

BEST COPY AVAILABLE

provisions of the Motor Vehicle Theft Law Enforcement Act.

Proposed Use of Information: Insurance companies and rental/leasing companies are required to provide information to NHTSA on comprehensive insurance premiums charged by insurers of motor vehicles due to vehicle thefts and distribution of stolen vehicle parts.

Frequency: Annually.

Burden Estimate: 238,780 hours.

Respondents: 50 Businesses/organizations.

Form(s): None.

Average Burden Hours Per Respondent: 79.5 hours.

DOT No: 3404

OMB No: 2127–0045.

Administration: National Highway Traffic Safety Administration.

Title: 49 CFR Part 556, Petitions for Inconsequentiality.

Need for Information: To determine that a defect or noncompliance is inconsequential.

Proposed Use of Information: This regulation establishes procedures for manufacturers to petition this agency for an exemption from the notice and remedy requirements of the Safety Act due to the inconsequentiality of the defect or noncompliance as it relates to motor vehicle safety.

Frequency: On occasion.

Burden Estimate: 30 hours.

Respondents: Businesses/organizations.

Form(s): None.

Average Burden Hours Per Respondent: 2 hours.

DOT No: 3405

OMB No: 2115–0010.

Administration: U.S. Coast Guard.

Title: Recreation Boating Accident Report.

Need for Information: Coast Guard needs this information collection requirement to comply with 46 U.S.C. 6102 (a) and (b) relative to recreational boating accidents.

Proposed Use of Information: Coast Guard uses this information to: (1) identify possible manufacturer defects in boats or equipment; (2) develop boat manufacturer standards; (3) develop safe boating education programs; and (4) publish statistical information. This requirement is also used for other program and analytical purposes.

Frequency: On occasion.

Burden Estimate: 4,232 hours.

Respondents: Recreational boat operators and state and local governments.

Form(s): CG–3865, CG–3865A.

Average Burden Hours Per Respondent: 30 minutes associated with Form CG–3865 and 3½ minutes associated with Form CG–3865A.

DOT No: 3406

OMB No: 2115–0514.

Administration: U.S. Coast Guard.

Title: Merchant Marine License, Certificate and Documents.

Need for Information: This requirement is needed to determine and document the training, experience, physical condition, professional qualifications and character of persons applying for a merchant marine license, certificate or document.

Proposed Use of Information: Coast Guard uses this information to determine the applicant's qualifications to receive or continue to hold a license, certificate or document.

Frequency: On occasion.

Burden Estimate: 101,087 hours.

Respondents: Applicants for merchant marine license, certificate or document.

Form(s): CG–719K, 866, 4509, 4510, 719, 2765, 2838, 719A, 5206, 5205, 4865, 3750, 2987, 2849, 887, and FD–258.

Average Burden Hours Per Respondent: 30 minutes per reporting activity; 45 seconds per recordkeeping.

DOT No: 3407

OMB No: 2120–0001.

Administration: Federal Aviation Administration.

Title: Notice of Proposed (or Actual) Construction or Alteration.

Need for Information: The information on proposed or actual construction or alteration of structures affecting air safety is needed to give adequate public notice.

Proposed Use of Information: The information is used to (a) establish minimum flight altitudes and procedures to ensure that aircraft are operated at safe distances from persons and property on the ground; (b) protect established minimum flight altitudes and procedures from unannounced or unknown structures that would have collision potential; (c) protect electronic air navigational aids from electromagnetic interference that causes false information to be presented to pilots which could lead the aircraft into surface objects or terrain with disastrous results; (d) provide accurate charting and other notification to airmen of the construction or alteration; (e) recommend appropriate obstruction marking and lighting to improve the conspicuousness of surface objects to help pilots see and avoid them; and (f) develop technical standards and provide guidance in the design and construction of airports.

Frequency: On occasion.

Burden Estimate: 15,310 hours.

Respondents: Anyone proposing to build or alter a construction which may affect air transportation.

Form(s): FAA Forms 7460–1, 7460–2, 7460–11.

Average Burden Hours Per Respondent:

FAA Form 7460–1 = 1 hour.
FAA Form 7460–2 = 12 minutes.
FAA Form 7460–11 = 5 minutes.

DOT No: 3408

OMB No: 2120–0034.

Administration: Federal Aviation Administration.

Title: Medical Standards and Certification—FAR 67.

Need for Information: The FAA needs the information to assess if an applicant is medically qualified to perform the duties associated with the class of airmen medical certificate sought.

Proposed Use of Information: The information obtained from FAA Form 8500–8 is used to determine medical eligibility for the certificate sought.

Frequency: On occasion.

Burden Estimate: 967,361 hours.

Respondents: Airmen.

Form(s): FAA Forms 8500–7, 8500–8, 8500–14, and 8500–20.

Average Burden Hours Per Respondent: The average burden associated with FAA Form 8500–7 is 15 minutes; FAA Form 8500–8 is 2 hours (30 minutes for form and 1.5 hours for physical); FAA Form 8500–14 is 15 minutes; and FAA Form 8500–20 is 10 minutes.

DOT No: 3409

OMB No: 2120–0517.

Administration: Federal Aviation Administration.

Title: FAR Part 150—Airport Noise Compatibility Planning.

Need for Information: The airport sponsors voluntarily submit noise exposure maps and noise compatibility programs for FAA review and approval. Approval of these programs would allow the airport to be eligible for a 10% set aside of grant funds. This information is needed by the FAA to conduct its Aviation Safety and Noise Abatement Act of 1979 (ASNA) required reviews.

Proposed Use of Information: The information would be used to meet the goal of reducing noncompatible land uses or the number of people adversely impacted by aircraft noise, and preventing the introduction of additional noncompatible land uses or people in the noise areas around airports.

Frequency: On occasion.

Burden Estimate: 78,300 hours.

Respondents: State and local governments.

Form(s): None.

Average Burden Hours Per Respondent: 2,175 hours.

DOT No: 3410

OMB No: 2120–0044.

Administration: Federal Aviation Administration.

Title: Rotorcraft External Load Operator Certificate Application—FAR 133.

Need for Information: The information is needed to determine eligibility for initial and renewal certification as a Rotorcraft External Load Operator.

Proposed Use of Information: The information is used by the FAA to process applications from operators seeking initial or renewal issuance of external-load operating certificates.

Frequency: On occasion.

Burden Estimate: 3,268 hours.

Respondents: External or perspective external load operators.

Form(s): FAA Form 8710–4.

Average Burden Hours Per Respondent: The burden for Form 8710–4 is 18 minutes. The burden for other information averages 2 hours or 40 hours for submission of a manual.

DOT No: 3411

OMB No: New.

Administration: DOT, Office of Inspector General.

Title: Publication of the Local Notice Mariners, U.S. Coast Guard, Survey Questionnaire.

Need for Information: The information is necessary for the successful completion of Audit Project #9280022000 Review of Publication and Information Material.

Proposed Use of Information: The information will be used to reduce the cost incurred by the U.S. Coast Guard, by either reducing the frequency of the LNM or imposing a user fee.

Frequency: One-time questionnaire.

Burden Estimate: 500 hours.

Respondents: 500 mariners.

Form(s): Questionnaire.

Average Burden Hours Per Respondent: 1 hour.

DOT No: 3412

OMB No: 2115–0139.

Administration: U.S. Coast Guard.

Title: Ship's Store's Certification for Hazardous Materials Aboard Ship.

Need for Information: This information collection requirement is needed to regulate the transportation, stowage and use of ships' stores and dangerous supplies.

Proposed Use of Information: Coast Guard uses this information to (1) determine whether a product can be identified as hazardous material and to properly classify it; (2) make certain that the instructions on the label are adequate to protect users from bodily harm; and (3) provide proper safeguards in case of excessive exposure or accident.

Frequency: On occasion.

Burden Estimate: 30 hours.

Respondents: Manufacturers of dangerous products used on ships.

Form(s): None.

Average Burden Hours Per Respondent: 3 hours.

DOT No: 3413

OMB No: 2115–0035.

Administration: U.S. Coast Guard.

Title: Defect/Compliance Report: Campaign Update Report.

Need for Information: Coast Guard needs this information collection requirement to determine if manufacturers of recreational boats and associated equipment are complying with the statutory requirements.

Proposed Use of Information: Coast Guard uses this information to evaluate the: (1) severity of defects and failures to comply with regulations; (2) danger presented to the public; (3) defects or failures to comply; and (4) corrective action proposed by a manufacturer. This information is also used to monitor the progress of notifications and recalls undertaken by manufacturers.

Frequency: On occasion.

Burden Estimate: 549 hours.

Respondents: Recreational boat and associated equipment manufacturers.

Form(s): CG–4917, CG–4918.

Average Burden Hours Per Respondent: 45 minutes for reporting and 2 hours for recordkeeping.

DOT No: 3414

OMB No: 2115–0143.

Administration: U.S. Coast Guard.

Title: Evidence of U.S. Citizenship or Lawful Alien Status for Workers on the Outer Continental Shelf (OCS).

Need for Information: This information collection requirement is needed to ensure compliance with the statutory mandate that OCS facilities be manned or crewed with U.S. citizens or permanent resident aliens.

Proposed Use of Information: Coast Guard uses this information to ascertain the citizenship of personnel employed on the OCS. This requirement is used in conjunction with the commercial vessel safety program.

Frequency: On occasion for reporting; recordkeeping retention period is 3 years.

Burden Estimate: 1,700 hours.

Respondents: Employees of personnel, and the employees engaged in exploration, development and production of resources on the OCS.

Form(s): None.

Average Burden Hours Per Respondent: 3 minutes for reporting and 27 minutes for recordkeeping.

DOT No: 3415

OMB No: 2115–0053.

Administration: U.S. Coast Guard.

Title: Request for Designation and Exemption of Oceanographic Vessels.

Need for Information: This information collection requirement is necessary to exempt oceanographic research vessels from statutes and regulations governing the shipment, discharge, payment and personal outfitting of merchant seamen.

Proposed Use of Information: Coast Guard uses this information to determine if certain oceanographic vessels should be exempted from specific regulatory requirements.

Frequency: On occasion and triennially.

Burden Estimate: 12.5 hours.

Respondents: Research oceanographic vessel owners/operators.

Form(s): None.

Average Burden Hours Per Respondent: 1 hour for reporting; 30 minutes for recordkeeping.

DOT No: 3416

OMB No: 2137–0572.

Administration: Research & Special Programs Administration.

Title: Testing Requirements for Packaging.

Need for Information: Needed to determine compliance of manufacturers to the general requirements for packaging to the extent that those requirements apply to the design, construction, and suitability for use of the standard to which manufactured.

Proposed Use of Information: Test criteria and performance standards established for non-bulk packaging manufacturers to assure transportation safety of hazardous materials. The Department uses these requirements to determine whether shippers are sharing responsibility with manufacturers to the degree that they cooperatively develop safety in transport through performance-oriented packaging.

Frequency: On occasion.

Burden Estimate: 30,000 hours.

Respondents: 5,000.

Form(s): None.

Average Burden Hours Per Respondent: 2 hours.

DOT No: 3417

OMB No: 2137–0557.
Administration: Research and Special Programs Administration.
Title: Approvals for Hazardous Materials.
Need for Information: To ascertain that applicants to become designated approval agencies are qualified and to assure that hazardous materials which pose a special danger to life and property in transportation are being packaged, loaded and transported in a safe manner.
Proposed Use of Information: To verify qualifications of applicants to become approval agencies and to ascertain that materials posing special hazards in transportation channels are safe to transport.
Frequency: On occasion.
Burden Estimate: 3,967 hours.
Respondents: 750.
Form(s): None.
Average Burden Hours Per Respondent: 4 hours and 45 minutes reporting and 2 minutes for recordkeeping.

DOT No: 3418

OMB No: 2120–0007.
Administration: Federal Aviation Administration.
Title: Flight Engineers and Flight Navigators.
Need for Information: The information is reviewed to determine applicant eligibility and compliance with prescribed provisions of FAR 63, Certification: Flight Crew Members Other Than Pilots.
Proposed Use of Information: FAR 63 prescribes requirements for examination and rating of flying schools. FAR 63 prescribes requirements for flight navigator certification and training course requirements for these airmen. The information collected is used to determine certification eligibility.
Frequency: On occasion.
Burden Estimate: 25,426 hours.
Respondents: Individuals and businesses.
Form(s): FAA Form 8400–3.
Average Burden Hours Per Respondent: 6 minutes for reporting (individuals); 10 to 40 hours for reporting (businesses); and 10 hours for recordkeeping.

DOT No: 3419

OMB No: 2120–0025.
Administration: Federal Aviation Administration.
Title: Crewmember Certificate Application.
Need for Information: The FAA needs the information to determine applicant eligibility for issuance of the certificate used in lieu of a passport.
Proposed Use of Information: The information is used by the FAA to issue certificates used by international flight crewmembers of U.S. air carriers in lieu of a passport, thus facilitating entry and re-entry into ICAO contracting countries.
Frequency: On occasion.
Burden Estimate: 1,133 hours.
Respondents: Individuals.
Form(s): FAA Form 8060–6.
Average Burden Hours Per Respondent: 8 minutes.

DOT No: 3420

OMB No: 2120–0009.
Administration: Federal Aviation Administration.
Title: Pilot Schools—FAR 141.
Need for Information: The information is needed to issue, renew, or amend the applicant's pilot school certificate.
Proposed Use of Information: The information is used for certification and to determine compliance.
Frequency: On occasion.
Burden Estimate: 46,674 hours.
Respondents: Those people with or wishing to be issued pilot school certificates.
Form(s): FAA Form 8420–8.
Average Burden Hours Per Respondent: 30 minutes to 20 hours for reporting, depending on application, and 50 hours for recordkeeping.

DOT No: 3421

OMB No: New.
Administration: Research & Special Programs Administration.
Title: Statement of Structural Serviceability for Freight Containers to be used for Class 1.1 and 1.2 Explosives.
Need for Information: To assure the structural serviceability of freight containers used to ship explosives.
Proposed Use of Information: Shippers of explosives in freight containers would be required to certify on the shipping documentation that the container meets the structural serviceability.
Frequency: Whenever explosives are shipped in freight containers by vessel.
Burden Estimate: 4,000 hours.
Respondents: Shippers of explosives in freight containers.
Form(s): None.
Average Burden Hours Per Respondent: 1 hour.

DOT No: 3422

OMB No: 2106–0005.
Administration: Office of the Secretary of Transportation.
Title: Public Charters Title 14 CFR 380.
Need for Information: Regulatory compliance.
Proposed Use of Information: Financial protection for traveling public and U.S. charter operators.
Frequency: On occasion.
Burden Estimate: 2,110.
Respondents: 310.
Form(s): 4530, 4532, 4533, 4534, and 4535.
Average Burden Hours Per Respondent: 1 hour.

Issued in Washington, DC on October 29, 1990.

Robert J. Woods,
Director of Information, Resource Management.

[FR Doc. 90–26126 Filed 11–5–90; 8:45 am]
BILLING CODE 4910–62–M

Federal Aviation Administration

[Summary Notice No. PE–90–45]

Petitions for Exemption; Summary of Petitions Received; Disposition of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: November 26, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on October 31, 1990.

Denise Donohue Hall,
Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 004SW.
Petitioner: Helicopter Association International.
Sections of the FAR Affected: 14 CFR 6.488.
Description of Relief Sought: To allow Sikorsky Model S–56 helicopters with standard airworthiness certificates to operate without an engine compartment fire extinguisher. Approximately 40 aircraft may be affected.

Dispositions of Petitions

Docket No.: 23492.
Petitioner: United States Hang Gliding Association.
Sections of the FAR Affected: 14 CFR 103.1(a).
Description of Relief Sought/ Disposition: To extend Exemption No. 4721, as amended, which permits petitioner's members to operate two-place unpowered ultralight vehicles for the purposes of sport, training, and recreation. Grant, October 25, 1990, Exemption No. 4721B

Docket No.: 25030.
Petitioner: Pan Am Express, Inc.
Sections of the FAR Affected: 14 CFR 93.123 and 93.129.
Description of Relief Sought: To extend Exemption No. 4777D that allows petitioner to conduct 10 operations during 4 of the 5 high-density hours at JFK International Airport. Grant, October 24, 1990, Exemption No. 4777E

[FR Doc. 90–26163 Filed 11–5–90; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Alameda County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed Route 84 highway project in the cities of Fremont, Union City and Hayward in Alameda County, California.

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California, 95812–1915. Telephone: (916) 551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (CALTRANS) and the Alameda County Transportation Authority (ACTA), will prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) on a proposed realignment of California State Route 84. Route 84 extends in an east-west direction between Route 1 in San Mateo County and I–580 in Livermore. The subject of the study is the section of Route 84 through Fremont and Union City. The segment is a two lane conventional highway (no access control) through commercial and residential areas. Route 84 is approximately three miles long and extends from I–880 (Nimitz Freeway) to State Route 238 (Mission Boulevard).

The project is needed to relieve existing and projected future congestion along the existing highway as well as on major arterials in Fremont and Union City; and to improve the alignment of Route 84 between I–880 and Route 238. The current alignment of Route 84 encompasses portions of several local streets including Thornton Avenue, Fremont Boulevard, Peralta Boulevard, and Mowry Avenue. There are numerous traffic signals which reduce traffic capacity and speed between Route 238 and I–880. There are no other direct routes between I–880 and Route 238 in the vicinity of existing Route 84, with the exception of Decoto Road. A number of locations in the vicinity of the proposed project have significant congestion including: Fremont Boulevard, Stevenson Boulevard, State Route 238, I–880 north of Decoto Road, and most interchanges along I–880. The proposal is to be funded by local Alameda County Transportation Authority (ACTA) Measure B funds.

Proposed roadway options include a 4–6 lane parkway/expressway or a freeway or various combinations thereof. Alternatives being studied include the following:

1. Realignment of Route 84 along the Route Concept alignment, (referred to as "Historic 84") in the City of Fremont. This corridor begins at I–880 and the Decoto Road interchange and proceeds northeasterly along Decoto Road for approximately three quarters of a mile where it then diverges from Decoto Road in a more easterly direction. This alignment continues to follow an easterly direction until it intersects Route 238. This alternative is being examined as a parkway/expressway (partial access control) and a freeway (full access control).

2. Realignment of Route 84 along Decoto Road in Union City. Currently Decoto Road is an arterial street that runs between I–880 and Route 238, with a number of at-grade intersections and all major intersections are signalized. Under this alternative Decoto would be upgraded to either a parkway/expressway or a freeway with a parallel frontage road to service local access needs.

3. Upgrade existing Route 84 along Thornton Avenue, Fremont Boulevard, Peralta Boulevard and Mowry Avenue from I–880 to Route 238 in the City of Fremont. Parkway/expressway and freeway concepts will be considered along this corridor. This alternative may require construction of a parallel circulation street or frontage road to service local businesses.

4. Upgrade Industrial Parkway between I–880 and Route 238 in The City of Hayward. Currently, Industrial Parkway is a major arterial designed to city standards, which runs between I–880 and State Route 238 and is comprised of several at-grade intersections. All major intersections are signalized. Parkway/expressway and freeway concepts will be considered along this corridor. A freeway would require a parallel frontage road to service local access needs.

5. No Build. This alternative assumes no upgrades to existing Route 84 from I–880 to Route 238. Currently, these streets are local streets designed to city standards, with numerous at-grade intersections. All major intersections are signalized. This alternative does not propose any improvements, aside from routine maintenance, and spot improvements for local needs.

The proposed scoping process includes the distribution of the Notice of Preparation to each responsible and trustee agency pursuant to the California Environmental Quality Act, publication of the Notice of Intent in the **Federal Register**, and a scoping meeting/open house to be held this fall. Also, letters describing the proposed action and soliciting comments, will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens in the study area. Additional public and agency meetings will be held throughout the study to

provide information and receive input on the proposal. A Draft EIS will be circulated for public and agency review and comment followed by a formal public hearing. Public notices will be mailed and/or advertised in local newspapers indicating the time and place of the meetings.

To ensure that a full range of environmental issues and public concerns related to this proposed action are addressed and that all potential significant effects identified, comments and suggestions are invited from all interested parties. If you have any information regarding historic resources, endangered species or other sensitive issues which could be affected by this project, please notify this office. Also, please indicate if you would be interested in being notified at completion of historic resource studies. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address previously provided in this document.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on October 25, 1990.

C. Glenn Clinton,

District Engineer, Sacramento, California.

[FR Doc. 90-26189 Filed 11-5-90; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 31, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: 8823.

Type of Review: New Collection.

Title: Low-Income Housing Credit Agency's Report of Noncompliance.

Description: Housing credit agencies are required to notify the IRS when they learn that any building, to which they have allocated any low-income housing credit, is not in compliance with the low-income housing tax credit provisions.

Respondents: State or local governments.

Estimated Number of Respondents: 58.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping; 3 hours, 35 minutes.
Learning about the law or the form; 12 minutes.
Preparing and sending the form to IRS; 16 minutes.

Frequency of Response: Annually.

Estimated Total Recordkeeping/Reporting Burden: 1,620 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois R. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90-26191 Filed 11-5-90; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 215
Tuesday, November 6, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS

Dated: November 9, 1990.

DATE AND TIME: Friday, November 9, 1990, 9 a.m.-5 p.m.

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of September Meeting
III. Approval of Minutes of October Telephonic Meeting
IV. Announcements
V. Draft Report on *Enforcement of the Indian Civil Rights Act of 1968*
VI. Staff Director's Report
VII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376-8312.

Emma Monroig,

Solicitor.

[FR Doc. 90-26356 Filed 11-2-90; 3:48 pm]

BILLING CODE 6335-01-M

FEDERAL COMMUNICATIONS COMMISSION

November 1, 1990.

FCC To Hold Open Commission Meeting Thursday, November 8, 1990

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, November 8, 1990, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, and Subject

1—Mass Media—Title: Implementation of the Children's Television Act of 1990. Summary: The Commission will consider adoption of a Notice of Proposed Rulemaking initiating a proceeding to implement the terms of the Children's Television Act of 1990, and further action in MM Docket No. 83-670.

2—Mass Media—Title: In the Matter of Modification of FM and Television Authorizations to Specify a New Community of License (MM Docket No. 88-526). Summary: The Commission will consider adoption of a *Memorandum Opinion and Order* addressing petitions for reconsideration of the *Report and Order* adopted in this docket.

3—Mass Media—Title: Report and Order pertaining to Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations (MM Docket No. 88-140). Summary: The Commission will consider adoption of a *Report and Order* modifying certain rules and policies governing the FM translator service.

4—Common Carrier—Title: In the Matter of Modification of Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals, and the Americans with Disabilities Act of 1990. Summary: The Commission will consider issuance of a Notice of Proposed Rulemaking to amend the rules in conformance with new section 225 and amended section 711 of the Communications Act, pursuant to the Americans with Disabilities Act of 1990, Pub. L. 101-336, enacted July 26, 1990.

5—Common Carrier—Title: Applications for Section 214 Authority and Cable Landing Licenses to Construct, Land, and Operate the HAW-5, PacRimEast, and PacRimWest Cable Systems. Summary: The Commission will consider six applications regarding proposed Pacific region submarine communications cable systems to provide service in the 1993-2005 time period.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Federal Communications Commission.

Issued: November 1, 1990.

Donna R. Searcy,

Secretary.

[FR Doc. 90-26284 Filed 11-2-90; 11:34 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12 noon, Tuesday, November 13, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26360 Filed 11-2-90; 3:48 pm]

BILLING CODE 6210-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-90-25]

TIME AND DATE: Tuesday, November 20, 1990 at 10:30 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
   a. Certain Rotary Printing Apparatus Using Heated Ink Composition, Components Thereof, and Systems Containing Said Apparatus and Components (D/N 1592)
   b. Certain Automotive Fuel Caps and Radiator Caps and Related Packaging and Promotional Materials (D/N 1591)
5. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: October 31, 1990.

Kenneth Mason,

Secretary.

[FR Doc. 90-26351 Filed 11-2-90; 2:57 pm]

BILLING CODE 7020-02-M

NATIONAL SCIENCE BOARD

DATE AND TIME:

November 16, 1990 8:30 a.m. Closed Session
November 16, 1990 8:50 a.m. Open Session

PLACE: National Science Foundation, 1800 G Street, NW., Room 540, Washington, DC 20550.

STATUS:

Part of this meeting will be open to the public.
Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED NOVEMBER 16:

Friday, November 16, 1990

Closed Session (8:30 a.m. to 8:50 a.m.)

1. Minutes—October 1990 Meetings
2. NSB and NSF Staff Nominees
3. Future NSF Budgets
4. Grants and Contracts

Friday, November 16, 1990

Open Session (8:50 a.m. to 11:45 a.m.)

Swearing-in Ceremony for New NSB Members

5. Chairman's Report
6. Minutes—October 1990 Meeting
7. Director's Report
8. Protocol for NSB Award Approvals
9. Conflicts-of-Interests
10. Draft Report of the Committee on Europe in 1992—Implications for U.S. S&T
11. Other Business

Thomas Ubois,

Executive Officer.

[FR Doc. 90-26343 Filed 11-2-90; 2:56 pm]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 5, 12, 19, and 26, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of November 5

Thursday, November 8

10:00 a.m.
Briefing on Progress of Research in the Area of Organization and Management (Public Meeting)

2:00 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Kerr-McGee's Petition for Reconsideration (Tentative)

Week of November 12—Tentative

Friday, November 16

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 19—Tentative

Wednesday, November 21

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 26—Tentative

Thursday, November 29

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING) (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: November 1, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90-26356 Filed 11-2-90; 2:56 pm]

BILLING CODE 7590-01-M

federal register

Tuesday
November 6, 1990

Part II

Environmental Protection Agency

40 CFR Part 721

Significant New Uses of Certain Chemical Substances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50588; FRL-3796-8]

RIN 2070-AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for several chemical substances which were the subject of premanufacture notices (PMNs), and are subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing activity designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and, if necessary, to prohibit or limit that activity before it occurs. Seven acrylate substances are not included for reasons specified in Unit III. EPA is promulgating this SNUR using direct final procedures.

DATES: This rule is effective January 7, 1991. If EPA receives notice before December 6, 1990 that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR for the chemical for which the notice of intent to comment is received, and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Each comment or notice of intent to submit adverse or critical comment must bear the docket control number OPTS-50588 and the name(s) of the chemical substance(s) subject to the comment. Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. E-105, 401 M St., SW., Washington, DC 20460. Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection. The Supplementary Information unit of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This SNUR will require persons to notify EPA at least 90 days before commencing any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNURs published in the **Federal Register** at 55 FR 17376 on April 24, 1990. Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28, and must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the importation certification appears at 40 CFR part 707.

III. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if applicable), basis for the action taken by EPA in the section 5(e) consent order for the substance (including the statutory citation and specific finding), and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of the rule by reference to 40 CFR part 721 subpart B where the significant new uses are described in detail. Where the underlying section 5(e) order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this unit. As explained further in Unit VI., the SNUR for such substances contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice at least 90 days in advance. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance, but for which no production limit has been established in the section 5(e) order. Descriptions of recommended tests are provided for informational purposes.

The SNURs on PMN substances (P-89-810 and P-89-998) regulate chemical substances subject to section 5(e) orders solely on a finding under TSCA section 5(e)(1)(A)(ii)(II) of substantial

production volume and significant or substantial human or environmental exposure. In these cases, there was limited or no toxicity data available for the PMN substances, potentially substantial production volume, and potentially significant or substantial human or environmental exposure. In such cases, EPA regulates new chemical substances under section 5(e) by requiring certain toxicity tests. Substances with potentially substantial human exposures would be subject to health effects testing such as mutagenicity, acute effects, and subchronic effects.

Some of the earlier section 5(e) orders contain provisions that required wording changes to be converted into SNURs. In some instances, the SNUR text is merely more detailed (e.g., the provision for a written hazard communication program in § 721.72(a) is more detailed than the hazard communication provisions in some earlier orders or the provision for dermal protection in § 721.63(a)(1) and (a)(3) is worded differently from dermal protection provisions in some earlier orders). In such cases, EPA considers the SNUR and section 5(e) provisions to be generally equivalent. Moreover, the companies which entered into the more limited hazard communication provisions of the earlier 5(e) orders, as well as those companies covered by the SNURs, are generally subject to the requirements of the Occupational Safety and Health Administration's hazard communication standard at 29 CFR 1910.1200. Therefore, EPA believes it equitable and minimally burdensome to include in the SNUR those requirements of the hazard communication standard that are generally considered to be acceptable in informing workers of potential chemical hazards.

In some instances, however, a particular requirement may be so differently worded from the corresponding SNUR provision that the basis of the SNUR provision is not evident. Where this occurs, the preamble below explains why the SNUR provision was chosen.

As presented in the regulatory text that follows, all 14 of these substances except P-89-810 and P-89-998 are exempt from § 721.63 and/or § 721.72 provisions if they are present at low levels and are not expected to reconcentrate in mixtures. The exemptions are provided in § 721.63(b) and § 721.72(e) and their application will make these SNURs consistent with those based on more recent section 5(e) consent orders. If a substance was determined to pose a cancer concern by structural-activity analysis or actual data (as described in this manner in the preamble that follows), it is exempt only if the level is 0.1 percent or less. All other substances must not exceed a 1.0 percent level in a mixture in order to qualify for the exemption. EPA's decision to allow exemptions at these levels was based on the Occupational Safety and Health Administration's hazard communication standard exemption of MSDS requirements in § 1910.1200(g)(2)(i)(C)(1) and (2) when substances are present at such low levels in mixtures.

Each of these SNURs involves information which has been claimed as CBI. When a generic chemical name appears in this unit, the specific name is claimed as CBI. In addition, some of the substances identified in this unit involve a production limit as a significant new use. Because the production limit is contained in the section 5(e) order and has been claimed as CBI, the regulatory text incorporates the production limit by reference to the section 5(e) order. The procedures for determining whether a specific substance and/or a specific significant new use which are CBI are covered by a specific SNUR are described in Unit VII.

PMN Number: P-83-1157

Chemical name: (generic) Substituted oxirane.
CAS Number: Not available. Effective date of section 5(e) consent order: September 25, 1984.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based on data from bioassays of structurally analogous substances this substance may cause carcinogenicity. In addition, P-83-1157 is expected to cause pulmonary edema based on data from testing analogue substances and data received from the PMN submitter.
Recommended testing: Results from a 90-day subchronic rodent inhalation study could provide the data to further evaluate the potential risk of pulmonary edema. A 2-year bioassay in rodents would be necessary to further evaluate the potential carcinogenic risks of this substance.
CFR citation: 40 CFR 721.1504.

PMN Number: P-83-1222

Chemical name: (generic) Substituted alkyl halide.
CAS Number: Not available.
Effective date of section 5(e) consent order: September 25, 1984.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based on data from bioassays of structurally analogous substances this substance may be carcinogenic. In addition, P-83-1222 is expected to cause pulmonary edema based on data from testing analogue substances and supporting data received from the PMN submitter.
Recommended testing: Results from a 90-day subchronic rodent inhalation study could provide the data to further evaluate the potential risk of pulmonary edema. A 2-year bioassay in rodents would be necessary to further evaluate the potential carcinogenic risks of this substance.
CFR citation: 40 CFR 721.1125.

PMN Number: P-83-1227

Chemical name: (generic) Perhalo alkoxy ether.
CAS Number: Not available.
Effective date of section 5(e) consent order: September 25, 1984.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: This substance is expected to cause pulmonary edema based on data from testing analogue substances.
Recommended testing: Results from a 90-day subchronic rodent inhalation study could provide the data to further evaluate the potential risk of pulmonary edema.
CFR citation: 40 CFR 721.1032.

PMN Number: P-84-492

Chemical name: (generic) Substituted hydroxylamine.
CAS Number: Not available.
Effective date of section 5(e) consent order: October 4, 1984.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based on positive test results from the Ames assay and data on structurally analogous substances that shows carcinogenic effects in mice, this substance may be carcinogenic.
Recommended testing: A 2-year bioassay in rodents would be necessary to further evaluate the potential risks of this substance.

CFR citation: 40 CFR 721.1243.

PMN Number: P-88-1492

Chemical name: (generic) Alkyl peroxy-2-ethyl hexanoate.
CAS Number: Not available.
Effective date of section 5(e) consent order: January 21, 1987.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Data on structurally similar substances show carcinogenic activity based on testing a limited study of mice. In addition, this substance was positive results when tested in the Ames assay for mutagenicity. These data indicate that this substance may cause cancer.
Recommended testing: A 2-year bioassay could provide the data to enable a reasoned evaluation of the potential risks.
CFR citation: 40 CFR 721.1208.

PMN Number: P-88-522

Chemical name: Hydrazinecarboxamide, *N,N'*-(methylenedi-4,1-phenylene)bis[2,2-dimethyl-.
CAS Number: 85095-61-0.
Effective date of section 5(e) consent order: May 17, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Based on data from bioassays of the structurally analogous daminozide and its potential metabolite, 1,1-dimethylhydrazine, this substance may cause carcinogenicity. In addition, because this substance belongs to the class of substances, hydrazines, it may also cause liver and blood effects.
Recommended testing: A two-species oncogenicity bioassay as described in 40 CFR 798.3300.
CFR citation: 40 CFR 721.1235.

PMN Number: P-88-2470

Chemical name: (generic) Alkyl alkenoate, azobis-.
CAS Number: Not available.
Effective date of section 5(e) consent order: September 21, 1989.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Data on structurally similar substances show neurotoxic activity with a no-observed effect level of only 0.19 mg/kg/day.
Recommended testing: The following information is required to evaluate the risk posed by this substance: (1) A 90-day subchronic inhalation study (as described in 40 CFR 798.2450); (2) a functional observational battery (as described in 40 CFR 798.6050); (3) a motor activity study (as described in 40 CFR 798.6200; and (4) a neuropathology study (as described in 40 CFR 798.6400). These studies must be completed before the production volume exceeds a certain limit which is CBI. Data on potential exposures or releases of the substance, testing other than that specified in the section 5(e) order for the substance, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification.
CFR citation: 40 CFR 721.454.

PMN Number: P-89-30

Chemical name: 2-Propenoic acid, 2-methyl-, 7-oxabicyclo[4.1.0]hept-3-ylmethyl ester.
CAS Number: 82428-30-6.
Effective date of section 5(e) consent order: June 11, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Structurally similar acrylates and epoxides have been shown to cause cancer when tested in laboratory animals. In addition, similar epoxides cause neurotoxicity and reproductive effects in laboratory animals. Therefore this substance may cause cancer, neurotoxicity, and reproductive effects.
Recommended testing: A 90-day dermal toxicity study in rats with functional observational battery, motor activity, and neuropathology and with fertility, reproductive organ toxicity, and clinical pathology as described in 40 CFR 798.2250. A 2-year, two-species rodent bioassay as described in 40 CFR 798.3300.
CFR citation: 40 CFR 721.1822.

PMN Number: P-89-31

Chemical name: 2-Propenoic acid, 7-oxabicyclo[4.1.0]hept-3ylmethyl ester.
CAS Number: 64630-63-3.
Effective date of section 5(e) consent order: June 11, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.
Toxicity concern: Structurally similar acrylates and epoxides have been shown to cause cancer when tested in laboratory animals. In addition, similar epoxides cause neurotoxicity and reproductive effects in laboratory animals. Therefore this substance may cause cancer, neurotoxicity, and reproductive effects.
Recommended testing: A 90-day dermal toxicity study in rats with functional observational battery, motor activity, and neuropathology and with fertility, reproductive organ toxicity, and clinical pathology as described in 40 CFR 798.2250. A 2-year, two-species rodent bioassay as described in 40 CFR 798.3300.
CFR citation: 40 CFR 721.1815.

PMN Number: P-89-750

Chemical name: (generic) Bisphenol A, epichlorohydrin, polyalkylenepolyol and polyisocyanato derivative.
CAS Number: Not available.
Effective date of section 5(e) consent order: June 7, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.
Toxicity concern: Based on data from studies of similar substances, this substance may cause cancer, mutations, and male reproductive effects. In addition, structurally similar substances have shown toxicity to aquatic organisms.
Recommended testing: Studies performed according to the following guidelines could provide the data for further evaluation of the substance: (1) A 2-year, two-species rodent bioassay (40 CFR 798.3300); (2) fish 96-hour acute (40 CFR 797.1400); (3) daphnid 48-hour acute (40 CFR 797.1300); (4) algal 96-hour acute (40 CFR 797.1050). Production may not exceed a certain CBI limit unless a 90-day subchronic oral study (40 CFR 798.2650) is performed with special attention to pathology of reproductive organs. Data on potential exposures or releases of the substance, testing other than that specified in the section 5(e) order for the substance, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification.
CFR citation: 40 CFR 721.609.

PMN Number: P-89-760

Chemical name: (generic) Reaction product of alkanediol and epichlorohydrin.
CAS Number: Not available.
Effective date of section 5(e) consent order: June 7, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to human health and the environment.
Toxicity concern: Based on data from studies of similar substances, this substance may cause cancer, mutations, and male reproductive effects. In addition, structurally similar substances have shown toxicity to aquatic organisms.
Recommended testing: Studies performed according to the following guidelines could provide the data for further evaluation of the substance: (1) A 2-year, two-species rodent bioassay (40 CFR 798.3300); (2) fish 96-hour acute (40 CFR 797.1400); (3) daphnid 48-hour acute (40 CFR 797.1300); (4) algal 96-hour acute (40 CFR 797.1050). Production may not exceed a certain CBI limit unless a 90-day subchronic oral study (40 CFR 798.2650) is performed with special attention to pathology of reproductive organs. Data on potential exposures or releases of the substance, testing other than that specified in the section 5(e) order for the substance, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification.
CFR citation: 40 CFR 721.953.

PMN Number: P-89-810

Chemical name: (generic) Polymer of polyethylenepolyamine and alkanediol diglycidyl ether.
CAS Number: Not available.
Effective date of section 5(e) consent order: May 24, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and that there may be significant or substantial human exposure to the substance.
Recommended testing: EPA has determined that the results of the following tests would help characterize possible effects of the substance: A 28-day oral toxicity test as described in OECD Guideline No. 407 that also includes, for all test doses, a neurotoxicity functional observational battery (40 CFR 798.6050) with the highest test dose set at 1,000 mg/kg, and, for the highest dose group only, a histopathologic examination extended to include testes/ovaries and lungs; an acute oral as described in 40 CFR 798.1175, an Ames Assay as described in 40 CFR 798.5265, and a mouse micronucleus which shall be conducted by the intraperitoneal route as described in 40 CFR 798.5395. The PMN submitter has agreed not to proceed the production volume limit with out performing these tests.
CFR citation: 40 CFR 721.1646.

PMN Number: P-89-906

Chemical name: Silane, (1,1-dimethylethoxy)dimethoxy (2-methylpropyl)-.
CAS Number: Not available.
Effective date of section 5(e) consent order: June 5, 1990.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Data on low molecular weight siloxanes show that these substances cause irreversible lung toxicity following inhalation exposures. Therefore, this substance is suspected of causing the same irreversible lung toxicity effect as that associated with siloxanes. Inhalation exposures to vapors or aerosols containing this substance are especially of concern.
Recommended testing: A 90-day subchronic inhalation study performed in accordance with 40 CFR 798.2450 would provide information to further evaluate the irreversible lung effects associated with this substance. This study must be completed prior to exceeding a certain CBI production volume limit. Data on potential exposures or releases of the substance, testing other than that specified in the section 5(e) order for the substance, or studies on analogous substances, which may demonstrate that the significant new uses being reported do not present an unreasonable risk, may be included with significant new use notification.
CFR citation: 40 CFR 721.1895.

PMN Number: P-89-998

Chemical name: (generic) Polyaromatic urethane.
CAS Number: Not available.
Effective date of section 5(e) consent order: July 11, 1986.
Basis for section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities.
Toxicity concern: Data from structurally similar substances show that this substance may cause acute toxicity to aquatic organisms.
Recommended testing: Performing the following studies would provide data to further evaluate the potential risks of acute toxicity: An acute algal (40 CFR 797.1050); an acute daphnid (40 CFR 797.1300); and acute fish (40 CFR 797.1400).
CFR citation: 40 CFR 721.2568.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that for certain of the substances, regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance. The basis for such findings is outlined in Unit III. of this preamble. Based on these findings, a section 5(e) consent order requiring the use of appropriate controls was negotiated with the PMN submitter, and the SNUR provisions for such substances are consistent with the provisions of the section 5(e) orders.

EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure the following objectives: That EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; that EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; that, when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and that all manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements.

V. Direct Final Procedure

EPA is issuing these SNURs as direct final rules, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). In accordance with 40 CFR 721.160(c)(3)(ii), these rules will be effective January 7, 1991, unless EPA receives a written notice by December 6, 1990 that

someone wishes to make adverse or critical comments on EPA's action. If EPA receives such a notice, EPA will publish a notice to withdraw the direct final SNUR(s) for the specific substance(s) to which the adverse or critical comments apply. EPA will then propose a SNUR for the specific substance(s) providing a 30-day comment period.

This action establishes SNURs for several chemical substances. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUR notice. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. In cases where a section 5(e) order recommends certain testing, Unit III. of this preamble lists those recommended tests.

However, EPA has established production limits in the section 5(e) orders for several of the substances regulated under this rule, in view of the lack of data on the potential health risks that may be posed by the significant new uses or increased exposure to the substances. These production limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these substances. Under recent consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier orders required submissions at least 12 weeks) before reaching the specified production limit. A listing of the tests specified in the section 5(e) orders is included in Unit III. of the preamble. The SNURs contain the same production limits as the consent orders. Exceeding these production limits is defined as a significant new use.

The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUR notices submitted for significant new uses without any test data may increase the likelihood that EPA will take action under section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUR notice submitters contact EPA early enough so that they will be able to conduct the appropriate tests before reaching the production limit.

SNUR notice submitters should be aware that EPA will be better able to evaluate SNUR notices which provide detailed information on: (1) Human exposure and environmental release that may result from the significant new use of the chemical substances; (2) potential benefits of the substances; and (3) information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI. EPA has decided it is appropriate to keep this information confidential to protect the interest of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.575(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure from § 721.575(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.575(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that a production volume identified in the *bona fide* submission would not be a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacture or import the substance as long as the aggregate amount does not exceed that which was specified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether the higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production volume is designated as a significant new use. Under such a procedure, a person showing a *bona fide* intent to manufacture or import the substance, under the procedure described in § 721.11, would automatically be informed of the production volume that would be a significant new use. Thus the person would not have to make multiple *bona fide* submissions to EPA for the same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.575(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. A section 5(e) order has been issued in all these cases and notice submitters are prohibited by the section 5(e) orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a Notice of Commencement (NOC) and the substance has not been added to the TSCA Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes that in cases when chemical substances identified in these SNURs are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, 10 of these 14 substances have CBI chemical identities, and since EPA has received no corresponding post-PMN *bona fide* submissions, the Agency believes that it is unlikely that many, if any, of the significant new uses described in the following regulatory text are ongoing.

As discussed at 55 FR 17376, EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of this date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity on the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with these SNURs before the effective date. If persons were to meet the conditions of advance compliance in § 721.45(h) (53 FR 28354, July 17, 1988), those persons will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity on the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPTS-50568).

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50588). The record includes information considered by EPA in developing this rule.

A public version of the record, without any confidential business information, is available in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE-G004, 401 M St., SW., Washington, DC.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070-0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070-0012), Washington, DC 20503.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: October 24, 1990.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.454 to subpart E to read as follows:

§ 721.454 Alkyl alkenoate, azobis-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkyl alkenoate, azobis- (PMN P-88-2470) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i) through (a)(5)(iii), (a)(6)(ii), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(v), and (g)(5). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a) and (c), respectively. The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l) and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), and (h).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The

provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

3. By adding new § 721.609 to subpart E to read as follows:

§ 721.609 Bisphenol A, epichlorohydrin, polyalkylenepolyol and polyisocyanato derivative.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as bisphenol A, epichlorohydrin, polyalkylenepolyol and polyisocyanato derivative (PMN P-89-750) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(viii), (a)(5)(ix), (a)(6)(ii), (a)(6)(v), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f) and (g)(1)(vi), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l) and (q) (The production limit applies to the aggregate production volume of both P-89-750 and P-89-760. P-89-780 is the preferred substance for use in performing these tests. Results from such testing can be used to evaluate the toxicity of P-89-750 as well).

(iv) *Disposal.* Requirements as specified in §721.85(b)(1), (b)(2), (c)(1), and (c)(2).

(v) *Release to water.* Requirements as specified in §721.90(a)(2)(ii) (Oil and grease separation may be used as an alternative treatment.), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

4. By adding new § 721.953 to subpart E to read as follows:

§ 721.953 Reaction product of alkanediol and epichlorohydrin.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as reaction product of alkanediol and epichlorohydrin (PMN P-89-760) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(viii), (a)(5)(ix), (a)(6)(ii), (a)(6)(v), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), and (g)(1)(vi), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l), and (q). (The production limit applies to the aggregate production volume of both P-89-750 and P-89-760. Results from testing this substance can be used to evaluate the toxicity P-89-750 as well.)

(iv) *Disposal.* Requirements as specified in §721.85(b)(1), (b)(2), (c)(1), and (c)(2).

(v) *Release to water.* Requirements as specified in §721.90(a)(2)(ii) (Oil and grease separation may be used as an alternative treatment.), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

5. By adding new § 721.1032 to subpart E to read as follows:

§ 721.1032 Perhalo alkoxy ether.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as perhalo alkoxy ether (PMN P-83-1227) is subject to reporting under this section for the significant new uses described in paragraph(a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i) through (a)(5)(iii), (a)(6)(v), (a)(6)(vi), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communicatiom program.* Requirements as specified in § 721.72(d), (e) (concentration set at 1.0 percent), (f), (g)(1)(ii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a), and (c), respectively. The provisions of § 721.72(g) requiring placement of specific information on a label and MSDS do not apply when a label and MSDS are not required under § 721.72(b), and (c), respectively.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(h).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), and (f).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

6. By adding new § 721.1125 to subpart E to read as follows:

§ 721.1125 Substituted alkyl halide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted alkyl halide (PMN P-83-1222) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i) through (a)(5)(iii), (a)(6)(v), (a)(6)(vi), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(d), (e) (concentration set at 0.1 percent), (f), (g)(1)(ii), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a), and (c), respectively. The provisions of § 721.72(g) requiring placement of specific information on a label and MSDS do not apply when a label and MSDS are not required under § 721.72(b), and (c), respectively.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(h).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), (h), (j), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

7. By adding new § 721.1206 to subpart E to read as follows:

§ 721.1206 Alkyl peroxy-2-ethyl hexanoate.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkyl peroxy-2-ethyl hexanoate (PMN P-88-1492) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (d), (e)[concentration set at 0.1 percent], (f), (g)(1)(vii), (g)(2)(i), (g)(2)(v), and (g)(5). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a), and (c), respectively. The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Disposal.* Requirements as specified in §721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(v) *Release to water.* Requirements as specified in §721.90(a)(3) (on-site only), (b)(3) (on-site only), and (c)(3) (on-site only).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), (h), (j), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

8. By adding new § 721.1235 to subpart E to read as follows:

§ 721.1235 Hydrazinecarboxamide, N,N'-(methylenedi-4,1-phenylene)bis[2,2-dimethyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance hydrazinecarboxamide, *N,N'*-(methylenedi-4,1-phenylene)bis[2,2-dimethyl- (PMN P-88-522) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(viii) through (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv) (and blood effects), (g)(1)(vii), (g)(2)(iv), (g)(2)(v), (g)(4)(iii), and (g)(5). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a), and (c), respectively. The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), and (l).

(iv) *Release to water.* Requirements as specified in §721.90(b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), (g), (h), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

9. By adding new § 721.1243 to subpart E to read as follows:

§ 721.1243 Substituted hydroxylamine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted hydroxylamine (PMN P-84-402) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), and (g)(2)(i) through (g)(2)(iii). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a), and (c), respectively. The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Release to water.* Requirements as specified in §721.90(a)(4) (chemically treated liquid wastes must contain no more than 10 ppm of the substance prior to discharge), (b)(4) (chemically treated liquid wastes must contain no more than 10 ppm of the substance prior to discharge), and (c)(4) (chemically treated liquid wastes must contain no more than 10 ppm of the substance prior to discharge).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (e), (f), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

10. By adding new § 721.1504 to subpart E to read as follows:

§ 721.1504 Substituted oxirane.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted oxirane (PMN P–83–1157) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i) through (a)(5)(iii), (a)(6)(v), (a)(6)(vi), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(d), (e) (concentration set at 0.1 percent), (f), (g)(1)(ii), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDS are not required under § 721.72(a), and (c), respectively. The provisions of § 721.72(g) requiring placement of specific information on a label and MSDS do not apply when a label and MSDS are not required under § 721.72(b), and (c), respectively.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(h).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (d), (e), (f), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

11. By adding new § 721.1646 to subpart E to read as follows:

§ 721.1646 Polymer of polyethylenepolyamine and alkanediol diglycidyl ether.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polymer of polyethylenepolyamine and alkanediol diglycidyl ether (PMN P–89–810) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communicatiom program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows.

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) which includes a written listing of safety data for this substance within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, this substance from the employer are provided an MSDS containing a written listing of safety data for this chemical and the information required under paragraph (a)(2)(i)(A) within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (2,000,000 kg).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (c), and (h) (In addition, each manufacturer, importer and processor of this substance shall maintain for five years from the date of their creation, copies of material safety data sheets required under paragraph (a)(2)(i)(A) of this section).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

12. By adding new § 721.1815 to subpart E to read as follows:

§ 721.1815 2-Propenoic acid, 7-oxabicyclo[4.1.0]hept-3-ylmethyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance 2-propenoic acid, 7-oxabicyclo[4.1.0]hept-3-ylmethyl ester (PMN P–89–31) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(viii), (a)(5)(xv), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vi), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

13. By adding new § 721.1822 to subpart E to read as follows:

§ 721.1822 2-Propenoic acid, 2-methyl-, 7-oxabicyclo [4.1.0]hept-3-ylmethyl ester.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance 2-propenoic acid, 2-methyl-, 7-oxabicyclo[4.1.0]hept-3-ylmethyl ester (PMN P–89–30) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(viii), (a)(5)(xv), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iii), (g)(1)(vi), (g)(1)(vii), (g)(2)(i) through (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

14. By adding new § 721.1895 to subpart E to read as follows:

§ 721.1895 Silane, (1,1-dimethylethoxy)dimethoxy(2-methyl propyl)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance silane, (1,1-dimethylethoxy) dimethoxy (2-methylpropyl)- (PMN P–89–906) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(5)(iv) through (a)(5)(vii), (a)(6)(i) through (a)(6)(vi), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(ii), (g)(2)(ii), (g)(2)(iv), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), (d), (f), (g), (h), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

15. By adding new § 721.2568 to subpart E to read as follows:

§ 721.2568 Polyaromatic urethane.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyaromatic urethane (PMN P–89–998) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communicatiom program.* A significant new use of this substance is any manner or method of manufacture, import, or processing associated with any use of this substance without providing risk notification as follows.

(A) If as a result of the test data required under the section 5(e) consent order for this substance, the employer becomes aware that this substance may present a risk of injury to human health or the environment, the employer must incorporate this new information, and any information on methods for protecting against such risk, into a Material Safety Data Sheet (MSDS) which includes a written listing of safety data for this substance within 90 days from the time the employer becomes aware of the new information. If this substance is not being manufactured, imported, processed, or used in the employer's workplace, the employer must add the new information to an MSDS before the substance is reintroduced into the workplace.

(B) The employer must ensure that persons who have received, or will receive, this substance from the employer are provided an MSDS containing a written listing of safety data for this chemical and the information required under paragraph (a)(2)(i)(A) within 90 days from the time the employer becomes aware of the new information.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(p) (146,000 kg).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (c), and (h) (In addition, each manufacturer, importer and processor of this substance shall maintain for 5 years from the date of their creation, copies of material safety data sheets required under paragraph (a)(2)(i)(A) of this section).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

[FR Doc. 90–26233; Filed 11–5–90; 8:45 am]

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federal register

Tuesday
November 6, 1990

Part III

International Trade Commission

Chrome-Plated Lug Nuts from the People's Republic of China and Taiwan, and Certain Electric Fans from the People's Republic of China; Notices

BEST COPY AVAILABLE

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-474 and 731-TA-475 (Preliminary)]

Chrome-Plated Lug Nuts From the People's Republic of China and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-474 and 731-TA-475 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China and Taiwan of chrome-plated lug nuts,[1] provided for in subheading 7318.16.00.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by December 17, 1990

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: November 1, 1990.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202-252-1182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on November 1, 1990, by Consolidated International Automotive, Inc., Los Angeles, CA.

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in these preliminary investigations to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on November 21, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Olumpia Hand (202-252-1182) not later than November 16, 1990, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before November 26, 1990, a written brief containing information and arguments pertinent to the subject matter of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). If briefs contain business proprietary information, a nonbusiness proprietary version is due November 27, 1990. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than November 29, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs. A nonbusiness proprietary version of such additional comments is due November 30, 1990.

[1] For purposes of this investigation, the term "chrome-plated lug nuts" refers to chrome-plated lug nuts, either closed-end or open-end ("one-piece" style) or open-end with caps and beads attached or separate ("two-piece" style), which are used for securing wheels onto cars, vans, trucks, utility vehicles and trailers. Chrome-plated locknuts are not included in the subject product. The subject lug nuts are primarily ¾" to 1⅛" hexagonal nuts, although the sizes may also be described in metric measurements. Most chrome-plated lug nuts are made from steel and, prior to plating, must have a polished surface. Chrome-plated lug nuts are provided for in subheading 7318.16.00.00 of the Harmonized Tariff Schedule of the United States (HTS) (item 646.5600 of the Tariff Schedules of the United States Annotated (TSUSA)).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: November 2, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-26377 Filed 11-5-90; 8:45 am]

BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-473 (Preliminary)]

Certain Electric Fans From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-473 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of certain electric fans,[1] provided for in subheading 8414.51.00 of the Harmonized Tariff Schedule of the United States (previously in item 661.06 of the former Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by December 17, 1990.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedures, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR 201).

EFFECTIVE DATE: October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Mary Trimble (202-252-1193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to petitition filed on October 31, 1990, by Lasko Metal Products, Inc., West Chester, PA.

Participation in the ivnestigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation msut be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.—Pursuant to 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary informationwithout a certificate of service indicating that it has been served on all the parties that authorized to receive such information under a protective order.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on November 21, 1990, at the U.S International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Mary Trimble (202-252-1193) not later than November 19, 1990, to arrange for their appearance. parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before November 26, 1990, a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). If briefs contain business proprietary information, a nonbusiness proprietary version is due November 27, 1990. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than November 29, 1990. Such additional comments must be

[1] For the purposes of this investigation, the term "certain electric fans" is defined as ceiling fans and oscillating fans, with a self-contained electric motor of an output not exceeding 125 watts. Ceiling fans direct a downward flow of air using a fan blade/motor unit fixed permanently or semi-permanently in the ceiling. The petition defines oscillating fans as fans whose fan/motor unit pivots back and forth on a stationary base through 90 degrees of arc. The petition does not include industrial or commercial ventilation fans or window fans.

limited to comments on business proprietary information received in or after the written briefs. A nonbusiness proprietary version of such additional comments is due November 30, 1990.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules [19 CFR 207.12].

By order of the Commission.

Issued: November 2, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-26378 Filed 11-5-90; 8:45 am]

BILLING CODE 7020-02-M

federal register

Tuesday
November 6, 1990

Part IV

The President

Proclamation 6221—For a National Day of Prayer, November 2, 1990

Proclamation 6222—National Week To Commemorate the Victims of the Famine in Ukraine, 1932-1933

Federal Register
Vol. 55, No. 215
Tuesday, November 6, 1990

Presidential Documents

Title 3—

The President

Proclamation 6221 of November 2, 1990

For a National Day of Prayer, November 2, 1990

By the President of the United States of America

A Proclamation

Throughout American history, the people of this Nation have depended on Almighty God for guidance and wisdom. Both Scripture and experience confirm that the Lord hears the prayers of those who place their trust in Him. Time and again, in peril and uncertainty, doubt and decision, we Americans have turned to God in prayer and, in so doing, found strength and direction.

Today the United States and, indeed, all civilized countries are being challenged by a dictator who would brazenly deny the sovereignty of other nations in order to achieve regional hegemony and to wield undue influence over the global economy. Iraqi forces continue to occupy neighboring Kuwait, terrorizing that nation's citizens in an affront to international law and fundamental standards of morality. Scores of U.S. civilians and citizens of other nations continue to be held hostage under inhuman conditions in both Kuwait and Iraq. Thousands have been made refugees fleeing from aggression in Kuwait and brutality in Iraq. To deter further aggression, thousands of American service men and women have been deployed and remain on duty in the demanding climate of the Persian Gulf region. They, too, face considerable hardship and danger. We are grateful for the loyalty, devotion to duty, and sacrifices of the members of our Armed Forces. Yet we know that military strength alone cannot save a nation or bring it prosperity and peace; as the Scripture speaks, "Unless the Lord watches over the city, the watchman stays awake in vain." With these grave concerns before us, we do well to recall as a Nation the power of faith and the efficacy of prayer.

The Psalmist proclaimed: "God is our refuge and strength, a very present help in trouble." Today let us turn to Him, both as individuals and as a Nation, to ask for His continued mercy and guidance. Let us pray for peace in the Persian Gulf, and let us ask the Lord to protect all those Americans and citizens of other nations, who are working to uphold the universal cause of freedom and justice half a world away from home. May it please the Lord to grant all leaders of nations involved in this crisis the wisdom and courage to work towards its just and speedy resolution.

The Congress, by House Joint Resolution 673, has authorized and requested the President to issue a proclamation designating November 2, 1990, as a National Day of Prayer.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim November 2, 1990, as a National Day of Prayer for American service personnel and American civilians stationed or held hostage in the Persian Gulf region. I urge all Americans to pause on this day to pray for these individuals and their families. I ask that prayer be made for the commanders of American military forces in the region and leaders in other nations that have deployed military forces in the Middle East to stop this aggression. I also urge the American people and their elected representatives to give thanks to God for His mercy and goodness and humbly to ask for His continued help and guidance in all our endeavors.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of November, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-26393
Filed 11-5-90; 10:21 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 6222 of November 3, 1990

National Week to Commemorate the Victims of the Famine in Ukraine, 1932–1933

By the President of the United States of America

A Proclamation

During the brutal famine that struck the Ukrainian Soviet Socialist Republic from 1932 to 1933, more than seven million men, women, and children died of starvation. Tragically—and to the horror of all those who cherish the blessings of life and liberty—this deadly famine was not caused by drought or by failed harvests. Rather, it resulted from a cruel and deliberate effort to destroy the spirit and the will of the Ukrainian people.

Between 1932 and 1933 the Government of the Union of Soviet Socialist Republics, under the leadership of Joseph Stalin, willfully permitted and even encouraged mass starvation in Ukraine. In an effort to enforce the collectivization of agriculture and to eliminate resistance to Moscow's rule by terror, Soviet authorities not only seized Ukrainian farmers' 1932 crop but also prevented desperately needed aid from reaching impoverished villages.

The United States Commission on the Ukraine Famine, mandated by the Congress to study this terrible tragedy and to expand public knowledge of it, has substantiated the belief that the famine was indeed the result of deliberate policies of the Soviet Government of that time. After months of hearings, eyewitness testimony, and the careful consideration of other documentation, the Commission concluded: "There is no doubt that large numbers of inhabitants of the Ukrainian SSR and the North Caucasus Territory starved to death in a man-made famine in 1932–1933, caused by the seizure of the 1932 crop by Soviet authorities."

This year the Central Committee of the Ukrainian Communist Party acknowledged that the famine was caused and sustained by Stalin and his associates. The current Soviet Government, led by President Gorbachev, has begun to confront the terrible legacy of Stalin and his era. It has begun to take important initial steps toward filling in the "blank pages" of Soviet history and ensuring the respect for human rights and human dignity that is essential to prevent such events from ever happening again. These steps are important, and they are encouraging.

As the United States Commission on the Ukraine Famine asserted, it is hoped that the lessons learned through this terrible tragedy, including "the concealment of criminal policies by those who perpetrate them," might provide insights which can be of use in confronting the challenges of similar events. This week, in commemorating the Ukraine famine, we reaffirm our determination to do just that.

The Congress, by Senate Joint Resolution 329, has designated the week of November 3 through November 10, 1990, as "National Week to Commemorate the Victims of the Famine in Ukraine, 1932–1933." The Congress has also requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of November 3 through November 10, 1990, as National Week to Commemorate the Victims of the Famine in Ukraine, 1932–1933. I call upon the people of the United States to observe this

week with appropriate programs, ceremonies, and activities that express our continued determination to uphold the God-given and inalienable rights and dignity of all human beings.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of November, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-26394
Filed 11-5-90; 10:22 am]
Billing code 3195-01-M

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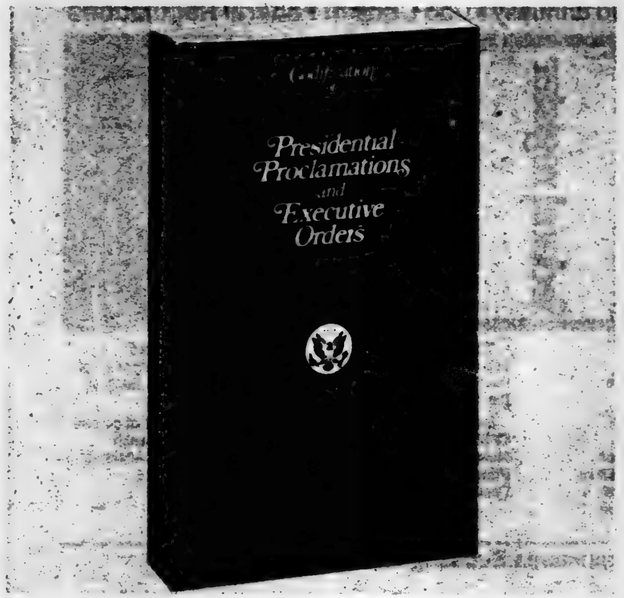

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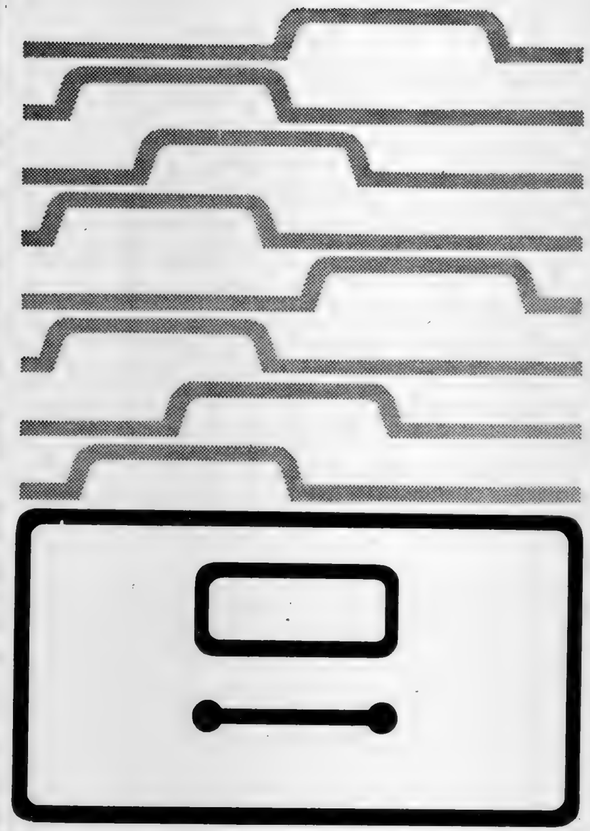

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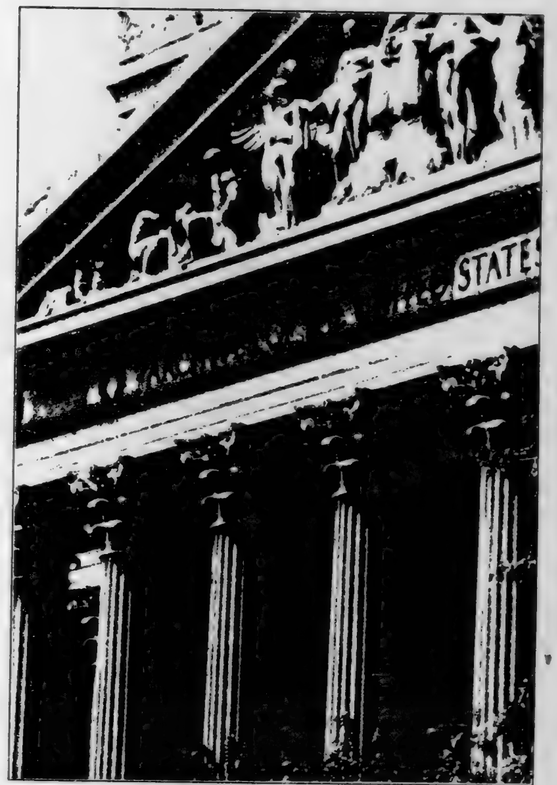

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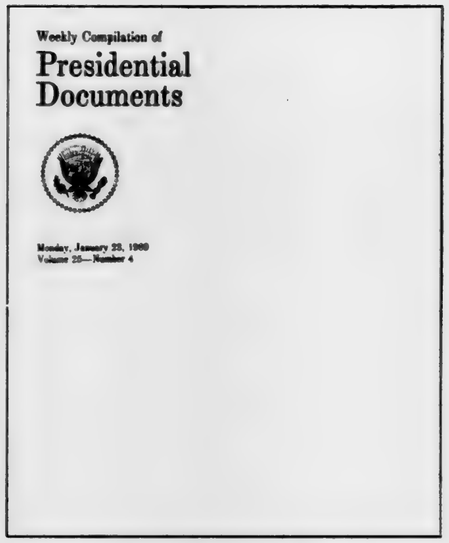

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Rules and Regulations

Federal Register
Vol. 55, No. 216
Wednesday, November 7, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-CE-19-AD; Amdt 39-6782]

Airworthiness Directives; Piper Models PA23, PA23-150, PA123-160, PA23-235, PA23-250, and PA23-250(6) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Amendment adopts a new Airworthiness Directive (AD), applicable to certain Piper PA23 series airplanes. This action provides new preflight fuel system drainage procedures and requires fuel system modifications on the affected airplanes. Numerous reports of engine stoppage due to water contaminated fuel have been reported. The actions specified in this AD will reduce the possibility of engine stoppage caused by fuel contamination.

EFFECTIVE DATE: December 10, 1990.

ADDRESSES: Piper Aircraft Corporation Service Bulletin (SB) No. 827A, dated November 4, 1988, and SB No. 932A, dated August 30, 1990, applicable to this AD, may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (407) 567-4386. This information also may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: W. H. Trammell, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD providing new preflight fuel system drainage procedures and requiring fuel system modifications on Piper PA23 series airplanes was published in the **Federal Register** on June 4, 1990 (55 FR 22802). The proposal was prompted by service reports, inquiries from field organizations, and by an NTSB Safety Recommendation.

In 1967, the FAA established a team to conduct an independent evaluation of the Piper PA23 fuel system with respect to water contamination and drain provisions. The team found that it is possible to trap fluid, specifically water, in excess of the capacity of the fuel strainer because of a low spot in the aft inboard corner of the main fuel tanks. Subsequently, Piper issued Service Bulletin (SB) No. 827A on November 4, 1988. Part I of Piper SB No. 827A set forth a revision to the fuel system draining procedures of Piper SB No. 827, issued in 1986, and Part II prescribes a dual-fuel drain kit available for certain airplanes.

On January 12, 1990, Piper issued SB No. 932, applicable to PA23 Series airplanes. Part I of Piper SB No. 932 provides for the installation of a fuel cell wedge kit in unbaffled fuel cells. Part II provides for the installation of an enlarged fuel bowl in airplanes equipped with baffled fuel cells.

Since the condition described is likely to exist or develop in other Piper PA23 series airplanes of the same design, an AD was proposed to require fuel drainage at each preflight inspection, the installation of a dual-fuel drain installation kit on Apache airplanes, and the installation of fuel cell wedges in unbaffled fuel tank airplanes and larger fuel bowls in baffled fuel tank airplanes.

Since the fuel contamination problem described in this proposal could be caused without actual operation of the airplane, the FAA determined that the compliance times could be based upon calendar time rather than hours time-in-service (TIS).

Interested parties have been afforded an opportunity to comment on the proposal, with four parties responding. Two commenters questioned the validity of installing wedges and both expressed doubt that the modification could be accomplished by mechanics in the field. The FAA has determined that although installation of the wedges is not a simple task, previous service experience involving installations of this type has been successful. Therefore, the AD is not amended in light of these comments.

One commenter suggested that a proper fix would be to install drains in low spots in the bladder tanks. The FAA has examined this alternate possible solution and has determined that this would require new bladder tanks at appreciably increased cost to the owner. Therefore, the FAA does not concur with the comment and has determined that the installation of wedges is a better overall solution.

One commenter agreed with the AD and believed that its adoption as a final rule will aid in preventing a significant number of accidents resulting from water in fuel.

During the comment period, the manufacturer made trial installations of the fuel bowls and discovered that an interference existed when the bowl is installed in a turbocharged airplane. In light of this discovery, the manufacturer has issued SB No. 932A, which replaces Part Number (P/N) 89483-008 with P/N 89483-009 and P/N 89483-010 for both turbocharged and nonturbocharged airplanes. The AD has been changed to reflect the replacement of SB No. 932 with SB No. 932A. The rest of the AD is unchanged except for minor editorial changes.

The FAA has determined that the cost breakdown for this AD is as follows:

- Apache Dual-Fuel Kit—1,107 affected airplanes at a part replacement cost of $400 and $560 for labor (14 hours at $40 per hour). The total cost is $960 per airplane for a fleet cost of $1,062,720.
- Fuel Cell Wedge Kit—3,259 affected airplanes at a part replacement cost of $167 and $400 for labor (10 hours at $40 an hour). The total cost is $567 per airplane for a fleet cost of $1,847,853.
- Aztec Fuel Bowls—408 affected airplanes at a part replacement cost of $102 and $40 for labor (1 hour at $40 an hour). The total cost is $142 per airplane for a fleet cost of $66,456.

The total estimated cost is $2,977,029 for the proposed AD. Since the individual airplane cost is so small, this AD will not have a significant financial impact on any small business entities owning the affected airplanes.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) Is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small business entities under the criteria of the Regulatory Flexibility Act. A copy of the final regulatory evaluation prepared for this action has been placed in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Piper: Amendment No. 39-6782. Docket No. 90-CE-19-AD.

Applicability: Models PA23, PA23-150, PA23-160 (serial numbers (S/N) 23-1 through 23-2048), PA23-235 (S/N 27-505 through 27-622), PA23-250, and PA23-250(6) (S/N 27-1 through 27-7405476, and S/N 27-7554001 through 27-8154030) airplanes, certificated in any category.

Compliance: Required within the next 180 calendar days after the effective date of this AD, unless already accomplished.

To preclude rough engine operation or complete power interruption caused by water contamination in the fuel, accomplish the following:

(a) For Models PA23, PA23-150, and PA23-160 airplanes:

(1) Incorporate into the Owner Handbook and/or Pilots Operating Manual the instructions contained in Part I of Piper Service Bulletin (SB) No. 827A, dated November 4, 1988.

(2) Modify the airplane by the installation of Piper Dual-Fuel Drain Kit (Part Number (P/N) 765-363), in accordance with the instructions in Part II of Piper SB No. 827A, dated November 4, 1988.

(3) Modify the airplane by the installation of Piper Fuel Tank Wedge Kit (P/N 596-367), in accordance with the instructions in Part I of Piper SB No. 923A, dated August 30, 1990.

(b) For Models PA23-235, PA23-250, and PA23-250(6) airplanes equipped with unbaffled fuel tanks, modify the airplane by the installation of Piper Fuel Tank Wedge Kit (P/N 596-367), in accordance with the instructions in Part I of Piper SB No. 932A, dated August 30, 1990.

(c) For Models PA23-250 and PA23-250(6) airplanes equipped with baffled fuel cells, modify the airplane by the installation of enlarged fuel bowls (P/N 89483-009 or P/N 89483-010) in accordance with the instructions in Part II of Piper SB No. 932A, dated August 30, 1990.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An alternate method of compliance or adjustment of the initial compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and send it to the Manager, Atlanta Aircraft Certification Office.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; telephone (407) 567-4366 or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on December 10, 1990.

Issued in Kansas City, Missouri, on October 15, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26281 Filed 11-6-90; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL-036; FRL-3855-8]

Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a request by the State of Florida to relax the limits contained in the Florida State Implementation Plan (SIP) for SO_2 and opacity from Florida Power & Light's (FP&L) Sanford No. 4 Unit located in Volusia County, Florida. The relaxed limits would apply only during the test burn for Orimulsion fuel. The purpose of the test is to determine the feasibility of switching to Orimulsion fuel and to test air pollution control equipment to reduce SO_2 and particulate emissions. The relaxed emission limit for particulate emissions was approved in 1980 and is still in effect. The relaxed limits will not interfere with the maintenance of the National Ambient Air Quality Standards and will be limited to a period of eighteen months. Therefore, EPA is today approving the request.

DATES: This action will become effective on January 7, 1991 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to Kay Prince of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Florida may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
Environmental Protection Agency Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.
Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

FOR FURTHER INFORMATION CONTACT: Kay Prince, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On October 11, 1990, the State of Florida through the Florida Department of Environmental Regulation submitted a request for a temporary relaxation of the emission limits contained in the Florida SIP for particulate matter, opacity, and SO_2 for FP&L's Sanford #4 unit. The timeframe for the relaxation would be eighteen months. The relaxed emission limits will become effective on the first day the Orimulsion is burned in Unit No. 4 and will be valid for 18 months or until Orimulsion has been burned for 90 full-power burn days equivalent (and for an additional 30 full-power burn days equivalent upon showing of good cause), whichever comes first. The purpose of the request is to allow FP&L to conduct tests to determine if switching to Orimulsion fuel is feasible. Orimulsion is an emulsified fuel produced from a naturally occurring bitumen found in the Venezuelan Orinoco River Basin. It is produced when bitumen is recovered using conventional tertiary recovery techniques, is degassed and desalted, and then emulsified into fresh water. The resulting emulsified fuel, Orimulsion, is stable and exhibits excellent combustion characteristics. Test burns using Orimulsion have been conducted in England and Canada. Orimulsion can be obtained at coal-comparable prices rather than at the much more costly liquid fuel prices.

On the basis of the tests conducted in Canada, it is expected that the emissions during the test burn would exceed the limits contained in the Florida SIP for sulfur dioxide, particulate matter, and opacity. FP&L has committee to burn lower sulfur fuel (1% or less) at Sanford Units No. 3 and 5 in order to partially offset the increased emissions projected for Sanford Unit No. 4. The emission limitation for all three units will revert to the previously approved limits when the timeframe for the relaxation expires. In addition, FP&L will be testing several types of control devices during the test burn. Should the Sanford No. 4 Unit ultimately be converted to Orimulsion fuel, FP&L would install control equipment to reduce SO_2 and particulate emissions.

The temporary emission limits requested by FP&L are:

(a) Sulfur dioxide—4.3 lb/mm Btu heat input;

(b) Suspended particulate matter—0.3 lb/mm Btu heat input (steady state) and 0.6 lb/mm Btu heat input (excess emission up to three hours per day); and

(c) Steady State opacity—60%; Excess Emissions Opacity—100%.

The limits in the Florida SIP are:

(a) Sulfur dioxide—2.75 lb/mm Btu heat input;

(b) Suspended particulate matter—0.1 lb/mm Btu heat input, maximum two hour average; and

(c) Steady State Opacity—20%.

Although the SIP contains the emission limits listed above, FP&L was granted a variance in 1980 which allowed the Sanford No. 4 Unit to emit particulate matter at the rate requested for the revision. This variance also relaxed the opacity limit. The relaxed limits were initially granted for the two year variance period allowed in the Florida SIP. Subsequently, as a result of a court determination, the relaxed limits were granted indefinitely. Therefore, the limits which currently apply to Sanford Unit No. 4 are:

(a) Sulfur dioxide—2.75 lb/mm Btu heat input;

(b) Suspended particulate matter—0.3 lb/mm Btu heat input (steady state) and 0.6 lb/mm Btu heat input (excess emission up to three hours per day); and

(c) Steady State Opacity—40%; Excess Emissions Opacity—100%.

The requested limit listed above for particulate matter is the same limit which is currently applicable to Sanford Unit No. 4. For the purpose of this notice, it is necessary only to act on the sulfur dioxide and opacity limits. At the expiration of the variance, the relaxed limits will revert to the limits which are currently in effect for the Sanford facility.

The submittal included a modeling analysis assuming an SO_2 emission rate of 4.3 lb/mm Btu heat input from Sanford Unit No. 4 and an SO_2 emission rate of 1.1 lb/mm Btu heat input from Units No. 3 and 5. The modeling analysis indicated that the increased emissions from Unit No. 4 would result in maximum 3-hour, 24-hour, and annual averages which are less than the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide. Additionally, the modeling showed that the SO_2 increment consumption is less than the allowable for PSD.

The aforementioned variance allowed 40% opacity (steady state) with excess opacity > 60% for not more than four 6-minute periods during any 3 hour period for Unit No. 4. The allowable excess emissions in the new variance is equivalent to that previously approved and the steady state opacity increase is only 20%. Therefore, the additional increase in allowed opacity should not create adverse conditions.

The permit requires continuous emission monitors (CEMs) for emissions of carbon monoxide (CO), nitrogen oxides (NO_x), sulfur dioxide (SO_2) and opacity to be installed and operated throughout the test burn period regardless of the fuel being burned. The CEMs must be maintained, calibrated, and evaluated in accordance with the requirements of 40 CFR part 60, appendix B. Compliance tests are required for particulate matter using EPA Test Method 5 or 17 and for SO_2 using EPA Test Method 6c. These tests must be conducted with the source operating within 90-100% of its full capacity when burning Orimulsion fuel. Opacity compliance will be determined from 6-minute averages of the opacity CEM data. There are additional test requirements for sulfuric acid mist, nitrogen oxides, volatile organic compounds, and trace elements and metals.

Since the No. 4 Unit is located in an attainment area for the pollutants in question and the increase in emissions is temporary, EPA is approving these revisions. The technical support information provided by FP&L can be viewed at the EPA Region IV and State offices at the above addresses.

Final Action

EPA approves the temporary relaxation for the sulfur dioxide and opacity limits for Sanford Unit No. 4. This action is being taken without prior proposal because the change is noncontroversial and EPA anticipates no significant comments on it. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have significant economic impact on a substantial number of small entities (see 46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 1991. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52:

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note: The Director of the Federal Register approved the incorporation by reference of the Florida SIP on July 1, 1982.

Joe R. Franzmathes,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart K—Florida

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.520 is amended by adding paragraph (c)(71) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(71) The Florida Department of Environmental Regulation submitted an Order authorizing research and testing by the Florida Power & Light Company and the operating permit for the Orimulsion Fuel Test Burn at the Sanford Power Plant Unit No. 4 to EPA on October 11, 1990.

(i) *Incorporation by reference.* (A) Florida Department of Environmental Regulation Order authorizing research and testing by the Florida Power & Light Company adopted on October 4, 1990.

(B) Florida Power Power & Light operating permit number AC 64–160842, PSD–FL–150 which becomes State-effective on January 7, 1991.

(ii) *Other materials.* (A) Letter of October 11, 1990, from the Florida Department of Environmental Regulation.

[FR Doc. 90–26320 Filed 11–6–90; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 761

[OPTS–66006K; FRL 3836–3]

Polychlorinated Biphenyls (PCB's): Manufacturing, Processing, and Distribution in Commerce, Partial Rescission of Exemption Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; partial rescission of exemption rule.

SUMMARY: Section 6 of the Toxic Substances Control Act (TSCA) generally prohibits the manufacture, processing and distribution in commerce of polychlorinated biphenyls (PCBs). It also provides a procedure where persons may petition the Administrator, for good cause shown, for an exemption from these prohibitions. This notice announces EPA's decision to rescind an interpretation of 40 CFR 761.20(c)(1) which was included in the PCB Manufacturing, Processing, and Distribution in Commerce Exemption Rule that was published in the **Federal Register** (55 FR 21023) on May 22, 1990.

EFFECTIVE DATE: This decision is effective as of August 29, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

ADDRESSES: The official record for the PCB exemptions is located in the TSCA Public Docket Office, Rm G008, NE Mall, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The record is available for copying and inspection from 8 a.m. to 12 noon, and from 1 p.m. to 4:30 p.m. Monday through Friday, excluding holidays.

SUPPLEMENTARY INFORMATION: EPA has determined to rescind an interpretation of 40 CFR 761.20(c)(1), only insofar as it requires entities such as the Electric Apparatus Service Association, Inc. (EASA) to obtain an exemption to buy or sell PCB Transformers or PCB-Contaminated Transformers, as discussed in the PCB Manufacturing, Processing, and Distribution in Commerce Exemptions Rule published in the **Federal Register** on May 22, 1990 (55 FR 21025). A stay of this same interpretation was published as an FR Notice on September 13, 1990 (55 FR 37714). This decision to rescind the interpretation does not affect any exemption petition addressed in that rule or any other aspect of that rule or preamble to the rule. Accordingly, the interpretation requiring entities such as EASA obtain an exemption to buy and sell intact, non-leaking PCB or PCB-Contaminated Transformers is hereby rescinded.

Dated: October 26, 1990.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 90–26322 Filed 11–6–90; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[Gen. Docket No. 87–389; FCC 90–324]

Regarding the Operation of Radio Frequency Devices Without an Individual License—G/M and M/A-COM Petitions for Reconsideration

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule; petition for reconsideration.

SUMMARY: In response to petitions filed by General Motors Research Corporation (GM) and by M/A–COM, Inc. (M/A–COM), the Commission is amending its rules which limit the field strength permitted in certain frequency bands for harmonic emissions of field disturbance sensors. GA and M/A–COM expressed concern that the limits were too restrictive and unnecessary, would increase the cost of field disturbance sensors, and make some products impractically large. The change adopted herein will continue to allow operation of economical field disturbance sensor equipment and also to ensure that such equipment does not pose a significant threat of interference to authorized communications users.

EFFECTIVE DATE: December 7, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: George Harenberg, Technical Standards Branch, Office of Engineering and Technology, (202) 653–7314.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum, Opinion and Order (MO&O)* in Gen. Docket No. 87–389, FCC 90–324, adopted on September 26, 1990, and released on October 26, 1990.

The full text of this *MO&O* is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Summary of Notice

1. In the First Report and Order (*R&O*) in GEN Docket No. 87–389, the Commission prohibited operation of part 15 intentional radiators in several restricted frequency bands. The Commission also specified limits on spurious emissions in the restricted frequency bands for intentional radiators. These restrictions were intended to limit the amount of interference caused to certain sensitive radio services. Previously the prohibitions and limitations on operating in specific restricted bands applied to remote control and security devices only.

2. Field disturbance sensors (FDSs) operate by establishing a radio frequency field and then detecting changes in that field caused by the movement of nearby persons or objects. Field disturbance sensors are commonly used to open doors or detect intruders. Many FDSs operate on 10.525 GHz. The second and third harmonics of 10.525 GHz fall in restricted frequency bands and, therefore, are subject to the spurious emission limits for these bands. Under the previous rules, the harmonic emissions of these devices were subject to less stringent limits. GM and M/A–COM, in petitions filed on May 26, 1989, express concern that the limits on harmonic emissions adopted in the R&O will adversely affect the public by making FDS products much more expensive and, in some cases, impractically large. They argue that the previous harmonic emission limits already provide adequate protection to restricted band users.

3. The identification of restricted bands and associated emission limits were developed in cooperation with National Telecommunications Information Administration (NTIA). Consequently, the petitions were referred to NTIA for comment. NTIA responded by proposing a plan for relaxation of the limit for FDS harmonic emissions in the restricted bands above 17.7 GHz. Specifically, NTIA proposes that the limit on harmonic emissions from FDSs designated for use only inside buildings be relaxed to 25 mV/m measured at 3 meters. This is equivalent to the limit in the previous rules. NTIA also proposes that the harmonic emission limit in these bands for FDS devices designated for use outside buildings be relaxed to 7.5 mV/m measured at 3 meters. Finally, NTIA proposes that FDSs used on mobile vehicles not be permitted to operate in a continuous mode.

4. The Commission concludes that the changes proposed by NTIA are generally reasonable. These changes would continue to allow FDS operation at 10.525 GHz in an economically-achievable manner, while maintaining a low likelihood of harmful interference. The emissions from 10.525 GHz FDSs used indoors are greatly attenuated by materials in the walls and ceilings of buildings. This attenuation makes it reasonable to allow higher harmonic emission levels indoors. Therefore, the Commission is relaxing the harmonic emission limit for FDSs designed for use only inside buildings to 25 mV/m measured at 3 meters. This is essentially the same limit as that specified in the previous harmonic limit for FDSs.

5. There also are several aspects of outdoor FDS operations that reduce the likelihood they will cause interference to restricted band users. FDS signals are generally highly directional. Thus, it is unlikely that an FDS signal would be pointed directly at authorized communications systems. Moreover, many FDS systems operating outdoors are at fixed locations. If interference occurs from a fixed FDS, the source can be traced easily and the interference remedied by realigning the FDS system. The government or other restricted band user can also require the emissions from FDSs installed on their property to be attenuated more than that which is needed for FDSs used by the public. Therefore, the Commission concludes that the 7.5 mV/m measured at 3 meters outdoor limit proposed by NTIA would provide adequate protection for restricted band users and, accordingly, the Commission is adopting this as the new standard.

6. The Commission agrees with NTIA that FDSs used in mobile vehicles, such as automobiles and trucks, represent the greatest potential source of interference to restricted band users. It is difficult to predict when and where a mobile FDS will operate. However, the Commission also agrees with GM that railroad cars, farm vehicles, and other specialized equipment pose less interference risk than other vehicles. To address GM's concern regarding railroad operations and farm equipment and to make the rules comparable with those elsewhere in this part, the Commission is applying the prohibition on continuous operation only to motor vehicles and aircraft. The term motor vehicle includes only vehicles that operate on highways, such as trucks, automobiles, and buses. FDS devices used on railroad locomotives, railroad cars, and other track equipment and farm equipment will be permitted to operate on a continuous basis. In addition, the prohibition on continuous operation will not apply to vehicles, such as fork lifts, that are used primarily indoors or for very specialized operations. Finally, the Commission is adopting GM's suggestion that the prohibition on continuous operation not apply if the FDS complies with the restricted band limits contained in §§ 15.205 and 15.209.

7. Based on the comments, the Commission believes that continuous operation is best defined by making the distinction as to whether the FDS transmits on a regular basis whenever the vehicle is in operation or only during periods of limited duration when the vehicle performs certain specific activities. For example, such activities would include operation in reverse gear or signaling a turn. Therefore, operation limited to specific activities of limited duration would be permitted under the rules.

8. The Commission agrees with M/A–COM that the outdoor limit should not be imposed on door openers. These FDSs are not a likely source of interference because they operate over an extremely short distance and are usually aimed towards the ground. They generally are mounted in such a manner that the building provides enough shielding to protect against the weather and also provides attenuation of the FDS signal. In addition, their location can be easily identified and controlled. Accordingly, FDS devices used to open doors will be subject to the indoor emission limit.

List of Subjects in 47 CFR Part 15

Communications equipment, Radio.

Rule Changes

Title 47 of the Code of Federal Regulations, part 15, is amended as follows:

1. The authority citation for part 15 continues to read as follows:

Authority: Sec. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, and 307.

2. Section 15.205 is amended by revising paragraphs (b) and (c) and adding a new paragraph (e), to read as follows:

§ 15.205 Restricted bands of operation.

* * * * *

(b) Except as provided in paragraphs (d) and (e) of this section, the field strength of emissions appearing within these frequency bands shall not exceed the limits shown in § 15.209. At frequencies equal to or less than 1000 MHz, compliance with the limits in § 15.209 shall be demonstrated using measurement instrumentation employing a CISPR quasi-peak detector. Above 1000 MHz, compliance with the emission limits in § 15.209 shall be demonstrated based on the average value of the measured emissions. The provisions in § 15.35 apply to these measurements.

(c) Except as provided in paragraphs (d) and (e) of this section, regardless of the field strength limits specified elsewhere in this subpart, the provisions of this section apply to emissions from any intentional radiator.

• • • • •

(e) Harmonic emissions appearing in the restricted bands above 17.7 GHz from field disturbance sensors operating under the provisions of § 15.245 shall not exceed the limits specified in § 15.245(b).

3. Section 15.245 is amended by revising paragraph (b) to read as follows:

§ 15.245 Operation within the bands 902–928 MHz, 2435–2465 MHz, 5785–5815 MHz, 10500–10550 MHz, and 24075–24175 MHz.

• • • • •

(b) The field strength of emissions from intentional radiators operated within these frequency bands shall comply with the following:

Fundamental frequency (MHz)	Field strength of fundamental (millivolts/meter)	Field strength of harmonics (millivolts/meter)
902–928	500	1.6
2435–2465	500	1.6
5785–5815	500	1.6
10500–10550	2500	25.0
24075–24175	2500	25.0

(1) Regardless of the limits shown in the above table, harmonic emissions in the restricted bands below 17.7 GHz, as specified in § 15.205, shall not exceed the field strength limits shown in § 15.209. Harmonic emissions in the restricted bands at and above 17.7 GHz, and below 40 GHz, shall not exceed the following field strength limits:

(i) For field disturbance sensors designed for use only within a building or to open building doors, 25.0 mV/m.

(ii) For all other field disturbance sensors, 7.5 mV/m.

(iii) Field disturbance sensors designed to be used in motor vehicles or aircraft must include features to prevent continuous operation unless their emissions in the restricted bands fully comply with the limits given in § 15.209. Continuous operation of field disturbance sensors designed to be used in farm equipment, vehicles such as fork lifts that are intended primarily for use indoors or for very specialized operations, or railroad locomotives, railroad cars and other equipment which travels on fixed tracks is permitted. A field disturbance sensor will be considered not to be operating in a continuous mode if its operation is limited to specific activities of limited duration (e.g., putting a vehicle into reverse gear, activating a turn signal, etc.).

(2) Field strength limits are specified at a distance of 3 meters.

(3) Emissions radiated outside of the specified frequency bands, except for harmonics, shall be attenuated by at least 50 dB below the level of the fundamental or to the general radiated emission limits in Section 15.209, whichever is the lesser attenuation.

(4) The emission limits shown above are based on measurement instrumentation employing an average detector. The provisions in § 15.35 for limiting peak emissions apply.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-26333 Filed 11-6-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-481; RM-6916]

Radio Broadcasting Services; Morehead City, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Curtis Radio Group, Inc., substitutes Channel 242C1 for Channel 242C2 at Morehead City, North Carolina, and modifies its license for Station WRHT(FM) to specify operation on the higher powered channel. See 54 FR 47797, November 17, 1989. Channel 242C1 can be allotted to Morehead City in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 242C1 at Morehead City are North Latitude 34–43–18 and West Longitude 76–42–54. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–481, adopted September 28, 1990, and released November 2, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under North Carolina, is amended by removing Channel 242C2 and adding Channel 242C1 at Morehead City.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26334 Filed 11-6-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-574; RM-7068]

Radio Broadcasting Services; Wanchese, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WOBR, Inc., substitutes Channel 237C3 for Channel 237A at Wanchese, North Carolina, and modifies its license for Station WOBR–FM to specify operation on the higher powered channel. *See* 55 FR 325, January 4, 1990. Channel 237C3 can be allotted to Wanchese in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.6 kilometers (4.1 miles) northeast to avoid a shortspacing to Station WRNS–FM, Channel 236C, Kinston, North Carolina, and to accommodate petitioner's desired transmitter site. The coordinates for Channel 237C3 at Wanchese are North Latitude 35–53–20 and West Longitude 75–35–20. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–574, adopted September 28, 1990, and released November 1, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC 20037. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 237A and adding Channel 237C3 at Wanchese.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26249 Filed 11-6-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-593; RM-7069]

Radio Broadcasting Services; Piketon, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ohio Kentucky Radio Company, allots Channel 261A to Piketon, Ohio, as the community's first local FM service. *See* 55 FR 883, January 10, 1990. Channel 261A can be allotted to Piketon in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 261A at Piketon are North Latitude 39–04–00 and West Longitude 83–00–42. Canadian concurrence in the allotment has been received. With this action, this proceeding is terminated.

DATES: Effective December 17, 1990. The window period for filing applications will open on December 18, 1990, and close on January 17, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–593, adopted September 28, 1990, and released November 1, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC 20037. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by adding Channel 261A at Piketon.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26248 Filed 11-6-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-464; RM-6859]

Radio Broadcasting Services; Lynchburg, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 269C3 for Channel 269A at Lynchburg, Virginia, and modifies the license for Station WXYU(FM) to specify operation on Channel 269C3 in response to a petition filed by CRS Communications, Inc. *See* 54 FR 46275, November 2, 1989. The coordinates for Channel 269C3 are 37–25–37 and 78–55–00.

EFFECTIVE DATE: December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–464, adopted September 28, 1990, and released November 1, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Channel 269A and adding Channel 269C3 at Lynchburg.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26250 Filed 11-6-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-462; RM-6920]

Radio Broadcasting Services; Newport, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Jonathan Seagull Broadcasting Company, allots Channel 224C3 to Newport, Oregon, as the community's second local FM service. See 54 FR 47798, November 17, 1989. Channel 224C3 can be allotted to Newport in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 224Ce are North Latitude 44–38–30 and West Longitude 124–03–00. With this action, this proceeding is terminated.

DATES: Effective December 17, 1990. The window period for filing applications will open on December 18, 1990, and close on January 17, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–462, adopted September 28, 1990, and released November 2, 1990. The full text

of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under Oregon, is amended by adding Channel 224C3 at Newport.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26335 Filed 11-6-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-33; RM-7080]

Radio Broadcasting Services; Marion, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of John W. Pittman, substitutes Channel 283C3 for Channel 283A at Marion, South Carolina, and modifies his construction permit for Station WQTI–FM to specify operation on the higher powered channel. See 55 FR 4886, February 12, 1990. Channel 283C3 can be allotted to Marion in compliance with the Commission's minimum distance separation requirements with a site restriction of 21 kilometers (13.1 miles) northwest to avoid a short-spacing to the requested allotments of Channel 285C2 at Fairmont, North Carolina, and Channel 284A at Andrews, South Carolina. See 55 FR 4885, February 12, 1990. The coordinates for Channel 283C3 at Marion are North Latitude 34–19–23 and West Longitude 79–32–32. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–33, adopted September 28, 1990, and released November 2, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Channel 283A and adding Channel 283C3 at Marion.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26336 Filed 11-6-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 172

[Docket No. HM-145I; Amdt Nos. 171-110, 172-122]

RIN 2137-AA88

Hazardous Substances

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In this final rule, RSPA is amending the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) by revising the "List of Hazardous Substances and Reportable Quantities" which appears in the appendix to 49 CFR 172.101. This action is necessary to comply with a 1986 amendment (Pub. L. 99–499) to section 306(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (Pub. L. 96–510) mandating that RSPA regulate, under the HMR, all Environmental Protection Agency (EPA)-designated hazardous substances. The intended effect of this action is to enable shippers and carriers to identify CERCLA hazardous substances and thereby enable them to comply with all applicable HMR requirements and to make the required notifications if a discharge of a hazardous substance occurs. No notice of proposed rulemaking has preceded this final rule because, in light of RSPA's lack of discretion concerning the regulation of hazardous substances under the HMR, RSPA has determined under the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), that such notice would serve no purpose and thus was unnecessary.

EFFECTIVE DATE: This amendment is effective December 31, 1990. However, immediate compliance with the regulations as amended herein is authorized. Because of the CERCLA mandate that RSPA regulate all EPA-designated hazardous substances under the HMR, RSPA has no discretion concerning which hazardous substances (or what quantities of them) to regulate under the HMR. Therefore, the provisions of 49 CFR 172.101(j), which allow up to one year after a change to the Hazardous Materials Table (HMT) to use up stocks of preprinted shipping papers and to ship packages that were marked prior to the change, do not apply to these amendments.

FOR FURTHER INFORMATION CONTACT: John A. Gale (202) 366–4488, Standards Division, or George Cushmac (202) 366–4545, Technical Division, Office of Hazardous Materials Transportation, RSPA, 400 7th Street, SW., Washington, DC 20590. Questions about hazardous substance designations or reportable quantities should be directed to the EPA. Call the RCRA/Superfund hotline at (800) 424–9346 or in Washington, DC (202) 382–3000.

SUPPLEMENTARY INFORMATION:

I. Background

Section 202 of the Superfund Amendments and Reauthorization Act (SARA; Pub. L. 99–499) of 1986 amended section 306(a) of CERCLA by requiring the Secretary of Transportation to list and regulate hazardous substances, listed or designated under section 101(14) of CERCLA, as hazardous materials under the Hazardous Materials Transportation Act (HMTA; 49 App. U.S.C. 1801 *et seq.*). RSPA carries out the rulemaking responsibilities of the Secretary of Transportation under the HMTA (49 CFR 1.53(b)). This final rule is necessary

to comply with section 306(a) of CERCLA as it is amended by section 202 of SARA.

In carrying out that statutory mandate, RSPA has no discretion to change the substances (or the quantities of them) designated by EPA. RSPA's role in regulating hazardous substances is directly tied to EPA's ongoing hazardous substances responsibility. RSPA has no role in determining what is or is not a hazardous substance or the appropriate reportable quantity (RQ) for materials designated as hazardous substances. This authority is vested in EPA. Therefore, under the CERCLA scheme EPA must issue final rules amending the list of CERCLA hazardous substances. In the preamble to the final rule on this subject issued under Docket HM–145F (51 FR 42174; November 21, 1986), RSPA included the following statement:

> It is RSPA's intention to make changes from time to time to the list of hazardous substances or their RQs in the Appendix as adjustments are made by EPA.

This document adjusts the "List of Hazardous Substances and Reportable Quantities", which appears in the appendix to § 172.101, based on seven final rules EPA has published since August 14, 1989. On August 14, 1989, EPA published a final rule in the **Federal Register** (54 FR 33426) which revised the reportable quantities of several hundred hazardous substances. In addition to the reportable quantity changes, however, EPA revised the names of numerous hazardous substances and added many new synonyms to the existing list of hazardous substances. On August 21, 1989, RSPA published a final rule under Docket HM–145G (54 FR 34666) which incorporated into the HMR the reportable quantity revisions that were promulgated under EPA's final rule. However, Docket HM–145G did not incorporate into the HMR those name changes or synonym additions that were also part of the EPA final rule of August 14, 1989. This rule dopts those name changes and synonym additions to the list of hazardous substances EPA promulgated under the final rule of August 14, 1989. On December 27, 1989, EPA published a technical correction (54 FR 53057) to its August 14, 1989, final rule which identifies and explains the reasons for those name changes and synonym additions.

EPA has published six additional rules which affect the "List of Hazardous Substances and Reportable Quantities". On October 6, 1989, EPA published a final rule (54 FR 41402) which added the waste streams K131 and K132 with RQ's of 100 and 1000 pounds, respectively. On December 11, 1989, EPA published a final rule (54 FR 50968) which added the waste stream F025 with an RQ of 1 pound. On February 14, 1990, EPA published a final rule (55 FR 5340) which revised the description for the waste stream F019. On March 29, 1990, EPA published a final rule (55 FR 11798) which added 26 new hazardous substances, D018–D043, and revised the name of "EP Toxicity" to read "Toxicity". On May 4, 1990, EPA published a final rule which added the waste streams K007, K008, K009 and K010 with RQ's of 1 pound each. Finally, on June 1, 1990, EPA published a final rule which added the waste stream F039 with an RQ of 1 pound.

To keep its "List of Hazardous Substances and Reportable Quantities" consistent with EPA's list of CERCLA hazardous substances and reportable quantities, RSPA is amending the HMR in accordance with the EPA final rules mentioned aboved. In addition, RSPA is making several non-substantive changes to its "List of Hazardous Substances and Reportable Quantities". The RQ for "Diethylamine" is corrected to read 1000 pounds. The RQ had been incorrectly listed at 100 pounds. The asterisk signifying that a material is a proper shipping name, which appeared with "Hexachlorobutadiene", is removed because "Hexachlorobutadiene" is not a proper shipping name. The entries "Copper chloride @" and "Phenyl dichloroarsine @" are added as synonyms for "Cupric chloride", and "Arsonous dichloride, phenyl-", respectively. The footnote "@" signifies that the entry is added by RSPA because it is a synonym for a listed hazardous substance and appears in the Hazardous Materials Table as a proper shipping name. The hazardous substance "Hydrogen chloride", which had been inadvertently left off previous lists of hazardous substances, is added with a reportable quantity of 5000 pounds. The term "EP Toxicity" is removed from the HMR and is replaced with the term "Toxicity". Finally, RSPA is rearranging its "List of Hazardous Substances and Reportable Quantities" by listing the characteristic wastes (*i.e.*, EPA hazardous wastes D001–D043) after the specific chemicals and before the "F" listed hazardous wastes.

This rulemaking will enable shippers and carriers to identify CERCLA hazardous substances and thereby enable them to comply with all applicable HMR requirements and to make the required notifications if a discharge of a hazardous substance occurs. In addition to the reporting requirements of the HMR found in §§ 171.15 and 171.16, a discharge of a hazardous substance is subject to the reporting requirements of EPA which are found in 40 CFR 302.6.

The regulatory action in this final rule is mandated by statute, and for this reason, RSPA is not affording persons affected by this rule the relief ordinarily afforded by § 172.101(j) which allows up to one year after a change to the HMT to use up stocks of preprinted shipping papers and to ship packages that were marked prior to the change unless specifically stated otherwise in an amendment or the "EFFECTIVE DATE" entry of its preamble.

Because this rulemaking makes numerous modifications to the "List of Hazardous Substances and Reportable Quantities" found in the appendix to § 172.101, RSPA is reprinting it in its entirety. The following listings identify those hazardous substances addressed in this final rule:

A. Hazardous Substances for Which New Synonyms Have Been Added

Name	New synonym
Aldrin	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro, (1alpha, 4alpha, 4abeta, 5alpha, 8alpha, 8abeta)-.
5-(Aminomethyl)-3-Isoxazolol.	Muscimol.
Arsenic acid	Arsenic acid H3AsO4.
1,2-Benzenedicarboxylic acid, [bis(2-ethyl-hexyl)]ester.	Diethythexyl phthalate.
Benzene, dimethyl	Benzene, dimethyl.
m-	m-Xylene.
o-	o-Xylene.
p-	p-Xylene.
Bis(2-chloroethoxy) methane.	Dichloromethoxy ethane.
Calcium cyanide	Calcium cyanide Ca(CN)2.
Carbonochloridic acid, methyl ester.	Methyl chloroformate.
Chlordane, technical	Chlordane, alpha & gamma isomers.
Cresylic acid	Phenol, methyl-.
Copper cyanide	Copper cyanide CuCN.
Cyanogen	EthaneDinitrile.
1,2-Dichloropropene	Propene, 1,2-dichloro-.
Endrin	Endrin, & metabolites.
gamma-BHC	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha, 2alpha, 3beta, 4alpha, 5alpha, 6beta)-.
Hydrochloric acid	Hydrogen chloride.
Hydrogen sulfide	Hydrogen sulfide H2S.
Lasiocarpine	2-Butenoic acid, 2-methyl-, 7[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*, 3R*),7aalpha]]-.
Lead subacetate	Lead, bis(acetato-O)tetra hydroxytri.
Methyl chloroform	Ethane, 1,1,1-trichloro-.
Nickel carbonyl	Nickel carbonyl Ni(CO)4, (T-4)-.

Name	New synonym
Nickel cyanide	Nickel cyanide Ni (CN)2.
Phenyl dichloroarsine	Arsonous dichloride, phenyl-.
Potassium cyanide	Potassium cyanide K(CN).
Potassium silver cyanide	Argentate(1-), bis(cyano-C)-, potassium.
2,4-D, salts and esters.	Acetic acid (2,4-dichlorophenoxy)-.
Selenium disulfide	Selenium sulfide Se52.
Silver cyanide	Silver cyanide Ag(CN).
Sodium cyanide	Sodium cyanide Na(CN).
Streptozotocin	D-Glucose, 2-deoxy-2-[[(methylnitrosoamino)-carbonyl]amino]-.
Thallium(I) chloride	Thallium chloride T1C1.
Thallium(I) nitrate	Nitric acid, thallium(1+) salt.
Trichloroethene	Ethene, trichloro-.
Vinyl acetate	Vinyl acetate monomer.
Zinc cyanide	Zinc cyanide Zn(CN)2.
Zinc phosphide	Zinc phosphide Zn3P2, when present at concentrations greater than 10 percent.

B. Hazardous Substances Whose Names Have Changed

Previous name	New name
Acetic acid, lead salt	Acetic acid, lead (2+) salt.
Acetic acid, thallium(1) salt.	Acetic acid, thallium(1+) salt.
Acetimidic acid, N-[[(methylcarbamoyl)-oxy]thio-methyl ester.	Ethanimidothioic acid, N-[[(methylamino)carbonyl] oxy]-,methyl ester.
Alanine, 3[p-bis(2-chloroethyl)amino] phenyl-, L-.	L-Phenylalanine, 4-[bis(2-chloroethyl)amino].
3-(alpha-Acetonyl-benzyl)-4-hydroxycoumarin and salts.	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, & salts, when present at concentrations greater than 0.3 percent.
2-Amino-1-methyl benzene.	Benzenamine, 2-methyl-.
4-Amino-1-methyl benzene.	Benzenamine, 4-methyl-.
Arsenic(III) oxide	Arsenic oxide As203.
Arsenic(V) oxide	Arsenic oxide As205.
Azirino(2'3':3,4) pyrrolo(1,2-a)indole-4,7-dione,6-amino-8-[[(aminocarbonyl)oxy] methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-.	Azirino(2'3':3,4)pyrrolo(1,2-a] indole-4,7-dione, 6-amino-8-[[(aminocarbonyl)oxy] methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, [1aS-(1aalpha, 8beta, 8aalpha, 8balpha)]-.
1,2-Benzanthracen, 7,12-dimethyl-.	Benz[a]anthracene, 7,12-dimethyl-.
1,2-Benzenedicarboxylic acid anhydride.	1,3-Isobenzofurandione.
1,2-Benzenedicarboxylic acid, di-n-octyl ester.	1,2-Benzenedicarboxylic acid, dioctyl ester.
Benzene,2,4-diisocyanatomethyl-	Benzene, 1,3-diisocyanato-methyl.
Benzene, 1-methyl-2,6-dinitro.	Benzene, 1-methyl-1,3-dinitro-.
Benzene, 1,2-methylene-dioxy-4-allyl-.	1,3-Benzodioxole, 5-(2-propenyl)-.
Benzene, 1,2-methylene-dioxy-4-propenyl-.	1,3-Benzodioxole, 5-propyl-.
Benzene, 1,2-methylene-dioxy-4-propyl-.	Benzene, (trichloromethyl).
Benzene, trichloro-methyl.	1,2-Benzisothiazol-3-(2H)-one, 1,1-dioxide.
1,2-Benzisothiazolin-3-one, 1,1-dioxide, and salts.	Propane, 2,2'-oxybis [2-chloro-.
Bis(2-chloroisopropyl) ether.	Dichloromethyl ether.
Bis(chloromethyl)ether.	Thioperoxydicarbonic diamide [(H2N)C(S)]2S2, tetramethyl-.
Bis(dimethylthio-carbamoyl)disulfide.	Cyanogen bromide (CN)Br.
Bromine cyanide	Butanoic acid, 4-[bis(2-chloroethyl)amino] benzene.
Butanoic acid, 4-[bis(2-chloroethyl)amino] benzene.	Urea, N-ethyl-N-nitroso-.
Carbamide, N-ethyl-N-nitroso-.	Urea, N-methyl-N-nitroso-.
Carbamide, N-methyl-N-nitroso-.	Carbamic chloride, dimethyl-
Carbamoyl chloride, dimethyl-.	Carbonic acid, dithallium(1+) salt.
Carbonic acid, dithallium(1) salt.	Carbonic dichloride.
Carbonyl chloride	Carbonic difluoride.
Carbonyl fluoride	Chromic acid H2Cr04, calcium salt.
Chromic acid, calcium salt.	Cyanogen chloride (CN)C1.
Chlorine cyanide	Cresol(s).
Cresol(s)	m-Cresol.
m-	o-Cresol.
o-	p-Cresol.
p-	Cyanides (soluble salts and complexes) not otherwise specified.
Cyanides (soluble cyanide salts), not elsewhere specified.	2,5-Cyclohexadiene-1,4-dione.
1,4-Cyclohexadiene-dione.	1,3,4-Metheno-2H-cyclobutal [cd]pentalen-2-one, 1,1a,3,3a,4,5,5a,5b,6-decachloroc-tahydro-.
Decachloroctahydro-1,3,4-metheno-2H-cyclobuta[c,d]-pentalen-2-one.	Benzenediamine, ar-methyl-.
Diaminotoluene	Benzo [rst]pentaphene.
1,2:7,8-Dibenzopyrene.	Carbamothioic acid, bis (1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester.
S-(2,3-Dichloroallyl) diisopropylthiocarbamate.	Dichlorobenzene.
Dichlorobenzene (mixed).	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro.
Dichlorodiphenyl dichloroethane.	Benzene, 1,1'-(2,2,2-trichloro-ethylidene)bis[4-chloro-.
Dichlorodiphenyl trichloroethane.	1,2-Dichloroethylene.
1,2-trans-Dichloro-ethylene.	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-.
3,5-Dichloro-N-(1,1-dimethyl-2-propynyl) benzamide.	Dichloropropene 2,3-Dichloropropene.
Dichloropropene(s) 2,3-Dichloropropene (isomer).	1,4-Diethylenedioxide.
1,4-Diethylene dioxide	Phosphorodithioic acid, O-O-diethyl S-[2-(ethylthio) ethyl]ester.
O,O-Diethyl S-[2-(ethylthio) ethyl] phosphorodithioate.	3,6-Pyridazinedione, 1,2-dihydro-.
1,2-Dihydro-3,6-pyridazinedione.	p-Dimethylaminoazobenzene.
Dimethylaminoazo-benzene.	Methanamine, N-methyl-N-nitroso-.
Dimethylnitrosamine	2-Butanone, 3,3-dimethyl-1-(methylthio)-, O[(methylamino) carbonyl] oxmine.
3,3-Dimethyl-1-(methylthio-2-butanone, O-[(methyl-amino) carbonyl] oxime.	Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester.
O,O-Dimethyl O-p-nitrophenyl phosphorothioate.	2-Cyclohexyl-4,6-dinitrophenol.
4,6-Dinitro-o-cyclo-hexylphenol.	Dithiobiuret.
2,4-Dithiobiuret	Thiodiphosphoric acid, tetraethyl ester.
Dithiopyrophosphoric acid, tetraethyl ester.	2,4-D Ester.
2,4-D Esters	Benzeneethanamine, alpha,alpha-dimethyl-.
Ethanamine, 1,1-dimethyl-2-2phenyl-.	Carbamodithioic acid, 1,2-ethanediylbis, salts & esters.
1,2-Ethanediylbis-carbamo-dithioic acid.	Ethane, hexachloro-.
Ethane, 1,1,1,2,2,2-hexachloro-.	Benzene, 1,1'-(2,2,2-trichloro ethylidene)bis[4-methoxy-.
Ethane, 1,1,1-trichloro-2,2-bis (p-methoxyphenyl)-.	Vinylamine, N-methyl-N-nitroso-.
Ethenamine, N-methyl-N-nitroso-.	Ethene, tetrachloro-.
Ethene, 1,1,2,2-tetra-chloro-.	Ethene, 1,2-dichloro- (E).
Ethene, trans-1,2-dichloro.	Ethanol, 2-ethoxy-.
2-Ethoxyethanol	Chlorobenzilate.
Ethyl 4,4'-dichloro-benzilate.	Ethylenebisdithiocarbamic acid, salts & esters.
Ethylenebis(dithio-carbamic acid).	Fulminic acid, mercury(2+) salt.
Fulminic acid, mercury(II) salt.	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-.
D-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-.	Guanidine, N-methyl-N'-nitro-N-nitroso-.
Guanidine, N-nitroso-N-methyl-N' -nitro.	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2abeta,3alpha,-6alpha,6abeta,7beta,7aalpha)-.
1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octa-hydro-endo,endo-1,4:5,8-dimethanonaphthalene.	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2aalpha,3beta,-6beta,6aalpa,7beta,7aalpha)-.
1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octa-hydro-endo,exo-1,4:5,8-dimethanonaphthalene.	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro, (1alpha,4alpha,4abeta,5beta,-8beta,8abeta)-.
1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro- 1,4,5,8-endo, endodimethanonaphthalene.	Isodrin.
Hexachlorohexahydro-endo, endodimethanonaphthalene.	Arsinic acid, dimethyl-.
Hydroxydimethylarsine oxide.	Methane, isocyanato-.
Isocyanic acid, methyl ester.	

Previous name	New name
4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro-3a,4,7,7a-tetrahydro-.	4,7-Metheno-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-.
2-Methylaziridine	Aziridine, 2-methyl-.
2,2' -Methylenebis(3,4,6-trichlorophenol).	Phenol, 2,2' -methylene-bis[3,4,6-trichloro-.
Methyl ethyl ketone	Methyl ethy ketone (MEK). MNKG.
N-Methyl-N' -nitro-N-nitrosoguanidine.	
5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-[3-amino- 2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-.	5,12-Naphthacendione, 8-acetyl-10-[3-amino- 2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl]oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy- 1-methyoxy-, (8S-cis)-.
2-Naphthylamine, N,N-bis(2-chloroethyl)-.	Naphthalenamine, N,N'-bis(2-chloroethyl)-.
Nitrogen(II) oxide	Nitrogen oxide NO.
Nitrogen(IV) oxide	Nitrogen oxide NO_2.
N-Nitrosodi-n-propylamine.	1-Propanamine, N-nitroso-N-propyl-.
5-Norbornene-2,3-dime-thanol, 1,4,5,6,7,7-hexachloro, cyclic sulfite.	6,9-Methano-2,4,3-benzo-dioxathiepin, 6,7,8,9,20,20-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide.
Osmium oxide	Osmium oxide OsO4 (T-4)-.
2H-1,3,2-Oxazaphospho-rine,2-[bis(2-chloro-ethyl)amino[tetra-hydro-2-oxide.	2H-1,3,2-Oxazaphosphorin,2-amine, N,N-bis((2-chloroethyl) tetrahydro-, 2-oxide.
Oxirane, 2-(chloro-methyl)-.	Oxirane, (chloromethyl)-.
Pentachloronitroben-zene.	Pentachloronitrobenzene (PCNB).
Phenol,2,4-dinitro-6-methyl-, and salts.	Phenol, 2-methyl-4,6-dinitro-
Phenol,2,4-dinitro-6(1-methylpropyl)-.	Phenol, 2-(1-methylpropyl)-4,6-dinitro.
N-Phenylthiourea	Phenylthiourea.
Phosphoric acid, diethyl p-nitrophenyl ester.	Phosphoric acid, diethyl 4-nitrophenyl ester.
Phosphoric acid, lead salt.	Phosphoric acid, lead(2+) salt (2:3).
Phosphorodithioic acid, O,O-diethyl S-methyl ester.	Phosphorodithioic acid, O'O-diethyl S-methyl ester.
Phosphorothioic acid, O,O-diethyl O-(p-nitrophenyl) ester.	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester.
Phosphorothioic acid, O,O-dimethyl-O-[p-[(dimethylamino)-sulfonyl]phenyl] ester.	Phosphorothioic acid, O,[4-[(dimethylamino) sulfonyl]phenyl] O,O-dimethyl ester.
1-Propanal, 2,3,-epoxy-	Oxiranecarboxyaldehyde.
Propene, 1,3-dichloro-.	1-Propene, 1,3-dichloro.
Pyridine,2-[2-(dimethylamino) ethyl-2-thenylamino]-.	1,2-Ethanediamine, N-N-dimethyl-N'-2-pyridinyl-N'-(2-thienyl-methyl)-.
Pyridine, hexahydro-N-nitroso-.	Piperidine, 1-nitroso-.
Pyridine, (S)-3-(1-methyl-2-pyrroli-dinyl)-, and salts.	Pyridine, 3-(1-methyl-2-pyr-rol-dinyl)-, (S)-.
Pyrophosphoric acid, tetraethyl ester.	Diphosphoric acid, tetraethyl ester.
Pyrrole, tetrahydro-N-nitroso-.	Pyrrolidine, 1-nitroso-.
Selenium disulfide	Selenium sulfide.
Silvex	Silvex (2,4,5-TP).
4,4'-Stilbenediol, alpha,alpha' -diethyl-.	Phenol, 4,4' -(1,2-diethyl-1,2-ethenediyl)bis-, (E).
Strychnidin-10-one, and salts.	Strychnidin-10-one.
Sulfuric acid, thallium(1) salt.	Sulfuric acid, dithallium(1+) salt.
Thallium (III) oxide	Thallium oxide T1203.
Thallium(1) selenide	Selenious acid, dithallium(1+) salt.
Thallium(1) selenide	Thallium selenide.
Thioimidodicarbonic diamide.	Thioimidodicarbonic diamide [(H2N)C(S)]2NH.
2,4,5-Trichloro-phenoxy.	Acetic acid, (2,4,5-trichloro-acetic acid phenoxy).
sym-Trinitrobenzene	1,3,5-Trinitrobenzene.
Uracil, 5-[bis(2-chloroethyl) amino]-.	2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-.
Vanadium(V) oxide	Vanadium oxide V205.
Warfarin	Warfarin, & salts, when present at concentrations greater than 0.3 percent.
Xylene (mixed)	Xylene (mixed).
m-	m-Benzene, dimethyl.
o-	o-Benzene, dimethyl.
p-	p-Benzene, dimethyl.
Yohimben-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl) oxy]-,methyl ester.	Yohimben-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester (3beta,16beta,17alpha,-18beta,20alpha)-.

C. Those Hazardous Wastes Streams Whose Descriptions Have Changed

F001	F011
F002	F012
F006	F019
F009	K062
F010	

D. Those Hazardous Substances Which Have Been Added

Name	Reportable quantity
F025	1 (0.454)
F039	1 (0.454)
K107	1 (0.454)
K108	1 (0.454)
K109	1 (0.454)
K010	1 (0.454)
K131	100 (45.4)
K132	1000 (454)
D018 Benzene	10 (4.54)
D019 Carbon tetrachloride	10 (4.54)
D020 Chlordane	1 (0.454)
D021 Chlorobenzene	100 (45.4)
D022 Chloroform	10 (4.54)
D023 o-Cresol	1,000 (454)
D024 m-Cresol	1,000 (454)
D025 p-Cresol	1,000 (454)
D026 Cresol	1,000 (454)
D027 1,4-Dichlorobenzene	100 (45.4)
D028 1,2-Dichloroethane	100 (45.4)
D029 1,1-Dichloroethylene	100 (45.4)
D030 2,4-Dinitrotoluene	10 (4.54)
D031 Heptachlor (and hydroxide)	1 (0.454)
D032 Hexachlorobenzene	10 (4.54)
D033 Hexachlorobutadiene	1 (0.454)
D034 Hexachloroethane	100 (45.4)
D035 Methyl ethyl ketone	5,000 (2270)
D036 Nitrobenzene	1,000 (454)
D037 Pentachlorophenol	10 (45.4)
D038 Pyridine	1,000 (454)
D039 Tetrachloroethylene	100 (45.4)
D040 Trichloroethylene	100 (45.4)
D041 2,4,5-Trichlorophenol	10 (4.54)
D042 2,4,6-Trichlorophenol	10 (4.54)
D043 Vinyl Chloride	1 (0.454)

Administrative Notices

In accordance with the Administrative Procedure Act, 5 U.S.C. 553, RSPA has determined that a notice of proposed rulemaking and an opportunity for public comment and review are impracticable and unnecessary. SARA mandated that the Department of Transportation regulate, as hazardous materials under 49 CFR parts 171–180, those hazardous substances designated under CERCLA. EPA is the sole agency authorized to designate hazardous substances and their reportable quantities. Therefore, public comment and review are unnecessary because: (1) The public was afforded time to comment when EPA published its notice of proposed rulemaking concerning that agency's change in the subject RQs; and (2) RSPA does not have the authority to designate hazardous substances or determine their reportable quantities.

RSPA has determined that this rulemaking: (1) Is not a "major rule" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 et seq); and (5) does not require the preparation of a regulatory evaluation.

Based on limited information concerning the size and nature of entities likely to be affected, I certify that this regulation will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12812, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Definitions, Hazardous

waste, Imports, Report and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous wastes, Labeling, Packaging and containers, Reporting and record keeping requirements, Shipping papers, Markings, and Emergency response information.

In consideration of the foregoing, parts 171 and 172 of title 49, Code of Federal Regulations, are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1808; 49 CFR part 1, unless otherwise noted.

2. In § 171.11(d)(1)(i)(C), remove the words "EP toxicity" and add, in their place, "Toxicity".

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REQUIREMENTS AND EMERGENCY RESPONSE INFORMATION REQUIREMENTS

3. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, and 1808; 49 CFR part 1.

4. The Appendix to § 172.101, entitled "List of Hazardous Substances and Reportable Quantities", is revised to read as follows:

Appendix to 172.101—List of Hazardous Substances and Reportable Quantities

1. This appendix lists materials and their corresponding reportable quantities (RQs) which are listed or designated as "hazardous substances" under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA; Pub. L. 96-510). This appendix is divided into 2 tables which are entitled "Table 1—Hazardous Substances Other Than Radionuclides" and "Table 2—Radionuclides". A material listed in this appendix is regulated as a hazardous material and a hazardous substance under this subchapter if it meets the definition of a hazardous substance in § 171.8 of this subchapter.

2. The procedure for selecting a proper shipping name for a hazardous substance is set forth in § 172.101(c)(9).

3. Column 1 of Table 1, entitled "Hazardous substance", contains the names of those elements and compounds which are hazardous substances. Following the listing of elements and compounds is a listing of waste streams. These waste streams appear on the list in numerical sequence and are referenced by the appropriate "F" and "K" numbers. Column 2 of Table 1, entitled "Synonyms", contains the names of synonyms for certain elements and compounds listed in Column 1. No synonyms are listed for waste streams. Synonyms are useful in identifying hazardous substances and in identifying proper shipping names. Column 3 of Table 1, entitled "Reportable quantity (RQ)", contains the reportable quantity (RQ), in pounds and kilograms, for each hazardous substance listed in Column 1 of Table 1.

4. A series of notes are used throughout Table 1 and Table 2 to provide additional information concerning certain hazardous substances. These notes are explained at the end of each Table.

5. Table 2 lists radionuclides which are hazardous substances and their corresponding RQs. The RQs in Table 2 for radionuclides are expressed in units of curies and terabecquerels, whereas those in Table 1 are expressed in units of pounds. If a material is listed in both Table 1 and Table 2, the lower RQ shall apply. Radionuclides are listed in alphabetical order. The RQs for radionuclides are given in the radiological unit of measure of curie, abbreviated "Ci", followed, in parentheses, by an equivalent unit measured in terabecquerels, abbreviated "TBq".

6. For mixtures of radionuclides, the following determinations shall be used in determining if a package contains an RQ of a hazardous substance:

(i) If the identity and quantity (in curies or terabecquerels) of each radionuclide in a mixture or solution is known, the ratio between the quantity per package (in curies or terabecquerels) and the RQ for the radionuclide must be determined for each radionuclide. A package contains an RQ of a hazardous substance when the sum of the ratios for the radionuclides in the mixture or solution is equal to or greater than one;

(ii) if the identity of each radionuclide in a mixture or solution is known but the quantity per package (in curies or terabecquerels) of one or more of the radionuclides is unknown, an RQ of a hazardous substance is present in a package when the total quantity (in curies or terabecquerels) of the mixture or solution is equal to or greater than the lowest RQ of any individual radionuclide in the mixture or solution; and

(iii) if the identity of one or more radionuclides in a mixture or solution is unknown (or if the identity of a radionuclide by itself is unknown), an RQ of a hazardous substance is present when the total quantity (in curies or terabecquerels) in a package is equal to or greater than either one curie or the lowest RQ of any known individual radionuclide in the mixture or solution, whichever is lower.

Table 1—Hazardous Substances Other Than Radionuclides

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Acenaphthene		100 (45.4)
Acenaphthylene		5000 (2270)
Acetaldehyde *	Ethanal	1000 (454)
Acetaldehyde, chloro-	Chloroacetaldehyde	1000 (454)
Acetaldehyde, trichloro-	Chloral	5000 (2270)
Acetamide, N-(aminothioxomethyl)-	1-Acetyl-2-thiourea	1000 (454)
Acetamide, N-(4-ethoxyphenyl)-	Phenacetin	100 (45.4)
Acetamide, N-fluoren-2-yl-	2-Acetylaminofluorene	1 (0.454)
Acetamide, 2-fluoro-	Fluoroacetamide	100 (45.4)
Acetic acid *		5000 (2270)
Acetic acid (2,4-dichlorophenoxy)-	2,4-D, salts and esters	100 (45.4)
	2,4-D acid	
Acetic acid, ethyl ester	Ethyl acetate *	5000 (2270)
Acetic acid, fluoro-, sodium salt	Fluoroacetic acid, sodium salt	10 (4.54)
Acetic acid, lead (2+) salt	Lead acetate	5000 (2270)
Acetic acid, thallium(I+) salt	Thallium(I) acetate	100 (45.4)
Acetic acid, (2,4,5-trichlorophenoxy)	2,4,5-T *	1000 (454)
	2,4,5-T acid	
Acetic anhydride *		5000 (2270)
Acetone *	2-Propanone	5000 (2270)
Acetone cyanohydrin *	Propanenitrile, 2-hydroxy-2-methyl-	10 (4.54)
	2-Methyllactonitrile	

Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Acetonitrile *	Ethanenitrile	5000 (2270)
Acetophenone	Ethanone, 1-phenyl-	5000 (2270)
2-Acetylaminofluorene	Acetamide, N-fluoren-2-yl-	1 (0.454)
Acetyl bromide *		5000 (2270)
Acetyl chloride *	Ethanoyl chloride	5000 (2270)
1-Acetyl-2-thiourea	Acetamide, N-(aminothioxomethyl)-	1000 (454)
Acrolein *	2-Propenal	1 (0.454)
Acrylamide	2-Propenamide	5000 (2270)
Acrylic acid *	2-Propenoic acid	5000 (2270)
Acrylonitrile *	2-Propenenitrile	100 (45.4)
Adipic acid		5000 (2270)
Aldicarb	Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime	1 (0.454)
Aldrin *	1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,exo-dimethanonaphthalene.	1 (0.454)
	1,4,5,8-Dimethanonaphthalene,1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-,(1alpha,4alpha,4abeta,5alpha,8a.	
Allyl alcohol *	2-Propen-1-ol	100 (45.4)
Allyl chloride *		1000 (454)
Aluminum phosphide *		100 (45.4)
Aluminum sulfate *		5000 (2270)
5-(Aminomethyl)-3-isoxazolol	3(2H)-Isoxazolone, 5-(aminomethyl)-	1000 (454)
	Muscimol	
4-Aminopyridine	4-Pyridinamine	1000 (454)
Amitrole	1H-1,2,4-Triazol-3-amine	10 (4.54)
Ammonia *		100 (45.4)
Ammonium acetate		5000 (2270)
Ammonium benzoate		5000 (2270)
Ammonium bicarbonate		5000 (2270)
Ammonium bichromate	Ammonium dichromate @	10 (4.54)
Ammonium bifluoride *		100 (45.4)
Ammonium bisulfite *		5000 (2270)
Ammonium carbamate *		5000 (2270)
Ammonium carbonate *		5000 (2270)
Ammonium chloride		5000 (2270)
Ammonium chromate		10 (4.54)
Ammonium citrate, dibasic		5000 (2270)
Ammonium dichromate @	Ammonium bichromate	10 (4.54)
Ammonium fluoborate *		5000 (2270)
Ammonium fluoride *		100 (45.4)
Ammonium hydroxide *		1000 (454)
Ammonium oxalate *		5000 (2270)
Ammonium picrate *	Phenol, 2,4,6-trinitro-, ammonium salt	10 (4.54)
Ammonium silicofluoride *		1000 (454)
Ammonium sulfamate		5000 (2270)
Ammonium sulfide *		100 (45.4)
Ammonium sulfite		5000 (2270)
Ammonium tartrate		5000 (2270)
Ammonium thiocyanate		5000 (2270)
Ammonium vanadate	Vanadic acid, ammonium salt	1000 (454)
Amyl acetate *		5000 (2270)
iso-Amyl acetate		
sec-Amyl acetate		
tert-Amyl acetate		
Aniline *	Benzenamine	5000 (2270)
Anthracene		5000 (2270)
Antimony &		5000 (2270)
Antimony pentachloride *		1000 (454)
Antimony potassium tartrate *		100 (45.4)
Antimony tribromide *		1000 (454)
Antimony trichloride *		1000 (454)
Antimony trifluoride *		1000 (454)
Antimony trioxide		1000 (454)
Argentate(1-), bis(cyano-C)-, potassium	Potassium silver cyanide	1 (0.454)
Aroclor 1016	POLYCHLORINATED BIPHENYLS (PCBs)	1 (0.454)
Aroclor 1221	POLYCHLORINATED BIPHENYLS (PCBs)	1 (0.454)
Aroclor 1232	POLYCHLORINATED BIPHENYLS (PCBs)	1 (0.454)
Aroclor 1242	POLYCHLORINATED BIPHENYLS (PCBs)	1 (0.454)
Aroclor 1248	POLYCHLORINATED BIPHENYLS (PCBs)	1 (0.454)
Aroclor 1254	POLYCHLORINATED BIPHENYLS (PCBs)	1 (0.454)
Aroclor 1260	POLYCHLORINATED BIPHENYLS (PCBs)	1 (0.454)
Arsenic * &		1 (0.454)
Arsenic acid *	Arsenic acid H3AsO4	1 (0.454)
Arsenic acid H3AsO4	Arsenic acid *	1 (0.454)
Arsenic disulfide *		1 (0.454)
Arsenic oxide As2O3	Arsenic trioxide *	1 (0.454)
Arsenic oxide As2O5	Arsenic pentoxide *	1 (0.454)

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Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Arsenic pentoxide *	Arsenic oxide As2O5	1 (0.454)
Arsenic trichloride *		1 (0.454)
Arsenic trioxide *	Arsenic oxide As2O3	1 (0.454)
Arsenic trisulfide *		1 (0.454)
Arsine, diethyl-	Diethylarsine	1 (0.454)
Arsinic acid, dimethyl-	Cacodylic acid	1 (0.454)
Arsonous dichloride, phenyl-	Dichlorophenylarsine	1 (0.454)
	Phenyl dichloroarsine @	
Asbestos * ¢¢		1 (0.454)
Auramine	Benzenamine, 4,4'-carbonimidoylbis (N,N-dimethyl-	100 (45.4)
Azaserine	L-Serine, diazoacetate (ester)	1 (0.454)
Azinphos methyl @	Guthion *	1 (0.454)
Aziridine	Ethylenimine—	1 (0.454)
	Ethylene imine@	
Aziridine, 2-methyl-	1,2-Propylenimine	1 (0.454)
Azirino[2',3':3,4]pyrrolo(1,2-a)indole-4,7-dione,6- amino-8-[[(aminocarbonyl)oxy] methyl]-1,1a,2,8,8a, 8b-hexahydro-8a-methoxy-5-methyl-, [1aS-[1aalpha,8beta,8aalpha,8balpha]]-	Mitomycin C	10 (4.54)
Barium cyanide *		10 (4.54)
Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	3-Methylcholanthrene	10 (4.54)
Benz[c]acridine	3,4-Benzacridine	100 (45.4)
3,4-Benzacridine	Benz[c]acridine	100 (45.4)
Benzal chloride	Benzene, dichloromethyl-	5000 (2270)
Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)	Pronamide	5000 (2270)
Benz[a]anthracene	Benzo[a]anthracene	10 (4.54)
	1,2-Benzanthracene	
1,2-Benzanthracene	Benz[a]anthracene	10 (4.54)
	Benzo[a]anthracene	
Benz[a]anthracene, 7,12-dimethyl-	7,12-Dimethylbenz[a]anthracene	1 (0.454)
Benzenamine	Aniline *	5000 (2270)
Benzenamine, 4,4'-carbonimidoylbis (N,N-dimethyl-	Auramine	100 (45.4)
Benzenamine, 4-chloro-	p-Chloroaniline	1000 (454)
Benzenamine, 4-chloro-2-methyl-, hydrochloride	4-Chloro-o-toluidine, hydrochloride	100 (45.4)
Benzenamine, N,N-dimethyl-4-(phenylazo)-	p-Dimethylaminoazobenzene	10 (4.54)
Benzenamine, 2-methyl-	o-Toluidine	100 (45.4)
Benzenamine, 4-methyl-	p-Toluidine	100 (45.4)
Benzenamine, 4,4'-methylenebis(2-chloro-	4,4'-Methylenebis(2-chloroaniline)	10 (4.54)
Benzenamine, 2-methyl-, hydrochloride	o-Toluidine hydrochloride	100 (45.4)
Benzenamine, 2-methyl-5-nitro-	5-Nitro-o-toluidine	100 (45.4)
Benzenamine, 4-nitro-	p-Nitroaniline *	5000 (2270)
Benzene *		10 (4.54)
Benzene, 1-bromo-4-phenoxy-	4-Bromophenyl phenyl ether	100 (45.4)
Benzene, chloro-	Chlorobenzene *	100 (45.4)
Benzene, chloromethyl-	Benzyl chloride *	100 (45.4)
Benzene, 1,2-dichloro-	o-Dichlorobenzene *	100 (45.4)
	1,2-Dichlorobenzene	
Benzene, 1,3-dichloro-	m-Dichlorobenzene	100 (45.4)
	1,3-Dichlorobenzene	
Benzene, 1,4-dichloro-	p-Dichlorobenzene *	100 (45.4)
	1,4-Dichlorobenzene	
Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro	DDD	1 (0.454)
	TDE *	
	4,4'-DDD	
Benzene, dichloromethyl-	Benzal chloride	5000 (2270)
Benzene, 1,3-diisocyanatomethyl	Toluene diisocyanate *	100 (45.4)
Benzene, dimethyl	Xylene * (mixed)	1000 (454)
m-Benzene, dimethyl	m-Xylene	
o-Benzene, dimethyl	o-Xylene	
p-Benzene, dimethyl	p-Xylene	
Benzene, hexachloro-	Hexachlorobenzene	10 (4.54)
Benzene, hexahydro-	Cyclohexane *	1000 (454)
Benzene, hydroxy-	Phenol *	1000 (454)
Benzene, methyl-	Toluene *	1000 (454)
Benzene, 1-methyl-2,4-dinitro-	2,4-Dinitrotoluene	10 (4.54)
Benzene, 2-methyl-1,3-dinitro-	2,6-Dinitrotoluene	100 (45.4)
Benzene, 1-methylethyl-	Cumene	5000 (2270)
Benzene, nitro-	Nitrobenzene *	1000 (454)
Benzene, pentachloro-	Pentachlorobenzene	10 (4.54)
Benzene, pentachloronitro-	Pentachloronitrobenzene (PCNB)	100 (45.4)
Benzene, 1,2,4,5-tetrachloro-	1,2,4,5-Tetrachlorobenzene	5000 (2270)
Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-	DDT *	1 (0.454)
	4,4'-DDT	
Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy]-	Methoxychlor	1 (0.454)
Benzene, (trichloromethyl)	Benzotrichloride	10 (4.54)
Benzene, 1,3,5-trinitro-	1,3,5-Trinitrobenzene	10 (4.54)
Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	Chlorobenzilate	10 (4.54)

Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-	Chlorambucil	10 (4.54)
Benzenediamine, ar-methyl-	Toluenediamine *	10 (4.54)
1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)] ester	Bis(2-ethylhexyl)phthalate—	100 (45.4)
	Diethylhexyl phthalate	
1,2-Benzenedicarboxylic acid, dibutyl ester	Di-n-butyl phthalate	10 (4.54)
	Dibutyl phthalate	
	n-Butyl phthalate	
1,2-Benzenedicarboxylic acid, diethyl ester	Diethyl phthalate	1000 (454)
1,2-Benzenedicarboxylic acid, dimethyl ester	Dimethyl phthalate	5000 (2270)
1,2-Benzenedicarboxylic acid, dioctyl ester	Di-n-octyl phthalate	5000 (2270)
1,3-Benzenediol	Resorcinol	5000 (2270)
1,2-Benzenediol,4-[1-hydroxy-2-(methylamino)ethyl]-	Epinephrine	1000 (454)
Benzeneethanamine, alpha,alpha-dimethyl-	alpha,alpha-Dimethylphenethylamine	5000 (2270)
Benzeneethanamine, alpha,alpha-dimethyl-	alpha,alpha-Dimethylphenethylamine	5000 (2270)
Benzenesulfonic acid chloride	Benzenesulfonyl chloride	100 (45.4)
Benzenesulfonyl chloride	Benzenesulfonic acid chloride	100 (45.4)
Benzenethiol	Phenyl mercaptan @	100 (45.4)
	Thiophenol	
Benzidine *	(1,1'-Biphenyl)-4,4'-diamine	1 (0.454)
1,2-Benzisothiazol-3(2H)-one,1,1-dioxide	Saccharin and salts	100 (45.4)
Benzo[a]anthracene	Benz[a]anthracene	10 (4.54)
	1,2-Benzanthracene	
1,3-Benzodioxole, 5-(2-propenyl)-	Safrole	100 (45.4)
1,3-Benzodioxole, 5-(1-propenyl)-	Isosafrole	100 (45.4)
1,3-Benzodioxole, 5-propyl-	Dihydrosafrole	10 (4.54)
Benzo[b]fluoranthene		1 (0.454)
Benzo[k]fluoranthene		5000 (2270)
Benzo[j,k]fluorene	Fluoranthene	100 (45.4)
Benzoic acid		5000 (2270)
Benzonitrile *		5000 (2270)
Benzo[g,h,i]perylene		5000 (2270)
2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, & salts, when present at concentrations greater than 0.3%	Warfarin, & salts, when present at concentrations greater than 0.3%	100 (45.4)
Benzo[a]pyrene	3,4-Benzopyrene	1 (0.454)
3,4-Benzopyrene	Benzo[a]pyrene	1 (0.454)
p-Benzoquinone	2,5-Cyclohexadiene-1,4-dione	10 (4.54)
Benzo [rst]pentaphene	Dibenz[a,i]pyrene	10 (4.54)
Benzotrichloride	Benzene, (trichloromethyl)	10 (4.54)
Benzoyl chloride *		1000 (454)
1,2-Benzphenanthrene	Chrysene	100 (45.4)
Benzyl chloride *	Benzene, chloromethyl-	100 (45.4)
Beryllium ¢	Beryllium dust ¢	10 (4.54)
Beryllium chloride *		1 (0.454)
Beryllium dust ¢	Beryllium ¢	10 (4.54)
Beryllium fluoride *		1 (0.454)
Beryllium nitrate *		1 (0.454)
alpha - BHC		10 (4.54)
beta - BHC		1 (0.454)
delta - BHC		1 (0.454)
gamma - BHC	Hexachlorocyclohexane (gamma isomer)	1 (0.454)
	Lindane *	
	Cyclohexane,1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-	
2,2'-Bioxirane	1,2:3,4-Diepoxybutane	10 (4.54)
(1,1'-Biphenyl)-4,4'-diamine	Benzidine *	1 (0.454)
(1,1'-Biphenyl)-4,4'-diamine,3,3'-dichloro-	3,3'-Dichlorobenzidine	1 (0.454)
(1,1'-Biphenyl)-4,4'-diamine,3,3'-dimethoxy-	3,3'-Dimethoxybenzidine	10 (4.54)
(1,1'-Biphenyl)-4,4'-diamine,3,3'-dimethyl-	3,3'-Dimethylbenzidine	10 (4.54)
Bis(2-chloroethoxy) methane	Ethane, 1,1'-[methylenebis(oxy)]bis(2-chloro-	1000 (454)
	Dichloromethoxy ethane	
Bis(2-chloroethyl) ether	Dichloroethyl ether	10 (4.54)
	Ethane, 1,1'-oxybis(2-chloro-	
Bis(2-ethylhexyl)phthalate	1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)]ester	100 (45.4)
	Diethylhexyl phthalate	
Bromoacetone *	2-Propanone, 1-bromo-	1000 (454)
Bromoform	Methane, tribromo-	100 (45.4)
4-Bromophenyl phenyl ether	Benzene, 1-bromo-4-phenoxy-	100 (45.4)
Brucine	Strychnidin-10-one, 2,3-dimethoxy-	100 (45.4)
1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	Hexachlorobutadiene	1 (0.454)
1-Butanamine, N-butyl-N-nitroso-	N-Nitrosodi-n-butylamine	10 (4.54)
1-Butanol	n-Butyl alcohol *	5000 (2270)
2-Butanone	Ethyl methyl ketone @	5000 (2270)
	Methyl ethyl ketone (MEK) *	
2-Butanone, 3,3-dimethyl-1-(methylthio)-,O-[(methylamino)carbonyl] oxime.	Thiofanox	100 (45.4)
2-Butanone peroxide	Methyl ethyl ketone peroxide *	10 (4.54)
2-Butenal	Crotonaldehyde *	100 (45.4)

Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
2-Butene, 1,4-dichloro-	1,4-Dichloro-2-butene	1 (0.454)
2-Butenoic acid, 2-methyl-,7[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*, 3R*), 7aalpha]]-	Lasiocarpine	10 (4.54)
Butyl acetate *		5000 (2270)
iso-Butyl acetate		
sec-Butyl acetate		
tert-Butyl acetate		
n-Butyl alcohol *	1-Butanol	5000 (2270)
Butylamine *		1000 (454)
iso-Butylamine		
sec-Butylamine		
tert-Butylamine		
Butyl benzyl phthalate		100 (45.4)
n-Butyl phthalate	Di-n-butyl phthalate	10 (4.54)
	Dibutyl phthalate	
	1,2-Benzenedicarboxylic acid, dibutyl ester	
Butyric acid *		5000 (2270)
iso-Butyric acid		
Cacodylic acid	Arsenic acid, dimethyl-	1 (0.454)
Cadmium ¢		10 (4.54)
Cadmium acetate		10 (4.54)
Cadmium bromide		10 (4.54)
Cadmium chloride		10 (4.54)
Calcium arsenate *		1 (0.454)
Calcium arsenite *		1 (0.454)
Calcium carbide *		10 (4.54)
Calcium chromate	Chromic acid H2CrO4, calcium salt	10 (4.54)
Calcium cyanide *	Calcium cyanide Ca(CN)2	10 (4.54)
Calcium cyanide Ca(CN)2	Calcium cyanide	10 (4.54)
Calcium dodecylbenzene sulfonate		1000 (454)
Calcium hypochlorite *		10 (4.54)
Camphene, octachloro-	Toxaphene *	1 (0.454)
Captan		10 (4.54)
Carbamic acid, ethyl ester	Ethyl carbamate (Urethan)	100 (45.4)
Carbamic acid, methylnitroso-, ethyl ester	N-Nitroso-N-methylurethane	1 (0.454)
Carbamic chloride, dimethyl-	Dimethylcarbamoyl chloride	1 (0.454)
Carbamide, thio-	Thiourea	10 (4.54)
Carbamimidoselenoic acid	Selenourea	1000 (454)
Carbamothioic acid, bis (1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester.	Diallate	100 (45.4)
Carbenyl *		100 (45.4)
Carbofuran *		10 (4.54)
Carbon bisulfide *	Carbon disulfide *	100 (45.4)
Carbon disulfide *	Carbon bisulfide *	100 (45.4)
Carbonic acid, dithallium (I+)	Thallium(I) carbonate	100 (45.4)
Carbonic dichloride	Phosgene *	10 (4.54)
Carbonic difluoride	Carbon oxyfluoride	1000 (454)
Carbonochloridic acid, methyl ester	Methyl chlorocarbonate *	1000 (454)
	Methyl chloroformate *	
Carbon oxyfluoride	Carbonic difluoride	1000 (454)
Carbon tetrachloride *	Methane, tetrachloro-	10 (4.54)
Chloral	Acetaldehyde, trichloro-	5000(2270)
Chlorambucil	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-	10 (4.54)
Chlordane *	Chlordane, technical *	1 (0.454)
	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-.	
	Chlordane, alpha & gamma isomers	
Chlordane, alpha & gamma isomers	Chlordane, technical	1 (0.454)
	Chlordane *	
	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-.	
Chlordane, technical *	Chlordane *	1 (0.454)
	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-.	
	Chlordane, alpha & gamma isomers	
Chlorine *		10 (4.54)
Chlornaphazine	Naphthylamine, N,N'-bis(2-chloroethyl)-	100 (45.4)
Chloroacetaldehyde	Acetaldehyde, chloro-	1000 (454)
p-Chloroaniline	Benzenamine, 4-chloro-	1000 (454)
Chlorobenzene *	Benzene, chloro-	100 (45.4)
Chlorobenzilate	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester.	10 (4.54)
4-Chloro-m-cresol	p-Chloro-m-cresol	5000 (2270)
	Phenol, 4-chloro-3-methyl-	
p-Chloro-m-cresol	Phenol, 4-chloro-3-methyl-	5000 (2270)
	4-Chloro-m-cresol	

Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Chlorodibromomethane		100 (45.4)
Chloroethane	Ethyl chloride @	100 (45.4)
2-Chloroethyl vinyl ether	Ethene, 2-chloroethoxy-	1000 (454)
Chloroform *	Methane, trichloro-	10 (4.54)
Chloromethane	Methane, chloro-	100 (45.4)
	Methyl chloride *	
Chloromethyl methyl ether	Methane, chloromethoxy-	1 (0.454)
	Methylchloromethyl ether @	
beta-Chloronaphthalene	Naphthalene, 2-chloro-	5000 (2270)
	2-Chloronaphthalene	
2-Chloronaphthalene	beta-Chloronaphthalene	5000 (2270)
	Naphthalene, 2-chloro-	
2-Chlorophenol	o-Chlorophenol	100 (45.4)
	Phenol, 2-chloro-	
o-Chlorophenol	Phenol, 2-chloro-	100 (45.4)
	2-Chlorophenol	
4-Chlorophenyl phenyl ether		5000 (2270)
1-(o-Chlorophenyl)thiourea	Thiourea, (2-chlorophenyl)-	100 (45.4)
3-Chloropropionitrile	Propanenitrile, 3-chloro-	1000 (454)
Chlorosulfonic acid *		1000 (454)
4-Chloro-o-toluidine, hydrochloride	Benzenamine, 4-chloro-2-methyl-, hydrochloride	100 (45.4)
Chlorpyrifos *		1 (0.454)
Chromic acetate		1000 (454)
Chromic acid *		10 (4.54)
Chromic acid H2CrO4, calcium salt	Calcium chromate	10 (4.54)
Chromic sulfate		1000 (454)
Chromium ¢		5000 (2270)
Chromous chloride		1000 (454)
Chrysene	1,2-Benzphenanthrene	100 (45.4)
Cobaltous bromide		1000 (454)
Cobaltous formate		1000 (454)
Cobaltous sulfamate		1000 (454)
Coke Oven Emissions		1 (0.454)
Copper ¢		5000 (2270)
Copper chloride @	Cupric chloride	10 (4.54)
Copper cyanide *	Copper cyanide CuCN	10 (4.54)
Copper cyanide CuCN	Copper cyanide *	10 (4.54)
Coumaphos *		10 (4.54)
Creosote		1 (0.454)
Cresol(s) *	Cresylic acid	1000 (454)
	Phenol, methyl-	
m-Cresol	m-Cresylic acid	
o-Cresol	o-Cresylic acid	
p-Cresol	p-Cresylic acid	
Cresylic acid	Cresols *	1000 (454)
	Phenol, methyl-	
m-Cresol	m-Cresylic acid	
o-Cresol	o-Cresylic acid	
p-Cresol	p-Cresylic acid	
Crotonaldehyde *	2-Butenal	100 (45.4)
Cumene	Benzene, 1-methylethyl-	5000 (2270)
Cumene hydroperoxide @	alpha,alpha-Dimethylbenzylhydroperoxide	10 (4.54)
	Hydroperoxide, 1-methyl-1-phenylethyl-	
Cupric acetate		100 (45.4)
Cupric acetoarsenite *		1 (0.454)
Cupric chloride	Copper chloride @	10 (4.54)
Cupric nitrate *		100 (45.4)
Cupric oxalate		100 (45.4)
Cupric sulfate		10 (4.54)
Cupric sulfate ammoniated		100 (45.4)
Cupric tartrate		100 (45.4)
Cyanides (soluble salts and complexes) not otherwise specified *		10 (4.54)
Cyanogen *	Ethanedinitrile	100 (45.4)
Cyanogen bromide *	Cyanogen bromide (CN)Br	1000 (454)
Cyanogen bromide (CN)Br	Cyanogen bromide *	1000 (454)
Cyanogen chloride *	Cyanogen chloride (CN)Cl	10 (4.54)
Cyanogen chloride (CN)Cl	Cyanogen chloride *	10 (4.54)
2,5-Cyclohexadiene-1,4-dione	p-Benzoquinone	10 (4.54)
Cyclohexane *	Benzene, hexahydro-	1000 (454)
Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-	gamma-BHC	1 (0.454)
	Hexachlorocyclohexane (gamma isomer)	
	Lindane *	
Cyclohexanone		5000 (2270)
2-Cyclohexyl-4,6-dinitrophenol	Phenol, 2-cyclohexyl-4,6-dinitro-	100 (45.4)
1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	Hexachlorocyclopentadiene *	10 (4.54)
Cyclophosphamide	2H-1,3,2-Oxazaphosphorin,2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide.	10 (4.54)

Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
2,4-D Acid	2,4-D *, salts and esters	100 (45.4)
	Acetic acid (2,4-dichlorophenoxy)-	
2,4-D Ester		100 (45.4)
2,4-D *, salts and esters	2,4-D Acid	100 (45.4)
	Acetic acid (2,4-dichloro-phenoxy)-	
Daunomycin	5,12-Naphthacenedione, 8-acetyl-10-[3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-(8S-cis)-.	10 (4.54)
DDD	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro	1 (0.454)
	TDE *	
	4,4'-DDD	
4,4'-DDD	DDD	1 (0.454)
	Dichlorodiphenyl dichloroethane	
	TDE *	
DDE	4,4'-DDE	1 (0.454)
4,4'-DDE	DDE	1 (0.454)
DDT *	Bezene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-	1 (0.454)
	4,4'-DDT	
4,4'-DDT	DDT *	1 (0.454)
	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-	
Diallate	Carbamothioic acid, bis (1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester.	100 (45.4)
Diamine	Hydrazine *	1 (0.454)
Diazinon *		1 (0.454)
Dibenz[a,h]anthracene	Dibenzo[a,h]anthracene	1 (0.454)
	1,2:5,6-Dibenzanthracene	
1,2:5,6-Dibenzanthracene	Dibenz[a,h]anthracene	1 (0.454)
	Dibenzo[a,h]anthracene	
Dibenzo[a,h]anthracene	Dibenz[a,h]anthracene	1 (0.454)
	1,2:5,6-Dibenzanthracene	
Dibenz[a,i]pyrene	Bezo [rst]pentaphene	10 (4.54)
1,2-Dibromo-3-chloropropane	Propane, 1,2-dibromo-3-chloro-	1 (0.454)
Dibutyl phthalate	Di-n-butyl phthalate	10 (4.54)
	n-Butyl phthalate *	
	1,2-Benzenedicarboxylic acid, dibutyl ester	
Di-n-butyl phthalate	Dibutyl phthalate	10 (4.54)
	n-Butyl phthalate *	
	1,2-Benzenedicarboxylic acid, dibutyl ester	
Dicamba		1000 (454)
Dichlobenil		100 (45.4)
Dichlone		1 (0.454)
Dichlorobenzene		100 (45.4)
1,2-Dichlorobenzene	Benzene, 1,2-dichloro-	100 (45.4)
	o-Dichlorobenzene *	
1,3-Dichlorobenzene	Benzene, 1,3-dichloro-	100 (45.4)
	m-Dichlorobenzene	
1,4-Dichlorobenzene	Benzene, 1,4-dichloro-	100 (45.4)
	p-Dichlorobenzene *	
m-Dichlorobenzene	Benzene, 1,3-dichloro-	100 (45.4)
	1,3-Dichlorobenzene	
o-Dichlorobenzene *	Benzene, 1,2-dichloro-	100 (45.4)
	1,2-Dichlorobenzene	
p-Dichlorobenzene *	Benzene, 1,4-dichloro-	100 (45.4)
	1,4-Dichlorobenzene	
3,3'-Dichlorobenzidine	(1,1'-Biphenyl)-4,4'-diamine,3,3'-dichloro-	1 (0.454)
Dichlorobromomethane		5000 (2270)
1,4-Dichloro-2-butene	2-Butene, 1,4-dichloro-	1 (0.454)
Dichlorodifluoromethane *	Methane, dichlorodifluoro-	5000 (2270)
1,1-Dichloroethane	Ethane, 1,1-dichloro-	1000 (454)
	Ethylidene dichloride	
1,2-Dichloroethane	Ethane, 1,2-dichloro-	100 (45.4)
	Ethylene dichloride *	
1,1-Dichloroethylene	Ethene, 1,1-dichloro-	100 (45.4)
	Vinylidene chloride *	
1,2-Dichloroethylene	Ethene, 1,2-dichloro- (E)	1000 (454)
1,3-Dichloropropene	1-Propene, 1,3-dichloro-	100 (45.4)
Dichloroethyl ether	Bis (2-chloroethyl) ether	10 (4.54)
	Ethane, 1,1'-oxybis(2-chloro-	
Dichloroisopropyl ether	Propane, 2,2'-oxybis [2-chloro-	1000 (454)
Dichloromethane @	Methane, dichloro-	1000 (454)
	Methylene chloride *	
Dichloromethoxy ethane	Bis(2-chloroethoxy) methane	1000 (454)
	Ethane, 1,1'-[methylenebis (oxy)]bis(2-chloro-	
Dichloromethyl ether	Methane, oxybis(chloro-	1 (0.454)
2,4-Dichlorophenol	Phenol, 2,4-dichloro-	100 (45.4)
2,6-Dichlorophenol	Phenol, 2,6-dichloro-	100 (45.4)

Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Dichlorophenylarsine	Phenyl dichloroarsine @	1 (0.454)
	Arsenous dichloride, phenyl-	
Dichloropropane *		1000 (454)
1,1-Dichloropropane		
1,3-Dichloropropane		
1,2-Dichloropropane	Propylene dichloride *	1000 (454)
	Propane, 1,2-dichloro-	
Dichloropropane - Dichloropropene (mixture)		100 (45.4)
Dichloropropene *		100 (45.4)
2,3-Dichloropropene		
2,2-Dichloropropionic acid *		5000 (2270)
Dichlorvos *		10 (4.54)
Dicofol		10 (4.54)
Dieldrin *	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-,(1alpha,2beta,2aalpha,3beta,6beta,6aalpha,7beta,7aalpha)-.	1 (0.454)
1,2:3,4-Diepoxybutane	2,2'-Bioxirane	10 (4.54)
Diethylamine *		1000 (454)
Diethylarsine	Arsine, diethyl-	1 (0.454)
1,4-Diethylenedioxide	1,4-Dioxane	100 (45.4)
Diethylhexyl phthalate	1,2-Benzenedicarbolic acid, [bis(2-ethylhexyl)]ester	
	Bis(2-ethylhexyl)phthalate	
N,N'-Diethylhydrazine	Hydrazine, 1,2-diethyl-	10 (4.54)
O,O-Diethyl S-methyl dithiophosphate	Phosphorodithioic acid, O'O'>-diethylS-methyl ester	5000 (2270)
Diethyl-p-nitrophenyl phosphate	Phosphoric acid, diethyl 4-nitrophenyl ester	100 (45.4)
Diethyl phthalate	1,2-Benzenedicarboxylic acid, diethyl ester	1000(454)
O,O-Diethyl O-pyrazinyl phosphorothioate	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	100 (45.4)
Diethylstilbestrol	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)	1 (0.454)
Dihydrosafrole	Benzene, 1,2-methylenedioxy-4-propyl-	10 (4.54)
Diisopropyl fluorophosphate	Phosphorofluoridic acid, bis(1-methylethyl) ester	100 (45.4)
1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro, (1alpha,4alpha,4abeta,5abeta,8beta,8abeta)-.	Isodrin	1 (0.454)
1,4,5,8-Dimethanonaphthalene,1,2,3,4,10,10-10-hexachloro-1,4,4a,5,8,8a-hexahydro-,(1alpha,4alpha,4abeta,5alpha,8alpha,8abeta)-.	Aldrin *	1 (0.454)
2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-,(1aalpha,2beta,2aabeta,3alpha,6alpha,6abeta,7beta,7aalpha)-.	1,2,3,4,10-10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,exo-dimethanonapthalene.	
2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-,(1aalpha,2beta,2aalpha,3beta,6beta,6aalpha,7beta,7aalpha)-.	Endrin *	1 (0.454)
Dimethoate	Endrin, and metabolitas	
	Dieldrin *	1 (0.454)
		*
	Phosphorodithioic acid, O,O-dimethyl S-[2(methylamino)-2-oxoethyl] ester.	10 (4.54)
3,3'-Dimethoxybenzidine	(1,1'-Biphenyl)-4,4'-diamine,3,3'-dimethoxy-	10 (4.54)
Dimethylamine *	Methanamine, N-methyl-	1000 (454)
p-Dimethylaminoazobenzene	Benzenamine, N,N-dimethyl-4-(phenylazo)-	10 (4.54)
7,12-Dimethylbenz[a]anthracene	Benz[a]anthracene, 7,12-dimethyl-	1 (0.454)
3,3'-Dimethylbenzidine	(1,1'-Biphenyl)-4,4'-diamine,3,3'-dimethyl-	10 (4.54)
alpha,alpha-Dimethylbenzylhydroperoxide	Hydroperoxide, 1-methyl-1-phenylethyl-	10 (4.54)
	Cumene hydroperoxide @	
Dimethylcarbamoyl chloride	Carbamic chloride, dimethyl-	1 (0.454)
1,1-Dimethylhydrazine	Dimethylhydrazine, unsymmetrical @	10 (4.54)
	Hydrazine, 1,1-dimethyl-	
1,2-Dimethylhydrazine	Hydrazine, 1,2-dimethyl-	1 (0.454)
Dimethylhydrazine, unsymmetrical @	1,1-Dimethylhydrazine	10 (4.54)
	Hydrazine, 1,1-dimethyl-	
alpha,alpha-Dimethylphenethylamine	Benzeneethanamine, alpha,alpha-dimethyl-	5000 (2270)
2,4-Dimethylphenol	Phenol, 2,4-dimethyl-	100 (45.4)
Dimethyl phthalate	1,2-Benzenedicarboxylic acid, dimethyl ester	5000 (2270)
Dimethyl sulfate *	Sulfuric acid, dimethyl ester	100 (45.4)
Dinitrobenzene * (mixed)		100 (45.4)
m-Dinitrobenzene		
o-Dinitrobenzene		
p-Dinitrobenzene		
4,6-Dinitro-o-cresol and salts	Phenol, 2-methyl-4,6-dinitro-	10 (4.54)
Dinitrophenol		10 (4.54)
2,5-Dinitrophenol		
2,6-Dinitrophenol		
2,4-Dinitrophenol	Phenol, 2,4-dinitro-	10 (4.54)
Dinitrotoluene		10 (4.54)
3,4-Dinitrotoluene		
2,4-Dinitrotoluene	Benzene, 1-methyl-2,4-dinitro-	10 (4.54)
2,6-Dinitrotoluene	Benzene, 2-methyl-1,3-dinitro-	100 (45.4)
Dinoseb	Phenol, 2-(1-methylpropyl)-4,6-dinitro	1000 (454)
Di-n-octyl phthalate	1,2-Benzenedicarboxylic acid, dioctyl ester	5000 (2270)
1,4-Dioxane	1,4-Diethylene dioxide	100 (45.4)
1,2-Diphenylhydrazine	Hydrazine, 1,2-diphenyl-	10 (4.54)

Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Diphosphoramide, octamethyl-	Octamethylpyrophosphoramide	100 (45.4)
Diphosphoric acid, tetraethyl ester	Tetraethyl pyrophosphate *	10 (4.54)
Dipropylamine	1-Propanamine, N-propyl-	5000 (2270)
Di-n-propylnitrosamine	1-Propanamine, N-nitroso-N-propyl-	10 (4.54)
Diquat		1000 (454)
Disulfoton *	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl]ester	1 (0.454)
Dithiobiuret	Thioimidodicarbonic diamide[(H2N)C(S)]2NH	100 (45.4)
Diuron		100 (45.4)
Dodecylbenzenesulfonic acid *		1000 (454)
Endosulfan *	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide.	1 (0.454)
alpha - Endosulfan		1 (0.454)
beta - Endosulfan		1 (0.454)
Endosulfan sulfate		1 (0.454)
Endothall	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	1000 (454)
Endrin *	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octa-hydro-,(1aalpha,2beta,2abeta,3alpha,6alpha,6abeta,7beta,7aalpha)—.	1 (0.454)
Endrin, & metabolites	Endrin, & metabolites	1 (0.454)
	Endrin	
	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octa-hydro-,(1aalpha,2beta,2abeta,3alpha,6alpha,6abeta,7beta,7aalpha)-.	
Endrin aldehyde		1 (0.454)
Epichlorohydrin *	Oxirane, (chloromethyl)-	100 (45.4)
Epinephrine	1,2-Benzenediol,4-[1-hydroxy-2-(methylamino)ethyl]	1000 (454)
Ethanal	Acetaldehyde *	1000 (454)
Ethanamine, N-ethyl-N-nitroso-	N-Nitrosodiethylamine	1 (0.454)
Ethane, 1,2-dibromo-	Ethylene dibromide *	1 (0.454)
Ethane, 1,1-dichloro-	Ethylidene dichloride	1000 (454)
	1,1-Dichloroethane	
Ethane, 1,2-dichloro-	Ethylene dichloride *	100 (45.4)
	1,2-Dichloroethane	
Ethane, hexachloro-	Hexachloroethane *	100 (45.4)
Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-	Bis(2-chloroethoxy)methane	1000 (454)
	Dichloromethoxy ethane	
Ethane, 1,1'-oxybis-	Ethyl ether *	100 (45.4)
Ethane, 1,1'-oxybis[2-chloro-	Bis (2-chloroethyl) ether	10 (4.54)
	Dichloroethyl ether	
Ethane, pentachloro-	Pentachloroethane	10 (4.54)
Ethane, 1,1,1,2-tetrachloro-	1,1,1,2-Tetrachloroethane—	100 (45.4)
	Tetrachloroethane @	
Ethane, 1,1,2,2-tetrachloro-	1,1,2,2-Tetrachloroethane—	100 (45.4)
	Tetrachloroethane @	
Ethane, 1,1,2-trichloro-	1,1,2-Trichloroethane	100 (45.4)
Ethane, 1,1,1-trichloro-	Methyl chloroform	1000 (454)
	1,1,1-Trichloroethane *	
1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienyl-methyl)-	Methapyrilene	5000 (2270)
Ethanedinitrile	Cyanogen *	100 (45.4)
Ethanenitrile	Acetonitrile *	5000 (2270)
Ethanethioamide	Thioacetamide	10 (4.54)
Ethanimidothioic acid, N-[[(methylamino)carbonyl] oxy]-, methyl ester	Methomyl	100 (45.4)
Ethanol, 2-ethoxy-	Ethylene glycol monoethyl ether *	1000 (454)
Ethanol, 2,2'-(nitrosoimino)bis-	N-Nitrosodiethanolamine	1 (0.454)
Ethanone, 1-phenyl-	Acetophenone	5000 (2270)
Ethanoyl chloride	Acetyl chloride *	5000 (2270)
Ethene, chloro-	Vinyl chloride *	1 (0.454)
Ethene, 2-chloroethoxy-	2-Chloroethyl vinyl ether	1000 (454)
Ethene, 1,1-dichloro-	Vinylidene chloride *	100 (45.4)
	1,1-Dichloroethylene	
Ethene, 1,2-dichloro- (E)	1,2-Dichloroethylene	1000 (454)
Ethene, tetrachloro-	Perchloroethylene	100 (45.4)
	Tetrachloroethene	
	Tetrachloroethylene	
Ethene, trichloro-	Trichloroethene	100 (45.4)
	Trichloroethylene	
Ethion *		10 (4.54)
Ethyl acetate *	Acetic acid, ethyl ester	5000 (2270)
Ethyl acrylate *	2-Propenoic acid, ethyl ester	1000 (454)
Ethylbenzene *		1000 (454)
Ethyl carbamate (Urethan)	Carbamic acid, ethyl ester	100 (45.4)
Ethyl chloride @	Chloroethane	100 (45.4)
Ethyl cyanide	Propanenitrile	10 (4.54)
Ethylene dibromide *	Ethane, 1,2-dibromo-	1 (0.454)
Ethylene dichloride *	1,2-Dichloroethane	100 (45.4)
	Ethane, 1,2-dichloro-	
Ethylene glycol monoethyl ether *	Ethanol, 2-ethoxy	1000 (454)

Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Ethylene imine @	Aziridine	1 (0.454)
	Ethylenimine	
Ethylene oxide *	Oxirane	10 (4.54)
Ethylenebisdithiocarbamic acid	Ethylenebisdithiocarbamic acid, salts and esters	5000 (2270)
Ethylenebisdithiocarbamic acid, salts and esters	Ethylenebisdithiocarbamic acid	5000 (2270)
Ethylenediamine *		5000 (2270)
Ethylenediamine tetraacetic acid (EDTA)		5000 (2270)
Ethylenethiourea	2-Imidazolidinethione	10 (4.54)
Ethylenimine	Aziridine—	1 (0.454)
	Ethylene imine@	
Ethyl ether *	Ethane, 1,1'-oxybis-	100 (45.4)
Ethylidene dichloride	Ethane, 1,1-dichloro-	*000 (454)
	1,1-Dichloroethane	
Ethyl methacrylate	2-Propenoic acid, 2-methyl-, ethyl ester	1000 (454)
Ethyl methanesulfonate	Methanesulfonic acid, ethyl ester	1 (0.454)
Ethyl methyl ketone @	2-Butanone	5000 (2270)
	Methyl ethyl ketone (MEK) *	
Famphur	Phosphorothioic acid, O[4-[(dimethylamino)-sulfonyl] phenyl] O,O-dimethylester.	1000 (454)
Ferric ammonium citrate		1000 (454)
Ferric ammonium oxalate		1000 (454)
Ferric chloride		1000 (454)
Ferric fluoride		100 (45.4)
Ferric nitrate *		1000 (454)
Ferric sulfate		1000 (454)
Ferrous ammonium sulfate		1000 (454)
Ferrous chloride *		100 (45.4)
Ferrous sulfate		1000 (454)
Fluoranthene	Benzo[j,k]fluorene	100 (45.4)
Fluorene		5000 (2270)
Fluorine *		10 (4.54)
Fluoroacetamide	Acetamide, 2-fluoro-	100 (45.4)
Fluoroacetic acid, sodium salt	Acetic acid, fluoro-, sodium salt	10 (4.54)
Formaldehyde *	Methylene oxide	100 (45.4)
Formic acid *	Methanoic acid	5000 (2270)
Fulminic acid, mercury(2+)salt	Mercury fulminate	10 (4.54)
Fumaric acid		5000 (2270)
Furan *	Furfuran	100 (45.4)
Furan, tetrahydro-	Tetrahydrofuran *	1000 (454)
2-Furancarboxaldehyde	Furfural *	5000 (2270)
2,5-Furandione	Maleic anhydride *	5000 (2270)
Furfural *	2-Furancarboxaldehyde	5000 (2270)
Furfuran	Furan *	100 (45.4)
Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-	Streptozotocin	1 (0.454)
	D-Glucose, 2-deoxy-2-[[(methylnitrosoamino)-carbonyl]amino]-	
D-Glucose, 2-deoxy-2-[[methylnitrosoamino)-carbonyl]amino]-	Streptozotocin	1 (0.454)
	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-	
Glycidylaldehyde	Oxiranecarboxyaldehyde	10 (4.54)
Guanidine, N-methyl-N'-nitro-N-nitroso-	MNNG	10 (4.54)
Guthion *	Azinphos methyl @	1 (0.454)
Heptachlor	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	1 (0.454)
Heptachlor epoxide		1 (0.454)
Hexachlorobenzene	Benzene, hexachloro-	10 (4.54)
Hexachlorobutadiene	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	1 (0.454)
Hexachlorocyclohexane (gamma isomer)	gamma - BHC	1 (0.454)
	Lindane *	
	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-.	
Hexachlorocyclopentadiene *	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	10 (4.54)
Hexachloroethane *	Ethane, hexachloro-	100 (45.4)
1,2,3,4,10-10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,exo-dimethanonaphthalene.	Aldrin *	1 (0.454)
	1,4,5,8-Dimethanonaphthalene,1,2,3,4,10,10-10hexachloro-1,4,4a,5,8,8a-hexahydro-,(1alpha,4alpha,4abeta,5alpha,8alpha,8abeta)-.	
Hexachlorophene	Phenol, 2,2'-methylenebis[3,4,6-trichloro	100 (45.4)
Hexachloropropene	1-Propene, 1,1,2,3,3,3-hexachloro-	1000 (454)
Hexaethyl tetraphosphate *	Tetraphosphoric acid, hexaethyl ester	100 (45.4)
2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-	Uracil mustard	10 (4.54)
Hydrazine *	Diamine	1 (0.454)
Hydrazine, 1,2-diethyl-	N,N'-Diethylhydrazine	10 (4.54)
Hydrazine, 1,1-dimethyl-	1,1-Dimethylhydrazine	10 (4.54)
	Dimethylhydrazine, unsymmetrical @	
Hydrazine, 1,2-dimethyl-	1,2-Dimethylhydrazine	1 (0.454)
Hydrazine, 1,2-diphenyl-	1,2-Diphenylhydrazine	10 (4.54)
Hydrazine, methyl-	Methyl hydrazine *	10 (4.54)
Hydrazinecarbothioamide	Thiosemicarbazide	100 (45.4)
Hydrochloric acid *	Hydrogen chloride *	500' (2270)

Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Hydrocyanic acid *	Hydrogen cyanide	10 (4.54)
Hydrofluoric acid *	Hydrogen fluoride *	100 (45.4)
Hydrogen chloride *	Hydrochloric acid *	5000 (2270)
Hydrogen cyanide	Hydrocyanic acid *	10 (4.54)
Hydrogen fluoride *	Hydrofluoric acid *	100 (45.4)
Hydrogen phosphide	Phosphine *	100 (45.4)
Hydrogen sulfide *	Hydrogen sulfide H2S	100 (45.4)
Hydrogen sulfide H2S	Hydrogen sulfide	100 (45.4)
Hydroperoxide, 1-methyl-1-phenylethyl-	alpha,alpha-Dimethylbenzylhydroperoxide	10 (4.54)
	Cumene hydroperoxide @	
2-Imidazolidinethione	Ethylenethiourea	10 (4.54)
Indeno(1,2,3-cd)pyrene	1,10-(1,2-Phenylene)pyrene	100 (45.4)
1,3-Isobenzofurandione	Phthalic anhydride	5000 (2270)
Isobutyl alcohol	1-Propanol, 2-methyl-	5000 (2270)
Isodrin	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro, (1alpha,4alpha,4abeta,5beta,8beta,8abeta)-.	1 (0.454)
Isophorone		5000 (2270)
Isoprene *		100 (45.4)
Isopropanolamine dodecylbenzene sulfonate		1000 (454)
Isosafrole	1,3-Benzodioxole, 5-(-1propenyl)-	100 (45.4)
3(2H)-Isoxazolone, 5-(aminomethyl)-	5-(Aminomethyl)-3-isoxazolol	1000 (454)
	Muscimol	
Kepone	1,3,4-Metheno-2H-cyclobuta[cd]-pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachloroc-tahydro-.	1 (0.454)
Lasiocarpine	2-Butenoic acid, 2-methyl-,7[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*, 3R*),7aalpha]]-.	10 (4.54)
Lead ◊		1 (0.454)
Lead acetate	Acetic acid, lead (2+) salt	5000 (2270)
Lead arsenate *		1 (0.454)
Lead, bis(acetato-O)tetrahydroxytri	Lead subacetate	100 (45.4)
Lead chloride *		100 (45.4)
Lead fluoborate *		100 (45.4)
Lead fluoride *		100 (45.4)
Lead iodide		100 (45.4)
Lead nitrate *		100 (45.4)
Lead phosphate	Phosphoric acid, lead(2+) salt (2:3)	1 (0.454)
Lead stearate		5000 (2270)
Lead subacetate	Lead, bis(acetato-O)tetrahydroxytri	100 (45.4)
Lead sulfate *		100 (45.4)
Lead sulfide		5000 (2270)
Lead thiocyanate		100 (45.4)
Lindane *	gamma - BHC	1 (0.454)
	Hexachlorocyclohexane (gamma isomer)	
	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-.	
Lithium chromate		10 (4.54)
Malathion *		100 (45.4)
Maleic acid *		5000 (2270)
Maleic anhydride *	2,5-Furandione	5000 (2270)
Maleic hydrazide	3,6-Pyridazinedione, 1,2-dihydro-	5000 (2270)
Malononitrile	Propanedinitrile	1000 (454)
Melphalan	L-Phenylalanine, 4-[bis(2-chloroethyl)amino]	1 (0.454)
Mercaptodimethur		10 (4.54)
Mercuric cyanide *		1 (0.454)
Mercuric nitrate *		10 (4.54)
Mercuric sulfate *		10 (4.54)
Mercuric thiocyanate		10 (4.54)
Mercurous nitrate *		10 (4.54)
Mercury *		1 (0.454)
Mercury, (acetato-O)phenyl-	Phenylmercuric acetate	100 (45.4)
Mercury fulminate	Fulminic acid, mercury(2+)salt	10 (4.54)
Methacrylonitrile	2-Propenenitrile, 2-methyl-	1000 (454)
Methanamine, N-methyl-	Dimethylamine *	1000 (454)
Methanamine, N-methyl-N-nitroso	N-Nitrosodimethylamine	10 (4.54)
Methane, bromo-	Methyl bromide *	1000 (454)
Methane, chloro-	Chloromethane	100 (45.4)
	Methyl chloride *	
Methane, chloromethoxy-	Chloromethyl methyl ether	1 (0.454)
	Methylchloromethyl ether @	
Methane, dibromo-	Methylene bromide	1000 (454)
Methane, dichloro-	Methylene chloride *	1000 (454)
	Dichloromethane @	
Methane, dichlorodifluoro-	Dichlorodifluoromethane *	5000 (2270)
Methane, iodo-	Methyl iodide	100 (45.4)
Methane, isocyanato-	Methyl isocyanate *	1 (0.454)
Methane, oxybis[chloro-	Dichloromethyl ether	1 (0.454)

Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Methane, tetrachloro-	Carbon tetrachloride *	10 (4.54)
Methane, tetranitro-	Tetranitromethane *	10 (4.54)
Methane, tribromo-	Bromoform	100 (45.4)
Methane, trichloro-	Chloroform *	10 (4.54)
Methane, trichlorofluoro-	Trichloromonofluoromethane	5000 (2270)
Methanesulfenyl chloride, trichloro-	Perchloromethyl mercaptan @	100 (45.4)
	Trichloromethanesulfenyl chloride	
Methanesulfonic acid, ethyl ester	Ethyl methanesulfonate	1 (0.454)
Methanethiol	Methyl mercaptan *	100 (45.4)
	Thiomethanol	
6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide.	Endosulfan *	1 (0.454)
Methanoic acid	Formic acid *	5000 (2270)
4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-a,4,7,7a-tetrahydro-	Heptachlor	1 (0.454)
4,7-Methano-1H-indene, 1,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-.	Chlordane *	1 (0.454)
	Chlordane, technical *	
	Chlordane, alpha & gamma isomers	
Methanol *	Methyl alcohol *	5000 (2270)
Methapyrilene	1,2-Ethanediamine, N-N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-	5000 (2270)
1,3,4-Metheno-2H-cyclobuta[cd]-pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-.	Kepone *	1 (0.454)
Methomyl	Ethanimidothioic acid, N-[[(methylamino)carbonyl] oxy]-, methyl ester	100 (45.4)
Methoxychlor	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-	1 (0.454)
Methyl alcohol *	Methanol *	5000 (2270)
Methylamine @	Monomethylamine	100 (45.4)
Methyl bromide *	Methane, bromo-	1000 (454)
1-Methylbutadiene	1,3-Pentadiene	100 (45.4)
Methyl chloride *	Chloromethane	100 (45.4)
	Methane, chloro-	
Methyl chlorocarbonate *	Carbonochloridic acid, methyl ester	1000 (454)
	Methyl chloroformate *	
Methyl chloroform *	1,1,1-Trichloroethane *	1000 (454)
	Ethane, 1,1,1-trichloro-	
Methyl chloroformate *	Carbonochloridic acid, methyl ester	1000 (454)
	Methyl chlorocarbonate *	
Methylchloromethyl ether @	Chloromethyl methyl ether	1 (0.454)
	Methane, chloromethoxy-	
3-Methylcholanthrene	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	10 (4.54)
4,4'-Methylenebis(2-chloroaniline)	Benzenamine, 4,4'-methylenebis(2-chloro-	10 (4.54)
Methylene bromide	Methane, dibromo-	1000 (454)
Methylene chloride *	Methane, dichloro—	1000 (454)
	Dichloromethane @	
Methylene oxide	Formaldehyde *	100 (45.4)
Methyl ethyl ketone (MEK) *	2-Butanone	5000 (2270)
	Ethyl methyl ketone @	
Methyl ethyl ketone peroxide *	2-Butanone peroxide	10 (4.54)
Methyl hydrazine *	Hydrazine, methyl-	10 (4.54)
Methyl iodide	Methane, iodo-	100 (45.4)
Methyl isobutyl ketone	4-Methyl-2-pentanone	5000 (2270)
Methyl isocyanate *	Methane, isocyanato-	1 (0.454)
2-Methyllactonitrile	Acetone cyanohydrin *	10 (4.54)
	Propanenitrile, 2-hydroxy-2-methyl-	
Methyl mercaptan *	Methanethiol	100 (45.4)
	Thiomethanol	
Methyl methacrylate *	2-Propenoic acid, 2-methyl-, methyl ester	1000 (454)
Methyl parathion *	Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester	100 (45.4)
4-Methyl-2-pentanone	Methyl isobutyl ketone	5000 (2270)
Methylthiouracil	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	10 (4.54)
Mevinphos *		10 (4.54)
Mexacarbate *		1000 (454)
Mitomycin C	Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione,6-amino-8-[[(aminocarbonyl)oxy] methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, [1aS-(1aalpha,8beta,8aalpha,8balpha)]-.	10 (4.54)
MNNG	Guanidine, N-methyl-N'-nitro-N-nitroso-	10 (4.54)
Monoethylamine *		100 (45.4)
Monomethylamine	Methylamine @	100 (45.4)
Muscimol	5-(Aminomethyl)-3-isoxazolol	1000 (454)
	3(2H)-isoxazolone, 5-(aminomethyl)-	
Naled		10 (4.54)
5,12-Naphthacenedione, 8-acetyl-10-[3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl) oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-	Daunomycin	10 (4.54)
Naphthalenamine, N,N-bis(2-chloroethyl)-	Chlornaphazine	100 (45.4)
Naphthalene *		100 (45.4)
Naphthalene, 2-chloro-	beta-Chloronaphthalene	5000 (2270)
	2-Chloronaphthalene	
1,4-Naphthalenedione	1,4-Naphthoquinone	5000 (2270)

Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'- dimethyl-[1,1'-biphenyl)-4,4'-diyl)-bis(azo)]bis(5-amino-4-hydroxy)-tetrasodium salt.	Trypan blue	10 (4.54)
Naphthenic acid		100 (45.4)
1,4-Naphthoquinone	1,4-Naphthalenedione	5000 (2270)
alpha-Naphthylamine	1-Naphthylamine	100 (45.4)
beta-Naphthylamine	2-Naphthylamine	1 (0.454)
1-Naphthylamine	alpha-Naphthylamine	100 (45.4)
2-Naphthylamine	beta-Naphthylamine	1 (0.454)
alpha-Naphthylthiourea	Thiourea, 1-naphthalenyl-	100 (45.4)
Nickel ®		100 (45.4)
Nickel ammonium sulfate		100 (45.4)
Nickel carbonyl °	Nickel carbonyl Ni(CO)4, (T-4)-	10 (4.54)
Nickel carbonyl Ni(CO)4,(T-4)-	Nickel carbonyl °	10 (4.54)
Nickel chloride		100 (45.4)
Nickel cyanide °	Nickel cyanide Ni(CN)2	10 (4.54)
Nickel cyanide Ni(CN)2	Nickel cyanide °	10 (4.54)
Nickel hydroxide		10 (4.54)
Nickel nitrate °		100 (45.4)
Nickel sulfate		100 (45.4)
Nicotine ° and salts °	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-	100 (45.4)
Nitric acid °		1000 (454)
Nitric acid, thallium(1+) salt	Thallium(I) nitrate	100 (45.4)
Nitric oxide °	Nitrogen oxide NO	10 (4.54)
p-Nitroaniline °	Benzenamine, 4-nitro-	5000 (2270)
Nitrobenzene °	Benzene, nitro-	1000 (454)
Nitrogen dioxide °	Nitrogen oxide NO2	10 (4.54)
	Nitrogen peroxide @	
	Nitrogen tetroxide @	
Nitrogen oxide NO	Nitric oxide °	10 (4.54)
Nitrogen oxide NO2	Nitrogen dioxide °	10 (4.54)
	Nitrogen peroxide @	
	Nitrogen tetroxide @	
Nitrogen peroxide @	Nitrogen dioxide °	10 (4.54)
	Nitrogen oxide NO2	
	Nitrogen tetroxide @	
Nitrogen tetroxide @	Nitrogen dioxide °	10 (4.54)
	Nitrogen oxide NO2	
	Nitrogen peroxide	
Nitroglycerine °	1,2,3-Propanetriol, trinitrate-	10 (4.54)
Nitrophenol (mixed)		100 (45.4)
m-		
o-	2-Nitrophenol	
p-	4-Nitrophenol	
	Phenol, 4-nitro-	
o-Nitrophenol	2-Nitrophenol	100 (45.4)
p-Nitrophenol	Phenol, 4-nitro-	100 (45.4)
	4-Nitrophenol	
2-Nitrophenol	o-Nitrophenol	100 (45.4)
4-Nitrophenol	p-Nitrophenol	100 (45.4)
	Phenol, 4-nitro-	
2-Nitropropane	Propane, 2-nitro-	10 (4.54)
N-Nitrosodi-n-butylamine	1-Butanamine, N-butyl-N-nitroso-	10 (4.54)
N-Nitrosodiethanolamine	Ethanol, 2,2'-(nitrosoimino)bis-	1 (0.454)
N-Nitrosodiethylamine	Ethanamine, N-ethyl-N-nitroso-	1 (0.454)
N-Nitrosodimethylamine	Methanamine, N-methyl-N-nitroso-	10 (4.54)
N-Nitrosodiphenylamine		100 (45.4)
N-Nitroso-N-ethylurea	Urea, N-ethyl-N-nitroso-	1 (0.454)
N-Nitroso-N-methylurea	Urea, N-methyl-N-nitroso-	1 (0.454)
N-Nitroso-N-methylurethane	Carbamic acid, methylnitroso-, ethyl ester	1 (0.454)
N-Nitrosomethylvinylamine	Vinylamine, N-methyl-N-nitroso-	10 (4.54)
N-Nitrosopiperidine	Piperidine, 1-nitroso-	10 (4.54)
N-Nitrosopyrrolidine	Pyrrolidine, 1-nitroso-	1 (0.454)
Nitrotoluene		1000 (454)
m-Nitrotoluene		
o-Nitrotoluene		
p-Nitrotoluene		
5-Nitro-o-toluidine	Benzenamine, 2-methyl-5-nitro-	100 (45.4)
Octamethylpyrophosphoramide	Diphosphoramide, octamethyl-	100 (45.4)
Osmium oxide OsO4 (T-4)-	Osmium tetroxide	1000 (454)
Osmium tetroxide	Osmium oxide OsO4 (T-4)-	1000 (454)
7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	Endothall	1000 (454)
1,2-Oxathiolane, 2,2-dioxide	1,3-Propane sultone	10 (4.54)
2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide.	Cyclophosphamide	10 (4.54)
Oxirane	Ethylene oxide °	10 (4.54)
Oxiranecarboxyaldehyde	Glycidylaldehyde	10 (4.54)
Oxirane, (chloromethyl)-	Epichlorohydrin °	100 (45.4)

Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Paraformaldehyde °		1000 (454)
Paraldehyde °	1,3,5-Trioxane, 2,4,6-trimethyl-	1000 (454)
Parathion °	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl)ester	10 (4.54)
Pentachlorobenzene	Benzene, pentachloro-	10 (4.54)
Pentachloroethane	Ethane, pentachloro-	10 (4.54)
Pentachloronitrobenzene (PCNB)	Benzene, pentachloronitro-	100 (45.4)
Pentachlorophenol	Phenol, pentachloro-	10 (4.54)
1,3-Pentadiene	1-Methylbutadiene	100 (45.4)
Perchloroethylene °	Ethene, tetrachloro-	100 (45.4)
	Tetrachloroethene	
	Tetrachloroethylene °	
Perchloromethyl mercaptan @	Methanesulfenyl chloride, trichloro-	100 (45.4)
	Trichloromethanesulfenyl chloride	
Phenacetin	Acetamide, N-(4-ethoxyphenyl)-	100 (45.4)
Phenanthrene		5000 (2270)
Phenol °	Benzene, hydroxy-	1000 (454)
Phenol, 2-chloro-	o-Chlorophenol	100 (45.4)
	2-Chlorophenol	
Phenol, 4-chloro-3-methyl-	p-Chloro-m-cresol	5000 (2270)
	4-Chloro-m-cresol	
Phenol, 2-cyclohexyl-4,6-dinitro-	2-Cyclohexyl-4,6-dinitrophenol	100 (45.4)
Phenol, 2,4-dichloro-	2,4-Dichlorophenol	100 (45.4)
Phenol, 2,6-dichloro-	2,6-Dichlorophenol	100 (45.4)
Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)	Diethylstilbestrol	1 (0.454)
Phenol, 2,4-dimethyl-	2,4-Dimethylphenol	100 (45.4)
Phenol, 2,4-dinitro-	2,4-Dinitrophenol	10 (4.54)
Phenol, methyl-	Cresol(s) °	1000 (454)
	Cresylic acid	
m-Cresol	m-Cresylic acid	
o-Cresol	o-Cresylic acid	
p-Cresol	p-Cresylic acid	
Phenol, 2-methyl-4,6-dinitro-	4,6-Dinitro-o-cresol and salts	10 (4.54)
Phenol, 2,2'-methylenebis[3,4,6-trichloro-	Hexachlorophene	100 (45.4)
Phenol, 2-(1-methylpropyl)-4,6-dinitro	Dinoseb	1000 (454)
Phenol, 4-nitro-	p-Nitrophenol	100 (45.4)
	4-Nitrophenol	
Phenol, pentachloro-	Pentachlorophenol	10 (4.54)
Phenol, 2,3,4,6-tetrachloro-	2,3,4,6-Tetrachlorophenol	10 (4.54)
Phenol, 2,4,5-trichloro-	2,4,5-Trichlorophenol	10 (4.54)
Phenol, 2,4,6-trichloro-	2,4,6-Trichlorophenol	10 (4.54)
Phenol, 2,4,6-trinitro-, ammonium salt	Ammonium picrate °	10 (4.54)
L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-	Melphalan	1 (0.454)
Phenyl dichloroarsine @	Dichlorophenylarsine—	1 (0.454)
	Arsonous dichloride, phenyl-	
1,10-(1,2-Phenylene)pyrene	Indeno(1,2,3-cd)pyrene	100 (45.4)
Phenyl mercaptan @	Benzenethiol	100 (45.4)
	Thiophenol °	
Phenylmercuric acetate	Mercury, (acetato-O)phenyl-	100 (45.4)
Phenylthiourea	Thiourea, phenyl-	100 (45.4)
Phorate	Phosphorodithioic acid, O,O-diethyl S-(ethylthio), methylester	10 (4.54)
Phosgene °	Carbonic dichloride	10 (4.54)
Phosphine °	Hydrogen phosphide	100 (45.4)
Phosphoric acid °		5000 (2270)
Phosphoric acid, diethyl 4-nitrophenyl ester	Diethyl-p-nitrophenyl phosphate	100 (45.4)
Phosphoric acid, lead(2+) salt (2:3)	Lead phosphate	1 (0.454)
Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl]ester	Disulfoton °	1 (0.454)
Phosphorodithioic acid, O,O-diethyl S-(ethylthio), methyl ester	Phorate	10 (4.54)
Phosphorodithioic acid, O,O-diethyl S-methyl ester	O,O-Diethyl S-methyl dithiophosphate	5000 (2270)
Phosphorodithioic acid, O,O-dimethyl S-[2 (methylamino)-2-oxoethyl] ester.	Dimethoate	10 (4.54)
Phosphorofluoridic acid, bis(1-methylethyl) ester	Diisopropyl fluorophosphate	100 (45.4)
Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester	Parathion °	10 (4.54)
Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	O,O-Diethyl O-pyrazinyl phosphorothioate	100 (45.4)
Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester	Methyl parathion °	100 (45.4)
Phosphorothioic acid, O,[4-[(dimethylamino)sulfonyl] phenyl] O,O-dimethyl ester.	Famphur	1000 (454)
Phosphorus °		1 (0.454)
Phosphorus oxychloride °		1000 (454)
Phosphorus pentasulfide °	Phosphorus sulfide	100 (45.4)
	Sulfur phosphide	
Phosphurus sulfide	Phosphorus pentasulfide °	100 (45.4)
	Sulfur phosphide	
Phosphorus trichloride °		1000 (454)
Phthalic anhydride	1,3-Isobenzofurandione	5000 (2270)
2-Picoline	Pyridine, 2-methyl-	5000 (2270)
Piperidine, 1-nitroso-	N-Nitrosopiperidine	10 (4.54)
Plumbane, tetraethyl-	Tetraethyl lead °	10 (4.54)

Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
POLYCHLORINATED BIPHENYLS (PCBs)	Aroclor 1016	1 (0.454)
	Aroclor 1221	
	Aroclor 1232	
	Aroclor 1242	
	Aroclor 1248	
	Aroclor 1254	
	Aroclor 1260	
Potassium arsenate *		1 (0.454)
Potassium arsenite *		1 (0.454)
Potassium bichromate	Potassium dichromate @	10 (4.54)
Potassium chromate		10 (4.54)
Potassium cyanide *	Potassium cyanide K(CN)	10 (4.54)
Potassium cyanide K(CN)	Potassium cyanide	10 (4.54)
Potassium dichromate @	Potassium bichromate	10 (4.54)
Potassium hydroxide *		1000 (454)
Potassium permanganate *		100 (45.4)
Potassium silver cyanide	Argentate(1-), bis(cyano-C)-, potassium	1 (0.454)
Pronamide	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	5000 (2270)
Propanal, 2-methyl-2-(methylthio)-,O-[(methylamino)carbonyl]oxime	Aldicarb	1 (0.454)
1-Propanamine	n-Propylamine *	5000 (2270)
1-Propanamine, N-nitroso-N-propyl-	Di-n-propylnitrosamine	10 (4.54)
1-Propanamine, N-propyl-	Dipropylamine	5000 (2270)
Propane, 1,2-dibromo-3-chloro-	1,2-Dibromo-3-chloropropane	1 (0.454)
Propane, 1,2-dichloro-	1,2-Dichloropropane	1000 (454)
	Propylene dichloride *	
Propane, 2-nitro-	2-Nitropropane	10 (4.54)
Propane, 2,2'-oxybis [2-chloro-	Dichloroisopropyl ether	1000 (454)
1,3-Propane sultone	1,2-Oxathiolane, 2,2-dioxide	10 (4.54)
Propanedinitrile	Malononitrile	1000 (454)
Propanenitrile	Ethyl cyanide	10 (4.54)
Propanenitrile, 3-chloro-	3-Chloropropionitrile	1000 (454)
Propanenitrile, 2-hydroxy-2-methyl-	Acetone cyanohydrin *	10 (4.54)
	2-Methyllactonitrile	
1,2,3-Propanetriol, trinitrate-	Nitroglycerine *	10 (4.54)
1-Propanol, 2,3-dibromo-, phosphate (3:1)	Tris(2,3-dibromopropyl)phosphate	10 (4.54)
1-Propanol, 2-methyl-	Isobutyl alcohol	5000 (2270)
2-Propanone	Acetone *	5000 (2270)
2-Propanone, 1-bromo-	Bromoacetone *	1000 (454)
Propargite		10 (4.54)
Propargyl alcohol *	2-Propyn-1-ol	1000 (454)
2-Propenal	Acrolein *	1 (0.454)
2-Propenamide	Acrylamide	5000 (2270)
1-Propene, 1,3-dichloro-	1,3-Dichloropropene	100 (45.4)
1-Propene, 1,1,2,3,3,3-hexachloro-	Hexachloropropene	1000 (454)
2-Propenenitrile	Acrylonitrile *	100 (45.4)
2-Propenenitrile, 2-methyl-	Methacrylonitrile	1000 (454)
2-Propenoic acid	Acrylic acid *	5000 (2270)
2-Propenoic acid, ethyl ester	Ethyl acrylate *	1000 (454)
2-Propenoic acid, 2-methyl-, ethyl ester	Ethyl methacrylate	1000 (454)
2-Propenoic acid, 2-methyl-, methyl ester	Methyl methacrylate *	1000 (454)
2-Propen-1-ol	Allyl alcohol *	100 (45.4)
Propionic acid *		5000 (2270)
Propionic acid, 2-(2,4,5-trichlorophenoxy)-	Silvex (2,4,5-TP)	100 (45.4)
	2,4,5-TP @	
	2,4,5-TP acid	
Propionic anhydride		5000 (2270)
n-Propylamine *	1-Propanamine	5000 (2270)
Propylene dichloride *	1,2-Dichloropropane	1000 (454)
	Propane, 1,2-dichloro-	
Propylene oxide *		100 (45.4)
1,2-Propylenimine *	Aziridine, 2-methyl-	1 (0.454)
2-Propyn-1-ol	Propargyl alcohol *	1000 (454)
Pyrene		5000 (2270)
Pyrethrins		1 (0.454)
3,6-Pyridazinedione, 1,2-dihydro-	Maleic hydrazide	5000 (2270)
4-Pyridinamine	4-Aminopyridine	1000 (454)
Pyridine *		1000 (454)
Pyridine, 2-methyl-	2-Picoline	5000 (2270)
Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)	Nicotine * and salts *	100 (45.4)
4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	Methylthiouracil	10 (4.54)
Pyrrolidine, 1-nitroso-	N-Nitrosopyrrolidine	1 (0.454)
Quinoline		5000 (2270)
RADIONUCLIDES		See Table 2
Reserpine	Yohimben-16-carboxylic acid,11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy-, methyl ester—(3beta,16beta,17alpha,18beta,20alpha)-.	5000 (2270)
Resorcinol	1,3-Benzenediol	5000 (2270)

Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Saccharin and salts	1,2-Benzisothiazol-3(2H)-one,1,1-dioxide	100 (45.4)
Safrole	1,3-Benzodioxole, 5-(2-propenyl)-	100 (45.4)
Selenious acid		10 (4.54)
Selenious acid, dithallium(1+) salt	Thallium selenite	1000 (454)
Selenium ¢		100 (45.4)
Selenium dioxide	Selenium oxide *	10 (4.54)
Selenium oxide *	Selenium dioxide	10 (4.54)
Selenium sulfide	Selenium sulfide SeS2	10 (4.54)
Selenium sulfide SeS2	Selenium sulfide	10 (4.54)
Selenourea	Carbamimidoselenoic acid	1000 (454)
L-Serine, diazoacetate (ester)	Azaserine	1 (0.454)
Silver ¢		1000 (454)
Silver cyanide *	Silver cyanide Ag(CN)	1 (0.454)
Silver cyanide Ag(CN)	Silver cyanide	1 (0.454)
Silver nitrate *		1 (0.454)
Silvex(2,4,5-TP)	Propionic acid, 2-(2,4,5-trichlorophenoxy)-	100 (45.4)
	2,4,5-TP @	
	2,4,5-TP acid	
Sodium *		10 (4.54)
Sodium arsenate *		1 (0.454)
Sodium arsenite *		1 (0.454)
Sodium azide *		1000 (454)
Sodium bichromate	Sodium dichromate @	10 (4.54)
Sodium bifluoride *		100 (45.4)
Sodium bisulfite *		5000 (2270)
Sodium chromate		10 (4.54)
Sodium cyanide *		10 (4.54)
Sodium cyanide Na(CN)	Sodium cyanide	10 (4.54)
Sodium dichromate @	Sodium bichromate	10 (4.54)
Sodium dodecylbenzene sulfonate		1000 (454)
Sodium fluoride *		1000 (454)
Sodium hydrosulfide *		5000 (2270)
Sodium hydroxide *		1000 (454)
Sodium hypochlorite *		100 (45.4)
Sodium methylate *		1000 (454)
Sodium nitrite *		100 (45.4)
Sodium phosphate, dibasic		5000 (2270)
Sodium phosphate, tribasic		5000 (2270)
Sodium selenite *		100 (45.4)
Streptozotocin	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)—	1 (0.454)
	D-Glucose, 2-deoxy-2-[[(methylnitrosoamino)-carbonyl]amino]-	
Strontium chromate		10 (4.54)
Strychnidin-10-one	Strychnine * and salts *	10 (4.54)
Strychnidin-10-one, 2,3-dimethoxy-	Brucine	100 (45.4)
Strychnine * and salts *	Strychnidin-10-one	10 (4.54)
Styrene		1000 (454)
Sulfur chloride @	Sulfur monochloride	1000 (454)
Sulfur monochloride	Sulfur chloride @	1000 (454)
Sulfur phosphide	Phosphorus pentasulfide *	100 (45.4)
	Phosphorus sulfide	
Sulfuric acid *		1000 (454)
Sulfuric acid, dimethyl ester	Dimethyl sulfate *	100 (45.4)
Sulfuric acid, dithallium(I+) salt	Thallium(I) sulfate *	100 (45.4)
2,4,5-T *	2,4,5-T acid	1000 (454)
	Acetic acid, (2,4,5-trichlorophenoxy)	
2,4,5-T acid	2,4,5-T *	1000 (454)
	Acetic acid, (2,4,5-trichlorophenoxy)	
2,4,5-T amines		5000 (2270)
2,4,5-T esters		1000 (454)
2,4,5-T salts		1000 (454)
TDE *	DDD	1 (0.454)
	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro-	
	4,4'-DDD	
1,2,4,5-Tetrachlorobenzene	Benzene, 1,2,4,5-tetrachloro-	5000 (2270)
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)		1 (0.454)
1,1,1,2-Tetrachloroethane	Ethane, 1,1,1,2-tetrachloro—	100 (45.4)
	Tetrachloroethane @	
1,1,2,2-Tetrachloroethane	Ethane, 1,1,2,2-tetrachloro-	100 (45.4)
	Tetrachloroethane @	
Tetrachloroethane @	Ethane, 1,1,1,2-tetrachloro-	100 (45.4)
	Ethane, 1,1,2,2-tetrachloro-	
	1,1,1,2-Tetrachloroethane	
	1,1,2,-Tetrachloroethane	
Tetrachloroethene	Ethene, tetrachloro-	100 (45.4)
	Perchloroethylene *	
	Tetrachloroethylene *	

Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Tetrachloroethylene *	Ethene, tetrachloro-	100 (45.4)
	Perchloroethylene *	
	Tetrachloroethene	
2,3,4,6-Tetrachlorophenol	Phenol, 2,3,4,6-tetrachloro-	10 (4.54)
Tetraethyl lead *	Plumbane, tetraethyl-	10 (4.54)
Tetraethyl pyrophosphate *	Diphosphoric acid, tetraethyl ester	10 (4.54)
Tetraethyldithiopyrophosphate	Thiodiphosphoric acid, tetraethyl ester	100 (45.4)
Tetrahydrofuran *	Furan, tetrahydro-	1000 (454)
Tetranitromethane *	Methane, tetranitro-	10 (4.54)
Tetraphosphoric acid, hexaethyl ester	Hexaethyl tetraphosphate *	100 (45.4)
Thallic oxide	Thallium oxide T1203	100 (45.4)
Thallium ¢		1000 (454)
Thallium(I) acetate	Acetic acid, thallium(I+) salt	100 (45.4)
Thallium(I) carbonate	Carbonic acid, dithallium (I+)	100 (45.4)
Thallium(I) chloride	Thallium chloride T1C1	100 (45.4)
Thallium chloride TlCl	Thallium(I) chloride	100 (45.4)
Thallium(I) nitrate	Nitric acid, thallium(1+) salt	100 (45.4)
Thallium oxide T1203	Thallic oxide	100 (45.4)
Thallium selenite	Selenious acid, dithallium(1+) salt	1000 (454)
Thallium(I) sulfate *	Sulfuric acid, dithallium(I+) salt	100 (45.4)
Thioacetamide	Ethanethioamide	10 (4.54)
Thiodiphosphoric acid, tetraethyl ester	Tetraethyldithiopyrophosphate	100 (45.4)
Thiofanox	2-Butanone, 3,3-Dimethyl-1-(methylthio)-,O[(methylamino)carbonyl] oxime.	100 (45.4)
Thioimidodicarbonic diamide [(H2N)C(S)]2NH	Dithiobiuret	100 (45.4)
Thiomethanol	Methanethiol	100 (45.4)
	Methyl mercaptan *	
Thioperoxydicarbonic diamide [(H2N)C(S)]2S2, tetramethyl-	Thiram	10 (4.54)
Thiophenol *	Benzenethiol	100 (45.4)
	Phenyl mercaptan @	
Thiosemicarbazide	Hydrazinecarbothioamide	100 (45.4)
Thiourea	Carbamide, thio-	10 (4.54)
Thiourea, (2-chlorophenyl)-	1-(o-Chlorophenyl)thiourea	100 (45.4)
Thiourea, 1-naphthalenyl-	alpha-Naphthylthiourea	100 (45.4)
Thiourea, phenyl-	Phenylthiourea	100 (45.4)
Thiram	Thioperoxydicarbonic diamide [(H2N)C(S)2S2, tetramethyl-	10 (4.54)
Toluene *	Benzene, methyl-	1000 (454)
Toluenediamine *	Benzenediamine, ar-methyl-	10 (4.54)
Toluene diisocyanate *	Benzene, 1,3-diisocyanatomethyl	100 (45.4)
o-Toluidine	2-Amino-1-methyl benzene	100 (45.4)
p-Toluidine	Benzenaminew, 4-methyl-	100 (45.4)
o-Toluidine hydrochloride	Benzenamine, 2-methyl-, hydrochloride	100 (45.4)
Toxaphene *	Camphene, octachloro-	1 (0.454)
2,4,5-TP ●	Propionic acid, 2-(2,4,5-trichlorophenoxy)-	100 (45.4)
	Silvex (2,4,5-TP)	
	2,4,5-TP acid	
2,4,5-TP acid	Propionic acid, 2-(2,4,5-trichlorophenoxy)-	100 (45.4)
	Silvex (2,4,5-TP)	
	2,4,5-TP @	
2,4,5-TP acid esters		100 (45.4)
1H-1,2,4-Triazol-3-amine	Amitrole	10 (4.54)
Trichlorfon		100 (45.4)
1,2,4-Trichlorobenzene		100 (45.4)
1,1,1-Trichloroethane *	Methyl chloroform *	1000 (454)
	Ethane, 1,1,1-trichloro-	
1,1,2-Trichloroethane	Ethane, 1,1,2-trichloro-	100 (45.4)
Trichloroethene	Trichloroethylene *	100 (45.4)
	Ethene, trichloro-	
Trichloroethylene *	Trichloroethene	100 (45.4)
	Ethene, trichloro-	
Trichloromethanesulfenyl chloride	Methanesulfenyl chloride, trichloro-	100 (45.4)
	Perchloromethyl mercaptan @	
Trichloromonofluoromethane	Methane, trichlorofluoro-	5000 (2270)
Trichlorophenol *		10 (4.54)
2,3,4-Trichlorophenol		
2,3,5-Trichlorophenol		
2,3,6-Trichlorophenol		
2,4,5-Trichlorophenol	Phenol, 2,4,5-trichloro-	
2,4,6-Trichlorophenol	Phenol, 2,4,6-trichloro-	
3,4,5-Trichlorophenol		
2,4,5-Trichlorophenol	Phenol, 2,4,5-trichloro-	10 (4.54)
2,4,6-Trichlorophenol	Phenol, 2,4,6-trichloro-	10 (4.54)
Triethanolamine dodecylbenzene sulfonate		1000 (454)
Triethylamine		5000 (2270)
Trimethylamine *		100 (45.4)
1,3,5-Trinitrobenzene	Benzene, 1,3,5-trinitro-	10 (4.54)
1,3,5-Trioxane, 2,4,6-trimethyl-	Paraldehyde *	1000 (454)

Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
Tris(2,3-dibromopropyl) phosphate	1-Propanol, 2,3-dibromo-, phosphate (3:1)	10 (4.54)
Trypan blue	2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl-(i,1'-biphenyi)-4,4'-dyl)-bis(azo)]bis(5-amino-4-hydroxy)-tetrasodium salt.	10 (4.54)
Uracil mustard	2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-	10 (4.54)
Uranyl acetate *		100 (45.4)
Uranyl nitrate *		100 (45.4)
Urea, N-ethyl-N-nitroso-	N-Nitroso-N-ethylurea	1 (0.454)
Urea, N-methyl-N-nitroso-	N-Nitroso-N-methylurea	1 (0.454)
Vanadic acid, ammonium salt	Ammonium vanadate	1000 (454)
Vanadium oxide V205	Vanadium pentoxide	1000 (454)
Vanadium pentoxide	Vanadium oxide V205	1000 (454)
Vanadyl sulfate		1000 (454)
Vinyl acetate *	Vinyl acetate monomer	5000 (2270)
Vinyl acetate monomer	Vinyl acetate—*	5000 (2270)
Vinylamine, N-methyl-N-nitroso-	N-Nitrosomethylvinylamine	10 (4.54)
Vinyl chloride *	Ethene, chloro-	1 (0.454)
Vinylidene chloride *	Ethene, 1,1-dichloro-	100 (45.4)
	1,1-Dichloroethylene	
Warfarin, & salts, when present at concentrations greater than 0.3%	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, & salts, when present at concentrations greater than 0.3%.	100 (45.4)
Xylene * (mixed)	Benzene, dimethyl	1000 (454)
m-Benzene, dimethyl	m-Xylene	
o-Benzene, dimethyl	o-Xylene	
p-Benzene, dimethyl	p-Xylene	
Xylenol *		1000 (454)
Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester (3beta,16beta,17alpha,18beta,20alpha)-.	Reserpine	5000 (2270)
Zinc ¢		1000 (454)
Zinc acetate		1000 (454)
Zinc ammonium chloride		1000 (454)
Zinc borate		1000 (454)
Zinc bromide		1000 (454)
Zinc carbonate		1000 (454)
Zinc chloride		1000 (454)
Zinc cyanide *	Zinc cyanide Zn(CN)2	10 (4.54)
Zinc cyanide Zn(CN)2	Zinc cyanide	10 (4.54)
Zinc fluoride		1000 (454)
Zinc formate		1000 (454)
Zinc hydrosulfite *		1000 (454)
Zinc nitrate *		1000 (454)
Zinc phenolsulfonate		5000 (2270)
Zinc phosphide *	Zinc phosphide Zn3P2, when present at concentrations greater than 10%.	100 (45.4)
Zinc phosphide Zn3P2, when present at concentrations greater than 10%.	Zinc phosphide—*	100 (45.4)
Zinc silicofluoride		5000 (2270)
Zinc sulfate		1000 (454)
Zirconium nitrate *		5000 (2270)
Zirconium potassium fluoride		1000 (454)
Zirconium sulfate *		5000 (2270)
Zirconium tetrachloride *		5000 (2270)
D001 Unlisted Hazardous Wastes Characteristic of Ignitability		100 (45.4)
D002 Unlisted Hazardous Wastes Characteristic of Corrosivity		100 (45.4)
D003 Unlisted Hazardous Wastes Characteristic of Reactivity		100 (45.4)
D004-D043 Unlisted Hazardous Wastes Characteristic of Toxicity		
D004 Arsenic		1 (0.454)
D005 Barium		1000 (454)
D006 Cadmium		10 (4.54)
D007 Chromium		10 (4.54)
D008 Lead		1 (0.454)
D009 Mercury		1 (0.454)
D010 Selenium		10 (4.54)
D011 Silver		1 (0.454)
D012 Endrin		1 (0.454)
D013 Lindane		1 (0.454)
D014 Methoxychlor		1 (0.454)
D015 Toxaphene		1 (0.454)
D016 2,4-D		100 (45.4)
D017 2,4,5-TP		100 (45.4)
D018 Benzene		10 (4.54)
D019 Carbon tetrachloride		10 (4.54)
D020 Chlordane		1 (0.454)
D021 Chlorobenzene		100 (45.4)
D022 Chloroform		10 (4.54)
D023 o-Cresol		1000 (454)
D024 m-Cresol		1000 (454)

Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
D025 p-Cresol		1000 (454)
D026 Cresol		1000 (454)
D027 1,4-Dichlorobenzene		100 (45.4)
D028 1,2-Dichloroethane		100 (45.4)
D029 1,1-Dichloroethylene		100 (45.4)
D030 2,4-Dinitrotoluene		10 (4.54)
D031 Heptachlor (and hydroxide)		1 (0.454)
D032 Hexachlorobenzene		10 (4.54)
D033 Hexachlorobutadiene		1 (0.454)
D034 Hexachloroethane		100 (45.4)
D035 Methyl ethyl ketone		5000 (2270)
D036 Nitrobenzene		1000 (454)
D037 Pentachlorophenol		10 (4.54)
D038 Pyridine		1000 (454)
D039 Tetrachloroethylene		100 (45.4)
D040 Trichloroethylene		100 (45.4)
D041 2,4,5-Trichlorophenol		10 (4.54)
D042 2,4,6-Trichlorophenol		10 (4.54)
D043 Vinyl chloride		1 (0.454)
F001		10 (4.54)
The following spent halogenated solvents used in degreasing; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the below listed halogenated solvents or those solvents listed in F002, F004 and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.		
(a) Tetrachloroethylene		100 (45.4)
(b) Trichloroethylene		100 (45.4)
(c) Methylene chloride		1000 (454)
(d) 1,1,1-Trichloroethane		1000 (454)
(e) Carbon tetrachloride		10 (4.54)
(f) Chlorinated fluorocarbons		5000 (2270)
F002		10 (4.54)
The following spent halogenated solvents; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the below listed halogenated solvents or those listed in F001, F004, F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures..		
(a) Tetrachloroethylene		100 (45.4)
(b) Methylene chloride		1000 (454)
(c) Trichloroethylene		100 (45.4)
(d) 1,1,1-Trichloroethane		1000 (454)
(e) Chlorobenzene		100 (45.4)
(f) 1,1,2-Trichloro-1,2,2-trifluoroethane		5000 (2270)
(g) o-Dichlorobenzene		100 (45.4)
(h) Trichlorofluoromethane		5000 (2270)
(i) 1,1,2 Trichloroethane		100 (45.4)
F003		100 (45.4)
The following spent non-halogenated solvents and solvents:		
(a) Xylene		1000 (454)
(b) Acetone		5000 (2270)
(c) Ethyl acetate		5000 (2270)
(d) Ethylbenzene		1000 (454)
(e) Ethyl ether		100 (45.4)
(f) Methyl isobutyl ketone		5000 (2270)
(g) n-Butyl alcohol		5000 (2270)
(h) Cyclohexanone		5000 (2270)
(i) Methanol		5000 (2270)
F004		1000 (454)
The following spent non-halogenated solvents and the stillbottoms from the recovery of these solvents:.		
(a) Cresols/Cresylic acid		1000 (454)
(b) Nitrobenzene		1000 (454)
F005		100 (45.4)
The following spent non-halogenated solvents and the stillbottoms from the recovery of these solvents:.		
(a) Toluene		1000 (454)
(b) Methyl ethyl ketone		5000 (2270)
(c) Carbon disulfide		100 (45.4)
(d) Isobutanol		5000 (2270)
(e) Pyridine		1000 (454)

Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
F006		10 (4.54)
Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum,(2) tin plating on carbon steel, (3) zinc plating (segregated basis) on carbonsteel, (4) aluminum or zinc-aluminum plating on carbon steel, (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel, and (6) chemical etchingand milling of aluminum.		
F007		10 (4.54)
Spent cyanide plating bath solutions from electroplating operations		
F008		10 (4.54)
Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.		
F009		10 (4.54)
Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.		
F010		10 (4.54)
Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.		
F011		10 (4.54)
Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations (except for precious metals heat treating spent cyanide solutions from salt bath pot cleaning).		
F012		10 (4.54)
Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.		
F019		10 (4.54)
Wastewater treatment sludges from the chemical conversion coating of aluminum—except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.		
F020		1 (0.454)
Wastes (except wastewator and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of hexachlorophene from highly purified 2,4,5-trichlorophenol.).		
F021		1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives..		
F022		1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions..		
F023		1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- and tetrachlorophenols. (This listing does not include wastes from equipment used only for the productionor use of hexachlorophene from highly purified 2,4,5-trichlorophenol.).		
F024		1 (0.454)
Wastes, including but not limited to distillation residues. heavy ends, tars, and reactor cleanout wastes, from the production of chlorinated aliphatichydrocarbons, having carbon content from one to five, utilizing free radical catalyzed processes. (This listing does not include light ends, spent filters and filter aids, spent desiccants(sic), wastewater, wastewater treatment sludges,spent catalysts, and wastes listed in 40 CFR 261.32.).		
F025		1 (0.454)
Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution.		

Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
F026		1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.		
F027		1 (0.454)
Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.).		
F028		1 (0.454)
Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.		
F039		1 0.454)
Multi source leachate		1 (0.454)
K001		
Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.		
K002		1 (0.454)
Wastewater treatment sludge from the production of chrome yellow and orange pigments.		
K003		1 (0.454)
Wastewater treatment sludge from the production of molybdate orange pigments.		
K004		10 (4.54)
Wastewater treatment sludge from the production of zinc yellow pigments.		
K005		1 (0.454)
Wastewater treatment sludge from the production of chrome green pigments.		
K006		10 (4.54)
Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).		
K007		10 (4.54)
Wastewater treatment sludge from the production of iron blue pigments		
K008		10 (4.54)
Oven residue from the production of chrome oxide green pigments		
K009		10 (4.54)
Distillation bottoms from the production of acetaldehyde from ethylene		
K010		10 (4.54)
Distillation side cuts from the production of acetaldehyde from ethylene		
K011		10 (4.54)
Bottom stream from the wastewater stripper in the production of acrylonitrile.		
K013		10 (4.54)
Bottom stream from the acetonitrile column in the production of acrylonitrile.		
K014		5000 (2270)
Bottoms from the acetonitrile purification column in the production of acrylonitrile.		
K015		10 (4.54)
Still bottoms from the distillation of benzyl chloride		
K016		1 (0.454)
Heavy ends or distillation residues from the production of carbon tetrachloride.		
K017		10 (4.54)
Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.		
K018		1 (0.454)
Heavy ends from the fractionation column in ethyl chloride production		
K019		1 (0.454)
Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.		
K020		1 (0.454)
Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.		
K021		10 (4.54)
Aqueous spent antimony catalyst waste from fluoromethanes production.		
K022		1 (0.454)
Distillation bottom tars from the production of phenol/acetone from cumene.		

Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
K023		5000 (2270)
Distillation light ends from the production of phthalic anhydride from naphthalene.		
K024		5000 (2270)
Distillation bottoms from the production of phthalic anhydride from naphthalene.		
K025		10 (4.54)
Distillation bottoms from the production of nitrobenzene by the nitration of benzene.		
K026		1000 (454)
Stripping still tails from the production of methyl ethyl pyridines		
K027		10 (4.54)
Centrifuge and distillation residues from toluene diisocyanate production.		
K028		1 (0.454)
Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.		
K029		1 (0.454)
Waste from the product steam stripper in the production of 1,1,1-trichloroethane.		
K030		1 (0.454)
Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene.		
K031		1 (0.454)
By-product salts generated in the production of MSMA and cacodylic acid.		
K032		10 (4.54)
Wastewater treatment sludge from the production of chlordane		
K033		10 (4.54)
Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane.		
K034		10 (4.54)
Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.		
K035		1 (0.454)
Wastewater treatment sludges generated in the production of creosote		
K036		1 (0.454)
Still bottoms from toluene reclamation distillation in the production of disulfoton.		
K037		1 (0.454)
Wastewater treatment sludges from the production of disulfoton		
K038		10 (4.54)
Wastewater from the washing and stripping of phorate production		
K039		10 (4.54)
Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate.		
K040		10 (4.54)
Wastewater treatment sludge from the production of phorate		
K041		1 (0.454)
Wastewater treatment sludge from the production of toxaphene		
K042		10 (4.54)
Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T.		
K043		10 (4.54)
2,6-dichlorophenol waste from the production of 2,4-D		
K044		10 (4.54)
Wastewater treatment sludges from the manufacturing and processing of explosives.		
K045		10 (4.54)
Spent carbon from the treatment of wastewater containing explosives		
K046		100 (45.4)
Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.		
K047		10 (4.54)
Pink/red water from TNT operations		
K048		1 (0.454)
Dissolved air flotation (DAF) float from the petroleum refining industry		
K049		1 (0.454)
Slop oil emulsion solids from the petroleum refining industry		
K050		10 (4.54)
Heat exchanger bundle cleaning sludge from the petroleum refining industry.		
K051		1 (0.454)
API separator sludge from the petroleum refining industry		
K052		10 (4.54)
Tank bottoms (leaded) from the petroleum refining industry		

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Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
K060		1 (0.454)
Ammonia still lime sludge from coking operations		
K061		1 (0.454)
Emission control dust/sludge from the primary production of steel in electric furnaces.		
K062		1 (0.454)
Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry.		
K064		1 (0.454)
Acid plant blowdown slurry/sludge resulting from thickening of blowdown slurry from primary copper production..		
K065		1 (0.454)
Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities..		
K066		1 (0.454)
Sludge from treatment of process wastewater and /or acid plant blowdown from primary zinc production..		
K069		1 (0.454)
Emission control dust/sludge from secondary lead smelting		
K071		1 (0.454)
Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.		
K073		10 (4.54)
Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production..		
K083		100 (45.4)
Distillation bottoms from aniline extraction		
K084		1 (0.454)
Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.		
K085		10 (4.54)
Distillation or fractionation column bottoms from the production of chlorobenzenes.		
K086		1 (0.454)
Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.		
K087		100 (45.4)
Decanter tank tar sludge from coking operations		
K088		1 (0.454)
Spent potliners from primary aluminum reduction		
K090		1 (0.454)
Emission control dust or sludge from ferrochromiumsilicon production		
K091		1 (0.454)
Emission control dust or sludge from ferrochromium production.		
K093		5000 (2270)
Distillation light ends from the production of phthalic anhydride from ortho-xylene.		
K094		5000 (2270)
Distillation bottoms from the production of phthalic anhydride from ortho-xylene.		
K095		100 (45.4)
Distillation bottoms from the production of 1,1,1-trichloroethane.		
K096		100 (45.4)
Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane..		
K097		1 (0.454)
Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.		
K098		1 (0.454)
Untreated process wastewater from the production of toxaphene		
K099		10 (4.54)
Untreated wastewater from the production of 2,4-D		
K100		1 (0.454)
Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.		
K101		1 (0.454)
Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.		
K102		1 (0.454)
Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.		

Table 1—Hazardous Substances Other Than Radionuclides—Continued

Hazardous Substance	Synonyms	Reportable Quantity (RQ) Pounds (Kilograms)
K103		100 (45.4)
Process residues from aniline extraction from the production of aniline		
K104		10 (4.54)
Combined wastewater streams generated from nitrobenzene/aniline chlorobenzenes.		
K105		10 (4.54)
Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.		
K106		1 (0.454)
Wastewater treatment sludge from the mercury cell process in chlorine production.		
K107		10 (4.54)
Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazines.		
K108		10 (4.54)
Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.		
K109		10 (4.54)
Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.		
K110		10 (4.54)
Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.		
K111		10 (4.54)
Product washwaters from the production of dinitrotoluene via nitration of toluene..		
K112		10 (4.54)
Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene..		
K113		10 (4.54)
Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene..		
K114		10 (4.54)
Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene..		
K115		10 (4.54)
Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene..		
K116		10 (4.54)
Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine..		
K117		1 (0.454)
Wastewater from the reactor vent gas scrubber in the production of ethylene bromide via bromination of ethene..		
K118		1 (0.454)
Spent absorbent solids from purification of ethylene dibromide in the production of ethylene dibromide..		
K123		10 (4.54)
Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts..		
K124		10 (4.54)
Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts..		
K125		10 (4.54)
Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts..		
K126		10 (4.54)
Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts..		
K131		100 (45.4)
Waste water from the reactor and spent sulfuric acid from the acid dryer in the production of methyl bromide.		
K132		1000 (454)
Spent absorbent and wastewater solids from the production of methyl bromide.		
K136		1 (0.454)
Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene..		

Footnotes:
¢ The RQ for these hazardous substances is limited to those pieces of the metal having a diameter smaller than 100 micrometers (0.004 inches).
¢¢ The RQ for asbestos is limited to friable forms only.
@ indicates that the name was added by RSPA because (1) the name is a synonym for a specific hazardous substance and (2) the name appears in the Hazardous Materials Table as a proper shipping name.
* indicates that this material appears by name in the Hazardous Materials Table

List of Hazardous Substances and Reportable Quantities

Table2— Radionuclides

(1)—Radionuclide	(2)—Atomic Number	(3)—Reportable Quantity (RQ) Ci (TBq)
Actinium-224	89	100 (3.7)
Actinium-225	89	1 (.037)
Actinium-226	89	10 (.37)
Actinium-227	89	0.001 (.000037)
Actinium-228	89	10 (.37)
Aluminum-26	13	10 (.37)
Americium-237	95	1000 (37)
Americium-238	95	100 (3.7)
Americium-239	95	100 (3.7)
Americium-240	95	10 (.37)
Americium-241	95	0.01 (.00037)
Americium-242	95	100 (3.7)
Americium-242m	95	0.01 (.00037)
Americium-243	95	0.01 (.00037)
Americium-244	95	10 (.37)
Americium-244m	95	1000 (37)
Americium-245	95	1000 (37)
Americium-246	95	1000 (37)
Americium-246m	95	1000 (37)
Antimony-115	51	1000 (37)
Antimony-116	51	1000 (37)
Antimony-116m	51	100 (3.7)
Antimony-117	51	1000 (37)
Antimony-118m	51	10 (.37)
Antimony-119	51	1000 (37)
Antimony-120 (16 min)	51	1000 (37)
Antimony-120 (5.76 day)	51	10 (.37)
Antimony-122	51	10 (.37)
Antimony-124	51	10 (.37)
Antimony-124m	51	1000 (37)
Antimony-125	51	10 (.37)
Antimony-126	51	10 (.37)
Antimony-126m	51	1000 (37)
Antimony-127	51	10 (.37)
Antimony-128 (10.4 min)	51	1000 (37)
Antimony-128 (9.01 hr)	51	10 (.37)
Antimony-129	51	100 (3.7)
Antimony-130	51	100 (3.7)
Antimony-131	51	1000 (37)
Argon-39	18	1000 (37)
Argon-41	18	10 (.37)
Arsenic-69	33	1000 (37)
Arsenic-70	33	100 (3.7)
Arsenic-71	33	100 (3.7)
Arsenic-72	33	10 (.37)
Arsenic-73	33	100 (3.7)
Arsenic-74	33	10 (.37)
Arsenic-76	33	100 (3.7)
Arsenic-77	33	1000 (37)
Arsenic-78	33	100 (3.7)
Astatine-207	85	100 (3.7)
Astatine-211	85	100 (3.7)
Barium-126	56	1000 (37)
Barium-128	56	10 (.37)
Barium-131	56	10 (.37)
Barium-131m	56	1000 (37)
Barium-133	56	10 (.37)
Barium-133m	56	100 (3.7)
Barium-135m	56	1000 (37)
Barium-139	56	1000 (37)
Barium-140	56	10 (.37)
Barium-141	56	1000 (37)
Barium-142	56	1000 (37)
Berkelium-245	97	100 (3.7)
Berkelium-246	97	10 (.37)
Berkelium-247	97	0.01 (.00037)
Berkelium-249	97	1 (.037)
Berkelium-250	97	100 (3.7)
Beryllium-10	4	1 (.037)
Beryllium-7	4	100 (3.7)
Bismuth-200	83	100 (3.7)
Bismuth-201	83	100 (3.7)
Bismuth-202	83	1000 (37)
Bismuth-203	83	10 (.37)
Bismuth-205	83	10 (.37)
Bismuth-206	83	10 (.37)
Bismuth-207	83	10 (.37)
Bismuth-210	83	10 (.37)
Bismuth-210m	83	0.1 (.0037)
Bismuth-212	83	100 (3.7)
Bismuth-213	83	100 (3.7)
Bismuth-214	83	100 (3.7)
Bromine-74	35	100 (3.7)
Bromine-74m	35	100 (3.7)
Bromine-75	35	100 (3.7)
Bromine-76	35	10 (.37)
Bromine-77	35	100 (3.7)
Bromine-80	35	1000 (37)
Bromine-80m	35	1000 (37)
Bromine-82	35	10 (.37)
Bromine-83	35	1000 (37)
Bromine-84	35	100 (3.7)
Cadmium-104	48	1000 (37)
Cadmium-107	48	1000 (37)
Cadmium-109	48	1 (.037)
Cadmium-113	48	0.1 (.0037)
Cadmium-113m	48	0.1 (.0037)
Cadmium-115	48	100 (3.7)
Cadmium-115m	48	10 (.37)
Cadmium-117	48	100 (3.7)
Cadmium-117m	48	10 (.37)
Calcium-41	20	10 (.37)
Calcium-45	20	10 (.37)
Calcium-47	20	10 (.37)
Californium-244	98	1000 (37)
Californium-246	98	10 (.37)
Californium-248	98	0.1 (.0037)
Californium-249	98	0.01 (.00037)
Californium-250	98	0.01 (.00037)
Californium-251	98	0.01 (.00037)
Californium-252	98	0.1 (.0037)
Californium-253	98	10 (.37)
Californium-254	98	0.1 (.0037)
Carbon-11	6	1000 (37)
Carbon-14	6	10 (.37)
Cerium-134	58	10 (.37)
Cerium-135	58	10 (.37)
Cerium-137	58	1000 (37)
Cerium-137m	58	100 (3.7)
Cerium-139	58	100 (3.7)
Cerium-141	58	10 (.37)
Cerium-143	58	100 (3.7)
Cerium-144	58	1 (.037)
Cesium-125	55	1000 (37)
Cesium-127	55	100 (3.7)
Cesium-129	55	100 (3.7)
Cesium-130	55	1000 (37)
Cesium-131	55	1000 (37)
Cesium-132	55	10 (.37)
Cesium-134	55	1 (.037)
Cesium-134m	55	1000 (37)
Cesium-135	55	10 (.37)
Cesium-135m	55	100 (3.7)
Cesium-136	55	10 (.37)
Cesium-137	55	1 (.037)
Cesium-138	55	100 (3.7)
Chlorine-36	17	10 (.37)
Chlorine-38	17	100 (3.7)
Chlorine-39	17	100 (3.7)
Chromium-48	24	100 (3.7)
Chromium-49	24	1000 (37)
Chromium-51	24	1000 (37)
Cobalt-55	27	10 (.37)
Cobalt-56	27	10 (.37)
Cobalt-57	27	100 (3.7)
Cobalt-58	27	10 (.37)
Cobalt-58m	27	1000 (37)
Cobalt-60	27	10 (.37)
Cobalt-60m	27	1000 (37)
Cobalt-61	27	1000 (37)
Cobalt-62m	27	1000 (37)
Copper-60	29	100 (3.7)
Copper-61	29	100 (3.7)
Copper-64	29	1000 (37)
Copper-67	29	100 (3.7)
Curium-238	96	1000 (37)
Curium-240	96	1 (.037)
Curium-241	96	10 (.37)
Curium-242	96	1 (.037)
Curium-243	96	0.01 (.00037)
Curium-244	96	0.01 (.00037)
Curium-245	96	0.01 (.00037)
Curium-246	96	0.01 (.00037)
Curium-247	96	0.01 (.00037)
Curium-248	96	0.001 (.000037)
Curium-249	96	1000 (37)
Dysprosium-155	66	100 (3.7)
Dysprosium-157	66	100 (3.7)
Dysprosium-159	66	100 (3.7)
Dysprosium-165	66	1000 (37)
Dysprosium-166	66	10 (.37)
Einsteinium-250	99	10 (.37)
Einsteinium-251	99	1000 (37)
Einsteinium-253	99	10 (.37)
Einsteinium-254	99	0.1 (.0037)
Einsteinium-254m	99	1 (.037)
Erbium-161	68	100 (3.7)
Erbium-165	68	1000 (37)
Erbium-169	68	100 (3.7)
Erbium-171	68	100 (3.7)
Erbium-172	68	10 (.37)
Europium-145	63	10 (.37)
Europium-146	63	10 (.37)
Europium-147	63	10 (.37)
Europium-148	63	10 (.37)
Europium-149	63	100 (3.7)
Europium-150 (12.6 hr)	63	1000 (37)
Europium-150 (34.2 yr)	63	10 (.37)
Europium-152	63	10 (.37)
Europium-152m	63	100 (3.7)
Europium-154	63	10 (.37)
Europium-155	63	10 (.37)
Europium-156	63	10 (.37)
Europium-157	63	10 (.37)
Europium-158	63	1000 (37)
Fermium-252	100	10 (.37)
Fermium-253	100	10 (.37)
Fermium-254	100	100 (3.7)
Fermium-255	100	100 (3.7)
Fermium-257	100	1 (.037)
Fluorine-18	9	1000 (37)
Francium-222	87	100 (3.7)
Francium-223	87	100 (3.7)
Gadolinium-145	64	100 (3.7)
Gadolinium-146	64	10 (.37)
Gadolinium-147	64	10 (.37)
Gadolinium-148	64	0.001 (.000037)
Gadolinium-149	64	100 (3.7)
Gadolinium-151	64	100 (3.7)
Gadolinium-152	64	0.001 (.000037)
Gadolinium-153	64	10 (.37)
Gadolinium-159	64	1000 (37)
Gallium-65	31	1000 (37)
Gallium-66	31	10 (.37)
Gallium-67	31	100 (3.7)
Gallium-68	31	1000 (37)
Gallium-70	31	1000 (37)
Gallium-72	31	10 (.37)
Gallium-73	31	100 (3.7)
Germanium-66	32	100 (3.7)
Germanium-67	32	1000 (37)
Germanium-68	32	10 (.37)
Germanium-69	32	10 (.37)
Germanium-71	32	1000 (37)
Germanium-75	32	1000 (37)
Germanium-77	32	10 (.37)
Germanium-78	32	1000 (37)
Gold-193	79	100 (3.7)
Gold-194	79	10 (.37)
Gold-195	79	100 (3.7)
Gold-198	79	100 (3.7)
Gold-198m	79	10 (.37)
Gold-199	79	100 (3.7)
Gold-200	79	1000 (37)
Gold-200m	79	10 (.37)
Gold-201	79	1000 (37)
Hafnium-170	72	100 (3.7)
Hafnium-172	72	1 (.037)
Hafnium-173	72	100 (3.7)
Hafnium-175	72	100 (3.7)
Hafnium-177m	72	1000 (37)
Hafnium-178m	72	0.1 (.0037)
Hafnium-179m	72	100 (3.7)
Hafnium-180m	72	100 (3.7)
Hafnium-181	72	10 (.37)
Hafnium-182	72	0.1 (.0037)
Hafnium-182m	72	100 (3.7)
Hafnium-183	72	100 (3.7)
Hafnium-184	72	100 (3.7)
Holmium-155	67	1000 (37)
Holmium-157	67	1000 (37)
Holmium-159	67	1000 (37)
Holmium-161	67	1000 (37)
Holmium-162	67	1000 (37)
Holmium-162m	67	1000 (37)
Holmium-164	67	1000 (37)
Holmium-164m	67	1000 (37)
Holmium-166	67	100 (3.7)
Holmium-166m	67	1 (.037)
Holmium-167	67	100 (3.7)
Hydrogen-3	1	100 (3.7)
Indium-109	49	100 (3.7)
Indium-110 (4.9 hr)	49	10 (.37)
Indium-110 (69.1 min)	49	100 (3.7)
Indium-111	49	100 (3.7)
Indium-112	49	1000 (37)
Indium-113m	49	1000 (37)
Indium-114m	49	10 (.37)
Indium-115	49	0.1 (.0037)
Indium-115m	49	100 (3.7)
Indium-116m	49	100 (3.7)
Indium-117	49	1000 (37)
Indium-117m	49	100 (3.7)
Indium-119m	49	1000 (37)
Iodine-120	53	10 (.37)
Iodine-120m	53	100 (3.7)
Iodine-121	53	100 (3.7)
Iodine-123	53	10 (.37)
Iodine-124	53	0.1 (.0037)
Iodine-125	53	0.01 (.00037)
Iodine-126	53	0.01 (.00037)
Iodine-128	53	1000 (37)
Iodine-129	53	0.001 (.000037)
Iodine-130	53	1 (.037)
Iodine-131	53	0.01 (.00037)
Iodine-132	53	10 (.37)
Iodine-132m	53	10 (.37)
Iodine-133	53	0.1 (.0037)
Iodine-134	53	100 (3.7)
Iodine-135	53	10 (.37)
Iridium-182	77	1000 (37)
Iridium-184	77	100 (3.7)
Iridium-185	77	100 (3.7)
Iridium-186	77	10 (.37)
Iridium-187	77	100 (3.7)
Iridium-188	77	10 (.37)
Iridium-189	77	100 (3.7)
Iridium-190	77	10 (.37)
Iridium-190m	77	1000 (37)
Iridium-192	77	10 (.37)
Iridium-192m	77	100 (3.7)
Iridium-194	77	100 (3.7)
Iridium-194m	77	10 (.37)
Iridium-195	77	1000 (37)
Iridium-195m	77	100 (3.7)
Iron-52	26	100 (3.7)
Iron-55	26	100 (3.7)
Iron-59	26	10 (.37)
Iron-60	26	0.1 (.0037)
Krypton-74	36	10 (.37)
Krypton-76	36	10 (.37)
Krypton-77	36	10 (.37)
Krypton-79	36	100 (3.7)
Krypton-81	36	1000 (37)
Krypton-83m	36	1000 (37)
Krypton-85	36	1000 (37)
Krypton-85m	36	100 (3.7)
Krypton-87	36	10 (.37)
Krypton-88	36	10 (.37)
Lanthanum-131	57	1000 (37)
Lanthanum-132	57	100 (3.7)
Lanthanum-135	57	1000 (37)
Lanthanum-137	57	10 (.37)
Lanthanum-138	57	1 (.037)
Lanthanum-140	57	10 (.37)
Lanthanum-141	57	1000 (37)
Lanthanum-142	57	100 (3.7)
Lanthanum-143	57	1000 (37)
Lead-195m	82	1000 (37)
Lead-198	82	100 (3.7)
Lead-199	82	100 (3.7)
Lead-200	82	100 (3.7)
Lead-201	82	100 (3.7)
Lead-202	82	1 (.037)
Lead-202m	82	10 (.37)
Lead-203	82	100 (3.7)
Lead-205	82	100 (3.7)
Lead-209	82	1000 (37)
Lead-210	82	0.01 (.00037)
Lead-211	82	100 (3.7)
Lead-212	82	10 (.37)
Lead-214	82	100 (3.7)
Lutetium-169	71	10 (.37)
Lutetium-170	71	10 (.37)
Lutetium-171	71	10 (.37)
Lutetium-172	71	10 (.37)
Lutetium-173	71	100 (3.7)
Lutetium-174	71	10 (.37)
Lutetium-174m	71	10 (.37)
Lutetium-176	71	1 (.037)
Lutetium-176m	71	1000 (37)
Lutetium-177	71	100 (3.7)
Lutetium-177m	71	10 (.37)
Lutetium-178	71	1000 (37)
Lutetium-178m	71	1000 (37)
Lutetium-179	71	1000 (37)
Magnesium-28	12	10 (.37)
Manganese-51	25	1000 (37)
Manganese-52	25	10 (.37)
Manganese-52m	25	1000 (37)
Manganese-53	25	1000 (37)
Manganese-54	25	10 (.37)
Manganese-56	25	100 (3.7)
Mendelevium-257	101	100 (3.7)
Mendelevium-258	101	1 (.037)
Mercury-193	80	100 (3.7)
Mercury-193m	80	10 (.37)
Mercury-194	80	0.1 (.0037)
Mercury-195	80	100 (3.7)
Mercury-195m	80	100 (3.7)
Mercury-197	80	1000 (37)
Mercury-197m	80	1000 (37)
Mercury-199m	80	1000 (37)
Mercury-203	80	10 (.37)
Molybdenum-101	42	1000 (37)
Molybdenum-90	42	100 (3.7)
Molybdenum-93	42	100 (3.7)
Molybdenum-93m	42	10 (.37)
Molybdenum-99	42	100 (3.7)
Neodymium-136	60	1000 (37)
Neodymium-138	60	1000 (37)
Neodymium-139	60	1000 (37)
Neodymium-139m	60	100 (3.7)
Neodymium-141	60	1000 (37)
Neodymium-147	60	10 (.37)
Neodymium-149	60	100 (3.7)
Neodymium-151	60	1000 (37)
Neptunium-232	93	1000 (37)
Neptunium-233	93	1000 (37)
Neptunium-234	93	10 (.37)
Neptunium-235	93	1000 (37)
Neptunium-236 (1.2 E 5 yr)	93	0.1 (.0037)
Neptunium-236 (22.5 hr)	93	100 (3.7)
Neptunium-237	93	0.01 (.00037)
Neptunium-238	93	10 (.37)
Neptunium-239	93	100 (3.7)
Neptunium-240	93	100 (3.7)
Nickel-56	28	10 (.37)
Nickel-57	28	10 (.37)
Nickel-59	28	100 (3.7)
Nickel-63	28	100 (3.7)
Nickel-65	28	100 (3.7)
Nickel-66	28	10 (.37)
Niobium-88	41	100 (3.7)
Niobium-89 (122 min)	41	100 (3.7)
Niobium-89 (66 min)	41	100 (3.7)
Niobium-90	41	10 (.37)
Niobium-93m	41	100 (3.7)
Niobium-94	41	10 (.37)
Niobium-95	41	10 (.37)
Niobium-95m	41	100 (3.7)
Niobium-96	41	10 (.37)
Niobium-97	41	100 (3.7)
Niobium-98	41	1000 (37)
Osmium-180	76	1000 (37)
Osmium-181	76	100 (3.7)
Osmium-182	76	100 (3.7)
Osmium-185	76	10 (.37)
Osmium-189m	76	1000 (37)
Osmium-191	76	100 (3.7)
Osmium-191m	76	1000 (37)
Osmium-193	76	100 (3.7)
Osmium-194	76	1 (.037)
Palladium-100	46	100 (3.7)
Palladium-101	46	100 (3.7)
Palladium-103	46	100 (3.7)
Palladium-107	46	100 (3.7)
Palladium-109	46	1000 (37)
Phosphorus-32	15	0.1 (.0037)
Phosphorus-33	15	1 (.037)
Platinum-186	78	100 (3.7)
Platinum-188	78	100 (3.7)
Platinum-189	78	100 (3.7)
Platinum-191	78	100 (3.7)
Platinum-193	78	1000 (37)
Platinum-193m	78	100 (3.7)
Platinum-195m	78	100 (3.7)
Platinum-197	78	1000 (37)
Platinum-197m	78	1000 (37)
Platinum-199	78	1000 (37)
Platinum-200	78	100 (3.7)
Plutonium-234	94	1000 (37)
Plutonium-235	94	1000 (37)
Plutonium-236	94	0.1 (.0037)
Plutonium-237	94	1000 (37)
Plutonium-238	94	0.01 (.00037)
Plutonium-239	94	0.01 (.00037)
Plutonium-240	94	0.01 (.00037)
Plutonium-241	94	1 (.037)
Plutonium-242	94	0.01 (.00037)
Plutonium-243	94	1000 (37)
Plutonium-244	94	0.01 (.00037)
Plutonium-245	94	100 (3.7)
Polonium-203	84	100 (3.7)
Polonium-205	84	100 (3.7)
Polonium-207	84	10 (.37)
Polonium-210	84	0.01 (.00037)
Potassium-40	19	1 (.037)
Potassium-42	19	100 (3.7)
Potassium-43	19	10 (.37)
Potassium-44	19	100 (3.7)

(1)—Radionuclide	(2)—Atomic Number	(3)—Reportable Quantity (RQ) Ci (TBq)
Potassium-45	19	1000 (37)
Praseodymium-136	59	1000 (37)
Praseodymium-137	59	1000 (37)
Praseodymium-138m	59	100 (3.7)
Praseodymium-139	59	1000 (37)
Praseodymium-142	59	100 (3.7)
Praseodymium-142m	59	1000 (37)
Praseodymium-143	59	10 (.37)
Praseodymium-144	59	1000 (37)
Praseodymium-145	59	1000 (37)
Praseodymium-147	59	1000 (37)
Promethium-141	61	1000 (37)
Promethium-143	61	100 (3.7)
Promethium-144	61	10 (.37)
Promethium-145	61	100 (3.7)
Promethium-146	61	10 (.37)
Promethium-147	61	10 (.37)
Promethium-148	61	10 (.37)
Promethium-148m	61	10 (.37)
Promethium-149	61	100 (3.7)
Promethium-150	61	100 (3.7)
Promethium-151	61	100 (3.7)
Protactinium-227	91	100 (3.7)
Protactinium-228	91	10 (.37)
Protactinium-230	91	10 (.37)
Protactinium-231	91	0.01 (.00037)
Protactinium-232	91	10 (.37)
Protactinium-233	91	100 (3.7)
Protactinium-234	91	10 (.37)
RADIONUCLIDES $ †		1 (.037)
Radium-223	88	1 (.037)
Radium-224	88	10 (.37)
Radium-225	88	1 (.037)
Radium-226 **	88	0.1 (.0037)
Radium-227	88	1000 (37)
Radium-228	88	0.1 (.0037)
Radon-220	86	0.1 (.0037)
Radon-222	86	0.1 (.0037)
Rhenium-177	75	1000 (37)
Rhenium-178	75	1000 (37)
Rhenium-181	75	100 (3.7)
Rhenium-182 (12.7 hr)	75	10 (.37)
Rhenium-182 (64.0 hr)	75	10 (.37)
Rhenium-184	75	10 (.37)
Rhenium-184m	75	10 (.37)
Rhenium-186	75	100 (3.7)
Rhenium-186m	75	10 (.37)
Rhenium-187	75	1000 (37)
Rhenium-188	75	1000 (37)
Rhenium-188m	75	1000 (37)
Rhenium-189	75	1000 (37)
Rhodium-100	45	10 (.37)
Rhodium-101	45	10 (.37)
Rhodium-101m	45	100 (3.7)
Rhodium-102	45	10 (.37)
Rhodium-102m	45	10 (.37)
Rhodium-103m	45	1000 (37)
Rhodium-105	45	100 (3.7)
Rhodium-106m	45	10 (.37)
Rhodium-107	45	1000 (37)
Rhodium-99	45	10 (.37)
Rhodium-99m	45	100 (3.7)
Rubidium-79	37	1000 (37)
Rubidium-81	37	100 (3.7)
Rubidium-81m	37	1000 (37)
Rubidium-82m	37	10 (.37)
Rubidium-83	37	10 (.37)
Rubidium-84	37	10 (.37)
Rubidium-86	37	10 (.37)
Rubidium-87	37	10 (.37)
Rubidium-88	37	1000 (37)
Rubidium-89	37	1000 (37)
Ruthenium-103	44	10 (.37)
Ruthenium-105	44	100 (3.7)
Ruthenium-106	44	1 (.037)
Ruthenium-94	44	1000 (37)
Ruthenium-97	44	100 (3.7)
Samarium-141	62	1000 (37)
Samarium-141m	62	1000 (37)
Samarium-142	62	1000 (37)
Samarium-145	62	100 (3.7)
Samarium-146	62	0.01 (.00037)
Samarium-147	62	0.01 (.00037)
Samarium-151	62	10 (.37)
Samarium-153	62	100 (3.7)
Samarium-155	62	1000 (37)
Samarium-156	62	100 (3.7)
Scandium-43	21	1000 (37)
Scandium-44	21	100 (3.7)
Scandium-44m	21	10 (.37)
Scandium-46	21	10 (.37)
Scandium-47	21	100 (3.7)
Scandium-48	21	10 (.37)
Scandium-49	21	1000 (37)
Selenium-70	34	1000 (37)
Selenium-73	34	10 (.37)
Selenium-73m	34	100 (3.7)
Selenium-75	34	10 (.37)
Selenium-79	34	10 (.37)
Selenium-81	34	1000 (37)
Selenium-81m	34	1000 (37)
Selenium-83	34	1000 (37)
Silicon-31	14	1000 (37)
Silicon-32	14	1 (.037)
Silver-102	47	100 (3.7)
Silver-103	47	1000 (37)
Silver-104	47	1000 (37)
Silver-104m	47	1000 (37)
Silver-105	47	10 (.37)
Silver-106	47	1000 (37)
Silver-106m	47	10 (.37)
Silver-108m	47	10 (.37)
Silver-110m	47	10 (.37)
Silver-111	47	10 (.37)
Silver-112	47	100 (3.7)
Silver-115	47	1000 (37)
Sodium-22	11	10 (.37)
Sodium-24	11	10 (.37)
Strontium-80	38	100 (3.7)
Strontium-81	38	1000 (37)
Strontium-83	38	100 (3.7)
Strontium-85	38	10 (.37)
Strontium-85m	38	1000 (37)
Strontium-87m	38	100 (3.7)
Strontium-89	38	10 (.37)
Strontium-90	38	0.1 (.0037)
Strontium-91	38	10 (.37)
Strontium-92	38	100 (3.7)
Sulfur-35	16	1 (.037)
Tantalum-172	73	100 (3.7)
Tantalum-173	73	100 (3.7)
Tantalum-174	73	100 (3.7)
Tantalum-175	73	100 (3.7)
Tantalum-176	73	10 (.37)
Tantalum-177	73	1000 (37)
Tantalum-178	73	1000 (37)
Tantalum-179	73	1000 (37)
Tantalum-180	73	100 (3.7)
Tantalum-180m	73	1000 (37)
Tantalum-182	73	10 (.37)
Tantalum-182m	73	1000 (37)
Tantalum-183	73	100 (3.7)
Tantalum-184	73	10 (.37)
Tantalum-185	73	1000 (37)
Tantalum-186	73	1000 (37)
Technetium-101	43	1000 (37)
Technetium-104	43	1000 (37)
Technetium-93	43	100 (3.7)
Technetium-93m	43	1000 (37)
Technetium-94	43	10 (.37)
Technetium-94m	43	100 (3.7)
Technetium-96	43	10 (.37)
Technetium-96m	43	1000 (37)
Technetium-97	43	100 (3.7)
Technetium-97m	43	100 (3.7)
Technetium-98	43	10 (.37)
Technetium-99	43	10 (.37)
Technetium-99m	43	100 (3.7)
Tellurium-116	52	1000 (37)
Tellurium-121	52	10 (.37)
Tellurium-121m	52	10 (.37)
Tellurium-123	52	10 (.37)
Tellurium-123m	52	10 (.37)
Tellurium-125m	52	10 (.37)
Tellurium-127	52	1000 (37)
Tellurium-127m	52	10 (.37)
Tellurium-129	52	1000 (37)
Tellurium-129m	52	10 (.37)
Tellurium-131	52	1000 (37)
Tellurium-131m	52	10 (.37)
Tellurium-132	52	10 (.37)
Tellurium-133	52	1000 (37)
Tellurium-133m	52	1000 (37)
Tellurium-134	52	1000 (37)
Terbium-147	65	100 (3.7)
Terbium-149	65	100 (3.7)
Terbium-150	65	100 (3.7)
Terbium-151	65	10 (.37)
Terbium-153	65	100 (3.7)
Terbium-154	65	10 (.37)
Terbium-155	65	100 (3.7)
Terbium-156	65	10 (.37)
Terbium-156m (24.4 hr)	65	1000 (37)
Terbium-156m (5.0 hr)	65	1000 (37)
Terbium-157	65	100 (3.7)
Terbium-158	65	10 (.37)
Terbium-160	65	10 (.37)
Terbium-161	65	100 (3.7)
Thallium-194	81	1000 (37)
Thallium-194m	81	100 (3.7)
Thallium-195	81	100 (3.7)
Thallium-197	81	100 (3.7)
Thallium-198	81	10 (.37)
Thallium-198m	81	100 (3.7)
Thallium-199	81	100 (3.7)
Thallium-200	81	10 (.37)
Thallium-201	81	1000 (37)
Thallium-202	81	10 (.37)
Thallium-204	81	10 (.37)
Thorium (Irradiated)	90	***
Thorium (Natural)	90	**
Thorium-226	90	100 (3.7)
Thorium-227	90	1 (.037)
Thorium-228	90	0.01 (.00037)
Thorium-229	90	0.001 (.000037)
Thorium-230	90	0.01 (.00037)
Thorium-231	90	100 (3.7)
Thorium-232 **	90	0.001 (.000037)
Thorium-234	90	100 (3.7)
Thulium-162	69	1000 (37)
Thulium-166	69	10 (.37)
Thulium-167	69	100 (3.7)
Thulium-170	69	10 (.37)
Thulium-171	69	100 (3.7)
Thulium-172	69	100 (3.7)
Thulium-173	69	100 (3.7)
Thulium-175	69	1000 (37)
Tin-110	50	100 (3.7)
Tin-111	50	1000 (37)
Tin-113	50	10 (.37)
Tin-117m	50	100 (3.7)
Tin-119m	50	10 (.37)
Tin-121	50	1000 (37)
Tin-121m	50	10 (.37)
Tin-123	50	10 (.37)
Tin-123m	50	1000 (37)
Tin-125	50	10 (.37)
Tin-126	50	1 (.037)
Tin-127	50	100 (3.7)
Tin-128	50	1000 (37)
Titanium-44	22	1 (.037)
Titanium-45	22	1000 (37)
Tungsten-176	74	1000 (37)
Tungsten-177	74	100 (3.7)
Tungsten-178	74	100 (3.7)
Tungsten-179	74	1000 (37)
Tungsten-181	74	100 (3.7)
Tungsten-185	74	10 (.37)
Tungsten-187	74	100 (3.7)
Tungsten-188	74	10 (.37)
Uranium (Depleted)	92	***
Uranium (Irradiated)	92	***
Uranium (Natural)	92	**
Uranium Enriched 20% or greater	92	***
Uranium Enriched less than 20%	92	***
Uranium-230	92	1 (.037)
Uranium-231	92	1000 (37)
Uranium-232	92	0.01 (.00037)
Uranium-233	92	0.1 (.0037)
Uranium-234 **	92	0.1 (.0037)
Uranium-235 **	92	0.1 (.0037)
Uranium-236	92	0.1 (.0037)
Uranium-237	92	100 (3.7)
Uranium-238 **	92	0.1 (.0037)
Uranium-239	92	1000 (37)
Uranium-240	92	1000 (37)
Vanadium-47	23	1000 (37)
Vanadium-48	23	10 (.37)
Vanadium-49	23	1000 (37)
Xenon-120	54	100 (3.7)
Xenon-121	54	10 (.37)
Xenon-122	54	100 (3.7)
Xenon-123	54	10 (.37)
Xenon-125	54	100 (3.7)
Xenon-127	54	100 (3.7)
Xenon-129m	54	1000 (37)
Xenon-131m	54	1000 (37)
Xenon-133	54	1000 (37)
Xenon-133m	54	1000 (37)
Xenon-135	54	100 (3.7)
Xenon-135m	54	10 (.37)
Xenon-136	54	10 (.37)
Ytterbium-162	70	1000 (37)
Ytterbium-166	70	10 (.37)
Ytterbium-167	70	1000 (37)
Ytterbium-169	70	10 (.37)
Ytterbium-175	70	100 (3.7)
Ytterbium-177	70	1000 (37)
Ytterbium-178	70	1000 (37)
Yttrium-86	39	10 (.37)
Yttrium-86m	39	1000 (37)
Yttrium-87	39	10 (.37)
Yttrium-88	39	10 (.37)
Yttrium-90	39	10 (.37)
Yttrium-90m	39	100 (3.7)
Yttrium-91	39	10 (.37)
Yttrium-91m	39	1000 (37)
Yttrium-92	39	100 (3.7)
Yttrium-93	39	100 (3.7)
Yttrium-94	39	1000 (37)
Yttrium-95	39	1000 (37)
Zinc-62	30	100 (3.7)
Zinc-63	30	1000 (37)
Zinc-65	30	10 (.37)
Zinc-69	30	1000 (37)
Zinc-69m	30	100 (3.7)
Zinc-71m	30	100 (3.7)
Zinc-72	30	100 (3.7)
Zirconium-86	40	100 (3.7)
Zirconium-88	40	10 (.37)
Zirconium-89	40	100 (3.7)
Zirconium-93	40	1 (.037)
Zirconium-95	40	10 (.37)
Zirconium-97	40	10 (.37)

$ The RQs for all radionuclides apply to chemical compounds containing the radionuclides and elemental forms regardless of the diameter of pieces of solid material.

† The RQ of one curie applies to all radionuclides not otherwise listed. Whenever the RQs in TABLE 1—HAZARDOUS SUBSTANCES OTHER THAN RADIONUCLIDES and this table conflict, the lowest RQ shall apply. For example, uranyl acetate and uranyl nitrate have RQs shown in TABLE 1 of 100 pounds, equivalent to about one-tenth the RQ level for uranium-238 in this table.

** The method to determine the RQs for mixtures or solutions of radionuclides can be found in paragraph 6 of the note preceding TABLE 1 of this Appendix. RQs for the following four common radionuclide mixtures are provided: radium-226 in secular equilibrium with its' daughters (0.053 curie); natural uranium (0.1 curie); natural uranium in secular equilibrium with its' daughters (0.052 curie); and natural thorium in secular equilibrium with its' daughters (0.011 curie).

*** Indicates that the name was added by RSPA because it appears in the list of radionuclides in 49 CFR 173.435. The reportable quantity (RQ), if not specifically listed elsewhere in this Appendix, shall be determined in accordance with the procedures in Paragraph 6 of this Appendix.

§ 172.203 [Amended]

5. In § 172.203(c)(1)(iii), remove the words "EP toxicity" and add, in their place, "Toxicity".

§ 172.324 [Amended]

6. In § 172.324(a)(3), remove the words "EP toxicity" and add, in their place, "Toxicity".

Issued in Washington, DC on November 1, 1990, under authority delegated in 49 CFR part 1.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 90–26260 Filed 11–6–90; 8:45 am]

BILLING CODE 4910–60–M

Proposed Rules

Federal Register
Vol. 55, No. 216
Wednesday, November 7, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-90-27]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previoulsy received. The purpose of this notice is to improve the public's awareness of, and participation in this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petititions received must identify the petition docket number involved and must be received on or before January 7, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulated docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Ida Klepper (202) 267-9688.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on October 31, 1990.

Denise Donohue Hall,

Manager, Program Management Staff Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 25759.

Petitioner: Air Transport Association of America and Regional Airline Association.

Regulations Affected: 14 CFR 1.1 and 121.586.

Description of Petition: To redefine the terms "handicapped person" and "qualified handicapped person"; authorize certificate holders to limit the numbers of qualified handicapped persons on any given flight; authorize certificate holders to require compliance with advance notice requirements if a person will need extensive special assistance from the air carrier; and authorize the certificate holder to restrict seating assignments under specified conditions.

Disposition: Denied, October 18, 1990.

[FR Doc. 90-26164 Filed 11-6-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-CE-50-AD]

Airworthiness Directives; Airship Industries Skyship Model 600 Airships

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD) that is applicable to Airship Industries Skyship Model 600 airships. The proposed action would require the installation of a modified ignition controil unit. An incident has been reported where dual engine failure occurred when the ignition control units were exposed to high intensity radiated fields (HIRF). This action will minimize the possibility of engine failure caused by HIRF, and the resulting possible loss of control of the airship in adverse wind conditions.

DATES: Comments must be received on or before December 28, 1990.

ADDRESSES: Service Bulletin REF 600-74-314, Revision 1, dated June 5, 1990, applicable to this AD, may be obtained from Airship Industries (UK) Limited, Manager, Technical Publications, Shortstown, Bedford, MK42 OTF, England; Telephone (44-234) 741901; Facsimile (44-234) 740190; or Airship Industries USA, Inc., Engineering Manager, Route 4, Box 109, Elizabeth City, North Carolina 27909; Telephone (919) 330-5511; Facsimile (919) 330-4241. This information may also be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-50-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Carl F. Mittag, Aircraft Certification Staff, Europe Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30 ext. 2710; Facsimile (322) 230.68.99; or Mr. John P. Dow, Sr., Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-50-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

During operation of a U.S. registered Skyship Model 600 airship in the vicinity of a Voice of America (VOA) transmitting antenna, both engines of the airship lost power. The flight crew followed the appropriate emergency procedures and, after a period of free balloon flight, successfully executed an unpowered landing into a suitable landing area. The airship suffered some damage during the landing. Subsequent investigation revealed that a resistor in the engine ignition control unit of each engine has burned out as a result of voltage induced into the system from the high intensity radiated fields (HIRF) of the VOA antenna.

In addition to this reported accident, the Civil Aviation Authority of the United Kingdom (CAA-UK), which is the airworthiness authority for the UK, notified the FAA that an unsafe condition may exist on these Airship Industries Skyship Model 600 airships. The CAA-UK advises that the ignition control units could fail when exposed to radio frequency interference and engine failure could result. Airship Industries issued Service Bulletin (SB) REF 600-74-314, Revision 1, dated June 5, 1990, which prescribes the replacement of the ignition control unit (MOD 1 or MOD 2) with ignition control unit MOD 3 that incorporates Modification 938 to the ignition control unit. Modification 938 is a design incorporated into MOD 3 that reduces susceptibility to HIRF. The CAA-UK classified this SB as mandatory and issued CAA-UK AD 016-06-90 to require the installation of a MOD 3 ignition control unit. These airships are manufactured in the United Kingdom and are type certificated for operation in the United States. Under the provisions of a bilateral airworthiness agreement, the CAA-UK has shared this information with the FAA.

The FAA has examined the findings of the CAA-UK, reviewed all available information, and determined that AD action is necessary for products of this type design, certificated for operation in the United States. Consequently, the FAA is proposing an AD that would require the installation of the MOD 3 ignition control unit as described in SB REF 600-74-314, Revision 1, dated June 5, 1990, on Airship Industries Limited Skyship Model 600 airships.

The FAA has determined that there are 3 airships affected by the proposed AD. There is no cost in obtaining the improved ignition control units because of an exchange program with Airship Industries as described in SB REF 600-74-314, Revision 1, dated June 5, 1990. It will take approximately 3 hours to install these improved ignition control units at $40 per hour for a total cost of $120 per airship. A small entity would have to own 31 of the affected airships to incur a significant cost impact. Since there are only 3 airships affected by the proposed AD, no small entity would incur a significant cost impact.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

AUTHORITY: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Airship Industries: Docket No. 90-CE-50-AD.

Applicability: Skyship Model 600 airships (all serial numbers), certificated in any category.

Compliance: Required within the next 250 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent ignition control unit failure and subsequent total loss of engine power, accomplish the following:

(a) Remove all ignition control units, Part Number (P/N) ASI/L/80 Issue D MOD 1 and 2, and replace with P/N ASI/L/80 Issue E MOD 3 ignition control units, as described in Airship Industries Service Bulletin (SB) REF 600-74-314, Revision 1, dated June 5, 1990.

(b) Airships may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An alternate method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Aircraft Certification Staff, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone (322) 513.38.30; Facsimile (322) 230.68.99.

Note 1: The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Staff.

Note 2: All persons affected by this directive may obtain copies of the document referred to herein upon request to Airship Industries Limited, Manager, Technical Publications, Shortstown, Bedford, MK42 OTF, England; or Airship Industries USA, Inc., Engineering Manager, Route 4, Box 109, Elizabeth City, North Carolina 27909; Telephone (919) 330-5511; Facsimile (919) 330-4241; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri on October 26, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26282 Filed 11-6-90; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

RIN 3095-AA04

Procedures for Transfers to Federal Records Centers

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: The National Archives and Records Administration is revising three aspects of 36 CFR 1228.152(e) relating to the transfer of records to Federal records centers.

The first revision to § 1228.152(e) will require that agencies attach folder title lists of box contents, or equivalent detailed records descriptions, to Standard Forms 135, Records Transmittal and Receipt, transmitting permanent records or unscheduled records which have been proposed for permanent retention on a pending SF 115 to the Federal records centers. This information will help to ensure the identification and preservation of archival records in the National Archives. Inclusion of a copy of this information with the SF 135 documenting the retirement of the records to the records center will increase NARA's assurance that the records will be properly preserved.

The second revision to § 1228.152(e) will restrict the transfer of permanent microform records to two records centers. Permanent microform records will only be accepted for storage at the Washington National Records Center in Suitland, Maryland, and the National Personnel Records Center—Civilian Personnel Records in St. Louis, Missouri. Microforms of temporary records will continue to be accepted at all centers.

The third revision to § 1228.152(e) will require agencies to submit an original and only one copy, rather than two copies, of SF 135 when proposing the transfer of records. Since agencies initially retain a copy of the SF 135 for filing purposes, NARA considers the second file copy to be superfluous and proposes to eliminate it. Agencies will continue to receive a final receipt copy of the SF 135 as provided in § 1228.152(g).

DATES: Written comments must be received by NARA no later than January 7, 1991.

ADDRESSES: Comments should be sent to Director, Policy and Program Analysis Division, National Archives and Records Administration (NAA), Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: John Constance or Nancy Allard at 202-501-5110 (FTS 241-5110).

SUPPLEMENTARY INFORMATION: Advance notice of the requirement for detailed box lists for permanent records was given in a July 2, 1985, memorandum for all agency records officers. The requirement has been in effect since that date at all Federal records centers. NARA now seeks to incorporate the requirement in its regulations. We are also proposing to require that agencies prepare detailed box lists for transfers of records that are scheduled for sampling or selecting files for permanent retention by the National Archives and for transfers of records for which the agency has implemented the sampling or selection technique specified in the agency records control schedule. A separate Standard Form 135 must be prepared for each accession in these categories.

36 CFR part 1230 contains very exacting temperature and humidity standards for storing permanent record microforms. Solid particles must be removed by mechanical filters from air supplied to housings or rooms used for archival storage, and gaseous impurities must be removed from the air by suitable washers or absorbers. In addition, 36 CFR part 1230 states that storage rooms must not be used for office space, working areas, or storage of other materials. In the past, some Federal records centers have stored permanent microforms in the same temperature and controlled vaults where permanent paper records were stored. NARA is now taking action to ensure that all permanent microforms are stored in vaults devoted exclusively to microform storage. The Washington National Records Center and the National Personnel Records Center—Civilian Personnel Records are the only records centers which have large storage vaults devoted exclusively to microform storage and which meet the stringent 36 CFR part 1230 storage specifications for permanent microforms.

A pilot project was conducted at the Washington National Records Center in 1989 to test the procedure for reducing the number of copies of SF 135 to be submitted when proposing the transfer of records. The project was announced in a January 26, 1989, memorandum to agency records officers. NARA did not receive any negative comments concerning the revised procedure and the success of the pilot project led NARA to seek to formally incorporate the change in its regulations.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1228

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend part 1228 of chapter XII of title 36 of the Code of Federal Regulations as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for part 1228 continues to read as follows:

Authority: 44 U.S.C. 2101-2111, 2901-2902, 3101-3107, 3301-3314.

2. Section 1228.152 is amended by revising paragraph (e) to read as follows:

§ 1228.152 Procedures for transfers to Federal records centers.

* * * * *

(e) Transfers to Federal records centers shall be preceded by the submission of Standard Form 135, Records Transmittal and Receipt.

(1) A separate accession number is required for each series of records listed on the Standard Form 135. An accession consists of records in one series that have the same disposition authority and disposition date.

(2) Standard Form 135 proposing the transfer of the following categories of records must be accompanied by a folder title list of box contents or equivalent detailed records descriptions, and each accession must be listed on a separate SF 135:

(i) Records scheduled for permanent retention;

(ii) Unscheduled records (if authorized for transfer by NARA in accordance with paragraph (a)(1)(i) of this section) which have been proposed for permanent retention on the pending SF 135;

(iii) Records which are scheduled for sampling or selecting files for permanent retention by the National Archives; and

(iv) Records for which the agency has implemented the sampling or selection technique specified in the agency records control schedule to separate permanent and disposable records.

(3) Permanent microforms from offices in the Washington, DC, area are stored at the Washington National Records Center. Permanent microforms from all other offices are stored at the National Personnel Records Center—Civilian Personnel Records. Submit Standard Forms 135 proposing the transfer of permanent microforms to the appropriate center. (See 36 CFR 1230.22 for inspection requirements for microforms transferred to a Federal records center.)

(4) Agencies shall prepare an original and two copies of the Standard Form 135, retain one copy for filing purposes, and send the original and one copy to the Federal records center to arrive at least 10 workdays before the desired date of the records shipment. The records center will review the Standard Form 135 for completeness to determine the appropriateness of the transfer. If the transfer is approved, the records center may annotate block 6] of the Standard Form 135 with Federal records center shelf location where each accession will be stored. The Federal records center returns a copy of the Standard Form 135 to the agency indicating that the records may be transferred. This copy shall be placed in the first carton of the shipment when the records are shipped to the center.

* * * * *

Dated: October 24, 1990.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 90-26292 Filed 11-6-90; 8:45 am]

BILLING CODE 7515-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3858-4]

Approval and Promulgation of Implementation Plans, Federal Assistance Limitations; State of Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule; withdrawal.

SUMMARY: USEPA is withdrawing its November 2, 1989, (54 FR 46271) proposal to impose Federal highway assistance limitations in Illinois pursuant to section 176(a) of the Clean Air Act (Act). USEPA originally proposed this action because of the State's failure to adopt and submit to USEPA an enhanced vehicle inspection and maintenance (I/M) program commensurate with the severity of the ozone problem in the Chicago area. On September 12, 1990, the Governor of Illinois signed legislation authorizing enhancements to the State's current I/M program.

ADDRESSES: Copies of all materials related to this action are available at the following address for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886-6036, before visiting the Region V Office.) U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Cheryl Newton, (312) 886-6081.

SUPPLEMENTARY INFORMATION: On November 2, 1989, (54 FR 46271), USEPA proposed to restrict highway funding assistance for Cook, Lake, Kane, and DePage Counties, Illinois. USEPA believed that, given the severity of the ozone problem in the Chicago area, an enhancement of the State's current I/M provisions [1] was a critical component of the "reasonable efforts" Illinois needed to make under section 176(a) of the Act to bring the Chicago area into attainment of the ozone National Ambient Air Quality Standards.

On September 12, 1990, the Governor of Illinois signed legislation establishing rules which enhance the State's current I/M program.[2] USEPA believes that the State's action in adopting these enhancements to its I/M program showed "good faith" in meeting the requirement of "reasonable efforts" under section 176(a) of the Act. USEPA is, therefore, withdrawing its November 2, 1989, proposal of Federal highway funding restrictions. Upon Illinois' submission of its enhanced I/M program, USEPA will rulemake in future **Federal Register** notice(s) on all provisions established by the September 12, 1990, legislation.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401-7642.

Dated: October 29, 1990.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 90-26317 Filed 11-6-90; 8:45 am]

BILLING CODE 6560-50-M

[1] On October 4, 1990, (54 FR 40566), USEPA approved the provisions of Illinois' current I/M program, which were submitted by Illinois as part of its 1982 ozone and carbon monoxide State Implementation Plan. USEPA determined that those I/M emissions testing provisions satisfied all of the then current policy requirements required under section 172(b)(1)(B) of the Act.

[2] The legislation expands the geographic coverage of the I/M program to cover all of Cook and DuPage Counties and a substantial portion of Lake, Kane, and Will Counties. It adds to the program an anti-tampering inspection of the catalytic converter, fuel inlet restrictor, and gas cap of each subject vehicle. The anti-tampering program begins in July 1991 within the existing I/M program area, and both emissions testing and the anti-tampering inspection of vehicles in the expanded areas begin in January 1992. The legislation also modifies the original I/M program by exempting new vehicles from the program for 3 years. It then requires biennial inspections until a vehicle is older than 7 years. At this point, an annual inspection is required.

40 CFR Part 52

[FRL-3858-3]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking; withdrawal.

SUMMARY: On July 28, 1982, (47 FR 32742), USEPA proposed to conditionally approve Minnesota Rule APC-41, Offset Rule, as a revision to the Minnesota State Implementation Plan (SIP). This action was based on a revision request submitted by Minnesota on December 22, 1981. Minnesota subsequently revised this rule. Therefore, on August 21, 1990, the State withdrew the December 22, 1981, version of the rule from further Federal rulemaking. Based on the State's withdrawal, USEPA today is withdrawing its July 28, 1982, proposed action on the revision.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, Minnesota Regulatory Specialist (312) 353-3849.

Authority: 42 U.S.C. 7401-7642.

Dated: October 30, 1990.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 90-26316 Filed 11-6-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[EPA/OSW-FR-90-FFF SWH-FRL-3858-2]

RIN 2050-AA78

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On March 29, 1990, EPA promulgated revisions to the toxicity characteristic, one of the methods used to identify waste regulated as hazardous under subtitle C of the Resource Conservation and Recovery Act (RCRA). Since the promulgation of the Toxicity Characteristic (TC), the Agency

has received information that immediate application of the rule, under certain circumstances, may prevent continued operation of hydrocarbon recovery activities currently being conducted at a number of petroleum refineries, marketing terminals or bulk plants handling crude petroleum and immediate products of petroleum refining. These operations recover free-floating hydrocarbons from a contaminated aquifer directly below the facility and, as part of the recovery, return the contaminated ground water via underground injection wells or infiltration galleries into the same aquifer from which it was withdrawn. Under ground injection control (UIC) wells are classified and regulated by EPA and States which have been granted primacy under authorities of the Safe Drinking Water Act (SDWA). Immediate application or requirements imposed by the TC for these operations could substantially change the regulatory status of the operations under both RCRA and the Safe Drinking Water Act (SDWA), causing, at a minimum, disruption of the recovery operations discussed above due to lack of necessary authorizations to operate under the (SDWA) and the Resource Conservation and Recovery Act (RCRA). Of particular concern to the Agency is that cessation of these activities may pose a substantially greater risk to human health and the environment than continued operation under the regulatory authority which existed prior to the promulgation of the TC. As a result of this new information and to allow for careful consideration of all available information (including information not yet before the Agency) and regulatory options, the Agency is proposing to extend the compliance dates for TC requirements for these combined petroleum product recovery and ground water reinjection operations at petroleum refining facilities, marketing terminals or bulk plants for two years beyond the current January 25, 1991 date. In a recent **Federal Register** notice, EPA promulgated an interim final rule to extend the date for compliance with TC requirements for the operations specified for 120 days beyond the effective date of the TC for other facilities, making January 25, 1991 the relevant compliance date for these facilities. The interim final rule was promulgated to ensure that such operations were not required to cease before all available information could be solicited and evaluated via this notice. This proposed rule solicits additional information on all combined petroleum product recovery and ground water reinjection operations, and asks for public comment on the desirability of a continued deferral of the TC for two years in order to allow sufficient time to consider all of the relevant issues arising from these operations and options for their resolution. In addition, EPA solicits comments on ways of integrating the dual regulatory schemes imposed under the SDWA and RCRA for combined petroleum product recovery and ground water reinjection operations.

DATES: Comments must be submitted on or before December 24, 1990.

ADDRESSES: The public docket for this rulemaking is located at room M2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket number assigned to this notice is F–90–PRAS–FFFFF. Persons who wish to comment on the notice should place the docket number on their comments and provide an original and two copies. The EPA RCRA docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling (202) 475–9372. A maximum of 50 pages may be copied from any regulatory docket at no cost. Additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact the RCRA/Superfund Hotline at (800) 424–9346 toll free, or (202) 382–3000 in Washington, DC metropolitan area. For information on specific aspects of this notice, contact David Topping, Waste Identification Branch, Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–4770.

SUPPLEMENTARY INFORMATION:

Outline of Today's Notice

I. Background
A. Hydrocarbon Recovery Operations
II. Application of Existing Regulatory Framework
A. Regulatory Requirements of Concern
III. Issues Arising from Application of Regulatory Requirements
A. Environmental Considerations
B. Timing Considerations
IV. Request for Comments
V. State Authorization
A. Applicability of Rules in Authorized States
B. Effect on State Authorization
VI. Regulatory Requirements
A. Regulatory Impact Analysis
B. Regulatory Flexibility Act
C. Paperwork Reduction Act

I. Background

On March 29, 1990 (55 FR 11798), the Environmental Protection Agency (EPA) promulgated the Toxicity Characteristic to revise the existing EP toxicity characteristic. The Toxicity Characteristic (TC) is used to identify wastes which are defined as hazardous based on the waste's propensity to leach toxic constituents. If wastes exhibit the toxicity characteristic they are subject to the subtitle C (hazardous waste) requirements of the Resource Conservation and Recovery Act (RCRA).

In today's notice, the Agency is proposing to extend the compliance date required for wastes which exhibit the toxicity characteristic for two years for certain operations. These operations involve contaminated ground water reinjected or infiltrated during free product recovery operations at petroleum refining facilities, marketing terminals or bulk plants handling crude petroleum and immediate products of petroleum refining. EPA believes these operations are environmentally beneficial. Immediate application of the TC could, however, contribute to temporary or permanent cessation of such operations by reclassifying the status of the reinjected or infiltrated ground water as hazardous waste and the injection well or infiltration gallery as hazardous waste disposal units. The current regulatory scheme for authorizations under SDWA and RCRA will require time for authorizing actions under EPA and State authorities. If finalized as proposed, today's action would delay the compliance date for subtitle C requirements imposed as a result of the TC until January 25, 1993. The reinjected ground water would not be a Federal hazardous waste during the interim period.

This proposed extension of the compliance date for reinjected waters stems from new information that was brought to the attention of the Agency after the promulgation of the TC final rule. EPA is proposing an extended compliance date for the TC requirements for two years to allow time to solicit and evaluate all pertinent information and to develop and evaluate regulatory options. The Agency is seeking public comment on the issues raised in this notice and desirability of the extended compliance date.

A. Hydrocarbon Recovery Operations

Since the promulgation of the TC, the Agency has learned of potentially significant impacts of the rule on hydrocarbon recovery operations currently being conducted at a number of petroleum refineries, marketing terminals or bulk plants handling crude petroleum and immediate products of petroleum refining. Due to past onsite spills or other releases, large quantities of free-floating and dissolved hydrocarbons are contained in the shallow aquifers beneath a number of facilities. Preliminary information available to the Agency suggests that at least 100 facilities are currently recovering free-floating petroleum hydrocarbons from aquifers. As discussed in more detail below, at least four of these facilities currently reinject contaminated ground water to facilitate recovery of usable petroleum products and one other has made commitments to begin doing so. Such facilities are the subject of today's notice. At one site, estimates indicate that between two and six million barrels of free-floating hydrocarbons rest on an aquifer beneath the property.

As a result of the discovery of aquifer contamination many of these facilities have taken action, in cooperation with State regulatory agencies, to remove the recoverable free-floating hydrocarbon product. While the individual operations differ in various ways, the operations of concern may have as many as three distinct phases. In such cases the first phase is removal/recovery of the free floating hydricarbons. The second and third phases, when present, address subsurface soil and ground water contamination respectively. It is the product recovery operation, as detailed below, that is of immediate concern to the Agency.

Free product recovery operations consist of pumping the free-floating hydrocarbon from the aquifer beneath the facility. Extensive recovery systems have been developed and built to implement the operation. Some of the operations involve two pumping systems. One pumping system is used to bring free product to the surface while the second reinjects contaminated ground water to facilitate the pumping of free product and prevent further migration of the contaminants in the aquifer. In five cases known to the Agency, ground water is (or will be) pumped from the aquifer to create a cone of depression in the ground water in which free hyrocarbon pools, facilitating recovery of the hydrocarbon and preventing further migration of contaminants. This pumped ground water, which contains high concentrations of dissolved hydrocarbon (particularly benzene) is returned to the aquifer via an injection well or through an infiltration gallery to contain the contamination and maintain the water table for purposes of the hydrocarbon recovery. The injection well would have been a SDWA Class V well prior to the effective date of the TC.

Due to the high quantities of dissolved hydrocarbon in the ground water, it may exhibit TC toxicity; therefore, its reinjection may be considered injection of a hazardous waste once such facilities are required to comply with the TC. In such a scenario, the current UIC Class V non-hazardous well may no longer be authorized, and the well's status may automatically become that of a Class IV well (injection of hazardous waste into or above an underground source of drinking water (USDW)). Operation of Class IV wells is restricted by statute and SDWA regulations; among other things, section 3020 of RCRA prohibits the injection of hazardous waste into or above an underground source of drinking water unless such injection is part of a cleanup under RCRA or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Such injection would also require RCRA and SDWA authorization.

The Agency recognizes that the use of infiltration galleries to contain the contamination plume is not exactly analogous to the use of an injection well for plume containment. However, the Agency currently lacks sufficient site-specific information on both the configuration and operational parameters of these infiltration galleries to enable it to distinguish between these galleries and reinjection wells and thus has decided to include both kinds of operations in today's proposed extension of the TC compliance date. The Agency is soliciting comment on both the configruation and operation of these infiltration galleries as well as information on whether they should be viewed as similar to reinjection systems.

II. Application of Existing Regulatory Framework

As described above, the operations of concern involve reinjection/infiltration of contaminated ground water into the aquifer. Under the current hazardous waste requirements which would be imposed via the TC, these activities (reinjection and/or infiltration of contaminated ground water) may constitute disposal of wastes exceeding the relevant regulatory level for benzene. Absent some measure providing relief, the materials may become hazardous wastes on January 25, 1991.

A. Regulatory Requirements of Concern

As described above, on January 25, 1991, the reinjection of ground water may be subject to the dual mandates of SDWA and RCRA (assuming the ground water exhibits the toxicity characteristic). If these facilities are to continue their current reinjection and infiltration operations with a hazardous waste, they will need to satisfy several regulatory requirements. First, to satisfy RCRA section 3020 and 40 CFR 144.13, the operations must be pursuant to a response action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or part of a corrective action under RCRA. Second, the injection operation must be authorized to operate as a hazardous waste management facility pursuant to either RCRA interim status or a RCRA permit. Finally, the injection well must be authorized under the SDWA. EPA is considering whether a Class IV UIC permit should be required, or whether the current part 144 regulations should be modified to explicitly authorize injection by rule.

RCRA section 3020 and SDWA regulations at 40 CFR 144.13 prohibit the injection of any hazardous waste into or above an USDW. One narrow exception to this general prohibition involves injections which are part of a remedial action pursuant to RCRA or CERCLA to clean up an aquifer. Such wells may operate only pursuant to a permit or other authorization under the SDWA or RCRA. Section 3020 requires that (1) There be substantial treatment of the hazardous constituents prior to the reinjection under this exception; (2) upon completion, the action is sufficient to protect human health and the environment, and (3) the cleanup must be undertaken pursuant to CERCLA or as part of a cleanup under RCRA authorities.

As the TC rule is a HSWA requirement, under section 3006(g) of RCRA, the new requirements take effect in authorized States at the same time that they take effect in unauthorized States. Until States are authorized to implement the TC, EPA will administer this portion of the hazardous waste program in both categories of States. In most cases these facilities would be managing a hazardous waste for the first time. Therefore, these newly regulated facilities would need to apply for interim status by notifying EPA under RCRA section 3010 and submitting Part A of their permit application. Such wells would also require either an authorization-by-rule or a UIC permit to satisfy 40 CFR 144.11.

Combined petroleum product recovery and ground water reinjection operations which inject hazardous waste directly into or above an USDW are also subject to requirements under the SDWA. To

minimize regulatory burdens arising from dual regulation under the SDWA and RCRA, 40 CFR 270.60(b) provides that if a unit has a UIC permit issued under Part 144 or 145 and meets other specified requirements, the facility is deemed to have a RCRA Subtitle C permit.

III. Issues Arising From Application of Regulatory Requirements

A. Environmental Considerations

According to comments received from potentially affected facilities, the immediate applicability of the TC to these operations could prohibit temporarily (if not permanently) the reinjection of ground water which, according to information submitted by facilities conducting the operations, is integral to the recovery operation.

Reinjection of the ground water serves several purposes, including causing the free-floating hydrocarbon to collect, thereby containing the source of contamination to faciliate pumping, and restricting the further migration of the contaminants within the aquifer. Without reinjection, the recovery process will take longer to complete, and there is a risk of further soil and ground water contamination.

According to facilities conducting the operations, it is not practicable or useful to introduce separate treatment of the contaminated ground water prior to reinjection during a recovery operation because once the ground water is returned to the aquifer it mixes and equilibrates with the remaining ground water and free-floating product. Thus any benefit of separate treatment of the contaminated ground water would be nullified as the reinjected ground water would quickly attain the same concentration of benzene that it had before pumping. The ground water will continue to seek equilibrium, resulting in the same high levels of benzene once returned to the aquifer, unless the source of contamination (*i.e.*, the free-floating product) is removed. Industry representatives have asserted that an additional effect of separate treatment prior to reinjection is that reinjecting treated ground water will gradually deplete the benzene and other hydrocarbon constituents present in the remaining hydrocarbons resulting in reduced quantities of product which may be recovered.

More generally and irrespective of the use of separate treatment of the contaminated ground water prior to reinjection, EPA believes that these hydrocarbon recovery systems (as the first phase of an overall remediation) can provide substantial treatment, within the meaning of RCRA section 3020, for the areas of contamination by effectively reducing the amount of free-floating hydrocarbons that can continue to contaminate ground water aquifers or surrounding soils. EPA solicits comments on this regulatory approach. EPA is also seeking comments on industry's assertion that separately treating the ground water prior to reinjecting it could result in reduced quantities of hydrocarbons available for recovery.

B. Regulatory and Timing Considerations

As discussed above, the paramount concern to the Agency is mitigating the potential for adverse environmental impacts while ensuring compliance with applicable regulatory requirements. These hydrocarbon recovery operations and the potential impacts of the TC on their continuation were not raised in comments to EPA during the public comment period on the proposed TC. If they had been, the Agency might have deferred application of the TC to these operations to provide additional time for such facilities as required to undertake activities necessary to achieve compliance with the TC.

After promulgation of the TC, industry raised its specific concern that the time required to apply for the necessary permits and obtain EPA approval for such activities would require cessation of combined petroleum product recovery and ground water reinjection operations until the regulatory requirements are clarified and in compliance with such requirements is achievable. EPA's initial evaluation of such arguments suggests that shutting down recovery operations for as little as four months may have four results: (1) Hydrocarbon recovery rates will be reduced significantly, thereby increasing total cleanup time; (2) off-site migration of free-floating hydrocarbons and soluble constitutents is more likely to occur; (3) "smearing" might occur, making hydrocarbon material more difficult to recover in the future; and (4) cessation of operations could force noncompliance with State orders to keep pumping.

As mentioned previously, at many of these sites, the recovery operation is being undertaken under State orders. These orders generally recognize the need for removal of recoverable hydrocarbons prior to beginning ground water remediation; immediate application of the TC to these operations could result in industry actions contrary to carefully negotiated actions required by States with little apparent environemtal benefit. Furthermore, industry has asserted that designation of the ground water as a hazardous waste would trigger other State requirements that have a greater potential to cause delay than those imposed by Federal requirements. EPA is soliciting examples of such requirements and comment on this assertion.

Even with rules which seek to minimize the effects of dual regulation in place, issuance of needed SDWA and RCRA permits and/or orders under the current scheme may be both time consuming and potentially involve actions at both the State and Federal levels. Regardless of the route chosen, the permitting process is expected to take from six months to two years. Furthermore, if EPA determines it appropriate to modify rules governing permit procedures for these sites, that action would also require additional time for facilities to seek proper authorization. Finally, EPA does not currently have definitive information as to the number of recovery facilities affected by the TC and thus the number of permits/orders that may be required to allow continued operation; the 2-year extension is designed to address this additional unknown.

IV. Request for Comments

As a result of this new information, and to allow for careful consideration of all the relevant information, issues, and regulatory options, the Agency is proposing to extend the compliance date for requirements imposed as a result of promulgation of the TC for two years for petroleum refining facilities, marketing terminals, or bulk plants handling crude petroleum and immediate products of petroleum refining which are engaged in combined petroleum product recovery and ground water reinjection/infiltration systems. The interim final rule published in a recent **Federal Register** notice will allow continuation of such operations already in existence until January 25, 1991. This proposed rule will provide time for individuals to submit comments on the various issues raised in this proposal, and for the Agency to consider all available information and alternatives concerning these operations. Specifically, the Agency is seeking public comment on: (1) The regulatory interface between RCRA and SDWA; (2) the potential effects and time required to comply with the regulatory requirements newly imposed by promulgation of the TC and the potential reclassification of the contaminated ground water as a hazardous waste; and (3) all other issues raised in or presented by this notice.

Of particular importance to the Agency is information regarding the scope of the universe of facilities which may fall within the extension proposed today. Identification of specific facilities, as well as types and any concentration of locations of facilities which are conducting hydrocarbon recovery operations or which plan to do so in the future will be helpful to the Agency in assessing the best long term solution for the issues presented by the operations. Further information regarding technical details of hydrocarbon recovery operations, how they differ from each other, and which elements are critical to such operations would also be of value in assessing whether to finalize today's proposed extension of the TC compliance date for affected facilities, as well as whether this extension is justifiable on environmental grounds.

V. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3006, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to HSWA, a State with final authorization administered its hazardous waste progam in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitons in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

B. Effect on State Authorizations

If today's proposed rule is finalized, EPA will implement its provisions in authorized States until their programs are modified to adopt the final toxicity characteristic and the modification is approved by EPA. Implementation of today's proposed rule, if finalized, beyond the date of a State's receiving final authorization for the toxicity characteristic depends upon actions taken by the State, as discussed below. EPA will implement the provisions of today's proposal (if finalized) in unauthorized States.

Today's proposed rule would extend the compliance date for requirements imposed in the final Toxicity Characteristic regulation (*see* 55 FR 11798, March 29, 1990) for certain hydrocarbon recovery operations. The Toxicity Characteristic was promulgated pursuant to a HSWA provision and must be adopted by States which intend to retain final authorization. However, today's rule proposes to provide, for a limited period of time, a less stringent standard for certain hydrocarbon recovery operations than would be imposed in the final Toxicity Characteristic. In order to promote environmentally beneficial hydrocarbon recovery operations, today's proposal provides that these wastes would not be hazardous wastes under the Federal regulations until January 25, 1993, and States would not be required to mandate their management as such in order to retain their RCRA authorization. However, Section 3009 of RCRA provides that States may impose more stringent requirements than those imposed under Federal regulations. States, whether using RCRA authorities (*e.g.*, authorities under State law where States have received final authorization to implement the toxicity characteristic provisions in lieu of their implementation by EPA), or other State authorities under other statues, may impose hazardous waste requirements on such operations, or may require other more stringent conditions upon management of these wastes.

VI. Regulatory Requirements

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major," and therefore subject to the requirement of a Regulatory Impact Analysis. The overall effect of today's rule, if finalized, would be to extend the compliance date for requirements imposed by the final Toxicity Characteristic rule for certain limited hydrocarbon recovery operations. No sampling or analysis requirements are proposed in today's rule. The net effect of this proposal, if finalized, would be to extend cost savings to certain segments of the regulated community. Consequently, no regulatory impact analysis is required.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a General Notice of Rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the Agency certified that the rule will not have a significant impact on a substantial number of small entities.

The extenstion of the compliance date for the Toxicity Characteristic requirements proposed for certain limited hydrocarbon recovery activities in this rule is deregulatory in nature and thus will only provide beneficial opportunities for entities that may be affected by the rule. Accordingly, I hereby certify that this regulation will not have a significant economic impact of substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

There are no reporting, notification, or recordkeeping (information) provisions proposed in this rule. Such provisions, were they included, would be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 261

Hazardous Waste.

Dated: October 31, 1990.

William K. Reilly,

Administrator.

For reasons set out in the preamble, it is proposed to amend chapter I of title 40 of the CFR as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. It is proposed to amend § 261.4 by revising paragraph (b)(11) to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(11) Ground water that exhibits the Toxicity Characteristic in § 261.24 of this part that is reinjected or infiltrated pursuant to hydrocarbon recovery operations undertaken at petroleum refineries, and marketing terminals or bulk plants handling crude petroleum and immediate products of petroleum refining until January 25, 1993.

* * * * *

[FR Doc. 90-26319 Filed 11-6-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 90

[PR Docket No. 90-481, RM-6910, FCC 90-344]

Construction, Licensing, and Operation of Private Land Mobile Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to modify several compliance and licensing rules in the Private Land Mobile Radio Services. First, the Commission proposes to reduce the period in which a licensee can reinstate an expired license. Second, the Commission would establish a finder's preference to provide an incentive for individuals to provide information that leads to channel recovery. Finally, the Commission proposes to clarify rules concerning automatic cancellation of licenses. The Commission expects its proposed rule changes to ensure the accuracy of the licensing data base, to expedite reassignment of channels for which the license has expired, and to make more channels available to applicants wishing to be licensed on scarce frequencies.

DATES: Comments must be submitted on or before December 24, 1990 and reply comment on or before January 8, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, PR Docket No. 90-481 adopted on October 11, 1990 and released November 1, 1990. The full text of the Notice is available for inspection and copying during normal business hours in the FCC Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch (room 5202), 2025 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800.

The collection of information requirement contained in proposed rule 90.173(k) has been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800. Persons wishing to comment on this information collection should contact Bruce McConnell, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785. A copy of any comments should also be sent to the Federal Communications Commission, Office of the Managing Director, Washington, DC 20554. For further information contact Judy Boley, Federal Communications Commission, (202) 632-7513.

OMB number: None.

Title: Proposed 47 CFR 90.173(k), Construction, Licensing and Operation of Private Land Mobile Radio Stations (Notice of Proposed Rule Making in PR Docket No. 90-481).

Action: New collection.

Respondents: Businesses (including small businesses), non-profit institutions, local governments.

Frequency of response: On occasion.

Estimated annual burden: 200 responses; 4.5 hours average burden per response; 900 hours total.

Needs and Uses: Persons who provide the Commission with information that a current licensee is violating certain Rules would be granted a licensing preference for any channels recovered as a result of that information. This will aid the Commission's compliance program and make effective use of scarce radio spectrum.

Summary of Notice of Proposed Rule Making

The Commission proposes to modify several compliance and licensing rules in the Private Land Mobile Radio Services. First, the Commission proposes to reduce the period in which a licensee can reinstate an expired license. The current reinstatement period of six months would be reduced to 90 days or less. To make it easier for licensees to reinstate, the Commission proposes to permit licensees to file for reinstatement on the Forms 574-R and 405-A, as well as the Form 574 which is currently required. These proposals aim to make channels available for reassignment quicker, when the license has expired. Second, the Commission would establish a finder's preference. Under this preference, persons who provide sufficient information to the Private Radio Bureau's Compliance Branch would be first in line for any channels recovered. The Notice of Proposed Rule Making contains explicit standards that the finder's preference request must meet. The preference would be available only on channels that can be licensed on an exclusive basis and only for reported violations of construction, loading, slow-growth, and continued operation rules. The purpose of the finder's preference is to uncover violations of which the Commission may not have learned, to recover and reassign these channels, and to give the public an incentive to provide the Commission with compliance information. Finally, the Commission proposed to clarify its rules concerning automatic cancellation of licenses. Licenses cancel automatically if the licensee permanently discontinues operations, *i.e.*, ceases operations for a period of one year. Licenses also cancel automatically if the licensee constructs but does not place the station in operation by the construction deadline.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 90

Construction, loading, Assignment of frequencies, License renewal, License reinstatement, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Proposed Rules

PART 1—[AMENDED]

A. 47 CFR part 1 is proposed to be amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. 47 CFR 1.926 is amended by adding a new paragraph (c) to read as follows:

§ 1.926 Application for renewal of license.

* * * * *

(c) Reinstatement of an expired license in the Private Land Mobile Radio Services may be required up to ninety (90) days after the expiration date using FCC Form 574, 574-R or 405-A.

PART 90—[AMENDED]

B. 47 CFR part 90 is proposed to be amended as follows:

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. 47 CFR 90.119 is amended by adding new paragraph (a)(5) and by revising paragraphs (e)(1) and (h) to read as follows:

§ 90.119 Application forms.

(a) * * *

(5) For reinstatement of an expired license. See also paragraphs (e)(1) and (h) of this section.

* * * * *

(e) * * *

(1) Apply for a renewal or reinstatement without modification of a station or system license when the licensee has not received renewal Form 574-R in the mail from the Commission within sixty (60) days of license expiration.

* * * * *

(h) Form 574-R shall be used to apply for renewal or reinstatement of an existing authorization without modification of the station or system license. (Form 574-R is generated by the Commission and mailed to the license prior to the expiration of the license term.)

3. 47 CFR 90.127 is amended by adding a last sentence to paragraph (b) to read as follows:

§ 90.127 Submission and filing of applications.

* * * * *

(b) * * * Applictions for reinstatement must be filed no later than ninety (90) days after the expiration date of the license.

* * * * *

4. 47 CFR 90.149 is amended by redesignating existing paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 90.149 License term.

* * * * *

(b) If no application for renewal or reinstatement has been filed as specified in this Part, the authorization shall be deemed to have automatically cancelled on the date specified on the authorization.

* * * * *

5. 47 CFR 90.155 is amended by adding a new paragraph (c) to read as follows:

§ 90.155 Time in which station must be placed in operation.

* * * * *

(c) For purposes of this section, a base station is not considered operational unless associated mobile stations are also operational.

6. 47 CFR § 90.157 is amended by revising paragraph (a) ——, by removing paragraph (b) and redesignating paragraph (c) as paragraph (b) to read as follows:

§ 90.157 Discontinuance of station operation.

(a) The license for a station shall cancel automatically upon permanent discontinuance of operations and the licensee shall forward the station license to the Commission. Alternatively, the licensee may notify the Commission of the closure or discontinuance of operations of the station by checking the appropriate box on Form 574-R or Form 405-A and requestng license cancellation. Notification of discontinued operation or cancellation shall be sent to the Federal Communications Commission, Gettysburg, Pennsylvania 17325.

* * * * *

7. 47 CFR 90.173 is amended by adding a new paragraph (k) to read as follows:

§ 90.173 Policies governing the assignment of frequencies.

* * * * *

(k) Notwithstanding any other provisions of this Part, any person may seek a preference for a channel assignment in the 220-222 MHz, 470-512 MHz, and 800-900 MHz bands (except for frequencies in the Specialized Mobile Radio Service Category and the one-way paging frequencies in the 929-930 MHz band) by submitting information that ultimately results in the recovery of frequencies in these bands because an existing licensee has failed to comply with the provisions of §§ 90.155, 90.157, 90.313, 90.629, 90.631 and 90.633 of this Part. The preference request shall be clearly marked "Request for Finder's Preference", addressed to the Chief, Compliance Branch, Private Radio Bureau, Washington, DC 20554 and sent by Certified Mail. The request shall contain detailed information to establish a *prima facie* violation, including: (1) The name and address of the licensee alledgely violating the applicable rules; (ii) the licensee's call sign, frequencies and location of the licensed facility; (iii) the Commission Rule(s) that the licensee is allegedly violating, including the dates or benchmarks the licensee has failed to meet; and (iv) a detailed statement as to the specific basis for the applicant's knowledge that the licensee is violating the rules specified in this section. General and conclusory statements shall result in the summary dismissal of any such request. All preference requests shall be dated and subscribed by the person as true under penalty of perjury as set forth in § 1.16 of this Chapter. The preference provided for in this subsection may also be awarded to any person who arranges for an existing licensee to request license cancellation voluntarily. The preference provided for in this subsection shall not apply to any construction or loading case that is scheduled to come up for regular review during the Private Radio Bureau's normal compliance activities or to a case already under review. This preference shall not be used to accomplish the assignment of a license of an unconstructed station.

8. 47 CFR 90.175 is amended by revising the introductory text to read as follows:

§ 90.175 Frequency coordination requirements.

Except for applications listed in paragraph (f) of this section, each application for a new frequency assignment, for a change in existing facilities as listed in § 90.135(a), or for operation at temporary locations in accordance with § 90.137, must include a showing of frequency coordination as set forth below. Application to renew or reinstate a license expired for more than 90 days will be considered as a request for a new frequency assignment. When frequencies are shared by more than one service, concurrence must be obtained from the other applicable certified coordinators.

* * * * *

9. 47 CFR 90.631 is amended by adding a last sentence to paragraph (f) to read as follows:

§ 90.631 Trunked systems loading, construction and authorization requirements.

* * * * *

(f) * * * For purposes of this section, a base station is not considered operational unless associated mobile stations are also operational.

* * * * *

10. 47 CFR 90.633 is amended by revising paragraph (d) to read as follows:

§ 90.633 Conventional systems loading requirements.

* * * * *

(d) If a station is not placed in permanent operation in eight months, except as provided in § 90.629, its license cancels automatically and must be returned to the Commission. For purposes of this section, a base station is not considered operational unless associated mobile stations are also operational.

* * * * *

[FR Doc. 90-26337 Filed 11-6-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-493, RM-7429]

Radio Broadcasting Services; Pine Bluff and Maumelle, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed on behalf of Southern Starr of Arkansas, Inc., licensee of Station KOLL-FM, Channel 235C, Pine Bluff, Arkansas, seeking to change the community of license for Channel 235C from Pine Bluff to Maumelle, Arkansas, and to modify its license accordingly. Coordinates used for this proposal are 34-26-31 and 93-13-03.

DATES: Comments must be filed on or before December 24, 1990, and reply comments on or before January 8, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Ashton R. Hardy, Bradford D. Carey, and Majorie R. Esman, Esqs., Walker, Bordelon, Hamlin, Theriot and Hardy, 701 South Peters Street, New Orleans, LA 70130.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-493, adopted October 1, 1990, and released November 1, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26252 Filed 11-6-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-492, RM-7438]

Radio Broadcasting Services; Baldwyn, MS

AGENCY: Federal Communicatons Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Magnolia Communications Corp., proposing the substitution of FM Channel 223A for Channel 240A at Baldwyn, Mississippi, and modification of the license for Station WESE. The coordinates for Channel 223A are 34-24-57 and 88-41-08.

DATES: Comments must be filed on or before December 24, 1990, and reply comments on or before January 8, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Magnolia Communications Corp., P.O. Box 2439, Tupelo, Mississippi 38803

James A. Koerner, Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street, NW., suite 700, Washington, DC 20036-3355 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-492, adopted October 3, 1990, and released November 1, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisons of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contracts. For information regarding proper filing procedures for comments, *See* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 90-26253 Filed 11-6-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-490, RM-7394]

Radio Broadcasting Services; Fort Ann, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Harvest Broadcasting Services seeking the allotment of Channel 253A to Fort Ann, New York, as the community's first local FM service. Channel 253A can be allotted to Fort Ann in compliance with the Commission's minimum distance separation requirements with respect to all domestic allotments without the imposition of a site restriction. However, the allotment at Fort Ann would be approximately 24 kilometers short-spaced to Station CIEL-FM, Channel 253C1 at Longueuil, Quebec, Canada. Since we have confirmed that there will be no prohibited overlap between the proposed Channel 253A allotment at Fort Ann and Station CIEL-FM at Longueuil, we will request Canadian concurrence in the allotment as a specially negotiated allotment. The coordinates for Channel 253A at Fort Ann are North Latitude 43-24-51 and West Longitude 73-29-17.

DATES: Comments must be filed on or before December 24, 1990, and reply comments on or before January 8, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brian Dodge, Harvest Broadcasting Services, RFD 3 Rt. 16N, Dover, New Hampshire 03820 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-490, adopted September 28, 1990, and released November 1, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26251 Filed 11-6-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-491, RM-7387]

Radio Broadcasting Services; Wisconsin Dells, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Armada Broadcasting Company, Inc., proposing the substitution of FM Channel 295A for Channel 296A at Wisconsin Dells, Wisconsin, and modification of the license for Station WNNO-FM to specify Channel 295A. The coordinates for Channel 295A are 43-36-50 and 89-36-26.

DATES: Comments must be filed on or before December 24, 1990, and reply comments on or before January 8, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Cary S. Tepper, Putbrese, Hunsaker & Ruddy, 6800 Fleetwood Road, suite 100, P.O. Box 539, McLean, Virginia 22101, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-491, adopted October 3, 1990, and released November 1, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, *See* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26254 Filed 11-6-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-486, RM-7379]

Radio Broadcasting Services; Asbury, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document request comments on a petition filed by William Bruce Wachter proposing the allotment of FM Channel 278A to Asbury, Missouri, as that community's first FM broadcast service. The coordinates for Ghannel 278A are 37-16-24 and 94-36-24.

DATES: Comments must be filed on or before December 24, 1990, and reply comments on or before January 8, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lauren A. Colby, 10 E. Fourth Street, P.O. Box 113, Frederick, Maryland 21701 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No 90-486, adopted September 28, 1990, and released November 2, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchaed from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission

consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26339 Filed 11-6-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-488, RM-7395]

Radio Broadcasting Services; Woodsville, NH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Harvest Broadcasting Services seeking the allotment of Channel 249A to Woodsville, New Hampshire, as the community's first local FM service. Channel 249A can be allotted to Woodsville in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.4 kilomenters (0.3 miles) southeast to avoid prohibited interference to Station CHOM-FM, Channel 249C1, Montreal, Quebec, Canada. The coordinates for this allotment are North Latitude 44-08-37 and West Longitude 72-02-00. Canadian concurrence in the allotment at Woodsville is required.

DATES: Comments must be filed on or before December 24, 1990, and reply comments on or before January 8, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brian Dodge, Harvest Broadcasting Services, RFD 3 Rt. 16N, Dover, New Hampshire 03820 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-488, adopted September 28, 1990, and released November 2, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchaed from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26340 Filed 11-6-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-489, RM-6420]

Radio Broadcasting Services; Altus, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Altus FM and Fred R. Morton seeking the substitution of Channel 300C2 for Channel 300A at Altus, Oklahoma, and the modification of the construction permit for Station KEYB to specify the higher powered channel. Channel 300C2 can be allotted to Altus in compliance with the Commission's minimum distance separation requirements with a site restriction of 25.5 kilometers (15.9 miles) south to avoid a short-spacing to Station KAKS-FM, Canyon, Texas. The coordinates for Channel 300C2 at Altus are North Latitude 34-24-30 and West Longitude 99-20-00. In accordance with § 1.420 of the Commission's rules, we will not accept competing expressions of interest in use of Channel 300C2 at Altus or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before December 24, 1990, and reply comments on or before January 8, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark Van Bergh, Esq., Gardner, Carton & Douglas, 1001 Pennsylvania Avenue, NW., suite 750, Washington, DC 20004 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-489, adopted September 21, 1990, and released November 2, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is not longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26341 Filed 11-6-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-487, RM-7390]

Radio Broadcasting Services; Tishomingo, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Ballard Broadcasting Company of Oklahoma, Inc. seeking the substitution of Channel 259C3 for Channel 292A at Tishomingo, Oklahoma, and the modification of its construction permit for Station KTSH-FM to specify operation on the higher powered channel. Channel 259C3 can be allotted to Tishomingo in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter site specified in Station KTSH-FM's construction permit. The coordinates for this allotment are North Latitude 34-11-15 and West Longitude 96-43-28. In accordance with § 1.420(g) of the Commission's Rules, Station KTSH-FM's construction permit may not be modified to specify non-adjacent Channel 259C3 if competing expressions of interest in use of the channel are expressed unless an additional equivalent class channel is available for use by such parties.

DATES: Comments must be filed on or before December 24, 1990, and reply comments on or before January 8, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Joseph E. Dunne III, Esq., May & Dunne, Chartered, 1000 Thomas Jefferson Street, NW., suite 520, Washington, DC 20007 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-487, adopted September 28, 1990, and released November 2, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26342 Filed 11-6-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

48 CFR Ch. 53

Air Force Logistics Command Federal Acquisition Regulation Supplement; Special Contracting Methods, Vendor Rating System; Correction

AGENCY: Department of the Air Force, DOD.

ACTION: Proposed rule, correction.

SUMMARY: On Wednesday, October 24, 1990, the Department of the Air Force published in the **Federal Register** (55 FR 42883) a proposed rule concerning development of the Vendor Rating system (VRS) by Air Force Logistics Command. The purpose of this document is to correct a paragraph in which language was inadvertently omitted.

FOR FURTHER INFORMATION CONTACT: S. Wiginton, AFLC/PMPL, Wright-Patterson AFB OH 45433-5001.

Accordingly, title 48 Chapter 53 is corrected as set forth below:

PART AFLC 5317—(CORRECTED)

1. The authority citation for part AFLC 5317 continues to read as follows:

Authority: 5 U.S.C. 301 and FAR 1.301.

5317.9103-2 [Corrected]

2. In AFLC 5317.9103-2(i) the last sentence which was incomplete is corrected to read "All printouts will carry the restrictive legend in AFLC 5317.9103-2(h)."

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-26277 Filed 11-6-90; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172 and 175

[Docket No. HM-184F; Notice No. 90-14]

RIN-2137-AB99

Implementation of the International Civil Aviation Organization's Technical Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) in order to permit the offering, acceptance and transportation by aircraft, and by motor vehicle incident to transportation by aircraft, of hazardous materials shipments conforming to the most recent edition of the International Civil Aviation Organization's Technical Instructions for the Safe Transportation of Dangerous Goods by Air (ICAO Technical Instructions). This amendment is necessary to facilitate the continued transport of hazardous materials in international commerce by aircraft when the 1991-1992 edition of the ICAO Technical Instructions becomes effective on January 1, 1991, pursuant to decisions taken by the ICAO Council regarding implementation of Annex 18 to the Convention on International Civil Aviation.

DATES: Comments must be received by December 7, 1990.

ADDRESSES: Address comments to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Comments should identify the docket and be submitted, if possible, in five copies. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the docket number (i.e., Docket HM-184F). The Dockets Unit is located in room 8419 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590-0001. Telephone: (202) 366-5046. The public dockets may be reviewed between the

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hours of 8:30 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, or Ann Boylan, Office of Hazardous Materials Standards, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–0656 or 366–4488.

SUPPLEMENTARY INFORMATION: On January 10, 1989, RSPA published a final rule in the **Federal Register** (54 FR 954) under Docket HM–184E. The final rule authorized, under certain conditions and with certain limitations, hazardous materials to be packaged, marked, labeled, classified, described and certified on shipping papers as provided in the 1989–1990 edition of the ICAO Technical Instructions, and to be offered, accepted and transported by aircraft within the United States and aboard aircraft of United States registry anywhere in air commerce. It was necessary that these amendments be published in order to provide consistency between the Hazardous Materials Regulations (HMR) and the ICAO Technical Instructions because the ICAO Technical Instructions have become the basic standard applied to the transport of hazardous materials by aircraft worldwide. A more detailed explanation of the reasons for this action was provided in an earlier notice of proposed rulemaking published under Docket No. HM–184 on August 2, 1982 (47 FR 33295). Since publication of the final rule under Docket No. HM–184E, ICAO has developed a number of amendments to the ICAO Technical Instructions. These amendments have been incorporated in the 1991–1992 edition of the ICAO Technical Instructions which will become effective on January 1, 1991. In order to facilitate the international transportation of hazardous materials by aircraft by insuring a basic consistency between the HMR and the ICAO Technical Instructions, RSPA believes it is necessary to amend certain provisions of the HMR to reflect changes introduced in the 1991–1992 edition of the ICAO Technical Instructions. The purpose of this rulemaking action is to propose these necessary amendments to the HMR.

The following changes are proposed to reflect changes incorporated in the 1991–1992 edition of the ICAO Technical Instructions.

Section 171.7. The reference to the 1989–1990 edition of the ICAO Technical Instructions in paragraph (d)(27) would be updated to reference to the 1991–1992 edition.

Section 172.101. In the § 172.101 Table, the proper shipping name, "Battery, *electric storage*, wet, with wheelchair" would be revised to read "Battery, *electric storage*, wet with wheelchair *or other* battery powered mobility aids." These words are added in order to permit battery powered mobility devices other than wheelchairs aboard aircraft.

Section 175.10. Several changes would be made to this section: In paragraph (a)(16), the words "not exceeding 70% alcohol by volume" would be added immediately following the words "Alcoholic beverages". This limit is added because alcoholic beverages with high alcohol content produce a flammable atmosphere at normal room temperatures. Permitting highly flammable liquids in the passenger compartment or in checked baggage would compromise safety. For consistency with the change proposed to the § 172.101 Table, in paragraphs (a)(19) and (a)(20) introductory text, the words "or other battery powered mobility aid" would be added following the word "wheelchair" and the words "or other powered mobility aids" would be added following the word "wheelchairs". In paragraph (a)(20)(iii), the reference to "Battery, wet, with wheelchair" would be revised to read "Battery, wet, with wheelchair *or other* battery powered mobility aid".

Administrative Notices

A. Executive Order 12291 and Administrative Notices

The RSPA has determined that this rulemaking: (1) Is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 *et seq.*). The proposals in this document reflect changes introduced in the 1991–1992 edition of the ICAO Technical Instructions. Their anticipated economic impacts are so minimal that preparation of a regulatory evaluation is not considered necessary. An earlier regulatory evaluation on implementation of the ICAO Technical Instructions was prepared for Docket HM–184. A copy of that regulatory evaluation is available for review in Docket HM–184F.

B. Executive Order 12612

This proposed action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. This proposal has no substantial direct impact of the States, on Federal-State relationship, or on the distribution of power and responsibilities among levels of government. Therefore, this proposed rulemaking contains no policies with Federalism implications as defined in Executive Order 12612.

C. Regulatory Flexibility Act

Based on limited information concerning the size and nature of entities likely to be affected by this proposed rule, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

List of subjects

49 CFR Part 171

Exports, Hazardous materials, transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 171, 172 and 175 would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 U.S.C. App. 1802, 1804, 1805, 1808; 49 CFR part 1.

2. In § 171.7, paragraph (d)(27) would be revised to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *

(27) International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air, DOC 9284–AN/905 (ICAO Technical Instructions), 1991–1992 edition.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLES, HAZARDOUS MATERIALS, COMMUNICATIONS REQUIREMENTS AND EMERGENCY RESPONSE INFORMATION REQUIREMENTS

3. The authority citation for part 172 would continue to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, and 1808; and 49 CFR part 1, unless otherwise noted.

§ 172.101 [Amended]

4. In § 172.101, Hazardous Materials Table, column (2), the proper shipping name "Battery, *electric storage*, wet, with wheelchair" would be revised to read "Battery, *electric storage*, wet, with wheelchair *or other* battery powered mobility aids".

PART 175—CARRIAGE BY AIRCRAFT

5. The authority citation for part 175 would continue to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1807, 1808; 49 CFR part 1.

§ 175.10 [Amended]

6. In § 175.10, the following changes would be made:

a. In paragraph (a)(16), the words "not exceeding 70% alcohol by volume" would be added immediately following the words "alcoholic beverages".

b. In paragraphs (a)(19), (a)(20) introductory text, and (a)(20)(iii), each reference to "wheelchair" would be changed to read "wheelchair *or other* battery powered mobility aid" and each reference to "wheelchairs" would be changed to read "wheelchairs *or other* battery powered mobility aids".

Issued in Washington, DC, on October 30, 1990.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 90–26259 Filed 11–6–90; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 901078–0278]

Foreign Fishing; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Services (NMSF), NOAA, Commerce.

ACTION: Notice of preliminary groundfish fishery specifications and management measures, and request for comment.

SUMMARY: NOAA announces and requests comments on the preliminary 1991 specifications and management measures for groundfish taken in the U.S. exclusive economic zone and state waters off the coasts of Washington, Oregon, and California. The preliminary specifications propose the level of the acceptable biological catch, the designation of harvest guidelines or quotas, and the apportionment of harvest guidelines or quotas between domestic and foreign fishing operations for groundfish species and species groups. The preliminary management measures propose fishing restrictions that would keep landings within specified levels. Most of the proposed actions are authorized by the current Pacific Coast Groundfish Fishery Management Plan (FMP). Some of the proposed actions would be authorized by Amendment 4 to the FMP. Amendment 4 was adopted by the Pacific Fishery Management Council (Council) on July 11, 1990, and was submitted for review by the Secretary of Commerce (Secretary) under procedures of the Magnuson Fishery Conservation and Management Act (Magnuson Act) on August 9, 1990. Those measures authorized by Amendment 4 are published here for the purpose of consistency with the procedures authorized by the Amendment, if it is approved, and to provide the public an opportunity to comment on all of the management measures being considered for the 1991 fishing seasons. Publication of measures that would be authorized if Amendement 4 is approved does not imply that the Secretary will approve and implement Amendment 4. The intended effect of this notice is to allow the necessary actions for 1991 to be taken, whether under Amendment 4 of the current FMP, to provide the Secretary of Commerce with the best available information on which to base the final specifications and management measures for 1991, and to provide opportunity for public comment. Additional public comment will be invited at the November 14–16, 1990, Council meeting in Seattle, Washington.

DATES: Comments on these preliminary specifications and management measures for 1990 must be received by November 23, 1990.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Bldg. 1, Seattle, Washington 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90371.

FOR FURTHER INFORMATION CONTACT: Willian L. Robinson at (206) 526–6140; or Rodney R. McInnis at (213) 514–6202.

SUPPLEMENTARY INFORMATION:

I. Preliminary Specifications of ABC, Harvest Guidelines and Quotas, and Apportionments to DAH, DAP, JVP, and TALFF

Under the FMP and its implementing regulations at 50 CFR 663.24, those management specifications for groundfish authorized by the FMP must be evaluated each calendar year, preliminary specifications for the upcoming year must be published in the **Federal Register** inviting public comment, and final specifications must be published in the **Federal Register** following public comment. The Council adopted Amendment 4 to the FMP on July 11, 1990, and submitted it to the Secretary on August 9, 1990, for review and, if approved, implementation. Proposed implementing regulations were published in the **Federal Register** at 55 FR 38105 (September 17, 1990). Amendment 4 provides the authority for additional management specifications beyond those authorized by the current FMP, principally, the authority to establish and modify quota or harvest guidelines without having to amend the FMP. If approved, Amendment 4 will not require that preliminary specifications be published in the **Federal Register**, although the Council is required to make them availablke for public comment. For the purpose of completeness, and to provide the public the opportunity to comment on all of the proposed specifications for the 1991 fishing year, NOAA is publishing all of the proposed specifications including those authorized by Amendment 4, if it is approved, for public comment.

The management specifications include the acceptable biological catch (ABC), the designation and amounts of harvest guidelines or quotas for species that need individual management, and the apportionment of the harvest guidelines or quotas between domestic and foreign fisheries. Under Amendment 4, the annual quota replaces the specification of the numerical optimum yield (OY) quota under the original FMP. For those species needing individual management that will not be fully utilized by domestic processors, or that cannot be fully utilized without severely impacting species that are fully utilized by domestic processors, the harvest guideline or quota may be apportioned to domestic annual harvest (DAH, which includes domestic annual processing (DAP) and joint venture processing

(JVP)) and the total allowable level of foreign fishing (TALFF).

The preliminary 1991 management specifications are listed in Tables 1 and 2, followed by a discussion of each species with an ABC different than in 1990, or with a harvest guideline or quota designation, and the amount of that designation. Unless noted here, the specifications are the same as in 1990. The aggregate data upon which these preliminary specifications are based are available for public inspection at the offices of the Regional Directors (See **ADDRESSES** above) during business hours until the end of the comment period.

The public is advised that the specifications proposed herein are very preliminary; additional analysis will be conducted to refine these estimates before being adopted at the November 14–16, 1990, Council meeting. Consequently, the final ABCs, harvest guidelines, quotas, and apportionments recommended by the Council in November may differ significantly from those proposed in this notice, depending on refined scientific information and public testimony received before or during the Council's November 1990 meeting. The revised analyses will be available from the Council before and during the November meeting and will be discussed in detail at that meeting, at which time additional public comment will be accepted.

TABLE 1.—PRELIMINARY SPECIFICATIONS OF ABC FOR 1991 FOR THE WASHINGTON, OREGON, AND CALIFORNIA REGION BY INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION AREAS

[In thousands of metric tons]

Species	Area					Total
	Vancouver [1]	Columbia	Eureka	Monterey	Conception	
Roundfish:						
Lingcod	1.0	4.0	0.5	1.1	0.4	7.0
Pacific Cod			[2]	[2]	[2]	3.2
Pacific Whiting			[2]	[2]	[2]	[3] 251.0
Sablefish			[2]	[2]	[2]	[4] 8.8
Rockfish:						
Pacific Ocean Perch	0.0	0.0	[2]	[2]	[2]	0.0
Shortbelly						[4] 13.0
Widow						[4] 7.0
Other Rockfish: [5]						
Bocaccio	[2]	[2]	[2]			0.8–1.7
Canary	0.8	1.5	0.6	[2]	[2]	2.9
Chilipepper						[4] 3.6
Yellowtail	1.2	3.1	0.3	[2]	[2]	4.6
Thornyheads	[2]	3.2	1.3	1.4	[2]	5.9
Remaining Rockfish	0.8	3.7	1.9	4.3	3.3	14.0
Flatfish:						
Dover Sole	2.4	6.1	8.0	5.0	1.0	22.5
English Sole						[4] 1.9
Petrale Sole	0.6	1.1	0.5	0.8	0.2	3.2
Other Flatfish	0.7	3.0	1.7	1.8	0.5	7.7
Other Fish: [6]						
Jack Mackerel						[7] 12.0
Others	2.5	7.0	1.2	2.0	2.0	14.7

[1] U.S. portion.
[2] These species are not common or important in the areas footnoted. Accordingly, for convenience, Pacific cod is included in the "other fish" category for the areas footnoted and rockfish species are included in the "remaining rockfish" category for the area footnoted only.
[3] Based on 90 percent of the 279,000 mt preliminary ABC for the U.S. and Canada combined.
[4] Total all areas.
[5] Other rockfish means rockfish species at 50 CFR 663.2, as amended, except Pacific ocean perch, widow rockfish, and shortbelly rockfish.
[6] Other fish includes sharks, skates, ratfish, morids, grenadiers, jack mackerel, and, in the Eureka, Monterey, and Conception areas, Pacific cod. "Other fish" is part of the "other species" category listed at 50 CFR 663.2.
[7] North of 39° N. latitude.

TABLE 2.—PRELIMINARY HARVEST GUIDELINE (HG) AND QUOTA SPECIFICATIONS AND THEIR APPORTIONMENT TO DAP, JVP, DAH, AND TALFF IN 1991

[In thousands of metric tons]

Species	HG or quota	DAP	JVP [1]	DAH	Reserve	TALFF [1]
I. Quota:						
Pacific Whiting [2]	251.0	251.0	0	251.0	0.0	0.0
Shortbelly Rockfish	13.0	0.0	10.4	10.4	2.6	0.0
Jack Mackerel	12.0	0.0	9.6	9.6	2.4	0.0
II. Harvest Guideline:						
Sablefish [3]	8.8	8.8	0.0	8.8	0.0	0.0
Pacific Ocean Perch	[4] 1.54	[4] 1.54	0.0	[4] 1.54	0.0	0.0
Widow Rockfish	7.0	7.0	0.0	7.0	0.0	0.0
Bocaccio	0.8–1.7	0.8–1.7	0.0	0.8–1.7	0.0	0.0
Yellowtail Rockfish	4.3	4.3	0.0	4.3	0.0	0.0
Thornyheads [3]	5.9	5.9	0.0	5.9	0.0	0.0
Dover Sole [3]	22.5	22.5	0.0	22.5	0.0	0.0
Sebastes Complex [4]	11.1	11.1	0.0	11.1	0.0	0.0

[1] In the foreign trawl and joint venture fisheries for Pacific whiting, incidental catch allowance percentages (based on TALFF) and incidental retention allowance percentages (based on JVP) are: sablefish 0.173 percent; Pacific ocean perch 0.062 percent; rockfish excluding Pacific ocean perch 0.738 percent; flatfish 0.1 percent; jack mackerel 3.0 percent; and other species 0.5 percent. In foreign trawl and joint venture fisheries, "other species" means all species, including nongroundfish species, except Pacific whiting, sablefish, Pacific ocean perch, other rockfish, (that is, rockfish excluding Pacific ocean perch), flatfish, jack mackerel, and prohibited species. In a foreign trawl or joint venture fishery for species other than Pacific whiting, incidental allowance percentages will be stated in the conditions and restrictions to the foreign fishing permit. See 50 CFR 611.70(c) for application of incidental retention allowance percentages to joint venture fisheries.
[2] Based on 90 percent of the 279,000 mt preliminary ABC for the U.S. and Canada combined.
[3] Sablefish, thornyheads, and Dover sole may be managed together as the "deepwater complex."
[4] Of this 1,540 metric tons (mt), 500 mt is for the Vancouver area and 1,040 mt is for the Columbia area.
[5] For the Vancouver and Columbia INPFC areas. The harvest guideline for the *Sebastes* complex (all rockfish managed under the FMP except Pacific ocean perch, shortbelly rockfish, widow rockfish, and thornyheads) is derived by adding the sum of the ABCs in the Vancouver and Columbia areas for the species in the complex (i.e., canary rockfish, yellowtail rockfish, and the remaining rockfish category from Table 1).

A. Preliminary ABCs

An ABC is the biologically based estimate of the amount of fish, for the more than 80 groundfish species managed by the FMP, that can be harvested from the fishery each year without jeopardizing the resource. ABCs are recommended by the Council's Groundfish Management Team (GMT) in consultation with an ad hoc stock assessment group consisting of state and federal fishery scientists, and the Council's Scientific and Statistical Committee. Unless noted herein, the ABCs in Table 1 are the same as in 1990.

The 1991 preliminary ABCs are revised from the 1990 levels for the following species: Pacific whiting, sablefish, widow rockfish, bocaccio, canary rockfish, yellowtail rockfish, and Dover sole, and possibly jack mackerel. An ABC also is established for the first time for thornyheads (*Sebastolobus* spp.) because of the substantial landings in recent years and the recent availability of a stock assessment.

Pacific whiting. The preliminary combined U.S. and Canada ABC for Pacific whiting in 1991 is 279,000 mt, the upper end of the ABC range provided by the most recent preliminary stock assessment. This is 14 percent higher than the 1990 U.S.-Canada ABC (245,000 mt), because of upward revisions in the strength of the 1980 and 1984 year classes based on the 1989 survey. Model projections are that biomass and ABC will decline considerably during 1991–1993. Although the stock assessment presented alternative constant and variable fishing mortality rate (F) policies, the recommended 1991 ABC was obtained using a variable F policy. The ABC for the U.S. portion is preliminarily set at 251,000 mt, 90 percent of the combined U.S.-Canada ABC of 279,000 mt.

Sablefish. The preliminary coastwide ABC for sablefish in 1991 is 8,800 mt, a 1 percent decrease from the 1990 ABC of 8,900 mt. Because of differences in growth and survey catches, the 1990 assessment was based on separate analyses for the Vancouver-Columbia and Eureka-Monterey-Conception areas. The stock is estimated to have been fished down to a greater degree in the more northern area. However, until further analysis can be completed, a coastwide ABC is maintained for sablefish.

Widow rockfish. The preliminary coastwide ABC for widow rockfish in 1991 is 7,000 mt, 21 percent less than the 1990 ABC of 8,900 mt. Projected total biomass for 1991 is about equal to the expected longterm biomass under the recommended level of fishing mortality. The relative abundance of older fish (ages 10 or older) continued to decline in the most recent (1989) catch-at-age data. In addition, the 1990 assessment continues to identify the 1982 and 1983 year classes as relatively weak.

Bocaccio. The preliminary 1991 ABC for bocaccio ranges from 800 to 1,700 mt for the Monterey and Conception International North Pacific Fisheries Commission (INPFC) areas. This range is lower than the expected 1990 landings of about 2,000 mt and substantially less than the 1990 ABC of 6,100 mt. The 1990 assessment applied to the Eureka, Monterey, and Conception INPFC areas, and incorporated trawl, set net, and recreational data, estimates of recreational fishing effort, and triennial trawl survey estimates of abundance. Biomass is estimated to have decreased from 70,000–80,000 mt in 1978 to 7,000–14,000 mt in 1990, due to poor recent recruitment and increased fishing mortality.

Canary rockfish. The preliminary 1991 ABC for canary rockfish in the Columbia INPFC area is 1,500 mt, 29 percent lower than the 1990 ABC of 2,100 mt. The stock assessment was based on catch-at-age data, logbook estimates of trawl effort, and triennial trawl catch rates and length composition data. Declines in mean length and age and in fishery catch rates support the conclusion that the stock has been gradually fished down to about the expected longterm biomass under the recommended level of fishing mortality. No changes are recommended for the Vancouver and Eureka areas until assessments can be completed for those areas. Consequently, the preliminary ABC for canary rockfish in the Vancouver, Columbia, and Eureka areas is reduced from 3,500 mt in 1990 to 2,900 mt in 1991.

Yellowtail rockfish. Based on a 1990 assessment, the preliminary 1991 ABC for yellowtail rockfish in the U.S. portion of the Vancouver area is 1,200 mt, 100 mt higher than in 1990. For the Columbia area, the recommended ABC for 3,100 mt is 200 mt higher than in 1990. The Eureka area ABC is not changed. Consequently, the preliminary ABC for the combined Vancouver-Columbia-Eureka in 1991 is 4,600 mt, 7 percent greater than the 1990 ABC of 4,300 mt for the same area.

Thornyheads. For the first time, an ABC is established for thornyheads (shortspine and longspine) in the Columbia, Eureka, and Monterey INPFC areas. The preliminary ABC is 5,900 mt, close to the 1988 Columbia-Monterey area landings, but substantially less than projected 1990 landings of about 11,000 mt. The ABC estimate is based on a first assessment of shortspine thornyhead growth, maturity, and abundance. Some information also is included for longspine thornyheads. The preliminary age data, which have not been validated, suggest that shortspine thornyheads live for more than 100 years; consequently, rates of natural mortality and growth are extremely low. The ABC estimates by INPFC area (3,200 mt in the Columbia area, 1,300 mt in the Eureka area, and 1,400 mt in the Monterey area) are based on the highest abundance estimates from slope trawl surveys and the relative proportion of shortspine and longspine thornyheads in 1989 landings. Additional information on thornyhead abundance should be available following the planned fall 1990 slope survey off the Eureka area.

Dover sole. Based on new stock assessments for Dover sole in the Eureka and Columbia INPFC areas, the preliminary 1991 ABC in the Eureka area is maintained at 8,000 mt, well above the 1989 catch of 4,000 mt. The preliminary Columbia area ABC is reduced to 6,100 mt, 47 percent below the 1990 ABC of 11,500 mt and 26 percent below the 1989 catch of 8,200 mt. The Columbia area assessment is based on fishery size and age composition data and is tuned to trawl survey estimates of biomass. The Eureka fishery size and age composition data indicate a lesser decline in biomass, although there is not yet any survey data to provide a more definitive assessment. The stock in both areas is above the expected longterm biomass under the recommended level of fishing mortality, and future reductions in ABC are expected as fishing down proceeds.

Jack mackerel (north of 39° N. latitude). The ABC for jack mackerel in the area north of 39° N. latitude is preliminarily set at 12,000 mt, as in 1990. However, joint venture interests requested 40,000 mt of jack mackerel. The Council asked the GMT to examine the possibility of a higher ABC in 1991 and may consider an increase to the 1991 ABC for jack mackerel north of 39° N. latitude at the November 1990 Council meeting. Because there has been little interest in this species, a stock assessment has not been conducted recently. The maximum sustainable yield is estimated to be 12,000 to 27,000 mt. Because jack mackerel has been lightly exploited, fishing above the maximum sustainable yield (MSY) level may be possible in 1991. The FMP does not govern the segment of the jack mackerel stock south of 39° N. latitude because these smaller, younger fish generally are not caught in the groundfish fishery.

B. Species Needing Individual Management—Harvest Guidelines and Quotes

A harvest guideline or quota is based on the ABC but may be modified by socioeconomic factors, and thus is not necessarily equal to the ABC. Both harvest guidelines and quotas are the amount of fish that the Council believes can be safely landed in a given year, and management measures may be imposed to keep landings close to that level. After a quota is reached, a fishery must be closed (*i.e.*, the species or species group may not be taken and retained, possessed, or landed), whereas reaching a harvest guideline does not automatically result in a fishery closure.

Amendment 4, if approved, will provide the authority to designate harvest guidelines or quotas and management measures to achieve them for a species or species group without amending the FMP if one of the following conditions exists: the species or species group is in need of special protection or more cautious exploitation than currently provided; the species or species group can be managed effectively as a unit; a point of concern is expected to be reached during the year; a joint venture or foreign fishery is expected; or a direct allocation is needed. The current FMP designates only six species with numerical OY quotas; until Amendment 4 is approved and implemented, these quotas cannot be changed to harvest guidelines, nor can new species be designated with numerical OYs without a plan amendment. Under the current FMP as well as Amendment 4, species not managed by harvest guidelines or quotas are managed by gear, area, and other catch restrictions.

The GMT recommended the following species and species groups be managed individually by harvest guideline or quota as of January 1, 1991: Pacific whiting, shortbelly rockfish, and jack mackerel, to accommodate potential joint ventures; Pacific Ocean perch, sablefish, widow rockfish, yellowtail rockfish, the *Sebastes* complex (all rockfish managed under the FMP except Pacific Ocean perch, widow, shortbelly and thornyheads, north and possibly south of Coos Bay, Oregon), Dover sole, thornyheads (*Sebastolobus* spp.), and bocaccio, to provide additional protection for these stocks that otherwise would be fished at levels above ABC (Tables 1 and 2). This would be the first time individual management has been recommended for Dover sole, thornyheads, and boccio.

Once a species or species group is identified for individual management, Amendment 4 provides guidance for choosing between a quota and a harvest guideline. Generally a quota will be used when it is necessary to prevent overfishing, to adhere to a rebuilding program, or to achieve resource allocations established through the FMP. Generally, harvest guideline rather than a quota will be used when one of the following exists: (1) A minimal level of protection or caution is believed to be sufficient; (2) incidental catches in groundfish fisheries, or other fisheries not regulated by this FMP, are unavoidable and significant; (3) unavoidable incidental catch would occur after a quota is reached, resulting in the discard and waste of significant quantities of fish; (4) data are insufficient to estimate status of stocks or inseason landings; or (5) harvest in excess of a harvest guideline is not expected to result in overfishing or to prevent adherence to a rebuilding program.

The Council recommended quota management for Pacific whiting, shortbelly rockfish and jack mackerel because of potential joint venture fisheries. These species are managed by OY quotas under the current FMP.

The Council recommended harvest guidelines for Pacific Ocean perch, widow rockfish, yellowtail rockfish, sablefish, Dover sole, thornyheads, and bocaccio for the reasons in items (2), (3), and (5) above, and the *Sebastes* complex under item (1). The *Sebastes* complex, which includes yellowtail rockfish, has been managed under a harvest guideline since 1983. Dover sole, thornyheads, and bocaccio would be managed individually for the first time to provide additional protection for those stocks. Pacific Ocean perch, widow rockfish, and sablefish are managed with OY quotas under the current FMP, but this has resulted in discards of unavoidable catch that occurred after the quota was reached while fishing for other species or under severe trip limits designed to keep landings within the quota. Although the Council intends to recommend additional management measures to achieve but not exceed the harvest guidelines, unavoidable catches in excess of a harvest guideline may occur. It should be noted that the harvest guideline and trip limit for Pacific Ocean perch are designed to allow only incidental catches to be landed and are consistent with the Council's intent to rebuild that species.

C. Preliminary Harvest Guidelines and Quotas

With the exception of Pacific Ocean perch, the Council recommended that the harvest guideline or quota be set equal to ABC for all the species or species groups identified for individual management. The recommended harvest guidelines and quotas are shown in Table 2. For Pacific Ocean perch, the Council is continuing its policy of allowing unavoidable incidental catches to be landed. Preliminary harvest guidelines are recommended at the same levels as in 1990 (500 mt for the Vancouver area and 1,040 mt for the Columbia area), even though the ABC is set at zero. Pacific Ocean perch was fished to a level below its MSY by foreign fleets before the Magnuson Act was implemented and is being managed to rebuild the stock. The Council may recommend combining the Vancouver and Columbia area harvest gudelines or applying the harvest guideline coastwide. The Council also may consider reducing the harvest guideline below the 1990 level if that level is found to be higher than needed to accommodate incidental catches in 1991.

The preliminary harvest guideline for the *Sebastes* complex north of Coos Bay is 11,100 mt, compared with 10,500 mt in 1990. In the past, the harvest guideline for yellowtail rockfish and the *Sebastes* complex north of Coos Bay, Oregon were derived by adding the ABCs for the species in the complex in the Vancouver and Columbia subareas, and subtracting a small, prorated amount because the area in the EEZ north of Coos Bay is slightly smaller than the Vancouver and Columbia areas combined. (Coos Bay is about 20 nautical miles north of the southern boundary of the Columbia area.)

Because of the difficulty in prorating biological landings data for the small portion of the Columbia area south of Coos Bay, in 1991 in ABCs, harvest guidelines, and landings for the *Sebastes* complex and yellowtail rockfish north of Coos Bay area based on Vancouver-Columbia area totals, even though management measures may be applied to areas north or south of Coos Bay.

At its November meeting, the Council may consider designating a separate harvest guideline for the *Sebastes* complex in more southern areas, or coastwide, if necessary to protect other species in the complex.

D. Apportionments to DAH, DAP, JVP, TALFF, and the Reserve

A harvest guideline or quota includes determinations of the amounts that may be available for domestic and foreign fishing. The DAH consists of estimates of DAP and JVP that are determined by surveys in September and June to assess the industry's planned utilization. The TALFF is the remainder, if any, of OY after domestic needs have been subtracted. Amendment 4 requires that a reserve to accommodate unexpected expansion in the domestic fishery be set aside at the beginning of the year if the entire quota is not needed by domestic processors. If DAP is 80 percent or less of the quota, the reserve is set at 20 percent of the quota; otherwise the reserve is the difference between the quota and DAP. Under the Original FMP, the reserve was applied only as a buffer between DAH and TALFF with no additional protection between DAP and JVP.

The recommended preliminary apportionments are based on the results of NMFS' survey of the domestic industry to determine domestic processing and harvesting needs. A follow-up survey is conducted later in the year to refine the estimates of DAP, JVP and DAH and to reapportion the reserve. The following apportionments are based on the survey conducted in early September 1990. Domestic processors who expect to use whiting, shortbelly rockfish, or jack mackerel in 1991 and who have not been contacted by the Northwest Region of NMFS as a part of this survey are encouraged to call (Kate King, at 206–526–6140) as soon as possible to assure that their processing needs are considered.

Pacific whiting. Domestic processors have preliminarily requested approximately 309,000 mt of Pacific whiting in 1991. The preliminary quota for Pacific whiting is expected to be between 70 and 90 percent of the combined U.S.-Canada ABC of 279,000 mt, less than domestic processing requests. Therefore, DAP is preliminarily set equal to the annual quota, leaving no surplus for JVP or TALFF and no reserve. The industry will be surveyed later in the year, after which surplus DAP, if any, may be reapportioned to JVP.

Most of the domestic processing interest (273,000 mt) in 1991 is from at-sea processing vessels that expect to process Pacific whiting during the closed period (April through May) between the two pollock seasons in Alaska, particularly if the "doughnut hole" in the Bering Sea is closed to U.S. fishing. Most of the at-sea processors are factory trawlers, although several are motherships that intend to process whiting delivered by 4 to 12 U.S. catcher vessels. In addition, domestic shore-based operations intend to expand, accounting for 36,000 mt of the requests for 1991.

In 1990, DAP initially was set at 35,000 mt, and lowered to 25,000 mt inseason. There was very little interest by at-sea processors. Landings in 1990 are expected to be close to the level landed in 1989, 7,400 mt. The 1990 DAP of 25,000 mt was not taken because the season was very short (whiting came late and left early) along much of the coast. However, most of the processors that requested whiting in 1990 did market that species, although sales were lower than hoped.

The joint venture companies that participated in 1990 were contacted regarding their requests for 1991. Initial requests for joint venture processing in 1991 are approximately 190,000 mt. About 170,000 mt of whiting are expected to be taken by 48 U.S. catcher vessels in the 1990 joint venture.

Shortbelly rockfish. There is little domestic processing of shortbelly rockfish. The DAP is lowered from 500 mt in 1990 to zero in 1991. Only 2.2 mt were landed in 1989. The 20 percent reserve should adequately accommodate unexpected expansion of domestic processing needs in 1991. Based on the 1990 quota of 13,000 mt being continued in 1991, the reserve would be 2,600 mt. The remaining 10,400 mt is designated for JVP. In the event that Amendment 4 is not approved, there would be no reserve at the beginning of the year and JVP preliminarily would be set at 13,000 mt.

Jack mackerel (North of 39° N. latitude). The U.S. processing industry expressed no interest in the segment of the jack mackerel stock that is available to trawl gear north of 39° N. latitude. Consequently DAP is preliminarily set at zero and, if the quota is maintained at 12,000 mt, the reserve would be 2,400 mt. One joint venture company has expressed interest in a joint venture for up to 40,000 mt of jack mackerel in the EEZ north of 39° N. latitude. Consequently, the remainder of the quota, 9,600 mt, is designated for JVP. The Council asked the GMT to reevaluate the ABC for jack mackerel to see if the higher JVP request could be accommodated. In the event that Amendment 4 is not approved, there would be no reserve at the beginning of the year and JVP would preliminarily be set at 12,000 mt.

Preliminary Management Measures

At its November meeting, the Council will recommend management measures intended to reduce the rate of landings in 1991 for certain species or species groups. These management measures fit into two procedural categories, those designated as "routine" Amendment 4 and those intended to be designated as routine before January 1, 1991, according to procedures contained in Amendment 4. The routine designation means the identified management measure may be implemented and adjusted for a specified species or species group and gear after consideration at a single Council meeting and after publication in the **Federal Register**, as long as the purpose of the limit is the same as originally established when these measures were designated as routine. All the management measures that the Council intends to consider at its November meeting for implementation on January 1, 1991, are listed here, even though not all are as yet designated routine. The designation of routine is expected to occur by separate rulemaking if Amendment 4 is approved. Notification of the actual management measures is expected to appear in the **Federal Register** notice announcing the final specifications and management measures for 1991.

Amendment 4 designates trip landing and trip frequency limits as routine for widow rockfish, Pacific ocean perch, yellowtail rockfish, the *Sebastes* complex of rockfish, and sablefish (trawl and nontrawl gears). In addition, trip limits may be established by size category for sablefish caught with trawl or nontrawl gear to limit the harvest of juvenile sablefish and protect future brood stock. Bag and size limits for rockfish and lingcod taken with recreational gear also are designated as routine, primarily to provide the Council the flexibility to adjust bag limits in Federal waters to make them consistent with state regulations for waters between zero and three nautical miles offshore.

The Council has recommended that trip landing and frequency limits for three new species be designated as routine in accordance with the procedures contained in Amendment 4. These are bocaccio, Dover sole, and thornyheads (for all commercial gear). The Council also has recommended that sablefish, Dover sole, and thornyheads, which individually will be designated as routine, be considered routine if managed together as a complex. NOAA intends to propose these new designations by separate rulemaking.

The management measures proposed below for 1991 are preliminary and likely to change because the final specifications on which they ultimately will be based also are preliminary and will not be final recommendations until after the Council's November 1990 meeting. Therefore, these proposed management measures are subject to change based on updated scientific information and public comment.

Widow rockfish. In 1990, the annual quota (OY) for widow rockfish was a range of 9,800 to 10,000 mt. The quota was set higher than the 8,900 mt ABC to soften the economic impact on the fishing industry of an abrupt reduction to the ABC level. At the time, the Council acknowledged that quota reductions in the future were likely. The fishery was restricted to a weekly trip limit of 15,000 pounds with a biweekly option of 25,000 pounds; only one landing per week (or two week period, depending on the option) could contain more than 3,000 pounds of widow rockfish. It appears that landings will stay within the quota in 1990. However, given the likelihood of a reduced harvest guideline in 1991 (preliminarily set at 7,000 mt), trip landing and frequency limits may need to be more restrictive. At its November meeting, the Council will consider reducing the trip landing limits and/or allowing fewer landings (perhaps only one landing per month) of widow rockfish in 1991. In the future, the Council also may consider prohibiting midwater trawls for the harvest of widow rockfish.

Sebastes complex (including yellowtail rockfish) north of Coos Bay. The 1990 harvest guideline for the *Sebastes* complex north of Coos Bay, Oregon was 10,500 mt. A weekly trip limit of 25,000 pounds (containing no more than 7,500 pounds of yellowtail rockfish) was implemented at the beginning of the year, and only one landing of the complex above 3,000 pounds was allowed per week. The limit for yellowtail rockfish was lowered to 3,000 pounds, or 20 percent of the complex, whichever was greater, on July 25. Biweekly and twice-weekly trip limit options were available. Landings of the *Sebastes* complex north of Coos Bay are expected to be within the harvest guideline in 1990. Landings of yellowtail rockfish are expected to exceed the harvest guideline by about 15 percent in 1990, but are close to the increased harvest guideline levels proposed for 1991. Yellowtail rockfish is near the level that produces MSY, and exceeding the harvest guideline by 15 percent in 1990 will not jeopardize the stock.

The 1991 harvest guideline north of Coos Bay is proposed to increase from 10,500 mt to 11,100 mt for the *Sebastes* complex and from 3,900 mt to 4,300 mt for yellowtail rockfish, which is close to the projected level of landings for that species in 1990. However, the trip poundage and frequency limits imposed on the *Sebastes* complex and yellowtail rockfish in January 1991 are likely to be more restrictive than in January 1990, to reduce the need for more severe restrictions before the end of the year.

Pacific ocean perch. The annual quota (OY) for Pacific ocean perch in 1990 was 500 mt in the Vancouver area, and 1,040 mt in the Columbia area, for a total of 1,540 mt. Although the ABC was set at zero to rebuild the stock, higher quotas and a trip limit of 3,000 pounds or 20 percent of all fish on board, whichever is less, were implemented to allow incidental catches to be landed. This limit was applied only when more than 1,000 pounds of Pacific ocean perch were on board. Landings are expected to be within the quotas in 1990.

If the proposed harvest guideline for Pacific ocean perch in 1991 remains the same as the quota in 1990, similar management restrictions can be expected. If it is reduced, the Council may consider more severe trip landing or frequency limits, or other restrictions to minimize the incidental catch or discards of Pacific ocean perch. The harvest guideline has been proposed at a level only to accommodate incidental catches. Trip limits will not be relaxed to allow any target fishing in 1991, even if the harvest guideline is not projected to be reaced.

Sablefish. In 1990, the annual quota (OY) for sablefish was 8,900 mt. After subtracting the estimated Washington coastal Indian tribal catch to the end of the year (300 mt), the remainder of the annual quota was divided into separate gear quotas, 58 percent for the trawl landings and 42 percent for the nontrawl (fixed) gear landings. This same apportionment applies during 1991. In addition, reference to tribal fisheries will be clarified to pertain only to Washington tribal fisheries along the coast of the Pacific Ocean.

Even though it has recommended an overall harvest guideline rather than a quota for sablefish in 1991, the Council intends to continue managing this species with trawl and nontrawl gear allocations, that are individual quotas. Under the current FMP, all landings by all gears are prohibited when the overall quota is reached. Thus, if an error was made in the landings projection for one gear group, the overage had to be subtracted from the other gear group's quota. Under Amendment 4, designation of an overall harvest guideline for sablefish allows the harvest guideline to be slightly exceeded, protecting each gear group from being penalized for management imprecision. Trip landing and frequency restrictions will be designed to keep landings within the harvest guideline. Overages, if any, are expected to be of a level that will not jeopardize the stock.

Sablefish (and the Deepwater Complex)—trawl fishery. A sablefish trip limit of 1,000 pounds or 25 percent of the deepwater complex (sablefish, Dover sole, thornyheads, and arrowtooth flounder), whichever is greater, was imposed on the multispecies trawl fishery at the beginning of the 1990 fishing season to discourage target fishing for sablefish and to slow achievement of the trawl quota. On October 3, this limit was modified to avoid reaching the trawl quota before the end of the year. To minimize discards of sablefish that would occur if only the trip limit for sablefish were reduced, trip landing and frequency limits were placed on the deepwater complex in the aggregate (sablefish, Dover sole, and thornyheads). Arrowtooth flounder is removed from the complex because it is not as closely associated with sablefish as previously thought and is uncommon in California and southern Oregon. This new trip limit allowed only one landing per week above 1,000 pounds of the deepwater complex, not to exceed 15,000 pounds, and no more than 1,000 pounds or 25 percent, whichever is greater, could be sablefish. Biweekly and twice-weekly landings options also were available. The 5,000 pound trip limit on sablefish smaller than 22 inches remained in effect. It is not yet known whether the trawl quota will be reached in 1990.

Trip landing and frequency limits will be considered for trawl landings of sablefish, Dover sole, and thornyheads, either separately or in the aggregate, in 1991. Trip limits on sablefish smaller than 22 inches (total length) are expected to continue. Trip landing and frequency limits for Dover sole and thornyheads are expected to be designated as "routine" in a separate announcement in the **Federal Register**.

Sablefish—nontrawl fishery. The 1990 nontrawl target fishery opened January 31, 1990. Between January 31 and June 24, the nontrawl fishery was unrestricted except for a trip limit on sablefish smaller than 22 inches of 1,500 pounds or 3 percent of sablefish, whichever is greater. On June 24, a trip limit of 500 pounds of sablefish of any size was imposed, a reduced on July 25 to 200 pounds, when only a small amount of the nontrawl quota was projected to remain. These small trip limits were imposed virtually to eliminate the target fishery, while allowing landings of sablefish taken incidentally or by the very small-scale fisheries that operate later in the year (notably the Newport, California dory fleet). Later data indicated that more of the quota remained than previously projected, and the trip limit was increased to 2,000 pounds on October 3, 1990. At that time the trip limit for sablefish smaller than 22 inches was reinstated. Current projections indicate that the nontrawl quota will not be reached before the end of the year.

The Council is considering a trip limit for the nontrawl fishery at the beginning of the year that would allow the landing of small quantities of sablefish caught incidentally in other fisheries, but would be intended primarily to delay the opening of the unrestricted target fishery until at least April 1, 1991. Because delaying the beginning of the unrestricted target fishery has allocative implications and is being recommended to achieve objectives different from those supporting the designation of trip limits on the nontrawl fishery as routine in Amendment 4, NOAA intends to propose designating trip limits for this purpose as routine in a different **Federal Register** rule. In that same rule NOAA intends to propose a change in the nontrawl season opening date but not as a routine management measure.

The Sebastes Complex south of Coos Bay. Currently, the *Seabastes* complex south of Coos Bay is managed with a 40,000 pound trip limit. It is likely that additional trip landing or frequency limits may be needed to protect certain species in the complex, especially bocaccio. Trip landing and frequency limits for the *Sebastes* complex are designated as routine by Amendment 4.

Bocaccio. The Council also intends to consider managing bocaccio in 1991, either separately or as a part of the *Sebastes* complex. Trip landing or frequency limits on commercial gear will be considered. Recreational landing limits also may be considered in 1991 or later as data become available. The Council has recommended, and NOAA intends to propose, that trip landing and frequency limits for bocaccio be designated as routine by a separate **Federal Register** rule.

Dover sole and thornyheads. As mentioned earlier, Dover sole, thronyheads, and sablefish may be managed separately or as a unit ("the deepwater complex"), to achieve the harvest guidelines for these species. The Council will consider trip landing and frequency limits at its November meeting. The Council has recommended and NOAA intends to propose that trip landing and frequency limits for Dover sole, thorneyheads, and sablefish, either individually or in the aggregate, be designated as routine by separate **Federal Register** rule.

Lingcod. The Council has proposed that the recreational bag limit for lingcod off California be changed from three to five fish, to be consistent with California state regulations. Bag and size limits for lingcod are designated as routine under Amendment 4.

Rockfish. The recreational bag limit for rockfish under the original FMP is expected to continue, and has been designated as routine under Amendment 4. This restriction allows possession of 15 rockfish per day. Multi-day limits are authorized by a valid permit issued by the State of California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

In the event that Amendment 4 is not approved, the authority to implement all of the management actions proposed above, except for the trip limit for nontrawl-caught sablefish at the beginning of the year and the recreational bag limit for lingcod, exists in the current FMP and implementing regulations at 50 CFR Parts 611.70 and 663. Procedures to delay the nontrawl sablefish season and to change the recreational bag limit for lingcod are not authorized under the current FMP. In the event that Amendment 4 is approved and implementing regulations published in the **Federal Register**, all of these proposed actions (i.e., those adopted after consideration of public comments received) will be authorized in final form according to the implementing regulations for Amendment 4 (published in the **Federal Register** as a proposed rule at 55 FR 38195 (September 17, 1990)).

Final Actions

The Council will make final recommendations for the 1991 specifications and management measures at its November 14–16, 1990, meeting in Seattle, Washington. The Council invites public comment both prior to (in writing) and at that meeting as well as during the public comment period following the publication of this notice. The Secretary will consider public testimony and the latest information on stock status and expected catch and effort before announcing the final specifications and management measures that will be effective January 1, 1991.

Classification

The preliminary specifications are made under the authority of and in accordance with 50 CFR 663.24 (a) and (b). The management measures are proposed under the authority of 50 CFR 663.22(a) and 663.23. If Amendment 4 is approved, these actions will be taken in final form under the authority of and in accordance with the regulations implementing Amendment 4 (proposed at 55 FR 38105, September 17, 1990).

An Environmental Impact Statement (EIS) was prepared for the FMP in 1982 and a Supplemental EIS was prepared for Amendment 4 in accordance with the National Environmental Policy Act (NEPA). The alternatives considered and environmental impacts of the actions proposed in this notice are not significantly different than those considered in either the EIS or SEIS for the FMP. Therefore this action is categorically excluded from the NEPA requirements to prepare an Environmental Assessment in accordance with paragraph 5a(3) of the NOAA Directives Manual 02–10 because the alternatives and their impacts have not changed significantly.

This action is in compliance with Executive Order 12291 and is covered by the regulatory impact review and the analysis contained in Amendment 4.

This action does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The public has had opportunities to comment on this action. The public participated in Groundfish Management Team, Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Council meetings in August and September 1990 that resulted in these recommendations from the Council. Additional public comments will be accepted for 15 days after publication of this notice in the **Federal Register** and during the November Council meeting.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 663

Fisheries, Fishing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 2, 1990.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90-26379 Filed 11-2-90; 3:05 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 216
Wednesday, November 7, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration; Public Meeting

SUMMARY: The Administrative Conference's Committee on Administration is considering a draft recommendation and consultant report dealing with the implementation of the Occupational Safety and Health Review Commission's implementation of its simplified proceedings. The draft recommendation, based in part on a report prepared by Professor Morell Mullins of the University of Arkansas—Little Rock School of Law, calls on OSHRC and OSHA to take modest steps to enhance use of simplified proceedings. The proposal will be discussed at the Committee's November 13 meeting, described below.

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of a meeting of the Committee on Administration of the Administrative Conference of the United States. The Committee has scheduled this meeting to discuss the draft report and possible recommendation on implementation of OSHRC's settlement judge and simplified proceedings. The draft recommendation and consultant report are available on request from the Conference.

DATE: November 13, 1990, 1:30 p.m.

LOCATION: Administrative Conference Library, 2120 L Street, NW., suite 500.

PUBLIC PARTICIPATION: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500 (202) 254-7020.

PUBLIC PARTICIPATION: Same as above.

Dated: November 4, 1990.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 90-26460 Filed 11-6-90; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census

Title: Follow-up Questionnaire—Housing Unit Coverage Study—1990 Decennial Census

Form Number: H-1374

Type of request: New

Burden: 1,245 hours

Number of respondents: 15,000

Avg hours per response: 5 minutes

Needs and uses: In this study the Census Bureau will computer-match a nationwide sample of 60,000 households from the Post Enumeration Survey sample to a sample of 1990 decennial census addresses. Census will contact approximately 15,000 of these households to assign a final enumeration status with precision and will use these data to evaluate the completeness of the 1990 decennial census

Affected public: Individuals or households

Frequency: One time

Respondent's obligation: Mandatory

OMB desk officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room H5312, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: November 1, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-26328 filed 11-6-90; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Docket 38-90]

Proposed Foreign-Trade Zone—Fort Wayne, Indiana Rescheduled Public Hearing and Extension of Comment Period

The public hearing, which was scheduled for October 12, 1990 (55 FR 38373, 9/18/90), and postponded (55 FR 40418, 10/3/90), has been rescheduled for November 29, 1990, beginning at 9 a.m. in room 106, City-County Building, One Main Street, Fort Wayne, Indiana 46802.

Also, the period for public comment is extended to December 31, 1990. Written comments may be submitted to the Executive Secretary at the address below.

The application is available for public inspection at:

Department of Economic Development, 840 City-County Building, One Main Street, Fort Wayne, Indiana 46802.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., room 4213, Washington, DC 20230.

Dated: November 1, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90-26329 Filed 11-6-90; 8:45 am]

BILLING CODE 3510-05-M

International Trade Administration

[A-570-506]

Porcelain-on-Steel Cooking Ware From the People's Republic of China, Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 27, 1989, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on porcelain-on-steel cooking ware from the People's Republic of China. The review covers sales of porcelain-on-steel cooking ware made during the period May 10, 1986 through November 30, 1987 by China National Light Import and Export Corporation, Shanghai Branch, a manufacturer located in the People's Republic of China, and by Amerport (H.K.), Ltd., a third-country reseller located in Hong Kong.

We gave intereted parties an opportunity to comment on the preliminary results. At the request of the two importers, Amerport (U.S.A.), Ltd. and Wallace International, Ltd., we held a hearing on June 12, 1989. Based on our analysis of the comments received, the final results are changed, in part, from those presented in the preliminary results.

EFFECTIVE DATE: November 7, 1990.

FOR FURTHER INFORMATION CONTACT: Chris Marsh or Robert J. Marenrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 18129) the preliminary results of its administrative review of the antidumping duty order on porcelain-on-steel cooking ware ("POS cooking ware") from the People's Republic of China ("PRC") (51 FR 43414, December 2, 1986). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of porcelain-on-steel cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. During the review period, such merchandise was classifiable under item 654.0815, 654.0824, and 654.0827 of the Tariff Schedules of the United States Annotated. The merchandise is currently classifiable under the Harmonized Tariff Schedule ("HTS") item 7323.94.00. The HTS item number(s) are provided for convenience and Custom purposes. The written description remains dispositive.

The review covers the shipments of one manufacturer located in the PRC, China National Light Import and Export Corporation, Shanghai Branch ("CSLI"), and one third-country reseller located in Hong Kong, Amerport (H.K.), Ltd. ("Amerport H.K."), both of which exported the POS cooking ware to the United States during the period from May 20, 1986 through November 30, 1987.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of two importers, Amerport (U.S.A.), Ltd. ("Amerport U.S.") and Wallace International, Ltd. ("Wallace"), we held a hearing on June 12, 1989. Below are the comments we received from the two importers, along with our response to each.

Comment 1: The importers argue that although CSLI sales were not computerized or segregated into categories covering the merchandise under review, the Department was afforded the opportunity to review all CSLI invoices for the period. They note that any difficulty the Department may have encountered in reviewing all such CSLI invoices during the course of the verification was due to the sheer volume involved and should not have resulted in any adverse assumptions regarding the verification process.

Department's position: The Department recognized that CSLI does not maintain the type of accounting records normally provided at verification. Accordingly, we tried to be flexible in our procedures for verifying total sales by giving CSLI an opportunity to provide copies of those invoices posted to their accounting statements for 1986 and 1987. Nevertheless, we were unable to verify adequately CSLI's total sales to the United States. (See our response to Comment 2.)

Comment 2: The importers argue that the Department successfully verified the total sales by CSLI to Amerport H.K., its only customer during the period of review. The Department's conclusion that CSLI's accounting statements for the period did not contain a complete listing of cookware sales to the United States were based on CSLI's failure to provide documentation for three of its sales invoices posted to its journals of accounts receivable for 1986 and 1987 (Documents Against Payment ("D/P")), and on five additional invoices which were not posted to the accounting statements reviewed. The first three invoices (nos. 76, 38118, and 38010) represented sample sales of extremely low value and were isolated air shipments. As such, they were subject to a different payment procedure and were not stored with the other invoices. Also, these invoices accounted for a mere three-tenths of one percent of such sales to Amerport H.K.

Of the latter five invoices (nos. 87A-038141, 028046, 039123, 039283, and 038129), three were erroneously posted to the journal of accounts receivable for letter of credit transactions, while the two others were posted to the D/P journal of accounts receivable in December of 1987. CSLI deleted the portions listing these invoices from the journals upon the belief that such postings were not subject to review by the Department. Thus, the journals reviewed at verification did not cover the D/P postings for the last month of the review period. Nevertheless, the supporting data was subsequently provided to the Department in submissions dated October 5, 1988 and October 19, 1988, and therefore, the transactions do not represent unreported sales.

Department's position: By tracing data to a company's internal accounting records, we verify the accuracy and completeness of factual information submitted by that company in response to our questionnaire. In this case, as stated in our verification report, we found that CSLI's accounting statements were incomplete. As a result, we were not able to verify total sales by CSLI and have relied upon the best information otherwise available for these sales.

CSLI was notified both prior to and during verification that the Department required copies of all invoices posted to the 1986 and 1987 accounting statements. This information, however, was not available for review upon the arrival of the verification team in China. The 1986 invoices were finally provided the night before the team departed, and the 1987 invoices were provided as the team left the hotel for the airport. CSLI never explained or attempted to explain at verification the discrepancies between what was or what was not posted to the accounting statements or why there were missing invoices.

The importers claim that all CSLI's sales data was reported in the two October 1988 submissions, particularly, the five invoices, 87A-038141, 038046, 039123, 039283, and 038129. In reviewing these two supplemental responses, however, we found that only those shipments pertaining to invoice 038046 were reported in the sales listings. There was no mention of the other four invoices not posted to CSLI's accounting statements. More importantly, whether these sales were reported or not, the importers' claim does not address the issue of the accuracy of CSLI's accounting statements.

The importers also claim that certain invoices were subject to a different payment procedure and were not stored with the other invoices. CSLI states that the three invoices (nos. 76, 38118, and 38010) account for a mere three-tenths of one percent of such sales to Amerport H.K. We note, however, that the five invoices (nos. 87A-038141, 038046, 039123, 039283, and 038129) account for approximately 37 percent of the total reported sales for 1987. This represents a very significant portion of sales that were not posted to the D/P journals provided to the Department for verification of total sales. Because of this significant discrepancy, we determined that we could not verify CSLI's total sales.

Comment 3: The importers argue that the Department was able to verify records of payment from Wallace for Amerport H.K.'s United States sales of open-stock cooking ware. Records showing Wallace's payment on these transactions, as well as documentation enabling the Department's verifiers to trace these sales to Amerport H.K.'s accounting books and records, were provided at verification. Information concerning proof of payment on the Wallace transactions (including accounting ledgers) are, and were at all times, maintained in Hong Kong. In fact, this information was made available for review by company officials during the Hong Kong verification. Bank records provided as Hong Kong verification exhibits substantiate payment of nearly half of the total sales exported to Wallace in the United States. The payment total on the bank credit advice submitted at verification exceeded the sum of the invoice values solely because the Department omitted invoice 121/86 from its calculations. If that invoice had been factored into the calculation, the credit advice total would have matched the sum of the invoice values, demonstrating that these invoices were covered by the credit advice provided at verification, and accounting for all alleged discrepancies regarding Amerport H.K.'s United States sales to Wallace.

If, however, the Department still sees some evidence that each and every invoice does not reveal the actual price paid on sales to Wallace in the United States, the accuracy of these transactions can be established by the fact that Commerce officials verified bank credit advices. Furthermore, these same credit advices had been successfully traced by Price Waterhouse, an independent accounting firm, to accounting ledgers furnished to the Department's verifiers.

Department's position: In verifying Amerport H.K.'s response, we found that payment at the full invoice price did not represent the final price paid by Wallace for the merchandise. At least half of the sales prices listed in the responses for sales to Wallace in the United States were different than the prices listed on the invoices. Amerport H.K. officials stated that the company's subsidiary, Amerport U.S., had granted Wallace discounts on certain invoices without the parent's knowledge. As a result, during our Hong Kong verification, we could only verify the payments made to Amerport H.K. at the full invoice price. It is therefore irrelevant that Amerport H.K.'s bank credit advice total matches the sum of its invoice values.

At verification in the United States, we found documented evidence that Wallace had been granted a discount on certain invoices. This evidence was dated several months after the date of the last payment on the last invoice affected by the "Tier 2" discounts. These "discounts" therefore appeared to have been a type of post-payment rebate. Because we have evidence that a rebate was granted after payment, and since we could not verify the total rebated amount on each sale, we were unable to determine the actual amount paid by Wallace on Amerport H.K.'s United States sales.

Comment 4: The importers argue that the Department's failure to publish any notice of the factual findings and legal conclusions underlying its preliminary use of the best information otherwise available is patently not in accordance with the law. In this regard, it is the importers' position that data submitted concerning Amerport H.K.'s sales to Wallace, which were destined for countries other than the United States or for consumption in Hong Kong, provide the proper basis for determining foreign market value. Alternatively, the foreign market value could be derived using data from CSLI's factors of production response, valued in a surrogate market economy at a similar stage of development.

Department's position: In the preliminary results of review, we fully explained our reasons for using the best information otherwise available. Prior to publication of the preliminary results, we provided copies of all relevant Departmental memoranda to the importers regarding the appropriate measure of United States price. This type of detailed analysis is not generally included in the **Federal Register** notice.

Regarding the foreign market value of Amerport H.K.'s open stock cooking ware sales to Wallace, we have reconsidered our approach for the final results of review and have determined not to use the best information otherwise available for these sales. (See our response to Comment 6.)

Comment 5: Amerport H.K. argues that all of its export sales to Wallace in the United States, and sales through Amerport U.S. to other unrelated customers in the United States, constitute purchase price transactions which should be used for purposes of determining United States price. If the Department considers that the sales transactions between CSLI and Amerport H.K. represent the proper basis for United States price, assuming *arguendo* that the Department's position is legally correct, there is no basis for the Department to conclude that such sales were not adequately substantiated during the course of the verification at CSLI. Thus, there is no basis for using the best information otherwise available.

Department's position: We determine that United States price for cookware sets should be based on the price between CSLI and Amerport H.K., not on Amerport U.S.'s price to the first unrelated purchaser in the United States. After reviewing the documents provided at verification, we found that CSLI knew the final destination of the merchandise prior to the date of sale (refer to the Department's memorandum dated February 22, 1989, concerning date of sale for sets and determining when CSLI knew that the merchandise was destined for the United States). Therefore, in accordance with 19 U.S.C. 1677a(b), we used the price paid by Amerport H.K. to CSLI as the basis for United States price. See Natural Bristle Paint Brushes From the People's Republic of China (55 FR 42599, 42600, October 22, 1990).

With respect to sales of open-stock cookware between Amerport H.K. and Wallace in the United States, we determine that United States price was the price paid by Wallace. For these sales, we found no evidence that CSLI knew the final destination of the merchandise at the time the price was established between itself and Amerport H.K.

Since we could not verify CSLI's total sales, we used the best information otherwise available to determine the final antidumping duty margin. (See our response to Comment 2.) Similarly, since we could not verify the actual amount paid by Wallace on Amerport H.K's sales of open-stock cookware, we used the best information available to determine the United States price. (See our response to Comment 3.)

Comment 6: The importers argue that, pursuant to 19 U.S.C. 1677b(f), Hong Kong should be treated as the country of exportation for the subject merchandise. They further argue that foreign market value should be based on the data submitted regarding Amerport H.K.'s sales to Wallace, both for exportation to countries other than the United States ("third countries") and for domestic consumption in Hong Kong. As the Department's preliminary notice did not address these sales, nor provide any explanation for its use of the best information otherwise available, respondents assume that it is the Department's position that such sales were not adequately verified.

Department's position: As discussed in our response to Comment 2, for all merchandise sold by CSLI to Amerport H.K. that was subsequently resold in the United States through Amerport U.S., we continue to base our antidumping duty on the best information available, as stated in the preliminary results. However, for direct sales of porcelain-on-steel cooking ware from Amerport H.K. to Wallace, because CSLI was unaware of the merchandise's ultimate destination at the time of its sale to Amerport H.K., we have changed the final results of review.

Section 353.47 of the Department's regulations (19 CFR 353.47 (1990)) directs the Department to base foreign market value on sales in an intermediate country where, at the time of sale, the manufacturer of the merchandise does not know the country to which a reseller intends to export the merchandise. For sales between Amerport H.K. and Wallace, we found that, at the time CSLI sold the merchandise to Amerport H.K., CSLI did not know the ultimate destination of the open-stock cooking ware. We therefore determine that for Amerport H.K.'s open-stock sales to Wallace, instead of CSLI's price to Amerport H.K., the price paid by Wallace to Amerport H.K. is the most appropriate basis for foreign market value.

For these particular sales, we were able to rely on the information provided by Amerport H.K. regarding its home and export market sales to Wallace. There were sufficient sales in Amerport H.K.'s home market to allow us to use home market price as the basis for foreign market value. Our analysis of the company's sales data, however, showed that all sales between Amerport H.K. and Wallace in Hong Kong took place during the latter part of the review period, almost one year after Amerport H.K.'s last sale to Wallace in the United States. As such, none of the company's home market sales was contemporaneous with its sales to Wallace in the United States. We therefore selected Amerport H.K.'s sales to Wallace in third countries as the most appropriate basis for foreign market value.

In a very few instances, no contemporaneous third country sales were available for comparison to United States sales of specific cooking ware models. In these instances, we based the foreign market value on the invoice price from the most recent third country sale of that model. This approach provides the Department with a reasonable surrogate for actual sales during the month in question since third country sales prices for open stock cooking ware did not vary over the period of review.

We calculated foreign market value based on Amerport H.K.'s f.o.b., Hong Kong sales price to Wallace in the third country markets. We made deductions from the third country price, where appropriate, for brokerage charges, foreign inland freight, and transit costs. Further, we made circumstance of sales adjustments for bank charges and interest expense and for warranty expenses incurred for defective merchandise.

In deriving the United States price, we used the purchase price from Amerport H.K. to Wallace in the United States since all sales between the two parties were made prior to importation of the merchandise. We calculated the purchase price based on the f.o.b., Hong Kong price from Amerport H.K. to Wallace in the United States.

As discussed in Comment 3, we found at verification that Amerport H.K.'s subsidiary, Amerport U.S., granted post-payment rebates on a number of sales to Wallace in the United States. Because we could not verify the total rebated amount on each sale to Wallace, as best information available, we applied the per unit rebated amount, as reported in Amerport H.K.'s questionnaire response, to all United States sales between Amerport H.K. and Wallace. We also made deductions, where appropriate, for brokerage charges, foreign inland freight, and movement expenses.

Final Results of the Review

Based on our review of the comments received, the final results are changed, in part, from those set forth in the preliminary results of review, and we have determined the margins for the period May 20, 1986 through November 30, 1987 to be:

Manufacturer/third-country reseller	Margin (percent)
China National Light Import and Export Corp., Shanghai Branch/Amerport (H.K.), Ltd.	66.65
China National Light Import and Export Corp., Shanghai Branch/Amerport (H.K.) Ltd./Wallace International, Ltd.	13.76

The Department has indications that there may be an agreement of reimbursement of antidumping duties between certain parties. Any reimbursement of duties to the importer is to result in an equivalent decrease in United States price pursuant to § 353.26 of the Commerce Department's regulations, and a consequent increase in dumping duties. The Department, in its assessment instructions, will advise the U.S. Customs Service to investigate the *bona-fides* of any certificate or non-reimbursement of dumping duties which may be filed by the importer. If no such certificate is filed prior to the liquidation of each customs entry where dumping duties are finally assessed, Customs will be instructed to double the amount of dumping duties on each such entry, to account for reimbursement. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required. This review covers two manufacturers/exporters, CSLI and CSLI/Amerport H.K. All cooking ware manufactured by CSLI and exported to the United States passes through Amerport H.K. Accordingly, Customs has no way of distinguishing between those sales where CSLI is the manufacturer/exporter and those sales where CSLI/Amerport H.K. is the manufacturer/exporter. Since all United States sales by CSLI/Amerport H.K. during the period of review were made to Wallace, the Department has used Wallace as a convenient identifier for cash deposit purposes. For any further entries of this merchandise from a new manufacturer/exporter, not covered in this administrative review, whose first shipments occurred after November 30, 1987, and who is unrelated to any reviewed firm, a cash deposit of 13.76 percent shall be required. This is in accordance with our practice of using the highest antidumping duty rate not based on the best information otherwise available for all new exporters of the subject merchandise.

These deposit requirements are effective for all shipments of porcelain-on-steel cooking ware from the People's Republic of China entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until the publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: October 30, 1990.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-26331 Filed 11-6-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-068]

Steel Wire Strand for Prestressed Concrete From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 5, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on steel wire strand for prestressed concrete from Japan. The review covers one exporter of Japanese steel wire strand for prestressed concrete to the United States and consecutive periods from April 1, 1978 through November 30, 1985.

We gave interested parties an opportunity to comment on our preliminary results of review. At the request of Mitsui, we held a hearing on June 9, 1988. Based on our analysis of the comments received, our results are unchanged from those presented in our preliminary results of review.

EFFECTIVE DATE: November 7, 1990.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4195/5255.

SUPPLEMENTARY INFORMATION:

Background

On May 5, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 16180) the preliminary results of its administrative review of the antidumping finding on steel wire strand for prestressed concrete ("strand") from Japan. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act"). The substantive provisions of the Antidumping Act of 1921 ("the 1921 Act") and the appropriate Customs Service regulations apply to all unliquidated entries made prior to January 1, 1980.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of steel wire strand, other than alloy steel, not galvanized, which are stress-relieved and suitable for use in prestressed concrete. During the review period such merchandise was classifiable under Tariff Schedules of the United States Annotated item number 642.1120. Such merchandise is currently classifiable under HTS item number 7312.10.30.15. The TSUSA and HTS item number are provided for convenience and Customs purposes. The written description remains dispositive. The review covers one exporter of Japanese strand to the United States and consecutive periods from April 1, 1978 through November 30, 1985.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from Mitsui & Co., Ltd. and Mitsui & Co., (U.S.A.), Inc. (collectively Mitsui), the respondents.

Comment 1: Mitsui argues that the Department's use of best information available is unwarranted. Mitsui notes that the Department's normal practice in situations involving trading companies is to use the price from the manufacturer to the trading company (in this case, Mitsui Japan) as the basis of U.S. price (*i.e.*, purchase price) when, as is the case here, the manufacturer knows that the merchandise is destined for the United States. Mitsui argues that the Department would not have used Mitsui USA's reseller data had the Department determined that Mitsui Japan resold strand in the United States at a net price (Mitsui USA's resale price less its U.S. selling expenses) above the price from the Japanese manufacturer to Mitsui Japan. Mitsui contends that the Department already possesses the data it would normally use to calculate margins for Mitsui.

Acknowledging that its original computer tape lacked adequate data for the first two periods, Mitsui submitted a revised computer tape following publication of the preliminary results which Mitsui contends corrected the deficiencies in its original computer submission. Mitsui notes that the Department has already published a preliminary results of review for all manufacturer/exporter combinations involving Mitsui for the first two periods (43 FR 21909, May 20, 1982). Thus, Mitsui argues that the reseller data submitted by Mitsui on computer tape constitutes "clarifying" data or "verification exhibits," data which the Department normally will accept after the publication of the preliminary results. Mitsui urges the Department to use the second computer tape to analyze the first two periods.

Department's position: Mitsui is correct that we would normally rely on the price from the manufacturers to the trading company to analyze these sales. However, Mitsui USA pled guilty in 1982 to Customs fraud, acknowledging that, among other things, it engaged in various illegal practices to circumvent the antidumping finding on Japanese strand. This required that we review Mitsui USA's sales separately. We initiated this review on June 7, 1987 (52 FR 25063). The publication of the earlier preliminary results notice has no relevance to this review.

For this review, we had to determine whether or not, or to what extent, Mitsui USA resold strand in the United States during the review periods at a net price below the price from the Japanese

manufacturers to Mitsui Japan. We were unable to make this determination.

We required that Mitsui provide a transactional database that clearly tied resales of Mitsui USA to purchases from the manufacturer. Mitsui provided an inadequate response to our request for reseller information. Mitsui did not explain how the invoices from Mitsui Japan to Mitsui USA (and the strand prices shown on these invoices) related to the later resales of strand from Mitsui USA to Mitsui's U.S. customers. This deficiency existed for many of Mitsui's first period (April 1, 1978 through March 31, 1979) and second period (April 1, 1979 through November 30, 1980) sales. Such information was also lacking on certain third period (December 1, 1980 through November 30, 1981) and fourth period (December 1, 1981 through November 30, 1982) sales. Additionally, Mitsui did not provide the U.S. selling prices for many of its first and second period and for some of its third and fourth period sales. Also, for all five periods, Mitsui failed to provide various data, including the date of payment from Mitsui's U.S. customers. Finally, we note that Mitsui's original computer tape was untimely submitted, despite our having given the company a reasonable period of time (approximately three months, including extensions) to submit it. Mitsui submitted its second computer tape after we published our preliminary results, and we do not accept submissions following publication of our preliminary results. Mitsui's second computer tape does not constitute verification exhibits or clarifying data, but rather factual data essential to our analysis of Mitsui's sales.

Comment 2: Mitsui argues that the Department "misread" the computer tape that it submitted concerning Mitsui USA's resales of strand to its U.S. customers. Mitsui argues that much of the information that the Department considers to be missing is actually redundant information that is shown elsewhere on Mitsui's computer tape, particularly with regard to periods three, four and five.

Department's position: We disagree. Mitsui did not submit its data in a usable format. (See the Department's response to Comment 1.)

Comment 3: Mitsui notes that the Department reviewed five consecutive periods as a single administrative review. Mitsui argues that the Department should evaluate each review period individually. Specifically, Mitsui contends that the Department should use the best information available only for those periods for which the Department found Mitsui's computer tape to be deficient, *i.e.*, for the first two periods.

Department's position: We reviewed each period separately. For the reasons outlined in our response to Comments 1 and 2, our analysis of Mitsui's computer tape and response indicates that they were deficient for each of the five periods covered in this review. We used as best information available the highest rate from the fair value investigation. Since our analysis resulted in the same rate for all periods, we combined the periods into one review.

Comment 4: Mitsui argues that, if the Department chooses to use the best information available, it should use either the highest rate for a producer during the review period (0.29%) or, alternatively, the highest rate ever used in this case for a trading company (4.5%) rather than the highest fair value rate, which is based on information that is out of date. Mitsui also contends that, because the best information rate chosen for Mitsui is highly punitive, the Department has treated Mitsui unfairly in this review.

Response: We disagree. In deciding what to use as best information available, the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information or otherwise impedes the proceeding (19 CFR 353.37(b)). Thus, the Department may determine on a case-by-case basis what is the best information available. In this case we used the highest fair value rate in view of Mitsui's repeated failure to furnish necessary information in a timely manner and in the form required. See the Department's response to Comment 1.

Final Results of Review

Based on our analysis of the comments received, the final results of review are unchanged from those presented in the preliminary results of review. We determine the margin for Mitsui to be 15.80 percent for each of the consecutive periods from April 1, 1978 through November 30, 1985.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Further, as provided for by section 751(a)(1) of the Tariff Act, the Department shall require of Mitsui a cash deposit of estimated antidumping duties based on the above rate. For any shipments from the remaining manufacturers and exporters not covered by this review, the cash deposit will continue to be at the latest rate applicable for those firms (53 FR 9787, March 25, 1988). For any entries of this merchandise by a new firm whose first shipment occurred after November 30 1986, the cash deposit will continue to be zero percent. These cash deposit requirements are effective for all shipments of Japanese strand, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: October 30, 1990.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-26332 Filed 11-6-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Western Pacific Crustacean Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice that the Western Pacific Fishery Management Council intends to develop a limited access program for the Northwestern Hawaiian Islands lobster fishery.

SUMMARY: NOAA issues this notice that the Western Pacific Regional Fishery Management Council (Council) decided on September 28, 1990, to develop a limited access program for the lobster fishery in the Northwestern Hawaiian Islands (NWHI) and intends to discuss the plan at its February meeting. The date and location of the Council meeting will be announced. The previously announced control date of August 8, 1985 (51 FR 7309, March 3, 1986), may be used as a criterion for eligibility to participate in the fishery, although the limited access program under development may use historical participation in the fishery as well as other factors in establishing effort and access limitation. The purpose of this notice is to inform the public of the possibility of action by the Council. Fishermen or vessel owners entering the fishery should be particularly alert to the possibility that their future participation in the fishery may be limited or denied under the limited access program under development.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, Suite 1405, 1164 Bishop Street, Honolulu, Hawaii 96813, (800) 523-1368 or E. Charles Fullerton, Regional Director, Southwest Region, NMFS, (213) 514-6196.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP) was developed by the Council and implemented under the authority of the Magnuson Fishery Conservation and Management Act. On August 8, 1985, the Council determined that the existing vessels in the NWHI lobster fishery had sufficient capacity to harvest the optimum yield and adopted that date as a control date. Anyone who entered the fishery after that date cannot be assured of future participation if the Council develops, and the Secretary of Commerce implements, a regime that limits the number of participants in the fishery. The Council also stated that alternative ways to establish limited access and to control effort for the fishery should be considered.

No plan was implemented, and the fishery remained stable until recently. However, new concerns from the fishing industry about decreasing catches and size of lobsters have been supported by field research and by the review of logbooks and processor records by the NMFS Honolulu Laboratory. The Council has received testimony that the fishery has suffered from a recruitment failure, and that management measures are needed to ensure future productivity of the stocks.

The Council and NMFS intend to discourage speculative entry into the NWHI lobster fishery while potential management approaches are being developed by the Council to control access to the fishery. While the Council is deciding whether to limit access and/or reduce effort, some fishermen who do not currently fish for lobster in the NWHI, and have never done so, may decide to enter the fishery only to establish a record of commercial lobster landings. This announcement reiterates that the August 8, 1985 control date may be used to determine historical or traditional participation in the NWHI lobster fishery. This does not commit the Council or the Secretary of Commerce to any particular management action for entry to the lobster fishery. Fishermen are not promised future eligibility regardless of when they entered the fishery or the intensity of their participation before or after the control date. Fishermen entering the fishery are notified that their future participation in the fishery may be limited or denied. The Council also may choose to give variably weighted consideration to fishermen in the fishery before and after the control date. The Council also may eventually decide to take no further action to manage the fishery through license limitations.

Persons interested in this subject should contact the Council at the above address for information on its next meeting.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 31, 1990

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90-26250 Filed 11-6-90; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will meet on November 13-16, 1990, at the Seattle Airport Hilton, 17620 Pacific Highway South, Seattle, WA. Except as noted below, the meetings are open to the public.

The Council will begin the meeting on November 13 at 1 p.m., in closed session (not open to the public) to discuss litigation and personnel matters. The public session will start at 2:30 p.m., to discuss administrative matter and anchovy fishery management issues. The Council is expected to adopt Amendment #8 to the Anchovy Fishery Management Plan (FMP) for submission for Federal review. Amendment #8 defines overfishing, provides for a small reduction fishery at low levels of spawning biomass, and considers habitat and vessel safety issues.

The Council will reconvene the meeting on November 14 at 8:00 a.m., to discuss salmon fishery management issues and habitat matters. Salmon issues include: (1) The 1991 preseason schedule/process; (2) adoption of Amendment #10 to the Salmon FMP; (3) consideration of measures to protect the Sacramento River winter chinook; (4) the status of Columbia River endangered species petitions; (5) a policy on weather-related adjustments to management measures; (6) review of possible changes to estimation procedures, and (7) the scoping process for future Salmon FMP amendments. Amendment #10 to the Salmon FMP includes four issues: (a) achievement of recreational season duration goals between Cape Falcon and Humbug Mountain; (b) modification of the Klamath River fall chinook salmon spawning escapement goal; (c) modification of criteria guiding the non-treaty catch allocation north of Cape Falcon, and (d) a definition for overfishing.

The Council will accept public comments on issues not on its agenda on November 14 at 4 p.m.

The Council will continue its meeting on November 15 and 16 at 8 a.m., to discuss numerous groundfish fishery management issues, including: (1) Trawl gear regulations; (2) approval of a limited entry plan for public hearings; (3) the status of negotiations between the United States and Canada on Pacific whiting allocation; (4) the status of Federal review of Amendment #4 to the Groundfish FMP; (5) final harvest levels and final management measures for 1991; (6) adoption of offshore processor reporting regulations; (7) an observer plan for domestic offshore processing vessels; and (9) the scoping process for future Groundfish FMP amendments. Regarding 1991 groundfish management, the Council will consider, among other things, special measures for managing rockfish, sablefish, Dover sole, thornyheads and whiting. Individual rockfish species of concern include widow rockfish, yellowtail rockfish, bocaccio, and Pacific ocean perch. The Council also will discuss the need for a jack mackerel FMP covering the entire range of the resource.

The *Scientific and Statistical Committee* will meet on November 13 at 9 a.m., to address scientific issues on the Council's agenda, and will reconvene on November 14 at 8 a.m.

The *Habitat Committee* will meet on November 13 to consider timely and relevant issues affecting fish stocks within the Council's area of jurisdiction

The *Salmon Advisory Subpanel* will meet on November 13 at 1 p.m., to address salmon fishery mnagement issues on the Council's agenda. The *Salmon Technical Team* will meet on November 13 at 1 p.m., to address technical salmon fishery management issues on the Council's agenda.

The *Groundfish Advisory Subpanel* will meet on November 13 at 1:00 p.m., to address groundfish fishery management issues on the Council's agenda, and will reconvene on Novvember 14 at 8 a.m.

The *Groundfish Management Team* will meet on November 14 at 1 p.m., to address groundfish fishery management issues on the Council's agenda.

Detailed agendas for the above meetings will be made available to the public after November 1, 1990. For more information contact Lawrence D. Six, Executive Director, Pacific Fishery

Management Council, 2000 SW. First Avenue, Room 420, Portland, OR 97201; telephone: (503) 326–6352.

Dated: November 1, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–26262 Filed 11–6–90; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Statement of Organization, Practices and Procedures

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

Pursuant to section 302(f)(6) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*, each Regional Fishery Management Council (Council) is responsible for carrying out its functions under the Magnuson Act, in accordance with such uniform standards as are prescribed by the Secretary of Commerce (Secretary). Further, each Council must make available to the public a statement of its organization, practices and procedures (SOPP).

On January 17, 1989, NOAA published in the **Federal Register** (54 FR 1700) a final rule that revised the regulations (50 CFR parts 600, 601, 604, and 605) and guidelines concerning the operation of the Councils under the Magnuson Act. The final rule, effective February 16, 1989, implemented parts of title 1 of Public Law 98–659, amending the Magnuson Act, and among other things, clarified instructions of the Secretary on other statutory requirements affecting the Councils.

In accordance with the above-mentioned final rule, the Gulf of Mexico Fishery Management Council (Gulf Council) has prepared its revised SOPP originally published September 13, 1977 (42 FR 46014). Interested parties may obtain a copy of the Gulf Council's revised SOPP by contacting Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2115.

Dated: November 2, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–26325 Filed 11–6–90; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Rescission of Import Limit and Guaranteed Access Level for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

November 2, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs cancelling a limit and a guaranteed access level.

EFFECTIVE DATE: November 2, 1990.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Jamaica have agreed to cancel the designated consultation level and guaranteed access level for cotton and man-made fiber textile products in Categories 349/649.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also *see* 54 FR 51218, published on December 13, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 2, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: Effective on November 2, 1990, this directive cancels only those portions of the directive issued to you on December 6, 1989 by the Chairman, Committee for the Implementation of Textile Agreements, that establish an import limit and a guaranteed access level for cotton and man-made fiber textile products in Categories 349/649, produced or manufactured in Jamaica, and assembled in Jamaica, subject to the Special Access Program, and exported to the United States from Jamaica during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–26327 Filed 11–6–90; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Ada Board Meeting

ACTION: Notice of meeting

SUMMARY: A meeting of the Ada Board will be held Friday, December 14, 1990 from 9 a.m. to 5 p.m. at the Naval Ocean Systems Command (NOSC), Cloud Room, San Diego, California.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Carlson, Ada Information Clearinghouse c/o IIT Research Institute, 4600 Forbes Boulevard, Lanham, Maryland, 20706, (703) 685–1477

Dated: November 2, 1990.

Linda Bynum,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense

[FR Doc. 90–26314 Filed 11–6–90; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Closed Meeting; Armed Forces Epidemiological Board

AGENCY: Department of the Army, DoD.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

NAME OF COMMITTEE: Armed Forces Epidemiological Board, DOD.

DATE OF MEETING: November 20, 1990.

TIME: 0900–1100.

PLACE: U.S. Army Medical Research and Development Command, Ft. Detrick, MD.

PROPOSED AGENDA: Infectious disease topics.

This will be a closed meeting as classified information will be discussed and reviewed.

FOR FURTHER INFORMATION CONTACT: CPT W.M. Parsons, Executive Secretary, Armed Forces Epidemiological Board, (703) 756–8018.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 90–26414 Filed 11–6–90; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Government-Owned Inventions; Availability for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $1.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161. Copies also may be ordered by telephone request to (703) 487–4650. Request for copies of patent applications must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

DATE: November 7, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217–5000, telephone (703) 696–4001.

Patent 4,936,187: Wire-Free Arming System for an Aircraft-Delivered Bomb; filed 20 April 1989; patented 26 June 1990.

Patent 4,936,675: Calibrated Bender for Fiber Optic Cable Position Determination; filed 18 May 1989; patented 26 June 1990.

Patent 4,937,584: Adaptive Phase-shifter Nulling Techniques for Large-Aperture Phased Arrays; filed 22 December 1988; patented 26 June 1990.

Patent 4,937,833: Analog Frequency Modulated Laser Using Magnetostriction; filed 13 November 1989; patented 26 June 1990.

Patent 4,938,028: Heat Engine Based on Shape Memory Alloys; filed 1 December 1989; patented 3 July 1990.

Patent 4,938,136: Resonant Acousticmagnetic Minesweeper; filed 19 January 1979; patented 3 July 1990.

Patent 4,939,041: Metal Film Coatings on Amorphous Metallic Alloys; filed 11 July 1989; patented 3 July 1990.

Patent 4,939,473: Tracking Harmonic Notch Filter; filed 20 March 1989; patented 3 July 1990.

Patent 4,939,697: Variable Focusing Sonar; filed 22 October 1968; patented 3 July 1990.

Patent 4,939,699: Sonar System; filed 8 December 1966; patented 3 July 1990.

Patent 4,939,702: Barrier Sonar; filed 19 July 1966; patented 3 July 1990.

Patent 4,939,995: Integrator and Firing Circuit for Proximity Fuzes; filed 11 November 1974; patented 10 July 1990.

Patent 4,940,891: Automated System for Measuring the Strength of Optical Fibers; filed 22 August 1989; patented 10 July 1990.

Patent 4,941,726: Tapered Fiber Amplifier; filed 31 August 1988; patented 17 July 1990.

Patent 4,941,811: Leakage Path Interconnection for Single Screw Mechanisms; filed 21 December 1988; patented 17 July 1990.

Patent 4,942,580: X-ray Laser with Enhanced X-ray Gain Through Photodepopulation; filed 29 September 1989; patented 17 July 1990.

Patent 4,942,975: Container Connector Having a Skewed Installation Configuration; filed 5 July 1989; patented 24 July 1990.

Patent 4,943,151: A Scheiner-principle Vernier Optometer; filed 23 June 1989; patented 25 July 1990.

Patent 4,943,556: Superconducting Neural Network Computer and Sensor Array; filed 30 September 1988; patented 24 July 1990.

Patent 4,945,813: Rapid Fire, Howitzer; filed 29 March 1976; patented 7 August 1990.

Patent 4,946,522: Liquid Monopropellant for a Gun; filed 15 June 1981; patented 7 August 1990.

Patent 4,946,766: Rigid Mullitewhisker Felt and Method of Preparation; filed 5 August 1988; patented 14 August 1990.

Patent 4,949,314: Method and Means for Increasing Echo-ranging-search Rate; filed 16 August 1966; patented 17 August 1990.

Patent 4,949,643: Anti-tilt Buoy Mooring System; filed 11 July 1974; patented 21 August 1990.

Patent 4,949,920: Ablative Cooling of Aerodynamically Heated Radomes; filed 14 December 1989; patented 21 August 1990.

Patent 4,950,076: Alternate Approach for Obtaining Dynamic Range in Monopulse Guidance Systems; filed 14 September 1976; patented 21 August 1990.

Patent 4,950,936: Piezoelectric Sandwich Polymer Transducer; filed 9 March 1981; patented 21 August 1990.

Patent 4,951,056: Collision Detection System; filed 26 June 1989; patented 21 August 1990.

Patent 4,951,058: Method for Remote Detection of Electronic Bomb Fuze; filed 11 September 1989; patented 21 August 1990.

Patent 4,951,239: Artificial Neural Network Implementation; filed 27 October 1988; patented 21 August 1990.

Patent 4,951,271: Flextensional Hydrophone; filed 17 April 1989; patented 21 August 1990.

Patent 4,951,571: Drum Minesweeper; filed 13 February 1975; patented 28 August 1990.

Patent 4,951,644: Pneumatic Launcher; filed 30 April 1984; patented 28 August 1990.

Patent 4,951,727: Low Storage-volume Closure Device for Curved Surface; filed 29 March 1989; patented 28 August 1990.

Patent 4,952,057: Optical Fiber Backscatter Signature Generator; filed 3 May 1989; patented 28 August 1990.

Patent 4,952,255: Extrudable PBX Molding Powder; filed 2 April 1984; patented 28 August 1990.

Patent 4,952,938: Wire Detector; filed 16 January 1976; patented 28 August 1990.

Patent 4,953,143: Multiple Frequency Synthetic Aperture Sonar; filed 12 January 1981; patented 28 August 1990.

Patent Application 416,616: High Pulse Repetition Frequency Radar Early Warning Receiver; filed 4 October 1989.

Patent Application 489,313: Method of Producing Superconducting Materials in Bulk Form; filed 28 February 1990.

Patent Application 502,969: Hold Down Interconnection Stick; filed 2 April 1990.

Patent Application 507,284: Sheave Assembly; filed 2 April 1990.

Patent Application 516,585: Method of Growing Diamond Film on Substrates; filed 30 April 1990.

Patent Application 526,259: Composites Having High Magnetic Permeability; filed 21 May 1990.

Patent Application 527,978: Force Cable Connect; filed 24 May 1990.

Patent Application 531,416: Phase Modulated High Power Optical Sources; filed 31 May 1990.

Patent Application 542,627: Submarmarine Torpedo Tube Collapsible Choke; filed 18 June 1990.

Patent Application 544,294: Flexible Weapon Handling Support System; filed 20 June 1990.

Patent Application 546,595: Toroidal Computer Memory for Serial and Parallel Processors; filed 26 June 1990.

Patent Application 548,397: Synthetic Aperture Active Underwater Imaging System; filed 5 July 1990.

Patent Application 551,103: M-dimensional Computer With M–1 Dimensional Hyperplane Access; filed 9 July 1990.

Patent Application 553,058: Optical Encoding of Imaging Data; filed 16 July 1990.

Patent Application 553,499: Linear Propelling Separator; filed 13 July 1990.

Patent Application 554,324: Multi-sonobuoy Launch Container With Mechanical Actuator; filed 18 July 1990.

Patent Application 554,509: Heat Engine With Corrugated Nitinol Endless Belt; filed 19 July 1990.

Patent Application 560,703: Method of Producing Glass Fiber With Cores of a Different Material; filed 31 July 1990.

Patent Application 564,892: Launching Projectiles With Hydrogen Gas Generated From Titanium-Water Reactions; filed 7 August 1990.

Patent Application 565,781: Use of Separated Material for Magnetoresistance Sensors; filed 13 August 1990.

Patent Application 479,490: Seawater Hydraulic Band Saw; filed 2 February 1990.

Patent Application 517,011: Window Cooling for High Speed Flight; filed 27 April 1990.

Patent Application 548,331: Diffusion Bonding Process for Aluminum and Aluminum Alloys; filed 3 July 1990.

Patent Application 548,852: Emittance Measuring Device for Charged Particle Beams; filed 5 July 1990.
Patent Application 553,035: BIS(2-Fluoro-2,2-Dinitroethyl) Carbonate, Pentafluorosulfanylimino; filed 18 July 1990.
Patent Application 564,894: Launching Projectiles with Hydrogen Gas Generated From Aluminum; filed 6 August 1990.
Patent Application 576,918: High Loss Solid/Liquid Composite; filed 4 September 1990.

Dated: October 29, 1990.

Wayne T. Baucino,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 90-26289 Filed 11-6-90; 8:45 am]

BILLING CODE 3810-AE-M

Co-Exclusive Patent Licenses, Somatogenics International, Inc., and Vestar, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant co-exclusive patent licenses; Somatogenetics International, Inc., and Vestar, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Somatogenetics International, Inc., and to Vestar, Inc., revocable, nonassignable, co-exclusive licenses to practice the Government-owned inventions described in U.S. Patent No. 4,776,991, "Scaled-Up Production of Liposome-Encapsulated Hemoglobin," issued October 11, 1988, and U.S. Patent No. 4,911,929, "Blood Substitute Comprising Liposome-Encapsulated Hemoglobin," issued March 27, 1990.

Anyone wishing to object to the grant of these licenses has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217-5000.

DATES: November 7, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 N. Quincy Street, Arlington, Virginia 22217-5000, telephone (703) 696-4001.

Dated: October 29, 1990.

Wayne T. Baucino,

LT, JAGC, USNR, Alternate Federal Register, Liaison Officer.

[FR Doc. 90-26288 Filed 11-6-90; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP91-259-000]

Equitrans, Inc.; Request Under Blanket Authorization

October 31, 1990.

Take notice that the above referenced company (Applicant) filed in Docket No. CP91-259-000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of a shipper under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice request which is on file with the Commission and open to public inspection.

Information applicable to the transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation date of the 120-day transaction under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for the shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7(c) of the Natural Gas Act.

Lois D. Cashell,

Secretary.

Docket number (date filed)	Applicant	Shipper name	Peak day [1] average, annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related [2] dockets
CP91-259-000	Equitrans, Inc	Coastal Gas Marketing Company	101,208dth 1,000dth 300,000dth	PA, WV	PA, WV	9-1-90, ITS	CP86-553-000, ST91-1016-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

[FR Doc. 90-26270 Filed 11-6-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-15-000]

Mid Louisiana Gas Co.; Proposed Change of Rates

October 31, 1990.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on October 29, 1990, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheet to become effective November 1, 1990:

	Superseding
Seventy-Seventh Revised Sheet No. 3a.	Substitute Seventy-Sixth Revised Sheet No. 3a.

Mid Louisiana states that the purpose of the filing of Seventy-Seventh Revised Sheet No. 3a is to reflect current gas costs for the month of November 1990.

The Tariff Sheet was filed as an Out of Cycle PGA to reflect the latest estimated gas cost to Mid Louisiana from its various suppliers. The majority of these suppliers have contracts with Mid Louisiana which contain pricing provisions which are tied to the spot market price of gas.

Mid Louisiana requests waiver of the notice requirements of § 154.309 of the Commission's regulations and any other waivers necessary to permit the above Tariff Sheet to become effective November 1, 1990, in order to implement the pricing provisions currently in effect

between Mid Louisiana and its gas suppliers.

Any person desiring to be heard or to protest said filing should file a Petition to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before November 7, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this filing have been mailed to Mid Louisiana's Jurisdictional Customers and interested State Commissions and are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26271 Filed 11-6-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-59-001]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

October 31, 1990.

Take notice that Northern Natural Gas Company, Division of Enron Corp. (Northern), on October 18, 1990, tendered for filing changes in its FERC Gas Tariff, Third Revised Volume No. 1 (Substitute Fifty-Second Revised Sheet No. 4B.1.)

Northern states that on August 31, 1990, Northern filed its Quarterly PGA in Docket No. TQ91-1-5-000 pursuant to § 154.308 of the Commission's Regulations. Northern states that in that filing it established its Base Average Commodity Gas Purchased Cost effective October 1, 1990 as required by the Commission's Order Nos. 483 and 483-A.

Northern states that the revised tariff sheet is being resubmitted due to an inadvertent error in the Cumulated PGA Adjustment in the Argus Drilling, Pumping, and Irrigation Commodity column.

Northern is also requesting any waiver of the Commission's Regulations and its tariff provisions as may be required to permit the above tariff sheet to be accepted for filing and made effective retroactive to October 1, 1990.

Northern states that copies of this letter and attachments have been mailed to each of Northern's gas utility customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before November 7, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26272 Filed 11-6-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-185-004]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

October 31, 1990.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on October 25, 1990, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 3-B.7
Second Revised Sheet No. 43-15

The proposed effective date of these revised tariff sheets is November 1, 1990.

Panhandle states that the Commission's Order issued on October 19, 1990 granted Panhandle's request for rehearing of the Commission's Order dated June 30, 1989 which required that Panhandle post its commodity rate for the billing month by the last day of the preceding month. The Commission has found that the lag in the prior month's spot market price and its incorporation in Panhandle's commodity rate formula "may distort the purchasing decisions of Panhandle's sales customers." The Commission has indicated in its October 19, 1990 Order that adoption of Panhandle's proposal, posting its commodity rate by the fifteenth day of the month for the applicable month, "eliminates this potential distortion."

Panhandle states that this filing reflects revised tariff sheets to the General Terms and Conditions of its FERC Gas Tariff revising language in Section 25.1 to state that a tariff sheet will be filed showing the commodity rates for the applicable month by the fifteenth day of the month the rates will be effective. This change is also reflected on First Revised Sheet No. 3-B.7.

Panhandle states that copies of its filing have been served on all parties, affected jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before November 7, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26273 Filed 11-6-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-115-000, et al.]

Texas Gas Transmission Corp.; Informal Settlement Conference

October 31, 1990.

Take notice that an informal settlement conference will be convened in this proceeding on November 15, 1990, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulation (18 CFR 385.214).

For additional information, contact Donald A. Heydt (202) 208-0248 or Joanne Leveque (202) 208-5705.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26274 Filed 11-6-90; 8:45 am]

BILLING CODE 6717-01-M

BEST COPY AVAILABLE

[Docket Nos. CP91-249-000 et al.]

U-T Offshore System; Requests Under Blanket Authorization

October 31, 1990.

Take notice that U-T Offshore System, P.O. Box 1396, Houston, Texas 77251, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89-99-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual mcf	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
Cp91-249-000 (10-26-90)	Louis Dreyfus Energy Corp. (Marketer).	300,000 300,000 109,500,000	OLA	LA	7-1-90, IT, Interruptible.	ST90-4937, 8-25-90
CP91-250-000 (10-26-90)	Northern Illinois Gas Company (LDC).	210,000 210,000 76,650,000	OLA	LA	7-1-90, it, Interruptible.	ST90-4801, 8-23-90
CP91-251-000 (10-26-90)	Bishop Pipeline Corporation (Intrastate Pipeline).	200,000 200,000 73,000,000	OLA	LA	7-1-90, IT, Interruptible.	ST90-4800, 8-29-90
CP91-252-000 (10-26-90)	Phibro Energy, Inc. (Marketer)	400,000 400,000 146,000,000	OLA	LA	7-1-90, IT, Interruptible.	ST90-4914, 8-28-90
CP91-253-000 (10-26-90)	Amoco Gas Company (LDC)	190,000 190,000 69,350,000	OLA	LA	7-1-90, IT, Interruptible.	ST90-4818, 8-28-90
CP21-254-000 (10-29-90)	Total Minatome Corporation (Producer).	200,000 200,000 73,000,000	OLA	LA	7-1-90, IT, Interruptible.	ST90-4808, 8-25-90
CP91-255-000 (10-29-90)	Western Methane Company (Marketer).	400,000 400,000 146,000,000	OLA	LA	7-1-90, IT, Interruptible.	ST90-4817, 8-28-90

[1] Offshore Louisiana is shown as OLA.

[FR Doc. 90-26275 Filed 11-6-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Nuclear Science Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date and time: Thursday, November 29, 1990, from 9 a.m. to 6 p.m.

Place: Holiday Inn, Lewis Room, 550 C Street, SW., Washington, DC.

Contact: Cathy Hanlin, Division of Nuclear Physics, U.S. Department of Energy, Washington, DC 20545, (301) 353-3613.

Purpose of committee: To advise the Department of Energy and the National Science Foundation on the scientific priorities within the field of basic nuclear science research.

Tentative agena:

- Discussions of the NSAC Subcommittee Reports and NSAC Recommendations on Low Energy Heavy Ion Facilities.
- Public comment.
- Other business.

Public Paticipation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact Cathy Hanlin at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on November 2, 1990.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 90-26299 Filed 11-6-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[Docket No. FE C&E 91-03; Certification Notice-71]

Cimarron Chemical, Inc.; Filing Certification of Compliance: Coal Capability of New Electric Powerplant

AGENCY: Office of Fossil Energy, Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended, ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant with out the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987.) In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d)

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Cimarron Chemical, Inc., Houston, TX	10-30-90	Combine Cycle	95	Johnstown, CO.

Amendments to the FUA on May 21, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Copies of this self certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC on November 1st, 1990.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 90-26297 Filed 11-6-90; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 91-02; Certification Notice-70]

Wallabout Cogen Partners; Filing Certification of Compliance: Coal Capability of New Electric Powerplant

AGENCY: Office of Fossil Energy, Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended, ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Wallabout Cogen Partners, Brooklyn, NY	10-12-90	Combine Cylce	220	Brooklyn, NY.

Amendments to the FUA on May 21, 1987, (Public Law 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Copies of this self certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC on November 1st, 1990.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 90-26298 Filed 11-6-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; During the Week of July 30 through August 3, 1990

During the week of July 30 through August 3, 1990, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of

Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Franc Pajek Co., 8/3/90; LFA-0057

On July 10, 1990, the Franc Pajek Company (Pajek) filed a second Motion for Reconsideration of a Decision and Order issued to it on May 22, 1990, by the Office of Hearings and Appeals (OHA) of the DOE. In that Decision, the OHA denied Pajek's Appeal from a denial by the Acting Assistant Manager for Administration of the DOE San Francisco Operations Office of a request for Information which Pajek had filed pursuant to the Freedom of Information Act (FOIA). Specifically, the OHA found that Pajek's request for a copy of all of the bids submitted for the Lawrence Livermore National Laboratory's Labor Only Contract RFQ # 5724900A should be denied because the requested material was confidential and commercial or financial information within the purview of Exemption 4. In considering the Motion for Reconsideration, the DOE found that Pajek had not demonstrated the existence of any changed circumstances or an error that would warrant a change in its Decision to withhold bid information. Accordingly, the DOE denied Pajek's Motion for Reconsideration.

Government Accountability Project, 8/3/90; LRA-0060

The Government Accountability (GAP) filed an Appeal with the Office of Hearings and Appeals (OHA) from a denial by the Richland Operations Office (ROO) of the DOE of a request for documents under the Freedom of Information Act (FOIA). The GAP challenged the adequacy of the ROO's search. In considering the Appeal, the OHA found that the ROO had conducted an adequate search and therefore denied the Appeal.

Remedial Order

A.V. Wright and Associates, Inc., et al., 8/1/90; HRO-0236

A.V. Wright and Associates, Inc. (Associates), Petroex Energy Corp. (Petroex) and Mr. A.V. Wright (Wright) objected to a Proposed Remedial Order (PRO), which the Economic Regulatory Administration (ERA) issued May 18, 1984, to the firms and to Wright individually. In the PRO, the ERA alleged that Associates and Petroex received illegal revenues totalling $2,970,041.96 as a result of selling crude oil at prices in excess of those permitted by 10 CFR 212.186 during the period January 1978 thorugh July 1980. The DOE determined that the firms' and Wright's objections should be denied. The DOE also determined that Wright's personal liability, for the overcharges resulting from violations by Petroex, should be reduced to the percentage of Petroex owned by Wright. In addition, the DOE determined that liability for interest on certain overcharges should be limited to the amount accrued as of the date of Petroex's and Wright's bankruptcy filings. The DOE therefore concluded that the PRO should be issued as a final Remedial Order, as modified by this Decision and Order. The important issues discussed in the Decision and Order include the DOE's authority to impose personal liability on Wright and the ERA's calculations regarding certain overcharges.

Refund Applications

Alpha Beta Stores, Inc., 8/1/90; RF272-23617, RD272-23617

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Alpha Beta Stores, Inc. (Alpha), based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicant, a grocery store chain, demonstrated the volume of its claim by using contemporaneous records and reasonable estimates. The applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. A group of states and territories filed Objections to the Application, contending that the firm was not injured because it was able to pass through to customers any overcharges it suffered due to the elasticities of supply and demand that exist in any industry. The DOE found the States' Objections to be without merit. Accordingly, the DOE granted Alpha a refund of $27,074. The States also filed a Motion for Discovery in connection with the Application which was denied for reasons discussed in earlier Subpart V crude oil Decisions. *See, e.g., Christian Haaland A/S*, 17 DOE ¶ 85,439 (1988).

Burrows Paper Corp., 7/30/90; RF272-49243, RD272-49243

The DOE issued a decision and Order granting a refund from crude oil overcharge funds to Burrows Paper Corporation, based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicant, a manufacturer of paper, demonstrated the volume of its claim by using contemporaneous records. The applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. A group of states and territories filed Objections to the Application, contending that the firm was not injured because it was able to pass through to customers any overcharges it suffered due to the elasticities of supply and demand that exist in any industry. The DOE found the States' Objections to be without merit. Accordingly, the DOE granted Burrows a refund of $19,259. The States also filed a Motion for Discovery in connection with the Application, which was denied for reasons discussed in earlier subpart V crude oil Decisions. *See, e.g., Christian Haaland A/S*, 17 DOE ¶ 85,439 (1988).

Exxon Corp./Dona's Exxon, 7/30/90; RF307-10141

The DOE issued a Supplemental Order in the Exxon Corporation special refund proceeding regarding Dona's Exxon (Dona's) (Case No. RF307-7008). In *Exxon Corp./Slocomb Oil Co.*, Case Nos. RF307-1153 *et al.* (July 13, 1990), Dona's was granted a refund of $303 based on its purchases of Exxon refined petroleum products. However, the Decision was returned as undeliverable, and the DOE was subsequently unable to obtain a correct address for this applicant. The refund granted to Dona's was therefore rescinded.

Exxon Corp./Fuel Power, Inc., Ultra Power Corp., 8/3/90; RF307-9586, RF307-9591

The DOE issued a Decision and Order denying two Applications for Refund. Both Applications were filed based on the alleged but undocumented purchases of Exxon products by Fuel Power and Ultra Power. Applicants in the Exxon proceeding are required to submit documentation of the volume of Exxon product they purchased during the consent order period. Under the circumstances, the applicants were found to be ineligible to receive a refund, and the Applications were denied.

Exxon Corp./Mervyn Robert Fleisher, 8/2/90; RF 307-10142

Mervyn Robert Fleisher filed duplicate refund claims, based on the same purchases, both of which were inadvertently granted in the Exxon Corporation special refund proceeding. In order to preclude the issuance of duplicative refunds, the DOE issued a Supplemental Order rescinding the second refund granted to Fleisher in *Exxon Corp./Slocomb Oil Co.*, Case Nos. RF307-1153, *et al.* (July 13, 1990). The amount of the refund rescinded was $1,305.

Exxon Corp./Thorngrove Trading Center, 8/3/90; RF307-5831

The DOE issued a Decision and Order Concerning an Application for Refund filed by Mr. Bill Lee in the Exxon Corporation special refund proceeding. Mr. Lee's Application was based upon purchases of Exxon refined products by the Thorngrove Trading Center. However, Mr. Lee did not own the Thorngrove Trading Center during the Exxon Consent Order period, and the Application was therefore denied.

Gulf Oil Corp./Crossroads Self Service, 8/1/90; RF300-10639

The DOE issued a Decision and Order granting a refund to Crossroads Self Service (Crossroads) in the Gulf Oil Corporation special refund proceeding. The refund was granted under a presumption of injury. Crossroads purchased Gulf petroleum products from B & M Oil, a reseller of Gulf Petroleum products. In Case No. RF300-9076, B & M Oil demonstrated that it was injured by the alleged Gulf's overcharges and received a refund in the Gulf proceeding. B & M Oil's refund was based on 49.5764 percent of its allocable share. As an indirect purchaser supplied by B & M Oil, Crossroads was eligible to receive a refund of 50.4236 percent of its allocable share. Crossroads received a refund of $626, which represents 50.4236 percent of its allocable share.

Gulf Oil Corp./Doug's Gulf Service, 8/2/90; RF300-10425

The DOE issued a Decision and Order Concerning an Application for Refund submitted on behalf of Doug's Gulf Service by Energy Watch, Inc., In the Gulf Oil Corporation special refund proceeding. Energy Watch, Inc., did not provide sufficient documentation to substantiate the full volume of purchases claimed in the Application. Therefore, the refund granted was based upon the customer's volume of purchase material provided in the Gulf I proceeding. That material, however, is limited to purchases made only through January 1976. The Application was approved using a presumption of injury. The refund granted in this Decision, including accrued interest, is $1,018.

Gulf Oil Corp./Flaugh's Service, et al., 8/3/90; RF300-10918, et al.

The DOE issues a Decision and Order concerning seven Applications for Refund submitted by Akin Energy, Inc. (Akin), on behalf of resellers of Gulf refined petroleum products in the Gulf Oil Corporation special refund proceeding. Akin submitted records to document each refund claim and documented the fact that it was authorized to file claims in the Gulf proceeding on behalf of each of the claimants. Each Application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $12,200.

Gulf Oil Corp./H & L Oil Co., 8/1/90; RF300-5374

The DOE issued a Decision and Order in the Gulf Oil Corporation special refund proceeding concerning an Application for Refund submitted by H & L Oil Company, an indirect purchaser of Gulf refined products. Based on the degree to which H & L's supplier/direct purchaser had been injured, H & L's refund amount was derived by multiplying its allocable share by its direct purchaser's passthrough percentage. The total refund granted in this Decision, which includes both principal and interest, is $323.

James W. Brown, et al., 8/2/90; RF272-68131, et al.

The DOE issued a Decision and Order concerning 25 Applications for Refund filed in the subpart V crude oil special refund proceeding. During the period August 19, 1973, through January 27, 1981, twenty-two of the applicants were resellers of refined petroleum products and the remaining three applicants were engaged in the business of renting and/or leasing motorized vehicles. All 25 applicants are considered resellers for the purposes of the crude oil proceeding. Because none of the applicants demonstrated that they were injured due to crude oil overcharges, they were ineligible for crude oil refund monies. Accordingly, the 25 Applications for Refund were deniend.

Kohler Co., 8/2/90; RF272-29731, RD272-29731

Kohler Co., a manufacturer of plumbing products and supplies, filed an Application for Refund in the subpart V crude oil special refund proceeding. The Applicant certified, based on available records and reasonable estimates, that it purchased 67,512,104 gallons of petroleum products during the crude oil price control period. Rejecting the generalized economic objections filed by a group of States, the DOE found that the end-user presumption of injury should be applied to Kohler Co. The refund was $54,010. A related Motion for Discovery filed by the States was denied.

R.L. White Co. White's Mines, Inc., 8/2/90; RF272-09881, RD272-09881, RF272-78663

R.L. White Co. and White's Mines, Inc., each filed an Application for Refund as an end-user of refined petroleum products in the subpart V crude oil special refund proceeding. Both firms produced and transported crushed stone products and asphaltic concrete paving mixtures. A group of state governments filed statements of objection to the firms' claims, and provided econometric evidence concerning the construction industry as a whole. The DOE determined that the States had failed to produce any convincing evidence to show that either firm had been able to pass on the crude oil overcharges to its customers and found that the States' econometric evidence failed to properly address the individual situations of the applicants. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as R.L. White Co. and White's Mines, Inc., were injured by crude oil overcharges. A portion of the claim filed by R.L. White Co. was for purchases of flux oil. The DOE found that flux oil is comparable to #6 fuel oil and, consequently, is an eligible product for purposes of the crude oil proceeding. The DOE granted R.L. White Co. a refund of $36,477, based on its approved purchases of 45,595,900 gallons of petroleum products, and granted White's Mines, Inc., a refund of $35,229 on its approved purchases of 44,036,573 gallons. A related Motion for Discovery filed by the States concerning the claim of R.L. White Co. was denied.

Sahuaro Petroleum & Asphalt Co., 7/30/90; RF272-31580, RD272-31580

The DOE issued a Decision and Order in the subpart V crude oil special refund proceeding granting a refund to Sahuaro Petroleum & Asphalt Co. based upon the firm's purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The DOE determined that the evidence offered by a group of States was insufficient to rebut the presumption of end-user injury. Therefore, the applicant should receive a refund. A related Motion for Discovery filed by the States was denied. The amount of the refund granted in this Decision, including accrued interest, is $18,746.

Standard Oil Co. (Indiana)/Coline Gasoline Corp/Maine, 8/1/90; RQ251-557, RQ2-558

The State of Maine received permission to use a total of $122,601 of Amoco Corporation and Coline Gasoline Corporation consent order funds for the initiation of a new restitutionary program. Specifically, the State will implement the Home Energy Rating System (HERS) program, providing energy efficiency ratings of home participating in the program and,

ultimately, market-based incentives for energy-efficient housing investments. Maine's second-stage Applications for Refund were approved in full, because the HERS program should reduce the fuel consumption of the State's home owners and buyers.

Standard Oil Co. (Indiana)/Nebraska, 8/3/90; RM251-211

The DOE issued a Decision and Order granting a Motion for Modification filed by the State of Nebraska in the Standard Oil Co. (Indiana) special refund proceeding. Nebraska requested permission to extend the deadline of the Energy Marketing and Media Series Project that the OHA approved in *Standard Oil Company/Nebraska*, 15 DOE 85.043 (1988) until April 30, 1991. The DOE approved the extension, finding that the extension of the program for these additional months would not compromise the DOE requirement that restitution to injured consumers be provided in a timely fashion.

Standard Products Co., Inc. American Fructose-Decatur, Inc., 7/30/90; RF272-8750, RD272-8750, RD 272-8885, RD272-8865

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to Standard Products Company, Inc., and American Fructose-Decatur, Inc., based on their purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicants are both manufacturers of food products and demonstrated the volumes of their purchases with contemporaneous refined petroleum records. Both applicants were end-users of the refined petroleum products they purchased and were therefore presumed injured by the DOE. A group of States and territories filed Objections to the Applications, contending that the firms were not injured because they were able to pass through to customers any overcharges due to the elasticities of supply and demand that exist in any industry. The States also argued that the food and food processing industry in general did not suffer injury becuase food is a necessity that customers will purchase despite increases in price. The DOE found the States' Objections to be without merit. Accordingly, the DOE granted the applicants refunds totalling $82,849. All related Motions for Discovery were denied for reasons discussed in earlier subpart V crude oil Decisions. *See, e.g., Christian Haaland A/S*, 17 DOE ¶ 85,439 (1988).

Texaco Inc./Elks Texaco, 7/30/90; RF321-5043, RF321-6301

The DOE issued a Decision and Order concerning the duplicate Applications for Refund filed by Elks Texaco in the Texaco Inc. subpart V special refund proceeding. The Applications were denied because one of the submissions falsely certified that it was the sole refund claim filed by Elks.

Texaco Inc./M&H Texaco #1 M&H Texaco #2, 8/3/90; RF321-636, RF321-637, RF321-6114, RF321-6115

The DOE issued a Decision and Order denying duplicate Applications for Refund filed by M&H Texaco #1 and #2 in the Texaco Inc. subpart V special refund proceeding. In each of the duplicate filings, the respective applicants falsely certified that it had filed only one refund Application in the Texaco proceeding. In view of these false certifications, the DOE determined that the Applications should be denied.

Texaco Inc./Medcenter Texaco Upshaw Texaco, 8/2/90; RF321-693, RF321-1435

The DOE issued a Decision and Order denying duplicate Applications for Refund filed by the same individual under the names Medcenter Texaco and Upshaw Texaco in the Texaco Inc. subpart V special refund proceeding. Because the initial Applications had been signed prior to the issuance of the Decision and Order implementing the Texaco refund proceeding, the applicant was required to recertify the Applications. The applicant filed two recertifications, each of which stated that it was the sole Application for Refund that had been filed in the Texaco proceeding. In view of these false certifications, the DOE determined that both Applications should be denied.

Texaco Inc./N&L Texaco, 8/3/90; RF321-5906, RF321-6246

The DOE issued a Decision and Order denying two duplicate Applications for Refund filed on behalf of N&L Texaco in the Texaco Inc. Subpart V special refund proceeding. Each of the Applications were based upon the same purchases and both certified that the applicant had filed only one Application in the Texaco proceeding. In view of the false certification, the DOE determined that both applications should be denied.

Texaco Inc./Sadler Texaco, 7/30/90; RF321-468, RF321-4555

The DOE issued a Decision and Order denying duplicate Applications for Refund filed by Sadler Texaco in the Texaco Inc. subpart V special refund proceeding. Both Applications were denied because one of the claims falsely represented that it was the sole Application filed by the firm in the Texaco proceeding.

Texaco Inc./Trade Winds Texaco, 8/1/90; RF321-1419, RF321-6136

The DOE issued a Decision and Order denying duplicate Applications for Refund filed by Trade Winds Texaco in the Texaco Inc. subpart V special refund proceeding. Both Applications were denied, because one of the submissions falsely certified that it was the only refund claim filed by the firm in the Texaco proceeding.

Texaco Inc./ Vince Eastside Texaco Vincent's Texaco, 8/2/90; RF321-1457, RF321-1458

The DOE issued a Decision and Order denying duplicate Applications for Refund filed under the names Vince Eastside Texaco and Vincent's Texaco in the Texaco Inc. subpart V special refund processing. Because both Applications had been signed prior to the issuance of the Decision and Order implementing the Texaco proceeding, the applicant was required to recertify the Applications. Two recertifications were filed, each of which certified that the applicant had filed only one refund Application in the Texaco proceeding. In view of these false certifications, the DOE determined that both Applications should be denied.

United Garage & Service Corp., 8/2/90; RF272-49860

The DOE issued a Decision and Order granting a partial refund from crude oil overcharge funds to United Garage & Service Corp., based upon its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicant, the owner of a fleet of taxicabs, stated in its Application that it purchased 10,098,934 gallons of refined petroleum products during the refund period. The submission was adjusted to eliminate a portion of the claimed purchases, because during June 1977, United became a leasing company and began to resell motor gasoline to its drivers. The DOE determined that after this point United should be considered a retainer and, therefore, is ineligible to receive a refund under the end-user presumption of injury. Accordingly, the DOE granted the applicant a refund of $4,945, based on a reduced gallonage total of 6,180,744.

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Atlantic Richfield Co./ B&B, *et al.*	RF304-0551	7/30/90
Atlantic Richfield Co./Roy Emge Brake Service, *et al.*	RF304-2257	7/30/90
Patrons Oil Co.	RF272-58030	8/3/90
Shell Oil Co./ Graymont Standard, *et al.*	RF315-9480	8/1/90
Shell Oil Co./ Nolen W. Wein, *et al.*	RF315-163	8/1/90
Shell Oil Co./Platt & Son Oil Company, *et al.*	RF315-8460	8/1/90
St. Lukes/ Roosevelt Hospital Center	RF272-78860	8/2/90
Texaco Inc./ Skip's Texaco, *et al.*	RF321-504	7/30/90
The Mount Sinai Medical Center	RF272-25571	8/1/90
Undelee Trucking, Inc., *et al.*	RF272-69005	8/1/90

Dismissals

The following submissions were dismissed:

Name	Case No.
American Cyanamid	RF307-9679
B.F. Goodrich Chemical Co.	RF307-5046
Bahu's Arco #1	RF304-11220
Bert N. Loop's Tune Up	RF321-820
Bordonaro's Exxon	RF307-8956
City of Peoria	RF272-76219
Clayton County Board of Education	RF272-76157
Dick Brown's Texaco	RF321-7044
Dickerson Texaco	RF321-3391
Duane's Skelly Service *et al.* (See Attached List)	RF321-2374
Fleet Transport Co., Inc.	RF309-102
Gaughan Service	RF307-8896
Ideal Forging Corp.	RF272-33496
James Brown	RF304-7479
Jo-Ed Exxon	RF307-8893
Joy Manufacturing Co.	RF307-5862
L&M Cavanaugh	RF303-5056
Lawthorne Brothers, Inc.	RF272-5173
Lincoln Avenue Car Wash	RF304-4286
Los Altos Arco AM/PM	RF304-4966
	RF304-5103
	RF304-5174
	RF304-5419
Memphis City Schools	RF315-9159
Mitchell J. Cavanaugh	RF304-5998
Nelson Oil Co.	RF315-9763
Randolph County Commission	RF272-76341
Rebel Enterprises	RF300-11174
Richard McRae	RF304-8083
Sales & Service Int., Inc.	RF304-4541
Service America Corporation	RF304-7616
Skaggs-Walsh, Inc.	RF307-9539
Tenneco Oil Company	RF304-4580
Tuscaloosa County Board of Education	RF272-76143

RF321-2374
Duane's Skelly Service
c/o Duane D. Myszka
116 Main St.
Marathon, WI 54448

RF321-2375
Marathon Oil Co.
c/o Duane D. Myszka
Chestnut St.
Marathon, WI 54448

RF321-2376
Carl's Texaco
c/o Carl Martin
Bus 71 & 52
Butler, MO 64730

RF321-2393
Alamo Getty Service
c/o James Zinken
410 Highway 10-52
St. Cloud, MN 56304

RF321-2395
Dick's Texaco & Towing Inc.
c/o Richard E. Berg
101 South Broadway
New Uhm, MN 56073

RF321-2404
Old Central Getty
c/o Michael Kittis
P.O. Box 612
Wrightstown, NJ 08562

RF321-2409
Hreno's Circle Service, Inc.
c/o Peter Hreno
38 Orchard Dr.
Clifton, NJ 07012

RF321-2411
Powell Skelgas
c/o John Powell
926 Spruce
Kingman, KS 67068

RF321-2465
Don's Skelly Service
c/o Donald E. Rude
201 East Water St.
Decorah, IA 52101

RF321-2745
Dan's Getty
c/o George P. Conklin
921 Montgomery St.
Jersey City, NJ 07306

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: October 31, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-26300 Filed 11-6-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3857-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In Compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and their expected costs and burdens; where appropriate, they include the actual data collection instruments.

DATES: Comments must be submitted on or before December 7, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Administration and Resources Management

Title: Contractor's Cumulative Claim and Reconciliation (EPA ICR #246.04; OMB #2030-0016). This ICR requests reinstatement of an expired clearance.

Abstract: Contractors, at the completion of a cost-type contract, submit a one-time report of final costs incurred under the contract. Costs reported include direct labor, materials, supplies, equipment, other direct charges, subcontracting, consultant fees, indirect costs and fixed fees. EPA will use this information to reconcile the contractor's costs incurred on cost reimbursable contracts with Agency records.

Burden Statement: The public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Businesses, small business and non-profit institutions who have completed cost-type contracts with the Environmental Protection Agency.

Estimated Number of Respondents: 265.

Estimated Total Annual Burden on Respondents: 132 hours.

Frequency of Collection: Once per contract, at its completion.

Title: Invitation for Bids (IFB) and Request for Proposals (RFP) (EPA ICR #1038.05: OMB # 2030–0007). This ICR requests renewal of the existing clearance.

Abstract: Firms that are interested in providing supplies or services to the Agency supply informaton on previous contracts performed, cost and pricing data, and technical information. This clearance includes new requirements proposed in the Federal Register on February 20, 1990 and October 4, 1990. The February proposal requires more detailed cost and pricing data from respondents. The October proposal requires respondents to provide additional information on the underlying assumptions in support of proposed category and individual labor rates, to propose the full amount of any travel or other direct costs, to propose a standard work year for acquisitions that require a fully dedicated staff and to identify any management or management support costs to be charged as direct costs. Respondents submit reports when the Agency announces a need for supplies or services that they are capable of providing. EPA will use this information to determine which firm's offer is most suited to the Agency's requirements.

Burden Statement: The public reporting burden for this collection of information is estimated to average 269 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Businesses, small businesses and non-profit institutions that are interested in providing services or supplies to the Agency.

Estimated Number of Respondents: 1335.

Estimated Total Annual Burden on Respondents: 359,400 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimates, or any other aspect of these information collections, including suggestions for reducing the burdens, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20530.

OMB Responses to Agency PRA Clearance Requests

EPA ICR # 1037.03; Oral Purchase Orders; was approved 10/10/90; OMB #2030–0007; expires 10/31/93.

EPA ICR # 0370.10; Underground Injection Control Program Information; was approved 09/28/90; OMB # 2040–0042; expires 09/30/91.

Dated: November 1, 1990.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 90–26323 Filed 11–6–90; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00296; FRL–3836–5]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with the peer review of Procymidone. The meeting will be open to the public.

DATES: The meeting will be held on Friday, November 30, 1990, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn-Crowne Plaza, 300 Army Navy Drive, Arlington, VA, (703) 892–4100.

FOR FURTHER INFORMATION CONTACT: By mail: Robert B. Jaeger, –Designated Federal Official, FIFRA Scientific Advisory Panel (H7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 821C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 557–4389/2244.

Copies of documents concerning Procymidone may be obtained by contacting by mail: Public Docket and Freedom of Information Section, Field Operations Division (H7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 244 Bay, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–2805.

SUPPLEMENTARY INFORMATION: The agenda for this meeting includes review of the scientific issues being considered by the Agency in connection with the peer review of Procymidone.

Any member of the public wishing to submit written comments should contact Robert B. Jaeger at the address or the phone number listed under the **FOR FURTHER INFORMATION CONTACT** unit to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advance notice to the Designated Federal Official, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket will be available for inspection in Rm. 244 Bay, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. All statements will be made part of the record and will be taken into consideration by the Panel.

Persons wishing to make oral and/or written statements should notify the Designated Federal Official and submit 10 copies of a summary no later than November 21, 1990, in order to ensure appropriate consideration by the Panel.

Dated: October 31, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 90–26235 Filed 11–6–90; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 90–436; DA 90–1272]

Public Land Mobile Service, Pass Word, Inc.

AGENCY: Federal Communications Commission.

ACTION: Order designating an application for hearing.

SUMMARY: An assignment application was designated for hearing to determine whether the proposed assignee and its principals have the requisite qualifications to be a radio common carrier licensee of the Commission. The Commission had revoked the licenses of the assignee and its President about ten years ago for serious misconduct. The hearing will determine whether the proposed assignee and its President have been rehabilitated sufficiently to hold a common carrier license.

DATES: The Order was released on October 19, 1990. Notices of appearance by those named as parties in the Order are due November 13, 1990. The pre-hearing conference date will be specified in a later order.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mobile Services Division, Common Carrier Bureau (202) 632–6450.

SUPPLEMENTARY INFORMATION: The Order was adopted on September 24, 1990 and released on October 19, 1990. The issues designated are as follows:.

(1) To determine in light of the findings in *Pass Word, Inc., 76* F.C.C.2d 465 (1980), *recon. denied,* 86 F.C.C.2d 437 (1981), *affirmed sub nom. Pass Word, Inc.* v. *FCC,* 673 F.2d 1383 (D.C. Cir. 1982), *cert. denied,* 459 U.S. 840 (1982), and the record to be adduced with respect to the conduct of Pass Word, Inc. and Mr. Rodney J. Bacon since the revocation of their PLMS licenses, whether Pass Word, Inc. and its principals possess the requisite qualifications to be a radio common carrier licensee of this Commission.

(2) To determine in light of the matters presented with respect to the foregoing issues, whether grant of the above- captioned assignment application would serve the public interest, convenience and necessity.

Federal Communications Commission.

Richard M. Firestone,

Chief, Common Carrier Bureau.

[FR Doc. 90–26338 Filed 11–6–90; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–881–DR]

South Carolina; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina (FEMA–881–DR), dated October 22, 1990, and related determinations.

DATED: October 25, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of South Carolina, dated October 22, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 22, 1990:

The counties of Edgefield and Florence for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90–26305 Filed 11–6–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–881–DR]

South Carolina; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina (FEMA–881–DR), dated October 22, 1990, and related determinations.

DATES: October 26, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of South Carolina, dated October 22, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 22, 1990:

The counties of Edgefield and Florence for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90–26306 Filed 11–6–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–881–DR]

South Carolina; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carloina (FEMA–881–DR), dated October 22, 1990, and related determinations.

DATED: October 28, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of South Carolina, dated October 22, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in this declaration of October 22, 1990:

Orangeburg County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90–26037 Filed 11–6–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–881–DR]

South Carolina; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina (FEMA–881–DR), dated October 22, 1990, and related determinations.

DATED: October 28, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective October 28, 1990.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-26308 Filed 11-6-90; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Key Centurion Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 26, 1990.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Key Centurion Bancshares, Inc.*, Charleston, West Virginia; to acquire 100 percent of the voting shares of Spectrum Financial Corporation, Wheeling, West Virginia, and thereby indirectly acquire Security National Bank & Trust Co., Wheeling, West Virginia, and The First National Bank of New Martinsville, New Martinsville, West Virginia.

2. *SPC Acquisition Company*, Wheeling, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Spectrum Financial Corporation, Wheeling, West Virginia, and thereby indirectly acquire Security National Bank & Trust Co., Wheeling, West Virginia, and The First National Bank of New Martinsville, New Martinsville, West Virginia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Waterford Bancshares, Inc.*, Waterford, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Waterford Bank, Waterford, Wisconsin.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Security Corporation*, Duncan, Oklahoma; to acquire 9.14 percent of the voting shares of Charter Bancshares, Inc., Oklahoma City, Oklahoma, and thereby indirectly acquire Charter National Bank, Oklahoma City, Oklahoma.

2. *Security Corporation*, Duncan, Oklahoma; to acquire 100 percent of the voting shares of Exchange Financial Corporation, Ardmore, Oklahoma, and thereby indirectly acquire Exchange National Corporation, Ardmore, Oklahoma, and Exchange National Bank & Trust Co., Ardmore, Oklahoma.

3. *Security Corporation*, Duncan, Oklahoma; to merge with Security Exchange Bancorp, Inc., Duncan, Oklahoma, and thereby indirectly acquire American National Bank of Duncan, Duncan, Oklahoma; Charter Bancshares, Inc., Oklahoma City, Oklahoma, and thereby indrectly acquire Charter National Bank, Oklahoma City, Oklahoma; Exchange Financial Corporation, Ardmore, Oklahoma, and thereby indirectly acquire Exchange National Corporation, Ardmore, Oklahoma, and Exchange National Bank and Trust Co., Ardmore, Oklahoma.

Board of Governors of the Federal Reserve System, October 31, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26278 Filed 11-6-90; 8:45 am]

BILLING CODE 6210-01-M

Martinsburg Bancorp, Inc.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any requests for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 1990.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Martinsburg Bancorp, Inc.*, Martinsburg, Missouri; to engage *de novo* in the sale of credit related insurance sold in connection with extensions of credit made by the subsidiary bank and in any insurance agency activity in a bank holding company with total consolidated assets of $50 million or less pursuant to § 225.25(b)(8)(i) and (vi) of the Board's Regulation Y. The activity will be generally within but not limited to a 50 mile radius of Mexico, Missouri.

Board of Governors of the Federal Reserve System, October 31, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26279 Filed 11-6-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 101590 AND 102690

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date terminated
PacifiCorp, Pinnacle West Capital Corporation, Arizona Public Service Company	90-2232	10/15/90
Enron Corp., USX Corporation, TXO Production Corporation	90-2233	10/15/90
Metallgesellschaft AG, Robert A. Hay, Bishop Pipeline Corporation	90-2251	10/15/90
The Columbia Gas System, Inc., The Columbia Gas System, Inc., COLEVE Joint Venture	91-0002	10/15/90
John N. Kapoor, Sutter Health, O.P.T.I.O.N. Care, Inc.	91-0015	10/15/90
President and Fellows of Harvard College, Price Communications Corporation, PriCellular Corporation	91-0019	10/15/90
Huffy Corporation, The Black & Decker Corporation, True Temper Hardware (U.S.)	91-0024	10/15/90
Union Pacific Corporation, Oryx Energy Company, Sun Operating Limited Partnership	90-2197	10/16/90
Western Gas Processors, Ltd., Burlington Resources Inc., El Paso Natural Gas Co.	90-2212	10/16/90
Holderbank Financiere Glaris Ltd., RPM, Inc., Euclid Chemical Company	90-2235	10/16/90
The Interpublic Group of Companies, Inc., The Lowe Group plc, The Lowe Group plc	91-0011	10/16/90
Fimedi S.p.A., The Estate of Marcus T. Barrett, Jr., Barlite, Inc.	90-2172	10/17/90
Vigier Cement Ltd., The Estate of Marcus T. Barrett, Jr., Barlite, Inc.	90-2173	10/17/90
William Olstan, The Upjohn Company, Upjohn HealthCare Services, Inc., Health Care Services	90-2102	10/17/90
Thomas R. Shelton, Hilsdown Holdings, PLC, Breeden Holdings, Inc.	90-2206	10/17/90
Ryder System, Inc., Robert S. Abrams, United Truck Leasing Corporation	90-2210	10/17/90
JWP Inc., Michael S. and Margo M. Gordsky, Harry Gordsky & Co., Inc. and Grodsky Service, Inc.	90-2238	10/17/90
MTM Plc, Ethyl Corporation, Hardwicke Chemical Company	90-2199	10/18/90
Amerada Hess Corporation, Phillips Petroleum Company, Phillips 66 Company	90-2219	10/18/90
Portland General Corporation, Bonneville Pacific Corporation, Bonneville Pacific Corporation	90-2222	10/19/90
Deere & Company, Re Capital Corporation, Re Capital Corporation	90-2228	10/19/90
Amerada Hess Corporation, British Gas PLC, North Sea, Inc.	90-2230	10/19/90
Compagnie Financiere et de Reassurance du Groupe AG, N.V. AMEV, AG 1990 (Nederland) N.V.	90-2260	10/19/90
John R. Lauritzen, Bruncor Inc.**, Diversified Financial Services, Inc.	91-0013	10/19/90
The Estate of James Campbell, Deceased, CMANE-Hyannis Retail Limited Partnership, Hyannes Festival Limited Partnership	91-0017	10/19/90
Permian Health Care, Inc., American Medical Holdings, Inc., New H Arroyo Grande, Inc. and New H Circle City, Inc.	91-0033	10/19/90
Arnold E. Ditri, Equity Holdings Limited, Hedstrom Corporation	91-0036	10/19/90
Alonzo F. and Norris B. Herndon Foundation, Inc., Chicago Metropolitan Mutual Assurance Company, Chicago Metropolitan Mutual Assurance Company	91-0048	10/19/90
First Wachovia Corporation, Arkansas Federal Corporation, Arkansas Federal Savings Bank	90-2223	10/22/90
Follett Corporation, Edward J. Brennan, Jr., Brennan College Service, Inc.	90-2225	10/22/90
Bridge Oil Limited, USX Corporation, TXO Production Corp.	90-2250	10/22/90
Fuqua Industries, Inc., Stillbrooke Corporation, Stillbrooke Corporation	91-0030	10/22/90
Kjell Inge Rokke, Fletcher Challenge Limited, Panpac Corporation	91-0037	10/22/90
Wal-Mart Stores, Inc., R. Drayton McLane, McLane Company, Inc.	91-0043	10/22/90
R. Drayton McLane, Jr., Wal-Mart Stores, Inc., Wal-Mart Stores, Inc.	91-0044	10/22/90
Marmon Holdings, Inc., Metropolitan Milwaukee Association of Commerce, Inc., Credit Bureau of Milwaukee, Incorporated	90-2224	10/23/90
Anders Althin, c/o Althin Medical AB, The Dow Chemical Company, CD Medical, Inc.	91-0007	10/23/90
Tyco Toys, Inc., Stanley Cohen, Playtime Products, Inc. and Playtime Electronics, Ltd.	90-2214	10/24/90
NGP No. I, L.P., Penrod Holding Corporation (Joint Venture), Penrod Holding Corporation (Joint Venture)	90-2221	10/24/90
JUSCO Co., Ltd., Laura Ashley Holdings plc, Revman Industries	90-2234	10/24/90
TIE/Communications, Inc., Bell Atlantic Corporation, Telecommunications Specialists, Inc.	90-2239	10/24/90
Diebold, Incorporated, International Business Machines Corporation, National Cash Register Division	90-2240	10/24/90
The Summit Trust Co. as Trustee U/T/A dated 11/15/89, Penrod Holding Corporation (Joint Venture), Penrod Holding Corporation (Joint Venture)	90-2244	10/24/90
The Summit Trust Co. as Trustee U/T/A dated 11/27/89, Penrod Holding Corporation (Joint Venture), Penrod Holding Corporation (Joint Venture)	90-2245	10/24/90
The Summit Trust Co. as Trustee U/T/A Dated 03/01/90, Penrod Holding Corporation (Joint Venture), Penrod Holding Corporation (Joint Venture)	90-2246	10/24/90

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 101590 AND 102690—Continued

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date terminated
The Summitt Trust Co. as Trustee U/T/A Dated 04/15/90, Penrod Holding Corporation (Joint Venture), Penrod Holding Corporation (Joint Venture)	90-2247	10/24/90
Schering Aktiengesellschaft, Berlin and Bergkamen, Royal Dutch Petroleum Company, Triton Biosciences Inc	90-2257	10/24/90
Ecolab, Inc., Unnamed Joint Venture Corporation, Unnamed Joint Venture Corporation	90-2259	10/24/90
Henkel KGaA, Unnamed Joint Venture Corporation, Unnamed Joint Venture Corporation	91-0027	10/24/90
Henkel, KGaA, Ecolab, Inc., Ecolab, Inc	91-0035	10/24/90
Langenscheidt KG, Maxwell Communications PLC, P. F. Collier, Inc	91-0045	10/24/90
BC Sugar Refinery, Limited, Jannock Limited, 171266 Canada Inc	90-2220	10/26/90
American Express Company, Illinois Central Corporation, Illinois Central Corporation	91-0040	10/26/90
Waste Management, Inc., The Brand Companies, Inc., The Brand Companies, Inc	91-0052	10/26/90
Shearson Lehman Hutton Merchant Banking Portfolio LP, Illinois Central Corporation, Illinois Central Corporation	91-0054	10/26/90
Hall-Houston Offshore (Partnership), Hall-Houston Oil Company (Delaware)-Joint Venture, Hall-Houston Oil Company, (Delaware)-Joint Venture	91-0055	10/26/90
Mr. Serge Varsano, Machado & Co., Inc., Machado, & Co., Inc	91-0067	10/26/90
Conseco, Inc., CalFed Inc., Beneficial Standard Life Insurance Company	91-0078	10/26/90

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-26286 Filed 11-6-90; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. C-3308]

Money Money Money, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California corporation and its officer, that create and distribute television programs commercials for various products, from selling broadcasting, or disseminating the "Government Grants" commercial, which purports to show people how to secure government grants. The consent order also prohibits respondents from making unsubstantiated claims; from using, publishing or referring to any endorsement, unless it reflects the honest opinion of the endorser, in any future advertisements; and from making any commercial that misrepresents that it is an independent program and not a paid commercial. In addition, the consent order required respondents to turn over $175,000 to the FTC to be used to establish a consumer redress fund.

DATES: Complaint and order issued October 2, 1990.[1]

FOR FURTHER INFORMATION CONTACT: Steven Shaffer or Jeffrey Klurfeld, San Francisco Regional Office, Federal Trade Commission, 901 Market St., suite 570, San Francisco, CA. 94103. (415) 744-7920.

SUPPLEMENTARY INFORMATION: On Tuesday, July 3, 1990, there was published in the **Federal Register**, 55 FR 27501, a proposed consent agreement with analysis In the Matter of Money Money Money, Inc., *et al.*, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

(Section 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 90-26285 Filed 11-6-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Notice of Hearing: Reconsideration of Disapproval of Florida State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on December 18, 1990, in Room 512, 101 Marietta Street, Atlanta, Georgia to reconsider our decision to disapprove Florida State Plan Amendment 90-11

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, Suite 110, Security Office Park, 7000 Security Blvd. Baltimore, Maryland 21207, Telephone: (301) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Florida State Plan amendment (SPA) number 90-11.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Florida SPA 90-11 contains a list of Medicaid obstetrical and pediatric payment rates, various assurances pertaining to these payment rates, and physician participation data for the State as a whole. The State also submitted a statement on obstetrical and pediatric reimbursement in a Health Maintenance Organization (HMO). No other data are included.

The issue in this matter is whether SPA 90-11 meets the statutory provisions of section 1926 of the Act. The provisions require that the Secretary determine that the State is in compliance with section 1902(a)(30)(A) of the Act based upon the data submitted by the State.

Section 1926 of the Act as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89), Public Law 101-239, requires that by no later than April 1 of each year (beginning in 1990), States are to submit plan amendments specifying their payment rates for obstetrical practitioner services and pediatric practitioner services. States must also provide specific information to document that those payment rates are sufficient to enlist enough providers such that obstetrical and pediatric services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30)(A) of the Act).

OBRA 89 was passed on December 19, 1989, and HCFA is developing its final policy concerning what is required to determine that the State is in compliance with section 1902(a)(30)(A) of the Act. HCFA has, however, initially determined that for obstetrical and pediatric rate SPA's to be approvable, they must include the following:

1. Payment rates for this year and next year (i.e. 1990 and 1991) for those obstetrical and pediatric services covered under the State plan. Pediatric rates must be specified by procedure and HCFA recommends the same format be followed for obstetrical services.

2. Data that document that payment rates for obstetrical and pediatric services are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area; and

3. Data that document that payment rates to HMOs under 1903(m) of the Act take into account the payment rates specified in number 1 above.

HCFA has also developed several guidelines that, if met by the State, would evidence that the State meets the statutory requirements of section 1926 of the Act. These guidelines are set forth in a draft State Medicaid manual revision dated March 26, 1990.

Based upon HCFA's review of the data submitted, HCFA determined that the Florida amendment does not comply with the statutory requirements of section 1926 of the Act, and, thus, also does not comply with section 1902(a)(30)(A). The State has argued that its submittal meets the statutory requirements of sections 1902(a)(30)(A) and 1926 of the Act under guideline 1 of the draft State Medicaid manual revision. This guideline permits States to document compliance with the statute by submitting data showing that at least 50 percent of obstetrical and pediatric practitioners are full Medicaid participants or that Medicaid participation is at the same rate as Blue Shield participation. The State indicates "51.7 percent of medical doctors in Florida accept Medicaid." HCFA believes what the rate of participation is for obstetrical and pediatric practitioners. However, data are not presented on an appropriate substate geographic basis. Without substate data, HCFA believes it cannot evaluate the possibility of significant variations in access to obstetrical and pediatric practitioners within the State.

The State did submit a statement on obstetrical and pediatric reimbursement in an HMO. However, the material is not contained in the SPA itself; it needs to be in the plan. In addition, it does not say the HMO rate takes into account fee-for-service payments for obstetrical and pediatric services. Therefore, HCFA believes the data are insufficient to enable HCFA to determine compliance with section 1902(a)(30)(A) of the Act, including data related to how rates established for payments to HMOs under 1903(m) of the Act take into account such payment rates. This is required by section 1926 of the Act.

The notice to Florida announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Mr. Gregory L. Coler,
Secretary
Department of Health and Rehabilitative Services, 1317 Winewood Boulevard, Tallahassee, Florida 32399-0700.

Dear Mr. Coler: I am responding to your request for reconsideration of the decision to disapprove Florida State Plan Amendment (SPA) 90-11. The amendment contains a list of Medicaid obsterical and pediatric payment rates, various assurances pertaining to these payment rates, and physician participation data for the State as a whole. The State also submitted a statement on obstetrical and pediatric reimbursement in a Health Maintenance Organization (HMO).

The issue in this matter is whether SPA 90-11 meets the statutory provisions of section 1926 of the Social Security Act (the Act). The provisions require that the Secretary determine that the State is in compliance with section 1902(a)(30)(A) of the Act based upon the data submitted by the State.

I am scheduling a hearing on your request for reconsideration to be held on December 18, 1990, at 10 a.m. in Room 512, 101 Marietta Street, Atlanta, Georgia. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 597-3013.

Sincerely,

Gail R. Wilensky, Ph.D.

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: November 1, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90-26311 Filed 11-6-90; 8:45 am]

BILLING CODE 4120-03-M

Notice of Hearing: Reconsideration of Disapproval of Georgia State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on December 4, 1990, in room 512, 101 Marietta Street, Atlanta, Georgia to reconsider our decision to disapprove Georgia State Plan Amendment 90-23.

Closing Date: Requests to participate in the hearing as a party must be received by the Docket Clerk by November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, Suite 110, Security Office Park, 7000 Security Blvd. Baltimore, Maryland 21207, Telephone: (301) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to

disapprove Georgia State Plan amendment (SPA) number 90-23.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Georgia SPA 90-23 contains an incomplete list of medical obstetrical and pediatric payment rates and data alleging at least 50 percent of obstetrical and pediatric practitioners are full Medicaid participants.

The issue in this matter is whether SPA 90-23 meets the statutory provisions of section 1926 of the Act. Section 1926 requires that the Secretary determine that the State is in compliance with section 1902(a)(30)(A) of the Act based upon the data submitted by the State.

Section 1926 of the Act as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89), Public Law 101-239, requires that, by no later than April 1 of each year (beginning in 1990), States are to submit plan amendments specifying their payment rates for obstetrical practitioner services and pediatric practitioner services. States must also provide specific information to document that those payment rates are sufficient to enlist enough providers such that obstetrical and pediatric services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30)(A) of the Act).

OBRA 89 was passed on December 19, 1989, and HCFA is developing its final policy concerning what is required to determine that the State is in compliance with section 1902(a)(30)(A) of the Act. HCFA has, however, initially determined that for obstetrical and pediatric rate SPA's to be approvable, they must include the following:

1. Payment rates for this year and next year (i.e. 1990 and 1991) for those obstetrical and pediatric services covered under the State plan. Pediatric rates must be specified by procedure and HCFA recommends the same format be followed for obstetrical services.

2. Data that document that payment rates for obstetrical and pediatric services are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area; and

3. Data that document that payment rates to Health Maintenance Organizations under 1903(m) of the Act take into account the payment rates specified in number 1 above.

HCFA has also developed several guidelines that, if met by the State, would evidence that the State meets the statutory requirements of section 1926 of the Act. These guidelines are set forth in a draft State Medicaid manual revision dated March 26, 1990.

Based upon HCFA's review of the data submitted, HCFA determined that the Georgia amendment does not comply with the statutory requirements of section 1926 of the Act, and, thus, also does not comply with section 1902(a)(30)(A). The State argued that it has met the statutory requirements under guideline 1 of the draft State Medicaid manual revision which permits a State to document compliance with the statute by submitting data showing that at least 50 percent of obstetrical and pediatric practitioners are full Medicaid participants or that Medicaid participation is at the same rate as Blue Shield participation. The Sate claims that it exceeds the 50 percent criteria except for providers of obstetrical services in the metropolitan Atlanta area. HCFA believes that the data submitted are insufficient to support a fiding that obstetrical and pediatric services are available to Medicaid recipients at least to the extent such services are available to the general population in the geographic area as required by section 1902(a)(30)(A) of the Act.

The State used ten Health Districts to document access, based on the percentage of Medicaid participating obstetric/pediatric physicians/practitioners to total obstetric/pediatric physicians/practitioners to total obstetric/pediatric practioners. Although the State claims access is met, it fails to explain how these areas are consistent with the geographic areas within which the general population would normally access services. HCFA believes the use of Health Districts is inappropriate because the State's data has not demonstrated that these areas are consistent with the geographic areas within which the general population would normally access services.

The State also submitted an incomplete list of pediatric payment rates. HCFA believes the State needs to provide additional data specifying the payment rates identified as covered as part of the Early and Periodic Screening the Diagnosis and Treatment Program but not in the physician program. Other States have provided this data and it is essential for future data base consistency that all States report under the same procedure codes. Therefore, HCFA believes the State fails to meet section 1926(a)(2) of the Act which requires that "* * * the State submits to the Secretary an amendment to the plan that specifies, by pediatric procedure, the payment rates to be used for such services under the plan * * *."

Georgia does not contract with HMOs, and therefore does not need to provide data concerning HMO payment rates. However, because the fee-for-service payment rates for obstetrical and pediatric services do not meet the requirements of section 1902(a)(30)(A), HCFA disapproved the amendment.

The notice to Georgia announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Mr. Aaron J. Johnson,
Commissioner, Department of Medical Assistance, Floyd Veterans Memorial Building, 2 Martin Luther King, Jr. Drive, SE., Suite 122-C—West Tower, Atlanta, Georgia 30334.

Dear Mr. Johnson:

I am responding to your request for reconsideration of the decision to disapprove Georgia State Plan Amendment (SPA) 90-23. The amendment contains a list of Medicaid obstetrical and pediatric payment rates and data alleging at least 50 percent of obstetrical and pediatric practitioners are full Medicaid participants.

The issue in this matter is whether SPA 90-23 meets the statutory provsions of section 1926 of the Social Security Act (the Act). Section 1926 requires that the Secretary determine that the State is in compliance with section 1902(a)(30)(A) of the Act based upon the data submitted by the State.

I am scheduling a hearing on your request for reconsideration to be held on December 4, 1990, at 10 a.m. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 40 CFR part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 597-3013.

Sincerely,

Gail R. Wilensky,
Administrator.

(Section 1116 of the Social Security Act, (42 U.S.C. section 1316); 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: November 1, 1990.

Gail R. Wilensky,
Administrator, Health Care Financing Administration.

[FR Doc. 90-26312 Filed 11-6-90; 8:45 am]
BILLING CODE 4120-03-M

Notice of Hearing: Reconsideration of Disapproval of Missouri State Plan Amendments (SPAs)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on December 5, 1990 in Room 215, 601 East 12th Street, Kansas City, Missouri to reconsider our decision to disapprove Missouri State Plan Amendments 89-04 and 89-17.

Closing Date: Request to participate in the hearing as a party must be received by the Docket Clerk by November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, Suite 110, Security Office Park, 7000 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 597-3013.

SUPPLEMENTARY INFORMATION: This notice annouces an administrative hearing to reconsider our decision to disapprove Missouri State Plan Amendments (SPAs) 89-04 and 89-17.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested persons or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Missouri SPAs 89-04 and 89-17 define the application of the trend factor adjustment for payment of long-term care facility services for State fiscal years 1989 and 1990. The issue in this matter is whether Missouri SPAs 89-04 and 89-17 violate the statutory requirements of section 1902(a)(13)(A) of the Act.

Section 1902(a)(13)(A) of the Act requires, in part, that the payment for long-term care facility services be made through the use of rates calculated under an approved State plan. The State is also required by this provision to make a finding and provide assurances satisfactory to the Secretary that these rates are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities.

The proposed plan amendments define the application of the trend factor adjustment for State fiscal years 1989 and 1990. Effective January 1, 1989, plan amendment TN 89-04 would define the application of the State fiscal year 1989 trend factor. A trend factor adjustment of two percent of the average per-diem rate paid to all skilled nursing facilities (SNFs), intermediate care facilities (ICFs), and SNF/ICFs on June 1, 1988, would be added to each facility's rate. A trend factor adjustment of one percent of the average per-diem rate paid all ICFs for the mentally retarded (MR) on June 1, 1988, would be added to each facility's rate. Effective July 1, 1989, plan amendment TN 89-17 would define the application of the State fiscal year 1990 trend factor. A trend factor adjustment of one and one-half percent of the average per-diem rate paid all SNFs, ICFs, SNF/ICFs and ICFs/MR on June 1, 1989, would be added to each facility's rate.

The State furnished an assurance statement as required by 42 CFR 447.253(b)(1) that it found the proposed payment rates to be reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers. However, HCFA determined that the assurance is unacceptable and the proposed State plan amendments, transmittal numbers 89-04 and 89-17, are not in accordance with the requirements of section 1902(a)(13)(A) of the Act.

In a letter, dated March 19, 1990, the State concluded that the amount of inflationary increases should not dictate the amount of the trend factor adjustment. Secondly, the State indicated that a 15.5 percent increase in provider participation between January 1987 and December 1989 supports its belief that the rates paid by Missouri are not only adequate, but are attracting an abundance of new providers. HCFA does not believe this argument establishes that the calculation of the rates paid are reasonable and adequate.

The State presented numerical data intended to demonstrate that the rates paid satisfy the statutory standard, taking into account inflation. The State's submission did not include a definition of the term "efficient and economically operated." The data presented by the State indicates that a substantial number of the most efficiently operated facilities do not recover their costs under the proposed amendments.

The notice to Missouri announcing an administrative hearing to reconsider the disapproval of its State plan amendments reads as follows:

Mr. Gary Stangler,
Director, Department of Social Services, Broadway State Office Building, P.O. Box 1527, Jefferson City, Missouri 65102.

Dear Mr. Stangler: I am responding to your request for reconsideration of the decision to disapprove Missouri State Plan Amendments (SPAs) 89-04 and 89-17. The SPAs define the application of the trend factor adjustment for payment of long-term care facility services for State fiscal years 1989 and 1990.

The issue in this matter is whether Missouri SPAs 89-04 and 89-17 violate the statutory requirements of section 1902(a)(13)(A) of the Social Security Act (the Act). Section 1902(a)(13)(A) of the Act requires, in part, that payment for long-term care facility services can be made through the use of rates which the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards.

I am scheduling a hearing on your request to be held on December 5, 1990, at 10 a.m. in room 215, 601 East 12th Street, Kansas City, Missouri. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary

between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 597-3013.

Sincerely,

Gail R. Wilensky,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: November 1, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90-26313 Filed 11-6-90; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

National Institute on Aging; Meeting of the National Commission on Sleep Disorders Research

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Commission on Sleep Disorders Research, National Institute on Aging, November 29-30, 1990 at the Embassy Suites Hotel, Chevy Chase Room 1, 4300 Military Road, NW., Washington, DC 20015.

The meeting will be open to the public from 8:30 a.m. on November 29 to adjournment on November 30. The agenda will include development of plans for future meetings and preparation of the Commission's report. Attendance by the public will be limited to space available.

Interested persons should contact Ms. Gladys Bohler, Secretary, DHHS/NIH/NIA, 9000 Rockville Pike, building 31C, room 5C35, Bethesda, Maryland 20892, 301-496-9350, for a summary of the meeting and a roster of the committee members.

Andrew A. Monjan, Ph.D., M.P.H., Executive Secretary, National Commission on Sleep Disorders Research, National Institute on Aging, 9000 Rockville Pike, Building 31C, Room 5C35, Bethesda, Maryland 20892, 301-496-9350, will provide substantive program information.

Dated: October 31, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-26289 Filed 11-6-90; 8:45 am]

BILLING CODE 4140-01-M

Office of Human Development Services

President's Committee on Mental Retardation; Meeting

AGENCY HOLDING THE MEETING: President's Committee on Mental Retardation, HHS.

TIME AND DATE:

Executive Committee, Sunday, December 2, 1990, 2 p.m.—5 p.m.

Full Committee, December 3-4, 1990, 8:30 a.m.—4:30 p.m.

PLACE:

Ritz-Carlton, Pentagon City, 1250 South Hayes Street, Arlington, Virginia 22202.

STATUS: Meeting are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

MATTERS TO BE CONSIDERED: Reports by members of the Executive Committee of the President's Committee on Mental Retardation (PCMR) will be given. The Committee plans to discuss services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

THE PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons with mental retardation; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect the mentally retarded.

CONTACT PERSON FOR MORE INFORMATION: Sambhu N. Banik, Ph.D., Executive Director, Room 5325—Wilbur J. Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201, (202) 619-0634.

Dated: October 31, 1990.

Sambhu N. Banik,

Executive Director.

[FR Doc. 90-26267 Filed 11-6-90; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Advisory Committee on the Food and Drug Administration; Meeting; Correction

ACTION: Notice of meeting and correction notice.

SUMMARY: The Subcommittee on Foods, Cosmetics, and Veterinary Medicine of the HHS Advisory Committee on the FDA will hold a meeting on Monday, December 10 from 9 a.m. to 5:30 p.m. The meeting is open to the public and will take place in the Humphrey Auditorium on the first floor of the Humphrey Building located at 200 Independence Avenue, SW., Washington, DC, 20201. Public registration will begin at 8 a.m. The meeting will address findings that the Subcommittee intends to make during a meeting of the full Committee scheduled for December 17-18 in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sheryl Rosenthal, Advisory Committee on the Food and Drug Administration, Department of Health and Human Services, room 740-G Humphrey Building, 200 Independence Avenue, SW., Washington, DC, 20201. Telephone number (202) 245-7305.

SUMMARY: The notice announcing the schedule of subcommittee meetings, printed in the August 7th **Federal Register** on page 32153, incorrectly identified the meeting time for the second Human Drugs and Biologics subcommittee meeting.

The Human Drugs and Biologics Subcommittee of the HHS Advisory Committee on the FDA will meet on Thursday, November 8 from 8:30 a.m. through 6:15 p.m. and Friday, November 9 from 8:30 a.m. through noon. The meeting will be held at the Scripps Clinic and Research Foundation at 10666 N. Torrey Pines Road, La Jolla, CA, 92037. Thursday's session will take place in the Valerie Tinker Amphitheater on the second floor of the Scripps Clinic Green Hospital. Friday's session will take place in the Committee Lecture Hall of the Molecular Biology Building. The meeting is open to the public and registration will begin one half hour prior to the beginning of the meeting on each day.

FOR FURTHER INFORMATION CONTACT: Pat Spitzig, Advisory Committee on the Food and Drug Administration, Department of Health and Human Services, room 740-G Humphrey Building, 200 Independence Avenue, SW., Washington, DC, 20201. Telephone number (202) 245-7305.

Dated: October 31, 1990.

Eric M. Katz,

Executive Director, Advisory Committee on the Food and Drug Administration

[FR Doc. 90-26288 Filed 11-6-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-90-938; FR-2915-D-01]

Order of Succession—Acting Assistant Secretary for Administration

AGENCY: Office of the Secretary, HUD.

ACTION: Order of succession—Acting Assistant Secretary for Administration.

SUMMARY: This designation lists the order of officials to serve as Acting Assistant Secretary for Administration during any absence, disability, or vacancy in the position of the Assistant Secretary for Administration.

EFFECTIVE DATE: October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Marie P. Kissick, Director, Office of Administrative and Management Services, Department of Housing and Urban Development, room 5168, 451 7th Street SW., Washington, DC 20410 (202) 708-3123. This is not a toll free number.

SUPPLEMENTARY INFORMATION: This Notice updates the Order of Succession for the Assistant Secretary for Administration. The authorization to act under this Order is subject to the 120 day limitation of the Vacancies Act, 5 U.S.C. 3348, as amended, whereby a vacancy caused by death or resignation of an appointee may be filled temporarily for not more than 120 days.

Accordingly, the Secretary designates as follows:

Section A: Designation

During any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Administration is not available to exercise the powers and perform the duties of the Assistant Secretary, appointees to the positions listed below are authorized to act as Assistant Secretary and exercise all the powers, functions, and duties assigned to or vested in the Assistant Secretary. However, no official shall act as Assistant Secretary until all of the appointees listed before such official's title in this designation are unable to act by reason of absence, disability, or vacancy in office.

1. Deputy Assistant Secretary for Finance and Management
2. Deputy Assistant Secretary for Resource Planning and Operations
3. Deputy Assistant Secretary for Executive Services
4. Director, Office of Budget
5. Director, Office of Finance and Accounting
6. Director, Office of Information Policies and Systems
7. Director, Office of Personnel and Training
8. Director, Office of Procurement and Contracts
9. Director, Office of Administrative and Management Services
10. Director, Office of Management and Quality Assurance
11. Director, Office of Ethics

Section B: Authority to Redesignate

Each head of an organizational unit of the Office of Administration is authorized to designate an employee under his/her supervision to act for him/her by reason of absence, disability, or vacancy in the position of head of the unit, except that no Office Director acting as Assistant Secretary may designate anyone to act in that capacity.

Section C: Supercedure

This Order of Succession supercedes the prior Order of Succession as follows: 47 F.R. 53503 (November 26, 1982) (Docket No. D-82-685)

(Executive Order 11274, 31 FR 5243, 3 CFR 537 (1966-70 Comp.); Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. § 3535(d))

Dated: October 31, 1990.

Jack Kemp,

Secretary.

[FR Doc. 90-26255 Filed 11-6-90; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-060-4351-06]

Coeur d'Alene District, Idaho; Emerald Empire Resource Area Off-Road Vehicle Designations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of off-road vehicle designations.

SUMMARY: Notice is hereby given relating to the use of off-road motorized vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR part 8340. The following described lands under the administration of the Bureau of Land Management (BLM) are designed as either open, limited, or closed for off-road motorized vehicle use.

The area affected by this designation is known as the Emerald Empire Resource Area. This resource area is comprised of 115,273 acres of scattered, forested parcels of BLM administered public lands in the five northern counties (Boundary, Bonner, Kootenai, Benewah, Shoshone) of the Idaho panhandle.

This decision is a result of planning decisions made in the Emerald Empire Management Framework Plan (1981) and subsequent environmental analysis documents. Public involvement was utilized in the formation of these decisions. These decisions become effective upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Mert Lombard, Emerald Empire Area Manager, Coeur d'Alene District Office, 1808 N. 3rd Street, Coeur d'Alene, Idaho 83814, (208) 765-1511.

Dated: October 29, 1990.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 90-26293 Filed 11-6-90; 8:45 am]

BILLING CODE 4310-GG-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 752689

Applicant: San Diego Wild Animal Park, Escondido, CA.

The applicant requests a permit to import one male and three female captive born Asian wild ass (*Equus hemionus onager*) from Zoologischer Garten, Koln, Germany for the purpose of captive propagation.

PRT 752869

Applicant: Peter Sarafin, Roseburg, OH.

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by Mr. A. Rudman, Blaauwkrantz, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Zoological Society of San Diego, San Diego, CA.

PRT 753059

The applicant requests a permit to import a pair of captive born Panamanian jaguarundi (*Felis yagouaroundi panamensis*) from Miguel Romero Antonio Parque Zoologico Barquisimeto, Lara, Venezuela for the purpose of captive propagation.

PRT 753074

Applicant: John R. Albers, Dallas, TX.

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by Mr. D. Parker, Elandsberg Farms, Constantia, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT 753765 & 753785

Applicant: Kevin Gorman, Rochester, NY.

The applicant requests permit to expert red siskins (*Carduelis* (=*Spinus*) *cucullatta*) captive-bred at his facility to Canada and to import captive-bred red siskins from Canada. The birds for import/export will be used in captive-breeding programs to enhance the survival of the species.

PRT 751682

Applicant: San Diego Zoo, San Diego, CA.

The applicant requests a permit to reexport a mountain tapir (*Tapirus pinchaque*) skin to the National Museum "Venado de Oro", Bogota, South America for scientifc research purposes.

PRT 752267

Applicant: Anne Frantzen, Maplewood, MN.

The applicant requests a permit to export/reimport one male captive-born mandrill (*Papio sphinx*) to Canada for exhibit purposes during which, conservation education material would be presented to the public.

PRT 752153

Applicant: Todd M. Steiner, San Francisco, CA.

The applicant requests a permit to take (capture, mark, measure, weigh, and palpate) San Francisco garter snakes (*Thamnophis sirtalis tetrataenia*) in the area of Sharp Park, Pacifica, California for the purpose of scientific research and enhancement of survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 430, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, 4401 N. Fairfax Drive, Room 432, Arlington, VA 22203.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: November 1, 1990.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 90-26276 Filed 11-6-90; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF JUSTICE

St. Thomas Paving Co., Ltd.; Lodging of Settlement Agreement

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in In re: *United States* v. *St. Thomas Paving Co., Ltd.*, Case No. 398-00015 (Bankr. D.V.I.), has been lodged with the United States Bankruptcy Court for the Virgin Islands, Division of St. Thomas and St. John on October 30, 1990.

The United States filed a complaint against the St. Thomas Paving Co., Ltd. ("Debtor") alleging violations of the Clean Air Act ("Act"), 42 U.S.C. 7401 *et seq.*, and the Virgin Islands State Implementation Plan ("SIP") in connection with the ownership and operation of an asphalt plant. On November 22, 1988, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On April 6, 1990, the United States filed a proof of claim against the Debtor in bankruptcy court. The proposed settlement agreement is included in the Debtor's Plan of Reogranization. The settlement agreement provides for payment to the United States of a $10,000 penalty plus interest over a six year period. In addition, the Debtor agrees that it will be enjoined from ever owning or operating any type of asphalt plant in the future.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed settlement agreement. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *St. Thomas Paving Co., Ltd*, D.J. Ref. 90-5-2-1-1069.

The proposed settlement agreement may be examined at the office of the United States Attorney, District of the Virgin Islands, Federal Building & Courthouse, room 260, Charlotte Amalie, St. Thomas, Virgin Islands, 00801; at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10278; and at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004. A copy of the proposed settlement agreement and attachments can be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $2.25 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 90-26926 Filed 11-6-90; 8:45 am]

BILLING CODE 4410-10-M

Antitrust Division

Amoco Production Co.; National Cooperative Research Notification

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), on October 10, 1990, Amoco Production Company ("Amoco") filed a written notification on behalf of Amoco and ARCO Oil and Gas Company ("ARCO"), a division of the Atlantic Richfield Company, simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties to the venture, and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture and its general areas of planned activities are given below.

The parties to the venture are:

Amoco Production Company, a Delaware corporation, having a place of business at 4502 East 41st Street, Tulsa, OK 74135;

ARCO Oil and Gas Company, a Delaware corporation, having a place of business at 2300 West Plano Parkway, Plano, TX 75075.

Amoco and ARCO entered into an agreement effective September 1, 1990 to collaborate on research to better understand the applications of neural network technology to geophysical exploration.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-26291 Filed 11-6-90; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Proposed Information Collection Requests

AGENCY: White House Conference on Library and Information Services (WHCLIS), National Commission on Libraries and Information Science (NCLIS).

ACTION: Notice of proposed information collection requests.

SUMMARY: The Chairman, NCLIS invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 15, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs. Attention: Daniel Chenok, Desk Officer, Department of Education, Office of Management and Budget, 728 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503.

Requests for copies of the proposed information collection requests should be addressed to Mary Alice Hedge Reszetar, Associate Executive Director, National Commission on Libraries and Information Science, 1111 18th Street NW., suite 310, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Frank A. Stevens, 202-254-3100.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform statutory obligations.

The Executive Director, WHCLIS publishes this notice containing a proposed information collection request prior to submission of this request to OMB. The proposed information collection contains the following:

(1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary Alice Hedge Reszetar at the address specified above.

White House Conference on Library and Information Services

Type of review: Reinstatement.
Title: Memorandum of Agreement.
Frequency: One time.
Affected public: Palau and Micronesia.
Reporting burden:
Responses: 2.
Burden hours: 0.4.
Recordkeeping burden:
Recordkeeper: 0.
Burden hours: 0.
Abstract: This Memorandum of Agreement will be used by Palau and Micronesia to allow them to receive funds and participate in the White House Conference on Library and Information Services, July 9-13, 1991, in Washington, DC as set forth in Public Law 100-382.

Dated: November 2, 1990.

Charles E. Reid,

Chairman, National Commission on Libraries and Information Science.

[FR Doc. 90-26280 Filed 11-6-90; 8:45 am]

BILLING CODE 7527-01-M

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee; Closed Meeting

A meeting of the National Security Telecommunications Advisory Committee (NSTAC) will be held on December 13, 1990. The business session of the meeting will be held at the Department of State. An executive session of the meeting will be held at the Old Executive Office Building.

Business Session

—Call to Order
—Welcome from Department of State
—Review of Ongoing NSTAC Activities
—Report from Industry
—Keynote Speech
—Review of Government Activities
—Closing Remarks
—Adjournment

Executive Session

—Call to Order
—Discussion with Government Officials
—NSTAC Closing Discussion
—Adjournment

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (703) 692-9274 or write the Manager, National Communications System, Washington, DC 20305-2010.

Terrance N. Danner,

Captain, USN, Assistant Manager, NCS Joint Secretariat.

[FR Doc. 90-26247 Filed 11-6-90; 8:45 am]

BILLING CODE 3810-05-M

NUCLEAR REGULATORY COMMISSION

Public Service Electric and Gas Co.; Environmental Assessment and Finding of No Significant Impact

[Docket Nos. 50-272 and 50-311]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to an exemption from the requirements of 10 CFR Part 50, Appendix R, Section III.G.2., to the Public Service and Gas Company, et. al. (the licensee), for the Salem Generating Station, Units 1 and 2, located at the licensee's site in Salem County, New Jersey.

Environmental Assessment

Identification of Proposed Action

The proposed action would amend the exemption issued on July 20, 1989 that approved the use of a localized automatic fire suppression system in the containment subarea (identified as 1 & 2 FA-RC-78) housing the pressurizer and Panel 335 at the 100 feet elevation (licensee's Exemption Request No. 12). This exemption was in lieu of separating redundant cables and equipment by at least 20 feet of horizontal distance, free of intervening combustibles or separation by a radiant energy shield as required by section III.G.2 of appendix R to 10 CFR part 50. This amendment would allow the use of a localized, water-based fire suppression system with remote-manual actuation. In addition, the use of a fire detection system to actuate the fire suppression system would no longer be necessary. Smoke detectors would be installed in the area around Panel 335 that would alarm in the control room. The Commission's technical evaluation of this request will be published in a safety evaluation to be issued concurrently with the exemption. This action is in response to the licensee's application for an amendment to the exemption dated March 23, 1990, and supplemental letter dated September 13, 1990.

The Need for the Proposed Action

The proposed exemption amendment is needed because the use of a fully

automatic fire suppression system is unnecessarily restrictive. The licensee has reviewed the suppression agents available and has concluded that a localized, water based fire suppression system requiring remote manual action will provide acceptable protection for this area. This system provides a practical means to meet the intent of appendix R.

Environmental Impacts of the Proposed Action

The proposed exemption amendment will provide a degree of fire protection that is equivalent to that required by 10 CFR part 50, appendix R for the affected area of the plant such that there is no increase in the risk of fires at this facility. Consequently, the proposed exemption amendment will not: Increase the probability of fires; increase the post-fire radiological releases beyond those previously determined nor otherwise affect radiological plant effluents; nor increase the probability or consequences of any reactor accident. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption amendment.

With regard to potential non-radiological impacts, the proposed exemption amendment involves features located entirely within the restricted area as defined in 10 CFR part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no measurable environmental impacts associated with the proposed exemption amendment, any alternatives to the exemption amendment will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption amendment. Such action would not reduce the environmental impacts of Salem Units 1 and 2 operations and would require additional time and resources to bring the facility into compliance with the original exemption with no significant enhancement of the fire protection capability.

Alternative Use of Resources

The action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Salem Generating Station, Units 1 and 2," dated April 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request that supports the proposed exemption amendment. The NRC staff did not consult other agencies or persons.

Findings of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed exemption amendment will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption amendment.

For further details with respect to the proposed action, see the licensee's request for the exemption amendment dated March 23, 1990, and the supplement dated September 13, 1990, which are available for public inspection at the Commission's Public Document Room 2120 L Street, NW., Washington, DC and at the Salem Free County Public Library, 112 W. Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 31st day of October 1990.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-26301 Filed 11-6-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-482]

Wolf Creek Nuclear Operating Corp.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR part 55 to the Wolf Creek Nuclear Operating Corporation (WCNOC) (the licensee), for the Wolf Creek Generating Station located in Coffey County, Kansas.

Environmental Assessment

Identification of Proposed Action

The exemption would grant relief from 10 CFR 55.59(a), which requires that a requalification program for operator licensees and senior operator licensees be conducted for a continuous period not to exceed 24 months in duration and that an annual requalification examination be administered. The licensee has requested an exemption which would extend the 24-month requalification program cycle from October 1990 to December 1990.

The licensee's request for exemption and the bases therefore are contained in a letter dated September 18, 1990.

The Need for the Proposed Action

The proposed exemption is from 10 CFR 55.59(a), which requires that a requalification program for operator licensees and senior operator licensees be conducted for a continuous period not to exceed 24 months in duration. In addition, an annual requalification examination must be passed. The licensee requested an exemption to extend the 24-month requalification cycle from October 1990 to December 1990, for the purpose of aligning the Wolf Creek program with the new NRC national examination schedule. This one-time exemption would result in a permanent adjustment to the 24-month requalification cycle and the annual requalification examination schedule.

Environmental Impacts of the Proposed Action

The proposed exemption would align the Wolf Creek requalification cycle with the NRC national examination schedule. This exemption will not increase the risk of facility accidents. Thus, post-accident radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect the quantity of radiological plant effluents, nor result in any significant increase in occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. Such action would not reduce the environmental impact of the Wolf Creek Generating Station operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in

the Final Environmental Statement related to operation of the Wolf Creek Generating Station dated June 1982.

Agencies and Persons Consulted

The Commission's staff has reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated September 18, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelam Building, 2120 L Street, NW., Washington, DC, at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801, and at the Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 31st day of October 1990.

For the Nuclear Regulatory Commission.

James C. Linville,

Acting Director, Project Directorate IV-2, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-26302 Filed 11-6-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-528, 50-529 and 50-530]

Arizona Public Service Co., et al., Palo Verde Nuclear Generating Station; Issuance of Partial Director's Decision (DD-90-7)

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Partial Director's Decision concerning a Petition dated May 22, 1990, filed by Mr. David K. Colapinto, Esq. on behalf of Mrs. Linda E. Mitchell. The Petition alleged safety violations in the area of fire protection at the Palo Verde Nuclear Generating Station (PVNGS) of the Arizona Public Service Company (APS). The Petition also presented numerous allegations that APS and Nuclear Regulatory Commission (NRC) personnel were involved in wrongdoing with regard to possible violations of fire protection, and particularly emergency lighting, requirements at PVNGS.

On June 21, 1990, the Director, Office of Nuclear Reactor Regulation, acknowledged receipt of the Petition. The Director informed Mr. Colapinto that the Petition would be treated under 10 CFR 2.206 of the Commission's regulations and that appropriate action would be taken in a reasonable time.

The Director of the Office of Nuclear Reactor Regulation has now determined that the portion of the Petitioner's request dealing with safety violations should be denied for the reasons set forth in the "Partial Director's Decision Under 10 CFR 2.206" (DD-90-7), which is available for inspection and copying in the Commission's Public Document Room, Gelman Building, 2121 L Street, NW., Washington, DC 20555 and at the local public document room located at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

A copy of the Partial Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the Partial Decision will become the final action of the Commission 25 days after issuance unless the Commission on its own motion institutes review of the Partial Decision within that time.

Dated at Rockville, Maryland, this 31st day of October 1990.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 90-26304 Filed 11-6-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

Boston Edison Co., (Pilgrim Nuclear Power Station); Exemption

I.

The Boston Edison Company (BECo) is the holder of Operating License No. DPR-35 which authorizes the operation of Pilgrim Nuclear Power Station (PNPS). The license provides, among other things, that the licensees are subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility is a boiling water reactor at the licensee's site located in Plymouth County, Massachusetts.

II.

By letter dated July 12, 1990 the licensee requested an exemption under 10 CFR 55.11 from 10 CFR 55.59(a) in order to extend the Pilgrim Nuclear Power Station requalification examination schedule from March 1992 to May 1992 and the end of the 24 month requalification program cycle from March 1992 to May 1992. Currently the requalification testing is required by March 1992 and the 24 month requalification program cycle ends in March 1992. The exemption was requested to align the Pilgrim Station with the new NRC national examination schedule. Generic Letter 90-07, "Operator Licensing National Examination Schedule" provided an examination schedule for all licensees to equalize NRC examiners workload due to limited NRC resources. A November and May examination schedule was established for Pilgrim. This one-time exemption will result in a permanent adjustment to the 24 month requalification cycle and the requalification examination schedule.

III.

Pursuant to 10 CFR 55.11, "The Commission may, upon application by an interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part (10 CFR Part 55), as it determines are authorized by law, and will not endanger life or property and are otherwise in the public interest."

The proposed exemption would align the Pilgrim requalification cycle and the requalification examination schedule with the NRC national examination schedule. This exemption will not increase the risk of facility accidents. Thus, post-accident radiological release will not be greater than previously determined, nor does the proposed exemption otherwise affect the quantity of radiological plant effluents, nor result in any significant increase in occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 55.11, that an exemption as described in section III is authorized by law, will not endanger life or property, and is otherwise in the public interest.

Therefore, the Commission hereby grants the following exemption:

Boston Edison Company is exempt from the requirements of 10 CFR 55.59(a) for a period of March 1992 to May 1992 with respect to the requalification testing examination and for a period of March 1992 to May 1992 with respect to the 24 month requalification program.

BEST COPY AVAILABLE

Pursuant to 10 CFR 51.32 the Commission determined that the granting of this exemption will not have a significant effect on the quality of the human environment (55 FR 38762).

For further details with respect to this action, see the licensee's request dated July 12, 1990, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

This exemption is effective on October 31, 1990.

Dated at Rockville, Maryland this 31st day of October, 1990.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-26303 Filed 11-6-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power & Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-23 issued to Carolina Power & Light Company (the licensee) for operation of H.B. Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina.

The proposed amendment is required as a result of Plant Modification M1005 related to the plant vent system. The licensee states that the modification will: (1) Upgrade the plant vent radiation monitor for particulate iodine and noble gas detection; (2) upgrade the stack flow monitor and incorporate isokinetic sampling of the plant vent effluents; (3) provide new control room indication and recording equipment for the upgraded instrumentation; and (4) permanently divert the condenser air ejector discharge from the atmospheric vent to the plant vent and remove the automatic divert interlock from the condenser air ejector radiation monitor. The proposed amendment also corrects minor typographical errors.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has reviewed the proposed change in accordance with the criteria specified in 10 CFR 50.92 and has determined that the proposed change does not involve a significant hazards consideration for the following reasons:

1. Operation of the facility, in accordance with the proposed amendment, would not involve a significant increase in the probability or consequences of an accident previously analyzed.

Regarding the probability of previously analyzed accidents, the instrumentation changes which required the proposed amendment merely provide effluent accountability. Neither the existing monitors nor the new monitors participate in any accident sequence, therefore, the new monitors cannot increase the probability of any accident previously evaluated. This proposed amendment does not increase the probability of a previously evaluated accident because it upgrades instrumentation designed to follow the course of an accident and thereby reduces the probability of equipment malfunction. This equipment does not perform any control function associated with any analyzed accident.

Regarding the consequences of an accident previously analyzed, the equipment which requires the proposed amendment is not required to function to mitigate the consequences of an accident. Further, eliminating the need to divert condenser discharge from the atmospheric vent to the plant vent on high activity levels eliminates the consequences of equipment malfunction since the condenser air radiation monitor no longer performs a control function. Replacing the two plant vent gas monitors with a single monitor does not increase the consequences of an equipment malfunction since the two monitors do not perform redundant waste gas system isolation functions.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The equipment changes which require the proposed amendment upgrade plant vent monitoring equipment and permanently divert condenser air ejector discharge to the plant vent. The new equipment performs the same function as the existing equipment. No different operating conditions or functions associated with this project are created, therefore, the proposed amendment does not create the possibility of a new or different accident from any accident previously evaluated.

3. Operation of the facility, in accordance with the proposed amendment, would not involve a significant reduction in a margin of safety.

Although the plant vent radiation monitor does not perform any safety related functions to prevent or to mitigate the consequences of any analyzed and unanalyzed accidents, its operation is a Technical Specification item and is required to monitor and assure that plant operation is within limits. The five detectors associated with the replacement plan vent radiation monitoring system have equal or greater equipment performance specifications compared to the existing detectors. The detection of particulate radiation also improves because the new isokinetic sample nozzles have a greater particle collection efficiency. The replacement plant vent radiation monitors are installed in the same location as the existing off line detectors, so there is no significant change in the sample transport tubing. Therefore, there is no significant decrease in a margin of safety.

This effort requires changes to the plant Technical Specifications to correctly identify instrumentation which monitor[s] plant gaseous effluents. The Technical Specifications are also being revised to eliminate the requirements of the condenser evacuation system radiation monitoring equipment. This equipment is no longer a Technical Specification requirement since effluents from this system are discharged to the plant vent and are monitored by the plant vent radiation detection equipment. At present, there are two low range noble gas detectors monitoring the plant vent. One detector provides isolation of the waste gas system on high activity level plus indication and alarm functions. The second detector provides backup indication and alarm functions only. These two low range noble gas detectors are replaced with a single low range gas detector. This single detector provides the control, indication, and alarm functions of the existing two detectors. The new detector incorporates present day technology with highly reliable components for improved performance and operability. Manual sampling of the specific release paths and of the plant vent are required by the operating procedures should the plant vent monitor fail. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a no significant hazards consideration. A notice of proposed finding of no significant hazards determination regarding an earlier application related to this modification was previously published in the **Federal Register** on October 3, 1990 (55 FR 40461). The present application, which supersedes the earlier request is more restrictive on the operation of the facility. The restriction would require that the effluent releases from the plant vent be suspended if the plant vent radiation monitors are inoperable.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 7, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29534. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: (petitioner's name

and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to R.E. Jones, General Counsel, Carolina Power & Light Company P.O. Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 21, 1990, and September 21, 1990, as superseded October 19, 1990, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Dated at Rockville, Maryland, this 31st day of October 1990.

For the Nuclear Regulatory Commission.

Ronnie H. Lo,

Senior Project Manager, Project Directorate II–1, Division of Reactor Projects—II–1, Office of Nuclear Reactor Regulation.

[FR Doc. 90–26309 Filed 11–6–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–368]

Entergy Operations, Inc.; Denial of Amendment To Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Arkansas Power and Light Company, for an amendment to Facility Operating License No. NPF–6 issued to the licensee for operation of the Arkansas Nuclear One, Unit No. 2, located in Russellville, Arkansas. A Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on May 16, 1990 (55 FR 20350).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to revise the power calibration requirements for the Linear Power level, Core Protection Calculator (CPC) delta-T power and the CPC nuclear power signals. In addition a time limit for declaring the channel inoperable would be added to the TS.

The NRC staff has concluded the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by letter dated November 1, 1990.

By December 7, 1990, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to Mr. Nicholas S. Reynolds, attorney for the licensee.

For further details with respect to this action, *see* (1) The application for amendment dated March 2, 1990, and (2) the Commission's letter to the licensee dated November 1, 1990.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801. A copy of item (2) may be obtained upon request addressed to the U.S., Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 1st day of November 1990.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Acting Director, Project Directorate IV–1, Division of Reactor Projects—III, IV, V and Special Projects—Office of Nuclear Reactor Regulation.

[FR Doc. 90–26310 Filed 11–6–90; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency clearance officer: Kenneth A. Fogash, (202) 272–2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, DC 20549.

Extension

File No. 270–124, Form T–4

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for an extension of clearance Form T–4. The form provides a basis for the Commission to exempt certain securities from the Trust Indenture Act of 1939 ("Act") pursuant to section 304(c) of the Act. Form T–4 affects 3 filers for a total of 15 burden hours. The estimated burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of the Commission's rules and forms. Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, Paperwork Reduction Project 3235–0107), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 31, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–26294 Filed 11–6–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–28589; File No. SR–PSE–90–35)

Self-Regulatory Organizations; No Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Listing of Long-Term Index and Equity Options.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 12, 1990, the Pacific Stock Exchange ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to add Rule VI, Section 4(d) to provide for the listing on the Exchange of long-term index and equity options. The proposed rule is set forth below.

Rule VI, Section 4(d).

Unless otherwise provided in the rules of the Exchange, the Exchange may open for trading equity options series that expire twelve (12) to twenty-four (24) months from the time they are opened for trading, and stock index options series that expire twelve (12) to thirty-six (36) months from the time they are opened for trading. The Exchange may open for trading up to four such extended far term expiration months for any index or equity option class. The Exchange rules regarding strike price interval, bid/ask differentials and continuity shall not apply to such series until the time to expiration is less than twelve months for index options, and less than nine months for equity options. When open for trading, trading in such option series shall commence either when there is buying or selling interest, or forty minutes prior to the close of trading for the day, whichever occurs first. Quotations will not be posted for extended far term option series until trading in such series is commenced on the day.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change would permit the Exchange to trade extended far term option series, defined in the proposed rule as equity options series that expire twelve to twenty-four months from the time they are opened for trading, or stock index options series that expire twelve to thirty-six months from the time they are opened for trading. At the time such option series have less than twelve months to expiration, the series will lose their extended far term characterization, and will be traded like any other non-extended far term option contract.

The purpose for the proposed rule change is to add a product for trading at the Exchange that will protect investors by providing them with an additional means to hedge their equity portfolios against long-term market risk. Although other hedging products are in existence, such as financially equivalent futures, the Exchange believes that investor interest is served by providing investors with an additional hedging choice.

The Exchange believes that rules regarding strike price intervals, bid/ask differentials and continuity should not apply to extended far term option series until the time to expiration is less than twelve months for index options, and less than nine months for equity options. The Exchange states that at this time a basis has not been determined for establishing reasonable prices for options that expire twelve or more months from the time they commence trading.[1] In addition, the Exchange believes that proper bid/ask differentials and market continuity will be established due to market makers' general obligations to maintain fair and orderly markets. Moreover, the Exchange states that it intends to monitor regularly trading in such extended far term option series to make certain that the markets are properly maintained.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act because it is based entirely, and without variance, on the existing rules of other self-regulatory organizations.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[2] Specifically, the Commission believes that the proposed rule change is designed to provide investors with additional means to hedge equity portfolios from long-term market risk, thereby facilitating transactions in options and contributing to the protection of investors and the maintenance of fair and orderly markets.

Currently, institutional customers use options to hedge the risks associated with holding diversified equity portfolios. The Commission believes that by allowing investors to lock in their hedges for up to two years (three years with stock index options), the Exchange's proposal for long-term options will permit institutions to protect better their portfolios from adverse market moves. Further, the Commission believes that long-term options will allow this protection to be provided at a known and limited cost. Finally, the proposal will provide institutions with an alternative to hedging portfolios with futures positions or off-exchange customized options. Accordingly, the Commission believes that the proposed rule change will better serve the long-term hedging needs of institutional investors.

The Commission notes that strike price interval, bid/ask differential, and

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[1] *See* Securities Exchange Act Release Nos. 25041 (October 16, 1987), 52 FR 40008 (October 23, 1987) (order approving SR–Amex–87–22, providing for the trading of long-term index options on the Amex), 24853 (August 27, 1987) 52 FR 33486 (September 3, 1987) (order approving SR–CBOE–87–24, providing for the trading of long-term index and equity options on the CBOE), and 28514 (October 3, 1990) 55 FR 41400 (October 11, 1990) (order approving SR–Amex–90–18, providing for the trading of long-term equity options on the Amex) (collectively termed "Long-term Options Approval Orders").

[2] 15 U.S.C. 78f(b)(5) (1982).

continuity rules will not apply to such long term options series until the time to expiration is less than twelve months for index options or less than nine months for equity options. This approach is consistent with the approach taken by the American Stock Exchange ("Amex") and by the Chicago Board Options Exchange "CBOE") with regard to their long-term index and equity options.[3] This approach is being taken initially because of the lack of historical pricing data for long-term options. Strike price interval requirements and bid/ask differential rules applicable to index and equity options currently are based on options that expire nine to twelve months from the time they begin trading. Therefore, there currently is no basis for establishing reasonable prices for long-term index and equity options that will expire more than twelve months from the time they begin trading.

The PSE has, however, stated that it will monitor the trading in long-term index and equity options closely to gain experience with regard to these options, and that it will reexamine the applicability of these rules to the long-term options in one year's time.[4]

The Commission, however, notes that although specified bid/ask differential and continuity rules will not apply to long-term equity options that expire in over nine months and long-term index options that expire in over twelve months, the PSE's general rules that obligate PSE market makers to maintain fair and orderly markets will continue to apply.[5] The Commission believes that the requirements of these rules are broad enough, even in the absence of bid/ask differential and continuity requirements, to provide the Exchange with the authority to make a finding of inadequate market maker performance should these market makers enter into transactions or make bids or offers (or fail to do so) in long-term options that are inconsistent with the maintenance of a fair and orderly market. Finally, the Commission notes that the bid/ask differential and continuity rules will apply to the long-term equity options when the time remaining until expiration is less than nine months and to the long-term index options when the time remaining until expiration is less than twelve months.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register because the PSE's proposed rule change is identical to proposals by the Amex and the CBOE to trade long-term, which the Commission has already approved.[6] These proposals were subject to a notice and comment period and the Commission did not receive any comments on them. Thus, the Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can begin trading long-term index and equity options. Since both the Amex and the CBOE have begun trading long-term options, permitting the PSE to begin trading long-term options will facilitate competition between the exchanges for product services, which, in turn, should benefit public investors. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 28, 1990.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [7] that the proposed rule change (SR-PSE-90-35) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: October 31, 1990.

[FR Doc. 90-26286 Filed 11-6-90; 8:45 am]
BILLING CODE 8010-01-M

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[3] See Long-term Options Approval Orders, *supra* note 1.

[4] Conversation between David P. Semak, Vice President, Regulation, PSE, and Thomas R. Gira, Branch Chief, Options Regulation, SEC, on October 22, 1990.

[5] *See, e.g.* PSE Rule VI, Section 7b.

[6] *See,* Long-term Options Approval Orders, *supra* note 1.

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (1989).

[Rel. No. IC-17835; 811-4586]

American Investors Option Fund, Inc.; Application for Deregistration

October 31, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: American Investors Option Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on October 22, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 26, 1990, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature or the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, P.O. Box 2500, 777 West Putnam Avenue, Greenwich, CT 06836.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504-2284, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 738-1400).

Applicant's Representations

1. Applicant is an open-end diversified management investment company organized as a corporation under the laws of Maryland on December 13, 1984. On February 6, 1986, applicant registered under the 1940 Act and filed a registration statement under the Securities Act of 1933 to register an indefinite number of its shares of common stock. The registration statement was declared effective on August 13, 1986, and an initial public offering was commenced immediately thereafter.

2. By February 22, 1990, all of applicant's shareholders had voluntarily redeemed their shares at the respective net asset values per share. Thereafter, applicant ceased offering additional shares to the public.

3. Following receipt of the order requested by this application, applicant expects to file articles of dissolution pursuant to Maryland law.

4. All of the expenses incurred in connection with applicant's liquidation have been and will be borne by applicant's investment adviser, D.H. Blair Advisors, Inc.

5. As of the date of the application, applicant had no assets liabilities, or shareholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-26285 Filed 11-6-90; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice No. 1287]

Shipping Coordinating Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open public meeting at 1000 on Wednesday, 28 November 1990, in room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting is to report on the results of the 63rd session of the International Maritime Organization (IMO) Legal Committee conducted 17-21 September 1990.

The principal focus of the SHC public meeting will be to provide an update of the ongoing Legal Committee deliberations concerning the question of liability and compensation related to the maritime carriage of hazardous and noxious substances (HNS).

The views of the public, and particularly those of affected maritime commercial and environmental interests, are requested.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room.

For further information or to submit views concerning any of the topics to be addressed at the SHC meeting, contact either Captain Jonathan Collom or Lieutenant Mark J. Yost, U.S. Coast Guard (G-LMI), 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267-1527, telefax (202) 267-4163.

Dated: October 25, 1990.

Thomas J. Wajda,
Chairman, Shipping Coordinating Committee.

[FR Doc. 90-26257 Filed 11-6-90; 8:45 am]
BILLING CODE 4710-07-M

[Public Notice No. 1286]

Soviet and Eastern European Studies Advisory Committee; Meeting

The Department of State announces that the Soviet and Eastern European Studies (title VIII) Advisory Committee will convene on December 4, 1990, beginning at 10 a.m. in room 1105, U.S. Department of State, 2201 C Street, NW., Washington, DC.

The Advisory Committee will recommend grant recipients for the advancement of the objectives of the Soviet and Eastern European Research and Training Act of 1983. The agenda will include: opening statements by the Chairman of the Committee and its members; oral statements by interested members of the public about the title VIII program in general; and within the Committee, discussion, approval, and recommendation that the Department of State negotiate grant agreements with certain "national organizations with an interest and expertise in conducting research and training concerning the USSR and Eastern Europe" based on the guidelines contained in the Call for Applications published in the Federal Register in June 1990.

This meeting will be open to the general public, however attendance will be limited to the seating available. Entry into the Department of State building is controlled and must be arranged in advance of the meeting. Those wishing to attend should notify Joanne Bramble, INR/RES, U.S. Department of State, (202) 632-2066. All attendees must use the 23rd Street entrance to the building.

Dated: October 22, 1990.

Kenneth E. Roberts,
Executive Director, Soviet and Eastern European Studies Advisory Committee.

[FR Doc. 90-26258 Filed 11-7-90; 8:45 am]
BILLING CODE 4710-32-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 216
Wednesday, November 7, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Wednesday, November 7, 1990, 10:00 a.m. (Recess at 12:30 p.m. and resume at 3:00 p.m., if necessary.)

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. *Final Rule on Glue Removers Containing Acetonitrile and Permanent Wave Neutralizers Containing Potassium Bromate or Sodium Bromate*

The Commission will consider final rules to require child-resistant packaging for glue removers containing acetonitrile and permanent wave neutralizers containing potassium bromate or sodium bromate.

2. *Waterbed Petitions, CP 89-4*

The staff will brief the Commission on a petition submitted by the Consumer Federation of America, the New York State Attorney General, and the American Academy of Pediatrics requesting a mandatory labeling standard for adult-size waterbeds.

FOR A RECORDED MESSAGE CONTAINING THE LASTEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avé., Bethesda, Md. 20207 301-492-6800.

Dated: November 1, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90-26483 Filed 11-5-90; 2:12 pm]

BILLING CODE 6355-01-M

Corrections

Federal Register
Vol. 55, No. 216
Wednesday, November 7, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-015]

Television Receivers, Monochrome and Color, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews

Correction

In notice document 90-24809 beginning on page 42616, in the issue of Monday, October 22, 1990, the table appearing in the first and second columns of page 42618, was published incorrectly and is correctly republished below.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer	Review no.	Period of review	Margin (percent)
Fujitsu General	8	03/01/86-02/28/87	49.56
	9	03/01/87-02/29/88	49.56
	11	03/01/89-02/28/90	[1] 49.56
Funai Electric	11	03/01/89-02/28/90	[1] 21.93
Hitachi	5	09/29/83-03/31/84	21.93
	6	04/01/84-02/28/85	21.93
	9	03/01/87-02/29/88	16.32
	10	03/01/88-02/28/89	22.90
	11	03/01/89-02/28/90	22.90
Matsushita	9	03/01/87-02/29/88	49.56
	10	03/01/88-02/28/89	49.56
	11	03/01/89-02/28/90	49.56
Mitsubishi	11	03/01/89-02/28/90	49.56
NEC	11	03/01/89-02/28/90	49.56
Sanyo	9	03/01/87-02/29/88	16.32
	10	03/01/88-02/28/89	22.90
	11	03/01/89-02/28/90	22.90
Seiko Epson	11	03/01/89-02/28/90	[1] 21.93
Sharp	11	03/01/89-02/28/90	[1] 4.76
Toshiba	8	03/01/86-02/28/87	[1] 0.00
	10	03/01/88-02/28/89	[1] 0.00
	11	03/01/89-02/28/90	[1] 0.00
Victor	9	03/01/87-02/29/88	49.56
	10	03/01/88-02/28/89	49.56
	11	03/01/89-02/28/90	[1] 49.56

[1] No shipments during the period; rate from last period in which there were shipments.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 413

[BPD-673-F]

RIN 0938-AE56

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1991 Rates

Correction

In rule document 90-20677 beginning on page 35990 in the issue of Tuesday, September 4, 1990, make the following corrections:

1. On page 36020, in the first column, in the 19th line from the bottom, "years" should read "days".

2. On page 36022, in the third column, in the first full paragraph, in the eighth line from the end, "with" should read "will".

3. On page 36023, in the third column, in the second full paragraph, in the 11th line, "inputed" should read "imputed".

4. On page 36024, in the third column, in the 25th line from the bottom, "of" should read "or".

PART 412--[CORRECTED]

5. On page 36068, in the second column, in the authority citation for part 412, on the third line, "1394hh, and 1394ww" should read "1395hh, and 1395ww".

§ 412.23 [Corrected]

6. On the same page, in the third column, in § 412.23(f), in the eigth line, "December 19, 1969" should read "December 19, 1989".

§ 412.75 [Corrected]

7. On page 36069, in the third column, in § 412.75(h)(2)(iii), in the fourth line, "§ 45.1875" should read "§ 405.1875" and in paragraph (h)(3), in the second line, "paragraph" should read "paragraphs".

§ 412.118 [Corrected]

8. On page 36070, in the third column, in § 412.118, in paragraph (f)(3), in the third line, "regardless" was misspelled.

Addendum [Corrected]

9. On page 36135, in the third column, in table 6g, under the column labled "Description", in the 20th entry from the bottom, "corneal" was misspelled.

10. On page 36136, in the first column, in table 6g, in the 14th entry from the bottom, "interior" should read "anterior".

11. On page 36139, in the third column, in table 6k, in the column labeled "Description" in the 12th entry from the bottom, in the last line, insert ", NOS" after "neck".

12. On page 36167, in the second column, in the seventh full paragraph, in the seventh line, "solely" should read "sole".

13. On page 36169, in the first column of table III, in the sixth entry, "Puerto" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6809

[AZ-930-4214-10; A-22695]

Withdrawal of National Forest System Lands in Support of a Land Exchange Program; Arizona

Correction

In rule document 90-25189 appearing on page 42960 in the issue of Thursday, October 25, 1990, make the following correction:

In the second column, under the land description headed "**Gila and Salt River Meridian**", in the 11th line, "Lots and 6" should read "Lots 4 and 6".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Permanent Regulatory Program

Correction

In rule document 90-25597 beginning on page 45603, in the issue of Tuesday, October 30, 1990, make the following corrections:

1. On page 45606, in the third column, in amendatory instruction 2., in the second line, "paragraph (1)" should read "paragraph (l)".

§ 925.15 [Corrected]

2. On the same page, in the same column, in § 925.15(l), the paragraph designation "(1)" should read "(l)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 25812; Amdt. Nos. 23-41, 91-220, 135-38]

RIN 2120-AC14

Small Airplane Airworthiness Review Program Amendment No. 5

Correction

In rule document 90-25343 beginning on page 43306, in the issue of Friday, October 26, 1990, make the following correction:

On page 43310, in the second column, in amendatory instruction 4., in the sixth line, "paragraphs (a) and (b)", should read "paragraphs (a) and (d)".

BILLING CODE 1505-01-D

federal register

Wednesday
November 7, 1990

Part II

Environmental Protection Agency

40 CFR Part 171
Certification of Pesticide Applicator; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 171

[OPP-40011; FRL-3775-4]

RIN 2070-AB75

Certification of Pesticide Applicator

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing the revision of the rules at 40 CFR part 171 governing the certification of applicators of restricted use pesticides. This action will upgrade the provisions of certification programs and will more fully ensure protection of man and the environment from the potential adverse effects of pesticides.

DATES: Written comments must be submitted on or before March 8, 1991.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: John R. MacDonald, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1101, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. Telephone: 703-557-7371.

SUPPLEMENTARY INFORMATION:

I. Authority

These proposed rules are issued pursuant to the authority given the Administrator of EPA in sections 11 and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. section 136i and w (a)).

II. Background

FIFRA section 3 requires pesticides to be classified for either general use or restricted use. FIFRA section 11 further requires that restricted use pesticides be applied by or under the direct supervision of a certified applicator. The current rules at 40 CFR 171.1 through 171.11 address the certification of applicators of restricted use pesticides. 40 CFR 171.1 through 171.10 promulgated in 1974 and 1975 have remained unchanged except for the addition of 40 CFR 171.11 which addresses EPA certification of pesticide applicators in States or Indian tribes without approved certification programs. 40 CFR 171.11 was added to the rules on June 8, 1978 (43 FR 24837), and amended effective April 25, 1984 (49 FR 1775), to include a dealer recordkeeping program.

At present EPA has approved State-administered certification programs for both private and commercial applicators in every State except Colorado and Nebraska. In Colorado EPA certifies private applicators with commercial applicators certified by Colorado. In Nebraska EPA certifies both commercial and private applicators. EPA has also approved four Federal agency plans to certify their employees as restricted use pesticide applicators: Department of Agriculture, Department of Defense, Department of Energy, and Department of the Interior. EPA has currently approved the Fort Berthold Tribal certification program and is actively assisting other Indian tribes in the development of certification programs.

In 1985 a taskforce was appointed by EPA to review existing certification programs and policies to determine what, if any, actions should be taken to improve the certification program. The taskforce was composed of representatives of EPA, U.S. Department of Agriculture, State Cooperative Extension Services, and State Lead Agencies. The taskforce submitted a report in August 1985 identifying areas in need of improvement and specific recommendations for improvement. The taskforce was aware of the growing complexity and technological advancements in pesticides, especially in the agricultural community. Further, proper pesticide use has become an important component of broader environment concerns, such as groundwater protection, endangered species protection, worker protection, chronic toxicity, pesticide disposal, and pesticide residues in the food supply. Those in the agricultural community are aware of these trends and as a consequence have sought increased and specialized training. Therefore, the taskforce identified a need to upgrade the competency of private and commercial agricultural applicators. This resulted in the proposed provision applying the same general competency standards to private and commercial applicators. The categories of private and commercial agricultural applicators were also upgraded and expanded. The proposed rules would replace the existing rules at 40 CFR 171.1 through 171.11 and provide the foundation for implementing many of the taskforce recommendations.

III. Summary

There are significant differences between provisions in the current and proposed rules. The significant changes are:

Definitions, especially definition of pesticide use for which certification is required.

Establishment of private applicator categories.

Establishment of additional commercial applicator categories and subcategories.

Establishment of revised general and specific standards of competency, including elimination of the non-reader provision.

Provision for establishment of specialty categories or subcategories.

Establishment of various levels of supervision and training requirements for noncertified applicators.

Criteria for approval of State noncertified applicator training programs.

Expansion of commercial applicator recordkeeping to include training provided to noncertified applicators.

Establishment of a recertification requirement for private and commercial applicators.

Establishment of provisions for review and approval of Federal agency programs.

Transition from existing certification programs to programs that meet these revised rules.

Elimination of exemption for doctors of medicine and doctors of veterinary medicine.

Following is a more detailed explanation of those new or revised provisions and the reasons for proposing their adoption. The citation of the new or revised provisions in the proposed regulation is also provided.

A. Definitions

Proposed definitions under § 171.3. "Application method", "Site specific guidance", and "Use site". These definitions are new because of the proposed levels of supervision at § 171.35 which incorporate these terms.

"Indian governing body" and "Indian reservation". These definitions are new because of their use in the text of the revised rules.

"Personal protective equipment". This definition replaces the old definition of protective equipment. This revision reflects the terminology currently in use.

"Risk". This definition replaces the old definition of hazard. This revision reflects the terminology currently in use.

"Use". This definition is new. Section 3(d) of FIFRA permits the Administrator to classify a pesticide, or certain uses of the pesticide, for restricted use to prevent unreasonable adverse effects on the environment. Section 12(a)(2)(F) of FIFRA prohibits use of a restricted use pesticide except in accordance with section 3(d) of FIFRA and rules issued thereunder. Under the general regulatory framework of FIFRA, use of a pesticide covers a wide range of activities, including the loading, mixing, application, storage, transport, and disposal of pesticides. All such use must always be done in accordance with label specifications. For purposes of part 171 and the certification of users of restricted use pesticides, EPA has determined that only certain use activities should require part 171 certification of the user. When a restricted use pesticide is involved, the user must be certified under part 171 (or under the direct supervision of a certified applicator) to load, mix, or apply the pesticide. In addition, storage, transport and disposal activities either routinely performed by the same person or easily capable of being performed by the same person that loads, mixes, or applies a restricted use pesticide are considered use for which certification is required. Use routinely done by persons other than a loader, mixer, or applicator, such as long-distance transport, long-term storage, or ultimate disposal, will not be considered use for which part 171 certification is required. Whenever the term "use" is found in part 171, its definition is limited to those activities for which certification is required.

The public is requested to comment on the proposed definitions.

B. Private Applicator Categories

Provisions under proposed § 171.5. The existing rules do not contain private applicator categories. Because of the increasing specialization of agriculture and the hazards to human health and the environment posed by certain types of pesticide applications, many States have chosen to establish categories for private applicators. The existing rules have a commercial agricultural pest control category consisting of agricultural plant and agricultural animal pest control. This agricultural pest control category is proposed as the basic private applicator category. The additional three categories proposed represent those areas of application requiring specialized knowledge.

The three proposed specialized categories of private applicator certification are: fumigation of soil and agricultural products, chemigation, and aerial application. However, certification in any of these three specialized categories should be concurrent with certification in the agricultural pest control category. This concurrent certification is proposed to assure that the private applicator has the basic knowledge to make a correct pesticide application.

The public is requested to comment on the proposed private applicator categories.

C. Commercial Applicator Categories and Subcategories

Provisions under proposed § 171.7. EPA also recognizes that the commercial categories have specialized requirements. Many States have established commercial applicator categories and subcategories to address these specialized requirements. The proposed rules would establish additional subcategories for Category 1, Agricultural Pest Control, establish subcategories for Category 7, Industrial, Institutional, Structural, and Health Related Pest Control, and establish a new aerial category.

The agricultural pest control category would retain the existing subcategories of plant pest control and animal pest control. The two subcategories added to the agricultural pest control category would be: fumigation of soil and agricultural products, and chemigation. It is proposed that certification in these latter two subcategories be concurrent with certification in the agricultural plant pest control subcategory.

The proposed rules establish 10 subcategories under Category 7, Industrial, Institutional, Structural, and Health Related Pest Control. Category 7 includes a variety of specialized application activities, and many States have established subcategories for Category 7 well in excess of the proposed 10 subcategories.

Aerial application is proposed as a separate commercial category with concurrent certification in another category appropriate to the type of application being performed. Not to have proposed aerial as a separate commercial category would have required creating aerial subcategories under a variety of categories, e.g. Category 1, Agricultural Pest Control; Category 2, Forest Pest Control; Category 5, Aquatic Pest Control; Category 6, Right-of-Way Pest Control; and Category 9, Regulatory Pest Control.

The public is requested to comment on the proposed commercial applicator categories and subcategories.

D. Standards of Competency

Provisions under proposed §§ 171.20, 171.25, and 171.27. The existing rules have separate standards of competency for private and commercial applicators. The present commercial standards are divided into general and specific standards of competency. The existing private applicator standards of competency have no separate general and specific standards, because there are no established categories. With the establishment of categories of private applicators in the proposed rules, there is a need for private applicator general and specific standards of competency. EPA has determined that the general and specific standards of competency used for commercial applicators should be the standards applied to private applicators as well. Similar general standards of competency for both private and commercial applicators was a specific recommendation of the 1985 State FIFRA Issues Research and Evaluation Group (SFIREG) Taskforce Report. The proposed rules also contain private and commercial specific standards of competency corresponding to the proposed categories and subcategories of certification.

The existing rules contain a provision for limited certification of private applicators who cannot read. The proposed rules would not permit the certification of a non-reader. The proposed rules would permit the certification of private and commercial applicators who are non-English readers. However, the proposed rules would limit the non-English reader certification to products that had labels in the non-English language the applicator could read and understand.

EPA is sensitive to the fact that elimination of this provision may adversely affect some farmers. Nonetheless, EPA believes that understanding of the label is critical to the safe use of restricted use pesticides. Labels are increasingly relied upon to transmit product specific information, relative to such subjects as worker protection, groundwater, endangered species, and human exposure. Therefore, because of the importance of the label EPA no longer believes a nonreader provision is justified. Existing non-reader certification may remain valid until expiration or recertification is required. Since most non-reader certifications were issued for a specific application in a single growing season, non-reader certification will not continue for any significant period of time.

The public is requested to comment on the proposed standards of competency and what demonstration of competency should be required.

E. Specialty Categories or Subcategories

Provision under proposed § 171.30. Existing general and specific standards of competency may not be totally applicable to some narrow, specialized uses of restricted use pesticides. Examples of this are pressure treating wood and painting a ship's hull with a restricted use pesticide. Here pesticides are used as part of the manufacturing process or for routine preventive maintenance. Another specialized use operation is loading/ mixing. Some applicators involved in the loading/ mixing of restricted use pesticides may not perform any other pesticide related activities and therefore do not need certification in a broader category. The specialty category provision will generally be used in those instances where the pesticide applicator is not concerned about pest identification or alternative means of control. Therefore, this provision permits a certification plan to establish specialty category(ies) or subcategory(ies) and to waive nonrelevant demonstration of general competency factors. However, the specialty category or subcategory must be specifically defined so the applicator cannot use a restricted use pesticide outside his or her area of certification. If the State, Federal agency, or Indian tribe proposes to waive general competency factors, an explanation must be provided of why the waived general competency factors were not relevant to the type of certification.

F. Levels of Supervision

Provisions under proposed § 171.35. The need to upgrade the requirements for the supervision of a noncertified applicator by the certified applicator was a major recommendation of the SFIREG 1985 Taskforce report. The existing requirements at 40 CFR 171.6 are general in nature and have resulted in some instances of supervision from locations far removed from the application site. While many States have imposed more stringent supervision requirements, other States use standards similar to the existing requirement at 40 CFR 171.6.

EPA reviewed varying levels of supervision in an attempt to identify levels that could be specifically described and which would ensure adequate protection of human health and the environment. EPA is proposing to establish three levels of supervision which will be incorporated in the future labeling of restricted use pesticides.

In developing this proposal, EPA considered other alternatives. First, EPA considered two-level approaches. One such approach consisted of either use only by a certified applicator or direct supervision from off-site as is currently required. The second approach consisted of either use only by a certified applicator or direct supervision where the certified applicator is at the point of use. This requirement would have cost $142,640,000. In reviewing these two approaches, EPA determined that neither was sufficient. Some restricted use products warrant closer supervision than might be provided from off-site. If a two-level approach with off-site supervision is used, many products that could be used by an uncertified person under closer supervision,would ultimately be placed into the higher category to ensure their safe and proper use. Further, the two-level approach with supervision occurring at the point of use does not provide the certified applicator any flexibility in terms of his or her physical distance from the uncertified applicator. EPA believes that under this approach, certified applicators would ultimately perform the application themselves since they would have to be at the point of use anyway.

Another suggestion that EPA considered was to eliminate variability in terms of the degree of supervision and require that all users of restricted use pesticides be certified applicators. This requirement would have cost $394,000,000. While this would ensure simplicity in terms of the use of these products, EPA believes that some restricted use products can be used appropriately by an individual who has received instruction from a certified applicator. Therefore, EPA does not believe that classifying all restricted use products in such a way as to limit their use to only certified applicators is appropriate.

The three levels EPA proposes can be summarized as follows: (1) use only by a certified applicator, (2) direct supervision by a certified applicator who is required to be on site at all times and available at the point of use within 5 minutes, and (3) direct supervision by a certified applicator who is not required to be on site.

Use only by a certified applicator is the most restrictive level proposed and is self explanatory. EPA would apply this restriction to pesticide products when EPA believes the level is necessary to assure that there are no adverse effects on humans or the environment.

Through the middle level of supervision (certified applicator on site and available within 5 minutes) EPA is attempting to assure that an application by noncertified applicators is more closely monitored and the certified applicator is more quickly available if needed.

The least stringent level of supervision proposed, supervision of the noncertified applicator from off-site, is similar to the standard of supervision currently described at 40 CFR 171.6. EPA is not attempting to specifically define the reasonable period of time for this level of restricted use. Instead, the certified applicator is expected to use judgement based on knowledge of the pesticide's properties, and the nature of the site to determine the degree to which the pesticide use should be supervised. EPA is proposing to maintain this broad standard because it believes that the use of many restricted use pesticides can be accomplished without adverse effects to people or the environment, provided the noncertified applicator has received training from the certified applicator regarding the product's use and potential for harm.

Within the context of a three-level system which EPA believes is warranted and will be effective, several alternatives for defining level two were considered. Following are the alternatives and the rationale for not proposing those alternatives.

(a) Line of sight supervision - Line of sight supervision has been used to describe the degree of supervision for some restricted use products in the past. However, EPA has been informed that there are practical difficulties with this concept. For instance, questions arise regarding whether this degree of supervision requires that the certified applicator be able to see the uncertified applicator without aids to enhance visibility (i.e., glasses or binoculars). Additionally, it is not clear whether line of sight must be maintained throughout use of the product to such a degree that even a momentary disruption due to a physical barrier such as, a tree, barn, or house, is a violation.

(b) On site supervision - This description of the degree of supervision does not necessarily provide for close physical association of the certified applicator to the noncertified applicator. For example, forest sites may be extremely large in area, and the requirement that the certified applicator be on site may still allow miles of separation from the noncertified applicator. A separation of this magnitude does not fulfill the need for the certified applicator to be able to act and react to situations in a reasonable period of time.

(c) Certified applicator with each work crew - Conceptually, EPA believes this degree of supervision merits attention. However, in terms of clarity and understanding, EPA believes it cannot propose this concept. In attempting to define the size of a "work crew" and the land area over which such a crew might be spread out, EPA found the use of specific distances or timeframes the only acceptable means. For instance, the certified applicator would have to be within X yards or Y minutes of the noncertified applicator. This approach then results in a description similar to that which EPA is proposing for level two.

EPA believes that the requirement of availability within 5 minutes will ensure close proximity of the certified applicator to the noncertified applicator while allowing the flexibility not afforded through other standards such as line of sight or point of use.

In general, the levels of supervision described above address the same elements currently contained at 40 CFR 171.6. However, the proposed levels of supervision have more detailed requirements to assist certified applicators in understanding their specific responsibilities. These specific responsibilities include providing site-specific information to the noncertified applicator, based on the certified applicator's knowledge of the site. This information must be provided to the noncertified applicator prior to every application. In addition to providing instructions to the noncertified applicator, the certified applicator must determine that the noncertified applicator is competent to perform the application. Competency can be ascertained in one of two ways. If the noncertified applicator has successfully completed a State- administered, EPA-approved training program specific to the type of application, the certified applicator may assume that the noncertified applicator is competent. If the noncertified applicator has not successfully completed such a training program, the certified applicator must determine competency by providing instructions and observing the noncertified applicator's performance the first time an application method is used or type of site is treated. Whatever method is used to train the noncertified applicator, it must be done within 5 years of the date of the application to be performed.

EPA considered requiring State training of noncertified applicators. However, many States do not have the resources to institute such programs and the instruction provided by the certified applicator is in most cases adequate to ensure proper use of a product. Therefore, EPA is not proposing a State training program requirement for noncertified applicators of restricted use products. However, EPA also believes that such programs do provide the degree of training necessary to claim competency. Therefore, EPA proposes to recognize such programs, where they exist, as a method of assuring noncertified applicator competency. The cost of the three level of supervision requirement is $39,350,000.

Another considered alternative which EPA requests comments would result in some products being labeled for use only by a certified applicator. Other products would be labeled for use under the supervision of a certified applicator with the level of supervision dependent on whether the noncertified applicator had received general competency training. If the noncertified applicator received general competency training, the certified applicator could be off-site as described in the proposed level three. If the noncertified applicator did not receive general competency training, the certified applicator would have to be on-site as described in the proposed level two. However, in all cases the certified applicator would be responsible for providing the noncertified applicator with appropriate site-specific information. This option would vary from the proposed levels of supervision in the following aspects: (1) there would only be two possible labeling options, (2) the least stringent labeling would permit a lesser degree of supervision if the noncertified applicator had received general competency training and (3) the least stringent labeling would not require noncertified applicator general competency training if the certified applicator chose to be at the use site.

A possible additional provision to this option is a limitation on the number of nontrained, noncertified applicators that can be supervised by an on-site certified applicator. The rationale for this provision is that on-site supervision is close supervision. Close supervision is only possible for a limited number of noncertified applicators, e.g. three to five.

It is not possible to provide an exact cost of the two level supervision option. This is because it is unclear how many certified applicators would utilize the option of on-site supervision of noncertified applicators in place of training. However, it is clear that this option would cost less than the $39,350,000 cost of the three level supervision requirement. EPA anticipates that small farmers and businesses would benefit from this two level option more than larger operations. The establishment of a formal training program is a greater burden for a small operation. Also the larger operation generally has economics of scale in that a greater number of noncertified applicators will be trained. Further, the option of on-site supervision would not be viable for large operations if EPA limited the number of noncertified applicators under the supervision of a certified applicator.

The public is requested to comment on the levels of supervision. Comments are specifically requested on two versus three levels of supervision, definitions of on-site and off-site supervision, number of nontrained, noncertified applicators who could be supervised on-site, response time for supervisory applicator, training for noncertified applicators, initial on the job observation of noncertified applicators, and making availability of certified applicators dependent on training provided to noncertified applicators.

G. Approval of State Noncertified Applicator Training Progrom

Provisions under proposed § 171.42. As described above, the proposed standards of supervision for noncertified applicators by certified applicators provide two options for assuring the general competency of the noncertified applicator. If a State wishes to provide training to noncertified applicators, instead of requiring observation/ instruction by the certified applicator, the State noncertified applicator training program must be approved by EPA. The criteria proposed for evaluation of State noncertified applicator programs are based on a review of existing State program requirements and State and EPA experience with the causes of pesticide misuse. Also reviewed were the proposed requirements for worker protection training contained in the Notice of Proposed Rulemaking for 40 CFR part 170. The purpose of the requirements at 40 CFR part 170 is to protect the safety and health of workers. Noncertified pesticide applicators need equivalent safety and health protection. Therefore, these relevant requirements are proposed for incorporation in 40 CFR 171.42(a). Incorporation of these worker requirements will eliminate some duplicative requirements, because those noncertified applicators trained under 40 CFR 171.42 will also meet the requirements for worker training under 40 CFR part 170. The overall cost of a noncertified applicator training requirement is $38,620,000. The cost of incorporating 40 CFR part 170 proposed requirements is $7,980,000 of this amount.

H. Commercial Applicator Recordkeeping of Noncertified Applicator Training

Provisions under proposed § 171.50. Current rules require commercial applicators to keep records of restricted use pesticide applications. Proposed provisions are expanded to include recorkeeping of the training provided noncertified applicators using restricted use pesticides under the supervision of a certified commercial applicator. For States with an EPA-approved noncertified applicator training program, the additional records required can be quite brief. Commercial applicator records pertaining to training in those States can consist primarily of the noncertified applicator's name, address, date of training, and identification number on his or her noncertified applicator training card or certificate.

In the absence of a State noncertified applicator training program approved by EPA, the burden of assuring the competency of the noncertified applicator rests fully on the certified applicator. The certified applicator must instruct and observe the noncertified applicator in the type of application to be performed. The training requirements must parallel those of an approved State noncertified applicator training program. The certified applicator must be physically present with the noncertified applicator and will be required to be at the location where the instruction and observation are occurring. The certified commercial applicator must make and maintain a record of the instruction and observation which will include an attestation form.

Section 11 of FIFRA prohibits EPA from requiring private applicators to maintain records. Therefore the recordkeeping requirements outlined above do not apply to private applicators. However, States may on their own authority require private applicator recordkeeping. Further, the lack of a recordkeeping requirement does not relieve the certified private applicator from meeting the requirements contained in the levels of supervision.

I. Recertification

Recertification provisions in State and Indian programs under proposed § 171.57. EPA is proposing implementation of a requirement that certified applicators in State and Indian programs be certified at least every 5 years. Presently, although there is no Federal requirement, most States require recertification every 3 to 5 years. EPA has decided to propose a 5-year rather than a 3-year recertification period for State and Indian programs because of concern that a shorter recertification period would put an unnecessary burden on applicators and limited State and Indian resources without a corresponding return in improved applicator competency. There was also concern that to implement a shorter recertification period some States and Indian Tribes would have to divert resources from training and enforcement, resulting in a less effective overall pesticide program.

EPA seriously considered a 3-year recertification period for commercial applicators. While a 5-year period is most common for private applicators, approximately 50 percent of the States presently require recertification of commercial applicators every 3 years. EPA believes that this higher standard might more fully assure commercial applicator awareness of changing technology, regulatory requirements, and overall competency. Further, the feasibility of more frequent commercial applicator recertification is demonstrated to some extent by the number of States currently recertifying commercial applicators on a 3-year or shorter period. EPA also considered a provision for a phase-in of a 3-year recertification period to distribute any burden placed on States by the imposition of this provision. This phase-in, if implemented, would provide the States with a fixed period of time to place all commercial applicators on a 3-year recertification cycle. The cost of instituting a 5-year recertification period for commercial and private applicators is $1,110,000. The cost of instituting a 3-year recertification period for commercial applicators and 5-year recertification period for private applicators is $6,480,000. Because of the importance EPA places on recertification as a means of assuring applicator competency and safe pesticide use, comments are specifically requested on alternative of a 3-year recertification provision for commercial applicators and a phase-in approach to implement this.

Recertification provisions in Federal agency programs under proposed § 171.62. EPA is proposing implementation of a requirement that certified applicators in Federal agency certification programs be recertified at least every 3 years. Certification in Federal agency programs is only granted in the commercial not private categories. In addition, Federal employees may operate in many States including those which have chosen a 3-year commercial recertification period (currently required by half the States). Thus having a recertification requirement equivalent to the more stringent State recertification period provides Federal employees the flexibility to work in any State without undergoing additional certification.

While there is currently no specified recertification period for Federal agency certification programs, all programs have adopted a 3-year recertification period. Therefore, this proposal would have no effect on currently operating Federal agency certification programs. A more complete description of the Federal agency program is contained in the following unit J.

Recertification provisions in EPA-administered programs under proposed § 171.70. The current regulation requires recertification of commercial applicators every 3 years and private applicators every 4 years in EPA-administered certification programs. EPA is proposing that these requirements be retained. Prior to 1983 recertification was required every 2 and 3 years for commercial and private applicators, respectively. Based on experience both with the EPA and State programs, that regulation was amended to the current 3 and 4 years recertification periods. EPA proposes that this recertification requirement be retained to insure EPA-administered programs are comparable to the more stringent State-administered programs and to act as an incentive to nonparticipating States to develop their own programs. A more complete description of EPA-administered programs is contained in unit K.

J. Federal Agency Certification Plans

Provisions under proposed § 171.62. The existing rules refer to development of a Government Agency Plan (GAP). Under this provision Federal agencies are provided the option of having their employees GAP-qualified. The States would have been encouraged to grant certification to these GAP qualified Federal employees. This provision was never implemented. Instead, on August 19, 1977, EPA issued a policy notice permitting Federal agencies to develop and submit certification plans to EPA for approval. The notice states that under EPA-approved Federal agency certification plans only commercial certification may be granted and certification is only valid in the performance of official duties. To date four Federal agencies' plans have been approved: the Departments of Agriculture, Defense, Energy, and Interior. Federal agencies with approved certification plans retain the option of having their employees State-certified. The State-certified option is often the choice for Federal agency employees working within the boundaries of only one State. Federal agencies with employees working in several States are more inclined to develop and use Federal agency certification programs, which are valid throughout the country.

The proposed rules incorporate the provisions contained in the policy notice of August 19, 1977, and no impact from this action is anticipated. Federal agencies would, however, be affected by other provisions of the proposed rules, such as, the levels of supervision. As discussed earlier, current Federal agencies certification programs all contain a 3-year recertification period. The proposed regulation requires recertification every 3 years in Federal agency programs. While this is more stringent than the 5-year recertification required of State programs, EPA believes that Federal agencies should meet the more stringent recertification period voluntarily adopted by many States, especially since Federal certification will be effective in more than one State.

K. EPA-Administered Certification Programs

Provisions under proposed § 171.70. The proposed provisions authorize EPA to administer certification programs in States without approved certification programs. The proposed provisions are contained in the current regulation. Under the current regulation EPA administers programs for certification and recertification of private and commercial applicators in Nebraska. In Colorado EPA certifies private applicators with Colorado certifying commercial applicators. The EPA-administered programs must meet all requirements imposed on State programs. The recertification requirement as discussed earlier is more stringent for EPA-administered programs than State-administered programs. This provision is designed to insure EPA-administered programs will be comparable to the more stringent State programs that exceed the minimum recertification requirement contained in the proposed regulation and to act as an incentive to nonparticipating States to develop their own programs.

L. Transition from Existing Certification Programs to New Programs

Provisions under proposed § 171.78. EPA realizes that the revision of many certification programs will be required when the proposed rules become final. EPA also realizes that in some instances revisions may be required to the laws, rules, procedures, etc., of States, Indian tribes, and other Federal agencies. However, EPA wishes to implement the final rules in an expeditious manner. Therefore, upon promulgation of the rules, EPA will work with States, Indian tribes and Federal agencies with certification programs to determine what program revisions are required and when these revisions will occur. Within 6 months of the effective date of the final rules, a status report and schedule for modifying the individual certification programs will be published in the **Federal Register**. A specific justification will be provided for program changes requiring more than 1 year from the effective date of the final regulation to implement.

M. Elimination of Exemption for Doctors of Medicine and Doctors of Veterinary Medicine

The existing rules at 40 CFR 171.4(e) contain an exemption from certification for (1) persons conducting laboratory type research involving restricted use pesticides and (2) doctors of medicine and doctors of veterinary medicine applying restricted use pesticides as drugs or medication during the course of their normal practice.

The proposed rules would retain the exemption for laboratory researchers but eliminate the exemption for doctors of medicine and doctors of veterinary medicine. EPA proposes retaining the exemption for laboratory research because of the existence of laboratory procedures and facilities for the safe handling and disposal of hazardous chemicals and pesticides, the level of training of the end user of the restricted use pesticide, the lack of opportunity for use by an untrained person, and the lack of opportunity for the public to be exposed to the restricted use product.

EPA proposes the elimination of the exemption for practicing doctors of medicine and doctors of veterinary medicine for several reasons. First, normal work practices and procedures have not traditionally addressed the safe handling and disposal of chemicals or pesticides. Second, end users may not always be properly trained, especially nurses, technicians, assistants, or animal owners. Third, there is a greater potential risk of exposure to humans and the environment either directly during use or from secondary exposure, e.g. treated animals, air, or clothing. The cost of requiring doctors of medicine and doctors of veterinary medicine to be certified is $200,000.

N. Impact of Regulation on Small Farmers and Businesses

EPA is concerned with the impact of this regulation on small farmers and businesses. Comments are especially solicited from these groups. Of special interest to EPA is the impact of the levels of supervision, noncertified applicator training, categories of certification, standards of competency, and commercial applicator recordkeeping of noncertified applicator training.

IV. Relationship to Other Rules

On July 8, 1988, (53 FR 25970), EPA issued a proposed rule entitled "Worker Protection Standards for Agricultural Pesticides". The purpose of the proposed rule at 40 CFR part 170 is the protection of workers from the adverse effects of pesticide use. The rule presently being proposed at 40 CFR part 171 will regulate the certification of applicators of restricted use pesticides. Certification under the authority of 40 CFR part 171 is intended to assure the competence of those using or supervising the use of restricted use pesticides. EPA is aware of the possible relationship and linkages between 40 CFR parts 170 and 171. While 40 CFR part 171 is more narrow in scope, it will contribute to the overall goals of 40 CFR part 170. EPA will modify 40 CFR part 171 as needed to enhance these linkages with 40 CFR part 170.

V. Economic Analysis

EPA has evaluated the potential costs to pesticide applicators resulting from the proposed revisions to the current rules. EPA's complete economic analysis is available in the public record for this proposed rule. (OPP–40011).

VI. Rulemaking Record

EPA has established a record of this rulemaking (docket control number OPP–40011. This record presently contains the following information:

1. Current rule.
2. Proposed rule.
3. The economic analysis of this proposed rule.
4. Report of the EPA/SFIREG Certification and Training Task Force (1985).

As comments are received on this proposed rule they will be added to this record. In addition, upon publication the final rule will be added to this record. A public version of this record is available for review and copying from 8 a.m. to 4 p.m., Monday through Friday, except holidays, in the Public Docket and Freedom of Information Section, Room 246, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

VII. Statutory Review

A. U. S. Department of Agriculture

As required by FIFRA section 25(a), a copy of this proposed rule was provided to the Secretary of Agriculture. On February 2, 1990, Charles L. Smith provided written comments on behalf of the Secretary. Following is a summary of each comment, together with the Agency's response.

Comment #1: Overall comment that the regulation will require more pesticide applicators to be certified and trained. This will place an increased burden on already limited funding provided USDA by the Agency.

Response: The Agency agrees more applicators will need to be certified and trained. While more funding may be required, the Agency is exploring the use of other organizations to supplement USDA training activities.

Comment #2: The "use definition proposed expands the current use definition to include mixing, loading, transport, storage, or handling after the pesticide seal is broken. This expansion of the definition will increase the need for training and place a further burden on USDA.

Response: There is currently not a use definition in the statute or regulation. The definition proposed includes mixing, loading, transport, storage, or handling of a pesticide after the seal is broken, because these activities are potentially hazardous. As to the need for increased resources, the Agency is exploring the incorporation of the training resources of outside organizations into the overall effort.

Comment #3: Does not believe it appropriate to establish private applicator categories, but rather permit States to establish categories as States feel are required.

Response: The State may still establish additional private applicator categories or have fewer categories than proposed in the regulations. EPA established private applicator categories because of the need for specialized competency for various types of pesticide applications. Since these activities are specialized, the Agency feels only those private applicators involved in the activities need to be required to demonstrate competency in the specialized areas. If a State does not permit private applicator chemigation (a proposed category), then a chemigation category is not required and chemigation competency need not be addressed. However, if a State does permit private applicator chemigation, but does not wish to have a separate chemigation category, then chemigation standards must be contained in the State established private applicator category that permits chemigation.

Or viewed another way, those performing activities addressed by any of the four proposed categories must meet the corresponding standards. The Agency will permit the States to eliminate the activities defined by the proposed categories or to combine or breakout the categories. But when an applicator performs chemigation he or she must meet the chemigation standards.

Comment #4: Does not feel that commercial applicator subcategories are appropriate.

Response: The workgroup developing the proposed rule felt subcategories are necessary, because commercial applicators require specialized knowledge. The subcategories are a mechanism to assure this specialized knowledge is received. Comments are solicited both on the need for subcategories and the subcategories proposed.

Comment #5: Guidance rather than rulemaking should be utilized to establish additional commercial subcategories and accompanying competency requirements.

Response: Rulemaking has several advantages over guidance. Most importantly it provides all interested parties an opportunity to comment. Rulemaking is also binding on EPA and enforceable. For these reasons, EPA prefers rulemaking over guidance in areas that have an important impact on the public and/or regulated community. EPA views the establishment of categories and subcategories and accompanying standards of competency as having an important impact and therefore proposes that this be done by rule not guidance.

Comment #6: USDA supports the general standards for private and commercial applicators as proposed.

Response: No response.

Comment #7: Supports a two-tier level of supervision rather than the proposed three-tier level of supervision

Response: This was the provision most discussed by the workgroup that developed the proposed rule. Therefore, the preamble addresses this provision in detail and specifically requests comments on this section of the proposed rule. The preamble also presents specific alternatives for comment.

Comment #8: Supports an initial on the job observation requirement of a noncertified applicator who has completed an EPA-approved State training program. The proposed rule only imposed this requirement when a noncertified applicator is trained by a certified applicator.

Response: EPA does not feel this requirement should be imposed, when a noncertified applicator has completed an EPA-approved State training program. However, EPA is soliciting public comments on this and other aspects of training requirements for noncertified applicators.

Comment #9: The proposed rule makes certified applicators responsible for ensuring that proper protective equipment is used and precautionary requirements are met. USDA recommends this requirement also be imposed on noncertified applicators.

Response: The certified applicator is responsible for the application of a restricted use pesticide. This proposed rule addresses certification requirements and the responsibilities of the certified restricted use pesticide applicator. Therefore, it is proposed that the certified applicator be responsible for assuring use of proper protective equipment by the noncertified applicator.

Comment #10: Supports a recertification period of 5 years. Does not support a phase-in to a 3-year recertification period.

Response: The proposed rule requires a 5-year recertification period for both commercial and private applicators in State-administered programs. There is no provision for a phase-in to a 3-year recertification in State- administered programs, but comments on this option are solicited in the preamble.

Comment #11: Supports a hyphenated version of "restricted use", i.e. restricted-use.

Response: It is not EPA practice to utilize a hyphen in the term "restricted use". Section 6.16 of the Government Printing Office Style Manual states "Where meaning is clear and readability is not aided, it is not necessary to use a hyphen..." The term "restricted use" has no hyphen in FIFRA and consistent with this usage EPA has utilized the term without hyphen in other documents and correspondence.

Comment #12: Supports use of term "agricultural commodities" in place of "agricultural crops". This is a broader term and more adequately reflects those involved in the agricultural activities defined in the proposed rule.

Response: Term "agricultural commodities" has been substituted for term "agricultural crops" as recommended at 40 CFR 171.5 and 171.25.

Comment #13: States that 40 CFR 171.20 is redundant in that standard requires recognition of poisoning symptoms plus recognition of acute toxicity. Poisoning symptoms and acute toxicity in the context of this rule are the same.

Response: General standards have been revised to eliminate redundancy.

Comment #14: Reentry interval should be addressed in labeling not at 40 CFR 171.20, the general standards section.

Response: The proposed provision is intended to assure that the applicator understands the importance and function of periods during which entry into treated areas is restricted. The label will contain specific restrictions on such entry.

Comment #15: The use of the word "role" in the general standards at 40 CFR 171.20 is confusing.

Response: Earlier drafts used the word "role". This word has been eliminated in the proposed rule.

Comment #16: Delete "and other protected species" in the general standards at 40 CFR 171.20.

Response: The rule is revised to read "protection of endangered and threatened species". This language corresponds with the terminology used in the Endangered Species Act.

Comment #17: Delete from general standards 40 CFR 171.20 "stages of life cycle when pests are most vulnerable". This information varies according to target pest and pesticide utilized and is, therefore inappropriate in general standards.

Response: Deleted as recommended.

Comment #18: The general standards at 40 CFR 171.20 is proposed as "factors in choosing the most appropriate equipment for applicable situations, including chemigation." The last two words "including chemigation" should be deleted, because some States do not permit chemigation.

Response: Deleted phrase "including chemigation".

Comment #19: Support the nonreader provision as proposed.

Response: No response.

Comment #20: Forest Pest Control should be expanded to include rangeland. Forest nurseries and seed production should be grouped with ornamental and turf pest control.

Response: The workgroup developing the proposed rule considered various optional categories and subcategories. In the commercial categories it was decided to retain the basic categories in the existing regulations. Therefore, rangeland applicators would continue to be addressed under the agricultural plant pest control subcategory. These basic categories are familiar to the States and training programs have been developed around many of these categories. Further, the States will continue to have the ability to create their own categories and subcategories, but will be required to incorporate the appropriate competency standards. Therefore, while other categories and subcategories are feasible the categories and subcategories as presently written will be retained in the proposed rulemaking. Comments are requested on the proposed categories and subcategories.

Comment #21: Permit Federal agencies to certify their employees as private applicators.

Response: Federal Agency Plans permit certification of Federal employees as restricted use pesticide applicators. This certification is valid only in performance of their official duties. Federal Agency Plans are most often used when a Federal employee must operate in several States making multi-State certification difficult. FIFRA section 2(e)(2) defines a private applicator as one producing an agricultural commodity. EPA does not feel a Federal employee applying a restricted use pesticide in performance of official duties meets this criteria and such an interpretation would not meet the intent of Congress.

Comment #22: Persons certified under a Federal Agency Plan should be permitted to apply restricted use pesticides outside their official duties.

Response: This would be counter to the purpose of a Federal Agency Plan as described in the preceding response. Such an interpretation would encroach on the legitimate rights of States to regulate pesticides within their boundaries. Further, this would clearly not be in accord with the intent of Congress or FIFRA section 23 which addresses EPA and State cooperation.

Comment #23: Do not include 40 CFR 171.62(a)(5) in the proposed rule.

Response: This section of the proposed rule contains provisions addressing the use of contractors by Federal agencies with approved certification plans. This section reflects provisions already contained in the approved Federal Agency Plans. These provisions are designed to foster Federal agency and State cooperation and will therefore be retained in the proposed rule.

B. Congressional Committees

As required by FIFRA section 25(a), a copy of this proposed rule was provided to the Committee on Agriculture, Nutrition and Forestry of the U. S. Senate and the Committee on Agriculture of the U.S. House of Representatives. No comments were received.

C. Scientific Advisory Panel

Pursuant to FIFRA section 25(d) the Scientific Advisory Panel waived formal review of this proposed rule. The Scientific Advisory Panel determined that this proposed rule did not involve scientific studies or decisions and therefore was not subject to review.

VIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act [5 U.S.C. 605(b)], EPA has determined that this proposed rule will not have a significant impact on a substantial number of small businesses. Small businesses are already required to have certified those employees who apply or supervise the application of restricted use pesticides. The proposed revisions to the existing rules will involve some additional recordkeeping, more training for noncertified applicators, and closer supervision of noncertified applicators. However, these additional requirements are not deemed to constitute a significant impact on a substantial number of small businesses.

C. Paperwork Reduction Act

This proposed rule and associated information collection request (ICR) amend a previously approved ICR (OMB Clearance No. 2070–0029) and impose additional burden hours as a result. The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 40 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by EPA (ICR No. 0155.03) and a copy may be obtained from Harold Hodges, Information Policy Branch; Environmental Protection Agency; 401 M St., SW., (PM–223); Washington, DC 20460, or by calling (202) 382–2706. Public reporting burden for this collection of information is estimated to average 2.2 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA".

List of Subjects in 40 CFR Part 171

Indians-lands, Intergovernmental relations, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 24, 1990.

William K. Reilly,

Administrator.

Therefore it is proposed that 40 CFR part 171 be revised to read as follows:

PART 171—CERTIFICATION OF PESTICIDE APPLICATORS

Subpart A—General Provisions

Sec.
171.1 Scope.
171.3 Definitions.
171.5 Private applicators of pesticides.
171.7 Commercial applicators of pesticides.

Subpart B—Certification Standards

171.20 General standards for private and commercial applicators.
171.25 Specific standards for private applicators.
171.27 Specific standards for commercial applicators.
171.30 Speciality categories.
171.32 Method of determining competency of pesticide applicators.
171.35 Standards of supervision of noncertified applicators by certified private and commercial applicators.

Subpart C—State Plans and Training Programs

171.42 State programs for training of noncertified applicators.
171.50 Submission and approval of State plans for commercial and private applicators.
171.57 Maintenance of State plans.

Subpart D—Federal and Indian Reservation Plans

171.62 Submission and approval of Federal agency certification plans.
171.65 Certification of applicators on Indian Reservations.
171.70 Federal certification.

Subpart E—Transition Procedures

171.78 Transition from existing certification programs to programs that meet the requirements of this part.

Authority: 7 U.S.C. 136b and 136w.

Subpart A—General Provisions

§ 171.1 Scope.

This part addresses the certification of applicators of restricted use pesticides.

§ 171.3 Definitions.

(a) *General.* Terms used in this part shall have the meanings set forth for such terms in the Act. In addition, the following definitions are applicable to all aspects of the certification of pesticide applicator program in this part:

Accident means an unexpected, undesirable event, caused by the use or presence of a pesticide, that adversely affects man or the environment.

Act means the Federal Insecticide, Fungicide, and Rodenticide Act.

Administrator means the Administrator of the Environmental Protection Agency, or any officer or employee of the Agency to whom authority has been delegated, or to whom authority may be delegated, to act in the Administrator's behalf.

Agricultural commodity means any plant, or part thereof, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) for sale, consumption, propagation, or other use by man or animals.

Application method means the way a pesticide is dispersed, including its preparation for dispersal and disposal of any excess material remaining in machinery.

Calibration of equipment means measurement of dispersal or output of application equipment and adjustment of such equipment to control the rate of dispersal and droplet or particle size of a pesticide dispersed by the equipment.

Certification means the recognition by a certifying agency that a person is competent and thus authorized to use or supervise the use of restricted use pesticides.

Certified applicator means any individual who is certified to use or supervise the use of any restricted use pesticides covered by his/her certification.

Commercial applicator means a certified applicator (whether or not he/she is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by the definition of *private applicator.*

Common exposure route means a likely way (dermal, oral, or respiratory) by which a pesticide may reach and/or enter an organism.

Compatibility means that property of a pesticide which permits its use with other chemicals without undesirable results being caused by the combination.

Competent means properly qualified to perform functions associated with pesticide application, the degree of capability required being directly related to the nature of the activity and the associated responsibility.

Environment means air, land, water, all plants and man and other animals living therein, and the interrelationships which exist among them.

EPA, unless otherwise specified, means the United States Environmental Protection Agency.

Forest means a concentration of trees and related vegetation in non-urban areas sparsely inhabited by and infrequently used by humans; characterized by natural terrain and drainage patterns.

Host means any animal or plant on or in which another lives for nourishment, development, or protection.

Indian Governing Body means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

Indian Reservation means any federally-recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.

Non-target organism means an animal or plant other than the one against which the pesticide is applied.

Ornamental means shrubs, trees, and other plantings in and around habitations generally, but not necessarily located in urban and suburban areas, including residences, parks, streets, retail outlets, and industrial and institutional buildings.

Personal protective equipment means devices and clothing that are worn over, in place of, or in addition to normal work attire for the purpose of protecting the human body from contact with pesticides or pesticide residues.

Practical knowledge means the possession of pertinent facts and comprehension together with the ability to use them in dealing with specific problems and situations.

Private applicator means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him/her or his/her employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

Regulated pest means a specific organism considered by a State or Federal agency to be a pest requiring regulatory restrictions, regulations, or control procedures to protect the host, man, and/or the environment.

Restricted use pesticide or *RUP* means a pesticide that is classified for restricted use under the provisions of section 3(d)(1)(C) of the Act.

Risk means a probability that a given pesticide will have an adverse effect on man or the environment in a given situation, the relative likelihood of danger or ill effect being dependent on a number of interrelated factors present at any given time.

Site specific guidance means the instructions a certified supervisor provides to a noncertified applicator concerning the interrelationship between the characteristics of the use site, such as surface and ground water, endangered species, local population, safety hazards, etc., and the conditions of application such as equipment, method of application, formulation, and hazards, to ensure a safe and effective application.

Standard means the measure of practical knowledge and ability which shall be demonstrated as a requirement for certification.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of Pacific Islands, and the American Samoa.

Susceptibility means the degree to which an organism is affected by a pesticide at a particular level of exposure.

Toxicity means the property of a pesticide to cause any adverse physiological effects.

Use means performance of the following pesticide related activities requiring certification: application; mixing; loading; transport, storage or handling after manufacturer's seal is broken; care and maintenance of application and handling equipment; and disposal of pesticides and their containers in accordance with label requirements. There are uses not requiring certification under this part, such as, long-distance transport, long-term storage, or ultimate disposal.

Use site means pesticide use site groups as described at 40 CFR part 156, appendix A.

(b) *Specific definitions.* The following definitions apply only to dealers, dealerships, and transactions in States or on Indian Reservations where EPA conducts a Federal Pesticide Applicator Certification Program.

Dealership means any site owned or operated by a restricted use pesticide retail dealer where any restricted use pesticide is made available for use, or where the dealer offers to make available for use any such pesticide.

Make available for use means to distribute, sell, ship, deliver for shipment, or receive and (having so received) deliver, to any person. However, the term excludes transactions solely between persons who are pesticide producers, registrants, wholesalers, or retail sellers, acting only in those capacities.

Noncertified person means any person who is not holding a current valid certification document indicating that he or she is certified under section 11 of the Act in the category of the restricted use pesticide made available for use.

Principal place of business means the principal location, either residence or office, in the State in which an individual, partnership, or corporation applies pesticides.

Restricted use pesticide retail dealer means any person who makes available for use any restricted use pesticide, or who offers to make available for use any such pesticide.

§ 171.5 Private applicators of pesticides.

(a) *Procedure.* Categories of private applicators using or supervising the use of restricted use pesticides are identified below. States submitting a plan may utilize in whole or in part these categories. A State may create new categories or subcategories and may also combine those categories listed in paragraph (b) of this section. State-created categories or subcategories will be evaluated against the categories in paragraph (b) of this section and the accompanying specific standards for private applicators at § 171.25. Where a State-created category or subcategory certifies an applicator for the type of application corresponding to the EPA categories defined in paragraph (b) of this section, the State standards shall be as stringent as the applicable standards at § 171.25.

(b) *Categories*—(1) *Agricultural pest control.* This category includes private applicators using or supervising the use of restricted use pesticides in production of agricultural commodities, including but not limited to tobacco, peanuts, cotton, feed grains, soybeans and forage; vegetables; small fruits; tree fruits and nuts; as well as on grasslands and noncrop agricultural lands. This category also includes private applicators using or supervising the use of restricted use pesticides on animals, including but not limited to beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock, and to places on or in which animals are confined.

(2) *Fumigation of soil and agricultural products.* This category includes private applicators using or supervising the application of restricted use pesticides for soil fumigation in production of an agricultural commodity and the application of restricted use pesticides for fumigation of agricultural products. Certification in this category requires concurrent certification in Category 1, Agricultural pest control.

(3) *Chemigation.* This category includes private applicators using or supervising the application of restricted use pesticides through an irrigation system. Certification in this category requires concurrent certification in Category 1, Agricultural pest control.

(4) *Aerial application.* This category includes private applicators applying restricted use pesticides by fixed or rotary wing aircraft in production or in the support of production of agricultural commodities, including but not limited to tobacco, feed grains, corn, soybeans and forage; vegetables; small fruits; tree fruits and nuts, as well as on grasslands and non-crop agricultural lands. Certification in this category requires concurrent certification in Category 1, Agricultural pest control.

§ 171.7 Commercial Applicators of Pesticides.

(a) *Procedure.* Categories of commercial applicators using or supervising the use of restricted use pesticides are identified below. States submitting a plan may utilize in whole or in part these categories and subcategories. In addition, a State may create new categories or subcategories and may also combine those listed in paragraph (b) of this section. State-created categories or subcategories will also be evaluated against the categories and subcategories listed at paragraph (b) of this section. Where a State-created category or subcategory certifies an applicator corresponding to the EPA categories or subcategories listed at paragraph (b) of this section, the State standards shall be as stringent as the applicable standards at § 171.27.

(b) *Categories*—(1) *Agricultural pest control*— (i) *Agricultural plant pest control.* This subcategory includes commercial applicators using or supervising the use of restricted use pesticides in production of agricultural crops, including but not limited to tobacco, peanuts, cotton, feed grains, soybeans and forage; vegetables; small

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fruits; tree fruits and nuts; as well as on grasslands and noncrop agricultural lands.

(ii) *Agricultural animal pest control.* This subcategory includes commercial applicators using or supervising the use of restricted use pesticides on animals, including but not limited to beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock, and to places on or in which animals are confined.

(iii) *Fumigation of soil and agricultural products.* This subcategory includes commercial applicators using or supervising the application of restricted use pesticides for soil fumigation in production of an agricultural commodity and the application of restricted use pesticides for fumigation of agricultural products. Certification in this subcategory requires concurrent certification in paragraph (b)(1)(i) of this section.

(iv) *Chemigation.* This subcategory includes commercial applicators using or supervising the application of restricted use pesticides through an irrigation system. Certification in this subcategory requires concurrent certification in paragraph (b)(1)(i) of this section.

(2) *Forest pest control.* This category includes commercial applicators using or supervising the use of restricted use pesticides in forests, forest nurseries, and forest seed producing areas.

(3) *Ornamental and turf pest control.* This category includes commercial applicators using or supervising the use of restricted use pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf.

(4) *Seed treatment.* This category includes commercial applicators using or supervising the use of restricted use pesticides on seeds.

(5) *Aquatic pest control.* This category includes commercial applicators using or supervising the use of any restricted use pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in paragraph (b)(8) of the section.

(6) *Right-of-way/Industrial weed control.* This category includes commercial applicators using or supervising the use of restricted use pesticides in the maintenance of public roads, electric powerlines, pipelines, railway right- of-way, fence lines, structural perimeters, or other similar areas.

(7) *Industrial, institutional, structural and health related pest control*—(i) *Swimming pool pest control.* This subcategory includes commercial applicators using or supervising the use of restricted use pesticides in swimming pools and related facilities.

(ii) *Pest control in cooling water systems.* This subcategory includes commercial applicators using or supervising the use of restricted use pesticides in cooling water systems used to transfer or dissipate heat.

(iii) *Disinfection of equipment and structures.* This subcategory includes commercial applicators using or supervising the use of restricted use pesticides to disinfect or sterilize medical/veterinary equipment, food/beverage/drug processing equipment, and the environmental surfaces of such places as hospitals/nursing homes, food processing areas, and plant and animal breeding facilities.

(iv) *Control of pests in food processing plants, excluding fumigation.* This subcategory includes commercial applicators using or supervising the use of restricted use pesticides in food manufacturing, processing, packaging, and storage facilities.

(v) *Control of pests in and around structures, excluding wood destroying pests and fumigation.* This subcategory includes commercial applicators using or supervising the use of restricted use pesticides in and around residential, commercial/institutional/industrial facilities, including food preparation areas such as, kitchens, cafeterias, or snack shops.

(vi) *Control of wood destroying organisms, excluding fumigation.* This subcategory includes commercial applicators using or supervising the use of restricted use pesticides to control structural wood destroying pests, and the handling and topical application and injection of wood preservatives, for operations such as, groundline pole treatment, waterproofing, millwork cut-offs, or supplemental field treatment.

(vii) *Fumigation.* This subcategory includes commercial applicators using or supervising the use of restricted use pesticides, in gaseous form, within enclosed gas tight spaces such as, tents, structures, vehicles, or vessels, for a wide range of commodities and conditions.

(viii) *Bird control.* This subcategory includes commercial applicators using or supervising the use of restricted use pesticides to control pest birds.

(ix) *Control of vertebrate pests other than birds and structural invaders.* This subcategory includes commercial applicators using or supervising the use of restricted use pesticides to control vertebrate pests, other than birds.

(x) *Wood preservation.* This subcategory includes commercial applicators using or supervising the use of restricted use pesticides, at treating plants and saw mills, for preservative treatment of wood by pressure, dipping, soaking, and diffusion processes to produce a commodity for sale and/or installation.

(8) *Public health pest control.* This category includes commercial applicators using or supervising the use of restricted use pesticides for Federal, State, or other governmental units in public health programs for the management and control of pests having medical and public health importance.

(9) *Regulatory pest control.* This category includes commercial applicators using or supervising the use of restricted use pesticides for Federal, State or other governmental units in the control of regulated pests.

(10) *Demonstration and research pest control.* This category includes commercial applicators who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstrations. Examples are such persons as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs. Also included in this category are commercial applicators conducting field research who use or supervise the use of restricted use pesticides. Examples are such persons as State, Federal, and other persons conducting field research utilizing restricted use pesticides.

(11) *Aerial pest control.* This category includes commercial applicators using or supervising the use of restricted use pesticides applied by fixed or rotary wing aircraft. In addition to certification in this category, certification is also required in one or more of the other categories listed in paragraph (b) of this section appropriate to the type of application being performed.

Subpart B—Certification Standards

§ 171.20 General standards for private and commercial applicators.

(a) All applicators shall demonstrate practical knowledge of the principles and practices of pest control and safety in use of pesticides. Determination of competency shall be based on examples of problems and situations appropriate to the particular category or subcategory of the applicator's certification and the following areas of competency:

(1) Label and labeling comprehension. (i) Labels and labeling are legal documents and the directions they contain shall be followed.

(ii) General format and terminology of labels and labeling.

(iii) Understanding directions for use, warnings, terms, names, symbols, and other information commonly appearing on pesticide labels.

(iv) Meaning of the term *Restricted Use* pesticide.

(2) Safety. (i) Understanding the terms acute and chronic toxicity, exposure, and how hazard is determined by exposure and a pesticide's toxicity.

(ii) Recognition of symptoms of acute toxicity and practical treatment.

(iii) Precautions to prevent injury to applicators and other individuals in or near treated areas.

(iv) Need for and use of personal protective equipment.

(v) Worker protection, including warnings, and reentry restrictions.

(vi) Transportation, storage, mixing, handling, application and disposal of pesticides including container disposal.

(3) Environmental risk. (i) Climatic factors that cause pesticide drift and runoff.

(ii) How terrain, soil and substrata influence surface and ground water contamination.

(iii) Recognition of sensitive areas and organisms affected by pesticide applications, drift and runoff.

(iv) Precautions for protection of endangered and threatened species.

(v) Methods of spill prevention and control.

(4) Pest identification and biology. (i) Principles of pest identification.

(ii) Recognition of damage or problems caused by pests.

(5) Pesticides and chemical control. (i) Types of pesticides, formulations and adjuvants.

(ii) Concepts of pesticide compatibility, synergism, persistence, and resistance.

(iii) Factors which affect a pesticide's effectiveness.

(iv) Selection of the correct formulation and method of application for a site and pest.

(6) Equipment. (i) Characteristics and main uses of typical pesticide application equipment.

(ii) Selection of the most appropriate equipment for applicable situations.

(iii) Proper care, maintenance, and use of application equipment.

(7) Calibration and calculation. (i) Dilution of concentrate formulations in accordance with label directions.

(ii) Calculation of area or volume to be treated, and amount of pesticide to be applied.

(iii) Adjustment of application equipment's nozzle, pressure, and speed to obtain correct pesticide output.

(8) Applicator related laws and regulations. (i) Applicable State and federal laws and regulations.

(ii) Applicator responsibility for pesticide use consistent with its label or labeling, and supervision of noncertified employees assigned to use a restricted use pesticide.

(iii) Applicator liability and penalties.

(b)(1) If a person applying for certification as a restricted use pesticide applicator is unable to read and understand a label written in English the responsible State agency may issue a limited certification. The certification will be limited to restricted use products where labels are available in the non-English language the applicator can read and understand. The procedure employed shall assure the Agency that the applicator not only understands the label but is also competent in the applicable standards contained in this section and § 171.25.

(2) Persons unable to read and understand a label in any language will not be certified as a restricted use pesticide applicator.

§ 171.25 Specific standards for private applicators.

(a) *Procedures.* Private applicators are required to demonstrate skills and knowledge specific to their certification. These specific competency standards are in addition to the general standards at § 171.20. The specific standards of competency set forth in paragraph (b) of this section are applicable to subcategories of certification established under § 171.5(b). Certification programs that adopt categories or subcategories not contained in this part will be required to develop corresponding specific standards of competency.

(b) *Specific standards of competency*—(1) *Agricultural pest control.* Applicators shall demonstrate practical knowledge of agricultural commodities grown in their State and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning relevant soil and water problems, preharvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, and non-target injury. Applicators shall also demonstrate practical knowledge of animals and their associated pests in their State. A practical knowledge is also required concerning specific pesticide toxicity and residue potential, since host animals will frequently be used for food. Further, the applicator shall know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress, and extent of treatment.

(2) *Fumigation of soil and agricultural products.* Applicators shall demonstrate practical knowledge of the use of personal protective equipment for fumigation, general safety procedures, including posting, reentry, and aeration. Further, they shall demonstrate knowledge of emergency procedures and application techniques appropriate to various situations.

(3) *Chemigation.* Applicators shall demonstrate practical knowledge of equipment associated with chemigation, including calibration techniques and use of an anti-back flow/check valve to prevent contamination of water supplies. They shall demonstrate knowledge of labeling requirements of products registered for chemigation, including posting requirements. Further, they shall demonstrate knowledge of the appropriate use of personal protective equipment associated with this type of application.

(4) *Aerial application.* Applicators shall demonstrate practical knowledge of the agricultural crops grown, as well as grasslands and non-crop agricultural lands, and the specific pests of those crops on which they may be using restricted use pesticides. Practical knowledge is required concerning soil and water problems, equipment calibration and maintenance, pre-harvest intervals, re-entry intervals, phytotoxicity, prevention of drift, and potential for environmental contamination, and non-target injury.

§ 171.27 Specific standards for commercial applicators.

(a) *Procedures.* Commercial applicators are required to demonstrate skills and knowledge specific to their certification. These specific competency standards are in addition to the general standards of competency under § 171.20. The specific standards of competency set forth in paragraph (b) of this section are applicable to the commercial applicator categories and subcategories of certification established under § 171.7(b). Certification programs that adopt commercial applicator categories or subcategories not contained in this part will be required to develop corresponding specific standards of competency.

(b) *Specific standards of competency*—(1) *Agricultural pest control*—(i) *Agricultural plant pest*

control. Applicators shall demonstrate practical knowledge of crops grown and the specific pests of those crops on which they may be using restricted use pesticides. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, reentry intervals, phytotoxicity, and potential for environmental contamination, non-target injury, and community problems resulting from the use of restricted use pesticides in agricultural areas.

(ii) *Agricultural animal pest control.* Applicators applying pesticides directly to animals shall demonstrate practical knowledge of such animals in their State and their associated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential, since host animals will frequently be used for food. Further, the applicator shall know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress, and extent of treatment.

(iii) *Fumigation of soil and agricultural products.* Applicators shall demonstrate practical knowledge of the use of personal protective equipment for fumigation, general safety procedures, including posting, reentry, and aeration. Further, they shall demonstrate knowledge of emergency procedures and application techniques appropriate to various situations.

(iv) *Chemigation.* Applicators shall demonstrate practical knowledge of equipment associated with chemigation, including calibration techniques and use of anti-back flow/check valve to prevent contamination of water supplies. They shall demonstrate knowledge of labeling requirements of products registered for chemigation, including posting requirements. Further, they shall demonstrate knowledge of the appropriate use of personal protective equipment associated with this type of application.

(2) *Forest pest control.* Applicators shall demonstrate practical knowledge of types of forests, forest nurseries, and seed production in their State and the pests involved. They shall possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied The applicator shall demonstrate practical knowledge of control methods and the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment shall be demonstrated, especially as it may relate to meteorological factors and adjacent land use.

(3) *Ornamental and turf pest control.* Applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this category shall demonstrate practical knowledge of application methods and the possible hazards to humans, pets, and other domestic animals.

(4) *Seed-treatment.* Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface agents which influence pesticide binding and may affect germination. They shall demonstrate practical knowledge of hazards associated with handling, sorting, and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seeds.

(5) *Aquatic pest control.* Applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of restricted use pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they shall have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.

(6) *Right-of-way/Industrial weed control.* Applicators shall demonstrate practical knowledge of a wide variety of environments, since right-of-way can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the mode of action of herbicides and the need for containment of these pesticides within the right-of-way area, and the impact of their application activities in the adjacent areas and communities.

(7) *Industrial, institutional, structural, and health related pest control*—(i) *Swimming pool pest control.* Applicators shall demonstrate practical knowledge of undesirable microorganisms infesting swimming pools and their possible health and environmental effects. They shall have practical knowledge of the pesticides (antimicrobials) used, their effects on humans and the environment, and their compatibility with other pool chemicals. Applicators shall be knowledgeable in water circulation and pesticide dispersal systems, and shall be able to demonstrate expertise in water testing and ability to make required adjustments to maintain the necessary chemical balance.

(ii) *Pest control in cooling water systems.* Applicators shall demonstrate practical knowledge of the different cooling water systems used to transfer or dissipate heat. They shall demonstrate expertise in identifying and analyzing microbial problems and in selecting the appropriate antimicrobial agents and dispersing systems to maintain the microorganisms at tolerable levels.

(iii) *Disinfection of equipment and structures.* Applicators shall demonstrate practical knowledge of the different microorganisms that contaminate equipment and different environmental sites in medical, breeding, and food processing facilities. They shall demonstrate knowledge of the different chemicals used as gasses to sterilize equipment within specific chambers, or as room disinfectants in enclosed spaces, and the possible hazards associated with the use of such gasses. Applicants shall also have practical knowledge of the different chemical agents used as cleaning and antimicrobial agents to disinfect specific areas within a structure.

(iv) *Control of pests in food processing plants.* Applicators shall demonstrate practical knowledge of pests capable of infesting food materials at any stage of processing. They shall demonstrate knowledge of conditions conducive to infestations and selection of appropriate control procedures, other than fumigations, for each situation. Applicators shall demonstrate an awareness of the hazards associated with pesticides in food processing plants.

(v) *Control of pests in and around structures excluding wood destroying pests and fumigation.* Applicators shall demonstrate practical knowledge of household type pests, such as cockroaches, ants, silverfish, spiders, food and fabric insects, rats, bats, and other occasional invaders, that infest structures, stored products, and food preparation areas, such as kitchens, cafeterias, or snack bars. They shall demonstrate knowledge of conditions conducive to pest infestations and selection of appropriate control procedures for each situation. Applicators shall demonstrate knowledge of hazards involved with pesticide usage.

(vi) *Control of wood destroying organisms excluding fumigation.* Applicators shall demonstrate practical knowledge of structural wood destroying organisms, such as beetles, termites, and fungi, and conditions conducive to infestation. They shall demonstrate knowledge and ability to select, calibrate, and use appropriate control procedures including rodding and trenching, topical application of pesticides and local injection of specially labeled liquid or solid wood fumigants into infested wood, such as poles, piling and railroad crossties. Applicators shall demonstrate knowledge of the hazards involved with handling and use of these pesticides and the appropriate application equipment to be used.

(vii) *Fumigation.* Applicators shall demonstrate practical knowledge of conditions requiring the application of fumigants, and selection of the most appropriate fumigation methods to use. They shall demonstrate knowledge of equipment used in fumigation, such as application, monitoring, testing, calculating, and personal protective devices. Applicators shall demonstrate ability to release, distribute, and maintain the correct fumigant concentrations for the product/structure being fumigated, under differing conditions. They shall have knowledge of the hazards involved with the use of fumigants.

(viii) *Bird control.* Applicators shall demonstrate practical knowledge of protected and unprotected pest birds and conditions conducive to bird problems. They shall demonstrate knowledge of all applicable laws and regulations protecting birds and the actions required in order to control protected pest species. Applicators shall demonstrate knowledge of bird control methods and the hazards involved with pesticide usage, especially secondary poisoning of non-target organisms.

(ix) *Control of vertebrate pests other than birds and structural invaders.* Applicators shall demonstrate practical knowledge of vertebrate pest animals, other than birds, and the conditions conducive to infestation and damage. They shall demonstrate knowledge of all applicable laws and regulations governing the control of such animals and the actions required to control protected or endangered animals. Applicators shall demonstrate knowledge of methods of control of pest animals, effects of such control on non-target organisms and other potential effects on the environment, and the hazards involved with pesticide usage.

(x) *Wood preservation.* Applicators shall demonstrate practical knowledge of conditions for which preservative treatment of wood is used. Applicators shall demonstrate a knowledge of the health and environmental hazards associated with wood treating procedures, and the need for informing purchasers of precautions for handling, use, and disposal of treated wood products. They shall demonstrate knowledge of all applicable treating and testing equipment.

(8) *Public health pest control.* Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests may be involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employment of such non-chemical control methods as sanitation, waste disposal, and drainage. Applicators shall also be aware of all regulatory requirements for reentry precautions and warnings.

(9) *Regulatory pest control.* Applicators shall demonstrate practical knowledge of regulated pests, including applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted use pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties, since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments shall be made in new situations.

(10) *Demonstration and research pest control.* Persons demonstrating the safe and effective use of pesticides to other applicators and the public shall be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they shall demonstrate an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods. Applicators doing demonstration pest control work shall possess knowledge of all of the standards detailed under § 171.20. In addition, they shall meet the specific standards required under paragraph (b)(1) through (7) of this section as may be applicable to their particular activity in their State. Persons conducting field research or method improvement work with restricted use pesticides shall know the general standards detailed in § 171.20. In addition, they shall know the specific standards required under paragraph (b)(1) through (9) of this section as may be applicable to their particular activity in their State.

(11) *Commercial applicator aerial specific standard.* Applicators shall demonstrate practical knowledge of equipment calibration and maintenance and the avoidance of problems associated with aerial application, such as, drift and nontarget injury. In addition, applicators will demonstrate knowledge appropriate to the type of aerial application being performed through their additional certification in one or more of the categories listed at § 171.7(b).

(c) [Reserved]

(d) *Laboratory research.* The standards listed under paragraph (b) of this section do not apply for purposes of this part to persons conducting laboratory type research involving restricted use pesticides.

§ 171.30 Specialty categories.

Some pesticide uses are characterized by the application of one or a few pesticides in a routine well controlled fashion. The routine nature of the operation may not require the pesticide user to analyze the need for the application, pest identification, alternative means of control, or drift prevention. Examples of this situation are uses of a pesticide in a manufacturing process and periodic disinfectant treatment. In these cases, the State may establish a category or subcategory and waive competency in those areas of the general standards of competency that are not needed to assure a safe, effective, and environmentally sound pesticide application. In establishing this category or subcategory it shall be clearly defined what aspects of the general standards of competency are being omitted and

satisfactory justification provided. The category or subcategory shall also be clearly defined so the certified applicator does not apply pesticides outside the narrow area of certification.

§ 171.32 Method of determining competency of pesticide applicators.

(a) *Private applicators.* (1) The certification system adopted may use a written, oral, self-study, training, or other appropriate system to assure competency in pesticide application and knowledge of the appropriate laws, regulations, and labeling requirements. However, Agency administered programs as addressed under § 171.70 will not require a examination to determine the competency of private applicators. However, an examination can be offered as an option to private applicators.

(2) The recertification of private applicators is required by § 171.57(a)(2). The system for recertification shall assure that the applicator continues to meet the requirement as specified in § 171.57(a)(2).

(b) *Commercial applicators.* (1) The initial certification of a commercial applicator shall be based at a minimum on the taking and passing of a written examination based on the standards under §§ 171.20 and 171.27. Performance testing, classroom training, on-the-job training, etc., may, as appropriate, be utilized in conjunction with the written examination.

(2) A commercial applicator certified in one category and seeking initial certification in an additional category shall meet the requirement specified in paragraph (b)(1) of this section and take and pass a written examination based at a minimum on the standards under § 171.27. However, the written examination may omit the general standards established at § 171.20 if in the process of receiving certification in another category the applicator took and passed an examination addressing these standards.

(c) *The recertification of commercial applicators.* Recertification is required by § 171.57(a)(2), and may be based on written examination, self-study, training, or other appropriate system.

§ 171.35 Standards of supervision of noncertified applicators by certified private and commercial applicators.

(a) There are three levels of supervision for use of restricted use pesticides. The three levels are as follows:

(1) *Level One - only by a certified applicator.* Use only by a certified applicator and only for those uses covered by the certified applicator's certification.

(2) *Level Two - available at the use site.* Use by or under the direct supervision of a certified applicator who is required to be at the use site, and available to the noncertified applicator, and only for those uses covered by the certified applicator's certificate.

(i) During the noncertified applicator's use of a restricted use pesticide (RUP), the certified applicator shall be physically at the use site and capable of being with the noncertified applicator at the point of use within 5 minutes; shall ensure that the noncertified applicator has means by which to contact the certified applicator immediately, should the need arise; shall be available to be contacted by the noncertified applicator; and shall arrive at the point of use within 5 minutes of being summoned by the noncertified applicator.

(ii) The certified applicator shall provide site-specific guidance on how to conduct each individual pesticide use performed under his/her direct supervision. The certified applicator shall have knowledge of the conditions at each individual use site and shall provide instructions to the noncertified applicator that address specific use site conditions, application method, the type and amount of pesticide to be used, all hazards and precautions indicated on the pesticide labeling, and the presence and nature of any unusual or significant risks from environmental or human exposure. The certified applicator shall ensure that all protective equipment and precautionary requirements are adhered to by the noncertified applicator.

(iii) The certified applicator shall ensure the noncertified applicator's general competence for each type of use site or application method in which the noncertified applicator is expected to participate. Competence shall be determined by the noncertified applicator's holding a valid certificate or document indicating successful participation in a State-administered, EPA-approved training program specific to the type of application. In the absence of successful completion of such a training program, the certified applicator shall ensure the noncertified applicator's competence by, at a minimum, observing the performance of the noncertified applicator and instructing the noncertified applicator in proper application, the first time each type of pesticide use site is treated or application method is employed. The certified applicator shall ensure that the noncertified applicator received the training within 5 years of the date of the application to be performed.

(3) *Level Three - off use site.* Use by or under the direct supervision of a certified applicator and only for those uses covered by the certified applicator's certification.

(i) During the noncertified applicator's use of a RUP, the certified applicator shall have the capability to be at the use site and with the noncertified applicator, at the point of use of the RUP, within a reasonable period of time; ensure that the noncertified applicator has means by which to contact the certified applicator immediately, should the need arise; shall be available to be contacted by the noncertified applicator; and shall arrive at the point of use within a reasonable period of time if summoned by the noncertified applicator. The potential for serious consequences of a delay in arriving at the use site will be taken into consideration when determining what is a *reasonable period of time.*

(ii) The certified applicator shall provide site-specific guidance on how to conduct each individual pesticide use performed under his/her direct supervision. The certified applicator shall have knowledge of the conditions at each individual use site and shall provide instructions to the noncertified applicator that address specific use site conditions, application method, the type and amount of pesticide to be used, all hazards and precautions indicated on the pesticide labeling, and the presence and nature of any unusual or significant risks from environmental or human exposure. The certified applicator shall ensure that all protective equipment and precautionary requirements are adhered to by the noncertified applicator.

(iii) The certified applicator shall ensure the noncertified applicator's general competence for each type of use site or application method in which the noncertified applicator is expected to participate. Competence shall be determined by the noncertified applicator's holding a valid certificate or document indicating successful participation in a State-administered, EPA-approved training program specific to the type of application. In the absence of successful completion of such a training program, the certified applicator shall ensure the noncertified applicator's competence by, at a mimimum, observing the performance of the noncertified applicator and instructing the noncertified applicator in proper application, the first time each type of pesticide use site is treated or application method is employed. The certified applicator shall ensure that the noncertified applicator received the

training within 5 years of the date of the pesticide application to be performed.

(b) [Reserved]

Subpart C—State Plans and Training Programs

§ 171.42 State programs for training of noncertified applicators.

(a) States may develop programs for the training of noncertified applicators. However, these State programs shall be approved by EPA before they can be used to fulfill the general training requirements for noncertified applicators outlined at § 171.35. The State noncertified applicator training programs submitted to EPA for approval shall address the following areas:

(1) State and federal laws and regulations.

(2) How to read and interpret a pesticide label.

(3) Handling of emergencies and spills.

(i) Signs and symptoms of common types of pesticide poisoning.

(ii) Emergency practical treatment for pesticide injuries.

(iii) How to obtain emergency medical care.

(iv) Decontamination procedures.

(4) Proper methods of storing, mixing/loading, transporting, handling, applying and disposing of pesticides.

(5) Safety and health including proper use of personal protective equipment.

(i) Hazards of pesticides from toxicity or exposure, including acute and delayed reaction.

(ii) Routes of exposure.

(6) Potential adverse effects caused by various climatic or environmental conditions, e.g. drift, pesticide run off, or groundwater contamination.

(b) The training may be provided by the State or outside organizations. If the training is provided by outside organizations the State shall indicate how the adequacy of the training will be assured. At a minimum the State shall review and approve in advance the training program of the outside organization. In addition, the State shall assure the continuing adequacy of the outside organization training through course monitoring, reevaluation of training program, examination of those trained or other appropriate means. The State shall also issue the trained applicator credentials or documents verifying training. These credentials or documents shall indicate an expiration date. This expiration date cannot exceed 5 years from the time training was provided.

§ 171.50 Submission and approval of State plans for commercial and private applicators.

If any State desires to certify applicators of restricted use pesticides, the Governor of that State shall submit a State plan to the Administrator for that purpose. The Administrator shall approve the plan submitted by any State, or any modification thereof, if the plan in his or her judgement:

(a) Designates a State agency as the agency responsible for administering the plan throughout the State. Since several other agencies or organizations may also be involved in administering portions of the State plan, all of these agencies or organizations shall be identified in the State plan, particularly any other agencies or organizations responsible for certifying applicators and suspending or revoking certification. In the event that more than one governmental agency will be responsible for performing certain functions under the State plans, the plans shall identify which functions are to be performed by which agency and indicate how the program will be coordinated by the lead agency to ensure consistency of programs within the State. The lead agency will serve as the central contact point for EPA in carrying out the certification program. The numbers and job titles of the responsible officials of the lead agency and cooperating units shall be included.

(b) Contains satisfactory assurances that such lead agency has or will have the legal authority and qualified personnel necessary to carry out the plan:

(1) Satisfactory assurances that the lead agency or other cooperating agencies have the legal authority necessary to carry out the plans shall be in the form of an opinion of the Attorney General or the legal counsel of the lead agency. In addition:

(i) The lead agency shall submit a copy of each appropriate State law and regulation.

(ii) In those States where any requisite legal authorities are pending enactment and/or promulgation, the Governor (or Chief Executive) may request that a State plan be approved contingent upon the enactment and/or promulgation of such authorities. Plans approved on a contingency basis will be subject to such reasonable terms and conditions, concerning the duration of the contingency approval and other matters, as the Administrator may impose. During the period of the contingency approval, the State will have an approved certification program and may proceed to certify applicators, who will then be permitted to use or supervise the use of pesticides classified for restricted use under the Act.

(iii) The State plan should indicate by citations to specific laws (whether enacted or pending enactment) and/or regulations (whether promulgated or pending promulgation) that the State has legal authorities as follows:

(A) Provisions for and listing of the acts which constitute grounds for denying, suspending, and revoking certification of applicators, and for assessing criminal and/or civil penalties. Such grounds should include, at a minimum, misuse of a pesticide and falsification of any records required to be maintained by the certified applicator.

(B) Provisions for reviewing an applicator's certification to determine whether suspension or revocation of the certification is appropriate in the event of criminal conviction under section 14(b) of the Act, a final order imposing civil penalty under section 14(a) of the Act, or conclusion of a State enforcement action.

(C) Provisions for right-of-entry by consent or warrant by appropriate State officials at reasonable times for sampling, inspection, and observation purposes.

(D) Provisions making it unlawful for persons other than certified applicators or persons working under their direct supervision to use restricted use pesticides.

(E) Provisions requiring commercial applicators to keep and maintain records of restricted use pesticide application for at least 2 years. Such records will contain at a minimum information on kinds, amounts, uses, dates, and places of restricted use pesticide application.

(*1*) In the case of restricted use pesticide application by a noncertified applicator, such records will contain the name and address of the noncertified applicator. If the noncertified applicator has participated in a State training program for noncertified applicators approved by the Administrator this will be indicated in the record. It is anticipated most States with training programs for noncertified applicators will include an identifying number on the credentials or documents issued to trained noncertified applicators. In this case, the identifying number of the trained noncertified applicator will be recorded by the supervising certified applicator. The certified applicator will also record the expiration date of the noncertified applicator certificate of training. The Administrator will only approve State-administered training programs for noncertified applicators

that require training be provided every 5 years or less. If the noncertified applicator has not participated in a State training program approved by the Administrator, the record shall contain information on how and when the certified commercial applicator observed and instructed the noncertified applicator in the type of application to be performed. This observation and instructions must have occurred within 5 years of the application being performed.

(2) Documentation that the certified commercial applicator observed and instructed noncertified applicators performing a restricted use pesticide application can be done in one of two ways. The record of the individual restricted use pesticide application can contain the required information on the observation and instruction of the noncertified applicators. Or the record of the individual restricted use pesticide application may cite an existing record containing the information on the observation and instruction of the noncertified applicators. It is anticipated that most certified commercial applicators will choose to cite a record containing information on the observation and instruction of noncertified applicators rather than generate this information for each restricted use pesticide application.

(2) Satisfactory assurances that the record of the observation and instruction of the noncertified applicator will consist of an attestation by the certified commercial applicator to the following:

(i) Name and address of the noncertified applicator observed and instructed.

(ii) Date noncertified applicator was observed and instructed.

(iii) That the following subjects as appropriate to the type of application being performed were addressed in the observation and instruction:

(A) State and federal laws and regulations.

(B) How to read and interpret a pesticide label.

(C) Handling of emergencies and spills.

(*1*) Sign and symptoms of common types of pesticide poisoning.

(*2*) Emergency practical treatment for pesticide injuries.

(*3*) How to obtain emergency medical care.

(*4*) Decontamination procedures.

(D) Proper methods of storing, mixing/loading, transporting, handling, applying and disposing of pesticides.

(E) Safety and health including proper use of personal protective equipment.

(*1*) Hazards of pesticides from toxicity or exposure, including acute and delayed reaction.

(*2*) Routes of exposure.

(F) Potential adverse effects caused by various climatic or environmental conditions, e.g. drift, pesticide run off, or groundwater contamination.

(3) Satisfactory assurances that the lead agency and any cooperating organizations have qualified personnel necessary to carry out the plan, this will be demonstrated by including the numbers, job titles, and job functions of persons so employed.

(c) Gives satisfactory assurances that the State will devote adequate funds to the administration of the plan.

(d) Provides that the State agency will make reports to the Administrator in a manner and containing information that the Administrator may from time to time require, including:

(1) An annual report to be submitted by the agency, at a time to be specified by the State, to include the following information:

(i) Total number of applicators, private and commercial, by category, currently certified; and number of applicators, private and commercial, by category, certified during the last reporting period.

(ii) Any changes in private and commercial applicator subcategories.

(iii) A summary of enforcement activities related to use of restricted use pesticides during the last reporting period.

(iv) Any significant proposed changes in required standards of competency.

(v) Proposed changes in plans and procedures for enforcement activities related to use of restricted use pesticides for the next reporting period.

(vi) Any other proposed changes from the State plan that would significantly affect the State certification program.

(2) Other reports as may be required by the Administrator from time to time to meet unexpected needs.

(e) Contains satisfactory assurances that the State standards for the certification of applicators of pesticides conform to those standards prescribed in §§ 171.1 through 171.25. Such assurances should consist of:

(1) A detailed description of the State's plan for certifying applicators and a discussion of any special situation, problems, and needs together with an explanation of how the State intends to handle them. The State plan should include the following elements:

(i) For commercial applicators:

(A) A list and description of categories and subcategories to be used in the State, such categories to be consistent with those defined under § 171.7.

(B) An estimate of the number of commercial applicators by category expected to be certified by the State.

(C) The standards of competency elaborated by the State. These standards shall conform and be at least equal to those prescribed under § 171.27 for the various categories of applicators utilized by the State. The standards shall also cover each of the points listed in the general standards under § 171.20.

(D) For each category and subcategory listed under § 171.7(b), either submission of examinations or a description of the types and contents of examinations (e.g., multiple choice or true-false) and submission of sample examination questions; and a description of any performance testing used to determine competency of applicators.

(E) A description of any special provisions that a State develops to certify an applicator who cannot read and understand English, but can read and understand another language as prescribed under § 171.20(b).

(ii) For private applicators:

(A) A list and description of any categories or subcategories to be used in the State, such categories or subcategories to be consistent with those defined under § 171.5.

(B) An estimate of the number of private applicators expected to be certified by the State.

(C) The standards of competency elaborated by the State. These standards shall conform and be at least equal to those prescribed under § 171.25. The standards shall also cover each of the requirements listed in the general standards under § 171.20.

(D) Types and contents of examinations and/or submission of detailed description of methods other than an examination used to determine competency of private applicators.

(E) A description of any special provisions that a State develops to certify an applicator who cannot read and understand English, but can read and understand another language as prescribed under § 171.20(b).

(2) A provision for issuance by the State of appropriate credentials or documents verifying certification of applicators.

(3) If appropriate, a description of any existing State licensing, certification, or authorization programs for private or commercial applicators may be included. If these programs are determined by the Administrator to meet standards of competency prescribed under §§ 171.1 through 171.25, States may certify applicators so licensed, certified, or authorized without any additional demonstration of competency provided:

(i) The commercial applicators who were licensed, certified, or authorized have demonstrated their competency based on written examinations and, as appropriate, performance testing, conforming to the standards set forth under §§ 171.7 and 171.27.

(ii) The private applicators who were licensed, certified, or authorized have demonstrated their competency by examination or other acceptable equivalent system, conforming to the standards set forth under §§ 171.20 and 171.25.

(4) A description of any cooperative agreements a State has made with any Indian Governing Body to certify or assist in the certification of applicators not subject to State jurisdiction under § 171.65.

(5) A description of any arrangements that a State has made or plans to make relating to reciprocity with other States or jurisdictions for the acceptance of certified applicators from those States or jurisdictions. However, those arrangements should meet these conditions:

(i) The State according reciprocity shall provide for issuance of an appropriate document verifying certification based upon the certifying document issued by the other States or jurisdictions.

(ii) The State according reciprocity shall have enforcement procedures that cover out-of-State applicators determined to be competent and certified within the State or jurisdiction.

(iii) The detailed State or other jurisdiction standards of competency including knowledge of pests in their respective States for each category identified in the reciprocity arrangement should be sufficiently comparable to justify waiving an additional determination of competency by the State granting reciprocity.

(f) In responding to the preceding requirements, a State may describe in its State plan other regulatory activities implemented under State laws or regulations which will contribute to the desired control of the use of restricted use pesticides by certified applicators. Such other regulatory activities, if described, will be considered by the Administrator in evaluating whether or not a State's certified applicator program satisfies the requirements under §§ 171.1 through 171.57.

§ 171.57 Maintenance of State plans.

(a) Any State certification program approved under § 171.50 shall be maintained in accordance with the State plan approved under that section. Accordingly, the State plan should include:

(1) Provisions to assure that certified applicators comply with standards for the use of restricted use pesticides and carry out their responsibility to provide adequate supervision of noncertified applicators.

(2) Provisions to ensure that certified applicators continue to meet the requirements of changing technology and to assure a continuing level of competency and ability to use pesticides safely and properly. Renewal of private and commercial applicator certification shall be required at least every 5 years. Recertification of private and commercial applicators may be accomplished by the taking and passing of a written examination, participation in classroom training, completion of a self-study program, completion of continuing education units, or a combination of the foregoing.

(b) An approved State plan and the certification program carried out under such plan may not be substantially modified without the prior approval of the Administrator. A proposed change may be submitted for approval at any time, but all applicable requirements prescribed by these regulations shall be satisfied for the modification to be eligible for approval by the Administrator. Examples of substantial modifications are changes in the following areas: recertification periods, mechanism to certify or recertify, definition of those requiring certification, direct supervision requirements, reporting requirements, standards of competency, and categories or subcategories.

(c) The State agency may, however, establish categories or subcategories on a temporary basis. The State agency will notify the Administrator within 5 working days after the establishment of a temporary category or subcategory. The State agency will provide a description of the temporary category or subcategory, specific standards of competency, justification for its adoption, and the proposed period of utilization. The State agency should also indicate whether it intends to amend its certification plan and permanently adopt the temporary category or subcategory. Upon review the Administrator may reject the establishment of a temporary category or subcategory, or limit the duration of its utilization. Until notified of a rejection or limitation by the Administrator, the State agency may continue certification in the temporary category or subcategory.

(d) Whenever the Administrator determines that a State is not administering the certification program in accordance with the State plan approved under § 171.50, the Administrator shall so notify the State and provide for a hearing at the request of the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed 90 days, the Administrator shall withdraw approval of the plan.

Subpart D—Federal and Indian Reservation Plans

§ 171.62 Submission and approval of Federal agency certification plans.

(a) The Administrator will approve a Federal agency certification plan submitted by the Federal agency head or designee, which meets the following requirements:

(1) Certification is limited to agency employees and only available in commercial applicator categories.

(2) Certification granted under the Federal agency plan is valid only in performance of official duties.

(3) Renewal of applicator certification is required every 3 years. Recertification is accomplished by the taking and passing of a written examination, participation in classroom training, completion of a self-study program, completion of continuing education units, or a combination of the foregoing.

(4) The Federal agency certification plan shall meet the requirements outlined under §§ 171.1 through 171.57. However, in place of legal authorities, the Federal agency may use administrative controls inherent in the employer-employee relationship especially in regard to denial, suspension, or revocation of certification and recordkeeping requirements.

(5) If the Federal agency uses contractors to apply restricted use pesticides, the certification plan shall contain the following:

(i) Provisions to assure that the contract employee applying the restricted use pesticide or supervising the restricted use pesticide application is certified by the appropriate State authority or under § 171.70.

(ii) Provision for the Federal agency to notify the appropriate State authority or EPA in the event of violation or accident by the contract employee.

(iii) Provision that, if requested, the Federal agency will cooperate with the State or the EPA in enforcement action undertaken against the Federal agency contractor.

(iv) Provision requiring the Federal agency to comply with Executive Order 12088 and to meet substantive State standards for pesticide use. If agreement cannot be reached between the Federal agency and a State on a particular application of this requirement, the Federal agency agrees to submit to arbitration by EPA and comply with the decision.

(b) Employees of Federal agencies without an approved certification plan shall obtain appropriate State certification or certification under § 171.70 to use or to supervise the use of restricted use pesticides. Federal agencies with approved certification plans retain the option of having some or all of their employees certified by the appropriate State authority or under § 171.70. However, State certification or certification under § 171.70 granted a Federal agency employee is only valid in the State of issuance or in States where reciprocal certification agreements are in effect.

§ 171.65 Certification of applicators on Indian Reservations.

This section applies to applicators on Indian Reservations.

(a) On Indian Reservations not subject to State jurisdiction the appropriate Indian Governing Body may choose to utilize the State certification program, with the concurrence of the State, or develop its own plan for certifying private and commercial applicators to use or supervise the use of restricted use pesticides.

(1) If the Indian Governing Body decides to utilize the State certification program, it should enter into a cooperative agreement with the State. This agreement should include matters concerning funding and proper authority for enforcement purposes. Such agreement and any amendments thereto shall be incorporated in the State plan, and forwarded to the Administrator for approval or disapproval.

(2) If the Indian Governing Body decides to develop its own certification plan, it shall be based on either the standards in §§ 171.1 through 171.57 or on State standards for certification which have been accepted by the Administrator. Such a plan shall be submitted through the United States Department of the Interior to the Administrator for approval.

(b) On Indian Reservations where the State has assumed jurisdiction under other Federal laws, anyone using or supervising the use of restricted use pesticides shall be certified under the appropriate State certification plan.

(c) Non-Indians applying restricted use pesticides on Indian Reservations not subject to State jurisdiction shall be certified either under a State certification plan accepted by the Indian Governing Body or under the Indian Reservation certification plan.

(d) Nothing in this section is intended either to confer or deny jurisdiction to the States over Indian Reservations not already conferred or denied under other laws or treaties.

§ 171.70 Federal certification.

(a) *Applicability.* This section applies to persons in any State and on any Indian Reservation where, because there is no approved State or Tribal certification plan in effect, the Administrator implements a plan for the Federal certification of applicators of restricted use pesticides.

(b) *Certification requirement.* In any State or on any Indian Reservation where this section is applicable, any person who uses or supervises the use of any pesticide classified for restricted use shall be certified in accordance with this section. However, a competent person who is not certified may use a restricted use pesticide under the direct supervision of a certified applicator for uses authorized by the certified applicator's certification. Private applicator certification shall authorize only those uses, or the supervision of those uses, described under the definition of *private applicator* under § 171.3. Commercial applicator certification shall authorize only those uses, or the supervision of those uses, described under the definition of *commercial applicator* under § 171.3(a)(9).

(c) *Certification of commercial applicators* — (1) *Categories for commercial applicators.* Categories referred to in this section are the same as those listed in § 171.7. Determination of competency in each category shall conform to the requirements under § 171.32(b).

(2) *Subcategories.* The Administrator may adopt additional categories and subcategories as he or she deems necessary, consonant with the needs of the individual State or Reservation. When additional categories or subcategories are adopted, the Administrator will also develop specific standards of competency for each new category or subcategory.

(3) *Standards for certification.* The standards of competency for certification of commercial applicators under this section are the same as those listed under §§ 171.20 and 171.27.

(4) *Certification procedure.* An individual who desires to be certified or recertified under this paragraph shall complete the Pesticide Applicator Certification Form (EPA Form 8500–17) and submit the form to the appropriate EPA Regional Office. Forms are available from the EPA offices identified under paragraph (g)(1)(i) of this section. To be initially certified as a commercial applicator under this paragraph, an individual shall take and pass written examinations approved by the Administrator and administered by the Administrator or any other party approved by him or her. A general examination will be given, based on the general standards found under § 171.20 and the standards for supervision found under § 171.35. In addition, specific category and subcategory examinations will be given, based on the appropriate category or subcategory standards found under § 171.27 and the applicable Federal plan. The Administrator will notify the individual in writing of the results of the examinations within 45 days unless special circumstances justify a longer time period. The Administrator will issue to each person who has passed a general examination and one or more category or subcategory examinations a commercial applicator certificate covering each category and subcategory in which he or she has qualified. A commercial applicator certificate is valid for a period of 3 years from the date of issuance, unless earlier suspended or revoked by the Administrator and is valid within the State or Indian Reservation named on the certificate.

(5) *Reexamination.* Individuals failing to pass the required certification examination(s) may be reexamined after an elapsed period of 30 days. An individual seeking reexamination need take only the examination(s) which he or she originally failed.

(6) *Renewal of commercial applicator certification.* A certified commercial applicator may qualify for recertification by taking and passing written examinations as specified in paragraph (c)(4) of this section, or by successfully completing any available training program approved for this purpose by the Administrator. Recertification procedures shall be completed by the certified commercial applicator during the 12–month period preceding the expiration date of his or her certification.

(7) *Recordkeeping requirements.* (i) Each certified commercial applicator who applies or supervises the application of a restricted use pesticide is required to record the following information for that application:

(A) Name and address of the applicator and if applied by a certified applicator include his or her certification number.

(B) Name and address of the person for whom the pesticide was applied.

(C) Location of the pesticide application.

(D) Target pest(s).

(E) Specific crop or commodity, as appropriate, and site, to which the pesticide was applied.

(F) Year, month, day, and time of application.

(G) Trade name and EPA registration number of the pesticide applied.

(H) Total amount of the pesticide applied and the rate per unit treated (active ingredient per unit of the pesticide used).

(I) Type and amount of the pesticide disposed of, method of disposal, date(s) of disposal, and location of the disposal site.

(ii) Each self-employed certified commercial applicator, each firm employing a certified commercial applicator, and each person who contracts with a certified commercial applicator (or his or her employer) to have a restricted use pesticide applied on property owned or operated by another person, shall keep and maintain at their principal place of business true and accurate information outlined in paragraph (c)(7)(i) of this section.

(iii) All records required under this paragraph shall be maintained for a period of at least 2 years from the date of the application of the pesticide and shall be made available, upon request, for inspection and copying by representatives of the EPA.

(d) *Certification of private applicators*—(1) *Categories for private applicators.* Categories referred to in this section are the same as those listed under § 171.5. Determination of competency in each category shall conform to the requirements of § 171.32(a).

(2) *Subcategories.* The Administrator may adopt additional categories and subcategories as he or she deems necessary, consonant with the needs of the individual State or Reservation. When additional categories or subcategories are adopted, the Administrator will also develop specific standards of competency for each new category or subcategory.

(3) *Standards for certification.* The standards of competency for certification of commerical applicators under this section are the same as those listed under §§ 171.20 and 171.25.

(4) *Certification procedures.* An individual who desires to be certified or recertified under this paragraph shall complete the Pesticide Applicator Certification Form (EPA Form 8500–17) and submit the form to the appropriate EPA Regional Office. To be certified or recertified as a private applicator to use restricted use pesticides, an individual shall be determined competent with respect to the use and handling of pesticides. Standards for such determination are the same as those listed in §§ 171.20, 171.25, and 171.35. The Administrator will offer one or more of the following certification options, including at least on option which does not require the applicator to take an examination:

(i) *Approved training course.* The individual may successfully complete an approved training course. Approved training courses may include courses sponsored by EPA, State cooperative extension services, State vocational agricultural courses, or private educational groups. Each training course for certification shall be approved for that purpose by the Administrator and include, at a minimum, coverage of the private applicator standards listed under §§ 171.20, 171.25, and 171.35, and a demonstration that the individual has successfully completed the training course. Subject to the approval of the Administrator, this demonstration may be accomplished by completion of a no pass/no fail written questionnaire or a workbook, receipt of a passing grade in an approved course offered by an educational institution, or any other equivalent procedure.

(ii) *Written examination.* The individual may pass a written examination approved by the Administrator and administered by the Administrator or any other party approved by him or her.

(iii) *Self-study program.* The individual may successfully complete a self-study learning program approved by the Administrator and administered by the Administrator or any other party approved by him or her.

(iv) *Non-English reader.* The individual may successfully demonstrate his competency to read and understand a non-English label as prescribed under § 171.20(b) via the three methods outlined in paragraphs (d)(4)(i), (d)(4)(ii), and (d)(4)(iii) of this section.

(5) *Issuance of certificates.* The Administrator will issue a private applicator certificate to each individual who successfully completes any available certification option. Individuals who, for any reason, fail to complete successfully a certification option may attempt to complete the same option or, if available, an alternative option. A private applicator certificate is valid for a period of 4 years from the date of issuance, unless suspended or revoked by the Administrator, and is valid within the State or Indian Reservation named on the certificate.

(6) *Renewal of private applicator certification.* A certified private applicator may qualify for recertification by successfully completing, during the 12–month period preceding the expiration date of his or her certificate, any available certification option approved by the Administrator.

(e) *Recognition of other certificates.* The Administrator may issue a certificate to an individual possessing any other valid Federal, State, or Tribal certificate without further demonstration of competency. The individual shall submit the Pesticide Applicator Certification Form (EPA Form 8500–17) and written evidence of valid certification to the appropriate EPA Regional Office. The Administrator may deny issuance of such certificate if the standards of competency for each category or subcategory identified in the other Federal, State, or Tribal certificate are not sufficiently comparable to justify waiving further demonstration of competency. The Administrator may revoke, suspend, or modify such certificate if the Federal, State, or Tribal certificate upon which it is based is revoked, suspended, or modified. Unless suspended or revoked, a certificate issued under this paragraph is valid for 3 years for commercial applicators and 4 years for private applicators, or until the expiration date of the original Federal, State, or Tribal certificate, whichever occurs first.

(f) *Denial, suspension, modification, or revocation of a certificate.* (1) The Administrator may suspend all or part of a certificate issued pursuant to this section, or, after opportunity for a hearing, may deny issuance of, or revoke or modify, a certificate issued pursuant to this section, if he or she finds that the applicant or certificate holder has been convicted under section 14(b) of the Act, has been subject to a final order imposing a civil penalty under section 14(a) of the Act, or has committed any of the following acts:

(i) Used any registered pesticide in a manner inconsistent with its labeling.

(ii) Made available for use, or used, any registered pesticide classified for restricted use other than in accordance with section 3(d) of the Act and any regulations promulgated thereunder.

(iii) Refused to keep and maintain any records required pursuant to this section.

(iv) Made false or fraudulent records, invoices, or reports.

(v) Failed to comply with any limitations or restrictions on or in a duly issued certificate.

(vi) Violated any provision of the Act and the regulations promulgated thereunder.

(2) If the Administrator decides to deny, revoke, or modify a certificate, he or she will:

(i) Notify the applicant or certificate holder of:

(A) The ground(s) upon which the denial, revocation, or modification is based.

(B) The time period during which the denial, revocation, or modification is effective, whether permanent or otherwise.

(C) The conditions, if any, under which the individual may become certified or recertified.

(D) Any additional conditions the Administrator determines necessary to ensure health and safety of affected individuals or protection of the environment.

(ii) Provide the applicant or certificate holder an opportunity to request a hearing prior to final Agency action to deny, revoke, or modify the certificate.

(3) If a hearing is requested by an applicant or certificate holder pursuant to paragraph (f)(2)(ii) of this section.

(i) Notify the affected applicant or certificate holder of those assertions of law and fact upon which the action to deny, revoke, or modify the certificate is based.

(ii) Provide the affected applicant or certificate holder an opportunity to offer written statements of facts, explanations, comments, and arguments relevant to the proposed action.

(iii) Provide the affected applicant or certificate holder such other procedural opportunities as the Administrator may deem appropriate to ensure a fair and impartial hearing.

(iv) Appoint an attorney in the Agency as Presiding Officer to conduct the hearing. No person shall serve as Presiding Officer if he or she has had any prior connection with the specific case.

(4) The Presiding Officer appointed pursuant to paragraph (f)(3)(iv) of this section shall:

(i) Conduct a fair, orderly, and impartial hearing, without unnecessary delay.

(ii) Consider all relevant evidence, explanation, comment, and argument submitted pursuant to paragraphs (f)(3)(ii) and (iii) of this section.

(iii) Promptly notify the affected applicant or certificate holder of his or her decision and order. Such an order is a final Agency action subject to judicial review in accordance with section 16 of the Act.

(5) If the Administrator decides to suspend all or part of a certificate, he or she will:

(i) First determine that the public health, interest, or welfare warrants immediate action to suspend the certificate.

(ii) Notify the certificate holder of the ground(s) upon which the suspension action is based.

(iii) Notify the certificate holder of the time period during which the suspension is effective.

(iv) Notify the certificate holder of his or her intent to revoke or modify the certificate, as appropriate, in accord with paragraph (f)(2) of this section. If such revocation or modification notice has not previously been issued, it will be issued at the same time the suspension notice is issued.

(6) In cases where the act constituting grounds for suspension, revocation, or modification of a certificate is neither willful nor contrary to the public interest, health, or safety, the affected certificate holder may have additional procedural rights under 5 U.S.C. 558(c).

(7) Any notice, decision, or order issued by the Administrator under paragraph (f) of this section, and any documents filed by an applicant or certificate holder in a hearing under paragraph (f) of this section, shall be available to the public except as otherwise provided by section 10 of the Act or by part 2 of this title. Any such hearing at which oral testimony is presented shall be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidentiality under section 10 of the Act or under part 2 of this title.

(g) *Pesticide dealer reporting and recordkeeping requirements, availability of records, and failure to comply*—(1) *Reporting requirements.* Each person who is a restricted use pesticide retail dealer in a State or on an Indian Reservation where the Administrator conducts the applicator certification and training program shall:

(i) Report to EPA the business name by which the restricted use pesticide retail dealer operates, and the name and business address of each of his or her dealerships. For dealers or dealerships in Nebraska this initial report shall be submitted to EPA, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101. For dealers or dealerships in Colorado this initial report shall be submitted to EPA, Region VIII, 999 18th St., Suite 500, Denver, CO 80202–2405. This report shall be submitted to the appropriate EPA Regional Office no later than 60 days after the date the person first becomes a restricted use pesticide retail dealer.

(ii) Submit revisions to the initial report to the appropriate EPA Regional Office listed in paragraph (g)(1)(i) of this section reflecting any name changes, additions, or deletions of dealerships. Revisions shall be submitted to EPA within 30 days of the occurrence of such change, addition, or deletion.

(2) *Recordkeeping requirement.* Recordkeeping is required when making restricted use pesticides available to:

(i) Certified applicators. Each restricted use pesticide retail dealer shall maintain at each individual dealership records of each transaction where a restricted use pesticide is made available for use by that dealership to a certified applicator. Record of each such transaction shall be maintained for a period of 24 months after the date of the transaction, and shall include the following information:

(A) Name and address of the residence or principal place of business of each person to whom the pesticide was made available for use.

(B) The certification number on the document evidencing that person's certification, the Federal or State agency that issued the document, the expiration date of the certification, and the categories in which the applicator is certified, if appropriate.

(C) The product name, EPA registration number, and, if appropriate, the State special local need registration number, granted under section 24(c) of the Act on the label of the pesticide.

(D) The quantity of the pesticide made available for use in the transaction.

(E) The date of the transaction.

(ii) Noncertified persons. No dealer or dealership may make a restricted use pesticide available to a noncertified person unless he or she can document that the restricted use pesticide will be used by a certified applicator, and he or she maintains the records required under this paragraph. Each restricted use pesticide retail dealer shall maintain records at each individual dealership of each transaction where a restricted use pesticide was made available to an noncertified person for use by a certified applicator. Records of each such transaction shall be maintained for a period of 24 months after the date of the transaction, and shall include the following information:

(A) The name and address of the residence or principal place of business of the noncertified person to whom the restricted use pesticide is made available for use by a certified applicator.

(B) The name and address of the residence or principal place of business of the certified applicator who will use the restricted use pesticide.

(C) The certified applicator's certification number, the Federal or State agency that issued his or her certification document, the expiration date of the certification, and the categories in which the applicator is certified, if appropriate.

(D) The product name, EPA registration number, and the State special local need registration number, granted under section 24(c) of the Act (if any) on the label of the pesticide.

(E) The quantity of the pesticide made available for use in the transaction.

(F) The date of the transaction.

(iii) At the time of each transaction, EPA recommends that the dealer obtain the information required in paragraph (g)(2)(ii)(A) through (C) of this section and assures himself or herself that the restricted use pesticide is made available for use by a certified applicator by examining one of the following sets of documents:

(A) The original of the certified applicator's certification document, and a driver's license or other State, county, or Tribal identification document issued to the noncertified person to whom the restricted use pesticide is made available.

(B) A photocopy or facsimile of the certified applicator's certification document, together with a statement signed by the certified applicator authorizing the noncertified person to purchase the restricted use pesticide on his or her behalf, and a driver's license or other State, county, or Tribal identification document issued to the noncertified person to whom the restricted use pesticide is made available.

(C) A photocopy or facsimile of the certified applicator's certification document, together with a copy of a signed contract or agreement, between the noncertified person to whom the restricted use pesticide is being made available for use and the identified certified applicator, which provides for the use of the restricted use pesticide by the identified certified applicator, and a driver's license or other State, county, or Tribal identification document issued to the noncertified person to whom the restricted use pesticide is made available.

(3) *Availability of required records.* Each pesticide dealer shall, upon request of any officer or employee of EPA duly designated by the Administrator, furnish or permit such person at all reasonable times to have access to and copy all records required to be maintained under this section.

(4) *Failure to comply.* Any person who fails to comply with the provisions of this part may be subject to civil or criminal sanctions, under section 14 of the Act, or 18 U.S.C. 1001. Violations include failure to submit or falsification of any report required under this paragraph, failure to maintain or falsification of records as required under this section, and making available for use any pesticide classified for restricted use to a person who is not a certified commercial applicator other than in accordance with this section and section 3(d) of the Act or rules promulgated thereunder.

Subpart E—Transition Procedures

§ 171.78 Transition from existing certification programs to programs that meet the requirements of this part.

Existing certification programs, which meet the requirements of this part as of [insert effective date of the final rule] will remain in effect until a revised certification plan or the current existing plan is reviewed by the Administrator and found to meet the requirements of this part. Since the time required to revise existing certification plans will vary among States and Federal agencies, a schedule for development and submission of revised certification plans will be developed. EPA will develop this schedule in coordination with the affected States and Federal agencies. In the development of the schedule, EPA will take into account such factors as, new or revised regulations required, procedures to promulgate regulations, legislative action required, and schedule of legislative sessions. By [insert date 6 months after the effective date of publication of the final rule in the **Federal Register**], EPA will issue a schedule for the submission of revised certification plans by the individual States and Federal agencies for approval under this part. When a State or Federal agency schedules submission of their plan later than [insert date 1 year after the effective date of publication of the final rule in the **Federal Register**], a justification will be provided in the published schedule. In those States where EPA administers certification programs a revised certification program will be available for public comment [insert date 6 months after the effective date of publication of the final rule in the **Federal Register**].

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November 7, 1990

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Status of Certain Over-the-Counter Drug Category II and III Active Ingredients; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 82N-0525]

RIN 0905-AA06

Status of Certain Over-the-Counter Drug Category II and III Active Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that certain active ingredients in over-the-counter (OTC) drug products are not generally recognized as safe and effective or are misbranded. FDA is issuing this final rule after considering the reports and recommendations of various OTC advisory review panels and public comments on the agency's notices of proposed rulemaking. Based on the absence of substantive comments in opposition to the agency's proposed nonmonograph status for these ingredients as well as the failure of interested parties to submit new data or information to FDA pursuant to 21 CFR 330.10(a)(7)(iii), the agency is issuing this final rule to remove from the OTC market these ingredients for the uses specified in this rule. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: May 7, 1991.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In various issues of the **Federal Register**, FDA has published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), advance notices of proposed rulemaking to establish monographs for specific classes of OTC drug products, together with the recommendations of the OTC advisory review panels, which were responsible for evaluating data on the active ingredients in the specific drug class(es) in each proposed monograph. Following publication of each proposed monograph, interested parties were invited to submit comments within a set time period, with an additional period of time allowed for reply comments in response to comments filed in the initial comment period.

After evaluation and consideration of the OTC advisory review panels' recommendations and the comments and reply comments received in response to the initial publication of the advance notices of proposed rulemaking, the agency's proposed regulations in the form of various tentative final monographs for specific classes of OTC drug products were published in the **Federal Register**. Interested persons were invited to file comments, objections, and/or requests for an oral hearing before the Commissioner of Food and Drugs regarding the specific proposals within a set time period. A period of 12 months was provided for the submission of new data and information regarding each specific proposed rulemaking, and 2 additional months were provided for comments on the new data to be submitted.

In the **Federal Register** of May 16, 1990 (55 FR 20434), FDA published, under § 330.10(a)(7)(ii) (21 CFR 330.10(a)(7)(ii)), a proposed rulemaking encompassing all Category II and Category III active ingredients for which the periods for submission of comments and new data following the publication of a notice of proposed rulemaking had closed and for which no significant comments or new data to upgrade the status of these ingredients had been submitted. In each instance, a final rule for the class of ingredients involved had not been published to date. Since that time, final rules for two of the OTC drug rulemakings included in the proposal, corn and callus remover drug products and wart remover drug products, have been published (August 14, 1990; 55 FR 33258 and 55 FR 33246, respectively). Accordingly, the active ingredients from those rulemakings that were included in the proposal are not included in this final rule.

The OTC drug review administrative procedures provide in § 330.10(a)(7)(ii) that the Commissioner may publish a separate tentative order proposing that active ingredients be excluded from an OTC drug monograph on the basis of the Commissioner's determination that they would result in a drug product not being generally recognized as safe and effective or would result in misbranding. This order may include active ingredients for which no substantial comments in opposition to the advisory panel's proposed classification and no new data and information were received pursuant to § 330.10(a)(6)(iv) (21 CFR 330.10(a)(6)(iv)). Section 330.10(a)(7)(ii) authorizes the publication of a separate tentative order immediately following the close of the comment and new data periods for an advance notice of proposed rulemaking. However, in the case of the ingredients included in the proposal, the Commissioner waited until after proposed rulemakings were published and the periods for submission of comments and new data had ended. This additional period allowed the fullest possible opportunity for public comment and receipt of new data to upgrade the status of these ingredients.

As mentioned, no substantive comments or new data were submitted to support reclassification of any of these active ingredients to monograph status. Therefore, before a final rule on each respective drug category is published, the Commissioner has determined that these ingredients are not generally recognized as safe and effective and that any OTC drug product containing any of these active ingredients not be allowed to continue to be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. FDA has elected to act on these ingredients in advance of finalization of other monograph conditions in order to expedite completion of the OTC drug review. Table I below lists the title, docket number, and active ingredients of the specific rulemakings that are addressed in this final rule.

FDA advises that the active ingredients listed in this final rule will not be included in the relevant final monographs because they have not been shown to be generally recognized as safe and effective for their intended use. The agency is amending 21 CFR part 310 to list all of the active ingredients covered by this final rule by adding to subpart E new § 310.545 (21 CFR 310.545). The agency further advises that these active ingredients should be eliminated from OTC drug products by May 7, 1991, regardless of whether further testing is undertaken to justify future use, and regardless of whether the relevant OTC drug monographs have been finalized at that time. Therefore, on or after May 7, 1991, no OTC drug product containing any ingredient listed in § 310.545 either labeled or intended as an active ingredient for the uses specified in that section may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product containing an ingredient subject to this final rule that is repackaged or relabeled after the effective date of this final rule must be in compliance with the final rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are urged to comply voluntarily with this final rule at the earliest possible date.

The agency points out that publication of this final rule does not preclude a manufacturer's testing an ingredient. New, relevant data can be submitted to the agency at a later date as the subject of an application that may provide for prescription or OTC marketing status. [See 21 CFR part 314.] As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in an appropriate citizen petition to amend or establish a monograph, as appropriate. (See 21 CFR 10.30.) However, marketing of products containing these active ingredients may not continue while the data are being evaluated by the agency.

In response to the proposed rule on certain OTC Category II and III ingredients, 12 drug manufacturers, 1 trade association, and 1 physician submitted comments. Copies of the comments received are on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Any additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comments

1. One comment requested clarification of the status of allantoin which was listed as a Category III skin protectant in the May 16, 1990 proposal (55 FR 20434 at 20437).

A correction notice clarifying that allantoin is Category I as a skin protectant and is Category III for wound healing claims was published in the **Federal Register** on June 7, 1990 (55 FR 23234).

2. One comment requested that lobeline be added to the list of Category II and III smoking deterrent ingredients in the May 16, 1990 proposal. The comment felt that lobeline should be removed from the market due to a lack of proof of its effectiveness as a smoking deterrent.

Although lobeline is in Category III as an OTC smoking deterrent due to a lack of evidence of effectiveness (50 FR 27552 at 27555), substantial comment has been received by the agency on this ingredient. Evidence regarding its effectiveness is currently under review as part of the OTC smoking deterrent rulemaking (Docket No. 81N-0027). Lobeline was not included in the May 16, 1990 proposal because that notice was limited to those Category II and III ingredients for which no substantive comment had been received by the agency.

3. One comment mentioned its submission of July 24, 1987 to the proposed rulemaking on OTC dandruff, seborrheic dermatitis, and psoriasis drug products (Docket No. 82N-0214) regarding the use of menthol as a Category I antipruritic active ingredient in combination with coal tar, a Category I antidandruff active ingredient. The comment requested that the May 16, 1990 proposal be revised to exclude menthol because of the pending data submission. Alternatively, the comment requested that the rulemaking remain as written for menthol used exclusively in the treatment of dandruff and exclude menthol used as an antipruritic in combination with coal tar.

The inclusion of menthol as a Category III antidandruff ingredient in the May 16, 1990 proposal was not intended to apply to the use of menthol as an antipruritic in combination with coal tar. A footnote has been included in the table in this final rule clarifying that it does not apply to the use of menthol as an antipruritic when used in combination with the Category I antidandruff ingredient coal tar.

4. One comment requested that sulfur and ichthammol be deleted from the list of boil treatment drug product ingredients included in the May 16, 1990 proposal. The comment pointed out that on January 26, 1989, a substantive comment, including data and scientific references supporting the use of sulfur and ichthammol as active ingredients in the treatment of boils, was submitted to the proposed rulemaking on OTC boil treatment drug products (Docket No. 82N-0054).

The agency acknowledges this oversight. Sulfur and ichthammol had been classified in Category II in the advance notice of proposed rulemaking for OTC boil ointment drug products (47 FR 28306 at 28307 and 28308), but were classified in Category III in the tentative final monograph (53 FR 2196 at 2204). These ingredients have been deleted from the list of boil treatment ingredients included in this final rule.

5. One comment requested clarification of the agency's inclusion of povidone-iodine in the May 16, 1990 proposal. Specifically, the comment requested acknowledgement that povidone-iodine was not granted monograph status in the rulemaking proceedings for OTC dandruff, seborrheic dermatitis, and psoriasis drug products (Docket No. 82N-0214) and acne drug products (Docket No. 81N-0114) only because the manufacturers of povidone-iodine failed to submit data and/or comments on efficacy for such uses. The comment asserted a lack of commercial interest in developing such data, not evidence that povidone-iodine would be unsafe or ineffective for such uses.

Another comment requested clarification of the agency's inclusion of chloroxylenol in the May 16, 1990 proposal. Specifically, the comment requested acknowledgement that chloroxylenol was not granted monograph status in the rulemaking proceedings for OTC acne drug products (Docket No. 81N-0114) and OTC ingrown toenail drug products (Docket No. 80N-0348) because the manufacturers of chloroxylenol did not submit data and/or comments on safety and efficacy. The comment asserted that data were not submitted because of a lack of commercial interest, not because evidence suggested that chloroxylenol would be unsafe or ineffective for such uses.

The agency notes that no substantive comments or data on the effectiveness of povidone-iodine or chloroxylenol were submitted to the specific rulemakings listed by the comments. Accordingly, povidone-iodine and chloroxylenol are included in this final rule.

The agency is unable to state why manufacturers elected not to submit data on these ingredients for these uses. However, nonmonograph status for the indications included in this final rule has no bearing on the ingredients' inclusion in other OTC drug monographs covering other uses. As the comments noted, data on the ingredients' effectiveness for other uses may be submitted in the future in the form of a petition to amend the appropriate final monograph.

6. One comment requested clarification of the statement in the May 16, 1990 proposal that "FDA has determined that the presence of these ingredients in an OTC drug product would result in that drug product not being generally recognized as safe and effective or would result in misbranding." (55 FR 20434). The comment contended that this statement applies only to the use of nonmonograph ingredients as active ingredients. The comment stated that certain nonmonograph ingredients may be used as inactive ingredients and mentioned the use of sorbitol as a sweetening or flavoring agent in oral health care products. The comment asserted that the mere presence of a nonmonograph ingredient when used as an inactive

ingredient should not result in a misbranded product.

This final rule affects only the use of the listed ingredients as active ingredients for the specific indications listed. The agency has reviewed all of the ingredients covered by this final rule and recognizes that some of the ingredients have valid uses as inactive ingredients. Examples include: (1) Sorbitol, sugars, eucalyptol, and peppermint oil for sweetening, flavor, and aroma and (2) petrolatum and lanolin as ointment bases. Other ingredients listed below may also have valid uses as pharmaceutical necessities. This final rule does not affect such uses. However, any inactive ingredient present in the product should have an appropriate purpose and be safe and suitable for use in the product in accord with 21 CFR 330.1(e).

7. Three comments requested that the agency delay its proposed action regarding certain ingredients in OTC digestive aid drug products under this rulemaking. These comments stated that a major foreign manufacturer of a digestive aid drug product containing the enzymes pancreatin, papain, bromelain, trypsin, lipase, amylase, chymotrypsin, and rutoside intends to petition the agency in the near future to reopen the administrative record for OTC digestive aid drug products (Docket No. 81N-0108). The comment contended that this substantial commitment on the part of a foreign manufacturer to comply with FDA's requirements should not be obstructed by "house cleaning" efforts like the May 16, 1990 proposal, and this manufacturer will provide relevant information on these products.

Another comment requested that the ingredient acetic acid be deleted from the list of active ingredients in topical otic drug products (Docket No. 77N-334S) covered by this final rule. The comment included a citizen petition to reopen the administrative record for topical otic drug products to accept data regarding the safety and effectiveness of acetic acid for the prevention of swimmer's ear.

Another comment requested that the agency delete calcium carbonate from the list of antidiarrheal drug ingredients affected by this rulemaking to allow additional time to assemble evidence of its effectiveness.

The agency clearly stated in the May 16, 1990 proposal that "This proposal does not constitute a reopening of the administrative record or an opportunity to submit new data to any of the specific rulemakings," (55 FR 20434). In addition, § 330.10(a)(7)(v) (21 CFR 330.10(a)(7)(v)) of the regulations governing the OTC drug review states that new data and information submitted after the closing of the administrative record for a tentative final rule " * * * but prior to the establishment of a final monograph will be considered as a petition to amend the monograph and will be considered by the Commissioner only after a final monograph has been published in the **Federal Register** unless the Commissioner finds that good cause has been shown that warrants earlier consideration."

None of the comments offered good cause why the requested ingredients should not be included in this final rule. Of the eight enzymes contained in the digestive aid drug product mentioned by the first three comments, only two, pancreatin and papain, are included in this final rule. There have been no data submissions to date on these ingredients. Of the remaining six enzymes, only two, amylase and lipase, are still under consideration in the OTC digestive aids rulemaking. No data have been submitted to the OTC drug review on the remaining four enzymes—bromelain, trypsin, chymotrypsin, and rutoside; thus, these ingredients are not currently under consideration in the OTC digestive aids rulemaking. Further, the specific drug product containing these eight enzymes is not currently marketed in the United States.

The comment and accompanying petition regarding acetic acid likewise fails to offer either any explanation as to why the data contained in the petition were not submitted prior to the closing of the administrative record or any good cause for reopening the administrative record for OTC topical otic drug products (Docket No. 77N-334S). The petition included published reports of clinical trials and other information to support the safety and effectiveness of acetic acid for the prevention of swimmer's ear.

The agency has reviewed the existing administrative record of the rulemaking for OTC topical otic drug products for the prevention of swimmer's ear and determined that some of the data submitted by the comment have already been considered in that rulemaking and were found to be inadequate to support monograph status. The additional information provided is also insufficient to support monograph status. Finally, as noted above, the rulemaking covered by this final rule is not the proper forum to submit additional data to support safety and effectiveness of any specific ingredient. Therefore, the request to suspend or delay that portion of this final rule as relates to acetic acid for the prevention of swimmer's ear is denied.

The comment regarding calcium carbonate did not contain any statement as to why the firm failed to submit data on this ingredient during the 15 years since the publication of the advance notice of proposed rulemaking on OTC antidiarrheal drug products on March 21, 1975 (Docket No. 78N-036D). The agency has examined the administrative record for this rulemaking and finds no record of any previous comments or data submissions on calcium carbonate. Accordingly, the request to delete calcium carbonate for antidiarrheal use from this final rule is denied.

While the agency may consider the data offered by the comments, such data must be submitted in the form of a petition to amend the appropriate final monograph in accordance with § 10.30 (21 CFR 10.30) and must be addressed to the rulemaking for the appropriate drug category.

8. Two comments requested that a February 7, 1983 petition to reopen the administrative record on OTC skin protectant drug products (Docket No. 78N-0021, Comment No. C00029) also be regarded as a substantive comment to the OTC dandruff, seborrheic dermatitis, and psoriasis rulemaking (Docket No. 82N-0214). The comments stated that the manufacturer that submitted the February 7, 1983 petition assumed (erroneously) that its petition would automatically be entered into all appropriate dockets and therefore did not enter the appropriate docket numbers at the heading of the petition. The comments further pointed out that the Advisory Review Panel on OTC Miscellaneous External Drug Products considered colloidal oatmeal only for a dandruff claim and not for relief of itching due to psoriasis, even though such itching claims were made on colloidal oatmeal products. The comments added that the 1983 petition specifically included label claims for relief of "itchy, sore, sensitive skin due to * * * eczemal psoriasis." The comments, therefore, requested that the February 7, 1983 petition to the rulemaking for OTC skin protectant drug products (Docket No. 78N-0021, Comment No. C00029) also be regarded as a substantive comment to the rulemaking for OTC dandruff, seborrheic dermatitis, and psoriasis drug products (Docket No. 82N-0214), that colloidal oatmeal continue to be evaluated as part of that rulemaking, and that colloidal oatmeal be deleted from the list of OTC dandruff, seborrheic dermatitis, and psoriasis ingredients affected by this final rule.

While the comments correctly point out that the heading of the petition fails to list any docket number(s), there is no indication that the petition was ever intended to address any rulemaking other than the one for OTC skin protectant drug products. The petition clearly identifies a docket and rulemaking in its first paragraph, where it states that this petition is "* * * to request the Commissioner of Food and Drugs ("Commissioner") to reopen the administrative record on Skin Protectant Drug Products for Over-the-Counter Human Use to allow for the consideration of colloidal oatmeal as generally recognized as a safe and effective skin protectant. Proposed 21 CFR 347, Docket 78N-0021, 43 FR 34628, *et seq.* (August 4, 1978)."

No request is made anywhere in the petition for consideration under any other rulemaking. In addition, if this petition was also intended as a comment to the rulemaking for OTC dandruff, seborrheic dermatitis, and psoriasis drug products, it could have been included as a comment in the administrative record for that rulemaking until May 4, 1983 when the record closed. Also, it could have been included during the 12 months that the administrative record was open following publication of the tentative final monograph for OTC dandruff, seborrheic dermatitis, and psoriasis drug products on July 30, 1986 (51 FR 27346).

The agency further notes that the comment in question deals solely with the use of colloidal oatmeal for the temporary relief of itching from a wide variety of skin conditions and contains no data on the use of colloidal oatmeal when used alone in the treatment of psoriasis. As indicated in the discussion of the use of hydrocortisone for the relief of itching in comment 13 of the tentative final monograph for OTC dandruff, seborrheic dermatitis, and psoriasis drug products (51 FR 27346 at 27351), claims for temporary symptomatic relief of itching are not appropriate for inclusion under that monograph. Therefore, the comments' request to delete colloidal oatmeal from the list of OTC dandruff, seborrheic dermatitis, and psoriasis ingredients included in this final rule is denied. New data on the safety and effectiveness of colloidal oatmeal in the relief of itching from a variety of causes and conditions including psoriasis may be submitted in the future in the form of a petition to amend the external analgesic, skin protectant, or other appropriate monographs.

9. One comment submitted a paper entitled "Virucidal and Bactericidal Effects of Ascorbic Acid" (Ref. 1), which included a bibliography with 30 references. The comment noted the Category II status of ascorbic acid as a corn and callus remover and its Category III status as a wart remover. The comment contended that the virucidal and bactericidal effects of ascorbic acid may be useful in topical applications, particularly in wart remover products.

As noted above, final rules for OTC corn and callus remover drug products and OTC wart remover drug products were published on August 14, 1990. Ascorbic acid was not included in either final monograph. Any data supporting the use of ascorbic acid in either of these types of products needs to be submitted in the form of a petition to amend a final monograph in accord with 21 CFR 330.10(a)(12).

The report submitted by the comment examines the effects of exposing viruses and bacteria to ascorbic acid. It does not contain any clinical data in which a product containing ascorbic acid was used as a corn and callus remover or a wart remover. The agency concludes that this report is inadequate to support monograph status for ascorbic acid for either of these uses.

Reference

(1) Comment No. 12, Docket No. 89N-0525, Dockets Management Branch.

II. Summary of Significant Changes From the Proposed Rule

1. A statement has been added clarifying that menthol, when used as an antipruritic in combination with the antidandruff ingredient coal tar, is not covered by this final rule (see comment 3 above).

2. Sulfur and ichthammol have been deleted from the list of boil treatment drug product active ingredients covered by this final rule (see comment 4 above.)

3. In reexamining the administrative record of the rulemaking for OTC topical otic drug products (Docket No. 77N-334S), a substantive comment regarding anhydrous glycerin was inadvertently overlooked (Comment No. RPT-002). Therefore, anhydrous glycerin has been deleted from the list of topical otic drug product active ingredients affected by this final rule.

4. The term "active" has been included in the hearing of table I to clarify that this final rule pertains to use of the listed ingredients as active ingredients in the applicable OTC drug rulemakings.

5. New § 310.545 (21 CFR 310.545) has been included to list all of the active ingredients covered by this final rule.

III. The Agency's Final Conclusions on Certain OTC Drug Category II and III Active Ingredients

The agency has determined that no substantive comments or additional data have been submitted to the OTC drug review to support any of the ingredients listed below as being generally recognized as safe and effective for the OTC drug uses specified in the table (Table I). Based on the agency's procedural regulations (21 CFR 330.10(a)(7)(ii)), the agency has determined that these ingredients are not generally recognized as safe and effective and are misbranded when present in the following specific OTC drug products:

TABLE 1.—OTC DRUG RULEMAKINGS AND ACTIVE INGREDIENTS COVERED BY THIS NOTICE

Rulemaking
(1) Topical Acne Drug Products (Docket No. 81N-0114):
Alclora
Alkyl isoquinolinium bromide
Aluminum chlorohydrex
Aluminum hydroxide
Benzocaine
Benzoic acid
Boric acid
Calcium polysulfide
Calcium thiosulfate
Camphor
Chlorhydroxyquinoline
Chloroxylenol
Coal tar
Dibenzothiophene
Estrone
Magnesium aluminum silicate
Magnesium sulfate
Phenol
Phenolate sodium
Phenyl salicylate
Povidone iodine
Pyrilamine maleate
Resorcinol (as single ingredient)
Resorcinol monoacetate (as single ingredient)
Salicylic acid (over 2 up to 5 percent)
Sodium borate
Sodium thiosulfate
Tetracaine hydrochloride
Thymol
Vitamin E
Zinc oxide
Zinc stearate
Zinc sulfide
(2) Anticaries drug products (Docket No. 80N-0042):
Acidulated sodium phosphate
Hydrogen fluoride
Sodium carbonate

TABLE 1.—OTC DRUG RULEMAKINGS AND ACTIVE INGREDIENTS COVERED BY THIS NOTICE—Continued

Rulemaking
Sodium monofluorophosphate (6 percent rinse)
Sodium phosphate
(3) Antidiarrheal drug products (Docket No. 79N-0036D):
Aluminum hydroxide
Atropine sulfate
Calcium carbonate
Carboxymethylcellulose
Glycine
Homatropine methylbromide
Hyoscyamine sulfate
Lactobacillus acidophilus
Lactobacillus bulgaricus
Opium, powdered
Opium tincture
Paregoric
Phenyl salicylate
Scopolamine hydrobromide
Zinc phenolsulfonate
(4) Antiperspirant drug products (Docket No. 78N-0064):
Alum, potassium
Aluminum bromohydrate
Aluminum chloride (alcoholic solutions)
Aluminum chloride (aqueous solution) (aerosol only)
Aluminum sulfate
Aluminum sulfate, buffered (aerosol only)
Sodium aluminum chlorohydroxy lactate
(5) Boil treatment drug products (Docket No. 82N-0054):
Aminacrine hydrochloride
Bismuth subnitrate
Calomel
Camphor
Cholesterol
Ergot fluidextract
Hexachlorophene
Isobutamben
Juniper tar
Lanolin
Magnesium sulfate
Menthol
Methyl salicylate
Oxyquinoline sulfate
Petrolatum
Phenol
Pine tar
Rosin
Rosin cerate
Sassafras oil
Thymol
Zinc oxide
(6) Cold, cough, allergy, bronchodilator, and antiasthmatic drug products:
(A) Antihistamine drug products (Docket No. 76N-052H):
Methapyrilene hydrochloride
Methapyrilene fumarate
Thenyldiamine
(B) Nasal decongestant drug products (Docket No. 76N-053N):
Allyl isothiocyanate
Camphor (lozenge)
Creosote, beechwood (oral)
Eucalyptol (lozenge)
Eucalyptol (mouthwash)
Eucalyptus oil (lozenge)
Eucalyptus oil (mouthwash)
Menthol (mouthwash)
Peppermint oil (mouthwash)
Thenyldiamine
Thymol
Thymol (lozenge)
Thymol (mouthwash)
Turpentine oil
(7) Dandruff/seborrheic dermatitis/psoriasis drug products (Docket No. 82N-0214):
Alakyl isoquinolinium
Allantoin
Benzalkonium chloride
Benzethonium chloride
Boric acid
Calcium undecylenate
Captan
Chloroxylenol
Colloidal oatmeal
Cresol, saponated
Ethohexadiol
Eucalyptol
Juniper tar
Lauryl isoquinolinium
Methol [1]
Mercury oleate
Methylbenzethonium
Methyl salicylate
Phenol
Phenolate sodium
Pine tar
Povidone-iodine
Resorcinol
Sodium borate
Sodium salicylate
Thymol
Undecylenic acid
(8) Digestive aid drug products (Docket No. 81N-0106):
Bismuth sodium tartrate
Calcium carbonate
Cellulase
Dehydrocholic acid
Dihydroxyaluminum
Duodenal substance
Garlic, dehydrated
Glutamic acid
Hemicellulase
Homatropine
Magnesium hydroxide
Magnesium trisilicate
Ox bile extract
Pancreatin
Pancrelipase
Papain
Peppermint oil
Pepsin
Sodium bicarbonate
Sodium citrate
Sorbitol
(9) Exocrine pancreatic insufficiency drug products (Docket No. 79N-0379):
Hemicellulase
(10) External analgesic drug products (Docket No. 78N-0301):
(A) Analgesic and anesthetic drug products
Aspirin
Chloral hydrate
Chlorobutanol
Cyclomethycaine sulfate
Eugenol
Hexylresorcinol
Methapyrilene hydrochloride
Salicylamide
Thymol
(B) Counterirritant drug products:
Chloral hydrate
Eucalyptus oil
(C) Male genital desensitizer drug products
Benzyl alcohol
Camphorated metacresol
Ephedrine hydrochloride
(11) Ingrown toenail relief drug products (Docket No. 80N-0346):
Chloroxylenol
Urea
(12) Laxative drug products (Docket No. 78N-036L):
(A) Bulk laxatives
Agar
Carrageenan (degraded)
Carrageenan (native)
Guar gum
(B) Saline laxative
Tartaric acid
(C) Stool softener
Poloxamer 188
(D) Stimulant laxatives
Aloin
Bile salts/acids
Calcium pantothenate
Calomel
Colocynth
Elaterin resin
Frangula
Gamboge
Ipomea
Jalap
Ox bile
Podophyllum resin
Prune concentrate
Prune powder
Rhuberb, chinese
Sodium oleate
(13) Nailbiting and thumbsucking deterrent drug products (Docket No. 80N-0146):
Denatonium benzoate
(14) Oral health care drug products (nonantimicrobial) (Docket No. 81N-0033):
Antipyrine
Camphor
Cresol
Dibucaine
Dibucaine hydrochloride
Eucalyptol
Lidocaine
Lidocaine hydrochloride
Methyl salicylate
Myrrh tincture
Pyrilamine maleate
Sorbitol
Sugars
Tetracaine
Tetracaine hydrochloride
Thymol
(15) Topical otic drug products for the prevention of swimmer's ear (Docket No. 77N-334S):
Acetic acid
(16) Poison treatment drug products (Docket No. 81N-0050):
Ipecac fluidextract
Ipecac tincture
Zinc sulfate
(17) Skin bleaching drug products (Docket No. 78N-0065):
Mercury, ammoniated
(18) Skin protectant drug products (Docket No. 78N-0021):
Sulfur Allantoin (wound healing claims only)
Tannic acid
Zinc acetate (wound healing claims only)
(19) Smoking deterrent drug products (Docket No. 81N-0027):
Clove
Coriander
Eucalyptus oil
Ginger, jamaica
Lemon oil, terpeneless
Licorice root extract
Menthol
Methyl salicylate
Quinine ascorbate
Silver nitrate
Thymol

[1] Does not apply to the use of menthol as an antipruritic when used in combination with the Category I antidandruff ingredient coal tar.

Accordingly, any drug product containing any of these active ingredients and labeled for the OTC use identified above will be considered nonmonograph and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 of the regulations is required for marketing. As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in a citizen petition to amend the appropriate monograph to include any of the above active ingredients in OTC drug products. (See 21 CFR 10.30.)

Any OTC drug product containing any of the above ingredients either labeled or intended as an active ingredient for the uses included in the above rulemakings that is initially introduced or initially delivered for introduction into interstate commerce after May 7, 1991, and that is not the subject of an approved application will be in violation of sections 502 and 505 of the act (21 U.S.C. 352 and 355) and, therefore, subject to regulatory action. Further, any OTC drug product containing an ingredient subject to this rulemaking that is repackaged or relabeled after May 7, 1991, must be in compliance with the rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (55 FR 20434 at 20438). The agency concludes that there is no basis for the continued marketing of these ingredients for the uses listed in Table I above. There are other ingredients being considered for monograph status that manufacturers can use to reformulate affected products. In many instances, manufacturers have already reformulated their products to include these ingredients. As a result of this final rule, manufacturers may need to reformulate some products prior to promulgation of the applicable final monograph. However, there will be no additional costs because reformulation would be required, in any event, when the final monograph is published.

Early finalization of the nonmonograph status of the ingredients listed in this notice will benefit both consumers and manufacturers. Consumers will benefit from the early removal from the marketplace of ingredients for which safety and effectiveness have not been established. This will result in a direct economic savings to consumers. Manufacturers will benefit from being able to use alternative ingredients that are being considered as being found generally recognized as safe and effective without incurring additional expense of clinical testing for these ingredients. Based on the above, the agency certified that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, subchapter D of chapter I of title 21 of the Code of Federal Regulations is amended in part 310 as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is added to subpart E to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) A number of active ingredients have been present in OTC drug products for various uses, as described below. However, based on evidence currently available, there are inadequate data to establish general recognition of the safety and effectiveness of these ingredients for the specified uses:

(1) *Topical acne drug products.*

Alcloxa
Alkyl isoquinolinium bromide
Aluminum chlorohydrex
Aluminum hydroxide
Benzocaine
Benzoic acid
Boric acid
Calcium polysulfide
Calcium thiosulfate
Camphor
Chlorhydroxyquinoline
Chloroxylenol
Coal tar
Dibenzothiophene
Estrone
Magnesium aluminum silicate
Magnesium sulfate
Phenol
Phenolate sodium
Phenyl salicylate
Povidone-iodine
Pyrilamine maleate
Resorcinol (as single ingredient)
Resorcinol monoacetate (as single ingredient)
Salicylic acid (over 2 up to 5 percent)
Sodium borate
Sodium thiosulfate
Tetracaine hydrochloride
Thymol
Vitamin E
Zinc oxide
Zinc stearate

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Zinc sulfide

(2) *Anticaries drug products.*

Acidulated sodium phosphate
Hydrogen fluoride
Sodium carbonate
Sodium monofluorophosphate (6 percent rinse)
Sodium phosphate

(3) *Antidiarrheal drug products.*

Aluminum hydroxide
Atropine sulfate
Calcium carbonate
Carboxymethylcellulose
Glycine
Homatropine methylbromide
Hyoscyamine sulfate
Lactobacillus acidophilus
Lactobacillus bulgaricus
Opium, powdered
Opium tincture
Paregoric
Phenyl salicylate
Scopolamine hydrobromide
Zinc phenolsulfonate

(4) *Antiperspirant drug products.*

Alum, potassium
Aluminun. bromohydrate
Aluminum chloride (alcoholic solutions)
Aluminum chloride (aqueous solution) (aerosol only)
Aluminum sulfate
Aluminum sulfate, buffered (aerosol only)
Sodium aluminum chlorohydroxy lactate

(5) *Boil treatment drug products.*

Aminacrine hydrochloride
Bismuth subnitrate
Calomel
Camphor
Cholesterol
Ergot fluidextract
Hexachlorophene
Isobutamben
Juniper tar
Lanolin
Magnesium sulfate
Menthol
Methyl salicylate
Oxyquinoline sulfate
Petrolatum
Phenol
Pine tar
Rosin
Rosin cerate
Sassafras oil
Thymol
Zinc oxide

(6) *Cold, cough, allergy, bronchodilator, and antiasthmatic drug products*—(i) *Antihistamine drug products.*

Methapyrilene hydrochloride
Methapyrilene fumarate
Thenyldiamine

(ii) *Nasal decongestant drug products.*

Allyl isothiocyanate
Camphor (lozenge)
Creosote, beechwood (oral)
Eucalyptol (lozenge)
Eucalyptol (mouthwash)
Eucalyptus oil (lozenge)
Eucalyptus oil (mouthwash)
Menthol (mouthwash)
Peppermint oil (mouthwash)
Thenyldiamine
Thymol
Thymol (lozenge)
Thymol (mouthwash)
Turpentine oil

(7) *Dandruff/seborrheic dermatitis/psoriasis drug products.*

Alkyl isoquinolinium
Allantoin
Benzalkonium chloride
Benzethonium chloride
Boric acid
Calcium undecylenate
Captan
Chloroxylenol
Colloidal oatmeal
Cresol, saponated
Ethohexadiol
Eucalyptol
Juniper tar
Lauryl isoquinolinium
Methol (Does not apply to the use of menthol as an antipruritic when used in combination with the Category I antidandruff ingredient coal tar)
Mercury oleate
Methylbenzethonium
Methyl salicylate
Phenol
Phenolate sodium
Pine tar
Providone-isodine
Resorcinol
Sodium borate
Sodium salicylate
Thymol
Undecylenic acid

(8) *Digestive aid drug products.*

Bismuth sodium tartrate
Calcium carbonate
Cellulase
Dehydrocholic acid
Dihydroxyaluminum
Duodenal substance
Garlic, dehydrated
Glutamic acid
Hemicellulase
Homatropine
Magnesium hydroxide
Magnesium trisilicate
Ox bile extract
Pancreatin
Pancrelipase
Papain
Peppermint oil
Pepsin
Sodium bicarbonate
Sodium citrate
Sorbitol

(9) *Exocrine pancreatic insufficiency drug products.*

Hemicellulase

(10) *External analgesic drug products*—(i) *Analgesic and anesthetic drug products.*

Aspirin
Chloral hydrate
Chlorobutanol
Cyclomethycaine sulfate
Eugenol
Hexylresorcinol
Methapyrilene hydrochloride
Salicylamide
Thymol

(ii) *Counterirritant drug products.*

Chloral hydrate
Eucalyptus oil

(iii) *Male genital desensitizer drug products.*

Benzyl alcohol
Camphorated metacresol
Ephedrine hydrochloride

(11) *Ingrown toenail relief drug products.*

Chloroxylenol
Urea

(12) *Laxative drug products*—(i) *Bulk laxatives.*

Agar
Carrageenan (degraded)
Carrageenan (native)
Guar gun

(ii) *Saline laxative.*

Tartaric acid

(iii) *Stool softener.*

Poloxamer 188

(iv) *Stimulant laxatives.*

Aloin
Bile salts/acids
Calcium pantothenate
Calomel
Colocynth
Elaterin resin
Frangula
Gamboge
Ipomea
Jalap
Ox bile
Podophyllum resin
Prune concentrate
Prune powder
Rhubarb, Chinese
Sodium Oleate

(13) *Nailbiting and thumbsucking deterrent drug products.*

Denatonium benzoate

(14) *Oral health care drug products (nonantimicrobial).*

Antipyrine
Camphor
Cresol
Dibucaine
Dibucaine hydrochloride
Eucalyptol
Lidocaine
Lidocaine hydrochloride
Methly salicylate
Myrrh tincture
Pyrilamine maleate
Sorbitol
Sugars
Tetracaine
Tetracaine hydrochloride
Thymol

(15) *Topical otic drug products for the prevention of swimmer's ear.*

Acetic acid

(16) *Poison treatment drug products.*

Ipecac fluidextract
Ipecac tincture
Zinc sulfate

(17) *Skin bleaching drug products.*

Mercury, ammoniated

(18) *Skin protectant drug products.*

Allantoin (wound healing claims only)
Sulfur
Tannic acid
Zinc acetate (wound healing claims only)

(19) *Smoking deterrent drug products.*

Clove
Coriander
Eucalyptus oil
Ginger, Jamaica
Lemon oil, terpeneless
Licorice root extract
Menthol
Methyl salicylate
Quinine ascorbate
Silver nitrate
Thymol

(b) Any OTC drug product that is labeled, represented, or promoted for the uses specified and containing any active ingredient(s) as specified in paragraph (a) of this section is regarded as a new drug within the meaning of section 210(p) of the Federal Food, Drug, and Cosmetic Act (the act), for which an approved new drug application under section 505 of the act and part 314 of this chapter is required for marketing. In the absence of an approved new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted for the OTC uses and containing any active ingredient(s) as specified in paragraph (a) of this section is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

(d) After May 7, 1991, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

Dated: October 1, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-26287 Filed 11-6-90; 8:45 am]

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Wednesday
November 7, 1990

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of the Harlingen Airport Radar Service Area; TX; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AWA-6]

Establishment of the Harlingen Airport Radar Service Area; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes an Airport Radar Service Area (ARSA) at Harlingen, TX. Rio Grande Valley International Airport is a public airport with an operating control tower served by a Level III Radar Approach Control Facility. Establishment of this ARSA requires that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at the affected location promotes the efficient control of air traffic and reduces the risk of midair collision in terminal areas.

EFFECTIVE DATE: 0901 utc, December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the Federal Register (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1-2 concluded that Terminal Radar Service Areas (TRSAs) should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was recommended by a consensus.

The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service," in Notice 83-9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSAs at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSAs were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSAs were permanently established at the Austin, TX; Columbus, OH; and the Baltimore/Washington International Airports (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSAs for other airports at which TRSA procedures are in effect. Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSAs at locations other than those which are included in the TRSA replacement program. The task group recommended that these criteria include among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. These criteria have been developed and are published via the FAA directives system.

The FAA has established ARSAs at 122 locations under a paced implementation plan to replace TRSAs with ARSAs.

On August 6, 1990, the FAA proposed to designate an ARSA at Harlingen, TX (55 FR 32064). Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. No comments objecting to the proposal were received. However, three comments were received as follows:

1. Aircraft Owners and Pilots Association (AOPA) commends FAA for the configuration of Harlingen ARSA. AOPA recommends that after the ARSA is in place for six months, a users meeting should be held to identify and correct problems.

The FAA will conduct a users meeting after six months of operation of the Harlingen ARSA to determine if there are problems for pilots that should be studied.

2. Air Transport Association of America, in coordination with the five members of the Association currently serving the Rio Grande Valley International Airport, Harlingen, concurs with its establishment.

3. Air Line Pilots Association (ALPA), representing 42,000 pilots who fly for 50 airlines, has reviewed the subject proposal and concurs with the establishment of the Harlingen ARSA. However, ALPA strongly recommends a navigational aid be installed on the airport so that ARSA boundaries could be defined by radial and distance measuring equipment (DME) in conjunction with landmarks.

The FAA has no current plans to install a VOR on the surface of the Rio Grande Valley International Airport, Harlingen. However, there are tentative plans to install a DME in conjunction with the installation of an instrument landing system (ILS) on Runway 17R.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.501 of part 71 of the Federal Aviation Regulations in FAA Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations designates an ARSA at Rio Grande Valley International Airport, Harlingen, TX. This location is a public airport with an operating control tower served by a Level III Radar Approach Control Facility. Establishment of this ARSA will require that pilots maintain two-way radio communication with ATC while in the ARSA. Implementation of ARSA procedures at this location will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

Regulatory Evaluation Summary

This section summarizes the regulatory evaluation prepared by the FAA which provides more detailed information on estimates of the potential economic consequences of this rule. This summary and the full evaluation quantify, to the extent practicable, estimated costs of this rule to the private sector, consumers, and Federal, State, and local governments, and also the anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this rule is not "major" as defined in the Executive Order. Therefore, a full regulatory impact *analysis*, which includes the identification and evaluation of cost-reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise document termed a "regulatory evaluation," which analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a final regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96-354) and an international trade impact assessment. If the reader desires more detailed economic information than this summary contains, then he or she should consult the full regulatory evaluation contained in the docket.

Costs

The FAA has determined that the establishment of the ARSA at Harlingen will only impose a negligible cost of $500 (discounted, 1989 dollars) to the agency and no additional cost to the aviation community (namely, aircraft operators and fixed based operators).

1. FAA Administrative Costs (air traffic controller staffing, controller training, and facility equipment).

For this final rule, the FAA does not expect to incur any additional costs for air traffic controller staffing, controller training, or facility equipment. The FAA contends that it can handle any additional traffic that will participate in radar services at ARSAs through more efficent use of personnel at current authorized staffing level.

The FAA expects to be able to train its controller force in ARSA procedures during regularly scheduled briefing sessions routinely held at Harlingen and Corpus Christi (and all other ARSA facilities). Therefore, no additional training costs are expected as a result from implementation of the ARSA at Harlingen. Because the Harlingen Airport currently provides Stage II service, which already has a terminal radar systems installed, it will not be necessary to procure additional equipment. For the ARSA program in general, modification of the computer software used to operate radar equipment may be necessary, though this has not happened to date. In some instances, previously adopted plans to replace or modify older existing equipment may be rescheduled to accommodate the ARSA program. However, no significant additional equipment requirements are anticipated. Essentially, the FAA will be modifying its terminal radar procedures in the ARSA program in a manner that will make more efficient use of existing resources.

An example of the ARSA program's promotion of more efficient resource utilization is the installation of a new generation of radar called the ASR-9 in Harlingen. Although the radar is located in Harlingen, its operation and control have been remoted to Corpus Christi, TX. This is because Corpus Christi ATC already has the necessary air traffic facilities and experienced personnel to provide ARSA service. Corpus Christi is currently served by an established Level III radar approach control and an ARSA at Corpus Christi International Airport. In addition, Corpus Christi ATC currently provides Stage II services at Rio Grande Valley International Airport (HRL) and other area airports. As the result of this rule, Corpus Christi ATC will also provide ARSA services at HRL without the need for additional resources.

Because of the experience Corpus Christi ATC has had with ARSA operations, the FAA expects no additional staffing, training, or equipment costs as a result of the ARSA at Harlingen.

2. Other FAA Administrative Costs (revision of charts, notification of the public, and pilot education)

Establishment of ARSAs throughout the country have made it necessary, and will continue to make it necessary, to revise sectional charts to remove existing airspace depictions and incorporate the new ARSA airspace boundaries. The current FAA practice is to revise these sectionals every 6 months. Changes of the type required to depict an ARSA are made routinely during charting cycles, and it can be considered an ordinary cost of doing business. Therefore, the FAA does not expect to incur any additional charting costs as a result of the ARSA at Harlingen. Pilots will obtain charts depicting ARSAs as they are published during the charting cycles. Because pilots are already required to use current charts, they also will not incur any additional costs.

The FAA routinely holds an informal public meeting at each location where an ARSA is proposed. These meetings provide pilots with the best opportunity to learn both how an ARSA works and how it would affect their local operations. The expenses associated with these public meetings will be incurred regardless of whether an ARSA is being ultimately established. Thus, they are more appropriately considered routine FAA costs. However, there will be public information costs attributed to this rule. Such costs will be incurred primarily as the result of distributing a "Letter To Airmen" to all pilots residing within 50 miles of the Harlingen ARSA site. This letter will explain the operation and airspace configuration of the ARSA. The FAA will also issue an Advisory Circular on the Harlingen ARSA.

The combined Letter to Airmen and prorated Advisory Circular costs for the Harlingen ARSA will amount to an estimated $500 (discounted). This one-time negligible cost will be incurred upon establishment of the ARSA.

For the ARSA program in general, FAA district offices throughout the country conduct aviation safety seminars. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, including ARSAs, and do not involve additional costs strictly as a result of the ARSA program. Additionally, no significant costs are expected to be incurred as a result of the follow-up user meetings that are held at each site following implementation of the ARSA. The FAA organizes these meetings to get feedback from users on local ARSA operations. The meetings are held at public or other facilities and are provided free of charge or at a nominal cost. Because local FAA facility personnel conduct these meetings, no travel, per diem, or overtime costs are incurred by regional or headquarters personnel.

3. Potential Operating Costs To The Aviation Community (circumnavigation, delays, and radio communications equipment)

Potential Circumnavigation Costs. The FAA anticipates that some pilots who currently transit the terminal area without establishing radio communications or participating in Stage II services may choose to circumnavigate the ARSA. However, the FAA contends that these operators could circumnavigate the ARSA without significantly deviating from their regular flight path. They could also fly above the ceiling (4,000 feet MSL) or under the floor (1,200 feet MSL) to remain clear of the ARSA. Because of this relatively short distance, the FAA estimates that this rule will have a minimal, if any, cost impact on general aviation (GA) aircraft operations.

Potential Costs of Delays. This rule could impose additional costs to aircraft operators in the form of delays. The FAA recognizes that the potential exists for delays to develop at HRL following the establishment of an ARSA there. The additional traffic that ATC will be handling as a result of the mandatory participation requirement may result in minor delays to aircraft operations. The FAA does not expect such delays to be significant. The flexibility afforded controllers in handling traffic as a result of the separation standards allowed in an ARSA will keep delay problems to a minimum. Those problems that do occur are typically transitional in nature. This has been the experience at the three locations where ARSAs have been in effect for the longest period of time and at most of the more recently designated ARSA locations. ATC facilities eventually gain the operating experience and knowledge to tailor procedures and allocate resources to take the fullest advantage of the efficiencies that ARSAs permit. A few ARSA sites have encountered situation specific difficulties in making the transition to an ARSA, and the FAA is attempting to resolve these local problems. However, the FAA does not anticipate that any circumstances exist at HRL that will result in such problems, and it is expected to experience the smooth transition process that has characterized the majority of ARSA sites established to date.

Potential Costs of Communications Equipment. The FAA does not expect that any operators will find it necessary to install radio transceivers as a result of this rule. Aircraft operating to and from HRL already are required to have two-way radio communications capability because of the existing airport traffic area and, therefore, these aircraft operators are not expected to incur any additional costs as a result of this ARSA. Nevertheless, the FAA has made an effort to minimize potential radio installation costs. This will be accomplished by providing cutouts along the floor of the ARSA. In addition, procedural agreements between ATC and affected satellite airports could be used to avoid imposing radio installation costs on operators at those airports.

4. Other Potential Costs To The Aviation Community.

Special situations might exist where establishment of the ARSA could impose certain costs on users. Some of the users and activities that may be affected are local fixed-base operators and airport operators, flight training, crop dusting, soaring, ballooning, parachuting, ultralight operators, and banner towing operators. However, the FAA may employ exclusions, cutouts, and special procedures to alleviate any adverse impacts. The FAA may also develop special procedures to accommodate these activities through local agreements between ATC and the affected organizations. For these reasons, the FAA does not expect any such adverse impacts to occur as a result of this rule.

5. Mode C and TCAS Rules

As the result of this ARSA rule, Harlingen will be subject to the "Transponder With Automatic Altitude Reporting Capability Requirement (Mode C)" (53 FR 23356, June 21, 1988). Phase II of the Mode C Rule goes into effect for ARSAs on December 30, 1990. It states that all aircraft must be equipped with an operable transponder with Mode C capability when operating in and above an ARSA. Specifically, the Mode C Rule affects all aircraft operating in an ARSA and in all airspace above an ARSA beginning at the ceiling and extending upward to 10,000 feet MSL within the lateral confines of an ARSA. The requirement also applies to any ARSA designated in the future.

Some aircraft operators may have to acquire (or upgrade to) a Mode C transponder as a result of the ARSA. However, the cost of acquiring a Mode C transponder for all GA aircraft in the U.S. was completely accounted for in the Mode C Rule. The Mode C Rule assumed a worst-case scenario that all operators of GA aircraft without a transponder with Mode C will acquire such equipment. The FAA contends that GA operators will acquire Mode C transponders to avoid having to continually circumnavigate the increasing amount of airspace that requires Mode C transponders. Thus, any Mode C acquisition costs as a result of the Harlingen ARSA or any other ARSA has already been attributed entirely to the Mode C rule.

The FAA has also adopted regulations requiring certain aircraft operators to install a traffic alert and collision avoidance system (TCAS, 54 FR 940, January 10, 1989). TCAS allows air carriers to determine the position of other aircraft from the signal emitted by Mode C transponders. TCAS then will issue resolution advisories as to what evasive actions are most appropriate to avoid a collision. The TCAS Rule will have no cost impact on this ARSA rule. However, it will contribute to the potential benefits. The benefits of the ARSA at Harlingen are discussed below.

Benefits

The FAA has determined that the potential benefits of this final rule will be enhanced aviation safety (in terms of a lowered likelihood of midair collisions) and improved operational efficiency (in terms of higher air traffic controller productivity with existing resources). These potential benefits are difficult to quantify and express in monetary terms. Thus, such benefits have been analyzed in qualitative terms, as explained in the following sections.

The safety and efficiency benefits of this rule are attributed to simplification and standardization of ARSA configurations and operating procedures. ARSAs allow ATC greater flexibility in handling air traffic and enable ATC to move traffic more efficiently, with increased safety in the form of a reduced likelihood of a midair collision.

The NAR task group found that airspace users, especially GA users, encountered significant problems with terminal radar services. Different levels of radar service offered within terminal areas caused confusion and users were not always certain what restrictions and privileges existed. The standardization and simplification of the ARSA concept is expected to alleviate many of these problems. As both pilots and controllers become more familiar with ARSA operating procedures, all IFR and VFR traffic is expected to move as efficiently and expeditiously as it did under State II service. These benefits of the ARSA program cannot be specifically attributed to individual airports, but rather will result from the overall improvements in terminal area air traffic control procedures realized as ARSAs are implemented throughout the country. Establishment of an ARSA at Harlingen, TX will contribute to these overall improvements.

The ARSA at Harlingen will generate potential safety benefits in the form of a lowered likelihood of midair collisions due to increased positive control of airspace around HRL. Because of the proactive nature of this rule to establish an ARSA at HRL, the potential safety benefits are difficult to quantify in monetary terms. Based on symptoms that indicate an increased probability of a midair collision at HRL, the FAA is establishing an ARSA there to prevent a safety problem from occurring. These early symptoms are the increased volume of passenger enplanements and the increased complexity of aircraft operations at HRL.

The volume of passenger enplanements at HRL has risen dramatically. Enplanements at HRL for 1989 are estimated to be 560,000 (up from 297,000 in 1980) and are projected to be 1.2 million by the year 2000. This high volume of passenger enplanements had made HRL eligible to become an ARSA. The number of aircraft operations have also increased. Operations at HRL in 1989 are estimated to be 64,000 and are projected to be 84,000 by the year 2000.

The complexity of aircraft operations at HRL has also increased. Complexity refers to air traffic conditions resulting from a mix of controlled and uncontrolled aircraft. As complexity increases, so does the potential for midair collisions. Several factors have lead to this increased complexity at HRL:

- Federal Express is expected to make HRL its hub for service into Mexico and will soon be operating Boeing 727s out of HRL.
- U.S. customs is expected to expand their Port of Entry operations in the near future and is considering establishing their base of operations at HRL. The Port of Entry is expected to dramatically increase general aviation traffic over the short run. Local fixed base operators are expecting an immediate 40% increase in their business as a direct result of the Port of Entry.
- The Confederate Airforce has its headquarters in Harlingen and presently occupies several hangars at HRL. Harlingen is host to the Winter Texas Airshow and the Confederate Airshow. The latter generates about 1,000 aircraft operations a day that are worked by ATC at HRL.
- Harlingen is located in the center of a major agricultural belt. Currently, there are approximately 200 crop duster operations daily in the Harlingen area.
- Aero Mexico, an air taxi operator, is presently negotiating for service from HRL to several cities in Mexico.

The ARSA program has the potential for reducing the number of near-midair collisions (NMACs). In a study [*Selected Statistics Concerning Pilot Reported Near Midair Collisions (1983–1985)*, FAA Office of Aviation Safety—Safety Analysis Division (ASF–200), June 1986], the FAA found that approximately 15 percent of reported NMACs occur in TRSA airspace. The study found that about half of all NMACs occur in the 1,000 to 5,000 feet altitude range, which is closely comparable to the altitudes where pilot participation will be mandatory in the ARSA. The study also found that over 85 percent of NMACs occur in VFR conditions when visibility is five miles or greater. Finally, the study found that the largest number of NMAC reports is associated with IFR operators under radar control conflicting with VFR traffic during VFR flight conditions below 12,500 feet. The mandatory participation requirements of the ARSA and the radar services provided by ATC to VFR as well as IFR pilots will help alleviate such conflicts that are now occurring in TRSA and other non-ARSA airspace.

The NAR task group also reviewed NMAC data for Austin, TX, and Columbus, OH, from 1978 to 1984. They found that the presence of an ARSA would have reduced the probability of NMAC occurrence by 38 percent of the reported incidents at Austin, and 33 percent at Columbus. The Office of Aviation Policy and Plans (APO) study entitled, *Airport Radar Service Area (ARSA) Analysis*, August 1984, by Ken Geisinger, APO–120, estimated that the potential for NMACs could be reduced by about 44 percent. Although no quantifiable benefits can be attributed to a reduction in near midair collisions, near midair and actual midair collisions result from similar causal factors. A reduction in near midair collisions suggests that a reduction in actual midair collisions may also be expected as a result of the ARSA program.

An FAA study by Ken Geisinger of the ARSA confirmation sites included a detailed analysis to determine if a reduction in midair collision risk might result from replacing a TRSA with an ARSA. The collision risk analysis was based upon the experience at Columbus because recorded radar data through Automated Radar Terminal System ARTS III–A extraction was available only at Columbus. The study focused on conditions of fairly heavy VFR activity since the ARSA affects procedures used to handle VFR traffic in the terminal radar area. Because the replacement of a TRSA with an ARSA might alter the routes of travel, particularly for aircraft that did not previously participate in the TRSA, the analysis examined the intersections of flight paths before and after the ARSA was installed. The flight path analysis focused on the areas immediately around, under, and above the ARSA, and determined that there was no compression of traffic in this airspace following installation of the ARSA. In the absence of compression, the study concluded that the mandatory participation requirement for all aircraft operating within the ARSA resulted in a 75 percent reduction in midair collision risk.

The FAA has reviewed NTSB midair collision accident records for the period between January 1978 and October 1984. This review indicated that the establishment of an ARSA, in place of a TRSA where these accidents occurred, could greatly reduce the likelihood of midair collisions. Because the circumstances observed at the Columbus test site may not be the same at other TRSA locations, the 75 percent reduction in midair collision risk measured at Columbus may not be achieved at other ARSA sites. Therefore, the FAA conservatively estimates that the ARSA program would reduce the risk of a midair collision by only 50 percent at TRSA locations that are replaced with ARSAs. Establishing ARSAs at high density airports currently provided Stage II radar service will also similarly contribute to a reduction in midair collision risk.

The reduction by 50 percent to one or two midair collisions per year where an ARSA could have made a difference, would result in the prevention of one midair collision nationally every 1 to 2 years. The quantifiable benefits of preventing a midair collision can range from less than $150,000, resulting from the prevention of a minor nonfatal accident betweeen GA aircraft, to $250 million or more, resulting from the prevention of a midair collision involving a passenger jet airplane. Establishment of the ARSA at Harlingen will contribute to this improvement in national aviation safety.

Ordinarily, the benefit of an incremental reduction in the likelihood of midair collisions from establishing an ARSA would be attributed entirely to the ARSA program. However, an indeterminant amount of the benefits have to be credited to the interaction of the ARSA at Harlingen (and the ARSA program in general) with the Mode C Rule, which in turn interacts with the TCAS Rule. This is because the benefits of the ARSA at Harlingen, as well as other designated airspace that require Mode C transponders, cannot be separated from the benefits of the Mode C and TCAS rules. Thus, the potential shared safety benefits of the ARSA and Terminal Control Area (TCA) programs and the Mode C and TCAS Rule total $2.1 billion (discounted) in 1989 dollars.

Comparison of Costs and Benefits

The FAA has determined that this rule to establish an ARSA at Harlingen, TX, will impose a negligible administrative cost of $500 to the agency. When this cost estimate of $500 is added to the total cost of $808.5 million of the TCA program and the Mode C and TCAS Rules, the combined cost will still be less than the total potential safety benefits ($2.1 billion). This rule will also generate some benefits in the form of enhanced aviation operational efficiency. In addition, this rule will not impose any additional cost to the aviation community. Thus, the FAA believes that this rule will be cost-beneficial.

International Trade Impact Assessment

This final rule will only affect U.S. terminal airspace operating procedures at and in the vicinity of Harlingen, TX. This rule will not impose a competitive trade disadvantage to foreign firms on the sale of either foreign aviation products or services in the United States. In addition, domestic firms will not incur a competitive trade disadvantage on either the sale of United States aviation products or services in foreign countries.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

Under FAA Order 2100.14A entitled, *Regulatory Flexibility Criteria and Guidance*, a significant economic impact means annualized net compliance cost to an entity, which when adjusted for inflation, is greater than or equal to the threshold cost level for that entity. A substantial number of small entities means a number that is not fewer than eleven and represents more than one-third of the small entities subject to a proposed or existing rule.

For the purpose of this evaluation, the small entities that will be potentially affected by this final rule are defined as fixed base operators, flight schools, agricultural operators, and other small aviation businesses located at satellite airports located within five nautical miles of a potential ARSA center. Participation in the TRSA and radio communication with ATC, prior to this rule, was voluntary. As the result of this rule, participation in the ARSA will be mandatory and businesses at airports located within the five-nautical-mile core might be altered or lose customers to airports outside of the five-nautical-mile ARSA core. The FAA has endeavored to exclude almost every satellite airport located within the five-nautical-mile-ring to avoid adversely impacting their operations, and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some cases, the same purposes were achieved through Letters of Agreement between ATC and the affected airports by establishing special procedures for aircraft operators. In this manner, the FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports that could result from the ARSA program. Similarly, the FAA expects to eliminate potential adverse impacts on existing flight-training practice areas, as well as on soaring, ballooning, parachuting, and ultralight and banner towing activities, by developing special procedures that would accommodate these activities through local agreements between ATC facilities and the affected organizations. The FAA has utilized such arrangements extensively in implementing the ARSAs that have been established to date.

The FAA expects that any delay problems that may initially develop following implementation of an ARSA would be transitory. Furthermore, airports that would be affected by this ARSA program represent only a small proportion of the public use airports affected by the Harlingen ARSA. Thus, small entities of any type that use aircraft in the course of their business would not be adversely impacted.

For these reasons, the FAA determined that this rule will not result in a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required under the terms of the RFA.

Federalism Implications

The regulation adopted herein will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation" the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Airport radar service areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. § 71.501 is amended as follows:

Harlingen, TX [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Rio Grande Valley International Airport (lat. 26°13'41"N., long. 97°39'15"W.), excluding that airspace east of the Arroyo Colorado that is north of the Southern Pacific Railroad; and that airspace extending upward from 2,000 feet MSL to 4,000 feet MSL within a 10-mile radius of the airport from Farm Road 1420 and the Arroyo Colorado clockwise to the Southern Pacific Railroad; and that airspace extending upward from 1,300 feet MSL to 4,000 feet MSL to the 10-mile radius of the airport from the Southern Pacific Railroad clockwise to U.S. Highway 83 (Business Route); and that airspace extending upward from 1,500 feet MSL to 4,000 feet MSL from U.S. Highway 83 (Business Route) clockwise to U.S. Highway 77 (Business Route); and that airspace extending upward from 1,200 feet MSL to 4,000 feet MSL from U.S. Highway 77 (Business Route) clockwise to Farm Road 1420.

Issued in Washington, DC, on November 1, 1990.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division

[FR Doc. 90-26283 Filed 11-6-90; 8:45 am]

BILLING CODE 4910-13-M

federal register

Wednesday
November 7 1990

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 15
Federal Acquisition Regulation (FAR); Evaluation Factors; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

Federal Acquisition Regulation (FAR); Evaluation Factors

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to FAR 15.605 to state that quality must be an evaluation factor in solicitations for services but must only be considered in the planning of other acquisitions. This change will better implement the requirements of Public Law 99-661, section 926(a).

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before January 7, 1991, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to:
General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., room 4041 Washington, DC 20405.

Please cite FAR Case 90-52 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mrs. Victoria Moss, Office of Federal Acquisition Policy, room 4041, GS Building, Washington, DC 20405, (202) 501-0168. Please cite FAR Case 90-52.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it merely clarifies the use of "quality" as an evaluation factor. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. However, comments from small entities concerning the affected FAR section will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 90-610 (FAR Case 90-52) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed change to the FAR does not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: October 31, 1990.
Albert A. Vicchiolla,
Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 15 be amended as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR part 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 15.605 is amended by revising paragraph (b) to read as follows:

15.605 Evaluation factors.

* * * * *

(b) The evaluation factors that apply to an acquisition and the relative importance of those factors are within the broad discretion of agency acquisition officials. However, price or cost to the Government shall be included as an evaluation factor in every source selection. Quality also shall be considered in planning every source selection and shall be included as an evaluation factor in solicitations for services. In evaluation factors, quality may be expressed in terms of technical excellence, management capability, personnel qualification, prior experience, past performance, and schedule compliance. Any other relevant factors, such as cost realism, may also be included.

* * * * *

[FR Doc. 90-26290 Filed 11-6-90; 8:45 am]
BILLING CODE 6820-34-M

federal register

Wednesday
November 7, 1990

Part VI

Congressional Budget Office

Final Sequestration Report for Fiscal Year 1991 to Congress and the Office of Management and Budget; Notice of Transmittal

CONGRESSIONAL BUDGET OFFICE

Notice of Transmittal of Final Sequestration Report for Fiscal Year 1991 to Congress and the Office of Management and Budget

Pursuant to the Omnibus Budget Reconciliation Act of 1990, Section 254(b), the Congressional Budget Office hereby reports that it has submitted its Final Sequestration Report for Fiscal Year 1991 to the House of Representatives, the Senate, and the Office of Management and Budget.

Mark Desautels,

Director, Office of Intergovernmental Relations, Congressional Budget Office.

[FR Doc. 90-26507 Filed 11-6-90; 12:36 pm]

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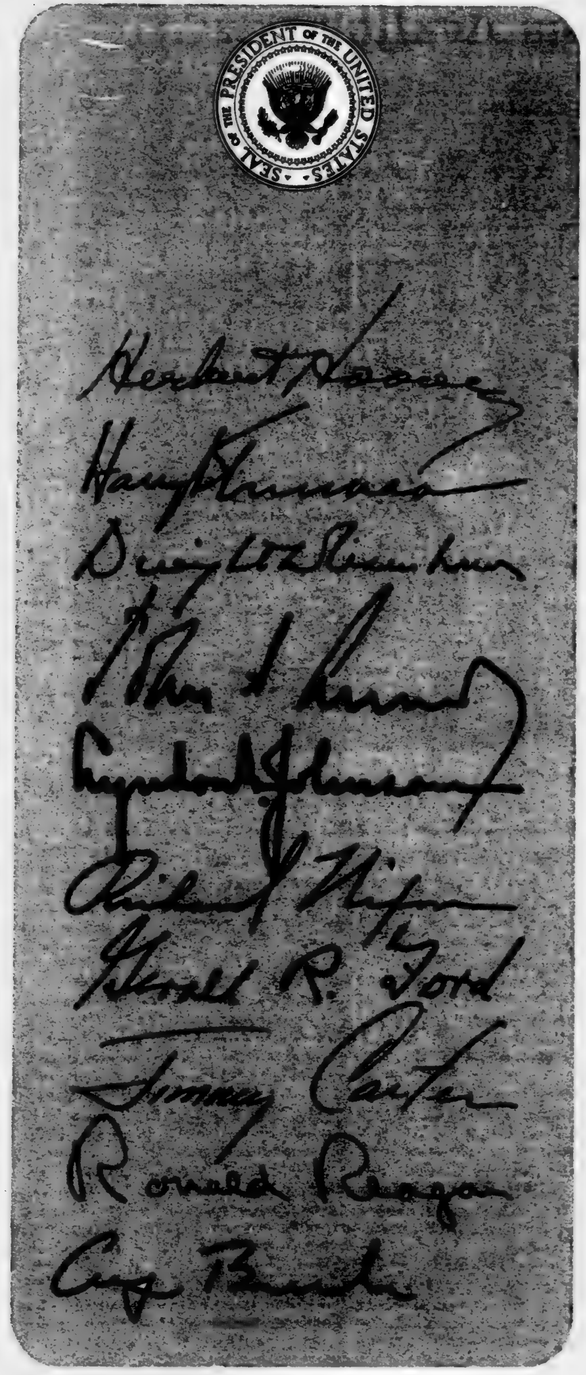

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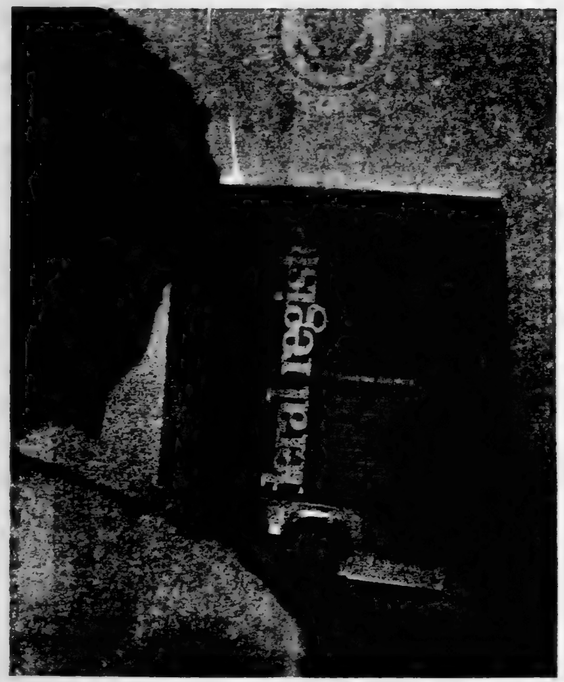

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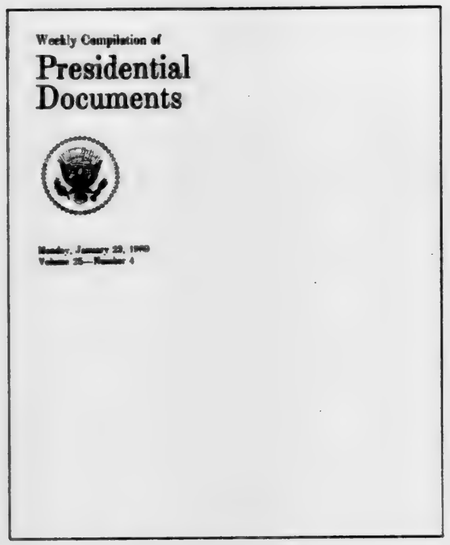

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Title 3—

The President

Presidential Determination No. 91–2 of October 10, 1990

Continued Implementation of Embassy Agreement With the Soviet Union

Memorandum for the Secretary of State

Section 151 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, Public Law 100–204, states that the United States shall withdraw from the Agreement between the Government of the United States and the Government of the Union of Soviet Socialist Republics on Reciprocal Allocation for Use Free of Charge of Plots of Land in Moscow and Washington (signed at Moscow, May 16, 1969) and related agreements, notes, and understandings unless I have made certain specified factual determinations. In signing this provision into law, President Reagan expressed reservations as to the provision's constitutionality, *see* Statement on Signing H.R. 1777 Into Law, 23 Weekly Compilation of Presidential Documents 1547, 1548 (December 22, 1987), and I share his concerns.

Nevertheless, in order to prevent disagreements between the executive and legislative branches of our Government from complicating U.S.-Soviet relations at this vital moment in history, and because the facts permit me to make the determinations that section 151 contemplates, I have decided to avoid the constitutional questions raised by that section by acting consistently with it. In particular, I have determined that:

(A) it is vital to the national security of the United States that the United States not withdraw from the Agreement (and related agreements, notes, and understandings) referred to above;

(B) steps have been and will be taken that will ensure that the new chancery building to be occupied by the United States Embassy in Moscow can be safely and securely used for its intended purposes; and

(C) steps have been and will be taken to eliminate, no later than 2 years after October 1, 1989, the damage to the national security of the United States due to electronic surveillance from Soviet facilities on Mount Alto.

Accordingly, I have determined that the United States will not withdraw from the Agreement (and related agreements, notes, and understandings) referred to above, and I hereby waive section 151(b).

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, October 10, 1990.

[FR Doc. 90-26553
Filed 11-6-90; 11:26 am]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 91–4 of October 25, 1990

Eligibility of Namibia To Be Furnished Defense Articles and Services under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 503 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2311), and Section 3(a)(1) of the Arms Export Control Act (22 U.S.C. 2753(a)(1)), I hereby find that the furnishing of defense articles and services to the Government of Namibia will strengthen the security of the United States and promote world peace.

You are authorized and directed to report this finding to the Congress and to publish it in the **Federal Register.**

THE WHITE HOUSE,
Washington, October 25, 1990.

[FR Doc. 90-26554
Filed 11-6-90; 11:27 am]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 91-5 of October 25, 1990

Eligibility of the Kingdom of Lesotho To Be Furnished Defense Articles and Services under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 503 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2311), and Section 3(a)(1) of the Arms Export Control Act (22 U.S.C. 2753(a)(1)), I hereby find that the furnishing of defense articles and services to the Government of the Kingdom of Lesotho will strengthen the security of the United States and promote world peace.

You are authorized and directed to report this finding to the Congress and to publish it in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, October 25, 1990.

[FR Doc. 90-26555
Filed 11-6-90; 11:28 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket Number 90-ACE-10]

Alteration of Control Zone; Davenport, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the control zone description for the Davenport Municipal Airport, Davenport, Iowa. The Cody Radiobeacon (RBN) has been decommissioned. Accordingly, reference to the RBN is being deleted from the control zone description. A minor correction is also being made in the geographic position coordinates of the Davenport Municipal Airport.

EFFECTIVE DATE: 0901 u.t.c., December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE-530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

History

On August 21, 1990, the FAA published a Notice of Proposed Rulemaking which would amend § 71.171 of part 71 of the Federal Aviation Regulations so as to alter the control zone description for Davenport Municipal Airport, Davenport, Iowa (55 FR 34024). A minor correction is also being made in the geographic coordinates of the airport. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the control zone description for the Davenport Municipal Airport, Davenport, Iowa. This action deletes reference in the control zone description to the Cody RBN, since this navigational aid has been removed from service. This action also corrects the geographic coordinates of the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Davenport, Iowa [Revised]

Within a 5-mile radius of Davenport Municipal Airport (lat. 41°36'42" N., long. 90°35'21" W.); within 2 miles each side of the Davenport VORTAC 220° radial, extending from the 5-mile radius zone to 1 mile southwest of the VORTAC. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Kansas City, Missouri, on October 25, 1990.

William Behan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 90-26386 Filed 11-7-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket Number 90-ACE-08]

Alteration of Control Zone—North Platte, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the control zone description for Lee Bird Field, North Platte, Nebraska. The Big Nell Radio beacon (RBN) has been decommissioned. Accordingly, reference to the Big Nell RBN is being deleted from the control zone description. A minor correction is also being made in the geographic position coordinates of Lee Bird Field, North Platte, Nebraska.

EFFECTIVE DATE: 0901 u.t.c., December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE-530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

History

On August 21, 1990, the FAA published a Notice of Proposed Rulemaking which would amend § 71.171 of part 71 of the Federal

Aviation Regulations so as to alter the control zone description for Lee Bird Field, North Platte, Nebraska (55 FR 34025). A minor correction is also being made in the geographic position coordinates of the airport. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the control zone description for Lee Bird Field, North Platte, Nebraska. This action deletes reference in the control zone description to the big Nell RBN, since this navigational aid has been removed from service. This action also corrects the geographic position coordinates of the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

North Platte, Nebraska [Revised]

Within a 6-mile radius of Lee Bird Field (lat. 41°07'34"N., long. 100°41'13"W.); within 3 miles each side of the 125° bearing from the Lee Bird RBN, extending from the 6-mile radius zone to 10 miles southeast of the RBN.

Issued in Kansas City, Missouri, on October 25, 1990.

William Behan,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 90-26387 Filed 11-7-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 90-AWA-4]

Establishment of Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction and delay of effective date.

SUMMARY: This action corrects the airspace designation for several new jet routes established in the northwest portion of the United States and delays the effective date for Airspace Docket No. 90-AWA-4 from December 13, 1990, to February 7, 1991. Due to an administrative oversight the identification of these jet routes, which are a part of changes in the Canadian airspace structure, are a duplication of existing jet routes in Canada. This action corrects that mistake. The effective date for charting must be delayed from December 13, 1990, to February 7, 1990, to coincide with this change.

EFFECTIVE DATE: 0901 u.t.c., February 7, 1991.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 90-24786, published on October 19, 1990, established new Jet Routes J-571, J-572, J-574, J-576, and J-577 located in the northwest portion of the United States. Due to an administrative oversight the identification of these jet routes, which are a part of changes in the Canadian airspace structure, are a duplication of existing jet routes in Canada. This action corrects that mistake. The effective date for charting must be delayed from December 13, 1990, to February 7, 1990, to coincide with this change.

Correction to Final Rule; Delay of Effective Date

Accordingly, pursuant to the authority delegated to me, Federal Register Document 90-24786, as published in the Federal Register on October 19, 1990, (55 FR 42364) is amended by delaying the effective date from December 13, 1990, to February 7, 1991, and is corrected as follows:

J-571 [Corrected]

By removing the title "J-571" and substituting "J-549"

J-572 [Corrected]

By removing the title "J-572" and substituting "J-539"

J-574 [Corrected]

By removing the title "J-574" and substituting "J-478"

J-576 [Corrected]

By removing the title "J-576" and substituting "J-477"

J-577 [Corrected]

By removing the title "J-577" and substituting "J-483"

Issued in Washington, DC, on October 30, 1990.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 90-26388 Filed 11-7-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 26367; Amdt. No. 1438]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on October 26, 1990.

Thomas C. Accardi,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective December 13, 1990

Gambell, AK—Gambell, NDB-A, Amdt. 1, CANCELLED
Gambell, AK—Gambell, NDB-B, Amdt. 1, CANCELLED
Gambell, AK—Gambell, NDB/DME RWY 16, Orig., CANCELLED
Gambell, AK—Gambell, NDB RWY 16, Orig.
Gambell, AK—Gambell, NDB/DME RWY 34, Amdt. 1
Selawik, AK—Selawik, VOR RWY 9, Orig., CANCELLED
Selawik, AK—Selawik, VOR RWY 27, Orig., CANCELLED
Selawik, AK—Selawik, VOR/DME RWY 9, Orig., CANCELLED
Paragould, AR—Kirk Field, VOR RWY 4, Amdt. 2
Orland, CA—Haigh Field, VOR-A, Amdt. 4
Leesburg, FL—Leesburg Muni, NDB RWY 31, Orig., CANCELLED

Pinckneyville, IL—Pinckneyville-Duquoin, NDB RWY 18, Amdt. 2
Clinton, IA—Clinton Muni, ILS RWY 3, Amdt. 3
Davenport, IA—Davenport Muni, VOR RWY 3, Amdt. 8
Davenport, IA—Davenport Muni, VOR RWY 21, Amdt. 7
Davenport, IA—Davenport Muni, LOC RWY 15, Amdt. 3
Clare, MI—Clare Muni, VOR–A, Orig.
Sault STE Marie, MI—Sault STE Marie Muni/Sanderson Field, VOR RWY 32, Orig.
Fulton, MS—Fulton-Itawamba County, VOR/DME–A, Orig.
Jackson, MS—Jackson International, VOR or TACAN RWY 15L, Amdt. 2, CANCELLED
Jackson, MS—Jackson International, VOR or TACAN RWY 15R, Amdt. 6, CANCELLED
Jackson, MS—Jackson International, VOR/DME or TACAN RWY 33L, Amdt. 10, CANCELLED
Jackson, MS—Jackson International, VOR/DME or TACAN RWY 33R, Amdt. 3, CANCELLED
Jackson, MS—Jackson International, LOC BC RWY 15R, Amdt. 4
Jackson, MS—Jackson International, NDB RWY 15L, Amdt. 4
Jackson, MS—Jackson International, ILS RWY 15L, Amdt. 7
Jackson, MS—Jackson International, ILS RWY 33L, Amdt. 4
Jackson, MS—Jackson International, RADAR–1, Amdt. 11
Tupelo, MS—Tupelo Municipal–C. D. Lemons, VOR/DME RWY 18, Orig.
Cape Girardeau, MO—Cape Girardeau Municipal, VOR RWY 20, Amdt. 1, CANCELLED
Missoula, MT—Missoula International, VOR–C, Amdt 2
Missoula, MT—Missoula International, VOR/DME–A, Amdt. 11
Missoula, MT—Missoula International, VOR/DME–B, Amdt. 4
Missoula, MT—Missoula International, NDB–D, Amdt. 2
Missoula, MT—Missoula International, ILS RWY 11, Amdt. 9
Missoula, MT—Missoula International, ILS–3 RWY 11, Amdt. 4, CANCELLED
Delaware, OH—Delaware Muni, VOR RWY 28, Amdt. 4
Delaware, OH—Delaware Muni, NDB RWY 10, Amdt. 3
West Union, OH—Alexander Salamon, NDB RWY 23, Amdt. 2
Portland, OR—Portland Intl, VOR–B, Amdt. 2, CANCELLED
Salem, OR—McNary Field, LOC BC RWY 13, Amdt. 5
Connellsville, PA—Connelsville, LOC RWY 5, Amdt. 2
Perkasie, PA—Pennridge, VOR RWY 8, Amdt. 1
Perkasie, PA—Pennridge, NDB–A, Amdt. 2
Columbia, SC—Columbia Metropolitan, RNAV RWY 5, Orig.
Arlington, TN—Arlington Muni, LOC RWY 15, Orig.
Arlington, TN—Arlington Muni, NDB RWY 33, Amdt 7
Knoxville, TN—Knoxville Downtown Island, VOR/DME–B, Amdt. 6
Knoxville, TN—Knoxville Downtown Island, LOC RWY 26, Amdt. 3
Petersburg, WV—Grant County, LDA/DME–B, Orig.

. . . Effective November 15, 1990

Orlando, FL—Orlando Executive, LORAN RNAV RWY 7, Orig.
Orlando, FL—Orlando Executive, LORAN RNAV RWY 25, Orig.
New Orleans, LA—Lakefront, LORAN RNAV RWY 18R, Orig.
Venice, LA—Point in Space, Copter LORAN RNAV 087, Orig.
Sault STE Marie, MI—Chippewa County Intl, ILS RWY 16, Amdt. 6
Columbus, OH—Ohio State University, LORAN RNAV RWY 27L, Orig.
Columbus, OH—Ohio State University, LORAN RNAV RWY 9R, Orig.
Portland, OR—Portland Intl, LORAN RNAV RWY 10R, Orig.
Portland, OR—Portland Intl, LORAN RNAV RWY 28R, Orig.
Burlington, VT—Burlington Intl, LORAN RNAV–A, Orig.
Burlington, VT—Burlington Intl, LORAN RNAV RWY 15, Orig.

. . . Effective October 22, 1990

Minot, ND—Minot Intl, VOR RWY 26, Amdt. 12

. . . Effective October 18, 1990

Montgomery, AL—Dannelly Field, NDB RWY 9, Amdt. 18
Montgomery, AL—Dannelly Field, ILS RWY 9, Amdt. 23
Montgomery, AL—Dannelly Field, ILS RWY 27, Amdt. 8
Greenville, NC—Pitt-Greenville, NDB RWY 19, Amdt. 14
Seattle, WA—Seattle-Tacoma Intl, ILS RWY 34L, Amdt. 1
La Crosse, WI—La Crosse Muni, NDB RWY 18, Amdt. 16

. . . Effective October 12, 1990

Fort Worth, TX—Fort Worth Spinks, RNAV RWY 35, Amdt. 1

. . . Effective August 24, 1990

Nashua, NH—Boire Field, RNAV RWY 32, Amdt. 5

[FR Doc. 90–26389 Filed 11–7–90; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 556

Animal Drugs, Feeds, and Related Products; Oxfendazole Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Syntex Animal Health, Inc. The NADA provides for use of oxfendazole suspension as an anthelmintic for beef cattle. The regulations are also amended to provide for a tolerance for oxfendazole residues in edible cattle tissues.

EFFECTIVE DATE: November 8, 1990.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Syntex Animal Health, Inc., 3401 Hillview Ave., Palo Alto, CA 94304, submitted NADA 140–854 for oxfendazole suspension. The NADA provides for the over-the-counter oral use of the 9.06 percent suspension and the prescription use of the 22.5 percent oral intraruminal suspension as an anthelmintic for beef cattle for removal and control of lungworms, stomach worms, and intestinal worms. The drug has been previously approved for equine use. The NADA is approved as of September 17, 1990, and the regulations are amended by revising 21 CFR 520.1630 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, the agency is amending 21 CFR part 556 to establish a tolerance for residues of oxfendazole in edible cattle tissues by adding new § 556.495. As discussed in the freedom of information summary, fenbendazole was selected as the marker substance for oxfendazole residues.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, room 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning September 17, 1990, because new clinical, field, and human food safety studies were required for the approval.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 556 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1630 is revised to read as follows:

§ 520.1630 Oxfendazole suspension.

(a) *Specifications.* Each milliliter contains 90.6 or 225.0 milligrams oxfendazole (9.06 or 22.5 percent).

(b) *Sponsor. See* 000033 in § 510.600(c) of this chapter.

(c) *Related tolerances. See* § 556.495 of this chapter.

(d) *Conditions of use*—(1) *Horses* (9.06 percent suspension only).

(i) *Amount.* 10 milligrams per kilogram (2.2 pounds) of body weight.

(ii) *Indications for use.* For removal of large roundworms (*Parascaris equorum*), mature and 4th stage larvae pinworms (*Oxyuris equi*), large strongyles (*Strongylus edentatus, S. vulgaris,* and *S. equinus*), and small strongyles.

(iii) *Limitations.* Administer 9.06 percent suspension by stomach tube or dose syringe. Horses maintained on premises where reinfection is likely to occur should be retreated in 6 to 8 weeks. Withholding feed or water prior to use is unnecessary. Administer drug with caution to sick or debilitated horses. Do not use in horses intended for food. If administered by stomach tube: Federal law restricts this drug to use by or on the order of a licensed veterinarian. If administered by dose syringe only: Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

(2) *Beef cattle.* (9.06 or 22.5 percent suspension). (i) *Amount.* 4.5 milligrams per kilogram of body weight (2.05 milligrams per pound).

(ii) *Indications for use.* For the removal and control of: lungworms (*Dictyocaulus viviparus*—adult, L4); stomach worms: barberpole worms (*Haemonchus contortus* and *H. placei*—adult), small stomach worms (*Trichostrongylus axei*—adult), brown stomach worms (*Ostertagia ostertagi*—adult, L4, inhibited L4); intestinal worms: nodular worms (*Oesophagostomum radiatum*—adult), hookworms (*Bunostomum phlebotomum*—adult), small intestinal worms (*Cooperia punctata, C. oncophora,* and *C. mcmasteri*—adult, L4), and tapeworms (*Moniezia benedeni*—adult).

(iii) *Limitations.* For use in beef cattle only. Administer 9.06 percent suspension orally only with a dose syringe, and 22.5 percent suspension either orally with a dose syringe or intraruminally with a rumen injector. Treatment may be repeated in 4 to 6 weeks. Cattle must not be slaughtered until 7 days after treatment. Do not use in lactating dairy cattle. For use of 9.06 percent suspension orally: Consult a veterinarian for assistance in the diagnosis, treatment, and control of parasitism. For use of 22.5 percent suspension orally or intraruminally: Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Sections 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

4. New § 556.495 is added to read as follows:

§ 556.495 Oxfendazole.

Cattle: A tolerance is established for total oxfendazole residues in edible cattle tissues based on a marker residue concentration of 0.8 part per million (ppm) fenbendazole in the target liver tissue. A fenbendazole concentration of 0.8 ppm in liver corresponds to a total safe concentration of oxfendazole residues of 1.7 ppm in liver. The safe concentrations of total oxfendazole residues in other uncooked edible cattle tissues are: muscle, 0.84 ppm; kidney, 2.5 ppm; and fat, 3.3 ppm. A tolerance refers to the concentration of marker residue in the target tissue selected to monitor for total drug residue in the target animal. A safe concentration is the total residue considered safe in edible tissue.

Dated: October 31, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90–26365 Filed 11–7–90; 8:45 am]
BILLING CODE 4160–01–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 3]

Citizenship of Responsible Officers and Sponsors, Exchange-Visitor Program

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: On May 29, 1987, the Agency published a notice of proposed rulemaking at 52 FR 20097 to provide that Responsible Officers of designated sponsors be citizens of the United States and that designated sponsors be United States organizations and corporations. Subsequently, on August 11, 1988, the Agency published a final rule at 54 FR 32904 (corrected at 54 FR 34503, August 21, 1989, and amended at 54 FR 40388, October 2, 1989) wherein the requirement of citizenship was further defined. The final rule was made effective August 11, 1989.

On November 20, 1989, the Agency postponed the compliance date of the final rule and sought further public comment as to the scope and impact of the rule, with a view to possible redefining it. (54 FR 47976, November 20, 1989). In response to public comment received by the Agency, the Agency has decided to revise the rule and set forth minimum requirements regarding the citizenship of sponsors and responsible officers.

By this notice the rule has been redefined and a final rule is adopted which requires that Responsible Officers and Alternate Responsible Officers of designated sponsors be United States citizens or permanent resident aliens and that sponsors be United States citizens, as that term is defined in the rule.

DATES: *Effective Date:* This final rule shall become effective November 8, 1990.

Compliance Date: By February 6, 1991, all designated sponsors and responsible officers must certify that they are in compliance with the final rule.

ADDRESSES: Merry Lynn, Assistant General Counsel, Office of the General Counsel, United States Information

Agency, room 700, 301 Fourth Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Office of the General Counsel, United States Information Agency, room 700, 301 Fourth Street, SW., Washington, DC 20547, (202) 619–6829.

SUPPLEMENTARY INFORMATION: On August 11, 1989, the Agency published a final rule, effective that date requiring Sponsors and Responsible Officers to be U.S. citizens, as that term was defined in the rule (54 FR 32984). On November 20, 1989, the Agency postponed the compliance date of the final rule and sought further public comment, with a view to redefining the term [54 FR 47976). Upon consideration of the various comments filed with the Agency, the definition of "Citizen of the United States" has been modified. By this notice, the final rule is adopted.

It is noted that the Agency may request supporting documentation as to the citizenship of the designated sponsor or responsible officer at any time and that the designated sponsor or responsible officer must supply such documentation when and as requested by the Agency. It is further noted that the inability of a designated sponsor or responsible officer to substantiate the required citizenship will result in the immediate withdrawal of its designation and the immediate return of or accounting for all IAP–66 forms transferred to it.

Upon a showing of exceptional hardship, a designated sponsor may be granted an extension of time of up to one year from the effective date of the final rule in order to comply with said rule. Requests for extensions of time for compliance shall be made in writing to the Agency, no later than 90 days from the publication of this rule in the **Federal Register**, and the decision on whether or not to grant such an extension shall be in the sole discretion of the Agency.

The Comments

The Agency timely received sixty-four comments in response to the August 11, 1989 and November 20, 1990 **Federal Register** notices. Four additional comments were received by the Agency after the January 19, 1990 deadline for submitting comments. No objections were filed to the admission of the late-filed comments. Therefore, all of the comments have been reviewed and considered, although not all of the comments are specifically discussed herein. A list of the parties submitting comments appears in appendix A hereto.

In addition to the parties listed in appendix A, the Agency also received comments from the Department of State, the Department of Labor, and the Immigration and Naturalization Service, all of which supported the final rule as set forth in the August 11, 1989 **Federal Register** notice.

With respect to the requirement that a Responsible Officer or an Alternate Responsible Officer be a United States citizen, for the most part, those opposing the requirement argued that there has been no showing that the duties of a Responsible Officer can only be fulfilled by a U.S. citizen, and further, that such a requirement would unreasonably detract from a sponsor's ability to conduct its business. A number of parties suggested that if the U.S. citizenship requirement is adopted it should at least be amended to authorize a permanent resident alien to serve as a Responsible Officer or Alternate Responsible Officer.

Several Land Grant and State universities stated that they should not have to prove their citizenship or the citizenship of their officers and directors in order to serve as a sponsor. Upon consideration, the Agency has modified the final rule to provide that accredited colleges, universities or other institutions of higher education which are created or organized under the laws of the United States, or of a State or political subdivision thereof, are, by definition, citizens of the United States. [See subsection "(e)"].

A number of parties objected to the August 11, 1989 final rule's requirement that each partner of a partnership must be a U.S. citizen before the partnership could be designated a sponsor. It was pointed out that today's multinational partnerships, such as large public accounting firms, have offices in many countries and partners of many nationalities. These comments argued that a showing that a majority of the partners are U.S. citizens should be sufficient to meet the Agency's objectives. Upon consideration, the Agency has modified the final rule to permit partnerships, a majority of whose partners are U.S. citizens, to be sponsors of designated Exchange-Visitor Programs.

A number of parties suggested that the Agency's requirement that 75 percent of the voting interests in corporations be U.S. citizens would eliminate many closely-held corporations and non-profit corporations as sponsors. Upon consideration, the Agency has modified the definition of citizenship to avoid that result. Under the modified definition provision is made for corporations whose stock is publicly traded on United States stock exchanges, for corporations whose stock is not publicly traded, and for non-profit corporations (which typically do not have stock). [See subsections "(c)(ii)" and "(d)"].

The final rule published in the August 11, 1989 **Federal Register** also included in its definition of "Citizen of the United States" the following language: "* * * (c) a corporation or association created under the laws of the United States * * *" Several comments correctly pointed out that most corporations are created or organized, not under the laws of the United States, but under the laws of a particular State. The definition adopted by the Agency in this Notice recognizes that fact by providing for corporations and partnerships which are created or organized "* * * under the laws of the United States, or of a State, territory or possession of the United States * * *" Similarly, the final rule adopted herein recognizes that colleges, universities or other institutions of higher education may be created or organized under the laws of the United States, a State, a county or a municipality or other political subdivision.

A number of parties stated that the Agency has cited no actual examples of abuses or problems which have arisen because a Responsible Officer or Sponsor was not a U.S. citizen, that the Exchange-Visitor Program has worked so well for so many years that a change in the rules is not warranted, and that the final rule may well be unconstitutional. These comments will be discussed below.

Comments were also received from the United States Departments of State and Labor and the Immigration and Naturalization Service (INS). All three agencies support the final rule requiring that sponsors be United States citizens. The Department of Labor and the INS also supported the final rule requiring that Responsible Officers be United States citizens. The Department of State questioned whether a permanent resident alien should be prohibited from serving as a Responsible Officer. As noted above, the Agency has modified the August 11, 1989 final rule to allow permanent resident aliens, as well as U.S. citizens, to serve as Responsible Officers.

Discussion

The statutory basis under which the United States Information Agency can designate programs as sponsors for a J-visa classification is found in 8 U.S.C. 1101 (a)(15)(J). That subsection was added to the Immigration and

Nationality Act in 1961 by section 109 of the Mutual Educational and Cultural Exchange Act of 1961. By placing that provision in the Immigration and Nationality Act, Congress intended to make it part of the overall scheme. Consequently, any interpretation of that section must harmonize with that statute as a whole. No interpretation or application can be given which would undermine or circumvent the Immigration and Nationality Act, taken as a totality.

According to the legislative history (1961 U.S. Code Cong. & Admin. News 2774), the new subsection [8 U.S.C. 1101 (a)(15)(J)] "creates and incorporates into the basic law a special new nonimmigrant visa designed to serve solely the purposes of the Mutual Educational and Cultural Exchange Act of 1961." The purpose of that Act is to strengthen international understanding. The exchange program is an instrument of foreign policy and decisions as to which exchange programs should be designated are, therefore, foreign policy determinations subject to the Agency's discretion. The exchange program was set up first in the Department of State and later moved to the Agency in order "to provide coordination with U.S. foreign relations." 1961 U.S. Code Cong. Admin. News 2760. That the decision regarding the designation of exchange organizations is a foreign relations decision should be obvious, since the task has been conferred upon a foreign affairs agency. As stated in the legislative history, "the Bureau of Educational and Cultural Affairs has been set up in the Department of State to provide coordination with U.S. foreign relations and general policy guidance for all agencies handling educational and cultural exchanges. In modern international relations a positive U.S. Government program promoting educational and cultural cooperation is essential to the welfare of the American people." 1961 U.S. Code Cong. & Admin. News 2760.

The importance of such exchange programs was highlighted in the testimony of Walter Laves, Chairman of the Department of Government at the University of Indiana, before the Senate Committee on Foreign Relations, in which he stated "the area which encompasses education, science, culture, knowledge, skills, technical assistance, and information * * * how significant this big area of foreign relations really is, and to what extent our welfare as a nation * * * may depend upon the effectiveness with which this aspect of our foreign relations is conducted." Hearings before the Committee on Foreign Relations, United States Senate, on S. 1154, March 29 and April 27, 1961, p. 74.

Consequently all persons entering the United States on a J-visa must enter pursuant to a program—the purpose of which is to strengthen international understanding and cooperation—as determined by the Agency. 8 U.S.C. 1101 (a)(15)(J) merely refers to the designation function of the Agency by describing an exchange visitor as a "participant in a program designated by the Director of the United States Information Agency." No criteria are set forth requiring the Agency to designate certain programs. The criteria are left to Agency discretion. Because of the nature of foreign relations, the Agency has been given broad authority to implement the legislation. It is not an abuse of Agency discretion to promulgate regulations consistent with the Act and its legislative history.

In *Slyper* v. *Attorney General*, 827 F2d. 821, 823 (DC Cir. 1987), a case involving the Exchange-Visitor program, the Court stated: "The statute contains no standard or criterion upon which to make or withhold a favorable recommendation. This broad delegation of discretionary authority 'is clear and convincing evidence' of congressional intent to restrict judicial review in cases such as those we now face." See also *Zemel* v. *Rusk*, 381 U.S. 1 (1965) and *Haig* v. *Agee*, 453 U.S. 280 (1981).

The Agency has determined that, as a matter of law, consistent with the text of the Immigration and Nationality Act, the Mutual Educational and Cultural Exchange Act, and the legislative history of those statutes, designated sponsors must be United States citizens. Congress clearly intended that United States citizens would play the key role as sponsors of educational and cultural exchange programs. Consequently the Agency is adopting a definition which comports with the legal requirements. At the same time, the definition sets forth a minimum standard of what it would take to be considered a citizen. The Agency believes that any organization in which the majority of control resides in non-citizens would not be a United States controlled organization, and accordingly, could not be considered a citizen for these purposes.

Congress envisioned that "the private resources of this country and the cooperation of United States citizens abroad" would be enlisted to assist in the educational exchange. 1948 U.S. Code Cong. & Admin News 1014—

> "It is vital that the Department of State can and should cooperate with the efforts of private citizens and with profit and non-profit organizations interested in promoting the better understanding of the United States abroad and lasting friendship. Also, the areas of cooperation, consultation, and separate activity between the Department of State and private industry (e.g., films, radio, press, magazines, books) are sufficiently great to expect fruitful and harmonious relationships. The importance of worthy private *United States* activities in the foreign field cannot be exaggerated."

Id. at 1015 (emphasis added).

Thus, from this legislative history it can be inferred that Congress contemplated that the assistance from the private sector would be assistance from the United States private sector. It can further be inferred that it is necessary that a designated organization may fairly be described as an "organization interested in promoting the better understanding of the United States abroad and lasting friendship".

The Mutual Educational and Cultural Exchange Act requires that the schools and institutions of learning designated to participate in educational exchange be United States "schools and institutions". Section 102 (1)(B). It is therefore necessary to define "United States schools and institutions" for educational exchanges.

It should also be noted that Congress intended that foreign governments would participate in the exchange program. However, Congress did not contemplate that these governments would be designated exchange-visitor sponsors and have direct access to United States Government controlled documents. Rather, it is clear that Congress envisioned government-to-government agreements whereby the two governments would cooperate in the field of exchange. Gongress did not intend that another government would have virtual control over exchange visitors to this country, as is evidenced by section 103, which provides for agreements with foreign governments. If Congress intended that the powers of the USIA Director to determine exchange program policy and participants be vested in foreign governments, that section of the Act would be unnecessary and redundant. The rules of statutory construction preclude interpretations which would render a section of a statute either redundant or unnecessary.

With respect to responsible officers, however, the Agency has decided that a permanent resident may serve as a responsible officer. This decision was taken in part upon review of the Immigration and Naturalization Service's regulations which do not exclude a permanent resident from

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signing a Form I–20 regarding the F-visa for students.

It should be noted that the Agency is under no legal requirement to seek public comment on this regulation. The Administrative Procedure Act, at 5 U.S.C. 553 (a)(1), specifically exempts from application of the Act a "foreign affairs function of the United States". There is no question that designation of exchange visitor sponsors for international exchange programs is a foreign affairs function. The operation and administration of the exchange program is an instrument of foreign policy. The J-visa was created by section 109 of the Mutual Educational and Cultural Exchange Act of 1961 to "serve solely the purposes of [that Act]". 1961 U.S. Code Cong. & Admin. News 2774. The Congressional intent behind the visa may be discerned from the statement that: "In modern international relations a positive U.S. Government program promoting educational and cultural cooperation is essential to the welfare of the American people". 1961 U.S. Code Cong. & Admin. News 2780.

Accordingly, the decision regarding the designation of an exchange-visitor organization is a foreign relations decision. Thus, although it was not required to do so, nor was it waiving the foreign affairs exemption in the Administrative Procedure Act, the Agency announced in 1987 and 1989 that it was proposing to amend the regulations, and, because it desired to preserve its valuable working relationship with program sponsors, invited comments on the proposed regulations. As is clear from the changes incorporated by the Agency, it gave a thorough review and due consideration to the comments from the public.

Findings and Conclusions

For the reasons stated above, the Agency finds that the exclusion of noncitizens from serving as sponsors is rationally related to a federal interest and that the federal interest is properly the concern of the USIA. Furthermore, the Agency has determined that such exclusion is necessary to ensure the integrity of the exchange visitor program. Accordingly, after careful consideration of the comments filed with the Agency, a definition of "Citizen of the United States" and revised definitions of "Responsible Officer" and "Sponsor" are hereby adopted and will be part of the Agency's regulations which appear in part 514 of title 22 of the Code of Federal Regulations.

This decision does not significantly affect the quality of the human environment and is not a major regulatory action under the Energy and Conservation Act of 1975.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies or geographic regions; or, (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

There are no information collection requirements in this rulemaking subject to approval of the Office of Management and Budget under the Paperwork Reduction Act of 1980 (42 U.S.C. 3501, et seq.).

List of Subjects in 22 CFR Part 514

Cultural exchange programs, Reporting and recordkeeping requirements. Accordingly, 22 CFR part 514 is amended as follows:

PART 514—[AMENDED]

1. The authority citation for 22 CFR part 514 is revised to read:

Authority: U.S. Information and Educational Exchange Act of 1948, as amended, Pub. L. 80–402, as amended (22 U.S.C. 1431–1442); Mutual Educational and Cultural Exchange Act of 1961, as amended, Pub. L. 87–256, as amended, 75 Stat. 527, 534, 535, (22 U.S.C. 2451–2460 and 8 U.S.C. 1101, 1182, and 1258); Pub. L. 97–241, 96 Stat. 261; 66 Stat. 166, 182, 184, 204 (8 U.S.C. 1101(a)(15)(j), 1182(e), 1182(j), 1258); Pub. L. 91–225, 84 Stat. 116, 117 (8 U.S.C. 1101, 1182); Pub. L. 97–116, 95 Stat. 1611, 1612, 1613 (8 U.S.C. 1101, 1182); Reorg. Plan. No. 2 of 1977; E.O. 12048 of March 27, 1978; USIA Delegation Order No. 85–5 (50 FR 27393).

2. Section 514.1 is amended by revising the definitions of "Citizen of the United States," "Responsible Officer" and "Sponsor," as follows:

§ 514.1 Definitions.

Citizen of the United States means

(1) An individual who is a citizen of the United States or one of its territories or possessions; or,

(2) A general or limited partnership created or organized under the laws of the United States, or of any State, the District of Columbia, or territory or possession of the United States, of which a majority of the partners are citizens of the United States; or,

(3) A for-profit corporation, association, or other legal entity created or organized under the laws of the United States, or of any State, the District of Columbia, or territory or possession of the United States, which

(i) Has its principal place of business in the United States, and

(ii) Whose shares or voting interests are publicly traded on a U.S. stock exchange; or, if its shares or voting interests are not publicly traded on a U.S. stock exchange, it shall nevertheless be deemed to be a citizen of the United States if a majority of its officers, Board of Directors, and its shareholders are citizens of the United States; or,

(4) A non-profit corporation, association, or other legal entity created or organized under the laws of the United States, or any State, the District of Columbia, or territory or possession of the United States, and which is

(i) Qualified with the Internal Revenue Service as a tax-exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code; and,

(ii) Which has its principal place of business in the United States; and,

(iii) A majority of its officers and a majority of its Board of Directors or other body vested with its management are citizens of the United States; or,

(5) An accredited college, university or other institution of higher education created or organized under the laws of the United States, or of a State, including a county, municipality or other political subdivision thereof, the District of Columbia, or of a territory or possession of the United States; or,

(6) An agency of the United States, or of a State, the District of Columbia, or a territory or possession of the United States.

* * * * *

Responsible Officer means the official of an organization sponsoring an Exchange-Visitor Program who has been listed with the Agency as being responsible for administering the program and carrying out the obligations which the organization assumes in undertaking to sponsor a program. The designation of an Alternate Responsible Officer is permitted and encouraged. The Responsible Officer and any Alternate Responsible Officer must be a United States citizen or a person who has been lawfully admitted to the United States for permanent residence. Responsible Officers must certify their citizenship to the Agency using the following language:

I hereby certify that I am the responsible officer [or alternate responsible officer, specify] for exchange visitor program [specify program number], and that I am a citizen of the United States [or a person lawfully admitted to the United States for permanent residence]. [Name of organization] agrees that my inability to substantiate my citizenship or status as a permanent resident will result in the immediate withdrawal of its designation and the immediate return of or accounting for all IAP–66 forms transferred to it.

I also understand that false certification may subject me to criminal prosecution under 18 U.S.C. 1001, which reads:

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact or makes any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Signed in ink by

(Name)

(Title)

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public

Sponsor means any reputable United States federal, State or local government agency or recognized international agency or organization of which the United States is a member and has offices in the United States or a reputable organization which is a "citizen of the United States," as that term is defined by this regulation, which makes application as prescribed to the Director of the United States Information Agency for designation of a program under its sponorship as an Exchange-Visitor Program and whose application is approved. Other corporations or organizations which are not citizens of the United States may not be designated as sponsors must certify their citizenship to the Agency using the following language:

I hereby certify that I am an officer of [Name of organization] with the title of [specify]; that I am authorized by the [Board of Directors, Trustees, etc.] to sign this certification and bind [Name of organization]; and that a true copy certified by the [Board of Directors, Trustees, etc.] of such authorization is attached. I further certify that [Name of organization] is a citizen of the United States as that term is defined at 22 CFR 514.1. [Name of organization] agrees that its inability to substantiate its representation of citizenship made in this certification will result in the immediate withdrawal of its destination and the immediate return of or accounting for all IAP-66 forms transferred to it. I also understand that false certification may subject me to criminal prosecution under 18 U.S.C. 1001, which reads:

"Whoever, in any matter within jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Signed in ink by

(Name)

(Title)

Subscribed and sworn to before me this _____day of _____, 19____.

Notary Public

* * * * *

Dated: November 1, 1990.

Alberto J. Mora,

General Counsel.

Appendix A

[Note: This Appendix will not appear in the Code of Federal Regulations]

Comments on the November 20, 1989 **Federal Register** Notice were received from the following parties:

Office of International Education, Montana State University
The International Exchange Association
Rotary International
International Student and Faculty Services, Ohio University
The Experiment In International Living
Office of International Student Services, Adelphi University
Office of International Education and Services, University of Iowa
UCSD International Center, University of California, San Diego
International Center, University of Michigan
University of Denver
American Immigration Lawyers Association
Kentucky Rotary Youth International Exchange, Inc.
Vanderbilt University
French American International School
Grand Metropolitan, Inc.
French-American Chamber of Commerce In The United States, Inc.
International Students and Scholars, Cornell University
Lankenau & Bickford
Credit Suisse
Office of International Education, University of Colorado at Boulder
International Affairs Services For International Students and Scholars, University of California, Berkeley
United States Senator John D. Rockefeller, IV
Spanish Heritage
Tony Cook Associates
Association for International Practical Training
Youth For Understanding International Exchange
BfG: New York
East-West Center
International Student Center, Kansas State University
SmithKline Beecham
Tampa Bay Research Institute, Teiko-Showa Universities Center
The Jesuit School of Theology at Berkeley
Mennonite Central Committee
The British-American Chamber of Commerce
Harris, Barrett, Mann & Dew
Lycee Francais de New York
The International Exchange Association
The French-American School of New York
University of Wisconsin-Madison
Coopers & Lybrand
Council on International Educational Exchange
The Liaison Group For International Educational Exchange
National Association For Foreign Student Affairs
The University of Wisconsin System
Patterson, Belknap, Webb & Tyler
Overseas Planning & Administration, Shell Oil Company
Baker & McKenzie
Haight, Gardner, Poor & Havens
Simmons, Ungar, Helbush, DiCostanza & Steinberg
American Council on International Personnel, Inc.
Center of International Studies, University of North Carolina at Charlotte
Office of International Affairs, University of Chicago
Council for International Exchange of Scholars
Wildes & Weinberg
Office of International Programs, Colorado State University
Office of International Programs, University of Pennsylvania
International Student Office, San Diego State University
EF Foundation
Gibney, Anthony & Flaherty
The American Scandanavian Foundation
Education Foundation for Foreign Study
Dechert Price & Rhoads
Hoffmann-LaRoche
Belgian American Educational Foundation, Inc.
Peat Marwick Main & Co.
United States Senator Daniel Patrick Moynihan
Badger Engineers, Inc.
Graduate School of Business, Columbia University

In addition to the above, comments were also received from the following U.S. Government agencies:

United States Department of State
Immigration and Naturalization Service, United States Department of Justice
United States Department of Labor

[FR Doc. 90–26324 Filed 11–7–90; 8:45 am]
BILLING CODE 8230–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218-AB 26

Air Contaminants

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule; Grant of partial stay for nitroglycerin.

SUMMARY: OSHA reduced exposure limits for 375 air contaminants on January 19, 1989, at 54 FR 2332. The new exposure limit for nitroglycerin (NG) of 0.1 mg/m ^{3} measured as a 15-minute Short Term Exposure Limit (STEL) was stayed for the manufacture of NG and NG-based explosives and propellants for military and space use. The Transitional (prior) limit of a ceiling of 2 mg/m ^{3} has remained in effect. OSHA is partially extending the stay so that compliance with the new exposure limit by use of any reasonable means including respiratory protection is to be phased in between November 1, 1990 and March 1, 1992, and the requirement for compliance using engineering controls is to be phased in between December 31, 1992, and December 31, 1998.

EFFECTIVE DATE: November 1, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA, Office of Public Affairs, Room N-3647, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: On January 19, 1989, at 54 FR 2332, OSHA issued a final standard setting new or more protective exposure limits for 375 substances. The new limits, which include revised permissible exposure limits ("PEL") for Nitroglycerin ("NG"), consisting of a 15-minute Short Term Exposure Limit ("STEL") of 0.1 mg/cubic meter with a skin designation, were to be achieved with any reasonable combination of controls including engineering controls and respirators by September 1, 1989, and with a preference for engineering controls by December 31, 1992.

The objective of this regulatory effort was to create major improvements in occupational health by lowering the exposure of 4.5 million workers to many toxic substances.

OSHA substantially lowered exposures to nitroglycerin (NG) in the Air Contaminants rulemaking based principally on NG's cardiovascular effect and cardiovascular disease and on its ability to cause moderate and severe headaches. OSHA continues to conclude that this lower limit is necessary to prevent these effects. See the discussion at 54 FR 2538–39. The substance is also a powerful and sensitive explosive and worker protection requires careful consideration of both health and safety aspects.

This stay is effective for DoD (at both government owned and government operated (GOGO) and government owned and contractor operated (GOCO facilities) and the industrial sector of civilian manufacture and distribution of explosives and propellants for military and space use. Some contractors may have joint military and civilian market production, use and distribution facilities. Such contractors may choose to follow the new standard and this stay for joint facilities or they may choose to follow the new standard and stay while producing for military and space use in joint facilities and the terms of the civilian settlement when producing for civilian use in those joint use facilities. In granting this stay, OSHA concludes that it is in the best interest of protecting worker health and will not create any additional long-term adverse health effects.

The military uses NG principally as a propellant ingredient for shells, rockets and other ordnance. These propellants are manufactured by employees working for the Government, working for private contractors at government-owned facilities and for private contractors at contractor-owned facilities.

The military has already made major efforts to reduce exposure to NG in its own and GOCO facilities. The Navy has completed research which has demonstrated that air filtration respirators are effective in filtering pure NG. The military has also done extensive industrial hygiene work on safe respirator use in the context of its own facilities and has instituted medical surveillance. It has commenced engineering design work to add additional engineering controls, but because of the large scale of its facilities, this will be a lengthy and expensive process.

OSHA believes that engineering controls are available to lower exposures to NG but agrees with DoD that they must be introduced only after careful evaluation of feasibility, including the minimization of any possibility of increasing the explosion hazard. OSHA also believes that supplied air respirators may create safety hazards in explosive manufacturing operations and that half-mask air-purifying respirators do not present a safety hazard, but that further research is needed to demonstrate fully their effectiveness for NG in mixtures.

To reduce the potential explosive hazards created by NG, to continue the improvements in industrial hygiene programs and health protection which have been occurring during production for military use, to conduct the detailed surveys of exposure, and the necessary engineering feasibility studies for enacting engineering controls, it is necessary to phase in respirator use and to provide for a more extended period of time to design and build engineering controls.

DoD and its contractors need time to evaluate the need for, and feasibility of, improved ventilation in process/production/operation buildings and to examine the technological and economic feasibility of installing engineering controls. These evaluations will include preparation of detailed surveys of employee exposures to NG in operating buildings and will identify the areas and circumstances which give rise to the highest vapor concentrations. Measurements and techniques shall be in accordance with accepted industrial hygiene practices.

OSHA recognizes that the DoD and the DoD Explosive Safety Board (DDESB) have express statutory authority to prescribe safety standards for military and government contractor operations involving explosives, pursuant to 10 U.S.C. 172. The DDESB has the final review and approval authority for any engineering changes at government owned facilities to assure that they are consistent with explosive safety standards and do not increase the explosive risk.

OSHA further recognizes that military personnel and military unique equipment, systems and operations are excluded from coverage under the Federal Agency OSHA programs and the DoD will continue its policy of using the OSHA standards as a basis for protecting military personnel.

Production for military use is large scale, involving many individual buildings and relatively large numbers of workers. Consequently, time is needed to phase in a good respiratory protection program with appropriate work practices to maintain safety. Similarly, a more extended period is needed to design engineering controls so as to maintain explosive safety and because of the large number of buildings involved a longer period will be needed to complete the installation of the controls.

Accordingly, for the manufacture, use and distribution of NG and NG-based explosives and propellants for military and space use, OSHA is staying 29 CFR 1910.1000 (f)(2)(i) so that the Final Rule limit is to be achieved by any reasonable combination of controls including respirators on a schedule commencing November 1, 1990, through March 1, 1992. Of the workers exposed per facility between 2 mg/m ^{3} and 0.1 mg/m ^{3} as of December 15, 1990; ¼ per facility shall have their exposures reduce to 0.1 mg/m ^{3} by July 1, 1991, an additional ¼ per facility by October 1, 1991, an additional ¼ per facility by January 1, 1992 and all by March 1, 1992. It should be noted that employees must continue to be kept below the 2 mg/m ^{3} ceiling ("Transitional" or existing limits) by feasible engineering controls pursuant to 29 CFR 1910.1000(e).

OSHA is also partially staying 29 CFR 1910.1000(f)(2)(ii)(A). That paragraph requires that compliance be achieved with engineering controls, if feasible by December 31, 1992. OSHA is staying the requirement so that ¼ of employees per facility, who are exposed between 0.1 mg/m ^{3} and 2 mg/m ^{3} as of December 15, 1990, will be protected by engineering controls by December 31, 1992, an additional ¼ by December 31, 1994, an additional ¼ by December 31, 1996 and all employees are to be protected by engineering controls where feasible by December 31, 1998.

It should be noted that 29 CFR 1910.1000(e) permits all employers, including employers whose employees are exposed to NG, to utilize supplementary respiratory protection when they can demonstrate that is not feasible to achieve an exposure limit in a specific operation with engineering and work practice controls.

When DoD and its contractors demonstrate that engineering controls are not feasible based on industrial hygiene practices and explosive safety needs, DoD may use a comprehensive occupational health program, including exposure profiles, respirators, medical surveillance and sound industrial hygiene programs to meet the standard.

One of the reasons for improved health status in government-owned explosive production facilities is ongoing medical surveillance provisions for NG exposed employees at those facilities. This surveillance should concentrate on cardiovascular conditions but does not need to include stress electrocardiograms. The Department of Defense, Army and Navy have committed to continuing to perform this medical surveillance for their civilian employees and for employees at GOCO facilities. This requirement will be placed in appropriate Department of Defense manuals. Consequently, Government contractors supplying NG based materials will be bound by contract to institute or maintain appropriate medical surveillance programs. These medical surveillance programs are an additional factor in OSHA permitting more time for phase-in of respiratory protection and engineering controls, while maintaining explosive safety.

There may be a few unique situations where it is not safe to wear an air filtration respirator because of a potential explosion hazard. OSHA is not aware of particular circumstances, but if a certified industrial hygienist or certified safety professional confirms that such a situation exists, it may be appropriate not to place that worker on respirators. However, work practices shall be immediately devised by the industrial hygienist to minimize exposures and that operation is to have first priority in the installation of engineering controls.

The new exposure limit for NG is below the odor threshold. Generally it is preferable not to use air filtration respirators to protect below the odor threshold because there will not be an odor warning of filter breakthrough.

However, OSHA has permitted the use of air filtration respirators for use below the odor threshold in appropriate circumstances. Employers must have a program to change cartridges before exhaustion with an appropriate margin of safety, have a good respiratory protection program and of course fully meet the requirements on respiratory protection specified in 29 CFR 1910.134. See the Benzene standard (20 CFR 1910.1028(g)) and preamble (52 FR 34460, 34545, September 11, 1987) and the letter of August 23, 1989, to the International Fabricare Institute in OSHA Docket H-020. This in general would be an appropriate circumstance to use such respirators so long as the above requirements are met because other types of respirators may in some circumstances present increased hazards from explosion.

There may be a few circumstances where engineering controls are not feasible based on industrial hygiene practices and explosive safety needs or cannot be designed/installed by the date specified. OSHA will consider requests for variances or other appropriate remedies at that time for carefully defined and limited operations based on an appropriate showing which would include substantial progress in installation of engineering controls generally.

OSHA's decision as to exposure to NG for the sector of civilian manufacture of explosives for civilian use is stated at 55 FR 19259 (May 9, 1990). Some different considerations are applicable. Most civilian explosives contain ethylene glycol dinitrate (EGDN) mixed with the NG. EGDN has different chemical characteristics and respirators have not been tested for effectiveness with the mixture. This sector is also much smaller involving fewer than 1000 employees permitting more detailed provisions.

If OSHA reconsiders and adopts a new permissible exposure limit for nitroglycerin that is higher than 0.1 mg/m ^{3}, the higher PEL shall apply. Any change in the PEL will be made after a full rulemaking proceeding and will be based upon substantial evidence. The DoD and the industrial sector of the civilian manufacturers, users and distributors of explosives and propellants for military and space uses shall have an opportunity to participate in any reconsideration of the PEL for nitroglycerin.

Accordingly, OSHA is partially staying the Final Rule limit NG STEL for production for military and space uses of NG and NG-based explosives. The following amendments to the effective date note to 29 CFR 1910.1000 Table Z-1-A implement this decision.

In addition, the effective date notice references several stays which had expired. This amendment also deletes those references and retains the reference to the Carbon Monoxide stay.

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. It is issued pursuant to section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), section 4 of the Administrative Procedure Act, 5 U.S.C. 553, 29 CFR part 1911 and Secretary of Labor Order 1-90 (55 FR 9033).

List of Subjects in 29 CFR 1910

Hazardous substance.

Signed at Washington, DC, this 1st day of November, 1990.

G.F. Scannell,

Assistant Secretary of Labor.

PART 1910—[AMENDED]

1. The general authority for part 1910, subpart Z, and authority for § 1910.1000 continue to read as follows:

Authority: Sections 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12-71 [36 FR

8754), 9–76 (41 FR 25090, 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655 (b) except those substances listed in the Final Rule Limits columns of Table Z–1–A, Table Z–2 or Table Z–3. The latter were issued under section 6(a) (29 U.S.C. 655 (a)).

Section 1910.1000, the Transitional Limits columns of Table Z–1–A, Table Z–2 and Table Z–3 also issued under 5 U.S.C. 533 § 1910.1000, the Transitional Limits columns of Table Z–1–A, Table Z–2 and Table Z–3 not issued under 29 CFR part 1911 except for arsenic, benzene, cotton dust and formaldehyde listings.

* * * * *

§ 1910.1000 [Amended]

2. Section 1910.1000, Table Z–1A., is amended by revising the effective date note following the footnotes to read as follows:

Note: Pursuant to administrative stays effective September 1, 1989 and published in the **Federal Register** on September 5, 1989, and extended in part by notices published in the **Federal Register** on October 6, 1989, December 8, 1989, February 5, 1990, April 6, 1990, May 9, 1990 and November 6, 1990, the September 1, 1989 start-up specified in 29 CFR 1910.1000 (f)(2)(i) is stayed as follows:

1. Until decision on the merits of the Eleventh Circuit Court of Appeals in the case of *Courtaulds Fibers Inc.* v. *U.S. Department of Labor*, No. 89–7073 and consolidated cases, for the Ceiling for carbon monoxide for blast furnace operations, vessel blowing at basic oxygen furnaces and sinter plants in the steel industry (SIC 33). OSHA will publish in the **Federal Register** notice of the termination of the carbon monoxide stay.

2. For employees exposed between 2 mg/m^3 and 0.1 mg/m^3 as a STEL for nitroglycerin as of December 15, 1990 in the manufacture of nitroglycerin and nitroglycerin based explosives and propellants for military and space use: until July 1, 1991 for all of those employees, until October 1, 1991 for ¾ of those employees per facility, until January 1, 1992 for ½ of those employees per facility, until March 1, 1992 for ¼ of those employees per facility.

In addition the December 31, 1992 start-up date for feasible engineering controls specified in 29 CFR 1910.1000 (f)(2)(ii)(A) for employees exposed between 2 mg/m^3 and 0.1 mg/m^3 as a STEL for nitroglycerin without regard to respirator use on December 15, 1990 in the manufacture of nitroglycerin and nitroglycerin based explosives and propellants for military and space use is stayed until December 31, 1994 for ¾ of those employees per facility, until December 31, 1996 for ½ of those employees per facility and until December 31, 1998 for ¼ of those employees per facility.

[FR Doc. 90–26326 Filed 11–7–90; 8:45 am]
BILLING CODE 4510–14–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286

[DoD 5400.7–R]

Freedom of Information Act (FOIA) Program

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule; correction.

SUMMARY: The Department of Defense published a final rule on October 26, 1990, 55 FR 43093. This document makes administrative corrections and amendments to 32 CFR part 286 for clarity.

EFFECTIVE DATE: October 3, 1990.

ADDRESSES: Office of the Assistant Secretary of Defense (Public Affairs), Washington, DC 20301–1400.

FOR FURTHER INFORMATION CONTACT: Mr. C. Talbott, telephone (703) 697–1180.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 286

Freedom of Information.

PART 286—[AMENDED]

Accordingly, 32 CFR part 286 is amended as follows:

1. The authority citation of part 286 continues to read as follows:

Authority: 5 U.S.C. 552.

§ 286.7 [Amended]

2. Section 286.7(h)(7)(iii) is amended by changing "(NSD)" to "(NSC)" and in the last sentence of the paragraph, add the words "to the" after the word "forwarded".

§ 286.9 [Amended]

3. Section 286.9(a) is amended by removing the last sentence of the paragraph.

§ 286.13 [Amended]

4. Section 286.13 is amended as follows: Paragraph (a)(1)(i) by changing the word "classifiable" to "classified"; removing paragraph (a)(1)(iii); in the last sentence of paragraph (a)(4) after the word "information;" and before the word "impair" add the phrase "impair the Government's ability to obtain necessary information in the future; or"; in the second sentence of paragraph (a)(6)(ii)(A) after the word "Government" add a comma (,) and the phrase "a privacy interest exists in its nondisclosure. The fact that the Federal Government"; in the last sentence of paragraph (a)(7)(ii)(C) after the word "and" add the words "those investigations"; first sentence in paragraph (a)(7)(v) change "exemptions" to "exemption"; and the last line in paragraph (a)(7)(v)(B) change the second word "the" to the word "to".

§ 286.27 [Amended]

5. Paragraph 286.27(b)(6), last line is amended to capitalize the first used "a" inside of the parenthesis.

§ 286.29 [Amended]

6. Redesignate the section identifier § 289.29 to § 286.29 and in the first line paragraph (f) change "Component" to "Components".

§ 286.33 [Amended]

7. The first line of § 286.33(c)(1) is amended by changing "charges" to "charged" and (d)(3)(i)(B) is amended to correct the spelling of the word "subject".

§ 286.37 [Amended]

8. The third sentence in § 286.37(a)(1) is amended by changing the word "date" to "data" and in (a)(3)(ii) change "32mm" to "35mm".

Appendix B [Amended]

9. Appendix B to part 286, paragraph 2.a. is amended by bringing "Defense Systems Management College, National Defense University, Armed Forces Staff College, and Department of Defense Dependent Schools" out to the margin and also bringing "Uniformed Services University of the Health Sciences" to the margin. This is DoD component not to be included with the Uniformed Services University of the Health Sciences.

Dated: November 5, 1990.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 90–26455 Filed 11–7–90; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 901080–0280]

Patent Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The Omnibus Budget Reconciliation Act of 1990 imposes a 69% surcharge on fees set under 35 U.S.C. 41 (a) and (b), rounded by standard arithmetic rules, effective November 5, 1990. Under this law, the Patent and Trademark Office must charge a 69% surcharge for all fees required to be paid under 35 U.S.C. 41 (a) and (b) beginning November 5, 1990.

FEE REGULATIONS AFFECTED: Sections 1.16, 1.17, 1.18, and 1.20 of Title 37, Code of Federal Regulations, will be amended as soon as practicable to reflect the fee changes required under the law. The fees established by the folowing regulations are subject to the 69% surcharge.

1. 37 CFR 1.16(a)—Basic fee for filing each application for an original patent, except design or plant cases.
2. 37 CFR 1.16(b)—In addition to the basic filing fee in an original application, for filing or later presentation of each independent claim in excess of 3.
3. 37 CFR 1.16(c)—In addition to the basic filing fee in an original application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20.
4. 37 CFR 1.16(d)—In addition to the basic filing fee in an original application, if the application contains, or is amended to contain, a multiple dependent claim(s) per application.
5. 37 CFR 1.16(f)—For filing each design application.
6. 37 CFR 1.16(g)—Basic fee for filing each application.
7. 37 CFR 1.16(h)—Basic fee for filing each plant application.
8. 37 CFR 1.16(i)—In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent.
9. 37 CFR 1.16(j)—In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim (whether independent or dependent) in excess of the number of 20 and also in excess of the number of claims in the original patent.
10. 37 CFR 1.17(a)—Extension fee for response within first month pursuant to § 1.136(a).
11. 37 CFR 1.17(b)—Extension fee for response within second month pursuant to § 1.136(a).
12. 37 CFR 1.17(c)—Extension fee for response within third month pursuant to § 1.136(a).
13. 37 CFR 1.17(d)—Extension fee for response within fourth month pursuant to § 1.136(a).
14. 37 CFR 1.17(e)—For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences.
15. 37 CFR 1.17(f)—In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal.
16. 37 CFR 1.17(g)—For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in an appeal under 35 U.S.C. 134.
17. 37 CFR 1.17(l)—For filing a petition (1) For the revival of an unavoidably abandoned application under 35 U.S.C. sections 133 or 371, or (2) For delayed payment of the issue fee uder 35 U.S.C. 151.
18. 37 CFR 1.17(m)—For filing a petition (1) For the revival of an unintentionally abandoned application, or (2) For the unintentionally delayed payment of the fee for issuing a patent.
19. 37 CFR 1.18(a)—Issue fee for issuing each original or reissue patent, except a design or plant patent.
20. 37 CFR 1.18(b)—Issue fee for issuing a design patent.
21. 37 CFR 1.18(c)—Issue fee for issuing a plant patent.
22. 37 CFR 1.20(c)—For filing each statutory disclaimer (§ 1.321).
23. 37 CFR 1.20(h)—For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after August 27, 1982, in force beyond four years; the fee is due by three years and six months after the original grant.
24. 37 CFR 1.20(i)—For maintaining an original or reissue patent, except a design or plant patent, based on an application, filed on or after August 27, 1982, in force beyond eight years; the fee is due by seven years and six months after the original grant.
25. 37 CFR 1.20(j)—For maintaining an original or issue patent, except a design or plant patent, based on an application filed on or after August 27, 1982, in force beyond twelve years; the fee is due by eleven years and six months after the original grant.

Dated: November 5, 1990.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 90–26588 Filed 11–6–90; 2:31 pm]
BILLING CODE 3510–16–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 310

RIN 2133–AA66

Merchant Marine Training

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is amending its merchant marine training regulations at 46 CFR part 310 to permit the United States Merchant Marine Academy (USMMA) to consider medical waivers for applicants and enrolled students who need such a waiver to qualify for admission and/or retention. A commission in the United States Navy, or any other branch of the Armed Forces, is a requirement for graduation from the USMMA. Consideration of medical waivers will parallel U.S. Navy guidelines and regulations for waiver consideration for admission to the U.S. Naval Academy. Affected individuals must be found qualified for commissioning as an inactive reserve officer in the U.S. Navy, in at least a restricted service category.

EFFECTIVE DATE: November 8, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce J. Carlton, Director, Office of Maritime Labor and Training, Maritime Administration, Department of Transportation, 400 Seventh Street SW., room 7302, Washington, DC 20590, Telephone: (202) 366–5755.

SUPPLEMENTARY INFORMATION: 46 CFR 310.56 establishes general physical requirements for eligibility for admission to the United States Merchant Marine Academy. Paragraph (d) of that section currently states that no waivers of physical requirements will be granted.

When USMMA regulations were amended, effective May 20, 1982, they were conformed to the provisions of the Maritime Education and Training Act of 1980 (Pub. L. 96–453). At that time, no medical waivers were permitted, based on an expectation that all candidates for admission to USMMA should, upon

graduation from USMMA, be able to meet the physical requirement to qualify for commissioning and appointment in any "unrestricted" officer billet on active duty, in the United States Navy Reserve including the Merchant Marine Reserve (USNR–MMR), or in the reserve of any other armed force. The majority of USMMA graduates accept a commission in the USNR–MMR.

In April of this year, the USNR–MMR program was changed by the U.S. Navy from an unrestricted to a restricted line program. Thus, there is no longer a compelling justification for mandating that USMMA applicants and enrolled students meet the medical qualifications for unrestricted U.S. Navy commissioning programs. Furthermore, the tougher physical requirements necessary to meet the qualifications for an unrestricted Navy commission have disqualified a significant number of applicants to the USMMA each year who may have been able to demonstrate potential to be outstanding merchant marine officers.

Individuals who are granted medical waivers must be able to meet all other admission requirements, including the physical examination requirement for an original U.S. Coast Guard merchant marine license as a third mate and/or third assistant engineer. Acceptance of a commission as an officer in any branch of the Armed Forces, either on active duty or in a reserve status, remains a requirement for graduation.

E.O. 12291, Statutory Requirements and DOT Procedure

The Maritime Administrator has made a determination that this rulemaking meets none of the criteria in Executive Order 12291 for a major rule. This rulemaking will have minimal economic impact. This rule will affect only currently enrolled students and applicants to USMMA. Accordingly, under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979), a determination has been made that this regulation is nonsignificant and that a full regulatory evaluation is unnecessary. The regulation contains no new or amended reporting requirement within the scope of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). Since this final rule will have no economic impact, the agency certifies that it will not have a significant economic impact on a substantial number of small entities. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule does not affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

It is imperative that this amendment to 46 CFR part 310 be published as a final rule without opportunity for public comment. The recruitment cycle has already begun for students interested in applying to the class entering in July 1991. Publication of a proposed rule with a public comment period would create substantial confusion for Congressional nominating authorities who are responsible for initiating nominations, by December 31, 1990, of applicants who meet the eligibility requirements. Moreover, the Department of Defense Medical Examination Review Board (DODMERB), which is responsible for reviewing the medical examination results of prospective candidates, will be required to implement the new medical waiver provisions as quickly as possible so that no candidate is unduly disqualified.

MARAD views this rulemaking to be noncontroversial and in keeping with the medical requirements for the USNR–MMR program which was changed from an unrestricted to a restricted line program. We expect no meaningful public comment.

Therefore, pursuant to 5 U.S.C 553(b)(B), good cause exists for finding that the notice and public comment prodecure otherwise required by 5 U.S.C. 553(c) is impracticable and unnecessary. Additionally, because nominations of candidates to the USMMA must be initiated by December 31, 1990, and the standards for eligibility should be known well in advance, the Maritime Administration finds, pursuant to 5 U.S.C. 553(d)(3), good cause to make this regulation effective immediately.

List of Subjects in 46 CFR Part 310

Grants programs, Education, Maritime administration, Schools, Seamen.

For the reasons set forth in the preamble, 46 CFR part 310 is amended as follows:

PART 310—MERCHANT MARINE TRAINING

1. The authority citation for 46 CFR part 310, subpart C, continues to read as follows:

Authority: Secs. 204(b) and 1301–1306, Merchant Marine Act, 1936, as amended, (46 U.S.C. 1114(b) and 1295–1295g); 49 CFR 1.66 (46 FR 47458, September 28, 1981).

2. Section 310.56 paragraph (d) is revised to read as follows:

§ 310.56 Waivers.

* * * * *

(d) Waivers. Some medical requirements may be waived for enrolled students and applicants to the USMMA who require such a medical waiver to qualify for admission and/or retention. Since commissioning in the United States Navy, or any other branch of the Armed Forces, is a requirement for graduation, no waivers will be granted for medical conditions which would prevent commissioning in at least a restricted status in the U.S. Navy Reserve. Individuals interested in waiver consideration may request a waiver by writing to the Superintendent, USMMA. The granting of medical waivers will be based on U.S. Navy guidelines and regulations for waiver consideration for admission to the U.S. Naval Academy and the physical requirements consistent with commissioning as a reserve officer in the U.S. Navy in a restricted line program. Individuals requesting medical waivers must be able to meet all other admission requirements, including the physical examination requirement for an original U.S. Coast Guard merchant marine license as a third mate and/or third assistant engineer. The decision of the Superintendent on any requested waiver is administratively final.

Dated: November 2, 1990.

By Order of the Maritime Administration.

James E. Saari,

Secretary.

[FR Doc. 90–26364 Filed 11–7–90; 8:45 am]

BILLING CODE 4910–81–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 88–475; FCC 90–336]

Construction Prior to Receiving Authorization for Public Mobile Service Applicants

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Memorandum Opinion and Order was written in response to several requests for petitions for reconsideration of the *Report and Order*, amending part 22 of the rules, 4 FCC Rcd 5960 (1989). In the *Report and Order*, the Commission amended part 22 to allow certain Public Mobile Service (PMS) applicants to begin constructing facilities after filing an application (FCC Form 401) and without receiving prior Commission authorization, as long as certain conditions are met. The Memorandum Opinion and Order revises and clarifies the adopted rules. The effect of the Order is to speed service to the public.

EFFECTIVE DATE: December 7, 1990.

FOR FURTHER INFORMATION CONTACT: Leila Brown, Mobile Services Division, Common Carrier Bureau (202) 632–6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in CC Docket No. 88–475, adopted October 11, 1990 and released October 22, 1990. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW. suite 140, Washington, DC 20037.

1. In this Memorandum Opinion and Order the Commission has amended its Report and Order, which permitted applicants in the domestic public cellular radio telecommunications service (cellular) and the public land mobile service (PLMS or non-cellular) to construct facilities after filing a Form 401 application but prior to receiving Commission authorization. The rule also contains the conditions under which an applicant may construct prior to receiving a grant of its authorization. On reconsideration, the Commission has determined that the pre-authorization construction rule should be extended to all applicants in the PMS service as defined in § 22.2 of the Commission's rules. 47 CFR 22.2. Additionally, on reconsideration, the Commission made it clear that, as with part 22 applicants, generally, applicants who propose pre-authorization construction are not required to obtain ASB clearance if the proposed antenna structures are exempted from FAA notification under § 17.14 of the Commission's rules. On reconsideration, the Commission also concluded that, for cellular licenses, allowing pre-grant construction of facilities where *de minimis* extensions are proposed would expedite service to the public and allow cellular operators and applicants to modify their system quickly in response to market demand. Thus, the Commission amended the rule to permit pre-authorization construction where the applicant proposes a *de minimis* extension of its CGSA or 39 dBu contour.

2. Final Regulatory Flexibility Analysis. The rulemaking will enhance the efficiency of PMS operations and speed service to the public because, under certain conditions, PMS applicants will not have to wait until after receiving Commission authorization to begin construction. The Order takes into consideration the various issues raised by the public concerning the proposed rules and modifies them where the Commission has been determined that service to the public would be provided with greater speed and efficiency.

3. Paperwork Reduction Act Statement. The Proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found not to impose a new information collection requirement on the public.

4. Authority for this Rulemaking is contained in sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

5. Wherefore, for the foregoing reasons, part 22 of the Commission's Rules is hereby amended as specified in the rule section appended to this summary. The amendments adopted in this Order for part 22 licensees will become effective December 7, 1990.

List of Subjects in 47 CFR 22

Communications common carriers, Prior construction.

1. The authority citation for part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 22.43 is amended by removing paragraph (d)(3)(iii), and adding new paragraph (d)(1)(viii), redesignating paragraphs (d)(3)(iv) through (d)(3)(vii) as paragraphs (d)(3)(iii) through (d)(3)(vi), and revising paragraphs (d)(1), (d)(1)(i), (d)(1)(ii), (d)(1)(iii), (d)(1)(vi), (d)(1)(vii), newly redesignated (d)(3)(iii), (d)(3)(v); and (d)(4)(iii), to read as follows:

§ 22.43 Period of construction.

* * * * *

(d) * * *

(1) Scope. Section 22.43(d) applies to all Public Mobile Service (PMS) applicants as defined in § 22.2 and set forth in § 22.43(d), paragraphs (i)–(viii):

(i) Applicants for an initial station authorization in the PMS;

(ii) Applicants for a non-permissive change of an existing station authorization in the PMS, *see* § 22.9(a) of the rules;

(iii) Applicants who have filed applications or amendments which request expansion of the reliable service area of a PMS base station facility by less than one mile. *Cf.* § 22.23(c)(2) of the rules;

* * * * *

(vi) Applicants seeking authorization to expand an existing Cellular Geographic Service Area (CGSA), pursuant to § 22.9(a) of the rules, within the boundaries of their market, both during the exclusive five year fill-in period, and after the fill-in period has expired, *see* § 22.31(a)(1)(i), (f) of the rules;

(vii) Applicants seeking an initial cellular authorization after the exclusive five year fill-in period has expired, *see* § 22.31(a)(1)(i), (f) of the rules;

* * * * *

(3) * * *

(iii) The applicant, where required (and not exempted under § 17.14 of the rules), has not filed a notice of proposed construction with the FAA, and has not received a determination from the Commission as to any required antenna structure marking and lighting specifications;

* * * * *

(v) For non-cellular applicants, the proposed facility will be located between line A and the United States-Canadian border, *see* §§ 1.955, 22.117(b)(2) of the rules; or a facility to be operated in the 931–932 MHz band will be located in any of the areas indicated in Note C, *infra*; and

* * * * *

(4) * * *

* * * * *

(iii) *Applications and amendments to expand the reliable service area of a non-cellular base station by less than one mile.* Applications and amendments which request expansion of the reliable service area of a non-cellular base station facility by less than one mile, *see* § 22.43(d)(1)(iii), shall not be subject to the general rule set out in § 22.43(d)(2)(i). Rather, once the applicant has mailed the Form 401 to the Commission, the applicant may commence construction provided that the requirements of § 22.43(d)(3) have been met.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–25695 Filed 11–7–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90-18; RM-7122]

Radio Broadcasting Services; Pine Bluff, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 267C3 for Channel 267A at Pine Bluff, Arkansas, and modifies the permit issued to Madison Hodges, for Station KPBQ-FM, as requested, to specify operation on the higher powered channel, thereby providing that community with an additional expanded coverage FM service. *See* 55 Fed. Reg. 4632, February 9, 1990. Coordinates for Channel 267C3 at Pine Bluff are 34-08-00 and 91-58-45. With this action, the proceeding is terminated.

EFFECTIVE DATE: December 20, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-18, adopted September 24, 1990, and released November 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Arkansas, is amended by removing Channel 267A and adding Channel 267C3 at Pine Bluff.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26476 Filed 11-7-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-131; RM-7162]

Radio Broadcasting Services; Bowling Green, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 231C3 for Channel 231A at Bowling Green, Missouri, in response to a petition filed by Pike County Broadcasting Co. *See* 55 FR 10790, March 23, 1990. We shall also modify the license for Station KPCR-FM, Bowling Green, to specify operation on Channel 231C3. The coordinates for Channel 231C3 are 39-21-57 and 91-10-45.

EFFECTIVE DATE: December 20, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-131, adopted September 25, 1990, and released November 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 231A and adding Channel 231C3 at Bowling Green.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26477 Filed 11-7-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-589; RM-7050]

Radio Broadcasting Services; La Crosse, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule

SUMMARY: The Notice in this proceeding was issued in response to a request from Vaughn Broadcasting Group proposing the substitution of Channel 292C3 for Channel 285A at La Crosse, Wisconsin, and modification of the license for Station WLXR-FM to specify the higher class channel. *See* 55 FR 327, January 4, 1990. Petitioner withdrew his interest in the proposed upgrade, but Robert V. Barnes filed comments stating his intent to file an application for the channel at La Crosse. This document allots Channel 292C3 to La Crosse, Wisconsin, as that community's fourth FM broadcast service, in response to comments filed by Robert V. Barnes. The coordinates for channel 292C3 are 43-48-00 and 91-14-42.

DATES: Effective December 20, 1990; the window period for filing applications will open on December 21, 1990, and close on January 21, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-589, adopted September 28, 1990, and released November 5, 1990.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Wisconsin by adding Channel 292C3 at La Crosse.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26478 Filed 11-7-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 90926-9277]

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) closes the commercial fishery for shallow-water groupers (all groupers other than yellowedge grouper, misty grouper, warsaw grouper, snowy grouper, and jewfish) in the exclusive economic zone (EEZ) of the Gulf of Mexico. The Secretary has determined that the commercial allocation for shallow-water groupers will be reached on November 7, 1990. This closure is necessary to protect the shallow-water grouper resource.

EFFECTIVE DATES: Closure is effective November 8, 1990, through December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico was developed by the Gulf of Mexico Fishery Management Council under the authority of the Magnuson Fishery Conservation and Management Act, and is implemented by regulations at 50 CFR part 641. Those regulations set the commercial quota for shallow-water grouper in the Gulf of Mexico at 9.2 million pounds for the current fishing year, January 1-December 31, 1990.

Under 50 CFR 641.26, the Secretary is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by publishing a notice in the **Federal Register**. The Secretary, based on current statistics, has determined that the commercial quota of 9.2 million pounds for shallow-water grouper will be reached on November 7, 1990. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for shallow-water grouper is closed effective November 8, 1990, through December 31, 1990, the end of the fishing year.

During the closure, the bag limit applies to all harvests of shallow-water groupers from the EEZ in the Gulf of Mexico and the purchase, barter, trade, or sale of shallow-water groupers taken from the EEZ is prohibited. This prohibition does not apply to trade in shallow-water groupers that were harvested, landed, and bartered, traded, or sold prior to the closure and were held in cold storage by a dealer or processor. The daily bag limit for groupers, excluding jewfish, is five. There is no allowable catch of jewfish in either the commercial or recreational fisheries.

Other Matters

This action is required by 50 CFR 641.26 and complies with E.O. 12291.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Date: November 2, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-26380 Filed 11-7-90; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 217
Thursday, November 8, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter 1

[Docket No. 26339; Summary Notice No. PR-90-20]

Request for Additional Comments on the Summary of Rulemaking Petition Received From American Airlines, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of petition for rulemaking.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice requests additional, specific comments addressing certain aspects of a petition by American Airlines, Inc., to allow aircraft certificated for 110 seats or less and that meet Stage 3 noise requirements to use commuter slots at Chicago's O'Hare International Airport. Specifically, this notice solicits additional comments on the availability of ground facilities for additional turbojet operations at O'Hare and the impact of such operations on ground congestion at the airport. Neither the publication of this notice nor the inclusion or omission of information in the summary or the additional request is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on the original petition and this supplemental request must identify the petition docket number involved and be received on or before December 3, 1990.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 25717, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Patricia R. Lane, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267-3491.

SUPPLEMENTARY INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rule Docket (AGC-10), room 915, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

Part 93, subpart K of the Federal Aviation Regulations (14 CFR part 93, subpart K) limits the number of aircraft operations at O'Hare International Airport and limits the type of aircraft that may use commuter slots. Under § 93.123(c), commuter operations are those conducted by a propeller-driven aircraft having a maximum certificated seating capacity of less than 75 passenger seats or a turbojet aircraft having a maximum certificated seating capacity of less than 56 passenger seats.

On October 2, 1990, the FAA published a summary of American Airlines' petition in which American requested that the requirements of part 93, subpart K of the Federal Aviation Regulations be amended to permit aircraft certificated for 110 seats or less and that meet Stage 3 noise requirements to use commuter slots at O'Hare International Airport. (54 FR 40191) Petitioner stated in its petition that the use of Stage 3 aircraft with up to 110 passenger seats would upgrade and increase service to small and medium-sized communities and would enhance competition in the Chicago area, as well as throughout the United States.

The FAA is now requesting further comment on certain concerns of the agency that were not addressed in the original petition. In particular, Air Traffic Control has concerns about the capacity of O'Hare Airport for additional turbojet operations that would result if the seat limitation of the commuter aircraft is raised as the petition has requested. Specifically, the FAA is requesting comments on the following.

1. Are sufficient terminal gates available at O'Hare International Airport for the additional jet aircraft?
2. If terminal gates are not available and ramp parking will be used, is there sufficient ramp space available at O'Hare in which to board and deplane passengers without causing a congestion problem in ramp areas?
3. Further, if terminal gates are not used, will passengers be able to transition between the terminal and the aircraft safely?
4. Should there be a limit on the number of commuter slots that may be converted to turbojet operations during specific time periods?

Issued in Washington, DC on November 5, 1990.

Donald P. Byrne,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 90-26447 Filed 11-5-90; 12:19 pm]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-ANE-28]

Airworthiness Directives; General Electric Co. (GE) CF6-80C2 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain GE CF6-80C2 series engines, which would require establishment of a borescope inspection program for high pressure turbine (HPT) stage one shrouds and HPT stage one blades. The AD would also require the installation of HPT hardware to increase cooling to the HPT stage one shroud. This proposal is prompted by an HPT failure which resulted in aircraft damage. This condition, if not corrected, could result in HPT failure and possible aircraft damage.

DATES: Comments must be received no later than December 5, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-ANE-28, 12 New England Executive Park, Burlington, Massachusetts 01803.

Comments may be inspected at the above location between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service information may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Thomas Boudreau, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7098.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 90-ANE-28." The postcard will be date/time stamped and returned to the commenter.

Discussion

There has been one event with aircraft damage attributed to an HPT stage one shroud failure. The shroud failure resulted in subsequent high and low pressure turbine damage and airfoil failures. Debris from the failed turbines exited the exhaust nozzle and impacted the aircraft external surfaces. Also, there have been several instances of distressed shrouds discovered on high thrust rated engines at shop visits and during routine HPT borescope inspections.

HPT stage one shroud distress has been attributed to two conditions. First, the shroud leading edge may become exposed to hot flowpath gases as the film cooling holes lack adequate backflow margin. This condition is prevalent on high thrust rated engine models where the least backflow margin and the highest flowpath temperatures exist. Second, a manufacturing process problem has been identified which could allow shroud grinding debris to become entrapped in the shroud cooling circuit, thus starving the shroud of sufficient cooling air. These conditions, if not corrected, could result in HPT failure and possible aircraft damage.

The FAA has reviewed and approved GE CF6-80C2 Service Bulletin (SB) 72-473, dated July 3, 1990, which describes procedures for borescope inspection of HPT stage one shrouds and HPT stage one blades. Also, the FAA has reviewed and approved GE CF6-80C2 SB 72-474, dated July 13, 1990, which describes HPT modifications to increase cooling to the HPT stage one shrouds.

Since this condition is likely to exist or develop on other engines of this same type design, an AD is proposed which would require repetitive borescope inspection of HPT stage one shrouds and HPT stage one blades, in accordance with CF6-80C2 SB 72-473. Also, the proposed AD would require HPT modifications to increase cooling to the shroud, in accordance with CF6-80C2 SB 72-474.

There are approximately 177 GE CF6-80C2A5, -80C2B6, -80C2B6F, and -80C2D1F series engines of the affected design in the worldwide fleet. It is estimated that 99 engines installed on aircraft of U.S. registry would be affected by this AD, and that all costs associated with the proposal will be incurred by the manufacturer through a warranty program.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423, 49 U.S.C. 106(g) (Revised Pub L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

General Electric Co.: Applies to General Electric Company (GE) CF6-80C2A5 and CF6-80C2B6 engines, Serial Numbers (S/N) 690-101 through 690-369, and S/N 695-101 through 695-423; and CF6-80C2B6F and CF6-80C2D1F engines, S/N 702-101 through 702-470, and S/N 703-101 through 703-136, which do not incorporate the increased shroud cooling design features of paragraph (c) of this AD, installed on, but not limited to, Airbus A300, Boeing 767, and McDonnell Douglas MD-11 aircraft.

Compliance is required as indicated, unless previously accomplished.

To prevent high pressure turbine (HPT) failure and possible aircraft damage, accomplish the following:

(a) Boroescope inspect engines in accordance with the Accomplishment Instructions in GE CF6-80C2 Service Bulletin (SB) 72-473, dated July 3, 1990, unless previously accomplished, according to the following schedule based upon cycles since new (CSN) on the effective date of this AD:

(1) Inspect within 10 cycles in service (CIS) after the effective date of this AD or prior to accumulating 520 CSN, whichever occurs later, for CF6-80C2A5 and CF6-80C2B6 engines, S/N 690-101 through 690-369, and S/N 695-101 through 695-350; and CF6-80B6F engines, S/N 702-101 through 702-315, and S/N 702-317 through 702-321.

(2) Inspect within 10 CIS after the effective date of this AD or prior to accumulating 1,250 CSN, whichever occurs later, for CF6-80C2A5 and CF6-80C2B6 and CF6-80C2D1F engines, S/N 702-316, 702-322 through 702-470, and S/N 703-101 through 703-136.

(3) Remove from service or reinspect in accordance with the following:

(i) Remove from service prior to further flight, engines with at least one Category 4 shroud.

(ii) Remove from service within 25 hours time in service (TIS) since last inspection (SLI), engines with no Category 4 shrouds, but at least one Category 3 shroud.

(iii) Borescope reinspect at intervals not to exceed 125 hours TIS SLI, engines with no Category 3 or 4 shrouds, but at least one Category 2 shroud.

(iv) Borescope reinspect at intervals not to exceed 300 hours TIS SLI, engines with no Category 2, 3, or 4 shrouds, but at least one Category 1 shroud.

(v) Borescope reinspect at intervals not to exceed 520 CIS SLI, engines with no Category 1, 2, 3, or 4 shrouds.

(b) Replace the HPT stator stage one shroud supports, the HPT stator support hangers, and the HPT stage one shrouds, in accordance with the Accomplishment Instructions of GE CF6-80C2 SB 72-474, dated July 13, 1990, at the next HPT module exposure after the effective date of this AD, but prior to December 31, 1994.

(c) For the purpose of this AD, HPT module exposure is defined as the separation of the HPT stator support case from the compressor rear frame.

(d) For the purpose of this AD, the shroud Categories are defined in GE CF6-80C2 SB 72-473, dated July 3, 1990.

(e) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to base where the AD can be accomplished.

(f) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on October 26, 1990.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90-26390 Filed 11-7-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. H-033-d]

RIN 1218-AB25

Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Cancellation of public hearing and extension of comment period.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is extending the period for submission of comments and analyses on a recent document submitted to the Agency by the American Thoracic Society (ATS). OSHA also is cancelling the informal public hearing scheduled for November 9, 1990.

DATES: Comments and analyses relevant to issues raised in the ATS final report must be postmarked on or before December 14, 1990.

ADDRESSES: Comments should be submitted in quadruplicate to the Docket Officer, Docket H-033-d, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., room N-2625, Washington, DC 20210; telephone (202) 523-7894.

All written materials received will be available for inspection and copying in the Docket Office, room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210, between the hours of 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N-3649, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION: On February 12, 1990, OSHA published a Notice of Proposed Rulemaking (NPRM) (55 FR 4938) to amend the asbestos standards (29 CFR 1910.1001; 1926.58) to remove non-asbestiform tremolite, anthophyllite and actinolite from their scope. Public hearings were held in Washington, DC May 8-14, 1990. At the close of the hearings, the Administrative Law Judge set the following deadlines for participants to send material to OSHA: June 28, 1990 for the submission of additional information and July 23, 1990 for submission of comments, summations and briefs.

At the time of the hearings, the American Lung Association and its medical division, the American Thoracic Society could not submit to the record its final report relating to the health effects of non-asbestiform tremolite, anthophyllite and actinolite. Earlier, the ATS had submitted a draft report to the record (Ex. 472) which discussed the relevant health issues and the ATS's opinion on the regulation of non-asbestiform tremolite, anthophyllite and actinolite. Extensive comment on the draft report had been submitted to the record before the hearing. ATS's final report was scheduled to undergo review for internal approval after the close of OSHA's public hearings.

After the close of the post-hearing comment period OSHA received the final report from the ATS entitled, "The Health effects of Tremolite." This document was placed in the public record (Docket Number H-033-d, Ex. 525).

On October 4, 1990 OSHA published a **Federal Register** notice which announced the re-opening of the rulemaking record to receive comments on the ATS report and which scheduled a one day hearing for November 9, 1990 to receive testimony by ATS and to allow questioning of ATS by hearing participants (55 FR 40677).

The ATS has now informed OSHA that it will not present oral testimony. OSHA, therefore, is cancelling the November 9, 1990 hearing. The Agency is extending the previously announced comment period from October 31, 1990 until December 14, 1990. This extension will afford sufficient time for all interested parties to submit written comments and analyses on all issues raised in the ATS report.

The Agency notes that relevant written submissions which have been subject to public comment, become part of the rulemaking record which the Assistant Secretary may consider in reaching a regulatory decision (see 29 CFR 1911.18(a)(1)).

Certification of Record and Final Determination

Following the close of the comment period, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health.

The proposed standard will be reviewed in light of all testimony and written submissions received as part of the record and a standard will be issued based on the entire record of the proceeding, including the written comments and data received from the public.

Authority: Section 6(b), 8(c), and 8(g), Pub. L. 91-596, 84 stat. 1593, 1599, 1600, 29 U.S.C. 655, 657; 29 CFR part 1911; and Secretary of Labor's Order No. 1-90 (55 FR 9033).

Signed at Washington, DC on this 2nd day of November 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 90-26392 Filed 11-7-90; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 169a

[DoD Instruction 4100.33]

RIN 0790-AA48

Commercial Activities Program Procedures

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Department of Defense withdraws the proposed rule regarding the Commercial Activities Program Procedures to incorporate changes (32 CFR part 169a). The Department of Defense will publish a revision after the Office of Management and Budget (OMB) completes its major revision to OMB Circular A-76, "Performance of Commercial Activities," which has an impact on this part.

FOR FURTHER INFORMATION CONTACT: Mr. D. Miglionico, Office of the Assistant Secretary of Defense (Production and Logistics) Installations Support Division, Pentagon, Washington, DC 20301-8000.

SUPPLEMENTARY INFORMATION: On April 18, 1989 (54 FR 15442), the Department of Defense published part 169a as a proposed rule. The Department of Defense previously published part 169a on November 14, 1979 (44 FR 65603) and April 4, 1980 (45 FR 22924).

Authority: 10 U.S.C. 133.

Dated: November 5, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-26457 Filed 11-7-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AE89

Schedule for Rating Disabilities—The Muscular System

AGENCY: Department of Veterans Affairs.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Veterans Affairs (VA) is issuing an advance notice of proposed rulemaking (ANPRM) concerning that portion of the Schedule for Rating Disabilities which deals with disabilities of the muscular system. This ANPRM is necessary because of a General Accounting Office (GAO) study and recommendation that the medical criteria in the rating schedule be reviewed and updated as necessary. The intended effect of this ANPRM is to solicit and obtain the comments and suggestions of various interest groups and the general public on necessary additions, deletions and revisions of terminology and how best to proceed with a systematic review of the medical criteria used to evaluate disabilities of the muscular system. Other body systems will be subsequently scheduled for review until the medical criteria in the entire rating schedule have been analyzed and updated.

DATES: Written comments and submissions in response to this ANPRM must be received by VA on or before January 7, 1991.

ADDRESSES: Interested persons and organizations are invited to submit written comments and suggestions regarding this ANPRM to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington DC 20420. All written submissions will be available for public inspection only in the Veterans Service Unit, room 132, at the above address and only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until January 17, 1991.

FOR FURTHER INFORMATION CONTACT: Phyllis Barber, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: In December 1988, GAO published a report entitled *Veterans' Benefits: Need to Update Medical Criteria Used in VA's Disability Rating Schedule* (GAO/HRD-89-28). After consulting numerous medical professionals and VA rating specialists, GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. VA rating specialists noted that for some disorders they would prefer more medical criteria for distinguishing between various levels of severity and that inconsistent ratings may result when unlisted conditions had to be rated by analogy to other listed disorders. GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. It also recommended that VA implement a procedure for systematically reviewing the rating schedule to keep it updated. VA agreed to both recommendations, and this ANPRM is one step in a comprehensive rating schedule review plan which will ultimately be converted into a systematic, cyclical review process.

This ANPRM is the first stage in VA's consideration of what regulatory action to take, if any, with respect to revising and updating that portion of the rating schedule dealing with disabilities of the muscular system (38 CFR 4.73). While we do not wish to limit comments in any way, it should be noted that our primary concern in this ANPRM is the medical criteria used to evaluate muscular disabilities and not the percentage evaluations presently assigned to each level of severity.

Interested organizations and individuals are invited to submit comments and suggestions for revising current medical criteria, adding additional disabilities and/or deleting certain rarely encountered disorders or transferring them to other sections of the rating schedule. Submissions may run the gamut from narrative discussions of individual rating criteria to wholesale format changes and substitute rating schedules. Where changes are suggested, we would also appreciate a recitation as to the scientific or medical authority for such changes. Early submissions will expedite the comment review process and are encouraged.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: October 15, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 90-26361 Filed 11-7-90; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-482, RM-7172]

Radio Broadcasting Services; Lemoore and Tipton, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Lemoore Wireless Co., Inc., licensee of Station KQYZ(FM), Channel 285A, Lemoore, California, seeking the reallotment of Channel 285A to Tipton, California, as a Class B1 channel, and modification of its license accordingly. Coordinates for this proposal are 36-02-58 and 119-29-08.

DATES: Comments must be filed on or before December 27, 1990, and reply comments on or before January 11, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Lauren A. Colby, Esq., Law Offices of Lauren A. Colby, 10 E. Fourth St., P.O. Box 113, Frederick, MD 21701.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-482, adopted September 28, 1990, and released November 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *See* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26479 Filed 11-7-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-483, RM-7456]

Radio Broadcasting Services; Searsport, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Brian Dodge, proposing the allotment of FM Channel 269A to Searsport, Maine, as that community's first local service. Canadian concurrence will be requested at coordinates 44-27-30 and 68-55-30.

DATES: Comments must be filed on or before December 27, 1990, and reply comments on or before January 11, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brian Dodge, Harvest Broadcasting Services, RFD3 Rt. 16N, Dover, New Hampshire 03820.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-483, adopted September 28, 1990, and released November 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26480 Filed 11-7-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-485, RM-7433]

Radio Broadcasting Services; Bolivar and Nixa, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Sunburst II, Inc., proposing the reallotment of Channel 290C2 from Bolivar, Missouri, to Nixa, Missouri, and modification of the permit for Station KGBX-FM to specify the new community of license. The coordinates for Channel 290C2 are 37-17-10 and 93-10-15.

DATES: Comments must be filed on or before December 27, 1990, and reply comments on or before January 11, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Martin R. Leader, Francisco R. Montero, Fisher, Wayland, Cooper and Leader, 1255 23rd Street, NW., suite 800, Washington, DC 20037-1125. (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-485, adopted September 28, 1990, and released November 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, *See* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26481 Filed 11-7-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-484, RM-7478]

Radio Broadcasting Services; Kalispell, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Skyline Broadcasters, Inc., proposing the allotment of Channel 292A to Kalispell, Montana, as that community's fourth FM broadcast service. Canadian concurrence will be requested at coordinates 48-11-42 and 114-18-48.

DATES: Comments must be filed on or before December 27, 1990, and reply comments on or before January 11, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ambrose Measuse, Skyline Broadcasters, Inc., P.O. Box 169, Kalispell, Montana 59903, (Petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-484, adopted September 28, 1990, and released November 5, 1990.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26482 Filed 11-7-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket 89-24; Notice 3]

RIN 2127-AC77

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This notice responds to comments to a notice of proposed rulemaking published in December 1989. That notice proposed deleting the phrase "optically combined" in Standard No. 108, and substituting clarifying language. Because of objections to the proposed language, NHTSA is proposing to adopt the SAE definition of "optical combination".

DATES: The comment closing date for the proposal is December 24, 1990. Effective date of the amendment would be 30 days after publication of the final rule in the Federal Register. Any request for an extension of time in which to comment must be received not later than 10 days before the published expiration date of the comment period.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Rulemaking, NHTSA (202-366-5271).

SUPPLEMENTARY INFORMATION: On December 5, 1989, the agency proposed amendments to Federal Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices, and Associated Equipment, with the intent of substituting clarifying phrases for the term "optical combination" (54 FR 50254). In view of comments received on the proposal, the agency has decided not to issue a final rule based on the proposal, but to issue this supplemental notice of proposed rulemaking instead.

As the agency explained in Notice 1, from its very beginning, Motor Vehicle Safety Standard No. 108, in one version or another, has allowed two or more lamps, reflective devices, or items of associated equipment to be combined, if the requirements for each are met, provided that certain specified lamps were not "optically combined" (*See, e.g.*, sections S3.3, S3.4.4.3, 23 CFR 255.21 revised as of January 1, 1968, Motor Vehicle Safety Standard No. 108). The current provisions are contained in sections S5.1.1.28 and S5.4.1. They are also contained in two SAE standards incorporated by reference.

Section S5.4.1 is being amended contemporaneously with this proposal to be redesignated S5.4, and to omit the prohibition against optical combination of identification lamps and clearance lamps. As amended, section S5.4. permits lighting equipment to be "combined", provided that "no clearance lamp may be optically combined with any taillamp, and no high mounted stop lamp shall be combined with any other lamp or reflective device."

With respect to use of the term elsewhere in Standard No. 108, paragraph 4.2 of SAE Standard J586c Stop Lamps, August 1970, and paragraph 4.4 of SAE Standard J588e Turn Signal Lamps, September 1970, both state "When a stop signal is optically

combined with the turn signal, the circuit shall be such that the stop signal cannot be turned on in the turn signal which is flashing". Finally, the second sentence of section S5.1.1.26 of Standard No. 108, states that "A stop lamp that is not optically combined with a turn signal lamp shall remain activated when the turn signal is flashing."

The agency has never adopted a definition of "optically combined", but over the years attempted to clarify the term by issuing a variety of interpretations. On June 14, 1988, the Truck Safety Equipment Institute ("TSEI") petitioned the agency for rulemaking to amend Standard No. 108 to adopt the Society of Automotive Engineers' (SAE) definition of the term "combined optically" as set forth in SAE Information Report J387 OCT88 "Terminology—Motor Vehicle Lighting." Until the revision of SAE J387 in 1988, the term had been undefined, though appearing in the two SAE standards for many years. TSEI had examined the opinion letters issued by NHTSA and concluded that they were inconsistent, alleging, for example, that one had "apparently been used to justify designs which have the clearance lamp bulb mounted in close proximity to the dual filament stop/tail lamp bulb * * * Both use a common lens area for the output of the tail and clearance functions. It does not appear that this is in keeping with either the spirit or the intent of FMVSS 108." The petitioner also mentioned that Canada had adopted, effective September 2, 1987, a definition of "combined optically" which is substantially similar to that of the SAE.

In considering TSEI's petition, NHTSA examined the prohibition against optically combining taillamps and clearance lamps. These lamps serve similar functions, namely the indication of the width and presence of the vehicle. The agency proposed an amendment of S5.4 that would prohibit a taillamp from sharing a light source, lens, or lamp body with a clearance lamp. NHTSA also wished to clarify its existing prohibition against combining the center highmounted stop lamp with other lighting devices, and proposed that the center lamp not share a light source, lens, or lamp body with any other lamp or reflector.

In reviewing section S5.1.1.26, containing the other direct reference to "optically combined", the agency wished to distinguish a lamp that performs two functions (stop, turn signal) with a single filament from one that performs these two functions with more than one filament. Accordingly it proposed a revision of that section to delete the term "optically combined" and replace it with language to clarify that a light source that performs a stop function but not a turn signal function shall provide the function regardless of whether any turn signal is flashing.

Finally, with reference to the identically worded sentence in the two SAE standards, NHTSA proposed to delete the phrase "when the stop signal is optically combined with the turn signal" and replace it with "when a light source performs both stop and turn signal functions". This would be accomplished by adding language to section S5.1.1.26. In NHTSA's view, removal of the term "optically combined" from Standard No. 108 would therefore cure the ambiguities that have existed, and constitute a grant of TSEI's petition.

Comments were received on the proposal from White/GMC Trucks, Chrysler Corporation, General Motors Corporation, Transportation Safety Equipment Institute, Peterson Manufacturing Company, Grote Manufacturing Company, Ford Motor Company, Truck-Lite Company, and Dry Launch. All commenters except Chrysler Corporation opposed the terminology of the proposed amendments to S5.1.1.26, and 5.4.1, though concurring with NHTSA is the regulatory goal of greater clarity. In general, the commenters felt that new ambiguities were being introduced, and that adoption of the proposal would prohibit some existing lamp designs where optical combination does not exist under current interpretations.

As an example, TSEI and Grote queried whether "light source" would mean the bulb or each filament, with respect to a bulb with more than one filament. Peterson pointed out that the fact that two light sources share a common body does not mean *per se* that they are "optically combined." GM, TSEI, and Ford argued that the proposed rewording of S5.1.1.26 would not result in the same performance as the SAE specifications for which it was intended to be a substitute. Virtually all these commenters recommended that NHTSA adopt the definition of "optically combined" as set forth in SAE Information Report J387 OCT88 Terminology—Motor Vehicle Lighting. Under the SAE definition,

> A lamp shall be deemed to be 'optically combined' if both of the following conditions are met:
>
> A. It has two or more separate light sources, or a single light source that operates in different ways (e.g., a two filament bulb).
>
> B. Its optically functional lens area is wholly or partially common to two or more lamp functions.'

NHTSA has reviewed these comments and found them persuasive. Accordingly, it is proposing an amendment of S4, rather than of S5.1.1.26 and S5.4.1, to add a definition quite similar to that of the SAE. Under the proposed definition:

> 'Optically combined' means a combination within a lamp of two or more separate light sources, or a single light source that operates in different ways, such as a dual-filament bulb, where its optically functional lens area is wholly or partially common to two or more lamp functions.

Because the amendment would clarify existing requirements, it is proposed that the amendment become effective 30 days after its publication in the **Federal Register**.

Impacts

NHTSA has considered the impacts of this rulemaking action and has determined that it is neither major within the meaning of Executive Order 12291 "Federal Regulation," nor significant under Department of Transportation regulatory policies and procedures. The primary effect of adopting the proposal would be to clarify existing requirements. In proposing this amendment, NHTSA has tentatively concluded that the savings in costs to manufacturers would be minimal, as it knows of no existing lamp designs that would be affected. Therefore, the agency has not prepared a full regulatory evaluation.

NHTSA has analyzed this proposal for purposes of the National Environmental Policy Act. It is not anticipated that a rule based on the proposal would have a significant effect upon the environment because its effect is to clarify existing requirements.

The agency has also considered the effects of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic effect upon a substantial number of small entities. Lamp and vehicle manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Furthermore, small organizations and governmental jurisdictions would not be significantly affected as the price of new vehicles should not be impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 "Federalism," and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Interested persons are invited to submit comments on the proposal. Please submit 10 copies of written comments and 2 copies of films, tapes, and other materials. All comments must be limited not to exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the docket section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR part 512).

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR part 571 Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment be amended as follows:

Part 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

> **Authority:** 15 U.S.C. 1392, 1407; delegations of authority at 49 CFR 1.50 and 501.8.

2. In § 571.108, S4 would be amended by adding a definition of "Optically combined", in alphabetical order, to read: § 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

Optically combined means a combination within a lamp of two or more separate light sources, or a single light source that operates in different ways, such as a dual filament bulb, where the optically functional lens area of the lamp is wholly or partially common to two or more lamp functions.

* * * * *

Issued on: October 31, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-26231 Filed 11-7-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB52

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Scirpus ancistrochaetus (Northeastern Bulrush)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Scirpus ancistrochaetus* (Northeastern bulrush), a perennial herb of the sedge family (Cyperaceae) to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. Twelve occurrences of *Scirpus ancistrochaetus* are found in open shallow ponds, wet depressions, and marshes in Virginia, West Virginia, Maryland, Pennsylvania, Massachusetts, and Vermont; the species is also known historically from New York. Eight of the twelve extant populations are extremely small, each having less than 70 flowering culms. The species is threatened by habitat loss and modification through residential, agricultural and recreational development. This proposal, if made final, would extend the Federal protection and recovery provisions afforded by the Act to *Scirpus ancistrochaetus*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by January 7, 1991. Public hearing requests must be received by December 24, 1990.

ADDRESSES: Comments and materials, and requests for public hearing concerning this proposal should be sent to the New England Field Office, U.S. Fish and Wildlife Service, 22 Bridge St., Concord, New Hampshire 03301. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Susanna L. von Oettingen at the above address (telephone: 603/225-1411 or FTS 834-4411.

SUPPLEMENTARY INFORMATION:

Background

Scirpus ancistrochaetus (Northeastern bulrush), a perennial member of the sedge family (Cyperaceae), was described as a new species by A.E. Schuyler in 1962. Though *Scirpus ancistrochaetus* is closely related to *Scirpus atrovirens* and *Scirpus hattorianus*, Kartesz and Kartesz (1980) also acknowledged *S. ancistrochaetus* as a distinct species. The Northeastern bulrush is a tall, leafy plant, generally 80 to 120 cm (30 to 47 inches) in height. Flowering culms (stems) are produced from short, woody, underground rhizomes. The lower leaves are 40 to 60 times as long as wide; the uppermost leaves are 30 to 50 times as long as wide (Schuyler 1962). A distinctive field characteristic which aids in separating this species from other bulrushes is the arching rays of the inflorescence. The flowers have six, small rigid perianth bristles each covered to the base with thick-walled, sharply pointed barbs projecting downward. The yellow brown achenes (fruits) are mostly ovate, and thickened and tough at the top. *S. ancistrochaetus* flowers from mid-June to July, and sets fruit between July and September (Crow 1982).

The reproductive mechanism of *S. ancistrochaetus* is not clearly understood. It appears that *S. ancistrochaetus* most often reproduces vegetatively as new plants develop from the nodes and culms of recumbent stems. The absence of isolated individuals suggests that sexual recruitment is not occurring (Bartgis, The Maryland Natural Heritage Program, pers. comm., 1990).

Schuyler (1964, 1967) investigated the relationship between *Scirpus*

ancistrochaetus and two closely related species, *S. atrovirens* and *S. hattorianus* and observed that *S. ancistrochaetus* will hybridize with both species, generally producing a sterile hybrid. When in its vegetative form, *S. atrovirens* is very similar in appearance to *S. ancistrochaetus*, while hybrids between these two species are morphologically intermediate, both in vegetative and reproductive forms. The ancestral relationship of *Scirpus ancistrochaetus* to *S. atrovirens*, as well as its scarcity and scattered occurrence in isolated wetlands in areas where the flora has been well researched, suggests that *S. ancistrochaetus* is a relict species (A. Schuyler, Academy of Natural Sciences of Philadelphia, pers. comm., 1990).

The Northeastern bulrush is found at the unshaded water's edge of acidic to circumneutral natural ponds, wet depressions or shallow sinkholes. The ponds are often clustered and separated by a few hundred feet or yards. *S. ancistrochaetus* may be found in one or more ponds within a wetland complex, though rarely, if ever, occurring in all of the ponds. These wetlands, generally less than one acre in size, appear to occur primarily in low-lying areas in hilly country (Schuyler 1982) and have seasonally variable water levels, ranging from inundation to desiccation (Rawinski 1990). The ponds and depressions where *S. ancistrochaetus* may be found are considered unusual habitats, especially in the southern portion of its range. Though the habitat does not appear to have distinctive characteristics, many statewide rare plants such as *Potamageton pulcher*, *Scirpus torreyi*, and *Glyceria acutiflora* are often found in association with *S. ancistrochaetus*, indicating that there may be subtle, and as yet unknown properties of the habitat (Rawinski, The Nature Conservancy, pers. comm., 1990). Other members of the genus *Scirpus* found with *S. ancistrochaetus* are *S. atrovirens, S. cyperinus, S. pedicellaris, S. hattorianus* and *S. atrocinctus*.

Schuyler (1982) first discovered *S. ancistrochaetus* in Rockingham, Windham County, Vermont, which is considered the type locality. Emergence of the plant at a location may be unpredictable from year to year. Nontheless, historical records of leafy *Scirpus* species are useful in indicating whether *S. ancistrochaetus* is more common than believed. In Schuyler's (1983, 1987) extensive review of *Scirpus* herbaria specimens, few misidentified *S. ancistrochaetus* were documented and only five historical occurrences were identified. In 1988 and 1989 the Fish and Wildlife Service (Service) contracted with The Nature Conservancy's Eastern Regional Office to conduct status surveys for *Scirpus ancistrochaetus* (Rawinski 1988, 1990). All extant and historic sites, and a majority of the sites identified as potential habitat were surveyed in Virginia, West Virginia, Maryland, Pennsylvania, New York, Massachusetts, and Vermont. At present, there are 12 extant occurrences and nine historical occurrences, four of which were confirmed to have been destroyed or failed.

Approximately half of the suitable habitat in Virginia has been surveyed; of the twenty-one ponds identified as potential habitat and surveyed for *S. ancistrochaetus* in 1989, only one was found to be a new occurrence. There are now four extant occurrences found in Rockingham, Bath, Alleghany and Augusta Counties. One of the occurrences has less than 25 plants. The plants are found in shallow, oligotrophic sinkholes overlying sandstone in the Blue Ridge Mountains. A number of rare and unusual species occur in association with *S. ancistrochaetus* on the Virginia sites, including *Helenium virginicum*, a Category 1 Federal candidate species (a candidate for which the Service has sufficient information to support a proposal to list), and *Glyceria acutiflora* and *G. septentrionalis*, two species diagnostic of this habitat type (Rawinski 1990). Three of the occurrences are on privately owned land, the fourth is located in the George Washington National Forest.

Prior to 1988, *Scirpus ancistrochaetus* had not been found in Maryland or West Virginia. Using aerial photographs to identify potentially suitable habitat, all potential habitat in Maryland and approximatley ninety percent of the potential habitat in West Virginia was surveyed. Three occurrences were discovered, two in West Virginia and one in Maryland. These populations are found relatively close together in the Appalachian Mountains. West Virginia's two extant occurrences are located in Berkeley County, both on privately owned land. They are found in shallow, centripally-drained sinkholes perched atop flat ridges and are part of wetland complexes containing three or more ponds. One site consists of two ponds in a cluster of seven, with stands totaling over 1400 stems. The second occurrence has over 400 stems in three discrete patches within one pond (Bartgis 1989). Maryland's occurrence, located in Frederick County, consists of a very small stand of approximately 100 stems. The small, shallow, successional pond is located on private property lying within the acquisition boundary of a State Wildlife Management Area (Bartgis 1989).

All but one of the historical *S. ancistrochaetus* sites and much of the potential habitat in Pennsylvania have been surveyed for *S. ancistrochaetus*. The two occurrences in Lackawanna and Clinton Counties, Pennsylvania are still recorded as "extant", although three years of surveys have been unable to reconfirm the plants' presence. The Lackawanna County site, a bog lying between sandstone ridges on private land, had one plant in 1985 and was severely burned in 1988. The Clinton County site, lying within the Bald Eagle State Forest, was reported to have had two plants in 1985.

Most of the potential habitat for *Scirpus ancistrochaetus* has been surveyed in Massachusetts; no new sites have been discovered, though one historical site was confirmed extant in 1989. The extant occurrence of four plants in Franklin County, Massachusetts is found in a shallow, bowl-shaped depression, which is part of a privately owned wetland complex. The depression is inundated with water during periods of ample rainfall and dries out during droughts (Rawinski 1990).

The two Vermont occurrences are both located in Windham County. One is an emergent marsh in an alluvial meadow of the Connecticut River. Sixty-nine plants were observed in 1985; 10 plants were observed in 1989. Currently, The Nature Conservancy holds a management agreement with the landowner. The second site, also located on privately owned land, is part of a wetland complex consisting of natural depressions and abondoned beaver ponds. In 1985, 12 plants were observed, while no plants were observed in 1989 (Thompson 1989). At both sites the plants grow at the edge of the emergent zone, adjacent to open water. All suitable habitat within the Connecticut River drainage in Vermont was surveyed; no new occurrences of *Scirpus ancistrochaetus* were found.

Five historical collections of *Scirpus ancistrochaetus* are known from New York (Washington County) and Pennsylvania (Blair, Lehigh, Monroe and Northampton Counties). The Nature Conservancy and Natural Heritage Program botanists undertook extensive surveys of these states in 1989, including all historical occurences and a signficant portion of the suitable habitat. Surveys have not relocated the presence of *S. ancistrochaetus* at any of the historical occurences in New York and Pennsylvania.

Scirpus ancistrochaetus and its habitat are highly vulnerable to destruction and disturbance. The majority of the occurrences are found in wetlands that currently have little State or Federal protection. Of the 12 existing populations, two are located on Federal lands and one population is located on State land. The remaining populations situated on private lands are subject to obliteration or degradation through filling and dredging activities for development, agriculture and recreation purposes. Other adverse impacts to the species can occur through direct physical damage to the plants by recreational vehicles or through water quality degradation from non-point source pollution.

There is little available information on the life history of this species. It is not known how the water regime affects *Scirpus ancistrochaetus* and what specific ecological factors are required for the establishment of new populations. Extremely high water levels may be responsible for the lack of reproduction in a given year, while drier conditions may be conducive to good reproductive output (Rawinski, pers. comm., 1990). There is no data on the impact of fire on *Scirpus ancistrochaetus*. The site of one extant population was completely burned in 1988 and subsequently, plants have not been observed.

Federal government action on this plant began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on the plants considered to be endangered, threatened or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975 and subsequently published (Ayensu and DeFilipps 1978). *Scirpus ancistrochaetus* was listed as "endangered" in that document. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) of the Act (now section 4(b)(3)) and of its intention to review the status of plant taxa named within. On June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered or threatened pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975 Federal Register publication. *Scirpus ancistrochaetus* was included in the July 1, 1975 notice of review and the June 16, 1976 proposal. General comments received in relation to the 1976 proposal were summarized in the Federal Register on April 26, 1978 (FR 17909). On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing the portion of the June 16, 1976 proposal that had not been made final, along with four other proposals that had expired due to a procedural requirement of the 1978 Amendments to the Act. On December 15, 1980 (45 FR 82479) the Service published a revised notice of review for native plants in the Federal Register. In this publication, *Scirpus ancistrochaetus* was identified as a Category 2 candidate (a taxon for which listing is possibly appropriate though existing information is not presently available to support a proposed rule). The species was also designated a Category 2 species in the September 27, 1985 (50 FR 29526) and the February 21, 1990 (50 FR 6184) updated notices of review.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982 be treated as having been newly submitted on that date. The deadline for a finding on those species, including *Scirpus ancistrochaetus* was October 13, 1983. Each October, 1983 through 1989, the Service found that the petitioned listing of *Scirpus ancistrochaetus* was warranted pending finding of further biological information but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires that the petition be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. This proposal to classify *Scirpus ancistrochaetus* as endangered constitutes the final required petition finding.

On April 7, 1988, the Service received a second petition, submitted by the Vermont Natural Heritage Program, requesting that *Scirpus ancistrochaetus* be federally listed. In accordance with its established policy, the Service treated this second petition as a public comment to be considered in evaluating the original listing petition. Additional information about the status and threats to *S. ancistrochaetus* provided by this petition, resulted in the Service's decision to raise the species' priority for listing.

Upon the evaluation of the most recent and comprehensive status survey work (Rawinski 1990), the Service has determined that *Scirpus ancistrochaetus* warrants listing as an endangered species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Scirpus ancistrochaetus* Schuyler (Northeastern bulrush) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Nine of the twelve extant populations occur on private lands. Residential development activities, particularly at the southern portion of its range, are responsible for extensive destruction and modification of *Scirpus ancistrochaetus* habitat. During the 1989 status survey in Virginia, nine of twenty-one ponds believed to be suitable habitat for *S. ancistrochaetus* were found to be degraded from fill, partial excavation, and eutrophication due to non-point source discharges, or were destroyed by total excavation and diking activities (Rawinski 1990). The two extant populations in West Virginia are also located in areas of increasing residential development and may suffer degradation or destruction if not protected. Both occurrences are surrounded by subdivided lands currently being marketed for housing developments. Four of eight historical sites in eastern Pennsylvania have been destroyed or degraded, primarily by agricultural activities. Construction or agricultural activities occurring near populations may indirectly impact the habitat unless specific measures to prevent or minimize siltation or contamination are implemented. Sedimentation of the wetlands, discharges of herbicides or fertilizers, and alteration of the hydrological regime of *Scirpus* wetlands are actions which can alter the physical and biological makeup of the habitat, creating an unsuitable environment for the continued existence of the species.

During droughts, the wetlands in which the populations are found dry out, allowing vehicular access to the habitat. Use of off-road and all terrain vehicles may result in the degradation of the habitat through soil compaction, destruction of vegetation, and the direct loss of plants. Heavy off-road vehicle use was observed at one *Scirpus ancistrochaetus* site in West Virginia

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during a dry period in 1989, but actual destruction of this species was not observed.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Taking of the species for these purposes has not been documented as being a factor in its decline. In the past, scientific collections have been inadvertent. Relatively few specimens have been collected in recent years. However, future collections could seriously threaten populations, especially at those sites consisting of only a few plants or occupying a very small area.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanism.* In Virginia, *Scirpus ancistrochaetus* is listed as endangered and is protected under the Endangered Plant and Insect Species Act of Virginia (1979, c. 372). This law prohibits taking without permits, except by private landowners. Virginia law also gives the Department of Agriculture and Consumer Services the authority to regulate the sale and movement of listed plants and to establish programs for the management of listed plants.

Scirpus ancistrochaetus receives protection in Pennsylvania as an endangered species under the regulations of the Wild Resources Conservation Act (25 Pa. Code, Chapter 82). Permits are required to collect, remove, or transplant wild plants classified as threatened or endangered, though landowners are exempt from these requirements. Pennsylvania regulations also provide for the establishment of native wild plant sanctuaries on private lands where there is a management agreement between the landowner and the State Department of Environmental Resources.

Under the Vermont Endangered Species Law (10 V.S.A. Chapter 123), *Scirpus ancistrochaetus* is listed as threatened and is afforded protection from taking, possession or transport by any person, unless exempted, or by certificate or permit. Permits may be granted for scientific purposes, enhancement of survival of the species, economic hardship, educational purposes or special purposes consistent with the purposes of the Federal Endangered Species Act.

Maryland is in the process of designating *Scirpus ancistrochaetus* as endangered, though no additional protection will be afforded the plant. Currently, there is no State endangered species legislation in Massachusetts or West Virginia. New York has a law protecting State listed plants, but has not listed *Scirpus ancistrochaetus* since there are no extant populations.

Though half of the states with extant *Scirpus ancistrochaetus* populations have legislation protecting endangered plants from taking or transport, no protection is afforded the habitat. The primary threat to *S. ancistrochaetus* is from habitat degradation.

Under current Federal regulations, a Department of the Army permit is required for the discharge of dredged or fill material into waters of the United States including adjacent and isolated wetlands where the majority of *S. ancistrochaetus* occurrences are situated. However, Nationwide Permit 26 exempts wetland fills smaller than 10 acres from the individual permit process provided they are (a) located above headwaters (5 cfs or less) and (b) not part of a surface tributary system to interstate waters or navigable waters. Deposit of up to one acre of dredge or fill material in such wetlands does not require the prior notification of the Army Corps of Engineers. Without federal listing of the species, the 404 regulatory process does not protect *S. ancistrochaetus* or its habitat.

E. *Other natural or manmade factors affecting its continued existence.* Six of the 12 known occurrences of *S. ancistrochaetus* contain fewer than 25 plants. These isolated and critically small populations are highly vulnerable to extinction. Extreme isolation, whether by geographic distance, ecological factors or reproductive strategy, prevents the influx of new genetic material and can result in a highly inbred population with low viability and/or fecundity (Chesser 1983). In addition, current knowledge of the species biology and population dynamics is insufficient to assess whether *S. ancistrochaetus* is likely to persist following natural events such as drought, flooding and fire.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Scirpus ancistrochaetus* as endangered. Only twelve occurrences are known, and plants were not found at three of these sites during the most recent status survey (Rawinski 1990). Due to the small number of populations and the continuing threats to its habitat, the plant is in need of protection if it is to survive. These factors support listing as an endangered species. Critical habitat is not being designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Scirpus ancistrochaetus* at this time. Most populations of this species are small to moderate in size, are widely scattered throughout its range and are located on private property, for which there is no regulation to prevent taking by the landowner or others. While collecting for scientific and educational purposes has not contributed to the decline of the species, taking due to vandalism or private collections could eliminate some populations if their locations are publicized. Publication of critical habitat descriptions and maps in the **Federal Register** could increase these threats to the survival of the species, overriding any protection that such designation might provide.

Designation of critical habitat primarily affects Federal agencies. Since the majority of the occurrences are on privately owned land, critical habitat designation will have little impact on the management or protection of this species. The designation of critical habitat would not provide additional benefits to populations that do not already accrue from listing through section 7 consultation and the recovery process. The Service will coordinate with the U.S. Army Corps of Engineers by providing locational information on *S. ancistrochaetus* in an effort to prevent destruction of existing sites under Nationwide Permit 26 activities. The U.S. Forest Service has been notified of the presence of *Scirpus ancistrochaetus* on its properties and of the section 7 requirements. The population located on State property is managed and protected by the State landowning agency.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. Though *Scirpus ancistrochaetus* is not currently listed as endangered in New York State, Federal listing will result in the species being listed as a Protected Native Plant in New York. This action will provide additional protection from collection or destruction. The Nature Conservancy is currently working to protect the known populations and listing will enhance these efforts. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Because *Scirpus ancistrochaetus* is a wetland plant, activities which involve filling of these wetlands (including filling authorized under Nationwide 26) would be regulated by the U.S. Army Corps of Engineers and would require section 7 consultation. The Service is not presently aware of any specific proposed projects that might affect known populations of *Scirpus ancistrochaetus*.

Listing *Scirpus ancistrochaetus* will encourage research on critical aspects of its life history, ecology and population biology. Information is needed regarding the relationship of fertile culm production to the hydrologic regime of its habitat, reproduction strategies and population recruitment. These factors will be important for the development of recovery strategies and long-term management considerations for individual populations.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62 and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and state conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, Rm 432, 4401 N Fairfax Dr., Arlington VA 22203-3507 (703/358-2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Scirpus ancistrochaetus*;

(2) The location of any additional populations of *Scirpus ancistrochaetus* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of *Scirpus ancistrochaetus*; and

(4) Current or planned activities in the subject area and their possible impacts on *Scirpus ancistrochaetus*.

Final promulgation of the regulation on *Scirpus ancistrochaetus* will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 25 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Field Supervisor, New England Field Office, U.S. Fish and Wildlife Service (See **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Susanna L. von Oettingen (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Cyperaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species							
Scientific name	Common name	Historic Range	Status	When listed	Critical habitat	Special rules
Cyperaceae—Sedge family						
Scirpus Ancistrochaetus	Northeastern bulrush.	(=Barbed bristle) U.S.A. (MA, MD, NY, PA, VA, VT, WV).	E		NA	NA

Dated: October 15, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–26355 Filed 11–7–90; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 60

RIN 1018–AB51

Patuxent Wildlife Research Center Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to revise regulations published on Dec. 15, 1966 codified at 50 CFR 60.10 that govern public use policy on the Patuxent Wildlife Research Center (PWRC). The existing restrictions that sport fishing would only be allowed in support of research are no longer necessary. The proposed regulations would permit public sport fishing on selected areas of the facility.

DATES: Comments must be received on or before December 10, 1990.

ADDRESSES: Comments may be addressed to Director, Patuxent Wildlife Research Center, Laurel-Bowie Rd., Laurel Md. 20708.

FOR FURTHER INFORMATION CONTACT: John P. Stasko, Chief, Branch of Facility Management, Patuxent Wildlife Research Center, Laurel-Bowie Rd., Laurel Md. 20708 (telephone 301–498–0342).

.11)

SUPPLEMENTARY INFORMATION:

The Patuxent Wildlife Research Refuge was established, by Executive Order 7514, dated December 6, 1936, in order to furtherthe purposes of the Migratory Bird Conservation Act. The name of the Refuge was changed in 1956 to the Patuxent Wildlife Research Center (PWRC) but the mission of this facility—to help protect and conserve the Nation's wildlife and natural environment through research on critical environmental problems and issues—has remained virtually unchanged throughout its 50-year history.

Shortly after its opening, PWRC began constructing two large lakes on the south side of its property. These lakes, Cash Lake and Lake Redington, were completed in 1939. These lakes were developed to provide habitat for a wide range of fish and wildlife. The recreational benefits of these lakes was also recognized. Cash Lake was opened to public fishing in 1940. Years later several other impoundments were created on the facility and several of these were also opened to public fishing. The persons who fished the PWRC impoundments were required to provide data about the kind of fish caught, their length, weight, etc. Much of the early work at the Research Center involved fish and their habitat.

Public fishing was discontinued at Cash Lake in 1957, when waterfowl studies were initiated at the lake. As the research emphasis at PWRC changed the compatibility of a public fishing program began to be questioned. In 1966 a Rule was published in the Code of Federal Regulations which restricted fishing at the Center only to that which would provide research data to the center's scientists. In 1969, fishing was discontinued.

Much has happened to PWRC and its grounds since the late 1960's. Today, PWRC encompasses 4700 acres. A large tract of land immediately adjacent to Cash Lake was acquired by PWRC from the Beltsville Agricultural Research Center in 1975 for recreational and environmental education use. This property is separated from the main research campus by Maryland Route 197. Although the lakes are managed to provide suitable habitat for waterfowl, no active waterfowl research is being conducted on this area.

In keeping with the Department of the Interior's efforts to develop recreational and environmental education opportunities for the public, including persons with disabilities, PWRC proposes to open the lakes and ponds that are located in this designated public use area to the general public for the purpose of sport fishing.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966 (NWRSAA), as amended (16 U.S.C. 668dd), authorizes the Secretary of the Interior (Secretary) to permit public access, use and recreation on refuges whenever he determines that suchuses are compatible with the major purposes for which such areas were established. The Service has determined that permitting controlled public sport fishing at PWRC from June 15 through October 15 will not have a biological impact on waterfowl nesting on the acreage, will not interfere with the research that is being conducted on the facility's main campus, and is compatible with the purposes for which the Patuxent Wildlife Research Refuge was established and with the purposes for which the land was acquired in the years since its establishment.

The provisions of the NWRSAA relating to recreation are administered in accordance with the Refuge Recreation Act of 1962 (16 U.S.C. 460k), which authorizes the Secretary to permit recreational uses on refuges if they are appropriate, incidental, or secondary uses. In conformance with that Act, the Service has determined that controlled public sport fishing, at PWRC, governed by the proposed regulations, permits a secondary use that is not inconsistent with the primary objectives for which it was established.

Further, the proposed recreational use will not interfere with the primary purposes for which PWRC was established. The above determinations are based in large part on empirical data collected at PWRC and have been previously described in the PWRC Master Plan. In addition, funds are available within the annual facility budget for the administration of the recreational activities that will be permitted by these regulations.

Economic Effect

Executive Order 12291 of February 19, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions, or significant adverse impact on the ability of the United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which will include small businesses, organizations, or government jurisdictions.

The proposed rulemaking is a minor adjustment to existing regulations for one refuge; therefore, this action will not have an adverse impact on the overall economy of a particular region, industry, or group of industries, or level of government. Although the proposed rule alters the existing recreational uses of the refuge, small entities such as sporting goods stores, restaurants, motels, and local governments will not be significantly affected by the rule.

Accordingly, the Department of the Interior has determined that this proposed rule is not a "major rule" within the meaning of Executive Order 12291, and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule contains information collection requirements approved by the Office of Management under 44 U.S.C. 3501, *et seq.*, and assigned clearance number 1018–0014. The public reporting burden for the permit application is estimated to average 6 minutes per response, including the time for reviewing instructions, gathering, and maintaining data, and completing and reviewing the forms. Direct comments regarding the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, MS 224 ARLSQ, U.S. Fish and Wildlife Service, Washington, DC 20240; or the Office of Management and Budget Paperwork Reduction Act Project (1018–0014), Washington, DC 20503.

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), an environmental assessment (EA) was prepared in 1989 on the effects of public use activities on the management of the Patuxent Wildlife Research Center as part of the PWRC Master Plan. An EA and Finding of No Significant Impact (FONSI) were also prepared for the August 1990 rulemaking.

These documents are available for public inspection at the Library/Merriam Laboratory, Patuxent Wildlife Research Center, Laurel, Md. Copies of the EA and FONSI are available by mail from the Center.

Maps of the refuge are available from the Chief, Branch of Facility Management, Patuxent Wildlife Research Center, Laurel-Bowie Rd., Laurel, Md. 20708.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, persons may submit written comments, suggestions, or objections regarding the proposed rule to the location identified in the **ADDRESSES** section of this document. All relevant comments will be considered by the Department prior to the issuance of the final rule.

Primary author of this proposed rule is John P. Stasko, Chief, Branch of Facility Management, Patuxent Wildlife Research Center.

List of Subjects in 50 CFR Part 60

Research, Wildlife.

PART 60—PATUXENT WILDLIFE RESEARCH CENTER

Accordingly, it is hereby proposed to amend 50 CFR part 60, as set forth below:

1. The authority citation for part 60 is amended to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460K, 668dd, 715i.

2. Section 60.10 is revised to read as follows:

60.10 Public sport fishing.

The research center may be opened to public sport fishing, under such conditions and restrictions as may be required, when public sport fishing activities will provide recreational and environmental opportunities for the public, including persons with disabilities, and when these activities can be administered without affecting the primary mission of the center. The sport fishing provisions set forth in part 33 of this chapter are equally applicable to the Patuxent Wildlife Research Center.

3. Section 60.11 is revised to read as follows:

60.11 Special regulations; hunting and sport fishing.

(a) Controlled public sport fishing will be permitted on the Patuxent Wildlife Research Center, Laurel, Md. The open area is confined to Cash Lake, comprising 54 acres as delineated on a map available at the Center. All of the fresh water fishing and boating laws of the State of Maryland apply except as further restricted below:

(1) Species permitted to be taken: Bass, pickerel, catfish, and sunfish.

(2) Open season: June 15 through October 15; 6 a.m. to legal sunset daily.

(3) Daily creel limits:

(i) Bass, catch and release only, except keeping of one bass greater than 15 inches in length is permitted.

(ii) Pickerel, catch and release only, except keeping of one pickerel greater than 15 inches in length is permitted.

(iii) Sunfish and catfish, 15 per day total fish limit.

(4) Methods of fishing:

(i) Hook and line tackle and baits permitted by Maryland law, except that no live minnows or other fish may be used for bait.

(ii) Boats may be used by permitees subject to the following conditions:

(A) No gasoline motors permitted.

(B) Boats may not be trailered to the water.

(C) Canoes longer than 17 feet are not permitted.

(D) Boats other than canoes may not exceed 14 feet.

(E) Sailboats and kayaks are not permitted.

(5) Special provisions:

(i) The information collection requirements contained in section 5(ii) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0014. The information is being collected and used to determine eligibility for permit issuance. Response is required to obtain a benefit in accordance with the requirements of the Refuge Administration Act (16 U.S.C. 668dd).

(ii) The provisions of this special regulation supplement the regulations which govern public use activities on national wildlife refuges which are set forth in title 50, Code of Federal Regulations, part 26.

(iii) A Federal permit is required to fish and a limit of 25 daily permits issued. Persons may request a permit application by addressing: Fishing Program, Patuxent Wildlife Research Center, Laurel-Bowie Rd., Laurel Md. 20708. Each request must include the person's name, address, and phone number; and the model, year, and license number of the vehicle they will drive to the Center and will be accepted annually after May 1st. Requests should be made no later than one week prior to the requested fishing date. All requests will be filed and, for dates where the number of requests exceeds the daily permits available, a random selection will determine successful permitees. Persons selected will be notified and the dates that they have been assigned will be listed. Each permit shall authorize the holder to be accompanied by one guest.

Dated: September 7, 1990.

Richard N. Smith,

Acting Director.

[FR Doc. 90–28422 Filed 11–7–90; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register

Vol. 55, No. 217

Thursday, November 8, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 2, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Revision

• National Agricultural Statistics Service.

Vegetable Surveys.

Weekly; Monthly; Quarterly; Seasonally.

Farms; Businesses or other for-profit; 19,365 responses; 3,250 hours, not applicable under 3504(h).

Larry Gambrell (202) 447–7737.

• Packers and Stockyards Administration.

Regulations and Related Reporting and Recordkeeping Requirements—Packers and Stockyards Act.

Recordkeeping; On occasion; Semi-annually; Annually.

Businesses or other for-profit: 29,517 responses; 361,874 hours; not applicable under 3504(h).

Patrick D'Agostino, (202) 475–3214.

Reinstatement

• Food and Nutrition Service.

Child Nutrition Program Operations Study.

One-time data collection.

State or local governments; Non-profit institutions; 2,460 responses; 1,230 hours; not applicable under 3504(h).

John Endahl, (703) 756–3115.

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 90–26366 Filed 11–7–90; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Steen Creek, Landore, and Deep Copper Timber Sales, Council Ranger District, Payette National Forest, Idaho, Revision of Notice of Intent

AGENCY: Forest Service, USDA.

ACTION: Revision of the notice of intent to prepare an environmental impact statement.

SUMMARY: A notice of intent to prepare an Environmental Impact Statement for the proposed Steen Creek, Landore, and Deep Copper Timber Sales was published in the **Federal Register**, August 3, 1990 (Vol. 55, Issue No. 150, Page 31617).

That notice is hereby revised to show that the Environmental Impact Statement will not include the analysis for the Deep Copper Timber Sale. Because of rapidly changing timber stand conditions, Payette National Forest Supervisor Veto J. LaSalle has decided to address the Deep Copper Timber Sale in a separate Environmental Impact Statement.

The condition of the timber stands in the Deep Copper project area is deteriorating rapidly. The Eagle Bar Fire of 1988 and prolonged drought have reduced the natural resistance of the trees to insect attack. Insect populations have reached epidemic proportions. If salvage activities are not initiated in the next year, currently infested trees will no longer be sound for harvest. The timber salvage harvest could also help reduce insect populations and risks to nearby timber stands.

No other revisions are made.

Dated: November 2, 1990.

Ralph Geibel,

Acting Forest Supervisor.

[FR Doc. 90–26406 Filed 11–7–90; 8:45 am]

BILLING CODE 3410–11–M

Deep Copper Timber Sale, Idaho; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for the proposed Deep Copper Timber Sale, Council Ranger District, Payette National Forest, Idaho. The proposed sale would construct roads and harvest timber within a portion of the Hells Canyon/Seven Devils roadless area that the Forest Plan allocated to timber management.

A range of alternatives will be considered for the proposal—from taking no action to harvesting about 15 million board feet of timber.

The agency has done some initial scoping for the analysis, but they invite additional comments and suggestions on the scope of the analysis to be included in the draft environmental impact statement (draft EIS).

DATES: Comments on the scope of the analysis must be received by December 7, 1990.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Tracy Beck, Deep Copper Team Leader, Payette National Forest, P.O. Box 1026, McCall, Idho 83638.

FOR FURTHER INFORMATION CONTACT: Tracy Beck, (208) 634–1333.

SUPPLEMENTARY INFORMATION: The Payette National Forest Plan (1988) provides Forestwide direction for management of the resources of the Payette National Forest, including roadless areas. The environmental impact statement for the Forest Plan (1988) analyzed a range of development and non-development alternatives for the Hells Canyon/Seven Devils roadless area. The Forest Plan allocates portions

of the area to timber management and assigns them to Management Area 3.

As well as Forestwide direction, the Forest Plan gives specific direction for that management area. It requires integrated management of the multiple resources including recreation, range, soil and water, fish, wildlife, timber, and fire/fuels to meet the desired future condition of the Forest.

Public participation will be especially important at several points during the analysis, particularly during scoping of issues and review of the draft EIS.

The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those covered by a relevant previous environmental analysis.
4. Determining potential cooperating agencies and responsibilities.

The U.S. Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat.

The Forest Service has conducted some preliminary scoping on the proposed timber sales and has identified preliminary issues and concerns. They include the following:

—How will recreation use be affected?
—How will visual quality be affected?
—How will the Hells Canyon/Seven Devils roadless area be affected?
—How will the associated logging traffic affect the community of Cuprum?
—How will the wildlife be affected?
—How will soil productivity be affected?
—How will water quality in Deep Creek be affected?
—How will anadromous fish and other fish be affected?

The second major opportunity for public input is the draft EIS. The draft EIS will analyze a range of alternatives to the proposed action, including the no-action alternative and alternative amounts of road building and timber harvesting. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in March 1991. EPA will then publish a notice of availability of the draft EIS in the Federal Register. Public comments are invited.

The comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the Federal Register. It is important that those interested in the management of the affected areas participate at that time. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. Federal court decisions have established that reviewers of draft EIS's must structure their participation of the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 [1978]), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (*Wisconsin Heritages, Inc.*, v. *Harris*, 490 F. Supp. 1334, 1338 [E.D. Wis. 1980]). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond in the final EIS.

Comments on the draft EIS will be analyzed and considered by the Forest Service in preparing the final EIS, which is scheduled to be completed in September 1991. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies in making the decision and stating the reasons for it in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Veto J. LaSalle, Forest Supervisor of Payette National Forest, McCall, Idaho, is the responsible official for this EIS.

Dated: November 2, 1990.

Ralph Geibel,

Acting Forest Supervisor.

[FR Doc. 90-26407 Filed 11-7-90; 8:45 am]

BILLING CODE 3410-11-M

White Mountain National Forest; Wildcat River Advisory Commission Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Wildcat River Advisory Commission meeting.

SUMMARY: The Wildcat River Advisory Commission will meet on November 20, 1990 at the Jackson Town Hall in Jackson, New Hampshire. The meeting will begin at 7 p.m. An agenda for the meeting includes review of a draft cooperative agreement between the Town of Jackson, State of New Hampshire and US Forest Service and review of a process for completing a comprehensive river management plan.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions about this meeting to Carl F. Gebhardt, Staff Officer, White Mountain National Forest, 719 Main Street, Laconia, NH 03247, (phone 603-528-8778).

Dated: November 1, 1990.

Rick D. Cables,

Forest Supervisor.

[FR Doc. 90-26408 Filed 11-7-90; 8:45 am]

BILLING CODE 3410-11-M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875-1573, MO/CPM, room 1109B, SA-14, Washington, DC 20523-1407.

Date submitted: October 29, 1990.

Submitting agency: Agency for International Development.

OMB number: 0412-0035.

Form numbers: AID 1550-2.

Type of submission: Renewal.

Title: Computation of Percentage of Private Funding for PVO's International Activities.

Purpose: A.I.D. is required to collect information regarding the financial support of private and voluntary organizations registered with the Agency. The information is used to determine the eligibility of PVOs to receive A.I.D. funding.

Annual reporting burden—
Respondents: 240;
Annual responses: 1;
Average hours per response: 1.5;
Burden hours: 368.

Reviewer: Marshall Mills (202) 395-7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: October 31, 1990.

Elizabeth Baltimore,

Chief, Communications and Program Management Division.

[FR Doc. 90-26417 Filed 11-7-90; 8:45 am]

BILLING CODE 6116-01-M

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875-1573, MO/CPM, room 1109B, SA-14, Washington, DC 20523-1407.

Date submitted: October 29, 1990.

Submitting agency: Agency for International development.

OMB number: 0412-0506.

Form number: AID 1420-50.

Type of submission: Renewal.

Title: Information Collection Elements in the A.I.D. Consultant Registry Information System (ACRIS).

Purpose: A.I.D.'s procuring activities are required to establish bidders mailing lists "to assure access to sources and to obtain meaningful competition," (CFR 1-2.205). In compliance with this requirement, A.I.D.'s Office of Small and Disadvantaged Business Utilizations/Minority Resource Center has responsibility for "developing and maintaining a Contractor's Index of bidders/offerors capable of furnishing services for use by A.I.D. procuring activities" (AIDPR 7-1.704-2(b)(4).

Annual reporting burden—
Respondents: 2000;
Annual responses: 1;
Average hours per response: .5;
Burden hours: 1,000.

Reviewer: Marshall Mills, (202) 395-7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: October 31, 1990.

Elizabeth Baltimore,

Chief, Communications and Program Management Division.

[FR Doc. 90-26418 Filed 11-7-90; 8:45 am]

BILLING CODE 6116-01-M

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875-1573, MO/CPM, room 1109B, SA-14, Washington, DC 20523-1407.

Date submitted: October 29, 1990.

Submitting agency: Agency for International Development.

OMB number: 0412-0510.

Type of submission: Revision.

Title: Information Collection Requirements Contained in A.I.D.'s Handbook 13, Grants and Cooperative Agreements.

Purpose: Section 635(b) of the Foreign Assistance Act (FAA) authorizes A.I.D. to make grants and cooperative agreements with any corporation or body of persons, whether within or without the United States, and international organizations in furtherance of the purposes and within the limitations of the FAA. A.I.D. is required to ensure the recipients are responsible and that they prudently manage public funds. These information collection and recordkeeping requirements are necessary for A.I.D. to review and monitor recipient's responsibility and compliances with U.S. Government requirements concerning use of funds.

Annual reporting burden—
Respondents: 400;
Annual responses: 2.75;
Average hours per response: 36;
Burden hours: 39,600.

Reviewer: Marshall Mills, (202) 395-7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: October 31, 1990.

Elizabeth Baltimore,

Chief, Communications and Program Management Division.

[FR Doc. 90-26419 Filed 11-7-90; 8:45 am]

BILLING CODE 6116-01-M

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875-1573, MO/CPM, room 1109B, SA-14, Washington, DC 20523.

Date submitted: October 29, 1990.

Submitting agency: Agency for International Development.

OMB number: 0412-0537.

Form number: AID 1 MB.

Type of submission: Renewal.

Title: Information on U.S. Private Organizations with Activities in Eastern Europe.

Purpose: A.I.D. in coordination with the Eastern Europe Business Information Center (EEBIC) at the Commerce Department is seeking qualified PVOs to help provide support to emerging eastern european countries. In order for A.I.D. to work with EEBIC to respond to requests from the public and to coordinate future program efforts, information is needed about each of the organizations working or planning to work in eastern europe. The information will be used to respond to requests for information on how to assist the people of eastern europe with donations of services or in kind contributions.

Annual reporting burden—
Respondents: 500;
Annual responses: 1;
Average hours per response: 2.25;
Burden hours: 1125.

Reviewer: Marshall Mills (202) 395-7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: October 31, 1990.

Elizabeth Baltimore,

Chief, Communications and Program Management Division.

[FR Doc. 90-26421 Filed 11-7-90; 8:45 am]

BILLING CODE 6116-01-M

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the

following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875–1573, MO/CPM, room 1109B, SA–14, Washington, DC 20523.

Date submitted: October 29, 1990.

Submitting agency: Agency for International Development.

OMB number: 0412–0524.

Type of submission: Renewal.

Title: Guidelines for Development Education Project Grants.

Purpose: The Biden-Pell Amendment to the International Security and Development Cooperation Act of 1980 urges the Administrator of A.I.D. to provide support to the ongoing efforts of private and voluntary organizations engaged in increasing public awareness of the issues pertaining to world hunger and poverty. A.I.D.'s major response to this legislative mandate is the Development Education Grants Program, initiated in FY 1982. Through this competitive, cost-shared grants program, applications for funding are considered on an annual basis. The information is used by A.I.D. officials in order to select the most qualified candidates for grant awards.

Annual reporting burden—
Respondents: 40;
Annual responses: 1;
Average hours per response: 5;
Burden hours: 200.

Reviewer: Marshall Mills (202) 395–7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: October 31, 1990.

Elizabeth Baltimore,

Chief, Communications and Program Management Division.

[FR Doc. 90–26420 Filed 11–7–90; 8:45 am]

BILLING CODE 6116–01–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB or Access Board) has scheduled regular business meetings to take place on Tuesday, November 13, 1990 at the ATBCB Library, 1111 18th Street, NW., suite 501, Washington, DC and Wednesday, November 14, 1990 at the Holiday Inn Southwest, 550 C Street, SW., Columbia North room, Washington, DC

DATES: The schedule of events is as follows:

Tuesday, November 13, 1990:

9:30–11:30 a.m. Planning and Budget Committee.

1–5 p.m. MGRAD Review (Closed Session).

Wednesday, November 14, 1990:

8:30–9:30 a.m. Ad Hoc Committee on Public Affairs.

10 a.m–1 p.m. Business Meeting.

MATTERS TO BE CONSIDERED: Agenda items at the Wednesday business meeting include:

- Approval of the September 12, 1990 Board Meeting Minutes.
- Executive Director's Report.
- Complaint Status Report.
- Legislative Amendments.
- *Task Force Reports.*

—ADA.
—Legislative (Section 502).

- *Ad Hoc Committee Report:*

—Public Affairs.

- *Planning and Budget Committee Reports:*

—Fiscal Years 1990, 1991 and 1992 Budget Status Reports.
—January Planning Retreat.
—Status Report: Facilities Task Force.

FOR FURTHER INFORMATION CONTACT: For information regarding the business meetings, please contact Barbara A. Gilley, Executive Officer, (202) 653–7834 (voice or TDD).

SUPPLEMENTARY INFORMATION: All meetings are open to the public except as noted. Interpreters (sign language and oral) and an assistive listening system are available for those individuals needing such accommodation.

Lawrence W. Roffee, Jr.,

Executive Director.

[FR Doc. 90–26459 Filed 11–7–90; 8:45 am]

BILLING CODE 6820–SF–M

CIVIL RIGHTS COMMISSION

California Advisory Committee: Meetings

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the California Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 5 p.m. on December 1, 1990 at the Santa Maria Inn, 801 South Broadway, Santa Maria, California 93454. The purpose of the meeting is to obtain information on civil rights issues in Santa Maria.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Michael C. Carney or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 29, 1990.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 90–26409 Filed 11–7–90; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Title 15

[Order No. 491]

Foreign-Trade Zones Board; Resolution and Order Approving the Application of the Dallas-Fort Worth Maquila Trade Development Corp. for a Foreign-Trade Zone in the Dallas-Fort Worth, TX, Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Dallas-Fort Worth Maquila Trade Development Corporation, filed with the Foreign-Trade Zones Board on May 8, 1990, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone at sites in Dallas and Fort Worth, Texas, within the Dallas-Fort Worth Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue an appropriate Board Order.

Grant of Authority To Establish, Operate, and Maintain a Foreign-Trade Zone in the Dallas-Fort Worth, Texas, Area

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Dallas-Fort Worth Maquila Trade Development Corporation (the Grantee), a Texas non-profit corporation, has made application (filed May 8, 1990, FTZ Docket 17–90, 55 FR 21210) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Dallas and Fort Worth, Texas, within the Dallas-Fort Worth Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 168, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 1st day of November, 1990, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Robert A. Mosbacher,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 90–26330 Filed 11–7–90; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications: Birmingham, AL

November 1, 1990.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with the provisions of Executive Order 11625, the Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance of 4/1/91 to 3/31/92. The MBDC will operate in the Birmingham, Alabama, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal Funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations (50 points); the resources available to the firm in providing management and technical assistance (10 points); the firm's proposed approach to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). It is advisable that applicants have an existing office in the geographic region for which they are applying.

An applicant must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the

Federal Government are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal Departmental regulations, policies, and procedures applicable to Federal assistance awards.

A false statement on an application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Section 319 of Public Law 101–121 generally prohibits recipients of appropriated funds from lobbying the Executive or Legislative Branches of Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contractors, Grants Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

CLOSING DATE: The closing date for applications is December 17, 1990. Applications must be postmarked on or before December 17, 1990. The anticipated processing time is 120 days.

ADDRESSES: Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 401 West Peachtree Street NW., room 1930, Atlanta, Georgia 30308–3516, 404/730–3300.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director of the Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street NW., room 1930, Atlanta, Georgia, November 28, 1990, at 9 a.m.

Dated: November 1, 1990.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 90–26410 Filed 11–7–90; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

1989 Survey of Atlantic Striped Bass Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of survey results.

SUMMARY: NOAA publishes the results of a survey of Atlantic coast striped bass fisheries for 1989, as required by the Atlantic Striped Bass Conservation Act, to provide information on the status of the fisheries.

ADDRESSES: Copies are available from David G. Deuel, NOAA/NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: David G. Deuel, 301–427–2347.

SUPPLEMENTARY INFORMATION:

Comprehensive Annual Survey of the Atlantic Striped Bass Fisheries—Calendar Year 1989 Survey Results.

Section 6 of the Atlantic Striped Bass Conservation Act (the Act) (Pub. L. 98–613, 16 U.S.C. 1851) requires the Secretary of Commerce and the Secretary of the Interior to conduct a comprehensive annual survey of the Atlantic striped bass fisheries. Each survey is to include, but not be limited to, a compilation and assessment of the recreational and commercial landings of Atlantic striped bass in the coastal states during the period considered in the survey. The results of each annual survey are to be published in the **Federal Register**. Reauthorization of the Act in 1986 (Pub. L. 99–432) and in 1988 (Pub. L. 100–589), extended the requirement for the annual survey. This report presents data for calendar year 1989 as required by section 6 of the Act.

The Act was signed into law on October 31, 1984. Under the Act, no funds were authorized for appropriation for activities in fiscal year 1985. For fiscal years 1986 through 1990, funds were authorized but not appropriated. Thus, for calendar years 1985 through 1989, no funds were appropriated for conduct of the comprehensive annual survey and no separate surveys were conducted on the Atlantic striped bass fisheries. However, NMFS routinely collects data on all U.S. commercial fisheries and on marine recreational fisheries on the Atlantic, Gulf, and Pacific coasts. Data from these surveys are used in this report to satisfy the requirements of section 6 of the Act.

A description of the statistical survey procedures for the commercial fishery landings may be found in "Fishery Statistics of the United States 1977" (U.S. Department of Commerce, 1984), and for the recreational fishery data in "Marine Recreational Fishery Statistics Survey, Atlantic and Gulf Coasts, 1986" (U.S. Department of Commerce, 1987).

The Act addresses Atlantic coast striped bass from Maine through North Carolina (hereafter referred to as striped bass); the data presented here are for the same area. In 1989, commercial landings of striped bass totaled 285,000 pounds (129.3 mt), the lowest landings on record, and a decrease of 122,000 pounds (55.3 mt) from the 1988 landings of 407,000 pounds (184.6 mt). The previous record low landings of 335,000 pounds (152.0 mt) was in 1986. Highest landings of 14.7 million pounds (666.8 kt) occurred in 1973, but have steadily declined at about 20 percent per year since that time (Figure 1). Part of the decline since 1982 has resulted from restrictive regulations on the commercial fishery. Commercial landings by state from 1982 through 1989 are shown in Table 1. During 1989, only Massachusetts and North Carolina reported commercial landings of striped bass.

Catch and harvest of striped bass by recreational fishermen have been estimated from the annual marine recreational fishery statistics surveys from 1979 through 1989. Catch is defined as the total number of fish caught, including those released alive. Harvest is the number of fish that were removed from the population. Estimated weights are available for the fish harvested. The reliability of the survey estimates is greater for species that occur more frequently in the catch than for those that occur infrequently. In recent years, with the striped bass stocks at low levels, the estimates for striped bass are less reliable than those for other species such as bluefish, winter flounder, or scup, which occur frequently in the catch. In addition, there is high interannual variability of striped bass catch estimates by state. Although a separate survey of the recreational fishery for striped bass would likely provide more reliable estimates of the catch and harvest of striped bass, such a survey would be extremely expensive to conduct. In recent years, several of the coastal states have augmented the level of sampling for the survey, which will result in an increase in the precision of catch estimates for striped bass. Additionally, if the striped bass stocks continue to increase, striped bass will occur more frequently in the catch, also resulting in increased precision.

In 1989, recreational fishermen caught an estimated 1,334,000 striped bass, of which only 40,000 were harvested; the remaining 1,294,000 were released alive. The estimated weight of the 1989 recreational harvest was 624,000 pounds (283.0 mt).

Table 2 presents estimates of the total recreational catch of striped bass by state from 1982 through 1989. The total recreational catch of striped bass declined from about 2.0 million fish in 1979 to about 600,000 fish annually during 1983–1985. As with the commercial fishery, restrictions on the recreational fishery contributed to the decrease in catch. The increase in total catch since 1986 likely reflects the abundance of the 1982 and subsequent year classes, which have received nearly total protection by management measures in force since 1985. The number of striped bass harvested generally declined from about 1.3 million fish in 1979 to 40,000 harvested in 1989. Since the early 1980's, the percentage of the total catch released alive has generally increased. During 1979–1981, an average of 24 percent was released alive; during 1982–1985, an average of 68 percent was released alive; and during 1986–1989, an average of 92 percent of the fish caught was released alive. This demonstrates the effectiveness of size limits and bag limits in conserving striped bass in the recreational fishery.

The management measures imposed on striped bass fishing by the coastal states, as recommended by the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for the Striped Bass (as amended) (ASMFC Plan), have had a significant impact on the level of the recreational and commercial harvest. Most new management resolutions were put in place between 1982 and 1986, with those having the most impact being implemented during 1984, 1985, and 1986. The regulations included closed seasons, closed areas, size limits, commercial gear restrictions, and bag limits on the recreational fishery. A moratorium was imposed on striped bass fishing in Maryland and Delaware in January 1985. During 1986, the striped bass fishery was closed in the marine waters of New York, Connecticut, and Rhode Island. Since then, a one fish per angler per day bag limit has been allowed for the recreational fishery in New York (during the open season) and Rhode Island. Several other states had prohibited sale of striped bass and all states had implemented a 36-inch (91.4 cm) total length minimum-size limit. Bag limits ranged from one to five fish in states that allowed possession of recreationally caught fish.

Historically, appropriate data from which to estimate the relative abundance of striped bass were not collected. Prior to 1982, striped bass commercial landings data were used as an indicator of the stock size. The commercial fishery has since been severely restricted by regulations; thus, landings in recent years are not comparable to those in earlier years, nor are they indicative of trends in stock size. The recreational fishery for striped bass has been similarly affected by management regulations. Thus, caution should be used in interpreting recent landings data.

In the last few years, commercial and recreational fishermen have reported increases in the numbers of striped bass. In addition to these undocumented reports, data obtained from sampling the population show an increased relative abundance of fish from recent year classes (fish born in the same year). This increase support the hypothesis that high levels of fishing mortality contributed significantly to the severe decline of the striped bass population on the Atlantic coast during the 1970's, and certainly shows that management measures have been effective in conserving and rebuilding the striped bass population.

Recent information indicates that female striped bass of the Chesapeake Bay stock may not all mature until age 8. Females from the first year class (1982) offered nearly total protection from fishing mortality are just now reaching full maturity. Full recovery of the population from the decline of the 1970's now depends on successful reproduction by the females of these protected year classes. Production of juvenile striped bass in 1987 in the Hudson River and in the Virginia portion of the Chesapeake Bay reached record highs and remained high during 1988 and 1989. Production in the Maryland portion of Chesapeake Bay remained low through 1988, but increased in 1989. Juvenile production in Maryland, as measured by the Maryland juvenile index, was 25.2. The only higher index on record (30.4) occurred in 1970. Both indices far exceed the 1954–1989 average index of 8.9.

Historically, spawning areas in Maryland have produced the majority of the striped bass found along the Atlantic coast. While fishing mortality was likely a major factor in the decline of the population, reduced water quality may have also played a role through reduced survival of eggs and/or larval fish. In some spawning rivers in Maryland during some years, larval striped bass exposed to various contaminants and/or low pH levels present in the rivers experienced greater mortality than the larvae exposed to water without contaminants or low pH. Thus, although an increased number of females are now in the spawning population, successful reproduction also will depend on water quality during the spawning season to allow survival of eggs and larval fish.

The ASMFC Plan was amended (Amendment 4) in October 1989 based on a 3-year average of the Maryland juvenile index exceeding 8.0. This trigger was assumed to represent a level of production that would signal partial recovery of the stocks and result in an increase in the allowed harvest. Amendment 4 of the ASMFC Plan specifies a 28-inch (71.1 cm) minimum size limit along the coast and an 18-inch (45.7 cm) minimum-size limit in inshore producing areas. The commercial harvest is restricted to 20 percent of the historical harvest from 1972 through 1979, and the recreational bag limit is set at one fish per angler per day. However, states also may propose regulations that differ from the basic provisions of Amendment 4, as long as those regulations meet the management objectives of the ASMFC Plan and result in the harvest at least as conservative as under the basic provisions. The ASMFC has approved fisheries to be conducted during 1990 for each state, the District of Columbia, and the Potomac River Fisheries Commission. This limited level of harvest during 1990 will be closely monitored by the states and, if needed, adjustments will be made for the 1991 season.

Dated: November 2, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

TABLE 1.—REPORTED COMMERCIAL LANDINGS (THOUSANDS OF POUNDS) OF STRIPED BASS IN ATLANTIC COASTAL STATES, 1982–1989

State	1982	1983	1984	1985	1986	1987	1988	1989
Maine	—	—	—	1	—	—	—	—
New Hampshire	—	—	—	—	—	—	—	—
Massachusetts	643	224	107	119	96	78	80	172

TABLE 1.—REPORTED COMMERCIAL LANDINGS (THOUSANDS OF POUNDS) OF STRIPED BASS IN ATLANTIC COASTAL STATES, 1982–1989—Continued

State	1982	1983	1984	1985	1986	1987	1988	1989
Rhode Island	270	196	54	61	11	1	—	—
Connecticut	6	2	2	6	—	—	—	—
New York	471	310	595	469	—	—	—	—
New Jersey	10	20	9	12	10	—	—	—
Delaware	25	7	37	—	—	—	—	—
Maryland	518	446	1,108	43	8	33	45	—
Virginia	147	151	508	241	23	57	165	—
North Carolina	338	361	513	280	189	262	115	113
Total	2,429	1,717	2,933	1,232	337	431	407	285

Source: National Marine Fisheries Service, F/RE1, unpublished data.
Dash denotes none reported.
Note: Restrictive regulations contributed to the decrease in landings since 1981.

TABLE 2.—ESTIMATED TOTAL RECREATIONAL CATCH (THOUSANDS OF FISH) OF STRIPED BASS BY STATE, MAINE TO NORTH CAROLINA, 1982–1989

State	1982	1983	1984	1985	1986	1987	1988	1989
Maine	—	—	—	77	—	—	—	—
New Hampshire	0	—	0	—	0	—	—	—
Massachusetts	129	68	132	123	655	138	301	236
Rhode Island	—	—	72	50	—	107	31	47
Connecticut	555	45	41	41	—	95	30	111
New York	—	36	101	95	149	227	146	376
New Jersey	151	210	84	—	43	89	704	287
Delaware	0	—	—	—	0	—	36	—
Maryland	40	155	146	102	502	181	163	152
Virginia	0	—	—	—	—	—	—	98
North Carolina	0	—	—	—	—	0	—	—
Total	911	568	626	618	1,399	886	1,465	1,334

Estimates include both fish harvested those released.
— = less than 30,000 reported.
0 = none reported.
Sources:
1982: USDOC, 1985. Current Fishery Statistics No. 8324.
1983–1984: USDOC, 1986. Current Fishery Statistics No. 8326.
1985: USDOC, 1986. Current Fishery Statistics No. 8327.
1986: USDOC, 1987. Current Fishery Statistics No. 8392.
1987, 1988, 1989: National Marine Fisheries Service, R. Essig, personal communication.

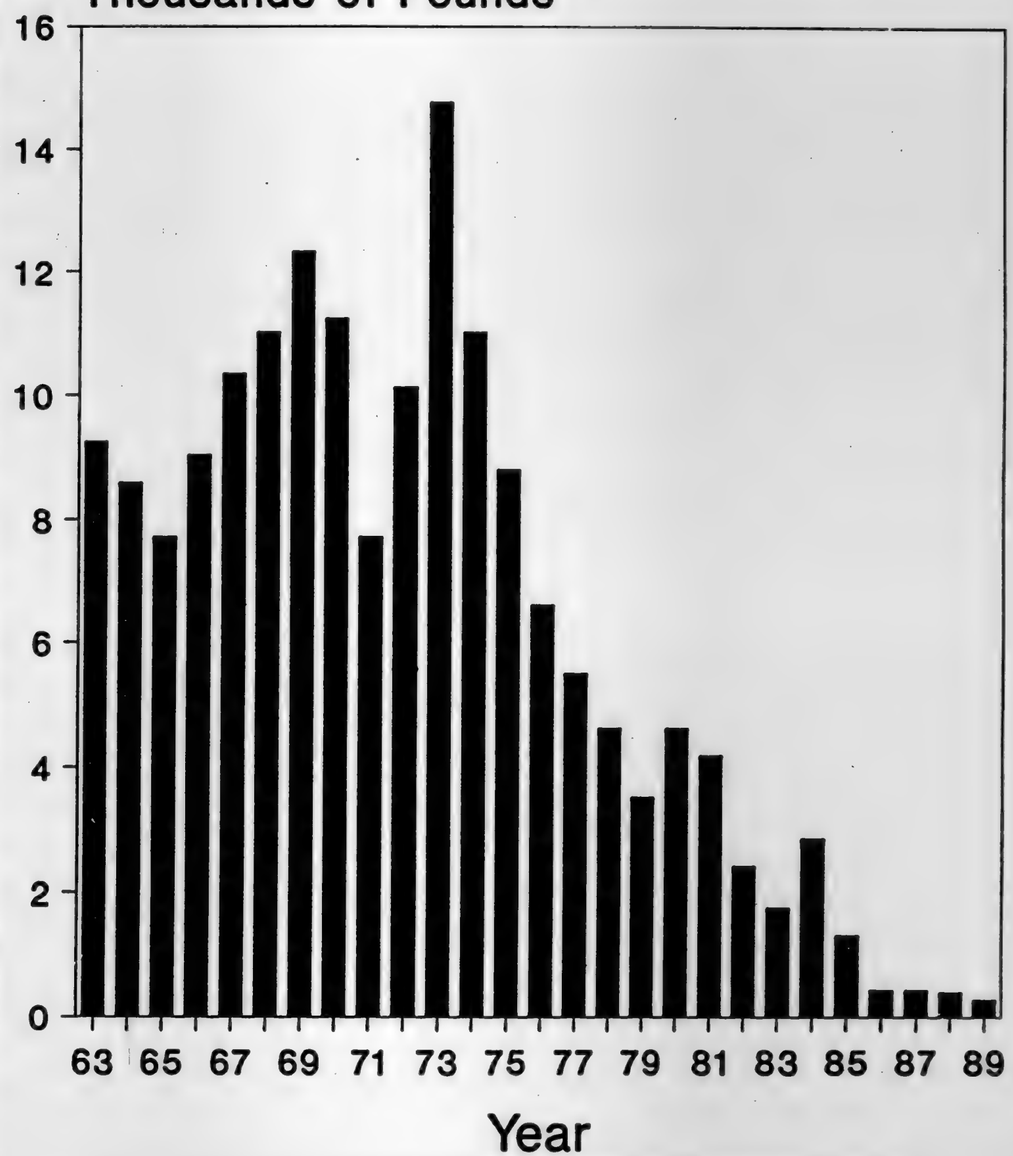

Figure 1. Reported commercial landings of striped bass from Maine through North Carolina, 1963–1989.

Note: Restrictive regulations on the commercial fishery contributed to the decrease in landings since 1982.

[FR Doc. 90-26462 Filed 11-7-90; 8:45 am]
BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; NMFS Southwest Fisheries Science Center (P77#45)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. Applicant: Southwest Fisheries Science Center, P.O. Box 271, La Jolla, California 92038.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals: Up to 120 harbor seals (*Phoca vitulina*) will be captured, fitted with one radio-flipper tag on each of the two rear flippers, weighed, sexed and released. Approximately 500–1000 animals per year will be incidentally harassed during the procedure. All age and sex classes will be considered for capture, except adult females with pups.

4. Location of Activity: Haul out sites on the mainland of California as well as the Channel Islands.

5. Period of Activity: 3 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, rm. 7324, Silver Spring, Maryland 20910 (301/427–2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731 (213–514–6196).

Dated: November 1, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90–26374 Filed 11–7–90; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 1 to Permit No. 627]

Marine Mammals; Permit Modification: Horizons West Ltd. (P158C)

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. 627 issued to Horizons West, Ltd., dba Marine Life Aquarium, HC 41 Box 365, Rapid City, South Dakota 57701, on March 14, 1988 is modified as follows:

Section B.4 is changed to read

B.4 The authority to capture or otherwise acquire these marine mammals shall extend from the date of issuance through December 31, 1992. The terms and conditions of this permit (Sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification becomes effective upon publication in the **Federal Register**.

Documents pertaining to the Permit and modification are available for review in the following Offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., room 7324, Silver Spring, Maryland 20910;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115.

Dated: November 1, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90–26375 Filed 11–7–90; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Frequency Management Advisory Council: Meetings

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of meeting of the CITEL–VI Subcommittee of the Frequency Management Advisory Council.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. 2 and the Department of Commerce Committee Management Handbook, a subcommittee of the Frequency Management Advisory Council was established on June 27, 1990 to assist United States in preparation for the VIth InterAmerican Telecommunications Conference (CITEL–VI) to be held in mid-1991. Major goals of United States participation in this conference are to strengthen the interAmerican alliance, create additional market opportunities for U.S. industry in Latin America, and provide opportunities to further U.S. goals of privatization while assisting Latin American countries in improving their telecommunication infrastructures.

NOTICE OF MEETING: The FMAC Subcommittee on Preparations for CITEL–VI will meet on November 29, 1990, from 9:30 a.m. to 12 noon in room 1605 of the United States Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC. Public entrance to the building is on 14th Street between Pennsylvania Avenue and Constitution Avenue.

AGENDA: The agenda for the fourth meeting of the Subcommittee on Preparations for CITEL–VI will be:

I. Adoption of the Agenda.
II. Summary Minutes of the 3rd Meeting.
III. Consideration of Draft Report of the Subcommittee.
IV. Report on Coordination Activities of T1/PTC–1.
V. Update on the Telecommunications Exhibition/Forum Associated with CITEL–VI.
VI. Report on Preparation for the Ad Hoc Meeting of PTC–I and the Agenda for the March 1991 Meeting of PTC–1.
VII. Debrief on Results of the COM/CITEL Meeting.
VIII. Date of the Next Meeting.

PUBLIC PARTICIPATION: This meeting of the CITEL VI Preparation Subcommittee will be held in accordance with the Federal Advisory Committee Act and will be open to public observations. A period will be set aside for oral comments or questions by the public.

More extensive questions, or comments should be submitted in writing before November 21, 1990. Other public statements regarding CITEL VI Subcommittee activities may be submitted at any time before or after the meeting. Approximately 25 seats will be available for the public on a first-come, first-served basis. Copies of the minutes will be available on request 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Inquiries or comments concerning the CITEL–VI Subcommittee may be addressed to the Designated Federal Official, Mr. William Moran, National Telecommunications and Information Administration, room 4701, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230, telephone (202) 377–1866.

Dated: October 31, 1990.

Michael W. Allen,

Executive Secretary, Frequency Management Advisory Council, National Telecommunications and Information Administration.

[FR Doc. 90–26411 Filed 11–7–90; 8:45 am]

BILLING CODE 3510-60-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Environmental: Chlorofluorocarbons (CFCs) Advisory Committee: Meetings

ACTION: Notice of meeting.

SUMMARY: This is another in a series of meetings to be held by the CFC Advisory Committee to study the feasibility and cost within DoD of substituting chemicals or technologies to replace ozone depleting chemicals whose production is restricted by the Montreal Protocol.

DATES: November 13, 1990.

ADDRESSES: Two Crystal Park, Advanced Technology Conference Room, 2121 Crystal Drive, Suite 200, Arlington, VA 22207.

FOR FURTHER INFORMATION: Mr. William D. Goins, (703) 325–2215.

SUMMARY INFORMATION: Due to limited space and security considerations please contact Charles W. Purcell (703) 934–3017 for attendance information and admission number.

Dated: November 5, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–26456 Filed 11–7–90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

November 2, 1990.

The USAF Scientific Advisory Board Ad Hoc Committee on Science and Technology (S&T) Broad Program Appraisal (BPA) will meet on December 17, 1990, from 8 a.m. to 5 p.m. at the Pentagon, Washington, DC 20330–5430.

The purpose of this meeting is to review the technology area plans for the programs in the Air Force S&T base. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–26412 Filed 11–7–90; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

November 2, 1990.

The USAF Scientific Advisory Board Division Advisory Group (DAG) for Aeronautical Systems Division (ASD) will meet on 28 November 90, from 8 a.m. to 5 p.m. and on 29 November 90, from 8 a.m. to 3 p.m. at Wright-Patterson AFB, OH. This meeting was originally scheduled for 12–13 September 90, but was postponed.

The purpose of this meeting is to receive classified briefings and hold classified discussions on selected Air Force programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 90–26413 Filed 11–7–90; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Military Traffic Management Command; Policy Change Concerning Storage-in Transit (SIT) on Carrier's Warehouse Floor

AGENCY: Military Traffic Management Command (MTMC), Department of the Army, DOD.

ACTION: Proposed revision of regulation and request for public comment.

SUMMARY: The Department of Defense is proposing to incorporate a policy specifying a maximum time frame in which carriers or carrier agents have to place personal property properly in storage-in-transit (SIT) to comply with paragraph 36.a of the Tender of Service for personnel property household goods and unaccompanied baggage shipments. Paragraph 36.a. of the Tender of Service will be changed to read:

a. *Storage.* Personal properety shall be stored on skids, dunnage, pallet bases, evaluated platforms, or similar storage aids maintaining a minimum of at least 2 inches clearance from the floor to the undermost portion of the personal property. This must be done no later than 3 workdays after receipt of the property by the storage facility or 3 workdays after the SIT number is issued, whichever is greater. In addition, the property shall not be stored in contact with exterior walls. Trash cans, extension ladders, lawn mowers, TV antennas, swing sets, and other like items are excluded from this requirement.

EFFECTIVE DATE: Change will be effective on January 1, 1991.

DATES: Comments must be submitted on or before December 10, 1990.

ADDRESSES: Comments should be addressed to Commander, Military Traffic Management Command, ATTN: MTPP–QQ, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Betty Wells, HQMTMC, ATTN: MTPP–QQ, 5611 Columbia Pike, Falls Church, VA 22041–5000, (703) 756–1784.

SUPPLEMENTARY INFORMATION: The proposed revision would supersede policy published in DoD 4500.34R, Personal Property Traffic Management Regulation.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 90–26416 Filed 11–7–90; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel U.S. Navy-Soviet Navy Exchanges Task Force will meet November 19–20, 1990 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss key issues regarding U.S. Navy-Soviet Exchanges. The entire agenda for the meeting will consist of discussions on how to implement a long-range, comprehensive, follow-on program. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

This notice is being published late because of administrative delays which constitutes an exceptional circumstance, not allowing Notice to be published in the **Federal Register** at least 15 days before the date of this meeting.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: November 5, 1990.

Wayne T. Baucino,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 90–26467 Filed 11–7–90; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

National Advisory Committee on Accreditation and Institutional Eligibility; Amendment of Notice of Meeting

AGENCY: National Advisory Committee on Accreditation and Institutional Eligibility; Education.

ACTION: Amendment of notice of meeting.

SUMMARY: This notice amends the agenda for the November 13–15 meeting of the National Advisory Committee on Accreditation and Institutional Eligibility, as published on October 15, 1990, in Vol. 55, No. 199, pages 41745–46.

FOR FURTHER INFORMATION CONTACT: Steven G. Pappas, Executive Director, National Advisory Committee on Accreditation and Institutional Eligibility, U.S. Department of Education, 400 Maryland Avenue SW., room 3915, ROB–3, Washington, DC 20202–5151, (202) 708–5656.

AGENDA: The agenda has been amended to include two petitions for initial recongition from Transnational Association of Christian Schools, Accrediting Commission.

Authority: 5 U.S.C.A. appendix 2.

Dated: November 5, 1990.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90–26464 Filed 11–7–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Determination To Establish the Environment, Safety, and Health Advisory Committee

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (FACA) (Public Law 92–463), and in accordance with 41 CFR 101–6.1007, and following consultation with the Committee Management Secretariat, General Services Administration (GSA), notice is hereby given that the Environment, Safety, and Health Advisory Committee (ESHAC) has been established. The Advisory Committee will provide independent advice to the Assistant Secretary for Environment, Safety and Health (EH) on the mission and activity of EH.

The Committee will be composed of distinguished individuals with expertise in the areas of public health, occupational health, epidemiology, research standards, ethical and legal aspects of research, organized labor, and other areas as necessary to obtain a fairly balanced membership on the Committee.

The establishment of the ESHAC has been determined necessary and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Advisory Committee will operate in accordance with the provisions of FACA, the Department of Energy Organization Act, the GSA Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Further information regarding this Advisory Committee can be obtained from Elinor Donnelly (202–586–3448).

Issued in Washington, DC, on November 5, 1990.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 90–26470 Filed 11–7–90; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Grant to the Rougeot Oil and Gas Corporation

AGENCY: U.S. Department of Energy, Bartlesville Project Office.

ACTION: Notice of non-competitive financial assistance (Grant) award with Rougeot Oil and Gas Corporation.

SUMMARY: The Department of Energy (DOE), Bartlesville Project Office announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (A) and (D), it intends to make a Non-Competitive Financial Assistance (Grant) Award through the Pittsburgh Energy Technology Center to Rougeot Oil and Gas Corporation for the research effort entitled "Cleanup/Stimulation of an Uncased Horizontal Well Bore Using Propellants."

SCOPE: The objective of this grant project is to ignite a propellant in a 1,000' horizontal well bore. This procedure will cause thousands of short fractures (less than 20') effectively eliminating skin damages and increasing near well bore premeability.

An increase in the project well's productivity after cleanup/stimulation will allow for quantifying the existence of near well bore permeability impairment in the project well. In contrast, no improvement in well productivity will indicate that a horizontal well can be drilled with air and the resulting skin damage is negligible. A positive or negative outcome will be equally valuable to independents studying the feasibility of horizontal drilling projects in their area.

There would be two levels of success. Level one would be a significant increase fluid production and the second level would be that the oil-water ratio remained above 50%. A level one success would provide a viable well plan for other independents' "pet" projects and a level two success would generate interest in a horizontal drilling from all stripper well operators.

In accordance with 10 CFR 600.7(b)(2)(i) criteria (A) and (D), a non-competitive financial assistance award to Rougeot Oil and Gas Corporation has been justified.

This effort is a continuation and expansion of Department of Energy grant number DE–FG22–89BC14458. Work to be performed under this renewal effort is part II of two parts. part I was designed to do applied research in the drilling, completion, and production of a horizontal well in a particular type reservoir with peculiar conditions. Part II will center on the production phase of the well, the stimulation of the well to determine if the higher oil producing rates and additional oil produciton can be obtained by removing any damage imposed during the drilling and completion phases. Rougeot Oil and Gas Corporation has exclusive domestic capability to perform this activity successfully based on their unique equipment and technical expertise.

The term of the grant is for a six-months period at an estimated value of $41,500. The DOE share is anticipated at $29,800.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236, Attn: Norey B. Laug. Telephone: AC (412) 892–4827.

Dated: November 1, 1990.

Gregory J. Kawalkin,

Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 90–26471 Filed 11–7–90; 8:45 am]

BILLING CODE 6450–01–M

Math/Science Leadership Development and Recognition Program

AGENCY: Department of Energy (DOE), Richland Operations Office.

ACTION: Notice of availability of financial assistance solicitation.

SUMMARY: In accordance with 10 CFR 600.9, the Department of Energy (DOE), the Office of Minority Economic Impact in conjunction with the DOE Richland Operations Office announces the availability of a financial assistance solicitation for use in submitting an application for a grant under the Math/Science Leadership Development and Recognition Program. Recent studies have made it quite clear that the United States is not producing enough scientists, engineers and professionals in related fields to meet projected future demands. African Americans, Hispanics, American Indians, Native Alaskans and certain other minorities continue to be under-represented in math and science professions and at all educational levels. In view of its critical dependence on advanced technology, the DOE is implementing this program in an effort to find a selected number of projects that could serve as models of successful efforts by public and private organizations leading to increased minority participation in mathematics, science and engineering fields. A Solicitation for Financial Assistance (SFAA), Number DE–SC06–91RL12051, has been developed for the purpose of providing qualified organizations interested in submitting an application with general guidelines and instructions. A copy of the SFAA may be obtained by contacting the office indicated below.

ELIGIBILITY: The intent of the financial assistance for this activity is to assist in expanding the support provided by private industry, foundations and individuals to those organizations dedicated to stimulating or sustaining the interest of minorities in mathematics, science and engineering. DOE has determined that one of the most effective ways to stimulate or sustain minority students interest in mathematics, science and engineering is to support existing programs that have been successful and can expand. Therefore, in accordance with 10 CFR 600.7(b)(1), eligiblity for awards under this notice is restricted to all educational institutions, section 501(c)(3) tax exempt organization, and not-for-profit entities (including professional and/or technical associations with a program designed to increase minority participation in mathematics, sciences and engineering—excluding social sciences). To be eligible, programs sponsored by educational institutions must be outside of the normal operating requirements associated with progress toward completion of the appropriate education level.

FOR COPY OF THE SFAA: To receive a copy of the SFAA, please send your request to the address indicated below.

DATES: Applications are due at the address listed below no later than 2 p.m., Pacific Standard Time, on January 10, 1991. The SFAA does not commit the Government to pay costs incurred in the preparation or submission of the application proposal, or in making necessary studies or design for the preparation thereof.

FOR FURTHER INFORMATION CONTACT: Copies of the SFAA may be obtained by contacting the U.S. Department of Energy, Richland Operations Office, ATTN: Ms. Julie A. Riel, Grants Specialist, Procurement Division, A7–80, P.O. Box 550, Richland, Washington, 99352, Phone (509) 376–6790 (no collect calls please). Completed applications referencing SFAA No. DE–SC06–91RL12051 must be forwarded to this same address.

SUPPLEMENTAL INFORMATION: The primary objective of the Math/Science Leadership Development and Recognition Program is to identify and promote efforts to increase the number of under-represented minority students pursuing studies in mathematics, science or engineering; efforts to improve the performance of students in those fields; and to provide resources needed to implement those efforts. In particular, DOE intends to recognize activities which have demonstrated "what works" in the education of minorities in the sciences and mathematics. The DOE will provide financial assistance to allow the selected programs to expand the coverage of activities, increase the number of participants, improve the effectiveness of services, expand parent and/or community involvement, or implement other improvements as defined by the applicant. In addition, the DOE intends to provide recognition to those qualified programs which do not get selected for financial assistance. It is expected that this SFAA will result in the award of approximately 40 grants totaling more than $2.0 million. The DOE intends to award a minimum of one (1) grant in each minority category and at each educational level. The maximum award amount shall be limited to $50,000 per grant. In the event there is not a sufficient number of acceptable applications submitted in response to this SFAA, the DOE reserves the right to extend competition under this SFAA by holding a second round of application review and award.

Issued in Richland, Washington, on November 1, 1990.

R.D. Larsen,

Director, Procurement Division, Richland Operations Office.

[FR Doc. 26472 Filed 11–7–90; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, *e.g.*, new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before December 10, 1990. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–538
3. 1902–0061
4. Gas Certificates: Initial Service
5. Extension
6. On Occasion
7. Mandatory
8. Business or other for-profit
9. 1 respondent
10. 1 response
11. 320 hours per response
12. 320 hours
13. FERC–538 is an application filing requesting the Commission to order an interstate natural gas pipeline to provide service to the LDC/municipality or natural gas company. Data are needed to determine the facilities necessary, cost and details of the project and to determine if such connection/service would be in the public interest.

Authority: Section 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, November 2, 1990

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 90–26473 Filed 11–7–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. GP88–13–001]

Damson Oil Corporation and the GHK Company; Petition to Reopen and Reconsider Final Order Reversing Jurisdictional Agency Determination, Permit Supplemental Evidentiary Filing, and Affirm Findings of the Oklahoma Corporation Commission

November 1, 1990.

Take notice that on October 3, 1990, Damson Oil Corporation and the GHK Company (Damson) filed with the Federal Energy Regulatory Commission (Commission), pursuant to §§ 275.205 and 385.716 of the Commission's regulations (18 CFR 275.205 and 385.716) a petition (1) to reopen and reconsider its Final Order Reversing Jurisdictional Agency Determinations issued November 29, 1988 (45 FERC ¶ 61,315 (1988)), in the above-captioned docket insofar, as such order pertains to the application for NGPA well category determination filed by Amarex, Inc. for the Nichols-Gregory No. 1 well, Beckham County, Okahoma, Cause No. U.S. 06615 before the Oklahoma Corporation Commission, FERC No. JD 81–17268; (2) to permit the filing of the supplemental evidentiary material which accompanied this petition; and (3) to affirm the findings of the Oklahoma Corporation Commission that natural gas produced from the Red Fork Formation by the Nichols-Gregory No. 1 well is produced from a new onshore reservoir within the meaning of NGPA section 102(c)(1)(C).

Any person desiring to be heard or protest this petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 23, 1990. All protests filed will be considered, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–26373 Filed 11–7–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–1–24–000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

November 1, 1990.

Take notice that Equitrans, Inc. (Equitrans) on October 30, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective December 1, 1990.

Eighteenth Revised Sheet No. 10
Ninth Revised Sheet No. 34

Equitrans hereby submits its regularly scheduled Quarterly Purchased Gas Adjustment filing in accordance with §§154.308 and 154.304 of the Commission's regulations and section 19 of Equitrans' FERC Gas Tariff, Original Volume No. 1.

The changes proposed in this filing consist of current adjustments for the components of Equitrans' sales rates under Rate Schedule PLS representing the change in Equitrans' last scheduled PGA filing effective September 1, 1990 in Docket No. TA90–1–24, et al. The current adjustment to the demand cost is an increase of $0.2628 per dekatherm (Dth). The commodity adjustment is an increase of $0.2663 per Dth. The current adjustment to Rate Schedule ISS is an increase in the maximum rate of $0.3171 per Dth and $0.2757 per Dth in the minimum rate.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 9, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–26369 Filed 11–7–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–1–25–000]

Mississippi River Transmission Corp.; Rate Change Filing

November 1, 1990.

Take notice that on October 30, 1990, Mississippi River Transmission Corporation (MRT) tendered for filing Fiftieth Revised Sheet No. 4, Ninth Revised Sheet No. 4.1, and Ninth Revised Sheet No. 4.2 to its FERC Gas Tariff, Second Revised Volume No. 1. These tariff sheets are proposed to become effective November 1, 1990.

MRT states that Fiftieth Revised Sheet No. 4, Ninth Revised Sheet No. 4.1, and Ninth Revised Sheet No. 4.2 to be effective November 1, 1990 reflects a 5.98 cents per MMBtu increase in its commodity cost of gas. MRT states that this tariff sheet represents an out-of-cycle purchased gas cost adjustment (PGA) filing necessitated by increases in the prices of natural gas that could not have been reflected under current Commission Regulations at the time of MRT's quarterly PGA filing. MRT states that because spot market purchases constitute a significant portion of its overall purchase mix of system supply gas, its overall gas costs have risen significantly, and its presently effective rates no longer reflect the current costs of gas which MRT is now experiencing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 9, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–26370 Filed 11–7–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–1–26–000]

Natural Gas Pipeline Co. of America; Changes in Rates

November 1, 1990.

Take notice that on October 31, 1990, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff) the below listed tariff sheets to be effective December 1, 1990:

Ninety-Sixth Revised Sheet No. 5
Sixty-First Revised Sheet No. 5A
Thirty-Ninth Revised Sheet No. 5B

Natural states the purpose of the instant filing is to implement Natural's quarterly PGA unit rate adjustment calculated pursuant to section 18 of the General Terms and Conditions of Natural's Tariff. The tariff sheets contain peak rates.

The overall effect of the quarterly adjustment when compared to the gas cost component in Natural's PGA filing in Docket No. TA90–3–26, effective September 1, 1990, is an increase in the DMQ–1 demand and commidity charges of $.04 and $.9930, respectively, and a decrease in the DMQ–1 entitlement charge of $.0019. Appropriate adjustments have been made with respect to Natural's other rate schedules. No changes are required to the surcharge adjustments that were approved in Docket No. TA90–1–26, effective March 1, 1990.

Natural states that a copy of the filing is being mailed to Natural's jurisdictional sales customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervent or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 9, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–26372 Filed 11–7–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–1–41–000]

Paiute Pipeline Co.; Out-of-Cycle Purchased Gas Cost Adjustment

November 1, 1990.

Take notice that on October 31, 1990, Paiute Pipeline Company (Paiute) tendered for filing an out-of-cycle purchased gas cost adjustment (PGA) filing pursuant to part 154 of the Commission's Regulations and the PGA provisions contained in section 9 of the General Terms and Conditions of Paiute's FERC Gas Tariff, Original Volume No. 1. Paiute has requested that its proposed tariff sheet, Seventeenth Revised Sheet No. 10, become effective December 1, 1990.

Paiute states that the purpose of its out-of-cycle PGS filing is to reflect the impact of a substantial increase in the gas supply requirements of its largest sales customer which occurred subsequent to the filing of Paiute's annual PGA on August 31, 1990 at Docket No. TA91–1–41–000. Paiute estimates that the cost impact of acquiring these additional gas supplies for the 1990–91 winter heating season will increase Paiute's average cost of purchased gas from the $1.8003 per Dth reflected in Paiute's annual PGA filing at Docket No. TA91–1–41–000 to $2.1548 per Dth.

Paiute states that copies of this filing have been mailed to all jurisdictional sales customers of Paiute Pipeline Company, interested parties and affected state regulatory agencies.

Any persons desiring to be heard or to protest said filing should file a motion to

BEST COPY AVAILABLE

intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 9, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26371 Filed 11-7-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Determination of Excess Petroleum Violation Escrow Funds for Fiscal Year 1991

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of determination of excess monies pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986.

SUMMARY: The Petroleum Overcharge Distribution and Restitution Act of 1986 requires the Secretary of Energy to determine annually the amount of oil overcharge funds held in escrow that is in excess of the amount needed to make restitution to injured parties. Notice is hereby given that $32,371,163 of the amounts currently in escrow is determined to be excess funds for fiscal year 1991. Pursuant to the statutory directive, these funds will be made available to state governments for use in specified energy conservation programs.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-2094 (Mann); (202) 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: The Petroleum Overcharge Distribution and Restitution Act of 1986 (hereinafter PODRA), contained in Title III of the Omnibus Budget Reconciliation Act of 1986, Public Law No. 99-509, establishes certain procedures for the disbursement of funds collected by the Department of Energy (hereinafter DOE) pursuant to the Emergency Petroleum Allocation Act of 1973 (hereinafter EPAA) or the Economic Stabilization Act of 1970 (hereinafter ESA). These funds, commonly referred to as oil overcharge funds, are monies obtained through enforcement actions instituted to remedy actual or alleged violations of those Acts.

PODRA requires the DOE, through the Office of Hearings and Appeals (hereinafter OHA), to conduct proceedings under 10 CFR part 205, subpart V, to accept claims for restitution from the public and to refund oil overcharge monies to persons injured by violations of the EPAA or the ESA. In addition, PODRA requires the Secretary of Energy to determine annually the amount of oil overcharge funds that will not be required for restitution to injured parties in these refund proceedings and to make this excess available to state governments for use in four energy conservation programs. This determination must be published in the **Federal Register** within 45 days after the beginning of each fiscal year. The Secretary has delegated this responsibility to the OHA Director.

Notice is hereby given that based on the best currently available information, $32,371,163 is in excess of the amount that is needed to make restitution to injured parties.

To arrive at that figure, the OHA has reviewed all accounts in which monies covered by PODRA are deposited. PODRA generally covers all funds now in DOE escrow which are derived from alleged violations of the EPAA or the ESA, with certain exclusions. Excluded are funds which (1) Have been identified for indirect restitution in orders issued prior to enactment of PODRA; (2) have been identified for direct restitution in a judicial or administrative order; or (3) are attributable to alleged violations of regulations governing the pricing of crude oil and subject to the settlement agreement in *In re The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan., July 7, 1986). As of September 30, 1990, the total in escrow subject to the PODRA procedures was $341,628,893.

The OHA has employed the following methodology to determine the amount of excess funds. We took special account of the provision of PODRA which directs that "primary consideration (be given) to assuring that at all times sufficient funds (including a reasonable reserve) are set aside for making (direct) restitution." Thus, in proceedings in which refund claims are pending, we have on a claim-by-claim basis examined pending claims and established reserves sufficient to pay the entire amount of these claims. The reserves also include all refunds ordered by the OHA since the end of the last fiscal year on September 30, 1990, but not yet paid. For proceedings in which all claims have been considered or in which no claims have been filed, and the deadline for filing claims has passed, all funds remaining are excess. Small amounts of interest accrued, until transfer, on funds in accounts that were closed (with a zero balance) in the fiscal year 1990 PODRA determination (54 FR 47262 (1989)) are included as part of the "excess" for fiscal year 1991. Finally, a relatively small amount of oil overcharge funds is currently subject to the control of the Department's Economic Regulatory Administration, which finds in its accompanying determination, as it has found in the past, that none of those funds are currently excess. No "other commitments" are reflected in the reserves.

As indicated above, the total escrow account equity subject to PODRA is $341,628,893. The total amount needed as reserves for direct restitution in those cases is $309,257,730. When this figure is subtracted from the former, the remainder—$32,371,163—is the amount in fiscal year 1991 that is "in excess" of the amount that will be needed to make restitution to injured persons. Appendix A sets forth for each refund case within the OHA's jurisdiction the total amount eligible for distribution under PODRA and the "excess" amount. Appendix B reflects information supplied by the Economic Regulatory Administration regarding cases subject to PODRA under its jurisdiction.

Accordingly, $32,371,163 will be transferred to a separate account within the United States Treasury and made available to the States for use in the four designated energy conservation programs in the manner prescribed by PODRA.

Dated: November 2, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX A: NOTICE OF EXCESS FUNDS FOR FISCAL YEAR 1991

OHA case name	Case No.	Consent order No.	Current equity	Excess funds in fiscal year 1991
Enron Corporation	HEF-0116	730V00221Z	$56,734,436	$9,800,000
Crown Central Petroleum Corp	KEF-0044	RCWA00000Z	3,596,947	3,580,000
AOC Acquisition Corporation	LEF-0003	RCKH016A1Z	13,377,655	3,300,901
Exxon Corporation	KEF-0087	REXL00201Z	10,366,129	2,600,000
Good Hope Refineries Inc	HEF-0211	150S00154Z	9,444,497	2,381,124
Placid Oil Company	KEF-0007	6D0S00005Z	2,181,732	2,000,000
True Companies, The	HEF-0557	733V02018Z	2,046,029	1,800,000
Product Tracking-PODRA	N/A	999DOE005W	1,546,135	1,546,135
United Refining Company	KEF-0132	340S00445Z	4,999,973	1,087,897
EDG, Inc	KEF-0003	930S00173Z	2,193,935	1,000,000
Quintana Energy Corp. et al	KEF-0131	650X00356Z	3,224,376	712,500
Power Test Petroleum Dist	KEF-0042	240H00499Z	543,127	543,127
Dorchester Gas Corporation	HEF-0559	670S00113Z	500,253	500,253
Gulf Oil Corp	DFF-0001	NCOR00007Y	287,285	287,285
Fletcher Oil & Refining Comp	LEF-0010	960S00100Z	1,019,672	254,918
Meadows Realty Company	KEF-0133	910S00001Z	1,232,257	250,000
Northeast Petroleum Industries	HEF-0137	110H00334Z	206,284	206,284
Northeast Petroleum, Inc	HEF-0138	120H00491Z	207,516	204,064
MCO Holdings Inc & MGPC Inc	KEF-0108	631V00016Z	156,306	156,306
Elias Oil Company	KEF-0022	412H00105Z	152,682	100,000
Power Pak Co. Inc	HEF-0155	610H10452Z	36,893	36,893
John R. Adams	LEF-0020	860H00060Z	144,378	36,094
West Coast Oil Company	KEF-0142	961S00028Z	101,003	25,251
World Oil Company	KEF-0005	980S00104Z	24,226	24,226
Pedersen Oil, Inc	HEF-0147	000H00418Z	20,554	20,554
Amtel, Inc	HEF-0027	720H00552Z	16,906	16,906
Appalachian Flying Service Inc	HEF-0028	432K00435Z	9,865	9,865
South Hampton Refining	HEF-0222	8E0S00002Z	8,226	8,226
Green Oil, c/o Terry's Propane	LEF-0013	811E00237Z	232	232
Saber Energy, Inc	HEF-0220	8D0S00037Z	122	122
Agway, Inc	KEF-0102	RTYA00001Z	904,565	0
Aminoil, U.S.A., Inc	HEF-0007	740V01259Y	5,031,633	0
Anchor Gasoline Corporation	KEF-0120	740S01247Z	3,502,478	0
Atlantic Richfield Company	HEF-0591	RARH00001Z	32,575,726	0
Automatic Comfort Corp	LEF-0005	110H00519A	9,890	0
Beacon Oil Company	HEF-0203	910S00008Z	2,758,791	0
Butler Fuel Corporation	KEF-0094	110E00421Z	64,452	0
County Fuel Company, Inc	LEF-0015	320H00310Z	44,518	0
Diamond Industries, Inc	KEF-0130	320H00097Z	349,759	0
Empire Gas Corporation	KEF-0048	720T00521Z	1,293,559	0
Gasoline Marketers of America	KEF-0138	320H00318Z	85,962	0
Getty Oil Company	HEF-0209	RGEA00001Z	4,605,284	0
Gulf Oil Corporation	HEF-0590	RGFA00001Z	20,000,000	0
Indian Wells Oil Company	KEF-0103	710V02002Z	1,669,593	0
Marathon Petroleum Company	KEF-0021	RMNA00001Z	7,454,778	0
Maxwell Oil Co	HEF-0125	000H00425W	12,974	0
McClure Oil Company	KEF-0009	660E00083Z	52,168	0
Mobil Oil Corporation	HEF-0508	RMOA00001Z	4,866,833	0
Murphy Oil Corporation	KEF-0095	RMUH01963Z	3,816,475	0
Northeast Petroleum Industries	HEF-0580	5C0X00241Z	1,689,390	0
O'Neals Service Center	KEF-0117	999K90056Z	4,573	0
Oasis Petroleum Corp	LEF-0007	940X00217Z	213,032	0
P&R Trading Company	LEF-0018	8A0X00335Z	105,360	0
Paul Invests & A.S. Holding Co	LEF-0006	400H00231Z	83,343	0
Pester Marketing Company	KEF-0134	730S01236Z	360,784	0
Petrolane-Lomita Gasoline Co	HEF-0269	940V00195Z	62,210	0
Point Landing Inc	HEF-0152	640H00175Z	151,002	0
Quantum Chemical Corporation	LEF-0011	720V01245Z	543,581	0
Reinauer Petroleum Company Inc	KEF-0110	240H00492Z	367,863	0
Sauvage Gas Company, Inc	KEF-0024	710H08006Z	232,072	0
Shell Oil Company	KEF-0093	RSHA00001Z	11,294,194	0
Strasburger Enterprises, Inc	LEF-0014	400H00218Z	528,541	0
Suburban Propane Gas Corp	KEF-0036	733V02010Z	50,122	0
Tesoro Petroleum Corp	KEF-0128	RTSE006A1Z	6,000,000	0
Texaco Inc	KEF-0119	RTXE006A1Z	105,566,970	0
Thomas P. Reidy, Inc	KEF-0137	720H06015Z	6,052,092	0
Trigon Exploration Inc	LEF-0019	650C00374Z	836,747	0
Witco Chemical Corporation	HEF-0227	240S00054Z	3,914,048	0
Totals			341,628,893	32,371,163

Appendix B: Notice of Excess Funds for Fiscal Year 1991

Memorandum for: George B. Breznay, Director, Office of Hearings and Appeals.

From: Chandler L. Van Orman, Acting Administrator, Economic Regulatory Administration.

Subject: ERA Input for the Podra Section 3003(c) Report.

ERA has reviewed the funds held in escrow as of September 30, 1990, which have not been petitioned under subpart V. A subpart V petition is filed with your office following completion of the required payments into an escrow account. Thus, payment into the escrow accounts we examined has not been completed.

The purpose of the review was to identify funds held in escrow in excess of the amounts required to effect restitution to persons or classes of persons in accordance with section 3003(b)(1) of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA). Since the amount of funds which will be available and the extent of claims which will be filed are not known, the funds currently on deposit in these escrow accounts are not excess funds for the purposes of PODRA.

[FR Doc. 90-26474 Filed 11-7-90; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $1,187,500, plus accrued interest, obtained by the DOE under the terms of a consent order entered into with Time Oil Company. The DOE has determined that injured Time Oil customers should be given an opportunity to submit claims for direct restitution before any remaining funds are distributed for indirect restitution in accordance with the terms of that consent order.

DATES AND ADDRESSES: Applications for Refund will be accepted from purchasers of Time Oil covered products. Applications must conform with the requirements set forth in the Decision and Order and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications must be filed in duplicate, postmarked no later than April 1, 1991, and should display a reference to case number KEF-0129.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute funds obtained from Time Oil Company (Time). The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The DOE and Time entered into a December 13, 1982 consent order that resolved, with the exclusion of specific exceptions, all civil and administrative disputes regarding Time's compliance with the DOE's price and allocation regulations. As explained in the Decision and Order, the Time consent order identifies one injured purchaser to receive direct restitution, and seven states which are designated to receive the remainder of the funds for indirect restitution. Although a claims process for other unidentified injured purchasers is required by neither the consent order nor any applicable statute, in view of the unique circumstances of this case, we have determined that all injured Time customers be permitted to file refund claims before any unclaimed monies are distributed to the seven states identified in the consent order, where Time sold petroleum products during the relevant period. The process of indirect restitution through those states will be governed by OHA's "second-stage" refund procedures.

Applications for Refund from the Time consent order fund will be accepted from customers who purchased covered petroleum products from Time during the consent order period. Applications for Refund must be postmarked no later than April 1, 1991 to meet the filing deadline.

Dated: October 31, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order; Implementation of Special Refund Procedures

Name of petitioner: Time Oil Company
Date of filing: April 18, 1989
Case number: KEF-0129

On April 18, 1989, the Economic Regulatory Administration (ERA) filed a Petition with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) requesting that the OHA formulate and implement procedures, in accordance with the provisions of 10 CFR part 205, subpart V (subpart V), for distributing funds obtained through the settlement of enforcement proceedings brought against Time Oil Company (Time) by the DOE.

I. Background

During the period August 20, 1973 through January 27, 1981, Time was engaged in the refining of crude oil and the sale of refined petroleum products. It was, therefore, a "refiner" as that term is defined in 10 CFR 212.31, and subject to the federal petroleum price and allocation regulations in existence at that time. The ERA conducted audits of Time's compliance with the price and allocation regulations during that period. During and as a result of those audits, disputes arose between Time and the DOE concerning the firm's compliance with the regulations, some of which led to the issuance of a notice of probable violation to Time on February 29, 1980.

In order to avoid protracted and costly litigation, Time and the DOE agreed to enter into a consent order, which became final on December 13, 1982. The consent order resolved, with certain specified exceptions, all civil and administrative disputes regarding Time's compliance with the regulations. Pursuant to the settlement agreement, Time paid the DOE $1,187,500 on December 22, 1982. The settlement agreement funds have been placed in an interest-bearing escrow account maintained by the Department of the Treasury for ultimate distribution by the DOE.

In its Petition for the Implementation of Special Refund Procedures, the ERA states that during the audit it had been able to identify a claim of the Defense Fuel Supply Center (DFSC), which was the only purchaser of jet fuel from Time during the months selected for intense audit. Petition at 2. The consent order therefore provided for the distribution of $325,000 to the DFSC. In addition, the consent order provides that the DOE will distribute the remaining amount to the treasurers of the seven states within which Time sold covered products during the period November 1973 through January 1981: Washington, Oregon, California, Idaho, Montana, Nevada and Hawaii. *Id.* Each state's portion of the remaining funds was calculated according to the share of Time's total volume of gasoline sold in that state during the period November 1973 through January 1981. The ERA requests that the OHA establish refund procedures pursuant to subpart V for the distribution of the funds that have been obtained from Time and distribute the Time money in accordance with the consent order. *Id.* at 3.

On April 5, 1990, the OHA issued a Proposed Decision and Order (PDO) that established tentative procedures for distributing the Time funds. The PDO was published for notice and comment in the **Federal Register** on April 16, 1990 at 55 FR 14122. In the PDO, we tentatively determined that the DFSC, the only injured purchaser of Time refined petroleum products identified in the consent order, should receive a refund in the indicated amount, and that the seven states would share the remainder of the funds in the manner suggested in the consent order.

The States of Oregon and Washington filed the only comments regarding the April 5, 1990 PDO, urging OHA to expedite release of the Time funds. However, the OHA reconsidered the proposed Time refund procedures on its own motion, and determined that they should be modified in two respects. First, we concluded that it would be more appropriate at this point to allow a claims process to proceed. This will permit injured purchasers of Time refined petroleum products who were not identified in the 1982 consent order to submit claims before any residual funds are distributed to the seven states. Second, we determined that the use of the unclaimed funds which are distributed to the seven states for indirect restitution should be governed by OHA's "second-stage refund procedures."

In view of these changes, we issued a new Proposed Decision and Order (Second PDO) to provide interested persons with notice and an opportunity to comment on the modified Time refund procedures. This Second PDO was published in the **Federal Register** on September 4, 1990, at 55 FR 35950. We provided a 30-day period for the submission of comments regarding the proposed procedures. The specified period for submission of comments on the Second PDO has now expired. The OHA received no objection or other comments from ERA or Time. The only comments received were filed jointly by the States of Hawaii, Nevada, Oregon, and California. After considering the States' comments, which are discussed below, we have concluded that the procedures set forth in the Second PDO should be adopted without revision.

II. Comments and Refund Procedures

In their comments, the States raise a procedural objection. They contend that the OHA has no authority to modify the Time consent order by proposing to accept refund claims. They argue that the consent order may not be rescinded or modified "except upon a petition pursuant to 10 CFR part 205, subpart J," and maintain that since no formal motion has been filed, the OHA cannot implement the refund procedures in the Second PDO.

We do not agree. Subpart J permits the Office of Hearings and Appeals to modify the consent order in the presence of "significantly changed circumstances." 10 CFR 205.135(b)(1)(i). As we set forth in the Second PDO, we have determined that circumstances surrounding this proceeding have changed significantly since the 1982 Time consent order. The States do not contest this. Before the enactment of the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501-07 (PODRA), the DOE had used a variety of restitutionary remedies for oil overcharges, including payment directly to the United States Treasury. It also used the unusual remedy fashioned in Time, in which a flat sum was earmarked for direct restitution to a single identified purchaser, with the remainder of the consent order fund to be distributed as indirect restitution to the states in which Time products were sold. No portion of the fund was reserved for direct restitution to unidentified purchasers. This procedure would not be allowable at the present time. PODRA specifically favors direct restitution and requires that oil overcharge funds be distributed under subpart V, in a manner designed to provide direct restitution to as many injured purchasers as possible. Only thereafter may monies be made available to the states for indirect restitution. The distribution scheme designated in the Time consent order, therefore, does not comply with the DOE's current restitutionary policy, which reflects the requirements embodied in PODRA.

As explained in the Second PDO, the use of subpart V procedures to distribute the Time funds is not mandatory, since those funds, "grandfathered" by an older consent order, are covered by section 3002(c) of PODRA. Nevertheless, PODRA does not prohibit the DOE from determining that subpart V is the most appropriate method for distributing the Time consent order funds. In light of PODRA and its clear congressional mandate that OHA shall, "to the maximum extent possible," use subpart V procedures to identify persons injured by oil overcharges, and make direct restitution to them, we have determined that significantly changed circumstances exist which justify the modification of the Time consent order. 10 CFR 205.135(b)(1)(i).

The States misguidedly contend that subpart V may not be used because no motion for modification of the Time consent order has been filed. However, this is an equitable proceeding for restitution, for which the DOE and the courts have the authority to fashion appropriate remedies, and we have here determined that significantly changed circumstances exist, making the use of the subpart V procedures appropriate. *See Citronelle-Mobile Gathering, Inc.* v. *Edwards*, 669 F.2d 717 (Temp. Emer. Ct. App.), *cert. denied*, 459 U.S. 877 (1982); 10 CFR 205.282(e). Furthermore, the States ignore that ERA's Petition for Implementation of Special Refund Procedures specifically requests that the OHA establish a refund procedure under subpart V, noting that it "now believes that the amount in escrow should be distributed in this manner." Petition at 2. Finally, both ERA and Time, the only parties to the consent order, have been served with the Second PDO, which sets forth the details of the proposed subpart V refund procedures, and neither has registered any objection. The time period for filing comments has now expired, and the only objectors to the proposed distribution scheme are the States, who are not parties to the Time consent order. Contrary to the States' suggestion, we cannot ignore the significantly changed circumstances during the eight years following the consent order, including the enactment into law of a comprehensive new restitutionary policy, calling for the use of subpart V to the maximum extent possible. *See* 15 U.S.C. 4502(b). Accordingly, we find that the States' arguments lack sufficient weight to convince us to change the terms of the proposed subpart V distribution scheme.

As discussed in detail in the Second PDO, we will implement a two-stage refund process by which the DFSC, and purchasers of Time covered products other than jet fuel during the period August 20, 1973 through January 27, 1981, may submit Applications for Refund in the initial stage, and any monies remaining after the payment of all valid first-stage claims will be remitted to the seven states in the proportional shares specified in the consent order for indirect restitution as second-stage refunds. From our experience with subpart V proceedings, we expect that potential applicants generally will fall into the following categories: (1) End-users; (2) regulated entities, such as public utilities, and cooperatives; and (3) refiners, resellers

and retailers (hereinafter collectively referred to as "resellers").

A. Claims Based Upon Alleged Overcharges

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of Time covered products during the refund period.[1] If the product was not purchased directly from Time, the claimant must establish that the product originated with Time. Additionally, a reseller claimant, except one who chooses to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by Time's alleged overcharges. This showing will generally consist of two distinct elements. First, a reseller claimant will be required to show that it had "banks" of unrecouped increased product costs in excess of the refund claimed.[2] Second, because a showing of banked costs alone is not sufficient to establish injury, a claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. *See Vickers Energy Corp./Hutchins Oil Co.*, 11 DOE ¶ 85,070, at 88,105 (1983). Such a showing could consist of a demonstration that a firm suffered a competitive disadvantage as a result of its purchases from Time. *See National Helium C./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom. Atlantic Richfield Co. v. DOE*, 618 F. Supp. 1199 (D. Del. 1985).

1. The Use of Presumptions

Our experience also indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. *See, e.g., Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986) (Marathon). The use of presumption in refund cases is specifically authorized by the applicable subpart V regulations at 10 CFR 205.282(e). Accordingly, we adopt the presumptions set forth below.

a. *Calculation of refunds.* First, we will adopt a presumption that the alleged overcharges were dispersed equally in all of Time's sales of refined petroleum products during the refund period. In accordance with this presumption, refunds are made on a per gallon or volumetric basis.[3] In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's "allocable share" of the consent order fund is equal to the number of gallons purchased from Time during the refund period multiplied by the per gallon refund amount. In the present case, the per gallon refund amount is $.00122. We derived this figure by dividing the consent order fund, $2,164,209, by 1,776,655,181 gallons, the approximate number of gallons of covered refined products which Time sold during the refund period. A firm that establishes its entitlement to a refund will receive all or a portion of its allocable share plus a pro-rata share of the interest that has accrued on the Time consent order fund since October 1, 1990.[4]

In addition to the volumetric presumption, we will adopt a number of presumptions regarding injury for claimants in each category listed below.

b. *End-users.* In accordance with prior subpart V proceedings, we will adopt the presumption that an end-user or ultimate consumer of Time petroleum products whose business is unrelated to the petroleum industry was injured by the alleged overcharges settled by the consent order. *See, e.g., Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069, and 88,209 (1984) (*TOGCO*). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the refund period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. *Id.* We have concluded, therefore, that the end-users of Time refined petroleum products need only document their purchase volumes from Time during the refund period to make a sufficient showing that they were injured by the alleged overcharges.

c. *Regulated firms and cooperatives.* A claimant whose prices for goods and services are regulated by governmental agency (*i.e.*, a public utility), or an agricultural cooperative that is required by its charter to pass through cost savings to its member purchasers, need only submit documentation of purchases used by itself or, in the case of a cooperative, sold to its members in order to receive a full volumetric refund. However, a regulated firm or a cooperative will also be required to certify that it will pass through any refund received to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of the receipt of the refund. *See Marathon*, 14 DOE at 88,514–15. These requirements are based upon the presumption that, with respect to a regulated firm, any overcharges would have been routinely passed through to its customers. Similarly, any refunds received should be passed through to its customers. With respect to a cooperative, in general, the cooperative agreement which controls its business operations would ensure that the alleged overcharges, and similarly refunds, would be passed through to its member-customers. Accordingly, these firms will not be required to make a detailed demonstration of injury.[5]

d. *Refiners, resellers and retailers—i. Small claims presumption.* We will adopt a "small claims" presumption that a firm which resold Time products and requests a small refund was injured by the alleged overcharges. Under the small claims presumption, a refiner, reseller or retailer seeking a refund of $5,000 or less, exclusive of interest, will not be required to submit evidence of injury beyond documentation of the volume of Time products it purchased during the refund period. *See TOGCO*, 12 DOE at 88,210. This presumption is based on the fact that there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; for small claims the expense might possibly exceed the potential refund. Consequently, failure to allow simplified refund procedures for small claims could deprive injured parties of their opportunity to obtain a refund. Furthermore, use of the small claims presumption is desirable since it allows the OHA to process routine refund claims in an efficient manner.[6]

ii. *Mid-level claim presumption.* In addition, a refiner, reseller or retailer claimant whose allocable share of the refund pool exceeds $5,000, excluding interest, may elect to receive as its refund either $5,000 or 40 percent of its allocable share, up to $50,000, whichever is larger.[7] The use of this presumption reflects our conviction that these larger, mid-level claimants were likely to have experienced some injury as a result of the alleged overcharges. *See Marathon*, 14 DOE at 88,515. In some prior special refund proceedings, we have performed detailed analysis in order to determine produce-specific levels of injury. *See, e.g., Getty Oil Co.*, 15 DOE ¶ 85,064 (1986). However, in *Gulf Oil Corp.*, 116 DOE ¶ 85,381 at 88,737 (1987), we determined that based upon the available data, it was more accurate and efficient to adopt a single presumptive level of injury of 40 percent for all mid-level claimants, regardless of the refined product that they purchased, based upon the results of our analyses in prior proceedings. We believe that approach generally to be sound, and we therefore will adopt a 40 percent presumptive level of injury for all mid-level claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of Time refined petroleum products during the refund period in order to be eligible to receive a refund of 40 percent of its total allocable share, up to $50,000, or $5,000, whichever is greater.[8]

iii. *Spot purchasers.* We will adopt a rebuttable presumption that a reseller that made only spot purchases from Time did not suffer injury as a result of those purchases. As we have previously stated, spot purchasers generally had considerable discretion as to the timing and market in which they made their purchases, and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. *See, e.g., Vickers Energy Corp.*, 8 DOE ¶ 82,597 at 85,396–97 (1981). Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from Time.[9]

B. Allocation Claims

We may also received claims based upon Time's alleged failure to furnish petroleum products that it was obliged to supply under the DOE allocation regulations that became effective in January 1974. *See* 10 CFR part 211. Any such applications will be evaluated with reference to the standards set forth in subpart V implementation cases such as *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,220 (1982), and refund application cases such as *Mobil Oil Corp./Reynolds Industries, Inc.*, 17 DOE ¶ 85,608 (1988); *Marathon Petroleum Co./Research Fuels, Inc.*, 19 DOE ¶ 85,575 (1989), *action for review pending*, No. CA3–89–2983G (N.D. Tex. filed Nov. 22, 1989) (*Marathon/RFI*). These standards generally require an allocable claimant to demonstrate the existence of a supplier/purchaser relationship with Time and the likelihood that Time failed to furnish peteroleum products that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the agency's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that Time may have had to the alleged allocation violation. *See Marathon/RFI.* In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operation, with particular reference to the amount of product that it received from suppliers other than Time. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the portion of the Time consent order amount that the agency attributed to allocation violations in general and to the specific allocation violation alleged by the claimants. Finally, since the Time consent order reflects a negotiated compromise of the issues involved in the enforcement proceedings against Time and the consent order amount is less than Time's potential liability in those proceedings, we will prorate those allocation refunds that would otherwise be disproportionately large in relation to the consent order fund. *Cf. Amtel/Whitco.*

C. Refund Application Requirements

We will not accept applications for refund from all direct and indirect purchasers of Time covered petroleum products. To apply for a refund, a claimant should submit an application for refund that contains the following information:

(1) Identifying information including the applicant's name, address, and Social Security number or employer identification number, as well as an indication whether the applicant is a corporation, the name and telephone number of a person to contact for any additional information, and the name

[1] Covered products are petroleum products sold by Time between August 20, 1973 and the dates of decontrol for those products:

Residual Fuel—June 1, 1976
Diesel Fuel and No. 2 Fuel Oil—July 1, 1976
Jet Fuel—February 26, 1979
Motor Gasoline and Propane—January 27, 1981

[2] Claimants who have previously relied upon their banked costs in order to obtain refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs submitted in this proceeding. *See Husky Oil Co./Metra Oil Products, Inc.*, 16 DOE ¶ 85,060, at 85,179 (1987). Additionally, a claimant may not receive a refund for any month in which it has a negative cumulative bank (for that product) or for any preceding month. *See Standard Oil (Indiana)/Suburban Propane Gas Corp.*, 13 DOE ¶ 85,030 at 88,082 (1985). If a claimant no longer has records showing its banked costs, the OHA may exercise its discretion to allow approximations of those banks prepared by the applicant. *See Gulf Oil Corp./Sturdy Oil Co.*, 15 DOE ¶ 85,187 (1986).

[3] Because we realize that the impact on an individual claimant may have been greater than the volumetric refund amount, we will allow any purchaser to file a refund application based upon a claim that it suffered a disproportionate share of Time's alleged overcharges. *See, e.g., Standard Oil (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984). Such an application will be granted only if an applicant makes a persuasive showing that: (1) It was "overcharged" by a specific amount, and (2) it was injured by those overcharges. *See Panhandle Eastern Pipeline Co./Western Petroleum Co.*, 19 DOE ¶ 85,705 (1989); *Mobil Oil Co./Cantro Petroleum Corp.*, 19 DOE ¶ 85,076 (1989), and cases cited therein. To the extent that a claimant makes this showing, it will receive a refund above the volumetric refund level. *See Amtel, Inc./Whitco, Inc.*, 19 DOE ¶ 85,319 (1989) (*Amtel/Whitco*).

[4] As in previous cases, we will establish a minimum refund amount of $15. In this determination, any potential claimant which purchased less than 12,296 gallons of petroleum products would have an allocable share of less than $15. We have found through our experience that the cost of processing claims in which refunds for amounts less than $15 are sought outweighs the benefits of restitution in those instances. *See Exxon Corp.*, 17 DOE ¶ 85,590 at 89,150 (1988) (*Exxon*).

[5] A cooperative's purchases of Time products that were resold to non-members will be treated in a manner consistent with purchases made by other resellers. *See Total Petroleum, Inc./Farmers Petroleum Cooperation, Inc.*, 19 DOE ¶ 85,215 (1989).

[6] In order to qualify for a refund under the small claims presumption, a refiner, reseller, or retailer must have purchased less than 4,098,361 gallons of Time refined petroleum products during the refund period.

[7] That is, claimants who purchase more than 4,098,361 gallons of Time refined petroleum products during the refund period (mid-level claimants) may elect to utilize this presumption.

[8] A claimant who attempts to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads up to conclude that it passed through all of the alleged overcharges, or that it is eligible for a refund of less than the applicable presumption-level refund, may not then be eligible for a presumption-based refund. Instead, such a claimant may receive a refund which reflects the level of injury established in its application. No refund will be approved if its submission indicates that it was not injured as a result of its purchases from Time. *See Exxon*, 17 DOE at 89,150 n.10.

[9] In prior proceedings, we have stated that refunds will be approved for spot purchasers who demonstrate that: (1) They made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (2) they were forced by market conditions to resell the product at a loss.

and address of the person who should receive the refund check;

(2) The applicant's use(s) of the Time products, e.g., retail gas station, petroleum jobber, consumer (end-user), cooperative, or public utility;

(3) If the applicant did business under more than one name, or a different name during the period of price controls, the applicant should list these names. If the applicant's firm is owned by another company, or owns other companies, a list of those other companies' names and their relationships to the applicant's firm;

(4) For each covered product purchased from Time, a separate monthly purchase schedule covering the period between the beginning of the refund period (August 20, 1973) and the date of decontrol of that product. The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its petroleum purchases, but the estimation methodology must be reasonable and must be explained in detail;

(5) If the applicant is a retailer or reseller whose allocable share exceeds $5,000 (i.e. whose purchases equal or exceed 4,098,361 gallons), it must indicate whether it elects to rely on the appropriate reseller injury presumption and receive the larger of $5,000 or 40% of its allocable share. If it does not elect to rely on the injury presumption, it must submit a detailed showing that it absorbed Time's alleged overcharges (i.e. that the applicant did not pass through the overcharges to its own customers);

(6) If the applicant is a regulated utility or a cooperative, a certification that it will notify the state utility commission, other regulatory agency, or membership body of any refunds received, and that it will pass on the entirety of its refund to its customers or members; and

(7) The application should also contain the following statement signed by the individual applicant or a responsible official of the business or organization applying for a refund:

I swear (or affirm) that the information contained in this application is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of the entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled "Time Refund Proceeding—Case No. KEF-0129." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than April 1, 1991, and sent to the following address:

Time Refund Proceeding, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

III. Distribution of Refunds Remaining After Consideration of All Refund Applications

All unclaimed money remaining in the Time escrow account after all meritorious refund applications are paid will be distributed in the manner suggested in the consent order to the seven states in which Time sold covered products during the period November 1973 through January 1981. As stated above, each state's portion of the remaining funds was calculated according to the share of Time's total volume of gasoline sold in that state during the relevant period. Those funds will be allocated to the seven identified states in proportions equal to those by which the original states' pool of $862,500 was apportioned.

Since these funds have been exempted from PODRA requirements, they will be distributed under OHA's second-stage refund procedures. These procedures have normally been used by OHA to ensure that indirect restitution of oil overcharges to the states is proportional to the injury experienced and provides timely restitutionary benefits. The states are familiar with this process. *See* "A Report on State Expenditures of Oil Overcharges," DOE Publication No. DOE/HG-003 (January 1990). Each of the seven affected states will be required to submit a restitutionary plan to the OHA. Upon approval of the plan, the OHA will order the disbursement of the state's share of the funds, including a proportionate share of accrued interest.

Detailed requirements applicable to the states' restitutionary plans will be addressed in a later Decision and Order, to be issued when we have completed processing all Time refund applications.

It is therefore ordered that:

Applications for Refund from the alleged overcharge funds remitted by Time Oil Company may now be filed.

Applications for Refund submitted by purchasers of Time covered products, including Defense Fuel Supply Center, must be postmarked by April 1, 1991.

Dated: October 31, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-26475 Filed 11-7-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3859-1]

Clean Air Act Advisory Committee and Request for Candidates

SUMMARY: The Environmental Protection Agency (EPA) is proposing to establish a new Advisory Committee under the Federal Advisory Committee Act (FACA). The committee's purpose would be to provide independent advice and counsel to the EPA on policy and technical issues associated with implementation of the Clean Air Act amendments of 1990. The Advisory Committee will be consulted on economic, environmental, technical, scientific and enforcement policy issues.

At this time, EPA requests nominations of candidates for membership on the Advisory Committee. The membership of the committee will represent a balance of interested persons with diverse perspectives and professional qualifications and experience to contribute to the functions of the Advisory Committee. Members will be drawn from: business and industry; educational and research institutions; state and local governmental bodies; environmental groups; and international organizations.

DATES: Submit nominations of candidates no later than January 1, 1991. Any interested person or organization may submit the names of qualified persons. Suggestions for the list of candidates should be identified by name, occupation, organization, position, address, and telephone number. Candidates will be asked to complete a brief form that summarizes their background, experience, qualifications and other relevant information as a part of the review process.

ADDRESSES: Submit suggestions for the list of candidates to Paul Rasmussen, Advisory Committee Nominations, Office of Air and Radiation, (ANR-443), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Fax number 202-245-4185.

FOR FURTHER INFORMATION CONTACT: Paul Rasmussen at the above address, or call 202-382-7430. The Agency will not formally acknowledge or respond to nominations.

SUPPLEMENTARY INFORMATION: The purpose of the Clean Air Act Advisory Committee is to provide advice and counsel to the Assistant Administrator, Office of Air and Radiation, on the development, implementation, and enforcement of the new and expanded regulatory and market-based programs required by the Clean Air Act amendments of 1990, with the exception of the provisions of the Act that address acid rain. A separate committee has been established to advise the Agency on the acid rain provisions of the Act. The programs falling under the purview of the committee include those for meeting National Ambient Air Quality Standards, reducing emissions from vehicles and vehicle fuels, reducing air toxics emissions, issuing operating permits and collecting fees, and carrying out new and expanded compliance authorities. The Clean Air Act Advisory Committee may advise on issues that cut across several program areas, including acid rain.

The responsibilities of the Advisory Committee include providing the Agency with advice on the following:

- Approaches for new and expanded programs, including those using innovative or market-based means to achieve environmental improvements.
- Potential health, environmental, and economic effects of programs required by the new amendments and the potential impacts on the public, state and local governments, and the regulated community.
- Policy and technical contents of proposed major EPA rulemaking and guidance required by the new amendments in order to help effectively incorporate appropriate outside advice and information.
- Integration of existing policies, regulations, standards, guidelines, and procedures in programs for implementing requirements of the new amendments.

Proposed Establishment

A Federal agency must comply with requirements of the FACA when it establishes or uses a group which includes non-federal members as a source of advice. Under FACA, a non-statutory advisory committee is established only after consultation with the General Services Administration (GSA). EPA has recently received approval from GSA to establish this committee.

Participants

The committee shall be composed of approximately 25 members, however, meetings will be open to all interested parties. Committee members shall serve two-year terms.

Members of the committee shall be selected on the basis of their professional qualifications and diversity of perspectives that will enable them to provide advice and guidance to the Agency in implementing the new Clean Air Act amendments.

Advisory Committee members shall be appointed in a balanced representation from the following sectors: Business and industry; academic and educational institutions; state and local governments; and nongovernmental and environmental groups.

The Advisory Committee will be authorized to form subcommittees to consider specific issues or actions and report back to the Committee.

Meetings will be held at least four times a year or as necessary, as determined by the Chairperson.

No honoria or salaries are contemplated in association with membership on the Advisory Committee, but compensation for travel and nominal daily expenses while attending meetings may be provided.

The Agency intends to hold the initial meeting of the Advisory Committee in the month of February 1991. Suggestions for the list of candidates should be submitted no later than January 1, 1991.

Dated: November 2, 1990.

Michael Shapiro,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 90-26466 Filed 11-7-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3858-9]

Underground Injection Control Program, Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; American Cyanamid, Westwego, LA

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to American Cyanamid, for Class I injection wells located at Westwego, Louisiana. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by American Cyanamid, of the specific restricted hazardous waste identified in the petition, into the Class I hazardous waste injection wells at the Westwego, Louisiana facility specifically identified in the petition, for as long as the basis for granting an approval of the petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued June 7, 1990. A public hearing was held July 10, 1990, and a public comment period ended on July 23, 1990. Due to the unavailability of a portion of the petition, the comment period was reopened August 9, 1990 and closed on September 24, 1990. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of October 31, 1990.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W-SU), 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Oscar Cabra, Jr., Municipal Facility Branch, EPA—Region 6, telephone (214) 655-7110, (FTS) 255-7110.

Myron O. Knudson,

Director, Water Management Division (6W).

[FR Doc. 90-26468 Filed 11-7-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3858-8]

Underground Injection Control Program, Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection Cecos International, Inc., Willow Springs, LA

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Cecos

International, Inc., for the Class I injection well located at Willow Springs, Louisiana. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Cecos International, Inc., of the specific restricted hazardous waste identified in the petition, into the Class I hazardous waste injection well at the Willow Springs, Louisiana facility specifically identified in the petition, for as long as the basis for granting an approval of the petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued March 13, 1990. A public hearing was held April 18, 1990, and a public comment period ended on April 28, 1990. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of October 31, 1990.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W-SU), 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Oscar Cabra, Jr., Chief Municipal Facilities Branch, EPA—Region 6, telephone (214) 655-7110, (FTS) 255-7110.

Myron O. Knudson,
Director, Water Management Division (6W).

[FR Doc. 90-26469 Filed 11-7-90; 8:45 am]
BILLING CODE 6560-50-M

[FRL-3859-2]

Peer Review Workshop

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: This notice announces a Peer Review Workshop, sponsored by the U.S. Environmental Protection Agency (EPA), to analyze and review a draft Risk Assessment Forum report on the use of data on alpha-2u-globulin accumulation, renal toxicity, and neoplasia in male rats. The meeting will be held at the Gaithersburg Marriott Hotel in Gaithersburg, Maryland.

DATES: The Workshop will begin on Tuesday, November 13, 1990, at 8:30 a.m. and end on Wednesday, November 14 at 3:30 p.m. Members of the public may attend as observers.

ADDRESSES: Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the workshop. To attend the workshop as an observer, call Easten Research Group's hotline for the meeting, (617) 648-7810, or contact Ms. Susan Brager, Eastern Research Group, Inc., 6 Whittemore Street, Arlington, Massachusetts, 02174, Telephone (617) 641-5347 by November 16, 1990. Space is limited.

FOR FURTHER INFORMATION CONTACT: For further information on this **Federal Register** notice, contact Dr. Imogene Rodgers, U.S. Environmental Protection Agency, (RD-689), 401 M Street, SW., Washington, DC, 20460, Telephone (202) 245-4192 (FTS: 245-4192).

SUPPLEMENTARY INFORMATION: Some scientists hypothesize that certain chemicals include the accumulation of alpha-2u-globulin in the male rat kidney, thus initiating a specific set of changes that can result in cancer in the renal tubules of these laboratory animals. In 1988 EPA's Risk Assessment Forum established a Technical Panel of Agency scientists to review the information underlying this hypothesis and to study its relevance for human risk assessment. A draft report, entitled "Alpha-2u-Globulin: Association with Renal Toxicity and Neoplasia in the "Male Rat," has been developed.

EPA has assembled a peer review panel of scientifically qualified persons to discuss four issues analyzed in the draft report: biochemistry and nephrotoxicity, cancer, criteria for distinguishing renal carcinogens that induce alpha-2u-globulin accumulation, and risk characterization. Panelists will discuss the draft report and make recommendations to EPA regarding information and principles reviewed in the report. Approximately 20 experts in toxicology, pathology, cancer mechanisms, and risk assessment are expected to participate as panelists.

Workshop discussions and recommendations will be used to prepare this draft Risk Assessment Forum report for further Agency and Science Advisory Board review.

Dated: October 31, 1990.

Erich W. Bretthauer,
Assistant Administrator for Research and Development.

[FR Doc. 90-26502 Filed 11-7-90; 8:45 am]
BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY (EPA)

[FRL-3858-7]

Gulf of Mexico Program Policy Review Board Meeting

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of meeting of the policy review board of the gulf of Mexico program.

SUMMARY: The Gulf of Mexico Program Policy Review Board will hold a meeting on November 8, 1990 at the Le Pavillon Hotel, Poydras at Baronne Streets, New Orleans, LA.

FOR FURTHER INFORMATION CONTACT: Mr. William Whitson, Gulf of Mexico Program Office, Stennis Space Center, MS, at 601/688-3726 (FTS 494-3726).

SUPPLEMENTARY INFORMATION: This notice, required by the Federal Advisory Committee Act (FACA), officially notifies interested parties of an open meeting of the Policy Review Board. Agenda items include a "Year of the Gulf" action plan presentation, a National Beach Cleanup report, a briefing on the Status of the Gulf Symposium, a report on the Boaters Pledge Project and other status briefings of interest to the committee.

Joseph R. Franxmathes,
Assistant Regional Administrator for Policy and Management.

[FR Doc. 90-26467 Filed 11-7-90; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-400052; FRL-3839-9]

Emergency Planning and Community Right-To-Know Act; Train-the-Trainers Conference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a 2-day train-the-trainers conferences on section 313 of the Emergency Planning and Community Right-to-Know Act reporting requirements. The purpose of this training is to present a model course to persons who plan to train others to comply with the reporting requirements of section 313. Persons who should consider attending are representatives from industry, consulting firms, or university continuing educations departments. Attendance is restricted to organizations that have not attended this training in the past 2 years. It will be restricted to those organizations that intend to provide training on a regular basis and expect to conduct a minimum of two training courses on section 313 prior to July 1, 1991. Persons who successfully complete the course will obtain a certification of proficiency. There is limited space available. Requests should be sent in writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Notification will be sent to each applicant regarding their acceptance for the training session. There is no charge for this training.

DATES: The conference will be held on Tuesday and Wednesday, December 4th and 5th, 1990. The meeting will start at 9 a.m. and end at approximately 5 p.m.

ADDRESSES: The conference will be held at: 75 Hawthorne St., First Floor, Arizona/California/Nevada Conference Rooms, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: Lee DePont, Economics and Technology Division (TS-779), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (1-800-535-0202).

SUPPLEMENTARY INFORMATION: Requests for registration will not be accepted after November 19, 1990. Future offerings of this course in February and March 1991 will be announced in the **Federal Register.**

Dated: November 1, 1990.

Charles L. Elkins,
Director, Office of Toxic Substances.

[FR Doc. 90-26465 Filed 11-7-90; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

[Agreement No. 232-011294]

Costa Container Line/Ocean Star Container Line Space Charter and Sailing Agreement

Reference is made to the **Federal Register** Notice of July 30, 1990, (55 FR 30981).

The above named Agreement has been redesignated as Agreement No. 203-011294.

By Order of the Federal Maritime Commission.

Dated: November 2, 1990.

Joseph C. Polking,
Secretary.

[FR Doc. 90-26368 Filed 11-7-90; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed; Linabol/CSAV Vessel Space Charter; et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-010612-004.
Title: Linabol/CSAV Vessel Space Charter Agreement.
Parties:
Compania Sud Americana De Vapores (CSAV")
Lineas Navieras Bolivianas.

Synopsis: The proposed amendment would permit the parties to charter space to one another in the trade between United States Atlantic, Gulf, and Great Lakes ports and ports on the West Coast of South America, for cargo moving to and from the Republic of Bolivia, except in the trade between U.S. Gulf Coast ports and inland points and ports and points in Mexico, Colombia, Panama, Ecuador, Peru and Chile, including Bolivian inland points, as set forth in Agreement No. 232-011301 between CSAV and Transportes Navieros Ecuatorianos.

Agreement No.: 202-010776-057.
Title: Asia North America Eastbound Rate Agreement.
Parties:
American President Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner Systems, Ltd.
Nippon Yusen Kaisha Line
Sea-Land Service, Inc.

Synopsis: The proposed amendment would modify Article 13.1 to allow a party that chooses to follow the independent action taken by another member of the Agreement to increase, in its following independent action, the amount of any monetary terms expressed in the original independent action.

Agreement No.: 212-011234-012.
Title: U.S.A./South Europe Pool Agreement.
Parties:
Compania Trasatlantica Espanola, S.A.
Costa Container Lines, S.p.A.
Evergreen Marine Corporation;
Italia di Navigazione S.p.A.
Lykes Lines
Nedlloyd Lines
P&O Containers Limited
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would delete Costa Container Lines, S.p.A. as a party to the Agreement.

Agreement No.: 203-011305.
Title: Tricontinental Service Agreement.
Parties:
Cho Yang Shipping Co., Ltd.
DSR/Senator Joint Service.

Synopsis: The proposed Agreement would provide for a cooperative working arrangement which permits space chartering and sailing authority. The parties would charter space to each other on their respective vessels in the trade between ports or points in the United States and ports or points in other countries, except in the trade between North Europe and ports and points in Puerto Rico and the U.S. Virgin Islands, as set forth in the scope of Agreement No. 207-011291, DSR/Stinnes West Indies Services Agreement.

Dated: November 2, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 90-26367 Filed 11-7-90; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Carolina First Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank

holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 2, 1990.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Carolina First Corporation,* Greenville, South Carolina; to engage *de novo* through its subsidiary, Carolina Interim Savings Bank, F.S.B., Greenville, South Carolina, in owning and operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Michigan Bank Corporation,* Holland, Michigan; to engage *de novo* through FMB-Trust and Financial Services, National Association, Holland, Michigan, in trust company functions pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26396 Filed 11-7-90; 8:45 am]

BILLING CODE 6210-01-M

CNB Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 U.S.C. 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 30, 1990.

A. Federal Reserve Bank of America (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *CNB Financial Corporation,* Clewiston, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Clewiston National Bank, Clewiston, Florida.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Morton Financial Corporation,* Morton, Texas; to acquire 84.3 percent of the voting shares of South Plains National Bank, Levelland, Texas.

Board of Governors of the Federal Reserve System, November 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26397 Filed 11-7-90; 8:45 am]

BILLING CODE 6210-01-M

Iqbal Haiderali Esnail Kassam, et al.; Change in Bank Control Notice; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 21, 1990.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Iqbal Haiderali Esnail Kassam,* North York, Ontario, to acquire 27.35 percent; Alnoor Haiderali Esnail Kassam, Nairobi, Kenya, to acquire 27.35 percent; Michael Harvey Appleton, Don Mills, Ontario, to acquire 13.70 percent; and Jay Stuart Hennick, Toronto, Ontario, to acquire 13.70 percent of the voting shares of AmeriTex Bancshares Corporation, Fort Worth, Texas, and thereby indirectly acquire Riverbend Bank, N.A., Fort Worth, Texas; American Bank of Commerce, Grapevine, Texas, and American Bank of Haltom City, Haltom City, Texas.

2. *Jerry Davis,* New Boston, Texas; Marshall Dear, New Boston, Texas; Ronny Looney, New Boston, Texas; John McCoy, New Boston, Texas; Hiram Shute, New Boston, Texas; and James Torian, New Boston, Texas; to each acquire an additional 14.29 percent of the voting shares of New Boston Bancshares, Inc., New Boston, Texas, and thereby indirectly acquire First National Bank, New Boston, Texas.

Board of Governors of the Federal Reserve System, November 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26399 Filed 11-7-90; 8:45 am]

BILLING CODE 6210-01-M

Norwest Corp., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities

of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 5, 1990.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation,* Minneapolis, Minnesota; to merge with United Banks of Colorado, Inc., Denver, Colorado, and thereby indirectly acquire United Bank of Boulder, N.A., Boulder, Colorado; United Bank of Colorado Springs, N.A., Colorado Springs, Colorado; United Bank of Denver, N.A., Denver, Colorado; United Bank of Fort Collins, N.A., Fort Collins, Colorado; United Bank of Greeley, N.A., Greeley, Colorado; United Bank of Montrose, N.A., Montrose, Colorado; United Bank of Steamboat Springs, N.A., Steamboat Springs, Colorado; United Bank of Sterling, N.A., Sterling, Colorado; United Bank of Grand Junction—Downtown, N.A., Grand Junction, Colorado; United Bank of Brighton, N.A., Brighton, Colorado; United Bank of Aurora, N.A., Aurora, Colorado; United Bank of Ignacio, N.A., Ignacio, Colorado; United Bank of Pueblo, N.A., Pueblo, Colorado; United Bank of Littleton, N.A., Littleton, Colorado; United Bank of Broomfield, N.A., Broomfield, Colorado; United Bank of Sunset Park, N.A., Pueblo, Colorado; United Bank of Lakewood, N.A., Lakewood, Colorado; United Bank of Northglenn, N.A., Northglenn, Colorado; United Bank of Lasalle, N.A., Lasalle, Colorado; United Bank of Grand Junction, N.A., Grand Junction, Colorado; United Bank of Delta, N.A., Delta, Colorado; United Bank of Bear Valley, N.A., Denver, Colorado; United Bank of Colorado Springs—East, N.A., Colorado Springs, Colorado; United Bank of Southglenn, N.A., Arapahoe County, Colorado; United Bank of Longmont, N.A., Longmont, Colorado; United Bank of Durango, N.A., Durango, Colorado; United Bank of Skyline, N.A., Denver Colorado; United Bank of Buckingham Square, N.A., Aurora, Colorado; United Bank of Monaco, N.A., Denver, Colorado; United Bank of Garden of the Gods, N.A., Colorado Springs, Colorado; United Bank of Arvada, N.A., Arvada, Colorado; United Bank of Fort Collins—South, N.A., Fort Collins; United Bank of Arapahoe, N.A., Englewood, Colorado; United Bank of Southwest Plaza, N.A., Jefferson County; United Bank of Cherry Creek, N.A., Denver, Colorado; United Bank of Highlands Ranch, N.A., Highlands Ranch, Colorado; United Bank of Academy Place, N.A., Colorado Springs, Colorado; United Bank of Aurora—City Center, N.A., Aurora, Colorado; United Bank of Aurora—South, N.A., Aurora, Colorado; and United Bank of Westminster, N.A., Westminster, Colorado.

In connection with this application, Applicant also proposes to acquire Fidelity National Life Insurance Company, Denver, Colorado, and thereby engage in underwriting and reinsuring credit life, health and accident as authorized by § 225.25(b)(8); IntraWest Insurance Company, Denver, Colorado, and thereby engage in underwriting and reinsuring credit life, health and accident as authorized by § 225.25(b)(8); United Banks Financial Services Corporation, Denver, Colorado, and thereby engage in commercial finance activities pursuant to § 225.25(b)(1); United Banks Service Company, Englewood, Colorado, and thereby engage in data processing activities pursuant to § 225.25(b)(7); and United Banks Insurance Services, Inc., Denver, Colorado, and thereby indirectly acquire Lincoln Agency Phoenix, Arizona, Tempe, Arizona, and thereby engage in insurance agency activities pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26400 Filed 11-7-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meeting in December

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the National Advisory Mental Health Council in the month of December 1990.

The Council meeting will be open for discussion of NIMH policy issues and will include current administrative, legislative, and program developments. Attendance by the public will be limited to space available

Notice of this meeting is required under the Federal Advisory Committee Act, Public Law 92-463.

Committee name: National Advisory Mental Health Council, NIMH.

Date and time: December 3-4: 9 a.m.

Place: National Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Rockville, MD 20892.

Status of meeting: OPEN—December 3: 9 a.m.–5 p.m., December 4: 9 a.m.–adjournment.

Contact: Jane A. Steinberg, Room 9-105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3367.

Purpose: The National Advisory Mental Health Council Advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the

Secretary with respect to approval of applications for, and amount of, these grants.

Substantive information, a summary of the meeting, and a roster of committee members may be obtained from Ms. Joanna Kieffer, NIMH Committee Management Officer, room 9-105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443-4333.

Dated: November 5, 1990.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90-26466 Filed 11-7-90; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 90P-0450]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to the Hygeia Dairy Co. to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 6, 1991.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0343.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to the Hygeia Dairy Co., P.O. Box 751, Harlingen, TX 78551.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog".

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 24,000 quarts (22,712 liters) of the test product. The product will be manufactured at the Hygeia Dairy Co., 5330 Ayers, Corpus Christi, TX 78415, and distributed in Texas.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 6, 1990.

Dated: October 30, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-26345 Filed 11-7-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90P-0324]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Grand's Dairies, Inc., to market test a product designated as "light eggnog" that deviates from the U.S. Standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This temporary permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 6, 1990.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food and Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0343.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Gandy's Dairies, Inc., 332 Pulliam St., San Angelo, TX 76902.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewere calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the lable must bear the comparative statement "1/3 less calories" and "75% less fat than regular eggnog."

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptance because there is at least a 50-percent reduction in the fat content of this product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 60,000 quarts (56 798 liters) of the test product. The test

product is to be manufactured at Gandy's Dairies, Inc., 332 Pulliam St., San Angelo, TX 76902, and distributd in Texas.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This temporary permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 6, 1991.

Dated: October 30, 1990.

Fred R. Shank,

Director, Center for Food and Safety and Applied Nutrition.

[FR Doc. 90-26346 Filed 11-7-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90P-0451]

Sour Cream Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to the Prairie Farms Dairy, Inc., to market test a product designated as "lite sour cream" that deviates from the U.S. standard of identity for sour cream (21 CFR 131.160). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 6, 1991.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0343.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Coametic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Prairie Farms Dairy, Inc., 1100 North Broadway, Carlinville, IL 62626.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for sour cream in 21 CFR 131.160 in that: (1) The fat content of the product is reduced from 18 percent to 9 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 2-tablespoon (28.35 gram (g)) serving of the product contains 4 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to sour cream but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "lite sour cream." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "50% less fat than sour cream".

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 500,000 16-ounce (453.6 g) units of the test product. The product will be manufactured at Prairie Farms Dairy, Inc., 742 North Illinois, Carbondale, IL 62901, and distributed in Illinois, Indiana, Iowa, Kentucky, Missouri, and Tennessee.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 6, 1991.

Dated: October 30, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-26347 Filed 11-7-90; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committee.

Meeting: The following advisory committee meeting is announced:

Dermatologic Drugs Advisory Committee

Date, time, and place. November 26, 1990, 8 a.m., Conference rooms G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact persons. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 2 p.m.; closed committee deliberations 2 p.m. to 5 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of dermatologic diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 15, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On November 26, 1990, the committee will discuss: (1) The use of within subject contralateral comparisons in the assessment of topical product safety and efficacy, (2) the appropriate clinical trial design for studies of diaper dermatitis and whether this is an appropriate indication for antifungal-steroid combination products, (3) revised class labeling for topical corticosterioids including the designation of class strengths, and (4) the safety and efficacy of the use of minoxidil 2 percent topical solution in the treatment of alopecia in women.

Closed committee deliberations. If necessary, the committee will review trade secret or confidential commercial information relevant to the safety and effectiveness of the new drugs under review. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open

public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, room 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to signficantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or indivdiual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previoulsy been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: October 31, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-26396 Filed 11-7-90; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meetings: Minneapolis District Office, chaired by Donald W. Aird, Jr., Consumer Affairs Officer. The topic to be discussed is food labeling proposals: mandatory nutrition labeling, serving size, and reference daily intakes (RDI's) and daily reference values (DRV's).

DATES: There will be two consecutive meetings, both on the same topic, Tuesday, November 13, 1990, 11:30 a.m. to 12-15 p.m. and 12:15 p.m. to 1 p.m.

ADDRESSES: Bishop Henry Whipple Federal Bldg., room 196, Fort Snelling, MN 55111.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Jr., Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612-334-4103/4104.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: November 5, 1990.

William L. Schwemer,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-26485 Filed 11-7-90; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the months of December 1990 and January 1991.

Name: Departments of Family Medicine Review Committee.

Date and Time: December 6-7, 1990, 8:30 a.m.

Place: Conference Room I and J, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on December 6, 8:30 a.m.-9:30 a.m.

Closed for remainder of Meeting

Purpose: The Departments of Family Medicine Review Committee shall review applications that (1) either assist in meeting the cost of planning, developing and operating; or participating in approved predoctoral training programs in the field of family medicine; and (2) assist in meeting the costs of projects to establish, maintain, or improve academic administrative units (which may be departments, division, or other units) to provide clinical instruction in family medicine.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on December 6, at 9:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463.

Name: Departments of Family Medicine Review Committee.

Date and Time: January 7-8, 1991, 8:30 a.m.

Place: Chesapeake and Potomac Rooms, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on January 7, 8:30 a.m.-9:30 a.m.

Closed for Remainder of Meeting

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on January 7, at 9:30 a.m. for the remainder of the meeting for the review of grant applications The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463.

Anyone requiring information regarding the subject Council should contact Mrs. Sherry Whipple, Executive Secretary, Departments of Family Medicine Review Committee, room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6874.

Agenda Items are subject to change as priorities dictate.

Dated: November 2, 1990.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 90-26348 Filed 11-7-90; 8:45 am]

BILLING CODE 4160-15-M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, announcement is made of the following National Advisory body scheduled to meet during the months of December 1990:

Name: Subcommittee on Medical Education Programs and Financing of the Council on Graduate Medical Education.

Time: December 3-4, 1990, 9 a.m.

Place: Conference Room G, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857.

Open for entire meeting.

Purpose: The subcommittee identifies the issues and problems in current methods of financing and support. Assesses the implications of alternative financing policies on medical education programs, service delivery, cost containment, physician supply and distribution, and shortages and excesses of physicians.

Analyzes existing information and data on current and alternative medical education programs of hospitals, schools of medicine and osteopathy, and accrediting bodies; federal policies regarding medical education programs; and their impact on the supply and distribution of physicians.

Agenda: The Subcommittee will prepare and discuss recommendations and conclusions for a future report on medical education including primary care training in the ambulatory setting.

Anyone requiring information regarding the subject Subcommittee should contact Dona Harris, Ph.D., Scholar-in-Residence, Division of Medicine, Bureau of Health Professions, room 4C-25 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6326.

Agenda Items are subject to change as priorities dictate.

Dated: November 2, 1990.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 90-26349 Filed 11-7-90; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

Meeting of the Genome Research Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Genome Research Review Committee, National Center for Human Genome Research, November 28-30, 1990, at the Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland. This meeting will be open to the public on November 28th from 8:30 a.m. to 9:30 a.m. to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 522b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on November 28th from 9:30 a.m. to adjournment on November 30 for the review, discussion and evalution of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Engel, Chief, Office of Scientific Review, National Center for Human Genome Research, National Institutes of Health, building 38A, room 601, Bethesda, Maryland 20892, (301) 402-0838, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Dated: October 24, 1990.
Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 90-26382 Filed 11-7-90; 8:45 am]
BILLING CODE 4140-01-M

Meeting of the Program Advisory Committee on the Human Genome

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Program Advisory Committee on the Human Genome, National Center for Human Genome Research, on December 3-4, 1990, at the National Institutes of Health, building 31, conference room 6, 9000 Rockville Pike, Bethesda, Maryland.

This meeting will be open to the public on December 3, from 9:30 a.m. to recess, to discuss the planning, organization, and progress of the human genome project at the National Institutes of Health. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(b)(4) and 552 (c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on December 4 from 9:00 a.m. to adjournment, for the review, discussion, and evaluation of progress on individual grant applications. The discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Elke Jordan, Deputy Director of the National Center for Human Genome Research, National Institutes of Health, building 38A, room 605, Bethesda, Maryland 20892, (301) 496-0844, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Dated: October 24, 1990.
Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 90-26383 Filed 11-7-90; 8:45 am]
BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Basic Sciences II Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Basic Sciences II Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee, National Institute of Allergy and Infectious Diseases, on November 13, 1990 at the Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Bethesda, Maryland 20815.

The meeting will be open to the public from 11 a.m. to 1 p.m. on November 13 to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 1 p.m. until adjournment on November 13. These applications, proposals, and discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Responses, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Allen Stoolmiller, Executive Secretary, Acquired Immunodeficiency Syndrome Research Review Committee, NIAID, NIH, Westwood Building, room 3A11, Bethesda, Maryland 20892, telephone (301-496-7966), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: October 24, 1990.
Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 90-26431 Filed 11-7-90; 8:45 am]
BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Notice of Meeting of Board of Scientific Counselors

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on December 10, 11 and 12, 1990. The meeting will be held in the 11th floor solarium, Building 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on December 10 from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 2:30 p.m. On December 11 the meeting will be open from 8 a.m. until 9:30 a.m. During the open sessions, the permanent staff of the Laboratory of Immunoregulation and Critical Care Medicine Department, Clinical Center will present and discuss their immediate past and present research activities.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on December 10 from 8:30 a.m. until 9 a.m., from 12:30 p.m. until 1:30 p.m., and from 2:30 p.m. until recess, on December 11 from 9:30 a.m. until recess and on December 12 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John I. Gallin, Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, room 11C103, telephone (301-496-3006) will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13-301, National Institutes of Health)

Dated: October 24, 1990.
Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 90-26432 Filed 11-07-90; 8:45 am]
BILLING CODE 4140-01-M

National Institute of Dental Research; Meeting of NIDR Board of Scientific Counselors

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Dental Research (NIDR), on December 5-7, 1990, in the H. Trendley Dean Conference Room, Building 30, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 9 a.m. to recess on December 5 and from 9 a.m. until 1 p.m. on December 6. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public from 1 p.m. till recess on December 6 and from 9 a.m. till adjournment on December 7 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Abner Notkins, Director of Intramural Research, NIDR, NIH, Building 30, room 132, Bethesda, Maryland 20892 (telephone 301-496-1483) will provide a summary of the meeting, roster of committee members and substantive program information.

Dated: October 24, 1990.
Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 90-26433 Filed 11-7-90; 8:45 am]
BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute, Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Asthma Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute, Friday, November 2, 1990, from 8:30 a.m. to 3 p.m., at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814, (301) 897-9400, which was published in the **Federal Register** on October 9, (55-FR-41143).

This committee was to have convened at 8:30 a.m. on November 2, 1990, but the meeting has been changed to 8:30 a.m. to 3 p.m. on December 4, 1990, at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The meeting will be open to the public. For detailed program information, agenda, list of participants, and meeting summary contact: Mr. Robinson Fulwood, Coordinator, National Asthma Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, building 31, room 4A18, Bethesda, Maryland 20892 (301) 496-1051.

Dated: October 31, 1990.
William F. Raub,
Acting Director, NIH.
[FR Doc. 90-26384 Filed 11-7-90; 8:45 am]
BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program; National Toxicology Program (NTP) Board of Scientific Counselors' Meeting, Announcement of NTP Draft Technical Reports Projected for Public Peer Review From November 1990 Through October 1992

To earlier inform the public and allow interested parties to comment or obtain information on long-term toxicology and carcinogenesis studies and short-term toxicity studies prior to public peer review, the National Toxicology Program (NTP) again publishes in the **Federal Register** a current listing of draft Technical Reports projected for evaluation by the NTP Board of Scientific Counselors' Technical Reports Review Subcommittee and associated *ad hoc* Panel of Experts (Peer Review Panel) during their next seven meetings from November 1990 through October 1992. The listing will continue to be updated with announcements in the **Federal Register** approximately twice a year. The meeting date for 1990 is: November 19-20. Specific dates for the 1991 and 1992 meetings will be established at a later time.

The attachment gives draft Technical Reports of studies on chemicals listed alphabetically within known or established dates of reviews and includes Chemical Abstracts Service registry numbers, responsible staff scientists with telephone numbers, NTP report numbers (if assigned), primary use(s), species, route of administration, and exposure levels used.

Those interested in having more information about any of the studies listed in this announcement, or wanting to provide input, should contact the particular NTP staff scientist as early as possible by telephone or by mail to: NIEHS, P.O. Box 12233, Research Triangle Park (RTP), North Carolina 27709. The staff scientists would welcome receiving toxicology and carcinogenesis data from completed, ongoing or planned studies by others as well as current production data, human exposure information, and use and use patterns.

The Executive Secretary, Dr. Larry G. Hart, NTP, P.O. Box 12233, RTP, North Carolina 27709, telephone 919/541-3971, FTS 629-3971, will furnish final agendas, and other program information prior to a meeting, and summary minutes subsequent to a meeting.

Dated: November 1, 1990.
David G. Hoel,
Acting Director, National Toxicology Program.

NTP TOXICOLOGY AND CARCINOGENESIS STUDIES CHEMICALS PROJECTED FOR PEER REVIEW

Chemical Name/CAS No.	Use	Study scientist	Route	Species	Exposure levels	NTP TR No.
Chemicals Tentatively Scheduled for Peer Review—November 19-20, 1990						
Long-Term Studies:						
Acetaminophen (4-Hydroxyacetanilide), 103-90-2.	PHAR	R. Irwin 919-541-3340	FEED	RM	R&M: 0, .06, .3, .6%/60 per group	394
Chloramine/Chlorine, 10599-90-3/7782-50-5.	GERM INTR	J. Dunnick 919-541-4811	WATER	RM	Chloramine 0, 50, 100, 200 PPM/Buff'd Chlorine H_2O 0, 70, 140, 275 PPM/60 per group.	392
C.I. Direct Blue 15, 2429-74-5	DYE	J. Dunnick 919-541-4811	WATER	R	R: 0, 630, 1250, 2500 PPM (70, 45, 75, 70 per group respectively).	397
Methyl Bromide, 74-83-9	FUME	S. Eustis 919-541-3231	INHAL	M	Mice only: 0, 10, 33, 100 PPM	395
Monochloroacetic acid, 79-11-8	DYE	K. Abdo 919-541-7819	GAV	RM:	R: 0, 15, 30; M: 0, 50, 100 MG/KG/70 & 60 per group respectively.	396
Probenecid, 57-66-9	PHAR	K. Abdo 919-541-7819	GAV	RM	R&M: 0, 100, 400 MG/KG/50 per group	395
Titanocene Dichloride, 1271-19-8	LABC	J. Dunnick 919-541-4811	GAV	R	Rats Only: 0, 25, 50 MG/KG/60 per group	399

NTP TOXICOLOGY AND CARCINOGENESIS STUDIES CHEMICALS PROJECTED FOR PEER REVIEW—Continued

Chemical Name/CAS No.	Use	Study scientist	Route	Species	Exposure levels	NTP TR No.
Short-Term Toxicity Studies:						
Antimony Potassium Tartrate, 28300-74-5.	PEST	M. Dieter 919-541-3368	IP/IJ	RM	R&M: 0, 1.5, 3, 6, 12, 24 MG/KG/30 per group.	11
Castor Oil, 8001-79-4	PHAR	R. Irwin 919-541-3340	FEED	RM	R&M: 0, .62, 1, 25, 2.5, 5.0, 10.0%	12
Cresol (Mixed Isomers), 1319-77-3	GERM	D. Dietz 919-541-2272	FEED	RM	R&M: 0, .03, .1, .3, 1.0, 3.0%	09
O-Cresol, 95-48-7	GERM	D. Dietz 919-541-2272	FEED	RM	R&M: 0, .03, .1, .3, 1.0, 3.0%	06
Ethylbenzene, 100-41-4	RUBR	P. Chan 919-541-7561	INHAL	RM	R&M: 0, 100, 250, 500, 750, 1000 PPM	10
2,4,7-Trinitro-Fluren-9-One, 129-79-3	PHOT	F. Kari 919-541-2926	FEED	RM	R: 0, 1000, 2000, 4000, 8000, 16000; M: 0, 3212, 6250, 12500, 25000, 55000 PPM.	13
Chemicals Tentatively Scheduled for Peer Review—February, 1991						
Long-Term Studies:						
Gamma-Butyrolactone, 96-48-0	INTR	K. Abdo 919-541-7819	GAV	RM	MR: 0, 112, 225, FR: 0, 225, 450, M: 0, 262, 525 MG/KG/50 per group.	406
C.I. Acid Red 114, 6459-94-5	DYE	K. Abdo 919-541-7819	WATER	R	MR: 0, 70, 150, 300, FR: 0, 150, 300, 600 PPM (70, 45, 75, 70 per group respectively).	405
C.I. Pigment Red 3, 2425-85-6	DYE	K. Abdo 919-541-7819	FEED	RM	R: 0, 6000, 12500, 25000; M: 0, 12500, 25000, 50000 PPM (60 per group).	407
C.I. Pigment Red 23, 6471-49-4	DYE	S. Eustis 919-541-3231	FEED	RM	R&M: 0, 1000, 25000, 5000 PPM (60 per group).	411
2,4-Diaminophenol dihydrochloride, 137-09-7.	PHOT	R. Irwin 919-541-3340	GAV	RM	R: 0, 12.5, 25, M: 0, 19, 38 MG/KG/60 per group.	401
4,4'-Diamino-2,2'-Stilbenedisulfonic acid, 81-11-8.	DYE	K. Abdo 919-541-7819	FEED	RM	R: 0, 12500, 25000, M: 0, 6250, 12500 PPM/60 per group.	
Ethylene Glycol, 107-21-1	TEXL	S. Eutis 919-541-3231	FEED	M	MM: 0, .625, 1.25, 2.5%, FM: 0, 1.25, 2.5, 5.0%/50 per group.	
Furan, 110-00-9	INTR	R. Irwin 919-541-3340	GAV	RM	R: 0, 2, 4, 8, M: 0, 5, 15 MG/KG/50 per group.	402
Mercuric Chloride, 7487-94-7	WOOD	K. Abdo 919-541-7819	GAV	RM	R: 0, 2.5, 5, M: 0, 5, 10 MG/KG/60 per group.	408
Naphthalene, 91-20-3	INTR	K. Abdo 919-541-7819	INHAL	M	0, 10, 30, 30 PPM/50 per group	410
Quercetin, 117-39-5	PHAR	J. Dunnick 919-541-4811	FEED	R	Rats only: 0, 1000, 1000, 4000 PPM/50 per group.	409
Resorcinol, 108-46-3	PHAR	R. Irwin 919-541-3340	GAV	RM	MR&M: 0, 112, 225 FR: 0, 50, 100, 150 MG/KG/60 per group.	403
Short-Term Toxicity Studies:						
2-(4-Aminophenyl)-6-Methyl-7-Benzothiazole Sulfonic Acid.	INTR	J. Bucher 919-541-4532	FEED	RM	R&M: 0, .25, .5, 1.0, 2.0, 4.0%	
Black Newsprint Ink, EMTDP-75	DYE	J. Mahler 919-541-0770	SP	RM	R&M: Untreated controls & neat application with USP mineral oil, printing ink mineral oil, letter press ink, & offset ink.	
Tert-Butyl Perbenzoate, 614-45-9	PLAS	H. Matthews 919-541-3252	GAV	RM	0, 30, 60, 125, 250, 500 MG/KG	
Cupric Sulfate, 7758-99-8	ELEC	J. Roycroft 919-541-3627	FEED	RM	R: 0, 500, 1000, 2000, 4000, 8000 PPM M: 0, 1000, 2000, 4000, 8000, 16,000 PPM (10/S/S).	
5,6-Dichloro-2-Benzothiazolamine, 24072-75-1.	INTR	J. Bucher 919-541-4532	FEED	RM	R: 0.0, 0.15, 0.38, 0.96, 2.4, 6.0, M: 0, 0.075, 0.15, 0.38, 0.96, 2.4 MG/G.	
Diethanolamine, 111-42-2	TEXL	R. Melnick 919-541-4142	SP	RM	R&M: 0, 37.5, 75, 300, 600 MG/ML	
Diethanolamine 111-42-2	TEXL	R. Melnick 919-541-4142	WATER	RM	MR: 0, .32, .63, 1.25, 2.5, 5.0MG/ML FR: 0, .16, .32, .63, 1.25, 2.5MG/ML Mice: 0, .63, 1.25, 2.5, 5.0, 10.0MG/ML.	
Dimethylformamide, 68-12-2	SOLV	D. Lynch 919-541-8213	INHAL	RM	R&M: 0, 50, 100, 200, 400, 800 PPM	
Formic acid, 64-18-6	FUME	M. Thompson 919-541-0651	INHAL	RM	R&M: 0, 8, 16, 32, 64, 128 PPM/10/group	
Glyphosate, 1071-83-6	HERB	P. Chan 919-541-7561	FEED	RM	R&M: 0, 3125, 6250, 12500, 25000, 50000PPM/10 per group.	
1,6-Hexanediamine, Dihydrochloride, 6055-52-3.	INTR	J. French 919-541-7790	INHAL	RM	R&M: 0, 1.6, 5, 16, 50, 160 MG/M3	
6-Methoxy-2-Benzothiazolamine, 1747-60-0.	INTR	J. Bucher 919-541-4532	FEED	RM	0, .25, 4.0 MG/GM	
4-(6-Methyl-2-Benzothiazolyl)-Benzenamine, 92-36-4.	INTR	J. Bucher 919-541-4532	FEED	RM	R: 0, .00625, .0125, .025, .05, .1%, M: 0, .0125, .025, .05, .1, .2%.	
Methyl Ethyl Ketone Peroxide, 1338-23-4.	PLAS	E. Zeiger 919-541-4482	SP	RM	R&M: 0, 0.3, 1, 3, 10, 30%	
3-Methyl-6-Methoxy-2-Amino-Benzothiazolium Chloride.	INTR	J. Bucher 919-541-4532	FEED	RM	R&M: 0, 0.25, 0.5, 1.0, 2.0, 4.0 MG/G	

NTP TOXICOLOGY AND CARCINOGENESIS STUDIES CHEMICALS PROJECTED FOR PEER REVIEW—Continued

Chemical Name/CAS No.	Use	Study scientist	Route	Species	Exposure levels	NTP TR No.
Chemicals Tentatively Scheduled for Peer Review—June, 1991						
Long-Term Studies:						
Coumarin, 91-64-5	PHAR	J. Dunnick 919-541-4811	GAV	RM	R: 0, 25, 50, 100; M: 0, 50, 100, 200 MG/KG/60 & 70 per group respectively.	
2,3-Dibromo-1-Propanol, 96-13-9	FLAM	K. Abdo 919-541-7819	SP	RM	R: 0, 188, 375, M: 0, 88, 177 MG/KG/50 per group.	400
3,4-Dihydrocoumarin, 119-84-6	FOOD	J. Dunnick 919-541-4811	GAV	RM	R: 0, 150, 300, 600, M: 0, 200, 400, 800 MG/KG/50 per group.	
Diphenylhydantoin (Phenytoin), 57-41-0.	PHAR	R. Chhabra 919-541-3386	FEED	RM	R: 0, 240, 800, 2400, MM: 0, 30, 100, 300, FM: 0, 60, 200, 600 PPM/50 per group.	404
HC Yellow 4, 52551-67-4	DYE	F. Kari 919-541-2926	FEED	RM	MR: 0, 0.25, 0.5%, FR&M: 0, 0.5, 1.0%/70 per group.	
P-Nitroaniline, 100-01-6	DYE	R. Irwin 919-541-3340	GAV	M	0, 3, 30, 100 MG/KG/50 per group	
O-Nitroanisole, 91-23-6	PHAR	R. Irwin 919-541-3340	FEED	RM	R: 0, 222, 666, 2000, M: 0, 666, 2000, 6000 PPM/50 per group.	
P-Nitrophenol, 100-02-7	PEST	R. Irwin 919-541-3340	SP	M	0, 40, 80, 175 MG/KG/60 per group	
Pentachloroanisole, 1825-21-4	PEST	R. Irwin 919-541-3340	GAV	RM	MR: 0, 10, 20, 40, FR&M: 0, 20, 40 MG/KG.	
Polybrominated Biphenyl Mixture (Firemaster FF-1), 67774-32-7.	FLAM	R. Chhabra 919-541-3386	FEED	RM	0, 1, 3, 10, 30 PPM/50 per group	398
Polysorbate 80 (Glycol), 9005-65-6	PHAR	K. Abdo 919-541-7819	FEED	RM	0, 2.5, 5.0%/20 per group	
Talc, 14807-96-6	COSM	T. Goehl 919-541-7961	INHAL	RM	0, 6, 18 MG OF TALC/M3 of atmosphere	
Triamterene, 396-01-0	PHAR	J. Dunnick 919-541-4811	FEED	RM	R: 0, 150, 300, 600, M: 0, 100, 200, 400 PPM Restart mice: 0, 400 PPM/50 per group.	
Short-Term Toxicity Studies:						
Ethylene Glycol Monobutyl Ether (EGMBE), 111-76-2.	SOLV	J. Dunnick 919-541-4811	WATER	RM	Core study: R&M: 0, 750, 1500, 3000, 4500, 6000 PPM/10 per group. Stop study: R: 0, 1500, 3000, 6000 PPM/30 per group.	
Ethylene Glycol Monoethyl Ether (EGMEE), 110-80-5.	SOLV	J. Dunnick 919-541-4811	WATER	RM	Core study: R: 0, 1250, 2500, 5000, 10000, 20000, M: 0, 2500, 5000, 10000, 20000, 40000 PPM/10 per group. Stop study: R: 0, 5000, 10000, 20000 PPM/30 per group.	
Ethylene Glycol Monomethyl Ether (EGMME), 109-86-4.	COSM	J. Dunnick 919-541-4811	WATER	RM	Core study: R: 0, 750, 1500, 3000, 4500, 6000, M: 0, 2000, 4000, 6000, 8000, 10000 PPM/10 per group. Stop study doses: R: 0, 1500, 3000, 6000 PPM/30 per group.	
2-Hydroxy-4-Methoxybenzophenone, 131-57-7.	PHAR	H. Matthews 919-541-3252	FEED	RM	R&M: 0, 3125, 6250, 12500, 25000, 50000 PPM.	
2-Hydroxy-4-Methoxybenzophenone, 131-57-7.	PHAR	H. Matthews 919-541-3252	SP	RM	R: 0, 12.5, 25, 50, 100, 200; M: 0, 22.75, 45.5, 91, 182, 364 MG/KG.	
Methyleugenol, 93-15-2	FOOD	D. Bristol 919-541-2756	GAV	RM	0, 10, 30, 100, 300, 1000 MG/KG plus Sham gevage group.	
Riddelliine, 23246-96-0	PHAR	P. Chan 919-541-7561	GAV	RM	R&M: 0, 0.33, 1.0, 3.3, 10.0, 25.0 MG/KG	
Sodium Cyanide, 143-33-9	FUME	R. Irwin 919-541-3340	WATER	RM	R&M: 0, 3, 10, 30, 100, 300 PPM 10 per group.	
Sodium Selenate, 13410-01-0	PEST	K. Abdo 919-541-7819	WATER	RM	3.75, 7.5, 15, 30, 60 PPM	
Sodium Selenite, 10102-18-8	FEED	K. Abdo 919-541-7819	WATER	RM	0, 2, 4, 8, 16, 32 PPM 10 per group	
Tetrachlorophthalic Anhydride, 117-08-8.	FLAM	F. Kari 919-541-2926	GAV	RM	0, 94, 187, 375, 750, 1500 MG/KG	
Chemicals Tentatively Scheduled for Peer Review—October, 1991						
Long-term studies:						
1-Amino-2,4-Dibromoanthraquinone, 81-49-2.	DYE	J. Huff 919-541-3780	FEED	RM	R: 0, .2, .5, 1.0, 2.0, M: 0, 1.0, 2.0 %/50 per group.	
Barium Chloride Dihydrate, 10326-27-9.	DYE	J. Dunnick 919-541-4811	WATER	RM	0, 500, 1200, 2500 PPM	
Benzyl Acetate, 140-11-4	FOOD	K. Abdo 919-541-7819	FEED	RM	R: 0, 0.3, 0.6, 1.2%, M: 0, 0.033, 0.1, 0.3%/50 per group.	
O-Benzyl-P-Chlorophenol, 120-32-1	GERM	S. Eustis 919-541-3231	SP	M	Acetone control, DMBA/DMBA, DMBA/Acetone, DMBA/TPA, DMBA/BCP(1,10,30 MG/ML), TPA/TPA, BCP(100)/TPA, BCP/BCP, BCP(10)BCP(1,10,30).	
O-Benzyl-P-Chlorophenol, 120-32-1	GERM	S. Eustis 919-541-3231	GAV	RM	MR: 0, 30, 60, 120, FR: 0, 60, 120, 240, M: 0, 120, 240, 480 MG/KG/50 per group.	

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NTP Toxicology and Carcinogenesis Studies Chemicals Projected for Peer Review—Continued

Chemical Name/CAS No.	Use	Study scientist	Route	Species	Exposure levels	NTP TR No.
C.I. Direct Blue 218, 28407-37-6	DYE	K. Abdo 919-541-7819	FEED	RM	0, 1000, 3000, 10000 PPM/60 per group	
Diethyl Phthalate, 84-66-2	INTR	S. Eustis 919-541-3231	SP	RM	R: 0, 100, 300 M: 0, 7.5, 15, 30 UL/100 UL solution /50 per group.	
Diethyl Phthalate, 84-66-2	INTR	S. Eustis 919-541-3231	SP	M	100 UL (promotor) neat chemical	
Dimethyl Phthalate, 131-11-3	PLAS	S. Eustis 919-541-3231	SP	M	100 UL (promotor) neat chemical on uninitiated and DMBA initiated skin.	
Manganese Sulfate Monohydrate, 10034-96-5.	DYE	J. Dunnick 919-541-4811	FEED	RM	0, 1500, 5000, 15000 PPM/50 per group	
Methylene Chloride, 75-09-2	SOLV	G. Boorman 919-541-3440	GAV	R	Male rats only 0, 2.5, 5, 10 ML/KG/50 per group (corn oil), methylene chloride is same at all corn oil doses (500 MG/KG). Testing the interaction of MC on corn oil.	
Promethazine Hydrochloride, 58-33-3	PHAR	S. Eustis 919-541-3231	GAV	RM	R: 0, 8.3, 16.6, 33.3, FM: 0, 3.75, 7.5, 15.0, MM: 0, 11.25, 22.5, 45.0 MG/KG.	
1,2,3-Trichloropropane, 96-18-4	PNT	L. Burka 919-541-4667	GAV	RM	R: 0, 3, 10, 30, M: 0, 6, 20, 60 MG/KG	
Turmeric, Oleoresin (Curcumin), 8024-37-1.	FOOD	S. Eustis 919-541-3231	FEED	RM	0, .2, 1.0, 5.0%	
Chemicals Tentatively Scheduled for Peer Review—February, 1992						
Long-Term Studies:						
1,3-Butadiene, 106-99-0	RUBR	R. Melnick 919-541-4142	INHAL	M	0, 6.25, 20, 62.5, 200, 625 PPM/50 per group.	
Tert-Butyl Alcohol, 75-65-0	PHAR	R. Maronpot 919-541-4861	WATER	RM	R: 0, 0.125, 0.25, 0.5%(M). 0, 0.25, 0.5, 1.0%(F). M: 0, 0.5, 1.0, 2.0% (M&F)/50 per group.	
Hexachlorocyclopentadiene, 77-47-4	PEST	K. Abado 919-541-7819	INHAL	RM	R: 0, .01, .05, .2PPM M: 0, .01, .05, .2, .5PPM/50 per group.	
INIT/PROM Comparative mouse study (DMBA/TPA/BPO/MNNG) INIT/PROM.	PHAR	W. Eastin 919-541-7941	SP	MM	DMBA/Acetone (50, 25, 2.5UG), DMBA 2.5, TPA 5UG, BPO 20MG, DMBA/TPA (2.5, 25, 50UG/5UG), DMBA/BPO (2.5, 25UG/20MG) and MNNG/Acetone (1000, 500, 100UG), MMNG 100UG, TPA 5UG, BPO 20MG, MNNG/BPO (100, 500, 1000UG/20MG), MNNG/TPA (100, 1000UG/5UG).	
INIT/PROM Comparative mouse study (DMBA/TPA/BPO/MNNG) INIT/PROM.	PHAR	W. Eastin 919-541-7941	SP	MM	DMBA/ACETONE (25, 2.5, .25UG), DMBA 2.5, TPA 5 UG, BPD 20MG, DMBA/TPA (.25, 2.5, 25/5UG), DMBA/BPO (2.5, 25UG/20MG) AND MMNG/ACETONE (1000, 500, 100UG), MNNG 100UG,TPA 5UG/BPO 20MG, MNNG/BPO (100, 500, 1000UG/20MG), MNNG/TPA (1000, 1000UG/5UG).	
INIT/PROM Comparative mouse study (DMBA/TPA/BPO/MNNG) INIT/PROM.	PHAR	W. Eastin 919-541-7941	SP	MM	DMBA/ACETONE 25, 2.5, .25UG): DMBA 2.5:TPA 1UG:BPO 20MG: DMBA/TPA (.25, 2.5, 25/1UG): DMBA/BPO (2.5, 25UG/20MG) AND MNNG/ACETONE (1000, 500, 100UG): MNNG 100UG:TPA 5UG:BPO 20MG: MNNG/BPO (100, 500, 1000 UG/20MG).	
4,4-Thiobis (6-Tert-Butyl-M-Cresol), 96-69-5.	RUBR	S. Eustis 919-541-3231	FEED	RM	R: 0, .05, .1, .25, M: 0, .025, .05, .1%	
Tricresyl Phosphate, 1330-78-5	PLAS	R. Irwin 919-541-3340	FEED	RM	R: 0, 75, 150, 300, 600, M: 0, 60, 125, 250 PPM/50 per group.	
Chemicals Tentatively Scheduled for Peer Review—June, 1992						
Long-Term Studies:						
Acetonitrile, 75-05-8	SOLV	J. Roycroft 919-541-3627	INHAL	RM	R: 0, 100, 200, 400 M: 0, 50, 100, 200 PPM/50 per group.	
Corn Oil, 8001-30-7	FOOD	G. Boorman 919-541-3440	GAV	R	0, 2.5, 5, 10 ML Corn oil/KG for 103 weeks./50 per group.	
Isobutyl Nitrite, 542-56-3	INTR	K. Abdo 919-541-7819	INHAL	RM	R&M: 0, 37, 75, 150 PPM	
Methylphenidate Hydrochloride, 298-59-9.	PHAR	J. Dunnick 919-541-4811	FEED	RM	R: 0, 100, 500, 1000 PPM. M: 0, 60, 250, 500 PPM/50 per group.	
Nickel (II) Oxide, 1313-99-1	INTR	W. Eastin 919-541-7941	INHAL	RM	R:0, .62, 1.25, 2.5 M: 0, 1.25, 2.5, 5.MG/M3/50 per group.	
Nickel Sulfate Hexahydrate, 10101-97-0.	INTR	W. Eastin 919-541-7941	INHAL	RM	R: 0, 0.125, 0.25, 0.5 M: 0, .25, .5, 1.0 MG/M3 /50 per group.	
Nickel Subsulfide, 12035-72-2	ENVH	W. Eastin 919-541-7941	INHAL	RM	R: 0, 0.075, 0.15 M: 0, 0.6, 1.2 MG/M3 / 50 per group.	
P-Nitrobenzoic Acid, 62-23-7	INTR	K. Abdo 919-541-7819	FEED	RM	0, 1250, 2500, 5000 PPM /60 per group	

NTP Toxicology and Carcinogenesis Studies Chemicals Projected for Peer Review—Continued

Chemical Name/CAS No.	Use	Study scientist	Route	Species	Exposure levels	NTP TR No.
Safflower Oil, 8001-23-8	FOOD	G. Boorman 919-541-3440	GAV	R	0, 2.5, 5, 10 ML/KG/50 per group	
Scopolamine Hydrobromide, 114-49-8.	PHAR	J. Roycroft 919-541-3627	GAV	RM	R&M: 0, 1, 5, 25 MG/KG /50 & 70 per group respectively. Diet restriction mice: 0.25 MG/KG.	
Tetrafluoroethylene, 116-14-3	FOOD	J. Roycroft 919-541-3627	INHAL	RM	M&FR: 0, 312, 625, 1250 MR: 0, 156, 312, 625 PPM /50 per group.	
1-Trans-Delta-9-Tetrahydrocannabinol, 1972-08-3.	PHAR	J. Dunnick 919-541-4811	GAV	RM	R: 0, 12.5, 25, 50; M: 0, 125, 250, 500 MG/KG /50 per group.	
Tricaprylin, 538-23-8	FOOD	G. Boorman 919-541-3440	GAV	R	0, 2.5, 5, 10 ML/KG/50 per group	
Triethanolamine	DTRG	J. Roycroft 919-541-3627	SP	RM	MR: 0, 32, 63, 125; FR: 0, 63, 125, 250; M: 0, 100, 300, 1000 MG/KG/60 per group.	
Chemicals Tentatively Scheduled for Peer Review—October, 1992						
Long-Term Studies:						
Benzethonium Chloride, 121-54-0	GERM	W. Eastin 919-541-7941	SP	RM	R&M: 0, 0.15, 0.5, 1.5/MG/KG/50/group	
2,2-BIS(Bromomethyl)-1,3-Propanediol, 3296-90-0.	FLAM	R. Irwin 919-541-3340	FEED	RM	R: 0, 2500, 5000, 10,000 PPM M: 0, 362, 625, 1250 PPM.	
T-Butylehydroquinone, 1948-33-0	FOOD	K. Abdo 919-541-7819	FEED	RM	R & M: 0, 0.125, 0.25, 0.5% in feed	
Codeine, 76-57-3	PHAR	D. Walters 919-541-3355	FEED	RM	R: 0, 400, 800, 1600; M: 0, 750, 3000, 6000 PPM/60/group.	
P-Cresidine, 120-71-8	DYE	R. Tennant 919-541-4141	FEED	MM	0, 2500, 5000 PPM.	
D & C Yellow No. 11, 8003-22-3	DYE	W. Eastin 919-541-7941	FEED	R	0, 0.05, 0.17, 0.5%	
1,2-Dihydro-2,2,4-Trimethylquinoline (Monomer), 147-47-7.	RUBR	J. Dunnick 919-541-4811	SP	RM	R: 36, 60, 100; M: 3.6, 6, 10 MG/KG/DAY; R: 60, 100 MG/KG/3-5X/WK; M: 6, 10 MG/KG/3-5X/WK.	
Nitromethane, 75-52-5	FUEL	J. Roycroft 919-541-3627	INHAL	RM	R: 0, 94, 188, 375, 750; M: 0, 188, 375, 750 PPM/50/group.	
Ozone, 10028-15-6	IND	G. Boorman 919-541-3440	INHAL	RM	0, 0.12, 0.5 & 1.0 PPM (50/S/S). 103 week study.	
Ozone, 10028-15-6	IND	G. Boorman 919-541-3440	INHAL	RM	R&M: 0, 0.5, & 1.0 PPM (50/S/S). 130 week study.	
Ozone/NNK 10028-15-6	TBCO	G. Boorman 919-541-3440	INHAL	R	MR Only: 0, 0.5 PPM ozone with 0, 0.1, 1.0 MG/KG NNK BY S.C. injection (20 weeks only).	
Reserpine 50-55-5	PHAR	R. Tennant 919-541-4141	FEED	MM	MTD and ½ MTD	
Salicylazosulfapyridine 599-79-1	PHAR	F. Kari 919-541-2926	GAV	RM	R: 84, 168, 337.5; M: 625, 1350, 2700 MG/KG/50 per group.	
Tetrahydrofuran 109-99-9	SOLV	J. Roycroft 919-541-3627	INHAL	RM	0, 200, 600, 1800 PPMD/(50/S/S)	

Abbreviations used:
USE Primary Use Category: COSM Cosmetics, Perfumes, Fragrances, Hair Preparations. DTRG Detergents and Cleansers. DYE As or in Dyes, Inks, and Pigments. ELEC In Electrical and/or Dielectric Systems. ENVH Environmental (Air/Water) Pollutants. FEED As or in Animal Feed or Feed Products. FLAM Flame Retradants. FOOD, Beverages, or Additives. FUEL As or in Fuel or oil Products. FUME Fumigants. GERM Germicides, Disinfectants, Antiseptics. HERB Herbicide(s). IND Industrial Uses. INTR Chemical Intermediate or Catalyst. LABC Unspecified Chemcial Uses not Fitting into SOLV, INTR, or REAG categories. PEST Pesticides. General or Unclassified. PHAR Pharmaceuticals or Intermediates. PHOT Photography or related purposes. PLAS As or in Plastics. PNT Paint Ingredient. REAG Laboratory Reagent. RUBR Rubber Chemical. SOLV Vehicles and Solvents. TBCO Tobacco and Tobacco Products. TEXL In Manufacture of Textiles. WOOD In Wood Industry.
ROUTE Route of Administration: FEED Oral in Feed. GAV Oral, Gavage. INHAL Inhalation. IP/IJ Intraperitoneal Injection. SP Skin Paint. WATER Oral with Water.
SPEC Species: R = Rats. M = Mice.

[FR Doc. 90-26385 Filed 11-7-90; 8:45 am]
BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Carcinogenesis Studies of Trichloroethylene

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on carcinogenesis studies of trichloroethylene (TCE), an industrial solvent used for vapor degreasing and cold cleaning of fabricated metal parts. Carcinogenesis studies of epichlorohydrin-free trichloroethylene were conducted by administering the test chemical in corn oil by gavage to groups of 50 male and 50 female F344/N rats and 50 B6C3F1 mice of each sex for 103 weeks. Dose levels were 500 and 1,000 mg/kg for rats and 1,000 mg/kg for mice.

Under the conditions of these studies, epichlorohydrin-free trichloroethylene caused renal tubular-cell neoplasms in male F344/N rats, produced toxic nephrosis in both sexes, and shortened the survival time of males. This experiment in male F344/N rats was considered to be inadequate to evaluate the presence or absence of a carcinogenic response to trichloroethylene. For female F344/N rats receiving trichloroethylene containing no epichlorohydrin, there was no evidence of carcinogenicity. Trichloroethylene (without epichlorohydrin) was carcinogenic for B6C3F1 mice, causing increased incidences of hepatocellular carcinomas in males and females and hepatocellular adenomas in females.

Copies of Carcinogenesis Studies of Trichloroethylene (Without Epichlorohydrin) in F344/N Rats and B6C3F1 Mice (Gavage Studies) (TR 243) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: October 25, 1990.

David G. Hoel,

Acting Director, National Toxicology Program.

[FR Doc. 90-26434 Filed 11-7-90; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Blackfeet Irrigation Project; Proposed Increase in Operation and Maintenance Rates

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Public notice.

PURPOSE: Increase to the Blackfeet irrigation project operation and maintenance rates.

SUMMARY: The Bureau of Indian Affairs is proposing to increase the operation and maitenance rate of the Blackfeet Irrigation Project from $7.75 to $8.00 per assessable acre. Congressional Cost of Living and operation cost have increased in 1990 and are anticipated to increase in 1991.

The projects annual operation and maintenance charges are based on the estimated normal operating cost of the project for one Fiscal Year. Copies of the proposed 1991 budget may be acquired from the Superintendent of the Blackfeet Agency, Bureau of Indian Affairs, Browning, Montana 59417. A self addressed manila envelop with postage must be included when making your request.

The due date for all operation and maintenance charges will be May 1 of each calendar year.

Interest and/or penalty fees will be assessed on all (Trust, and Fee assessed lands) delinquent operation and maintenance charges as prescribed in the 42 Bureau of Indian Affairs Manual and the Code of Federal Regulations, Chapter 4, Part 102. Government agencies, such as Federal, State and Tribal Governments are exempted from interest and/or penalty fees.

This notice will be published and posted at the following locations:

U.S. Post Offices

Browning, Mt. 59417
Cut Bank, Mt. 59427
Valier, Mt. 59486

Bureau of Indian Affairs

Blackfeet Agency, Browning, Mt. 59417

Newspaper

Glacier Reporter, Browning, Mt. 59417
Pioneer Press, Cut Bank, Mt. 59427

COMMENTS: All comments concerning the proposed 1991 operating and maintenance charges for the Blackfeet irrigation project must be in writing and addressed to the Superintendent of the Blackfeet Agency, Blackfeet Agency, Browning, Montana 59417 before the close of business on December 12, 1989.

APPEAL PROCESS: Chapter 25, part 2 of the Code of Federal Regulations outlines the appeal process for this administrative action. Appeals must be received by the Billings Area Director, Bureau of Indian Affairs, 316 North 26th St., Billings, Montana 59101 via the Superintendent of the Blackfeet Agency, before the close of business on December 12, 1989.

SUPPLEMENTARY INFORMATION: This notice is issued pursuant to the Code of Federal Regulations, chapter 25, part 171 under the authority delegated to the Area Director, by the Assistant Secretary of Indian Affairs and the Deputy Assistant Secretary of the Interior (Departmental Manual, chapter 3, part 230, (3.1 & 3.2)).

Richard Whitesell,

Billings Area Director.

[FR Doc. 90-26424 Filed 11-7-90; 8:45 am]

BILLINGS CODE 4310-02-M

Bureau of Land Management

[ES-970-00-4120-14-2410; KYES 41395]

Notice of Federal and State Competitive Coal Lease Offering by Sealed Bid; Kentucky Ridge State Forest, Bell County, Kentucky

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal sale.

SUMMARY: Notice is hereby given that as a result of an application filed by Cairnes Coal Company, Inc., Middlesboro, Kentucky (KYES-41395) for certain coal resources in the Kentucky Ridge State Forest, Bell County, Kentucky, these coal resources will be offered for competitive leasing by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1974 (61 Stat. 913, 30 U.S.C. 351-359), as amended. The Federal Government owns 75 percent of the coal reserves and the Commonwealth of Kentucky owns 25 percent. The applicant has satisfactorily demonstrated under the emergency leasing regulation, 43 CFR 3425.1-4, and the regulations of the Commonwealth of Kentucky that if the coal deposits are not leased, they will be bypassed in the reasonably foreseeable future.

DATE AND ADDRESS: The sale will be held at 2:30 p.m., December 13, 1990 in the Capital Plaza Hotel, 405 Wilkinson Boulevard, Frankfort, Kentucky 40601. Bids may be submitted to the Bureau of Land Management (BLM), Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304 on or before 4 p.m., December 12, 1990. The bids should be sent by certified mail, return receipt. Sealed bids may be hand delivered at the sale location on December 13, 1990. BLM personnel will be present to accept bids in the sale room (Kentucky Ballroom No. 2) between 2-2:30 p.m. only. Any bids received after 2:30 p.m., December 13, 1990 will not be considered.

SUPPLEMENTARY INFORMATION: Bidders are requested to submit one bid for 100 percent of the minerals for the tract. The tract will be leased to the qualified bidder of the highest cash amount, provided that the high bid for the tract equals or exceeds the fair market value (FMV) of the tract as determined by the officer after the sale. The Department has established a minimum bid of $100 per acre for the tract. The minimum bid is not to be considered as representing the amout for which the tract may actually be leased, since FMV will be determined in a separate postsale analysis. If identical sealed high bids are received, the tying high bidders will be asked to submit follow-up sealed bids until a high bid is received. All tie breaking bids must be submitted within 15 minutes following the authorized officer's announcement at the sale that identical high bids have been received. The successful qualified bidder for the tract will be awarded two leases; one for 75 percent of the tract's mineral interest from the Bureau of Land Management and one for 25 percent of the tract's mineral interest from the Commonwealth of Kentucky.

Coal Tract To Be Offered

The coal resources to be offered consists of all recoverable reserves in the following tract:

TRACT-1101-A (Metes and Bounds), Kentucky Ridge State Forest, Bell County, Kentucky

Containing 980 acres more or less.

There are three Coal seams: Highnite, Poplar Lick and Buckeye Springs.

The weighted coal average for the quality of the coal on the tract is as follows:

1. 4,335.500 tons of recoverable coal
2. 11,450 BTU's per pound
3. 21.5 Ash
4. 1.7 Moisture
5. 1.16 Sulphur

Rental and Royalty

Any lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof per year, and a royalty payable to the United States of 8 percent of the value of the coal shall be mined by underground methods. The value of the coal will be determined in accordance with 43 CFR 3485.2.

Notice of Availability

Bidding instructions and bidder qualifications are included in the Detailed Statement and Lease Sale. Copies of the Statement and of the proposed coal lease is available at the Bureau of Land Management, Eastern States Office and the Jackson District Office, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206, (601) 977-5422. Case file documents are also available for public inspection at the Eastern States Office. For further information contact Ms. Ida V. Doup at (703) 461-1460.

Robert J. Bainbridge,

Acting State Director.

[FR Doc. 90-26526 Filed 11-7-90; 8:45 am]

BILLING CODE 4310-GJ-M

[ID-943-00-4212-13; IDI-26365]

Order Providing for Opening of Public Land; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: This order opens lands received in a private exchange to the land, mining, and mineral leasing laws.

EFFECTIVE DATE: December 6, 1990.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1720.

1. In an exchange made under the provisions of section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been reconveyed to the United States:

Boise Meridian

T. 5S., R. 3E.,
Sec. 12, NE¼NE¼.
T. 5S., R. 4E.,
Sec. 9, E½SE¼.

The area described contains 120.00 acres in Elmore County.

2. At 9 a.m. on December 6, 1990, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on December 6, 1990, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on December 6, 1990, the lands described in paragraph 1 will be opened to location and entry under the United States mining laws and to applications and offers under the mineral leasing laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: October 29, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-26437 Filed 11-7-90; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-01-4212-13; IDI-27085]

Order Providing for Opening of Public Land; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: This order opens lands received in a private exchange to the land, mining, and mineral leasing laws.

EFFECTIVE DATE: December 6, 1990.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1720.

1. In an exchange made under the provisions of Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been reconveyed to the United States:

Boise Meridian

T. 9 N., R. 17 E.,
Sec. 27, Parcels A and C.

The area described contains 7.34 acres in Custer County.

2. At 9 a.m. on December 6, 1990, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on December 6, 1990, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on December 6, 1990, the lands described in paragraph 1 will be opened to location and entry under the United States mining laws and to applications and offers under the mineral leasing laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriations, including atempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: October 29, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-26438 Filed 11-7-90; 8:45 am]

BILLING CODE 4310-GG-M

[AZ-20-00-4212-13; AZA-24408]

Arizona; Exchange of Public and Private Lands in Maricopa, Yavapai and Yuma Counties

November 2, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and the Olympic Land Pleasant General Partnership. The United States conveyed 160 acres in Maricopy County and Olympic Lake Pleasant General Partnership transferred 1,085 acres in Yavapai and Yuma Counties.

FOR FURTHER INFORMATION CONTACT: Mary Jo Yoas, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 640-5534.

SUPPLEMENTARY INFORMATION: On August 23, 1990, the Bureau of Land Management transferred the following described land by Patent No. 02–90–0026, under the exchange provisions of the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

T. 6 N., R. 2.,
Sec. 10, E½SW¼,W½SE¼.

The area described contains 160 acres in Maricopa County.

In exchange the surface of the following described land was transferred to the United States:

Gila and Salt River Meridian, Arizona

T. 9 N., R. 2 W.,
Sec. 2, S½NW¼,N½SW¼;
Sec. 3, E½SE¼,S½SE¼SE¼NE¼.
T. 6 S., R. 11 W.,
Sec. 10, SW¼,N½SE¼,SW¼SE¼
Sec. 23, S½NE¼, NW¼, SW¼;
Sec. 26, NW¼.

The areas described aggregate 1,085 in Yavapai and Yuma Counties.

The purpose of this notice is to inform the public and interested State and local government officials of this exchange of public and private land.

The land transferred to the United States in this exchange will be administered by the Bureau of Land Management.

Mary Jo Yoas,

Chief, Branch of Lands Operations.

[FR Doc. 90–28440 Filed 11–7–90; 8:45 am]

BILLING CODE 4310–32–M

[AZ–921–00–4212–13; AZA–22775]

Arizona Exchange of Public and Private Lands in Mohave County

November 2, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and Fred M. Jessop. The United States conveyed 165.87 acres and Fred M. Jessop transferred 361.20 acres, all in Mohave County.

FOR FURTHER INFORMATION CONTACT: John Gaudio, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 640–5534.

SUPPLEMENTARY INFORMATION: On September 17, 1990, the Bureau of Land Management conveyed the following described land by Deed No. AZ–90–002, under the exchange provisions of the Federal Land Policy and Management Act of October 21, 1976:

Gila and Salt River Meridian, Arizona

T. 42 N., R. 6 W.,
Sec. 32, lots 3 and 4, W½E½NE¼NW¼ SE¼, W½E½NW¼SE¼, W½NW¼ SE¼, W½SE¼SE¼NW¼SE¼, N½ NE¼SW¼, N½S½NE¼SW¼, SW¼ SW¼NE¼SW¼, W½SE¼SW¼NE¼ SW¼, E½SW¼SE¼NE¼SW¼, SE¼ SE¼NE¼SW¼, NW¼SW¼.

The area described contains 165.87 acres in Mohave County.

In exchange, the surface in the following described land was transferred to the United States:

Gila and Salt River Meridian, Arizona

T. 40 N., R. 6 W.,
Sec. 17, S½.
T. 41 N., R. 6 W.,
Sec. 5, lot 1.

The areas described aggregate 361.20 acres in Mohave County.

The purpose of this notice is to inform the public and interested State and local government officials of this exchange of public and private land.

The surface of the land transferred to the United States will be administered by the Bureau of Land Management. The mineral estate was already in Federal ownership, open to the operation of the mining and mineral leasing laws, and presently remains so.

Mary Jo Yoas,

Chief, Branch of Lands Operations.

[FR Doc. 90–26441 Filed 11–7–90; 8:45 am]

BILLING CODE 4310–32–M

[CACA 26721]

Realty Action; Modoc County, CA; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: CACA 26721; Correction of notice of realty action, exchange of public lands in Modoc County, California.

SUMMARY: The legal description of the public lands found suitable for exchange, as published in the **Federal Register** on October 25, 1990 is hereby corrected as follows:.

In T.44N., R.14E., Mt. Diablo Meridian, California, the public lands in Section 32 are the N½2SW¼, the W½SE¼, and the SE¼SE¼.

These lands are within the Susanville District, Bureau of Land Management.

Robert J. Sherve,

Acting District Manager.

[FR Doc. 90–26642 Filed 11–7–90; 8:45 am]

BILLING CODE 4310–40–M

[ID–943–01–4212–13; IDI–27085]

Issuance of Land Exchange Conveyance Document; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Exhange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to Stanley L. Heiner and Geraldine M. Heiner, of Salt Lake City, Utah, 84117, for the following described land under section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian

T. 9 N., R. 17 E.,
Sec. 27, lot 2.

Comprising 6.47 acres of public land.

In exchange for these lands, the United States acquired the following described lands:

Boise Meridian

T. 9 N., R. 17 E.,
Sec. 27, Parcels A and C.

Comprising 7.34 acres of private land.

The purpose of the exchange was to acquire non-federal land which has high public value for a trailhead to the White Cloud area and fee title to an access road. The public interest was well served through completion of this exchange.

The values of the federal land and the non-federal land in the exchange were each appraised at $4,550.

Dated: September 25, 1990.

John Davis,

Deputy State Director for Operations.

[FR Doc. 90–26443 Filed 11–7–90; 8:45 am]

BILLING CODE 4310–GG–M

[MT–060–01–4212–02–50% MT–060–01–4333–02–50%]

Realty Action; Resource Management Plan Amendment Montana

AGENCY: Bureau of Land Management—Lewistown District, Interior.

ACTION: Notice is hereby given that the West HiLine Resource Management Plan will be amended by the Havre Resource Area, Havre, Montana.

(1) The Bureau of Land Management proposes exchanging public land with Jim and Norma Wood. This proposed exchange involves only surface estate. The public and private lands are located in Chouteau County.

(2) The Bureau of Land Management proposes selling public land to the Hill County Disposal Board. This proposed sale involves only surface estate located in Blaine County. The proposed sale tract meets criteria 3 of section 203 of the Federal Land Policy and Management Act.

(Summary 1) The public will gain private lands adjacent to other public lands and consolidate wildlife habitat for upland game birds and mule deer.

(Summary 2) Blaine County will use the tract to establish controlled access to the adjacent sanitary landfill on county land.

Disposal of these lands was not analyzed in the "West HiLine Resource Management Plan (RMP)". Disposal of public lands with relatively low public value will help meet the management goals for the area where; (1) the public will gain private land and; (2) Blaine County will control access to their sanitary landfill. The Havre Resource Area, Lewistown District, Bureau of Land Management will prepare an environmental assessment to analyze the environmental impacts of disposal of these tracts.

The following public lands will be analyzed by the exchange disposal criteria contained in the RMP.

Principal Meridian Montana

(1) T. 25 N., R. 9 E., Section 11, SE¼NW¼;
(2) T. 32 N., R. 17 E., Section 1, Lot 1.

DATES: Comments and recommendations will be received on or before December 10, 1990. Interested parties may request a copy of the environmental assessment fron the BLM, Havre Resource Area, Drawer 911, Havre, MT 59501 on or after December 12, 1990. Comments should be submitted to the Bureau of Land Management, Havre Resource Area, Drawer 911, Havre, MT 595901 on or before January 12, 1990.

FOR COMMENTS AND FURTHER INFORMATION CONTACT: Bureau of Land Management, Havre Resource Area, Drawer 911, Havre, MT 59501.

SUPPLEMENTARY INFORMATION: The exchange and sale tracts must meet the exchange/disposal and Federal Land Policy and Management Act criteria as presented in the "West HiLine Resource Management Plan," approved September 1988, before they can be added to the RMP sale or exchange tables.

Dated: November 2, 1990.

Wayne Zinne,

District Manager.

[FR Doc. 90–26439 Filed 11–7–90; 8:45 am]

BILLING CODE 4310–DN–M

[ID–942–01–4730–12]

Idaho: Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., November 2, 1990.

The plat representing the dependent resurvey of portions of the Fourth Standard Parallel North through Ranges 23 and 24 East and west boundary, T. 18 N., R. 24 E., a portion of the east boundary and subdivisional lines, and the subdivision of section 1, T. 17 N., R. 23 E., Boise Meridian, Idaho Group No. 771, was accepted October 19, 1990.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: November 2, 1990.

Gary T. Oviatt,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 90–2644 Filed 11–7–90; 8:45 am]

BILLING CODE 4310–GG–M

[ID–943–00–4214–11; IDI–2377]

Proposed Continuation of Withdrawal, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Army, Corps of Engineers, proposes that the withdrawal of 7.17 acres for the Lower Granite Lock and Dam Project on the Snake River be continued for an additional 85 years. The land is still being used for the purpose for which it was withdrawn. The land would remain closed to surface entry and mining, but has been and would remain open to mineral leasing.

DATES: Comments should be received on or before February 6, 1991.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1720.

The U.S. Department of the Army, Corps of Engineers, proposes that the existing land withdrawal made by Public Land Order No. 4680 be continued for a period of 85 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The land is described as follows:

Boise Meridian

T. 35 N., R. 6 W.,
Sec. 12, unsurveyed island opposite lot 1.

The area described contains 7.17 acres in Nez Perce County.

The withdrawal is essential to fulfill the authorized requirements of this multiple-use civil works project, a man-made pool operated for navigation, hydropower, irrigation, recreation, fish and wildlife, and other public uses and benefits. The withdrawal closed the land to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: October 29, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90–26445 Filed 11–7–90; 8:45 am]

BILLING CODE 4310–GG–M

[ID–943–00–4214–11; IDI–27277, IDI–27278, IDI–27852]

Proposed Continuation of Withdrawals, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Bureau of Reclamation, Department of the Interior, proposes that the withdrawal of 37.32 acres for the Acequia, Rupert, and Heyburn townsites in Minidoka County be continued for an additional 16 years. The lands are still being used for the purposes for which they were withdrawn. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

DATES: Comments should be received on or before February 6, 1991.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1720.

The U.S. Bureau of Reclamation proposes that the existing land withdrawals made by Presidential Proclamation 25 and two Secretarial Orders each dated June 21, 1906, be continued for a period of 16 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

IDI–27277 (Proclamation 25)

Acequia Townsite

T. 9 S., R. 24 E.,
Sec. 1, United States Reserves—west side of Block 36, Main North Side Canal, and A Canal.

Rupert Townsite

T. 9 S., R. 24 E.,
Sec. 20, Public Reserve described on Sheet 6 of Rupert Townsite Plat;
Sec. 29, by metes and bounds.

Heyburn Townsite

T. 10 S., R. 23 E.,
Sec. 15, United States Reserve described on Sheets 5, 6, and 11 of Heyburn Townsite Plat.

IDI–27278 (SO 6/21/06)

Rupert Townsite

T. 9 S., R. 24 E.,
Sec. 20, Public Reserve Areas described on Sheets 3 and 6 of Rupert Townsite Plat;
Sec. 29, by metes and bounds.

IDI–27652 (SO 8/21/06)

Heyburn Townsite

T. 10 S., R. 23 E.,
Sec. 15, United States Reserve described on Sheet 6 of Heyburn Townsite Plat.

The areas described aggregate 37.32 acres in Minidoka County.

The withdrawals are essential for protection of substantial capital improvements and to provide for control, operation, and maintenance of the Minidoka Reclamation Project. The withdrawals closed the lands to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the lands is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Dated: October 28, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90–26446 Filed 11–7–90; 8:45 am]

BILLING CODE 4310–GG–M

Bureau of Mines

Meeting of the Advisory Committee on Mining and Mineral Resources Research

The Advisory Committee on Mining and Mineral Resources Research will meet from 8 a.m. to 5 p.m. (or completion of business) on Tuesday, December 11, 1990, in the Connor Room, University Park Hotel, Salt Lake City, Utah. The proposed agenda is:

1. Welcome and introductions.
2. Approval of the minutes of the meeting of September 12, 1990
3. Review of 1990 legislation and outlook for 1991
4. Status of Committee initiatives and 1990 Update to the National Plan
5. Approval of 1990 grants
6. Review and approval of the Interim Report on the Mineral Industry Waste Treatment and Recovery Generic Mineral Technology Center
7. Review of the Interim Report on Pyrometallurgy Generic Mineral Technology
8. Review of the Comminution Generic Mineral Technology Center and consideration of the report of the review
9. Discussion of the National Materials Advisory Board's report on "Competitiveness of the Minerals and Metals Industry"
10. New business.

This meeting is open to the public with seating for visitors on a first come, first served basis. Written statements concerning agenda subjects and the operation of the mineral institutes program are welcome.

Visitors having written statements to put before the Committee or who wish to address the Committee should inform Dr. Ronald A. Munson, Chief, Office of Mineral Institutes, Bureau of Mines, Mail Stop 1020, 2401 E Street NW., Washington, DC 20241, phone (202) 634–1328, FAX (202) 634–2208, BITNET MININSTS@GWUVM, no later than noon, Friday, December 7, 1990.

Dated: November 2, 1990.

T.S. Ary,

Director.

[FR Doc. 90–26359 Filed 11–7–90; 8:45 am]

BILLING CODE 4310–53–M

Bureau of Reclamation

Central Valley Project California; Realty Action Competitive Sale of Federal Land

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described tract of land has been identified for disposal under the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374), at no less than the appraised fair market value. The Bureau of Reclamation will accept bids on the land described below and will reject any bids for less than $188,000, the appraised value.

DATE: January 16, 1991.

FOR FURTHER INFORMATION CONTACT: Bill Grangood, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630; telephone (916) 988–1707.

SUPPLEMENTARY INFORMATION: The property is described as a tract of land in the Rancho de los Americanos being a portion of Tract One as described in the Grant Deed recorded in Book 69–10–21 at Page 25, and a portion of Tract One as described in the Grant Deed recorded in Book 69–05–02 at Page 753, and a portion of Parcel 3 (Unit 12) as described in Schedule "A" of the Judgement recorded July 3, 1952, in Book 2247 at page 437, all Official Records of Sacramento County, CA, containing an area of 2.35 acres, more or less.

The land will be offered for sale through the competitive bidding process. A sealed bid sale will be held at the Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA on January 16, 1991, at which time the sealed bids will be opened. Sealed bids will be accepted at the Folsom Office until close of business on January 15, 1991. Reclamation may accept or reject any and all offers, or withdraw any land or interest in land for sale if, in the opinion of the Regional Director, consummation of the sale would not be fully consistent with the Act of February 2, 1911 (36 Stat 895, 43 U.S.C. 374), or other applicable laws. Should the land remain unsold, it may be reoffered for sale at a later date as determined by the Regional Director In order to promote full and free competition, the bid forms required for this sale contain a statement that the purchase price has been determined independently by the bidder; this statement must accompany each sealed bid.

The sale of the land is consistent with the Bureau of Reclamation land use planning, and it was determined that the public interest would best be served by offering this land for sale.

Resource clearances consistent with the National Environmental Policy Act requirements have been completed and approved. A Categorical Exclusion Checklist is available for public review at the Folsom office.

The quitclaim deed issued for the land sold will be subject to easements or rights-of-way existing or of record in favor of the public or third parties.

For a period of 60 days from the date of this notice, interested parties may submit comments to the Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825. Any adverse comments will be evaluated by the Regional Director who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the Regional Director, this Realty Action will become the final determination of the Department of the Interior.

Dated: October 30, 1990.

Neil W. Schild,

Acting Regional Director, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 90–26425 Filed 11–7–90; 8:45 am]

BILLING CODE 4310–09–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–317]

Commission to Review Initial Determination of No Violation and Issuance of Commission Opinion

In the Matter of Certain Internal Mixing Devices and Components Thereof.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in its entirety an initial determination (ID) issued by the presiding administrative law judge (ALJ) terminating the investigation in the above-captioned investigation. The Commission has determined to issue its own opinion affirming the holding of the ALJ terminating the investigation. The Commission has also determined not to request further briefing at the present time.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Scott Andersen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington DC 20436, telephone 202–252–1092.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On October 3, 1990, the presiding ALJ issued an ID terminating the investigation on the basis, *inter alia*, of arbitration clauses in licensing agreements entered into by the parties. Petitions for review of the ID were filed by the complainant Farrel Corporation, respondents Pomini S.p.A. and Pomini Inc., and the Commission investigative attorneys.

By order of the Commission.

Issued: November 2, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–26435 Filed 11–7–90; 8:45 am]

BILLING CODE 7020–02–M

Ranitidine Hydrochloride: The Potential Impact on Domestic Competition in the Antiulcer Drug Market of a Temporary Duty Suspension on Imports

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and request for comments.

EFFECTIVE DATE: October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth R. Nesbitt (202–252–1355), Energy and Chemicals Division, Office of Industries, U.S. International Trade Commission, Washington, DC 20436.

SUMMARY: Following receipt on October 16, 1990, of a request from the Committee on Finance of the U.S. Senate, the Commission instituted investigation No. 332–300 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide information pertaining to the potential impact on the domestic competition in the antiulcer duty market of suspending temporarily the duty on U.S. imports of ranitidine hydrochloride.

In its request, the Committee stated that H.R. 1594, as passed by the Senate, provided for the suspension of the existing tariff on imports of ranitidine hydrochloride (provided for in subheading 2932.19.50 of the Harmonized Tariff Schedule). The Committee said the conference agreement on the Customs and Trade Act of 1990 (Pub. L. 101–382), which considered the provision, stated that the House conferees were unable to accept the provision because of strong opposition from domestic interests and the Administration. The Committee said that the conferees agreed, as part of the conference agreement, to request an ITC study of domestic competition in the antiulcer drug market to determine the potential impact of the provision. The Committee said that the House conferees also agreed to hold public hearings on this issue and that, pursuant to this commitment, the Subcommittee on Trade of the House Committee on Ways and Means held a hearing on September 24, 1990.

The Committee request that the Commission submit its report by January 18, 1991, and that the Commission provide opportunity for public comments.

WRITTEN SUBMISSION: Interested persons are invited to submit written statements concerning the investigation. Written submissions should be received by 5 p.m. on December 14, 1990, to be considered by the Commission for the report. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons.

All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: October 31, 1990.
Kenneth R. Mason,
Secretary.
[FR Doc. 90-26352 Filed 11-7-90; 8:45 am]
BILLING CODE 7020-02-M

United States-Canada Free-Trade Agreement: Probable Economic Effect on U.S. Industries and Consumers of Immediate Elimination of U.S. Tariffs on Certain Articles from Canada (Second Annual Report)

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on October 15, 1990, of a request from the U.S. Trade Representative (USTR) pursuant to authority delegated by the President, the Commission instituted investigation No. 332-299 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to advise the President, with respect to each dutiable article listed in Annex I of the USTR's notice published in the Federal Register of October 5, 1990 (55 FR 40964), of its judgment as to the probable economic effect of the immediate elimination of the U.S. tariff, under the United States-Canada Free-Trade Agreement, on domestic industries producing like or directly competitive articles, and on consumers.

USTR asked that the Commission provide its advice not later than 90 days after the Commission received the request, or in this case by January 14, 1991.

EFFECTIVE DATE: October 29, 1990.

FOR FURTHER INFORMATION CONTACT: The Project Leader, Kate Bishop (202-252-1494), General Manufactures Division, Office of Industries, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. For information on legal aspects of the investigation contact William Gearhart of the Commission's Office of the General Counsel (202-252-1091). The media should contact Lisbeth Godley, Acting Director, Office of Public Affairs (202-252-1819). For information on a product basis, contact the appropriate member of the Commission's Office of Industries, as follows:

(1) Agricultural products, Mr. Fred Warren (202-252-1311)
(2) Textiles and apparel, Ms. Mary Elizabeth Enfield (202-252-1455)
(3) Chemical products, Mr. Larry Johnson (202-252-1351).
(4) Minerals and metals, Mr. Vincent DeSapio (202-252-1435)
(5) Machinery and equipment, Mr. William Greene (202-252-1405)
(6) General manufactures, Mr. Carl Seastrum (202-252-1493)
(7) Services and technology, Mr. John Kitzmiller (202-252-1387)

Hearing-impaired persons can obtain information on this study by contacting our TDD terminal on (202-252-1810).

Background

The United States-Canada Free-Trade Agreement (CFTA), which entered into force on January 1, 1989, provides that all products of Canada imported into the United States and all products of the United States imported into Canada shall be free of duty by January 1, 1998. In the United States, it was approved and implemented by the United States-Canada Free-Trade Agreement Implementation Act of 1988.

Article 401(5) of the CFTA provides that at the request of either government, the two governments are to undertake consultation to consider agreeing to accelerate the elimination of the duties on specific products in the schedule of each government. Section 201(b) of the CFTA Implementation Act grants the President, subject to certain requirements, the authority to proclaim any such agreed acceleration of the elimination of a U.S. duty. As required by section 103(a)(1)(B) of the CFTA Implementation Act, the USTR requested that the Commission provide the probable economic effect advice.

Public Hearing

A public hearing in connection with the investigation will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on December 3, 1990, and continuing, as required, on December 4 through 7. All persons will have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear not later than November 21, 1990. Prehearing briefs (original and 14 copies) should also be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, not later than 5 p.m., November 21, 1990. Any post-hearing briefs must be filed by December 12, 1990.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on December 12, 1990. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

By order of the Commission.
Issued: October 31, 1990.
Kenneth R. Mason,
Secretary.
[FR Doc. 90-26353 Filed 11-7-90; 8:45 am]
BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31747]

Southern Railway Company—Trackage Rights Exemption—Louisville and Jefferson County Riverport Authority

The Louisville and Jefferson County Riverport Authority (Riverport) has agreed to grant local trackage rights in the Riverport Complex, near Louisville, KY, to Southern Railway Company (Southern) as follows: (a) The co-exclusive right with Paducah and Louisville Railway, Inc., to operate over the Lead Track, between valuation stations 7+59.50 and 34+96.00 (approximately 3,496 feet); and (b) the non-exclusive right to operate over (1) the Joint Portion Track, between valuation stations 34.96 and 86+93 (approximately 5,196 feet), (2) the Onsite Line, between valuation stations 86.93 and 50+61.23 (approximately 5,061 feet), and (3) the Port Rail Trackage.[1]

The trackage rights were to become effective on October 26, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: F. Blair Wimbush, Norfolk Southern Corporation, 3 Commercial Place, Norfolk, VA 23510-2191.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: October 31, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.
Sidney L. Strickland, Jr.,
Secretary.
[FR Doc. 90-26450 Filed 11-7-90; 8:45 am]
BILLING CODE 7035-01-M

[1] These trackage rights will replace Southern's right to operate in the Riverport Complex under an agreement among Southern, Riverport, and Illinois Central Gulf Railroad, dated July 6, 1983. *See* Finance Docket No. 30273, *Illinois Central Gulf Railroad Company and Southern Railway Company—Construction Exemption—Jefferson County, KY* (not printed), served September 19, 1983.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Madison, IN

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 31, 1990, a proposed consent decree in *United States and the State of Indiana* v. *City of Madison, Indiana*, Civil Action No. 90-156-C, was lodged with the United States District Court for the Southern District of Indiana. The proposed consent decree concerns a complaint filed by the United States that alleged violations of section 301 of the Clean Water Act, 33 U.S.C. 1311, at the City of Madison's wastewater treatment plants. The complaint alleges that the City of Madison discharged pollutants into navigable waters in excess of the limitations in its National Pollutant Discharge Elimination System ("NPDES") permits, and bypassed secondary treatment at its facilities in violation of its NPDES permit. The complaint seeks injunctive relief to require the City of Madison to comply with its NPDES permit and to pay civil penalties for past violations.

The consent decree requires the City of Madison to undertake plant construction upgrades at its facilities in order to come into compliance with it's NPDES permits and the Clean Water Act. The City of Madison is also required to pay a civil penalty of $30,000 in settlement of the government's civil penalty claims.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and the State of Indiana* v. *City of Madison, Indiana*, D.J. Ref. 90-5-1-1-3352.

The proposed consent decree may be examined at the Region V Office of the United States Environmental Protection Agency, 230 S. Dearborn Street, Chicago, Illinois 60604. Copies of the consent decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street NW., suite 600, Washington, DC 20004, 202-347-7829. A copy of the proposed decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $6.25 (25 cents per page reproduction cost) payable to "Consent Decree Library." In requesting a copy, please refer to the referenced case name and the D.J. Ref. number.

Richard B. Stewart,
Assistant Attorney General, Environment and Natural Resources Division.
[FR Doc. 90-26426 Filed 11-7-90; 8:45 am]
BILLING CODE 4410-01-M

Drug Enforcement Administration

Reuben H. Dawson, M.D.; Denial of Application

On April 16, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Reuben H. Dawson, M.D. of 5000 Nannie H. Burroughs Avenue, NE., Washington, DC 20019, proposing to deny his application, executed on April 13, 1989, for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Dr. Dawson's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

The Order to Show Cause was sent to Dr. Dawson by registered mail. More than thirty days have passed since the Order to Show Cause was received by Dr. Dawson and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Reuben H. Dawson, M.D. is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that between September 5, 1980 and March 6, 1981, an undercover officer of the District of Columbia, Metropolitan Police Department, went to Dr. Dawson's office on approximately 22 separate occasions. On each occasion, the undercover officer received a prescription for Biphetamine, a Schedule II controlled substance, for no legitimate medical purpose. No medical examination was ever performed. On many occasions, Dr. Dawson would also issue the undercover officer prescriptions for Biphetamine in names of individuals whom Dr. Dawson had never seen. The officer would merely present Dr. Dawson with a note listing her name, as well as the fictitious names, the number of prescriptions and the amount of Biphetamine she wanted.

On December 17, 1982, a Federal grand jury in the United States District Court for the District of Columbia returned a 22 count indictment charging Dr. Dawson with the illegal distribution of a Schedule II controlled substance in violation of 21 U.S.C. 841(a)(1). On April 6, 1983, after entering a guilty plea, Dr. Dawson was convicted of one count of the indictment and was placed on probation for a period of three years. As a condition of probation, Dr. Dawson's District of Columbia medical license was revoked. Dr. Dawson presently possesses an unrestricted license to practice medicine in the District of Columbia.

No evidence of explanation or mitigating circumstances has been offered on behalf of Dr. Dawson. Based on the above, the Administrator concludes that Dr. Dawson's registration with the Drug Enforcement Administration would be inconsistent with the public interest.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application for registration, executed on April 13, 1989, by Reuben H. Dawson, M.D., be, and it hereby is, denied.

Dated: November 1, 1990.
Robert C. Bonner,
Administrator.
[FR Doc. 90-26403 Filed 11-7-90; 8:45 am]
BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (90-95)]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by December 10, 1990. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D.A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-0012), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (703) 271-5542.

Reports

Title: Aeronautics and Space Report.
OMB number: 2700-0012.
Type of request: Extension.
Frequency of report: On occasion.
Type of respondent: Businesses or other for profit, non-profit institutions, small businesses or organizations:
Number of respondents: 580.
Responses per respondent: 1.
Hours per response: 0.3.
Annual responses: 580.
Annual burden hours: 174.

Abstract-need/uses: NASA produces video tapes each month to report status of its programs and research underway. These tapes are mailed to TV stations throughout the country for use as public service programming or as news features. This "post-card" report is used to measure the effectiveness of the tapes and provides the date and time they were aired.

Dated: October 31, 1990.

D. A. Gerstner,

Director, IRM Policy Division.

[FR Doc. 90-26401 Filed 11-07-90; 8:45 am]

BILLING CODE 7510-01-M

[Notice (90-94)]

Advisory Committee on the Future of the U.S. Space Program; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Advisory Committee on the Future of the U.S. Space Program (hereafter referred to as the "Advisory Committee").

DATES: November 19, 1990, 1 p.m. to 7 p.m.; and November 20, 1990, 1 p.m. to 7 p.m.

ADDRESSES: The George Washington Room, Academic Center, George Washington University, 801 22nd Street NW., Washington, DC 20052.

FOR FURTHER INFORMATION CONTACT: Mr. James D. Bain, Code ADA-1, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2409.

SUPPLEMENTARY INFORMATION: The Vice President, in his capacity as head of the National Space Council, has determined that it is appropriate for the National Aeronautics and Space Administration to establish the Advisory Committee to look into the future of the U.S. space program. The Advisory Committee will report to the Vice President and the NASA Administrator on the future of the U.S. space program, to include various projects, objectives, and methods to implement those projects and objectives for the coming decades. The Advisory Committee is chaired by Mr. Norman R. Augustine and is composed of 12 members, selected from a cross section of qualified individuals with an extensive knowledge of space activities and broad technical and managerial expertise.

The meeting will be open to the public up to the seating capacity of the room, which is approximately 50 persons including Advisory Committee members and other participants. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Interested members of the public are encouraged to send written comments regarding the work of the Advisory Committee to Mr. Norman R. Augustine, Chairman and Chief Executive Officer, Martin Marietta Corporation, 6801 Rockledge Drive, Bethesda, MD 20817.

TYPE OF MEETING: Open.

Agenda

Monday, November 19, 1990
1 p.m.—Introductory remarks.
1:10 p.m.—Receive perspectives of national experts and review implications of selected studies on major space programs.
7 p.m.—Adjourn.

Tuesday, November 20, 1990
1 p.m.—Receive perspectives of national experts and review implications of selected studies on major space programs.
7 p.m.—Adjourn.

Dated: November 2, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90-26402 Filed 11-7-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Literature Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Literary Publishing Section) to the National Council on the Arts will be held on November 23, 1990 from 2 p.m.-5:30 p.m., November 29-30 from 9 a.m.-5:30 p.m. and December 1 from 9 a.m.-3 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 1 from 12 noon-3 p.m. The topics will be guideline review and policy discussion.

The remaining portions of this meeting on November 28 from 2 p.m.-5:30 p.m., November 29-30 from 9 a.m.-5:30 p.m. and December 1 from 9 a.m.-12 noon are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of October 19, 1990 these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-26427 Filed 11-07-90; 8:45 a.m]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Orchestras section) to the National Council on the Arts will be held on November 27, 1990 from 9 a.m.-6:30 p.m., November 28 from 9 a.m.-8:30 p.m., November 29 from 9 a.m.-10 p.m., November 30 from 9 a.m.-7 p.m. and December 1 from 9 a.m.-3:30 p.m. in room 716, M-09 and M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 1 from 1:30 p.m.-3:30 p.m. The topics will be policy discussion and guidelines review.

The remaining portions of this meeting on November 27 from 9 a.m.-6:30 p.m., November 28 from 9 a.m.-8:30 p.m., November 29 from 9 a.m.-10 p.m., November 30 from 9 a.m.-7 p.m. and December 1 from 9 a.m.-1:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of October 19, 1990, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-26428 Filed 11-7-90; 8:45 am]

BILLING CODE 7537-01-M

Opera-Musical Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (New American Works Section) to the National Council on the Arts will be held on November 27-30, 1990 from 9 a.m.-6 p.m. in room M-07 and M-09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public on November 27 from 9 a.m.-9:45 a.m. and November 30 from 10 a.m.-12 noon. The topics will be introductory remarks and guidelines and policy discussion.

The remaining portions of this meeting on November 27 from 9:45 a.m.-6 p.m., November 28-29 from 9 a.m.-6 p.m. and November 30 from 9 a.m.-10 a.m. and 12 noon-6 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of October 19, 1990, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-26429 Filed 11-7-90; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of each permit application

received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of a permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 10, 1990. The permit application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

Applicant 90–34

Mary A. Olson, Science Museum of Minnesota, 30 East Tenth Street, St. Paul, Minnesota 55101.

Activity for which permit requested

Taking. Import into USA. The applicant proposes to salvage dead specimens of seals on an opportunity basis. Specimens will be returned to the Science Museum of Minnesota for scientific study and educational display.

Location

Antarctica (various locations).

Dates

December 1990–October 1992.

Charles Myers,

Permit Officer.

[FR Doc. 90–26364 Filed 11–7–90; 8:45 am]

BILLING CODE 7555–01–M

BBS Task Force Looking to the 21st Century Public Hearing and Meeting

The National Science Foundation announces the following:

Name: Biological, Behavioral and Social Sciences Task Force Looking to the 21st Century.

Date and time: Public Hearing/November 29 and 30, 1990 9 a.m. to 5 p.m. each day. Task Force Meeting/December 1, 1990 9 a.m. to 4 p.m.

Place: Key Bridge Marriott, Arlington, Virginia.

Type of meeting: Open.

Contact person: Dr. Mary E. Clutter, Assistant Director, Biological, Behavioral and Social Sciences, (202) 357–9854, room 506, National Science Foundation, Washington, DC 20550.

Summary of minutes: May be obtained from the contact person.

Purpose of task force: To examine the organizational structure of BBS and to evaluate the adequacy and effectiveness of that structure to respond to new research opportunities and scientific challenges in the future.

Public hearing agenda: Professional societies and associations will present testimony related to the purpose of the task force. Requests from the general public to testify on the announced subject will be accepted at the start of each hearing day; some time will be allocated at the end of each hearing day for scheduling these requests.

Task force meeting agenda: Saturday, December 1, the task force will hold a meeting to synthesize findings from the hearing and to draft an outline of a final report.

Dated: November 5, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–26453 Filed 11–7–90; 8:45 am]

BILLING CODE 7555–01–M

Council for Continental Scientific Drilling; Meeting

The National Science Foundation announces the following:

Name: Council For Continental Scientific Drilling.

Date: November 27 and 28, 1990.

Time: 8:30 a.m. to 5 p.m. each day.

Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Contact person: Dr. Ian D. MacGregor, Acting Division Director, Division of Earth Sciences, Room 602, National Science Foundation, Washington, DC, (202) 257–7956; and Donald W. Klick, ICG/CSD Executive Secretary, 922 National Center, U.S. Geological Survey, Reston, VA 22092, (703) 648–6345.

Summary minutes: May be obtained from the Contact Person at the above address.

Purpose of meeting: To establish organizational structure, procedures, schedule, and other aspects for undertaking in overview of the U.S. Continental Scientific Drilling Program (CSDP) which is being coordinated by the Interagency Coordinating Group for Continental Scientific Drilling (ICG/CSD), and to become familiar with the current U.S. CSDP.

Agenda: Briefings on accomplishments, current activities, and future plans of the DOE, NSF, and USGS CSDP programs; discussions and determinations of organizational structure, procedures, schedule, and related matters for U.S. CSDP overview by the Council for CSD.

Dated: November 5, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–26452 Filed 11–7–90; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee to the Directorate for Education and Human Resources; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee to the Directorate for Education and Human Resources.

Date and time: Thursday, November 29, 1990, 9 a.m.–5 p.m. Friday, November 30, 1990, 9 a.m.–5 p.m.

Place: National Science Foundation, room 540, Washington, DC

Type of Meeting: Open.

Contact person: Dr. Peter E. Yankwich, Executive Secretary, Directorate for Education and Human Resources, National Science Foundation, Washington, DC 20550, (202) 357–7926.

Summary minutes: May be obtained from contact person listed above.

Purpose of committee: To provide advice and recommendations concerning NSF support for education and human resources.

Agenda: Review of FY 1991 Programs and Initiatives Review of FY 1992 Programs and Initiatives Strategic Planning for FY 1993 and Beyond.

Dated: November 5, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–26451 Filed 11–7–90; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Political Science, Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Political Science.

Date/time: November 28–29, 1990; 9 a.m. to 5 p.m. each day.

Place: National Science Foundation, 1800 G Street, NW., room 523, Washington DC 20550.

Type of meeting: Part Open—November 29, 10–11 p.m. Closed remainder.

Contact persons: Dr. William T.E. Mishler, Program Director, (202) 357–9406, Political Science, Division of Social and Economic National Science Foundation, Washington, DC 20550, room 336.

Purpose of meeting: To provide advice and recommendations concerning support for research in political science.

Agenda: Open—general discussion of trends and opportunities in political science. Closed portion—To review and evaluate research proposals.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemption (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: November 5, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–26454 Filed 11–7–90; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–352 and 50–353]

Philadelphia Electric Co.; Correction Notice

On October 17, 1990, the **Federal Register** published the Bi-weekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations. On page 42105, for the Limerick Generating Station, Units 1 and 2, (application dated October 11, 1989 and April 9, 1990), the Amendment Nos. read "146 and 9". The correct Amendment Nos. should have been "48 and 9".

Dated at Rockville, Maryland, this 31st day of October 1990.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–26404 Filed 11–7–90; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 17836; International Series Rel. No. 186; 812–7614]

The Chile Fund, Inc., et al.; Application

November 1, 1990.

AGENCY: Securities and Exhange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: The Chile Fund, Inc., The Indonesia Fund, Inc., The Latin America Investment Fund, Inc., and The Portugal Fund, Inc.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) and Rule 12d3–1.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting them to invest in equity and convertible debt securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter or investment adviser ("foreign securities companies") in accordance with the conditions of the proposed amendments to Rule 12d3–1.

FILING DATE: The application was filed on October 25, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 27, 1990, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o BEA Associates, Inc., One Citicorp Center, 153 E. 53rd Street, 58th Floor, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each applicant is a closed-end management investment company registered under the Act. BEA Associates, Inc. acts as investment adviser to each applicant. In addition, Salomon Brothers Asset Management, Inc. acts as co-investment adviser with BEA Associates, Inc. to the Latin America Investment Fund, Inc. Applicants request that any order issued on the application also apply to any other registered investment company or series thereof for which Bea Associates, Inc. or an affiliate thereof, or BEA Associates, a general partnership that will shortly succeed to the business of BEA Associates, Inc., or an affiliate thereof, acts as investment adviser or principal underwriter.

2. Applicants seek to be able to diversify their portfolios further by being permitted to invest in foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser.

3. Applicants seek relief from section 12(d)(3) of the Act and Rule 12d3–1 thereunder to invest in securities of foreign securities companies to the extent allowed in the proposed amendments to Rule 12d3–1. *See* Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989). Proposed amended Rule 12d3–1 would, among other things, facilitate the acquisition by applicants of equity securities issued by foreign securities companies. Applicants' proposed acquisitions of securities issued by foreign securities companies will satisfy each of the requirements of proposed amended Rule 12d3–1.

Applicants' Legal Conclusions

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule. Subparagraph (b)(4) of Rule 12d3–1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." Since the definition of "margin security" as it is applied to foreign issuers is generally much more restrictive than for securities traded in the United States markets, securities issued by many foreign securities firms would not meet this test. Accordingly, applicants seek an exemption from the "margin security" requirements of Rule 12d3–1.

2. Proposed amended Rule 12d3–1 provides that the "margin security"

requirement would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicants' Condition

Applicants agree to the following condition in connection with the relief requested:

Applicants will comply with the proposed amendments to Rule 12d3–1 (Investment Company Act Release No. 17096 (Aug. 3, 1989); 54 FR 33027 (Aug. 11, 1989)), as they are currently proposed, and as they may be reproposed, adopted, or amended.

For the commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-26361 Filed 11-7-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17837; 812-7982]

Bando McGlocklin Capital Corp.; Application

November 1, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Bando McGlocklin Capital Corporation ("Applicant").

RELEVANT 1940 ACT SECTIONS: Exemption requested under sections 6(c), 17(d), and 23(c)(3) of the Act and Rule 17d–1 thereunder from the provisions of section 17(d), 18(d) and 23 (a), (b), and (c).

SUMMARY OF APPLICATION: Applicant, a licensed small business investment company, seeks an order permitting it to offer its key employees deferred equity compensation in the form of stock options.

FILING DATE: The application was filed on August 24, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 26, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 13555 Bishops Court, Brookfield, Wisconsin 53005.

FOR FURTHER INFORMATION CONTACT: Kimberly Warren, Staff Attorney, at (202) 272–3028, or Max Berueffy, Branch Chief, at (202) 272–3016.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 738–1400).

Applicant's Representations

1. Applicant is a registered closed-end, diversified management investment company, licensed as a small business investment company ("SBIC") under the Small Business Investment Act of 1958. It has outstanding 2,044,253 shares of Common Stock quoted on NASDAQ. On September 13, 1990, Applicant filed a registration statement on Form N–5 pursuant to which it proposes to offer up to 1,380,000 shares in an underwritten public offering (the "Proposed Offering").

2. On July 25, 1990 and August 17, 1990, Applicant's Board of Directors approved its 1990 Incentive Stock Option Plan ("Plan") to induce key employees of Applicant to remain employed by the Applicant and to increase their incentive and personal interest in Applicant's welfare. The Plan provides for the grant of options to purchase shares of Applicant's Common Stock up to an amount equal to the sum of 25,000 shares plus 20% of the shares of Common Stock issued in the Proposed Offering. Only key employees of Applicant are eligible to receive options. The Plan provides that if an option granted under the Plan expires or is terminated unexercised, the shares of Common Stock covered will again be available for the grant of additional options under the Plan. Notwithstanding the foregoing, not more than 121,440 shares may be issued to one participant pursuant to the exercise of options granted under the Plan.

3. Applicant currently has four key employees, its three executive officers and its senior loan officer, who would be presently eligible to receive options. It is anticipated that the senior loan officer will be granted options to purchase 12,500 shares of Applicant's Common Stock and Applicant's three executive officers will be granted options in proportion to their current salaries in the aggregate amount of 20% of the shares to be issued in the Proposed Offering. The remaining options will be held in reserve for grants to junior loan officers upon their attaining key employee status.

4. Applicant's three executive officers are responsible for making Applicant's investment as well as for making all executive and operational decisions. Their performance directly affects Applicant's performance and the value of Applicant's Common Stock. Applicant's senior loan officer actively participates in the loan approval process but does not have loan approval authority. Thus, to a lesser extent, this employee's performance also directly affects the value of Applicant's Common Stock. It would be inconsistent with the purposes of the Plan to grant Applicant's other employees stock options since no matter how competently they performed their duties, their performance would probably not affect the value of the Applicant's Common Stock.

5. The Plan will be administered by the Compensation Committee of Applicant's Board of Directors. The Compensation Committee consists of three directors who are not "interested persons" of Applicant as defined in section 2(a)(19) of the Act. Members of the Committee are not eligible to receive options under the Plan.

6. All of the options to be granted pursuant to the Plan are intended to be incentive stock options within the meaning of section 422A of the Internal Revenue Code ("Code"), and as such, are subject to the following restrictions:

(a) The Plan must state the aggregate number of shares which may be issued pursuant to the exercise of options and the class of employees eligible to receive options and must further be approved by the shareholders.

(b) All options must be granted within 10 years of the date the Plan was adopted. Applicant anticipates that substantially all of the options will be granted upon receipt of the requested order.

(c) Options may not be exercised after the expiration of 10 years from the date the option is granted.

(d) The exercise price of the options may not be less that the fair market value of the underlying stock on the date of grant. Under the Plan, options granted on the date of the Proposed Offering will be granted at the public offering price. All other options will be granted at the last quoted sale price on the date of grant or if there is no sale on such date, the mean between the closing bid and asked quotations.

(e) An optionee may not transfer the options other than by will or the laws of descent and distribution. The options may be exercised during the lifetime of the optionee, only by the optionee.

(f) Options may not be granted to persons owning more than 10% of the voting power of the outstanding shares of Applicant's Common Stock at the time the option is granted.

(g) The aggregate fair market value (determined at the time the option is granted) of the stock with respect to which options are exercisable for the first time by an individual in any calendar year may not exceed $100,000. Moreover, the Plan provides for a ten year vesting schedule permitting only 10% of the options to be exercised in the calendar year subsequent to the date of grant and providing for proportional increases in subsequent years.

7. The Plan does not provide for the grant of stock appreciation rights. However, the Plan does permit the exercise price of an option to be paid in cash or by tendering previously acquired shares of stock, valued at the fair market value. In placing a fair market value on previously acquired shares of Applicant's Common Stock, Applicant will utilize the same standards as are used in determining the fair market value at the time of the grant of the option.

8. The Plan provides that options will terminate on the earlier of: The expiration date; termination of employment by the optionee or by the Applicant for cause; three months following termination of employment, without cause, other than by reason of death or disability; or one year following termination of employment by reason of death or disability as defined in section 22(e)(3) of the Code. If the employee ceases to be employed on a full-time basis by the Company, any option not exercised will be proportionately cancelled as determined by the Committee based on the number of hours actually worked by the employee.

9. The Compensation Committee may determine in its sole discretion that an adjustment in the number or kind of shares reserved for issuance pursuant to the Plan but not yet covered by options or of the stock subject to options is necessary, or an adjustment in the option price in each stock option agreement is necessary because of a change in the number or kind of outstanding shares of stock of the Applicant whether through reorganization, recapitalization, stock split-up, combination of shares, merger or consolidation, or any other change in the number or kind of outstanding shares of stock.

Applicant's Legal Analysis

1. Section 18(d) of the Act prohibits the issuance of stock options except those issued ratably to a class of security holders with an exercise period of up to 120 days or in exchange for warrants in connection with a reorganization. Applicant does not satisfy these requirements. In addition, absent an exemption, Applicant's stock option plan would be prohibited under section 23(a) of the Act, which generally prevents a registered closed-end investment company from issuing any of its securities for services. Furthermore, section 23(c) generally prohibits the purchase by a registered closed-end investment company of any securities of which it is the issuer. Thus, to the extent that payment for stock options with previously acquired shares of Applicant's Common Stock is considered to be a "purchase" by Applicant of its own securities, section 23(c) would prohbit the transaction.

2. Section 17(d) and Rule 17d–1 also prohibit an affiliated person of a registered investment company from participating in or effecting a transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the registered company is a participant absent an order from the SEC. Rule 17d–1 includes stock option plans in the definition of "joint enterprise or joint arrangement or profit sharing plan." Thus, these provisions may prohibit any stock option plan absent an order from the SEC.

3. Applicant is unable to rely on the existing SEC order permitting SBICs to issue stock options to their employees (Investment Company Act Release No. 6523 (May 14, 1971)) or on Rule 17d–1(d) under the Act because both specifically provide that the options granted must be "qualified stock options" under section 422 of the Code and must conform to the requirements of 13 CFR 805(b) adopted by the Small Business Administration. "Qualified stock options" were eliminated in 1976 and 13 CFR 805(b) was significantly amended (as well as renumbered 13 CFR 706(b)) in 1982. Thus, although the incentive stock options that will be issued under the Plan and that meet the requirements of section 422A of the Code are substantially the same as the earlier "qualified stock options", they have minor differences which are fully described in the application.

4. The SEC granted a prior order (Investment Company Act Release Nos. 15905 (August 3, 1987) (notice), 15956 (September 2, 1987) (order) ("1987 Order")) to permit Applicant to issue stock options under its 1987 Incentive Stock Option Plan ("1987 Plan"). The Plan is similar to the 1987 Plan with the following exceptions: (a) The maximum number of shares which may be issued pursuant to the Plan may be as high as 310,000 whereas the 1987 Plan Provided for the issuance of 150,000 shares; and (b) options under the Plan vest over a ten year period whereas options granted under the 1987 Plan vest over a four year period.

5. The limitations on the issuance of stock options under the Plan will to a large extent protect investors against dilution of their pro rata interests in Applicant. The Plan will not only be approved by Applicant's shareholders, but any options granted under the Plan will be approved by a majority of Applicant's directors who are not "interested persons" of Applicant and who cannot participate in the Plan. In addition, Applicant will conduct a review similar to that required by the order in Investment Company Act Release No. 14594 (June 21, 1985), as amended in Investment Company Act Release No. 15496 (December 23, 1986), if it subsequently grants options which have been reserved for future grants or which become available through the expiration or termination of previously granted options prior to their exercise. These protections are similar to those the SEC previously found consistent with the purposes and policies of the Act, and even greater than those that Congress imposed on stock options to be issued by business development companies in section 61(a)(3)(B) of the Small Business Investment Incentive Act of 1980.

6. The limited stock options granted under the Plan will offer no opportunity for a change in control of Applicant or quick sale at a profit, and will not be transferable. The existence and nature of stock options granted by Applicant will be fully disclosed in accordance with the standards or guidelines adopted by the Financial Accounting Standards Board for operating companies and the requirements of the SEC, and will be neither so extensive nor so complex as to make the financial statements of Applicant or management

remuneration more difficult to understand.

7. As an SBIC, all of Applicant's investments (other than investments in idle funds) must be made in small businesses, the securities of which will not be publicly traded. Moreover, all of Applicant's investments in small businesses consist of non-convertible secured loans. Under these circumstances, Applicant submits that it is difficult to conceive a scenario in which Applicant's portfolio investments could create a short-term artificial increase in Applicant's stock.

8. For the foregoing reasons, Applicant claims any adverse impact on investor interests by the Plan will be minimal, and will be more than outweighed by the benefits to investors that will result from permitting Applicant to compete for top quality personnel on a more equal footing with its competitors. Applicant competes primarily with banks and other entities which are not investment companies registered under the Act. These organizations are able to offer stock options to employees and have an advantage over Applicant in attracting and retaining highly qualified personnel. In order for Applicant to compete on a more equal basis with such organizations, it has to have personnel as competent as such organizations, and in order to attract and retain such personnel Applicant must be able to offer comparable compensation packages. Accordingly, Applicant believes that the application satisfies the conditions specified in section 6(c) of the Act, section 17(d) and Rule 17d–1 thereunder, and section 23(c)(3).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–26362 Filed 11–7–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 35–25186]

Filings

November 2, 1990.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 26, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy of the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

General Public Utilities Corp., et al. (70–7525)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and General Portfolios Corporation ("GPC"), Mellon Bank Center, Tenth and Market Streets, Wilmington, Delaware 19001, a wholly-owned subsidiary of GPU, have filed an application-declaration under sections 9(c)(3) and 12(b) of the Act and rule 45 thereunder.

GPU proposes to make a cash capital contribution of $10 million to GPC on or before December 31, 1990 for the proposed purchase by GPC of $10 million aggregate principal amount of 9.9% convertible subordinated debentures due 2005 ("Debentures") to be issued by California Energy Company, Inc. ("CE"). CE is a California corporation incorporated to explore and develop geothermal resources in California for electric power production. CE currently operates three qualifying facilities, within the meaning of the Public Utility Regulatory Policies Act of 1978, with approximately 240 MW of capacity.

The Debentures which GPC proposes to purchase will (1) Bear interest, payable semi-annually, at the rate of 9.9%, (2) be convertible into shares of CE common stock at a price equal to the lesser of 120% of the closing price of CE's common stock on the closing date or $10.00 per share, subject to adjustment for certain dilution events, provided, however, that the conversion price shall not be less than the average of the closing prices of CE's common stock for the period August 15, 1990 through November 15, 1990, and (3) be redeemable by CE beginning October 1, 1995 at 107% of their face value and at declining premiums thereafter until September 30, 2000 and at face value after September 30, 2000 until maturity.

American Electric Power Co., Inc. et al. (70–7776)

American Electric Power Company, Inc. ("AEP"), a registered holding company, AEP Generating Company ("Generating"), both located at 1 Riverside Plaza, Columbus, Ohio 43215, Appalachian Power Company ("Appalachian"), 40 Franklin Road, SW., Roanoke, Virginia 24011, Columbus Southern Power Company ("Columbus"), 215 North Front Street, Columbus, Ohio 43215, Indiana Michigan Power Company ("Indiana"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, Kanawha Valley Power Company ("Kanawha"), 301 Virginia Street East, Charleston, West Virginia 25327, Kentucky Power Company ("Kentucky"), 1701 Central Avenue, Ashland, Kentucky 41101, Kingsport Power Company ("Kingsport"), 40 Franklin Road, SW., Roanoke, Virginia 24011, Michigan Power Company ("Michigan"), P.O. Box 413, Three Rivers, Michigan 49093, Ohio Power Company ("Ohio"), 301 Cleveland Avenue, SW., Canton, Ohio 44701 and Wheeling Power Company ("Wheeling"), 51 Sixteenth Street, Wheeling, West Virginia 26003, subsidiaries of AEP, have filed an application-declaration under sections 6(a), 6(b), 7 and 12(b) of the Act and rules 45 and 50(a)(5) thereunder.

During the period from January 1, 1991 through December 31, 1993, AEP, Appalachian, Columbus, Indiana, Kentucky and Ohio propose to issue short-term notes to banks and to issue and sell commercial paper to dealers in commercial paper ("Commercial Paper") in aggregage principal amounts not to exceed $100 million, $200 million, $200 million, $200 million, $100 million and $200 million, respectively, outstanding at any one time. Generating, Kanawha, Kingport, Michigan and Wheeling propose to issue short-term notes to banks in aggregate principal amounts not to exceed $60 million, $10 million, $15 million, $15 million and $15 million, respectively, outstanding at any one time (all short-term notes proposed to be issued herein are herinafter collectively referred to as "Notes"). AEP, Appalachian, Columbus, Indiana, Kentucky and Ohio request that the proposed issuance and sale of Commercial Paper be excepted from the competitive bidding requirements of rule 50 pursuant to rule 50(a)(5).

Notes to be issued to banks will mature in not more than 270 days after the date of issuance or renewal, provided that no such Notes shall mature later than June 30, 1994. The Notes will be sold under various lines of credit with different terms. The total annual cost of borrowings under all such bank lines is estimated to be not greater than the effective rate for borrowings bearing interest at the prime commercial rate with compensating balances of up to 10% of the line of credit. The maximum effective annual interest cost will not exceed 125% of the prime commercial rate in effect from time-to-time.

The Commercial Paper will be in the form of promissory notes in denominations of not less than $50,000, and of varying maturities, with no maturity more than 270 days after the date of issue. The Commercial Paper will not be prepayable prior to maturity and will be sold directly to a dealer at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity.

In addition, AEP requests authorization from January 1, 1991 through December 31, 1993 to make cash capital contributions from time-to-time to provide equity capital of up to $40 million for Columbus, $10 million for Kentucky and up to $3 million each to Kingsport, Michigan and Wheeling.

The proceeds of the short-term debt will be used to pay the general obligations of the companies, including expenditures incurred in various construction projects and for other corporate purposes.

American Electric Power Co., Inc. (70–7777)

American Electric Power Company, Inc. ("AEP"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, and its service company subsidiary, American Electric Power Service Corporation ("Service"), 1 Riverside Plaza, Columbus, Ohio 43215, have filed a declaration under section 12(b) of the Act and Rule 45 thereunder.

The American Electric Power Company System Retirement Plan provides pensions for employees of associates of American, including Service. Service proposes to adopt an Excess Benefits Plan ("Excess Benefits Plan") and has entered into certain deferred compensation and employment agreements under which certain unfunded employee benefits are payable. Service anticipates adopting similar additional employee benefits in the future. In order to avoid constructive receipt of income for federal income tax purposes, such plans and agreements are not and will not be funded. For the purpose of providing greater assurance of payment of these unfunded benefits to the beneficiaries, AEP proposes to guarantee Service's obligation to pay any benefits under the Excess Benefits Plan.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–26458 Filed 11–7–90; 8:45 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Proposed New Routine Uses

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Proposed new routine uses for TVA–12, "Travel History Records—TVA."

SUMMARY: This publication gives notice, as required by the Privacy Act, of TVA's intention to establish new routine uses for the system of records entitled TVA–12, "Travel History Records—TVA." Details of the proposed new routine uses are described below. The full text of TVA–12 appears at 55 FR 34826, August 24, 1990.

DATES: Comments must be received by December 10, 1990.

ADDRESSES: Comments should be sent to Ronald E. Brewer, Privacy Act Officer, Tennessee Valley Authority, Edney Building 4W 06B, Chattanooga, Tennessee 37402–2801.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brewer, 615–751–2520.

TVA–12

SYSTEM NAME

Travel History Records—TVA.

CATEGORIES OF RECORDS IN THE SYSTEM

Travel advance requests, travel expense vouchers and supporting documentation, travel charge card program records and reports, and travel orders. Records supporting relocation expense claims also include Government Bills of Lading, real estate sales agreements and settlements, Federal Truth-In-Lending disclosure statements, lease agreements, receipts for loss of rental deposit, and relocation income tax allowance documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

5 U.S.C. 5701–5709, and related Federal travel regulations; Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

To respond to a request from a Member of Congress regarding the status of an employee, former employee, or applicant.

To TVA contractors and subcontractors engaged at TVA's direction who are providing support services to TVA's travel charge card program.

Louis S. Grande,

Vice President, Information Services.

[FR Doc. 90–26430 Filed 11–07–90; 8:45 am]

BILLING CODE 8120–03–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Flying Boat, Inc.

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 90–11–1, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Flying Boat, Inc., is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, room 6401, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than November 19, 1990.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2337.

Dated: November 2, 1990.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 90–26365 Filed 11–7–90; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Greater Rockford Airport, Rockford, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Greater Rockford Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) (hereinafter referred to as "the Act") and 14 CFR part 150 by the Greater Rockford Airport Authority. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Greater Rockford Airport were in compliance with applicable requirements effective March 23, 1990. The proposed noise compatibility program will be approved or disapproved on or before April 24, 1991.

EFFECTIVE DATE: The effective date of the FAA's start of its review of the associated noise compatibility program is October 26, 1990. The public comment period ends December 26, 1990.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL-611, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7538. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for the Greater Rockford Airport which will be approved or disapproved on or before April 24, 1991. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Greater Rockford Airport, effective on October 26, 1990. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatability program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before April 24, 1991.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, room 261, Des Plaines, Illinois 60018.

Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, room 260, Des Plaines, Illinois 60018.

Greater Rockford Regional Airport, 2 Airport Circle, Rockford, Illinois 61109.

Division of Aeronautics, Illinois Department of Transportation, Capital Airport, Springfield, Illinois 62706.

Questions may be directed to the individual named above under the headering, **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, October 26, 1990.

James H. Washington,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 90-26391 Filed 11-7-90; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket S-873]

Lykes Bros. Steamship Co., Inc.; Application for a Waiver To Permit Certain Foreign-Flag Operations

By application dated October 31, 1990, Lykes Bros. Steamship Co., Inc. (Lykes), requests a waiver of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended (Act). Without a waiver, the Act prevents the ownership or chartering of foreign flag vessels by contractors receiving operating-differential subsidy (ODS). Lykes seeks a waiver pursuant to § 804(b) for the duration of its Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB-451, due to special circumstances and good cause.

Granting of the waiver will permit Lykes to replace existing U.S.-flag subsidized vessels which are nearing the end of their subsidizable lives and to seize the opportunities for growth and diversification available to Lykes in light of current economic and defense realities. Should the waiver requested be granted, Lykes would contemplate operating up to ten multi-purpose, self-sustaining foreign-flag vessels in various U.S. trades to Africa, Australasia, the Middle East and South Asia, and South America.

Lykes contemplates the purchase or charter of six vessels in 1991 and four vessels in 1992. Lykes would not object to a conditional approval requiring Lykes to transfer vessels purchased under this application to U.S. flag subsidized service in the event that ODS Reform Legislation, essentially in the form of S. 2773, were to pass in 1991 and the vessels purchased by Lykes were found to be eligible for subsidy payments and the carriage of preference cargoes.

According to Lykes, if reform legislation were to pass in Calendar Year 1991 as provided for above, the 1992 authorities would lapse. Existing authorities approved under this application would otherwise be unaffected by passage of legislation.

Lykes claims that any vessels purchased by Lykes would be operated under the flag of a country which qualifies under the Maritime Administration's definition of Effective U.S. Control and Lykes will use its reasonable best efforts to charter vessels under the flag of such countries.

Lykes maintains that it has endeavored for many years, without success, to find opportunities to build economically viable, subsidy eligible vessels in the United States.

Furthermore, Lykes has actively pursued the acquisition of existing U.S.-flag, U.S.-built vessels to fulfill its operational requirements. While certain U.S.-built vessels have been acquired in recent years it appears that under current circumstances no such vessels are or will be available to satisfy Lykes' requirements.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on 11/21/90. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By Order of the Maritime Administrator.

Dated: November 5, 1990.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 90-26436 Filed 11-7-90; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Advisory Committee for the Preservation of the Treasury Building; Meeting

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10 of Public Law 92-463, this notice announces the date of the next meeting and the agenda for consideration by the Advisory Committee for the Preservation of the Treasury Building.

DATES: The next meeting of the Advisory Committee for the Preservation of the Treasury Building is set for November 19, 1990 at 2 p.m. in room 4125 of the Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC.

SUPPLEMENTARY INFORMATION: Agenda items for the November 19, 1990 meeting of the Advisory Committee for the Preservation of the Treasury Building will include:.

1. Welcome
2. Overview of Secretary Salmon P. Chase Suite restoration
3. Overview of President Andrew Johnson Suite restoration
4. Update and review of fundraising goals

PUBLIC PARTICIPATION: The meeting is open to the public. Owing to security procedures in place at the Treasury Building and limited conference space, it is necessary for anyone planning to attend the meeting to call in advance in order to be admitted to the building. Persons other than advisory committee members who plan to attend should contact Debbie Miller at 202-566-8409 no later than November 16, 1990 to be admitted to the meeting.

If you would like to have the committee consider a written statement, please call 202-566-8409 or write Debbie Miller, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Dated: November 1, 1990.

Linda M. Combs,

Assistant Secretary (Management).

[FR Doc. 90-26363 Filed 11-7-90; 8:45 am]

BILLING CODE 4810-25

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held November 14, 1990 in room 600, 301 4th Street SW., Washington, DC from 10:30 a.m. to 12 p.m.

The Commission will meet with Ms. Paula Dobriansky, Associate Director, Bureau of Programs, Mr. Greg Guroff, Chairman, Director's Task Force for Soviet Affairs and Mr. Rick Ruth, Executive Assistant to USIA Director Gelb and Vice Chairman, Director's Task Force for Soviet Affairs, and Ms. Gail Becker, Chief, Development and Production Division (Soviet Exhibits), for briefings and discussion of public diplomacy policy and programs.

Please call Gloria Kalamets, (202) 619-4468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: November 2, 1990.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 90-26376 Filed 11-7-90; 8:45 am]

BILLING CODE 8230-01-M

BEST COPY AVAILABLE

Sunshine Act Meetings

Federal Register
Vol. 55, No. 217
Thursday, November 8, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

* * * * *

DATE AND TIME: Wednesday, November 14, 1990, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes
Advisory Opinion:
1990-19—Gordon M. Strauss on behalf of the Suarez Corporation
1990-22—Lyn Utrecht on behalf of the Blue Cross and Blue Shield Association ("BCBSA")
Administrative Matters

* * * * *

DATE AND TIME: Wednesday, November 14, 1990, to convene after open meeting.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTRACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Delores Harris,
Administrative Assistant, Office of the Secretariat.
[FR Doc. 90-26620 Filed 11-6-90; 3:18 pm]
BILLING CODE 6715-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m. November 19, 1990.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, N.W., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the October 15, 1990, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Quarterly review of investment policy.
4. Executive compensation.

CONTRACT PESON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523-5660.

Date: November 5, 1990.

Francis X. Cavanaugh,
Executive Director, Federal Retirement Thrift Investment Board.
[FR Doc. 90-26532 Filed 11-6-90; 1:41 pm]
BILLING CODE 6760-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities Exchange Commission will hold the following meeting during the week of November 5, 1990.

A closed meeting will be held on Tuesday, November 6, 1990, at 2:00 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Lochner, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 6, 1990, at 2:30 p.m., will be:

Formal orders of investigation.
Chapter 11 proceeding.
Consideration of *amicus* participation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Ronald Mueller at (202) 272-3077.

Dated: November 5, 1990.

Jonathan G. Katz,
Secretary.
[FR Doc. 90-26581 Filed 11-6-90; 1:42 pm]
BILLING CODE 8010-01-M

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting

AGENCY: National Council on Disability.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the National Council on Disability. This notice also describes the functions of the National Council. Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (P.L. 94-409).

DATES:
November 26, 1990, 8:30 a.m. to 5:00 p.m.
November 27, 1990, 8:30 a.m. to 5:00 p.m.
November 28, 1990, 8:30 a.m. to 5:00 p.m.

LOCATION: Raddison Mark Plaza Hotel, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: National Council on Disability, 800 Independence Avenue, SW, Suite 814, Washington, D.C. 20591, (202) 267-3846, TDD: (202) 267-3232

The National Council on Disability is an independence federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Public Law No. 95-602 in 1978), the National Council was initially an advisory board within the Department of Education. In 1984, however, the National Council was transformed into an independent agency by the Rehabiliation Act Amendments of 1984 (Public Law 98-221).

The National Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting individuals with disabilities and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Diability and Rehabilitation Research (NIDRR). In addition, the National Council is mandated to provide guidance to the President's Committee on Employment of People With Disabilities.

The meeting of the National Council shall be open to the Public. The proposed agenda includes:

Report from Chairperson and Executive Committee

Update on NIDRR
Update on Prevention
Update on ADA
Committee Meetings/Committee Reports
Strategic planning
National Symposium: Writing Employment Policies for Persons with Disabilities
Unfinished Business
New Business
Announcements
Adjournment

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disabilit".

Signed at Washington, DC on November 5 1990.

Dr. Harold W. Snider,
Deputy Executive Director.
[FR Doc. 90-26525 Filed 11-5-90; 5:14 pm]
BILLING CODE 6820-MA

Corrections

Federal Register
Vol. 55, No. 217
Thursday, November 8, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

Statutory Interpretation Concerning Certain Hybrid Instruments

Correction

In notice document 90-8321 beginning on page 13582 in the issue of Wednesday, April 11, 1990, make the following corrections:

1. On page 13586, in the 3rd column, in the 35th and 39th lines, "independent" should read "dependent".

2. On page 13587, in the first column, in the ninth line, "independent" should read "dependent".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 522

Employment of Learners

Correction

In rule document 90-25991 beginning on page 46466 in the issue of Friday, November 2, 1990, make the following corrections:

1. On page 46466, in the second column, in the 7th line "increase" should read "increases".

§ 522.24 [Corrected]

2. On page 46467, in the first column, in § 522.24(c), in the fourth line and in § 522.24(d), in the last line "and" should read "an".

§ 522.35 [Corrected]

3. On the same page, in the same column, in § 522.35(a), in the fourth line "and" should read "an".

§ 522.43 [Corrected]

4. On the same page, in the second column, in § 522.43(a)(4), in the penultimate line "and" should read "an".

5. In § 522.43(a)(9), on the same page, in the third column, in the second line, "and" should read "an".

6. In § 522.43(d), on the same page, in the 19th line from the bottom of the paragraph "for" should read "forth".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 91, and 135

[Docket No. 25812; Amdt. Nos. 23-41, 91-220, 135-38]

RIN 2120-AC14

Small Airplane Airworthiness Review Program Amdt. No. 5

Correction

In rule document 90-25343 beginning on page 43306, in the issue of Friday, October 26, 1990, make the following corrections:

1. On page 43306, in the second column, in the 12th line, "CE-83-1" should read "CE-84-1".

2. On page 43307, in the first column, in the last paragraph, in the sixth line, "each" should read "such" and in the 11th line, "redue" should read "reduce".

3. On the same page, in the second column, in the third complete paragraph, in the third line, "and 15.1317, should read "and 25.1317".

4. On page 43308, in the first column, in the second complete paragraph, in the 10th line, "only" was misspelled, and in the 12th line, after "regulatory" insert "evaluation, this section also contains the regulatory".

5. In the next paragraph, in the first line "The" should read "This".

6. On the same page, in the second column, in the 11th and 14th lines "critically" should read "criticality".

§ 23.1309 [Corrected]

7. On page 43309, in the first column, in § 23.1309, paragraph (a)(2) should end with a period (.).

§ 23.1309 [Corrected]

8. On the same page, in the second column, in § 23.1309(b)(3), in the fourth line, "make" should read "take".

§ 23.1309 [Corrected]

9. On the same page, in the same column, in § 23.1309, paragraph (b)(4)(i), should end with a semicolon (;).

§ 23.1309 [Corrected]

10. On the same page, in the third column, in § 23.1309(d), in the first line, "determining" was misspelled.

§ 23.1311 [Corrected]

11. On page 43310, in the first column, in § 23.1311(b), in the second line, "§ 23.1301 (a)," should read "23.1303 (a),".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-199-AD; Amdt. 39-6781]

Airworthiness Directives; Airbus Industrie Model A320-231 Series Airplanes

Correction

In rule document 90-24780 beginning on page 42356, in the issue of Friday, October 19, 1990, make the following correction:

§ 39.13 [Corrected]

On page 42357, in the first column, in the eighth line from the bottom, "S999.0085/90," should read "ST/999.0085/90,".

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 553

[Docket No. 90-25; Notice 1]

RIN 2127-AD78

Reconsideration of Rules; Effect on Judicial Review

Correction

In proposed rule document 90-25755 beginning on page 45825 in the issue of Wednesday, October 31, 1990, in the third column, under **DATES**, in the 5th line "adopted" was misspelled, and in the last line, "November 30, 1990." should read "30 days after publication of that rule in the **Federal Register**.".

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DEPARTMENT OF VETERANS AFFAIRS

Advisory Commission on the Future Structure of Veterans Health Care; Meeting

Correction

In notice document 90-25526 appearing on page 43436 in the issue of Monday, October 29, 1990, make the following correction:

On page 43436, in the second column, under the heading of the document, in the fifth and sixth lines, "December 11 and 21, 1990." should read "December 11 and 12, 1990.".

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federal register

Thursday,
November 8, 1990

Part II

Department of the Interior

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as Indian Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as Indian Tribe; Meherrin Indian Tribe

October 22, 1990.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the

Meherrin Indian Tribe, c/o Patrick Riddick, P.O. Box 508, Winton, North Carolina 27986.

has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on August 2, 1990, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs' files. Such submissions will be provided to the petitioner upon receipt by the Bureau. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Mail Stop 2614–MIB, 1849 C Street NW., Washington, DC 20240, Phone: (202) 208–3592.

Patrick A. Hayes,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 90–26423 Filed 11–7–90; 8:45 am]

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federal register

Thursday
November 8, 1990

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 312, 314, and 320
Retention of Bioavailability and Bioequivalence Testing Samples; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 312, 414, and 320

[Docket No. 89N-0367]

Retention of Bioavailability and Bioequivalence Testing Samples

AGENCY: Food and Drug Administration.

ACTION: Interim rule; opportunity for public comment.

SUMMARY: The Food and Drug Administration (FDA) is issuing interim regulations to amend its current bioavailability/bioequivalence regulations to require the retention for a specified period of reserve samples of the drug products used to conduct bioavailability or bioequivalence studies of drug products, and when specifically requested, to release the reserve samples to FDA. The requirement applies to manufacturers who conduct in-house bioavailability and bioequivalence testing and to testing facilities who conduct such testing under contract for a drug manufacturer. This action is intended to help ensure bioequivalence between generic drugs and their brand-name counterparts and to help the agency investigate more fully instances of possible fraud in bioavailability and bioequivalence testing. FDA is issuing these regulations as an interim rule with opportunity for public comment.

DATES: Interim rule effective November 8, 1990; comments by January 7, 1991.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Watson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8038.

SUPPLEMENTARY INFORMATION:

I. Background

The approval and marketing of generic drug products have increased greatly since passage in 1984 of the Drug Price Competition and Patent Term Restoration Act. This new law facilitated the entry into the marketplace of generic versions of pioneer drugs first approved after 1962 whose patents had expired. This marked increase in the availability of generic drug products has led to controversy about equivalency between a generic drug product and its brand-name counterpart.

Approval of generic drug products is based in part on a comparison of the in vivo bioavailability of the generic drug product with the brand-name drug product. The manufacturer of the generic drug product must demonstrate bioequivalence through studies in humans showing that its product's rate and extent of absorption do not differ from those of the brand-name product that was initially approved. If such a demonstration is made, the generic and brand-name drug products can be expected to have the same therapeutic effect when administered to patients under the conditions specified in the labeling. If the drug products do not present a known or potential bioequivalence problem, and there is sufficient clinical experience with the drug, bioequivalence may be demonstrated by meeting an appropriate in vitro test (i.e., dissolution). In still other cases, the bioequivalence of a drug product may be self-evident, such as in a drug product that is a solution, but not a suspension, for oral or intravenous administration.

FDA publishes annually, with monthly updates, a listing entitled Approved Drug Products with Therapeutic Equivalence Evaluations (the list) (also commonly referred to as the "Orange Book"). The list, which is publicly available, contains approved prescription drug products, and for those drug products that are available from more than one manufacturer, FDA's evaluation as to their therapeutic equivalence. FDA evaluates as therapeutically equivalent only those drug products that have the same active ingredients, dosage forms, and strengths, and that the agency has determined to be bioequivalent.

Because of the controversy about the comparability of generic drug products and their brand-name counterparts, FDA sponsored a public bioequivalence hearing from September 29 to October 1, 1988. This hearing provided a forum for all interested persons to express their views on the scientific principles and procedures the agency uses to make a finding of bioequivalence between immediate release solid oral dosage forms.

A major concern expressed at the bioequivalence hearing was whether the current adverse drug reaction reporting system is capable of detecting therapeutic failures of drug products. The agency established a Task Force to evaluate the recommendations made at the hearing. In a report released on February 29, 1988 (53 FR 6036), the Task Force identified significant issues raised at the bioequivalence hearing and made recommendations for agency action. The Task Force report recommended that FDA improve its procedures to detect and evaluate reports of drug product therapeutic failures that could be indicative of product inequivalence.

In the **Federal Register** of July 10, 1989 (54 FR 28872), FDA proposed regulations implementing the statutory requirements contained in Title I of the Drug Price Competition and Patent Term Restoration Act of 1984. The proposal provides for the submission of ANDA's for generic versions of drug products. In that proposal, FDA proposed to revise its regulations concerning the reporting of therapeutic failures of drug products. The proposed revisions would clarify that all reports of therapeutic failure be submitted to FDA and that applicants report to FDA any significant increase in frequency of reports of therapeutic failure. The intent of this proposed revision was to facilitate the identification of possible therapeutic failures with both generic and brand-name drug products and to obtain evidence to confirm or refute reports of therapeutic inequivalence between generic drugs and their brand-name counterparts.

The agency reviews and evaluates documented reports of drug product therapeutic failure and other adverse drug reactions attributed to the substitution of one drug product for another when the two products have been rated therapeutically equivalent, including reports of no drug effect and reports of toxicity. As part of the agency's followup to reports of drug product therapeutic failure, FDA may repeat the bioavailability or bioequivalence testing or perform other appropriate analyses.

The agency also thoroughly investigates any situation where FDA has reason to believe fraud was involved in performing a bioavailability or bioequivalence study. Such fraud would include intentionally misrepresenting the identity of a sample of a proposed drug product provided to a testing facility for purposes of performing a bioavailability or bioequivalence study, and submission by the applicant to FDA of falsified data. For example, FDA has recently found that, in several instances, an applicant used disguised innovators' products rather than its own proposed product as the test products in certain bioequivalence studies.

To investigate more fully any potential problem with generic drugs or incidents of suspected fraud in performing a bioavailability or bioequivalence study by the applicant or a contract testing facility, FDA may need to perform in its own laboratories assays or bioequivalence testing with samples of the proposed drug product and of the reference standard used in a bioavailability or bioequivalence study. Currently, an applicant seeking approval to market a drug product under a full new drug application or a generic version of a pioneer drug product under an abbreviated new drug application or an application described by section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(b)(2)) may perform the required bioavailability or bioequivalence testing in-house or may utilize extramural contract testing facilities. An extramural contract testing facility is referred to in the interim rule as a contract research organization because it falls within the definition of that term under 21 CFR 312.3(b). If the testing is performed under contract, the applicant provides the contract research organization with samples of the proposed drug product (test article) and of the reference standard. In either case, there is currently no requirement that the applicant or contract research organization retain reserve samples of the test article and the reference standard used in performing the bioavailability and bioequivalence testing. Thus, the samples may be discarded after the applicant has obtained approval of its full or abbreviated new drug application for the test product. If the agency needs to obtain samples of the test article and reference standard that were used in specific bioavailability or bioequivalence study to repeat the testing procedures or perform other analyses, there is no assurance that the samples will be available.

Bioequivalence and bioavailability data are a critical component of FDA's approval of new drug products, especially generic drug products. To provide adequate assurance that the bioequivalence and bioavailability results upon which FDA bases approval are reliable, FDA has concluded that samples of the tested products must be available for later analysis. Therefore, the agency is establishing a requirement that applicants and contract research organizations retain reserve samples of any test article and reference standard used in performing a bioavailability study submitted in support of the approval of a full new drug application or used in performing a bioequivalence study required for abbreviated new drug application approval or submitted in support of the approval of a 505(b)(2) application, and release such samples to FDA upon request. This requirement would apply to bioequivalence and bioavailability studies involving new drugs and antibiotics for human use. This action is only one of several programs FDA is initiating to address the problem of fraud and misrepresentation in the drug approval process, an action that may be achieved within FDA's current constraints. The agency may institute additional measures or propose new requirements if necessary to strengthen the integrity of the drug approval process.

As described further below, FDA is issuing these regulations as an interim rule, effective immediately, with an opportunity for public comment.

II. Provisions of the Regulations

The agency concludes that it has authority pursuant, inter alia, to sections 505 and 701(a) of the act (21 U.S.C. 355 and 371(a)), to promulgate regulations to assure the reliability of bioequivalence and bioavailability testing intended to support approval of new drug applications, by requiring those who conduct the studies to retain reserve samples of the tested products and by amending the regulations specifying the grounds for refusing to approve applications and withdrawing approval of applications to include a refusal to permit an inspection or to submit a reserve sample when requested by FDA. Under section 701(a) of the act, the Commissioner has authority to promulgate regulations for the efficient enforcement of the act. In the past, the Commissioner has used this authority to promulgate good laboratory practice regulations (21 CFR part 58) under which laboratories conducting nonclinical studies intended to support research or marketing applications submitted to FDA are required to follow certain procedures and maintain records and test samples to ensure the reliability of the test results. These regulations were adopted to ensure that FDA could carry out its statutory obligation to evaluate the safety of the products for which marketing applications were submitted (see 41 FR 51206 and 51216; November 19, 1976). The Commissioner's authority under sections 701(a) and 505(i) of the act has also been used to issue regulations governing the conduct of clinical investigations of drugs (21 CFR part 312), which are intended, among other things, to ensure the validity and reliability of study results submitted to FDA in support of new drug applications. The Commissioner's authority to issue regulations governing the validity of data developed in clinical studies has been upheld by the Supreme Court. *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973). The Commissioner's authority to impose recordkeeping and reporting requirements on contract research organizations that carry out clinical studies has also been upheld. *Leo Winter* v. *Department of Health and Human Services*, 497 F. Supp. 429 (D.D.C. 1980). The agency has therefore concluded that it has sufficient authority under sections 505 and 701(a) of the act to promulgate regulations requiring the retention of bioavailability and bioequivalence reserve samples for the purpose of assuring the validity of study results submitted to the agency in support of new drug applications.

Bioequivalence and biovailability studies may be conducted in vivo or in vitro. In vitro and animal in vivo bioequivalence and bioavailability studies are within the scope of the good laboratory practice regulations, and are in some cases already subject to a requirement that reserve samples of the test article be retained (21 CFR 58.105 and 58.195). With respect to in vitro studies and in vivo studies in animals, this rule will codify in 21 CFR part 320 specific requirements with respect to retention of reserve samples of test articles used in all bioequivalence and bioavailability studies, specify a different period of retention of reserve test samples than in 21 CFR part 58, and require the testing facility to release the reserve test samples to FDA on request. Any additional requirements applicable to such studies under 21 CFR part 58 will remain in effect.

FDA is establishing new §§ 320.32 and 320.63 in 21 CFR part 320, under subparts B and C, respectively, to require any applicant who performs in-house bioavailability or bioequivalence testing for new drug product approval or any testing facility that performs such bioavailability or bioequivalence testing under contract for an applicant to retain a reserve sample of each test article and reference standard that is representative of each sample of the test article and the reference standard provided by the applicant for use in the testing. Under the rule, the applicant or contract testing facility will retain a sufficient quantity of each reserve sample to permit FDA to perform five times all of the release tests required in the application or supplemental application. As noted above, FDA may need to repeat the bioavailability or bioequivalence testing or perform other appropriate analysis as part of the agency's followup to reports of drug product therapeutic failure. The reserve samples will be required to be retained for a period of at least 5 years

following the date on which a full or abbreviated new drug application or supplemental application is approved, or, if such application or supplemental application is not approved, at least 5 years following the date of completion of a bioavailability or bioequivalence study. The public is specifically invited to comment on whether FDA's retention period is appropriate. In addition, each reserve sample is required to be adequately identified so that the reserve sample can be positively identified as having come from the same sample as used in the specific bioavailability or bioequivalence study. Each reserve sample is also required to be stored under conditions that will maintain the product's integrity, identity, strength, quality, and purity.

Ordinarily, an FDA investigator will collect the reserve samples at the place of storage during a preapproval inspection of the applicant's facilities and of any contract research organization that conducts bioavailability or bioequivalence testing for the applicant. This will permit inspection by FDA of the storage conditions. In some instances, FDA may request delivery by other methods if a sample collection by agency personnel is impractical. At the time of such a request, FDA will ask the applicant or contract research organization to send reserve samples directly to a specified office in FDA (e.g., to the agency's district laboratory where the samples would be tested). To further deter fraudulent practices in bioavailability and bioequivalence testing, the agency intends to randomly sample reserve samples.

The agency notes that resource considerations may impose limits on the number of samples that the agency can collect and test. Therefore, if FDA has not collected or requested delivery of a reserve sample, the reserve sample must be retained for at least the 5-year period discussed above. Likewise, if FDA has not collected the entire reserve sample or if FDA has not requested delivery of an entire reserve sample, the remaining sample must be retained for the 5-year period.

Upon release of the reserve samples to FDA, the applicant or contract research organization shall provide a written assurance that the reserve samples came from the same samples as used in the specific bioavailability or bioequivalence study identified by the agency. The assurance shall be executed by an individual authorized to act for the applicant or contract research organization in releasing the reserve samples to FDA.

The agency is aware that a U.S. applicant may contract with a foreign testing facility to perform bioavailability or bioequivalence testing, or a foreign applicant may conduct its own studies or use a foreign testing facility. Reserve samples from this testing must also be available to FDA for analysis. Where FDA has reason to believe fraud was involved in performing a bioavailability or bioequivalence study, a foreign testing facility may be asked to consent to FDA inspection or to submit to FDA reserve samples of the products used in the study. The agency advises all applicants who utilize foreign testing facilities to conduct bioavailability and bioequivalence studies that may be submitted to FDA in support of the approval of an application or abbreviated application to consider inclusion in the contract agreement with the testing facility provisions regarding FDA inspection and submission of reserve samples. FDA solicits comment on appropriate measures to ensure agency access to samples of drugs tested in foreign testing facilities.

As noted above, the agency has additional authority under section 505(i) of the act to impose conditions upon the conduct of clinical investigations to assure the reliability of study results. With respect to bioequivalence and bioavailability studies in humans, this rule imposes the requirement that sponsors and contract research organizations retain reserve test samples as a condition for obtaining an investigational new drug application (IND) under part 312 or an exemption from the requirements of part 312. Section 312.57(c) of the rule requires a sponsor of an IND to retain reserve samples of products used in bioequivalence or bioavailability studies in accordance with new § 320.32. Section 320.31 currently exempts from the requirements of part 312 many bioequivalence and bioavailability studies. This rule adds as a condition for such an exemption that the sponsor, or any contract research organization to whom the sponsor delegates responsibility to conduct a bioequivalence or bioavailability study, retain reserve samples of the test article and reference standard and release them upon request to FDA in accordance with new § 320.32.

In light of recent experience, the agency has concluded that adequate information concerning the conduct of a required bioequivalence and bioavailablity study, including inspection of test samples and related records, may be essential to assess the validity and reliability of the results of that study. In many cases, access to test samples and the records related to the conduct of the bioequivalence study may provide the only evidence linking a marketed product to the tested product. Consequently, when an applicant or testing facility fails to retain samples or to release those samples to FDA, or refuses to permit inspection of the facilities and records related to the bioequivalence or bioavailability study, FDA may have insufficient information to conclude that the study supporting the application reliably demonstrates bioequivalence or bioavailability.

For a not-yet-approved drug, this lack of reliable information of bioequivalence or bioavailability constitutes a basis to refuse to approve the drug on the grounds that the application does not contain sufficient information to show bioequivalence under section 505(j)(3)(F) of the act, or that the application lacks sufficient information to demonstrate safety and effectiveness under sections 505 (d)(2) and (d)(3) of the act. For an approved drug, a newly discovered question about the reliability of the bioequivalence or bioavailability information in the application constitutes a basis to withdraw approval of the application on the grounds that there is a lack of substantial evidence of effectiveness and that the drug is not shown to be safe, under section 505 (e)(2) and (e)(3) of the act.

Therefore, this rule at § 314.125(b)(17) adds as a reason for refusing to approve an application, and at § 314.150(b)(9) as a circumstance under which the agency has discretion to withdraw approval of an application, refusal to permit an inspection of the facilities or records relevant to a bioequivalence or bioavailability study contained in the application or to submit reserve samples when requested by the agency.

The agency has concluded that the addition of these grounds for disapproving or withdrawing approval of an application is necessary for the enforcement of the agency's responsibility to ensure that drugs prescribed and administered to patients are safe and effective. As noted, experience has shown that inspection of test samples and related records is sometimes essential to carry out the agency's obligation to determine that a proposed or marketed product has in fact undergone the testing required by statute for approval. Moreover, FDA has been unable to identify any legitimate reason for a refusal to permit access to test samples or related records. These provisions recognize that a refusal to permit access or inspection compromises the agency's ability to assure the public of the safety and effectiveness of the product. The provisions are intended to prevent applicants from refusing access and at the same time asserting the right to market drug products whose safety and effectiveness are in question.

Other offices and agencies such as the General Accounting Office and the Office of the Inspector General may have independent access to certain records of FDA-regulated entities. These interim regulations govern only FDA's authority to carry out its responsibilities under the act and do not limit the authority of other agencies, pursuant to their own authorizing statutes, to obtain samples retained under these regulations.

The agency also is considering whether additional requirements are necessary to ensure that the integrity of the reserve samples is not compromised during the retention period. Therefore, FDA is soliciting comments on the following questions:

1. Should the reserve samples be required to be stored in an area where access is controlled and that is separate from the testing area?

2. Should the testing facility be required to appoint a sample custodian who is responsible for proper storage of the reserve samples and release for analysis when requested by FDA?

3. How should the reserve samples be packaged during the retention period to ensure that sample integrity is not compromised? For example, should the package be required to be sealed in some manner to prevent tampering?

FDA will carefully consider comments received on these issues before reaching any final decision on whether to impose further requirements with respect to maintaining reserve sample integrity.

III. Effective Date and Opportunity for Public Comment

For the reasons described below, FDA is issuing these regulations as an interim rule, with an opportunity for public comment.

The requirements established in this interim rule are intended to make available to FDA reserve samples of tested products for analysis to ensure that the bioavailability and bioequivalence results upon which FDA bases approval are reliable. Bioequivalence and bioavailability are a critical component of FDA's approval of new drug products, especially generic drug products. Passage of the Drug Price Competition and Patent Term Restoration Act of 1984 (the Act) resulted in an acceleration of the number of generic drug reviews and the time periods for evaluating and approving new generic drugs. This Act also increased the market availability of important and more affordable generic drugs. Because of fraud and submission by applicants to FDA of falsified data during the past year, the integrity of FDA's generic drug approval process and the safety and effectiveness of generic drugs have been questioned. It is clearly in the public interest to move quickly to restore and maintain the integrity of the generic drug approval system and to restore the public's confidence in generic drugs. The purpose of these regulations is to ensure that samples of tested drugs are preserved for future inspection by FDA. If FDA proposed these requirements and offered an opportunity for comment before the requirements went into effect, applicants would be given an opportunity to destroy any existing samples that might reveal fraud or wrongdoing. Because advance notice of these requirements could thereby defeat the purpose of the regulations and because the public interest demands prompt reform to ensure the integrity of the generic drug approval system, the agency finds that it would be contrary to the public interest to delay implementation of these requirements pending notice and an opportunity for comment. FDA believes, however, that it should invite and consider public comment on the requirements, in accordance with its administrative practices and procedures regulations (21 CFR 10.40).

Interested persons may, on or before January 7, 1991, submit to the Dockets Management Branch (address above) written comments regarding this interim rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IV. Economic Impact

FDA has examined the regulatory impact and regulatory flexibility implications of the interim rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). This rule would impact most on contract research organizations that, prior to the generic drug investigation, did not retain reserve samples. We believe, however, that many of these organizations now are retaining reserve samples. The rule would also have some impact on foreign applicants who conduct in-house testing and foreign contract research organizations. The magnitude of the economic impact for manufacturers and contract research organizations (foreign and domestic) resulting from this rule would depend on the number of bioavailability and bioequivalence studies conducted for applicants who are seeking marketing approval for drug products. This parameter cannot be reliably calculated to permit a quantification of the true economic impact. The agency, however, concludes that additional costs resulting from this rule will be negligible, and to the limited extent that they may occur, will likely be more than offset by the societal benefits of this rule, i.e., the added assurance that FDA's drug approval process functions effectively to ensure that only safe and effective drug products enter the marketplace. The agency has determined that this interim rule is not a major rule as defined in Executive Order 12291 and certifies that the rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 320

Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 312, 314, and 320 are amended as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

1. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 331, 351, 352, 353,

355, 356, 357, 371); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

2. Section 312.57 is amended by adding new paragraph (c) to read as follows:

§ 312.57 Recordkeeping and record retention.

* * * * *

(c) A sponsor shall retain reserve samples of any test article and reference standard used in a bioequivalence or bioavailability study and release the reserve samples to FDA upon request, in accordance with, and for the period specified in, § 320.32 of this chapter.

* * * * *

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

3. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 376).

4. Section 314.125 is amended by adding paragraph (b)(17) to read as follows:

§ 314.125 Refusal to approve an application.

* * * * *

(b) * * *

(17) The applicant or contract research organization that conducted a bioavailability or bioequivalence study contained in the application refuses to permit an inspection of facilities or records relevant to the study by a properly authorized officer or employee of the Department of Health and Human Services or refuses to submit reserve samples of the drug products used in the study when requested by FDA.

* * * * *

5. Section 314.150 is amended by adding paragraph (b)(9) to read as follows:

§ 314.150 Withdrawal of approval of an application.

* * * * *

(b) * * *

(9) That the applicant or contract research organization that conducted a bioavailability or bioequivalence study contained in the application refuses to permit an inspection of facilities or records relevant to the study by a properly authorized officer or employee of the Department of Health and Human Services or refuses to submit reserve samples of the drug products used in the study when requested by FDA.

* * * * *

PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

6. The authority citation for 21 CFR part 320 continues to read as follows:

Authority: Secs. 201, 501, 502, 505, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, 357, 371).

7. Section 320.31 is amended by revising the introductory text of paragraph (a), paragraphs (c) and (d), and by removing paragraphs (e) and (f) to read as follows:

§ 320.31 Applicability of requirements regarding an "Investigational New Drug Application."

(a) Any person planning to conduct an in vivo bioavailability study in humans shall submit an "Investigational New Drug Application" (IND) if either:

* * * * *

(c) The provisions of parts 50, 56, and 312 of this chapter are applicable to any bioavailability study conducted under an IND.

(d) A bioavailability study in humans other than one described in paragraphs (a) through (c) of this section is exempt from the requirements of part 312 of this chapter if the following conditions are satisfied:

(1) The person conducting the study, including any contract research organization, shall retain reserve samples of any test article and reference standard used in the study and release the reserve samples to FDA upon request, in accordance with, and for the period specified in, § 320.32, and;

(2) An in vivo bioavailability study in humans shall be conducted in compliance with the requirements for institutional review set forth in part 56 of this chapter, and informed consent set forth in part 50 of this chapter.

8. New § 320.32 is added to Subpart B to read as follows:

§ 320.32 Retention of bioavailability samples.

(a) The applicant of an application or supplemental application submitted under section 505 or 507 of the Federal Food, Drug, and Cosmetic Act, or, if bioavailability testing was performed under contract, the contract research organization, shall retain an appropriately identified reserve sample of the drug product for which the applicant is seeking approval (test article) and of the reference standard used to perform an in vivo bioavailability study required for approval of the application or supplemental application that is representative of each sample of the test article and reference standard provided by the applicant for the testing. Each reserve sample shall consist of a sufficient quantity to permit FDA to perform five times all of the release tests required in the application or supplemental application.

(b) Each reserve sample shall be adequately identified so that the reserve sample can be positively identified as having come from the same sample as used in the specific bioavailability study.

(c) Each reserve sample shall be scored under conditions that will maintain the sample's integrity, identify, strength, quality, and purity and shall be retained for a period of at least 5 years following the date on which the application or supplemental application is approved, or, if such application or supplemental application is not approved, at least 5 years following the date of completion of the bioavailability study in which the sample from which the reserve sample was obtained was used.

(d) Authorized FDA personnel will ordinarily collect reserve samples directly from the applicant or contract research organization at the storage site during a preapproval inspection. If authorized FDA personnel are unable to collect samples, FDA may require the applicant or contract research organization to submit the reserve samples to the place identified in the agency's request. If FDA has not collected or requested delivery of a reserve sample, or if FDA has not collected or requested delivery of any portion of a reserve sample, the applicant or contract research organization shall retain the sample or remaining sample for the 5-year period specified in paragraph (c) of this section.

(e) Upon release of the reserve samples to FDA, the applicant or contract research organization shall provide a written assurance that the reserve samples came from the same samples as used in the specific bioavailability or bioequivalence study identified by the agency. The assurance shall be executed by an individual authorized to act for the applicant or contract research organization in releasing the reserve samples to FDA.

9. New § 320.63 is added to Subpart C to read as follows:

§ 320.63 Retention of bioequivalence samples.

The applicant of a full or abbreviated application or a supplemental application submitted under section 505 or 507 of the Federal Food, Drug, and Cosmetic Act, or, if bioequivalence testing was performed under contract, the contract research organization shall retain reserve samples of any test article and reference standard used in conducting an in vivo or in vitro bioequivalence study required for approval of, or submitted in support of the approval of, the full or abbreviated application or supplemental application. The applicant or contract research organization shall retain the reserve samples in accordance with, and for the period specified in, § 320.32 and shall release the reserve samples to FDA upon request in accordance with § 320.32.

James S. Benson,

Acting Commissioner of Food and Drugs.

Dated: July 2, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 90-26484 Filed 11-7-90; 8:45 am]

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Thursday
November 8, 1990

Part IV

Department of Defense

Department of the Army

32 CFR Part 589

Compliance With Court Orders by Personnel and Command Sponsored Family Members; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 589

Compliance With Court Orders by Personnel and Command Sponsored Family Members

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army announces a new policy, which had not previously been published in the Federal Register, on compliance with court orders by personnel and command sponsored family members. This new policy is required to implement Public Law 100.45, National Defense Authorization Act, and title 10, U.S.C. section 814, and Department of Defense Directive 5525.9, Compliance of DOD Members, Employees, and Family Members Outside the United States With Court Orders. This part is Army implementation of DOD 5525.9, which requires cooperation with courts and Federal, state and local officials in enforcing court orders pertaining to military personnel and DOD employees serving outside the United States as well as their command sponsored family members.

EFFECTIVE DATE: December 10, 1990.

FOR FURTHER INFORMATION CONTACT: Office of the Deputy Chief of Staff for Personnel, ATTN: DAPE–MPE–DR, Mr. Librado Rivas, Washington, DC 20310–0300, telephone: (703) 697–1012/2403.

SUPPLEMENTARY INFORMATION: This part will appear as chapter 11 of the consolidated Army Regulation 614–XX. AR 614–XX prescribes policies pertaining to permanent change of station (PCS) moves, overseas tour lengths, unit deployment, volunteers, deletions and deferment from overseas assignment instructions, curtailments, extensions, consecutive overseas tours, eligibility for overseas service, stabilization of tour lengths for military personnel, and compliance with Court Orders. This regulation supersedes AR 614–5, Stabilization of Tours; AR 614–6, Permanent Change of Station Policy; and AR 614–30, Overseas Service.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as nonmajor. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 589

Army, court, and personnel.

Accordingly, 32 CFR part 589 is added to read as follows:

PART 589—COMPLIANCE WITH COURT ORDERS BY PERSONNEL AND COMMAND SPONSORED FAMILY MEMBERS

Sec.

589.1 Definitions.
589.2 Policy.
589.3 Applicability.
589.4 General.

Authority: Public Law 100.456 and 10 U.S.C., 814.

§ 589.1 Definitions.

(a) *Court.* Any judicial body in the United States with jurisdiction to impose criminal sanctions of a DoD member, employee, or family member.

(b) *DoD Employee.* A civilian employed by a DoD Component, including an individual paid from nonappropriated funds, who is a citizen or national of the United States.

(c) *DoD Member.* An individual who is a member of the Armed Forces on active duty and is under the jursidiction of the Secretary of a Military Department, regardless whether that individual is assigned to duty outside that Military Department.

§ 589.2 Policy.

(a) This part (chapter) implements procedural guidance in Department of Defense Directive 552 5.9, "Compliance of DoD members, employees, and family members outside the United States with court orders." This guidance applies to all soldiers and Department of the Army and Nonappropriated Fund (NAF) civilian employees serving outside the United States, as well as to their command sponsored family members.

(b) DODD 5525.9 requires DoD cooperation with courts and federal, state, and local officials in enforcing court orders pertaining to military personnel and DoD employees serving outside the United States, as well as their command sponsored family members, who—

(1) Have been charged with or convicted of any felony.

(2) Have been held in contempt of a court for failure to obey a court order, or

(3) Have been ordered to show cause why they should not be held in contempt for failing to obey a court order.

This guidance does not affect the authority of Army officials to cooperate with courts and federal, state, or local officials, such as is currently described in Army Regulation 27–3, Legal Services, Army Regulation 190–9, Military Absentee and Deserter Apprehension Program, and Army Regulation 608–99, Family Support, Child Custody, and Paternity, in enforcing orders against soldiers and employees in matters not discussed below. The guidance below does not authorize Army personnel to serve or attempt to serve process from U.S. courts on military or DoD employees overseas. (See also AR 27–40, Litigation, paragraph 1–7.)

§ 589.3 Applicability.

This section applies to the following personnel:

(a) Army personnel on active duty or inactive duty for training in overseas areas. This includes the National Guard when federalized.

(b) Department of the army civilian employees, including Nonappropriated Fund Instrumentalities (NAFI) employees.

(c) Command sponsored family members of Army personnel or Department of the Army civilian employees.

§ 589.4 General.

(a) Courts of federal, state, or local officials desiring to initiate a request for assistance pursuant to this section must forward the request, with appropriate court orders, as follows:

(1) For soldiers and members of their family, to the soldier's unit commander of Office, Deputy Chief of Staff for Personnel (ODCSPER), ATTN: DAPE–MP (703–695–2497); and

(2) For Department of the Army civilian employees and members of their family, to the servicing civilian personnel office for the employee's command, or ODCSPER, ATTN: DAPE–CPL, (703–697–4429).

(3) Nonappropriated Fund (NAF) employees and members of their family, to the servicing civilian personnel office for the employee's command, or ODCSPER, ATTN: CFSC–HR–P (703–325–9461).

(b) Upon receipt of such requests for assistance concerning courts orders described in paragarph (a) of this section and AR 190–9, commanders/supervisors, with the advice of their servicing Judge Advocates and legal advisors, will take action as appropriate as outlined below:

(1) Determine whether the request is based on an order issued by a court of competent jurisdiction. An "order issued by a court of competent jurisdiction" is an order that appears valid on its face and is signed by a judge.

(2) If the order appears valid on its face and is signed by a judge, attempt to resolve the matter in a timely manner to the satisfaction of the court without the return of, or other action affecting, the soldier, Army civilian employee, or family member. Due regard should be given to mission requirements, applicable international agreements, and ongoing DoD investigations or courts-martial.

(3) If the matter cannot be resolved, afford the subject of the court order a reasonable opportunity to provide evidence of legal efforts to resist the court order or otherwise show legitimate cause for noncompliance. If it is determined that efforts to provide such evidence or to show cause for noncompliance warrant a delay in taking further action, a request for delay, not to exceed 90 days, must be sought from the Secretary of the Army. Such requests, fully setting forth the reasons justifying delay and the estimated delay necessary, will be forwarded within 30 days directly to ODCSPER, ATTN: DAPE–MP (for military personnel and their family members or ODCSPER, ATTN: DAPE–CPL (for Army civilian employees and their family members) or ODCSPER, ATTN: CFSC–HR–P (for NAF employees and their family members). These offices must promptly forward the request for delay to the Assistant Secretary of Army (Manpower and Reserve Affairs) ASA(M&RA), for approval. If a delay is approved, ASA(M&RA) will promptly notify the Assistant Secretary of Defense (Force Management and Personnel) ASD (FM&P), copy furnished General Counsel, Department of Defense (GC, DOD).

(4) If one, the matter cannot be resolved, and two, it appears that noncompliance with the request to return the individual, or to take other action involving a family member or DA or NAF employee is warranted by all the facts and circumstances of the particular case, and three, the court order does not pertain to any felony or to a contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of the court or the custody of a parent or another person awarded custody by court order, the matter will be forwarded, for soldiers or their family members to the soldier's general court-martial convening authority or, for army civilian or NAF employees or their family members, to the fairest general officer or civilian equivalent in the employee's chain of command, for a determination as to whether the request should be complied with. In those cases in which it is determined that noncompliance with the request is warranted, copies of that determination will be forwarded directly to the appropriate office noted in § 589.4(b)(3) and to HQDA, DAJA–CL, pursuant to Chapter 6, AR 190–9.

(5) If one, the matter cannot be resolved, and two, it appears that noncompliance with the request to return the individual is warranted by all the facts and circumstances of the particular case, and three, the court order pertains to any felony or to a contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a parent or another person awarded custody by court order, a request for exception to policy will be forwarded directly to the appropriate office listed in § 589.4(b)(3) with an information copy to HQDA, DAJA–AL, within 30 days unless a delay has been approved by ASA(M&RA). The offices listed in § 589.4(b)(3) must forward the request for an exception promptly through ASA(M&RA) to ASD(FM&P) for decision, copy furnished to General Counsel, DOD.

(c) If requests for military personnel cannot be resolved without return of the individual, and denial of the request as outlined in this section is not warranted, the individual will be ordered pursuant to section 721, Public Law 100–456 and DODD 5525.9 to the appropriate U.S. part of entry at government expense, provided the federal, state, or local authority requesting the individual provides travel expenses including a prepaid transportation ticket or equivalent and an escort, if appropriate, from the port of entry to the appropriate jurisdiction. Absent unusual circumstances, requesting parties will be notified at least 10 days before the individual is due to return. Guidance concerning use of military law enforcement personnel to effect the return of military personnel to U.S. civil authorities may be obtained from the U.S. Army Military Policy Operations Agency (MOMP–O).

(d) In accordance with DoD policy, military personnel traveling pursuant to a contempt order or show cause order, as described in this part and in AR 614–XX is entitled to full transportation and per diem allowances. However, this does not alleviate the requesting parties' requirement to pay travel expenses from the appropriate U.S. port of entry. Any travel expenses received from the requesting party must be deducted from the soldier's entitlement to travel and per diem allowances. The soldier will be returned in a temporary duty (TDY) status, unless a permanent change of station (PCS) is appropriate.

(e) If requests for Army civilian and NAF employees cannot be resolved and denial of the request as outlined in this section is not warranted, the individual will be strongly encouraged to comply with the court order. Failure to comply with such orders by an Army civilian or NAF employee, if all criteria are met, is a basis for withdrawal of command sponsorship and adverse action against the employee, to include removal from federal service. Proposals to take disciplinary/adverse actions must be coordinated with the appropriate civilian personnel office (CPO) and the servicing Judge Advocate or legal advisor and forwarded for approval to the first general officer or civilian equivalent in the employee's chain of command. A copy of the final action taken on the case must be forwarded to HQDA, ATTN: DAPE–CPL, or ATTL: CFSC–HR–P (for NAF employees).

(f) If the request is based upon a valid court order pertaining to a family member of a soldier or Army civilian or NAF employee, the family member will be strongly encouraged to comply with the court order if denial of the request as outlined in this part is not warranted, unless the family member can show legitimate cause for non-compliance with the order, considering all of the facts and circumstances, failure to comply may be basis for withdrawal of command sponsorship.

(g) Failure of the requesting party to provide travel expenses for military personnel, Army civilian or NAF employees, or their command sponsored family members as specified in this section, is grounds to be recommended denial of the request for assistance. The request must still be forwarded through DAPE–MP (for military personnel and their family members) or DAPE–CPL (for Army civilian employees and their

family members) or CFSC-HR-P (for NAF employees and their family members) and ASA(M&RA) to ASD(FM&P) for decision, copy furnished to General Counsel, Department of Defense.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 90-26415 Filed 11-7-90; 8:45 am]

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Thursday, November 8, 1990

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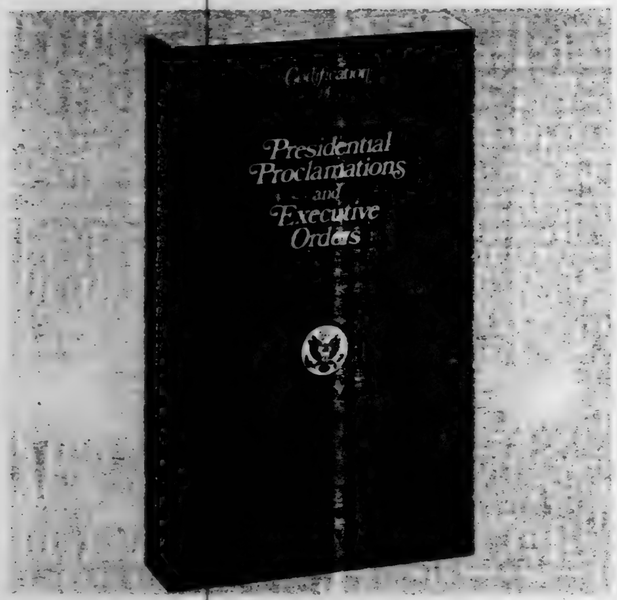

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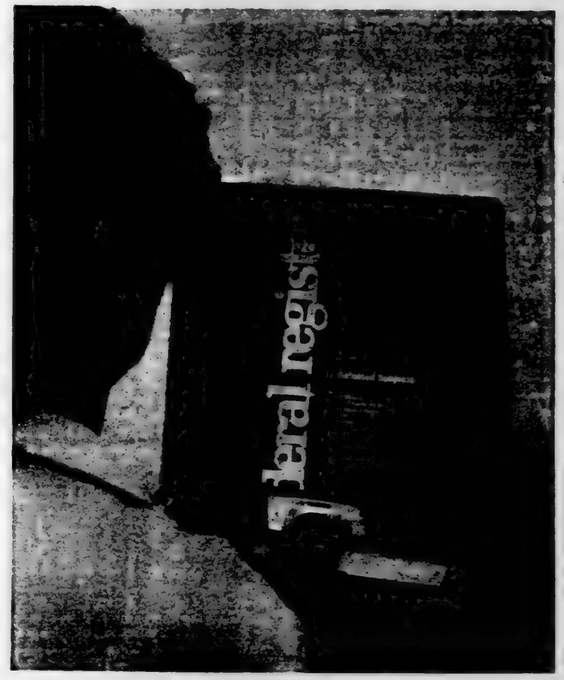

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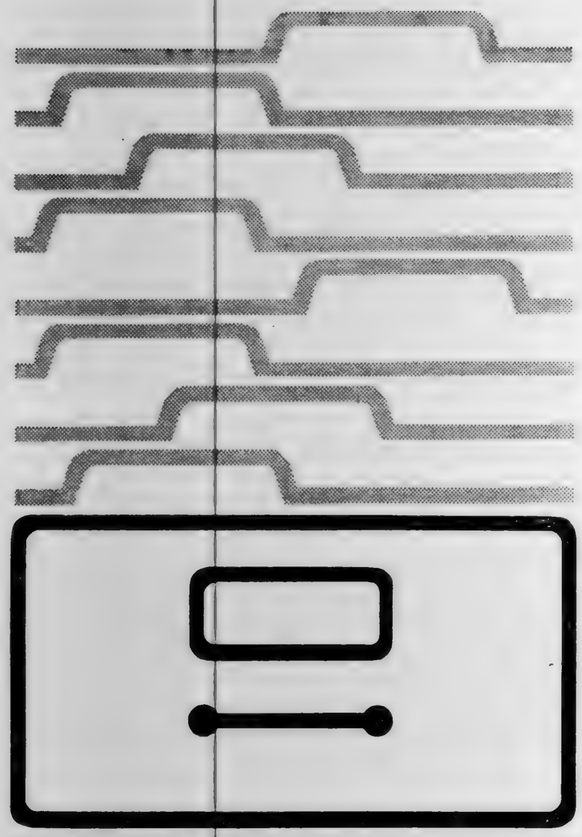

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in the Code of Federal Regulations (CFR)

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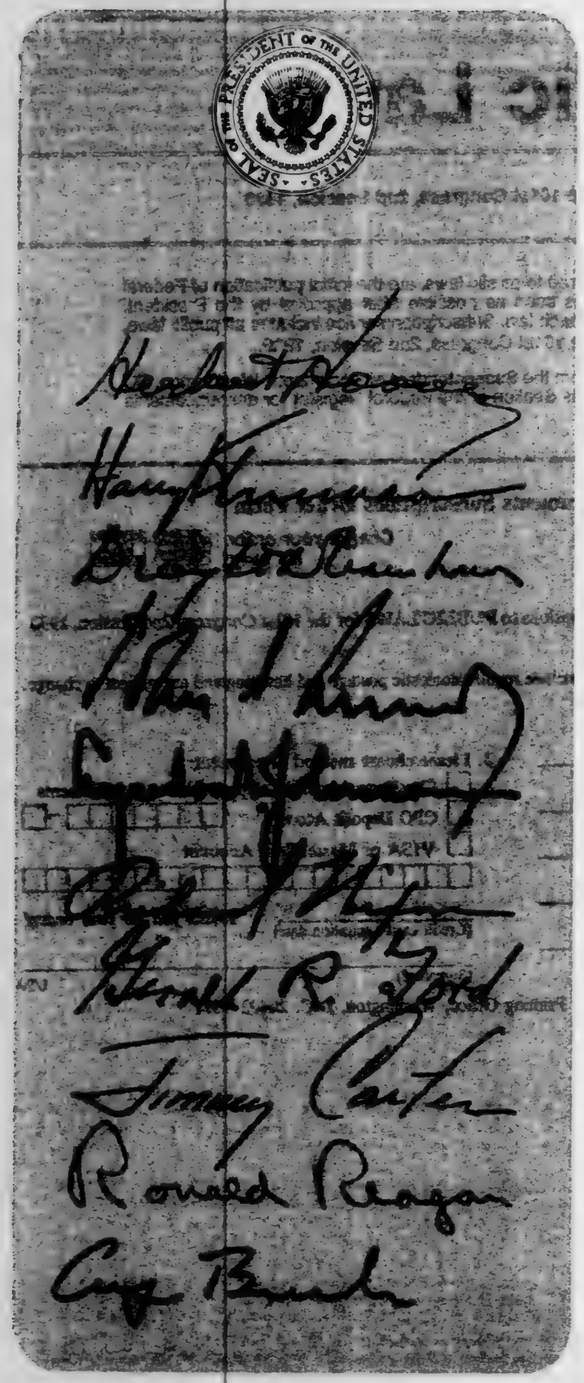

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Vol. 55 No. 218

federal register

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV-90-205]

Florida Tomatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 966 for the 1990–91 fiscal period. Authorization of this budget permits the Florida Tomato Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1990, through July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Marketing Order No. 966 (7 CFR part 966), both as amended, regulating the handling of tomatoes grown in Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Florida tomatoes under this marketing order and 250 tomato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,00. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1990–91 fiscal period was prepared by the Florida Tomato Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are producers of tomatoes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Florida tomatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on September 6, 1990, and unanimously recommended a 1990–91 budget of $1,964,000. Last season's budget was $1,613,500. The major expense allocation is for education and promotion projects, which at a total of $1,268,000 accounts for about 65 percent of the budget. Other major budget items include administrative expenses in the amount of $384,500 and research expenses of $216,500.

The committee also unanimously recommended an assessment rate of $0.035 per 25-pound container, an increase of $0.01 from last year's rate. This rate, when applied to anticipated shipments of 55 million 25-pound containers, will yield $1,925,000 in assessment revenue. This amount, when added to $45,000 from interested and other income, will be more than adequate to cover budgeted expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of this marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on October 10, 1990 (55 FR 41195). This document contained a proposal to add § 966.228 to authorize expenses for the committee. That rule provided that interested persons could file comments through October 22, 1990. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1990–91 fiscal period began in August, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable tomatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 966.228 is added to read as follows:

Note: This section will not be published in the Code of Federal Regulations.

§ 966.228 Expenses and assessment rate.

Expenses of $1,964,000 by the Florida Tomato Committee are authorized and an assessment rate of $0.035 per 25-pound container of tomatoes is established for the fiscal period ending July 31, 1991. Unexpended funds may be carried over as a reserve.

Dated: November 5, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–26560 Filed 11–8–90; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–NM–96–AD; Amendment 39–6804]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires inspection and replacement, if necessary, of undersized wires installed in the number 1 window heat system; and reporting to the FAA of any undersized wires detected. This amendment is prompted by two reports of the installation of undersized wires in the flight compartment window heat system that resulted in overheating and discoloration of the wire and protective sleeving. This condition, if not corrected, could result in failure of the number 1 window heat system, damage to other equipment, and/or smoke and fire.

EFFECTIVE DATE: December 17, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commerical Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Slotte, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S; telephone (206) 227–2797. *Mailing address:* FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 757 series airplanes, which requires inspection and replacement, if necessary, of undersized wires installed in the number 1 window heat system; and reporting to the FAA of any undersized wires detected, was published in the **Federal Register** on June 15, 1990 (55 FR 24252).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter questioned the need to issue an AD on which there is no known service problems. This commenter suggested that a "less formal" request to inspect, such as an Action Notice or bulletin to the FAA Principal Maintenance Inspectors, in lieu of an AD, would be more appropriate. The commenter considered that to be less of a burden to the operators while at the same time accomplishing the same objectives. The FAA does not concur. As discussed in the NPRM the FAA has determined that an unsafe condition exists, which warrants the issuance of an AD. To ensure that appropriate action is taken to correct the unsafe condition, an AD is necessary. An AD is also the means by which the FAA informs foreign authorities and operators of the unsafe condition.

Several commenters requested additional time to accomplish the required inspection. They suggested that the inspections be scheduled during a "C" check, which is equivalent to approximately 16 months for these operators. Their reasoning for this request is that, although the required inspection itself takes very little time, if a discrepancy is found, then replacement of the wiring could only be accomplished during an extended hold at a maintenance base. The FAA does not concur with this request. Continued use of the number 1 window heat system with AWG 22 size wire installed poses a hazard to the system itself, as well as, to the adjoining wires in the bundle in which they are routed. Any number of systems could be damaged from overheating of the window heat wires.

The FAA has determined that the compliance time of 90 days, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to operate prior to the required inspection/replacement without compromising safety. Since regular maintenance schedules (i.e., for a C–check) may vary from operator to operator, there would be no assurance that the inspection will be accomplished within that time.

Since issuance of the NPRM, the FAA has reviewed and approved Revision 2 of Boeing Service Bulletin 757–30–0015, dated August 2, 1990. This revision corrects certain minor discrepancies contained in Revision 1 and adds specific instructions for installing additional sleeving to certain replaced wires. Paragraph A. of the final rule has been revised to specify this revision to the service bulletin as the appropriate information source. Paragraph A. has also been revised to delete the special instructions specified in proposed paragraph A.2., since those instructions are now contained in the revised service bulletin.

Paragraph C of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described above. The FAA has determerined that these changes will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 204 Boeing Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 123 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,840.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, as listed in Boeing Service Bulletin 757–30–0015, Revision 1, dated January 25, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect undersized wiring in the flight compartment number 1 window heat system, accomplish the following:

A. Within 90 days after the effective date of this AD, inspect for the presence of undersized wires in the number 1 window heat system, in accordance with Boeing Service Bulletin 757–30–0015, Revision 2, dated August 2, 1990. If undersized wires are found, prior to further flight, replace with wires of appropriate size, in accordance with Boeing Service Bulletin 757–30–0015, Revision 2, dated August 2, 1990.

B. Within 30 days after detecting any undersized wires, submit a report of findings to the Manager, Manufacturing Inspection District Office, FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

This amendment becomes effective December 17, 1990.

Issued in Seattle, Washington, on October 31, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–26572 Filed 11–8–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–NM–140–AD; Amendment 39–6805]

Airworthiness Directives; Fokker Model F–28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Fokker Model F–28 series airplanes, which currently requires repetitive eddy current inspections to detect cracks in the fuselage lap joint at stringer 73 between frame 5305 and frame 9305, and repair, if necessary. Cracking in this area, if not corrected, could result in reduced structural integrity of the fuselage. This amendment would require a permanent repair of the lap joint at stringer 73 between frame 4900 and frame 9805, and terminates the requirement for the repetitive inspections. This amendment is prompted by the development of a permanent lap joint repair scheme.

EFFECTIVE DATE: December 17, 1990.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 227–2145. *Mailing address:* FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 89–17–02, Amendment 39–6284 (54 FR 31608, August 2, 1989), applicable to certain Fokker Model F–28 series airplanes, to require a permanent repair of the lap joint at stringer 73 between frame 4900 and frame 9805, and terminate the requirement for the repetitive inspections, was published in the **Federal Register** on August 14, 1990 (55 FR 33131).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

One commenter requested that the effective date of the AD be no earlier than December 31, 1990. This operator has 45 airplanes ranging from 11,868 to 39,369 cycles. At this time, none of this operator's 45 airplanes have been reworked. The FAA does not concur with this request. Considering the potential for fatigue failure of the lap joint, the FAA has determined that the interval proposed is the maximum inspection time permissible without compromising air safety.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 48 airplanes of U.S. registry will be affected by this AD, that it will take approximately 260 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for required parts is $3,165. Based on these figures, the total cost impact of

the AD on U.S. operators is estimated to be $651,120.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6284 (54 FR 31808, August 2, 1989), AD 89-17-02, with the following new airworthiness directive:

Fokker: Applies to Model F-28 series airplanes, Serial Numbers 11003 to 11241, inclusive, and 11991 and 11992, certificated in any category.

Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the fuselage, accomplish the following:

A. For airplanes Serial Numbers 11008 through 11241: Inspect the fuselage lap joint at stringer 73 between frames 5305 and 9305, in accordance with part 1 of Fokker Service Bulletin F-28/53-A94, Revision 1, dated July 5, 1989, and with the following schedule:

1. For airplanes that accumulated 32,000 landings or more as of August 18, 1989 (the effective date and Amendment 39-6284, AD 89-17-02), inspect within 2 days after August 18, 1989.

2. For airplanes that have accumulated fewer than 32,000 landings as of August 18, 1989, inspect within 60 days after August 18, 1989, or prior to the accumulation of 20,000 landings, whichever occurs later.

B. Repeat the inspections required by paragraph A. of this AD at intervals not to exceed 1,000 landings.

C. If cracks are found, repair prior to further flight, in accordance with part 2 of Fokker Service Bulletin F28/53-A94, Revision 1, dated July 5, 1989. After repair, continue to inspect in accordance with part 1 of the service bulletin, at intervals not to exceed 1,000 landings.

D. Replace the lap joint at stringer 73 between frames 4900 through 9805, in accordance with the accomplishment instructions in Fokker Service Bulletin F28/53-95, Revision 1, dated February 16, 1990, according to the schedule below. Accomplishment of this modification terminates the requirement for the repetitive inspections required by paragraphs B. and C. of this AD.

1. For airplanes, Serial Numbers 11008 through 11241, inclusive: Prior to the accumulation of 30,000 landings, or within one year after the effective date of this AD, whichever occurs later.

2. For airplanes, Serial Numbers 11003, 11004, 11006, 11991, and 11992: prior to the accumulation of 50,000 landings, or within one year after the effective date of this AD, whichever occurs later.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39-39-6284, AD 89-17-02.

This amendment becomes effective December 17, 1990.

Issued in Renton, Washington, on October 31, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26571 Filed 11-8-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Bureau of Export Administration

15 CFR Parts 30 and 786

[Docket No. 900812-0212]

Shipper's Export Declaration: Combining General License and Validated License Commodities on the Same SED

AGENCY: Bureau of the Census and Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: Section 786.3(h) of the Export Administration Regulations (15 CFR parts 730-799) contains certain requirements for listing commodities on the Shipper's Export Declaration (SED). Previously, § 786.3(h)(1) contained a general prohibition against combining general license commodities and validated license commodities on the same SED. This interim rule amends § 786.3(h) to permit exporters to list general license commodities and validated license commodities on the same SED. The rule also revises § 786.3(h) to clarify that the commodities that may be listed on the same SED must be included in one shipment on board a single carrier and must be from the same exporter to the same consignee.

This change—which is made in response to a recommendation by the Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee—will reduce the paperwork burden for exporters by decreasing the number of SEDs that must be filed. Exporters will no longer be required to file separate SEDs for general license commodities and validated license commodities.

By agreement with the Foreign Trade Division, Bureau of the Census, U.S. Department of Commerce, this rule also removes the requirement for separate declarations in § 30.6(b) of the Census Bureau's Foreign Trade Statistics Regulations (15 CFR part 30).

DATES: *Effective date:* This rule is effective November 9, 1990.

Comment date: Comments must be received by January 8, 1991.

ADDRESSES: Written comments (six copies) should be sent to: Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, room 1622, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Bureau of Export Administration, telephone: (202) 377-3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection—which reduces the paperwork burden by not requiring that separate Shipper's Export Declarations be filed for general license and validated license commodities—has been approved by the Office of Management and Budget under control number 0607-0018. The public reporting burden for this collection of information is estimated to average eleven minutes per response. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503—Attn: Paperwork Reduction Project (0607-0018).

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a foreign and military affairs function. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the matters relating to these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close January 8, 1991. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. Accordingly, the Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address, or by calling (202) 377-2593.

5. This interim rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

6. As stated, *supra*, in the summary, this rule removes the requirement for separate declarations in § 30.6(b) of the Census Bureau's Foreign Trade Statistics Regulations (FTSR).

List of Subjects

15 CFR Part 30

Economic statistics, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 786

Exports, Reporting and recordkeeping requirements.

Accordingly, part 30 of the Foreign Trade Statistics Regulations (15 CFR part 30) and part 786 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

PART 30—[AMENDED]

1. The authority citation for 15 CFR part 30 continues to read as follows:

Authority: Title 13, United States Code, sections 301-307; and title 5 United States Code, section 301; Reorganization Plan No. 5 of 1950; Department of Commerce Order No. 35-2A, August 4, 1975, 40 FR 42765.

§ 30.6 [Amended]

2. Section 30.6 is amended by removing and reserving paragraph (b).

PART 786—[AMENDED]

1. The authority citation for 15 CFR part 786 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985, and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986). Secs. 203, 205, Pub. L. 95-223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704); Executive Order No. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

2. Section 786.3 is amended by revising paragraph (h) to read as follows:

§ 786.3 Shipper's export declaration.

* * * * *

(h) *Commodities that may be listed on the same declaration*—(1) *General.* Except as described in paragraph (h)(2) of this section, commodities may be listed on the same Declaration provided

that they are contained in one shipment on board a single carrier and are from the same exporter to the same consignee. Unless the commodities are being shipped in separate vehicles, as described in paragraph (h)(2) of this section, general license commodities and validated license commodities may be combined on the same Declaration. The applicable validated license number and/or general license symbol shall be listed in the designated space on the Declaration (see § 786.3(j)). An asterisk (*) shall be placed immediately to the left of the description of any general license commodity listed on a Declaration that combines validated and general license commodities.

(2) *Exception.* Separate Declarations are required for shipments by rail, truck, or other vehicle when more than one vehicle is used to make the shipment. This requirement may be waived by Customs Directors if a shipment is made under a single bill of lading or other loading document and all the commodities listed on the Declaration are cleared simultaneously.

* * * * *

Dated: October 31, 1990.

Michael P. Galvin,

Assistant Secretary for Export Administration.

Dated: October 31, 1990.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 90-26537 Filed 11-8-90; 8:45 am]

BILLING CODE 3510-DT-M

15 CFR Part 773

[Docket No. 90911-9211]

Change in Reporting Requirements for the Special Licenses

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for public comment.

SUMMARY: In order to facilitate the export of commodities requiring a validated license, the Bureau of Export Administration (BXA) has established a series of special licensing procedures that may be used, when appropriate, in lieu of the individual export license.

BXA is amending the reporting requirements for certain of the special licenses in part 773 of the Export Administration Regulations. This rule removes the requirement that exporters submit certain reports to the Office of Export Licensing (OEL), unless specified by OEL. This rule does not remove the requirement that exporters maintain certain records, but extends the retention period of these records from two years to five years.

DATES: This rule is effective February 7, 1991. Comments must be received by December 10, 1990.

ADDRESSES: Written comments (six copies) should be sent: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule contains reporting and recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Information requirements found at § 773.2(f)(1) and § 773.3(h)(1) have previously been approved by the Office of Management and Budget (OMB) under Control Numbers 0607-0018 and 0694-0015, respectively. This rule also imposes a new recordkeeping requirement and it has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act. Other collections that are affected by this action have been approved by OMB under Control Numbers 0694-0002 and 0694-0006. Public burden for the collections contained within the rulemaking are estimated to average 11 minutes for 0607-0018, 30 minutes for 0694-0015, and 1 minute for the new recordkeeping requirement. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing this burden, to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503—Attn: Paperwork Reduction Project (0607-0018, and 0694-0015).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. The rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, this rule is being published in interim form, and an opportunity for public comment is provided. Because this rule is being issued in interim form, comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close December 10, 1990. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Facility, room 4086, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377-2593.

List of Subjects in 15 CFR Part 773

Exports, Reporting and recordkeeping requirements.

Accordingly, part 773 of the Export Administration Regulations (15 CFR parts 730-799) is amended as follows:

1. The authority citation for 15 CFR part 773 jis revised to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, Pub. L. 99-64 of July 12, 1985 and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986.) Sec. 203, 205, Pub. L. 95-223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704); Executive Order No. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

2. In § 773.2 paragraph (f)(1) is revised to read as follows:

§ 773.2 Project license.

* * * * *

(f) *Export clearance.*—(1) *Shipper's Export Declaration.* The Shipper's Export Declaration covering an export made under a Project License shall be prepared in accordance with standard instructions. Although the Project License and amendments describe the commodities only by commodity groups, commodity descriptions on the Declaration shall show specifically the commodity description conforming to the applicable Commodity Control List description and incorporating any additional information where required by Schedule B; *e.g.*, type, size, name of specific commodity, etc. In addition, the Declaration shall include the Project License number. A copy of the Shipper's Export Declaration shall be prepared and be retained by the exporter for recordkeeping purposes for a period of five years (see § 787.13(e)). The Office of Export Licensing may require submission of copies of the Shippers Export Declarations upon notification.

* * * * *

3. In § 773.3, paragraph (h)(1) is revised to read as follows:

§ 773.3 Distribution license.

* * * * *

(h) *Special documentation for specific destination.*—(1) *Export by license holders.* A Swiss Blue Import Certificate or Yugoslav End-Use Certificate, as appropriate, covering distribution or use within Switzerland or Yugoslavia, must be obtained from the respective government and forwarded to the license holder before any export is made to these destinations. The license holder shall maintain records of all completed certificates and for partially used certificates maintain a record summarizing the partial shipments for each certificate. Records for partial shipments shall include the certificate number, the quantity and dates of any partial shipments, and the balance remaining unused. The Office of Export Licensing may requires submission of these documents upon notification. Records for this special documentation requirement shall be maintained by the license holder for a period of five years (see § 787.13(e)).

* * * * *

4. In § 773.7, paragraph (e) and the first sentence of (k) introductory text are revised to read as follows:

§ 773.7 Service supply procedure.

* * * * *

(e) *Exports and reexports to Switzerland or Yugoslavia.* For an export or reexport of spare and replacement parts to service equipment located in Switzerland or Yugoslavia, the U.S. exporter or his approved service facility, or the authorized foreign manufacturer, must obtain for each transaction a Swiss Blue Import Certificate or a Yugoslav End-Use Certificate showing the United States as the country of origin of the parts to be shipped. Exporters shall maintain these records for a period of five years (see § 787.13(e)). Approved foreign service facilities shall forward, on a quarterly basis, the originals of these documents (or reproduce copies if the originals are required by the government of the country in which the Form ITA-6052P holder is located) directly to the U.S. exporter. A letter of transmittal showing the SL License number of the approved Form ITA-6052P shall accompany the documents. Authorized foreign manufacturers are required to maintain appropriate records. The Office of Export Licensing may requires the exporter or foreign manufacturer to submit these documents upon notification.

* * * * *

(k) *Reports.* Each exporter who has been issued an SL License under the provisions of § 773.7(f)(1) shall prepare, on a yearly basis, a report on all exports made during the preceding year under the SL License (OMB Approval No. 0694-0002). The Office of Export Licensing may require submission of documents upon notification.

* * * * *

Dated: November 5, 1990.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 90-26523 Filed 11-8-90; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 141

[T.D. 90-87]

RIN 1515-AA96

Blanket Release Orders

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to permit the use of blanket release orders by carriers in appropriate circumstances. A 1987 amendment to the regulations which eliminated several Customs forms also inadvertently eliminated all references to blanket release orders. It had not been the intention that the orders be eliminated. In order to clarify the status of these orders, this amendment of the regulations will expressly permit use of blanket release orders.

EFFECTIVE DATE: December 10, 1990.

FOR FURTHER INFORMATION CONTACT: John Pfeifer, Office of Cargo Enforcement, U.S. Customs Service (202) 566-5354.

SUPPLEMENTARY INFORMATION:

Background

In 1987, as part of an ongoing effort to streamline its operations, the Customs Service issued T.D. 87-75 which eliminated Customs forms that were determined to require the submission of information already provided to Customs by other means. Among the

forms which were eliminated was CF 7529, entitled "Carrier's Certificate and Release Order". It had been determined that this form was unduly burdensome because the information sought on that form could be supplied in another manner using existing trade documentation as prescribed in 19 CFR 141.11(a).

Unfortunately, blanket release orders as prescribed in 19 CFR 141.11(a)(5) and 141.111(c) specifically required the filing of a CF 7529. When T.D. 87-75 was issued, this fact was overlooked. It had not been Customs intent to disallow the use of blanket release orders in appropriate situations. A blanket release order is a right-to-make-entry document for formal or informal entry procedures. It can be effective for the duration specified in the document.

Customs is now amending the regulations to specifically permit the use of blanket release orders by carriers. The regulations permit appropriately modified bills of lading or air waybills to be used as blanket release orders.

A notice of proposed rulemaking was published in the **Federal Register** on April 3, 1990 (55 FR 12385). No comments were received in response to the proposal. Accordingly, this final rule is being issued as proposed.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 141

Customs duties and inspection; Imports.

Amendments to the Regulations

Part 141, Customs Regulations (19 CFR part 141) is amended as set forth below:

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for part 141 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624. Subpart B also issued under 19 U.S.C. 1483;

* * * * *

2. Section 141.11 is amended by removing the designation "Reserved" in paragraph (a)(5), and adding a new paragraph (a)(5) to read as follows:

§ 141.11 Evidence of right to make entry for importations by common carrier.

(a) * * *

(5) A blanket carrier's release order on an appropriately modified bill of lading or air waybill covering any or all shipments which will arrive within the district on the carrier's conveyance during the period specified in the release order.

* * * * *

3. Section 141.111 is amended by adding a new paragraph (c) to read as follows:

§ 141.111 Carrier's release order.

* * * * *

(c) *Blanket release order.* Merchandise may be released to the person named in the bill of lading or air waybill in the absence of a specific release order from the carrier, if the carrier concerned has filed a blanket order authorizing release to the owner or consignee in such cases. A carrier's certificate in the form shown in § 141.11(a)(4), may be modified and executed to make it a blanket release order for the shipments covered by a blanket carrier's release order under § 141.11(a)(5).

* * * * *

Michael H. Lane,
Acting Commissioner of Customs.

Approved: October 24, 1990.

Peter K. Nunes,
Assistant Secretary of the Treasury.

[FR Doc. 90-26586 Filed 11-8-90; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Devices and Radiological Health

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to functions performed by the Center for Devices and Radiological Health (CDRH) to change the name of the Office of Compliance where it appears in the delegations to the Office of Compliance and Surveillance, to conform with the reorganization approved by the Director, Office of Management, Public Health Service, and published in the **Federal Register** of February 9, 1989 (54 FR 6339). This final rule also delegates additional authorities to CDRH officials in the Office of Compliance and Surveillance.

EFFECTIVE DATE: November 9, 1990.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is amending seven delegations of authority under 21 CFR part 5, relating to functions assigned to CDRH to delegate additional authorities to CDRH officials in the Office of Compliance and Surveillance. The redelegation is designed to make the CDRH approval process more efficient.

FDA is adding the Director, Division of Standards Enforcement, Office of Compliance and Surveillance to the list of officials authorized to act in § 5.37 *Issuance of reports of minor violations* (21 CFR 5.37), paragraph (b); § 5.89 *Notification of defects in, and repair or replacement of, electronic products* (21 CFR 5.89), paragraph (b); and § 5.91 *Dealer and distributor direction to provide data to manufacturers of electronic products* (21 CFR 5.91).

Also, FDA is adding the Director, Division of Compliance Operations, Office of Compliance and Surveillance, to the list of officials authorized to act in § 5.45 *Imports and exports* (21 CFR 5.45), paragraph (e).

Finally, FDA is adding the Director, and Deputy Director, Office of Compliance and Surveillance to the list of officials authorized to act in § 5.46 *Manufacturer's resident import agents* (21 CFR 5.46); § 5.59 *Approval, disapproval, or withdrawal of approval of applications for investigational device exemptions* (21 CFR 5.59), paragraph (a); and § 5.89 *Notification of defects in, and repair or replacement of, electronic products* (21 CFR 5.89), paragraph (a).

In addition, FDA is changing the name of the Office of Compliance, CDRH, to the Office of Compliance and Surveillance, CDRH, in the 12 regulations in which the former name appears.

Further redelegation of the authority is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended to read as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 2271; 15 U.S.C. 638, 1261-1282, 3701-3711a; secs. 2-12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451-1461); 21 U.S.C. 41-50, 61-63, 141-149, 467f, 679(b), 801-886, 1031-1309; secs 201-903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321-393); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354-360F, 361, 362, 1701-1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 264, 263b-263n, 263, 265, 300u-300u-5, 300aa-1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007-10008; E.O. 11490, 11921, and 12591.

2. Section 5.22 is amended by revising paragraphs (a)(9)(iii) and (a)(9)(iv) to read as follows:

§ 5.22 Certification of true copies and use of Department seal.

(a) * * *

(9) * * *

(iii) The Director and Deputy Director, Office of Compliance and Surveillance, CDRH.

(iv) The Director, Division of Compliance Operations, Office of Compliance and Surveillance, CDRH.

* * * * *

3. Section 5.23 is amended by revising paragraphs (c)(2) and (c)(3) to read as follows:

§ 5.23 Disclosure of official records.

* * * * *

(c) * * *

(2)The Director and Deputy Director, Office of Compliance and Surveillance, CDRH.

(3) The Director, Division of Product Surveillance, Office of Compliance and Surveillance, CDRH.

* * * * *

4. Section 5.37 is amended by revising paragraphs (a)(2)(ii), (a)(2)(iii), (b)(2) and (b)(3), by redesignating paragraph (b)(4) as paragraph (b)(5), and by adding new paragraph (b)(4) to read as follows:

§ 5.37 Issuance of reports of minor violations.

(a) * * *

(2) * * *

(ii) The Director and Deputy Director, Office of Compliance and Surveillance, CDRH.

(iii) The Director, Division of Compliance Operations, Office of Compliance and Surveillance, CDRH

* * * * *

(b) * * *

(2) The Director and Deputy Director, Office of Compliance and Surveillance, CDRH.

(3) Director, Division of Compliance Operations, Office of Compliance and Surveillance, CDRH.

(4) The Director, Division of Standards Enforcement, Office of Compliance and Surveillance, CDRH.

* * * * *

(5) Section 5.45 is amended by revising paragraphs (b) introductory text, (b)(4), (c)(2), and (e)(1)(ii), by redesignating paragraphs (e)(1)(iii) and (e)(1)(iv) as paragraph (e)(1)(iv) and (e)(1)(v) respectively, and by adding new paragraph (e)(1)(iii) to read as follows:

§ 5.45 Imports and exports.

* * * * *

(b) The Director and Deputy Director, Center for Devices and Radiological Health (CDRH); the Director and Deputy Director, Office of Compliance and Surveillance, CDRH; Regional Food and Drug Directors; District Directors; and the Director, St. Louis Branch, are authorized, under section 360 of the Public Health Service Act (PHSA), to perform the following functions or to designate officials to:

* * * * *

(4) Refuse or grant permission and time extensions to bring noncomplying products into compliance with the PHSA in accordance with a corrective action plan approved by the Director, Office of Compliance and Surveillance, CDRH.

(c) * * *

(2) The Director and Deputy Director, Office of Compliance and Surveillance, CDRH.

* * * * *

(e) * * *

(1) * * *

(ii) The Director and Deputy Director, Office of Compliance and Surveillance, CDRH.

(iii) The Director, Division of Compliance Operations, Office of Compliance and Surveillance, CDRH.

* * * * *

6. Section 5.46 is revised to read as follows:

§ 5.46 Manufacturer's resident import agents.

The Director and Deputy Director, Center for Devices and Radiological Health (CDRH) and the Director and Deputy Director, Office of Compliance and Surveillance, CDRH, are authorized to reject manufacturer's designations of import agents under § 1005.25(b) of this chapter.

7. Section 5.47 is amended by revising paragraph (e)(2) to read as follows:

§ 5.47 Detention of adulterated or misbranded medical devices.

* * * * *

(a) * * *

(2) The Director and Deputy Director, Office of Compliance and Surveillance, CDRH.

* * * * *

8. Section 5.59 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 5.59 Approval, disapproval, or withdrawal of approval of applications for investigational device exemptions.

(a) * * *

(1) The Director and Deputy Director, Center for Devices and Radiological Health (CDRH), the Director, Deputy Director, and Associate Director, Office of Device Evaluation, CDRH, and the Director and Deputy Director, Office of Compliance and Surveillance, CDRH.

* * * * *

(b) For medical devices assigned to their respective divisions, the Division Directors, Office of Device Evaluation, CDRH, are authorized to approve, disapprove, or withdraw approval of applications for investigational device exemptions submitted under section 520(g) of the act.

9. Section 5.86 is amended by revising paragraph (b) to read as follows:

§ 5.86 Variances from performance standards for electronic products.

* * * * *

(b) The Director and Deputy Director, Office of Compliance and Surveillance, CDRH.

* * * * *

10. Section 5.87 is amended by revising paragraph (b) to read as follows:

§ 5.87 Exemption of electronic products from performance standards and prohibited acts.

* * * * *

(b) The Director and Deputy Director, Office of Compliance and Surveillance, CDRH.

* * * * *

11. Section 5.88 is revised to read as follows:

§ 5.88 Testing programs and methods of certification and identification for electronic products.

The Director and Deputy Director, Center for Devices and Radiological Health (CDRH), and the Director and Deputy Director, Office of Compliance and Surveillance, CDRH, are authorized to review and evaluate industry testing programs under section 358(g) of the Public Health Service Act (the act), and to approve or disapprove alternate methods of certification and identification and to disapprove testing programs upon which certification is based under section 358(h) of the act.

12. Section 5.89 is amended by revising the introductory text of both paragraphs (a) and (b) to read as follows:

§ 5.89 Notification of defects in, and repair or replacement of, electronic products.

(a) The Director and Deputy Director, Center for Devices and Radiological Health (CDRH), and the Director and Deputy Director, Office of Compliance and Surveillance, CDRH, are authorized to perform all functions of the Commissioner of Food and Drugs, relating to notification of defects in, noncompliance of, and repair or replacement of or refund for, electronic products under section 359 of the Public Health Service Act (the act) and under §§ 1003.11, 1003.22, 1003.31, 1004.2, 1004.3, 1004.4, and 1004.6 of this chapter; and Regional Food and Drug Directors, District Directors, and the Director, St. Louis Branch, are authorized to perform all such functions relating to:

* * * * *

(b) The Director and Deputy Director, Office of Compliance and Surveillance, CDRH, and the Director, Division of Standards Enforcement, Office of Compliance and Surveillance, CDRH, are authorized to notify manufacturers of defects in, and noncompliance of, electronic products under section 359(e) of the act and under § 1003.11(a) of this chapter; and the chiefs of District Compliance Branches are authorized to perform all such functions relating to:

* * * * *

13. Section 5.91 is revised to read as follows:

§ 5.91 Dealer and distributor direction to provide data to manufacturers of electronic products.

The Director and Deputy Director, Center for Devices and Radiological Health (CDRH), the Director and Deputy Director, Office of Compliance and Surveillance, CDRH, and the Director, Division of Standards Enforcement, Office of Compliance and Surveillance, CDRH, are authorized to direct dealers and distributors of electronic products to furnish information on first purchasers of such products to the manufacturer of the product under section 360A(f) of the Public Health Service Act.

Dated: November 2, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-26530 Filed 11-8-90; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 89F-0481]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyisobutylene and isobutylene/isoprene copolymers as components of food-contact materials sterilized with a hydrogen peroxide solution. This action responds to a petition filed by Exxon Chemical Co.

DATES: Effective November 9, 1990; written objections and requests for a hearing by December 10, 1990.

ADDRESSES: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFF-335), 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 6, 1989 (54 FR 50436), FDA announced that a petition (FAP 9B4178) had been filed by Exxon Chemical Co., P.O. Box 45, Linden, NJ 07036, proposing that § 178.1005 *Hydrogen peroxide solution* (21 CFR 178.1005) be amended to provide for the safe use of polyisobutylene and isobutylene/isoprene copolymers as components of food-contact materials sterilized with a hydrogen peroxide solution.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive is safe and that the regulations should be amended in § 178.1005(e)(1) in the table by alphabetically adding a new entry as set forth below.

In accordance with § 171.1(h) CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this section. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before December 10, 1990 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.1005 is amended in the table of paragraph (e)(1) by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.1005 Hydrogen peroxide solution.

* * * * *

(e) * * *

(1) * * *

Substances	Limitations
* * * * *	
Isobutylene polymers.	Complying with § 177.1420 (a)(1) and (a)(2) of this chapter.
* * * * *	

* * * * *

Dated: November 1, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-26531 Filed 11-8-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 551

Control, Custody, Care, Treatment and Instruction of Inmates Grooming

CFR Correction

In title 28 of the Code of Federal Regulations, revised as of July 1, 1990, on page 872, § 551.3 was incorrectly revised. The text printed at 55 FR 6181, February 21, 1990, was a proposed revision. The correct text of the section as published in title 28 revised as of July 1, 1989, reads as follows:

§ 551.3 Hairpieces.

(a) A female inmate may wear a wig or hairpiece.

(b) A male inmate may not wear an artificial hairpiece.

BILLING CODE 1505-01-D

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Chapter 99

Cost Accounting Standards Board; Establishment of Rules and Procedures

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board, today establishes rules and procedures for the conduct of its operations. The Board is established pursuant to section 5 of the Office of Federal Procurement Policy Act Amendments of 1988, 41 U.S.C. 422. Section 5(f)(3) of that Act, 41 U.S.C. 422(f)(3) requires the Administrator for Federal Procurement Policy, after consultation with the Board, to prescribe rules and procedures governing actions of the Board. The Administrator today gives notice that he has consulted with the Members of the Board, and that by consensus the Board has adopted the following rules and procedures pursuant to the cited statutory authority.

DATES: This rule is effective November 9, 1990. Comments on the Board's interim rules must be in writing and must be received by January 8, 1991.

ADDRESSES: Comments should be addressed to the Office of Federal Procurement Policy, Cost Accounting Standards Board, 725 17th Street NW., room 9001, Washington, DC 20503. ATTN: CASB Docket #90-02.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Acting Executive Secretary and Counsel, Cost Accounting Standards Board (telephone: 202-395-3300).

SUPPLEMENTARY INFORMATION:

A. Background

Section 5 of Public Law 100-679, "The Office of Federal Procurement Policy Act Amendments of 1988" reestablished the Cost Accounting Standards Board as an independent board within the Office of Federal Procurement Policy. The Board consists of five members, including the Administrator for Federal Procurement Policy, who serves as Chairman. The Board has the exclusive statutory authority to make, promulgate, amend, and rescind cost accounting standards and interpretations thereof designed to achieve uniformity and consistency in the cost accounting practices governing measurement, assignment and allocation of costs to contracts with the United States.

Section 5(f)(3) of the Office of Federal Procurement Policy Act Amendments requires the Administrator, after consultation with the Board, to prescribe rules and procedures governing actions of the Board. The statute requires that such rules and procedures mandate that any cost accounting standard promulgated, amended, or rescinded (and interpretations thereof) shall be adopted by majority vote of the Board Members.

The rule promulgated today sets forth the operational rules and procedures of the Cost Accounting Standards Board. It does not promulgate, rescind or modify any existing Standards. Such Cost Accounting Standards, including any waivers, exemptions, interpretations, modifications, rules and regulations promulgated by the previous Cost Accounting Standards Board under the authority of section 719 of the Defense Production Act of 1950, 50 U.S.C. app. 2168, shall remain in effect unless and until amended, superseded or rescinded by the Board pursuant to the authority of section 5 of Public Law 100-679.

The public is further advised that today's rulemaking is purely administrative in nature, and in no way affects the application (including thresholds) of existing cost accounting standards to government contracts. In particular, the public is advised that § 9901.306, entitled "Standards applicability," should in no way be construed as modifying existing dollar thresholds for cost accounting standards applicability, or the application of the standards to non-defense contracts. The standards as codified at 48 CFR part 30, and 4 CFR part 331, *et seq.*, remain in full force and effect, until amended, modified or superseded by the Cost Accounting Standards Board.

The previous Cost Accounting Standards Board completed its work in establishing basic Cost Accounting Standards, and subsequently ceased operations on September 30, 1980. After that time, the General Accounting Office (GAO) sponsored the continued publication of CASB regulations (45 FR 79409 December 1, 1980). To reflect this GAO sponsorship, the heading of

chapter III of title 4 was changed in the 1981 edition of the CFR from "Cost Accounting Standards Board" to "General Accounting Office (CASB)."

The recodification of the existing sets of Cost Accounting Standards, including any changes in applicability or dollar thresholds, will be the subject of a future rulemaking by the Board.

B. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this rulemaking because this rule does not impose any reporting, recordkeeping or collection of information requirements on offerors, contractors or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.* These rules and procedures relate solely to the internal organization and operation of the Cost Accounting Standards Board.

C. Executive Order 12291 and the Regulatory Flexibility Act

This regulation governs the operation of the Cost Accounting Standards Board. The economic impact of establishing and operating the Board is expected to be minor. Therefore, the Chairman has determined that this is not a "major rule" under Executive Order 12291, and that a regulatory impact analysis is not required. Furthermore, this regulation will not have a significant effect on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

List of Subjects in 48 CFR Part 9901

Government procurement, Cost accounting standards.

For the reasons set out in the preamble, chapter 99 of title 48 of the Code of Federal Regulations is established consisting at this time of part 9901 as set forth below.

Dated: October 30, 1990.

Allan V. Burman,

Administrator for Federal Procurement Policy and Chairman, Cost Accounting Standards Board.

CHAPTER 99—COST ACCOUNTING STANDARDS BOARD, OFFICE OF FEDERAL PROCUREMENT POLICY, OFFICE OF MANAGEMENT AND BUDGET

PART 9900—[RESERVED]

SUBCHAPTER A—ADMINISTRATION

PART 9901—RULES AND PROCEDURES

Sec.

9901.301 Purpose
9901.302 Authority.
9901.303 Offices.
9901.304 Membership.
9901.305 Requirements for standards and interpretive rulings.
9901.306 Standards applicability.
9901.307 Exemptions and waivers.
9901.308 Meetings.
9901.309 Quorum.
9901.310 Board action.
9901.311 Executive sessions.
9901.312 Minutes.
9901.313 Public hearings.
9901.314 Informal actions.
9901.315 Executive Secretary.
9901.316 Files and records.
9901.317 Amendments.

Authority: Pub. L. 100–679, 102 Stat. 4056, 41 U.S.C. 422.

§ 9901.301 Purpose.

This part is published in compliance with Public Law 100–679, section 5(f)(3), 41 U.S.C. 422(f)(3), and constitutes the rules and procedures of the Cost Accounting Standards Board.

§ 9901.302 Authority.

(a) The Cost Accounting Standards Board (hereinafter referred to as the "Board") is established and operates in compliance with Public Law 100–679.

(b) The Board has the exclusive regulatory authority to make, promulgate, amend, and rescind cost accounting standards, and interpretations thereof, designed to achieve uniformity and consistency in the cost accounting standards governing measurement, assignment, and allocation of costs to contracts with the United States Government.

(c) All cost accounting standards, waivers, exemptions, interpretations, modifications, rules, and regulations previously promulgated under section 719 of the Defense Production Act of 1950 (50 U.S.C. app. 2168) shall remain in effect unless and until amended, superseded, or rescinded by the Board pursuant to Public Law 100–679.

§ 9901.303 Offices.

The Cost Accounting Standards Board's offices are located in the New Executive Office Building, 725 17th Street NW., Washington, DC 20503. The hours of business for the Board are 9 a.m. to 5:30 p.m., local time, Monday through Friday, excluding holidays observed by the Federal Government in Washington, DC.

§ 9901.304 Membership.

The Board consists of five members, including the Administrator of the Office of Federal Procurement Policy (hereinafter referred to as the "Administrator") who shall serve as Chairman, and four other members with experience in Government contract cost accounting who are to be appointed as follows:

(a) A representative of the Department of Defense appointed by the Secretary of Defense.

(b) An officer or employee of the General Services Administration appointed by the Administrator of the General Services Administration or his/her designee.

(c) A representative of industry appointed from the private sector by the Administrator.

(d) An individual who is particularly knowledgeable about cost accounting problems and systems appointed from the private sector by the Administrator.

(e) The term of office of each of the members of the Board, other than the Administrator, shall be four years, with the exception of the initial appointments of members. Of the initial appointments to the Board, two members shall hold appointment for a term of two years, one shall hold appointment for a term of three years, and one shall hold appointment for a term of four years.

(f) The members from the Department of Defense and the General Services Administration shall not be permitted to continue to serve on the Board after ceasing to be an officer or employee of their respective appointing agency. A vacancy on the Board shall be filled in the same manner in which the original appointment was made. A member may be reappointed for a subsequent term(s). Any member appointed to fill an interim vacancy on the Board shall serve for the remainder of the term for which his or her predecessor was appointed.

(g) In the event of the absence or incapacity of the Administrator or during a vacancy in the office, the official of the Office of Federal Procurement Policy, acting as Administrator, shall serve as the Chairman of the Board.

(h) In the event of the absence of any of the other Board members, a representative of that Board member may attend the Board meeting, but shall have no vote, and his or her attendance shall not be counted to establish a quorum.

§ 9901.305 Requirements for standards and interpretive rulings.

Prior to the promulgation of cost accounting standards and interpretations thereof, the Board shall:

(a) Take into account, after consultation and discussion with the Comptroller General and professional accounting organizations, contractors and other interested parties:

(1) The probable costs of implementation, including inflationary effects, if any, compared to the probable benefits;

(2) The advantages, disadvantages, and improvements anticipated in the pricing and administration of, and settlement of disputes concerning, contracts; and

(3) The scope of, and alternatives available to, the action proposed to be taken.

(b) Prepare and publish a report in the **Federal Register** on issues reviewed under paragraph (a) of this section.

(c) Publish an advance notice of proposed rulemaking in the **Federal Register** in order to solicit comments on the report prepared pursuant to paragraph (c) of this section, and provide all parties affected a period of not less than 60 days after such publication to submit their views and comments. During this 60-day period, consult with the Comptroller General and consider any recommendation the Comptroller General may make.

(d) Publish a notice of such proposed rulemaking in the **Federal Register** and provide all parties affected a period of not less than 60 days after such publication to submit their views and comments.

(e) Rules, regulations, cost accounting standards, and modifications thereof promulgated or amended by the Board, shall have the full force and effect of law and shall become effective within 120 days after publication in the **Federal Register** in final form, unless the Board determines a longer period is necessary. Implementation dates for contractors and subcontractors shall be determined by the Board, but in no event shall such dates be later than the beginning of the second fiscal year of affected contractors or subcontractors after the standard becomes effective. Rules, regulations, cost accounting standards, and modifications thereof promulgated or amended by the Board shall be accompanied by prefatory comments and by illustrations, if necessary.

(f) The above functions exercised by the Board are excluded from the operations of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

§ 9901.306 Standards applicability.

Cost Accounting Standards promulgated by the Board shall be mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the United States Government in excess of $500,000, other than contracts or subcontracts that have been exempted by the Board.

§ 9901.307 Exemptions and waivers.

The Board may exempt classes or categories of contractors and subcontractors from cost accounting standards requirements, and establish procedures for waiver of the requirements with respect to individual contracts and subcontracts. The official records of the Board shall be documented with supporting justification for class or category exemptions and individual waivers.

§ 9901.308 Meetings.

The Board shall meet at the call of the Chairman. Agenda for Board meetings shall be proposed by the Chairman, but any Board member may request any item to be placed on the agenda.

§ 9901.309 Quorum.

Three Board members, at least one of whom is appointed by the Administrator from private life, shall constitute a quorum of the Board.

§ 9901.310 Board action.

Board action shall be by majority vote of the members present and voting, except that any vote to publish a proposed standard, rule or regulation in the **Federal Register** for comment or any vote to promulgate or adopt a standard, rule or regulation, or any interpretation thereof, shall require at least three affirmative votes of the five Board members. The Chairman may vote on all matters presented for a vote, not merely to resolve tie votes. The results of final votes shall be reported in the minutes of the meeting, and the vote of a Board member may be recorded at his/her request.

§ 9901.311 Executive sessions.

During the course of a Board meeting, any Board Member may request that for any portion of the meeting, the Board meet in executive session. The Chairman shall thereupon order such a session.

§ 9901.312 Minutes.

The Executive Secretary of the Board shall be responsible for keeping accurate minutes of Board meetings and maintaining Board files.

§ 9901.313 Public hearings.

Public hearings to assist the Board in the development and explanation of cost accounting standards and interpretive rulings may be held to the extent the Board in its sole discretion deems desirable. Notice of such hearings shall be given by publication in the **Federal Register.**

§ 9901.314 Informal actions.

The Chairman may take actions on behalf of the Board on administrative issues, as determined by the Chairman, without holding an official meeting of the members. However, details of the actions so taken shall be provided to all of the members at the next Board meeting following such actions. Board members may be polled by telephone on other issues that must be processed on a timely basis when such matters cannot be deferred until the next formal meeting of the Board.

§ 9901.315 Executive Secretary.

The Board's staff of professional, technical and supporting personnel is directed and supervised by the Executive Secretary.

§ 9901.316 Files and Records.

The files and records of the Board shall be maintained in accordance with the *Federal Records Creation, Maintenance, and Disposition Manual* of the Executive Office of The President, Office of Administration. As a minimum, the files and records shall include:

(a) A record of every Board meeting, including the minutes of Board proceedings and public hearings.

(b) Cost accounting standards promulgated, amended, or rescinded and interpretations thereof along with the supporting documentation and applicable research material.

(c) Applicable working papers, memoranda, research material, etc. related to issues under consideration by the Board and/or previously considered by the Board.

(d) Substantive regulations and statutes of general applicability and general policy and interpretations thereof.

(e) Any other file or record deemed important and relative to the duties and responsibilities of the Board.

§ 9901.317 Amendments.

This part 9901, Rules and Procedures, may be amended by the Chairman, after consultation with the Board.

[FR Doc. 90–26605 Filed 11–8–90; 8:45 am]
BILLING CODE 3110–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 371

Fraser River Sockeye and Pink Salmon Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason orders.

SUMMARY: The Secretary of Commerce (Secretary) hereby publishes the inseason orders regulating fisheries in U.S. waters that were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by the Secretary during the 1990 sockeye and pink salmon fisheries within the Fraser River Panel Area. These orders established fishing times, areas, and types of gear for U.S. treaty Indian and all-citizen fisheries during the period the Commission exercised jurisdiction over these fisheries.

Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. Therefore, the 1990 orders are being published together in this notice.

EFFECTIVE DATES: Each of the following inseason orders of the Secretary was effective upon announcement on telephone hotlines as specified at 50 CFR 371.21(b)(1).

ADDRESSES: Comments on these inseason orders may be sent to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150; or Robert R. Vreeland, 206–526–6144.

SUPPLEMENTARY INFORMATION: The Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon was signed at Ottawa on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631–3644.

Under authority of the Act, regulations were promulgated at 50 CFR part 371 (51 FR 23420, June 27, 1986) to provide a framework for implementation of certain regulations of the Commission and inseason orders of the Commission's Panel for sockeye and pink salmon fisheries in the Fraser River Panel Area (U.S.). The regulations apply to the Fraser River Panel Area (U.S.) during the period each year when the Commission exercises jurisdiction over these fisheries.

The regulations close the Fraser River Panel Area (U.S.) to sockeye and pink salmon fishing unless opened by Panel regulations or by inseason orders of the Secretary that give effect to Panel orders, unless such orders are determined not to be consistent with domestic legal obligations. During the fishing season, the Secretary may issue orders that establish fishing times and areas consistent with the annual Commission regime and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations. The Secretary issues inseason orders through his delegate, the Northwest Regional Director of NMFS. Official notice of these inseason actions of the Secretary is provided by two telephone hotlines described at 50 CFR 371.21(b)(1). Inseason orders of the Secretary must be published in the **Federal Register** as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 1990 orders are being published in this notice for the convenience of the public.

The following inseason orders were adopted by the Panel and issued for U.S. fisheries by the Secretary during the 1990 fishing season. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220–22.

Order no. 1990–1: Issued 8:10 p.m., July 17, 1990.

Treaty indian fishery: Areas 4B, 5 and 6C—Drift gill nets open 12 noon, July 18 to 12 noon, July 21.

Order no. 1990–2: Issued 1:30 p.m., July 20, 1990.

Treaty indian fishery: Areas 4B, 5 and 6C—Drift gill nets open 12 noon, July 22 to 12 noon, July 26.

Order no. 1990–3: Issued 11:30 a.m., July 24, 1990.

Treaty indian fishery: Areas 4B, 5 and 6C—Drift gill nets open 12 noon, July 26 to 12 noon, July 29.

Order no. 1990–4: Issued 1:15 p.m., July 27, 1990.

Treaty indian fishery: Areas 4B, 5 and 6C—Drift gill nets open 12 noon, July 29 to 12 noon, August 2.

Order no. 1990–5: Issued 12:20 p.m., July 30, 1990.

Treaty indian fishery: Areas 4B, 5 and 6C—Drift gill nets open 12 noon, August 2 to 12 noon, August 4.

Order no. 1990–6: Issued 2 p.m., August 3, 1990.

Treaty indian fishery: Areas 4B, 5 and 6C—Drift gill nets open 12 noon, August 4 to 12 noon, August 9.

Areas 6, 7 and 7A—Net fishing open 4 a.m. to 8 p.m., August 7.

All-citizen fishery: Areas 4B, 5, 6, 6C, 7 and 7A—Reef nets remain closed.

Purse seines open 6 a.m. to 1 p.m., August 8.

Gill nets open 1:30 p.m. to 8:30 p.m., August 8.

Order no. 1990–7: Issued 3 p.m., August 6, 1990.

Treaty indian fishery: Areas 4B, 5 and 6C—Drift gill nets open 12 noon, August 9 to 12 noon, August 12.

Order no. 1990–8: Issued 4:15 p.m., August 9, 1990.

Treaty indian fishery: Areas 4B, 5 and 6C—Closed to drift gill nets effective 4:15 p.m., August 9.

Order no. 1990–9: Issued 1:30 p.m., August 10, 1990.

Treaty indian and all-citizen fisheries: Areas 4B, 5, 6, 6C, 7 and 7A—Remain closed to net fishing.

Order no. 1990–10: Issued 1 p.m., August 13, 1990.

Referred only to fishing in Canadian area Panel Waters.

Order no. 1990–11: Issued 1:30 p.m., August 17, 1990.

Treaty indian fishery: Areas 4B, 5 and 6C—Remain closed to net fishing.

Areas 6, 7 and 7A—Open to net fishing 5 a.m., August 20 to 9 a.m., August 21.

All-citizen fishery: Areas 4B, 5, 6, 6C, 7 and 7A—Reef nets open 5 a.m. to 9 p.m., August 19. Gill nets open 2 p.m., August 21 to 7 a.m., August 22.

Purse seines open 6 a.m. to 9 p.m., August 22.

Order no. 1990–12: Issued 2:45 p.m., August 20, 1990.

Referred only to fishing in Canadian area Panel Waters.

Order no. 1990–13: Issued 12 noon, August 21, 1990.

Referred only to fishing in Canadian area Panel Waters.

Order no. 1990–14: Issued 3:05 p.m., August 22, 1990.

Referred only to fishing in Canadian area Panel Waters.

Order no. 1990–15: Issued 3:30 p.m., August 24, 1990.

Treaty indian fishery: Areas 4B, 5 and 6C—Drift gill nets open 5 a.m. to 1 p.m., August 31.

Areas 6, 7 and 7A—Open to net fishing 5 a.m. to 1 p.m., August 31.

All-citizen fishery: Areas 4B, 5, 6, 6C, 7 and 7A—Remain closed to reef net fishing. Purse seines open 6 a.m. to 2 p.m., August 30.

Gill nets open 2 p.m. to 10 p.m., August 30.

Order no. 1990–16: Issued 2:05 p.m., August 27, 1990.

Treaty indian fishery: Areas 4B, 5 and 6C—Drift gill nets open 4 a.m. to 4 p.m., August 29.

Areas 6, 7 and 7A—Open to net fishing 4 a.m. to 4 p.m., August 29.

All-citizen fishery: Areas 4B, 5, 6, 6C, 7 and 7A—Purse seines open 6 a.m. to 12 noon, August 28.

Gill nets open 1 p.m. to 9 p.m., August 28.

Order no. 1990–17: Issued 3:20 p.m., August 29, 1990.

Treaty indian fishery: Areas 4B, 5 and 6C—Drift gill net fishing extended from 4 p.m., August 29 to 9 a.m. August 30.

Areas 6, 7 and 7A—Net fishing extended from 4 p.m., August 29 to 9 a.m., August 30.

All-citizen fishery: Areas 4B, 5, 6, 6C, 7 and 7A: Reef nets open 5 a.m. to 9 p.m., September 2.

Order no. 1990–18: Issued 1:15 p.m., August 31, 1990.

Treaty indian fishery: Areas 4B, 5 and 6C—Drift gill nets open 1 p.m., September 1 to 9 p.m., September 3.

Areas 6, 7 and 7A—Net fishing open 1 p.m., September 1 to 9 p.m., September 3.

All-citizen fishery: Areas 6, 7 and 7A—Reef nets open 5 a.m. to 9 p.m., September 1.

Gill nets open 12 noon to 12 midnight, September 5.

Order no. 1990–19: Issued 2:55 p.m., September 3, 1990.

Treaty indian fishery: Areas 4B, 5 and 6C—Relinquished regulatory control effective 9 p.m., September 3.

Areas 6, 7 and 7A—Net fishing extended from 9 p.m., September 3 to 9 p.m., September 4.

All-citizen fishery: Areas 6, 7 and 7A—Reef nets open 5 a.m. to 9 p.m., September 4.

Gill nets open 12 noon to 12 midnight, September 5.

Order no. 1990–20: Issued 10:40 a.m., September 5, 1990.

All-citizen fishery: Areas 6, 7 and 7A (South of the Iwersen's dock Line)—Gill nets open 12 noon to 12 midnight, September 5.

Order no. 1990–21: Issued 11:55 a.m., September 7, 1990.

Referred only to fishing in Canadian area Panel Waters.

Order no. 1990–22: Issued 1:10 p.m., September 7, 1990.

Referred only to fishing in Canadian area Panel Waters.

Order no. 1990–23: Issued 11:35 a.m., September 28, 1990.

Area 7A—Regulatory control extended until further notice in that portion of Area 7A lying westerly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts to the East Point Light on Saturna Island in the Province of British Columbia.

Order no. 1990–24: Issued 11:40 a.m., October 5, 1990.

Area 7A—Relinquish regulatory control of that portion of Area 7A lying westerly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts to the East Point Light on Saturna Island in the Province of British Columbia, effective October 7.

Other Matters

This action is taken under authority of 50 CFR 371.21 (51 FR 23425, June 27, 1986) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 371

Fisheries, Fishing, Pacific Salmon Commission, Treaty Indians.

Authority: 16 U.S.C. 3636(b).

Dated: November 5, 1990.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–26568 Filed 11–8–90; 8:45 am]

BILLING CODE 3510–22–M

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50 CFR Part 647

[Docket No. 900805–0270]

RIN 0648–AD17

Atlantic Coast Red Drum Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this rule to implement the Atlantic Coast Red Drum Fishery Management Plan (FMP). This rule prohibits the harvest of red drum in the exclusive economic zone (EEZ) off the Atlantic coastal states south of the New Jersey/New York border. The intended effect of this rule is to conserve the red drum resource off the Atlantic coastal states.

EFFECTIVE DATE: December 11, 1990.

ADDRESSES: Requests for copies of the environmental impact statement should be sent to the South Atlantic Fishery Management Council, 1 Southpark Circle, Southpark Building, suite 306, Charleston, South Carolina 29407–4699.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813–893–3722.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the South Atlantic Fishery Management Council (Council) in cooperation with the Mid-Atlantic Fishery Management Council under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The management unit is the population of red drum occurring off the Atlantic coastal states from the east coast of Florida to the New Jersey/New York border. This rule regulates only the EEZ portion of the management unit; however, recommendations for management in applicable state waters are included in the FMP.

The background of the fishery and the management measures and their rationale were discussed in the proposed rule published August 15, 1990, (55 FR 33337), and are not repeated here. Further information is included in the FMP, the availability of which was published in the **Federal Register** on July 23, 1990 (55 FR 29868). One comment, which supported the FMP and the proposed regulations, was received.

Approval of the FMP

The Secretary of Commerce (Secretary) has approved the FMP, and the proposed rule is implemented as final with no changes.

Classification

The Regional Director, Southeast Region, NMFS, determined that the FMP is necessary for the conservation and management of the Atlantic red drum fishery and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review (RIR) that concludes that this rule will have minimal adverse economic effects because the recreational and commercial catches of red drum in the EEZ are minimal.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant

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economic impact on a substantial number of small entities because no entities conduct a directed fishery for red drum in the Atlantic Ocean EEZ. As a result, a regulatory flexibility analysis was not prepared.

The Council prepared an environmental impact statement (EIS) that discusses the impact on the affected environment as a result of this rule. Based on the EIS, the Assistant Administrator concluded that there will be no significant adverse impact on the human environment as a result of this rule. A copy of the EIS may be obtained from the South Atlantic Council (see **ADDRESSES**).

The Council determined that this rule will be impiemented in a manner that is consistent to the maximum extent practicable with the coastal zone management programs of Delaware, Florida, Maryland, New Jersey, North Carolina, South Carolina, and Virginia. Georgia does not participate in the coastal zone management program. This determination was submitted for review by the appropriate state agencies under section 307 of the Coastal Zone Management Act. Delaware, Maryland, New Jersey, and South Carolina have found the provisions of this rule to be consistent to the maximum extent practicable with their coastal zone management programs. Florida, North Carolina, and Virginia failed to comment within the statutory time period; therefore, consistency is implied.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR 647

Fisheries, Fishing.

Dated: November 5, 1990.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR is amended by adding a new part 647 to read as follows:

PART 647—ATLANTIC COAST RED DRUM

Subpart A—General Provisions

Sec.

647.1 Purpose and scope.
647.2 Definitions.
647.3 Relation to other laws.
647.4 Permits and fees. [Reserved]
647.5 Reporting requirements. [Reserved]
647.6 Vessel identification. [Reserved]
647.7 Prohibitions.
647.8 Facilitation of enforcement.
647.9 Penalties.

Subpart B—Management Measures

647.20 Closure.
647.21 Specifically authorized activities.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 647.1 Purpose and scope.

(a) The purpose of this part is to implement the Atlantic Coast Red Drum Fishery Management Plan prepared by the South Atlantic Fishery Management Council in cooperation with the Mid-Atlantic Fishery Management The Council.

(b) This part governs conservation and management of red drum in or from the EEZ off the Atlantic coastal states south of the New Jersey/New York border.

§ 647.2 Definitions.

In addition to the definitions in the Magnuson Act, and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Management unit means the waters from the boundary between New Jersey and New York, and extension thereof to the outer limit of the EEZ, to the boundary between the Gulf of Mexico and the Atlantic Ocean, as specified at 50 CFR 601.11(c). The extension of the New Jersey/New York boundary to the outer limit of the EEZ is a line extending in a direction of 115° from true north commencing at a point at 40°29.6'N. latitude, 73°54.1'W. longitude, such point being the intersection of the New Jersey/New York boundary with the three nautical-mile line denoting the seaward limit of state waters.

Red drum means *Sciaenops ocellatus*, also called redfish or channel bass.

§ 647.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) These regulations apply within the EEZ portion of the following National Marine Sanctuaries and National Parks unless regulations or statutes establishing such sanctuary or park prohibit their application:

(1) Looe Key National Marine Sanctuary (15 CFR 937);

(2) Key Largo Coral Reef Marine Sanctuary (15 CFR part 929);

(3) Biscayne National Park (title 16 U.S.C. 410gg);

(4) Gray's Reef National Marine Sanctuary (15 CFR part 938); and

(5) Monitor Marine Sanctuary (15 CFR part 924).

§ 647.4 Permits and fees. [Reserved]

§ 647.5 Reporting requirements. [Reserved]

§ 647.6 Vessel identification. [Reserved]

§ 647.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of the chapter, it is unlawful for any person to do any of the following:

(a) Harvest or possess red drum in or from the EEZ, as specified in § 647.20(a).

(b) Fail to release red drum, as specified in § 647.20(b).

(c) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search in the process of enforcing this part.

§ 647.8 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 647.9 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 647.20 Closure.

(a) No red drum may be harvested or possessed in or from the EEZ in the management unit.

(b) Red drum caught in the EEZ in the management unit must be released immediately with a minimum of harm.

§ 647.21 Specifically authorized activities.

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

[FR Doc. 90-26569 Filed 11-6-90; 12:54 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 55, No. 218

Friday, November 9, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Financing of Commercial Sales of Agricultural Commodities

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Foreign Agricultural Service (FAS) proposes to amend the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480), to increase the initial freight payment due vessel owners from 90 percent to 95 percent and to require detention provisions in freight contracts to cover delays in loading due to the failure to timely open letters of credit when the Commodity Credit Corporation (CCC) finances any part of the ocean freight. The amendment would also provide that vessel owners may collect the undisputed balance of freight in certain circumstances without the charterer's having signed the statement of facts and the laytime statement.

The purpose of these changes is to keep the costs of the Public Law 480, title I program as low as possible and insure that all persons desiring to participate in the shipping of commodities financed under Public Law 480, title I, receive fair and equitable treatment.

DATES: Written comments in duplicate should be submitted on or before December 24, 1990.

ADDRESSES: Comments should be sent to F. Paul Dickerson, General Sales Manager, Foreign Agricultural Service, U.S. Department of Agriculture, room 4071 South Building, 14th and Independence SW., Washington, DC 20250–1000.

FOR FURTHER INFORMATION CONTACT: Connie B. Delaplane, Director, P.L. 480 Operations Division, Export Credits, Foreign Agricultural Service, room 4549 South Building, U.S. Department of Agriculture, 14th and Independence SW., Washington, DC 20250–1000. Telephone: (202) 447–3664.

SUPPLEMENTARY INFORMATION: The proposed rule has been reviewed under USDA Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "nonmajor." It has been determined that this rule will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in costs to consumers, individual industries, Federal, State or local government agencies or geographic regions; and will not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Background

Under title I of the Agricultural Trade Development and Assistance Act of 1954, as amended, (Pub. L. 480), the Commodity Credit Corporation ("CCC") is authorized to finance the sale and exportation of agricultural commodities purchased by friendly countries. CCC's policy is, generally, to pay the ocean freight differential ("OFD") on U.S.-flag vessels. OFD is the amount determined to represent the additional freight costs incurred as a result of the requriement to use U.S.-flag vessels pursuant to cargo preference legislation. In certain circumstances, CCC may also finance, on credit terms, the non-OFD portion of the freight charges for U.S.-flag vessel carriage or the freight charges for foreign-flag vessel carriage.

The importing country is required to open letters of credit for the commodity purchase and for 100 percent of the freight costs for vessels carrying title I commodities when CCC finances any portion of the freight charges. Generally, the OFD portion of the freight costs is financed by CCC on a letter of commitment basis. However, when the freight contract provides for despatch earnings, only 90 percent of the OFD is financed on a letter of commitment basis and the balance of the OFD is financed on the reimbursement method. Under the reimbursement method, the importer pays the supplier of ocean transportation the balance of the freight, which may be less than 10 percent if the vessel owes despatch on the voyage. Despatch is the amount specified in a freight contract to be paid by the vessel operator to the charterer of the vessel for time saved by the vessel in loading and discharging the cargo, less than the number of days stipulated for those purposes in the contract ("laytime"). CCC reimburses the importing country, or a U.S. banking institution if the right to receive reimbursement has been assigned to the bank, for the balance of ocean freight, less a pro-rata share of net despatch, if any. Thus, CCC shares in despatch but not in demurrage. Demurrage is the amount to be paid by the charterer to the vessel operator for time that the vessel must use for loading and discharging the cargo in excess of the laytime.

Letter of Credit

It is proposed that 7 CFR 17.14 be amended to include the requirement that importing countries must open letters of credit for ocean freight before the vessel presents at the loading port whenever CCC finances any portion of the freight. This requirement is presently contained in each title I agreement. This provision would also make it clear that letters of credit must cover 100 percent of the estimated freight based upon quantities and rates specified in the shipping contract.

Initial Freight Payment

The initial freight payment due suppliers of ocean transportation when the contract provides for demurrage/despatch and CCC finances any part of the ocean freight would be increased from 90 percent to 95 percent. The original purpose of the 10 percent withholding procedure was to assure collection by CCC and the importing

country of their respective portions of any despatch payments that might be due under the terms of the ocean transportation agreement between the importer and the supplier of ocean transportation.

The 10 percent withholding amount has, in the past, significantly exceeded the actual amount of despatch earned by importing countries in almost all cases. The Maritime Administration (MARAD), Department of Transportation, conducted a study covering the period April 1, 1988 through March 31, 1989. In 97 instances out of 131 shipments (74 percent of the total shipments) the charterer was entitled to less than 3 percent of the total ocean freight to cover earned despatch; in 28 instances (21.4 percent of the total) the charterer was entitled to from 3 to 5 percent; and in only 6 instances (4.6 percent of the shipments) was the charterer entitled to more than 5 percent of the ocean freight.

Based on the above information and because some owners have encountered delays of months in receiving their final 10 percent payments under the existing regulations, we believe that increasing the initial freight payment would be more realistic and fairer to the vessel owners. Payment delays cost owners money and increase their operating costs; thus, the amendment is expected to reduce U.S.-flag freight rates and consequently the ocean freight differential paid by CCC.

Detention

The problem of delayed freight letters of credit has increased in the last several years. Title I agreements require that the importing country open freight letters of credit promptly after contracting for shipping space but, in any event, not later than presentation of the U.S.-flag vessel for loading. In addition, the Public Law 480, title I Financing Regulations provide in 7 CFR 17.6(g) that "If * * * the supplier of ocean transportation accepts the commodity, before receipt of an acceptable letter of credit from a bank, the supplier takes such action at its own risk * * *." In many cases, however, vessel owners have agreed to load without a letter of credit in order to accommodate the importing country or to prevent costly delays in the vessel's schedule. Many of these vessels have actually completed discharge of the title I cargo before freight letters of credit were opened.

A recent MARAD review revealed that, during July and August 1987, 11 U.S.-flag vessels loaded their cargoes, sailed, discharged their cargoes and were returning to the United States before proper letters of credit were established by the importing country. For two vessels, the letters of credit were established by the completion of the final discharging operations. For all 13 vessels, the 90 percent portion of the ocean freight represented over $22 million.

The review showed that, in the same period in 1988, eight U.S.-flag vessels loaded and completed discharge of their cargoes before properly executed letters credit were established. For these eight vessels, the 90 percent portion of the freight represented more than $5.3 million. Letters of credit for four vessels were not established until after the vessels had completed discharge and were en route back to the United States. In almost every case the letter of credit was not established until more than 60 days after the vessel's presentation date at the load port.

Finally, according to the review, during the period May 31 through June 15, 1989, four vessels loaded, sailed and discharged their cargoes before letters of credit were opened. This resulted in payment of more than $8 million of ocean freight being withheld for more than 60 days.

In other cases, commodity suppliers have refused to release the cargo until an operable commodity letter of credit was available to the exporting firm. This has generally meant that vessels sat idle and lost revenue.

Such delays in payment or in loading are very likely to increase freight rates offered under the title I program as owners build these costs into their rates or to reduce competition if owners are able to locate cargoes other than title I commodities. In order to avoid these problems, and realizing that ocean transportation suppliers are not in position to negotiate contract terms under the title I program, it is deemed desirable to preserve the remedy of detention available to a carrier. Therefore, the proposed rule would require that freight contracts must allow for vessel detention claims when loading is delayed because of the lack of a freight or commodity letter of credit. The decision whether to load or not because of the lack of a letter of credit for the freight remains with the supplier of ocean transportation.

Under the proposed regulation, the period of detention would begin when the vessel presented its notice of readiness to load at the designated loading port and end when an acceptable letter of credit was established. Once begun, detention would continue only until the letter of credit was opened, regardless of other delaying factors which might exist such as strikes or inclement weather.

The regulations would further be amended to make it clear that CCC will not finance detention charges. As a result, disputes regarding actual liability for detention and amounts due under a detention clause must be resolved between the parties to the contract. (See 7 CFR 17.6(d)) of the current regulations.

Laytime Statements and Statements of Fact

According to several vessel owners, slow processing by importing countries of required statements of fact and laytime statements have contributed to some serious delays in collection of the balance of ocean freight due. The statement of facts details the activities related to loading and discharging the vessel and is approved by representatives of the vessel operator and the importer. The laytime statement is prepared by the vessel operator based on the statement of facts and is approved by the importer. They are reviewed by CCC before reimbursement of ocean freight differential is made. The statement of facts and laytime statement serve as the basis for determining despatch or demurrage that may be due. Delay in collecting the balance of ocean freight because of failure to process these documents promptly can increase title I freight rates. Under current regulations, a laytime statement and statement of facts signed by the charterer or consignee are required before the supplier of ocean transportation may receive the balance of freight due.

When CCC finances any part of the ocean freight, the proposed rule would allow the supplier of ocean transportation to provide laytime statements and statements of fact without the signature of the charterer, the consignee or their agents if 60 days had elapsed since completion of discharge. In connection with this provision, as further described below, it would be incumbent upon the charterer, consignee or their agent to provide prompt written notification to the supplier of ocean transportation and to CCC of the amount of disputed despatch and the reason for such dispute.

In order to receive payment based on laytime statements and statements of fact without the signature of the charterer, the supplier would be required to certify that the documents had been submitted to the charterer at least 30 days prior to the request for payment and that the charterer had been notified that payment was being requested based on laytime statements and/or statements of fact signed only by the vessel master or owner. In addition, in the case of a dispute over the despatch computation, the supplier of ocean transportation would be required to provide to the U.S. banking institution through which payment is being effected a copy of the notice from the charterers of the amount in dispute and the reason for such dispute. In such case, the supplier would be entitled to collect only the undisputed amount of the final 5 percent without signature by the charterer, consignee, or their agents of the statements of fact and combined laytime statements. The freight letter of credit and the freight contract would be required to contain this provision.

List of Subjects in 7 CFR Part 17

Agricultural commodities; Exports; Finance; Maritime carriers.

Accordingly, 7 CFR part 17, subpart A, is amended as follows:

1. The authority citation for part 17 continues to read as follows:

Authority: Sections 101–115, Pub. L. 480, 83rd Cong., as amended, 68 Stat. 455 (7 U.S.C. 1701 *et seq.*); E.O. 12220, 45 FR 44245.

§ 17.14 [Amended]

2. In § 17.14, "90 percent" is changed to "95 percent" and "10 percent" is changed to "5 percent" in paragraphs (e)(3), (e)(4), (l)(8) and (n); and "90 percent" is changed to "95 percent" in paragraphs (l)(2), (l)(3), (l)(4), (l)(5)(ii), (l)(6), and (l)(7).

§ 17.14 [Amended]

3. Section 17.14 is further amended by adding paragraph (a)(4), changing the period following paragraph (j)(8) to a semicolon and adding paragraphs (j)(9) and (k) (7) and (8), and amending paragraph (n) by adding a sentence at the end thereof, to read as follows:

§ 17.14 Ocean transportation.

(a) * * *

(4) When commodities are required to be transported in a U.S.-flag vessel, the government of the importing country must ensure that an irrevocable letter of credit has been opened in favor of the supplier of ocean transportation prior to the vessel's presentation for loading. The letter of credit shall provide for sight payment or acceptance of a draft, payable in U.S. dollars, for 100 percent of the ocean freight on the basis of the quantities and rates specified in the applicable charter party or liner booking contract.

* * * * *

(j) * * *

* * * * *

(9) Detention.

(k) * * *

* * * * *

(7) Charter parties and liner booking contracts must specify that the participant shall be liable for detention of the vessel for loading delays attributable to the decision of the supplier of ocean transportation or the supplier of commodity not to commence loading because of the failure of the participant to establish an operable irrevocable ocean freight or commodity letter of credit. The ocean transportation supplier shall be entitled to reimbursement for detention costs for all time so lost, for each calendar day or any part of a calendar day. The period of such delay shall not commence earlier than upon presentation of the vessel at the designated loading port within the laydays specified in the charter party or booking contract, and upon notification of the vessel's readiness to load in accordance with the terms of the applicable charter party or booking contract. The period of such delay shall end at the time an operable irrevocable letter of credit has been established. Time calculated as detention shall not count as laytime. Reimbursement for such detention shall be payable no later than upon the vessel's arrival at the first port of discharge.

(8) Charter parties and liner booking contracts which provide for despatch earnings, and related letters of credit for ocean freight, must contain the provision in § 17.18(d)(iii) regarding acceptability under certain circumstances of statements of fact and combined laytime statements without signature by the charterer or consignee or their agents.

* * * * *

(n) * * * If the charterer does not agree with the despatch computation, the charterer, consignee or their agent must immediately provide written notification to the supplier of ocean transportation and to CCC of the amount disputed and the reason for such dispute. (See § 17.18(d)(6)(iii)).

4. In § 17.18 paragraphs (d)(6) introductory text and (d)(6)(ii) are amended by changing "90 percent" to read "95 percent", and by revising paragraph (d)(6)(iii) to read as follows:

§ 17.18 Documentation.

* * * * *

(d) *Documents required for reimbursement of ocean freight financed separately from commodity price.*

* * * * *

(6) * * *

(iii) A copy of the loading and discharging statements of fact and the combined laytime statement signed by the ship's master or owner and the charterer or consignee. Agents' signatures are acceptable. However, if 60 calendar days have elapsed since completion of discharge, as shown by the statement of fact, signature by the charterer or consignee or their agents is not required as long as the documents are accompanied by a statement signed by the supplier of ocean transportation certifying that the supplier submitted the statements of fact and combined laytime statement to the charterer for review at least 30 days prior to the request for payment and that the supplier has notified the charterer of the request for payment on this basis. If the charterer has advised the supplier in writing of any disputed amount of despatch, a copy of this advice must be included in the request for payment and, in such case, only the portion of the 5 percent which is not in dispute is eligible for reimbursement. The provisions of this paragraph shall be included in the letter of credit for ocean freight.

* * * * *

Signed at Washington, DC on October 25, 1990.

F. Paul Dickerson,

General Sales Manager, Foreign Agricultural Service; and Vice President, Commodity Credit Corporation.

[FR Doc. 90–26556 Filed 11–8–90; 8:45 am]

BILLING CODE 3410–10–M

Agricultural Marketing Service

7 CFR Part 989

[FV–91–212 PR]

1990–91 Expenses and Assessment Rate Under Marketing Order No. 989

Raisins Produced From Grapes Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 989 for the 1990–91 fiscal year established under the federal marketing order for raisins produced from grapes grown in California. Authorization of this budget would allow the Raisin Administrative Committee (Committee) to incur reasonable and necessary expenses to administer the marketing order program. Funds for the program would be derived from assessments on handlers of California raisins.

DATES: Comments must be received by November 19, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. box 96456, room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, room 2525–S, F&V, AMS, USDA, P.O. box 96456, Washington, DC 20090–6456; telephone: (202) 475–3920.

SUPPLEMENTARY INFORMATION:

This proposed rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 23 handlers of California raisins subject to regulation under this marketing order and approximately 5,000 producers of California raisins. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The minority of handlers and the majority of producers of raisins may be classified as small entities.

The federal marketing order for California raisins requires that the assessment rate for a particular marketing year shall apply to all assessable raisins handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of regulated raisins. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings, so that all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of assessable raisins. That rate is applied to actual shipments to produce sufficient income to pay the Committee's expected expenses. The budget of expenses and rate of assessment are usually recommended by the Committee shortly after the season starts. Expenses are incurred on a continuous basis; therefore, the budget of annual expenses and assessment rate approval must be expedited so that the Committee will have funds to meet its obligations.

The Committee met on October 4, 1990, as required by the marketing order, and unanimously recommended 1990–91 marketing order expenditures of $540,550 and an assessment rate of $1.90 per assessable ton of raisins. In comparison, 1989–90 marketing year budgeted expenditures were $534,505, and the assessment rate was 1.50 per ton. Assessment income for 1990–91 is estimated at $540,550 based on 284,500 tons of assessable raisins.

Major expenditure categories in the 1990–91 budget are $195,000 for executive salaries, $101,000 for office personnel salaries, $50,000 for Committee travel, $38,000 for compliance staff salaries, and $35,000 for insurance and bonds. Comparable budgeted expenditures for the 1988–89 fiscal year were $176,400, $91,200, $40,000, $33,000, and $35,000, respectively. The increase in the assessment rate is necessary because the estimate of the crop is about 35,000 tons less than last year. Also, the Committee has increased salaries for executive personnel.

While this action would impose some additional costs on handlers of California raisins, including small entities, the costs are in the form of uniform assessments on all handlers. Any costs to handlers are expected to be more than offset by benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for this program needs to be expedited. The Committee must have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Part 989 be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 989.341 is added to read as follows:

§ 989.341 Expenses and assessment rate.

Expenses of $540,550 by the Raisin Administrative Committee are authorized and an assessment rate payable by each handler in accordance with § 989.80 of $1.90 per ton of assessable raisins is established for the crop year ending July 31, 1991. Any unexpended funds from that crop year shall be credited or refunded to the handler from whom collected.

Dated: November 5, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–26561 Filed 11–8–90; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–46; Notice No. SC–90–5–NM]

Special Conditions: Embraer Model CBA–123 Airplane; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Embraer Model CBA–123 airplane. This airplane is equipped with high-technology digital avionics systems which perform critical or essential funcitons. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). This notice proposes additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

DATES: Comments must be received on or before December 24, 1990.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket ANM–7), Docket No. NM46, 1601 Lind Avenue SW, Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–46. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Hank Jenkins, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, Washington, 98055–4046; telephone (207) 227–2141.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–46." The postcard will be date/time stamped, and returned to the commentor.

Background

On July 31, 1986, Embraer applied for a type certificate for their new Model CBA–123 airplane. The CBA–123 is a pressurized 19-passenger transport category airplane with a maximum takeoff gross weight of 18,739 pounds, maximum cruise speed of 272 knots, maximum operating altitude of 40,000 feet, and a range of approximately 800 miles fully loaded. It is powered by two Garrett TPF351–20 turboprop engines mounted on the aft fuselage in a pusher configuration. This airplane incorporates a number of novel or unusual design features, such as digital avionics including, but not necessarily limited to, an electronic flight instrument system (EFIS), attitude and heading reference system (AHRS), engine indication and crew alerting system (EICAS), and full authority digital engine control (FADEC), which are vulnerable to lightning and high-intensity radiated fields (HIRF) external to the airplane. In addition to these novel or unusual design features, the Model CBA–123 also incorporates other unrelated novel or unusual design features. Those features will be the subject of separate notices of proposed special conditions.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Embraer must show that the Model CBA–123 meets the applicable requirements of Subchapter C in effect on the date of application for that certificate unless: (1) Otherwise specified by the Administrator; or (2) Compliance with later effective amendments is elected or required under § 21.17; and (3) Special conditions are prescribed by the Administrator.

Based on the provisions of § 21.17(a)(1), the Model CBA–123 would be required to comply with part 25, as amended through Amendment 25–60; however, Embraer has elected to comply with part 25, as amended through Amendment 25–61, and is expected to comply with §§ 25.571(e)(2) and 25.905(d), as amended by Amendment 25–72. In addition, SFAR 27 and part 36, through the latest amendments in effect at the time of awarding the type certificate, must be met. The special conditions which may be developed as a result of this notice will form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Model CBA–123 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2). In addition to the applicable airworthiness regulations and special conditions, the Model CBA–123 must comply with the noise certification requirements of part 36 and the engine emission requirements of Special Federal Aviation Regulation (SFAR) 27.

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection; one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from

ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the Model CBA–123 which would require that the new technology electrical and electronic systems, such as the electronic flight instrument system (EFIS), attitude and heading reference system (AHRS), engine indication and crew alerting system (EICAS), and full authority digital engine control (FADEC), be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with the proposed special conditions, a clarification on the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the proposed lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed sytems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (⅛ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ⅛ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And,

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 randon sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10μs, the maximum is 50μs. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (⅛ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$i(t) = I_o (e^{-at} - e^{-bt})$

where:

t = time in seconds,

i = current in amperes, and

	Severe Strike (component A)	Restrike (component D)	Multiple stroke (⅛ component D)	Multiple Burst (component H)
I_o, amp =	218,810	109,405	54,703	10,572
a, sec^{-1} =	11,354	22,708	22,708	187,191
b, sec^{-1} =	647,265	1,294,530	1,294,530	19,105,100
This equation produces the following characteristics:				
I_{peak} =	200 KA	100 KA	50 KA	10 KA
and				
(di/dt)$_{max}$ (amp/sec) =	1.4 × 10^{11} @t=0+sec	1.4 × 10^{11} @t=0+sec	0.7 × 10^{11} @t=0+sec	2.0 × 10^{11} @t=0+sec
di/dt, (amp/sec) =	1.0 × 10^{11} @t=.5μs	1.0 × 10^{11} @t=.25μs	0.5 × 10^{11} @t=.25μs	
Action Integral (amp^2 sec) =	2.0 × 10^6	0.25 × 10^6	.0625 × 10^6	

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS and EICAS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter average electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–500 KHz	80	80
500 KHz–2 MHz	80	80
2 MHz– 30 MHz	200	200
30 MHz–100 MHz	33	33
100 MHz–200 MHz	33	33
200 MHz–400 MHz	150	33
400 MHz– 1 GHz	8,300	2,000
1 GHz– 2 GHz	9,000	1,500
2 GHz– 4 GHz	17,000	1,200
4 GHz– 6 GHz	14,500	800
6 GHz– 8 GHz	4,000	666
8 GHz– 12 GHz	9,000	2,000
12 GHz– 20 GHz	4,000	509
20 GHz– 40 GHz	4,000	1,000

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Embraer Model CBA–123 airplane:

1. *Lightning Protection*

a. Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF)*

Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to externally radiated electromagnetic energy.

3. The following definitions apply with respect to these special conditions:

Critical Function. Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on October 26, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–26573 Filed 11–8–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–NM–230–AD]

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes, which would require replacement of a certain remote controlled circuit breaker (RCCB). This proposal is prompted by a report of an in-service incident where an adjustment nut came loose within an RCCB in the AC powered hydraulic pump electric power circuit, which disabled the electrical power over-current protection. This condition, if not corrected, could result in loss of all AC electrical power.

DATES: Comments must be received no later than January 3, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–230–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. box 17414, Dulles International Airport,

Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-230-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes. There has been a recent report of an in-service incident where an adjustment nut came loose within a remote controlled circuit breaker (RCCB). This resulted in one contact set remaining closed and disabling the over-current protection. The RCCB unit involved was located in the AC powered hydraulic pump electrical power supply circuit. This condition, if not corrected, could result in complete loss of all AC electrical power.

British Aerospace has issued Service Bulletin 24-69-70484A, Revision 1, dated July 25, 1990, which describes procedures to remove certain RCCB's and replace them with modified units. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require the removal of certain RCCB's and replacement with a modified unit in accordance with the service bulletin previously described.

It is estimated that 74 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The modified RCCB's will be provided to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,960.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 146-100A, -200A, and -300A series airplanes, as listed in British Aerospace Service Bulletin 24-289-70484A, Revision 1, dated July 25, 1990, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent loss of all AC electrical power, accomplish the following:

A. Within 90 days after the effective date of this AD, in the AC powered hydraulic pump electric power circuit, remove the remote controlled circuit breaker (RCCB), part Number SM601BA40A12 or SM601BA40A13, and replace it with a modified RCCB, part Number SM601BA40A14, in accordance with British Aerospace Service Bulletin 24-69-70484A, Revision 1, dated July 25, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on October 31, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26574 Filed 11-8-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-224-AD]

Airworthiness Directives; Airbus Industrie Model A320-111, A320-211, and A320-231 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A320-111, A320-211, and A320-231 series airplanes, which would require a one-time inspection of the main landing gear (MLG) wheel axles, to detect defects in the MLG sliding tube assemblies and to identify part numbers, and replacement, if necessary. This proposal is prompted by fatigue testing of sliding tube subassemblies found with cracks which revealed that certain assemblies must be replaced upon the accumulation of 6,600 landings. This condition, if not corrected, could result in loss of the MLG wheels.

DATES: Comments must be received no later than January 3, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-224-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-224-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A320-111, A320-211, and A320-231 series airplanes. During manufacture of a main landing gear (MLG) sliding tube assembly, an inspection revealed an area of residual stress. The area of residual stress is around the axle (at the radius where the axle runs into the brake mounting flange). The residual stress is a result of a grinding technique applied to the MLG axle, which has now been discontinued. Further inspections of the MLG slide tube assembly, with the chromium plating on the axle removed, revealed small spanwise cracks around the axle. Fatigue testing of cracked sliding tube subassemblies has revealed that suspect assemblies must be replaced prior to the accumulation of 6,600 landings. This condition, if not corrected could result in loss of the MLG wheels. Airbus Industrie has issued Service Bulletin A320-32-1031, Revision 1, dated March 19, 1990, which describes procedures for a one-time inspection of the MLG wheel axles, using "Stresscan 500C" test equipment, to detect defects in the MLG slide tube assemblies and to identify part numbers, and replacement of the assemblies, if necessary. The Airbus Industrie Service Bulletin references Dowty Rotol Service Bulletin 200-32-70, appendix A, dated December 7, 1989, for additional instructions. The French DGAC has classified the Airbus Industrie service bulletin as mandatory, and has issued Airworthiness Directive 90-096-010(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require a one-time inspection of the MLG wheel axles, using "Stresscan 500C" test equipment, to detect defects in the MLG sliding tube assemblies and to identify the part number, and replacement, if necessary, in accordance with the service bulletin previously described.

It is estimated that 20 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,800.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A320-111, A320-211, and A320-231 series airplanes, equipped with twin wheel axles; Serial Numbers 002 through 044, 052 through 055, 059 through 073, 076 through 078, and 081; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect defects in the main landing gear (MLG) sliding tube assemblies, accomplish the following:

A. Prior to the accumulation of 6,800 landings, or within 30 days after the effective date of this AD, whichever occurs later, perform an inspection of the MLG wheel axles, using "Stresscan 500C" test equipment, and identify the part number of the MLG sliding tube assemblies, in accordance with Airbus Industrie Service Bulletin A320-32-1031, Revision 1, dated March 19, 1990. Prior to further flight, replace all sliding tube assemblies identified as suspect and all sliding tube assemblies found with defects, in accordance with the service bulletin.

Note: The Airbus Industrie service bulletin references Dowty Rotol Service Bulletin 200-32-70, appendix A, dated December 7, 1989, for additional instructions.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on October 31, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26575 Filed 11-8-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-CE-48-AD]

Airworthiness Directives; Dornier Models Do228-100, Do228-101, Do228-200, Do228-201, Do228-202 and Do228-212 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD) that is applicable to certain Dornier Do228 series airplanes. The proposed action would require the replacement of certain horizontal stabilizer electric trim system relays with improved relays and the modification of the connections to these relays. Optional electrical installations on these airplanes can cause higher specific switching cycles and higher peak currents and reduces the life of the relays and the reliability of the system. A failed relay could result in an uncommanded trim motion and the resulting possible loss of control of the airplane. This proposed action would preclude these electrical reliability reductions and assure proper functioning of the electric trim system.

DATES: Comments must be received on or before January 7, 1991.

ADDRESSES: Dornier 228 Service Bulletin No. ASB-228-164, dated June 5, 1990, applicable to this AD, may be obtained from Dornier Luftfahrt GmbH, Product Support, P.O. box 3, D-8031 Wessling, Federal Republic of Germany; Telephone (498153)-300; Facsimile (498153)-30.29.85. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-48-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Heinz Hellebrand, Brussels Aircraft Certification Office, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone (322)-513.38.30; or Mr. Herman Belderok, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932, ext 2710; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-48-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Certain Dornier 228 series airplanes currently have electric trim systems incorporating trim relays 4CC, 5CC, 8CC, and 9CC. These trim relays are critical to the system reliability and to the prevention of an uncommanded trim system runaway, which could result in complete loss of control of the airplane.

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany (FRG), recently notified the FAA of an unsafe condition that may exist on certain Dornier Model Do228 airplanes. The LBA-FRG advises that the optional installations of the autopilot and/or the elevator trim coupling systems on these airplanes cause higher specific switching cycles than anticipated. In addition, the peak currents caused by the dual trim actuation could exceed the design values in the 4CC, 5CC, 8CC, and 9CC relays, thereby reducing the reliability of these relays and of the trim system. Dornier has issued Service Bulletin (SB) No. ASB-228-164, dated June 5, 1990, which prescribes the replacement of relays 4CC, 5CC, 8CC, and 9CC with new improved relays and subsequent modifications of the relay connections. The LBA-FRG classified this SB as mandatory. These airplanes are manufactured in the Federal Republic of Germany and are type certificated for operation in the United States. Under the provisions of a bilateral airworthiness agreement, the LBA-FRG has shared the above information with the FAA.

The FAA has examined the findings of the LBA-FRG, reviewed all available information, and determined that AD action is necessary for products of this type design, certificated for operation in the United States. Consequently, the FAA is proposing an AD that would require the replacement of the horizontal stabilizer electric system relays 4CC, 5CC, 8CC, and 9CC with improved relays and modification of the relay connections on certain Dornier Do228 series airplanes in accordance with Dornier SB No. ASB-228-164, dated June 5, 1990.

The FAA has determined that there are approximately 43 airplanes affected by the proposed AD. The cost of complying with the proposed AD is estimated to be $200 for labor (5 hours at $40 an hour) and $1,017 for parts for a total of $1,217 per airplane. The total cost is estimated to be $52,331. It would be necessary for a small entity to own 4 or more of the affected airplanes to incur a significant cost of compliance with this proposal. Few (less than 33 percent) small entities affected by the proposal own 4 or more of the affected airplanes. Therefore, the cost of compliance is so small that it will not have a significant impact on the small entities operating these airplanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Dornier: Docket No. 90-CE-48-AD.

Applicability: Model Do228-100, Do228-101, Do228-200, Do228-201, Do228-202, and Do228-212 airplanes (serial numbers (S/N) 7005 through 7167 with autopilot option (S20); and S/N 8002 through 8161 and 8163 through 8190 with autopilot option (S20), or trim coupling option (CO1), or a combination of the S20 and CO1 options), certificated in any category.

Compliance: Required within the next 600 hours time-in-service after the effective date of this AD, unless already accomplished.

To retain the reliability of the horizontal stabilizer electric trim system, accomplish the following:

(a) Replace relays 4CC, 5CC, 8CC, and 9CC with improved relays and modify the electrical connections of these relays in accordance with the instructions in Dornier Service Bulletin No. ASB-228-164, dated June 5, 1990.

(b) Airplanes may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(c) An alternate method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

Note 1: The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

Note 2: All persons affected by this directive may obtain copies of the document referred to herein upon request to Dornier Luftfahrt GmbH, Product Support, P.O. box 3, D-8031 Wessling, Federal Republic of Germany; Telephone (498153)-300; Facsimile (498153)-30.29.85; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 1, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26576 Filed 11-8-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-CE-48-AD]

Airworthiness Directives; Dornier Models Do228-100, Do228-101, Do228-200, Do228-201, Do228-202, and Do228-212 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD) that is applicable to certain Dornier Do228 series airplanes. The proposed action would require the installation of a second electrical bonding strap between the wing rear spar and the fuselage, an inspection for galvanic corrosion between the wing front spar and several electrical connectors, and the improvement of the electrical bonding jumpers between the horizontal stabilizer and the elevator. Several reports from U.S. airplane operators have been received of malfunctions of electrical equipment located in the wings of these airplanes. This action would assure the safety of electrical equipment and help eliminate subsequent engine failure.

DATES: Comments must be received on or before January 7, 1991.

ADDRESSES: Dornier Service Bulletin (SB) No. SB-228-106, Revision 1, dated December 11, 1989, SB No. SB-228-152, Revision 1, dated February 19, 1990, and SB No. SB-228-162, dated February 19, 1990, applicable to this AD, may be obtained from Dornier Luftfahrt GmbH, Product Support, P.O. box 3, D-8031 Wessling, Federal Republic of Germany; Telephone (498153)-300; Facsimile (498153)-30.29.85. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA,

Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-49-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Heinz Hellebrand, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone (322)-513.38.30, Extension 2710; or Mr. Herman Belderok, Project Officer, FAA, 601 E. 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-49-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Several U.S. operators of Dornier Do228 series airplanes have reported malfunctions of the electrical equipment located in the wings. Dornier has issued several service bulletins on methods to improve the electrical bonding system of these airplanes and to eliminate possible galvanic corrosion between certain electrical connectors located on the wing front spar.

These include Service Bulletin (SB) No. SB-228-106, Revision 1, dated December 11, 1989; SB No SB-228-152, Revision 1, dated February 19, 1990; and SB No. SB-228-162, dated February 19, 1990. These service bulletins prescribe the installation of an additional electrical bonding strap between the wing rear spar and the fuselage, the inspection for possible galvanic corrosion between the wing front spar and electrical connectors 56VP, 57VP, 58VP, and 59VP (electrical connectors 23Qxa and 24Qxa if option IK04 is installed), and the replacement of the elevator to the stabilizer electrical bonding straps with units having a larger cross section.

The FAA has reviewed the situation as described above and has concluded that an unsafe condition does exist and that AD action is necessary to assure the continued airworthiness of the affected Dornier Do228 series airplanes certificated for operation in the United States. Consequently, the proposed AD would require the installation of a second electrical bonding strap between the wing rear spar and the fuselage, an inspection for galvanic corrosion between the wing front spar and electrical connectors 56VP, 57VP, 58VP, and 59VP (electrical connectors 23Qxa and 24Qxa if option IK04 is installed), and the improvement of the electrical bonding jumpers between the horizontal stabilizer and the elevator.

The FAA has determined that there are approximately 43 airplanes affected by the proposed AD. The cost of complying with the proposed AD is estimated to be $800 for labor (20 hours at $40 an hour) and $546 for parts for a total of $1,346 per airplane. The total fleet cost is estimated to be $57,878. It would be necessary for a small entity to own 3 or more of the affected airplanes to incur a significant cost of compliance with this proposal. Few (less than 33 percent) small entities affected by this proposal own 3 or more of the affected airplanes. Therefore, the cost of compliance is so small that it will not have a significant impact on the small entities operating these airplanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Dornier: Docket No. 90-CE-49-AD.

Applicability: Models Do228-100, Do228-101, Do228-200, Do228-201, Do228-202, and Do228-212 airplanes (serial numbers as indicated in the body of the AD), certificated in any category.

Compliance: Required within the next 300 hours time-in-service after the effective date of this AD, unless already accomplished.

To assure the electrical bonding integrity of the affected airplanes, accomplish the following:

(a) For serial numbers (S/N) 7000 through 7168 and S/N 8000 through 8190 airplanes, replace the 4 mm^2 cross-sectional area bonding straps between the horizontal stabilizer and the elevator with 6 mm^2 cross-sectional area bonding straps in accordance with Dornier Service Bulletin (SB) No. SB-228-106, Revision 1, dated December 11, 1989.

(b) For S/N 7000 through 7168, S/N 8000 through 8175, and S/N 8177 airplanes, visually inspect the wing front spar area around electrical connectors 56VP, 57VP, 58VP and 59VP (electrical connectors 23Qxa, 24Qxa if option IK04 is installed) for corrosion in accordance with Dornier SB No. SB-228-152, Revision 1, dated February 19, 1990. If corrosion is found, prior to further flight remove the corrosion and treat the affected area in accordance with Dornier SB No. SB-228-152, "Accomplishment Instruction" paragraph 2.2.

(c) For S/N 7000 through 7166 and S/N 8000 through 8179 airplanes, install an additional grounding strap between the wing rear spar and the fuselage in accordance with Dornier SB No. SB-228-162, dated February 19, 1990.

(d) Airplanes may be flown in accordance to FAR 21.197 to a location where this AD may be accomplished.

(e) An alternate method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Staff, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

Note 1: The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

Note 2: All persons affected by this directive may obtain copies of the documents referred to herein upon request to Dornier Luftfahrt GmbH, Product Support, P.O. box 3, D-8031 Wessling, Federal Republic of Germany; Telephone (498153)-300; Fax (498153)-30.29.85; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 1, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-26577 Filed 11-8-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-ASO-21]

Proposed Amendment of Transition Area, New Smyrna Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the New Smyrna Beach, FL, transition area. A new standard instrument approach procedure (SIAP) is planned to the Massey Ranch Airport utilizing the New Smyrna Beach nondirectional radio beacon (NDB). This proposed action would lower the base of controlled airspace from 1200 to 700 feet above the surface in vicinity of the Massey Ranch Airport for protection of instrument flight rules (IFR) aeronautical operations. If approved, the operating status of the airport will change from visual flight rules (VFR) to IFR concurrent with publication of the NDB SIAP.

DATES: Comments must be received on or before: December 31, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, System Management Branch, Docket No. 90-ASO-21, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ASO-21." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the New Smyrna Beach, FL, transition area. An NDB SIAP is planned for the Massey Ranch Airport and additional controlled airspace is needed for protection of IFR aeronautical operations. This action would lower the base of controlled airspace from 1200 to 700 feet above the surface in vicinity of the airport. The operating status of the Massey Ranch Airport would be changed from VFR to IFR concurrent with publication of the SIAP. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

New Smyrna Beach, FL [Amended]

Following the words, "• • • New Smyrna Beach Airport (lat. 29°03'15" N., long. 80°56'54" W);" insert the clause, "within a 6.5-mile radius of Massey Ranch Airpark Airport (lat. 28°58'45" N, long. 80°55'30" W);"

Issued in East Point, Georgia, on October 26, 1990.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 90-26578 Filed 11-8-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-015]

RIN 1218-AA59

Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment; Reopening of the Record and Request for Public Comment

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; reopening of the record and request for public comment.

SUMMARY: On January 31, 1989, OSHA proposed a new standard addressing the work practices to be used during the operation and maintenance of electric power generation, transmission, and distribution facilities (54 FR 4974). The proposal included requirements relating to confined spaces, hazardous energy control, working near energized parts, grounding for employee protection, work on underground and overhead installations, work in substations and generating plants, and other special conditions and equipment unique to the generation, transmission, and distribution of electric energy. OSHA also proposed to revise the electrical protective equipment requirements contained in the General Industry Standards.

This document reopens the rulemaking record on this proposed standard to allow for additional public comment and to include an economic impact study for non-utilities.

DATES: Comments on the proposal must be postmarked by January 8, 1991.

ADDRESSES: Four copies of written comments must be sent to the Docket Office, Docket No. S-015, U.S. Department of Labor, room N2625, 200 Constitution Ave., NW., Washington, DC 20210. (telephone: 202-523-7894.) Comments of 10 or fewer pages in length may also be transmitted by facsimile to 202-523-5046 (FTS 523-5046), provided that the original and four copies of the comment are sent to the Docket Office thereafter.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, room N3637, 200 Constitution Ave., NW., Washington, DC 20210 (telephone: 202-523-8148).

SUPPLEMENTARY INFORMATION: On January 31, 1989, OSHA published a proposed standard on electric power generation, transmission, and distribution work and on electrical protective equipment (54 FR 4974). Proposed new § 1910.269 was intended to supplement the existing electric power transmission and distribution requirements contained in 29 CFR part 1926, subpart V. Proposed § 1910.137 was intended to update the existing provisions on electrical protective equipment. The proposal was based, in part, on the provisions of a draft standard proposed jointly by the International Brotherhood of Electrical Workers and the Edison Electric Institute. Interested parties were originally given until May 1, 1989, to submit written comments on the proposal, to file objections, and to request a hearing. In response to requests from the public, the deadline was subsequently extended to June 1, 1989 (54 FR 18546).

OSHA received 77 comments on the proposal by June 1, 1989, and several commenters requested a hearing. In response to the hearing requests and in accordance with section 6(b)(3) of the Occupational Safety and Health Act, OSHA published a notice announcing an informal public hearing and listing the issues to be discussed at the hearing (54 FR 30401, corrected at 54 FR 31970).

The hearing began on November 28, 1989, in Washington, DC. It was adjourned on December 5, 1989, and was reconvened on December 12, 1989, in Los Angeles, CA. The hearing concluded on December 14, 1989.

At the close of the public hearing, Administrative Law Judge Robert Feldman set the deadlines for the submission of additional information and for the filing of briefs by the participants to be March 14 and April 13, 1990, respectively. At the request of some of the hearing participants, Judge Feldman subsequently extended the deadlines to July 1 and August 1, 1990.

Section 1910.269 was proposed to apply only to installations under the exclusive control of electric utilities. One of the issues listed in the notice of hearing was whether the scope of the standard should be extended to include work on all electric power generation, transmission, and distribution installations regardless of who owned or operated the installations.

The original regulatory impact analysis for the proposal did not consider the impact of the standard beyond electric utilities and their contractors. Based on its review of the record, the Agency has decided to evaluate the economic impact of applying the rule to employers who are not electric utilities. Therefore, OSHA has conducted a study (performed by Eastern Research Group, Inc.) of the costs and benefits of applying § 1910.269 to companies who generate or distribute their own electric power. This study, entitled "Assessment of the Benefits of the Proposed Standard for Electric Power Generation, Transmission, and Distribution As It Pertains to the Cogeneration of Electric Power," has been placed in the rulemaking record on the proposal and is available for inspection and copying in the Docket Office.

OSHA is reopening the record on the proposal for a period of 60 days. This will enable persons affected by the extension in scope and other interested persons to comment on the impact assessment and the proposed standard. Written comments must be postmarked on or before January 8, 1991, and submitted in quadruplicate to the Docket Office; Docket No. S-105, rm. N2625; U.S. Department of Labor, Occupational Safety and Health Administration; 200 Constitution Ave., NW.; Washington, DC 20210 (telephone: 202-523-7894).

The data, views, and arguments that are submitted will be available for public inspection and copying at the Docket Office. All timely written submissions received will be made part of the record of this rulemaking.

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Authority: This document is issued under sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 1-90 (55 FR 9033), and 29 CFR part 1911.

Signed at Washington, DC this 5th day of November, 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 90-26521 Filed 11-8-90; 8:45 am]

BILLING CODE 4910-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CCGD11-90-06]

Anchorage Regulations; San Diego Harbor, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard establishes anchorage areas for the purpose of navigation safety. Water use areas (including anchorage areas) established by state and local jurisdictions can be established for reasons other than navigation safety. The San Diego Unified Port District (SDUPD) in conjunction with the Port of San Diego Pilots, and Commander, Naval Base San Diego (COMNAVBASE SD) have requested that the Coast Guard initiate the federal rule making process to expand the current "B" Street Commercial Anchorage (33 CFR 110.210(a)(2)) and to establish an additional anchorage ground, under the administrative control of COMNAVBASE SD, reserved exclusively for the anchorage of vessels of the United States Government.

DATES: Comments must be received on or before December 24, 1990.

ADDRESSES: Comments should be mailed to Commander (oan), Eleventh Coast Guard District, suite 702, Union Bank Building, 400 Oceangate, Long Beach, CA 90822-5399. Telephone: (213) 499-5410. The comments and other materials referenced in this notice will be available for inspection and copying at 400 Oceangate, suite 702, Long Beach, CA 90822-5399. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Edward Sinclair, Eleventh Coast Guard District Aids to Navigation and Waterways Management Branch, 400 Oceangate, Long Beach, CA 90822-5399, telephone (213) 499-5410.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CCGD11-90-06) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The proposed regualtions may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rule making process.

Drafting Information

The drafters of this regulation are Lieutenant Edward Sinclair, Project Officer, Eleventh Coast Guard District Aids to Nativigation and Waterways Management Branch, Lieutenant (junior grade) Edward Bass, Project Office, U.S. Coast Guard Marine Safety Office San Diego, CA, and Lieutenant Allen Lotz, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Eleventh Coast Guard District, via the U.S.C.G. Captain of the Port, San Diego, CA, received a request for federal rule making concerning subject anchorages. The Captain of the Port (COTP), San Diego, received written request and justification for the anchorage from the San Diego Unified Port District (SDUPD) on May 31, 1990, and from Commander, Naval Base San Diego (COMNAVBASE SD) on February 27, 1990 and March 28, 1990. The proposed anchorages have been discussed in detail at meetings hosted by the COTP San Diego between December, 1989 and April, 1990. These meetings have involved various representatives from the San Diego Port Readiness Committee (USCG COTP, Army Corps of Engineers, San Diego Unified Port District, COMNAVBASE SD), the San Diego Harbor Police, and Port of San Diego Pilots.

Federal anchorages are established under 33 U.S.C. 471. This statute authorizes the Secretary of Transportation to define and establish anchorage grounds in all harbors of the United States whenever necesary for safe navigation. The Secretary may adopt suitable rules and regulations relating to these anchorages. This power has been delegated to each Coast Guard District Commander (33 CFR 1.05-1(g)(1)). Non-federal designated use areas may be established by any state or local government which has jurisdiction over the body of water in question, provided that the designated use is compatible, and the regulations do not conflict with, federal laws or regulations.

In light of the above and after review of the requests by the SDUPD and COMNAVBASE SD, it is the position of the Coast Guard that:

(1) The Port of San Diego Pilots have experienced difficulty in anchoring commercial vessels in the current "B" Street Anchorage. The problem has intensified over the last 10 years as the merchant vessels of the world have increased in length, beam, and tonnage to cut operating costs. The current "B" Street Anchorage was not designed to accommodate these larger vessels with their greater turning radius and swing radius when at anchor. The original concept of an anchorage for two vessels at "B" Street has become unusable. Currently, it is difficult to anchor one of these larger vessels and not impede the approaches to "B" Street Terminal or Broadway Pier.

As the current "B" Street Anchorage is located adjacent to the approaches to "B" Street Terminal and Broadway Pier, there is concern due to the increase in the number of cruise ships expected to use the terminal in the near future. The cruise industry is presently expanding with a substantial increase in newly constructed cruise ships. The port of San Diego will undoubtedly be impacted, as several companies are presently considering homeporting their vessels in San Diego. For this reason, "B" Street Terminal is expected to have a substantial increase in traffic and must remain fully accessible. Further, the Port's present plans for expanding the "B" Street Terminal will increase the number of berths available. If the present anchorage is not expanded westward, or otherwise adjusted, anchored ships in the approaches to the terminal will remain as navigational hazards for ships approaching "B" Street Terminal. The proposed expansion of the anchorage would alleviate congestion of the anchorage area and the approaches to the "B" Street Terminal would be opened to allow safer navigation. This would also allow for at least two commercial ships to anchor at the same time, for which the anchorage was originally designed.

(2) The U.S. Navy historically has trained and evaluated operational Naval units in the water area south of Harbor Island and north of the main ship channel. In this area, five unregulated, non-federal anchorage areas numbered 212-216 have been charted (NOAA chart #18773) for the convenience of the U.S.

Navy. They have historically been heavily used by the U.S. Navy. Additionally, the U.S. Navy has used a similar non-designated anchorage area, which is not charted, but is known as area 217, just east of area 216. (This area would conflict with the proposed expansion of the "B" Street Commercial Anchorage, except that the Navy and SDUPD have established an informal agreement concerning Navy usage of the proposed expanded "B" Street Commercial Anchorage.)

The training which historically has been and is currently conducted in these areas is crucial to the support of the U.S. Navy's primary mission of sustained operations at sea and in furtherance of national policy for worldwide strategic deployment to insure control of critical sea lanes of communication.

During 1989, there were 891 anchorages and moorings in the areas 212–217, 284 which were of a duration of one day or more; 62 deployment on/off-loads were conducted. Demonstration of proficiency at anchoring, conducting graded exercises and evaluation of operational readiness necessitated the vast bulk of the 891 anchorings in 1989. The Navy has also submitted statistics which confirm that this large traditional presence and use of San Diego Bay continues today.

At present, there are approximately 50 recreational vessels using anchorages areas 212–214. In recent months, these vessels have made this area unusable by the Navy, and on at least two occasions, have encountered near collisions with frigate-sized naval vessels, causing significant safety concerns. The rate at which recreational vessels are making San Diego their home is still increasing (A mid-1980s study reported that the rate at which the number of recreational vessels increased was nearly 2 and ½ times the rate of the booming population growth rate in San Diego County in the early 80's). This increasing rate, combined with the shortfall in number of slips being built to accommodate these vessels, is reason to expect the number of vessels anchoring in this vicinity in the future to get larger. Unless control of these areas is obtained, the safety problem will get worse and the Navy will be forced to dramatically curtail or painstakingly rearrange its well established routine training and operating plans. Consequently, the only other alternatives would be to pursue more costly or more hazardous options.

Given this era of limited funding, the use of San Diego Harbor anchorages is the most cost effective and efficient way for the U.S. Navy to conduct critical fleet operations and training. Again, the anticipated increase in commercial and recreational harbor traffic for the coming years will exacerbate the existing shortage of berthing areas, mandating that legal control be established for these areas.

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. These proposed regulations do not change federal policy regarding the use of navigable waters for navigation purposes. Since the impact of this proposal is expected to be minimal, the Coast Guard certified that, if adopted, it will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This proposal contains no information collection or recordkeeping requirements.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.c of Commandant Instruction M16475.1B, it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 110 of title 33, Code of Federal Regulations, as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.210 is revised to read as follows:

§ 110.210 San Diego Harbor, California.

(a) *The anchorage grounds.* (1) Special anchorage for U.S. Government vessels. Shoreward of a line extending from Ballast Point Light approximately 351° 30' to the shore end of the Quarantine Dock.

(2) Special anchorage for U.S. Government vessels. An area enclosed by a line beginning at a point marked at latitude 32°43'25.6" N., longitude 117°12'46.1" W.; thence westerly to latitude 32°43'25.3" N., longitude 117°12'52" W.; thence south southwesterly to latitude 32°43'08.2" N., longitude 117°12'58" W.; thence south southeasterly to a point further to the south at the northern boundary of the channel marked at latitude 32°42'57.9" N., longitude 117°12'54" W.; thence easterly following along the northern boundary of the channel marked at latitude 32°43'05" N., longitude 117°11'30.5" W.; thence northeasterly to a point at the eastern edge of Harbor Island marked at latitude 32°43'27.2" N., longitude 117°11'14" W. Datum: NAD 83.

(3) "B" Street Merchant Vessel Anchorage. Due west from the southwest corner of the "B" Street pier head to latitude 32°43'00.8" N., longitude 117°11'23" W.; thence northwesterly to latitude 32°43'05" N., longitude 117°11'30.5" W.; thence northeasterly to latitude 32°43'27.2" N., longitude 117°11'14" W.; thence southeasterly to latitude 32°43'20.2" N., longitude 117°10'53" W.; thence due east to the shoreline; thence following the shoreline and pier to the point of beginning. Datum: NAD 83.

(b) *The Regulations.* (1) The special anchorages described in paragraphs (a)(1) and (a)(2) of this section are reserved exclusively for the anchorage of vessels of the United States Government and of authorized harbor pilot boats. No other vessels shall anchor in these areas except by special permission obtained in advance from the Commander, Naval Base, San Diego, California. The administration of these anchorages is exercised by the Commander, Naval Base, San Diego, California.

(2) The area described in paragraph (a)(3) of this section is reserved for the use of merchant vessels calling at the Port of San Diego while waiting a berta. The administration of this anchorage is exercised by the Port director, San Diego Unified Port district.

(3) Vessels anchoring in San Diego Harbor shall leave a free passage for other craft and shall not obstruct the approaches to the wharves in the harbor.

Dated: October 16, 1990.

M.E. Gilbert,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 90–26558 Filed 11–8–90; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 161

[CGD 90–048]

RIN 2115–AD62

Vessel Traffic Management in St. Marys River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the requirement for maintaining a radio listening watch on channel 16 to channel 12 for vessels in the St. Marys River Vessel Traffic Service (VTS) area. Vessels in the VTS area are presently required to maintain the listening watch on channels 16 and 13, while communicating with the Vessel Traffic Center (VTC), known as "Soo Control" on channel 12. This change would result in lessening the confusion which may occur from listening and/or communicating on three separate channels.

DATES: Comments must be received on or before January 8, 1991.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA–2/3406), (CGD 90–048), U.S. Coast Guard Headquarters, 2100 2nd St. SW., Washington, DC, 20593–0001, or may be delivered to Room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Bruce Riley, Project Officer, Navigation Safety Special Projects Staff, Tel. (202) 267–0412.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 90–048) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **"ADDRESSES."** If it determines that the opportunity for oral presentations will aid in this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Bruce Riley, Project Manager, and Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Background and Purpose

As discussed below, a vessel transiting the VTS St. Marys River Area is required to maintain a watch and/or communicate on three separate VHF/FM channels, 13, 16 and 12, while simultaneously navigating through the restricted waters of the St. Marys River.

a. The Bridge-to-Bridge Radiotelephone Regulation, 33 CFR part 26, requires a vessel to maintain a watch and communicate its intentions to another vessel on channel 13.

b. 47 CFR 80.308(1) requires a vessel to maintain a continuous watch on channel 16 (156.8 Mhz) VHF/FM, unless it is maintaining a watch on the bridge-to-bridge frequency and participating in a (VTS) while maintaining a watch on the VTS working frequency. However, the exemption does not apply in the VTS St. Marys River Area because of the requirement in § 161.820.

c. 33 CFR 161.821 requires a vessel to make reports to the Vessel Traffic Center (VTC) on channel 12 (156.6 Mhz).

Pursuant to 33 CFR 161.809, on February 6, 1989, Commander, Ninth Coast Guard District granted a deviation to § 161.820. By this deviation, mariners were relieved of the requirement to continuously maintain the watch on channel 16, and were required instead to listen on channel 12 while transiting the St. Marys River VTS Area. For purposes of evaluation, this deviation continued in effect through the 1989 shipping season. More reliable communications on channels 12 and 13 were realized. Any calls made on channel 16 to participating vessels are now relayed through the VTC. Rather than continue the deviation, this rulemaking proposes to make this a permanent change.

Discussion of Proposed Amendments

This proposal would amend § 161.820, changing the requirement for a vessel to guard channel 16 to a requirement to guard channel 12. The end result is a requirement for a vessel to guard channels 12 and 13, bothe of which are used extensively while navigating through congested waterways. The requirement to maintain a continuous guard on channel 16 causes confusion and may result in missed communications which could be vital to the safe navigation of a vessel.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

The act of requiring a vessel to guard one radio channel vice another has no economic impact because the radio channel is already available.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The number and characteristics of present users of VTS St. Marys River will not change because of this proposal and purchase or modification of radio equipment is not necessary, therefore, a requirement to guard one channel vice another will not have a major impact.

Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have significant economic impact on a substantial number of small entities.

Collection of Information

The collection of information under the Paperwork Reduction Act and 5 CFR part 1320 has been approved by a blanket OMB approval for 33 CFR part 161. Approval number 2115–0540.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 161

Harbors, Navigation (water), Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 161 as follows:

PART 161—VESSEL TRAFFIC MANAGEMENT

1. The authority citation for part 161 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. Section 161.820 is revised to read as follows:

§ 161.820 Radio Listening Watch.

The master of a vessel in the VTS Area shall continuously monitor channel 13 VHF/FM (156.65 Mhz) and channel 12 VHF/FM (156.6 Mhz).

Dated: November 6, 1990.

R.A. Appelbaum,

Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 90-26559 Filed 11-8-90; 8:45 am]

BILLING CODE 4910-14-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1253, 1254, and 1280

RIN 3095-AA19

Research Room Procedures

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Archives and Records Administration (NARA) is update 36 CFR part 1253 to reflect both Saturday research room hours at the Washington National Records Center and changes in the titles, addresses, and telephone numbers of the National Archives Field Branches. NARA is also proposing to amend its regulations in 36 CFR part 1254 concerning NARA research rooms to clarify eligibility for researcher identification cards, to provide a procedure for withdrawing research privileges for researchers not required to haver a researcher identification card, to clarify self-service copier procedures, and to update other research room procedures. In 36 CFR part 1280, NARA is proposing to implement a policy that children under the age of 16 must be accompanied by an adult when visiting a NARA facility, including exhibition areas. The proposed rule would affect individuals who perform research at NARA facilities.

DATES: Comments must be received by December 10, 1990.

ADDRESSES: Comments should be sent to Director, Policy and Program Analysis Division (NAA), National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: John Constance or Nancy Allard at 202-501-5110.

SUPPLEMENTARY INFORMATION: This proposed rule clarifies in § 1254.4 that a researcher identification card is not required and will not be issued to an individual when NARA does not have the requested records or when the individual's needs can be met by a secondary source readily available at a library or other institution rather than by the original records or reference copies.

In § 1254.20 (c), NARA proposes to add a procedure for withdrawing research privileges from a researcher using microfilm in a separate microfilm reading room if the researcher does not comply with NARA rules or is otherwise disruptive. This procedure is similar to the procedure in § 1254.20 (b) for revoking researcher identification cards. NARA would withdraw research privileges only when a researcher refused to comply with NARA rules or demonstrated by his or her actions that he or she was a threat to NARA property or a danger or nuisance to other researchers or to NARA employees. The procedure provides for an appeal to the Archivist of the United States and reinstatement of research privileges after a period of six months.

Section 1254.26 is being amended to clarify that research rooms in the National Archives Building and Washington National Records Center in which original records are used are reserved for individuals examining records and other materials in NARA custody. Individuals (including children) who currently accompany a researcher into one of these research rooms but who do not perform research would not be admitted to the research room under this proposed provision.

The section is further amended to provide a procedure for students under the age of 16 who wish to perform research on original records to obtain NARA research privileges. Student researchers must present a letter of reference from a teacher and normally must be accompanied by a responsible adult researcher.

The proposed rule also clarifies self-service copier procedures in § 1254.71. NARA now has a number of self-service copiers, intended for copying small quantities of records, as well as self-service copiers, intended for copying larger quantities of records, which can be reserved over a longer period of time. The section has been revised to cover both types of self-service copiers and to update procedures for purchasing debitcards to operate the copiers and for obtaining refunds of unused amounts on debitcards.

Finally, the proposed rule makes several minor changes to existing research room procedures and modifies the signature authority for denial of Freedom of Information Act (FOIA) requests in part 1254. In § 1254.2, the mailing address to which inquiries may be sent has been updated. Section 1254.12 is revised to provide that researchers using records other than microfilm must return those records to the research room attendant as much as 15 minutes before closing time, while researchers using microfilm must refile the microfilm in the proper place instead of placing rolls on top of the microfilm cabinet. Section 1254.38 is modified to allow directors or regional archives to make denials under the FOIA of access to archives.

In part 1280, a new § 1280.2 is being added to require that children under the age of 16, other than students who are permitted to conduct research without adult supervision, be accompanied by an adult at all times while on NARA property. Directors of NARA field facilities are authorized to establish a lower age limit. The intent of this rule is to eliminate instances where children are left unsupervised in one area of a NARA facility while those responsible for the children are in another area. This rule complements § 1254.26, discussed above, which would prohibit individuals who are not doing research from accompanying researchers in the National Archives Building's Central

Research Room or the Washington National Records Center's Research Room. Under the proposed rules, researchers would not be allowed either to bring children into the affected research rooms unless the children were themselves doing research; or to leave the children unsupervised by an adult outside the research room while the researchers were doing research.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects

36 CFR Part 1253

Archives and records.

36 CFR Part 1254

Archives and records, Confidential business information, Freedom of information, Micrographics.

36 CFR Part 1280

Federal buildings and facilities.

For the reasons set forth in the preamble, NARA proposes to amend 36 CFR chapter XII as follows:

PART 1253—LOCATION OF RECORDS AND HOURS OF USE

1. The authority citation for part 1253 continues to read as folllows:

Authority: 44 U.S.C. 2104(a).

2. Section 1253.4 is revised to read as follows:

§ 1253.4 Washington National Records Center.

Washington National Records Center, 4205 Suitland Road, Suitland, MD. Mailing address: Washington National Records Center, Washington, DC 20409. Hours: 8 a.m. to 4:30 p.m., Monday through Friday, for the Suitland Research Room, 8 a.m. to 4:30 p.m., Monday through Saturday.

3. Section 1253.6 is amended by revising the section heading, by removing the introductory text and paragraph (d), by redesignating paragraphs (e) through (m) as paragraphs (d) through (l), and by revising paragraphs (c) and newly redesignated (e) to read as follows:

§ 1253.6 Federal Records Centers.

* * * * *

(c) 5000 Wissahickon Avenue, Philadelphia, PA 19144. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

* * * * *

(e) 3150 Springboro Road, Dayton, OH 45439. Hours: 7:30 a.m. to 4 p.m., Monday through Friday.

* * * * *

4. Section 1253.7 is added to read as follows:

§ 1253.7 Regional Archives System.

Some of the Regional Archives may offer extended research room hours on selected evenings and Saturdays. More specific information on extended hours is available from each Regional Archives. The hours listed in this section are the minimum hours that each Regional Archives is normally open.

(a) *National Archives—New England Region.* 380 Trapelo Road, Waltham, MA 02154. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (617) 647-8100.

(b) *National Archives—Northeast Region.* Building 22, Military Ocean Terminal, Bayonne, NJ 07002-5388. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (201) 823-7545.

(c) *National Archives—Mid-Atlantic Region.* 9th and Market Streets, Room 1350, Philadelphia, PA 19107. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (215) 597-3000.

(d) *National Archives—Southeast Region.* 1557 St. Joseph Avenue, East Point, GA 30344. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (404) 763-7477.

(e) *National Archives—Great Lakes Region.* 7358 South Pulaski Road, Chicago, IL 60629. Hours: 8 a.m. to 4 p.m., Modnay through Friday. Telephone: (312) 581-7816.

(f) *National Archives—Central Plains Region.* 2312 East Bannister Road, Kansas City, MO 64131. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (816) 926-6272.

(g) *National Archives—Southwest Region.* 501 West Felix Street, Fort Worth, TX. Mailing address: P.O. Box 6216, Fort Worth, TX 76115. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (817) 334-5525.

(h) *National Archives—Rocky Mountain Region.* Denver Federal Center, Building 48, Denver, CO. Mailing address: P.O. Box 25307, Denver, CO 802225. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (303) 236-0817.

(i) *National Archives—Pacific Sierra Region.* 1000 Commodore Drive, San Bruno, CA 94066. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone: (415) 876-9009.

(j) *National Archives—Pacific Southwest Region.* 24000 Avila Road, Laguna Niguel, CA. Mailing address: P.O. Box 6719, Laguna Niguel, CA 92677-6719. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone (714) 643-4241.

(k) *National Archives—Pacific Northwest Region.* 6125 Sand Point Way, Seattle, WA 98115. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone (206) 526-6507.

(l) *National Archives—Alaska Region.* 654 West 3rd Avenue, Anchorage, AK 99501. Hours: 8 a.m. to 4 p.m., Monday through Friday. Telephone (907) 271-2441.

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

5. The authority citation for part 1254 continues to read as follows:

Authority: 44 U.S.C. 2101-2118.

6. Section 1254.2 is amended by revising paragraph (a) to read as follows:

§ 1254.2 Location of records and hours of use.

(a) Researchers should identify the location of the records needed. Inquiries may be addressed to the National Archives (NNRS), Washington, DC 20408.

* * * * *

7. Section 1254.4 is amended by redesignating paragraphs (d) through (f) as paragraphs (e) through (g) and by adding new paragraphs (d) to read as follows:

§ 1254.4 Research procedures.

* * * * *

(d) A researcher will not be issued a researcher identification card if the branch chief or director of the relevant repository determines that:

(1) the records which the researcher wishes to use are not in the legal custody of NARA; or

(2) the researcher is not interested in records maintained by NARA but in information contained in secondary sources available at other institutions.

8. Section 1254.12 is revised to read as follows:

§ 1254.12 Researcher's responsibility for records.

(a) The research room attendant may limit the quantity of records delivered to a researcher at one time. The researcher must sign for the records received. The researcher is responsible for all records delivered to him/her until he/she returns them. When the researcher is finished using the records, the records should be returned to the research room attendant. The reference service slip that accompanies the records to the research room must not be removed. If

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asked to do so, the researcher must return records as much as 15 minutes before closing time. Before leaving a research room, even for a short time, a researcher must notify the research room attendant and place all records in their proper containers.

(b) When microfilm is available on a self-service basis, research room attendants may assist researchers in identifying which roll(s) of film contains the information of interest, but the researcher is responsible for locating the roll(s). Unless otherwise permitted, a researcher is limited to one roll of microfilm at a time. After using each roll, the researcher must refile the roll of microfilm in the location from which it was removed, unless instructed otherwise.

9. Section 1254.20 is amended by adding new paragraph (c) to read as follows:

§ 1254.20 Conduct.

* * * * *

(c) *Withdrawal of research privileges for researchers not required to have a researcher identification card.* If researchers who are not required to have researcher identification cards refuse to comply with the rules and regulations of a NARA facility or by their actions demonstrate that they present a danger to NARA property or a danger or nuisance to other researchers or employees, NARA may withdraw all research privileges. A researcher whose research privileges are withdrawn under this paragraph will lose research privileges at all NARA research rooms, including those for which no researcher identification card is required. A researcher whose research privileges have been withdrawn may not apply for a researcher identification card, or for readmittance to research rooms not requiring a research card, until research privileges have been restored (see below). A researcher whose research privileges are withdrawn under this paaragraph will be sent a written notice of the reasons for the withdrawal within 3 workdays. The researcher has 30 calendar days after the withdrawal to appeal in writing to the Archivist of the United States (address: National Archives and Records Administration (N), Washington, DC 20408) for reinstatement of research privileges. The Archivist of the United States has 30 calendar days from receipt of the appeal to decide whether or not to reinstate the research privileges. If the withdrawal is upheld or if no appeal is made, the researcher may request reinstatement of privileges no earlier than 180 calendar days from the date the privileges were revoked. If readmission to a NARA facility poses a threat to the safety of persons or property, NARA may continue to extend the withdrawal period for 180-day periods. The researcher will be notified in writing of all such extensions within 3 workdays of NARA receiving a request for reinstatement of research privileges. The researcher may appeal any decision to extend the withdrawal of research privileges to the Archivist of the United States. All appeals must be made in writing to the Archivist of the United States within 30 calendar days of the decision being appealed.

10. Section 1254.26 is amended by redesignating paragraphs (a) through (f) as paragraphs (b) through (g), by adding a new paragraph (a) and revising the newly redesignated paragraph (b) to read as follows:

§ 1254.26 Additional rules for use of research rooms in the National Archives and Washington National Records Center buildings.

(a) Admission to research rooms in the National Archives Building and Washington National Records Center at which original records are made available is limited to individuals examining and/or copying records and other materials in the legal custody of the National Archives and Records Administration. Children under the age of 16 will not be admitted to these research rooms unless they have been granted research privileges. Students under the age of 16 who wish to perform research on original documents must apply in person to the Chief of the Reference Services Branch and present a letter of reference from a teacher. Students under the age of 16 who have been granted research privileges will be required to be accompanied in the research room by an adult with similar privileges, unless the Chief of the Reference Services Branch specifically waives this requirement with respect to individual researchers.

(b) The procedures in paragraphs (c) through (g) of this section shall apply to all research rooms in the National Archives and Washington National Records Center buildings, except the Microfilm Research Room and the Motion Pictures Research Room in the National Archives Building. These procedures are in addition to the procedures specified elsewhere in this part.

* * * * *

11. In § 1254.38, paragraph (e) is revised to read as follows:

§ 1254.38 Freedom of information Act requests.

* * * * *

(e) *Denial of access.* Denials under the FOIA of access to archives are made by the appropriate director of a Presidential library or a regional archives or the Assistant Archivist for the National Archives, who, within 10 workdays, shall notify the requester of the reasons for the denial and of the procedures for appeal.

* * * * *

12. Section 1254.71 is revised to read as follows:

§ 1254.71 Researcher use of the self-service card-operated copiers in the National Archives Building and the Washington National Records Center.

(a) *General.* Self-service card-operated copiers are located in research rooms in the National Archives Building and the Washington National Records Center. Other copiers set aside for use by reservation are located in designated research areas. Procedures for use are outlined in paragraphs (b) through (g) of this section.

(b) *Hours of use.* (1) Copiers located in research rooms in the National Archives Building and the Washington National Records Center may be used until 15 minutes prior to the closing of the research room. There is a three-minute time limit on these copiers when others are waiting to use the copier. Researchers wishing to copy large quantities of records should see a staff member in the research room to reserve a copier for an extended time period.

(2) Reserved self-service copiers located in the designated research area on the second floor of the National Archives Building may be used between 9 a.m. and 12 noon and between 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays. The reserved self-service copier located in the designated research area at the Washington National Records Center may be used between the hours of 8 a.m. and 12 noon and between 1 p.m. and 4 p.m., Monday through Friday, except Federal holidays.

(i) Copiers may be reserved for one hour at a time in the National Archives Building and for one-half hour at a time in the Washington National Records Center. Another appointment may be reserved after completing the scheduled appointment. The appointment may be forfeited if the researcher does not arrive within 10 minutes after the scheduled time.

(ii) If an appointment must be canceled due to copier failure, NARA will make every effort to schedule a new mutually agreed-upon time. However, NARA will not displace researchers whose appointments are not affected by the copier failure.

(c) *Copying procedures.* (1) Individual documents to be copied shall be tabbed in accordance with the procedures governing the tabbing of documents and returned to their container. The research room attendant will examine the records to determine whether they can be copied on the self-service copier. The chief of the branch administering the research room will review the determination of suitability if asked to do so by the researcher.

(2) Researchers using the reserved copiers must submit the containers of records to the attendant for review at least one hour prior to the scheduled appointment. The research room staff will deliver the containers to the designated area where the reserved copiers are located. Researchers using self-service copiers located in the research room will transport their containers of records to the copier themselves.

(3) Researchers may copy from only one box and one folder at a time. After copying the records, the researcher must show the original records and the copies to a research room attendant.

(d) *Records not suitable for self-service copying.* The following types of records may not be copied on the self-service copiers:

(1) Bound archival volumes;

(2) Records fastened together by staples, clips, acco fasteners, rivets, or similar fasteners, where folding or bending records may cause damage;

(3) Records larger than 11 inches by 14 inches;

(4) Records with uncanceled security classification markings;

(5) Records with legal restrictions on copying; and

(6) Records which, in the judgment of the research room attendant, are in poor physical condition.

(e) *Cancellation of security classification markings.* (1) Security classification markings (RESTRICTED, CONFIDENTIAL, SECRET, TOP SECRET, and others) on declassified records must be properly canceled before documents are copied. Only a NARA staff member can cancel security markings. Properly declassified documents will bear the declassification authority.

(2) Researchers may not remove from the research room copies of documents bearing uncancelled classification markings. Copies of documents with uncancelled markings will be confiscated.

(3) When individual documents are being copied, the research room staff will cancel the classification markings on each page and will place the declassification authority on the first page of each document. If the researcher is copying only selected pages from a document, the researcher must make a copy of the first page bearing the declassification authority and attach that page to any subsequent page(s) copied from the document. This declassification authority must be presented to the guard when copies of documents are removed from the research room and/or the building.

(4) Researchers using the reserved copiers and provided with a declassification strip which is attached to the copier. The strip, which is reproduced on each page copied, cancels the security markings.

(f) *Purchasing debitcards for copiers.* Researchers may use cash to purchase a debitcard from a vending machine during the hours that self-service copiers are in operation. Additionally, debitcards may be purchased with cash, check, money order, or funds from an active deposit account from the Cashiers Office located in Room G–1 of the National Archives Building, between the hours of 8:45 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. During the evening and weekend hours, the research room supervisor can make change for $20 or less. The debitcard will, when inserted into the copier, enable the user to make copies, for the appropriate fee, up to the value on the debitcard. Researchers may add value to the debitcard by using the vending machine. The fee for self-service copies is found in § 1258.12 of this chapter.

(g) *Refunds of unused amounts on debitcards.* (1) To obtain a refund of any unused amount on a debitcard, a researcher must bring the debitcard to the Cashier's Office in room G–1 of the National Archives Building. Cash refunds for debitcards are currently limited to $10.00 or less. Refunds due for more than $10.00 are currently paid by U.S. Treasury check in approximately 6–8 weeks. NARA may increase the maximum cash refund amount upon waiver by the U.S. Department of the Treasury of applicable regulation. Refunds due on debitcards obtained using funds from a deposit account will be made by crediting the refund to the deposit account.

(2) An NATF Form 30A, Request for Debit Card Refund or Credit, must be submitted to the Cashier's Office. The form is available from the research room staff or the Cashier. During evening hours and on Saturday, researchers should enclose the completed form and debitcard in the preaddressed envelope, also available in the research room. The envelope may be dropped through the mail slot in Room G–2 or mailed to the Cashier.

PART 1280—PUBLIC USE OF FACILITIES

13. The authority citation for part 1280 continues to read:

Authority: 44 U.S.C. 2104(a).

14. A new § 1280.2 is added to read as follows:

§ 1280.2 Admittance of children under the age of 16.

Children under the age of 16 will not be admitted to NARA facilities unless accompanied by an adult. Children under the age of 16 must be supervised by the accompanying adult at all times while on NARA property. The director of a NARA facility may authorize a lower age limit for admission of unaccompanied children to meet local circumstances, e.g., students who have been given permission to conduct research without adult supervision.

Dated: November 5, 1990.

Don. W. Wilson,

Archivist of the United States.

[FR Doc. 90-26538 Filed 11-8-90; 8:45 am]

BILLING CODE 7515-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB38

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule to List the Plant Salpingostylis coelestina (Bartram's Ixia) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of withdrawal.

SUMMARY: The Service gives notice of the withdrawal of the proposed regulation to list *Salpingostylis coelestina* (Bartram's ixia) as endangered, pursuant to the Endangered Species Act of 1973, as amended. This plant occurs in grassy pinelands, planted pine forests, and road and powerline rights-of-way in seven counties in northeastern Florida. Based on evaluation of data available following publication of the proposal and evaluation of comments, the Service has determined that listing of Bartram's ixia is not warranted at the present time, although urbanization of its habitat, if not accompanied by appropriate conservation measures, may require its listing in the foreseeable future. The

Service expects to work with the forest products industry to monitor the status of this plant in commercial forest lands.

ADDRESSES: The complete file for this action is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216 (904/791–2580 or FTS 946–2580).

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address.

SUPPLEMENTARY INFORMATION:

Background

Salpingostylis coelestina (Bartram's ixia) is a grassy-leafed herb belonging to the iris family (Iridaceae). This plant was first collected, illustrated, and described by William Bartram as *Ixea coelestina* (Harper 1959, pp. 96, 99, 360). Small (1931) created a new genus, *Salpingostylis*, for this plant. Foster (1945) and Goldblatt (1975) assigned the plant to the genus *Sphenostigma*, but since then, for nomenclatural reasons, the name *Sphenostigma* can no longer be applied to Bartram's ixia (R. Goldblatt, Missouri Botanical Garden, St. Louis, *in litt.* July 1988). Until the taxonomy of this part of the iris family is clarified, Small's name, *Salpingostylis coelestina*, may be used.

Salpingostylis coelestina is a perennial herb about 30 centimeters (1 foot) tall. The bulb is dark brown with a papery coating. The basal leaves are narrowly linear, 20–30 centimeters long. The flower stalk (scape) rises from the ground and has a spathe with one or two flowers, which are 5 centimeters (2 inches) across, usually opening at dawn (by 9 a.m. on a cool morning), and withering by 11 a.m. (later on a cloudy day). The flowers are violet when they open, fading to blue-lavender before they wilt. Flowering may start as early as April, peaks sharply near Memorial Day, and continues through July. Sporadic flowering may occur as late as early November in response to fire or site disturbance (Ward 1979; Goldblatt 1975; Martin 1989; M. Peacock, *pers. comm.* 1988; E. Geiger, consulting forester, Jacksonville, *pers. comm.* 1989; other foresters, *pers. comm.* 1989).

Bartram's ixia is native to flatwoods with an understory of wiregrass, other grasses, herbs, and low shrubs (but not palmetto thickets). The understory burns readily, and frequent understory fires are characteristic of flatwoods (Clewell 1986). In the past 30 years, a majority of the pine timberland in Baker, Bradford, Clay, Putnam, and St. Johns Counties have been converted to planted stands (USDA Forest Service, Southeastern Forest Experiment Station, Forest Inventory and Analysis. Forest Information Retrieval runs; 1987 inventory data. Data obtained by ITT Rayonier Inc.). A large portion of the known range of the ixia is on land owned or managed by the forest industry.

In flatwoods managed for cattle grazing, as well as in planted pine managed for pulpwood, Bartram's ixia flowers the spring after a fire, but not in subsequent years. At clearcut and replanted pine plantations, large numbers of ixia flowers have been observed in bare, disturbed ground, with abundant flowering for at least two or three years after cutting. Smaller numbers of flowers have been observed in recently-plowed fire breaks (Martin 1989, Rayonier 1990, other data submitted by the forest companies). The plants are conspicuous only in flower.

Murrill (1940) and others worked out the ixia's general distribution; recent surveys provided detailed information. Its range is: Duval County between the St. Johns River and Cecil Field near Ed White High School and Herlong Field, and near the Clay County line; Mandarin near Julington Creek; St. Johns County north of Tocoi Creek and west of Twelvemile Swamp; Clay County excluding Trail Ridge and the lake area around Keystone Heights; Putnam County from State Road 100 northward and east of Georges Lake; Bradford County between Starke, Lawtey, and Florida State Prison, and north of Santa Fe Swamp; Baker County south of county road 130, west of New River Swamp, and east of county road 229; Northeastern Union County (Martin 1989; Peacock and Peacock 1989; ITT Rayonier, Georgia-Pacific, and Southwood Realty, *in litt.* 1989 and 1990; Union Camp, Nekoosa Packaging, and Jefferson Smurfit & Container Corporation of America, *pers. comm.* 1990). This range covers approximately 550 square miles.

The ixia has been reported to occur elsewhere. Foster (1945) cited Francis Harper's opinion that Bartram had collected the ixia at Kanapaha Prairie, Alachua County. Foster saw a specimen from "Duval or Nassau County: near Thomas Creek, branch of the Nassau River". The plant may also occur near East Palatka (E. Matthews, Bradford Telegraph, Starke, Florida, *pers. comm.* 1990).

Bartram's ixia usually occurs on poorly drained soils. Such soils may be within a few yards of excessively drained sites with bluejack oak. At one site with intact native vegetation, the ixia is restricted to the grassy margins of shallow depressions, where it occurs with wiregrass (*Aristida stricta*), purple pitcher plant (*Sarracenia purpurea*), and *Aletris*. Murrill (1940) described the plant as growing in and beyond the slash pines at the edges of flatwoods ponds, with the plants mentioned above as well as *Asclepias michauxii, Hypoxis juncea,* and *Psoralea virgata*. Bartram's ixia occurs along the grassy edges of rights-of-way of paved roads, usually with *Aletris, Calopogon* orchids, and in Clay County, *Rudbeckia nitida,* a coneflower (Martin 1989; Peacock and Peacock 1988).

Herbarium specimens and observations (Murrill 1940, Ward 1979, Wunderlin et al. 1980) indicate that flowering populations of Bartram's ixia have become less easy to find as pine flatwoods have been converted to pine plantations, and as the frequency of burning apparently declined. Some site preparation methods associated with forestry (bulldozing, root raking, bedding, chopping) are likely to destroy or damage Bartram's ixia bulbs (Kral 1983) even though such disturbance stimulates surviving bulbs to flower. The shady conditions of maturing pine plantations may be unfavorable to the ixia. This is the case for other understory pineland plants; which persist under the first planted stand of pines, but become less important or disappear in subsequent rotations (Clewell 1986). It is possible that Bartram's ixia plants flowering in cutover areas produce enough seedlings to replace any individuals destroyed by logging and site preparation, or that died due to excessive shade. Data on the demography of this species through the cycle of tree harvest, site preparation, replanting, and regeneration would be of great value for understanding the conservation needs of this species and possibly species with similar life histories, such as *Nemastylis floridana* (fall ixia) and possibly *Zephyranthes* (Atamasco lilies).

Stand history information provided by ITT Rayonier (*in litt.* 1990) shows that the ixia flowers in abundance when the first stand of pines to be planted on a site (usually planted in the early 1960s, sometimes earlier) is harvested. Most of these plantations had been control burned every 3 to 5 years; at least some stands had abundant wiregrass. In Clay and Baker Counties, large numbers of flowering ixia plants have been observed on sites where pine plantations had recently been harvested. The abundance of Bartram's ixia in commercial forest land at the present time indicates that any threat to this species from forest management

practices is long-term rather than immediate. The Service expects to work with the forest industry to develop a program for monitoring the demography of Bartram's ixia in commercial forest land.

The Service published a proposal to list Bartram's ixia as endangered (**Federal Register**, May 19, 1989; 54 FR 21632) based on information available in 1980, augmented by data gathered in 1987 and 1988 (Martin 1989, Peacock and Peacock 1988). In response to several requests, a public hearing was held on August 3, 1989 (54 FR 29915). The comment period on the proposal was subsequently reopened until July 2, 1990 (55 FR 6660) to allow private landowners to collect additional data on the ixia's distribution and abundance during its 1990 flowering season. The deadline for publishing a final listing decision was extended in the same **Federal Register** notice to November 19, 1990.

Summary of Comments and Recommendations

In the May 19 proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate state agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *Bradford County Telegraph*, June 1, 1989; the *Florida Times-Union*, Jacksonville, June 3, 1989; the *St. Augustine Record*, June 3, 1989; and the *Palatka Daily News*, June 8, 1989. A public hearing was held on August 3, 1989 (advertised in the *Florida Times-Union*, July 16, 1989), and the proposed rule's comment period was extended on request of the forest products industry, which desired sufficient time to collect field data on this species (advertised in the *Florida Times-Union* April 23, 1990).

The public hearing was attended by a total of 38 persons. Of the 10 who made statements, 8 were opposed to listing Bartram's ixia or were critical of the proposal, 1 was neutral, and 1 was in favor of listing.

Thirty-three letters or telephone calls commented on the proposal or provided information. The Florida Department of Agriculture and Consumer Services, the Florida Natural Areas Inventory, and a county commissioner supported the proposal, along with 12 letters from individuals or garden clubs. One member of Congress expressed concern over the proposal; two other members forwarded concerns of constituents or others for response by the Service, as did a member of the Florida legislature. Four forest products companies or their subsidiaries, and one environmental consulting firm opposed listing the plant, as did the Florida Forestry Association and a county timber growers association. Six letters supplied information but did not have an opinion on whether to list the plant. In addition, five forest products companies and a county forester submitted data on the ixia's distribution collected during the 1990 flowering season.

Specific issues raised by the comments are listed below with the Service's response to each:

Issue 1: The proposal is based on inadequate surveys that failed to search outside the previously known range of Bartram's ixia and missed extensive private lands within the known range. Large populations may exist in 1.6 million acres of commercial timberland in the six-county range. At least several populations may comprise over 50,000 individuals. Private studies indicate that the Service underestimated the number and size of ixia populations. For example, one company's forest managers located 12 additional sites in 4 days by examining recently disturbed areas. One comment asked why the Service proceeded to propose to list the ixia after so many years of delay, when "sound scientific methodology and responsibility to the public requires a better inventory prior to listing"?

Service response: The general range of Bartram's ixia was reliably known before the latest surveys began, due to work by botanists since about 1908 (Murrill 1940). New surveys relocated known sites, then searched nearby, similar areas. Martin (1989) covered about 1800 miles of road on 25 days and Peacock and Peacock (1988) covered about 1000 miles of road. The effectiveness of these surveys is confirmed by independent surveys conducted by the forest products industry in 1990; the most important discovery by these surveys was rediscovery of ixia sites north of Santa Fe Swamp in Bradford County. The Service did not attempt to estimate the number of ixia populations; the proposed rule described the extent of the plant's range and noted the existence of at least one large population in a recently-harvested commercial forest land. The Service appreciates the forest product industry's reports of additional sites. The Service proposed to list Bartram's ixia as soon as it considered adequate scientific data to be available.

Issue 2: The proposed rule is contrary to the conclusions of an independent survey funded by the State (Florida Natural Areas Inventory (FNAI)) (Peacock and Peacock 1988, and public hearing comment by Marsha Peacock that there is not enough information on the ixia).

Service response: The proposed rule stated that not all populations of the plant are known, in keeping with the Peacocks' conclusions. The FNAI supported listing of the plant.

Issue 3: The Peacocks' survey found 22 sites in 11 days, while only 12 sites were recorded in the scientific literature, and they saw more of the plant than anyone else.

Service response: The Peacocks attempted to visit the 12 sites in the FNAI database. They also had access to other, older, herbarium records and Martin's 1987 results (Martin 1989). Murrill (1940) and his contemporaries probably saw very large flowering populations of this plant.

Issue 4: The Service has no evidence that the suitable habitat for Bartram's ixia is significantly shrinking or that the number of ixia plants has declined since the 1700s.

Service response: Murrill (1940) provides circumstantial evidence that the ixia was formerly much more conspicuous and probably more abundant in the Starke area. Ward (1979) mentioned destruction of a large population near Starke. Urban expansion in westside Jacksonville, northeastern Clay County, and northwestern St. Johns County is obviously destroying ixia habitat. The preparation of complex, costly applications for Developments of Regional Impact by large landowners in the plant's range provides evidence that these large development projects are expected to generate greater profits than pulpwood.

Issue 5: The ixia's range is unverified, as shown by a discrepancy about its occurrence in Union County between the proposed rule and Ward (1979) as well as a newspaper legal advertisement for the public hearing.

Service response: Herbarium specimens of ixia had been collected in Union County near its border with Baker County, but Martin did not find the plant there. A comment on the proposal confirmed that the plant still occurs in Union County.

Issue 6: Power line and road rights-of-way may protect adequate habitat for Bartram's ixia.

Service response: Rural power lines and some road rights-of-way are valuable habitat for many pineland plant species, and management of these areas offers opportunities to conserve

the flora, including Bartram's ixia. The Service is concerned that road widening, construction of underground utilities, herbicide use, and urbanization adjacent to rights-of-way can destroy the native flora.

Issue 7: The ixia stays dormant for as long as 20 years, and is frequently found in second rotation plantations. Documentation was provided by the commenting forest products company.

Service response: Most sites for which data were presented were first-generation plantations, but the prospects for the ixia persisting in second-rotation plantations appear good.

Issue 8: Several comments disagreed with statements in the proposal and a newspaper notice, that the listing would have little or no effect on state or county agencies, or the activities of private citizens on their own land. The comments asserted that the Federal Government's links with states and private citizens result in mandates to not jeopardize listed species for activities such as road and culvert construction, placement of utilities in public rights-of-way, federal loan guarantees, and herbicide applications. Because most populations of Bartram's ixia are on private lands, the burden of this regulation will fall on private landowners. Another comment cited, as an example of the true implications of listing the plant, comments by the Service's Jacksonville Field Office, submitted to the Regional Planning Council, on an application for a Development of Regional Impact. The comments recommended on-site or off-site conservation measures for the ixia.

Service response: Federal activities, including permits, that might affect endangered or threatened plants are regulated through the consultation process of section 7 of the Endangered Species Act. Federal activities or permits rarely jeopardize the continued existence of a plant species, so section 7 is rarely invoked to protect plants. It is not known at this point whether listing would affect routine herbicide use in forestry. Federal listing of endangered and threatened species is intended to encourage conservation actions by state and local governments; such conservation actions are undertaken within the scope of their own authority.

Issue 9: Until a management plan is jointly developed and reviewed by the Service and private landowners, neither can determine the effects of proposed listing. Two comments stated that the Service cannot prepare a site-specific recovery plan with the available information, so if the plant is listed now, any protection to be gained through recovery planning is illusory. Therefore, the Service should gather sufficient information to plan the plant's recovery before proposing to list it.

Service response: The Endangered Species Act requires that species be listed as endangered or threatened based on the best scientific data available, when the data are sufficient to show that listing is warranted. The Act does not require that sufficient data be available to plan recovery. Before a recovery plan is approved, the Service must provide public notice and an opportunity for public review and comment.

Issue 10: The ixia's biology needs to be better understood so habitat requirements can be defined. The ixia's response to disturbance needs to be better understood. Present forest management practices, such as control burning and site preparation may encourage the plant. At least two comments pointed out that prescribed burning of pinelands, which is likely to be encouraged by any recovery plan, is inhibited by landowners concerns over liability. One forest products company offered assistance to install field trials to evaluate effects of various silvicultural activities on plant survival and reproduction.

Service response: The ixia's persistence in pine plantations is the main reason for withdrawing the proposal; the Service concurs that there is a need to better understand the response of the plant to management practices. Field trials could be quite valuable. The Service is encouraged that the 1990 Florida legislature addressed the problem of landowner liability for prescribed fire. The Service notes, however, that the threat of urbanization may in the future require listing, regardless of its status in privately owned forest land.

Issue 11: How would private landowners be regulated if the ixia is listed? Since the plant can lay dormant, how will it be determined whether land may be developed without first either burning it or turning over the soils? How would a purchaser of land be protected, without knowing if the plant exists on the property? Which agency is responsible for construction permitting and development?

Service response: Permits for development of land with endangered or threatened plants are almost always a local or state matter for land with endangered or threatened plants, because the Endangered Species Act does not prohibit take of endangered or threatened plants on private land. If a plant is listed and a construction project requires a Corps of Engineers dredge and fill permit, then consideration of the effects of the project on listed plants would be required. A Florida State government agency has considered requiring applicants for permission to build large projects to effectively inventory their land for Bartram's ixia by burning or disturbing suitable ixia habitat before searching for flowers; such a requirement is being considered under the State's authority.

Issue 12: The proposal cited no authoritative surveys or statistics to indicate that urban sprawl will reach into most of the six county range (in excess of 5 million acres) within the remotely foreseeable future; an economic slowdown means no major habitat destruction within the coming year. Ward (1979) suggested that the largest populations are in Bradford and Clay Counties, where the urbanization threat is minimal.

Service response: The Service reviews applications for Developments of Regional Impact (DRIs); statements in the proposal about such applications reflect Service review, although newspaper stories are referenced. Applicants for DRIs are unlikely to go through the considerable cost of application unless they expect the projects to materialize. The listing proposal relied on estimates of future population growth prepared by the University of Florida Bureau of Economic and Business Research and published annually in *Florida Trend* magazine. The Service notes that considerable ixia habitat appears to already have been destroyed, as stated in the proposal. The comment overstates the size of the known range of the ixia by an order of magnitude (see "Background" section).

Issue 13: Overutilization is not a problem because cultivated plants have survived well. The plant is not affected by natural disaster or disease because it has survived in its range since Bartram.

Service response: The Service concurs, but notes that the ability of a plant to thrive in cultivation has no relation to its status in the wild.

Issue 14: The proposal lacked an economic impact analysis.

Service response: Economic analysis is required only when critical habitat is proposed.

Issue 15: The proposed rule and newspaper legal advertisements of it are inaccurate, legally insufficient, and misleading; as such, they are arbitrary and capricious. The inaccuracies will render any subsequent rule invalid. Misleading statements include those minimizing the effect of listing on private landowners, because the plant occurs only on private property and recovery programs would of necessity impact private landowners. The public cannot be put on meaningful notice unless the Service includes a detailed plan for recovery or other activities.

Service response: The Service considers the proposal and its advertisements to be accurate and sufficient, for reasons described above, particularly under issue 8.

Issue 16: The proposal is invalid because the Service lacks the authority to list species without a proper petition. The Smithsonian report was not an adequate petition, and even if it were, the Service had abrogated its validity by failing to follow its own timetables and procedures.

Service response: The Endangered Species Act does not require a petition as a precondition for listing. Nevertheless, the Service's handling of the 1975 Smithsonian report satisfies the petition requirements of the Endangered Species Act.

Issue 17: A plant conservation organization pointed out results of their survey of U.S. botanists which indicated that this is one of some 700 United States plant taxa that could become extinct within the next 10 years in the absence of conservation efforts such as listing.

Service response: The poll was useful for identifying which species need attention, but recently collected field data and firsthand observation of this plant are more reliable for determining whether to list this particular species.

Issue 18: The amount of ixia is decreasing rapidly in northwest St. Johns County south to State Road 210, and the plant is expected to completely disappear from this area within ten years. Similar commercial and residential development elsewhere in the range of this plant will destroy habitat and eliminate populations of this plant.

Service response: The Service expects that substantial populations of Bartram's ixia will remain in this area ten years from now, but the outlook for the longer term is unknown. Considerable habitat currently occupied by this plant in this county can be destroyed before it is threatened with extinction.

Issue 19: Dramatic changes in forestry practices such as plantation development, mechanical harvest, site preparation and associated disruption of natural fire cycles in these flatwoods communities will have long-term implications to the survival of Bartram's ixia. It is evident that continued mechanical ground disturbances may eliminate or detrimentally affect this species.

Service response: Commercial forestry practices probably are not especially favorable for this plant, but so far it has persisted under such practices.

Issue 20: Bartram's ixia does not occur on protected sites.

Service response: The Service concurs, but is hopeful that the State or the St. Johns Water Management District may purchase habitat and that management of the State's Camp Blanding may protect the plant.

Issue 21: Because Bartram's ixia is difficult to find unless it is flowering, and is inconspicuous most of the time, the presence of this species is probably undetected in environmental reviews of lands in this area. It is likely that Bartram's ixia is declining faster than we can estimate given the changes in the landscape within the range of this species.

Service response: Data provided by several major landowners, as well as data that may be obtained through a monitoring program may prove useful in the future for evaluating the status of this plant and the need for conservation measures for developments.

Summary of Factors Affecting the Species

The Endangered Species Act and implementing regulations found at 50 CFR 424.17(3) provide the basis for determining a species to be endangered or threatened and for withdrawing a proposed rule when the proposal has not been found to be supported by available evidence. The five factors described in section 4(a)(1) of the Endangered Species Act, as they apply to the withdrawal of the proposed listing of *Salpingostylis coelestina*, are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Bartram's ixia is restricted to a limited part of northeastern Florida. In the past 30 years, a majority of the flatwoods in Baker, Bradford, Clay, Putnam, and St. Johns Counties have been converted to pine plantations, with densely planted slash pine. The relative ease of finding large numbers of flowering Bartram's ixia in clearcut and/or freshly replanted pine plantations shows that the plant persists in large numbers under the first crop of pines and can survive site preparation, including chopping and bedding, in large numbers. If Bartram's ixia reproduces abundantly by seed in clearcut/replanting sites (which appears likely, based on casual observation), and if the ixia plants persist to flower either after fire or after the next tree cutting, the ixia may remain relatively secure in such habitats. Threats to the plant from continued timber management might become evident in another 15 to 30 years as the second-crop plantations are harvested.

Some sites that once had populations of Bartram's ixia have been converted to pastures, where the plants may persist, depending on management, or to miscellaneous land uses. Near Starke, a junkyard displaced a well known ixia site (Wunderlin et al. 1980).

Growth of the Jacksonville metropolitan area threatens Bartram's ixia. The plant occurs in the Mandarin section of Jacksonville (Duval County), where it was reported in 1960 and confirmed in 1988 and 1989, but Mandarin is now almost entirely a residential area. In northwestern St. Johns County south of Jacksonville, Bartram's ixia is abundant along roads, in power line rights-of-way, and in pinelands, but in this area, four proposed residential/mixed use developments were large enough to require approval as Florida Developments of Regional Impact (DRIs). These proposals covered much of the known ixia habitat in St. Johns County (allowance must be made for the fact that DRI areas have been searched for the ixia, and some other areas have not). These projects were proposed to house as many as 143,000 people within 20 years (Florida Times-Union, Jacksonville, August 21, 1988; the Service's Jacksonville Field Office reviewed applications for these projects). After the proposal to list this species was published, applications for two developments were dropped, at least temporarily, and the builder of an approved DRI experienced financial difficulties.

The ixia is locally abundant, and is probably widespread, in southern Clay and northern Putnam Counties. Clay County's human population is estimated to have increased from 72,000 in 1984 to 102,800 in 1990 (Moire 1988, Willson 1990. Estimates are by University of Florida Bureau of Economic and Business Research). After the comment period for the ixia proposal had closed, Union Camp Corporation announced plans to develop its nearly 90 square miles of land in Clay and Putnam Counties over a 50-year period (Gainesville Sun, July 18; Florida Times-Union, July 25, July 27, 1990). A proposed Jacksonville outer beltway through St. Johns and Clay Counties may encourage real estate development. The status of Bartram's ixia on Camp Blanding is not known at the present time. Prospective changes in the Camp's forestry practices to favor red-cockaded woodpeckers may also have the effect of conserving the

native flora, perhaps including Bartram's ixia. The State of Florida may purchase habitat occupied by Bartram's ixia under its Conservation and Recreation Lands Program.

In Baker and adjoining Union Counties, Peacock and Peacock (1988) found abundant ixia in clearcuts on Clet Harvey Road, and the landowner found similar populations two miles south in 1990. Bartram's ixia is relatively secure in these counties if these areas remain commercial forest land.

In Bradford County, Bartram's ixia may similarly be secure in commercial forest land north of Starke and east of Hampton.

Prescribed burning of pinelands stimulates flowering of Bartram's ixia and is almost certainly desirable, if not essential for the well-being of this species. The 1990 session of the Florida legislature passed legislation intended to protect from liability suits landowners who practice prescribed burning in accordance with practices approved by the Florida Division of Forestry.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable. The ixia may be of limited interest as a cultivated plant, and is readily grown under the proper conditions in containers (E. Geiger, in litt. 1989) or naturalized in a bog garden (R. McCartney, Woodlanders, Inc., Aiken, SC, in litt. 1989).

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms.* Bartram's ixia is listed as endangered (as *Sphenostigma coelestinum*) by the Preservation of Native Flora of Florida Act (Section 581.185–187, Florida Statutes), which regulates taking, transport, and sale of plants but does not provide habitat protection. Florida's regional planning councils can require protection of state-listed plants in Developments of Regional Impact, and counties are encouraged to provide for conservation of such plants in their state-mandated comprehensive plans. Listing under the Endangered Species Act would have offered additional protection through Sections 7 and 9, and through recovery planning, although Section 7 consultations for plants are rare. Opposition to listing by the forest industry, if accompanied by similar opposition to recovery measures, could render recovery planning nearly meaningless unless it were accompanied by government land acquisition.

E. *Other natural or manmade factors affecting its continued existence.* A July 27, 1990, news story in the *Florida Times-Union* (Jacksonville) noted that changes in the capital gains provisions of the Federal tax laws in 1986 made timber ownership less attractive, encouraging conversion of forest land to real estate development. Robert Olszewski (Florida Forestry Association, pers. comm. 1990) subsequently confirmed that this is a genuine concern. This possible economic incentive for ixia habitat destruction will be considered in any future decisions with respect to listing of this species.

The Service carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by Bartram's ixia in determining to withdraw this proposed rule. The withdrawal is based on the ixia's likelihood of remaining abundant in commercial forest land, combined with a good likelihood of State acquisition of some habitat for this plant, and the possibility that the Florida Department of Community Affairs will require effective conservation of this plant (as a state-listed species) as a condition of approving development projects or county comprehensive plans.

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Author

The primary author of this notice is David Martin (See **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: October 24, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–26557 Filed 11–8–90; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 55, No. 218
Friday, November 9, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Turner Lake Sockeye Salmon Enhancement Project, Tongass National Forest; Environmental Impact Statement

In the matter of Turner Lake Sockeye Salmon Enhancement Project, Tongass National Forest, Chatham Area, Juneau Ranger District, Juneau, AK, environmental impact statement cancellation notice.

The Alaska Department of Fish and Game has decided not to proceed with the enhancement proposal to stock Turner Lake with sockeye salmon fry. This decision was based upon the department's disease policy that seeks to control the potential introduction of pathogens into systems where those pathogens do not occur.

The Notice of Intent, published in the **Federal Register** of October 16, 1989, is hereby rescinded (54 FR 42314–03).

For further information, contact: Dennis J. Rogers, Environmental Coordinator, Chatham Area, Tongass National Forest, 204 Siginaka Way, Sitka, Alaska 99835; telephone 907–747–6671.

Dated: November 1, 1990.

Gary A. Morrison,

Forest Supervisor.

[FR Doc. 90–26533 Filed 11–8–90; 8:45 am]

BILLING CODE 3410–11–M

The Ouachita National Forest, Le Flore County, Oklahoma, Multiple Use Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of The Ouachita National Forest, Le Flore County, Oklahoma, Multiple Use Advisory Council. The meeting will be open to the public. This notice also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act.

DATES: November 26, 1990, 7 p.m.

ADDRESSES: The meeting location is the Kerr Conference Center, located about 3 miles south of Poteau, Oklahoma, just off Highway 271. Send written statements to Forest Supervisor, Ouachita National Forest, P.O. Box 1270, Hot Springs, AR 71902.

FOR FURTHER INFORMATION CONTACT: Gary Pierson, (501)–321–5281.

SUPPLEMENTARY INFORMATION: The Ouachita National Forest, Le Flore County, Oklahoma, Multiple Use Advisory Council was created by the Winding Stair Mountain National Recreation and Wilderness Area Act (16 U.S.C. 460vv–13). The Council, comprised of 20 members, appointed by the Secretary of Agriculture September 25, 1989, will meet periodically. The purpose of this Council is advisory in nature. The Council shall provide information and recommendations to the Secretary regarding the operation of the Ouachita National Forest in Le Flore County. The Council is composed of representatives from the local area in which the Ouachita National Forest is located, equally divided among conservation, timber, fish and wildlife, tourism and recreation, and economic development interests.

Mike Curran, Supervisor of the Ouachita National Forest will chair the meeting. Representatives of the Forest Service will attend from the Department of Agriculture including the designated officer of the Federal Government. The agenda for this meeting will include: The new organization of the two Ranger Districts involved in the NRA., future field trip, "New Perspectives", status of FY 91 funding and construction contracts, and a discussion of suitable acres.

Dated: November 2, 1990.

Raleigh Meadows,

Acting Forest Supervisor.

[FR Doc. 90–26618 Filed 11–8–90; 8:45 am]

BILLING CODE 3410–11–M

Office of International Cooperation and Development

Cornell University; Grant and Cooperative Agreement Awards

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

ACTIVITY: OICD intends to enter into agreement with Cornell University to provide partial funding support for collaborative international research on Soil/Water/Environmental Problems Resulting from Use of Fertilizers and Pesticides.

Authority: Section 1458 of the National Agriculture Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3191), and the Food Security Act of 1985 (Publ L. 99–198).

OICD announces the availability of funds in fiscal year 1991 (FY1991) to enter into an agreement with Cornell University to collaborate on international research on Soil/Water/Environmental problems resulting from Use of Fertilizers and Pesticides. Funds will be made available to the University's Department of Soil, Crop and Atmospheric Sciences to conduct collaborative research with the Egypt Ministry of Agriculture's Soil and Water Research Institute. Assistance will be provided only to the University, which is contributing resources and experience to conduct the research. Funds provided by OICD will be used to supplement costs for supplies, computer time, a research associate, and travel.

Based on the above, this is not a formal request for application. An estimated $74,800 will be available in FY1991 to support this seminar. It is anticipated that a total of $224,400 will be provided for this effort over a three-year period, subject to the availability of federally appropriated funds in future fiscal years.

Information on proposed Agreement #58–319R–1–013 may be obtained from: USDA/OICD/Admin Services, 430 McGregor Bldg, Washington, DC 20250–4300.

Dated: November 6, 1990.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 90–26590 Filed 11–8–90; 8:45 am]

BILLING CODE 3410–DP–M

Nitrogen Fixing Tree Association, Hawaii; Grant and Cooperative Agreement Awards

AGENCY: Office of International Cooperation and Development (OICD), USDA.

ACTION: Notice of intent.

ACTIVITY: OICD intends to enter into an agreement with the Nitrogen Fixing Tree Association, Hawaii, to convene a seminar on Economic Analyses of Agroforestry Systems.

Authority: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

OICD announces the availability of funds in fiscal year 1991 (FY1991) to hold a seminar on Economic Analyses of Agroforestry Systems. This activity will be sponsored by A.I.D.'s Office of Forestry, Environment and Natural Resources through its Forestry Support Program which is managed jointly by USDA's Forest Service and OICD.

The seminar would achieve the following goals: (1) Encourage the adoption of a standardized methodology for analyzing financial and economic returns of farm forestry and agroforestry interventions; (2) promote collaboration and sharing of information between A.I.D., other donors and PVOs, and economists/investigators; and (3) encapsulate and disseminate the existing body of knowledge on financial and economic analysis of farm forestry and agroforestry systems. Workshop output would include a report containing case studies; recommendations for a standardized methodology; and recommendations for meeting information needs of A.I.D., other donors and extension projects.

Based on the above, this is not a formal request for application. An estimated $40,200 will be available in FY1991 to support this seminar.

Information on proposed Agreement #58-319R-1-012 may be obtained from: USDA/OICD/Admin Services, 430 McGregor Bldg, Washington DC 20250-4300.

Dated: November 6, 1990.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 90-26591 Filed 11-8-90; 8:45 am]

BILLING CODE 3410-DP-M

Rural Electrification Administration

Alabama Electric Cooperative, Inc.; South Mississippi Electric Power Association

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of intent to hold scoping meetings and prepare an environmental assessment and/or environmental impact statement.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR parts 1500-1508), and REA Environmental Policies and Procedures (7 CFR part 1794) may prepare a Draft Environmental Impact Statement (DEIS) and subsequently a Final Environmental Impact Statement (FEIS) for its Federal action related to a proposal by Alabama Electric Cooperative, Inc., of Andalusia, Alabama, and South Mississippi Electric Power Association, of Hattiesburg, Mississippi, to construct a 230 kV transmission line project. REA may consider providing financing assistance, construction approval, and/or approval of contractual agreements between Alabama Electric Cooperative, Inc., and South Mississippi Electric Power Association that would result in construction of the project. Notice is also given of a public scoping meeting to be held in conjunction with the review of the possible environmental consequences and the determination of potentially significant environmental issues associated with the REA Federal action related to the proposed project.

FOR INFORMATION CONTACT: The primary point of contact for this project is Mr. Alex M. Cockey, Jr., Director, Southeast Area-Electric, Rural Electrification Administration, 14th and Independence Avenue, SW., South Agriculture Building, room number 0270, Washington, DC 20250-1500, telephone number (202) 382-8436. For information on specific aspects of Alabama Electric Cooperative, Inc., proposal contact Mr. Mike Noel, Alabama Electric Cooperative, Inc., Highway 29 North, Andalusia, Alabama 36420, telephone number (205) 222-2571, or South Mississippi Electric Power Association's proposal contact Mr. Clifford A. Webb, South Mississippi Electric Power Association, 6401 Highway 49 North, Hattiesburg, Mississippi 39404, telephone number (601) 268-2083).

SUPPLEMENTARY INFORMATION: Alabama Electric Cooperative, Inc., and South Mississippi Electric Power Association tentatively propose to construct approximately 52 miles of 230 kV transmission line. The line would begin at a new switching station to be constructed in Washington County, Alabama, south of McIntosh and traverse in a southwesterly direction to an existing substation in George County, Mississippi, located just south of Benndale. Alabama Electric Cooperative, Inc., will construct the Alabama portion of the project and South Mississippi Electric Power Association will construct the Mississippi portion.

Alternatives to be considered by REA, Alabama Electric Cooperative and South Mississippi Electric Power Association include: (a) No action, (b) upgrading the existing 230 kV Chatom, Alabama, to Waynesboro, Mississippi, intertie between Alabama Electric Cooperative and South Mississippi Electric Power Association, (c) alternate origination points, (d) alternate routes and (e) alternate voltage levels.

A public scoping meeting related to REA's environmental review of the project will be held at 7 p.m. at the headquarters of Singing River Electric Power Association, Highway 63 South, Lucedale, Mississippi 39452 on Tuesday, December 11, 1990.

Comments regarding the proposed project may be submitted orally or in writing at the scoping meeting or in writing within 30 days after the December 11th meeting to REA at the address provided in this notice.

Government agencies, other organizations, and the public are invited to participate in the planning and analysis of the proposed project. Issues to be discussed at the public scoping meeting may include, but are not limited to, determination of the project scope, the nature and extent of reasonable alternatives, identification of environmental issues and the scope of those issues, and other reviews or studies that REA or other Federal, States of Alabama and Mississippi, or local agencies may conduct.

To be presented at the meeting will be a macro-corridor study and an alternatives analysis prepared by Alabama Electric Cooperative, Inc., and South Mississippi Electric Power Association which were reviewed and accepted by REA as adequate scoping documents. The macro-corridor study and alternatives analysis are available for public review at REA or Alabama Electric Cooperative, Inc., or at South Mississippi Electric Power Association at the addresses provided herein. They can also be reviewed at the following libraries:

Lucedale Public Library, 104 North Summer, Lucedale, Mississippi 39452

McIntosh Public Library, River Road, McIntosh, Alabama 36553

Citronelle Public Library, 201 State Street, Citronelle, Alabama 36522.

From information provided in the macro-corridor study the alternatives analysis, input from local, States of Alabama and Mississippi and Federal agencies and the public, Alabama Electric Cooperative, Inc., and South Mississippi Electric Power Association will prepare an Environmental Analysis to be submitted to REA for review. Upon review of the Environmental Analysis and other input, REA at this point may decide to directly begin preparation of a DEIS. If significant effects are not evident based on a review of the Environmental Analysis and other relevant information, REA will prepare an Environmental Assessment to determine if the preparation of an Environmental Impact Statement (EIS) is warranted.

Should REA determine that the preparation of an EIS is not warranted, it will prepare a Finding of No Significant Impact (FONSI). The FONSI will be made available for public review and comment for 30 days. REA will not take its final action related to the project prior to the expiration of the 30-day period.

Any final action to REA related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental procedures as prescribed by CEQ and REA environmental policies and procedures as applicable.

Dated: November 5, 1990.

John H. Arneson,

Assistant Administrator—Electric.

[FR Doc. 90-26562 Filed 11-8-90; 8:45 am]

BILLING CODE 3410-15-M

ARMS CONTROL AND DISARMAMENT AGENCY

Announcement of the William C. Foster Fellows Visiting Scholars Program for the 1991-92 School Year

The U.S. Arms Control and Disarmament Agency (ACDA) will conduct a competition for selection of visiting scholars to participate in ACDA's activities during the 1991-92 academic year.

Section 28 of the Arms Control and Disarmament Act (22 U.S.C. 2568) provides that "A program for visiting scholars in the field of arms control and disarmament shall be established by the Director of the U.S. Arms Control and Disarmament Agency in order to obtain the services of scholars from the facilities of recognized institutions for higher learing."

The law states "That the purpose of the program will be to give specialists in the physical sciences and other disciplines revelvant to the Agency's activities an opportunity for active participation in the arms control and disarmament activities of the Agency and to gain for the Agency the prespective and expertise such person can offer. . . . Fellows shall be chosen by a board consisting of the Director of the Agency, who shall be the chairperson, and all former Directors of the Agency." In honor of the first Director of ACDA, William C. Foster, who served from the inception of ACDA in 1961 to 1969 and died on October 15, 1984, scholars are known as William C. Foster Fellows.

ACDA began this program by competitively selecting six visiting scholars for the 1984-85 academic year. The competition has continued each subsequent academic year until the present. One-year assignments will begin at a mutually agreeable time between July 1991 and mid-September 1992.

Positions are available in the Bureau of Multilateral Affairs (MA), the Bureau of Verification and Implementation (VI), the Bureau of Strategic Nuclear Affairs (SNA), the Bureau of Nonproliferation Policy (NP) and the Office of the Chief Science Advisor (OCAS). The attached "Description of Visiting Scholar Assignments to ACDA" describes the positions in detail. Evaluation of applicants for appointments to these positions will emphasize the scholars' potential for providing expertise or performing services needed by ACDA, rather than on the scholar's previously displayed interest in arms control. While pursuit of the scholars' own line of research may sometimes be possible, support of such activity is not the purpose of the program.

Visiting scholars will be detailed to ACDA by their universities; the universities will be compensated for their salaries and benefits in accordance with the intergovernmental Personnel Act and within Agency limitations. In addition to pay based on their regular salary rates, the visting scholars will receive travel to and from Washington, D.C. area for their one-year assignment and either per diem allowance during the one-year assignment or relocation costs.

Visiting scholars must be citizens of the United States and on the faculty of recognized institution of higher learning. Prior to appointment they will be subject to a full-field background security investigation for a top secret security clearance, as required by Section 45 of the Arms Control and Disarmament Act. Visiting scholars will also be subject to applicable Federal conflict of interest laws and standards of conduct.

Selections will be made without regard to race, color, religion, sex, national origin, age, or physical handicap which does not interfere with performance of duties, and all qualified persons are encouraged to apply. Applications should be in the form of a letter indicating the position(s) in which the applicant is interested and the prespective and expertise which the applicant offers. The letter should be accomplished by a curriculum vitae, and any other materials such as letters of reference and samples of published articles which the applicants believe should be considered in the selection process. (If published materials are submitted please provide twelve copies, if possible.)

Applications, and any requests for addition information, should be sent to: Visiting Scholars Program, Attention: Operations Analysis, room 5726, U.S. Arms Control and Disarmament Agency, Washington, DC 20451. The application deadline for assignments for the 1991-1992 academic year is January 31, 1991, subject to extension at ACDA's option. Announcement of selection, subject to security clearance procedures, is expected in early spring 1991.

Dated: October 11, 1990.

Alfred Lieberman,

Chief, Operations Analysis.

Description of Visiting Scholar Assignments to ACDA

Bureau of Multilateral Affairs

Description of Bureau

The Bureau of Multilateral Affairs (MA) has primary responsibility within ACDA for arms control issues dealt with in multilateral forums. On these issues the Bureau is responsible for the development of policy, strategy, and tactics. The Bureau is responsible for consultation and coordination with foreign governments and preparing the Director and Deputy Director for their meetings with foreign country representatives on multilateral arms control. It also provides organizational support, delegational staffing, and Washington backstopping for multilateral arms control negotiations.

In the accomplishment of this mission, MA performs the following tasks:

—leads the preparation of guidance with ACDA for the negotiations on Conventional Forces in Europe and on Confidence-and-Security-Building Measures,

—leads the preparation of guidance for, and backstopping of, delegations to the Conference on Disarmament (CD), multilateral and bilateral chemical weapons negotiations, the United Nations Disarmament Commission, and the First Committee of the United Nations General Assembly,

—provides general support to the US Representative to the CD who heads these delegations,

—develops policy within ACDA on the President's Open Skies initiative.

MA has three divisions: European Security Negotiations (ESN), International Security Affairs (ISA), and Science and Technology Policy (STP).

Possible Assignments

A visiting scholar might be assigned to assist in the negotiations leading to a Chemical Weapons treaty or a follow-on treaty to the Conventional Armed Forces in Europe treaty.

Qualifications

Useful background for a candidate would include knowledge of European political and military issues and familiarity with NATO defense doctrine. Previous experience and research on arms control and national security issued would be valuable.

Bureau of Verification and Implementation

Description of Bureau

VI provides verification support for all arms control negotiations including those on strategic and theater nuclear arms limitations, limitations on conventional forces in Europe, limitations on the tests of nuclear weapons, limitations on the deployment of strategic defenses in space, and limitations on the production and stockpiling of chemical and biological weapons.

VI participates in compliance assessment with regard to the Intermediate-Range Nuclear Forces Treaty (INF), the unratified Threshold Test Ban Treaty (TTBT), the Antiballistic Missile Treaty (ABM), the Biological Weapons Convention (BWC), the Geneva Protocol on Chemical Weapons, and the Limited Test Ban Treaty. VI also provides technical support on compliance to the Standing Consultive Commission, a U.S./Soviet forum for discussing suspected treaty violations.

Possible Assignments

VI developes verification requirements for arms control agreements being negotiated; reviews compliance with existing arms control agreements; and evaluates the potential of various collection technologies for monitoring compliance with provisions of arms control agreements. A Visiting Scholar would be expected to participate in one or more of these activities by performing studies, or drafting policy papers. In some cases, the Visiting Scholar would represent ACDA on interagency working groups and would be called upon to exercise a relatively high degree of individual judgment.

Subject areas where a Visiting Scholar might contribute include: verification of a treaty on chemical weapons; verification of limits on space-based weapons and weapons which can attack space-based military assets; compliance with existing—and verification of proposed—treaty limitations on ballistic missiles and nuclear testing; or analysis of Soviet views on stability and their impact on verification.

Qualifications

Because of the complex technical and analytical content in these areas, VI seeks a physical scientist, or expert in Soviet strategy and doctrine with a broad background. Specific useful background for a candidate would include: knowledge of basic physics, chemistry, aerospace systems, or Soviet strategic studies. The Visiting Scholar should have facility in analytical writing and general communication and a proven ability to innovate. Specific background in the areas of VI responsibility would be of value, but is not a requirement.

Bureau of Strategic Nuclear Affairs

Description of Bureau

The Bureau of Strategic Nuclear Affairs (SNA) has responsibility for support of the Director of ACDA on arms control matters concerning limitations on U.S. and Soviet strategic and theater offensive forces and defensive and space forces. This includes providing technical and policy guidance in these areas and participating in the policy deliberation of Interagency Groups responsible for these areas. SNA also has responsibility for ACDA's participation in the Nuclear and Space Talks (NST) in Geneva, other bilateral U.S.-USSR nuclear arms control negotiations, and other defense related matters including ACDA participation in US decisions regarding research on ballistic missile defenses. NST includes strategic and theater nuclear arms control and defense and space issues. Other bilateral discussions include meetings of the Standing Consultative Commission (SCC) and preparation for periodic Anti-Ballistic Missile (ABM) Treaty reviews as well as meetings of the Special Verification Commission (SVC) on implementation of and compliance with the Intermediate-Range Nuclear Forces Treaty (INF). SNA also has interagency responsibility for backstopping of the NST negotiations, the SVC, the SCC, and ABM Treaty reviews. SNA has three divisions: Strategic Affairs, Theater Affairs, and Defense and Space.

Possible Assignments

A Visiting Scholar assigned to SNA would assist in policy formation in one or more of the areas cited above. The visiting scholar's responsibilities would include drafting position papers, background studies, and policy analyses, both for use within ACDA and for coordination with other agencies such as the Central Intelligence Agency, the Office of the Secretary of Defense, the Joint Chiefs of Staff, the Department of State, and Interagency groups. In some cases, the individual would represent ACDA on interagency working groups. The visiting scholar would be called upon to exercise a relatively high degree of individual judgment in developing policy recommendations. There may be an opportunity to volunteer to serve on the staff of U.S. delegations to arms control negotiations. The most likely area of concentration for the visiting scholar would be strategic arms reduction policy, but this could vary according to the scholar's background and the needs of SNA.

Qualifications

Because of the highly technical content in these areas, SNA seeks a physical scientists with a broad theoretical or applied background. Useful background for a candidate would include: knowledge of basic physics, facility in concise writing, general communication skills, and proven ability to innovate. Background in areas of SNA responsibility would be of value but is not a requirement.

Bureau of Nonproliferation Policies

Description of Bureau

The Bureau of Nonproliferation Policies (NP) has responsibility for proliferation issues, including nuclear and chemical weapons, missiles, and conventional armaments. Functions include the review of nuclear exports, support of the international safeguards system, and the promotion of the Nuclear Non-Proliferation Treaty and the Treaty of Tlatelolco. NP also assesses the arms control implications of proposed arms transfers and technology transfers, prepares arms control impact statements on U.S. programs and prepares arms control policy assessments and proposals. The Bureau participates in missile and chemical weapon nonproliferation policy development and associated multilateral arrangements such as Missile Technology Control Regime and the Australia Group. In addition, NP is responsible for ACDA's economic analysis work and coordinates publication of "World Military Expenditures and Arms Transfers."

Possible Assignments

A visiting scholar assigned to NP would work on selected topics within that Bureau's responsibility, with emphasis on issues raised by the interrelationships among U.S. policies on nuclear nonproliferation, the transfer of conventional arms, and the export of missile technology. The visiting scholar's responsibilities would include the preparation of analyses of these issues and recommendations on their implications for arms control.

The position would involve close coordination with officials in the Department of State and Defense and other concerned agencies. In carrying out assigned duties, the individual would need to exercise initiative and function effectively with minimum direct guidance and supervision.

Qualifications

Desirable attributes for a candidate from the physical sciences would include expertise in nuclear, chemical or military technologies, industrial development, and science policy. Candidates from other disciplines relevant to NP's activities ideally should have some understanding of the role of arms control in national security planning, familiarity with weapons characteristics and capabilities, knowledge of political-military conditions in developing regions. Because of the complex political, technology and military issues involved, a good background in national security studies or international relations is also important.

Office of the Chief Science Advisor

Description of Office

The Office of the Chief Science Advisor (OCSA) provides a focal point for ACDA and for the US Government on science and technology in arms control and on coordination of verification research and development. Its responsibilities include:

—provision of operations analysis, mathematical and statistical support for evaluation of the security implications of treaty options and for negotiation of treaty verification protocols,

—coordination of interagency and international verification research and development efforts,

—performance of liaison with academia, industry and other government agencies on the application of science to arms control problems,

—provision of technical computer support to the Agency,

—coordination of arms control related external research throughout the government and oversight of the Agency's external research program,

—and provision of technical management of projects of a general nature.

Possible Assignments

A visiting scholar in OCSA might be assigned to a liaison post between ACDA and academia or industry; to a post in the Research Group where he would contribute to the performance and management of research; or to the Operations Analysis Group where he would apply operations research methods and other mathematical and statistical techniques to the evaluation of conventional and strategic treaty options or to the comparison of verification protocols. Some of the work in the Operations Analysis Group might require the use of numerous computer applications including large strategic or conventional war-gaming models.

Qualifications

The assignments in OCSA require the backgrounds of physicists, engineers, mathematicians, mathematical statisticians, or operations research analysts. There is no requirement that the scholar have had experience in applying his specialty to arms control problems. While the emphasis at ACDA is on the application of these disciplines, scholars whose specialties were mainly theoretical could make valuable contributions to the work of OCSA.

[FR Doc. 90-26489 Filed 11-8-90; 8:45 am]
BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

DEPARTMENT OF EDUCATION

DEPARTMENT OF JUSTICE

Departments of Commerce and Education Agreement to Delegate Certain Civil Rights Compliance Responsibilities for Educational Institutions

ACTION: Agreement between the Department of Commerce and the Department of Education to delegate certain civil rights compliance responsibilities for educational institutions.

A. Purpose

Section 1-207 of Executive Order 12250 authorizes the Attorney General to initiate cooperative programs among Federal agencies responsible for enforcing title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, as amended, and section 504 of the Rehabilitation Act of 1973, as amended, and similar provisions of Federal law prohibiting discrimination on the basis of race, color, national origin, sex, handicap, or religion in programs or activities receiving Federal financial assistance.

This agreement will promote consistent and coordinated enforcement of covered nondiscrimination provisions as required in the Coordination of Enforcement of Non-discrimination in Federally Assisted Programs (28 CFR 42.401-.415), increase the efficiency of compliance activity, and reduce burdens on recipients, beneficiaries, and Federal agencies by consolidating compliance responsibilities, by eliminating duplication in civil rights reviews and data requirements, and by promoting consistent application of enforcement standards.

B. Delegation

By this agreement the Department of Commerce designates the Department of Education as the agency responsible for specific civil rights compliance duties, as enumerated below, with respect to Educational Institutions. Responsibility for the following covered nondiscrimination provisions are delegated:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to 2000-4); and

2. Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794).

The agreement specifies the duties to be performed by each agency. It does not alter the requirements of the joint Department of Justice/Equal

Employment Opportunity Commission regulation concerning procedures for handling complaints of employment discrimination filed against recipients of Federal financial assistance. 28 CFR 42.601–42.613, 29 CFR 1691.1–1697.13, 48 FR 3570 (January 25, 1983). Complaints covered by that regulation filed with a delegating agency against a recipient of Federal financial assistance solely alleging employment discrimination based on race, color, national origin, religion, or sex against an individual are to be referred directly to the EEOC by the delegating agency.

C. Duties of the Department of Education

The Department of Commerce assigns the following compliance duties to the Department of Education with respect to Educational Institutions. Specifically, the Department of Education shall:

1. Maintain current files on all activities undertaken pursuant to this agreement and on the compliance status of applicants and recipients with respect to their programs or activities receiving Federal financial assistance resulting from preapproval and postapproval reviews, complaint investigations, and actions to resolve noncompliance. A summary of these activities and the compliance status of applicants and recipients shall be reported at least at the end of every fiscal year to the Department of Commerce.

2. Develop and use information for the routine, periodic monitoring of compliance by Educational Institutions with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

3. Perform, upon request by the Department of Commerce, preapproval reviews for which the following conditions apply:

(a) the delegating agency has reason to believe discrimination may be occurring in a program or activity receiving or applying for Federal financial assistance, and (b) supplemental information or field reviews not readily achievable by the Department of Commerce are necessary to determine compliance.

4. Conduct an effective program of postapproval reviews of recipients with respect to their programs or activities receiving Federal financial assistance subject to this agreement.

5. Receive complaints alleging that recipients subject to this agreement have discriminated in violation of covered nondiscrimination provisions in their programs or activities receiving Federal financial assistance, attempt to obtain information necessary to make complaints complete, and investigate complete complaints.

6. Issue a written letter of findings of compliance or a letter of findings of noncompliance that (a) advises the recipient and, where appropriate, the complainant of the results of the postapproval review or complaint investigation, (b) provides recommendations, where appropriate, for achieving voluntary compliance, and (c) offers the opportunity to engage in negotiations for achieving voluntary compliance. The governor of the state in which the applicant or recipient is located will be given the opportunity to secure compliance by voluntary means if the letter of findings of noncompliance is made pursuant to a statute requiring that the governor be given an opportunity to secure compliance by voluntary means. The Department of Education promptly shall provide a copy of its letter of findings to the Department of Commerce and to the Assistant Attorney General for Civil Rights.

7. Conduct, after a letter of findings of noncompliance, negotiations seeking voluntary compliance with the requirements of covered nondiscrimination provisions.

8. (a) If compliance cannot be voluntarily achieved, and the Department of Education does not fund the applicant or recipient, refer the matter to the Department of Commerce for its own independent action and notify the Assistant Attorney General for Civil Rights of the referral.

(b) If compliance cannot be achieved and both the Department of Education and the Department of Commerce fund the applicant or recipient, initiate formal enforcement action. When the Department of Education initiates formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, provide the Department of Commerce with an opportunity to participate as a party in a joint administrative hearing. When the Department of Education initiates formal enforcement action by referring the matter to the Department of Justice for appropriate judicial action, notify the Department of Commerce of the referral.

9. Notify the Department of Commerce and the Assistant Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and any action taken against the applicant or recipient.

D. Duties of the Department of Commerce

The Department of Commerce shall:

1. Issue and provide to the Department of Education copies of all regulations, guidelines, reports, orders, policies, and other documents that are needed for recipients to comply with covered nondiscrimination provisions and for the Department of Education to administer the responsibilities enumerated under this agreement.

2. Provide the Department of Education with information, technical assistance, and training necessary for the Department of Education to perform the duties delegated under this agreement. This information shall include, but is not limited to, a list of recipients receiving Federal financial assistance from the Department of Commerce, the types of assistance provided, compliance information solely in the Department of Commerce's possession or control, and data on program eligibility and/or actual participants in assisted programs or activities.

3. Perform preapproval reviews of applicants for assistance, as required by 28 CFR 42.407(b), where the reviews do not require supplemental information or field reviews not readily achievable by the Department of Commerce. The reviews may require information to be supplied by the Department of Education. If the Department of Commerce requests the Department of Education to undertake an on-site review because it has shown it has reason to believe discrimination is occurring in a program or activity receiving or applying for Federal financial assistance, the Department of Commerce shall supply information necessary for the Department of Education to undertake such a review.

4. Refer all complaints alleging discrimination under covered nondiscrimination provisions filed with the Department of Commerce against the recipient subject to this delegation and determine, if possible, whether the program involved receives Federal financial assistance from the delegating agency.

5. Where the Department of Education has notified the applicant or recipient in writing that compliance cannot be achieved by voluntary means and the Department of Education has referred the matter to the Department of Commerce, make the final compliance determination and;

(a) If the Department of Commerce wishes to initiate formal enforcement action by providing the applicant or recipient with an opportunity for an administrative hearing, notify the Department of Education if the Department of Commerce will either join as a party in the Department of Education's administrative hearing or will conduct its own administrative hearing.

(b) When the Department of Commerce initiates formal enforcement action by referring the matter to the Department of Justice for appropriate judicial action, notify the Department of Education of the referral.

(c) If the Department of Commerce conducts its own hearing, notify the Department of Education and the Assistant Attorney General for Civil Rights of the outcome of the hearing, including the reasons for finding the applicant or recipient in noncompliance, and any action taken against the applicant or recipient. The Department of Commerce may request the Department of Education to act as counsel in its administrative hearing.

(d) If the Department of Commerce neither initiates steps to deny or terminate Federal financial assistance nor refers the matter to the Department of Justice, notify the Department of Education and the Assistant Attorney General for Civil Rights, in writing, within 15 days after notification from the Department of Education that voluntary compliance cannot be achieved.

E. Redelegation

Duties delegated herein to the Department of Education may be redelegated. The Department of Education shall notify the Department of Commerce of any such redelegation prior to its effective date.

F. Effect on Prior Delegations

This agreement supersedes and replaces the delegation agreement between the Department of Commerce and the Department of Health, Education and Welfare with respect to Educational Institutions published in the **Federal Register** at 32 FR 3109 (February 21, 1967).

G. Approval

This agreement shall be signed by the Assistant Attorney General for Civil Rights. It shall be signed by both parties and become effective December 10, 1990.

H. Termination

This Agreement may be terminated by either agency 60 days after notice to the other agency and to the Assistant Attorney General for Civil Rights.

Dated: June 26, 1990

Thomas J. Collamore,

Assistant Secretary for Administration, Department of Commerce

Dated: September 10, 1990

Lauro F. Cavazos,

Secretary, Department of Education.

Dated: October 16, 1990.

John R. Dunne,

Assistant Attorney General for Civil Rights Division, Department of Justice.

[FR Doc. 90–26527 Filed 11–8–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–009]

Color Television Receivers, Except for Video Monitors, From Taiwan; Final Results

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation in part.

SUMMARY: On May 23, 1990, the Department of Commerce published the preliminary results of its administrative review and intent to revoke in part of the antidumping duty order on color television receivers, except for video monitors, from Taiwan. The review covers eleven manufacturers and/or exporters for the period April 1, 1986 through March 31, 1987 (third review).

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke in part. Based on our analysis of comments received and the correction of certain clerical errors, we have changed the preliminary rates for AOC International Inc. (AOC), Proton (Fulet) Electronic Industrial Co., Ltd. (Proton), Kuang Yuan, Co., Ltd. (Kuang Yuan), Shin-Shirasuna Electric Corporation (Taiwan) (Shin-Shirasuna), and Thomson Consumer Electronics/RCA Taiwan (RCA). We also confirm the revocation in part with respect to Capetronic.

EFFECTIVE DATE: November 9, 1990.

FOR FURTHER INFORMATION CONTACT: Maureen C. McPhillips or Robert Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 21210) the preliminary results of its administrative review of, and intent to revoke in part, the antidumping duty order on color television receivers, except for video monitors, from Taiwan (49 FR 18337, April 30, 1984). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act) and 19 CFR 353.22 (1990).

Scope of the Review

Imports covered by the review are shipments of color television receivers, except for video monitors, complete or incomplete, from Taiwan. The order covers all color television receivers (CTVs) regardless of tariff classification. The merchandise was classified under item numbers 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9270, 684.9275, 684.9655, 684.9656, 684.9658, 684.9660, 684.9663, 684.9864, 684.9866, 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, and 687.3520 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under items 8528.10.80, 8529.90.15, 8529.90.20, and 8540.11.00 of the Harmonized Tariff Schedules. TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The review covers eleven manufacturers and/or exporters of color television receivers, except for video monitors, from Taiwan for the period April 1, 1986 through March 31, 1987.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke in part as provided by §§ 353.22(c) and 353.54 of the Department's regulations. We received comments from the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, AFL–CIO–CLC, the Independent Radionic Workers of America, the Industrial Union Department, AFL–CIO (the petitioners); Zenith Electronics Corp. (Zenith); and nine respondents: AOC, Capetronic, Proton, Hitachi, Kuang Yuan, Philips, RCA, Shin-Shirasuna, and Tatung.

We have corrected any clerical errors noted by the petitioners, Zenith, and respondents, but have not addressed them specifically in this notice.

General Comments

Comment 1: Zenith and the petitioners argue that the commodity tax pass-

through measurement is required by statute and that the Department's assumption of full pass-through is unwarranted. They also maintain that it is unlawful for the Department to adjust foreign market value (FMV) for a difference in circumstances of sale quantified as the full amount of the difference between the tax added to United States Price (USP) and the tax included in the home market price. Zenith argues that the Department's failure to cap the amount of tax added to the USP at the amount of tax added to or included in the home market price, even assuming full pass-through, is unlawful. Citing section 772(d)(1)(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1677a(d)(1)(c)), the petitioners add that the Department should not adjust USP upward for any taxes because the respondents have not demonstrated that any taxes were passed through to customers on home market sales and consequently have not established entitlement to this adjustment. Moreover, the petitioners state that the Department's assertion that it is not bound by decisions of the court with which it does not agree and which it plans to appeal is tantamount to administrative agency nonacquiescence. Zenith and the petitioners cite *Zenith Electronics Corp. v. United States*, 10 CIT 268, 633 F. Supp. 1382 (1986), *appeals dismissed*, nos. 88–1259 and 88–1260 (Fed Cir., 1989); and *Daewoo Electronics Co., et al. v. United States*, 712 F. Supp. 931 (CIT, 1989), in support of their position.

AOC, Proton, and Tatung contend that the statute provides that the commodity tax adjustment should be the amount of the commodity tax that would have been paid if the exported merchandise had been sold in the home market and that this amount should be made as an addition to USP. The Department's use of a methodology that deducts taxes from home market price is unlawful. These respondents cite *Zenith, supra*, in support of their position. They also maintain that it is nonsensical to base the amount of the exempted commodity tax on USP because the adjustment is designed to measure indirect taxes rebated or not collected by reason of the exportation of the merchandise to the United States (19 U.S.C. 1677a(d)(1)(c)). Accordingly, these respondents urge the Department to calculate the amount of the commodity tax using the duty paying values and formulae provided in their responses. This amount should then be added to the USP. Moreover, the circumstance-of-sale adjustment, which these respondents hold is without statutory basis, will no longer be necessary. They concur with the Department's position that the antidumping statute does not require measurement of the incidence of indirect taxes in an economic sense.

Department's Position: We do not agree with the court in *Zenith* but have not had an opportunity to appeal the issues on its merits. Consistent with our long-standing policy, we have not attempted to measure the amount of tax "passed through" to customers in Taiwan. We do not agree that the statutory language limiting the amount of the adjustment to the amount of the commodity tax "added to or included in the price" of televisions sold in Taiwan requires the Department to measure the incidence of the tax in an economic sense.

We agree that the amount of the commodity tax forgiven by reason of the export of televisions to the United States must be added to USP under the statute. The tax base in Taiwan, or duty paying value (DPV), is submitted by each firm and approved by the Taiwan authorities. For CTVs sold from bonded factories, the DPV is the ex-factory price; for CTVs sold from unbonded factories, the DPV consists of production costs, general selling and administrative costs, and profit, *i.e.*, the price to the first unrelated buyer. We also disagree with AOC, Proton, and Tatung that we should base the amount of tax added to USP on home market DPV. Because we are trying to make an "apples-to-apples" comparison, the amount of tax rebated or not collected by reason of exportation should be based on a U.S. tax base that is comparable to the home market tax base. Accordingly, for bonded factories, we used the ex-factory price of the U.S. merchandise; for unbonded factories, we used the price to the first unrelated customer in the United States as the U.S. tax base. We calculated the adjustment by multiplying the U.S. tax base by the home market tax rate and adding the result to USP.

To avoid artificially inflating or deflating margins, we made circumstance-of-sale adjustments equal to the difference between the per unit tax collected in Taiwan and the imputed per unit tax calculated for U.S. merchandise.

Comment 2: Zenith contends that the Department failed to take into account the average age and balance of accounts payable relating to a respondent's home market sales activity, as opposed to product process activity. With respect to discounts, rebates, and differences in circumstances of sale in the home market, Zenith maintains that the true cost to the respondent is not the amount paid out, but rather that amount minus the savings realized by paying that amount some time after the obligation to pay was incurred. AOC, Proton, and Tatung point out that the Department has rejected this argument on numerous occasions, including the final results of the second administrative review of this order.

Department's Position: We disagree with Zenith. In this review, we have followed our practice as stated in the second administrative review of color television receivers from Taiwan (53 FR at 49707, Comment 2). Any savings resulting from the deferred payment of a discount or rebate would have been taken into account by the seller in setting the terms of the discount or rebate. Therefore, it is unnecessary to adjust the "actual cost" to the seller. This is in contrast to credit costs or inventory carrying costs, which are imputed costs, where the seller does not know how long it will take for a customer to pay or how long he will store merchandise before it is sold.

Comment 3: Zenith maintains that the Department should correct its ESP calculations by deducting the amount of antidumping-related legal expenses which respondents paid during the period under review. AOC, Hitachi, Proton, and Tatung maintain that this adjustment would be contrary to the Department's long-standing practice of excluding such legal expenses from antidumping calculations. Furthermore, these respondents note that the Department's position has been upheld by the CIT in *Daewoo, supra*.

Department's Position: We disagree with Zenith. In this review, we have followed our practice as stated in the final results of the second administrative review of this order (53 at FR 49708, Comment 10) and in *Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review* (55 FR 26225, 26227), a position sustained by the court in *Daewoo*. We do not consider legal fees paid in connection with litigation resulting from an earlier antidumping investigation to be an expense related to sales made in the period of review. We view legal fees incurred at the administrative review stage of an antidumping proceeding as meriting similar treatment since they are incurred in defending against an allegation of dumping. As such, they are not expenses incurred in selling merchandise in the United States. Moreover, to deduct antidumping legal fees as selling expenses would effectively discriminate against those respondents who seek legal counsel in proceedings before the Department.

Comment 4: Zenith states that the Department has incorrectly offset U.S. commissions with indirect selling expenses in the home market. Zenith argues that commissions paid on U.S. sales compensate the recipients for both direct and indirect expenses. Unless a commission is broken up into its direct and indirect components, and the FMV offset is capped at only the level of the indirect expense element, the commissions, effect on FMV will be overstated by the amount of the direct expense portion of the U.S. commission. AOC, Proton, and Tatung contend that the proposed distinction between "direct" and "indirect" commission components is untenable. The Department should continue to offset the full amount of U.S. commissions with home market indirect selling expenses in those situations in which commissions are paid in the United States but not in Taiwan.

Department's Position: In this review, we have followed our practice as stated in the second administrative review of this order (53 FR at 49708, Comment 9). Respondents have demonstrated that commissions paid to unrelated parties bear a direct relationship to the sales under consideration. It is not necessary to examine how the commissionaire spent the money; to the seller it is a direct expense, incurred only because a particular sale was made. We have treated these expenses as direct circumstance-of-sale adjustments pursuant to § 353.56(b)(1) of the regulations and, where appropriate, have deducted indirect selling expenses in the market where there is no commission up to the amount of the commission in the other market.

Comment 5: Zenith argues that the statute instructs the Department to reduce USP by the amount of any charges or expenses associated with shipping the merchandise from the country of exportation to its place of delivery in the United States (19 U.S.C. 1677a(d)(2)(A)). Therefore, the Department should reduce USP by the amount of estimated antidumping duties and any expenses associated with paying such duties. AOC, Hitachi, Proton, and Tatung assert that Zenith's position is contrary to the Department's well-established policy of not adjusting U.S. price for antidumping duty deposits. These respondents cite the second review of this order (53 FR 49708) and *Color Television Receivers from the Republic of Korea* (55 FR 26227) in support of their position.

Department's Position: In this review, we have followed our position as stated in the final results of the second review (53 FR at 49708, Comment 11) of this order. Like legal fees, we do not consider antidumping duties to be expenses related to sales under consideration. Given the tenuous nature of these estimated rates and the possibility that they could be zero, we do not consider them to be expenses within the meaning of 19 U.S.C. 1677(d)(2)(A) for purposes of determining USP.

Comment 6: Zenith maintains that the Department understates the antidumping cash deposit on entered merchandise by basing the weighted-average margins on statutory USP and not on the entered value of the merchandise. Upon entry of the merchandise into the United States, the Custom Service applies the weighted-average dumping margin to the declared entered value as best information available. Zenith argues that because this entered value is often less than the statutory USP, the absolute amount of dumping duty is less than the dollar amount that would be the result if the margin were based on the statutory USP. Therefore, Zenith urges the Department to calculate the deposit rate as a percentage of the entered value and not as a percentage of the statutory USP. AOC, Hitachi, Proton, and Tatung disagree with Zenith, noting that the Department has rejected the same argument in previous decisions in television cases, and the Department's position was upheld by the court in the *Daewoo* case, 712 F. Supp. at 956–57. These respondents also point out that if it is determined in the course of an administrative review that the actual amount of antidumping duties assessed on an entry exceeds the cash deposit, the Department will collect the difference with interest. Therefore, the Department should continue to base duty deposit rates on statutory USP.

Department's Position: In this review, we have followed our practice as stated in the final results of the third review of this order (53 FR at 8940, Comment 7). Section 736 of the Tariff Act requires the Department to instruct U.S. Customs to "assess an antidumping duty equal to the amount by which the FMV of the merchandise exceeds the United States price of the merchandise * * *" (19 U.S.C. 1673e(a)(1)). At the time that the merchandise is entered, USP has yet to be determined. Since cash deposits of estimated dumping duties are required at that time, we instruct Customs to require cash deposits based on a percentage of the only value available, the entered value. If, after an administrative review, the amount of the antidumping duties deposited should be less than the actual amount to be assessed, Customs will collect the difference with interest.

Comment 7: AOC, Proton, and Tatung maintain that the Department's present methodology of adjusting for differences in circumstance of sale on respondents' ESP transactions by deducting expenses separately from the prices in the market in which they were incurred directly conflicts with the antidumping statute, which authorizes circumstance-of-sale adjustments only with respect to foreign market value (19 U.S.C. 1677b(a)(4)). Rather, the Department should perform its circumstance-of-sale adjustments in accordance with the methodology mandated by the CIT in *Timken Co. v. United States*, 673 F. Supp. 495, 508–512 (CIT, 1987), which ruled that circumstance-of-sale adjustments can only be made as additions to, or subtractions from, FMV.

Department's Position: We disagree with these respondents and have appealed the court's decision in *Timken*. Until the *Timken* decision is decided on appeal we intend to follow our standard methodology as prescribed by the Tariff Act, which states that ESP shall be reduced by "expenses generally incurred" in selling merchandise in the United States (19 U.S.C. 1677a(e)(2)).

Company-Specific Comments

AOC

Comment 8: AOC, the petitioners, and Zenith submitted comments concerning various mathematical, computer programming, and clerical errors in the Department's analysis of the preliminary results of AOC's response.

Department's Position: We have made the following corrections to the appropriate programs in our final results calculations for AOC: Incorrect difference-in-merchandise adjustments in the purchase price program were corrected; the double-counting of U.S. direct and indirect selling expenses and the omission of third-country indirect selling expenses were corrected; and the difference-in-merchandise adjustment was changed to reflect the correct amount subtracted from FMV.

Comment 9: Zenith contends that the Department not only failed to calculate AOC's commodity tax adjustment on the basis of the appropriate U.S. tax base, but compounded the error by "imputing" a tax base which includes the customs import duty paid in Taiwan. Zenith suggests that the Department derive the taxable value by adding the rebated duties to the actual ex-factory price prior to applying the commodity tax rate.

Department's Position: We disagree with Zenith. In order to ensure that FMV and USP are comparable, it is necessary to determine at what point in the manufacturing/marketing chain the tax authority in Taiwan would have imposed the taxes on the exported merchandise, were it to impose the taxes in question at a point comparable to the point at which the home market tax is assessed. Accordingly, we have calculated the U.S. tax base for each type of sale, *i.e.*, whether from a bonded or unbonded warehouse, by applying the same formulae used to calculate the home market commodity tax base (see Comment 1). The tax rate in Taiwan was then applied to the U.S. tax base to determine the amount of tax that should be added to USP pursuant to 19 U.S.C. 1677a(d)(1)(c).

Comment 10: Zenith notes that the Department added an amount to USP for commodity taxes after October 1, 1986, when in fact, AOC did not pay any home market commodity taxes after this date. In addition, for a few models, AOC did not inform the tax authorities until December 1986 of shipments made prior to October 23, 1986, and paid the lower import duty effective on that date. The petitioners request that for those sales affected by this change, the Department should use the December tax rate to calculate the uncollected U.S. commodity tax. AOC rejects both the Department's and the petitioner's commodity tax methodologies. However, AOC points out that if the Department does remove the commodity tax adjustments from USP for sales made after October 1, 1986, it should also remove the corresponding circumstance-of-sale adjustments to home market price for differences in the commodity tax.

Department's Position: We agree with Zenith. We removed the commodity tax adjustment on U.S. sales made after October 1, 1986 and have made the corresponding correction in the circumstance-of-sale adjustment. As the petitioners suggested, we used the duty rate in effect when AOC actually paid the Taiwan authorities.

Comment 11: The petitioners maintain that all of AOC's sales should be considered ESP transactions. They state that AOC's response indicates that merchandise classified under purchase price transactions was not only stored in AOC-USA's warehouse, but was "resold" after entry into the U.S. warehouse. AOC maintains that the CTVs it classifies as purchase price "were *directly shipped* to large retail buying groups or wholesalers/distributors * * *" and "*did not enter AOC-USA's warehouse.*" Moreover, the term "resale" refers to AOC-USA's issuance of an invoice to the U.S. customers on behalf of AOC-Taipei, with AOC-USA serving only as a document handler or agent with respect to sales made by AOC-Taipei. AOC urges the Department to reject the petitioners' argument.

Department's Position: We disagree with the petitioners. We have continued to treat these transactions as purchase price sales because AOC-USA serves merely as the facilitator of the transaction and importer of record for the merchandise. The merchandise was shipped directly from AOC-Taipei to the unrelated customer and did not enter the inventory of AOC-USA. Direct shipment from AOC-Taipei to the unrelated buyer was the customary commercial channel for these sales. When these conditions are present, it is the Department's policy to use purchase price as the basis for USP (see, Color Television Receivers, Except for Video Monitors, from Taiwan, 53 FR at 49711, Comment 41).

Comment 12: The petitioners state that the Department erred in using AOC's reported home market interest rate to calculate the company's credit expenses on its U.S. sales. In its final analysis, therefore, the Department should calculate AOC's U.S. credit expenses based on the short-term debt recorded in AOC-Taipei's financial statements. AOC asserts that the petitioners have misinterpreted the financial statements. The U.S. dollar-denominated loans, listed in the AOC-Taipei financial statement, reflect loans taken out by AOC-Taipei to finance the importation of material to Taiwan, not the exportation of CTVs to the United States.

Department's Position: AOC-USA borrowed from home market banks in order to finance its U.S. sales. It is the Department's practice to use the home market interest rate in these instances. Therefore, we agree with AOC and have continued to use the same rate in the final determination.

Comment 13: The petitioners claim that the Department understated the average collection period on AOC's purchase price sales by using the amount reported in the original response instead of the revised amount submitted in the supplemental response. Citing AOC's response, the petitioners state that the former figure only accounts for the average time period between exportation and entry into the U.S. warehouse. The Department should also include the period from the date the unrelated customer received the merchandise to the date of payment to AOC-USA. AOC counters that the two figures measure separate and distinct segments of time. The first period represents the average accounts receivable turnover of AOC-USA used to calculate the period from the date the unrelated customer received the merchandise to the date of payment to AOC-USA. The second period represents the average inventory-in-transit period. AOC maintains that it is irrelevant whether the payment is made to AOC-USA or to AOC-Taipei as the former is a wholly-owned subsidiary of the latter. The petitioners assert that since AOC-USA was responsible for billing AOC's purchase price sales, the expense incurred from the point of shipment in Taiwan to the time AOC-Taipei received payment must be included in the credit period as a direct expense. AOC maintains that the pre-delivery period has nothing to do with credit to the customer. Inclusion of this period in the direct credit calculation is inconsistent with the Department's established practice of basing the starting point of the direct credit period on the date of posting to the accounts receivable. AOC cites *Oil Country Tubular Goods from Israel* (51 FR 30259, 30260, August 25, 1986), *Color Television Receivers from Korea* (49 FR 50420, December 28, 1984), and *Television Receiving Sets, Monochrome and Color, from Japan* (50 FR 24278, 24282, June 10, 1985) in support of its position.

Department's Position: We agree with the petitioners that the direct credit period on purchase price sales should include the period from shipment in Taiwan to payment by the unrelated purchaser because this is the period for which the seller assumes the liability. We have used the data submitted in AOC's supplemental response to revise our direct credit calculation. However, we disagree with petitioners that a separate credit calculation needs to be made for the period between payment to AOC-USA and AOC-Taipei. Since AOC-USA is a wholly-owned subsidiary of AOC-Taipei, we consider both entities to be the same party. Finally, we disagree with AOC that the direct credit calculation should start on the day that AOC-USA issues the invoice. Even though AOC-USA issued the invoice, the sales were made by AOC-Taipei, and the shipments were made from Taipei in purchase price transactions. In *OCTG from Israel* and the other cases cited, we stated that the date of shipment and the posting to accounts receivable was usually the same. In this case, the dates are different. However, as explained above, we consider the date of shipment to be controlling.

Comment 14: The petitioners request that the Department furnish documentation to support its conclusion that all of AOC's home market sales were above the cost of production.

Department's Position: AOC complied with the Department's request for a cost of production response. We analyzed the response and requested and received additional source documents to corroborate the data. We used the data submitted by AOC to determine that all sales were made above cost and therefore used all reported sales in our analysis.

Comment 15: AOC notes that it erred in its disfavor on its computer tape by recording an amount for direct credit expenses even for those sales that were paid upon receipt of goods. AOC maintains that the Department should correct the error by removing the credit amount from the sales so marked.

Department's Position: We have deleted the direct credit expense on the sales with terms of "receipt of goods" and letter of credit.

Capetronic

Comment 16: In regard to the Department's tentative revocation with respect to Capetronic, Zenith states that revocation is not permitted unless the respondent has (1) established a history of no sales at less than fair value (LTFV) or no shipments, (2) entered into an agreement calling for the immediate reimposition of antidumping duties if LTFV sales resume, and (3) satisfied the Department that there is no likelihood that LTFV sales will resume. Zenith maintains that Capetronic has not met these required conditions for revocation. Zenith states that Capetronic's margins of 0.46 percent, 0.30 percent, and 0.20 percent for the first and second review finals and the third review preliminary, respectively, constitute a weighted average and indicate that not "all" sales were made at not LTFV. Moreover, Capetronic's earlier margins have been challenged in court and remain unsettled. Even if Capetronic's earlier margins are sustained by the Court, Zenith contends that the Department should not rest a conclusion of no likelihood of dumping on a trend of declining (not disappearing) margins. Zenith contends that the 18.1 percent appreciation of the Taiwanese dollar since the last reviewed period (May 29, 1987) will result in a decline of Capetronic's more recent USPs and a rise in home market costs and calculated FMVs, making an increase in LTFV sales more likely. Zenith cites the statutory and regulatory provisions, 19 U.S.C. 1675(c) and (former) 19 CFR 353.54(a), which state that the Department "may" revoke if the necessary conditions are met—not that the Department "shall" revoke. Thus, the decision whether to revoke is discretionary "even where the necessary preconditions for revocation have been met." Zenith cites *Television Receivers, Monochrome and Color, From Japan; Determination Not to Revoke in Part* (55 FR 11420, March 28, 1990) and *Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke In Part* (54 FR 35517, August 28, 1989) as precedent for the Department's denial of revocation in part.

Capetronic counters that the Department has never found it to have sold in the U.S. market at LTFV, unlike the Japanese cases where the Department initially determined that the firms had dumped. Capetronic asserts that a series of *de minimis* determinations over a period spanning from October 19, 1983 through May 29, 1987 clearly establishes that Capetronic has not engaged in any dumping. Capetronic cites §§ 353.21(e) and 353.25(a)(b) of the Department's regulations, and the preamble to 19 CFR part 353 (54 FR 12755, 12757, 12758, March 28, 1989) in support of its contention that *de minimis* is equivalent to zero for purposes of revoking an order. Capetronic claims that Zenith is engaging in pure speculation and conjecture in stating that the appreciation of the Taiwanese dollar since the last reviewed period will make an increase in LTFV sales more likely. Capetronic points out that the Taiwanese dollar appreciated during the first three administrative reviews, yet the Department found no dumping margins. Capetronic asserts that with the exception of one claim in the lawsuit on the first review, Zenith has made no subsequent claims of error regarding Capetronic's margin calculations. Moreover, failure to revoke would violate GATT principles which hold that antidumping duties "shall remain in force only as long as, and to the extent necessary, to counteract dumping which is causing injury."

Department's Position: The preamble to 19 CFR 353.25 (a) and (b) states, "[in] cases in which the Department has issued tentative revocations prior to the effective date of these regulations, it will complete the revocation procedure under the existing regulations. In all other cases, the new regulations will apply." (54 FR 12758, March 28, 1989). Because the effective date of the current regulations was April 27, 1989, and because we published our tentative determination to revoke with respect to Capetronic on May 29, 1987 (52 FR 20130), we have considered Capetronic's request for revocation pursuant to the earlier regulations and established administrative practice. Under the prior regulations and practice, we considered two years plus the gap period (*i.e.*, the period from the end of the second review to the date of publication of the tentative determination to revoke) with *de minimis* margins as a valid criterion for revocation.

As required, Capetronic has furnished a statement agreeing to the immediate suspension of liquidation and reinstatement of the order if circumstances develop which indicate that the merchandise imported subsequent to revocation is being sold at less than fair value. Moreover, there is no evidence on the record to substantiate Zenith's concern that Capetronic is likely to resume sales at dumped prices. Zenith's allegations regarding the likelihood of resumption of sales at LTFV are based on speculation and a misinterpretation of the *de minimis* standard. Capetronic has not dumped during the last three administrative reviews when the Taiwanese dollar appreciated approximately 37 percent. Given Capetronic's proven track record of no dumping during periods of an appreciating Taiwanese dollar, there is no reason to believe that an appreciating Taiwanese dollar would precipitate dumping on Capetronic's part. In contrast to Japanese televisions (cited above) where there were no shipments by the firms requesting revocation and, therefore, no way to determine the absence of dumping, Capetronic has continued to export to the United States at fair value prices. The Department considers a *de minimis* margin to be equivalent to a zero margin, and a weighted-average *de minimis* margin to be equivalent to zero for all sales, regardless of the actual margin on individual sales, for purposes of eligibility for revocation. Capetronic has had *de minimis* margins for at least three years. We are satisfied that Capetronic has met all the requirements established by the Department's prior regulations as prerequisites for revocation. Therefore, we are revoking the order with respect to Capetronic.

Hitachi

Comment 16: Zenith maintains that the average inventory turnover rate used by Hitachi to calculate its inventory carrying costs does not accurately reflect the actual indirect credit costs associated with carrying the inventory.

Since the Department knows the actual periods and the individual models involved, it should use this information to ascertain the indirect credit expense associated with maintaining the inventory. Hitachi argues that it complied with the Department's instructions in the questionnaire by providing information on the average length of time from importation to sale for "each grade and product combination" (by screen size). This information reflects the inventory turnover experience of all models within each screen size during the review period.

Department's Position: Since Hitachi reported the inventory turnover experience of all models within each screen size, as requested in the questionnaire, we have continued to use Hitachi's inventory carrying costs as submitted. Moreover, the cost of carrying merchandise in inventory is indirect and is not absorbed by one particular television set, but by the company's entire operations. It is not necessary to allocate indirect expenses specifically to particular models or sales. Therefore, we have used Hitachi's average inventory carrying costs, as submitted, in our final determination.

Kuang Yuan

Comment 7: Kuang Yuan maintains that the GS&A portion of the constructed value calculation of two models incorporates the royalty cost. Therefore, a deduction for royalty must be made to the constructed value as a circumstance-of-sale adjustment.

Department's Position: We agree and have deducted the royalty expense from constructed value.

Philips

Comment 18: Zenith objects to the Department's use of a small number of third-country transactions to determine Philip's FMV, compared with a much larger U.S. database. Zenith argues that the subsequent weight-averaging of the third country database reduces the number of observations to an even greater extent. Zenith urges the Department to use constructed value as the basis for FMV.

Philips rejects Zenith's argument that the number of third-country sales were inadequate, stating that, to the best of its knowledge, the Department has never used the number of transactions to determine home market or third-country viability. Philips asserts that neither the statute nor the regulations require a minimum quantity of third-country sales in order to determine foreign market value. Moreover, the Department's regulations clearly prefer FMV based on sales to a third country rather than on constructed value (19 CFR 353.48(b) (1990)). Philips also cites the Department's regulations, which hold that a third country may be used for model matches if, *inter alia*, "The volume of sales to the third country is *adequate*" (19 CFR 353.49(b)(1) (1990) (emphasis added)). Philips acknowledges that the regulations do not provide a definition of adequate sales volume, but the Department has traditionally used a similar test for third country market viability as for home market viability (*i.e.*, the Department relies on third country sales when they represent more than five percent of U.S. sales). Philips cites *Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong*, 55 FR 17775, 17777–78 (April 27, 1990) in support of its position. The volume of sales to Panama represents more than five percent of the sales volume to the United States.

Department's Position: We disagree with Zenith. For Philips, there was no such or similar merchandise sold in the home market. Therefore, we determined that home market sales did not constitute a viable basis for calculating FMV, in accordance with the Department's regulations (19 CFR 353.48(a) (1990)). Although neither the statute nor the regulations require a minimum quantity of third-country sales to determine FMV, it is the Department's policy to deem third-country sales to be adequate when they represent more than five percent of the volume sold to the United States (see 19 CFR 353.49(b)(1) (1990)). The aggregate volume of Philips' sales to Panama was greater than five percent of the volume sold to the United States. Accordingly, we used third-country sales to Panama rather than constructed value to determine FMV (see *Sweaters, supra*).

Comment 19: Zenith objects to the Department's extension of the 90/60 day matching exercise back to 120 days in the case of Philips. Zenith urges the Department to base its final analysis on constructed value. Philips asserts that the Department committed no error in conducting its model match exercise because the models selected beyond 90 days back were matched to such or similar merchandise. Moreover, the particular circumstances in this case warrant matches up to 120 days back as these sales account for an insignificant proportion of Philips, total sales to the U.S. market.

Although Philips believes the Department should not alter its preliminary determination, it offers two alternatives to reaching back 120 days: (1) Use an alternative comparison model, or (2) use the weighted average of all other sales as best information available.

Department's Position: In our preliminary results, we elected to reach back 120 days to obtain an appropriate comparison for FMV, as the sales in question represented a small percentage of U.S. sales. However, we agree with Zenith that it is more appropriate to follow our traditional 90/60 rule to obtain a matching sale in the home market. Therefore, we have opted to use the alternative home market comparison model suggested by Philips, as it maintains the integrity of the 90/60 day policy, yet relies on similar merchandise as the basis for comparison.

Proton

Comment 20: In calculating Proton's tax base for merchandise from a bonded factory, Zenith argues that the Department erred in the same manner as it did in calculating AOC's tax base (see Comment 9). With respect to products shipped from Proton's unbonded factory, Zenith asserts that the Department erred in using the price charged by Proton's subsidiary to the first unrelated U.S. purchaser as the tax base in calculating the U.S. commodity tax. Zenith maintains that it is apparent that the tax base of a product from an unbonded warehouse (a buildup of production costs, selling expenses, packing, and profit) is limited to expenses incurred *in Taiwan*. Basing the tax on a U.S. price implies that Taiwan would subjugate its revenue statutes to the vagaries of other sovereign states' economic policies.

Department's Position: We disagree with Zenith. In calculating the U.S. tax base, we used the same formulae used by respondents to calculate the home market tax base and applied them to the U.S. data (see our response to AOC, Comment 9).

Comment 21: Proton objects to the Department's treatment of in-house warranty labor expenses as indirect selling expenses, stating that this methodology contradicts the decision of the CIT in *AOC International, Inc.* v. *United States*, 721 F. Supp. 314, 318 (1989). In *AOC*, the court held that these expenses should be considered direct. The petitioners contend that the Department correctly treated Proton's in-house warranty labor expenses as indirect selling expenses.

Department's Position: We agree with the petitioners. The *AOC* remand order is not a final decision, is not yet ripe for appeal, and may yet be reversed. Therefore, we see no reason to change our long-standing practice of treating such expenses as indirect expenses (see, *Color Television Receivers from Korea*, 55 FR 26230).

Comment 22: Zenith asserts that Proton's home market inland freight claim consists entirely of such general expenses as depreciation and insurance, expenses which cannot be attributable to the transport of any particular merchandise and should only be considered indirect expenses contributing to the pool of ESP offset expenses. Proton maintains that the cost of operating delivery trucks is a legitimate home market inland freight expense. Proton asserts that the Department rejected Zenith's argument with regard to AOC's home market inland freight claim in the second review of Taiwan CTVs (see *Color Televisions from Taiwan*, 53 FR 49712, December 9, 1988) and should do so again in this review.

Department's Position: We disagree with Zenith. If Proton's inland freight were contracted to an outside agent, the price to Proton would include elements such as insurance and depreciation. Therefore, it is necessary to deduct all the costs of operating delivery trucks from the home market selling price. Proton reported the underlying cost of providing the inland freight service and we have deducted this cost from foreign market value.

Comment 23: Zenith contends that Proton's claim for a pre-sale warehousing circumstance-of-sale adjustment in the home market is unjustified, as it is apparent that Proton's home market sales (like its export shipments) are made directly from the factory. Zenith asserts that, unlike the exported merchandise, which involves ocean transport time and U.S. storage, no comparable expense exists in the home market because there is no pre-sale distribution facility carrying stock. Therefore, this claim should be denied in its entirety. Proton disputes Zenith's contention and maintains that its Taiwan facilities do, in fact, include a warehouse designated to carry stock for home market distribution.

Department's Position: Proton incurs pre-sale warehousing expense in the home market. Therefore, we have accepted Proton's calculation of an indirect interest expense for the inventory carrying period from the time the merchandise leaves the factory until the merchandise is sold in the home market.

Comment 24: Zenith asserts that the Department has no basis for assuming that Proton USA's payment to its parent occurs after the U.S. subsidiary receives payment from its unrelated purchaser. Proton USA must establish that it receives payment from its customers prior to its payment to the parent. Proton counters that the time between the sale to the unrelated customer and payment to Proton by that customer must be subtracted from the "imputed interest" calculation, as it represents a period after resale that is already covered in the separate calculation of Proton USA's direct credit expense.

Department's Position: We disagree with Zenith. Proton USA pays Proton Taiwan after receipt of payment from the unrelated customer. Proton USA calculates the indirect credit period from the date of exportation to the date of payment by the subsidiary to its parent, Proton Taiwan. Since Proton USA resells the merchandise and receives payment from the unrelated customer prior to paying Proton Taiwan, the period between resale and payment must be deducted from the imputed interest period to avoid double-counting. This period is already covered in the separate direct credit calculation.

RCA

Comment 25: Zenith asserts that there is no indication that RCA has included the customs user fee in the aggregate variable "landcost." Since RCA did not report dutiable values, Zenith believes the Department should extrapolate dutiable values from the model-specific duty amounts given by RCA and reduce ESP by the user fee rate applied to those computed values. RCA counters that Zenith's assumption that the customs user fee was not reported in RCA's data is erroneous. RCA cites the Department's "Report on RCA's Domestic Verification" (January 25, 1988) as evidence that the landed costs include the customs user fee.

Department's Position: We agree with the petitioners. We reexamined the verification documents and found that the customs user fee of 0.22% of the entered value was not included in the landed costs element of RCA's submission. As best information available, we multiplied the net unit price by 0.22% for all sales made after December 1, 1986, the effective date of the customs user fee, and deducted the result from USP.

Shin-Shirasuna

Comment 26: Shirasuna maintains that the Department's formula for determining the foreign market value of televisions sold in third-country markets erroneously adds rather than subtracts the amount of "commissions" paid on behalf of such sales to the third country. Shirasuna contends that this "sales commission" is not a commission paid to a third party, but rather a directly-related selling expense incurred in assisting the purchaser to sell Shirasuna CTVs in a third-country market.

Department's Position: We agree. We have made the downward adjustment to foreign market value to reflect commission payments to third country purchasers that were not incurred in Shirasuna's sales to the United States.

Comment 27: Shirasuna argues that the Department's sales-below-cost analysis should be based not on a model-by-model analysis, but on an examination of all sales of such or similar merchandise.

Department's Position: We disagree with Shirasuna. In our preliminary determination, we performed a model-by-model cost comparison. It is preferable to perform the cost test on a model-specific basis because we make model-specific comparisons in our price-to-price analysis (see *Korean Television Receivers*, 55 FR 26225, 26228, June 27, 1990, Comment 14).

Comment 28: Shirasuna objects to the Department's selection of a 20-inch stereo model sold to a third-country market as a comparison model for a 19-inch mono model sold to the U.S. market. Shirasuna states that the Department is obliged to compare sales of the most similar merchandise for which qualifying third-country sales exist when there are no sales of identical merchandise. Because Shirasuna submitted evidence of qualifying third-country sales of several models having 19-inch screens and mono-audio capability, it feels the Department should select sales of one of these 19-inch models for comparison purposes. Shirasuna suggests that the Department compare the U.S. sale of model 19A1 with the sale of models 19C1 or 19C3, which have the same screen size and audio capability. In addition, Shirasuna notes that model 19C3 has no sales below cost. The petitioners state that the Department correctly compared sales of U.S. model 19A1 with third-country model 20C3 because the Department found the third-country model, 19C1, suggested by Shirasuna, to have been sold below cost.

Department's Position: As the petitioners note, we did not use model 19C1 for comparison purposes because we found that either there were no contemporaneous sales or the contemporaneous sales were below cost. However, we agree with Shirasuna that the Department is obligated to select the most similar model to calculate FMV. We have, therefore, used model 19C3 in our final analysis.

Comment 29: Shirasuna objects to the Department's selection of a sale of model 14C1 to a third country as a

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comparison model for the U.S. sale of model 13A3. Shirasuna contends that the Department is obliged to match qualifying sales on the most similar merchandise available in calculating FMV. Shirasuna suggests that a better match for model 13A3 is either model 13C1 or model 13C2 sold to third-country purchasers. Moreover, in this instance, neither cost of production nor other factors disqualify these sales from consideration.

Department's Position: We agree and have used third-country model 13C2 as our comparison model in the final analysis.

Comment 30: Shirasuna asserts that the Department should use constructed value or third-country sales of model 20C2 rather than model 20C3 for comparison to U.S. model 20A4. Shirasuna notes that model 20C2 is virtually identical to model 20C3. In addition, the sale of model 20C2 occurred only one month before the U.S. sale and, therefore, is more contemporaneous than the sale of model 20C3 used by the Department. The petitioners contend that Shirasuna failed to explain why model 20C3 is inadequate for comparison purposes. Therefore, the Department should continue to compare sales of U.S. model 20A4 with third-country model 20C3.

Department's Position: We agree with the petitioners. We use the most similar third-country model to compare with the U.S. model, whenever possible. During the model match process, Shirasuna did not object to our selection of model 20C3. In this instance, Shirasuna has failed to present a valid reason for using constructed value instead of model 20C3 as the basis for FMV. Therefore, we have continued to use model 20C3 as the basis for FMV in our final analysis.

Comment 31: Shirasuna contends that the Department incorrectly matched sales of U.S. model 5A1 to certain third-country sales of model 5P1 within the same month, but after the U.S. sale. Since it is normally the Department's preference to use sales taking place before the U.S. sale, the sale of model 5P1 occurring before the U.S. sale date is a better match than the later sales selected by the Department. Shirasuna also notes that the Department appears to have made a clerical error in calculating the quantity of the third-country sales of model 5P1.

Department's Position: While it is the Department's policy to go back 90 days prior to going forward 60 days, it is preferable to use first a sale within the identical month of the U.S. sale for FMV. Therefore, we have continued to use the third-country sales within the same month for comparison purposes, whether these sales occurred before or after the U.S. sale date. We have corrected the clerical error noted by Shirasuna.

Comment 32: The petitioners contend that Shirasuna sold CTVs in the United States and a third-country market to the same customer. Further, certain of these sales have the same customer order number, contract date, and sales price as those of the U.S. sale. Petitioners believe that comparison of the prices on these sales is inappropriate because they are all part of the same sale and do not represent different sales. Shirasuna counters that nothing in the antidumping law or in the Department's regulations directs or authorizes the Department to ignore valid third-country sales for purposes of calculating FMV simply because those sales are made to a third-country purchaser who is related to the U.S. purchaser. Shirasuna cites *Certain Forged Steel Crankshafts from Japan* (52 FR 36984 October 2, 1987) and the second administrative review of *Color Television Receivers from Taiwan* (53 FR 49706, 49715 December 9, 1988) in support of its position.

Department's Position: We agree with Shirasuna. For these final results, we have continued to use these sales as the basis for FMV.

Shin-Shirasuna/Capetronic

Comment 33: In answer to the Department's request for comments on the disputed U.S. sales involving Shin-Shirasuna and Capetronic, Shirasuna reiterates its contention that it is neither the producer nor the reseller in this instance. Shirasuna claims that it is not the reseller of the CTVs because it had no influence over the terms of sale to the unrelated U.S. customer, and that it is not the producer of the CTVs because Capetronic decided what kind and quantity to produce, how to produce them, what component parts to buy for assembly, and how much to pay for the parts. Capetronic argues that because Shirasuna manufactured the parts into televisions and knew the ultimate destination to be the United States, these sales are in fact Shirasuna's. Capetronic argues further that, if these sales are characterized as a processing arrangement, the Department has generally treated the processor (here, Shirasuna) as the manufacturer.

Zenith states that the transactions in question appear to be Shirasuna's sales as Shirasuna produced and sold these models with full knowledge of their ultimate destination to the United States. Therefore, Shirasuna's prices to Capetronic should form the basis of USP. However, if the Department decides that Capetronic is the producer and seller, Zenith submits that it is all the more inappropriate to entertain revocation for Capetronic.

The petitioners believe the Department should use best information available (BIA) with respect to both Shirasuna and Capetronic as Shirasuna failed to supply adequate information to enable the Department to calculate dumping margins, and Capetronic submitted contradictory information concerning its role in these transactions.

Department's Position: Because Shin-Shirasuna (Taiwan) is the company that actually assembles the CTVs in question, we consider Shirasuna to be the producer of those CTVs. Moreover, Shirasuna is also the company which ships the CTVs to the United States. In this case, Shirasuna (Taiwan) entered into a "tolling" arrangement with Capetronic (Hong Kong), whereby Shirasuna assembled CTVs from third-country parts provided by Capetronic. In past proceedings involving tolling arrangements like this one, where the amount of tolling performed has not been insignificant, we have treated the assembler (here Shirasuna) as the producer/manufacturer/exporter. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value; Certain Headware from the People's Republic of China* (53 FR 45138, November 8, 1988). To be consistent with past practice, we have used the tolling fee charged by Shirasuna to Capetronic as the basis for U.S. price. Because Shirasuna had no "tolled" sales in Taiwan or to other countries, we have based FMV on the constructed value of Shirasuna's tolling operation. Because there is sufficient information on the record to perform these calculations, we did not resort to BIA.

Tatung

Comment 34: Tatung objects to the Department's use of best information available (BIA) to determine its weighted-average margin. Tatung maintains that the Department should rely on the factual information it submitted after verification because Tatung's response contained only minor inaccuracies and inconsistencies, which it proceeded to correct and submit to the Department. Further, the Department's use of BIA was arbitrary and not supported by evidence on record. Tatung contends that BIA can only be used for noncompliance with an information request, and Tatung complied with all of the Department's requests. According to Tatung, the Department could easily have resolved all questions concerning Tatung's data during the period between verification and the preliminary determination. According to Tatung, even assuming that some form of BIA is justified, the Department's decision to apply the highest shipper's rate is unreasonable. Tatung argues that if the Department believes it must use BIA, some alternative approach, based in substantial part on actual verified company data, should be used.

The petitioners believe that the Department was correct in using the best information available in its preliminary determination for Tatung. Tatung's characterization of the mistakes uncovered at verification as minor is incorrect, given the extensive problems identified by the Department with the limited group of sales studied. The petitioners point out that the Department generally does not accept information from a respondent at or subsequent to verification and that the Department has no legal obligation to request additional data from Tatung. They cite *Photo Albums and Filler Pages from Korea* (50 FR 43754, 43756, October 29, 1985), in support of their position.

Department's Position: We agree with the petitioners. We used BIA because in virtually all of the sales we sampled at verification, we found numerous inconsistencies in sales traces, commissions, and reported prices. These inconsistencies involved unreported or misreported data. We found additional errors in the reporting or allocation of ocean freight, brokerage and handling, interest rate calculations, advertising, and general and administrative expenses. After verification, Tatung filed certain corrected information for the record and submitted additional corrections to the sales listing. However, we were unable to use these additional data because they could not be substantiated. Contrary to Tatung's characterization, we do not deem the problems found at verification to be minimal. Because of the significant deficiencies found in the sample verified, we concluded that Tatung's data were unreliable. Therefore, we have continued to use the BIA rate we applied in the preliminary results.

Final Results of the Review and Revocation in Part

Based on our analysis, we have changed the rates determined in our preliminary results for AOC, Kuang Yuan, Proton, RCA, and Shin-Shirasuna. We have determined the weighted-average margins to be:

Manufacturer/exporter	Period	Margin (percent)
AOC International, Inc.	04/01/86–03/31/87	1.64
Capetronic (BSR) Ltd.	04/01/86–05/29/87	0.20
Funai Electric Company.	04/01/86–03/31/87	4.44
Hitachi Television (Taiwan) Ltd.	04/01/86–03/31/87	4.44
Kuang Yuan	04/01/86–03/31/87	0.00
Nettek Corp., Ltd.	04/01/86–03/31/87	1.30
Philips Electronic Industries.	4/01/86–03/31/87	0.76
Proton Electronics.	04/01/86–03/31/87	0.09
RCA Taiwan, Ltd.	04/01/86–03/31/87	4.07
Shin-Shirasuna Electric Co.	04/01/86–03/31/87	1.50
Tatung Co	04/01/86–03/31/87	4.44

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. Since the margins for Capetronic, Kuang Yuan, and Proton are less than 0.5 percent and therefore *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for these firms.

For any entries of this merchandise from a new exporter, whose first shipment occurred on or after April 1, 1987 and who is unrelated to any reviewed firm, a cash deposit of 4.44 percent will be required. These cash deposit requirements and waivers are effective for all shipments of CTVs from Taiwan, except for video monitors, complete or incomplete, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until publication of the final results of the next administrative review.

In accordance with 19 CFR 353.22 (1989), we are revoking the antidumping order with respect to Capetronic. The revocation applies to all unliquidated entries of this merchandise manufactured and exported by Capetronic and entered, or withdrawn, from warehouse, for consumption on or after May 29, 1987, the date of our tentative determination to revoke in part.

This administrative review, revocation in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and (19 CFR 353.22 (1989) and 353.54 (1988)).

Dated: October 31, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-26498 Filed 11-8-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-604]

New Steel Rails, Except Light Rails, From Canada; Termination of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On October 26, 1990, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on new steel rails, except light rails, from Canada. This review has now been terminated.

EFFECTIVE DATE: November 9, 1990.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-8312/3601.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 1990, at the request of Algoma Steel Corporation, Limited (Algoma), a manufacturer of the subject merchandise, the Department initiated an administrative review of the antidumping duty order on new steel rails, except light rails, from Canada (55 FR 43153). The review covered Algoma and the period September 20, 1989 through August 31, 1990. On October 25, 1990, Algoma withdrew its request for review. No other interested party had requested a review of Algoma. As a result, the Department has terminated the review.

This notice is published in accordance with section 751 of the Tariff Act of 1930 (19 U.S.C. 1675) and 19 CFR 353.22(a)(5).

Dated: November 1, 1990.
Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance.
[FR Doc. 90-26497 Filed 11-8-90; 8:45 am]
BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Western Pacific Bottomfish and Seamount Groundfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues this notice that the Western Pacific Fishery Management Council (Council) has submitted Amendment 3 to its Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP) for Secretarial review and is requesting comments from the public. Copies of Amendment 3 may be obtained from the Council at the address below.

DATES: Comments on the amendment should be submitted on or before December 31, 1990.

ADDRESSES: All comments should be sent to, E.C. Fullerton, Regional Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the amendment and the environmental assessment are available from the Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, NMFS, Terminal Island, California (213) 514-6660 or Alvin Katekaru, NMFS, Pacific Area Office, Honolulu, HI (808) 955-8831.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*) requires that each Regional Fishery Management Council submit any fishery management plan or amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon receiving a plan or amendment, immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider all public comments in determining whether to approve the plan or amendment.

The Magnuson Act also established seven national standards that fishery management plans must meet to be approvable, and requires the Secretary to publish guidelines for the Councils to use in applying these national standards. The guidelines (50 CFR part 602) were revised in 1989 (54 FR 30711 *et seq.*) to require that the Councils amend their fishery management plans to include definitions of overfishing for the respective fisheries. Amendment 3 to the FMP is intended to address the requirements of the Secretary's guidelines for compliance with national standards 1 and 2 of the Magnuson Act.

The amendment defines overfishing (i.e., recruitment overfishing) in terms of Spawning Potential Ratio (SPR). SPR is calculated as spawning stock biomass per recruit (SSBR) of the fished population divided by the SSBR of the unfished population. The SPR decreases as fishing mortality increases and ranges from 1.0 to 0.0. A bottomfish species is considered overfished when SPR is equal to or less than 0.2. The pelagic armorhead, a seamount species, is considered overfished when its SPR measured for all seamounts is equal to or less than 0.2 or when its SPR on the Southeast Hancock Seamount alone is equal to or less than 0.4. Two methods of estimating SPR are described in the amendment: An equilibrium estimator, based on yield-per-current theory, and a dynamic estimator, an estimate of the current spawning stock biomass divided by the spawning stock biomass when the fishery was initiated. The dynamic estimator will be used initially to measure overfishing because of the greater availability of data; however, the Council intends to use both estimators based on the best scientific information available. Amendment 3 includes a process by which the Council will evaluate annually the status of stocks and conditions in the fishery to determine if any stock is overfished relative to the overfishing definitions. It is the Council's intent to take action under the FMP so that fishing will not drive a stock down to a level where SPR approaches or reaches the minimum level, but to manage the bottomfish and seamount groundfish fisheries at a higher, optimum level of productivity.

No Federal regulatory action is necessary to implement this amendment. The Council has determined that the proposed amendment is consistent to the maximum extent practicable with the coastal zone programs of the governments in the Council's region and has asked for concurrence with this determination. The amendment incorporates an environmental assessment, which is available upon request (see ADDRESSES). It has no direct effect on either the fishery resources or fishery participants and will not require rulemaking; therefore, neither a Regulatory Impact Analysis nor a Regulatory Flexibility Analysis is necessary. There will be no impact on marine mammals or endangered species. There is no taking under Executive Order 12630. No information collection burdens are imposed. If actions are taken subsequently to implement new conservation and management measures to prevent overfishing, the appropriate analyses and determinations will be made at that time. Amendment 3 does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 6, 1990.
Richard H. Schaefer,
Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.
[FR Doc. 90-26593 Filed 11-6-90; 1:40 pm]
BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will hold a public meeting, except for the sessions noted below, on November 12-15, 1990, at the Omni Tampa Hotel at Westshore, 700 North Westshore Boulevard, Tampa, FL. The Council will also conduct a public hearing on November 12, 1990.

Council

The Council will meet on November 14 at 8:30 a.m., and adjourn at 5 p.m. The following items will be discussed:

(1) Consideration of appointment of committee members;

(2) Public testimony on overfishing amendments for stone crab, spiny lobster, billfish, and shrimp (9 a.m. to 10:30 a.m.);

(3) Review of committee recommendations (10:30 a.m. to 12 noon); and (4) Consideration of the Shark Amendment Options Paper (1:30 p.m. to 4:45 p.m.). The Council will also convene the Personnel Committee (in closed session—not opened to the public) from 4:45 p.m. to 5 p.m.). On November 15 at 8:30 a.m., the Council will: (1) Receive Reef Fish, Budget, and Habitat Protection Management Committee reports; (2) receive Enforcement Reports; (3) conduct orientation meetings; and (4) hear Director's reports. It will adjourn at 12 noon.

Committees

Committee meetings will begin on November 12 at 1 p.m., with a meeting of the Reef Fish Management Committee. Adjournment will be at 5:30 p.m. On November 13, at 8 a.m., the Shark Management Committee, Spiny Lobster Management Committee, Budget Committee, Stone Crab Management Committee, Billfish Management Committee, Shrimp Management Committee, and Habitat Protection Committee will meet. The Personnel Committee also will meet (in closed session—not opened to the public). Adjournment will be at 5 p.m.

Public Hearing

On November 12, there will be a public hearing on Billfish Amendment #1 from 6 p.m. to 7 p.m. Written comments will be accepted until November 12 at the address indicated below.

For more information contact Wayne F. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228-2815.

Dated: November 5, 1990.
Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.
[FR Doc. 90-26524 Filed 11-8-90; 8:45 am]
BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Crustaceans Plan Monitoring Team (PMT) will hold a public meeting on November 14, 1990, at the National Marine Fisheries Service, Honolulu Laboratory, conference room, 2570 Dole Street, Honolulu, HI.

The agenda is: To develop a system to limit entry and reduce effort in the Northwestern Hawaiian Islands (NWHI) lobster trap fishery.

For more information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (803) 523-1368.

Dated: November 6, 1990.
David S. Crestin,
Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.
[FR Doc. 90-26566 Filed 11-8-90; 8:45 am]
BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in India

November 1, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 2, 1990.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6494. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 640, 641, 642 and 647/648 are being increased, variously, by application of swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 53351, published on December 28, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive of December 21, 1989, as amended, issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the period which began on January 1, 1990 and extends through December 31, 1990.

Effective on November 2, 1990 you are directed to increase the limits for textile products in the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and India:

Category	Adjusted 12-month limit[1] (dozen)
Sublevels in Group II:	
640	166,322
641	962,584
642	302,620
647/648	426,575

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 90-26501 Filed 11-8-90; 8:45 am]
BILLING CODE 3510-DR-M

Amendment and Adjustment of Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Peru

November 6, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending and adjusting limits.

EFFECTIVE DATE: November 14, 1990.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of thee limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Peru have agreed to amend the current bilateral textile agreement to increase the sublimit for Categories 338–S/339–S. In addition, the limits for Categories 338/339 and 338–S/339–S are being increased for swing and carryforward, reducing the limit for Category 219 to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 50795, published on December 11, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 6, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of December 5, 1989 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Peru and exported during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

Effective on November 14, 1990, the limits are being increased as follows:

Category	Amended twelve-month limit [1]
219	14,864,135 square meters.
338/339	798,000 dozen of which not more than 656,287 dozen shall be in Categories 338–S/339–S.[2]

[1] The sublimit has not been adjusted to account for any imports exported after December 31, 1989.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–26538 Filed 11–8–90; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: December 10, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION:

On July 20, August 10 and September 14 and 21, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 29647, 32682, 37930 and 38833) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Lead, Pencils
7510–01–317–6421
7510–01–317–6422

Services

Janitorial/Custodial, U.S. Post Office and Courthouse, Floors 1 and 2 only, Little Rock, Arkansas
Janitorial/Custodial, Building 225, Robins Air Force Base, Georgia
Janitorial/Custodial, BEQ Naval Station, Staten Island, New York
Janitorial/Custodial, Navy Commissary Store, Naval Base, Norfolk, Virginia

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 90–26582 Filed 11–18–90; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from the Procurement List commodities to be produced and services to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 10, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to the Procurement List:

Commissary Shelf Stocking, Custodial and Warehousing, Luke Air Force Base, Arizona
Grounds Maintenance, Federal Service Center, Bell, California
Janitorial/Custodial, Federal Building, 410 W. Michigan Avenue, Kalamazoo, Michigan
Janitorial/Custodial, Federal Building, 100 North Warren, Saginaw, Michigan

Deletions

It is proposed to delete the following commodities from the Procurement List:

Wire Bundle Assembly, 1680–00–222–3676, 1680–00–828–7752, 1680–00–881–4215, 1680–00–883–4437, 1680–00–884–0409, 1680–00–894–3991, 1680–00–919–3706, 1680–00–974–5275, 1680–00–974–5276, 1680–00–998–8594, 1680–00–125–9646
Wedge, Hardwood, 5510–00–640–0237
Base, Grooming Unit, 7105–01–NSH–0001
Bookcase, Drop-Lid, 7105–01–047–3559
Chest, Five-Drawer, 7105–01–047–3555
Chest, Six-Drawer, 7105–01–049–9587
Chest, Stereo, 7105–01–047–3575
Overchest, 7105–01–047–3576

Beverly L. Milkman,

Executive Director.

[FR Doc. 90–26583 Filed 11–8–90; 8:45 am]

BILLING CODE 6820–33–M

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee Meeting

This is to give notice pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, secs. 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee will conduct a public meeting on Tuesday, November 27, 1990 in the Fifth Floor Hearing Room at the Commission's Washington, D.C. headquarters located at room 532, 2033 K Street, NW., Washington, DC 20581. This meeting will be held between 1:30 p.m. and 4:30 p.m.

The agenda consists of the following:

1. Welcoming remarks.

2. Update on Commission activities concerning financial products.

3. Discussion of circuit breakers and other measures that affect the interaction between equity and equity derivative markets, including a discussion of the practical experience with circuit breaker rules and their effect on international market linkage.

4. A discussion of the adequacy of existing regulatory systems to address changes likely to occur in the next decade, such as the growth of electronic trading, the increasing internationalization of the markets and the development off-exchange products.

5. Discussion of possible areas for future committee consideration, particularly areas of concern identified in Agenda Item 4.

6. Any other business that may properly come before the Committee, including the timing of the next meeting.

The purpose of this meeting is to solicit the views of the Committee on the above-listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on financial products issues. The purposes and objectives of the Advisory Committee are more fully set forth in the April 28, 1989 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner William P. Albrecht, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Commodity Futures Trading Commission Financial Products Advisory Committee, c/o Nancy E. Yanofsky, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, to be received prior to the date of the meeting. Members of the public who wish to make oral statements also should inform Ms. Yanofsky in writing at the above address at least three days prior to the meeting. Provision will be made, if time permits, for an oral presentation of reasonable duration.

Issued by the Commission in Washington, DC on November 7, 1990.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–26717 Filed 11–9–90; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Conduct of Employees; Waiver

Section 602(a) of the Department of Energy Organization Act (Pub. L. No. 95–91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) where exceptional hardship will result or where the interest is a pension, insurance, or other similarly vested interest.

Mr. Owen W. Lowe has been selected for the position of Director, Office of Nuclear Safety Self-Assessment in the Department of Energy. Mr. Lowe has a vested interest in the Employee Retirement Plan of Stone and Webster, Inc., as a result of his previous employment with Stone and Webster. Stone and Webster, Inc. is an "energy concern" within the meaning of section 601(b) of the Act. Therefore, Mr. Lowe's pension interest is subject to the divestiture requirement of section 602(a) of the Act.

It has been established to my satisfaction that Mr. Lowe's interest in the Employee Retirement Plan of Stone and Webster, Inc., is a vested pension interest within the meaning of section 602(c) of the Act. Accordingly, I have granted Mr. Lowe a waiver of the divestiture requirements of section 602(a) of the Act for the duration of his employment with the Department, with respect to his interest in the Stone and Webster Employee Retirement Plan.

In accordance with section 208, title 18, United States Code, Mr. Lowe will be directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon Stone and Webster, Inc., unless his supervisor and the Counselor agree that the financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of him.

Dated: November 1, 1990.

James D. Watkins,

Admiral, U.S. Navy (Retired), Secretary of Energy.

[FR Doc. 90–26594 Filed 11–8–90; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Public L. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information:

(1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC));

(2) Collection number(s);

(3) Current OMB docket number (if applicable);

(4) Collection title;

(5) Type of request, *e.g.*, new, revision, extension, or reinstatement;

(6) Frequency of collection;

(7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit;

(8) Affected public;

(9) An estimate of the number of respondents per report period;

(10) An estimate of the number or responses per respondent annually;

(11) An estimate of the average hours per response;

(12) The estimated total annual respondent burden; and

(13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before December 10, 1990. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration
2. EIA–14, 182, 782A,B,C, 821, 856, 863, and 877
3. 1905–0174
4. Petroleum Marketing Program
5. Revision
6. Monthly, Annually, and Triennially
7. Mandatory
8. Businesses or other for profit
9. 17,522 respondents
10. 3.74 responses per respondent
11. 2.22 hours per response
12. 145,532 hours
13. The Petroleum Marketing Program surveys collect information on costs, sales, prices, and distribution for crude oil and petroleum products. Data are published in petroleum publications and in multifuel reports. Respondents are refiners, first purchasers, gas plant operators, resellers/retailers, motor gasoline wholesalers, suppliers, distributors, and importers.

Authority: Secs. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, November 5, 1990.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 90–26597 Filed 11–8–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER90–519–000, et al.]

Consolidated Edison Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Consolidated Edison Co.

[Docket No. ER90–519–000]

October 31, 1990.

Take notice that on September 20, 1990, Consolidated Edison Company ("Con Edison") tendered for filing a proposed amendment to its rate schedule filed on July 30, 1990. The proposed rate schedule includes a planning agreement between Con Edison and the Power Authority of the State of New York (NYPA) providing in part that Con Edison and NYPA will make certain reciprocal sales of supplemental power and energy. The amended filing states and explains the rates applicable to sales of supplemental power and energy.

Comment date: November 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Houlton Water Co., Van Buren Light and Power District, and Eastern Maine Electric Cooperative v. Maine Public Service Co.

[Docket No. EL91–5–000]

November 1, 1990.

Take notice that on October 29, 1990, Houlton Water Company, Van Buren Light and Power District and Eastern Maine Electric Cooperative filed a complaint against Maine Public Service Company. In their filing the complaining parties assert that Maine Public Service Company intends to continue collecting charges from the complaining parties that are in violation of a settlement agreement among the complaining parties and Maine Public Service Company. The complaining parties request summary disposition of their complaint and an expeditious grant of the relief that they request, an order by the Commission requiring Maine Public Service Company to cease collecting the charges at issue after December 1, 1990.

Comment date: December 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Louisiana Public Service Commission v. Entergy Services, Inc.

[Docket No. EL90–45–000]

November 1, 1990.

Take notice that on October 25, 1990, the Louisiana Public Service Commission tendered for filing an amendment and supplement to its complaint in this docket. The material submitted by the Louisiana Commission consists of new updated testimony of Mr. Matthew Kahal, a witness for the Louisiana Commission, that directly examines the return on equity under the System Agreement among Entergy Services, Inc. and the Entergy Operating Companies.

Comment date: December 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Eastern Edison Co.

[Docket No. ER91–59–000]

November 1, 1990.

Take notice that on October 29, 1990, Eastern Edison Company ("Eastern") tendered for filing a letter agreement between itself and Middleborough Gas & Electric Department ("Middleborough"). This agreement provides for installation, ownership, and payment for a new gas circuit breaker installed by Eastern at Eastern's East Bridgewater substation.

Comment date: November 15, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Montana Power Co.

[Docket No. ER91–60–000]

November 1, 1990.

Take notice that on October 29, 1990, the Montana Power Company ("MPC") tendered for filing an Agreement for Purchase of Power dated June 8, 1982 ("1982 Agreement") between MPC and Big Horn County Electric Cooperative, Inc. ("Big Horn"), Amendment No. 1 to the 1982 Agreement dated February 2, 1990, and an Assignment of the 1982 Agreement by Big Horn to Central Montana Electric Power Cooperative, Inc. MPC has requested waiver of certain Commission regulations in order to permit the 1982 Agreement Amendment No. 1 thereto, and the Assignment to become effective in accordance with their terms.

Comment date: November 15, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Co. (Minnesota); Northern States Power Co. (Wisconsin)

[Docket No. ER91–21–000]

November 1, 1990.

Take notice that on October 29, 1990, Northern States Power Company—Minnesota and Northern States Power Company—Wisconsin ("NSP") tendered an amendment to their filing in this docket correcting it for inadvertent errors in the transmission services tariff making available reserved and interruptible transmission service on the combined transmission systems of the two companies.

Comment date: November 15, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. West Penn Power Co.

[Docket No. ER91–61–000]

November 1, 1990.

Take notice that on October 30, 1990, West Penn Power Company tendered for filing proposed changes in its FERC Electric Tariff. The proposed changes would increase revenues from jurisdictional sales and service by approximately $188,451. The filing company states that the changes proposed are for the sole purpose of recovering increased tax expense incurred by West Penn Power Company.

Comment date: November 15, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Consumers Power Co.

[Docket No. ES91–4–000]

November 1, 1990.

Take notice that on October 29, 1990, Consumers Power Company (Applicant) filed an application pursuant to section 204 of the Federal Power Act seeking authority to issue and sell or guarantee up to $900 million in secured and/or unsecured short-term debt, including but not limited to notes, drafts, debentures and commercial paper. The issuance, sale or guarantee of the secured and/or unsecured short-term debt would be from time to time, during the period January 1, 1991 through December 31, 1992, with maturities of 364 days or less.

Comment date: November 28, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–26507 Filed 11–8–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP91–232–000, et al.]

Tennessee Gas Pipeline Co., et al.; Natural Gas Certificate Filings

October 30, 1990.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Co.

[Docket No. CP91–232–000]

October 30, 1990.

Take notice that on October 23, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP91–232–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Tejas Power Corporation (Tejas), under Tennessee's blanket certificate issued in Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to transport, on an interruptible basis, up to 210,000 dt equivalent of natural gas per day for Tejas. Tennessee states that construction of facilities would not be required to provide the proposed service.

Tennessee states that the maximum day, average day, and annual transportation volumes would be approximately 210,000 dt, 210,000 dt and 76,650,000 dt equivalent of natural gas respectively.

Tennessee advises that service under § 284.223(a) commenced September 27, 1990, as reported in Docket No. ST91–865–000.

Comment date: December 14, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. High Island Offshore System

[Docket No. CP91–221–000 et al.]

October 30, 1990.

Take notice that Applicant filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

[1] These prior notice requests are not consolidated.

Comment date: December 14, 1990, in accordance with Standard Paragraph G at the end of this notice.

Applicant: High Island Offshore System, 500 Renaissance Center, Detroit, MI 48243.

Blanket Certificate Issued in Docket No.: RP89-82-000.

Docket No. (date filed)	Shipper name	Peak day,[1] average, annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related [2] dockets
CP91-221-000 (10-23-90)	Corpus Christi Oil and Gas Company.	36,000 36,000 13,140,000	Offshore LA	Offshore LA	08-23-90, IT	ST90-4786-000
CP91-222-000 (10-23-90)	Brooklyn Interstate Natural Gas Corp.	225,616 225,616 82,348,840	Offshore TX, Offshore LA.	Offshore LA	08-22-90, IT	ST90-4539-000
CP91-223-000 (10-23-90)	Spindletop Gas Distribution System.	140,000 140,000 51,100,000	Offshore TX, Offshore LA.	Offshore TX, Offshore LA.	08-23-90, IT	ST90-4529-000
CP91-224-000 (10-23-90)	Coast Energy Group, Inc.	233,000 233,000 85,045,000	Offshore TX Offshore LA.	Offshore TX, Offshore LA.	08-22-90, IT	ST90-4534-000
CP91-225-000 (10-23-90)	Public Service Electric and Gas Company.	300,000 300,000 109,500,000	Offshore TX, Offshore LA.	Offshore LA	08-22-90, IT	ST90-4538-000
CP91-226-000 (10-23-90)	Neches Pipeline System	140,000 140,000 51,100,000	Offshore TX, Offshore LA.	Offshore TX, Offshore LA.	08-22-90, IT	ST90-4537-000
CP91-227-000 (10-23-90)	Delmarva Power and Light Company.	100,000 100,000 36,500,000	Offshore TX, Offshore LA.	Offshore TX, Offshore LA.	08-22-90, IT	ST90-4535-000

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.

3. Gateway Pipeline Co.

[Docket No. CP89-471-002]

October 30, 1990.

Take notice that on October 23, 1990, Gateway Pipeline Company (Gateway), 600 Travis Street, P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-471-002, an application to amend its pending application in Docket No. CP89-471-001, to authorize Gateway to relocate, construct and operate a lateral line 0.14 mile to connect Gateway with the relocated Jubilee Pipeline Company (Jubilee) sweetening plant in Mobile County, Alabama, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Gateway proposes to construct and operate approximately 1.19 miles of 16-inch pipeline and 1.0 mile of 24-inch pipeline to connect Gateway's proposed 30-inch mainline to a Shell Offshore, Inc. (Shell) proposed sweetening plant, all in southern Mobile County, Alabama. In Docket No. CP89-471-001, Gateway proposed to construct the above 1.0 mile segment using 16-inch pipeline. Gateway also proposes to relocate, construct and operate 0.14 mile of 20-inch pipeline to connect Gateway's 16 and 24-inch pipelines above to Jubilee Pipeline Company's proposed processing plant, also in southern Mobile County, Alabama. Gateway states that the estimated cost to construct this new lateral is $542,660, which would be financed with cash on hand.

Comment date: November 20, 1990, in accordance with Standard Paragraph F at the end of this notice.

4. Williston Basin Interstate Pipeline Co.

[Docket No. CP91-243-000]

October 30, 1990.

Take notice that on October 24, 1990, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP90-243-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas on behalf of Western Gas Processors, Ltd. (WGP), a producer of natural gas, under Williston Basin's blanket certificate issued in Docket No. CP89-1118-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully detailed in the application which is on file with the Commission and open to public inspection.

Williston Basin proposes to transport, on an interruptible basis, up to 55,000 dt equivalent of natural gas on a peak day, 15,000 dt equivalent on an average day, and 20,075,000 dt equivalent on an annual basis for WGP. Williston Basin states that it would perform the transportation service for WGP under Williston Basin's Rate Schedule IT-1. Panhandle indicates that the receipt and delivery points would all be located in Park County, Wyoming. It is explained that the service commenced September 26, 1990, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST91-35.

Comment date: December 14, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Northern Natural Gas Co.

[Docket No. CP91-209-000]

October 30, 1990.

Take notice that on October 22, 1990, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, Houston, Texas 77002 filed in Docket No. CP91-209-000 a request, pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authority to abandon and remove twenty-three (23) small volume measuring stations in the States of Minnesota, Iwoa, South Dakota, Kansas and Nebraska, under Northern's blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that it has been advised by Peoples Natural Gas Company, Division of Utilicorp United Inc. (Peoples), a local distribution customer, that twenty-three (23) of Northern's small volume measuring station customers no longer desire natural gas service and have consented, in writing, to the removal of their meters. Northern explains that Peoples bills it for gas service provided to these end-use customers on Northern's behalf. Northern estimates that the net cost of removing the facilities would be minimal, as their salvage value is expected to substantially offset the cost of removal. Lastly, Northern asserts that the appropriate State Commissions are being directly notified of the proposed abandonment by copy of its application.

Comment date: December 14, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. Columbia Gas Transmission Corp. and Texas Eastern Gas Transmission Corp.

[Docket No. CP91-199-000 et al.]

October 30, 1990.

Take notice that on October 19, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314 [2] and Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77010 (Applicants), filed prior notice requests with the Commission in the above-referenced dockets pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under their respective blanket certificates issued in Docket Nos. CP86-240-000 and CP88-136-000, pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.[3]

Information applicable to each transaction, including the shipper's identity; the type of transportation service; the appropriate transportation rate schedule; the peak day, average day and annual volumes; the service initiation dates; and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is summarized in the attached appendix.

Comment date: December 14, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] Columbia tendered its notice of request under blanket authorization for filing on October 19, 1990; however, the fee required by § 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until October 25, 1990. Section 281.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points [1]	Delivery points	Contracts date, rate schedule, service type	Related docket, start up date
CP91-199-00 (10-19-90).	PSI, Inc. (Marketer)	150,000 120,000 54,750,000	OH, WV	AL, AR, CT, GA, IL, IN, KY, LA, MA, MD, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VA, WV.	8-10-90, ITS, Interruptible.	ST90-4257, 8-1-90
CP91-200-000 (10-19-90).	Cranberry Pipeline Corporation (Intrastate Pipeline Company).	100,000 100,000 36,500,000	AL, AR, IL, IN, KY, LA, OLA, MS, MO, NJ, NY, OH, PA, TN, TX, WV.	NJ, NY, OH, PA	7-2-90, IT-1, Interruptible.	ST91-244, 9-22-90
CP91-201-000 (10-19-90).	Virginia Electric & Power Company (marketer).	86,000 86,000 31,390,000	AL, AR, IL, IN, KY, LA, OLA, MS, MO, NJ, NY, OH, PA, TN, TX, WV.	NJ, NY, OH, PA	8-8-90, IT-1, Interruptible.	ST91-245, 9-28-90
CP91-205-000 (10-19-90).	Harbert Oil & Gas Corporation (Producer).	60,000 60,000 21,900,000	AL, AR, IL, IN, KY, LA, OLA, MS, MO, NJ, NY, OH, PA, TN, TX, WV.	NJ, NY, OH, PA	5-17-90, IT-1, Interruptible.	ST90-5305, 9-1-90
CP91-206-000 (10-19-90).	Libra Marketing Company (Marketer).	100,000 100,000 36,500,000	AL, AR, IL, IN, KY, LA, OLA, MS, MO, NJ, NY, OH, PA, TN, TX, WV.	Mexico, TX	8-3-90, IT-1, Interruptible.	ST91-76, 9-15-90

[1] Offshore Louisiana is shown as OLA.

7. Natural Gas Pipeline Co. of America

[Docket Nos. CP91-210-000 and CP91-211-000]

October 30, 1990.

Take notice that on October 22, 1990, Natural Gas Pipeline of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[4]

A summary of each transaction service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: December 14, 1990, in accordance with Standard Paragraph G at the end of the this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day, [1] average, annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related dockets [2]
CP91-210-000 (10-22-90)	Natural Gas Pipeline Co. of America.	Longhorn Natural Gas Company, Inc.	10,000 5,000 2,190,000	Offshore LA & TX, AR, CO, IA, IL, KS, MO, NE, NM, OK, LA, TX.	Offshore TX & LA IA, OK, CO, NM, IL, LA, TX.	8-17-90, ITS	CP86-582-000, ST90-4757-000
CP91-211-000 (10-22-90)	Natural Gas Pipeline Co of America.	Total Minatome Corporation.	75,000 25,000 9,125,000	Offshore TX	Offshore TX	8-25-90, ITS	CP86-582-000, ST90-4962-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The ST docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

8. U-T Offshore System

[Docket No. CP91-246-000]

October 30, 1990.

Take notice that on October 25, 1990, U-T Offshore System (U-TOS), 2800 Post Oak Boulevard, P.O. Box 1396, Houston, Texas 77251, filed a request with the Commission in Docket No. CP91-246-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to provide an interruptible natural gas transportation service for Spindletop Gas Distribution System (Spindletop Gas) under U-TOS' blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the NGA, corresponding to the rates, terms, and conditions filed in Docket No. RP88-99-000, all as more fully set forth in the request which is open to public inspection.

U-TOS states that it proposes an interruptible natural gas transportation service of 100,000 Mcf on peak and average days and 36,500,000 Mcf annually for Spindletop Gas. U-TOS states that it would receive the gas for Spindletop Gas' account at two receipt points in West Cameron Blocks 116 and 167, offshore Louisiana, and deliver the gas at the Johnson's Bayou Plant, Cameron Parish, Louisiana. U-TOS commenced its transportation service for Spindletop Gas on August 23, 1990, under its FERC Rate Schedule IT, as reported in Docket No. ST90-4810 pursuant to § 284.223(a) of the Regulations.

Comment date: December 14, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. Colorado Interstate Gas Co.

[Docket No. CP91-265-000]

November 1, 1990.

Take notice that on October 30, 1990, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP91-265-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Mesa Operating Limited Partnership, a producer, under the blanket certificate issued in Docket No. CP86-589, *et al.* pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that, pursuant to an agreement dated July 15, 1990, under its Rate Schedule TI-1, it proposes to transport up to 10,000 Mcf per day of natural gas. CIG indicates that the gas would be transported from receipt points located in Kansas, and Oklahoma, and would be redelivered at delivery points located in Kansas. CIG further indicates that it would transport 10,000 Mcf on an average day and 3,650,000 Mcf annually.

CIG advises that service under § 284.223(a) commenced August 1, 1990, as reported in Docket No. ST90-4347-000.

Comment date: December 17, 1990, in accordance with Standard Paragraph G at the end of the notice.

10. Williams Natural Gas Co.

[Docket No. CP91-244-000]

November 1, 1990.

Take notice that on October 24, 1990, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 7401, filed in Docket No. CP91-244-000, a request pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act, to abandon by reclaimation measuring, regulating and appurtenant facilities installed to serve the William Stockstill (Stockstill) irrigation operation in Gray County, Texas, pursuant to Williams's blanket authorization issued in Docket No. CP82-479-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states the customer, William D. Stockstill, has requested WNG reclaim its facilities and estimates the reclaimation cost to be $490 with no salvage value.

Comment date: December 17, 1990, in accordance with Standard Paragraph G at the end of the notice.

11. Panhandle Eastern Pipe Line Co.

[Docket No. CP91-231-000]

November 1, 1990.

Take notice that on October 23, 1990, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston Texas 77251-1642, filed in Docket No. CP91-231-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a storage service provided to Citizens Gas and Coke (Citizens), a jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle is currently providing certain long-term storage and transportation service to Citizens under Panhandle's Rate Schedule TS-2 and TS-6. However, Citizens, in its letter dated December 8, 1989, requested cancellation of storage arrangements, effective March 30, 1991.

Comment date: November 23, 1990, in accordance with Standard Paragraph F at the end of this notice.

12. Natural Gas Pipeline Co.

[Docket No. CP91-228-000]

November 1, 1990.

Take notice that on October 23, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP91-228-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon sales service to nine (9) of its existing sales customers and increase sales service to eight (8) of its existing sales customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that the service reductions are pursuant to nomination procedures provided in the pending Stipulation and Agreement on Gas Inventory Demand Charges filed June 4, 1990 in Docket No. CP89-1281-000.

Natural states further that the reduction and abandonment of 96,901 MMBtu in the daily contract quantities of nine (9) of its existing DMQ-1 and G-1 sales customers and the increase of 31,013 MMBtu in the daily contract quantities of eight (8) of its existing DMQ-1 and G-1 sales customers would be effective December 1, 1990.

It is said that the pregranted authority to increase daily contract quantities to existing sales customers would be at the dates in the volumes provided in their new service agreements.

Comment date: November 23, 1990, in accordance with Standard Paragraph F at the end of this notice.

13. ANR Pipeline Co.

[Docket No. CP91-235-000]

November 1, 1990.

Take notice that on October 24, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP91-235-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon natural gas transportation service for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that pursuant to a letter dated June 30, 1990, Natural advised ANR that it wanted to termiante the transportation service which it performs under Rate Schedule X-43. This service was certificated in Docket No. CP75-26.

Comment date: November 23, 1990, in accordance with Standard Paragraph F at the end of this notice.

14. Southern Natural Gas Co.

[Docket No. CP91-245-000]

November 1, 1990.

Take notice that on October 25, 1990, Southern Natural Gas Co. (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP91-245-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Ashton Energy Company (Ashton), a marketer, under Southern's blanket certificate issued in Docket No. CP88-316-000 pursuant ot section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport on an interruptible basis up to 30,000 MMBtu of natural gas on a peak day, 10,000 MMBtu on an average day and 3,650,000 MMBtu on an annual basis for Ashton. Southern states that it would perform the transportation service for Ashton under Southern's Rate Schedule IT. Southern indicates that it would transport the gas from various receipt points in offshore Texas, offshore Louisiana, Texas, Louisiana, Mississippi and Alabama to various delivery points in Georgia and South Carolina.

It is explained that the service commenced September 12, 1990, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-5330. Southern indicates that no new facilities would be necessary to provide the subject service.

Comment date: December 17, 1990, in accordance with Standard Paragraph G at the end of this notice.

15. El Paso Natural Gas Co. and Texas Gas Transmission Corp.

[Docket Nos. CP91-260-000 et al.]

November 1, 1990.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 17, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average annual	Points of Receipt	Points of Delivery	Start up date rate schedule	Related dockets[2]
CP91-260-000, 10-30-90	El Paso Natural Gas Company.	Mock Resources, Inc.	154,500 77,250 28,196,250	Any point on system.	CO, NM, TX, OK	9-22-90, T-1	ST91-425-000
CP91-261-000, 10-30-90	Texas Gas Transmission Corporation.	PSI Gas Marketing, Inc.	21,000 21,000 7,665,000	Off TX	Off TX	9-15-90, IT	ST91-434-000
CP91-262-000, 10-30-90	Texas Gas Transmission Corporation.	Bishop Pipeline Corporation.	100,000 50,000 36,500,000	On LA, Off LA, On TX, Off TX, KY, AR, OH.	KY, IN, IL	9-15-90, IT	ST91-436-000
CP91-263-000, 10-30-90	Texas Gas Transmission Corporation.	PSI Gas Marketing, Inc.	50,000 25,000 9,125,000	Off TX	Off LA	9-15-90, IT	ST91-432-000
CP91-264-000, 10-30-90	Texas Gas Transmission Corporation.	PSI Gas Marketing, Inc.	100,000 50,000 36,500,000	Off TX	Off TX	9-15-90, IT	ST91-433-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a part to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal

Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.250 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26508 Filed 11-8-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-22-000]

Algonquin Gas Transmission Co.; Informal Settlement Conference

November 2, 1990.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, November 13, 1990, at 1:30 p.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washingotn, DC. 20428, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208-2215 or David R. Cain (202) 208-0917.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26509 Filed 11-8-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 2, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on October 31, 1990, pursuant to section 4 of the Natural Gas Act and Section 12 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed the following revised tariff sheets, all to First Revised Volume No. 1 of CNG's FERC Gas Tariff:

3rd Revised First Revised Sheet No. 31
Alternate 3rd Revised First Revised Sheet No. 31

CNG requests that the Commission allow the proposed tariff revisions to become effective on December 1, 1990, as CNG's regular, quarterly purchased gas adjustment ("PGA") filing.

The primary filing would increase CNG's RQ and CD commodity rates by 18.17 cents per dekatherm, increase D-1 demand rates by 1.0 cent per dekatherm and decrease D-2 demand rates by 1.09 cents per dekatherm from the rates currently in effect. Other rates will change correspondingly.

CNG respectively requests the Commission to accept either the primary or alternative tariff sheet, as appropriate, depending upon the Commission's disposition of CNG's outstanding filings in Docket Nos. TM91-2-22-000 and RP91-3-000, *et al.*

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before November 9, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wish to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26510 Filed 11-8-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-13-000]

Equitrans, Inc.; Proposed Tariff Changes

November 2, 1990.

Take notice that on October 31, 1990, Equitrans, Inc. ("Equitrans") tendered for filing, with a proposed effective date of December 1, 1990, subject to refund, the following tariff sheets for inclusion in its FERC Gas Tariff Original Volume Nos. 1 and 3:

Volume No. 1

Nineteenth Revised Sheet No. 10
Tenth Revised Sheet No. 34
Sixth Revised Sheet No. 23

Volume No. 3

Sixth Revised Sheet No. 4
Sixth Revised Sheet No. 8

Equitrans states that the purpose of its filing is to revise Equitrans' FERC Gas Tariff to the limited extent necessary to reflect in Equitrans' base rates the costs which result from receiving firm transportation service from Tennessee Gas Pipeline Company ("Tennessee"), Texas Eastern Transmission Corporation ("Texas Eastern"), and Columbia Gas Transmission Corporation ("Columbia").

The filing makes no change in the gas cost portion of Equitrans' base rates. It does reflect the cost of purchased gas and the purchased gas surcharge adjustment reflected in Equitrans' currently effective PGA tracker filing made effective on October 30, 1990 in Docket No. TQ91-1-24-000.

This filing constitutes a limited Natural Gas Act section 4(e) rate change to Equitrans' Account No. 858. Equitrans requests that this filing be consolidated with Equitrans' on-going rate proceeding in Docket No. RP90-70-000.

The rate adjustment reflects transportation of 2,420,000 dekatherms per year by Tennessee effective December 1, 1990 at a rate of $1,050,000 per year. It also reflects a rate for transportation by Texas Eastern under section 4.1 of Texas Eastern's Rate Schedule FT-1 rather than Rate Schedule 4.2, which was projected in Equitrans' filing in Docket No. RP90-70. Finally, the adjustment reflects the change in Texas Eastern's section 4.1 charges to become effective on December 1, 1990 pursuant to the Commission's suspension order issued on June 29, 1990 in Docket No. RP90-119. Texas Eastern Transmission Corp., 51 FERC ¶61,384 (1990.) These two changes result in an increase in transmission and compression costs paid to Texas Eastern by Equitrans of $4,026,982 per year. Finally, the rate adjustment reflects an increase in the transportation rate charged by Equitrans by Columbia under Columbia's Rate Schedule X-70 effective November 1, 1990 to $8,041,000 from $5,524,000 pursuant to Columbia's most recent section 4(e) general rate increase filing in Docket No. RP90-108.

Equitrans states that copies of this filing were served on its jurisdictional customers and on interested state commissions.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 9, 1990 file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26511 Filed 11-8-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-13-000]

Gas Gathering Corp.; Proposed Changes in FERC Gas Tariff

November 2, 1990.

Take notice that Gas Gathering Corporation (GGC) on October 19, 1990 tendered for filing Fourth Revised Sheet No. 4 to First Revised Volume No. 1 of its FERC Gas Tariff. The tariff sheet revises, pursuant to § 154.38(d)(6) of the Commission regulations, GGC's Annual Charge Adjustment (ACA) unit surcharge rate to $0.0022 per Mcf.

GGC proposes an effective date of October 1, 1990 or the earliest date thereafter acceptable by the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 9, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26512 Filed 11-8-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-15-000]

Mid Louisiana Gas Co.; Proposed Change of Rates

November 2, 1990.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on October 31, 1990, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheet to become effective December 1, 1990:

	Superseding
Seventy-Eighth Revised Sheet No. 3a.	Seventy-Seventh Revised Sheet No. 3a.

Mid Louisiana states that the purpose of the filing of Seventy-Eighth Revised Sheet No. 3a is to reflect a $.0051 per MCF increase in its current cost of gas.

This filing is being made in accordance with section 19 of Mid Louisiana's FERC Gas Tariff. Mid Louisiana states that copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a Petition to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with §§1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before November 9, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26513 Filed 11-8-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-25-000 and TM91-2-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

November 2, 1990.

Take notice that on October 31, 1990 Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective December 1, 1990:

Fifty-First Revised Sheet No. 4
Tenth Revised Sheet No. 4.1
Tenth Revised Sheet No. 4.2
Nineteenth Revised Sheet No. 4A
Twentieth Revised Sheet No. 4A (effective January 1, 1991)
Tenth Revised Sheet No. 4A.1
Tenth Revised Sheet No. 4A.2
Seventh Revised Sheet No. 4A.3
Eighth Revised Sheet No. 4A.3 (effective January 1, 1991)
Seventh Revised Sheet No. 4A.4
Sixth Revised Sheet No. 4A.5
Second Revised Sheet No. 4A.6
First Revised Sheet No. 4A.7
Twelfth Revised Sheet No. 73

MRT states that the instant filing reflects its quarterly purchased gas cost adjustment (PGA), submitted pursuant to § 154.308 of the Commission's Regulations and paragraph 17.2 of MRT's FERC Gas Tariff, and changes in fixed take-or-pay charges incurred from pipeline suppliers. MRT states that the impact of the instant filing on its Rate Schedule CD-1 rates is a decrease of $.003 per MMBtu in the demand charge, and an increase of 14.23 cents per MMBtu in the commodity charge. The single part rate under Rate Schedule SGS-1 reflects an increase of 14.20 cents per MMBtu.

MRT is mailing a copy of the revised tariff sheets to each of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 9, 1990. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26514 Filed 11-8-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-28-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

November 2, 1990.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on October 31, 1990, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No.:

Eighty-First Revised Sheet No. 3-A
Fifty-Eighth Revised Sheet No. 3-B
Fifth Revised Sheet No. 3-B.1

The proposed effective date of these revised tariff sheets is December 1, 1990.

Panhandle states that these revised tariff sheets filed herewith reflect the following adjustments respecting Panhandle's D1 and D2 demand rates: (1) An increase of $0.66 for D1 and (2) no change for D2 pursuant to section 18.4 of the General Terms and Conditions of Panhandle's tariff (pipeline suppliers' demand costs).

Panhandle states that the above-referenced tariff sheets are being filed in accordance with § 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to §§ 18.1 and 18.4 (Purchased Gas Demand Rate Adjustments by Pipeline Suppliers) of Panhandle's FERC Gas Tariff, Original Volume No. 1 to reflect the change in Panhandle's jurisdictional rates effective December 1, 1990.

Panhandle states that it should be noted that by Order dated June 30, 1989, issued in Docket No. RP89-185-000, and reaffirmed in Docket No. RP89-185-001, dated September 26, 1990, the Commission accepted for filing section 25 (Seasonal Sales Program) of Panhandle's FERC Gas Tariff, Original Volume No. 1. Pursuant to § 2531 thereof, §§ 18.2, 18.3, 18.5, 18.6, 18.7 and 18.8 are suspended until re-established in accordance with § 25.32. Accordingly, Panhandle is reflecting as a current adjustment only the changes in its D1 and D2 demand rates mentioned above.

Panhandle states that copies of its filing have been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 9, 1990. Protests will be considerd by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26515 Filed 11-8-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ91-1-55-000 and TM91-2-55-000]

Questar Pipeline Co.; Rate Change

November 2, 1990.

Take notice that on October 31, 1990, Questar Pipeline Company tendered for filing and acceptance certain revised tariff sheets to its FERC Gas Tariff as follows:

Tariff Sheet and Proposed Effective Date

Original Volume No. 1

Tenth Revised Sheet No. 12, December 1, 1990
Eleventh Revised Sheet No. 12, January 1, 1991

Original Volume No. 1-A

Fourth Revised Sheet No. 5, January 1, 1991

Original Volume No. 1-A

Fifth Revised Sheet No. 8, January 1, 1991

Questar Pipeline states that the purpose of this filing is to adjust the purchased gas cost under Questar Pipeline's sale-for-resale Rate Schedule CD-1 effective December 1, 1990, and implement the Gas Research Institute's (GRI) adjustment of $0.0142/Dth authorized in Docket No. RP90-120-000 to be effective January 1, 1991.

Questar Pipeline further states that the Tenth Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $2.47958/Dth which is $0.24047 lower than the currently effective rate of $2.72005/Dth. The demand base cost of purchased gas remained unchanged at $0.00541/Dth.

Questar Pipeline states that it has provided a copy of the filing to Mountain Fuel Supply Company and interested state public service commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20002, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protest should be filed on or before November 9, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26516 Filed 11-8-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-2-42-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

November 2, 1990.

Take notice that Transwestern Pipeline Company ("Transwestern") on October 31, 1990, tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective December 1, 1990

80th Revised Sheet No. 5
3rd Revised No. 5E
2nd Revised No. 5E(i)
45th Revised Sheet No. 6
12th Revised Sheet No. 37

Without prejudice to supplemental filings that may be permitted by any final order in the Order No. 500 proceedings, the above-referenced tariff sheets are being filed pursuant to section 25.6 of the General Terms and Conditions of Transwestern's FERC Tariff. Pursuant thereto, Transwestern must file on or before November 1, 1989 and annually thereafter to adjust the TCR Surcharge to account for actual versus estimated interest amounts and to estimate interest expense for the upcoming annual period. Therefore, the instant filing is the second annual filing and is being filed solely to (1) true-up for the actual quarterly interest rates published by the Commission from December 1, 1989 through November 30, 1990 and (2) estimate the interest expense for the upcoming annual period of December 1, 1990 through November 30, 1991.

Transwestern herein proposes to revise the TCR Surcharge Rate as a result of the interest rate changes to be $0.1530/dth, which represents a decrease of $0.0177/dth from the last currently effective TCR Surcharge Rate of $0.1707/dth. Such decrease is due to the declining unamortized principle amounts and the reduced interest rates applicable to the amortization period of December 1, 1989 through November 30, 1990. The revised TCR Surcharge Rate is based on the adjusted balances ending November 30, 1990 for TCR Nos. 1, 2, 3, and 4 (Docket Nos. RP88-198, RP89-59, RP89-130, and RP90-25, respectively). Estimated interest expense for the upcoming period (December 1, 1990 through November 30, 1991) is based upon the currently effective Commission fourth quarter interest rate of 10.0%.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 9, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26517 Filed 11-8-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-30-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

November 2, 1990.

Take notice that Trunkline Gas Company (Trunkline) on October 31, 1990, tenderd for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

Eightieth Revised Sheet No. 3-A

The proposed effective date of this revised tariff sheet is December 1, 1990.

Trunkline states that the revised tariff sheet filed herewith reflects a commodity rate increase of 0.01¢ per Dt in the projected purchased gas cost component.

Trunkline states that the above-referenced tariff sheet is being filed in accordance with § 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to section 18 (Purchase Gas Adjustment Clause) of Trunkline's FERC Gas Tariff, Original Volume No. 1 to reflect the change in Trunkline's jurisdictional rates effective December 1, 1990.

Trunkline states that copies of its filing have been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 9, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26518 Filed 11-8-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ91-1-56-000 and TM91-2-56-000]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

November 2, 1990.

Take notice that Valero Interstate Transmission Company ("Vitco"), on October 31, 1990 tendered for filing the following tariff sheets as required by Orders 483 and 483-A and the provisions contained in Exhibits (E) and (F) in Docket No. RP90-187-000 containing changes in Purchased Gas Cost Rates, Take-or-Pay Commodity Rate Surcharge and Account 191—Settlement Commodity Rate Surcharge pursuant to such provisions:

FERC Gas Tariff, Original Volume No. 1

22nd Revised Sheet No. 14.2

FERC Gas Tariff, Original Volume No. 2

27th Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483-A. The change in rates to Rates Schedule S-3 includes an increase in purchased gas cost of $0.9761 per MMBtu above the purchased gas cost set out in the filing in Docket No. RP90-187.

The Take-or-Pay Commodity Rate Schedule is $0.4205 per MMBtu which represents an increase from the rate filed in docket No. RP90-187-000. The Account 191-Settlement Commodity Rate Surcharge is $(0.1845) per MMBtu which represents a decrease from the rate filed in Docket No. RP90-187-000.

The proposed effective date of the above filing is December 1, 1990. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by December 1, 1990.

If the Commission has not issued an order approving the settlement in Docket No. RP90-187 by December 1, 1990 Vitco requests that the following tariff sheet be made effective December 1, 1990:

Alternate 27th Revised Sheet No. 6

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests, should be filed on or before November 9, 1990. Protests should will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26519 Filed 11-8-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-89-NG]

IGI Resources, Inc.; Application for Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Energy.

ACTION: Notice of application for long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by IG Resources, Inc. (IGI) on

October 11, 1990, as supplemented October 31, 1990, for authorization to import natural gas from Canada over a period of ten years. IGI proposes to import up to 5,000 MMBtu of gas per day from November 1, 1992, through October 31, 1992; up to 10,000 MMBtu per day from November 1, 1992, thorugh October 31, 1995, and up to 15,000 MMBtu per day from November 1, 1995 through October 31, 2000 (one MMBtu equates to approximately one Mcf). The volumes imported would enter the United States near Sumas, Washington and be transported from that point through the existing pipeline facilities of Northwest Pipeline corporation (Northwest). No new construction or new pipeline facilities would be involved.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., December 10, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, 1000 Independence Avenue, SW. Washington, DC 20585 (202) 586–4809

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW. Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: IGI, an Idaho corporation having its principal office in Boise, Idaho, is a gas marketer supplying industrial end-users and local distribution companies (LDC's) in the western U.S., primarily in the Pacific Northwest. The LDC's include Intermountain Gas Company (Intermountain) in Idaho and CP National Corporation in Oregon. IGI is a wholly owned subsidiary of Intermountain Gas Industries, a holding company which also owns Intermountain. The imported volumes would be purchased from Mobil Oil Canada (Mobil).

Under the gas sale contract between IGI and Mobil accompanying the application, sales would be arranged on a monthly basis when IGI notifies Mobil of the amount it desires to purchase from zero up to the established maximum daily delivery quantities. During each month, IGI has the right to change its designated purchase quantity three times upon three days written notice to Mobil. The contract term extends to October 31, 2000, with provision for automatic extension for subsequent periods of two years.

The price that IGI would pay Mobil for the gas would be calculated monthly and is comprised of a demand charge, a commodity charge, and a gas reservation fee.

Demand charge. The demand charge covers the toll charges of Westcoast Energy Inc. for gathering, processing and transporting the gas from the producing fields in the Province of British Columbia to the U.S./Canada border.

Commodity charge. The commodity charge is established initially as the weighted sum of the following four factors:

(1) 25 percent of the B.C. Gas Inc. (a British Columbia local distribution company) residential gas price at the wellhead for the prior month;

(2) 25 percent of the arithmetic average of the weekly high and low prices for Number 6 fuel oil (Bunker C) in Seattle, Washington for the delivery month;

(3) 25 percent of the price for spot market gas delivered into Northwest's system at Sumas, Washington for the prior month (subject to a summer season, April-September, adjustment under certain circumstances); and

(4) 25 percent of the price for spot market gas delivered into Northwest's system in the Rocky Mountains.

The formula for determining the commodity charge may be renegotiated annually, and the contract provides for arbitration if the parties cannot agree on a new formula. Any disputes regarding non-price provisions of the contract would also be settled through arbitration.

Reservation fee. The last element of the three-part rate, the gas reservation fee, is intended to compensate Mobil for holding dedicated reserves available for IGI. It is equal to the greater of (a) 18 percent of the commodity price applied to the deficient volumes in any month in which IGI does not take the full contract quantity or (b) nine percent of the commodity price applied to the daily contract quantity on a monthly basis.

There is no requirement for IGI to purchase a minimum quantity of gas. However, if IGI nominates volumes but they are not actually taken, it must pay the demand charge and reserveation fee on the deficiency.

Under the pricing scheme, IGI estimated that the border price for deliveries in November 1990, if deliveries had then taken place, would have been $2.49 (U.S.) per MMBtu at 100 percent load factor. IGI provided the following breakdown of the price: Demand charge of $0.64 per MMBtu, commodity charge of $1.70 per MMBtu, and reservation charge of $0.15 per MMBtu.

IGI requested that the import authorization be granted by November 1, 1990, so that there are sufficient gas supplies to meet the peak period requirements of LDC's and downstream customers, as well as industrial end-users in its marketing area during the upcoming winter heating season. If a final order could not be issued by that time, IGI requested interim authorization. Except in extraordinary or emergency circumstances, 10 CFR 590.205(a) of DOE's administrative procedures provides for a public comment period of not less than 30 days. IGI has not shown that such circumstances surround this import proposal to justify departing from our standard policy. Accordingly, a decision on the application will not be made until all responses to this notice have been received and evaluated.

The decision on IGI's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters that will be considered in making a public interest determination include need for the natural gas, and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because it is needed, competitive, and its natural gas source will be secure. Parties opposing the import arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application.

All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of IGI's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 6, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–26595 Filed 11–8–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 90–90–NG]

Northern Minnesota Utilities; Application for Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on October 19, 1990, of an application filed by Northern Minnesota Utilities (NMU) requesting blanket authorization to import from Canada up to 66.43 Bcf of natural gas, and to export and re-import up to 66.43 Bcf of this gas, over a two-year term beginning February 15, 1991, the date NMU's current blanket authorization expires. NMU requests authority to import and export and re-import the natural gas at any point on the U.S./Canadian border where existing pipeline facilities are located. No new construction would be involved.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, request for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., December 10, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9393

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–32, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–6667

SUPPLEMENTARY INFORMATION: NMU, with its principal place of business in Cloquet, Minnesota, is a division of Utilicorp United, Inc., a Delaware corporation. NMU is currently authorized by DOE/ERA Opinion and Order 245 (1 ERA 70,780), issued June 21, 1988, in ERA Docket No. 88–02–NG, to import from Canada up to 66.43 Bcf of natural gas and to export and re-import up to 66.43 Bcf of this gas for a two-year term. This authorization became operational on February 14, 1989.

NMU states that the specific terms of each import and export or re-import arrangement would be freely negotiated and tailored to NMU's markets, thus making them responsive. NMU anticipates obtaining supplies from various Canadian sources on an interruptible, primarily spot purchase basis.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate in a particular case. However, since the source of the natural gas proposed to be exported involves only Canadian production and not sales of domestic gas to Canada, it is unnecessary to consider domestic need in connection with the export portion of NMU's proposal. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable,

and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto.

Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of NMU's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC November 5, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-26596 Filed 11-8-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of August 6 Through August 10, 1990

During the week of August 6 through August 10, 1990, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Natural Resources Defense Council, 8/6/90, LFA-0059

The Office of Hearings and Appeals (OHA) issued a Decision and Order which considered a Freedom of Information Act (FOIA) Appeal in which the requester had sought the release of all briefing materials that were used in presentations to Secretary Watkins during 1990 regarding the restart of plutonium processing and/or pit production activities at the Rocky Flats Plant. The Office of Military Application (OMA) had denied the request in its entirety, withholding the documents under Exemption 5 of the FOIA. Exemption 5 encompasses the deliberative process privilege, which shields from disclosure documents which were created during agency consideration of a proposed action and which were part of the decision-making process.

In its Appeal, the Natural Resource Defense Council (NRDC) requested: (1) A new search by the OMA for responsive materials based on the alleged inadequacy of the initial search; (2) the segregation and release of all non-exempt portions of responsive materials; and (3) the release of "all predecisional materials which contributed directly to Admiral Watkins' restart decision." The OHA determined that the OMA had conducted an adequate search for responsive materials. The OHA also stated that it believed that many of the withheld documents contain factual information not protected by Exemption 5 and thus should be segregated and released. Therefore, the OHA remanded the proceeding to the OMA in order for it to determine what material is factually segregable and to release that material. Finally, the OHA found that the NRDC had not shown that the withheld materials had been expressly adopted or incorporated by reference in a final opinion; thus, the deliberative portions of these materials remain shielded from disclosure by Exemption 5.

Refund Application

Albertson's Inc., 8/6/90, RF272-433; RD272-433

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Albertson's, Inc., based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicant used the petroleum products in its vehicles and refrigeration units and determined its claim using fuel tax returns and mileage records. The applicant was an end-user of the products it claimed and was, therefore, presumed injured. A consortium of states and territories of the United States filed a Statement of Objections and Motion for Discovery with respect to the applicant. The DOE found that this filing was insufficient to rebut the presumption of injury for end-users, and the Motion for Discovery was denied. The Application for Refund was granted. The total refund amount granted is $12,291.

Atlantic Richfield Company/Michael Kimak, 8/9/90, RF304-11952

The DOE issued a Supplemental Decision and Order concerning a Decision and Order issued on July 12, 1990, to Bruce Blair's ARCO, *et al.*, in the Atlantic Richfield Company special refund proceeding. The DOE determined that the refund granted to Michael Kimak (Case No. RF304-8134) was incorrectly calculated. Accordingly, the refund previously granted was rescinded, and the correct refund was granted to the claimant

Atlantic Richfield Company/Wally's Arco, 8/8/90, RF304-11951

The DOE issued a Supplemental Order concerning a Decision and Order issued on July 24, 1990, to Gene Lobe Distributor, Inc., *et al.*, in the Atlantic Richfield Company special refund proceeding. The DOE rescinded a refund granted to Wally's ARCO (Case No. RF304-9570). The amount of the refund rescinded was $5,112.

Exxon Corporation/Hector M. Vazquez, et al., 8/8/90, RF307-9250, et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed in the Exxon Corporation special refund proceeding. Each applicant purchased directly from Exxon and was a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $1,632 ($1,241 principal plus $391 interest).

Exxon Corporation/Northville Caribbean Corp., 8/10/90, RF307-8675

The DOE issued a Decision and Order concerning an Application for Refund filed in the Exxon Corporation special refund proceeding on behalf of Northville Caribbean Corp., a reseller of Exxon products whose allocable share is greater than $5,000. Instead of making an injury showing to receive its full allocable share, Northville elected to limit its claim to $5,000 or 40% of its allocable share, whichever was greater. The total refund granted in this Decision is $6,627 ($5,099 principal plus $1,627 interest).

Gulf Oil Company/J. L. Sowell, 8/6/90, RF300-229

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The applicant established that it was a consignee and reseller of Gulf motor gasoline and distillate during the consent order period. The applicant attempted to prove injury as to its consigned volumes of Gulf product. However, the OHA rejected the injury demonstration methodology and, instead, recalculated the applicant's injury under an acceptable methodology. The resulting refund calculated under the OHA's methodology would have been less than the refund under the 10 percent injury presumption for Gulf consignees. Under the circumstances, the applicant was granted a refund equal to 10 percent of its allocable share on its consigned gallons. The applicant was also granted a refund equal to its full allocable share on the Gulf products which it purchased and resold. The sum of the refund granted in this Decision, including accrued interest, is $2,073.

Gulf Oil Corporation/Williams Gulf Service, Cupertino's Transport, 8/7/90, RF300-10928, RF300-10937

The DOE issued a Decision and Order concerning two Applications for Refund submitted by Akin Energy, Inc., on behalf of two resellers of Gulf petroleum products in the Gulf Oil Corporation special refund proceeding. Akin Energy, Inc., submitted records to document each refund claim and provided sufficient authorization to file on behalf of both of the claimants. Each Application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $7,483.

Jamie Towers, 8/9/90, RA272-26

The DOE issued a Supplemental Order concerning an Application for Refund filed by Jamie Towers in the subpart V crude oil special refund proceeding. Jamie Towers, an apartment complex in Bronx, NY, was granted a refund of $2,485 based on the purchases of petroleum products used for heating. The refund check was sent in the care of Mr. Otis Jones. It has come to our attention that Mr. Jones is no longer the managing agent of Jamie Towers. Mr. Jones returned the refund check, requested that it be voided, and asked that a revised refund check be issued to the new agent, William R. Lucas, Inc. Accordingly, we have revised the refunds granted in *J.W. Nelson Transport, Inc., et al.*, Case Nos. RF272-56503, *et al.*

Schering Corporation, 8/10/90, RF272-8752

A pharmaceutical corporation filed an Application for Refund in the subpart V crude oil special refund proceedings. A group of states and territories filed objections to this Application, claiming that the applicant should not be eligible to receive refunds because it was not injured as a result of crude oil overcharges. The DOE rejected the states' arguments, finding that they had not submitted relevant material sufficient to overcome the presumption of injury available to end-user applicants in this proceeding. The DOE than reviewed the Application and found that the information provided therein supported the company's claim. Accordingly, the DOE granted a refund based on the end/user presumption of injury in the amount of $15,556.

Shell Oil Company/Cumberland Lake Shell, Inc, 8/9/90, RF315-2300

The DOE issued a Decision and Order granting an Application for Refund filed by Cumberland Lake Shell, Inc., in the Shell Oil Company special refund proceeding. The applicant was granted a refund under the presumption for mid-level claimants. The total refund granted in the Decision was $7,204 ($5,595 principal plus $1,609 in interest).

Shell Oil Company/Steve's Shell, et al., 8/8/90, RF315-2538, et al.

The DOE issued a Decision and Order granting 15 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the applicants purchased indirectly from Shell and was a reseller whose allocable share was less than $5,000. Each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $10,493 ($8,151 principal plus $2,342 interest).

Southwest Airline Co., 8/6/90, RF272-444, RD272-444

The DOE issued a final Decision and Order granting a refund from crude oil overcharge funds to Southwest Airlines Co. based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicant used the petroleum products to operate a fleet of Boeing 737 type aircraft and determined its claim using reasonable estimates based upon actual purchase records for the years 1973 through 1981. The applicant was an end-user of the products it claimed and was, therefore, presumed injured. A consortium of states and territories of the United States filed a Statement of Objections and Motion for Discovery with respect to the applicant. On June 12, 1990, the DOE issued a Proposed Decision and Order in which the DOE tentatively determined that these filings were insufficient to rebut the presumption of injury for end-users. The Proposed Decision tentatively denied the Motion for Discovery and granted the Application for Refund. The DOE allowed 30 days for comments regarding the Proposed Decision to be received. No comments or objections were received regarding the Proposed Decision. As a result, Southwest's Application for Refund was granted, and the States' Motion for Discovery was denied. The total refund amount granted is $205,473.

Standard Oil Company (Indiana)/ New Hampshire, et al., 8/10/90, RM251-212, et al.

The DOE issued a Decision and Order partially approving the motion for modification filed by the State of New Hampshire in the Amoco II, Coline, National Helium, and Northeast Petroleum proceedings. The OHA granted the State's request to modify the Restitutionary program which was approved in *Northeast Petroleum Industries/New Hampshire*, 14 DOE ¶ 85,488 (1986). The State proposed a new project through which it would publish a directory of solar energy technology experts and distribute it to New Hampshire residents. The DOE found that the proposed project would bring

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Restitutionary benefits to New Hampshire citizens by promoting energy conservation.

Texaco Inc./ Bill's Texaco on Broadway, 8/10/90, RF321-4287, RF321-8043

The DOE issued a Decision and Order denying duplicate Applications for Refund filed in the Texaco Inc. special refund proceeding by Bill's Texaco on Broadway. In both refund submissions, the applicant certified that it had filed or authorized the filing of only one refund Application in the Texaco proceeding. In view of the false certifications, the DOE determined that both refund Applications should be denied.

Texaco Inc./H&B Texaco Service #1 Broad Street Texaco, 8/7/90, RF321-326, RF321-891

The DOE issued a Decision and Order in the Texaco Inc. special refund proceeding denying duplicate claims filed by a single applicant under the names H&B Texaco Service #1 and Broad Street Texaco. Because both Applications were signed before issuance of the Decision and Order implementing the Texaco refund procedures, the applicant was required to recertify the submissions. The applicant filed two recertifications, both of which certified that it had filed one refund Application in the Texaco refund proceeding. In view of the false certifications, the DOE determined that both Applications should be denied.

Texaco Inc./ Nelson Petroleum Co., et al., 8/10/90, RF321-2530, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund filed in the Texaco Inc. Subpart V special refund proceeding. Each applicant purchased directly from Texaco and was a reseller whose allocable share is greater than $10,000. In lieu of making a detailed injury showing to receive its full allocable share, each applicant elected to limit its claim to $10,000 or 50 percent of its allocable share, whichever is greater. The total of the refunds granted in this Decision is $116,620 ($100,000 principal plus $16,620 interest).

Texaco Inc./Tiger Texaco, et al., 8/10/90, RF321-2602, et al.

The DOE issued a Decision and Order concerning 32 Applications for Refund filed in the Texaco Inc. Subpart V special refund proceeding. Each applicant purchased directly from Texaco and was a reseller whose allocable share is less than $10,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The value of the refunds granted in this Decision, including $17,883 in accrued interest, is $125,486.

Texaco Inc./West End Texaco #1, West End Texaco #2, 8/8/90, RF321-278, RF321-279, RF321-5405, RF321-5406

The DOE issued a Decision and Order in the Texaco Inc. Subpart V special refund proceeding denying duplicate refund claims filed on behalf of West End Texaco #1 and #2. In each pair of duplicate filings, the applicant certified that it had only filed a single refund Application on behalf of each outlet in the Texaco proceeding. In view of these false certifications, the DOE determined that the Applications should be denied.

Texaco Inc./Wristen Texaco, 8/10/90, RF321-5123, RF321-5947

The DOE issued a Decision and Order denying duplicate Applications for Refund filed in the Texaco Inc. special refund proceeding by Wristen Texaco. The Applicant filed two refund Applications for the same Texaco purchases. In both Applications, the applicant certified that it had filed or authorized the filing of only one refund Application in the Texaco proceeding. In view of the false certification, the DOE determined that both refund Applications should be denied.

Utility Propane, 8/10/90, RF272-32833

The DOE issued a Decision and Order denying an Application for Refund filed by Utility Propane in the subpart V crude oil special refund proceeding. Utility Propane was a retailer of propane and fuel oil during the crude oil control period. The DOE determined that because the firm did not demonstrate that it was injured by the crude oil overcharges, it was ineligible for a crude oil refund.

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Alaska Power and Telephone Co., *et al.*	RF272-62934	8/7/90
Arctic Utilities, *et al.*	RF272-74008	8/6/90
Atlantic Richfield Co./ James Brown, *et al.*	RF304-510	8/8/90
Atlantic Richfield Co./ Jim's Arco, *et al.*	RF304-9600	8/9/90
Atlantic Richfield Co./ Lott's Service Inc., *et al.*	RF304-2518	8/9/90
County of Atlantic, *et al.*	RF272-70015	8/6/90
Dairy Leasing Services, Inc., *et al.*	RF272-75501	8/6/90
Exxon Corp./C-R Auto Service, Inc., *et al.*	RF307-7799	8/8/90
Exxon Corp./Ikard & Ward, Inc.	RF307-5750	8/9/90
Ikard & Griffin, Inc.	RF307-5751	
Lampton-Love, Inc	RF307-5796	
Lampton-Love Butane Co.	RF307-5977	
Exxon Corp./Ken's Minit Markets, Inc. #2, *et al.*	RF307-6739	8/6/90
Exxon Corp./Navajo Tribal Utility Authority, *et al.*	RF307-6469	8/9/90
Exxon Corp./ Woodbridge Exxon, *et al.*	RF307-1929	8/9/90
Farmers Union Oil Co., *et al.*	RF272-64254	8/7/90
Greenville Transit Authority, *et al.*	RF272-76003	8/6/90
Gulf Oil Corp./ Precision Auto Body, *et al.*	RF300-11001	8/7/90
Robert L. Collins, *et al.*	RF272-73503	8/6/90
Shell Oil Co./B&L Oil Company, Inc., *et al.*	RF315-473	8/9/90
Texaco Inc./New Orleans East Texaco, *et al.*	RF321-405	8/7/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Enco Truck Stop	RF307-8269
Herbert A. Smit	RF315-4340
Kern Oil & Refining Company and Larry D. Delpit.	KRO-0520
Kingsport Fuels, Inc	RF315-3760
Lenora Mercantile Association	RF272-70244
Lopilato & Chioccariello	RF315-9904
Seven-Up Royal Crown Bottling Co..	RF272-71792
Tilcon Massachusetts, Inc.	RF272-9185
Trevis Berry	RF272-70305
United Asbury, Inc	RF307-9481

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: November 6, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-26596 Filed 11-8-90; 8:45 am]

BILLING CODE 6450-01-M

Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for the disbursement of $4,351,589.43, plus accrued interest, obtained by the DOE under the terms of a settlement agreement entered into with United Refining Company and United Refining Company of Pennsylvania. There are a number of subsidiaries of United Refining Company and United Refining Company of Pennsylvania that are covered by this proceeding. These subsidiaries are listed in the Decision and Order. The OHA has determined that the funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATES AND ADDRESSES: Applications for Refund submitted for a portion of the settlement funds must be filed in duplicate, postmarked no later than October 31, 1991. Applications should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All Applications for Refund should display a reference to case number KEF-0132.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute $4,351,589.43 that has been remitted by United Refining Company and United Refining Company of Pennsylvania to the DOE to settle possible pricing violations with respect to sales of certain refined petroleum products in specified months. The settlement also covers a number of subsidiaries of United Refining Company and United Refining Company of Pennsylvania. These subsidiaries and the specific requirements for making a claim are set forth in the decision and order. The DOE is currently holding the funds in an interest bearing escrow account pending distribution.

Applications for refund should be postmarked no later than October 31, 1991 to meet the deadline. All Applications for Refund will be available for public inspection between the hours of 1 p.m. through 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: October 26, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firm: United Refining Company, United Refining Company of Pennsylvania.

Date of Filing: April 27, 1989.

Case Number: KEF-0132.

October 26, 1990.

On April 27, 1989, the Economic Regulatory Administration (ERA) filed a Petition with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings between United Refining Company, United Refining Company of Pennsylvania (hereinafter referred to collectively as United) and the DOE. 10 CFR part 205, subpart V. A number of subsidiaries and affiliated firms are included in the definition of United for purposes of this proceeding. Refer to footnotes 2 and 3 for a list of these covered entities. On November 14, 1989, the OHA issued a Proposed Decision and Order (PD&O) that tentatively set forth procedures for disbursement of the settlement funds. 54 FR 48148 (November 21, 1989). We established a 30-day period for the submission of comments regarding the proposed procedures. We received one comment from Bassman, Mitchell & Alfano, Chartered for the Petroleum Marketers of America and a dozen individual marketers of United Refining products. The present Decision will address this comment and will set forth final procedures for the distribution of the United settlement funds.

I. Background

United was a "refiner", as that term is defined in 10 CFR 212.31. United was therefore subject to the price regulations set forth in 10 CFR 212.82, *et seq.* During the period August 19, 1973 through January 27, 1981, United Was a Pennsylvania Corporation, which refined and sold gasoline, distillates and other refined petroleum products.[1] The ERA conducted an audit of United's compliance with the Mandatory Petroleum Price Regulations contained in 6 CFR 150, subpart L and 10 CFR part 212 during the period August 1973 through December 1974 (the audit period). As a result of this audit, the ERA issued a Proposed Remedial Order (PRO) to United Refining, Inc., United Refining Company and United Refining Company of Pennsylvania on August 3, 1984.[2] The ERA alleged that certain of United's pricing practices were in violation of 6 CFR 150.356 and 10 CFR 212.82, 212.83, and 212.126(b). The ERA calculated that these alleged violations resulted in overcharges in the amount of $29,070,251, which includes interest through September 16, 1983, in sales of United's [3] gasoline, distillates and

[1] Gasoline accounted for most of United's sales revenues. Other products sold by United include kerosene, diesel fuel, home heating oils, residual fuel oil, paving and roofing asphalt and to a lesser degree, liquefied petroleum gas.

[2] During the audit and overcharge period, United Refining Company was a Pennsylvania corporation engaged in the refining and marketing of petroleum products. Coral Energy, Inc., a Pennsylvania corporation and wholly-owned subsidiary of the House, Texas based Coral Petroleum, Inc., purchased United Refining Company on February 26, 1981. United Refining Company therefore became a wholly-owned subsidiary of Coral Energy, Inc.

The refinery assets of United Refining Company were distributed to Coral Energy, Inc., in August and September 1981, as part of a partial liquidation and reorganization. In connection with this reorganization, Coral Energy, Inc. changed its name to United Refining Company stayed with the original United Refining Company under a new name, United Refining Company of Pennsylvania. United Refining Company of Pennsylvania remained a wholly-owned subsidiary of United Refining Company (formerly Coral Energy, Inc.). The ultimate parent company, Coral Petroleum, Inc., transferred all of its stock in the new United Refining Company (formerly Coral Energy, Inc.) to a wholly-owned Delaware corporation created in July 1981. This Delaware corporation became known as United Refining, Inc. On October 6, 1981.

The DOE believes that United Refining, Inc. is a holding company that owns all of the stock of the United Refining Company, a refiner of petroleum products. United Refining Company, in turn, owns all of the stock of United Petroleum Company of Pennsylvania, a marketer of petroleum products. United Refining, Inc. was not named as a party to the Settlement Agreement.

[3] During the violation period, United had a number of subsidiaries. These subsidiaries include: Beaver Gasoline Company; Kiantone Pipeline Corporation; Trans Penn Oil Company; United Oil Manufacturing Company; PPC, Inc.; Minute Man Service, Inc.; Kwik-Fill Corporation; Skat Oil Company; Six-Ninety Service Center, Inc. (became part of United some time after March 1, 1974); Osceola Refining Company (Osceola) (acquired by United on December 31, 1973); Ogar Pipe Line Company (wholly-owned by Osceola); Super Test Petroleum, Inc. (Super Test) (wholly-owned) by Osceola); Bell Oil Company (wholly-owned by Super Test). During the period 1973 through 1976 United and its subsidiaries marketed their

Continued

general refinery products during specified months between November 1973 through April 1976. On September 16, 1983, United Refining Company and United Refining Company of Pennsylvania filed a petition for reorganization under chapter 11 in The United States Bankruptcy Court for the Southern District of Texas.

In order to settle any potential civil liability for the alleged violations and overcharges referred to in the August 3, 1984 PRO, United and the DOE executed a Settlement Agreement on January 13, 1988.[4] The Settlement Agreement settles the liability of United Refining Company and United Refining Company of Pennsylvania for the violations specified in the PRO described above.[5] *See* Settlement Agreement, pp. 1–2, 5 at ¶ 5.

Pursuant to the Settlement Agreement, United issued a promissory note in the amount of $3,459,264.01, plus interest, to the DOE. On March 7, 1989, United prepaid the promissory note. The DOE received a total of $4,351,589.43. The Settlement Agreement funds have been placed in an interest-bearing escrow account maintained by the Department of the Treasury for ultimate distribution by the DOE. This Decision and Order sets forth the distribution by the DOE. This Decision and Order sets forth the OHA's plan for distributing these funds to qualified purchasers of United's gasoline, distillates and general refinery products.

petroleum products through between 599 to 715 retail outlets. The outlets were either owned by United, held under long-term leases or supplied under contract. These outlets are known to have operated under a number of different brand names in regions of one or more of the following states: Delaware, Michigan; New York; Ohio; and Pennsylvania.

[4] The United States Bankruptcy Court for the Southern District of Texas approved the Settlement Agreement on January 22, 1988.

[5] The Settlement Agreement also involved Kiantone Pipeline Corporation (Kiantone), a subsidiary of United that was also in chapter 11 bankruptcy. However, Kiantone was not a named party to the Proposed Remedial Order (PRO) that prompted the Settlement Agreement. The Settlement Agreement specifically states that it was entered into "for the express purpose of settling the Proof of Claim filed by the DOE against the bankruptcy estates of United [United Refining Company] and United-Pennsylvania [United Refining Company of Pennsylvania], by the DOE's covenanting not to sue United or United-Pennsylvania regarding certain alleged violations and transactions referred to by the DOE Proof of Claim and specified in a Proposed Remedial Order issued in case number 340S00445 by the DOE to United on August 3, 1984." Settlement Agreement, pp. 1–2. Kiantone was a wholly-owned subsidiary of United. The OHA believes that the PRO covered sales made in certain months by United and its subsidiaries. Accordingly, any company that was a subsidiary of United and sold covered products during the months specified in the PRO is included in the definition of United for purposes of this proceeding. See Footnotes 2 & 3. See also section III. A.

II. Analysis of Comment

The only comment received in response to the PD&O was submitted by the law firm of Bassman, Mitchell & Alfano, Chartered (Bassman) for the Petroleum Marketers Association of America and a dozen individual marketers of United products. Bassman's comment concerns only the merits of applying a 40 percent mid-level presumption of injury in the present proceeding. Bassman notes that OHA policy has been evolving toward the application of a mid-level presumption of injury in most cases. We agree that the OHA has been moving toward such a standard. In a number of recent small proceedings, the OHA has stated that a 40 percent mid-level presumption is generally sound and reflects our relief that larger claimants were likely to have experienced some injury as a result of the alleged violations. *West Coast Oil Co.*, 20 DOE ¶ 85,583 at 89,337 (1990); *see also Fletcher Oil & Refining Company, Inc.*, 20 DOE ¶ 85,513 at 89,172 (1990). The OHA has no reason to believe that United was not typical in its pricing practices. The use of a mid-level presumption of injury serves dual purposes. It allows larger claimants to receive some restitution for the loss that they likely suffered without incurring inordinate expense in compiling a claim. It also ensures that refund claims are evaluated by the OHA in the most efficient manner possible. Accordingly, we believe that it is appropriate to apply a 40 percent mid-level presumption in the present proceeding. The specific procedures that a claimant must follow for a mid-level refund will be discussed below.

III. Refund Procedures

A. *Eligibility for refunds.* The settlement amount of $4,351,589.43, plus accrued interest, will be available for distribution to purchasers of United gasoline, distillates [6] and general refinery products [7] who can show that they were injured because of purchases made from United during specific months during the period November 1973 through April 1976.[8] The months and product types that are covered by this proceeding are listed in the Appendix attached to this Decision and Order. From our experience with subpart V refund proceedings, we believe that potential claimants will fall into the following categories: (1) End-users; (2) regulated non-petroleum industry entities such as public utilities or cooperatives; and (3) refiners, resellers and retailers. As in many prior special refund proceedings, we are adopting certain presumptions that will permit claimants to participate in the refund process without incurring inordinate expense and will enable the OHA to consider refund applications in the most efficient manner possible. See 10 CFR 205.282(e), subpart V; see also *American Pacific International*, 14 DOE ¶ 85,158 (1986) (*API*).

B. *Calculation of refund amount.* We are adopting a volumetric method to apportion the United escrow account. We will drive the volumetric figure by dividing the $4,351,589.43 received from United by the total volume of covered products sold by the firm during the months listed in the Appendix. In the PD&O we put forth a volumetric refund amount of $.0084 per gallon, exclusive of interest, based upon the OHA's estimates of the total volume of covered products sold by United during the months in question.[9] However, pursuant to the OHA's request, United has provided us with a volume figure derived from its records. The OHA believes that United's own figures are a more accurate reflection of its sales of covered products during the months in question. Accordingly, the OHA will derive the volumetric based upon United's records. The revised volumetric for this proceeding is therefore $.012, exclusive of interest.[10]

The volumetric method is based upon the presumption that the alleged overcharges were spread equally over

[6] Distillates for the purposes of this proceeding shall mean No. 2 oils. No. 2 oils are defined as No. 2 heating oil and No. 2–D diesel fuel. 10 CFR 212.31.

[7] For purposes of this proceeding, general refinery products are defined as all covered products other than No. 2 oils, gasoline, and crude oil. 10 CFR 212.31.

[8] Applicants are only eligible to receive refunds based upon covered products purchased during the period in which each product was subject to federal price controls. Therefore, an applicant will not be eligible to receive a refund based upon paving and roofing asphalt purchased after March 31, 1974 because these products were decontrolled on April 1, 1974. 39 FR 12214 (April 3, 1974).

[9] To compute this figure, we estimated that United sold a total of 517,298,583 gallons of covered products during the months listed in the appendix. This figure was obtained from FEO–96 data resubmitted to the DOE by United on May 31, 1979 and annual reports that the OHA located in the ERA's file of the United enforcement proceeding.

[10] The revised volumetric was derived by dividing the $4,351,589.43 settlement fund by the 360,379,391 gallons of covered products reported by United. United reports that it sold the following product totals: (1) Gasoline—209,755,828 gallons from November 1973 through April 1974. (2) Distillates—56,939,223 from November 1973 through February 1974; 11,319,024 gallons in February 1976; 11,653,671 gallons in April 1976. (3) General Refinery Products—27,070,836 from November 1973 through March 1974; 29,207,247 gallons from September through December 1974; 4,295,383 gallons in February 1975; 4,913,191 gallons in October 1975; 5,224,990 gallons in January 1976

all gallons of covered products sold by United during the months when the alleged overcharges occurred.[11] Therefore, under the volumetric approach, an eligible claimant will receive a refund equal to the number of gallons of covered products that it purchased from United during the months when the alleged overcharges occurred on those products, multiplied by the per gallon volumetric amount for this proceeding. In addition, each successful claimant will receive a pro rata portion of the interest that has accrued on the United funds since the date of remittance.

As in previous cases, we will establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims of $15 or less outweighs the benefits of restitution in those situations. *E.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982) (*Uban*).

1. *Showing of injury.* Each claimant will be required to document its purchases of United's covered products during the months that the alleged overcharges occurred. In addition, each applicant will be required to demonstrate that it was injured by the alleged overcharges. In order to demonstrate that it did not subsequently raise its prices and thereby recover the increased costs associated with United's alleged overcharges, a claimant will have to show that it maintained banks of unrecovered product costs. *E.g., Seminole Refining Inc.*, 12 DOE ¶ 85,188 (1985). We realize that some applicants may be unable to provide actual cost bank records for the period covered by this proceeding. We are therefore willing to accept information establishing with reasonable likelihood that a claimant had banks. *E.g., Tenneco Oil Co./ Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982). In addition, a claimant must show that market conditions would not permit it to pass through those increased costs to its customers. *E.g., API*, 14 DOE at 88,295. Such a showing might be made through a demonstration of a competitive disadvantage, lowered profit margin, decreased market share or depressed sales volumes during the period of purchases of United covered products. *E.g., Gulf Oil Corporation*, 16 DOE ¶ 85,381 and 88,740 (1987).[12]

2. *Small claims presumption.* We are adopting a presumption, as we have in have in many cases, that refiners, resellers and retailers seeking refunds of $5,000 or less were injured by United's pricing practices. *E.g., API*, 14 DOE at 88,295. We recognize that the cost to such applicants of gathering evidence of injury to support a refund claim of $5,000 or less could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund. For example, some firms may have limited accounting and data-retrieval capabilities, and may therefore be unable to produce the records necessary to prove either the existence of banks of unrecovered necessary to prove either the existence of banks of unrecovered costs, or that they did not pass the alleged overcharges on to their own customers. We also seek to insure that the cost to the applicant and to the government of compiling and analyzing information sufficient to establish a claim does not exceed the amount of the refund. Under the small claims presumption, refiner, reseller and retailer applicants seeking total refunds of $5,000 or less will not be required to make a detailed demonstration of injury. Such an applicant need only document ist purchase volume of United covered products during the months that the alleged overcharges occurred.

3. *Mid-level refiner, reseller and retailer claimants.* In lieu of making and detailed showing of injury, a refiner, reseller or retailer claimant whose allocable share exceeds $5,000 may elect to receive as its refund the larger of $5,000 or 40 percent of its allocable share up to $50,000. An applicant in this group will only be required to provide documentation of its purchase volumes of United covered products during the months in question in order to be eligible to receive a refund of 40 percent of its total volumetric share, or $5,000 whichever is greater. *E.g., Gulf Oil Corp.*, 16 DOE ¶ 85,381 at 88,737 (1987).

4. *End-users.* We are adopting the presumption that end-users, i.e. ultimate consumers, whose businesses are unrelated to the petroleum industry, were injured by United's alleged overcharges. Unlike regulated firms in the petroleum industry, end-users were generally not subject to price controls during the period covered by this proceeding, and were not required to keep records that justified selling price increases by reference to cost increases. For these records, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *E.g., Marion Corp.*, 12 DOE ¶ 85,014 at 88,030 (1984). Therefore, an end-user of United products need only document its purchase volume of covered products during the months of the alleged overcharges in order to receive a refund on its full volumetric share.

5. *Regulated firms and cooperatives.* Claimants whose prices for goods and services are regulated by a government agency (such as a public utility), or by the terms of a cooperative agreement, need only submit documentation of the volume of covered products purchased by and used by them, or, in the case of cooperatives, sold to their members, during the months when the alleged overcharges occurred, in order to receive a full volumetric refund. These firms would have routinely passed price increases through to their customers, and will now pass on the benefits of the refund to their customers. Accordingly, these firms will not be required to make a detailed demonstration of injury. However, regulated firms or cooperatives will be required to certify that they will pass any refund on to their customers or member-customers, provide us with a full explanation of how they plan to accomplish the restitution, and certify that they will notify the appropriate regulatory body or membership group of their receipt of the refund. *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,514 (1986); *Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). We will not require a public utility seeking a refund of $5,000 or less to submit the above referenced certifications and explanation. Sales of covered products by cooperatives to non-members will be treated in the same manner as sales by other resellers or retailers.

6. *Indirect purchasers.* Firms that made indirect purchases of covered United products during the months when the alleged overcharges occurred may also apply for refunds. If an applicant did not purchase directly from United, but believes that covered products it purchased from another firm were originally purchased from United during a month (or months) listed in the appendix, the applicant must establish its basis for that belief and identify the reseller from whom the products were

[11] Nevertheless, we realize that the impact on an individual claimant may have been greater than the volumetric amount. Therefore, the volumetric presumption will be rebuttable, and we will allow a claimant to submit evidence detailing the specific overcharges that it incurred in order to be eligible for a larger refund. See generally Standard Oil Co./ Army and Air Force Exchange Service, 12 DOE ¶ 85,015 (1984).

[12] In a recent decision, the Temporary Emergency Court of Appeals affirmed the OHA's standards for a demonstration of injury. The court specifically upheld the method used by the OHA to evaluate comparative market price and thereby determine competitive disadvantages. *Behm Family Corp* v. *DOE*, 903 F.2d 830 (Temp. Emer. Ct. App. 1990).

purchased. Indirect purchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of United products passed through United's alleged overcharges to its own customers. *E.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,451–452 (1986).

7. *Spot purchasers.* We are adopting the rebuttable presumption that a claimant who made only spot purchases from United was not injured as a result of those purchases. A claimant is a spot purchaser if it made only sporadic purchases of significant volumes of covered United products.[12] Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from United. *E.g., Gulf Oil Corp.*, 16 DOE ¶ 85,381 at 88,741 (1987).

IV. General Refund Application Requirements

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from individuals and firms that purchased covered products from United during the months listed in the appendix to this Decision and Order. There is no specific application form that must be used. However, the following information should be included in all Applications for Refund:

(1) The name of the settling firm, United Refining Company; United Refining Company of Pennsylvania, the case number (KEF–0132) and the applicant's name should be prominently displayed on the first page.

(2) The name, title, and telephone number of a person who may be contacted for additional information concerning the Application.

(3) The use(s) of the United covered product(s) by the applicant, i.e., refiner, reseller, retailer, end-user, public utility or cooperative.

(4) Monthly schedules of the applicant's purchasers of each type of covered product that it purchased from United during the months listed in the appendix must be submitted. The applicant should indicate the source of this volume information. Monthly schedules should be based upon actual, contemporaneous business records. If such records are not available, the applicant may submit estimates provided that those estimates are reasonable and the estimation methodology is explained in detail.

(5) If the applicant was an indirect purchaser, it should submit the name, address and telephone number of its immediate supplier and indicate why it believes that the covered product was originally sold by United.

(6) If the applicant is a refiner, reseller or retailer whose volumetric share exceeds $5,000, it must indicate whether it elects to receive the larger of $5,000 or 40 percent of its allocable share up to $50,000. If is does not elect a presumption of injury, it must submit a detailed showing that it was injured by the alleged overcharges. See Section III.B.1.

(7) A statement whether the applicant or a related firm has filed, or authorized any individual to file on its behalf, any other Application for Refund in the United proceeding, and if so, an explanation of the circumstances surrounding that filing or authorization.

(8) A statement whether the applicant was in any way affiliated with United. If so, the applicant should explain the nature of the affiliation.

(9) A statement whether there has been any change in ownership of the entity that purchased the United covered products at any time during or after the settlement period. If so, the name and address of the current (or former) owner should be provided.

(10) A statement of whether the applicant is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have been terminated, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of the Application for Refund. See 10 CFR 205.9(d).

(11) The following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant 18 U.S.C. 1001.

All Applications for Refund must be filed *in duplicate* and must be filed no later than October 31, 1991. A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, room 1E–234, 1000 Independence Avenue, SW., Washington, DC. Any applicant that believes that its Application contains confidential information must so indicate on the first page of the Application and must submit two additional copies of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is privileged or confidential. All Applications should be sent to: United Refining Company; United Refining Company of Pennsylvania Refund Proceeding, Case No. KEF–0132, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

V. Distribution of Funds Remaining after Consideration of All Refund Applications

In the event that money remains after all meritorious Applications for Refund have been processed, the funds in the United escrow account will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA). 15 U.S.C.A. 4501–4507 (West Supp. 1990).

It is therefore ordered that:

(1) Applications for Refund from the funds remitted to the Department of Energy by United Refining Company; United Refining Company of Pennsylvania pursuant to the Settlement Agreement executed on January 13, 1988, may now be filed.

(2) Applications for Refund from the United Refining Company; United Refining Company of Pennsylvania escrow account must be postmarked no later than October 31, 1991.

Dated: October 26, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX

Month	Year	Products [1]
November	1973	Distillate; Gasoline; GRP
December	1973	Distillate; Gasoline; GRP
January	1974	Distillate; Gasoline; GRP
February	1974	Distillate; Gasoline; GRP
March	1974	Gasoline; GRP
April	1974	Gasoline
September	1974	GRP
October	1974	GRP
November	1974	GRP
December	1974	GRP
February	1975	GRP
October	1975	GRP
January	1976	GRP
February	1976	Distillate
April	1976	Distillate

[1] Refer to footnotes 6 and 7 in text.

[FR Doc. 90–26599 Filed 11–8–90; 8:45 am]

BILLING CODE 6450–01–M

[12] Spot purchasers tend to have considerable discretion as to the timing of purchases and the market in which to make purchases. Accordingly, they generally would not have made spot purchases from United at increased prices unless they were able to pass through the full amount of any price increases to their own customers. *E.g. Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–397 (1981).

Western Area Power Administration

Environmental Impact Statement, Post-1989 General Power Marketing and Allocation Criteria; Salt Lake City Area Integrated Projects, Extension of Public Comment Period; Additional Scoping Meetings

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of public scoping meetings and extension of comment period.

SUMMARY: The Western Area Power Administration (Western) announced its intent to prepare an environmental impact statement (EIS) on its Post-1989 General Power Marketing and Allocation Criteria in the **Federal Register** on April 4, 1990 (55 FR 12550). The public comment period began April 4. In a subsequent **Federal Register** notice, published September 20, 1990 (55 FR 38747), Western announced that the comment period would end November 16, 1990. That notice also announced five scoping meetings, which were held in October.

In response to requests at the scoping meetings and during the comment period, Western will hold two additional scoping meetings. The comment period has also been extended to December 31, 1990.

DATES: Additional scoping meetings will be held at the following dates and locations. Both meetings begin at 7 p.m.

November 28, 1990, Red Lion Inn, 255 South West Temple, Salt Lake City, Utah.

December 4, 1990, Phoenix Sheraton, 111 North Central, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: Mr. David Sabo, EIS Coordinator, Salt Lake City Area, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147, (801) 524–5493.

Issued at Golden, Colorado, October 31, 1990.

William H. Clagett,

Administrator.

[FR Doc. 90–26600 Filed 11–8–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3859–3]

Environmental Impact Statements and Regulations: Availability of EPA Comments

Availability of EPA comments prepared October 22, 1990 Through October 26, 1990 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 13949).

Draft EISs

ERP No. D–AFS–K61108–CA Rating LO1, Kings River Special Management Area (SMA), South Fork, Middle Fork, Kings Wild and Scenic Rivers, Implementation, Sierra and Sequoia National Forests, King River Ranger and Hume Lake Ranger Districts, Fresno County, CA.

Summary: EPA expressed a lack of objections with the proposed action and supported the selection of the preferred alternative.

ERP No. D–AFS–K61109–CA Rating EC2, Lake Red Bluff Recreation Development, Implementation, Mendocino National Forest, Sacreamento River, Tehama County. CA.

Summary: EPA supported the Forest Service's plan to recreate ripiarian woodland and oak woodland habitats and recommended the creation of a six-acre artificial wetland, but expressed environmental concerns regarding development impacts to water quality and beneficial uses.

ERP No. D–COE–J11005–00 Rating EC2, Fort Douglas Base Closure and Realignment, Relocation to Fort Carson, CO; Tooele Army Depot, UT and Fitzsimmons Medical Center, CO, Implementation, Salt Lake City, UT, CO and MT.

Summary: EPA recommends the final EIS discuss the sewage collection system including the collectors and mains in the excessed area.

ERP No. D–NOA–K90025–CA Rating LO2, Monterey Bay National Marine Sanctuary, Establishment, Designation and Management Plan, San Mateo, Santa Cruz and Monterey Counties, CA.

Summary: EPA requested additional information on the best means of oil and hazardous materials spill prevention and response, potential impacts to Sanctuary resources from commercial vehicle traffic, and potential conflicts between boundary alternatives 4 and 5 and current EPA efforts to designate an ocean disposal site for dredged sediments under the Marine Protection Research and Sanctuary Act.

ERP No. DS–COE–G36145–NM Rating LO, Rio Grande Floodway Flood Protection Plan, San Acacia to Bosque del Apache Unit, Implementation, Section 404 Permit, Elephant Butte Reservoir, Socorro County, NM.

Summary: EPA has no objection to the proposed levee rehabilitation project.

Dated: November 6, 1990.

William McGovern,

Acting Director, Office of Federal Activities.

[FR Doc. 90–26603 Filed 11–8–90; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3859–4]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements Filed October 29, 1990. Through November 2, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900404, FINAL EIS, NOA, FL, NJ, NY, NH, ME, MA, RI, CT, PA, DE, MD, VA, NC, SC, GA, Atlantic Coast Red Drum Fishery Management Plan, Implementation, Exclusive Economic Zone (EEZ) of the east coast of MA, NH, MA, RI, CT, NY, NJ, PA, DE, MD, VA, NC, SC, GA, and FL, Due: Decemeber 10, 1990, Contact: William Fox, Jr. (301) 427–2239.

EIS No. 900405, DRAFT EIS, COE, CA, Prado Dam Water Conservation Plan, Implentation, Prado Flood Control Basin, Santa Ana River, Riverside and San Bernardino Counties, CA, Due: December 24, 1990, Contact: Gary Gunther (213) 894–3825.

EIS No. 900406, FINAL EIS, CGD, FL, Miracle Parkway/Everest Parkway Improvement and Midpoint Bridge Construction, Over the Caloosahatchee River, U.S. Coast Guard Approval and Permit, Cape Coral to Fort Myers, Lee County, FL, Due: December 10, 1990, Contact: John W. Winslow (305) 536–4103

EIS No. 900407, DRAFT EIS, AFS, CA, Stanislaus National Forest, Land and Resource Management Plan, Implementation, Alpine, Calaveras, Mariposa and Tuolumne Counties, CA, Due: February 26, 1991, Contact: Janet L. Wold (209) 532–3671.

EIS No. 900408, DRAFT EIS, NPS, CA, Santa Monica Mountains National Recreation Area, Cheeseboro Canyon and Palo Comado Canyon Land Exchange, Ventura and Los Angeles Counties, CA, Due: January 31, 1991, Contact: David Gackenbach (818) 587–1036.

EIS No. 900409, FINAL EIS, GSA, NY, Foley Square Federal Courthouse and Federal/Municipal Office Building

Development, Construction, New York County, NY, Due: December 10, 1990, Contact: Peter Sneed (212) 264–3561.

EIS No. 900410, FINAL EIS, BLM, MT, Bull Mountains Land Exchange, Federal Coal Lands for High Values Recreational and Wildlife Lands, Carbon County, MT, Due: December 10, 1990, Contact: Mat Millenbach (406) 232–4331.

Amended States

EIS No. 900317, FINAL EIS, EPA, NJ, Environmental Technology and Engineering (E–TEC) Facility Development, Testing and Evaluation of Hazardous Substances Control, Construction and Operation, Middlesex County, NJ, Due: November 30, 1990, Contact: Robert Hargrove (212) 264–1892. Published FR 8–22–90—Review period extended.

EIS No. 900356, DRAFT EIS, FHW, CA, San Joaquin Hills Transportation Corridor Improvements, CA–73 Extension between I–5 in San Juan Capistrano City to Jamboree Road in Newport Beach City, Funding and Section 404 Permit, Orange County, CA, Due: November 26, 1990, Contact: James J. Bednar (916) 551–1310. Published FR 9–28–90—Review period extended.

Dated: November 6, 1990.

William McGovern,

Acting Director, Office of Federal Activities.

[FR Doc. 90–26804 Filed 11–8–90; 8:45 am]

BILLING CODE 6560–50–M

[FR–38526]

Proposed Administrative Penalty Assessment and Opportunity to Comment for Texaco U.S.A., Inc., Ventura District, Los Angeles Operations Division

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. section 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. section 1319(g)(4)(a).

Class I proceedings are conducted under EPA's "Guidance on Class I Clean Water Act Administrative Penalty Procedures." The procedures through which the public may submit written comment on a proposed Class I order or participate in a Class I proceeding, and the procedures by which a respondent may request a hearing, are set forth in the guidance document referred to above. The deadline for submitting public comment on a proposed Class I order is thirty days after issuance of public notice.

On the date identified below, EPA commenced the following Class I proceeding for the assessment of penalties:

In the Matter of Texaco U.S.A., Inc., Platform Habitat, Ventura District, Los Angeles Operations Division, Ventura, California; EPA Docket No. IX–FY90–31; filed on October 1, 1990 with Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 1235 Mission Street, San Francisco, California 94103, (415) 556–5607; proposed penalty of $10,000 for a one-time discharge to the Pacific Ocean off Southern California from the Platform Habitat facility in violation of the prohibitions established in General Nathional Pollutant Discharge Elimination System Permit No. CA110516.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's guidance document, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty days after the date of publication of this notice.

Dated: October 1, 1990.

Harry Seraydarian,

Director, Water Management Division.

[FR Doc. 90–26802 Filed 11–8–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200373–001.

Title: San Francisco Port Commission/Splosna Plovba Terminal Agreement.

Parties:

San Francisco Port Commission (Port)
Splosna Plovba (Carrier).

Synopsis: The Agreement provides for the transfer of Carrier's terminal operations from South Container Terminal to North Container Terminal ("facilities"), located in the City and County of San Francisco. It also provides for the Carrier's acknowledgment that the responsibility of managing the facilities has been assigned to California Stevedore and Ballast Company.

Agreement No.: 224–200435.

Title: South Carolina State Ports Authority/PCSL US Med Line, Ltd Terminal Agreement.

Parties:

South Carolina State Ports Authority
BCSL—US Med Line, Ltd. (BCSL).

Synopsis: The Agreement provides BCSL certain reduced tariff charges for container and chassis handling, receiving and delivery services; and an annual wharfage incentive schedule. BCSL agrees to use the Port of Charleston as its principal port of call in the range from Wilmington, NC through Jacksonville, FL.

Agreement No.: 224–010968–006.

Title: Maryland Port Administration/Hapag-Lloyd AG/Atlantic Division Terminal Agreement.

Parties:

Maryland Port Administration/Hapag-Lloyd
AG/Atlantic Division.

Synopsis: The Agreement extends the parties' basic agreement an additional three months beginning November 9, 1990, pending the final negotiation of a long term lease between the parties.

Agreement No.: 224–200438.

Title: Port Authority of New York and New Jersey/Maher Terminals, Inc. Terminal Agreement.

Parties:

Port Authority of New York & New Jersey (Port Authority)
Maher Terminals, Inc., (Maher).

Synopsis: The Agreement provides for the leasing of certain properties and improvements of the Port Authority at Port Newark terminal facilities ("facilities") for the storage of lumber, forest products, steel and other general cargo. Maher shall pay a monthly tonnage fee based upon the amount of lumber, forest products, steel and other general cargo placed in the facilities during each monthly period. The term of this Agreement shall expire September 30, 1991.

By Order of the Federal Maritime Commission.

Dated: November 5, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–26495 Filed 11–8–90; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200402–001.

Title: Maryland Port Administration/Puerto Rico Maritime Shipping Authority Terminal Agreement.

Parties:

Maryland Port Administration.
Puerto Rico Maritime Shipping Authority.

Filing Party: Mr. Brenden W. O'Malley, Executive Director, Maryland Port Administration, The World Trade Center, Baltimore, MD 21202–3041.

Synopsis: The Agreement extends the term of the basic agreement for 90 days effective November 9, 1990, pending final negotiations of a long term lease between the parties.

Agreement No.: 224–200437.

Title: Port of New Orleans/Deputy Storage and Forwarding Corporation Terminal Agreement.

Parties:

Port of New Orleans (Port).
Dupuy Storage and Forwarding Corporation (Dupuy).

Filing Party: Julia A. Berrone, Staff Attorney, Board of Commissioners of the Port of New Orleans, P.O. Box 60046, New Orleans, LA.

Synopsis: The Agreement provides for Dupuy to lease Sections 1–45 of the Port's Press Street Wharf. Dupuy will use the facility for the loading and unloading of cargo from vessels, barges, and other watercraft. Dupuy will pay (1) a base rent of $61,420.15 for the first year with a five percent increase commencing on the anniversary date of the second year; and (2) all applicable tariff charges with the exception of demurrage and sheddage charges. The Agreement expires October 31, 1992.

Agreement No.: 224–200392–001.

Title: Port of New Orleans/Coastal Cargo Company, Inc. Terminal Agreement.

Parties:

Board of Commissioners of the Port of New Orleans.
Coastal Cargo Company, Inc.

Filing Party: Gerald O. Gussoni, Jr., Port General Counsel. The Port of New Orleans, P. O. Box 60046, New Orleans, LA 70160.

Synopsis: The Agreement amends the basic agreement to increase the square footage of leased premises at the Esplanade Avenue Wharf and raises the rent proportionally.

By Order of the Federal Maritime Commission.

Dated: November 5, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–26534 Filed 11–8–90; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 90–30]

Empresa Maritima Del Estado-Chile (Empremar) v. Mar Shipping Line; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Empresa Maritima Del Estado-Chile (Empremar) ("Complainant") against Mar Shipping Line ("Respondent") was served November 5, 1990. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by failing to remit ocean freight and other charges, including but not limited to terminal handling charges, due and payable on twenty-one shipments, notwithstanding demand for payment.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by November 5, 1991, and the final decision of the Commission shall be issued by March 3, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 90–26535 Filed 11–8–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

[Dkt. C–3310]

American Life Nutrition, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New York City based wholesale distributors of dietary food supplements

from making false and unsubstantiated health efficacy claims for any food and drug in the future. In addition, it requires the respondents to publish retractions of previous advertising claims for certain bee pollen, royal jelly, fish oil, and vitamin or mineral products, that were published between December 1, 1987 and December 1, 1988, in newspapers and magazines, and to send corrective notices to past wholesale and retail purchasers.

DATES: Compliant and Order issued October 8, 1990.[1]

FOR FURTHER INFORMATION CONTACT: Harriet Mulhern, New York Regional Office, Federal Trade Commission, 150 William St., suite 1300, New York, NY 10038, (212) 264–1207.

SUPPLEMENTARY INFORMATION: On Tuesday, August 7, 1990, there was published in the **Federal Register**, 55 FR 32141, a proposed consent agreement with analysis In the Matter of American Life Nutrition, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form or order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

Donald S. Clark,

Secretary.

[FR Doc. 90–26544 Filed 11–8–90; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. 9235]

Consumer Direct, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, two Ohio based companies and their officers from making false and unsubstantiated claims about "Cut Buster", an exercise device. Respondents are required to include a notice stating—that overstretching the spring in the device may break the spring and cause injury—in all advertisements and to warn past purchasers of the potential for breakage and personal injury from the device.

DATES: Complaint issued January 5, 1990 and amended April 30, 1990. Order issued October 29, 1990.[1]

FOR FURTHER INFORMATION CONTACT: Maureen Enright, FTC/S–4002, Washington, DC 20580, (202) 326–3160.

SUPPLEMENTARY INFORMATION: On Tuesday, August 14, 1990, there was published in the **Federal Register**, 55 FR 33160, a proposed consent agreement with analysis In the Matter of Consumer Direct, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Donald S. Clark,

Secretary.

[FR Doc. 90–26545 Filed 11–8–90; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. Report of Accounting Personal Property—HHS–565–0990–0081—This form is used to report all accountable personal property purchased or fabricated by contractors and billed to HHS. *Respondents:* State or local governments, business or other for-profit, non-profit institutions, small business; *Annual Number of Respondents:* 3,600; *Annual Frequency of Response:* one time; *Average Burden per Response:* 30 minutes; *Total Annual Burden:* 1,800 hours.

2. Recordkeeping Requirements for Government Owned/Contractor Held Property—0990–0015—These recordkeeping requirements are needed to assure accountability and control for government owned/contractor held property for HHS contracts. *Respondents:* State or local governments, business or other for-profit, non-profit institutions, small business; *Annual Number of Responses:* 4,500; Average *Burden per Response:* 6 minutes; *Total Annual Burden:* 450 hours.

3. HHS Acquisition Regulation—HHSAR part 352—Solicitation Provisions and Contract Clauses—0990–0130—The requirement for the Key Personnel Clause is needed by HHS contracting and project staff to assess the qualifications of proposed contractor changes to key project personnel. *Respondents:* State or local governments, business or other for-profit, non-profit institutions, small business; *Annual Number of Respondents:* 1,565; *Annual Frequency of Response:* One time; *Average Burden per Response:* One hour; *Total Annual Burden:* 1,565 hours.

HHS Acquisition Regulation—HHSAR part 370—Special Programs Affecting Acquistion—0990–0129—HHAR § 370.1 establishes requirements to assure the accessibility of meetings, conferences and seminars to persons with disabilities; HHSAR § 370.2 establishes criteria for Indian preference in contractor employment, training, and subcontractor opportunities. *Respondents:* State or local governments, business or other for-profit, non-profit institutions, small business; Burden Information for 370.1—*Annual Number of Respondents:* 220; *Annual Frequency of Response:* One time; *Average Burden per Response:* Eight hours; *Total Annual Burden:* 1,760 hours. Burden Information for 370.2—*Annual Number of Respondents:* 460; *Annual Frequency of Response:* Twice; *Average Burden per Response:* Eight hours; *Total Annual Burden:* 7,360 hours.

OMB Desk Officer: Allison Herron.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619–0511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: October 30, 1990.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

[FR Doc. 90–26499 Filed 11–8–90; 8:45 am]

BILLING CODE 4150–04–M

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Following is the package submitted to OMB since the last publication.

(For a copy of the package, call the FSA, Report Clearance Officer 202–252–5604.)

Availability of Funds and Request for Applications under the Office of Community Services' FY 1991 Discretionary Grants Programs—0970–0062—This information collection will be used as a generic grant application request to OMB for the Office of Community Services' five program announcements—Discretionary Grant Program, Community Food and Nutrition Grant Program, Low Income Home Energy Assistance Program, Demonstration Partnership Program, and Jobs Opportunity for Low-Income Individuals Program. *Respondents:* State and local governments, non-profit institutions; *Number of Respondents:* 620; *Frequency of Response:* One-time; *Estimated Average Burden per Response:* 17.90; *Estimated Annual Burden:* 11,100 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations for the proposed information collection should be sent directly to the OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, room 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: October 29, 1990.

Sylvia E. Vela,

Deputy Associate Administrator, Office of Management and Information Systems.

[FR Doc. 90–26565 Filed 11–8–90; 8:45 am]

BILLING CODE 4150–04–M

Social Security Administration

[Social Security Ruling SSR 90–3c]

Representation of Claimant—Validity of Regulation for Determining Attorney Fees—Administrative Proceedings

AGENCY: Social Security Administration, HHS.

ACTION: Notice of social security ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 90–3c. This Ruling, which is based on a decision made by the United States Court of Appeals for the Fifth Circuit, concerns the validity of the Secretary's regulations for determining attorney fees in administrative proceedings.

EFFECTIVE DATE: November 9, 1990.

FOR FURTHER INFORMATION CONTACT: John W. Modler, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1713.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings are based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivor's Insurance; 13.806—Special Benefits for Disabled Coal Miners; 13.807—Supplemental Security Income)

Dated: October 23, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Section 206(a) of the Social Security Act (42 U.S.C. 406(a)) Representation of Claimant—Validity of Regulation for Determining Attorney Fees—Administrative Proceedings

20 CFR 404.1720 and 404.1725

Weisbrod v. *Sullivan*, 875 F.2d 526 (5th Cir. 1989)

Plaintiff, an attorney who represents Social Security claimants, filed a suit against the Secretary challenging the regulations at 20 CFR 404.0.1725(b). Plaintiff asserted that the regulations, which the Secretary applies in "fixing a reasonable fee" pursuant to 42 U.S.C. 406(a), employ an impermissibly arbitrary and capricious formula. Plaintiff contended that, because courts consider delays in payment, prevailing market rates, and the contingency of payment in determining fees under other statutes, the Secretary must explicitly consider these factors in determining reasonable fees at the administrative level under 42 U.S.C. 406(a).

The district court dismissed the complaint and plaintiff appealed to the United States Court of Appeals for the Fifth Circuit. In affirming the district court's dismissal, the court of appeals rejected the plaintiff's contentions concerning the factors which the Secretary must consider. The court noted that none of the cases plaintiff cited considered fees under 42 U.S.C. 406(a) and that all of the Supreme Court decisions plaintiff cited involved "fee-shifting" statutes. The court stated that there is no reason why the factors relevant to fees that a losing party pays to a prevailing party under fee-shifting statutes have any bearing on the determination of fees an attorney may charge a Social Security claimant at the administrative level. The court found that the Secretary has a broad grant of statutory authority to promulgate regulations in the fee setting area and that 20 CFR 404.0.1725(b) constitutes a reasonable exercise of delegated authority which is consistent with the statutory scheme. The court noted that the seven regulatory factors used in deciding attorneys' fees appear rationally related to the overall objective of ensuring that an attorney receives a fair fee for the work he or she performs while at the same time not unduly dissipating the claimant's

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

benefits. The court further noted that it is entirely rational not to burden claimants with additional fees because of delay which is inherent in the system, and that the Secretary should not be mandated to require claimants to pay higher fees merely because their attorneys take other cases on a contingency basis and run the risk of not being paid in those cases.

The court rejected the plaintiff's further contention that the Secretary violates equal protection in his practice of regulating the attorney fees which a private, third party insurer pays but not regulating attorney fees which nonprofit organizations and government agencies pay (*see* SSR 85-3, C.E. 1981-1985, p. 275). The court reasoned that the distinction does not violate equal protection because classifications that social welfare legislation create are routinely upheld under the rational basis standard when, as here, no suspect class is involved.

In affirming the district court's dismissal, the court of appeals *held* that the Secretary did not exceed his statutory authority and that the challenged regulations are neither arbitrary nor capricious.

Hunter, Jr., District Judge: [1]

Section 206(a) of the Social Security Act ("ACT"),[2] vested the Secretary with authority to set "reasonable" fees that attorneys may charge their clients in administrative proceedings and to institute regulations to fulfill this mandate. A regulation promulgated pursuant to this statute sets forth various factors to be considered when the Secretary sets a fee. Appellant, Weisbrod, an attorney who represents Social Security claimants instituted this suit against the Secretary of Health and Human Services attacking this regulation as impermissibly employing an arbitrary and capricious formula. The Secretary filed a motion for judgment on the pleadings requesting dismissal on multiple grounds. The motion was granted in a one paragraph order.[3]

Because we are convinced that the Secretary did not "exceed his statutory authority" and that the regulation is neither arbitrary nor capricious, we affirm the dismissal.

Under the APA, a court may set aside agency action only if it is arbitrary, capricious, or an abuse of discretion. 5 U.S.C. 706(2)(A); *see also Schweiker*, 453 U.S. at 44, 101 S.Ct. at 2640. The court is not to substitute its judgment for that of the agency, *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402, 415-16, 91 S.Ct. 814, 823-24, 28 L.Ed.2d 136 (1971), and is to be extremely deferential to an agency's interpretation of its governing legislation. *United States Dept. of Transp.* v. *Paralyzed Veterans of America*, 477 U.S. 597, 106 S.Ct. 2705, 91 L.Ed.2d 494 (1986).

Congress delegated to the Secretary broad discretion in the fee fixing area. The Secretary "may, by rule and regulation, prescribe * * * maximum fees" and must fix a reasonable fee "in accordance with the regulations prescribed." The regulation the Secretary promulgated in order to fulfill this congressional mandate sets out seven factors to be used in deciding awards of attroney's fees.[3] Both the enabling legislation and the Secretary's regulation appear to be aimed at ensuring that an attorney receives a fair fee for the work he or she performs while at the same time not unduly dissipating the claimant's benefits. Plaintiff insists that because section 206(a) mandates the award of a reasonable fee, such fees must be based on prevailing market rates in the relevant community and must take into consideration factors that may affect the valuation of the services such as delay in payment and contingency of payment.

In addressing plaintiff's contention it is appropriate to quote from *Schweiker* v. *Gray Panthers*, 453 U.S. 34, 101 S.Ct. 2633, 69 L.Ed.2d 460 (1981):

> The Social Security Act is among the most intricate ever drafted by Congress. Its Byzantine construction, as Judge Friendly has observed, makes the Act "almost unintelligible to the uninitiated". *Friedmon* v. *Berger*, 547 F.2d 724, 727, n. 7 (CA2 1976), cert. denied, 430 U.S. 984, 97 S.Ct. 1681, 52 L.Ed.2d 378 (1977). Perhaps appreciating the complexity of what it had wrought, Congress conferred on the Secretary exceptionally broad authority to prescribe standards for applying certain sections of the Act. *Batterton* v. *Francis*, 432 U.S. 416, 425, 97 S.Ct. 2399, 2405, 53 L.Ed.2d 448 (1977).
>
> Here, the delegation of authority to the Secretary in section 206(a) is as great as that contained in the provision at issue in *Gray Panthers*. The reasonableness inquiry is an objective one. Is it legitimate and neutral? Is it rationally related to its overall objective? The attorney is invited to submit his evaluation of the worth of his services in the form of a fee petition. 20 CFR 404.1720(b). The decision maker who sets the fee evaluates, among other things, the level of services, the skill of the attorney, the nature of the case and the extent to which it was pursued, as well as the actual amount the representative requests. 20 CFR 404.1725(b). Nothing appears more appropriate to achieving a just result.
>
> Nevertheless, we briefly address the major premise of appellant's argument that: delay—contingency—and prevailing rate must be explicitly considered. He contends that because these factors are sometimes used by courts in determining fees *under other statutes*, they must also be explicitly taken into account under section 206(a). None of the cases cited considered fees under section 206(a). The Supreme Court cases cited all involve *fee shifting* statutes such as the Civil Rights Attorney's Fees Awards Act. *See, e.g., Blum* v. *Stenson*, 465 U.S. 886, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984). There is no reason why the factors relevant to the fees to be paid *by a losing party to a prevailing party* under such statutes have any bearing on the determination of fees that an attorney may charge a Social Security claimant at the administrative level.
>
> The Supreme Court has never decided what constitutes a "reasonable" fee under section 206(a), or, for that matter, what constitutes a "reasonable" fee outside the context of fee shifting statutes. And the lower court decisions cited by plaintiff concerning fees under section 206(b) are limited to the reasonableness of fees for *court* proceedings. Indeed, the assumption that Congress intended the same standards to be applied under sections 206(a) and 206(b) is belied by the fact that Congress enacted two separate statutory provisions for the awarding of fees at the administrative level and in court. Had Congress intended that the two provisions be identical, it surely would not have enacted separate provisions. In enacting section 206(a), Congress did not perceive a need for attorneys in administrative proceedings and was concerned that where attorneys were utilized, their fees be regulated so as to protect Social Security claimants. *See* S. Rep. 734, 76th Cong., 1st Sess. at 53 (1938); H.R. Rep. 728, 76th Cong., 1st Sess. at 44 (1939).
>
> It is entirely rational not to burden claimants by subtracting additional sums from their benefits for delay that is inherent in the system and of which an attorney knew or should have known when he agreed to handle the claim. The actual fee requested is explicitly listed as a factor to be considered. An attorney is free to consider delay "in payment" and "prevailing community rates", when he submits his fee request. Finally, the fact that "contingency of payment" is not explicitly required to be considered is hardly surprising. From every perspective, the Secretary should not be mandated to require successful claimants, many of whom are on limited, fixed incomes, to pay higher attorneys' fees simply because their attorney has taken on other cases on a contingency basis and runs the risk of not being paid in those cases.
>
> Congress explicitly delegated to the Secretary broad authority to promulgate regulations in the fee setting area. The regulations challenged are consistent with the statutory scheme. They constitute a reasonable exercise of delegated power. They are neither arbitrary nor capricious.[4]
>
> The judgment of the district court is "Affirmed".

[FR Doc. 90-26549 Filed 11-8-90; 8:45 am]

BILLING CODE 4150-29-M

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[1] District Judge of the Western District of Louisiana, sitting by designation.

[2] 42 U.S.C. 406(a)

[3] The district court determined that the regulation challenged by Weisbrod was not subject to judicial review. Weisbrod argues that the Supreme Court consistently has entertained other challenges to the Secretary's regulations according to the terms of the Administrative Procedure Act ("APA"), 5 U.S.C. 701 *et seq. See, e.g., Schweiker* v. *Gray Panthers*, 453 U.S. 34, 43, 101 S.Ct. 2633, 2640, 69 L.Ed.2d 460 (1981). We think it is clear that the district court intended to say that the fee amounts fixed by the Secretary pursuant to this regulation are not subject to judicial review—not the regulation itself. (*See infra*) The Court's possible misstatement does not present a problem because it also held that the challenged regulation is neither arbitrary nor capricious.

[3] Those elements are:

(i) The extent and type of services performed;

(ii) The complexity of the case;

(iii) The level of skill and competence required of the representative giving the services;

(iv) The amount of time spent on the case;

(v) The results the representative achieved;

(vi) The level of the review to which the claim was taken and the level of the review at which the representative became your representative; and

(vii) The amount of fee the representative requests for his or her services, including any amount authorized or requested before, but not including the amount of any expense he or she incurred. 20 CFR 404.1725(b).

[4] In some instances, private insurance companies (which already have provided disability payments to the claimants under private insurance plans) pay Weisbrod's fees. The Secretary refuses to exempt these fees that are paid by the insurance companies from regulation. Weisbrod maintains that this practice of regulating the amount of attorney's fees paid by third party insurers while at the same time exempting from regulation the attorney's fees paid by nonprofit organizations and government agencies violates equal protection. We do not agree. The Supreme Court routinely upholds classifications created by social welfare legislation under the rational basis standard, where as here, no suspect class is involved. *E.g. Schweiker* v. *Hogan*, 457 U.S. 569, 102 S.Ct. 2597, 73 L.Ed.2d 227 (1982); *Schweiker* v. *Wilson*, 450 U.S. 221, 101 S.Ct. 1074, 67 L.Ed2d 186 (1981); *Califano* v. *Jobst*, 434 U.S. 47, 98 S.Ct. 95, 54 L.Ed.2d 228 (1977); *Jefferson* v. *Hackney*, 406 U.S. 535, 92 S.Ct. 1724, 32 L.Ed.2d 285 (1972)

[Social Security Ruling SSR 90-5c]

Disability Insurance Benefits—Interpreting the Statutory Blindness Provision

AGENCY: Social Security Administration, HHS.

ACTION: Notice of social security ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 90-5c. This Ruling, which is based on a decision made by the United States Court of Appeals for the Ninth Circuit, concerns the Secretary's interpretation of the statutory blindness provision in section 216(i)(1)(B) of the Social Security Act (42 U.S.C. 416(i)(1)(B)).

EFFECTIVE DATE: November 9, 1990.

FOR FURTHER INFORMATION CONTACT: John W. Modler, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1713.

SUPPLEMENTARY INFORMATION:

Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings are based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivor's Insurance; 13.806—Special Benefits for Disabled Coal Miners; 13.807—Supplemental Security Income)

Dated: October 26, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Sections 216(i)(1)(B) and 223 (c)(1) and (d)(1)(B) of the Social Security Act (42 U.S.C. 416(i)(1)(B) and 423 (c)(1) and (d)(1)(B)) Disability Insurance Benefits—Interpreting the Statutory Blindness Provision

20 CFR 404.130(e) and 404.1581

Adams v. *Bowen* 872 F.2d 926 (9th Cir. 1989), cert. denied, —U.S.—, 110 S. Ct. 151 (1989)

The claimant, a 56-year-old diabetic, applied for disability insurance benefits under title II of the Social Security Act (the Act), contending that she was unable to work because of impaired vision. Although she did not have 20 quarters of coverage in the 40-quarter period ending with the quarter of alleged disability, she was fully insured and would have met the diability insured status requirements under section 223(c)(1) of the Act and would have been entitled to disability insurance benefits, had she established that she was statutorily blind. Section 216(i)(1)(B) of the Act provides that a person is statutorily blind if he or she has either central visual acuity of 20/200 or less in the better eye with the use of correcting lens, or has a limitation in the fields of vision so that the widest diameter of the visual field subtends an angle no greater than 20 degrees which is considered as having a central visual acuity of 20/200 or less. The evidence of record showed that the claimant's visual acuity in each eye was approximately 20/50 and her visual fields were intact. Because of neurological impairment, however, the claimant had difficulty processing visual information when the environment around here was moving. She would trip and fall when she walked, and she could not see well enough to put a staple in the corner of a piece of paper. A neuropsychologist stated that, because of her condition, the claimant was in many ways worse off than someone who was blind. Moreover, three ophthalmologic specialists, including the claimant's attending physician, characterized here as being "functionally blind." The Secretary, nonetheless, denied the claimant's application because the evidence showed that she did not meet the statutory definition of blindness. The district court upheld the Secretary's denial, and the claimant appealed to the Court of Appeals for the Ninth Circuit. She argued that, even though section 216(i)(1)(B) of the Act sets forth a specific definition of blindness for

purposes of determining entitlement to disability insurance benefits, "Congress cannot have intended that disability benefits be awarded to those who are effectively blind because of damage to their eyes while denying benefits to those who suffer the same impairment because of damage to the brain." In essence, the claimant advocated to use of an equivalency requirement for the condition of blindness described in the statute. The court of appeals, however, rejected that argument and found that, because the language of the statute was clear, the definition of blindness should be read and applied literally. The court stated that there was nothing in the legislative history of the pertinent statutory provisions which suggested that Congress had intended anything but a narrow reading of the statute's unambiguous language. Finally, the court found that the Secretary's interpretation of the statute was entitled to due deference and that the Secretary had clearly interpreted it to require a strict application of the statutory definition. In upholding the district court's affirmation of the Secretary's decision, the court of appeals held that the Secretary's decision was supported by substantial evidence and that it was based on the application of a correct legal standard. The Supreme Court denied the claimant's request that it hear this case.

Canby, Circuit Judge:

Lucretia Adams appeals from the district court's decision upholding the determination of the Secretary of Health and Human Services (the Secretary) that Adams is not entitled to social security diability benefits, 683 F.Supp. 231. The Secretary's decision to deny benefits " 'will be disturbed only if it is not supported by substantial evidence or it is not supported by substantial evidence or it is based on legal error.' " *Brawner* v. *Secretary of Health & Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988) (quoting *Green* v. *Heckler*, 803 F.2d 528, 529 (9th Cir. 1986)). *See* 42 U.S.C. 405(g) (1982). We review the district court's conclusion *de novo*. *Gamer* v. *Secretary of Health & Human Servs., 815 F.2d 1275, 1278 (9th Cir. 1987).*

Background

The relevant facts are undisputed. Adams, a 56-year-old diabetic with impaired vision, has 32 quarters of coverage since 1980 and is "fully" insured under the requirements of 20 CFR 404.130 (1988). However, Adams does not have 20 quarters of coverage in the 40-quarter period ending with the quarter of alleged disability; therefore, she is not "specifically insured. Because Adams is "fully," but not "specially," insured, she must be statutorily blind in order to be eligible for disability benefits based upon her visual deficiency. 20 CFR 404.130(e). The statute defines blindness as follows:

> [T]he term "blindness" means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less.

42 U.S.C. 416(i)(1)(B) (Supp. IV 1986).[1]

In December of 1980, Adams suffered a heart attack. During coronary bypass surgery several months later, Adams had a stroke leaving her totally blind with partial left-sided paralysis. Adams has recovered, largely successfully, from the effects of the stroke. She is no longer completely blind and has regained full use of all but here left hand.

Adams continues to suffer, however, from a neurological impairment affecting the "central processing of visual information." Although she has intact visual fields, and her visual acuity in each eye is approximately 20/50, Adams has difficulty processing visual information when the environment around her is moving. She cannot see well enough to put a staple in the corner of a piece of paper and must avoid brick sidewalks and escalators, which make her nauseous. She trips and falls while walking. The consulting neuropsychologist described her condition as follows:

> While her visual acuity may well be relatively intact, her ability to perceive and use that visual information in an efficient manner is highly compromised. She is severely impaired on all tasks involving visual scanning and visual planning and organization. In this regard, while she is not blind in the sense of having lost the sensation of vision, she is in many ways worse off than someone who is blind. That is because of her difficulty with visuoprattic function and her ability to use efficiently what information is available to her. At this time, she is vocationally disabled of this lack of visual efficiency.

[1] The language of the corresponding regulation simply track the statute: We will consider you blind under the law for a period of disability and for payment of disability insurance benefits if we determine that you are statutorily blind. Statutory blindness is defined in the law as central visual acuity of 20/200 or less * * * in the better eye with the use of correcting lens. An eye which has a limitation in the field of vision so that the widest diameter of the visual field subtends an angle no greater than 20 degrees is considered to have a central visual acuity of 20/200 or less. 20 CFR 404.1581 (1988).

The Administrative Law Judge (ALJ) noted that three opthalmologic specialists, including Adams' treating physician, agree that she is "functionally blind."

Despite Adams' functional blindness, the ALJ rejected her disability claim, reasoning that Adams does not strictly satisfy the highly specific statutory definition of blindness. The ALJ noted that Adams is clearly "visually disfunctional" and "would be found disabled if she were specially insured instead of only fully insured." The Appeals Council denied Adams' request for review of the ALJ's decision.

Discussion

Adams contends that, although 42 U.S.C. 416(i)(1)(B) sets for a specific definition of blindness for purposes of determining entitlement to disability benefits, "Congress cannot have intended that disability benefits be awarded to those who are effectively blind because of damage to their eyes while denying benefits to those who suffer the same impairment because of damage to the brain." In essence, Adams advocates the use of an equivalency requirement for the condition of blindness described in the statute. The Secretary, on the other hand, argues that there is nothing in the language of the statute or the legislative history "suggesting that Congress intended the Secretary to apply any standard other than the strict definition in the statute." Furthermore, the Secretary contends that the agency's interpretation of the statute and the implementing regulation are entitled to great deference. This is a case of first impression.

The basic rules of statutory construction are long-standing and well-settled:

> In construing a statute in a case of first impression, we look to the traditional signposts of statutory construction: first, the language of the statute itself; second, its legislative history, and as an aid in interpreting Congress' intent, the interpretation given to it by its administering agency.

Funbus Systems, Inc. v. *California Pub. Util. Comm'n*, 801 F.2d 1120, 1125–26 (9th Cir.1986) (citation omitted). *See Washington State Dep't of Game* v. *I.C.C.*, 829 F.2d 877, 879 (9th Cir.1987). 42 U S.C. 416(i)(1)(B) presents a clear definition of what blindness "means." "As a rule, '[a] definition which declares what a term "means" * * * excludes any meaning that is not stated.' " *Colautti* v. *Frnaklin*, 439 U.S. 379, 393–93 n. 10, 99 S.Ct. 675, 684 n. 10, 58 L.Ed.2d 596 (1979) (quoting 2A C. Sands, *Statutes and Statutory Construction* § 47.07 (4th ed. Supp.1978)). *See, e.g., Johns-Manville Corp.* v. *United States*, 855 F.2d 1556, 1559 (Fed.Cir.1988), *cert. denied*, — U.S. —, 109 S.Ct. 1342, 103 L.Ed.2d 811 (1989); *Leber* v. *Pennsylvania Dep't of Envtl. Resources*, 780 F.2d 372, 376 (3d Cir.), *cert. denied*, 478 U.S. 1004, 106 S.Ct. 3294, 92 L.Ed.2d 710 (1986). Because the language of the statute is clear, the definition of blindness should be read and applied literally.

Nothing in the legislative history of the Social Security Amendments of 1967, including section 416(i)(1)(B), suggests that Congress intended anything but a narrow reading of the statute's unambiguous language. *See Escobar Ruiz* v. *INS*, 838 F.2d 1020, 1023 (9th Cir.1988) (en banc) (even if a statute is plan and unambiguous, courts may look to see if there is clearly expressed legislative intent contrary to the language); *California* v. *Klepp*, 604 F.2d 1187, 1194 (9th Cir.1979) (" '[E]ven the most basic general principles of statutory construction must yield to clear contrary evidence of legislative intent.' ") (quoting *National R.R. Passenger Corp.* v. *National Ass'n of R.R. Passengers*, 414 U.S. 453, 458, 94 S.Ct. 690, 693, 38 L.Ed.2d 646 (1974). The Senate Report states only that "[i]n order to qualify for benefits a person would have to have vision of 20/200 or less." *See* 1967 U.S.Code Cong. & Adm. News 2834, 2842, 2886–87. Although the statute purposely "liberalized" the previous definition of blindness "[i]n recognition of the economic hardships faced by blind persons," *id.* at 2886, 3200, there is no indication that the equivalency requirement urged by Adams was intended or even contemplated by Congress.[2] Congress chose a certain and exact rule; we are reluctant to engraft upon it a more flexible standard that is inherently more difficult to administer.

Finally, the rules of statutory construction require us to consider the Secretary's interpretation of the statute. "The interpretation of statutes and regulations by an agency charged with their administration is entitled to due deference and should be accepted unless demonstrably irrational or clearly contrary to the plain meaning." *Nevitt* v. *United States*, 828 F.2d 1405, 1406–07 (9th Cir.1987) (citing *Udall* v. *Tallman*, 380 U.S. 1, 85 S.Ct. 792, 13 L.Ed.2d 616 (1965)). *See also Gardebring* v. *Jenkins*, 485 U.S. 415, 108 S.Ct. 1306, 1314, 99 L.Ed.2d 515 (1988) (deference to Secretary's reading of agency's regulation). While, as Adams points out, this is not a case in which the Secretary has issued an *interpretative* regulation, we can evaluate the Secretary's interpretation as demonstrated by his position in this litigation and section 26005.001 of the Secretary's Program Operations Manual System dealing with statutory blindness. The Secretary clearly interprets the statute to require a strict application of the statutory definition.

The Secretary's decision is supported by substantial evidence and is based on the application of a correct legal standard.

Affirmed.

[2] The Senate Report does not note that "[t]his definition of blindness is the definition in the Internal Revenue Code and is used by a number of governmental and private agencies." 1967 U.S.Code Cong. & Admin.News 2886. *See* I.R.C. 151(d)(3) (1982) (repealed in 1986; preceded by I.R.C. 25(b)(1)(C)(iii) (1948) and I.R.C. 25(y) (1944)). Prior interpretations of section 151(d)(3) or its predecessors might therefore be indicative of congressional intent because "[i]t is always appropriate to assume that our elected representatives, like other citizens, know the law * * *." *Cannon* v. *University of Chicago*, 441 U.S. 677, 696–97, 99 S.Ct. 1946, 1957–58, 60 L.Ed.2d 560 (1979). *See also Goodyear Atomic Corp.* v. *Miller*, 486 U.S. 174, 108 S.Ct. 1704, 1711–12, 100 L.Ed.2d 158 (1988); *Blitz* v. *Donovan*, 740 F.2d 1241, 1245 (D.C.Cir. 1984).

However, the only case dealing with the application of section 151(d)(3) or its predecessors to a visual impairment not meeting the strict statutory definition appears to be *Hollman* v. *Commissioner*, 38 T.C. 251 (1962). Although the holding in *Hollman* supports Adams' functional blindness interpretation generally, *id.* at 258, 262, it is not sufficient to provide a clear insight into legislative intent.

[FR Doc. 90-28548 Filed 11-8-90; 8:45 am]

BILLING CODE 4190-29-M

Social Security Ruling SSR 90-2c, Family Relationships—Recognition of Common-Law Marriage—Illinois

AGENCY: Social Security Administration, HHS.

ACTION: Notice of social security ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 90–2c. This Ruling, which is based on a Federal district court decision, concerns the law of Illinois regarding common-law marriages and the applicability of that law in a claim for widow's insurance benefits under title II of the Social Security Act.

EFFECTIVE DATE: November 9, 1990.

FOR FURTHER INFORMATION CONTACT: John W. Modler, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1713.

SUPPLEMENTARY INFORMATION:

Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings are based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivior's Insurance; 13.806—Special Benefits for Disabled Coal Miners; 13.807—Supplemental Security Income)

Dated: October 26, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Section 216(h)(1)(A) of the Social Security Act (42 U.S.C. 416(h)(1)(A)) Family Relationships—Recognition of Common-Law Marriage—Illinois

20 CFR 404.726

Lynch v. *Bowen*, 681 F. Supp. 506 (N.D. Ill. 1988)

The claimant applied for widow's insurance benefits on the deceased worker's earnings record. After the Secretary determined that the claimant was not the worker's widow and denied her application, the claimant sought judicial review in Federal district court, contending that she and the worker had contracted a valid common-law marriage. Applying section 216(h)(1)(A) of the Social Security Act (42 U.S.C. 416(h)(1)(A)), the district court considered whether the courts of the State of Illinois, the worker's domicile when he died, would hold that the claimant and the worker were married at the time of the worker's death. The evidence of record showed that the claimant and the worker were never

ceremonially married, that they lived together in Illinois and were domiciled there from 1946 until the worker's death on January 30, 1984, and that during their relationship they made brief trips to jurisdictions that recognize common-law marriages. In agreeing with the Secretary's interpretation of Illinois law, the district court held that Illinois law does not recognize common-law marriages that are (1) contracted within Illinois or (2) contracted by its domiciliaries based on brief sojourns or visits to jurisdictions that recognize common-law marriages. The court *further held* that, even if the domiciliaries were unaware that Illinois did not accept common-law marriages and they did not travel out of State with the intent of avoiding Illinois' prohibition, Illinois law would not recognize the common-law marriage. The district court affirmed the Secretary's decision that the claimant was not the worker's widow and, thus, was not entitled to widow's insurance benefits on the worker's earnings record.

SHADUR, District Judge:

Laura Lynch ("Lynch") seeks widow's insurance benefits, based on the earnings record of James Lynch ("James") [1] under part of the Old Age, Survivors and Disability Insurance program ("OASDI") embodied in Social Security Act ("Act") section 202(e), 42 U.S.C. 402(e).[2] When Lynch sought judicial review of a final decision by the Secretary of Health and Human Services ("Secretary") denying her claim, this Court issued a July 1, 1988 order remanding the case to Secretary for further consideration.

After a December 16, 1988 hearing, Administrative Law Judge ("ALJ") Irving Stillerman denied Lynch's application on March 17, 1987. When the Appeals Council affirmed the ALJ's decision July 10, 1987, Lynch renewed this action against Secretary under section 405(g).

Now the parties have filed cross-motions for summary judgment under Fed.R.Civ.P. ("Rule") 56. For the reasons stated in this memorandum opinion and order, Secretary's motion is granted and Lynch's is denied.

Facts [3]

Lynch, now 65, lived with James as wife and husband from 1946 until James' death on January 30, 1984. Lynches were never married in a formal ceremony, but Lynch insists they believed they were married under common law principles they thought the State of Illinois recognized. Lynches were domiciled in Illinois for their entire time together.

Lynches had three children and maintained a series of apartments together in Chicago. They introduced each other as husband and wife, signed various joint contracts and filed joint income tax returns. Lynch was also the beneficiary of James' life insurance policy.

During their time together Lynches took four trips outside the State of Illinois—trips now offered to establish a valid common law marriage. They took two trips to Pennsylvania, the first (in 1947) of about ten days' duration to visit Lynch's relatives and the second (in 1948) for about two or three days to investigate a possible business opportunity. Lynch also recalls a 1948 trip of three or four days' length to Alanta, Georgia, where James had an engagement as a musician in a band. Lynches also travelled with one of their daughters to Washington, DC for one week in 1965. On all those trips Lynches travelled and held themselves out as husband and wife. When staying in hotels they registered as a married couple.

History of Lynch's Claim

After James' death, Lynch applied for survivor's benefits under the Act on March 1, 1984. Her application was denied, originally and on reconsideration, on the basis that she was not James' widow under Illinois law. Lynch requested and obtained a hearing, held before ALJ James Drzewiecki on October 30, 1984. ALJ Drzewiecki's November 30, 1984 decision denied Lynch's application, finding (1) Lynches had lived solely in Illinois, (2) Illinois did not recognize common law marriages and (3) Lynch had not established a valid common law marriage in any other state (R. 5). On July 1, 1985 the Appeals Council declined to review the ALJ's decision, and Lynch initially sought judicial review here.

On Lynch's motion, this Court (as stated at the outset of this opinion) remanded the case for a determination whether Lynch had validly established her marriage under the laws of any sister state and the operative provisions of Illinois law for the recognition of foreign marriages. Lynch received her second hearing (that before ALJ Stillerman), then returned to this Court once Secretary's decision had become final.

Applicable Standards

Of course one precondition to the payment of widow's insurance benefits under the Act is the claimant's proof she was married to the insured individual at the time of his death. Section 416(h)(1)(A) contains the relevent definition of marriage:

> An applicant is the * * * widow * * * of a fully or currently insured individual for purposes of this subchapter if * * * the courts of the State in which he was domiciled at the time of death * * * would find that such applicant and such insured individual were validly married * * * at the time he died.[4]

Under Illinois law (James was domiciled here at his death) common law marriages contracted in Illinois after 1905 are invalid (Ill. Rev. Stat. ch. 40, ¶214). But the Illinois Marriage and Dissolution of Marriage Act (the "Illinois Act," enacted in 1977) also contains a provision for the recognition of foreign marriages (Ill. Rev. Stat. ch. 40, ¶213):[5]

> All marriages contracted * * * outside this State, that were valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted or by the domicile of the parties, are valid in this State, except where contrary to the public policy of this State.

Secretary's Decision

ALJ Stillerman's March 17, 1987 decision focused on the legal question whether Illinois courts would recognize Lynches as married at the time of James'

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[1] Laura and James Lynch will collectively be referred to as "Lynches."

[2] All further citations to provisions of the Act will take the form "Section—," referring to the Title 42 numbering rather than to the Act's internal numbering.

[3] This factual discussion is largely taken from Lynch's submissions to the Court. As befits a summary judgment motion, the facts must be viewed in the light most favorable to the non-movant on the successful motion—in this case Lynch (*DeValk Lincoln Mercury, Inc.* v. *Ford Motor Co.*, 811 F.2d 326, 329 (7th Cir. 1987)). Because this case turns solely on a question of law and the essential facts are not in dispute, no problem arises in this respect. However, this opinion's references to the record are limited as the result of an unfortunate misunderstanding as to the filing of documents in the Clerk's Office. Although government counsel properly filed the administrative record as it was developed following the July 1988 remand, that record did not find its way to the regular court file in the Clerk's Office. Accordingly, when this Court's law clerk began to prepare his draft opinion to submit for this Court's reworking and final preparation, he found no administrative record in the court file—and this opinion therefore had to be prepared solely in the basis of the parties' legal submissions. Given the nature of the dispute, however, that has had no impact whatever on the analysis or conclusions reached here.

[4] [Footnote by this Court] section 416(h)(1)(A) also states an individual shall be deemed a widow, even without a valid marriage, if the individual would have the status of a widow for the devolution of intestate personal property. Lynch has not claimed that status.

[5] All further references to the Illinois Act will take the form "Ill. Act § —." This use of the "§" symbol rather than "¶" conforms to the Illinois General Assembly's use of the former in the internal designation of legislation, while Smith-Hurd uses the latter in its statutory compilation.

death. After reviewing Lynch's testimony and the documentary evidence she submitted, the ALJ found Lynches were domiciled only in Illinois during their relationship and Illinois would not recognize a common law marriage contracted here (ALJ decision at 4). ALJ Stillerman then considered whether Illinois would recognize a common law marriage Lynches may have contracted during their visits to jurisdictions that accept such marriages. Although some other states might do so, the ALJ concluded Illinois law would not recognize a foreign common law marriage contracted by its own domiciliaries (*id* at 4–5).

ALJ Stillerman's decision concluded with the following findings (*id.* at 6):

> 4. The claimant and wage earner were, at all times during the years they lived together, domiciled in the State of Illinois, and the wage earner was domiciled in the State of Illinois at the time of his death.
>
> 5. The claimant and wage earner never went through a ceremonial marriage, valid or otherwise, were never domiciled in a state recognizing common-law marriage, were never validly married under Illinois law, and the claimant would not be found to be the widow or inherit as such by the courts of Illinois.
>
> 6. The claimant and wage earner could not and did not effectuate a validly contracted common-law marriage in any other jurisdiction or state.
>
> 7. The claimant is not the widow of the wage earner within the meaning of section 216(h)(1)(A) of the Social Security Act.

Those and ALJ Stillerman's other findings and conclusions were adopted by the Appeals Council, so the decision became Secretary's.

Lynch's Arguments

Lynch contends she and James established a valid common law marriage through their brief visits to the states of Pennsylvania and Georgia and the District of Columbia. Under the laws of each of those jurisdictions, a couple are married if they (1) have agreed with the present intent to form a marital relationship and (2) later hold themselves out in that state as married with any degree of cohabitation (see, e.g., *In re Estate of Gavula*, 490 Pa. 535, 540, 417 A.2d 168, 171 (1980)). Lynch says Illinois law, as codified in Ill. Act § 213, would recognize her foreign common law marriage.[6]

Illinois' Recognition of Foreign Common Law Marriages

At the outset it is profitable to identify which aspects of this inquiry are not in dispute. First, Lynches were Illinois domiciliaries throughout their relationship (Lynch Mem. 2). Illinois law thus governs whether they were married. Second, Illinois does not recognize common law marriages between its citizens when contracted within this state (Ill. Act § 214).

This case therefore turns on the interpretation of Ill. Act § 213, which governs Illinois' recognition of marriages that occur outside its jurisdiction.[7] This opinion will assume arguendo that Lynches did establish a common law marriage under the law of one or more of Pennsylvania, Georgia and the District of Columbia by thier visits.[8]

Nonetheless this Court concludes Illinois law would not recognize such a common law marriage contracted by Illinois domiciliaries in a foreign jurisdiction.

When the Illinois General Assembly enacted the Illinois Act in 1977, it was not writing on a clean slate. Illinois had prior statutory codifications governing marriages (see the pre-1977 Ill. Rev. Stat. ch. 89, ¶¶1 ff.) and considerable common law on the subject. Smith-Hurd's Historical and Practice Notes published with Ill. Act § 213 indicate the section was not meant to be a break with the past (S.H.A. ch. 40, ¶213, at 62–63):

> This section, although new to Illinois statutory law, continues the prior common law of this State.

At least three pre-Illinois-Act cases considered whether Illinois would recognize foreign common law marriages of its own domiciliaries—and all those cases gave a negative answer to that question.

Enoch involved Illinois domiciliaries who had spent approximately two weeks in Colorado, a trip offered to prove the existence of a common law marriage (52 Ill. App. 2d at 48–49, 201 N.E2d at 667). Enoch held Illinois' prohibition on common law marriages would follow its citizens to another state and therefore rejected the claimed common law marriage in Colorado (id. at 52–53, 201 N.E.2d at 669). In re Estate of Stahl, 13 Ill. App. 3d 660, 662–63, 301 NE.2d, 82, 83–84 (1st Dist. 1973) reached that same result, refusing to recognize a Texas common law marriage by a couple domiciled in Illinois.

One earlier case (though its discussion of the issue was dictum) is of particular significance, for reasons discussed later in this opinion. *Peirce* v. *Peirce*, 879 Ill. 185, 89 N.E.2d 900 (1942) upheld a Nevada common law marriage because the parties were Nevada domiciliaries during their one month spent together in that state (*id.* at 190–93, 39 NE.2d at 993).[9] In the course of its opinion, the Illinois Supreme Court distinguished the cases that later served as the underpinnings for *Enoch* and *Stahl (id.)*:

> The rule [that a common law marriage is void in Illinois, even if performed in some other jurisdiction] is limited to the situation where the parties whose marriage is sought to be upheld in Illinois were, at the time of the marriage, domiciled in Illinois, although the marriage occurred in another state.

Peirce, id. (citations omitted) confirmed both that rule and the controlling principle "that the marital

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[6] Lynch also alleged in her Amended Complaint before this Court that Secretary's denial of her benefits violated the Fifth Amendment's Equal Protection Clause (Amended Complaint ¶11). However, Lynch has not pursued that challenge and has not raised it as a defense to Secretary's summary judgment motion.

[7] Secretary's memorandum to this Court also emphasizes Ill. Act § 216, but it is seriously flawed in its analysis. Its repeated refrain (Secretary Mem. 6 (in two places), 7, 8, 9) is that Lynches' claimed common law marriage was "null and void" because it ran afoul of Ill. Act § 216:

> That if any person residing and intending to continue to reside in this state and who is disabled or prohibited from contracting marriage under the laws of this state, shall go into another state or country and there contract a marriage prohibited and declared void by the laws of this state, such marriage shall be null and void for all purposes in this state with the same effect as though such prohibited marriage has been entered into in this state.

That argument of course misses the obvious point that there was nothing at all that "disabled or prohibited [Lynches] from contracting marriage under the laws of this state": They were not (say) first cousins, who could not validly marry here (Ill. Act § 212) and would have to travel elsewhere to escape the taint of illegality. Had Lynches appeared before a judge or other person authorized to solemnize marriages in Illinois, they were perfectly competent to have regularized their relationship as an Illinois-recognized marriage. Thus Ill. Act § 216 is simply inapplicable to Lynches' situation. It may be that its statutory provision manifests the same kind of legislative attitude toward Illinois domiciliaries as the judicial attitude reflected in the case law discussed later in the text—a public policy against any change in Illinoisans' marital status by other jurisdictions if Illinois would not work the same change under the same circumstances. But Secretary is simply wrong in viewing Ill. Act § 216 as dispositive (or even applicable).

[8] Secretary Mem. 8 n. 9 does not altogether concede that a brief sojourn suffices to establish a common law marriage in those jurisdictions. This opinion need not reach that issue, because resolution of the case rests on Illinois' refusal to accept such a marriage in any event. However, it is worth nothing that while some states require more than a brief visit to establish a common law marriage there (see In re Estate of Enoch, 52 Ill. App. 2d 38, 53–54, 201 N.E.2d 662, 669–80 (1st Dist. 1964) (discussing Colorado law)), other states—including one at issue here—would find a common law marriage based on such limited contacts (see e.g., Renshaw v. Heckler, 787 F. 2d 50, 53 (2d Cir. 1986), holding New York would recognize a Pennsylvania common law marriage from periodic visits).

[9] In *Peirce*, *id.* the couple's *Illinois* sojourn was a temporary one ("No intention to make Illinois their residence appears from the record").

status is governed by the law of the State of domicile."

Lynch seeks to avoid the impact of all that earlier case law by arguing that Ill. Act section 213 incorporates a broader policy for the recognition of foreign marriages, including common law marriages. But what that section says is that all foreign marriages valid where executed will be valid in Illinois *except* where such recognition is "contrary to the public policy of this State." Thus the issue hinges on whether the purported marriage in this case violates Illinois public policy.[10]

Lynch relies heavily on a statement in the Historical and Practice Notes to Ill. Act § 213:

The public policy exception does not, however, apply to common law marriages.

But as the Appeals Council Decision at 2 pointed out, that statement must be taken in the larger context of the Historical and Practice Notes, which go on to say:

> Although common law marriages which are validly contracted in other states are considered contrary to Illinois public policy such marriages are recognized as valid in Illinois, unless contracted in evasion of Illinois law. *Peirce* v. *Peirce*, 379 Ill. 185, 39 N.E.2d 990 (1942); *Acklin* v. *Employees Benefit Ass'n*, 222 Ill. App. 369 (4th Dist. 1920). This does not alter the rule that common law marriages contracted in Illinois after June 30, 1905, are invalid. Section 214. See *Hewitt* v. *Hewitt*, 77 Ill. 2d 49, 394 N.E.2d 1204, 31 Ill. Dec. 827 (1979).

As the Appeals Council then noted (Decision at 3), the Notes' citation of *Peirce* in that context is significant. It plainly indicates the "marriages recognized as valid in Illinois" because "validly contracted in other states" are those foreign common law marriages contracted by *non-Illinois* domiciliaries. Despite Illinois' policy against such marriages, they will be recognized when couples later move to Illinois.[11] But the *Peirce*-confirmed policy against such marriages by *Illinois* domiciliaries cannot fairly be viewed as having been questioned—let alone changed—by the Notes.

Lynch makes a valiant effort to rebut that conclusion—but an effort lacking precedential support. Lynch R. Mem. 6 argues that Illinois' refusal to recognize foreign common law marriages contracted "in evasion of Illinois law" is intended to cover only "Illinois couples [who] were aware of Illinois law and *intended* to evade it in contracting a foreign marriage" (emphasis in original). Lynch says she and James were unaware that Illinois did not accept common law marriages and did not make their out-of-state trips with the intent of evading Illinois' prohibition.

That offered distinction finds no support in the case law. There is no indication Illinois courts would accept such a "pure heart" defense to the invalidation of such foreign marriages. True enough, the facts of cases such as *Stahl* and *Enoch* suggest the parties may have been aware of the Illinois ban on common law marriages. However, the discussion in those cases wholly ignores that element of the parties' intent. In fact, *Stahl* specified the narrow inquiry required to determine the validity of a foreign common law marriage (13 Ill. App. 3d at 682, 301 NE.2d at 83, after citing and quoting *Peirce* to the identical effect):

> Thus, we need only focus on the single issue of the domicile of the parties.

Peirce indeed focused solely on the parties' domicile, ignoring any issue of intent to violate Illinois law (379 Ill. at 190–93, 39 NE.2d at 993). Although the *Peirce* discussion of the grounds for invalidating foreign common law marriages could be considered dictum, it has been generally recognized as authority for the limitation on the recognition of foreign marriages (see, e.g., 26 I.L.P. *Marriages* § 5, at 211 & nn. 26–27).

Obvious difficulties would be created by Lynch's interpretation of Ill. Act § 213. Those problems would go beyond simply the encouragement of "forum shopping" acknowledged by Lynch R. Mem. 6. Courts interpreting Illinois law would have the daunting task of divining the intent and knowledge of those seeking to establish a common law marriage based on a "brief sojourn" theory. Such inquiries (almost invariably made long after the fact, and often with one of the "marital" partners already dead) would encourage self-serving statements of innocence and ignorance—with no objective means of either confirmation or impeachment. It is no accident that the fear of perjury played a significant part in leading the majority of states to prohibit common law marriages in the first place (see 52 Am.Jur.2d *Marriage* § 46 ("a fruitful source of perjury and fraud—to be tolerated and not encouraged")). Requiring such judicial inquiries would certainly undermine the stability and predictability of the property and personal relationships involved in marriages.

Secretary is also correct that the establishment of marriages by mere visits to appropriate jurisdictions could significantly erode Illinois' prohibition on common law marriages. Validity of those marriages would turn on the happenstance of which state a couple chooses to visit (however briefly). Illinois' continuing policy against establishing a legal marriage relationship without the required formalities was reconfirmed not only by the passage of the Illinois Act but by the post-Act decision in *Hewitt* rejecting mutual property rights between unmarried cohabitants. *Hewitt's* denial of the plaintiff's claim was based in part on the fear that recognition of the claim would have the practical effect of reinstating common law marriage, a prospect that had been clearly rejected by the General Assembly in adopting the Illinois Act (77 Ill.2d at 61–66, 394 NE.2d at 1209–11, 31 Ill.Dec. at 832).

In sum, this Court must agree with Secretary that Illinois would not recognize the existence of a common law marriage based on brief stays by Illinois domiciliaries in a state that permits such marriages. Secretary is thus correct in finding Lynch was not James' widow for purposes of entitlement to OASDI benefits.

Conclusion

This Court's role is limited to determining whether Secretary's reading of Illinois law was correct. On that score the Illinois General Assembly and courts have spoken with a clear voice, deciding that (1) common law marriages cannot be established in Illinois and (2) the State will not recognize such marriages contracted elsewhere by its own citizens. It is not for this Court to question whether the course pursued by Illinois law is the correct one in a policy sense or whether Congress is correct to defer to that policy for the eligibility determination for Social Security benefits in this case. Under the law as it stands, Lynch is not eligible for widow's insurance benefits.

There is no genuine issue of material fact (in the outcome-determinative sense), and Secretary is entitled to a judgment as a matter of law. Lynch's motion for summary judgment is denied, and Secretary's motion for summary judgment is granted. This action is dismissed.

[FR Doc. 90-26552 Filed 11-8-90; 8:45 am]
BILLING CODE 4190-29-M

[10] Lynch R. Mem. 5 places great emphasis on the notes of the Commissioners on Uniform Laws to section 210 of the Uniform Marriage and Divorce Act, on which Ill. Act section 213 was based. That analogy is of limited use, however, and may even cut the other way. Illinois' express public policy exception to the recognition of foreign marriages is not contained in the Uniform Act. It is familiar doctrine (and common sense) that such substantial changes in language from a uniform law carry with them intended changes in meaning. Because the legislature has mandated that Illinois public policy will specifically override the full-faith-and-credit approach of Uniform Act section 210, the commentaries on the latter cannot carry the day against evidence of a contrary Illinois public policy.

[11] As for the two other cases cited in the quoted excerpt from the Notes, *Acklin* involved the validity in Illinois of a common law marriage contracted by Missouri residents in Missouri (222 Ill. App. at 373), while *Hewitt* concerned property rights potentially acquired between unmarried cohabitants (and is discussed later in the text of this opinion).

[Social Security Ruling SSR 90-6]

Representative Payee—Disappearance of Beneficiary—Restriction Against Payment of Benefits to Conservator

AGENCY: Social Security Administration, HHS.

ACTION: Notice of social security ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 90–6. This Ruling, which is based on an opinion of the Office of the General Counsel, concerns the legality of paying benefits to the court-appointed conservator of a beneficiary who has disappeared.

EFFECTIVE DATE: November 9, 1990.

FOR FURTHER INFORMATION CONTACT: John W. Modler, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1713.

SUPPLEMENTARY INFORMATION:

Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings are based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

In accordance with 20 CFR 422.416, all references to individuals or specific businesses involved have been deleted from the Ruling so as not to disclose confidential information, unless this information is already a matter of public record.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivor's Insurance; 13.806—Special Benefits for Disabled Coal Miners; 13.807—Supplemental Security Income)

Dated: October 23, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Sections 205(j) and 207 of the Social Security Act (42 U.S.C. 405(j) and 407) Representative Payee—Disappearance of Beneficiary—Restriction Against Payment of Benefits to a Conservator

20 CFR 404.2001

After a beneficiary disappeared, the Social Security Administration (SSA) suspended her benefits. A State court then appointed the beneficiary's son as her conservator, and issued an order giving the conservator full power and authority to take possession of and hold all property of the beneficiary. On the basis of this appointment and the court's order, the son requested SSA to pay his mother's benefits to him on her behalf. The Secretary, however, is not bound by a decision of a State court in a proceeding to which he was not a party, and need not consider the adjudication of such a court if, as in this case, an issue was not genuinely contested before it by parties with opposing interests. Moreover, according to section 207 of the Social Security Act (the Act), the right to receive benefits cannot be assigned or transferred and shall not be subject to any form of legal process. Generally, the payment of benefits to someone other than a beneficiary is appropriate, as authorized by section 205 of the Act and provided in 20 CFR 404.2001, if the beneficiary is not able to manage or direct the management of benefit payments in his or her interest. There is no legal authority, however, for making representative payment if the beneficiary has disappeared. Therefore, the beneficiary's son had no grounds for attempting to compel SSA to pay his mother's benefits to him on her behalf. *Held*, under the circumstances in this case, the Secretary was justified in suspending the beneficiary's benefits until such time as her status or whereabouts have been determined.

A question has been raised as to whether a conservator appointed under State law can compel SSA to pay to him the benefits due a beneficiary who has disappeared and whose present whereabouts are unknown.

The beneficiary was 60 years old when she disappeared on July 27, 1987. She has not been seen by or been in contact with her relatives since the date of her disappearance. There has been no determination by any State or Federal Agency that the beneficiary is dead. The beneficiary's benefit checks dated August 5, 1987, September 3, 1987, October 3, 1987, and November 3, 1987, were cashed subsequent to her disappearance, although it appears that the beneficiary's signature was forged on these benefit checks.

The beneficiary's son was appointed as conservator of the estate and property of the beneficiary on December 7, 1988. By order of the Circuit Court of Escambia County, Florida, he was given full power and authority to take possession of and to hold all property of the missing beneficiary. Benefit payments were suspended when SSA became aware of the beneficiary's disappearance.

The State court order is the son's apparent authority for his belief that he can receive benefits on behalf of his mother. However, the Secretary is not bound by a decision of a State court in a proceeding to which he was not a party, and need not consider the adjudication of such a court if, as in this case, an issue was not genuinely contested before it by parties with opposing interests. SSR 83–37c (C.E. 1981–1985, p. 37) adopting *Gray* v. Richardson, 474 F.2d 1370 (6th Cir. 1973); *Cain* v. *Secretary of Health, Education, and Welfare*, 377 F.2d 55 (4th Cir. 1967); *Cruz* v. *Gardner*, 375 F.2d 453 (7th Cir. 1967), *cert. denied*, 389 U.S. 886 (1967). Further, subject to exceptions which are not applicable here, section 207 of the Act, 42 U.S.C. 407, specifically provides that the right to receive benefits cannot be assigned or transferred and shall not be subject to any legal process.

The payment of benefits is personal to the beneficiary. The payment of benefits to anyone other than the entitled individual is governed by the representative payee provisions of section 205 of the Act and 20 CFR 404.2001 *et seq*. Generally, representative payment is appropriate if the beneficiary is not able to manage or direct the management of benefit payments in his or her own interest. 20 CFR 404.2001. There is no authority for making representative payment if the beneficiary has disappeared or is believed to be deceased. If the subject beneficiary is deceased as her son suspects, no benefits are payable on her behalf effective with the month of her death.

Under the circumstances in this case, the Secretary was justified in suspending the beneficiary's benefits until such time as her status or whereabouts have been determined. Accordingly, the beneficiary's son had no legal basis for attempting to compel SSA to pay his mother's benefits to him on her behalf.

[FR Doc. 90-26550 Filed 11-8-90; 8:45 am]
BILLING CODE 4190-29-M

[Social Security Ruling SSR 90-4a]

Supplemental Security Income—Unearned Income—Value of Lodging Furnished for Employer's Convenience on Employer's Premises as a Condition of Employment

AGENCY: Social Security Administration, HHS.

ACTION: Notice of social security ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 90-4a. This Ruling is based on a decision made by the Appeals Council of the Social Security Administration. It provides that the value of lodging furnished by an employer to an employee for the employer's convenience on the employer's premises as a condition of employment constitutes unearned income for supplemental security income payment purposes.

EFFECTIVE DATE: November 9, 1990.

FOR FURTHER INFORMATION CONTACT: John W. Modler, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1713.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings are based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

In accordance with 20 CFR 422.418, all references to individuals or specific businesses involved have been deleted from the Ruling so as not to disclose confidential information, unless this information is already a matter of public record.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivor's Insurance; 13.806—Special Benefits for Disabled Coal Miners; 13.807—Supplemental Security Income)

October 28, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Sections 209(r) and 1612(a) of the Social Security Act (42 U.S.C. 409(r) and 1382a(a)) Supplemental Security Income—Unearned Income—Value of Lodging Furnished for Employer's Convenience on Employer's Premises as a Condition of Employment

20 CFR 404.1043(b), 416.1110(a), 416.1120, and 416.1140

The claimant, a supplemental security income recipient, lives in an apartment which rents for $550 per month. She pays only $350. The landlord, a property management company, stated that the claimant pays a reduced rent because she collects rent payments from the other tenants in the apartment complex. The property manager, her employer, requires the claimant to reside at the apartment complex to perform the rent collection services. Held: The $200 is unearned in-kind income because it is not wages for the Social Security retirement program's earnings test, and, thus, is not earned income under 20 CFR 416.1110(a). Accordingly, the presumed value rule (20 CFR 416.1140) applies in calculating the claimant's supplemental security income.

The issue before the Appeals Council is whether the $200 reduction in rent the claimant receives as the apartment rent collector is earned or unearned income for purposes of calculating her supplemental security income benefits.

In late 1987, the Social Security Administration notified the claimant, a supplemental security income recipient, that it intended to decrease the amount of her monthly supplemental security income payment under the "presumed value rule" at 20 CFR 416.1140 because she was paying less than fair market value for her apartment. The claimant disagreed with the finding. She stated that her monthly rent was $350 rather than the usual $550 because she collects rents from the other tenants for the property manager.

The Administrative Law Judge found that the $200 per month in-kind income was earned income subject to the earned income exclusions.

The Appeals Council does not adopt the findings and conclusions of the Administrative Law Judge.

Subsequent to the Administrative Law Judge's decision, the Apeals Council received information from the property manager confirming that the claimant had resided at her present address since November 1987 and that she pays $200 less in rent because of her rent collection services. The property manager's office stated that the claimant is required to reside on the premises to perform the rent collection duties and that this is an employer-employee relationship.

The regulations at 20 CFR 416.1110(a) state that wages for supplemental security income purposes are the same as wages for the Social Security retirement program's earnings test. Wages for the earnings test, with some limited exceptions which do not apply here, are the same as wages for the purpose of Social Security coverage. The Social Security Act, section 209 (42 U.S.C. 409), and regulations at 20 CFR 404.1043(b) exclude from wages the value of employer-furnished lodging, if, as pertinent in the claimant's case, the lodging is furnished on the employer's business premises for the convenience of the employer and the employee is required to accept lodging on the employer's business premises as a condition of employment. Thus, the $200 value in lodging is not in-kind earned income under 20 CFR 416.1110(a).

Pursuant to the Social Security Act, section 1612(a)(2) (42 U.S.C. 1382a(a)(2)), and the regulations, 20 CFR 416.1120, income which is not earned income is unearned income. Accordingly, the Appeals Council finds that the $200 value of lodging the claimant reveives is in-kind unearned income, and that the presumed value rule set forth at 20 CFR 416.1140 applies in calculating the claimant's supplemental security income montly payment rate.

[FR Doc. 90-28551 Filed 11-8-90; 8:45 am]
BILLING CODE 4190-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-1917; FR-2506-N-07]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: November 9, 1990.

ADDRESS: For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal Buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: November 1, 1990.

Audrey E. Scott,

Deputy Assistant, Secretary for Program Development.

[FR Doc. 90-28357 Filed 11-5-90; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-202-00-4120-09]

Availability of Final Bull Mountains Exchange Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the final bull mountains exchange environmental impact statement.

SUMMARY: In accordance with section 202 of the National Environmental Policy Act of 1969, a Final Environmental Impact Statement (EIS) has been prepared for the proposed Bull Mountains exchange of selected federal coal lands for high-value recreation and wildlife private lands offered by Meridian Minerals Company. The EIS describes an analyzes the proposed exchange (BLM's preferred alternative) as well as a coal-for-coal alternative, a leasing alternative and a no-action alternative. The Peabody coal-for-coal alternative was dropped from consideration. The EIS addresses the impacts of development of the coal as a small room and pillar underground mine producing 0.5 million tons of coal per year. A 3.0. million tons of coal per year longwall underground mine is analyzed as the maximum development scenario. A generic railroad to haul to the coal is also addressed.

ADDRESSES: Copies of the EIS will be available at each public library located in Musselshell, Yellowstone, Rosebud, Madison, Custer, Beaverhead, Deer Lodge and Carbon counties. In addition, copies will be available at libraries in Billings, Worden, Butte, Ennis, Colstrip, Forsyth, Helena, Miles City and Roundup. Copies will be available upon request from the Miles City District Office, P.O. Box 940, Miles City, Montana, 59301; telephone (406) 232-4331. Public reading copies will available for review at the following BLM locations:

Bureau of Land Management, Office of External Affairs, Main Interior Building, room 5600, 18th and C Streets, NW., Washington, DC 20240
Bureau of Land Management, Office of External Affairs, Montana State Office, 222 North 32nd Street, Billings, Montana 59107
Bureau of Land Management, Miles City District Office, West of Miles City, Miles City, Montana 59301
Bureau of Land Management, Butte District Office, 106 North Parkmont, Butte, Montana 59702
Bureau of Land Management, Dillon Resource Area, Obey Building, Dillon, Montana 59725
Bureau of Land Management, Garnet Resource Area, 3255 Fort Missoula Road, Missoula, Montana 59801
Bureau of Land Management, Billings Resource Area, 810 East Main Street, Billings, Montana 59105.

Background information and maps used in developing EIS are available at the Montana State Office, the Miles City and Butte District Offices, and the Big Dry, Billings, Headwaters and Dillon Resource Area Offices.

DATES: A public hearing will be held on November 27, 1990 at 7 p.m. at the Central School Multipurpose Room, Sixth Avenue and Second Street, Roundup, Montana. The purpose of the public hearing will be to receive public comment on the public interest factors of the proposed exchange. Individuals wishing to testify may be limited time-wise to insure all parties are afforded an opportunity to speak.

FOR FURTHER INFORMATION CONTACT: Bill Matthews, Project Manager, Miles City District Office, P.O. Box 940, Miles City, Montana 59301, telephone: (406) 232-7000.

SUPPLEMENTARY INFORMATION: Changes based on public comments and concerns have been incorporated into the Final EIS. Written comments and oral comments from the public meetings and the Bureau of Land Management's responses to these comments are presented in chapter 5 of the EIS. Revisions were made to the "Hydrology", "Subsidence", and "Socioeconomics" sections for the selected coal lands. The resource sections for the "offered lands" have also been expanded. The priority 4 offered lands in Custer County that were inadvertently sold by Glacier Park Company have been replaced by additional lands in Carbon County. The Peabody coal-for-coal alternative has been dropped from consideration. The Final EIS incorporates all changes and revisions to the Draft EIS and has been printed in its entirety.

The Final EIS analyzes the proposed action, *i.e.*, the exchange of selected Federal coal lands to Meridian Minerals Company for high-value recreation and wildlife offered lands. The proposed action is BLM's preferred alternative. A coal-for-coal exchange alternative, a leasing alternative, and a no-action alternative are also addressed.

The proposed action (Preferred-Alternative A) is to exchange 3,674.36 acres of BLM administered federal coal for 9,873.2 acres of high-value recreation and wildlife lands offered by Meridian Minerals Company. The federal coal reserves in the exchange application total 54.5 million tons of which 43.6 million tons are recoverable by a longwall mining operation and 27.3 million tons are recoverable by a room-and-pillar mining operation. The fair market value of the federal coal is $730,000. In return for the federal coal under consideration for exchange, BLM selected priority acquisition and replacement lands with a fair market value of $1,148,700. These lands have a minimum value that BLM would accept in an exchange for the federal coal.

BEST COPY AVAILABLE

Under the mirror image coal-for-coal exchange (Alternative B), the federal and Meridian coal in the project area would be split into two logical mining units of approximately equal size and value. Meridian would get one unit, BLM would get the other unit. About 32.7 million tons of in-place federal coal in the southern half of the projected area would be exchanged for 30.5 million tons of in-place Meridian coal in the northern half of the project area. This alternative would provide a block of private coal of 70.8 million tons in the south half and a block of federal coal of 60.2 million tons in the north half.

Under the leasing alternative (Alternative C), BLM evaluated the federal coal being considered for exchange as well as some state and other federal coal lands. The federal coal being considered for exchange could be leased competitively. Since the Coal Production Region is now decertified, leasing could occur through the lease-by-application process.

Current market conditions indicate that the Bull Mountains coal would not become economically feasible for development until market conditions approached a $20 to $30 minimum selling price (1990 dollars). This would not occur until twenty to forty years in the future. Using a mid range of these values ($25 and 2020), royalty stream flows were calculated. A 0.5 million tons of coal underground mine would generate $13,367,592 in royalty payments over a forty year period with a discounted value of $176,941 (1990 dollars). A 3.0 million tons of coal underground mine would generate $76,622,000 in royalty payments over the forty year period with a discounted value of $1,008,208 (1990 dollars).

If BLM were able to lease the federal coal immediately and it was developed with a $15 sale price, a 0.5 million tons of coal per year underground mine would generate $7,985,628 in royalty payments over the forty year period with a discounted value of $1,676,763 (1990 dollars). A 3.0 million tons of coal per year underground mine generates $45,773,000 in royalty payments over the same forty year period with a discounted value of $9,554,192 (1990 dollars).

The No Action (Alternative D) would continue present management as it exists now for all the lands. It is in essence a two-part no action alternative, *i.e.*, denial of the exchange(s) and denial of leasing. There would be no development of the federal coal under this alternative.

Should BLM deny the exchanges, the Bull Mountains federal coal lands included in the exchange application would remain in public ownership and would not be developed in the foreseeable future. The offered recreational properties would remain in private ownership as would the private coal.

Should BLM deny leasing in the Bull Mountains, the federal coal lands would still remain in public ownership for development by future generations. There would be no immediate coal development unless it was done on private coal lands.

A comparison of the net revenues generated by Alternatives A (exchange) and C (leasing) for the three million-ton mine scenarios shows Alternative A would generate $291.3 million in total net revenues to all levels of government through the year 2025. Alternative C would generate $564 million in total net revenues through the year 2054. However, the mine in Alternative C would not begin until 2020 so the net revenues must be discounted over a much longer period of time than those in Alternative A. The present value of the net revenues discounted to 1990 are $84.7 million for Alternative A and $7.6 million for Alternative C.

Public participation has occurred throughout the EIS process. A Notice of Intent to conduct scoping and prepare an EIS was filed in the **Federal Register** in May 1988. Public meetings for comment on the Draft EIS were held in Noember and December 1989 in Roundup, Billings, and Butte, Montana. Over 600 written comments on the Draft EIS were received. The Final EIS concludes BLM evaluation of the proposed exchange and alternatives. A decision will be made after 30 days and recorded in a Record of Decision which will be made available to the public.

Sandra E. Sacher,

Associate District Manager, Miles City District.

[FR Doc. 90-25709 Filed 11-8-90; 8:45 am]

BILLING CODE 4310-84-M

[ID-020-01-4760-02]

Burley District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting for Burley District Advisory Council.

SUMMARY: Notice is hereby given that the Burley District Advisory Council will meet on December 5, 1990. The meeting will convene at 9 a.m. in the Conference room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho.

Agenda items are: (1) District Budget Process (2) Challenge Cost Sharing Process (3) Update on Murtaugh/Minidoka/German Lake Hazardous Material Sites (4) Forestry Program Report (5) District Normal Year Fire Rehab. Plan (6) District Volunteer Program (7) Goose Creek Allotment Riparian Update and Recommendations.

The meeting is open to the general public. The comment period for persons or organizations wishing to make oral statements to the Council will begin at 11 a.m. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Route 3, Box 1, Burley, Idaho 83318, prior to the start of the meeting. Depending upon the number of persons wishing to make statements, a per time limit may be established by the District Manager. Written statements may also be filed.

Minutes of the Council meeting will be maintained in the District Office and will be available for public inspection during regular business hours.

DATES: December 5, 1990.

ADDRESSES: Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: Gerald Quinn, Burley District Manager, (208) 678-5514.

Dated: November 2, 1990.

Gerald L. Quinn,

District Manager.

[FR Doc. 90-26540 Filed 11-8-90; 8:45 am]

BILLING CODE 4310-GG-M

[NV-930-91-4212-11; Nev-051093]

Reconveyance of Title and Order Providing for Opening of Lands; Nevada

October 31, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management has accepted title to the land described below. The land will be opened to the public land laws, including the mining laws. The land has been and will remain open to mineral leasing.

DATES: December 10, 1990.

ADDRESSES: Comments should be addressed to the State Director, Bureau of Land Management (NV-943.2), P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 702-785-6526.

The following described land was transferred to Humboldt County on November 19, 1962, for park purposes pursuant to the Recreation and Public Purposes Act, as amended. The County determined that the land could not be developed in accordance with the plan of development and quitclaimed the land back to the United States on November 16, 1987:

Mount Diablo Meridian

T. 37 N. R. 36 E.,
Sec. 16, NW¼, W½NE¼.

The United States has accepted title to the above described land. Said land regained public land status on October 29, 1990.

At 10 a.m. on December 10, 1990, the land will be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on December 10, 1990, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on December 10, 1990, the land will be open to location and entry under the United States mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The land has been and will remain open to mineral leasing.

Fred Wolf,

Acting State Director.

[FR Doc. 90-26541 Filed 11-8-90; 8:45 am]

BILLING CODE 4310-HC-M

[E-930-1-4212-13; MTM 59144]

Order Providing for Opening of Public Land to Mineral Leasing in Missoula and Granite Counties, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open to applications and offers the leasable mineral estate on certain lands that were reconveyed to the United States in an exchange that was completed on April 9, 1987, under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. (FLPMA). The oil and gas rights were reserved to the Grantors in the exchange until the existing private lease expired or was terminated. That lease has expired.

EFFECTIVE DATE: January 9, 1991.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

Opening

At 9 a.m. on January 9, 1991, the leasable mineral estate for the following described lands will be opened to applications and offers under the mineral leasing laws. The lands are already open to the operation of the public land laws and the mining laws.

Principal Meridian, Montana

T. 12 N., R. 15 W.,
Sec. 1, E½SW¼, W½SE¼;
Sec. 12, NW¼NE¼, NW¼, NE¼SW¼, W½SW¼; and
Sec. 13, W½NW¼.

Aggregating 560 acres.

Dated: October 29, 1990.

John E. Moorhouse,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 90-26490 Filed 11-8-90; 8:45 am]

BILLING CODE 4310-DN-M

[AZ-020-4212-12; Serial No. AZA 23606]

Realty Action; Gila and Salt River Meridian, AZ

The following described public land under the administration of the Bureau of Land Management has been determined to be suitable for disposal through exchange under section 206 of the Federal Land and Policy Act of 1976, 43 U.S.C. 1716.

Selected Land

Gila and Salt River Meridian, Arizona

T. 15 N., R. 19 E.,
Sec. 14, all.
T. 5 N., R. 19 W.,
Sec. 2, lots 1-4, incl., S½N½, S½.
T. 10 N., R. 16 W.,
Sec. 2, N½N½NE¼.
T. 6 S., R. 23 E.,
Sec. 31, lots 1-7, incl., NE¼, E½NW¼, NE¼SW¼, N½SE¼.
T. 7 S., R. 23 E.,
Sec. 2, lots 1-4, incl., S½NE¼, N½SW¼NW¼, SE¼NW¼;
Sec. 6, lots 1-6, incl., SW¼NE¼, SE¼NW¼.
T. 14 S., R. 27 E.,
Sec. 16, SE¼NE¼.
T. 14 S., R. 31 E.,
Sec. 2, lots 3 & 4, S½NW¼, SW¼.
T. 14 S., R. 32 E.,
Sec. 19, N½NE¼.
Sec. 20, N½.

3,286.34 acres.

In exchange, the Bureau of Land Management will receive the following described lands from the State of Arizona:

Offered Land

Gila and Salt River Meridian, Arizona

T. 18 N., R. 20 E.,
Sec. 20, all.
Sec. 28, all.
T. 9 N., R. 9 W.,
Sec. 32, lots 1-10, incl., E½NE¼, NW¼NW¼, SW¼SW¼, E½SE¼, SW¼SE¼.
T. 31 N., R. 11 W.,
Sec. 2, S½N½, N½SW¼, SW¼SW¼, SE¼.
T. 33 N., R. 12 W.,
Sec. 32, all.
T. 33 N., R. 13 W.,
Sec. 2, lots 1-4, incl., S½N½, S½.
T. 34 N., R. 12 W.,
Sec. 32, all.
T. 7 S., R. 25 E.,
Sec. 24, that portion lying north of the golf course road.

4,194.40 acres.

The lands transferred from the United States will be conveyed subject to the following reservations:

AZA 006585, a federal aid highway and a reservation of rights-of-way for ditches and canals to the United States, pursuant to the Act of August 30, 1890.

Publication of this notice shall segregate the subject lands from operation of the public land laws, including mining laws, (except for mineral leasing) for a period of two years. This segregation will terminate in two years or when a deed or patent is issued. More detailed information may be obtained from the Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 850027. For a period of 45 days from the date this notice is published in the **Federal Register**, interested parties may submit comments to the Phoenix District Manager at the address listed above. Any adverse comments will be reviewed by the State Director, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Bureau of Land Management.

Dated: November 2, 1990.

Charles R. Frost,

Associate Manager.

[FR Doc. 90-26491 Filed 11-8-90; 8:45 am]

BILLING CODE 4310-32-M

[M-74913; MT-020-4212-21]

Realty Action; Lease in Big Horn County, MT

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Noncompetitive lease of public land in Big Horn County, Montana.

SUMMARY: The following described lands have been examined and identified as suitable for leasing under section 302 of the Federal Land Policy and Management Act (43 U.S.C. 1732) at not less than fair market value:

Principal Meridian

Big Horn County

T. 8 S., R. 39 E.,
Section 22, NESW.
Containing 40 acres.

The purpose of this lease is to authorize the use of public land for stockpiling of topsoil and overburden, construction of a haul road and for drainage control. Lease M-74913 will be offered noncompetitively to Spring Creek Coal Company as the land is adjacent to the Spring Creek coal mine operation. The proposed lease will provide authorized surface use of the public land.

The terms, conditions and reservations of the lease are:

1. The lease will run for a 20-year period to be further evaluated upon expiration.
2. The lands will be leased subject to all valid existing rights of record.
3. All the coal, oil, gas, geothermal and other mineral deposits are reserved together with the right to enter upon the land and prospect for, mine and remove such materials.
4. The United States reserves the right to issue rights-of-way or use permits over the area. Such uses, however, shall not unduly impair the use of such lands for authorized improvements therein.
5. The United States reserves the right to use the public lands or authorize use of the public lands by the general public in any way compatible or consistent with the use authorized by this lease.

DATES: On or before December 24, 1990, interested parties may submit comments to Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301. Any adverse comments will be evaluated by the BLM Montana State Director, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Bureau.

FOR FURTHER INFORMATION CONTACT: Pam Loomis, Powder River Resource Area, Miles City, Montana 59301, telephone 406 232-7000.

Dated: October 30, 1990.

Sandra E. Sacher,

Associate District Manager.

[FR Doc. 90-26492 Filed 11-8-90; 8:45 am]

BILLING CODE 4310-DN-M

[ID-942-01-4730-12]

Idaho: Filing of Plats of Survey; Idaho

The plats of survey of the following described land, will be officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., December 14, 1990.

The plat representing the dependent resurvey of portions of the east and north boundaries and subdivisional lines, and the subdivision of section 1, T. 2 S., R. 37 E., Boise Meridian, Idaho, Group No. 788, was accepted October 24, 1990.

The plat representing the dependent resurvey of portions of the north boundary, subdivisional lines, and original meanders of the right bank of the Blackfoot River, and the subdivision of certain sections, T. 2 S., R. 38 E., Boise Meridian, Idaho, Group No. 788, was accepted October 24, 1990.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries and/or protests concerning the technical aspects of the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: October 31, 1990.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 90-26539 Filed 11-8-90; 8:45 am]

BILLING CODE 4310-GG-M

[OR-933-01-4332-09; GP1-014]

Public Review Period for USGS/USBM "Mineral Survey Reports" Prepared for BLM Wilderness Study Areas; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Oregon Bureau of Land Management (BLM) is requesting public review of U.S. Geological Survey (USGS) and U.S. Bureau of Mines Open-File Reports for the following Wilderness Study Areas (WSAs). These WSAs have been preliminarily recommended suitable for inclusion into the National Wilderness Preservation System:

1. Diablo Mountain (OR-1-58), Lake County, Oregon (USGS Open-File Report 90-0513);
2. Gold Creek (OR-3-33) and Sperry Creek (OR-3-35), Malheur County, Oregon (USGS Open-File Report 90-0517);
3. Blue Canyon (OR-3-73) and Owyhee Breaks (OR-3-59), Malheur County, Oregon (USGS Open-File Report 90-0514);
4. Lower Owyhee Canyon (OR-3-110), Malheur County, Oregon (USGS Open-File Report 90-0515);
5. Bad lands (OR-5-21), Crook and Deschutes Counties, Oregon (USGS Open-File Report 90-0511);
6. Soda Mountain (OR-11-17), Jackson County, Oregon (USGS Open-File Report 90-0519).

If the public provides a new interpretation of the data presented in the mineral reports or submits new mineral data for consideration, BLM will send these comments to the USGS. Significant new findings, if any, will be documented in the BLM "Wilderness Study Report" which will be reviewed by the Secretary, the President, and by Congress before final decisions on wilderness designation are made.

Copies of the mineral survey reports are available for review in BLM offices in Portland, Salem, Eugene, Roseburg, Medford, Coos Bay, Lakeview, Burns, Prineville, Vale, and Spokane. These copies are not available for sale or removal from BLM offices. Copies, however, may be purchased from the following address: Books and Open-File Report Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225 (303) 236-7476. Payment by check or money order must accompany all orders.

DATES: The public review of the mineral survey reports named in this notice shall conclude on December 28, 1990.

ADDRESSES: Send comments and information to: State Director (920), BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Eric Hoffman, Division of Mineral Resources at (503) 280-7099 or David Harmon, Division of Lands and Renewable Resources at (503) 280-7062, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, directed the Secretary of Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitabilty or non-suitability of each area for preservation as wilderness. The USGS and US Bureau of Mines (USBM) are charged with conducting mineral surveys for areas that have been preliminarily recommended suitable by BLM for inclusion into the wilderness system to determine the mineral values, if any, that may be present in such areas.

There are about 2.8 million acres of Wilderness Study Areas identified by BLM in Oregon, of which about 1.3 million acres have been preliminarily recommended as suitable. These 6 reports are part of 35 mineral survey reports that have been prepared by USGS and USBM. One additional mineral survey report will be available for public review in the future.

The BLM Oregon State Director is providing this public review and comment period in order to insure that all available minerals data are considered by Congress prior to making its final wilderness suitability decisions. BLM will review the public comments and will forward to USGS/USBM any significant new minerals data or new interpretations of the minerals data submitted by the public.

The information requested from the public via this invitation is not limited to any specific energy or mineral resource. Comments should be provided in writing and should be as specific as possible and include:

1. The name and number of the subject Wilderness Study Area and USGS/USBM Mineral Survey Report;
2. Mineral(s) of interest;
3. A map or land description by subdivision of the public land survey grid or protracted surveys showing the specific parcel(s) of concern within the subject Wildnerness Study Area;
4. Inforamtion and documents that depict the new data or reinterpretation of data;
5. The name, address, and phone number of the person who may be contacted by technical personnel of the BLM, USGS, or USBM assigned to review the information.

Dated: October 24, 1990.

Eric G. Hoffman,

Acting Deputy State Director for Mineral Resources.

[FR Doc. 90-26543 Filed 11-8-90; 8:45 am]

BILLING CODE 4310-33-M

[ID-943-01-4214-11; IDI-9110]

Proposed Continuation of Withdrawal, Correction; Idaho

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: This notice will correct two errors in the land description for a notice of proposed continuation of withdrawal for the Lost Valley Progeny Test Area.

EFFECTIVE DATE: April 5, 1989.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1720.

The land description in the notice of proposed continuation of withdrawal published on April 5, 1989, page 13748, for the Lost Valley Progeny Test Area is hereby corrected as follows: The fifth line after "Payette National Forest" is corrected to read "SE¼;" and the eighth line is corrected to read "Sec. 20, SW¼NW¼NE¼NW¼, SW¼NE¼".

Dated: October 30, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-26494 Filed 11-8-90; 8:45 am]

BILLING CODE 4310-GG-M

[MT-930-1-4214-11; MTM 79549, MTM 044188, MTM 060295, and MTM 012788]

Proposed Continuation of Withdrawals; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that the withdrawal of 416.28 acres of National Forest System (NFS) lands withdraw for recreation acreas and an administrative site continue for an additional 20 years. Those lands closed to operation of the general land laws will be opened to such forms of disposition as may by law be made of NSF lands. The lands will remain closed to mining, but have been and would remain open to mineral leasing.

EFFECTIVE DATE: Comments should be received on or before February 7, 1991.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

SUPPLEMENTARY INFORMATION: The U.S. Forest Service proposes that the existing withdrawals of NFS lands identified below be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714. The lands are described as follows:

Principal Meridian

Custer National Forest

[MTM 012788—PLO 1843]

Woodbine Campground

T. 5 S., R. 15 E.,
Sec. 32, E½SW¼, SW¼NW¼SE¼, NW¼SW¼SE¼.

[MTM 044188—PLO 3625]

Woodbine Campground

T. 5 S., R. 15 E.,
Sec. 32, SW¼SE¼NE¼, NE¼SE¼, SE¼NW¼SE¼, NE¼SW¼SE¼, N½SE¼ SE¼.

Lolo National Forest

[MTM 79549—S.O. 12-7-07]

Rock Creek Ranger Station

T. 8 N., R. 17 W.,
Sec. 27, unsurveyed tract.

[MTM 06029—PLO 3403]

Cascade Camp Recreation Area

T. 18 N., R. 25 W.,
Sec. 19, lots 7 and 8.

The areas described aggregate 416.28 acres in Stillwater, Sanders, and Granite Counties.

The withdrawals are essential for protection of the recreation areas and administrative site involved. The withdrawals segregate the lands from operation of the mining laws, but not the mineral leasing laws, and some of the lands are closed to operation of the general land laws. The Forest Service requests no change in the purpose or segregative effect of the withdrawals except that those lands closed to operation of the general land laws be opened.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Chief, Branch of Land Resources, at the address listed above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be condinued and, if so, for how long. The final determination on the continuation of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Dated: October 29, 1990.

John E. Moorhouse,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 90-28493 Filed 11-8-90; 8:45 am]

BILLING CODE 4310-DN-M

Fish and Wildlife Service

Alaska Peninsula Federal Lands Hunting Closure

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: By emergency order of the Federal Subsistence Board, caribou hunting on Federal public lands within the following Alaska State Game Management Units is closed to all individuals except the residents listed below:

Unit	Open to
Unit 9(D)	Residents of 9(D) and False Pass.
Unit 10 (Unimak Island Only).	Residents of False Pass only.

This closure is effective from November 5, 1990–March 31, 1991, and is necessary to ensure a healthy population and to provide a subsistence opportunity for qualified subsistence users.

DATES: The emergency closure is effective from November 5, 1990–March 31, 1991.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service, Subsistence Office, 1011 East Tudor Road, Anchorage, Alaska 99503, telephone (907) 267–1461; or Izembek National Wildlife Refuge, PO Box 127, Cold Bay, Alaska 99571, telephone (907) 532–2445.

SUPPLEMENTARY INFORMATION: As empowered by 50 CFR 100.17(b), the Federal Subsistence Board has closed Federal public lands in Game Management Units 9(D) and 10 (Unimak Island only) to the hunting of caribou from November 5, 1990–March 31, 1991, by all individuals except by those residents listed below:

Unit	Open to
Unit 9(D)	Residents of 9(D) and False Pass.
Unit 10 (Unimak Island Only).	Residents of False Pass only.

Other individuals are prohibited from hunting caribou on said lands. On October 30, 1990, the Federal Subsistence Board took emergency action to amend the Federal subsistence season and bag limit restrictions for caribou in Game Management Units 9(D) and 10 (Unimak Island only). This closure is necessitated by a change in eligibility under state hunting regulations due to *McDowell v. State of Alaska*. Prior to that court decision, the State restricted hunting after October 31 to local subsistence users. With the *McDowell* decision eliminating rural preference under State law, the preference for the local subsistence users was also eliminated. A typographical error in the closing date (May 31) in Unit 10 (Unimak Island only) was published in the Federal Register (55 FR 27139); this notice also corrects that date to March 31.

Title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture grant a preference in favor of subsistence uses of fish and wildlife resource on public lands. The Southern Alaska Peninsula caribou herd has suffered a rapid decline with poor population recruitment. This action will protect the caribou population as well as provide a subsistence preference for local subsistence users.

Walter O. Stieglitz,

Chairman, Federal Subsistence Board; Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 90–26490 Filed 11–8–90; 8:45 am]

BILLING CODE 4310–55–M

Alaska Federal Subsistence Board Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

TIME AND DATE: 8:30 a.m.; November 20, 1990, 8:30 a.m.; December 17, 1990.

PLACE: Captain Cook Hotel, 5th and "K" Streets, Anchorage, Alaska.

STATUS: Parts of this meeting will be open to the public. The public is invited to attend and observe the proceedings. Public testimony on business agenda items only will be accepted at these meetings. The rest of the meeting may be closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public: The Board will discuss business relative to management of the Federal subsistence management program on Federal lands. The major categories to be discussed on November 20 include:

a. Correspondence to the Board
b. Environmental Impact Statement Team Report
c. Federal Register Announcements
d. Federal Subsistence Board Operations Manual
e. Appeals Proccess
f. Appeals
g. Emergency Regulation Changes

Public testimony will be accepted on items (d) through (g) only.

The major categories to be discussed on December 17 include:

a. Correspondence to the Board
b. Environmental Impact Statement Team Report
c. Federal Register Announcements
d. Federal Subsistence Board Operations Manual
e. Rural Determinations

Public testimony will be accepted on items (d) and (e) only.

Portions Closed to the Public: If needed, the Board will discuss business relative to management of the Federal Subsistence Board activities.

CONTACT PERSON FOR MORE INFORMATION: Richard Pospahala, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 267–1461.

Walter O. Stieglitz,

Chairman, Federal Subsistence Board, Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 90–26500 Filed 11–8–90; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Cheesboro Canyon/Palo Comado Canyon, Santa Monica Mountains National Recreation Area; Availability of Draft Environmental Impact Statement

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190, the National Park Service, Santa Monica Mountains National Recreation Area, has prepared a draft environmental impact statement to assess the impacts of a proposal, set forth by a private development firm, to exchange private properties for lands within the National Recreation Area in order to facilitate the proponent's access to a proposed golf course and residential development on Jordan Ranch in Ventura County, California. The proposed access also involves lands within Los Angeles County, California.

Alternatives evaluated in the draft environmental statement include (1) no action, which would require the proponent to seek other access, and (2) approval of the exchange by the National Park Service which would result in approximately 59 acres of federally-owned land to be exchanged for approximately 804 acres of private lands, all within the boundaries of the National Recreation Area. There are other considerations with this exchange that are detailed in the draft environmental statement. Approval of the exchange by the National Park Service would constitute an amendment of the National Recreation Area's General Management Plan and associated plans. Evaluation of the specific impacts of the proposed golf course and subdivision on Jordon Ranch is being accomplished through a Ventura County General Plan Amendment Application and its accompanying environmental impact report (EIR), prepared in accordance with the California Environmental Quality Act (CEAQA). The EIR was released for public review period extending from August 29, 1990, to October 29, 1990.

Comments on the draft environmental statement should be directed to the Superintendent, Santa Monica Mountains National Recreation Area, 30401 Agoura Road, suite 100, Agoura Hills, CA 91301, telephone number (818) 597–1036. Comments must be received no later than January 31, 1991. Requests for additional information and/or copies of the statement should also be directed to the above address.

Copies of the draft statement are available for inspection at the park headquarters in Agoura Hills, CA, in libraries located in the park vicinity and at the following address: Western Regional Office, National Park Service, Attn: Division of Planning, Grants and Environmental Quality, P.O. Box 36063, 450 Golden Gate Avenue, room 14033, San Francisco, CA 94102.

Dated: October 26, 1990.

Stanley T. Albright,

Regional Director, Western Region.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–305 and 306, 303–TA–21, and 731–TA–476 through 482 (Preliminary)]

Steel Wire Rope From Argentina, Chile, India, Israel, Mexico, The People's Republic of China, Taiwan, and Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 701–TA–305 and 306 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), and investigation No. 303–TA–21 (Preliminary) under section 303 of the Tariff Act (19 U.S.C. 1303), to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India, Israel and Thailand of steel wire rope,[1] that are alleged to be subsidized by the Governments of India, Israel and Thailand.

The Commission also gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–476 through 482 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Argentina, Chile, India, Mexico, the People's Republic of China, Taiwan and Thailand of steel wire rope, provided for in subheadings 7312.10.60 and 7312.10.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value.

As provided in sections 703(a), 733(a) and 303, the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by December 20, 1990.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–252–1184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on November 5, 1990, by The Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers.

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in these preliminary investigations to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

[1] The imported steel wire rope covered by these investigations include ropes, cables and cordage, of iron or steel, other than stranded wire, not fitted with fittings or made into articles, and not made of brass plated wire. Such steel wire rope are provided for in subheadings 7221.10.60 and 7312.10.90 of the Harmonized Tariff Schedule of the United States (HTS) (previously in items 642.14 and 642.16 of the former Tariff Schedules of the United States (TSUS)).

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on November 27, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Diane Mazur (202–252–1184) not later than November 20, 1990, to arrange for their appearance. Parties in support of the imposition of countervailing or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before November 29, 1990, a written brief containing information and arguments pertinent to the subject matter of the investigations, as provided in section 207.15 of the Commission's rules (19 CFR 207.15). If briefs contain business proprietary information, a nonbusiness proprietary version is due November 30, 1990. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties who obtain access to business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than December 3, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs. A nonbusiness proprietary version of such additional comments is due December 4, 1990.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: November 7, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–26714 Filed 11–8–90; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Date: November 6, 1990.

The following Notices were filed in accordance with section 10526 (a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2) the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) CENEX/Land O'Lakes Agronomy Company
5500 Cenex Drive,
Inver Grove Heights, MN 55077
(2)
(3) Robert J. Broich
P.O. Box 64089,
St. Paul, MN 55164–0089
(4)

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–26588 Filed 11–8–90; 8:45 am]

BILLING CODE 7033–01–M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office:
Roger Ward, Inc., 620 20th Avenue SW., P.O. Box 2108, Minot, ND 58701

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

a. Roger Ward-Minot, Inc., a Delaware corporation
b. Roger Ward-Bismarck, Inc., a Delaware corporation
c. Roger Ward-Dickinson, Inc., a Delaware corporation
d. Roger Ward-Fargo, Inc., a Delaware corporation
e. Roger Ward-San Antonio, Inc., a Delaware corporation
f. Roger Ward-Harlingen, Inc., a Delaware corporation
g. Roger Ward Transportation, Inc., a Delaware corporation
h. Roger Ward Management, Inc., a Delaware corporation.

Sidney L. Strickland,

Secretary.

[FR Doc. 90–26587 Filed 11–8–90; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31742]

The Ferdinand Corp.—Acquisition and Operation Exemption—the Ferdinand & Huntingburg Railroad Co.; Exemption

The Ferdinand Corporation (FC), a noncarrier, has filed a notice of exemption to acquire and operate the entire rail line owned by The Ferdinand & Huntingburg Railroad Company (Ferdinand), a distance of approximately 6.38 miles, located between Huntingburg and Ferdinand, IN.[1]

Any comments must be filed with the Commission and served on: William H. Davis, The Ferdinand Corporation, P.O. Box 10, Corydon, IN 47112.

FC shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] FC indicates that currently there are no mileposts on the line to be acquired.

Decided: October 15, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–26448 Filed 11–8–90; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 365X)]

CSX Transportation, Inc.—Abandonment Exemption—in Suwannee County, FL; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 1.48-mile line of railroad between mileposts AR–669.1 and AR–670.58, at Live Oak, in Suwannee County, FL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 9, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by November 19, 1990.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by November 29, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 14, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 2, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–26449 Filed 11–8–90; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Information Collections Under Review

November 6, 1990.

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published.

Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) an indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 514–4312.

If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of you intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collections

(1) Performance Report
(2) No form number. Office of Juvenile Justice and Delinquency Prevention (JJDP), Office of Justice Programs.
(3) Annually.
(4) State or local governments. Information is collected to report information from states participating in the JJDP Act Formula Grant Program on activities/performance toward goals stated in states' formula grant plans, used to answer public inquiries and to assist Congress, OJJDP and the states in measuring effectiveness of activities and the status of compliance.
(5) 57 estimated responses at 152 hours per response.
(6) 8,664 estimated annual public burden hours.
(7) Not applicable under section 3504(h).

(1) Juvenile Justice and Delinquency Prevention Act Formula Grant Program Subgrant Award Report.

(2) No form number. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs.

(3) Other, one-time grantees must submit 30 days after award is made.

(4) State or local governments, non-profit institutions. Used to collect information from public and private subgrant recipients.

(5) 1,239 annual respondents at .5 hours per response.

(6) 620 estimated annual public burden hours.

(7) Not applicable under section 3504(h).

Existing Collection in use Without an OMB Number

(1) Juvenile Justice and Delinquency Prevention Act Formula Grant Program Application Kit; Fiscal Years 1991–1993.

(2) No form number. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs.

(3) Annually.

(4) State or local governments. This provides state agencies with the instructions and forms necessary to apply for formula grants under the JJDP Act.

(5) 57 annual repondents at 432 hours per response.

(6) 24,624 estimated annual public burden hours.

(7) Not applicable under section 3504(h).

Revisions of Currently Approved Collections

Note: The following information collection is printed in full following this notice.

The Immigration and Naturalization Service is striving to create forms and instructions that are precise and that can be easily understood. Therefore, public comment is especially invited, as well as suggestions regarding the format, contents and public burden associated with the proposed revision to the INS Form I–589, "Request for Asylum in the United States." All written comments FOR THIS FORM ONLY should be directed to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5034, 425 "I" Street, NW., Washington, DC 20536, ATTENTION: Form I–89. Written comments must be received no later than December 21, 1990.

(1) Request for Asylum in the United States.

(2) I–589, Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. This information will be used to determine if an alien applying for asylum in the United States is classifiable as a refugee and is eligible to remain in the United States. This data will minimize the need to reinterview applicants for asylum.

(5) 80,000 annual respondents at 1.664 hour per response.

(6) 113,120 estimated annual public burden hours.

(7) Not applicable under section 3504(h).

Larry E. Miesse,

Department Clearance Officer, U.S. Department of Justice.

BILLING CODE 4410-10-M

U.S. Department of Justice
Immigration and Naturalization Service

OMB NO. 1115-0086
Request for Asylum In The United States

INSTRUCTIONS

READ ALL INSTRUCTIONS CAREFULLY BEFORE COMPLETING THIS FORM

1. PREPARATION OF FORM. Type or print legibly in ink. **Do not leave any questions unanswered.** If any questions do not apply to your personal situation write "none" or "not applicable". If you need more space to complete any item, attach a continuation sheet, indicate the item number, and date and sign each sheet. One form may include an entire family (husband, wife, and unmarried children under age 21 if they are in the U.S. and are also applying for asylum) and must be accompanied by documentary evidence to establish their relationship to you. Children, married, or age 21 or over must file a separate form.

2. SUBMISSION OF FORM. Mail or take this form and supporting documents to the Immigration and Naturalization Service office having jurisdiction over your place of residence. Submit this form in quadruplicate. There are no fees for processing this form.

3. REQUIRED DOCUMENTS. Each applicant 14 years of age or older must complete the **Biographic Information Form G-325A** and **Fingerprint Card, FD-258.** Applicants may be fingerprinted by law enforcement officers, outreach centers, charitable and voluntary agencies, or other reputable persons or organizations. The Fingerprint Card (FD-258) on which the prints are submitted, the ink used, and the quality and classifiability of the prints must meet standards prescribed by the Federal Bureau of Investigation. The card must be signed by you in the presence of the person taking your fingerprints, who must then sign his/her name and enter the date in the spaces provided. **It is important to furnish all the information requested on the card.**

4. PHOTOGRAPH. Regardless of age, all applicants must submit one photograph taken within 30 days of the date of this application. This photograph should contain a front view of your face, about one 1 inch from chin to top of head.

5. PASSPORT INFORMATION. You will be notified to appear for an interview with an Immigration Officer. If you have a passport, you must bring it with you to the interview. If other members of your family are included in your application for asylum, they must also appear for the interview and bring their passports if in their possession.

6. INTERVIEW. An immigration officer will interview you and make an evaluation of the propriety of your Asylum claim. You may remain in the United States until a final decision is made on your case.

7. UNITED NATIONS. You may, if you wish, forward a copy of your form and other supporting documents to the: Regional Representative of the United Nations, High Commissioner for Refugees, United Nations, 1718 Connecticut Ave., N.W., Suite 200, Washington, D.C. 20009.

8. SUPPORTING DOCUMENTS. Background materials, such as newspaper articles, affidavits of witnesses or experts, periodicals, journals, books, photographs, official documents, your own statements, etc., must include explanations from you of their relevance to your personal case and situation. Give full citation of your sources, dates, pages, etc. Attach as many sheets and explanations as necessary to fully explain the basis of your claim. Submit all supporting documents in quadruplicate.

9. BURDEN OF PROOF. The burden of proof is upon you to establish that you qualify as a refugee either because you suffered actual past persecution or because you have a well-founded fear of future persecution in your country of nationality or last habitual residence on account of your race, religion, nationality, membership in a particular social group or political opinion, and for this reason you are unable or unwilling to return to or avail yourself of the protection of that country. To persecute is defined as: "to pursue; to harass in a manner designed to injure, grieve or afflict; to oppress. Answer all questions on this form as to "what", "when", "where", "how", "who", and "why" relating to your claim of persecution.

10. TRANSLATION. Any document in a foreign language must be accompanied by a translation in English. The translator must certify that he or she is competent to translate and that the translation is accurate.

11. WITHHOLDING OF DEPORTATION. This application will be considered concurrently as an application for withholding of deportation under Section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253), as amended. If asylum is not granted, you may be eligible for withholding of deportation.

12. WORK AUTHORIZATION. You may request permission to work while your asylum application is pending. Generally, work authorization, if granted, will be valid, if renewed as required, at least until a final decision is made on your application. Submit a Form I-765, Application for Employment Authorization, with this form for each person seeking permission to work.

13. **PENALTY:** Title 18, United States Code, section 1546, provides, ".. Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement - Shall be fined in accordance with this title or imprisoned not more than five years, or both."

14. **REPORTING BURDEN:** Public reporting burden for this collection of information is estimated to average 1 hour and 40 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: U.S. Department of Justice, Immigration and Naturalization Service (Room 5304), Washington, DC 20536; and to the Office of Management and Budget, Paperwork Reduction Project: OMB No. 1115-0086, Washington, DC 20503.

U.S. Department of Justice
Immigration and Naturalization Service

OMB NO. 1115-0086
Request for Asylum In The United States

DO NOT WRITE IN THIS BLOCK - FOR INS USE ONLY

Asylum Office:	Basis of Asylum Claim:	Action:
INS-FCO:	1. ☐ Race 2. ☐ Religion 3. ☐ Nationality 4. ☐ Membership in a Particular Social Group 5. ☐ Political Opinion	Asylum: ☐ Granted ☐ Denied Date:_____ Withholding of deportation: ☐ Granted ☐ Denied Date:_____ _____ Adjudicating Officer
Received date:		
G-28 or VOLAG#		

1. Name *(Family name in CAPS)* *(First)* *(Middle)*

2. Alien Registration No. *(if known)*

3. Sex: ☐ Male ☐ Female

4. Other names used: *(include maiden name or aliases)*

5. Marital status: ☐ Single ☐ Married ☐ Divorced ☐ Widowed

6. Date of Birth: *(Mo./Day/Yr.)*

7. Address - *in the United States* *(Number and Street, Apt. #)*

(City or Town) *(State/Country)* *(Zip Code)*

8. Place of Birth: *(City or Town)*

(State or Province) *(Country)*

9. Address - *abroad prior to coming to U.S.*: *(Number and Street, Apt. #)*

(City) *(Province)* *(Country)*

10. Nationality: at Birth:_____ at Present:_____ Other:_____

11. Ethnic Group:

12. Religion:

13. Languages spoken:

14. If stateless, how did you become stateless?

15. Arrival in the U.S.:
Date: *(Mo./Day/Yr.)*
Place: *(City/State)*
☐ I was ☐ I was not inspected

As a: ☐ Visitor ☐ Student ☐ Stowaway ☐ Crewman ☐ Other *(Specify)*

Means of arrival: *(name of vessel or airline and flight #, other)*

Current Immigration status: *(Visitor, Student, etc.)*

Date authorized stay expires: *(Mo./Day/Yr.)*

16. My nonimmigrant visa number is: *(If none, state "none")*_____. It was issued by the U.S. Consul on *(Mo./Day/Yr.)*_____ at (City, County)_____

17. Why did you obtain a U.S. Visa? or If you did not apply for a U.S. Visa explain why not:

18. List your spouse and all your sons/daughters:

Name:	A-Number: *(If any or known)*	Sex	Date of birth:	Place of birth:	If in U.S.: Date/Place of Arrival

If in the U.S. are your spouse/children included in your request for Asylum: *(if not explain why)* Spouse: ☐ Yes ☐ No Children: ☐ Yes ☐ No

19. If in the U.S., is your spouse making a separate application for asylum?
☐ Yes (INS office_____ Results (Granted/Denied)
☐ No

Form I-589 (Rev. 10-26-90)N

29. My spouse/children reside: ☐ with me ☐ apart from me *(if apart, explain why)*:

(Number and street and Apt. No.) *(City)* *(Province)* *(Country)*

21. Have you traveled to the United States before? How many times?_____

☐ Yes *(If so, give date, manner of entry, purpose and duration of trip)*

☐ No

22. List all travel or identity documents such as national passport, refugee convention travel document, safe conduct, or national identity card:

Document type	Document number	Issuing country or authority	Date of issue	Date of expiration	Cost	Obtained by whom

23. Date of departure from your country of nationality *(Mo./Day/Yr.)*

24. Was exit permission required to leave your country?

☐ Yes *(Obtained by Whom)*

☐ No *(If not, explain why)*

25. Why did you leave your country of nationality? *(Explain fully)*

26. When you left your home country, to what country did you intend to go?

27. After leaving your home country, have you traveled through or resided in any other country before entering the U.S.?

☐ Yes (If yes, identify each country, length of stay, purpose of stay, address, reason for leaving, and whether you are entitled to return to that country for residence purposes.)

☐ No

28. Have you been recognized as a refugee by another country or by the United Nations High Commissioner for Refugees?

☐ Yes *(If yes, Date_____Country_____)*

☐ No

29. Did you apply for asylum in any other country?

☐ Yes (Date_____Country_____Results - Granted/Denied)

☐ No

30. Why did you continue traveling to the U.S.?

31. Did you apply for asylum in the U.S. before?

☐ Yes (Date_____INS office_____Results - Granted/Denied)

☐ No

32. Why are you seeking asylum in the United States? *(Explain fully what is the basis - attach additional sheets as needed)*

33. Have you taken any actions that you believe will result in your persecution in your home country?
(Explain fully, if none, so state - attach additional sheets as needed)

34. Have you or any member of your immediate family ever belonged to or been associated with any organization or group in your home country that is harassed, restricted, intimidated, prohibited, or denounced by the government of your home country; or threatened with or subjected to violence by organized groups not controlled by the government of your home country?

☐ Yes ☐ No

If yes, provide the following information relating to each organization or group: Name of organization or group, dates of membership or affiliation, purpose of the organization, what, if any, were your official duties or responsibilities, and are you still an active member.)

35. Have you or any member of your family, ever been mistreated by the authorities of your home country/country of nationality or by organized groups within that country? ☐ Yes - If yes, was it mistreatment because of:

☐ Race ☐ Religion ☐ Nationality ☐ Membership in a particular social group ☐ Political opinion ☐ Other

Specify for each instance; what occurred and the circumstances, date, exact location, who took such action against you, what was his/her position in the government or group, reason why the incident occurred, names and addresses of people who witnessed these actions and who could verify these statements. Attach documents referring to these incidents.

☐ No

36. Have you ever been: ☐ *Arrested* ☐ *Detained* ☐ *Interrogated* ☐ *Convicted and sentenced* ☐ *Imprisoned* in any country, including the U.S.?

☐ Yes (If yes, specify for each instance: What occurred and the circumstances, dates, location, duration of the detention or imprisonment, reason for the detention or conviction, what formal charges were placed against you, reason for the release, treatment after release, names and addresses of persons who could verify these statements. Attach documents referring to these incidents, if any.)

☐ No

37. If you base your claim for asylum on current conditions in your country, do these conditions affect your freedom more than the rest of that country's population?

☐ Yes *(If yes, explain how and why you think so, how and why it affects you)*

☐ No

38. Were you ever involved in any incidents of persecution against any person because of his/her race, religion, nationality, membership in a particular social group, or political opinion?

☐ Yes *(If yes, describe nature of the incidents and your own involvement)*

☐ No

39. Are you entitled to return to country of issuance of your: *(If not, explain why)*

Passport	☐ Yes ☐ No
Other Travel document	☐ Yes ☐ No
Or Identity document	☐ Yes ☐ No

40. Have you returned to your country in the last five (5) years?

☐ Yes *(explain)*

☐ No

41. Would you return to your home country?

☐ Yes

☐ No *(If no, explain why)*

42. What do you think would happen to you if you returned? *(Explain)*

43. Are you registered with a consulate or any other authority of your home country abroad?

☐ Yes *(If yes, give details)*

☐ No *(If no, explain why not)*

44. Is there any additional information not covered by the above questions? *(If yes, explain, attach additional sheets as needed.)*

45. Name/address of schools attended	Type of school	From *(Mo./Yr.)*	To *(Mo./Yr.)*	Highest grade completed	Title of degree or certification

46. What specific skills do you have?

47. Social Security No. *(if any)*

48. Relatives in U.S.:

Name	Address	Relationship	Immigration status

49. Other relatives who are refugees outside the U.S.

Name	Relationship	Country where presently located

50. Under penalty of perjury, I declare that the above and all accompanying documents are true and correct to the best of my knowledge and belief.

Signature of applicant _____ Date _____

51. Signature of person preparing form if other than above: I declare that this document was prepared by me at the request of the applicant and is based on information provided by the applicant.

Name/signature _____ Date _____ Address _____

Applicant is not to sign the application below until he or she appears before an officer of the Immigration and Naturalization Service for examination

I _____ swear (affirm) that I know the contents of this application that I am signing including the attached documents; that they are true to the best of my knowledge; and that corrections numbered ( ) to ( ) were made by me or at my request and that I signed this application with my full, true name:

_____

(Complete and true signature of applicant)

Signed and sworn to before me by the above-named applicant at _____ on _____

(Month) (Day) (Year)

_____

(Signature and title of interviewing officer)

[FR Doc. 90-26584 Filed 11-8-90; 8:45 am]

BILLING CODE 4410-10-C

Bureau of Prisons

Intent To Prepare Draft Environmental Impact Statement (EIS) for the Construction of a Federal Correctional Institution Beckley, Raleigh County, WV

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

AGENCY: U.S. Department of Justice.

SUMMARY:

Proposed Action

The U.S. Department of Justice, Federal Bureau of Prisons has determined that a new Federal correctional institution with an adjacent satellite prison camp is needed in its system. A 250 acre tract of land immediately adjacent to and northwest of the Raleigh County Memorial Airport or other suitable sites, will be evaluated. The proposal calls for the construction of a 750 bed facility to house medium security inmates and a 250 bed camp to house minimum security inmates.

Approximately 125 of the 250 acres would be used for road access, inmate housing, administration and program spaces, and service and support facilities. In addition, exercise areas would be included in the needed acreage.

In the process of evaluating the land, several aspects will receive a detailed examination including: utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

Alternatives

In developing the DEIS, the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

Scoping Process

During the preparation of the DEIS, there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location convenient to the citizens of Beckley. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings have already been held and will be continued by representatives of the Bureau of Prisons with interested community leaders and officials.

DEIS Preparation

Public notice will be given concerning the availability of the DEIS for public review and comment.

Address

Questions concerning the proposed action and the DEIS can be answered by: Kevin W. McMahon, Site Acquisitioin Specialist, Office of Facilities Development and Operations, Administration Division, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. Telephone: (202) 514-6698.

William J. Patrick,

Chief, Facilities Development and Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 90-26463 Filed 11-8-90; 8:45 am]

BILLING CODE 4410-05-M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Construction of a Metropolitan Detention Center in Washington, DC

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

Proposed Action

The United States Department of Justice, Federal Bureau of Prisons had determined that a new Metropolitan Detention Center (MDC) is needed in its system. The Bureau of Prisons will evaluate three proposed sites located in the District of Columbia for construction of the MDC.

The proposed sites are:

(A) The eastern half (approximately 2 acres) of a 5.4 acre tract of acre tract of land located off New York Avenue NE, and and bounded by "O" and "P" Streets, and North Capitol Street and First Street, NE. The only structures remaining on the site are a former bank building and a large warehouse.

(B) A 2.7 acre triangular shaped vacant parcel of land bounded by New York Avenue, NE., Florida Avenue NE and the elevated CSX and Metrorail tracks. A Sunoco gasoline station adjoins the site and occupies the corner of the tract of land but it not under consideration as part of the proposed site. There are no structures on the site except two advertising billboards.

(C) A 1.8 acre parcel situated off of South Capitol Street, SE., in the unit block of I (Eye) Street, SE. The only structures on the property are a concrete block warehouse structure (known as 70 I Street SE, and the shell of another concrete building. The most recent use of the property was as a salvage yard.

The Federal Bureau of Prisons proposes to construct a 1000 bed detention facility for individuals who are awaiting trial, awaiting sentencing or having other business before the United States District Court. As such, the facility is considered extension of the Federal judiciary and law enforcement activity in the District of Columbia.

It is anticipated that all of the three proposed sites are of sufficient size to provide space for detainee housing, programs, services and support areas as well as administration, staff training and parking.

The Process

In the process of evaluating the three sites several aspects will receive detailed examination including: Utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources and socio-economic impacts.

Alternatives

in developing the DEIS, the options of no action and alternative sites for the proposed facility wil be fully and thoroughly examined.

Scoping Process

During the preparation of the DEIS, there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at 7 p.m. on Tuesday, November 27, 1990, at the Dunbar High School Auditorium, First and O Streets, NW. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of public information meetings will be held by representatives of the Bureau of Prisons with interested citizens, officials and community leaders.

DEIS Preperation

Public notice will be given concerning the availability of the DEIS for public review and comment.

Addresses:

Questions concerning the proposed action and the DEIS can be answered by:

Patricia K. Sledge, Site Acquisition Coordinator, Office of Facilities Development and Operations, Federal Bureau of Prisons, 320 First Street,

NW., Washington, DC 20534, (202) 514–6470.

William J. Patrick,

Chief, Office of Facilities Development and Operations, U.S. Department of Justice.

[FR Doc. 90–26682 Filed 11–8–90; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by the contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S–3014, Washington, DC 20210.

New General Wage Determinations Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers(s).

Volume II

Texas:
TX90–63 ..... p. 1156i, p. 1156j.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York:
NY90–7 (Jan. 5, 1990) ..... p.797, p. 799.
NY90–12 (Jan. 5, 1990) ..... p. 851, pp. 852–854.
NY90–13 (Jan. 5, 1990) ..... p. 861, p.863.
NY90–20 (Jan. 5, 1990) ..... p. 908a, p. 908b.

Pennsylvania:
PA90–5 (Jan. 5, 1990) ..... p. 951, p. 952.
PA90–6 (Jan. 5, 1990) ..... p. 965, p. 966.
PA90–9 (Jan. 5, 1990) ..... p. 997, p. 998.
PA90–15 (Jan. 5, 1990) ..... p. 1029, p. 1030.

West Virginia:
WV90–2 (Jan. 5, 1990) ..... p. 1391, pp. 1395–1396.

Volume II

Michigan:
MI90–4 (Jan. 5, 1990) ..... p. 471, pp. 472, 474–475.

Texas:
TX90–3 (Jan. 5, 1990) ..... p. 987, p. 988.
TX90–14 (Jan. 5, 1990) ..... p. 1021, p. 1022.

Wisconsin:
WI90–4 (Jan. 5, 1990) ..... p. 1169, pp. 1170–1172.

Index ..... pp. xxxvii–xl.

Volume III

Nevada:
NV90–1 (Jan. 5, 1990) ..... p. 243, pp. 244–245.
NV90–5 (Jan. 5, 1990) ..... p. 289, p. 290.

Oregon:
OR90–1 (Jan. 5, 1990) ..... p. 309, p. 312.

Washington:
WA90–1 (Jan. 5, 1990) ..... p. 369, p. 373.
WA90–9 (Jan. 5, 1990) ..... p. 431, pp. 432–433.

Index ..... pp. xix–xx.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC. This 2nd day of November 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90–26344 Filed 11–8–90; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 19, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 19, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 22nd day of October 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Akron Catheter (UPWI)	Chippewa Lake, OH	10/22/90	10/09/90	24,966	Surgical catheter.
Bay Chemical Co. (workers)	Bay City, MI	10/22/90	10/05/90	24,967	Sulfuric acid.
Burlington Coat Factory (workers)	Columbus, OH	10/22/90	10/11/90	24,968	Coats.
Dae Yang America, Inc. (workers)	Kutztown, PA	10/22/90	10/02/90	24,969	Athletic shoes.
Donora Sportswear Co., Inc. (workers)	Donora, PA	10/22/90	09/13/90	24,970	Outerwear.
Fairfield Textile (ILGWU)	Fairfield, NJ	10/22/90	10/11/90	24,971	Knit fabric.
Hanlan & Gregory (USWA)	Pittsburgh, PA	10/22/90	10/09/90	24,972	Iron & steel.
Kellwood Co. (company)	Clinton, OK	10/22/90	10/02/90	24,973	Bed coverings.
Pantasote, Inc. (UTWA)	Lincoln Park, NJ	10/22/90	10/06/90	24,974	Trays.
Pope & Talbot, Inc. (workers)	Port Gamble, WA	10/22/90	10/08/90	24,975	Lumber.
R.W.M&M Apparel & Jean Factory (workers)	Lebanon, TN	10/22/90	10/10/90	24,976	Sportswear.
R.W.M&M Apparel & Jean Factory (workers)	Holland, KY	10/22/90	10/10/90	24,977	Sportswear.
R.W.M&M Apparel & Jean Factory (workers)	Scottsville, KY	10/22/90	10/10/90	24,978	Sportswear.
Sherfstein & Feigin Furs (workers)	New York, NY	10/22/90	09/27/90	24,979	Coats.
Tri County Cedar (company)	Cosmopolis, WA	10/22/90	09/27/90	24,980	Shake & Shingles.
Umetco Minerals Corp. (workers)	Blanding, UT	10/22/90	10/09/90	24,981	Uranium.
Unisys Corp (workers)	Paoli, PA	10/22/90	09/18/90	24,982	Computers.
Waymart Knitting Co., Inc. (workers)	Waymart, PA	10/22/90	10/05/90	24,983	Shirts.
Western Union Corp. (workers)	Allentown, PA	10/22/90	10/10/90	24,984	Telex machines.
Weyerhauser-Craig Plant (workers)	Broken Bow, OK	10/22/90	10/08/90	24,985	Fiberboard.
Winchester Mold, Inc. (AFGW)	Winchester, IN	10/22/90	10/09/90	24,986	Molds.
Zenith Electronics Corp. (IBEW)	Springfield, MO	10/22/90	10/08/90	24,987	TV receivers.

[FR Doc. 90–26592 Filed 11–8–90; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 19, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 19, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 29th day of October 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
A.P. Green Industries (workers)	Troy, ID	10/29/90	10/03/90	24,988	Heat insulations.
A.P.I. of Florida (workers)	Silver Springs, FL	10/29/90	10/11/90	24,989	Inductor coils.
Airfoil Textron (UAW)	Fostoria, OH	10/29/90	10/08/90	24,990	Compressor blades.
Applied Biosystems, Inc. (workers)	Ramsey, NJ	10/29/90	10/06/90	24,991	Instruments.
BASF/Chemical Div. (workers)	Kearney, NJ	10/29/90	10/11/90	24,992	Raw materials.
Behrens Mfg., Co. (workers)	Winona, MN	10/29/90	10/12/90	24,993	Containers.
Bernat Yarn & Craft Corp. (workers)	UxBridge, MA	10/29/90	08/30/90	24,994	Craft kits.
BethEnergy Mines, Inc. (UMWA)	Ebensburg, PA	10/29/90	10/12/90	24,995	Coal.
Billie Jo Sportswear (workers)	New York, NY	10/29/90	10/17/90	24,996	Sportswear.
Brush Fuses, Inc. (USWA)	Des Plaines, IL	10/29/90	10/19/90	24,997	Fuses.
Gem Industries, Inc. (workers)	Gardner, MA	10/29/90	10/14/90	24,998	Furniture.
Hewitt-Robins Corp. (IAM)	Passaic, NJ	10/29/90	10/19/90	24,999	Machinery.
Info Magnetics Caribe, Inc. (workers)	Moca, PR	10/29/90	10/11/90	25,000	Magnetic heads.
ISC-Bunker Ramo	Spokane, WA	10/29/90	10/17/90	25,001	Computers.
Jay-Zee, Inc. (workers)	St. Louis, MO	10/29/90	10/15/90	25,002	Slacks.
Johnson Controls, Inc. (SMWIA)	Lexington, KY	10/29/90	10/17/90	25,003	Instruments.
Krementz & Co. (workers)	Newark, NJ	10/29/90	10/19/90	25,004	Jewelry.
Mason Lumber Co. (workers)	Beaver, WA	10/29/90	10/16/90	25,005	Lumber.
MSG (workers)	Nooksack, WA	10/29/90	10/17/90	25,006	Lumber.
Olean Advanced Products (IBEW)	Olean, NY	10/29/90	10/16/90	25,007	Ceramic capacitor.
Penn Wire Rope (workers)	Williamsport, PA	10/29/90	10/08/90	25,008	Cable.
R&S Supply (workers)	Portage, MI	10/29/90	10/23/90	25,009	Paper.
Royce Chemical Co. (workers)	Newark, NJ	10/29/90	10/18/90	25,010	Zinc powder.
Russell-Newman, Inc. (workers)	Seymour, TX	10/29/90	10/18/90	25,011	Apparel.
Sealed Air Co. (USW)	Somerset, NJ	10/29/90	10/12/90	25,012	Envelopes.
Skillers of America (workers)	Butler, PA	10/29/90	10/11/90	25,013	Sportswear.
Stateline Foundry, Inc. (workers)	Roscoe, IL	10/29/90	10/09/90	25,014	Motorheads.
Texas Oil & Gas Corp. (workers)	Dallas, TX	10/29/90	10/16/90	25,015	(Workers).
White Plywood (workers)	Lebanon, OR	10/29/90	10/12/90	25,016	Plywood.
Winter Wood Products, Inc. (workers)	Phillips, WI	10/29/90	10/15/90	25,017	Wood handles.
Yellow Front Stores, Inc. (workers)	Phoenix, AZ	10/29/90	10/22/90	25,018	Sporting goods.

[FR Doc. 90-26579 Filed 11-8-90; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Connecticut State Standards; Approval

1. *Background.* Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor of Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with section 18 (c) of the Act and 29 CFR part 1902. On November 3, 1978, notice was published in the **Federal Register** (43 FR 51390) of the approval of the Connecticut Public Sector States Plan State and the adoption of subpart E to part 1956 containing the decision.

The Connecticut Public Sector only State Plan provides for the adoption of Federal standards as State standards after:

a. Publishing an intent to amend the State Plan by adopting the standard(s) in the Connecticut Law Journal.

b. Approval by the Commissioner of Labor and the Attorney General of the State of Connecticut.

c. Approval by the Legislative Regulation Review Committee, State of Connecticut.

d. Filing in the Office of the Secretary of State, State of Connecticut.

e. Publishing a notice that the State Plan is amended by adopting the standards(s) in the Connecticut Law Journal.

The Connecticut Public Sector State Plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. By letter dated February 23, 1990, from Commissioner Betty L. Tianti, Connecticut Department of Labor, to John B. Miles, Jr., Regional Administrator, and incorporated as part of the plan, the State submitted updated State standards identical to 29 CFR parts 1910 and 1926 and subsequent amendments thereto, as described below:

(1) Revision to 29 CFR 1910.120, Hardous Waste Operations and Emergency Response; final rule (54 FR 9317, dated 3/6/89).

(2) Revision to 29 CFR 11910.1000, Air Contaminants; final rule, (54 FR 2920, dated 1/19/89).

(3) Correction to 29 CFR 1910.1000, Air Contaminants; (54 FR 28054, dated 7/5/89).

(4) Revision to 29 CFR Part 1926, Underground Construction; final rule (54 FR 23850, dated 6/2/89).

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and accordingly are approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 133 Portland Street, Boston, Massachusetts 02114; Office of the Commissioner, State of Connecticut, Department of Labor, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, and the OSHA Office of State Programs, room N-3476, Third Street and Constitution Avenue, NW., Washington, DC 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Connecticut Public Sector Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standards were adopted in accordance with the procedural requirements of State law which included public comment, and further public participation would be repetitious.

This decision is effective November 9, 1990.

Authority: Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).

Signed at Boston, Mass., this 23rd day of August, 1990.

John B. Miles, Jr.,

Regional Administrator.

[FR Doc. 90-26580 Filed 11-8-90; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 90-96]

NASA Advisory Council Exploration Task Force; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council Exploration Task Force.

DATES: December 6, 1990, 8:30 a.m. to 5 p.m.; and December 7, 1990, 8:30 a.m. to 1 p.m.

ADDRESSES: National Air and Space Museum, Director's Conference Room, room 3501, 7th and Independence Avenue, SW., Washington, DC 20560.

FOR FURTHER INFORMATION CONTACT: Ms. Kristine Johnson, Code RZ, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2918.

SUPPLEMENTARY INFORMATION: The NASA Advisory Council Exploration Task Force was established to provide strategy guidelines for a comprehensive program of human exploration of the solar system and report to the Council the results of its study. The Task Force is chaired by Robert M. Adams and is composed of nine members.

The meeting will be open to the public up to the seating capacity of the room, which is approximately 30 persons including Task Force members and other participants.

Type of Meeting: Open.

Agenda

December 6, 1990

8:30 a.m.—Introductory Remarks.
8:45 a.m.—Space Exploration Initiative Update.
9:45 a.m.—Rationale and Benefits Assessment Overview.
10:30 a.m.—Rationale White Paper.
1 p.m.—Education White Paper.
2 p.m.—NASA Educational Objectives and Programs.
3:30 p.m.—Economics White Paper.
5 p.m.—Adjourn.

December 7, 1990

8:30 a.m.—Quality of Life White Paper.
9:30 a.m.—International White Paper.
10:45 a.m.—Discussion of Space Exploration Initiative Identifier.
11:45 a.m.—Development of Action Plan.
1 p.m.—Adjourn.

Dated: November 5, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90-26529 Filed 11-8-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public. Interested persons are invited to submit comments to the following individuals within 30 days of the published date of this notice. Comments may be submitted to:

1. *Agency Clearance Officer:* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or telephone (202) 357-7335.

2. *OMB Desk Officer:* Office of Information and Regulatory Affairs, attn: Dan Chenok, Desk Officer, Paperwork Reduction Project (3145-0101), OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: 1992 and 1994 Surveys of Scientific and Engineering Research Facilities.

Affected Public: Non-profit institutions.

Respondents/Burden Hours: 415 respondents; 24 hours per response.

Abstract: These two surveys of academic research facilities will update data from previous biennial surveys in 1988 and 1990, and will document trends in facilities amount, condition, adequacy, cost, and needs. Findings will be used to inform institution, state and Federal facilities programs and policy makers on recent trends regarding research facilities.

Dated: November 5, 1990.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 90-26503 Filed 11-8-90; 8:45 am]

BILLING CODE 7555-01-M

Committee Management; Establishment

The Assistant Director for Scientific, Technological, and International Affairs has determined that the establishment of the Advisory Panel for Experimental Program to Stimulate Competitive Research (EPSCoR) is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of the Committee: Advisory Panel for Experimental Program to Stimulate Competitive Research (EPSCoR).

Purpose: To review, evaluate, and site visit, if necessary, research and research-related proposals submitted to the NSF EPSCoR Program. Additionally, the Panel provides general advice and policy guidance to EPSCoR.

Balanced Membership Plan: The Panel will consist of up to about 75 panelists. Criteria used to maintain balanced membership are demonstrated capabilities in scientific research, age, gender, minority, geographic origin, and disabled.

Responsible NSF Official: Dr. Bruce Reiss, Program Director for the EPSCoR Program, (202) 357-7760.

BEST COPY AVAILABLE

Dated: November 5, 1990.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 90-26504 Filed 11-8-90; 8:45 am]
BILLING CODE 7555-01-M

Advisory Committee for Cross-Disciplinary Activities; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Cross-Disciplinary Activities.
Date and Time: November 29-30, 1990; 8:30-5 p.m., Room 536, Washington, DC 20550.
Type of Meeting: Open.
Contact Person: Mrs. Barbara H. Palmer, Administrative Officer, Office of Cross Disciplinary Activities, Room 304, National Science Foundation, Washington, DC 20550, (202) 357-7349.
Summary of Minutes: May be obtained from the contact person at the above address.
Purpose of Committee: To provide regular advice, recommendations, and oversight to the Office in guiding its policy decisions with regard to the programs within its purview.
Agenda: November 29: 8:30-12 noon. Review and discussion of current OCDA activities.
12-1 p.m. Lunch.
1-5 p.m. Possible New Initiatives, OCDA Committee Reactions.
November 30, 1990: 8:30-12 noon. Committee Activities. Subcommittee Reports.
12-1 p.m. Lunch.
1-3 p.m. Discussions with Acting Director and Acting Assistant Director.
Dated: November 5, 1990.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 90-26505 Filed 11-8-90; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 030-12145-CivP; E.A. 89-079, ASLBP No. 91-622-01-CivP]

Certified Testing Laboratories, Inc.; Hearing

Before Administrative Judges:
Charles Bechhoefer, Chairman
Dr. Cadet H. Hand, Jr.
Elizabeth B. Johnson

In the matter of Laboratories, Inc.; [Materials License No. 29-14150-01]
November 5, 1990.

Notice is hereby given that, by Memorandum and Order dated November 5, 1990, the Atomic Safety and Licensing Board has granted the request of Certified Testing Laboratories, Inc. (Licensee) for a hearing in the above-titled proceeding. The hearing concerns the Order Imposing A Civil Monetary Penalty, issued by the NRC Staff on August 29, 1990 (published at 55 FR 36729, September 6, 1990). The parties to the proceeding are the Licensee and the NRC Staff. The issues to be considered at the hearing are (a) whether the Licensee committed Violations I.A.1 AND I.B, as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty, dated March 9, 1990; and (b) whether, on the basis of those violations and Violation I.A.2 set forth in the Notice of Violation that the Licensee admitted, the Order Imposing A Civil Monetary Penalty should be sustained.

Materials concerning this proceeding are on file at the Commission's Public Document room, 2120 L Street, NW., Washington, DC 20555, and at the Commission's Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

During the course of this proceeding, the Licensing Board, as necessary, will conduct one or more prehearing conferences and evidentiary hearing sessions. The time and place of these sessions will be announced in later Licensing Board Orders. Members of the public will be invited to attend any such sessions.

Dated: November 5, 1990, Bethesda, Maryland.

For the Atomic Safety and Licensing Board.
Charles Bechoefer,
Chairman, Administrative Judge.
[FR Doc. 90-26563 Filed 11-8-90; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-390 and 50-391]

Tennessee Valley Authority; Availability of Safety Evaluation Report Related to the Operation of Watts Bar Nuclear Plant, Units 1 and 2

The U.S. Nuclear Regulatory Commission has published its Safety Evaluation Report, Supplement No. 5 Related to the Operation of Watts Bar Nuclear Plant, Units 1 and 2, Docket Nos. 50-390 and 50-391 (NUREG-0847).

Copies of the report have been placed in the NRC's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and in the Local Public Document room, Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402, for review by interested persons. Copies of the report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, GPO deposit account holders may charge orders by calling 202-275-2060. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Rockville, Maryland, this 1st day of November, 1990.

For the Nuclear Regulatory Commission.
Frederick J. Hebden,
Director, Project Directorate II-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.
[FR Doc. 90-26564 Filed 11-8-90; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Availability

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Notice of availability of the first annual report on the Small Business Competitiveness Demonstration Program.

SUMMARY: Title VII of Public Law 100-656 established the Small Business Competitiveness Demonstration Program as a four year test. The purpose of the Program is to determine if small businesses can successfully compete on an unrestricted basis for Federal Government contracts. In addition, the Program seeks to determine if the use of targeted goaling techniques can expand small business participation in areas where Federal contracting opportunities have been historically low. OFPP has prepared a report to assess the Program's impact during its first year of operation.

ADDRESSES: Those persons interested in obtaining a copy of the first annual report on the Small Business Competitiveness Demonstration Program should contact the Executive Office of the President Publications Service, room 2200, 725 17th Street, NW., Washington, DC, 20503, or phone (202) 395-7332.

Dated: November 5, 1990.
Allan V. Burman,
Administrator.
[FR Doc. 90-26606 Filed 11-8-90; 8:45 am]
BILLING CODE 3110-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Prior Service Reports.

(2) *Form(s) submitted:* AA-15, AA-2P(R), G-86.

(3) *OMB Number:* 3220-0003.

(4) *Expiration date of current OMB clearance:* Three years from date of approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households, businesses or other for-profit.

(8) *Estimated annual number of respondents:* 550.

(9) *Total annual responses:* 550.

(10) *Average time per response:* .298 hours.

(11) *Total annual reporting hours:* 164.

(12) *Collection description:* Railroad service prior to 1937 which can be used to determine entitlement to and amount of annuity under the RRA is not carried on Railroad Retirement Board records. The reports obtain verification of such records, or in the absence of such records, obtain information from the applicant to support the claim.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,
Clearance Officer.
[FR Doc. 90-26488 Filed 11-8-90; 8:45 am]
BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28595; File No. SR-NASD-90-57]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Service Charges for the Risk Management Functions of the Automated Confirmation Transaction Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 22, 1990, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend part IX of Schedule D of the By-Laws, adding a service charge for the risk management function of the Automated Confirmation Transaction ("ACT") service of $.02/side and $15/month per correspondent firm.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The ACT service, implemented in March 1990 for self-clearing firms, is designed to capture trade information in close proximity to the time of the trade to compare and lock-in that data for same day submission to clearing. The ACT service for clearing firms and their executing correspondents was implemented on October 29, 1990, with full risk management functionality. The risk management features of the ACT service include correspondent gross dollar thresholds for purchases and sales, trade file scan, end of day recap, on-line review (for computer interface clearing firms), a single trade limit of $1,000,000 (with time for clearing firm review), and super cap calculations, along with alert and pre-alert messages when correspondents are approaching any of the applicable thresholds. (For a detailed description of the ACT risk management functions, see SR-NASD-89-25, Release No. 34-26991, dated June 29, 1989 and Amendments 2 and 3 to SR-NASD 89-25, Release No. 34-27229, dated September 7, 1989 and Release No. 34-27977, dated May 2, 1990.) The ACT risk management function will serve approximately 900 introducing brokers and their clearing firms. These "indirect" clearing firms account for approximately 25% of trading activity as counted by number of sides submitted to clearing. The operational impact on the ACT system to process risk management traffic has been projected to account for 10% of the overall capacity of the ACT computers. To implement the risk management functions for ACT, the NASD has expended over $1 million in one-time and development costs for hardware and software development, and in keeping with the Association's commitment to keep costs as low as possible for member services, has decided on a five-year recovery period, rather than the three-year period used in the past. With the addition of operational expenses attributable to risk management functions, the service charges for participants result in a fixed monthly fee of $15 per correspondent and a variable charge of $.02 per side.

The NASD believes the proposed rule change is consistent with section 15A(b)(5) of the Act. Section 15A(b)(5) requires that the rules of a national securities association "provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls." The ACT service charges proposed in this filing have been formulated on the basis of the costs associated with developing and operating the risk management functions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed

rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of rule 19b–4 thereunder in that it is "establishing or changing a due, fee, or other charge imposed by the self-regulatory organization." At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions 5 U.S.C. 552, will be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 30, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: November 5, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–26506 Filed 11–8–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 5, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0086.
Form Number: CF 214 and CF 216.
Type of Review: Extension.
Title: Application for Foreign Trade Zone Admission and/or Status Transaction; Application for Foreign Trade Zone Activity Report.
Description: These documents allow business firms to apply for admission of goods to a foreign trade zone, and for foreign trade zone grantees and U.S. Customs to authorize admissions without payment of duties and taxes. Also allows firms to apply for and receive an appropriate zone status.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 6,514.
Estimated Burden Hours Per Response/ Recordkeeping: 17 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 18,001 hours.
Clearance Officer: Dennis Dore, (202) 535–9267, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 90–26546 Filed 11–8–90; 8:45 am]

BILLING CODE 4820–02–M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 5, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0115.
Form Number: ATF Form 5220.4.
Type of Review: Extension.
Title: Monthly Report—Export Warehouse Proprietor.
Description: Proprietors who are qualified to operate export warehouses that handle untaxpaid tobacco products are required to file a monthly report. This report summarizes all transactions by the proprietor including receipts, dispositions and on-hand quantities. ATF F 5220.4 is used for product accountability and is examined by regional office personnel.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 218.
Estimated Burden Hours Per Response: 49 minutes
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 2,119 hours.
Clearance Officer: Robert Masarsky,. (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90–26547 Filed 11–8–90; 8:45 am]

BILLING CODE 4810–31–M

CUSTOMS SERVICE

[T.D. 90–88]

Revocation by Action of Law of the Customs Broker License for Kamigumi U.S.A. Inc.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that, pursuant to section 641(c) (5), Tariff Act of 1930, as amended (19 U.S.C. 1641(c) (5)), and part 111.45 of the Customs Regulations, as amended (19 CFR 111.45), the license for Kamigumi U.S.A., Inc., (license no. 11443) to conduct Customs business has been revoked by operation of law for failure to have at least one officer of the corporation who is validly licensed for a continuous period of 120 days. Such revocation was effective on October 13, 1990.

Dated: November 6, 1990.

Victor G. Weeren,

Director, Office of Trade Operations.

[FR Doc. 90–26585 Filed 11–8–90; 8:45 am]

BILLING CODE 4820–02–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 218
Friday, November 9, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meetings

TIME AND DATE: 9:30 a.m., Thursday, November 15, 1990.

PLACE: Filene Board Room, 7th Floor, 1776 G Street NW., Washington, DC 20456.

STATUS: Open.

BOARD BRIEFING:

1. Insurance Fund Report.
2. Central Liquidity Report and Report on CLF Lending Rate.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Proposed Rule: Part 741, Requirements for Insurance, NCUA's Rules and Regulations.
3. Fiscal Year 1991 Operating Fee Assessment.

RECESS: 10:30 a.m.

TIME AND DATE: 11:00 a.m., Thursday, November 15, 1990.

PLACE: Filene Board Room, 7th Floor, 1776 G Street NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (8), (9)(A)(ii), and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 90-26713 Filed 11-7-90; 1:30 pm]

BILLING CODE 7535-01-M

Corrections

Federal Register
Vol. 55, No. 218
Friday, November 9, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER90-568-000, et al.]

PSI Energy, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 90-26149 beginning on page 46713 in the issue of Tuesday, November 6, 1990, make the following correction:

On page 46714, in the second column, under number 21, the docket number should read "[Docket No. EL90-40-000]".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 808

[Docket No. 89P-0314]

Exemption From Preemption of State and Local Hearing Aid Requirements; Vermont

Correction

In proposed rule document 90-25603 beginning on page 45615 in the issue of Tuesday, October 30, 1990, make the following correction:

On page 45615, in the first column, under **DATES**, on the fifth and sixth lines, "by November 29, 1990" should read "30 days after date of publication in the **Federal Register**".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Criteria and Standards for Evaluating Intermediary and Carrier Performance

Correction

In notice document 90-23117 beginning on page 39730 in the issue of Friday, September 28, 1990, make the following corrections:

1. On page 39731, in the first column, in the first full paragraph, the second sentence should read "These programs include educational and outreach activities and the use of professional relations personnel to handle billing and other problems relating to payment of claims of participating physicians; and programs to familiarize beneficiaries with the participating physician program and to assist the beneficiaries in locating participating physicians."

2. In the last paragraph of the first column, in the second line, in the parenthetical, "Dee" should read "See".

3. On page 39733, in the second column, under item 7, the fourth italicized entry should read "*Passing Level (3-part standard) and Points*".

4. On page 39737, in the first column, under item 8, under the fourth "Passing Level and Points" heading, in the second line "tool" should read "total"; and under the next heading of the same name, in the first line, "Reports" should read "Report".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6808

[CO-930-01-4214-10; COC-48967]

Withdrawal of National Forest System Land for Protection of Recreational Values; Colorado

Correction

In rule document 90-25190 beginning on page 42959 in the issue of Thursday, October 25, 1990, make the following correction:

On page 42960, in the first column, in the land description, in section 15, in the third and fourth lines, the portion after "and" should read "N½N½NW¼ SW¼;".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-234]

Organization and Delegation of Powers and Duties

Correction

In rule document 90-23435 beginning on page 40661 in the issue of Thursday, October 4, 1990, make the following corrections:

§ 1.53 [Corrected]

In § 1.53, on page 40662, in the third column, the last paragraph should be designated "(e)" rather than "(3)"; and on page 40663, in the last line of paragraph (h)(2) "Order of the President" should read "Office of the President".

BILLING CODE 1505-01-D

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federal register

Friday
November 9, 1990

Part II

Department of State

Office of Protocol

Gifts to Federal Employees From Foreign Governments Reported to Employing Agencies in Calendar Year 1989; Notice

DEPARTMENT OF STATE

Office of Protocol

[Public Notice 1284]

Gifts to Federal Employees From Foreign Governments Reported to Employing Agencies in Calendar Year 1989

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 1989 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statute.

Publication of this listing in the **Federal Register** is required by section 7342(f) of title 5, United States Code, as added by section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Pub. L. 95–105, August 17, 1977, 91 Stat. 865).

Dated October 2, 1990.

Ivan Selin,

Under Secretary for Management.

AGENCY: Executive Office of the President

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1989

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Flowers: Fifty red roses with baby's breath and Christmas greens. Residence; for official use/display. Recd: Dec. 21, 1989. Est. value: $250.	His Excellency and Mrs. Ghazi Mohamed Algosaibi, Ambassador of the State of Bahrain, Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Athletic equipment: Two "Flying Pigeon" one-speed bicycles—one white with green trim and one white with red trim; also included are multi-colored carrying bags; Residence; for official use/display. Photograph: Fabric-covered album of 30 color photographs of the President and Mrs. Bush, et al. on the occasion of their trip to the People's Republic of China. Archives, Foreign. Recd: Feb. 25, 1989. Est. value: $754.	His Excellency Li Peng, Premier of the State Council of the People's Republic of China, People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Photograph: An autographed color photograph of His Royal Highness Prince Philip in a sterling silver frame with a Royal Crest engraved at top; leather easel backing; 8½"×12¼" overall. Residence; for official use/display. Recd: May 31, 1989. Est. value: $1050.	His Royal Highness Prince Philip, Duke of Edinburgh, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Household: An oval enamelled music box, by Halcyon Days Enamels, made in England; 2¼" in diameter; Residence; for official use/display. Flowers: A basket of English cut flowers. Residence; for official use/display. Recd: May 31, 1989. Est. value: $670.	The Right Honorable Margaret Thatcher, M.P., Prime Minister of England, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Flowers: Two large pots of white orchids. Residence; for official use/display. Recd: May 22, 1989. Est. value: $100.	His Excellency Francois Mitterrand, President of the French Republic, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Consumables: 12 bottles of assorted German wines. Perishable. Recd: Jan. 23, 1989. Est. value: $375.	His Excellency Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Consumables: 20 cans (approximately one pound each) of various cold-meat specialties from the Palatinate. Perishable. Recd: May 30, 1989. Est. value: $90.	His Excellency Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Consumables: 15 bottles of German wine; perishable. Household: A decorative Blue Lapis Bowl by H. Wolf, Signed; 6" in diameter. Archives, Foreign. Recd: May 31, 1989. Est. value: $700.	His Excellency Dr. Carl-Ludwig Wagner, Ministerpresident, Rheinland-Pfalz, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: Executive Office of the President—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1989

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Artwork: Wood seal of the City of Nettuno; mounted in gold-colored distressed frame with presentation plaque; 17½"×21"; Archives, Foreign. Artwork: Antique engraving, dated 1600, of the old town of Nettuno in brown wood frame; 19¼"×23½"; Archives, Foreign. Books: Two copies of "Quei Giorni a Nettuno (Those Days at Nettuno)," by Francesco Rossi and Silvano Casaldi, published by Edizioni Abete, 1989, and one copy of "Nettuno (Vista Da Un Giornalista)," by Oscar Rampone, Archives, Foreign. Recd: May 31, 1989. Est. value: $370.	The Honorable Antonio Simeoni, Mayor of the City of Nettuno, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Household: Glazed earthenware bowl, Middle Eastern Design on blue background, by M. Tana, 1989, signed on underside; 19" in diameter; Archives, Foreign. Photograph: Color photograph of their Royal Highnesses Crown Prince Hassan and Princess Sarvath, inscribed; displayed in navy blue leather frame with gold-stamped edging; 11½×9" overall. Archives, Foreign. Recd: Sep. 12, 1989. Est. value: $260.	His Royal Highness Hassan Bin Talal, Crown Prince of the Hashemite Kingdom of Jordan, Jordan.	Non-acceptabnce would cause embarrassment to donor and U.S. Government.
President and First Lady	Photograph: Album of 28 color photographs of President and Mrs. Bush on occasion of their visit to South Korea; gold-stamped design and inscription on cover; housed in a blue velvet-covered case. Archives, Foreign. Recd: May 15, 1989. Est. value: $380.	His Excellency and Mrs. Roh Tae Woo, President of the Republic of Korea, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Photograph: Color photograph of President Roh, inscribed; in a sterling silver frame with crest at top; 9"×11". Residence; for official use/display. Recd: Oct. 17, 1989. Est. value: $75.	His Excellency Roh Tae Woo, President of the Republic of Korea, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Household: A silver-plated set of six perfume or potpourri lancers with matching carrying tray. Archives, Foreign. Recd: Dec 21, 1989, Est. value: $970.	His Excellency and Mrs. Ali Bengelloun, Ambassador of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Household: A pair of Delft footed vases, designed in two parts, with fish head spout motif at bottom and center and gargoyle figures around top; 21" tall overall. Archives, Foreign. Recd: Jul 19, 1989. Est. value: $600.	Her Majesty Beatrix, Queen of The Netherlands, Netherlands.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Book: Autobiography, "Daughter of Destiny," by Benazir Bhutto; inscribed; published by Simon and Schuster, New York, 1989. Archives, Foreign. Recd: Jun. 06, 1989. Est. value: $22.	Her Excellency Benazir Bhutto, Prime Minister of the Islamic Republic of Pakistan, Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Artwork: A star design Philippine lantern handcrafted of multi-colored capiz shells; electrified; 26" in diameter; Archives, Foreign. Household: One dozen corkboard place mats and coasters covered in Mother-of-Pearl; 12"×18" and 3½"×4½" respectively. Archives, Foreign. Recd: Nov. 9, 1989. Est. value: $275.	Her Excellency Corazon Aquino, President of the Republic of the Philippines, Philippines.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Household: A 70" square handwoven wool rug with overall floral and border design in earth tones, and a crystal punch bowl, ladle, and twelve cups. Archives, Foreign. Recd: Jul. 10, 1989. Est. value: $1,100.	His Excellency and Mrs. Wojciech Jaruzelski, President of the Council of Ministers of the Polish People's Republic, Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1989

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Household: A black lacquered box depicting a prince and a frog on the lid, 6¼"×2¾"×1⅛"; an oval metal plaque depicting the Kremlin, 6⅜"×7⅛"; and a fragment of an SS–20 missile destroyed in accordance with the INF treaty, displayed in a lucite case, 6"×11½". Archives, Foreign. Recd: Nov. 21, 1989. Est. value: $350.	His Excellency Anatoly F. Dobrynin, Advisor to the Chairman of the Supreme Soviet Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumables: Three cartons (36 bottles) of Algerian wine and four boxes of dates-on-vine. Perishable. Recd: Jan. 23, 1989. Est. value: $188.	His Excellency Chadli Bendjedid, President of the Democratic and Popular Republic of Algeria, Algeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Two wooden carved Mezzo relief heads of a man and a woman, mounted on grasscloth background, and displayed in light-colored wood frame with engraved brass presentation plaque; 28½"×34" overall. Archives, Foreign. Recd: Oct. 5, 1989. Est. value: $300.	His Excellency Jonas Savimbi, President of Unita, Angola.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A blanket of Guanaco fur measuring 60"×91" overall; Archives, Foreign. Consumables: Six bottles of Argentine wine. Perishable. Recd: Sep. 26, 1989. Est. value: $675.	His Excellency Carlos Menem, President of the Argentine Nation, Argentina.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Coin: A $100 "1989 Barbados 350th Anniversary of Parliament" gold proof coin encased in plastic holder. Archives, Foreign. Recd: Sep. 20, 1989. Est. value: $190.	The Honorable Lloyd Erskine Sandiford, Prime Minister of Barbados, Barbados.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book: An original copy of "On Liberty" by John Stuart Mill; published by John W. Parker and Son, West Strand, London, 1859; bound in red leather with mottled end-papers; restored condition. Archives, Foreign. Recd: May 27, 1989. Est. value: $500.	His Excellency Jacques Delors, President of the Commission of the European Communities, Belgium.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: A circular wallhanging or decorative piece made from animal hide and hair; 30" in diameter. Archives, Foreign. Recd: Jun. 07, 1989. Est. value: $350.	Mrs. Quett Masire, wife of the President of the Republic of Botswana, Botswana.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Wool wallhanging depicting a multicolored village scene of people, animals, birds, trees, and huts in a patchwork style; fringed; 67"×70". Archives, Foreign. Recd: Jun. 07, 1989. Est. value: $650.	His Excellency Dr. Quett K.J. Masire, President of the Republic of Botswana, Botswana.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing and accessories: A gray, white, and black hooded wool sweater handcrafted by a Newfoundland craftsperson; size 44; Archives, Foreign. Artwork: Copper weathervane figure of a rooster, displayed on an old wood base; 12" wide, 18" tall overall. Archives, Foreign. Recd: May 04, 1989. Est. value: $264.	The Right Honorable and Mrs. Brian Mulroney, P.C., M.P., Prime Minister of Canada, Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Calligraphic artwork scroll of the Tang Dynasty beauty, Yang Gui Fei; watercolor on paper attached to wood pole; Archives, Foreign. Artwork: A seal script or Tu-Zhang with elephant motif, 2"×1¾"×¾". Archives, Foreign. Recd: Feb. 16, 1989. Est. value: $1,050.	His Excellency, Lin Hanxiong, Minister of Construction of the People's Republic of China, People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1989

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Books: "Atlas De Cartografia Historica De Colombia," (includes 3-part set of documentation), 1985; "Colombia Amazonica," 1987; "Politica De Gobierno Nacional . . . De La Cuenca Amazonia"; and two copies of "The Fight Against the Drug Traffic in Colombia."; Archives, Foreign. Books: Four books about the PTI (interoceanic Land Bridge) project; Archives, Foreign. Household: Silver (900) box engraved "Septiembre De 1989" and bearing coat of arms of Colombia; 3"×4½". Archives, Foreign. Recd: Oct. 06, 1989. Est. value: $310.	His Excellency Virgilio Barco Vargas, President of the Republic of Colombia, Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Historic Artifacts: "Antique Earthenware Jug" Numbered "SR 10745/87" on Underside; 600 B.C.; 5" in diameter at center, 7½" tall. Archives, Foreign. Recd: Oct. 04, 1989. Est. value: Indeterminable.	His Excellency George Vassiliou, President of the Republic of Cyprus, Cyprus.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A flat weave wool rug depicting an Egyptian scene of pyramids, trees, and birds on a gold-colored background; fringed on two ends; 5 feet, 4 inches long × 3 feet, 10 inches wide. Archives, Foreign. Recd: Apr 04, 1989. Est. value: $185.	His Excellency Mohammad Hosni Mubarak, President of the Arab Republic of Egypt, Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A 100 percent New Zealand wool rug depicting fullface portrait of President Bush; power loomed by oriental weavers, Egypt; fringed on one end; 58"×81" overall. Archives, Foreign. Clothing and accessories: A cotton jogging suit; yellow, gray, and white jacket with solid gray pants; "Octopus" brand, size medium. Archives, Foreign. Recd: Oct. 05, 1989. Est. value: $345.	His Excellency Mohammad Hosni Mubarak, President of the Arab Republic of Egypt; Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A silver trinket box with incised designs overall; 10¼"×6¾"×1¼"; enclosed in a blue velvet-covered box. Archives, Foreign. Recd: Aug 08, 1989. Est. value: $1,000.	His Excellency Youssef Abou Taleb; Commander-in-Chief of the Armed Forces; Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A "Parker Duofold" fountain pen with black shaft and gold-plated trim and 18 kt. gold nib; Archives, Foreign. Household: A sterling silver "Armada dish" made in England; 4½" in diameter. Archives, Foreign. Recd: May 31, 1989. Est. value: $450.	The Right Honorable Margaret Thatcher, M.P.; Prime Minister of England; England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Original black and white engraved print of the Bastille, titled "Vue De La Bastille De Paris, De La Porte St., Antoine, Et Du'Une Partie Du Fauxbourg." By J. Rigaud: No. 97; Shadowbox matted in 22 kt. gold-leaf frame; 11"×20½"; overall: 20"×28½". Archives, Foreign. Recd: May 08, 1989. Est. value: $800.	His Excellency, Jacques Chirac; Mayor of Paris; France.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1989

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Assortment: A framed Bicentennial print by Tavier, 1989, measuring 31"×44" overall; a book, "Richard Tavier;" and a spot image photograph of the Paris area of the Economic Summit in metal frame, measuring 31"×35" overall; Archives, Foreign. Artwork: A brass disc and silver-toned metal cylinder sculpture in blue velvet presentation chest; disc measures 11" in diameter and the cylinder measures 2⅜" in diameter and 8½" long; the lid of the chest is lettered "15–14–16 Juillet 1989—Francois Mitterrand—President De La Republique"; Archives, Foreign. Artwork: A bronze sculpture depiction of the phrase "Liberte, Egalite, Fraternite," by Haim Kern; the work measures 21¼"×11"×2" overall and is contained in a fitted wood case; Archives, Foreign. Assortment: One cookbook, "Foie Gras, Magret, and other good food from Gascony;" an oval, polished brass paperweight in a stylized bird design, measuring 2⅛"×3½"; a 14 kt. gold bicentennial lapel pin; a 14 kt. gold Summit lapel pin; and a silver Summit medallion, lettered: "Sommet De L'Arche 14–16 Juillet 1989 Francois Mitterrand" and measuring 3⅛" in diameter; Archives, Foreign. Household: A black leather briefcase with brass hardware by Longchamps and a book, "La Marseillaise," by Frederic Robert, Imprimerie Nationale Editions, 1989, red leather bound with gold edges in slipcase; Archives, Foreign. Household: A gentlemen Laman Rolling ball pen by Waterman. Official use/display. Recd: Jul 14, 1989. Est. value: $5,543.	His Excellency, Francois Mitterrand, President of the French Republic; France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: An antique wooden model of a sailing ship mounted on a black wooden base under an oval clear glass dome; Ship is 15" long, 15" tall; approximately 19" tall overall. Archives, Foreign. Recd: May 22, 1989. Est. Value: $1,500.	His Excellency Francois Mitterrand, President of the French Republic, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Photograph: 31 black and white photographs of President and Mrs. Bush, et al., on the occasion of the Economic Summit in Paris; in tan paper-covered album in matching slipcase. Archives, Foreign. Recd: Aug 29, 1989. Est. Value: $298.	Mr. Serge Mostura, Ministry of Foreign Affairs, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: A silver filigree ship mounted on a wood base: 12" long, 12" high, 5½" deep. Archives, Foreign. Recd: May 15, 1989. Est. Value: $350.	His Excellency Alhaji Sir Dawda Kairaba Jawara, President of the Republic of the Gambia, The Gambia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: An engraved sterling silver scalloped serving tray; 13"×17". Archives, Foreign. Recd: May 31, 1989. Est. Value: $800.	The Honorable Willi Hoerter, Lord Mayor of the City of Koblenz, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Original color etching of the town of Oberwesel, published in London, 1819; inscribed on matting; displayed under glass in brown wood frames; 10⅛"×12" image, 16¾"×20½" overall; Archives, Foreign. Artwork: an 18" x 32" leather wallhanging titled "Urkunde". Archives, Foreign. Recd: May 31, 1989. Est. Value: $250.	The Honorable Johan Peter Josten, Mayor of the Town of Oberwesel, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1989

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Fishing equipment: Chalkstream split-cane flyrod 5/89, 7½ feet long, 3¼ ounces; handmade by Bavarian craftsman C. M. Schinn; contained in a handcrafted case with engraved presentation plaque; included are approximately 75 flies in a handcrafted box and a leather record book containing a description of the rod. Archives. Recd: May 30, 1989. Est. Value: $683.	His Excellency Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A quartz desk clock, round gold rim with Roman numeraled dial, date window, and second hand; made by "EB;" in a sterling silver frame engraved with the eagle emblem of the Federal Republic of Germany and a facsimile signature of Chancellor Kohl; 3" square. Archives, Foreign. Recd: Dec 6, 1989. Est. Value: $495.	His Excellency Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: Sterling silver humidor engraved with the German Eagle, depicting a color picture of the Brandenburg Gate on a hinged lid; engraved plaque on inside lid; 6¾"×9"×2" overall. Archives, Foreign. Recd: May 31, 1989. Est. Value: $575.	His Excellency Richard Von Weizsaecker, President of the Federal Republic of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Historic artifacts: Pictorial map, "Delkeskamp's Panorama of the Rhine from Cologne to Mayence," published by Leigh and Son, London; undated; in foldout binder. Archives, Foreign. Recd: May 31, 1989. Est. Value: Indeterminable.	His Excellency Dr. Carl-Ludwig Wagner, Ministerpresident, Rheinland-Pfalz, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Coin: An 18 kt. gold coin depicting the coat-of-arms of Ghana. Archives, Foreign. Recd: Mar. 10, 1989. Est. Value: $500.	His Excellency Flt.-Lt. Jerry John Rawlings, Chairman, Provisional National Defense Council of Ghana, Ghana.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Medallions: A blue case containing two large reproduction coins minted to commemorate President Bush's visit to Hungary and two smaller silver and bronze coins. Archives, Foreign. Recd: Jul. 14, 1989. Est. Value: $250.	His Excellency F. Bruno Straub, President of the Presidential Council of the Hungarian People's Republic, Hungary.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Books: "An autobiography," "The Discovery of India," and "Glimpses of World History" by Jawaharlal Nehru; inscribed by Ambassador Singh; published by Oxford University Press, 1982; leather-bound with gold tooling. Archives, Foreign. Recd: Nov. 14, 1989. Est. Value: $525.	His Excellency Dr. Karan Singh, Ambassador of India, India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: A painting entitled "The Arja Dance" by N. Darmana, Signed; depicts a classical drama dance from the island of bali performed in the Temple Yard after Finishing Religious Ceremony; in a light-colored carved wood frame with velvet backing: 41½"×55½" Overall; Archives, Foreign. Artwork: A circular plaque with Indonesian Coat of Arms, "Garuda Pancasila," a map of the Indonesian Archipelago, and the logos of the 27 Provinces; Gold-plated copper and teakwood; 11½" in diameter. Archives, Foreign. Recd: Jun. 15, 1989. Est. Value: $640.	His Excellency and Mrs. Soeharto, President of the Republic of Indonesia, Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1989

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Household: A Waterford crystal bowl engraved "Presented to George Bush President of the United States by the Taoiseach Charles Haughey on St. Patrick's Day 1989;" scalloped edge; 8" high, 12G6> in diameter. Archives, Foreign. Recd: Mar. 17, 1989. Est. Value: $12,000.	His Excellency Charles Haughey, Prime Minister of Ireland, Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Religious articles: A two-pronged candleholder centered with a star of David; made of black metal in Ethiopia; 7¾"×6"; attached with a brass presentation plaque lettered "To George Bush . . . From the Ethiopian Jews in Israel"; Archives, Foreign. Artwork: A color print lettered "Whoever Preserves a Single Soul, Scripture Ascribes Merit to them as Tho They Saved a Complete World" (English and Hebrew text); circular matted under glass in brown wood frame; labelled on reverse with name, address, and inscription of artist, Mordechai M. Rosenstein; 222" square overall. Archives, Foreign. Recd: Mar. 13, 1989. Est. Value: $300.	His Excellency Moshe Arens, Minister of Foreign Affairs of Israel, Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book: a leather-bound volume, "The Passover Haggadah," with original artwork by the artist Agam and inscribed in calligraphy; in a leather case and measuring 21"×17"×5"; provided with a 3-part lucite stand approximately 3 feet tall. Archives, Foreign. Recd: Apr 06, 1989. Est. Value: $25,000.	His Excellency Yitzhak Shamir, Prime Minister of Israel, Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: An original color etching, "Monte Cavallo Palais Du Pape a Rome (Monte Cavallo Palace of the Pope in Rome)," by Giacomo de Rossi, 1782; printed in Amsterdam; dark matting under glass in burlwood frame; 16"×28" image; 28¼"×37½" overall. Archives, Foreign. Recd: May 26, 1989. Est. Value: $400.	His Excellency Francesco Cossiga, President of the Italian Republic, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: Sterling silver dish with leaf design and bearing facsimile signature of President Cossiga on underside; 7" in diamter; residence; for official use/display. Photograph: Color photograph of President Cossiga, inscribed; in a sterling silver (925) frame; 11"×13". Residence; for official use/display. Recd: Oct. 11, 1988. Est. value: $300.	His Excellency Francesco Cossiga; President of the Council of Ministers of the Italian Republic, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Bronze sculpture of Garibaldi, the father of Italian independence and unification, mounted on marble base: artist unknown: 18" tall. Archives. Foreign. Recd: Dec 06, 1989. Est. value: $650.	His Excellency Bettino Craxi, Secretary of the Italian Socialist Party, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: Murano glass bowl or vase, pink and white striped scalloped design; 10" high, 10" in diameter. Recd: May 27, 1989. Est. value: $350.	His Excellency Ciriaco de Mita, President of the Council of Ministers of the Italian Republic, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumables: One case (12 bottles) of "Vignadora" wine by Mastrobernardino, 1988 vintage. Perishable. Recd: Jul 18, 1989. Est. value: $336.	His Excellency Ciriaco de Mita; President of the Council of Ministers of the Italian Republic, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Books: Three volume set of books on the Etruscans published by Istituto Geografico de Agostina, Italian text, 1988. Archives, Foreign. Recd: May 27, 1989. Est. Value: $225.	The Honorable Bruno Lazzaro; President; Consiglio Regione Lazio, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1989

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Coins: A set of three medallions, gold, silver, and bronze, depicting Pope John Paul II on one side and the Mother and Child on the reverse; enclosed in a white leather case. Archives, Foreign. Recd: May 27, 1989. Est. Value: $625.	His Holiness Pope John Paul II, Italy	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Parchment scroll done in calligraphy and a colorful florentine design border of "The Freedom of Nettuno"; in brown leather tube. Archives, Foreign. Recd: May 31, 1989. Est. Value: $35.	The Honorable Antonio Simeoni, Mayor of the City of Nettuno, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Antiqued bronze sculpture entitled "Fraternity," by Maggio, 1988; (Depicts President Reagan and Chairman Gorbachev shaking hands with missiles in background; Greek figures embellish the sculpture); inscribed "This Work Is Given to the United States of America, Symbolically West Urging Every Country to Peace;" Displayed on a square base; overall: 86¾" H, 39½" W, 35½" D. Archives, Foreign. Recd: Oct. 11, 1989. Est. Value: $12,000.	The Government of the Italian Republic, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: A miniature Kabuto helmet of metal, plastic, and braid; 7½"×5"×6"; displayed on wood stand and housed in a black lacquered box; residence. For official use/display photograph: color photograph of Prime Minister Takeshita, inscribed; in sterling silver frame with gold crest at top; 9½"×11½" overall. Archives, Foreign. Recd: Feb. 2, 1989. Est. Value: $240.	His Excellency Noboru Takeshita, Prime Minister of Japan, Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Statuette of a rider on camel; sterling silver decorated in gold-leaf and mounted on a marble base; 8½" high, 8" wide; displayed in a burgundy leather case. Archives, Foreign. Photograph: Color photograph of King Hussein I of Jordan, inscribed in sterling silver frame with royal crest at top; 8½"×11" overall. Residence; for official use/display. Recd: Apr. 20, 1989. Est. Value: $1970.	His Majesty Hussein I, King of the Hashemite Kingdom of Jordan, Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A black lacquered, mother-of-pearl document box; dragon design on removable lid, inscribed; interior lift-out suede trays; 19" long, 14" deep, 9" high. Archives, Foreign. Recd: Feb. 28, 1989. Est. Value: $300.	His Excellency Roh Tae Woo, President of the Republic of Korea, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: A watercolor on paper of a mountainous scene, by Yoo Tae Lee Hyun-Cho; inscribed in oriental calligraphy; in a gold-painted distressed wood frame; 18"×27" image, 28"×37½" overall. Archives, Foreign. Recd: Oct. 17, 1989. Est. Value: $150.	His Excellency Roh Tae Woo, President of the Republic of Korea, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1989

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: Watercolor of the United States and Soviet Ships involved in the meetings in the Mediterranean between President Bush and Chairman Gorbachev. Titled "A New Beginning," by Edwin Gales, signed, 1989; double-matted under non-glare glass in brown and gold-colored wood frame; engraved brass title and presentation plaques; 15" × 20½" image, 31¼" × 25¼" overall; Archives, Foreign. Consumables: Large wicker basket of assorted fruits, traditional breads, wines. Perishable. Recd: Dec. 01, 1989. Est. Value: $850.	The Honorable Dr. Edward Fenech-Adami, Prime Minister of the Republic of Malta, Malta.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: Sterling silver footed vase, bearing seal of the United Mexican States; 8" Tall, 5½" in diameter at widest point; displayed in a fitted leather case. Archives, Foreign. Recd: Oct. 03, 1989. Est. Value: $300.	His Excellency Carlos Salinas De Gortari President of the United Mexican States, Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: An arrangement of birds of paradise, gerber daisies, anthurium, lilies, palm fronds, and other tropical flowers in a reproduction Chinese porcelain jardiniere; Residence; For official use/display Consumables: A natural wicker basket filled with gourmet foodstuffs; perishable. Household: A brandy decanter, six fluted brandy glasses, and an eagle figurine, 7" tall; all crystal by baccarat. Archives, Foreign. Recd: June 12, 1989. Est. Value: $1,915.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Medallion: Gold engraved medallion lettered "to America Home for the Pilgrims from Leiden;" 2½" in diameter, contained in a blue leather box; Archives, foreign. Book: "Orfers Leiden" published in Leyden 1614. Archives, Foreign. Recd: July 17, 1989. Est. Value: $1400.	The Honorable C.H. Goekoop Burgemeester of Leiden, Netherlands.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A silk carpet (new) with a centered tree and vine design interspersed with bird motifs and bordered in floral pattern; in earth tones on creme colored background and fringed; 48" × 70" overall. Residence; for official use/display. Recd: June 06, 1989. Est. Value: $1,500.	Her Excellency Benazir Bhutto, Prime Minister of the Islamic Republic of Pakistan, Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing and accessories: A "mate" or horn (flask) used by Gauchos, made of horn with silver (800) ends and plaque engraved "George Bush" and silver and gold lion motif, 6⅛" long; and a silver (800) "straw" for use with the horn, 8⅛" long; enclosed in a fitted red fabric-covered box. Archives, Foreign. Recd: Sep. 26, 1989. Est. Value: $500.	His Excellency Andres Rodriguez, President of the Republic of Paraguay, Paraguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Books: Two-volume set of "Burza Nad Pacyfikiem" (History of Polish involvement in World War II in the Pacific) by Zbigniew Flisowski; Polish text. Archives, Foreign. Recd: July 10, 1989. Est. Value: $50.	His Excellency and Mrs. Wojciech Jaruzelski, President of the Council of Ministers of the Polish People's Republic, Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT—Continued

Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1989

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: Oil Painting of an architectural site (House or temple) by Ali Al-Russaiss, Signed on reverse, in heavy goldleaf frame; 49" square image, 54" square overall; Archives, Foreign. Artwork: A plaque of three metal designs (scroll, key, and a colonial style building) mounted on felt background in wood frame; 15"×19½"; easel backing; contained in black vinyl case bearing seal of the Islamic Saudi Academy; crafted by students; Archives, Foreign. Books: "1400 years of Islamic Art" published by Khalili Gallery, London, 1981: "Islamic Science" by Seyyed Hossein Nasr, published by World of Islam Festival Publishing Company, Ltd., 1976; "The Genius of Arab Civilization" distributed by Kegan Paul International, England, 1983; and "Islam and Muslim Art" by Alexandre Papadopoulo, published by Harry Abrams, Inc., New York, 1979. Archives, Foreign. Recd: July 27, 1989. Est. Value: $1,545.	Fahd Bin Abd Al-Aziz Al Saud, custodian of the two holy mosques and King of the Kingdom of Saudi Arabia, Saudia Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: Large arrangement of pink peonies in a glass fishbowl. Residence; for official use/display Recd: June 12, 1989. Est. Value: $250.	His Royal Highness Prince Bandar Bin Sultan Bin Abdulaziz, Ambassador of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Silver ship model displayed on a polished wood base; 8½"×7"×2¾"; West wing; for official use/display. Household: Silver cigarette box engraved "Felipe" and Royal Crown on lid; 8"×3⅝"×2". Archives, Foreign. Recd: Oct. 01, 1989. Est. Value: $600.	His Royal Highness Felipe, Crown Prince of Spain, Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: A modernistic print by Eduardo Chillida, signed; No. 56 of 100; in white metal frame; 20"×30" image, 28⅛"×36⅛" overall; Archives, Foreign. Book: "Chillida" by Octavio Paz, published by Maeght. Archives, Foreign. Recd: Oct. 19, 1989. Est. Value: $390.	His Excellency Felipe Gonzalez Marquez, President of the Government of Spain, Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A traditional Swazi wooden bowl made from Kiaat wood, 16" in diameter, and a vinyl album of photographs of King Mswati. Archives, Foreign. Recd: Apr. 27, 1989. Est. value: $350.	His Excellency Mswati III, King of Swaziland, Swaziland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A painted lacquer box depicting President Bush and Chairman Gorbachev with likenesses of the Capitol and Kremlin behind; 6¼"×4¼"×2⅝" deep. Camp David: for official use/display. Recd: Dec. 24, 1989. Est. value: Not yet determined.	His Excellency Yuri V. Dubinin, Ambassador of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: A three-dimensional bamboo ship, displayed under glass in light-colored wood frame with presentation plaque; 24"×29½"; housed in a wood, brass-cornered carrying case; 25¼"×31¼" case. Archives, foreign. Recd: Jan. 20, 1989. Est. value: $250.	His Excellency Mikhail Gorbachev, Chairman of the Presidium of the Supreme Soviet of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1989

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: Art model of the frigate "Aleksandr Nevskiy," a 51-cannon frigate, made in the Central Naval Museum in Leningrad according to the set of original design blueprints of 1852–1862 by Russian Naval Engineer K. Gasekhus; scale of 1/16 of an inch to one foot; approximately 2 feet long, 14 inches high, six inches wide; displayed in a wood-framed plexiglass case. Camp David; for official use/display. Recd: Dec. 02, 1989. Est. value: $12,000.	His Excellency Mikhail Gorbachev, Chairman of the Supreme Soviet of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Framed, enameled copper plaque depicting various public buildings in Washington, D.C.; 24" square and mounted in a wood frame; 33½" square overall; archives, foreign. Consumables: Four bottles of Russian vodka and four jars of caviar. Perishable. Recd: Sept. 21, 1989. Est. value: $640.	His Excellency Eduard A. Shevardnadze, Minister of Foreign Affairs of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Clothing and accessories: A "Guampa" or horn in the form of a flask used by Gauchos; bears year 1926; silver ends and leather strap; 7" long; housed in a navy blue case. Archives, foreign. Recd: Sept. 15, 1989. Est. value: $300.	His Excellency Julio Maria Sanguinetti, President of the Oriental Republic of Uruguay, Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Bronze bust of Simon Bolivar by E. Pratt, 1939; (from an original by Nhellby 1907); 20" high, 12" deep, 11" wide. Archives, foreign. Recd: Mar. 27, 1989. Est. value: $1,500.	His Excellency Dr. Jaime Lusinchi, Former President of Venezuela, Venezuela.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A circular cotton fibre rug depicting a multicolored peacock design and lettered "Venezuela;" 60" in diameter; designed by Luis Montiel. Archives, foreign. Recd: Sept. 25, 1989. Est. value: $1,200.	His Excellency Carlos Andres Perez, President of the Republic of Venezuela, Venezuela.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Collection: A display of 48 mineral samples from Zaire, contained in a carved wood chest measuring 20½"×15"; Archives, foreign. Artwork: A brass figure of a bird, 22"×9"×20"; Archives, foreign. Artwork: A set of 40 color floral prints, "Fleurs Du Zaire," published by Pehel Editions Bruxelles; each print is 11½"×15"; contained in a fabric-covered box. Archives, foreign. Recd: June 29, 1989. Est. value: $1,030.	His Excellency Marshal Sese Seko Mobutu, President of the Republic of Zaire, Zaire.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A painted lacquer box with a picture of President Bush on top; 8"×10½"×1¾" deep. Archives. Recd: Dec. 07, 1989. Est. value: $5,000.00.	Professor Levon O. Badalian, M.D., Academician of the USSR, Academy of Medical Sciences, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: A cobalt blue glass dish with a decorative sterling silver leaf design clip by "Makers Mark;" 8¼" in diameter. Archives, Foreign. Recd: June 27, 1989. Est. Value: $228.	Mrs. Hazel Hawke, wife of the Prime Minister of Australia, Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: Soapstone figurine of a walrus, signed "Appa Geetz;" 7¼" long, 3½" tall; Archives, Foreign. Clothing and accessories: A red wool pullover fishing jacket, handmade by sea shell designs, Nova Scotia, Canada; size large. Archives, Foreign. Recd: May 04, 1989. Est. Value: $252.	The Right Honorable and Mrs. Brian Mulroney, P.C., M.P., Prime Minister of Canada, Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1989

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Household: A heavy beige cotton (flax) tablecloth with multi-colored embroidered figures; fringed on two ends; 52" wide, 98" long; and nine tablemats with one figure embroidered on each; 13"×25⅛" (includes one smaller mat, 9"×17"); Archives, Foreign. Household: Two wool carpets, multi-colored geometric design overall, fringed; 49"×97" and 47"×107"; Archives, Foreign. Clothing and accessories: An envelope style clutch bag, two wallets, and two change purses; all in snakeskin. Archives, Foreign. Recd: Mar. 14, 1989. Est. Value: $1,400.	Mrs. Hissein Haabre, Wife of the President of Chad, Chad.	Non-acceptance would cause embarrassment to donor and U.S. Government
First Lady	Household: White fisherman's net style bedspread, handcrocheted in Egypt, in a circular medallion design; 100" long 84" wide, Archives, Foreign. Recd: Apr. 04, 1989. Est. Value: $1,200.	His Excellency Mohammad Hosni Mubarak, President of the Arab Republic of Egypt, Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: An autographed color photograph of Her Majesty Queen Elizabeth II in a sterling silver frame bearing "ER" Royal Crest at top; leather easel backing; 8½"×12¼" overall. Residence; for official use/display. Recd: Jun. 08, 1989. Est. Value: $1,050.	Her Majesty Elizabeth II, Queen of England, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: A gold-plated parker fountain pen, 18 kt. Gold NIB. Residence; for official use/display. Recd: May 31, 1989. Est. Value: $150.	The Right Honorable Margaret Thatcher, M.P., Prime Minister of England, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: An oval enamelled music box, by Halcyon Days Enamels. Made in England; 2¼" in Diameter. Camp David; for official use/display. Recd: Nov. 24, 1989. Est. Value: $595.	The Right Honorable Margaret Thatcher, M.P., Prime Minister of England, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and accessories: A burgandy calf leather, envelope style purse with leather strap and gold-toned metal hardware by Hermes of Paris; mirror included; 8¾"×7¼". Archives, Foreign. Recd: May 08, 1989. Est. value: $2695.	His Excellency Jacques Chirac, Mayor of Paris, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Flowers: three baskets of Barbara Bush roses; official use/display. Photograph: album of color and black and white photographs taken on occasion of the President and Mrs. Bush's trip for the Bicentennial of the French Revolution and the economic summit: Includes several photographs taken during the Reagan administration. Archives. Foreign. Recd: July 14, 1989. Est. value: $275.	Madame Jacques Chirac, wife of the Mayor of Paris, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Assortment: A set of six porcelain cups and saucers, re-edition of the "Tasse de Lumiere" produced by Sevres in 1794, made in Limoges, France; a crystal ceralc, coq rouge, 8" tall; and a 35" square blue silk scarf by Francois de Reix. Archives, Foreign. Recd: July 13, 1989. Est. value: $650.	His Excellency Francois Mitterrand, President of the French Republic, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: A pastel painting of two classical female marble figures in blue and gray tones on a reddish background; 30"×38" image. Cream matting with an antiqued silver/gold finish frame; 35½"×44" overall. Archives, Foreign. Recd: May 22, 1989. Est. value: $1500.	His Excellency Francois Mitterrand, President of the French Republic, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Artwork: Painting, "Tiergarten Berlin," by Reinhold W. Timm, signed, 1989; in black and gold-painted wood frame with plaque; 30½"×38" overall; Archives, Foreign. Household: A six piece porcelain mocha service, white with gold trim and a different design motiff on each; by Hochst. Residence: For official use/display. Recd: May 31, 1989. Est. value: $1150.	Mrs. Hannelore Kohl, wife of the Chancellor of the Federal Republic of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and accessories: A Kente stole in multi-colored geometric design: 22 inches × 6 feet. Archives. Foreign. Recd: March 10, 1989. Est. value: $250.	His Excellency Flt.-Lt. Jerry John Rawlings, Chairman, Provisional National Defense Council of Ghana, Ghana.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and accessories: A bright blue cashmere stole with embroidered edges. Approximat size 39"×79". Archives, Foreign. Recd: Nov 14, 1989. Est. value: $500.	His Excellency Karan Singh, Ambassador of India, India.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: A seven-part silver (835) tea service, including sugar spoon and 12 spoons, displayed in a red velvet-covered box. Archives. Foreign. Recd: June 15, 1989. Est. Value: $3,311.	His Excellency and Mrs. Soeharto, President of the Republic of Indonesia; Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: A white linen tablecloth with embroidered floral design (72"×144") and twelve matching napkins (each 20" square); made in Ireland. Archives. Foreign. Recd: March 20, 1989. Est. Value: $1,100.	His Excellency Charles Haughey, Prime Minister of Ireland, Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: A pendant, designed as a tablet bearing a figure carrying grapes and a quotation from numbers 13:27; 18 kt. gold, sterling silver, and ruby chips, attached to sterling silver chain; displayed in an olivewood box with silver plaque attached to inner lid with English translation of quote: "and they told him and said, we came unto the land wither thou sentest us, and surely it floweth with milk and honey;" 1¾"×1" pendant designed by Michael Ende. Archives, Foreign. Recd: April 06, 1989. Est. Value: $3,000.	His Excellency Yitzhad Shamir, Prime Minister of Israel, Israel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and accessories: Black leather envelope style handbag with Chevron design; black tassle cord and a silver clasp with antique crystal setting; sewn by hand by Fendi of Italy: 9¾"×6". Archives, foreign. Recd: May 27, 1989. Est. Value: $600.	Mrs. Anna Maria de Mita, wife of the President of the Council of Ministers of the Italian Republic, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: Two ceremonial dolls displayed in glass case; dolls are 5" and 6" tall respectively; case measures 21½"×13½"×12". Residence; for official use/display. Recd: February 02, 1989. Est. Value: $250.	Mrs. Noboru Takeshita, wife of the Prime Minister of Japan, Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: Two needlepoint pillow covers in an intricate geometrical design in predominate blues: 14" square. Archives, Foreign. Recd: September 12, 1989. Est. Value: $500.	His Royal Highness Hassan Bin Talal, Crown Prince of the Hashemite, Kingdom of Jordan, Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government
First Lady	Jewelry: 18 kt. gold necklace, octagonal pendant with Arab inscription on gold chain: Archives, Foreign. Photograph: Color photograph of Queen Noor and King Hussein, inscribed; in black leather frame: 11¼"×16" overall. Residence; for official use/display. Recd: April 19, 1989. Est. Value: $1,160.	Her Majesty Queen Noor, Jordan	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Household: A mother-of-pearl and gold colored jewelry box in a geometric design on black lacquer, removable lid, and interior lift-out suede trays; inscribed; 15½" long, 11¾" deep, 7" high. Archives, Foreign. Recd: February 28, 1989. Est. Value: $250.	Mrs. Roh Tae Woo, wife of the President of the Republic of Korea, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: Sterling silver and gold-plated necklace and matching pierced earrings by "Tane;" enclosed in leather cases; Archives, Foreign. Book: "The Taste of Mexico," by Patricia Quintana; Published by Stewart, Tabori & Chang, New York, 1986. Archives, Foreign. Recd: October 03, 1989. Est. Value: $335.	Mrs. Cecilia Occeli De Salinas, wife of the President of the United Mexican States, Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government
First Lady	Flowers: An arrangement of lilies, lilacs, hydrangea, laurel, gladiola, peonies, delphinium, roses, and orchid stems in a reproduction Chinese porcelain Jardiniere; Residence; for official use/display. Household: Six champagne flutes, two covered condiments, a bud base, and a perfume bottle; all crystal by Baccarat; Archives, Foreign. Consumables: A white wicker basket filled with gourmet foodstuffs. Perishable. Recd: June 08, 1989. Est. Value: $1515.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government
First Lady	Jewelry: A pair of gold and diamond ear clips in a floral design. Archives, Foreign. Recd: June 06, 1989. Est. Value: $1300.	Her Excellency Benazir Bhutto, Prime Minister of the Islamic Republic of Pakistan, Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: A linen tablecloth of "Aho-Poi" work, with blue geometric designs; measuring 12½ feet × 6 feet; and 18 complementary napkins measuring 14" × 18". Archives Foreign. Recd: September 26, 1989. Est. Value: $1500.	His Excellency Andres Rodriguez, President of the Republic of Paraguay, Paraguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Cosmetics: Three jars of cosmetic honey. Perishable. Recd: July 10, 1989, Est. Value: $15.	His Excellency and Mrs. Wojciech Jaruzelski, President of the Council of Ministers of the Polish People's Republic, Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: A sterling silver and colored glass necklace and bracelet set. Archives, Foreign Recd: July 12, 1989. Est. Value: $400.	The Honorable Kazimierz Rynkowski, Mayor of Gdansk, Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government
First Lady	Assortment: Yellow beaded cotton caftan; multi-colored cotton prayer rug; blue and white canvas tote; brass tray, 10" in diameter; cap; coffee mug; T-shirt; apron; cassette tape; booklet; souvenir key chain, badge, and pin; silver and enamelled trinket box, 3" in diameter; and a silver, stone, and beaded necklace. Archives, Foreign. Recd: December 08, 1989. Est. Value: $264.	His Royal Highness Prince Bandar Bin Sultan Bin Abdulaziz, Ambassador of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Flowers: Large grapevine basket containing seven cybidium orchids. Residence; for official use/display. Recd: February 03, 1989. Est. Value: $250.	His Excellency Wilhelm Wachtmeister, Ambassador of Sweden and Dean of the Diplomatic Corps, Sweden.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: A lacquered box depicting a fairytale scene of a king seated at a banquet table surrounded by his queen and entourage with three cranes in flight; No. 7546, 1981; 11" × 8" × 2". Residence; for official use/display Recd: December 02, 1989. Est. Value: $4,000.	Mrs. Raisa Gorbachev, Wife of the Chairman of the Supreme Soviet of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: A pedestal-style vase in pinkish quartz-like material on a black base; 7½" long., 4" high, 3¾" deep. Archives, Foreign. Recd: September 26, 1989. Est. Value: $200.	Mrs. Zulema Yoma De Menem, Wife of the President of Venezuela, Venezuela.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Household: A malachite box with removable lid, 6¼" × 4½" × 2"; Archives, Foreign. Household: A carved ebony lidded stand; 14½" High, 7" in diameter. Archives, Foreign. Recd: June 29, 1989. Est. Value: $350.	His Excellency Marshal Sese Seko Mobutu, President of the Republic of Zaire, Zaire.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Robert D. Blackwill, Special Assistant to the President for National Security Affairs.	Household: A desk clock in the style of a painted Russian box; box measures 9⅝" × 5¾" × 2⅛" deep and depicts a church. Retained. Recd: December 02, 1989. Est. Value: $90.00.	His Excellency Mikhail Gorbachev Chairman of the Supreme Soviet of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
William J. Canary, Jr., Special Assistant to the President for Intergovernmental Affairs.	Food, lodging, and transportation within the Soviet Union; September 15–30, 1989.	Government of the Union of Soviet Socialist Republics.	Participation in foreign exchange sponsored by American Council of Young Political Leaders.
Max Martin Fitzwater, Assistant to the President and Press Secretary.	Household: One Russian lacquered box measuring 3" × 5¼" × 1¼" deep. Presidential Staff; for official use/display. Recd: December 02, 1989. Est. Value: $250.	His Excellency Mikhail Gorbachev, Chairman of the Supreme Soviet of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Robert M. Gates, Assistant to the President and Deputy for National Security Affairs.	Artwork: A 31" × 41" woven wool picture of three figures; on wood frame. GSA. Recd: April 27, 1989. Est. Value: $350.	His Excellency Abdallah Kallel, Minister of National Defense of Tunisia, Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Barbara Jobe, Trip Coordinator, Presidential Advance Office.	Jewelry: A 1⅛" × 1¾" decorative pin. GSA. Recd: Dec. 02, 1989. Est. Value: $200.	His Excellency Mikhail Gorbachev, Chairman of the Supreme Soviet of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Eric D.K. Melby, Director, International Economic Affairs, National Security Council.	A bronze medallion highlighting the newly built Arche De La Defense, site of the summit meetings, and lettered on the reverse "Sommet De L'Arche 14–16 Juillet 1989" with a facsimile of President Mitterrand's signature, 3⅝" in diameter; Presidential staff; for official use/display. Clothing and accessories: A black leather briefcase by Longchamp lettered underneath the foldover flap "Sommet De L'Arche 14–16 Juillet 1989.". GSA. Recd: July 16, 1989. Est. Value: $350.	His Excellency Francois Mitterrand, President of the French Republic, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Condoleezza Rice, Director, European and Soviet Affairs, National Security Council.	Household: A desk clock in the style of a painted Russian box; box measures 9⅝" × 6¼" × 2⅛" deep and depicts a medieval scene. Retained. Recd: Dec. 02, 1989. Est. Value: $75.00.	His Excellency Mikhail Gorbachev, Chairman of the Supreme Soviet of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brent Scowcroft, Assistant to the President for National Security Affairs.	Household: A 10" tall cinnabar vase, 4¾" in diameter with a separate wood stand. Presidential staff; for official use/display. Recd: Apr. 15, 1989. Est. Value: $200.	Government of the People's Republic of China, People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brent Scowcroft, Assistant to the President for National Security Affairs.	Household: A woven wool carpet, 34" × 50" overall, in tones of brown, beige, tan, and gray depicting palm trees, houses, and animals; and an inlaid wooden box with red felt-like lining. Presidential staff; for official use/display. Recd: Aug. 08, 1989. Est. Value: $275.	General Youssef Sabri Abou Taleb, Commander-in-Chief of the Armed Forces of the Arab Republic of Egypt, Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brent Scowcroft, Assistant to the President for National Security Affairs.	Household: An 8-day wind up clock by L'Epee in a brass and beveled glass case; plate on back reads "Declaration Des Droits De L'Homme Et Du Citoyn;" engraved on bottom of clock "Bicentenaire De La Revolution Francaise.—1989." (1789/Bi-Centenaire No. 411). Presidential staff; for official use/display. Recd: July 16, 1989. Est. Value: $750.	His Excellency Jacques Attali, Special Counselor to the President of the French Republic, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Brent Scowcroft, Assistant to the President for National Security Affairs.	A bronze medallion highlighting the newly built Arche De La Defense, site of the summit meetings, and lettered on the reverse "Sommet De L'Arche 14–16 Juillet 1989" with a facsimile of President Mitterrand's signature, 3⅝" in diameter; and a black leather briefcase by Longchamp lettered underneath the foldover flap "Sommet De L'Arche 14–16 Juillet 1989". GSA. Recd: July 16, 1989. Est. Value: $350.	His Excellency Francois Mitterrand, President of the French Republic, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brent Scowcroft, Assistant to the President for National Security Affairs.	Household: A 38" × 68" silk oriental rug (new) in tones of rust, peach, beige, and light green. Presidential staff; for official use/display. Recd: June 06, 1989. Est. Value: $1,075.	Her Excellency Benazir Bhutto, Prime Minister of the Islamic Republic of Pakistan, Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brent Scowcroft, Assistant to the President for National Security Affairs.	A 5" × 3" × 1¾" deep painted lacquer box featuring a fairytale scene and a metal panel on wood representing the month of "March". Presidential staff; for official use/display. Recd: Nov. 21, 1989. Est. Value: $1,400.	His Excellency Anatoliy F. Dobrynin, Adviser to the Chairman of the Supreme Soviet Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Brent Scowcroft, Assistant to the President for National Security Affairs.	Artwork: A handcrafted copper-tone artwork of bird in brown wood frame; 13½" × 26" overall. Presidential staff; for official use/display. Recd: June 29, 1989. Est. Value: $400.	His Excellency Marshal Sese Seko Mobutu, President of the Republic of Zaire, Zaire.	Non-acceptance would cause embarrassment to donor and U.S. Government.
John H. Sununu, Chief of Staff to the President.	Household: A 10" tall cloisonne vase, 6¼" in diameter; with separate wood stand. Presidential staff; for official use/display. Recd: Dec. 20, 1989. Est. Value: $350.	His Excellency Zhu Qizhen, Ambassador of the People's Republic of China, People's Republic of China.	Non-acceptance would cause embarrassment to donor and U.S. Government.
John H. Sununu, Chief of Staff to the President.	Household: A 38"×68" silk Oriental rug (new) in tones of rust, peach, beige, and light green. Presidential staff; for official use/display. Recd: June 06, 1989. Est. Value: $1,075.	Her Excellency Benazir Bhutto, Prime Minister of the Islamic Republic of Pakistan, Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Vice President and Mrs. Quayle	Six books on Thailand: "His Majesty & His Development Work"; "The Royal Palace"; "The Sights of Rattanakosin"; "Royal Ceremonies"; "Monarchs and the Thailand People"; 9 booklets in a volume on Thailand. ($100) Archives. Hand woven maroon tapestry fabric presented in gold fabric box—very handsome. ($100) Archives. Red leather box with silver coin inside—may be Thai coin. ($15) Pewter miniature elephants. ($80) Archives. Recd: May 26, 1989. Est. Value: $295.00.	Bhumibol Adulyadej, King of Thailand	Non-acceptance would have caused donor embarrassment.
Vice President and Mrs. Quayle	Blue ceramic urn with lid about 12" tall in presentation box on display at House. ($150). Residence (House). Ceramic dish (matches urn given to VP—Control #891189) about 14" diameter—hand painted and glazed blue in color. On display at House ($125). Residence (House). Recd: Sept. 27, 1989. Est. Value: $275.00.	Corazon C. Aquino, President of the Republic of the Philippines.	Non-acceptance would have caused donor embrassassment.
Vice President and Mrs. Quayle	Sea wood snacks. ($15). Gift destroyed. Recd: Sept. 21, 1989. Est. Value: $15.00.	Tae Woo Roh, President, Republic of Korea.	Non-acceptance would have caused donor embarrassment.
Vice President Dan Quayle	Large white porcelain vase—18" tall. ($300) Archives. Recd: Sept. 21, 1989. Est. Value $300.00.	Tae Woo Roh, President, Republic of Korea.	Non-acceptance would have caused donor embarrassment.
Marilyn Tucker Quayle	Large lacquered jewel box 10 x 14—8" tall with mother of pearl scene on top. Very attractive box presented in pink suede, autographed by Mrs. Roh. ($350). Archives. Recd: Sept. 21, 1989. Est. Value: $350.00.	Tae Woo Roh, President Republic of Korea.	Non-acceptance would have caused donor embarrassment.

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Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Vice President and Mrs. Quayle	Silver tea service, pot, tray, creamer, sugar, waste bowl, 6 teaspoons, 1 sugar spoon. ($450). Archives. Recd: May 17, 1989. Est. Value: $450.00.	His excellency Soeharto, President Republic of Indonesia.	Non-acceptance would have caused donor embarrassment.
Vice President Dan Quayle	Mans silk shirt—given in red velvet box. ($150). Archives. Recd: May 17, 1989. Est. Value: $150.00.	His excellency Soeharto, President Republic of Indonesia.	Non-acceptance would have caused donor embarrassment.
Vice President and Mrs. Quayle	Large blue silk fabric with diamond design multi color. ($135). Silk fabric woven in earth tones—more like long scarf. ($80). Large elegant piece of purple fabric with golden threads woven through. ($300). Hand carved plaque in wooden box. ($100). Silver necklace, bracelet and earrings. ($150). Archives. Recd: May 26, 1989. Est. Value: $765.00.	Sawai Prammanee, Governor of Nakornrachasima Province Thailand.	Non-acceptance would have caused donor embarrassment.
Vice President Dan Quayle	A very handsome black lacquered box measuring 4½" x 4½". The lid is a brightly painted folk lore scene edged in gold trim. Interior of box is red. ($800). Archives. Recd: Nov. 30, 1988. Est. Value: $800.00.	Fedor M. Burlatsky, Member of Supreme Soviet of the Union of Soviet Socialist Republic.	Non-acceptance would have caused donor embarrassment.
Vice President Dan Quayle	8 original serigraphs by Raphael Abecassis "Song of Songs". Archives. ($3,000). Recd: April 6, 1989. Est. Value: $3,000.00.	Yitzhak Shamir, Prime Minister of Israel	Non-acceptance would have caused donor embarrassment.
Vice President Dan Quayle	Wall hanging—very large—sent to Archives. (Indeterminable value). Books: "Hussain Muhammad Ershad, Selected Poems" published by Raushan Ershad Dkyview P New Senpara Rangpur, Bangladeesh ($22 U.S.); "Era of Sheikh Mujibur Rahman" by Moudud Ahmed, The University Press. Unlimited. ($22 U.S.). Archives. Recd: April 7, 1989. Est. Value: Indeterminable.	Ahmed Moudud, Prime Minister of Bangladesh.	Non-acceptance would have caused donor embarrassment.
Vice President Dan Quayle	Silver cigarette box—7" x 3½" with the Jordan Crest. ($600) "Jordan—A Land For All Seasons". ($50). 11" x 4" colored photograph of King and Queen of Jordan in burgundy leather standing frame trimmed in gold leaf—inscribed. ($150). 10"x18" backgammon set—inlaid. ($1,500). (On display at House) Archives. Recd: April 14, 1989. Est. Value: $2,300.00.	King Hussein, I, Hashemite Kingdom of Jordan.	Non-acceptance would have caused donor embarrassment.
Vice President Dan Quayle	Hand painted Bowl or urn with top presented in blue silk box. The urn is 8" high—with top 12". It is China with blue background and gold diamonds—9" diameter. ($600). Archives. Recd: May 17, 1989. Est. Value: $600.00.	Chatichai Choonhaven, Prime Minister, Kingdom of Thailand.	Non-acceptance would have caused donor embarrassment.
Vice President Dan Quayle	Scroll and pottery vase in plastic case—3" tall. Impossible to value—4th century B.C. Archives. Recd: May 20, 1989. Est. Value: Indeterminable.	Yitzhak Rabin, Minister of Defense of Israel.	Non-acceptance would have caused donor embarrassment.
Vice President Dan Quayle	Vase—2½ feet tall on wooden stand, deep wine red on outside—white inside—$300, on display in residence. Official photo framed of Wan Li. $100. Archives. Recd: May 25, 1989. Est. Value: $400.00.	Wan Li, Chairman of the Standing Committee of the National People's Congress of China.	Non-acceptance would have caused donor embarrassment.
Vice President Dan Quayle	China plate with blue medallions painted on it about 5" in diameter—could be valuable as antique. Archives. Recd: May 26, 1989. Est. Value: Indeterminable.	Goh Chok Tong, 1st Minister of Defense, Republic of Singapore.	Non-acceptance would have caused donor embarrassment.
Vice President Dan Quayle	Original colorful native painting of El Salvador village. 18×24. Colorful lithograph signed by artist. 18×24. Archives. Recd: June 15, 1989. Est. Value: $400.00.	Alfredo Cristiani, President of El Salvador.	Non-acceptance would have caused donor embarrassment.

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Vice President Dan Quayle	Framed wood hand carving 2×4 of Oriental dragons. Difficult to value because of the uniqueness of the gift. Archives. Recd: June 15, 1989. Est. Value: Indeterminable.	His Excellency Soeharto, President of the Republic of Indonesia.	Non-acceptance would have caused donor embarrassment.
Vice President Dan Quayle	Rug—Pakistan 4×6 Oriental in pale colors. On display at residence. ($1,500). Recd: June 15, 1989. Est. Value: $1,500.00.	Mohtrama Benazir Bhutto, Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would have caused donor embarrassment.
Vice President Dan Quayle	Red wool Indian Oriental rug, about 4×6. On display in MTQ Office. ($900). OEOB Office. Recd: June 29, 1989. Est. Value: $900.00.	Krishna Chandra Pant, Minister of Defense of Republic of India.	Non-acceptance would have caused donor embarrassment.
Vice President Dan Quayle	12" high 12" diameter glazed white vase. ($350). Archives. Recd: Sept. 19, 1989. Est. Value: $350.	Young-Hoon Kang, Prime Minister, Republic of Korea.	Non-acceptance would have caused donor embarrassment.
Vice President Dan Quayle	Wood framed, modern print entitled "Light and Sound" 2"×3". ($350). Archives. Recd: Sept. 21, 1989. Est. Value: $350.00.	Roh Tae Woo, President, Republic of Korea.	Non-acceptance would have caused donor embarrassment.
Vice President Dan Quayle	Silver frame with picture of Prime Minister Kaifu. ($150). Large wooden frame with hand crafted scene. ($200). Archives. Recd: Sept. 23, 1989. Est. value: $350.00.	Toshiki Kaifu, wife of Prime Minister of Japan.	Non-acceptance would have caused donor embarrassment.
Vice President Dan Quayle	Two silver flower vases, about 12" high—on display at residence. ($1,850). One 10"×14" silver frame. ($360). Archives. Recd: Sept. 26, 1989. Est. value: $2,210.00.	Emperor and Empress of Japan	Non-acceptance would have caused donor embarrassment.
Vice President Dan Quayle	Silver framed photo 10×14—inscribed to VP. ($150). Archives. Silver tray—about 14×20 with Cossiga's sign engraved in corner of tray. ($500). On display at residence. Recd: Oct. 11, 1989. Est. value: $650.00.	Francesco Cossiga, President of Italy	Non-acceptance would have caused donor embarrassment.
Vice President Dan Quayle	Large gilded "Atlas de Joan Martines 1587" #2410 of 5,000 copies. 24"×16". Indeterminable value, Archives. Recd: Oct. 19, 1989. Est. value: Indeterminable.	Felipe Gonzalez Macquez, Prime Minister, Spain.	Non-acceptance would have caused donor embarrassment.
Marilyn Tucker Quayle	Silver choker 20" and bracelets ($175). 20" fresh water pearls, pink color ($250). Archives. Recd: April 06, 1989. Est. value: $425.00.	Hasna Moudud, wife of the Prime Minister of Bangladesh.	Non-acceptance would have caused donor embarrassment.
Marilyn Tucker Quayle	Carved Indonesian temple. Presented in glass case. Value: Indeterminable. On display at House. Recd: May 26, 1989. Est. value: Indeterminable.	H. Muhammad Ismail, Governor of Central Java, Indonesia.	Non-acceptance would have caused donor embarrassment.
Marilyn Tucker Quayle	12×30 painting on wood, with 1918 at the bottom. (Indeterminable value), Archives. Book on Russia. (On Display at House), two dolls (on display at House). Recd: Dec. 12, 1989. Est. value: Indeterminable.	Mayor Spitak, Union of Soviet Socialist Republic,	Non-acceptance would have caused donor embarrassment.
Marilyn Tucker Quayle	Silk fabric—gold, black and white—presented in red velvet box. ($105). Stone (translucent) marble bowl with silver medallions on the upper brim and base—12" dia 3" high. ($250). Archives. Tile 12"×12" of theater in Indonesia shows imax film of beauty of Indonesia. Theater is called "Keong Emas" Theater. ($30). Archives. Recd: May 17, 1988. Est. Value: $385.	E N Sudharmono, Vice President of the Republic of Indonesia.	Non-acceptable would have caused donor embarrassment.
Marilyn Tucker Quayle	Table cloth—silk dusty pink background—hand embroidered scenes. ($300). Archives. Recd: May 22, 1989. Est. Value: $300.00.	Wan Li, Chairman of the Standing Committee of the National People's Congress of China.	Non-acceptance would have caused donor embarrassment.
Marilyn Tucker Quayle	18k gold and diamond leaf earrings ($750). Archives. Recd: June 15, 1989. Est. Value: $750.00.	Mohtrama Benazir Bhutto, Prime Minister, Pakistan.	Non-acceptance would have caused donor embarrassment.

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Marilyn Tucker Quayle	Polished red wooden box (jewelry box) with mother of pearl scene on lid and sides—($200). Archives. Recd: Sept. 19, 1989. Est. Value: $200.00.	Young-Hoon Kang, Prime Minister of the Republic of Korea.	Non-acceptance would have caused donor embarrassment.
Marilyn Tucker Quayle	Large Japanese doll in glass box. ($250.00). Archives. Recd: Sept. 22, 1989. Est. Value: $250.00.	Mayor Malomechi, Oehima Island, Tokyo, Japan.	Non-acceptance would have caused donor embarrassment.
Marilyn Tucker Quayle	Large Japanese doll presented in box. ($450.000). Archives. Recd: Sept. 26, 1989. Est. Value: $450.00.	Mrs. Kuwae, wife of Mayor of Okinawa, Japan.	Non-acceptance would have caused donor embarrassment.
Vice President and Mrs. Quayle	Leather 8"×10" frame. ($100). Embroidered dress in teal. ($50). Framed 10"×14" page from the Holy Quaran ($175). Archives. Recd: Sept. 13, 1989. Est. Value: $325.00.	Hassan Bin Talal, Crown Prince of Jordan.	Non-acceptance would have caused donor embarrassment.

AGENCY: UNITED STATES SENATE

Report of Tangible Gifts

Name and title of persons accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Robert C. Byrd, U.S. Senator	Decorative display bowl, Recd—January 12, 1988. Est. value—$500 to $1,000. Deposited with the Secretary of the Senate.	Noboru Takeshita, Former Prime Minister of Japan.	Refusal would likely cause offense or embarrassment.
Bill Bradley, U.S. Senator	Hand-painted lacquered box, Recd—April 28, 1989. Est. value—$500. Disposition: Displayed in Senator's Office.	Nikolai Ryzhkov, Prime Minister, USSR	Refusal would likely cause offense or embarrassment.
	Nest of 3 black lacquered boxes, Recd—May 3, 1989. Est. value—$200. Disposition: Displayed in Senator's office.	Tustomu Hata, Minister of Agriculture, Japan.	Refusal would likely cause offense or embarrassment.
Dennis DeConcini, U.S. Senator	Two silken embroidered robes, Recd—May 23, 1989. Est. value—$110 to $120. Deposited with the Secretary of the Senate.	Khalifa Bin Salman Al Khalifa, Prime Minister of Bahrain.	Refusal would likely cause offense or embarrassment.
Robert Dole U.S. Senator	Black glass case with two Japanese dolls measuring 21x11½×13, Recd—February 3, 1989. Est. value—$200 to $300. Disposition: Displayed in Senator's office.	Noboru Takeshita, Prime Minister, Japan.	Refusal would likely cause offense or embarrassment.
Edward M. Kennedy, U.S. Senator	Contemporary Russian lacquered hinged top box with polychromed view of Moscow, measuring 6¼" ×3¼x1¼, Recd—January 10, 1989. Est. value—in excess of $100. Disposition: Display in Senator's office.	Mikhail S. Gorbachev, Chairman of the Presidium of the Supreme Soviet of the USSR.	Refusal would likely cause offense or embarrassment.
	Pakistani Kirman tree of life prayer rug. Recd—June 14, 1989. Est. value—$1,250. Disposition: Display in Senator's office.	Mohtrama Benazir Bhutto, Prime Minister of Pakistan.	Refusal would likely cause offense or embarrassment.
	Oriental Celadon vase, Recd—June 14, 1989. Est. value—$200. Disposition: Display in Senator's office.	Kim Young Sam, President, Reunification Democratic Party of Republic of Korea.	Refusal would likely cause offense or embarrassment.
Connie Mack, U.S. Senator	Cloisonne enamel vase, Recd—August 20, 1989. Est. value—$217. Disposition: Display in Senator's office.	Lee Huan, Premier, Republic of China (Taiwan).	Refusal would likely cause offense or embarrassment.
George J. Mitchell, U.S. Senator	Book "Butler's Birds of New Zealand", Recd—June 19, 1989. Est. value—$200. Deposited with the Secretary of the Senate.	Kerry Burke, Speaker of the New Zealand House of Representatives.	Refusal would likely cause offense or embarrassment.
	Wooden lined silver box engraved with "Septiembre De 1989", Recd—September 28, 1989. Est. value—$200 to $250. Deposited with the Secretary of the Senate.	Virgilo Barco, President of Colombia	Refusal would likely cause offense or embarrassment.

AGENCY: UNITED STATES SENATE—Continued

Report of Tangible Gifts

Name and title of persons accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Daniel P. Moynihan, U.S. Senator	Persian rug, Recd—February, 1989. Est. value—$250. Disposition: Display in Senator's office.	Benazir Bhutto, Prime Minister of Islamic Republic of Pakistan.	Refusal would likely cause offense or embarrassment.
	Set of Hungarian China, Recd—October 12, 1989. Est. value—$300. Deposited with the Secretary of the Senate.	Dr. Matyas Szures, President of the National Assembly of the Hungarian People's Republic.	Refusal would likely cause offense or embarrassment.
David Pryor, U.S. Senator	Korean painting, Recd—November, 1989. Est. value—$150 to $250. Disposition: Display in Senator's office.	Roh Tae-Woo, President of Korea	Refusal would likely cause offense or embarrassment.

AGENCY: UNITED STATES SENATE

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Charles Battaglia, Designee, Select Committee on Intelligence.	Lodging and meals in host country	22 USC 1754(b)	22 USC 1754(b).
Ian Butterfield, Professional Staff, Committee on Governmental Affairs.	Transportation, food and lodging in country, July 2-8, 1989. Estimated value—$842.	Government of U.S.S.R.	International delegation North Atlantic Assembly.
William S. Cohen, U.S. Senator	Lodging and meals for one night, June 9, 1988. Estimated value—$132.	German Democratic Republic	Multinational conference on East-West relations.
Dennis J. Culkin, Legislative Assistant to Senator Heinz.	Transportation within Kenya including lodging and meals, September 3–5, 1989. Estimated value—$806.	Government of Republic of Kenya	Fact-finding trip.
Thomas A. Daschle, U.S. Senator	Air transportation within China, August 19, 21, 23, 26 27, 1988. Estimated value—$595.	Government of People's Republic of China.	No other means of transportation.
Linda Daschle, Spouse of Senatbr Daschle.	Air transportation within China, August 19, 21, 23, 26, 27, 1988. Estimated value—$595.	Government of People's Republic of China.	Do.
Robert Dole, U.S. Senator	Transportation, lodging and meals in country, August 22-24, 1989. Estimated value—$232.	Armenian Soviet Socialist Republic, U.S.S.R.	U.S. Senate delegation.
John Doney, Assistant Secretary for the Minority.	Air transportation, Wellington-Mt. Cook-Christchurch, January 15-17, 1988.	Government of New Zealand	Fact-finding trip.
	Ground Transportation Sydney and Canberra. January 12–15, 1988.	Government of Australia	Do.
Dave Durenberger, U.S. Senator	Air transportation New Delhi-Pathankot, August 31, 1989.	Government of India	To meet with Dalai Lama.
	Round trip ground transportation, Pathankot-Dharamsala, India. August 31, 1989.	Do	Do.
	Ground Transportation in Toronto, Canada, June 11–13, 1989.	The Honorable David Peterson, Premier, Province of Ontario, Canada.	To meet with Canadian Government officials
J. James Exon, U.S. Senator	Air Transportation, Wellington-Mt. Cook-Christchurch, January 15–17, 1988.	Government of New Zealand	Fact-finding trip.
	Ground Transportation Sydney and Canberra, January 12–15, 1988.	Government of Australia	Do.
Patricia Exon, Spouse of Senator Exon	Air Transportation, Wellington-Mt. Cook-Christchurch, January 15–17, 1988.	Government of New Zealand	Do.
	Ground Transportation Sydney and Canberra, January 12–15, 1988.	Government of Australia	Do.
Carl Feldbaum, Administrative Assistant, Senator Specter.	Lodging and meals for two nights January 10–11, 1989.	Government of Saudi Arabia	To meet with government officials.
Richard D. Finn, Jr., Professional Staff Member, Committee on Armed Services.	Air Transportation Wellington-Mt. Cook-Christchurch, January 15–17, 1988.	Government of New Zealand	Fact-finding trip.
	Ground Transportation Sydney and Canberra, January 12–15, 1988.	Government of Australia	Do.
William A. Gillon, Majority Counsel, Committee on Agriculture.	Air Transportation Wellington-Mt. Cook-Christchruch, January 15–17, 1988.	Government of New Zealand	Do.
	Ground Transportation Sydney and Canberra, January 12–15,1988.	Government of Australia	Do.
Albert Gore, Jr., U.S. Senator	Small aircraft overflight of Amazon rainforest, January 15, 1989.	Government of Porto Velho, Brazil	U.S. Senate delegation.

AGENCY: UNITED STATES SENATE—Continued

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Kenneth B. Handelman, Legislative Assistant, Senator Metzenbaum.	Transportation, food and lodging in country, September 3–5, 1989. Estimated value—$806.	Government of Republic of Kenya	Fact-finding trip.
Ms. Adele C. Hanson, Personal Secretary, Senator Exon.	Air Transportation Wellington-Mt. Cook-Christchurch, January 15–17, 1988.	Government of New Zealand	Do.
	Ground Transportation in Sydney and Canberra, January 12–15,1988.	Government of Australia	Do.
Tom Harkin, U.S. Senator	Air Transportation Wellington-Mt. Cook-Christchurch, January 15–17, 1988.	Government of New Zealand	Do.
	Ground Transportation in Sydney and Canberra January 12–15, 1988.	Government of Australia	Do.
Ruth Harkin, Spouse of Senator Harkin	Air Transportation Wellington-Mt. Cook-Christchurch, January 15–17, 1988.	Government of New Zealand	Do.
	Ground Transportation in Sydney and Canberra, January 12–15, 1988.	Government of Australia	Do
Elizabeth Ann Heflin, Spouse of Senator Heflin.	Air Transportation Wellington-Mt. Cook-Christchurch, January 15–17, 1988.	Government of New Zealand	Do
	Ground Transportation Syndey and Canberra, January 12–15, 1988.	Government of Australia	Do.
John Heinz, U.S. Senator	Small aircraft overflight Amazon rainforest January 15, 1988.	Government of Porto Velho, Brazil	Do.
Theresa Heinz, Spouse of Senator Heinz.	do	do	Do.
Robert F. Hurley, Minority Staff Director, Committee on Environment and Public Works.	Round trip air transportation, Baghdad to Basra. Round trip to ground transportation, Basra to Faw, December 11, 1988. Estimated value—$180.	Republic of Iraq	Do.
Neal Houston, Administrative Assistant, Former Senator Stafford.	Air transportation within China, August 19, 21, 23, 26, 27, 1988. Estimated value—$595.	Government of People's Republic of China.	No other means of transportation.
Georgia Joyal, Executive Assistant, Senator Leahy.	Air transportation within China, August 19, 21, 23, 26, 27, 1988. Estimated value—$595.	Government of People's Repulic of China.	Do.
William N. LaForge, Chief of Staff, Senator Cochran.	Round trip air transportation, Baghdad to Basra. Round trip ground transportation, Basra to Faw, December 11, 1988. Estimated value—$180.	Republic of Iraq	Fact-finding trip.
Patrick J. Leahy, U.S. Senator	Air transportation within China, August 19, 21, 23, 26, 27, 1988. Estimated value—$595.	Government of People's Republic of China.	No other means of transportation.
Marcelle Leahy, Spouse of Senator Leahy.	Air transportation within China, August 19, 21, 23, 26, 27, 1988. Estimated value—$595.	Government of People's Republic of China.	Do.
Alfred Lehn, National Security Affairs, Advisor, Senator Dole.	Transportation, meals and lodging in country, August 22–24, 1989. Estimated value—$232.	Armenian Soviet Socialist Republic, U.S.S.R.	U.S. Senate delegation.
Annie Lesher, Legislative Assistant, Senator Mikulski.	Transportation, food and lodging in country, July 2–8, 1989. Estimated value—$842.	Government of U.S.S.R	International delegation, North Atlantic Assembly.
Ellen Lovell, Administrative Assistant, Senator Leahy.	Air transportation within China, August 19, 21, 23, 26, 27, 1988. Estimated value—$595.	Government of People's Republic of China.	No other means of transportation.
Bruce W. MacDonald, Legislative Assistant, Senator Bumpers.	Transportation, food and lodging in country, September 3–5, 1989. Estimated value—$806.	Government of Republic of Kenya	Fact-finding trip.
Jerold Mande, Legislative Assistant, Senator Gore.	Small aircraft overflight, Amazon rainforest, January 15, 1989.	Government of Porto Velho, Brazil	U.S. Senate delegation.
Jim Martin, Legislative Assistant, Senator Wirth.	Small aircraft flight, Asuncion to Mbaracayu Nature Preserve, January 10, 1989.	Government of Republic of Paraguay	Do.
	Small aircraft overflight, Amazon rainforest, January 15, 1989.	Government of Porto Velho, Brazil	Do.
Kevin McManus, Democratic Policy Committee.	Small aircraft flight, Asuncion to Mbaracayu Nature Preserve, January 10, 1989.	Government of Republic of Paraguay	Do.
	Small aircraft overflight Amazon rainforest, January 15, 1989.	Government of Porto Velho, Brazil	Do.
John Melcher, Former U.S. Senator	Air Transportation Wellington-Mt. Cook-Christchurch, January 15–17, 1988.	Government of New Zealand	Fact-finding trip.
	Ground Transportation Sydney and Canberra, January 12–15, 1988.	Government of Australia	Do.
Ruth Melcher, Spouse of Senator Melcher.	Same as Senator Melcher		

AGENCY: UNITED STATES SENATE—Continued

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Edmund Mihalski, Minority Chief of Staff, Committee on Finance.	Round trip air transportation, Baghdad to Basra. Round trip ground transportation, Basra to Faw, December 11, 1988. Estimated value—$180.	Republic of Iraq	Do.
Barbara A. Mikulski, U.S. Senator	Transportation, food and lodging in country, July 2–8, 1989. Estimated value—$842.	Government of U.S.S.R	International delegation, North Atlantic Assembly.
Steven H. Moore, Legislative Director, Senator Durenberger.	Ground transportation in Toronto, Canada, June 11–13, 1989.	The Hon. David Peterson, Premier, Province Ontario, Canada.	To meet with Canadian government officials.
John H. Moseman, Chief of Staff, Senator Murkowski.	Round trip air transportation, Baghdad to Basra. Round trip ground transportation, Basra to Faw, December 11, 1988. Estimated value—$180.	Republic of Iraq	Fact-finding trip.
Eric Newsom, Legislative Director, Senator Leahy.	Air transportation within China, August 19, 21, 23, 26, 27, 1988. Estimated value—$595.	Government of People's Republic of China.	No other means of transportation.
Jan Paulk, Director, Office of Interparliamentary Services.	Air transportation within China, August 19, 21, 23, 26, 27, 1988. Estimated value—$595.	Government of People's Republic of China.	Do.
	Transportation, food and lodging in country, August 22–24, 1989. Estimated value—$232.	Armenian Soviet Socialist Republic, U.S.S.R.	U.S. Senate delegation.
Alan Porter, Director of Senate Photographic Studio.	Transportation, food and lodging in country, August 22–24, 1989. Estimated value—$232.	Armenian Soviet Socialist Republic, U.S.S.R.	U.S. Senate delegation.
Larry Pressler, U.S. Senator	Air Transportation Wellington-Mt. Cook-Christchurch, January 15–17, 1988.	Government of New Zealand	Fact-finding trip.
	Ground Transportation in Sydney and Canberra, January 12–15, 1988.	Government of Australia	Do.
Harriet Pressler, Spouse of Senator Pressler.	Same as Senator Pressler		
Richard Quinn, Staff Assistant, Senator Dole.	Transportation, food and lodging in country, August 22–24, 1989. Estimated value—$232.	Armenian Soviet Socialist Republic, U.S.S.R.	U.S. Senate delegation.
Charles Riemenschneider, Chief of Staff, Committee on Argiculture.	Air transportation within China, August 19, 21, 23, 26,27, 1988. Estimated value—$595.	Government of People's Republic of China.	No other means of transportation.
Walt Riker, Press Secretary, Senator Dole.	Transportation, food and lodging in country within Armenia, August 22–24, 1989. Estimated value—$232.	Armenian Soviet Socialist Republic, U.S.S.R.	U.S. Senate delegation.
Charles S. Robb, U.S. Senator	Transportation, food and lodging in country, July 2–8, 1989. Estimated value—$842.	Government of U.S.S.R	International delegation, North Atlantic Assembly.
Richard Roberts, Administrative Assistant, Senator Shelby.	Small aircraft flight, Asuncion to Mbaracayu Nature Preserve, January 10, 1989.	Government of Republic of Paraguay	U.S. Senate delegation.
	Small aircraft overflight of Amazon rainforest, January 15, 1989.	Government of Porto Velho, Brazil	Do.
Kirk K. Robertson, Legislative Assistant, Senator Pryor.	Transportation within Kenya including lodging and meals, September 3–5, 1989. Estimated value—$806.	Goverment of Republic of Kenya	Fact-finding trip.
William V. Roth, Jr., U.S. Senator	Transportation, food and lodging in country, July 2–8, 1989. Estimated value—$842.	Government of U.S.S.R	International delegation, North Atlantic Assembly.
C. Abbott Saffold, Secretary for Majority.	Air Transportation Wellington-Mt. Cook-Christchurch, January 15–17, 1988.	Government of New Zealand	Fact-finding trip.
	Ground Transportation Sydney and Canberra, January 12–15, 1988.	Government of Australia	Do
Andrew K. Semmel, Foreign Policy Advisor, Senator Lugar.	Round-trip air transportation Baghdad-Basra. Round-trip ground transportation Basra-Faw, December 11, 1988. Estimated value—$180.	Republic of Iraq	Do.
Richard C. Shelby, U.S. Senator	Small aircraft flight Asuncion to Mbaracayu Nature Preserve, January 10, 1989.	Government of Republic of Paraguay	U.S. Senate delegation.
	Small aircraft overflight of Amazon rainforest, January 15, 1989.	Government of Porto Velho, Brazil	Do.
Annette Shelby, Spouse of Senator Shelby.	Same as Senator Shelby		
Arlen Specter, U.S. Senator	Lodging and meals for two nights, January 10–11, 1989.	Government of Saudi Arabia	To meet with Government officials.
Robert Stafford, Former U.S. Senator	Air transportation within China, August 19, 21, 23, 26, 27, 1988. Estimated value—$595.	Government of People's Republic of China.	No other means of transportation.

AGENCY: UNITED STATES SENATE—Continued

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Helen Stafford, Spouse of Senator Stafford.	Air transportation within China, August 19, 21, 23, 26, 27, 1988.	Government of People's Republic of China.	Do.
Walter J. Stewart, Secretary of the Senate.	Transportation, food and lodging in country, July 2–8, 1989. Estimated value—$842.	Government of U.S.S.R.	International delegation, North Atlantic Assembly.
	Air transportation within China, August 19, 21, 23, 26, 27, 1988. Estimated value—$595.	Government of People's Republic of China.	No other means of transportation.
Jeffrey Subko, Legislative Assistant, Senator Exon.	Air Transportation Wellington-Mt. Cook-Christchurch, January 15–17, 1988.	Government of New Zealand	Fact-finding trip.
	Ground Transportation Sydney and Canberra, January 12–15, 1988.	Government of Australia	Do.
Sally Walsh, Office of Interparliamentary Services.	Small aircraft flight, Asuncion to Mbaracayu Nature Preserve, January 10, 1989.	Government of Republic of Paraguay	U.S. Senate delegation.
	Small aircraft overflight Amazon rainforest, January 15, 1989.	Government of Poro Velho, Brazil	Do.
	Air Transportation Wellington-Mt. Cook-Christchurch, January 15–17,188.	Government of New Zealand	Fact-finding trip.
	Ground Transportation Sydney and Canberra, January 12–15, 1988.	Government of Australia	Do.
Timothy E. Wirth, U.S. Senator	Small aircraft flight Asuncion to Mbaracayu Nature Preserve, January 10, 1989.	Government of Republic of Paraguay	Do.
	Small aircraft overflight Amazon rainforest, January 15, 1989.	Government of Porto Velho, Brazil	Do.
Wren Wirth, Spouse of Senator Wirth	Same as Senator Wirth		

AGENCY: U.S. HOUSE OF REPRESENTATIVES

Report of Tangible Gifts

Amended 1988 report to reflect disclosure statements received in 1989

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Thomas F. Foley, Speaker of the House.	Oriental rug. Recd June 14, 1989. Est. value—$750. Approved for official display.	Mohtrama Benazir Bhutto, Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would have caused embarrassment to donor.
Matthew F. McHugh, Member of Congress.	Waterford crystal claret decanter. Recd May 31, 1989. Est. value—$220 to 250. Approved for official display.	Padraic N. MacKernan, Ambassador of Ireland.	Non-acceptance would have caused embarrassment to donor.
Ted Weiss, Member of Congress	Bohkara rug. Recd January, 1989. Est. value—$500. Approved for official display.	Benazir Bhutto, Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would have caused embarrassment to donor.
Wayne Owens, Member of Congress	Gold Saudi Arabian ceremonial dagger Recd December 1988. Est. value—unknown. Deposited with Clerk for disposition.	Prince Mohammed biu Fahd, Governor of Eastern Provinces of Saudi Arabia.	Non-acceptance would have caused embarrassment to donor.

AGENCY: U.S. HOUSE OF REPRESENTATIVES

Report of Travel or Expenses of Travel

Amended 1988 report to reflect disclosure statements received in 1989

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identify of foreign donor and government	Circumstances justifying acceptance
Charles W. Stenholm, Member of Congress.	Travel within Australia and New Zealand, Nov. 11–23, 1988.	Australian Livestock and Meat Board/ New Zealand Livestock and Dairy Board (Quasi-govern. agencies).	Fact-finding tour.
Robin Tallon, Member of Congress	Travel within Australia and New Zealand, Nov. 11–23, 1988.	Australian Livestock and Meat Board/ New Zealand Livestock and Dairy Board (Quasi-govern. agencies).	Fact-finding tour.
Arthur J. Simonetti, Rep. Dick Schulze	Transportation, meals, and lodging in Japan, Feb. 7–14, 1988.	Government of Japan	(MECA).

AGENCY: U.S. HOUSE OF REPRESENTATIVES—Continued

Report of Travel or Expenses of Travel

Amended 1988 report to reflect disclosure statements received in 1989

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identify of foreign donor and government	Circumstances justifying acceptance
Joanna R. Shelton, Ways and Means Committee.	Transportation, lodging and meals, in Japan, Oct. 15–25, 1988.	Government of Japan	(MECA).
Jim Olin, Member of Congress	Food, lodging and transportation in USSR for 7 days. (Notwithstanding traveler has made partial reimbursement for food, lodging and transportation received, full disclosure is made.).	Soviet Academy of Sciences	Fact-finding tour.
John M. Spratt, Jr., Member of Congress.	Food, lodging and transportation in USSR for 7 days. (Notwithstanding traveler has made partial reimbursement for food, lodging and transportation received, full disclosure is made.).	Soviet Academy of Sciences	Fact-finding tour.
Gus Savage, Member of Congress	Hotel accommodations at Kinshasa Intercontinental Hotel for 5 days. Est. value—$1,375.	Government of Zaire	Fact-finding tour.
Gus Savage, Member of Congress	Hotel accommodations at Abidjan Intercontinental Hotel for 4 days. Est. value—$1,260.	Ivory Coast Golf Federation	Fact-finding tour.
Meredith Broadbent, Ways and Means Committee.	Transportation between Washington and Brussels with stops in Paris, Rome and Bonn.	European Community's Visitors Program, Brussels, Belgium.	Mutual Education and Cultural Exchange Act (MECA).
Daniel P. Finn, Foreign Affairs Committee.	Travel between Beijing, Shanghai, Zian and Guangzhai, China.	Ambassador Chai Zemin, VP, Chinese People's Institute of Foreign Affairs.	(MECA).
Sam E. Fowler, Interior Committee	Ground transportation, meals, and services of English-speaking guides between Paris, Avignon and LaHague, France.	French Atomic Energy Commission	Fact-finding tour.
Sam E. Fowler, Interior Committee	Ground transportation and meals, in connection with tours of nuclear waste facilities in Sweden.	Ministry of Environment and Energy and Sweden's Nuclear Fuel and Waste Management Company.	Fact-finding tour.
Thomas S. Kahn, Rep. John M. Spratt, Jr.	Food, lodging and transportation in USSR for 7 days. (Notwithstanding traveler has made partial reimbursement for food, lodging and transportation received, full disclosure is made.).	Soviet Academy of Sciences	Fact-finding tour.
Joel D. Kassiday, Rep. Hank Brown	Airfare, food and lodging in Japan. Est. value—$2,708.	Ministry of Foreign Affairs, Tokyo, Japan.	(MECA).
Mark J. Molli, Rep. Gus Hawkins	Food, lodging and transportation in Italy for 6 nights.	Ministry of Public Education, Department of Cultural Exchange, Italy.	Fact-finding/substantial participation
Kennon H. Nakamura, Foreign Affairs Committee.	Travel between Beijing, Shanghai, Xi'an and Guangzhou, China.	Ambassador Chai Zemin, VP, Chinese People's Institute of Foreign Affairs.	(MECA).
David A. Nathan, Rep. Constance Morella.	Airfare, food and lodging in Japan. Est. value—$2,700.	Ministry of Foreign Affairs, Tokyo, Japan.	(MECA).
Charles R. O'Regan, Rep. Dante Fascell.	Airfare, food and lodging in Japan.	Ministry of Foreign Affairs, Tokyo, Japan.	(MECA).
Thomas M. Parkhurst, Rep. Matt McHugh.	Airfare, food and lodging in Japan.	Ministry of Foreign Affairs, Tokyo, Japan.	(MECA).
Louanner Peters, Rep. Gus Savage	Hotel accommodations at Kinshasa Intercontinental Hotel for 5 days. Est. value—$725.	Government of Zaire	Fact-finding tour.
Louanner Peters, Rep. Gus Savage	Hotel accommodations at Abidjan Intercontinental Hotel for 3 days. Est. value—$390.	Ivory Coast Golf Federation	Fact-finding tour.
Pamela W. Robinson, Consultant, General, Oversight and Investigations.	Ground transportation and meals in connection with tours of nuclear waste facilities in Sweden.	Ministry of Environment and Energy and Sweden's Nuclear Fuel and Waste Management Company.	Fact-finding tour.
Pamela W. Robinson, Consultant, General, Oversight and Investigations.	Ground transportation, meals, and services of English-speaking guides in connection with tours of nuclear waste facilities in France.	French Atomic Energy Commission	Fact-finding tour.
Arthur J. Simonetti, Rep. Dick Schulze	Transportation, meals and lodging in Korea.	Government of the Republic of Korea	(MECA).
John E. Shelk, Energy and Commerce Committee.	Transportation, lodging and meals in Venezuela. Est. value—$500.	Petroleos de Venezuela, state-owned oil company.	(MECA).
Michael S. Scrivner, Rep. Norman Lent	Food, lodging and transportation in Venezuela.	Petroleos de Venezuela	MECA).
Joanna R. Shelton, Ways and Means Committee.	Transportation, lodging and meals in Korea.	Government of the Republic of Korea	(MECA).

AGENCY: U.S. HOUSE OF REPRESENTATIVES—Continued

Report of Travel or Expenses of Travel

Amended 1988 report to reflect disclosure statements received in 1989

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identify of foreign donor and government	Circumstances justifying acceptance
Daniel B. Waggoner, Agriculture Committee.	Airfare, food and lodging in China	Chinese People's Institute of Foreign Affairs.	MECA).

AGENCY: AFRICAN DEVELOPMENT FOUNDATION

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Jay Kenneth Katzen, Vice Chairman of the ADF Board of Directors.	Camel Saddle, March 1989 $800, on loan to African American Institute for display of African handicrafts.	Prime Minister of Niger	Failure to accept would cause embarrassment to donor and U.S. Government.

AGENCY: AGENCY FOR INTERNATIONAL DEVELOPMENT

[Report of tangible gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Robert Hellyer, Project Development Officer	Beige Moroccan Fez Rug. Recd—September 30, 1989. Est. value—$500. Location: In AID pending decision.	Government of Morocco	Employee departed country for AID/W rotation. Upon departure employee was given rug by Director of the National Gendarmerie as an expression of appreciation by the Moroccan Government for employee's work on locust control efforts in Morocco.

AGENCY: DEPARTMENT OF AGRICULTURE

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S Government, estimated vaule, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Clayton Yeutter, Secretary of Agriculture.	Gold plated Samsung man's wristwatch, Korea B.B. #0660M water resistant stainless steel. Recd—May 22, 1989. Est. value—$195. Being stored in Secretary's office.	Dr. Soung Soo Han, Minister of Trade and Industry, Republic of Korea.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Clayton Yeutter, Secretary of Agriculture.	Gilt World time clock, kienzle quartz, face of clock shows the world in gold leaf with Roman numerals, back of clock has signature "Zuguignet". Recd—November 13, 1989. Est. value—$500. Being stored in Secretary's office.	Minister-President, des Landes, Baden-Wurttemburg, Germany.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Clayton Yeutter, Secretary of Agriculture.	Sterling silver display plate, octagon shape with center enameled in tree and bird design produced by Los Castillo Patteros De Taxaco, Talleres en Taxaco Mexico. Recd—November 13, 1989. Est. value—$200. Being stored in Secretary's office.	Jorge de la Vega, Dominquez Secretary of Agriculture and Hydraulic Resources, Mexico.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE AIR FORCE

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Lieutenant General and Mrs. Jimmie V. Adams, Deputy Chief of Staff, Plans and Operations.	Four-piece suite of Pakistani jewelry, yellow gold set with dark blue gemstones and diamonds. Recd—May 25, 1989. Est. value—$1500. Delivered to GSA for disposition, November 16, 1989.	Air Chief Marshal, Hakim Hakimullah, Chief of Air Staff, Pakistan Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Captain Shawn W. Evans, U.S. Aide to the Commander, ROKAF Combat Air Command, Korean Air Force.	$200 in U.S. currency. Recd—December 16, 1988 (report not filed until 1989). Deposited with U.S. Treasury, February 17, 1989.	Lieutenant General Han, Chu-Sok, Commander, ROKAF Combat Air Command.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James F. McGovern, Acting Secretary of the Air Force.	Omani dagger, decorated with applied panels of white and gold colored metal filigree and enamel badge of United Emirates Air Force, in a blue velvet presentation box. Recd—January 17, 1989. Est. value—$250. On official display in the lobby of Headquarters, Air Force Military Personnel Center, Randolph Air Force Base, Texas.	Brigadier General, Sheikh Mohamad bin Zayed Al Nahyan, Commander, United Emirates Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Larry D. Welch, Chief of Staff	Contemporary Pakistani rug with Pakistani Air Force Crest. Recd—November 8, 1988. (Report not filed until 1989.) Est. value—$500. Officially displayed in the Chief of Staff's Official Quarters.	Air Chief Marshal, Hakim Hakimullah, Chief of Air Staff, Pakistan Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General and Mrs. Larry D. Welch, Chief of Staff.	Four-piece suite of contemporary Pakistani high karat yellow gold, ruby and seed pearl jewelry. Recd—November 8, 1988. (Report not filed until 1989.) Est. value—$5775. Delivered to GSA for disposition, November 16, 1989.	Air Chief Marshal, Hakim Hakimullah, Chief of Air Staff, Pakistan Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Larry D. Welch, Chief of Staff	Contemporary Pakistani rug. Recd—November 9, 1988. (Report not filed until 1989.) Est. value—$350. Officially displayed in the Chief of Staff's Official Quarters.	Ghulam Ishaq Khan, Acting President of Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General and Mrs. Larry D. Welch, Chief of Staff.	Four-piece suite of Pakistani jewelry, yellow gold with dark blue gemstones and diamonds. Recd—May 25, 1989. Est. value—$1750. On official display in the lobby of Headquarters, Air Force Military Personnel Center, Randolph Air Force Base, Texas.	Air Chief Marshal, Hakim Hakimullah, Chief of Air Staff, Pakistan Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Larry D. Welch, Chief of Staff	Man's Raymond Weil wristwatch, model #9186. Recd—July 13, 1989. Est. value—$550. Being held in the office of the Chief of Staff pending transfer to GSA for disposition.	Major General Behery, Commander, Royal Saudi Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General and Mrs. Larry D. Welch, Chief of Staff.	Lady's Raymond Weil wristwatch, model #8022-7702. Recd—July 13, 1989. Est. value—$575. Being held in the office of the Chief of Staff pending transfer to GSA for disposition.	Major General Behery, Commander, Royal Saudi Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: UNITED STATES ARMY

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
John O. Marsh, Jr., Secretary of the Army, Washington, DC.	Boxed green vase 10"×6". Recd—Feb 88. Est. value—$75".	Chung Jin Tae, DCINC, CFA	Non-acceptance would have caused embarrassment to donor.
John O. Marsh, Jr., Secretary of the Army, Washington, DC.	Korean gold crown in case. Recd—Feb 88. Est. value—$150".	Chung Jin Tae, DCINC, CFA	Non-acceptance would have caused embarrassment to donor.
John O. Marsh, Jr., Secretary of the Army, Washington, DC.	Korean gold crown in red felt presentation. Recd—Feb 88. Est. value—$175".	General Park Hee Do, COFS, ROK	Non-acceptance would have caused embarrassment to donor.
John O. Marsh, Jr., Secretary of the Army, Washington, DC.	Olympic ceramic spoons. Recd—Feb 88. Est. value—$60".	General Park Hee Do, COFS, ROK	Non-acceptance would have caused embarrassment to donor.

AGENCY: UNITED STATES ARMY—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
LTG. Henry Doctor, Jr., The Inspector General, OSA, Washington, DC.	Wooden box (10"×7.5") containing 25 Davidoff Dom Perignon handmade cigars from Havana, Cuba; Blue cloth covered and lined presentation case (9⅝"×12¼") containing a rectangular wooden plaque on which are affixed a circular metal emblem, a metal plate inscribed "Saudi Armed Forces Air Defense Forces" and a metal plate inscribed "Presented to: The Inspector General of the Army (IG) From: S. Brig. Gen. Mohd H. Romaih (IG) R.S.A.D.F. 1988"; Green felt-covered and lined presentation case (18"×10½") containing a short-bladed (5¼") dagger with brass scabbard, and a decorative cloth belt. Inside the top of the case is a card which reads "Presented to Inspector General of the Army (IG) from S. Brigadier General Mohammed H. Al-Romaih Director of Inspection and Evaluation Department Royal Saudi Air Defense Forces Command (RSADFC)" Recd—March 17, 1988 Est. value—$230. Retained by U.S. Total Army Personnel Command pending transfer to GSA.	S. Brigadier General Mohammed H. Al-Romaih, Royal Saudi Air Defense Forces.	Non-acceptance would have caused embarrassment to donor.
Col. Roger M. John, Chief of Staff, 1st Special Operations Command, Fort Bragg, NC.	Kuwaiti gold commemorative coin. Recd—September 20, 1988. Est. value—$250. Approved for official display.	BG Yousef al-Misheri, Head of a Kuwaiti Army delegation.	Non-acceptance would have caused embarrassment to donor.
BG Julius F. Johnson, Director, Joint Staff Armed Forces Inaugural Committee, Washington, DC.	Kuwaiti gold commemorative coin. Recd—July 21, 1988. Est. value—$250. Retained by U.S. Total Army Personnel Command pending transfer to GSA.	Saad Al Abdullah Al Salim Al Sabah, Crown Prince of Kuwait.	Non-acceptance would have caused embarrassment to donor.
LTG. Claude M. Kicklighter, Director of the Army Staff, Washington, DC.	Pistol, .58 calibre, wood finish, serial number 00636, blue Santa Barbara case. Recd—September 9, 1988. Est. value—$400. Approved for official display.	LTG. Iniquez, Chief of Staff, Spanish Army.	Non-acceptance would have caused embarrassment to donor.
LTG. Claude M. Kicklighter, Director of the Army Staff, Washington, DC.	Pakistan Rug (3'×5'), mauve patterned with fringe, rolled in a green cloth case. Recd—October 14, 1988. Est. value—$300. Approved for official display.	Military Attache of Pakistan	Non-acceptance would have caused embarrassment to donor.
MAJ. Samuel J. Zwahlen, Country Officer for United Arab Emirate, MacDill Air Force Base, Florida.	Swiss Asterial automatic 25 jewel data watch, serial number 45005 with crest of United Arab Emirates' Armed Forces. Recd—August 10, 1988. Est. value—$250. Approved for official use.	Sheik Sultan Bin Saqr Al Qassimi (Deputy Ruler), United Arab Emirate.	Non-acceptance would have caused embarrassment to donor.

* Because these gifts were received from one donor in recognition of a single event (Mr. Marsh's trip to Korea), they are not divisible but are considered one gift. Aproved for official display.

AGENCY: DEPARTMENT OF THE ARMY

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
James Ambrose, Former Under Secretary of the Army, Washington, D.C.	Pistol, .45 calibre, silver finish, serial #192623, wood finish case. Recd—March 18, 1967. Est. value—$450.00. Reported to GSA July 10, 1989; pending sale to Mr. Ambrose by GSA.	Senior Government official, Argentina Army.	Non-acceptance would have caused embarrassment to donor.
2LT. Kathryn Burbe, Executive Officer, 3d Support Battalion, 3d Infantry Division, Korea.	$300.00 in cash. Recd—November 30, 1988. Est. value—$300.00. Deposited with U.S. Treasury March 28, 1989.	General Jin Kae Chun, Republic of Korea Army.	Non-acceptance would have caused embarrassment to donor.

AGENCY: DEPARTMENT OF THE ARMY—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
BG John S. Cowings, Commander, 3d Corps Support, Command, Germany.	Four books (no title). Recd—October 30, 1989. Est. value—$335.00. Approved for official use.	Lord Mayor Exner, Mayor of Wiesbaden.	Non-acceptance would have caused embarrassment to donor.
Col. Philip R. Harris, Commander, U.S. Army Kwajalein Atoll.	His and her gold Seiko wrist watches. Recd—August 25, 1989. Est. value—$300.00. Reported to GSA January 13, 1990; pending transfer to GSA.	Marshall-Gilbert, Bereaved Families Association.	Non-acceptance would have caused embarrassment to the donor.
Col. Philip R. Harris, Commander, U.S. Army Kwajalein Atoll.	Japanese ornamental vase and cuff link/tie-bar set. Recd—November 17, 1989. Est. value—$200.00. Reported to GSA January 13, 1990; pending transfer to GSA.	Japanese Air Force Pilot	Non-acceptance would have caused embarrassment to donor.
Col. Curtis J. Herrick, Jr., Program Manager, Advanced Helicopter, U.S. Army Aviation Systems Command, St. Louis, Missouri.	Rolex oyster watch, serial #8998143, stainless steel band. Recd—March 11, 1989. Est. value—$2,000.00. Reported to GSA January 13, 1990; pending transfer to GSA.	BG (Sheik) Mohammed Bin Sayed Al Nahayyan, Commander, United Arab Emirates, Air Force and Air Defense.	Non-acceptance would have caused embarrassment to donor.
Walter R. Hollis, Deputy Under Secretary of the Army, Operations Research, Washington, D.C.	Korean vase/urn, 18" high x 14" across, decorated with two large birds and a pine tree. Recd—September 20, 1989. Est. value—$150.00*. Approved for official use.	Hwang, Kawn Young, President, Korea Institute of Defense Analyses.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Walter R. Hollis, Deputy Under Secretary of the Army, Operations Research, Washington, D.C.	Framed picture of a Korean lady 33" square. Recd—September 20, 1989. Est. value—$100.00*. Approved for official use.	Hwang, Kawn Young, President Korea Institute of Defense Analyses.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
LTG. Claude M. Kicklighter, Director of the Army Staff, Washington, D.C.	Pakistan rug (2½' x 4½'), mauve pattern with fringe. Recd—January 23, 1989. Est. value—$298.00. Transferred to GSA October 16, 1989.	LTG Shamin, Pakistan	Non-acceptance would have caused embarrassment to donor.
LTG. Claude M. Kicklighter, Director of the Army Staff, Washington, D.C.	Brass soldier on marble stand with inscription to LTG Kicklighter. Recd—April 22, 1989. Est. value—$200.00. Transferred to GSA October 16, 1989.	An official from the Republic of Argentina.	Non-acceptance would have caused embarrassment to donor.
LTG. Claude M. Kicklighter, Director of the Army Staff, Washington, D.C.	Deer antlers, mounted on wood base (3' x 3'). Recd—April 19, 1989. Est. value—$200.00. Transferred to GSA October 16, 1989.	Gen. LaVollel, Commander, 4th Mountain Cavalry Regiment, Argentina Army.	Non-acceptance would have caused embarrassment to donor.
Gen. Glenn K. Otis, Former Commander-in-Chief, U.S. Army, Europe.	Carved ivory African sculpture (9¾" height. overall 15¼" height x 7" square). Recd—January 12, 1988. Est. value—$500.00. Transferred to GSA October 16, 1989.	LTG. D. Y. Bali, Minister of Defense, Nigeria.	Gift delivered following departure of donee from Europe. Non-acceptance would have caused embarrassment to donor.
LTG. Ellis D. Parker, Director of the Army Staff, Washington D.C.	Taurus PT-92, 9mm parabellum, serial #B613010. Recd—September 18, 1989. Est. value—$480.00. Reported to GSA October 3, 1989; pending sale to the recipient.	Brazilian government official at the Brazilian Embassy in Washington, D.C.	Non-acceptance would have caused embarrassment to donor and the Brazilian Government.
BG Virgil A. Richard, Commander, U.S. Army Finance and Accounting Center, Indianapolis, Indiana.	Commemorative plate, British Royal Army Pay Corps seal. Recd—July 20, 1989. Est. value—$180.00. Approved for official use.	MG P.S. Bray, Paymaster-in-Chief British Royal Army Pay Corps.	Received in exchange of gifts between exchange programs of the U.S. Army Finance and Accounting Center and the British Royal Army Pay Corps.
Mrs. Michael P.W. Stone, Wife of the Secretary of the Army, Washington, D.C.	14kt. gold cartouche. Recd—November 16, 1989. Est. value—$250.00. Pending transfer to GSA.	Youssef Abu Taleb, Minister of Defense, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Gen. N. Norman Schwarzkopf Commander-in-Chief, U.S. Central Command MacDill Air Force Base, Florida.	"National" VHS movie system VW-SHM7. Recd—January 30, 1989. Est. value—$1,200.00. Approved for official use.	MG Abdul Rahman Al-Sane, Chief of Staff, Kuwait.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Gen. N. Norman Schwarzkopf, Commander-in-Chief, U.S. Central Command, MacDill Air Force Base, Florida.	Rolex Oyster Perpetual day-date, 18kt gold wrist watch. Recd—March 1989. Est. value—$8,400.00. Approved for official use.	The Amir of Bahrain, Isa Bin Salmon Al Khalifa.	Non-acceptance would have caused embarrassment to donor.
Gen. N. Norman Schwarzkopf Commander-in-Chief, U.S. Central Command, MacDill Air Force Base, Florida.	RPK (Soviet) machine gun with case and 100 rounds of ammunition. Recd—June 1989. Est. value—$1,200.00. Approved for official use.	General Mirza Aslam Beg of Pakistan	Non-acceptance would have caused embarrassment to donor.
Gen. Maxwell R. Thuman, Commander-in-Chief, U.S. Southern Command, Panama.	Rifle, 8mm (German) model 98-SVWMB, serial #SVW 22041. Recd—November 1988. Est. value—$300.00. Reported to GSA January 13, 1990; pending transfer to GSA.	LTG. Odendahl, Chief, German General Army Office.	Non-acceptance would have caused embarrassment to donor.

AGENCY: DEPARTMENT OF THE ARMY—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
MG James W. Wurman, Commander, U.S. Army Training Center, Fort Dix, New Jersey.	Sam Jung De Saber Award (Commanders Sword). Recd—May 28, 1986. Est. value—$300.00. Approved for official use.	President Chun Doo Hwan Republic of Korea.	Non-acceptance would have caused embarrassment to donor.
U.S. Tank Automotive Command (donee unknown) Warren, Michigan.	Gold cuff links and tie pins. Recd—Unknown. Est. value—$200.00. Reported to GSA January 13, 1990; pending transfer to GSA.	Unknown	

*Because these two gifts were received from one donor in recognition of a single event, they are not divisible but are considered as one gift. Approved for official display.

AGENCY: CENTRAL INTELLIGENCE AGENCY

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Agency Employee	Italian 750 (18 karat) yellow gold key chain, with heart shaped charm. Retailed by Bedetti. Recd—November 20, 1988. Est. value—$450. To be reported to GSA for disposition.	Public Law 95-105A(F)(4)	Non-acceptance would have caused embarrassment to donor.
Agency Employee	French gilt metal and black enamel carriage clock. Retailed by Cartier. In the Art Deco style with hinged door, number 00574. Recd—December 1988. Est. value—$200. To be retained for official display.	Public Law 95-105A(F)(4)	Non-acceptance would have caused embarrassment to donor.
Agency Employee	Cartier polished stainless steel gentleman's wristwatch. With Swiss movement, case number 187902/08160. Recd—December 1988. Est. value—$300. To be reported to GSA for disposition.	Public Law 95-105A(F)(4)	Non-acceptance would have caused embarrassment to donor.
Agency Employee	Mottled green-white jade ring. The unmarked yellow gold mount set with an oblong mottled green-white jade. Recd—January 1989. Est. value—$250. To be reported to GSA for disposition.	Public Law 95-105A(F)(4)	Non-acceptance would have caused embarrassment to donor.
Agency Employee	Ruby and diamond floriform pendent. The 18 karat yellow gold mount, set with five marquise faceted rubies, and six round faceted diamonds, weighing approximately .60 carats. Wt. of rubies approximately 1.50 carats. Together with 585 (14 karat) yellow gold chain. Recd—January 1989. Est. value—$750. To be reported to GSA for disposition.	Public Law 95-105A(F)(4)	Non-acceptance would have caused embarrassment to donor.
Agency Employee	14 karat and cultured pearl opera length necklace with 114 cultured pearls measuring approximately 7.0mm and 14 karat yellow gold clasp set with one cultured pearl. Retailed Okubo Brothers, Toyoko. Recd—January 1989. Est. value—$1,800. To be reported to GSA for disposition.	Public Law 95-105A(F)(4)	Non-acceptance would have caused embarrassment to donor.
Agency Employee	Sterling cigarette box. Rectangular with hinged lid with silver coin, with burlwood and silver plaque with verse. L: 8. Recd—July 1989. Est. value—$250. To be reported to GSA for disposition.	Public Law 95-105A(F)(4)	Non-acceptance would have caused embarrassment to donor.
Richard J. Kerr, Deputy Director, CIA	Dagger in an engraved and etched gilt silver sheath and complementary pommel, encased. L: 10¾. Recd—June 9, 1989. Est. value—$250. To be retained for official display.	Public Law 95-105A(F)(4)	Non-acceptance would have caused embarrassment to donor.

AGENCY: CENTRAL INTELLIGENCE AGENCY—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Richard J. Kerr, Deputy Director, CIA	Unmarked launcher with gilt plaque. In walnut case. L: of weapon 37½. Recd—January 7, 1989. Est. value—$1,000. To be retained for official display.	Public Law 95-105	Non-acceptance would have caused embarrassment to donor.
William H. Webster, Director, CIA	Silver gilt "palm tree" sculpture on oval malachite base, and raised on gilt silver ball feet. H: overall 9½. Recd—March 22, 1989. Est. value—$250. To be retained for official display.	Public Law 95-105A(F)(4)	Non-acceptance would have caused embarrassment to donor.
William H. Webster, Director, CIA	Middle Eastern aqua glass teardrop vial, probably first-third century A.D. With bulbous inverted base and elongated neck with flared rim. H: 2½. In lucite dust-proof case. Recd—May 24, 1989. Est. value—$200. To be reported to GSA for disposition.	Public Law 95-105A(F)(4)	Non-acceptance would have caused embarrassment to donor.
William H. Webster, Director, CIA	Malachite figure of an elephant. H: 9¼. Recd—June 22, 1989. Est. value—$250. To be reported to GSA for disposition.	Public Law 95-105A(F)(4)	Non-acceptance would have caused embarrassment to donor.
William H. Webster, Director, CIA	Animal hide blanket with lozenge-joined hide panels. Overall approximately 96×64. Recd—June 29, 1989. Est. value—$200. To be reported to GSA for disposition.	Public Law 95-105A(F)(4)	Non-acceptance would have caused embarrassment to donor.
William H. Webster, Director, CIA	———Baron. *Paloma Paz.* Mottled green-gold bronze mechanical sculpture on gilt bronze base, inscribed "Baron". Edition 5/25 and inscribed S. C, also, entitled "Paloma Paz". H: 12¼. Recd—October 2, 1989. Est. value—$250. To be reported to GSA for disposition.	Public Law 95-105A(F)(4)	Non-acceptance would have caused embarrassment to donor.

AGENCY: DEPARTMENT OF COMMERCE

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Robert A. Mosbacher, Secretary of Commerce.	Venolian vase, thin vase with royal blue, green, deep red highlights and gold outlines 8¾ inches by 1¼ inches round. Recd June 9, 1989. Est. value $500.00. Held for official use.	Antonio Cassebboti, Mayor of Venice, Italy.	Non-acceptance would have caused embarrassment to donor and United States Government.
Robert A. Mosbacher, Secretary of Commerce.	Porcelain vase, silver blue with intricate design 5 inches round by 4½ inches deep on the upper portion. Recd September 10, 1989. Est. value $200.00. Held for official use.	Choi Ho Joong, Minister of Foreign Affairs, South Korea.	Non-acceptance would have caused embarrassment to donor and United States Government.
Robert A. Mosbacher, Secretary of Commerce.	Celadon bowl, ice-bluish hue, with raised brooch and leaf design on top 7 inches round by 6 inches high on wooden base. Recd September 11, 1989. Est. value $500.00. Held for official use.	Roh Tae Woo, President, South Korea	Non-acceptance would have caused embarrassment to donor and United States Government.
Robert A. Mosbacher, Secretary of Commerce.	"Obsedian Monkey" vase, entire piece made of polished volcanic glass 6½ inches round by 6 inches high with 4 inch round opening. Recd September 11, 1989. Est. value $800.00. Held for official use.	Carlos Hank Gonzales, Minister of Tourism, Mexico.	Non-acceptance would have caused embarrassment to donor and United States Government.
Robert A. Mosbacher, Secretary of Commerce.	"Delft" bowl, blue and white porcelain 5¾ inches by 6 inches mounted on a wooden base. Recd September 11, 1989. Est. value $500.00. Held for official use.	Minister Han, Minister of Trade and Industry, South Korea.	Non-acceptance would have caused embarrassment to donor and United States Government.

AGENCY: DEPARTMENT OF COMMERCE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Robert A. Mosbacher, Secretary of Commerce.	Framed Korean print, round print in square silk matted edge 18 inches by 18 inches. Recd September 12, 1989. Est. value $400.00. Held for official use.	Minister Matorinaga, Minister of Trade and Industry, Japan.	Non-acceptance would have caused embarrassment to donor and United States Government.
Robert A. Mosbacher, Secretary of Commerce.	Mexican coin collection, 10 white metal coins 2 inches in diameter each with a different scene of traditional Mexican folklore. Recd October 24, 1989. Est. value $200.00. Held for official use.	Carlos Hank Gonzales, Minister of Tourism, Mexico.	Non-acceptance would have caused embarrassment to donor and United States Government.
Robert A. Mosbacher, Secretary of Commerce.	Celadon vase, gray and green porcelain vase 10½ inches by 6 inches. Recd November 11, 1989. Est. value $600.00. Held for official use.	Choi Ho Joong, Minister of Foreign Affairs, South Korea.	Non-acceptance would have caused embarrassment to donor and United States Government.
Robert A. Mosbacher, Secretary of Commerce.	Celadon vase, silver blue with a lacey pattern 5 inches round by 5½ inches high. Recd November 11, 1989. Est. value $250.00. Held for official use.	Choi Ho Joong, Minister of Foreign Affairs, South Korea.	Non-acceptance would have caused embarrassment to donor and United States Government.
Robert A. Mosbacher, Secretary of Commerce.	Celadon vase, gray and green porcelain vase 17 inches by 8½ inches. Recd November 11, 1989. Est. value $800.00. Held for official use.	Choi Ho Joong, Minister of Foreign Affairs, South Korea.	Non-acceptance would have caused embarrassment to donor and United States Government.
Robert A. Mosbacher, Secretary of Commerce.	Lead crystal bowl, with gray and silver design. Recd November 20, 1989. Est. value $500.00. Held for official use.	Marcin Sivencki, Minister of Commerce, Poland.	Non-acceptance would have caused embarrassment to donor and United States Government.

AGENCY: DEPARTMENT OF DEFENSE

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Richard L. Armitage, Assistant Secretary for International Security Affairs.	Large round, silverplated tray, 20" diameter, engraved with inscription, in large red velour box. Recd—February 16, 1989. Est. value—$250. Stored in vault pending transfer to GSA.	General Hau Pei-Tsun, Chief of General Staff, Ministry of National Defense, Republic of China (Taiwan).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Richard L. Armitage, Assistant Secretary for International Security Affairs.	Set of wooden stack tables with brass corners. Recd—February 28, 1989. Est. value—$250. Delivered to GSA November 21, 1989.	General Beg, Chief of the Army Staff, Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Richard L. Armitage, Assistant Secretary for International Security Affairs.	Pakistani rug, red, blue and ivory, approx. 4' x 6'. Recd—March 1, 1989. Est. value—$1800. Approved for official display in office of the Secretary of Defense.	Minister of Defense Pakistan	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Richard L. Armitage, Assistant Secretary for International Security Affairs.	Pakistani rug, brown, tan and ivory, approx. 3' x 4'. Recd—March 1, 1989. Est. value—$700. Approved for official display in office of donee.	Minister of Defense of Pakistan	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Richard L. Armitage, Assistant Secretary for International Security Affairs.	(a) Set of 18K gold Cartouch cufflinks; (b) Man's Tissot watch. Recd—May 20, 1989. Est. value—(a) $400; (b) $250. Delivered to GSA November 21, 1989.	Minister of Defense of Egypt	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Richard L. Armitage, Assistant Secretary for International Security Affairs.	(a) Leather jewelry box, burgundy; (b) Leather handbag, burgundy. Recd—May 27, 1989. Est. value—(a) $80; (b)$165. Delivered to GSA November 21, 1989.	Air Chief Marshal Hakimullah, Deputy Chief of the Pakistani Air Force, Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Richard L. Armitage, Assistant Secretary for International Security Affairs.	Pakistani rug, brown, blue and ivory with animals in design, approx. 4' x 6'. Recd—May 27, 1989. Est. value—$1800. Approved official display in office of donee.	Air Chief Marshal Hakimullah, Deputy Chief of the Pakistani Air Force, Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Richard L. Armitage, Assistant Secretary for International Security Affairs.	Pakistani rug, red, blue and ivory, approx. 3' x 5'. Recd—June 7, 1989, Est. value—$600. Approved for official display in office of donee.	Her Excellency Mohtrama Benazir Bhutto, Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would have caused embarrassment to donor and U. S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Donald J. Atwood, Deputy Secretary of Defense.	Pakistani rug, red, blue and ivory, approx. 3'2" x 5'3". Recd—June 7, 1989. Est. Value—$600. Purchased from GSA by donee.	Her Excellency Mohtrama Benazir Bhutto, Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald J. Atwood, Deputy Secretary of Defense.	Small sterling silver plate, engraved with Egyptian maiden in the center. Recd—August 7, 1989. Est. value—$200. Approved for official display in office of donee.	General Youssef Sabri Abou Taleb, Commander-in-Chief of the Armed Forces, Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
LTG Charles W. Brown, USA, Director, Defense Security Assistance Agency.	(a) Letter opener with cloisonne handle with matching magnifying glass; (b) framed painting with stitching, approx. 17÷÷ x 24½÷÷. Recd—May 10, 1989. Est. value—(a) $95; (b) $150. (a) Delivered to GSA November 21, 1989; (b) approved for official display in office of donee.	Vice Admiral Chuang Ming-Yao, Deputy Commander-in-Chief, Republic of China Navy.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
LTG Charles W. Brown, USA, Director, Defense Security Assistance Agency.	(a) Light green jade beads necklace, approx. 30" long; (b) book commemorating 1988 Olympic Games in Seoul, Korea. Recd—May 4, 1989. Est. value—(a) $400; (b) $95. Reported to GSA pending disposition.	General Suh, Chief of Staff, Korean Air Force, Korea.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
LTG Charles W. Brown, USA, Director, Defense Security Assistance Agency.	(a) Rug with Pakistani Air Force emblem in center, approx. 31" x 48"; (b) large black plaque with silver decoration, 10½" x 13". Recd—May 26, 1989. Est. value—(a) $750; (b) $75. Reported to GSA pending disposition.	Air Chief Marshal Hakimullah, Deputy Chief of the Pakistani Air Force, Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Charles W. Brown, spouse of Director, Defense Security Assistance Agency.	(a) Leather Jewelry box, burgundy; (b) leather handbag, burgundy. Recd—May 26, 1989. Est. value—(a) $80; (b) $165. Delivered to GSA November 21, 1989.	Mrs. Hakimullah, wife of Air Chief Marshal Hakimullah, Deputy Chief of the Pakistani Air Force, Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
LTG Charles W. Brown, USA, Director, Defense Security Assistance Agency.	Pakistani rug, red, blue and ivory, approx. 3' x 5'. Recd—June 7, 1989. Est value—$600. Approved for official display in office of donee.	Her Excellency Mohtrama Benazir Bhutto, Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
LTG Charles W. Brown, USA, Director, Defense Security Assistance Agency.	(a) Decorative silverplated plate for wall hanging, engraved design, approx. 11" diameter; (b) decorative silverplated table top, with metal legs to be attached, engraved design, approx. 15½" diameter. Recd—July 26, 1989. Est. value—(a) $50; (b) $150. Delivered to GSA November 21, 1989.	Vice Admiral El Saiek SHARIF, Commander-in-Chief, Egyptian Armed Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
LTG Charles W. Brown, USA, Director, Defense Security Assistance Agency.	(a) Metal paper tray and pen set; (b) Men's Longines gold watch; (c) Ladies' Certina goldtone watch. Recd—November 29, 1989. Est. value—(a) $40; (b) $150 (c) $125. Reported to GSA pending transfer.	General Fathi Abu Taleb, Chief of General Staff, Jordan Armed Forces, Jordan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
LTG Charles W. Brown, USA, Director, Defense Security Assistance Agency.	Men's Rado "Voyager" watch, stainless steel. Recd—November 29, 1989. Est. value—$250. Reported to GSA pending transfer.	Maj. Gen. Fawzi Ebeidat, G.H.Q. Jordan Armed Forces, Jordan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Frank C. Carlucci, former Secretary of Defense.	Bronze sculpture, "Pray for Peace," by Gila J. Stein, 1988 (approx. 4' x 2'), mounted on black wooden base (approx. 2' x 2'), with presentation plate: "Dedicated to The U.S. Department of Defense by the Ministry of Defense of the State of Israel with appreciation for the profound friendship and support, Tel Aviv, November 3, 1988." Recd in U.S.—February 6, 1989. Est. value—Not determined approved for official display in corridor at entrance to Meditation Room, the Pentagon.	His Excellency Yitzhak Rabin, Minister of Defense of Israel.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

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AGENCY: DEPARTMENT OF DEFENSE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Dick Cheney, Secretary of Defense	Pakistani rug, burgundy, blue and ivory, approx. 5' x 7'. Recd—June 9, 1989. Est. value—$2600. Approved for official display in office of donee.	Her Excellency Mohtrama Benazir Bhutto, Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Secretary of Defense and Mrs. Dick Cheney.	(a) Small rug, pink, blue, brown and ivory, with Persian design, approx. 3' x 2'; (b) small silverplated serving tray, approx. 9" x 7". Recd—June 9, 1989. Est. value—(a) $420; (b) $45. Approved for official display.	Minister of Defense of India	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	Framed, hand-coloured print of "Windsor Castle," by Thomas Allom (1804–1872), gold leaf frame with French matte, 26" x 16", from Malcolm Innes Gallery, London. Recd—July 12, 1989. Est. value—$200. Approved for official display in office of donee.	Rt. Hon. George Younger, Secretary of State for Defence of the United Kingdom.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Lynne V. Cheney, spouse of Secretary of Defense.	(a) Amethyst earrings and pendant set, 18K gold with 3 small diamonds; (b) pair of amethyst stones in silver settings. Recd—July 18, 1989. Est. value—(1) $475; (2) $100. Delivered to GSA November 21, 1989.	Minister of Defense, Lee of Korea and Mrs. Lee.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Secretary of Defense and Mrs. Dick Cheney.	Set of personalized His and Her Destiny Pro Kennex tennis racquets, with carrying cases. Recd—July 25, 1989. Est. value—$250. Stored in vault pending disposition.	General Hau Pei-Tsun, Chief of General Staff, Ministry of National Defense, Republic of China (Taiwan), and Mrs. Hau Pei-Tsun.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	(a) Small sterling silver plate, engraved with Egyptian maiden in the center; (b) gold-tone plaque mounted on red velour. Recd—August 3, 1989. Est. value—(a) $200; (b) $40. (a) Reported to GSA pending transfer; (b) approved for official display.	General Youssef Sabri Abou Taleb, Commander-in-Chief of the Armed Forces of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Lynne V. Cheney, spouse of Secretary of Defense.	22K gold brooch with lapis stone in shape of a ladybug in the center. Recd—August 3, 1989. Est. value—$350. Reported to GSA pending transfer.	General Youssef Sabri Abou Taleb, Commander-in-Chief of the Armed Forces of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	Pakistani rug, shades of brown and ivory, approx. 3' x 5'. Recd—August 3, 1989. Est. value—$1125. Approved for official display in suite of the Executive Secretariat.	Syed Ijlab Haider Zaidi, Secretary, Defense and Aviation Divisions, Ministry of Defense, Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	(a) Heavy black metal statue of man with horse on stand; (b) small gold-tone medallion. Recd—October 6, 1989. Est. value—(a) $130; (b) $50. Approved for official display.	Dmitriy Yazov, Minister of Defense of the Soviet Union.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Lynne V. Cheney, spouse of Secretary of Defense.	Yellow and brown necklace and bracelet set (large beads). Recd—October 6, 1989. Est. value—$20. Reported to GSA pending transfer.	Mrs. Dmitriy Yazov, spouse of Minister of Defense of the Soviet Union.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	Small silver statue of an Italian soldier. Recd—October 1989. Est. value—$250. Delivered to GSA November 21, 1989.	His Excellency Fermo Mino Martinazzoli, Minister of Defense, Rome, Italy.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Lynne V. Cheney spouse of Secretary of Defense.	(a) Cucci silk scarf, brown and white floral and fruit pattern; (b) gold and lapis Italian Crest bow pendant pin. Recd—October 1989. Est. value—(a) $165; (b) $250. Reported to GSA pending transfer.	Mrs. Fermo Mino Martinazzoli, spouse of the Minister of Defense, Rome, Italy.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Secretary of Defense and Mrs. Dick Cheney.	Fine China demitasse set by KPM, includes teapot, sugar bowl, creamer, two cups and saucers. Recd—October 1989. Est. value—$350. Stored in vault pending disposition.	Hon. and Mrs. Walter Momper, Governor of West Berlin, Germany.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
LTG Howard D. Graves, USA Assistant to the Chairman, Joint Chiefs of Staff.	Black lacquer "Becha" clock, approx. 9½" x 6¼". Recd—December 2, 1989. Est. value—$250. Approved for official display in office of donee.	His Excellency Mikhail Gorbachev, General Secretary of the Central Committee of the Communist Party of the Soviet Union.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF DEFENSE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Alma J. Powell, spouse of General Colin L. Powell, Chairman, Joint Chiefs of Staff.	Silver pin with 9 pearls. Recd—November 16, 1989. Est. value—$300. Reported to GSA pending transfer.	Mrs. Masao Ishii, spouse of the Chairman, Joint Staff Council, Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Henry S. Rowen, Assistant Secretary for International Security Affairs.	Pakistani rug, blue and burgundy, approx. 4'x6'. Recd—July 27, 1989. Est. value—$1700. Approved for official display in office of donee.	Syed Ijlab Haider Zaidi, Secretary, Defense and Aviation Divisions, Ministry of Defense, Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Henry S. Rowen, Assistant Secretary for International Security Affairs.	Rug, brown and white, approx. 5'8"x8'2". Recd—September 15, 1989. Est. value—$1900. Approved for official display in office of donee.	Minister of National Defense Kallel of Tunisia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Henry S. Rowen, Assistant Secretary for International Security Affairs.	(a) Set of gold-tone letter opener and gold-tone ballpoint pen; (b) Men's Certina gold-tone watch, with Jordanian Armed Forces Emblem; (c) Ladies' Certina gold-tone watch, with Jordanian Armed Forces Emblem. Recd—November 29, 1989. Est. value—(a) $35; (b) $150; (c) $125. Reported to GSA pending disposition.	General Fathi Abu Taleb, Chief of General Staff, Jordan Armed Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Glenn A. Rudd, Deputy Director, Defense Security Assistance Agency.	Set of four stack tables, wood decorated with brass (largest—16"x12"x17½" high). Recd—July 28, 1989. Est. value—$220. Approved for official display in office of donee.	Syed Ijlab Haider Zaidi, Secretary, Defense and Aviation Divisions, Ministry of Defense, Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Frederick C. Smith, Director, NESA Region, Office of the Under Secretary for Policy.	Men's Baume and Mercier watch, gold and stainless steel band. Recd—June 1989. Est. value—$400. Delivered to GSA November 21, 1989.	Major General Khalifa bin Ahmed Al-Khalifa, Minister of Defense of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Paul Wolfowitz, spouse of the Under Secretary of Defense for Policy.	Small rug, 3'x2'. Recd—June 28, 1989. Est. value—$420. Approved for official display in office of donee.	Shri Krishna Chandra Pant, Minister of Defense of India, and Mrs. Ila Pant.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY DEPARTMENT OF EDUCATION

[Report of Travel or Expenses of Travel—Calendar Year: 1989]

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Diane Weinstein, Deputy General Counsel for Departmental Service.	Travel and lodging expenses as a gift actually extended Alan Weinstein (her spouse) in connection with his work as Director of the Center for Democracy associated with Boston University which conducts activities to promote democratic institutions in other countries. Inclusive Dates: August 23-30, 1988. Estimated value: $6,000. Reported to the U.S. Department of Education on December 22, 1989 after employee had left her position in the Department.	The People's Republic of China	Non-acceptance would have caused embarrassment to donor and United States Government.

AGENCY: FEDERAL ELECTION COMMISSION

[Report of Travel or Expenses of Travel]

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Joan D. Aikens, Commissioner	Airfare Moscow-Leningrad-Kiev-Moscow plus hotel and subsistence in those cities from June 5–13, 1989. Estimated value $1,613.40.	USSR	Official visit on invitation of the Central Electoral Commission for the Election of People's Deputies of the USSR.

AGENCY: FEDERAL ELECTION COMMISSION—Continued

[Report of Travel or Expenses of Travel]

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Penelope Bonsall, Director, National Clearinghouse on Election Administration.	Airfare Moscow-Leningrad-Kiev-Moscow plus hotel and subsistence in those cities from June 5–13, 1989. Estimated value $1,613.40.	USSR	Official visit on invitation of the Central Electoral Commission for the Election of People's Deputies of the USSR.
Robert A. Dahl, Executive Assistant	Airfare Moscow-Leningrad-Kiev-Moscow plus hotel and subsistence in those cities from June 5–13, 1989. $1,613.40.	USSR	Official visit on invitation of the Central Electoral Commission for the Election of People's Deputies of the USSR.
Lee Ann Elliott, Commissioner	Airfare Moscow-Leningrad-Kiev-Moscow plus hotel and subsistence in those cities from June 5–13, 1989. $1,613.40.	USSR	Official visit on invitation of the Central Electoral Commission for the Election of People's Deputies of the USSR.
France Hughes Glendening, Executive Assistant.	Airfare Moscow-Leningrad-Kiev-Moscow plus hotel and subsistence in those cities from June 5–13, 1989. Estimated value $1,613.40.	USSR	Official visit on invitation of the Central Electoral Commission for the Election of People's Deputies of the USSR.
Thomas J. Josefiak, Commissioner	Airfare Moscow-Leningrad-Kiev-Moscow plus hotel and subsistence in those cities from June 5–13, 1989. Estimated value $1,613.40.	USSR	Official visit on invitation of the Central Electoral Commission for the Election of People's Deputies of the USSR.
Danny L. McDonald, Chairman	Airfare Moscow-Leningrad-Kiev-Moscow plus hotel and subsistence in those cities from June 5–13, 1989. Estimated value $1,613.40.	USSR	Official visit on invitation of the Central Electoral Commission for the Election of People's Deputies of the USSR.
John Warren McGarry, Commissioner	Airfare Moscow-Leningrad-Kiev-Moscow plus hotel and subsistence in those cities from June 5–13, 1989. Estimated value $1,613.40.	USSR	Official visit on invitation of the Central Electoral Commission for the Election of People's Deputies of the USSR.
Lawrence M. Noble, General Counsel	Airfare Moscow-Leningrad-Kiev-Moscow Hotel and subsistence in those cities from June 5–13, 1989. Total: $1,613.40.	USSR	Official visit on invitation of the Central Electoral Commission for the Election of People's Deputies of the USSR.
John C. Surina, Staff Director	Airfare Moscow-Leningrad-Kiev-Moscow plus hotel and subsistence in those cities from June 5–13, 1989. Estimated value $1,613.40.	USSR	Official visit on invitation of the Central Electoral Commission for the Election of People's Deputies of the USSR.
Scott E. Thomas, Commissioner	Moscow-Leningrad-Kiev-Moscow June 5–13, 1989; travel, hotels, and subsistence = $1,613.40.	USSR	Official visit on invitation of the Central Electoral Commission for the Election of People's Deputies of the USSR.
Louise D. Wides, Assistant Staff Director for Information.	Airfare Moscow-Leningrad-Kiev-Moscow plus hotel and subsistence in those cities from June 5–13, 1989. Estimated value $1,613.40.	USSR	Official visit on invitation of the Central Electoral Commission for the Election of People's Deputies of the USSR.

AGENCY: U.S. GENERAL ACCOUNTING OFFICE

[Report of Travel or Expenses of Travel]

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Mary R. Hamilton, Manager, New York Regional Office, and spouse.	Soviet currency and hotel accommodations, Rcd. October 14, 1989. Est. Value—$787. Funds spent on food and incidental expenses in the Soviet Union.	Official of the USSR Academy of Sciences; Soviet Union.	Non-acceptance would have caused embarrassment to the USSR Academy of Sciences and to the US Government.

AGENCY: U.S. GENERAL ACCOUNTING OFFICE

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Linda L. Weeks, Program Manager, Office of International Audit, Organization Liaison.	Petite china tea set, service for six, Rcd. Nov. 1, 1989. Est. Value—$300.00. Stored in GAO's Office of Security pending transfer to GSA.	Official of the State Audit Office of the Republic of Hungary.	Non-acceptance would have caused embarrassment to the Governments of Hungary and the U.S.

AGENCY: DEPARTMENT OF JUSTICE

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Goverment	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Robert A. Bryden SAC, Office of Training, Drug Enforcement Administration.	Watch, Cupillard Rieme, quartz, gold-plated with stones circling the face Recd—May 11, 1989 Est. Value—$995 Held in DEA property office awaiting disposition from GSA.	Mohammed Nassir Deputy Chief of Police, Dubai, United Arab Emirates.	Non-acceptance would have caused embarrassment to donor and US Government.
William S. Sessions Director, Federal Bureau of Investigation.	Replica of an Olympic Torch, brass 24" tall Recd—January 9, 1989 Est. Value—$200 Retained for official display in the Director's office.	Seh Jik Park Director, Agency for National Security Planning, Republic of Korea.	Non-acceptance would have caused embarrassment to donor and US Government.
William S. Sessions Director, Federal Bureau of Investigation.	Briefcase, alligator leather Recd—July 6, 1989 Est. Value—$225 Retained for official display in the Director's office.	Aliyu Mohammed Director, Office of the Coordinator of National Security, Nigeria.	Non-acceptance would have caused embarrassment to donor and US Government.
William S. Sessions Director, Federal Bureau of Investigation.	Medallion, gold, depicting a flying dove, 2" in diameter Recd—July 7, 1989 Est. Value—$300 Retained for official display in the Director's office.	Riccardo Malpica Director, Italian Intelligence and Democratic Service, Rome, Italy.	Non-acceptance would have caused embarrassment to donor and US Government.
William S. Sessions Director, Federal Bureau of Investigation.	Water Pitcher, china, in wooden display box 12" x 12" Recd—October 17, 1989 Est. Value—$300 Retained for official display in the Director's office.	Prince Turki Alfaisal Director, Saudi Arabian Intelligence Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and US Government.
Dick Thornburgh Attorney General of the United States.	Teapot, silver, 11" tall, with wooden handle Recd—April 4, 1989 Est. Value—$450 Held in DOJ property office awaiting disposition instructions from GSA.	Antonio Gava Minister of Interior Italy	Non-acceptance would have caused embarrassment to donor and US Government.
Dick Thornburgh Attorney General of the United States.	Dagger, stainless steel, 12" long, with 4" silver-plated hilt and 12" silver-plate and bone sheath Recd—October 16, 1989 Est. Value—$300 Held in DOJ property office awaiting disposition instructions from GSA.	Vadim Bakatin Minister of Interal Affairs, Union of Soviet Socialist Republics.	Non-acceptance would have caused embarrassment to donor and US Government.

AGENCY: DEPARTMENT OF THE NAVY

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Captain T.R. Meyers, USN, Executive Officer NAVPRO, Strafford, CT.	Pearl Necklace and Pen Set Recd May 1989 Est. Value—$200 Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	Government of Republic of China	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Peter Murphy, Counsel for the Commandant of the Marine Corps.	Silver Spurs Recd February 28, 1989 Est Value—$200 Displayed in the Office of the Commandant of the Marine Corps.	Admiral & Mrs. Gallegos, Chilean Naval Mission.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Brigadier General M.E. Rich, Staff Judge Advocate to the Commandant of the Marine Corps.	Omega Seamester Watch Recd March 21, 1989 Est. Value—$595 Being held in Commandant of the Marine Corps HQ pending transfer to GSA for disposition.	Emir Bahrain, Sheik Isa Al Khalifa	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Rear Admiral Grant A. Sharp, USN, Director, Plans and Policy Directorate, U.S. Central Command, MacDill AFB, FL.	Mens Rado Voyager Watch Recd November 29, 1989 Est. Value—$500 Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	MG Fauzi Ebeidat, Assistant Chief of Staff for Planning and Organizations, Jordanian Armed Forces, Armed Forces, Jordan.	Non-acceptance would have cause embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE NAVY—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Captain Richard S. Watkins, USN, Chief of Staff, Commander Joint Task Force Middle East.	Rolex Mens Oyster Wrist Watch Recd February 22, 1988 Est. Value—$2,500 Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	The Emir of Bahrain	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Captain Richard S. Watkins, USN, Chief of Staff, Commander Joint Task Force Middle East.	Three Ladies Gold Bracelets Recd February 22, 1988 Est. Value—$1,000 Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	The Emir of Bahrain	Non-acceptance would have caused embarrassment to donor and U.S. Government.
H. Lawrence Garrett, III and Mrs. Garret, Secretary of the Navy.	Fresh Water Pearls Cuff Links and Tie Clasp Recd August 22, 1989 Est. Value—$200 Being held by the General Counsel of the Secretary of the Navy pending transfer to GSA for disposition.	Japanese Defense Prime Minister Matsumoto.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
H. Lawrence Garrett, III and Mrs Garret, Secretary of the Navy.	Fresh Water Pearls 3-strand Necklace with Bracelet Attached Recd August 22, 1989 Est. Value—$400 Being held by the General Counsel of the Secretary of the Navy pending transfer to GSA for disposition.	Japanese Defense Prime Minister Matsumoto.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
James A. Baker, III, Secretary of State	Carved ivory piece, two moose fighting on stand, Recd—December 19, 1989, Est. Value—$250.00, In the Office of Protocol pending delivery to GSA.	Ambassador & Mrs. Dubinin, Union of Soviet Socialist Republics.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker, III, Secretary of State	Brown leather case with gold design on top, 13"x8" Recd—December 28, 1989, Est. Value—$200.00, In the Office of Protocol pending delivery to GSA.	Foreign Minister Eschekh of Tunisia	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker, III, Secretary of State	Crystal ashtray/vase, Recd—July 31, 1989, Est. value—$300.00, In the Office of Protocol pending delivery to GSA.	General & Mrs. Jaruzelski, Chairman, Polish People's Republic.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker, III, Secretary of State	Brass clock commemorating the French Bicentennial, Recd—August 3, 1989, Est. value—$400.00, In the Office of Protocol pending delivery to GSA.	President Mitterrand of France	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker, III, Secretary of State	Soco leather briefcase & Waterman ballpoint pen, Recd—August 3, 1989, Est. value—$200.00, In the Office of Protocol pending delivery to GSA.	Foreign Minister Dumas of France	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker, III, Secretary of State	Sterling Silver Tray 10"x3" w/facsimile signature, Recd—October 11, 1989, Est. value—$300.00, In the Office of Protocol pending delivery to GSA.	President Cossiga, Council of Ministers, Italy.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker, III, Secretary of State	Briefcase: Charles Jourdan Actif, black leather, Recd—July 6, 1989, Est. value—$200.00, In the Office of Protocol pending delivery to GSA.	Bolkiah, Sultan: Brunei	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker, III, Secretary of State	Cufflinks: Lapis/gold with crest, Recd—July 6, 1989, Est. Value—$200.00, In the Office of Protocol pending delivery to GSA.	Bolkiah, Sultan: Brunei	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker, III, Secretary of State	Coin: $100.00 denomination, Recd—July 6, 1989, Est. value—$150.00, In the Office of Protocol pending delivery to GSA.	Bolkiah, Sultan: Brunei	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker, III, Secretary of State	Garrard Pen 14k nib, Recd—July 6, 1989, Est. value—$200.00, In the Office of Protocol pending delivery to GSA.	Deputy Prime Minister of Defense/Security Sayyid of Oman.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
James A. Baker, III, Secretary of State	Decanter, man riding on a horse, Recd—May 15, 1989, Est. value—$200.00, In the Office of Protocol pending delivery to GSA.	Foreign Minister Shevardnadze of Union of Soviet Socialist Republics.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker, III, Secretary of State	Carpet, 3'x5', beige field with blue tones, Recd—June 6, 1989, Est. value—$200.00, In the Office of Protocol pending delivery to GSA.	Prime Minister Bhutto of Pakistan	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James A. Baker, III, Secretary of State	Hunting prints: set of four Jagdrennen: The Course of Hunting, Recd—June 7, 1989, Est. Value—$200.00, In the Office of Protocol pending delivery to GSA.	Chancellor Kohl of the Federal Republic of Germany.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James A. Baker, III, Secretary of State	Malachite checkers set, Recd—June 29, 1989, Est. Value—$200.00, In the Office of Protocol pending delivery to GSA.	President Mobutu of Zaire	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James A. Baker, III, Secretary of State	Imari porcelain vase: white w/blue, rust, gold flowers, Recd—February 3, 1989, Est. Value—$200.00, In the Office of Protocol pending delivery to GSA.	Prime Minister Takeshita of Japan	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James A. Baker, III, Secretary of State	Sterling Silver framed photograph 9"x11", in black case, Recd—February 3, 1989, Est. Value—$200.00, In the Office of Protocol pending delivery to GSA.	Prime Minister Takeshita of Japan	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James A. Baker, III, Secretary of State	Sterling Silver plaque w/silver compass, Recd—February 15, 1989, Est. Value—$200.00, In the Office of Protocol pending delivery to GSA.	Foreign Minister Pinheiro of Portugal	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James A. Baker, III, Secretary of State	Tapestry: framed silk embroidery 3'x4', Recd—April 11, 1989, Est. Value—$400.00, In the Office of Protocol pending delivery to GSA.	Prime Minister Moudud of Bangladesh	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James A. Baker, III, Secretary of State	Laquer box: Oval Palekh w/sleigh scene 3"x5.5", Recd—May 5, 1989, Est. Value—$350.00, In the Office of Protocol pending delivery to GSA.	Eduard Shevardnadze, Foreign Minister of Union of Soviet Socialist Republics.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. James A. Baker, Wife of Secretary of State.	2 Porcelain dolls: w/lacquer stand in glass display cas, Recd—February 3, 1989, Est. Value—$200.00, In the Office of Protocol pending delivery to GSA.	Prime Minister Takeshita of Japan	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. James A. Baker, Wife of Secretary of State.	Brooch: gold w/yellow sapphires/rubies/diamonds, Recd—July 5, 1989, Est. Value—$1,000.00, In the Office of Protocol pending delivery to GSA.	Hajahah, second wife of Sultan: Brunei	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. James A. Baker, Wife of Secretary of State.	Perfume bottles: (9) procelain, Recd—July 5, 1989, Est. Value—$200.00, In the Office of Protocol pending delivery to GSA.	Hajahah, second wife of Sultan: Brunei	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. James A. Baker, Wife of Secretary of State.	Length of fabric silk/blue w/gold threads, Recd—July 5, 1989, Est. Value—$200.00, In the Office of Protocol pending delivery to GSA.	Pengiran, wife of Sultan: Brunei	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. James A. Baker, Wife of Secretary of State.	18k Pendant w/chain, sapphires/emeralds/rubies/diamonds, Recd—July 5, 1989, Est. Value—$3,000.00, In the Office of Protocol pending delivery to GSA.	Pengiran, wife of Sultan: Brunei	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. James A. Baker, Wife of Secretary of State.	Porcelain plate w/photo image of Princess, Recd—July 6, 1989, Est. value—$50.00, In the Office of Protocol pending delivery to GSA.	Anak, wife of Sultan: Brunei	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. James A. Baker, Wife of Secretary of State.	Asprey Set: purple leather Piaget watch, wallet, pen/pencil set, gold bracelet, Recd—July 6, 1989, Est. value—$1,500.00, In the Office of Protocol pending delivery to GSA.	Anak, wife of Sultan: Brunei	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. James A. Baker, Wife of Secretary of State.	Lacquer box: black with gold flower design, 6.75"x3.5"x2", Recd—November 7, 1989, Est. value—$200.00, In the Office of Protocol pending delivery to GSA.	Matsunaga, Minister of Trade: Japan	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mrs. James A. Baker, Wife of Secretary of State.	Lacquer box: black with child and bright colored bird on lid, 6.5"x2.5"x1.5", Recd—November 21, 1989, Est. Value—$300.00, In the Office of Protocol pending delivery to GSA.	Mrs. Dobrynin, wife of Advisor: Union of Soviet Socialist Republics.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. James A. Baker, Wife of Secretary of State.	Piece of gold Chinese Silk, Recd—November 2, 1989, Est. Value—$200,00, In the Office of Protocol pending delivery to GSA.	Mrs. Roh, wife of President of Korea	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Reginald Bartholomew, Under Secretary for Security Assistance, Science & Technology.	3'×5.5' burgundy and brown carpet, Recd—June 7, 1989, Est. Value—$180.00+, Approved for Official Use.	Prime Minister Bhutto of Pakistan	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Everett E. Briggs, Ambassador to Honduras.	AK-47 assault rifle, Recd—Mid March 1989, Est. Value—$180.00+, In Office of Protocol pending delivery to GSA.	Commander of the Yatama Indians of Nicaragua.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Walter Cutler, U.S. Ambassador to Saudi Arabia.	Gold plated ceremonial knife with incised decorations, Recd—December 1988, Est. Value—$1,300.00, Delivered to GSA 1/25/90.	Unknown, Emirate of the Eastern Province.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Alene Gelbard, Wife of U.S. Ambassador to Mexico.	18k gold pendent in triangular shape set with smokey topaz, Recd—December 26, 1988, Est. Value—$690.00, Delivered to GSA 1/25/90.	General Guillermo Uhry of Bolivian Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Alene Gelbard, Wife of U.S. Ambassador to Mexico.	Silver candy box 7⅞"x5¼"x2½", Recd—December 26, 1988, Est. Value—$520.00, Approved for Official Use.	General Guillermo Uhry of Bolivian Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul J. Hare, Acting Assistant Secretary of State for Near Eastern and South Asian Affairs.	3'×5' gold and brown carpet with geometric design, Recd—June 7, 1989, Est. Value—$180.00+, Approved for Official Use.	Prime Minister Bhutto of Pakistan	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Charles W. Hostler, Ambassador to Bahrain.	Large wooden chest, ornamented with brass islamic inscriptions and fixtures, Recd—November 4, 1989, Est. Value—$300.00, Approved for Official Use.	Khalifa, Minister of Labor and Social Affairs, State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
James R. Hooper, Deputy Chief of Mission, Embassy Kuwait.	Gold colored Christian Dior man's wristwatch, Recd—May 3, 1989, Est. Value—$180.00, Delivered to GSA 1/25/90.	Abdul Fattah Al-Bader, Chairman of KOTC, Kuwait.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
John H. Kelly, Assistant Secretary of State-Designate for Near Eastern and South Asian Affairs.	3'×5' Pakistani carpet, red and blue with geometric designs, Recd—June 7, 1989, Est. Value—$180.00+, Approved for Official Use.	Prime Minister Bhutto of Pakistan	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James R. Lilley, U.S. Ambassador-designated to China.	18k gold mans Rolex wristwatch, Recd—January 1, 1989, Est. Value—$200.00+, Delivered to GSA 1/25/90.	Wang You-Tsang, Chairman, Chinese Chamber of Commerce, Taiwan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
David L. Mack, Ambassador to United Arab Emirates.	Watch, Rolex, Cellini, Man's Recd—October 1989, Est. Value—$1,720.00, In the Office of Protocol pending delivery to GSA.	Minister of Foreign Affairs, United Arab Emirates.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
David L. Mack, Ambassador to United Arab Emirates.	Watch, Rolex, Cellini, Woman's, Recd—October 1989, Est. Value—$1,580.00, In the Office of Protocol pending delivery to GSA.	Minister of Foreign Affairs, United Arab Emirates.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
David L. Mack, Ambassador to United Arab Emirates.	Watch, Rolex, Oyster, Man's, Recd—October 1989, Est. Value—$2,210.00, In the Office of Protocol pending delivery to GSA.	Chief of Staff, United Arab Emirates	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Richard M. Miles, Consul General, American Consul, Leningrad.	220 Volt, ceramic Samovar, Recd—August 25, 1989, Est. Value—$180.00+, Approved for Official Use.	Leningrad Experimental Factory of Porcelain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
G. Cranwell Montgomery, U.S. Ambassador to Oman.	Silver Khanjar ceremonial knife with bone handle, Recd—December 1988, Est. Value—$180.00, Delivered to GSA 1/25/90.	Sultan Al Busaidy, Governor of Muscat	Non-acceptance would have caused embarrassment to donor & U.S. Government.
G. Cranwell Montgomery, U.S. Ambassador to Oman.	Sterling silver ballpoint and fountain pen set by S.T. Dupont of Paris, Recd—December 29, 1988, Est. Value—$500.00, Delivered to GSA 1/25/90.	Suhail Bahwan, Omani businessman	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF STATE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
G. Cranwell Montgomery, U.S. Ambassador to Oman.	Gold bracelet with six coins commemorating the coronation of King George V of England, Recd—December 17, 1989, Est. Value—$425.00, Delivered to GSA 1/25/90.	Seud Bahwan, Omani businessman	Non-acceptance would have caused embarrassment to donor & U.S. Government.
G. Cranwell Montgomery, U.S. Ambassador to Oman.	Sterling Silver incense burner by Graff of London, Globe shaped on pedestal with handle, Recd—December 22, 1989, Est. Value—$180.00, Delivered to GSA 1/25/90.	Deputy Prime Minister Fahr bin Taymour of Oman.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Daniel O'Donohue, U.S. Ambassador to Thailand.	2'×5' scroll with Oriental scene on gold colored background, Recd—May 1, 1989, Est. Value—$180.00, Delivered to GSA 1/25/90.	S.C. Huang, Thai businessman	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Joseph Verner Reed, Chief of Protocol	Sterling silver ballpoint and fountain pen set with Chancellor's signature engraved on side, Recd 6/5/89, Est. Value—$300.00, Delivered to GSA 1/25/90..	Helmut Kohl, Chancellor of the Federal Republic of Germany.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Otto J. Reich, Ambassador to Venezuela.	One-ounce gold, Recd—October 27, 1988, Est. Value—$400.00, At the American Embassy, Caracas, pending decision, regarding Official Use.	Dr. Jaime Lusinchi, President of Venezuela.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Teresita C. Schaffer, Assistant Secretary of State NEA.	Sheesham wood chest with brass inlay, Recd—December 22, 1989, Est. Value—$1,000, approved for Official Use.	Prime Minister Bhutto of Pakistan	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Gaston J. Sigur, Assistant Secretary of State.	Gold plated man's wristwatch, Recd—February 6, 1989, Est. Value—180.00, Delivered to GSA 1/25/90.	Kim Jong Pil, President, Korean Democratic Party.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Paul D. Taylor, Ambassador to the Dominican Republic.	Six silver coins in mahogany box: Coins of 8, 4, & 2 Reales, 97% silver, Recd—December 24, 1988, Est. Value—$800.00, Approved for Official Use.	Rafael Bello Andino, Secretary of State to the Presidency of the Dominican Republic.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Margaret Tutwiler, Assistant Secretary of State.	Silver and gold pen set, Recd—May 31, 1989, Est. Value—$200.00 Approved for Official Use.	Helmut Kohl, Chancellor of the Federal Republic of Germany.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Margaret Tutwiler, Assistant Secretary of State.	18k gold necklace with pendant of the Prime Minister's Coat of Arms, Recd—July 7, 1989, Est. Value—$180.00 Delivered to GSA 1/25/90.	Deputy Prime Minister of Oman	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Michael E. Ussery, U.S. Ambassador to Morocco.	Blue and white wool carpet measuring 1.5 meters x 1.2 meters, Recd—July 5, 1989, Est. Value—$180.00 Delivered to GSA 1/25/90.	Governor of Meknes, Morocco	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Michael E. Ussery, U.S. Ambassador to Morocco.	15" gold necklace with silver design every four inches, Recd—June 16, 1989, Est. Value—$180.00, Delivered to GSA 1/25/90.	Sheikh Ashmawi, Saudi businessman	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Lucien S. Vandenbrouchke, Political Officer, American Embassy, Nouakchott.	Mauritanian handwoven rug, Recd—June 10, 1989, Est. Value—$1,000.00, Approved for Official Use.	Lt. Abdenrahman Ould Lekouar, Chief of Naval Operations.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
James Wojtasiewicz, Charge d'Affaires, American Embassy: Brunei.	Hollow gold ornament in shape of mangustan fruit, Recd—August 2, 1989, Est. Value—$800.00, In the Office of Protocol pending delivery to GSA.	Sultan Bolkiah: Brunei	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Renata Wojtasiewicz, Wife of Charge d'Affaires, American Embassy: Brunei.	Jewelled gold bracelet, Recd—October 28, 1989, Est. Value—$180.00+, Office of Protocol awaits delivery of gift.	Raja Isteri Pengiran Anak Saleha, First wife of Sultan: Brunei.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: USTR

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location.	Identity of foreign donor and government	Circumstances justifying acceptance
Amb. Carla A. Hills, USTR	Handpainted, black lacquer box; estimated value, $350; on display in USTR's conference room; accepted on 5/22/89.	Srichand P. Hindlya Chairman, Hindlya Group of Companies (London).	Presented at meeting in Washington, DC; Accepted to avoid cultural misunderstandings.

AGENCY: OFFICE OF U.S. TRADE REPRESENTATIVE

[Report of Travel or Expenses of Travel]

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief Description and estimated value of travel expenses accepted as consistent with the interest of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Geza Feketekuty Counselor to the U.S. Trade Representative.	Air travel from Geneva, Switzerland to Madrid, Spain at a cost of U.S. dollars $366.00. Recd July 3, 1989.	Government of Spain	Spanish government organized seminar on Uruguay Round, and paid travel for attendees. Limited requested support to air travel within Europe, as per U.S. government regulations.
James M. Murphy, Jr. Assistant U.S. Trade Representative.	Lodging—$309.00. Recd November 19 through 21, 1989.	SINTERCAFE is sponsored and paid for by the Gov't of Costa Rica (Min. of Agriculture, Economy, Commerce & Industry) & the Private Sector (Federation of Cooperatives of Costa Rica, Coffee Growers Association, & Coffee Traders.	SINTERCAFE is the most important event for coffee procucers to take place on a yearly basis. The chief purpose of the event is to bring together in Costa Rica participants from different countries to exchange ideas. There was no conflict of interest.

AGENCY: TREASURY DEPARTMENTAL OFFICES

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Nicholas F. Brady, Secretary	Philippines. Coin Commemorating Presidents Aquino and Reagan. Recd—April 5, 1989. Est. Value—$375. Reported to GSA December 20, 1989. Pending Transfer to GSA.	Vincente Jayme, Minister of Finance, The Philippines.	Received during meeting with Minister Jayme. Non-acceptance would have caused embarrassment to donor country and U.S. Government.
Nicholas F. Brady, Secretary	L'epee pendulum clock. Recd—July 16, 1989. Est. Value—$2,000. Acceptance pending with Secretary and General Counsel for official departmental use.	Government of France	Received while at 1989 Economic Summit in Paris, France. Non-acceptance would have caused embarrassment to donor country and U.S. Government.

AGENCY: DEPARTMENT OF VETERANS AFFAIRS

[Report of Travel or Expenses of Travel]

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
W. Ross Adey, M.D., Associate Chief of Staff for Research and Development.	Recd.—May 22, 1989. Est. Value—$2,012. Expended for airfare, hotel, and meals.	Royal Swedish Academy of Sciences, Sweden.	To present a paper on research being conducted in electromagnetic fields.
David J. Baylink, M.D., Chief Mineral Metabolism.	Recd.—November 8, 1989. Est. Value—$2,569. Expended for airfare, hotel, and meals.	Chemofux, Vienna, Austria	Guest Lecturer for "Treatment of Osteoporosis" Conference in Salzburg, Austria.
Jared R. Tinklenberg, M.D., Chief, Geriatric Psychiatry.	Recd.—August 30, 1989. Est. Value—$4,000. Expended for airfare, hotel, and meals.	Sandoz, Basle & International Psychogeriatrics Society, Kyoto & Tokyo, Japan.	To lecture and present a manuscript.
Jerome A. Yesavage, M.D., Chief, Psychiatric Intensive Care Unit.	Recd.—February 23,1989. Est. Value—$3,200. Expended for airfare, hotel, and meals.	Spanish Gerontological Society, Murcia, Spain.	To lecture.
	Recd. September 4, 1989. Est. Value—$2,000. Expended for airfare, hotel, and meals.	Internat'l Psychogeriatrics Society, Tokyo, Japan.	To lecture.

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federal register

Friday
November 9, 1990

Part III

Environmental Protection Agency

40 CFR Part 503

National Sewage Sludge Survey; Availability of Information and Data, and Anticipated Impacts on Proposed Regulations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 503

[FRL-3857-2]

National Sewage Sludge Survey: Availability of Information and Data, and Anticipated Impacts on Proposed Regulations

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of information and data from the National Sewage Sludge Survey and request for comments.

SUMMARY: On February 6, 1989, EPA proposed regulations establishing requirements for the final use and disposal of sewage sludge (54 FR 5746–5902). The sewage sludge use and disposal standards (proposed 40 CFR Part 503) are required by section 405(d) of the Clean Water Act (CWA) of 1977, as amended by the Water Quality Act of 1987. EPA today is noticing the availability of information and data collected by the National Sewage Sludge Survey and its anticipated impacts on the proposed part 503 regulations. This survey was conducted to support the development of the part 503 regulations.

EPA is considering revising certain aspects of its part 503 approach to regulating the following sewage sludge use and disposal practices: Domestic septage; organic emissions from incinerators; non-agricultural land application; surface impoundments; and distribution and marketing/agricultural land application. Information and comments provided by scientific peer review panels, public comments and the information as well as data from the survey form the basis for the revisions to the proposed part 503 regulations now under consideration and for future rulemaking under CWA section 405(d). The changes the Agency is considering will encourage those practices that reuse sewage sludge for its beneficial qualities while protecting public health and the environment from risks related to contaminated sludges. Details of the format of the analytical and questionnaire survey data are provided in part IV of today's notice.

DATES: EPA will accept public comments on this notice until January 8, 1990.

ADDRESSES: Comments on this notice should be sent to: William R. Diamond, Criteria and Standards Division (WH–585), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The public docket is located in the Public Information Reference Unit, room 2904, Waterside Mall, 401 M Street, SW., Washington, DC. The docket is available for viewing from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. Comments provided on this notice will become part of the docket for the 40 CFR part 503 regulations. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying. See also part IV of this document regarding availability of documents.

FOR FURTHER INFORMATION CONTACT: Further information on the results from the National Sewage Sludge Survey may be obtained by writing or calling Dr. Alan Rubin, Sludge Regulation and Management Branch (WH–585), 401 M Street, SW., Washington, DC 20460, (202) 475–7301.

SUPPLEMENTARY INFORMATION: This notice is organized as follows:

Overview

Part I: Numerical Results From the National Sewage Sludge Survey

Part II: New Issues and Revised Approaches

Subpart A: Revised Approach for Regulating Domestic Septage
Subpart B: Revised Approach for Regulating Organic Emissions from Incinerators
Subpart C: Revised Approach for Regulating Non-Agricultural Land Application
Subpart D: Revised Approach for Regulating Surface Impoundments
Subpart E: Revised Approach for Regulating Distribution and Marketing and Agricultural Land Application
Subpart F: Alternative Pollutant Limits
Subpart G: Removal Credits

Part III: Implication of Survey Results on the Economic Impact Analysis

Part IV: Availability of Survey Information and Data

Overview

Congress adopted the Clean Water Act to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Section 101(a), 33 U.S.C. 1251(a). To achieve this goal, the Act prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The CWA directs EPA to promulgate regulations establishing limits on the types and amounts of pollutants discharged from various industrial, commercial and public sources of wastewater.

Congress recognized that the regulation of those discharging effluent directly into the nation's waters alone would not be sufficient to achieve the CWA's goals. Consequently, the Act requires EPA to restrict pollutant discharges for those who discharge wastewater indirectly through sewers flowing to publicly owned treatment works (POTWs) as well as direct discharges.

Municipal treatment works receive wastewater from industrial facilities, domestic wastes from private residences and run-off from various sources that must be treated prior to discharge by the POTW. Treatment results in an effluent that may be discharged and sewage sludge. The treatment sludge, usually over 90 percent water, also contains solids and dissolved substances. The chemical composition and biological constituents of the sludge depend upon the composition of the wastewater entering the treatment facilities and the subsequent treatment processes. Typically, these constituents may include volatiles, organic solids, nutrients, disease-causing pathogenic organisms (e.g., bacteria, viruses, etc.), heavy metals and inorganic ions, and toxic organic chemicals from industrial wastes, household chemicals, and pesticides.

The CWA of 1977 amended section 405 by adding subsection (d), which directed EPA to develop regulations containing guidelines for the use and disposal of sewage sludge. The regulations were to identify uses for sewage sludge, including disposal, and factors to be taken into account in determining the measures and practices applicable to each use or disposal. In addition, the regulations were to specify concentrations of pollutants which would interfere with sewage sludge use or disposal. The Water Quality Act of 1987 amended section 405(d) to add the requirement that EPA establish sludge use and disposal standards that include management practices and numerical limitations for the toxic pollutants in sewage sludge identified by EPA that may adversely affect public health or the environment. These standards must be adequate to protect public health and the environment from any reasonably anticipated adverse effects of the pollutants.

Background

As required by section 405(d), EPA relied on available information in developing proposed 40 CFR part 503. The primary source of information on the occurrence and concentration of pollutants in sewage sludge was determined from analyzing data from 43 to 45 publicly owned treatment works (POTWs) (depending on the pollutant) in 40 cities (U.S. EPA. 1982. "Fate of Priority Pollutants in Publicly Owned Treatment Works" Vol. I. Industrial Technology Division, Washington, D.C. EPA 440/1–82–303—the "40 City Study"). The data from the "40 City Study" consisted of concentrations of 40 pollutants (12 metals, six base neutral organic compounds, six volatile organic compounds, nine pesticides and seven polychlorinated biphenyls—PCBs) in sludge analyzed from the POTWs in the "40 City Study."

At the time the proposed Part 503 regulations were being developed, the "40 City Study" provided the most comprehensive and best documented nationwide data base on the concentrations of pollutants in sewage sludge. Consequently, EPA concluded these data were an appropriate basis for developing the proposal. However, EPA recognized several deficiencies in using the "40 City Study" data. Key among them was the fact that data on final processed sewage sludge was generally not available from the "40 City Study." The procedure used to select POTWs in the "40 City Study" did not follow the statistical methods required to support unbiased national estimates of pollutant concentrations in POTW sludge.

The "40 City Study" was designed not to measure pollutant concentrations in the sewage sludge leaving a POTW, but to determine what happened to section 307(a)(1) priority toxic pollutants in POTWs employing secondary or advanced treatment. The study approach required that some sludge samples be taken at points within the POTW prior to final sewage sludge processing in order to account for organic pollutants that may be transformed into more elementary compounds or gases by final sludge processing like anaerobic digestion. However, the study did include information that enabled the Agency to "estimate" the dry weight concentrations of pollutants in POTW sewage sludge.

The second deficiency of the data from the "40 City Study" is that it is not current. Sewage sludge quality may have changed since 1978, due to the initiation of many pretreatment programs, development of new industrial facilities discharging wastewater into the POTW, and changes in wastewater treatment processes. Therefore, pollutant concentrations from the "40 City Study" would not be expected to reflect the current quality of sewage sludge. Moreover, analytical method advancements since the "40 City Study" allow for more accurate analyses of pollutants in the presence of suspended solids.

Although there are other sources of data on sewage sludge quality, these also suffered from deficiencies rendering them unsuitable for regulatory purposes. Some data were drawn from too narrow a geographic area or were drawn from POTWs of a particular size. Frequently, these data were not collected systematically and different sampling and analytical protocols were used in the same survey. In addition, many of these other data were collected prior to the "40 City Study" data.

While EPA believed that the "40 City Study" data were the appropriate data on which to base the proposed part 503 regulations, EPA concluded the data needed to be replaced or at a minimum supplemented to support the final regulations. Therefore, EPA undertook the National Sewage Sludge Survey to obtain a current and reliable data base for developing the final part 503 rule. This data base will also be used in developing a list of pollutants from which the Agency will select additional pollutants for further analyses and potential regulation under section 405(d) of the CWA.

The National Sewage Sludge Survey data collection effort began in August 1988 and was completed in September 1989. EPA sampled at 180 publicly owned treatment works and analyzed their sludges for more than 400 pollutants. In addition, through the use of detailed questionnaires, the survey collected information on sludge use and disposal practices from 462 public treatment facilities with at least secondary treatment of wastewater. The results of the National Sewage Sludge Survey have provided EPA current data and information essential to establishing numerical pollutant limits in the final part 503 rule that will encourage the beneficial reuse of sewage sludge and provide a greater degree of public health and environmental protection than the February 6, 1989 proposal.

The National Sewage Sludge Survey

The National Sewage Sludge Survey, a massive undertaking, was conducted to obtain credible analytical data in order to characterize the quality of final process sewage sludge. This data will be used to develop national estimates of the frequency of occurrence and the level of occurrence for pollutants in sewage sludge. EPA augmented sludge quality data with information concerning sewage sludge generation and treatment processes, current and alternate sludge use and disposal practices, and treatment and disposal cost data. These data, from a national sampling of POTWs employing secondary or advanced treatment of wastewater, are necessary for a number of essential analyses required for promulgating the final Part 503 regulations including the aggregate risk analysis (ARA) and the regulatory impact analysis (RIA) which project the benefits and expected effects associated with the final part 503 rule.

In establishing numerical limits, pollutant concentration data from the National Sewage Sludge Survey are required to estimate the level of risk posed by current sludge quality and current use or disposal methods. EPA must also have the data from the survey to test the reasonableness of its analyses and regulatory approach. Some areas of earlier concern included the accuracy of anticipated risks and analyzed characteristics of increased incidence of chemically induced disease in proximity to particular use or disposal methods. The survey information will assist the Agency in further evaluating its regulatory approach.

The results of the survey are also used to assess the potential shifts among the various use or disposal methods as a result of the proposed regulations. The effect of the rule is an important element in determining how rapidly to implement the regulations. For instance, if there is likely to be only a slight impact from a particular numerical limitation, immediate implementation may be appropriate. If, on the other hand, wide shifts in current methods of use or disposal are anticipated from the numerical limits, it might be appropriate to assist the POTWs in the development of more stringent pretreatment limits for their industrial dischargers or in the adoption of alternative use or disposal methods.

In addition, EPA will study the analytical results to identify a preliminary list of pollutants for second round rulemaking. Potential candidate pollutants are those that have a high frequency of occurrence and elevated concentrations. A final decision to regulate pollutants in the second round will depend, in significant measure, upon the availability of sufficient information on a pollutant's toxicity and environmental fate, effect and transport properties. The process EPA will follow to identify these pollutants will be similar to the process used in developing the pollutants of concern considered for regulation in this rulemaking.

Description of the Survey

The National Sewage Sludge Survey (NSSS) was a data collection effort relying on analytical sampling and an informational questionnaire to obtain data on sewage sludge quality and management. The NSSS was designed to collect information and data necessary to produce national estimates of:

(1) Concentrations of toxic contaminants in municipal sludge;

(2) Sludge generation and treatment processes;

(3) Sludge use and disposal practices and alternative use and disposal practices; and

(4) Sludge treatment and disposal costs.

Participants in the NSSS were selected from 11,407 POTWs in the United States, Puerto Rico, and the District of Columbia, identified in the EPA Office of Municipal Pollution Control's 1986 Needs Survey as using at least secondary wastewater treatment. Secondary treatment was defined as a primary clarification process followed by biological treatment and secondary clarification. In identifying POTWs for the NSSS, EPA excluded POTWs with "Present Effluent Characteristics" codes of "No Discharge", "Raw Discharge" and "Advanced Primary" from the 1986 Needs Survey.

As noted above, the NSSS effort consisted of a questionnaire and analytical survey component. The sample of POTWs for each component was selected from the 11,407 secondary treatment POTWs identified by the Agency. The POTWs included in the samples were selected such that each possible sample POTW from the available list of POTWs had the same probability of being selected. The two POTW samples are related in that all POTWs in the analytical survey were selected from among those POTWs that were already selected to receive the questionnaire.

The questionnaire survey was designed to allow survey results to be analyzed separately by flow rate group and by sewage sludge use and disposal practice. The secondary treatment POTWs identified by the Agency were divided into 24 mutually exclusive groups. Membership in these groups is based on four categories of wastewater flow rate and six primary use and disposal practices. The flow rates and use and disposal categories are as follows:

1. POTW average daily flow rate categories;

a. Flow less than or equal to one million gallons per day (MGD),

b. Flow more than one MGD but less than or equal to 10 MGD,

c. Flow more than 10 MGD but less than or equal to 100 MGD, and

d. Flow greater than 100 MGD.

2. POTW sewage sludge use and disposal practice groups;

a. Land application,

b. Distribution and marketing,

c. Incineration,

d. Monofill (sewage sludge only landfill),

e. Ocean disposal, and

f. Co-disposal landfill and other.

A 50 page questionnaire was mailed to every POTW selected for the NSSS. A total of 479 POTWs were selected to receive the questionnaire. General information gathered by the questionnaire concerned service area, POTW operating information, general sewage sludge use and disposal practices, pretreatment activities, wastewater and sewage sludge testing frequencies, and POTW financial information. POTWs also supplied disposal practice specific information and indicated which practice(s) would be likely alternatives to current disposal practices.

POTWs in the analytical survey were restricted to the contiguous States and the District of Columbia. The POTWs in the analytical survey were drawn from those included in the questionnaire survey. A total of 208 POTWs from the four flow rate categories were selected for sampling and analysis. EPA contract personnel collected sewage sludge samples just prior to disposal from each POTW according to sampling and preservation protocols.

Samples were analyzed for a total of 419 analytes. These analytes included every organic, pesticide, dibenzofurans, dioxins and PCBs for which EPA has gas chromatography—mass spectrometry (GC/MS) standards. The remaining pollutants are metals and inorganics. The pollutants were also selected in consideration of:

(1) The CWA section 307(a) priority pollutants;

(2) Toxic compounds highlighted in the Domestic Sewage Study;

(3) Resource Conservation and Recovery Act (RCRA, Pub. L. 94–580) Appendix VIII pollutants; and

(4) Contaminants of suspected concern in municipal sludge.

Sludge sampling, preservation, and analytical protocols were specifically developed for this survey. Analytical methods 1624 and 1625 were adapted from standard methods to deal specifically with the sludge matrix for volatile and semi-volatile organics, respectively, and utilize gel permeation chromatography sample clean-up followed by isotope dilution gas chromatography—mass spectrometry analyte identification and quantification. Pesticides and PCBs, and dibenzofurans and dioxins are analyzed by analytical methods 1618 and 1613, respectively. Metals, other inorganics and classicals are analyzed by standard EPA methods. The analytical methods were either developed, chosen or adapted specifically for the sludge matrix to give the most reliable, accurate and precise measurements of the 419 analytes undertaken in any previous analytical survey.

All raw analytical results were subjected to a two step quality assurance/quality control (QA/QC) procedure. In the first step, each result and analytical procedure were checked against analytical method specifications. If this step was satisfied, then the result was evaluated for potential outlier characteristics by checking on laboratory identification number validity as well as sample origin. If the sample raw data passed both of these checks, it was certified and reported to EPA.

Part I: Numerical Results From the National Sewage Sludge Survey

Disposal Practices

Based on information in the 1986 Needs Survey, EPA, in designing the survey, assigned each of the 11,407 POTWs classified by the Agency as secondary treatment facilities to one of six reported primary use and disposal practices (the "survey disposal practices"). The six possible disposal practice categories were: (1) Land application, (2) distribution and marketing, (3) incineration, (4) monofill, (5) co-disposal landfill, and (6) ocean disposal. EPA sent the questionnaire to POTWs randomly selected, according to a stratified probability design, from the 11,407 secondary treatment POTWs grouped into these six categories. Selection at random is the statistical basis for developing unbiased national estimates for the dry weight concentrations in sludge for pollutants of concern and all other quantities of interest.

The NSSS questionnaire asked POTWs (question 36 of General POTW Information section I in the questionnaire), to indicate which of these six disposal practices were used to dispose of sludge in 1988. However, not all of the responding POTWs used one of these six disposal practices. More complete disposal practice information was obtained from another question (question 24 in section I) in the questionnaire. This question provided the opportunity for POTWs to record information for nine disposal practices (the "reported disposal practice"). The first six of these nine practices are as listed above. The remaining three are: (7) Co-incineration, (8) surface disposal, and (9) other. Definition of the first eight practices as supplied by the questionnaire are listed below.

Land Application—The application of liquid, dewatered, dried, or composted sewage sludge to the land by surface spraying, surface spreading, or subsurface injection. Sludge may be applied to land intended for a number of end uses including, but not limited to, cropland, pasture, commercially grown turf, silviculture, land for reclamation, and dedicated sites. The sludge may be applied by the POTW or by a distributor or end user under a contract or similar control mechanism with the POTW. Note that in this definition the POTW has direct control over the application of sewage sludge.

Distribution and Marketing—The give-away, transfer, or sale of sewage sludge or sewage sludge product (e.g., composted sludge product) in either bagged or bulk form. The POTW does not apply the sludge and the end-user applying the sludge is not under the direct control of the POTW. Note that a label or notice provided with the sewage sludge does not constitute direct control.

Sewage Sludge Incineration—The treatment of sewage sludge exclusively in an enclosed device using controlled flame combustion. Includes all sewage sludge incinerators on site and also, those facilities transporting sewage sludge to another facility that operates sewage sludge incinerators.

Monofill—A controlled area of land that contains one or more sewage sludge units. A sewage sludge unit is defined as a controlled area of land where only sewage sludge is placed. The sludge is covered with a cover material at the end of each operating day or at more frequent intervals.

Co-Disposal Landfill—An area of land or an excavation that is used for the permanent disposal of solid waste residuals, and sewage sludges. These include, but are not limited to, municipal landfills that accept sewage sludge for disposal in conjunction with other waste materials.

Ocean Disposal—Dumping or controlled release of sewage sludge from a barge or other vessel into marine water.

Co-Incineration—The combined treatment of sewage sludge and other combustible waste materials (e.g., trash and other municipal solid waste) in an enclosed device using controlled flame combustion.

Surface Disposal—A controlled area of land where only sewage sludge is placed for a period of one year or longer. Sludge placed in this area is not provided with a daily or final cover. (Surface disposal areas may become naturally covered with vegetation as a result of seed drift.) Surface disposal does not include areas where sludge has formed or is currently being formed and being deposited as a result of ongoing treatment (e.g., finishing ponds). Surface disposal can be a natural topographical depression, man-made excavation or diked area formed primarily of earthen material designed to store (not treat) sewage sludge for a period of one year or longer. Surface disposal also includes placement of sludge in piles for a period of one year or more, as a means of disposal.

1. Frequency of Reported Disposal Practices

The number of POTWs for each of the six survey disposal practice groups are recorded by reported major disposal practice in Tables I–1 and I–2. If a POTW used more than one disposal method in 1988, the practice used to dispose of the largest percentage of sludge was deemed the major disposal practice. Table I–1 presents a cross tabulation of 1986 Needs Survey and reported 1988 major disposal practice frequencies for the questionnaire survey. This table, and the other cross tabulations that follow, reports four numbers in each box. Each box describes facilities that meet all of the conditions required to be reported in the row and all of the conditions required to be in the column. As summarized in the upper left hand corner, the first number in a box reports the frequency, or number of facilities, in the NSSS that belong in that box. The second number reports the number of facilities as a percent of the total sample for the given frequency. The third number reports the percent of the row (survey design category) for the given frequency. And, the last number reports the percent of the column (report category) for the given frequency. For example, Column 1 of Table I–1 shows that 161 (total) or 33.61 percent of the 479 POTWs responding to the NSSS questionnaire reported land application as their major disposal practice. The first number in each box shows the number of the 161 POTWs EPA had assigned to disposal practices 1 through 6 based on the 1986 Needs data.

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TABLE I-1.

POTWS IN THE QUESTIONNAIRE SURVEY

1986 NEEDS DISPOSAL CLASSIFICATION VS 1988 REPORTED DISPOSAL PRACTICE FREQUENCIES

POTWS REPORTING SEVERAL DISPOSAL PRACTICES ARE CLASSIFIED ACCORDING TO THE PRACTICE USED TO DISPOSE OF THE MAJORITY OF SLUDGE

Major Disposal Practices Based On 1986 NEEDS Survey	Frequency / Percent / Row Pct / Col Pct	Reported Major Disposal Practices as Reported in the NSSS												
		1	2	3	4	5	6	7	8	9	10	11	12	TOTAL
	1	65	1	0	1	21	0	0	18	4	2	0	4	116
		13.57	0.21	0.00	0.21	4.38	0.00	0.00	3.76	0.84	0.42	0.00	0.84	24.22
		56.03	0.86	0.00	0.86	18.10	0.00	0.00	15.52	3.45	1.72	0.00	3.45	
		40.37	3.70	0.00	7.57	27.63	0.00	0.00	30.51	16.67	50.00	0.00	36.36	
	2	26	16	1	2	9	0	0	1	1	0	0	0	56
		5.43	3.34	0.21	0.42	1.88	0.00	0.00	0.21	0.21	0.00	0.00	0.00	11.69
		46.43	28.57	1.79	3.57	16.07	0.00	0.00	1.79	1.79	0.00	0.00	0.00	
		16.15	59.26	1.59	7.14	11.84	0.00	0.00	1.69	4.17	0.00	0.00	0.00	
	3	3	0	55	0	6	1	3	0	0	0	0	0	66
		0.63	0.00	11.48	0.00	1.25	0.21	0.63	0.00	0.00	0.00	0.00	0.00	14.20
		4.41	0.00	80.88	0.00	8.82	1.47	4.41	0.00	0.00	0.00	0.00	0.00	
		1.86	0.00	87.30	0.00	7.89	4.76	100.00	0.00	0.00	0.00	0.00	0.00	
	4	4	2	1	21	5	0	0	2	0	0	0	0	35
		0.84	0.42	0.21	4.38	1.04	0.00	0.00	0.42	0.00	0.00	0.00	0.00	7.31
		11.43	5.71	2.86	60.00	14.29	0.00	0.00	5.71	0.00	0.00	0.00	0.00	
		2.48	7.41	1.59	75.00	6.58	0.00	0.00	3.39	0.00	0.00	0.00	0.00	
	5	63	8	5	4	35	1	0	38	19	2	2	7	185
		13.15	1.67	1.25	0.84	7.31	0.21	0.00	7.93	3.97	0.42	0.42	1.46	38.62
		34.05	4.32	3.24	2.16	18.92	0.54	0.00	20.54	10.27	1.08	1.08	3.78	
		39.13	29.63	9.52	14.29	46.05	4.76	0.00	64.41	79.17	50.00	100.00	63.64	
	6	0	0	0	0	0	19	0	0	0	0	0	0	19
		0.00	0.00	0.00	0.00	0.00	3.97	0.00	0.00	0.00	0.00	0.00	0.00	3.97
		0.00	0.00	0.00	0.00	0.00	100.00	0.00	0.00	0.00	0.00	0.00	0.00	
		0.00	0.00	0.00	0.00	0.00	90.48	0.00	0.00	0.00	0.00	0.00	0.00	
	TOTAL	161	27	63	28	76	21	3	59	24	4	2	11	479
		33.61	5.64	13.15	5.85	15.87	4.38	0.63	12.32	5.01	0.84	0.42	2.30	100.00

DISPOSAL PRACTICES:

1 = Land Application
2 = Distribution and Marketing
3 = Incineration
4 = Monofill
5 = Co-Disposal Landfill
6 = Ocean Disposal
7 = Co-Incineration
8 = Surface Disposal
9 = Other
10 = Out of Business
11 = Ineligible
12 = Non-Respondents

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TABLE I-2.

POTWS IN THE ANALYTICAL SURVEY

1986 NEEDS DISPOSAL CLASSIFICATION VS REPORTED DISPOSAL PRACTICE FREQUENCIES

POTWS REPORTING SEVERAL DISPOSAL PRACTICES ARE CLASSIFIED ACCORDING TO THE PRACTICE USED TO DISPOSE OF THE MAJORITY OF SLUDGE

Major Disposal Practices Based on 1986 NEEDS Survey	Frequency / Percent / Row Pct / Col Pct	Reported Major Disposal Practices												
		1	2	3	4	5	6	7	8	9	10	11	12	TOTAL
	1	30	1	0	1	7	0	0	2	0	3	2	0	46
		14.42	0.48	0.00	0.48	3.37	0.00	0.00	0.96	0.00	1.44	0.96	0.00	22.12
		65.22	2.17	0.00	2.17	15.22	0.00	0.00	4.35	0.00	6.52	4.35	0.00	
		37.04	10.00	0.00	16.67	25.00	0.00	0.00	16.67	0.00	12.00	66.67	0.00	
	2	6	4	0	1	0	0	0	0	0	1	0	0	12
		2.88	1.92	0.00	0.48	0.00	0.00	0.00	0.00	0.00	0.48	0.00	0.00	5.77
		50.00	33.33	0.00	8.33	0.00	0.00	0.00	0.00	0.00	8.33	0.00	0.00	
		7.41	40.00	0.00	16.67	0.00	0.00	0.00	0.00	0.00	4.00	0.00	0.00	
	3	2	0	20	0	1	0	2	0	0	0	0	0	27
		0.96	0.00	9.62	0.00	1.44	0.00	0.96	0.00	0.00	0.00	0.00	0.00	12.98
		7.41	0.00	74.07	0.00	11.11	0.00	7.41	0.00	0.00	0.00	0.00	0.00	
		2.47	0.00	86.96	0.00	10.71	0.00	100.00	0.00	0.00	0.00	0.00	0.00	
	4	0	0	0	1	0	0	0	0	0	0	0	0	2
		0.00	0.00	0.00	0.96	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.96
		0.00	0.00	0.00	100.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
		0.00	0.00	0.00	33.33	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
	5	40	5	3	2	21	1	0	11	8	21	1	3	116
		19.23	2.40	1.44	0.96	10.10	0.48	0.00	5.29	3.85	10.10	0.48	1.44	55.77
		34.48	4.31	2.59	1.72	18.10	0.86	0.00	9.48	6.90	18.10	0.86	2.59	
		51.28	50.00	13.04	33.33	67.74	16.67	0.00	84.62	100.00	84.00	33.33	100.00	
	6	0	0	0	0	0	5	0	0	0	0	0	0	5
		0.00	0.00	0.00	0.00	0.00	2.40	0.00	0.00	0.00	0.00	0.00	0.00	2.40
		0.00	0.00	0.00	0.00	0.00	100.00	0.00	0.00	0.00	0.00	0.00	0.00	
		0.00	0.00	0.00	0.00	0.00	83.33	0.00	0.00	0.00	0.00	0.00	0.00	
	TOTAL	78	10	23	6	31	6	2	13	8	25	3	3	208
		37.50	4.81	11.06	2.88	14.90	2.88	0.96	6.25	3.85	12.02	1.44	1.44	100.00

DISPOSAL PRACTICES:

1 = Land Application
2 = Distribution and Marketing
3 = Incineration
4 = Monofill
5 = Co-Disposal Landfill
6 = Ocean Disposal
7 = Co-Incineration
8 = Surface Disposal
9 = Other
10 = No Sludge Sampled
11 = Primary Samples Only
12 = Out of Business/Ineligible

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Thus, for example, in Box 1 (upper left hand corner) 65 of the 161 POTWs now reporting land application, had been classified by EPA as sludge land appliers for purposes of the survey design. These 65 POTWs represented 13.57 percent of the total 479 POTWs and 40.37 percent (column percent) of the 161 land appliers. These 65 POTWs also represent 56.03 percent of 116 POTWs EPA assigned to land application (row percent).

Column 1 through 9 account for the 462 POTWs that responded to the survey. Columns 10 and 11 report the number of POTWs determined to be out of business, or ineligible. Of those POTWs which were ineligible, one responded that it would not be operational until 1990 and the other stated that it only performed primary treatment of wastewater. The remaining reported disposal practice column of Table I–1 records the distribution of survey non-respondents in the questionnaire sample.

Table I–2 records the cross tabulation for 1986 Needs Survey and major reported 1988 disposal practices for the 208 POTWs in the analytical survey. It should be noted that some POTWs reported their major 1988 disposal practice as "sludge lagoon." Other facilities that used sludge lagoons in 1988 recorded their disposal practice as surface disposal. For Tables I–1 and I–2, the number of POTWs listing "sludge lagoon" as their major disposal practice in 1988 were included in the count of POTWs using surface disposal. Data and POTW schematics for POTWs that recorded sludge lagoons under either the disposal practice "surface disposal" or "other" are currently being reviewed by the EPA to determine if indeed the sludge lagoon is a surface disposal or whether the sludge is lagooned as a form of wastewater treatment.

Columns 1 through 9 account for the 177 POTWs in the analytical portion of the survey with sludge generated by secondary or better wastewater treatment. Column 10 reports the number of POTWs that were not sampled because they were not disposing of sludge generated by secondary or better wastewater treatment during the time when physical samples were taken. Column 11 reports the number of POTWs where sludge generated by less than secondary wastewater treatment were the only physical samples taken. Finally, column 12 reports the number of POTWs classified as out of business or ineligible.

A frequency of POTWs and the disposal practice listed for those POTWs that characterized their 1988 major disposal practice as "other", excluding POTWs that responded sludge lagoon to this question, are listed in Table I–3. Nine of these POTWs were in the analytical survey. In all cases, the trip report completed by the EPA contractor who sampled the facility indicated that the final disposal practice for sludge from the POTW was one of the first six major disposal practices. However, these facilities are included under the reported major disposal practice of "other" in Tables I–1 and I–2 because they reflect the information provided by the respondents. Data and POTW schematics are currently being reviewed by the EPA to determine if more definitive disposal practices can be recorded for these POTWs.

TABLE I–3.—LISTING OF SURVEY RESPONSES REPORTED IN DISPOSAL PRACTICE CATEGORY "OTHER"

Response	Number of POTWs
Composting	1
Discharged	11
Drying Bed	1
New Facility	1
Private Contractor	1
Storage	1
Stored Off-Site	1
To Other POTW	1
To Regional Plant	1
Transferred	5
Total	24

2. National Estimates of the Frequency of POTWs Using the Nine Disposal Practices

Based on reported major 1988 disposal practice data from the questionnaire survey, the national number of POTWs using one of the nine disposal categories was estimated. Disposal practices for POTWs that did not respond to the survey were considered to be the survey disposal practice reported in the 1988 Needs Survey. National totals for the nine practices reflect survey sampling weights. These estimates as well as a 95 percent confidence interval for the estimated total are reported on Table I–4. The difference between the number of POTWs estimated to use a disposal practice based on the NSSS data and the number of POTWs using the practice based on 1986 Needs Survey data is also listed.

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TABLE I-4.

NATIONAL ESTIMATES OF DISPOSAL PRACTICE FREQUENCIES

Disposal Practice	1986 NEEDS Classification	1988 Estimated	Change 1988 Estimate -1986 NEEDS	Variance of the Estimate	Lower 95% CI on Estimate	Upper 95% CI on Estimate
Land Application	2,233	3,542	1,309	127,440	2,842.30	4,241.70
Dist. and Marketing	94	308	214	18,292	42.91	573.09
Incineration	144	294	150	9,912	98.86	489.14
Monofill	45	203	158	10,009	6.92	399.08
Co-disposal Landfill	8,871	1,851	-7,020	92,793	1,253.94	2,448.06
Ocean Disposal	20	115	95	8,515	-65.86	295.86
Co-incineration	.	6	6	8	0.37	11.63
Surface Disposal	.	3,147	3,147	166,884	2,345.31	3,946.69
Other	.	1,526	1,526	107,536	883.26	2,168.74
Out of Business	.	229	229	17,716	-31.88	489.88
Ineligible	.	186	186	16,809	-68.11	440.11
	11,407	11,407	0			

Note: CI Stands For Confidence Interval. The Agency is 95 Percent Confident that the True National Total is No Less than the "Lower 95 Percent CI on Estimate" and that the True National Total is No More Than the "Upper 95 Percent CI on Estimate".

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The number of facilities estimated to be using ocean disposal is higher than what the Agency expected, though the 95 percent confidence interval includes reasonable estimates. Because ocean disposal requires a permit and these permits are unusual, it is assumed that no more than thirty facilities use this practice. The Agency will investigate further and, if appropriate, adjust the national estimates.

3. Estimate of the Number of POTWs Using Multiple Disposal Practices

Sixty-five of the responding 462 POTWs reported using multiple disposal practices in 1988. The estimated national frequency of POTWs using multiple disposal practices are listed in Table I–5 by major disposal practice. These estimates are further delineated by the secondary practices in Table I–6.

Average Daily Flow

Based on the average daily flow of wastewater reported in the 1988 Needs Survey, each of the 11,407 POTWs with secondary or better treatment was assigned to one of four flow group categories (the "survey flow rate group"). The four survey flow groups are: (1) More than 100 million gallons per day (MGD), (2) greater than 10 MGD but less than or equal to 100 MGD, (3) greater than one MGD but less than or equal to 10 MGD, and (4) less than or equal to one MGD. Flow rate was one of the stratification variables used to design the probability sample of POTWs to receive the questionnaire. The other stratification variable was primary disposal practice reported in the 1986 Needs Survey.

TABLE I–5.—NATIONAL ESTIMATES OF POTWs USING MULTIPLE DISPOSAL PRACTICES

Major disposal practice	Estimated No. of POTWs using multiple practices
Land Application	166
Dist. and Marketing	17
Incineration	32
Monofill	2
Co-disposal Landfill	27

TABLE I–5.—NATIONAL ESTIMATES OF POTWs USING MULTIPLE DISPOSAL PRACTICES—Continued

Major disposal practice	Estimated No. of POTWs using multiple practices
Ocean Disposal	0
Co-incineration	2
Surface Disposal	138
Other	117
Total	501

TABLE I–6.—ESTIMATED NUMBER OF POTWs USING MULTIPLE DISPOSAL PRACTICES

Major disposal practice	Secondary disposal practice	Estimated No. of POTWs
Land Application	Distribution & marketing D&M.	14
	Incineration	2
	Monofill	3
	Co-disposal landfill	101
	D&M, surface disposal.	1
	D&M, co-disposal landfill.	23
	D&M, co-disposal, other.	2
	D&M, other	1
	Other	19
		166
Distribution and marketing.	Land application	11
	Land application, co-disposal landfill.	2
	Incineration	4
		17
Incineration	Land application	1
	Distribution & marketing.	2
	Monofill	1
	Co-disposal landfill	28
		32
Monofill	Co-disposal landfill	2
Co-disposal landfill	Land application	9
	Distribution & marketing.	7
	Incineration	7
	Other	2
	Land application, D&M.	2
		27

TABLE I–6.—ESTIMATED NUMBER OF POTWs USING MULTIPLE DISPOSAL PRACTICES—Continued

Major disposal practice	Secondary disposal practice	Estimated No. of POTWs
Co-incineration	Co-disposal	2
Surface disposal	Land application	117
	Co-disposal landfill	1
	Land application, D&M.	20
		138
Other	Land application	115
	Monofill	2
		117

Average daily flow information for 1988 was obtained from the questionnaire (Question 9b of General POTW Information section I.) These data were then categorized into one of four flow rate groups. The categories for 1988 reported flow rate groups are the same used to categorize the 1986 Needs Survey flow rates. Flow rate groups based on the categorization of 1988 data is referred to as "reported flow rate group."

1. Frequency of POTWs in Each Flow Rate Group

The number of POTWs for each of the four 1986 Needs Survey based flow rate groups are recorded by reported 1988 flow rate group in Tables I–7 and I–8. Table I–7 presents a cross tabulation of survey and reported flow rate groups for the questionnaire survey. Column 1 through 4 account for the 462 POTWs that responded to the survey. Columns 5 and 6 were created from those POTWs that were determined to be out of business, or ineligible. Of those POTWs that were ineligible, one responded that it would not be operational until 1990 and the other stated that it only performed primary treatment of wastewater. Column 7 of Table I–7 records the distribution of survey non-respondents in the questionnaire sample by flow rate group. Table I–8 records the cross tabulation for survey and major reported disposal practices for the 208 POTWs in the analytical survey.

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TABLE I-7.

POTWs IN THE QUESTIONNAIRE SURVEY
1986 NEEDS FLOW RATE CLASSIFICATION VS. 1988 REPORTED FLOW RATE GROUP FREQUENCIES

1986 NEEDS Based Flow Rate Group	Frequency / Percent / Row Pct / Col Pct	1988 Reported Flow Rate Group 1	2	3	4	5	6	7	TOTAL
1		24	2	2	0	0	0	0	28
		5.01	0.42	0.42	0.00	0.00	0.00	0.00	5.85
		85.71	7.14	7.14	0.00	0.00	0.00	0.00	
		96.00	1.87	1.17	0.00	0.00	0.00	0.00	
2		1	97	7	0	0	0	2	107
		0.21	20.25	1.46	0.00	0.00	0.00	0.42	22.34
		0.93	90.65	6.54	0.00	0.00	0.00	1.87	
		4.00	90.65	4.09	0.00	0.00	0.00	18.18	
3		0	7	139	11	0	0	2	159
		0.00	1.46	29.02	2.30	0.00	0.00	0.42	33.19
		0.00	4.40	87.42	6.92	0.00	0.00	1.26	
		0.00	6.54	81.29	6.92	0.00	0.00	18.18	
4		0	1	23	148	4	2	7	185
		0.00	0.21	4.80	30.90	0.84	0.42	1.46	38.62
		0.00	0.54	12.43	80.00	2.16	1.08	3.78	
		0.00	0.93	13.45	93.08	100.00	100.00	63.64	
TOTAL		25	107	171	159	4	2	11	479
		5.22	22.34	35.70	33.19	0.84	0.42	2.30	100.00

Average Daily Flow Rate Groups:
1 = Greater than 100 MGD
2 = 10 < Flow <= 100
3 = 1 < Flow <= 10
4 = Flow <= 1
5 = Out of Business
6 = Ineligible
7 = Nonrespondents

TABLE I-8.

POTWS IN THE ANALYTICAL SURVEY
1986 NEEDS FLOW RATE CLASSIFICATION VS. 1988 REPORTED FLOW RATE GROUP FREQUENCIES

1986 NEEDS Based Flow Rate Group	Frequency / Percent / Row Pct / Col Pct	1988 Reported Flow Rate Group 1	2	3	4	5	6	7	TOTAL
	1	16	1	2	0	1	0	0	20
		7.69	0.48	0.96	0.00	0.48	0.00	0.00	9.62
		80.00	5.00	10.00	0.00	5.00	0.00	0.00	
		100.00	1.96	3.03	0.00	4.00	0.00	0.00	
	2	0	49	4	0	2	1	0	56
		0.00	23.56	1.92	0.00	0.96	0.48	0.00	26.92
		0.00	87.50	7.14	0.00	3.57	1.79	0.00	
		0.00	96.08	6.06	0.00	8.00	33.33	0.00	
	3	0	1	55	7	0	2	0	65
		0.00	0.48	26.44	3.37	0.00	0.96	0.00	31.25
		0.00	1.54	84.62	10.77	0.00	3.08	0.00	
		0.00	1.96	83.33	15.91	0.00	66.67	0.00	
	4	0	0	5	37	22	0	3	67
		0.00	0.00	2.40	17.79	10.58	0.00	1.44	32.21
		0.00	0.00	7.46	55.22	32.84	0.00	4.48	
		0.00	0.00	7.58	84.09	88.00	0.00	100.00	
	TOTAL	16	51	66	44	25	3	3	208
		7.69	24.52	31.73	21.15	12.02	1.44	1.44	100.00

Average Daily Flow Rate Groups:
1 = Greater Than 100 MGD
2 = 10 < FLOW <= 100
3 = 1 < FLOW <= 10
4 = FLOW <= 1
5 = No Sludge Sampled
6 = Only Primary Sludge Sampled
7 = Ineligible or Out of Business

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Samples were not taken from some of the POTWs in the survey that indicated they disposed of sludge in lagoons. During pre-sampling phone contacts, facilities indicated that they had no sludge. Hence, they are classified as "No Sludge Sampled" in Table I–8. Additionally, samples from three POTWs were excluded from the analytical survey because only primary treatment sludge was sampled. These samples are classified in the table as "Primary Samples Only."

2. National Estimates of the Frequency of POTWs From Each of the Flow Rate Groups

Based on reported 1988 flow rate group data from the questionnaire survey, the national number of POTWs in each group was estimated. Flow rate groups for POTWs that did not respond to the survey were considered to be the survey flow rate group determined from the 1986 Needs Survey. National totals for the four flow rate groups reflect survey sampling weights. These estimates as well as a 95 percent confidence interval for the estimated total are reported on Table I–9. Also listed on Table I–9 is the difference between the number of POTWs estimated to be in each flow rate group based on 1988 data and number of POTWs in that flow rate group as determined from the 1986 Needs Survey.

3. National Estimates of the Frequency of POTWS by Reported Flow Rate Group and Major Disposal Practice

The number of POTWs in the nation for each flow rate major disposal practice category have been estimated based on 1988 data and are presented in Table I–10. Not reflected on this table are the 415 POTWs which were estimated to be either closed or out of business.

TABLE I–9.—NATIONAL ESTIMATES OF POTWS BY AVERAGE DAILY FLOW GROUP

Reported flow group	1986 NEEDS classification	1988 estimated	Change 1988 Estimated – 1986 NEEDS	Variance of the estimate	Lower 95% CI on estimate	Upper 95% CI on estimate
> 100 MGD	28	26	−2	2.8	22.73	29.27
10 < FLOW <= 100	324	420	96	8,968.3	234.39	605.61
1 < FLOW <= 10	1,941	2,456	515	47,196.8	2,030.18	2,881.82
FLOW <= 1	9,114	8,090	−1,024	82,511.3	7,526.99	8,653.01
Out of Business		229	229	70,796.0	−292.51	750.51
Ineligible		186	186	16,808.7	−68.11	440.11
	11,407	11,407	0			

NOTE: CI Stands For Confidence Interval. The Agency is 95 Percent Confident that the True National Total is No Less than the "Lower 95 Percent CI on Estimate" and that the True National Total is No More Than the "Upper 95 Percent CI on Estimate".

TABLE I–10.—ESTIMATED NUMBER OF POTWS BY FLOW RATE GROUP AND DISPOSAL PRACTICE BASED ON 1988 DATA

Flow rate group	Disposal practices									
	1	2	3	4	5	6	7	8	9	Total
1	10	1	8	0	1	4	0	1	1	25
2	83	20	64	10	81	12	4	121	24	419
3	1,302	95	129	90	692	5	2	120	21	2,456
4	2,146	193	93	103	1,077	94	0	2,905	1,479	8,090
	3,541	309	294	203	1,851	115	6	3,147	1,525	10,991

Flow Rate Group (MGD): 1 = FLOW > 100; 2 = 10 < FLOW <= 100; 3 = 1 < FLOW <= 100; 4 = FLOW <= 100.
Disposal Practices: 1 = Land Application; 2 = Distributing and Marketing; 3 = Incineration; 4 = Monofill; 5 = Co-Disposal Landfill; 6 = Ocean Disposal; 7 = Co-Incineration; 8 = Surface Disposal; 9 = Other.

Pollutant Concentrations

The national pollutant concentration estimates in today's Notice were calculated using the results from the analytical portion of the National Sewage Sludge Survey. They are estimates for the distribution among POTWs of pollutant concentrations in dry weight sewage sludge that is ready for disposal and that is generated by secondary or better treatment of wastewater.

1. Data Used to Calculate Pollutant Concentrations

A total of 208 POTWs were selected at random, from within the four flow groups of the survey design, for physical sampling but no pollutant concentration data from POTWs in three categories were used in the calculation of national estimates. These three categories are Primary Samples Only, No Sludge Sampled, and Out of Business/ Ineligible. Concentration data from the remaining 177 POTWs were used in the determination of national estimates.

The three categories are more explicitly defined as follows:

Primary Samples Only—Samples of sewage sludge generated during less than secondary treatment were collected from some POTWs and for three POTWs they were the only type of sample collected. These data were not suitable to use in determining the national estimates for pollutant concentrations in sewage sludge generated during secondary or better treatment.

No Sludge Sampled—No sewage sludge samples were collected at 25 of the selected POTWs. One POTW was not sampled because all sewage sludge at that POTW was generated using primary wastewater treatment. Additionally, pre-sampling phone contacts indicated that sewage sludge was not being use or disposed of at 24 POTWs during the time of the NSSS. These POTWs claimed to treat their wastewater in stabilization ponds; sewage sludge generated in a stabilization pond remains in the pond

until it is used or disposed at some infrequent interval.

Out of Business/Ineligible—Two of the selected POTWs were closed and another POTW could not be contacted by telephone. Therefore, no data were available for those POTWs because no samples could be collected.

2. Analytical Detection Limits and Percent Solids

Each NSSS sample was tested by EPA contract laboratories for 419 analytes or pollutants. Each was assigned a minimum level, a form of "detection limit" used by the Agency, in the protocol of the analytical method. That minimum level, as applied to the determination of pollutants by gas chromatography combined with mass spectrometry (GCMS), is defined by the EPA's Industrial Technology Division as the level at which the entire analytical system shall give recognizable mass spectra and acceptable calibration points. In the NSSS, the minimum level is equivalent to the minimum concentration or amount of pollutant that could be measured.

If a pollutant was quantified above the minimum level, as adjusted for interferences, the measured concentration in dry weight units is reported under the variable "AMOUNT" in the NSSS data base. However, if analytical testing did not yield a pollutant concentration above the minimum level, the dry weight value of the minimum level is recorded for the sample in the variable "DETLIMIT."

Pollutant concentrations and minimum levels were reported in dry weight units due to differences in sludge samples. A sludge pollutant concentration reported in dry weight units is a function of the sample's percent solids. Percent solids range from less than one percent to 100 percent in NSSS samples. This standardized reporting unit allows all sludges to be evaluated on an equivalent basis with respect to pollutant loads. Implicit in this form of reporting is that pollutants are associated with the solid phase of sludge. Dry weight concentrations of zinc are plotted against percent solids in Figure I–1. The plot of dry weight concentration measurements illustrates that percent solids do not provide information for predicting the dry weight zinc concentration in sludge. Wet weight zinc concentrations plotted against percent solids are illustrated in Figure I–2. The plot of the wet weight concentration measurements illustrates that zinc concentrations in wet sludge increase as the percent solids in that sludge increases. Wet and dry weight conversions assume a density of one.

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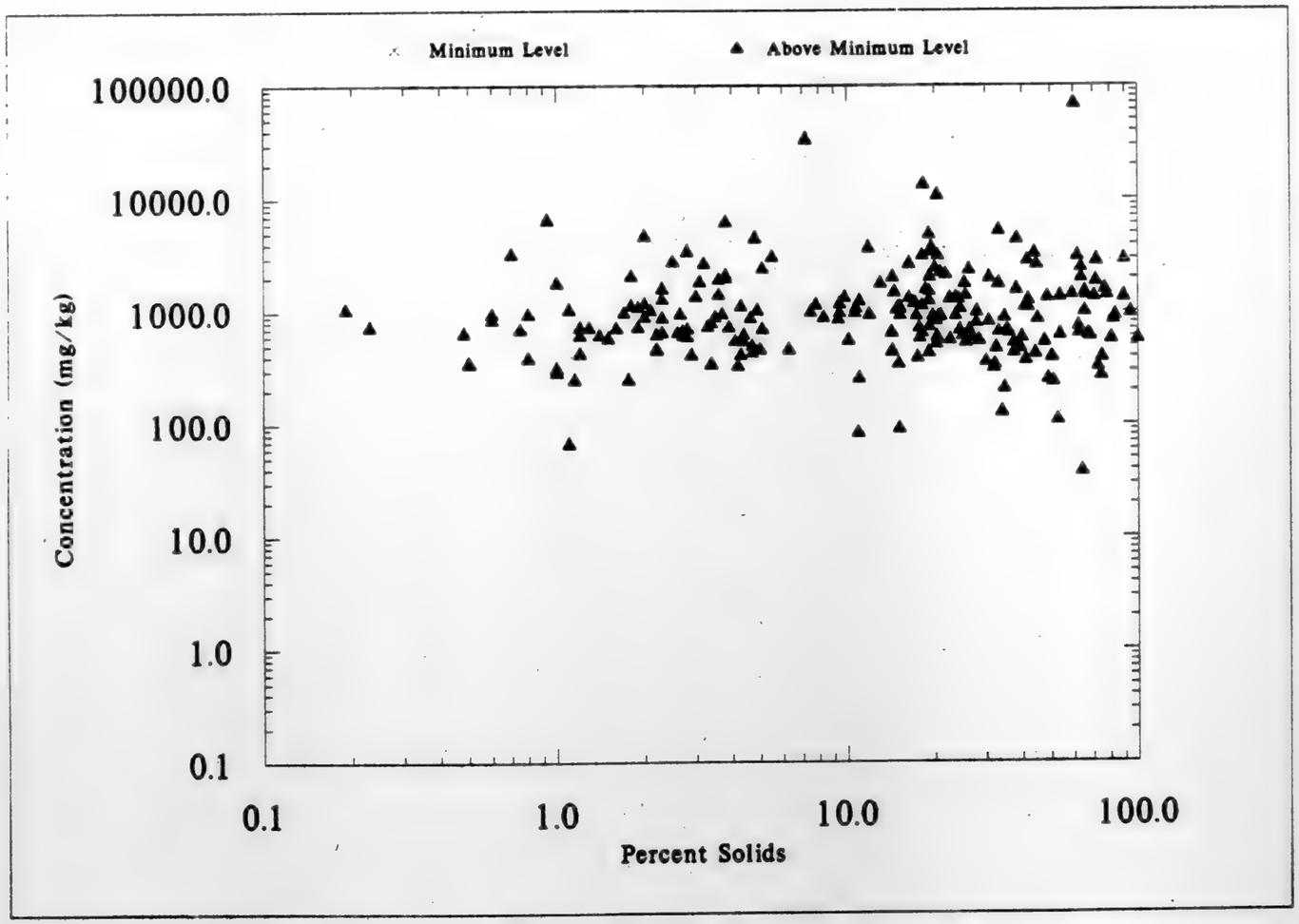

Figure I-1. Percent Solids of NSSS Samples Versus DRY WEIGHT Concentrations of ZINC

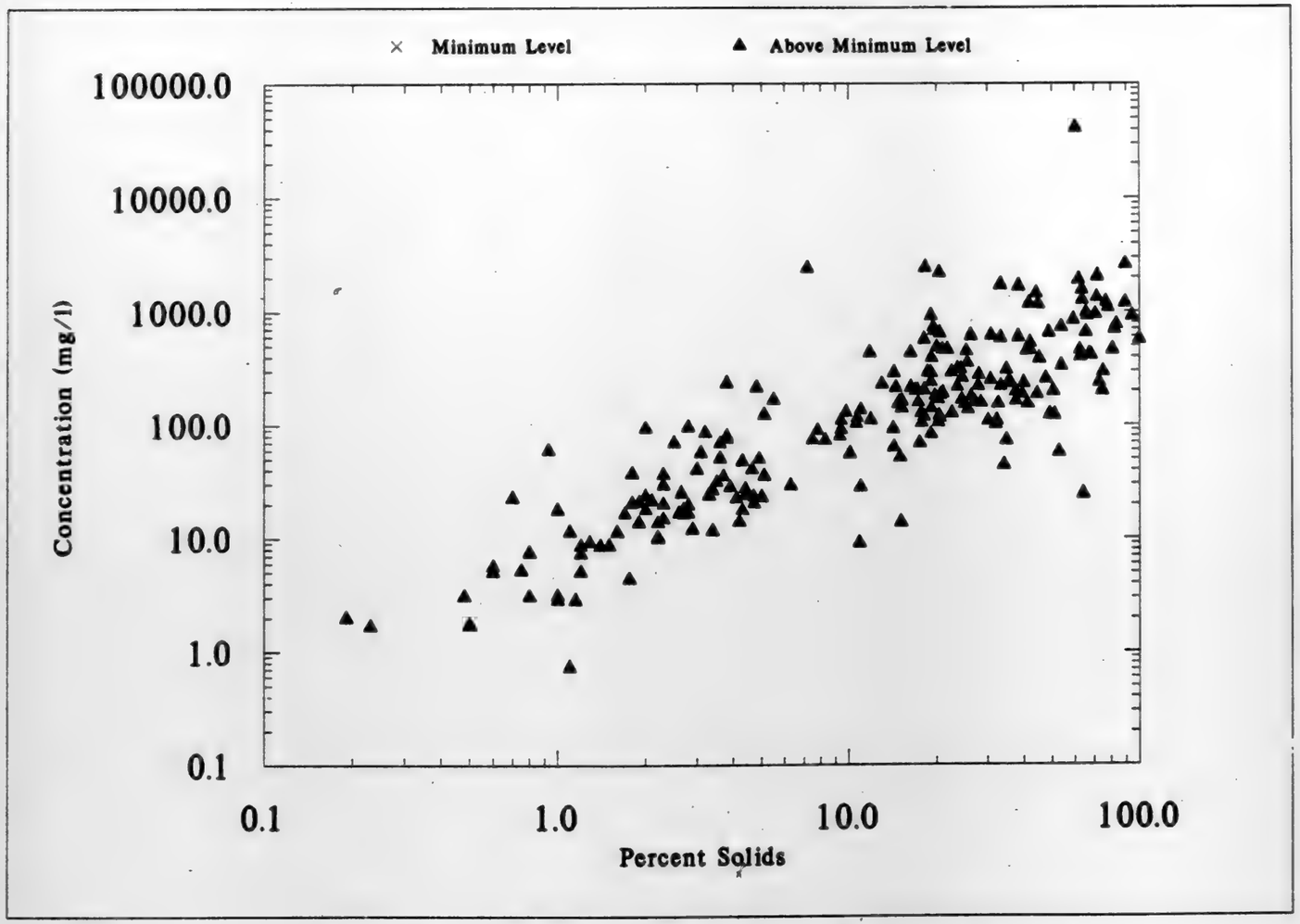

Figure I–2. Percent Solids of NSSS Samples Versus WET WEIGHT Concentrations of ZINC

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For any given analyte, the values recorded under the variable "DETLIMIT" are not constant. A constant value would imply that for all samples a fixed volume or amount was tested, with no dilution of the sample or extract, and that there was no matrix effect or interference. This was not the case. All analytical protocols specified the volume or amount of sludge to be tested. However, when matrix interferences prevented accurate determination of pollutant concentrations, samples were diluted with reagent water and analyzed. The purpose of dilution was to negate matrix effects. However, the minimum level for a diluted sample is raised by the dilution factor. For example, if a sample was diluted by a factor of 10, then the minimum level was raised by a factor of 10. Analytical protocols provided explicit guidance as to the limits of dilution.

Likewise, the reporting of analytical results in units per kilogram also influences the values reported in the data base. As mentioned previously, the percent solids of NSSS samples range from a fraction of 1 percent to 100 percent. Because the dry weight pollutant concentrations and minimum levels are a function of the percent solids in a sample, the range in percent solids is also reflected in reported pollutant concentrations and minimum levels. For example, assuming that there was no dilution of samples and that the same quantity of sludge was tested, the value recorded under "DETLIMIT" for a sample with one percent solids would be ten times higher than that reported for a sample with 10 percent solids. This is because it would take 10 times the quantity of the one percent solids sample to produce the same amount of solids in the 10 percent solids sample. Figure I–3 illustrates the wet weight of mercury for NSSS samples. Mercury concentrations detected above the minimum level are distinguished by the triangle symbol and are defined in the figure key as "Above Minimum Levels." This contrasts the samples not measured above the minimum level which are identified by the symbol "x" and are listed in the figure key as "Minimum Levels." Notice that the majority of "nondetect" samples have 0.10 mg/1 as the minimum level value. The effect of sample percent solids on the dry weight reporting of mercury minimum levels is illustrated by the plot of dry weight mercury concentrations in Figure I–4.

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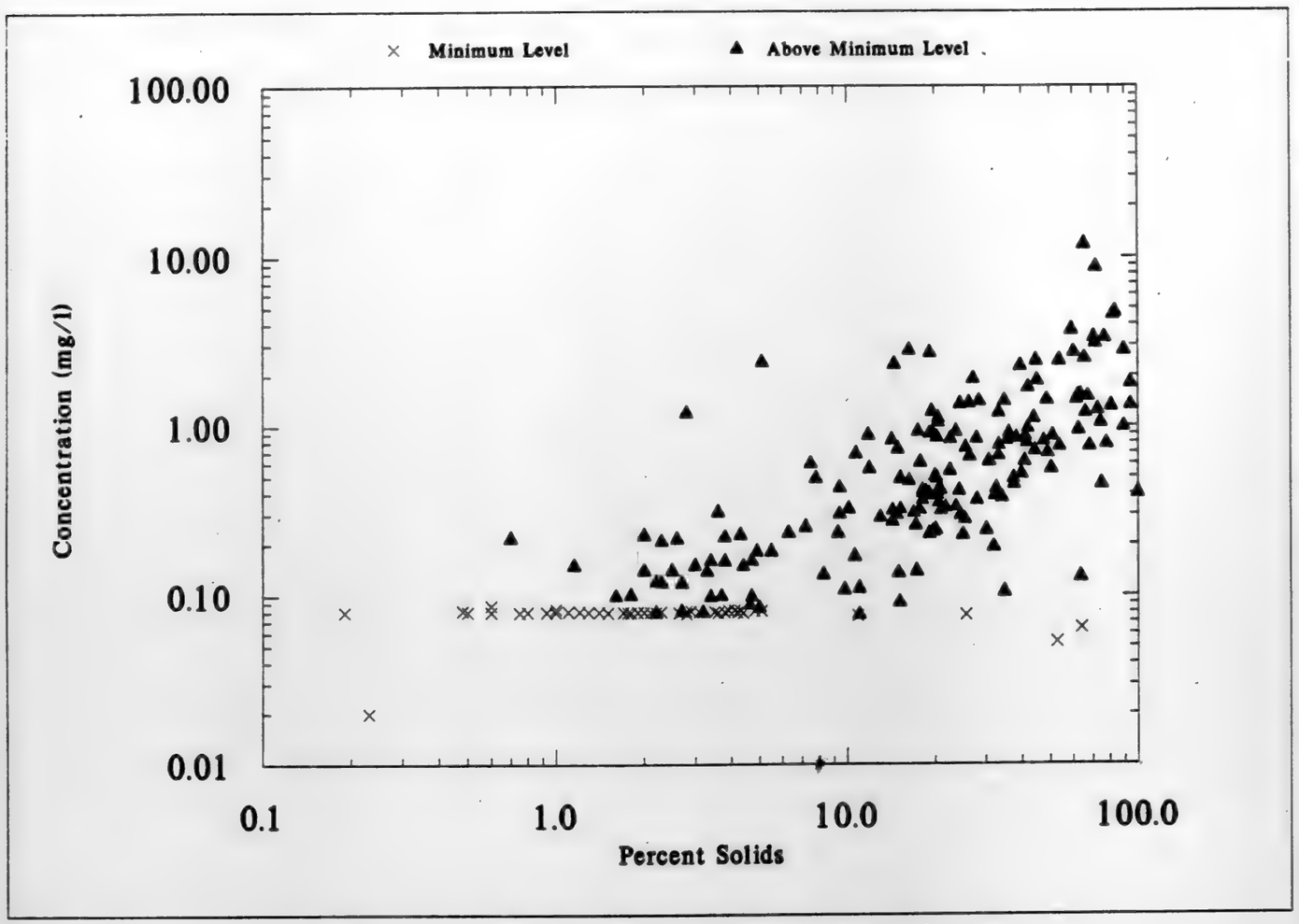

Figure I–3. Percent Solids of NSSS Samples Versus WET WEIGHT Concentrations of MERCURY

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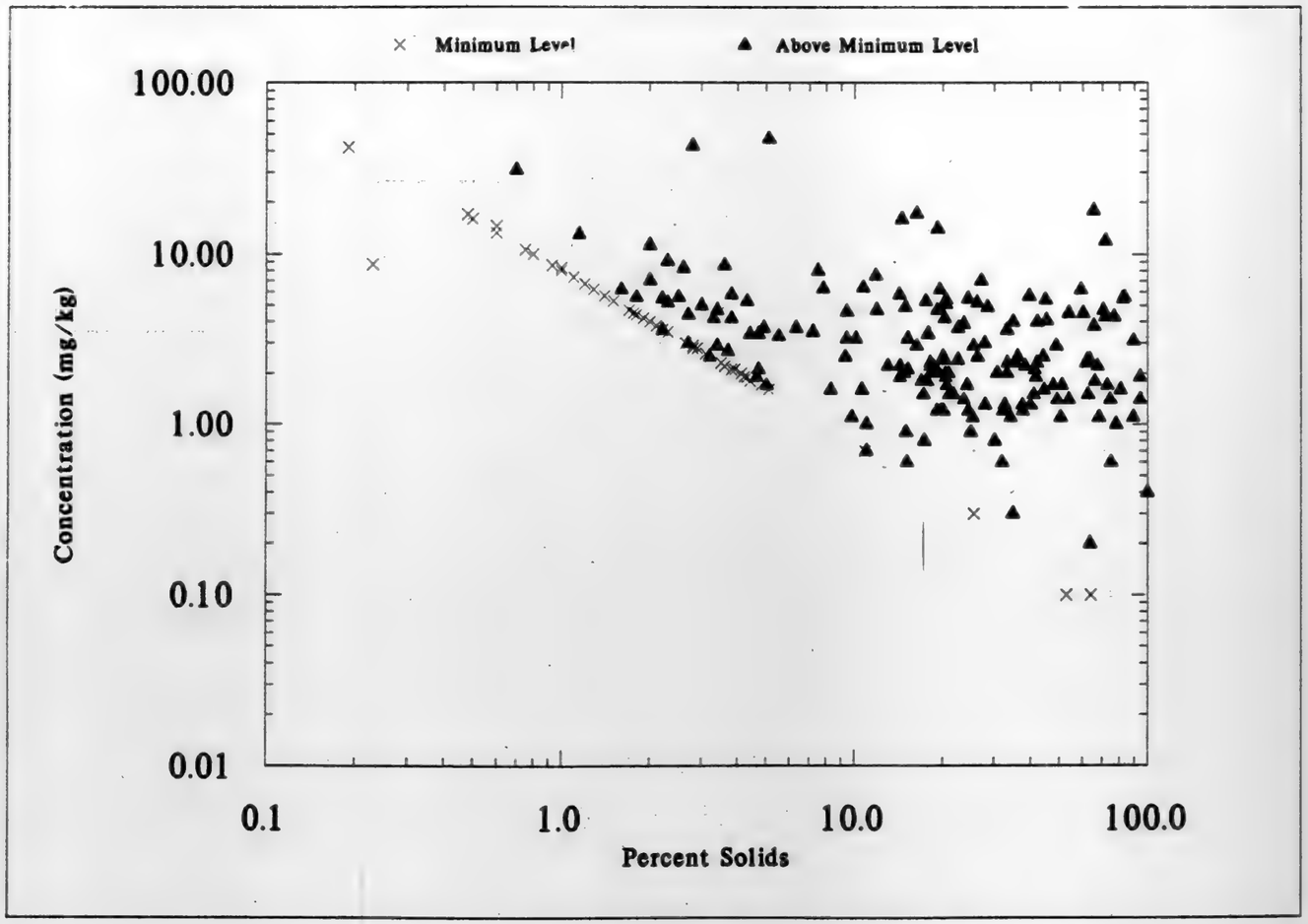

Figure I-4. Percent Solids of NSSS Samples Versus DRY WEIGHT Concentrations of MERCURY

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3. Parameter Estimation with Multiple Censoring Points

When a pollutant is not measured above the minimum level, the data point recording the dry weight minimum level for that sample is considered to be "left censored." Left censoring means that the pollutant concentration in the sample is less than "or to the left of" the minimum level value (i.e., a graphical representation of the data would show the value to the left of the minimum level). When the censoring points or dry weight minimum levels differ because of differences in the sample matrix the data is considered to be multicensored.

Several statistical methods are available for producing national estimates of pollutant concentrations when the data contain multiple censor points. The most commonly applied methods include: (a) Ignoring the censored observations; (b) Setting all censored observations equal to zero; or (c) Setting the censored observation to either the minimum limit of detection or some fraction of the limit of detection. Ignoring censored data will always result in descriptive statistics that overestimate true pollutant concentration values. Setting censored data points to zero will under estimate true pollutant concentration values. Equating censored points to minimum level values will also tend to overestimate pollutant concentrations. Other methods for estimating multicensored data exist but are less frequently used. Generally, these methods consist of "fill-in" and maximum likelihood procedures. "Fill-in" procedures replace censored data points with pollutant concentrations that have been estimated from the measured or non-censored data points. In the maximum likelihood procedures developed by Cohen (See Reference number 1), pollutant concentrations are estimated by maximizing mathematical equations that contain both the data measured above the minimum level and censored data points values.

Eight procedures for calculating descriptive statistics from data with a single censor point value were evaluated by Gilliom and Helsel of the U.S. Geological Survey (USGS) in 1986 (See Reference numbers 2 and 3). These procedures included simple substitution, "fill-in", and maximum likelihood techniques. Monte Carlo experiments with singularly censored data from distributions that mimic the distribution of water quality measures were used to evaluate the accuracy and reliability of the eight methods. Simulations results indicated that simple substitution methods produce biased and highly variable estimates. The maximum likelihood procedure and a probability plotting "fill-in" procedure performed on natural logarithm transformed data produced the lowest errors of estimation. That is, estimated statistics were the closest to the known values. The most reliable estimates of the mean and standard deviation were produced by the probability plotting procedure while the maximum likelihood technique produced the best median and percentile estimates. Application of these techniques to actual water quality data confirmed these conclusions.

In 1988, Helsel and Cohn of USGS (See Reference number 4) extended their study to include multiple censor points. Two approaches to producing estimates were used in this later study. For the first, the maximum value of the multiple censor points was determined and single censor techniques were applied using this maximum value. For the second approach, methods were evaluated using multiple censor points. The methods using mutliple thresholds were shown to be better than the application of single censor methods. Conclusions in the presence of multiple censor points were the same as those drawn from the studies with single censor points. Basically, when log-normality of the distribution of pollutants can be assumed, then the maximum likelihood estimates are desirable. In their 1988 publication, Helsel and Cohn state "When utilized correctly, 'less than' values frequently contain nearly as much information for estimating population moments and quantiles as would the same observation had the detection limit been below them."

Pollutant concentration descriptive statistics for the NSSS were estimated from multicensored data using the maximum likelihood technique. Maximum likelihood estimates were produced assuming that pollutant concentrations were distributed log-normally within each flow rate category. These estimates are presented below in the section—Pollutant Concentration Estimates for the 28 Pollutants of Concern.

4. Pollutant Concentration Estimates for the 28 Pollutants of Concern

The percent of samples from which a pollutant was measured above the minimum level and the estimated mean, standard deviation, and coefficient of variation for the 28 pollutants of concern are listed in Table I–11. Estimates for the individual flow groups as classified for the survey design were generated under the assumption that pollutant concentrations are distributed lognormally. The lognormal distribution generally provides a good approximation to the distribution of pollutant concentrations and is used commonly. Information from samples not measured above the minimum level as well as concentrations that were measured above the "minimum level" were incorporated into the estimates through the maximum likelihood procedure for multiple censor points. As discussed above, this estimation procedure produces "better" estimates than procedures that substitute either zero or the "minimum level" for "nondetect" samples. If none of the samples in a group were measured above the "minimum level", pollutant concentration estimates are listed as non-estimable. In these cases, pollutant concentration estimates from the maximum likelihood procedure were close to zero but unique solutions are not available.

Estimates of national pollutant concentrations are also presented in Table I–11 for those pollutants with estimates for all four flow groups. These descriptive statistics were calculated as a weighted combination of the group estimates. The weights for groups 1 through 4 are as follows:

Flow rate group	Weight
> 100 MGD	0.002
10 < FLOW < 100	.029
1 < FLOW < 10	.170
FLOW < 1	.799

Figures I–5 and I–6 present graphically the estimated national distribution for mercury and zinc. Overlaying each estimated distribution are histograms which show the frequency distribution of the data. The close approximation of the estimated distributions to the detected values in the histograms which show the frequency distribution suggests that the estimation procedure is providing a good approximation to the concentration data from these pollutants. The estimation procedure also appears to be providing good approximations to the concentration data from all other pollutants of concern, except for the PCBs.

TABLE I–11.—POLLUTANT CONCENTRATION ESTIMATES FROM THE NATIONAL SEWAGE SLUDGE SURVEY

Analyte	Unit	Flow group	Number of samples	Percent detect	Mean	Standard deviation	Coefficient of variation (CV)
Aldrin	µg/kg	>100 MGD	26	4	3.57	176.03	49.29
		10<FLOW<=100	61	5	7.36	968.73	131.69
		1<FLOW<=10	69	4	2.60	50.49	19.44
		FLOW <=1	42	2	1.50	57.40	38.14
		National	198	3	1.86	171.63	92.15
Arsenic	µg/kg	>100 MGD	26	77	7.71	5.58	0.72
		10<FLOW<=100	61	85	12.06	17.04	1.41
		1<FLOW<=10	70	83	9.72	10.91	1.12
		FLOW<=1	42	79	9.91	20.24	2.04
		National	199	80	9.93	18.84	1.90
Benzene	µg/kg	>100 MGD	26	8	95.12	12,346.51	129.82
		10<FLOW<=100	61	2	9.74	2.08	0.21
		1<FLOW<=10	70	0	.	.	.
		FLOW<=1	43	0	.	.	.
		National	200	0	.	.	.
Benzo(A)pyrene	µg/kg	>100 MGD	26	0	.	.	.
		10<FLOW<=100	61	5	.	.	.
		1<FLOW<=10	70	3	217.48	401.15	1.84
		FLOW<=1	43	2	230.51	450.47	1.95
		National	200	3	.	.	.
Beryllium	µg/kg	>100 MGD	26	42	0.52	0.14	0.26
		10<FLOW<=100	61	21	0.37	0.45	1.22
		1<FLOW<=10	70	36	0.48	0.41	0.86
		FLOW<=1	42	19	0.35	0.32	0.90
		National	199	23	0.37	0.34	0.92
Bis(2-Ethylhexyl) Phthalate	µg/kg	>100 MGD	26	92	297,021.56	2,301,006.97	7.75
		10<FLOW<=100	61	84	183,309.10	474,396.95	2.90
		1<FLOW<=10	70	86	148,606.62	758,645.25	5.11
		FLOW<=1	43	53	55,166.26	550,297.61	9.98
		National	200	62	74,721.17	598,375.57	8.01
Cadmium	mg/kg	>100 MGD	26	92	44.17	75.97	1.72
		10<FLOW<=100	61	93	22.84	44.52	1.95
		1<FLOW<=10	69	78	9.16	10.72	1.17
		FLOW<=1	42	64	5.78	6.64	1.16
		National	198	69	6.94	11.76	1.69
Chlordane	µg/kg	>100 MGD	26	0	.	.	.
		10<FLOW<=100	61	0	.	.	.
		1<FLOW<=10	69	1	22.02	789.48	35.86
		FLOW<=1	42	0	.	.	.
		National	198	0	.	.	.
Chromium	mg/kg	>100 MGD	26	100	461.41	662.09	1.48
		10<FLOW<=100	61	100	281.40	503.53	1.79
		1<FLOW<=10	70	99	180.57	266.16	1.78
		FLOW<=1	42	88	102.77	338.99	3.30
		National	199	91	118.57	339.16	2.86
Copper	mg/kg	>100 MGD	26	100	783.65	645.52	0.82
		10<FLOW<=100	61	100	746.77	616.35	0.83
		1<FLOW<=10	70	100	670.68	702.50	1.05
		FLOW<=1	42	100	755.86	1,020.48	1.35
		National	199	100	741.20	961.78	1.30
Dieldrin	µg/kg	>100 MGD	26	4	2.24	24.94	11.13
		10<FLOW<=100	61	0	.	.	.
		1<FLOW<=10	69	3	2.70	238.60	88.22
		FLOW<=1	42	5	3.17	86.84	27.42
		National	198	4	.	.	.
Heptachlor	µg/kg	>100 MGD	26	0	.	.	.
		10<FLOW<=100	61	2	2.81	4.67	1.66
		1<FLOW<=10	69	0	.	.	.
		FLOW<=1	42	0	.	.	.
		National	198	0	.	.	.
Hexachlorobenzene	µg/kg	>100 MGD	26	0	.	.	.
		10<FLOW<=100	61	0	.	.	.
		1<FLOW<=10	70	0	.	.	.
		FLOW<=1	43	0	.	.	.
		National	200	0	.	.	.
Hexachlorobutadiene	µg/kg	>100 MGD	26	0	.	.	.
		10<FLOW<=100	61	0	.	.	.
		1<FLOW<=10	70	0	.	.	.
		FLOW<=1	43	0	.	.	.
		National	200	0	.	.	.
Lead	mg/kg	>100 MGD	26	100	232.22	162.70	0.70
		10<FLOW<=100	61	98	243.38	286.44	1.18

TABLE I-11.—POLLUTANT CONCENTRATION ESTIMATES FROM THE NATIONAL SEWAGE SLUDGE SURVEY—Continued

Analyte	Unit	Flow group	Number of samples	Percent detect	Mean	Standard deviation	Coefficient of variation (CV)
		1<FLOW<=10	70	87	156.99	150.58	0.96
		FLOW<=1	42	76	125.38	201.79	1.61
		National	199	80	134.37	197.79	1.47
Lindane (Gamma-BHC)	µg/kg	>100 MGD	26	0	.	.	.
		10<FLOW<=100	61	2	3.88	454.00	116.98
		1<FLOW<=10	69	1	5.70	3,775.57	662.92
		FLOW<=1	42	0	.	.	.
		National	198	0	.	.	.
Mercury	mg/kg	>100 MGD	26	88	2.36	1.57	0.67
		10<FLOW<=100	61	85	2.94	2.70	0.92
		1<FLOW<=10	70	79	3.96	3.64	0.92
		FLOW<=1	42	57	5.58	17.30	3.10
		National	199	63	5.22	15.54	2.98
Molybdenum	mg/kg	>100 MGD	26	69	8.08	6.10	0.76
		10<FLOW<=100	61	77	12.98	17.18	1.32
		1<FLOW<=10	70	66	10.31	11.05	1.07
		FLOW<=1	42	48	8.89	17.54	1.97
		National	199	53	9.24	16.56	1.79
N-Nitrosodimethylamine	µg/kg	>100 MGD	26	0	.	.	.
		10<FLOW<=100	61	0	.	.	.
		1<FLOW<=10	70	0	.	.	.
		FLOW<=1	43	0	.	.	.
		National	200	0	.	.	.
Nickel	mg/kg	>100 MGD	26	96	90.30	113.19	1.25
		10<FLOW<=100	61	97	81.96	108.17	1.32
		1<FLOW<=10	70	81	48.36	49.23	1.02
		FLOW<=1	42	60	39.90	101.25	2.54
		National	199	66	42.66	94.83	2.22
PCB-1016	µg/kg	> 100 MGD	26	0	.	.	.
		10<FLOW<=100	61	0	.	.	.
		1<FLOW<=10	69	0	.	.	.
		FLOW<=1	42	0	.	.	.
		National	196	0	.	.	.
PCB-1221	µg/kg	> 100 MGD	26	0	.	.	.
		10<FLOW<=100	61	0	.	.	.
		1<FLOW<=10	69	0	.	.	.
		FLOW<=1	42	0	.	.	.
		National	196	0	.	.	.
PCB-1232	µg/kg	> 100 MGD	26	0	.	.	.
		10<FLOW<=100	61	0	.	.	.
		1<FLOW<=10	69	0	.	.	.
		FLOW<=1	42	0	.	.	.
		National	196	0	.	.	.
PCB-1242	µg/kg	> 100 MGD	26	0	.	.	.
		10<FLOW<=100	61	0	.	.	.
		1<FLOW<=10	69	0	.	.	.
		FLOW<=1	42	0	.	.	.
		National	196	0	.	.	.
PCB-1248[Δ]	µg/kg	> 100 MGD	26	12	106.23	437.69	4.12
		10<FLOW<=100	61	10	223.39	8,123.00	36.36
		1<FLOW<=10	69	12	153.20	1,926.23	12.57
		FLOW<=1	42	10	64.66	225.69	3.49
		National	196	10	84.34	1,586.26	18.81
PCB-1254[Δ]	µg/kg	> 100 MGD	26	8	2,463.55	8,291,321.77	3,365.59
		10<FLOW<=100	61	2	44.25	13,571.51	306.70
		1<FLOW<=10	69	4	132.67	23,218.15	175.01
		FLOW<=1	42	10	148,576.26	91,326,544,085.36	614,677.89
		National	196	8	118,762.55	81,514,762,398.43	686,367.54
PCB-1260[Δ]	µg/kg	> 100 MGD	26	15	182.89	1,202.71	6.58
		10<FLOW<=100	61	8	72.47	221.76	3.06
		1<FLOW<=10	69	9	112.43	1,629.76	14.50
		FLOW<=1	42	10	176.59	7,071.84	39.60
		National	196	9	154.33	5,347.69	36.63
Selenium	mg/kg	> 100 MGD	26	62	5.21	7.29	1.40
		10<FLOW<=100	61	62	5.21	5.08	0.97
		1<FLOW<=10	70	64	5.59	5.98	1.07
		FLOW<=1	42	64	5.07	7.68	1.51
		National	199	65	5.16	7.34	1.42
Toxaphene	µg/kg	> 100 MGD	26	0	.	.	.
		10<FLOW<=100	61	0	.	.	.
		1<FLOW<=10	69	0	.	.	.
		FLOW<=1	42	0	.	.	.
		National	196	0	.	.	.

TABLE I-11.—POLLUTANT CONCENTRATION ESTIMATES FROM THE NATIONAL SEWAGE SLUDGE SURVEY—Continued

Analyte	Unit	Flow group	Number of samples	Percent detect	Mean	Standard deviation	Coefficient of variation (CV)
Trichloroethene	µg/kg	> 100 MGD	26	4	8.18	8.36	1.02
		10<FLOW<=100	61	5	59.42	6,947.10	116.92
		1<FLOW<=10	70	4	.	.	.
		FLOW<=1	43	0	.	.	.
		National	200	1	.	.	.
Zinc	mg/kg	> 100 MGD	26	100	1,400.83	981.31	0.70
		10<FLOW<=100	61	100	1,584.87	1,599.72	1.01
		1<FLOW<=10	70	100	1,707.99	2,346.10	1.37
		FLOW<=1	42	100	1,080.02	1,306.42	1.21
		National	199	100	1,201.86	1,554.42	1.29
4,4'-DDD	µg/kg	> 100 MGD	26	4	61.75	44.76	0.72
		10<FLOW<=100	61	0	.	.	.
		1<FLOW<=10	69	0	.	.	.
		FLOW<=1	42	0	.	.	.
		National	198	0	.	.	.
4,4'-DDE	µg/kg	> 100 MGD	26	4	55.83	30.83	0.56
		10<FLOW<=100	61	2	51.50	23.50	0.46
		1<FLOW<=10	69	3	65.03	59.61	0.92
		FLOW<=1	42	0	.	.	.
		National	198	1	.	.	.
4,4'-DDT	µg/kg	> 100 MGD	26	12	22.49	12.25	0.54
		10<FLOW<=100	61	3	22.82	13.78	0.60
		1<FLOW<=10	69	1	25.43	23.05	0.91
		FLOW<=1	42	2	30.22	36.37	1.20
		National	198	2	29.18	33.96	1.16

. = Nonestimable.
* = National Estimates Determined as Weighted Sums of Stratum Estimates.
CV = Standard Deviation Divided by the Mean.
Δ = PCB concentrations, although not detected frequently, indicate a violation of the Lognormal Distribution assumption used to generate estimates. Therefore, estimates are not considered realistic.

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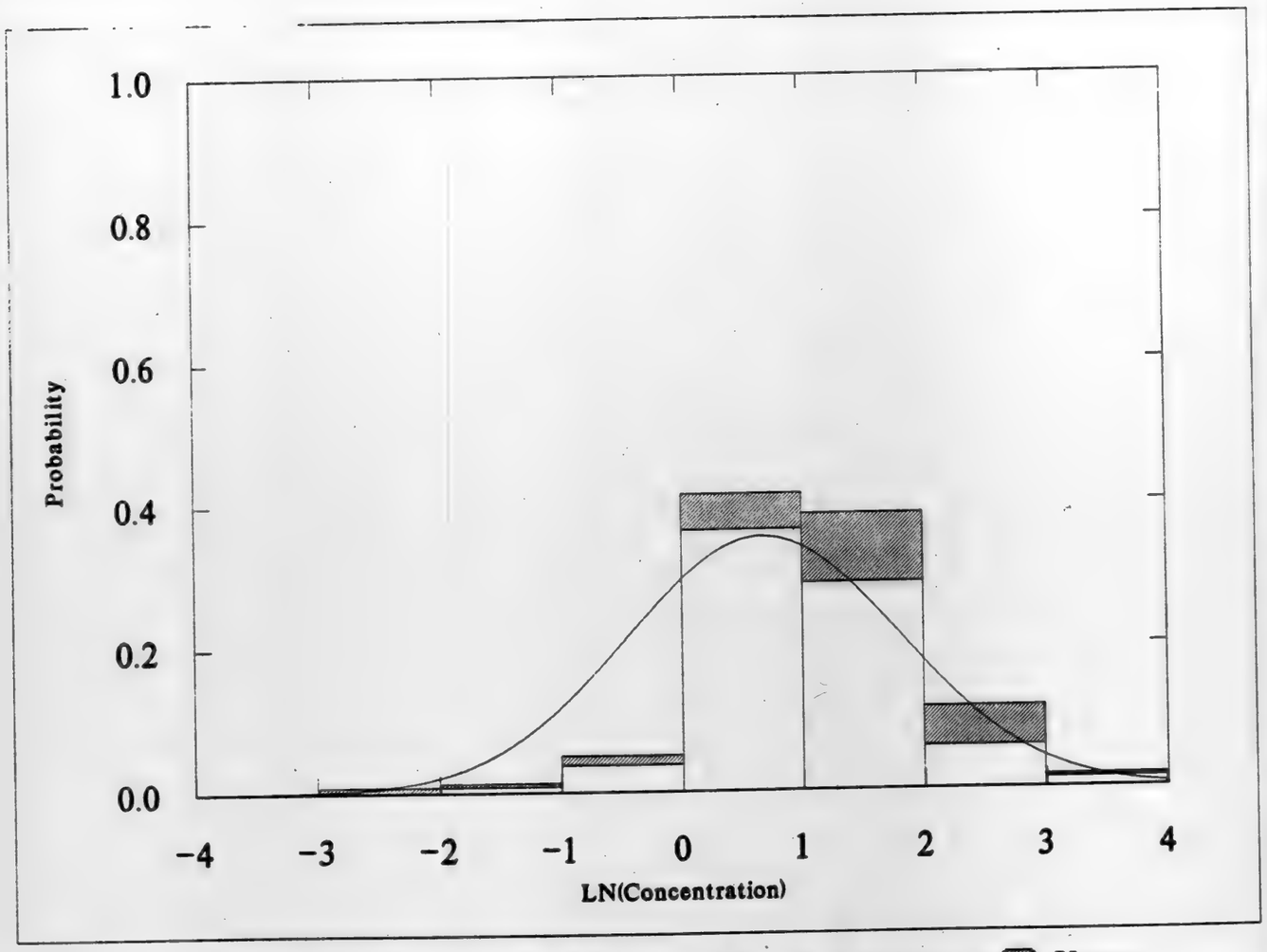

Figure I–5. Histogram of Detects (□) and Nondetects (▨) Versus Estimated National Pollutant Concentration Distribution of MERCURY

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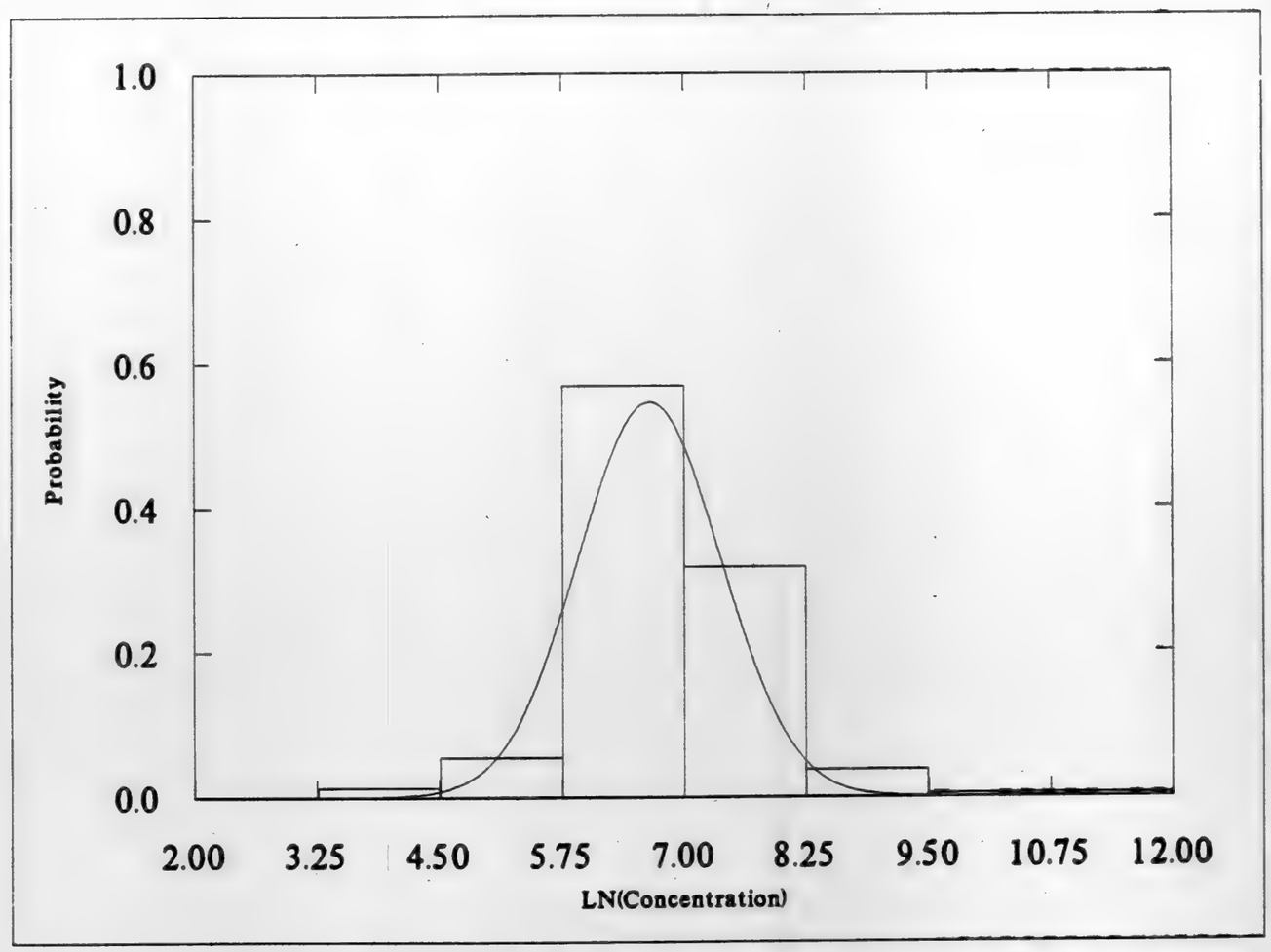

Figure I-6. Histogram of Detects (□) and Nondetects (▨) Versus Estimated National Pollutant Concentration Distribution of ZINC

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5. Polychlorinated Biphenyls (PCB) Concentration Estimates

Sludge samples in the National Sewage Sludge Survey were analyzed for seven PCB congeners. There were no detectable levels of PCB 1016, 1221, 1232, or 1242 in any of the 196 tested samples. The remaining congeners, PCB 1248, 1254, and 1260 were detected above the minimum level in about 10 percent of the sludge samples. Pollutant concentration estimates for these three congeners were produced under the assumption that the PCBs are distributed lognormally. However, both the data and resulting estimates suggest that this assumption is not appropriated.

As mentioned in previous sections, sludge samples in the NSSS ranged from less than one percent solids to approximately 100 percent solids. Additionally, pollutant concentration measurements and minimum levels (i.e., "detection limits") were reported in dry weight units. Plots of sample concentrations against the percent solids for PCB 1248, 1254, and 1260 are presented in Figures I–7 through I–9, respectively. PCB concentrations detected above the minimum level are distinguished by the triangle symbol and are defined in the legend as "Above Minimum Level." Samples not measured above the minimum level are defined as "Minimum Level" are identified by the symbol "x."

Notice that PCB concentrations were measured above the minimum level only in sludge samples with higher percent solids. Of the 24 samples from which PCB–1248 was measured above the minimum level, 23 had solids content in excess of 30 percent. The remaining sample contained 28 percent solids. Eleven of the 12 samples in which PCB–1254 was detected were in excess of 30 percent solids. Likewise, 19 of the 20 samples in which PCB–1260 was detected were in excess of 30 percent solids. None of the other pollutants of concern displayed this pattern of detections only in higher percent solids samples.

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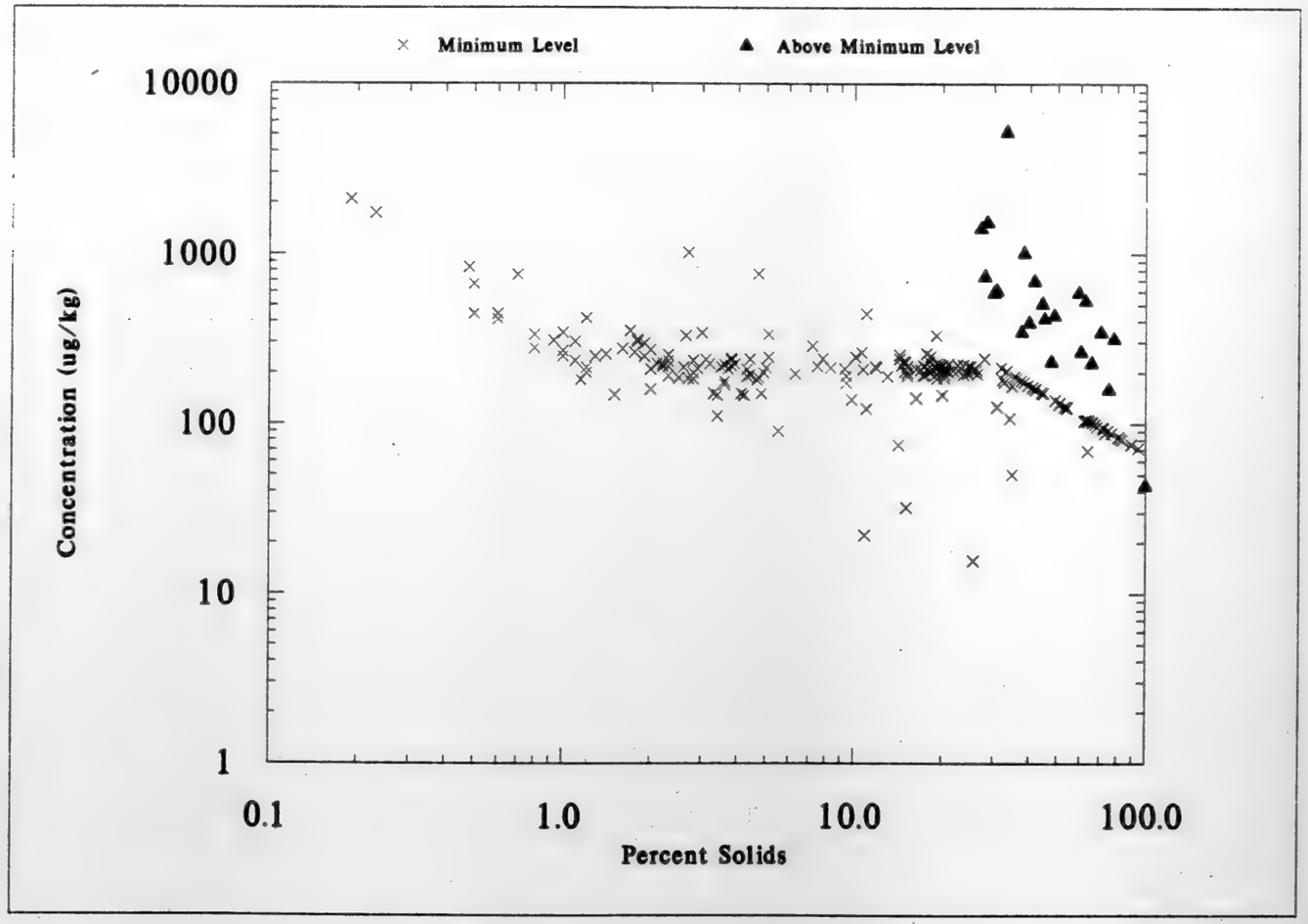

Figure I-7. Percent Solids of NSSS Samples Versus DRY WEIGHT Concentrations of PCB-1248

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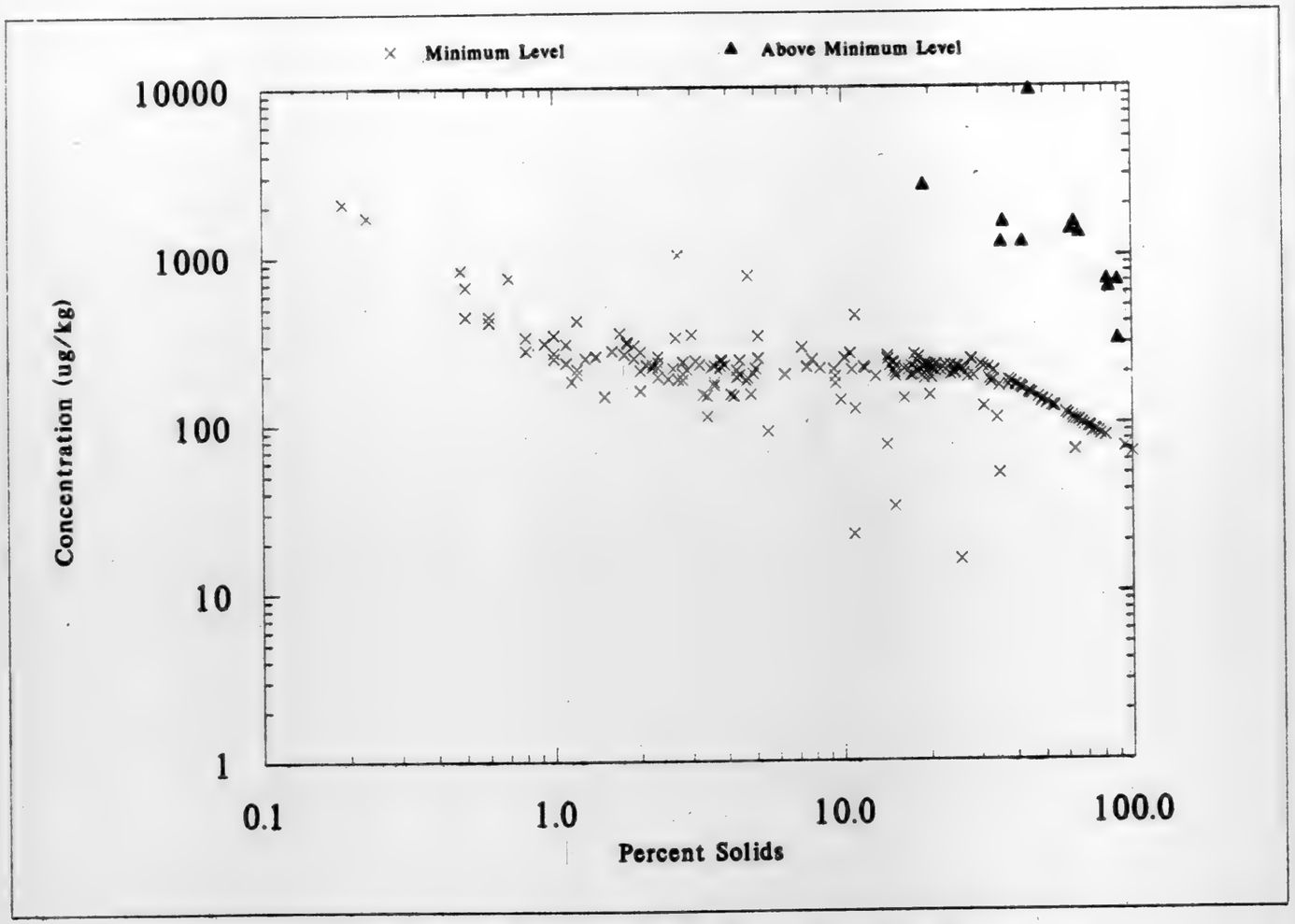

Figure I-8. Percent Solids of NSSS Samples Versus DRY WEIGHT Concentrations of PCB-1254

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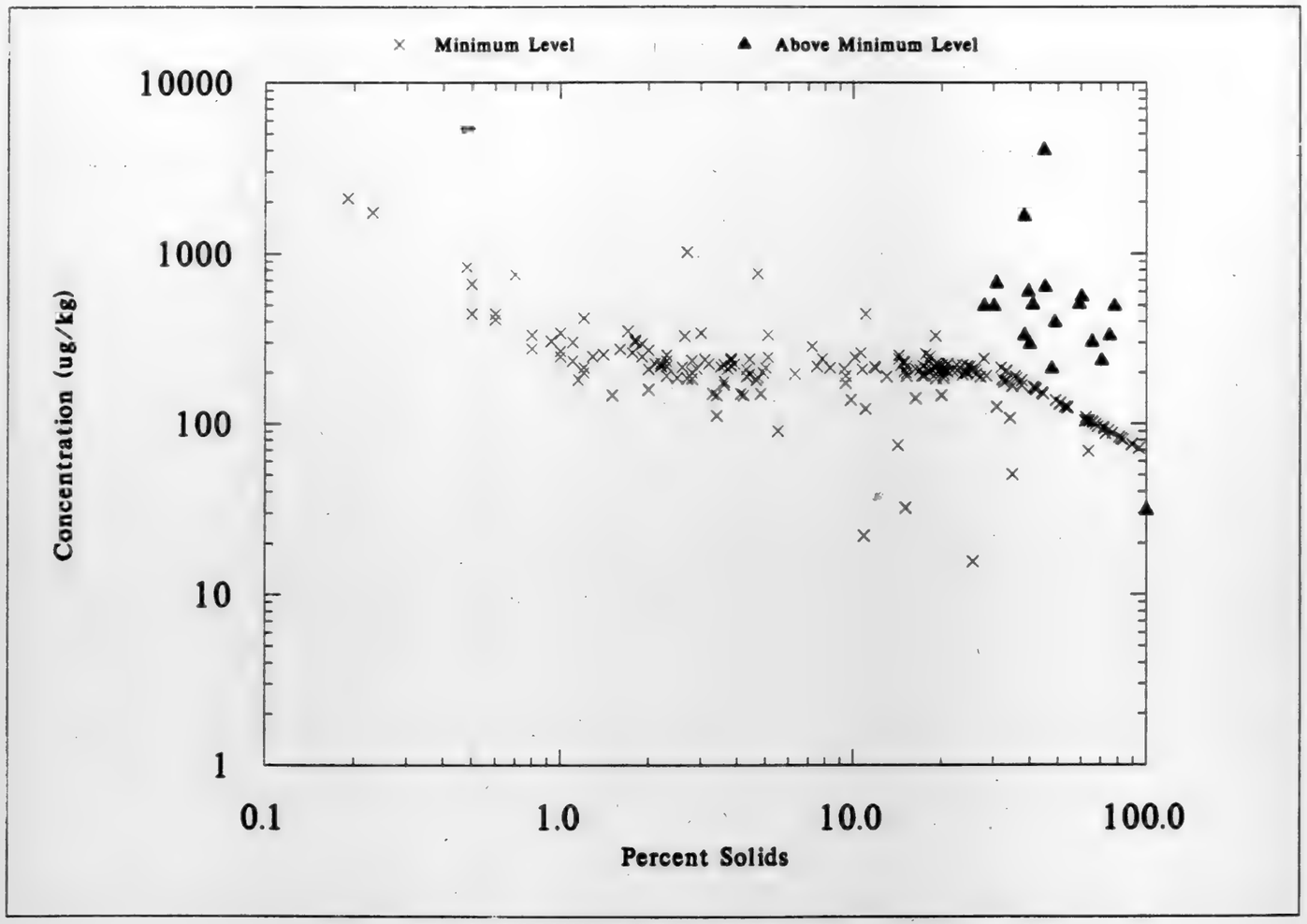

Figure I-9. Percent Solids of NSSS Samples Versus DRY WEIGHT Concentrations of PCB-1260

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The Agency is offering a possible explanation for this set of observations. PCBs, especially the higher molecular weight, higher chlorinated mixtures such as PCBs 1248, 1254 and 1260 are extremely hydrophobic. Because of their very low water solubility, they tend to strongly partition through adsorption to solid particle surfaces. Sludges with a high solids content as they are being produced would, therefore, tend to have these PCBs preferentially migrate to solid particle surfaces in roughly the same order of increasing solids content of the whole sludge as the sludge is being produced in wastewater treatment processes.

The unexpectedly large concentration estimates for PCB–1254 also leads to questions concerning the distribution of PCBs in general. Pollutant concentration estimates produced under the assumption of log-normality are generated form functions of the mean and variance of pollutant concentration estimated from natural log transformed data. Therefore, a large variation in pollutant concentration data yields large estimates. Referring to Figure I–8, notice that PCB–1254 concentrations that were measured above the minimum level are generally much larger than the minimum level concentrations reported for samples from which PCB–1254 was not measured. This large variation is more apparent when Figure I–8 is viewed with reference to the other two PCB congener plots (Figures I–7 and I–9).

The Agency is offering a possible explanation for this observation. The elevated detected values for PCB–1254 can be explained by two factors. First, production and use data of Aroclor 1254 indicates that over the years, the largest environmental loadings are from Aroclor 1254. Second, higher molecular weight, higher chlorinated PCB mixtures like 1254 have a greater environmental and treatment process persistence than do lower molecular weight PCB mixtures.

6. Parallel Listing of Pollutant Concentration Estimates From the NSSS and Estimates Used During Proposal

This section will illustrate the change from the proposal to today's notice for Agency estimates of pollutant concentrations in processed sludge. As was stated in the overview, the Agency did not believe at the time of propsal and does not believe now that the concentration estimates used during proposal are of sufficient quality to support the development of the final Part 503 regulations. Some of the problems with the previous estimates, from the "40 City Study", include:

A. Many samples analyzed were not from final processed sludge.

B. The statistical relationship between the facilities studied and all facilities in the nation is not estimatable.

C. The information is over ten years old and since then industrial and industrial wastewater treatment processes have changed.

D. Chemical analytical techniques have improved since the study was conducted.

E. "Detection limits" were not reported in a consistent fashion and some of these values have been used as observed concentrations when estimates were made.

On the other hand, pollutant concentrations from the National Sewage Sludge Survey are national estimates from the results of measurement processes specifically developed for this purpose that have been used on recently acquired sampled of sludges that are the product of secondary or better treatment.

In general, adoption of the current pollutant concentration estimates from the NSSS will make broad changes in previous Agency estimates. Concentrations of heavy metals like cadmium, chromium, lead, and nickel will be lower. In particular, lead concentrations in sludge will be approximately 60 percent lower than previously predicted. Other metals with lower concentrations than predicted during proposal include zinc, beryllium, and mercury. Concentrations of organic pollutants do not change in a systematic fashion. However, it appears that the current levels of chlorinated pollutants in sludge are "low." The parallel listing in Table I–12 shows the corrections made to Agency estimates of pollutant concentrations since the proposal.

TABLE I–12.—POLLUTANT CONCENTRATION DESCRIPTIVE STATISTICS FROM THE 1988 NATIONAL SEWAGE SLUDGE SURVEY AND THE 1980 40 CITY STUDY

Note: These listings are provided strictly for information purposes. Due to substantial differences between the two studies, data are not technically comparable.*

Analyte (unit)	Study	Samples	Percent detection	Mean	Standard deviation	Coefficient of variation (CV)
Aldrin	NSSS	198	3	1.9	171.6	92.2
(µg/kg)	40 City	43	16	6.4	16.6	2.59
Arsenic	NSSS	199	80	9.9	18.8	1.9
(mg/kg)	40 City	45	100	6.7	6.59	0.98
Benzene	NSSS	200	0	.	.	.
(µg/kg)	40 City	43	93	1,782	4,273	2.40
Benzo(A)pyrene	NSSS	200	3	.	.	.
(µg/kg)	40 City	43	21	138	471.7	3.42
Beryllium	NSSS	199	23	0.37	0.34	0.92
(mg/kg)	40 City	45	100	1.63	2.10	1.29
Bis(2-ethylhexyl)-phthalate (µg/kg)	NSSS	200	62	74,721	596,376	8.01
	40 City	43	100	155,585	157,443	1.01
Cadmium	NSSS	198	69	6.84	11.8	1.69
(mg/kg)	40 City	45	100	69.0	252	3.65
Chlordane	NSSS	198	0	.	.	.
(µg/kg)	40 City	43	16	6.4	16.6	2.59
Chromium	NSSS	199	91	119	339.2	2.86
(mg/kg)	40 City	45	100	429	440.8	1.03
Copper	NSSS	199	100	741	961.8	1.30
(mg/kg)	40 City	45	100	602	528.6	0.88
Dieldrin	NSSS	198	4	.	.	.
(µg/kg)	40 City	43	16	6.4	16.6	2.59

TABLE I–12.—POLLUTANT CONCENTRATION DESCRIPTIVE STATISTICS FROM THE 1988 NATIONAL SEWAGE SLUDGE SURVEY AND THE 1980 40 CITY STUDY—Continued

Note: These listings are provided strictly for information purposes. Due to substantial differences between the two studies, data are not technically comparable.*

Analyte (unit)	Study	Samples	Percent detection	Mean	Standard deviation	Coefficient of variation (CV)
Heptachlor	NSSS	198	0	.	.	.
(µg/kg)	40 City	43	16	6.4	16.6	2.59
Hexachlorobenzene	NSSS	200	0	.	.	.
(µg/kg)	40 City	43	16	155	492	3.17
Hexachlorobutadiene	NSSS	200	0	.	.	.
(µg/kg)	40 City	43	5	23	108	4.69
Lead	NSSS	199	80	134.4	187.8	1.47
(mg/kg)	40 City	45	100	369.0	321.5	0.99
Lindane (Gamma-BBC)	NSSS	198	0	.	.	.
(µg/kg)	40 City	43	16	6.4	16.6	2.59
Mercury	NSSS	199	63	5.2	15.5	2.98
(mg/kg)	40 City	45	100	2.8	2.6	0.93
Molybdenum	NSSS	199	59	9.2	16.6	1.79
(mg/kg)	40 City	4	75	17.7	16.7	0.94
N-Nitrosodimethylamine	NSSS	200	0	.	.	.
(µg/kg)	40 City	43	5	57	286	4.85
Nickel	NSSS	199	66	42.7	94.8	2.22
(mg/kg)	40 City	45	100	135.1	169.1	1.25
PCB–1016	NSSS	198	0	.	.	.
(µg/kg)	40 City	43	16	6.4	16.6	2.59
PCB–1221	NSSS	198	0	.	.	.
(µg/kg)	40 City	43	16	6.4	16.6	2.59
PCB–1232	NSSS	198	0	.	.	.
(µg/kg)	40 City	43	16	6.4	16.6	2.59
PCB–1242	NSSS	198	0	.	.	.
(µg/kg)	40 City	43	16	6.4	16.6	2.59
PCB–1248[A]	NSSS	198	10	84.2	1,586.3	18.8
(µg/kg)	40 City	43	16	6.4	16.6	2.59
PCB–1254[A]	NSSS	198	8	.	.	.
(µg/kg)	40 City	43	16	6.4	16.6	2.59
PCB–1260[A]	NSSS	198	9	164.3	6,348	38.6
(µg/kg)	40 City	43	16	6.4	16.6	2.59
Selenium	NSSS	199	85	5.2	7.3	1.42
(mg/kg)	40 City	45	100	7.3	29.10	4.16
Toxaphene	NSSS	198	0	.	.	.
(µg/kg)	40 City	43	16	6.4	16.6	2.59
Trichloroethene	NSSS	200	1	.	.	.
(µg/kg)	40 City	43	84	5,139	30,685	3.77
Zinc	NSSS	199	100	1,202	1,554.4	1.29
(mg/kg)	40 City	45	100	1,594	1,759.3	1.10
4'4'-DDD	NSSS	198	0	.	.	.
(µg/kg)	40 City	43	16	6.4	16.6	2.59
4'4'-DDE	NSSS	198	1	.	.	.
(µg/kg)	40 City	43	19	7.3	17.4	2.39
4'4'-DDT	NSSS	198	2	29.2	34.0	1.16
(µg/kg)	40 City	43	16	6.4	16.6	2.59

KEY:
. = Nonestimable.
CV = Standard Deviation Divided by the Mean.
*The Following Differences Between the 2 Studies Strongly Influence Results:
(1) Sample Sites:
NSS—After Final Processing
40 City—During Treatment Process.
(2) Time Frame:
NSSS—1988
40 city—1979 to 1980.
(3) Distributional Assumptions:
NSSS—Lognormal
40 City—Nonparametric.
(4) Concentrations Below Minimum Level:
NSSS—Values Incorporated Into the Maximum Likihood Equations
40 City—Set to Zero or Method Detection Limit.
[A] = PCB Concentrations, Although Not Detected Frequently, Indicate a Violation of the Lognormal Distribution Assumption Used to Generate Estimates. Therefore, Estimates are not Considered Realistic.

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The descriptive statistics produced from the NSSS, for pollutants other than PCBs, appears to be appropriate and essentially unbiased estimates of the current quality of sludge for several reasons. First, POTWs were selected from all secondary treatment facilities identified by the 1986 Needs Survey. The 1986 Needs Survey was the most complete listing of POTWs available at the time the National Sewage Sludge Survey was designed. Secondly, facilities were included in the NSSS in such a way that all POTWs in a flow rate design group were equally likely to have been selected. Also, analytical protocols used to measure the concentration of pollutants in NSSS samples were specifically adapted for the sludge matrix. Finally, the method used to incorporate information from samples that were not above the "detection limit" reduces the bias induced by more commonly used estimation procedures.

Request for Comments on the Numerical Results of the Survey

The Agency is requesting comments and information on improved methodologies in relation to the numerical results of the Survey. In particular, the Agency is requesting comment and information on the estimation of pollutant concentration in the presence of multiple "detection limits."

The lognormal distribution is commonly used and is generally accepted for modeling pollutant concentrations. The Agency requests comments and suggestions on improving the quality of the estimates generated from NSSS data using the Maximum Likelihood Procedure for Multiple Censor Points. In particular, how should the Agency estimate pollutant concentrations when that pollutant is not detected in all of the flow groups established during the survey design?

Additionally, PCBs do not appear to fit the lognormal distribution. The Agency requests comment on what would be an appropriate methodology for producing national estimates of PCB concentrations.

Part II: New Issues and Revised Approaches

Revised Approach for Regulating Domestic Septage (Subpart A)

Under the proposed part 503 rule, EPA would regulate septage (septic tank pumpings) that is pumped and collected for use or disposal in the same manner as municipal wastewater sewage sludge. Septage has very similar properties to sewage sludge and may contain the same types of pollutants and pathogenic organisms (although at lower concentrations). Because of these similarities, the Agency believes that septage, like sewage sludge, has the potential to adversely impact public health and the environment. It is for this reason that EPA decided to regulate septage under the proposed part 503 rule.

Under the approach proposed in February, 1989, the same numerical pollutant limits and management practices applicable to sewage sludge would also apply to septage. Although there does not exist a comprehensive national data base on septage quality, EPA believes that concentrations of inorganic and organic pollutants in septage should be significantly lower than concentrations of these pollutants in sewage sludge because of the septage's predominately domestic sewage nature and the lack of significant industrial wastewater contribution to it. Because septage quality should be better than sewage sludge quality, it should prove easier for septage than for sewage sludge to comply with quality requirements of the part 503 rule.

In the proposal, EPA solicited comments on its decision to regulate septage in the same manner as sewage sludge and asked for suggested alternative approaches. Many comments were received from small communities and septage pumpers and haulers disagreeing with the Agency's proposed approach. They argued that applying the proposed regulations for sewage sludge from POTWs to domestic septage collected from private homes was over stringent, burdensome, and would have little or no environmental benefit. They were particularly concerned about the proposed requirements for pathogen and vector attraction reduction, and the frequency of monitoring pollutants, record keeping and reporting.

Under the proposal, septage is required to be analyzed to determine the amount and presence of inorganic and organic pollutants covered by the regulations. This information is required to allow the septage pumper or hauler to determine the appropriate use or disposal practice. If, as is generally the case, septage is to be applied to agricultural or nonagricultural land, pollutant concentration data would be needed to determine the allowable pollutant application rate or maximum pollutant concentrations for applying the septage to the land. Many of the commenters felt that regardless of whether septage is used beneficially on agricultural or non-agricultural land or disposed of in some other manner, the cost of monitoring, record keeping, and reporting is excessive when considering that most septage collection vehicles usually collect septage from only two homes prior to use or disposal.

EPA recognizes that the septage pumping, hauling, and disposal industry has significantly different characteristics from publicly owned treatment works. As a result, EPA has decided to re-examine the requirements for domestic septage when it is applied to agricultural and non-agricultural land. A description of the proposed numerical pollutant limitations and management requirements for septage (regulated under the part 503 proposal as sewage sludge) that is applied to agricultural and non-agricultural land is found at 54 FR 5796–5807, 5876–5880, 5894–5895.

Comments on the Proposed Rule

The Agency received over 130 comments concerning the proposed treatment of septage. A majority of the respondents opposed the regulation of septage as sewage sludge. Commenters indicated the proposed regulations were too costly to implement and would have a negative effect on the environment. The regulations, if adopted as proposed, could eliminate the land application of septage or could cause illegal or reduced pumping of septage systems by homeowners or illegal dumping. In addition, the Agency received limited information on septage quality and industry practices.

Discussion

Because of the comments and information we received on the proposal, the Agency began evaluating alternative regulatory strategies that would similarly protect public health and the environment but were less complex and easier to implement.

The Agency recognizes that several factors must be taken into account when regulating septage. Most septage collection businesses are small operations, usually three or fewer trucks. Each truck generally has a storage capacity of about 2000 gallons which will contain the wastewater from, at most, two typical home septic tanks. Under these circumstances, it is readily apparent how difficult it would be to require sampling and testing of septage for organics, metals and nitrogen, and then regulate land application based on septage quality. Such an approach appears particularly difficult for small and marginal businesses in the septage service industry.

While the Agency believes domestic septage has many of the same chemical and biological constituents as sewage sludge, septage presents less of a risk to public health and the environment because these constituents are found at very low concentrations. Presently, a number of States and local governments regulate land application of septage by controlling the amount of septage that may be applied on a gallons per acre per year basis—a hydraulic loading rate approach.

The use of a hydraulic loading rate is an attractive alternative for small volumes of septage with low levels of pollutants. Such a regulatory approach is easily understood and implemented by small communities and septage pumpers and haulers. Moreover, it does not require specific testing of septage loads and land application based on the analysis of septage quality. This approach also lends itself to a simple record keeping system. Regulatory agencies would merely check the haulers' records which would indicate the gallons of septage hauled to a specific site.

In order to validate the hydraulic loading rate approach, the Agency, using data on septage quality and the typical amount of nitrogen a crop needs during growth, compared a calculated reasonable hydraulic loading to safe pollutant limits for inorganics, organics and nitrogen found in septage. The first step was to calculate a reasonable hydraulic loading rate. Based on a total nitrogen content for domestic septage of 700 milligrams per liter (a reasonable value representing high nitrogen-content septage) and a crop uptake rate of 175 pounds of nitrogen per acre per year, a maximum septage application rate of 30,000 gallons per acre per year was calculated. The crop uptake rate of 175 pounds of nitrogen per acre per year is considered reasonable since all but a few crops would need this amount of nitrogen to satisfy their growth requirements, and not all of the nitrogen would be immediately bioavailable because some of it is organic nitrogen that is released slowly over a period of two or three years.

To verify that a hydraulic loading rate of 30,000 gallons per acre per year for domestic septage protects public health and the environment, the Agency reviewed the inorganic and organic pollutant content of septage from limited data provided by the State of Wisconsin's Department of Natural Resources and from an EPA draft report containing information on septage quality (see Reference number 5). Using this information, the Agency calculated the annual organic and cumulative inorganic pollutant loads for each pollutant in septage and compared them to the annual organic and cumulative inorganic pollutant loading rates developed for land application in the proposed part 503 regulations.

For inorganic pollutants found in septage, the Agency has tentatively determined that septage could be applied safely to a typical land application site for approximately 40 years and that the limiting inorganic pollutant restricting site-life was copper. The Agency believes the 30,000 gallons per acre per year hydraulic loading rate is reasonable for inorganic pollutants because it would not exceed the safe cumulative inorganic pollutant loads in the proposed part 503 regulations for at least 40 years and because the Agency does not believe that 30,000 gallons of domestic septage will be applied each year to the same site over a 40-year period.

There was little available data on organic pollutants and their concentrations in septage. However, by making reasonable worst-case assumptions based on analytical detection limits for organic pollutants found in sewage sludge and on limited data available on domestic septage quality, the Agency determined that the annual organic pollutant loading would not violate the safe annual organic pollutant limits identified in the Part 503 proposal. Therefore, the Agency has tentatively concluded that the land application of domestic septage is safe with respect to organic pollutants if the annual hydraulic loading rate is limited to 30,000 gallons per acre per year.

Finally, septage contains pathogens and is capable of attracting vectors when untreated septage is surface applied to the land. Based on a university study (Ronner, A.B., Cliver, D.O. 1987. "Disinfection of Viruses in Septic Tank and Holding Tank Waste by Calcium Hydroxide." University of Wisconsin, Madison) and on several States' experience with lime stabilized septage, the Agency believes that raising the pH of septage with lime to 12 or above for 30 minutes stabilizes septage and exceeds the minimum pathogen reduction requirements for a Class B sewage sludge described in the part 503 proposal. In addition, the Agency believes (based on States' experience) that the vector attraction reduction requirement for septage is also satisfied by lime stabilization because odors are drastically reduced. The Agency requests comments, information and data on the use of lime stabilization of septage to reduce pathogens and vector attraction.

Revised Approach for the Final Part 503 Rule

The Agency, after reviewing the public comments, decided that the proposed regulations as applied to septage could be exceedingly difficult to implement and therefore unlikely to obtain the public health and environmental statutory objectives. As a result, the Agency is considering revising its approach for regulating domestic septage applied to land for inclusion in the final part 503 rule. It is the Agency's belief that the revised approach will be less burdensome but still protect public health and the environment. The requirements being considered today apply only to *domestic* septage and not to sewage sludge. These requirements also do not apply to domestic septage that is comingled with industrial or commercial wastewaters, sludges or greases. The requirements for the revised approach are as follows:

1. *Septage Land Application Rate Limit*—The rate of septage applied to land would be limited to a hydraulic loading rate of 30,000 gallons per acre per year. By limiting the hydraulic loading of septage, the Agency has tentatively determined that the annual and cumulative pollutant loading rate to the site will be protective of public health and the environment. In addition, the amount of nitrogen present in septage applied at this rate should satisfy nitrogen demands for growing crops and not adversely impact surface or ground waters.

2. *Pathogen and Vector Attraction Reduction*—Short term lime stabilization would be required to reduce pathogens and vector attraction prior to land application. Short term lime stabilization would be accomplished by raising the pH of septage to 12 or greater for 30 minutes. The Agency believes that raising the pH of septage reduces pathogens, indicator organisms and vector attraction and thereby decreases the risk of disease to the public.

3. *Crop Restrictions*—When septage is applied to agricultural land, the Agency has tentatively determined that a nitrogen consuming crop must be grown and harvested to protect surface and ground waters from nitrogen pollution impacts. In addition, the planting of crops whose edible portions may contact the surface soil, and of root crops grow in the soil would be prohibited after septage application for one and two years, respectively. The Agency has found that short term lime stabilization does not sterilize the septage but does significantly reduce the

number of pathogens and indicator organisms. The one and two year planting delay would allow further die-off of these organisms from exposure to sunlight and frequent drying to levels the Agency believes is protective of public health.

4. *Use and Access Restrictions*—Access to sites where the potential for public exposure is high (e.g., parks and recreational areas) would be restricted for 12 months after application of domestic septage to those sites. This is the same period in the current Criteria for Classification of Solid Waste Disposal Facilities (40 CFR part 257) for septage that is applied to the land if the septage is not treated in a Process to Significantly Reduce Pathogens. The main purpose of the 12 month restriction is to protect children who may ingest septage-amended soil while playing in the areas where domestic septage is applied. The Agency believes that the 12 month period is reasonable based on pathogen die-off information for septage-amended soil. However, the Agency is concerned that such a restriction for certain parks and recreational areas may be unreasonable and preclude the use of septage in sites with a high potential for exposure. The Agency invites public comment on the reasonableness of the 12 month public access restriction for sites with a high potential for exposure.

For agricultural and non-agricultural lands where the potential for exposure to the septage-soil mixture is low, the access restriction would vary depending on whether the public is informed. Access for the uninformed public to low exposure areas would be limited for 90 days. The access restriction for the informed public would be 30 days. An example of when the public is informed is when signs are posted that indicate that domestic septage has been applied to a site.

EPA believes that the use of different time periods for access restrictions is appropriate because those time periods reflect the potential for different exposures. The Agency also believes, based on available information, that the different time periods help protect the public from reasonably anticipated adverse effects of pathogens in domestic septage. The Agency invites public comment and supporting data on whether or not an "informed" public requires a 30 day access restriction to allow for pathogen die-off, or is such restriction unnecessary and over-burdensome.

5. *Run-off and Infiltration Controls*—Surface land application of septage would be applied at a rate that would not result in septage run-off from the application site. In addition, septage application would be prohibited on sites which do not have adequate depth to ground water. The Agency believes that controlling depth to ground water and the method of septage application at the site can substantially reduce surface and ground water impacts from septage run-off and infiltration. The Agency invites public comment on defining what an "adequate" depth to ground water should be for surface land application of septage.

6. *Other Requirements*—The Agency is considering retaining the following requirements from the February 6, 1989, part 503 proposal: (1) The land application of septage must not cause or contribute to the harm of any threatened or endangered species of plant, fish, or wildlife or result in the destruction or adverse modification of the critical habitat of a threatened or endangered species; and (2) septage should not be applied to frozen, snow-covered, or flooded land, unless it can be demonstrated that the application will not cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the CWA.

Request for Comments

The revised approach that is being considered today is to regulate the land application of *domestic* septage using a maximum hydraulic loading rate and other minimal management practices. In addition, pathogen and vector attraction reduction would be accomplished through lime stabilization. The Agency is requesting information and data on septage quality and public comments on the revised approach, its assumptions, requirements, protectiveness and implementability, and its anticipated impact on septage regulatory programs, small communities, and the septage industry.

The Agency is also inviting comments on limiting the revised approach to *domestic* septage only, and on what additional requirements would be needed if septage were co-mingled with industrial or commercial wastewater, sludges, or greases. For example, should septage co-mingled with commercial sludges be regulated under the requirements for normal land application. In addition, the Agency is requesting public comment on including portable toilet pumpings and Type III marine sanitation device pumpings in the definition of domestic septage. Limited information is available on the reduction of pathogens and vector attraction of portable toilet pumpings and Type III marine sanitation device pumpings using lime stabilization. EPA requests information on pathogen and vector attraction reduction for portable toilet pumpings and Type III marine sanitation device pumpings. In particular, the Agency requests information on the impact that materials (e.g., formaldehyde, quaternary ammonium compounds, and glutaraldehyde compounds) used to disinfect and deodorize the pumpings have on pathogens and vector attraction reduction. EPA also would like to receive information on the environmental impact these materials have on land where the pumpings are applied.

Revised Approach for Regulating Organic Emissions From Incinerators (Subpart B)

In the February 6, 1989 part 503 proposal, the Agency proposed site-specific numerical limits for total hydrocarbons (THCs) to achieve a desired risk level associated with organic emissions and required continuous monitoring of THC as the mechanism for controlling toxic organic emissions from sewage sludge incinerators. EPA proposed to use total hydrocarbons as a surrogate for all organic pollutants emitted from sludge incinerators in determining an allowable organic emission rate. Using air quality models, EPA determined the allowable emission rates for organic and inorganic pollutants that would impose undue risks to the most exposed individual in the vicinity of the incinerator. For all organic pollutants, the allowable emission rate determined by modeling is the numerical limit for total hydrocarbons.

EPA received a significant number of comments from scientific peer review experts and the public critical of certain aspects of the THC approach and its scientific basis for controlling organic pollutants. These comments focused on the feasibility of THC monitoring, the correlation between THC and organic pollutants emissions, and the risk assessment methodology used in the THC approach. As a result, today EPA is requesting comment on an alternative regulatory approach it is considering for controlling organic pollutant emissions from sewage sludge incinerators.

The alternative approach being considered is similar (but not identical) to that proposed by the Agency in its Standards for Emissions Monitoring for Owners and Operators of Hazardous Waste Incinerators and the Burning of Hazardous Wastes in Boilers and Industrial Furnaces (See Reference numbers 6 and 7). Under today's revised approach, EPA would establish an operational standard or standards for THC emissions. An operational standard is a numerical limitation for THC emissions that must be achieved by the incinerator; however, the method (e.g., engineering and technology changes such as the addition of an afterburner; and operating modifications such as changing temperature or feed rate; etc.) for achieving the numerical limitation is left to the discretion of the owner or operator of the facility. This approach is consistent with section 405(d)(3) of the CWA which states "if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under paragraph (2), the Administrator may instead promulgate a design, equipment, management practice, or operational standard * * *." The following section gives a brief description of the proposed part 503 regulations for sewage sludge incinerators and their technical bases. A complete discussion of the proposed regulations and their technical bases is found at 54 FR 5835–5853, 5888–5891, 5897.

Approach in the Proposed Rule

The incinerator requirements set forth in the part 503 proposal applied to those facilities that fire waste streams consisting only of sewage sludge. As part of the proposal, the Agency proposed to require site-specific limits based on continuous THC monitoring as a means to control toxic organic emissions from sludge incinerators.

Total hydrocarbons are defined in the proposal as the sum of all emitted organic compounds that have one or more carbon-to-carbon bonds, one or more carbon-to-hydrogen bonds, and that may also have one or more carbon-to-chlorine, carbon-to-nitrogen, or carbon-to-oxygen bonds. The site-specific incinerator emission limits are expressed in terms of the concentration of total hydrocarbons in the emissions.

EPA proposed to limit the concentration of total hydrocarbons in the emissions of sewage sludge incinerators for two reasons. First, the approach controls the emission of individual organic compounds found in sludge fed into the incinerator, and second, the approach controls the emission of organic compounds that are created during the combustion process (i.e., products of incomplete combustion—PICs). The Agency recognized setting limits on total hydrocarbons was an innovative approach that would stimulate considerable scientific debate as to its use in the proposed rule and to its applicability to other incinerator programs within the Agency.

1. General Requirements

Owners and operators of sewage sludge incinerators would be required to continuously monitor and record the total hydrocarbon concentration in the emission gases. Monitoring total hydrocarbons in the emissions was proposed in lieu of specifying the concentrations of organic pollutants in the sludge feed. (Note: The proposal would control metals in the sludge feed as the method of controlling inorganic emissions from sludge incinerators on a pollutant-by-pollutant basis. This method is not being considered for revision in today's notice.)

The proposal would require total hydrocarbon emissions to be measured using a heated flame ionization detector (FID) system. The detector is a hydrogen-oxygen flame into which a small sample of the exhaust gases from the incinerator is introduced. If hydrocarbon gases are present in the exhaust, they will burn in the hydrogen-oxygen flame. The oxidation of the carbon-to-carbon and carbon-to-hydrogen bonds is detected as an electrical signal. The electrical signal is a direct measure of the number of carbon-to-carbon and carbon-to-hydrogen bonds that are oxidized in the flame. Standardized gases of known hydrocarbon concentration are periodically introduced into the sample stream to calibrate the instrument.

When the flame ionization detector system actually measures the total hydrocarbons, the measurement must then be multiplied by a correction factor and adjusted to 7 percent oxygen before it is compared to the facility's numerical limit for total hydrocarbons. Unless this conversion is done, the measured hydrocarbons could be diluted by excess air and would not represent the actual hydrocarbon concentration in the exit gases. Under the proposal, compliance with the site-specific, risk-based total hydrocarbon limit calculated for the facility would be determined by comparison with the measured, oxygen-corrected total hydrocarbon reading from the flame ionization detector.

2. The Risk Assessment Methodology Used To Establish Site-Specific THC Limits

To develop a site-specific risk-based concentration for total hydrocarbons in the proposal, the Agency developed a weighted carcinogenic potency (Q^*) value for the organic compounds that are projected to be in the emissions of a sewage sludge incinerator. In developing the Q^* value, the Agency multiplied the Q^* value of every carcinogenic organic pollutant listed in EPA's computerized Integrated Risk Information System (IRIS) by the weighted fraction of the compound in the emissions of sewage sludge incinerators. Calculating a weighted fraction of a compound in the emission required a two step process. First, the Agency determined the concentration in micrograms per cubic meter ($\mu g/m^3$) for the pollutant in the emissions in one of three ways. If the compound was measured in the emissions of a sludge incinerator during an EPA test, the average of the measured concentrations for the compound was used. In the case of compounds expected to be present because they are commonly found in other combustion emissions such as emissions from municipal waste combustors or hazardous waste incinerators, but not detected, the concentration of these compounds in emissions from these sources ($\mu g/m^3$) was used. Finally, for the remaining pollutants listed in IRIS and not detected in the emissions of sewage sludge incinerators, an analytical detection limit of 0.1 $\mu g/m^3$ was assigned to those pollutants. The Agency than calculated a weighted fraction for each pollutant by dividing the sum of all the pollutants concentrations into each individual pollutant concentration. Then the weighted fraction of each pollutant was multiplied by the pollutant's cancer potency value (Q^*) and the resulting product was summed to give a weighted carcinogenic potency value for all carcinogenic pollutants detected or not detected.

Weighted fractions were also calculated for all non-carcinogens that have a reference dose (RfD) in IRIS. However, the Agency assumed that the actual ambient air concentration of the non-carcinogens (i.e., threshold pollutants) would not exceed their inhalation RfDs and, therefore, do not contribute to the weighted Q^* value or cause adverse health effects. The weighted Q^* value was calculated as 0.013 (milligrams per kilogram per day)$^{-1}$.

From the Q^* value, the Agency developed a risk-based concentration (RSC) for THC of 2.69 $\mu g/m^3$ used in the proposal. This value represents the lifetime average exposure to THC that would yield a risk of 1×10^{-6} for the most exposed individual (MEI). The proposal uses the RSC in a simple equation to develop a site-specific numerical limit for the maximum allowable THC concentration in the facilities incinerator emissions. As

discussed earlier, this calculated numerical limit is compared to the oxygen-corrected total hydrocarbon reading from the flame ionization detector to determine if the incinerator would be in compliance with the facilities permit.

Science Advisory Board Review of the THC Approach Used in the Proposed Rule

At the request of the Agency, a subcommittee of the EPA Science Advisory Board (SAB) was assembled to review major technical parts of the proposed part 503 regulations concerning sewage sludge incinerators. The subcommittee consisted of ten experts in the technical areas under review.

The SAB subcommittee reviewed five major issues pertaining to the sludge incineration part of the proposed regulations. The subcommittee also looked at the need for long-term research by which some of the generic issues could be addressed to improve the scientific and technical basis for future regulations. The five technical issues were as follows:

1. Are appropriate and correct air dispersion models used to relate stack emissions to ground level concentrations for the most exposed individual?
2. Is the MEI defined properly?
3. Are the assumptions concerning efficiency of air pollution control devices correct and appropriate?
4. Is it appropriate to use total hydrocarbon emissions as a monitoring surrogate for total organic compounds emitted?
5. Are the requirements for good incinerator operations properly evaluated and stated?

The reader is referred to the SAB Report "Review of Proposed Sewage Sludge Incineration Rules (40 CFR parts 257 and 503"), EPA–SAB–EEC–89–02X for a complete and detailed discussion of the five issues.

SAB Conclusions and Recommendations—The SAB subcommittee made, in part, the following conclusions concerning the THC approach used in the part 503 proposal.

The Office of Water has made a strong effort to use a limited data base on emissions and the associated health risk of toxicants to develop a risk-based regulation for sewage sludge incinerators. These regulations focus on the control of metals and organics emissions from incinerators. The Subcommittee believes that incineration is an important and viable technology for sewage sludge disposal; we conclude however, that there are a number of technical flaws with the currently proposed regulations which are likely to preclude the effective regulation of sewage sludge treatment by incineration.

These risk-based regulations do not have a strong enough technical basis to allow actual standards to be developed directly, due to a wide range of uncertainties associated with the risk-based analysis. Many safety factors are built into the analysis. Each individual safety factor appears reasonable, but the multiplicative use of a series of such factors makes the final number unreasonable. The methodology as presented does not explicitly assign measure of uncertainty or confidence to the calculations. A false and misleading impression of confidence is conveyed by the final expression of risk as a single number.

We endorse the concept of using a stack gas measure of total hydrocarbons emissions for monitoring sludge incineration and air pollution control device performance. However, the use of total hydrocarbons as a direct indicator of risk is not possible due to the uncertainties associated with the field implementation of hot FID systems and the lack of direct link between total hydrocarbons, as measured by the FID, and the total spectrum of organics which might be emitted from sewage sludge incinerators. Also, since it has not been demonstrated that the proposed hot FID systems can operate continuously in the stack gas environment of sewage sludge incinerators, it is not appropriate to propose regulations that will demand such operation in order to be in compliance.

The SAB subcommittee stated that the THC measurements at best may indicate the combined performance of combustion and air quality control devices, but how these measured concentrations at the stack relate to environmental concentrations of carcinogens remains unknown. The subcommittee suggested that EPA has the scientific basis for developing operational standards, and that such standards would be enforceable and provide incentives for improving incineration technology and pollution control equipment. They also recommended that the Agency undertake and support "epidemiological research to determine the incidence of adverse health effects in populations residing near existing incineration facilities."

Public Comments on the Proposed Rule

The Agency received comments from many respondents on the incineration portion of the proposed part 503 regulations which paralleled the conclusions of the SAB. These comments fell into two groups. The first group concerns the feasibility of THC monitoring of sludge incinerator emissions. The second group concerns the risk assessment methodology used by the Agency to establish the risk-based THC limits.

Commenters indicated that THC monitoring has not been shown to be practical for sludge incinerators and carbon monoxide (CO) monitoring should be used instead. These commenters suggested CO monitoring since it has been demonstrated in other incinerator applications and is simpler to operate and maintain. Some commenters argued that THC monitoring is more costly than EPA estimated and would result in many incinerators having to install afterburners unnecessarily. Other commenters recommended that EPA should use THC monitoring to determine overall combustion efficiency of the incinerator and set minimum temperatures, or specify afterburners to ensure complete destruction of organic pollutants.

Several respondents quarreled with the risk assessment methodology used to established THC limits contending that there are too many scientific uncertainties involved in the calculation of a single weighted carcinogenic potency value representing the risk of organic compounds emitted from sludge incinerators. Others opposed certain other aspects of the Agency's proposed method for calculating hydrocarbon limits including assigning a detection limit of 0.1 $\mu g/m^3$ for both carcinogens and threshold compounds not detected in any of the incinerators tested but included in EPA's IRIS data base. Many commenters pointed out that the correlation between THC readings and the total concentration of detected organics in the four incinerators EPA tested was poor and that EPA should conduct more testing before it tries to calculate a risk for total hydrocarbon emissions.

Discussion

The Agency agrees with many of the comments provided by the SAB and the public concerning the feasibility of THC monitoring and the approach proposed for establishing THC limits for sewage sludge incinerators. As a result, the Agency is considering substituting that approach with an operational standard similar (but not identical) to the one being proposed in Tier II of the hazardous waste incinerator regulations. In addition, based on these comments and the recommendations of the SAB, the Agency has undertaken a study to determine the feasibility of THC monitoring using a hot flame ionization detector system in sewage sludge incinerators. The discussion below explains the approach being considered and recent EPA studies on THC monitoring and incinerator testing.

1. Hazardous Waste Incinerator Proposal

The Agency has recently proposed Standards for Emissions Monitoring for Owners and Operators of Hazardous Waste Incinerators and the Burning of Hazardous Wastes in Boilers and Industrial Furnaces (see Reference numbers 6 and 7). In these rules the Agency is proposing to require continuous carbon monoxide monitoring as the primary technique to control organic products of incomplete combustion (PICs).

Low CO levels in flue gas are indicative of an incinerator (or any combustion device) operating at high combustion efficiency. Operating at high combustion efficiency helps ensure minimum emissions of unburned (or incompletely burned) organics. In a simplified view of combustion of waste, the first stage is immediate thermal decomposition of the principal organic hazardous constituents (POHCs) in the flame to form other, usually smaller, compounds, also referred to as PICs. These PICs are generally rapidly decomposed to form CO.

The second state of combustion involves the oxidation of CO to CO_2 (carbon dioxide). The CO to CO_2 step is the slowest (rate controlling) step in the combustion process because CO is considered to be more thermally stable (difficult to oxidize) than other intermediate products of combustion of hazardous waste constituents. Since fuel is being fired continuously, both combustion states are occurring simultaneously.

The Agency has selected a 100 ppm (corrected to 7% oxygen) concentration of CO as a numerical limit that corresponds to operation at a high combustion efficiency. The 100 ppm limit is described as the Tier I limit. Testing data on hazardous waste incinerators, boilers and furnaces have shown that the levels of destruction and removal efficiency (DRE) of POHCs in the units and the risk levels of PIC emissions are adequate when CO levels are 100 ppm or below. However, the same testing has also shown that CO levels can be higher than 100 ppm and the combustion unit may or may not still have acceptable DRE and PIC emissions. Thus, in the hazardous waste proposal, the Agency states that when CO levels are below the 100 ppm limit, it is reasonably assumed that DREs of 99.99 percent for principal organic hazardous constituents are being achieved and that PIC emissions are not exceeding the 1×10^{-6} MEI risk level.

In the situation where a hazardous waste combustor has CO stack emissions which exceed the 100 ppm limit, a second approach has been proposed. This approach would waive the 100 ppm CO limit and would allow a second (Tier II) approach. In Tier II, the 100 ppm CO limit would be waived if a technology-based demonstration showed that the THC concentration in the stack gases does not exceed a good operating practice-based limit of 20 ppm. EPA has tentatively selected a regulatory level of 20 ppm for hazardous waste incinerators because:

(1) It is within the range of values reported in our data base for hazardous waste incinerators and boilers and industrial furnaces burning hazardous waste; and (2) The level appears to be protective of human health based on risk assessments for 30 hazardous waste incinerators operating in this range.

Under Tier II, total hydrocarbons would be monitored for hazardous waste incinerators during the trial burn to ensure that the highest hourly average level does not exceed 20 ppm. EPA believes that continuous hydrocarbon monitoring should also be required over the life of the permit and an exceedence of the THC limit would be linked to automatic waste feed cutoff.

It is an approach similar (but not identical) to the proposed Tier II THC approach for hazardous waste incinerators that the Agency is considering modifying for the part 503 sewage sludge incinerator regulations. This approach would replace the earlier proposal establishing an operational standard or standards for THC emissions in the final part 503 rule.

2. Feasibility Study on THC Monitoring

Because of questions raised about the feasibility and reliability of the THC monitoring of sewage sludge incinerator emissions, EPA has been sponsoring a long-term demonstration of a heated FID system for use as a THC monitor at the Metropolitan Waste Control Commission (MWCC), Metropolitan Wastewater Treatment Plant in St. Paul, Minnesota. The plant has 6 multiple hearth sludge furnaces, with wet venturi scrubbing systems and waste heat recovery boilers. A heated total hydrocarbon measuring instrument, a Beckman Model 402, was installed on incinerator No. 9 on June 19, 1989.

The MWCC plant was selected for this study because the plant's management approached the Agency about conducting a cooperative research activity and the incinerator facility has a sophisticated computer control system that allows for the collection and analysis of incinerator and air pollution control device operating data.

The objectives of the study are as follows:

1. Demonstrate the feasibility and long term reliability of an FID system on a full scale sewage sludge incinerator.
2. Determine the costs of operation and maintenance of the FID monitor.
3. Evaluate the effects of various incinerator operating parameters on THC emissions such as operating temperatures, excess air rates, transient operating conditions, and scrubber operation.
4. Correlate the organic emissions from the incinerator with the THC readings to strengthen the Agency incinerator emission data base and to further support the regulation of total organic compound emissions through the regulation of THC emissions.

Instrument Reliability—The heated FID system has operated satisfactorily since its June, 1989 start-up. Several modifications to the standard gas sampling system were made which have contributed to the success of the project to date.

a. A 180-degree shroud was installed on the upstream side of the sintered metal stack sampling probe. This has the effect of reducing the direct impact of stack gas stream particles on the sintered metal sampling probe and is believed to greatly reduce plugging of the sampling probe.

b. The sintered metal sample probe is routinely back purged with calibration gases during the bi-weekly instrument calibration and maintenance check.

c. The temperature of the sampling system instrument was raised from 150 °C to 190 °C. At 190 °C, erratic behavior of the system ceased and stable operation was achieved. It is theorized that at the 150 °C operating temperature, moisture in the stack gas was causing the unstable operation. It appears that at least for the St. Paul incinerator system, which has a stack temperature of 90–100 °F (32–38 °C), 190 °C is necessary for successful operation. Based on this experience, it is not known at this time if temperatures of 190 °C for the sampling system and the FID instrument will be needed at other facilities or whether each facility will be able to arrive at its own optimum operating temperature.

With these modifications of the FID system, the system has performed quite well. For the period of June to December 1989, the THC system was operational 88.2 percent of the time. Most of the down time (approximately 7.2 percent) was related to an instrument equipment failure; specifically, the back pressure regulator and the internal pump failed on October 10, 1989. The unit was out of service for 13 days because the plant did

not have the spare parts to effect an immediate repair. The remaining 4.6 percent of the instrument down time was due to the normal maintenance shut-down of the incinerator itself. Sludge incineration plants routinely using hot FID monitors in the future would be expected to have repair parts on site as well as back-up instruments to minimize down time.

The hot FID instrument has been collecting data which is being used in a number of analyses. For example, the THC levels in the stack have been found to correlate very well (correlation coefficient, r^2=0.90) with the top hearth gas temperatures. Carbon monoxide instrument data does not show as good a correlation with either top hearth gas temperatures or THC data. A second heated FID system was put into operation on October 10, 1989. The readouts of both instruments correlate very well, with only a 10 percent difference between the two THC readouts. Additional parametric tests on upset operating conditions and scum burning are being conducted. Also measurements of emissions of individual semi-volatile and volatile organic compounds are planned so that EPA may better correlate THC measurements with total organic compounds emissions and better understand the health risks associated with THC readings.

The operating and maintenance costs of the hot FID system at St. Paul have been recorded. For the period of June 19, 1989 to December 31, 1989, 180 labor hours have been spent on operation and maintenance of the system. The Agency feels that this is a reasonable effort to ensure that emissions of organic pollutants are controlled to acceptable health risk levels.

EPA plans additional demonstration of THC and CO monitoring on sewage sludge incinerators in fiscal year 1991. These additional demonstrations are expected to further show the viability of continuous THC/CO monitoring of sludge combustion systems. As of today's notice, EPA believes that THC monitoring is a viable regulatory tool. However, questions still remain about the use of hot monitoring systems such as the one being tested at St. Paul and cold conditioned gas systems that have proven successful at hazardous waste incinerators.

3. EPA's Comprehensive Sludge Incinerator Testing Program

In 1986–1987, EPA conducted a comprehensive series of emissions tests at four sewage sludge incinerators, three multiple hearth furnaces and one a fluidized bed furnace. These test results are reported in the Draft Technical Support Document, Incineration of Sewage Sludge (see Reference number 8). These four incinerator tests (identified as sites 1 through 4) included continuous monitoring of THC and CO as well as stack sampling of organics and metals.

In 1989, the Agency started another comprehensive testing program of sewage sludge incinerators. These tests are focused on collecting data to determine the toxicity of nickel and chromium emissions and to strengthen the Agency's data base on organic emissions. The testing program has included five incinerators in addition to the work at MWCC St. Paul discussed earlier. A major part of the testing program has included an attempt to show that typical incinerator organic emissions can be reduced by adopting "improved" operating conditions. Also the test series has included extensive continuous monitoring of emissions including CO and "hot" and "cold" THC.

At this time not all of the test results are available. However, most of the THC and CO monitoring data are available for sites 6, 7, and 8. The following discussion is a summary of the THC and CO test results collected by EPA for sewage sludge incinerators located at these sites.

Discussion of Test Results—Table II C–1 presents test data from five multiple hearth and two fluidized bed incinerators. Three preliminary conclusions can be drawn from the test data: (1) Routinely operated fluidized bed sewage sludge incinerators have considerably lower concentrations of CO and THC in their emissions than multiple hearth incinerators. Carbon monoxide emissions for fluidized bed units are in the range of 7 to 277 ppm whereas CO emissions for multiple hearth units are in the range of several hundred to several thousand parts per million; (2) A fluidized bed unit is capable of emitting THC at less than 5 ppm during routine operations. Routine operations of multiple hearth incinerators produce THC emissions generally in the range of 10 to 50 ppm with at least one unit emitting THC at greater than 100 ppm; and (3) Improvements in operating conditions for multiple hearth incinerators or installation of an afterburner on such units can significantly reduce THC emissions. Optimizing operating conditions of sludge feed rate, combustion temperature and combustion air distribution for a multiple hearth incinerator resulted in significant reductions of both THC and CO emissions. The use of an afterburner on a multiple hearth unit significantly reduced THC emissions down to 1 to 2 ppm. The test data collected to date and the preliminary findings are discussed in greater detail below.

The test data in Table II C–1 shows that the two fluidized bed incinerators have lower concentrations of CO and THC in their emissions compared to the multiple hearth units. Site 3 has three parts per million of THC or less, and Site 8 has five parts per million of THC or less. These concentrations are significantly lower than the THC emissions from the five multiple hearth incinerators without afterburners. This is also true of the CO emission levels which averaged 181 ppm at site 3 and seven parts per million at site 8. Lower THC and CO emissions from fluidized bed incinerators would be expected since the mixing of sludge and air during combustion is more intense and complete, thereby, leading to more efficient combustion than a multiple hearth unit.

TABLE II C–1.—SUMMARY OF TOTAL HYDROCARBON AND CARBON MONOXIDE DATA FROM SLUDGE INCINERATOR TESTS

[Data corrected for seven percent oxygen]

Incin. type	Site	Run	THC (ppm)	CO (ppm)	Comments
Multiple Hearth	1	1	14	489	
	1	2	22	630	
	1	3	13	861	
	1	4	12	554	
	1	5	12	506	
			Avg., 14.6	Avg., 568	
Multiple Hearth	2	1	26	1026	
	2	2	27	1116	
	2	3	55	2399	
	2	4		2256	
	2	5		1357	
	2	6		1067	
			Avg., 36	Avg., 1635	
Fluidized Bed	3	1	2	277	
	3	2		90	
	3	3	3	176	
			Avg., 2.5	Avg., 181	
Multiple Hearth with Afterburner	4	1		380	Afterburner off.
	4	2	25	1743	Afterburner off.
	4	3	299	2835	Afterburner off.
	4	4	1	306	Afterburner on.
	4	5	2	97	Afterburner on.
	4	6	1	239	Afterburner on.
	4	7	13	1365	Afterburner off.
	4	8	13	1365	Afterburner off.
	4	9	32	3246	Afterburner off.
			Avg. 47	Avg. 1449	
Multiple Hearth	6	3	46	2714	Normal Operation.
	6	4	24	1473	Normal Operation.
	6	5	101	2919	Normal Operation.
	6	6	38	2758	Normal Operation.
	6	7	45	3463	Normal Operation.
	6	8	32	1821	Normal Operation.
	6	9	13	1132	Improved Operation.
	6	10	16	1090	Improved Operation.
	6	11	13	986	Improved Operation.
	6	12	13	1109	Improved Operation.
	6	13	34	2586	Normal Operation.
			Avg., 34	Avg., 2006	
Multiple Hearth	7	.....	93	4600	
	7	.....	110	4000	
	7	.....	100	40000	
	7	.....	50	1600	
	7	.....	492	5740	These numbers for site 7 were estimated from instrument plots.
		.....	Avg., 171	Avg., 3988	
Fluidized Bed	8	4	2	7	
	8	5	3	6	
	8	6	3	7	
	8	7	3	9	
	8	8	5	7	
	8	9	3	8	
			Avg., 3.2	Avg., 7.3	

For the multiple hearth units shown in the table, THC and CO are typically higher and more variable than the fluidized bed incinerators. Carbon monoxide levels are highly variable between multiple hearth incinerators and within individual multiple hearth incinerator runs. However, the number of fluidized bed incinerators in the sample is limited, suggesting that this generalization is more suggestive than conclusory.

Site 4 is of particular interest because this multiple hearth unit is equipped with a direct-fired afterburner. When the afterburner was in operation, the THC levels dropped from an average value of 75 ppm to 1 to 2 ppm. From this test, it is clear that addition of an afterburner to a multiple hearth incinerator will significantly reduce organic emissions down to or below those emitted from a fluidized bed unit.

Site 6 is also of special interest. The first six test runs were made with the multiple hearth furnace running at normal operating conditions as routinely operated by the plant personnel. The next four test runs were made after changing (improving) incinerator operating conditions for sludge feed rate, combustion air distribution, and combustion temperatures. These changes resulted in significant reductions in both THC and CO concentrations. Thus, it is possible to make significant reductions in THC emissions by improving the operations of multiple hearth incinerators without installing afterburners.

Revised Approach for the Final Part 503 Rule

The Agency agrees with many of the findings and recommendations made by the SAB and the public comments, and is considering revising its THC approach for controlling organic pollutant emissions from sewage sludge incinerators covered by the proposed part 503 regulations. The CWA has specifically provided for alternatives to numerical limits for sewage sludge use and disposal in certain circumstances. Section 405(d)(3) of the CWA states:

"Alternative standards—For purposes of this subsection, if, in the judgement of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified

under paragraph (2), the Administrator may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in the Administrator's judgement is adequate to protect public health and the environment from any reasonably anticipated adverse effect of such pollutant."

Congress recognized that circumstances would arise where it would *not* be feasible for EPA to prescribe numerical limits for pollutants in sludge for certain sludge use and disposal practices. EPA has concluded that establishing site-specific numerical THC limits for sewage sludge incinerators is just such a case.

The part 503 site-specific approach would be replaced with an operational standard similar (but not identical) to the technology-based Tier II approach being proposed for hazardous waste combustion systems. It is the Agency's belief that an operational standard for sewage sludge incinerators will be more defensible, less burdensome to implement, and equally protective of public health and the environment as the approach proposed in the February 6, 1989 part 503 proposal.

Under the revised part 503 approach, sewage sludge incinerators would be monitored during a trial burn to ensure that the highest hourly THC level does not exceed a good operating practice-based THC limit (i.e., an operational standard for THC emissions). In addition, continuous THC monitoring would be required using an FID system over the life of the permit and an exceedence of the operational standard for THC emissions would be linked to automatic sludge feed cutoff.

The Agency is considering three options for establishing the operational standard for THC emissions. The first option would be to establish a single operational standard for THC emissions for all sewage sludge incinerators based on best demonstrated technology with or without an afterburner (e.g., an operation standard of 5 ppm THC for all sewage sludge incinerators). The second option would be to set different operational standards for THC emissions based on best demonstrated technology for different types or categories of sewage sludge incinerators (e.g., an operational standard of; 5 ppm THC for all fluidized bed furnaces, 5 ppm THC for multiple hearth incinerators with an afterburner, 20 ppm THC for multiple hearth incinerators without an afterburner, and 20 ppm THC for all other types of incinerators). The third option would be to adopt the operational standard of 20 ppm THC proposed for hazardous waste incinerator for all sewage sludge incinerators because this standard is based on a larger data base (i.e., 30 hazardous waste incinerators) than the existing data base currently available for sewage sludge incinerators (i.e., nine sewage sludge incinerators). The Agency has tentatively concluded, based on existing data that each of these options will not exceed a risk level of 1×10^{-4} to highly exposed individuals or populations.

Request for Comments

The revised approach that is being considered today controls organic pollutant emissions from sewage sludge incinerators using an operational standard for THC emissions and continuous THC monitoring. The Agency is requesting public comments on the revised approach and its requirements, and its protectiveness and implementability. The Agency specifically requests information and data on:

1. What is the best option for establishing the operational standard or standards for THC emissions for sewage sludge incinerators (i.e., a single operational standard for all sludge incinerators vs. different standards for fluidized bed/multiple hearth/other incinerators vs. adopting the operational standard for hazardous waste incinerators)?
2. At what level should the operational standard(s) for THC emissions be set (e.g., 5 ppm, 10 ppm, 20 ppm, 30 ppm, etc.)?
3. Is carbon monoxide monitoring a better approach to controlling hydrocarbon emissions than THC monitoring?
4. Do any facilities have data on or experience with either CO or THC monitoring that they can share with the Agency? and
5. What are the differences between hot and cold THC monitoring and is one type preferred over the other?

Revised Approach for Regulating Non-Agricultural Land Application (Subpart C)

In the part 503 proposal, the Agency established numerical pollutant limits for non-agricultural land application practices using data on existing sewage sludge quality from the "40 City Study." This approach followed a preliminary risk assessment which determined that those practices did not result in high levels of human exposure. Aggregate risk analyses of the proposed limits did not show human health effects on the population as a whole.

The Agency's aggregate risk analysis for non-agricultural land application was based upon the assumption that proposed management practices would eliminate many of the fourteen potential pathways of exposure that had been identified for sewage sludge applied to "agricultural" land. Therefore, the Agency estimated aggregate effects from human exposure to pollutants in sewage sludge applied to non-agricultural land using only two pathways of exposure:

1. Sludge-Soil-Surface Water-Human (Pathway #11); and
2. Sludge-Soil-Ground Water-Human (Pathway #12W)

Using data on national application rates and the two exposure pathways, the Agency estimated that application of sewage sludge to non-agricultural land would result in a maximum individual cancer risk of 2×10^{-6} based upon the 98th-percentile pollutant concentrations shown in the "40 City Study." The 98th-percentile pollutant concentrations are calculated from a regression analysis of the values of 25 pollutants in the "40 City Study." The Agency selected the 98th-percentile concentration to prevent potential deviations from the pollutant concentrations in the "40 City Study" and to prevent increases in any risks associated with the application of sewage sludge to non-agricultural land. The Agency believed that this approach would ensure that sludge quality would not get worse and therefore, assure the continued validity of the risk assumptions underlying the Agency's regulatory control decisions.

Peer review and public comments raised a number of concerns with using the 98th-percentile pollutant concentrations for non-agricultural land application practices. Many respondents were concerned that the proposed approach was arbitrary (an artifact of the "40 City Study") and not adequately protective of public health and the environment. As a result, today the Agency is requesting comments on another risk-based approach it is considering for deriving numerical pollutant limits for sewage sludge applied to non-agricultural land. The revised approach would replace the 98th-percentile approach used in the February 6, 1989 part 503 proposal, with a more comprehensive exposure pathway approach that would consider the risk to highly exposed individuals and populations, the aggregate risk to the population as a whole, and the risk to average exposed individuals and populations. A complete description of the 98-percentile approach and the proposed regulations for non-agricultural land application is found in the proposal at 54 FR 5785–5789, 5798–5800, 5804–5807, 5860–5861, 5868–5871, 5879–5880, 5895.

Comments on the Proposed Rule

Many respondents questioned the Agency use of the 98th-percentile approach. Their comments are summarized as follows:

—The 98th-percentile approach has scientific and technical deficiencies and either over or under regulates non-agricultural land application of sewage sludge depending on the pollutants of concern and the practice
—The numerical limits derived from the 98th-percentile approach are not supported by adequate risk assessments and are not substantiated by field studies
—The proposed approach will reduce the desirability of the non-agricultural land practices because of the increased public perception of a human health or environmental risk
—The approach for agricultural and non-agricultural land application practices should be consistent
—The 98th-percentile based numerical limits cannot be considered a substitute for plant and animal exposure pathways

Discussion

The Agency's objective is to encourage the beneficial reuse of sludge wherever safe environmental use is possible. To be consistent with other beneficial reuse practices within the part 503 rule, the Agency is considering developing numeric limits for non-agricultural land application of sewage sludge similar to the risk assessment approach used for "agricultural" land application practices. Based on comments and research, the Agency now believes there is adequate data available from direct studies of plants and animals in non-agricultural sludge scenarios, or which can be interpolated from other sludge studies to perform a defensible and comprehensive risk assessment for non-agricultural land practices.

The Risk Assessment Approach Used for Agricultural Land Application Practices

In the part 503 proposal the Agency used mathematical models to determine the concentration of a pollutant reaching a target organism when sewage sludge is applied to agricultural land. The models consider the likely exposure to the target organism from soil, food, air, surface water, and ground water. The target organism is a highly exposed individual, plant or animal, or population that remains for an extended period of time at or adjacent to the site where the exposure occurs. An explanation of how this process works is found in the proposal at 54 FR 5765–5787.

All 14 pathways assessed for "agricultural" land practices were evaluated by the Agency for their applicability to use of sludge on non-agricultural land. The Agency believes that not all the pathways (or assumptions used in characterizing these pathways) for agricultural practices are appropriate for nonagricultural land practices and could be unnecessarily restrictive. Thus, the Agency has deleted some of the pathways and revised the assumptions used in others so that they are better suited to a risk assessment for non-agricultural land practices.

Revised Approach for the Final Part 503 Rule

The Agency is considering revising the approach it has taken for regulating sewage sludge applied to non-agricultural land. This revised approach would establish specific numerical pollutant limits for different categories of non-agricultural land application using an exposure pathway analysis rather than the 98th percentile limitation proposed earlier. The Agency would consider the aggregate risk to the population as a whole, the risk to average exposed individuals and populations, and the risk to highly exposed individuals and populations before establishing numerical pollutant limitations and management practices for non-agricultural land practices. The numerical limits, management practices, and other requirements developed for non-agricultural land application would apply to anyone who spreads liquid, dewatered, dried or composted sewage sludge on or just below the surface of non-agricultural land. Examples of non-agricultural lands include lands used for forests or turf farming, lands reclaimed for more productive purposes (i.e., lands devastated by fires, strip mining, etc.), and lands dedicated to sludge disposal.

The Agency is now requesting comment on the development of different numerical limitations for sewage sludge when use on:

(1) Forest and range lands;
(2) Soil reclamation sites (e.g., lands devastated by natural disasters, strip mined areas, construction sites, etc.);
(3) Public contact sites (e.g., parks, golf courses, campuses, playgrounds, highway medians, etc.);
(4) Dedicated disposal sites (i.e., land owned by the sludge generator and designated for sludge disposal); and
(5) Dedicated beneficial use sites (i.e., land owned by the sludge generator and used to grow feed crops for domestic animals).

As of today's notice, the Agency has not completed its analysis and development of specific numerical pollutant limitations for each of the five categories of non-agricultural land application. The Agency recognizes that some of these categories differ significantly from others with respect to the method of sludge application (e.g., soil reclamation sites may only have one or more high rate sludge applications over a short time period while public contact sites may have many low rate sludge applications over multiple years). For this reason the Agency is conducting a separate risk assessment and developing numerical limits for each non-agricultural land application category. In addition to meeting the specific numerical limitations, the application of sludge would also have to meet specific management requirements the Agency is considering for each non-agricultural land application category. However, if the Agency finds that the numerical limits and management requirements for some or all of the five categories are the same it may combine these categories for the final part 503 rule. The Agency invites public comment on this alternative.

1. Development of Appropriate Pathways of Exposure

The revised risk-based approach for non-agricultural land practices will use many of the same modeling assumptions, exposure pathways and target organisms as were used for "agricultural" land practices including aggregate risk and risks to average and highly exposed individuals and populations. However, the Agency recognizes that the two practices do have significant differences. Because of these differences, new or modified exposure pathways have been added. In addition, different assumptions used within each non-agricultural practice category have resulted in the Agency tailoring the exposure pathway specific to the practice category. For example, it is not probable that an individual will live for 70 years of his life next to a public contact site in which all of his drinking water is from a stream or aquifer influenced by the site. The probability of risk is low because the Agency has found that generally public contact sites are relatively small areas in size and close to public drinking water supplies not influenced by the site.

In cases where the exposure pathway is the same as used for "agricultural" land practices, the numerical pollutant

limits derived from the risk assessment for "agricultural" land application of sewage sludge will be used for the non-agricultural land practice if it is the "critical pathway." The pathways of exposure being considered in today's notice for non-agricultural land application of sewage sludge are as follows:

1. Sludge-soil-plant-human (Pathway #1).
2. Sludge-soil-human-present use (Pathway #2P).
3. Sludge-soil-plant-animal-human (Pathway #3).
4. Sludge-soil-animal-human (Pathway #4).
5. Sludge-soil-plant-animal toxicity (Pathway #5).
6. Sludge-soil-animal toxicity (Pathway #6).
7. Sludge-soil-plant toxicity (Pathway #7).
8. Sludge-soil-soil biota toxicity (Pathway #8).
9. Sludge-soil-soil biota-predator of soil biota toxicity (Pathway #9).
10. Sludge-soil-airborne dust-human (Pathway #10).
11. Sludge-soil-surface water-contaminated water-toxicity to fish-toxicity to humans (Pathway #11).
12. Sludge-soil-air-human (Pathway #12A).
13. Sludge-soil-ground water-human (Pathway #12W).

An explanation of the assumptions used in the pathway exposure analysis is provided below:

Pathway #1—In model Pathway #1 the Agency will evaluate exposure to individuals from ingesting wild plants found growing on sludge-soil mixtures on forest and range lands, soil reclamation sites, and public contact sites. The individual is exposed for 70 years from ingesting wild plants (e.g., berries, flowers, mushrooms, bulbs) canned for year round use. Pathway #1 determines an allowable pollutant concentration in the soil based on (1) the allowable pollutant intake; (2) an individual typical daily consumption of several types of wild plants found growing on sludge-soil mixtures; (3) the fraction of different wild plants assumed to be growing on sludge-soil mixtures; and (4) the uptake of a pollutant by each type of wild plant (uptake coefficient). Pathway #1 is intended to correspond to the exposure of an individual living in a region where sludge is widely applied in these non-agricultural practices. It assumes that an individuals intake of wild plants comes from sludge-soil mixtures. Pathway #1 does not assume that the non-agricultural land is converted to residential home garden use 5 years after the final application of sludge as was done for "agricultural" land application (Pathway #1F). The Agency is considering allowing conversion of a non-agricultural site to an agricultural site (and ultimately a residential site) only if cumulative metals loadings are at or below agricultural loading limits. The Agency requests comments on this alternative.

Pathway #2P—The Agency will evaluate the inadvertent ingestion of soil by children in Pathway #2P. It is assumed that children would come into contact with sludge-soil mixtures when entering forest and range lands, and public contact sites after sludge application. It is also assumed that a sludge-soil mixture is ingested at a rate of 0.2 gram per day for five years. The allowable pollutant concentration in the soil is the quotient rate of pollutant ingestion that will not adversely affect a child and the rate of soil ingestion.

Pathways #3 and #4—The Agency will evaluate human exposure from the consumption of wild and domestic animals in Pathways #3 and #4. Pathway #3 assumes that an individual's meat is from hunting wild animals (herbivores) foraging on vegetation grown on sludge-amended soil on forest and range lands, and soil reclamation sites; or that an individual consumes a small percentage of their meat and dairy products from domestic animals grazing on or feed crops from sludge-amended soil on soil reclamation sites and dedicated beneficial use sites. The allowable pollutant concentration in the soil is the quotient of the allowable pollutant concentration in the feed crop and a crop uptake factor (partition coefficient). The allowable pollutant concentration in the feed crop is determined from (1) the human intake of the pollutant that can be allowed without causing undue risk, (2) typical consumption rates of various classes of animal products, (3) the percentage of each class of animal product assumed to be raised on sludge-amended soil, and (4) a set of uptake factors relating the pollutant concentration in each animal product to the pollutant concentration in the feed consumed by the animal.

In Pathway #4 where animals graze, the pathway assumes that eight percent of the grazing animal's diet consists of a sludge-soil mixture. This is the same approach as for "agricultural" land practices where the allowable pollutant concentration in the soil is the allowable feed concentration divided by the fraction of the animal's diet that is sludge-amended soil. The allowable soil concentration is determined as in Pathway #3, with some differences in the fraction of each food class assumed to be grown on sludge-amended soil. In both Pathways #3 and #4 the individual is exposed for 70 years.

Pathways #5 and #6—For the pathways intended to protect wild animals and livestock from toxicity (Pathways #5 and #6), the Agency will evaluate animal toxicity data to estimate the maximum allowable pollutant concentration in the feed or sludge-soil mixture that would not be toxic to an animal. Wild animals and livestock include small herbivores, birds, rodents, etc., found on forest and range lands, public contact sites, and dedicated beneficial use sites; and domesticated grazing animals such as sheep found on forest and range lands, and soil reclamation sites.

The Agency will assume that the livestock only consumed feed grown on sludge-amended lands. In the pathway involving the uptake of a pollutant from the soil into the feed crop (Pathway #5), the allowable pollutant concentration in the soil is the quotient of the allowable pollutant concentration in the feed and the estimated plant uptake factor (partition coefficient).

In Pathway #6 involving direct ingestion of the contaminated soil by a grazing animal, eight percent of the animal's diet is assumed to be sludge-amended soil that is incidentally ingested. This is the same approach as for "agricultural" land application involving grazing livestock. The allowable pollutant concentration in the soil is the allowable feed concentration divided by the fraction of the diet that is soil.

Pathways #7 and #8—For the plant toxicity and soil biota pathway (Pathways #7 and #8), the Agency specified an allowable pollutant concentration in the soil for all non-agricultural land practices, which is the concentration that will not cause plant and soil biota toxicity. This value was derived from scientific data relating plant and soil biota toxicity to soil contaminant levels. Thus, the allowable pollutant load for these pathways is that load which, after dilution with surface soil, does not exceed the threshold values.

Pathway #9—For the pathway involving predators of soil biota (Pathway #9), the Agency will evaluate toxicity data to estimate a pollutant concentration in soil biota (insects and worms) that would not be toxic to small insectivores such as birds. For this pathway, the predator is exposed over its entire life and its diet is assumed to be composed entirely of soil biota from the sludge-amended soil. The allowable pollutant concentration in the soil is the quotient of the allowable pollutant concentration in soil biota and an estimated soil biota uptake factor (or partition coefficient).

Pathway #10—Pathway #10 evaluates the potential for adverse effects from direct inhalation by a tractor driver during tillage operations on a dedicated beneficial use site. This approach is the same as for "agricultural" land practices; the pollutant concentration in the soil is not permitted to exceed the National Institute of Occupational Safety and Health (NIOSH) workplace air quality criteria if significant quantities of soil become airborne. Using the assumption that the total airborne dust does not exceed the NIOSH criterion, this pathway is not a limiting pathway for any pollutant.

The dust inhalation pathway is the only pathway that uses NIOSH criteria. For all other human exposure pathways, the maximum allowable intake is based on the following EPA health effects criteria: a reference dose (RfD) for non-carcinogens; a risk-specific dose for carcinogens; a daily dietary intake derived from the drinking water standard; or a drinking water standard (maximum contaminant level—MCL).

Pathway #11—The surface run-off pathway (Pathway #11) is intended to protect beneficial use of surface waters by determining the pollutant concentration in the soil that would not exceed a Water Quality Criterion for a pollutant if the soil enters a relatively small stream. The rate at which the soil enters the stream is based on an appropriate soil loss equation and sediment delivery ratio for non-agricultural land practices. Water Quality Criteria are designed to protect human health, assuming exposure through consumption of drinking water and resident fish, and to protect aquatic life.

In Pathway #11 the following three routes of exposure are considered for forest and range lands, soil reclamation sites, dedicated disposal sites, and dedicated beneficial use sites: (1) Ingestion from drinking contaminated surface water by humans; (2) exposure to aquatic life inhabiting contaminated surface water; and (3) human ingestion of tainted fish taken from contaminated surface water. Here the individual is exposed over a 70 year lifetime, consuming 2 liters of contaminated drinking water and 6.5 grams of fish per day.

It is assumed that a reasonable worst case situation exists for forest and range lands when sewage sludge is applied annually to 10 percent of a watershed. This would suggest that 10 percent of the surface water flow from the watershed is a result of run-off from the sludge site. Normal components of sludge-soil mixtures during non-storm times are from interlayer flow, which is effective in reducing particulate and dissolved matter migration. Thus, only during intense rainstorm events will over land flow (run-off) generally occur that could impact the receiving water. This situation is assumed to occur up to 10 times each year for forest and range lands.

Soil reclamation sites are assumed to have a one-time application of sewage sludge which is incorporated into the soil at the site and capped with a vegetative cover. Thus, the risk of material entering the surface water from the site via run-off is assumed highest immediately after application of the sewage sludge. For soil reclamation sites 10 percent of the originally applied sludge is assumed to be continually lost over a 70 year period. As in the case with forest and range lands, intense rainstorms are assumed to occur 10 times a year and constitute 10 percent of the surface water flow.

Dedicated disposal and beneficial use sites will use many of the same assumptions as described above except the choice of cover material for these sites will vary. For example, dedicated disposal sites may not have any vegetative cover and resemble bare soil conditions, whereas beneficial use sites may have a feed crop or other vegetative cover. Public contact sites are not included in this pathway analysis.

Pathway #12A—In exposure Pathway #12A, the Agency will evaluate the exposure of an individual inhaling vapors of any volatile pollutants that may be in the sludge when it is applied to forest and range lands, dedicated disposal sites, and dedicated beneficial use sites. The individual is assumed to be living next to the site and inhaling the vapors for 70 years. This pathway is considered for six chemicals: benzo(a)pyrene, bis(2-ethylhexyl) phthalate, chlordane, DDT, dimethylnitrosamine, and polychlorinated biphenyls. The Agency will not apply the vapor pathway to benzene, lindane, trichloroethylene, or toxaphene because these chemicals would volatilize in wastewater treatment processes before sludge disposal—either during wastewater aeration or during sludge processing and de-watering. In addition, the vapor pathway will not be applied to relatively non-volatile metals.

The vapor pathway assumes that the total amount of chemical spread in each year would vaporize during that year. Thus, the allowable annual pollutant loading rate is equal to the flux (mass of chemical per unit area per unit time) that may be allowed to enter the atmosphere without exceeding the allowable pollutant concentration in the air. This concentration corresponds to the RfD, risk-specific dose, or an MCL. A plume model is used to relate the flux to the resulting pollutant concentration in the air. The allowable flux is determined by (1) the allowable pollutant concentration in the air, (2) the size of the sludge application site, (3) the assumed distance of an individual from the site where the air concentration must be attained, (4) the wind speed, and (5) the degree of atmospheric mixing. The wind direction is assumed never to change, so that the individual always remains in the center line of the plume.

Pathway #12W—In exposure Pathway #12W, the Agency will evaluate the exposure of individuals who would obtain their drinking water from ground water located below an area to which sludge had been applied on forest and range lands, soil reclamation sites, dedicated disposal sites, and dedicated beneficial use sites. This is the same approach as for "agricultural" land practices where the leachate concentration formed in the sludge-amended soil layer is related by a partition coefficient to the pollutant concentration in the soil. In moving down through the unsaturated zone, the peak leachate concentration is reduced by the modeled processes of vertical dispersion (primarily caused by detention of sorbed pollutant), chemical degradation, and metal precipitation.

The allowable pollutant loading rate is thus determined from the MCL (that must be met at the ground water interface with no allowance for dilution), the rate of decay of a pollutant, and other factors that affect either the time period for decay or the dispersive smoothing of the peak concentration. These other factors include the recharge or infiltration rate, hydraulic characteristics of the soil, depth to ground water, and the chemical partition coefficient. For some metals, the net ground water electromotive potential (Eh) and ground water pH influence precipitation.

2. Definition of Management Requirements for Non-Agricultural Land Practices

As noted, the Agency is evaluating the appropriateness of establishing numerical limits and management requirements for sludge use on five categories of non-agricultural land; (1) forest and range lands, (2) soil reclamation sites, (3) public contact sites, (4) dedicated disposal sites, and (5) dedicated beneficial use sites. The Agency is considering regulating each of the five non-agricultural land categories using different numerical limitations

instead of a single set of numerical limits for all non-agricultural land practices. The Agency believes a single set of national pollutant concentrations protective of all non-agricultural land practices could over-regulate the different non-agricultural land categories because different categories pose substantially different risks. Such an approach also fails to recognize that certain environmental settings are better suited to assimilate or ameliorate the effect of pollutants than others. The approach the Agency is considering utilizes exposure pathway modeling to establish numerical pollutant limitations for each category of non-agricultural land application. The following management requirements, being considered by the Agency, are to ensure operations at non-agricultural land sites are consistent with the assumptions and parameters used in the exposure pathway models, and to establish good operating procedures to avoid gross public health and environmental abuses:

1. Forest and Range Lands
   a. Food crops may not be grown on sludge applied forest or range lands.
   b. Public access is permitted on sludge applied forest and range lands in accordance with part 503 pathogen requirements.
   c. Buffer areas are to be maintained between the sludge application area and the following: (1) All surface waters and draining areas; (2) residential areas; and (3) public and private water wells.
2. Soil Reclamation Sites
   a. Public access is permitted on sludge applied reclamation sites in accordance with part 503 pathogen requirements.
   b. Buffer areas are to be maintained between the sludge reclamation site and the following: (1) All surface waters and drainage areas; (2) residential areas; and (3) public and private water wells.
3. Public Contact Sites
   a. Buffer areas are to be maintained between the sludge public contact site and the following: (1) All surface water and draining areas; (2) residential areas; and (3) public and private water wells.
4. Dedicated Disposal Sites
   a. Dedicated disposal sites may not be converted to agricultural land, forest or range lands, or to public contact sites.
   b. Public access and game access to dedicated disposal sites are to be restricted at all times.
   c. Buffer areas are to be maintained between the dedicated disposal site and the following: (1) All surface water and draining area; (2) residential areas; and (3) public and private water wells.
5. Dedicated Beneficial Use Sites
   a. Ground cover on dedicated beneficial use sites may be a feed crop for domestic animals; however, domestic animals may not be grazed directly on the site.
   b. Public access and game access to dedicated beneficial use sites are to be restricted at all times.
   c. Buffer areas are to be maintained between the dedicated beneficial use site and the following: (1) All surface waters and drainage areas; (2) residential areas; and (3) public and private water wells.

Request for Comments

The revised approach that the Agency is considering today, is to establish numerical pollutant limits for non-agricultural land application practices using a comprehensive exposure pathway, risk assessment approach. The Agency is requesting public comment on the revised approach and exposure pathways, its requirements and assumptions, and its protectiveness and implementability. In addition, the Agency is interested in receiving any data the public may have on the fate and toxicity of trace metals and organic pollutants found in non-agricultural land practice categories.

Specifically, information is needed concerning the fate of trace organics in all practices and pathways included in the non-agricultural land application of sewage sludge. Information on the effects of sewage sludge on wildlife has been developed for forest sites and soil reclamation sites in Washington, Michigan and Pennsylvania. EPA is interested in receiving data in other areas. Additional information is needed for plant and wildlife on range lands, public contact sites, dedicated disposal sites and dedicated beneficial use sites. The Agency is also interested in data on the effects of sewage sludge on plants, soil biota and aquatic life found in non-agricultural land settings.

Data on the potential human health effects from wind-blown particulates containing sewage sludge is needed especially for forest and range lands, soil reclamation sites and dedicated disposal sites. The Agency is also interested in data on the uptake of metals by wild mushrooms, native herbs and wild berries growing on sludge sites, and the bioavailability of the metals.

Revised Approach for Regulating Surface Disposal Sites (Subpart D)

In the February 6, 1989 proposal, EPA proposed requirements for the disposal of sewage sludge on a surface disposal site. In the proposal, the Agency defined "surface disposal site" as an area of land on which only sewage sludge is placed for a period of one year or longer. Surface disposal sites have no vegetative or other cover, are not part of the POTW's treatment process, and are not sites used for temporary storage of sewage sludge prior to final use or disposal.

As proposed, owners or operators of sewage sludge surface disposal sites would not need to comply with extensive management requirements because the Agency concluded that surface disposal sites generally are small, located in rural areas on lands owned or controlled by local governments, and do not pose a significant threat to public health or the environment. The Agency proposed pollutant limits for sludge disposed at surface disposal sites based on "current sludge quality" (i.e., the 98th-percentile pollutant concentration shown in the "40 City Study").

For many of the same reasons explained above (Subpart C—Revised Approach for Regulating Non-Agricultural Land Application Practices), the Agency is now considering revising its approach for regulating sewage sludge surface disposal sites. Instead of establishing pollutant limits based on 98th-percentile sludge quality, EPA would use exposure assessment models to develop pollutant limits. The approach EPA is considering for surface disposal sites is similar to the two-tiered approach proposed for sewage sludge monofills in the February 6, 1989 part 503 rule. A complete description of the two-tiered approach proposed in the part 503 regulations can be found at 54 FR 5812–5824, 5893–5905.

Revised Approach for the Final Part 503 Rule

In the part 503 proposal, the Agency proposed to establish numerical pollutant limits based on existing sludge quality for sewage sludge surface disposal sites because of its preliminary conclusion that such a disposal would not result in high levels of pollutant exposure to potentially exposed individuals. Further, the Agency's aggregate risk analysis did not show significant human health effects on the population as a whole from this method. To derive numerical limits based on existing sewage sludge quality, EPA

used the 98th-percentile pollutant concentrations of the "40 City Study."

Peer review and public comments suggested that there were scientific or technical deficiencies in using the 98th-percentile pollutant concentrations. Many respondents were concerned that the proposed approach was arbitrary (an artifact of the "40 City Study") and not adequately protective of public health and the environment. As a result, today the Agency is requesting comments on using an exposure assessment approach (similar to the two-tiered approach proposed in the part 503 rule for sewage sludge monofills) for deriving numerical pollutant limits for sewage sludge stored or disposed in surface disposal sites.

1. The Risk-Based Approach

The risk-based approach the Agency is considering for establishing numerical pollutant limits for surface disposal sites is a two tiered approach. Sludge that did not qualify for disposal under the first tier would have the option of alternative limits established under the second tier.

The first tier derives two sets of national numerical limits for pollutants found in sewage sludge based on three exposure pathways; air, ground water, and ground water/surface water. The Agency would consider the aggregate risk to the population as a whole, the risk to average exposed individuals and populations, and the risk to highly exposed individuals and populations before establishing numerical pollutant limitations and management practices for surface disposal sites. The first set of national numerical limits will be established for surface disposal sites without a liner. The models used for establishing limits and the assumptions used for these models are similar to those used to derive the monofill limits with certain modifications described below. EPA believes such an approach is reasonable in view of the similarities in likely environmental effects between disposal of sludge disposed on surface sites and in monofills. The second set of national numerical limits will be derived using many of the same assumptions as for monofills except the Agency will assume that the surface disposal site has a liner. The Agency requests comments on the approach of having two sets of national numerical limits and on what type of liners should be assumed in the models to derive the second set of national numerical limits.

The second tier would apply to those surface disposal sites receiving sewage sludge that contains any pollutant exceeding the national numerical limits established for the first tier. For those surface disposal sites, the owner or operator of the site or treatment work (if different from that of the surface disposal site), may submit site-specific data to EPA to use in calculating alternative pollutant concentrations for that particular site.

The three exposure pathways that will be modeled by the Agency to establish national pollutant limits or calculate alternative, case-by-case pollutant concentrations (using site-specific data) for surface disposal sites are listed below.

Pathway #12A—In exposure Pathway #12A, the Agency will evaluate the exposure of an individual inhaling vapors of any volatile pollutants that may be in the sludge stored or disposed at a surface disposal site. The individual is assumed to be living next to the site and inhaling the vapors for 70 years.

The vapor pathway assumes that the total amount of chemical in sludge stored or disposed at the site each year would either degrade, leach out or vaporize during that year. Thus, the allowable pollutant mass in the sludge is equal to the flux (mass of chemical per unit area per unit time) that may be allowed to enter the atmosphere without exceeding the allowable pollutant concentration in the air. This concentration corresponds to the RfD for non-carcinogens, or a risk specific dose for carcinogens. A plume model is used to relate the flux to the resulting pollutant concentration in the air. The allowable flux is determined by (1) the allowable pollutant concentration in the air, (2) the size of the sludge surface disposal site, (3) the assumed distance of an individual from the site where the air concentration must be attained, (4) the wind speed, and (5) the degree of atmospheric mixing. The wind direction is assumed never to change, so that the individual always remains in the center line of the plume.

Pathway #12W—In exposure Pathway #12W, the Agency will evaluate the exposure of individuals who would obtain their drinking water from ground water located near a surface disposal site. The exposed individual is assumed to be consuming 2 liters of water per day over a 70-year lifetime.

The leachate concentration formed in the sludge-soil layer is related by a partition coefficient and to the extent of "mounding" in the water table beneath the surface disposal site. In moving down through the unsaturated zone, the peak leachate concentration is reduced by the modeled processes of vertical dispersion (primarily caused by detention of sorbed pollutant), chemical degradation, metal precipitation, and mounding.

The allowable pollutant loading rate is thus determined from the MCL, RfD or risk-specific dose, the rate of decay of a pollutant, and other factors that affect either the time period for decay or the dispersive smoothing of the peak concentration. These other site-specific factors include the recharge or infiltration rate, hydraulic characteristics of the soil, depth to groundwater, and the chemical partition coefficient.

Pathway #11W—The ground water/surface water pathway will be used by the Agency to protect beneficial use of surface waters by determining the pollutant concentration in the ground water that would not exceed a Water Quality Criterion for a pollutant if the ground water enters a relatively small stream. Water Quality Criteria are designed to protect human health, assuming exposure through consumption of drinking water and resident fish, and to protect aquatic life. Here the individual is exposed over a 70-year lifetime, consuming 2 liters of contaminated drinking water and 6.5 grams of fish per day.

In Pathway #11W three routes of exposure are considered; ingestion from drinking contaminated surface water by humans, exposure to aquatic life inhabitating contaminated surface water, and human ingestion of tainted fish taken from contaminated surface water. The concentration of pollutant entering the ground water from the surface disposal site is determined using the same type of analysis as described above in Pathway #12W except the analysis is based on the distance to the surface water and not the location of the exposed individual. Once the pollutant reaches the surface water a cascading cells model is used to simulate fate and transport of each pollutant through the surface water to the exposed individual.

National Limits vs. Case-By-Case Limits—As discussed earlier, when EPA uses the exposure assessment models to establish national numerical limits, site-specific numerical limits may be established on a case-by-case basis when the physical parameters at a surface disposal site differ from those used in the model to derive the national limits. In developing two sets of national limits EPA will use the three exposure pathways (Pathways #11W, #12A and #12W), with and without a liner, described above. The owner or operator (or applicant) will use these same pathways with site-specific data for the surface disposal site if the pollutant concentrations of the sewage sludge to be stored or disposed of in the site exceed the national pollutant limits.

Using an EPA approved model and the site-specific parameters, the applicant will calculate and the Agency will review alternative pollutant concentrations for the surface disposal site. This approach does not, preclude the applicant from incorporating into the model the site's artificial characteristics (e.g., a liner different from the liner used by the Agency to establish Tier I numerical limits) in addition to its natural characteristics (e.g., a natural clay liner). The site-specific numerical limits are thus capable of being modified to account for the effect of containment measures such as liners.

If the sewage sludge that a treatment work wishes to place in a surface disposal site continues to exceed the national numerical limits or the site-specific numerical limits calculated on a case-by-case basis, the treatment work must either reduce the concentration of the pollutants through more stringent local pretreatment limits or find an alternative way of managing the sewage sludge.

2. Definition of Surface Disposal Sites

For the purpose of revising the part 503 rule for surface disposal sites to a two tiered risk-based approach, the Agency would redefine "surface disposal" to mean the final disposal of sewage sludge in uncovered pits, ponds, lagoons or impoundments. Accumulation of sewage sludge during wastewater treatment would not be included under this definition. The land application, distribution and marketing, and the disposal of sewage sludge in covered landfills are also excluded.

POTWs may store sewage sludge from primary and secondary treatment processes in on-site pits, ponds and lagoons with the intention of later removing the sludge for final use or disposal. The frequency of this periodic removal from long-term storage in surface disposal sites will vary depending on the site. Any remaining sewage sludge and associated contamination will also be removed when the storage site is closed. The length of time the sewage sludge is stored (i.e., the frequency of sludge removal from the site) may affect the mobility of sludge contaminants and subsequent environmental impacts. Surface disposal sites that deposit sewage sludge in on-site pits, ponds, lagoons or impoundments for extensive periods of time with no plans for removal are surface disposal sites being used for the purpose of permanent disposal of sewage sludge. The Agency requests comment on what time period should be adopted to distinguish surface disposal from treatment or storage.

3. Management Practices

In order to ensure environmentally sound disposal of sludge on surface disposal sites, in EPA's current thinking the following management requirements should be adopted for surface disposal sites:

1. All public access to the site must be restricted; and

2. Sewage sludge surface disposal sites are required to have berms, dikes or other surface runoff controls, and to use good design practices at closure.

EPA solicits comments on these requirements and suggestions for others as appropriate.

Request for Comments

The Agency is considering revising its 98-percentile approach proposed for sewage sludge surface disposal sites to an approach similar to the approach proposed in the part 503 rule for sewage sludge monofills. The Agency believes that this will afford these sites a greater degree of human health and environmental protection, and flexibility in complying with the use and disposal standards. The Agency is requesting public comments on the revised approach, its requirements and assumptions, protectiveness, administrative feasibility, and implementability.

Further, if the Agency finds that most all surface disposal sites can meet the Tier I national numerical pollutant limits, it may not ultimately promulgate Tier II. In addition, if the final Tier I numerical limits for surface disposal sites are the same as for monofills the Agency may combine the two practices. The Agency requests public comment on these alternatives.

Revised Approach for Regulating Distribution and Marketing and Agricultural Land Application (Subpart E)

For the proposal, the Agency developed numerical limits and required management practices to protect highly exposed individuals from high levels of pollutants found in sewage sludge distributed and marketed for home garden use and applied to agricultural land.

Scientific peer review and public comments questioned many of the conservative assumptions, supporting data, and the risk assessment methodology used to establish numerical pollutant limits for distribution and marketing (D&M), as well as related agricultural land application of sewage sludge. As a result, today the Agency is requesting comments on revisions to certain assumptions, data, and aspects of the risk assessment approach for deriving numerical pollutant limits for sewage sludge distributed and marketed for home garden use and applied to agricultural land.

Approach in the Proposed Rule

The numeric limits, management practices and other requirements in the part 503 proposal for agricultural land application would apply to anyone who spreads liquid, dewatered, dried or composted sewage sludge on or just below the surface of land. As defined for purposes of the regulations, agricultural land is land to which sewage sludge is applied in order to use the nutrient and soil conditioning properties of sewage sludge for crops which are intended for direct or indirect human consumption or for animal feed for animals intended for human consumption. This definition would include land used as pasture for the grazing of animals. Distribution and marketing of sludge, on the other hand, is defined as the give-away or sale of sewage sludge or a product derived from sewage sludge, either in containers (e.g., bags) or in bulk form, by owners or operators of treatment works or by a person who receives sewage sludge from treatment works. Examples of agricultural use include the growing of crops for human and non-human food-chain use. In a typical D&M program, sludge products are sold or distributed free to commercial growers, landscaping firms, parks, highway departments, cemeteries and the public. A description of the proposed numerical limitations and management requirements for sludge that is land-applied to agricultural land is found at 54 FR 5796–5804, 5878–5880, 5894–5895, and for sludge that is distributed and marketed at 54 FR 5807–5812, 5880–5883, 5895–5896.

Comments on the Proposed Rule

The Agency strongly supports the beneficial reuse of sewage sludge. Improving land productivity through use of the soil conditioning and nutrient properties of sewage sludge has advantages beyond those directly associated with applying sewage sludge to land. Additional benefits are realized from a reduction in the potentially adverse human health effects of incineration, a decreased reliance on commercial chemical fertilizers and a reduction in energy costs associated with incineration. The Agency will continue to enthusiastically promote and encourage the recovery and reuse of sludge wherever its safe environmental use is possible. Therefore, EPA is carefully analyzing the comments on the proposed approach from scientific peer review and the public that support the Agency's policy of beneficial reuse.

Many respondents questioned the appropriateness of the assumptions, models and data used in the risk assessments for D&M and agricultural land application practices. Their comments focused on the following areas: selection of exposure pathways; MEIs used for each pathway; parameters used in the transport models and the models used; screening and selection of data for each contaminant and pathway; conservative nature of criteria and selection of risk levels; and other assumptions used in the risk assessments. These areas will be discussed in more detail in the section that follows on the "revised approach" on which the Agency is soliciting comments.

Revised Approach for the Final Part 503 Rule

As a result of scientific peer review and public comments, many of the assumptions and data used in the exposure models used to generate numerical limitations for the proposed rule will be changed to reflect more up-to-date information and more realistic exposure scenarios describing the expected conditions in which sewage sludge will be land-applied. The following is a qualitative discussion of the changes the Agency is considering. Comment is solicited on these issues.

1. The Most Exposed Individual

The Agency is reviewing its assumptions for the most exposed individual (MEI) for each pathway to provide a more realistic assessment of potential exposure. In the final rule, the Agency is considering using more "reasonably anticipated" adverse effects associated with sludge exposure to protect public health and the environment. For instance, in the proposal, the target MEI for assessing the environmental effect associated with lead-contaminated earthworms was the duck. The Agency used ducks as a surrogate for prey species because EPA had toxicological effects data on ducks. However, ducks are not physiologically adapted to forage in soil for earthworms, so the Agency is gathering information and data on a more appropriate species to be modeled for this pathway. The Agency will substitute another species which consumes a high portion of its diet from earthworms in the final analysis. Other exposure scenarios that incorporate a low probability of occurrence will also be re-evaluated for possible revision to more realistic assumptions for future assessments of risk to highly exposed individuals, plants or animals, and populations. In addition, the Agency will consider the aggregate risk to the population as a whole and the risk to average exposed individuals and populations before establishing numerical pollutant limitations and management practices for D&M and agricultural land practices.

2. Model Selection

Although many public comments were received concerning the elimination of Pathway #7 (plant phytotoxicity pathway) on the grounds that it was self-limiting, it has been tentatively decided to keep this pathway, as well as the other 19 pathways of exposure described in subpart C of this part that were used in the exposure assessment analysis for the proposed rule. However, new models are being developed for evaluating the aquatic pathways #11 and #12. Commenters suggested that the model selected to simulate transport in surface run-off was over simplistic (e.g., the universal soil loss equation for run-off and erosion). The saturated flow model, AT-123D, was also criticized for being poorly documented and unvalidated. In addition, a more realistic model for air dispersion is being considered for SLUDGEMAN. However, the Agency has not made a final decision on which models it will use and is requesting public comment on which models are most appropriate.

3. Screening and Selection of Data

The Agency is considering corrections in the data used for individual pollutants and pathways, particularly Pathways #1 through #9 in order to replace flawed data with more appropriate and scientifically sound information. The changes being considered are discussed below.

Daily Dietary Intake—More realistic human dietary exposure scenarios are being considered for use in calculating human food-chain risk from consuming plant or animal products that have been grown or raised on sludge-amended fields.

The Technical Support Document (TSD) for the proposed rule used the highest consumption for all age and sex groups to represent the human diet from 0 to 70 years (see Reference number 9). As a result, the diet of the teenage male (14–16 years of age) was used to represent the consumption of grain, potatoes, root vegetables, dairy products and dairy fat, and the diet of the adult female (25–30 years of age) was used to represent lamb and lamb fat consumption. Consumption of legumes, garden fruits, beef, beef fat, poultry, poultry fat, pork and pork fat was represented by the data for adult males (25–30 years of age). The diet of the adult male (60–65 years of age) was used to represent consumers of beef liver, beef liver fat and eggs. Depending on whether the pollutant being evaluated was organic or inorganic, either total meat consumption or only meat fat was considered in the evaluation. It was assumed that the metals would collect in the total tissue mass, but organics would be found only in the lipid portion of the exposed individuals' tissues.

Comment was provided suggesting that the additive effects of these conservative choices yielded an "unreasonably worst-case" MEI that was totally unrealistic. Therefore, the Agency is considering more realistic values representing a lifetime average consumption for both sexes analyzed for each food group.

Such an approach would involve integrating the consumption rates for each sex over their lifespan and calculating a time weighted, lifetime average value. This results in a difference in daily consumption rates of between 52 to 75 percent depending on the food group. This would allow for an increase in annual pollutant loading rate limits of 1.3 to 1.9 based on changes to this element of the risk assessment.

Plant Uptake and Phytotoxicity—In the risk assessment performed for the proposed rule, phytotoxicity and plant uptake data was chosen based on a selection hierarchy. This hierarchy grouped data from most preferred (i.e., "most like the conditions being regulated") to least preferred (i.e., "least like the expected conditions to be regulated"). Therefore, the most preferred studies to extract data points from were performed under sludge/field conditions followed by sludge/pot conditions and the least preferred, were pure organic compounds or salt/pot studies.

Numerous public comments were received on this approach. The majority stating that the use of salt or pot studies was an "unreasonably worst-case" situation which would drastically overestimate plant uptake and phytotoxicity of sludge pollutants. Studies using salt spikes, instead of sludge, result in greater bioavailability of the metallic pollutants, because they are not bound to an organic matrix and are, therefore, more freely taken up by plant roots.

Likewise, greenhouse studies, where plants are grown in pots were known to often overpredict uptake compared to

field conditions. This is because pots tend to restrict the area of root growth and the small amount of contained soil tends to concentrate and retain the sludge pollutants around the roots, thus accelerating uptake. Under field conditions, precipitation can leach pollutants into the soil profile, so that they are less available to the plants. In fact, there are numerous differences between the pot and field environments, such as the molecular form of the pollutant under consideration.

Furthermore, some respondents believed that this pathway should not even be evaluated, because it is essentially self-limiting. If a particular quality of sludge caused phytotoxic effects, such as yield reductions, farmers and the public would cease using it. The Agency thought it was important, however, to continue to model these effects even if they could become self-limiting, because they could cause harmful effects and economic losses initially before these effects could be observed. In addition, sludge could be applied to areas that do not have commercially valuable plant species but could still have pollutant sensitive plant species that exhibit phytotoxicity resulting in secondary environmental impacts such as erosion.

In the final rule the Agency has tentatively decided to use, in all possible cases, field data derived from stabilized sludge to develop transfer coefficients for these pathways. Much of this field data was provided by scientific peer review and public comment on the proposed rule. This approach if adopted should result in more realistic values and higher allowable sludge application rates and higher pollutant loading rates for the actual sludge-field conditions regulated. The Agency believes that this analysis will show less pollutant uptake in crops as well as a lower incidence of plant phytotoxicity.

No Effect Data—Most low-dose extrapolation models are linear and assume a response to a stimulus, no matter how small. However, such non-threshold behavior is not often observed in nature. Many public comments were received about the Agency's failure to enter "no effect data" into the models used to extrapolate an effect for the previously performed risk assessment. Research results were also submitted by the public demonstrating that the use of sludge-borne metals in field studies using biologically-processed sludge often result in plant tissue metal concentration insignificantly different from controls. Therefore, the highest sludge metal application rate that caused no significant field reduction would probably be a valid limit for the purposes of evaluating phytotoxicity.

Failure to take into consideration field demonstration of "no effect data" for purposes of evaluating the phytotoxicity effects of copper and zinc, and the uptake of PCBs in the calculation of numerical limitations for the proposed rule skewed the loading rates so that they were more conservative than necessary. For instance, copper applied as copper sulfate will not react the same in soil as copper in a sludge matrix. Copper sulfate is readily available to be taken up by plant roots, unlike copper bound in the sludge matrix which is not as bioavailable.

The Agency is considering incorporating "no effect data" for many of the organic compounds and some inorganic compounds for the pathways utilizing soil to plant transfers, i.e., Pathways #1, #1F, #3, #5 and #7. Additionally, such data could also be used to develop soil to animal transfer coefficients and soil to biota coefficients (Pathways #4, #6, #8 and #9), where possible. If there are field or epidemiological data that indicate the existence of a "no effect" level or there is reason to believe there is a threshold, then instead of relying on non-threshold linear models, the Agency is considering examining the data base to see if a NOAEL (No Observed Adverse Effect Level) or LOAEL (Lowest Observed Adverse Effect Level) could be used as a means of deriving a maximum allowed concentration or loading.

PCB Evaluation—For agricultural land application, the most limiting pathways for PCBs were Pathways #3 (sludge-soil-plant-animal-human) and #4 (sludge-soil-animal-human). These pathways are highly dependent on the diet model used, the fraction of sludge/soil in the diet of the grazing animal, the slope of the plant/soil response curve, and the uptake slope of PCBs in animal fat for animal products in the human diet.

Many public comments were received about the derivation of limits for Pathways #3 and #4 because of the soil to plant transfer coefficient used. The PCB transfer coefficient value is 10-fold greater than other transfer coefficient values found in Table 4–20 of the Land Application Technical Support Document which suggested that this was potentially unique data (see Reference number 9). Information received during the public comment period suggested that this high uptake value for fescue reported by Strek and Weber (1980) was from a study performed using conditions not expected for usual agricultural application (see Reference number 10). The study was done with sandy soil containing very little organic carbon. If the study had been performed on normal agricultural land the organic carbon content would have been greater and would have provided an organic binding site for PCBs making them less bioavailable for plant uptake. Furthermore, very high concentrations of the PCBs were added as a pure compound to only 300 grams of soil in a shallow styrofoam cup. This would overpredict plant uptake of the compound when compared to plants grown in sludge under field conditions which allows for expansion of the roots.

Recently, additional studies of PCBs in sludge were undertaken using Madison, Wisconsin, aged-sludge containing 52 ppm total PCBs. Greenhouse pot studies of plant uptake of PCBs by tall fescue (O'Connor, 1989) showed no detectable PCB residue regardless of the PCB application rate (see Reference number 11). From this work, the highest slope would have been less than 0.02. However, based on non-detection of PCBs in the fescue, the uptake slope is zero. Taylor (1988) studied the same sludge in the field with corn grain (see Reference number 12). No detectable PCB residue was found at any rate of application, so again the uptake slope would be zero. In the land application TSD for the proposal, the uptake slope of 0.25 selected from the report by Strek and Weber (1980) on tall fescue uptake of PCB (see Reference number 10) is at least 12.5-fold too high, but possibly 125-fold too high or more. The result of using more appropriate data to evaluate the expected conditions being regulated shifts the controlling pathway for PCBs to Pathway #4. This direct ingestion pathway allows the greatest transfer of sludge-absorbed organics into animals (see Reference number 13).

Pathway #4 requires that the amount of animal fat or fat products which individuals consume over their 70-year lifetime be estimated to allow calculation of the maximally allowed PCB concentrations in sludge which grazing livestock can ingest from the soil surface on adhering forage crops. Since only grazing animals were being evaluated, only the fat portion from beef (both meat and dairy products) and sheep products were included in the analysis. The Land Application Methodology (see Reference number 14), as well as the Technical Support Document (see Reference number 9), for the proposed rule used the highest consumption of food for each age and sex for each food group analyzed. Although these documents clearly stated

that the highest consumers of dairy fat were 6–11 month-old children (29.2 grams, dry weight per day) these was an input error for the RAMMS model and the data for the teenage male (29.7 grams, dry weight per day) was used by mistake. A comparison of the daily dietary consumption calculated by the new method indicated a factor of 1.85 between the new lifetime estimate, described previously, and RAMMS or 2.14 between the newly calculated lifetime estimate and the Technical Support Document. The later method is being considered for use in the risk assessment for the final rule.

The response slope for PCBs uptake (UA) in beef tissue used in the proposal's risk assessment to evaluate the effects of this chemical on animals ingesting sludge-amended soils was taken from a 1973 study by Fries (see Reference number 15). Several public comments were received stating that the pure compound used in these feeding trials may not be appropriate for evaluating the risk from the low concentrations of PCBs expected in sludges ingested by livestock. Several studies involving direct feeding of sludge or grazing on sludge-amended pastures have shown no hazards from PCBs based on PCB uptake, Multiple Function Oxidase activity, or histopathology.

During sludge feeding studies sponsored by Denver, several sludges were fed to beef cattle for up to 270 days (see Reference number 16). PCB levels in the sludges, and in the animals' diet and fat were analyzed. The results showed that bioaccumulation factors were less than 2 rather than the 4 measured by Fries. There is reason to believe that the bioaccumulation factor might even be lower if lower PCB-containing sludges had been used in the Denver studies. Therefore, the Agency is considering changing the UA value from 4 to 2, reducing the response slope value by a factor of 2.

Fraction of Food Groups Derived from Sludge-Amended Soil—The value representing the fraction of animal product food groups derived from sludge-amended soil (FA) in the proposed regulations was estimated as an average percent of the annual consumption of food which is homegrown by rural farm households. This data was calculated from U.S. Department of Agriculture Sources (USDA, 1986) and is found in Table 4–14 of the Land Application Methodology. The exposed individual in this assessment was conservatively assumed to consume 44 percent of meat and 40 percent of dairy products from farms raising livestock on sludge-amended soil.

Scientific peer review and public comments submitted to the Agency on the proposal also indicate it is likely that current data on food consumption by rural farm families may show a lower fraction of locally grown livestock consumed by the highest consuming families. Furthermore, the Scientific Peer Review Committee on land application noted that in any one year, the maximum fraction of a farm treated with sludge may be 33 percent, rather than the 100 percent assumed in the proposed analysis. No final values have been selected at this time, but the Agency is considering lower numbers for these parameters for use in the final rule's risk assessment.

Grazing Animal Consumption of Sludge From Foraging Activity—The Land Application Peer Review Committee considered that eight percent sludge ingestion assumed for Pathways #4 and #6 in the risk assessment methodology for the proposed rule was too high based on chronic sludge ingestion by cattle in field studies of sludge or compost surface application to growing pasture. The committee recommended that 2.5 percent sludge in the diet should have been used. In this pathway, grazing livestock ingest 2.5 percent sludge (season long average) when continuously grazing pastures amended with sludge 30 days before the animals entered the field. Over time, the freshly applied sludge will become mixed with the previously applied sludge on the soil surface. The Agency now believes that grazing livestock can ingest the sludge on the soil surface, but the rate of ingestion is significantly less than the 2.5 percent sludge used for the adherence pathway. Pathway #4 risk cannot increase with time (as cumulative sludge application increases) since the first application provides the maximum chronic risk from sludge ingestion. Cessation of application reduces the fraction of diet from 2.5 percent to lower levels.

The 2.5 percent ingestion does not take into consideration the observation that sludge is not applied on 100 percent of a farm in each year. Thus, the fraction of sludge in the diet is lower because adhering sludge significantly exceeded sludge ingested from the soil surface in season-long grazing studies with sludge (see Reference number 17). The Land Application Peer Review Committee found some evidence that a reasonable worst case would be 33 percent of a farm field receiving sludge in any year. Using one percent sludge ingestion during non-application periods (% of time), and 2.5 percent ingestion during sludge application periods (% of time) yields a long term average of 1.5 percent sludge in the grazer's diet. If EPA adopted these values, this would allow for an increase in annual pollutant loading rate limits of 3.2 to 5.3 based on changes to this element of the analysis for agricultural land application of sewage sludge.

Soil Background Levels—In the proposal, a median inorganic pollutant concentration in agricultural soils was used to represent the national background levels for metals, whereas zero was used to represent the background levels of organics, since only incremental risks for carcinogenic organic pollutants over background were considered. In addition, most organics being regulated have relatively short half-lives of less than a year and would volatilize or degrade between sludge applications.

Public comments and scientific peer review generally support the use of the Holmgren (1985) data base for metals, but objected to the zero organic background assumptions on the grounds that it was not sufficiently protective (see Reference number 18). They stated that although many of the organic chemicals being evaluated do not persist for long periods of time in soil, some of the others, particularly the chlorinated insecticides (i.e., dieldrin, chlordane and DDT) do. In some cases, the background levels of these insecticides in agricultural soils (rarely found urban settings) can approach the concentrations found in sewage sludges. They suggested that the Agency should utilize available data on the background levels of these organic compounds instead of assuming a value of zero. EPA is currently seeking information to complete the data base on these organics and the results may be incorporated into the final rule.

Relative Effectiveness of Exposure—The relative effectiveness of exposure value (RE) as used in the algorithms for agricultural or D&M practices is a unitless factor that shows the relative toxicological effectiveness of an exposure by a given route when compared with another route. For example, carbon tetrachloride and chloroform were estimated to be 40 and 65 percent as effective when absorbed, respectively, by inhalation as by ingestion. In addition to route differences, RE can also reflect differences in the exposure conditions, e.g., absorption of nickel ingested in water has been estimated to be five times greater than when ingested in food.

It is widely recognized that the RE factor should only be applied where well-documented and referenced information is available on the contaminant's pharmacokinetics. When such information is not available, RE is equal to 1. Since this data was not sufficiently well-documented at the time of proposal, all of the RE factors used in the risk assessment were assumed to be 1. Objections to using the value of 1 for RE was expressed in the public comments and the scientific peer review on the grounds that it is overly conservative. They noted that this assumption implies that there are no observed differences in absorption among various exposure routes and that 100 percent of a pollutant from an exposure route is absorbed and taken up by the target tissue. They urged the Agency to try to develop more reasonable estimates of the RE value for the various exposure routes.

A more extensive literature search is underway to identify the correct values. For example, studies by Hinesly et al. (1985) in which female chickens were fed diets containing three levels of biologically incorporated cadmium demonstrated that after 80 weeks the hens retained only 1.3, 0.96 and 0.87 percent of the total ingested cadmium (see Reference number 19). Similar results were obtained from studies with pheasant and sows (see Reference numbers 20 and 21).

Soil Ingestion Rate For Children—The Land Application TSD used an estimated soil ingestion rate of 0.1 grams of soil per day (see Reference number 9). Comments were received on both sides of this issue. Some respondents stated that the rate was too high, while others felt it was too low. Several programs within the Agency have examined this issue and supported research efforts to resolve it. A recent directive from the Agency's Office of Solid Waste and Emergency Response suggested a range of soil ingestion rates for children of 0.1 to 0.2 grams per day and has selected 0.2 grams per day as a best estimate of daily soil ingestion by children (see Reference number 22). The Agency has tentatively concluded that 0.2 grams per day is the appropriate value for developing these regulations and requests further comment on this issue.

The Scientific Peer Review Committee on land application recommended that 0.5 grams per day soil ingestion (at the 95th percentile) would be a more responsible worst-case exposure level for children. However, after further evaluation, the committee agreed that this is an over-estimation of chronic risk associated with PCBs as compared to shorter term acute risk from lead soil ingestion if the exposure is for 5 years. The Agency believes that using either 0.2 grams per day for 5 years or 0.5 grams per day for 2 years will result in the same amount of exposure and will be suitable for modeling children at higher risk. The Agency requests public comment on this assumption. In addition, the Agency solicits comments on using an average soil ingestion rate (0.1 grams per day) to estimate average exposure levels.

4. Fifty Metric Ton Per Hectare Limit

The proposed regulations limited sludge applications to agricultural lands to no more than 50 dry metric tons per hectare (mt/ha). This approach was used because the model lost linearity at higher loading amounts and could not be used in the rule for calculating the number of years that sewage sludge of a certain quality may be applied to the agricultural land at rates that do not exceed the cumulative application rate for each inorganic pollutant.

Many public comments were received objecting to this limitation which they saw as "arbitrary" and not having any scientific justification. They pointed out that there may be cases where sludge has a low nitrogen content and would require a rate greater than 50 mt/ha application rate to meet the nutrient requirements for a specific crop. The Agency understands these concerns and is attempting to revise the model so that this limit can be raised to levels necessary to meet the nitrogen needs of crops, but without exceeding the health-based cumulative limits.

5. D&M Labeling Requirements

The proposed rule required that when sludge is distributed and marketed it must have a label affixed to the product or an information sheet accompanying the product that lists the nitrogen content and pollutant concentrations.

The Agency received several comments from the public and scientific peer review committee on this issue. In general, the consensus was that this type of information would have no useful purpose to the general public, but would merely cause undue confusion or alarm about the perceived hazard from using these products.

Concern about the effects these actions would have on beneficial reuse has caused the Agency to reconsider this labeling requirement for all 22 pollutants. However, it is still thought that information about the nutrient value of the product is essential for proper use by the user. The Agency is considering not requiring that the contaminants and their concentrations be listed on the bag or handout. However, they must be made available to interested parties who inquire by phone or mail about their presence and concentrations. For that reason the label will require a statement saying that a listing of the trace elements and their concentrations in the product are available from the generator or manufacturer whose name, address and phone number will be provided. The nitrogen (N) and phosphate (P_2O_5) content of the D&M product would also have to be listed on the label or handout.

6. Regulation of Banned Chemicals

The proposed regulation established numeric criteria for several chemicals which have been banned or severely restricted by the Agency since the 1970's (e.g., aldrin/dieldrin, chlordane, DDT, lindane, PCBs and hexachlorobutadiene). Scientific peer review and public comments suggested that these compounds be exempt from the rule for all use and disposal practices if they are shown not to be present in current sewage sludge in sufficient amounts to pose a significant risk to human health and the environment. Furthermore, they felt it was not reasonable for treatment works to have to go to the expense of analyzing for the presence of chemicals that are totally absent or seldom found in more than exceedingly small concentrations.

The Agency is currently reevaluating the necessity for regulating these banned chemicals if they are found to be no longer present in sewage sludge or only is insignificant amounts. The data from the recent National Sewage Sludge Survey and recalculated numerical criteria will be analyzed to determine whether it would be advisable to drop these chemicals from the part 503 rule.

7. Anticipated Impacts and Conclusions

Table II E–1 describes the differences in the individual pathway loading rates between the values used in the land application TSD for the proposed regulations and the preliminary values calculated if EPA were to adopt new methods proposed for comment. The changes in these values show what would be the effect of the new data and revised assumptions if used in the calculation of numerical limitations in EPA's models. These changes, as reflected in Table II E–1 include use of no effects data, plant uptake data from sludge-field studies, revised human dietary scenarios and new information on pollutant bioavailability and bioaccumulation.

TABLE II E–1.—COMPARISON OF TSD AND PRC ESTIMATED SLUDGE APPLICATION LIMITS FOR CU, ZN, NI, CR, PB, CD, AS, AND HG

Pathway	TSD limit	Preliminary draft limit
	Maximum allowed kg Cu/ha	
5:Sludge soil plant animal	153	(1)
6:Sludge soil animal	458	3930
7:Sludge soil plant	46	1180
8:Sludge soil soil biota	224	1200
	Maximum allowed kg Zn/ha	
7:Sludge soil plant	172	2750
9:Sludge soil soil biota	452	2600
	Maximum allowed kg Ni/ha	
7:Sludge soil plant	78	500
1F:Sludge soil plant animal	206	>>500
	Maximum allowed kg Cr/ha	
7:Sludge soil plant	530	(*)
12:Sludge soil groundwater human		(*)
	Maximum allowed kg Pb/ha	
9:Sludge soil soil biota predator	125	>1000
7:Sludge soil plant	-	>>1000
1F:Sludge soil plant human	195	>1000
2F–Agr:Sludge soil human	378	580
2F–D&M:Sludge human	378	300 mg/kg
1:Sludge soil plant human	1190	>>1000
	Maximum allowed kg Cd/ha	
1F:Sludge soil plant human	18.4	(*)
7:Sludge soil plant	176.0	>20
9:Sludge soil soil biota predator	-	>20
	Maximum allowed kg As/ha	
1:Sludge soil plant human	6960	(*)
1F:Sludge soil plant human	382	(*)
2F:Sludge human	14	1626
	Maximum allowed kg Hg/ha	
3:Sludge soil plant animal human	14.9	(*)
2F:Sludge human	38.9	(*)
1F:Sludge soil plant human	110.0	(*)
4:Sludge soil animal human	1000.0	(*)
1:Sludge soil plant human	2000.0	(*)
1M:Sludge "soil" mushroom human	-	(*)

[1] At least 2360.
[*] No basis.
[*] Near correct.
[*] Analysis not complete.

These numbers are preliminary and only indicate the direction that changes in pathway loading rates may take. The impact of these changes on the pathway loading rates for inorganic pollutants varies from no change (in the case of cadmium) to approximately 116 times (in the case of arsenic). These values are only examples and do not reflect changes in human diet, which would affect Pathways #1, #1F and #3, and therefore should not be used to predict final numerical criteria for these pollutants. Final numerical limitations will be developed after consideration of all the data and comments the Agency receives.

In summary, the Agency believes that adoption of the revisions described above could increase the numerical limits for D&M and agricultural land application practices by factors of 1 to 125 for pollutants regulated under part 503. Revisions to the MEIs, fraction of diet impacts, bioavailability of pollutants, new parameters and models for the exposure pathways, and other revisions previously discussed could also alter the pollutant limits. Based on assessment of data to date, the Agency believes the revised pollutant limits would still protect public health and the environment against reasonably anticipated adverse effects.

Request for Comments

The revised approach that the Agency is considering today, as explained above, would change some of the assumptions and data points used in the proposed rule to reflect more current information and more realistic exposure scenarios. The Agency is requesting public comment on this revised approach, its requirements and assumptions, and its protectiveness and implementability. In addition, the Agency is interested in receiving any data the public might have on the selection and screening of data for D&M and agricultural sludge use, as well as models for evaluating ground water and surface run-off impacts.

Alternative Pollutant Limits (Subpart F)

In response to comments on the proposed part 503 regulations, the Agency is considering developing alternative pollutant limits for sewage sludge applied to agricultural or non-agricultural land or distributed and marketed. These alternative pollutant limits are "no adverse effect" pollutant concentrations. As long as the pollutant concentrations in a sewage sludge are equal to or less than the "no adverse effect" concentrations, no restrictions are needed on the amount of the sewage sludge applied to the land. If any of the pollutant concentrations in sewage sludge exceed the "no adverse effect" concentrations, the sludge user or disposer would have to meet the pollutant limits in the proposed part 503 regulations for the applicable disposal method (i.e., annual pollutant loading rates for organic pollutants and cumulative pollutant loading rates for inorganic pollutants when sewage sludge is applied to either agricultural or non-agricultural land or the annual product application rate for a sewage sludge product that is distributed and marketed).

The major advantage of the alternative pollutant limits is that no records on the amount of sewage sludge applied and on cumulative pollutant loads for inorganic pollutants have to be kept when the sewage sludge is applied to agricultural land or to non-agricultural land. Also, an application rate would not have to be specified for a sewage sludge product that meets the alternative pollutant limits when the product is distributed and marketed. Sewage sludge that meets the alternative pollutant limits would still have to meet the appropriate standards in part 503 for pathogen and vector attraction reduction. EPA believes that not having to keep records on the amount of sewage sludge and the amount of inorganic pollutants applied to the land would encourage the beneficial reuse of sewage sludge.

Approach in the Proposed Rule

The pollutant limits in the proposed part 503 regulations for sewage sludge applied to agricultural land include annual pollutant loading rates (APLR) for organic pollutants and cumulative pollutant loading rates (CPLR) for inorganic pollutants. These loading rates are based on the results of a pathway exposure analysis and are established at a level that protects human health and the environment from any reasonable anticipated adverse effects of pollutants in sewage sludge. The Agency's current thinking is that the final part 503 regulations also will contain annual pollutant loading rates for organic pollutants and cumulative pollutant loading rates for inorganic pollutants. EPA anticipates, however, that the values for the loading rates in the final regulation will be different from the values for those rates in the proposal because of modifications now under consideration to the input parameters for the risk assessment models used to develop the pollutant loading rates.

The following equation relates the annual whole sludge application rate for a sewage sludge to an annual pollutant loading rate:

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$$AWSAR \times \frac{APLR}{C \times 0.001} \quad (1)$$

Where:
AWSAR = Annual whole sludge application rate in metric tons per hectare per 365 consecutive-day period.
APLR = Annual pollutant loading rate in kilograms per 365 consecutive-day period.
C = Pollutant concentration in milligrams per kilogram of total sewage sludge solids.

The *limiting* AWSAR for a sewage sludge is the smallest of the AWSARs calculated using the annual pollutant loading rates for organic pollutants promulgated in the part 503 regulations and the actual pollutant concentrations measured in the sewage sludge in equation (1). If sewage sludge is applied to agricultural land at an annual rate higher than the *limiting* AWSAR, one or more of the part 503 APLRs will be exceeded.

The cumulative pollutant loading rates for inorganic pollutants in the proposed part 503 rule for sewage sludge applied to agricultural land are not annual rates. They are the maximum amount of an inorganic pollutant that can be applied to a land application site. Records have to be kept on the amount of an inorganic pollutant applied to a site. Under the proposal, when the cumulative load for any of the inorganic pollutants is reached, sewage sludge could no longer be applied to the site.

The pollutant limits in proposed part 503 for sewage sludge applied to non-agricultural land are pollutant concentrations that can not be exceeded. If any of the pollutant concentrations are exceeded, the sewage sludge can not be applied to non-agricultural land. EPA anticipates that the pollutant limits in the final part 503 for sewage sludge applied to non-agricultural land will consist of annual pollutant loading rates for organic pollutants and cumulative pollutant rates for inorganic pollutants instead of pollutant concentrations. These rates will be based on the results of a pathway exposure analysis and will be established at a level that protects human health and the environment from any reasonable anticipated adverse effects of pollutants in sewage sludge.

The pollutant limits in proposed part 503 for a sewage sludge product that is distributed and marketed are a series of pollutant concentrations. Those concentrations were calculated using the annual pollutant loading rate for each pollutant, which is based on the results of a pathway exposure analysis, and annual product application rates in the following equation:

$$C = \frac{APLR}{\text{Annual Product Application Rate} \times 0.001} \quad (2)$$

Where:
C = Pollutant concentration in milligrams per kilogram of total sewage sludge solids.
APLR = Annual pollutant loading rate in kilograms per hectare per 365 consecutive-day period.
Annual Product Application Rate = The amount of a sewage sludge product applied in metric tons per hectare per 365 consecutive-day period.

The proposed part 503 rule requires that the concentration of pollutants in a sewage sludge product that is distributed and marketed shall not exceed the pollutant concentrations in the proposal for the appropriate annual product application rate. Appendix B in the proposal explained the procedure used to determine the appropriate annual product application rate for a sewage sludge product. EPA anticipates that the pollutant limits in the final part 503 for a sewage sludge product that is distributed and marketed will be annual pollutant loading rates instead of a series of pollutant concentrations. A procedure to determine the annual product application rate of the sewage sludge product that does cause any of the annual pollutant loading rates to be exceeded will be included in an appendix to the final part 503.

Alternative Pollutant Limits

The basis for the alternative pollutant limits is that if the pollutant concentrations in a sewage sludge are all equal to or less than the "no adverse effect" concentrations, no restrictions, with the exception that sewage sludge applied to the land not cause the nitrogen requirement of the crop grown on the land to be exceeded, are needed on the amount of the sewage sludge applied to the land. Several assumptions are made to determine the "no adverse effect" pollutant concentrations.

The first assumption is that the cumulative pollutant load for an inorganic pollutant is applied to a site in one year (i.e., the annual pollutant loading rate equals the cumulative pollutant loading rate). The annual pollutant loading rate for an inorganic pollutant is calculated using one year in the following equation:

$$APLR = \frac{CPLR}{years} \quad (3)$$

Where:
APLR = Annual pollutant loading rate in kilograms per hectare per year.
CPLR = Cumulative pollutant loading rate in kilograms per hectare from part 503.
Years = The number of years the pollutant is applied.

The APLRs for the inorganic pollutants are used to calculate the "no adverse effect" concentrations for those pollutants.

The second assumption is that the sludge/soil mixture at the application site is 50 percent. Because a hectare of land with a six inch plow layer, which is the depth of plow layer in the risk assessment models used to develop the pollutant loading rates, contains 2000 metric tons of soil, a 50 percent sludge/soil mixture means that the hectare of land has 1000 metric tons of sewage sludge and 1000 metric tons of soil.

To calculate the "no adverse effect" concentrations, the Agency assumed that 1 metric tons of sewage sludge are applied in one year. Thus, the AWSAR for the application site for that year is 1000 metric tons per hectare (dry weight basis).

Using the APLRs for organic pollutants from part 503; the APLRs for inorganic pollutants calculated using the cumulative pollutant loading rates from part 503 and one year in equation (2); and an AWSAR of 1000, a concentration is calculated for each pollutant controlled by the part 503 regulation using equation (1). The Agency would consider these pollutant concentrations to be "no adverse effect" concentrations because they are based on the pollutant loading rates from part 503 and a very conservative AWSAR.

An AWSAR of 1000 metric tons per hectare is conservative because to achieve that rate, 20 inches of a 20 percent solids sewage sludge has to be applied to the site. EPA does not believe that 20 inches of a 20 percent solids sewage sludge will be applied to a site in any one year. Consequently, the "no adverse effect" concentrations based on that AWSAR also are conservative and thus protective of public health and the environment. Further support for considering those concentrations conservative comes from the results of recent research. In the developing the proposed pollutant loading rates in part 503, the Agency assumed that the availability of a pollutant is linear (i. e., the more of the pollutant applied, the higher the availability). This assumption is based on data for sewage sludges with high pollutant concentrations.

Research results indicate that the availability of a pollutant in a low pollutant concentration sewage sludge is less than linear. This means that a pollutant is available (e.g., for uptake by plants) up to a certain concentration. After that concentration, the availability flattens out and reaches a plateau (e.g., no further uptake occurs in plants). This occurs most likely because of the effect of hydrous iron oxide, organic matter, and phosphate in the mixture of low pollutant sewage sludge and soil. EPA believes that these research results support its tentative conclusions about the conservativeness of the "no adverse effect" concentrations.

The Agency invites comments in today's notice on the results of the research on the availability of pollutants in a low pollutant concentration sewage sludge. Additional data on this subject are also requested.

EPA believes that if the pollutant concentrations in a sewage sludge are all below the "no adverse effect" concentrations, no restrictions (except for the requirement that sewage sludge nitrogen levels applied to the land not exceed the nitrogen requirement of the crop grown on the land) are needed on the amount of the sewage sludge applied to either agricultural or non-agricultural land or distributed and marketed for several reasons.

First, as previously mentioned, the annual pollutant loading rates are established at a level that protects human health and the environment from reasonable anticipated adverse effects of pollutant in sewage sludge. Pollutant concentrations based on those loading rates should provide equal protection to human health and the environment.

Second, the nutrient requirements of crops grown on the land most likely will limit the AWSAR of the sewage sludge to well below 1000 metric tons per hectare. Thus, an AWSAR of 1000 will probably will not be achieved in any one year. A typical AWSAR based on crop nutrient requirements is 11 metric tons per hectare (dry weight basis). At an AWSAR of 11, approximately 91 years (i.e., 1000 divided by 11) are required to achieve a 50 percent sludge/soil mixture.

Third, restrictions on the quantity of sewage sludge applied are not needed to insure that the cumulative pollutant loading rates for inorganic pollutant are not exceeded in one year when the pollutant concentrations in the sewage sludge are equal to or less than the "no adverse effect" concentrations. At the typical AWSAR of 11, the sewage sludge has to be applied to the same site for approximately 91 years for any of the cumulative pollutant loading rates for inorganic pollutants to be exceeded. The Agency believes it is a reasonable assumption that sewage sludge will not be applied to a site at 11 metric tons per hectare per year for 91 years.

Fourth, the risk assessment models used to determine the APLRs for organic pollutants assume first order decay kinetics for those pollutants. This means that when steady state conditions are achieved, there is no "build-up" (i.e., the amount applied equals the amount that decays) of organic pollutants at the site. As long as the annual pollutant loading rate for an organic pollutant, which is the product of the pollutant concentration and the AWSAR, is not exceeded, human health and the environment are protected from the reasonable anticipated adverse effects of organic pollutants in sewage sludge. Considering the "no adverse effect" concentrations are based on an AWSAR (i.e., 1000) that probably will not be achieved in any one year, no restrictions on the amount of a sewage sludge applied are needed to insure the annual pollutant loading rates for organic pollutants are not exceeded when the sewage sludge has pollutant concentrations equal to or less than the "no adverse effect" concentrations.

EPA is considering publishing the "no adverse effect" concentrations as alternative pollutant limits in the final part 503. If the pollutant concentrations in a sewage sludge are all below the "no adverse effects" concentrations, no restrictions will be imposed on the application rate, except the requirement that sewage sludge applied to the land not cause the nitrogen requirement of the crop grown on the land where the sewage sludge is applied to be exceeded, for the sewage sludge when it is applied to the land and no records on the amount of either sewage sludge or inorganic pollutants applied to the land have to be maintained. For a sewage sludge product that complies with the alternative pollutant limits and that is distributed and marketed, no restrictions are placed on the amount of the sewage sludge product applied to land (e.g., an application rate based on the concentrations of the pollutants controlled in Part 503 in the sewage sludge product does not have to be placed on the bag that contains the sewage sludge product). Sewage sludge that meets the alternative pollutant limits still has to meet the pathogen and vector attraction requirements in the Part 503 regulation.

As previously mentioned, the Agency believes that alternative pollutant limits developed using the concept discussed above encourage beneficial reuse of sewage sludge. EPA also believes that the alternative pollutant limits protect human health and the environment from any reasonable anticipated adverse effects of pollutants in sewage sludge because they are based on annual pollutant loading rates obtained from a pathway exposure analysis and on a annual whole sludge application rate (i.e., 1000 metric tons per hectare) scenario that is not likely to occur in any one year.

Request For Comments

In today's notice, EPA is requesting comment on the alternative pollutant limit concept. Specifically, the Agency requests comments on:

- The approach that would be used to develop the alternative pollutant limits (i.e., calculate the "no adverse effect" concentrations using the APLRs from part 503 and an AWSAR of 1000 metric tons per hectare in equation (1)).
- The conclusion that no restrictions, except that sewage sludge applied to the land shall not cause the nitrogen requirement of the land on which the sewage sludge is applied to be exceeded, are needed on application rates when a sewage sludge that meets the alternative pollutant limits is applied to either agricultural or non-agricultural land or distributed and marketed. The values for the "no adverse effect" concentrations will be different for the three use and disposal practices (i.e., application to agricultural land, application to non-agricultural land, and distributed and marketed) because the APLRs for those practices are different.
- The assumption that the cumulative pollutant load for an inorganic pollutant is applied to the land in one year. The one year period is used to convert the cumulative pollutant loading rate to an annual pollutant loading rate, which is used to calculate the "no adverse effect" concentration for an inorganic pollutant.
- The 50 percent sludge/soil mixture assumption that results in using an

AWSAR of 1000 metric ton per hectare per 365 consecutive-day period to calculate the "no adverse effect" pollutant concentrations. Should a different sewage sludge/soil mixture, which would result in a different value for the AWSAR, be used?

• The results of the research that indicate that the availability of the pollutants in sewage sludge is less than linear when the pollutant concentrations in the sewage sludge are low (see Figure 1). Additional data are also requested.

Removal Credits (Subpart G)

As previously explained, many industrial facilities discharge large quantities of pollutants to POTWs, where their wastes mix with wastewater from other industrial facilities, domestic wastes from private residences and run-off from various sources prior to treatment and discharge by the POTW. Industrial discharges frequently contain pollutants that are generally not removed as effectively by POTWs as by the industries themselves.

The introduction of pollutants to a POTW from industrial dischargers potentially poses several problems. The discharges may inhibit or interfere with a POTW's operation, resulting in inadequate treatment of domestic wastes and sewage. Pollutants may pass through the POTW into navigable waters if they are inadequately treated. Finally, even if partially or fully treated by the POTW and removed from the POTW wastestream prior to discharge, these pollutants may settle in and contaminate the sewage sludge, causing a sludge disposal problem.

In order to prevent these potential problems, Congress has directed EPA in sections 307(b)–(d) of the CWA, 33 U.S.C. 1317(b)–(d), to establish pretreatment standards to "prevent the discharge of any pollutant through [POTWs], which pollutant interferes with, passes through, or otherwise is incompatible with such works." 33 U.S.C. 1317(b). Pretreatment standards limit the amount of a pollutant that facilities in an industrial category may introduce into a POTW. Section 307(d), 33 U.S.C. 1317(d).

Congress recognized that, in certain situations POTWs could provide some or all of the treatment of an industrial users wastestream that would be required pursuant to the pretreatment standard. Consequently, Congress established a discretionary program for POTWs to grant "removal credits" to their indirect discharger. 33 U.S.C. 1317(b). The credit, in the form of a less stringent pretreatment standard, allows an increased amount of pollutants to flow from the indirect discharger's plant to the POTW.

Section 307(b) of the CWA establishes a three-part test for obtaining removal credit authority. Removal credits may be awarded only if (1) the POTW "removes all or any part of such toxic pollutant," (2) the POTW's ultimate discharge would "not violate that effluent limitation, or standard which would be applicable to such toxic pollutant if it were discharged" directly rather than through a POTW, and (3) the POTW's discharge would "not prevent sludge use or disposal by such [POTW] in accordance with section (405) * * *". Section 307(b), 33 U.S.C. 1317(b).

EPA has promulgated removal credit regulations in 40 CFR part 403. On April 30, 1988, the United States Court of Appeals for the Third Circuit invalidated certain portion of the then-effective removal credit regulations. *NRDC* v. *EPA*, 790 F.2d 289, 292 (3rd Cir. 1986), *cert. denied*, 479 U.S. 1084, (1987). Among other determinations, the Third Circuit held that, under section 307(b), EPA may not authorize any POTW to grant removal credits to any indirect discharger until EPA promulgates the comprehensive regulations addressing sewage sludge required by section 405 of the CWA. *NRDC* v. *EPA*, 790 F.2d 289, 292 (3rd Cir. 1986).

Congress made this prohibition explicit in the Water Quality Act of 1987 (WQA). While temporarily staying the effect of the Third Circuit's decision until August 31, 1987, section 406(e) of the WQA provides that, after that date, EPA shall not authorize any other removal credits until EPA issues the sewage sludge use and disposal regulations required by CWA section 405(d)(2)(a)(ii).

As EPA explained in the proposed rule (54 FR 5853), upon promulgation of final part 503 standards, POTWs that manage their sludge by the use or disposal methods covered by part 503 may apply to EPA for removal credit authority. EPA may grant that authority to any POTW complying with the procedural and substantive requirements of part 503 and the removal credits regulations.

The statutory scheme of section 307(b) requires sludge use and disposal standards under section 405 before EPA may authorize removal credits. When promulgated, the part 503 will meet the legal requirement for comprehensive sludge regulations under CWA section 405. These standards are the predicate to a determination that an indirect discharge to a POTW is not preventing disposal in accordance with these standards as required by section 307(b). The publication of the part 503 standards alone will not entitle a POTW to removal credit authorization. Removal credits are not authorized before the statutory protective level is achieved. As Senator Stafford, one of the sponsors of the Water Quality Act of 1987 has pointed out (132 Cong. Rec. S16427, daily ed. October 16, 1986):

> * * * Congress intended the existence of sludge regulations, and compliance with those regulations, to be a precondition to the granting of removal credits.

Therefore, in order to obtain removal credits authority, the POTW must comply with the substantive use and disposal standards before removal credits will be available.

In the proposed rule, EPA identified certain pollutants proposed for regulation for which removal credits would be available after promulgation and compliance with the final part 503 use and disposal standards. In addition, EPA also indicated its tentative conclusion that 17 other pollutants not regulated in the proposed standards would be eligible for removal credits in one or more use or disposal methods. EPA explained that certain pollutants not proposed for regulation had been evaluated for adverse effects and at the highest concentration shown, did not pose an unreasonable risk to public health or the environment (54 FR 5853–5854).

The Agency is now considering several options for identifying pollutants eligible for removal credits with respect to the use and disposal of sewage sludge. These options address pollutants not reviewed for possible control and numerical limitations in the initial part 503 regulations.

Section 405(d) of the CWA, as amended, requires EPA to identify and develop regulations for pollutants in sewage sludge in two phases and from time to time review these regulations for the purpose of identifying other pollutants for regulation. EPA has identified an initial list of pollutants in sewage sludge in the proposed part 503 regulations—"round one" pollutants. EPA is also reviewing pollutants other than the "round one" pollutants for possible control in subsequent amendments to the part 503 rule. These pollutants would be "round two" pollutants. Other pollutants may be reviewed for possible control after the regulations for the "round two" pollutants are promulgated.

Approach in the Proposed Rule

As previously noted, the proposed part 503 regulations contains two lists of pollutants eligible for a removal credit with respect to the use and disposal of sewage sludge. One list (i.e., Table 11 of the proposal) contains the pollutants controlled by the proposed part 503 by use and disposal practice. If the limit for a pollutant for the applicable use and disposal practice is met, the pollutant would be eligible for a removal credit with respect to the use and disposal of sewage sludge so long as other EPA procedural and substantive requirements found at 40 CFR 403.7 are met.

The second list (i.e., Table 12 of the proposal) contains pollutants by use and disposal practice and a concentration for each pollutant. The Agency determined, based on the results of a risk assessment using worst-case assumptions, that the pollutants on the second list do not pose an unreasonable risk to human health and the environment if the concentrations for those pollutants are below the concentrations on the second list. Data available at the time the "round one" list of pollutants was developed indicated that the concentrations of the pollutants in sewage sludge never exceeded the concentrations in Table 12 for those pollutants. For this reason, EPA decided not to control those pollutants in part 503. The Agency indicated it was considering making a pollutant on the second list eligible for a removal credit with respect to the use and disposal of sewage sludge if the concentration of the pollutant in the sewage sludge did not exceed the concentration for that pollutant in Table 12 and if the treatment works complies with the applicable standards in part 503.

The proposed part 503 regulations also indicated that if sewage sludge is disposed of in a municipal solid waste landfill that meets the criteria in 40 CFR part 258, any pollutant in the sewage sludge is eligible for a removal credit with respect to the use and disposal of sewage sludge. Those pollutants are eligible for a removal credit with respect to the use and disposal of sewage sludge because disposal of sewage sludge in a municipal solid waste landfill that meets the criteria in 40 CFR part 258 constitutes compliance with section 405 of the Clean Water Act, as amended. The final part 258 regulations to be issued in the fall of 1990 will explain the conditions under which removal credits may be authorized.

Removal Credits

Four options are presented in this section concerning the eligibility for a removal credit with respect to the use and disposal of sewage sludge for the "round two" pollutants and for pollutants not on either the "round one" or "round two" lists. The Agency invites comment on these options and requests information on the rationale for a particular option if that option is recommended. Several options for removal credit authorization for pollutants that are not regulated in the use or disposal standards are being considered. The options range from not authorizing a removal credit until EPA has developed a specific numerical limitation for that pollutant or specifically determined a pollutant is not of concern to allowing a removal credit unless the pollutant is identified for development of numerical pollutant limitations.

Each of the options presented below assume the removal credits section in the proposed part 503 regulations for the "round one" pollutants is the same in the final part 503 regulations for those pollutants. That section indicates:

• Pollutants listed in the removal credit section of the part 503 regulations for the "round one" pollutants are eligible for a removal credit with respect to the use and disposal of sewage sludge if: (1) The limit for a pollutant that is controlled is met or (2) the concentration for a pollutant that is regulated does not exceed specified limits in the sewage sludge; and

• Any pollutant in sewage sludge disposed of in a municipal solid waste landfill that meets the criteria in 40 CFR part 258 is eligible for a removal credit with respect to the use and disposal of sewage.

Option 1—A categorical pretreatment standard pollutant is eligible for removal credits only when EPA has either established a specific numerical limit for that pollutant or has evaluated it and concluded that it does not threaten public health and the environment.

Option 2—A categorical pretreatment standard pollutant, not listed in the removal credit section of the final part 503 regulations for "round one" or "round two," becomes eligible for a removal credit when the "round two" regulations are promulgated.

Option 3—A categorical pretreatment standard pollutant, not listed in the removal credit section of the final part 503 regulations for "round one," becomes eligible for a removal credit if not identified by EPA in the Federal Register as a pollutant that may be regulated in "round two."

Option 4—A categorical pretreatment standard pollutant, not listed in the removal credit section of the final part 503 regulations for "round one," becomes eligible for a removal credit when the "round one" regulations are promulgated.

Under Options 2 through 4, once an unregulated pollutant was listed as a candidate for possible regulation, it would no longer be eligible for removal credits until numerical limits for that pollutant were promulgated and sludge is used or disposed in compliance with the limits.

Options 2 through 4 are premised on the assumption that "round one" and "round two" will probably address substantially all the universe of pollutants in sewage sludge that may pose a threat to human health and the environment. The NSSS, as previously explained, provides the data on pollutant frequency and level of occurrence that will be used, in part, to identify pollutants for subsequent regulation. The processes used to identify pollutants for possible regulation in "round two" will involve examination of additional data on pollutant effects. Further, EPA will employ procedures like those used to identify candidate pollutants for "round one" to screen for "round two" pollutants.

In addition, substantial amounts of data and new information have been obtained in this rulemaking concerning pollutants in sewage sludge, and the public health and environmental effects associated with these pollutants. "Round two" should similarly result in the Agency's developing further information. Because of the comprehensiveness of the NSSS and the information developed to support these rulemaking efforts, the Agency believes it is a well founded assumption that there will be little need for addressing additional pollutants following "round two." In these circumstances then, it may be appropriate to make unregulated pollutants eligible for removal credits without more formal, resource-intensive modelling efforts. The Agency requests public comment on the reasonableness of such assumptions.

Option 1, essentially the approach proposed in the part 503 regulations, by contrast, would continue to rely on more detailed examination of pollutants for possible adverse effects on human health and the environment. Thus, in the part 503 proposal, EPA would limit removal credit eligibility to those pollutants either specifically regulated or pollutants that the Agency determined did not threaten public health and the environment. In the proposal, EPA indicated that removal credits would be available for 65 pollutants regulated for any one of five use or disposal methods as well as 17

other pollutants that had been evaluated for regulation but determined not to represent a threat to human health or the environment at certain levels.

In determining which pollutants to regulate, the Agency had looked first at a list of some 200 pollutants for further evaluation as candidates for possible regulation. This list was reduced to a subset of pollutants for more intense scrutiny and possible regulation. The pollutants for which removal credits were proposed to be available came from this group of pollutants. Categorical pretreatment standards pollutants that belonged to the group of pollutants not evaluated for regulation, under the proposal, would not be eligible for removal credits. In the view of some commenters, this approach unfairly excludes from removal credit eligibility pollutants that may represent little or no threat to public health and the environment simply because EPA has not formally evaluated them for environmental threat.

EPA recognizes that, generally, the pollutants regulated in "round one" represents those pollutants with the greatest potential for threatening public health and the environment. In fact, a multi-year effort was devoted to the identification of just such pollutants. However, it should be recognized that the decision to regulate some pollutants and not others was in part based on the availability of information on the pollutants. The decision not to regulate does not necessarily mean that the unregulated pollutants may not threaten public health and the environment.

Consequently, under the Option 1 approach, EPA believes that before any additional pollutant not identified in proposed part 503 should be eligible for a removal credit, that any such pollutant must be fully evaluated for its potential to threaten public health or the environment when disposed of in sewage sludge. This, in most cases, would require a demonstration applying the methodology used in part 503 to establish the numerical pollutant-specific concentration limits that the pollutant, at some specified concentrations in sludge, would not adversely affect public health and the environment.

EPA is seeking comment on the Option 1 approach for establishing what pollutants may be eligible for removal credit authorization. In addition, if, at this time, a person believes that a specific categorical pretreatment standard pollutant not regulated in proposed part 503 should be eligible for removal credits under Option 1 (because it can be demonstrated that the pollutant represents no threat to human health and the environment), the person should provide EPA in this rulemaking information to support such a finding. Based on such information, if EPA decides to adopt Option 1, EPA will consider if further categorical pretreatment standard pollutants may be appropriate for removal credit eligibility.

Thus, for example, a POTW or industry seeking to establish that removal credits should be authorized in part 503 for a pollutant in sewage sludge that is applied to land and not proposed for regulation would need to establish that the concentration of that pollutant in its sludge was not harmful to the environmental end point for the controlling pathway for land application. The demonstration would generally require the use of mathematical models such as those described in the TSD for land application used for the proposed rule.

In addition to comments on the options discussed above, EPA requests information on pollutants in sewage sludge not on the two lists of pollutants (i.e., Tables 11 and 12 of the proposal) eligible for a removal credit with respect of the use and disposal of sewage sludge in the proposed part 503. The Agency collected information on the frequency of occurrence and concentration of pollutants in sewage sludge during the National Sewage Sludge Survey. Additional data on frequency of occurrence and concentration is requested.

Other information requested includes, but is not limited to:

- Toxicity of a pollutant to aquatic organisms, mammals, birds, soil organisms, and domesticated animals used for meat and milk production. Information on the acute and chronic mutagenic, carcinogenic, and teratogenic effects of a pollutant are requested.
- Environmental fate, effect, and transport of a pollutant. This includes the persistence of a pollutant in air, water, soil, and plants; bioconcentration in aquatic organisms, mammals, birds, and soil organisms; uptake by a plant based on sewage sludge field data; volatility; water solubility; and the decay rate of a pollutant in the soil.

The Agency will use the information requested above to develop the "round two" list of pollutants. Some of the information also will be used to conduct pathway exposure analyses for the "round two" pollutants during the development of the limits for those pollutants.

Part III: Implication of Survey Results on the Economic Impact Analysis

Section 405(d) of the CWA directs EPA to publish information on the costs of sludge use and disposal. In addition to this legislative requirement, Executive Order 12291 directs EPA to analyze and consider the cost and impact associated with regulations. The Executive Order addresses various concerns about Federal regulations, including a requirement to develop a Regulatory Impact Analysis for all major regulations, which are defined as those that impose an annual costs to the economy of $100 million or more or that meet other economic impact criteria. While the Agency will conduct the analysis necessary to meet these legislative requirements, the determination about what are appropriate use or disposal standards in the final part 503 regulations will be based on public health and environmental protection, not costs. Although costs will be considered in the development of the regulations, the major emphasis of concern will be to protect public health and the environment.

Methodologies for the Compliance Analysis

1. Pass/Fail Analysis Methodology

The pass/fail analysis is the initial step in EPA's methodology to estimate the regulatory impacts associated with the proposed part 503 regulations. For the pass/fail analysis, EPA will rely on the NSSS results to determine the number and percentage of POTWs that will need either to modify their current sewage sludge use and disposal practice or to shift to an alternative practice. This analysis compares the actual concentrations of pollutants in the sludge of secondary treatment POTWs that will need either to modify their current sewage sludge use and disposal practice or to shift to an alternative practice. The pass/fail analysis refers to the process of comparing actual concentrations of pollutants in the sludge of secondary treatment POTWs to the proposed part 503 numerical pollutant limits. If the actual concentration of one or more of the regulated pollutants exceeds the numerical limits, the POTW's sludge "fails" for that disposal option. Where pollutant concentrations in sludge are all below the numerical limits, the POTW's sludge "passes" for that disposal option. The pass/fail results will then be extrapolated to the total number of secondary treatment POTWs in the United States.

The term "failure" is used in the compliance cost analysis to define a situation where a POTW's sludge does not meet the criteria at the current application or feed rate reported by that POTW. In these circumstances, in order to comply with the part 503 standards, the POTW would need to modify its sludge disposal practices by either shifting to another disposal method or modifying application or feed rates, and thus will incur compliance costs beyond those for monitoring, recordkeeping, and reporting. This definition of "failure" is used throughout part II of today's notice.

a. *National Sewage Sludge Survey Data*—The analytical data base of the NSSS, which contains sludge quality information on 177 POTWs, will provide EPA with the concentrations of pollutants in each wastewater treatment process at each POTW. The questionnaire data base portion of the NSSS, which contains data on approximately 480 POTWs, will provide information regarding the volume of sludge disposed using the various available use and disposal options, the size of the POTW, and numerous other input variables, such as sludge land application rates, associated with each of the use and disposal options.

b. *Methodology*—For each of the 177 POTWs for which sludge quality results are presented in the analytical survey and for each use and disposal method used by these 177 POTWs, EPA will conduct a pass/fail analysis based on criteria in the proposed sewage sludge use and disposal regulations. The analysis, which uses the data discussed above, involves the following steps:

(1) *Determine the pollutant levels for each POTW*—Using laboratory results of sludge samples taken from each POTW for the analytical portion of the NSSS, EPA will determine the concentration of each pollutant regulated under the proposed part 503 regulations in each POTW's sludge.

Some POTWs in the study have more than one treatment process. In these cases, sludge samples were taken from each treatment process, bringing the total number of samples to 240 samples for the 177 POTWs in the study. EPA has not yet determined if sludge from two separate treatment processes was disposed of using two different disposal methods. For now, EPA may average pollutant levels for all treatment processes at each individual POTW. Eventually EPA plans to link each process with the use and disposal options used if multiple use and disposal options are employed at a particular POTW.

In addition, some sampling results for specific pollutants were reported as "not detected." EPA will establish a policy for how non-detects should be handled, and this policy will be incorporated into the analysis. At this time, EPA is considering three options: (1) To treat non-detects as a zero pollutant concentration, (2) to treat non-detects as present in the sludge at the detection limit or (3) to estimate the actual concentration based on a probability function. The last option is EPA's choice at this time. A more detailed discussion of non-detects is presented in part I of today's notice.

(2) *Merging Data from the Questionnaire Survey with Data from the Analytical Survey*—The questionnaire portion of the NSSS is divided into a number of separate data bases that will be merged so that information from each data base will be available for each of the 177 POTWs in the analytical survey. The final merged pass/fail data base will include information on each POTW's name, flow group (size), disposal method, average total flow, volume of sludge disposed, percent solids of sludge, various data associated with the specific use and disposal method or methods used, and the analytical data on pollutant concentrations in the POTW's sludge. For example, for land appliers, current sludge application rates for each end use employed by the POTW will be included; for POTWs using incineration, incinerator operating parameters for each unit will be included. The disposal-specific information will be used as input to the equations specified in the regulations for calculating, for example, the annual whole sludge application rate for land application or the allowable pollutant concentration in incinerated sludge.

(3) *Generation of Pass/Fail Results*—The final merged pass/fail data base will then be used with the equations as specified in the part 503 regulations and the criteria established in the regulations for the disposal method used by each POTW to calculate four types of pass/fail results.

(a) The percentage of facilities, by use and disposal method, that pass the appropriate sludge use and disposal criteria. The percentage estimates will reflect survey weights.

(b) The percentage of facilities that pass all criteria for sludge use and disposal. Each facility will be considered to be in compliance if sludge from all its use and disposal practices is in compliance. Again, the percentage estimate will reflect survey weights.

(c) The average percentage of individual facilities in compliance. The amount of sludge at a facility that is in compliance will be estimated by comparing the analytical results for each disposal practice with the sludge use and disposal criteria, the total amount of sludge in compliance will be divided by the total amount of sludge produced, and then the average percentage of facilities in compliance will be the weighted average across facilities.

(d) The percentage of all sludge that meets the sludge criteria. This estimate is based on the total sludge reported used for all disposal practices, results of the analytical survey, sludge use and disposal criteria, and weighing factors that are based on the survey design.

(4) *Extrapolation to the Entire Population of Secondary Treatment POTWs*—The final step in the methodology is to extrapolate the weighted results of the pass/fail analysis to the entire population of secondary treatment POTWs. These results will then become part of the input to the compliance cost analysis.

2. Estimated Cost of Compliance

a. *Introduction*—Due to the characteristics of the National Sewage Sludge Survey, a different method will be available to estimate the cost of compliance with the final regulations from that used for the proposal. This method will use the probability structure of the survey and information on multiple disposal practices.

The part 503 numerical criteria for sludge use and disposal will be compared to the analytical results of all sampled disposal practices at every facility in the analytical portion of the survey. If a pollutant of concern is detected at a level higher than the criteria for the appropriate disposal practice (or if it is detected at a level higher than the criteria based on the application rate or feed rate currently being used) then the necessary cost to bring that facility into compliance will be estimated. Weighing factors, based on the design of the survey, will then be used to estimate the total cost of regulation for all POTWs and the expected value of the cost for POTWs that use each disposal practice.

b. *Selection of Survey Subset for Compliance Cost Analysis*—In theory, all POTWs that fail to meet the criteria (or fail to meet the criteria at the application rate/feed rate currently used) should be analyzed to determine compliance costs. In reality, however, the number of POTWs involved may be too large to handle in this manner. Depending on the number of POTWs that fail the criteria, either 100 percent or some fraction of POTWs will be selected for use in the compliance cost analysis. If less than 100 percent

sampling must be used (i.e., where the number of eligible POTWs is too large to analyze) the POTWs to be used will be selected in a statistically representative manner. The actual selection procedure has not been finalized, but the POTWs selected will be representative of the other survey POTWs in that flow group and disposal category (stratum).

c. *Compliance Cost Analysis Methodology*—The subset of POTWs selected (the compliance cost POTWs) will be analyzed to determine a number of factors important to the compliance cost estimate. These factors, which are discussed below, include, among others, application rate for land appliers and those practicing distribution and marketing (D&M), compost bulking agent ratio for those practicing D&M, depth to groundwater for those practicing monofilling, feed rate and stack height for those practicing incineration, and disposal methods POTWs might consider if the present disposal practice were unavailable or impractical following promulgation of part 503.

These data will be used to develop compliance strategies and incremental costs of compliance associated with implementing the compliance strategy as well as with meeting monitoring, recordkeeping, and reporting requirements. Total incremental costs for the compliance cost POTWs will be totalled by flow group and disposal method stratum. These costs will then be extrapolated, first to all POTWs in the analytical survey represented by the compliance cost POTWs and then, once weighted, to all secondary treatment POTWs. Incremental compliance costs for monitoring, recordkeeping, and reporting will also be calculated for all POTWs that pass the criteria.

If, after selecting the compliance cost POTWs, the number of POTWs to be analyzed is still too large, a modification of this methodology may be employed. In this case, the group of POTWs within a stratum that fail the relevant criteria (for example, all POTWs in the analytical survey within a particular flow group practicing land application that fail to meet the land application criteria at their current application rates) will be used to derive appropriate estimates of critical parameters (e.g., the mean application rate among POTWs in that stratum). These estimates of parameters will then be used to develop a "model facility" to represent all POTWs in each stratum. EPA prefers, however, to use the former approach. EPA invites public comment on these two approaches.

d. *Example of How Data Will Be Used*—EPA's preferred methodology for using each of the compliance cost POTWs can be explained best by example. Assume that a POTW has been selected to represent a portion of the surveyed POTWs that are land appliers with a flow of greater than 10 to 100 MGD (flow group 2). Assume also that the questionnaire survey indicates that the POTW applies sludge to agricultural land at 10 percent solids and at a rate of 15 dry metric tons (DMT)/hectare (ha). Assume further that the questionnaire indicates that the POTW could reduce this rate by 30 percent and that the POTW believes it could not shift to non-agricultural land application but would consider co-disposal as a viable option. Using this and other available information (including the sludge criteria and the POTW's sludge quality) the analysis will determine what the most likely compliance strategy might be (e.g., whether a 30 percent reduction in application rate would allow the POTW to continue its land application program or whether co-disposal might be chosen).

Costs for the most likely compliance strategy will then be developed. For example, if co-disposal were determined to be the most likely compliance strategy, costs for additional dewatering (from the 10 percent solids now reported), sludge transport, and tipping fees at the landfill will be calculated. Incremental monitoring, recordkeeping, and reporting costs will be added to the compliance strategy implementation costs to determine a total incremental cost for this POTW. When total incremental costs for this POTW are added to costs developed for all other compliance cost POTWs in this stratum, a national compliance cost total can be developed as described above under Compliance Cost Analysis Methodology.

EPA solicits comment on this approach to calculating compliance costs, as well as on the methodology for developing a "model facility" approach, which may be used if the number of POTWs that must be analyzed is large.

Revisions of 1989 RIA Parameters Based on NSSS Data

EPA made a number of assumptions in the 1989 RIA regarding sewage sludge and its use and disposal. Because of the availability of far more complete data from the NSSS, the Agency will not have to rely on many of these assumptions in the revised RIA. As noted in the previous section, where averages were used to estimate costs in the 1989 RIA, actual POTW data from a subset of facilities in the NSSS (the compliance cost POTWs) will probably be used to develop compliance costs, subject to the limitations outlined.

The following sections summarize some of the results from the questionnaire portion of the NSSS that will be important in developing the compliance cost estimates. These results are presented for the most part as averages, although, as discussed, EPA prefers not to use averages in the compliance cost estimates. Note that the results are not final; sampling weights have not been applied to the data and the number of facilities in the survey by use and disposal practices may change following further survey data verification (however, these changes should be minimal). Thus, most tables in this section do not present overall averages or percentages across totals, because these data could be misleading and their interpretation could result in incorrect conclusions being drawn. The applicability of these reported data to all POTWs has not yet been established, although they may be a reasonable approximation of what is expected once sampling weights are applied. Since the data have been organized by reported flow group rather than by survey design flow group, data for some flow groups could change somewhat when results are finalized (see part I of the Notice for a discussion of reported vs. survey design strata).

The critical assumptions from the 1989 RIA that will be replaced by more precise NSSS data were divided into seven topic areas:

1. General Sludge Characteristics;
2. Characteristics of Land Applied Sludge and POTWs Practicing Land Application;
3. Characteristics of Distributed and Marketed (D&M) Sludge and POTWs Practicing D&M;
4. Characteristics of Incinerated Sludge and POTWs Practicing Incineration;
5. Characteristics of Monofilled Sludge and POTWs Practicing Monofilling;
6. Characteristics of Surface-Disposed Sludge and POTWs Practicing Surface Disposal; and
7. Disposers of Primary Sludge.

Each of these topic areas, with their relevant data, are discussed below. EPA solicits comment on these data and the proposed approaches to incorporating the data into the revised RIA.

1. General Sludge Characteristics

Total volumes of sludge can be estimated based on the NSSS. The totals in Table III–1 have been weighted and thus reflect volumes extrapolated to all POTWs practicing secondary treatment in the United States. The means have not been weighted, so these numbers are only approximate. The total volume of secondary treatment sludge generated annually in the United States is estimated to be 5.6 million dry metric tons (DMT). The 1989 RIA estimated 7.7 million DMT per year. Some of this difference may be related to primary sludge volumes, which are included in the 1989 RIA estimate but are not included in the NSSS estimate. Additional differences may be attributable to assumptions made in preparing the 1989 RIA estimate, in which sludge volumes in dry weight were derived using reported wastewater flow, a conversion factor, and percent solids assumptions.

TABLE III–1—TOTAL[a] AND MEAN[b] VOLUMES OF SLUDGE GENERATED BY DISPOSAL METHOD AND FLOW GROUP

[Totals in thousands dry metric tons; means in dry metric tons]

Reported flow group[c]	Land application		D&M		Incineration		Monofill		Co-disposal	
	Mean	Total	Mean	Total	Mean	Total	Mean	Total	Mean	Total
1	46,182	461.8	49,474	49.5	48,394	348.1			117,105	117.1
2	10,436	646.2	5,643	156.9	4,899	311.6	55,586	71.7	6,821	501.6
3	993	1,094.1	1,615	66.8	1,221	95.0	5,759	16.8	781	410.1
4	58	131.6	316	45.1	44	4.1	3,745	20.4	205	95.6
Total	NA	2,336.7	NA	321.3	NA	758.8	NA	108.8	NA	1,124.3
Percent of Total		41.9		5.8		13.6		2.0		20.2

Reported Flow Group	Ocean		Co-Incineration		Surface disposal		Other		Total	
	Mean	Total	Mean	Total	Mean	Total	Mean	Total	Mean	Total
1	36,896	147.6		0.0	35,539	35.5	2,478	2.5	46,111	1,163.2
2	9,733	116.8	7,917	35.5	11,742	386.1	2,531	60.0	7,458	2,289.3
3	206	0.8	820	1.9	381	53.4	439	10.7	947	1,751.6
4	18	0.01		0.0	41	37.3	21	34.7	97	309.8
Total	NA	265.2	NA	37.4	NA	512.3	NA	107.9	NA	5,573.9
Percent of Total		4.8		0.1		9.2		1.9		100.0

[a] Total is extrapolated to all POTWs with secondary treatment. Totals have been weighted; means are unweighted.
[b] Mean is calculated only for sample not for the universe.
[c] Flow group 1 = >100 MGD; flow group 2 = >10–100 MGD; flow group 3 = >1–10 MGD; flow group 4 = 0–1 MGD.
NA = not available at this time. Once data are weighted, these numbers will be calculated.

A total of 42 percent of the sludge volume reported in the NSSS was determined to be land applied, and 20 percent co-disposed. The 1989 RIA differs from the NSSS on estimates for these two disposal practices (the 1989 RIA estimates 16 percent of sludge is land applied and 40 percent is co-disposed). Estimates for all other disposal methods are more similar between the two data sources. The new data from the NSSS, which are considered representative of actual sludge volumes going to the various use and disposal methods, will be used in the revised RIA to establish total sludge volumes among the various use and disposal practices. Costs, however, will continue to be estimated in the revised RIA on a POTW basis (i.e., total volumes will not directly determine compliance costs).

Another major assumption EPA used in the 1989 RIA was that sludge is 22 percent solids, with the exception of ocean-disposed sludge, which was calculated to be about three percent solids based on information from Region II EPA. The methodology for using percent solids may change significantly in the revised RIA since EPA prefers not to use an average. Rather the percent solids reported by each POTW used to determine compliance costs will, if possible, be used instead. To indicate where the percent solids of these facilities may range, Table III–2 presents average percent solids for each disposal method in the NSSS by reported flow group. Land applying POTWs reporting in the NSSS appear to be applying sludges that are less than 22 percent solids. Within all reported flow groups, percent solids averaged less than 22 percent, with averages ranging from a low of 4.3 percent to a high of 10.5 percent. For those practicing D&M, the average percent solids range from 2.8 percent to 12.4 percent among the reported flow groups. The other disposal practices may be associated with sludges having percent solids near 22 percent, except for ocean disposal in which average percent solids range from 2.7 to 4.5 percent in the NSSS, near the three percent used in the 1989 RIA.

TABLE III–2.—MEAN PERCENT SOLIDS OF SLUDGE BY DISPOSAL METHOD AND FLOW GROUP AS REPORTED BY NSSS RESPONDENTS

Reported flow group[a]	Land application	D&M	Incineration	Monofill	Co-Disposal	Ocean	Co-Incineration	Surface disposal	Other
1	10.5	8.8	28.9	44.0	33.9	4.3		38.0	1.0
2	5.2	12.4	24.8	20.1	25.1	2.7	56.0	12.2	14.8
3	4.3	3.7	15.4	20.5	21.9	4.5	20.0	25.4	15.7
4	4.5	2.8	5.0	10.0	24.6	3.0		33.5	11.8
Total	NA	NA	NA	NA	NA	NA	NA	NA	NA

[illegible] Flow group 1=>100 MGD; flow group 2=>10-100 MGD; flow group 3=>1-10 MGD; flow group 4=>0-1 MGD.
NA = Not available at this time. When data are weighted, these numbers will be calculated.

2. Characteristics of Land Applied Sludge and POTWs Practicing Land Application

EPA made several important assumptions about land applied sludges and land applying, POTWs in the 1989 RIA. The major assumptions were that:

(1) All POTWs land applying sludges did not compost their sludge;

(2) Non-agricultural land was readily available to those POTWs that would want to shift from agricultural to non-agricultural land application as a means of complying with the regulations;

(3) POTWs that could not continue to use some form of land application would shift to incineration or co-disposal;

(4) Each POTW practiced only one end use;

(5) Among agricultural land appliers, an application rate of 11 DMT/ha was typically used;

(6) The POTW owned the land on which sludge was applied in many cases;

(7) Written agreements or contracts between POTWs and land owners were common and not difficult to implement; and

(8) Land application rates could be lowered to some extent, but extremely low application rates would not be practically feasible.

EPA will not have to rely on these generalizations in the revised RIA. Rather, the characteristics of the compliance cost POTWs can be used directly. For example, if a representative facility indicates that non-agricultural land is available and that shifting from agricultural to non-agricultural land application is a compliance strategy the POTW might consider, then the POTW may be considered likely to shift from agricultural land application to non-agricultural land application, if necessary, to comply with the Part 503 regulations. Information from the NSSS is summarized below to indicate the types of data that will be used in the revised RIA.

As Table III-3 shows, most POTWs, with the exception of those in the largest flow group, do not appear to compost their sludges. Among the smaller flow groups the percentage composting their sludges ranges between 1.6 percent and 10.8 percent. EPA should not have to assume that POTWs practicing land application do not compost their sludge since the Agency plans to use the compliance cost POTWs to represent POTWs that land apply either composted or non-composted sludge.

TABLE III-3.—NUMBER OF POTWS COMPOSTING BEFORE LAND APPLYING

Reported flow group [a]	Total land application POTWs in survey	Using some type of composting: No.	Using some type of composting: Percent of total	Total responding
1	12	6	50.0	12
2	26	1	3.6	26
3	75	8	10.8	74
4	61	1	1.6	61
Total	176	16	NA	175

[a] Flow group 1=>100 MGD; flow group 2=>10-100 MGD; flow group 3=>1-10 MGD; flow group 4=0-1 MGD.
NA=Not available at this time. When data are weighed, this number will be calculated.

In the 1989 RIA, EPA assumed that non-agricultural land was readily available to most POTWs. As Table III-4 shows, however, the percentage of POTWs that believe non-agricultural land is available to them ranges from 55.6 percent among the largest POTWs to 22.9 percent among the smallest POTWs. Note that this does not mean that non-agricultural land is absolutely unavailable, but it does tend to indicate that many POTWs would have to spend time and money further investigating the availability of non-agricultural sites if their other disposal options are limited. It also indicates that transportation costs for sludge disposal may increase significantly as POTWs search farther off site for suitable land. The revised RIA will take into account that all POTWs that might want to shift to non-agricultural land application as a means of compliance with the regulations may not be able to shift or may choose not to shift to non-agricultural land application because of costs additional to those for disposal alone (e.g., high transportation costs).

TABLE III-4.—NONAGRICULTURAL LAND IS AVAILABLE AS AN ALTERNATIVE FOR AGRICULTURAL LAND APPLICATION

[Among Those Practicing Agricultural Land Application]

Reported flow group [a]	Non-agricultural land available: Total land application POTWs in survey	Non-agricultural land available: No. responding yes	Percent of total	Total responding
1	12	5	55.6	9
2	26	6	27.3	22
3	75	20	33.9	59
4	61	11	22.9	48
Total	176	42	NA	138

[a] Flow group 1=>100 MGD; flow group 2=>10-100 MGD; flow group 3=>1-10 MGD; flow group 4=0-1 MGD.
NA=Not available at this time. When data are weighed, this number will be calculated.

Table III-5 can be used to determine the likelihood that POTWs would shift to incineration or co-disposal if land application were no longer available to them. Many POTWs in all flow groups indicated that co-disposal would be considered; however, incineration does not appear to be a major choice as an alternative. More can be said about these choices once weights have been applied. Note that this does not mean that incineration would not be considered if it appeared to be the only alternative available (which might be the case if criteria for all other disposal methods are as stringent or more stringent than those for land application and if co-disposal were not available). Again, the revised RIA will investigate the most likely compliance strategy for each compliance cost POTW.

The 1989 RIA assumed that all POTWs practicing land application employed only one end use. Table III-6 and III-7 show that many POTWs use more than one land application method. In most flow groups, agricultural land application is practiced most frequently, often by a wide margin. "Other" methods of land application are used fairly frequently among the largest two groups of POTWs. The 1989 RIA indicated that the end use employed most often was land application (72 percent), followed by "other" (19 percent), dedicated land application (6 percent), and reclamation (3 percent). These estimates appear realistic based on what can be determined at this point from the NSSS. Note, however, that the revised RIA will take into account the distribution of end uses among POTWs, and the Agency will attempt to include multiple end uses in the compliance cost analysis.

TABLE III-4.—NONAGRICULTURAL LAND IS AVAILABLE AS AN ALTERNATIVE FOR AGRICULTURAL LAND APPLICATION—Continued

[Among Those Practicing Agricultural Land Application]

Reported flow group [a]	Non-agricultural land available: Total land application POTWs in survey	Non-agricultural land available: No. responding yes	Percent of total	Total responding
4	61	11	22.9	48
Total	176	42	NA	138

[a] Flow group 1=>100 MGD; flow group 2=>10-100 MGD; flow group 3=>1-10 MGD; flow group 4=0-1 MGD.
NA=Not available at this time. When data are weighed, this number will be calculated.

TABLE III-5.—WHICH DISPOSAL OPTIONS WOULD BE CONSIDERED IF LAND APPLICATION WERE NO LONGER A VIABLE ALTERNATIVE

[Multiple responses possible]

Reported flow group [a]	Co-disposal: No.	Co-disposal: Percent	Co-incineration: No.	Co-incineration: Percent	D&M: No.	D&M: Percent	Incineration (new incinerator): No.	Incineration (new incinerator): Percent	Incineration (existing incinerator): No.	Incineration (existing incinerator): Percent	Monofill: No.	Monofill: Percent	Surface disposal: No.	Surface disposal: Percent	Other: No.	Other: Percent	Total responding
1	6	37.5	0	0.0	4	25.0	0	0.0	2	12.5	1	6.3	3	18.8	0	0.0	16
2	18	56.3	1	3.1	4	12.5	0	0.0	0	0.0	1	31.3	6	18.8	2	6.3	32
3	32	37.6	1	1.2	19	22.4	5	5.9	2	2.4	3	35.3	14	16.4	9	10.6	85
4	26	52.0	1	0.2	6	12.0	0	0.0	0	0.0	3	6.0	6	12.0	8	16.0	50
Total	82	NA	3		33	NA	5	NA	4	NA	8	NA	29	NA	19	NA	183

[a] Flow group 1=>100 MGD; flow group 2=>10-100 MGD; flow group 3=>1-10 MGD; flow group 4=0-1 MGD.
NA=Not available at this time. When data are weighed, these numbers will be calculated.

TABLE III-6.—NO. AND TYPE OF END USES EMPLOYED BY SURVEY POTWS PRACTICING LAND APPLICATION AS ONE OF THEIR DISPOSAL METHODS BY SIZE AND END USE

[Multiple responses possible]

Reported flow group [a]	Total land application POTWs in survey	Agricultural land application	Dedicated land application	Reclamation	Other	Total responding
1	12	9	2	6	10	27
2	26	28	1	2	11	42
3	75	75	10	1	10	96
4	61	52	5	2	3	62
Total	176	164	18	11	34	227

[a] Flow group 1=>100 MGD; flow group 2=>10-100 MGD; flow group 3=>1-10 MGD; flow group 4=0-1 MGD.

TABLE III-7.—Average Number of End Use Disposal Methods Practiced by Land Applying POTWs by Flow Group

Reported flow group [a]	Mean
1	2.3
2	1.6
3	1.3
4	1.1
Total	NA

[a] Flow group 1=>100 MGD; flow group 2=>10-100 MGD; flow group 3=>1-10 MGD; flow group 4=0-1 MGD.
NA=Not available at this time. When data are weighted, this number will be calculated.

The 1989 RIA used average application rates for POTWs practicing agricultural land application. EPA will probably not rely on any average application rate, but will attempt to use the application rate indicated by each compliance cost POTW. Note, however, that the average of 11 DMT/ha used in the 1989 RIA is within the range of application rates for agricultural land application shown in Table III-8, in which mean land application rates range from 3 to 19 DMT/ha.

In the 1989 RIA, EPA assumed for costing purposes that the POTW owns the land used for most types of land application. In Table III-9, among the reported flow groups, many POTWs practicing agricultural land application appear to use privately owned land. Patterns in the other end use categories are not yet as clear, but non-POTW ownership does occur. Once weights are applied, the patterns can be interpreted more reliably. EPA should not have to determine a general case of ownership but will attempt to use the compliance cost POTWs to indicate the land ownership in each particular instance.

EPA assumed in the 1989 RIA that written agreements or contracts were commonplace and easy to implement. Table III-10 appears to support this assumption. Within each flow group, most facilities responding to the question appear to have some form of written agreement. At this time, however, it is not clear how many POTWs practicing land application responded to this question, thus a final determination of how often written agreements are used must await weighing and other data analysis.

TABLE III-8.—MEAN APPLICATION RATE BY END USE AND SIZE

[DMT/HA] [a]

Reported flow group [b]	Mean application rate			
	Agricultural	Dedicated	Reclamation	Other
1	16	10	134	136
2	19	13	41	37
3	12	17	-	8

TABLE III-8.—MEAN APPLICATION RATE BY END USE AND SIZE—Continued

[DMT/HA] [a]

Reported flow group [b]	Mean application rate			
	Agricultural	Dedicated	Reclamation	Other
4	3	3	20	11
Total	NA	NA	NA	NA

[a] Dry Metric Tons Per Hectare.
[b] Flow group 1 = > 100 MGD; flow group 2 = > 10–100 MGD; flow group 3 = > 1–10 MGD; flow group 4 = 0–1 MGD.
NA = Not available at this time. When data are weighted, these numbers will be calculated.

TABLE III-9.—OWNER OF LAND FOR LAND APPLICATION BY SIZE AND TYPE OF END USE

[Multiple Responses Possible]

Reported flow group [a]	Agricultural				Dedicated			
	Mun.	POTW	Private	Other [b]	Mun.	POTW	Private	Other [b]
1	0	1	8	1	1	2	0	0
2	6	4	23	2	1	0	0	0
3	7	7	66	3	7	3	1	0
4	3	3	47	1	2	0	2	0
Total % of total	16	15	144	7	11	5	3	0
For each end use	NA	NA	NA	NA	NA	NA	NA	NA

Reported flow group [a]	Reclamation				Other			
	Mun.	POTW	Private	Other [b]	Mun.	POTW	Private	Other [b]
1	1	1	5	0	5	3	2	2
2	0	0	2	0	4	0	5	3
3	0	0	0	1	5	1	3	2
4	1	0	1	0	0	0	3	0
Total % of total	2	1	8	1	14	4	13	7
For each end use	NA	NA	NA	NA	NA	NA	NA	NA

[a] Flow group 1 = > 100 MGD; flow group 2 = > 10–100 MGD; flow group 3 = > 1–10 MGD; flow group 4 = 0–1 MGD.
[b] Includes State.
NA = Not available at this time. When data are weighted, these numbers will be calculated.

TABLE III-10.—TYPES OF LAND APPLICATION AGREEMENTS BY FLOW GROUP

[Multiple Responses Possible]

Reported flow group [a]	Interagency	Written contract	Other written agreement	Other	None	Total responding	Total end uses [b]
1	6	12	12	13	1	44	27
2	7	15	3	7	2	44	42
3	9	31	5	11	6	62	96
4	6	11	8	10	7	42	62
Total % of total	28	79	28	41	16	192	227
	NA	NA	NA	NA	NA	NA	NA

[a] Flow group 1 = > 100 MGD; flow group 2 = > 10–100 MGD; flow group 3 = > 1–10 MGD; flow group 4 = 0–1 MGD.
[b] Each POTW may employ more than one end use. POTWs were required to fill out a separate portion of the questionnaire for each end use they employ.
NA = Not available at this time. When data are weighted, these numbers will be calculated.

In the 1989 RIA, EPA discussed whether land application rates could be lowered as a means of compliance and assumed that rates could be lowered to some extent, but that a cut from 11 DMT/ha to three DMT/ha (or more than a 70 percent reduction) would be unrealistic. Table III-11 appears to indicate that within all reported flow groups most POTWs felt that they could not lower application rates. Only among those POTWs practicing agricultural land application do rate reductions seem to be possible with any frequency. Table III-12 seems to support the 1989 RIA assumptions that rate reductions of 70 percent or more are probably not feasible in agricultural land application. Rate reduction assumptions will probably be unnecessary in the revised RIA. Any rate reductions possible as reported by the compliance cost POTWs will be incorporated, if possible, as part of the compliance strategy determination. Otherwise, EPA will probably assume that no reductions are practically or technically feasible.

TABLE III-11.—REDUCTION IN LAND APPLICATION RATES

Reported Flow Group [a]	Application rates can be lowered					Application rates can't be lowered						
	Agricultural	Dedicated	Reclamation	Other	Total	Agricultural	Dedicated	Reclamation	Other	Total	Total responses not missing or noted as NA [b]	Total end uses [b]
1	2	0	1	0	3	7	2	5	10	24	27	27
2	9	0	0	0	9	19	1	1	8	29	38	42
3	18	2	0	1	22	51	7	1	5	65	87	96
4	17	1	0	0	18	33	4	2	2	41	59	62
Total of Reapondents	47	3	1	1	52	110	14	9	26	159	211	227
% of Total Practicing Each End Use	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

[a] Flow group 1 = > MGD; flow group 2 = > MGD; flow group 3 = > 1–10MGB; flow group 4 = 0–1 MGD.
[b] Each POTW may employ more than one end use. POTWs were required to fill out a separate portion of the questionnaire for each end use they employ.
NA = Not available. When data are weighted, these numbers will be calculated.

TABLE III-12.—MEAN MAXIMUM PERCENTAGE REDUCTION OF SLUDGE APPLICATION RATES POSSIBLE BY SIZE AND END USE AMONG THOSE WHO CAN REDUCE APPLICATION RATES

[In percent]

Reported flow group [a]	Mean application rate			
	Agricultural	Dedicated	Reclamation	Other
1	20	.....	20	.....
2	30	.....	.....	.....
3	33	69	.....	20
4	30	25	.....	.....
Total	NA	NA	NA	NA

[a] Flow group 1 = > 100 MGD; flow group 2 = > 10–100 MGD; flow group 3 = > 1–10 MGD; flow group 4 = 0–1 MGD.
NA = Not available at this time. When data are weighted, these numbers will be calculated.

3. Characteristics of Distributed and Marketed (D&M) Sludge and POTWs Practicing D&M

EPA used a number of assumptions in the 1989 RIA about POTWs practicing D&M. These assumptions were investigated using data from the NSSS. Among these assumptions were: (1) All POTWs practicing D&M composted their sludge and incurred a current cost of D&M consistent with the expense of composting sludge; (2) the bulking ratio of compost bulk material to sludge was 2.5 to 1; (3) POTWs did not necessarily provide labels or handouts for their D&M products at this time; (4) the sludge was given away, not sold; and (5) POTWs that must shift disposal practices would shift to co-disposal and incineration. EPA should not have to rely on these generalizations in the revised RIA. The way in which NSSS data can be used in the revised RIA is discussed below.

Table III-13 investigates the frequency with which composting is employed by POTWs practicing D&M. Within each reported flow group, most POTWs appear to compost their sludge (POTWs that do not compost their sludge include those which use heat treatment). As would be expected, Table III-14 shows that the costs of composted sludge on a dry ton basis appear to exceed the costs of non-composted sludge (this observation can be tested statistically once weights have been applied). Thus, the revised RIA will take this difference into account when calculating the incremental costs of shifting disposal practices among the portion of facilities that do not compost their sludge. The revised RIA will also be able to account for POTWs that currently do not compost or heat treat their sludge to calculate potential costs associated with meeting Class A pathogen reduction requirements.

TABLE III-13.—PERCENTAGE OF POTWS PRACTICING D&M THAT COMPOST SLUDGE BY FLOW GROUP

Reported flow group [a]	No. of POTWs practicing D&M in survey	Compost sludge		Total responding
		No.	% [b]	
1	6	5	83.3	6
2	14	8	57.1	14
3	19	12	63.2	19
4	7	5	71.4	7
Total	.....	30	NA	46

[a] Flow group 1 = > 100 MGD; flow group 2 = > 10–100 MGD; flow group 3 = > 1–10 MGD; flow group 4 = 0–1 MGD.
[b] Of those responding to this question.
NA = Not available at this time. When data are weighted, this number will be calculated.

TABLE III-14.—O&M COST PER DRY METRIC TON FOR D&M SLUDGE

Reported flow group [a]	No. of POTWs practicing D&M in survey	No. responding—do composting	Mean cost/DMT composted	No. responding—do not compost [b]	Mean cost/DMT not composted
1	6	5	$420	1	$262
2	14	8	123	5	176
3	19	10	916	6	90

TABLE III-14.—O&M COST PER DRY METRIC TON FOR D&M SLUDGE—Continued

Reported flow group [a]	No. of POTWs practicing D&M in survey	No. responding—do composting	Mean cost/DMT composted	No. responding—do not compost [b]	Mean cost/DMT not composted
4	7	4	1,734	2	32
Total		27	NA	14	NA

[a] Flow group 1=>100 MGD; flow group 2=>10–100 MGD; flow group 3=>1–10 MGD; flow group 4=0–1 MGD.
[b] Facility may heat treat.
NA=Not available at this time. When data are weighted, this number will be calculated.

EPA's assumption of a bulking agent ratio was critical to the calculation of the dilution factor, which in turn determined the concentration of pollutants in the final product. As Table III-15 shows, the assumption used in the 1989 RIA was most likely reasonable. Within the reported flow groups, bulking agent ratios range from a low of 2.3:1 to a high of 4:1 at the largest POTWs. EPA's assumed ratio of 2.5:1 is within this range. For the revised RIA, EPA will attempt to use the reported bulking ratio for each compliance cost POTW that composts its sludge to estimate dilution factors. Additionally, other factors such as the loss of moisture from the composting process will be taken into account to estimate the dilution factors.

In the 1989 RIA, EPA assumed that all POTWs practicing D&M would be faced with incremental costs associated with labeling and handout development. As Table III-16 indicates, however, it appears that a large number of POTWs may already be providing written instructions. The percentage ranges from 100 percent of those responding to the question in the largest flow group to 57 percent responding to the question among the smallest flow group.

TABLE III-15.—RATIO OF BULKING AGENT TO SLUDGE BY VOLUME

Reported flow group [a]	No. of POTWs in survey practicing D&M	No. responding	Mean ratio
1	6	5	4:1
2	14	8	2.3:1
3	19	12	2.4:1
4	7	5	2.8:1
Total	46	30	NA

[a] Flow group 1=>100 MGD; flow group 2=>10–100 MGD; flow group 3=>1–10 MGD; flow group 4=0–1 MGD.
NA=Not available at this time. When these data are weighted, this number will be calculated.

TABLE III-16.—WRITTEN USE INSTRUCTIONS PROVIDED BY POTWS

Reported flow group [a]	POTWs responding: No. of POTWs practicing D&M in survey	No. with written instructions	% of total	Total responding
1	6	6	100.0	6
2	14	11	84.6	13
3	19	11	61.1	18
4	7	4	57.1	7
Total	46	32	NA	44

[a] Flow group 1 = > 100 MGD; flow group 2 = > 10 – 100 MGD; flow group 3 = > 1 – 10 MGD; flow group 4 = 0 – 1 MGD.
NA=Not available at this time. When data are weighted, this number will be calculated.

The issue of labeling and handout costs will be reassessed in the revised RIA. EPA plans to consider whether a compliance cost POTW currently uses handouts or labels in determining incremental costs.

Table III-17 investigates whether sludge is predominantly sold or given away. The percentage of POTWs that sell sludge range from 60 percent in the largest flow group to 38 percent in the smallest flow group. The revised RIA will be able to take into account that at least a portion of a POTW's sludge may be sold. Thus the Agency will attempt to account for potential lost revenue among POTWs that sell a portion of their sludge if they must shift to alternative practices as a result of the Part 503 criteria. Table III-18 indicates the average prices obtained by POTWs in the survey for their sludge. The average ranges from $4 to $6 per cubic yard. Price, as reported by each compliance cost POTW, will also be taken into account, if possible, in the revised RIA.

TABLE III-17.—FREQUENCY OF SLUDGE GIVEN AWAY OR SOLD

[Multiple responses possible]

Reported flow group [a]	No. of POTWs practicing D&M in survey	No. of POTWs that give away: No.	%	No. of POTWs that sell: No.	%	Total responding
1	6	4	40.0	6	60.0	10
2	14	4	28.6	10	71.4	14
3	19	11	57.9	8	42.1	19
4	7	5	62.5	3	37.5	8

TABLE III-17.—FREQUENCY OF SLUDGE GIVEN AWAY OR SOLD—Continued

[Multiple responses possible]

Reported flow group [a]	No. of POTWs practicing D&M in survey	No. of POTWs that give away: No.	%	No. of POTWs that sell: No.	%	Total responding
Total		24	NA	27	NA	51

[a] Flow group 1=>100 MGD; flow group 2=>10–100 MGD; flow group 3=>1–10 MGD; flow group 4=0–1 MGD.
NA=Not available at this time. When data are weighted, these numbers will be calculated.

TABLE III-18.—MEAN PRICE PER U.S. TON OR CUBIC YARD OF SOLID SLUDGE

Reported flow group [a]	No. of POTWs practicing D&M in survey	Price per ton: No. of POTWs responding	Price per ton: Price ($)	Price per cubic yard: No. responding	Price per cubic yard: Price ($)
1	6	3	63	4	5
2	14	4	34	3	6
3	19	0		6	4
4	7	0		3	6
Total	46	7	NA	16	NA

[a] Flow group 1=>100 MGD; flow group 2=>10–100 MGD; flow group 3=>1–10 MGD; flow group 4=>0–1 MGD.
NA=Not available at this time. When data are weighted, these numbers will be calculated.

TABLE III-19.—PRACTICES POTWS MAY SHIFT TO IF D&M CANNOT BE PRACTICED

[Percentage of POTWs responding to the question that would Consider Shifting]

Reported flow group [a]	Co-disposal	Co-incineration	Land application	Incineration, new onsite	Incineration, onsite	Incineration, offsite	Monofill	Surface disposal	Other
1	50.0	0.0	50.0	16.7	0.0	3.3	0.0	0.0	0.0
2	45.5	0.0	44.4	0.0	11.1	11.1	11.1	11.1	0.0
3	46.7	0.0	60.0	0.0	0.0	26.6	0.0	6.7	26.6
4	33.3	0.0	57.1	0.0	0.0	33.3	0.0	0.0	20.0
Total	NA	NA	NA	NA	NA	NA	NA	NA	NA

[a] Flow group 1=>100 MFD; flow group 2=>10–100 MGD; flow group 3=>1–10 MGD; flow group 4=>0–1 MGD.
NA=Not available at this time. When data are weighted, these numbers will be calculated.

Table III-19 investigates EPA's assumption about the use or disposal methods D&M POTWs may employ if D&M becomes impractical under the part 503 regulations (i.e., if the POTW determines that the application rate required to meet the criteria is not practical from an economic or agricultural standpoint). The table indicates that co-disposal, land application, and off-site incineration may be popular choices among most of the flow groups. EPA assumed in the 1989 RIA that some POTWs whose composted sludge was employed in non-agricultural end uses would simply reclassify themselves as land appliers. The 1989 RIA also assumed a shift to incineration. Co-disposal was not considered viable in the 1989 RIA because on average it is less expensive than composting and it was assumed that if co-disposal had been available, the POTW would not currently be practicing D&M. As the survey shows, however, some POTWs do not compost their D&M sludge and this sludge may have a lower cost/DMT for disposal. EPA has not yet determined whether the POTWs that indicated an interest in co-disposal are those which currently do not compost their sludge; this will be determined later. EPA will consider the possibility that some POTWs practicing D&M may shift to co-disposal as a compliance strategy. In fact, the Agency will try to consider all potential compliance strategies determined for the compliance cost POTWs in the revised RIA.

4. Characteristics of Incinerated Sludge and POTWs Practicing Incineration

EPA made a number of assumptions in the 1989 RIA about POTWs that incinerate sewage sludge and their incinerators. Some of these assumptions were:

(1) All incinerators were located on site;

(2) POTWs would add air pollution control devices to reduce pollutants rather than shifting to other methods of disposal as a means of compliance;

(3) All incinerators were either multiple hearth, fluid bed, or electric furnaces;

(4) All incinerators were assumed to have sludge feed rate monitors; 70 percent were assumed to have furnace temperature monitors and recorders; 30 percent were assumed to have feed rate monitors, pressure drop monitors and recorders, stack temperature monitors and recorders, and oxygen monitors; and no units were assumed to have hydrocarbon monitors or recorders; and

(5) No incinerators were assumed to have fabric filters (baghouses), wet ESPs, dry scrubbers with fabric filters or afterburners in place.

EPA will not have to make these types of assumptions in the revised RIA. Rather, the Agency plans to use the reported characteristics of those compliance cost POTWs practicing incineration to determine the compliance costs of meeting the Part 503 incineration requirements. The following sections summarize some of the results of the survey as they apply to the survey respondents.

Table III-20 indicates that most respondents noted they use an onsite incinerator; however, a few offsite incinerators are also employed. Costs of

sludge transport will be considered in the revised RIA for POTWs incinerating sludge offsite.

EPA's assumption in the 1989 RIA that pollution control devices would be used to bring incinerators into compliance is investigated in Tables III–21 and III–22. Of those POTWs responding, many indicated they would add pollution control devices to reduce sludge pollutants. Adding more pretreatment and improved instrumentation were also indicated frequently in most reported flow groups (see Table III–21). In addition to adding pollution control devices or other means of reducing pollutants, many POTWs that responded to the survey question about disposal practices noted that they would consider shifting to co-disposal or co-incineration (see Table III–22). In its compliance cost analysis for the revised RIA, EPA will consider the possibility that a POTW may shift to co-disposal or co-incineration rather than install costly air pollution control equipment.

TABLE III–20.—NUMBER OF INCINERATOR UNITS OPERATED BY POTWs

[Among POTWs Responding]

Reported flow group [a]	Total No. of incinerators [b]	Onsite	Offsite
1	35	35	0
2	48	48	0
3	36	23	13
4	1	0	1
Total	120	106	14

[a] Flow group 1 = >100 MGD; flow group 2 = >10–100 MGD; flow group 3 = >1–10 MGD; flow group 4 = 0–1 MGD.
[b] There are discrepancies between reports of numbers of incinerators and number of responses to the site-specific questions on the questionnaire. These discrepancies will be resolved before weights are applied.

TABLE III–21.—WHAT INCINERATING POTWs IN SURVEY WOULD DO TO FURTHER REDUCE POLLUTANTS IN SLUDGE

[Multiple Responses Possible]

Reported flow group [a]	Add pretreatment	Add pollution control devices	Improved instrumentation	Other changes to incinerator	Reduction of feed rate	Other	Total POTWs responding
1	5	5	4	0	1	0	7
2	22	17	18	7	4	2	32
3	19	16	12	2	1	2	28
4	1	0	0	0	0	0	1
Total	48	38	34	9	6	4	68

[a] Flow group 1 = >100 MGD; flow group 2 = >10–100 MGD; flow group 3 = >1–10 MGD; flow group 4 = 0–1 MGD.

TABLE III–22.—PRACTICES POTWs MAY SHIFT TO IF INCINERATION CANNOT BE PRACTICED

[Percentage of POTWs Responding to Question that would Consider Shifting—Multiple Responses Possible]

Reported flow group [a]	Co-disposal	Land Co-incineration	Application	D&M	Monofill	Surface disposal	Other
1	60.0	60.0	20.0	0.0	33.3	0.0	25.0
2	57.1	20.8	57.7	27.3	4.4	8.7	4.4
3	50.0	13.0	40.0	26.1	4.6	0.0	24.0
4	0.0	100.0	0.0	0.0	0.0	0.0	100.0
Total	NA	NA	NA	NA	NA	NA	NA

[a] Flow group 1 = >100 MGD; flow group 2 = >10–100 MGD; flow group 3 = >1–10 MGD; flow group 4 = 0–1 MGD.
NA = Not available at the time. When data are weighted, these numbers will be calculated.

EPA considered the cost of retrofitting only three types of incinerators in the 1989 RIA: Multiple hearth, fluid bed, and electric furnaces, as Table III–23 shows, most POTWs responding indicated that they use these three types of incinerator units. Other types of incinerators are used but not as frequently. EPA will take the type of incinerator used by each compliance cost POTW into account when estimating costs of retrofitting pollution control equipment in the revised RIA.

As noted above, EPA made a number of assumptions regarding monitoring and recording equipment in the 1989 RIA. Based on Table III–24, it appears that some of these assumptions could have been conservative. Many units in the survey appear to have oxygen monitors and recorders, combustion temperature monitoring and recorders, and stack temperature monitors and recorders. Even a few appear to have hydrocarbon monitors. In the revised RIA, EPA will use the types of monitors and recorders in place at each of the compliance cost POTWs to calculate the incremental costs of requiring additional monitoring and recording equipment.

TABLE III–23.—TYPE OF INCINERATOR USED BY FLOW GROUP

Reported flow group [a]	Multiple hearth	Electric furnace	Fluid bed	Total other type	Total responding	No. of units
1	33	0	0	1	34	35
2	42	1	2	2	47	48
3	22	0	11	0	33	36
4						1

TABLE III–23.—TYPE OF INCINERATOR USED BY FLOW GROUP—Continued

Reported flow group [a]	Multiple hearth	Electric furnace	Fluid bed	Total other type	Total responding	No. of units
Total	97	1	13	3	114	120

[a] Flow group 1 = >100 MGD; flow group 2 = >10–100 MGD; flow group 3 = >1–10 MGD; flow group 4 = 0–1 MGD.

TABLE III–24.—TYPES OF MONITORS AND RECORDERS USED

[Among POTWs Responding "Yes"]

Reported flow group [a]	Total No. of units	CO_2		O_2		Combustion temp.		Draft		Pressure drop		Sludge feed rate		Stack temp.		Hydrocarbons		Other	
		Mon.	Rec.	Mon.	Rec.	Mon.	Rec.	Mon.	Rec.	Mon.	Rec.	Mon.	Rec.	Mon.	Rec.	Mon.	Rec.	Mon.	Rec.
1	35	0	0	23	19	35	35	35	11	35	14	34	34	35	30	0	0	20	16
2	48	3	2	33	32	45	46	44	15	45	13	43	31	41	37	3	3	9	6
3	36	2	2	18	19	31	31	23	8	27	8	23	15	32	22	0	0	6	3
4	1																		
Total	120	5	4	74	70	111	112	102	34	107	35	100	80	108	89	3	3	35	25

[a] Flow group 1 = >100 MGD; flow group 2 = >10–100 MGD; flow group 3 = >1–10 MGD; flow group 4 = 0–1 MGD.

EPA assumed in the 1989 RIA that no POTWs had wet ESPs, fabric filters (baghouses) or dry scrubbers with fabric filters. Table III–25 shows that these types of equipment appear uncommon among the POTWs responding to this question nor do many responding POTWs appear to be planning to add this type of equipment in the near future. Impingers, venturis, and venturi/impinger combinations appear to be common in most reported flow groups. EPA will note the existing pollution control equipment at each compliance cost POTW practicing incineration when performing the compliance cost analysis in the revised RIA.

Although EPA assumed no incinerators have afterburners in place, it appears that some incinerators do have afterburners (see Table III–26). EPA will take this fact into account when analyzing the compliance cost POTWs for the revised RIA.

TABLE III–25.—TYPES OF POLLUTION EQUIPMENT IN PLACE

Reported flow group [a]	Wet ESP [b]	Dry ESP [b]	Bag house	Dry cyclone	Impinger	Spray chamber	Venturi	Venturi/impinger	Venturi/packed tower	Wet cyclone	Cyclone/impinger	Other	None	Total No. of units
1	0	0	0	5	9	0	2	16	6	1	0	0	0	35
2	0	0	0	5	19	19	10	16	0	1	3	7	1	48
3	1	0	1	8	12	14	17	10	3	5	1	5	0	36
4														1
Total	1	0	1	19	40	33	29	42	9	6	4	12	1	120

[a] Flow group 1 = >100 MGD; flow group 2 = >10–100 MGD; flow group 3 = >1–10 MGD; flow group 4 = 0–1 MGD.
[b] ESP = electrostatic precipitator.

TABLE III–26.—NUMBER OF INCINERATORS WITH AFTERBURNERS INSTALLED ON SYSTEM

[Among POTWs Responding to the Question]

Reported flow group [a]	Total No. of units	No. of incinerators without afterburners	No. with afterburner and heat exchanger	No. with afterburner, no heat exchanger
1	35	21	12	0
2	48	37	4	6
3	36	26	1	8
4	1			
Total	120	84	17	12

[a] Flow group 1 = > 100 MGD; flow group 2 = > 10 – 100 MGD; flow group 3 = > 1 – 100 MGD; flow group 4 = 0 – 1 MGD.

5. Characteristics of Monofilled Sludge and POTWs Practicing Monofilling

Because EPA estimated in the 1989 RIA that all monofills would fail the part 503 criteria, the Agency made very few assumptions in developing compliance costs for this practice. The monofill criteria, however, were developed based on an assumption that the monofill is located either at zero or one meter above ground water depending on the class of ground water over which the

monofill is located. The regulation allows for site-specific modeling to determine alternative criteria and allows for the actual depth to ground water to be used in place of this assumption. EPA did not determine which monofills might pass site-specific criteria in the 1989 RIA, but the Agency will attempt to use data from the NSSS to create site-specific criteria on which to base the pass/fail analysis in the revised RIA. Table III-27 indicates that some POTWs may benefit from site-specific criteria, since many report greater than one meter depths to ground water. The revised RIA will use the depth-to-ground water data to construct site-specific criteria for any of the compliance costs POTWs practicing monofilling that fail the non-site-specific criteria presented in the regulation.

The 1989 RIA assumed that POTWs practicing monofilling would shift to co-disposal and incineration. Table III-28 indicates that among the three flow groups reporting, this assumption probably was reasonable. Again, compliance strategies will be investigated on a POTW-by-POTW basis in the compliance cost analysis for the revised RIA.

TABLE III-27.—DEPTH TO GROUNDWATER AT MONOFILLS BY FLOW GROUP

[No. of POTWs]

Reported flow group [a]	No. of POTWs practicing monofilling in survey	No groundwater	Meters						Total responding
			0	0–0.5	0.6–2	2.1–6	6.1–12	>12	
1	1	0	0	0	0	0	0	1	1
2	9	0	0	1	3	2	0	4	9
3	12	1	0	1	6	1	1	1	11
4	9	1	1	1	1	3	0	1	8
Total	31	2	1	3	10	5	1	7	29
Percent of Total		NA	NA	NA	NA	NA	NA	NA	NA

[a] Flow group 1 = >100 MGD; flow group 2 = >0–100 MGD; flow group 3 = >1–10 MGD; flow group 4 = 0–1 MGD.
NA = Not available at this time. When data are weighted, these numbers will be calculated.

TABLE III-28.—PERCENTAGE OF POTWS THAT WOULD CONSIDER SHIFTING TO ALTERNATIVE PRACTICES IF MONOFILLING IS UNAVAILABLE

[Among POTWs that are Monofilling According to Questionnaire Response]

Reported flow group [a]	Co-disposal	Co-incineration	D&M	Incineration—new, onsite	Incineration, onsite	Incineration, offsite	Land app.	Surface disp.	Other
1	33.3	0.0	16.7	16.7	0.0	37.5	33.3	0.0	0.0
2	20.0	0.0	33.3	33.3	11.1	22.2	11.1	0.0	0.0
3	25.0	14.3	0.0	0.0	0.0	37.5	28.6	0.0	57.1
Total	NA	NA	NA	NA	NA	NA	NA	NA	NA

[a] Flow group 1 = >100 MGD; flow group 2 = >10–100 MGD; flow group 3 = >1–10 MGD; flow group 4 = 0–1 MGD.
NA = Not available at this time. When data are weighted, these numbers will be calculated.

6. Characteristics of Surface-Disposed Sludge and POTWs Practicing Surface Disposal

Two types of POTWs are covered by the part 503 regulations governing disposal of sewage sludge at surface disposal sites: (1) Those which use a sludge pile, impoundment or other type of surface site as the ultimate disposal site for their sludge; and (2) those which store sludge for a period of one year or more, including indefinitely. Some sludge storers may ultimately dispose of their sludge using some other method of disposal (including another form of surface disposal). Each of these two types of POTWs is discussed below.

a. *Surface Disposal*—While developing the 1989 RIA, EPA determined that information on surface disposal was minimal in the Needs Survey. EPA, therefore, assumed that POTWs that indicated "other" sludge disposal in the EPA Needs Survey might be using surface disposal. EPA further assumed that only POTWs using facilities such as stabilization ponds, containment ponds, and drying ponds are using these facilities for disposal or long-term storage. All other POTWs that were listed in the Needs Survey as using "other" types of disposal were identified as using aeration lagoons, drying beds or other types of treatment processes and were eliminated from the analysis, since the sludge use and disposal regulations are not intended to cover sludge that is generated during a treatment process. Only after the sludge has been removed for disposal from a treament facility or system do the regulations apply. EPA believed, however, that some of the POTWs using non-treatment methods of storage/disposal (e.g., stabilization ponds, containment ponds and drying ponds) might actually be treating the sludge, so EPA assumed that only 50 percent of the POTWs identified as appearing to use non-treatment methods were practicing surface disposal of sewage sludge. The total number of surface disposers was thus estimated at 2,395 surface disposers nationwide.

EPA has now estimated the number of POTWs practicing surface disposal based on the NSSS. Table I-4 in part I of today's notice presents these esitmates. A total of 3,147 secondary treatment POTWs (at a 95 percent confidence interval of 2,345 to 3,946 POTWs) are believed to be using surface disposal or sludge lagoons. EPA's estimate in the 1989 RIA of the number of surface disposers thus appears to have been

reasonable based on the estimate derived using the NSSS data. Some of the sludge lagoons reported in the NSSS, however, may actually be treatment lagoons, so the estimate of surface disposers based on the NSSS may somewhat overstate the number of facilities that are covered by the regulation. EPA will be attempting to determine more clearly which lagoons reported in the NSSS are disposal lagoons and which are treatment lagoons.

Unlike the individual sections for each of the other use and disposal practices, the NSSS questionnaire did not include a separate section asking for detailed information regarding surface disposal. The Agency needs additional data to answer a number of questions:

—Description of the surface disposal site: pile, lagoon, pond?
—On average, how many surface disposal sites would one POTW have?
—What proportion of surface disposal sites are waste piles? Lagoons? Ponds? Other types of disposal?
—What types of discharge controls are typically found at surface disposal sites, such as leachate collection or treatment, synthetic or natural liners, methane monitoring and controls, monitoring wells, cement pad (for sludge piles), runon/runoff controls?
—What would surface disposers use to control releases of pollutants from surface disposal sites (if not present already): Liners and leachate collection systems? Additional pretreatment requirements for industrial dischargers that are the source of problem pollutants? Installation of runon/runoff controls? Other?
—If surface disposal were no longer a viable option, what alternative disposal options might many surface disposers consider?
—What is the typical life of a surface disposal site?
—What percentage of surface impoundment sites are on-site at the facility vs. off-site? If off-site, what are typical transportation distances?
—What is the typical depth to groundwater at a surface disposal site? Is it greater than one meter in most cases?
—What is the percent solids of sludge when it is placed in the surface disposal site? If the sludge is removed from the site, what is the percent solids at the time of its removal?

The Agency will attempt to gather additional data and solicits comment and information regarding management practices and potential compliance strategies related to surface disposal.

Sludge Storage—The EPA Needs Survey provided little usable information about sludge storage, so the 1989 RIA did not address this issue. The NSSS appears to indicate that most storage of sewage sludge is short-term, i.e., the sludge is stored for less than a year and is thus not covered by the proposed Part 503 regulations pertaining to surface disposal. As Table III-29 shows, within each reported flow group, of those facilities that do store sludge, the percentage storing their sludge for less than a year ranges from 51.6 percent in the smallest flow group to 77.2 percent in the 1–10 MGD flow group. Long-term storage is defined as storage occurring for a year or longer, and these POTWs would be covered by the regulation as surface disposal facilities. Many of the facilities that appear to store sludge for one year or more ultimately dispose of their sludge using another method of disposal (relatively few POTWs in the survey indicated that they store sludge indefinitely, see Table III-29).

Additionally, not all types of storage reported in the NSSS are considered to be covered under the part 503 Regulations. Of those storage types reported in Table III-30, only sludge piles, sludge storage impoundments and a very few "other" types are considered to be covered. Most of the POTWs reporting that they use "other" types of storage indicated that they used silos, in-ground tanks, and aeration lagoons or other treatment lagoons, all of which are not covered by the regulation. Thus in each reported flow group, many survey POTWs would appear to be unaffected by the regulations because of the type of storage that they practice.

TABLE III-29.—NUMBER OF SURVEY POTWS BY DURATION OF STORAGE

Reported flow group*	Less than 1 year		1–2 years		2–5 years		5–10 years		>10 years		Indef.		Total
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%h	
1	9	64.3	1	7.1	3	21.4	1	7.1	0	0.0	0	0.0	14
2	41	70.7	5	8.6	5	8.6	0	0.0	2	3.4	5	8.6	58
3	78	77.2	8	7.9	6	5.9	2	2.0	1	1.0	6	5.9	101
4	48	51.6	4	4.3	6	6.5	2	2.2	8	8.6	25	26.9	93
Total	176	NA	18	NA	20	NA	5	NA	11	NA	36	NA	266

* Flow group 1 = >100 MGD; flow group 2 = >10–100 MGD; flow group 3 = >1–10 MGD; flow group 4 = 0–1 MGD.
NA = Not available at this time. When data are weighted, these numbers will be calculated.

TABLE III-30.—NUMBER OF SURVEY POTWS STORING SLUDGE

[Multiple responses possible]

Reported flow group*	Sludge pile	Sludge storage impoundment	Above-ground tank/container	Other	Total responding	Total No. of storage practices
1	3	5	7	2	14	17
2	11	14	34	4	58	63
3	36	17	44	8	96	105
4	24	17	31	16	87	90
Total	74	53	116	32	255	275
Percent of Total Practices	NA	NA	NA	NA		

* Flow group 1 = >100 MGD; flow group 2 = >10–100 MGD; flow group 3 = >1–10 MGD; flow group 4 = 0–1 MGD.
NA = Not available at this time. When data are weighted, these numbers will be calculated.

The percentage of sludge storers that will not be affected by the regulations because they either store sludge for less than a year or store for more than a year as a part of a treatment process or in some type of tank or silo cannot accurately be determined until survey weights are applied to these results, but EPA believes that many POTWs that store sludge probably will be unaffected by the part 503 regulations covering surface disposal of sludge. The revised RIA, however, will take into account whether a compliance cost POTW stores sludge on-site for more than one year in a sludge pile or impoundment in order to calculate additional costs of either reducing storage times or using, for example, above-ground tanks for sludge storage in the event the POTW's sludge does not meet the surface disposal criteria.

Additional data on long-term sludge storers, such as management practices and potential compliance strategies, will be developed later after additional information is gathered and evaluated. The Agency solicits comments regarding storage practices and potential compliance strategies for facilities storing sludge for longer than one year.

7. Disposers of Primary Sludge

Although the Agency contends that primary treatment facilities will be obsolete in the near future, there are likely to be impacts associated with these facilities as a result of the part 503 regulations.

The NSSS was not designed to capture information on primary treatment facilities or on secondary facilities that generate primary sludge that is disposed of separately from their secondary sludge. The NSSS does, however, have some very limited information on primary sludge because a few responding facilities that were believed to be secondary treatment facilities were found to be primary facilities. The Agency has also obtained information from other sources as well but is hoping to supplement this data with other available information to better formalize conclusions regarding typical disposal practices, sludge quality, plans for changes to sludge disposal practices as POTWs upgrade to secondary treatment, viable alternatives to current disposal practices, etc.

Two types of primary sludge producing POTWs are of interest. EPA believes that most secondary POTWs combine their primary and secondary sludges at some point in the treatment process, but that some secondary treatment facilities are known to dispose of their primary and secondary sludges separately. In the case of POTWs that use aeration lagoons to provide secondary treatment, secondary sludge is dredged and disposed of very infrequently, but primary sludge may be disposed of on a regular basis. EPA would like additional information that will further support the assumption that this practice is typical at POTWs with treatment lagoons and whether there are other types of treatment facilities also practicing separate primary and secondary sludge disposal. Further, the Agency is soliciting additional information regarding the methods typically used to dispose of primary sludges and any viable alternatives that could be used if the current methods of disposal were no longer available after promulgation of the part 503 regulations. The Agency is soliciting information on primary sludge quality; particularly in comparison to the quality of secondary sludge at the same facility. The Agency believes that in general, primary sludge contains lower pollutant concentrations than secondary sludge.

The second type of facility on which EPA would like to obtain additional information are facilities that are still operating as primary treatment facilities. EPA solicits available information on current sludge disposal practices at primary treatment POTWs, whether primary treatment POTWs have plans for changing to other disposal methods when upgrading to secondary treatment and which disposal methods are under consideration, how many primary treatment POTWs plan to upgrade to secondary treatment within the next year or two, general information on sludge quality, and viable alternative disposal options that could be used if the current methods of disposal were no longer available.

Other Methodologies That Will Be Incorporated Into the Revised RIA

New information will be used to develop additional data to augment the pretreatment analysis and to modify the approach for analyzing the impacts of the regulation on small entities (the regulatory flexibility analysis). Furthermore, EPA plans to provide estimates of impacts on the septage hauling industry and on households and other entities using on-site septic systems. The methodologies developed for these three analyses are discussed below. Comments on these methodologies are solicited.

1. Pretreatment Methodology

As indicated in the proposed regulations, EPA believes that industrial pretreatment will be a means of compliance for many municipalities, but has lacked sufficient information to make a quantitative assessment of the number of POTWs that can and will use pretreatment to comply with the part 503 regulations.

For the initial regulatory impact analysis, EPA analyzed eight POTWs with pretreatment programs to determine the effect of stricter pretreatment measures on a POTW's ability to comply with the sewage sludge use and disposal criteria. The eight case studies considered the effect of categorical pretreatment standards, and when applicable, more stringent technologies. At each POTW, the annual loading rates of several pollutants were estimated for each industrial contributor. Then, the effect of additional pretreatment control was determined by estimating the reduction in pollutant loadings attributable to these controls. EPA obtained information on pretreatment technologies and their pollutant-removal efficiencies from the technical support documents for the effluent guidelines for various industries.

The case-study analysis and its conclusions were limited by several factors: (1) The site-specific nature of the analysis made it difficult to extrapolate any results to all POTWs; (2) the results were dependent on the type and size of dischargers; and (3) improvements in sludge quality could only be estimated from those industries covered by specific pretreatment regulations (categorical industries). Further, the pollutant removals calculated were limited to those contaminants for which categorical pretreatment standards have been established (primarily metals).

To expand on this limited analysis, the Agency collected industrial waste surveys from a sample of POTWs drawn from the population of POTWs in the analytical portion of the NSSS. Using these industrial waste surveys, POTW sludge quality data from the NSSS, and additional data on treatment efficiencies that may be available, the Agency plans to expand the analysis to all regulated contaminants discharged by both categorical and noncategorical industries for which adequate information can be developed. In addition, EPA plans to assess the potential costs associated with using industrial pretreatment where pretreatment is shown to be a feasible means of compliance. The Agency intends to conduct the analysis using the three-staged methodology described below. EPA invites comment on this analysis.

a. *Data for the Pretreatment Analysis*—(1) *Industrial Waste Surveys*—To obtain information on the industrial pollutant loadings to POTWs with existing pretreatment programs, EPA contacted all POTWs in the analytical survey reporting total flow over five MGD (i.e., those required to institute pretreatment programs) and requested 1988 data on organic and inorganic pollutant concentrations in the industrial influent to the POTW from each significant categorical and noncategorical industrial discharger. POTWs with flow under five MGD were eliminated because they lack either significant industrial dischargers or information on influent pollutant concentrations from their industrial users. Data received from responding POTWs included for each industrial discharger: (1) The industry name; (2) Standard Industrial Classification (SIC) code; (3) the Code of Federal Regulations (CFR) number (which refers to the part of the pretreatment regulations covering that particular industry) if the discharger is a categorical industry; (4) flow rate; and (5) pollutant concentrations. Approximately 30 POTWs, of a total of 54 POTWs contacted, responded to EPA's request for information. EPA will attempt to obtain more surveys, if possible, from the remaining 24 POTWs.

(2) *National Sewage Sludge Survey (NSSS)*—Information on the current sludge quality of POTWs chosen for the pretreatment analysis will be obtained from the NSSS.

(3) *Pollutant Removal Efficiencies*—EPA will obtain data on the additional pollutant removal potential for individual pretreatment technologies from various sources. The technical support documents for the effluent guidelines will provide data on potential removal efficiencies for technologies appropriate for these categorical industries. For non-categorical industries, EPA will use the Toxic Chemical Release Inventory (TRI) data base to determine if removal rates achieved by similar industrial users, including industries discharging directly to a water body, are available. TRI will also be used for categorical industries, where possible, to determine if additional information on organic chemicals may be available.

b. *The Three-Staged Methodology*—This methodology closely resembles the methodology used for the eight case studies in the regulatory impact assessment. However, in this analysis, EPA plans to use the data discussed above on categorical and noncategorical industry removal efficiencies and organic pollutants to perform 8 to 12 case studies to determine the feasibility and cost of using pretreatment as a means of compliance. In addition, using analytical data from NSSS, EPA plans to extrapolate some results of the analysis to the entire populations of POTWs with current pretreatment programs. For example, EPA plans to determine:

(1) The number of pretreatment POTWs that have sludge that will exceed the proposed use and disposal criteria for their current sludge use and disposal method; and

(2) The number of the pretreatment POTWs that could not attain compliance for their current use and disposal method even when the industrial flow component of the POTW's wastewater is removed from the calculation of pollutant loadings.

Stage 1—Initial Pass-Fail Analysis—Using sludge quality profiles of pretreatment POTWs in the NSSS analytical data base, EPA will conduct a pass-fail analysis to determine which POTWs fail the proposed criteria for their current method of disposal and the overall percentage of pretreatment POTWs failing. EPA will use the analytical survey data collected from each POTW for comparison with the proposed criteria to determine compliance. If any one pollutant exceeds the proposed numerical criteria, the POTW's sludge fails for that disposal method. Analysis in Stages 2 and 3 will be performed only on POTWs that fail the initial analysis.

Stage 2—Pass-Fail Analysis Without Industrial Flow—Using data from POTWs who responded to EPA's request for industrial waste surveys, EPA will:

(1) Re-estimate sludge quality data assuming pollutant loadings attributable to industrial flow are eliminated; and

(2) Perform the pass-fail analysis on the revised sludge quality to determine how many POTWs would fail the proposed criteria due to domestic pollutant loadings alone.

The POTWs that fail at this stage are not candidates for attaining compliance through additional pretreatment actions and no further analysis will be performed on this group. However, the percentage of such POTWs will be noted in the revised RIA.

Stage 3—Pass-Fail Analysis With More-Stringent Pretreatment—For POTWs that pass Stage Two above (i.e., they pass the criteria if all industrial contributions are removed), EPA will determine which industries—of those discharging the pollutants which exceed the regulatory limit—could, theoretically, reduce loadings to the POTW by installing or upgrading pretreatment equipment. EPA will then make quantitative estimates of potential reductions of the critical pollutants (those for which the POTW fails to meet the criteria) in the sludge. Because categorical industries typically have higher pollutant concentrations than non-categorical industries, EPA will calculate potential reductions from categorical industries initially, and then will calculate potential reductions from non-categorical industries if necessary (i.e., if the POTW still fails to meet the criteria).

In calculating removals in both Stage 2 and 3, EPA will assume that the percentage reduction in pollutants attributable to the POTW remains constant despite declines in pollutant concentrations following installation of more efficient treatment technology. In this approach, pollutant removal rates attributable to the POTW do not have to be known. EPA recognizes one limitation with this approach is that POTW removal efficiencies tend to decline with influent concentration. As removal efficiency declines and the level of pollutants removed from the wastewater is lowered, relative sludge quality would be improved. The constant removal efficiency assumption could, for this reason, result in the analysis understating the number of POTWs able to pass the sludge criteria, although EPA does not believe this underestimation will be large. EPA solicits comments on this assumption.

c. *Calculating Costs*—The total cost of installing stricter pretreatment technology will be determined for each industrial contributor and summed for each POTW that passes the sludge criteria following implementation of stricter pretreatment requirements. As in the 1989 RIA, incremental capital and annual operating and maintenance costs will be calculated for each pretreatment option. Costs are defined as: (1) The cost of upgrading from existing requirements to more stringent treatment for categorical industries (including those currently in noncompliance with PSES standards); and (2) the cost associated with a non-categorical industry installing pretreatment equipment for the first time. EPA will attempt to extrapolate costs to the national level.

2. Methodology for Determining Impacts on Septage Haulers

As indicated in section 503.4, the proposed part 503 regulations will apply to septage pumped and collected from household septic tanks. EPA included the use or disposal of septage in these regulations because of its concern with the levels of pathogenic organisms that may be present in septage, and

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inorganic and organic pollutants in septage, although probably at a lower concentration than in sludge. As indicated in the proposed regulations, EPA is also concerned, however, that requiring septage haulers to comply with the current regulations might be unduly burdensome. This section focuses on information pertinent to determining cost impacts on septage haulers.

To evaluate potential impacts and to determine if the regulation should be modified to reduce undue negative effects, EPA solicited information from the States on the number of haulers, the amount of septage hauled, and the breakdown by type of disposal practice. Although EPA did receive some information from the States, in many cases the data were incomplete and there were too few States with complete data to allow for extrapolation to all fifty States. To better estimate the number of haulers and volumes hauled, EPA supplemented State data with additional sources of information such as industry publications and previous EPA estimates. EPA solicits comments on the estimates developed from these sources.

At this time, based on these estimates, EPA believes there are approximately 17,000 septage haulers in the U.S. who haul and dispose of a total of 8.6 billion gallons of septage annually. These estimates do not, however, include septage from commercial tanks, portable toilets, holding tanks, etc. EPA has also determined from information provided by the States, that approximately 51 percent of septage is disposed of at POTWs. Another 20 percent of septage is land applied. The remaining disposal methods for septage include: lagoons (13%), distribution and marketing (8%), and landfill (8%). It appears to be common for septage haulers, particularly small and medium sized haulers to use more than one method of disposal. Many haulers land apply a portion of collected septage and dispose of the remainder at a local POTW.

Based on this information on current disposal practices, EPA may limit the regulatory impact analysis to the two disposal options (POTW disposal and land application) that account for approximately 71 percent of all septage disposal to simplify the analysis. The Agency solicits comment on this decision.

a. *State Regulations*—States regulate the specific septage disposal practices to varying degrees. In estimating baseline costs of septage disposal, EPA will use the following information on State disposal regulations to determine current operating practices of septage haulers.

(1) *Disposal at POTWs*—Of the 40 States responding, only two indicated that septage *must* be disposed of at a POTW. Additionally, one State mandates septage to be disposed of either at a POTW or at a special treatment plant. Six other States had either programs or regulations designed to encourage disposal of septage at POTWs, including provisions requiring POTWs to accept septage and for local governments to either provide disposal sites or develop management plans for septage disposal.

(2) *Land Application*—Of 40 States providing EPA with information on current septage regulations, 22 States allow (or do not forbid) land application of untreated septage. An additional five States allow land application of septage but require the septage to meet pathogen reduction requirements (as set forth in 40 CFR part 257) before being land applied. Six of the responding States forbid land application of septage. Of the 27 States that allow land application of either treated or untreated septage, 12 have no application rate standards. Fourteen States do have specific application rates, four of which have site- or crop-specific rates.

(3) *Landfill*—Two States reported regulations prohibiting disposal of septage at landfills.

b. *Preliminary Industry Profile*—To assess the potential impact of the proposed regulations on septage haulers, EPA developed a preliminary industry profile, including breakdowns of size, type, and average annual volume handled. Based on the distribution of sizes among the data provided by the States, the 17,000 estimated haulers nationwide can be classified as follows:

- 11,050 (65%) are small haulers who haul, on average, approximately 0.1 million gallons annually;
- 5,100 (30%) are medium haulers who haul, on average, approximately 0.8 million gallons annually; and
- 850 (5%) are large haulers who haul, on average, approximately 4.0 million gallons annually.

In addition, EPA has been developing economic profiles of these three size classifications of septage haulers that will be used to estimate baseline and incremental costs when calculating regulatory impacts. The three model firms developed by EPA are described below:

Small Firm—A small pumping firm is a part-time business. The owner-operator has no employees, although a family member may assist with bookkeeping or other work. The business owns one small truck with the capacity to haul 1,500 gallons, which was bought second-hand and is maintained by the owner. A small firm services a 25-mile radius, and during the 90 days of actual operation per year, pumps 100 home septic tanks, hauling a total volume of 100,000 gallons. The average daily round trip, including septage pick-up and disposal, is 30 miles; the truck therefore travels 2,700 miles per year. Most of the septage (90%) is applied on land either owned, rented, or used under a fee arrangement by the pumper, but during bad weather (when State regulations forbid land application, and business declines) septage is disposed of at a POTW.

Medium Firm—A medium pumping firm is a full-time business, with one employee assisting the owner-operator. The business owns two trucks, each holding 2,000 gallons, and services three septic tanks per day from April through November, and half that amount in December through March, within a 35-mile radius. Medium-size firms may occasionally collect septage from commercial firms, but most of their business comes from homes. Each truck travels about 80 miles per day, collecting septage and either spreading it on land or disposing of it at a POTW. The full-time schedule (320 days per year) allows the medium-size firm to handle about 800,000 gallons a year. Half of the waste is disposed at a POTW and half is land-applied.

Large Firm—A large firm may be involved in other trades as well as in septage, but septage pumping and hauling remains the largest portion of the business. The firm is usually owner-operated, with four employees (and the owner) and four 4,000 gallon trucks servicing a radius of 50 miles. Each truck services one to two home tanks and one commercial system daily. A large firm collects 2.5 million gallons of home septage and 1.5 million gallons of commercial septage annually, for a total volume of about 4 million gallons. Because of the large volume, the large firm land applies only 25 percent of the septage, disposing of 75 percent in POTWs. Each truck travels about 150 miles per day (48,000 miles/year) to service tanks and dispose of the septage. Firms that would have to travel farther to dispose of septage at a POTW lease or rent large storage tanks (about 10,000 gallons) that are then hauled to POTWs by another trucking company.

EPA invites comment on any of the assumptions underlying these three profiles of septage haulers.

c. *Capital Costs and Operating and Maintenance Costs*—In order to estimate regulatory impacts on septage haulers, EPA will need information on the capital costs and operating and maintenance costs facing septage haulers in order to assess how new regulatory requirements will increase these costs. Although information on these costs were not readily available, EPA was able to develop some information on septage hauler charges. EPA intends to use this information, to the extent possible, to determine upper limits on the capital, operating and maintenance costs. These upper limits will be used with the assumptions underlying the three septage hauler profiles to calculate costs to haulers. EPA invites comments on the septage hauling charge information.

Charges for emptying tanks vary widely around the U.S. ranging from a low of $30 to a high of $225 (in Massachusetts). Prices generally show a strong regional correlation. Prices sometimes vary by firm size, with the smallest firms charging less than larger firms. Small pumpers have lower overheads: their equipment is older, often purchased second-hand, and is currently fully depreciated. Furthermore, the owner is usually the only employee, there are fewer problems disposing of their small volume of sludge, and the owner often operates only to supplement a full-time job. The State or local control of licenses, combined with small service areas (typically a 25- to 50-mile radius), may limit competition, allowing price variations within a region.

d. *Assessing Regulatory Impacts on Septage Haulers*—EPA will need information additional to that outlined above in order to fully assess the regulatory impacts of the proposed regulations on septage haulers. EPA needs to develop potential compliance strategies for septage haulers. At this time, it is difficult for EPA to determine if it is practically or technically feasible for septage haulers to either modify their existing disposal practice or to shift to an alternative practice, such as taking septage to a POTW, if requirements or management practices are perceived as too costly. If shifting is feasible, EPA will need to determine which alternative practices septage haulers could shift to and the costs associated with such a change. EPA invites comments on the potential compliance strategies available to septage haulers and the costs associated with these strategies.

e. *Assessing Regulatory Impacts on Households using On-site Septic Systems*—EPA will assume that incremental costs are passed through to households and other entities using on-site septic systems. Impacts will be estimated as increases in the price of septage tank cleaning.

3. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (Pub.L. 90-34), which amended the Administrative Procedures Act, 33 U.S.C. § 551, *et seq.*, requires federal agencies to consider the effect of its rules on small entities. Agencies must consider alternatives to rules to minimize the economic impact on small entities to the extent consistent with the stated objective of the statute under which such rules are developed. However, the requirements of the Regulatory Flexibility Act (RFA) do not alter standards otherwise applicable to agency action. As previously noted, CWA Section 405 requires EPA to promulgate regulations that are adequate to protect public health and the environment against reasonably anticipated adverse effects. In developing the regulations, EPA will consider effects on small entities to the extent consistent with the CWA requirements.

EPA plans to expand its small entity impact analysis of the Part 503 sewage sludge use and disposal regulations, which will include both POTWs and septage haulers. The methodology outlined here meets the requirements for a regulatory flexibility analysis as specified in the "Guidelines for Implementing the Regulatory Flexibility Act."

The first step of the analysis is to consider whether a full regulatory flexibility analysis is warranted based on the number of small entities affected by the regulation and based on the magnitude of the impacts expected. This step entails defining "small entity." According to the RFA, the Agency may establish its own definition of small entity. For the revised RIA, EPA will continue to define a "small entity" as represented by a POTW processing one MGD of wastewater or less, which corresponds roughly to a community of under 10,000 inhabitants. This definition is used frequently throughout the Agency, and the precedence for its use will be documented in the revised RIA. EPA will also define all septage haulers as small entities, unless further work indicates that this definition is inappropriate. The justification for this definition will also be presented in the revised RIA.

EPA's next step will be to make a determination of whether a substantial number of small POTWs or septage haulers will experience "significant impacts." EPA will use the RFA's definition of substantial—more than 20 percent of all small entities as defined. EPA will also consider impacts to be substantial if "hundreds" of small entities are affected or if very few entities are affected by very significant impacts.

EPA will define significant impacts as they are defined in the RFA:

- Annual compliance costs increase total costs of production by more than 5 percent; and
- Capital costs of compliance represent a significant portion of capital available to small entities considering internal cash flow plus external financing capabilities.

Two other definitions are also presented in the RFA but they require some modifications before they can be applied to this analysis.

EPA will adjust one definition (since POTWs do not have "sales") to determine whether compliance costs passed through to households served by small POTWs (on a per-household basis) are at least 10 percent higher than those associated with larger POTWs. This analysis is not relevant for septage haulers, since at this time, EPA plans to consider all septage haulers as small entities. The last definition of substantial impact is the effect of the regulation on closures. EPA will not use this definition for POTWs, since closures are not appropriate measures for publicly owned utilities. EPA will, however, determine whether closures are likely among septage haulers as a result of the part 503 regulations.

If EPA makes a determination of no significant impact, a full regulatory flexibility analysis will not be undertaken. However, if EPA determines that there is significant impact, the regulatory flexibility analysis will cover all required analyses as outlined in the "Guidelines for Implementing the Regulatory Flexibility Act." These requirements include such items as identification of alternatives that would minimize impact of the regulation on small entities, a cost analysis that will identify all costs for small entities associated with each of the alternatives, and an analysis showing whether small POTWs are affected disproportionately in each significant alternative.

Part IV: Availability of Survey Information and Data

Availability of Documents

Data and information from the National Sewage Sludge Survey are available as printed documents or computer files. Printed copies of the Analytical Survey (PB 90-107491; Cost $139.95), and Questionnaire Survey (PB 90-107509; Cost $97.95) may be ordered from the National Technical Information

Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, ATTN: Sales, telephone No. (703) 487–4650. Please specify PB number when ordering.

Computer copies of the data base for the National Sewage Sludge Survey are also available, from the National Technical Information Service, in either of the following options:

(a) *Computer access* to the EPA National Computer Center (NCC), which houses the primary copies of the data base in the format of the SAS system for statistical analysis, is available on a fee for service basis. In order to open an account with NTIS on the NCC system, state that you wish to access the data base for the National Sewage Sludge Survey.

(b) *Computer tapes* of the data base are available for a fee from NTIS. These are nine track tapes, written in SAS transportable code at 1600 bpi, with logical record lengths of 80 and block sizes of 8000. The tapes were written under the OS operating system but they should also be readable by CMS, VSE, AOS/VS, PRIMOS, and VMS. The NTIS order number is PB 90–501834 and the current price is $220.

Persons requesting a computer copy, under either option, will want the *National Sewage Sludge Survey: Data Element Dictionary for the Questionnaire and Analytical Data Bases.* The dictionary contains definitions and specifications for all variables in the data base. The NTIS order number is PB 90–198961 and the current price is $23 for paper copies and $8 for microfiche. The address for ordering is as follows: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, telephone: (703) 487–4650.

Additionally, a technical support document for the numerical results of the National Sewage Sludge Survey is available at no charge (limit one copy per request) by writing to: Nancy Talbot, Dynamac Corporation, 11140 Rockville Pike, Rockville, Maryland 20852; or by phoning (301) 468–2500, Ext. 6104.

Format of Survey Report

Analytical Results—The report format for the analytical portion of the survey is organized by POTW and EPA Region. The analytical data is grouped by analyte type i.e., classicals, metals and inorganics, volatile organics, semi-volatile organics, pesticides including PCBs, and dioxins/dibenzofurans. Analytical data is presented as line items. Each line consists of: (1) The analyte name; (2) its Chemical Abstract System (CAS) number; (3) a sample number; (4) its concentration on a dry weight basis in either percent, mg/kg, ug/kg or ng/kg; (5) analytical level of detection; (6) indication of whether a duplicate sample was taken and analyzed; and (7) analytical units reported.

There are approximately 40 analytical lines to a page. Therefore, a report for the analysis of a sludge from a single POTW is approximately 10 pages. If two samples or a duplicate sample (for QA/QC) were taken at a POTW, the number of pages doubles.

Questionnaire Results—For the purposes of data analysis, the responses to the questions are presented as coded data which can be converted back to individual questionnaire responses by consulting the Data Element Dictionary which is provided with this data base.

Questionnaire results are organized by facility. The facilities are arranged by States in alphabetical order. Each facility is organized in seven sections which corresponds to individual sections in the questionnaire. Section Number I contains facility characteristic information such as wastewater flow size, POTW location and financial information. Sections II–VII correspond to specific sludge use and disposal practice sections of the questionnaire. POTWs with only one sludge use or disposal practice will respond to only one of the appropriate sections of the questionnaire.

Because there are a number of questions in Section I, the Section is divided into eleven (11) sub sections. At the beginning of each subsection there is an index which identifies the variables, corresponding to individual questions, that are contained in the subsection. For example, Subsection I.1 contains the responses from all States for Questions I through 3(e) in the questionnaire; Subsection I.2 contains the responses for Questions 3(f) through 9(b)(4) OTHER, and so on for the remaining 11 sections.

All of the sections corresponding to specific use and disposal practices, with the exception of section III (distribution and marketing), are divided into two (2) subsections. For sections II (land application), IV (incineration), V (monofill), and VI (co-disposal landfill) each subsection 1 corresponds to general information regarding the specific practice and subsection 2 corresponds to individual or multiple sites within the specific practice. More specifically, section II.1 corresponds to responses to the questions in Part A—Land Application in the questionnaire and section II.2 corresponds to those in Part B for Land Application. Section VII (ocean disposal) is divided into two subsections only because of the number of questions in the section. Section VII.1 contains the responses to Questions 1 through 9 and section VII.2 contains responses to questions 10 through 19(j) in section VII in the questionnaire. Similar to section I, there is an index at the beginning of each subsection which identifies the variables, corresponding to individual questions, that are contained in the subsection.

To review all responses for any one facility, one determines the facility identification number and reads across the line of coded responses for each appropriate section of the data base. To review all responses for a particular question from a nationwide perspective, one reads down a column of coded responses for all POTWs in a specific section of the data base.

Example: To review all the responses for a particular facility, first use the Data Element Dictionary to determine the Survey I.D. number. Begin with section I.1, find the state in which the facility is located, then find the Survey I.D. number for the facility. Read across the coded responses, AQ1A through AQ3E, for the section. Proceed to section I.2, follow the same procedure for identifying the facility and read across the coded responses AQ3F through AQ9B4(OTH). Continue this procedure for the remaining subsections (I.3 through I.11) of section I. The coded responses for AQ36A through AQ36F will indicate the use or disposal practice identified by the facility and will make the review of sections II through VII easier. Once you have determined the practice identified by the facility you need only to review the section or sections corresponding to that practice. For instance, if the facility only identifies AQ36A which corresponds to land application, you need only review section II.1 and section II.2. Follow the same procedures for identifying the facility and read across the coded responses as you did for section I.1 through I.11.

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Today EPA is noticing the availability of information and data from the National Sewage Sludge Survey and its anticipated impacts on the proposed 40 CFR part 503 Sewage Sludge Use and Disposal Regulations (54 FR 5746–5902; February 6, 1989).

LaJuana S. Wilcher,

Assistant Administrator, Office of Water.

[FR Doc. 90–25975 Filed 11–8–90; 8:45 am]

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November 9, 1990

Part IV

Environmental Protection Agency

40 CFR Part 721

Reproposal of Significant New Uses of Certain Chemical Substances; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50587; FRL-3796-4]

RIN 2070-AB27

Reproposal of Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for several chemical substances which were the subject of premanufacture notices (PMNs), are subject to TSCA section 5(e) consent orders issued by EPA, and are subject to previously proposed SNURs under TSCA. This proposal would require certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing activity designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, prohibit or limit that activity before it can occur.

DATES: Written comments must be submitted to EPA by December 10, 1990.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room E-105, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number. The docket control number for each of the new chemical substances covered in this SNUR is OPTS-50587, followed by the last four digits of the number of the proposed CFR section covering that chemical substance. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit X. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This proposed SNUR would require certain persons to notify EPA at least 90 days before commencing any activity designated herein as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first SNURs issued under the Expedited Follow-Up Rule and published at 55 FR 17376 on April 24, 1990. This document reproposes SNURsfor substances for which EPA proposed SNURs prior to the adoption of the expedited process. These original proposals are being revised and restructured in the new format established for regulation under 40 CFR part 721. The following table reflects the chemicals that are the subject of this proposed rule along with the citations to the original **Federal Register** publication.

Table.— Chemicals Subject to This Significant New Use Rule

[Publication History]

Chemical	Proposed CFR Cite	Publication Date	Redesignated
P-83-769	40 CFR 721.240	49 FR 38310, 9/28/84	40 CFR 721.660
P-83-817	40 CFR 721.300	49 FR 42960, 10/25/84	40 CFR 721.850
P-83-818	40 CFR 721.300	49 FR 42960, 10/25/84	40 CFR 721.850
P-83-906	40 CFR 721.240	49 FR 38303, 9/28/84	40 CFR 721.1029
P-83-908	40 CFR 721.104	49 FR 38303, 9/28/84	40 CFR 721.315
P-83-909	40 CFR 721.100	49 FR 38303, 9/28/84	40 CFR 721.305
P-83-910	40 CFR 721.125	49 FR 38303, 9/28/84	40 CFR 721.425
P-83-1023	40 CFR 721.140	49 FR 36880, 9/20/84	40 CFR 721.1600
P-83-1085	40 CFR 721.54	50 FR 34500, 8/26/85	40 CFR 721.235
P-84-7	40 CFR 721.1017	51 FR 1396, 1/13/86	40 CFR 721.2150
P-84-176	40 CFR 721.65	50 FR 12046, 3/27/85	40 CFR 721.265
P-84-180	40 CFR 721.65	50 FR 12046, 3/27/85	40 CFR 721.285
P-84-181	40 CFR 721.65	50 FR 12046, 3/27/85	40 CFR 721.285
P-84-182	40 CFR 721.65	50 FR 12046, 3/27/85	40 CFR 721.285
P-84-183	40 CFR 721.65	50 FR 12046, 3/27/85	40 CFR 721.285
P-84-184	40 CFR 721.65	50 FR 12046, 3/27/85	40 CFR 721.285
P-84-341	40 CFR 721.76	51 FR 11591, 4/4/86	40 CFR 721.285
P-84-342	40 CFR 721.76	51 FR 11591, 4/4/86	40 CFR 721.265
P-84-343	40 CFR 721.76	51 FR 11591, 4/4/86	40 CFR 721.285
P-84-344	40 CFR 721.76	51 FR 11591, 4/4/86	40 CFR 721.265
P-84-417	40 CFR 721.440	50 FR 11391, 3/21/85	40 CFR 721.1425
P-84-1042	40 CFR 721.433	51 FR 10027, 3/24/86	40 CFR 721.1375
P-85-703	40 CFR 721.76	51 FR 22831, 6/23/86	40 CFR 721.285
P-86-83	40 CFR 721.175	51 FR 26557, 7/24/86	40 CFR 721.460
P-86-542	40 CFR 721.330	52 FR 26557, 3/25/87	40 CFR 721.1025

Consult the preamble of the Expedited Follow-Up Rule for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2).

Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of rule to uses occurring before the effective date of the final rule. Other provisions for SNURs appear under subparts B, C, and D of 40 CFR part 721. [See 54 FR 31306 (July 27, 1989).] These provisions describe standard significant new use designations, recordkeeping requirements, and expedited SNUR procedures. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(d)(1) and 5(b), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under sections 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

III. Substances Subject to This Proposed Rule

EPA is proposing significant new use and recordkeeping requirements for the following chemical substances under § 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name, CAS number (if assigned), the effective date of the 5(e) order where applicable, the basis for each section 5(e) order where applicable, toxicity concern, any recommended tests identified, and the CFR citation assigned in the regulatory text section of this rule. EPA has previously proposed a SNUR for all the chemical substances subject to this rule as referenced in the preamble for each substance.

Most of the original SNUR proposals, corresponding public comments, and subject section 5(e) orders were created 4 to 6 years ago. Regulatory requirements and procedures in section 5(e) orders and SNURs have significantly changed since that time. Rather than individually issue each of these SNURs, the most efficient and equitable method to promulgate these SNURs is to repropose and finalize them under the Expedited Follow-Up Rule.

To determine what would constitute significant new uses of these substances, EPA considered relevant information about the toxicity of the subetances, likely exposures associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA.

Some of the earlier section 5(e) orders contain provisions that required wording changes to be converted into SNURs. In some instances, the SNUR text is merely more detailed (e.g., the provision for a written hazard communication program in § 721.72(a) is more detailed than the hazard communication provisions in some earlier orders or the provision for dermal protection in § 721.63(a)(1) and (a)(3) is worded differently from dermal protection provisions in some earlier orders). In such cases, EPA considers the SNUR and section 5(e) provisions to be generally equivalent. Moreover, the companies which entered into the more limited hazard communication provisions of the earlier 5(e) orders as well as those companies covered by the SNURs, are now generally subject to the requirements of OSHA's hazard communication standard at 29 CFR 1910.1200. Therefore, EPA believes it equitable and minimally burdensome to include in the SNUR those requirements of the hazard communication standard that are generally considered to be acceptable in informing workers of potential chemical hazards. These section 5(e) consent orders and the original SNUR proposals contain limited recordkeeping requirements. EPA is proposing more extensive recordkeeping requirements in these SNURs. Without a requirement to keep appropriate records, EPA cannot expect to document if manufacturers and processors are complying with SNUR regulations.

In some instances, however, a particular requirement may be so differently worded from the corresponding SNUR provision that the basis of the SNUR provision is not evident. Where this occurs, the preamble below explains why the SNUR provision was chosen.

The substances designated P-84-176, P-84-180, P-84-181, P-84-182, P-84-183, P-84-184, P-84-341, P-84-342, P-84-343, P-84-344, and P-85-703 contain section 5(e) order provisions banning spray application. In their corresponding SNURs, EPA does not propose to ban spray application but to require respiratory protective equipment under conditions where inhalation exposure, expected only during spray application, is possible. EPA considers the SNUR and section 5(e) provisions to be generally equivalent in this case. In addition, by allowing spray application when workers are adequately protected, EPA will avoid future unnecessary Significant New Use Notices (SNUNs) if manufacturers, processors, or users decide to spray apply these substances. The section 5(e) orders have labeling requirements that state "spray application is not permitted". In accordance with allowing spray application EPA is also proposing labeling requirements that state "use respiratory protection when spray applied" or "avoid breathing when spray applied".

The substances designated P-84-176, P-84-180, P-84-181, P-84-182, P-84-183, P-84-184, P-84-341, P-84-342, P-84-343, P-84-344, and P-85-703 also limit use of the PMN substances to the specific use in the section 5(e) consent order. EPA is proposing that only consumer uses be designated a significant new use. All of these chemicals fall under the category of acrylates. EPA's policy in regulating new acrylate chemicals under section 5(e) is to allow nonconsumer uses as long as adequate worker protection and hazard communication requirements are followed. This policy is based on EPA's extensive experience regulating acrylates as new chemicals under section 5(e). By allowing nonconsumer uses when workers are adequately protected, EPA avoids future unnecessary SNUNs when manufacturers, processors, or users develop other specific uses for the substances.

Some of the SNURs that contain worker protection or hazard communication provisions, (i.e., the substances designated P-83-1023, P-84-7, P-84-105, P-84-106, P-84-107, P-84-176, P-84-180, P-84-181, P-84-182, P-84-183, P-84-184, P-84-341, P-84-342, P-84-343, P-84-344, P-84-417, P-84-1042, P-85-703, and P-86-83) provide an exemption from such provisions if the substances are present at low levels and are not expected to be reconcentrated in mixtures. The exemptions are provided in § 721.63(b) and § 721.72(c) and will make these SNURs consistent with those based on more recent section 5(e) orders. If a substance was determined to pose a cancer concern by structure-activity analysis or actual data (as described in the preamble that follows), it is exempt only if the level of the substance in the mixture is 0.1 percent or less. All other substances must not exceed a 1.0 percent level in a mixture

in order to qualify for the exemption. EPA's decision to allow exemptions at these levels was based on the Occupational Safety and Health Administration's hazard communication standard exemption of MSDS requirements § 1910.1200 (g)(2)(i)(C)(1) and (2) when substances are present at such low levels in mixtures.

The specific uses which are proposed to be designated as significant new uses are cited in the regulatory text section of this rule. The requirements specified by these citations will be found in 40 CFR 721.50 through 40 CFR 721.91, subpart B of part 721. Subpart B was published in the Federal Register of July 27, 1989 (54 FR 31298).

PMN Numbers: P-83-817 and P-83-818

Chemical name: (generic) [(Dinitrophenyl)azo]-[2,4-diamino-5-methoxybenzene] derivatives.
CAS number: Not available.
Reference to previous SNUR proposal: Published at 49 FR 42960 on October 25, 1984.
Basis for action: The PMN substances will be used as disperse blue dyes. Test data on certain phenylenediamines, which are structurally similar to the anticipated phenylenediamine products resulting from azo reduction of P-83-817 and P-83-818, indicate that expected metabolites of the PMN substances may cause cancer. EPA determined that use of the substances in a liquid or paste form as described in the PMN did not present an unreasonable risk because only dermal exposure would occur as inhalation exposure of the liquid or paste was unlikely. Dermal absorption of the PMN substances is not expected because of their high molecular weight and azo reduction is not expected to occur on the skin. EPA has determined that use of the PMN substances as dry solids or powders could result in ingestion or swallowing of inhaled particles of the PMN substances. After azo reduction, exposure to potentially cancer-causing chemicals could occur. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(D) and § 721.170(c)(2)(ii).
Recommended testing: A 2-year, two-species oral rodent bioassay (40 CFR 798.3300) to assess potential carcinogencity.
CFR citation: 40 CFR 721.850.

PMN Number: P-83-769

Chemical name: (generic) Substituted bromothiophene.
CAS number: Not available.
Reference to previous SNUR proposal: Published at 49 FR 38310 on September 28, 1984.
Effective date of section 5(e) consent order: November 9, 1983.
Basis of section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause cancer in test animals.
Recommended testing: A 2-year rodent oncogenicity study as described in 40 CFR 798.3300 to characterize possible carcinogenicity.
CFR citation: 40 CFR 721.660.

PMN Number: P-83-906

Chemical name: (generic) Brominated aryl alkyl ether.
CAS number: Not available.
Reference to previous SNUR proposal: Published at 49 FR 38303 on September 28, 1984.
Effective date of section 5(e) consent order: November 18, 1983.
Basis of section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause hepatotoxicity in test animals.
Recommended testing: Long-term feeding studies in rodents.
CFR citation: 40 CFR 721.1029.

PMN Number: P-83-908

Chemical name: (generic) Ethylated aminophenol.
CAS number: Not available.
Reference to previous SNUR proposal: Published at 49 FR 38303 on September 28, 1984.
Effective date of section 5(e) consent order: November 18, 1983.
Basis of section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause reproductive effects in test animals.
Recommended testing: Long-term reproductive effects testing in rodents.
CFR citation: 40 CFR 721.315.

PMN Number: P-83-909

Chemical name: (generic) Aminophenol.
CAS number: Not available.
Reference to previous SNUR proposal: Published at 49 FR 38303 on September 28, 1984.
Effective date of section 5(e) consent order: November 18, 1983.
Basis of section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause reproductive effects in test animals.
Recommended testing: Long-term reproductive effects testing in rodents.
CFR citation: 40 CFR 721.305.

PMN Number P-83-910

Chemical name: (generic) Anilino ether.
CAS number: Not available.
Reference to previous SNUR proposal: Published at 49 FR 38303 on September 28, 1984.
Effective date of section 5(e) consent order: November 18, 1983.
Basis of section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause reproductive effects in test animals.
Recommended testing: Long-term reproductive effects testing in rodents.
CFR citation: 40 CFR 721.425.

PMN Number P-83-1023

Chemical name: (generic) Phosphine, dialkylphenyl.
CAS number: Not available.
Reference to previous SNUR proposal: Published at 49 FR 36880 on September 20, 1984.
Effective date of section 5(e) consent order: January 16, 1984.
Basis of section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause neurotoxicity in test animals.
Recommended testing: Subchronic neurotoxicity testing in the dog, cat, or rat.
CFR citation: 40 CFR 721.1600.

PMN Number P-83-1085

Chemical name: (generic) Halogenated-*N*-(2-propenyl)-*N*-[substituted phenyl] acetamide.
CAS number: Not available.
Reference to previous SNUR proposal: Published at 50 FR 34500 on August 26, 1985.
Effective date of section 5(e) consent order: December 6, 1983.
Basis of section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause cancer and reproductive effects in test animals.
Recommended testing: A 90-day subchronic inhalation study, a 2-year dermal carcinogenicity study, and a two-generation reproduction study.
CFR citation: 40 CFR 721.2150.

PMN Numbers: P-84-176, P-84-180, P-84-181, P-84-182, P-84-183, P-84-184

Chemical names: (generic) Alkanetriol dimethacrylate, substituted (P-84-176); polyalkylene glycol monomethacrylate, substituted (P-84-180); polyalkyl alkanediol monoacrylate, substituted (P-84-181); alkanetriol polyalkylene glycol ester acrylate, substituted (P-84-182); alkylene glycol monomethacrylate, substituted (P-84-183); and polyalkyl alkanediol monomethacrylate, substituted (P-84-184).
CAS number: Not available.
Reference to previous SNUR proposal: Published at 50 FR 12046 on March 27, 1985.
Effective date of section 5(e) consent order: June 6, 1984.
Basis of section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause cancer in test animals.
Recommended testing: A 2-year two-species rodent bioassay according to 40 CFR 798.3300.
CFR citation: 40 CFR 721.285.

PMN Numbers P-84-341, P-84-342, P-84-343, and P-84-344

Chemical names: 2-Oxepanone, homopolymer, ester with 3-hydroxy-2,2-dimethylpropanoic acid (2:1), di-2-propenoate (P-84-341), 2-oxepanone, homopolymer, 2-propenoate, [tetrahydro-2-furanyl] methyl ester, (P-84-342), 2-oxepanone, homopolymer, 2-propenoate, ester with 2,2'-[oxybis(methylene)] bis[2-hydroxymethyl]-1,3-propanediol (P-84-343), and 2-propenoic acid, [2-[1,1-dimethyl2-[(1-oxo-2-propenyl)oxyethyl]-5-ethyl-1,3-dioxan-5-yl] methyl ester (P-84-344).
CAS numbers: P-84-341, 96915-49-0; P-84-342, 96915-50-3; P-84-343, 96915-52-5; P-84-344, 87320-05-6
Reference to previous SNUR proposal: Published at 51 FR 11591 on April 4, 1986.
Effective date of Section 5(e) consent order: June 13, 1984.
Basis of section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause cancer in test animals.
Recommended testing: A 2-year two-species rodent bioassay according to 40 CFR 798.3300.
CFR citation: 40 CFR 721.285.

PMN Number P-84-417

Chemical name: (generic) Methylphenol, bis(substituted)alkyl.
CAS number: Not available.
Reference to previous SNUR proposal: Published at 50 FR 11391 on March 21, 1985.
Effective date of section 5(e) consent order: August 17, 1984.
Basis of section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause liver, kidney, and respiratory effects.
Recommended testing: A 28-day dermal subchronic study.
CFR citation: 40 CFR 721.1425.

PMN Number P-84-1042

Chemical name: Carbamodithioic acid, methyl-, compound with methanamine (1:1).
CAS number: Not available.
Reference to previous SNUR proposal: Published at 51 FR 10027 on March 24, 1986.
Effective date of section 5(e) consent order: February 6, 1985.
Basis of section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause carcinogenicity, developmental toxicity, and neurotoxicity.
Recommended testing: A 2-year two-species rodent bioassay, a two-generation reproductive study, a two-species teratology study, repeated exposure and neuropathy testing with correlative functional observation, and acute exposure neurotoxicity testing.
CFR citation: 40 CFR 721.1375.

PMN Number P-85-703

Chemical name: 2-Propanol, 1-amino-, reaction products with melamine, polymer with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, 2-hydroxy ethyl acrylate-blocked.
CAS number: Not available.
Reference to previous SNUR proposal: Published at 51 FR 22831 on June 23, 1986.
Effective date of section 5(e) consent order: September 12, 1985.
Basis of section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause carcinogenicity and neurotoxicity.
Recommended testing: A 2-year two-species rodent oncogenicity study as described in 40 CFR 798.3300.
CFR citation: 40 CFR 721.285.

PMN Number P-85-83

Chemical name: Benzenamine, 3-chloro-2,6-dinitro-*N,N*-dipropyl-4-(trifluoromethyl)-.
CAS number: 29091-20-1.
Reference to previous SNUR proposal: Published at 51 FR 26557 on July 24, 1986.
Effective date of section 5(e) consent order: April 10, 1986.
Basis of section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.

Toxicity concern: Similar substances have been shown to cause carcinogenicity, developmental effects, and reproductive effects.
Recommended testing: A carcinogenicity bioassay, a teratogenicity study, a reproduction study, and a fertility study.
CFR citation: 40 CFR 721.460.

PMN Number P-88-542

Chemical name: Ethanol, 2-amino-, compound with *N*-hydroxy-*N*-nitroso benzenamine (1:1).
CAS number: 105658-30-6.
Reference to previous SNUR proposal: Published at 52 FR 9508 on March 25, 1987.
Effective date of section 5(e) consent order: July 25, 1988.
Basis of section 5(e) consent order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.
Toxicity concern: Similar substances have been shown to cause carcinogenicity and chronic blood and spleen effects.
Recommended testing: A 2-year two-species cancer bioassay to address carcinogenicity concerns and a 90-day oral subchronic study to address blood and spleen effects.
CFR citation: 40 CFR 721.1025.

IV. Objectives and Rationale of the Proposed Rule

During review of the PMNs submitted for the chemical substances that would be subject to this proposed SNUR, EPA concluded that for all except two of the substances, regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health or environmental effects of the substance. The basis for such findings is outlined in Unit III. of this preamble. Based on these findings, section 5(e) consent orders requiring the use of appropriate controls were negotiated with the PMN submitters, and SNURs proposed for such substances which are consistent with the provisions of the section 5(e) orders.

In the case of P-83-817 and P-83-818, for which the proposed uses are not regulated under a section 5(e) order, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met.

EPA is proposing SNURs for 25 specific chemical substances which have undergone premanufacture review to ensure the following objectives: (1) EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; (2) EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; (3) when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and (4) all manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements.

EPA is reproposing the SNUR for each substance in this rule. Public comments were received concerning most of the previous proposals. However, since the time of the initial proposals, regulatory requirements and procedures in section 5(e) orders and SNURs have significantly changed. EPA has concluded that reproposing the SNURs and addressing new public comments, if any, for these substances is the best approach to promulgating the SNURs.

V. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require persons to develop any particular test data before submission of a SNUR notice. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. The studies specified in the section 5(e) order may not be the only means of addressing the potential risks of the substance. SNUR notice submitters should be aware that the Agency will be better able to evaluate SNUR notices which provide detailed information on: (1) Human exposure and environmental release that may result from the significant new use of the chemical substances; (2) potential benefits of the substances; and (3) information on risks posed by the substances compared to risks posed by potential substitutes.

VI. Applicability of Proposed Rule to Uses Occurring Before Effective Date of the Final Rule

For a use to be a significant "new" use, EPA must determine that the use is not ongoing. When the PMN submitter begins manufacture or import of the substances, the submitter must send EPA a Notice of Commencement of Manufacture/Import (NOC) and the substances will be added to the Inventory. In those cases where a section 5(e) order has been issued, the notice submitters are prohibited by the section 5(e) orders from undertaking activities which the Agency is designating as a significant new use. In addition, because most of these substances have CBI chemical identities and only a very few *bona fide* inquiries have been received for substances that have undergone PMN review, there is little chance that others are undertaking activities which the Agency is designating as a significant new use. Therefore, at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in these SNURs are added to the Inventory prior to their promulgation, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this proposal before promulgation of the rule.

Each chemical substance which is the subject of a proposed SNUR in this document was originally proposed previously, as noted in the table in the Supplementary Information section and in Unit III. of the preamble. These proposed rules were issued prior to the effective date of the Expedited Follow-Up Rule. The original proposals have been revised and restructured in the new format established under 40 CFR part 721 with terms that are generally equivalent to those in the original proposal. EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of the original proposal rather than as of the effective date of the rule. If uses which had commenced between the date of the original proposal and the effective date were considered ongoing, rather than new, any person could defeat the SNURs by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements.

Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VII. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substances contained in this proposed rule. The Agency's complete economic analysis is available in the public record for this proposed rule (OPTS-50587).

VIII. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

IX. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50587). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received.

EPA will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record without any confidential business information is available in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE-G004, 401 M St., SW., Washington, DC.

X. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice.

EPA believes that, because of the nature of the proposed rule and the substances involved, there would be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this proposed rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the –number of small businesses affected by this rule would not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070-0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposal.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: November 1, 1990.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.235 to subpart E to read as follows:

§ 721.235 Halogenated-*N*-(2-propenyl)-*N*-[substituted phenyl] acetamide.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated-*N*-(2-propenyl)-*N*-[substituted phenyl] acetamide (P-83-1085) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (e), and (i).

(2) *Limitations or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

3. By adding new § 721.285 to subpart E to read as follows:

§ 721.285 Certain acrylates and methacrylate chemicals.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkanetriol dimethacrylate, substituted (P-84-178); polyalkylene glycol monomethacrylate, substituted (P-84-180); polyalkyl alkanediol monoacrylate, substituted (P-84-181); alkanetriol polyalkylene glycol ester acrylate, substituted (P-84-182); alkylene glycol monomethacrylate, substituted (P-84-183); polyalkyl alkanediol monomethacrylate, substituted (P-84-184); 2-oxepanone, homopolymer, ester with 3-hydroxy-2,2-dimethylpropanoic acid (2:1), di-2-propenoate (P-84-341); 2-oxepanone, homopolymer, 2-propenoate, [tetrahydro-2-furanyl]methyl ester, (P-84-342); 2-oxepanone, homopolymer, 2-propenoate, ester with 2,2'-[oxybis(methylene)] bis[2-hydroxymethyl]-1,3-propanediol (P-84-343); 2-propenoic acid, [2-[1,1-dimethyl-2-[(1-oxo-2-propenyl) oxyethyl]-5-ethyl-1,3-dioxan-5-yl] methyl ester (P-84-344); and 2-propanol, 1-amino-, reaction products with melamine, polymer with 5-isocyanato-1-(isocyanatomethyl)-,3,3-trimethylcyclohexane, 2-hydroxyethyl, acrylate-blocked (P-85-709) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v). The statement "when spray applied" shall appear with the statements required under (g)(2)(ii) and (g)(2)(iv).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 720.80(o).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1).

(3) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(i) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (j).

(ii) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

4. By adding new § 721.305 to subpart E to read as follows:

§ 721.305 Aminophenol.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as aminophenol (P-83-908) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(1)(i)(D) and (g)(2)(v). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), (c), (d), (f), and (g).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

5. By adding new § 721.315 to subpart E to read as follows:

§ 721.315 Ethylated aminophenol.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as ethylated aminophenol (P-83-906) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(1)(i)(D) and (g)(2)(v). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), (c), (d), (f), and (g).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

6. By adding new § 721.425 to subpart E to read as follows:

§ 721.425 Anilino ether.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as anilino ether (P-83-910) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(1)(i)(D) and (g)(2)(v). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), (c), (d), (f), and (g).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

7. By adding new § 721.460 to subpart E to read as follows:

§ 721.460 Benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4(trifluoromethyl)-.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as benzenamine, 3-chloro-2,6-dinitro-*N,N*-dipropyl-4-(trifluoromethyl)-(P-86-83) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vi), (g)(1)(vii), (g)(1)(ix), (g)(2)(i), and (g)(2)(v). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS is not required under § 721.72(c). The provision of § 721.72(g) requiring placement of specific information on an MSDS or label does not apply when an MSDS and label are not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 720.60(h).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(3), (b)(1), (b)(3), (c)(1), and (c)(3).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (f), (i), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

8. By adding new § 721.660 to subpart E to read as follows:

§ 721.660 Substituted bromothiophene.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted bromothiophene (P-83-769) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), and (a)(6)(i).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(1)(i)(D) and (g)(2)(iv). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), (c), (d), (f), and (g).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

9. By adding new § 721.850 to subpart E to read as follows:

§ 721.850 [(Dinitrophenyl)azo]-[2,4-diamino-5-methoxybenzene] derivatives.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as [(dinitrophenyl)azo]-[2,4-diamino-5-methoxybenzene] derivatives (P-83-817 and P-83-818) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(v)(1), (v)(2), (w)(1), (w)(2), (x)(1), and (x)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

10. By adding new § 721.1025 to subpart E to read as follows:

§ 721.1025 Ethanol, 2-amino-, compound with N-hydroxy-N-nitrosobenzenamine (1:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as ethanol, 2-amino-, compound with *N*-hydroxy-*N*-nitrosobenzenamine (1:1) (P-86-542), is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), and (g)(2)(v).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 720.80(k) (monomer stabilizer).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

11. By adding new § 721.1029 to subpart E to read as follows:

§ 721.1029 Brominated arylalkyl ether.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as brominated arylalkyl ether (P-83-906) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(1)(i)(D) and (g)(2)(v). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), (c), (d), (f), and (g).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

12. By adding new § 721.1375 to subpart E to read as follows:

§ 721.1375 Carbamodithioic acid, methyl-, compound with methanamine (1:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as carbamodithioic acid, methyl-, compound with methanamine (1:1) (P84-1042), is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(1)(vi), and (g)(2)(i). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS is not required under § 721.72(c). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 720.80(k).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(2), (b)(2), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (g), (i), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

13. By adding new § 721.1425 to subpart E to read as follows:

§ 721.1425 Methylphenol, bis(substituted)alkyl.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as methylphenol, bis(substituted)alkyl (P–84–417) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(ii), (g)(1)(iv), (g)(2)(i), and (g)(2)(v).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 720.80(k) (antioxidant/stabilizer for polymers) and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

14. By adding new § 721.1600 to subpart E to read as follows:

§ 721.1600 Phosphine, dialkylphenyl.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as phosphine, dialkylphenyl (P–83–1023) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(6)(i), (b) (concentration set at 1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (d), (e) (concentration set at 1 percent), (f), (g)(1)(iii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), and (g)(2)(v). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS is not required under § 721.72(c). The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(iii) *Disposal.* Requirements as specified in § 721.85 (a)(2), (b)(2), and (c)(2).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(3), (b)(3), and (c)(3).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (g), (i), (j), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

15. By adding new § 721.2150 to subpart E to read as follows:

§ 721.2150 N,N,N',N'-tetrakis(oxiranylmethyl)-1,3-cyclohexanedimethanamine.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as *N,N,N',N'*-tetrakis(oxiranylmethyl)-1,3-cyclohexanedimethanamine (P–84–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

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Friday
November 9, 1990

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Restriction on Certain Flights From the United States to Iraq or Kuwait; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26380; Special Federal Aviation Regulation (SFAR) No. 61]

Restriction on Certain Flights From the United States to Iraq or Kuwait

AGENCY: Federal Aviation Administration, (FAA), Department of Transportation, (DOT).

ACTION: Final rule.

SUMMARY: This action prohibits the takeoff from or overflight of the territory of the United States by an aircraft carrying cargo on a flight to the Republic of Iraq or the Republic of Kuwait, with an exception for medicines or approved humanitarian food supplies. This action also prohibits the takeoff or overflight by any such aircraft from the territory of the United States on a flight to any intermediate destination, the ultimate destination of which is Iraq or Kuwait. This action is taken to prevent an undue hazard to the aircraft that would be engaged in such a flight, as well as to persons involved in the flight, in response to United Nations (UN) Security Council Resolution 670 (1990) mandating an embargo of air traffic with Iraq. Issuance of this rule implements and is fully consistent with Resolution 670.

DATES: *Effective date:* November 9, 1990. *Expiration date:* November 9, 1991.

FOR FURTHER INFORMATION CONTACT: Sheila Hughes Rodriguez, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background

The Federal Aviation Administration (FAA) is responsible for the safety of flight in the United States and the safety of U.S.-registered aircraft throughout the world. Under section 103 of the Federal Aviation Act of 1958 (Act), as amended, the FAA is charged with the regulation of air commerce in a manner to best promote safety and fulfill the requirements of national security. In addition, section 1102(a) of the Act requires that the FAA Administrator exercise his authority consistent with any treaty obligations of the United States. The United States is a party to the Charter of the United Nations (Charter) (59 Stat. 1031; 3 Bevans 1153). Articles 25 and 48 of the Charter require that Members of the United Nations carry out the decisions of the Security Council. Article 25 states:

> The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

Additionally, Article 48 states, in pertinent part:

> The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all Members of the United Nations * * *.

On August 2, 1990, military forces of Iraq invaded Kuwait, seizing control of the country. Following the invasion, additional Iraqi military units were sent into Kuwait to occupy strategic positions. Iraq has subsequently announced a purported "annexation" of Kuwait. As a result of Iraq's continued illegal occupation of Kuwait and its refusal to rescind its actions, including the holding of third-state nationals against their will in violation of international humanitarian law, the UN Security Council, on August 6, 1990, adopted Resolution 661. Resolution 661, in pertinent part, prohibits the importation and transshipment from, and sale or supply to, Iraq or Kuwait of commodities or products, except for supplies intended strictly for medical purposes and, under humanitarian circumstances, food.

On September 25, 1990, acting under chapter VII of the UN Charter, the Security Council adopted Resolution 670 issuing an embargo of certain air traffic with Iraq. Paragraph 3 of Resolution 670 requires all states to deny permission to any aircraft to take off from their terrritory if the aircraft would carry any cargo to or from Iraq or Kuwait other than food provided under humanitarian circumstances, or supplies intended strictly for medical purposes, or solely for the UN Iran-Iraq Military Observer Group (UNIIMOG). Paragraph 4 imposes an obligation on all States to deny permission to any aircraft destined to land in Iraq or Kuwait to overfly its territory unless:

(a) The aircraft lands at an airfield designated by that State outside Iraq or Kuwait in order to permit its inspection to ensure that there is no cargo aboard in violation of Resolutions 661 or 670;

(b) The particular flight has been approved by the sanctions committee established by Resolution 661; or

(c) The flight is certified by the UN as solely for the purposes of UNIIMOG.

The FAA expects that member states of the UN will take action to comply with UN Security Council Resolution 670. Such action would have the effect of denying overflight rights to aircraft carrying non-excepted cargo to Iraq or Kuwait unless such aircraft land at a designated airport for inspection. As a practical matter, no aircraft in common use can travel from U.S. territory to Iraq or Kuwait without an intermediate stop in a UN member state or passage through the airspace of a member state. Because such a routing would be affected by national overflight restrictions adopted pursuant to Resolution 670, the crew of a flight leaving the U.S. territory for Iraq or Kuwait could not be certain of a safe intermediate stopover point within the range of the aircraft. Nor could the crew be certain of the availability of alternate airports if weather or other conditions require the diversion or unplanned landing of the aircraft. As a result, the FAA believes that a flight from the U.S. to Iraq or Kuwait during the effective period of UN Resolution 670 could not be planned with assurance that the aircraft would have safe primary and alternate landing points within the fuel range of the aircraft. There is substantial risk, therefore, that such a flight would not be conducted safely.

Second, the Government of Iraq has prevented the departure of civilian foreign nationals, and the current status of many such persons in Iraq is unknown. Accordingly, the safety of aircrews arriving in Iraq on a flight cannot be assumed.

The United States Government has taken several actions to restrict air transportation between the United States and Iraq and Kuwait. On August 2, 1990, the President issued Executive Order 12722 (55 FR 31803, August 3, 1990), which prohibits "any transaction by a United States person relating to transportation to or from Iraq; the provision of transportation to or from the United States by any Iraqi person or any vessel or aircraft of Iraqi registration; or the sale in the United States * * * of any transportation by air which includes any stop in Iraq;" and defines "United States person" so as to include any person within the United States.

On August 6, 1990, the Secretary of Transportation issued Order 90-8-16, which implements Executive Order 12722 by amending all Department of Transportation (DOT) certificates issued under section 401 of the Federal Aviation Act, all permits issued under sections 402 of the Act, and all exemptions from sections 401 and 402 to prohibit the holder from selling or engaging in transportation by air to Iraq, or engaging in any transaction relating to transportation to or from Iraq.

Executive Order 12722 cited the President's authority under the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*, the National Emergencies Act, 50 U.S.C. 1601 *et seq.*, and section 301 of title 3 of the United States Code, 3 U.S.C. 301, but did not cite the United Nations Participation Act of 1945, as amended. Section 5(a) of this Act provides that:

> Notwithstanding the provisions of any other law, whenever the United States is called upon by the Security Council to apply measures which said Council has decided * * * to be employed to give effect to its decisions under the [The United Nations] Charter, the President may, to the extent necessary to apply such measures, through any agency which he may designate, and under such orders, rules, or regulations as may be prescribed by him, investigate, regulate, or prohibit, in whole or in part, economic relations of rail, sea, air * * * between any foreign country or to any national thereof or any person therein and the United States or any person subject to the jurisdiction thereof * * *

22 U.S.C. 287(c).

On August 9, 1990, the President, exercising his authority under, *inter alia*, the United Nations Participation Act, issued Executive Orders No. 12724 and 12725 (55 FR 33089, 33091, August 13, 1990), pertaining to Iraq and Kuwait, respectively. These orders, which contain prohibitions on air transportation to Iraq and Kuwait that are substantially the same as those contained in Executive Order No. 12722 relating to Iraq, were issued in order to take additional steps with respect to Iraq's invasion of Kuwait and the national emergency declared in Executive Order No. 12722. On August 17, 1990, the Secretary issued Order 90-8-36, which extends the same prohibitions on air transportation to or from Kuwait as previously applied to Iraq under DOT Order 90-8-16.

Copies of the August 6 and September 25 UN Resolutions; Executive Orders 12722, 12724 and 12725; and DOT Orders 90-8-16 and 90-8-36 have been placed in the docket for this rulemaking.

Temporary Restrictions on Flights Leaving the United States

On the basis of the above, and after consultation with the Department of State, I find that the circumstances which currently exist in the Persian Gulf, including the closure of airspace and landing sites in countries situated between the United States and the Gulf area to aircraft carrying certain cargo to Iraq and Kuwait, represent a hazard to any aircraft used for that purpose as well as to the persons on board that aircraft. Accordingly, these circumstances require immediate action by the FAA in order to maintain the safety of flight and in order to meet obligations under international law. For these reasons, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. For the same reason, I also find that good cause exists for making this rule effective immediately upon issuance. I also find that this action is fully consistent with my obligations under section 1102(a) of the Federal Aviation Act to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

The rule contains an expiration date of November 9, 1991, but may be terminated sooner or extended if circumstances in effect at that time warrant.

Regulatory Evaluation

The potential cost of this regulation is limited to the net revenue of commercial flights between the United States and the Republic of Iraq or between the United States and the State of Kuwait. However, revenue flights to Iraq and Kuwait are currently prohibited by DOT Orders 90-8-16 and 90-8-36. Accordingly, this action will impose no additional burden on those operators.

Benefits in the form of potential prevention of injury to persons and damage to property are not quantifiable and most likely would occur outside the United States. For these reasons, the costs and benefits of the regulation considered under DOT Regulatory Policies and Procedures are minimal, and a further regulatory evaluation will not be conducted.

Conclusion

The FAA has determined that this action (1) is not a "major rule" under Executive Order 12291; and (2) is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Federalism Determination

The amendment set forth herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 91

Aviation safety, Republic of Iraq, State of Kuwait.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

> Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by P.L. 100-223), 1422 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; P.L. 100-202; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By adding Special Federal Aviation Regulation (SFAR) No. 61 to read as follows:

Special Federal Aviation Regulation No. 61

Restriction on Certain Cargo Flights From the United States to the Republic of Iraq or to the State of Kuwait

1. *Applicability.* This rule applies to all cargo-carrying operations in the United States.

2. *Special flight restrictions.* Except as provided in paragraph 3 of this SFAR—

(a) No person may operate an aircraft or initiate a flight carrying cargo from any point in the United States to any point in Iraq or Kuwait, or to any intermediate destination on a flight the ultimate destination of which is the Republic of Iraq or the State of Kuwait; and

(b) No person may operate an aircraft destined to land in Iraq or Kuwait over the territory of the United States.

3. *Permitted operations.* This SFAR shall not prohibit the takeoff of an aircraft, the initiation of a flight, or the overflight of United States territory by an aircraft—

(a) Carrying food in humanitarian circumstances, subject to authorization by the United Nations (UN) Security Council or the Committee established by UN Resolution 661 (1990) and in accordance with UN Resolution 666 (1990);

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(b) Carrying supplies intended strictly for medical purposes or solely for the United Nations Iran-Iraq Military Observer Group; or

(c) If the operator agrees to land at an airport designated by the United States Government in order to permit inspection to ensure that there is no cargo on board in violation of Resolution 661 (1990) or Resolution 670 (1990).

4. *Expiration.* This special rule expires November 9, 1991.

Issued in Washington, DC on November 6, 1990.

James B. Busey,

Administrator.

[FR Doc. 90-26570 Filed 11-5-90; 8:45 am]

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November 13, 1990

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WHO: Donna Rickett, Doris Tucker.
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 743]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona lemons that may be shipped to domestic markets during the period from November 11 through November 17, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh lemons with the demand for such lemons during the period specified. This action was recommended by the Lemon Administrative Committee (Committee), which is responsible for local administration of the lemon marketing order.

EFFECTIVE DATE: Regulation 743 (7 CFR part 910) is effective for the period from November 11 through November 17, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,000 lemon producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

The California-Arizona lemon industry is characterized by a large number of growers located over a wide area. The Committee's estimate of the 1990–91 production is 42,140 cars (one car equals 1,000 cartons at 38 pounds net weight each), compared to 37,881 cars during the 1989–90 season. The production area is divided into three districts which span California and Arizona. The Committee estimates District 1, central California, 1990–91 production at 6,600 cars compared to the 4,158 cars produced in 1989–90. In District 2, southern California, the crop is expected to be 24,700 cars compared to the 24,292 cars produced last year. In District 3, the California desert and Arizona, the Committee estimates a production of 10,840 cars compared to the 9,436 cars produced last year. According to the National Agricultural Statistics Service, 1990–91 lemon production is expected to total 40,200 cars, 8 percent above the 1989–90 season and 1 percent more than the crop utilized in 1988–89.

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona lemons. Based on its crop estimate of 42,140 cars, the Committee estimates that about 42.5 percent of the 1990–91 crop will be utilized in fresh domestic channels (17,900 cars), compared with the 1989–90 total of 16,600 cars, about 44 percent of the total production of 37,881 cars in 1989–90. Fresh exports are projected at 20.1 percent of the total 1990–91 crop utilization compared with 22 percent in 1989–90. Processed and other uses would account for the residual 37.4 percent compared with 34 percent of the 1989–90 crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 910 are intended to provide benefits to growers and consumers. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of lemons in the market throughout the marketing season and to avoid unreasonable fluctuations in supplies and prices.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the lemon marketing order are required by the Committee from handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

The Committee submitted its marketing policy for the 1990–91 season to the Department on June 19. The marketing policy discussed, among other things, the potential use of volume and

size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Rodrigues. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on November 6, 1990, in Newhall, California, to consider the current and prospective conditions of supply and demand and, by an 11 to 1 vote, recommended that 240,000 cartons is the quantity of lemons deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, the preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1990–91 marketing policy. This recommended amount is 85,000 cartons below the estimated projections in the Committee's current shipping schedule.

During the week ending on November 3, 1990, shipments of lemons to fresh domestic markets, including Canada, totaled 308,000 cartons compared with 209,000 cartons shipped during the week ending on November 4, 1989. Export shipments totaled 185,000 cartons compared with 181,000 cartons shipped during the week ending on November 4, 1989. Processing and other uses accounted for 391,000 cartons compared with 245,000 cartons shipped during the week ending on November 4, 1989.

Fresh domestic shipments to date for the 1990–91 season total 4,283,000 cartons compared with 4,079,000 cartons shipped by this time during the 1989–90 season. Export shipments total 2,056,000 cartons compared with 2,202,000 cartons shipped by this time during 1989–90. Processing and other use shipments total 3,536,000 cartons compared with 2,235,000 cartons shipped by this time during 1989–90.

For the week ending on November 3, 1990, regulated shipments of lemons to the fresh domestic market were 308,000 cartons on an adjusted allotment of 52,000 cartons which resulted in net undershipments of 51,000 cartons. Regulated shipments for the current week (November 4 through November 10, 1990) are estimated at 310,000 cartons on an adjusted allotment of 364,000 cartons. Thus, undershipments of 54,000 cartons could be carried over into the week ending on November 17, 1990.

The average f.o.b. shipping point price for the week ending on November 3, 1990, was $10.98 per carton based on a reported sales volume of 302,000 cartons compared with last week's average of $12.99 per carton on a reported sales volume of 311,000 cartons. The 1990–91 season average f.o.b. shipping point price to date is $12.99 per carton. The average f.o.b. shipping point price for the week ending on November 4, 1989, was $13.96 per carton; the season average f.o.b. shipping point price at this time during 1989–90 was $14.54 per carton.

The Department's Market News Service reported that, as of November 6, the demand for lemons is "fairly light" and the market for lemons is "about steady." At the meeting, various Committee members indicated that the current market for lemons is unstable, that prices have dropped considerably, that inventory levels have increased, and that high levels of undershipments have been carried over from previous weeks. Several members indicated that a lower allotment level was necessary to stabilize the market.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the California-Arizona 1990–91 season average fresh on-tree price is estimated at $8.83 per carton, 106 percent of the projected season average fresh on-tree parity equivalent price of $8.35 per carton. The California-Arizona 1989–90 season average fresh on-tree price is estimated at $9.02, 121 percent of the projected season average fresh on-tree parity equivalent price of $7.47 per carton.

Limiting the quantity of lemons that may be shipped during the period from November 11 through November 17, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of lemons to market.

Based on considerations of supply and market conditions, it is found that this action will tend to effectuate the declared policy of the Act.

Based on the above information, the Administrator of the AMS has determined that issuance of this rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until November 6, 1990, and this action needs to be effective for the regulatory week which begins on November 11, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and hanlders were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.1043 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.1043 Lemon Regulation 743.

The quantity of lemons grown in California and Arizona which may be handled during the period from November 11 through November 17, 1990, is established at 240,000 cartons.

Dated: November 5, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–26749 Filed 11–9–90; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 90–183]

Tuberculosis in Cattle and Bison; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations concerning the interstate movement of cattle and bison because of tuberculosis by lowering the designation of Kansas and Oklahoma from accredited-free States to modified accredited States. We have determined that Kansas and Oklahoma no longer meet the criteria for designation as accredited-free States but meet the criteria for designation as modified accredited States.

DATES: Interim rule effective November 13, 1990. Consideration will be given only to comments received on or before January 14, 1991.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90–183. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8715.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis" regulations contained in 9 CFR part 77 (referred to below as the regulations) regulate the interstate movement of cattle and bison because of tuberculosis. Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. The requirements of the regulations concerning the interstate movement of cattle and bison not known to be affected with, or exposed to, tuberculosis are based on whether the cattle and bison are moved from jurisdictions designated as accredited-free States, modified accredited States, or nonmodified accredited States.

The criteria for determining the status of States (the term State is defined to mean any State, territory, the District of Columbia, or Puerto Rico) are contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," 1985 edition, which has been made part of the regulations via incorporation by reference. The status of States is based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis eradication program.

Before publication of this interim rule, Kansas and Oklahoma were designated in § 77.1 of the regulations as accredited-free States. However, the Administrator has determined that Kansas and Oklahoma no longer meet the criteria for designation as accredited-free States, but instead meet the criteria for designation as modified accredited States. Therefore, we are amending the regulations by removing Kansas and Oklahoma from the list of accredited-free States in § 77.1 and adding them to the list of modified accredited States in that section.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. It is necessary to change the regulations so that they accurately reflect the current tuberculosis status of Kansas and Oklahoma as modified accredited States. This will provide prospective cattle and bison buyers with accurate and up-to-date information.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Kansas and Oklahoma may affect the marketability of cattle and bison from those States, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. However, it has been our experience that lowering a State's designation from accredited-free to modified accredited status does not significantly affect interstate sales of cattle and bison. Consequently, we have determined that this action will not have a significant effect on marketing patterns in Kansas and Oklahoma, and will therefore not have a significant economic impact on those persons affected by this action.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This progam/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

Accordingly, we are amending 9 CFR part 77 as follows:

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 77.1 [Amended]

2. Section 77.1, paragraph (2) of the definition for *Accredited-free state* is amended by removing *Kansas,* and *Oklahoma,*.

§ 77.1 [Amended]

3. Section 77.1, paragraph (2) of the definition for *Modified accredited state* is amended by adding *Kansas,* immediately before *Louisiana,* and by adding *Oklahoma,* immediately before *Puerto Rico,*.

Done in Washington, DC, this 6 day of November 1990.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-26704 Filed 11-9-90; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-ANE-15; Amdt. 39-6685]

Airworthiness Directives; Garrett Engine Division, Allied-Signal Incorporated, Models TFE731 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires removal and replacement of certain thermocouple lead assemblies and requires testing of these suspect assemblies to determine if any additional engine maintenance actions are required. This AD is needed to prevent erroneous interstage turbine temperature (ITT) indications which could mask deteriorated engine performance and cause overtemperature of turbine components.

DATES: Effective—November 13, 1990.

Comments for inclusion in the docket must be received on or before December 12, 1990.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of November 13, 1990.

ADDRESSES: Submit comments in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 90-ANE-15, 12 New England Executive Park, Burlington, Massachusetts 01803, or deliver in duplicate to Room 311 at the above address.

Comments may be inspected at the above location between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable engine manufacturer's service bulletin (SB) may be obtained from Garrett General Aviation Services Division, Distribution Center, 2340 East University, Phoenix, Arizona 85034; telephone (602) 225-2548, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Propulsion Branch, ANM-140L, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5246.

SUPPLEMENTARY INFORMATION: The FAA has determined that certain thermocouple lead assemblies produced in late 1989 and early 1990 were manufactured with wire having an incorrect alloy. These improperly manufactured leads affect the ITT signal coming from the engine to the cockpit indicator or to the engine control, or both. The error can be approximately 100° F (56° C) resulting in an indicated ITT that is lower than the actual ITT. In certain circumstances the error may be present, but not readily apparent. The error introduced by the lead can mask deteriorated engine performance and cause an overtemperature and subsequent uncontained failure of the turbine components. Such a failure could lead to uncontained rotor fragments causing structural/system damage to the aircraft.

Since this condition is likely to exist or develop in other engines with thermocouple lead assemblies of the same type design, this AD requires incorporation of Garrett SB TFE731-A77-3020, dated April 27, 1990, to correct the unsafe condition by removing and replacing suspect thermocouple lead assemblies and testing of assemblies to determine if additional engine maintenance is necessary.

Since this condition could lead to uncontained rotor fragments causing structural/system damage to the aircraft, there is a need to limit the exposure of revenue service engines to operation with improperly manufactured thermocouple lead assemblies. In addition, based on the above, and the need for accomplishment within 25 hours after the effective date of this AD, a situation exists that requires the immediate adoption of this regulation. Therefore, it is found that notice and public procedure hereon are impractical, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure thereon, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the regulatory docket number and be submitted in duplicate to the Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Airworthiness Rules Docket 90-ANE-15, 12 New England Executive Park, Burlington, Massachusetts 01803.

All communications received by the deadline date indicated above will be considered by the Administrator and the AD may be amended in light of comments received.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It had been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Garrett Engine Division, Allied-Signal, Inc. (formerly Garrett Turbine Engine Co., GTEC, formerly AiResearch Manufacturing Company of Arizona). Applies to Models TFE731-2, -2A, -3, -3A, -3AR, -3B, -3BR, -3R, -5, -5AR, and -5R turbofan engines equipped with thermocouple lead assemblies, part numbers (P/N) 3073951-1/-2/-7/-15, 3074175-1, and P/N 3073950-1 reworked to P/N 3077031-1/-2, installed in aircraft certificated in any category.

Compliance is required as indicated, unless already accomplished.

To prevent overtemperature and damage of turbine components, accomplish the following:

a. Remove from service and replace with a serviceable part thermocouple lead assemblies with serial numbers listed in Table 1, in Garrett Service Bulletin (SB) TFE731-A77-3020, dated April 27, 1990, within 25 operating hours in service after the effective date of this AD, in accordance with the accomplishment instructions of the above Garrett SB. Engines with thermocouple lead assemblies with serial numbers having a "T" suffix are excluded from the requirements of this AD.

b. Test suspect lead assemblies in accordance with Accomplishment Instructions of Garrett SB TFE731-A77-3020, to determine if additional maintenance action is required before further operation of the engine in service.

c. Remove from service engines that had suspect lead assemblies removed as required by paragraph a. of this AD, in which the removed lead assembly tested faulty, until the engine has been determined to be airworthy in accordance with the accomplishment instructions of the SB.

d. Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

e. Upon submission of substantiating data by an owner or operator through a FAA Airworthiness Inspector, the Manager, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 3229 East Spring Street, Long Beach, California 90806-2425, may approve an equivalent means of compliance or an adjustment of the compliance schedule which provides an equivalent level of safety.

The removal, replacement, and testing of certain thermocouple lead assemblies and the testing of certain engines shall be done in accordance with Garrett SB TFE731-A77-3020, dated April 27, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Garrett General Aviation Services Division, Distribution Center, 2340 East University, Phoenix, Arizona 85034. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC 20591.

Issued in Burlington, Massachusetts, on November 5, 1990.

Jack A. Sain,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90-26678 Filed 11-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-ANE-13; Amdt. 39-6760]

Airworthiness Directives; Textron Lycoming ALF502R Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts an airworthiness directive (AD) that supersedes Telegraphic Airworthiness Directive (TAD) No. T89-13-52, applicable to Textron Lycoming ALF502R series turbofan engines, which currently requires initial and repetitive inspections of the high compressor (HC) rotor third stage disk bore for evidence of corrosion or cracking. This amendment incorporates all the requirements of TAD T89-13-52, except for altering one compliance criterion and adding an additional method of inspection. This amendment is prompted by reports of fatigue cracking of the third stage HC disk. This condition, if not corrected, could result in complete loss of engine power, uncontained disk failure, and possible damage to the aircraft.

DATES: Effective—November 13, 1990.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of November 13, 1990.

ADDRESSES: The applicable service information may be obtained from Textron Lycoming, 550 Main Street, Stratford, Connecticut 06497, or may be examined in the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Karen Grant, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7087.

SUPPLEMENTARY INFORMATION: On June 22, 1989, the FAA issued TAD No. T89-13-52, applicable to Textron Lycoming ALF502R series turbofan engines, requiring visual and fluorescent penetrant or magnetic particle inspections of the third stage HC disk bore for evidence of corrosion. Disks found with evidence of corrosion pitting in the bore or found cracked are to be removed from service prior to further flight. Disks found serviceable are to be repainted with aluminum paint or coated with "Sermetel W" or "ALSEAL-518" surface finish. That action was prompted by reports of fatigue cracking of the third stage HC disk. This condition, if not corrected, could result in complete loss of engine power, uncontained disk failure, and possible damage to the aircraft. Since the issuance of TAD T89-13-52, two additional third stage HC disks have been found cracked. These disks were found cracked below the 8,500 cycles since new (CSN) inspection threshold defined in TAD T89-13-52. This AD reduces the inspection threshold required for visual inspection of the third stage HC disk bore, for those disks with less than 7,000 CSN on the effective date of this AD, to 7,500 CSN. This AD also introduces an additional alternate method for reinspection, allowing for "on-wing" borescope inspections. However, if reinspection is accomplished using borescope or ultrasonic methods, modification of the second stage compressor spacer is required. As modified the second stage compressor spacer has a reduced low cycle fatigue life and must be removed from service prior to accumulating 5,000

cycles since modification, not to exceed 16,600 total part cycles.

Since this condition could result in complete loss of engine power, uncontained disk failure, and possible damage to the aircraft, there is a need to minimize the exposure of revenue service aircraft to this failure mode. Therefore, safety is air transportation requires adoption of this regulation without prior notice and public comment. In addition, based on the above and the need to reduce the inspection threshold for certain disks as soon as practicable, a situation exists that requires the immediate adoption of this regulation. Therefore, it is found that notice and public procedure are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Textron Lycoming: Applies to ALF502R series turbofan engines installed on, but not limited to British Aerospace BAE146 aircraft.

Compliance is required as indicated, unless already accomplished.

To prevent complete loss of engine power, uncontained disk failure, and possible damage to the aircraft, accomplish the following:

(a) Inspect and recoat with "Sermetel W", "ALSEAL-518" or aluminum paint, third stage high compressor (HC) disks in accordance with Textron Lycoming Service Bulletin (SB) ALF502R-72-203, Revision 2, dated August 8, 1990, as follows:

(1) For those third stage HC disks with 7,000 cycles since new (CSN) or greater on the effective date of this AD, within the next 500 cycles in service (CIS) not to exceed 8,500 CSN.

(2) For those third stage HC disks with less than 7,000 CSN on the effective date of this AD, at or prior to accumulating a total of 7,500 CSN.

(b) Reinspect third stage HC disks recoated with aluminum paint as follows:

(1) For disks inspected in accordance with Textron Lycoming SB ALF502R 72-203, Revision 2, dated August 8, 1990, at intervals not to exceed 6,000 CIS from last inspection.

(2) For disks inspected in accordance with Textron Lycoming SB ALF502R 72-218, Revision 1, dated December 1, 1989, at intervals not to exceed 1,500 CIS from last inspection. Remove the modified second stage compressor spacer, Part Number 2-100-047R10, from service prior to accumulating 5,000 additional CIS since modification, not to exceed 16,600 CSN.

(3) For disks inspected in accordance with Textron Lycoming SB ALF502R 72-237, dated November 30, 1989, at intervals not to exceed 1,000 CIS from last inspection. Remove the modified second stage compressor spacer, Part Number 2-100-047R10, from service prior to accumulating 5,000 additional CIS since modification, not to exceed 16,600 CSN.

(c) No reinspection is required for those third stage HC disks recoated with "SERMETEL W" or "ALSEAL-518" surface finish in accordance with Textron Lycoming SB ALF502R 72-203, Revision 2, dated August 8, 1990.

(d) Actions accomplished in accordance with SB ALF502R 72-203, dated January 31, 1989; SB ALF502R 72-203, Revision 1, dated June 16, 1989; or with SB ALF502R 72-218, dated May 26, 1989, in complying with Telegraphic Airworthiness Directive T89-13-52 dated June 22, 1989, are considered to be in compliance with the corresponding requirements of this AD, if applicable.

(e) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(f) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance (schedule) times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

The inspection procedures shall be done in accordance with the following Textron Lycoming Service Bulletins:

Service bulletin No.	Page No.	Issue/revision	Date
ALF502R 72-203	1-4, 6	2	August 8, 1990.
ALF502R 72-203	5	1	June 16, 1989.
ALF502R 72-218	1, 2, 3, 4, 5, 6, 9	1	December 1, 1989.
ALF502R 72-218	7, 8	Original	May 26, 1989.
ALF502R 72-237	1-12	Original	November 30, 1989.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Textron Lycoming, 550 Main Street, Stratford, Connecticut 06497. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC 20591.

This amendment supersedes TAD 89-13-52 dated June 22, 1989.

This amendment becomes effective on November 13, 1990.

Issued in Burlington, Massachusetts, on November 5, 1990.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90-26790 Filed 11-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AEA-19]

Alteration of Transition Area; Petersburg, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies the 700 foot Transition Area established at Petersburg, WV, due to the pending establishment of a new LDA/DME-A Standard Instrument Approach Procedure (SIAP), and the pending decommissioning of the DORCAS Nondirectional Radio Beacon (NDB). This action realigns that amount of controlled airspace which is deemed necessary by the FAA to contain arriving and departing aircraft at the Grant County Airport, Petersburg, WV.

EFFECTIVE DATE: 0901 u.t.c. December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

History

On July 16, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the 700 foot Transition Area at Petersburg, WV, due to the pending establishment of a new LDA/DME-A SIAP and the proposed decommissioning of the DORCAS NDB (55 FR 32097). The proposed action would realign that amount of airspace deemed necessary by the FAA to contain arriving and departing aircraft at the Grant County Airport, Petersburg, WV, within controlled airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6F, January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the 700 foot Transition Area established at Petersburg, WV, due to the development of a new LDA/DME-A SIAP and the pending decommissioning of the DORCAS NDB.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Petersburg, WV [Revised]

"That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the center (lat. 38°59'35" N., long. 79°08'32" W.) of the Grant County Airport, Petersburg, WV; within 4 miles each side of the 207° (T) 213° (M) radial of the Kessel, WV, VOR (lat. 39°13'31" N., long. 78°59'23" W.) extending from the VOR to the 6.5-mile radius area; within 4.5 miles each side of a 124° bearing from the airport extending from the 6.5-mile radius area to 17 miles southeast of the airport."

Issued in Jamaica, New York, on November 1, 1990.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 90-26660 Filed 11-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-AGL-10]

Control Zone Establishment and Transition Area Alteration, Woodruff, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish a control zone area, alter the existing transition area airspace near Woodruff, WI, and, change the airport name from Lakeland to Noble F. Lee Memorial Field Airport. The airport manager requested a control zone due to increasing numbers of Visual Flight Rules (VFR) operations in the vicinity of Noble F. Lee Memorial Field during marginal and below VFR weather conditions. The intended effect of this action is to enhance safety for all potential users of this airspace. The establishment of a control zone will segregate aircraft using approach procedures under instrument flight rules from other aircraft operating under visual flight rules in controlled airspace. The Woodruff, WI, transition area is being altered to accommodate existing Standard Instrument Approach Procedures (SIAP's) at Noble F. Lee Memorial Field, Woodruff, WI.

EFFECTIVE DATE: 0901 UTC, February 7, 1991.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, July 3, 1990, the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a control zone and alter the existing transition area near Woodruff, WI (55 FR 27474).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received from the Wisconsin Department of

Transportation (WDOT), Bureau of Aeronautics.

WDOT was concerned about the effects the proposed control zone would have on pilots navigating VFR when the weather conditions are: ceiling less than 1000' AGL and/or visibility less than three (3) miles. A synopsis of their comments is as follows: (a) A pilot would have to abandon the roadway system to circumvent the airport; (b) A common practice is to fly an approach to Noble F. Lee Memorial Airport, cancel IFR and proceed VFR to the North. Establishing a control zone would require a special VFR clearance; and (c) Would the control zone effect operations at Manitowish Waters Airport?

For the majority of the time, the airspace is available to both IFR and VFR operations. However, when weather conditions are not being met for VFR operations, the control zone will allow for use of the airspace during those weather conditions which would otherwise prohibit any use. This will enable the IFR-rated pilot to safely transition from VFR flight to IFR flight in order to land at the airport. The control zone will only be in effect when weather conditions are less than VFR. Under these weather conditions VFR pilots would be required to find other routes. Pilots on an IFR flight plan could still execute the approach procedure, reach VFR conditions and cancel their flight plan upon exiting the control zone. The pilot would then not need a special VFR clearance.

The FAA does not believe the establishment of a control zone will hinder standard instrument approach procedures into Manitowish Waters Airport. However, under certain conditions delays may be incurred because of overlapping protected airspace. If delays occur, they will be distributed evenly between both airports. The intent of a control zone is to enhance safety when weather conditions are below three (3) miles visibility and/or 1000' ceiling for both VFR and IFR traffic.

Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.171 and 71.181 of part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6F dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes a control zone area, alters the existing transition area near Woodruff, WI, and changes the airport name from Lakeland to Noble F. Lee Memorial Field Airport.

This control zone is necessary to enhance safety due to the increasing number of VFR flights in the vicinity of Noble F. Lee Memorial Field Airport, Woodruff, WI during marginal and below VFR weather conditions.

The FAA believes this control zone will reduce the risk of midair collisions and promote the efficient control of air traffic. The existing situation includes commuter airlines, jet traffic, and air ambulances mixed with VFR operations. The airspace required would lower the floor of controlled airspace from 700 feet above the surface down to the surface within a 5.5-mile radius of the geographic center of Noble F. Lee Memorial Field Airport, and within 2 statute miles, each side of the 182° bearing from the airport, extending from the 5.5-mile radius to 6 miles south of the airport; and within 3 miles each side of the 348° bearing from the airport, extending from the 5.5-mile radius to 8.5 miles northwest of the airport. The control zone would be effective from 0700 to 1900 hours, local time, daily, May 1 to October 31; and, from 0800 to 1800 hours, local time, daily, November 1 to April 30.

The present transition area is being modified to accommodate existing SIAP's to Noble F. Lee Memorial Field Airport. The modification consists of adding an extension from the 9-mile radius to 10.5 miles east of the airport within 2.75 miles each side of the 110° bearing from the airport and extending from the 9-mile radius to 10 miles south of the airport within 2.5 miles each side of the 182° bearing from the airport.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the areas in order to comply with applicable visual flight rules requirements.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Woodruff, WI [New]

Within a 5.5 mile radius of Noble F. Lee Memorial Field Airport (lat. 45°55'47" N., long. 89°43'37" W.) within 2.75 miles each side of the 110° bearing from the Noble F. Lee Memorial Field extending from the 5.5-mile radius area to 6 miles east of the airport, and within 2 miles each side of the 182° bearing from Noble F. Lee Memorial Field extending from the 5.5-mile radius area to 6 miles south of the airport, and within 3 miles each side of the 348° bearing from the Noble F. Lee Memorial Field extending from the 5.5-mile radius area to 8.5 miles northwest of the airport. The control zone shall be effective from 0700 to 1900 hours, local time, daily, May 1 to October 31; and, from 0800 to 1800 hours, local time, daily, November 1 to April 30.

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Woodruff, WI [Revised]

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the Noble F. Lee Memorial Field Airport (lat. 45°55'47" N., long. 89°43'37" W.), within 2.75 miles each side of the 110° bearing from Noble F. Lee Memorial Field extending from the 9-mile radius area to 10.5 miles east of the airport, and within 2.5 miles each side of the 182° bearing from Noble F. Lee Memorial Field extending from the 9-mile radius area to 10 miles south of the airport.

Issued in Des Plaines, Illinois on October 20, 1990.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 90-25879 Filed 11-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 91

[Docket No. 24722, Amdt. 91-213]

RIN 2120-AB04

Night-Visual Flight Rules Visibility and Distance from Clouds Minimums

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action corrects an error which appeared in a final rule, published on July 19, 1990 (55 FR 29552), which restored paragraphs (c), (d), and (e) to § 91.155 of the Federal Aviation Regulations (FAR). This amendment corrects the language in paragraph (c) which inadvertently transposed language contained in another paragraph.

EFFECTIVE DATE: November 2, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Richard K. Kagehiro, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Background

On July 19, 1990, the FAA published a correction to Amendment No. 91-213 which restored paragraphs (c), (d), and (e) to § 91.155 (55 FR 29552). These paragraphs were inadvertently omitted from this section by a previous rulemaking.

The language contained in § 91.155(c) in the July 19, 1990, amendment inadvertently transposed a portion of the language contained in § 91.155(d). This action corrects that error and restores § 91.155(c) to its intended form.

Need for Immediate Adoption

This amendment corrects an error and restores an agency regulation to its intended version. Because this action is a technical amendment, I find that good cause exists for making the amendment effective in less than 30 days to eliminate the possibility of misinterpretation of the intent of published agency regulations.

List of Subjects in 14 CFR Part 91

Visual flight rules.

The Amendment

For the reasons set forth above, part 91 of the Federal Aviation Regulations (14 CFR part 91) is amended as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 (as amended by Pub. L. 100-223) through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq; E.O. 11514; Pub. L. 100-202; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 91.155(c) is revised to read as follows:

§ 91.155 Basic VFR weather minimums.

* * * * *

(c) Except as provided in § 91.157, no person may operate an aircraft, under VFR, within a control zone beneath the ceiling when the ceiling is less than 1,000 feet.

* * * * *

Issued in Washington, DC, November 2, 1990.

Harold W. Becker,

Acting Director, Air Traffic Rules and Procedures Service.

[FR Doc. 90-26861 Filed 11-9-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM86-2-000]

Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands

November 8, 1990.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: On May 8, 1987, the Commission issued its final rule amending part 11 of its regulations (Order No. 469, 52 FR 18,201 May 14, 1987). The final rule revised the billing procedures for annual charges for administering part I of the Federal Power Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges.

In accordance with § 11.2(b) (18 CFR 11.2(b) (1990)) of the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is determined by adapting the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 1990, through September 30, 1991, the fees in this notice will become effective October 1, 1990. The fees will apply to fiscal year 1991 annual charges for the use of government lands.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Olive J. Wallace, Chief, Revenue and Funds Control Branch, Office of the Executive Director, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 219-2903.

SUPPLEMENTARY INFORMATION: In accordance with § 11.2, 18 CFR, the land values included in this document will be published in the Federal Register. In addition, the Commission also provides all interested persons an opportunity to inspect or copy contents of this document during normal business hours in Room 3104 at the Commission's Headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

George L.B. Pratt,

Executive Director.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

Accordingly, the Commission, effective October 1, 1990, amends part 11 of chapter I, title 18 of the Code of Federal Regulations, as set forth below.

PART 11—[AMENDED]

1. The authority citation for part 11 is revised to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In part 11, appendix A is revised to read as follows:

Appendix A to Part II

FEE SCHEDULE FOR FY 1991

State	County	Rate per acre
Alabama	All Counties	$20.61
Arkansas	All Counties	15.46
Arizona	Apache, Cochise, Gila, Graham, La Paz, Mohave, Navajo, Pima, Yavapai, Yuma, Coconino North of Colorado River.	5.15
	Coconino South of Colorado River, Greenlee, Maricopa, Pinal, Santa Cruz.	20.61
California	Imperial, Inyo, Lassen, Modoc, Riverside, San Bernardino.	10.30
	Siskiyou	15.46
	Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kern, Kings, Lake, Madera, Mariposa, Mendocino, Merced, Mono, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Joaquin, Santa Clara, Shasta, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, Yuba.	25.76
	Los Angeles, Marin, Monterey, Orange, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Ventura.	30.92
Colorado	Adams, Arapahoe, Bent, Cheyenne, Crowley, Elbert, El Paso, Huerfano, Kiowa, Kit Carson, Lincoln, Logan, Moffat, Montezuma, Morgan, Pueblo, Sedgwick, Washington, Weld, Yuma.	5.15
	Baca, Dolores, Garfield, Las Animas, Mesa, Montrose, Otero, Prowers, Rio Blanco, Routt, San Miguel.	10.30
	Alamosa, Archuleta, Boulder, Chaffee, Clear Creek, Conejos, Costilla, Custer, Delta, Denver, Douglas, Eagle, Fremont, Gilpin, Grand, Gunnison, Hinsdale, Jackson, Jefferson, Lake, La Plata, Larimer, Mineral, Ouray Park, Pitkin, Rio Grande, Saguache, San Juan, Summit, Teller.	20.61
Connecticut	All Counties	5.15
Florida	Baker, Bay, Bradford, Calhoun, Clay, Columbia, Dixie, Duval, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, LaFayette, Leon, Liberty, Madison, Nassau, Okaloosa, Santa Rosa, Suwannee, Taylor, Union, Wakulla, Walton, Washington.	30.92
	All Other Counties	51.53
Georgia	All Counties	30.92
Idaho	Cassia, Gooding, Jerome, Lincoln, Minidoka, Oneida, Owyhee, Power, Twin Falls.	5.15
	Ada, Adams, Bannock, Bear Lake, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Butte, Camas, Canyon, Caribou, Clark, Clearwater, Custer, Elmore, Franklin, Fremont, Gem, Idaho, Jefferson, Kootenai, Latah, Lemhi, Lewis, Madison, Nez Perce, Payette, Shoshone, Teton, Valley, Washington.	15.46
Kansas	All Other Counties	5.15
	Morton	10.30
Illinois	All Counties	15.46
Indiana	All Counties	25.76
Kentucky	All Counties	15.46
Louisiana	All Counties	30.92
Maine	All Counties	15.46
Michigan	Alger, Baraga, Delta, Chippewa, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, Schoolcraft.	15.46
	All Other Counties	20.61
Minnesota	All Counties	15.46
Mississippi	All Counties	20.61
Missouri	All Counties	$15.46
Montana	Big Horn, Blaine, Carter, Cascade, Chouteau, Custer, Daniels, McCone, Meagher, Dawson, Fallon, Fergus, Garfield, Glacier, Golden Valley, Hill, Judith Basin, Liberty, Musselshell, Petroleum, Phillips, Ponders, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Teton, Toole, Treasure, Valley, Wheatland, Wibaux, Yellowstone.	5.15
	Beaverhead, Broadwater, Carbon, Deer Lodge, Flathead, Gallatin, Granite, Jefferson, Lake, Lewis and Clark, Lincoln, Madison, Mineral, Missoula, Park, Powell, Ravalli, Sanders, Silver Bow, Stillwater, Sweet Grass.	15.46
Nebraska	All Counties	5.15
Nevada	Churchill, Clark, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, Washoe, White Pine.	2.58
	Carson City, Douglas, Storey.	25.76
New Hampshire	All Counties	15.46
New Mexico	Chaves, Curry, De Baca, Dona Ana, Eddy, Grant, Guadalupe, Harding, Hidalgo, Lea, Luna, McKinley, Otero, Quay, Roosevelt, San Juan, Socorro, Torrance.	5.15
	Rio Arriba, Sandoval, Union.	10.30
	Bernalillo, Catron, Cibola, Colfax, Lincoln, Los Alamos, Mora, San Miguel, Santa Fe, Sierra, Taos, Valencia.	20.61
New York	All Counties	20.61
North Carolina	All Counties	30.92
North Dakota	All Counties	5.15
Ohio	All Counties	20.61
Oklahoma	All Other Counties	5.15
	Beaver, Cimarron, Roger Mills, Texas.	10.30
	Le Flore, McCurtain	15.46
Oregon	Harney, Lake, Malheur.	5.15
	Baker, Crook, Deschutes, Gilliam, Grant, Jefferson, Klamath, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler.	10.30
	Coos, Curry, Douglas, Jackson, Josephine.	15.46
	Benton, Clackamas, Clatsop, Columbia, Hood River, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, Yamhill.	20.61
Pennsylvania	All Counties	20.61
Puerto Rico	All	30.92
South Dakota	Butte, Custer, Fall River, Lawrence, Meade, Pennington.	15.46
	All Other Counties	5.15
South Carolina	All Counties	30.92
Tennessee	All Counties	20.61
Texas	Culberson, El Paso, Hudspeth.	5.15
	All Other Counties	30.92
Utah	Beaver, Box Elder, Carbon, Duchesne, Emery, Garfield, Grand, Iron, Jaub, Kane, Millard, San Juan, Tooele, Uintah, Wayne.	5.15
	Washington	10.30
	Cache, Daggett, Davis, Morgan, Piute, Rich, Salt Lake, Sanpete, Sevier, Summit, Utah, Wasatch, Weber.	15.46
Vermont	All Counties	20.61
Virginia	All Counties	20.61
Washington	Adams, Asotin, Benton, Chelan, Columbia, Douglas, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Spokane, Walla Walla, Whitman, Yakima.	10.30
	Ferry, Pend Oreille, Stevens.	15.46
	Cellam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, Whatcom.	20.61
West Virginia	All Counties	20.61
Wisconsin	All Counties	15.46
Wyoming	Albany, Campbell, Carbon, Converse, Goshen, Hot Springs, Johnson, Laramie, Lincoln, Natrona, Niobrara, Platte, Sheridan, Sweetwater, Fremont, Sublette, Uinta, Washakie.	5.15
	Big Horn, Crook, Park, Teton, Weston.	15.46
All Other Zones		6.57

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BILLING CODE 6717-01-M

18 CFR Parts 35 and 382

[Docket No. RM90-8-000 Order No. 529]

Amendments to FERC Form Nos. 1 and 1-F, and Annual Charges, and Fuel Cost and Purchased Economic Power Adjustment Clauses

November 5, 1990.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others (Form 1) and FERC Form No. 1-F, Annual Report of Nonmajor Public Utilities and Licensees (Form 1-F). The changes involve elimination and addition of some reporting requirements, revised instructions and modified schedule formats. This final rule makes minor conforming changes to the Commission's annual charges regulations in 18 CFR part 382 and the Commission's fuel cost and purchased economic power

adjustment clause regulations in 18 CFR part 35.

The purpose of the changes is to improve consistent reporting of bulk power transactions so as to provide better support for the Commission's regulatory efforts. The changes are the result of a joint effort by the Commission and the Energy Information Administration to evaluate the consistency of bulk power trade information.

DATES: The final rule is effective December 13, 1990.

FOR FURTHER INFORMATION CONTACT:

William Booth, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 208–0849.

Joseph Harkins, Office of the Chief Accountant, Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, (202) 357–0617.

Ann E. Gorton, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2137.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Amendments to FERC Form Nos. 1 and 1–F, and Annual Charges, and Fuel Cost and Purchased Economic Power Adjustment Clauses

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others (Form 1)[1] and FERC Form No. 1–F, Annual Report of Nonmajor Public Utilities and Licensees (Form 1–F).[2] The final rule modifies how a company reports bulk power transactions on the following Form 1 schedules: "Sales for Resale" (Account 447), pages 310–11; "Purchased Power" (Account 555), pages 326–27; "Summary of Interchange According to Companies and Points of Delivery" (Account 555), pages 328–29; "Transmission of Electricity For or By Others" (Accounts 456 and 565), page 332; and the "Electric Energy Account" and "Monthly Peaks and Output," page 401. The final rule also modifies the "Sales of Electricity For Resale" (page 17) and "Purchased Power" (page 18) Form 1–F schedules, and the comparable Form 1 substitute schedules: "Sales for Resale," "Purchased Power" and "Summary of Interchange According to Companies and Points of Interchange" for those filing a Form 1–F. The changes involve elimination and addition of some reporting requirements, revised instructions and modified schedule formats.[3] The final rule also makes minor conforming changes to the Commission's annual charges regulations in part 382 and the Commission's fuel cost and purchased economic power adjustment clauses regulations in part 35.

The purpose of the changes is to improve consistent reporting of bulk power transactions to better support current regulatory responsibilities of the Commission. The changes are an outgrowth of a joint effort by the Commission and the Energy Information Administration to evaluate the consistency of our bulk power trade information.

The Commission received 15 comments[4] in response to the Notice of Proposed Rulemaking (NOPR), issued July 23, 1990, in this docket.[5] Most of the comments came from jurisdictional utilities. The Commission also received comments from the Energy Information Administration (EIA) of the Department of Energy, the Bureau of Economic Analysis (BEA) of the Department of Commerce and the American Public Power Association. Several commenters were unqualified in their support, and no commenter opposed the NOPR in toto. Other commenters supported the NOPR while expressing certain limited concerns which are addressed below. The Commission has considered all of these comments in developing the final rule. The Commission is issuing the final rule herein in substantial conformity with the NOPR. Some minor changes and explanations have been made in order to clarify the proposed regulatory text.

II. Reporting Burden

A. Estimate

The annual public reporting burden for this collection of information is estimated to average 1,215 hours per response for Form 1 and 30 hours per response for Form 1–F. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, (202) 208–1415). Comments on the requirements of the regulation can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

B. Comments

Pacific Gas & Electric Company (PG&E) stated that requiring the reporting of average monthly coincident peak demand on the Purchased Power schedule for each qualifying facility under PURPA (QF) would needlessly increase the expense of preparing the report. As discussed below in the section on Reporting of Demand, reporting of demand for QFs may not be required. American Electric Power Service Corporation (AEP) stated that reporting of statistical classifications on the Sales for Resale, Purchased Power and Transmission for Others schedules will create duplication of effort and cause unproductive expenditures of manpower. As discussed below in the section on Statistical Classifications, reporting of statistical classifications is better done, in the first instance, by the respondents and also is necessary because existing rate schedules and tariffs contain provisions for many different types of services.

Public Service Electric & Gas Company (PSE&G) stated that the proposed elimination of certain non-essential reporting requirements will reduce the expense of compliance for many companies. PSE&G also stated that it will not have to change any internal procedures to comply with the proposed changes, and that there will be no additional expense incurred during or after the transition. Arizona Public Service Company (APS) stated its support of the Commission's assessment that, on balance, the proposed changes will reduce the overall reporting burden.

C. Conclusion

Given the diversity of respondents, and as the comments received expressly illustrate, the Commission anticipates that the reporting burden will increase for certain respondents-particularly those who engage in a substantial number of transmission transactions for others—but that the burden will decrease for other respondents. The final rule's changes are relatively few, and are discrete. The information being requested is for the most part not new data; it is already collected by the industry in other contexts.

On balance, therefore, the Commission believes the overall burden on the industry will be lessened by the final rule's changes.

III. Background

In an effort to improve consistent reporting on Form 1, the Chief Accountant has provided additional guidelines and examples of properly completed schedules in the transmittal letters included with the 1988 and 1989 mailings of Form 1. However, many respondents still are not reporting the information in a consistent manner as prescribed by the instructions on the schedules and the Chief Accountant's guidelines.

These reporting deficiencies trace to the fact that the format and requirements of these schedules have not kept up with the significant changes that have occurred in bulk power markets. At the time these schedules were created, high voltage transmission interconnections between utilities were limited.[6] Long-term firm sales to distribution utilities within a utility's service area, which have come to be known as "requirements" sales, made up the majority of power transactions between utilities. Transactions between major integrated utilities were relatively insignificant and tended to be for emergency support purposes or exchange of economy energy.

With the growth of extensive high voltage transmission networks and the increased number of interconnections, the number and diversity of bulk power transactions has risen dramatically. It has become a challenge for utilities to report the wider variety of transactions, which have come to be known as "coordination" transactions, on the previous schedules, which were designed when these transactions were comparatively infrequent.

A major source of confusion has been exactly what types of transactions should be reported on the "Summary of Interchange" schedule. The text of Account 555, Purchased Power, in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees,[7] the instructions on the Form 1 schedules and the Chief Accountant's additional guidelines have not resulted in uniform reporting of "coordination" transactions. Many utilities report all "coordination" transactions on the "Summary of Interchange" schedule, reserving the "Sales for Resale" and "Purchased Power" schedules for "requirements" sales or purchases. Many other utilities reserve the "Summary of Interchange" schedule for power exchange transactions and report all distinct sales and purchases, whether "requirements" or "coordination," on the "Sales for Resale" and "Purchased Power" schedules, respectively.

The latter interpretation is consistent with the requirements of the Uniform System of Accounts and the Chief Accountant's guidelines. The final rule's changes in the Form 1 schedules are intended to ensure that "coordination" transactions are reported consistently on the "Sales for Resale" or "Purchased Power" schedules, as appropriate.

IV. Discussion

A. Purpose and Objectives

In order to eliminate the reporting of unnecessary data, to improve consistency in the reporting of this information, and to clarify how bulk power transactions are to be reported, the final rule modifies or eliminates five Form 1 schedules, and five comparable Form 1–F schedules. The final rule also makes minor changes in the Commission's regulations for annual charges and for fuel cost and purchased economic power adjustment clauses.[8]

The following Form 1 schedules are hereby modified: "Sales for Resale" (Account 447); "Purchased Power" (Account 555); and "Electric Energy Account" and "Monthly Peaks and Output."[9] The final rule incorporates the reporting requirements of the "Summary of Interchange According to Companies and Point of Delivery" (Account 555) schedule into the modified "Purchased Power" (Account 555) schedule.[10] The final rule replaces the term "interchange power" with the synonym "exchange power," for consistency with the term used in the text of Account 555 in the Uniform System of Accounts.

The "Transmission of Electricity For or By Others" schedule, page 332, is eliminated and replaced by two new schedules: "Transmission of Electricity For Others" (Account 456), pages 238–30, and "Transmission of Electricity By Others" (Account 565), page 332. Separate schedules will allow for more detailed reporting of transmission service provided for others, increasing the accuracy of reporting, and less

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[1] This form consists of approximately 124 non-consecutively numbered pages and a 5-page index. It is mandatory under sections 304 and 309 of the Federal Power Act and codified at § 141.1 of the Commission's regulations. The current version bears the OMB approval No. 1902–0021, expiring September 30, 1991.

The Commission considered renumbering the pages of the Form 1 (and the Form 1–F) schedules to make them consecutive, but decided not to renumber them for two reasons. First, it is useful to have continuity with previous years, and continuing the same numbering system is an aid to the filer as well as to the Commission. Second, this system provides for logical expansion of the forms when such expansion is necessary to carry out the tasks of the Commission.

[2] This form consists of approximately 20 consecutively numbered pages, 1–20, and 30 non-consecutively numbered substitute pages from the Form 1 that may be used in lieu of the comparable pages in the first section. It is mandatory under sections 304 and 309 of the Federal Power Act and codified at § 141.2 of the Commission's regulations. The current version bears the OMB approval No. 1902–0029, expiring September 30, 1991.

[3] Appendix A consists of facsimiles of the revised forms, incorporating the final rule's changes. A comparison of these forms with the previous Form 1 schedules may help the reader to comprehend these changes. Appendix A is not being published in the **Federal Register**, but is available appended to copies of the final rule from the Commission's Public Reference Room.

[4] The following entities submitted comments: Wisconsin Electric Power Company, Arizona Public Service Company, Pennsylvania Power & Light Company, Pacific Gas & Electric Company, Southwestern Public Service Company, Public Service Electric & Gas Company, American Public Power Association, Northeast Utilities, U.S. Department of Commerce—Bureau of Economic Analysis, American Electric Power Service Corporation, Duke Power Company, Carolina Power & Light Company, U.S. Department of Energy—Energy Information Administration, Public Service Company of Colorado and Cheyenne Light Fuel & Power Company. The last two entities submitted comments jointly.

[5] 55 FR ¶ 31,073 (July 31, 1990); IV FERC Stats. & Regs. ¶ 32,472 (1990).

[6] The "Sales for Resale," "Purchased Power," "Summary of Interchange," "Electric Energy Account," and "Monthly Peaks and Output" schedules have not been substantially revised since the Form 1 was first instituted in 1937. The "Transmission of Electricity For or By Others" schedule was added in 1961 and has not been substantially revised since then.

[7] *See* 18 CFR part 101 (1990).

[8] Annual Charges, 18 CFR part 381 (1990); Fuel Cost and Purchased Economic Power Adjustment Clauses, 18 CFR 35.14 (1990).

[9] These schedules are on pages 310–11, 326–27 and 401 of Form 1, respectively.

[10] These schedules were previously on pages 328–29. The final rule eliminates pages 323 and 329.

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detailed reporting of transmission service provided by others, lessening the reporting burden.

The final rule eliminates three reporting requirements from the Form 1–F schedules for "Sales For Resale," and "Purchased Power." The instructions have been rewritten and expanded and the remaining columns have been reordered. The substitute Form 1 schedules for "Sales for Resale," and "Purchased Power," and "Summary of Interchange According to Companies and Point of Delivery" in the Form 1–F incorporate changes parallel to the charges in the comparable schedules in the Form 1.

Specific changes are discussed below and the modified and new schedules are provided in the Appendix. The changes to the Form 1 schedules are described in IV. C. For each schedule, changes in schedule formats are discussed first. The final rule's new instructions are described in the order the instructions are listed on the modified and new schedules. The changes to the Form 1–F schedules are described in IV. D., in the same way as the changes to the Form 1 schedules. The changes to the Commission's annual charges regulation are described in IV. E. The changes to the Commission's fuel cost and purchased economic power adjustment clauses regulation are described in IV. F.

General comments are addressed in the section immediately following; comments regarding particular reporting requirements are addressed in the sections to which they pertain.

B. General Comments

1. Reporting of Demand

In the case of PG&E, there appeared to be some confusion about the types of transactions for which demand data is required to be reported. The final rule limits the reporting of demand information to only two categories of transactions: Requirements service and other services were part of the monthly (or longer period) payment is based on contract or actural demand. Reporting of demand from QF purchases is not required unless it meets the above definition.

APS requested clarification of the computation of "average" in reference to the reporting of demand. Specifically, APS asked whether, when a short-term transaction occurs only over four months, the average figure should be computed by dividing by four months or by 12 months. Averages should be calculated using the term of the transaction, where the transaction's duration is less than one year.

Public Service Company of Colorado and Cheyenne Light Fuel and Power Company (collectively Colorado) indicated that monthly coincident peak demand is not known at the time of billing, but is known at the end of the month or later. Form 1 is required to be submitted 4 months after the end of the reporting year; therefore, demand data should be available by then. The Commission also requires coincident peak demand information as part of the cost of service analysis that must be submitted in a rate filing. This information is necessary to perform a cost of service analysis.

Southwestern Public Service Company (Southwestern) stated that it bills based on the sum of the peak demands of each of the several delivery points to a customer. Transactions should be reported in the same way as customers are billed. If they are billed for purchases at several delivery points, these sales should be reported separately for each delivery point. If they are billed on "total" demand, as is apparently the case for Southwestern, then one line can be used for reporting sales to the customer.

AEP suggested that dropping any requirement to report demand and demand charges would significantly reduce the reporting burden. These requirements are necessary to perform cost of service analyses which assist the Commission in carrying out its regulatory responsibilities. The Commission believes that limiting the reporting of demand to only those types of transactions for which such information is required in rate filings significantly reduces the reporting burden.

2. Statistical Classifications

EIA suggested that the various statistical classifications which identify different kinds of transactions on the "Purchased Power" schedule be eliminated and replaced by two categories: purchases from utilities and from non-utilities. The Commission requires the classifications for its cost-of-service analyses. Although the summary information would be useful, it would unnecessarily increase the reporting burden, because most of the information requested is already available through two EIA data forms: EIA–861, Annual Summary Report on Sales, Disposition of Energy and Ownership; and EIA–867, Annual Non-Utility Power Producer Report. The non-redundant information that is available from the Form 1 is the cost of non-utility purchases to respondents. EIA is capable of sorting utility from non-utility purchases by using the names of the sellers identified on the Form 1 purchased power schedule.

Pennsylvania Power & Light Company (PP&L) requested clarification on whether the term of commitment referred to in many of the statistical categories was the original term of the contract or the remaining term. It is the original term. PP&L also suggested that the "LU" classification read "* * * from a designated generating unit or units." There are a relatively small number of unit power contracts involving multiple units. These unit power contracts involving multiple units should be reported as "OS" and a footnote should be provided describing the contract terms. Southwestern requested clarification of how to report sales to partial requirements customers. Following the definition provided in the instructions on the schedule pages, firm sales to partial requirements customers should be classified as "RQ" when the supplier plans to provide the service on an ongoing basis (*i.e.*, the supplier includes projected load for this service in its system resource planning). Otherwise, such sales should be classified as "non-RQ."

PP&L requested that the requirement to report separately "out of period adjustments" be deleted as too burdensome or should apply only to large adjustments. The reporting of all out of period adjustments is essential for properly identifying the cost of service. In this regard, the period referred to here is the reporting year.

PP&L stated that the classifications were not clear and could be interpreted diffently by respondents. AEP suggested that the Commission rather than the utility assign a statistical category to each tariff thus ensuring consistency and reducing the burden. The Commission believes that the respondents will be more familiar with the nature of the transactions and will be better situated to decide, in the first instance, the appropriate classification. Moreover, while the Commission endeavors in this final rule to ensure greater consistency and reduce the reporting burden, rate schedules and tariffs on file with the Commission often include several different types of services. Consequently, the respondents will in such cases be particularly well situated to decide, in the first instance, the appropriate classification. In this regard, one of the purposes of this requirement is to assist the Commission in identifying the appropriate section in a rate schedule or tariff that relates to a particular transaction, and having the respondents provide this information will thus assist the Commission.

Carolina Power & Light Company (Carolina) stated that a category should be provided for nonfirm service. The Commission proposed that nonfirm service be reported as "OS," Other Service. However, Carolina pointed out that the "OS" category requires further explanation in a footnote and that most bulk power transactions would be classified as nonfirm. This would mean that many transactions would be reported as "OS" and would require a footnote. This is the Commission's intent and is consistent with the previous reporting requirement. Respondents are required to report on a separate line of the schedules each distinct type of transaction. The footnote is to indicate the type of service, such as economy, emergency, etc.

3. Other Issues

EIA suggested that line 11 on the "Electric Operating Revenues" (Account 400) schedule, pages 300–01, be expanded to include requirements and non-requirements sales for resale, to make the reporting of Electric Operating Revenues consistent with the reporting of the "Electric Energy Account", page 401. This addition is unnecessary because such a breakdown exists in subtotals on the "Sales for Resale" schedule.

One commenter, BEA, submitted no specific comments on the changes proposed to the bulk power schedules, but expressed disappointment that certain other changes related to investments in plant and equipment it had proposed in 1988 were not incorporated into the schedule changes proposed herein. BEA had submitted those changes in response to a notice of proposed rulemaking issued in Docket No. RM88–18–000, which concerned the "Statement of Cash Flows" schedule. BEA's comments are therefore not relevant to the instant proceeding. Furthermore, the Commission declined, in Order No. 505 issued in Docket No. RM88–18–000,[11] to incorporate BEA's proposed changes because those proposed changes were inconsistent with the Commission's regulatory needs.[12]

EIA requested clarification on a number of issues related to proper ways of reporting data on the Form 1 bulk power schedules. EIA notes that many respondents are reporting negative volumes in various columns. There are only two situations in which negative volumes are acceptable. These are for a settlement (column (g) on the "Purchased Power" schedule), or for an out-of-period adjustment. Using negative numbers to represent sales for resale or purchases is not acceptable. EIA requested clarification on the reporting of transmission and voltage conversion charges included in transactions reported on the "Sales For Resale" and "Purchased Power" schedules. If these services are provided as part of a bundled service, they should be reported as "Other Charges." They should only be reported separately when they are provided as a separate unbundled service.

4. Effective Date for Changes

Four commenters (Carolina, AEP, PG&E and Colorado) requested that the implementation of the final rule become effective for the 1991 reporting year instead of for the 1990 reporting year, as proposed in the NOPR. They stated that the 1990 year is more than half over and that they would have to go back and reconstruct 1990 data using the new requirements. They stated that they can better use their resources reprogramming their accounting systems to be ready to implement the changes for the reporting year starting January 1, 1991.

However, one commenter (PSE&G) stated that it will incur no additional expense during or after the transition. Another commenter (APS) stated that it anticipates more time will initially be required for reformatting the information; nevertheless, it does not request delayed implementation. Two utilities (Wisconsin and APS) support the rule because they believe it will lead to a fairer allocation of annual charges.

The main purpose of this rule is to ensure consistent reporting of power exchange transactions. As mentioned earlier, instructions on how to report these transactions were in the Chief Accountant's transmittal letters included with the 1988 and 1989 mailings of the Form 1. Therefore, a delay in implementing this change is not justified.

The commenters that requested delayed implementation identified concerns with the reporting of demand or providing statistical classifications for transactions. As stated above, concerns about the reporting of demand are misplaced because the final rule limits reporting of demand to those types of transactions where demand information is already available for billing purposes or would be required in a rate filing. Assigning the new statistical classifications to transactions that have already been recorded will require some extra work for the 1990 reporting year. The extent of this extra work will depend on the number of transactions that need to be reclassified and this is likely to vary significantly among respondents.

The Commission notes that respondents will have five or six months from the issuance of the final rule until the date for submitting Forms 1 and 1–F, to implement the changes made herein. Respondents may request an extension of time to file the requisite form, if special problems arise. Accordingly, the changes made in this final rule are effective for the 1990 reporting year.

C. Changes to FERC Form No. 1 Schedules

1. Sales for Resale (Account 447) Schedule [13]

a. *Comments.* PP&L requested that some provision be made for reporting non-jurisdictional sales-for-resale. The volume of such transactions does not justify a distinct reporting category. Respondents should provide, however, an appropriate designation for such non-jurisdictional sales in column (c) of the Sales-For-Resale schedule.

b. *Schedule format.* The final rule eliminates five columns, currently designated as (c), (e), (f), (j) and (k). These columns request, respectively, information on: Export across state lines, point of delivery, substation ownership, type of demand reading, and voltage at which delivered. The information requested in these columns is either available from other sources or is no longer useful to the Commission.

The elimination of these columns necessitates changes in the designation letters of the remaining columns. Thus, columns (d), (g), (h), (i), (l), (m), (n), (o) and (p) are redesignated as columns (c), (d), (e), (f), (g), (h), (i), (j) and (k), respectively. Designations for five columns are changed.[14] One of the

[11] Statement of Cash Flows to Replace Statement of Changes in Financial Position in FERC Annual Report Forms, 53 FR ¶40,875 (October 19, 1988), 45 FERC ¶61,056 (1988).

[12] *Id.* at 61,193.

[13] This schedule comprises pages 310 and 311 of Form 1, 1989 edition.

[14] The changes include:

(1) column (a) "Sales to" becomes "name of company or public authority;"

(2) column (b) "Contract demand" becomes (d) "average monthly billing demand;"

(3) column (h) "Average monthly maximum demand" becomes (e) "average monthly NCP demand;"

(4) column (i) "Annual maximum demand" becomes (f) "Average monthly CP demand"; and

(5) column (l) "Megawatt hours" becomes (g) "megawatt hours sold."

Finally, the title currently over columns (g), (h) and (i) is placed over new columns (e) and (f), and changed from "MW or MVa of Demand (specify which)" to "Actual Demand (MW)."

changes in designation which the final rule implements, "annual maximum demand" to "average monthly CP demand," involves a substantive change from the previous schedule.

c. *Instructions.* The final rule eliminates several of the ten previous instructions to the schedule, and rewords or establishes additional requirements in the remaining instructions. Those instructions previously numbered 3, 4, 5, 7 and 8 are deleted. The instruction previously numbered 6 is renumbered as 7. The only substantive change to instruction 1 is a clarification that power exchange transactions must be reported on the "Purchased Power" (Account 555) schedule, pages 326–27. Previous instruction 2 is divided into instructions 2 and 3. The substantive change embodied in the final rule's instruction 2 is a requirement that ownership interest or affiliation between the responding entity and the purchaser be disclosed. The substantive change embodied in the final rule's instruction 3 increases the number of classifications and explains in more detail the coding definitions used to classify the type of sale. There are eight classification codes in the final rule, which replace the previous five codes. The eight codes consist of the following: RQ, for requirements service;[15] LF, for long-term firm service;[16] IF, for intermediate-term firm service;[17] SF, for short-term firm service;[18] LU, for long-term service from a designated generating unit;[19] IU, for intermediate-term service from a designated generating unit;[20] OS, for other service, which must be described in a footnote;[21] and AD, for out-of-period adjustment, which must be described in a footnote.[22] The reporting of statistical classification codes and contract termination dates in footnotes for long-term firm service is necessary to distinguish types of transactions for regulatory purposes.

Reporting of these codes must be based on the contractual terms and conditions of the service. These categories are intended for descriptive and statistical purposes only. They do not prescribe either acceptable types of sales or how transactions should be described in contracts, rates or tariffs filed with the Commission.

The final rule's instruction 4 requires that sales be grouped either as RQ, *i.e.*, requirements service, or non-RQ sales, and that the respondents provide appropriate subtotals and totals for proposed columns (g) through (k), *i.e.*, megawatt hours sold, total revenue and revenue components. The final rule's instruction 5 explains the designation system for entering the FERC rate schedule or tariff number required for column(c).

New instruction 6 requires the reporting of average monthly billing demand in column (d), average monthly non-coincident peak (NCP) demand in column (e), and average monthly coincident peak (CP) demand in column (f). Demand in columns (e) and (f) should be reported in megawatts. Reporting of demand is only required for requirements service and any type of service involving demand charges imposed on a monthly (or longer) basis. Definitions of average monthly NCP and CP demands are provided. If respondents are unable to express demand on a megawatt basis they must provide a reason in a footnote. The final rule's instruction 8 clarifies and organizes the requirements of columns (h) to (k), which are revenue items previously classified as (m) through (p). The final rule's instruction 9 requires that the subtotal for RQ sales for resale, in the final rule's column (g) be reported on page 401, line 23 of Form 1, and that the subtotal for non-RQ sales for resale in column (g) be reported on page 401, line 24. The final rule's instruction 10 requires footnotes for all entries that need explanation.

2. Purchased Power (Account 555) Schedule[23]

a. *Comments.* PP&L requested clarification of what should be reported in column (a) of the Purchased Power schedule, since sometimes the respondent is the seller in an exchange. For exchange transactions, the name of the other party to the transaction should be reported in column (a). Instruction 2 on the Purchased Power Schedule is modified to read: "Enter the name of the seller or other party in an exchange transaction in column (a)." PP&L also noted that the title in column (m) of the purchased power schedule showing that it equals columns j+k+l is not appropriate for the reporting of settlement amounts in this column. The title for column (m) is reworded as "Total (j+k+l) or Settlement ($)."

The Commission agrees with Southwestern that the title of column (g) on the Purchased Power schedule should be "Megawatthours Purchased." Several commenters noted that the definitions of the statistical classifications for the Purchased Power schedule were incorrect in the **Federal Register** notice. The definitions are correct in the final rule.

EIA stated that some utilities report, as exchange transactions, those transactions in which power is only received or delivered. Such transactions are unlikely to meet the definition of "exchange" in this rule.

If an exchange transaction is not settled in the reporting year, the settlement, column (m) on the Purchased Power schedule, must be left blank. Estimates of the monetary value of the energy owed are not permitted.

Additionally, some utilities are reporting exchange power received or delivered as a negative number. This is not acceptable. A negative receipt is a delivery and a negative delivery is a receipt. Columns (h) and (i) on the Purchased Power schedule, containing exchange power received and delivered, must always contain positive numbers.

b. *Schedule format.* The final rule makes a number of format changes to the previous reporting schedules which appeared on pages 326–27 [24] and 328–29 [25] of Form 1. The final rule eliminates the latter schedule, except for two columns of information on power exchanges, which are added to the "Purchased Power" schedule. The final rule does not increase the amount of substantive information required. Five columns are eliminated from the "Purchased Power" schedule previously designated as column (c), (e), (f), (j) and (k).[26] The elimination of these columns necessitates changes in the designation letters of the remaining columns. The two columns which are added to the schedule from the "Summary of Interchange According to Company and Point of Delivery" schedule are columns (f) and (g), megawatt hours received and delivered, respectively; on the "Purchased Power" schedule, they are now designated columns (h) and (i). The final rule also changes the designations for five columns to parallel the changes in the "Sales for Resale" schedule.[27] One of the final rule's changes in designation, *i.e.*, "annual maximum demand" to "average monthly CP demand," involves a substantive change from the previous schedules.

The final rule eliminates several of the ten previous instructions, and rewords or establishes additional requirements in the remaining instructions. Those instructions previously numbered 3, 4, 5, and 7 are deleted. Instruction 1 is rephrased to clarify that power exchange transactions and any settlements for imbalanced exchanges are to be reported here. Previous instruction 2 is now divided into instructions 2 and 3. The substantive change embodied in the final rule's instruction 2 is that disclosure is required of any ownership interest or affiliation between the responding entity and the purchaser. The substantive change embodied in the final rule's instruction 3 increases the number of classifications and explains in more detail the code definitions used to classify the type of sale. There are now nine classification codes rather than the previous five codes. The nine codes consist of the following: RQ, for requirements service; [28] LF, for long-term firm service; [29] IF, for intermediate-term firm service; [30] SF, for short-term firm service; [31] LU, for long-term service from a designated generating unit; [32] IU, for intermediate-term service from a designated generating unit; [33] EX, for exchanges of electricity; [34] OS, for other service, which must be described in a footnote; [35] and AD, for out-of-period adjustment, which must be described in a footnote.[36] The reporting of statistical classification codes and contract termination dates in footnotes for long-term firm service is necessary to distinguish types of transactions for regulatory purposes.

Reporting of these codes must be based on the contractual terms and conditions of the service. These sales categories are intended for descriptive and statistical purposes only. They do not prescribe either acceptable types of sales or how transactions should be described in contracts, rates or tariffs filed with the Commission. The final rule's instruction 4 explains the designation system for entering the FERC rate schedule or tariff number required for column (c).

As with the "Sales for Resale" schedule, the final rule's instruction 5 requires, for requirements service and any type of service involving demand charges imposed on a monthly (or longer) basis, the reporting of average monthly billing demand in column (d), average monthly non-coincident peak (NCP) demand in column (e), and average monthly coincident peak (CP) demand in column (f). Demand in columns (e) and (f) must be reported in megawatts. The inability to express any demand on a megawatt basis must be explained in a footnote. The final rule's instruction 6 covers power exchanges received and delivered, as well as megawatt hours purchased. The final rule's instruction 7 clarifies the reporting of revenues by including instructions on how settlements under power exchange agreements should be reported in column (1). The final rule's instruction 8 requires that the total amounts in columns (g), (h) and (i) be reported on page 401, lines 10, 12, and 13. The final rule's instruction 9 requires footnotes for all entries that need explanation.

3. Transmission of Electricity for or by Others (Accounts 456 and 365) Schedule [37]

The final rule eliminates this schedule and replaces it with two new schedules: one for the reporting of "Transmission of Electricity For Others," Account 456, and the other for the reporting of "Transmission of Electricity By Others" Account 565.

4. Transmission of Electricity for Others (Account 456) Schedule

a. *Comments.* Colorado and Southwestern state that they have contracts with either multiple delivery points or pool transactions for which specific delivery points are not identified because they have more than one point of interconnection with certain other utilities' systems. Consequently, Colorado and Southwestern state that they cannot identify receipt and delivery points. Such specific receipt and delivery point information is not required in these cases. Instruction 6 on the "Transmission For Others" schedule states: "Report receipt and delivery locations for all single contract path, 'point-to-point' transmission service." Because transactions of the type identified by Colorado and Southwestern are not single contract path, point to point transaction, it is acceptable to use the term "system" as the point of delivery for such transactions.

Southwestern noted that accounting for inadvertant flows is not addressed in the "Transmission For Others" schedule. This schedule should be used to report contractual transactions subject to Commission jurisdiction. Inadvertent flows which are covered by contracts should be reported on this schedule. Otherwise, inadvertent flows should not be reported.

PP&L noted that the statement "(*e.g.*, the supplier must provide emergency energy to maintain the LF service)" in the definition of long-term, firm transmission service in the instructions on the "Transmission of Electricity For Others" schedule seems inapplicable to transmission service. The final rule deletes this statement.

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[15] Requirements service is service which the supplier plans to provide on an ongoing basis (*i.e.*, the supplier includes projected load for this service in its system resource planning). In addition, the reliability of requirements service must be the same as, or second only to, the supplier's service to its own ultimate consumers.

[16] "Long-term" means five years or longer and "firm" means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions (*e.g.*, the supplier must attempt to buy emergency energy from third parties to maintain deliveries of LF service). This category should not be used for long-term firm service which meets the definition of RQ service. For all transactions identified as LF, the respondent also should provide in a footnote the termination date of the contract defined as the earliest date that either buyer or seller can unilaterally get out of the contract.

[17] IF is the same as LF service except that "intermediate-term" means longer than one year but less than five years. This category should not be used for intermediate-term firm service which meets the definition of RQ service.

[18] This category should be used for all firm services where the duration of each period of commitment for service is one year or less. This category should not be used for short-term firm service which meets the definition of RQ service.

[19] *Long-term* means five years or longer. The availability and reliability of service, aside from transmission constraints, must match the availability and reliability of the designated unit.

[20] This category is the same as LU service except that "intermediate-term" would mean longer than one year but less than five years.

[21] This category should be used only for those services which cannot be placed in the above-defined categories, such as all nonfirm service regardless of the length of the contract and service from a designated unit of less than one year. The respondent also should describe the nature of the service in a footnote.

[22] This code should be used for any accounting adjustments or "true-ups" for service provided in prior reporting years. The respondent also should provide an explanation in a footnote for each adjustment.

[23] This schedule comprises pages 326–27 of Form 1.

[24] "Purchased Power" (Account 555).

[25] "Summary of Interchange According to Company and Point of Delivery".

[26] These columns request information on the comparable items that are being deleted from the "Sales for Resale" schedule, *i.e.*, import across state lines, point of delivery, substation ownership, type of demand reading and voltage at which received.

[27] The changes include:

(1) Column (a) "Sales to" becomes "name of company or public authority;"

(2) Column (b) "Contract demand" becomes (d) "average monthly billing demand;"

(3) Column (h) "Average monthly maximum demand" becomes (e) "average monthly NCP demand;"

(4) Column (i) "Annual maximum demand" becomes (f) "Average monthly CP demand;" and

(5) Column (l) "Megawatthours" becomes (g) "Megawatthours Purchased."

Finally, the title previously over columns (g), (h) and (i) is now placed over new columns (e) and (f), and changed from "MW or MVa of Demand (specify which)" to "Actual Demand (MW)."

[28] *See Supra* note 15.

[29] *See Supra* note 16.

[30] *See Supra* note 17.

[31] *See Supra* note 18.

[32] *See Supra* note 19.

[33] *See Supra* note 20.

[34] *This category should be used for transactions involving a balancing of debits and credits for energy, capacity, etc. and any settlements for imbalanced exchanges.*

[35] *See Supra* note 21.

[36] *See Supra* note 22.

[37] This schedule was previously on page 332 of Form 1, 1989 edition.

b. *Schedule format.* The final rule provides a column format to improve the ease and consistency of reporting. The following 14 columns, which the final rule includes in the new "Transmission of Electricity For Others" (Account 456) schedule, are similar to the column headings for the schedules discussed previously. They include: "Payment By (Company or Public Authority);" "Energy Received From (Company or Public Authority);" "Energy Delivered To (Company or Public Authority);" "Statistical Classification;" "FERC Rate Schedule or Tariff Number;" "Point of Receipt;" "Point of Delivery;" "Billing Demand (MW);" "Megawatthours Received;" "Megawatthours Delivered;" "Demand Charges;" "Energy Charges;" "Other Charges;" and "Total Revenues."

c. *Instructions.* The final rule's instruction 1 requires reporting of transmission service that the respondent provides to others. The final rule's instruction 2 requires a line of data for each distinct type of transmission service provided. The final rule's instruction 3 requires reporting the identities of the three other potential parties to a transmission transaction: The entity that made payment to the respondent for providing the transmission service; the entity from which the power was received, and the entity to which the power was delivered. The instruction also clarifies how the names of entities are to be reported and requires that a footnote be provided to explain any ownership interest or affiliation the respondent has with the identified or reported entities. The final rule's instruction 4 requires the reporting of statistical classification codes based on the contractual terms and conditions of the service. The transactions must be coded within one of four categories: LF, for long-term firm transmission service; [38] SF, for short-term firm transmission service; [39] OS, for other transmission service; [40] and AD, for out-of-period adjustment.[41] The final rule's instruction 5 requires the reporting of the applicable FERC rate schedule or tariff number under which the transmission service was provided to the companies or public authorities identified in columns (a), (b), or (c). The final rule's instruction 6 requires the reporting by substation or other designation of points of receipt and delivery. The final rule's instruction 7 requires that billing demand under the transmission agreement be reported in megawatts in column (h). The final rule's instruction 8 requires the reporting of megawatthours received and delivered. The final rule's instruction 9 requires the reporting of the components and total of both monetary and nonmonetary settlements recieved for transmission service provided for others. The final rule's instruction 10 requires that the total amounts in columns (i) and (j) be reported as Transmission Received and Delivered on page 401, lines 16 and 17, respectively. The final rule's instruction 11 requires footnotes for all entries that need explanation. For example, some utilities previously reported transmission for others or by others involving no revenue and no other form of settlement. In these situations, the respondents should explain the absence of payment or settlement for the service in a footnote. Additionally, some transmission transactions are reported with zero receipts and a number of megawatthours delivered. This yields a negative number presumably indicating a loss. The total amount of energy recieved as well as the total amount of energy delivered must be reported.

5. Transmission of Electricity by Others (Account 565) Schedule

a. *Schedule format and comments.* The final rule provides a column format to improve the ease and consistency of reporting. The following seven columns are included in the new "Transmission of Electricity By Others" (Account 565) schedule: "Name of Company or Public Authority;" "Megawatthours Received;" "Megawatthours Delivered;" "Demand Charges;" "Energy Charges;" "Other Charges;" and "Total Cost of Transmission."

Southwestern states that respondents are not likely to know the information requested in columns (b) and (c), "megawatthours received and delivered." On this schedule, respondents are required to provide information on transactions in which they paid for transmission service provided by others. Consequently, respondents should know this information.

Moreover, payment typically includes an amount for transmission losses. Losses can be paid for in two ways: either the utility providing the transmission service makes up transmission losses with its own energy which is paid for directly, or the utility delivers less power than it received in an amount equal to its losses. Columns (b) and (c) are necessary for identifying how such losses are accounted for. It is unlikely that a contract for transmission service would ignore the cost of losses or the amount of power recieved and delivered by the transmitting utility.

In situations where this information is now known, an explanatory footnote should be provided stating why this information is not available, and how losses are handled.

b. *Instructions.* The final rule's instruction 1 requires the reporting of all transmission service provided to the respondent by other electric utilities, cooperatives, municipals and other public authorities during the year. The final rule's instruction 2 requires the name of the transmission provider and an explanation of any ownership interest or affiliation the respondent has with the transmission provider. The final rule's instruction 3 requires that respondents group transmission service purchased from other utilities as either "Delivered Power to Wheeler" or "Received Power from Wheeler." The final rule's instruction 4 requires the reporting of "MWh received" and "MWh delivered" by the provider of the transmission service. The final rule's instruction 5 requires the reporting of the components and total of both monetary and nonmonetary settlements received for transmission service provided by others. The final rule's instruction 6 requires that a total be provided as the last line. The following has been added to instruction 6 to explain how losses associated with Transmission By Others transactions are to be reported on the Electric Energy Account, page 401: "Energy provided by the respondent for the wheeler's transmission losses should be reported on the Electric Energy Account, page 401. If the respondent received power from the wheeler, energy provided to account for losses should be reported on line 19, Transmission By Others Losses, on page 401. Otherwise, losses should be reported on line 27, Total Energy Losses.

[38] *Long-term* means one year or longer and "firm" means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions. For all transactions identified as LF, the respondent must provide in a footnote the termination date of the contract, defined as the earliest date that either buyer or seller can unilaterally get out of the contract.

[39] *Short-term* is to be used for all firm services where the duration of each period of commitment for service is less than one year.

[40] *Other transmission service* is to be used only for those services which cannot be placed in the above-defined categories, such as all nonfirm transmission service, regardless of the length of the contract. Respondent must describe the nature of the service in a footnote.

[41] *Out-of-period adjustment* is to be used for any accounting adjustments or "true-ups" for service provided in prior reporting years. Respondent must provide an explanation in a footnote for each adjustment.

page 401." [42] Instruction 7 requires footnotes for all entries that need explanation.

6. *Electric Energy Account Schedule* [43]

The final rule changes seven item names, and deletes six lines from the "Electric Energy Account" schedule. The final rule requires two additional items of information (lines 19 and 24).

a. *Schedule format.* The final rule renames lines 11, 12, 13, 14, 18 and 23, as follows: "Interchanges" is renamed "Power Exchanges;" "In Gross," is renamed "Received;" "Out Gross" is renamed "Delivered;" "Net Interchanges" is renamed "Net Exchanges;" "Net Transmission" would be renamed "Net Transmission for Others;" and "Sales for Resale" is renamed "Requirements Sales for Resale." The final rule also eliminates the words "or by" in line 15 (because transmission service provided to the respondent by others should not be reported on this schedule). The final rule also adds a new line 24, "Non-requirements Sales for Resale," to conform with the new "Sales for Resale" schedule.

Duke questioned the Commission's determination that "Transmission of Electricity By Others" should not be reflected on "Electric Energy Account" page 401. Duke states that any energy losses that may result from wheeling by others should affect total energy available for sale reflected on line 20 of page 401. The Commission agrees. A new line 19 is added to the Electric Energy Account, entitled "Transmission By Others Losses," for reporting situations where purchasers of power provide for losses from transmission by others by receiving less energy than is purchased. The final rule eliminates the details on energy losses previously collected in lines 28–29 and 31.

7. Monthly Peaks and Output Schedule [44]

a. *Comments.* As described below, the final rule deletes two columns from the "Monthly Peaks and Output" schedule because the information is no longer needed, and the final rule adds a column entitled "Monthly Non-Requirements Sales for Resale & Associated Losses." Southwestern and PP&L questioned the definition of "system peak" used on the "Monthly Peaks and Output" schedule. Southwestern stated that this definition may be inconsistent with the company's definition of peak. However, the definition of system peak on page 401 is required for preparing the cost of service analyses employed by the Commission to meet its regulatory responsibilities. Moreover, column (c), "Monthly Non-Requirements Sales for Resale & Associated Losses" was added to make the definition of system peak explicit: System peak only includes the firm demand of the utility's ultimate requirements and wholesale requirements customers. It does not include demand related to non-requirements transactions or losses associated with them. This is information the respondent is likely to have.

Additionally, Southwestern requested that the instructions clarify which line of the "Electric Energy Account" schedule should be equal to the "Total Monthly Energy" column. Instruction 2 states: "Report in column (b) the system's energy output for each month such that the total on line 41 matches the total on line 20."

Some commenters also stated that the losses associated with non-requirements sales for resale are not known. As noted above, the respondents are likely to know these losses.

b. *Schedule format.* The final rule eliminates columns (c) and (f) and renames previous column (g), "Monthly Output (MWh)," as "Total Monthly Energy." The final rule also adds a new column, entitled "Monthly Non-Requirements Sales for Resale & Associated Losses" for reporting monthly nonrequirements sales for resale and associated losses. Finally, the final rule defines the system's monthly maximum megawatt load, reported in the column entitled "Megawatts (see instruction 4)," as "that load associated with the net energy for the system defined as the difference between columns (b) and (c)." Column letter designations are changed accordingly.

c. *Instructions.* The final rule replaces all the previous instructions with new instructions as follows: Instruction 1 requires the separate reporting of the required information for the respondent's non-integrated power systems; Instruction 2 requires the reporting of system energy output by month; Instruction 3 requires the reporting of nonrequirements sales for resale and associated losses; Instruction 4 requires the reporting of the system's monthly maximum megawatt load as that load associated with the net energy for the system defined as the difference between columns (b) and (c); and Instruction 5 requires the reporting of day of the month and hour of the monthly peak.

D. Changes to FERC Form No. 1–F Schedules

The final rule changes several titles and deletes three columns from the "Sales of Electricity for Resale" schedule in order to parallel the changes on the Form 1 "Sales for Resale" schedule, pages 310–11, discussed above.

1. Part XV: Sales of Electricity for Resale Schedule [45]

a. *Comments.* EIA requested that the Part XV: Sales for Resale and Part XVI: Purchased Power schedules include revenue and cost breakdowns similar to those required on the Form 1 schedules. EIA also requested that power exchange transactions be reported on the Part XVI: Purchased Power schedule as is proposed on the Form 1 Purchased Power Schedule. As part of the changes to the bulk power schedules proposed herein, the Commission proposed identical changes to the substitute sales for resale and purchased power schedules for Form 1–F. Presently, most Nonmajor electric utilities elect to file a Form 1 in lieu of the required Form 1–F; therefore, only a few Nonmajor electric utilities file a Form 1–F. The intent of the reduced information in the Form 1–F schedules has always been to lessen the reporting burden on smaller entities. We therefore do not accept EIA's proposal since it is inconsistent with this regulatory objective.

b. *Schedule format.* The final rule eliminates three columns, previously designated as (c), (d) and (h). The information which was requested in those columns is either available from other sources or is no longer useful to the Commission. The elimination of those columns necessitates changes in the designation letters of the remaining columns. The final rule retitles the following items: the schedules title of Part XV "Sales of Electricity for Resale" is now "Sales for Resale;" previous column (a), "Sales To," is now "Name of Company or Public Authority;" and previous column (e), "Kilowatthours," is now "Megawatthours Sold (MWh)."

c. *Instructions.* The final rule rewords instruction 1 consistent with the changes to the "Sales For Resale" (Account 447)

[42] This addition is in response to a comment by Duke Power Company (Duke) on the "Electric Energy Account" which is discussed in the next section.

[43] This schedule was previously on page 401 of Form 1, 1989 edition. There is no account number for this schedule.

[44] This schedule was previously on page 401 of Form 1, 1989 edition. There is no account number for this schedule.

[45] This schedule was previously on page 17 of FERC Form 1–F, 1989 edition. There are no account numbers for any Form 1–F schedules proper (although when Form 1 schedules are used in lieu of Form 1–F schedules there are account numbers).

schedule instructions in the Form 1. The final rule replaces the remaining previous instructions as follows: Instruction 2 requires reporting the name of the purchaser and providing a footnote to explain any ownership interest or affiliation the respondent has with the purchaser; Instruction 3 requires reporting the FERC rate schedule or tariff number; Instruction 4 requires reporting the annual maximum damand in megawatts and providing an explanatory footnote if demand is reported on a different basis; Instruction 6 requires reporting the total sales for resale charges on bills rendered to each purchaser; and Instruction 7 requires footnotes for all entries that need explanation.

2. Part XVI: Purchased Power Schedule [46]

The final rule changes several titles and deletes three columns from the "Purchased Power" schedule to parallel changes on the Form 1 "Purchased Power" (pages 326–27) schedule.

a. *Schedule format.* The final rule eliminates three columns previously designated as (c), (d) and (h). The information which was requested in those columns is either available from other sources or is no longer useful to the Commission. The elimination of these columns necessitates changes in the designation letters of the remaining columns. The final rule retitles the following items: previous column (a), "Sales To," is now "Name of Company or Public Authority" and previous column (e), "Kilowatthours," is now "Megawatthours Purchased (MWh)."

b. *Instructions.* The final rule rewords Instruction 1 consistent with the changes to the "Purchased Power" (Account 555) schedule instructions in Form 1, and incorporates previous Instruction 3. The final rule replaced all the remaining previous instructions with new instructions as follows: Instruction 2 requires reporting the name of the seller and providing a footnote to explain any ownership interest or affiliation the respondent may have with the seller; Instruction 3 requires reporting the FERC rate schedule or tariff number or, for non-jurisdictional sellers, an appropriate and precise designation for the contract; Instruction 4 requires reporting the annual maximum demand in megawatts and providing an explanatory footnote if demand is reported on a different basis; Instruction 6 requires reporting the total purchased power charges on bills rendered by each seller to the respondent; and Instruction 7 requires footnotes for all entries that need explanation.

E. Requirements Related to Annual Charges [47]

a. *Comments.* APS and Wisconsin Electric Power Company (WEPCO) supported the proposed clarification of how power exchange transactions should be reported because they are already reporting it according to the Chief Accountant's instructions. Each asserts that its annual charges have been particularly high and each believes that if other utilities were to report power exchange transactions properly, its own annual charges would decrease. WEPCO requested that the commission rectify any past incorrect assessments of annual charges. The Commission cannot recalculate annual charges for past years because it lacks the necessary data and obtaining such data would not be cost-effective; the administrative burden associated with an attempted recalculation would far outweigh the benefits. However, obtaining consistent and appropriate data for the future is one of the main purposes of this final rule, and the Commission expects that these concerns will be allayed in the future.

PP&L suggested that megawatthours be used for reporting Annual Charges. The Commission adopts this suggestion. All instances where kilowatt-hours are used in section 382.201 are changed to megawatt-hours in the final rule. PP&L also suggested that the Annual Charges worksheet be required to be filed. The Commission adopts this suggestion also. A sentence is added to the end of § 382.201(b)(4)(B)(ii) to read: "A copy of the completed worksheet must be submitted as part of the Commission's annual charge reporting requirement (FERC Reporting Requirement No. 582)." PP&L suggested that a line be added for deducting non-jurisdictional sales for resale. The volume of non-jurisdictional sales for resale does not justify imposing a distinct reporting category.

b. *Changes in the final rule.* The final rule makes several changes to the Commission's Annual Charges regulations to conform to changes on the Form 1 "Purchased Power" schedule. Only changes to the Form 1 "Purchased Power" schedule need to be reflected in the Annual Charges regulations.

The final rule does not propose to change the definitions or reporting requirements in the Annual Charges regulations; however, the final rule replaces the term "interchange out" in § 382.102, paragraphs (k) and (n)(2), with "exchange delivered" to conform to the renaming of this term in the Purchased Power schedule of the FERC Form No. 1.[48] These paragraphs read as follows:

(k) *Adjusted exchange delivered* are jurisdictional energy transactions not included in either the above "Adjusted sales for resale" category or the above "Adjusted transmission delivered" category.

(n) *Adjusted coordination sales megawatt-hours* means the number of megawatt-hours of electrical energy that are (1) Not adjusted sales for resale megawatt-hours, (2) reported as adjusted exchange delivered or adjusted transmission delivered under section 382.201(b)(4) of this part, and (3) the rates, charges, terms and conditions of which are regulated by the Commission.

In addition, the final rule replaces the term "interchange out" with "exchange delivered" in: The heading for column 3, the title for row (B) and footnote 2 of the worksheet referred to in § 382.201(b)(4)(B)(ii). The final rule also changes, in the worksheet referred to in § 382.201(b)(4)(B)(ii), the page number references in footnote 2 from 328 to 326–27 and in footnote 3 from 332 to 328–30 to conform to the page renumbering of the bulk power schedules of the Form 1 The Annual Charges Worksheet is attached as appendix B.

F. Requirements Related to Fuel Cost and Purchased Economic Power Adjustment Clauses

1. *Comments.* To conform to changes on the Form 1 "Purchased Power" schedule, the final rule makes a consistent change in the fuel cost and purchased power adjustment clauses regulations. The term "interchange-in" is replaced with "exchange received" in § 35.14(a)(3).[49] This paragraph now reads as follows:

(3) Sales (S) shall be all kWh's sold, excluding inter-system sales. Where for any reason, billed system sales cannot be coordinated with fuel costs for the billing period, sales may be equated to the sum of (i) Generation, (ii) purchases, (iii) exchange received, less (iv) energy associated with pumped storage operations, less (v) inter-system sales referred to in paragraph (a)(2)(iv) above, less (vi) total system losses.

APS, Northeast Utilities (Northeast), and Southwestern expressed concern about the impact of the replacement of the term "interchange-in" with "exchange received" in the Commission's Economic Power Adjustment Clause regulations. This change does not substantively change this regulation. It is made so that the terminology used in the regulation conforms with the terminology used in Form 1.

[46] This schedule comprised page 18 of FERC Form 1–F, 1989 edition.

[47] The Commission established annual charges in Order No. 472, 52 F.R. 21,263 (1987), III FERC Stats. & Regs. ¶ 30,746 (1987).

[48] 18 CFR part 382 (1990).

[49] 18 CFR 35.14 (1990).

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA),[50] generally requires a description and analysis of proposed rules that will have a significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect. The Commission does not believe that this rule will have such an impact on small entities. Most electric utilities do not fall within the RFA's definition of small entities.[51] The Commission concludes, therefore, that this impact will not be "significant" within the meaning of the RFA. Accordingly, the commission certifies that issuance of this final rule will not have a "significant economic impact on a substantial number of small entities."

VI. Environmental Statement

The Commission concludes that issuance of his rule will not represent a major federal action having a significant adverse effect on the human environment under the Commission regulations implementing the National Environmental Policy Act.[52] This rule is procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.[53]

VII. Information Collection Statement

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection and recordkeeping requirements imposed by an agency.[54]

The Sales for Resale (Account 447), Purchased Power (Account 555), Transmission of Electricity For Others (Account 456), Transmission of Electricity By Others (Account 565), Electric Energy Account and Monthly Peaks and Output schedules in the Form 1; Sales For Resale and Purchased Power schedules in the Form 1–F; and conforming changes to the Annual Charges regulation and Fuel Cost and Purchased Economic Power Adjustment Clauses regulation are being submitted to OMB for its review.

The information collection forms affected by the final rule are FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others and FERC Form No. 1–F, Annual Report of Nonmajor Public Utilities and Licensees. These information collections are required in order for the Commission to carry out its legislative mandats under the Federal Power Act. The information required by this final rule, as previoulsy discussed herein, will assist the Commission in fulfilling its current regulatory responsibilities by improving the consistency of reporting of bulk power transactions.

An estimated 204 respondents will be affected by the final rule. The respondents will consist mostly of large public utilities, with a few medium to large public utilities. The annual public reporting burden for collection of information, including the few schedules revised herein, is estimated to be 218,700 hours for the Form 1 and 720 hours for the Form 1–F for all electric utilities filing these forms. The industry burden is based on an estimate of 1,215 average hours for the 180 utilities which complete a Form 1–F, both on an annual basis. THese estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

VIII. Effective Date

This rule is effective December 13, 1990.

List of Subjects

18 CFR Part 35

Electric power rates,
Electric utilities,
Reporting and recordkeeping requirements.

18 CFR Part 382

Annual charges.

In consideration of the foregoing, the Commission amends parts 35, and 382 in chapter I, title 18 of the Code of Federal Regulations as set forth below.

By the Commission.
Lois D. Cashell,
Secretary.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for part 35 is revised to read as follows:

Authority: 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142; 31 U.S.C. 9701; 16 U.S.C. 791a–825r; 16 U.S.C. 2601–2645.

2. In § 35.14, paragraph (a)(3) is revised to read as follows:

§ 35.14 Fuel cost and purchased economic power adjustment clauses.

(a) * * *

(3) Sales (S) must be all kWh's sold, excluding inter-system sales. Where for any reason, billed system sales cannot be coordinated with fuel costs for the billing period, sales may be equated to the sum of: (i) Generation, (ii) purchases, (iii) exchange received, less (iv) energy associated with pumped storage operations, less (v) inter-system sales referred to in paragraph (a)(2)(iv) of this section, less (vi) total system losses.

* * * * *

PART 382—ANNUAL CHARGES

3. The authority citation for Part 382 is revised to read as follows:

Authority: Public Law 99–509, title III, subtitle E, sec. 3401 (Oct. 21, 1986); 42 U.S.C. 7101–7352 (1988); E.O. 12009, 3 CFR 1978 Comp., p. 142; 5 U.S.C. 551–557; 15 U.S.C. 717–717w; 16 U.S.C. 791a–828c; 15 U.S.C. 3301–3432; 16 U.S.C. 2601–2645; 49 U.S.C. 1–27.

4. In § 382.102, paragraphs (k) and (n) are revised to read as follows:

§ 382.102 Definitions

* * * * *

(k) *Adjusted exchange delivered* are jurisdictional energy transactions not included in either the above "Adjusted sales for resale" category or the above "Adjusted transmission delivered" category.

* * * * *

(n) *Adjusted coordination sales megawatt-hours* means the number of megawatt-hours of electrical energy that are: (1) Not adjusted sales for resale megawatt-hours; (2) reported as adjusted exchange delivered or adjusted transmission delivered under § 382.201(b)(4); and (3) the rates, charges, terms and conditions of which are regulated by the Commission.

* * * * *

5. In § 382.201, paragraphs (b)(1), (b)(2), (b)(4)(i)(A), (b)(4)(i)(B), and (b)(4)(ii) are revised to read as follows:

§ 382.201 Annual charges under Parts II and III of the Federal Power Act and related statutes.

* * * * *

(b) *Determination of annual charges to be assessed against public utilities.*

(1) The adjusted sales for resale costs determined under paragraph (a) of this section will be assessed against each

[50] 5 U.S.C. 601–612 (1988).

[51] 5 U.S.C. 601(3) (1988) (citing to section 3 of the Small Business Act. 15 U.S.C. 632 (1988); section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation).

[52] 52 FR 47,897 (Dec. 17, 1987), III FERC Stats. & Regs ¶30,783 (Dec. 10, 1987) (*codified at* 18 CFR part 380).

[53] *See* CFR 380 4(a)(1) (1990).

[54] 5 CFR 1320.13 (1990).

public utility based on the proportion of the adjusted sales for resale megawatt-hours of each public utility in the immediately preceding reporting year (either a calendar year or fiscal year, depending on which accounting convention is used by the public utility to be charged) to the sum of the adjusted sales for resale megawatt-hours in the immediately preceding reporting year of all public utilities being assessed annual charges.

(2) The adjusted coordination sales costs determined under paragraph (a) of this section will be assessed against each public utility based on the proportion of the adjusted coordination sales megawatt-hours of each public utility in the immediately preceding reporting year (either a calendar year or fiscal year, depending on which accounting convention is used by the public utility to be charged) to the sum of the adjusted coordination sales megawatt-hours in the immediately preceding reporting year of all public utilities being assessed annual charges.

* * * * *

(4) *Reporting requirement.*

* * * * *

(i) * * *

(A) The total annual adjusted sales for resale megawatt-hours, as defined in § 382.102(m); and

(B) The total annual adjusted coordination sales megawatt-hours, as defined in § 382.102(n).

(ii) The data required in paragraphs (b)(4)(i) (A) and (B) of this section will be derived from information reported to the Commission annually in the FERC Form Nos. 1 and 1–F. For purposes of computing annual charges, the definitions in § 382.102(i)–(l) will be used in conjunction with the following worksheet to determine data reported in paragraphs (b)(4)(i) (A) and (B) of this section. A copy of the completed worksheet must be submitted as part of the Commission's Annual Charges reporting requirement (FERC Reporting Requirement No. 582).

* * * * *

[FR Doc. 90–28655 Filed 11–9–90; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 90F–0122]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,6-hexanediol as a component of the gelling agent dialkyldimethylammonium aluminum silicate and to increase the currently permitted use level of the gelling agent in mineral oil lubricants. This action is in response to a petition filed by Rheox, Inc.

DATES: Effective November 13, 1990; written objections and requests for a hearing by December 13, 1990.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 26, 1990 (55 FR 17671), FDA announced that a food additive petition (FAP 9B4174) had been filed by Rheox, Inc., Wyckoffs Mill Rd., Hightstown, NJ 08520, proposing that § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) be amended to provide for the safe use of 1,6 hexanediol as a component of the gelling agent dialkyldimethylammonium aluminum silicate and to increase the currently permitted use level of the gelling agent in mineral oil lubricants, from 7 percent maximum to 15 percent maximum.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed food additive use in mineral oil lubricants is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before December 13, 1990 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.3570 is amended by revising the table in paragraph (a)(3) for the entry "Dialkyldimethylammonium aluminum silicate * * *" under the "Substances" and "Limitations" columns to read as follows:

§ 178.3570 Lubricants with incidental food contact.

* * * * *

(a) * * *

(3) * * *

Substances	Limitations
* * *	* * *
Dialkyldimethylammonium aluminum silicate (CAS Reg. No. 68953–58–2), which may contain up to 7 percent by weight 1,6-hexanediol (CAS Reg. No. 629–11–8), where the alkyl groups are derived from hydrogenated tallow fatty acids (C_{16}–C_{18}) and where the aluminum silicate is derived from bentonite.	For use only as a gelling agent in mineral oil lubricants at a level not to exceed 15 percent by weight of the mineral oil.
* * *	* * *

* * * * *

Dated: November 1, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90–26609 Filed 11–9–90; 8:45 am]
BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 71

[T.D. ATF–302; Ref: Notice Nos. 661 and 670]

Requests or Demands for Disclosure of Information in Testimony and in Related Matters

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This final rule amends regulations in 27 CFR part 71 applicable to requests and demands for the disclosure of information in court testimony and related matters. The amendment requires an affidavit or, if that is not feasible, a statement to be filed whenever the testimony of an ATF employee or officer is sought, in any case in which the Federal Government is not a party. In addition, the amendment requires that any request or demand for testimony or production of records be served at least 5 working days before the scheduled date of disclosure to ensure that there will be enough time to properly consider whether the request or demand should be granted. Finally, the amendment specifies some of the criteria to be used in determining whether to grant the request or demand for testimony or records. These changes are intended to improve the procedures for dealing with requests and demands for testimony.

EFFECTIVE DATE: December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Simon, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, room 6230, Ariel Rios Federal Building, 1200 Pennsylvania Ave. NW., Washington, DC 20226; (202) 566–7531.

SUPPLEMENTARY INFORMATION:

Background

Among the responsibilities of the ATF Director is to exercise appropriate control over Bureau officers and employees in the performance of their official duties. This responsibility includes determining whether to grant permission to such officers and employees to testify, as representatives of the Bureau, in response to requests or demands from courts or similar forums.

Currently, ATF regulations provide that ATF officers and employees shall not testify or disclose official records in criminal or civil court cases without prior authorization from the Direstor or his delegate (27 CFR 71.27). These regulations are now being amended to provide additional guidelines regarding the necessary prior authorization. The amendment sets forth uniform and expeditious procedures for obtaining the prescribed authorization.

The Director is often requested to authorize a court appearance or deposition of an ATF official without an adequate explanation of the nature of the testimony being sought and without adequate time to determine the ramifications of the testimony from the Government's standpoint. It is important for the Director to have sufficient time and date to ascertain whether the requested testimony would disclose the identity of confidential informers, jeopardize a pending criminal case or investigation by prematurely revealing information about it, or disclose information prohibited by law from disclosure.

Summary of Changes

The provisions of this final rule will add three new subparagraphs under paragraph (e) of 27 CFR 71.27. Paragraph (e), titled "Procedure in the event of a request or demand for ATF records or information," currently sets forth procedures for processing and responding to such requests or demands, but not for submitting them. Nor does the current regulation describe the criteria for determining whether a request or demand would be granted. New subparagraphs (3), (4), and (5) of paragraph (e) provide such procedures and criteria.

New paragraph (e)(3) requires an affidavit or statement to be prepared by the party (or party's attorney) who makes a request or demand (including a subpoena *duces tecum*) for the testimony of an ATF officer or employee. This requirement will not apply to a request or demand from a State, because § 71.27(e) generally does not apply to such requests or demands. In addition, this requirement will not apply in any case in which the United States is a party. The affidavit or statement must specify the information about which the testimony is desired. The affidavit will enable the Director or his delegate to make an informed decision whether to authorize the officer or employee to testify. No affidavit or statement is necessary in the case of a request or demand for ATF records only (as opposed to testimony), since the request or demand itself would specify the matters sought to be disclosed.

New paragraph (e)(4) prescribes a time limit within which any request or demand for testimony or disclosure of records must be served. Service will be required at least 5 working days before the date scheduled for the disclosure of information. This will give ATF time in which to evaluate the request or demand and to decide whether it will be granted. This time requirement, as well as the affidavit requirement of paragraph (e)(3) may be waived upon a demonstration that emergency circumstances, or other good cause reasons, make compliance infeasible or impractical.

New paragraph (e)(5) contains a brief discussion of the factors to be considered in determining whether to grant requests or demands under § 71.27. New subparagraph (5) applies both to testimony and to the disclosure of records in testimony-related matters. No

attempt is made to present an exhaustive catalog of all the determining factors, in view of the variety of circumstances from case to case. Rather, the subparagraph presents the general principles to be followed and lists the most common reasons for denial of requests or demands for disclosure under § 71.27.

Finally, because some of the authorities of the Director under part 71, including the authorities under § 71.27, have been redelegated to subordinate officials, the definition of "Director" in § 71.11 is amended by adding the words "or his delegate."

Notice of Proposed Rulemaking

On July 11, 1988, ATF published a notice of proposed rulemaking, Notice No. 661 (53 FR 26088), with a 60-day comment period. In response to several requests for an extension of the comment period, the original 60-day period was extended for an additional 60 days by Notice No. 670 (53 FR 35093).

Comments Received

During the comment period, 13 comments were received. Among the commenters were nine alcoholic beverage industry members, three trade associations, and another interested party. All of the comments were critical of the proposal, and most of them called for its withdrawal, for various reasons. ATF has given these comments serious consideration, and certain changes have, in consequence, been made in this final rule. Those changes are discussed below.

Several of the commenters requested an opportunity to elaborate their arguments verbally at a public hearing. However, the Director has determined that a public hearing would not be beneficial in this case. ATF has afforded an opportunity for the public to submit written comments on the proposal and, as mentioned, such comments have been helpful in preparing this final rule. But we do not feel that an oral public hearing would be likely to provide any additional information or serve the public good, as provided in 27 CFR 71.41.

For most commenters, the principal objection to the proposed amendment was that it would limit their access to testimony or information, which they might need in order to prosecute or defend a case in court. This objection misunderstands the nature of the amendment. Access to testimony or information would only be limited if the Director refused to allow an ATF officer or employee to testify. However, the Director already has full authority, under § 71.27(d), to forbid employee testimony. Consequently, the amendment made by this final rule does not expand the Director's authority but merely provides an orderly procedure for its exercise. Additionally, the final rule, in § 71.27(e)(3), excludes from the affidavit requirement all cases in which the United States is a party. This should alleviate the concerns of several commenters about the fairness of this requirement in litigation involving ATF.

Some commenters suggested that ATF was without legal authority to promulgate these regulations. The authority to issue the regulations is contained in 5 U.S.C. 301, which provides in part:

> The head of an Executive Department * * * may prescribe regulations for the government of his department, the conduct of its employees, * * * and the custody, use, and preservation of its records, papers, and property * * *. This section does not authorize withholding information from the public or limiting the availability of records to the public.

Section 301 and its predecessor (5 U.S.C. 22) have been recognized as "housekeeping" statutes, the purpose of which is to centralize decision making to ensure consistent rulings. *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462, 468 (1050); *Cates* v. *L.T.V. Aerospace Corp.*, 480 F.2d 620, 623 (5th Cir. 1973). Under section 301, courts have consistently recognized that an agency head may reserve the authority to determine when agency documents and information should, within the ambit of the law, be disclosed. *Id.*; *Boske* v. *Comingore*, 177 U.S. 459, 470 (1900); *Saunders* v. *Great Western Sugar Co.*, 396 F.2d 794 (10th Cir. 1968). Therefore, there is ample legal authority to promulgate these regulations.

Some commenters suggested that the proposed regulations usurped the authority of the courts and administrative law judges in determining the applicability of any asserted privilege. They also stated that the proposed regulations would result in a denial of due process by impairing an industry member's ability to defend itself in a judicial or administrative proceeding. The regulations prescribed by this final rule do not give the Director any undue authority to arbitrarily refuse to comply with a request or demand for testimony. There is a clear distinction between the agency's authority to decide "who" may disclose official information from the ultimate judicial authority to decide "what" must be disclosed. It is clear that until a request or demand for the materials is made upon the proper person, and pursuant to lawfully issued regulations, the issue of whether the agency head has a privilege to refuse the production of testimony or records need not be reached. In this regard, 5 U.S.C. 301 and these regulations do not create any new privilege of nondisclosure. Rather, this final rule merely establishes procedures for obtaining testimony and restates existing privileges which are available to the Government. Further, it gives the public notice of these privileges. The ultimate authority to decide whether a claim of privilege has been correctly asserted remains with the appropriate judicial or administrative authority. Hence, section 301 is appropriate authority for ATF to issue procedural regulations governing the conduct of its employees. This is consistent with the provision that section 301 does not, in itself, authorize the withholding of records from the public.

Several commenters argued that the proposed regulations were unnecessary, that existing procedures (such as the Federal Rules of Civil Procedure) are adequate to protect ATF against unreasonable demands for information, and that there is no reason why the Bureau should be treated any differently from other parties or non-parties in litigation. However, as an agency of the U.S. Government, ATF has a right to provide procedures for the consideration of requests for testimony of its personnel under 5 U.S.C. 301. This final rule does not provide ATF with rights not afforded other Federal agencies under the law.

One commenter suggested that a portion of proposed paragraph (e)(5)(v) is violative of the rule in *Brady* v. *Maryland*, 373 U.S. 83 (1963). Specifically, as proposed, paragraph (e)(5)(v) provided that a request or demand would be denied if disclosure might "jeopardize or conflict with any * * * pending criminal case." In *Brady*, the Supreme Court held that, irrespective of good or bad faith, suppression by the prosecution of evidence favorable to a defendant who has requested it violates due process where such evidence is material to either guilt or punishment.

The amendment made by this Treasury decision is not intended to avoid the Government's obligation under *Brady*, nor to preclude appropriate discovery in any case. To clarify this point, paragraph (e)(5)(iv) of the final rule provides for disclosure of information in the interest of justice notwithstanding that disclosure might otherwise be denied because such disclosure would interfere with enforcement proceedings. This provision is consistent with the Department of Justice's regulations at 28 CFR 16.26(b)(5) and (c).

One commenter proposed an additional criterion to be considered for denying testimony or production of documents where ATF has had no involvement in the matters which are the subject of the case. This commenter's point is well taken, and paragraph (e)(5)(vi) has been revised to preclude permission for testimony when ATF has not participated in an investigation and has no other record, official information or interest concerning the case in which the testimony is sought. For example, where an employee's testimony is sought for the sole purpose of interpreting Federal law or regulations rather than producing agency records or other official information, the testimony would not be authorized (unless ATF had some official interest in the case). The purpose of this criterion is to ensure that employees' official time is used only for official purposes, to maintain the impartiality of ATF among litigants, to ensure that public funds are not used for private purposes, and to establish procedures for approving testimony or production of documents when clearly in the best interests of the United States.

Additional Changes

ATF has considered the possibility that, in some cases, obtaining a sworn affidavit might be unreasonably burdensome, while a plain statement could be submitted without undue difficulty. In consideration of this possibility, the proposal is revised in the final rule to provide that if oral testimony is sought by a request or demand in any case in which the United States is not a party, an affidavit or, if that is not feasible, a statement by the party (or party's attorney) seeking the testimony, setting forth a summary of the testimony sought and its relevance to the proceeding, must be furnished. The final rule is thus consistent with the Department of Justice's regulation at 28 CFR 16.22(c).

Finally, proposed paragraph (e)(5)(v) has been deleted, because the provision is covered by paragraph (e)(5)(iv) as revised in the final rule.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis (5 U.S.C. 603, 604) are not applicable to this final rule, because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of February 17, 1981, ATF has determined that this final rule is not a major rule, since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR 1320, do not apply to this final rule, because no requirement to collect information is imposed. An affidavit is excluded from the definition of "information" under regulations of the office of Management and Budget, 5 CFR 1320.7(j)(1) (revised May 10, 1988).

Drafting Information

The authors of this document are Steve Simon, Distilled Spirits and Tobacco Branch, and Richard Isen, office of Chief Counsel, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 71

Administrative practice and procedure, Authority delegations, Courts, Freedom of information, Privacy.

Issuance

Accordingly, part 71 of title 27 of the Code of Federal Regulations is amended as follows:

Paragraph 1. The authority citation for part 71 continues to read as follows:

Authority: 5 U.S.C. 301, 552.

Par. 2. The definition of "Director" in 71.11 is revised to read as follows:

§ 71.11 Meaning of terms.

* * * * *

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC 20226, or his delegate.

* * * * *

Par. 3. Section 71.27 is amended by adding new paragraphs (e)(3), (4), and (5) to read as follows:

§ 71.27 Requests or demands for disclosure in testimony and in related matters.

* * * * *

(e) * * *

* * * * * *

(3) *Affidavit required for testimony.* If testimony of an ATF officer or employee is sought by a request or demand on behalf of a party other than a State in any case or matter in which the United States is not a party, an affidavit, or if that is not feasible, a statement shall be submitted. The affidavit or statement shall be prepared by the party (or party's attorney) seeking the testimony, and shall set forth a summary of the testimony sought and its relevance to the proceedings. The affidavit or statement must be submitted before permission to testify may be granted. The Director may, upon request and for good cause shown, waive the requirement of this paragraph.

(4) *Time limit for serving request or demand.* The request or demand, together with the affidavit or statement (if required by paragraph (e)(3) of this section), shall be served at least 5 working days prior to the scheduled date of testimony or disclosure of records, in order to ensure that the Director has adequate time to consider whether to grant the request or demand. The Director may, upon request and for good cause shown, waive the requirement of this paragraph.

(5) *Factors to be considered in determining whether a request or demand will be granted.* The Director shall consider whether granting the request or demand would be appropriate under the relevant rules of procedure and substantive law concerning privilege. Among the requests or demands that will not be granted are those that would, if granted, result in—

(i) The violation of a statute, such as 26 U.S.C. 6103 or 7213, or a rule of procedure, such as the grand jury secrecy rule (F.R.Cr.P. Rule 6(e)), or a specific regulation;

(ii) The disclosure of classified information;

(iii) The disclosure of a confidential source or informant, unless the ATF officer or employee and the source or informant, have no objection;

(iv) The disclosure of investigative records compiled for law enforcement purposes if enforcement proceedings

would thereby be impeded, or of investigative techniques and procedures whose effectiveness would thereby be impaired, unless the Director determines that the administration of justice requires disclosure:

(v) The disclosure of trade secrets without the owner's consent; or

(vi) Testimony in a case in which ATF has no interest, records or other official information.

Dated: September 6, 1990.

Daniel R. Black,

Acting Director.

Dated: September 27, 1990.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 90-23880 Filed 11-9-90; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 90-183]

Special Local Regulations; President's Cup Regatta, Poughkeepsie, NY

AGENCY: Coast Guard, DOT

ACTION: Temporary rule.

SUMMARY: Special local regulations are being adopted for the President's Cup Regatta, a rowing regatta to be held in the Hudson River at Poughkeepsie, New York. This event will be held from 6 a.m. to 5 p.m. on November 17, 1990. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: This temporary regulation becomes effective on November 17, 1990 from 6 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ensign Leslie J. Penney, U.S. Coast Guard, (617) 223-8310.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until September 10, 1990 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this notice are Ensign L. J. Penney, U.S. Coast Guard, Project Officer, Boating Safety Office and Lieutenant R.E. Korroch, U.S. Coast Guard, Project Attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The President's Cup Regatta is a rowing regatta which will be held in the Hudson River at Poughkeepsie, NY. The regulated area will be the race course. No vessel other than participants or those vessels authorized by either the sponsor or the Coast Guard Patrol Commander shall enter the regulated area. The regulated area will be patrolled by the Coast Guard, Coast Guard Auxiliary and sponsor provided patrols.

Economic Assessment and Certification

The regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The event will draw a number of spectators and participants into the area which will aid the local economy. The effective period of regulation is short and the only adverse impact to uninterested and commercial vessels is that navigation in the regulated area will be reduced. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section, 100.35-01-05T is added to read as follows:

§ 100.35-01-05T President's Cup Regatta, Poughkeepsie, NY

(a) *Regulated area.* The race course is in the Hudson River at Poughkeepsie, NY in the area bounded within a rectangular area described by the following points:

Commencing at Mid Hudson Bridge North to Latitude 41 44.2 North, Longitude 073 56.3 West then West to Latitude 41 44.2 North, Longitude 073 56.6 West then South to Mid Hudson Bridge.

(b) *Special local regulations.* The following requirements will be placed on vessels operating within the regulated area during the effective period of regulation:

(1) Vessels, including tows, greater than 20 meters in length shall not transit the regulated area at any time during the effective period unless authorized by the Coast Guard Patrol Commander.

(2) Vessels less than 20 meters in length may transit the regulated area if escorted by official regatta patrol vessels specified in paragraph (4) below.

(3) Unless otherwise directed by the Coast Guard Patrol Commander transiting vessels shall: Remain clear of the race course area as marked by the sponsor provided buoys; not interfere with races; remain outside of the designated regulated area.

(4) Official patrol vessels include Coast Guard and Coast Guard Auxiliary vessels and other vessels so designated by the regatta sponsor or Coast Guard patrol personnel.

(5) No person or vessel may enter or remain in the regulated area during the effective period unless participating in the event or authorized to be there by the sponsor or Coast Guard patrol personnel.

(6) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(7) In the event of an emergency or as directed by the Coast Guard Patrol Commander, the sponsor shall dismantle the race course to allow the passage of any U.S. Government vessel or any other designated emergency vessel. At the discretion of the Patrol Commander, any violation of the provisions contained within this regulation shall be sufficient grounds to terminate this event.

(c) *Effective date:* This regulation will be effective from 6 a.m. to 5 p.m. on November 17, 1990.

Dated: October 31, 1990.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 90-26720 Filed 11-9-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Honolulu Regulation 90-03]

Safety Zone Regulations; Pearl Harbor, Oahu, HI

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone on specific water areas within Pearl Harbor. This zone is needed to protect vessels and operators, participating as racers or spectators, from damage and injury resulting from improper vessel traffic situations, presence of unauthorized vessels in restricted race areas, and unsafe boating practices during "HYDROFEST". The "HYDROFEST" is a four-day event featuring high speed hydrofoil races. Entry into this zone is controlled by the Captain of the Port or his designated representatives.

EFFECTIVE DATES: This regulation is effective on November 10, 1990, from 6 a.m. until 7 p.m.; on November 11, 1990, from 6 a.m. until 7:30 p.m.; and on November 12, 1990, from 6 a.m. until 7 p.m., unless terminated sooner by the Captain of the Port, Honolulu, HI.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Emily F. Costa, Project Officer, Port Operations Department, (808) 541-2068, FTS 551-2068, U.S. Coast Guard Marine Safety Office, Honolulu, Hawaii.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent injury to vessel operators in the vicinity of the "HYDROFEST" until the hydrofoil races are completed.

Drafting Information

The drafter of this regulation is LTJG E. F. Costa, Project Officer for the Captain of the Port, Honolulu.

Discussion of the Regulation

The event requiring this regulation is "HYDROFEST 90", a four-day event featuring high speed unlimited hydrofoil races. Although Pearl Harbor is normally closed to civilian and most commercial traffic, the specified water areas of the zone will be open to a limited number of authorized, recreational boaters for the purpose of viewing the hydrofoil races. The entire zone will be the water area enclosed by lines drawn from the southern most point of pier V2, Pearl City Peninsula (21°-22'10" N, 157°-58'12" W) extending eastward through Ford Island and the Arizona Memorial, to the foot of Hotel Pier, Pearl Harbor Naval Base (21°-21'52" N, 157°-56'39" W), then extending northward to (21°-23'08" N, 157°-56'00" W), then extending westward to (21°-23'20" N, 157°-58'12" W), and finally extending southward to the first point. The speed limit within the zone will be "NO WAKE" for all recreational/spectator vessels.

Whenever a hydroplane is in the water there will be "NO MOVEMENT" for ALL vessels within the zone. Furthermore, a restricted area inside the zone will be designated as the hydrofoil race course. The restricted area (Race Course) is the water area enclosed by lines drawn from (21°-22'25" N, 157°-58'00" W) extending eastward to (21°-22'06" N, 157°-56'52" W), then extending northward to (21°-22'30" N, 157°-56'43" W), then extending westward to (21°-22'56" N, 157°-58'00" W), and finally extending southward to the first point. All spectator vessels are prohibited from entering the restricted area (Race Course) at any time during the effective date of this regulation. The safety zone will be in effect on November 10, 1990, from 6 a.m. until 7 p.m.; on November 11, 1990, from 6 a.m. until 7:30 p.m.; and on November 12, 1990, from 6 a.m. until 7 p.m. unless terminated sooner by the Captain of the Port, Honolulu, HI. Coast Guard and Coast Guard Auxiliary vessels, with Coast Guard boarding officers onboard will be on scene to enforce the safety zone. The intent of this regulation is to minimize the risk to vessel operators, race contestants and spectators from the hazards involved with high speed boat races. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. In Part 165, a new § 165.T1403 is added as follows:

§ 165.T1403 Safety Zones: Top Gun Hydrofest at Pearl Harbor, Oahu, Hawaii.

(a) *Location.* The following area is a safety zone: The waters enclosed by lines drawn from (21°-22'10" N, 157°-58'12" W) extending eastward to (21°-21'52" N, 157°-56'39" W), then extending northward to (21°-23'08" N, 157°-56'00" W), then extending westward to (21°-23'20" N, 157°-58'12" W), and finally extending southward to the first point.

(b) *Effective date.* This regulation is effective on November 10, 1990, from 6 a.m. until 7 p.m.; on November 11, 1990, from 6 a.m. until 7:30 p.m.; and on November 12, 1990, from 6 a.m. until 7 p.m., unless terminated sooner by the Captain of the Port, Honolulu, HI.

(c) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Honolulu, Hawaii to act on his behalf. The following officers have or will be designated by the Captain of the Port: The senior Coast Guard boarding officer on each vessel enforcing the safety zone, and the Duty Officers for the Marine Safety Office, Honolulu, HI.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless meeting the restrictions outlined in paragraph 2(d)(2) below or as authorized by the Captain of the Port or his designated representative.

(2) The operator of any vessel in the safety zone shall:

(i) Proceed at a NO WAKE speed while in the zone, comply with the NO MOVEMENT requirement while any hydrofoils are in the water, and stay out of the marked restricted area (race course). The restricted area is enclosed

by lines drawn from (21°—22'25" N, 157°—58'00" W) extending eastward to (21°—22'08" N, 157°—56'52" W), then extending northward to (21°—22'30" N, 157°–56'43" W), then extending westward to (21°—22'56" N, 157°—58'00" W), and finally extending southward to the first point.

(ii) Stop the vessel immediately upon being directed to do so by any Coast Guard commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(iii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

Dated: October 24, 1990.

Richard C. Vlaun,

Captain, U.S. Coast Guard, Captain of the Port, Honolulu, Hawaii.

[FR Doc. 90-26719 Filed 11-9-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3859-7]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for a specific waste generated by Kawneer Company, Incorporated, Springdale, Arkansas. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: November 13, 1990.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW. (Room M2427), Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-90-KWEF-FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4782.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine: (1) That the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the waste at levels of regulatory concern.

B. History of the Rulemaking

Kawneer Company, Incorporated (Kawneer) petitioned the Agency to exclude from hazardous waste control its F019 wastewater treatment sludge. After evaluating the petition, EPA proposed, on August 6, 1990, to exclude Kawneer's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 55 FR 31849).

This rulemaking finalizes the proposed decision to grant Kawneer's petition.

II. Disposition of Delisting Petition

A. Kawneer Company, Incorporated, Springdale, Arkansas

1. Proposed Exclusion

Kawneer Company, Incorporated (Kawneer), located in Springdale, Arkansas, petitioned the Agency to exclude its wastewater treatment sludge, listed as Hazardous Waste No. F019—"Wastewater treatment sludges from the chemical conversion coating of aluminum". The listed constituents for EPA Hazardous Waste No. F019 are hexavalent chromium and cyanide (complexed) (see 40 CFR part 261, appendix VII).

In support of its petition, Kawneer submitted: (1) Detailed descriptions of its manufacturing and wastewater treatment processes; (2) a list of all raw materials used in both the manufacturing and treatment processes; (3) total constituent and EP toxicity analysis data for the EP toxic metals, nickel, and cyanide for representative samples of the petitioned waste; (4) total constituent analysis data for total sulfide for representative samples of the petitioned waste; (5) total oil and grease analysis data for representative samples of the petitioned waste; (6) total constituent analysis data for hazardous organic compounds (*i.e.*, those listed in 40 CFR 261, appendix VIII) potentially present in the petitioned waste; and (7) results from characteristics testing for ignitability, corrosivity, and reactivity.

The Agency evaluated the information and analytical data provided by Kawneer in support of its petition and determined that the hazardous constituents found in the petitioned waste would not pose a threat to human health and the environment. Specifically, the Agency used its vertical and horizontal spread (VHS) model and organic leachate model (OLM) to predict the potential mobility of the hazardous constituents found in the petitioned waste. Based on this evaluation, the Agency tentatively determined that Kawneer's petitioned waste would not leach and migrate at concentrations above the health-based levels used in delisting decision-making. See 55 FR 31849, August 6, 1990, for a more detailed explanation of why EPA proposed to grant Kawneer's petition.

2. Agency Response to Public Comment

The Agency did not receive any public comments regarding its proposal to grant Kawneer's petition for its wastewater treatment sludge.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that Kawneer's petitioned wastewater treatment sludge should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to the Kawneer Company, Incorporated, located in Springdale, Arkansas, for its wastewater treatment sludge described in its petition as EPA Hazardous Waste No. F019.

The exclusion only applies to the processes and waste volume covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that a change in waste composition or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition is relieved from subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under the State law.

IV. Effective Date

This rule is effective November 13, 1990. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is a "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis, which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities. This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

VIII. List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling and reporting and recordkeeping requirements.

Dated: October 23, 1990.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In table 1 of appendix IX to part 261, add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under § 260.20 and § 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Kawneer Company, Incorporated	Springdale, Arkansas	Wastewater treatment filter press sludge (EPA Hazardous Waste No. F019) generated (at a maximum annual rate of 26 cubic yards) from the chemical conversion coating of aluminum. This exclusion was published on November 13, 1990.

[FR Doc. 90-26700 Filed 11-9-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3859-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for specified waste generated by Perox, Incorporated (Perox), Sharon, Pennsylvania. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: November 13, 1990.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., Room M2427, Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-90-PXEF-FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Bob Kayser, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2224.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine: (1) That the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the waste at levels of regulatory concern.

B. History of This Rulemaking

Perox, Incorporated (Perox), located in Sharon, Pennsylvania petitioned the Agency to exclude its iron oxide waste from hazardous regulation. After evaluating the petition, EPA proposed, on January 12, 1989, to exclude Perox's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 54 FR 1189).

This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to grant Perox's petition.

II. Disposition of Delisting Petition

A. Perox, Incorporated, Sharon, Pennsylvania

1. Proposed Exclusion

Perox petitioned the Agency for an exclusion of its iron oxide waste, produced as a by-product from the regeneration of spent pickle liquor, presently listed as EPA Hazardous Waste No. K062—"Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332)". The listed constituents for EPA Hazardous Waste No. K062 are hexavalent chromium and lead. EPA Hazardous Waste No. K062 is also classified as a corrosive waste under 40 CFR 261.30. Perox based its petition on the claim that the constituents of concern, although present in the waste, are in an essentially immobile form.

To support its claim that both the non-listed and listed constituents of concern are not present in the iron oxide above health-based levels of concern, Perox submitted: (1) A detailed description of its hydrochloric acid regeneration process, including schematic diagrams; (2) total constituent and EP toxicity results of the iron oxide for the EP toxic metals and nickel; (3) analytical results for total cyanide; (4) iron oxide analysis data (*e.g.*, inorganic compounds, density and particle size measurements) for a six-month period; and (5) results from characteristics testing for ignitability, corrosivity, and reactivity. Additionally, the Agency conducted a spot-check sampling visit to Perox and collected and analyzed samples of the petitioned waste.

The Agency evaluated the information and analytical data provided by Perox in support of its petition and determined that the hazardous constituents found in the petitioned waste would not pose a threat to human health and the environment. Specifically, the Agency used its vertical and horizontal spread (VHS) model to predict the potential mobility of the hazardous constituents found in the petitioned waste. Based on this evaluation, the Agency determined that the constituents in Perox's waste would not leach and migrate at concentrations above the health-based levels used in delisting decisionmaking. See 54 FR 1189, January 12, 1989, for a more detailed explanation of why EPA proposed to grant Perox's petition for its iron oxide waste.

2. Agency Response to Public Comments

The Agency received comments on the proposed rule from one interested party. This commenter disagreed with the Agency's proposed decision to exclude Perox's iron oxide waste. The comments submitted related to the following areas: (1) The Agency's failure to evaluate total constituent levels of metals in the waste, (2) the Agency's failure to consider alternative disposal scenarios, (3) the Agency's use of the VHS model in evaluating the petition, and (4) inconsistency between the Delisting and Land Disposal Restrictions Programs. The specific comments made by the interested party regarding the Agency's proposed decision to grant the petition, and the Agency's responses to them, are discussed below.

Evaluation of total constituent levels. The commenter claimed that Perox has failed to demonstrate that its K062 waste is not capable of posing a hazard to human health or the environment. The commenter emphasized that the maximum total constituent concentration of chromium in Perox's iron oxide is 1,550 ppm, which is greater than the "significant concentration" of 1,380 ppm referred to by the Agency in its background support for the listing of K061 waste (emission control dust from the electric furnace production of steel). The commenter also believed that, based on the acknowledged toxicity of hexavalent chromium, the total constituent levels of chromium in the petitioner's waste must be considered by the Agency in its petition evaluation.

The Agency agrees that the presence of significant concentrations of chromium and lead in K062 wastes was one of the reasons for listing K062 wastes as "T" (toxic) wastes. See 40 CFR 261.11(a)(3)(ii) and the "Background Document, Resource Conservation and Recovery Act, Subtitle C, Hazardous Waste Management, Section 3001, Identification and Listing of Hazardous

Waste," 1980. The Agency, however, believes that the data presented in the Background Documents broadly characterize the physical/chemical nature of K061 and K062 wastes and that these data are not representative of the physical/chemical nature of Perox's iron oxide waste. K061 wastes, as described in the K061 Background Document, are generated when particulate matters in carbon monoxide and carbon dioxide gases given off by an electric arc furnace are removed using air pollution control equipment (*e.g.*, baghouse filters). K061 wastes may be dusts or sludges depending on whether the air pollution control equipment relies on a dry or wet collection method. The K062 Background Document describes wastes listed as EPA Hazardous Waste No. K062 (spent pickle liquor generated by steel finishing operations) as strongly acidic solutions containing very high concentrations of dissolved iron and significant levels of other metals (*e.g.*, chromium). Pickle liquors are used to remove surface oxidation (*e.g.*, ferrous oxide) or to impart specific surface characteristics.

Unlike these wastes, Perox's iron oxide waste is a solid residue generated during the treatment of spent hydrochloric acid pickle liquor. The iron oxide waste has a total solids content of 99 percent. As described above, the K061 and K062 wastes characterized in the Background Documents are dusts or sludges (K061 wastes) or acidic solutions (K062 wastes). In addition, Perox's waste is primarily composed of ferric oxide (data submitted in the petition indicate that levels of ferric oxide in the petitioned waste range between 97 and 99 percent by weight). Calcium oxide levels in the petitioned waste range between 0.01 and 0.1 percent. By comparison, data for a typical K061 dust (as cited in the K061 Background Document) indicate iron and calcium oxide concentrations of approximately 35 and 12 percent, respectively. Furthermore, because of the acidity of spent pickle liquor solutions, toxic metals are readily available to migrate into the environment; toxic metals in Perox's petitioned waste, on the other hand, would not be expected to mobilize as readily. For these reasons, the Agency believes that Perox's iron oxide waste is different physically and chemically than the wastes characterized by the K061 and K062 listings.

EPA also believes it is reasonable to expect that, as the total constituent concentration of an unbound or loosely bound metal present in a waste increases, the potential for the metal to leach from the waste also increases (generally, the higher the total constituent concentration of an unbound or loosely bound metal, the higher the potential EP leachate concentration). Thus, wastes having significant total constituent concentrations of unbound or loosely bound metals, as did those considered in the Background Document, are more likely to impact the underlying ground water than wastes having lower total constituent concentrations of unbound or loosely bound metals. Here, however, unlike the spent pickle liquor solutions considered in the Background Document for K062 wastes, the metals in Perox's iron oxide waste are tightly bound within the waste matrix. Thus, the Agency believes that the levels of the metals present in Perox's iron oxide waste should not pose a threat to either human health or the environment. The Agency's conclusion that the listed and non-listed inorganic constituents of concern are bound in the waste matrix and are, therefore, unavailable for leaching is supported by the results of the EP leachate analyses of Perox's petitioned waste (see 54 FR 1189, January 12, 1989).

EPA evaluated the potential mobility of Perox's iron oxide waste using the maximum EP leachate concentrations and the VHS model. The VHS model predicts a dilution factor of approximately 6.4 for the estimated volume of waste generated by Perox (4,800 cubic yards per year). The VHS model analysis provides a conservative and reasonable worst-case evaluation of the waste's effect on the underlying aquifer. The predicted compliance-point concentrations resulting from this conservative analysis were below the levels of concern used for delisting purposes. See 54 FR 1189, January 12, 1989, for a description of the modeling analysis of Perox's iron oxide waste.

Furthermore, in delisting evaluations, EPA considers all factors that could cause a waste to be hazardous. The Agency considers both factors for which the waste was listed and factors, other than those for which the waste was originally listed, that could cause the waste to be hazardous (see 42 U.S.C. 6921(f)). For Perox's petitioned waste, based on the discussions presented above and in the proposal, EPA does not believe that any other factors, including total concentrations of the listed and non-listed inorganic constituents of concern, could cause this waste to present a hazard to human health and the environment.

With regard to the commenter's concern about the toxicity of hexavalent chromium, the Agency notes that its application of the VHS model for possible ground-water ingestion considers concentrations of total chromium, not only the hexavalent species. Specifically, the delisting health-based level for ground-water is based on the assumption that all the chromium is in the hexavalent state. See the basis for the maximum contaminant level (MCL) for chromium in drinking water given in 45 FR 57332, August 27, 1980. While the hexavalent form of chromium is more toxic than the trivalent form, the Agency believes it is more appropriate to set an acceptable level for total chromium due to the potential for interconversion between the two species in water. See also 54 FR 22062, May 22, 1989. Thus, the delisting modeling evaluation assumes the worst-case (*i.e.*, the chromium present in a waste is the hexavalent species of chromium).

Consideration of alternative disposal scenarios. The commenter also stated that the Agency, in its reliance on the VHS model, has focused solely on the leaching potential of hazardous constituents in a landfill setting and has not evaluated other relevant and plausible mismanagement scenarios. The commenter believed that, if the waste were delisted, the waste could be improperly managed during transport off site, or inadequately controlled at the landfill. As such, there could be opportunity for airborne or waterborne dispersal resulting in human or environmental exposure. The commenter claimed that the absence of an evaluation of such other factors has resulted in a serious underestimation of the risks posed by Perox's waste.

The Agency disagrees with the commenter that use of the VHS model, in this case, has underestimated the potential hazard posed to human health and the environment by Perox's waste. The Agency believes, for the reasons stated below, that there is no substantial present or potential hazard to human health or the environment from airborne exposure to contaminants from Perox's iron oxide waste.

Although EPA does not believe that exposure to hazardous airborne contaminants from Perox's iron oxide waste is likely to present a hazard to human health or the environment, the Agency, in order to fully respond to the specific comment, evaluated the hazards resulting from such an exposure to Perox's iron oxide waste. Specifically, EPA used the methodology documented in "Rapid Assessment of Exposure to Particulate Emissions From Surface Contamination Sites," U.S. Environmental Protection Agency,

Office of Health and Environmental Assessment, EPA/600/8-85/002, February 1985, to estimate respirable particulate emissions from wind erosion of surfaces with an "unlimited reservoir" of erodible particles. The worst-case emission rate derived from this methodology then was used as an input to the Agency's Ambient Air Dispersion Model (AADM), a steady-state, Gaussian plume dispersion model, to predict the concentrations of the inorganic constituents 1,000 feet downwind of the facility. For a complete description and discussion of the AADM, see 50 FR 48963, November 27, 1985.

In this specific analysis, the Agency assumed conservative values for all variables likely to influence potential soil erosion, including wind velocity and vegetation. The Agency, however, modified the assumptions regarding unit dimensions used in the AADM to more closely resemble a landfill (*i.e.*, unit depth was changed from one foot to eight feet as used in the VHS model). The results of this conservative, worst-case analysis indicated that no substantial present or potential hazard to human health or the environment is likely from airborne exposure to both the listed and non-listed inorganic constituents from Perox's iron oxide waste. (A complete description of the Agency's modeling and analysis of air emissions from Perox's iron oxide waste is presented in "Docket Report on Evaluation of Air Emissions Resulting From Perox's Iron Oxide Waste," September 26, 1990, which is available in the docket for today's final rule.)

The Agency acknowledges that it may be possible for runoff (*i.e.*, rainwater, leachate, or other liquid) to transport contaminants from a waste disposal area to a nearby surface water body. However, the Agency does not believe that analysis of such overland transport of contaminants as a reasonable exposure route for the petitioned waste would indicate a different result for this petition. While contamination of surface water might occur through runoff from the waste disposal area (including both contaminants leached from the waste, as well as suspended particulate matter), EPA believes that the concentrations of any hazardous constituents in that runoff will tend to be lower than the levels indicated by the EP leachate analyses reported in the proposal due to the acidic medium of the EP test. Furthermore, any transported constituents would be further diluted in the surface water body.

Finally, the Agency notes that, if delisted, the petitioned waste remains a solid waste (as defined under 40 CFR 261.2) and, thus, is subject to regulation under the State solid waste management program. Perox must dispose of the delisted waste on site, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, Perox may continue to recycle its iron oxide waste by processing and marketing it as a raw material, as it has done in the past (*i.e.*, when the waste was hazardous) (see 54 FR 1189, January 12, 1989).

Use of the VHS model to evaluate the petitioned waste. The commenter noted that a detection limit of 0.20 ppm used by EPA for determining the amount of chromium in the spot-check sampling EP leachate exceeded the drinking water standard for chromium of 0.05 ppm. The commenter claimed that there was no apparent justification for employing such a high limit of detection.

The Agency agrees that the detection limit of 0.20 ppm for chromium in its spot-check sampling EP leachate appears somewhat higher than the limit thought to be achievable. In this case, however, EPA believes that the detection limit for chromium it used is acceptable. Specifically, using Perox's estimated volume of waste (4,800 cubic yards per year), the VHS model analysis indicates that Perox's waste could exhibit a maximum leachable chromium concentration of 0.32 ppm and still be considered non-hazardous (*i.e.*, only a value exceeding 0.32 ppm would yield a compliance-point concentration in excess of the drinking water standard). As result, the Agency believes that the spot-check detection limit is sufficiently low to provide an adequate margin of safety. Furthermore, data submitted to the Agency by Perox, presented in the proposed rule (54 FR 1189, January 12, 1989) and noted by the commenter, indicate that the extractable level of chromium in the waste is 0.16 ppm.

The commenter stated that the VHS model does not adequately evaluate the impact of large volumes of waste. The commenter asserted that above approximately 2,000 cubic yards, the VHS model predicts virtually no further reduction in the expected dilution. The commenter noted that EPA has previously stated: "Since the quantity of leachate from a larger quantity of waste will be greater, the model predicts that a large waste volume will tend to have a greater impact on an underlying aquifer" and "waste in excess of 2,000 cubic yards probably would have a greater than predicted impact at the compliance point" (see 50 FR 48886 and 48899, November 27, 1985). Thus, the commenter believed that the Agency's use of Perox's annual estimated production of 4,800 cubic yards, without modification of dilution factors, is inadequate.

The initial version of the VHS model, presented on February 26, 1985, calculated dilution factors ranging from 10 to 50, with the minimum dilution factor (*i.e.*, 10) resulting at a waste volume of approximately 2,000 cubic yards (see 50 FR 7886). On November 27, 1985, the Agency modified the values used for several of the VHS model variables and responded to public comments regarding the February 26, 1985 model (see 50 FR 48896). The November 27, 1985 version of the VHS model, which was used to evaluate Perox's petitioned waste, calculates dilution factors ranging from 6.3 to 32.3. In this version, the calculated dilution factor steadily falls as the waste volume increases from 475 cubic yards with the minimum dilution factor resulting at waste volumes equal to or exceeding 8,000 cubic yards.

Unfortunately, the Agency's November 27, 1985 notice (cited by the commenter) failed to consistently reflect both the technical modifications made to the VHS model and the resulting change in the range of calculated dilution factors. Due to the technical modifications incorporated into the current version of the model, the statement that the VHS model predicts virtually no further dilution above a waste volume of 2,000 cubic yards, was an inadvertent error in the text and is not accurate. Specifically, the current version of the model predicts a dilution factor of 6.4 for Perox's waste volume (4,800 cubic yards). The Agency continues to believe that the VHS model performs a reasonable, worst-case analysis and provides dilution factors that fully protect human health and the environment.

The commenter further stated that the VHS model, as applied, considered the impact of only one year of waste disposal at an off-site landfill. The commenter stated that accumulation of this waste year after year, for a decade, would eventually exceed the model's upper volume limit by almost 25 times. In addition, the commenter stated that EPA's consideration of an annual, rather than cumulative, waste quantity in its calculation is unjustified and may seriously underestimate compliance-point concentrations for constituents of concern.

The Agency believes that the commenter is incorrect to conclude that a decade of waste generation would yield a waste volume that exceeds the VHS model upper limit by 25-fold. The VHS model does not have an "upper limit", but rather incorporates a sliding-scale which allows the Agency to consider the different impacts that various waste volumes would have on ground-water quality. As stated above, the VHS model calculates the maximum and minimum dilution factors at waste volumes of less than or equal to 475 cubic yards and equal to or greater than 8,000 cubic yards, respectively. Thus, as the waste volume increases above 8,000 cubic yards or even 48,000 cubic yards (10 years × 4,800 cubic yards/year), the dilution factor calculated by the VHS model would be 6.3. The reason that the dilution factor remains constant after the waste volume exceeds 8,000 cubic yards is a function of the assumptions made in the disposal unit dimensions for the VHS model (see 50 FR 48900, November 27, 1985).

The Agency considers the use of an annual waste volume to evaluate Perox's waste to be sufficiently conservative since it is a reasonable worst-case for a facility to dispose of one year's accumulated volume of waste in a single landfill cell at one time. The Agency believes that periodic disposal of a continuously generated waste over the course of time (*e.g.*, one or ten years) would likely increase mixing (*i.e.*, dilution) of the petitioned waste with other non-hazardous wastes and fill material (*e.g.*, native soils) at the Subtitle D landfill. Subsequently, due to this mixing, the Agency believes that the concentrations of hazardous constituents at the receptor well would be less than if the petitioned waste were disposed of at one time (*i.e.*, the waste's impact on the underlying aquifer would be reduced).

Furthermore, based on routine landfill management practice, EPA believes that it is unreasonable to assume, even in a worst-case scenario, that waste continuously generated over ten years would be disposed into the same landfill cell on a one-time basis. Generally, wastes continuously generated are not disposed of in the same landfill cell. Rather, continuously generated waste (if disposed of at the same landfill) are periodically disposed of and, as such, are distributed throughout the entire landfill, as the landfill is filled. In addition, the Agency notes that it may be very impractical for Perox to store one or ten year's accumulated volume of waste (4,800 or 48,000 cubic yards, respectively) at its facility.

The Agency, therefore, believes its assumption that the annual waste volume is disposed in the same landfill cell is a reasonable worst-case and is protective of human health and the environment. The Agency notes, however, that it will continue to use the total volume when the petitioner is attempting to obtain a "one-time" delisting for waste that is no longer generated.

The Agency is also taking this opportunity to specify the maximum annual volume of iron oxide that will be generated by Perox under the final exclusion. As noted in the proposed rule, Perox submitted a signed certification stating that the maximum annual generation rate of iron oxide is 4800 tons (approximately 4800 cubic yards). The proposal also noted that this exclusion applies only to the process covered by the original demonstration in the petition. The Agency believes including the certified maximum volume limitation in the final rule does not present any added burden on Perox, but merely serves to clarify this limitation in the exclusion. Therefore, the Agency has inserted the maximum annual generation rate of 4800 cubic yards into the final rule.

The commenter criticized the VHS model for ignoring the possibility of contaminant sources other than the waste being evaluated. The commenter stated that the VHS model evaluation calculates compliance-point concentrations of toxic constituents only from the petitioned waste and compares them to the corresponding levels of regulatory concern. Such a limited approach does not consider the cumulative effect of the petitioner's wastes with others that may be disposed of in the same landfill. Therefore, the commenter believed that the Agency underpredicted the potential hazard associated with the unregulated disposal of Perox's waste.

The Agency acknowledges that the VHS model evaluation does not consider other potential contaminant sources at the disposal site [see 50 FR 7900, February 26, 1985 and 51 FR 41085, November 13, 1986 for additional discussion of the co-disposal of wastes). However, without specifying management conditions or considering site-specific characteristics, the Agency does not believe that it is appropriate to modify the VHS model to assess the effects of co-disposal of multiple wastes on the underlying aquifer. The Agency believes that the commenter is implying that wastes should not be delisted unless the predicted at-the-well concentrations are significantly less (e.g., 50 percent, 75 percent, 95 percent) than their respective delisting health-based levels. The Agency does not have any technical basis to determine an appropriate percentage reduction and believes that, without a technical basis, any resulting percentage reduction would be arbitrary. Therefore, in light of the conservative nature of the VHS model, EPA believes that it is appropriate to continue allowing wastes to exhibit compliance-point concentrations up to 100 percent of the delisting health-based levels.

Inconsistency between the delisting program and the land disposal restrictions program. The commenter claimed that the granting of Perox's petition would be inconsistent with the Land Disposal Restrictions Program's recently promulgated best demonstrated available technology (BDAT) treatment levels for K061 wastes. As such, the granting of this exclusion would be unreasonable and contrary to the intent of this program.

The Agency disagrees with the commenter that granting this exclusion will be inconsistent with the Land Disposal Restrictions (LDR) Program. Although the recently promulgated BDAT treatment standards for K061 (electric furnace emission control dust) do specify chromium levels, they are set for a different category of waste and thus are not automatically relevant to Perox's K062-classified waste. In addition, the Agency believes that, even if BDAT treatment levels were applied to delisted wastes, it would neither be accurate nor fair to compare BDAT treatment levels for one specific type of waste to a different waste.

Furthermore, there are differences in approaches used in individual delisting decisions and those used in the LDR Program. These differences are appropriate given the separate functions of the two programs and their different regulatory coverage. The Delisting Program and the LDR Program are fundamentally different in that the Delisting Program's standards are health-based and the LDR Program's treatment standards are currently technology-based (see RCRA Section 3001 (42 U.S.C. 6921) and RCRA Section 3004 (42 U.S.C. 6924(m)), respectively). It is the Agency's view that Congress expected the Agency to adopt a different approach to establishing the LDR program's treatment standards than the approach used heretofore by the

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Agency in establishing subtitle C regulatory standards.

For the LDR program's treatment standards the Agency is to set standards that diminish waste toxicity or mobility in order that "short-term and long-term threats to human health and the environment be minimized." This may result in a standard different from one set according to the usual subtitle C regulatory command that the standards be necessary to protect human health and the environment. (The Agency notes that the treatment technology and treatment standards for K061 wastes to which the commenter referred were only proposed at the time the comment was made. Subsequent to that proposal, the Agency revised and finalized the BDAT standards for K061 wastes based on an alternative treatment technology.)

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that Perox's iron oxide waste, produced as a by-product from the regeneration of its spent pickle liquor, should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Perox, Incorporated, located in Sharon, Pennsylvania, for its iron oxide waste described in its petition as EPA Hazardous Waste No. K062. The exclusion only applies to the processes and waste volume covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or regeneration processes are significantly altered such that a change in waste composition or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition is relieved from subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

IV. Effective Date

This rule is effective November 13, 1990. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six-months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes. This enables the facility to treat its waste as non-hazardous. Therefore, there is no additional economic impact due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis, which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since it is limited to one facility and will reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: October 23, 1990.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922 and 6938.

2. In Table 2 of appendix IX, add the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
•	•	•
Perox, Incorporated.	Sharon, Pennsylvania.	Iron oxide (EPA Hazardous Waste No. K062) generated (at a maximum annual rate of 4800 cubic yards) from a spent hydrochloric acid pickle liquor regeneration plant for spent pickle liquor generated from steel finishing operations. This exclusion was published on November 13, 1990.
•	•	•

[FR Doc. 90–26701 Filed 11–9–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[Common Carrier Docket No. 87–120, FCC 90–338]

Flexible Allocation of Frequencies for Paging and Other Services (Domestic Public Land Mobile Service)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action establishes procedural rules for licensing multi-point control channels on common carrier frequencies 470–512 MHz in thirteen of the largest cities in the U.S.: Boston, Chicago, Cleveland, New York-Northeastern N.J., Dallas-Ft. Worth, Detroit, Houston, Los Angeles, Miami, Philadelphia, Pittsburgh, San Francisco, and Washington, DC. Of these cities, New York-Northeastern N.J. requires a further order on reconsideration before the total number of available control channels is known. The rules respond to a Petition for Clarification filed in the captioned proceeding. The rules are intended to allow licensees of wide-area paging and two-way mobile systems in the named cities to acquire one or more new control channels.

EFFECTIVE DATE: December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Susan E. Magnotti, Mobile Services Division, Common Carrier Bureau, (202) 632–6450.

SUPPLEMENTARY INFORMATION: CFR part amended: 47 CFR Part 22, "Public Mobile Service."

This is a summary of the Commission's order on reconsideration of second report and order (part I), CC Docket No. 87–120, Adopted October 5, 1990, and Released October 23, 1990.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC dockets branch (Room 230), 1919 M Street, Northwest, Washington DC. The complete text of this decision may also be purchased from the Commission's Copy Contractor, International Transcription Service, (202) 857–3800, 2100 M Street, Northwest, Suite 140, Washington DC 20037.

Summary of Order on Reconsideration of Second Report and Order (Part I)

In the Second Report and Order (Flexible Paging II), 4 FCC Rcd. 6415 (1989), 54 FR 39529 (September 27, 1989), the Commission unpaired and reallocated the 470–512 MHz band frequencies not needed for existing two-way service to one-way control use by control stations serving four or more base stations, amending §§ 22.501 (j), (k), and (l) of the Rules. Telocator filed a Petition for Clarification of this order, in which it proposes modified procedures for licensing control channels in the 470–512 MHz band. PacTel filed comments in support, in which it proposes a two-phase filing process. Both petitioners recommended that applicants should state which UHF–TV channel they prefer to use for control purposes, but that the Commission should choose the specific frequency.

The Commission decided to implement a two-step filing procedure. First, a public notice released simultaneously with the order specified a filing window of January 23, 1990 through February 8, 1991, inclusive. During that time, applications for one UHF–TV control channel will be accepted from licensees holding four or more transmitter sites on a wide-area system. Second, if any frequencies remain after all applications filed during the window have been granted, the Commission will license the remaining frequencies according to a "rolling 60-day" procedure. Finally, the Commission agreed that applicants should not specify any particular frequency in their applications, but that the Commission would choose a frequency from the UHF–TV channel specified by the applicant.

Ordering Paragraphs

Wherefore, for the foregoing reasons, part 22 of the Commission's Rules *is hereby amended* as discussed herein and as shown below.

It is further ordered that the rule changes made herein *will become effective* 30 days after publication in the Federal Register.

List of Subjects in 47 CFR Part 22

Communications common carriers, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rules Section

Part 22 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for part 22 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

2. Section 22.501 is amended by adding paragraph (k)(6) to read as follows:

§ 22.501 Frequencies.

* * * * *

(k) * * *

(6) An applicant for a control channel from among the frequencies listed in paragraph (k)(4) of this section shall not specify a frequency in its application. It may specify its frequency preference, but the Commission is not bound by such requests. Applicants may only apply for one frequency at a time. An applicant must specify from which television channel it wishes its control channel to come in areas with more than one television channel available.

* * * * *

3. Section 22.31 is amended by adding paragraph (i) to read as follows:

§ 22.31 Mutually exclusive applications.

* * * * *

(i)(1) Notwithstanding other provisions of this section, all applications for control channels in the 470–512 MHz band filed pursuant to § 22.501(k)(6) of this part specifying the same television channel, will be deemed mutually exclusive and entitled to comparative consideration if there are more applications filed than there are available frequencies. Initially, applications will be accepted within a two-week period specified by public notice. If there are more applicants than

frequencies available, the applications will be deemed mutually exclusive and subject to a random selection procedure.

(2) Any control channels remaining after the initial applications are granted will be assigned pursuant to a "rolling sixty-day" licensing procedure: All applicants filing after the close of the initial filing window will be considered in the order in which they have filed. The public notice of the first applicant to file after close of the filing window will begin a 60-day filing period. If there are more applications filed than frequencies available, the applications will be deemed mutually exclusive and subject to random selection procedures. If all applicants filing within that 60-day period can be granted a frequency without the use of random selection procedures, then the first application will be granted. Then the second applicant to file will be considered. If all applicants filing within sixty days of the second application's public notice date can be granted a frequency without resort to random selection procedures, then the second application will be granted, and so on. Whenever an application is reached which, together with applications filed within sixty days of its public notice date, cannot be granted because there is an insufficient number of frequencies remaining, that group of applications will be deemed mutually exclusive and will be subject to a random selection procedure.

[FR Doc. 90-26724 Filed 11-9-90; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-181; RM-6938]

Radio Broadcasting Services; Pierre, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sorenson Broadcasting Corporation, substitutes Channel 237C2 for Channel 237A at Pierre, South Dakota, and modifies its license for Station KLXS to specify operation on the higher powered channel. *See* 54 FR 26220, June 22, 1989. Channel 237C2 can be allotted to Pierre in compliance with the Commission's minimum distance separation requirements and can be used at Station KLXS's licensed transmitter site. The coordinates for Channel 237C2 at Pierre are North Latitude 44-22-15 and West Longitude 100-24-17. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 24, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-181, adopted October 24, 1990, and released November 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by removing Channel 237A and adding Channel 237C2 at Pierre.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division. Mass Media Bureau.

[FR Doc. 90-26725 Filed 11-9-90; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1011, 1118, 1132 and 1162

[Ex Parte No. 55 (Sub. 80)]

Technical Revisions—Suspension/Special Permission Board

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is revising its regulations to reflect the merger of two employee boards within the Commission's Bureau of Traffic. Also, the Commission is updating its regulations dealing with temporary and emergency temporary authorities. Since these revisions deal merely with agency organization and procedure, public comment is not being sought.

EFFECTIVE DATE: The revisions will become effective November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Herzig, (202) 275-7358, or David R. Manning, (202) 275-7395, (TDD for hearing impaired, (202) 275-1721).

SUPPLEMENTARY INFORMATION: In formulating its Fiscal Year 1986 budget, the Commission decided to combine two employee boards within the Commission's Bureau of Traffic into one board to be called the Suspension/Special Permission Board. Prior to the merger, a separate Suspension Board consisting of three Bureau of Traffic employees was delegated by the Commission with the responsibility of (1) acting upon protests against proposed tariff provisions, (2) acting upon requests for relief from the requirements of 49 U.S.C. 10728, and (3) handling certain matters relating to railroad transportation contracts and contract summaries. The Special Permission Board consisted of three other employees of the Bureau of Traffic who were delegated with the responsibility of handling requests for departure from the Commission's tariff publishing regulations.

With an expected decline in the number of cases to be reviewed and handled by the two separate employee boards, the Commission decided during its Fiscal Year 1986 budget deliberations to combine the two boards into one. Currently, the board consists of three Bureau of Traffic employees who have been delegated the responsibility of handling all the matters discussed above. The purpose of this notice is to revise and update our regulations where necessary to reflect the merger. No substantive changes are being made.

The provisions of 49 CFR 1312.39(h)(1) currently indicate that each independently established new rate shall be filed with the Commission at least one day before the date upon which it is to become effective. This was a reduction in the statutory 30-day notice period. In view of this, the provisions of Special Tariff Authority No. 78-1000-TA, which authorized the filing of temporary authority (TA) tariffs on one day's notice, are no longer necessary. We are revising our regulations at 49 CFR 1162.5 to provide reference to 49 CFR 1312.39(h)(1) and we are deleting reference to Special Tariff Authority No. 78-1000-TA. This revision will bring the TA regulations up to date with other provisions of the CFR.

List of Subjects

49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

49 CFR Part 1118

Administrative practice and procedure.

49 CFR Part 1132

Administrative practice and procedure.

49 CFR Part 1162

Administrative practice and procedure, Maritime carriers, Motor carriers.

This action will not significantly affect the quality of the human environment or energy conservation and it will not have a significant impact on a substantial number of small entities.

This notice is issued under authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

It is ordered:

1. The revisions, as shown below, are adopted.

2. This decision is effective November 13, 1990.

Decided: November 5, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1011, 1118, 1132 and 1162 of the Code of Federal Regulations are amended as set forth below:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, and 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

2. In § 1011.6, introductory text, the reference "paragraph (g)" is revised to read "paragraph (f)". In § 1011.6, paragraph (a) is revised to read as follows, paragraph (c) is removed and paragraphs (d), (e), (f), (g), (h), and (i) are redesignated as paragraphs (c), (d), (e), (f), (g), and (h).

§ 1011.6 Employee Boards.

* * * * *

(a) *Suspension/Special Permission Board.* This board has authority to act initially upon matters involving tariff provisions and railroad contracts arising from certain sections of the Act as follows:

(1) In matters arising from Sections 10707 and 10708 relating to suspension and/or investigation of tariff matter, the board is authorized:

(i) To not suspend a rate or a classification, rule, or practice related to a rate, or to suspend such rate, classification, rule, or practice and order an investigation;

(ii) To institute investigations into rates, fares, charges, and practices of regulated carriers; and

(iii) Prior to the submission of evidence, to discontinue any proceeding when the proposed rate, classification, rule, or practice has been cancelled.

The board is not authorized to act on petitions or requests relating to rates, classifications, rules, or practices filed in purported compliance with decisions of the Commission or a division, or to act in connection with suspensions to be taken during or after formal hearings and investigations.

(2) In matters arising from section 10726, the Board is authorized to grant or withhold relief from the long and short haul transportation requirements of this section, except for proceedings made the subject of formal hearings, matters prompted by an order or requirement of the Commission or division, or matters arising from general increase proceedings.

(3) In matters arising from sections 10701, 10702, 10761, and 10762, the board is authorized to grant or withhold special tariff authority or other permissible waivers of rules regarding tariffs or schedules, including authorization for the cancellation of suspended tariffs or schedules, that have not involved taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(4) In matters arising from section 10713 the board is authorized:

(i) To grant or withhold discovery of railroad transportation contracts;

(ii) To institute investigations of railroad transportation contracts; and

(iii) To grant or withhold relief from the rules in 49 CFR 1313.7 (a), (b), and (c) governing the construction and filing of railroad transportation contracts and contract summaries.

* * * * *

PART 1118—PROCEDURES IN INFORMAL PROCEEDINGS BEFORE CERTAIN EMPLOYEE BOARDS

3. The authority citation for part 1118 continues to read as follows:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1118.1 [Amended]

4. In § 1118.1, remove the words "Special Permission Board" and add, in their place, the words "special tariff authority activities of the Suspension/Special Permission Board."

PART 1132—PROTESTS AGAINST TARIFFS; PROCEDURES IN CERTAIN SUSPENSION AND LONG AND SHORT HAUL RESTRICTION MATTERS

5. The authority citation for part 1132 continues to read as follows:

Authority: 49 U.S.C. 10321, 10707, 10708 and 10728; 5 U.S.C. 553 and 559.

§§ 1132.1 and 1132.2 [Amended]

6. In §§ 1132.1 and 1132.2, remove the words "Suspension Board" everywhere they are shown and add, in their place, the words "Suspension/Special Permission Board".

PART 1162—TEMPORARY AUTHORITY (TA) AND EMERGENCY TEMPORARY AUTHORITY (ETA) PROCEDURES UNDER 49 U.S.C. 10928

7. The authority citation for part 1162 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10928; 5 U.S.C. 559.

§ 1162.5 [Amended]

8. In § 1162.5(a) remove the words "Special Tariff Authority No. 78-1000 TA" and add in their place "49 CFR 1312.39(h)(1)". In § 1162.5 (b)(3) remove the words "as set forth in paragraph (c) of this section," and remove paragraph (c) of § 1162.5.

[FR Doc. 90-26688 Filed 11-9-90; 8:45 am]
BILLING CODE 7035-01-M

49 CFR Parts 1043, 1044, 1145, 1167, and 1171

Technical Amendments

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; technical amendments.

SUMMARY: In order to correctly state the Interstate Commerce Commission's regulations, as set forth in title 49, chapter X, of the Code of Federal Regulations, several technical amendments are necessary to correct errors to several parts that were previously published in the **Federal Register.** These technical amendments are set forth below.

EFFECTIVE DATE: November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Gass, (202) 275-8796.

SUPPLEMENTARY INFORMATION:

List of Subjects

49 CFR Part 1043

Insurance, Motor carriers, Surety bonds.

49 CFR Part 1044

Brokers, Motor carriers.

49 CFR Part 1145

Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1167

Motor carriers.

49 CFR Part 1171

Administrative practice and procedure, Motor carriers, Insurance.

For the reasons set forth in the preamble, title 49, chapter X, parts 1043, 1044, 1145, 1167, and 1171 of the Code of Federal Regulations are amended as set forth below:

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

1. The authority citation for part 1043 continues to read as follows:

Authority: 49 U.S.C. 10101, 10321, 11701, 10927; 5 U.S.C. 553.

§ 1043.2 [Amended]

2. In § 1043.2 paragraphs (b)(4) (1), (2), and (3) are redesignated as (b)(4)(i), (b)(4)(ii), and (b)(4)(iii).

PART 1044—DESIGNATION OF PROCESS AGENT

3. The authority citation for part 1044 continues to read as follows:

Authority: 49 U.S.C. 10329, 10330 and 11705.

§ 1044.4 [Amended]

4. In § 1044.4, paragraph (a) is amended in the beginning of the first sentence by revising the words "Every motor carrier or property" to read "Every motor carrier of property".

PART 1145—[AMENDED]

5. Part 1145 is amended by revising the authority citation to read as follows:

Authority: 49 U.S.C. 10321, 10731, and 1707a; 5 U.S.C. 553

PART 1167—COMPENSATED INTERCORPORATE HAULING

6. The authority citation for part 1167 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10524; 5 U.S.C. 559.

§ 1167.2 [Amended]

7. Section 1167.2, paragraph (c) is amended by removing the third sentence beginning with the words "CIH operations" and ending with the words "required date.".

PART 1171—RULES GOVERNING APPLICATIONS FOR CERTIFICATES OF REGISTRATION BY FOREIGN MOTOR CARRIERS AND FOREIGN MOTOR PRIVATE CARRIERS UNDER 49 U.S.C. 10530

8. The authority citation for part 1171 continues to read as follows:

Authority: 49 U.S.C. 10922 and 10530; 5 U.S.C. 553.

§ 1171.6 [Amended]

9. Section 1171.6 is amended by revising the last sentence in paragraph (b)(2) to read as follows: "No certificate of registration shall be issued prior to compliance."

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-26687 Filed 11-9-90; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 55, No. 219
Tuesday, November 13, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-90-29]

Petition for Rulemaking, Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions proviously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 12, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____ 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Ida Klepper, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9688.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on November 8, 1990.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 28345.
Petitioner: Regional Airline Pilot Association.
Regulations Affected: 14 CFR 135.265.
Description of Petition: To amend part 135 pilot flight time limitations to:

1. Delete the reduced rest provisions of § 135.265(c).
2. Increase the minimum rest period for flight crewmembers who are scheduled to fly in pressurized aircraft to 10 hours within a 24-hour period with 9 hours in a rest facility.
3. Increase the rest for flight crewmembers who fly in unpresurized aircraft and who make more than seven landings in a 24-hour period to 12 hours with at least 10 hours in a rest facility.
4. Limit flight duty to no more than 12 hours in any consecutive 24 hours.
5. Require that flight crewmembers be given two calendar days that are free from duty.
6. Prohibit air carriers from interrupting any flight crewmember if that crewmember is in any required rest period.
7. Prohibit the scheduling of any flight crewmember if that crewmember's total time will exceed:
   (a) 1,000 hours in any calendar year,
   (b) 100 hours in any calendar month,
   (c) 34 hours in any 5 consecutive days,
   (d) 7 hours during any consecutive 24 hours for a flightcrew of one pilot in unpressurized aircraft, or
   (e) 6 hours during any 24 consecutive hours for a flightcrew of one pilot in unpressurized aircraft, or
   (f) 6 hour of duty between the requied rest period for a flightcrew of two pilots in unpressurized aircraft.

Petitioner's Reason for the Request: The petitioner believes that evidence regarding multiple short segments and unpressurized operations mandate substantially greater revisions in part 135 than the Air Line Pilots Association proposes.
Docket No.: 25003.
Petitioner: Air Transport Association and Aerospace Industries Association.
Regulations Affected: 14 CFR 25.853 and 121.312.
Description of Petition: To require different flammability test procedures and acceptance criteria for the materials used in the cabins of transport category airplanes. The amendments proposed by the petitioners were to supplement and supersede any flammability standards which might be adopted based on Notice of Proposed Rulemaking (NPRM) 85-10 (50 FR 15038; April 16, 1985). Such standards were, in fact, subsequently adopted as Amendments 25-61 and 121-189 (51 FR 26206; July 21, 1986).
Disposition: Denied, March 1, 1990.

[FR Doc. 90-26675 Filed 11-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-ANE-25]

Airworthiness Directives; General Electric Company (GE) CF6-50 and CF6-45 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to GE CF6-50 and CF6-45 series engines, which would require a repetitive inspection program for high pressure compressor (HPC) rear shafts, and also would require installation of a certain rear shaft flange bolt configuration. This proposal is prompted by the report of 35 HPC rear shafts found cracked in the bolt hole area. This condition, if not corrected, could result in HPC rear shaft fracture, inflight shutdown, and uncontained failure.

DATES: Comments must be received no later than December 12, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 90-ANE-25, 12 New England Executive Park, Burlington, Massachusetts 01803.

Comments may be inspected at the above location in Room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from the General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7085.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 90-ANE-25." The postcard will be date/time stamped and returned to the commenter.

Discussion

The FAA has determined that 35 CF6-50 and -45 HPC rear shafts have been found to contain cracks in the forward flange bolt hole region. The crack origins are located at the bolt hole aft corner at the six o'clock position. Laboratory investigation has revealed high stress low cycle fatigue (LCF) crack initiation, and LCF crack propagation. This condition, if not corrected, could result in HPC rear shaft fracture, inflight shutdown, and uncontained failure.

The FAA has reviewed and approved General Electric Service Bulletin 72-958, dated August 15, 1990, which describes procedures for inspection of HPC rear shafts.

Since this condition is likely to exist or develop in other engines of the same type design, an AD is proposed which would require flourescent penetrant repetitive inspections to identify cracks in the HPC rear shaft bolt hole region of parts installed in CF6-50, -45 series engines. Also the AD would require installation of a certain rear shaft flange tapered turn-around bolt at the next required inspection.

There are approximately 2,158 CF6-50/-45 series engines of the affected design in the worldwide fleet. It is estimated that 517 engines would be affected by this AD, that it would take approximately 2 manhours per engine per inspection to accomplish the required actions, and that the average labor cost would be $40 per manhour. It is estimated that 625 required inspections will occur annually. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be approximately $50,000 annually.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric Company: Applies to General Electric Company (GE) CF6-50, -45 series turbofan engines installed on, but not limited to, McDonnell-Douglas DC-10, Boeing 747, and Airbus A300 aircraft.

Compliance is required as indicated, unless previously accomplished.

To prevent high pressure compressor (HPC) rear shaft failure, inflight shutdown, and uncontained failure, accomplish the following:

(a) Flourescent penetrant inspect HPC rear shafts, Part Numbers (P/N) 9127M58P03, and 9079M63P12, 9079M63P15, 9079M63P16, 9079M63P17, 9079M63P18,and 9079M63P19, in accordance with GE Service Bulletin (SB) 72-958, dated August 15, 1990, as follows:

(1) For HPC rear shafts installed with hook bolts, P/N 9012M99G10, 9214M95C07, and 9214M95G10, inspect in accordance with the following schedule:

(i) Inspect shafts which have not been previously inspected and have 10,000 cycles since new (CSN) or greater on the effective date of this AD, within the next 1,500 cycles in service (CIS) after the effective date of this AD.

(ii) Inspect shafts which have not been previously inspected and have less than 10,000 CSN on the effective date of this AD, within the next 2,500 CIS from the effective date of this AD, or before accumulating 7,500 CSN, whichever occurs later. However, no shaft may exceed 11,5000 CSN prior to inspections.

(iii) Thereafter, for shafts that have been previously inspected and have greater than 7,500 CSN, reinspect at intervals not to exceed 4,500 cycles since last inspection (CSLI), except as noted in paragraph (a)(1)(iv) below.

(iv) For shafts that have been previously inspected and have greater than 7,500 CSN and greater than 3,000 CSLI on the effective date of this AD, reinspect within the next 1,500 CIS from the effective date of this AD. Thereafter, reinspect at intervals not to exceed 4,500 CSLI.

(2) For HPC rear shafts installed with turn-around bolts, P/N 9249M54P01, or tapered turn-around bolts P/N 1375M69P01, inspect in accordance with the following schedule:

(i) Inspect shafts which have not been previously inspected and have 6,500 CSN or greater on the effective date of this AD, within the next 2,500 CIS after the effective date of this AD.

(ii) Inspect shafts which have not been previously inspected and have less tha 6,500 CSN on the effective date of this AD, prior to accumulating 9,000 CSN.

(iii) Thereafter, for shafts that have been previously inspected and have greater than 9,000 CSN, reinspect at intervals not to exceed 6,000 CSLI, except as noted in paragraph (a)(2)(iv) below.

(iv) For shafts that have been previously inspected and have greater than 9,000 CSN and greater than 3,500 CSLI on the effective date of this AD, reinspect within the next 2,500 CIS from the effective date of this AD. Thereafter, reinspect at interals not to exceed 6,000 CSLI.

(b) Remove from service, prior to further flight, any shafts found cracked at inspection.

(c) Install tapered turn-around bolts, P/N 1375M69P01, after the next inspection in accordance with paragraph (a) above. Tapered turn-around bolt, P/N 1375M69P01, that has been previously installed, need not be replaced.

Note: Information concerning the tapered turn-around bolt noted in (c) above can be found in GE SB 72-877.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on October 30, 1990.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90-26676 Filed 11-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 90-AWP-7]

Proposed Alteration of Jet Route; AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Jet Route J-8 located between Needles, CA, and Gallup, NM. The realignment of this jet route is necessary to improve the flow of traffic and the efficiency of operation between Needles, CA, and Gallup, NM. This action would reduce controller workload.

DATES: Comments must be received on or before December 28, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP-500, Docket No. 90-AWP-7, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docet and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airsapce Docket No. 90-AWP-7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being places on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 75 of the Federal Aviation Regulations (14 CFR part 75) to alter the description of Jet Route J-8 located between Needles, CA, and Gallup, NM. The realignment of this route would improve the flow of traffic between Albuquerque Air Route Traffic Control Center (ARTCC) and Los Angeles ARTCC. This action would provide a more precise alternate means of navigation between Needles, CA, and Gallup, NM. The adjustment of this route is designed to reduce controller workload and coordination and to establish optimum use of the airspace. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory

Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes the amend part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 contines to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-8 [Amended]

By removing the words "via Winslow, AZ;" and substituting the words "via Flagstaff, AZ;"

Issued in Washington, DC, on November 1, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-26877 Filed 11-9-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program; Inspection and Enforcement

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: By letter dated October 4, 1990, Ohio withdrew an amendment to the Ohio regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) concerning abandoned sites. OSM is announcing the suspension of formal processing of the amendment.

EFFECTIVE DATE: November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, Columbus, Ohio 43232; (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission and Discussion Amendments

On June 5, 1990, (Administrative Record No. OH-1322) OSM published a notice in the **Federal Register** (55 FR 22931) announcing receipt and soliciting public comment on the program amendment for the definition of "abandoned site," the establishment of reduced inspection frequency at abandoned sites, and the citation of violations at abandoned sites. The proposed rule notice announcing receipt of the proposed amendment contained a typographical error. The deadline for requests to present oral testimony at the hearing was inadvertently published as July 2, 1990, instead of June 10, 1990. To correct this error, and to provide the public with sufficient time to request a hearing, the dates were revised. The date for receiving written comments and the date for a public hearing, if requested, were extended to July 12, 1990. The deadline for requests to present oral testimony remained unchanged at July 2, 1990.

By letter to Ohio on August 15, 1990 (Administrative Record No. OH-1348), OSM identified deficiencies in the program amendment, as submitted. In response to OSM's request, Ohio submitted a Revised Program Amendment No. 44 on September 18, 1990. By letter dated September 21, 1990, OSM notified Ohio that in *National Wildlife Federation* v. *Lujan* (Civil Actions 88-2416, 88-3345, 88-3586, 88-3635, 89-0039, 89-0136, 89-0141, D.D.C. August 30, 1990), the U.S. District Court for the District of Columbia remanded the Federal rules at 30 CFR 840.11(g) and 840.11(h) and CFR 842.11(e) and 842.11(f) to the Secretary for further action. In line with this Court decision, OSM cannot approve any proposed state program amendments which concern the abandoned site provisions at 30 CFR 840.11(g) and 840.11(h) and 30 CFR 842.11(e) and 842.11(f). Therefore, OSM cannot approve Ohio's proposed Revised Program Amendment No. 44 concerning abandoned sites. Consequently, Ohio is withdrawing the proposed program amendment on abandoned sites based on the recent Court decision. The Director is announcing the withdrawal of the proposed program amendment and the suspension of processing of the amendment by OSM.

List of Subjects in 30 CFR 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 1, 1990.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 90-26608 Filed 11-9-90; 8:45 am]

BILLING CODE 4310-05-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-521, RM-7465]

Radio Broadcasting Services; Clinton, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Weber-King Broadcasting, licensee of Station KHPQ(FM), Channel 221A, Clinton, Arkansas, seeking the substitution of FM Channel 221C3 for Channel 221A and modification of its license accordingly. Coordinates for this proposal are 35-39-52 and 92-16-06.

DATES: Comments must be filed on or before December 31, 1990, and reply comments on or before January 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Weber-King Broadcasting, Attn: Sid King, P.O. Box 33, Clinton, Arkansas 72031.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-521, adopted October 22, 1990, and released November 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26726 Filed 11-9-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-524, RM-7501]

Radio Broadcasting Services; Sebring, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by WJCM, Inc., requesting the allotment of Channel 298A to Sebring, Florida, as that community's second local FM service. The coordinates for the proposal are North Latitude 27-26-13 and West Longitude 81-21-59.

DATES: Comments must be filed on or before December 31, 1990, and reply comments on or before January 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Julian P. Freret, Booth, Freret & Imlay, 1920 N Street, NW., Suite 150, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-524, adopted October 19, 1990, and released November 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26727 Filed 11-9-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-522, RM-7493, RM-7499]

Radio Broadcasting Services; Douglas, GA and LaCrosse, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separately filed petitions. The first petition, filed by WDMG, Inc., licensee of Station WDMG(FM), Channel 258C1 at Douglas, Georgia, proposes the substitution of Channel 258C for Channel 258C1 at Douglas, Georgia, and modification of its license to specify operation on the higher class channel. The second petition, filed by Robert E. Wideman, proposes the allotment of Channel 258A to LaCrosse, Florida, as that community's first local FM broadcast service. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 258C at Douglas or require the proponent to demonstrate the availability of an additional equivalent channel for use by other interested parties. The coordinates for Channel 258A at LaCross are North Latitude 29-44-57 and West Longitude 82-20-30. The coordinates for Channel 258C at Douglas are North Latitude 31-20-15 and West Longitude 82-43-50.

DATES: Comments must be filed on or before December 31, 1990, and reply comments on or before January 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert E. Wideman, 3015 W. University Ave. Gainesville, Florida 32607 (Petitioner for LaCrosse, Florida), and Chester F. Naumowicz, Ward & Mendelsohn, P.C., 1100 17th Street, NW., Suite 900, Washington, DC 20036 (Attorney for WDMG, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-522, adopted October 22, 1990, and released November 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex*

parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26728 Filed 11-9-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-523, RM-7495]

Radio Broadcasting Services; Lincoln, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by L&M Broadcasting Co., Inc., requesting the substitution of Channel 230A for Channel 261A at Lincoln, Illinois. Channel 230A can be allotted to Lincoln in compliance with the Commission's minimum distance separation requirement with a site restriction of 12.9 kilometers (8 miles) southeast in order to avoid a short-spacing to Station WKZW(FM), Peoria, Illinois. The coordinates for this allotment are North Latitude 40-02-00 and West Longitude 89-20-00.

DATES: Comments must be filed on or before December 31, 1990, and reply comments on or before January 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John S. Neely, Miller and Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-523, adopted October 24, 1990, and released November 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26729 Filed 11-9-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-510, RM-7491, RM-7496]

Radio Broadcasting Services; Taylorville and Virginia, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separately filed petitions. The first petition, filed by USA Radio Corporation ("USA"), licensee of WTJY (FM), Channel 224A at Taylorville, Illinois, proposes the substitution of Channel 224B1 for Channel 224A at Taylorville, and modification of its license to specify operation on the higher class channel. The second petition, filed by Panther Creek Communications ("Panther"), proposes the allotment of Channel 223A to Virginia, Illinois, as the community's first local FM broadcast service. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 224B1 at Taylorville or require the proponent to demonstrate the availability of an additional equivalent channel for use by other interested parties. The coordinates for Channel 223A at Virginia are North Latitude 39-57-30 and West Longitude 90-13-00. The coordinates for Channel 224B1 at Taylorville are North Latitude 39-32-00 and West Longitude 89-27-00.

DATES: Comments must be filed on or before December 28, 1990, and reply comments on or before January 14, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Allan G. Moskowitz, Kaye, Scholer, Fierman, Hays & Handler, 901 15th Street, NW., Suite 1100, Washington, DC 20005 (Attorney for Panther Creek Communications), and David D. Oxenford, Matthew P. Zinn, Fisher, Wayland, Cooper & Leader, 1255 23rd Street, NW., Suite 800, Washington, DC 20037 (Attorneys for USA Radio Corporation).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-510, adopted October 12, 1990, and released November 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26611 Filed 11-9-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-511, RM-7500]

Radio Broadcasting Services; Burlington, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by John M. Giannettino seeking the allotment of Channel 276C3 to Burlington, Iowa, as the community's third local FM service. Channel 276C3 can be allotted to Burlington in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 276C3 at Burlington are North Latitude 40-48-36 and West Longitude 91-14-00.

DATES: Comments must be filed on or before December 28, 1990, and reply comments on or before January 14, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John M. Giannettino, P.O. Box 946, Burlington, Iowa 52601 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-511, adopted October 9, 1990, and released November 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26612 Filed 11-9-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-512, RM-7435]

Radio Broadcasting Services; Skowhegan and Bar Harbor, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Dark Communications, Inc., requesting the substitution of Channel 300C3 for Channel 300A at Skowhegan, Maine, and modification of the construction permit for Station WHQO, to specify the higher class channel. The coordinates for Channel 300C3 are 44-42-46 and 69-43-36. To accommodate the upgrade at Skowhegan, we shall also propose to substitute Channel 299B1 for vacant Channel 299B at Bar Harbor, Maine. The coordinates for Channel 299B1 are 44-23-12 and 68-12-42. Since both communities are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested.

DATES: Comments must be filed on or before December 28, 1990, and reply comments on or before January 14, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Donald E. Martin, Spencer W. Weisbroth, Donald E. Martin, P.C., 2000 L Street, NW., Suite 200, Washington, DC 20036. (Counsel to the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-512, adopted October 10, 1990, and released November 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR Section 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26613 Filed 11-9-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-513, RM-7388]

Radio Broadcasting Services; Campbell, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Jack G. Hunt, proposing the substitution of FM Channel 298C3 for 298A at Campbell, Missouri, and modification of his construction permit for Channel 298A to specify 298C3. The coordinates for Channel 298C3 are 36-29-42 and 89-51-17.

DATES: Comments must be filed on or before December 28, 1990, and reply comments on or before January 14, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

John R. Wilner, Bryan, Cave, McPheeters & McRoberts, 1015 Fifteenth Street, NW., Suite 1000,

Washington, DC 20005 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–513, adopted October 11, 1990, and released November 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–26614 Filed 11–9–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–525, RM–7505]

Radio Broadcasting Services; Creswell, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Jed Broadcasting Co. of Oregon, Ltd., seeking the substitution of Channel 237C3 for Channel 237A at Creswell, Oregon, and the modification of its license for Station KAVE to specify operation on the higher powered channel. Channel 237C3 can be allotted to Creswell with a site restriction of 0.3 kilometer (0.2 mile) east of the community to accommodate petitioner's desired transmitter site. The coordinates for Channel 237C3 at Creswell are North Latitude 43–55–09 and West Longitude 123–00–59. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 237C3 at Creswell or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before December 31, 1990, and reply comments on or before January 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitoner, or its counsel or consultant, as follows: David M. Hunsaker, Esq., Cary S. Tepper, Esq., Putbrese, Hunsaker & Ruddy, 6800 Fleetwood Road, Suite 100, P.O. Box 539, McLean, Virginia 22101 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–525 adopted October 24, 1990, and released November 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act or 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–26730 Filed 11–9–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–509, RM–7360]

Radio Broadcasting Services; Port Henry, NY and Middlebury, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Pro-Radio, Inc., seeking the substitution of Channel 221C3 for Channel 221A at Port Henry, New York, and the modification of its license for Station WMNM(FM) to specify operation on the higher powered channel. In addition, the Commission proposes to substitute Channel 210A for Channel 219A at Middlebury, Vermont, and to modify the license for Station WRMC–FM to specify operation on the alternate Class A channel. Channel 221C3 can be allotted to Port Henry in compliance with the Commission's minimum distance separation requirements and can be used at Station WMNM(FM)'s presently licensed transmitter site. Channel 210A can be licensed to Middlebury, and can be used at Station WRMC–FM's presently licensed transmitter site. The use of Channel 210A at Middlebury, however, conflicts with the pending application of St. Lawrence University for Channel 210C3 at North Creek, New York (BPED–900117MA). The coordinates for Channel 221C3 at Port Henry are North Latitude 44–01–38 and West Longitude 73–28–54. The coordinates for Channel 210A at Middlebury are North Latitude 44–00–35 and West Longitude 73–10–45. In accordance with § 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 221C3 at Port Henry or require Pro-Radio to demonstrate the availability of an additional equivalent class channel for use by such parties. Canadian concurrence in both allotments is required since Port Henry and Middlebury are located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before December 28, 1990, and reply comments on or before January 14, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Nathaniel F. Emmons, Esq., Mark N. Lipp, Esq., Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Avenue, NW., Suite 500, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 90–509, adopted October 13, 1990, and released November 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–26610 Filed 11–09–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB52

Endangered and Threatened Wildlife and Plants; Proposal to List the Plant Spiranthes diluvialis (Ute ladies'-tresses) as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine a plant *Spiranthes diluvialis* (Ute ladies'-tresses), to be a threatened species under the authority of the Endangered Species Act of 1973 (Act), as amended. *Spiranthes diluvialis* was historically found in riparian areas in Colorado, Utah, and Nevada. It is presently found in relatively undisturbed riparian areas in the greater Denver metropolitan area, Colorado (two populations), and in low elevation riparian areas in the Colorado River drainage in eastern Utah (five populations). The species' small populations are threatened by habitat disturbance. In addition, *S. diluvialis* is potentially vulnerable to collecting for horticultural purposes. A determination that *S. diluvialis* is a threatened species would protect it under the authority of the Act. The Service seeks data and comments on this proposal.

DATES: Comments from all interested parties must be received by January 14, 1991. Public hearing requests must be received by December 28, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England at the above address, telephone 801/524–4430 or FTS 588–4430.

SUPPLEMENTARY INFORMATION:

Background

In 1981, live plants belonging to the genus *Spiranthes* were collected in Colorado by W.G. Gambill and W.F. Jennings and sent to C.J. Sheviak for examination. The following year, additional specimens were collected in mesic (i.e., moderately moist) to wet alluvial meadows along Clear Creek in Colorado, and from Utah. Examining these and other specimens from Colorado, Utah, and Nevada (some of which had been assigned in the past to other *Spiranthes* species), Sheviak (1984) found sufficient differences to justify formal designation of a new species, *Spiranthes diluvialis*. The type locality is along Clear Creek in Golden, Colorado. It should be noted that Welsh *et al.* (1987) leaves this species in synonomy with *S. porrifolia*.

Spiranthes diluvialis is a perennial, terrestrial orchid with stems 20–50 centimeters (cm) (8 to 20 in.) tall arising from tuberously thickened roots. Its narrow leaves are about 28 cm (11 in.) long at the base of the stem and become reduced in size going up the stem. The flowers consist of 3 to 15 small white or ivory colored flowers clustered into a spike arrangement at the top of the stem. These flowers have the distinctive bilateral symmetry of the species' genus and family. *S. diluvialis* is endemic to moist soils in mesic or wet meadows near springs, lakes, or perennial streams. The species occurs primarily in areas where the vegetation is relatively open and not overly dense, overgrown, or overgrazed (Coyner 1989, Jennings 1989).

Spiranthes diluvialis is endemic to relatively low elevation riparian meadows in three general areas in the interior western United States. The two eastern populations are located in mesic riparian meadows in relict tall grass prairie areas near Boulder Creek in the City of Boulder, Boulder County, Colorado, and in mesic meadows in the riparian woodland understory along Clear Creek in adjacent Jefferson County, Colorado. The Clear Creek population has one site in the City of Golden and a second in the City of Wheat Ridge (Jennings 1989). No other populations of the species are currently known from Colorado, though a historic collection was made from either Weld or Morgan County in the Platte River valley in 1856 by H. Engelmann of the Bryan expedition (Jennings 1989).

The central populations of *S. diluvialis* are in wet or mesic riparian meadows or in understory meadows of riparian woodlands in the Colorado River drainage of eastern Utah. Five separate populations are known: (1) Along the Green River in Browns Park in Daggett County; (2) in the Cub Creek drainage in Dinosaur National Monument; (3) along the Uinta River in the Uinta Basin in Duchesne and Uintah Counties; (4) along the Fremont River in Capitol Reef National Park in Wayne County; and (5) along Deer Creek in Garfield County. All these populations have been discovered since 1977 (Coyner 1989, Heil 1988, Jennings 1989).

The western populations of *S. diluvialis* were in riparian, lake and springside wet or mesic meadows in the eastern Great Basin of western Utah and adjacent Nevada. Five separate populations were known: (1) "Ogden" in Weber County, Utah—specimens from this population were collected in 1887 and have not been seen since; (2) wetlands in the Jordan River drainage in

Salt Lake County, Utah—specimens from this population were last collected in 1953; (3) Powell's Slough adjacent to Utah Lake in Utah County, Utah—specimens from this population were last collected in 1978; (4) Willow Springs near the town of Callao in Tooele County, Utah—specimens from this population were last collected in 1956; and (5) wet meadow in the drainage of Meadow Valley Wash near the town of Panaca in Lincoln County, Nevada—specimens from this population were last collected in 1936. Recent searches for *S. diluvialis* in the Great Basin have failed to rediscover any of the species' historic populations, and recent rare plant inventories have not discovered any new populations (Coyner 1989, Jennings 1989).

Most of the populations in Colorado occur on city park and greenbelt areas owned by the Cities of Boulder and Wheat Ridge. Existing populations in Utah primarily occur on lands managed by the Bureau of Land Management and the National Park Service, with one population on Ute Indian Tribal land within the boundary of the Uintah and Ouray Reservation. Though all populations are relict in nature, the largest populations occur in Boulder County, Colorado, and along the Uinta River in Utah.

Federal action on this species began on September 27, 1985, when the Service published a notice of review of candidate plants for listing as endangered or threatened species, which included *S. diluvialis* as a category 2 species (50 FR 39526). Category 2 comprises taxa for which the Service has information indicating the appropriateness of a proposal to list the taxa as endangered or threatened but for which more substantial data are needed on biological vulnerability and threats.

After a review of status information acquired since 1985 (Coyner 1989, Heil 1988, and Jennings 1989), the Service upgraded *S. diluvialis* to category 1 in the plant notice of review published in the **Federal Register** on February 21, 1990 (55 FR 6184). Category 1 comprises those taxa for which the Service has on file substantial information on the biological vulnerability and threats to support the appropriateness of proposing to list them as endangered or threatened species.

In the 1990 notice, *S. diluvialis* was given the common name "plateau lady's tresses" to provide the public a convenient reference. However, the Service proposes that "Ute ladies'-tresses" be used instead as the species' common name in recognition of the fact that the species' historic range was used largely by the Ute Indian Tribe.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Spiranthes diluvialis* Sheviak (Ute ladies'-tresses) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Spiranthes diluvialis* has been adversely affected by modification of its riparian habitat. Most of thie riparian habitat along the Wasatch Front in Utah has been heavily modified by stream channelization and construction projects in and adjacent to the Jordan and Weber rivers and their tributaries and in wetlands and meadows adjacent to Utah Lake and the Great Salt Lake. All known historic populations of this species along the Wasatch Front in the populated north-central area of Utah are presumed extinct, as are all other known historic populations in the eastern Great Basin. It is believed that alteration of riparian habitat caused the extinction of these populations. Attempts in 1989 and 1990 to find the Nevada population were unsuccessful (Coyner 1989; Jim Coyner, State Arboretum of Utah, pers. comm., 1990). Extant populations in eastern Utah and Colorado are very small and potentially vulnerable to the same habitat changes that appear to have eliminated the Wasatch Front and eastern Great Basin populations. Fewer than 3,000 individual plants are known to exist in the 7 known populations.

The remaining populations are in areas that have not been overly degraded by agricultural activities, including farming and grazing. However, most of the current habitat of *S. diluvialis* is subject to livestock grazing and trampling. The full effects of livestock grazing and trampling are not known, but are though to be detrimental to the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Spiranthes diluvialis* is potentially vulnerable to commercial exploitation for horticultural purposes as a specimen plant for terrestrial orchid gardens.

C. *Disease or predation.* Livestock grazing is thought to be detrimental to the species. The plant is highly palatable and is preferentially grazed. All the known remaining populations are relict in nature, with most in small areas where livestock grazing has been less intense than in other riparian communities within the species' range.

D. *The inadequacy of existing regulatory mechanisms.* No Federal or State laws or regulations directly protect *S. diluvialis* or its habitat. Most of the species' Utah populations occur on lands managed by the Bureau of Land Management or the National Park Service, which offer varying, but incomplete, levels of protection. Populations located in the greenbelt areas in the City of Boulder are also provided some protection. However, all of these areas are subject to livestock grazing. International trade in all orchids is regulated by the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES).

E. *Other natural or manmade factors affecting its continued existence.* The species' low population numbers and restricted habitat makes it vulnerable to natural or human-caused disturbances. Localized catastrophic events have the potential to cause the extinction of individual populations. The rise of Utah Lake in the early 1980's may have caused the extirpation of the Powell Slough population (Sheviak 1984). It is not known if many of the species' smaller scattered populations are at levels that would ensure their continued existence over the long term, particularly the populations in Dinosaur National Monument and Capitol Reef National Park.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Spiranthes diluvialis* as a threatened species. With fewer than 3,000 known individuals in 7 known populations, collecting could lower its numbers significantly. Surface disturbances which eliminate or degrade the habitat in which the species occurs are likely to increase in the future.

Portions of the species' population occur within Capitol Reef National Park, Dinosaur National Monument, and greenbelt areas in the City of Boulder, which offer some degree of protection. However, all of these areas are open to livestock grazing. Threatened status, which means that the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, would be an accurate assessment of the species' status. For the reasons given below, it would not be prudent to propose critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *S. diluvialis*.

As discussed under Factor B in the "Summary of Factors Affecting the Species," as an orchid, *S. diluvialis* is potentially threatened by taking. Publication of critical habitat descriptions and maps would make *S. diluvialis* more vulnerable to take and increase enforcement problems. Protection of this species' habitat will be addressed through the section 7 jeopardy standard and recovery activities. Therefore, it would not now be prudent to determine critical habitat for *S. diluvialis*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Much of the population of *S. diluvialis* is on Federal lands, managed by the Bureau of Land Management and the National Park Service. Both of these Federal agencies would be responsible for insuring that all activities and actions on lands they manage are not likely to jeopardize the continued existence of *S. diluvialis*. In addition, the Corps of Engineers, which issues Federal dredge and fill permits which can affect wetlands and riparian areas, would be required to insure permitted actions are not likely to jeopardize the continued existence of *S. diluvialis*.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers.

In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulations. This protection may apply to threatened plants once revised regulations are promulgated.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. Because of horticultural interest in *S. diluvialis*, trade permits may be sought, but few, if any, trade permits for plants of wild origin would ever be issued since the species is not common in the wild. Plants of cultivated origin are available and permits may, under certain circumstances, be issued for trade in cultivated plants. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Mangement Authority, U.S. Fish and Wildlife Service, Room 432, 4401 N. Fairfax Drive, Arlington, Virginia 22203 (703/358-2093; FTS 921-2093).

As a member of the family Orchidaceae, *S. diluvialis* is included on Appendix II of CITES. Species on Appendix II require a permit from the country of origin prior to export. International trade in this species is likely minimal.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *S. diluvialis*;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provide by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within

45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service (see **ADDRESSES** above).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (49 FR 49244).

References Cited

Coyner, J. 1989. Status check on reported historic populations of *Spiranthes diluvialis*. Memorandum, U.S. Fish and Wildlife Service, Salt Lake City, Utah. 9 pp.

Heil, K.D. 1988. Endangered, threatened, rare and other plants of concern at Capitol Reef National Park, Utah. Unpublished report. National Park Service, Torrey, Utah. 57 pp.

Jennings, W.F. 1989. Final report. Species studied: *Eustoma grandiflorum, Spiranthes diluvialis, Malaxis brachypoda, Hypoxis hirsuta, Physaria bellii, Aletes humilis*. Unpublished report prepared for The Nature Conservancy under the Colorado Natural History Small Grants Program. The Nature Conservancy, Boulder, Colorado. 48 pp.

Sheviak, C.J. 1984. *Spiranthes diluvialis* (Orchidaceae), a new species from the western United States. Brittonia 36(1):8–14.

Welsh, S.L., N.D. Atwood, S. Goodrich, L.C. Higgins. 1987. A Utah flora. Great Basin Naturalist Memoirs, Number 9. 894 pp.

Author

The primary author of this proposed rule is John L. England, botanist, U.S. Fish and Wildlife Service (see **ADDRESSES** above, telephone 801/524–4430 or FTS 588–4430).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Orchidaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
*	*	*	*	*	*	*
Orchidaceae—Orchid family:						
*	*	*	*	*	*	*
Spiranthes diluvialis	Ute ladies'-tresses	U.S.C. (CO, NV, UT)	T		NA	NA
*	*	*	*	*	*	*

Dated: October 25, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–26689 Filed 11–9–90; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 33

RIN 1018–AA50

Refuge-Specific Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) would amend certain regulations in 50 CFR part 33 that pertain to fishing on individual national wildlife refuges (NWRs). Refuge fishing programs are reviewed annually to determine whether the regulations governing fishing on individual refuges should be modified. Changing environmental conditions, state and Federal regulations and other factors affecting fish populations and habitats may warrant such amendments. The modifications would ensure the continued compatibility of fishing with the purposes for which the individual refuges involved were established and, to the extent practical, make refuge fishing programs consistent with state regulations.

DATES: Comments must be received on or before December 13, 1990.

ADDRESSES: Send comments to: Assistant Director, Refuges and Wildlife, U.S Fish and Wildlife Service, 1849 C Street NW., MS 670–ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Larry LaRochelle, Division of Refuges, Fish and Wildlife Service, 1849 C Street NW., MS 670–ARLSQ, Washington, DC 20240; Telephone 703–358–2043.

SUPPLEMENTARY INFORMATION: 50 CFR part 33 contains the provisions that govern fishing on NWRs. Fishing is regulated on refuges to (1) ensure compatibility with primary refuge purposes, (2) properly manage the fishery resource, and (3) protect other refuge values. On many refuges, the Service policy of adopting state fishing regulations is an adequate way of meeting these objectives. On other refuges it is necessary to supplement state regulations with refuge-specific fishing regulations which will ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance With Statutory and Regulatory Authorities." These regulations may list the seasons, methods of taking fish, descriptions of open areas and other provisions. The Service has previously issued refuge-specific fishing regulations in 50 CFR part 33. Refuge-specific fishing regulations are issued only after the final publication in the **Federal Register** of the opening of a wildlife refuge to fishing.

This proposed rule would amend and supplement certain refuge-specific regulations in 50 CFR part 33, §§ 33.5 through 33.55, which pertain to fishing on individual refuges in their respective alphabetically listed state.

The policy of the Department of the Interior (Department) is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is, therefore, the purpose of the proposed rulemaking to

seek public input regarding the proposed amendments to refuge-specific fishing regulations. Accordingly, interested persons may submit written comments concerning this proposal to the Assistant Director, Refuges and Wildlife (address above), by the end of the comment period. All substantive comments will be considered by the Department prior to issuance of a final rule.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act (RRA) of 1962 (16 U.S.C. 460k) govern the administration and public use of NWRs. Specifically, section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior (Secretary), under such regulations as he may prescribe, to permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations and access when he determines that such uses are compatible with the major purposes for which such areas were established.

The RRA authorizes the Secretary to administer refuge areas within the National Wildlife Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the area was established. The RRA also authorizes the Secretary to issue regulations to carry out the purposes of the Act.

Fishing plans are developed for each fishing program on a refuge prior to its opening to fishing. In some cases, refuge-specific regulations are included as part of fishing plans to ensure the compatibility of the fishing programs with the purposes for which the refuge was established. Compliance with the NWRSAA and RRA is ensured when fishing plans are developed and the determinations required by these Acts are made prior to the addition of the refuge to the list of areas open to fishing in 50 CFR part 33. Continued compliance is ensured by annual review of fishing programs and regulations.

Economic Effect

Effective Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The proposed amendments to the codified refuge-specific fishing regulations would make relatively minor adjustments to existing fishing programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, state or local governments, agencies or geographic regions. The benefits accruing to the public are expected to exceed the costs of administering this rule. Accordingly, the Department has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). These requirements are presently approved by OMB as cited below:

Type of Information Collection	OMB approval No.
Economic and public use permits	1018–0014

Public reporting burden for this form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when fishing plans are developed and the determinations required by these Acts are made prior to the addition of refuges to the list of areas open to sport fishing in 50 CFR part 33. Refuge-specific fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular refuge. The changes proposed in this rulemaking would not significantly alter the existing uses of the refuges involved.

Information regarding the conditions that apply to individual refuge fishing programs, any restrictions related to public use on the refuge and a map of the refuge are available at refuge headquarters. This information can also be obtained from the regional offices of the Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon and Washington:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 911 NE 11th Ave, Portland, Oregon 97232; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Puerto Rico, Tennessee and the Virgin Islands:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street SW, Atlanta, Georgia 30303; Telephone (404) 331–0833.

Region 5—Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia:
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158; Telephone (617) 965–9222.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming:
Assistant Regional Director—Refuges

and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236-8145.

Region 7—Alaska:

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; Telephone (907) 786-3538.

Larry LaRochelle, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this proposed rulemaking document.

List of Subjects in 50 CFR Part 33

Fishing, Reporting and recordkeeping requirements, Wildlife refuges.

PART 33—[AMENDED]

Accordingly, it is proposed to amend part 33 of chapter I of title 50 of the Code of Federal Regulations as set forth below:

1. The authority citation for part 33 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 33.5 would be amended by adding paragraphs (d) (3) and (4) as follows:

§ 33.5 Alabama.

* * * * *

(d) *Wheeler National Wildlife Refuge.* * * *

(3) Entry and use of airboats and hovercraft is prohibited on all waters within the refuge boundaries.

(4) Entry and use of personalized watercraft, such as but not limited to, jetskis, watercycles, and waterbikes are prohibited on all waters within the boundaries of the refuge except that portion of the Tennessee River and Flint Creek from its mouth to mile market three.

3. Section 33.8 would be amended by revising paragraph (f)(1) as follows:

§ 33.8 Arkansas.

* * * * *

(f) *White River National Wildlife Refuge.* * * *

(1) Fishing is permitted from March 1 through October 31 except as posted and as follows: Fishing is permitted year-round in LaGrue, Essex, Prairie, and Brooks Bayous, Big Island Chute, Moon Lake next to Highway 1, the portion of Indian Bay south of Highway 1, the Arkansas Post Canal and Adjacent drainage ditches, and those borrow ditches located adjacent to the west bank of that portion of the White River Levee north of the Arkansas Power and Light Company powerline right-of-way.

* * * * *

4. Section 33.9 would be amended by removing paragraphs (a), (c) and (h); redesignating paragraph (b) as (a); redesignating pargraphs (d), (e), (f) and (g) and (b), (c), (d) and (e) respectively; redesignating paragraphs (i), (j) and (k) as (f), (g) and (h) respectively; and revisign newly redesignated paragraphs (b) and (h)(2) as follows:

§ 33.9 California.

* * * * *

(b) *Delevan National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted during daylight hours only from February 1 through October 15.

* * * * *

(h) *San Luis National Wildlife Refuge.* * * *

(2) Only the use of pole and line or rod and reel is permitted.

5. Section 33.12 would be amended by adding paragraph (a)(5) as follows:

§ 33.12 Delaware.

(a) *Prime Hook National Wildlife Refuge.* * * *

(5) The use of air thrust watercraft is not permitted.

6. Section 33.17 would be amended by revising paragraphs (a)(1); (b)(3) and (c)(1) through (4) and removing paragraphs (c)(5) through (8) as follows:

§ 33.17 Illinois.

(a) *Chautauqua National Wildlife Refuge.* * * *

(1) From December 15 through October 15 bank fishing is permitted and all refuge waters are open to fishing. From October 16 through December 14 bank fishing is permitted in the posted area that extends from the Recreation Area to the break in the cross dike and along Boatyard #3 to 100 feet west of the radial gate structure, from boats in Goofy Ridge Ditch, and in all waters within the Public Hunting Area. Fishing is permitted during daylight hours only.

* * * * *

(b) *Crab Orchard National Wildlife Refuge.* * * *

(3) It is unlawful to take largemouth bass between 12" to 15" in length from Little Grassy Lake; there is not minimum length limit on largemouth bass in effect on Devils Kitchen Lake.

* * * * *

(c) *Mark Twain National Wildlife Refuge.* * * *

(1) Fishing is permitted all year in the Big Timber Division, Iowa including Turkey and Otter Island, and in the Gardner Division, Illinois.

(2) Fishing is permitted in the Louisa Division, Iowa, from February 1 until the start of the Iowa waterfowl hunting season with the exception of certain designated areas adjacent to the Port Louisa Road that are open all year.

(3) Fishing is permitted in the Keithsburg Division, Illinois, from January 1 through September 15. Bank fishing at the Spring Slough access is permitted all year.

(4) Fishing is permitted in the Calhoun, Batchtown, and Gilbert Lake Division, Illinois, from December 16 through October 15.

* * * * *

7. Section 33.22 would be amended by revising paragraphs (c) (1) through (5) and (f); and removing paragraph (c)(6) as follows:

§ 33.22 Louisiana.

* * * * *

(c) *Catahoula National Wildlife Refuge.* * * *

(c) Fishing is permitted from one hour before sunrise until one-half hour after sunset. Only pole and line or rod and reel fishing is permitted.

(2) Boat launching on all refuge waters is permitted only at designated boat ramps. Boats with motors over the maximum size listed are prohibited, whether or not the motors are used for power. Boats may not be left on the refuge overnight.

(3) Cowpen Bayou is open to fishing year-round. Only nonmotorized boats or boats with electric motors are permitted.

(4) Duck Lake, all outlet waters, and all flooded woodlands are open to fishing and boating from March 1 through October 31. Only nonmotorized boats or boats with motors of 10 horsepower or less are permitted.

(5) Muddy Bayou is open to fishing from March 1 through October 31. Only nonmotorized boats or boats with electric trolling motors are permitted.

* * * * *

(f) *Lacassine National Wildlife Refuge.* Fishing and crayfishing are permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing and crayfishing are permitted from one hour before sunrise until one hour after sunset during the period of March 1 through October 15.

(2) Only pole and line or rod and reel fishing is permitted. Crayfish may be taken only with drop nets or hand lines. The use or possession of any other type of fishing and crayfishing gear is prohibited.

(3) No person may take or possess more than 100 pounds of crayfish per vehicle per day.

(4) Only boats with motors totaling 25 horsepower or less are permitted in the Lacassine Pool. Entry and use of airboats and hovercraft is prohibited on all waters within refuge boundaries. Boats may not be left on the refuge overnight.

(5) Access into refuge marshes and ponds outside the Lacassine Pool is permitted by walking, poling, paddling or rowing. The use of outboard motors in these areas is prohibited.

(6) Boat access to the Lacassine Pool is prohibited from November 1 to March 1.

* * * * *

8. Section 33.27 would be amended by revising paragraphs (e) as follows:

§ 33.27 Minnesota.

* * * * *

(e) *Tamarac National Wildlife Refuge.* * * *

(1) Fishing is permitted in North Tamarac Lake and Wauboose Lake all year, in accordance with State seasons.

(2) Fishing is permitted on Two Island Lake, Blackbird Lake, and Lost Lake from the first day of the State walleye season through Labor Day.

(3) Bank fishing only is permitted in an area 50 yards on either side of the Ottertail River Bridges on County Roads #26 and #126 during State seasons.

* * * * *

9. Section 33.28 would be amended by redesignating paragraph (b) as paragraph (c) and adding new paragraph (b) as follows:

§ 33.28 Mississippi.

* * * * *

(b) *Mathews Brake National Wildlife Refuge.* Fishing and frogging are permitted on designated areas of the refuge subject to the following condition: The designated waterfowl sanctuary is closed to entry from December 1 through March 15.

* * * * *

10. Section 33.32 would be revised by adding new paragraph (c) as follows:

§ 33.32 Nevada.

* * * * *

(c) *Sheldon National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Big Springs Reservoir—only non-motorized boats are permitted.

(2) Dufurrena Ponds—only float tubes and similar flotation devices are permitted.

(3) McGee Pond—only individuals 12 years of age and under, or 65 years of age and older, or handicapped individuals, are permitted to fish.

11. Section 33.40 would be amended by revising paragraph (b)(2) as follows:

§ 33.40 Oklahoma.

* * * * *

(b) *Salt Plains National Wildlife Refuge.* * * *

(2) Fishing is permitted from April through October 15.

* * * * *

§ 33.41 [Amended]

12. Section 33.41 would be amended by removing paragraph (g)(4) and redesignating paragraph (g)(5) as paragraph (g)(4).

13. Section 33.53 would be amended by revising paragraph (b) as follows:

§ 33.53 Wisconsin.

* * * * *

(b) *Necedah National Wildlife Refuge.* * * *

(1) Fishing is permitted in Areas 1, 2, 4, and 5 according to State seasons and regulations, except that the Suk Cerney Pool in Area 5 is open only from December 15 through September 15.

(2) Fishing is permitted in all waters of Area 3 that are located south of the Turkey Track Road and north of the Sprague-Mather Road including the Goose and Sprague Pools from December 15 through March 15 and from June 1 through September 15.

(3) Non-motorized boats are permitted in all areas that are open at the time of fishing.

* * * * *

14. Section 33.55 would be amended by adding new paragraph (a)(3) as follows:

§ 33.55 Pacific Islands Territory.

(a) *Johnston Atoll National Wildlife Refuge.* * * *

(3) Taking of fish by the use of spear "guns" is prohibited. Hand propelled spears or "Hawaiian Slings" consisting of a single shaft propelled by a rubber tube are permitted for underwater taking of fish.

Dated: October 15, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-26703 Filed 11-9-90; 8:45 am]

BILLING CODE 4310-55-M

BEST COPY AVAILABLE

Notices

Federal Register
Vol. 55, No. 219
Tuesday, November 13, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Agricultural Research and Extension Users Advisory Board; Intent To Establish an Advisory Board

Notice is hereby given that the Secretary of Agriculture intends to establish the National Agricultural Research and Extension Users Advisory Board. The purpose of the Board will be to provide the Secretary of Agriculture with an assessment of, and recommendations on, program, budgetary, and policy matters relating to food and agricultural sciences. The Board will submit to the Secretary a statement of recommendations as to allocations of responsibilities and levels of funding for federally supported agricultural and extension programs; the Board also will submit a report to the President and to various Congressional committees on its appraisal of the President's proposed budget.

The establishment of this Board is necessary and in the public interest in connection with the work of the United States Department of Agriculture.

Interested parties are invited to submit written comments to John Patrick Jordan, Administrator, Room 305–A, Administration Building, United States Department of Agriculture, Washington, DC 20250–2200.

Done in Washington, DC, this 8th day of November 1990.

Adis M. Vila,

Assistant Secretary for Administration.

[FR Doc. 90–26813 Filed 11–8–90; 11:54 am]

BILLING CODE 3410–22–M

[Docket No. 90–023N]

National Advisory Committee on Microbiological Criteria for Foods; Meetings

Notice is hereby given that meetings of the National Advisory Committee on Microbiological Criteria for Foods will be held Monday through Thursday, November 26–29, 1990, in Houston, Texas, at the Hyatt Regency-Houston, 1200 Louisiana Street, Houston, Texas 77002.

The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been produced using good manufacturing practices.

Scheduled sessions are as follows:

(1) Monday, November 26: 2 p.m. to 5 p.m.—Session of the Evaluation of Process Controls (Partially Defatted Species Products) Subcommittee.

(2) Tuesday, November 27: 8:30 a.m. to 5 p.m.—Session of the *Listeria monocytogenes* Subcommittee.

(3) Wednesday, November 28: 8:30 a.m. to 5 p.m.—Concurrent sessions of the Meat and Poultry Subcommittee and the Seafood Subcommittee; and

(4) Thursday, November 29: 8:30 a.m. to 12 noon—Concurrent sessions of the Meat and Poultry Subcommittee and the Seafood Subcommittee; and 1:30 p.m. to 5 p.m.—Full Committee session.

Notice is hereby given on the appointment of members to the Committee. The new members are: Dr. Charles W. Beard, Southeast Poultry Research Laboratory, Agricultural Research Service, Athens, Georgia, and Dr. Stanley S. Green, Food Safety and Inspection Service, Washington, DC.

The Committee meetings are open to the public on a space available basis. Comments of interested persons may be filed prior to the meeting in order that they may be considered and should be addressed to Ms. Catherine M. DeRoever, Director, Executive Secretariat, U.S. Department of Agriculture, Food Safety and Inspection Service, room 3175, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. In submitting comments, please reference the docket number appearing in the heading of this notice. Background materials are available for inspection by contacting Ms. DeRoever on (202) 447–9150.

Done at Washington, DC on November 5, 1990.

Lester M. Crawford,

Chairman.

[FR Doc. 90–26657 Filed 11–9–90; 8:45 am]

BILLING CODE 3410–DM–M

Washington Game Farm Alternative Program; Determination of Primary Purpose of Program Payments for Consideration as Excludable From Income Under Section 126 of the Internal Revenue Code of 1954

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that payments made to individuals under the Washington Game Farm Alternative Program are made primarily for the purposes of protecting or restoring the environment and providing a habitat for wildlife. This determination, which is made in accordance with section 126 of the Internal Revenue Code of 1954, as amended, permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Curt Smitch, Director, Department of Wildlife, 600 North Capitol Way, GJ–11, Olympia, Washington 98504–0091, or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. box 2890, Washington, DC 20013 (202) 382–1870.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, 26 U.S.C. 126, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that the payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife * * *." The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR part 14, and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that payments made under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

One of the state conservation programs is the State of Washington Game Farm Alternative Program. The program is operated as part of the Lower Snake River Fish and Wildlife Compensation Plan authorized by the Water Resources Development Act of 1976, Public Law 94–587, as modified by section 856 of the Water Resources Development Act of 1986, Public Law 99–662. The program is implemented by the Washington State Department of Wildlife under the Revised Code of Washington, §§ 77.12.010 and 77.12.320. The program is funded by the U.S. Army Corps of Engineers, Walla Walla District, Washington, with Lower Snake River Fish and Wildlife Compensation Plan funds.

The objective of the Washington Game Farm Alternative Program is to establish, protect or enhance permanent wildlife habitat on privately owned farmland. The program objective is achieved by developing permanent wildlife habitat on private farmland through cost-shared land treatment or management practices.

Practices eligible for cost-sharing include, but are not limited to:

Grass or grass/legume filter strips
Shrub and tree plantings
Fencing riparian zones to protect from grazing
Planting small grain food plots

In addition, landowners are reimbursed for profits forgone as a result of reducing farmable acreage. It is noted that these payments for profits forgone are not directly related to the installation of the cost shared land treatment practice improvements, but rather are analogues to a rental payment for the non-farmed areas. As such, they are similar to rental payments which the Internal Revenue Service has determined to be outside of the scope of section 126. See 26 CFR 16A.126–1(b)(2)(iii) and 46 FR 27636 (May 21, 1981). Accordingly, the question of the eligibility of these particular payments for exclusion under section 126 is left for determination by the Internal Revenue Service. The determination of primary purpose set forth in this notice, however, does apply to such payments.

Procedural Matters

The authorizing legislation, regulations, and operating procedures for the Washington Game Farm Alternative Program have been examined using the criteria set forth in 7 CFR part 14. The U.S. Department of Agriculture has concluded that the payments made under this cost-share program are made to provide financial assistance to eligible persons in protecting or restoring the environment, and in providing wildlife habitat.

A "Record of Decision, Washington Game Farm Alternative Program: Primary Purpose Determination for Federal Tax Purposes" has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. box 2890, Washington, DC 20013, or Director, Department of Wildlife, 600 North Capitol Way, GJ–11, Olympia, Washington 98504–0091.

Determination

As required by section 126(b) of the Internal Revenue Code of 1957, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the Washington Game Farm Alternative Program. In accordance with the criteria set out in 7 CFR part 14, I have determined that all cost-share payments made under this program are primarily for the purposes of protecting or restoring the environment, and providing wildlife habitat. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for federal income tax purposes, all or part of such payments made under the Washington Game Farm Alternative Program.

Signed at Washington, DC on November 5, 1990.

Clayton Yeutter,

Secretary.

[FR Doc. 90–26658 Filed 11–9–90; 8:45 am]

BILLING CODE 3410–16–M

Animal and Plant Health Inspection Service

[Docket No. 90–214]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Tomato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Calgene, Inc., to allow field testing of tomato plants genetically engineered to express an anti-sense endopolygalacturonase (PG) RNA, in Riverside County, California. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants will not present a risk of introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 848, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens at the same address. The environmental assessment should be requested under permit number 90–249–01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment

and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906, June 16, 1987).

Calgene, Inc., of Davis, California, has submitted an application for a permit for release into the environment, to field test tomato plants genetically engineered to express an anti-sense endopolygalacturonase (PG) RNA. The field trial will take place in Riverside County, California.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tomato plants under the conditions described in the Calgene, Inc., application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Calgene, Inc., as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting the finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A PG gene from tomato has been modified to produce anti-sense RNA. The modified gene was then inserted in the plant genome, resulting in the inhibition of expression of the endogenous PG gene. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because the field test plot is a sufficient distance from any sexually compatible plants with which it might cross-pollinate.

2. Neither the modified PG gene itself, nor the derived anti-sense RNA, confers on tomato any plant pest characteristic. The tomato cultivar (UC82B) from which the PG gene was obtained is not a plant pest.

3. The anti-sense PG gene does not provide the transformed tomato plants with any measurable selective advantage over nontransformed tomato plants in their ability to be disseminated or to become established in the environment.

4. Select noncoding regulatory regions derived from plant pests have been incorporated into the plant DNA but do not confer on tomato any plant pest characteristics.

5. The vector used to transfer the anti-sense PG gene to tomato plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk therein. The vector, although derived from a DNA sequence with known plant pathogenic potential, has been disarmed: that is, the genes that are necessary for pathogenicity have been removed.

6. The vector agent, the phytopathogenic bacterium that was used to deliver the vector DNA carrying the anti-sense PG gene into a tomato plant cell, was eliminated and is no longer associated with a transformed tomato plant.

7. Horizontal movement of genetic material after insertion into the plant genome (i.e., into chromosomal DNA) has not been demonstrated. After delivering and inserting the DNA to be transferred into the tomto genome, the vector does not survive in or on the transformed plants. No mechanism is known to exist in nature to horizontally move an inserted gene from a chromosome of a transformed plant to any other organism.

8. The field test site is small, approximately 3 acres.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 6 day of November 1990.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–26706 Filed 11–9–90; 8:45 am]

BILLING CODE 3410-34-M

Application No.	Applicant	Date received	Organism	Field test locations
90-282-01	Monsanto Agricultural Company	10-09-90	Potato plants genetically engineered to express the coat protein gene of potato leaf roll virus.	Florida.

[Docket No. 90–215]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests." require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permits for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test locations
90-282-05	Monsanto Agricultural Company	10-09-90	*Pseudomonas corrugata* strain 2140 genetically engineered to contain the *lacZY* marker gene.	Alabama, Illinois, Indiana, Missouri, Montana, Washington.

Done in Washington, DC, this 6 day of November 1990.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–26705 Filed 11–8–90; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 43–90]

Foreign-Trade Zone 2—New Orleans, LA; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Commissioners of the Port of New Orleans (the Port), grantee of Foreign-Trade Zone 2, requesting authority to expand its zone to two sites in Kenner, Louisiana, adjacent to the New Orleans International Airport, within the New Orleans Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 31, 1990.

On July 16, 1946, the Port received authority from the Board to establish a foreign-trade zone in New Orleans (B.O. 12, 11 FR 8235, 7/31/46). The zone was expanded in 1984 (B.O. 245, 49 FR 15006, 4/16/84) and in 1986 (B.O. 331, 51 FR 17783, 5/15/86). It currently involves a site (19 acres) at the Napoleon Avenue Wharf, a site (76 acres) within the Almonaster-Michoud Industrial District, and the entire Newport Industrial Park (700 acres) in New Orleans.

The Port is now requesting authority to expand its zone project to include two warehouse facilities in Kenner (Jefferson Parish), Louisiana, adjacent to the New Orleans International Airport. One facility is located at 200 Crofton Road (159,000 sq. ft., Lacour Warehousing, Inc.) and the other is at 2445–2447 Aberdeen Street (23,500 sq. ft., Quast and Company, Inc.). No manufacturing approvals are being sought in the application. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joel Mish, District Director, U.S. Customs Service, South Central Region, 423 Canal Street, New Orleans, Louisiana 70130; and Colonel Richard V. Gorski, District Engineer, U.S. Army Engineer District New Orleans, P.O. Box 60267, New Orleans, Louisiana 70160.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before December 24, 1990.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce, District Office, 432 World Trade Center, 2 Canal Street, New Orleans, LA 70130.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4213, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: November 1, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90–26633 Filed 11–9–90; 8:45 am]

BILLING CODE 3510-DS-M

[A-30-90]

Foreign-Trade Subzone 15D Mobay Chemical Plant, Kansas City, Mo; Determination of Scope of Manufacturing

A request has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ 15 and Subzone 15D, at the agricultural chemical manufacturing plant of Mobay Corporation, Kansas City, Missouri, to determine whether certain proposed manufacturing activity is within the scope of manufacturing authority already approved by the Board.

On September 11, 1989, the Board authorized FTZ Subzone 15D at the Mobay plant (Board Order 440, 54 FR 38413). Authority was granted for the manufacture of pesticides (e.g., insecticides, herbicides and fungicides) (duty rates: 3.5–20%) utilizing foreign materials such as cyanuric chloride, benzenethial, surface agents, nitrogeneous compounds, ketones, nitriles and halogenated, sulfonated and nitrated derivatives of aldehydes (duty rates: 7.9–12.5%).

The original application listed a number of finished pesticide products which Mobay planned to produce under zone procedures. Mobay has informed the Board that it now plans to produce several additional related finished pesticide products for animal health applications (duty rates: 3.4–7.9%) that were not specifically listed in the original application.

The request under review also indicates that the company plans to use new, but related, foreign materials such as heterocyclic compounds with oxygen, polycarboxylic acids and related products, and esters of inorganic acids and related products (duty rates: 3.1–20.0%), in its production of pesticides.

It appears that the proposed activity is within the range of activity reviewed in the original application and authorized by Board Order 440, but the FTZ Staff invites the comments of interested parties for consideration in its review.

Comments must be submitted by December 10, 1990. They shall be addressed as follows.

A copy of the request is available for public inspection at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Room 4213, Washington, DC 20230.

Dated: November 1, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90–26634 Filed 11–9–90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-067]

Final Scope Ruling; Portable Electric Typewriters From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On August 7, 1990, we published a preliminary scope ruling, determining that certain later-developed portable electric typewriters (PETs) are within the scope of the antidumping duty order on PETs from Japan. Specifically, we found that the addition of an LCD, LED or CRT [1] display and expanded and/or removable text memory does not exempt a PET from the antidumping order. We notified the U.S. International Trade Commission (ITC) of our proposed inclusion of certain later-developed PETs. The ITC informed the Department that consultations were not necessary. Respondents submitted comments regarding the preliminary determination and, after reviewing these comments, we have found no evidence to merit changing the preliminary determination. Therefore, we reaffirm the preliminary determination, finding that certain later-developed portable electric typewriters, including so-called "personal word processors" (PWPs), are presumptively of the same class or kind as PETs within the scope of the order, if they meet the following seven physical criteria. To be of the same class or kind as a PET a typewriter must: be easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability; be electric, regardless of source of power; be comprised of a single, integrated unit; have a keyboard embedded in the chassis or frame of the machine; have a built-in printer; have a platen (roller) to accommodate paper; only accommodate its own dedicated or captive software.

EFFECTIVE DATE: November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner or Keir Bonine, Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4851.

Criteria

For purposes of determining whether the merchandise in question is within the scope of the antidumping duty order on portable electric typewriters from Japan, the Department will refer to section 781(d) of the Tariff Act of 1930, as amended, 19 U.S.C. 1677j(d) ("the Act") and its interim final regulations on scope, published at 19 CFR 353.29 (1990). Because the product descriptions of the merchandise contained in the petition and prior determinations of the Department and the ITC during the original investigation are not dispositive as to whether PWPs are within the scope of the antidumping duty order, and because the allegations were that the PETs at issue are later-developed products, we considered the criteria listed in section 781(d) of the Act. The statute provides:

> (1) *In general.* For purposes of determining whether merchandise developed after an investigation is initiated * * * (hereafter in this paragraph referred to as the "later-developed merchandise") is within the scope of an outstanding antidumping or countervailing duty order * * * (the Secretary will) consider whether:
>
> (A) The later-developed product has the same general physical characteristics as the merchandise with respect to which the order was originally issued (hereafter in this paragraph referred to as the "earlier product");
>
> (B) The expectations of the ultimate purchasers of the later-developed product are the same as for the earlier product;
>
> (C) The ultimate use of the earlier product and the later-developed product are the same;
>
> (D) The later-developed merchandise is sold through the same channels of trade as the earlier product; and
>
> (E) The later-developed merchandise is advertised and displayed in a manner similar to the earlier product.

See also 19 CFR 353.29(h) of the Department's regulations.

The statute further provides that the Department may not exclude later-developed merchandise from an order merely because the merchandise permits the purchaser to perform additional functions, unless such additional functions constitute the primary use of the merchandise and the cost of the additional functions constitute more than a significant proportion of the total cost of production of the merchandise. *See* 19 U.S.C. 1677j(d)(2)(B) and 19 CFR 353.29(h)(2).

Documents from the underlying proceeding deemed relevant by the Department to the scope of the outstanding order were made part of the record to the instant scope review. In completing its analysis, the Department considered any written arguments that interested parties submitted within the specified time limits and information obtained from other Government offices and agencies. Documents that were not presented to the Department, or placed by it on the record, will not constitute part of the administrative record attendant to this scope proceeding.

Background

The antidumping duty order on PETs from Japan, published in the **Federal Register** on May 9, 1980 (45 FR 30618), defined the original scope of the order as all typewriters classifiable under Tariff Schedules of the United States Annotated (TSUSA) 676.0510. Following reclassification of some PETs under a different TSUSA number by Customs, the Department issued a scope clarification in Portable Electric Typewriters From Japan; Clarification of Scope of Antidumping Duty Order and Correction to Early Determination of Antidumping Duties, published in 46 FR 14006, 14007 (February 25, 1981), which defined "portable electric typewriters" as:

> (A)ll typewriters currently classifiable under TSUSA 676.0510, and some currently classifiable under 676.0540, depending on their individual characteristics * * * The characteristics we will consider include, but are not limited to, the dimensions, weight, presence of a carrying case, the type of market, and method of distribution.

The description of the original TSUSA Item number 676.0510, cited in the original petition, was:

> Typewriters not incorporating a calculating mechanism:
> Non-Automatic with hand-operated keyboard:
> Portable:
> Electric.

TSUSA number 676.0540 reads:

> Typewriters not incorporating a calculating mechanism:
> Non-Automatic with hand-operated keyboard:
> Other: Electric.

In 1983, after reviewing comments from interested parties, the Department found portable electronic typewriters to be of the same class or kind as PETs and therefore to be within the scope of the order. This finding was published in the Department's Final Results of Administrative Review of Antidumping Duty Order, 48 FR 7769 (February 24, 1983).

In its final results of the 1981-1982 administrative review, the Department determined that the scope of the order excluded automatic (text memory) typewriters and typewriters with a calculating mechanism. Portable Electric Typewriters From Japan; Final Results of Antidumping Duty Administrative Review, 52 FR 1505 (January 14, 1987). The petitioner sought judicial review of these scope determinations, in *Smith Corona* v. *United States*, CIT Number 87-02-00157. The Court of International Trade (CIT) remanded the case to the Department on December 31, 1987, to reconsider its scope determination and publish a revised determination as to whether PETs incorporating a calculator or text memory are within the scope of the antidumping duty order. On remand, the Department determined that typewriters with calculators are within the scope of the antidumping duty order, but portable electric typewriters with text memory (automatics) were not. The final results of this revised scope determination were submitted to the CIT on March 18, 1988. On September 20, 1988, the Court upheld the Department's determination that portable electric typewriters incorporating a calculating mechanism are within the scope of the order, but reversed the Department's determination that portable electric typewriters with text memory (automatics) are not included in the scope of the order. *See Smith Corona* v. *United States*, 11 CIT 954, 698 F. Supp. 240 (CIT 1988) (*Smith Corona*).

Defendant-intervenors appealed the CIT's decision to the Court of Appeals for the Federal Circuit (CAFC). The CAFC issued a decision affirming the CIT's decision on September 26, 1990.[2]

With the conversion to the Harmonized Tariff System, the Department explained how the new HTS numbers related to the old TSUSA system in Portable Electric Typewriters From Japan; Final Results of Antidumping Duty Administrative Review, published in 53 FR 40926 (October 19, 1988):

> (P)ortable electric typewriters currently classified under Tariff Schedules of the United States Annotated ("TSUSA") item 676.0510, and some currently classifiable under TSUSA item 676.0540, and Harmonized Tariff System item numbers HS 8469.21.00 and 8469.29.00.

On April 13, 1990, the Department sent instructions to Customs (C.I.E. N-57-79), to suspend liquidation on automatic PETs (*i.e.*, PETs with text memory). These instructions specified, however, that Customs is not to suspend liquidation on PETs which contain a drive that accommodates a removable storage medium, such as a floppy disk or an integrated circuit card. See also Portable Electric Typewriters from Japan; Court of International Trade Decision Concerning the Scope of the Antidumping Duty Order, 55 FR 12701 (April 5, 1990).

On August 7, 1990, the Department issued a preliminary scope determination, in response to Smith Corona's May 15, 1990, request for a ruling that certain "later-developed PETs" were within the scope of the PETs antidumping duty order. See Preliminary Scope Ruling: Portable Electric Typewriters From Japan, 55 FR 32107 (hereafter, Preliminary). In the preliminary, the Department determined that certain later-developed portable electric typewriters from Japan, including those with text display and expanded memory, are presumptively within the scope of the antidumping duty order on PETs, if they meet all of the following criteria:

> To be of the same class or kind as a PET, a typewriter must:
>
> (1) Be easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability;
>
> (2) Be electric, regardless of source of power;
>
> (3) Be comprised of a single, integrated unit (*e.g.*, not in two or more pieces);
>
> (4) Have a keyboard embedded in the chassis or frame of the machine;
>
> (5) Have a built-in printer;
>
> (6) Have a platen (roller) to accommodate paper;
>
> (7) Only accommodate its own dedicated or captive software.

In the preliminary, the Department ruled that

> * * * the storage ability and word processing capabilities of later-developed PETs do not create a different set of expectations for the ultimate purchaser. Later-developed PETs still retain the primary function found in the original PETs subject to the antidumping duty investigation and can be used as a traditional typewriter. In other words, PWPs with typing capability retain the same ultimate use as traditional PETs, that is, to type text. Unlike a PC, a PWP can only use its own dedicated, captive software. This limits the functions and use of a PWP. The same channels of trade exist for PETs, PWPs and PCs, as well as other consumer goods; therefore, channels of trade are not dispositive in this scope determination. Similarly, PETs and PWPs are advertised and displayed together with other consumer goods; therefore, advertisement and display are not dispositive in this case.

Id. at 32115.

In accordance with section 781(e)(1)(C), because we found that the later-developed merchandise incorporates a significant technological advance to an earlier product, we notified the ITC on July 27, 1990. On August 10, 1990, the ITC acknowledged notification and stated that it did not believe that consultations between the Department and the ITC were necessary.

In accordance with its preliminary determination, the Department notified Customs on August 7, 1990, to suspend liquidation on any PETs or PWPs which meet all seven of the aforementioned criteria.

On September 9, 1990, the Department notified Customs that PETs and PWPs potentially within the scope of the antidumping duty order may be classified under HTS numbers 8469 and 8469.10.000, and that liquidation of entries under these HTS numbers should be suspended if they meet the seven criteria listed in the August 7, 1990, notification.

Arguments

Smith Corona

Smith Corona argues that the Department's preliminary determination did "not go far enough" and that all of the machines the Department listed as representative models should be included within the scope of the PETs antidumping order, including those that the Department preliminarily found to be outside the scope. Smith Corona Comments on Preliminary Scope Ruling, September 6, 1990 (Smith Corona Comments), at 1-2. Smith Corona says that the machines found to be outside the scope "were excluded apparently on the basis of immaterial considerations, unrelated to the primary use of these machines and legally unsound as the basis for decision making." *Id.* at 2.

Physical Characteristics

Smith Corona argues that "the relevant physical characteristics should be related to the primary use of the merchandise." *Id.* at 2. It contends that the Department's preliminary scope ruling "arbitrarily limits the relevant physical characteristics of machines to be covered by the antidumping order." According to Smith Corona, physical characteristics such as a detachable keyboard, or separate printer, "should not become the basis for exclusion—otherwise next year's models of imported portable electric typewriters will all offer detachable keyboards or separate printers." *Id.* at 2. Smith Corona argues that such physical criteria are "immaterial to the functioning of the machine," which is the printing of characters on paper, "and its portability." *Id.* at 2.

Smith Corona continues by arguing that a manufacturer only needs "to make minor, inexpensive modifications to remove a machine from the scope of the antidumping duty order." *Id.* at 3. Smith Corona argues that "(t)his is particularly absurd given the low cost of

[1] Liquid Crystal Display, Light Emitting Diode, and Cathode Ray Tube, respectively.

[2] This scope ruling will be subject to this court decision on whether automatic typewriters are within the scope of the order when the mandate issues. If the CAFC's September 26 decision is reversed on rehearing or on appeal, then this scope ruling will be revised in accordance with such final court decision

separating a printer from the chassis of a portable word processor or producing a detachable keyboard * * *" Smith Corona claims that the cost of "detaching a keyboard is less than 2% of the cost of a personal word processor, and the cost of separating the printer is a similar amount." *Id.* at 3, with evidence at Exhibit 1.

Smith Corona argues that the criteria of a detachable keyboard and a separate printer are "cosmetic modifications that do not affect whether the machines otherwise are portable and function as typewriters." *Id.* at 4. Smith Corona uses the Brother WP–80, which was one of the sample models listed in the appendix of the preliminary decision, as an example of what it argues would be within the scope of the order, if not for its detachable keyboard. "Otherwise, the WP–80 is portable and is intended to be used to type on paper as a result of operation of the keyboard." *Id.* at 4. Smith Corona argues that, in fact, it is the detachable nature of the keyboard on this particular machine which allows for its portable nature, and that if the keyboard were not detachable, "the overall dimensions of the WP–80 would be increased and its ease of portability diminished." *Id.* at 4.

Smith Corona contends that, "(a)lthough the detachable keyboard is a recognizable physical difference between models deemed in scope by ITA (International Trade Administration) and those excluded, every physical difference does not signify that a product is of a different class or kind." *Id.* at 5. Smith Corona argues that the "detached keyboard is not a 'substantially distinct' characteristic. Nor, for the same reason, is a detached printer a distinction with a difference, except to the extent that the size of the components is not consistent with portability." *Id.* at 6.

Smith Corona also disagrees with the preliminary decision to exclude from the scope Panasonic's KX–W1510—a sample model listed in the appendix of the preliminary ruling found to be outside the scope because it lacked a handle and was therefore not easily portable. Smith Corona contends that the machine's weight of 21.56 pounds indicates that it is "no less portable than other models found to be sufficiently portable to meet ITA guidelines." *Id.* at 7. Referring to the 27.5-pound Royal Administrator ruled within the scope of the PETs order, Smith Corona argues that "(b)y virtue of its weight, then, the KX–W1510 does not exceed the range historically characteristic of a portable typewriter." *Id.* at 7–8.

Smith Corona also argues that a PWP's capacity to use nondedicated software does not change its ultimate use. Smith Corona disegrees with the Department's criterion that a personal word processor (PWP) must only accommodate its own captive or dedicated software to be considered within the scope of the order. Smith Corona argues that this criteria is "irrelevant to (the machine's) primary use of typing text." *Id.* at 8. Smith Corona argues that if, as the Department said in its preliminary determination, word processing functions are "merely enhancements to typing functions," then Smith Corona reasons that "it should follow that variations of word processing capabilities provided by additional software would also be enhancements to the typing function." *Id.* at 8.

Referring to *Smith Corona* v. *United States*, 698 F. Supp. 240, 244–245 (1988), where the court ruled that the addition of a calculator to a PET did not create a new class or kind of merchandise, Smith Corona argues that, similarly, the addition of "flexible, noncaptive software does not change the primary use of personal word processors as typewriters * * *" *Id.* at 9. Smith Corona argues that if the ultimate use of the machine is "word processing and printing of text, then it should be considered within the scope of the order whether the software is captive or dedicated or not." *Id.* at 9.

Smith Corona addresses the Department's attempt to differentiate between personal computers (PCs) and PWPs with its "proprietary software" criterion by stating that "(t)he proprietor of the software * * * is immaterial." *Id.* at 10. Smith Corona further argues that:

> Advanced typewriters and personal word processors are distinguished from personal computers by the fact that the latter are designed and sold as a platform for the operation of any of various types of software, which may include word processing software. Personal word processors, however, trade on their similarity with typewriters and their dedication to word processing; they are typically equipped to type without loading software * * * To the extent that future models may offer commercial word processing programs or non-captive software, that development should not affect the coverage of the order, so long as the primary use of the merchandise is unchanged. *Id.* at 10.

Expectations of the Ultimate Purchasers

Smith Corona does not address this criterion specifically, except to say that the "addition of flexible, noncaptive software to a personal word processor may represent an identifiable difference, but it * * * does not significantly influence consumer expectations that the machine will perform as a typewriter." *Id.* at 9.

Ultimate Use

Referring to the Department's criteria in the preliminary scope determination for machines to be considered within the scope of the order, Smith Corona argues that "(c)riteria such as detachable keyboard, separate printer, and captive software are invalid bases for inclusion within the scope of the order * * *, in that none of these criteria affect either the ultimate or primary use of the machines." *Id.* at 10. Smith Corona argues that "the ITA has not analyzed the proposed criteria based on the statute's concerns" and that "these are not effective criteria consistent with the applicable law and regulations." *Id.* at 13.

Referring to the Department's preliminary criteria of an attached keyboard and self-contained printer for a machine to be within the scope, Smith Corona argues that "(t)he fact that the (detachable) keyboard is incidental to the primary use is illustrated by the advertising (for these machines)." *Id.* at 6.

Smith Corona claims that in promotional brochures for Brother and Panasonic machines, "the keyboard is shown in detached position in only about ¼ of the pictures of these machines * * * This emphasis does not detract from the primary use of these models or distinguish WP models from portable electric typewriters." *Id.* at 7.

In addition, Smith Corona argues that the primary use of PWPs for typing is evidenced by the fact that "many portable word processors retain a 'typewriter mode' so that the machines can be used both as a typewriter or word processor." And, "(i)n either mode * * * the machines ultimately are used to print letter on paper." *Id.* at 11–12.

Channels of Trade

Smith Corona argues that PWPs are sold in "consumer-oriented channels of trade—mass merchandisers and discount houses" such as K-Mart, Luskin's and W. Bell. *Id.* at 15. "Whether other products are sold through these channels is irrelevant," *Id.* at 17, because "(t)he statute focuses on whether the products are advertised and sold through the same channels and media as the products of the original investigation." *Id.* at 16. "That these stores also sell calculators, razors or watches hardly affects the obvious fact that word processors have displaced the top-of-the-line portable electric typewriters on the shelves and in the customer's perception at the top of the typewriter line." *Id.* at 17–18.

Advertisement and Display

Smith Corona states that PWP models ruled outside the scope of the PETs order in the preliminary determination, "including the Panasonic Model KX–W1500 and Brother models WP–75 and WP–80 are currently being advertised during this promotional season as 'back to school' models by discount houses and mass merchandisers." *Id.* at 13. Smith Corona contends that "(i)t is well established that the back-to-school season is one of three peak promotional seasons," in which PETs are sold (the other two being "graduation-Father's Day" and Christmas). *Id.* at 14. Smith Corona thus concludes that "the subject machines (referred to above) are squarely within the scope of the order." *Id.* at 14.

Smith Corona argues that "ITA has correctly found that advertising and display for PETs and PWPs 'are virtually the same.'" "However," Smith Corona argues, "it is absurd to imply that (because) portable word processors are advertised with and marketed in the same channels with all kinds of other products * * * that advertising and marketing are unimportant." *Id.* at 16.

Smith Corona contends that "(t)he statute focuses on whether the products are advertised and sold through the same channels and media as the products of the original investigation." *Id.* at 16. "Whether other products are sold through these channels is irrelevant." *Id.* at 17.

Respondents

Later-Developed Merchandise

Respondents argue that the PWPs "at issue today are far removed from the electromechanical machines that were the subject of the original investigation and injury finding, and constitute a distinct class of merchandise." Nakajima Comments of September 6, 1990, at 4. Matsushita Comments of September 6, 1990, at 5. Respondents contend that the very existence of the term "personal word processor" demonstrates this. *See* Nakajima Comments of September 6, 1990, at 2.

Moreover, respondents argue that word processors were already in existence at the time of the original antidumping investigation and "were distinguished in the marketplace from typewriters based on functions and capabilities. Consequently, word processors were not included in the original antidumping investigation which was limited to portable electric typewriters ('PETs') * * * PWPs are a type of word processor and are not a 'later-developed' (PET)." Brother Comments of September 6, 1990, at 2.

Furthermore, respondents argue that "(i)n every context, other than this proceeding, Smith Corona has consistently differentiated PWPs and portable electric typewriters * * * as *entirely different product lines*—in effect, entirely different classes or kind of merchandise." Brother's emphasis. Brother Rebuttal Comments of September 17, 1990, at 1. *See also* Nakajima Comments of September 6, 1990, at 5, 6. Respondents argue that Smith Corona maintains this distinction, as shown by its filing with the SEC on June 5, 1989, where it lists "electronic typewriters" and "personal word processors" as separate product lines, differentiating them on the basis of a "built in disk drive for the external storage of a 100,000 character data disk." Nakajima Comments at 6, quoting from Smith Corona Form S–1, at Exhibit 22 of Brother Comments of June 25, 1990.

Respondents argue that this distinction is also evidenced by the words of Smith Corona's Vice President Fred Feuerhake, who stated that word processors and typewriters are "two products" produced by Smith Corona. *See* Nakajima Comments at 6, quoting from Attachment 15 to Brother Comments of June 25, 1990.

Respondents argue that the Department's failure to define the term "PWP" in the preliminary decision "acts to disguise conclusory statements purporting to be analysis." Nakajima Comments at 7. *See also* Brother Comments of September 6, 1990, at 3. Nor does the Department recognize the distinction between "personal word processors" and "word processing typewriters," which respondents argue is evident by the "large display, unlimited memory, and sophisticated 'block move' editing capability" of PWPs. *See* Nakajima Comments at 8.

Respondents argue that in its preliminary decision the Department did not follow the legal requirements set forth in the later-developed products (LDP) criteria. That is, they argue, despite stating that it would compare the later-developed product to the merchandise with respect to which the order was originally issued, the Department compared PWPs to automatic PETs, the most recent generation of PETs found to be within the scope of the order. Respondents argue that as a result the Department found a product within the scope of the order "which was not an advancement of the original product subject to the order but an advancement of a product which was only 'recently found to be within the scope of the order.'" Nakajima Comments at 3, 4. *See also* Matsushita Comments of September 6, 1990, at 8–9, 17–18.

Respondents argue that "the statutory concept of 'later-developed' product carries with it the notion of displacement of an (sic) similar predecessor product * * * Where displacement does not occur, an implication is raised that the new product is not of the same class or kind of merchandise as the earlier product.

Rather the new product creates a new use or a new expectation on the part of the customer." Thus, "word processors did not displace typewriters," because there is still a strong market for PETs at the same time that a market for PWPs has developed. Brother Comments of September 6, 1990, at 8–11. *See also* Brother Rebuttal Comments at 10.

Respondents also contend that the preliminary decision included "within the scope of an existing antidumping duty order merchandise embodying new and significant technological innovation representing a significant proportion of the cost of the new merchandise," contrary to the intent of Congress. Matsushita Comments at 9. Rather, they argue, Congress intended the later-developed products legislation to prevent circumvention of an existing antidumping duty order through minor alterations to covered products. *See Id.* at 9–15.

Physical Characteristics

Respondents argue that the Department's preliminary conclusion that display size does not differentiate between PWPs and PETs in a "meaningful" way is "unsupportable" (sic). Nakajima Comments at 19. They argue that "the one or two line display found on certain automatic typewriters, while sufficient for making changes to form letters, is inadequate for word processing." *Id.* at 19. Rather, "(i)t is the large display that makes word processing possible * * *" *Id.* at 20. *See also* Canon Comments of September 6, 1990, at 11–12.

Respondents argue that an external disk drive is another important physical difference between PETs and PWPs. *See* Nakajima Comments at 20, and Canon Comments at 11. "Clearly, the existence of hardware for access to external memory in the form of a floppy disk drive is a significant physical difference between PWPs and PETs. This hardware in turn requires sophisticated internal hardware, including microprocessors and power supplies." Matsushita Comments at 19. They argue that the existence of external memory is

a significant physical difference because it allows the user "the capability to word process not only many documents, but also lengthy documents, and to store one document while working on another." *See* Nakajima Comments at 20–21.

Respondents contend that the Department did not compare the physical characteristics of PWPs with the PETs originally investigated, but rather, incorrectly, compared them to the latest generation of automatic PETs. *See* Matsushita Comments at 17–18, and Brother Comments of September 6, 1990, at 6 and 11. Furthermore, respondents argue, even when compared with automatic PETs, the physical differences between PWPs and automatic PETs are great. A PWP has "more chips and software, between 3 and 20 times as much display, and an infinite amount of storage capacity" as compared to an automatic PET. Brother Comments at 14–15. Respondents contend that:

> The CIT has acknowledged these quantitative differences—more chips, more software, more display, more memory—rise to "high enough 'levels of sophistication' to support a finding" of a separate class or kind of merchandise. *Smith Corona, supra* 698 F. Supp. at 248. And, the CIT has indicated that these quantitative differences become a separate class or kind when they rise to "level of sophistication" of a word processor. *Id.*

Brother Comments at 15.

Furthermore, respondents argue, the "physical distinction between PETs (typing text on paper) and PWPs (inputting text onto a storage medium) can be readily observed by the distance between the keyboard and the printer." Brother Rebuttal Comments at 13. "Obviously," respondents assert, "where the operator is typing text directly onto the paper, proximity between they (sic) keyboard and printer is important." However, when using a word processor, "where the operator is inputting text onto a storage medium, the location of the printer is not nearly so important." *Id.* at 13.

In response to Smith Corona's criticism of the Department's preliminary criterion that a PWP within the scope must consist of "a single, integrated unit," respondents argue that PWPs that have separate components, "such as those with separate printers, do not have the same 'look and feel' as the PETs that were the subject of the antidumping order. Canon Comments of September 17, 1990, (Canon Rebuttal Comments) at 5. "Furthermore, the difference in physical appearance between PETs that are comprised of a single unit and PWPs that are not, creates different consumer expectations about the products." For example, consumers expect those PETs comprised of a single unit "to be easier to transport because only one unit need be carried." *Id.* at 5. Also, respondents argue that "(a) PWP comprised of different components conveys an impression that such machines are more like PCs than PETs." *Id.* at 5.

Respondents state that those PWPs which need separate printers are sold separately from the printer. Thus, they argue, "(a) (word) processor which is not sold together with a printer as an integral unit cannot conceivably be considered within the PETs Order for neither the processor nor the printer is capable of functioning as a typewriter, *i.e.*, to print characters on a page as corresponding characters on a keyboard are pressed." Matsushita Rebuttal Comments at 9.

Similarly, concerning the "embedded keyboard" criterion, respondents argue that, contrary to Smith Corona's arguments, "this is a valid criterion under the statute, and PWPs without embedded keyboards should remain outside of the antidumping order." Canon Rebuttal Comments at 8. Respondents argue that "the PETs that were the subject of the original investigation were single-unit machines" with "* * * keyboards that were firmly embedded in the frame or chassis of the machine, and thus shared the same basic design and footprint traditionally common to typewriters." *Id.* at 8.

Respondents argue that Smith Corona's cost arguments concerning a detachable keyboard and separate printer are "fallacious." Matsushita Rebuttal Comments at 10. Contrary to Smith Corona's argument that the estimated cost "for detachable keyboard and separate printer" is less than two percent of the cost of the word processor for each of these items. Respondents argue that these figures are inaccurate and that "Smith Corona's assertion regarding the printer is for *providing for* a separate printer. It does *not* cover the cost of the separate printer itself." Matsushita Rebuttal Comments at 10, referring to Smith Corona Comments at 3, Matsushita's emphasis.

Concerning the "portability" criterion, Respondents argue that "portability should not be ultimately dispositive as to whether a PWP falls within the order's scope." Canon Rebuttal Comments at 10. This is because, "although PWPs are portable in the sense that they can be transported, it is more accurate to state that the machines are designed to be placed more or less permanently at work stations and desks." *Id.* at 10.

Referring to the Department's preliminary criterion of dedicated software for a PWP to be considered within the scope of the order, some respondents argue that "the Department has created an inappropriate and arbitrary line which cannot serve as a proper basis for a determination that personal word processors are within the scope of the existing PETs order pursuant to section 781(d)." Matsushita Comments at 38.

Recognizing that the Department meant this criterion to distinguish PWPs from personal computers (PCs), respondents argue that, in fact, PWPs share many features with computers and compete directly against them in the market place. *See* Matsushita Comments at 42–43.

At the same time, rebutting Smith Corona's argument that the "captive software" criterion should be scrapped, respondents argue that "(i)f the only thing that counts, as postulated by Smith Corona, is a 'primary use of typing text', then PCs surely belong within the antidumping duty order because 'word processing (is) the main use of home PCs.' " Brother Rebuttal Comments at 5, quoting from *HFD*, Attachment 4 of Brother Comments of September 6, 1990. Respondents argue that "this leads to the preposterous result of bringing within the PETs order computers, a product which no one would have ever dreamed of falling in the same class or merchandise as PETs in 1979, now that they have become portable." Brother Rebuttal Comments at 5.

Respondents contend that "Smith Corona's attack on validity of the 'dedicated/captive software' criteria is clearly intended to remove an impediment to excluding PCs" from the PETs order in the future. Brother Rebuttal Comments at 7.

Referring to the July 23 and July 24, 1990, ITA Memoranda to the File, containing various definitions for word processors and typewriters from different government agencies and trade associations, respondents argue that the Department did not take these definitions into account. They contend that "five of the six sources clearly distinguish between word processors and typewriters, while the sixth source, which does not even purport to provide definitions, simply describes a broad marketing category." Nakajima Comments at 26. Respondents hold that two of the definitions, both from General Services Administration (GSA), exclude machines with external memory storage "(and therefore unlimited memory)" from the typewriter category *See Id.* at 27.

Respondents argue that "(w)hile these memoranda show that there is no uniform definition for a PWP or PET, they also establish that features such as a large display, external memory, and sophisticated word processing capability distinguish a word processor from a typewriter." Nakajima Comments at 28.

Thus, respondents argue, "(w)hile the trade (associations), other government agencies (referred to in the July 23 and July 24, 1990, ITA Memoranda), and the respondents, may differ as where the line should be drawn, distinguishing one class or kind of merchandise from another, all agree that a line should be drawn between typewriters and word processors as generically different merchandise." They conclude that the Department has an obligation to draw such a line. Brother Comments of September 6, 1990, at 16–17.

Finally, respondents argue that "automatic typewriters incorporating a computer interface are outside the scope of the order." Nakajima Comments at 28. They argue that the CIT's decision on automatic PETs in *Smith Corona* "addressed only *one* type of automatic typewriter—typewriters that are automatic because they incorporate text memory—and did *not* otherwise disturb the Department's January 14, 1987 Determination that *all* portable typewriters classified as automatic are outside the scope of the order." In other words, respondents contend that those automatic typewriters with a computer interface were not included in the CIT's ruling on automatics. *Id.* at 28.

Expectations of the Ultimate Purchasers

Respondents argue that in analyzing this criterion, "(a)gain, the Department improperly compared personal word processors to automatic PETs, not merchandise subject to the original investigation, which had no memory and no ability to store or manipulate text." Matsushita Comments at 24. Thus, if the expectations of the purchasers of PWPs were compared to the expectations of purchasers of the PETs originally investigated, the "ultimate purchasers of the 'original' PETs could hardly expect any word processing from their PETs, let alone the sophisticated level of word processing capability supplied by personal word processors." *Id.* at 24.

The argument follows that the "purchaser of a personal word processor buys the machine so that he or she may create and edit text without the necessity of printing on paper," in contrast to the purchaser of the PETs originally investigated, who simply expected to type on paper. *See* Matsushita Comments at 25, Brother Comments at 18–19 and Canon Comments of September 6, 1990, at 7–9.

Respondents argue that "the difference in physical appearance between machines with embedded keyboards and those without creates different consumer expectations. Consumers can anticipate that if a machine looks like a typewriter, it works like a typewriter." Canon Rebuttal Comments at 8. In contrast, "(a) PWP without an embedded keyboard," respondents argue, "conveys the impression that the machine is more closely related to a PC and is therefore capable of operating like a PC."

Respondents argue that, moreover, "personal word processors are aimed at a separate constituency than that for PETs." Matsushita Comments at 26. They state that, according to the original investigation, the principal users of PETs are "students and housewives." *See* Nakajima Comments at 13, quoting from 1980 ITC determination. They argue that PWPs "were developed for customers concerned about the complexity of personal computer hardware and software and the cost of this equipment." Matsushita Comments of September 6, 1990, at 26. These users "are quite price sensitive" and "would not choose to spend two, three, or four times as much in order to buy a PWP rather than a PET." Nakajima Comments at 14.

Respondents argue that Smith Corona's survey supporting its arguments of ultimate use and expectations of the ultimate consumers arguments, the "Parry affidavit," only serves to undercut these. "The Parry affidavit shows that these consumers are not PWP purchasers but are more likely to buy typewriters with, at most, limited word processing capability." Nakajima Comments of at 13. Respondents quote the Parry affidavit:

> The sales people typically indicated that customers on a tight budget (most often students) mainly look at the price of the machines. These customers look for functions such as spell checking, portability, reliability and *some* memory, to the extent they can afford these features.

Parry affidavit, quoted from Nakajima Comments at 14, Nakajima's emphasis.

Respondents further argue that there are in fact "separate markets for personal word processors and PETs and distinct expectations on the part of the respective users." Matsushita Comments of September 6, 1990, at 28. Respondents assert that "(t)he student or limited home use consumer stands in sharp contrast to that person who requires sophisticated word processing capabilities." Nakajima Comments at 14.

Respondents argue that "consumers have different expectations for PWPs precisely because it is easier to produce documents with PWPs than with PETs." Consumers are therefore "willing to pay more for PWPs because they expect such a machine to perform tasks that can be done only with great difficulty on PETs or that cannot be done at all." Canon Comments of September 6, 1990, at 9–10.

In other words, respondents argue that the unique capabilities of PWPs, such as unlimited storage, "shows that the PWP is something other than a typewriter, because to pay at least twice as much for a capability that is not a primary function is counterintuitive. Such persons are not the traditional cost-conscious PET purchaser." Nakajima Comments at 15. For example, "the minimum suggested retail price on Matsushita's least expensive personal word processor (the KX–W900) is $469.95, while present-day basic PETs are available for under $100." Matsushita Comments at 30. *See also* Brother Comments of September 6, 1990, at 19–20.

In addition, respondents argue that the Department's preliminary position that consumer expectations are the same for PWPs and PETs "ignores the fact that as technology evolves, new products are introduced, and consumers' expectations with regard to the new products must be compared with their expectations concerning the products subject to the original investigation." Nakajima Comments at 21–22.

Respondents further argue that it does not follow that "if consumers were really willing to pay for enhanced word processing functions, they would purchase a regular PC." They contend that "the evidence indicates that PCs continue to be significantly more costly than PWPs." Canon Comments at 10 (Canon cites a survey Commissioned by Smith Corona in PR Newswire, January 9, 1990). Respondents also contend that "a separate market exists for consumers who want a machine that will perform word processing functions like a PC, but for one reason or another feel threatened by the "complexity" of a PC, or intend a machine solely for word processing." *Id.* at 10.

Ultimate Use

Respondents argue that the ultimate use of a PWP is not the same as that of a PET, contrary to the Department's preliminary finding. They contend that the Department failed to provide any data to support its finding that the ultimate use of a PWP is "to type text." Respondents charge that "(t)he only

authority the Department cites for its claim that 'word processing features *merely* provide a technological advancement to typing' is Smith Corona's Rebuttal Comments," which provide no supporting evidence. *See* Nakajima Comments at 9–10, quoting from Preliminary Ruling at 32115. *See also* Matsushita Comments at 32.

Rather, respondents argue, "(t)he primary function of and ultimate use of a personal word processor is to input, store and manipulate information, *i.e.*, to process text, not simply to type text." Matsushita Comments of September 6, 1990, at 32. *See also* Brother Comments at 4, and Canon Comments at 4–6.

Respondents argue that by categorizing word processing "as a mere enhancement over typing," the Department "ignores the terms of the original order and the common understanding of the terms 'word processing' and 'typing.' " *See* Nakajima Comments at 10.

Respondents contend that the Department's position that the ultimate use of PWPs is to type text is difficult to reconcile with the exclusion of manual and office typewriters from the original order on PETs. "Yet, manual typewriters, office typewriters and (even) PCs possess the capability 'to type text.' Thus, if 'to type text' is the criteria to be employed to determine whether a particular machine properly comes within the scope of the class or kind of merchandise subject to the order, these three separate classes or kinds of merchandise, specifically excluded by Smith Corona and the ITA, would now be included within 'such class or kind.' " Brother Comments at 4. *See also* Nakajima Comments at 9.

Respondents argue that a PET "is distinguished from a portable manual typewriter chiefly by the greater ease of typing, along with the associated physical characteristic (the electric motor) that underlies that functional difference," as well as "the difference in cost." Under this reasoning, respondents argue, "these differences would have to be dismissed as 'not meaningful' or not 'significant.' " But, "the original order on PETs recognizes that ease of use * * * and associated physical characteristics do in fact establish a different class of merchandise." Nakajima Comments at 11, 12. In other words, "the time saving and work reduction capabilities of PWPs * * * is the very reason why automatic typewriters and word processors were originally created, why they have been traditionally differentiated from typewriters, and why customers will always pay a price premium, even today, for them." Brother Comments at 27, footnote omitted.

Respondents argue that the ultimate use of PWPs is different, because word processing is dependent on the visual display and extensive text memory, as well as "sophisticated word processing functions such as search and replace, block delete, and block move * * *" *See* Nakajima Comments at 12. Rather than typing text directly onto paper, respondents argue that "PWPs electronically transfer text onto storage medium for replay and printout at a later time." Brother Comments at 4, footnote omitted.

In addition, respondents argue that "(t)he very existence of a 'typewriter use mode' on many PWPs (Preliminary Ruling, at 32109) compels the conclusion that the primary function of PWPs is something other than typing as performed on a PET. The typewriter mode is an additional function to the primary word processing mode." Nakajima Comments at 12.

Respondents point to surveys that they argue demonstrate the ultimate use of PWPs is different from that of PETs. Brother conducted a survey of Brother word processor owners which "indicates that PWPs are predominantly used for word processing, rather than typing." Brother Comments at 21. *See also* Canon Comments at 5, referring to Camarro Research survey cited in Nakajima's Comments of June 26, 1990, at 15.

Respondents contend that even Smith Corona recognized the difference in the ultimate use of PET as opposed to a word processor, but has since "flip flopped." They quote Smith Corona in September 9, 1986:

> In terms of use, word processors, which incorporate half-page video display, which are capable of block, which can write to external permanent storage media, and which utilize higher speed printers are clearly intended and actually used for more repetitive and complex tasks than PETs. (* * *) (T)he PET will likely continue to be distinguished by its intermittent largely non-repetitive use. Word processors, on the other hand, will be identifiable by the capabilities of manipulation and retrieval of unlimited amounts of text stored permanently on external magnetic storage media. (* * *) This use of a word processor clearly distinguishes it from a portable typewriter.

Matsushita Comments of September 6, 1990, at 36, quoting from Smith Corona Posthearing Brief of September 9, 1986 at 21–27.

Respondents further argue that, "(w)hile PWPs may replace either PETs or PC-based word processing systems, this does not make them of the same class or kind as the product replaced." Nakajima Comments of September 6, 1990, at 23. Respondents argue that, because "a PWP and a PC operate precisely in the same manner, i.e., electronically input text onto a storage medium(,) (a) PWP is a PC and not a PET." Brother Comments of September 6, 1990, at 5–6.

To bolster this argument, respondents argue that "Smith Corona's own survey shows that 77 percent of PC owners use their PCs 'mainly for word processing and spread sheets.' " Brother Comments at 22–23, referring to Brother's June 25, 1990, submission at 26. Thus, they reason, the ultimate use of PWPs is more like that of PCs than PETs.

In reply to Smith Corona's reference to a letter, attached as Exhibit 4 to its Comments of September 6, 1990, respondents argue that this letter actually supports their position that "while the typing mode (of a PWP) is useful for incidental tasks * * * (t)he word processing functions are primary." Matsushita Comments of September 17, 1990, (Matsushita Rebuttal Comments) at 4, referring to letter attached as Exhibit 4 to Smith Corona's Comments of September 6, 1990. Respondents further argue that "(n)one of these (word processing) functions can be performed by PETs of the type investigated and subject to the PETs Order. The typing mode retained within a word processor is not the primary use of the machine, and word processing functions are not mere enhancements to typing functions * * *" Matsushita Rebuttal Comments at 4. *See also* Nakajima Reply Comments at 6–8.

Respondents argue that Smith Corona "distorts the plain meaning of the term 'ultimate use' * * *" when it argues that whether the PWP is in typewriter mode or word processing mode, "the machines ultimately are used to print letters on paper." Nakajima Reply Comments of September 17, 1990, at 4, quoting from Smith Corona Comments of September 6, 1990, at 12. Respondents contend that ultimate use "refers to the manner of use made of the merchandise by the ultimate consumer, not merely the results of such use." Nakajima Reply Comments at 4.

However, if typing text is the ultimate use of a PWP, then respondents argue that "use is not dispositive." Otherwise, they argue, "the current antidumping duty order would cover office typewriters, manual typewriters, PCs and perhaps other machines." Brother Rebuttal Comments at 9.

Channels of Trade

Respondents concur with the Department's preliminary determination that this criterion is not dispositive in this inquiry. *See* Brother Comments of September 6, 1990, at 23, Matsushita

Rebuttal Comments at 13–14 and Nakajima Reply Comments at 8–9.

Advertisement and Display

All respondents except one concur with the Department's preliminary determination that this criterion is not dispositive in this inquiry. *See* Brother Comments of September 6, 1990, at 23, Matsushita Rebuttal Comments at 13–14 and Nakajima Reply Comments at 8–9.

Sears argues that "Smith Corona's own advertising draws a distinction between PWPs and typewriters." Sears attached examples of this advertising to its submissions. Sears Comments of September 6, 1990, at 11.

Exclusionary Criteria

Respondents argue that they have demonstrated that, "in terms of physical characteristics, purchaser expectations and ultimate use, the primary function of a personal word processor is text manipulation and all that it entails." Furthermore, "(b)oth a comparison of cost and price of the merchandise in issue further corroborate the fact that the function of a personal word processor is far different from that of a PET." Matsushita Comments of September 6, 1990, at 44.

Respondents argue that the Department completely avoided the issue of the cost difference between PETs and PWPs in its preliminary decision. *See* Nakajima Comments of September 6, 1990, at 15–16. They argue that the "least expensive PWP that Smith Corona claims to be within the scope of the antidumping order is nearly twice (1.84) the list price of the most expensive PET. The price of the most expensive PWP is more than three (3.11) times the price of the most expensive PET." *Id.* at 16, referring to Exhibit 4 of Smith Corona's Ruling Request of May 15, 1990.

Respondents argue that the additional cost of the word processing function (mainly the display and external disk drive) constitutes more than a substantial proportion of the cost of production of a PWP. They also assert that the cost of display and external of a PWP is greater than the entire cost of a basic PET and provide proprietary cost data to back up both claims. *See* Matsushita Comments of June 25, 1990, at 20, Matsushita Comments of September 6, 1990, at 45, Nakajima Comments of June 26, 1990, at 16, and Brother Comments of June 25, 1990, at 27–28.

Respondents argue that the Department incorrectly equates PWPs and automatic PETs with limited word processing features. They argue that automatic typewriters have only limited text memory and display capabilities, and do "not have any significant ability to perform sophisticated word processing." Nakajima Comments of September 6, 1990, at 22. Respondents argue that the CIT's decision on automatic typewriters referred to by the Department as justification for including PWPs, *see* Preliminary Ruling at 32114–5, "is misplaced in that the CIT decision did not concern automatic typewriters with significant word processing capabilities." Nakajima Comments at 22. Furthermore, "(t)he CIT's determination that one or two line text display and small internal memory does not place an automatic PET outside the scope of the order was not a substantive finding that large display and external memory are 'insubstantial' differences." *Id.* at 23.

Smith Corona's Rebuttal Arguments

Later-Developed Merchandise

Smith Corona argues that all the sample PWP models in question in the preliminary determination should be "treated as later-developed machines within the class or kind. The physical characteristics (such as detachable keyboard) identified as the basis for distinguishing various PWPs from portable typewriters are not dispositive of the primary use of the machines." Smith Corona Rebuttal Comments of September 17, 1990, at 3.

In answer to respondents' comments that the Department must compare the later-developed PWPs to the PETs originally investigated, Smith Corona argues that "there has been very little fundamental change in the essential characteristics and primary use of the machines since the date of the original order." *Id.* at 11–12. Comparing text memory typewriters with the older less sophisticated PETs, Smith Corona quotes the Court in *Smith Corona* v. *United States:*

> While such components constitute physical differences, they do not add up to a different class or kind of merchandise. Any comparison of features of a manufacturer's older or obsolete machines with those of its most advanced should show differences, but such a phenomenon is not necessarily conclusive of substantially distinct general physical characteristics.

Id. at 13, quoting from *Smith Corona* v. *United States*, 698 F. Supp. at 246.

Smith Corona argues that in reference to PWPs: "So, too, here, the addition of features such as larger memory and a larger video display do not substantially distinguish the use of PWP from the class or kind of merchandise originally subject to investigation in 1980." *Id.* at 13.

Physical Characteristics

Smith Corona argues that the Department's preliminary "captive software" criterion is inappropriate as "the type of software used in these machines does not change the primary use of the machine. Nor would flexible software capability change the general physical characteristics, the expectations of the ultimate purchasers, channels of trade, or advertising and display, so long as the machines remains a 'word processor' as distinct from a personal computer." *Id.* at 21. Smith Corona contends that it should make no difference "(if) one software program is used instead of another, or if the program can be changed through the use of operating system." *Id.* at 21.

Smith Corona argues that this criterion is not necessary to distinguish PWPs from PCs, because "the factual differences between personal word processors and computers are large. A personal computer is a platform upon which numerous functions and programs can be added and varied according to the desires and objectives of the user." *Id.* at 21. "Indeed," Smith Corona argues, "the PC industry, as illustrated by the identification of lap top PCs in Exhibit 3, does not consider any of the lap-top PWPs to be personal computers. PWPs are instead considered to be advanced typewriters." *Id.* at 22, referring to Exhibits 3 and 4.

Smith Corona adds that while a "PWP may incidently provide a spreadsheet, just as in 1985 the EP–20 provided a calculating function as an incidental feature on a portable typewriter * * * the PWP is marketed, advertised, priced, displayed, intended to be used, and used for word processing. It is not sold as a platform for software, including data processing, word processing, data management, graphics, games, telecommunications, and so forth." Thus, Smith Corona concludes, "whether a PWP is offered with captive word processing software, or with some other brand word processing software 'out of the box,' it should not be considered another category of merchandise." *Id.* at 22.

Smith Corona argues that "(t)he ability of a machine to connect to a computer for the purpose of providing printing functions does not change any of the *Diversified Products* criteria * * *" Further, Smith Corona argues that respondents' "effort to exclude typewriters having a computer interface port is inconsistent with (the CIT's) holding." *Id.* at 20.

Expectations of the Ultimate Purchasers

In response to Matsushita (Matsushita Comments of September 6, 1990, at 26), Smith Corona argues that there is not a "separate constituency" of PWP purchasers distinct from PET purchasers, but that "the evidence before the agency establishes without doubt that the same types of consumers who purchased typewriters also purchase personal word processors." Smith Corona Rebuttal Comments at 13. Smith Corona contends that "(t)his has been shown in the affidavit of Joellyn M. Parry," wherein (i)nterviews with merchants and store personnel indicated that personal word processors were purchased by nonbusiness consumers, including housewives and students, small business persons and those operating home offices." *Id.* at 13–14, referring to Parry Affidavit attached to Smith Corona's Request for Scope Ruling dated May 15, 1990, at Exhibit 4.

Smith Corona argues that the "(v)arious user surveys conducted by or for Matsushita and Brother have not directly controverted the findings of the informal survey conducted in the stores of metropolitan Washington by Joellyn Parry and Susan McKittrick." *Id.* at 14. "Matsushita's survey * * * purports to distinguish portable electric typewriters and PWPs by distinguishing categories of word processing as finely as it elsewhere attempts to distinguish physical features." However, "the distinctions alleged by Matsushita are unconvincing." *Id.* at 14–15.

Smith Corona argues that when Nakajima argues that a price comparison should be conducted between "the later-developed product and that original product at the time of the time of the antidumping duty order," it then "uses prices currently charged for electronic typewriters and PWPs." However, Smith Corona argues, "(t)he relevant comparison should be between prices currently charged for the later-developed merchandise and prices charged for the original merchandise subject to the antidumping order." *Id.* at 15, referring to Nakajima Comments of September 6, 1990, at 3 and 15.

Smith Corona asserts that "(i)f inflation between 1979 and the present is taken into account, the electro-mechanical machines sold in 1979 would be selling for much higher real prices than the current line of personal word processors." *Id.* at 16. Smith Corona argues that "(t)he variety of different word processors were selling at a range of prices from $200 to $699" at the time of its Request for Scope Ruling of May 15, 1990. *Id.* at 16. "These data are relevant as they establish that PWP (sic) have filled the market niche formerly maintained by top-of-the-line (and lower) portable electric typewriters." *Id.* at 16.

Ultimate Use

Smith Corona argues that the "ITA correctly identified the primary use of the personal word processor as the same as the typewriter, the typing of words upon paper." Smith Corona contends that "(r)espondents' analyses are flawed to the extent that they ignore the obvious: text is not corrected, edited, and stored for its own sake; these functions are ancillary to the purpose of PWPs of producing letters, term papers, reports, and other documents traditionally produced by portable typewriters." *Id.* at 7.

In reply to respondents' contention that the ultimate use of PWPs is word processing, Smith Corona argues that "these (word processing) functions are not performed for their own sake. There is no evidence that textual documents are created on PWPs solely to be manipulated within the memory of the machine and read from its screen * * *" *Id.* at 10. Smith Corona asserts, furthermore, that "this argument * * * has already been rejected. Machines that move blocks of copy, perform the so-called word-processing type functions, use visual display in connection with text-memory machines are already within the scope of the order." *Id.* at 10, referring to *Smith Corona*, 698 F. Supp. at 254.

"In short," Smith Corona argues, "the fact that PWP (sic) are word processors does not distinguish their primary use from typewriters. Given that the machines under consideration are also portable, respondents' focus on word processing does not differentiate PWPs from the scope of the antidumping duty order for purposes of 19 U.S.C. § 1677j(d)." *Id.* at 11.

Analysis

Later-Developed Merchandise

We agree with respondents that the word processors in existence at the time of the original investigation were not covered by the investigation. *See* Brother Comments of September 6, 1990, at 2. However, we note that such word processors were not portable. Similar to the CIT's finding that "it was the non-portability of those earlier automatic machines, which were 'office' typewriters, that meant their exclusion from the order." *Smith Corona Corporation* v. *United States*, 698 F. Supp. at 247–248 (hereafter, *Smith Corona*), we find that PWPs were not excluded from the order. Therefore, we reaffirm our preliminary determination that consideration of PWPs under the later-developed merchandise criteria is appropriate. *See Preliminary* at 32113–32114.

Respondents argue that the Department's failure to define the term "PWP" in the preliminary decision "acts to disguise conclusory statements purporting to be analysis." Nakajima Comments of September 6, 1990 at 7. The submissions of the parties and the research independently conducted by the Department indicate that there is no generally accepted industry definition of PWP. Some manufacturers use the term "portable word processors," some "personal word processors," and some "word processing typewriters." As stated in the "SUMMARY," we use PWP interchangeably with "personal word processor." However, the definition of this term is precisely the issue this scope ruling will address.

We reject respondents assertion that, because Smith Corona identifies electronic typewriters and personal word processors as separate product lines, the two are to be considered different classes of merchandise. *See* Brother Comments at 1, and Nakajima Comments at 5–6. To accept such an argument is to ignore the criteria that the statute directs the Department to consider in determining whether the later-developed merchandise is within the scope of the outstanding order. *See* 19 U.S.C. 1677j(d).

We agree with respondents, and reaffirm our preliminary determination, that for purposes of determining whether the "later-developed merchandise" is within the scope of an order, the general physical characteristics, the expectations of the ultimate purchasers, the ultimate use, the channels of trade, and the manner of advertisement and display of the later-developed merchandise should be compared with those of the merchandise subject to the original investigation. *See Preliminary* at 32113–32114. The Petitioner did not contest this point.

Respondents argue, however, that the Department failed to carry out its analysis in this manner. They contend that the Department compared PWPs to automatic PETs, the most recent generation of PETs found to be within the scope of the order. They argue that this has resulted in the Department finding a product within the scope of the order "which was not an advancement of the original product subject to the order but an advancement of a product which was only 'recently found to be within the scope of the order.'" Nakajima Comments at 3, 4. *See also* Matsushita Comments of September 6, 1990 at 8–9, 17–18. While we agree with respondents that the later-developed product should be compared with the earlier merchandise, at the same time, the Department must take cognizance of judicial decisions interpreting the scope of the order at issue. *See Smith Corona.* Therefore, for purposes of this final determination, we continue, where appropriate, to make comparisons between automatic PETs and the later-developed merchandise subject to this scope inquiry.

Finally, respondents also contend that the preliminary decision included within the scope "merchandise embodying new and significant technological innovation * * *" Matsushita Comments at 9. We agree that PWPs incorporate a significant technological advancement to the earlier merchandise. This, however, is not dispositive of class or kind of merchandise. Further, "later-developed merchandise" may incorporate "a significant technological development or a significant alteration of the merchandise involving commercially significant changes in the characteristics and uses of the product." *See* H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. (1988), reprinted in 134 Cong. Rec. H2039 (daily ed., April 20, 1988). This, by itself, however, does not dictate that such merchandise be found outside the scope of an existing order. Rather, Congress recognized that a significant injury issue can arise with regard to such products. As noted in the Conference agreement concerning ITC advice:

> * * * a later developed product incorporating a new technology that provides additional capability, speed, or functions would be covered by the order as long as it has the same basic characteristics and uses.

Id. at H2039.

In the preliminary ruling, we determined that PWPs represent a significant technological advance to, and significant alteration of the portable electric typewriters subject to the original investigations by the Department and the ITC. Therefore, we notified the ITC of our determination. On August 10, 1990, the ITC advised us in writing that it "does not believe that consultations between Commerce and the Commission are necessary."

Physical Characteristics

In the preliminary determination, we noted the absence of a consistent, objective definition of a portable electric typewriter, particularly when quantifying various physical features. Therefore, we identified the primary physical characteristics of PETs. *See Preliminary* at 32114.

For purposes of this final determination, we note that, in order to make a comparison of the physical characteristics of the portable electric typewriters subject to the original investigation with those of the later-developed merchandise, we must first identify the general physical characteristics of the "earlier merchandise."

The petition described the imported merchandise as: "(a)ll portable electric typewriters, whether utilizing typebars or single elements, and whether fully electric with powered carriage return or with manual carriage return, and whether with conventional ribbons or with cartridge or cassette ribbons." Smith Corona Petition for the Initiation of an Antidumping Proceeding on Portable Electric Typewriters from Japan, April 9, 1979, at 2.

The ITC noted that "(a) typewriter is a machine with a manually operated keyboard which produces characters like those of a letterpress as a substitute for handwriting * * * The typewriters which have been sold in the United States at less than fair value and which are the subject of this investigation are electrically operated portable units (customarily sold at retail with a carrying case)." USITC Final Determination of Material Injury, Pub. 1062, May 1980 at A–2, 3.

Furthermore, according to the Petitioner, "(t)he PET, as defined since 1979, is a single unit incorporating an electrically actuated keyboard and a printing mechanism in a portable package. *See* ITC Final Determination at A–2–3; Hearing Exhibit 3." Smith Corona Post Hearing Brief, September 9, 1986, at 16.

As stated in the preliminary, machines that are not "comprised of a single integrated unit" or do not "have a keyboard embedded in the chassis or frame" do not have the same general physical characteristics as PETs subject to the original investigation. *See Preliminary* at 32114. In upholding the determination that automatic typewriters were of the same class or kind of merchandise subject to the order, the Court of Appeals for the Federal Circuit (CAFC) stated that, with regard to the general physical characteristics, "(i)t was undisputed that the imported typewriters (automatics) generally looked like typewriters." *Smith Corona Corp.* v. *United States*, Slip Op. 89–1387 (September 26, 1990) at 8 ("CAFC Decision"). Later-developed merchandise that is comprised of two or more pieces, or that does not have a keyboard embedded in the chassis or frame cannot be considered to "generally look like typewriters." Therefore, where a PWP is comprised of more than one unit, the differences in general physical characteristics between the later-developed merchandise and the PETs subject to the original investigation are significant enough to constitute different classes or kinds of merchandise.

We disagree with Smith Corona's contention that a detachable keyboard and a separate printer are merely "cosmetic modifications." As noted above, one of the essential physical characteristics of a portable electric typewriter is that it is a single unit incorporating an electrically actuated keyboard and a printing mechanism. A machine such as the Panasonic KX–WL50, that has no printing mechanism, cannot be considered a self-contained unit for printing letters on paper. Rather, the absence of a built-in printer is a significant difference in physical characteristics between the later-developed merchandise and the portable electric typewriters subject to the original investigation. Machines that do not have a built-in printer are not of the same class or kind of merchandise as PETs.

We note that neither Smith Corona nor the respondents directly challenged the Department's criterion that a primary physical characteristic of merchandise of the same class or kind as a PET must be the presence of a platen (roller) to accommodate paper. *See Preliminary* at 32114.

We reject Smith Corona's argument that despite the absence of a handle on Panasonic's KX–W1510, the machine should be considered portable because its weight, 21.56 pounds, does not exceed the range historically characteristic of a portable typewriter. In the Department's July 6, 1990, scope ruling excluding certain Panasonic typewriters from the scope of the PETs order (involving office typewriters that weigh less than the maximum guideline established by the Department in the original investigation in 1980, and specified in the relevant tariff classification), the Department agreed with respondent's contention that "the 26 pound upper limit is not (sic) longer 'contemporary,' but rather is 'antiquated'." ITA Decision Memorandum of July 6, 1990, at 6. Further, in considering that "no carrying cases or handles are included or offered for any of the models in question," the Department restated that "(i)t is our opinion that the presence of a carrying case is a significant criterion in determining if a typewriter is within the

scope of the order, since it is unlikely that individuals wishing to purchase a PET would do so if a carrying case was not available even as an option." *Id.* at 7–8, quoting from ITA Letter of September 28, 1981, from Leonard Shambon to James Taylor, Jr. Therefore, we reaffirm our preliminary determination that to be of the same class or kind as a PET, the later-developed merchandise must have a handle and/or carrying case, or similar mechanism to facilitate portability.

We note that neither the petitioner nor the respondents challenged the Department's criterion requiring that a machine be electric, regardless of source of power, in order to be of the same class or kind of merchandise as a PET.

Smith Corona argues that the Department's "dedicated software" criterion is "irrelevant to (the machine's) primary use of typing text." Smith Corona Comments at 8. Smith Corona contends that the "proprietor of the software * * * is immaterial." *Id.* at 10. Some respondents also oppose this criterion, arguing that it creates "an inappropriate and arbitrary line * * *" Matsushita Comments of September 6, 1990, at 38. At the same time, other respondents argue that "Smith Corona's attack on validity of the 'dedicated/captive software' criteria is clearly intended to remove an impediment to excluding PCs" from the PETs order in the future. Brother Rebuttal Comments at 7. We disagree with Smith Corona and those respondents who criticize this criterion. Rather, we continue to agree with GSA that a machine that has an operating system which allows it to use software other than its own dedicated or captive software is not a typewriter. *See* July 23, 1990 Memorandum to File. The requirement that a PWP only operate on its own dedicated or captive software is a valid criterion and serves to differentiate between PWPs and PCs. *See* Preliminary at 32114.

Having reaffirmed that the criteria set out in the preliminary determination are, in fact, essential physical characteristics of the class or kind of merchandise subject to the order, we next considered respondents' assertions that expanded video displays and external memory storage devices constitute sufficient differences in physical characteristics to be dispositive of a distinct class or kind of merchandise.

Respondents argue that a PWP has "more chips and software, between 3 and 20 times as much display, and an infinite amount of storage capacity" as compared to an automatic PET. Brother Comments at 14–15. Respondents further argue that an external disk drive is a significant physical distinction of PWPs when compared with PETs. *See* Nakajima Comments of September 6, 1990, at 20 and Canon Comments of September 6, 1990, at 11. We do not agree with respondents' arguments. We find that the essential physical characteristics of PETs (as defined in the preliminary determination and reaffirmed above) are, in fact, the predominant physical characteristics.

In rejecting the respondents' assertions, we considered that, in *Smith Corona*, the CIT concluded (and the CAFC upheld) that, although there were differences in the general physical characteristics of PETs with text memory (*i.e.*, the existence of limited word processing features) and PETs without memory, those differences were not sufficient enough to alter the primary function of automatic PETs. Furthermore, the CIT stated that "[p]ortability, an electrically-activated keyboard, and an ability to imprint characters like those of a letterpress are common characteristics of PETs * * * When those characteristics are combined with 'pure typewriter mode operation' in a unit designed for easy manipulation of a variety of paper types, they amount to PETs of the class or kind subject to the original order." *Id.* at 248 (citation and footnotes omitted).

Additionally, we are cognizant of the CIT's ruling in *Funai Electric Company, Ltd.* v. *United States* 713 F. Supp. at 420 (CIT 1989), (which affirmed the Department's ruling that a combination television and video cassette recorder was within the scope of the antidumping duty order on television receivers, monochrome and color, from Japan). Although noting that the combination model in question "* * * contains a video cassette recorder, or 'VCR,' which can record television programs from the aforesaid [television broadcast] signals on the medium of video tape, and play back those tapes or * * * commercially recorded (tapes) * * *," the CIT found that "(i)n physical terms the television portion of the importation is prominent." *Id.* at 421–422. Similarly, the incorporation of features such as a display screen and expanded memory on a PET do not change the functions of the merchandise so significantly as to warrant exclusion from the order. The typing function is still prominent.

Finally, respondents argue that typewriters incorporating a computer interface are outside the scope of the order. They argue that the CIT's decision on automatic PETs in *Smith Corona* only found text memory typewriters within the scope of the order, but not typewriters considered automatic because of buffer memory necessary for the machine to operate as a printer using a computer interface. In other words, respondents contend that those automatic typewriters with a computer interface were not included in the CIT's ruling on automatics. Nakajima Comments of September 6, 1990, at 28. Petitioner rebuts, arguing that the ability to interface with a computer for printing does not change any of the Diversified Products criteria. Smith Corona further argues that such an exclusion of automatics with computer interface capability would be inconsistent with the CIT's ruling. *See* Smith Corona Rebuttal Comments at 20. We agree with petitioner that the CIT did not exclude automatic PETs with a computer interface from its decision. Further, because the presence of a computer interface does not change the underlying machine, we do not agree with respondents' assertion that typewriters incorporating a computer interface are outside the scope of the order.

In summary, we reaffirm the preliminary determination, that PWPs that have the same physical characteristics as PETs, are presumptively of the same class or kind of merchandise as PETs. These physical characteristics include: Ease of portability, as determined by the existence of a handle and/or carrying case, or similar mechanism to facilitate carrying; existence of an electric power source; the existence of a platen (roller) to accommodate paper or other medium (such as plastic sheets for use in overhead projectors); the existence of a built-in-printer; the existence of a keyboard embedded in the chassis or frame of the machine; and the fact that the machine is comprised of a single integrated unit. Also, the inability to use other software than that dedicated software already programmed into or designed for that brand of machine, is a determinative characteristic of a PET or PWP of the same class or kind as a PET.

Expectations of the Ultimate Purchasers

In our preliminary determination, we found that the word processing capabilities of PWPs "merely offer consumer(s) features in addition to the primary typing function" and that "(a)lthough more tedious on previous generations of typewriters, many users nevertheless composed on the keyboard and wrote long documents, even without the text-editing capabilities available on today's machines." *Preliminary* at 32114, 33115.

Respondents argue that the "ultimate purchasers of the 'original' PETs could hardly expect any word processing from their PETs, let alone the sophisticated level of word processing capability supplied by personal word processors," and therefore, the expectations of the ultimate purchasers of PWPs are not the same as those of PETs. Matsushita Comments of September 6, 1990 at 24. Both Smith Corona and the respondents have submitted information purporting to demonstrate consumers' motives in purchasing PWPs, along with pricing information. Respondents argue that if consumers did not have distinct expectations of PWPs, they would not be willing to pay the price premium over the cost of a basic PET. *See* Nakajima Comments of June 26, 1990, at 18 and Canon Comments of September 6, 1990, at 9–10. Smith Corona, on the other hand, argues that the higher priced PWPs "have filled the market niche formerly maintained by top-of-the-line (and lower) portable electric typewriters." Smith Corona Request for Scope Ruling of May 15, 1990, at 16. Much of this "evidence," however, including the pricing information, is conflicting.

We have determined that expanded display screens and external memory storage devices are not significant enough distinguishing physical characteristics to warrant exclusion from the PETs order. We find that purchasers of PWPs are seeking a portable electric typewriter, with the word processing capabilities representing attractive supplementary features. We agree that the ultimate purchasers did not expect the "earlier merchandise" to possess word processing capabilities. We do not, however, agree that the addition of word processing features creates differing customer expectations sufficient to dictate a different class or kind of merchandise.

In addition, we agree that customers willing to pay a price premium for a PWP are interested in the additional features offered on many PWPs. Consumers' willingness to pay a premium for additional features is evident across a variety of product lines, such as automobiles and stereos. We do not, however, consider this willingness as dispositive of completely differing expectations. Rather, while word processing capabilities may facilitate the task, we find that customers continue to expect a self-contained, portable machine dedicated to producing on paper printed letters and other characters as a substitute for handwritten ones, through manual use of an electrically-actuated keyboard. See ITC Final Determination at A–2, 3. Therefore, we reaffirm our preliminary determination, that the ultimate purchasers have the same expectations of PWPs as they do of PETs.

Ultimate Use

Respondents argue that the preliminary determination that the ultimate use of PWPs is to type text is difficult to reconcile with the exclusion of manual and office typewriters from the original order on PETs, because "manual typewriters, office typewriters and (even) PCs possess the capability 'to type text.' " Brother Comments of September 6, 1990 at 4. They argue that such logic would lead to including office typewriters and PCs within the scope of the order. However, what the respondents fail to recognize is that ultimate use is but one of several criteria which, when considered with physical characteristics and the other criteria set forth in 19 U.S.C. 1677j(d), determine whether later-developed merchandise is in the scope of the outstanding antidumping order. Accordingly, the ultimate use of office typewriters may in fact be the same as that of PETs—to type text—however, this is not the only consideration. Among other distinctions, office typewriters are not portable. Therefore, we see no contradiction in previous Department findings that office typewriters are not in the scope of the order and in finding that the ultimate use of PETs and PWPs is the same.

Channels of Trade

The preliminary determination said that the channels of trade for PWPs and PETs are the same, but that channels of trade are not dispositive in this case, "because the usual channels of trade for PETs (mass merchandisers, consumer electronics stores, etc.) are the same for countless other products as well, including PCs." *Preliminary* at 32115. Smith Corona argues that the fact that other products are sold through these same channels of trade is "irrelevant," because "(t)he statute focuses on whether the products are advertised and sold through the same channels and media as the products of the original investigation." Smith Corona at 16, 17. Smith Corona argues that the fact that other products are sold through the same channels "hardly affects the obvious fact that word processors have displaced the top-of-the-line portable electric typewriters on the shelves and in the customer's perception at the top of the typewriter line." *Id.* at 17–18.

Respondents concur with the Department's preliminary determination that this criterion is not dispositive in this inquiry. *See* Brother Comments of September 6, 1990, at 23, Matsushita Rebuttal Comments at 13–14 and Nakajima Reply Comments at 8–9. As stated in the preliminary determination, the channels of trade for PETs and PWPs are the same for countless other products, including PCs. The Department reaffirms its preliminary determination that the channels of trade in this inquiry are not dispositive. *See Preliminary* at 32115.

Advertisement and Display

Smith Corona agrees with the Department that advertising and display for PETs and PWPs "are virtually the same." However, Smith Corona argues, "it is absurd to imply that (because) portable word processors are advertised with and marketed in the same channels with all kinds of other products * * * that advertising and marketing are unimportant." Smith Corona Comments at 16. Smith Corona contends that "(t)he statute focuses on whether the products are advertised and sold through the same channels and media as the products of the original investigation." *Id.* at 16. "Whether other products are sold through these channels is irrelevant." *Id.* at 17.

All respondents except one concur with the Department's preliminary determination that this criterion is not dispositive in this inquiry. *See* Brother Comments of September 6, 1990, at 23, Matsushita Rebuttal Comments at 13–14 and Nakajima Reply Comments at 8–9. Sears, the only dissenter, argues that "Smith Corona's own advertising draws a distinction between PWPs and typewriters." Sears Comments of September 6, 1990, at 11.

As with channels of trade, the Department reaffirms its preliminary determination that advertising and display is not a dispositive criterion in this case. In this case, the advertisement and display provide no useful gauge whatsoever in determining class or kind, because, along with PWPs and PETs, numerous other consumer items are sold in the very same channels of trade. *See Preliminary* at 32115.

Exclusionary Criteria

Respondents argue that the word processing function of PWPs "constitutes the primary use of the products" and that the cost of the word processing function "constitute(s) more than a significant proportion of the total cost of production of the products." *See* Matsushita Comments of September 6, 1990, at 45; Matsushita Comments of June 25, 1990, at 20; Nakajima Comments of June 26, 1990 at 16; and Brother Comments of June 25, 1990 at 27–28. However, as stated in the Preliminary, "the Department is not persuaded that the addition of a display, external

memory and/or word processing capabilities results in [a] determination that PWPs are not the same class or kind of merchandise as PETs." *Preliminary* at 32115. Therefore, it is not necessary to perform an analysis using this criterion.

Conclusion

For the foregoing reasons, the Department reaffirms its preliminary scope ruling, finding that certain PWPs have the same physical characteristics of PETs. They engender the same expectations of the ultimate purchasers as PETs and they have the same ultimate use as PETs. Thus, those PWPs which meet all of the following seven physical criteria are presumptively within the scope of the antidumping duty order on PETs from Japan:

To be of the same class or kind as a PET, a typewriter must:

(1) Be easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability;
(2) Be electric, regardless of source of power;
(3) Be comprised of a single, integrated unit (*e.g.*, not in two or more pieces);
(4) Have a keyboard embedded in the chassis or frame of the machine;
(5) Have a built-in printer;
(6) Have a platen (roller) to accommodate paper;
(7) Only accommodate its own dedicated or captive software;

This scope ruling is in accordance with section 781(d) of the Tariff Act (19 U.S.C. 1677j(d)).

Dated: November 2, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

Appendix

Interested parties requested model-specific scope rulings on the following models:

Canon StarWriter 80 and Canon StarWriter 20.

These two models are not within the scope of the PETs order, because their keyboards are not embedded in the chassis or frame.

We also affirm our decision concerning the inclusion or exclusion of models listed in the preliminary determination, as shown below. *See Preliminary* at Appendix.

Models not Meeting the Criteria and Therefore, Outside the Class or Kind

Panasonic KX–WL50—no built-in printer
Panasonic KX–W1500—keyboard not embedded in the chassis or frame of the machine
Panasonic KX–W1510—not easily portable
Panasonic KX–W1550—not comprised of a single, integrated unit
Brother WP–75—keyboard not embedded in the chassis or frame of the machine
Brother WP–80—keyboard not embedded in the chassis or frame of the machine
Brother WP–90—keyboard not embedded in the chassis or frame of the machine
Brother WP–95—not comprised of a single, integrated unit
Brother WP–500—keyboard not embedded in the chassis or frame of the machine
Brother WP–650—keyboard not embedded in the chassis or frame of the machine
Brother WP–660—keyboard not embedded in the chassis or frame of the machine
Brother OPUS WP–510—keyboard not embedded in the chassis or frame of the machine

Models Meeting all of the Criteria and Therefore, Presumptively Within the Class or Kind

Panasonic KX–W900
Panasonic KX–W1025
Brother WP–4U
Brother WP–60
Brother WP–65
Brother WP–720
Brother WP–1400D
Brother WP–760D

[FR Doc. 90–28630 Filed 11–09–90; 8:45 am]

BILLING CODE 3510–DS–M

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to request a review

Not later than November 30, 1990, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

	Period
Antidumping duty proceedings:	
Argentina: Barbed wire and barbless fencing wire (A–357–405)	11/01/89–10/31/90
Argentina: Carbon steel wire rod (A–357–007)	11/01/89–10/31/90
Japan: Bicycle speedometers (A–588–038)	11/01/89–10/31/90
Japan: (Titanium sponge A–588)	11/01/89–10/31/90
The Federal Republic of Germany: Drycleaning Machinery: (A–428–037)	11/01/89–10/31/90
The Republic of Singapore: Rectangular pipes and tubes (A–559–502)	11/01/89–10/31/90
Suspension Agreements	
Japan: Certain small motors (A–588–090)	11/01/89–10/31/90
Singapore: Certain refrigeration compressors (C–559–001)	04/01/89–03/31/90
Countervailing duty proceedings:	
Argentina: Certain textiles and textile products (C–357–048)	01/01/89–12/31/89
Argentina: Oil country tubular goods (C–357–403)	01/01/89–12/31/89
Peru: Deformed steel concrete reinforcing bar (C–333–502)	01/01/89–12/31/89

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with § 353.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by November 30, 1990.

If the Department does not receive by November 30, 1990 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: November 5, 1990.

Bernard Carreau,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 90–28632 Filed 11–9–90; 8:45 am]

BILLING CODE 3510–DS–M

Short Supply Review; Certain Continuous Cast Steel Slabs

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments; certain continuous cast steel slabs.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 125,000 net tons of certain continuous cast steel slabs for the remainder of 1990 under article 8 of the U.S.-EC and U.S.-Brazil steel arrangements and Paragraph 8 of the U.S.-Mexico and U.S.-Venezuela steel arrangements.

SHORT-SUPPLY REVIEW NUMBER: 30.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain continuous cast steel slabs for use in the manufacture of hot-rolled coils, plate coils and cut-to-length plate. On October 30, 1990, the Secretary received an adequate petition from Tuscaloosa Steel Corp. ("Tuscaloosa Steel") requesting a short-supply allowance for 125,000 net tons of this product during the remainder of 1990 under article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products (the "U.S.-EC arrangement"), Article 8 of the Arrangement Between the Government of Brazil and the Government of the United States Concerning Trade in Certain Steel Products (the "U.S.-Brazil arrangement"), Paragraph 8 of the Arrangement Between the Government of Mexico and the Government of the United States of America Concerning Trade in Certain Steel Products (the "U.S.-Mexico arrangement"), and Paragraph 8 of the Arrangement Between the Government of Venezuela and the Government of the United States of America Concerning Trade in Certain Steel Products (the "U.S.-Venezuela arrangement").

On September 12, 1990, Tuscaloosa Steel requested a short-supply allowance under the U.S.-EC arrangement because domestic producers could not meet its needs for the fourth quarter of 1990 and because it could not obtain sufficient suplies of regular export licenses for its traditional offshore supplier. On October 10, 1990, the Secretary granted a short-supply allowance to Tuscaloosa Steel for 125,000 net tons of certain continuous cast slabs under the U.S.-EC arrangement.

The current petition does not request tonnage in addition to the October 10, 1990, allowance. Tuscaloosa Steel now is requesting that the Secretary grant a short-supply allowance for this quantity under the U.S.-EC, U.S.-Brazil, U.S.-Mexico and U.S.-Venezuela arrangements. In its new petition, Tuscaloosa Steel has slightly modified the specifications for the concast steel slabs requested.

The requested material should meet the following specifications:

Dimensions

Guage: 7.5 inches—10 inches
Width: 60 inches—less than 84 inches
Length: 240 inches—384 inches

Tolerances

Thickness ±0.20 inch
Width: + 0.750 inch 0.500 inch
Length: + 0.0% − 1.6%
Flatness: < 1.0% bow maximum
Camber: < 0.2% length maximum
Weight: ± 2.0% ordered weight with actual weight provided
Taper: Maximum 1.0 inch in 384 inches (slab must be dimensionally within ordered width including width tolerances)
Wedge: Maximum 0.167 inch

Chemical Composition

C—0.09% to 0.30%
MN—0.30% to 1.25%
P—0.030% maximum
S—0.020% maximum
SI—0.15% to 0.30%
AL—0.000% to 0.060%
Residuals 0.12% maximum
Certified chemical test reports are required per heat.

Quality

Continuous cast process
Fully conditioned for rolling to hot-roll product
Hand conditioning is permissible
Torch cutting to length (¼ inch to ⅜ inch maximum dross allowable)

Identification

Each slab must be identified with a heat number, slab number, and Tuscaloosa Steel order number (complete heat traceability is required).

Miscellaneous

Supplier is required to provide a quality slab capable of meeting API, ASTM, or similar product specifications without further inspection or conditioning. Slab supplier will be expected to utilize statistical process control procedures to insure quality, and any non-conforming quality condition traceable to slab quality is considered for the account of the slab producer.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than November 29, 1990.

Comments

Interested parties wishing to comment upon this review must send written comments not later than November 20, 1990 to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after November 20, 1990. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than

officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Sally A. Craig or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377–0165 or (202) 377–0159.

Dated: November 2, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–26631 Filed 11–9–90; 8:45 am]

BILLING CODE 3510–DS–M

Short-Supply Review; Certain Large Diameter Pipe

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments: certain large diameter pipe.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 34,550.5 net tons of certain large diameter pipe for the first half of 1991 under Paragraph 8 of the U.S.-Japan steel arrangement.

Short-Supply Review Number: 31.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, (19 CFR 357.104(b)) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain large diameter pipe ("LDP"). On October 31, 1990, Enron Corporation ("Enron") submitted an adequate petition to the Secretary requesting a short-supply allowance under Paragraph 8 of the Arrangement Between the Government of Japan, and the Government of the United States of America Concerning Trade in Certain Steel Products, for 34,550.5 net tons of American Petroleum Institute grade X–70 submerged arc welded steel pipe, 30 inches in diameter, and with a wall thickness of 0.30 inch. This pipe is for production of the Transwestern Pipeline Expansion and must be delivered during the first half of 1991. Enron is requesting a short-supply allowance because the domestic manufacturers of LDP are unable to meet Enron's needs for this material during the requested period and its potential foreign supplier has no regular export licenses available.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than November 30, 1990.

Comments

Interested parties wishing to comment upon this review must send written comments not later than November 20, 1990. To the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after November 20, 1990. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible or Norbert Gannon, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–0159 or (202) 377–4037.

Dated: November 2, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–26635 Filed 11–9–90; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA announces that the South Atlantic Fishery Management Council (Council) has submitted Amendment 1 to the Fishery Management Plan for Atlantic Swordfish (Amendment 1) for review by the Secretary of Commerce (Secretary). Written comments are requested from the public.

DATES: Written comments must be received on or before January 4, 1990.

ADDRESSES: Copies of Amendment 1 are available from the South Atlantic Fishery Management Council, 1 Southpark Circle, suite 306, Charleston, SC 29407. Comments should be sent to Rodney C. Dalton, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires that a council-prepared fishery management plan or amendment be submitted to the Secretary for review and approval or disapproval. The Magnuson Act also requires that the Secretary immediately publish a notice that the document is available for public review and comment. The Secretary will consider public comment in determining approvability of the document.

Amendment 1 would (1) establish a three-year phase-in program, beginning in 1991, for achieving substantial reductions in fishing mortality (and allowable landings) of swordfish harvested from the western North Atlantic; (2) establish an annual procedure for specifying acceptable biological catch (stockwide), total allowable catch (TAC) for the U.S. fishery, allocation of the TAC between the directed swordfish fishery and the bycatch fishery, and import quota levels for swordfish harvested from the western North Atlantic; (3) allocate the directed fishery quota equally between two zones, one north and one south of a line extending eastward from the Georgia/Florida border; (4) institute new permit procedures that require a vessel owner to choose one zone in which the vessel would conduct a directed swordfish fishery; (5) establish a January–December fishing year for the southern zone and a June–May fishing year for the northern zone; (6) prohibit nighttime longlining when the directed fishery for that zone and the bycatch fishery are closed; (7) prohibit use and possession of artificial lights and lightsticks in areas closed to directed swordfish fishing; (8) reduce imports of swordfish from the western North Atlantic by the same percentage that the U.S. fishery is reduced; (9) prohibit drift entanglement gillnet fishing in the swordfish fishery; (10) restrict recreational fishing to use of rod and reel and prohibit sale of catch; (11) establish a control date of August 16, 1989, as a bench mark date for a possible limited entry system.

In July 1989, NOAA published revised guidelines interpreting the Magnuson Act's national standards for fishery conservation and management. In compliance with the revised guidelines, Amendment 1 proposes a definition of overfishing and measures to restore the resource.

Proposed regulations to implement Amendment 1 are scheduled for publication by November 20, 1990.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: November 6, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–26661 Filed 11–7–90; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of Bangladesh

November 6, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 14, 1990.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 3449, published on February 1, 1990; and 55 FR 13928, published on April 13, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on January 25, 1990 and April 9, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. These directives concern imports into the United States of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1990 and extends through January 31, 1991.

Effective on November 14, 1990 the directives of January 25, 1990 and April 9, 1990 are amended further to adjust the limits for the following categories, under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of Bangladesh:

Category	Adjusted 12-mo. limit[1]
335	156,544 dozen.
336/636	258,367 dozen.
341	1,315,546 dozen of which not more than 676,943 dozen shall be in Category 341-Y.[2]
342/642	266,701 dozen.
351/651	423,576 dozen.
635	165,444 dozen.
638/639	1,039,146 dozen.
641	747,761 dozen.
645/646	244,587 dozen.
847	353,709 dozen.

[1] The limits have not been adjusted to account for any imports exported after January 31, 1990.

[2] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provision of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–26629 Filed 11–9–90; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

November 7, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 15, 1990.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refers to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–6736. For information on embargoes and quota re-openings, call (202) 377–3715.

BEST COPY AVAILABLE

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain cotton and man-made fiber textile products are being adjusted, variously, for swing, special shift and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 47548, published on November 15, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 9, 1989 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the period which began on January 1, 1990 and extends through December 31, 1990.

Effective on November 15, 1990, the directive of November 8, 1989 is being amended further to adjust the current limits for cotton and man-made fiber textile products in the following categories, as provided in the current bilateral textile agreement between the Governments of the United States and Singapore:

Adjusted 12-mo. limit [1]	Category
Levels in group I:	
239	384,315 kilograms.
334	55,300 dozen.
335	122,496 dozen.
338/339	947,409 dozen of which not more than 524,758 dozen shall be in Category 338 and not more than 583,465 dozen shall be in Category 339.
341	130,018 dozen.
347/348	855,054 dozen of which not more than 508,479 dozen shall be in Category 347 and not more than 393,928 dozen shall be in Category 348.
604	775,687 kilograms.
634	196,941 dozen.
635	213,519 dozen.
638	606,590 dozen.
639	3,349,417 dozen.
640	129,521 dozen.
645/646	111,264 dozen.
647	499,833 dozen.
648	1,490,832 dozen.
Sublevel in group II:	
237	181,416 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-26663 Filed 11-9-90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Aquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Consultants'-Conflict of Interest.

ADDRESSES: Send comments to Mr. Stephen Holden, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John O'Neill, Office of Federal Acquisition Policy, (202) 501-3856.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* To implement the requirement of section 6 of the Office of Federal Procurement Policy Act, and section 8141 of the 1989 Department of Defense Appropriations act with regard to regulation concerning Conflict of Interest for Consultants.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 4000; responses per respondent, 1.5; total annual responses, 6000; preparation hours per hour response, 2; and total response burden hours, 12,000.

c. *Annual recordkeeping burden:* The annual recordkeeping burden is estimated as follows: Recordkeeping, 10,000; hours per recordkeeper, 2.5; and total recordkeeping burden hours, 25,000.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0111, Consultants'-Conflicts of Interest.

Dated: November 5, 1990.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 90-26617 Filed 11-9-90; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Final Consent Order With Salomon Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final action on proposed consent order.

SUMMARY: The Department of Energy (DOE) has determined that a proposed Consent Order between the DOE and Salomon Inc, including five affiliated companies (Salomon), which was published for public comment in 55 FR 39698 (September 28, 1990), shall be made final. The Consent Order resolves matters relating to Salomon's compliance with the federal petroleum price and allocation regulations in resales of crude oil for the period January 1, 1978, through January 27, 1981. To resolve these matters, Salomon will pay to the DOE $83,750,000, within thirty (30) days of the effective date of the Consent Order. Following receipt of the settlement monies, ERA will petition the DOE's Office of Hearings and Appeals to implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in which proceedings any persons who claim to have suffered injury from the alleged overcharges will have the opportunity to submit claims for payment.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., RG-32, Washington, DC 20585, (202) 586-1699.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comments Received
III. Analysis of Comments
IV. Decision

I. Introduction

On September 28, 1990, the DOE's Economic Regulatory Administration (ERA) issued a notice announcing a proposed Consent Order between DOE and Salomon which would resolve matters relating to Salomon's compliance with the federal petroleum price and allocation regulations in crude oil resales for the period January 1, 1978, through January 27, 1981. 55 FR 39698. Specifically, the September 28 Notice provided information regarding Salomon's potential overcharge liability arising from some 3100 crude oil resale transactions at issue in a Proposed Remedial Order issued September 23, 1988, and detailed the range of possible outcomes in light of the risks of litigating to conclusion the numerous issues in dispute. Those considerations underlay the ERA's preliminary view that the proposed settlement is favorable to the government and in the public interest.

The Notice solicited written comments from the public relating to the terms and conditions of the settlement and whether the settlement should be made final. ERA received two written comments, which were considered in making the decision to issue the proposed Consent Order as a final Order.

II. Comments Received

The Controller of California, and a group of utilities, transporters, and manufacturers (hereinafter "end users") submitted written comments on the proposed Consent Order. Both commenters questioned the adequacy of the settlement amount to be paid by Salomon. In addition, the end users addressed the distribution of the monies received in the settlement.[1]

III. Analysis of Comments

A. Adequacy of the Settlement Amount

The end users object to the settlement amount on the grounds that it is a lower percentage of Salomon's maximum potential liability than the percentages received by ERA in three other, assertedly similar settlements; and does not reflect the substantial weight that should be given to the "egregious nature" of Salomon's conduct and the "arrogance" of the firm's attempt to justify that conduct by filing a "veritable blizzard of paper" in the PRO proceeding before OHA. The Controller asserts that some of the potential litigation outcomes which ERA described in the September 28 Notice are improbable, and should not weigh in the risk assessment.

Upon consideration of these comments as explained below, ERA has concluded that they do not state a cognizable basis for rejecting or renegotiating the settlement.

As discussed in the September 28 Notice, ERA's initial determination that the settlement amount was appropriate reflected ERA's careful consideration of the number and nature of the factual and legal issues in dispute in the litigation and the litigation risks associated with establishing the alleged overcharges. These factors are, to a large degree, necessarily specific to each case, making comparisons of percentages of alleged potential liability in disparate cases an inappropriate basis for assessing the adequacy of a particular settlement. Here, the end users err in asserting that the settlements which DOE concluded with Canal Refining Company, Texaco Inc., and Tesoro Petroleum Corporation were "similar situations" to the *Salomon* case. While the three cited settlements all involved (in part) crude oil overcharges, as does *Salomon*, none of the three prior settlements involved the regulatory violations alleged against Salomon, and consequently concerned different legal and factual issues and different litigation risk considerations.

With respect to the end users' focus on the "nature" of Salomon's conduct as a determinant of the adequacy of a particular settlement sum, ERA considered the conduct at issue in the PRO proceeding in initially determining an appropriate settlement amount to the extent that this matter bore on the probability of proving in litigation the factual predicates required to establish that regulatory violations occurred. However, to the extent that the end users urge that "egregiousness" should increase the amount required for an adequate settlement by reason of suggesting willful misconduct, that is not an appropriate consideration. Willfulness is not an element of a regulatory violation in a civil enforcement proceeding for restitution. It is similarly inappropriate to exact a settlement premium because of the vigor with which Salomon has defended its conduct, as measured by the "blizzard of paper" the firm has filed in the PRO proceeding.

The Controller of California asserts that the proposed settlement amount is less than one-third of what Salomon "owes;" and objects, on grounds of irrelevance and implausibility, to consideration of possible litigation outcomes resulting in low violation amounts. Both objections are misdirected. First, Salomon does not "owe" either the sum the Controller computes, or any other amount, unless and until there has been a final adjudication of Salomon's liability. At the current stage of the enforcement proceeding, before either the issuance of a Remedial Order by OHA or any administrative or judicial reviews of such an order, it is appropriate to consider the full range of potential litigation outcomes in order to determine a reasonable settlement amount. Second, it was precisely for the purpose of advising the public of the full array of potential litigation outcomes—and not to "mislead," as the Controller maintains—that the September 28 Notice discussed not only Salomon's maximum potential liability but also other possible, alternative outcomes.

Finally, the Controller's comments ignore the transaction-specific nature of the layering charges alleged against Salomon. Even assuming OHA's rejection in this case of both the gross profit methodology of computing the alleged violation amount and the sum yielded by Salomon's pipeline tracing methodology, there remains the matter of establishing the regulatory violations. The PRO alleges layering in nearly 400 transactions, each of which contributes some specific portion of the total potential overcharges. As discussed in the September 28 Notice, Salomon has raised numerous transaction-specific defenses, and the complexity of the transactions alleged to be layered presents opportunities for Salomon to raise a number of defenses with respect to each such transaction. 55 FR 39699. Thus, the potential litigation outcome in this case is not an all-or-nothing matter as the Controller suggests, but a multiplicity of matters presenting a wide range of possible overcharge amounts.

In view of the foregoing, ERA has concluded that the settlement amount represents a fair and reasonable compromise and is in the public interest.

B. Distribution of Refunds

The end users' comment also raised a number of issues relating to the disposition of crude oil refund monies, primarily focusing on an assertion that

[1] The end users also requested that an oral hearing be convened to consider the proposed Consent Order. However, this settlement does not meet the criteria for holding a public hearing, set out at 49 FR 12301 (March 24, 1984). Furthermore, the September 28 Notice elicited responses from only two commenters. In determining to make the proposed Consent Order final, ERA has fully considered the views of both commenters.

the reservation of up to 20% of these monies for a claims procedure would be insufficient to pay claims. In general, the disposition of crude oil monies is governed by the Final Settlement Agreement in the *Stripper Well* litigation. More importantly, however, it is neither appropriate nor necessary to resolve disputes about that Agreement in the context of the Salomon Consent Order. Specific issues about the adequacy of particular refund formulae should be presented to the OHA which is responsible for subpart V procedures and decisions.

IV. Decision

Upon consideration of the two written comments received and addressed herein, and inasmuch as there were no other bases proffered for rejecting or modifying the settlement as proposed, the DOE has determined that it is in the best interest of the public to make the proposed Consent Order final without change. By this notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between DOE and Salomon is made a final Order of the Department of Energy, effective on the date of publication of this notice in the **Federal Register**.

Issued in Washington, DC on November 5, 1990.

Chandler L. van Orman,

Acting Administrator, Economic Regulatory Administration.

[FR Doc. 90-26723 Filed 11-9-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. RM91-2-000; RP90-118-000, TA84-2-9-015, and TA85-1-9-003]

Tennessee Gas Pipeline Co.; Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs

November 8, 1990.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of request for expedited Office of Management and Budget (OMB) review of data request.

SUMMARY: Pursuant to §§ 1320.15 and 1320.18 of OMB's regulations, the Federal Energy Regulatory Commission (Commission) is submitting to the OMB a request for expedited review of a one-time information collection survey of state regulatory commissions concerning treatment of take-or-pay settlement costs at the state level. The Commission desires this information in order to assist in analyzing the wellhead to burner tip impact of any pipeline proposals filed in response to the Commission's Order No. 528, issued November 1, 1990.

DATES: Comments are due to OMB by November 21, 1990. The Commission is requesting OMB clearance of the data request by no later than 5 p.m., November 30, 1990.

ADDRESSES: Send comments to:

Mike Miller, Federal Energy Regulatory Commission, Information Policy and Standards Branch, 941 North Capitol St., NE., Washington, DC 20426.

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Energy Regulatory Commission, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., (202) 208-1274, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION: Pursuant to §§ 1320.15 and 1320.18 of OMB's regulations, the Commission is seeking expedited OMB approval of a request for certain information concerning the recovery of take-or-pay settlement costs at the state level. The Commission desires this information in order to assist in analyzing the wellhead to burner tip impact of any pipeline proposals filed in response to the Commission's Order No. 528 issued on November 1, 1990. In that order, the Commission stayed, effective 30 days after publication of Order No. 528 in the **Federal Register**, the authority of certain pipelines to collect fixed take-or-pay charges based on the purchase deficiency allocation method. The Commission also stated that pipelines may file new tariff provisions to replace the stayed provisions and set forth several principles that the Commission will use to evaluate revised allocation methods.

The respondents are the 47 state regulatory agencies in the contiguous United States. The total reporting and recordkeeping burden that will result from the collection of information is estimated to average four hours per response, including the time for reviewing the request, searching the available data resources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Mr. Mike Miller, Federal Energy Regulatory Commission, Information Policy and Standards Branch, 941 North Capitol Street NE., Washington, DC 20426; and to the Office of Informtion and Regulatory Affairs, Office of Management and Budget, attention: Desk Officer for the Federal Energy Regulatory Commission, Washington, DC 20503. The telephone number for the OMB Desk Officer is (202) 395-3084. OMB has requested that comments be submitted on or before November 21, 1990 in order to provide adequate time for OMB to review the comments on the data request.

A copy of the letter to the state commissions is attached to this notice as Attachment A.

Lois D. Cashell,

Secretary.

Attachment A

[Commission Letterhead]

Dear Chairman [_____]: In *Associated Gas Distributors* v. *FERC*, 893 F.2d 349 (D.C. Cir. 1989), the United States Court of Appeals for the District of Columbia Circuit decided that the Commission's use of purchase deficiencies to allocate take-or-pay settlement costs among the customers of interstate pipelines violates the filed rate doctrine. On October 9, 1990, the Supreme Court of the United States denied the Commission's petition for certiorari (59 U.S.L.W. 3271 (Oct. 9, 1990)), and the decision of the Court of Appeals became final. In response to that decision, the Commission has issued Order No. 528 (copy enclosed), directing interstate pipelines, their customers, and other affected parties to formulate alternative proposals for the pipelines' recovery of the costs of their take-or-pay settlements with natural gas producers.

In order for the Commission to properly evaluate the alternative proposals to be filed by interstate pipelines pursuant to Order No. 528, the Commission is requesting information from each state regulatory commission. We are seeking your views and guidance so that we can better understand the impact of this Commission's take-or-pay policy at the state level. Accordingly, the Commission requests that the [insert name of state commission] (as well as regulatory agencies in other states) provide information on how it has addressed recovery of take-or-pay costs at the state level.

Specifically, we would like to know how the [insert name of state commission] has dealt with proposals, if any, by local distribution companies to recover take-or-pay settlement costs after they are billed by interstate pipelines. For instance, have you allowed 100 percent recovery of those costs, of have you required some amounts to be absorbed by entities subject to your jurisdiction? To the extent you have allowed cost recovery, have you allowed the costs to be direct billed, allocated to sales and/or transportation customers through a volumetric surcharge, or recovered through a PGA-type mechanism? The Commission is also interested in what guidelines you have used in developing plans for allocating those costs. Finally, do you anticipate any changes in your policy on this issue as a result of the court's invalidation of the purchase deficiency method of allocation?

In conclusion, the Commission is interested in learning more from the state commissions on how you have dealt with this difficult issue. This will provide the Commission with your views, as well as a complete record upon which to assess the wellhead to burner-tip impact of this situation. Since we plan to deal with these issues expeditiously, it would be most helpful if we could receive your response by [insert date 30 days after letter is mailed].

Please direct your reply to the Secretary of the Commission, Federal Energy Regulatory Commission, 825 N. Capitol St., N.E., Washington, D.C. 20426 and reference Docket No. RM91-2-000.

By direction of the Commission.

Secretary.

Enclosure

[FR Doc. 90-26917 Filed 11-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER90-480-000, et al.]

Niagara Mohawk Power Corporation, et al., Electric rate, Small power production, and interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. Niagara Mohawk Power Corporation

[Docket No. ER90-499-000]

November 2, 1990.

Take notice that on October 31, 1990, Niagara Mohawk Power Corporation tendered for filing additional information requested by staff pertaining to its Transmission Service Agreement with Green Mountain Power Corporation in the above referenced docket.

Comment date: November 19, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Central Maine Power Company

[Docket No. ER90-471-000]

November 2, 1990.

Take notice that on November 1, 1990, Central Maine Power Company (CMP) tendered for filing an unexecuted Revised Transmission Service Agreement between CMP and Massachusetts Municipal Wholesale Electric Company effective as of November 1, 1990, (the Revised Service Agreement). The Revised Service Agreement amends and supersedes the unexecuted Transmission Service Agreement filed by CMP by letter dated June 25, 1990. The amendments pertain to provisions setting forth charges for New England Power Pool dispatch costs imposed on CMP as a result of the transaction.

CMP requests that the Commission waive its notice and filing requirements to permit the Revised Service Agreement to become effective in accordance with its terms.

CMP has served copies of the filing on the affected customer and on the Maine Public Utilities Commission.

Comment date: November 13, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Central Maine Power Company

[Docket No. ER90-525-000]

November 2, 1990.

Take notice that on November 1, 1990, Central Maine Power Company (CMP) amended its filing in the above-captioned docket by submitting the following to the Commission for filing:

1. An unexecuted Revised Transmission Service Agreement between Central Maine and Maine Public Service Company effective as of September 1, 1990 (the "Revised Service Agreement"). The Revised Service Agreement amends and supersedes the unexecuted Transmission Service Agreement filed by CMP by letter dated August 6, 1990. The amendments pertain to provisions setting forth charges for New England Power Pool dispatch costs imposed on Central Maine as a result of the transaction;

2. Updated cost of service information for the 1989 Period I test year; and

3. A revised rate calculation in support of the originally filed transmission rate of $15.02 per kW per year.

CMP requests that the Commission waive its notice and filing requirements to permit the Revised Service Agreement to become effective in accordance with its terms.

CMP has served copies of the filing on the affected customer and on the Maine Public Utilities Commission.

Comment date: November 13, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. PacifiCorp Electric Operations

[Docket No. ER91-68-000]

November 5, 1990.

Take notice that on PacifiCorp Electric Operations (PacifiCorp), on October 31, 1990, tendered for filing, in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, Third Revised Sheet No. 5D superseding Second Revised Sheet No. 5D [Index of Purchasers Executing Service Agreements under PacifiCorp's FERC Electric Tariff, Original Volume No. 3 (Tariff), and Service Agreements between PacifiCorp and the following parties:

Parties

Plains Electric Generation and Transmission Cooperative, Inc. (Plains)
Western Area Power Administration, Loveland Area Office (Western)

PacifiCorp states that the Service Agreements provide for the sale of non-firm power and energy for resale in accordance with the rates specified in Service PPL-3 of PacifiCorp's Tariff. PacifiCorp respectfully requests that a waiver of the prior notice requirements of 18 CFR 35.3 be granted pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations and that an effective date of October 1, 1990 be assigned to the Plains' Service Agreement and May 11, 1990 be assigned to the Western Service Agreement. These dates are consistent with the dates service commenced.

Copies of this filing were supplied to Plains, Western, New Mexico Public Service Commission, Public Utilities Commission of Oregon and the Public Service Commission of Wyoming.

Comment date: November 19, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Electric Power Company

[Docket No. ER91-65-000]

November 5, 1990.

Take notice that on October 30, 1990, Southwestern Electric Power Company (SWEPCO) tendered for filing a proposed amendment to the Interconnection Agreement between SWEPCO and Oklahoma Gas and Electric Company [OG&E]. The amendment is necessary to reflect SWEPCO's sale to OG&E on May 1, 1990 of the transmission line running for Fort Smith, Arkansas, to Bonanza, Arkansas, and the related shift of one to the SWEPCO-OG&E interconnection points from Fort Smith, Arkansas to Bonanza, Arkansas.

SWEPCO seeks an effective date of May 1, 1990 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served on OG&E and the Oklahoma Corporation Commission.

Comment date: November 19, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Montaup Electric Company

[Docket No. ER91-75-000]

November 5, 1990.

Take notice that on November 1, 1990, Montaup Electric Company ("Montaup"

or "the Company") tendered for filing rate schedule revisions incorporating the 1991 forecast billing rate for its purchased capacity adjustment clause ("PCAC") for all-requirements service to Montaup's affiliates Eastern Edison Company ("Eastern Edison") in Massachusetts and Blackstone Valley Electric Company ("Blackstone") in Rhode Island and contract demand service to one affiliate Newport Electric Company and two non-affiliated customers: The town of Middleborough in Massachusetts and the Pascoag Fire District in Rhode Island. The new forecast billing rate is $13.79232/kw-Mo. Montaup requests that the new rate become effective January 1, 1991 in accordance with the PCAC. Montaup states that the filing was served on the affected customers, the Attorneys General of Massachusetts and Rhode Island, the Rhode Island Public Utilities Commission and the Massachusetts Department of Public Utilities.

Comment date: November 19, 1990, in accordance with Standard Paragraph E end of the this notice.

7. Commonwealth Electric Company, Boston Edison Company, Montaup Electric Company

[Docket No. ER91-64-000]

November 5, 1990.

Take notice that on October 30, 1990, Commonwealth Electric Company (Commonwealth) tendered for filing on behalf of itself, Montaup Electric Company and Boston Edison Company supplemental data pertaining to their applicable investments and carrying changes including local tax rates, for the twelve-month period ending December 31, 1989. commonwealth states that this supplemental data is submitted pursuant to a letter order of the Federal Power Commission in Docket No. E-7981 dated April 26, 1973 accepting for filing Commonwealth's Rate Schedule FERC No. 21, Boston Edison Company's Rate schedule FERC No. 67, and Montaup Electric Company's Rate Schedule No. 27.

Commonwealth states that these rate schedules have previously been similarly supplemented for the calendar years 1962 through 1988.

Copies of said filing have been served upon Boston Edison Company, Montaup Electric Company, New England Power Company and the Massachusetts Department of Public Utilities.

Comment date: November 19, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Commonwealth Edison Company of Indiana, Inc.

[Docket No. ER91-72-000]

November 5, 1990.

Take notice that on October 31, 1990, Commonwealth Edison Company of Indiana, Inc. (Edison Indiana) and Commonwealth Edison Company (Edison) submitted for filing a Letter Agreement, dated October 19, 1990. The Letter Agreement modifies certain provisions of the Electirc Service Agreement, dated July 1, 1941, as amended, and the Transmission Service Agreement, dated May 1, 1958, as amended, between Edison Indiana and Edison and is intended to resolve the concerns underlying the Commission's Order in Docket No. EL89-47-000 with respect to Edison Indiana's return on common equity.

Edison Indiana seeks an effective date of January 1, 1990 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Edison Indiana, the Illinois Commerce Commission and the Indiana Utility Regulatory Commission.

Comment date: November 19, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Power Company

[Docket No. ER91-70-000]

November 5, 1990.

Take notice that on October 31, 1990, Duke Power Company (Duke Power) tendered for filing a Contract for Purchases of Economy Energy (Contract) between Seminole Electric Cooperative, Inc. and Duke. The Contract provides for the sale or exchange of economy energy between the two non-contiguous utilities.

Duke asks that the sixty (60) day notice requirement be waived so that the Contract may be permitted to become effective on November 1, 1990.

Comment date: November 19, 1990, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corporation

[Docket No. ER91-32-000]

November 5, 1990.

Take notice that Niagara Mohawk Power Corporation (Niagara) on October 17, 1990, tendered for filing a cancellation if its Supplemental No. 8 to Rate Schedule No. 142, between Niagara and Long Island Lighting Company.

Niagara presently has on file an Agreement with LILCO dated April 6, 1990 which provides for the delivery of 100 MW of power and energy to LILCO for the period June 1, 1990 through September 30, 1990. This Agreement is designated as Niagara Mohawk Power Corporation Supplement No. 8 to Rate Schedule No. 142. This cancellation is a result of the expiration of the April 6, 1990 agreement by its own terms.

Copies of the cancellation were served upon LILCO and the New York State Public Service Commission.

Comment date: November 19, 1990, in accordance with Standard Paragraph E at the end of this notice.

11. Arkansas Power & Light Company

[Docket No. ER91-73-000]

November 5, 1990.

Take notice that on November 1, 1990, Arkansas Power & Light Company ("AP&L") tendered for filing two Letter Agreements which amend a sale of reserve capacity to Associated Electric Cooperative, Inc. (Supplement No. 7 to AP&L Rate Schedule FERC No. 87). AP&L requests effecive dates of January 1, 1991 for the 1988 Letter Agreement and June 1, 1991 for the 1989 Letter Agreement. AP&L states that it requests waiver of the Commission's notice requirements for the 1989 Letter Agreement, under § 35.11 of the Commission's Regulations.

Comment date: November 19, 1990, in accordance with Standard Paragraph E at the end of this notice.

12. Philadelphia Electric Company

[Docket No. ER91-76-000]

November 5, 1990.

Take notice that on November 1, 1990, Philadelphia Electric Company ("PE") tendered for filing, on behalf of itself and Delmarva Power & Light Company ("DPL"), what it describes as an initial rate under section 205 of the Federal Power Act and part 35 of the Commission's regulations. PE describes the filing as an Agreement between PE and DPL dated October 18, 1990. PE describes the Agreement as setting forth the terms and conditions for the sale of import capability which each party expects to have available for sale from time to time. PE requests that the Commission waive its notice period and allow the Agreement to become effective on October 29, 1990. PE states that a copy of the filing has been sent to DPL and will be furnished to the Pennsylvania Public Utility Commission, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Comment date: November 19, 1990, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Pool

[Docket No. ER91-74-000]

November 5, 1990.

Take notice that on November 1, 1990, the New England Power Pool ("NEPOOL") Executive Committee filed an Amendment to the NEPOOL Agreement, dated as of October 1, 1990. The NEPOOL Executive Committee states that the Amendment changes provisions of the NEPOOL Agreement (NEPOOL FPC No. 2), dated September 1, 1971, as previously amended by twenty-six (26) amendments. The NEPOOL Executive Committee states that the Amendment is intended: (1) To make clear that the pool's Management Committee has authority to require Participants to install, maintain and operate automatic generation control equipment in order to maintain proper frequency for the interconnected bulk power system of the Participants and control power flows on interconnections between Participants and non-Participant electric systems, (2) to authorize the Management Committee to establish a system for sharing by the Participants of costs incurred because of the installation, maintenance and operation of any automatic generating control equipment required by the Committee, and (3) to change the pool's planning structure. The NEPOOL Executive Committee also filed, as a supplement, rules for the automatic generation control billing system established pursuant to the Amendment.

Comment date: November 19, 1990, in accordance with Standard Paragraph E at the end of this notice.

14. West Texas Utilities Company

[Docket No. ER91-69-000]

November 5, 1990.

Take notice that on October 31, 1990, West Texas Utilities Company tendered for filing: (1) A Transmission Service Agreement (the "TNP agreement"), dated July 3, 1990, between WTU and Texas-New Mexico Power company (TNP); (2) a Transmission Service Agreement (the Tex-LA Electric Cooperative [Tex-LA]) and (3) a revised Master ERCOT Transmission Facility charge Rate Schedule.

Under the terms of the TNP Agreement, WTU will transmit up to 600 MW of capacity generated at TNP's generating station in Robertson County, Texas. Under the terms of the Tex-LA Agreement, WTU will transmit up to 40 MW purchased by Tex-LA from Central Power and Light Company. WTU will provide such transmission service rates based on the cost of service data specified in the Master ERCOT Transmission Facility Charge Rate Schedule. The revised Master ERCOT Transmission Facility Charge Rate Schedule reflects the addition of the TNP Agreement to the tariffs and contracts specified in appendix A of the schedule.

WTU seeks an effective date of January 1, 1990 for the Tex-LA Agreement and of June 1, 1990 for the TNP Agreement and the revised Master ERCOT Transmission Facility Charge Rate Schedule. Accordingly, WTU seeks waiver of the Commission's notice requirements. Copies of the filing were served upon TNP, Tex-LA, the Public Utility Commission of Texas and the New Mexico Public Service Commission.

Comment date: November 19, 1990, in accordance with Standard Paragraph E at the end of the this notice.

15. Entergy Services, Inc.

[Docket No. ER91-62-000]

November 5, 1990.

Take notice that Entergy Services, Inc. (Entergy Services) on October 30, 1990 tendered for filing a Letter Amendment to a sale of limited firm capacity to Sam Rayburn G&T Electric Cooperative, Inc. (SRG&T). The sale extends the terms of the transaction by one year and increases the quantity of reserve capacity sold to SRG&T.

Entergy Services request an effective date of January 1, 1991 for the Letter Amendment.

Comment date: November 19, 1990, in accordance with Standard Paragraph E at the end of this notice.

16. New England Power Pool

[Docket No. ER91-71-000]

November 5, 1990.

Take notice that on October 31, 1990, the New England Power Pool tendered for filing a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by the Barton Village, Inc. electric system. Barton Village, Inc. has its principal office in Barton, Vermont. NEPOOL indicates that the New England Power Pool Agreement has previously been filed with the Commission as a rate schedule (designated NEPOOL FPC No. 1).

NEPOOL states that the Barton Village, Inc. has joined the over 90 other electric utilities that already participate in the pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Barton Village, Inc. a participant in the pool.

NEPOOL requests an effective date of December 1, 1990 for commencement of participation in the power pool in Barton Village, Inc., and requests waiver of the Commission's customary notice requirements to permit the membership of Barton Village, Inc. to become effective on that date.

Comment date: November 19, 1990, in accordance with Standard Paragraph E at the end of this notice.

17. The Connecticut Light and Power Company; Western Massachusetts Electric Company

[Docket No. ER91-66-000]

November 5, 1990.

Take notice that on October 31, 1990, the Connecticut Light and Power Company and Western Massachusetts Electric Company (collectively referred to as the "NU Companies") tendered for filing a Notice of Termination effective October 31, 1990 with respect to a Northfield Mountain Purchase Agreement, between CL&P, WMECO, and the City of Holyoke, Massachusetts, Gas and Electric Department (HG&E) dated May 1, 1968.

The NU Companies state that this termination is in accordance with the terms of the Agreement.

The NU Companies request that the Commission waive its filing requirements to the extent necessary to permit the termination of this rate schedule to become effective as of October 31, 1990.

The NU Companies state that a copy of the termination notice has been mailed to HG&E.

The NU Companies further state that the filing is in accordance with section 35 of the Commission's Regulations.

Comment date: November 19, 1990, in accordance with Standard Paragraph E at the end of this notice.

18. The Connecticut Light and Power Company; Western Massachusetts Electric Company

[Docket No. ER91-67-000]

November 5, 1990.

Take notice that on October 31, 1990, the Connecticut Light and Power Company and Western Massachusetts Electric Company (collectively referred to as the "NU Companies") tendered for filing a Notice of Termination effective October 31, 1990 with respect to a Northfield Mountain Purchase Agreement, between CL&P, WMECO, and the North Attleboro Electric Department (NAEC) dated May 1, 1968.

The NU Companies state that this termination is in accordance with the terms of the Agreement.

The NU Companies request that the Commission waive its filing requirements to the extent necessary to permit the termination of this rate

schedule to become effective as of October 31, 1990.

The NU Companies state that a copy of the termination notice has been mailed to NAEC.

The NU Companies further state that the filing is in accordance with section 35 of the Commission's Regulations.

Comment date: November 19, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procdure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26650 Filed 11-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2180-000, et al.]

Hydroelectric Applications [Nekoosa Packaging Corporation, et al.]; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Transfer of License.

b. *Project No.:* 2180-000.

c. *Date filed:* October 9, 1990.

d. *Applicant:* Nekoosa Packaging Corporation.

e. *Name of Project:* Grandmother Falls.

f. *Location:* On the Wisconsin River in Lincoln County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Nekoosa Packaging Corporation, c/o Diane Durgin, Senior Vice President—Law Georgia Pacific Corporation, 133 Peachtree Street, NE., 11th Floor, Law Department, Atlanta, GA 30303, (404) 521–5208.

i. *FERC Contact:* Mary C. Golato (202) 357–0804.

j. *Comment Date:* December 7, 1990.

k. *Description of Project:* Nekoosa Packaging Corporation (transferor) proposes to transfer the license for the Grandmother Falls Project No. 2180 to Packaging Corporation of America (transferee). The purpose of the transfer is to have the transferor sell to the transferee the Grandmother Falls Project which supplies power to a paper mill associated with the project. Such a tansfer would provide a significant economic benefit to the paper mill. The hydroelectric project and the paper mill have historically been owned and operated by the same entity.

1. *This ntoice also consists of the following standard paragraphs:* B, C, & D2.

2 a. *Type of Application:* Amendment of License.

b. *Project No.:* 2389-008.

c. *Date Filed:* September 25, 1990.

d. *Applicant:* Edwards Manufacturing Company, Inc.

e. *Name of Project:* Edwards Dam.

f. *Location:* On the Kennebec River in the City of Augusta, Maine.

g. *Filed Pursuant to:* Federal Power Act (Act), 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Anthony W. Buxton, Joseph G. Donahue, Preti, Flaherty, Beliveau & Pachios, 45 Memorial Circle, P.O. Box 1058, Augusta, ME 04332–1058, (207) 623–5167.

i. *FERC Contact:* Dean C. Wight, (202) 357–0675.

j. *Comment Date:* November 30, 1990.

k. *Description of the Proposed Amendment:* The licensee proposed to add the State of Maine as a co-licensee, requests an extension of the license term, which expires on December 31, 1993, until December 31, 2000; and requests authorization to install upgraded fish passage facilities.

1. *Other Matters:* Augusta Development Corporation has filed a notice of intent to file an application for a new license for the project. The co-licensees, upon Commission approval of this amendment, intend to submit an application for surrender of license and authority to breach or remove Edwards Dam, effective no sooner than January 2, 1999. Should the Commission accept surrender of the license and/or authorize removal of the dam, relicensing of this project would become moot.

The application for amendment arises from a proposed agreement between the State of Maine and Edwards. The proposed agreement resulted from legislation considered by the Maine Legislature which, if enacted, would have granted eminent domain over Edwards Dam to the Atlantic Sea Run Salmon Commission. That Commission would remove the dam to facilitate the restoration of salmon to the Kennebec River.

m. *This notice consists of the following paragraphs:* B, C, and D2.

3 a. *Type of Application:* Minor License.

b. *Project No.* 6731-001.

c. *Date Filed:* October 7, 1988 and supplemented August 6, 1990.

d. *Applicant:* Aquenergy Systems, Inc.

e. *Name of Project:* Coneross Creek Hydropower Project.

f. *Location:* On the Coneross Creek near Seneca, Oconee County, South Carolina..

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Wayne E. Nelson, Rt. #2, Box 690H, Industrial Avenue, Sanford, ME 04073, (207) 490–1980.

i. *FERC Contact:* Ed Lee (202) 357-0809.

j. *Comment Date:* December 20, 1990.

k. *Description of Project:* The existing constructed project consists of: (1) a 288-foot-long and 25-foot-high concrete dam; (2) a 123-foot-long and 20-foot-high concrete spillway; (3) a 9-acre reservoir having a gross storage capacity of 13.5 acre-feet; (4) an intake gate and trashracks; (5) a 780-foot-long and 8-foot-diameter concrete penstock; (6) a concrete powerhouse housing three generating units (one 540-kW, one 243-kW, and one 106-kW) for a total installed capacity of 889 kW; (7) a 95-foot-long tailrace; (8) a 93-foot-long, 12.47-kV transmission line; and (9) appurtenant facilities. The applicant estimates the total annual power generation to be 3,826 MWh. All project works are owned by the applicant.

l. *Purpose of Project:* All project energy will be sold to Seneca Light & Water Company.

m. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D1.

4 a. *Type of Application:* Surrender of License.

b. *Project No.:* 6913-007.

c. *Date Filed:* October 12, 1990.

d. *Applicants:* Weber Basin Water Conservancy District.

e. *Name of Project:* West Gateway.

f. *Location:* On the Weber River in Davis County, Utah.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Ivan Flint, General Manager, Weber Basin Water Conservancy District, 2837 East Highway 193, Layton, UT 84041, (801) 359–4494.

Barbara S. Jost, Esq., Donald H. Clarke, Esq., Wilkinson, Barker, Knauer & Quinn, 1735 New York Avenue, NW., Washington, DC 20006, (202) 783–4141.

i. *FERC Contact:* Hector M. Perez (202) 219–2843.

j. *Comment Date:* December 26, 1990.

k. *Description of Project:* The unconstructed 9,510-kW project was licensed on November 2, 1988. To protect fish resources, Articles 403 and 404 of the license require the licensee to maintain minimum flows of 194 cubic feet per second (cfs) or the Weber River streamflow, whichever is less, from April 1 to June 30 each year. The licensee filed a timely appeal proposing a minimum flow of 126 cfs in lieu of the 194 cfs. The appeal was denied on March 23, 1990. The licensee filed a timely Petition for Rehearing which is still pending before the Commission.

The licensee has concluded that the project is no longer economically feasible, even with the lower minimum flows requested in its appeal and rehearing requests.

l. *This notice also consists of the following standards paragraphs:* B, C, & D2.

5 a. *Type of Filing:* Major License.

b. *Project No.:* 10359–003.

c. *Date Filed:* August 28, 1990.

d. *Applicant:* Snoqualmie River Hydro.

e. *Name of Project:* Youngs Creek.

f. *Location:* On the Youngs Creek, in Snohomish County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Michael S. Wright, 1300—114th Ave. SE, #220, Bellevue, WA 98004, (206) 451–7371.

Frank Frisk, Jr., 1054—31st Street NW., Washington, DC 20007, (202) 342–5200.

i. *FERC Contact:* Hector M. Perez, (202) 219–2843.

j. *Comment Date:* January 2, 1991.

k. *Description of Project:* The proposed run-of-river project would consist of: (1) a new 12-foot-high, 65-foot-long diversion weir with a crest elevation of 1,530 feet mean sea level; (2) a new intake structure; (3) a new 51-inch-diameter, 1,450-foot-long penstock; (4) a new powerhouse with a turbine generator unit with a generating capacity of 7.5 MW; (5) a short tailrace; (6) a new 15.5-kV, 0.1-mile-long overhead transmission line; and (7) other appurtenances. The project would have an average annual generation of 29,500,000 kWh.

l. *Purpose of the project:* Project energy would be sold to the Snohomish PUD.

m. *This notice also consists of the following standard paragraphs:* A3, A9, B, and C.

6 a. *Type of Application:* Major License (less than 5 MW).

b. *Project No.:* 10461–002.

c. *Date Filed:* May 31, 1990.

d. *Applicant:* Niagara Mohawk Power Corporation.

e. *Name of Project:* Parishville.

f. *Location:* On the West Branch of the St. Regis River, St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Michael W. Murphy, System Law Department, C–3, Niagara Mohawk Power Corp., 300 Erie Boulevard West, Syracuse, New York 13202, (315) 428–6941.

i. *FERC Contact:* Michael Dees (202) 357–0807.

j. *Comment Date:* December 27, 1990.

k. *Description of Project:* The proposed project would consist of: (1) An existing dam composed of an earthen dike and various concrete structures; (2) an existing intake structure; (3) an existing penstock 2,561 feet long and six to 10 feet in diameter; (4) an existing powerhouse housing a 2,400-kW hydropower unit; (5) an existing tailrace 400 feet long; (6) a proposed penstock 75 feet long and 3.5 feet in diameter; (7) a proposed outdoor type hydropower unit with a capacity of 415 kW; (8) an existing 4.8-kV transmission line; (9) a proposed 4.8-kV transmission line 100 feet long; and (10) appurtenant facilities. The estimated annual energy production is 12.6 GWh. Project energy would be used by the applicant to satisfy its customers needs.

l. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D1.

7 a. *Type of Application:* Minor License.

b. *Project No.:* 10900–000.

c. *Date Filed:* March 6, 1990.

d. *Applicant:* Thomas Hodgson & Sons, Inc.

e. *Name of Project:* China Mill.

f. *Location:* On the Suncook River in the Village of Suncook, Town of Allenstown, Merrimack County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Howard M. Moffett, P.O. Box 709, Concord, NH 03302, (603) 224–2381.

i. *FERC Contact:* Charles T. Raabe (tag) (202) 357–0811.

j. *Comment Date:* December 27, 1990.

k. *Description of Project:* The existing constructed run-of-river project would consist of: (1) A 25-foot-high, 250-foot-long concrete gravity-type dam having a 143-foot-long ogee-type spillway; (2) a reservoir having a surface area of 2 acres and a gross storage capacity of 14 acre feet at spillway crest elevation 226.63 feet NGVD; (3) a gated intake structure at the reservoir's left (south) bank; (4) a 34-foot-wide, 1,330-foot-long canal; (5) trashracks and gates leading to two 9-foot-diameter, 100-foot-long riveted steel penstocks; (6) a powerhouse containing a 1,480-kW generating unit operated at a 32-foot net head and at a flow of 600 cfs; (7) a tailrace; and (8) appurtenant facilities.

Applicant estimates that the average annual generation would be 4,100,000 kWh. Project power would be sold to Public Service Company of New Hampshire. The dam is owned by Thomas Hodgson & Sons, Inc.

l. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D1.

8 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10962–000.

c. *Date Filed:* June 22, 1990.

d. *Applicant:* Portland General Electric Company.

e. *Name of Project:* Timothy Lake.

f. *Location:* In Mount Hood National Forest, on Stone and Anvil Creeks and the Oak Grove Fork of the Clackamas River in Clackamas County, Oregon. Township 5 S Range 8 E.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:* Ms. Peggy Y. Fowler, Portland General Electric Company, 121 SW Salmon Street, Portland, OR 97204, (503) 464–8401.

i. *FERC Contact:* Michael Spencer at (202) 357–0846.

j. *Comment Date:* December 24, 1990.

k. *Description of Project:* The proposed project would be an amendment to the existing Oak Grove Project No. 135 and consist of: (1) 10-foot-high dams on Stone and Anvil Creeks and the existing dam at Timothy Lake; (2) a 36-inch-diameter, 2,000-foot-long penstock from Anvil Creek that will connect to a 60-inch-diameter, 5,000-foot-long penstock from Timothy Lake and a separate 36-inch-diameter, 6,500-foot-long penstock from Stone Creek; (3) a powerhouse containing two gneerating units with a total capacity of 4,000 kW and an estimated average annual generation of 20 GWh; and (4) a 10-mile-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to

be conducted under the preliminary permit would be $200,000.

l. *Purpose of Project:* Project power would be used by the applicant.

m. *This notice also consists of the following standards paragraphs:* A5, A7, A9, A10, B, C, and D2.

9 a. *Type of Application:* Preliminary Permit.

b. *Project No.* 10982–000.

c. *Date filed:* August 1, 1990.

d. *Applicant:* Bryant Mountain Hydroelectric Associates.

e. *Name of Project:* Bryant Mountain Hydroelectric Pumped Storage Project.

f. *Location:* On the Klamath Irrigation District's "D" canal in Klamath County, Oregon near the town of Malin. The project would occupy U.S. lands administered by the Bureau of Land Management. T41S, R12E; T40S, R12E and R13E. Willamette Meridian and Base.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791 (a)–825(r).

h. *Applicant Contacts:* Mr. Bart M. O'Keeffe, P.O. Box 60565, Sacramento, CA 95860, (916) 971–3717.

Mr. Horst Butz, ABB Power Generation Inc., 1460 Livingston Ave., North Brunswick, NJ 08902, (201) 932–6273.

Mr. Louis Rosenman, LeBeouf, Lamb, Leiby & MacRae, 1333 New Hampshire Ave., NW., Washington, DC 20036, (202) 457–7500.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Comment Date:* January 24, 1991.

k. *Competing Application:* Project No. 10971–000, Public Comment: December 3, 1990.

l. *Description of Project:* The proposed project would consist of: (1) two earth dams with a crest elevation at 5,830 feet, one dam would be 80 feet high, 1,600 feet long and one dam would be 40 feet high, 1,600 feet long; enlarging (2) the Long Lake reservoir to 500 acres with a storage capacity of 29,000 acre-feet at elevation 5,820 feet, msl, to be utilized as the upper reservoir; (3) an intake structure; (4) a 35-foot-diameter, 1,370-foot-deep power shaft, connecting to; (5) a 35-foot-diameter, 15,200-foot-long power tunnel, splitting into four tunnels upon entering the powerhouse; (6) powerhouse containing four reversible pump-turbines with a combined installed capacity of 1,000,000 kW, producing an estimated average annual energy output of 2,555,000 MWh; (7) a 65-foot-high, 12,300-foot-long earth dam with a crest elevation at 4,230 feet, creating; (8) a 570 acre reservoir with a storage capacity of 29,000 acre-feet at elevation 4,220 feet, to be utilized as the lower reservoir; (9) a 36-inch-diameter, 2.5-mile-long water supply pipeline used to initially fill the lower reservoir with water from the "D" canal; (10) a pumping station; and (11) a 230-kV or 500-kV transmission line tying into an existing or proposed line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $3,000,000. No new roads will be needed for the purpose of conducting these studies.

Water flowing through the "D" canal is regulated by the U.S. Bureau of Reclamation.

m. *Purpose of Project:* Project power would be sold to a local utility or organization.

n. *This notice also consists of the following standard paragraphs:* A8, A10, B, C, D2.

10 a. *Type of Application:* Preliminary Permit.

b. *Project No.* 10983–000.

c. *Date filed:* August 1, 1990.

d. *Applicant:* Russel Canyon Corporation.

e. *Name of Project:* Bryant Mountain Hydroelectric Pumped Storage Project.

f. *Location:* On the Klamath Irrigation District's "D" canal in Klamath County, Oregon near the town of Malin. The project would occupy U.S. lands administered by the Bureau of Land Management. T41S, R12E; T40S, R12E and R13E. Willamette Meridian and Base.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791 (a)–825(r).

h. *Applicant Contacts:* David B. Ward, P.C. Attorney at Law, Flood & Ward, 1000 Potomac Street, NW. Washington, DC 20007, (202) 298–6910.

Mr. Douglas Spaulding, EWI Engineering Associates, Inc. 715 Florida Ave., So. suite 306, Minneapolis, MN 55426, (612) 593–5650.

Mr. Ingolf Herman, Independent Hydro Developers, 1000 Shelard Parkway, Suite 404, Minneapolis, MN 55426, (612) 546–5110.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Comment Date:* January 24, 1991.

k. *Competing Application:* Project No. 10971–000, Public Comment: December 3, 1990.

l. *Description of Project:* The proposed project would consist of: (1) two earth dams with a crest elevation at 5,825 feet, one dam would be 100 feet high, 3,000 feet long and one dam would be 80 feet high, 1,300 feet long; enlarging (2) the Long Lake reservoir to 420 acres with a storage capacity of 24,000 acre-feet at elevation 5,820 feet, msl, to be utilized as the upper reservoir; (3) an intake structure; (4) a 24-foot-diameter, 1,300-foot-deep power shaft, connecting to; (5) a 24-foot-diameter, 17,000-foot-long power tunnel, splitting into four tunnels upon entering the powerhouse; (6) an underground powerhouse containing four pump-turbines with a combined installed capacity of 1,000,000 kW, producing an estimated average annual energy output of 1,314 GWh; (7) a 90-foot-high, 12,000-foot-long earth dam with a crest elevation at 4,225 feet, creating; (8) a 475 acre reservoir with a storage capacity of 24,000 acre-feet at elevation 4,220 feet, to be utilized as the lower reservoir; (9) a 36-inch-diameter, 2.5-mile-long water supply pipeline used to initially fill the lower reservoir with water from the "D" canal; (10) a pumping station; and (11) a 230-kV or 500-kV transmission line tying into an existing or proposed transmission line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $850,000. No new roads will be needed for the purpose of conducting these studies.

Water flowing through the "D" canal is regulated by the U.S. Bureau of Reclamation.

m. *Purpose of Project:* Project power would be sold to a local utility or organization.

n. *This notice also consists of the following standard paragraphs:* A8, A10, B, C, D2.

11a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–10985–000.

c. *Date Filed:* August 1, 1990.

d. *Applicant:* Rock River Power and Light Corporation.

e. *Name of Project:* Lake Altoona Dam.

f. *Location:* On Eau Claire River, Eau Claire County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas J. Reiss, Jr., P.O. Box 553, 319 Hart Street, Watertown, WI 53094, (414) 261–7975.

i. *FERC Contact:* Michael Dees (202) 357–0807.

j. *Comment Date:* December 20, 1990.

k. *Description of Project:* The proposed project would consist of: (1) an existing dam 223 feet long; (2) an existing reservoir with a surface area of 836 acres; (3) a proposed penstock 12 feet in diameter and 50 feet long; (4) a proposed powerhouse housing one hydropower unit with a total capacity of 875 kW; (5) a 4.16–kV transmission line 200 feet long; and (6) appurtenant facilities. The applicant estimates that the annual energy generation would be 2,468 MWh and that the cost of the studies to be performed under the permit would be $40,000. The energy would be sold to Northern States Power Company. The dam is owned by Eau Claire County, Wisconsin.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

12 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–10986–000.

c. *Date Filed:* August 1, 1990.

d. *Applicant:* Rock River Power and Light Corporation.

e. *Name of Project:* Lake Eau Claire Dam.

f. *Location:* On Eau Claire River, Eau Claire County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas J. Reiss, Jr., P.O. Box 553, 319 Hart Street, Watertown, WI 53094, (414) 261–7975.

i. *FERC Contact:* Michael Dees (202) 357–0807.

j. *Comment Date:* December 20, 1990.

k. *Description of Project:* The proposed project would consist of: (1) an existing dam 170 feet long; (2) an existing reservoir with a surface area of 793 acres; (3) a proposed penstock 12 feet in diameter and 50 feet long; (4) a proposed powerhouse housing one hydropower unit with a total capacity of 800 kW; (5) a 4.16–kV transmission line 400 feet long; and (6) appurtenant facilities. The applicant estimates that the annual energy generation would be 1,853 MWh and that the cost of the studies to be performed under the permit would be $30,000. The energy would be sold to Northern States Power Company. The dam is owned by Eau Claire County, Wisconsin.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

13 a. *Type of Applications:* Preliminary Permit.

b. *Project No.* 10991–000.

c. *Date filed:* August 13, 1990.

d. *Applicant:* Russell Canyon Corporation.

e. *Name of Project:* Tule Valley Pumped Storage Project.

f. *Location:* On Highline canal in Klamath County, Oregon near the town of Malin. The project would occupy lands administered by the Bureau of Land Management. T41S, R12E, T40S, R12E and R13E. Willamette Meridian.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791 (a)–825(r).

h. Applicant Contact:

Mr. David B. Ward, Flood & Ward, 1000 Potomac St., NW., Washington, DC 20007, (202) 298–6910.

Mr. Douglas Spaulding, EWI Engineering Associates, Inc., 715 Florida Ave. So. Suite 306, Minneapolis, MN 55426, (612) 593–5650.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Comment Date:* January 28, 1991.

k. *Competing Application:* Project No. 10971–000, Public Comment: December 3, 1990.

l. *Description of Project:* The proposed project would consist of: (1) three earth and rock fill dams with a crest elevation at 5,760 feet, Dam No. 1 would be 40 feet high, 800 feet long, Dam No. 2 would be 20 feet high, 500 feet long, and Dam No. 3 would be 20 feet high, 50 feet long; enlarging (2) the Worlow Meadows Reservoir to 241 acres with a storage capacity of 8,000 acre-feet, to be utilized as the upper reservoir; (3) an intake structure; (4) a 12-foot-diameter, 1,500-foot-deep power shaft; (5) a 12-foot-diameter, 13,500-foot-long power tunnel; (6) a powerhouse containing two pump turbines with a combined installed capacity of 200,000 kW, producing an estimated annual energy output of 1,576,800 MWh; (7) a 100-foot-high, 7,000-foot-long earth and rock fill dam at elevation 4,300 feet, creating; (8) a 634 acre reservoir with a storage capacity of 7,000 acre-feet, to be utilized as the lower reservoir; (9) a 42-inch-diameter, 5,800-foot-long water supply pipeline used to fill the lower reservoir initially with water from the highline canal; (10) a pumping station; and (11) a 55-kV, 2-mile-long transmission line tying into an existing utility line.

The applicant estimates the costs of the studies to be conducted under the preliminary permit would be $500,000. No new access road will be needed to conduct the studies.

This project competes with Project No. 10982–000 and Project No. 10983–000, which competes with Project No. 10971–000. Any competing application must be filed in response to the notice for Project No. 10971.

m. *Purpose of Project:* Project power would be sold to a local utility.

n. *This notice also consists of the following standard paragraphs:* A8, A10, B, C, D2.

14a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10998–000.

c. *Date filed:* August 27, 1990.

d. *Applicant:* Ochoco Irrigation District.

e. *Name of Project:* Prineville Power Project.

f. *Location:* On Crooked River in Crook County, OR, near the town of Prineville. The proposed project would occupy lands administer by the Bureau of Reclamation. T17S., R16E Willamette Meridian.

g. *Filed Pursuant to:* Federal Power Act 16 U.SC. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Hugh Moore, Secretary-Manager, Ochoco Irrigation District, 1001 North Deer St., Prineville, OR 97754, (503) 447–6449.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Comment Date:* January 29, 1991.

k. *Description of Project:* The proposed project would be located at the Bureau of Reclamation's (BUR) Arthur R. Bowman Dam and would consist of: (1) A 16-foot-diameter horseshoe tunnel extending from the BUR existing tunnel 96 feet upstream of the existing gate chamber, enclosing; (2) a 6-foot-diameter penstock; (3) a powerhouse containing a single generating unit with a rated capacity of 2,900 kW, producing an estimated annual energy output of 17.07 million KWh; (4) a 10-foot-diameter, 80-foot-long tailrace tunnel returning project flows to the existing BUR tunnel 78 feet downstream of the existing gate chamber; and (5) 6.1 miles of upgraded transmission line.

All proposed project facilities would be located underground. No new access road will be needed to conduct the studies. The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $86,250.00.

l. *Purpose of Project:* Project power would be sold to a local utility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

15a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11001–000.

c. *Date Filed:* September 10, 1990.

d. *Applicant:* A.L.L. Natural Resources Company.

e. *Name of Project:* Nashua River Hydroelectric Project.

f. *Location:* On Nashua River, Middlesex County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. James E. Lane, 29 Westminster Street, Fitchburg, MA 01420, (508) 342–4029.

i. *FERC Contact:* Michael Dees (202) 357–9807.

j. *Comment Date:* January 4, 1991.

k. *Description of Project:* The proposed project would consist of: (1) an existing dam 100 feet long and 15 feet high; (2) an existing reservoir with a surface area of 0.7 acre at a normal water surface elevation of 215 feet msl; (3) an existing intake structure 30 feet wide; (4) a powerhouse housing two hydropower units with a total capacity of 500 kW; (5) a tailrace 400 feet long and 50 feet wide; (6) a 13.8–kV transmission line 300 feet long; (7) and appurtenant facilities. The applicant estimates that the annual energy generation would be 2,500 MWH and

that the cost of the studies to be performed under the permit would be $50,000. The energy would be sold an electric utility. The dam is owned by the Mr. John Horgan, Executor.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

16a. *Type of Filing:* Preliminary Permit.

b. *Project No.:* 11004–000.

c. *Date Filed:* September 11, 1990.

d. *Applicant:* City of Shady Cove.

e. *Name of Project:* Prospect No. 5.

f. *Location:* On the North Fork Rogue River, in Jackson County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Shirley Oswald Mayor 22451 Highway 62, P.O. Box 1210, Shady Cove, Oregon 97539 (503) 878–2225.

i. *FERC Contact:* Hector M. Perez, (202) 219–2843.

j. *Comment Date:* January 29, 1990.

k. *Description of Project:* The proposed project would consist of: (1) a new 35-foot-high, 150-foot-long roller compacted concrete dam with a crest a crest elevation of 1,982.5 feet mean sea level (msl); (2) a reservoir with a storage capacity of 25 acre-feet at surface elevation of 1,982.5 feet msl; (3) a new 7,350-foot-long conduit; (4) two new 114-inch-diameter, 170-foot-long penstocks; (5) a new powerhouse with 2 turbine-generator units with a total capacity of 12.5 MW; (6) a new 20.8–kV, 2-mile-long transmission line; and (7) other appurtenances. The proposed conduit would cross lands owned by the Army Corps of Engineers. The project would produce an average annual generation of 91,458,000 kWh to be sold to Pacific Power & Light.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2. .

17a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11007–000.

c. *Date Filed:* September 19, 1990.

d. *Applicant:* Sullivan Island Associates.

e. *Name of Project:* Sullivan Island Hydroelectric Project.

f. *Location* On the Oswegatchie River, St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. Neal F. Dunlevy, 185 Genesee Street, Utica, NY 13501, (315) 793–0366.

i. *FERC Contact:* Michael Dees (202) 357–0807.

j. *Comment Date:* December 27, 1990.

k. *Description of Project:* The proposed project would consist of: (1) A proposed north dam approximately 125 feet long and 12 feet high, and a proposed south dam approximately 75 feet long and 15 feet high; (2) a reservoir with a surface area of 100 acres at a normal water surface elevation of 606 to 608 feet msl; (3) a new intake structure at the south dam; (4) a proposed powerhouse at the south dam housing two hydropower units with a total capacity of 2,000 kW; (5) a tailrace 50 feet long and 45 feet wide; (6) a 13.8–kV transmission line 700 feet long; and (7) appurtenant facilities. The applicant estimates that the annual energy generation would be 10 GWh and that the cost of the studies to be performed under the permit would be $50,000. The energy would be sold to Niagara Mohawk Power Corporation. The project site is owned by Bruce, Paul, and Daniel Gayne, Sallie Ann Stoner, Carl Cappellino, Robert and Barbara Sullivan, Roger and Catherine Blackburn, and Jean and Chester Cole.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

18 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11010–000.

c. *Date Filed:* September 24, 1990.

d. *Applicant:* Hydropower, Inc.

e. *Name of Project:* Loyalhanna Dam.

f. *Location:* On Loyalhanna Creek, near New Alexandria, Westmoreland County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Mark Labant, 109 Apache Drive, Indiana, PA 15701, (412) 463–0737.

i. *FERC Contact:* Michael Dees (202) 357–0807.

j. *Comment Date:* January 4, 1991.

k. *Description of Project:* The proposed project would utilize the existing Corps of Engineers' Loyalhanna Dam and reservoir and would consist of: (1) An existing penstock 10 feet in diameter; (2) a proposed penstock 10 feet in diameter and 150 feet long; (3) a proposed reinforced concrete powerhouse 30 feet by 40 feet housing a 2,100-kW hydropower unit; (4) a proposed tailrace 50 feet wide and 70 feet long; (5) a proposed 13.2-kV transmission line 700 feet long; and (6) appurtenant facilities. The estimated annual energy production is 8 GWh. Project power would be sold to Pennsylvania Electric Company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $100,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

19 a. *Type of Applicotion:* Preliminary Permit.

b. *Project No.:* 11011–000.

c. *Date Filed:* September 25, 1990.

d. *Applicant:* Western Renewable Energy Company.

e. *Name of Project:* San Juan Power.

f. *Location:* At the U.S. Bureau of Reclamation's Ridgeway Dam on the Uncompahgre River in Ouray County, Colorado, Township 46 North, Range 8 West.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Donald P. Scrimgeour, Western Renewable Energy Company, 875 Alpine Ave., #5, Boulder, CO 80302, (303) 449–0899.

i. *FERC Contact:* Mr. James Hunter, (202) 357–0843.

j. *Comment Date:* December 28, 1990.

k. *Description of Project:* The proposed project would utilize the Ridgeway Dam and Reservoir and would consist of: (1) a penstock connecting to the existing outlet works; (2) a powerhouse at the downstream toe of the dam containing a generating unit rated at 4,000 kilowatts and producing an average annual output of 20 gigawatthours; and (3) a 2,000-foot-long transmission line connecting to a local distribution line. The applicant estimates the cost of the work to be performed under the permit to be $150,000.

l. *Purpose of Project:* Power generated would be sold to a private or public utility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

20. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11013–000.

c. *Date filed:* September 25, 1990.

d. *Applicant:* Western Renewable Energy Company.

e. *Name of Project:* Sun River Power.

f. *Location:* On the U.S. Bureau of Reclamation's Spring Valley Canal at the Turnbull Drop Structures in Teton County, Montana, Township 21 North, Range 4 West.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Donald P. Scrimgeour, Western Renewable Energy Company, 875 Alpine Ave., #5, Boulder, CO 80302, (303) 449–899.

i. *FERC Contact:* Mr. James Hunter, (202) 357–0843.

j. *Comment Date:* December 28, 1990.

k. *Description of Project:* The proposed project would consist of: (1) a diversion structure on the canal above the upper drop structure; (2) a 1.5-mile-long penstock; (3) a powerhouse containing a generating unit rated at 9400 kilowatts and producing an average annual output of 25 gigawatthours; (4) a tailrace returning water to the canal below the lower drop structure; and (5) a transmission line interconnecting with a local distribution line. The applicant estimates the cost of the work to be performed under the permit to be $150,000.

l. *Purpose of Project:* Power generated would be sold to a private or public utility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11015–000.

c. *Date Filed:* October 1, 1990.

d. *Applicants:* Washington Hydro Development Co.

e. *Name of Project:* O'Toole Creek.

f. *Location:* Partially within Mt. Baker-Snoqualmie National Forest on O'Toole Creek, a tributary of the Skagit River, in Skagit County, Washington. T35N, R7E in sections 20, 28, 29, and 33.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Bill E. Covin, Washington Hydro Development Company, 1422–130th Avenue NE, Bellevue, WA 98005, (206) 455–0234.

i. *FERC Contact:* Mr. William Roy-Harrison, (202) 219–2845.

j. *Comment Date:* January 24, 1991.

k. *Description of Project:* The proposed project would consist of: (1) a 13-foot-high, 80-foot-long diversion structure at elevation 2,055 feet msl; (2) a concrete intake structure; (3) a 36-inch-diameter, 11,000-foot-long penstock; (4) a powerhouse containing a generating unit with a rated capacity of 7,150 kW; (5) a 34.5 kV, 7-mile-long transmission line; and (6) appurtenant facilities. The applicant estimates an average annual energy generation of 26.3 GWh. The approximate cost of the studies under the permit would be $300,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, & D2.

22 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11016–000.

c. *Date Filed:* October 1, 1990.

d. *Applicants:* CRV Corporation.

e. *Name of Project:* Crystal River.

f. *Location:* Partially within White River National Forest on Crystal River in Gunnison County, Colorado. T11S, R88W section 25, and T11S, R87W section 30.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas A. Rogers, CRV Corporation, 7 Mirror Lake, Irvine, CA 92714, (714) 552–6711.

i. *FERC Contact:* Mr. William Roy-Harrison, (202) 219–2845.

j. *Comment Date:* January 24, 1991.

k. *Description of Project:* The proposed project would consist of: (1) an existing 8-foot-diameter, 100-foot-long diversion tunnel at elevation 8,409 feet msl; (2) a 36-inch-diameter, 3,900-foot-long penstock; (3) a powerhouse containing a generating unit with a total rated capacity of 4.9 MW; (4) a 14.4 kV, 300-foot-long transmission line; and (5) appurtenant facilities. The applicant estimates a 13.6 GWh average annual energy generation. The approximate cost of the studies under the permit would be $40,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, & D2.

23 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11018–000.

c. *Date filed:* October 4, 1990.

d. *Applicant:* Montreal Pumped Storage Corporation.

e. *Name of Project:* Montreal Pumped Storage Hydro Project.

f. *Location:* On the West Fork of the Montreal River near Montreal, Iron County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ingolf Hermann, Montreal Pumped Storage Corporation, c/o Independent Hydro Developers, 1000 Shelard Pkwy.—suite 404, Minneapolis, MN 55426, (612) 546–5110.

i. *FERC Contact:* Ed Lee (202) 357–0809 or 219–2809.

j. *Comment Date:* January 7, 1991.

k. *Description of Project:* The proposed project would consist of a 500-MW close-looped pumped storage project designed to opeate with a minimum head of 1800 feet. The project would have a proposed 185-acre upper reservoir and the existing Montreal iron mine as the lower reservoir. The reservoirs will be connected by a proposed 18-foot/diameter concrete penstock with an underground power-pumping house located in the lower reservoir. The project would have a new 2.5-mile, 92–kV or 138–kV transmission line. No areas within or in the vicinity of the proposed project boundary are included or have been designated for study for inclusion in the National Wild and Scenic River System. The applicant estimates that the average annual generation would be 657 GWh for the proposed pumped storage project. The cost of the work and studies to be performed under the permit would be $850,000. No lands of the United States are included in the project. The applicant states that the location of any borings would be limited to areas which are accessible from existing roadways or those which would cause minimal environmental disturbances. The applicant will restore any disturbed areas caused by any field exploration.

l. *Purposes of Project:* The applicant will sell the generated power to one or more electric utilities located in Wisconsin.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

24 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11022–000.

c. *Date filed:* October 9, 1990.

d. *Applicant:* Owasco Power and Electric Company.

e. *Name of Project:* Aurelius Avenue Upper Dam Hydroelectric Project.

f. *Location:* On the Owasco Outlet, in the City of Auburn, Cayuga County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Neal F. Dunlevy, 185 Genesee Street, Utica, NY 13501, (315) 793–0366.

i. *FERC Contact:* Mary C. Golato (202) 357–0804 or 219–2804.

j. *Comment Date:* January 7, 1991.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) An existing dam with a crest 13 feet above tailwater that will involve rehabilitation; (2) an existing penstock 15.5 feet long; (3) a proposed pond estimated to have a surface area of 2 acres and a volume of 10 acre-feet; (4) an existing powerhouse containing one single turbine generator having a total installed capacity of 500 kilowatts; (5) a proposed 13.8-kilovolt transmission line 300 feet long; and (6) appurtenant facilities. The owner of the dam is the City of Auburn, New York. The applicant estimates that the average annual generation of the project would be in the range of 2,000 megawatthours. The cost of the studies under permit would be about $25,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

25 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11023–000.

c. *Date filed:* October 9, 1990.

d. *Applicant:* Owasco Power and Electric Company.

e. *Name of Project:* Swift Street Dam Project.

f. *Location:* On the Owasco Outlet, in the City of Auburn, Cayuga County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Neal F. Dunlevy, 185 Genesee Street, Utica, NY 13501, (315) 793–0366.

i. *FERC Contact:* Mary C. Golato (202) 357–0804 or 219–2804.

j. *Comment Date:* January 7, 1991.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) an existing dam with a crest 13 feet above tailwater that will involve rehabilitation; (2) an existing pond estimated to have a surface area of 10.5 square miles; (3) a new penstock 80 feet long and 8 feet in diameter; (4) a new powerplant with a single turbine generator unit having a total installed capacity of 500 kilowatts; (5) a 13.8-kilovolt transmission line 300 feet long; and (6) appurtenant facilities. The dam is owned by the City of Auburn, New York. The applicant estimates that the average annual generation would be 2,000 megawatthours, and the cost of the studies under permit would be about $25,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

26 a. *Type of Application:* Declaration of Intention.

b. *Docket No:* EL91–4–000.

c. *Date Filed:* October 17, 1990.

d. *Applicant:* Wind & Water Power, Inc.

e. *Name of Project:* Filtrine Hydro Project.

f. *Location:* Nubanusit Brook, Town of Harrisville, Cheshire County, New Hampshire.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Ms. Constance Koons, Wind & Water Power, Inc., c/o Filtrine Manufacturing Company, Main Street, Harrisville, NH 03450–0805, (603) 827–3367.

i. *FERC Contact:* Diane M. Scire, (202) 219–2682.

j. *Comment Date:* December 17, 1990.

k. *Description of Project:* The existing project consists of: (1) A three-acre-foot pond; (2) a 33-foot-high, 109-foot-long stone masonry dam, with a stop long stanchion section and a concrete cap of about one foot installed in 1978; (3) a gated penstock intake; (4) a 140-foot-long, 42-inch-diameter welded steel penstock; (5) a turbine-generator unit, installed in 1978, with an installed capacity of 180 kilowatts (the decommissioned turbine, of unknown horsepower, was installed by a former owner in December 1938, and was used to mechanically power a conveyor belt system).

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* To sell power generated to the Filtrine Manufacturing Company.

m. *This notice also consists of the following standard paragraphs:* B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 (b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 (b)(1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b)(1) and (9) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027 [810 1st], at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in secton 313(b) of the Federal Power Act, 16 U.S.C. Section 8251(b), that Commisaion findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the applicant's representatives.

Dated: November 6, 1990, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 90–26656 Filed 11–9–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER90–376–000]

Dartmouth Power Associates Limited Partnership; Order Accepting Rates for Filing and Granting and Denying Waivers

October 29, 1990.

Take notice that on October 19, 1990 the Federal Energy Regulatory Commission issued an Order Accepting Rates For Filing and Granting and Denying Waivers (Order). On March 21, 1990, as completed October 5, 1990, Dartmouth Power Associates Limited Partnership (Dartmouth) submitted a Power Purchase Agreement between Dartmouth and Commonwealth Electric Company (Commonwealth Electric), and an Amendment to the Agreement. The rates from Dartmouth to Commonwealth Electric were negotiated between the parties, and Dartmouth requested that the Commission find that its rates were just and reasonable, as market-based rates. In the Order, the Commission found that Dartmouth's market-pricing proposal would result in rates to Commonwealth Electric within the legally mandated zone of reasonableness.

The Commission's October 29, 1990, Order in Ordering Paragraphs (F), (G) and (H) reads as follows:

(F) Within thirty (30) days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liability by Dartmouth should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commissions Rules of Practice and Procedure (18 CFR and 385.214 (1990)).

(G) Absent a request for hearing within the period set forth in Ordering Paragraph (F) above, Dartmouth is authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Commonwealth Electric's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing a motion to intervene or protest, as set forth above, is November 28, 1990.

Copies of the full text of the order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol St., NE., Washington, DC, 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 90–26652 Filed 11–9–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–111–000]

East Tennessee Natural Gas Company; Informal Settlement Conference

November 5, 1990.

Take notice that an informal settlement conference will be convened in this proceeding on November 19, 1990, at 9 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. The conference will continue on November 20, if necessary.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For addition information, contact Donald A. Heydt (202) 208–0248 or Irene E. Szopo (202) 208–1589.

Lois D. Cashell,

Secretary.

[FR Doc. 90–28653 Filed 11–9–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER82–774–016]

Nantahala Power and Light; Filing

November 6, 1990.

Take notice that on October 23, 1990, Nantahala Power and Light Company tendered for filing its compliance filing for the period July 1, 1989 through September 30, 1990, pursuant to ordering paragraph (C) of Opinion No. 277.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 14, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–28654 Filed 11–9–90; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

Clean Coal Technology Program; Availability of Draft Program Opportunity

AGENCY: Office of Fossil Energy, Department of Energy (DOE).

ACTION: Notice of availability of a draft Program Opportunity Notice (PON) for the Clean Coal Technology (CCT) Program, and request for public comments.

SUMMARY: DOE is issuing a draft Program Opportunity Notice (PON), No. DE–PS01–91FE–62271, for public comments. The draft PON solicits proposals for cost-shared projects to demonstrate clean coal technologies that could be commercialized in the 1990's. A total of $600 million (less approximately $32 million for DOE's administrative expenses) has been appropriated for financial assistance awards under this solicitation.

DATES: The deadline for receipt of comments on the draft PON is December 14, 1990, at 4:30 p.m., e.s.t.

ADDRESSES FOR PUBLIC COMMENTS: Written comments must be delivered or mailed to the U.S. Department of Energy, Office of Procurement Operations, Attn: Herbert D. Watkins, PR 321.1, Room II–065, 1000 Independence Avenue, SW., Washington, DC 20585.

ADDRESSES FOR OBTAINING DRAFT PON: Written requests must be sent to the U.S. Department of Energy, P.O. Box 2500, Attn: Document Control Specialist, PR–33, Washington, DC 20012. Written requests to be placed on the mailing list for the draft PON should be received by November 16, 1990. Also, copies of the draft PON may be picked up at the U.S. Department of Energy, Office of Procurement Operations, Document Control Specialist, Forrestal Building, Room 1J–005, 1000 Independence Avenue SW., Washington, DC between the hours of 9 a.m. and 3 p.m., e.s.t., Monday through Friday, except Federal holidays. The draft PON is anticipated to be available on or after November 20, 1990. If you have received past solicitations and/or attended the 1988/1989/1990 Clean Coal Technology public meetings, you need not submit a written request for the draft PON.

SUPPLEMENTARY INFORMATION: On October 23, 1989, Public Law 101–121, "An Act Making Appropriations for the Department of the Interior and Related Agencies for the Fiscal Year Ending September 30, 1990, and for Other Purposes" (the "Act"), was signed into law. This Act, among other things, provides funds to conduct cost-shared Clean Coal Technology projects (CCT IV) for the design, construction, and operation of facilities that would demonstrate the feasibility of future commercial applications of such "* * * technologies capable of replacing, retrofitting, or repowering existing facilities * * *." This Act makes available a total of $600 million for this program.

On May 25, 1990, Public Law 101–302 was enacted which delayed issuing the CCT–IV PON until September 1, 1991. Subsequently, on October 26, 1990, Congress passed, and the President has approved, an "Act Making Appropriations for the Department of the Interior and Related Agencies for the Fiscal Year Ending September 30, 1991," which directs the Department of Energy to issue the CCT IV PON not later than February 1, 1991. A preproposal conference will be held within 30 days after the release of the final PON and the time, date, and place will be announced in the final PON.

The final PON will establish a four-month deadline for the submission of proposals. The evaluation of proposals and selection of projects for negotiations will occur within eight months after issuance of the final PON.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert D. Watkins, Tel. (202) 586–1026.

Issued in Washington, DC November 6, 1990.

Michael R. McElwrath,

Principal Deputy Assistant Secretary, Fossil Energy.

[FR Doc. 90–28721 Filed 11–9–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 90–80–NG]

Dartmouth Power Associates Limited Partnership; Application To Import Natural Gas From Canada

AGENCY: Department of Energy Office of Fossil Energy.

ACTION: Notice of application to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on September 17, 1990, of an application filed by Dartmouth Power Associates Limited Partnership (DPA) to import Canadian natural gas. DPA requested authorization to import up to 16,000 Mcf of natural gas per day and up to a total of 116.8 Bcf over a 20-year term commencing approximately July 1, 1992. The natural gas would be imported at the proposed interconnection between TransCanada Pipelines Limited (TransCanada) and Iroquois Gas Transmission System (Iroquois) near Iroquois, Ontario.

The imported gas is to be used as fuel in a new 67.6 MW electric generating plant to be constructed and operated by DPA in the town of Dartmouth, Massachusetts (the Project).

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., December 13, 1990.

ADDRESS: Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Steven Mintz, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–070, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9506

Michael Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–32, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: DPA is a limited partnership under the laws of the State of Massachusetts, whose general partner is EMI/Dartmouth, Inc. EMI/Dartmouth, Inc. is owned by James S. Gordon, President.

DPA intends to construct, own and operate a new combined-cycle, independent power facility in Dartmouth, Massachusetts. Construction is expected to commence on November 1, 1990. The Project is scheduled to have a generating capacity of approximately 67.6 megawatts (net) of electricity. DPA has contracted with Commonwealth Electric Company (CEC) for the sale to CEC of the power generated by the Project.

In order to fuel the proposed congeneration facility, DPA requests authority to import from Canada a volume of up to 16,000 Mcf of natural gas per day, up to 5,840,000 Mcf per year and a total of up to 116.8 Bcf over a 20-year term that it has arranged to purchase from four Canadian producers. The natural gas would be imported in accordance with the terms and conditions of four separate gas purchase agreements (collectively the Agreements) entered into between DPA, and Canadian Natural Resources Limited (CNRL), Columbia Gas Development of Canada, LTD (Columbia), Excel Energy Inc. (Excel), and Remington Energy Ltd. (Remington), (collectively the Suppliers). DPA has contracted to purchase up to 6,000 Mcf per day from Remington. Deliveries of gas under these gas purchase agreements are to commence on the initial firm delivery date: the later of November 1, 1992 or the date that all necessary facilities of the Canadian and U.S. transporters are in place and operational, and are to continue for twenty years from the initial firm delivery date.

The four gas purchase agreements contain no take-or-pay provisions. Each gas purchase agreement provides that if DPA fails to take the "triggering quantity" (generally defined under the Agreements as the quantity of gas equal to 70% of the actual average daily contract quantities) during any contract year after the first contract year, then the supplier under that Agreement may upon notice reduce DPA's daily and total contract quantities by the difference between the triggering quantity and the average deliveries actually taken. In addition, under the Columbia Agreement, Columbia may elect unilaterally to reduce the daily contract quantity once every five-years coincident with the date for price renegotiation.

The base price under all of the gas purchase agreements is $1.453 per MMBtu (U.S.), to be adjusted monthly based on the gas prices in the Alberta, United States and Northeast markets. The actual adjusted per MMBtu commodity price shall be based on a percentage of the base price. Such percentage is computed by dividing the Adjusted Fuel Cost (AFC) by a base index of 2.006. The base index was determined from the average price of the fuel cost adjuster for 1989. The AFC is the sum of:

1. Tennessee's CD–6 Commodity Rate and Gas Rate as specified in its FERC tariff, weighted at 25 percent; plus

2. Algonquin's F–1 Commodity Rate as specified in its FERC tariff, weighted at 25 percent; plus

3. The Alberta Average Market Price, multiplied by the Bank of Canada average exchange rate, multiplied by 1.054615, weighted at 50 percent.

DPA has entered into agreements for firm transportation of the gas with NOVA Corporation of Alberta (NOVA), TransCanada, Iroquois, Tennessee Gas Pipeline Company (Tennessee) and Algonquin Gas Transmission Company (Algonquin). The point of delivery under the Excel, Remington and Columbia Agreements are the points of inlet on the NOVA system. The point of delivery under the CNRL Agreement is the point of inlet on the TransCanada system.

Except for gas subject to the CNRL Agreement, the imported gas will be transported on NOVA system to the Alberta border. From the Alberta border, gas subject to each of the Agreements will be transported on the TransCanada system to Iroquois, Ontario at the Canadian and U.S. international border. From that point, Iroquois will transport the gas to Wright, New York to a point of interconnection with Tennessee. From the Tennessee interconnection, the gas will be transported to an existing interconnection with Algonquin at Mendon, Massachusetts. Algonquin will deliver the gas to the Dartmouth facility.

Tennessee, Iroquois and Algonquin plan to construct or upgrade, as necessary, facilities to provide transportation service to Dartmouth, applications for which are or will be pending at the Federal Energy Regulatory Commission (FERC) in the "open season" proceeding, Docket Nos. CP87–451 *et al.* Once FERC approves these transportation proposals and the new facilities become operational, Dartmouth will transport gas on the Iroquois, Tennessee and Algonquin systems.

In support of its application, DPA states that the natural gas that it seeks to import represents the best overall supply arrangement that it could secure on a long-term, firm supply basis. DPA further claims that after an extensive search for domestic supply, DPA could not secure an available domestic source of supply at a price and on terms that would permit economically feasible operation of the Project. DPA alleges that the gas purchase agreements afford DPA direct access to major natural gas sources with demonstrated reliability. Each of the suppliers are required under their respective Agreements with DPA to dedicate sufficient reserves to meet the daily and total contract quantities.

DPA maintains that the proposed imports are not inconsistent with the public interest as the terms and conditions of the Agreements are flexible with respect to both volume and price, insuring the long-term competitiveness of the proposed import with alternate fuels in New England, including gas from domestic suppliers.

Applicant filed a Certification of Compliance with the coal capability requirement for proposed new electric powerplants on February 28, 1990, pursuant to the Powerplant and Industrial Fuel Use Act of 1978 (FUA) (10 USC 3601 *et seq.*, as amended; 53 FR 35544, September 14, 1988).

The decision on Applicant's application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters that may be considered in making a public interest determination include need for gas, security of the long-term supply, and any relevant issues that may be unique to cogeneration facilities. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The

applicant asserts that this import arrangement is in the public interest because it is competitive and its gas source will be secure. Parties opposing the import arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the requested import is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing or a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a conditional or final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Applicant's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 2, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-26722 Filed 11-9-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3859-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Public Water System Information (EPA ICR #270.25; OMB #2070-0090). This ICR requests renewal of the existing clearance.

Abstract: Public water systems monitor drinking water for several organic, inorganic and biological contaminants at frequencies specified in general and contaminant specific rules, and they also maintain records on the analytical results of monitoring actions. Public water systems use the data to determine system specific needs and modify monitoring frequencies and schedules.

Primacy agents (designated States, Indian tribes or EPA regional offices): (1) Maintain an inventory of public water systems, (2) record the results of analyses of drinking water standards, (3) track plans for systems trying to achieve compliance and (4) submit annual and quarterly reports to EPA including analytical results for each public water system, by contaminant type for systems in violation. This reporting is a condition for establishing primacy and maintaining eligibility for State grants. Primacy agents use the data to evaluate system performance, to identify system needs and problem areas, and to identify enforcement targets and systems requiring remedial action.

The EPA, as steward of the safe drinking water program, uses the data to guarantee safe drinking water to the population served, to estimate the costs of new regulations and to conduct economic and policy analyses.

Burden Statement: The public reporting burden for this collection of information is estimated to average less than half an hour per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Public drinking water systems and primacy agents.

Estimated Number of Respondents: 200,264.

Estimated Total Annual Burden on Respondents: 6,112,594 hours.

Frequency of Collection: As required by statute, varies from daily to every 4 years.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20530.

Dated: November 5, 1990.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 90-26699 Filed 11-9-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Community Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 3, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Community Bancorp, Inc.*, Rhinebeck, New York; to acquire Interim Federal Savings Bank, Rhinebeck, New York, and thereby engage in the acquisition and assumption of certain assets and deposit liabilities of the Mid-Hudson valley branches of Beacon Federal Savings Bank, Baldwin, New York, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26666 Filed 11-9-90; 8:45 am]

BILLING CODE 6210-01-M

First Bancorporation of Ohio; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 3, 1990.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Bancorporation of Ohio*, Akron, Ohio; to engage *de novo* through its subsidiary, First Bancorporation of Ohio Services Division, Brecksville, Ohio, and thereby engage in operating a disaster recovery hotsite for processing and transmitting financial, banking, and economic data and check processing pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26667 Filed 11-9-90; 8:45 am]

BILLING CODE 6210-01-M

James Erskine Jordan, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 27, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *James Erskine Jordan*, Aliceville, Alabama; to retain 0.49 percent of the voting shares of First National Bancshares of West Alabama, Inc., Aliceville, Alabama, for a total of 12.50 percent, as the result of a stock redemption, and thereby indirectly acquire First National Bank of Pickens County, Aliceville, Alabama.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Galen R. Gilbert*, individually and trustee of the Phillip L. Gilbert Trust #1 and the Martha Gilbert Trust #1, Lamar, Colorado; to acquire an additional 15.47 percent of the voting shares of Valley State Investments, Inc., Lamar, Colorado, for a total of 97.68 percent, and thereby indirectly acquire Valley State Bank, Lamar, Colorado.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *George R. Tesch*, Robert L. Thurston, Brett N. Aamot, and Tennessen Properties; to acquire 100 percent of the voting shares of Olivia Bancorporation, Inc., Olivia, Minnesota, and thereby indirectly acquire American State Bank of Olivia, Olivia, Minnesota.

Board of Governors of the Federal Reserve System, November 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26668 Filed 11-9-90; 8:45 am]

BILLING CODE 6210-01-M

Main Street Banks Incorporated, et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 29, 1990.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Main Street Banks Incorporated*, Covington, Georgia; to engage *de novo* through its subsidiary, Main Street Savings Bank, F.S.B., Conyers, Georgia, in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in Conyers, Georgia.

B. **Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. *Banco Nacional de Mexico, S.N.C.*, Mexico City, Mexico; to engage *de novo* in providing data processing services to Banco Nacional de Mexico, S.N.C. and American Express Travel Related Services Company, Inc.; license, install and maintain software in connection with the sale by licensed agents in the United States of Mexican peso-denominated electronic payment orders for the delivery of Mexican pesos at a participating branch of Banco Nacional de Mexico in Mexico pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 5, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26669 Filed 11-9-90; 8:45 am]

BILLING CODE 6210-01-M

SNB Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 3, 1990.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

1. *SNB Financial Corporation*, Summerville, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Summerville National Bank, Summerville, South Carolina.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *CNB Bancorp, Inc. Employees Stock Ownership Plan*, Independence, Kansas; to become a bank holding company by acquiring 33.95 percent of the voting shares of CNB Bancorp, Inc., Independence, Kansas, and thereby indirectly acquire The Citizens National Bank in Independence, Independence, Kansas.

Board of Governors of the Federal Reserve System, November 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26670 Filed 11-9-90; 8:45 am]

BILLING CODE 6210-01-M

Sun Financial Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications

are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than November 29, 1990.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Sun Financial Corporation*, Earth City, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of E Corporation, Earth City, Missouri, and thereby indirectly acquire Farmers State Bank of Ellington, Ellington, Missouri.

Board of Governors of the Federal Reserve System, November 5, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26672 Filed 11-9-90; 8:45 am]

BILLING CODE 6210-01-M

Siggi B. Wizzig, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 23, 1990

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. *Siggi B. Wizzig*, Jersey City, New Jersey; to acquire an additional 0.9 percent of the voting shares of The Trustcompany Bancorporation, Jersey City, New Jersey, for a total of 15.3 percent, and thereby indirectly acquire Trust Company of New Jersey, Jersey City, New Jersey.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Charles S. Aycock, Jr.*, Rayville, Louisiana; to acquire an additional 9.8 percent of the voting shares of First Republic Bancshares, Inc., Rayville, Louisiana, for a total of 18.92 percent, and thereby indirectly acquire First Republic Bank, Rayville, Louisiana.

Board of Governors of the Federal Reserve System, November 5, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26671 Filed 11-9-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health; Request for Comments and Secondary Data on Occupational Exposure to Coal Dust

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice of request for comments and secondary data.

SUMMARY: NIOSH is requesting comments and secondary data from all interested parties concerning the health and safety aspects of occupational exposure to coal dust that may occur during the mining or use of coal. Interested parties may submit published and unpublished data concerning occupational exposure to coal dust, including but not limited to: (1) Exposure data on the respirable and thoracic particulate mass fractions of coal dust (as defined by the American Conference of Governmental Industrial Hygienists) and on other components of coal dust, including quartz, (2) results of human health or epidemiologic studies, including exposure/effect relationships, (3) results of animal and other experimental studies, including cytotoxicity, biochemical, and serologic studies pertaining to the mechanisms of disease associated with exposure to coal dust, (4) descriptions of current work practices, protective equipment, and control technology, and (5) technical difficulties in the monitoring or control of coal dust exposures. NIOSH will use this information to evaluate existing health problems associated with coal dust exposure and to develop recommendations for minimizing and controlling these problems.

DATES: Comments concerning this notice should be submitted by January 14, 1991.

ADDRESSES: Please submit four (4) copies of any information, comments, suggestions, or recommendations to Dr. Richard Niemeier, Director, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C-14, Cincinnati, Ohio 45226.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen Kuempel, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C-32, Cincinnati, Ohio 45226, (513) 533-8363 or FTS 684-8363.

SUPPLEMENTARY INFORMATION: Pursuant to sections 20 and 22 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669 and 671) and sections 103 and 501 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 813 and 951), NIOSH is authorized to gather information in order to develop recommendations for improving occupational safety and health. NIOSH has been concerned with the potential health effects associated with occupational exposure to coal dust, including the following: (1) Simple coal workers' pneumoconiosis (CWP), (2) complicated CWP, or progressive massive fibrosis (PMF), (3) silicosis or mixed dust pneumoconiosis due to combined coal dust and silica exposures, (4) chronic bronchitis, (5) emphysema, (6) other chronic or acute obstructive airways diseases, (7) lung cancer, and (8) gastric cancer.

NIOSH would like to receive published and unpublished data on the following topics related to coal dust exposure:

1. Information on exposure to coal dust, including data on coal rank, mineral content (e.g., quartz), particle size (including respirable and thoracic mass fractions), and data collected for specific job categories in underground or surface mining, for specific mining operations (e.g., longwall, continuous, auger, highwall), or for other job categories or operations (e.g., during coal gasification or liquefaction, coal preparation or mineral processing, or during use of coal at power plants or steel mills).

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2. Epidemiologic data on the prevalence or incidence of disease among workers exposed to coal dust or to coal dust mixed with other agents.

3. Results of *in vivo* toxicologic studies, including inhalation studies of concomitant combined exposures that may occur in underground or surface coal mines or in other occupational settings (e.g., coal dust with silica or with diesel exhaust or other combustion products), and *in vitro* toxicologic studies, including cytotoxicity of coal dust due to its noncoal components, surface characteristics, or particle size distribution.

4. Results of biochemical, serologic, and/or other clinical or biological studies of the etiologic factors involved in the development of diseases associated with exposure to coal dust or to coal dust mixed with other agents.

5. Data on the role of personal factors (e.g., use of tobacco products, age, gender, height, and weight) in the development of diseases associated with exposure to coal dust or to coal dust mixed with other agents.

6. Information on dust-producing operations or equipment in underground or surface coal mines or in other occupational settings and on the effectiveness of engineering controls (particularly new or innovative control technologies), work practices, personal protective equipment, respirators (including workplace protection factor data), and training programs that have been used to limit workers' exposures to coal dust.

All information received in response to this notice (except that designated as trade secrets and protected by Section 15 of the Occupational Safety and Health Act, or that exempt from disclosure under the Freedom of Information Act) will be available for public examination and copying at the above address.

Dated: November 6, 1990.

J. Donald Millar,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control.

[FR Doc. 90-26716 Filed 11-9-90; 8:45 am]

BILLING CODE 4160-19-M

Health Care Financing Administration

Privacy Act of 1974; Systems of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of proposed new routine use for an existing system of records (Health Insurance Master Record, HHS/HCFA/BPO No. 09-70-0502).

SUMMARY: Section 1862(g) of the Social Security Act authorizes the Secretary to enter into contracts with utilization and quality control peer review organizations pursuant to part B of title XI of the Social Security Act (Act) to promote the effective, efficient and economical delivery of health care services and to promote the quality of Medicare-covered health care services. These organizations collectively are referred to as Peer Review Organizations (PROs). PROs review the health care services provided by physicians, other health care practitioners, and institutional and noninstitutional providers of health care services for which payment may be made under title XVIII of Act (the Medicare Program). The purpose of the PROs' review is to determine whether such services are or were reasonable and medically necessary; whether the quality of such services meets professionally recognized standards of health care; and, in cases where such services and items are proposed to be provided in a hospital or other health care facility on an inpatient basis, whether such services and items could, consistent with the provision of appropriate medical care, be effectively provided more economically on an outpatient basis or in an inpatient health care facility of a different type.

The PRO's functions also include the review of services provided by health maintenance organizations (HMOs) and competitive medical plan (CMPs) pursuant to a risk sharing contract under Section 1876 of the Act. Review of such HMO and CMP services may also be performed by organizations known as Quality Review Organizations (QROs) in those states where a contract is not made with the PRO to perform such review. As a general rule, each state is designated as a geographic review are for PRO and QRO purposes. PROs and QROs review HMO and CMP services for the purposes of determining whether the quality of such services meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings and whether individuals enrolled with an eligible organization have adequate access to health care services provided by or through such organizations.

In order to assist the utilization and quality control peer review organizations in carrying out these functions, HCFA is proposing to add a new routine use to the Health Insurance Master Record, No. 09-70-0502, (last published at 55 FR 37554; September 12, 1990) that will permit us to provide Medicare data to PROs and QROs. The proposed disclosure was inadvertently not included in a previous notice that disclosed a variety of other information to the PROs. This routine use is currently included in four of our other systems of records, the Carrier Medicare Claims Records, No. 09-70-0501, (last published at 55 FR 37557; September 12, 1990), the Medicare Physician Identification and Eligibility System, No. 09-70-0525 (last published at 54 FR 28120; July 5, 1989), and the Common Working File, No. 09-70-0526 (last published at 53 FR 52806; Decemver 29, 1988).

EFFECTIVE DATES: The proposed new routine use will become effective December 13, 1990, unless HCFA receives comments which warrrant modification of the notice.

ADDRESSES: The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, Room 108, Security Office Park Building, 7008 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: William A. Grant, Division of Entitlement Requirements, Office of Program Operations Procedures, Bureau of Program Operations, Health Care Financing Administration, Room G-E-7, Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

SUPPLEMENTARY INFORMATION: The Health Insurance Master Record contains information on enrollment, entitlement, utilization query and reply activity, health insurance bill and payment record processing, workers' compensation entitlement information, and entitlement information from the Veterans Administration (VA).

HCFA is currently evaluating a variety of methods for the distribution of mortality data, demographic data, enrollment data, and health insurance billing data to PROs. The Health Insurance Master Record data are useful for checking on risk HMO/CMP no-pay bill volumes, and selection of intervening care records for PRO review.

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose which the information was collected. We disclose information for "routine uses" when it is necessary to carry out our programs. We may also routinely disclose information to other Federal, State or local or private agencies or individuals for purposes that are compatible with the purposes of our programs when the benefit of the proposed use outweighs the effect, or risk of any effect, on the privacy of individuals.

In complying with the technical requirements of the Privacy Act, we are proposing to add the routine use below to the above named system of records:

(18) Peer Review Organizations and Quality Review Organizations in connection with their review of claims, or in connection with studies or other review activities, conducted pursuant to part B of title XI of the Social Security Act.

The new routine use is consistent with the Privacy Act, 5 U.S.C. 552a(a)(7) and is compatible with the purpose for which the information is collected. Because the addition of this new routine use will not change the purpose for which the information is to be used or otherwise significantly alter the system, we are not preparing a report of an altered system of records under 5 U.S.C. 552a(o). For the convenience of the reader we are publishing the entire system below.

In addition, we are taking this opportunity to make the following minor editorial changes to the systems of records noted below:

1. Carrier Medicare Claims Records, No. 09-70-0501 (last published at 55 FR 37550; September 12, 1990), in routine use 8, on page 37551, column 1, line 24, change "Professional Review Organizations" to "Peer Review Organizations and Quality Review Organizations".

2. Intermediary Medicare Claims Record, No. 09-70-0503 (last published at 55 FR 37557; September 12, 1990), in routine use 8, on page 37558, column 1, line 50, change "Professional Review Organizations" to "Peer Review Organizations and Quality Review Organizations".

3. Medicare Physician Identification and Eligibility System, No. 09-70-0525 (last published at 54 FR 28120; July 5, 1989), in routine use 4, on page 28120, column 2, line 12, change "Professional Review Organizations" to "Peer Review Organizations and Quality Review Organizations".

4. Common Working File, No. 09-70-0526 (last published at 53 FR 52806; December 29, 1988), in routine use 8, on page 52807, column 2, line 30, change "Peer Review Organizations" to "Peer Review Organizations and Quality Review Organizations".

Dated: November 3, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

09-70-0502

SYSTEM NAME:

Health Insurance Master Record. HHS/HCFA/BPO

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration Bureau of Data Management and Strategy, 6325 Security Blvd., Baltimore, Md. 21207. Federal Records Centers

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals age 65 or over who have been, or currently are, entitled to health insurance (Medicare) benefits under title XVIII of the Social Security Act; individuals under age 65 who have been, or currently are, entitled to such benefits on the basis of having been entitled for not less than 24 months to disability benefits under title II of the Act or under the Railroad Retirement Act and individuals who have been, or currently are, entitled to such benefits because they have end-stage renal disease; or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information on enrollment, entitlement, utilization, query and reply activity, health insurance bill and payment record processing workers' compensation entitlement information, and entitlement information from the Veterans' Administration (VA), Health Insurance Master Record maintenance, and Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claim payment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1814, 1833 and 1862(b) of title XVIII of the Social Security Act (42 U.S.C. 1396f, 1395l and 1395y(b)).

PURPOSE(S):

To maintain information on Medicare beneficiary eligibility and costs in order to reply to inquiries from contractors and intermediaries and to maintain utilization data for health insurance bill and payment record processing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Disclosure may be made to: (1) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Act relating to railroad employment.

(2) State Welfare Department pursuant to agreements with the Department of Health and Human Services for determining Medicaid and Medicare eligibility for quality control studies, for determining eligibility of recipients of assistance under title IV, XVIII, and XIX of the Social Security Act, and for the complete administration of the Medicaid program.

(3) State audit agencies for auditing State Medicaid eligibility considerations.

(4) Providers and suppliers of services directly or dealing through fiscal intermediaries or carriers for administration of title XVIII.

(5) A congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(6) An individual or organization for a research, evaluation or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health if HCFA:

a. Determine that the use of disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the purpose of which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form.

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished:

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual.

(b) For use in another research project, under these same conditions, and with written authorization of HCFA.

(c) For disclosure to a property identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law:

d. Secures a written statement attesting to the information recipient(s) understanding of and willingness to abide by these provisions.

(7) The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(8) To a contractor when the Department contracts with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

(9) State welfare agencies that require access to the two files which are extracted from the Health Insurance Master Record. These files are the Carrier Alphabetical State File (CASF) and Beneficiary State File (BEST). Most State agencies require access to the CASF and BEST files for improved administration of the Medicaid program. Routine uses of the CASF and BEST files for State agencies are: (a) Obtaining a beneficiary's correct health insurance claim number and (b) screening of prepayment and post-payment Medicaid claims.

(10) Third-party contacts (without the consent of the individual to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capability or manage his or her affairs or to his or her eligibilitya for an entitlement to benefits under the Medicare program when:

(a) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: Individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual); or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's eligibility to benefits under the Medicare program; the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement of system activities.

(11) Release information, without the beneficiary's authorization, to insurance companies, self-insurers, Health Maintenance Organizations, multiple employer trusts and other groups providing protection against medical expenses of their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive this information the entity must agree to the following conditions:

a. To certify that the individual about whom the information is being provided is one of its insureds;

b. To utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. To safeguard the confidentiality of the data and to prevent unauthorized access to it.

(12) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating ADP software. Data would also be disclosed to contractors, incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

(13) To an agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individuals that additional exposure of the record might bring, and;

(3) There is reasonable probability that the objective for the use would be accomplished; and

d. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except;

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subject to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law; and

(4) Secure a written statement attesting to the recipient's understanding of an willingness to abide by these provisions. The recipient must agree to the following:

(1) Not to use the data for purposes that are not related to the evaluation of cost, quality, and effectiveness of care;

(2) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level when no data cells have ten or fewer beneficiaries); and

(3) To submit a copy of any aggregation of the data intended for publication to HCFA for approval prior to publication.

(14) To a group health plan (i.e., health maintenance organization (HMO), or a competitive medical plan (CMP)) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP), directly or through a contractor on a case-by-case basis for the purpose of determining the eligibility of a Medicare beneficiary to enroll in the group health plan. Group health plans will have access only to one record at a time and only through a CRT terminal. A password must be entered to gain access to the file. Both the beneficiary name and the Health Insurance Claim number must be entered to access individual records within the file. The information disclosed will be the minimum necessary to determine eligibility for enrollment.

(15) To a contractor when HCFA contracts with a private firm for the purpose of refining or otherwise processing data and disclosing such data to group health plans consistent with routine use No. 14. The contractor will be required to safeguard the confidentiality of the data and prevent unauthorized use or disclosure.

(16) To insurers, underwriters, third party administrators, self-insurers, group health plans, employers, health maintenance organizations, health and welfare benefit funds, Federal agencies, a State or local government or political subdivision of either (when the organization has assumed the role of an insurer, underwriter, or third party administrator, or in the case of a State that assumes the liabilities of an insolvent insurer, through a State created insolvent insurer pool or fund), multiple-employer trusts, no-fault, medical, automobile insurers, workers' compensation carriers or plans, liability insurers, and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 USC 1395y(b), or any entity having knowledge of the occurrence of any event affecting (A) an individual's right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment (for example, a State Medicaid Agency, State Workers' Compensation Board, or Department of Motor Vehicles) for the purpose of coordination of benefits with the Medicare program and implementation of the Medicare Secondary Payer provisions at 42 USC 1395y(b). The information HCFA may disclose will be:

- Beneficiary Name
- Beneficiary Address
- Beneficiary Health Insurance Claim Number
- Beneficiary Social Security Number
- Beneficiary Sex
- Beneficiary Date of Birth
- Amount of Medicare Conditional Payment
- Provider name and number
- Physician name and number
- Supplier name and number
- Dates of service
- Nature of service
- Diagnosis

To administer the Medicare Secondary payer provisions at 42 USC 1396y(b) (2), (3), (4) more effectively, HCFA would receive (to the extent that it is available) and may disclose the following types of information from insurers, underwriters, third party administrators, self-insureds, etc.:

- Subscriber Name and Address
- Subscriber Date of Birth
- Subscriber Social Security Number
- Dependent Name
- Dependent Date of Birth
- Dependent Social Security Number
- Dependent Relationship to Subscriber
- Insurer/Underwriter/TPA Name and Address
- Insurer/Underwriter/TPA Group Number
- Insurer/Underwriter/TPA Group Name
- Prescription Drug Coverage
- Policy Number
- Effective Date of Coverage
- Employer Name, Employer Identification Number (EIN) and Address
- Employment Status
- Amounts of Payment

To administer the Medicare Secondary payer provision at 42 U.S.C. 1395y(b)(1) more effectively for entities such as Workers Compensation carriers or boards, liability insurers, no-fault and automobile medical policies or plans, HCFA would receive (to the extent that it is available) and may disclose the following information:

- Beneficiary's Name and Address
- Beneficiary's Date of Birth
- Beneficiary's Social Security Number*
- Name of Insured*
- Insurer Name and Address
- Type of coverage; automobile medical, no-fault, liability payment, or workers' compensation settlement
- Insured's Policy Number
- Effective Date of Coverage
- Date of accident, injury or illness
- Amount of payment under liability, nofault, or automobile medical policies, plans, and workers' compensation settlements
- Employer Name and Address (Workers' Compensation only)
- Name of insured could be the driver of the car, a business, the beneficiary (i.e., the name of the individual or entity which carries the insurance policy or plan).

In order to receive this information the entity must agree to the following conditions:

a. To utilize the information solely for the purpose of coordination of benefits with the Medicare program and other third party payers in accordance with 42 U.S.C. 1395y(b);

b. To safeguard the confidentiality of the data and to prevent unauthorized access to it;

c. To prohibit the use of beneficiary-specific data for purposes other than for the coordination of benefits among third party payers and the Medicare program. This agreement would allow the entities to use the information to determine cases where they or other third party payers have primary responsibility for payment or cases where Medicare has primary responsibility for payment. Examples of prohibited uses would include but are not limited to: Creation of a mailing list, sale or transfer of data.

—To administer the MSP provisions more effectively, HCFA may receive or disclose the following types of information from or to entities including insurers, underwriters, third party administrators (TPAs), and self-insured plans, concerning potentially affected individuals:

- Subscriber Health Insurance Claim Number
- Dependent Name
- Funding arrangements of employer group health plans, for example, contributory or non-contributory plan, self-insured, re-insured, HMO, TPA insurance
- Claims payment information, for example, the amount paid, the date of payment, the name of the insurer or payer
- Dates of employment including termination date, if appropriate
- Number of full and/or part-time employees in the current and preceding calendar years
- Employment status of subscriber, for example full or part time, self employed

(17) To the Internal Revenue Service for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plans or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y(b).

(18) Peer Review Organizations and Quality Review Organizations in connection with their review of claims, or in connection with studies or other review activities, conducted pursuant to part B of title XI of the Social Security Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained on paper, listings, microfilm, magnetic tape disc and punchcards.

RETRIEVABILITY:

System is sequence by health insurance claim number, and is used to carry out the tasks of enrollment query/reply activity, and health insurance bill and payment record processings. Copies of selected parts of the records will be used by the Office of Statistics and Data Management.

SAFEGUARDS:

Unauthorized personnel are denied access to the records areas. Disclosure is limited to routine use. For computerized records electronically transmitted between Central Office and field office locations (including Medicare contractors) systems securities are established in accordance with DHHS ADP Systems Manual. Part 6, "ADP Systems Security." Safeguards include a lock/unlock passwords system, exclusive use of leased telephone lines, a terminal oriented transaction matrix, and audit trail.

RETENTION AND DISPOSAL:

Records are generally added to the file several months prior to entitlement. After the death of a beneficiary, his or her records may be placed in an inactive file following a period of no billing or query activity. The current 5 years of Part B and current 5 spells of Part A utilization data are maintained. All noncurrent data is microfilmed prior to elimination from the system.

SYSTEM MANAGER(S) AND ADDRESS:

Health Care Financing Administration, Bureau of Program Operations, Director, Division of Entitlement Requirements, 6325 Security Boulevard, Baltimore, MD 21207.

NOTIFICATION PROCEDURE:

Inquiries and requests for system records should be addressed to the most conventional social security office, the appropriate carrier or intermediary, the HCFA Regional Office, or the system manager named above. The individual should furnish his or her health insurance claim number and name as shown on Medicare records.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations (45 CFR 5b.5(a)(2).))

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedure above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

The data contained in these records are furnished by the individual, or in the case of some Medicare secondary payer situations, through third party contacts. There are cases, however, in which the identifying information is provided to the physician by the individual; the physician then adds the medical information and submits the bill to the carrier for payment. Updating information is also obtained from the Master Beneficiary Record.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 90-26883 Filed 11-9-90; 8:45 am]
BILLING CODE 4120-03-M

Health Resources and Services Administration

National Vaccine Injury Compensation Program; Announcement of Extension of Deadline for Filing Certain Petitions for Compensation

The Health Resources and Services Administration (HRSA), Public Health Service (PHS), Department of Health and Human Services (HHS), is announcing an extension for filing petitions for compensation under the National Vaccine Injury Compensation Program (the Program) for those injuries that took place before October 1, 1988. The Program, governed by subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. The new deadline for filing claims for compensation of injuries or deaths alleged to be associated with certain vaccines administered before October 1, 1988, is January 31, 1991.

Those seeking compensation for a vaccine-related injury or death are to file a petition with the United States Claims Court and to serve a copy of the petition on the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS.

For those who allege vaccine related injuries or deaths based on vaccines administered before October 1, 1988, the filing deadline under the previous version of the statute was October 1, 1990. However, Congress enacted and the President signed legislation to extend the deadline for this category of petitioners. As provided by the amendment (section 5(e)(1) of the Vaccine and Immunization Amendments of 1990, Pub. L. 101-502), petitions for this category must be filed no later than January 31, 1991.

For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place NW., Washington, DC 20005, telephone (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Acting Administrator, Vaccine Injury Compensation Program, Bureau of Health Professions, Health Resources and Services Administration, 6001 Montrose Road, Suite 702, Rockville, Maryland 20852, 1-800-338-2382 (toll free).

The propose of this notice is to call the public's attention to this new deadline. Those seeking additional information may contact the Clerk of the United States Claims Court or the Vaccine Injury Compensation Program at the addresses noted above.

Dated: November 6, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90-26807 Filed 11-7-90; 12:42 pm]
BILLING CODE 4160-15-M

National Institutes of Health

National Cancer Institute; Notice of Meeting (President's Cancer Panel)

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, November 16, 1990, at the National Cancer Institute, 9000 Rockville Pike, Building 31, Room 11A10, Bethesda, Maryland 20892.

This meeting will be open to the public on November 16 from 9 a.m. to 11:30 a.m. Attendance will be limited to space available. Agenda items will include reports by the Chairman, President's Cancer Panel; the Director, NCI; staff of the NCI.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Insitute, Building 31, Room 4A32, National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will provide a roster of the Panel members and substantive program information upon request.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

Dated: November 7, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-26832 Filed 11-9-90; 8:45 am]
BILLING CODE 4140-01-M

Revision of the Guidelines Subcommittee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Revision of the NIH Guidelines Subcommittee (a subcommittee of the Recombinant DNA Advisory Committee) on December 7, 1990. The meeting will be held at the National Institutes of Health (NIH), Building 31C, Conference room 9, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. to adjournment at approximately 5 p.m.

The meeting will be open to the public to discuss the following proposed action under the *NIH Guidelines for Research Involving Recombinant DNA Molecules* (51 FR 16958, May 7, 1986):

I. Revision of appendix K

Revision of Appendix K of the *NIH Guidelines* Regarding Establishment of Guidelines for Level of Containment Appropriate to Good Industrial Large Scale Practices (GILSP). In a letter dated June 28, 1990, the Industrial Biotechnology Association (IBA) and the Pharmaceutical Manufacturers Association (PMA) requested that the Recombinant DNA Advisory Committee revise Appendix K of the *NIH Guidelines* to reflect a formalization of suitable containment practices and facilities for the conduct of large-scale experiments involving recombinant DNA-derived industrial microorganisms. In attachments to this request, there are proposed definitions and requirements pertaining to the requested changes. During the RAC meeting on October 16, 1990, they considered the recommendations made by the Revision of the NIH Guidelines Subcommittee. Following a discussion, it was decided that further modifications of appendix K were necessary. Accordingly, the matter was referred back to the subcommittee. The Revision of the NIH Guidelines Subcommittee will report with recommendations to the Recombinant DNA Advisory Committee during their meeting on February 4, 1991.

II. Other Matters To Be Considered by the Committee

Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, telephone (301) 496-9838, fax (301) 496-9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcement the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines*. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: November 6, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-26662 Filed 11-9-90; 8:45 am]
BILLING CODE 4140-01-M

Human Gene Therapy Subcommittee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Human Gene Therapy Subcommittee (a subcommittee of the Recombinant DNA Advisory Committee) on November 30, 1990. The meeting will be held at the National Institutes of Health (NIH), Building 31, Conference room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. to adjournment at approximately 5 p.m.

The meeting will be open to the public to discuss the following proposed actions under the *NIH Guidelines for Research Involving Recombinant DNA Molecules* (51 FR 16958 May 7, 1986):

I. Addition to Appendix D of the "NIH Guidelines" Regarding Human Gene Transfer Protocols/Dr. Brenner

In a letter receive on October 5, 1990, Dr. Malcolm K. Brenner of St. Jude Children's Research Hospital of Memphis, Tennessee, indicated his intention to submit two human gene transfer protocols to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The titles of these protocols are:

1. "A Phase II Trial of High-Dose Carboplatin and Etoposide with Autologous Marrow Support for Treatment of Relapse/Refractory Neuroblastoma Without Apparent Bone Marrow Involvement: Use of Marker Genes to Investigate the Biology of Marrow Reconstitution and the Mechanism of Relapse;" and

2. "Autologous Bone Marrow Transplant for Children with Acute Myelogenous Leukemia (AML) in First Complete Remission: Use of Marker Genes to Investigate the Biology of Marrow Reconstitution and the Mechanism of Relapse."

II. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Transfer Protocol/Dr. Lotze

In a letter dated September 13, 1990, Dr. Michael T. Lotze of the University of Pittsburgh School of Medicine indicated

his intention to submit a human gene transfer protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is:

"The Administration of Interleukin-2, Interleukin-4, and Tumor Infiltrating Lymphocytes to Patients with Melanoma."

III. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Transfer Protocol/Dr. Cornetta

In a letter dated July 25, 1990, Dr. Ken Cornetta of the University of Wisconsin/Madison indicated his intention to submit a human gene transfer protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is:

BMT 9049—Retroviral-Mediated Gene Transfer of Bone Marrow Cells During Autologous Bone Marrow Transplantation for Acute Leukemia: Understanding Disease Recurrence.

IV. Other Matters To Be Considered by the Committee

Protocols which are approved by the Human Gene Therapy Subcommittee will be forwarded to the Recombinant DNA Advisory Committee for consideration during their February 4, 1991, meeting.

Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, telephone (301) 496–9838, fax (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines*. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: November 6, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–26663 Filed 11–9–90; 8:45 am]

BILLING CODE 4140–01–M

Planning Subcommittee of the Recombinant DNA Advisory Commiee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Planning Subcommittee (a subcommittee of the Recombinant DNA Advisory Committee) on December 6, 1990. The meeting will be held at the National Institutes of Health (NIH), Building 31C, Conference room 9, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. to adjournment at approximately 5 p.m.

The meeting will be open to the public to discuss the following proposed action under the *NIH Guidelines for Research Involving DNA Molecules* (51 FR 16958, May 7, 1986):

I. Results of Regional Hearings

The subcommittee will consider in detail the results of the regional hearings. Based on these findings, a series of recommendations will be made concerning:

1. Changes in the defintion of recombinant DNA;

2. Review of experiments that involve deliberate transfer of drug resistance to microorganisms, and cloning of genes for biosysnthesis of vertebrate toxins;

3. Consideration of relinquishing review of experiments involving environmental release of genetically modified organisms;

4. Educational role of the Recombinant DNA Advisory Committee and its Human Gene Therapy Subcommittee with regard to human gene therapy protocols; and

5. Other changes in the *NIH Guidelines*

The Planning Subcommittee will report with recommendations to the Recombinant DNA Advisory Committee during their meeting on February 4, 1991.

II. Other Matters To Be Considered by the Committee

Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, telephone (301) 496–9838, fax (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. A summary of the meeting will be available at a later date.

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Dated: November 6, 1990.

Betty J. Beveridge,

Committee Mangement Officer, NIH.

[FR Doc. 90–26664 Filed 11–9–90; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–01–4212–13; N–48869]

Issuance of Land Exchange Conveyance Document and Order Providing for Opening of Lands, Nevada

October 31, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Issuance of Land Exchange Conveyance Document and Order Providing for Opening of Lands, Nevada.

SUMMARY: This notice identifies Federal and non-Federal lands involved in a recently completed exchange transaction. The purpose of the exchange was to acquire non-Federal lands within the Toiyabe National Forest having high public values. The mineral estates in the Federal and non-Federal lands were also conveyed.

EFFECTIVE DATE: December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Forest Supervisor, Toiyabe National Forest, 1200 Franklin Way, Sparks, NV 89431, 702–355–5329.

SUPPLEMENTARY INFORMATION: On October 24, 1990, the United States issued Patent No. 27–91–0003 to D. Donald Lonie, Jr., as Trustee of the D. Donald Lonie, Jr. Family Trust, for the following described lands pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E.,
Sec. 8, lot 39;
Sec. 17, NW¼NE¼, S½N½NE¼SW¼ NE¼, S½NE¼SW¼NE¼, W½SW¼ NE¼, SE¼SW¼NE¼, W½E½NE¼ NW¼SE¼, E½W½NE¼NW¼SE¼, E½ NE¼NW¼NW¼SE¼, E½NE¼SW¼ NW¼SE¼, N½SE¼NW¼SE¼.

The area described contains 95 acres in Clark County, Nevada. In exchange for these lands, the United States acquired the following described lands from the above-named party:

Mount Diablo Meridian, Nevada

T. 19 N., R. 19 E.,
Sec. 31, all;
Sec. 32, N½NW¼, SW¼NW¼, NW¼ SW¼.

The area described contains 798.03 acres in Washoe County, Nevada. Title to the non-Federal lands was accepted on October 18, 1990.

The values of the Federal lands and the non-Federal lands in this exchange were appraised at $2,090,000.00 and $2,000,000.00, respectively. In order to equalize values, the proponent paid the United States $90,000.00.

In accordance with 43 CFR 2200.3(c), the lands acquired by the United States are hereby transferred to the Secretary of Agriculture as part of the Toiyabe National Forest and are subject to all the laws, rules, and regulations applicable thereto.

At 10 a.m., on December 13, 1990, said lands shall be open to such forms of disposition as may be made of national forest lands, including location and entry under the United States mining laws. Appropriation of said lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law.

The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 10 a.m., on December 13, 1990, the land acquired by the United States in this exchange will also be opened to applications under the mineral leasing laws.

Robert G. Steele,

Acting State Director, Nevada.

[FR Doc. 90–26542 Filed 11–9–90; 8:45 am]

BILLING CODE 4310–HC–M

[WAOR 45733; OR–130–01–4212–13; GP1–006]

Amendment of Realty Action: Exchange of Public Lands in Ferry, Lincoln, Pend Oreille and Stevens Counties, Washington

AGENCY: Bureau of Land Management, Interior.

SUMMARY: This notice amends the Realty Action published in Vol. 55, page 2,155 of the **Federal Register** on January 22, 1990, to include the following lands proposed for acquisition by exchange:

Willamette Meridian

T. 21 N., R. 35 E.,
Sec. 25, N½NE¼;
T. 21 N., R. 36 E.,
Sec. 15, Portion of N½S½, S½S½;
Sec. 19, Portion of NE¼NE¼, NW¼NE¼, S½NE¼, NW¼, S½;
Sec. 20, Portion of NE¼NE¼, NW¼NE¼, S½NE¼, NW ¼, S½;
Sec. 21, Portion of N½N½, S½N½, S½;
Sec. 22, All;
Sec. 30, NE¼, N½NW¼;

Aggregating 3,032 acres more or less in Lincoln County, Washington.

Date of Issue: October 2, 1990.

Joseph K. Buesing,

District Manager.

[FR Doc. 90–26615 Filed 11–9–90; 8:45 am]

BILLING CODE 4310–33–M

Bureau of Reclamation

Western Suisun Marsh Salinity Control Project, Plan of Protection for the Suisun Marsh, Phases III and IV, Suisun Marsh, Solano County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement/environmental impact report (EIS/EIR) and notice of scoping meeting.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, and section 21100, et. seq., of the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the California State Department of Water Resources (DWR) intend to prepare a Draft EIS/EIR for the proposed Western Suisun Marsh Salinity Control Project, Plan of Protection for the Suisun Marsh, Phases III and IV, Suisun Marsh, Solano County, California.

The Western Suisun Marsh Salinity Control Project is aimed at lowering channel water salinity in the western portion of the Suisun Marsh (Marsh). Salinity standards were set by the California State Water Resources Control Board to provide optimum habitat for waterfowl food plant production and to preserve the Suisun Marsh as a brackish water tidal marsh. The project is a component of the Plan of Protection for Suisun Marsh.

The Western Suisun Marsh Salinity Control Project consists of constructing the Boynton-Cordelia Ditch, the Cordelia-Goodyear Ditch, and Goodyear Slough Culverts. As presently conceived, the Boynton-Cordelia Ditch would be an earthen ditch, approximately 3.5 miles long, for using the tide to move lower salinity water from the eastern Suisun Marsh westward, through Boynton Slough, to Cordelia Slough. The Cordelia-Goodyear Ditch would be an earthen ditch, approximately 2.8 miles long, for using the tide to move lower salinity water from upper Cordelia Slough to Goodyear Slough. The Goodyear Slough Culverts would be located in Goodyear Slough near Suisun Slough to reduce channel water salinity in Goodyear Slough.

Alternatives currently being considered include: (1) Obtaining additional water from creeks north of the Suisun Marsh, (2) constructing a water delivery ditch from Suisun Slough to Cordelia Slough via Frank Horan Slough, (3) improving the water delivery capacity of Cutoff and Volanti Sloughs, (4) installing tidal gates on Goodyear Slough at Suisun Slough, and (5) releasing additional water from State and Federal reservoirs. A no action alternative will also be considered.

The environmental document for the Western Suisun Marsh Salinity Control Project will consider the engineering feasibility and environmental, socioeconomic, and cumulative impacts of the Boynton-Cordelia Ditch, Cordelia-Goodyear Ditch, and Goodyear Slough Culverts. Measures to avoid or mitigate significant adverse impacts will be proposed.

DATES AND LOCATION: The Bureau of Reclamation and the Department of Water Resources encourage comments and suggestions concerning the proposed and alternative actions and possible environmental impacts to be considered in the environmental document. A public scoping meeting will be held from 7 to 10 p.m. on Thursday, December 13, 1990, in the Supervisors' Chambers, Solano County Courthouse, 580 Texas Street, Fairfield, California.

The Suisun Marsh Technical Advisory Committee (TECHCOMM) meetings will be the forum for additional public and agency input to the EIS/EIR. TECHCOMM meetings are scheduled for 9:30 a.m. on the last Thursday of each month at the Department of Water Resources, Central District Office, 3251 S Street, Sacramento, California (Large Conference Room). To receive TECHCOMM meeting announcements, agendas and minutes, contact Kamyar Guivetchi at (916) 445-7094.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Breitenbach, U.S. Bureau of Reclamation, 2800 Cottage Way, Room W-2103, Sacramento CA 95825, phone: (916) 978-5134, FAX: (916) 978-5284; or Mr. Dwight P. Russell, California Department of Water Resources, 3251 S Street, Room B-18, Sacramento CA 95816, phone: (916) 323-8888, FAX (916) 322-7184.

SUPPLEMENTARY INFORMATION: Suisun Marsh is situated in southern Solano County, California, west of the Sacramento-San Joaquin Delta and north of Suisun Bay. The Marsh represents over 10 percent of California's remaining natural wetlands, and is one of the largest contiguous brackish water tidal marshes in the United States. It covers approximately 55,000 acres of brackish water wetlands and 29,000 acres of bays and sloughs.

In 1974, the California legislature enacted the Suisun Marsh Preservation Act (SB 1981), requiring the development of a protection plan for the Marsh. In 1978, the California State Water Resources Control Board issued Water Right Decision 1485, establishing channel water salinity standards for the Suisun Marsh to provide optimum habitat for waterfowl food plant production and to preserve the Suisun Marsh as a brackish water tidal marsh.

In 1986, Federal legislation (PL 99-546) authorized funds to Reclamation for protecting the Suisun Marsh. In 1987 Reclamation, DWR, California State Department of Fish and Game, and Suisun Resource Conservation District signed the Suisun Marsh Preservation Agreement. Consequently, future activities will comply with both NEPA and CEQA regulations.

It is anticipated that the Western Suisun Salinity Control Project EIS/EIR will address a variety of environmental impacts such as: (1) Disturbance to the habitat of marsh flora along proposed ditch alignments, ponds, and culverts; (2) impacts to wildlife habitat and wildlife movement corridors due to the enlargement of natural channels, depositing of dredge spoils, and construction of ditches, ponds, and culverts; and (3) impacts to fish, both resident and migratory, by the transport of water from Boynton Slough to Cordelia Slough, and from Cordelia Slough to Goodyear Slough, as well as by diversion of water through ponds, culverts, and siphons. In addition, the cumulative impacts on the Marsh and Suisun Bay area will be assessed with respect to existing Marsh facilities and future facilities proposed in the Plan of Protection.

Because portions of the proposed sites for the Western Suisun Marsh Salinity Control Project are within wetland areas, the objectives and requirements of Executive Orders 11988 and 11990 will be considered throughout the planning and preparation of the EIS/EIR. Prior to construction and operation of the Boynton-Cordelia Ditch, the Cordelia-Goodyear Ditch, and the Goodyear Slough Culverts, Reclamation and DWR will have to obtain permits from Federal and State agencies, including, the U.S. Army Corps of Engineers, California State Department of Fish and Game, San Francisco Bay Conservation and Development Commission, San Francisco Regional Water Quality Control Board, and California State Lands Commission. These and other agencies will help evaluate the EIS/EIR for the Western Suisun Marsh Salinity Control Project to ensure that it complies with the requirements of NEPA and CEQA.

The draft EIS/EIR is scheduled to be completed and available for review by November 1991.

Dated: November 6, 1990

J. Austin Burke,

Deputy Assistant Commissioner Administration.

[FR Doc. 90-26715 Filed 11-9-90; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 3, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by November 28, 1990.

Carol D. Shull,

Chief of Registration, National Register

Alabama

Tuscaloosa County

Jemison, Robert, Servants' House, 2303 13th St., Tuscaloosa, 90001808.

CALIFORNIA

Colusa County

Colusa Carnegie Library, (California Carnegie Libraries MPS), 280 Sixth St., Colusa, 90001816

Humboldt County

Ferndale Public Library, (California Carnegie Libraries MPS), 807 Main St., Ferndale, 90001815.

Nevada County

Nevada City Free Public Library, (California Carnegie Libraries MPS), 211 N. Pine St., Nevada City, 90001809

Placer County

Lincoln Public Library, (California Carnegie Libraries MPS), 590 Fifth St., Lincoln, 90001814.

San Bernardino County

Upland Public Library, (California Carnegie Libraries MPS), 123 E. D St., Upland, 90001817.

Santa Barbara County

Lompoc Public Library, (California Carnegie Libraries MPS), 200 S. H St., Lompoc, 90001818.

Santa Clara County

East San Jose Carnegie Library, (California Carnegie Libraries MPS), 1102 E. Santa Clara St., San Jose, 90001813.

Stanislaus County

Patterson Branch Library, (California Carnegie Libraries MPS), 355 W. Las Palmas Ave., Patterson, 90001812.

Tulare County

Exeter Public Library, (California Carnegie Libraries MPS), 309 S. E St., Exeter, 90001811.

Yolo County

Yolo Branch Library, (California Carnegie Libraries MPS), 200 Sacramento St., Yolo, 90001810.

COLORADO

Custer County

Mingus Homestead, Off CO 165 M of jct. with Ophir Cr. Rd., San Isabel MF, Beulah vicinity, 90001791.

CONNECTICUT

Fairfield County

Old Mine Park Archeological Site, Address Restricted, Trumbull, 90001807.

Litchfield County

Canaan Village Historic District, Roughly bounded by W. Main, Bragg & Orchard Sts. & Granite Ave., North Canaan, 90001800.

New Haven County

Tuttle, Bronson B., House, 380 Church St., Naugatuck, 90001803.

FLORIDA

Charlotte County

Charlotte High School (Punta Gorda MPS), 1250 Cooper St., Punta Gorda, 90001796.
Punta Gorda Atlantic Coast Line Depot (Punta Gorda MPS), 1009 Taylor Rd., Punta Gorda, 90001797.
Punta Gorda Ice Plant (Punta Gorda MPS), 408 Tamiami Trail, Punta Gorda, 90001798.

INDIANA

Elkhart County

Stahly—Missley—Kuhns Farm, 1600 W. Market St., Nappanee, 90001793.

Johnson County

Forsyth—Schlosser House, 99 N. Forsythe St., Franklin, 90001795.

La Porte County

Smith, Everel S., House, 58 W. Jefferson St., Westville, 90001794.

IOWA

Ringgold County

Middlefork Methodist Episcopal Church, S of US 169 on E side of Middle Fork, Grand R., Reading, 90001801.

MARYLAND

Washington County

Potomac—Broadway Historic District, Roughly, Potomac St & Oak Hill Ave. from Franklin St. to Maple Ave. & North Ave. & Broadway from Park Pl. to Mulberry, Hagerstown, 90001804.

MASSACHUSETTS

Hampden County

Purchase—Ferre House, 1289 Main St., Agawan, 90001805.

MINNESOTA

Olmsted County

Pill Hill Residential Historic District, Roughly bounded by 3rd & 9th Sts. & 7th & 10th Aves. SW. Rochester, 90001799.

MONTANA

Ravalli County

Eil Capitan Lodge, Access Rd. 1111, N shore of Lake Como, Bitterroot MF, Hamilton vicinity, 90001792.

NORTH CAROLINA

Yancey County

McElroy, John Wesley, House, 11 Academy St., Burnsville, 90001802.

TEXAS

Shelby County

Shelby County Courthouse (Boundary Increase), Courthouse Sq., Center 90001819.

Washington County

Schmidt House, (Brenham MPS), 906 W. 5th St., Brenham, 90001806.

[FR Doc. 90-26690 Filed 11-9-90; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Consent Decree in Comprehensive Environmental Response, Compensation and Recovery Action

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *City of Spokane, Washington*, Civil Action No. CS-90-0462-JLQ, was lodged with the United States District Court for the Eastern District of Washington on November 1, 1990. This Consent Decree concerns a Complaint filed by the United States and the State of Washington against the City of Spokane pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Recovery Act ("CERCLA") to compel the City to implement the remedial action selected in the Record of Decision issued by the Environmental Protection Agency ("EPA") on September 30, 1989 for the Northside Landfill Site. The Northside Landfill Site is located in Spokane, Washington, and is owned and operated by the City of Spokane. The Northside Landfill Site was placed on the National Priorities List on June 10, 1986 (51 FR 21,054).

The proposed Consent Decree requires that the City undertake the remedial action selected in the Record of Decision and pay the past and future costs of the United States and the State of Washington, which the United States and the State have incurred or will incur for response actions at the Site.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *City of Spokane, Washington*, 90-11-2-545.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Washington, West 920 Riverside, room 851, Spokane, Washington, 99201 and at the Region X Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of the proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street NW., Washington, DC 20004, (202) 347-7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. When requesting a copy of the Consent Decree, please enclose a check in the amount of $63.75 payable to the "Consent Decree Library."

R.B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-26616 Filed 11-9-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Mine Safety and Health Administration

Records of Fire Drills and Programs to Instruct and Train Miners in the Location and Use of Firefighting Equipment; 1219-0054; on occasion; quarterly; program: 200 respondents × 0.5 hour=100 total burden hours.

Underground coal mine operators are required to have a plan approved by MSHA for the instruction of miners in firefighting and evacuation procedures to be followed in event of an emergency. To implement the plan, fire drills are required to be conducted on a quarterly basis, and certified by the operators' signature and date that the fire drills were conducted in accordance with the approved plan.

Extension

Pension and Welfare Benefits Administration

Class Exemption 86-128; 1219-0059; on occasion; businesses or other for profit; Small businesses or organizations; 327,000 responses; 54,719 hours.

This class exemption exempts from the prohibited transaction restrictions of ERISA the effecting or executing of securities transactions on behalf of an employee benefit plan by a person who is a fiduciary with respect to the plan and who is acting in such transactions as agent for the plan.

Departmental Management

Collection by Use of a Personal Charge Card; 1225-0047; individuals or households; 300 respondents; 5 hours; 1 minute per response.

Information will be collected from individuals' charge cards to allow agencies' servicing finance offices to process these transactions when collecting funds for the Department.

Employment Standards Administration

Request to be Selected as Payee; 1215-0166; CM-910; on occasion.

Individuals or households; Businesses or other for profit; nonprofit institutions; Small businesses or organizations 600 respondents; 200 total hours; ⅓ hr. per response; 1 form. If a beneficiary is incapable of handling his/her own affairs, the legal guardian or other responsible party may apply to receive the benefits on behalf of the beneficiary as a representative payee. The CM-910 is the form the potential representative payee must submit to DCMWC's staff for review to determine if the request can be approved.

Reinstatement

Employment and Training Administration

Internal Fraud Activities; 1205-0157; ETA 9000; annually; state or local governments; 53 respondents; 424 total hours; 8 hrs. per response; 1 form.

ETA 9000 is SESA, ETA and OIG's sole data collection for identifying continuing activity involving internal fraud, and assessing fraud prevention effectiveness. Resulting analyses will be communicated to SESAs to enhance management efforts in controlling false representation and fraud. Negative trends could result in ETA requesting OIG audit(s).

Signed at Washington, DC, this 6th day of November, 1990.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 90-26707 Filed 11-9-90; 8:45 am]

BILLING CODE 4510-43-M

Mine Safety and Health Administration

[Docket No. M-90-155-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its Blacksville No. 2 Mine (I.D. No. 46-01968) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. Petitioner proposes to use air in the belt entry to ventilate active working places and planned longwall panels.

3. As an alternate method, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide system in all belt entries used as intake aircourses. The petitioner outlines specific procedures and equipment in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard, while compliance with the standard will result in a diminution of safety to the miners.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 13, 1990. Copies of the petition are available for inspection at that address.

Dated: November 5, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-26708 Filed 11-9-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-153-C]

Cordero Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Cordero Mining Compay, P.O. Box 1449, Gillette, Wyoming 82717-1449 has filed a petition to modify the application of 30 CFR 77.206(c) (ladders; construction; installation and maintenance) to its Cordero Mine (I.D. No. 48-00992) located in Campbell County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that ladders used regularly at fixed locations be anchored securely and provided with backguards extending from a point not more than 7 feet from the bottom of the ladder to the top of the ladder.

2. Petitioner requests to leave two backguards as originally fabricated, one 87 inches and one 85 inches above the bottom of the ladder instead of the required 84 inches. The petitioner outlines specific equipment and procedures in the petition.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 13, 1990. Copies of the petition are available for inspection at that address.

Dated: November 5, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-26709 Filed 11-9-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-160-C]

Fantasia Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Fantasia Mining Company, P.O. Box 954, Barbourville, Kentucky 40906, has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 2 Mine (I.D. No. 15-16984) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methance monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitor instead of methane monitors on three-wheel tractors as outlined in the petition.

3. In support of this request, petitioner states that:

(a) No methane has been detected in the mine;

(b) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(c) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to detemine the methane conentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips; and

(d) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent.

(4) Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 13, 1990. Copies of the petition are available for inspection at that address.

Dated: November 5, 1990.

Patricia W. Silvey,

Director, Office of Standard, Regulations and Variances.

[FR Doc. 90-26710 Filed 11-9-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-158-C]

Mason and Dixon Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Mason and Dixon Coal Company, P.O. Box 188, Muir, Pennsylvania 17957, has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its No. 1 Slope mine (I.D. No. 36-07893) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air reaching each working face is required to be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations and respirable dust.

4. Requiring extremely high velocities in small cross-sectional airways and manways in friable anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the

miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

(a) The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

(b) The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

(c) The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 13, 1990. Copies of the petition are available for inspection at that address.

Dated: November 5, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-26711 Filed 11-9-90; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONATUTICS AND SPACE ADMINISTRATION

[Notice 90-97]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on Advanced Life Support Technology.

DATES: December 6, 1990, 9 a.m. to 5 p.m.; and December 7, 1990, 8:30 a.m. to 1 p.m.

ADDRESSES: Lockheed Engineering and Sciences Company, Suite 600, 600 Maryland Avenue SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Evanich, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2843.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics, Exploration and Technology (OAET) on space systems and technology programs. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Advanced Life Support Technology, chaired by Mr. Adrain P. O'Neal, is composed of eight members.

The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

December 6, 1990

9 a.m.—Welcome.
9:15 a.m.—Discussion of Charter and Future Meetings.
1:30 p.m.—Briefing on Advanced Life Support Program.
3 p.m.—Briefing on ExtraVehicular Activity/Suit Technology Program.
5 p.m.—Adjourn.

December 7, 1990

8:30 a.m.—Briefing on Controlled Ecological Life Support Program.
10:30 a.m.—Group Discussion.
1 p.m.—Adjourn.

Dated: November 6, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90-26702 Filed 11-9-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before December 13, 1990.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202-786-0494 and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202) 786-0494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extensions

Title: Organizational Survey.
Form Number: OMB No. 3136-0124.
Frequency of Collection: Once.
Respondents: Nonprofit organizations and groups.
Use: Application for funding.
Estimated Number of Respondents: 30.
Frequency of Response: Once.
Estimated Hours for Respondents to Provide Information: .50 per respondent.
Estimated Total Annual Reporting and Recordkeeping Burdens: 15 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 90-26692 Filed 11-9-90; 8:45 am]

BILLING CODE 7536-01-M

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the

Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before December 13, 1990.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202-786-0494) and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202) 786-0494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable, (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504 (h).

Category: Extension

Title: Process of Application, Evaluation, Award, and Report of NEH Fellowships.
Form Number: OMB No. 3136-0063.
Frequency of Collection: Annual.
Respondents: Scholars, writers, and teachers in the humanities.
Use: Application for funding, evaluation, award-making, and reporting for NEH Fellowships.
Estimated Number of Respondents: 16,230.
Frequency of Response: Once.
Estimated Hours for Respondents to Provide Information: 1.5 per respondent.
Estimated Total Annual Reporting and Record Keeping Burden: 24,465 hours.

Thomas S. Kingston,

Assistant Chairman for Operation.

[FR Doc. 90-26691 Filed 11-9-90; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-150]

Environmental Assessment and Finding of No Significant Environmental Impact Regarding Proposed Power Increase of Facility Operating License No. R-75; Ohio State University

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. R-75 to the Ohio State University (the licensee) for the Ohio State University Pool-Type Research Reactor (OSURR) located on the Ohio State University campus in Columbus, Ohio.

Environmental Assessment

This environmental assessment relates to the proposed power increase for the OSURR at Columbus, Ohio, in response to an application from the licensee of October 7, 1987, as supplemented on May 28, 1989, February 28, and June 12, 1990. The proposed action would authorize operation at a power level of 500 kilowatts (thermal) (kW(t)), from the presently licensed power level of 10 kW(t). The only hardware modifications that are required by the power increase and that change the environmental are those necessary to increase the capacity of the heat removal system and to increase the coverage of the radioactivity monitoring system, along with their associated instrumentation and controls. The heat removal system uses primary (pool water)-to-secondary (ethylene glycol and water mixture) coolant heat exchangers, a fan-forced air cooling unit (also called a drycooler) for initial cooling of the secondary coolant, and a city water-based heat exchanger for additional cooling of the secondary coolant. The primary-secondary coolant loop is a totally enclosed and self-contained loop. No liquid effluent releases are expected from normal OSURR operation. Any release of water from the reactor pool or secondary coolant fluid from the cooling system will be planned and controlled, and performed in accordance with appropriate regulations. By including a drycooler in the secondary loop, the OSURR avoids the use of a cooling tower. Thus, the drycooler produces no drift or fog and does not use city water. Makeup water for the reactor pool is obtained from the city water supply, after first passing through an initial cleanup demineralizer. All connections to the city water system will have backflow preventers to preclude the possibility of introducing reactor pool water to the potable water supply. The city water-based supplementary heat exchanger will draw water from the city water supply, but it will be used only when the outdoor drycooler is unable, because of the outdoor air temperature, to reduce secondary coolant temperatures to the point where primary coolant temperature returned to the pool is within specified limits. Thus, water use by the supplementary heat exchanger will be monitored and kept within thermal limits for discharge to the sanitary sewer system. Installation of the outdoor drycooler unit will require very little land because the unit is mounted on an 8 foot by 17 foot concrete pad, on an unused part of the grounds of the reactor building. Thus, no additional land use will result. To install the cooling unit, the licensee will not need to remove trees or move animal life. In addition, the cooling unit stands about 48 inches tall, and covers an area of about 8 feet by 14 feet, and thus will cause no disruption of visibility or visual distraction in the area. Operation of the fans of the drycooler will cause a small amount of noise, but no more than may be expected from a building air conditioner of modest size. In any case, the nearest residences are about one-quarter of a mile upwind of the reactor building, and persons in and near these areas will not experience any additional noise exposure because of fan operation. The environmental effluents (warm air) caused by increasing the power to 500 kilowatts are negligible.

The licensee plans to expand the radioactive monitoring system by installing additional monitors outside the restricted area. At leat four of these monitors will be positioned in the unrestricted area about 100 feet from the reactor building. The areas are normally unoccupied in all directions except about 150 feet to the south where a van de Graaff laboratory is located. The effect on the environment of these monitors is negligible.

Need for the Proposed Action

The licensee is planning to conduct research in neutron activation analysis, boron neutron capture therapy, and related medical and biological research, materials analysis, and instrumentation research and testing. Operation at 10 kW would not provide sufficient neutron flux to conduct these activities.

Environmental Impact

The OSURR operates in a shielded pool of water inside the reactor building on the Columbus campus of the Ohio State University. This licensing action

does not lead to a change in the physical environment except for the heat removal system and radioactivity monitoring system previously discussed.

Based on the review of the facility specific operating characteristics that are considered for possible effect on the environment, as set forth in the staff's safety evaluation report (SER) (*see* SER for Amendment No. 13 to Facility Operating License No. R-75) for this action, the staff concludes that increasing the power level to 500 kW at OSURR will have an insignificant environmental effect. Although the proposed operating features are judged to have an insignificant effect on the environment, the following paragraphs summarize those features with the greatest possible environmental effect.

Argon-41, a product from neutron irradiation of air during operation, is the principal airborne radioactive effluent from the OSURR during routine operations. Conservation calculations by the staff, based on the total amount of Ar-41 released from the reactor during the year, place the maximum credible dose assessment to members of the general public in areas that would normally be occupied at about 0.2 millirem per year.

The staff has considered hypothetical credible accidents at the OSURR and has concluded that there is reasonable assurance that such accidents will not release a significant quantity of fission products from the fuel cladding and, therefore, will not cause significant radiological hazard to the environment or the public.

This conclusion is based on the following:

(1) The excess reactivity available under the technical specifications is insufficient to support a reactor transient generating enough energy to cause overheating of the fuel or loss of integrity of the cladding.

(2) At a thermal power level of 500 kilowatts, the inventory of fission products in the fuel cannot generate sufficient radioactive decay heat to cause fuel damage even in the hypothetical event of instantaneous total loss of coolant, and

(3) The hypothetical loss of integrity of the cladding of the maximum irradiated fuel rod will not lead to radiation exposures in the unrestricted environment that exceed guidelines values of 10 CFR part 20.

In addition to the analyses in the SER summarized herein, the environmental effect associated with the operation of research reactors has been generically evaluated by the staff and is discussed in the attached generic evaluation. This evaluation concludes that there will be no significant environmental effect associated with the operation of research reactors licensed to operate at power levels up to and including 2 MW(t) and that an environmental impact statement is not required for the issuance of construction permits or operating licenses for such facilities. We have determined that this generic evaluation is applicable to operation of the OSURR and that this facility will have no special or unique features that would preclude reliance on the generic evaluation.

Alternatives to the Proposed Action

Alternatives considered to the proposed action were to not increase the power level or to increase the power level to some lesser power. Operation at 10 kW would not achieve the licensee's research objectives. Operation at a lesser power could achieve some but not all of the objectives and would result in essentially the same environmental effect as at 500 kW. The environmental effect between operation at 10 kW and at 500 kW is not significant.

Alternative Use of Resources

This action does not involve the use of any resources beyond those normally allocated for such activities.

Agencies and Persons Consulted

The staff has obtained the technical assistance of the Idaho National Engineering Laboratory in performing the safety evaluation of continued operation of the OSURR facility.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for this proposed action. For further details with respect to this action, see the licensee's request for a license amendment of October 7, 1987, as supplemented on May 26, 1989, February 28 and June 12, 1990. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 5th day of November 1990.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactor, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-26896 Filed 11-9-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-606]

Arkansas Tech University of Proposed Issuance of Construction Permit and Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a construction permit and subsequently a facility operating license to Arkansas Tech University (the applicant). The permit would authorize the applicant to construct for educational training and research purposes a nuclear research reactor (the facility) on the University's campus in Russellville, Arkansas. The license would authorize the applicant to operate the reactor at power levels not in excess of 250 kilowatts (thermal), with pulse step reactivity insertion not in excess of 2.00$.

Prior to issuance of the construction permit, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Upon completion of the construction of the facility in Russellville, Arkansas, in compliance with the terms and conditions of the construction permit and the application, as amended, and in the absence of good cause to the contrary, the Commission will issue to the applicant (without prior notice) a class 104c facility license authorizing operation of the nuclear research reactor at the power and pulse levels specified above, since the application is complete enough to permit evaluation of the safety and environmental impact of the operation of the facility in the manner and location proposed. Prior to the issuance of the license, the facility will be inspected by a representative of the Commission to determine whether it has been constructed in accordance with the application and the provisions of the construction permit. The license will not be issued until the Commission makes the findings required by the Act and the Commission's rules and regulations and concludes that the issuance of the license will not be inimical to the common defense and security or to the health and safety of the public or to the environment. In addition, the applicant will be required to execute an indemnity agreement as required by section 170 of the Act and by 10 CFR part 140 of the Commission's regulations.

By December 10, 1990, the applicant may file a request for a hearing with respect to the issuance of the construction permit and the facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules and Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceedings. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the application under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, at 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Seymour H. Weiss: Petitioner's name and telephone number; date petition was mailed; Arkansas Tech University; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Jeff Bell, Deputy Attorney General, State of Arkansas, 200 Tower Building, 4th and Center Streets, Little Rock, Arkansas 72201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for construction permit and facility operating license dated November 13, 1989, as supplemented on December 19, 1989 and April 25, 1990, which is available for public inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 5th day of November 1990.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactor, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-26895 Filed 11-9-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-30870; License No. 53-23288-01 EA 90-190]

In the matter or Fewell Geotechnical Engineering, Ltd., Pearl City, HI; Order Modifying License (Effective Immediately)

I

Fewell Geotechnical Engineering, Ltd. (FGE or Licensee) is the holder of Byproduct Material License No. 53-23288-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 34. The license authorizes the Licensee to receive, possess, and utilize sealed sources of Iridium 192 in industrial radiographic exposure devices. The license was issued on January 26, 1989, was most recently amended on September 29, 1989, and is due to expire on January 31, 1994.

II

Under 10 CFR 20.105 and 20.201 and under FGE License Condition 15 on page 3 of the license and FGE Operating and Emergency Procedures ("OEP"), personnel performing licensed activities under FGE's license are required to conduct radiation surveys to establish the boundaries of restricted areas (OEP section IV, paragraph 2.5). In addition, duing radiographic operations, personnel are required to determine that the sealed source is returned to the fully shielded position after each source exposure (10 CFR 34.43(b); OEP section IV, paragraph 2.6), to secure the sealed

source assembly in the shielded position after each source exposure (10 CFR 34.22(a); OEP section IV, paragraph 2.6), to post and rope off the 2mR/hr boundary (OEP section IV, paragraphs 2.2. and 2.5), and to prevent entry into the restricted area of individuals other than radiographers and radiographer's assistants (OEP section I, paragraphs 5; OEP section IV, paragraph 2.5). Finally, information provided to the NRC by licensee personnel must be complete and accurate in all material respects (10 CFR 30.9).

Thomas E. Murray, a radiographer for the Licensee, has been a radiographer since December 1987, having satisfied the experience, training, and examination requirements of at least two NRC licensees (the U.S. Navy and FGE). In accord with 10 CFR 34.31, examinations by NRC licensees must include demonstrations by radiographer candidates evidencing their understanding of NRC requirements, including licensee operating and emergency procedures. During an NRC inspection conducted on October 4, 1990, Mr. Murray demonstrated a thorough understanding of proper procedures for surveys, source securing, and control of access into restricted areas.

An NRC investigator and an NRC inspector observed Mr. Murray, conduct radiographic operations on October 23 and 25, 1990 at Campbell Industrial Park, Oahu, Hawaii, contrary to the above-referenced NRC requirements as follows:

(1) On October 25, 1990, Mr. Murray conducted radiographic operations without performing surveys to establish the radiation boundary;

(2) On October 23 and 25, 1990 Mr. Murray failed to rope off any portion of the radiation boundary, and failed to post signs for most of that boundary;

(3) On October 23, 1990, on at least 12 occasions and on October 25, 1990, on at least 5 occasions, Mr. Murray failed to perform surveys of the exposure device to determine that the sealed source had been returned to its shielded position after radiographic exposures;

(4) On October 25, 1990, Mr. Murray failed to secure the radiographic source in the fully shielded position after each of several source exposures;

(5) On October 23, 1990, Mr. Murray failed to prevent entry into the restricted area of individuals other than radiographers and radiographers' assistants.

On October 25, 1990, Mr. Murray was asked by NRC personnel whether, during the NRC-observed operations of October 23 and 25, he had compiled with the above-referenced NRC requirements for the conduct of surveys to assure that the source had been retracted to its fully shielded position, for the securing of the source in this shielded position after each exposure, and for preventing the entry of unauthorized personnel into the restricted area. He stated that he had complied and also demonstrated to the NRC personnel the survey procedures he stated that he had used on those occasions, i.e., conducting a survey with a survey meter as he approached the radiographic exposure device, and circumferentially surveying the device with a survey meter. This demonstration again showed that he had a thorough understanding of Commission requirements.

III

It appears that Mr. Murray's actions were willful because he was experienced, trained, and knowledgeable concerning NRC and Licensee requirements pertaining to surveys, to securing the source in the fully shielded position after each source exposure, and to preventing unauthorized entry into a restricted area, and because he repeatedly failed to comply with these requirements on at least two days in one week. In addition, Mr. Murray gave the NRC false information concerning his actions, contrary to the observations of two NRC employees. Therefore, the NRC has concluded that false information was also provided willfully. As a result of these willful violations, the NRC does not have reasonable assurance that Mr. Murray will comply with regulatory requirements. Moreover, Mr. Murray's willful violations of Commission requirements cannot be tolerated.

Consequently, I lack the requisite reasonable assurance that, with Mr. Murray's involvement, the Licensee's current operations under License No. 53-23288-01 can be conducted in compliance with the Commission's requirements and that the health and safety of the public, including the Licensee's employees, will be protected. Therefore, the public health, safety, and interest require that License No. 53-23288-01 be modified to prohibit the utilization of Mr. Thomas E. Murray in Licensed activities. Furthermore, pursuant to 10 CFR 2.204, I find that the public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to Sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR part 34, it is hereby ordered, effective immediately, that License No. 53-23288-01 is modified as follows:

Fewell Geotechnical Engineering, Ltd., shall not utilize Mr. Thomas E. Murray in any licensed activities, including, but not limited to, activities performed by radiographers, radiographers' assistants, and helpers, for a period of three years.

The Regional Administrator, Region V, may relax or rescind, in writing, any of the above conditions upon a showing of good cause by the Licensee.

The Licensee, Mr. Thomas E. Murray, or any other person adversely affected by this Order may submit an answer to this Order or request a hearing on this Order within twenty days of the date of this Order. The answer shall set forth the matters of fact and law on which the Licensee, Mr. Thomas E. Murray, or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer filed within twenty days of the date of this Order may include a request for a hearing. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region V, 1450 Maria Lane, suite 210, Walnut Creek, California 94596, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee or Mr. Thomas E. Murray requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the licensee, Mr. Thomas E. Murray, or any other person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained.

Upon the Licensee's and Mr. Murray's consent to the provisions set forth in Section IV of this Order, or upon failure of the Licensee and Mr. Murray to file an answer within the specified time, and in the absence of any request for hearing, the provisions specified in section IV above shall be final without further Order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland this 2nd day of November 1990.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 90-26697 Filed 11-9-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL-R5 and 50-444-OL-R5; Construction Permit Nos. CPPR-135 and CPPR-136]

Public Service Co. of New Hampshire, et. al., Seabrook Station, Units 1 and 2; (Emergency Planning—ALS Patients); Establishment of a Separate Atomic Safety and Licensing Board To Preside in Proceeding

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, and pursuant to the Statement of Policy on Conduct of Licensing Proceedings, 13 N.R.C. 452 (1981), and the request of the Atomic Safety and Licensing Board already established to preside in this operating license proceeding, a separate Atomic Safety and Licensing Board is being established to preside over the proceeding on the issue of evacuation time estimates for special facility Advanced Life Support patients.

This Board is being established pursuant to the Atomic Safety and Licensing Appeal Board's November 7, 1989 Decision concerning the New Hampshire Radiological Emergency Response Plan (NHRERP). ALAB-924, 30 NRC 331 (1989). One of the issues that the Appeal Board remanded for further proceedings in ALAB-924 was the Licensing Board's finding in LBP-88-32, 28 NRC 667 (1988) that intervenor SAPL's concerns regarding evacuation time estimates for special facility Advanced Life Support (ALS) patients were adequately reflected in the NHRERP's evacuation time assumptions.

The separate Board is comprised of the following Administrative Judges:

Peter B. Bloch, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dr. Richard F. Cole, Member, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 2055.

Dr. Harry Foreman, Member, 1564 Burton Avenue, St. Paul, Minnesota 55108.

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR 2.701 (1980).

This separate Licensing Board of limited jurisdiction (to be referred to for convenience as the "ALS" Board), exists solely to hear and resolve issues related to evacuation time estimates for special Facility Advanced Life Support (ALS) patients.

The Licensing Board comprised of Administrative Judges Smith, Cole and McCollom, sometimes referred to for convenience as the "offsite EP Board", stands in the shoes of the original Licensing Board constituted November 30, 1981 in response to the October 19, 1981 notice of hearing. *See* 46 FR 51,330 (1981). Thus, that Licensing Board has general jurisdiction over all matters pertaining now or in the future to the application for a license to operate Units 1 and 2 of the Seabrook Station not otherwise expressly assigned to the new separate "ALS" Board.

Dated at Bethesda, Maryland, this 5th day of November 1990.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 90-26694 Filed 11-9-90; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-17839; 812-7485]

American Capital Comstock Fund, Inc. et al.; Application

November 5, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: American Capital Comstock Fund, Inc.; American Capital Corporate Bond Fund, Inc.; American Capital Emerging Growth Fund, Inc.; American Capital Enterprise Fund, Inc.; American Capital Equity Income Fund, Inc.; American Capital Federal Mortgage Trust; American Capital Government Securities, Inc.; American Capital Government Target Series; American Capital Growth and Income Fund, Inc.; American Capital Harbor Fund, Inc.; American Capital High Yield Investments, Inc.; American Capital Pace Fund, Inc.; and any other investment companies whose shares may be distributed by American Capital Marketing, Inc. (together, the "Funds"); American Capital Marketing, Inc.; and American Capital Asset Management, Inc. (together, the "Applicants").

RELEVANT 1940 ACT SECTION: Exemption requested under section 6(c) of the 1940 Act from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and Rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an exemption under section 6(c) to permit the Applicant to impose and waive a contingent deferred sales charge on redemptions of its shares in certain cases.

FILING DATES: The application was filed on March 7, 1990 and amended on September 28 and October 29, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 29, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; on behalf of Applicants, c/o American Capital Asset Management, Inc., 2800 Post Oak Blvd., Houston, Texas 77056.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511, or Max Berueffy, Branch Chief, (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 738-1400).

Applicants' Representations

1. The Funds are open-end investment management companies registered under the 1940 Act. Each of the Funds has or will enter into an underwriting agreement pursuant to which American Capital Marketing, Inc. (the "Distributor") acts as principal

underwriter for the Funds. American Capital Asset Management, Inc. is the Funds' investment adviser.

2. Each Fund currently offers its shares to the public at their net asset value plus a sales commission at the time of purchase, as set forth in each Fund's prospectus. Each of the Funds, except American Capital Comstock Fund, Inc. ("American Comstock"), has adopted a distribution plan pursuant to Rule 12b–1 of the 1940 Act (the "Plan"). Under the Plan, each Fund, except American Comstock, may pay the Distributor up to 0.25% per year of their respective average daily net assets for reimbursement of certain distribution expenditures.

3. The Funds propose to continue to offer shares for sale at net asset value plus a front-end sales charge in amounts determined by the size of the investment. However, for certain qualified purchasers, Applicants intend to waive the front-end sales charge and instead impose a contingent deferred sales charge ("CDSC") in the same amount in the event of certain redemptions of shares within a two year period. The CDSC would be equal to the initial sales charge that would have applied to purchase payments in the same amount made by investors other than Qualified Purchasers, and in no event would it be more than 1% of the value of shares purchased. Qualified Purchasers are defined as retirement plans purchasing Fund shares in amounts of $1,000,000 or more, in which a trustee or other fiduciary makes purchases for a single fiduciary account, and that qualify as a benefit plan under Internal Revenue Code Sections 401(a) and 457 ("Retirement Plans").

4. The CDSC would be imposed if a Qualified Purchaser redeems an amount which causes the value of the account to fall below the total dollar amount of purchase payments made by the Qualified Purchaser without an initial sales charge during a period of two years prior to the redemption. No CDSC will be imposed when Qualified Purchasers redeem amounts derived from (a) increases in the value of the account above the total dollar amount of purchase payments made during a two year period (either through growth in net asset value per share of the Fund or through reinvestment of dividends or capital gain distributions in additional shares of the Fund) or (b) purchase payments made more than two years prior to the redemption. Furthermore, no CDSC will be imposed on exchanges of shares between Funds. For purposes of the CDSC, when shares of one Fund are exchanged for shares of another Fund, the purchase date for the shares of the Fund exchanged into will be assumed to be the date on which shares were purchased in the Fund from which the exchange was made. In determining whether a CDSC is payable, the shares held the longest are assumed to be redeemed first. If a CDSC is imposed upon redemption, the amount of the CDSC will be equal to the lesser of a specified percentage of the net asset value of the shares at the time of purchase, or the same or a lower percentage of the net asset value of the shares at the time of redemption.

5. Applicants intend to waive the CDSC in connection with redemptions by Qualified Purchasers required to obtain funds to pay distributions made to beneficiaries pursuant to the terms of their Retirement Plans. Such payments include, but are not limited to, death, disability, retirement, or separation from service.

Applicants' Legal Conclusions

1. Applicants request an order under section 6(c) of the 1940 Act granting an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the 1940 Act and Rule 22c–1 thereunder to permit the imposition and waiver of a CDSC on the terms described above. In addition, Applicants request that the exemptive relief referred to above also extend to other investment companies whose shares may be distributed by the Distributor on similar terms.

2. Applicants submit that the requested exemption is appropriate and in the public interest, consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

If the requested exemptive relief is granted, Applicants agree that they will comply with the provisions of proposed Rule 6c–10 under the 1940 Act, Investment Company Act Rel. No. 16619 (Nov. 2, 1988), as currently proposed and as it may be further revised and adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–26636 Filed 11–9–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17840; 811–5638]

DFA Dual Fund One, Inc.; Application for Deregistration

November 5, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: The DFA Dual Fund One, Inc. (the "Fund").

RELEVANT 1940 ACT SECTION: Section 6(f) of the Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on October 1, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 29, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; on behalf of Applicants, 1299 Ocean Avenue, Suite 650, Santa Monica, CA 90401.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or Max Berueffy, Branch Chief, (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 738–1400).

Applicant's Representations

1. Applicant is a Maryland corporation and a closed-end diversified management company registered under the Act. On August 19, 1988, Applicant filed a Notification of Registration of Form N–8A pursuant to section 8(a) of the Act. On that same date, Applicant filed a registration statement on Form N–2 under section 8(b) of the Act and the Securities Act of 1933.

2. Applicant has never made a public offering of its securities.

3. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, not does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–26637 Filed 11–9–90; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 17841; International Series Rel. No. 187; 812–7270]

Prudential Corporation plc and Prudential Finance (Jersey) Ltd; Application

November 5, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application under Section 6(c) of the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Prudential Corporation plc ("Prudential") and Prudential Finance (Jersey) Ltd ("Prudential Finance").

RELEVANT 1940 ACT SECTION: Section 6(c).

SUMMARY OF APPLICATION: Applicants seek a conditional order under section 6(c) permitting them to offer and sell their debt securities in the United States without registering as investment companies under the 1940 Act.

FILING DATES: The application was filed on March 13, 1989, and amendments were filed on July 25, 1990 and October 18, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 3, 1990, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o Albert Francke, III, Curtis, Mallet-Prevost, Colt & Mosle, 101 Park Avenue, New York, New York 10178–0061.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272–3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 738–1400).

Applicants' Representations

1. Prudential is an English corporation which is the parent company of a group of companies (the "Group") primarily engaged in insurance and reinsurance in the United Kingdom and other countries. The Group has the largest long-term insurance operations of any United Kingdom casualty insurer and includes the largest reinsurance company in the United Kingdom. At the end of 1988, the total market value of funds under management by the Group was $89 billion. Prudential's major subsidiary is The Prudential Assurance Company Limited. Prudential is also the parent company of Mercantile and General U.S. Holdings Inc., a registered Delaware insurance holding company, and Jackson National Life Insurance Company, a life insurance company licensed in 48 states and conducting business in 35 states and the District of Columbia.

2. The Group is organized into eight operating divisions. The Group's insurance activities are subject to extensive regulation in the United Kingdom, principally under the Insurance Companies Act 1982 and the Financial Services Act 1986. These acts and associated regulations impose on insurance companies operating in the United Kingdom, among other requirements, minimum solvency standards and auditing and reporting requirements. The Group's insurance activities are also subject to regulation and supervision in the United States and other countries in which the Group conducts business.

3. Prudential Finance is a direct subsidiary of Prudential Corporation Holdings Ltd., a direct holding company subsidiary of Prudential, and is registered in Jersey, Channel Islands, British Isles. Prudential Finance was formed for the sole purpose of issuing and selling its commercial paper and other debt securities and advancing substantially all of the net proceeds of the sale thereof to Prudential and/or other members of the Group for current operating expenses and for general short-term business needs.

4. Applicants propose to sell in the United States from time to time unsecured, prime quality commercial paper notes (the "Notes") and/or other debt securities (the "Debt Securities") issued either by Prudential or Prudential Finance. Notes and Debt Securities issued by Prudential Finance would be unconditionally guaranteed by Prudential. Applicants do not request relief to issue equity securities in the United States.

5. Substantially all (but in no event less than 85%) of the proceeds of the sale of the Notes and Debt Securities issued by Prudential Finance would be provided to Prudential or companies controlled by Prudential as soon as practicable, but in no event more than six months after receipt, on terms that would allow Prudential Finance to make timely payment on such securities.

6. Applicants seek access to the United States commercial paper and other debt securities markets to provide an alternative source of supply of United States dollars at favorable rates for short-term borrowings and to better manage the short-term general business needs of the Group.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the SEC to issue conditional or unconditional exemptions from any provision of the 1940 Act or rule thereunder if the exemption is "necessary or appropriate in the public interest" and is "consistent with the protection of investors and the purposes fairly intended by the policy and provisions of (the 1940 Act)." Applicants submit that the application meets these requirements.

2. Applicants seek an order permitting each of them to offer and sell Notes and/or Debt Securities in the United States without registering as investment companies under the 1940 Act. Prudential is applying for relief because it is a holding company of foreign insurance companies. Section 3(c)(3) of the 1940 Act provides an exception from the definition of "investment company" for any "insurance company." Section 3(c)(6) provides, among other things, that no company primarily engaged in the insurance company business through

BEST COPY AVAILABLE

majority-owned subsidiaries shall be an investment company. Section 2(a)(17) defines the term "insurance company" to be a company organized as an insurance company and subject to supervision by the insurance commissioner or a similar official or agency of a state. Because many of the insurance companies owned by Prudential are not subject to domestic insurance regulation, Prudential may not meet the exception provided by Section 3(c)(6) and, thus, could be an "investment company" required to register under the 1940 Act in connection with the issuance of its Notes and Debt Securities in the United States. Prudential Finance is applying for relief because its rights to receive repayments of loans made to Prudential and its subsidiaries out of the proceeds of sales of its Notes and Debt Securities could be "securities" under the 1940 Act, thereby causing Prudential Finance to be an "investment company" required to register under the 1940 Act.

3. On August 15, 1990, the Commission proposed amendments to Rule 6c–9 under the 1940 Act. Investment Company Act Release No. 17682 (Aug. 17, 1990); 55 F.R. 34,569 (Aug. 23, 1990). In its present form, Rule 6c–9 provides a conditional exemption from the 1940 Act that permits foreign banks and their finance subsidiaries to offer and sell debt securities and non-voting preferred stock without registering under the 1940 Act. The proposed amendments would, among other things, extend the exemption from registration under the 1940 Act to foreign insurance holding companies and to foreign insurance companies and their finance subsidiaries offering or selling their debt securities in the United States. Applicants have agreed to comply with Rule 6c–9 (except as described in paragraph 4, below) as it is proposed to be amended and as it may be reproposed, adopted, or amended in the future in connection with the issuance and sale of their Notes and Debt Securities in the United States.

4. Because of the particular corporate structure of the Group, applicants are unable to comply with all of the technical requirements of Rule 6c–9 as it is proposed to be amended (the "proposed amended Rule"). Under the proposed amended Rule, a "finance subsidiary" must be owned either directly or indirectly by a foreign insurance company. Prudential Finance, however, is wholly owned by a holding company that is wholly owned by Prudential. Although Prudential is a "qualifying holding company" of foreign insurance companies, as defined in the proposed amended Rule, Prudential Finance's sole shareholder is not a foreign insurance company or a company controlled by a foreign insurance company. Thus, Prudential Finance does not constitute a "finance subsidiary" under proposed amended Rule 6c–9(c)(1). In addition, the proposed amended Rule requires that the finance subsidiary transfer to its parent company or a company controlled by its parent company at least 85% of the cash raised through an offering of its securities. Proposed amended Rule 6c–9(c)(3) defines "company controlled by a parent company" to be either a foreign insurance company or a non-investment company, all of the securities of which are owned by a foreign insurance company. Because Prudential is itself a holding company and not a foreign insurance company, some of its subsidiaries to which Prudential Finance intends to transfer cash do not come within the definition of "company controlled by a parent company."

5. As required by the proposed amended Rule, the primary purpose of Prudential Finance is to finance the business operations of Prudential or companies controlled by Prudential that are foreign insurance companies or are not investment companies. Although Prudential Finance does not fall within the definition of "finance subsidiary" of a foreign insurance company in the proposed amended Rule, it is the type of entity to which the policy considerations underlying the proposed amended Rule apply. Offerings of securities by Prudential Finance will be in accordance with the requirements of the proposed amended Rule, except for the fact that Prudential Finance and some of the affiliates to which it transfers cash will be subsidiaries of a qualifying holding company but not of a foreign insurance company.

6. In proposing amendments to Rule 6c–9 under the 1940 Act, the Commission has indicated its view that foreign insurance companies, like domestic insurance companies, should be exempted from the 1940 Act's requirements. Similarly, in incorporating the Rule 3a–5 requirements for finance subsidiaries into the proposed amended Rule, the Commission recognized that it is not necessary to subject to the requirements of the 1940 Act certain finance subsidiaries serving as vehicles for issuing securities to finance the activities of a foreign insurance company group.

7. The requested relief is consistent with the protection of investors, the purposes fairly intended by the 1940 Act, and the spirit and general substance of the proposed amended Rule. The Commission has granted similar relief under similar circumstances. See *Legal & General Group plc*, Investment Company Act Release Nos. 16785 (Jan. 30, 1989) (notice) and 16835 (Feb. 24, 1989) (order).

Applicants' Condition

Applicants consent to any Commission order granting the application being expressly conditioned upon their compliance (except for the fact that Prudential Finance and some affiliates to which it transfers cash will not be subsidiaries of a foreign insurance company) with the proposed amended Rule under the 1940 Act as they are currently proposed and as they may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–28638 Filed 11–9–90; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Areas #2461 and #2462]

Arizona And Contiguous Counties in Utah; Declaration of Disaster Loan Area

Conconino, Maricopa, and Pinal Counties and the contiguous counties of Gila, Graham, LaPaz, Mohave, Navajo, Pima, Yavapai, and Yuma in the State of Arizona, and Kane and San Juan Counties in the State of Utah constitute a disaster area as a result of damages caused by a severe monsoonal storm system which occurred between July 8 and September 14, 1990. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 21, 1990 and for economic injury until the close of business on July 22, 1991, at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. box 13795, Sacramento, CA 95853–4795;

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 246111 for Arizona and 246211 for Utah. For economic injury the numbers are 715100 for Arizona and 715200 for Utah.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 22, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90–28642 Filed 11–9–90; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2464]

Georgia, With Contiguous Counties in South Carolina; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on October 19, 1990, and an amendment thereto on October 22, 1990, I find that the Counties of Burke, Columbia, Emanuel, Jefferson, Johnson, McDuffie, Richmond, and Screven in the State of Georgia constitute a disaster area as a result of damages caused by severe storms and flooding beginning on October 11, 1990. Applications for loans for physical damage may be filed until the close of business on December 19, 1990, and for loans for economic injury until the close of business on July 19, 1991, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308;

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bulloch, Candler, Effingham, Glasock, Jenkins, Laurens, Lincoln, Montgomery, Tattnall, Toombs, Treutlen, Warren, Washington, Wilkes, and Wilkinson in the State of Georgia and Aiken, Allendale, Barnwell, Edgefield, and Hampton Counties in the State of South Carolina may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 246406 and for economic injury the numbers are 715400 for the State of Georgia and 715500 for the State of South Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59006)

Dated: October 25, 1990.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 90–28643 Filed 11–9–90; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2464]

Georgia, Amendment #1, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated October 22, 1990 to the President's major disaster declaration of October 19 to include Jenkins County in the State of Georgia, which was inadvertently omitted from the original declaration, as a disaster area as a result of damages caused by severe storms and flooding beginning on October 11, 1990.

All other information remains the same, i.e., the termination date for filing applications for physical damage is December 19, 1990, and for economic injury until the close of business on July 19, 1991.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59006)

Dated: October 29, 1990.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 90–28644 Filed 11–9–90; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2465]

Maryland (and a Contiguous County in Pennsylvania); Declaration of Disaster Loan Area

Baltimore County and the contiguous counties of Anne Arundel, Carroll, Harford, and Howard, and Baltimore City, in the State of Maryland, and York County in the State of Pennsylvania constitute a disaster area as a result of damages caused by a tornado which occurred on October 18, 1990 in the town of Reisterstown, Maryland. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 24, 1990 and for economic injury until the close of business on July 23, 1991 at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th fl., Atlanta, Georgia 30308.

or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125
For economic injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The numbers assigned to this disaster for physical damage are 246512 for the State of Maryland and 246612 for the State of Pennsylvania. For economic injury the numbers are 715600 for Maryland and 715700 for Pennsylvania.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 23, 1990.

June M. Nichols,

Acting Administrator.

[FR Doc. 90–28645 Filed 11–9–90; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2466]

Minnesota; Declaration of Disaster Loan Area

Ramsey County and the contiguous counties of Anoka, Dakota, Hennepin, and Washington in the State of Minnesota constitute a disaster area as

a result of damages caused by a fire which occurred in the Grand Pre apartment complex located in the City of Little Canada on October 9, 1990. Applications for loans for physical damage as a direct result of this fire may be filed until the close of business on December 31, 1990 and for economic injury until the close of business on August 1, 1991 at the address listed below: Disaster Area 2 Office, Small Business Adminstration, 120 Ralph McGill Blvd., 14th fl., Atlanta, Georgia 30308,
or other locally announced locations.

The interest rates are:

	Percent
For physical damage	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 246805 and for economic injury the numbers are 716000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 1, 1990.

June M. Nichols,

Acting Administrator.

[FR Doc. 90-26646 Filed 11-9-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2467]

South Carolina (With Contiguous Counties in North Carolina); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on October 22, 1990, I find that the Counties of Aiken, Calhoun, Cherokee, Darlington, Kershaw, Lee, Spartanburg, Sumter and Union in the State of South Carolina constitute a disaster area as a result of damages caused by severe storms and flooding beginning on October 11, 1990. Applications for loans for physical damage may be filed until the close of business on December 21, 1990, and for loans for ecomomic injury until the close of business on July 22, 1991, at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th fl., Atlanta, Georgia 30308,
or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Chester, Chesterfield, Clarendon, Fairfield, Florence, Greenville, Lancaster, Laurens, Lexington, Marlboro, Newberry, Orangeburg, Richland, Saluda, and York in the State of South Carolina and Cleveland, Polk, and Rutherford Counties in the State of North Carolina may be filed until the specified date at the above location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrences.

The interest rates are:

	Percent
For physical damage	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 246706 and for economic injury the numbers are 715800 for the State of South Carolina and 715900 for the State of North Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 29, 1990.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 90-26647 Filed 11-9-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2463]

Virginia; Declaration of Disaster Loan Area

The Independent City of Portsmouth and the contiguous Independent Cities of Chesapeake and Norfolk in the State of Virginia constitute a disaster area as a result of damages caused by flooding which occurred on August 24, 1990. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 24, 1990 and for economic injury until the close of business on July 23, 1991 at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th fl., Atlanta, Georgia 30308,
or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.250
For economic injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 246306 and for economic injury the number is 715300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 23, 1990.

June M. Nichols,

Acting Administrator.

[FR Doc. 90-26648 Filed 11-9-90; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0136]

Super Market Investors, Inc.; Surrender of License

Notice is hereby given that Super Market Investors, Inc., 23000 Roundy Drive, Pewaukee, Wisconsin 53072-0901, has surrendered its license to operate as a small business investment company under section 301(c) of the Small Business Investment Act of 1958, as amended (Act). Super Market Investors, Inc. was licensed by the Small Business Administration on January 25, 1979.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on October 26, 1990, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 2, 1990.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 90-26639 Filed 11-9-90; 8:45 am]

BILLING CODE 8025-01-M

Region II Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of Newark, will hold a public meeting at 8:30 a.m. on Firday, November 30, 1990, at the Headquarters of Bellcore, Bell Communications Research, 290 West Mt. Pleasant Avenue, Livingston, New Jersey, to discuss such matters as may be presented by members, staff of the Small Business Administration or others present.

For further information, write or call Stanley H. Salt, District Director, U.S. Small Business Administration, 60 Park Place, Newark, New Jersey, 07102, telephone (201) 645-3580.

Dated: October 31, 1990.

Veronica De Nardo,

Acting Director, Office of Advisory Councils.

[FR Doc. 90-26641 Filed 11-9-90; 8:45 am]

BILLING CODE 8025-01-M

[License No. 03/03-5191]

Continental SBIC, Issuance of Small Business Investment Company License

On December 27, 1989, a notice was published in the **Federal Register** (54 FR 53230) stating that an application has been filed by Continental SBIC, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) for a license as a small business investment company.

Interested parties were given until close of business Friday, January 26, 1990 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 03/03-5191 on October 19, 1990, to Continental SBIC to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.01 Small Business Investment Companies)

Dated: November 2, 1990.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 90-26640 Filed 11-1-90; 8:45am]

BILLING CODE 8025-01-M

[License No. 02/02-5532]

Yuzary Capital Funding, Ltd.; Issuance of Small Business Investment Company License

On January 31, 1990, a notice was published in the **Federal Register** (55 FR 3296) stating that an application has been filed by Yuzary Capital Funding, LTD. 386 Park Avenue South, Suite 1101, New York, New York 10016 with the Small Business Administration (SBA) pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1990)) for a license to operate as a small business investment company.

Interested parties were given until close of business March 21, 1990, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, a amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-5532 on October 19, 1990, to Yuzary Capital Funding, LTD. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 5, 1990.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 90-26649 Filed 11-9-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program Addison Airport, Addison, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Town of Addison, Texas under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On April 24, 1990, the FAA determined that the noise exposure maps submitted by the Town of Addison under part 150 were in compliance with applicable requirements. On October 18, 1990, the Administrator approved the noise compatibility program. All of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Addison Airport's noise compatibility program is October 18, 1990.

FOR FURTHER INFORMATION CONTACT: Dean A. McMath, Department of Transportation, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas, 76193-0612, (817) 624-5594. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Addison Airport, effective October 18, 1990.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas

preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrators prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Fort Worth, Texas.

The Town of Addison submitted to the FAA on November 6, 1989, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from August 2, 1987 through March 5, 1990. The Addison Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on April 24, 1990. Notice of this determination was published in the Federal Register on May 11, 1990.

The Addison Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to (or beyond) the year 1994. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on April 24, 1990, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such programs within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained three proposed actions for noise mitigation at the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective October 18, 1990.

Outright approval was granted for all of the specific program elements. The approved elements included the institution of a noise complaint response and investigation system, update and review of the approved program, and initiation of a pilot education and noise abatement brochure distribution program.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on October 18, 1990. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available at the FAA office listed above and at the administrative offices of the Addison Airport.

Issued in Forth Worth, Texas, October 31, 1990.

John M. Dempsey,

Manager, Airports Division.

[FR Doc. 90-26674 Filed 11-9-90; 8:45am]

BILLING CODE 4910-13-M

Illustration of Technical Feasibility of FAA's Interaction and Integration Laboratory (I-Lab)

Notice is hereby given that an illustration of the technical feasibility of FAA's I-Lab will be held on Wednesday, November 28, 1990, at the MITRE Corporation's Westgate Facility, 7525 Colshire Drive, in McLean, Virginia.

The I-Lab is FAA's prototype of the National Simulation Laboratory which is expected to be operational within the next several years. The I-Lab has been developed to illustrate the technical feasibility of: Horizontally integrating existing National Airspace System air traffic control subsystems in a simulation environment; identifying system engineering problems and issues; and answering questions about the interaction of different elements of the aviation system.

The illustration will take approximately one (1) hour to complete. Attendance is open to interested organizations but limited to space available. Organizations wishing to attend should elect to send one (1) representative and should contact Herb Goldstein, Manager, System Analysis Division, Operations Research Service, C/O FAA, 800 Independence Avenue SW., Washington, DC 20591; (202) 267-3411. Mr. Goldstein will schedule the times for the illustration based on the demand; please contact him no later than November 21, 1990.

Issued in Washington, DC on November 5, 1990.

Herbert P. Goldstein,

Manager System Analysis Division, AOR-100, Operations Research Service.

[FR Doc. 90-26673 Filed 11-9-90; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 90-01-VE-NO3]

Final Determinations That Certain Nonconforming Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final determinations that certain nonconforming vehicles are eligible for importation.

SUMMARY: This notice announces final determinations by the National Highway Traffic Safety Administration (NHTSA) that certain motor vehicles which do not comply with the Federal motor vehicle safety standards are nevertheless eligible for importation into the United States because they are:

(1) Substantially similar to motor vehicles which were originally manufactured and certified to conform to the Federal standards and were imported into and sold in the United States, and

(2) Capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

A notice of tentative determination was published on April 25, 1990.

DATES: The determination is effective November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (366-5306).

SUPPLEMENTARY INFORMATION: In order that the public fully understand the final determinations of this notice, NHTSA refers the reader to the full discussion that was provided in the notice of tentative determinations published on April 25, 1990 (55 FR 17518).

Background

On April 25, 1990, NHTSA published tentative determinations of eligibility with respect to two categories of motor vehicles that were not certified by their original manufacturers under section 114 of the Act as conforming to all applicable Federal motor vehicle safety standards. The first of these categories was comprised of passenger cars of 1989 and earlier model years, and all other vehicle types, that were certified by their original manufacturers as complying with all applicable Canadian motor vehicle safety standards, but not all applicable Federal motor vehicle safety standards, and which were substantially similar to vehicles that, having been originally manufactured for sale in the United States, are certified as complying with all Federal safety standards. Final determinations regarding this category of vehicles was published on August 13, 1990 (55 FR 32988).

The second category was comprised of certain nonconforming passenger cars manufactured in Great Britain, Germany, Italy, and Japan, which were substantially similar to conforming counterparts manufactured and certified for sale in the United States and which have been the subject of sufficient demonstrations of conformance since 1987 to justify release of the performance bond under which they entered the United States.

Vehicles Successfully Conformed Since January 1, 1988

Over the years, the typical practice of manufacturers outside the United States who wish to sell passenger cars in the American market has been to offer versions of their home-market products that they have re-engineered and originally manufactured to conform to the Federal motor vehicle safety standards. The so-called "grey market" is comprised of foreign motor vehicles not originally manufactured to conform to the U.S. standards. In many instances, these vehicles are equipped with a body whose visual appearance, other than lighting equipment, bumpers, and rear view mirrors, is identical to that of U.S.-certified vehicles, and share a large number of the same structural components. Thus, there is a large body of passenger cars which the agency tentatively determined in the April 25, 1990, notice were substantially similar to vehicles of the same model and model year certified by their original manufacturers for sale in the United States.

In making a determination of eligibility for importation, NHTSA is required by 15 U.S.C. 1397(c)(3)(C)(iii) to give due consideration to information available to it. The primary information that is readily available to the agency consists of its own records, reflecting the importation of noncomplying motor vehicles under bond over the years, and data submitted by their importers in substantiation of statements that the vehicles have been brought into compliance with all applicable Federal motor vehicle safety standards. Much of the data that NHTSA found acceptable were based upon modifications of a relatively minor nature, without the necessity for major structural modifications or destructive component testing. For example, adhesives have been added to windshields as a guarantor of compliance under the dynamic test conditions of Standard No. 212, *Windshield Mounting*. Because a vehicle certified as complying with the Federal motor vehicle safety standards by its original manufacturer is a variation of one that is not so certified, but is "substantially similar" to it, the agency believes that a "substantially similar" vehicle will be more likely to incorporate structural features adaptable to conformance than will vehicles for which there is no substantially similar U.S. certified model.

On the basis of its enforcement history with respect to those models and model years of substantially similar non-certified vehicles for which NHTSA has accepted such statements with some frequency so as to afford familiarity with the vehicle, NHTSA tentatively determined that the vehicles listed as an Annex to the April notice were readily capable of conformance.

As of the effective date of the regulation, January 31, 1990, no registered importer had been approved, therefore no vehicle eligibility petition could be filed by a registered importer (nor had any manufacturer filed one). In order to expedite the continued importation of motor vehicles, the agency decided to make determinations on its own initiative, as permitted by statute. To further expedite the process, the agency decided to use its experience in admitting grey market vehicles during the two most recent years, 1988 and 1989, and choosing within these years the most frequently imported models and model years. The agency then decided that if at least 10 model and model years of a particular car had been imported in those years, and compliance work found satisfactory, a basis existed upon which a tentative determination could be made that the vehicles were readily capable of conformance. The agency identified almost 500 imported nonconforming passenger cars that are equivalent counterparts to passenger cars certified by their original manufacturers for importation into and sale in the United States, and for which not less than 10 acceptable compliance packages have been received. These makes, models, and different model years, as divided, covered BMW (106), Ferrari (5), Jaguar (15), Mazda (3), Mercedes-Benz (279), Nissan (10), Porsche (51), Rolls-Royce (10), and Toyota (12). A complete listing of these makes, models, and model years appeared as an Annex to the notice of tentative determinations.

Comments on the Notice of Tentative Determinations

Comments on the Notice of Tentative Determinations were submitted by registered importers (Wallace Environmental Testing Laboratories, Inc., ICI International, Inc., Liphardt & Associates, Inc., Import Trade Services, USA, Inc. on behalf of Registered Importers), and original manufacturers (BMW of North America, Mercedes-Benz of North America). Two principal issues were raised by the commenters.

1. Composition of List of Vehicles Covered by Tentative Determination

Liphardt, Wallace, Import Trade Services, and Mercedes-Benz commented on the composition of the list of vehicles in annex A of the notice of tentative determination. In general, the commenters felt that NHTSA's determinations should be based on chassis series or body type, rather than the engine families that comprised the list. For example, annex A listed 35 variations of the BMW series 3 under the nomenclature 316, 316i, 320, 320i, 323i, 325, 325e, and 325i, and covering model years 1976 to 1987. During that period, BMW changed the body shell only once. Thus, in the commenter's opinion, the list could be reduced to two variations. Conversely, the list omitted certain productions years of vehicles with the same body style as vehicles covered by the tentative determinations. For example, annex A included model years through 1986 of the Mercedes S class, whose body has remained unchanged since 1979, but did not include them for the years 1987–89. Import Trade Services submitted its own list which it felt met NHTSA's criteria. It thought the agency erred in selecting low-volume import years (1988, 1989) as its reference points, rather than including such high-volume years as 1984 and 1985. Mercedes-Benz thought NHTSA's classification procedure insufficient to allow for detailed meaningful comment. For example, the agency included the 1980 280 SE in annex A, but there were two completely different 280s manufactured in that year. The manufacturer commented that it might be necessary to propose annex A

using the model identification that it had furnished the agency in 1989.

The agency has taken these comments into consideration into formulating its final list. Where feasible, engine families have been subsumed into models whose bodies remained unchanged over their production lives. Additional model years have been added to include models whose bodies remained unchanged from those that were imported in sufficient numbers during 1988 and 1989 to have been included in the list of tentative determinations. For example, the entry on the Mercedes S class covers 11 different models under the company's internal identification of the vehicle as Model 126, and coverage has been broadened to cover all model 126s in the inclusive model years of 1981–89.

2. Whether Cartain Vehicles are Readily Capable of Conformance

Original manufacturers (Mercedes-Benz, and BMW) took issue with NHTSA's inclusion of their vehicles in annex A, commenting that the modifications required of their vehicles were so extensive that they did not meet the test of being "readily capable of conformance." BMW stated that the structure of its vehicles had been considerably modified in order to conform with U.S. standards, and that non U.S. versions had not been tested for compliance with the standards. Mercedes argued that it could not provide a definitive analysis in the short comment period provided, but used the fuel system integrity regulation, Standard No. 301, as illustrative of its views: It stated that the majority of the vehicles listed by NHTSA were built with fuel systems that were never designed to meet either the Federal or Canadian Motor Vehicle Safety Standards. Mercedes cited, as an example, the European version of its station wagon in production before 1986 (the model 280 TE for 1979–85 in annex A) which was available in the U.S. only as a diesel. It argued that the gasoline fuel systems used in its European station wagons would require extensive modifications (structural, electrical, piping, vapor recovery, etc.), based on destructive crash testing, to certify compliance with Standard No. 301.

The agency has considered the comments of these manufacturers. It notes that the objection by BMW is general in nature, while that of Mercedes is more specific. Although BMW noted that its conforming models have been structurally modified, it did not explain this remark, and it conceded that it had not tested its non-U.S. models for conformance. In the absence of such testing, NHTSA does not feel foreclosed from determining that BMW's non-U.S. vehicles are capable of being readily modified to achieve conformance when it has reviewed and accepted (and rejected as well) countless statements of conformity over the years.

Mercedes appeared prepared to present a more detailed analysis in support of an argument that its vehicles are not capable of being readily modified, but did not follow through with detailed comments, except for a comment regarding the difficulties of achieving conformance with Standard No. 301. The agency has characterized Standard No. 301 as one for which substantially similar vehicles could be readily modified to achieve conformance. However, the differences in fuel systems between the U.S.-certified Mercedes models and those for the home market lie chiefly in the routing of fuel lines, and the provision of check valves for cars intended to meet Standard No. 301. In the agency's judgement, such alterations that are called for do not involve major structural modifications. Therefore, NHTSA has not omitted any BMW or Mercedes for which it had made a tentative determination of eligibility on the basis of these manufacturers' comments.

Importation Code Numbers for Eligible Vehicles

The importer of a vehicle admissible under any final determination must indicate on the Form HS–7 accompanying entry the appropriate "VSA #" indicating that the vehicle is eligible for entry. VSA#1 applies to Canadian vehicles admissible under the final determination published on August 13, 1990. The determinations of this notice apply to BMW (VSA#s 2 through 35 covering 59 models and model years 1968–89) Ferrari (VSA#s 36 through 39 covering 4 models with varying model years in the 1980s), Jaguar (VSA#s 40 and 41 covering two models of varying model years in the 1970s and 1980s), Mazda (VSA#s 42, covering the 1979–81 RX 7), Mercedes-Benz (VSA#s 43 through 55 covering 13 cars with internal designations comprising 83 models of model years 1968–89), Porsche (VSA#s 56 through 61 covering 19 models of model years 1968–89), Rolls Royce (VSA#s 62, covering the 1970–79 Silver Shadow, and Toyota (VSA#s 63 through 65 covering three models of model years 1988–89).

Fees

Under 15 U.S.C. 1397(c)(3)(A)(iii), registered importers must pay such fees as NHTSA reasonably establishes to cover its cost in making determinations under subsection (i)(I) on its own initiative that motor vehicles are eligible for importation. At the time of the April 1990 tentative determination, the regulation applicable in Fiscal Year 1990 required that a fee of $1,560 be payable by the first importer of a substantially similar vehicle covered by a determination on the Administrator's initiative. Subsequently the agency proposed and adopted a revised fee structure for Fiscal Year 1991, under which a fee of $156 will be furnished the Administrator by the registered importer (owing by the importer of record) who submits a certificate of conformity on the vehicle. This means that any vehicle for which a final determination has been made in this notice is subject to the $156 fee if it is imported between the issuance of this notice and September 30, 1991, the end of Fiscal Year 1991.

Theft Prevention Standard Reminder

Some of the passenger cars covered by this notice of Final Determination are car lines subject to the requirements of 49 CFR part 541 *Federal Motor Vehicle Theft Prevention Standard*. Under the standard, certain vehicle parts must be marked before the vehicle can enter the United States. Unlike its authority with respect to the Federal motor vehicle safety and bumper standards, NHTSA has not authority to allow post-entry conformance of passenger cars subject to the theft prevention standard. Accordingly, it wishes to advise registered importers who may be interested in importing a passenger car covered by this determination to refer to appendix A of part 541 to see whether the car appears on the list, and, if it does, to ensure that the parts specified are marked appropriately and that the required certification label is attached before the car is offered for entry.

Final Determinations

Accordingly, on the basis of the foregoing, NHTSA hereby determines that each of the passenger cars listed in annex A is substantially similar to a passenger car originally manufactured for importation into and sale in the United States, certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and of the same model year, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and 1397(c)(3)(C)(iii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8

Issued on: November 6, 1990.

Jeffrey R. Miller,

Deputy Administrator.

Annex A

Nonconforming Motor Vehicles Eligible for Entry into the U.S. VSA#

1 Canadian Vehicles Admissible Under Final Determination Of August 13, 1990 (55 FR 32988)

* * * * *

VEHICLES MANUFACTURED FOR OTHER THAN THE CANADIAN MARKET

	Model type	Model year
	BMW	
2	1600	1968 through 1971.
3	2002	1968 through 1976.
4	2000 and 2000A	1969 Only.
5	1500 and 2500A	1969 through 1970.
6	2800 and 2800A	1969 through 1971.
7	2002A	1970 through 1976.
8	2800CS and 2800CSA.	1970 through 1971.
9	2.8 and 2.8A Bavaria.	1971 Only.
10	2002Tii	1972 through 1974.
11	3.0 and 3.0A Bavaria.	1972 Only.
12	3.0CS and 3.0CSA	1972 through 1974.
13	30S and 3.0SA	1974 Only.
14	3.0Si and 3.0SiA	1975 Only.
15	530i and 530iA	1975 through 1978.
16	320i and 320iA	1977 through 1983.
17	630CSi and 630CSiA.	1977 Only.
18	633CSi and 633CSiA.	1978 through 1984.
19	733i and 733iA	1978 through 1984.
20	528i and 528iA	1979 through 1981.
21	528e and 528eA	1982 through 1988.
22	533i and 533iA	1983 through 1984.
23	318i and 318iA	1984 through 1985.
24	325e and 325eA	1984 through 1987.
25	535i and 55iA	1985 through 1989.
26	524tdA	1985 through 1988.
27	635CSi and 635CSiA.	1985 through 1989.
28	735i and 735iA	1985 through 1989.
29	L7	1986 through 1987.
30	325i and 325iA	1987 through 1989.
31	325is and 325isA	1987 through 1989.
32	M6	1987 through 1988.
33	325iX and 325iXA	1988 through 1989.
34	M5	1988 Only.
35	M3	1988 through 1989.
	Ferrari	
36	308	1980 Only.
37	328 GTS	1986 through 1987.
38	GTO	1985 Only.
39	TESTAROSSA	1987 through 1988.
	Jaguar	
40	XJS	1986 through 1987.
41	XJ6	1970 through 1983.
	Mazda	
42	RX7	1979 through 1981.

Note: (1) Model Year Starts After the First Model ID Was Manufactured for the U.S. Market. (Model ID is Key for Eligibility)

(2) The Following Model Suffixes Will Not Be a Factor for the Elibigility Status: E (Fuel Injection), D (Diesel) and T (Turbo).

Model		Model Type	Model ID	Model Year
		Mercedes Benz		
43	100	600	100.012	1968 through 1981.
		600 Long 4 door	100.014	1968 through 1981.
		600 Landaulet	100.015	1968 through 1981.
		600 Long 6 door	100.016	1968 through 1981.
44	107	380 SL	107.045	1981 through 1989.
		44380 SLC	107.025	1981 through 1989.
		450.SL	107.044	1972 through 1989.
		450 SLC	107.024	1973 through 1989.
		500 SL	107.048	1986 through 1989.
45	108	280 S	108.016	1968 through 1972.
		280 SE	108.018	1968 through 1972.
		280 SEL	108.019	1968 through 1972.
		280 SE 3.5	108.057	1972 through 1973.
		280 SEL 3.5	108.058	1972 through 1973.
		280 SE 4.5	108.067	1972 Only.
		280 SEL 4.5	108.068	1972 Only.
46	109	300 SEL	109.016	1968 through 1972.
		300 SEL 4.5	109.057	1972 Only.
		300 SEL 6.3	109.018	1969 through 1972.
47	111	280 SE Coupe	111.024	1968 through 1971.
		280 SE Conv	111.025	1968 through 1971.
		280 SE 3.5 Coupe	111.026	1971 Only.
		280 SE 3.5 Conv	111.026	1971 Only.
48	113	230 SL	113.042	1968 through 1971.
		250 SL	113.043	1968 through 1971.
		280 SL	113.044	1968 through 1971.
49	114	230 .6	114.015	1968 through 1976.
		250	114.010	1968 through 1976.
		250	114.011	1971 through 1976.
		250 C	114.023	1970 through 1976.
		250 CE	114.022	1970 through 1976.
		280	114.080	1972 through 1976.
		280 E	114.06	1972 through 1976.
		280 C	114.073	1972 through 1976.
		280 CE	114.072	1972 through 1976.
50	115	220 D	115.110	1968 through 1976.
		240 D	115.117	1974 through 1976.
		240.D 3.0	115.114	1974 through 1976.
		230 .4	115.017	1974 through 1976.
51	116	300 SD	116.120	1978 through 1970.
		280 S	116.020	1975 through 1980.
		280 SE	116.024	1975 through 1988.
		450 SE	116.032	1972 through 1980.

Model		Model Type	Model ID	Model Year
		450 SEL	116.033	1972 through 1988.
		450 SEL 6.9	116.036	1972 through 1988.
52	123	240 D	123.123	1977 through 1985.
		240 TD	123.183	1977 through 1985.
		300 D	123.130	1977 through 1985.
		300 D	123.133	1977 through 1985.
		300 TD	123.190	1977 through 1985.
		300 TD	123.193	1977 through 1985.
		300 CD	123.150	1978 through 1985.
		300 CD	123.153	1978 through 1985.
		230	123.023	1977 through 1985.
		230 E	123.223	1977 through 1985.
		230 T	123.083	1977 through 1985.
		230 TE	123.283	1977 through 1985.
		280	123.030	1977 through 1985.
		280 E	123.033	1977 through 1985.
		280 TE	123.093	1977 through 1985.
		280 CE	123.053	1978 through 1985.
53	126	300 SD	126.120	1981 through 1989.
		300 SE	126.024	1988 through 1989.
		300 SEL	126.025	1988 through 1989.
		380 SE	126.032	1984 through 1989.
		380 SEL	126.033	1981 through 1989.
		420 SEL	126.035	1986 through 1989.
		500 SEL	126.037	1984 through 1989.
		300 SE	126.043	1982 through 1989.
		500 SEC	126.044	1984 through 1989.
		560 SEL	126.039	1986 through 1989.
		560 SEC	126.045	1986 through 1989.
54	201	190 E 2.3	201.024	1984 through 1989.
		190 E	201.028	1986 through 1989.
		190 E 2.6	201.029	1987 through 1989.
		190 E 2.6 16	201.034	1986 through 1989.
		190 D 2.2	201.122	1984 through 1989.
		190 D	201.126	1984 through 1989.
		300 D T	124.133	1986 through 1989.
55	124	260 E	124.026	1987 through 1989.
		300 E	124.030	1986 through 1989.
		300 TE	124.080	1986 through 1989.
		300 CE	124.050	1988 through 1989.

Model type		Model year
Porsche		
56	911 COUPE	1968 through 1989.
	911 TARGA	1968 through 1989.
	911 TURBO	1976 through 1989.
	911 CABRIOLET	1984 through 1989.
	911 CARRERA	1974 through 1989.
57	912 COUPE	1968 through 1969.
	912 TARGA	1968 through 1969.
	912 KARMANN	1968 through 1969.
58	914	1970 through 1976.
59	924 COUPE	1977 through 1989.
	924 TURBO COUPE	1979 through 1989.
	924 S	1987 through 1989.
60	928 COUPE	1978 through 1989.
	928 S COUPE	1983 through 1989.
	928 S4	1979 through 1989.
	928 GT	1978 through 1989.
61	944 COUPE	1984 through 1989.
	944 TURBO COUPE	1985 through 1989.
	944 S COUPE	1987 through 1989.

Model type		Model year
Rolls Royce		
62	Silver Shadow	1970 through 1979.

Model type		Model year
Toyota		
63	Camry	1987 through 1988.
64	Celica	1987 through 1988.
65	Corolla	1987 through 1988.

[FR Doc. 90-26619 Filed 11-9-90; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

[Number: 120-03]

Transfer of Functions

November 5, 1990.

Subject: Transfer of functions to the Director, Bureau of Alcohol, Tobacco and Firearms, to administer and enforce 26 U.S.C. 4181 and 4182, relating to excise tax on firearms.

By virtue of the authority vested in me as Secretary of the Treasury by 31 U.S.C. 321(b), it is ordered that:

1. There is hereby transferred, as specified herein, the functions, powers, and duties of the Commissioner of Internal Revenue (hereinafter referred to as the Commissioner) arising under certain laws relating to firearms to the Director of the Bureau of Alcohol, Tobacco, and Firearms (hereinafter referred to as the Director).

2. The Director shall perform the functions, exercise the powers, and carry out the duties of the Secretary in the administration and enforcement of the following provisions of law:

a. Sections 4181 and 4182 under chapter 32 of the Internal Revenue Code of 1986;

b. Subchapters F and G of chapter 32 of the Internal Revenue Code of 1986, insofar as they relate to activities administered and enforced with respect to sections 4181 and 4182 of the Internal Revenue Code of 1986; and

c. Chapters 61 to 80, inclusive, of the Internal Revenue Code of 1986, insofar as they relate to activities administered and enforced with respect to sections 4181 and 4182 of the Internal Revenue Code of 1986.

3. Regulations for the purposes of carrying out the functions, powers and duties delegated to the Director may be issued by the Director with the approval of the Secretary.

4. All regulations prescribed, all rules and instructions issued, and all forms adopted for the administration and enforcement of the laws specified in paragraph 2., which are in effect or in use on the effective date of this Order, shall continue in effect as regulations, rules, instructions and forms of the Bureau of Alcohol, Tobacco, and Firearms until superseded or revised.

5. The Director shall adopt all rulings and interpretations of the Internal Revenue Service in existence on the effective date of this Order which concern the laws specified in paragraph 2. and shall consult with the Commissioner to achieve uniformity and consistency in administering such laws.

6. All existing activities relating to the discovery of civil liability, determination, assessment, collection, processing, depositing, or accounting for taxes (including interest, additional amounts, additions to the tax, and assessable penalties), under the laws specified in paragraph 2. shall continue to be performed by the Commissioner until the Director shall otherwise direct.

7. Except as provided in paragraph 6., the term "Commissioner of Internal Revenue" to the exent used in regulations, rules, instructions and forms, issued or adopted for carrying out the fucntions, powers and duties specified in paragraph 2. which are in effect or in use on the effective date of this Order shall be held to mean the Director.

8. Except as provided in paragraph 6., the term "District Director of Internal Revenue," and "District Director" to the extend used in regulations, rules, instructions and forms, issued or adopted for carrying out the functions, powers and duties specified in paragraph 2. which are in effect or in use on the effective date of this Order shall be held to mean the Director.

9. Except as provided in paragraph 6., the term "internal revenue officer" to the extend used in any regulations, rules, instructions and forms, issued or adopted for carrying out the functions, powers and duties specified in paragraph 2. shall include all officers and employees of the United States engaged in the administration and enforcement of the laws administered by the Bureau of Alcohol, Tobacco, and Firearms who are appointed or employed by, or pursuant to the authority of, or who are subject to the directions, instructions, or orders of the Secretary.

10. To the extend that any action taken by the Commissioner or his delegates or the Director or his delegates which relates to administration or enforcement of the laws specified in paragraph 2. prior to the effective date of this Order requires ratification, such action is hereby affirmed and ratified.

11. Nothwithstanding paragraph 6., the Commissioner shall pursue to conclusion all cases and investigations open or otherwise in process as of the date the Director assumes the responsibility for performing the activities specified in paragraph 6.

12. Except as provided in paragraph 11., once the Director assumes the responsibility for performing the activities specified in paragraph 6., the Director shall enter all assessments, process all claims for abatement and refund, and make all proper adjustments to tax liability under the laws specified in paragraph 2., even though such actions relate to tax liability incurred for return periods preceding the date the Director assumes such responsibilities.

13. Upon request of the Director, the Commissioner shall transfer documents and records relating to the administration and enforcement of the laws specified in paragraph 2. to the Director.

14. The authorities delegated by this Order may be redelegated.

Nicholas F. Brady,
Secretary of the Treasury.

[FR Doc. 26684 Filed 11-9-90; 8:45 am]
BILLING CODE 4810-31-M

Office of Thrift Supervision

Boonslick Federal Savings and Loan Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Boonslick Federal Savings and Loan Association, Boonville, Missouri, on November 2, 1990.

Dated: November 5, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Executive Secretary.

[FR Doc. 90-26624 Filed 11-9-90; 8:45 am]
BILLING CODE 6720-01-M

DeSoto Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for DeSoto Federal Savings Association, Mansfield, Louisiana on November 2, 1990.

Dated: November 5, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Executive Secretary.

[FR Doc. 90-26626 Filed 11-9-90; 8:45 am]
BILLING CODE 6720-01-M

Riverside Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Riverside Federal Savings Bank, Riverside, New Jersey, on November 2, 1990.

Dated: November 5, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Executive Secretary.

[FR Doc. 90-26625 Filed 11-9-90; 8:45 am]
BILLING CODE 6720-01-M

Boonslick Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (C) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Boonslick Savings and Loan Association, Boonville, Missouri, Docket No. 6209, on November 2, 1990.

Dated: November 5, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Executive Secretary.

[FR Doc. 90-26621 Filed 11-9-90; 8:45 am]
BILLING CODE 6720-01-M

DeSoto Federal Savings Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for DeSoto Federal Savings and Loan Association, Mansfield, Louisiana on November 2, 1990.

Dated: November 5, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-26628 Filed 11-9-90; 8:45 am]

BILLING CODE 6720-01-M

First Standard Federal Savings Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivison (F) of section 5 (d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Standard Federal Savings Association, Fairmont, West Virginia, Docket No. 8766, with the Resolution Trust Corporation as sole Receiver for the Association on November 2, 1990.

Dated: November 5, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-26622 Filed 11-9-90; 8:45 am]

BILLING CODE 6720-01-M

Riverside Savings Bank, SLA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(C) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Riverside Savings Bank, SLA, Riverside, New Jersey, Docket No. 5606, on November 2, 1990.

Dated: November 5, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-26623 Filed 11-9-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-62; OTS No. 1382]

First Federal Savings Bank of LaFayette, Lafayette, IN; Final Action; Approval of Conversion Application

Notice is hereby given that on October 23, 1990, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Savings Bank of Lafayette, Lafayette, Indiana, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Indianapolis, 8250 Woodfield Crossing Blvd., suite 305, Indianapolis, Indiana 46240.

Dated: October 31, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-26627 Filed 11-9-90; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register

Vol. 55, No. 219

Tuesday, November 13, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

November 7, 1990.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), U.S.C. 552B:

DATE AND TIME: November 14, 1990, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 928th Meeting—November 14, 1990, Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 3865-036, Guadalupe-Blanco River Authority

CAH-2.
Project No. 2756-015, Burlington Electric Company and Winooski One Partnership

CAH-3.
Project Nos. 8435-010, 8468-012 and 8812-009, Independence Electric Corporation

CAH-4.
Project No. 10645-002, City of Richmond, Virginia

CAH-5.
Project No. 8747-005, Power Resources Development Corp.

CAH-6.
Docket No. UL90-9-001, Wisconsin Power and Light Company

CAH-7.
Project No. 7941-002, Enviro Hydro, Inc.

CAH-8.
Project Nos. 10635-001 and 10813-000, Town of Summersville, West Virginia
Project No. 10634-000, City of Manassas, Virginia

CAH-9.
Project No. 6939-012, City of Jackson, Ohio

CAH-10.
Project No. 8662-006, Nockamixon Hydro Associates

CAH-11.
Docket No. EL88-37-001, Kentucky Utilities Company

CAH-12.
Project No. 8662-007, Nockamixon Hydro Associates

CAH-13.
Docket No. UL88-23-001, City of Seattle, Washington

CAH-14.
Docket No. UL89-34-002, Consolidated Hydro, Inc.

CAH-15.
Project No. 10418-004, City of Harrisburg, Pennsylvania

CAH-16.
Omitted

CAH-17.
Docket No. RM87-19-000, Electric Utilities; Classification of Dams

Consent Agenda—Electric

CAE-1.
Docket No. ER89-581-003, Portland General Electric Company

CAE-2.
Docket No. ER90-223-003, Texas Utilities Electric Company

CAE-3.
Docket No. ER90-355-001, Pacific Gas and Electric Company

CAE-4.
Docket No. ER90-527-001, Northern States Power Company (Minnesota)

CAE-5.
Docket Nos. ER90-333-001, ER89-256-003 and EC89-10-002, Palisades Generating Company

CAE-6.
Docket No. EC90-8-001, Central Vermont Public Service Corporation and Allied Power and Light Company

CAE-7.
Omitted

CAE-8.
Docket No. FA88-8-001, Century Power Corporation

CAE-9.
Docket No. ID-1984-002, Norman Barker, Jr.
Docket No. ID-2214-001, Joseph J. Pinola
Docket No. ID-2383-000, Roy A. Anderson
Docket No. ID-2384-000, Warren Christopher

CAE-10.
Docket No. EL90-2-000, Turlock Irrigation District v. Pacific Gas and Electric Company
Docket No. EL90-3-000, Modesto Irrigation District v. Pacific Gas and Electric Company
Docket No. EL90-5-000, City and County of San Francisco v. Pacific Gas and Electric Company

CAE-11.
Docket No. ER90-298-000, Pennsylvania Power & Light Company

Consent Miscellaneous

CAM-1.
Docket No. RM90-11-000, Streamlining Commission Procedures for Review of Staff Action

Consent Agenda—Gas and Oil

CAG-1.
Docket Nos. TQ90-3-27-002, RP91-10-000 and TA90-1-27-002, North Penn Gas Company

CAG-2.
Docket No. TM91-3-22-000, CNG Transmission Corporation

CAG-3.
Docket No. GT91-5-000, Northwest Pipeline Corporation

CAG-4.
Docket No. RP91-8-000, National Fuel Gas Supply Corporation

CAG-5.
Docket Nos. RP88-259-036, RP89-136-021 and CP89-1227-007, Northern Natural Gas Company

CAG-6.
Docket No. RP89-183-019, Williams Natural Gas Company

CAG-7.
Docket Nos. RP89-161-017, 004 and 014, ANR Pipeline Company

CAG-8.
Docket No. RP90-156-001, Natural Gas Pipeline Company of America

CAG-9.
Docket Nos. RP90-12-005 and CP89-1554-004, Colorado Interstate Gas Company

CAG-10.
Docket No. ST87-1986-001, ONG Transmission Company, a Division of ONEOK, Inc.

CAG-11.
Docket No. PR90-8-000, Magnolia Pipeline Corporation

CAG-12.
Docket No. RP90-155-001, Panhandle Eastern Pipe Line Company

CAG-13.
Docket Nos. RP88-115-015, CP89-31-002, CP88-818-002 and CP89-59-003, Texas Gas Transmission Corporation

CAG-14.
Docket No. RP90-178-000, Panhandle Eastern Pipe Line Company

CAG-15.
Docket Nos. RP89-251-010 and TA90-1-1-010, Alabama-Tennessee Natural Gas Company

CAG-16.
Docket Nos. RP88-259-037, RP89-136-020 and CP89-1227-006, Northern Natural Gas Company, Division of Enron Corp.

CAG-17.
Docket Nos. RP88-227-020, CP90-767-001 and CP78-221-003, Paiute Pipeline Company
Docket No. CP90-849-001, Northwest Pipeline Corporation

CAG-18.

Docket No. TA90-1-9-004, Tennessee Gas Pipeline Company
CAG-19.
Docket No. TM91-3-30-001, Trunkline Gas Company
CAG-20.
Docket No. TQ90-3-43-004, Williams Natural Gas Company
CAG-21.
Docket Nos. RP87-82-003 and RP-86-145-005, Pacific Gas Transmission Company
CAG-22.
Docket Nos. RP88-63-014 and RP88-114-010, Southern Natural Gas Company
CAG-23.
Omitted
CAG-24.
Docket No. RP90-2-001, Williston Basin Interstate Pipeline Company
CAG-25.
Omitted
CAG-26.
Docket Nos. RP90-184-000 and 001, Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company
CAG-27.
Docket Nos. RP90-164-002 and RP90-165-002, Mid-Louisiana Gas Company
CAG-28.
Docket Nos. CP86-578-031, CP89-1740-005 and RP90-147-001, Northwest Pipeline Corporation
CAG-29.
Docket No. RP85-39-000, Wyoming Interstate Company, Ltd.
CAG-30.
Docket No. RP90-19-000, El Paso Natural Gas Company v. West Texas Gathering Company
CAG-31.
Omitted
CAG-32.
Docket Nos. RP89-86-000 and RP90-128-000, Chandeleur Pipe Line Company
CAG-33.
Docket Nos. TQ89-1-46-000, *et al.*, RP86-165-000, *et al.*, RP88-188-000, *et. al.* and CP90-2135-000, *et al.*, Kentucky West Virginia Gas Company
CAG-34.
Docket No. ST90-3051-000, Louisiana Interstate Gas Corporation
Docket No. ST90-2572-000, Enogex, Inc.
Docket Nos. ST90-2573-000 and ST90-2577-000, TEX/CON Gas Pipeline Company
Docket No. ST90-2574-000, Louisiana Resources Company
Docket No. ST90-2575-000, Midcon Corporation (Arcadian)
Docket No. ST90-2576-000, Transok, Inc.
Docket No. ST90-3390-000, ONG Transmission Company
Docket No. ST90-4264-000, Texas Corporation
CAG-35.
Docket Nos. CS86-97-001 and 002, Harbert Energy Corporation
CAG-36.
Docket No. GP89-31-001, Graves Drilling Company, Inc.
CAG-37.
Docket No. GP89-8-000, Questar Pipeline Company
CAG-38.
Docket No. CP89-600-001, Panhandle Eastern Pipe Line Company
CAG-39.
Docket No. CP89-93-006, Williams Natural Gas Company
CAG-40.
Docket No. CP89-1540-001, El Paso Natural Gas Company
CAG-41.
Docket No. CP88-136-025, Texas Eastern Transmission Corporation
CAG-42.
Docket No. CP88-212-002, West Texas Gathering Company
CAG-43.
Docket No. CP88-328-005, Transcontinental Gas Pipe Line Corporation
CAG-44.
Omitted
CAG-45.
Docket No. CP91-156-000, Williams Natural Gas Company
CAG-46.
Docket No. CP90-1269-000, El Paso Natural Gas Company
CAG-47.
Docket No. CP90-1281-000, El Paso Natural Gas Company
CAG-48.
Docket No. CP90-1014-000, Panhandle Eastern Pipe Line Company and Pan Gas Storage Company, d.b.a. Southwest Gas Storage Company
CAG-49.
Docket No. CP90-1251-000, Northern Border Pipeline Company
CAG-50.
Docket No. CP90-1292-000, East Tennessee Natural Gas Company
CAG-51.
Docket No. CP90-1661-000, South Georgia Natural Gas Company
CAG-52.
Docket No. CP90-1849-000, The Washington Water Power Company
Docket No. CP90-2158-000, Northwest Pipeline Corporation
CAG-53.
Docket No. CP90-1922-000, East Tennessee Natural Gas Company
Docket No. CP90-2060-000, Chattanooga Gas Company
CAG-54.
Omitted
CAG-55.
Docket No. CP90-909-000, Florida Gas Transmission Company
CAG-56.
Docket No. CP90-132-000, Transcontinental Gas Pipe Line Corporation
CAG-57.
Docket No. CP90-706-000, Wyoming Interstate Company, Ltd.
CAG-58.
Docket Nos. CP89-1571-000 and 001, Niagara Mohawk Power Corporation
CAG-59.
Docket No. C187-429-002, Vesta Energy Company
CAG-60.
Docket Nos. RP90-187-000 and CP81-188-014, Valero Interstate Transmission Company

Hydro Agenda

H-1.
Project Nos. 618-008 and 016, Alabama Power Company. Order on appeal and on requests for rehearing of denial of stay and for declaratory order.

Electric Agenda

E-1.
Docket No. EF87-2011-005, United States Department of Energy—Bonneville Power Administration. Order on requests for rehearing.
E-2.
Docket No. ER90-164-001, TECO Power Services Corporation and Tampa Electric Company. Order on requests for rehearing.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1.
Docket Nos. RP88-259-034, CP89-1227-003, RP89-136-018 and RP90-124-002, Northern Natural Gas Company, Division of Enron Corp. Order on interim gas inventory charge settlement.
PR-2.
Docket No. CP88-1281-000, Natural Gas Pipeline Company of America. Order on gas inventory charge settlement.

II. Producer Matters

PF-1.
Reserved

III. Pipeline Certificate Matters

PC-1. Docket Nos. CP89-634-000, 001, 002, CP89-815-000 and 001, Iroquois Gas Transmission System, L.P.
Docket Nos. CP89-629-000, 001 and 002, Tennessee Gas Pipeline Company
Docket Nos. CP89-1263-000 and 001, Texas Eastern Transmission Corporation
Docket Nos. CP89-1339-000 and 001, Long Island Lighting Company, The Brooklyn Union Gas Company and Consolidated Edison Company of New York, Inc.
Order on applications for certificates, permit, and abandonment authorization, petition for declaratory order, and requests for rehearing and clarification.
PC-2.
Docket No. CP89-2067-001, Southern Natural Gas Company. Order on requests for rehearing and stay concerning service to Air Products.
PC-3.
Docket No. CP89-2174-000, Arkla Energy Resources, a Division of Arkla, Inc. Order on application for certificate.
PC-4.
Docket No. CP90-1391-000, Arcadian Corporation v. Southern Natural Gas Company. Order on complaint.
PC-5.
Docket No. CP90-1478-000, Northern Border Pipeline Company. Order on petition for declaratory order.

Lois D. Cashell,
Secretary.

[FR Doc. 90-26816 Filed 11-8-90; 1:58 pm]
BILLING CODE 6717-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10 a.m., Thursday, November 15, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on October 29, 1990.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 7, 1990.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 90-26796 Filed 11-8-90; 9:46 am]
BILLING CODE 6210-01-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: A meeting of the Board of Directors will be held on November 19, 1990. The meeting will commence at 12 noon.

PLACE: The Washington Court Hotel, 525 New Jersey Avenue, NW., Ballroom West, Washington, DC 20001, 202-628-2100.

STATUS OF MEETING: Open (A portion of the meeting may be closed, subject to a vote by a majority of the Board of Directors, to discuss personnel, privileged or confidential, personal, investigatory and litigation matters under the Government in the Sunshine Act) (5 U.S.C. 552b (c) (2), (4), (5), (7), and (10) and 45 CFR 1622.5 (a), (c), (d), (e), (f), and (h)).

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes.
—September 23-24, 1990
3. Election of Chairman and Vice-Chairman.
4. Report from Board Members.
5. President's Report.
6. Legislative Report.
7. Report on the Fiscal Year (FY) 1991 Consolidated Operating Budget.
8. Presentation and Discussion of Proposals for FY 1992 Budget Mark.
9. Report on 1991 Application for Funding.
10. Presentation from Client Members of the Legal Services Community.
11. Report on the Potential for Self-Help within Legal Services, by William Fry of the National Training Center.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date issued: September 12, 1990.

Maureen R. Bozell,
Corporation Secretary.

[FR Doc. 90-26878 Filed 11-8-90; 8:45 am]
BILLING CODE 7050-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of November 12, 1990.

A closed meeting will be held on Tuesday, November 13, 1990, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 13, 1990, at 2:30 p.m., will be:

Settlement of injunctive action.
Settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Daniel Hirsch at (202) 272-2100.

Dated: November 6, 1990.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-26881 Filed 11-8-90; 4:07 pm]
BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 55, No. 219
day, November 13, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL RESERVE SYSTEM

12 CFR Part 210

[Reg. J; Docket No. R-0697]

Funds Transfers Through Fedwire

Correction

In rule document 90-23461 beginning on page 40791 in the issue of Friday, October 5, 1990, make the following corrections:

1. On page 40801, in the first column:

a. In the second line of the authority citation to part 210, insert a closed parenthesis after "342"; and

b. In the table of contents entry for subpart B, add an "s" to "Fund".

§ 210.25 [Corrected]

2. On the same page, in the second column, in § 210.25(b)(3), in the seventh line "transfer" was misspelled.

§ 210.26 [Corrected]

3. On the same page, in the third column, in § 210.26, in the third line of paragraph (e) and the second line of paragraph (f), add an "s" to "Bank" and "account", respectively.

§ 210.29 [Corrected]

4. On page 40802, in the third column, in the second line "offline" should have appeared "off-line".

5. On page 40803, in the second column, under "*Section 210.25—Authority, Purpose, and Scope*", in paragraph (b)(1), in the fifth line, delete the "s" from "supersedes"

6. On page 40804, in the first column, in the second full paragraph, in the second line "obligated" should read "obliged".

7. On the same page, in the second column, in the second paragraph, the first line should read:

(a) *Article 4A.* "Article 4A" means the

8. On the same page, in the third column, under "*Section 210.27—Reliance on Identifying Number*", in paragraph (a), in the 13th line, "sensor" should read "sender".

9. On page 40805, in the second column, in the 15th line of the first full paragraph, "Security" should appear lowercase.

10. In the same column, in paragraph (c), in the fourth line from the end, "Section 210.28(d)" should read "Section 210.28(c)".

11. In the same column, in the next to last line, and in the next column, in the second line, "advises" should read "advices".

12. On page 40806, in the second column, in the 23rd line "apply" was misspelled.

13. On page 40806, in the second column, in the 11th line from the bottom, insert a period between "order" and "The".

14. On page 40811, in the first column, in paragraph (c), in the seventh line, after "by" insert "a particular means, the receiving bank may issue its payment order by".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

Correction

In notice document 90-24122 beginning on page 41611, in the issue of Friday, October 12, 1990, make the following corrections:

1. On page 41611, in the third column, in the 16th line, after "submitted" insert "by".

2. On page 41612, in the first column, "Docket No.: M-88-100-C", in the fifth line, "a" should be deleted.

3. Under the next docket number "M-88-111-C", the next line should read "*FR Notice:* 53 FR 28714".

4. On page 41613, in the first and second columns, "*FR notice:*53" should read "*FR notice:*54" each time it appears, except in the first column, in the seventh line from the bottom, "*FR notice:*53 FR 50602 was published correctly.

5. On page 41614, in the second column, in the eighth line, "30 CFR 75.811" should read "30 CFR 77.811".

6. On page 41616, in the first column, in the sixth line, "contractors" should read "contactors".

7. On page 41617, in the second column, under "Docket No.: M-89-189-C", "44 FR 2426" should read "55 FR 2426".

BILLING CODE 1505-01-D

federal register

Tuesday
November 13. 1990

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 816, et al.

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Standards; Hydrologic Balance; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 816 and 817

RIN No. 1029-AB36

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Standards; Hydrologic Balance

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) proposes to amend portions of its permanent program regulations governing protection of the prevailing hydrologic balance at surface and underground mining operations through the use of best technology currently available (BTCA). Most of the proposed revisions are in response to a court decision and subsequent rule suspension; revisions are also being proposed to a related definitional rule.

The proposed rule, which concerns the use of best technology currently available would:

(1) Require that regulatory authorities submit to OSM for approval specific sediment control practices they plan to allow as alternatives to siltation structures;

(2) Require siltation structures for surface and underground mining operations in those regions receiving more than 26 inches of average annual precipitation; and

(3) Allow either siltation structures or alternative sediment control practices approved by OSM as BTCA for surface and underground mining operations in those regions receiving 26 inches or less of average annual precipitation.

DATES: Written comments: OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on January 14, 1991.

Public hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, DC; in Denver, Colorado; and in Knoxville, Tennessee. Upon request, OSM will also hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times and on dates to be announced prior to hearings. OSM will accept requests for public hearings until 5 p.m. Eastern time on December 28, 1990. Individuals wishing to attend but not testify at any hearing should contact the person identified under "FOR FURTHER INFORMATION CONTACT" beforehand to verify that the hearing will be held.

ADDRESSES: Written comments: Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131, 1100 L St. NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131-L, 1951 Constitution Avenue NW., Washington, DC 20240.

Public hearings: Department of the Interior Auditorium, 18th and C Street NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th St., Denver, Colorado; and the Hyatt, 500 Hill Avenue SE., Knoxville, Tennessee. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington will be announced prior to the hearings.

Request for public hearings: Submit requests orally or in writing to the person and address specific under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Douglas J. Growitz, PHG, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343-1507 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see "DATES") or delivered to an address other than those listed above (see "ADDRESSES") may not necessarily be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see "DATES" and "ADDRESSES"). The dates and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the Federal Register at least 7 days prior to any hearings held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr. Growitz (see "FOR FURTHER INFORMATION CONTACT") either orally or in writing of the desired hearing location by 5 p.m. Eastern time December 28, 1990. If no one has contacted Mr. Growitz to express an interest in participating in hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a copy of their testimony to assist OSM in preparing appropriate questions. OSM also requests that persons who plan to testify submit to OSM, at the address previously specified for the submission of written comments (see "ADDRESSES") an advance copy of the testimony.

II. Background

The Surface Mining Control and Reclamation Act of 1977 (the Act or SMCRA), 30 U.S.C. 1201 *et seq.*, sets forth general regulatory requirements for surface coal mining and the surface impacts of underground coal mining. Environmental protection standards for the control of sediment for surface mining activities using the best technology currently available are found at section 515(b)(10)(B)(i) and section 515(b)(24) of the Act. Section 515(b)(10)(B)(i) requires the operation to minimize the disturbances to the prevailing hydrologic balance at the mine site and associated offsite areas during and after surface coal mining operations and during reclamation by:

> Conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow, or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable State or Federal law; * * *

Section 515(b)(24) of the Act requires the operator:

> To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable.

Sections 516(b)(9)(B) and 516(b)(11) require the same protection for underground mining.

The permanent regulatory program for surface coal mining and reclamation operations was initially promulgated on March 13, 1979 (44 FR 15312). Regulations to minimize disturbances to the prevailing hydrologic balance were established at 30 CFR 816.42(a)(1) (44 FR 15398) for surface mining activities and at 30 CFR 817.42(a)(1) (44 FR 15424) for underground mining activities. These regulations required all surface drainage from the disturbed areas and any discharge of water from underground workings that did not meet effluent limitations to be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area. Sedimentation pond was defined at 30 CFR 701.5 to be:

> "a primary sediment control structure designed, constructed and maintained in accordance with 30 CFR 816.46 and including but not limited to a barrier, dam, or excavated depression which slows down water and runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts, and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond."

Sedimentation ponds provide a point source discharge. At that time, OSM considered sedimentation ponds, in conjunction with other control measures, to be the best technology currently available for controlling water quality problems (44 FR 15149).

In 1981, OSM proposed changes to the rules (46 FR 34784) in order to conform with effluent limitation guidelines promulgated by the U.S. Environmental Protection Agency (EPA). The rules were proposed at 30 CFR 816.42 and at 30 CFR 817.42. The proposal was to allow the use of alternative sediment control measures in lieu of sedimentation ponds if such alternate measures could meet the applicable State and Federal water quality and effluent standards, disturbances to the hydrologic balance were minimized, and use of such a facility was the BTCA.

On October 22, 1982, OSM published final rules at 30 CFR 816.42 and 817.42 that required discharges of water from areas disturbed by surface mining activities and underground mining activities to be made in compliance with all applicable State and Federal water quality laws and regulations, and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency at 40 CFR part 434 (47 FR 47216).

Further, final rules were promulgated on September 26, 1983 (48 FR 44032) at 30 CFR 816.46(b)(2) for surface mining and at 30 CFR 817.46(b)(2) for underground mining. Both paragraphs required that all surface drainage from the disturbed area be passed through a siltation structure before leaving the permit area. Exceptions could be granted in cases where the disturbed area was small in relation to the total drainage area and where the operator could demonstrate compliance with effluent limitations and applicable State and Federal water quality standards for the receiving waters. The proposed use of alternative sediment control measures was not adopted because OSM believed there was not a sufficient technical basis for using alternatives other than siltation structures. OSM considered siltation structures to be the BTCA.

The term "siltation structure" was defined at §§ 816.46(a)(1) and 817.46(a)(1) to mean "a sedimentation pond, a series of sedimentation ponds or other treatment facility." "Other treatment facilities" was defined at these sections and restricted to chemical treatment such as flocculation or mechanical structures such as clarifiers that result in a point source discharge. These two definitions were added to be more consistent with the wording in the Act and to reflect rule changes which allow certain siltation structures other than sedimentation ponds.

Upon issuance, the 1983 rulemaking for §§ 816.46 and 817.46 was challenged in the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79-1144 (D.D.C. July 15, 1985) (*In Re: Permanent* (II)). The court remanded: (1) Sections 816.46(b)(2) and 817.46(b)(2) on the basis that OSM did not adequately address concerns about negative impacts of siltation structures in the West raised during the public comment period. OSM suspended Paragraphs 816.46(b)(2) and 817.46(b)(2) on November 20, 1986 (51 FR 41952).

III. Discussion of Proposed Rule

After consideration of the administrative record of these regulations, as well as the legislative history of the Act and the opinions of the court, and in light of current technical information on best technology current available practice [1, 2], OSM is proposing the following revisions to its permanent regulatory program. Consistent with its findings when promulgating the 1979 and 1983 rules, OSM has not identified any differences between BTCA practices for surface and underground mines that would appear to necessitate different regulatory provisions under this proposed rulemaking. Therefore, the proposed performance standard for surface mining activities at 30 CFR 816.46(b)(2) and the proposed standard for underground mining activities at 30 CFR 817.46(b)(2) are identical.

Section 701.5. Definitions

For the definition of "best technology currently available" OSM is proposing to delete the last sentence of the current definition which provides discretion to the regulatory authority to determine the BTCA on a case-by-case basis. For the reasons explained below, OSM believes it is important to justify the effectiveness of BTCA practices other than siltation structures in meeting the requirements of the Act.

Sections 816.45/817.45, Sediment Control Measures

OSM is proposing to insert language under new paragraph (c) that would provide that regulatory authorities may submit to OSM for approval specific sediment control practices as alternatives to siltation structures as BTCA for those regions receiving 26 inches or less of average annual precipitation. See discussion, standard of differentiation. To obtain approval, regulatory authorities would need to identify and present the technical basis for the use of any sediment control practices they plan to accept as BTCA other than siltation structures in the arid and semi-arid regions of the U.S. Specific sediment control practices other than siltation structures would be authorized through the State program amendment approval process for States and through rulemaking for Federal regulatory programs and measured against the BTCA definition as the standard.

Further, OSM is proposing to insert language under new paragraph (d) that would require BTCA practices other than siltation structures to meet minimum standards for construction, maintenance and reclamation in order to

[1] Alternative Methods of Surface Mining Sediment Control and Measuring Water Quality in Streams. Hinton, J.R. et al. 1985. American Society for Surface Mining and Reclamation.

[2] Evaluation of Alternative Sediment Control Techniques at Surface Mines in the Semiarid West. Peterson, M.R. et al. 1990. Billings Symposium, Planning, Rehabilitation and Treatment of Disturbed Lands.

ensure meeting the requirements of the Act over the life cycle of the specific BTCA practice. For this reason, OSM is proposing that each BTCA practice must conform with the requirements of existing 30 CFR 816.46 (b)(4), (b)(5), (b)(6), except as provided in paragraph (e) of § 816.46 and 817.46 (b)(4), (b)(5), (b)(6), except as provided in paragraph (e) of § 817.46.

Many practices to control sediment have been documented in the literature or identified in response to various environmental statutes and programs, particularly those of the EPA.[3,4] In preparation for this rulemaking, OSM visited specific mining operations in the States of New Mexico and Wyoming and discussed BTCA practices being used at the sites with mining companies and regulatory authorities.[5]

Some practices may be more effective in controlling sediment than other practices and it is for this reason OSM is proposing the definitional change. The effectiveness of specific practices may be restricted to specific areas and be dependent upon variables such as geomorphology, hydrology, climate and engineering design used in the construction.[6] Because of the wide range in the type of sediment control practices and their effectiveness in a given application, OSM believes it is necessary for the regulatory authorities to specify details about specific sediment control practices for which they seek approval to allow operators to use as BTCA instead of siltation structures. Details would include: Circumstances or conditions under which a specific practice would be used, engineering designs related to the construction of a specific sediment control practice, and technical data to support the effectiveness of the practice. The detailed information, including any monitoring data, will be used by OSM to judge the effectiveness of the practice in meeting the standards set forth in the Act.

The detailed support required under the rule to justify BTCA practices other than siltation structures may arguably inhibit the development of new and innovative BTCA practices to control sediment. OSM believes experimental practices authorized by section 711 of the Act could provide an opportunity for the controlled use and evaluation of new and innovative sediment control measures.[7] Indeed, some of the BTCA practices observed in New Mexico were first implemented under the experimental practices program. Further, through research and sediment control as being implemented through the agricultural, construction and silvacultural industries and Federal agencies that oversee these activities, OSM believes ample opportunity exists to identify additional BTCA sediment control practices that will have transfer value for the coal mining industry.[8,9]

Paragraph 816.46(b)(2)/817.46(b)(2). Performance Standards for BTCA Practices

Paragraph 816.46(b)(2) which requires all surface drainage from the disturbed area to be passed through a siltation structure before leaving the permit area was suspended on November 20, 1986. In effect, the rule defined siltation structures as the only acceptable BTCA practice. OSM is proposing to remove the suspension and propose new language for § 816.46(b)(2) which differentiates regions where siltation structures will be mandatory from those regions where any approved BTCA practice, including siltation structures, can be used. The differentiation will be based on the amount of average annual precipitation the region receives. See discussion, Standard of Differentiation.

The primary purpose of BTCA practices is to control sediment. The Act at section 515(b)(10)(B)(i), in part, states surface coal mining operations shall minimize disturbances to the prevailing hydrologic balance by preventing to the extent possible additional contributions of suspended solids to stream flow or runoff outside the permit area using BTCA. There are many examples of practices that commonly have been used to control suspended sediment.[10, 11] These include sediment ponds or siltation structures, contour furrows, porous rock check dams,[12] temporary sediment traps, drainage to the mine pit, straw dikes, mulches, etc. The purpose of these is to reduce flow velocities/ runoff volumes or trap sediment. Sediment control practices other than siltation structures may effectively delay runoff and result in smaller peak flow. Many of these practices reduce the amount of water permanently retained on the site, thereby minimizing impacts to streamflow and downstream water users.

Different sediment control practices are used in the humid versus the arid/ semi-arid regions of the United States and OSM believes there may be sound technical reasons for these differences that should be reflected in the rule. Differences in regional approaches to controlling sediment are determined by many factors such as climate, geomorphology, size of the operation, and the coexistence of several potential water quality problems.[13]

Higher Precipitation or Humid Regions

Higher precipitation or humid regions of the United States, i.e. eastern, central, and northwestern States are characterized in the Act by average annual precipitation that exceeds 26 inches. In most of the humid regions, especially in northern Appalachia, sediment control problems and acid mine drainage problems coexist.[14] Both problems are normally resolved through the use of siltation structures that release water to intermittent and perennial streams. The ponds trap any sediment coming from the disturbed area and also are convenient and economical structures where chemicals are added when needed, to reduce iron and manganese concentrations and raise the pH of the water before it is discharged from the permit area. The geology of the coal and associated rocks of this region i.e., the presence of iron disulfide minerals and lack of natural abundant carbonate minerals which are effective in neutralizing acid waters, and the abundant precipitation uniformly distributed throughout the year create a potential for acid mine drainage.

The size of individual surface mine operations in the eastern and central States is often small and the topography ranges from gently rolling to steep hills and intervening valleys. Together these conditions favor the construction of one or, in most cases, a few ponds that will collect all the drainage from the disturbed area.

Siltation structures have been used in the humid regions of the United States as the exclusive sediment control practice. OSM believes it is significant that regulatory authorities in the humid regions have continued to require that all drainage from the disturbed area be passed through siltation structures in the face of the 1986 suspension of the rule requiring all surface drainage from the disturbed area to be passed through a siltation structure. This consistent approach to sediment control indicates that regulatory authorities have not accepted other practices to be as effective as siltation structures for BTCA, i.e. no technical findings have been offered or accepted that would support a change.

In summary, OSM believes siltation structures are the BTCA for treating water quality problems common to the disturbed areas of coal mining activities in humid regions of the country.

OSM also wishes to clarify that all drainage from the disturbed areas must be directed through any required siltation structures for a period of time of at least two years following the last augmented seeding of the reclamation area. Other structures which carry drainage from disturbed areas to siltation structures are considered secondary sediment control structures and must also be maintained for the two-year time period unless under § 816.46(e), the regulatory authority authorizes their removal in writing based on meeting the effluent limitations under §§ 816.42/817.42 and applicable State and Federal water quality standards for the receiving waters.

Arid/Semi-Arid Regions

The conditions described above for the humid regions of the country differ significantly from those found in the arid and semi-arid regions that generally comprise the western States. Arid and semi-arid regions are characterized by average precipitation less than or equal to 26 inches.

Acid mine drainage generally is not a problem in the arid and semi-arid western region of the United States. Coal mining operations in these regions are concerned with controlling suspended sediment resulting primarily from severe thunderstorms during the summer seasons. Runoff from disturbed areas often drains into ephemeral streams. Siltation structures are used at some operations only to contain runoff and spills of oil and grease and other chemicals from the facilities portion of the permit area that must be collected and treated, if released outside the permit area. As there are normally many points of discharge possible from the large operations on sloping topography of the arid and semi-arid region, and the fact that discharge points tend to change as the operation expands, siltation structures are not viewed in all cases by operators as practical nor by regulatory authorities as the BTCA. In many cases the environmental harm in constructing siltation structures may exceed their value in controlling sediment because the construction of siltation structures may increased the amount of land disturbed and thereby increase sedimentation to the streams. For example, in the permit application package for the Jim Bridger Mine in Wyoming, the Jim Bridger Coal Company asserted that:

"The extensive mining area and drainage density would necessitate roughly 200 ponds to control all mining disturbed runoff over the life of the mine. This would entail disturbing over 400 additional acres."

In the arid and semi-arid regions, siltation structures may pose significant environmental problems that may outweigh their effectiveness in controlling sediment from disturbed areas.[15] Release of water from siltation structures may cause excessive downstream erosion and channel deepening because sediment-free water is not in hydrologic balance with natural background conditions.[16] Furthermore, excessive evaporation occurs from the water stored in siltation structures and may constitute "willful waste" in the water-scarce arid and semi-arid regions (48 FR 44036). Furthermore, downstream users may have to authorize impoundments under western water rights doctrine (48 FR 44036). These problems were raised before in response to the proposed rulemaking of 1981. OSM believes the concerns are reasonable. For these reasons as well as the previous explanation of significant differences between eastern and western coal operations, OSM believes siltation structures may not be BTCA in all cases and thus should not be mandatory in arid and semi-arid regions. Rather, the regulatory authority should have the flexibility of approving any BTCA practice that it can demonstrate will be successful in controlling sediment and meeting the requirements of the Act.

Standard of Differentiation

OSM believes the humid versus arid and semi-arid distinction is one appropriate and technically-sound way to distinguish where different kinds of BTCA practices can be allowed under the Act.[17]

The distinction between humid and arid/semi arid is based on the amount of precipitation. More specifically, regions that receive more than 26 inches of annual precipitation are classified as humid while regions that receive 26 inches or less of average annual precipitation are classified as arid or semi arid. As discussed earlier, OSM believes siltation structures are the BTCA for regions that receive more than 26 inches of precipitation. Yet, it is possible that a number of acceptable BTCA practices may be utilized for regions receiving 26 inches or less of annual precipitation. Regulatory authorities would have to submit the technical data to support the use of BTCA practices other than siltation structures. On the basis of the technical supporting data, OSM would approve or disapprove the practice as it would apply to a specific State.

Further, there is an administrative reason for using the 26-inch standard. It is already "built into" the statute and permanent program regulations. Section 515(b)(20) of the Act uses this standard in defining the operators' liability period for revegetation in humid versus arid/ semi-arid regions. The House report influential in developing the language of the Act (H.R. 95–218, 1977, at p. 108) states:

The differential time limits for revegetation responsibility of HR 2 is based on the average annual precipitation isopleth demarcating coalfields in the arid and semi-arid west from those of the more humid areas of the east and northwest. Thus, the standard of 26 inches became the basic measure used in the bill to distinguish between coal mine regions in arid and semi-arid areas and such regions in humid areas.

The 26-inch standard was carried forth to the permanent program regulations at 30 CFR 816.116(c)(2) and at 30 CFR 817.116(c)(2). The use of this standard related to BTCA practices, thus, would not create any additional burden for the regulatory authority.

OSM is interested in receiving comments on the proposed adoption of the 26-inch standard related to BTCA

[3] Sediment Ponds vs. Alternative Sediment Control Technologies on Surface Mined Lands of the Semiarid West. Kearney, W.F. and F.W. Bergstrom. 1981. Symposium on Surface Mining Hydrology, Sedimentology and Reclamation.

[4] Assessment of Alternative Sediment Control Technology at Western Surface Mines. Peterson, M.R. et al. 1988. American Society of Agricultural Engineers.

[5] Growitz's Trip Report. February 1990. Albuquerque, NM; Gallup, NM; and Gillette, WY.

[6] Handbook of Alternative Sediment Control Methodologies for Mined Lands. 1985. Mining and Reclamation Council of America and Hess & Fisher Engineers, Inc.

[7] Experimental Practices: *Case Histories*. 1990. Office of Surface Mining Reclamation and Enforcement. Department of the Interior.

[8] Soil and Water Conservation Research and Education Progress and Needs. 1989. Soil Conservation Service. U.S. Department of Agriculture.

[9] Making Our Forests and Rangelands More Productive. 1985 Research Accomplishments. 1988. Forest Service. U.S. Department of Agriculture.

[10] Handbook of Alternative Sediment Control Methodologies for Mined Lands. 1985. Mining and Reclamation Council of America and Hess & Fisher Engineers, Inc.

[11] Small Surface Coal Mine Operators Handbook. J. Toby Tourbier. 1980. Water Resources Center, University of Delaware.

[12] Modeling Check Dam Trap Efficiency. 1983. Warner, R.C. and M.C. Hirschi. American Society of Agricultural Engineers.

[13] Handbook of Alternative Sediment Control Methodologies for Mined Lands. 1985. Mining and Reclamation Council of America and Hess & Fisher Engineers, Inc.

[14] Where We Agree: Report of the National Coal Policy Project. Vol. 2. 1978. F.K. Murray. Westview Press, Inc.

[15] Impacts of Surface Mining Sediment Control Regulations on the Hydrologic Balance of Dryland Streams. Doehring, D.O. et al. 1985. American Society of Surface Mining Reclamation.

[16] A literature Review Mined-Land Sediment Control and The Dryland Fluvial System. Morris, R.N., F.E. Basil, & D.O. Doehring. 1980. Research Institute of Colorado.

[17] State-Of-The-Art Paper on Sediment Control Technology for the Surface Mining Industry. Simons, D.B., R.M., Li, & P.F. Lagasse. 1981.

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practices. Comments should specifically address whether another standard, although not as convenient as the proposed standard, would be more appropriate for technical reasons.

IV. Procedures Matters

Federal Paperwork Reduction Act

These proposed rules do not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and that it will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor, and no incremental economic effects are anticipated as a result of the rule.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA), and has made a tentative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The draft EA is on file in the OSM Administrative Record at the address specified previously (see "**ADDRESSES**"). An EA of the final rule will be completed and a final finding made on the significance of any impacts prior to promulgation of the final rule.

Author

The principal author of this rule is Douglas J. Growitz, PHG, Office of Surface Mining Reclamation and Enforcement 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone 202–343–1507 (Commercial or FTS).

List of Subjects

30 CFR Part 816

Reporting and recordkeeping requirements, Permanent regulatory program.

30 CFR 816

Environmental Protection, Reporting and recordkeeping requirements, Surface Mining.

30 CFR Part 817

Environmental Protection, Reporting and Recordkeeping requirements, Underground mining.

Accordingly it is proposed to amend 30 CFR parts 701, 816 and 817 as set forth below.

Dated: October 1, 1990.

James M. Hughes,

Deputy Assistant Secretary for Land and Mineral Management.

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for part 701 continues to read as follows:

Authority: Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), and Pub. L. 100–34.

§ 701.5 [Amended]

2. Section 701.5 is amended by removing the last sentence from the definition of *best technology currently available.*

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS-SURFACE MINING ACTIVITIES

3. The authority citation for part 816 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, 1201 *et seq.*, as amended; sec. 115 of Pub. L. 98–146, 30 U.S.C. 1257; and Pub. L. 100–34.

4. Section 816.45 is amended by adding paragraphs (c) and (d) to read as follows:

§ 816.45 Hydrologic balance: sediment control measures.

* * * * *

(c) For those regions receiving 26 inches or less of average annual precipitation, a regulatory authority may submit to OSM for approval as a part of its permanent regulatory program, specific sediment control practices as alternatives to siltation structures as the best technology currently available to prevent additional contributions of suspended solids to streamflow or runoff outside the permit area.

(d) Practices and structures approved as best technology currently available shall be constructed, maintained, and reclaimed in accordance with § 816.46(b)(4), (b)(5), and (b)(6), except as provided in paragraph (e) of § 816.46.

5. The suspension published in the **Federal Register** of November 20, 1986, at 51 FR 41961 is removed for paragraph (b)(2) of § 816.46.

6. Section 816.46 is amended by revising paragraph (b)(2) as follows:

§ 816.46 Hydrologic balance: siltation structures.

* * * * *

(b) * * *

(2)(i) All surface drainage from the disturbed area shall be passed through a siltation structure for regions where the average annual precipitation exceeds 26 inches, except as provided in paragraph (b)(5) or (e) of this section.

(2)(ii) All surface drainage from the disturbed area shall be passed through a siltation structure or be subjected to other sediment control practices approved by OSM under § 816.45(c) for use as the best technology currently available for regions where the average annual precipitation is 26 inches or less, except as provided in paragraph (b)(5) or (e) of this section.

* * * * *

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

7. The authority citation for part 817 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, as amended; sec. 115 of Pub. L. 98–146, 30 U.S.C. 1257; and Pub. L. 100–34.

8. Section 817.45 is amended by adding paragraphs (c) and (d) to read as follows:

§ 817.45 Hydrologic balance: sediment control measures.

* * * * *

(c) For those regions receiving 26 inches or less of average annual precipitation, a regulatory authority may submit to OSM for approval as part of its permanent regulatory program, specific sediment control practices as alternatives to siltation structures as the best technology currently available to prevent additional contributions of suspended solids to streamflow or runoff outside the permit area.

(d) Practices and structures approved as best technology currently available shall be constructed, maintained, and reclaimed in accordance with § 817.46 (b)(4), (b)(5), and (b)(6), except as provided in paragraph (e) of § 817.46.

9. The suspension published in the **Federal Register** of November 20, 1986, at 51 FR 41961 is removed for paragraph (b)(2) of § 817.46.

10. Section 817.46 is amended by revising paragraph (b)(2) to read as follows:

§ 817.46 Hydrologic balance: siltation structures.

* * * * *

(b) * * *

(2)(i) All surface drainage from the disturbed area shall be passed through a siltation structure for regions where the average annual precipitation exceeds 26 inches, except as provided in paragraph (b)(5) or (e) of this section.

(2)(ii) All surface drainage from the disturbed area shall be passed through a siltation structure or be subjected to other sediment control practices approved by OSM under § 816.45(e) as the best technology currently available for regions where the average annual precipitation is 26 inches or less, except as provided in paragraph (b)(5) or (e) of this section.

* * * * *

[FR Doc. 90–26665 Filed 11–9–90; 8:45 am]

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Tuesday,
November 13, 1990

Part III

Department of Education

34 CFR Parts 674, 675 and 676
Perkins Loan Program, et al.; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 675, and 676

RIN 1840-AB22

Perkins Loan Program et al.

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the campus-based programs (Perkins Loan, College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) programs). These proposed regulations would modify provisions contained in current regulations. The Secretary takes this action to clarify existing policy and make other necessary changes. Due to the scope of the provisions, these proposed changes will not take effect until July 1, 1991 in order to give institutions sufficient time to prepare to implement them.

DATES: Comments must be received on or before December 28, 1990.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Harold McCullough, Chief, Policy Section, Campus and State Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, 400 Maryland Avenue, SW. (room 4018, ROB-3), Washington, DC 20202-5446. Telephone (202) 708-4690.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Sylvia Ross or Gwendolyn Dockett. Telephone (202) 708-4690.

SUPPLEMENTARY INFORMATION: These proposed amendments revise the existing campus-based program regulations. The campus-based programs are authorized as follows: Perkins Loan—20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429; CWS—42 U.S.C. 2751–2756a; SEOG—20 U.S.C. 1070b–1070b–3. The Secretary is proposing these rules to change the definition of low-income individual to be conceptually consistent with part F (Needs Analysis) of title IV of the Higher Education Act of 1965, as amended (HEA); to reduce collection costs chargeable to the Perkins Loan Fund; to clarify the current waiver provision and to expand the write-off authority in the Perkins Loan Program; to clarify the types of positions that involve student services under the CWS Program; and, to establish overpayment collection consistency between the Pell Grant and SEOG programs.

Perkins Loan Program

Repayment—Low-Income Individual (§ 674.33(c)(2))

Under the current regulations, an institution may extend a repayment period for a "low-income individual." The Secretary proposes to change the definition of the term "low-income individual" under the Perkins Loan Program for Perkins loans, and Direct loans made on or after October 1, 1980, which is used to enable an institution to determine whether to extend the borrower's repayment period up to 10 additional years beyond the normal 10-year maximum repayment period and to establish whether the borrower can continue to be classified as a "low-income individual" during the course of the extended repayment period. If a borrower no longer qualifies as a "low-income individual," the institution must renegotiate a new repayment schedule based on the 10-year maximum repayment period minus the time elapsed under the borrower's original repayment schedule. Any extension to the repayment schedule previously granted on the basis of low-income status is not included in computing the maximum repayment period.

The Secretary believes that the Standard Maintenance Allowance (SMA) contained in the need analysis methodology prescribed in part F of title IV of the HEA used to make awards under the Perkins Loan Program is an appropriate measure of "low-income" that can also be used to determine eligibility for extended repayment periods. Use of the SMA provides a consistent determination of what constitutes low-income at all stages of the student loan process from initial calculation of loan eligibility through repayment.

The family contribution expected of Perkins Loan borrowers is determined according to the procedures prescribed in part F of title IV of the HEA. In this needs analysis, a portion of the family's income that represents a minimum subsistence level of income is not assessed for contribution purposes. This unassessed income, called the Standard Maintenance Allowance (SMA), represents the income level required to meet the costs of basic necessities including food, housing, clothing and personal care, transportation and other similar needs. The SMA is derived from the annual updates of the 1967 Bureau of Labor Statistics (BLS) lower-budget expenditure figures from "Three Standards of Living for an Urban Family of Four Persons" (BLS Bulletin 1570-5. Washington: Bureau of Labor Statistics, 1967).

In establishing the SMA, the BLS statistics are modified to reflect the student's assumed absence from home for the academic year (9 months) resulting in an approximate 10 percent reduction of the BLS lower standard. Amounts representing State and local taxes that were included in the BLS lower standard are also excluded from the SMA since a direct allowance for these taxes is contained in other sections of part F of title IV of the HEA, resulting in an additional 10 percent reduction of the BLS lower standard. The Secretary proposes that an individual with a family size of two or more be permitted to earn up to 125 percent of the appropriate SMA values to be classified as a "low-income individual" and be eligible for an extended repayment period. Use of 125 percent factor recognizes that the SMA represents a minimum level of subsistence and provides an allowance for the differences between the consumption patterns assumed by the SMA, including a family with a student away from home for 9 months of the year, and those assumed by the BLS, which do not reflect a family member's absence from the home. It also recognizes that the amounts that were excluded from the BLS figures in establishing the SMA should be considered.

The SMA charts provide different maintenance amounts for different size families; however, the minimum family size listed on the charts is two family members. Therefore, the 125 percent factor must be modified to address an unmarried borrower with no dependents. The 1967 BLS survey provided consumption costs for a family of four persons (husband, wife and two children) and estimated consumption costs for the family sizes using equivalency rates. The BLS equivalency factors for one person is 36 percent. Therefore, the income threshold for an unmarried borrower with no dependents should be 125 percent of 36 percent of the SMA for a family of four persons, or 45 percent of the SMA for a family of four persons. Institutions should use the SMA chart for a family of four persons when determining whether a single borrower qualifies as a "low-income individual" and use the 45 percent factor rather than the 125 percent factor, as identified above. Institutions should refer to the SMA chart for the applicable number of family members in making a "low-income individual" determination using the column for one family member

in college, regardless of whether any of the family members presently attend college.

In order to determine whether the borrower is a "low-income individual," the institution must obtain a copy of the Notice of Revision of the Need Analysis System for the given academic year, published in the **Federal Register**, and use the Standard Maintenance Allowance tables. For example:

- John Jones is an unmarried borrower without dependents who earned a total income of $8,600 for the preceding year. The SMA for a family of four with one in college is $13,200. Applying the formula: 45 percent of $13,200 is $5,940. To be considered a "low-income individual," Mr. Jones must have earned $5,940 or less; he does not meet the low-income threshold.
- Mary Smith and her spouse have two dependents. She and her spouse earned $10,000 for the preceding year. The applicable SMA for a family of four with one in college is $13,200. Applying the formula: 125 percent of $13,200 is $16,500. To be considered a "low-income individual," Mary Smith's family income must have been $16,500 or less; she does meet the low-income threshold.

Costs Chargeable to the Fund (§ 674.47)

The proposed regulations clarify § 674.47(d) by amending paragraph (d) and creating paragraphs (d) (1) and (2) to alleviate any confusion experienced by institutions in carrying out the waiver authority for collection costs. Under current regulations, an institution must assess against the borrower the full amount of collection costs incurred in collecting a loan, but may, at its discretion, waive those costs applicable to that portion of the loan balance that the borrower pays within 30 days of the date on which a new repayment agreement is completed. 34 CFR 674.47 (b), (d). The proposed regulations clarify that a written repayment agreement is not involved for a lump-sum payment of the full amount of principal and interest outstanding on a loan.

The waiver option is not intended to confer any right on the borrower, and is entirely at the discretion of the institution. Furthermore, in those cases involving a partial payment of the amount then past-due on a loan, because the waiver is available only pursuant to a new written repayment agreement, the institution is free to include additional conditions and terms in the new agreement that it considers reasonable. The new agreement could include conditions and items such as requiring a down payment, a cosigner, periodic reviews of financial resources with corresponding changes in the amount of installment payments due, execution of a confession of judgment agreement, or, for out-of-State debtors, agreement that a designated institutional official is authorized to accept service of process as agent for the debtor if the debtor again defaults, making litigation necessary.

In addition, the Secretary proposes here to amend limits on the amount of collection costs that may be charged to the Fund. Under current regulations, an institution may spend assets of the Fund to pay certain costs incurred to collect a loan. 34 CFR 674.47(e). In response to the comments on the final rule establishing this provision, the Secretary stated that in the near future, the Department would review and consider modifying the limits on amounts chargeable to the Fund for collection costs. 52 FR 45569, November 30, 1987. The Secretary here proposes the promised revision in order to modify the restrictions on the use of Fund assets to pay collection costs and to clarify the manner in which the restrictions apply to the use of borrower payments.

Current regulations require the institution to first demand that the borrower repay the full amount of various costs incurred by the institution to collect the loan, 34 CFR 674.47(b)(1), unless the institution waives some or all of those costs. 34 CFR 674.47 (c), (d). The regulations then require the institution to apply payments received on a loan in the following order:

(1) Collection costs.
(2) Late charges.
(3) Accrued interest.
(4) Principal.

34 CFR 67433(a)(3), 52 FR 45755, December 1, 1987.

In addressing the use of Fund assets to pay collection costs, §§ 674.33 and 674.47 implicitly distinguish between the payments received from the individual borrower, which may always be used to satisfy collection costs incurred on that particular loan, and all other Fund assets, including payments received on other loan accounts, and restrict the use of only the latter. The Secretary recognizes that some collection actions, including successful address searches, credit bureau reports, and actions taken to oppose bankruptcy discharges, may not result in any recovery from the borrower; the institution may therefore use Fund assets to pay these costs. 34 CFR 674.47(e) (1), (2), (5) (i) and (ii). The Secretary does not propose any change in the amount that can be charged against Fund assets for these costs.

The Secretary proposes to change here only the limits on the amount of other Fund assets that the institution can spend for other collection costs, especially contingent fee collection charges. Because the institution incurs contingent fee charges only the amounts recovered, and because the institution must apply amounts recovered or repaid on a loan first to outstanding collection costs, 34 CFR 674.33(a)(3)(i), the changes proposed here to the limits in § 674.47(e) (3), (4), (5)(iii), and (6) affect only those cases in which the amounts recovered on the individual loan either do not suffice to pay these collection costs or, pursuant to an authorized repayment agreement, cannot be applied to collection costs. Under current regulations, the institution may use Fund assets to pay these costs, in amounts not to exceed 33⅓ percent of the amount of principal, interest and late charges collected in the case of first placements or 50 percent of that amount in the case of litigation and second placements. The Secretary proposes to amend these provisions to reduce the amount of contingent fee costs chargeable to the Fund under these circumstances to 25 percent and 35 percent, respectively, but to allow the charging of actual amounts of court costs.

The institution may charge the Fund for collection costs arising in connection with contingent fee charges in three cases. First, the institution, pursuant to the provisions of § 674.47(d), may have agreed with the borrower to waive enforcement of some of all of these charges; this authority extends only to repayment agreements or lump sum payoffs made before suit is filed. Second, the institution may be legally barred from assessing the full amount of these costs against the borrower, either because the promissory note limits the borrower's liability for contingent fee costs to 25 percent of the amount collected, or because a court gives judgment to the institution for only a portion, or for none, of the litigation costs demanded by the institution in its complaint. Third, the institution may have demanded that the borrower pay these costs, but the amount paid or recovered by the contractor or attorney is not enough to satisfy both the accrued contingent fees and the costs of address searches, credit bureau reports, and required bankruptcy defensive action.

The Secretary proposes to amend § 674.47(e) (3)–(6) to reduce the amount of collection costs, and in particular contingent fees charged by collection contractors or attorneys, that may be paid from other Fund assets, but to permit the institution to use other Fund assets to pay the actual amount of those court costs specified in 28 U.S.C. 1920. These court costs are currently included

in the amount chargeable against the 33⅓ percent and 50 percent limits, and the Secretary therefore expects this reclassification, by excluding these costs from the amounts counted against the proposed limits on contingent fees, to still permit the institution to pay attorney fees at a contingent fee level well within the range commonly charged for accounts receivable litigation. The Secretary, in making this proposal, notes that State and private nonprofit agencies customarily secure litigation services on loans guaranteed under part B of title IV of the HEA at rates within the statutory 30 percent cap on the amount payable out of recoveries.

The Secretary expects that the proposed limitation on the amount chargeable against Fund assets principally affects those cases in which the institution may wish to waive charging the borrower some or all of these collection costs (1) As part of a new repayment agreement or (2) in return for a lump sum payoff of the full loan amount. This waiver is a matter of discretion for the institution and not a matter of right to the borrower; the institution would retain the authority, under the proposed rule, to pass on some or all of these costs to the borrower, and the proposed limits do not directly impose a new financial burden on the institution. Under the proposed rule, the institution could still offer the borrower who makes substantial and prompt payment a substantial reduction in the amount of collection costs otherwise chargeable. The institution could pass on to the borrower the difference between the amount payable from the Fund under the current rule and that allowed under the new rule (8⅓ percent for first placements, 15 percent for second placements and attorney fees); it could satisfy that difference from its own resources; or it could revise its agreements with contractors and attorneys to limit the amount charged on recoveries made within 30 days of the execution of a new repayment agreement to fall within the new limits.

The Secretary considers the new limits, within the context of those current rules addressing application of payments, to offer a reasonable recovery consistent with the risk and effort factors on which a contingent fee charge is based. The contingent fee concept recognizes both the uncertainty of payment, particularly payments to be received over time, and the varying amount of effort needed to effect that recovery. The proposed rule does not affect the institution's ability to negotiate contingent fee agreements at the current level for those amounts paid later than 30 days after the signing of the new repayment agreement. As to these amounts, there is legitimate uncertainty whether the borrower may continue to honor the repayment agreement, and if he or she does not, what costs may be incurred to persuade or coerce the borrower to make further payments. Therefore, the Secretary does not propose to reduce directly or indirectly the amount of fee charged on recoveries outside that 30-day period.

The Secretary recognizes, nevertheless, that the amount charged against the Fund reduces the amount available for new loans, and seeks ways to reduce that amount without unduly hindering recovery actions. Several factors lead the Secretary to believe that such a reduction is warranted in the Perkins Loan Program on these "waived costs" recoveries received within 30 days of the execution of a repayment agreement. First, the Secretary has over the past 10 years negotiated over a dozen major collection contracts on defaulted student loans held by the Department at contingent fee rates that in most instances did not exceed the 35 percent litigation and second placement limit now proposed for institutions. Second, based on years of experience by the Department in collecting these loans, which were typically in advanced stages of delinquency, the Secretary believes that a significant portion of those defaulters who enter repayment do so promptly after initial demand by a new collector and that the substantial payments achieved in these cases come with little of the risk and costs associated with protracted collection cases. The Secretary believes that the proposed reduction in the amount of collection costs that can be waived as to the borrower and paid from Fund assets still provides a fair recovery for the contractor or attorney that adequately offsets risk and expense involved on those accounts on which no payments may ever be realized. At the same time, the reduction lessens the drain to the Fund and increases the amount available for new loans to students.

The Secretary proposes this rule based on this balancing of factors affecting the management of the Fund, and not out of any intent to prescribe a limit on the amount that may be passed on to the borrower. In that regard, these regulations, like the other provisions of subpart C, are intended to set minimum standards of responsibility for the institution and not to create any defense for a nonpaying borrower. The Secretary does not intend that the omission of any step prescribed in this subpart, or the imposition of a collection cost at a rate in excess of that proposed here, be available as defense to a borrower. This same principle applies to collection actions by the Department itself pursuant to standards established under the Federal Claims Collection Standards, 4 CFR 101.8. The reasonableness of any collection cost imposed on a defaulter pursuant to this subpart and section 484A(b) of the HEA is not limited by the standards adopted here to apportion those costs between the Fund and the institution or the borrower, but on whether the institution acted reasonably in incurring the cost, as discussed in the preamble to the final rule of November 30, 1987. 52 FR 45553.

The Secretary also proposes to amend § 674.47(g) to increase the ability of an institution to write off small balance accounts. The November 30, 1987 regulations permit an institution to write off balances of less than $200. However, institutions are precluded from writing off those accounts unless they have completed all the billing and collection steps required in the regulations, including the sequence of contacts immediately after defaults, semiannual attempts to locate "skips," annual dunning contacts, and annual evaluations of accounts for litigation until litigation by the institution to collect the account would be barred by the statute of limitations, now six years unless the State law provides a longer period.

Under the proposed amendments to § 674.47(g), and institution would be permitted to write off accounts of less than $25.00, after complying with only these collections procedures specified in § 674.457(g)(1)(i). Institutions would be permitted to submit defaulted loan accounts, with balances of $25.00 or more, to the Secretary for assignment to the United States in accordance with § 674.50 of the November 30, 1987 regulations.

This proposal is intended to address the concerns of institutions and collection agents that current requirements have caused significant, unanticipated costs as well as processing difficulties while serving no apparent benefit to the program. Because current rules do not permit the write-off of small balances before the expiration of the statute of limitations for a law suit, institutions must attempt collection throughout that limitation period on delinquent accounts with very small balances. The institutions report that the costs of the billing notices and demand letters on these accounts is totally out of proportion to the value to the Fund of the unpaid accounts.

Under current regulations, institutions have two courses of action with regard to defaulted loan accounts on which the first cycle of collection actions described in the regulations (billing, referral to collection firm or in-house collection staff, and litigation) proves unsuccessful. The institution may assign the account to the Secretary or retain the account and attempt to collect the debt by means of semiannual collection efforts throughout the period of limitations applicable to a suit to collect that debt (whether that period is established under the law of the State in which the debtor would be subject to suit, or, in longer, the six-year limitation period established by section 484A(a)(3) of the HEA) and, at the end of that period, if the account was less than $200, write the account off. Current rules therefore tend to encourage the assignment to the Department of accounts over $200, and to encourage that assignment even before the limitation period has run, since the institution need not complete that course of semiannual collection efforts prior to assigning the account.

The proposed rules would increase the incentives for assigning defaulted loans by lowering the minimum amount that qualifies for assignment from $200 to $25 and by removing the authority to write off defaulted accounts with balances of $25 or more. These accounts, if retained by the institution, would therefore remain part of the institution's portfolio and count against its default rate. The Secretary requests comments regarding the cost effectiveness of this provision and other provisions in the regulations.

College Work Program

Institutional Employment (§ 675.21)

A proprietary institution may employ students on campus to work for the institution itself only in positions in which the employee provides direct and personal services to students. The Secretary proposes to codify the definition of student services to include areas where the student employee provides direct and personal services to other students that are incidental to the training or education being offered.

The Secretary recognizes that many institutions have delineated certain areas of their operation to be areas which provide a direct benefit to individual students. These areas may include activities related to campus-life, academic tutoring, peer counseling, and others. These regulations propose to codify those general areas in which CWS employment is authorized, to differentiate between that employment which is of a service nature and is directed at individual students and that employment which is necessary to carry out the operation of the institution itself. Activities in the areas of maintenance, security, purchasing, or public relations, for example, are necessary for the operation of the institution itself and generally do not provide direct and personal services to students, and are not considered student services.

Supplemental Educational Opportunity Grant Program

Overaward (§ 676.14)

The Secretary is seeking assistance from institutions in recovering the Federal share of SEOG overpayments from their students, by proposing that overpayment cases of $25.00 or more be referred to the Department for collection. While cases of $25.00 or less are not required to be referred, the regulations do not prohibit referral on those cases. A similar referral procedure for unrecovered Pell Grant overpayments has been successful and the Secretary believes that a referral procedure would also be effective for the recovery of SEOG overpayments.

The Secretary proposes to implement the referral process with minimal disruption to institutions. Therefore, institutions must make two reasonable attempts over a 30-day period to recover the overpayment before referring cases to the Secretary. The institutions shall consider any objection by a student that an overpayment determination was erroneous and determine whether the objection is warranted prior to referring the case to the Secretary. Referral to the Secretary is required only where the Federal share of the overpayment is $25.00 or more and the student has failed to make repayment arrangements within 90 days of the overpayment. No further recovery efforts are required by the institution. However, if the institution refers an overpayment case to the Secretary, the student becomes ineligible for further title IV student financial assistance for attendance at any institution until a final repayment of the overpayment has been made.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected by these regulations would be small institutions of higher education participating in the campus-based programs. The only proposed regulations that would have a potential economic impact on small entities would be those contained in the sections governing the Federal share limitations (§§ 675.26 and 676.21). Based on analysis conducted by the Department, the Secretary has determined that these provisions would affect a minimal number of institutions.

Paperwork Reduction Act of 1980

Sections 674.33 and 676.14 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4018, ROB-3, 7th and D Streets SW., Washington, DC 20202-5447, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educationol Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 674, 675, and 676

Education loan programs—education, Student aid, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: Perkins Loan Program, 84.038; College Work-Study Program, 84.033; Supplemental Educational Opportunity Grant Program, 84.007)

Dated: November 5, 1990.

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend parts 674, 675, and 676 of title 34 of the Code of Federal Regulations as follows:

PART 674—PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.33 is amended by revising paragraph (c)(2) to read as follows:

§ 674.33 Repayment.

* * * * *

(c) * * *

(2) *Low-income individual.* (i) For Perkins loans and Direct loans made on or after October 1, 1980, the institution may extend the borrower's repayment period up to 10 additional years beyond the 10-year maximum repayment period if the institution determines during the course of the repayment period that the borrower is a "low-income individual." The borrower qualifies for an extension of the repayment period on the basis of low-income status only during the period in which the borrower meets the criteria described in paragraphs (c)(2)(i)(A) and (B) of this section. The term "low-income individual" means the following:

(A) For an unmarried borrower without dependents, an individual whose total income for the preceding calendar year did not exceed 45 percent of the Standard Maintenance Allowance for the current award year for a family of four with one in college.

(B) For a borrower with a family size of two or more, an individual whose total family income for the preceding calendar year did not exceed 125 percent of the Standard Maintenance Allowance for the current award year for a family with one in college and equal in size to that of the borrower's family.

(ii) The institution shall use the Standard Maintenance Allowance published annually in accordance with section 478 of the HEA in making this determination.

(iii) The institution shall review the borrower's status annually to determine whether the borrower continues to qualify for an extended repayment period based on his or her status as a "low-income individual."

(iv) Upon determining that a borrower ceases to qualify for an extended repayment period under this section, the institution shall amend the borrower's repayment schedule. The term of the amended repayment schedule may not exceed the number of months remaining on the original repayment schedule, provided that the institution may not include the time elapsed during any extension of the repayment period granted under this section in determining the number of months remaining on the original repayment schedule.

* * * * *

(Authority: 20 U.S.C. 425 and 1087dd, sec. 137(d) of Pub. L. 92–318)

3. Section 674.47 is amended by revising paragraphs (d), (e), and (g) to read as follows:

§ 674.47 Costs chargeable to the Fund.

* * * * *

(d) *Waiver: collection costs.* Before filing suit on a loan, the institution may waive collection costs as follows:

(1) The institution may waive that percentage of collection costs applicable to the amount then past-due on a loan equal to the percentage of that past-due balance that the borrower pays within 30 days after the date on which the borrower and the institution enter into a written repayment agreement on the loan.

(2) The institution may waive all collection costs in return for a lump-sum payment of the full amount of principal and interest outstanding on a loan.

(e) *Limitations on costs charged to the Fund.* The institution may charge to the Fund the following collection costs not paid by the borrower or waived under paragraph (d)(1) or paragraph (d)(2) of this section:

(1) A reasonable amount for the cost of a successful address search required in § 674.44(b).

(2) Costs related to the use of credit bureaus as provided in § 674.45(b)(1).

(3) For first collection efforts pursuant to § 674.45(a)(2), an amount that does not exceed 25 percent of the amount of principal, interest and late charges collected.

(4) For second collection efforts pursuant to § 674.45(c)(1)(ii), an amount that does not exceed 35 percent of the amount of principal, interest and late charges collected.

(5) For collection costs resulting from litigation, including attorney's fees, an amount that does not exceed the sum of—

(i) Court costs specified in 28 U.S.C. 1920;

(ii) Other costs incurred in bankruptcy proceedings in taking actions required or authorized under § 674.49;

(iii) Costs of other actions in bankruptcy proceedings to the extent that those costs, together with costs described in paragraph (e)(5)(ii) of this section, do not exceed 35 percent of the total amount of judgment secured on the loan; and

(iv) 35 percent of the total amount recovered from the borrower in any other proceeding.

(6) If a collection firm agrees to perform or secure the performance of both collection and litigation services on a loan, an amount for both functions that does not exceed the sum of 35 percent of the amount of principal, interest and late charges collected on the loan, and court costs specified in 28 U.S.C. 1920.

* * * * *

(g) *Write-offs.* (1) An institution may write-off an account with a balance of less than $25.00, including outstanding principal, accrued interest, collection costs and late charges, if—

(i) The institution has carried out the procedures in §§ 674.43, 674.44, and 674.45 (a), (b), (c), (e), and (f);

(ii)(A) The loan is discharged in bankruptcy; and

(B) The institution has exhausted the procedures in this subpart with regard to any endorser; or

(iii) The institution has released the borrower from further obligation on a loan pursuant to performance of a repayment agreement under paragraphs (d)(1) and (d)(2) of this section.

(2) An institution that writes off an account under this paragraph may no longer include the amount of the account as an asset of the Fund.

(3) If an institution receives a payment from a borrower after the loan has been written off, it shall deposit that payment into the Fund.

(Authority: 20 U.S.C. 424, 1087cc)

PART 675—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAMS

1. The authority citation for part 675 continues to read as follows:

Authority: 42 U.S.C. 2751–2756a, unless otherwise noted.

2. Section 675.2(b) is amended by adding, in alphabetical order, a definition of *student services* to read as follows:

§ 675.2 Definitions.

* * * * *

(b) * * *

Student services: Services that are offered directly to individual students incidental to the training or education being offered and that may include, but are not limited to, financial aid, library, peer guidance counseling, social and health services and tutorial services.

* * * * *

(Authority: 42 U.S.C. 2751–2756a)

3. Section 675.21 is amended by revising paragraph (b) introductory text and (b)(2) to read as follows:

§ 675.21 Institutional employment.

* * * * *

(b) A proprietary institution may employ a student to work for the institution itself, but only in jobs that—

* * * * *

(2) Involve the provision of student services as defined in § 675.2.

* * * * *

(Authority: 42 U.S.C. 2753)

PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

1. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

2. Section 676.14 is amended by revising paragraph (c)(3) to read as follows:

§ 676.14 Overawards.

* * * * *

(c) * * *

(3) (i) If the institution makes an overpayment for which it is not liable, it shall promptly attempt to recover the overpayment by sending a written notice to the student requesting payment in full. Failure to make repayment of the overawarded funds renders the student ineligible for further title IV aid.

(ii) If a student does not make payment as requested, the institution shall make a second attempt to recover the overpayment, within 30 days of sending the first notice.

(iii) If a student objects to the institution's overpayment determination on the grounds that it is erroneous, the institution shall consider any information provided by the student and determine whether the objection is warranted prior to referring it to the Secretary.

(iv) (A) If an institution fails to collect the overpayment after taking the action required by paragraphs (c)(3) (i) and (ii) and, if applicable, (c)(3)(iii), of this section, and the Federal share of the overpayment is $25.00 or more, it shall notify the Secretary within 90 days of the overpayment, identifying the Federal share of the overpayment, the student's name, most recent address, telephone number, and other relevant information. After notifying the Secretary under this section, the institution need make no further recovery efforts.

(B) If an institution fails in its attempt to collect the overpayment and the Federal share of the overpayment is less than $25.00, the institution need make no further recovery efforts.

* * * * *

(Authority: 20 U.S.C. 1070b–1)

[FR Doc. 90–26860 Filed 11–9–90; 8:45 am]

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federal register

Tuesday
November 13, 1990

Part IV

The President

Proclamation 6223—To Designate Nicaragua as a Beneficiary Country for Purposes of the Caribbean Basin Economic Recovery Act

Federal Register
Vol. 55, No. 219
Tuesday, November 13, 1990

Presidential Documents

Title 3—

The President

Proclamation 6223 of November 8, 1990

To Designate Nicaragua as a Beneficiary Country for Purposes of the Caribbean Basin Economic Recovery Act

By the President of the United States of America

A Proclamation

1. Section 212 of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2702), as amended, authorizes the President to designate the countries, territories, or successor political entities thereto that will be beneficiary countries for the purposes of the CBERA (19 U.S.C. 2701 *et seq.*). Such countries are entitled to duty-free entry of eligible articles imported directly therefrom into the customs territory of the United States. Nicaragua has expressed its desire to be so designated and its intention to take steps to comply with all of the necessary criteria set forth in the CBERA.

2. Pursuant to section 212(b) of the CBERA (19 U.S.C. 2702(b)), I have determined that the designation of Nicaragua as a beneficiary country will be in the national security interest of the United States, and have reported such determination to the Congress with the reasons therefor. In addition, pursuant to section 212(a) of the CBERA (19 U.S.C. 2702(a)), I have notified the House of Representatives and the Senate of my intention to designate Nicaragua as a beneficiary country and have communicated to them the considerations entering into my decision. Accordingly, pursuant to section 212(b) of the CBERA, and after taking into account the factors enumerated in section 212(c) of the CBERA (19 U.S.C. 2702(c)), I hereby designate Nicaragua as a beneficiary country for purposes of the CBERA.

3. Section 604 of the Trade Act of 1974 (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that Act, of other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 211 through 213 of the Caribbean Basin Economic Recovery Act, as amended by the Caribbean Basin Economic Recovery Expansion Act of 1990, and section 604 of the Trade Act of 1974, do proclaim that:

(1) In order to designate Nicaragua as a beneficiary country for the purposes of the CBERA, general note 3(c)(v)(A) to the HTS, listing those countries designated as beneficiary countries under the CBERA, is modified by inserting in alphabetical sequence "Nicaragua".

(2) The modifications made by this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, in the customs territory of the United States on or after the date of publication of this proclamation in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of November, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-26896
Filed 11-9-90; 9:23 am]
Billing code 3195-01-M

Editorial note: For the President's memorandum to the Secretary of State and the President's letters to the Speaker of the House and the President of the Senate, both dated Nov. 7, on the determination, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 45). For a statement by Press Secretary Fitzwater on the determination, see the same issue.

federal register

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November 13, 1990

Part V

Office of Management and Budget

Final Sequestration Report for Fiscal Year 1991 to the President and Congress; Notice of Transmittal

OFFICE OF MANAGEMENT AND BUDGET

Transmittal of Final Sequestration Report for Fiscal Year 1991 to the President and Congress

November 9, 1990.

Pursuant to Title XIII of the Omnibus Budget Reconciliation Act of 1990, the Office of Management and Budget hereby reports that it has submitted its Final Sequestration Report for Fiscal Year 1991 to the President, the Speaker of the House of Representatives, and the President of the Senate.

Darrell A. Johnson,

Assistant Director for Administration.

[FR Doc. 90-28941 Filed 11-9-90; 12:47 pm]

BILLING CODE 3110-01-M

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Part VI

The President

Notice of November 9, 1990—
Continuation of Iran Emergency

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Presidential Documents

Title 3—

The President

Notice of November 9, 1990

Continuation of Iran Emergency

On November 14, 1979, by Executive Order No. 12170, the President declared a national emergency to deal with the threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Notices of the continuation of this national emergency have been transmitted annually by the President to the Congress and the **Federal Register**, most recently on October 30, 1989. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 1990. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iran. This notice shall be published in the **Federal Register** and transmitted to the Congress.

George Bush

THE WHITE HOUSE,
November 9, 1990.

[FR Doc. 90-26968
Filed 11-9-90; 5:12 pm]
Billing code 3195-01-M

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

S.J. Res. 388/Pub. L. 101–497
Waiving certain enrollment requirements with respect to S. 2830, the Food, Agriculture, Conservation and Trade Act of 1990. (Oct. 31, 1990; 104 Stat. 1205; 2 pages) Price: $1.00

H.R. 4111/Pub. L. 101–498
Strategic and Critical Minerals Act of 1990. (Nov. 2, 1990; 104 Stat. 1207; 2 pages) Price: $1.00

S. 2846/Pub. L. 101–499
To authorize and direct the Secretary of the Interior to conduct a study of the feasibility of establishing a unit of the National Park System to interpret and commemorate the origins, development, and progression of jazz in the United States, and for other purposes. (Nov. 2, 1990; 104 Stat. 1209; 4 pages) Price: $1.00

H.R. 3386/Pub. L. 101–500
Sanitary Food Transportation Act of 1990. (Nov. 3, 1990; 104 Stat. 1213; 9 pages) Price: $1.00

H.R. 4151/Pub. L. 101–501
Augustus F. Hawkins Human Services Reauthorization Act of 1990. (Nov. 3, 1990; 104 Stat. 1222; 63 pages) Price: $1.75

H.R. 4238/Pub. L. 101–502
Vaccine Immunization Amendments of 1990. (Nov. 3, 1990; 104 Stat. 1285; 7 pages) Price: $1.00

H.R. 5367/Pub. L. 101–503
Seneca Nation Settlement Act of 1990. (Nov. 3, 1990; 104 Stat. 1292; 6 pages) Price: $1.00

H.R. 5794/Pub. L. 101–504
Age Discrimination Claims Assistance Amendments of 1990. (Nov. 3, 1990; 104 Stat. 1296; 2 pages) Price: $1.00

H.J. Res. 520/Pub. L. 101–505
Granting the consent of Congress to amendments to the Washington Metropolitan Area Transit Regulation Compact. (Nov. 3, 1990; 104 Stat. 1300; 15 pages) Price: $1.00

H.R. 5268/Pub. L. 101–506
Rural Development, Agriculture, and Related Agencies Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 1315; 36 pages) Price: $1.25

H.R. 5158/Pub. L. 101–507
Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 1351; 37 pages) Price: $1.25

H.R. 5835/Pub. L. 101–508
Omnibus Budget Reconciliation Act of 1990. (Nov. 5, 1990; 104 Stat. 1388)

H.R. 5241/Pub. L. 101–509
Treasury, Postal Service and General Government Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 1389; 96 pages) Price: $2.75

H.R. 4739/Pub. L. 101–510
National Defense Authorization Act for Fiscal Year 1991. (Nov. 5, 1990; 104 Stat. 1485; 371 pages) Price: $11.00

H.R. 5803/Pub. L. 101–511
Department of Defense Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 1856; 59 pages) Price: $1.75

H.R. 5769/Pub. L. 101–512
Department of the Interior and Related Agencies Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 1915; 64 pages) Price: $1.75

H.R. 5114/Pub. L. 101–513
Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 1979; 95 pages) Price: $2.75

H.R. 5019/Pub. L. 101–514
Energy and Water Development Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 2074; 27 pages) Price: $1.00

H.R. 5021/Pub. L. 101–515
Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 2101; 54 pages) Price: $1.50

H.R. 5229/Pub. L. 101–516
Department of Transportation and Related Agencies Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 2155; 35 pages) Price: $1.25

H.R. 5257/Pub. L. 101–517
Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1991. (Nov. 5, 1990; 104 Stat. 2190; 34 pages) Price: $1.25

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To establish the Newberry National Volcanic Monument in the State of Oregon, and for other purposes. (Nov. 5, 1990; 104 Stat. 2288; 9 pages) Price: $1.00

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To designate November 16, 1990, as "National Federation of the Blind Day". (Nov. 6, 1990; 104 Stat. 2337; 1 page) Price: $1.00

S. 1890/Pub. L. 101–530
To amend title 5, United States Code, to provide relief from certain inequities remaining in the crediting of National Guard technician service in connection with civil service retirement, and for other purposes. (Nov. 6, 1990; 104 Stat. 2338; 3 pages) Price: $1.00

S. 3062/Pub. L. 101–531
To transfer the responsibility for operation and maintenance of Highway 82 Bridge at Greenville, Mississippi, to the States of Mississippi and Arkansas. (Nov. 6, 1990; 104 Stat. 2341; 1 page) Price: $1.00

H.J. Res. 669/Pub. L. 101–532
To salute and congratulate the people of Poland as they commemorate the two-hundredth anniversary of the adoption of the Polish Constitution on May 3, 1991. (Nov. 7, 1990; 104 Stat. 2342; 2 pages) Price: $1.00

S. 2516/Pub. L. 101–533
Foreign Direct Investment and International Financial Data Improvements Act of 1990. (Nov. 7, 1990; 104 Stat. 2344; 8 pages) Price: $1.00

Last List November 6, 1990

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[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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Rules and Regulations

Federal Register
Vol. 55, No. 220
Wednesday, November 14, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

Share Insurance and Appendix

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Technical amendments.

SUMMARY: Part 745 sets forth rules on insurance of accounts for federally insured credit unions. The Appendix to part 745 illustrates insurance of various types of accounts through the use of examples. The examples note the applicable regulatory sections in part 745. Several errors have been found in these regulatory citations in the examples of the appendix. Most of the errors were due to a renumbering of part 745. The citations in the examples were not consistently renumbered. This document will correct the regulatory citations.

EFFECTIVE DATE: November 14, 1990.

ADDRESSES: NCUA Board, 1776 G Street, Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Associate General Counsel, at the above address or telephone: (202) 682-9630.

SUPPLEMENTARY INFORMATION:

List of Subjects in 12 CFR Part 745

Credit unions, Account insurance coverage.

By the National Credit Union Administration Board on November 5, 1990.

Becky Baker,
Secretary of the Board.

Accordingly, NCUA amends the Appendix to part 745 as follows:

Appendix to Part 745—[Amended]

1. The authority citation of part 745 continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1781, 12 U.S.C. 1787, 12 U.S.C. 1789.

2. In part A, example 1, answer, § 745.3(a) is changed to § 745.3(a)(1).
3. In part A, example 2, answer, § 745.3(a) is changed to § 745.3(a)(1).
4. In part A, example 3, answer, § 745.3(b) is changed to § 745.3(a)(2) and § 745.3(a) is changed to § 745.3(a)(1).
5. In part A, example 4, answer, § 745.3(b) is changed to § 745.3(a)(2).
6. In part A, example 7, answer, § 745.3(d) is changed to § 745.3(a)(3)
7. In part B, example 1, answer, § 745.4(c) is changed to § 745.4(b).
8. In part E, examples 1, 2, 3, and 6, answers, § 745.10(2) is changed to § 745.10(a)(2).
9. In part E, example 4, answer, second sentence, the word "be" is changed to "by", § 745.1(c) is changed to § 745.1(d), and § 745.10(2) is changed to § 745.10(a)(2).
10. In part E, example 5, answers § 745.10(1) is changed to § 745.10(a)(1).
11. In part E, example 7, answer, § 745.1(c) is changed to § 745.1(d) and § 745.10(2) is changed to § 745.10(a)(2).
12. In part E, example 8, answer, § 745.10(5) is changed to § 745.10(a)(5).
13. In part F, examples 2, 4 and 6, answers, § 745.3(a) is changed to § 745.3(a)(1).
14. In part G, example 1, answer, § 745.3(a) is changed to § 745.3(a)(1) and § 745.9-1(a) is changed to § 745.9-1.
15. In part G, example 4, answer, § 745.3(a) is changed to § 745.3(a)(1).

[FR Doc. 90-26853 Filed 11-13-90; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 089CE, Special Conditions 23-ACE-58]

Special Conditions; Grob EGRETT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are being issued for the Grob EGRETT airplane. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards of 14 CFR part 23 of the Federal Aviation Regulations (FAR). These novel and unusual design features include the use of composite materials for primary flight structure and evacuation of fumes from pressurized airplanes for which the regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of part 23.

EFFECTIVE DATE: December 14, 1990.

FOR FURTHER INFORMATION CONTACT: Victor F. Sokoloski, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1988, Grob made application for a type certificate through the Luftfahrt Bundesamt (LBA) to the FAA Brussels Office for the EGRETT airplane. The Grob EGRETT is a single seat, high aspect ratio, pressurized, mid-wing monoplane with tricycle landing gear. The EGRETT utilizes composite material for its structure, powered by a turbopropeller engine. The maximum gross weight is 9,950 pounds.

The Grob EGRETT is made of composites assembled mainly by bonding. Since the early 1940's, airframes have predominantly been composed of semi-monocoque aluminum construction. Composite material of the type used on the Grob EGRETT is generally not susceptible to the initiation of fatigue cracks by the application of repetitive loads, like that of semi-monocoque aluminum construction. The composite material is, however, susceptible to damage in the form of cracks, breaks, and delaminations. Because of this and other factors, the FAA has determined that the wing fatigue requirements of § 23.572 are inadequate to assure that the composite material structure can withstand the repeated loads of variable magnitude expected in service.

Part 23 does not require that non-commuter airplanes have the capability to evacuate smoke from the cockpit

area. There have been numerous instances where faults/failures of an airplane's systems/components (electrical/heating/cooling, etc.) have caused significant amounts of smoke in the cockpit of CAR 3/FAR part 23 airplanes. These failures substantiate the need for a requirement to demonstrate that the current generation of part 23 airplanes have the capability to evacuate smoke from the cockpit area.

Because the requirements of part 23 do not address the level of substantiation necessary for composite material structure, or the capability to remove smoke from the cockpit area, special conditions are proposed to include the necessary airworthiness standards as a part of the type certification basis for the Grob EGRETT airplane.

Type Certification Basis

The type certification basis for the Grob EGRETT airplane is as follows: Part 21 of the Federal Aviation Regulations (FAR), § 21.29; part 23 of the FAR, effective February 1, 1965, as amended by amendments 23–1 through 23–34; Special Federal Aviation Regulations (SFAR) No. 27, effective February 1, 1974, as amended by amendments 27–1 through 27–8; part 36 of the FAR, effective December 1, 1969, as amended by amendments 36–1 through the amendment effective on the date of type certification; exemptions, if any; and any special conditions resulting from this notice.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, in accordance with § 21.17(a)(2).

The proposed type design of the Grob EGRETT airplane contains a number of novel or unusual design features not envisaged by the applicable part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness requirements of part 23 do not contain adequate or appropriate safety standards for the novel and unusual design features of the Grob EGRETT airplane.

Composite Structure

All safety of flight structure is to be constructed of composite materials, which require damage tolerance methods for a thorough evaluation. Composite materials in existence, and in commonly used aircraft airframes at this time, are typically more susceptible than commonly used aluminum structure to damage from intrinsic and discrete sources that might adversely influence strength properties. It is generally agreed that damage tolerance criteria should be used to show that composite material structure can withstand the repeated loads of variable magnitude expected in service. Because of the lack of a service experience base for these new materials and their mechanical properties characteristics, there is a need to apply special requirements such as residual strength load with large area manufacturing defects (*e.g.*, understrength bonds) and impact damage from discrete sources, and ability to carry ultimate load with realistic impact damage below the threshold of detectability and material environmental exposure effects.

Cockpit Smoke Evacuation

Small airplanes have typically been unpressurized where smoke could be evacuated by opening windows or, if pressurized, have had maximum operating altitudes such that the airplane could be depressurized readily to evacuate smoke without creating an unsafe condition. Applicable airworthiness standards do not require that the Grob EGRETT airplane have smoke evacuation provisions. Such provisions must be incorporated for the safety of the pilot because of the high operating altitude. This notice proposes special conditions to require the capability to evacuate smoke from the cockpit and to require the ventilation air for normal operations to be free of harmful or hazardous concentrations of gases and vapors in order to maintain an acceptable environment at the maximum operating altitudes of this airplane.

Discussion of Comments

Notice of Proposed Special Conditions, Notice No. 23–ACE–58, Docket No. 089CE, was published in the **Federal Register** on October 5, 1990 (55 FR 40851) and the comment period closed November 5, 1990. The FAA received no comments in response to Notice No. 23–ACE–58; therefore, these special conditions are adopted as proposed.

Conclusion

In view of the design features discussed above, the following special conditions are being issued for the Grob EGRETT airplanes under the provisions of § 21.16 to provide a level of safety equivalent to that intended by the regulations incorporated by reference. This action is not a rule of general applicability and affects only the model/series of airplane identified in these special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety

The authority citation for these special conditions is as follows:

Authority: Sections 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

Adoption of Special Conditions

Accordingly, the Federal Aviation Administration issues the following special condition as part of the type certification basis for the Grob EGRETT airplane by adding the following:

1. Evaluation of Composite Structure

Instead of complying with § 23.572, and in addition to the requirements of §§ 23.603 and 23.613, airframe structure, the failure of which would result in catastrophic loss of airplane, the wing, wing carry-through, wing attaching structure, horizontal stabilizer stabilizer carry-through and attaching structure, fuselage, vertical stabilizer and attaching structure, wing flaps, and all movable control surfaces and attaching structure must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (j) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (k) of this special condition. Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (h) of this special condition.

(a) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; e.g., bond defects, or damage from discrete sources under repeated loads expected in service; i.e., between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operation and maintenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations, must be documented in test proposals.

(f) The structure of the fuselage must be shown by residual strength tests, or by analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with damage consistent with the results of the damage tolerance evaluations.

(g) The wind, wing carry-through, wing attaching structure, horizontal stabilizer, stabilizer carry-through and attaching structure, fuselage, vertical stabilizer and attaching structure, wing flaps, and all movable control surfaces, and their attaching structure must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(h) In lieu of a non-destructive inspection technique that ensures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbonds of each bonded joint, consistent with the capability to withstand the loads in paragraphs (f) and (g) of this special condition, must be determined by analysis, tests, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof-testing must be conducted on each production article that will apply the critical limit design load to each critical bonded joint.

(i) The effects of material variability and environmental conditions; e.g., exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials, must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(j) The airplane must be shown by analysis to be free from flutter to V_D with the extent of damage for which residual strength is demonstrated.

(k) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Sufficient component, subcomponent, elements, or coupon tests must be performed to establish the fatigue scatter and environmental effects. Impact damage in composite material components that may occur must be considered in the demonstration. The impact damage level considered must be consistent with detectability by the inspection procedures employed.

2. Cockpit Smoke Evacuation

In the absence of specific requirements for evacuation of smoke from the cockpit, the following applies:

The ventilating air in the flight crew and passenger compartments must be free of harmful or hazardous concentrations of gases and vapors in normal operations and in the event of reasonably probable failures or malfunctioning of the ventilating, heating, pressurization, or other systems and equipment. If accumulation of hazardous quantities of smoke in the cockpit area is reasonably probable, smoke evacuation must be readily accomplished, starting with full cockpit pressurization and without depressurizing beyond safe limits.

Issued in Kansas City, Missouri on November 6, 1990.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–26791 Filed 11–13–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 284

[Docket No. RM90–14–001 and Order No. 525–A]

Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities

Order Denying Requests for Rehearing and Granting Requests for Clarification

Issued October 31, 1990.

AGENCY: Federal Energy Regulatory Commission (Commission).

ACTION: Final rule; order denying requests for rehearing and granting requests for clarification.

SUMMARY: Order No. 525, issued August 2, 1990, required notification to the Commission of construction of facilities, pursuant to section 311 of the Natural Gas Policy Act, or the replacement of certain facilities, pursuant to § 2.55(b) of the Commission's regulations, at least 30 days prior to commencement of any construction or replacement activity commenced after August 2, 1990. The purpose for requiring this notification was to give the Commission the opportunity to review projects and take action, where necessary, to ensure compliance with environmental requirements. This notification would not necessarily alter a pipeline's construction plans, but merely required notification to the Commission prior to commencement of construction. Several requests for rehearing and/or clarification of Order No. 525 were filed.

The Commission has decided not to make any substantive changes in the final rule adopted in Order No. 525. The parties that filed requests for rehearing and/or clarification allege, among other things, that the requirements of Order No. 525 violate section 553 of the Administrative Procedure Act, that the notification requirement is unduly burdensome and would result in delaying construction and replacement projects, that the notification requirement is inconsistent with the Department of Transportation's pipeline safety regulations, and that the notification requirement is inadequate to protect against environmental violations resulting from construction activities. The requests for rehearing filed in this docket are denied because the arguments made on rehearing are unpersuasive.

However, the Commission will clarify certain points of confusion. Specifically, the Commission will clarify (1) that the notification requirement for replacement of facilities attaches only to planned replacement of facilities and not to facilities which must be replaced to avoid injury to persons and property or the interruption of service, (2) that

facilities may be replaced pursuant to the blanket certificate authorization found in Part 157, Subpart F of the regulations, and (3) that any construction activity performed pursuant to section 311 by an intrastate entity is subject to the notification requirements of Order No. 525.

EFFECTIVE DATE: October 31, 1990.

ADDRESSES: All filings should refer to Docket No. RM90-14-001 and should be addressed to:

Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:
Connie Caldwell Feuchtenberger, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, (202) 208-5709.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE, Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be access using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this interim rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3308, 941 North Capitol Street, NE, Washington, DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

I. Introduction

On August 2, 1990, the Commission issued Order No. 525,[1] an immediately effective interim rule which requires notification to the Commission 30 days prior to the commencement of any construction activity begun after August 2, 1990, under section 311 of the Natural Gas Policy Act of 1978 [2] or any replacement of facilities under § 2.55(b) of the Commission's regulations.

Simultaneously, the Commission issued a notice of proposed rulemaking (NOPR) in Docket No. RM90-1-000. Docket No. RM90-1-000 proposes numerous and significant changes to the regulations which should serve to expedite the Natural Gas Act (NGA) section 7 certification process. It also proposes to amend the regulations to conform with the Commission's current practices and policies regarding the environmental review of construction projects.

II. Background

Eighteen parties filed timely requests for rehearing of Order No. 525.[3] Two parties, the Miami Valley Council for Native Americans, the City of Germantown, and the Germantown Area Concerned Citizens Association, jointly, (Miami Valley) and CNG Transmission Corporation filed late requests for rehearing. Since the latter requests were not filed within 30 days of issuance of Order No. 525, we may not consider these pleadings as requests for rehearing. However, so that the concerns raised by these parties may be addressed and resolved, we will treat the pleadings as requests for reconsideration.

On August 17, 1990, Tennessee Gas Pipeline Company (Tennesse) filed a request for clarification of Order No. 525. The Commission issued on order granting the request and clarifying the matters raised by Tennessee on September 13, 1990.[4]

Several issues addressed in the September 13 order were raised by various parties [5] in their requests for rehearing. Therefore, we incorporate into this order, by reference, the discussions and clarifications provided in the September 13 order. In other respects, we will deny the requests for rehearing; however, we will further clarify certain aspects of Order No. 525.

On October 11, 1990, United filed a Notice of Replacement and Request for Clarification or in the Alternative Request for Waiver of 30-day period. We will clarify the matters raised by United.

III. Discussion of the Issues Raised in the Requests for Rehearing

A. Whether the Requirements of Order No. 525 Violate the Administrative Procedure Act's Requirements for Notice and Comment

Several parties [6] assert that the Commission exceeded its authority by issuing Order No. 525 without notice and comment as required by section 553 of the Administrative Procedure Act (APA). The parties request that the Commission suspend or withdraw the notification requirements of Order No. 525 until comments are received and a final rule is issued. It is argued that the Commission's reliance on the Court's discussions in *Mid-Tex Electric Cooperative Inc.* v. *FERC* [7] in support of a conclusion that "good cause" existed to make the rule effective upon issuance is misplaced, since Order No. 525 was not promulgated in response to a court remand.

However, the "good cause" exception is not limited to only those situations where an agency must respond quickly to a court's decision remanding that agency's decision to adopt a certain rule. Instead, the "good cause" exception to the notice and comment requirements of the APA applies to any instance in which an agency "for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." [8] For the reasons set forth in Order No. 525, as well as the elaboration on those reasons below, we have determined that delaying implementation of the notification requirements of Order No. 525 in order to provide notice and an opportunity to comment would be contrary to the public interest.

It is further asserted that the notice and comment requirement is needed to provide an opportunity to develop a record. Accordingly, it is argued, issuance of Order No. 525 without notice and comment is improper because no record has been developed in support of the requirements of that rule. Arkla, for example, argues that implementation of the rule is improper because the rule "creates a new requirement without a record indicating a problem, without court instructions that it must address

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[1] Interim Revisions to Regulations Governing Construction of Facilities pursuant to NGPA section 311 and Replacement of Facilities, 55 FR 33,011 (Aug. 13, 1990), 52 FERC ¶ 61,159 (1990).

[2] 15 U.S.C. 3301-3432 (1990).

[3] The parties requesting rehearing are listed in the appendix to this order.

[4] Interim Revisions to Regulations Governing Construction of Facilities pursuant to NGPA Section 331 and Replacement of Facilities, "Order Addressing Requests for Clarification," 52 FERC ¶ 61,252 (1990).

[5] AGA, Arkla, CNG, Enron, Great Lakes, INGAA, Natural, Tennessee, and Transco.

[6] AGA, Arkla, ANR, CNG, Enron, INGAA, Southern, Tennessee, Transco, and United.

[7] 822 F.2d 1123 (D.C. Cir. 1987).

[8] 5 U.S.C. 553(b)(3)(B) (1990).

an issue quickly, and without any other exigency."

Also, the assertion is made that there is no financial or industry confusion which would support issuing Order No. 525 without notice and comment. It is further asserted that the Commission's desire to protect the environment does not in itself justify the requirements of Order No. 525 which in turn threaten public safety and affect pipeline companies' conduct of certain activities.

For several reasons, we disagree with these arguments. As discussed in Docket No. RM90-1-000, the environment was not a primary consideration when § 2.55 was first adopted. At that time, there were fewer pipeline construction projects and the majority of those projects involved relatively short lengths of small diameter pipeline. However, over the years, an integrated and sophisticated national pipeline gridwork has developed. In addition, the natural gas industry is in the midst of transition as a result of statutory changes, the natural evolution of the industry, and this agency's program to encourage a more competitive natural gas industry. This transition results in a continual learning process and has given rise to innovative ways to promote these competitive goals, as well as expanded societal knowledge about our environment. Whereas replacement of facilities when § 2.55 was adopted could be assumed to involve minor projects, today, replacement of facilities could involve hundreds of miles of large diameter pipeline. Further, the environment where a pipeline was originally laid may very well have changed completely by the time replacement is necessary.

The NOPR also discusses in some detail why it is necessary to evaluate whether changes in current procedures may be necessary regarding construction under section 311. The NOPR explains that the current procedures relating to section 311 construction developed based on the assumption that, for the most part, only very minor facilities, such as taps and interconnections, would be constructed under section 311. The Commission previously had determined through the rulemaking proceeding that promulgated the subpart F blanket certificate regulations that stringent Commission review was not necessary for these types of minor transactions. It generally was not anticipated that extensive facilities would be constructed under that authorization. In fact, it was envisioned that primarily existing facilities would be used for section 311 transactions. However, in actuality, pipelines have viewed section 311 as a vehicle for the construction of much more extenseive projects—in at least one instance, with potentially serious environmental repercussions.[9] Prior to issuance of Order No. 525, the Commission had no established means, other than the press, of being informed of potential environmental harm resulting from construction under section 311 or from the replacement of facilities under § 2.55(b).

With these matters in mind, we issued the notice of proposed rulemaking. In that proceeding, we intend to evaluate the need and extent of Commission environmental overview, among other things. It was anticipated that issuance of the NOPR would call into question the form of authorization for construction under section 311 or replacement of facilities under § 2.55(b) which would be required upon adoption of a final rule. The Commission was cognizant of the possibility that some companies might rush out and hastily install or replace pipeline in order to avoid the uncertainty of possible future changes to the regulations. As was stated in Order No. 525:

> We are concerned that construction activities may take place during the period of time between issuance of the NOPR and adoption of a final rule without the opportunity for Commission intervention. Once the NOPR is issued, pipelines may respond to the proposed changes in the regulations by commencing construction in order to avoid either the inherent uncertainty associated with proposed changes to existing regulations or application of the proposed changes, if adopted, to a particular project. In order to ensure that our intentions to establish a vehicle offering the opportunity for preconstruction review of potentially environmentally detrimental construction activities are not circumvented, it is imperative that the opportunity for some form of oversight on an interim basis be provided immediately.

It has been asserted that the notification requirements are unnecessary with regard to replacement of facilities, since the activities involved in such replacement occur in established rights-of-way which have been disturbed previously when the pipeline was initially installed. However, just because an area was disturbed when the pipeline was originally installed does not mean that replacing the old pipe with a new pipe will not potentially raise new environmental concerns. Such an action must be assessed in light of current land use, regulations, and concerns about erosion, sediment control, impact on streams and soil, threatened and endangered species and potential PCB contamination.

B. Whether the Notification Requirements of Order No. 525 Are Unduly Burdensome

Certain parties [10] maintain that the notification requirements are unduly burdensome and should be rescinded. However, the Commission believes that the notification requirement appropriately balances the Commission's environmmental responsibilities with the fact that the burden associated with the notification requirement are *de minimis*: a brief description of the pertinent facilities, a topographical map, a description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings, and, in the case of construction under section 311, evidence of having complied with the provisions of § 157.206(d).

None of these requirements calls for more than the minimum information the company already should have at its disposal. Preparation of the report should involve no more than a compilation of that information. This hardly can be interpreted as a burdensome requirement or one that should in any way delay commencement or progress of a given project. Surely, any minor inconvenience caused by preparation of this notification is negligible in comparison to the environmental concerns which we are seeking to protect.

Columbia requests that the requirement that a pipeline submit evidence of having complied with § 157.206(d) be clarified or modified to mean that such information is required prior to commencement of construction, but not as part of the notification filed with the Commission. Columbia asserts that such a requirement could result in delaying construction activities. However, this interpretation would defeat the underlying purpose behind the notification requirement. In general, a pipeline would obtain the clearances required by § 157.206(d) prior to entering into contractural arrangements for the actual construction activity or ordering necessary equipment for a particular job. Therefore, submission of this information thirty days prior to construction commencement is not unreasonable and should not delay planned activities. Further, pipelines are now on notice that this information is required thirty days before beginning construction and can adjust their

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[9] *See* Transcontinental Gas Pipe Line Corporation, 48 FERC ¶ 61,189 (1989); 48 FERC ¶ 61,132 (1989).

[10] AGA and Enron.

internal schedules to effectuate this requirement.

C. Whether the Notification Requirements Result in the Delay of Section 311 Construction or Replacement Activities

It is also asserted by certain parties [11] that the notification requirements merely delay construction and replacement activities. Order No. 525 addressed the possibility that its issuance could result in interruption or delay of replacement or construction activities. We stated that, in such an issuance, the company should bring the matter to the Commission's attention. Consequently, we have received requests for waiver of Order No. 525 requirements, and have responded promptly with more than twelve orders granting the requests, when warranted.[12] Further, as noted, Tennessee filed a request for clarification of Order No. 525 on August 17, 1990. We issued an order on September 13, 1990, which addressed and clarified the areas of confusion raised by Tennessee's pleading.[13] Thus, the Commission has provided ways to minimize the possibility of adverse consequences arising from Order No. 525.

Further, as stated in Order No. 525, the notification requirements are intended only as a temporary measure pending adoption of any final rule in Docket No. RM90-1-000. It is the intention of the Commission to issue any final rule as quickly as possible following receipt and analysis of all comments and reply comments.

Enron asserts that the notification requirements result in a negative impact on the public interest because it allows competitors to become aware of each other's actions. Enron does not state how the public interest is harmed by this factor. However, it should be noted that, prior to issuance of Order No. 525, only construction under section 311, replacement of facilities under § 2.55(b), or construction under a part 157 automatic authorization could have occurred without public filings with the Commission. For all other construction authorizations, public notice is filed in the Federal Register upon receipt of the company's application for authorization.

D. Whether the Notification Requirement of Order No. 525, as It Applies to Replacement of Facilities Under § 2.55(b), Is Inconsistent With the Department of Transportation's Pipeline Safety Regulations

Several parties [14] assert that the thirty day notification requirement in Order No. 525, as it applies to the replacement of facilities under § 2.55(b), is in conflict with the requirements of the Natural Gas Pipeline Safety Act of 1978,[15] as administered by the Department of Transportation (DOT) through its pipeline safety regulations.[16] It is further asserted that Order No. 525 completely safety concerns or emergency situations. The Director of the Office of Pipeline Safety in the Research and Special Programs Administration, by letter dated August 24, 1990, expressed concern over potential conflicts between Order No. 525 requirements and the DOT's regulations. The DOT's regulations require interstate pipelines to repair hazardous pipeline leaks immediately. These regulations also require yearly leakage surveys and replacement, repair, or removel from service any segment of pipeline which becomes unsafe.

In a similar vein, clarification that the notification requirement for replacement of facilities attaches only to planned replacement of facilities and not to facilities which must be replaced to avoid injury to persons and property or the interruption of services is requested. Natural points out that such emergency situations can be readily distinguished from normal replacement projects, which are scheduled months in advance of the actual work.

United, in its October 11 request for clarification, explains that it was necessary to replace certain facilities in order to repair a pipeline leak. United cites to § 192.77 of the DOT's regulations which requires pipeline operators to make immediate permanent or temporary repairs to a leak. United states that the discussion in our September 13 order is not clear as to whether United's compliance with the DOT regulations is a violation of the requirements of Order No. 525.

On September 13, 1990, the Commission issued an order in response to a request for clarification filed by Tennessee on August 17, 1990. In that order the Commission responded to the DOT's concerns regarding the possible conflict in regulations. Because of the serious implications of any misunderstanding on this matter we reiterate the explanation contained in the September 13 clarification order:

> The interim rule does not override other Commission regulations which permit interstate pipelines to take prompt corrective actions to address conditions that constitute a safety hazard. Subpart I of part 284 of the Commission's regulations exempts emergency situations from the provisions of section 7 of the Natural Gas Act and permits a pipeline to make immediate action to alleviate an emergency situation subject to a subsequent 48 hour reporting requirement. Section 284.262(a)(1)(iii) of subpart I defines emergency as "Any situation in which . . . immediate action is required or is reasonably anticipated to be required for the protection of life or health or for maintenance of physical property." Thus, should an interstate pipeline find it necessary to replace facilities to respond to safety related conditions, immediate remedial action may be taken if the pipeline meets the § 284.262(a)(1)(iii) criteria.
>
> In essence, the Commission does not intend that there be any conflict between the interim rule and the Department of Transportation's safety regulations. All interstate pipeline operators are placed on notice that the 30-day advance notification requirement does not require and does not justify any result contrary to that required by the Department of Transportation's safety regulations.

Arkla argues in its request for rehearing that the emergency authorizations currently in effect under the regulations do not contemplate the necessity for emergency construction. However, § 284.263 states, in pertinent part, that "Any participant that engages in an emergency natural gas transaction conducted in accordance with this subpart is exempt from the requirements of section 7 of the Natural Gas Act * * *." Section 284.262(d) defines "Emergency natural gas transaction" as,

> the sale, transportation, or exchange of natural gas *(including the construction and operation of necessary facilities)* conducted pursuant to this subpart that is:
>
> (1) Necessary to alleviate an emergency; and
>
> (2) Not anticipated to extend for more than 60 days in duration. (Emphasis added.)

[11] AGA, Arkla, INGAA, and United.

[12] *See, e.g.*, Tennessee Gas Pipeline Company, 52 FERC ¶ 61,252 (1990); Mississippi River Transmission Corporation, 52 FERC ¶ 61,368 (1990); National Fuel Gas Supply Corporation, 52 FERC ¶ 61,209 (1990); Superior Offshore Pipeline Company, 52 FERC ¶ 61,243 (1990); Northern Natural Gas Company, 52 FERC ¶ 61,236 (1990); National Fuel Gas Supply Corporation, 52 FERC ¶ 61,240 (1990); Northern Natural Gas Company, 52 FERC ¶ 61,238 (1990); Transcontinental Gas Pipe Line Corporation, 52 FERC ¶ 61,325 (1990); Algonquin Gas Transmission Company, 52 FERC ¶ 61,247 (1990); Northern Natural Gas Company, 52 FERC ¶ 61,237; Tennessee Gas Pipeline Company, 52 FERC ¶ 61,256 (1990); Transcontinental Gas Pipe Line Corporation, 52 FERC ¶ 61,283 (1990); Northern Natural Gas Company, 52 FERC ¶ 61,244 (1990); Williams Natural Gas Company, 53 FERC ¶ 61,007 (1990); National Fuel Gas Supply Corporation, 53 FERC ¶ 61,054 (1990); National Fuel Gas Supply Corporation, 53 FERC ¶ 61,055 (1990); Northern Natural Gas Company, 53 FERC ¶ 61,053 (1990).

[13] Interim Revisions to Regulations Governing Construction of Facilities pursuant to NGPA section 311 and Replacement of Facilities, 52 FERC ¶ 61,252 (1990).

[14] AGA, Arkla, CNG, Enron, Great Lakes, INGAA, Natural, Tennessee, and Transco.

[15] 49 U.S.C. 1671, *et seq.*

[16] 49 CFR parts 191 and 192 (1990).

While not explicitly stated in Order No. 525, the interim rule does not affect the existing emergency regulations, or any other existing regulation not addressed in the interim rule. The Commission would not implement a rule which could result in hazardous or unsafe pipeline operations. In an instance where safety warrants immediate action, the emergency regulations are operative.

Further, where replacement of facilities comports with the requirements of the authorizations available under a part 157, Subpart F blanket certificate (specifically the project cost limits), such authorization may be used in lieu of § 2.55(b), as may the authorizations contained in subparts A and E. It would appear that the majority of minor replacement projects would fall under the automatic authorization. However, Arkla argues that the Commission's Part 157, Subpart F blanket certificate regulations preclude the replacement of facilities under the automatic authorization set forth in § 157.208(a) of subpart F. Arkla requests clarification on this point.

Under the automatic authorization, if the project cost does not exceed the designated cost limitations, a pipeline may make miscellaneous rearrangements of *any facility.* "Miscellaneous rearrangement of any facility" is defined in § 157.202(b)(6) as,

> any rearrangement of a facility that does not result in any change of service rendered by means of the facilities involved, *e.g.*, changes in existing field operations or relocation of existing sales or transportation facilities when required by highway construction, dam construction or similar reasons.

Section 157.202(b)(3) states that "'Facility' does not include the items described in § 2.55." Apparently, Arkla has interpreted this language to mean that facilities may not be replaced under the automatic blanket certificate authorization. However, the intention behind § 157.202(b)(3) was to clarify that adoption of the blanket certificate regulation did not interfere with existing § 2.55.

It is incorrect to conclude that the Commission was attempting to prohibit replacement of facilities under a blanket certificate. The purpose behind adopting the blanket certificate regulations was to expand the number and types of authorizations available for various activities, not reduce the options available to pipelines. Further, the Commission explained in Order No. 234, in which the final blanket certificate regulations were issued, that

> [a]ctivities *not* authorized under the blanket certificate are those activities which may have a major potential impact on ratepayers, or which propose such important considerations that close scrutiny and case-specific deliberation by the Commission is warranted prior to the issuance of a certificate. (Emphasis added.) [17]

Moreover, the order issuing the blanket regulations emphasized that the regulations were designed to discourage the use of Subpart A certificate applications and encourage the use of blanket certificates in order to expedite authorization. In light of the significance placed on this point in those discussions, inclusion of § 157.202(b)(3) was plainly meant to prevent any possible misinterpretation leading to a conclusion that § 2.55 was no longer a viable alternative authorization or that the activities authorized under § 2.55 would then have to be undertaken pursuant to a blanket certificate authorization. In other words, prohibiting replacement of facilities under a blanket certificate would have been inconsistent with the goals motivating adoption of the blanket certificate regulations.

E. Whether Order No. 525 Modifies Order No. 486

Enron asserts that Order No. 525 unlawfully modifies Order No. 486.[18] Enron discusses the fact that the Commission's regulations implementing the National Environmental Policy Act (NEPA), specifically § 380.4 and § 380.5, set forth a listing of the projects which are categorically excluded from the general requirement that an environmental assessment (EA) and/or an environmental impact statement (EIS) must be prepared for construction projects. Enron argues that promulgation of the interim rule is contradictory to the Commission's previous determination that certain activities, including replacement of facilities pursuant to § 2.55(b), are categorically excluded from the general environmental review process. However, Order No. 486 addresses whether the possibility of environmental review is foreclosed if a project is listed in the categorical exclusion (CE) category:

> [E]vironmental review is not foreclosed merely because a project is in the CE category. * * * The CEQ [Council on Environmental Quality] is concerned that the nature of the Commission's environmental review of particular projects might be rigidly predetermined by the general classification of such projects. This is a misunderstanding of the Commission's intent. The general classification of a project indicates only how such a project will normally be treated. The classification of a project as categorically excluded, for example, does not automatically foreclose further environmental review in particular unusual circumstances. The existence of unusual circumstances may be manifest from the application itself, or derived from comments by interested persons in response to the application itself * * * or from additional information sought by the staff.

The Commission is adopting one commenter's suggestion that the Commission specify the circumstances when an EA or EIS will be prepared for a project normally categorically excluded. The commenter suggests the following exceptions: if the project may have an impact on Indian lands, units of the National Park System, national Wildlife Refuges, national Fish hatcheries and other fish facilities, anadromous fish, endangered species, wilderness areas, wild and scenic rivers, wetlands, and other ecologically significant or critical areas, or if the environmental effects are uncertain. The situations described by this commenter are examples of projects that may have a significant environmental impact. However, there may be others and, thus, in making this determination, the Commission will not limit itself to only these.

To implement this, the Commission adopted exceptions to the designated categorical exclusions in § 380.4 (b) to allow for environmental review of activities which would ordinarily be categorically excluded from such review, where warranted. It is clear from this discussion that the Commission's categorical exclusion of certain types of projects was not intended to prohibit environmental review if the Commission determined such review was advisable. Instead, Order No. 486 illustrates the Commission's unwillingness to make a final, irreversible finding on the environmental impact of various activities. To do so would prohibit the Commission from responding to the continuing developments in the industry and in environmental understanding. The notification requirement is intended to help the Commission determine situations where environmental review may be required and is, therefore, consistent with the intent of Order No. 486.

We would emphasize, however, that the notification requirement is not intended to be tantamount to a determination that an EA or EIS will automatically be required for all categorically excluded replacement facilities. Nor is it intended to alter the current status of categorically excluded activities. Rather, the information submitted as notification will merely provide the Commission with a basis for review of individual projects in order to

[17] Interstate Pipeline Certificates for Routine Transactions, FERC Stats. & Regs. ¶ 30,368 (1982).

[18] Regulations Implementing National Environment Policy Act, FERC Stats. & Regs. ¶ 30,783 (1988).

determine whether additional environmental review is appropriate in a particular instance. Finally, nothing in this order or Order No. 525 is intended to prejudge the Notice of Proposed Rulemaking in Docket No. RM90-1-000.

F. Whether the notification requirements of Order No. 525 apply to non-jurisdictional facilities if the facilities are used for section 311 transactions

Columbia requests clarification of the applicability of Order No. 525 to non-jurisdictional facilities. Section 311 was enacted in order to allow interstate and intrastate pipelines to provide service which, being in interstate commerce, would otherwise fall under the requirements of the NGA, without subjecting those entities to the full panoply of federal jurisdiction. Part 284 of the Commission's regulations governs section 311 transactions. Under these regulations, an intrastate pipeline constructing facilities to be used for section 311 transactions (which are in interstate commerce by their nature) is held to the same environmental standards as an interstate pipeline in like circumstances.[10]

Order No. 525 applies to any construction activity performed pursuant to section 311. Accordingly, any construction or replacement activity (since the activities associated with replacement, with regard to environmental concerns, are essentially the same as those associated with construction) undertaken by an intrastate entity under the color of section 311 would be subject to the notification requirements of Order No. 525. In this connection, however, we emphasize that this order is not intended to expand our jurisdiction to include facilities which were not within our jurisdiction prior to issuance of Order No. 525. In other words, if an entity is planning to rely upon section 311 for authorization to construct facilities, or intends to replace facilities which were constructed pursuant to section 311 authorization, the notification requirements of Order No. 525 would apply. Stated another way, only construction or replacement activity which would have been subject to the requirements of § 284.11 prior to the issuance of Order No. 525 would be subject to the notification requirement promulgated by the interim rule.

[10] § 284.11.

G. Whether the notification requirements are inadequate to protect against environmental violations occurring as a result of section 311 construction

Miami Valley states that the interim rule is manifestly inadequate to address the deficiencies in the Commission's environmental compliance. Miami Valley asserts that major pipeline construction projects are build under section 311 authority without compliance with NEPA.

Miami Valley further asserts that pipelines disingenuously construct pipelines under section 311 in order to avoid environmental oversight, then request certificate authority in order to provide service in interstate commerce which is not exempt from Commission jurisdiction under section 311. Miami Valley requests that the Commission immediately adopt regulations which (1) provide for a pre-construction environmental report by the pipeline, (2) provide for pre-construction notice to the interested public as well as to the Commission, and for the report to be served on all requesting persons, (3) provide for the Commission to prepare, and to circulate for comment, a pre-construction EA for all pipelines with the potential for adverse environmental impacts, and (4) provide for a Commission decision resolving any environmental issues prior to construction. Miami Valley requests that these regulations provide for the issuance of an EA prepared by Commission staff within 20 days after the pipeline files its report, that the public then be given thirty days in which to comment on the Commission's EA, and that a Commission order indicating that there are no unresolved environmental issues, or granting a stay to permit resolution of such issues, be issued within 10 days after receipt of comments.

While the Commission appreciates Miami Valley's concerns, adoption of Miami Valley's suggested regulations, to be effective immediately as requested by Miami Valley, would not be supported by the information presently before us and is more appropriate for consideration in the final rule. Miami Valley believes that the requirements it seeks could be implemented during a sixty day period and, therefore, would not be overly burdensome. However, it is infeasible to expect that an environmental document could be prepared, circulated, a reasonable time allowed for comments, evaluation of all the pertinent information, and a Commission order issued within the periods designated by Miami Valley.

We believe that the notification requirements in Order No. 525 will indeed provide for environmental oversight, where warranted, without creating unduly burdensome requirements. Should the Commission determine that current practices and regulations need revision, the appropriate proceeding to promulgate those changes is the rulemaking proceeding in Docket No. RM90-1-000.

The Commission orders:

For the reasons stated herein, the requests for rehearing are denied.

By the Commission. Commissioner Trabandt concurred.

Lois D. Cashell,

Secretary.

APPENDIX

Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company, jointly.	[Columbia].
ANR Pipeline Company and Colorado Interstate Gas Company, jointly.	[ANR].
Panhandle Eastern Pipeline Company, Trunkline Gas Company, Texas Eastern Transmission Corporation, and Algonquin Gas Transmission Company, jointly.	[Panhandle].
Natural Gas Pipeline Company of America.	[Natural].
United Gas Pipeline Company	[United].
Tennessee Gas Pipeline Company	[Tennessee].
Great Lakes Gas Transmission Company.	[Great Lakes].
Southern Natural Gas Company	[Southern].
Enron Interstate Pipeline Companies.	[Enron].
Arkla Pipeline Group	[Arkla].
Interstate Natural Gas Assoc. of America.	[INGAA].
Transcontinental Gas Pipe Line Corporation.	[Transco].
American Gas Association	[AGA].

[FR Doc. 90-26815 Filed 11-13-90; 8:45 am]

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18 CFR Part 284

[Docket No. RM90-13-001; Order No. 526-B]

Interim Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates; Order Denying Applications for Rehearing, Granting in Part and Denying in Part Clarification, and Denying Petition for Stay

Issued October 31, 1990.

AGENCY: Federal Energy Regulatory Commission (Commission), DOE.

ACTION: Final rule; order on rehearing, requests for clarification, and petition for stay.

SUMMARY: The Commission is denying the requests for rehearing of the interim rule issued on August 2, 1990, (Order No. 526) and modified by order issued September 21, 1990 (Order No. 526-A). The interim rule revised regulations governing transportation by interstate pipelines under section 311 of the Natural Gas Policy Act. The Commission also is addressing the requests for clarification of Order No. 526 and denying a petition for stay.

EFFECTIVE DATE: October 31, 1990.

ADDRESSES: All filings should be filed in Docket No. RM90-13 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jack O. Kendall, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-0847.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register** the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this interim rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Traband, Elizabeth Anne Moler and Jerry J. Langdon.

I. Introduction

On August 2, 1990, the Federal Energy Regulatory Commission (Commission) issued Order No. 526,[1] an immediately effective interim rule revising the regulations governing transportation by interstate pipelines under section 311 of the Natural Gas Policy Act of 1978 (NGPA).[2] This order denies the applications filed for rehearing of the interim rule. This order also addresses requests for clarification and denies a petition for stay of the interim rule.

II. Background

A. AGD-Hadson Decision

On April 6, 1990, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Associated Gas Distributors* v. *FERC (AGD-Hadson).*[3] *In AGD-Hadson* the Court held that the Commission's then effective interpretation of the "on behalf of" standard in NGPA section 311 was inconsistent with the NGPA and therefore invalid. Since the Court's *AGD-Hadson* decision created uncertainty as to which existing section 311 transportation services could continue and whether needed new services could commence, there was potential risk for supply disruptions and substantial hardships for natural gas producers, suppliers, and end-users. In view of these considerations, as well as the need for a timely response to the Court's decision, on August 2, 1990, the Commission issued the immediately effective interim rule in this proceeding to adopt a revised interpretation of section 311's "on behalf of" standard.

B. Order No. 526

The interim rule's revised interpretation requires, in a new § 284.102(d) to the regulations, that the "on behalf of" entity for any section 311 transportation service by an interstate pipeline either (1) have physical custody of and transport the gas at some point, or (2) hold title to the gas at some point for a purpose related to its identity as a local distribution company (LDC) or intrastate pipeline.

Since this interpretation of the "on behalf of" standard was specifically endorsed by the Court in *AGD-Hadson*,[4] the Commission determined that it would serve as an appropriate "safe harbor," on an interim basis, for section 311 transportation services. However, the Court recognized that the Commission may be able to fashion a broader interpretation which will ensure that an "on behalf of" entity's function in a section 311 transaction is related to its identity as an LDC or intrastate pipeline.[5] Therefore, on August 2, 1990, the Commission also issued a companion Notice of Proposed Rulemaking (NOPR) in Docket No. RM90-7-000 seeking comments and suggestions on how the interim rule's interpretation of section 311's "on behalf of" standard may be expanded to encompass additional transactions while satisfying the Court's concerns.[6] Comments on the NOPR in Docket No. RM90-7-00 are due October 31, 1990, and reply comments are due November 30, 1990.

As an additional mechanism to prevent market disruption, the interim rule also includes procedures in new § 284.223(h) for the non-discriminatory conversion of existing section 311 transportation services to blanket certificate authorization. To ensure timely compliance with the Court's mandate, the interim rule adopted a new § 284.223(h)(i)(ii), requiring that all conversions be made effective by October 1, 1990. For the same reason, the interim rule also adopted a new § 284.102(e)[7] to require that any non-qualifying section 311 transportation device be terminated on October 1, 1990, if it has not been converted to blanket certificate authority by that date.

C. Order No. 526-A

On September 21, 1990, the Commission issued Order No. 526-A in this proceeding.[8] That order amended the interim rule to extend, from October 1, 1990, to November 1, 1990, the date by which interstate pipelines may convert section 311 transportation services to blanket certificate authorization under the procedures adopted by the interim rule in new § 284.223(h).[9] The Commission determined that the one-month extension of the conversion period would not cause undue delay in responding to the Court's mandate and was necessary to permit adequate time for parties to gas supply arrangements to determine whether their transactions qualify for continued NGPA section 311 transportation service under the interim rule's revised interpretation of section 311's "on behalf of" standard.

[1] 55 FR 33602 (Aug. 13, 1990), FERC Stats. & Regs. ¶ 30, 894 (1990).

[2] 15 U.S.C. 3301-3432 (1988).

[3] 899 F.2d 1250 (D.C. Cir. 1990), *reh'g denied*, No. 88-1856 (D.C. Cir. June 4, 1990). The mandate of the Court issued on June 18, 1990.

[4] 899 F.2d at 1264.

[5] *Id.*

[6] 55 FR 33017 (Aug. 13, 1990), 52 FERC ¶ 61,157 (1990).

[7] To be codified at 18 CFR 284.223(e).

[8] 55 FR 40828 (Oct. 5, 1990), FERC Stats. & Regs. ¶ 30,899 (1990).

[9] To be codified at 18 CFR 284.223(h).

III. Requests for Rehearing, Clarification, and Stay

A. Requests for Further Extension of the Conversion Period or Delay in Effective Date of Interim Rule

Description of Rehearing Requests

Order No. 526–A, extending the interim rule's conversion period by one month to November 1, 1990, was issued in response to a motion filed on August 27, 1990, by the Indicated Shippers, an *ad hoc* group of natural gas producers.

United Gas Pipe Line Company (United) seeks a further extension of the conversion period to December 1, 1990, and, if the Commission clarifies its new "on behalf of" standard, an additional extension of the conversion period or delay of the effective date of the interim rule so that interstate pipelines may take the clarifications into account in the conversion process.

United states that it cannot accurately analyze requests for new section 311 services or whether ongoing services must be converted without clarification of the interim rule. Specifically, United asserts that it must determine (for any transaction where the "on behalf of entity" does not transport the gas at some point) whether the transaction satisfies § 284.102(d)(2) because the "on behalf of" entity "hold[s] title to gas at some point during the transaction, which may occur prior to, during, or after the time that the gas is being transported by the interstate pipeline, for a purpose related to its status and functions as an intrastate pipeline or its status and functions as a local distribution company."

As further support for extending the conversion period or delaying the effective date of the interim rule, United asserts that the Commission has underestimated the administrative burdens that interstate pipelines face in conducting and completing the conversion process. United emphasizes that the conversion process necessitates discussions with section 311 shippers regarding the interim rule's impact on their services (approximately 850 section 311 transactions on United's system); analysis of each customer's responses to determine which of its services qualify under the interim rule; and significant "paperwork", including the filing of section 311 service termination reports and initial blanket service reports. United also asserts that more time is needed to complete the conversion process in view of pipelines' new reporting burdens under the Commission's August 2, 1990 interim rule on construction.[10]

The City of Willcox, Arizona (Willcox) requests, in a joint filing with Arizona Electric Power Cooperative, Inc., that the conversion period be extended until 30 days after issuance of a final rule in Docket No. RM90–13–000. Willcox argues that a shipper whose transaction does not qualify under the current interim rule should not be placed in the position of having to choose conversion at this time, since its transaction may qualify for continued section 311 service under a broader "on behalf of" interpretation that may be adopted by the final rule.

The Enron Interstate Pipeline Companies (Enron) request extension of the conversion period to April 1, 1991. Enron states that the requested extension is necessary to complete its review of contracts, to determine whether they qualify under the interim rule, and to amend existing transportation agreements to reflect the change in transportation authority for converted services.

The Commission's Response

The Commission is denying the requests to further extend the period for converting section 311 services to blanket certificate authority or to delay the effective date of the interim rule.

In making the interim rule immediately effective and originally limiting the conversion period to October 1, 1990, the Commission's purpose was to provide a timely response to the Court's opinion in *AGD-Hadson* that certain transportation services currently being provided under color of authority of NGPA section 311 are not authorized under that section. The Commission recognized that the October 1, 1990 conversion deadline might not provide sufficient time for all interstate pipelines and their shippers to thoroughly review all of their ongoing transactions to determine which ones qualify under the interim rule's revised "on behalf of" standard.

In view of these considerations, the Commission fashioned the interim rule's conversion procedures to afford each interstate pipeline discretion to determine, subject to the regulations' prohibition against undue discrimination,[11] the circumstances under which shippers would be allowed to convert section 311 services to blanket certificate authority.

Thus, under the interim rule, an interstate pipeline may decide to review each of its section 311 transactions on a case-by-case basis, if it determines that such a review can be completed by the end of the conversion period, and offer conversion opportunities only to those shippers that qualified under the Commission's prior "on behalf of" interpretation but not under the interim rule's interpretation.

As an alternative, an interstate pipeline may offer to convert all ongoing section 311 transportation services, if the interstate pipeline determines from an operational standpoint that it either is not advisable, or is not feasible by the end of the conversion period, to undertake a case-by-case review of all section 311 transactions that were ongoing on August 2, 1990, and make arrangements for the conversion of only non-qualifying services.

Although a pipeline has this discretion to offer conversion to all of its section 311 shippers, a pipeline may not require any shipper to convert. Neither may a pipeline exercise the conversion procedures in a manner which would withhold or offer conversion opportunities conditioned on the requirement that a shipper agree to different service terms or contract modifications, other than those appropriate to merely reflect the change in transportation authority from section 311 of the NGPA to blanket service under section 7 of the NGA.

If a shipper believes that its transaction qualifies for continued section 311 service under the interim rule, and the shipper declines on that basis to convert to blanket authority, a pipeline may not require the shipper to convert. Under such circumstances, the pipeline is obligated to continue section 311 service until such time that it is determined that the shipper does not qualify under the interim rule for section 311 service or the shipper fails to provide sufficient information to demonstrate that it qualifies for section 311 service. Subject to the procedure described below, if it is determined that the shipper does not qualify under the interim rule's for section 311 service, the pipeline will be obligated to terminate transportation service, upon reasonable notice to the shipper, if the service has not been converted to blanket authority. Therefore, while a shipper may decline to accept a pipeline's offer of conversion opportunity, the shipper assumes the risk of service termination if it is subsequently determined that the transaction does not qualify for section 311 service. If a shipper is notified by a pipeline that service is to be terminated, and the shipper believes that termination is not warranted, the shipper may either telephone the Commission's Enforcement Hot Line (202–208–1390 or 202–208–0098) and request the Commission's Enforcement Task Force's assistance in reaching a quick informal resolution of the dispute, or notify the Commission by appropriate filing. The Commission will resolve this dispute promptly. Until the Commission issues a final order on the dispute, the pipeline must continue to provide transportation to the shipper.

These steps are being taken because we recognize that in some instances a shipper may believe that it qualifies for continued section 311 service but the pipeline may not be persuaded that the service qualifies. In other instances, the pipeline may conclude that a service qualifies under section 311 and should continue under section 311 authority, but the shipper would prefer to convert to blanket service because the shipper either is not certain that it qualifies under the interim rule or is concerned that it may not qualify under the final rule on section 311 service. In such circumstances, either the pipeline or the shipper may seek resolution by the Commission. Unless the dispute is otherwise resolved—either by the pipeline and shipper themselves or with the aid of the Commission's Enforcement Task Force—the pipeline must maintain service until the Commission has issued a final order resolving whether the service must be continued under section 311, converted to blanket service, or terminated. While the same terms and conditions apply to section 311 and blanket services under part 284, requiring that disputed services be continued under section 311, rather than blanket authority, will avoid the potential need for contract modifications to reflect changed transportation authority prior to the Commission reaching final determinations regarding the services at issue.

The Commission determined, in view of the time that may be needed to implement the conversion procedures, that the interim rule's "safe harbor" for existing transactions was appropriate and adequate to prevent disruption of ongoing supply arrangements and at the same time respond in a timely fashion to the Court's mandate in *AGD-Hadson*. However, the Commission subsequently concluded that a one-month extension of the conversion period would not be unresponsive to the Court's decision. Therefore, the Commission issued its September 21 order (Order No. 526–A) granting the Indicated Shippers' motion for a one-month extension of the conversion period to November 1, 1990.

The Commission finds that United and Willcox have not provided sufficient justification for a regulatory amendment that would further extend the conversion period on a generic basis. Such action would permit non-qualifying transactions to continue under color of authority of section 311 beyond November 1, 1990, at which time six months already will have passed since the Court issued its mandate in *AGD-Hadson*.

The Commission has a responsibility to ensure that non-qualifying transactions do not continue under color of section 311 authority any longer than necessary to permit new arrangements to be made to prevent supply disruptions. Further, the Commission believes the conversion process can be completed in an equitable, orderly manner by November 1, 1990, so that further action to extend the conversion period on a generic basis is not necessary and therefore would be inappropriate.

However, the Commission recognizes that some interstate pipelines may determine that conversion opportunities should be offered only to those shippers whose transactions do not qualify for section 311 service under the interim rule, and that the November 1, 1990 conversion deadline will not permit time for a case-by-case review to identify non-qualifying transactions. In such cases, the Commission will entertain a request for a waiver to extend the conversion period for a particular pipeline. However, because of the Commission's resolve to respond to the *AGD-Hadson* decision in a timely manner, a waiver extending the conversion period will be granted only if the pipeline demonstrates that the waiver is necessary to prevent serious hardship.

In this regard, the Commission emphasizes that it is not persuaded that the interim rule's conversion procedures may create hardship or work in an unfair manner, as suggested by Willcox, by placing a shipper in the position of having to accept an offer of conversion or have its service terminated on November 1, 1990. The conversion procedures insure that shippers will not lose their priority in pipelines' transportation queues. Further, the same general terms and conditions under subpart A of part 284 of the Commission's regulations apply to both blanket certificate and section 311 services.

In view of these considerations, the Commission does not believe that a shipper will be prejudiced by conversion regardless of whether its service qualifies under the interim rule for continued service under section 311. Thus, bearing in mind the continued service under section 311. Thus, bearing in mind the need for a timely response to the court's decision, the Commission's tentative conclusion is that the conversion period should not be extended for any pipeline solely because some of its shippers (1) believe that they eventually (after November 1, 1990) will be able to provide information verifying that they qualify for section 311 service under the interim rule, or (2) are relying on an assumption that the final rule will adopt a broader "on behalf of" interpretation which covers their transactions.

Since conversion will not unfairly prejudice any shipper, the Commission believes it is appropriate for an interstate pipeline to offer conversion opportunities to any shipper when there is uncertainty as to whether the shipper's transaction qualifies under the interim rule's "on behalf of" standard. However, based on the comments in this proceeding, the Commission believes that pipelines will have difficulty in relatively few instances in determining whether a transaction satisfies the interim rule's "transport" test or "title" test. Further, the Commission will respond as quickly as possible to clarification requests regarding sufficiently described transactions.

In view of all of these considerations, the Commission believes it is neither necessary nor appropriate to delay the interim rule's effectiveness or to further extend the conversion period until all possible hypothetical transactions have been addressed. Therefore, the Commission is denying these rehearing requests.

[10] Order No. 525, 52 FERC ¶ 61,159 (1990). United also believes that the Commission's estimate of the conversion procedures' administrative burdens on pipelines will be inaccurate in United's case. While the Commission estimated that one-third of all ongoing section 311 transportation services may not qualify under the interim rule (and therefore may need to be converted to blanket authority), United believes that its shippers will request conversion of up to two-thirds of United's ongoing section 311 services. United also believes that the Commission's estimate of 2.7 hours to file reports on converted transactions will prove accurate only for transactions where the necessary information is readily available to pipelines. Where problems arise (such as discrepancies in information, lack of shipper cooperation, difficulty in validating "on behalf of" entities), United believes the reporting burden for converted transactions will average 4 hours.

[11] 18 CFR 284.8(b) and 284.9(b).

B. Requests Regarding Whether Pipelines Are Required To Permit Conversion of Services That Qualify Under the Interim Rule and Whether Qualifying Section 311 Services Must Be Converted

Citizens' and Tennessee's Requests

Citizens Gas Supply Corporation (Citizens) states that some of its interstate pipeline transporters have offered their shippers the opportunity to convert all of their section 311 transportation services to blanket certificate, regardless of whether the services may qualify for continued section 311 service under the interim rule. Citizens further states that others of its interstate pipeline transporters are permitting shippers to convert only those services that do not qualify under the interim rule.

Citizens asserts that all interstate pipelines should be required to offer conversion opportunities to all shippers, including those whose services may clearly qualify for section 311 service under the interim rule. Citizens argues that, absent such a requirement, shippers like itself which already "transport" or "hold title" will be disadvantaged, because blanket certificate service offers shippers significant benefits in the form of greater flexibility in adding delivery points, ability to engage in transactions involving gas deliveries to end users, and reduced paperwork when contracts are amended. Citizens asserts that the conversion period should be extended until the commission resolves the issue as to whether pipelines should be required to offer conversion opportunities to shippers that qualify under the interim rule for section 311 service.

Tennessee Gas Pipeline Company (Tennessee) requests clarification that a pipeline's failure to convert qualifying section 311 transactions to blanket certificate authority while the interim rule is in effect will not prejudice the pipeline and shipper from seeking waivers at some subsequent time to convert qualifying section 311 services to blanket service without loss of queue priority and without being subject to the blanket regulations' prior notice and protest procedures. Tennessee further requests that the Commission amend the interim rule on rehearing to ensure that conversion requests by qualifying section 311 shippers will not be prejudiced by their not being converted presently under the interim rule.

The Commission's Response

For the reasons stated above, the Commission does not believe it is necessary to grant Citizens' request. However, although the Commission intended to leave pipelines some flexibility to implement the conversion procedures, these procedures and the decision to convert are subject to the condition that conversions must not be offered in an unduly discriminatory manner. Since the conversions will merely change the statutory authority under which pipelines are transporting, and in view of the relatively minor administrative burdens on pipelines compared to the hardships that would result to others if their gas supply arrangements are terminated, the Commission does not believe that any pipeline would be justified in failing to offer conversion opportunities to non-qualifying section 311 shippers. In view of the potential hardships that service interruptions would create, the Commission will closely scrutinize any pipeline's decision not to offer conversion opportunities to non-qualifying shippers to determine whether the pipeline's reasons for not offering conversion were unduly discriminatory.

However, a pipeline's decision to offer conversion opportunities only to shippers that do not qualify for section 311 service does not, by itself, evidence undue discrimination. As discussed above, some pipelines may decide, from an administrative and operational standpoint, that case-by-case review is feasible in the time allowed, and, therefore, that conversion opportunities may be restricted to non-qualifying section 311 shippers. Other pipelines may determine that such a transaction-specific review is not feasible, and therefore may decide to offer all section 311 shippers the opportunity to convert to blanket certificate service. But whatever approach the pipeline takes, it may not act in an unduly discriminatory fashion. This would disrupt the orderly functioning of the natural gas market. Further, pipelines should offer to convert any transactions that do not clearly qualify for section 311 service under the interim rule, since significant hardships will result if such transactions are not converted and later must be terminated because they are identified as non-qualifying transactions. Also, as discussed above, pipelines may not condition conversion opportunities in any manner intended to obtain concessions from shippers.

We also note that Citizens states an incorrect premise as the basis for its request that pipelines be required to offer conversion opportunities to qualifying section 311 shippers. Part 284 transactions, whether authorized under subpart B (NGPA section 311 authority) or subpart G (NGA section 7 blanket certificate authority), are subject to the same terms and conditions found in a pipeline's tariff. Hence, while blanket service may be more flexible in the sense that blankets authorize a broader range of transactions (since they may be for any shipper and do not have to be "on behalf of" an LDC or intrastate pipeline), all part 284 transactions—once authorized—have the same degree of flexibility, contrary to Citizens' representation.

Since the Commission is denying Citizens' request on rehearing that pipelines be required to offer conversion opportunities to qualifying section 311 shippers, Citizens' request for extension of the conversion period, pending resolution of this issue, is moot.

We are granting Tennessee's request for clarification that a pipeline's failure to convert a qualifying section 311 transaction while the interim rule is in effect will not prejudice the pipeline and the shipper from seeking waivers at a later time to convert the service to blanket authority without loss of queue priority and without being subject to the blanket regulations' prior notice and protest procedures. The Commission will consider such waiver requests on a case-by-case basis. In view of the short time that pipelines and shippers have to decide whether to convert services under the interim rule, the Commission does not believe that a pipeline's or shipper's failure to convert a particular transaction under the interim rule should prejudice requests at a later date for waivers to permit conversion without loss of queue priority or application of the blanket regulations' prior notice and protest procedures. In view of this clarification, Tennessee's request for amendment of the interim rule is not necessary to prevent prejudice.

C. Request for Notice and Protest Procedures

The Petitioners' Request

The interim rule revised § 284.223(b) of the regulations to exempt transactions converted under new § 284.223(h) from the prior notice requirements of § 157.205 of the regulations which apply to pipelines' blanket certificate transportation services that will continue for more than 120 days.

Associated Gas Distributors (AGD) is an *ad hoc* group of local gas distribution companies. AGD does not necessarily oppose conversion opportunities of queue maintenance for non-qualifying section 311 services. However, AGD

believes that conversions of non-qualifying section 311 services to blanket authority should be subject to § 157.205's prior notice and protest procedures.

AGD stresses that these section 311 transactions commenced under color of section 311 authority and therefore have not previously been subject to the blanket regulations' prior notice and protest procedures. AGD also emphasizes that, because the self-implementing regulatory authority for section 311 transactions has been coupled with the Commission's broad "some economic benefit" interpretation of section 311's "on behalf of" standard, large numbers of transportation services have been able to commence over the years without being subject to review under the Commission's standards and regulations implementing the requirements of section 7 the Natural Gas Act. AGD notes the Commission's statement in Order No. 436 that "the protest procedures ensure the integrity of the regulatory function mandated by statute," [12] and asserts that the procedures are necessary to satisfy the statutory notice requirement in section 7 of the Natural Gas Act. Finally, AGD emphasizes the Court's finding in *AGD-Hadson* that the Commission's "some economic benefit" interpretation had the potential of superannuating NGA section 7, contrary to Congressional intent. In view of these considerations, AGD asserts that the interim rule's waiver of the blanket regulations' prior notice and protest procedures is inconsistent with the Court's decision.

AGD further asserts that the potential for disruption of converted transactions, if they are protested and required by operation of the protest procedures to cease after 120 days, is not grounds for waiving § 157.205's notice and procedures. AGD argues that the procedures give the Commission ample time to make a preliminary review of protested transactions, particularly since past experience indicates that few protests will be filed. Further, AGD argues, parties to these converted supply arrangements cannot be viewed as being unfairly prejudiced if protesters are successful in demonstrating that the services are contrary to the public interest and should be terminated.

Willcox also does not believe that non-qualifying section 311 service should be converted to blanket authority without being subject to notice and protest procedures. In view of the Court's *AGD-Hadson* decision invalidating the Commission's "some economic benefit" test, Willcox asserts that services which do not qualify under the interim rule may never have qualified for section 311 service

Willcox states that there is a particular need for ensuring that non-qualifying firm services are made subject to notice and protest, since successful protests to the conversion of non-qualifying firm services would free up capacity needed on some pipelines' systems to meet firm sales customers' entitlements.

Finally, citing *AGD-Hadson*, 899 F.2d at 1281–1282, Willcox asserts, similarly to AGD, that failure to make the conversion of transactions subject to notice and protest, as the transactions should have been originally, is inconsistent with the Court's finding that one of the defects in the Commission's "some economic benefit" test is that it operates to exempt gas transportation services not intended to be covered by section 311 from the requirements of section 7 of the Natural Gas Act.

The Commission's Response

As explained in the interim rule, the Commission's purpose in adopting conversion procedures was to ensure that shippers and other persons are not penalized for having relied in good faith on the Commission's prior interpretation of section 311. For the same reason, the Commission decided to exempt the converted services from the prior notice and protest procedures of § 157.205, since those procedures—with their 120-limitation on protested services—could result in the disruption of needed gas services, aside from creating an unnecessary drain on Commission resources to process such protests. In view of the Commission's purpose in adopting the conversion procedures, the petitioner's assertions regarding the conversion of section 311 services—including Willcox's assertions regarding the conversion of firm services, in particular—are immaterial.

The Commission does not believe that AGD, Willcox, or any other LDCs have been unfairly prejudiced because section 311 transactions have not been subject to the same protest procedures as blanket certificate services. While a section 311 transportation service, unlike a blanket service, has not been subject to termination after 120 days if a protest is filed, pipelines have been required pursuant to § 284.106(a)(4) to give prior notice to an LDC, as well as its state agency, of any section 311 service for a customer in the LDS's service area. Therefore, LDCs have had the opportunity to protest any section 311 service and request Commission action to require termination of the service.

D. Transactions That Have Expired or Not Commenced

The Arkla Pipeline Group (Arkla) and Indicated Shippers request clarification that a contract for section 311 service executed prior to August 2, 1990 (the effective date of the interim rule) is eligible for conversion under the interim rule, even if gas had not yet moved under the contract as of August 2, 1990. Arkla also requests clarification that services may continue under blanket certificate authorization, without application of the blanket regulations' prior notice and protest procedures, if the services are extensions, renewals, replacements, roll-overs, or successors in interest to section 311 services that were converted and expire during the conversion period.

These requests are granted. With respect to the first request, execution of the contract has more bearing on a shipper's place in the queue than the flow of gas. The second request is consistent with our original intention that converted transactions not be treated any differently from other transactions that originally commended under blanket certificate authority. Hence, the renewal or extension of such transactions by other contractual means is in no way prejudiced by virtue of their having been converted.

E. Use of Section 311 Facilities

AGD's and Arkla's Rehearing Requests

In the interim rule, the Commission recognized that in some instances pipelines may be using facilities constructed under NGPA section 311 authority, and never certificated under the Natural Gas Act, to provide non-qualifying section 311 services that are converted to blanket certificate authorization. The Commission stated that during the period the interim rule is in effect, the converted services may continue through use of those facilities that were completed under authority of section 311.

The Commission explained that it was exercising its authority pursuant to section (7)(c) of the Natural Gas Act to "exempt from the requirements of (section 7) temporary acts or operations for which the issuance of a certificate will not be required in the public interest." [13] The Commission concluded that such action was appropriate so as not to interrupt existing, authorized transactions until such time that a final

[12] FERC Stats. & Regs., Regs. Preambles, ¶ 30,665 at 31,554 (1986).

[13] Mimeo., at 4, n. 7.

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interpretation of the "on behalf of" standard is adopted in Docket No. RM90–7–000. Since abrupt termination of ongoing services was not a concern in the context of facilities still under construction, the Commission did not exercise section 7's exemption provision to authorize the use of section 311 facilities not yet completed and ready to commence service as of the effective date of the interim rule.

The Commission stated that it may be necessary for interstate pipelines to seek to obtain, within a reasonable period of time after issuance of the final rule in Docket No. RM90–7–000, NGA certificates authorizing the use of facilities for converted services. However, the Commission also stated that it would determine how best to deal with any remaining facilities questions after finalizing its "on behalf of" interpretation.

Citing *Consumer Federation of America* v. *FPC*, 515 F.2d 347 (D.C. Cir.), *cert. denied*, 423 U.S. 908 (1975), AGD asserts that section 7's exemption provision was intended as a narrow exception to NGA certification requirements and, therefore, that the exemption provision does not authorize the Commission to allow numerous, unidentified facilities to be used, prior to certification, to continue non-qualifying NGPA section 311 services that have been converted to NGA blanket certificate authority.

Finally, AGD suggests possible methods by which the Commission could expedite the process of certificating facilities that were constructed under section 311.

Arkla requests on rehearing that the Commission provide temporary blanket certificate authority for all section 311 facilities currently under construction so that they may be used, upon completion, to provide converted services. Alternatively, Arkla requests a waiver so that it may use its Line AC when construction is completed to provide all of the services that Arkla planned to render through that facility, regardless of whether the planned services qualify under the interim rule.

The Commission's Response

Consumer Federation involved the Commission's invocation of section 7's exemption provision to authorize, without prior hearing and issuance of a certificate, 180-day sales of natural gas during a period of widespread curtailment. In overturning the Commission's regulations, the Court found that the 180-day sale exemptions were not an appropriate exercise of section 7's exemption provision.

The Commission does not believe that its temporary exemption to permit use section 311 facilities to provide converted services is inconsistent with the *Consumer Federation* decision. The 180-day sales authority at issue in *Consumer Federation* was akin to blanket certificate authority, which would have been available to pipelines on a self-implementing basis. This interim rule's exercise of the section 7 exemption provision is a one-time exemption which must begin during the specified conversion period. Further, the Commission believes the temporary exemption of these facilities satisfies the exemption provision's public interest standard since the exemption is necessary to prevent the hardship that would result if services using these facilities were abruptly terminated.

In view of these considerations, the Commission is denying AGD's request on rehearing that the Commission revoke the interim rule's temporary exemption of facilities used to provide converted services from the certification requirements of the NGA. This denial of the requested clarification moots the need to respond to AGD's suggestions regarding how to expedite the certification of facilities, prior to their being used for converted transactions.

The Commission also is denying Arkla's rehearing request for temporary section 7 authority to operate section 311 facilities when their construction is completed. The possible delay of planned services to be rendered through facilities not yet completed does not present the same potential for hardship as the abrupt termination of ongoing facilities. The Commission also is denying Arkla's alternative request for a waiver to permit use of its Line AC line upon completion to provide the services that Arkla planned to provide through that facility under section 311. The Commission is currently reviewing Arkla's September 27, 1989 application in Docket No. CP89–2174–000 for a certificate for Line AC. Arkla has not demonstrated that a waiver is necessary at this time to prevent hardship or Line AC's remaining idle upon completion.

F. The Interim Rule's Title Test

In the companion NOPR in Docket No. RM90–7–000 regarding section 311 transportation service, the Commission stated its conclusion that, when an LDC sells gas to an end user that is not in the LDC's franchised or traditional local distribution service area, the sale is not a function related to the LDC's status as an LDC. The Commission also explained its conclusion that, if gas sold by a non-transporting intrastate pipeline to an end user was not produced in the area of the country where the intrastate pipeline operates, the intrastate pipeline's sale of gas is not related to its status as an intrastate pipeline.

Indicated Shippers requests on rehearing that the Commission amend the interim rule to permit section 311 transportation by interstate pipelines when a non-transporting LDC holds title to gas that will not be sold to a customer in its service area and when a non-transporting intrastate pipeline holds title to gas not produced in its operating area.

Indicated Shippers agues that the limitation regarding LDCs is inconsistent with the NGPA because, under the definition of "local distribution company" in section 2(17) of that Act, an entity may qualify as a local distribution company for purposes of that Act without regard to whether they transport or make sales of gas to customers outside their service area.

The Commission's Response

The Commission is not persuaded by Indicated Shippers' argument that the interim rule's denial of section 311 authority in these types of transactions is inconsistent with the Court's *AGD-Hadson*. The Court was emphatic that an LDC or intrastate pipeline cannot qualify as the "on behalf of" entity for an interstate pipeline's section 311 transportation service unless the LDC's or intrastate pipeline's role in the transaction reflects its status as such. An LDC's sales of gas that will be consumed outside its service area are not traditional local distribution functions. Neither is a non-transporting intrastate pipeline's sale of gas not produced in its operating area a traditional intrastate pipeline function. This conclusion is not changed by the fact that the Commission has determined in previous decisions, cited by Indicated Shippers, that such activities by LDCs and intrastate pipelines were in the public interest. The Court stated in the *AGD-Hadson* decision that an interstate pipeline must have or obtain authority under section 7 of the NGA before transporting gas under circumstances which involve participation by an LDC or intrastate pipeline in a manner that does not reflect its identity as such. Whether there are other types of section 311 transactions that meet this test will be addressed in the final rule in Docket No. Rm90–7–000.

Since the Indicated Shippers' arguments do not demonstrate that the described situations reflect LDCs' and intrastate pipelines' identities as such, the Commission is not persuaded that

the interim rule should be amended to permit section 311 transportation by interstate pipelines under these circumstances. As discussed above, the purpose of the interim rule is to delineate a "safe harbor" by providing section 311 authority only for transactions that clearly meet the Court's criteria in *AGD-Hadson*.

However, in the rulemaking proceeding in Docket No. RM90–7–000, the Commission will give further consideration to the transactions described by Indicated Shippers to determine whether it would be appropriate to find that an interstate pipeline's transportation is "on behalf of" an LDC or intrastate pipeline, within the meaning of section 311 of the NGPA, even though the LDC or intrastate pipeline is not performing functions traditionally associated with their identities. To the extent the Commission determines that such transactions can be accurately identified and demonstrated to satisfy the "on behalf of" requirement, the Commission will provide for their coverage by the "on behalf of" standard adopted by the final rule in Docket No. RM90–7–000.

G. The Interim Rule's Physical Custody/Transportation Test

Section 284.102(d)(1) provides that an interstate pipeline may transport under section 311 if the "on behalf of" entity (LDC or intrastate pipeline) "[h]as custody of and transports the natural gas at some point during the transaction." Indicated Shippers requests clarification that the Commission's intent was that the "on behalf of" entity may have physical custody of the gas prior to or after the time the gas is in the interstate pipeline's system.

The Commission is granting this request for clarification that an "on behalf of" entity may satisfy the interim rule by having physical custody of gas prior to or after the gas is in the interstate pipeline's system.

H. Section 311 Facilities in the Outer Continental Shelf

In Order No. 509 [14] the Commission issued open-access transportation certificates to interstate pipelines for their certificated facilities located in the Outer Continental Shelf (OCS). Since the OCS blanket certificates only authorize service on OCS facilities that have been certificated under the NGA, Union Texas Petroleum Corporation (Union Texas) states that the interim rule put shippers dependent on section 311 facilities in the OCS at a disadvantage since they may only use the facilities for services that qualify for section 311 service under the interim rule.

Union Texas requests on rehearing that the interim rule be amended to ensure that converted services, as well as any new transportation service that could take place on certificated OCS facilities under a pipeline's Order No. 509 blanket certificate, may also be rendered through uncertificated OCS facilities constructed under section 311 authority. Union Texas states that such an amendment to the interim rule is necessary to prevent undue discrimination against shippers dependent on section 311 facilities in the OCS.

Union Texas' rehearing request indicates a misunderstanding of the interim rule's effect on section 311 transactions using uncertificated OCS facilities constructed under section 311. The interim rule provides for non-qualifying section 311 services in the OCS to be converted to blanket certificate authority. Further, the Commission's temporary exemption for section 311 facilities applies equally to OCS facilities constructed under section 311. In view of these considerations, the Commission is dismissing Union Texas' request for rehearing as moot.

I. Requests for Clarification

Whether Pipelines Must Offer Conversion Opportunities

Indicated Shippers requests clarification that pipelines must offer shippers the opportunity to convert their services to blanket certificate authority unless the services are being rendered through facilities that have not been certificated.

The Commission is denying the requested clarification. New § 284.223(h) adopted by the interim rule grants authority for pipelines to offer conversion opportunities. However, § 284.223(h) does not require that a pipeline offer to convert section 311 services. The preamble to the interim rule also speaks only in terms of authorizing pipelines to convert services, not requiring pipelines to convert services.[15]

Further, it would not be appropriate to require that a pipeline permit conversion unless it is first shown that the pipeline's failure to offer conversion opportunities constitutes undue discrimination. Since the Commission has a responsibility to respond to the Court's mandate in a timely manner, the Commission determined that its best available means of preventing the *AGD-Hadson* decision from causing significant market disruptions is to authorize pipelines to convert section 311 services on a voluntary basis. However, the Commission again emphasizes that a pipeline may not fail to offer conversion opportunities, if its reasons for this decision are unduly discriminatory. Further, if a pipelines offers conversion opportunities, it may not do so in an unduly discriminatory manner. If disputes over conversion arise, shippers may contact the Commission's Emergency Task Force for assistance in resolving such disputes in a timely manner.

Off-System Sales by "on behalf of" Entities

United requests clarification whether the interim rule's "title" test is satisfied when an intrastate pipeline or LDC holds title to gas that is sold to a customer that is "marginally" within its traditional service area, but not connected directly or indirectly to its system, so that it is physically impossible for the LDC or intrastate pipeline to perform any portion of the transportation of the gas.

The Commission is denying this request for clarification since it focuses on the location of a customer, without regard to whether the relationship between the customer and LDC or intrastate reflects the latter's identity as such. An LDC's or intrastate pipeline's mere geographic proximity to a customer does not, by itself, qualify the LDC or intrastate pipeline as an "on behalf of" entity regardless of whether the customer is only "marginally" or clearly within the LDC's or intrastate pipeline's traditional service area. While an LDC or intrastate pipeline that holds title does not necessarily have to be directly or indirectly able to physically transport gas for a customer to qualify as the "on behalf of" entity, the LDC or intrastate pipeline, in addition to holding title, must be involved in locating or purchasing the gas supplies, arranging for their delivery, metering the gas volumes, or some other function traditionally provided by such an entity.

Pre-Order No. 436 Interruptible Transportation Services

Section 284.223(h)(1)(i) of the interim rule provides that shippers whose transportation services are converted under that section shall retain their same respective places in pipelines' transportation queues following

[14] FERC Stats. & Regs., Regs. Preambles, ¶ 30,842 (1988).

[15] *See, e.g.*, mimeo at 10: "The Commission estimates that an interstate pipeline's choice to avail itself of the interim rule's voluntary conversion procedures * * *."

conversion. Willcox seeks clarification that this provision ensures that pipelines must maintain the queue priority for interruptible transportation services, *vis-a-vis* other interruptible transportation services, if they commenced prior to October 9, 1985, the issuance date of Order No. 436, and are authorized to continue for their full terms pursuant to § 284.223(g) of the regulations.

The Commission is granting Willcox's request for clarification. The interim rule requires that a shipper's priority in a pipeline's transportation queue be the same following conversion. Therefore, a converted service will not change queue priority, irrespective of how its priority was previously determined.

Uncertificated Facilities and New Blanket Certificate Services

Colorado Interstate Gas Company requests clarification that the interim rule provides for interstate pipelines to use uncertificated facilities constructed under authority of section 311 to initiate new blanket certificate services after August 2, 1990, the issuance and effective date of the interim rule.

The Commission is denying Colorado Interstate's requested clarification. The Commission exercised its authority under the exemption provision of section 7 of the NGA to permit the continued used of uncertificated section 311 facilities for converted transactions based on the finding that such a limited exemption was necessary to prevent the significant hardships that shippers, producers, pipelines, and other parties would experience if their ongoing gas supply arrangement were terminated abruptly. Since the same potential for hardship generally does not exist if transportation service has not already begun, and the Court's *AGD-Hadson* decision should be given immediate effect in the absence of significant, widespread hardship, the Commission determined that there was no justification for a generic exemption allowing the use of uncertificated facilities for new blanket certificate services.

If any pipeline believes that its inability to use certain of its facilities for new blanket certificate transactions will result in significant hardship to itself or others, the pipeline should file an application for a certificate for the facilities with a request for a temporary certificate, pursuant to section 7 of the NGA, pending review of its application.

Substitution of Eligible "on behalf of" Entities

Indicated Shippers and Enron request clarification or rehearing to permit substitution of an eligible "on behalf of" entity for an ongoing transaction in which the presently specified "on behalf of" entity does not qualify under the interim rule. The purpose of such substitutions would be to permit an ongoing service to continue under authority of section 311 authority with the same place in a pipeline's transportation queue.

The Commission included a waiver in the interim rule to allow converted transactions to maintain their transportation priority, even if inconsistent with a pipeline's tariff provisions, because it would not be fair to penalize shippers for having relied on the Commission's prior interpretation of section 311's "on behalf of" requirement. As discussed above, however, the Commission does not believe any shipper will be unfairly prejudiced by being placed in the position of having to convert to blanket authority or accept termination of its service. Therefore, the Commission does not believe that it is necessary to waive pipelines' tariff provisions on a generic basis to permit substitution of "on behalf of" entities without loss of queue priority. Further, substitution of "on behalf of" entities would be inconsistent with the purpose of the interim rule's "safe harbor" which is to maintain the status quo. If pipelines are permitted to substitute qualifying "on behalf of" entities, instead of using the conversion procedures, some non-qualifying section 311 shippers might lose service altogether, because they are unable to locate qualifying "on behalf of" entities. Thus, other non-qualifying shippers might move up in the queue if they are successful in substituting qualifying "on behalf of" entities. In view of these considerations, this request for clarification and alternative request for rehearing are denied.

Deadline for Filing Conversion Reports

Enron requests that the Commission amend the interim rule to allow 90 days following the end of the conversion period for interstate pipelines to file the required section 311 termination reports and initial blanket service reports on converted transactions. Enron states that additional time is needed in view of the large number of reports that it will be required to file at one time.

The Commission recognizes that some pipelines offering conversion opportunities may have large numbers of reports to file in a short period of time. However, the Commission does not believe that a generic extension of the reporting deadlines is appropriate. Rather, the length of extensions should be based on the individual pipeline's circumstances. Pipelines may submit requests for extensions of time to file required reports to the Director of the Office of Pipeline and Producer Regulation, pursuant to § 375.307(d)(4) of the regulations.

I. Request for Stay

Willcox filed a separate request for stay of the interim rule until the Commission issues an order on the merits disposing of the requests for rehearing of the interim rule. Since this order addresses all of the filed rehearing requests, the Commission is dismissing Willcox's request for a stay of the interim rule as moot.

By the Commission. Commissioner Trabandt concurred.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26814 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 07 90-104]

Safety Zone; Cut "G" Channel Tampa Bay, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has designated Cut "G" Channel Tampa, Florida as a Safety Zone. This zone is necessary due to the silting in of the cut and the reduction of the navigable channel width from 400 to 200 feet. Vessels restricted to the channel by their draft may not meet or pass at any point in Cut "G" Channel. Vessels with a draft of 29 feet or greater shall transit Cut "G" at a slow speed with a minimum of two tug boats, of sufficient size to control the vessel's movement, made up to it. Vessels with a draft of 31 feet 9 inches may transit Cut "G" when the height of tide is at or above mean low water. Vessels with drafts greater than 31 feet 9 inches but less than 33 feet may transit Cut "G" when the height of tide plus 31 feet 9 inches is greater than or equal to their draft. Vessels with a draft greater than 33 feet may not transit Tampa Channel Cut "G" under any condition.

DATES: This regulation becomes effective on November 1, 1990. Comments on this regulation must be received on or before December 31, 1990.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, 155 Columbia Drive, Tampa, Florida 33606-3598. The comments will be available for inspection and copying at Coast Guard Marine Safety Office, 155 Columbia Drive, Tampa, Florida 33606-3598. Normal office hours are between 7:30 a.m. and 4 p.m., Monday and Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: LT S.P. Metruck, Coast Guard Marine Safety Office, Tampa, FL at (813) 228-2189.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Following normal rulemaking procedures would have been contrary to the public interest since immediate action is required to prevent damage to deep draft vessels and the possible environmental harm caused by pollution from the damage.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "**ADDRESSES**" in the preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulations may be changed.

Drafting Information

The drafters of this regulation are Lieutenant S.P. Metruck, project officer, for the Captain of the Port and Lieutenant G. Tanos, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

This regulation is required due to the silting in of the Cut "G" Channel. This condition has reduced the usable channel width from a project width of 400 feet to 200 feet. A U.S. Army Corps of Engineers survey of the cut, completed on May 18, 1990, and a meeting with the Tampa Bay Pilots and interested Cut "G" users, on May 21, 1990, have demonstrated the need for these restrictions. Concern that a grounding or collision could result in damage to vessels and result in the release of oil or chemicals in an environmentally sensitive area makes immediate action necessary. An emergency rule was signed on August 17, 1990 effective until October 31, 1990 with the same restrictions, however, the U.S. Army Corps of Engineers has revised their schedule to dredge Cut "G" and now estimates the completion of the dredging on December 31, 1991 making this rule necessary.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The regulation should have little economic impact due to the low commercial traffic load in Cut "G" Channel, Tampa Bay, Florida. Vessels affected include tank and freight vessels calling on Port Tampa and a Florida Power Corporation power plant. An emergency rule; COTP Tampa, FL Regulation 90-55; has been in effect since August 17, 1990 because of the immediate hazards involved with the shoaling requiring vessels transiting the channel to observe the draft restrictions as of that date.

Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new § 165.702 is added to read as follows:

§ 165.702 Safety zone: Cut "G" Channel Tampa Bay, Florida.

(a) *Location:* The following is a safety zone: Cut "G" Channel Tampa, Florida.

(b) *Effective date:* This regulation becomes effective on November 1, 1990. It terminates on December 31, 1991 unless terminated earlier because of channel dredging project progress.

(c) *Regulations:* In accordance with the general regulations in § 165.23 of this part:

(1) Vessels restricted to the channel by their draft may not meet or pass at any point in Cut "G" Channel.

(2) Vessels with a draft of 29 feet or greater shall transit Cut "G" at a slow speed and with a minimum of two tug boats, of sufficient size to control the vessel's movement, made up to it.

(3) Vessels with a draft of 31 feet 9 inches may transit Cut "G" when the height of tide is at or above mean low water.

(4) Vessels with drafts greater than 31 feet 9 inches but less than 33 feet may transit Cut "G" when the height of tide plus 31 feet 9 inches is greater than or equal to their draft.

(5) Vessels with a draft greater than 33 feet may not transit Tampa Channel Cut "G" under any condition.

Dated: November 1, 1990.

M.J. Schiro,

Captain, U.S. Coast Guard, Captain of the Port, Tampa, Florida.

[FR Doc. 90-26718 Filed 11-13-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3848-2]

Standards of Performance for New Stationary Sources; Test Methods in Appendix A and Performance Specifications in Appendix B; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: The EPA is correcting errors in the test methods and performance specifications (PS's) in appendices A and B of 40 CFR part 60 as they appear in the Code of Federal Regulations.

DATES: Effective date. November 14, 1990.

FOR FURTHER INFORMATION CONTACT: Candace Sorrell at (919) 541-1064.

SUPPLEMENTARY INFORMATION: The Code of Federal Regulations for 40 CFR part 60, revised as of July 1, is published each year. Errors in the test methods and PS's that have been overlooked over the years are corrected by this action. In addition, some minor editorial revisions are made.

The Agency feels the notice and comment period are unnecessary for these changes. The changes made by this notice correct minor technical and editorial corrections. The changes do not affect the stringency, applicability, burden of compliance, or compliance costs of the tests methods or performance specifications.

Dated: September 25, 1990.

Michael Shapiro,

Acting Assistant Administrator of Air and Radiation.

List of Subjects in 40 CFR Part 60

Air pollution control.

As set forth in the preamble, 40 CFR chapter I, part 60 is amended as set forth below.

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

Appendix A—[Amended]

Appendix A, Method 2 [Amended]

2. Appendix A, Method 2 is amended as follows:

a. Figure 2–3, title, by revising the terms "$\alpha 1$", $\alpha 2$", "$\beta 1$", "$\beta 2$" to read as "α_1", "α_2", "β_1", and "β_2", respectively.

b. By revising the words "Section 6" to read "Bibliography" in the following sections:

1. Figures 2–3, title.
2. Section 2.2, first paragraph, last sentence.
3. Section 2.7, third sentence.
4. Section 2.8, last sentence.
5. Section 4.1.1, second sentence.
6. Section 4.1.2.3, last sentence.
7. Section 4.1.5.1.3, first sentence.
8. Section 4.1.8.1.2, second and last sentences.

c. Section 2.3, third sentence after the section heading "Temperature Gauge.", by revising the word "Alternate to read "Alternative".

d. Section 2.7, the section heading is amended by revising the word "Pilot" to read "Pitot".

Appendix A, Method 2A [Amended]

3. Appendix A, Method 2A is amended as follows:

a. Section 4.1, second paragraph, first sentence, by revising the word "Alternately" to read "alternatively".

b. Section 6, by revising the bibliography citation numbers "6.1", "6.2", and "6.3" to read "1.", "2.", and "3.", respectively.

Appendix A, Method 2B [Amended]

4. Appendix A, Method 2B is amended as follows:

a. By revising "ppmv" to read "ppm" in the following places:

(1) Section 4.1, under the terms "CO_2", "CO_{2_d}", "HC_e", "HC_d", and "300"

(2) Section 4.2, last sentence.

Appendix A, Method 4 [Amended]

5. Appendix A, Method 4 is as follows:

a. Section 1.2, Note, last sentence, by revising the word "alternate" to read "alternative".

Appendix A, Method 5 [Amended]

6. Appendix A, Method 5 is amended as follows:

a. Section 3.1.1, last sentence, by removing the word "Section 7".

b. Section 3.1.3, first sentence after the heading "water", by adding the word "deionized" between the words "required," and "distilled" to read ". . . required, deionized distilled . . .".

c. Section 6.1, sixth term, L_a, by revising the figure "0.0057" to read "0.00057"

Appendix A, Method 5A [Amended]

7. Appendix A, Method 5A is amended as follows:

a. Section 6.10, by adding the words "Same as in" to the beginning of the second sentence.

b. By revising Section 7 to read as follows:

* * * * *

Appendix A, Method 5A [Amended]

7. *Bibliography*

The bibliography for Method 5A is the same as that for Method 5.

* * * * *

Appendix A, Method 5D [Amended]

8. Appendix A, Method 5D is amended as follows:

a. Section 7, by removing the comma and the words "Section 7".

Appendix A, Method 5E [Amended]

9. Appendix A, Method 5E is amended as follows:

a. By removing the word "Reference" in the following places:

(1) Section 2.1.
(2) Section 2.1.1.
(3) Section 2.1.2.
(4) Section 2.2.
(5) Section 2.3.
(6) Section 3.2.
(7) Section 3.3.
(8) Section 4.1.
(9) Section 4.1.2.
(10) Section 4.2, second paragraph, last sentence.
(11) Section 4.2, under Container No. 1.
(12) Section 4.2, under Container No. 2.
(13) Section 4.2, under Container No. 3.
(14) Section 4.2, under Container No. 4.
(15) Section 4.2, under Container No. 5.
(16) Section 4.3 first paragraph.
(17) Section 4.3, under Container No. 1.
(18) Section 4.3, under Container Nos. 2 and 3.
(19) Section 4.3, under Container No. 4.
(20) Section 4.3, under "Water and Acetone Blank" Containers.
(21) Section 5.
(22) Section 6, first paragraph.
(23) Section 6.2, nomenclature, last term, $V_{m(std)}$.
(24) Section 6.3, nomenclature, last term, C_s.

b. Section 7, by removing the words "Section 8 of Reference" and by revising the bibliography citation number "7.1" to read "1.".

Appendix A, Method 6 [Amended]

10. Appendix A, Method 6 is amended as follows:

a. Section 2.1.1, first sentence after the heading "Probe", by revising the word "outstack" to read "out-stack"

b. Section 4.1.3, fifth sentence after the heading "Sample collection", by adding a comma between the words "outlet" and "and" to read " * * * outlet, and * * * ".

c. Section 5.1.1, second paragraph, by adding the words "of the drying tube" to the end of the first sentence.

d. Section 7.2.2, second paragraph, Second sentence, by revising the words " a outlet" to read "an outlet".

e. Section 7.2.3.4, paragraph above Equation 6–7, by revising the word "staturated" to read "saturated".

Appendix A, Method 6A [Amended]

11. Appendix A, Method 6A is amended as follows:

a. Section 4.1.1, first sentence, paragraph 3, by revising the word "paragraph" to read "section".

b. Section 8, by revising the bibliography citation number "8.1", "8.2", and "8.3" to read "1.", "2.", and "3.", respectively.

Appendix A, Method 6B [Amended]

12. Appendix A, Method 6B is amended as follows:

a. Section 2, paragraph 3, last sentence, by adding a comma after the number "20" to read "20,".

b. Section 3, fourth sentence, by revising "5A" to read "5A".

c. Section 8, by removing "section 7" and by revising the bibliography citation number "8.1" to read "1.".

Appendix A, Method 7 [Amended]

13. Appendix A, Method 7 is amended as follows:

a. Sections 6.2 and 6.3 are revised to read as follows:

6.2 Sample Volume, Dry Basis, Corrected to Standard Conditions.

$$V_{sc} = (T_{std}/P_{std})(V_f - V_a)(P_b/T_f - P_f/T_f)$$
$$= K_1 (V_f - 25\ ml)(P_b/T_f - P_f/T_f) \quad \text{Eq. 7–2}$$

Where:

K_1 = 0.3858°K/mm Hg for metric units
= 17.64 °R/in. Hg for English units.

6.3 Total $\mu g\ NO_2$ Per Sample.

$$m = 2K_c A F \quad \text{Eq. 7–3}$$

Note: If other than a 25-ml aliquot is used for analysis, the factor 2 must be replaced by a corresponding factor.

Appendix A, Method 9 [Amended]

14. Appendix A, Method 9 is amended as follows:

a. By revising the word "paragraph" to read "section" in the following sections:

1. Section 2, first paragraph
2. Section 3.1, first paragraph after the heading "Certification and Testing", Second sentence and twice in the third sentence.
3. Section 3.3, first and fourth sentences.

b. Table 9–1 of Section 3.3., under entry b., by revising the words "reference 4.3" to read "Citation 3".

c. Section 4, by revising the heading "*References*" to read "*Bibliography*" and by revising the bibliography citation numbers "4.1", "4.2", and "4.3" to read "1.", "2.", and "3.", respectively.

Appendix A, Method 10 [Amended]

15. Appendix A, Method 10 is amended as follows:

a. Section 9, by removing the words "Concentration of carbon monoxide." the first time they occur.

b. Section 11, by revising the bibliography citation numbers "11.1", "11.2", "11.3", "11.4", and "11.5", and "11.6" to read "1.", "2.", "3.", "4.", "5.", and "6.", respectively.

Appendix A, Method [Amended]

16. Appendix A, Method 11 is amended as follows:

a. By revising the word "alternate" to read "alternative" in the following places:

(1) Section 6.1.1, last sentence.
(2) Section 7.2.1, last sentence of Note.

b. Section 7.1.2, last sentence of note, by removing the word "reference".

c. Section 7.2.2 [Alternate), by revising the title "(Alternate)" to read "(Alternative)".

d. Section 11, by revising the bibliography citation numbers "11.1", "11.2", "11.3", and "11.4" to read "1.", "2.", "3.", and "4.", respectively.

Appendix A, Method 12 [Amended]

17. Appendix A, Method 12 is amended as follows:

a. Section 4.1.3, by revising "D1193–77" to read "D1192–77"

b. Section 5.4.2, last paragraph, first sentence, by removing the words "Section 9.1" and adding in their place the words "Citation 1 of Bibliography".

c. Section 9, by revising the bibliography citation numbers "9.1", "9.2", "9.3", "9.4", and "9.5" to read "1.", "2.", "3.", "4.", and "5.", respectively.

d. Section 9, last citation, by revising the words "Section 7" to read "bibliography".

Appendix A, Method 13B [Amended]

18. Appendix A, Method 13B is amended as follows:

a. Section 10, by revising the heading "*References*" to read "*Bibliography*".

b. Section 10, Citation 1, by revising "Section 10" to read "Bibliography".

Appendix A, Method 15 [Amended]

19. Appendix A, Method 15 is amended as follows:

a. Section 2.2, by adding the heading "Sensitivity." between the section number "2.2" and the word "The".

b. Section 8.5, eighth sentence after the heading "Calibration of Dilution System.", by revising the word "paragraph" to read "section".

c. Section 9.1, by revising the words "paragraph 8.5" to read "section 8.5."

d. Section 11.3, term B_{wo}, by removing "(36 FR 24887)".

e. Section 13, by revising the bibliography citation numbers "13.1", "13.2", "13.3", "13.4", "13.5", and "13.6" to read "1.", "2.", "3.", "4.", "5.", and "6.", respectively.

Appendix A, Method 16 [Amended]

20. Appendix A, Method 16 is amended as follows:

a. Section 4.2, by revising the figure "10" to read "5".

b. Section 5.5, paragraph 2, last sentence by revising the word "alternate" to read "alternative".

c. Section 8.5, eighth sentence after the heading "Calibration of Dilution System.", by revising the word "paragraph" to read "section".

d. Section 9.1, by revising the words "paragraph 8.5" to read "section 8.5."

e. Section 11.3, term B_{wo}, last line, by removing "(36 FR 24887)".

f. Section 13, by revising the bibliography citation numbers "13.1", "13.2", "13.3", "13.4", "13.5", and "13.6" to read "1.", "2.", "3.", "4.", "5.", and "6.", respectively.

Appendix A, Method 17 [Amended]

21. Appendix A, Method 17 is amended as follows:

a. By revising "Section 7" to read "Bibliography" in the following sections:

1. Section 2.1, paragraph 1.
2. Section 2.1, paragraph 2, first sentence.
3. Section 4.1.2, fourth sentence after the heading "Preliminary Determination."
4. Section 4.1.5, paragraph 3, last sentence.
5. Section 6.12, third sentence after the heading "Acceptable Results."

b. By adding a new section 3.1.5 after section 3.1.4 to read as follows:

3.1.5 Water. Same as in Method 5, Section 3.1.3.

Appendix A, Method 20 [Amended]

22. Appendix A, Method 20 is amended as follows:

a. By removing the word "Reference" in the following places:

(1) Section 4.1.6.
(2) Section 4.2.
(3) Section 5.1, under (b).
(4) Section 6.3 paragraph 2.

b. Section 5.1, under (b), by revising the bibliography citation number "8.1" to read "1."

Appendix A, Method 21 [Amended]

23. Appendix A, Method 21 is amended as follows:

a. Section 4.4.1, second paragraph, last sentence, by revising the words "Section 5" to read "Bibliography".

b. Section 5, by revising the bibliography citation numbers "5.1", "5.2", and "5.3" to read "1.", "2.", and "3.", respectively.

Appendix A, Method 22 [Amended]

24. Appendix A, Method 22 is amended as follows:

a. Section 1, paragraph 2, last sentence, by removing the words "References 7.1 and 7.2" and adding in their place the words "Citations 1 and 2 of Bibliography".

b. Section 7, by revising the heading "*References*" to read "*Bibliography*".

c. Section 7, by revising the bibliography citation numbers "7.1" and "7.2" to read "1." and "2.", respectively.

Appendix A, Method 24A [Amended]

25. Appendix A, Method 24A is amended as follows:

a. Section 4, by revising the bibliography citation numbers "4.1", "4.2", and "4.3" to read "1.", "2.", and "3.", respectively.

Appendix A, Method 25A [Amended]

26. Appendix A, Method 25A is amended as follows:

a. Section 4, paragraph 1, second sentence, by removing the words "Reference 9.2" and adding in their place the words "Citation 2 of Bibliography".

b. Section 9, by revising the bibliography citation numbers "9.1", "9.2", and "9.3" to read "1.", "2.", and "3.", respectively.

Appendix A, Method 25B [Amended]

27. Appendix A, Method 25B is amended as follows:

a. Section 9, by removing the comma and the words "Section 9".

Appendix B—[Amended]

Appendix B, Performance Specification 1 [Amended]

28. Appendix B, Performance Specification 1 is amended as follows:

a. Section 1.1, paragraph (b), by revising the word "Paragraphs" to read "Sections".

b. Section 1.1, paragraph (c) by revising the word "Paragraph" to read "Section".

c. By revising the word "alternate" to read "alternative" in the following places:

(1) Section 4.3, twice in the third sentence.

d. Section 8.1, by adding at the end of Equation 1–2 the following:

where:

n=Number of data points.

$$\sum_{i=1}^{n} x_i$$ = Algebraic sum of the individual measurements x_i.

e. Section 11, by revising the bibliography citation numbers "11.1", and "11.2" to read "1." and "2.", respectively

Appendix B, Performance Specification 2 [Amended]

29. Appendix B, Performance Specification 2 is amended as follows:

a. Section 11, by revising the bibliography citation numbers "11.1", "11.2", "11.3", and "11.4" to read "1.", "2.", "3.", and "4.", respectively.

Appendix B, Performance Specification 4 [Amended]

30. Appendix B, Performance Specification 4 is amended as follows:

a. Section 4, by revising the bibliography citation numbers "4.1", "4.2", and "4.3" and read "1.", "2.", and "3.", respectively.

Appendix B, Performance Specification 5 [Amended]

31. Appendix B, Performance Specification 5 is amended as follows:

a. Section 4, by revising the bibliography citation numbers "4.1", "4.2", and "4.3" and read "1.", "2.", and "3.", respectively.

[FR Doc. 90-24498 Filed 11-13-90; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 0F3871/R1094; FRL-3803-3]

Indole Butyric Acid (IBA); Exemption From the Requirement of Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the biochemical plant growth regulator indole butyric acid (IBA) in or on certain raw agricultural commodities (RACs) when applied to growing crops at a rate of less than 20 grams of active ingredient per acre (20 g ai/A) per application. This regulation was requested by Plant Growth Formulators, Inc.

EFFECTIVE DATE: Effective on December 14, 1990.

ADDRESSES: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert J. Taylor, Product Manager (PM-25), Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of July 18, 1990 (55 FR 29288), which announced that Micro Flo Co., P.O. Box 5948, Lakeland, FL 33807-05948, had submitted pesticide petition (PP) 0F3871 proposing to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of the plant growth regulator IBA when used on the RACs alfalfa, apples, barley, beans, beets (sugar), broccoli, brussels sprouts, cabbage, carrots, cauliflower, celery, cherries, corn (field, sweet, popcorn), cotton, cucumber, eggplant, garlic, grapefruit, grapes, lemons, lettuce, melons, mustard greens, oats, okra, onions, oranges, peaches, peanuts, pears, pecans, peppers, potatoes, potatoes (sweet), radishes, rice, rye, sorghum (milo), soybeans, spinach, squash, strawberries, sugarcane, tomatoes, turnips, and wheat when applied to growing crops.

There were no comments received in response to the notice of filing.

The filing notice erred in stating that Micro Flo Co. filed PP 0F3871. The filing notice should have read as follows: Micro Flo Co., acting as an agent, filed PP 0F3871 on behalf of Plant Growth Formulators, Inc., P.O. Box 2307, Gainsville, GA 30503, proposing to amend 40 CFR * * *. The petitioner (Plant Growth Formulators, Inc.) subsequently amended the petition by submitting a revised Section F proposing that an exemption from the requirement of tolerance be established for the biochemical IBA when used as a plant growth regulator at application rates of less than 20 g ai/A in or on the following RACs: barley, beans, beets (sugar), broccoli, brussels sprouts, cabbage, cauliflower, corn (field, sweet, and popcorn), cotton, cucumber, grapefruit, lemons, lettuce, melons, mustard greens, oats, onions, oranges, peanuts, peppers, potatoes, rice, rye, sorghum (milo), soybeans, spinach, squash, strawberries, sugarcane, tomatoes, turnips, and wheat. Because the correction clarifies who filed the petition and the revision deletes crops previously proposed, there is no further potential increased risk to humans; therefore, no further period of public comment is needed.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered included an acute oral toxicity study (rats) with no deaths at 5,050 milligrams per kilogram (mg/kg); an acute dermal toxicity study (rabbit) with no deaths at 2,020 mg/kg; an acute inhalation toxicity study (rat) with no deaths at 3.82 milligrams per liter (mg/L); an acute eye irritation study (rat) showing "minimal effects clearing in less than 24 hours"; a dermal irritation study (rabbits) with a score of "mildly or slightly irritating"; and a dermal sensitization study (guinea pig) scored as "not a dermal sensitizer." All other toxicology data requirements, including a 90-day dermal study (rabbits), a teratology study in one species, and the mutagenicity battery of studies, have been waived due not only to minimum (if any) health risks associated with IBA, but to the proposed low-volume use patterns. Dietary exposure (residue chemistry) data will not be required to support the exemption of IBA, because one of the criteria used to determine the necessity of residue chemistry data for a biochemical is the application rate. If the rate is less than 20 g ai/A/application, then dietary exposure data are not required. In this case, the single application rate is 0.0024 g ai/A; consequently, the proposed maximum seasonal rate for a given crop is much less than 20 g ai/A. The requirement of an adequate analytical method for enforcement was satisfied by the registrant who cited public literature for methods including sephadex chromatography, counter-current chromatography, and fluorimetry.

IBA is a synthetic analog resembling a naturally occurring plant hormone, indole acetic acid (IAA), which is classified as a biochemical according to Pesticide Assessment Guidelines, Subdivision M. In order for synthesized pesticides to be considered as biochemical pesticides, they must be structurally similar, and functionally identical, to a naturally occurring biochemical pesticide. Biochemical pesticides are distinguished by their unique nontoxic mode of action, low use volume, target specificity, and natural occurrence.

Since IBA is sufficiently similar to IAA in terms of chemical nature, and functionally equivalent to naturally occurring auxins, IBA is classified as a biochemical pesticide. The recommended application rate results in insignificant concentrations of IBA. Based on the low volume use patterns, applicator exposure will be minute; therefore, adverse human effects are highly unlikely.

The pesticide is considered useful for the purpose for which the exemption is sought. It is concluded that the exemption would protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)).)

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests

Dated: October 2, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.1099, to read as follows:

§ 180.1099 Indole butyric acid (IBA); exemption from the requirement of tolerance.

Indole butyric acid is exempted from the requirement of a tolerance when used as a plant growth regulator at application rates less than 20 grams of active ingredient per acre (20 g ai/A) in or on the following raw agricultural commodities: Barley, beans, beets (sugar), broccoli, brussels sprouts, cabbage, cauliflower, corn (field, sweet, and popcorn), cotton, cucumber, grapefruit, lemons, lettuce, melons, mustard greens, oats, onions, oranges, peanuts, peppers, potatoes, rice, rye, sorghum (milo), soybeans, spinach, squash, strawberries, sugarcane, tomatoes, turnips, and wheat.

[FR Doc. 90-26837 Filed 11-13-90; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 0F3871/R1093; FRL-3803-2]

Exemption from the Requirement of a Tolerance for Gibberellins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the class of biochemical plant growth regulators known as gibberellins when used in or on certain raw agriculturual commodities (RACs) when applied to growing crops at a rate of less than 20 grams of active ingredient per acre (20 g ai/A) per application. This regulation was requested by Plant Growth Formulators, Inc.

EFFECTIVE DATE: This regulation becomes effective November 14, 1990.

ADDRESSES: Written objections, identified by the document control number, [PP 0F3871/R1093], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of July 18, 1990 (55 FR 29288), that gave notice that Micro Flo Co., P.O. Box 5948, Lakeland, FL 33807-05948, had submitted pesticide petition (PP) 0F3871 proposing to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of the plant growth regulator GA_3 when used on the RACs alfalfa, apples, barley, beans, beets (sugar), broccoli, brussels sprouts, cabbage, carrots, cauliflower, celery, cherries, corn (field, sweet, and popcorn), cotton, cucumber, eggplant, garlic, grapefruit, grapes, grasses, lemons, lettuce, melons, mustard greens, oats, okra, onions, oranges, peaches, peanuts, pears, pecans, peppers, potatoes, potatoes (sweet), radishes, rice, rye, sorghum (milo), soybeans, spinach, squash, strawberries, sugarcane, tomatoes, turnips, and wheat.

There were no comments received in response to the notice of filing.

The filing notice erred in stating that Micro Flo Co. filed PP 0F3871. The filing notice should have read as follows: Micro Flo Company, acting as an agent, filed PP 0F3871 on behalf of Plant Growth Formulators, Inc., P.O. Box 2307, Gainsville, GA 30503, proposing to amend 40 CFR * * *. The petitioner (Plant Growth Formulators, Inc.) subsequently amended the petition by submitting a revised Section F proposing that an exemption from the requirement of tolerance be established for the biochemical class gibberellins (GA_3, GA_4, GA_7), when used as a plant growth regulator at application rates of less than 20 g ai/A in or on the following RAC's: barley, beans, beets (sugar), broccoli, brussels sprouts, cabbage, cauliflower, corn (field, sweet, and popcorn), cotton, cucumber, grapefruit, lemons, lettuce, melons, mustard greens, oats, onions, oranges, peanuts, peppers, potatoes, rice, rye, sorghum (milo), soybeans, spinach, squash, strawberries, sugarcane, tomatoes, turnips, and wheat. Because the correction clarifies who filed the petition and the revision deletes crops previously proposed, there is no potential increased risk to humans; therefore, no further period of public comment is needed.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered include an acute oral toxicity study (rats) with no deaths at 5,050 milligrams per kilogram (mg/kg); an acute dermal toxicity study (rabbit) with no deaths at 2,020 mg/kg; an acute inhalation toxicity study (rat) with no deaths at 3.82 milligrams per liter (mg/L); an acute eye irritation study (rat) showing "minimal effects clearing in less than 24 hours"; a dermal irritation study (rabbits) with a score of "mildly or slightly irritating"; and a dermal sensitization study (guinea pig) scored as "not a dermal sensitizer." All other toxciology data requirements, including subchronic and chronic feeding studies, oncogenicity, reproduction, teratology, and mutagenicity studies are waived due not only to minimum (if any) health risks associated with gibberellins, but to proposed low-volume use patterns. Dietary exposure (residue chemistry) data requirements have also been waived because of the application rate. If the rate of application is less than 20 g ai/A/application, then dietary exposure data are not required. In this case, the maximum single application rate is 0.0024 ai/A, and the proposed maximal season rate is less than 20 g ai/A. The analytical method for enforcement purposes was submitted by the registrant who cited public literature for methods including high-performance liquid chromatography, spectrofluorimetry, and radioimmunoassay.

Gibberellins are naturally occurring compounds produced by several species of fungi including *Gibberella fujikuroi*. In this instance gibberellins are produced by batch fermentation using *G. fujikuroi*, a naturally occurring plant or fungal species. Gibberellins are not expected to present an unacceptable hazard to humans, fish, and wildlife, or the environment.

Gibberellins are classified as a biochemical pesticide according to Pesticide Assessment Guidelines, Subdivision M. The recommended application rate falls below detection limits, resulting in insignificant concentrations of gibberellins. Based on the low-volume use patterns, applicator exposure will be minute; therefore, adverse human effects are highly unlikely.

The pesticide is considered useful for the purpose for which the exemption is sought. It is concluded that the exemption would protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and a request for a hearing with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)).)

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 2, 1990.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding new § 180.1098, to read as follows:

§ 180.1098 Gibberellins (GA_3); exemption from the requirement of tolerance.

Gibberellins (GA_3) is exempted from the requirement of a tolerance when used as a plant growth regulator at application rates less than 20 grams of active ingredient per acre (20 g ai/A) in or on the following raw agricultural commodities: Barley, beans, beets (sugar), broccoli, brussels sprouts, cabbage, cauliflower, corn (field, sweet, and popcorn), cotton, cucumber, grapefruit, lemons, lettuce; melons, mustard greens, oats, onions, oranges, peanuts, peppers, potatoes, rice, rye, sorghum (milo), soybeans, spinach, squash, strawberries, sugarcane, tomatoes, turnips, and wheat.

[FR Doc. 90-26838 Filed 11-13-90; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 64 and 98

[CGD 84-043]

RIN 2115-AB68

Portable Tanks for the Transportation of Bulk Hazardous Materials by Vessel

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The United States Coast Guard is correcting errors in an amendment to the regulations governing the transportation of bulk hazardous materials in portable tanks by vessel. The amendment appeared in the Federal Register on Tuesday, September 11, 1990 (55 FR 37406).

FOR FURTHER INFORMATION CONTACT: Mr. Frank K. Thompson, Office of Marine Safety, Security, and Environmental Protection, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-1577.

SUPPLEMENTARY INFORMATION: In the Federal Register on Tuesday, September 11, 1990 (55 FR 37406), the Coast Guard published a final rule concerning portable tanks for the transport of bulk hazardous materials. A number of editorial errors occurred. As this is a technical amendment that does not change the substance of the rules, publication of this document for comment is not required.

Correction

In rule document CGD 84-043, beginning at page 37405 in the issue of Tuesday, September 11, 1990, make the following corrections:

PART 64—[CORRECTED]

§ 64.1 [Corrected]

1. On page 37409, in the second column, in the 12th line, the introductory text of § 64.1 should be followed by a dash rather than a colon.

§ 64.2 [Corrected]

2. On page 37409, in the second column, in paragraph (a) of § 64.2, in the 43rd line, remove the period in "DC.".

§ 64.63 [Corrected]

3. On page 37410, in the second column, § 64.63(a), in the sixth line, the parentheses and square-root sign were omitted from the venting-capacity formula. As corrected, this formula reads as follows:

$$Q = 633{,}000 \left(\frac{A^{*\,82}}{LC}\right)\sqrt{\frac{ZT}{M}}$$

PART 98—[CORRECTED]

4. On page 37412, in the first column, item 37 is corrected to read as follows:

37. The section heading and introductory text to paragraph (b)(2) of § 98.30-9 are revised to read as follows:

§ 98.30-9 Stowage of portable tanks.

* * * * *

(b) * * *

(2) Unless all electrical equipment is explosion-proof or intrinsically safe, as defined in § § 111.105-9 and 111.105-11 of this chapter, in the area of the tank and its associated equipment that is—

* * * * *

§ 98.33-5 [Corrected]

6. On page 37412, in the second column, in the last line, in paragraph (b) of § 98.33-5 change the brackets surrounding the words "rupture disks" to parentheses.

§ 98.33-15 [Corrected]

7. On page 37412, in the third column, paragraphs (h) and (i) of § 98.33-15 are correctly added to read as follows:

§ 98.33-15 Transfers.

* * * * *

(h) Pumping of incompatible products complies with § 98.30-29 of this part;

(i) Conditions for pumping comply with § 98.30-31 of this part; and.

* * * * *

Dated: October 10, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90-25390 Filed 11-13-90; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-408; RM-6838]

Radio Broadcasting Services; Branson, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 292C3 for Channel 292A at Branson, Missouri, and modifies the license of Station KRZK to specify operation on Channel 292C3 in response to a petition filed by Turtle Broadcasting Company of Branson. The coordinates for Channel 292C3 are 36-47-00 and 93-12-00. As indicated in the notice, the allotment at Branson is contingent upon the licensing of Station KOZX, Cabool, Missouri, on Channel 251A and Station KGBX, Bolivar, Missouri, on Channel 290C2. Final action regarding the license of Station KRZK may be delayed until the license grants occur in Cabool and Bolivar.

EFFECTIVE DATE: December 24, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-408, adopted October 22, 1990, and released November 8, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 292A and adding Channel 292C3 at Branson.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26880 Filed 11-13-90; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1806, 1810, 1813, 1815, 1819, 1837, 1842, 1843, 1852, 1853, and 1870

[NASA FAR Supplement Directive 89-5]

RIN 2700-AB14

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal or administrative matters. The major changes involve: (1) Security requirements for unclassified contracts; (2) Positive subcontracting goals; (3) NASA rural area small business plan; (4) Advisory and assistance services; and (5) Engineering change proposal regulation and clause.

EFFECTIVE DATE: September 30, 1990.

FOR FURTHER INFORMATION CONTACT: David K. Beck, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-8250.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its

entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The regulation imposes no new burdens on the public within the ambit of the Paperwork Reduction Act, as implemented at 5 CFR Part 1320, nor does it significantly alter any reporting or recordkeeping requirements currently approved under OMB control number 2700-0042.

List of Subjects in 48 CFR Parts 1804, 1806, 1810, 1813, 1815, 1819, 1837, 1843, 1852, 1853, and 1870

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

PART 1804—ADMINISTRATIVE MATTERS

1. The authority citation for 48 CFR parts 1804, 1806, 1810, 1813, 1815, 1819, 1837, 1842, 1843, 1852, 1853, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

2. Part 1804 is amended as set forth below:

Subpart 1804.4—Safeguarding Classified Information Within Industry

a. Sections 1804.470, 1804.470-1, 1804.470-2, 1804.470-3, and 1804.470-4 are added to read as set forth below:

1804.470 Security requirements for unclassified automated information resources.

1804.470-1 Scope.

This section implements the procurement-related aspects of agencywide policies for assuring the security of unclassified automated information resources.

1804.470-2 Policy.

NASA policies and procedures on automated information security are prescribed in NMI 2410.7, Assuring the Security and Integrity of NASA Automated Information Resources, and in NHB 2410.9, NASA Automated Information Security Handbook, chapter 3, paragraphs 311 and 312, and chapter 4. Security requirements are required in contracts involving unclassified automated information resources, via contracts for automatic data processing equipment, software, the management or operation of Data Processing Installations (DPIs) or related services; or in contracts under which contractor personnel must have physical or electronic access to sensitive automated information, or automated information that supports mission-critical functions.

1804.470-3 Responsibilities.

The requiring activity is responsible for providing the contracting officer with any functional and technical requirements to be included in the schedule. The requiring activity, in consort with its computer security manager, is also responsible for providing accurate lists of protected spaces designated as limited or controlled access areas that contractor or subcontractor personnel will enter, and of sensitive automated information, and automated information that supports mission-critical functions to which contractor personnel may require access.

1804.470-4 Contract clause.

The contracting officer shall insert the clause substantially as stated at 1852.204-76, Security Requirements for Unclassified Automated Information Resources, in solicitations and contracts involving unclassified automated information resources as described by section 1804.470. Paragraph (a) of the clause shall be completed with information supplied by the cognizant requiring activity.

1804.671-6 [Amended]

b. In section 1804.671-6(e), "$1,000" is revised to read "$2,500".

PART 1806—COMPETITION REQUIREMENTS

1806.202-70, 1806.302-770 and 1806.304 [Amended]

3. In sections 1806.202-70(a)(2)(i), 1806.202-70(a)(3), 1806.302-770 (a) and (c), and 1806.304(c), "Code HS" is revised to read "Code HH."

PART 1810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

1810.011-70 [Amended]

4. In section 1810.0011-70(d), "NASA Handbook 6000.1" is revised to read "NASA Handbook (NHB) 6000.1", and "MIL-STD-2073" is revised to read "MIL-STD-2073-1 and MIL-STD-2073-2."

PART 1813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

1813.104 and 1813.204 [Amended]

5. In sections 1813.104(c) and 1813.204, "$1,000" is revised to read "$2,500".

PART 1815—CONTRACTING BY NEGOTIATION

6. Part 1815 is amended as set forth below:

1815.405-71 [Amended]

a. In the phrase "synopsized according to in FAR Subpart 5.2." of section 1815.405-71(b), the word "in" is removed.

b. Section 1815.609 is added to read as set forth below:

1815.609 Competitive range.

For competitive range determinations under formal source selection procedures, see 1815.613-71(b)(4) and 1870.303, App. I, subparagraph 406.7.a.

1815.804-3 [Amended]

c. In section 1815.804-3(c) introductory text and in the "Determination and Findings," the citation "10 U.S.C. 2306(f)" is revised to read "10 U.S.C. 2306a(b)."

d. In section 1815.804-3(c) introductory text, "Contract Pricing and Finance Office" is revised to read "Contract Pricing and Finance Division."

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

7. Part 1819 is amended as set forth below:

a. Section 1819.705-4 is added to read as set forth below:

1819.705-4 Positive subcontracting goals.

Sucontracting plans must reflect realistic and justifiable percentage and dollar goals for subcontracting with small business concerns and small disadvantaged business concerns. Prime contractors shall be encouraged to submit, when possible, positive goals (i.e., greater than zero) in their initial plans. In evaluating subcontracting plans, contracting officers shall challenge any unrealistically low and particularly any proposed zero goals to ascertain what opportunity exists for subcontracting with small and small disadvantaged firms. The evaluation may include a specific review of the factors used by the prime contractor to develop its goal, the past performance of the prime contractor on similar requirements, and the current procedures used by the prime to maximize the opportunities for small and small disadvantaged businesses to participate in its subcontracting program. The contract file shall be documented to reflect the review and the contracting officer's decision on the goal which is finally accepted.

b. Subpart 1819.71 is added to read as set forth below:

Subpart 1819.71—NASA Rural Area Small Business Plan

1819.7101 Definition.
1819.7102 General.
1819.7103 Solicitation provision and contract clause.

Subpart 1819.71—NASA Rural Area Small Business Plan

1819.7101 Definition.

Rural area means a county with a population of fewer than twenty thousand individuals.

1819.7102 General.

Public Law 100-590 requires NASA to establish a Rural Area Business Enterprise Development Plan that includes methods for encouraging prime and subcontractors to use small business contractors located in rural areas as subcontractors. One method is to encourage the contractor to use its best efforts to comply with the intent of the statute.

1819.7103 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 1852.219-74, Use of Rural Area Small Businesses, in solicitations and contracts that offer subcontracting possibilities or that are expected to exceed $500,000 ($1,000,000 for construction of public facility) unless the contract, together with all its subcontracts, is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

PART 1837—SERVICE CONTRACTING

8. Section 1837.205 is revised to read as set forth below:

1837.205 Responsibilities/Management controls.

The contracting officer shall include in each contract or purchase order file a copy of:

(a) The contracting officer's determination that a contractual action constitutes advisory and assistance services;

(b) The sponsoring office's Request for Approval to Acquire Advisory and Assistance Services by Contract; and

(c) Authorization by the Associate Administrator for Management to commence procurement activities as required by NMI 5104.5, Subparagraph 7—Responsibilities/Management Controls.

PART 1842—CONTRACT ADMINISTRATION

1842.1004 [Amended]

9. In section 1842.1004, "Contract Pricing and Finance Office" is revised to read "Contract Pricing and Finance Division."

PART 1843—CONTRACT MODIFICATIONS

Subpart 1843.2—Change Orders

1843.205 Contract clauses.
1843.205-7 NASA contract clause.
1843.270 Originating and accepting engineering change proposals.

10. Subpart 1843.2 is revised to read as set forth below:

Subpart 1843.2—Change Orders

1843.205 Contract clauses.

As authorized in the preface of clauses FAR 52.243-1—Changes-Fixed Price; FAR 52.243-2—Changes-Cost Reimbursement; and FAR 52.243-3—Changes-Time-and-Material or Labor-Hours, the period within which a contractor must assert its rights to an equitable adjustment may be varied not to exceed 60 calendar days.

1843.205-70 NASA contract clause.

(a) The contracting officer may insert in contracts a clause substantially the same as 1852.243-70, Engineering Change Proposals (ECP), when impact evaluation information is required. Paragraphs (c) and (d) of the basic clause and Alternate I of the clause shall be changed to reflect the specific type of contract. A local format may be substituted for the MIL-STD-480B format.

(b) If it is desirable to preclude a large number of small-dollar, contractor-initiated engineering changes and to reduce the administrative cost of reviewing them, the contracting officer shall use the clause with its Alternate I.

(c) If the contract is a cost-reimbursement contract, the contracting officer shall use the clause with its Alternate II.

1843.270 Originating and accepting engineering change proposals.

(a) Either party to the contract may originate engineering changes. The originator must submit to the contracting officer detailed technical, cost, and schedule information documenting the proposed change. This information will be used by the Government project manager in deciding whether or not to implement the change and by the contracting officer to price the change in advance, when possible.

(b) Contractual implementation of an approved ECP may occur by either a supplemental agreement or, if appropriate, as a written change order to the contract.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Part 1852 is amended as set forth below:

a. Section 1852.204-76 is added to read as set forth below:

1852.204-76 Security Requirements for Unclassified Automated Information Resources.

As prescribed in 1804.470-4, insert the following clause:

Security Requirements for Unclassified Automated Information Resources (June 1990)

(a) In addition to complying with any functional and technical security requirements set forth in the schedule and the clauses of this contract, the Contractor shall obtain special identification, as required by the computer security manager, for its personnel who need unescorted or unsupervised physical access or electronic access to the following limited or controlled areas, systems, programs and data: [*List areas, systems, programs and data*].

(b) The Contractor shall incorporate this clause in all subcontracts where the requirements identified in paragraph (a) are applicable to performance of the subcontract.

(End of clause)

1852.210-75 [Amended]

b. In section 1852.210-75, in the heading of the clause, the date "DECEMBER 1988" is revised to read "SEPTEMBER 1990" and in paragraph (a) of the clause, "MIL-STD-2073" is revised to read "MIL-STD-2073-1 and MIL-STD-2073-2."

c. Section 1852.219-74 is added to read as set forth below:

1852.219-74 Use of Rural Area Small Businesses.

As prescribed in 1819.7103, insert the following clause:

Use of Rural Area Small Business (September 1990)

(a) Definitions.

Rural area means any county with a population of fewer than twenty thousand individuals.

Small business concern, as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding under this contract, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) NASA prime and subcontractors are encouraged to use their best efforts to award subcontracts to small business concerns located in rural areas.

(c) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as small business concerns located in rural areas.

(d) The Contractor agrees to insert the provisions of this clause, including this paragraph (d), in all subcontracts hereunder that offer subcontracting possibilities.

(End of clause)

d. In section 1852.227(a), paragraph (e) of the clause, the phrase "NASA Contract Technical Representative/User" is revised to read "NASA Contracting Officer's Technical Representative/User."

1852.243-70 [Amended]

e. Section 1852.243-70 is revised to read as set forth below:

1852.243-70 Engineering Change Proposals.

As prescribed in 1843.205-70, insert the following clause, modified to suit contract type, with any appropriate alternates:

Engineering Change Proposals (September 1990)

(a) Definitions.

ECP means an Engineering Change Proposal (ECP) which is a proposed engineering change and the documentation by which the change is described, justified, and submitted to the procuring activity for approval or disapproval.

MIL-STD-480B means a DoD publication entitled, Military Standard Configuration Control—Engineering Changes, Deviations and Waivers, 15 July 1988.

(b) Either party to the contract may originate ECPs. The originator shall forward proposed ECPs to the Contracting Officer. Unless otherwise required by the Contracting Officer, the ECP formats, forms and controls specified in MIL-STD-480B shall be used. Implementation of an approved ECP may occur by either a supplemental agreement or, if appropriate, as a written change order to the contract.

(c) Any ECP submitted to the Contracting Officer shall include a "not-to-exceed" _____ [price or estimated cost] increase or decrease adjustment amount, in any, and the required [time of delivery or period of performance] adjustment, if any, acceptable to the originator of the ECP. If the change is originated within the Government, the Contracting Officer shall obtain a written agreement with the contractor regarding the "not-to-exceed" _____ [price or estimated cost] and [delivery or period of performance] adjustments, if any, prior to issuing an order for implementation of the change.

(d) Concurrent with the submission of an ECP, the contractor shall, in accordance with FAR 15.804-6, provide a completed Standard Form 1411, Contract Pricing Proposal Cover Sheet, with appropriate attachments. At the time of agreement on the _____ [price or estimated cost] amount, the contractor may be required to execute and submit to the Contracting Officer a Certificate of Current Cost or Pricing Data (FAR 15.804-2 and 15.804-4).

(End of clause)

Alternate I (September 1990)

As prescribed in 1843.205-70(b), add the following paragraph (e), modified to suit contract type, to the basic clause:

(e) If the _____ [price or estimated cost] adjustment proposed for any Contractor-originated ECP is _____ [insert a percent or dollar amount of the contract price or estimated cost.] or less, the ECP shall be executed with no adjustment to the contract _____ [price or estimated cost].

Alternate II (September 1990)

As prescribed in 1843.205-70(c), add the following sentence at the end of paragraph (c) of the basic clause:

An ECP accepted in accordance with the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost in the contract Schedule, unless the estimated cost is increased by the change order or other contract modification.

PART 1853—FORMS

1853.107 [Amended]

12. In section 1853.107, paragraph (a), "Code 853.9" is revised to read "Code 239."

PART 1870—NASA SUPPLEMENTARY REGULATIONS

Appendix I to 1870.403—[Amended]

13. In part 1870 Appendix I to 1870.403 is amended as set forth below:

a. In paragraphs 11.(a)(2)(A), 11.(a)(3)(C), 11.(a)(3)(D), and 11.(a)(4), "$1,000" is revised to read "$2,500" in each occurrence.

b. Paragraph 11.(b)(4) is revised to read as set forth below:

* * * * *

11. * * *

(b) * * *

(4) A log should be used to document or record telephone credit card orders of $2,500 or less when competitive quotes are not solicited. If competitive quotes are solicited for purchases of $2,500 or less, or if the purchase exceeds $2,500 and therefore requires competition, the record shall be documented. The documentation should be held until the monthly billing statement is received and then attached to the statement when it is submitted to the approving official.

* * * * *

[FR Doc. 90-26798 Filed 11-13-90; 8:45 am]

BILLING CODE 7510-01-M

Proposed Rules

Federal Register
Vol. 55, No. 220
Wednesday, November 14, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

Quality Assurance in the Medical Use of Byproduct Material; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) staff plans to convene a public meeting with representatives of several medical associations to discuss a proposed rule, draft regulatory guide, and other applicable guidance concerning quality assurance in the medical use of byproduct material.

DATES: The workshop will be held Monday, November 19, 1990 and will begin at 9: 00 am and end about 5 pm.

ADDRESSES: American College of Radiology, Conference Room A, 1891 Preston White Drive, Reston, VA 22091.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Regulation Development Branch, Mail Stop; NL/S-129, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3797.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the **Federal Register** on January 18, 1990 [55 FR 1439] which described a performance-based quality assurance program that the NRC believes should be incorporated into each licensee's medical use program. The proposed rule also contains certain modifications to the definition of the term misadministration and to the related reporting and recordkeeping requirements. The NRC has also prepared a draft regulatory guide that contains specific quality assurance procedures that could be used by the licensees to establish a QA program that meets the performance-based rule.

The purpose of the meeting is to hold a roundtable discussion on the proposed rule, draft regulatory guide, and other applicable guidance with the representatives of the following medical associations; American Association of Physicists in Medicine (AAPM), American College of Medical Physics (ACMP), American College of Radiology (ACR), American Endocurietherapy Society (AES), and American Society for Therapeutic Radiology and Oncology (ASTRO). In a previous meeting held on July 23, 1990, the NRC staff met with representatives from the American College of Nuclear Physicians (ACNP) and the Society of Nuclear Medicine (SNM) to discuss quality assurance in the use of byproduct material in nuclear medicine.

The draft regulatory guide is available for inspection, and copying or a fee, at the NRC Public Document Room, 2120 L Street (Lower Level) NW., Washington, DC. A transcription of the meeting will be available by about December 28, 1990 at the NRC Public Document Room.

Conduct of the Meeting

The meeting will be chaired by Mr. John Telford, Chief, Rulemaking Section, Regulation Development Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission. The meeting will be conducted in a manner that will facilitate the orderly conduct of business.

The following procedures apply to public participation in the meeting:

1. At the meeting, questions or statements from attendees other than participants (i.e., representatives of AAPM, ACMP, ACR, AES, and ASTRO, and designated NRC staff) will be entertained as time permits.

2. Seating for the public will be on a first come-first served basis.

Dated at Rockville, Maryland, this 7th day of November, 1990.

For the Nuclear Regulatory Commission.

Sher Bahadur,

Chief, Regulation Development Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 90-26822 Filed 11-13-90; 8:45 am]

BILLING CODE 7590-01-M

RESOLUTION TRUST CORPORATION

12 CFR Part 1613

RIN 3205-AA05

Priority of Distribution of Claims Against Resolution Trust Corporation as Receiver

AGENCY: Resolution Trust Corporation.

ACTION: Proposed rule.

SUMMARY: The Resolution Trust Corporation ("RTC") is hereby proposing to adopt a regulation establishing the priority of distribution for certain claims by the RTC in its corporate capacity against the RTC as receiver for failed savings associations. The current regulations, which were adopted to govern receiverships conducted by the former Federal Savings and Loan Insurance Corporation, do not take into account the current methods by which the RTC operates conservatorships or receiverships. The regulation would recognize that the RTC as a corporation is entitled to the highest priority of unsecured claim for advances made to the RTC as conservator or receiver, as those advances benefit all creditors of the associations in conservatorship or receivership.

DATES: Comments on the proposal must be received by December 14, 1990.

ADDRESSES: Comments should be mailed to John M. Buckley, Jr., Executive Secretary, Resolution Trust Corporation, 801 17th Street, NW., Washington, DC 20434-0001. Comments may be hand-delivered to room 314 at the same address between the hours of 9 a.m. and 5 p.m. on business days. Comments will be available for inspection and photocopying in the Public Reading Room, 801 17th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carl J. Gold, Counsel, Legal Division, (202) 416-7327.

SUPPLEMENTARY INFORMATION: The Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") established the RTC and provided mechanisms by which it would be appointed conservator or receiver of failed savings associations. The statute provided that, as conservator or receiver, the RTC would have the same rights and responsibilities as the Federal

Deposit Insurance Corporation ("FDIC") when the FDIC acts as conservator or receiver of failed financial institutions (12 U.S.C. 1441a(b)(4)). The RTC is authorized by statute to follow the FDIC's regulations to the extent the RTC has not promulgated its own regulations (12 U.S.C. 1441(a)(7)). The RTC also has independent authority to promulgate regulations as required (12 U.S.C. 1441(a)(12)(A)). In addition to its independent rulemaking authority, the RTC has the same authority as the FDIC under 12 U.S.C. 1821(d)(1) to prescribe such regulations as may be appropriate regarding the conduct of conservatorships and receiverships, and under 12 U.S.C. 1821(d)(4) to prescribe regulations regarding the allowance or disallowance of claims by the receiver. In addition, the FDIC as receiver is granted discretion by the statute as to the payment of dividends on proved claims (12 U.S.C. 1821(d)(10)). The RTC concludes that it has the same discretion, and that such discretion includes the establishment of levels of priorities of distribution. The RTC notes that it generally follows the same regulations regarding its conservatorships and receiverships as does the FDIC. However, in view of the fact that the regulation being adopted herein addresses a situation not currently facing the FDIC, i.e., the treatment upon receivership of funds advanced to a conservatorship, the RTC is proposing to adopt a regulation to cover a situation that is currently unique to the RTC. Furthermore, the RTC notes that the FDIC has recently taken regulatory action regarding rules transferred from the Federal Home Loan Bank Board ("FHLBB") that affect conservatorships and receiverships, and the RTC understands that the FDIC may take further regulatory action to promulgate regulations governing conservatorships and receiverships conducted under FIRREA. The regulation being proposed by the RTC in this document may be finalized in conjunction with the regulatory proceedings undertaken by the FDIC in this regard.

The regulation that is being proposed is intended to clarify the priority to be accorded to the RTC when, in its corporate capacity, in advances funds to a savings association under RTC conservatorship, the association is placed into receivership, and portions of the RTC advance to the conservatorship are deemds to be unsecured. The regulation would also clarify the treatment of RTC advances to associations under RTC receivership. The FHLBB had promulgated a detailed regulation governing the priorities of distribution in a receivership conducted by the Federal Savings and Loan Insurance Corporation. That FHLBB regulation was transferred to the FDIC by section 401(h) of FIRREA, and was codified at 12 CFR 389.11. It has been renumbered 12 CFR 360.2

The RTC is proposing a regulation to establish that, when it provides advances to RTC conservatorships, and the association is placed into receivership, any unsecured portions of the RTC's claim to recover the advances will be assigned the first priority of distribution for allowable unsecured claims. The same would be true where the RTC has advanced funds to the RTC as receiver in order to facilitate liquidation of the receivership estate. In receiverships, such funds may be advanced from time to time to enable the receiver to conduct its duties of liquidating, and would under the regulation be repaid to the RTC as funds are recovered from the liquidation of receivership assets. The RTC finds that, since the advances are made for the benefit of all creditors, and actually increase the potential recovery of all creditors by enabling the receiver to perform its duty to collect funds due to the depository institution, it is not unfair to other unsecured creditors to accord this priority to the RTC.

Similarly, in regard to conservatorships, from time to time funds of the RTC have been, and will be, advanced to a conservator for various purposes, whether to lower the cost of the institution's funds, or to maintain liquidity. By the same rationale as expressed above, the RTC Deems it not to be unfair to general unsecured creditors to accord the RTC this priority in recovering any portion of such funds which may be unsecured.

The RTC concludes that, even under the priority regulation as adopted by the FHLBB, its advances would have been entitled to this level of priority. Since the existing regulations were promulgated at a time that conservatorship was a rarely used tool, there was no reason for the FHLBB to have expressly provided a priority for recovery of advances to a conservator for a failed savings association. The RTC, however, has been appointed conservator for hundreds of depository institutions since the enactment of FIRREA. The RTC concludes that Congress must have intended that the regulations transferred from the FHLBB to the FDIC and the RTC by FIRREA would be interpreted in a manner consistent with the practices utilized by the FDIC and the RTC in taking over failed depository institutions. RTC's advances to conservators and receivers benefit the entire body of creditors because they enable the conservators and receivers to operate efficiently and to pay bills as they become due. The RTC concludes that establishing the priority of the Corporation for advances is reasonable and consistent with applicable law.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is hereby certified that this regulatory action will not have a significant impact on a substantial number of small businesses.

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 1613

Conservator, Creditor, Receiver, Savings associations.

Accordingly, for the reasons set out in the preamble, the RTC hereby proposes to add part 1613 to title 12, chapter XVI of the Code of Federal Regulations, to read as follows:

PART 1613—RESOLUTION TRUST CORPORATION AS CONSERVATOR OR RECEIVER

Authority: 12 U.S.C. 1821(d); 12 U.S.C. 1441a(a)(7), (b)(4), (b)(12)(A).

§ 1613.1 Priority of Resolution Trust Corporation as creditor for advances made to RTC as conservator or receiver.

In applying § 360.2 of title 12 of the Code of Federal Regulations, to the extent that any advance of funds made by the Resolution Trust Corporation to a conservator or receiver is found by the receiver, upon liquidation, to be unsecured, the Resolution Trust Corporation, as a creditor of the receivership, shall be assigned the first level of priority of distribution.

By order of the Board of Directors.

Dated at Washington, DC, this 2nd day of November, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.

Executive Secretary.

[FR Doc. 90-26526 Filed 11-13-90; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Notice No. 90-28; Docket No. 26385]

RIN 2120-AD67

Request for Data and Information; Passenger Facility Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for data and information regarding collection, handling, and disbursement of passenger facility charges.

SUMMARY: This preliminary action requests data and information which may be helpful in implementing a provision of the Aviation Safety and Capacity Expansion Act of 1990 which authorizes public agencies to collect an airport passenger facility charge. This notice solicits, on a voluntary basis, information and data in response to specific questions concerning methods and practices involved in fee collection, handling, disbursement, and audit/recordkeeping procedures related to airline passenger ticketing.

DATES: Information should be submitted as soon as possible. Information received by November 20, 1990 will have the best opportunity for consideration prior to issuance of a notice of proposed rulemaking.

ADDRESSES: Send all information and data in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 26385, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Lowell Johnson, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267-3831.

SUPPLEMENTARY INFORMATION:

Background

The Aviation Safety and Capacity Expansion Act of 1990 (the Act), enacted November 5, 1990, directs the Secretary of Transportation to initiate several rulemaking proceedings. One of the subjects addressed in the statute is passenger facility charges (PFC). Specifically, section 9110 of the Act requires that not later than 180 days after the date of enactment, the Secretary shall issue such regulations as may be necessary to carry out a PFC program in accordance with specific legislative directives. Two of the areas where specific legislative direction are given are in the areas of collection and handling of fees by air carriers and their agents and recordkeeping and audits. With respect to collection and handling of fees by air carriers the Act requires:

The regulations issued by the Secretary to carry out this subsection shall—

(A) Require air carriers and their agents to collect fees imposed by public agencies pursuant to this subsection;

(B) Establish procedures regarding handling and remittance of the amounts so collected;

(C) Ensure that such amounts are promptly paid to the public agency for which they are collected less a uniform amount determined by the Secretary as reflecting average necessary and reasonable expenses (net of interest accruing to the air carrier and agent after collection and prior to remittance) incurred in the collection and handling of such fees; and

(D) Require that the amount of fees collected pursuant to this subsection with respect to any air transportation be noted on the ticket for such air transportation.

Regarding recordkeeping and audits, the Act also requires:

With respect to collection of fees.—The Secretary shall issue regulations requiring such recordkeeping and auditing of accounts maintained by an air carrier and any agency thereof which is collecting a fee imposed pursuant to this subsection and by the public agency which is imposing such fee as may be necessary to ensure compliance with this subsection.

As a result of the extremely short time for issuance of a final rule, the FAA is expeditiously developing a notice of proposed rulemaking relating to the PFC program. While the FAA will provide as much time as possible for comment to the NPRM, the statutory deadline for issuance of a final rule will result in a relatively short comment period and will preclude extension of the comment period.

The FAA believes that data and information about current industry practices and capabilities will assist in the development of that NPRM. Such information must be received quickly to be of use. Information received by November 20, 1990, will have the best opportunity for consideration prior to issuance of a notice of proposed rulemaking. All information submitted will be included in the Rules Docket. Persons submitting information should identify the regulatory docket or notice number. Three copies of the information should be provided.

Request for Information

The FAA is particularly interested in data and information regarding the following specific questions:

(1) What fees are air carriers (U.S. and foreign) currently collecting and segregating, *e.g.*, ticket tax, international departure tax, or other surcharges? Also, identify applicable regulations or provisions of law which specify such procedures for collection, etc.

(2) How do air carriers manage segregation of the fees, *e.g.*, through separate accounts or intermediaries such as clearinghouses? Where are funds deposited pending distribution?

(3) For each of these fees, how often are funds disbursed to recipients?

(4) What are the administrative costs incurred by air carriers, their agents, and other parties, for collection and disbursement of each of these fees? How are the costs determined and how much are they?

(5) To what extent do air carriers receive reimbursement of administrative costs for collection and disbursement of these fees? Who receives any interest earned, or has use of the money, from the time fees are collected until disbursement?

(6) How do air carriers handle reimbursements for tickets or changes in itinerary with regard to these fees?

(7) What records are kept with respect to the accounts of these fees and how are they audited?

(8) Of the systems used for existing fees, which of these would provide the best model for use in collection and disbursement of PFC's?

Issued in Washington, DC on November 9, 1990.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

[FR Doc. 90-26917 Filed 11-9-90; 11:29 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-AWA-15]

Proposed Alteration of Airport Radar Service at Port Columbus International Airport, Columbus; OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Port Columbus International Airport, OH, Airport Radar Service Area (ARSA). This proposal would adjust the lower vertical limits of the outer circle of the ARSA by removing a segment of that airspace from regulatory status. This action would eliminate the altitude stratification of the outer circle of the current ARSA.

DATES: Comments must be received on or before January 3, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Airspace Docket No. 89-AWA-15, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., Airspace and Obstruction Evaluation Branch (ATP-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AWA-15."

The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Port Columbus International Airport ARSA by raising the altitude of the floor from 2,200 feet mean sea level (MSL) to 2,500 feet MSL within the 10-nautical mile radius of the airport from the 127° bearing from the airport clockwise to the 006° bearing from the airport. Currently, the floor of the outer circle, i.e., the 10-nautical mile radius, is at two different altitudes. This action would eliminate the stratification of the outer circle of the Port Columbus ARSA and would make the floor of the outer circle 2,500 feet MSL throughout. Between the 006° bearing from the airport clockwise to the 127° bearing from the airport, the floor of the outer circle is 2,500 feet MSL.

During user forums and feedback sessions following the original implementation of this ARSA, comments have been in support of the ARSA. However, negative comments concerning the stratification of the ARSA have been expressed at almost all of the user group meetings. Pilots have expressed that it is difficult for them to distinguish between the two segments of the outer circle of the ARSA due to difficulty in determining a definite bearing from the airport: the segments of the outer circle are defined by using bearings from the airport. On October 2, 1989, the Ohio Experimental Aircraft Association (EAA) Sport Aviation Association requested that the FAA modify the Port Columbus ARSA by eliminating the stratification of the outer circle and establishing the floor of the outer circle at 2,500 feet MSL throughout. On November 6, 1989, the Aircraft Owners and Pilots Association in the Great Lakes area also wrote to the FAA in support of the EAA's request.

In addition to addressing the problem of pilot navigation throughout the Port Columbus ARSA, raising the floor of the outer circle to 2,500 feet MSL in the previously described area would provide an additional 300 feet of airspace in the area west and southwest of the city of Columbus, OH.

Definitions, operating requirements, and specific airspace designations applicable to ARSA's may be found in §§ 71.14 and 71.501 of part 71 and § 91.1 and 91.88 of part 91 of the Federal Aviation Regulations (14 CFR parts 71, 91).

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Regulatory Evaluation

This section summarizes the full regulatory evaluation that provides more detailed estimates of the economic consequences of this proposed regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, state and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. This Order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this proposal is not "major" as defined in the executive order; therefore, a full regulatory analysis, that includes the identification and evaluation of cost-reducing alternatives to the proposal, has not been prepared. Instead, the agency has prepared a more concise document, termed a regulatory evaluation, that analyzes only this proposal without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96-354), and an international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is referred to the full regulatory evaluation contained in the docket.

Costs

The FAA estimates the total monetary costs of implementing the proposed rule to be zero because the proposed modification is relieving in nature and would not impose any additional administrative costs on the FAA for either personnel or equipment. Also, the proposal would not impose any additional costs on general aviation (GA) users since it would require no additional avionics equipment or circumnavigation.

The proposal also would not result in reduction in safety (in terms of an increased likelihood of a midair collision) due to a contraction of the subject ARSA airspace. The FAA contends that the proposed reduction in ARSA airspace would be insignificant and of no consequence to Port Columbus ATC's ability to maintain aircraft separation.

Benefits

The proposed rule is expected to accrue potential benefits primarily in the form of increased operating efficiency for visual flight rules (VFR) operators and aircraft noise relief for the city of Columbus, OH. These benefits are discussed below.

For VFR aircraft operators, the proposal would simplify the ARSA by making the floor 2,500 feet MSL throughout the outer circle. Simplifying the floor of the ARSA's outer circle would increase efficiency for VFR pilots operating below the ARSA. Affected pilots would have more airspace in which to maneuver. Simplifying the outer circle of the ARSA would also establish a single standard altitude. The proposal would also be of special benefit to transient pilots who are not familiar with the current stratification of the ARSA's outer circle.

Conclusions

The estimated monetary cost of the proposal is zero. This is because there would be no costs incurred for additional equipment or personnel for the FAA nor any reduction in aviation safety for aircraft operators. The potential qualitative benefit would be increased efficiency for aircraft operators.

On balance, the FAA contends that this proposal is cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." The FAA has determined that this proposal would not have a significant economic impact, positive or negative, on a substantial number of small entities. This determination is based on the belief that none of the small entities, such as air taxi operators, would incur additional equipment or operating costs. Therefore, this proposal requires no flexibility analysis.

International Trade Impact Assessment

This proposed rule would neither have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed rule would neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign) that would result in a competitive disadvantage to either.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. § 71.501 is amended as follows:

Port Columbus International Airport, Columbus, OH [Revised]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-nautical-mile radius of the Port Columbus International Airport and that airspace extending upward from 2,500 feet MSL to 4,800 feet MSL within a 10-nautical-mile radius of the Port Columbus Airport.

Issued in Washington, DC, on October 24, 1990.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

AIRPORT RADAR SERVICE AREA

COLUMBUS, OHIO

FIELD ELEVATION - 814 FEET

(NOT TO BE USED FOR NAVIGATION)

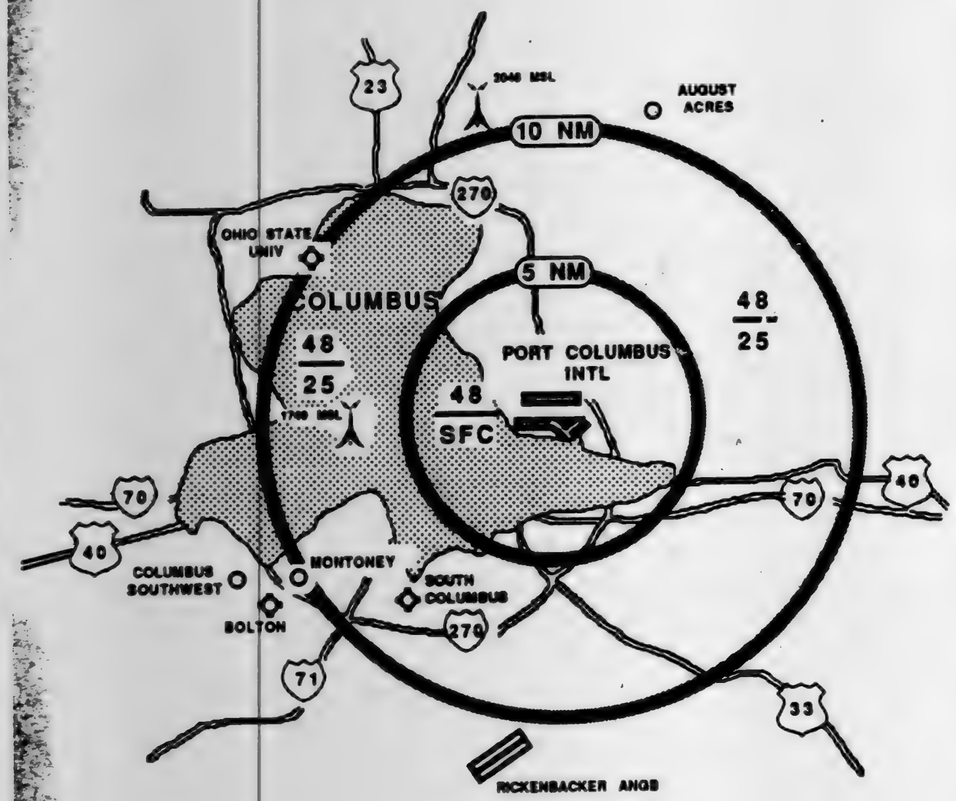

Graphic prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Branch
(ATP - 220)

[FR Doc. 90-28792 Filed 11-13-90; 8:45 am]
BILLING CODE 4910-13-C

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

[S-776]

RIN 1218-AB26

Occupant Protection in Motor Vehicles

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule; notice of informal public hearing; extension of written comment period.

SUMMARY: On Thursday, July 12, 1990 the Occupational Safety and Health Administration (OSHA) issued a Notice of Proposed Rulemaking on Occupant Protection in Motor Vehicles (55 FR 28728). As part of that document OSHA tentatively scheduled an informal public hearing on this rulemaking for January 8, 1991.

This document announces the convening of the informal public hearing that was tentatively scheduled in OSHA's July 12, 1990 notice, and schedules a second informal public hearing to be held in Chicago. The hearings are scheduled to begin in Washington, DC on January 8, 1991, and in Chicago, IL on February 5, 1991. The deadline for hearing requests, which has passed, will remain September 10, 1990.

This document also corrects and extends to December 14, 1990, the period for submission of written comments and submission of notices of intention to appear at the informal public hearings. In addition, this document specifies what information the notices of intention to appear must contain.

DATES: The informal public hearings on occupant protection in motor vehicles are scheduled to begin in Washington, DC, at 10 a.m., Tuesday, January 8, 1991. Once all parties who wish to do so have testified in Washington, DC, the hearing will be recessed and reconvened in Chicago at 10 a.m., Tuesday, February 5, 1991. Both hearings will continue, if necessary, on successive days.

Notices of intention to appear at the informal hearings as well as hearing testimony, witness statements and all evidence which will be introduced into the hearing record must be received by December 14, 1990.

Additional written comments on the notice of proposed rulemaking on occupant protection in motor vehicles published on July 12, 1990 (55 FR 28278) must be received by December 14, 1990.

ADDRESSES: 1. Comments and information on this proposal should be sent in quadruplicate to the Docket Office, Docket No. S-776, Occupational Safety and Health Administration, room N-2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

In order to facilitate a prompt review of the comments and information submitted to the Docket Office, submitters are requested to use the following docket numbers when submitting their comments:

For general comments:
Use Docket No. S-776.
For specific comments:
Part 1910 use Docket No. S-776-G.
For parts 1915, 1917 and 1918 use Docket No. S-776-M.
For part 1926 use Docket No. S-776-C.
For part 1928 use Docket No. S-776-A.

Comments and information received may be inspected and copied in the Docket Office.

2. Notices of intention to appear at the hearing, testimony and documentary evidence which will be introduced into the hearing record must be submitted in quadruplicate to Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, room N-3649, 200 Constitution Avenue, NW., Washington, DC 202-523-8615.

The January 8 hearing will be held in the auditorium of the Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210. The February 5 hearing will be held at the Ambassador West Hotel, 1330 N. State Parkway, Chicago, IL 60610. The hearings will continue, if necessary, on successive days.

FOR FURTHER INFORMATION CONTACT:
Proposed Rule: Mr. James F. Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, room N-3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, 202-523-8151.

Public Hearing: Mr. Thomas Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, room N-3649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, 202-523-8615.

SUPPLEMENTARY INFORMATION: On July 12, 1990, OSHA published a Notice of Proposed Rulemaking (NPRM) on Occupant Protection in Motor Vehicles (55 FR 28278). As part of that notice OSHA tentatively scheduled an informal public hearing to begin on January 8, 1991, in Washington, DC, if the agency received any requests for a public hearing by September 10, 1990. OSHA received 20 hearing requests, including requests for additional regional hearings. This notice officially announces the convening of informal public hearings beginning January 8, 1991, in Washington, DC. This notice also schedules a second public hearing to begin February 5, 1991, in Chicago, Illinois.

In the NPRM OSHA specified that requests for informal public hearings, notices of intention to appear at those public hearings and all written comments and evidence were to be received by September 10, 1990. Some of those deadlines were in error. This notice corrects and extends those dates. The deadline for hearing requests will remain September 10, 1990. The deadline for the receipt of notices of intention to appear at the informal public hearings as well as receipt of hearing testimony, witness statements and all evidence which will be introduced into the hearing record is being extended to December 14, 1990. The deadline for receipt of additional written comments on the NPRM and issues raised in the NPRM is extended to December 14, 1990.

Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposed standard. These comments must be received by December 14, 1990, and submitted in quadruplicate to the Docket Officer, Docket No. S-776, room N-2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Comments limited to 10 pages or less also may be transmitted by facsimile to (202) 523-5046 or (for FTS) 8-523-5046, provided the original and three copies are sent to the Docket Officer thereafter.

Written submissions must clearly identify the provisions of the proposal which are being addressed and the position taken with respect to each issue. The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely written submissions will be made a part of the record of the proceeding.

Pursuant to section 6(b)(3) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 655(b), an opportunity to submit oral testimony concerning the issues raised by the proposed standard including economic and environmental impacts, will be provided at two informal public hearings scheduled to begin at 10 a.m. on the following dates: January 8 1991, in

BEST COPY AVAILABLE

Washington, DC and on February 5, 1991, in Chicago, IL. The hearing in Washington will be held in the auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210. The hearing in Chicago will be held at the Ambassador West Hotel, 1300 N. State Parkway, Chicago, IL 60610, (312) 787-7900.

Notice of Intention To Appear

All persons desiring to participate at the hearing must file in quadruplicate a Notice of Intention to Appear, which must be received by December 14, 1990, addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. S-776, room N-3649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone 202-523-8615. A Notice of Intention to Appear also may be transmitted by facsimile to 202-523-5986 or to 8-523-5986 (for FTS), provided the original and three copies of the Notice are sent to the above address thereafter.

The Notices of Intention to Appear, which will be available for inspection and copying at the OSHA Technical Data Center, Docket Office (room N-2625), telephone 202-523-7894, must contain the following information:

(1) The name, address, and telephone number of each person to appear;
(2) The capacity in which the person will appear;
(3) The approximate amount of time requested for the presentation;
(4) The specific issues that will be addressed;
(5) A statement of the position that will be taken with respect to each issue addressed;
(6) Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence; and
(7) At which hearing the party wishes to testify.

Filing of Testimony and Evidence Before Hearing

Any party requesting more than 10 minutes for a presentation at the hearings, or who will submit documentary evidence, must provide in quadruplicate the complete text of his or her testimony, including any documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs. This material must be received by December 14, 1990. The material will be available for inspection and copying at the OSHA Technical Data Center Docket Office. Each such submission will be reviewed in light of the amount of time requested in the Notice of Intention to Appear. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation, and may be requested to return for questioning at a later time. Any party who has not filed a Notice of Intention to Appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

OSHA emphasizes that the hearing is open to the public, and that interested persons are welcome to attend. However, only persons who have filed proper Notices of Intention to Appear at the hearing will be entitled to ask questions and otherwise participate fully in the proceedings.

Conduct and Nature of Hearing

The Washington, DC hearing will begin at 10 a.m. on January 8, 1991 and the Chicago, IL hearing will begin at 10 a.m. on February 5, 1991. At that time any procedural matters relating to the hearing will be resolved.

The nature of the informal rulemaking hearings to be held is established in the legislative history of section 6 of the Act and is reflected by the OSHA hearing regulations (see 29 CFR 1911.15(a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, it is clear that the proceedings shall remain informal and legislative in type. The essential intent is to provide an opportunity for effective oral presentation by interested persons which can be carried out expeditiously and in the absence of rigid procedures which might unduly impede or protract the rulemaking process.

Additionally, since the hearing is primarily for information gathering and clarification, it is an informal administrative proceeding, rather than an adjudicative one. The technical rules of evidence, for example, do not apply. The regulations that govern hearings and the pre-hearing guidelines to be issued for this hearing will ensure fairness and due process and also facilitate the development of a clear, accurate and complete record. Those rules and guidelines will be interpreted in a manner that furthers that development. Thus, questions of relevance, procedure and participation generally will be decided so as to favor development of the record.

The hearing will be conducted in accordance with 29 CFR part 1911. The Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR part 1911 including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentation to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. At the Judge's discretion, to question and permit the questioning of any witness and to limit the time for questioning; and
6. At the Judge's discretion, to keep the record open for a reasonable stated time to receive written information and additional data, views, and arguments from any person who has participated in oral proceedings.

Certification of Record and Final Determination After the Hearing

Following the close of the hearing and post-hearing comment period, the presiding Administrative Law Judge will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of the final standard.

The proposed standard will be reviewed in light of all oral and written submissions received as part of the record, and a permanent standard for occupant protection in motor vehicles, will be issued, based upon the entire record in the proceeding including the written comments and data received from the public.

Authority

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S., Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655); Secretary of Labor's Order No. 1-90 (55 FR 9033); and 29 CFR part 1911.

Signed at Washington, DC this 7th day of November 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 90-28751 Filed 11-13-90; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD13 90-17]

Marine Event, National Maritime Week Tugboat Races, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish a permanent area of controlled navigation upon the waters of Elliott Bay, Seattle, Washington, annually on the third or fourth Saturday in May from 12 p.m. PDT until 4:30 p.m. PDT. This is necessary due to the Seattle Maritime Week Tugboat Races. The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event by establishing an exclusionary zone to keep spectator vessels from interfering with the races or from being damaged by the large wakes thrown by the tugs while racing.

DATES: Comments must be received on or before December 31, 1990.

ADDRESSES: Comments and other materials referenced in this notice will be available for inspection and copying at USCG Group Seattle, 1519 Alaskan Way South, Seattle, Washington 98134. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG D. A. Kearns, Assistant Operations Officer, Coast Guard Group Seattle, Tel: 206-286-5412.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD13 90-17) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information:

The drafters of this notice are LTJG D. A. Kearns, project officer, and LT D. K. Schram, project attorney, Coast Guard District Thirteen Legal Office.

Discussion of Proposed Regulations

The Seattle Maritime Week Tugboat Races are held as part of National Maritime Week. The races are conducted in Elliott Bay, Seattle, Washington between Pier 57 and pier 86, approximately 300 years off shore. The event is sponsored by the Port of Seattle Chapter of the Propeller Club. A large number of spectators are expected to gather on the waters of Elliott Bay near the race course. This regulation is required to ensure the safety of both the spectators and race participants. A local notice to mariners will be released several weeks prior to the event which will specify either the third or fourth Saturday in May.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it appears that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. However, comments regarding possible impact this proposed rule may have on federalism concerns are requested. This assessment may be changed in light of comments received.

Environmental Assessment

The proposed rule affects only a small portion of Elliott Bay during the annual Maritime Week Tugboat Races and appears to be categorically excluded from environmental assessment requirements. However, comments addressing possible impact this proposed change may have on the human environment or potential inconsistencies with any federal, state, or local law or administrative determination relating to the environment are solicited. A final determination regarding the possible need for an environmental assessment will be made after receipt of written comments.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be minimal, as it affects only a small section of Elliott Bay and will be in effect for less than 5 hours on a Saturday. A full regulatory evaluation is unnecessary. The permanent regulation will provide improved public notice of the event and promote safety. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine event, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations as follows:

PART 33—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46; and 33 CFR 100.35.

2. Section 100.1309 is added to read as follows:

§ 100.1309 Seattle Maritime Week Tugboat Races

(a) Regulated area: By this regulation, the Coast Guard will restrict general navigation and anchorage, and prohibit entry by persons, on the waters of Elliott Bay in an area bounded by the following points:

Latitude	*Longitude*
47°37'30" N.	122°22'48" W.
47°37'42" N.	122°22'33" W.
47°36'26" N.	122°20'27" W.
47°36'14" N.	122°20'43" W.

This restricted area resembles a rectangle measuring approximately 3900 yards along the shoreline between Pier 57 and Pier 89, and extending approximately 400 years into Elliott Bay.

(b) *Special local regulations:* (1) This event will take place annually from 12 p.m. P.D.T. to approximately 4:30 p.m. PDT on the third or fourth Saturday in May on the described waters of Elliott Bay near Seattle, Washington.

(2) Persons or vessels (other than official or racing vessels) shall not enter or remain in the exclusionary area described in paragraph (a) during the hours this regulation is in effect.

(3) Patrol of the described area will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander is empowered to forbid vessels or persons from entering the regulated area described in paragraph (a) of this section during the hours this regulation is in effect.

(4) A succession of sharp, short signals by whistle, siren, or horn, from vessels patrolling the area under the direction of the Patrol Commander shall

serve as a signal to stop. Vessels or persons signaled to stop shall comply with the orders of the Patrol vessels: Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

Dated: November 6, 1990.

Rudy K. Peschel,

Commander, Thirteenth Coast Guard District. DOT–U.S. Coast Guard.

[FR Doc. 90–26851 Filed 11–13–90; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD13 90–15]

Marine Event, Tacoma 4th of July Air Show and Fireworks Display, Tacoma, WA

AGENCY: Coast Guard DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish a permanent area of controlled navigation upon the waters of Commencement Bay, Tacoma, Washington, annually on every July 4th from 11 a.m. PDT until 11 p.m. PDT. This is necessary due to the Tacoma 4th of July Air Show and Fireworks Display. The Coast Guard, through this action, intends to promote the safety of spectators and participants in this event by establishing an exclusionary area for both the air show and the fireworks display. The center of the exclusionary area for the air show will be 1000 yards northeast of Tacoma's Old Town Dock and will measure approximately 1500 yards by 1000 yards, with the major axis running 110° magnetic. The exclusionary area for the fireworks display will be a 340 yard radius around the fireworks display barge which will be positioned 340 yards north of Tacoma's Old Town Dock.

DATES: Comments must be received on or before December 31, 1990.

ADDRESSES: Comments and other materials referenced in this notice will be available for inspection and copying at USCG Group Seattle, 1519 Alaskan Way South, Seattle, Washington 98134. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG D. A. Keerns, Assistant Operations Officer, Coast Guard Group Seattle, Tel.: 206–286–5412.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD13 90–15) and the specific section of the proposal to which their comments apply, and given reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LTJG D. A. Kearns, project officer, and LT D. K. Schram, project attorney, Coast Guard District Thirteen Legal Office.

Discussion of Proposed Regulations

These events are sponsored by the Fourth of July Extravaganza Commission, a non-profit organization. The Air Show is scheduled to be conducted above the waters of Commencement Bay near the area of Old Town Dock at Tacoma, Washington. FAA regulations (FAA Order 8440.5A) require that no spectators be allowed below the area designated for aerobatics. The Fireworks Display is scheduled to be conducted from a barge located on the waters of Commencement Bay near the area of the Old Town Dock at Tacoma, Washington. This one day event attracts a large number of spectators gathered on the waters near both the Air Show and Fireworks Display. To promote the safety of both the spectators and participants, this special local regulation is required to keep spectators away from the Air Show aerobatics area and the explosive fireworks barge.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it appears that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. However, comments regarding possible impact this proposed rule may have on federalism concerns are requested. This assessment may be changed in light of comments received.

Environmental Assessment

The proposed rule affects only a small portion of Commencement Bay during the annual air show and fireworks display and appears to be categorically excluded from environmental assessment requirements. However, comments addressing possible impact this proposed change may have on the human environment or potential inconsistencies with any Federal, state, or local law or administrative determination relating to the environment are solicited. A final determination regarding the possible need for an environmental assessment will be made after receipt of written comments.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be minimal, as it affects only a small section of Commencement Bay and will be in effect for less than twelve hours during the Fourth of July Independence Day national holiday. A full regulatory evaluation is unnecessary. The permanent regulation will provide improved public notice of the event and promote safety.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine event, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46; and 33 CFR 100.35.

2. Section 100.1307 is added to read as follows:

§ 100.1307 Tacoma Fourth of July air show and fireworks display.

(a) Regulated area: By this regulation, the Coast Guard will restrict general navigation and anchorage, and prohibit entry by persons, on the waters of:

(1) Commencement Bay in an area bounded by the following points:

Latitude	Longitude
47°17′ 32″N.	122°27′ 45″W.
47°17′ 03″N.	122°26′ 57″W.
47°16′ 41″N.	122°27′ 26″W.
47°17′ 10″N.	122°28′ 15″W.

This restricted area is a rectangle measuring approximately 1500 yards by 1000 yards and is centered approximately 1000 yards northeast of the Tacoma Old Town Dock. The area will be marked by a minimum of six buoys to aid in identifying the boundaries.

(2) Commencement Bay in an area within a 340 yards radius of the fireworks display barge positioned at latitude 47°16′43″N, longitude 122°27′49″W. This circular exclusionary area is located approximately 340 yards north of Tacoma's Old Town Dock.

(b) *Special local Regulations:* (1) These events will take place annually from 11 a.m. PDT to approximately 11:30 p.m. PDT on each July 4, in and above the described waters of Commencement Bay, Tacoma, Washington.

(2) Persons or vessels other than official vessels, shall not enter or remain in the area described in paragraph (a) of this section during the hours this regulation is in effect.

(3) Patrol of the described area will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander is empowered to forbid vessels or persons from entering the area described in paragraph (a) of this section during the hours this regulation is in effect.

(4) A succession of sharp, short signals by whistle, siren, or horn, from vessels patrolling the area under the direction of the Patrol Commander shall serve as a signal to stop. Vessels or persons signaled shall stop and shall comply with the orders of the patrol vessel: Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

Dated: November 6, 1990.

Rudy K. Peschel,

Commander, Thirteenth Coast Guard District, DOT–U.S. Coast Guard.

[FR Doc. 90–26852 Filed 11–13–90; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3858–5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to disapprove as a revision to the Indiana State Implementation Plan (SIP) for total suspended particulates (TSP), amendments to Indiana Administrative Code (IAC) 326 IAC 6–1–8, Nonattainment Counties, and 326 IAC 6–1–7, Scope. The proposed revision would repeal section 326 IAC 6–1–8, and add a new section (326 IAC 6–1–8.1) which contains new particulate matter emission limitations for Boilers 5 and 6 at the Joseph E. Seagram and Sons, Inc. (Seagram), facility in Lawrenceburg, Dearborn County, Indiana. This revision would also amend section 326 IAC 6–1–7 to include a reference for the new section. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of the Clean Air Act (Act).

DATES: Comments on this revision and on the proposed USEPA action must be received by December 14, 1990.

ADDRESSES: Copies of this SIP revision and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone E. Marie Phillips at (312) 886–6034, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: E. Marie Phillips, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6034.

SUPPLEMENTARY INFORMATION: Under section 107 of the Clean Air Act (Act), USEPA has designated certain areas in each State as not attaining National Ambient Air Quality Standards (NAAQS) for TSP. For Indiana, *see* 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978) and 40 CFR 81.315. For these areas, part D of the Act, requires that the State revise its TSP SIP to provide for attaining the primary NAAQS by December 31, 1982. These SIP revisions must also provide for attaining the secondary NAAQS as soon as practicable. The requirements for an approvable SIP are described in the "General Preamble" for part D rulemaking published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), and 44 FR 67182 (November 23, 1979). Lawrenceburg Township, Dearborn County, in which the Seagram facility is located, has been designated by USEPA as nonattainment for TSP.

On July 1, 1987, the USEPA published "Revisions to the National Ambient Air Quality Standards" (52 FR 24634), which revised the particulate matter standard and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate with a nominal diameter of 10 micrometers or less (PM_{10}). However, USEPA continues to process certain TSP SIP revisions at a state's request. USEPA's policy (52 FR 24679) states that it will regard existing TSP SIPs as necessary interim particulate matter plans during the period preceding the approval of site-specific PM_{10} SIPs. Regulations in the TSP SIP cannot be relaxed without a demonstration that the revision will not interfere with attainment or maintenance of the PM_{10} NAAQS.

I. Summary of State Submittal

On March 3, 1989, the Indiana Department of Environmental Management (IDEM) submitted a proposed revision to the Indiana TSP SIP. This revision repeals section 326 IAC 6–1–8, Nonattainment Counties, and adds a new section 326 IAC 6–1–8.1, Dearborn County Particulate Emission Limitations, which contains new particulate matter emission limitations for Seagram. This revision also amends section 326 IAC 6–1–7, Scope, to include reference to the new section. The following paragraphs describe the proposed requirements for Seagram.

The proposed SIP revision substantively affects particulate emission limitations for two boilers, identified as Seagram Boilers 5 and 6. Under the former regulation (326 IAC 6–1–8), emission limitations for these two boilers were independent. The emissions limitations for Boiler 5 were 0.62 pounds of particulate matter per million British Thermal Units (lbs/MMBTU) and 209.0 tons of particulate matter per year. The emissions limitations for Boiler 6 were 0.010 lbs/MMBTU and 5.2 tons/year.

Under the replacement regulation (326 IAC 6–1–8.1), the mass emission limitation for Boiler 6 is increased to 0.180 lbs/MMBTU. The revised mass emission limitation for Boiler 5 is dependent upon operations at Boiler 6. If Boiler 6 is being fired with natural gas or is not in operation, the mass emission limitation for Boiler 5 remains at 0.62 lbs/MMBTU. However, if Boiler 6 is being fired with fuel other than natural gas (presumably coal), the mass emission limitation for Boiler 5 is reduced to 0.0180 lbs/MMBTU. The

annual emissions limitation for Boiler 5 is retained at 209 tons/year, but the independent annual emissions limitation for Boiler 6 is replaced with a joint annual emission limitation requiring the sum of 12 month emissions from both Boiler 6 and Boiler 5 not to exceed 214.2 tons/year. Additional recordkeeping and reporting requirements are included in the revised regulation. Finally, the revised regulation deletes emission limitations of zero for Boilers 1, 2, 3, and 4, which are not operating.[1]

II. Discussion of Proposed SIP Revision

Section 326 IAC 6-1-8 currently allows both Seagram Boilers 5 and 6 to burn coal simultaneously. Sulfur dioxide emission limitations in 326 IAC 7-1-20, however, prohibit Boiler 5 from burning coal when Boiler 6 is burning any fuel other than natural gas. IDEM states that the limitations proposed in 326 IAC 6-1-8.1 would be consistent with this prohibition.

The proposed SIP revision would increase allowable emissions from Boiler 6 from 2.4 pounds per hour (lbs/hr) to 43.9 lbs/hr, an increase of 41.5 lbs/hr. When Boiler 6 is burning fuel other than natural gas, the allowable TSP emissions from Boiler 5 would be reduced from 106.0 lbs/hr to 3.1 lbs/hr, a decrease of 102.9 lbs/hr. Boiler 5 can comply with this limit when burning either natural gas or 1 percent sulfur fuel oil consistent with its SO_2 limit.

Under this scenario, the combined allowable TSP emissions from Boilers 5 and 6 would be reduced from the currently allowed rate of 108.5 lbs/hr to 47.0 lbs/hr. When Boiler 6 is burning natural gas or is not in operation, the allowable emission rate for Boiler 5 would remain 0.62 lbs/MMBTU (106.0 lbs/hr).

IDEM stated that they established the proposed 0.18 lbs/MMBTU TSP emission limit for Boiler 6 to ensure that maximum PM_{10} emissions would not increase as a result of this revision of the rule. When Boilers 5 and 6 are both burning coal, under the limits in the current rule, the maximum overall PM_{10} emissions are an estimated 32 lbs/hr. The limits in the proposed rule result in an equivalent maximum overall PM_{10} emission rate of 32 lbs/hr when Boiler 6 is burning coal and Boiler 5 is burning fuel oil. Boiler 6 has a taller stack and a higher plume rise than Boiler 5. IDEM stated that its review of the modeling analyses performed during development of its Dearborn County SO_2 rule, 326 IAC 7-1-20, demonstrate that proposed 326 IAC 6-1-8.1 will not result in an increase in ambient concentrations of either TSP or PM_{10} relative to that allowed by the existing rule. The submittal from the State also includes an atmospheric dispersion modeling analysis which was included in the Seagram submittal to the State. This modeling analysis, using the Industrial Source Complex Short Term (ISCST) model, was submitted to demonstrate that no adverse ambient impact would occur at the revised allowable emissions levels.

The proposed combined annual emission limit for Boilers 5 and 6 is the sum of the individual limits contained in the existing rule. Combining annual limits provides Seagram flexibility in boiler usage, and IDEM states that the combination will not increase ambient particulate matter concentrations.

Section 326 IAC 6-1-8.1(c)(6) contains new reporting requirements for Seagram to document compliance with the proposed emission limitations in 326 IAC 6-1-8.1. In addition, amendments to 326 IAC 6-1-7 are proposed to revise references to 326 IAC 6-1-8 to 326 IAC 6-1-8.1.

III. USEPA's Analysis of the State Submittal

Indiana's submittal presents arguments for this SIP revision on the basis of two separate policies. This first policy is the requirement in TSP SIPs for reasonably available control technology (RACT). The State contends that (1) The present emission limits for Boiler 6 are infeasible, (2) fuel switching is too expensive, and (3) the original 1979 test used to establish the emission limit for Boiler 6 was incorrectly performed. These contentions imply that current limits for Boiler 6 do not represent RACT. The State does not, however, contend that the revised limits do represent RACT.

The second policy is USEPA's Emissions Trading Policy Statement (ETPS), described in the December 4, 1986, Federal Register (51 FR 43814-43860). The State contends that the proposed SIP revision would yield a net decrease in allowable emissions, on the basis that the increase in the allowable emissions from Boiler 6 is more than offset by the decrease in allowable emissions at Boiler 5. However, the State does not provide a detailed analysis of the proposed revision as required by the ETPS.

USEPA's evaluation concludes that the proposed SIP revision is not justified under either policy. With respect to RACT, the State has not submitted justification that the revised limits represent RACT. Further, the calculations included in Seagram's analysis of existing limits contain significant flaws. As described in USEPA's technical support document: (1) The calculation of ash loading on the electrostatic precipitator (ESP) and then of the emissions escaping the ESP (reflecting a fixed but unsupported ESP control efficiency) were not adjusted for coal ash that does not reach the ESP; and (2) the cost comparison, which compares the fuel cost for Boiler 6 using virtually 100% coal versus 100% natural gas, does not provide a realistic assessment of costs of complying with current SIP limits.

With respect to the emissions trading policy, a number of criteria are not addressed by the State. For example, the State did not address the attainment and SIP approval status of the area (therefore failing to identify which emission trading requirements apply), and the State did not show that baseline emissions estimates were calculated in accordance with the emission trading policy.

The rationale for the proposed SIP revision as an emissions trade is that an increase in allowable emissions at Boiler 6 would be more than offset by a decrease in allowable emissions at Boiler 5. However, USEPA believes that this trade of allowable emissions would result in a net increase in actual emissions, as discussed below.

Seagram's submittal states that "Boiler No. 6 is utilized by Seagram as the principal source of steam production * * *. Boiler No. 5 is utilized by Seagram primarily * * * to heat the Facility and as a backup source for process steam." That is, the actual hours of usage of Boiler 6 is much greater than the usage of Boiler 5. Consequently, the increase in actual emissions at Boiler 6 would far outweigh any decrease in actual emissions at Boiler 5.

Furthermore, the SIP submittal suggests that the decrease in allowable emissions at Boiler 5 will cause no actual decrease in emissions. The decrease in allowable emissions at Boiler 5 apparently results from a prohibition on burning coal at the same time Boiler 6 is burning coal. The submittal indicates that this prohibition already is in place due to the sulfur dioxide limits in 325 IAC 7-1-20. Thus, the change in allowable particulate matter emissions would not result in any actual reductions in particulate matter emissions beyond the reductions already effected by sulfur dioxide regulations.

USEPA's ETPS requires that any relaxation of a particulate matter SIP be accompanied by a demonstration that the NAAQS will be attained notwithstanding this relaxation. IDEM contends that the SIP revision would not increase allowable emissions. However, IDEM does not address the impact of the probable increase in actual emissions that would result from this revision. Thus, this SIP revision could cause or exacerbate violations of the NAAQS.

A third relevant policy, included in the PM_{10} SIP Development Guideline, states that particulate matter regulations may not be relaxed without a full modeling analysis demonstrating that the relaxed regulations provide sufficient enforceable measures to assure attainment of the PM_{10} standards. Since no such attainment demonstration for Dearborn County has been provided by the State, relaxation of the particulate matter limits can not be approved.

A further problem with the proposed SIP revision pertains to its enforceability. The proposed emission limitations at Boiler 5 are contingent upon the type of fuel being burned in Boiler 6. The proposed revision would effectively prohibit the simultaneous coal firing of Boilers 5 and 6.

Enforcement of this revision would require daily record keeping of the times when each fuel type is fired at each of the two boilers. The proposed revision does not have such daily record keeping requirements. Consequently, no practical mechanism is provided to ensure that Seagram is complying with the contingent emission limitations on a continuous basis.

IV. USEPA's Proposed Rulemaking Action

Indiana has presented arguments that this proposed SIP revision complies with two policies: (1) The policy requiring RACT, and (2) the emissions trading policy. USEPA concludes that the proposed revision does not meet either policy. First, the State has not demonstrated that the proposed revision represents RACT, and the calculations of economic reasonableness have significant flaws. Second, the submittal does not demonstrate the proposed revision is consistent with the emissions trading policy. In fact, the trade of allowable emission would allow significantly more emissions at Boilers 6 while causing little or no actual emissions reduction at Boiler 5. Furthermore, the State provides no demonstration that this SIP revision, in conjunction with other emissions in the area, will not cause or exacerbate violations of the NAAQS. In addition, the proposed SIP revision does not provide any appropriate enforcement mechanism to ensure that fuel selection at Boiler 5 is contingent on fuel selection at Boiler 6, as necessitated under the proposed revision. For these reasons, USEPA is proposing to disapprove the requested revision to 326 IAC 6-1-7 and 326 IAC 6-1-8.

Public comments are solicited on the requested SIP revision and on USEPA's proposal to disapprove. Public comments received by December 14, 1990, will be considered in the development of USEPA's final rulemaking action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and enviornmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waiver Table Two and Three SIP revisions (54 FR 222) from the requirements of section 3 of Order 12291 for a period of 2 years.

Under 5 U.S.C. 605(b), the Administrator has certified that this SIP disapproval will not have a significant economic impact on a substantial number of small entities because it applies to only one source, Joseph E. Seagram and Sons, Inc.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: October 30, 1990.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 90-26318 Filed 11-13-90; 8:45 am]

BILLING CODE 6560-50-M

[1] If these boilers are placed back in operation, Seagram will have to submit new emission limits for the units as SIP revisions.

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40 CFR Part 261

[SW-FRL-3860-6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the comment period on the proposed delisting decision for Bethlehem Steel Corporation, Chesterton, Indiana, which appeared in the Federal Register on September 19, 1990 (see 55 FR 38565). This extension of the comment period is provided to allow commenters an opportunity to finalize their data gathering efforts and responses to the Agency's proposed decision.

DATES: EPA will accept public comments on the proposed decision until December 3, 1990. Comments postmarked after the close of the extended comment period will be stamped "late".

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Characterization and Assessment Division, CAD/OSW (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-90-B1DP-FFFFF".

The RCRA regulatory docket where this information can be viewed is located at the U.S. Environmental Protection Agency, 401 M. Street, SW. (Room M2427), Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4782.

SUPPLEMENTARY INFORMATION: On September 19, 1990, EPA proposed to deny a petition submitted by Bethlehem Steel Corporation (BSC), Chesterton, Indiana, pursuant to 40 CFR 260.20 and 260.22, to exclude certain solid wastes generated at its facility from the list of hazardous wastes contained in 40 CFR 261.31 and 261.32. The petitioned waste is currently being managed in a series of waste piles at BSC's Chesterton, Indiana facility. See 55 FR 38565 for a more detailed explanation of why the Agency proposed to deny BSC's petition.

On October 29, 1990, the Agency received a request from one commenter to extend the comment period so that the commenter could obtain analytical results from outside laboratories in time

to include such data with the commenter's response to the Agency's proposed decision. The Agency considered the commenter's request and has decided to extend the comment period for 30 days to allow the commenter to obtain these data.

The public comment period for the proposed rule was originally scheduled to end on November 9, 1990. Today's notice extends the public comment period for the proposed rule to allow commenters an opportunity to finalize their data gathering efforts and responses to the Agency's proposed decision.

Dated: November 5, 1990.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

[FR Doc. 90-26833 Filed 11-13-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-530, RM-7472]

Radio Broadcasting Services; Baker, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Althea Bauers seeking the allotment of Channel 261B to Baker, California, as that community's second local FM broadcast service. Coordinates for this proposal are 35-15-42 and 116-19-20.

DATES: Comments must be filed on or before December 31, 1990, and reply comments on or before January 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Daniel F. Van Horn, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, NW., Washington, DC 20036-5339.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-530, adopted October 25, 1990, and released November 8, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26861 Filed 11-13-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-526, RM-7422]

Radio Broadcasting Services; Eagle, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In response to a petition filed by Cynthia Anne Siragusa, this document proposes the allotment of Channel 300C2 to Eagle, Idaho, as that community's first local FM service. The coordinates for this proposal are North Latitude 43-41-42 and West Longitude 116-21-12.

DATES: Comments must be filed on or before December 31, 1990, and reply comments on or before January 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Denise B. Moline, McCabe & Allen, 9105 Owens Drive, P.O. Box 2126, Manassas Park, VA 22111 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-526, adopted October 22, 1990, and released November 8, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26862 Filed 11-13-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-529, RM-7408]

Radio Broadcasting Services; McLain, MS

AGENCY: Federal Communication Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Community Broadcasting Company, Inc., proposing the allotment of FM Channel 245A to McLain, Mississippi, as that community's first local broadcast service. There is a site restriction 11.7 kilometers (7.3 miles) southeast of the community. The coordinates for Channel 245A are 31-03-54 and 88-43-01.

DATES: Comments must be filed on or before December 31, 1990, and reply comments on or before January 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the

FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John S. Neely, Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033, (Counsel for the Petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-528, adopted, October 23, 1990, and released November 8, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involves channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26863 Filed 11-13-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-527, RM-7302 and RM-7490]

Radio Broadcasting Services; Marshall and Huntsville, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two mutually exclusive petitions for rule making. Ms. Garnet Tuttle requests the allotment of Channel 248C2 to Marshall, Missouri, as that community's second FM broadcast service. A site restriction 14.6 kilometers (9 miles) north of the community is required to accommodate this allotment. The coordinates for Channel 248C2 at Marshall are 39-14-41 and 93-09-37. Contemporary Broadcasting, Inc., proposes the substitution of Channel 247C2 for Channel 223A at Huntsville, Missouri, and modification of its construction permit (BPH-890719MC) for Channel 223A to specify Channel 247C2. This proposal could provide a first wide coverage area station for Huntsville. The coordinates for Channel 247C2 at Huntsville are 39-38-00 and 92-27-00.

DATES: Comments must be filed on or before December 31, 1990 comments on or before January 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Ms. Garnet Tuttle, 533 Ashbury Drive, Fond du Lac, Wisconsin, 54935

Larry G. Fuss, Contemporary Communications, Post Office Box 159, Fayetteville, Georgia 30214, (Consultant to Garnet Tuttle).

Contemporary Broadcasting, Inc., 1360 S 5th Street, suite 365, St. Charles, Missouri 63301.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-527, adopted October 22, 1990, and released November 8, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26864 Filed 11-13-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-529, RM-7440]

Radio Broadcasting Services; Waupun and Omro, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Midwest Dimensions, Inc., permittee of Station WPKR(FM), Channel 258C2, Waupun, Wisconsin, proposing a change of community of license for Channel 258C2 from Waupun to Omro, Wisconsin, and the modification of the construction permit to specify the new community. The coordinates for Channel 258C2 are 43-50-51 and 88-51-31, with a site restriction 23.4 kilometers (14.5 miles) southwest of the community.

DATES: Comments must be filed on or before December 31, 1990 and reply comments on or before January 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Eugene T. Smith, 715 G Street, SE., Washington, DC 20003, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule making, MM Docket No. 90-529, adopted October 23, 1990, and released November 8, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-26865 Filed 11-13-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-162; FCC 90-351]

Evaluation of the Syndication and Financial Interest Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission issued a Further Notice of Proposed Rulemaking in order to solicit additional information on possible modifications to its financial interest and syndication rules in order to develop a fuller record on these issues.

DATES: Comments are due on or before November 21, 1990 and reply comments are due December 21, 1990; an *en banc* hearing will be held on December 14, 1990 to receive oral testimony.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexandra M. Wilson, Office of General Counsel, Federal Communications Commission, (202) 632-7020.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking, adopted October 22, 1990, FCC 90-351. The full text of this Commission Further Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The full text of this Further Notice of Proposed Rulemaking may also be purchased from the Commissioner's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037, (202) 857-3800.

Title: Proposals to Modify the Commission's Financial Interest and Syndication Rules for Television Networks

Summary of Further Notice

1. On March 14, 1990, the Commission instituted a new rulemaking proceeding to evaluate the financial interest and syndication rules set forth in 47 CFR 73.658(j).[1] After reviewing the comments and reply comments submitted on the notice of proposed rulemaking, we are adopting this further notice to solicit comment on a variety of specific proposals developed during the course of the proceeding. In general, the proposals suggest modification of the financial interest rule, subject to certain safeguards, and a narrowing of the prohibition against network participation in foreign and domestic syndication. In order to better assess the merits of these proposals, we will also hold one day of *en banc* hearings on December 14, 1990 in Washington, DC to receive oral testimony from interested parties. We stress that, by asking for additional comment on specific proposals, we are not foreclosing the possibility that we will either retain or repeal the financial interest and syndication rules in their entirety, or adopt rule modifications different from those discussed in the further notice.

Financial Interests

2. We believe it would be fruitful to further explore the proposals made by several commenters that we permit the television networks to purchase financial interests from program producers, provided they abide by regulatory restrictions designed to guard against anticompetitive conduct and ensure program diversity. In this regard, we believe that there are at least two fundamental approaches we could take. The first would entail regulating in some fashion the negotiations that take place when a network is interested in purchasing a program from an outside producer for exhibition on its network. The second alternative is to somehow limit the number or types of programs in which a network could acquire financial interests.

3. With respect to the first approach, we seek comment on whether program producers should be permitted, on an unrestricted basis, to sell financial interests to the networks as long as the producer initiates the offer to sell, with no coercion by the networks. Alternatively, we seek comment on whether the networks should be allowed to acquire financial interests in non-in-house produced programs, provided that (a) negotiations for such interests are held separately from the negotiations over network exhibition rights and only after the program has been scheduled for its initial network run, and (b) the networks are prohibited from subsequently discriminating against programs in which they hold no financial interests.

4. With respect to the second approach, we seek comment on three separate proposals on how we might permit network acquisition of financial interests with safeguards by limiting the number and/or types of programs in which the networks could hold ownership interests. Specifically, we seek comment on whether the Commission should (a) cap the percentage of scheduled programs in which the networks could actively participate in production; (b) cap the percentage of scheduled programs in which a network could acquire financial interests of any kind, whether through active participation or passive investment; or (c) cap the percentage of a financial interest that a network would be permitted to acquire in individual programs.

5. We note that market power assertions and evidence in this proceeding are not limited to the networks, and that some parties contend that the market power held by the major studios (or by highly successful independent producers) is no less or may be even greater than that of the networks. We accordingly seek comment on whether we should prevent outside producers from extracting commitments from the networks that go beyond the program under consideration, whether we should preclude the networks from insisting on financial interests as a condition precedent of network exhibition only in those programs produced by producers with little negotiating leverage, and whether we should request that the Department of Justice assume oversight of network/producer relationships and transactions since it currently administers both the network and studio consent decrees.

Syndication

6. Several commenters in this proceeding allege that network participation in the syndication business would raise concerns over network extraction of, or underpayment for, syndication rights, network favoritism of shows in which they own syndication rights, potential loss of program diversity through network curtailment of producers' financial and/or creative independence, and potential manipulation of the off-network syndication market to the disadvantage of independent stations. We accordingly seek comment on what ways, if any, the above-discussed proposals for safeguarding against a network's extraction of a financial interest would provide an effective safeguard against similar concerns in the direct network acquisition of syndication rights. In particular, we seek comment on whether we should permit the networks to retain a profit participation in future revenues from the domestic syndication of a television program, but continue to bar them from actively engaging in the business of domestic syndication. Alternatively, we request comment on whether we should allow the networks to hold syndication rights, but limit the number and types of programs in which they could acquire or retain such rights. Comment is also sought on whether similar limitations should be placed on network involvement in foreign syndication, or whether the foreign syndication restriction can safely be lifted in its entirety at this time.

7. In the event we were to allow the networks to acquire certain syndication rights, comment is also sought on whether we should adopt additional safeguards designed to prevent network discrimination against non-affiliates and anticompetitive warehousing. Specifically, we seek comment on whether a network engaged in the business of domestic syndication could be presumed not to be favoring its affiliates so long as no more than a certain percentage of its syndication sales were made to those affiliates. We also seek comment on whether any anti-warehousing provision should expressly define the time periods within which a program would have to be made available for airing in the syndication market once it had completed its network run, or whether it would be sufficient to state that such programs must be made available on a "commercially timely basis."

International Implications

8. We note that in recent years, there has been an increased interest by foreign investors in acquiring U.S. production assets. Such foreign investments clearly signal the increasing globalization of the entertainment programming marketplace. In order to better understand the roles that U.S. and foreign firms may play in this marketplace, we seek additional information about the forces that are driving the acquisition of U.S. entertainment production assets by foreign entities and whether the pattern of increased foreign investment is likely to continue. We also seek comment on what categories of companies are most likely to acquire production assets in the future and why. Finally, we solicit comment on whether U.S. companies are more or less likely to acquire production assets in the future, assuming that foreign investment continues to increase and our financial interest and syndication rules are not changed.

Sunsetting/Revisiting the Rules

9. Another issue raised by those commenters proposing significant modifications to our existing rules is whether we should set a timetable for revisiting the effectiveness of and continuing need for our regulations. We thus solicit comment on whether we should re-examine any revised rules within three to five years after their adoption. Alternatively, it may be desirable for us simply to adopt a provision that would let the rules sunset after some stated period of time. Comment is therefore sought on whether it would be appropriate to adopt a sunset provision in view of ongoing marketplace developments, and on how such a provision could best be crafted.

Network Definition and Emerging Networks

10. It has been argued by some commenters that the definition of a "network" currently set forth in our financial interest and syndication rules is so broad as to inhibit the formation of new networks. We believe it is in the public interest to foster the emergence of new competitive networks, but recognize that at some point emerging networks must be subject to the same regulatory treatment as established networks. Commenters are thus requested to address the appropriateness of the existing definition and how it could be modified to deal with emerging networks.

11. In addition, we believe that it would be useful to receive further comment on how the various proposals discussed above should be applied to emerging networks such as Fox Broadcasting Corporation (FBC). For example, would it be appropriate to apply any revised financial interest rules to emerging networks while adding to the rules a temporary exemption from domestic syndication restrictions? If so, would it also be appropriate to apply our prime time access restrictions to FBC's and other emerging networks' affiliates at that time? Further, we specifically seek comment on whether the factors which led the Commission to grant FBC earlier this year a limited and temporary waiver of the financial interest and syndication rules also support permanent rule dispensations for FBC or other emerging networks.

Effect on Prime Time Access Rule

12. We have not proposed, and we do not intend, to revisit or revise the Prime Time Access Rule (PTAR), 47 CFR 73.658(k), in this proceeding. We note, however, that the PTAR was adopted at the same time as the financial interest and syndication rules, and that the rules together were intended to foster a healthy syndication industry composed of independent producers. We accordingly seek comment on what effect, if any, changes in our financial interest and syndication rules would have on the effectiveness of the PTAR and on the availability of the outlet for independent producers that the PTAR was designed to provide. Commenters who believe that safeguards or limitations on the networks' involvement with first-run syndication programming are necessary to preserve the integrity of the PTAR should offer specific proposals for our consideration.

13. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* 47 CFR 1.1206 *et seq.* The Sunshine Agenda period commences with the release of a public notice that a matter has been placed on the Sunshine Agenda, and terminates when the Commission (1) Releases the text of a decision or order in the matter, (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda, or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. 47 CFR 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. 47 CFR 1.1203.

14. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who makes or submits a written *ex parte* presentation shall provide on the

[1] Notice of Proposed Rulemaking in MM Docket No. 90-162, FCC 90-100, adopted March 14, 1990 (55 FR 11222, March 27, 1990).

same day it is submitted two copies of same under separate cover to the Commission's Secretary for inclusion in the public record. The presentation (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding(s) to which it relates and the fact that two copies of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation.

15. Any person who in making an oral *ex parte* presentation presents data or arguments not already reflected in that person's written comments, memoranda, or other previous filings in that proceeding shall provide on the day of the oral presentation an original and one copy of a written memorandum to the Secretary (with a copy to the Commission or staff member involved) which summarizes the data and arguments. The memorandum (as well as any transmittal letter) must clearly indicate on its fact that an original and one copy of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation, § 1.1206.

16. Pursuant to applicable procedures set forth in 47 CFR 1.415 and 1.419, interested parties may file comments on or before November 21, 1990, and reply comments on or before December 21, 1990. Extensions of these time periods are not contemplated. Comments must not exceed 50 double-spaced typed pages and reply comments must not exceed 25 double-spaced typed pages. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

17. In view of the complexity of the issues in this proceeding and the variety of proposals now before the Commission, we believe that our assessment of the record would be greatly aided if interested parties also were given an opportunity to present oral testimony on the proposals before the full Commission. We therefore are scheduling one day of *en banc* hearings to receive testimony on the issues raised in the further notice. The hearing will be held on December 14, 1990, in the Commission Meeting Room, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, from 9:30 a.m. to 5:30 p.m. Parties wishing to make oral presentations at the hearing should submit written requests by close-of-business on November 15, 1990, to Alexandra M. Wilson, Office of the General Counsel, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

18. Initial Regulatory Flexibility Analysis:

I. Reason for Action

This Further Notice of Proposed Rulemaking is adopted to obtain comment regarding specific proposals to modify the Commission's financial interest and syndication rules. *See* 47 CFR 73.658(j).

II. Objectives

The Commission seeks comment on a number of specific proposals developed during the course of the rulemaking proceeding in order to better assess whether it should modify its financial interest and syndication rules in light of marketplace developments.

III. Legal Basis

The proposed action is authorized under sections 4(i), 4(j), 301, 303(i), 303(r), 313 and 314 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, 303(i), 303(r), 313 and 314.

IV. Reporting, Recordkeeping and Other Compliance Requirements

None.

V. Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

VI. Description, Potential Impact, and Number of Small Entities Involved

Any rule changes in this proceeding could affect television program producers, television networks and their affiliate stations, non-network television stations, cable networks, cable television program producers, cable television networks and cable television operators. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

VII. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

The Further Notice solicits comments on a variety of alternatives.

19. *It is ordered* that a copy of this Further Notice of Proposed Rulemaking shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

20. Authority for issuance of this Further Notice of Proposed Rulemaking is contained in Sections 4(i), 4(j), 301, 303(i), 303(r), 313 and 314 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, 303(i), 303(r), 313 and 314.

For further information concerning this proceeding, contact Alexandra M. Wilson, Office of General Counsel, (202) 632–7020.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–26891 Filed 11–13–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AB45

Migratory Bird Permits; Determination That Kansas Meets Federal Falconry Standards

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Director has determined that the falconry laws of the State of Kansas meet or exceed the minimum Federal standards for the use of certain migratory birds for falconry. The Service proposes to add Kansas to the list of States participating in the joint Federal/State falconry permit system. This proposed rule would permit the practice of falconry in that State.

DATES: Comments must be submitted on or before December 14, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 3247, Arlington, VA 22203. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, Arlington Square Building, room 500, 4401 North Fairfax Drive, Arlington, VA, between the hours of 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Thomas L. Striegler, Special Agent in Charge, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, Washington, DC 20240, Telephone Number (703) 358–1949.

SUPPLEMENTARY INFORMATION: On July 30, 1973, and on April 4, 1974, the Service proposed regulations for the issuance of falconry permits (38 FR 20264 and 39 FR 12314, respectively). Public comments were solicited, and on January 15, 1976, the final rule was published (41 FR 2237). These regulations are intended to provide adequate protection for the raptor population while allowing for falconry use.

Falconry is permitted in States pursuant to a system of joint Federal/State permits. Federal regulations provide for the review and approval of State falconry laws by the Service. A list of States whose falconry laws have been approved by the Service is found in 50 CFR 21.29.

On November 17, 1987, the Kansas Department of Wildlife and Parks Commission held public hearings on that State's proposed falconry regulations; the hearings were attended by falconers and concerned wildlife conservation organizations. As provided by section 21.29(c), the Director has reviewed a certified copy of the falconry regulations adopted by the State of Kansas (K.A.R. 23–21–1 through 23–21–14, effective May 1, 1988). These regulations meet or exceed the minimum restrictions, conditions, and requirements contained in 50 CFR 21.29 (d) through (i) prescribed for permit requirements, classes of permits, examination procedures, facilities and equipment standards, raptor marking, and raptor taking restrictions. The Kansas regulations also meet or exceed all restrictions or conditions found in 50 CFR 21.29(j). Therefore, the Service proposes to add Kansas to the list of States already participating in the joint Federal/State falconry permit system, which will permit the practice of falconry in Kansas.

Determination of Effects

The Department of the Interior (Department) has determined that this is not a major rule under Executive Order 12291 and certifies that this proposed rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule does not contain any new or additional information collection requirements which require approval by the office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* In accordance with Executive order No. 12630, the Service has determined that the proposed rules have no potential taking implications for private property as defined in the executive order. In addition, the Regulatory Flexibility Act does not apply to this action since the Department anticipates very few falconers in Kansas and approval of these rules have minimal impact on the economy in the State. Approximately 3,000 falconers presently hold permits to practice falconry throughout the United States and it is estimated that 20 to 25 people would apply for falconry permits in Kansas, an activity covered by OMB Approval Number 1018–0022.

A finding of no significant impact for this proposed regulation was based on Environmental Assessments on the regulations for falconry permits prepared in 1976, 1982, and 1988 by the Service's Office of Migratory Bird Management. The Service issued Findings of No Significant Impact for these regulations. This proposed rule will not change the existing regulations; rather, it will amend the section of the regulations to add Kansas to the list of States already participating in the Joint Federal/State falconry permit system. Copies of the environmental assessments and the finding of no significant impact statements are available for public inspection in the Division of Law Enforcement, room 500, Arlington Square, 4401 North Fairfax Drive, Arlington, VA. Single copies may be obtained from the Service's Office of Migratory Bird Management, room 634, Arlington Square Building, 4401 North Fairfax Drive, Arlington, VA.

Author

The principal author of this proposed rule is Special Agent G. Adam O'Hara, Division of Law Enforcement, U.S. Fish and Wildlife Service, Washington, DC.

List of Subjects in 50 CFR Part 21

Exports, Imports, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, part 21, subchapter B, chapter I of title 50, Code of Federal Regulations, is proposed to be amended as follows:

PART 21—MIGRATORY BIRD PERMITS

1. The authority citation for part 21 continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 704); sec. 3(h)(3), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

§ 21.29 [Amended]

2. Section 21.29(k) would be amended by adding to the list of States in alphabetical order the name "Kansas" preceded by an asterisk.

Dated: June 15, 1990.

Richard N. Smith,

Acting Director.

[FR Doc. 90–26746 Filed 11–13–90; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 55, No. 220
Wednesday, November 14, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Loan and Purchase Programs: Transportation Assistance Refunds

AGENCY: Commodity Credit Corporation (CCC), Department of Agriculture (USDA).

ACTION: Notice.

SUMMARY: CCC has determined that certain producers will be reimbursed certain increased price support loan proceeds which were repaid by producers who acquired grain which had been pledged as collateral for FCC drive support loans through the exchange of commodity certificates on or after May 15, 1986.

DATES: November 14, 1990.

ADDRESSES: Director, Cotton, Grain and Rice Price Support Division, USDA–ASCS room 3630, South Building, P.O. box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Director, Cotton, Grain and Rice Price Support Division, USDA-SACS, P.O. box 2415, Washington, DC 20013.

Refund of Transportation Assistance

A review of the manner in which county Agricultural Stabilization and Conservation Service offices have implemented the regulations regarding the exchange of commodity certificates indicates that not all such offices properly followed the procedures which were applicable to those instances when producers acquired grain which had been: (1) Pledged as collateral for CCC price support loans; (2) subsequently moved to another location pursuant to an agreement with CCC to increase the applicable price support level for such grain (*i.e.* "transportation assistance"); and (3) thereafter acquired through the use of commodity certificates. Although the applicable procedure provided that producers were required to refund the transportation assistance prior to the acquisition of the grain through the exchange of commodity certificates, this procedure was not uniformly applied. Accordingly, in order to insure that all producers are treated equitably it has been determined that CCC will reimburse producers in an amount equal to the amount of the transportation assistance which was refunded on or after May 15, 1986, by producers, who in accordance with 7 CFR PART 1470, Affected grain which had been pledged as CCC price support collateral. Affected producers must file a written request with their local county Agricultural Stabilization and Conservation Service office within 60 days from the date of this notice.

Producers who repaid such assistance when the CCC price support loan was repaid in a typical cash only (non-certificate) transaction are not affected by this action.

Authority: 15 U.S.C. 714b and 714c, 7 U.S.C. 1423.

Signed at Washington, DC November 7, 1990.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 90-26799 Filed 11-13-90; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region: Idaho, Montana, North Dakota, and portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR part 217. This action is necessary to implement the Secretary of Agriculture's interim rule amending the Forest Service administrative appeal procedures, which was signed on February 26, 1990, and was published in the **Federal Register** on March 6, 1990. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers wil begin with decisions subject to appeal that are made on or after November 2, 1990. The list of newspapers will remain in effect until October 1991, when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: John Hughes; Regional Appeals Coordinator; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone: (406) 329–3200.

SUPPLEMENTARY INFORMATION: On February 26, 1990, the Secretary of Agriculture signed an interim rule amending the administrative appeal procedures 36 CFR part 217 of the Forest Service to require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing, and to those known to be interested and affected by a specific decision.

The legal notice is to identify: The decision by title and subject matter, the date of the decision, the name and title of the official making the decision, and how to obtain copies of the decision. In addition, the notice is to state that the date the appeal period begins is the day following publication of the notice.

In addition to the principal newspaper listed for each unit, some Forest Supervisors and District Rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana:

The Missoulian, Missoula, Montana
Great Falls Tribune, Great Falls, Montana
The Billings Gazette, Billings, Montana

Regional Forester decisions in Northern Idaho and Eastern Washington:

The Spokesman Review, Spokane, Washington

Regional Forester decisions in North Dakota:
Bismarck Tribune, Bismarck, North Dakota

Regional Forester decisions in South Dakota:
Rapid City Journal, Rapid City, South Dakota

Montana National Forests

Beaverhead National Forest

Beaverhead Forest Supervisor decisions:
Montana Standard, Butte, Montana

Madison District Ranger decisions:
Montana Standard, Butte, Montana

Newspaper providing additional notice of Madison District Ranger decisions:
Bozeman Chronicle, Bozeman, Montana

Bitterroot National Forest

Bitterroot Forest Supervisor decisions:
Ravalli Republic, Hamilton, Montana

Newspaper providing additional notice of Bitterroot Forest Supervisor decisions:
Idaho County Free Press, Grangeville, Idaho

West Fork District Ranger decisions:
Ravalli Republic, Hamilton, Montana

Newspaper providing additional notice of West Fork District Ranger decisions:
Idaho County Free Press, Grangeville, Idaho

Clearwater National Forest

Clearwater Forest Supervisor decisions:
Lewiston Morning Tribune, Lewiston, Idaho
Clearwater Tribune, Orofino, Idaho

Pierce District Ranger decisions:
Clearwater Progress, Kamiah, Idaho

Palouse District Ranger decisions:
Idahonian, Moscow, Idaho

North Fork District Ranger decisions:
Clearwater Tribune, Orofino, Idaho
Idahonian, Moscow, Idaho
Missoulian, Missoula, Montana

Lochsa District Ranger decisions:
Missoulian, Missoula, Montana

Custer National Forest

Custer Forest Supervisor decisions in North Dakota:
Bismarck Tribune, Bismarck, North Dakota

Custer Forest Supervisor decisions in South Dakota:
Rapid City Journal, Rapid City, South Dakota

Custer Forest Supervisor decisions in Montana:
Billings Gazette, Billings, Montana

Sheynne District Ranger decisions:
Fargo Forum, Fargo, North Dakota

Beartooth District Ranger decisions:
Carbon County News, Red Lodge, Montana

Sioux District Ranger decisions:
Nation's Center News, Buffalo, South Dakota
Ekalka Eagle, Ekalaka, Montana

Ashland District Ranger decisions:
Billings Gazette, Billings, Montana

Grand River District Ranger decisions:
Lemmon Leader, Lemmon, South Dakota

Medora District Ranger decisions:
Dickinson Press, Dickinson, North Dakota

McKenzie District Ranger decisions:
Williston Daily Heard, Williston, North Dakota

Deerlodge National Forest

Deerlodge Forest Supervisor decisions:
Montana Standard, Silver Bow County, Montana,

Butte District Ranger decisions:
Montana Standard, Silver Bow County, Montana

Jefferson District Ranger decisions:
Montana Standard, Silver Bow County, Montana

Philpsburg District Ranger decisions:
Montana Standard, Silver Bow County, Montana

Flathead National Forest

Flathead Supervisior decisions:
The Daily Inter Lake, Kalispeel, Montana Only in the Sunday Edition

All District Rangers' decisions:
The Daily Inter Lake, Kalispell, Montana Only in the Sunday Edition

Gallatin National Forest

Gallatin Forest Supervisor decisions:
Bozeman Daily Chronicle, Bozeman, Montana
Billings Gazette, Billings, Montana

Hebgen Lake District Ranger decisions:
Bozeman Daily Chronicle, Bozeman, Montana
Billings Gazette, Billings, Montana

Newspaper providing additional notice of Hebgen Lake District Ranger decisions:
West Yellowstone News, West Yellowstone, Montana

Livingston District Ranger decisions:
Bozeman Daily Chronicle, Bozeman, Montana
Billings Gazette, Billings, Montana

Newspaper providing additional notice of Livingston District Ranger decisions:
Livingston Enterprise, Livingston, Montana

Gardiner District Ranger decisions:
Bozeman Daily Chronicle, Bozeman, Montana
Billings Gazette, Billings, Montana

Newspaper providing additional notice of Gardiner District Ranger decisions:
Livingston Enterprise, Livingston, Montana

Big Timber District Ranger decisions:
Bozeman Daily Chronicle, Bozeman, Montana
Billings Gazette, Billings, Montana

Newspaper providing additional notice of Big Timber District Ranger decisions:
Big Timber Pioneer, Big Timber, Montana

Helena National Forest

Helena Forest Supervisor decisions:
Independent Record, Helena, Montana

Helena District Ranger decisions:
Independent Record, Helena, Montana

Idaho Panhandle National Forests

Idaho Panhandle Forest Supervisor decisions:
Spokesman Review, Spokane, Washington

Newspaper providing additional notice of Idaho Panhandle Forest Supervisor decisisons:
Coeur d'Alene Press, Coeur d'Alene, Idaho

Idaho Panhandle District Ranger decisions:
Spokesman Review, Spokane, Washington

Newspaper providing additional notice of Idaho Panhandle District Ranger decisions:
Coeur d'Alene Press, Coeur d'Alene, Idaho

Kootenai National Forest

Kootenai Forest Supervisor decisions:
Western News, Libby, Montana
Tobacco Alley News, Eureka, Montana
Sanders County Ledger, Thompson Falls, Montana

Newspaper providing additional notice of Kootenai Forest Supervisor decisions:
Bonners Ferry Herald, Bonners Ferry, Idaho

Rexford District Ranger decisions:
Tobacco Valley News, Eureka, Montana
Western News, Libby, Montana

Fortine District Ranger decisions:
Tobacco Valley News, Eureka, Montana

Newspaper providing additional notice of Fortine District Ranger decisions:
Western News, Libby, Montana
Daily Inter Lake, Kalispell, Montana

Three Rivers District Ranger decisions:
Western News, Libby, Montana

Newspaper providing additional notice of Three Rivers District Ranger decisions:
Bonners Ferry Herald, Bonners Ferry, Idaho

Libby District Ranger decisions:
Western News, Libby, Montana

Fisher River District Ranger decisions:
Western News, Libby, Montana

Cabinet District Ranger decisions:
Sanders County Ledger, Thompson Falls, Montana

Lewis and Clark National Forest

Lewis and Clark Forest Supervisor decisions:
Great Falls Tribune, Great Falls, Montana

Lewis and Clark District Ranger's decisions:
Great Falls Tribune, Great Falls, Montana

Newspaper providing additional notice of Lewis and Clark District Ranger's decisions:

Rocky Mountain District Ranger decisions:
Choteau Acantha, Choteau, Montana
Sun Valley Sun, Augusta, Montana
Glacier Reporter, Browning, Montana

Judith District Ranger decisions:
Judith Basin Press, Stanford, Montana
News Argus, Lewistown, Montana
River Press, Fort Benton, Montana
Independent Record, Helena, Montana
Billings Gazette, Billings, Montana
Meagher County News, White Sulphur Springs, Montana
Havre Daily News, Havre, Montana
The Eagle, Stockett, Montana

Musselshell District Ranger decisions:
Times Clarion, Harlowtown, Montana
Billings Gazette, Billings, Montana

Kings Hill District Ranger decisions:
Meagher County News, White Sulphur Springs, Montana
The Eagle, Stockett, Montana

Lolo National Forest

Lolo Forest Supervisor decisions:
Missoulian, Missoula, Montana

Missoula, District Ranger decisions:
Missoulian, Missoula, Montana

Ninemile District Ranger decisions:
Missoulian, Missoula, Montana

Seeley Lake District Ranger decisions:
Missoulian, Missoula, Montana

Plains/Thompson Falls District Ranger decisions:

Sanders County Ledger, Thompson Falls, Montana
Superior District Ranger decisions:
Mineral Independent, Plains, Montana

Nezperce National Forest

Nezperce Forest Supervisor decisions:
Idaho County Free Press, Grangeville, Idaho
Nezperce District Ranger's decisions:
Idaho County Free Press, Grangeville, Idaho
Newspaper providing additional notice of Nezperce District Ranger's decisions:
Selway District Ranger decisions:
Clearwater Progress, Kamiah, Idaho.

Dated: November 2, 1990.

John M. Hughes,

Deputy Regional Forester.

[FR Doc. 90-26780 Filed 11-13-90; 8:45 am]

BILLING CODE 3410-11-M

Newspapers Used for Publication of Legal Notice of Appealable Decisions for Intermountain Region, Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Correction.

SUMMARY: This notice corrects the information previously published in a notice that appeared in the Federal Registerof October 5, 1990, (55 FR 40900) listing the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR part 217. The earlier document failed to list the newspapers for the Salmon, Sawtooth, and Targhee National Forests. This notice gives a listing of the newspapers that will be used on those forests and also corrects the effective date.

DATES: Publication of legal notices in the listed newspapers in the October 5, 1990, (55 FR 40900) as well as this notice will remain in effect until April 30, 1991, or until superceded by subsequent notice will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: K. Dale Torgerson, Regional Appeals/and Litigation Manager, Intermountain Region, 324 25th Street, Ogden, UT 84401, phone (801) 625-5279.

SUPPLEMENTARY INFORMATION: The newspapers to be for the Salmon, Sawtooth, and Targhee National Forests are as follows:

Salmon National Forest

Salmon Forest Supervisor decisions:
The Recorder-Herald, Salmon, Idaho
Cobalt District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
North Fork District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Leadore District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
Salmon District Ranger decisions:
The Recorder-Herald, Salmon, Idaho

Sawtooth National Forest

Sawtooth Forest Supervisor decisions:
The Times News, Twin Falls, Idaho
Burley District Ranger decisions:
South Idaho Press, Burley, Idaho
Twin Falls District Ranger decisions:
The Times News, Twin Falls, Idaho
Ketchum District Ranger decisions:
Wood River Journal, Hailey, Idaho
Sawtooth National Recreation Area:
Challis Messenger, Challis, Idaho
Fairfield District Ranger decisions:
The Times News, Twin Falls, Idaho

Targhee National Forest

Targhee Forest Supervisor decisions:
The Post Register, Idaho Falls, Idaho
Dubois District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Island Park District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Ashton District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Palisades District Ranger decisions:
The Post Register, Idaho Falls, Idaho
Teton Basin District Ranger decisions:
The Post Register, Idaho Falls, Idaho.

Dated: November 21, 1990.

Robert C. Joslin,

Deputy Regional Forester.

[FR Doc. 90-26804 Filed 11-13-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 489]

Termination of Foreign-Trade Subzones 84A and 84B, Harris County, TX

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign Trade Zones Board has adopted the following order:

Whereas, on July 15, 1983, the Foreign-Trade Zones Board issued a grant of authority to the Port of Houston Authority authorizing the establishment of Foreign-Trade Zone 84 in Harris County, Texas, that included sites at the pipe finishing and heat treating plant of Texas Steel Conversion, Inc. (TSC), and the drilling tools and equipment facility of Hughes Tool Company (HTC);

Whereas, the two sites were later converted to subzones (Subzone 84A-TSC; Subzone 84B-HTC) (Board Order 424, 54 FR 3516);

Whereas, during 1989, the Port of Houston Authority requested voluntary termination of Subzone Nos. 82A and 84B (FTZ Docket 5-89 and FTZ Docket 22-89), because zone procedures are no longer needed at the facilities; and,

Whereas, the requests have been reviewed by the FTZ Staff and the Customs Service, and approval has been recommended;

Now, therefore, the Foreign-Trade Zones Board terminates the subzone status of Subzone Nos. 84A and 84B effective this date.

Signed at Washington, DC, this 5th day of November 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90-26809 Filed 11-13-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-351-605]

Frozen Concentrated Orange Juice From Brazil; Final Results and Termination in Part of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results and termination in part of antidumping duty administrative review.

SUMMARY: On September 10, 1990, the Department of Commerce published the preliminary results and termination in part of the antidumping duty administrative review on frozen concentrated orange juice from Brazil. The review covers four producers and/or exporters of this merchandise to the United States and the period May 1, 1988 through April 1989. Because Frutropic S.A., Citrovale S.A, and Branco Peres Citrus S.A. withdrew their requests for review, we are terminating the review with respect to those firms.

We gave interested parties an opportunity to comment on our preliminarily results. We received comments from the petitioners and two respondents. After consideration of all comments, the final results of review remain unchanged from those presented in our preliminary results.

EFFECTIVE DATE: November 14, 1990.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION

Background

On September 10, 1990, the Department of Commerce (the Department) published in the Federal Register (55 FR 37256) the preliminary results of its administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil (52 FR 16426; May 5, 1987). Because Frutropic S.A., Citrovale S.A., and Branco Peres Citrus S.A. subsequently withdrew their requests for review, the Department is terminating the review of their sales for this period. The Department has now completed that review for the remaining companies in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of frozen concentrated orange juice (FCOJ) from Brazil. During the review period, such merchandise was classifiable under item 165.29 of the Tariff Schedules of the United States (TSUS). The merchandise is currently classifiable under item 2009.11.00 of the Harmonized Tariff Schedule (HTS). The TSUS and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period May 1, 1988 through April 30, 1989 and four producers and/or exporters of Brazilian FCOJ to the United States: Citrosuco Paulista S.A., Cargill Citrus Ltda., Coopercitrus Industrial Frutesp S.A., and Montecitrus Trading S.A.

The review of this period with respect to Frutropic S.A., Citrovale S.A., and Branco Peres Citrus S.A. is being terminated.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received timely comments from the petitioners, Florida Citrus Mutual, Alcoma Packing Co., Berry Citrus Products, Inc., Citrus Belle, Inc., B & W Canning Co., Caulkins Indiantown Citrus Co., and Citrus World, Inc., and two respondents, Citrosuco Paulista, S.A. (Citrosuco) and Coopercitrus Frutesp (Frutesp).

Comment 1: Petitioners argue that the Department erred in assuming that full pass-through exists for ICM and IPI taxes incurred on sales of FCOJ in the home market. The Department did not develop a methodology for measuring the degree to which the tax payments are passed on to home market customers in the form of higher prices. Therefore, it should either require the respondents to provide an acceptable methodology for measuring the rate of tax pass-through, or assume that ICM and IPI taxes are not passed through and disallow this adjustment to foreign market value.

Conversely, Frutesp claims that, consistent with its long-standing practice, the Department does not attempt to measure pass through, but calculates, based on the indirect foreign tax forgiven, the analogous amount to be added to the U.S. price and then makes necessary circumstances of sale adjustments. The Department correctly used this methodology in its preliminary results.

Department's Position: We disagree with petitioners. Regarding taxes imposed in the home market, section 772(d)(C) of the Tariff Act states, in part, "(t)o the extent that such taxes are added to or included in the price". We interpret this phrase to mean to the extent that the tax was charged and actually paid on home market sales. If these circumstances are met, we adjust for the full amount of the tax.

Comment 2: Petitioners argue that the Department failed to impute a credit expense for "time on the water" for purchase price transactions. Furthermore, the credit expense imputed for ESP transactions should not be based on the "overnight" borrowing rate, but rather on the "ACC/ACE" borrowing rate since the latter rate is the best representation of Brazilian interest rates available to the Brazilian FCOJ industry.

Fruteap argues that "time on the water" credit expense is an imputed indirect sales expense and indirect sales expenses are not adjusted for in purchase price transactions.

Department's Position: We disagree with petitioner. Section 773(a)(4)(B) of the Tariff Act allows adjustments for differences in circumstances of sale for foreign market value. The bases for these adjustments consist of direct selling expenses and offsets for commissions and offsets for indirect selling expenses that are deducted from exporter's sales price. It is the Department's practice to impute and deduct inventory carrying expense, or any other indirect selling expense from foreign market value only in comparisons with exporter's sales price (see, 19 CFR 353.56(b)).

We verified that virtually all of the firms participating in this review deposited receivables in "overnight" accounts. We found very little evidence of "ACC/ACE" operations. Therefore, in cases where firms did not use "ACC/ACE" operations, we used the "overnight"rates as the best representation of the cost of credit for FCOJ-exporting firms.

Comment 3: Petitioners argue that cash deposits should be required for nonreviewed firms and for new exporters.

Department's Position: We agree that, in this case, nonreviewed firms that are not new shippers should be required to post a cash deposit; however, we disagree that a cash deposit should be collected on future shipments by a new exporter. It is the Department's practice to require a cash deposit from nonreviewed firms at the rate established in the final results of the last administrative review or the antidumping duty order, as applicable (*see*, 55 FR 26721; June 29, 1990, and 52 FR 16426; May 5, 1987, respectively).

We will not require a cash deposit for future entries of this merchandise from a new exporter, not covered in this administrative review or in the original investigation, whose first shipments occurred between May 1, 1988 and April 30, 1989, because the highest margin found for a responding firm with shipments in the current review period is *de minimis* (see, Elemental Sulfur from Canada (50 FR 37889, September 18, 1985) and Certain Dried Heavy Salted Codfish from Canada (52 FR 42702, November 6, 1987.)

We found *de minimis* dumping margins for all the firms reviewed in this administrative review. Therefore, it would be inappropriate for the Department to require a cash deposit from new firms.

Comment 4: Petitioners argue that pulp wash should be included within the scope of the order because pulp wash and orange solids are the same class or kinds or merchandise as FCOJ.

Department's Position: We disagree. We considered and rejected this argument (*see, Scope Decision*, October 25, 1989).

Comment 5: Petitioner argues that the Department erroneously failed to impute a credit expense on Citrosuco's U.S. sales.

Department's Position: We disagree. We did, in fact, impute a credit expense for Citrosuco's U.S. sales. We calculated the credit expense by multiplying Citrosuco's annual borrowing rate by the unit price times the number of days between the date of sale and the date of receipt of payment divided by 365. These calculations were made available to petitioner's counsel at disclosure.

Comment 6: Petitioners argue that the proper third-country market for the calculation of Citrosuco's foreign market

value is Germany, not Canada. Despite differences in the physical characteristics of the merchandise sold in the U.S. and German markets, these differences do not result in differences in the cost of manufacture for the two types of FCOJ.

Citrosuco argues that the Department verified that Canada is the only third market receiving identical product. Therefore, the Department correctly used Citrosuco's sales to Canada for calculation of foreign market value.

Department's Position: We disagree with petitioner. We chose Canada because the product sold to Canada was identical to that sold to the United States. Conversely, we verified that the product sold in Germany scored below the minimum allowable standards for color, flavor and clarity established by the State of Florida and the United States Department of Agriculture. Moreover, we determined that the volume of sales to Canada was adequate for comparison purposes. This conforms to the Department's regulatory hierarchy for determining an adequate third-country market.

Comment 7: Petitioners argue that the taxes paid on Cacitrus' home market sales must be adjusted to reflect the effects of Brazilian hyperinflation before being added to the U.S. price.

Department's Position: We disagree. Cacitrus reported three taxes paid on sales of the merchandise in the home market. The ICM and Finsocial taxes were not paid on export sales. The PIS tax was paid on all sales but the amount collected for export sales was either credited against income taxes owed or refunded where the credit exceeded income taxes owed. Section 772(d) of the Tariff Act requires that indirect taxes imposed upon home market merchandise that have not been collected on exported merchandise by reason of its exportation to the United States be added to the U.S. price to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation.

To account for these taxes, we applied all three tax rates to U.S. price. The foreign market value, including the home market taxes, was converted into U.S. dollars using the exchange rate in effect on the date of the U.S. sale. The hyperinflation issue was addressed in the final results of the last administrative review (*see*, Frozen Concentrated Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review; 55 FR 26721, June 29, 1990).

Comment 8: Petitioners argue that the Department should not permit Cacitrus a difference-in-merchandise adjustment for the addition of a preservative to the FCOJ.

Department's Position: We disagree. We have considered and rejected this argument in a previous review (*see*, Frozen Concentrated Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review; 55 FR 26721, June 29, 1990).

Comment 9: Petitioners are concerned about the potential for "middleman dumping" through intermediate trading companies.

Department's Position: For the calculation of Montecitrus' foreign market value and U.S. price, we used the price at which Montecitrus sold the product to an unrelated offshore trading company, which in turn resold the product to third-country and U.S. customers.

All Montecitrus' reported sales to the unrelated offshore trading company were at or above the Minimum Export Price established by the Government of Brazil. Resales of Montecitrus FCOJ by the unrelated offshore trading company during the period of review were at prices greater than the Minimum Export Price at which they were purchased.

Comment 10: Citrosuco argues that the Department erred in failing to impute and deduct inventory carrying expenses from foreign market value for purposes of comparison with U.S. purchase price transactions.

Department's Position: We disagree. Inventory carrying expenses are indirect sales expenses and indirect sales expenses are not dealt with in purchase price transactions (*see*, Department's response to Comment 2).

Final Results of the Review

After analysis of the comments received, the final results of our review are the same as those presented in the preliminary results of review, and we determine that the following weighted-average margins exist for the period May 1, 1988 through April 30, 1989:

Manufacturer/exporter	Margin (percent)
Citrosuco Paulista S.A.	0.06
Cargill Citrus Ltda.	zero
Coopercitus Industrial Frutesp S.A.	zero
Montecitrus Trading S.A.	zero

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a) (1) of the Tariff Act, because there was no margin for Cargill Citrus Ltda., Coopercitrus Industrial Frutesp S.A. and Montecitrus Trading S.A., and the margin for Citrosuco Paulista S.A. was *de minimis*, no cash deposit will be required for these manufacturers. For shipments from the remaining known manufacturers or exporters not covered by this review, the cash deposit will continue to be at the rate established in the final results of the last administrative review (55 FR 26721; June 29, 1990) or the antidumping duty order (52 FR 16426; May 5, 1987), as applicable. For any future entries of this merchandise from a new exporter not covered in this or prior reviews, whose first shipments occurred between May 1, 1988 and April 30, 1989, and who is unrelated to any reviewed firm, a cash deposit shall not be required. These deposit requirements/waivers are effective for all shipments of Brazilian FCOJ entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a) (1) of the Tariff Act (19 U.S.C. 1675(a) (1)) and 19 CFR 353.22.

Dated: November 6, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-26808 Filed 11-13-90; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app., notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet Wednesday, December 5, 1990, from 8:15 a.m. to 5 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The discussion on NIST Budget, scheduled to begin at 3:30 p.m. and end at 5 p.m. on December 5, 1990, will be closed.

DATES: The meeting will convene December 5, 1990, at 8:15 a.m. and will adjourn at 5 p.m.

ADDRESSES: The meeting will be held in Lecture Room A, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Dale E. Hall, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 20, 1990, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with section 552(b)(9)(B) of title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: November 7, 1990.

John W. Lyons,

Director.

[FR Doc. 90-26850 Filed 11-13-90; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Teleconference

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council will hold a Teleconference on November 15, 1990, at 1 p.m. The Council will consider a revised incentive program to reduce the bycatch of halibut and crab in the Bering Sea and Aleutians and Gulf of Alaska ground fish fisheries in 1991. The Council will also consider tentative approval of a program proposed by the National Marine Fisheries Service (NMFS) for submission for Secretary of Commerce review. The NMFS program would revise the vessel penalty box program proposed earlier, but found to be unimplementable for 1991. The public will have the opportunity to comment on the revised program at the December 3-7, 1990, Council meeting and to comment directly to the Secretary of Commerce.

For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: November 7, 1990.

David S. Cretin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-26789 Filed 11-13-90; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity option contract.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in options on three-month European Currency Unit (ECU) interest rate futures. For the proposed futures option contract, the CBT's application also contains a petition for an exemption from the volume requirement for the underlying futures contract specified in the Commission's rules. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by the Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before December 14, 1990.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CBT option on three-month ECU interest rate futures.

FOR FURTHER INFORMATION CONTACT: Please contact Steve Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, at (202) 254-7303.

SUPPLEMENTAL INFORMATION: In addition to requiring comment on the terms and conditions of the proposed option contract, the Division also is requesting comment of the merits of a petition filed by the CBT pursuant to § 33.11 of the Commission's rules. The petition requests exemptive relief from the trading volume tests set forth in the Commission's rules. In that regard, § 33.4(a)(5)(iii) of the Commission's rules requires, as a condition of designation for proposed options on futures contracts, that the Exchange demonstrate that:

> * * * the volume of trading in all contract months for futures delivery of the commodity for which the option designation is sought has averaged at least 3,000 contracts per week on such board of trade for the 12 months preceding the date of application for option contract market designation, or alternatively, that such futures contract market, based on its trading history, substantially meets this total volume requirement in less than the 12 months preceding the date of application * * *.

The Division notes that the CBT's three-month ECU interest rate futures contract which will underlie the proposed option contract currently is pending Commission approval. Therefore, the futures trading volume requirement has not been met for the proposed option contract.

As discussed in more detail in previous **Federal Register** notices (*see*, for example, 52 FR 41755, October 30, 1987), the Commission has stated that it believes that, at the minimum, a petition for exemption from the trading volume tests may be granted only if the underlying cash market for the commodity exhibits a high level of liquidity. Cash market liquidity would be evidenced by extensive and frequent trading activity, a large number of participants in the market, and tight bid/ask spreads. Further, the terms of the futures contract should ensure the opportunity for arbitrage and close alignment between the cash and futures markets. In combination, the liquidity of the underlying cash market and the opportunities for arbitrage are major factors in determining the extent to which a less liquid futures contract could be disrupted by the exercise of options and the alternatives available to those exercising the options. In addition, to enable position holders to evaluate accurately the value of their option positions in the absence of active trading in the underlying futures

contract, the Commission stated its belief that there should exist an accurate and widely available price series that would be representative of values of the commodity underlying the futures.[1]

In requesting comment on the CBT's proposed option on three-month ECU interest-rate futures, the Division is seeking specific comment on whether it should grant the CBT's request for an exemption from the requirements of § 33.4(a)(5)(iii) for the proposed contract. Commenters are requested to consider the issues noted above. Also, commenters are requested to address whether, if the petition were granted, additional surveillance activities and expiration reviews, particularly at the outset of trading, should be implemented by the CBT for the proposed contract.

Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CBT in suppport of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contract or the related petition, or with respect to other materials submitted by the CBT in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC, 20581, by the specified date.

Issued in Washington, DC, on September 8, 1990.

Gerald Gay,

Director, Division of Economic Analysis.

[FR Doc. 90–26806 Filed 11–13–90; 8:45 am]

BILLING CODE 6351–01–M

[1] The Division notes that, in those cases where the underlying futures contract fails to develop a sufficient level of trading volume, the option on the futures contract would become subject to the delisting criteria set for in § 5.4 of the Commission's rules. Specifically, if the volume in the underlying futures contract falls below an average weekly volume of 1,000 contracts for all months listed for the six-month period following designation of the option contract, no new option contract months may be listed until the volume in the underlying futures contract rises above an average of 2,000 contracts per week for all trading months listed for a period of three consecutive months.

Coffee, Sugar and Cocoa Exchange, Inc., Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Coffee, Sugar & Cocoa Exchange, Inc., (CSCE) applied for designation as a contract market in Euro-differential coffee futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before December 14, 1990.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

Reference should be made to the CSCE Euro-differential coffee futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, at (202) 254–7303.

SUPPLEMENTAL INFORMATION: The proposed Euro-differential coffee futures contract provides for the delivery in Europe of arabica coffee which meets the quality standards for the CSCE's existing coffee "C" futures contract. All deliveries must be made in warehouses at any of four European ports, all at par: Antwerp, Belgium; Bremen, Germany; Hamburg, Germany; or Amsterdam/Rotterdam, the Netherlands. The price of the proposed contract will be quoted as the difference between the price of the coffee "C" futures contract, which provides for delivery in New York City and New Orleans, and the price of coffee which is to be delivered at one of these four European ports. The price of a delivered lot of coffee under the proposed contract shall be the price of a coffee "C" futures contract adjusted by the positive or negative differential price of the proposed contract. The par growths and schedule of price differentials for non-par growths will be the same as those for the coffee "C" contract. Likewise, the schedules of discounts for imperfections and age of the certificate will be the same as those for the coffee "C" contract.

The proposed futures contract can be traded either separately or in conjunction with existing coffee "C" futures contract until the delivery notice period. Once the delivery notice period begins, those traders with Euro-differential futures contract positions are required to have identical coffee "C" futures contract positions. Thus, a short trader in this proposed differential contract who wishes to make delivery must also be short an identical amount in the coffee "C" contract. Such a trader must make delivery at one of the European delivery points under the terms of the proposed contract and cannot choose to make delivery at a delivery point in the United States under the terms and conditions of the coffee "C" contract. Similarly, to take delivery in Europe, a long trader in the proposed contract must also hold an identical long position in the coffee "C" contract but will not be obliged to take delivery in the United States under the terms of the latter contract.

In its submission, the Exchange stated:

> The Euro-Differential contract will satisfy the need to provide arabica hedging capability to the European market. It will also maintain the liquidity of the "C" contract without rising its existing market or affecting the pure coffee price discovery function. In addition, the new contract will allow market participants to continually re-assess the differential, a unique new concept in futures trading, which is very advantageous given the volatility of currencies and freight rates.

Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CSCE in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)),

except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materals should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contract, or with respect to other materials submitted by the CSCE in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC on November 8, 1990.

Gerald Gay,

Director, Division of Economic Analysis.

[FR Doc. 90–26807 Filed 11–13–90; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee.

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing a correction to the Civilian Personnel Per Diem Bulletin Number 152, previously published in the **Federal Register**, Vol. 55 No. 195, pages 41123 to 41127, effective 1 October 1990. The correction is that the per diem rate prescribed for the Island of Kauai, Hawaii should read $148.

EFFECTIVE DATE: October 1, 1990.

Dated: November 7, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–26743 Filed 11–13–1990; 8:45 am]

BILLING CODE 3810–01–M

Defense Intelligence Agency Defense Intelligence College.

AGENCY: Defense Intelligence Agency Defense Intelligence College; Meeting

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Defense Intelligence College Board of Visitors has been scheduled as follows:

DATES: Tuesday, 27 November 1990, and Wednesday, 28 November 1990, from 0900 to 1600, and Thursday, 29 November 1990, from 0900 to 1130.

ADDRESS: The DIAC, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Robert L. De Gross, Acting Commandant, DIA Defense Intelligence College, Washington, DC 20340–5485 (202/373–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Defense Intelligence College.

Dated: November 7, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–26744 Filed 11–13–90; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0830, Thursday and Friday, 13–14 December 1990.

ADDRESSES: The meeting will be held at Headquarters, 6th U.S. Army, Command Conference Facility, Bldg. 35, Keyes Ave & Lincoln Blvd., The Presidio, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such program as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: November 7, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–26741 Filed 11–13–90; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group of Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, 13 December 1990.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2940 Presidential Drive, Suite 201, Fairborn Ohio.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, NY 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d)(1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

BEST COPY AVAILABLE

Dated: November 7, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-26742 Filed 11-1-90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Inland Waterways Users Board; Meetings

AGENCY: Corps of Engineers, Department of the Army.

ACTION: Notice of rescheduled open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting.

Name of Committee: Inland Waterways Users Board.

Date of Meeting: December 4, 1990.

Place: Executive Inn, 1 Executive Boulevard, Paducah, KY 42001 (Tel: (502) 443-8000).

Time: 8:30 a.m. to 5 p.m.

Proposed Agenda:

a.m. Session

8:30: Registration

Business Session

Administrative Announcements; Chairman's Call to Order; Executive Director's Comments; Approval of Prior Meeting Minutes

Presentation of Information to the Board

9:20: Trust Fund Analysis

9:45: Trust Fund Disbursements

10:15: Break

10:30: Investment Needs Assessment Phase 2 Results

11:30: Construction Projects Update

12: Lunch

p.m. Session

Ohio River Division Presentations

1: Olmsted Project Development Status and Schedule

2: Olmsted Cofferdam Test at Smithland

2:15 Ohio River System Modernization

2:45: Break

3: Public Comment Period

4:45 Other Business/Instructions to Board Staff

5: Adjourn

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Sanford, Jr., Headquarters, U.S. Army Corps of Engineers, CECW-P, Washington, DC 20314-1000 at (202) 272-0148.

Hugh F. Boyd III,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 90-26735 Filed 11-13-90; 8:45 am]

BILLING CODE 3710-92-M

Department of the Navy

Privacy Act of 1974; Amend Record Systems

AGENCY: Department of the Navy, DOD.

ACTION: Amend Record Systems.

SUMMARY: The Department of the Navy proposes to amend two existing record systems in its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The proposed actions will be effective on December 14, 1990, unless comments are received that would result in a contrary determination.

ADDRESSES: Send any comments to Mrs. Gwendolyn Aitken, Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000. Telephone (703) 694-2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy record system notices for records systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) were published in the **Federal Register** as follows:

51 FR 12908, Apr. 16, 1986
51 FR 18088, May 16, 1986 (DON Compilation changes follow)
51 FR 19884, Jun. 3, 1986
51 FR 30377, Aug. 26, 1986
51 FR 30393, Aug. 26, 1986
51 FR 45931, Dec. 23, 1986
52 FR 2147, Jan. 20, 1987
52 FR 2149, Jan. 20, 1987
52 FR 8500, Mar. 18, 1987
52 FR 15530, Apr. 29, 1987
52 FR 22871, Jun. 15, 1987
52 FR 45846, Dec. 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, Jun. 8, 1988
53 FR 25383, Jul. 6, 1988
53 FR 39409, Oct. 7, 1988
53 FR 41224, Oct. 20, 1988
54 FR 8322, Feb. 28, 1989
54 FR 14378, Apr. 11, 1989
54 FR 32682, Aug. 9, 1989
54 FR 40160, Sep. 29, 1989
54 FR 41495, Oct. 10, 1989
54 FR 43453, Oct. 25, 1989
54 FR 45781, Oct. 31, 1989
54 FR 48131, Nov. 21, 1989
54 FR 51784, Dec. 18, 1989
54 FR 52976, Dec. 26, 1989
55 FR 21910, May 30, 1990 (Navy Mailing Addresses)
55 FR 37920, Sep. 14, 1990
55 FR 42758, Oct. 23, 1990

The specific changes to the record systems being amended are set forth below, followed by the system notices, as amended, in their entirety. This notice is not within the purview of subsection (r) of the Privacy Act of 1974, as amended (5 U.S.C. 522a), which requires the submission of an altered system report.

Dated: November 7, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NO1070-2

System name:

Naval Attache Files (54 FR 52977, December 26, 1989)

Changes:

* * * * *

Exemptions claimed for this system:

Delete entire entry and substitute with "None."

* * * * *

NO1070-2

System name:

Naval Attache Files.

System location:

Chief of Naval Operations (OP-092L), The Pentagon, Washington, DC 20350-2000.

Categories of individuals covered by the system:

U.S. Navy and Marine Corps Officers nominated and/or assigned to duty in the Defense Attache System (DAS).

Categories of records in the system:

File contains records concerning the service and personal history of officers nominated and/or assigned to duty in the DAS and their dependents.

Authority for maintenance of the system:

National Security Act of 1974, as amended; 5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 503 and 6011; 44 U.S.C. 3101; and Executive Order 12356.

Purpose(s):

To determine suitability of personnel for security clearances and assignment to the Defense Attache System.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To the Department of State to determine suitability of personnel for security clearances and assignment to the Defense Attache System.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of record systems notices also apply to this record system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper files in folders stored in standard General Services Administration safes.

Retrievability:

Retrieved by name of officer.

Safeguards:

Records are stored in a controlled access area and are accessible only to a very limited number of authorized personnel with proper security clearance and demonstrated need for access.

Retention and disposal:

Records are opened on individuals when first nominated for attache duty, and retained until six months after completion of attache duty and then destroyed.

System manager(s) and address:

Chief of Naval Operations (OP-092L), The Pentagon, Washington, DC 20350-2000.

Notification procedure:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Operations (OP-092L), Pentagon, Washington, DC 20350-2000.

Record access procedures:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Operations (OP-092L), The Pentagon, Washington, DC 20350-2000.

The request should contain the full name and address of the subject individual.

Contesting record procedures:

The Department of the Navy rules for accessing records and for contesting contents and appealing initial agency determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

Record source categories:

Data is gained from the subjects of the file, Naval Military Personnel Command and Headquarters Marine Corps files of subject's fitness reports, Defense Investigative Service/Naval Investigative Service (DIS/NIS) background investigations and other sources who are familiar with the subject.

Exemptions claimed for the system:

None.

NO5527-1

System name:

Security Incident System (51 FR 18160, May 16, 1986)

Changes:

* * * * *

Categories of records in the system:

In line two, after the word "report" add "data sheets which contain information on victims and perpetrators, * * *".

Authority for maintenance of the system:

At end of entry, add "and Executive Order 9397."

Purposes:

In line two, delete the words "prosecution of military offenses" and substitute with "tracking and prosecuting offenses, counseling victims, * * *".

* * * * * *

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

In line one, after the word "files," add "computer, * * *".

* * * * * *

Safeguards:

Delete the entire entry and substitute with "Access provided on a need to know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access is controlled by password or other user code system."

Retention and disposal:

Delete the entire entry and substitute with "Maintained for five years and then destroyed."

* * * * * *

Notification procedure:

Delete the entire entry and substitute with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer or head of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of record systems notices.

Written requests should contain full name, social Security Number, and must be signed by the individual."

Record access procedures:

Delete the entire entry and substitute with "Individuals seeking access to records about themselves should address written inquiries to the Commanding Officer or head of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of record systems notices.

Written requests should contain full name, Social Security Number, and must be signed by the individual."

Contesting record procedures:

Delete the entire entry and substitute with "The Department of the Navy rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

* * * * * *

NO5527-1

System name:

Security Incident System.

System location:

Organizational elements of the Department of the Navy as indicated in the Directory of Department of the Navy mailing Addresses.

Categories of individuals covered by the system:

Individuals involved in or witnessing incidents requiring the attention of base, station, or activity security personnel.

Categories of records in the system:

Incident/complaint report, investigator's report, data sheets which contain information on victims and perpetrators, military magistrate's records, confinement records, traffic accident and violation records, traffic court file, citations to appear before U.S. Magistrate.

Authority for maintenance of the system:

5 U.S.C. 301; Departmental Regulations and Executive Order 9397.

Purpose(s):

Used by command legal personnel for tracking and prosecuting offenses, counseling victims, and other administrative actions; support of insurance claims and civil litigation, revocation of base, station, or activity driving privileges.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The Navy's "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of record systems notices apply to this system.

Policies and practices for storing, retrieving, assessing, retaining, and disposing of records in the system:

Storage:

File folders, card files, computer, punched cards, magnetic tape.

Retrievability:

Name, Social Security Number, case number, and organization.

Safeguards:

Access provided on a need to know basis only. Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access is controlled by password or other user code system.

Retention and disposal:

Maintained for five years and then destroyed.

System manager(s) and address:

Commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of record system notices.

Notification procedure:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer or head of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of record systems notices.

Written requests should contain full name, Social Security Number, and must be signed by the individual.

Record access procedures:

Individuals seeking access to records about themselves should address written inquiries to the Commanding Officer or head of the activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of record systems notices.

Written requests should contain full name, Social Security Number, and must be signed by the individual.

Contesting record procedures:

The Department of the Navy rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

Record source categories:

Individual concerned, other records of the activity, investigators, witnesses, correspondents.

Exemptions claimed for the system:

Parts of this system may be exempt under 5 U.S.C. 552a(j)(2) as applicable.

An exemption rule for this system has been published in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

[FR Doc. 90-26745 Filed 11-13-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Special Study Panel on Education Indicators, Meetings

AGENCY: Special Study Panel on Education Indicators, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the Special Study Panel on Education Indicators. This notice also describes the function of the Study Panel. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: December 10, 1990, 8:30 a.m. to 6 p.m. and December 11, 1990, 8:30 a.m. to 6 p.m.

ADDRESSES: Hyatt Regency—Bethesda, 1 Bethesda Metro Center, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Paul Mertins, National Center for Education Statistics, 555 New Jersey Avenue, NW., Washington, DC 20208-5650, (202) 219-1319.

SUPPLEMENTARY INFORMATION: The Special Study Panel on Education Indicators is established under section 406(g)(3) of the General Education Provisions Act (20 U.S.C. 1221e-1). The Study Panel is established to make recommendations concerning the determination of education indicators. The Study Panel advises the Commissioner of the National Center for Education Statistics on the development of indicators of the current state of the American education system. The meeting of the Study Panel is open to the public. The agenda includes the following items. December 10—Review of Study Panel's progress and discussion of workplan; reporting of working groups and panel discussion of indicators within six education issue areas; December 11—continued discussion of appropriate indicators for each issue area.

Records are kept of all Study Panel proceedings and are available for public inspection from 9 a.m. to 5 p.m. at the office of the Study Panel at the National Center for Education Statistics, 555 New Jersey Avenue, NW., room 518, Washington, DC 20208-5650.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90-26747 Filed 11-13-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER91-77-000, et al.]

Southern California Edison Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 6, 1990.

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Co.

[Docket No. ER91-77-000]

Take notice that on November 1, 1990, Southern California Edison Company ("Edison") tendered for filing a change of rate for scheduling and dispatching services under the provisions of Edison's agreements with various entities as embodied in their FERC Rate Schedules. Edison requests that the new rates for these services be made effective January 1, 1990. Edison states that copies of its filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: November 21, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Southwestern Public Service Co.

[Docket Nos. EL89-50-002, EL89-51-002, ER90-63-001, ER90-96-001, and ER90-195-001]

Take notice that on November 2, 1990, Southwestern Public Service Company tendered for filing its compliance refund report in these dockets.

Comment date: November 21, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Glassboro Cogeneration, Inc.

[Docket No. QF91-25-000]

On October 25, 1990, Glassboro Cogeneration Inc., c/o Synergics, Inc., 191 Main Street, Annapolis, Maryland 21401 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Glassboro, New Jersey. The facility will consist of a combustion turbine generator and a heat recovery boiler. The facility is also equipped with a duct burner for supplemental firing. Thermal energy recovered from the facility will be used for demestic hot water production and space heating and cooling purposes. The primary energy source will be natural gas. The net electric power production capacity will be 1,404 Kilowatts. Installation of the facility will begin on March 1, 1991.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Power & Light Co.

[Docket No. ER91-95-000]

Take notice that on November 2, 1990, Puget Sound Power & Light Company ("Puget") tendered for filing its average system cost rate filing, pursuant to 18 CFR 35.30(c) of the Commission's regulations, for the exchange period beginning January 30, 1990. Puget also tendered for filing a motion for hearing and for appointment of a joint state board to review average system cost rate, pursuant to rule 212 of the Commission's Rules of Practice and Procedure, 18 CFR. 385.212.

Comment date: November 21, 1990, in accordance with Standard Paragraph E end of this notice.

5. Arizona Public Service Co.

[Docket No. ER91-78-000]

Take notice that on November 1, 1990, Arizona Public Service Company ("APS") tendered for filing its notice of cancellation of the firm transmission service agreement between itself and Southern California Edison Company (APS-FERC Rate Schedule No. 80). APS states that the agreement has expired by its own terms and that no service is being provided with the corresponding Cholla 4 Layoff Agreement.

Comment date: November 21, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp Electric Operations

[Docket No. ER91-99-000]

Take notice that on November 5, 1990, PacifiCorp Electric Operations ("PacifiCorp") tendered for filing Revision No. 1 to Exhibit G, dated October 1, 1989 to the General Transfer Agreement between PacifiCorp and the Bonneville Power Administration ("Bonneville") (PacifiCorp Rate Schedule FERC No. 299). PacifiCorp requests that a waiver of the prior notice requirements of the Commission's regulations be granted and that an effective date of October 1, 1989 be assigned to this filing.

Comment date: November 21, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Nantahala Power and Light Co.

[Docket No. ER90-312-002]

Take notice that on November 2, 1990, Nantahala Power and Light Company tendered for filing in this docket its report detailing refunds paid to customers in accordance with the terms of the Commission's prior order in this proceeding.

Comment date: November 21, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Charles K. Gifford

[Docket No. ID-2512-000]

Take notice that on October 29, 1990, Charles K. Gifford (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act seeking authorization to hold the following positions:

Director, Boston Edison Company
Director, Massachusetts Mutual Life Insurance Company

Comment date: November 21, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. Enron Power Enterprise Corp.

[Docket No. EC91-1-000]

Take notice that on October 31, 1990, Enron Power Enterprise Corporation ("Enron Power") tendered for filing an application for authorization to transfer facilities pursuant to section 203 of the Federal Power Act and for waiver of part 33 of the Commission's regulations. Enron Power notes that the Commission previously (in Docket No. ER90-290-000) found rates to be just and reasonable in a power purchase agreement (the "Agreement") for the sale of power to New England Power Company from Enron Power's proposed gas-fired, combined-cycle, baseload generating facility in Milford, Massachusetts (the "Project"). Enron Power seeks approval under section 203 and a waiver of part 33 of the Commission's regulations, 18 CFR part 33, in connection with Enron Power's proposed transfer of the Agreement to an affiliated partnership in return for a limited partnership interest. The partnership has been established to facilitate financing the Project. The partnership would assume Enron Power's responsibilities to construct, own and operate the Project. An Enron Power affiliate is the general partner of the partnership.

Comment date: November 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26779 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-4602-001, et al.]

Amerada Hess Corp., et al.; Applications for Certificates and Abandonment of Service [1]

November 6, 1990.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 26, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-4602-001, E, Oct. 18, 1990	Amerada Hess Corporation, P.O. Box 2040, Tulsa, OK 74102.	Texas Gas Transmission Corporation, Lewisburg Field, Acadia and St. Landry Parishes, Louisiana.	Acreage acquired 10-1-88 from BP Exploration Inc.
CI90-155-000 (G-6271), F, Aug. 20, 1990.	Amerada Hess Corporation	Texas Gas Transmission Corporation, Lewisburg Field, Acadia and St. Landry Parishes, Louisiana.	Acreage acquired 1-1-90 from Texaco Producing Inc.
CI90-156-000 (CI81-258) B, Aug. 21, 1990.	Samedan Oil Corporation, P.O. Box 909, Ardmore, OK 73402.	Columbia Gas Transmission Corporation, West Cameron Block 595, Offshore Louisiana.	Reservoir depleted.
CI90-157-000 (CI83-419-000) B, Aug. 21, 1990.	Samedan Oil Corporation	Texas Eastern Transmission Corporation, East Cameron Block 215, Offshore Louisiana.	Reservoir depleted.
CI90-164-000 (CI75-445-001), F, Sept. 13, 1990.	Exxon Corporation, P.O. Box 2180, Houston, TX 77252-2180.	Natural Gas Pipeline Company of America, Evetts Field, Winkler and Loving Counties, Texas.	Acreage Acquired 1-1-89 from Enron Oil & Gas Company.
CI90-165-000 (G-11960) F, Sept. 13, 1990.	Exxon Corporation	Texas Gas Transmission Corporation, Carthage Field, Fred Kyle Unit, Panola County, Texas.	Acreage acquired 12-31-88 from Mobil Producing Texas & New Mexico Inc.

Filing Code: A Initial Service; B Abandonment; C Amendment to add acreage; D Assignment of acreage; E Succession; F Partial Succession.

[FR Doc. 90-26761 Filed 11-13-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. G-12901-001, et al.]

Oryx Energy Co., et al.; Applications for Termination or Amendments of Certificates [1]

November 6, 1990.)

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 26, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-12901-001, D, Oct. 12, 1990	Oryx Energy Company, P.O. Box 2880, Dallas, TX 75221-2880.	Northern Natural Gas Company, Division of Enron Corp., Embry Field, Edwards County, Kansas.	Assigned 7-1-90 to Jade Resources, Inc.
CI62-1412-008, D, Aug. 3, 1990	Oryx Energy Company	Ringwood Gathering Company, Ringwood Field, Major County, Oklahoma.	Assigned 10-1-89 to Headington Minerals, Inc.
CI65-683-000, D, Oct. 9, 1990	Union Oil Company of California, P.O. Box 7600, Los Angeles, CA 90051.	Nothern Natural Gas Company, Division of Enron Corp., Coyanosa Area, Pecos County, Texas.	Assigned 6-1-90 to M. Brad Bennett, Inc.
CI87-1085-007, D, Oct. 15, 1990	Oryx Energy Company	Ringwood Gathering Company, Ringwood Field, Major County, Oklahoma.	Assigned 10-1-89 to UMC Petroleum Corporation.
CI78-28-001, D, Oct. 16, 1990	Oryx Energy Company	Southern Natural Gas Company, Fausse Point Field, Iberia Parish, Louisiana.	Assigned 9-1-90 to Fredonia Resources, Inc.
CI81-489-001 D, Oct. 15, 1990	Oryx Energy Company	Locust Ridge Gas Company, Lake Maryddale Field, Tensas Parish, Louisiana.	Assigned 10-1-89 to Headington Minerals, Inc.

Docket No. and date filed	Applicant	Purchaser and location	Description
CI91-489-002, D, Oct. 15, 1990	Oryx Energy Company	Locust Ridge Gas Company, Chambles Field, Tensas Parish, Louisiana.	Assigned 4-1-84 to KABCO Production Company.
CI91-2-000 (CI75-245), D, Oct. 16, 1990.	Oryx Energy Company	Arkla Energy Resources, a division of Arkla, Inc., Sooner Trend Field, Kingfisher County, Oklahoma.	Assigned 10-1-89 to Headington Minerals, Inc.
CI91-3-000 (G-4946), D, Oct. 16, 1990.	Oryx Energy Company	United Gas Pipe Line Company, Burnell Field, Karnes County, Texas.	Assigned 10-1-89 to Headington Minerals, Inc.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession.

[FR Doc. 90-26762 Filed 11-13-90; 8:45 am]
BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP91-267-000, et al.]

Trunkline Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Co.

[Docket Nos. CP91-267-000, CP91-268-000, CP91-269-000, and CP91-270-000]

November 6, 1990.

Take notice that on November 1, 1990, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would change rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: December 21, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day,[2] average annual	Points of [3] Receipt	Points of [3] Delivery	Start up date, rate schedule service type	Related [1] docket contract date
CP91-267-000 (11-1-90).	Access Energy Company	100,000 100,000 36,500,000	IL, IN, LA, TN, TX, OLA, OTX.	LA	8-31-90, PT, Interruptible.	ST91-240-000, 6-1-90
CP91-268-000 (11-1-90).	Mega Natural Gas Company.	100,000 50,000 18,250,000	IL, IN, LA, TN, TX, OTX, OLA.	IL	9-28-90, PT, Interruptible.	ST91-441-000, 8-28-90
CP91-269-000 (11-1-90).	Unifield Natural Gas Group	50,000 10,000 18,250,000	IL, IN, LA, TN, TX, OLA, OTX.	LA	9-8-90, PT, Interruptible.	ST91-136-000, 7-16-90
CP91-270-000 (11-1-90).	Panhandle Trading Company.	100,000 100,000 36,500,000	IL, IN, LA, TN, TX, OTX, OLA.	OLA	9-22-90, PT, Interruptible.	ST91-136-000, 8-1-90

[1] If an ST docket is shown, 120-day transportation service was reported in it.
[2] Quantities are shown in Mcf.
[3] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.

2. Natural Gas Pipeline Co. of America

Docket Nos. CP91-297-000, CP91-298-000, CP91-299-000, and CP91-300-000

November 6, 1990.

Take notice that on November 2, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Natural and is summarized in the attached appendix.

Comment date: December 21, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket start up date
CP91-297-000 (11-2-90).	Clinton Gas Transmission, Inc. (marketer).	50,000 30,000 10,950,000	Various	Various	7-18-90, ITS, Interruptible.	ST90-5096-000, 9-1-90
CP91-298-000 (11-2-90).	Mitchell Marketing Company (marketer).	50,000 25,000 9,125,000	Various	Various	8-27-90, ITS, Interruptible.	ST90-5204-000, 9-1-90
CP91-299-000 (11-2-90).	MidCon Marketing Corp. (marketer).	100,000 75,000 27,375,000	Various	Various	2-3-89,[1] ITS, Interruptible.	ST90-5203-000, 9-1-90
CP91-300-000 (11-2-90).	Amerada Hess Corporation (producer).	100,000 40,000 14,600,000	Various	Various	7-20-90, ITS, Interruptible.	ST90-5097-000, 9-1-90

[1] As amended July 16, 1990.

U-T Offshore System, et al.

[Docket No. CP91-278-000, CP91-279-000, CP91-280-000, CP91-287-000, CP91-288-000, CP91-290-000, and CP91-291-000]

November 8, 1990.

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached Appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached Appendix B.

Comment date: December 21, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-278-000 (10-31-90).	Conoco, Inc. (producer)	165,000 165,000 60,225,000	OLA	LA	7-1-90, IT, Interruptible.	ST90-4956-000, 9-1-90
CP91-279-000 (10-31-90).	Anadarko Trading Company (marketer).	40,000 40,000, 14,600,000	OLA	LA	7-1-90, IT, Interruptible.	ST90-5105-000, 9-1-90
CP91-280-000 (10-31-90).	Enron Gas Marketing, Inc. (marketer).	1,000,000 1,000,000 365,000,000	OLA	LA	7-1-90, IT, Interruptible.	ST90-4957-000, 9-1-90
CP91-287-000 (10-31-90).	Xabec Gas Company (marketer).	80,000 80,000 [2] 29,200,000	Various	Various	7-13-90,[3] IT-1, Interruptible.	ST91-243-000, 9-25-90
CP91-288-000 (10-31-90).	BHP Gas Marketing Company (marketer).	100,000 100,000 36,500,000	OLA	LA	7-1-90, IT, Interruptible.	ST90-5103-000, 9-18-90
CP91-290-000 (10-31-90).	The Burro Corporation (producer).	2,000 1,500 [4] 730,000	TX	TX	8-31-90, IT-1, Interruptible.	ST90-4954-000, 8-31-90
CP91-291-000 (11-1-90).	Amoco Production Company (producer).	185,000 185,000 67,525,000	OLA	LA	7-1-90, IT, Interruptible.	ST90-5106-000, 9-1-90

[1] Offshore Louisiana is shown as OLA.
[2] As amended by letter agreement dated September 21, 1990.
[3] Texas Eastern's quantities are in MMBtu.
[4] Northern's quantities are in MMBtu.

Applicant's address	Blanket docket
Northern Natural Gas Company, Division of Enron Corp., 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188.	CP86-435-000
Texas Eastern Transmission Corporation, 5400 Westheimer Court, P.O. Box 2521, Houston, Texas 77252-2521.	CP86-136-000

Applicant's address	Blanket docket
U-T Offshore System, P.O. Box 1396, Houston, Texas 77251.	RP89-99-000 [5]

[5] Order No. 509 issued U-TAOS a blanket transportation certificate corresponding to the rates, terms and conditions filed in Docket No. RP89-99-000.

4. United Gas Pipe Line Co.

[Docket No. CP91-286-000]

November 7, 1990.

Take notice that on October 31, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed a request with the Commission in Docket No. CP91-286-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NAG) for permission and approval to construct and operate a two-inch sales tap, 50 feet of four-inch pipe and related facilities, located in Shelby County, Texas, under United's blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the NAG, all as more fully set forth in the request which is open to public inspection.

United states that the proposed new tap would enable United to supply an estimated average of 1,200 Mcfd of natural gas for the city of Chinero for residential use, under United's G Rate Schedule. It is also stated that the estimated cost of the facilities would be $69,249 which would be reimbursed by the city of Chinero. The proposed facilities would not cause an increase in the city's aggregate base requirements or contractual MDQ.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Midwestern Gas Transmission Co. and Transcontinental Gas Pipe Line Corp.

[Docket Nos. CP91-309-000 and CP91-311-000]

November 7, 1990.

Take notice that on November 2, 1990, Midwestern Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252, and Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP90-174-000 and Docket No. CP88-328-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt points	Delivery points	Contract Date, rate schedule service type	Related docket, start up date
CP91-309-000 (11-2-90).	Vesta Energy Company (Marketer).	50,000 50,000 18,250,000	TX	TN, IL, IN, KY	8-27-90, IT, Interruptible.	ST91-1947-000, 10-1-90.
CP91-311-000 (11-2-90).	O & R Energy Development (Marketer).	2,995,000 2,995,000 1,093,175,000	TX, LA, MS	GA, NJ, PA, NY, NC, SC, VA, MD, DE.	8-7-90, IT, Interruptible.	ST91-31-000, 9-1-90.

6. Equitrans, Inc.

[Docket No. CP91-276-000]

November 7, 1990.

Take notice that on November 1, 1990, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP91-276-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations for authorization to construct and operate a delivery point for service to an end user, under Equitran's blanket certificate issued in Docket No. CP86-676-000,[5] pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Equitrans requests authorization to construct and operate a sales tap for Mr. Charles Perry (Mr. Perry) of French Creek, West Virginia. It is stated that the sales tap would be located on Equitrans' transmission line F-988 in French Creek, West Virginia. It is indicated that Mr. Perry would be served by Equitable and that Equitable would be charged the applicable rate contained in Equitrans' FERC Gas Tariff, on file and approved by the Commission. Equitrans projects that the quantity of gas to be delivered through the proposed sales tap would be approximately on Mcf on a peak day.

Comment date: December 24, 1990, in accordance with Standards Paragraph G at the end of this notice.

[5] A blanket certificate of public convenience and necessity was issued to Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable), CP83-506-000 on December 14, 1983. On January 20, 1988, in Docket No. CP86-676-000, the Commission approved the transfer of Equitable's blanket certificate to its newly-formed affiliate, Equitrans.

7. High Island Offshore System

[Docket Nos. CP91-284-000,[6] CP91-285-000, and CP91-289-000]

November 7, 1990.

Take notice that High Island Offshore System (Applicant), filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day, average, annual [1]	Points of: Receipt	Points of: Delivery	Start up date, rate schedule	Related dockets [2]
CP91-284-000... 10-31-90	High Island Offshore Sys., 500 Renaissance Center, Detroit, MI 48243.	Equitable Resources Marketing Co..	395,000 395,000 144,175,000	Off TX, Off LA	Off TX, Off LA	8-29-90, IT	RM86-14-001, RM86-15-000, ST90-4791-000.
CP91-285-000... 10-31-90	High Island Offshore Sys., 500 Renaissance Center, Detroit, MI 48243.	Total Minatome Corporation.	54,900 54,900 20,036,500	Off TX, Off LA	Off TX, Off LA	8-25-90, IT	RM86-14-001, RM86-15-000, ST90-4796-000.
CP91-289-000... 10-31-90	High Island Offshore Sys., 500 Renaissance Center, Detroit, MI 48243.	Fina Oil an Chemical Company.	34,500 34,500 12,592,000	Off TX, Off LA	Off TX, Off LA	8-29-90, IT	RM86-14-001, RM86-15-000, ST90-4790-000.

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

8. Texas Gas Transmission Corp.

[Docket Nos. CP91-256-000, CP91-257-000, and CP91-258-000]

November 7, 1990.

Take notice that on October 29, 1990, Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, Kentucky 42301, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[7]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[7] These prior notice requests are not consolidated.

Docket No (date filed)	Applicant	Shipper name	Peak day,[1] avg, annual	Points of: Receipt	Points of: Delivery	Start up date, rate schedule	Related [2] dockets
CP91-256-000... (10-29-90)	Texas Gas Transmission Corporation.	PSI Gas Marketing, Inc.	100,000 50,000 36,500,000	Offshore TX	Offshore TX	9-15-90, IT	ST91-437-000, CP88-686-000.
CP91-257-000... (10-29-90)	Texas Gas Transmission Corporation.	PSI Gas Marketing, Inc.	150,000 100,000 54,750,000	Offshore LA & TX, LA, TX, AR, IL, IN, KY, OH, TN.	KY, IN, IL	9-14-90, IT	ST91-435-000, CP88-686-000.
CP91-258-000... (10-29-90)	Texas Gas Transmission Corporation.	PSI Gas Marketing, Inc.	100,000 50,000 36,500,000	Offshore LA & TX, AR, IL, IN, LA, KY, OH, TN, TX.	KY, IN, OH	9-13-90, IT	ST91-431-000, CP88-686-000.

[1] Quantities are shown in MMbtu unless otherwise indicated.
[2] The RP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

9. Trunkline Gas Co. et al.

[Docket Nos. CP91-273-000, CP91-274-000, and CP91-275-000]

November 7, 1990.

Take notice that on November 1, 1990, Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251-1642, and Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, (Applicants) filed prior notice requests with the Commission in the above-referenced dockets pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP86-586-000 and Docket No. CP88-328-000, respectively, pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspections.[8]

Information applicable to each transaction, including the shipper's identity; the type of transportation service; the appropriate transportation rate schedule; the peak day, average day, and annual volumes; the service initation dates and related ST docket numbers of the 120-day transactions under § 284.233 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[8] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt [1] points	Delivery points	Contract date, rate schedule service type	Related docket, start up date
CP91-273-000... (11-1-90)	TransState Gas Service Company (Marketer).	75,000 75,000 27,375,000	IL, LA, OLA, TN, TX, OTX	LA	6-28-90, PT, Interruptible.	ST91-129, 9-19-90
CP91-274-000... (11-1-90)	Endevco Marketing Company (Marketer).	20,000 20,000 7,300,000	MS	VA	8-23-90, IT, Interruptible.	ST91-30, 9-1-90
CP91-275-000... (11-1-90)	Endevco Marketing Company (Marketer).	50,000 50,000 18,250,000	MS	PA	8-20-90, IT, Interruptible.	ST91-29, 9-1-90

[1] Offshore Lousiana and offshore Texas are shown as OLA and OTX.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26752 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-1-000]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

November 6, 1990.

Take notice that on November 1, 1990, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Appendix A

Twenty Third Revised Sheet No. 4

Appendix B

Alternate Twenty Third Revised Sheet No. 4

The tariff sheets are proposed to become effective January 1, 1991. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers. According to Alabama-Tennessee, the tariff sheet in appendix A reflects the rates proposed by Tennessee Gas Pipeline Company in its primary filing in Docket No. TA91-1-9-000; the Appendix B rates reflect Tennessee's alternate rates.

Alabama-Tennessee states that the instant filing represents its annual purchased gas cost adjustment pursuant to § 154.305 of the Commission's Regulations and contains the Assessment of Past Performance required by § 154.306.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulations Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 or rule 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211 and 385.214). All such motions or protests should be filed on or before November 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26757 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

November 6, 1990.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on October 31, 1990, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective December 1, 1990

47 Rev Sheet No. 201
9 Rev Sheet No. 201A
48 Rev Sheet No. 203
44 Rev Sheet No. 204
41 Rev Sheet No. 205

Algonquin states that the revised tariff Sheet Nos. 201 through 205, listed above, are being filed as part of Algonquin's regularly schedule quarterly Purchased Gas Adjustment ("PGA") and is made pursuant to Algonquin's PGA section 17 of the General Terms and Conditions of Algonquin's FERC Gas Tariff, Second Revised Volume No. 1 to reflect the standby service costs to be charged by Texas Eastern Transmission Corporation ("Texas Eastern") and purchased gas costs to be charged by its suppliers, Texas Eastern, National Fuel Gas Supply Corporation ("National") and CNG Transmission Corporation ("CNGT").

Algonquin states that the effect of the change in rates is to increase the demand charges by $1.611 per MMBtu and to increase the commodity charges by 3.20¢ per MMBtu under all of Algonquin's firm sales rate schedules from those rates contained in Algonquin's Out-of-Cycle PGA filing of October 23, 1990 in Docket No. TQ91-1-20-000. In addition, the rate under Rate Schedule I-1 has increased by 3.20¢ per MMBtu, while Rate schedule WS-1 excess commodity has increased by 39.42¢ per MMBtu and Rate Schedule E-1 has increased by 9.15¢ per MMBtu.

Algonquin states that the proposed effective date for the revised tariff Sheet Nos. 201 through 205, above, is December 1, 1990.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections

385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26758 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC91-6-000]

Arkla Energy Resources, a Division of Arkla, Inc.; Tariff Filing

November 7, 1990.

Take notice that on October 31, 1990, Arkla Energy Resources, a division of Arkla, Inc. (AER), P.O. Box 21734, Shreveport, Louisiana 71151 filed the following revised tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1,:

Twelfth Revised Sheet No. 3E

The Filing reflects changes in AER's Index of Entitlements pursuant to § 281.204(B)(2) of the Commission's Regulations. AER requests that the changes become effective November 1, 1990.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 285.214 and 385.211. All such motions or protests must be filed by November 16, 1990. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26766 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 6, 1990.

Take notice that on November 2, 1990, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Twelfth Revised Sheet No. 8
Twelfth Revised Sheet No. 9

Carnegie states that pursuant to the PGA clause in its FERC Gas Tariff and § 154.308 of the Commission's regulations, it is proposing to adjust its rates effective December 1, 1990, as part of its scheduled Quarterly PGA filing. Carnegie states that its proposed rates reflect significant changes in the sales rates of its pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern"), as filed by Texas Eastern on October 31, 1990. Carnegie states that the revised rates reflect projected purchased gas costs incorporating Texas Eastern's proposed elimination of its D2 charge and concomitant change to one-part demand rates. The revised rates reflect the following changes from Carnegie's last fully-supported Out-of-Cycle PGA filing in Docket No. TQ91-2-63-000: a $0.2600 per Dth increase in the applicable commodity components of its LVWS and CDS rate schedules; a $0.3077 per Dth increase in the commodity component of its LVIS rate schedule; a $4.2747 per Dth increase in the D1 component of its LVWS and CDS rate schedules; a $0.0187 per Dth decrease in the D2 component of its LVWS and CDS rate schedules; and a $0.1398 per Dth increase in the DCA component. No Standby Charge Adjustment is stated in this filing.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before November 14, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26763 Filed 11-13-1990; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-910-002]

Catamount Natural Gas, Inc.; Application To Amend a Blanket Certificate With Pregranted Abandonment

November 6, 1990.

Take notice that on October 12, 1990, Catamount Natural Gas, Inc. (Catamount) of 347 Congress Street, Boston, Massachusetts 02210, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend its unlimited-term blanket certificate with pregranted abandonment previously issued by the Commission in Docket No. CI87-910-001 to include authorization for sales for resale of imported natural gas, liquified natural gas and gas purchased from "non-first-sellers" such as gas sold under pipeline discount sales authority, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 26, 1990, file with the Federal Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Catamount to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26768 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI90-165-000]

Chippewa Gas Corp.; Application for a Blanket Certificate With Pregranted Abandonment

November 6, 1990

Take notice that on September 24, 1990, Chippewa Gas Corporation (Chippewa) of 3200 Southwest Freeway, Suite 3100, Houston, Texas 77027, filed an application pursuant to Sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing the sale in interstate commerce for resale of (1) gas subject to the Commission's NGA jurisdiction, (2) gas purchased from non-first sellers, including interstate pipelines selling gas off-system under authorization such as interruptible sales service, and (2) imported natural gas, including liquified natural gas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 26, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Chippewa to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26769 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TF91-2-2-000 and RP90-111-004]

East Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 6, 1990.

Take notice that on October 31, 1990, East Tennessee Natural Gas Company (East Tennessee) filed with the Federal Energy Regulatory Commission First Revised Sheet Nos. 4 and 5 of First Revised Volume No. 1 of its FERC Gas Tariff to be effective November 1, 1990. East Tennessee states that the tariff sheets implement an Interim Purchased Gas Adjustment (PGA) pursuant to section 21.4 of the General Terms and Conditions of its FERC Gas Tariff. The Interim PGA reflects an increase of $.5255 in the gas rate as compared to that reflected in the Interim PGA filed in Docket No. TF91-1-2-000. East Tennessee also states that the Current Gas Cost Rate Adjustment of <.8222> reflects the difference between the sales gas costs filed in the Quarterly PGA in docket No. TQ91-1-2-000 and the instant interim adjustment.

East Tennessee also has moved to implement the base tariff rates filed in Docket No. RP90-111-000, effective November 1, 1990.

East Tennessee requests that the Commission grant any waivers it deems necessary for acceptance of the filing.

East Tennessee states that a copy of this cover letter has been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before November 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26764 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-2-000]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

November 6, 1990.

Take notice that on November 1, 1990, East Tennessee Natural Gas Company (East Tennessee) hereby files ten copies of the following revised tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff to be effective January 1, 1991:

Second Revised Sheet No. 4
Second Revised Sheet No. 5

East Tennessee states that the purpose of this revision is to institute the Annual PGA pursuant to sections 21.1-21.3 of the General Terms and Conditions of East Tennessee's Tariff.

The Current Purchased Gas Cost Rate Adjustments reflected on Second Revised Sheet Nos. 4 and 5 consist of a $<.1807> per dekatherm adjustment applicable to the gas rate and to Rate Schedule SWS and a $1.33 per dekatherm adjustment applicable to the D1 component of the demand rates.

The revisions also reflect a $<.0390> per dekatherm surcharge adjustment to the gas rates and a $<.11> per dekatherm surcharge adjustment to the demand D1 rate.

East Tennessee states that the current adjustment to its demand rates (D1) reflect the demand charges from Tennessee Gas Pipeline Company effective January 1, 1991. East Tennessee states that current adjustments to its gas rate reflect increases in the gas rate of Tennessee and other various non-pipline suppliers.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E. Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 28, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to come a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26774 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA91-3-000]

East Texas Gas Systems; Petition for Adjustment

November 7, 1990.

Take notice that on October 31, 1990, East Texas Gas Systems (East Texas)

filed pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), a petition for adjustment from § 284.123(b)(1)(ii) of the Commission's regulations to permit East Texas to use its tariff on file with the Railroad Commission of Texas (Railroad Commission) for services performed pursuant to section 311 of the NGPA. East Texas asserts that since it does not render city-gate service the Commission should issue this adjustment under section 502(c) of the NGPA to prevent special hardship and inequity that would otherwise result if East Texas were required to submit a § 284.123(b)(2) filing.

In support of its petition East Texas states that it is an intrastate pipeline which operates in the state of Texas, subject to the jurisdiction of the Railroad Commission. East Texas' transportation rates are subject to regulation by the Railroad Commission and have been filed with the Railroad Commission in the form of tariffs. East Texas states that it intends to perform interruptible transportation services pursuant to section 311(a)(2) of the NGPA on behalf of eligible interest pipeline companies and/or local distribution companies served by interstate pipeline companies, for a transportation fee not to exceed $0.017 per MMBtu.

The regulations applicable to this proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this proceeding must file a motion to intervene in accordance with the provisions of Subpart K. Motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**. The petition for adjustment is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-28776 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-4-000, TM91-1-4-001]

Granite State Gas Transmission, Inc.; Filing of Rate Changes

November 6, 1990.

Take notice that on November 1, 1990, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 filed the revised tariff sheets, listed below, in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on November 1, 1990 and November 27, 1990:

Revised tariff sheets	Proposed effective dates
Revised Original Sheet No. 21.	November 1, 1990.
Revised Original Sheet No. 22.	November 1, 1990.
Revised First Revised Sheet No. 21.	November 27, 1990.

According to Granite State Revised Original Sheet No. 21 is an out-of-cycle purchased gas cost adjustment for effectiveness November 1, 1990 based on revised purchased gas costs and sales for the remaining two months of the fourth quarter. The out-of-cycle purchased gas cost adjustment reflect s the current increase in gas costs. Revised Original Sheet No. 22 if filed to comply with the Commission's October 5, 1990 Letter Order in Docket No. TQ91-1-4-000 related to the ACA charge for the fiscal year beginning October 1, 1990, and reflects the effect of the corrected ACA charge in the commodity component of Rate Schedule CGT-NE. Revised First Revised Sheet No. 21 is submitted because of the restatement of Granite State's Base Tariff Rates in Docket No. RP91-12-000 on October 26, 1990. The sales rates on this tariff sheet are identical to those on Revised Original Sheet No. 21; however, when the restatement of the Base Tariff Rates becomes effective, the latter tariff sheet will be superseded by Revised First Revised Sheet No. 21.

It is stated that the proposed rate changes are applicable to Granite State's jurisdictional sales services rendered to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions to intervene or protests should be filed on or before November 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-28753 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ91-1-4-001 and TQ91-2-4-001]

Granite State Gas Transmission, Inc.; Filing of Rate Changes in Compliance With Commission Order

November 6, 1990.

Take notice that on October 31, 1990, Granite State Gas Transmission, Inc. (Granite State), 120 Royal Street, Canton, Massachusetts 02021 filed the revised tariff sheets, listed below, in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for effectiveness on October 1, 1990:

Revised Thirty-Ninth Revised Sheet No. 7
and
Revised Twelfth Revised Sheet No. 7-A

According to Granite State, the rate changes submitted herewith comply with a Letter Order dated October 5, 1990 accepting its regular quarterly purchased gas adjustment filed in Docket No. TQ91-1-4-000 for effectiveness on October 1, 1990. Granite State further states that its purchased gas cost adjustment was accepted subject to a condition to refile to reflect the effect of a correction in the Annual Charges Adjustment for the fiscal year beginning October 1 that Tennessee Gas Pipeline Company (Tennessee) has utilized in establishing its rates and which Granite State had tracked. It is stated that the revised rates in this filing comply with the condition in the Commission's letter Order to refile to track the effect of the corrected Tennessee ACA charge on Granite State's rates.

It is stated that the proposed rate changes are applicable to Granite State's jurisdictional sales services rendered to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be

filed on or before November 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-28775 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA91-1-16-000, TM91-3-16-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

November 6, 1990.

Take notice that on October 31, 1990, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fortieth Revised Sheet No. 4, proposed to become effective on January 1, 1991.

National's filing comprises its Annual Purchased Gas Adjustment, to comply with Section 154.305 of the Commission's Regulations. National states that the revised tariff sheet also reflects its quarterly Purchased Gas Cost Adjustments required under Part 154 of the Commission's Regulations.

Fortieth Revised Sheet No. 4 contains the base tariff rates filed in Docket No. RP90-14-000 on October 19, 1989. The tariff reflects a commodity current adjustment of 9.23 cents per Dth, in comparison with National's most recent quarterly Purchased Gas Adjustment, filed on October 5, 1990, in Docket No. TQ91-1-16-001. In addition, Fortieth Revised Sheet No. 4 contains a 12.71 cents per Dth negative commodity surcharge and reflects a GRI adjustment of 1.42 cents per Dth, as described in the Commission's Order of October 1, 1990, in Docket No. RP90-120-000.

National states that with this filing it is eliminating its prior negative demand surcharge and instituting a 98.0 cents per dt demand surcharge to reflect increased demand charges billed to National by Tennessee Gas Pipeline Company. In addition, the filing is said to reflect a current demand adjustment of 35.0 cents per dt in comparison with the "Current Demand Cost of Gas Applicable to CD & RQ Rate Schedules" contained in National's most recent quarterly PGA filing.

National states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before November 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-28771 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM-2-26-000]

Natural Gas Pipeline Co. of America; Change in FERC Gas Tariff

November 6, 1990

Take notice that on November 1, 1990, Natural Gas Pipeline Company of America (Natural) submitted for filing Sixth Revised Sheet Nos. 171 and 172 and Fourth Revised Sheet Nos. 173 and 174 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date of the revised sheets is December 1, 1990.

The purposes of this filing are: (1) to track Colorado Interstate Gas Company's (CIG) recovery of interest on take-or-pay buyout, buydown, or other contract reformation costs (Transition Costs) allocated to Natural at Docket No. RP90-95-000; (2) to track CIG's recovery of interest on Northwest Pipeline Corporation (Northwest) transition costs that were passed through to Natural from CIG; and (3) to reflect accrued interest for the months of June 1990 through November 1990 for Natural's amortization of CIG and Northwest transition costs in accordance with the semi-annual interest adjustment provision of its FERC Gas Tariff.

Natural requests any waivers of the Commission's Regulations which may be necessary to permit the tendered tariff sheets to take effect December 1, 1990. Natural states that copies of the filing have been mailed to Natural's jurisdictional sales customers, interested state regulatory agencies, and all parties set out on the official service list at Docket Nos. RP88-131-000, *et al.* and RP89-186-000, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-28777 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-3-26-000]

Natural Gas Pipeline Co., of America; Changes in FERC Gas Tariff

November 6, 1990.

Take notice that on November 1, 1990, Natural Gas Pipeline Company of America (Natural) submitted for filing Eleventh Revised Sheet Nos. 169 and 170 to be part of its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date of the revised tariff sheets is December 1, 1990.

The purpose of the filing is to reflect accrued interest for the months of June through November 1990 related to Natural's recovery of take-or-pay buyout, buydown and other contract reformation costs (Trasition Costs) under an Order No. 500 mechanism.

Natural seeks any waivers of the Commission's Regulations as are necessary to permit the tendered tariff sheets to take effect December 1, 1990.

Natural states that copies of the filing have been mailed to Natural's sales customers, interested state regulatory agencies, and all parties set out on the official service list at Docket No. RP88-94-000, et al., and RP90-24-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington,

DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26778 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. TQ91-1-27-000]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

November 6, 1990.

Take notice that North Penn Gas Company (North Penn) on November 1, 1990 tendered for filing Third Revised Sheet No. 3A to its FERC Gas Tariff First Revised Volume No. 1.

The revised tariff sheet is being filed pursuant to Section 14 (PGA Clause) of the General Terms and Conditions of North Penn's FERC Gas Tariff to reflect changes in the cost of gas for the period December 1, 1990 through February 28, 1991 and is proposed to be effective December 1, 1990. The proposed change reflects a decrease in the average cost of gas for the G-1 Rate Schedule of $1.09 per Mcf.

While North Penn believes that no other waivers are necessary in order to permit this filing to become effective December 1, 1990, as proposed, North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective December 1, 1990, as proposed.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and State Commissions shown on the attached service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26754 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TF91-2-59-000 and TM91-1-59-004]

Northern Natural Gas Co., Division of Enron Corp.; Change in FERC Gas Tariff

November 6, 1990.

Take notice that on October 31, 1990, Northern Natural Gas Company (Northern), filed with the Federal Regulatory Commission as part of its F.E.R.C. Gas Tariff the following tariff sheets to be effective November 1, 1990:

Th'rd Revised Volume No. 1

Eighty-Sixth Revised Sheet No. 4B
Fifty-Fourth Revised Sheet No. 4B.1
Fourteenth Revised Sheet No. 4G
Fourteenth Revised Sheet No. 4G.1
Seventeenth Revised Sheet No. 4G.2
Eighth Revised Sheet No. 4H

Original Volume No. 2

Ninety-Third Revised Sheet No. 1C
Fourth Revised Sheet No. 1C.a

Northern states that this filing reflects a Base Average Gas Purchased Cost of $2.1751 per MMBtu, which reflects a $0.1703 decrease in Northern's base average gas purchased cost of $2.3454, as established in the quarterly PGA in Docket No. TQ91-1-59-000. Northern states that the rate established herein is also a $0.6599 per MMBtu increase to the base average cost of gas of $1.5152, as reflected in Northern's October 1, 1990 flex filing in Docket No. TF91-1-59-000.

Northern further notes that this filing also reflects an ACA adjustment of $0.0001, increasing the ACA from $0.0021 to $0.0022 effective November 1, 1990. Northern is hereby requesting any waiver of the Commission's regulations and its tariff provisions as may be required to permit the above tariff sheets to be accepted for filing and made effective on November 1, 1990.

Northern states that copies of this letter and attachments have been mailed to each of Northern's gas utility customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before November 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26785 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA-91-1-59-000 TM 91-2-59-000]

Northern Natural Gas Co., Division of Enron Corp.; Purchased Gas Cost Adjustment Rate Change

November 6, 1990

Take notice that on November 1, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing, as part of Northern's FERC Gas Tariff, Third Revised Volume No. 1 (Volume 1 Tariff) and Original Volume No. 2 (Volume 2 Tariff), the following tariff sheets:

Third Revised Volume No. 1

Fifty-Ninth Revised Sheet No. 4A
Eighty-Ninth Revised Sheet No. 4B
Fifty-Seventh Revised Sheet No. 4B.1
Fifteenth Revised Sheet No. 4G
Fifteenth Revised Sheet No. 4G.1
Eighteenth Revised Sheet No. 4G.2
Eighth Revised Sheet No. 67
Seventh Revised Sheet No. 68

Original Volume No. 2

Ninety-Sixth Revised Sheet No. 1C
Fifth Revised Sheet No. 1C.a
Sixth Revised Sheet No. 1E
Seventh Revised Sheet No. 1F

Such revised tariff sheets are required in order that Northern may place into effect the proposed rates on January 1, 1991 to:

(1) Reflect Northern's cost of purchased gas to be experienced during the 1st Quarter, 1991, based on the fact the Interim Gas Inventory Charge (IGIC) filed June 1, 1990 has not been placed into effect, pursuant to Paragraph 18 of Northern's Volume 1 Tariff, and Paragraph 1 of Northern's Volume 2 Tariff.

(2) Reflect a surcharge to amortize the underrecovered commodity cost of purchased gas account for the twelve months ended August 31, 1990, and a surcharge to amortize the recovered demand cost of purchased gas account for the twelve months ended August 31, 1990, both pursuant to Paragraph 18 of Northern's Volume 1 Tariff and Paragraph 1 of Northern's Volume 2 Tariff and also to reflect certain revenue tracking adjustments.

(3) Track the change in the cost of transportation of gas through the Alaska Natural Gas Transportation System (ANGTS) pursuant to Paragraph 21 of Northern's Volume 2 Tariff. In addition, this filing reflects a negative surcharge to amortize the overrecovered cost of transportation of gas through ANGTS for the twelve months ended September 30, 1990.

(4) Reflects the permanent waiver of section 154.302(j) of the Regulations as granted by the Commission on September 20, 1990 to permit Northern to flow through its Purchased Gas Adjustment (PGA) the cost of liquid ethane and/or ethane mixture injected into system supply.

In the filing, Northern has established a ceiling PGA rate of $2.7515 per MMBtu which reflects an increase of $.4061 per MMBtu from the approved 4th Quarter 1990 ceiling PGA rate of $2.3454 per MMBtu.

Northern states that since the projection of 1st Quarter, 1991 gas purchased costs may not reflect the level of gas purchased costs it actually will experience on January 1, 1991, it may not bill the commodity rates established in its filing on January 1, 1991. Instead, Northern states that it will utilize its flexible PGA tariff mechanism, if necessary, to reflect in the commodity rates on January 1, 1991, the estimated actual cost of purchased gas being experienced at that time.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 28, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26759 Filed 11-13-90 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-119-004]

Texas Eastern Transmission Corp.; Compliance Filing

November 6, 1990.

Take notice that October 31, 1990 Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing certain revised Proposed and Alternate tariff sheets as listed on the attached Appendices A (Proposed) and B (Alternate) attached to the filing. Texas Eastern requests an effective date of December 1, 1990.

Texas Eastern states that by order issued June 29, 1990 in the above-captioned proceeding, Texas Eastern is authorized to place into effect, subject to certain conditions, as of December 1, 1990 certain tariff sheets referenced in appendix A to that order.

Texas Eastern further states that the revised tariff sheets listed on the attached Appendices A and B to be effective December 1, 1990 also reflect, among other things, (1) Texas Eastern's PGA and EPC tracking filings effective June 1, August 1 and November 1, 1990; (2) the Annual Charge Adjustment (ACA) filing to be effective October 1, 1990 in Docket No. RP90-181-000 and TM91-1-17-000; and, (3) an Interim Purchased GAS Adjustment filing, filed concurrently herewith pursuant to § 154.309 of the Commission's Regulations and § 23.1(c) of the General Terms and Conditions to effectuate the elimination of its purchases from Texas Gas Transmission Corporation effective December 1, 1990.

Texas Eastern states that pursuant to the June 29, 1990 Order these Proposed tariff sheets reflect: (1) The elimination of facilities and related costs and volumes associated with the system supply portion of the Niagara Import Point Project; (2) the removal of § 23.2(c) of the General Terms and Conditions which would have provided for the direct billing of unrecovered balances in Account No. 191 of the PGA clause became suspended; Section 23.6 of the General Terms and Conditions which would have permitted the direct billing of unrecovered balances in Account No. 191, if the PGA became suspended; (3) the modification to section 35 which would have permitted Texas Eastern to pay for new facilities associated with new transportation requests under certain conditions rather than be reimbursed; and, (4) the prior method of allocating Administrative and General costs on a dekatherm mile basis to Rate Schedule X-43. Texas Eastern further states that the Proposed tariff sheets include facilities and related costs and volumes associated with the CD-1 Adjustment Program and specifically requested waiver of Ordering Paragraph (E) of the June 29, 1990 Order to the extent required in order to include these costs.

On July 30, 1990 Texas Eastern filed a Request for Rehearing and for Clarification which, *inter alia*, requested the Commission to reconsider its decision which requires Texas Eastern to change the rate design methodology for rates applicable to Rate Schedule X-43. On August 27, 1990 the Commission issued its Order on Rehearing Solely for the Purpose of Further Consideration. Subsequent Commission action regarding this issue is pending.

The Alternate tariff sheets identified in appendix B proposed herein reflect the identical adjustments as the Proposed tariff sheets described above with the exception of the inclusion of the rate design methodology as originally proposed by Texas Eastern in its May 31, 1990 filing applicable to Rate Schedule X-43. Texas Eastern submits that no adjustment related to Rate Schedule X-43 is appropriate at this time. Therefore, in the event the above-referenced rehearing is granted, Texas Eastern respectfully requests the Commission to accept the tariff sheets in Appendix B to become effective December 1, 1990.

Texas Eastern further states that the filing of these revised tariff sheets which satisfies the requirements of the Commission's Order dated June 29, 1990 in this proceeding is without prejudice to Texas Eastern's rights on rehearing or in any judicial review proceeding or its position in this proceeding. In particular, Texas Eastern reserves the right to revise its rates and terms and conditions of service and assess surcharges to the extent it is successful on rehearing or appeal.

Texas Eastern states that copies of this letter and enclosures are being served on all jurisdictional customers, interested state commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and

Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before November 14, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26760 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-5-29-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

November 6, 1990.

Take notice that on October 31, 1990, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume 1:

Second Revised Sheet No. 3-C.13
Second Revised Sheet No. 3-C.14
Second Revised Sheet No. 3-C.15

The proposed effective date of these revised tariff sheets is December 1, 1990.

Panhandle states that the revised tariff sheets filed herewith reflect revisions to the Order No. 500 take-or-pay direct billing amounts approved by Commission Orders dated November 25, 1988, January 26, 1989 and October 10, 1989 in Docket No. RP88-8-000, and also by Commission Letter Order dated December 22, 1989 in Docket No. TM90-7-28-000, 001, and 002; and Docket No. TM90-8-28-000, 001, and 002.

Panhandle further states that the revised tariff sheets referenced above reflect the second annual adjustment to carrying charges and monthly TOP Fixed Surcharges in accordance with section 24 of Panhandle's FERC Gas Tariff, Original Volume No. 1.

Panhandle states that copies of this letter and enclosures are being served on all affected jurisdictional sales customers and appropriate State regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests will be considered by the Commission in detern ining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person desiring to become a party must file a motion to intervene. Copies of Panhandle's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26755 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-4-29-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

November 6, 1990.

Take notice that on October 31, 1990 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume 1:

Second Revised Sheet No. 3-C.10
Second Revised Sheet No. 3-C.11
Second Revised Sheet No. 3-C.12

The proposed effective date of these revised tariff sheets is December 1, 1990.

Panhandle states that the revised tariff sheets filed herewith reflect revisions to the Order No. 500 take-or-pay direct billing amounts approved by Commission Orders dated November 25, 1988, January 26, 1989 and October 10, 1989 in Docket No. RP88-8-000, and also by Commission Letter Order dated December 22, 1989 in Docket No. TM90-7-28-000, 001, and 002; and Docket No. TM90-8-28-000, 001, and 002.

Panhandle further states that the revised tariff sheets referenced above reflect the second annual adjustment to carrying charges and monthly TOP Fixed Surcharges in accordance with § 23.4(c) and (d) and § 23.5 of Panhandle's FERC Gas Tariff, Original Volume No. 1.

Panhandle states that copies of this letter and enclosures are being served on all affected jurisdictional sales customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Panhandle's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26770 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-17-000]

Questar Pipeline Co.; Tariff Filing

November 6, 1990.

Take notice that on November 1, 1990, pursuant to 18 CFR 154.63(a)(1) Questar Pipeline Company submitted for filing and acceptance the following revised tariff sheets to Original Volume Nos. 1, 1-A and 3 of its FERC Gas Tariff:

Original Volume No. 1

First Revised Sheet No. 48

Original Volume No. 1-A

First Revised Sheet Nos. 17, 57, 58 and 64
Original Sheet Nos. 17A, and 64A

Original Volume No. 3

Fourth Revised Sheet No. 8

Questar Pipeline states that this filing modifies certain tariff provisions relating to billing procedures that are acceptable to demand and commodity charges associated with natural-gas sales and transportation services.

Questar Pipeline requests an effective date of December 1, 1990, for the tendered tariff sheets and states that copies of the filing were served upon its customers and the Utah and Wyoming Public Service Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20002, in accordance with Rules 385.211 and 385.214 of the Commission's Rules and Regulations (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 14, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26767 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA91-1-9-000, TM91-2-9-000 and RP91-16-000]

Tennessee Gas Pipeline Co.; Tariff Change

November 6, 1990.

Take notice that on November 1, 1990, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets to its FERC Gas Tariff to be effective January 1, 1991:

Item A: *Third Revised Volume No. 1*
First Revised Sheet No. 20 (Primary & Alternate)
First Revised Sheet No. 21 (Primary & Alternate)
First Revised Sheet No. 22 (Primary & Alternate)
First Revised Sheet No. 23 (Primary)
First Revised Sheet No. 25
First Revised Sheet No. 26
Item B: First Revised Sheet Nos. 32-27
Item C: First Revised Sheet No. 253
Original Sheet Nos. 253A-253B
First Revised Sheet No. 255
Item D: *Original Volume No. 2*
Twenty-First Revised Sheet No. 5 (Primary & Alternate)
Twentieth Revised Sheet No. 6 (Primary & Alternate)
Item E: *Third Revised Volume No. 1*
Substitute Original Sheet Nos. 20-26

The purpose of the filing is to implement the annual Purchased Gas Adjustment to Tennessee's Gas Rates and certain transportation rate schedules whose fuel rates track the Gas Rate.

The purpose of the revisions under Item A is to reflect Tariff. These sheets also reflect a new GRI adjustment of 1.42 cents per dth pursuant to Opinion No. 355 and Article XXVII of the General Terms and Conditions. These sheets further reflect an adjustment to the fuel rates for Rate Schedules IT and FT pursuant to Section 6 of these Rate Schedules. As discussed below, the primary sheets reflect as-billed classification of certain producer demand changes, while the alternate sheets reflect commodity only treatment of the charges.

The purpose of the revisions under Item B is to reflect amortization of production-related costs pursuant to the settlement agreement approved by the Commission Order on June 14, 1985 in Docket Nos. CP84-441, *et al.*

The purpose of the revisions under Item C is to amend provisions of Tennessee PGA clause (Article XXIII of the General Terms and Conditions) concerning the collection of unrecovered gas costs and disbursements from the Refund Subaccount.

The purpos of the revisions listed under Item D is to reflect adjustments to transportation rate schedules for changes in the cost of gas from fuel and losses pursuant to Section 5 of the PGA clause.

The purpose of the revisions listed in Item E is to incorporate in *Third* Revised Volume No. 1 previously filed tariff changes to *Second* Revised Volume No. 1 reflecting the new ACA change.

The current adjustment to the Gas Rate is $(.0133) per dth on the primary sheets and $0.2619 per dth on the alternate sheets. The current adjustment to the Demand Rate (D_1) is $.67 per dth on the primary sheets and $.08 per dth on the alternate sheets. These adjustments are calculated based upon a comparison with the rates included in Tennessee's previous quarterly PGA filing in Docket No. TQ91-1-9. The surcharge adjustment to demand rates to amortize unrecovered gas costs is $.08 per dth. The surcharge adjustment to Gas Rates to amortize unrecovered gas costs is $.3477 per dth.

In the filing, Tennessee requests that the Commission waive the requirements of §§ 154.305(6) and 154.305(7) of the Commission's regulations to permit "as-billed" treatment of certain demand charges and annual disbursements from the Refund Subaccount, respectively. Tennessee has also amended the surcharge of provisions of its PGA clause to provide for a reconciliation surcharge in the event of termination of sales service or termination of the PGA clause.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 28, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26772 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

November 6, 1990.

Take notice that Transwestern Pipeline Company ("Transwestern") on October 31, 1990, tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective December 1, 1990:

Proposed Tariff Sheets

81st Revised Sheet No. 5
8th Revised Sheet No. 36
4th Revised Sheet No. 39
1st Revised Sheet No. 39B
4th Revised Sheet No. 40
8th Revised Sheet No. 133

In the alternative, Transwestern, herewith submits for filing the following alternative tariff sheet, also proposed to be effective December 1, 1990.

Alternate Tariff Sheet

Alternate 81st Revised Sheet No. 5

Reason for Filing

Transwestern's tariff presently limits the maximum rate to be charged under Rate Schedule IS-1 to a rate of $2.2102/dth which rate was based on a weighted average cost of gas (WACOG) in effect on transwestern's system as of September 30, 1989. Transwestern proposes to eliminate the maximum rate under Rate Schedule IS-1 to become effective December 1, 1990. Since gas prices fluctuate from month to month, Transwestern submits it is not appropriate for its IS-1 maximum rate to be conditioned on a price frozen in time that does not recognize changes in market conditions, In view of the increase in gas demand in the past year, along with a decrease in excess supply/demand imbalance is eliminated. Transwestern also submits that much of the available gas supply under Transwestern's interruptible sales program is from small independent producers who rely on Transwestern to aggregate and market their production. If the market price were to exceed the maximum price, Transwestern would not be able to offer a competitive price to purchase gas supplies. Therefore, the producers would either have to accept a lower price from Transwestern, shut in their gas, or find another buyer. Further, in view of the very competitive nature of the markets served off in Transwestern's system, Transwestern must price its interruptable sales gas at market prices or it will not make any sales.

Alternative Proposal

In the alternate, if the Commission does not grant Transwestern's proposal to eliminate in its entirety the maximum rate under Rate Schedule IS-1, Transwestern would propose to charge the higher of Transwestern's presently effective maximum rate of $2.2102/dth or one hundred-twenty percent (120%) of the arithmetic average of the monthly spot price as published in Gas Daily, Inside FERC, and Natural Gas Week. Transwestern submits that setting the maximum price under Rate Schedule IS-1 at 120% of the average of the three spot published prices or the present or the present maximum rate of $2.2102/dth whichever is higher, would allow Transwestern to price its interruptible sales gas in competition with other gas sellers or marketers while still imposing a maximum price limitation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protest should be filed on or before November 13, 1990. Protest will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26756 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-3-30-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

November 6, 1990.

Take notice that on October 31, 1990 Trunkline Gas Company (Trunkline) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume 1:

Second Revised Sheet No. 3-A.7
Second Revised Sheet No. 3-A.8

The proposed effective date of these revised tariff sheets is December 1, 1990.

Trunkline states that the revised tariff sheets filed herewith reflect revisions to the Order No. 500 take-or-pay direct billing amounts approved by Commission Orders dated November 25, 1988, January 31, 1989 and May 10, 1989 in Docket No. RP89-11-000, and also by Commission Letter Order dated December 22, 1989 in Docket No. TM90-4-30-000.

Trunkline further states that the revised tariff sheets referenced above reflect the second annual adjustment to carrying charges and monthly TOP Fixed Surcharges in accordance with Section 21 of Trunkline's FERC Gas Tariff, Original Volume No. 1.

Trunkline states that copies of this letter and enclosures are being served on all affected jurisdictional sales customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Panhandle's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26773 Filed 11-13-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50715; FRL-3837-3]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of a notification of intent to conduct small-scale field testing of a nonindigenous strain of *Bacillus thuringiensis*.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment(s) concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Rm. 246 at the Virginia address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 17, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2690).

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received from the Ciba-Geigy Corporation of Greensboro, North Carolina. The purpose of the proposed testing is to evaluate the efficacy of the nonindigenous *Bacillus thuringiensis* strain towards lepidopterous insect pests of vegetables. The field tests are to take place in California, Florida, Mississippi, and Texas for a combined acreage of 0.85 acre. Following the review of the Ciba-Geigy Corporation application and any comments received in response to this Notice, EPA will decide whether or not an experimental use permit is required.

Dated: October 12, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-26842 Filed 11-13-90; 8:45 am]

BILLING CODE 6560-50-F

[OPP-42028F; FRL-3800-4]

Delaware State Plan for Certification of Applicators of Pesticides Classified for Restricted Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval of amendments to Plan.

SUMMARY: In the **Federal Register** of August 31, 1988 (53 FR 33533), the Agency announced its approval of proposed amendments to Delaware's State Plan for Certification of Applicators of Pesticides Classified For Restricted Use, contingent upon passage of the amendments by the State legislature. This notice announces passage of the amendments by the State legislature and final approval of the amendments by EPA.

ADDRESSES: Copies of the Delaware State Plan are available for review at the following locations:

1. Toxics and Pesticides Branch (3AM32), Environmental Protection Agency, Region III, 841 Chestnut St., Philadelphia, PA 19107.
2. Pesticide Compliance Supervisor, 2320 S. DuPont Highway, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Pesticide Certification and Training Officer, Toxics and Pesticides Branch (3AM32), Environmental Protection Agency, Region III, 841 Chestnut St., Philadelphia, PA 19107 (215)-597-6067.

SUPPLEMENTARY INFORMATION: The Delaware State Plan for Certification of Applicators of Pesticides Classified for Restricted Use was approved on January 31, 1978, and notice of the approval appeared in the **Federal Register** of February 14, 1978 (43 FR 6320). Delaware requested to amend its Plan by establishing additional requirements for the training and recertification of pesticide applicators, and the subdivision of Category 7 - Industrial, Institutional, Structural, and Health Related Pest Control to include the subcategories "Fumigation," "Wood Preservative Treatments," and "Miscellaneous Pest Control."

The Agency issued a notice of intent to approve the proposed amendments to Delaware's Plan on March 2, 1988 (53 FR 6691); no comments were received. On August 31, 1988 (53 FR 33533), the Agency announced approval of the proposed amendments contingent upon passage of the revised Plan by the State legislature.

The Delaware Department of Agriculture, through administrative authority granted by the State legislature, revised the regulations to include the necessary changes required by EPA. The amended State Plan was approved on January 20, 1989. This notice announces the final approval of Delaware's State Plan by the Agency.

Dated: October 23, 1990.

Edwin B. Erickson,

Regional Administrator, Region III.

[FR Doc. 90-26839 Filed 11-13-90; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50014; FRL-3838-5]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6 (f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to section 3(c)(2)(B) of FIFRA. The Notices were issued following issuance of Data Call-In Notices by the Agency and the failure of registrants subject to the Data Call-In Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3 (c)(2)(B). As required by section 6 (f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308-8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

[Addressee Information]

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the 3(c)(2)(B) Data Call-In Notice for _____ Dated _____.

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12 (a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the 3(c)(2)(B) Data Call-In Notice. The specific items where failure to comply has resulted in this intent to suspend are listed in the following two attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164. Section 3(c)(2)(B), however, provides that the only issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. If a hearing is requested, the Agency will issue a final order at the conclusion

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of the hearing governing the suspension of your products.

A request for a hearing must (1) State which allowable issues are to be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts, pertaining to any of the allowable issues for which you have requested a hearing. Three copies of the request must be submitted to: Hearing Clerk, A–110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be received by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit cannot be extended. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s).

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 3(c)(2)(B) Data Call-In Notice. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension, the Agency must also determine within the applicable 30–day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed on Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspensions must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors.

If you have any questions about the requirements and procedures set forth in this suspension notice or in the 3(c)(2)(B) Data Call-In Notice, please contact Stephen L. Brozena at (703) 308–8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:
Attachment I - Product List
Attachment II - Requirement List

II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a list of products for which a letter of notification has been sent:

TABLE A—LIST OF PRODUCTS

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Grow Group	257–252	Methylene Chloride	Liminox Liquid Residue Insecticide	10/16/90
Campbell Chemical Company	58294–07	Methylene Chloride	Wasp & Hornet Killer	10/16/90
Mobay Chemical Company	3125–121	Propoxur	Baygon 2% Bait Insecticide	10/15/90
	3125–176	Propoxur	Baygon Houshold Insect Residual Spray	10/15/90
	3125–177	Propoxur	Baygon Household Insect Spray	10/15/90
	3125–262	Propoxur	Baygon 1% Household Insect Residue Spray	10/15/90
	3125–344	Propoxur	Baygon 0.5% Aqueous Insecticide	10/15/90
	3125–345	Propoxur	Baygon 0.5% Aqueous Pressurized Insect Spray.	10/15/90
Prentiss Drug & Chemical Co.	655–351	Propoxur	Prentox Residual Spray Contains 1% Baygon	10/15/90
	655–527	Propoxur	Prentox Roach Bait Insecticide	10/15/90
	655–546	Propoxur	Prentox Prenbay 1 % Oil Solution	10/15/90
	655–641	Propoxur	Prentox Roach & Ant Killer	10/15/90
	655–642	Propoxur	Prentox Roach & Ant Killer w/0.5% Propoxur	10/15/90
Fairfield American Corporation	4816–371	Propoxur	Roach & Ant Spray Pressurized Contains Propoxur.	10/15/90
	4816–394	Propoxur	Roach & Ant Liquid Spray Contains Pyrenone & Baygon.	10/15/90

TABLE A—LIST OF PRODUCTS—Continued

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
	4816–542	Propoxur	FA Roach & Cricket Bait	10/15/90
	4816–548	Propoxur	Industrial Crawling Insect Spray	10/15/90
	4816–549	Propoxur	Roach & Ant Spray	10/15/90
	4816–601	Propoxur	Baygon 1 % Residue Spray	10/15/90
	4816–602	Propoxur	Baygon Household Insect Residual Spray	10/15/90
Roussel Bio Corp.	432–642	Propoxur	Propoxur Transparent Emulsion Spray 0.5%	10/15/90
	432–643	Propoxur	Propoxur Transparent Emulsion Spray 1%	10/15/90
	432–650	Propoxur	Propoxur Transparent Emulsion Pressurized Spray 1%.	10/15/90
	432–699	Propoxur	Propoxur Transparent Emulsion Pressurized Spray 0.5%.	10/15/90
	432–702	Propoxur	Propoxur/PYR/PBO/Transparent Emulsion 0.5% + 0.5% + 0.5%.	10/15/90
	432–705	Propoxur	Propoxur/Pyrethrins/PBO Transparent Emulsion Spray 0.5% + 0.5% + 0.5%.	10/15/90
Mobay Corp. Aminal Health Div.	11556–8	Propoxur	My Pal Flea & Tick Spray	10/15/90
	11556–82	Propoxur	Para-Ban Pressurized Spray	10/15/90
	11556–83	Propoxur	My Pal Flea & Tick Spray	10/15/90
Aceto Agricultural Chemicals Corp.	2749–106	Phorate	Phorate Technical	10/25/90
	2749–121	Phorate	Rampart 10G Soiland Systemic Insecticide	10/25/90
	2749–123	Phorate	Phorate 15G	10/25/90
Wilbur Ellis Co.	2935–361	Phorate	Red Top Thimet 6.5% Systemic Insecticide w/ PCNB Fungicide Granular.	10/25/90
Riverside/Terra Corporation	9779–293	Phorate	Phorate 20G	10/25/90
Platte Chemical Co.	34704–259	Phorate	Clean Crop Phorate 20G	10/25/90
	34704–405	Phorate	Terracior 6.5 Super x 1.6 Thimet 6.5 Granular.	10/25/90
Hess & Clark, Inc.	134–65	Formaldehyde	DC&R Disinfectant	10/15/90
I.D. Russell Company Labs	346–34	Formaldehyde	Incubator Fumigant	10/15/90
E.I. DuPont DeNemous & Co., Inc.	352–500	Formaldehyde	Conquest 4L Herbicide	10/15/90
US Professional Labs Lehn & Fink IND Product.	365–78	Formaldehyde	Grotan GF-35 Preservative	10/15/90
Pfizer Inc. Chemical Division	1007–86	Formaldehyde	Flogaurd 1015	10/15/90
Hydro Chemical Co.	1712–7	Formaldehyde	Hydro Formaldehyde Disinfectant	10/15/90
Petrolite Corp.	5009–38	Formaldehyde	X-Cide 133	10/15/90
	5009–42	Formaldehyde	X-Cide 233 Industrial Micobiocide	10/15/90
	5009–43	Formaldehyde	X-Cide 137 Industrial Bactericide	10/15/90
Vineland Laboratories	6035–33	Formaldehyde	Sani-Squad	10/15/90
	6035–47	Formaldehyde	Vinco Formaldehyde Solution	10/15/90
MDT Biologic Co.	10648–1	Formaldehyde	Harvey's Vapo-Steril Solution	10/15/90
Champion Chemical	8133–28	Formaldehyde	Bactron K-55 Microbiocide	10/15/90
Frontier Feeds, Inc.	566 .9–2	Formaldehyde	Protectein RTU	10/15/90
Hysan Corporation	334–177	Paraformaldehyde	Fyte 60 Solid Atmosphere Odor Control	10/15/90
	334–187	Paraformaldehyde	Fyte 7 Bacteriostat	10/15/90
	334–279	Paraformaldehyde	Blue Fyte Lock on Bowl Bacteriostat	10/15/90
Noble Pine Products Company	397–6	Paraformaldehyde	Steri-Dri Fungicide	10/15/90
Para Industries, Inc.	649–50	Paraformaldehyde	Click Solid Air Deodorizer and Bacteriostat for Urinals.	10/15/90
Vapor Products	2214–5	Paraformaldehyde	Mildewcide	10/15/90
	2214–6	Paraformaldehyde	DI Gas	10/15/90
Vineland Products	6035–37	Paraformaldehyde	Vinco Formaldegen-F	10/15/90
	6035–43	Paraformaldehyde	Vineland Formaldegen	10/15/90
Barlod Division of NL Industries Inc.	17564–8	Paraformaldehyde	Aldacide	10/15/90
Guardsman Products, Inc.	41104–1	Paraformaldehyde	Mildew Stop	10/15/90
Davis Mud & Chemical, Inc.	43290–1	Paraformaldehyde	Davis Mud & Chemical, Inc. Paraformaldehyde Microbiocide.	10/15/90

III. Basis for Issuance of Notice of Intent; Requirement List

The following companies failed to submit the following required data or information:

TABLE B—LIST OF REQUIREMENTS

Active Ingredient	Registrant Affected	Requirement Name	Original Due-Date
Methylene Chloride	Grow Group	Confidential Statement of Formula	5/21/90
		90-Day Data Call-In Summary Sheet	5/21/90
	Campbell Chemical Co.	Confidential Statement of Formula	5/21/90
		90-Day Data Call-In Summary Sheet	5/21/90
Propoxur	Mobay Chemical Co.	Exposure of applicator during outside application (guideline reference no. 133-3/133-4).	2/16/90
	Mobay Corp./Animal Health Division	Post-application exposure from total release aerosols (guideline reference no. 133-3/133-4).	2/16/90
	Roussel Bio Corp.	Exposure of applicator during application of aerosolized insecticide (guideline reference no. 133-3/133-4).	2/16/90
	Fairfield American Corp.	Exposure of applicator during application around foundations, patios, driveways, or sidewalks (guideline reference no. 133-3/133-4).	2/16/90
	Prentiss Drug & Chemical Co.		
Phorate	Aceto Agricultural Chemical Corp. Wilbur Ellis Co. Riverside/Terra Corp. Platte Chemical Co.	Boiling point (guideline reference no. 63-6)	10/31/89
		Solubility (guideline reference no. 63-8)	10/31/89
		Vapor Pressure (guideline reference no. 63-9)	10/31/89
		Octanol/Water Partition Coefficient (guideline reference no. 63-11)	10/31/89
		Stability (guideline reference no. 63-13)	10/31/89
		Residue Analytical Method-Plant (guideline reference no. 171-4B)	4/30/90
		Residue Analytical Method-Animal (guideline reference no. 171-4D)	4/30/90
		Storage Solubility (guideline reference no. 171-4E)	4/30/90
		Hydrolysis (guideline reference no. 161-1)	10/31/89
		Photodegradation (Water) (guideline reference no. 161-2)	10/31/89
		Photodegradation (Soil) (guideline reference no. 161-3)	10/31/89
		Lab Volatity (guideline reference no. 163-2)	1/31/90
		Bioaccumulation in Fish (guideline reference no. 165-4)	1/31/90
		Special Testing for Eye Effects Acute Oral (Rat) Study	10/31/89
		Special Testing for Eye Effects Subchronic Oral (Rat) Study	4/30/90
		Special Testing - Short Term Mouse Study	1/31/90
		Estuarine/Marine Toxicity Shrimp - TEP (guideline reference no. 72-3F)	1/31/90
		Early Life Stage Fish (guideline reference no. 72-4A)	4/30/90
		Life Cycle Invertebrate (guideline reference no. 72-4B)	4/30/90
Phorate	Aceto Agricultural Chemical Corp.	Product Identity & Composition (guideline reference no. 61-1, 61-2, 61-3)	10/31/89
		Analysis & Certification of Product Ingredients (guideline reference no. 62-1, 62-2, 62-3).	1/31/90
		Physical/Chemical Properties (guideline reference no. 63-3, 63-4, 63-5, 63-6, 63-7, 63-14, 63-16).	10/31/89
		Physical/Chemical Properties (guideline reference no. 63-17, 63-20)	4/30/90
		Acute Oral Toxicity - Rat (guideline reference no. 81-1)	10/31/89
		Acute Dermal Toxicity (guideline reference no. 81-2)	10/31/89
		Acute Inhalation Toxicity - Rat (guideline reference no. 81-3)	10/31/89

TABLE B—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Original Due-Date
Formaldehyde	Hess & Clark, Inc. I.D. Russell Company Labs E.I DuPont DeNemours & Co., Inc. US Professional Labs Lehn & Funk IND Product Pfizer Inc. Chemical Division Hydro Chemical Co. Petrolite Corp. Vinalands Laboratories MDT Biologic Company Champion Chemical Inc. Frontier Feeds, Inc.	Analytical Method (guideline reference no. 62-3)	7/31/89
		Fish Toxicity Bluegill - TEP (guideline reference no. 72-1B)	4/30/89
		Invertebrate Toxicity (guideline reference no. 72-2B)	4/30/89
		Estuarine/Marine Toxicity Fish (guideline reference no. 72-3D)	7/31/89
		Estuarine/Marine Toxicity Molluak - TEP (guideline reference no. 72-3E)	7/31/89
		Estuarine/Marine Toxicity Shrimp - TEP (guideline reference no. 72-3F)	7/31/89
		Acute Oral Toxicity Rat (guideline reference no. 81-1)	4/30/89
		Acute Dermal Toxicity Rabbit/Rat (guideline reference no. 81-2)	4/30/89
		Acute Inhalation Toxicity Rat (guideline reference no. 81-3)	4/30/89
		90-Day Feeding-Rodent (guideline reference no. 82-1A)	10/31/89
		90-Day Feeding-Nonrodent (guideline reference no. 82-1B)	10/31/89
		21-Day Dermal-Rabbit/Rat (guideline reference no. 82-2)	10/31/89
		90-Day Inhalation-Rat (guideline reference no. 82-4)	10/31/89
		Teratogenicity-Rat (guideline reference no. 83-3A)	10/31/90
		Teratogenicity-Rabbit (guideline reference no. 83-3B)	10/31/89
		Gene Mutation-Ames (guideline reference no. 84-2A)	4/30/89
		Stuctural Chromosome Aberration (guideline reference no. 84-2B)	4/30/89
		Other Genotoxic Effects (guideline reference no. 84-4)	4/30/89
		Dermal Penetration (guideline reference no. 85-2)	7/31/89
		Inhalation Passive Dosimetry Exposure (guideline reference no. 133-4)	7/31/89
		Hydrolysis (guideline reference no. 161-1)	4/30/89
		Photodegradation-Water (guideline reference no. 161-2)	4/30/89
		Photodegradation-Soil (guideline reference no. 161-3)	4/30/89
		Leaching/Absorption/Desorption (guideline reference no. 163-1)	7/31/89
		Volatility-Lab (guideline reference no. 163-2)	7/31/89
		Bioaccumulation in Fish (guideline reference no. 165-4)	7/31/89
		Bioaccumulation-Aquatic Non-Target (guideline reference no. 165-5)	7/31/89
		Nature of Residue-Plants (guideline reference no. 171-4A)	1/31/90
		Nature of Residue-Livestock (guideline reference no. 171-4B)	1/31/90
		Residue Analytical Method-Plant (guideline reference no. 171-4C)	10/31/89
		Residue Analytical Method-Animal (guideline reference no. 171-4D)	10/31/89
		Storage Stability (guideline reference no. 171-4E)	10/31/89
Paraformaldehyde	Hysan Corporation (LARA OFC) Noble Pine Products Co. Para Industries Inc. Vapor Products Vineland Laboratories Bariod Division NL Industries, Inc. Guardsman Products Inc. Davis Mud & Chemical, Inc.	Analytical Method (guideline reference no. 62-3)	7/31/89
		Acute Avian Oral Quail/Duck (guideline reference no. 71-1)	4/30/89
		Acute Avian Dietary Quail (guideline reference no. 71-2A)	4/30/89
		Acute Avian Dietary Duck (guideline reference no. 71-2B)	4/30/89
		Fish Toxicity Bluegill - TEP (guideline reference no. 72-1B)	4/30/89
		Fish Toxicity Rainbow Trout - TEP (guideline reference no. 72-1D)	4/30/89
		Invertebrate Toxicity - TEP (guideline reference no. 72-2B)	4/30/89
		Acute Oral Toxicity Rat (guideline reference no. 81-1)	4/30/89
		Acute Dermal Toxicity Rabbit/Rat (guideline reference no. 81-2)	4/30/89
		Acute Inhalation Toxicity Rat (guideline reference no. 81-3)	4/30/89
		Invertebrate Toxicity - TEP (guideline reference no. 72-2B)	4/30/89
		Acute Oral Toxicity Rat (guideline reference no. 81-1)	4/30/89
		Acute Dermal Toxicity Rabbit/Rat (guideline reference no. 81-2)	4/30/89
		Acute Inhalation Toxicity Rat (guideline reference no. 81-3)	4/30/89
		90-Day Feeding-Rodent (guideline reference no. 82-1A)	10/31/89
		90-Day Feeding-Nonrodent (guideline reference no. 82-1B)	10/31/89
		21-Day Dermal-Rabbit/Rat (guideline reference no. 82-2)	10/31/89
		90-Day Inhalation-Rat (guideline reference no. 82-4)	10/31/89
		Teratogenicity-Rat (guideline reference no. 83-3A)	10/31/89
		Teratogenicity-Rabbit (guideline reference no. 83-3B)	10/31/90
		Gene Mutation-Ames (guideline reference no. 84-2A)	4/30/89
		Stuctural Chromosone Aberration (guideline reference no. 84-2B)	4/30/89
		Other Genotoxic Effects (guideline reference no. 84-4)	4/30/89
		Dermal Penetration (guideline reference no. 85-2)	7/31/89
		Inhalation Passive Dosimetry Exposure (guideline reference no. 133-4)	7/31/89
		Hydrolysis (guideline reference no. 161-1)	4/30/89
		Photodegradation-Water (guideline reference no. 161-2)	4/30/89
		Photodegradation-Soil (guideline reference no. 161-3)	4/30/89
		Leaching/Absorption/Desorption (guideline reference no. 163-1)	7/31/89
		Volatility-Lab (guideline reference no. 163-2)	7/31/89
		Bioaccumulation in Fish (guideline reference no. 165-4)	7/31/89
		Bioaccumulation-Aquatic Non-Target (guideline reference no. 165-5)	7/31/89
		Nature of Residue-Plants (guideline reference no. 171-4A)	1/31/90
		Nature of Residue-Livestock (guideline reference no. 171-4B)	1/31/90
		Residue Analytical Method-Plant (guideline reference no. 171-4C)	10/31/89
		Residue Analytical Method-Animal	10/31/89
		Storage Stability (guideline reference no. 171-4E)	10/31/89

IV. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: November 2, 1990.

Connie A. Musgrove,

Acting Director, Office of Compliance Monitoring.

[FR Doc. 90-26712 Filed 11-13-90; 8:45 am]

BILLING CODE 6560-50-F

[OPP-42011F; FRL-3800-3]

Pennsylvania State Plan for Certification of Applicators of Pesticides Classified for Restricted Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval of amendments to Plan.

SUMMARY: In the Federal Register of August 31, 1988 (53 FR 33534), the Agency announced its approval of proposed amendments to Pennsylvania's State Plan for Certification of Applicators of Pesticides Classified for Restricted Use, contingent upon passage of the amendments by the State legislature. This notice announces passage of the amendments by the State legislature and final approval of the amendments by EPA.

ADDRESSES: Copies of the Pennsylvania State Plan are available for review at the following locations:

1. Toxics and Pesticides Branch (3AM32), Environmental Protection Agency, Region III, 841 Chestnut St., Philadelphia, PA 19107.
2. Pesticide Compliance Supervisor, Pennsylvania Department of Agriculture, Bureau of Plant Industry, 2301 N. Cameron St., Harrisburg, PA 17120.

FOR FURTHER INFORMATION CONTACT: Pesticide Certification and Training Officer, Toxics and Pesticides Branch (3AM32), Environmental Protection Agency, Region III, 841 Chestnut St., Philadelphia, PA 19107, (215)-597-8067.

SUPPLEMENTARY INFORMATION: The Pennsylvania State Plan for Certification of Applicators of Pesticides Classified for Restricted Use was approved on August 8, 1977, and notice of the approval appeared in the Federal Register of August 19, 1977 (42 FR 41907). Pennsylvania requested to amend its Plan by establishing additional requirements for the certification and recertification of pesticide applicators, and the creation of the new commercial categories "Wood Preservation Technology," "Commodity Fumigation," "Soil Fumigation," "Interior Plantscapes," and "Park Pest Control."

The Agency issued a notice of intent to approve the proposed amendments to Pennsylvania's Plan on March 2, 1988 (53 FR 6692); no comments were received. On August 31, 1988 (53 FR 33534), the Agency announced approval of the proposed amendments contingent upon passage of the revised Plan by the State legislature.

The Pennsylvania Legislature approved the amended State Plan on February 3, 1990. This notice announces the final approval of Pennsylvania's State Plan by the Agency.

Dated: October 23, 1990.

Edwin B. Erickson,

Regional Administrator, Region III.

[FR Doc. 90-26840 Filed 11-13-90; 8:45 am]

BILLING CODE 6560-50-F

42 U.S.C. 122(h)

[FRL-3860-3]

Proposed Administrative Agreement

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Proposed settlement.

SUMMARY: U.S. EPA is proposing to settle a claim under section 107 of CERCLA for response costs incurred during removal activities at Dead Creek Site No. 60 in Sauget, Illinois. Respondents have agreed to reimburse U.S. EPA in the amount of $12,500. U.S. EPA today is proposing to approve this settlement offer because it reimburses U.S. EPA, in part, for costs incurred during U.S. EPA's removal action.

DATES: Comments on this proposed settlement must be received by December 14, 1990.

ADDRESSES: Copies of the proposed settlement are available at the following addresses for review: (It is recommended that you telephone Daniel O'Riordan at (312) 886-4359 before visiting the Region V Office) U.S. Environmental Protection Agency, Region V, Office of Superfund, Remedial and Enforcement Response Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Comments on this proposed settlement should be addressed to: (Please submit an original and three copies, if possible) Daniel O'Riordan, Community Relations Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-4359.

FOR FURTHER INFORMATION CONTACT: Daniel O'Riordan, Office of Public Affairs, at (312) 886-4359.

SUPPLEMENTARY INFORMATION: Dead Creek Site No. 60 is not on the National Priorities List. After receiving reports that Dead Creek was smoldering, U.S. EPA personnel installed a chain link fence on that portion of the creek bordered by Judith Lane on the south and Queeny Avenue to the north in Sauget, Illinois. This prevented anyone from having direct contact with the creek. The Illinois Environmental Protection Agency is studying the Dead Creek as well as other locales in Sauget, and will determine what further action is appropriate.

Respondents are four companies that generated hazardous waste while operating in the area of the Dead Creek. A 30-day period, beginning on the date of publication, is open pursuant to section 122(i) of CERCLA for comments on the proposed settlement.

Comments should be sent to the Office of Public Affairs (5PA-14), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

Elizabeth Doyle,

Assistant Regional Counsel, United States Environmental Protection Agency.

[FR Doc. 90-26834 Filed 11-13-90; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140138; FRL-3802-3]

Access to Confidential Business Information by Certain Contractors and Subcontractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized several contractors and subcontractors for access to information which has been submitted to EPA under various sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI). EPA is issuing this notice to inform submitters of changes in the TSCA CBI access status under these contracts.

FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

Access to CBI by the contractors and subcontractors shown in the chart below was announced in earlier Federal Register notices. EPA is issuing this notice to inform submitters of changes in the TSCA CBI access status under these contracts. In accordance with 40 CFR 2.306(j), EPA has determined that the following contractors and subcontractors will require access to CBI submitted to EPA under TSCA to perform successfully work specified under their contracts.

Contract Number	Contractor Name	Contractor Address	Authorized Sections of TSCA	Site Information	Federal Register Publication Cite/Date	Extended Expiration Date
68-D8-0069	Am-Pro Protective Agency	7499 Parklane Rd., Suite 136, Columbia, SC 29223.	All	EPA RTP, NC Facilities	54 FR 46981 (11/8/89).	9/30/91
68-D9-0005	ASci Corporation	1365 Beverly Rd., McLean, VA 22101.	All	EPA Headquarters	54 FR 46981 (11/8/89).	9/30/91
68-01-7176	Computer Sciences Corporation.	6100 Gatehouse Rd., Falls Church, VA 22042.	All	EPA Headquarters	50 FR 45483 (10/31/85).	11/30/90
68-02-4252	Midwest Research Institute	425 Volker Blvd., Kansas City, MO 64110.	4, 5, 6, 8	EPA Headquarters and Contractor Site.	51 FR 24439 (7/3/86).	12/31/90
68-01-7176	NMI/CRC Systems Incorporated.	11042 Waples Mill Rd., Fairfax, VA 22030.	All	EPA Headquarters	54 FR 46981 (11/8/89).	11/30/90
68-02-3056	Research Triangle Institute	3040 Cornwallis Rd., Research Triangle, NC 27709.	8	Contractor Site	53 FR 37640 (9/27/88).	10/13/92
68-D9-0176	Technical Resources Incorporated.	1000 6th St., SW., Apt. 315, Washington, DC 20460.	5, 6	EPA Headquarters and Contractor Site.	55 FR 760 (1/9/90)	9/30/93

The contractors and subcontractors listed above that are authorized to transfer CBI materials from EPA Headquarters to their facilities will, upon completing review of the CBI materials, return them to EPA. Contractors and subcontractors requiring access to TSCA CBI at their facilities will be authorized for such access under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business

Information" security manual. EPA has received their security plans and has performed the required inspections of their facilities. Contractor and subcontractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: October 3, 1990.

Steve Newburg-Rinn

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90-26841 Filed 11-13-90; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL ELECTION COMMISSION

Clearinghouse on Election Administration; Meeting

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. app. I) and Office of Management and Budget Circular A-63, as revised, the Federal Election Commission announces the following Advisory Panel meeting:

Name: Federal Election Commission Clearinghouse Advisory Panel.

Date: 12-14 December 1990.

Place: Westin Hotel, 909 N Michigan Ave, Chicago, IL.

Time: 1500-1730 on 12 December 1990, 0830-1200; 1400-1600 on 13 December 1990, 0830-1230; 1400-1700 on 14 December 1990.

Proposed Agenda:

Status of Clearinghouse projects; Doing It By The Numbers, 1990 Census; Prosecution of Crimes Against the Electoral Process; Elections Abroad; Telling the Public Who Won the Elections; Kids Voting: So Easy a Kid Can Do It; America in the 1990's: An Economy in Transition: A Society Under Stress; Problems in Recruiting Poll Workers: A Local and National Perspective; Election Law: Precedent Setting Cases; Advances in Information Technology; Panel Discussion of Election Applications.

Purpose of the Meeting:

The Panel will discuss the agenda items, present their views on problems in the administration of Federal elections, and formulate recommendations to the Federal Election Commission Clearinghouse for its future program development.

The Advisory Panel meeting is open to the public, dependent on available space. Attendees to all sessions must pay $95.00 in registration fees. Any member of the public may file a written statement with the Panel before, during or after the meeting. To the extent that time permits, the Panel Chairman may allow public presentation or oral statements at the meeting.

All communications regarding the Advisory Panel should be addressed to Penelope Bonsall, National Clearinghouse on Election Administration, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

Dated: November 6, 1990.

Marjorie W. Emmons,

Secretary to the Commission.

[FR Doc. 90-26733 Filed 11-13-90; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public, Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Crown Cruise Line of Florida, Inc., Grundstad Maritime Overseas, Inc., Palm Beach Cruises S.A. and Cruceros de Valencia S.A., P.O. Box 3000, 2790 N. Federal Highway, Boca Raton, FL 33431.

Vessel: Crown Monarch.

Dated: November 7, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-26732 Filed 11-13-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

November 7, 1990.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be submitted on or before November 28, 1990.

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

Proposal to Approve Under OMB Delegated Authority the Extension, With Revision, of the Following Reports

Report title: Applications for Membership in the Federal Reserve System
Agency form number: FR 2083, 2083A-2083E
OMB docket number: 7100-0046
Frequency: On occasion
Reporters: Commercial banks and certain mutual savings banks
Annual reporting hours: 1,308
Estimated average hours per response: 37.5
Number of respondents: 37
Small businesses are not affected.
General description of report: This application provides managerial, financial and structural data necessary for the Federal Reserve Board to evaluate a new or existing bank's application for admission to the Federal Reserve System pursuant to criteria established by statute and regulation (regulation H). The revisions would standardize the format of certain information and reflect reduced reporting requirements resulting from amendments to the Change in Bank Control Act.

This information collection is authorized by law (12 U.S.C. 321-328). Parts may be given confidential treatment at applicant's request (5 U.S.C. 552(b)(4)).

Proposal to Approve Under OMB Delegated Authority the Extension, Without Revision, of the Following Reports

Report title: Monthly Survey of Eligible Bankers Acceptances
Agency form number: FR 2006
OMB docket number: 7100-0055
Frequency: Monthly
Reporters: U.S. commercial banks, U.S. branches and agencies of foreign banks and edge corporations.
Annual reporting hours: 2570
Estimated average hours per response: 2.1
Number of respondents: 102
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 248(a), 625, and 3105(b)) and is given confidential treatment (5 U.S.C. 552(b)(4) and (8)).

This report provides timely and detailed information on eligible dollar acceptances traded in the United States. The data are used for constructing a measure of short- and intermediate-term business credit and are relied upon to provide information to the Federal Reserve's trading desk.

Report title: Survey to Obtain Information on the Relevant Market in Individual Merger Cases
Agency form number: FR 2060
OMB docket number: 7100-0232
Frequency: On occasion
Reporters: Small businesses and consumers
Annual reporting hours: 55
Estimated average hours per response: 10 minutes for small businesses, 6 minutes for consumers
Number of respondents: 25 small businesses and 50 consumers per survey
Small businesses are affected.
General description of report: This information collection is voluntary (12 U.S.C. 1828(c)) and is given confidential treatment (5 U.S.C. 552 (b)(4) and (b)(6).

This telephone survey is designed to determine from what sources small businesses and consumers obtain financial services. The information is needed for specific merger and acquisition applications to determine relevant banking markets in the analysis of local market competition.

3. *Report title:* Report by Banks Proposing to Amortize Losses on Qualified Agricultural Loans
Agency form number: FR 4020
OMB docket number: 7100-0231
Frequency: On occasion for initial applications, annually for participating banks
Reporters: State member banks
Annual reporting hours: 27
Estimated average hours per response: 15 for initial applications, 2 for participating banks
Number of respondents: 6 currently, with 1 initial application expected
Small businesses are affected.
General description of report: This information collection is voluntary (12 U.S.C. 321 *et seq.*), and individual respondent data may be given confidential treatment (5 U.S.C. 552 (b)(4) and (b)(8))

The report documents an applicant state member bank's eligibility to amortize losses on qualified agricultural loans under the Competitive Equality Banking Act of 1987 and provides information needed by the Federal Reserve to fulfill its supervisory responsibilities in establishing the eligibility of the bank and in monitoring the bank's compliance with the conditions of the program.

4. *Report title:* Transfer Agent Registration and Amendment Form
Agency form number: FR TA-1
OMB docket number: 7100-0099
Frequency: On occasion
Reporters: State member banks, bank holding companies, and certain nondeposit trust company subsidiaries of bank holding companies
Annual reporting hours: 23
Estimated average hours per response: 1.25 for initial registrations, 10 minutes for amendments
Number of respondents: 16 filing initial registrations and 18 filing amendments
Small businesses are not affected.
General description of report: This information collection is mandatory (15 U.S.C. 78q-1(c)(1) and (2)) and is not given confidential treatment.

This interagency form fulfills the statutory registration and amendment requirements for entities acting as transfer agents for securities registered under section 12 of the Securities Exchange Act of 1934. Such entities must register with the appropriate regulatory agency prior to performing the functions of a transfer agent.

5. *Report title:* Reports Related to Securities of State Member Banks as Required by Regulation H
Agency form number: N.A.
OMB docket number: 7100-0091
Frequency: On occasion, quarterly, and annually
Reporters: State member banks with more than 500 shareholders and more than $5 million in total assets
Annual reporting hours: 7,324
Estimated average hours per response: 8.75
Number of respondents: 35
Small businesses are not affected.
General description of report: This information collection is mandatory (15 U.S.C. 78(i)) and is not given confidential treatment.

Since December 1987 state member banks that meet the shareholder and total asset criteria have been required pursuant to Regulation H to file the same securities forms and reports that bank holding companies and non-bank entities use when they file directly with the Securities and Exchange Commission. Some examples of such reports are Form 10-Q quarterly reports, Form 10-K annual reports, and event-generated Form 3 and Form 4 reports.

Proposal To Approve Under OMB Delegated Authority the Discontinuance of the Following Report

Report title: Monthly Report of International Banking Facility (IBF) Accounts
Agency form number: FR 2072
OMB docket number: 7100-0158
Frequency: Monthly
Reporters: Financial institutions
Annual reporting hours: 1,187
Estimated average hours per response: 2.3
Number of respondents: 43
Small businesses are not affected.
General description of report: This information collection is required by law (12 U.S.C. 248(a), 602, 625, and 3105(b)). Individual respondent data are given confidential treatment (5 U.S.C. 552(b)(4)).

This report collects data on assets and liabilities of International Banking Facility (IBF) accounts. The Board no longer needs the data from this report to monitor the activities of IBFs or for

interpretation of the monetary and credit aggregates because the data are available from another source.

Board of Governors of the Federal Reserve System, November 7, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-26797 Filed 11-13-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Dkt. C-3309]

Nationwide Acceptance Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Chicago, Ill., based corporation to cease and desist from failing to disclose required information under the Fair Credit Reporting Act. It also requires the respondent to mail informational brochures and letters, which disclose certain required information, to all applicants who were rejected for consumer credit or charged an increased amount for credit, based on a report from a consumer reporting agency or third party, between July 1, 1988 and December 31, 1989.

DATES: Complaint and order issued October 18, 1990.[1]

FOR FURTHER INFORMATION CONTACT: Sandra Wilmore, FTC/S-4429, Washington, DC 20580. (202) 326-3169.

SUPPLEMENTARY INFORMATION: On Tuesday, August 7, 1990, there was published in the **Federal Register** 55 FR 32146, a proposed consent agreement with analysis In the Matter of Nationwide Acceptance Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 84 Stat. 1128-36; 15 U.S.C. 1681-1681(f).

Donald S. Clark,

Secretary.

[FR Doc. 90-26827 Filed 11-13-90; 8:45 am]

BILLING CODE 6750-01-M

[File Docket Nos. 892 3019]

Haverhills, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a California mail order company and its owners from making certain misrepresentations and unsubstantiated health and safety claims, in the sale of artificial tanning devices or any other device, and from making unsubstantiated fuel economy claims, with respect to any engine oil additive, automobile gasoline additive, or automobile retrofit device. In addition, respondents would be required to distribute a copy of the order to officers, employees, and representatives involved in sales or advertising.

DATES: Comments must be received on or before January 14, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lee Peeler, FTC/S-4002, Washington, DC 20580. (202) 326-3090.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of Haverhills, a corporation, and Gerardo Joffe and Priscilla Joffe, individually and as officers of said corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Haverhills, a corporation, and Gerardo Joffe and Priscilla Joffe, individually and as officers of Haverhills, hereinafter sometimes referred to as proposed respondents, and it now is appearing that the proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between Haverhills, Gerardo Joffe, Priscilla Joffe, and counsel for the Federal Trade Commission that:

1. Proposed respondent Haverhills, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 131 Townsend Street, San Francisco, California 94107.

2. Proposed respondents Gerardo Joffe and Priscilla Joffe are officers of Haverhills. They formulate, direct and control the acts and practices of Haverhills. Their address is the same as that of Haverhills.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of the complaint attached hereto.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement;

(d) All claims under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the proposed complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and action as it may consider appropriate, or issue and serve its complaint (in such form as the circumsances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the proposed complaint attached hereto.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the proposed complaint attached hereto and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-agreement shall constitute service. Proposed respondents waive any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order of the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For the purpose of this Order, the following definition shall apply:

Tanning device means any product designed to incorporate one or more ultraviolet lamps and intended for irradiation of any part of the living human body by ultraviolet radiation to induce skin tanning.

Health or safety representation means any general or specific, oral or written representation that relates or refers to the maintenance, preservation, or improvement or a consumer's health of physical safety.

I

It is ordered that respondent Haverhills, a corporation, its successors and assigns, and its officers and directors; and Gerardo Joffe and Priscilla Joffe, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, independent contractor or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication, that:

A. Use of any such device does not pose a risk of the harmful side effects associated with exposure to the sun's radiation;

B. Use of any such device does not increase the risk of developing skin cancer;

C. Use of any such device does not contribute to skin aging; and

D. The sun emits UVC radiation that penetrates the earth's atmosphere and therefore causes the harmful side effects associated with exposure to the sun's radiation.

II

It is further ordered that respondent Haverhills, a corporation, its successors and assigns, and its officers and directors; and Gerardo Joffe and Priscilla Joffe, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, independent contractor or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication, that use of any such device without protective eyewear is safe.

Provided that, for the purpose of this Order, any advertisement or promotional material depicting models using tanning devices without appropriate protective eyewear will be deemed to be a representation covered by this section, unless the advertisement or promotional material clearly and conspicuously, and in close proximity to such depiction, discloses (i) That protective eyewear is needed to prevent eye injury, and (ii) if such promotional material depicts models wearing what might appear to be ordinary sunglasses, that ordinary sunglasses do not offer adequate protection.

III

It is further ordered that, for one (1) year after the date of service of this Order, respondent Haverhills, a corporation, its successors and assigns, and its officers and directors; and Gerardo Joffe and Priscilla Joffe, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, independent contractor or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose in any advertisement or any other promotional material the following statement:

Notice—Read the mandatory FDA warning label found on every tanning machine for important information on potential eye injury, skin cancer, skin aging and photosensitive reactions.

The above-required language shall be included in printed material printed in a typeface and color that are clear and conspicuous; and shall be included in any television, radio, film, video tape, or slide promotional material either orally or visually in a manner designed to ensure clarity and prominence. Nothing contrary to, inconsistent with, or in mitigation of the above-required statement shall be used in any advertising or promotional materials.

IV

It is further ordered that, commencing one (1) year after the date of service of this Order, respondent Haverhills, a corporation, its successors and assigns, and its officers and directors; and Gerardo Joffe and Priscilla Joffe, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, independent contractor or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that the tanning device is safe or safer than any other method of tanning, that the device has any health benefit, or that the device may be safely used without wearing protective eyewear, unless the following statement is disclosed as specified below:

Notice—Read the mandatory FDA warning label found on every tanning machine for

important information on potential eye injury, skin cancer, skin aging and photosensitive reactions.

The above-required language shall be included in printed material printed in a typeface and color that are clear and conspicuous; and shall be included in any television, radio, film, video tape, or slide promotional material either orally or visually in a manner designed to ensure clarity and prominence. Nothing contrary to, inconsistent with, or in mitigation of the above-required statement shall be used in any advertising or promotional materials.

V

It is further ordered that respondent Haverhills, a corporation, its successors and assigns, and it officers and directors; and Gerardo Joffe and Priscilla Joffe, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, independent contractor or other device, in connection with the advertising, offering for sale, sale, or distribution of any device, as "device" is defined in the Federal Trade Commission Act, in or affecting commerce, as "commerce" is defined in that Act, do forthwith cease and desist from making, directly or by implication, any health or safety representation, unless, at the time of such representation, respondents possess and rely upon a reasonable basis for such representation, consisting of reliable and competent scientific evidence that substantiates such representation; provided, however, that to the extent such evidence consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results.

VI

It is further ordered that respondent Haverhills, a corporation, its successors and assigns, and it officers and directors; and Gerardo Joffe and Priscilla Joffe, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, independent contractor or other device, in connection with the advertising, offering for sale, sale, or distribution of the automobile retrofit device known as Fuel Magnetizer, or any other automobile retrofit device (as "automobile retrofit device" is defined in section 511 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2011) having substantially similar properties, in or affecting commerce "as commerce" is defined in the Federal Trade Commission Act, cease and desist from representing, directly, or by implication, that such retrofit device will or may result in fuel economy improvement when installed in an automobile, truck, recreational vehicle, or other motor vehicle.

VII

It is further ordered that respondent Haverhills, a corporation, its successors and assigns, and it officers and directors; and Gerardo Joffe and Priscilla Joffe, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, independent contractor or other device, in connection with the advertising, offering for sale, sale, or distribution of any automotive gasoline additive, engine oil additive, or automobile retrofit device (as "automobile retrofit device" is defined in section 511 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2011), in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly, or by implication, that such device will or may result in fuel economy improvement when installed in an automobile, truck, recreational vehicle, or other motor vehicle, unless, and only to the extent, respondents possess and rely upon a reasonable basis for such representation. This reasonable basis shall consist of competent and reliable tests, such as:

a. Chassis dynamometer tests done according to procedures that simulate typical urban and highway driving patterns, such as the then current urban and highway driving test schedules established by the Environmental Protection Agency; or

b. Track or road tests done according to procedures that simulate urban and highway driving patterns, such as those established by the Environmental Protection Agency.

A competent and reliable test means one conducted and evaluated in an objective manner by persons qualified to do so using procedures generally accepted in the profession to yield accurate and reliable results.

Respondents shall, when using the results of any tests required by this part, clearly and conspicuously disclose the limitations upon the applicability of the results to any automobile, truck, recreational vehicle, or other motor vehicle. Where the results of such tests are used in connection with a representation of fuel economy improvement expressed in miles per gallon (or liter), miles per tankful, or percentage, or where the representation of the benefit is expressed as a monetary saving in dollars or percentages, all advertising and other sales promotional materials that contain the representation must also clearly and conspicuously disclose the following disclaimer: "REMINDER: Your actual saving may vary. It depends on the kind of driving you do, how you drive and the condition of your car."

VIII

It is further ordered that respondents shall distribute a copy of this Order to each current officer, employee, agent and/or representative having sales, advertising or promotional responsibilities with respect to the subject matter of this Order and shall obtain from each such person a signed statement acknowledging receipt of the Order.

IX

It is further ordered that for three (3) years from the date of the last dissemination of each representation which is subject to this Order, respondents and their successors and assigns shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

a. All materials relied upon to substantiate any representation covered by this Order; and

b. All test reports, studies, surveys, or other materials in its possession or control that contradict, qualify, or call into question such representation or the basis upon which respondent relied for such representation, including complaints from consumers.

X

It is further ordered that respondents and their successors and assigns shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising under this Order. Respondents shall require, as a condition precedent to the closing of any sale or other disposition of all or a substantial part of their assets, that the acquiring party file with the Commission, prior to the closing of such sale or other disposition, a written agreement to be bound by the provisions of the Order.

XI

It is further ordered that for a period of ten (10) years from the date of service of this Order, each of the individual respondents named herein shall promptly notify the Commission in the event of the discontinuance of his/her present business or employment and of each affiliation with a new business or employment. Each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which said respondent is newly engaged as well as a description of said respondent' duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

XII

It is further ordered that respondents shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted subject to final approval an agreement containing a consent order from Haverhills, a mail order company, and its owners Gerardo Joffe and Priscilla Joffe ("respondents").

The consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will decide whether it should withdraw from the agreement and take other appropriate action, or make final the order contained in the agreement.

This matter concerns advertisements for Solar Gold Tanner, an artificial tanning device and the Fuel Magnetizer, a fuel economy device, sold by Haverhills in its mail order catalog.

The Commission's complaint in this matter charges that respondents have violated the Federal Trade Commission Act by making deceptive claims in advertisements for the Solar Gold Tanner and the Fuel Magnetizer. With respect to the Solar Gold Tanner, the complaint alleges that the respondents' advertisements falsely claimed that the devices can be used without the risk of harmful side effects associated with solar radiation, including skin cancer and skin aging, and that the devices can be used safely without eye protection. The complaint further charges that respondents falsely represented that the sun emits UVC radiation that penetrates the earth's atmosphere and therefore causes the harmful side effects associated with exposure to the sun's radiation. The complaint also alleges that the respondents falsely represented that it had a reasonable basis to substantiate these claims. Finally, the complaint alleges that respondents failed to disclose the fact that the use of the device poses the risk of skin cancer, skin aging and eye injury, and that use of the device without protective eyewear poses a risk of eye damage. The failure to disclose these facts, in light of respondents' representations, is alleged to be a deceptive practice.

In addition, the complaint charges that Haverhills falsely represented the fuel economy improvement which can be achieved through use of the Fuel Magnetizer device. The complaint alleges that respondents falsely claimed that, under normal driving conditions, a typical driver can usually obtain a fuel economy improvement of up to 25% when the Fuel Magnetizer is installed in his or her automobile. The complaint also alleges that respondents falsely represented that they had a reasonable basis for this representation, when in fact they did not.

The consent order contains provisions designed to prevent repetition of the false claims, to prevent future unsubstantiated health or safety claims in the sale of artificial tanning or other devices, to prevent future unsubstantiated fuel economy claims, and under certain circumstances to require affirmative disclosures of the risks associated with tanning devices.

Part I of the order prohibits respondents from misrepresenting that any such tanning device does not pose a risk of the harmful side effects associated with sun tanning, that the use of device does not pose a risk of skin cancer or premature skin aging, and that the sun emits UVC radiation that penetrates the earth's atmosphere, causing the harmful side effects associated with the sun's radiation.

Part II of the order prohibits respondents from misrepresenting that use of any tanning device without protective eyewear is safe. This section also provides that any depiction of models operating tanning devices without appropriate protective eyewear will be deemed to represent that protective eyewear is not needed when using the devices, unless that need is clearly disclosed.

Part III and IV require respondents to advise prospective purchasers of its tanning devices to read the warning label affixed to the tanning equipment as required by the U.S. Food and Drug Administration. This warning label warns users that overexposure to ultraviolet radiation can cause skin injury, including premature skin aging and skin cancer, and that failure to wear protective eyewear may result in severe burns or long-term injury to the eyes. This disclosure requirement must be made in all ads or promotional material for tanning devices for one year to remedy any lingering effects of respondents' deceptive safety claims. After one year, the disclosure must be made whenever respondents make any health or safety claim for tanning devices.

Part V prohibits respondents from making unsubstantiated health or safety claims in connection with the advertising of any device, as "device" is defined in the FTC Act. Prior to making such claims, respondents must have competent and reliable scientific evidence that supports the claims.

Part VI prohibits respondents from representing that the Fuel Magnetizer or any substantially similar automobile retrofit device will or may result in fuel economy improvement when installed in an automobile, truck, recreational vehicle, or other motor vehicle.

Part VII prohibits respondents from making unsubstantiated fuel economy claims in connection with the advertising of any engine oil additive, automobile gasoline additive, or automobile retrofit device.

Part VIII requires respondents to distribute a copy of the order to officers, employees, agents and representative having sales or advertising responsibilities with respect to the subject matter of the order.

Part IX requires respondents to keep records concerning claims covered by the order.

Part X requires respondents to notify the Commission of any change in status of the corporate respondent that might affect enforcement of the order.

Part XI requires the individual respondents to notify the Commission in the event of the discontinuance of his or her present business or employment and of each affiliation with a new business or employment.

Part XII requires respondents to file a compliance report with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to

constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 90-26828 Filed 11-13-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90P-0346]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Homeland Stores, Inc., to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 12, 1991.

FOR FURTHER INFORMATION CONTACT: Joanne Travers, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0108.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Homeland Stores, Inc., P.O. Box 25008, Oklahoma City, OK 73125.

The permit covers limited interstate marketing tests of the product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "1/3 less calories" and 75% less fat than regular eggnog".

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 40,000 quarts (37,480 liters) of the test product. The test product is to be manufactured at Homeland Stores, Inc., 3515 North Lincoln, Oklahoma City, OK 73105, and will be distributed in Kansas, Oklahoma, and Texas.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 12, 1990.

Dated: November 2, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-26801 Filed 11-13-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90P-0338]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Dairy Fresh Corp. to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 12, 1991.

FOR FURTHER INFORMATION CONTACT: Joanne Travers, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0106.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Dairy Fresh Corp., P.O. Box 16209, Hattiesburg, MS 39402.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent; and (2) sufficient vitamin A palmitate is added to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer consumers a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ fewer calories" and "75% less fat than regular eggnog".

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 60,000 quarts (56,778 liters) of the test product. The test product will be manufactured at Dairy Fresh Corp., P.O. Box 16209, Hattiesburg, MS 39402, and will be distributed in Alabama, Florida, Louisiana, and Mississippi.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 12, 1991.

Dated: November 2, 1990.

Fred R. Shank,

Director, Center for Food and Safety and Applied Nutrition.

[FR Doc. 90-26802 Filed 11-13-1990; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90P-0328]

Sour Cream Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Smith's Food and Drug Centers, Inc., to market test a product designated as "light sour cream" that deviates from the U.S. standard of identity for sour cream (21 CFR 131.160). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 12, 1991.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0343.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Smith's Food and Drug Centers, Inc., 500 North Sugar St., Layton, UT 84041.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for sour cream in 21 CFR 131-160 in that: (1) The fat content of the product is reduced from 18 percent to 9 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 2-tablespoon serving of the product contains 4 percent of the U.S. Recommended daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to sour cream but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light sour cream." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ fewer calories" and "⅓ the fat of regular sour cream".

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 1,000,000 16-ounce (454-gram) units of the test product. The product will be manufactured at Smith's Food and Drug Centers, Inc., 500 North Sugar St., Layton, UT 84041, and distributed in Arizona, California, Colorado, Idaho, Nevada, Utah, and Wyoming.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 12, 1991.

Dated: November 2, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-26803 Filed 11-13-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90N-0384]

Drug Export; Chlorhexidine Gluconate Topical Solution—4% W/V

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Becton Dickinson has filed an application requesting approval for the export of the human drug chlorhexidine gluconate topical solution—4% w/v to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frank R. Fazzari, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Deseret Medical, Inc., a subsidiary of Becton Dickinson, 9450 South State St., Sandy, UT 84070, has filed an application requesting approval for the export of the drug chlorhexidine gluconate topical solution—4% w/v, to Canada. This product is to be used as a pre-operative surgical scrub. The application was received and filed in the Center for Drug Evaluation and Research on October 17, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by November 26,

1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: October 30, 1990.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 90-26800 Filed 11-13-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90N-0383]

Bolar Pharmaceutical Co., Inc.; Withdrawal of Approval of Abbreviated New Drug Application for Phenytoin Sodium Extended Release Capsules

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of abbreviated new drug application (ANDA) 88-711 for phenytoin sodium extended release capsules 100 miligram (mg) held by Bolar Pharmaceutical Co., Inc., 33 Ralph Ave., Copiague, NY 11726-0030 (Bolar). Bolar has requested that approval of the application be withdrawn and has waived its opportunity for a hearing. This action stems from discoveries by FDA that the application contains untrue statements of material fact.

EFFECTIVE DATE: November 14, 1990.

FOR FURTHER INFORMATION CONTACT: Harry T. Schiller, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: Recently, FDA became aware of the submission of false data in support of the approval of ANDA 88-711 held by Bolar for phenytoin sodium extended release capsules 100 mg. Bolar's product is a generic version of Dilantin Kapseals manufactured by Parke-Davis. The false submission included fabricated batch records, raw material records, and discrepancies in other documents. In addition, the identity of the lot submitted by Bolar for bioequivalency testing is in doubt because of a change made by Bolar in the lot number reported to the bioequivalency testing laboratory. Furthermore, the dissolution, stability, and content uniformity characteristics of both lots submitted by Bolar to the ANDA may differ from commercial batches. Bolar has ceased marketing this product and has requested that approval of its application be withdrawn, waiving its opportunity for a hearing.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of abbreviated new drug application 88-711, and all amendments and supplements thereto, is hereby withdrawn, effective November 14, 1990.

Dated: November 6, 1990.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 90-26731 Filed 11-13-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

State of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (Federal Register, Vol. 54, No. 128, pp. 28499 and 28500, dated Thursday July 6, 1989) is amended to reflect the establishment of the National Claims History Staff in the Office of Statistics and Data Management, Bureau of Data Management and Strategy, Office of the Associate Administrator for Management. This staff will: (1) Plan, organize, and coordinate activities required to build and control HCFA's National Claims History data base; (2) perform strategic data resource planning; (3) coordinate operational and program development requirements for data from the National Claims History; (4) define systems interfaces and contractor operations requirements; (5) define and negotiate user requirements, design alternatives, systems specifications, test, conversion, plans, and documentation; (6) define, design, and implement electronic processes to ensure reliability; (7) define and coordinate a systems quality assurance program; (8) identify and implement technology innovations, identify and evaluate software, and identify and implement processes and procedures.

The specific amendment to part F is described below:

- Section FG.20.D.3.d, Division of Statistical Analysis (FHE76) is amended and section FG.20.D.3.f., National Claims History Staff (FHE7-2) is added to reflect a focal coordinating point for the National Claims History Staff formerly located within the Division of Statistical Analysis (FHE76)

1. Performs the planning, organization, and coordination activities required to build and control HCFA's program development and statistical analysis software.

2. Performs strategic data resource planning to develop long-range plans to meet future program development analytic support requirements.

3. Coordinates requirements definitions for program development analytic systems design and implementation, ensuring consistency with long term Agency goals.

4. Establishes and maintains documentation on all systems, programs and data sets.

5. Assists program development components in the development and design of analytic data sets to ensure that informational needs are adequately addressed.

6. Plans, organizes, coordinates, and controls activities required to assure the timely, accurate, cost-effective, and successful development and implementation of news and revised policy decision support systems.

7. Provides highly technical data analysis and processing support in the development of payment rates, e.g., Prospective Payment System and Average Adjusted Per Capital Cost rate development.

8. Provides highly technical data analysis and processing support needed to analyze current and proposed health care delivery systems, the implications of experimental financing methods on providers and physicians, the quality and accessibility of care being received by beneficiaries, the monetary effects of new legislation on alternative reimbursement methodologies, and related research studies of concern to policy makers and program managers.

9. Develops databases and computer software for addressing research initiatives, ad hoc data requests; statistical, legislative, and policy issues; and computer-based simulations in support of studies by HCFA's researchers and program managers.

10. Manages the Hospital Cost Report Information System which is the national database of all Medicare hospital cost reports.

11. Collects, validates, and processes automated and hard copy cost reports, generates routine and user-specific

research, actuarial, and budgetary reports, and incorporates modifications to the systems that will handle revised user requirements and changes in cost reports.

12. Prepares documentation for and participates in the preparation of fiscal intermediary manual instructions.

f. National Claims History Staff (FHE7-2)

1. Performs the planning, organization, and coordination activities required to build and control HCFA's National Claims History database (NCHDB) and related hardware requirements and software applications.

2. Performs strategic data resource planning to develop long-range NCHDB plans to meet future program operations and development support requirements.

3. Coordinates operational and program development requirements for data from the National Claims History (NCH) with other components within HCFA and the Department.

4. Defines systems interfaces and contractor operations requirements to ensure the efficient development and use of the NCHDB for program purposes.

5. Defines and negotiates user requirements, design alternatives, system specifications, test, conversion and implementation plans, operation plans (e.g., HCFA Data Center support requirements), and documentation for the NCHDB and related applications.

6. Defines, designs and implements the electronic processes necessary to ensure that NCHDB is reliable for use in program development.

7. Defines and coordinates an NCHDB systems quality assurance program including the development of process controls, consistency edits and statistical measures to ensure that the database is reliable for use in program operations and development.

8. Identifies and implements technology innovations that will facilitate the use of the NCHDB. Implements innovative techniques to provide access to the NCHDB and to maximize processing efficiency of the NCHDB.

9. Identifies and evaluates software which will allow technical and non-technical staff to exploit the full value of the NCHDB.

10. Identifies and implements processes and procedures that will take maximum advantage of the multi-level data processing architecture; e.g., taking advantage of the microcomputers to put data and application development at the desk-top where appropriate, as well as to maximize the efficient use of the mainframe of process large scale applications.

Dated: October 31, 1990.

Robert A. Streimer,

Associate Administrator for Management.

[FR Doc. 90-26811 Filed 11-13-90; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Basic Sciences I Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee, National Institute of Allergy and Infectious Diseases, on November 16, 1990, at the Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Bethesda, Maryland 20815, which was published in the **Federal Register** on October 26, 1990 (55 FR 43221).

The meeting was cancelled due to complications of other commitments of several members of the Committee and will be rescheduled at a later date.

Dated: November 7, 1990.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 90-26830 Filed 11-13-90; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, December 3-4, 1990, Building 31C, Conference Room 10, 6th Floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees will be held at the times and places listed below. The meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, 9000 Rockville Pike, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide a summary of the meeting and rosters of the Board members, upon request.

Name of Committee: National Cancer Advisory Board
Executive Secretary: Mrs. Barbara Bynum, Building 31, room 10A03, Bethesda, MD 20892 (301) 496-5147
Date of Meeting: December 3-4, 1990
Place of Meeting: Building 31C, Conference Room 10
Open: December 3, 8 a.m. to recess; December 4, 8 a.m. to adjournment
Agenda: Reports on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; Scientific Presentations; Subcommittee Reports; and New Business.

Name of Committee: Subcommittee on Planning and Budget
Executive Secretary: Judith Whalen, Building 31, room 11A23, Bethesda, MD 20892 (301) 496-5515
Date of Meeting: December 3
Place of Meeting: Building 31C, Conference Room 7
Open: Immediately following the recess of the NCAB meeting
Agenda: To discuss 1991 budget

Name of Committee: Subcommittee on Cancer Center
Executive Secretary: Dr. Brian Kimes, Executive Plaza North, room 300, Bethesda, MD 20892 (301) 496-8537
Date of Meeting: December 3
Place of Meeting: Building 31C, Conference Room 8
Open: Immediately following the recess of the NCAB meeting
Agenda: Future Direction for the Cancer Center Program

Catalog of Federal Domestic Assistance Program Numbers: (13.392, Project grants in cancer construction; 13.393, Project grants in cancer cause and prevention; 13.394, Project grants in cancer detection and diagnosis; 13.395, Project grants in cancer treatment; 13.396, Project grants in cancer biology; 13.397, Project grants in cancer centers support; 13.398, Project grants in cancer research manpower; and 13.399, Project grants and contracts in cancer control.)

Dated: November 7, 1990.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 90-26831 Filed 11-13-90; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material

may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance office and to the Office of Management and Budget Paperwork Reduction Project 1076–0080, Washington, DC 20503, telephone, 202/395–7340.

Title: Additional Requirements for Trust Responsibilities, 25 CFR 271.33.

Abstract: Indian tribes that are preparing contract applications which involve Bureau trust responsibilities in the area of natural resources provide additional information to assure the protection, preservation, and perpetuation of such resources; to ensure fair market value to tribes or individual Indians; and to ensure that no delegation of trust responsibility occurs.

Frequency: Upon initial application.

Description of respondents: Indian tribes contracting Bureau programs in the area of natural resources.

Annual responses: 74.

Annual burden hours: 2,300.

Bureau clearance officer: Gail Sheridan, 202/208–2685.

Dated: October 3, 1990.

Ronal Eden,

Deputy to the Assistant Secretary—Indian Affairs (Tribal Services).

[FR Doc. 90–26740 Filed 11–13–90; 8:45 am]

BILLING CODE 4310–6–M

Fish and Wildlife Service

Extension of the Public Comment Period for the Draft Revised Grizzly Bear Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service is extending the comment period for review of the Draft Grizzly Bear Recovery Plan.

FOR FURTHER INFORMATION CONTACT: Dr. Chris Servheen at (406) 329–3223.

SUPPLEMENTARY INFORMATION: The Service published a Notice of Availability of the Draft Revised Grizzly Bear Recovery Plan which appeared in the **Federal Register** on October 4, 1990 (54 FR 40725). It established a public comment period ending on December 3, 1990. Due to the complexity and length of the plan, the Service has received several requests for extending the comment period. The comment period is therefore extended to February 4, 1991.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Dated: November 7, 1990.

Galen L. Buterbaugh,

Regional Director.

[FR Doc. 90–26805 Filed 11–13–90; 8:45 am]

BILLING CODE 4310–55–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0063), Washington, DC 20503, telephone 202–395–7340.

Title: Coal; Production and Reclamation Fee Report, OSM–1.

OMB Number: 1029–0063.

Abstract: In order to ensure compliance with 30 CFR part 870, a quarterly report is required of coal produced for sale, transfer or use nationwide. Individual reclamation fee payment liability is based on this information.

Bureau form number: OSM–1.

Frequency: Quarterly.

Description of respondents: Coal mine operators.

Annual responses: 17,904.

Annual bureau hours: 4,285.

Estimated completion time: 14 mins.

Bureau clearance officer: Richard L. Wolfe (202) 343–5143.

Dated: October 30, 1990.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 90–26738 Filed 11–13–90; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–483 & 484 (Preliminary)]

Certain Personal Word Processor From Japan and Singapore

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–483 & 484 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan and Singapore of certain personal word processors,[1] provided for in subheading 8469.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by December 21, 1990.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: November 6, 1990.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–252–1177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

[1] For purposes of these investigations, personal word processors are defined as machines designed principally for the composition and correction of text, consisting of a keyboard, a device to permit external storage of text (e.g., floppy disk drive or RAM card), a visual display (either solid state (LCD) or CRT) and, typically, a printer, and having operating systems which are permanently installed and designed principally for the specific purpose of word processing. The scope of these investigations is limited to those PWPs which have separable major components, such as keyboards which are not embedded in the chassis or frame, separate (or no) printing mechanisms, or separate video monitors.)

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on November 6, 1990, by Smith Corona Corporation, New Canaan, CT.

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11) not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in these preliminary investigations to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been seved on all the parties that are authorized to receive such information under a protective order.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on November 28, 1990 at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jonathan Seiger (202–252–1177) no later than November 26, 1990 to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before November 30, 1990 a written brief containing information and arguments pertinent to the subject matter of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). If briefs contain business proprietary information, a nonbusiness proprietary version is due December 3, 1990. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of section 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than December 4, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs. A nonbusiness proprietary version of such additional comments is due December 5, 1990.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: November 8, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–26927 Filed 11–13–90; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub-No. 35)]

Intrastate Rail Rate Authority—West Virginia

AGENCY: Interstate Commerce Commission.

ACTION: Notice of recertification.

SUMMARY: Pursuant to 49 U.S.C. 11501(b), the Interstate Commerce Commission recertifies the State of West Virginia to regulate intrastate rail rates, classifications, rules, and practices for a 5-year period.

DATES: Recertification will be effective December 14, 1990, and will expire December 13, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: November 5, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–26821 Filed 11–13–90; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31761]

Illinois Central Railroad Co.—Trackage Rights Exemption—Burlington Northern Railroad Co.

Burlington Northern Railroad Company (BN) has agreed to grant overhead trackage rights to Illinois Central Railroad Company (IC) over its line of railroad between mileposts 218.9 and 220, at Cook, in Massac County, IL, a distance of 1.1 miles. IC currently

operates over BN's track between Metropolis (milepost 225.33) and Cook (milepost 220), in Massac County, under trackage rights granted in Finance Docket No. 31037. The trackage rights here will enable IC to transport coal to an electric generating station and barge facility at Joppa, IL. They became effective November 1, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John H. Doeringer, 20180 Governors Highway, Olympia Fields, IL 60461.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: November 2, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-26685 Filed 11-13-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31759]

Reading Blue Mountain and Northern Railroad Co.—Acquisition and Operation Exemption—Rail Lines of Consolidated Rail Corp. Near Reading, PA

Reading blue Mountain & Northern Railroad Company (RBMNR), a noncarrier, has filed a notice of exemption to acquire and operate approximately 124 miles of Consolidated Rail Corporation (Conrail) track known as the "Reading Cluster," near Reading, PA.[1] The transaction is expected to be consummated on or about December 1, 1990.

The notice is related to Finance Docket No. 31760, *Andrew M. Muller, Jr.—Continuance In Control Exemption—Reading Blue Mountain & Northern Railroad Company.*

RBMNR shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

Any comments must be filed with the Commission and served on: William P. Quinn, Rubin, Quinn, Moss, Heaney & Patterson, 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106-3619.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 6, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-26686 Filed 11-13-90; 8:45 am]

BILLING CODE 7035-01-M

[1] The specific lines involved are: The Shamokin Secondary, a 68.5-mile line between Reading and Mt. Carmel; the Greenwood Industrial Track, a 2.5-mile line connecting at Tamaqua with the Shamokin Secondary; the Shenandoah Industrial Track, a 5.1-mile line between Shenandoah and the connection with the Shamokin Secondary near St. Nicholas; the Pottsville Secondary, a 14.8-mile line between Pottsville and the connection with the Shamokin Secondary at Port Clinton; the Middleport Industrial Track, a 7.1-mile line between Middleport and the connection with the Pottsville Secondary at Pottsville; the Good Spring Industrial Track, a 19.8-mile line between Good Spring and the connection with the Pottsville Secondary near Cressona; the Buckley Industrial Track, a 3.4-mile line connecting with the Good Spring Industrial Track in the Minersville area; and the Swatara Industrial Track, a 2.0-mile line connecting with the Good Spring Industrial Track in the Tremont area. According to the map filed by RBMNR, the lines connect.

DEPARTMENT OF JUSTICE

Lodging of a Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on November 5, 1990, a proposed consent decree in *United States* v. *Boliden Metech, Inc.*, Civil Action No. 89-0208-T, was lodged with the United States District Court for the District of Rhode Island. The decree resolves claims of the United States against Boliden Metech, Inc. (the "defendant") for violations of the Toxic Substances Control Act, 15 U.S.C. 2601, *et seq.*, and the Rivers and Harbors Act, 33 U.S.C. 407. The violations arose out of the alleged improper use, storage, processing, and disposal of polychlorinated biphenyls (PCBs) arising out of the operation by the defendant of a metal shredding facility in Providence, Rhode Island.

In the proposed consent decree, the defendant has agreed to conduct specified site characterization, cleanup, and disposal activities, and to shut down its shredding operation.

The proposed decree may be examined at the office of the United States Attorney for the District of Rhode Island, Westminster Square Building, 10 Dorrance Street, Providence, Rhode Island 02903; at the Region I Office of Regional Counsel, Environmental Protection Agency, JFK Federal Building, Boston, Massachusetts 02203, Attn: Michael Kenyon, Esq.; and at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, (202) 347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $22.00 (25 cents per page reproduction charge) payable to the Consent Decree Library. The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Boliden Metech, Inc.*, Civil Action No. 89-0208-T (D.R.I.), D.J. Reference No. 90-5-1-1-3096.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-26737 Filed 11-13-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 5, 1990, a proposed Partial Consent Decree in *United States* v. *Arthur Bursey, et al.*, Civil No. 81-299D, was lodged with the United States District Court for the District of New Hempshire resolving the matter as to certain defendants. The proposed Partial Consent Decree concerns the response to the existence of asbestos, a hazardsous substance, at certain sites in New Hampshire pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and the Resource Conservation and Recovery Act. This Partial Consent Decree resolves the claims of the United States and the State of New Hampshire alleged in the complaint against Arthur Bursey. Three previous consent decrees resolved the governments' claims against the other defendants.

Under the terms of the Consent Decree, the defendant agrees to file a notice of institutional controls and related covenants concerning the relevant site. The defendant also will provide access to the site and undetake the necessary institutional controls.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Bursey*, D.J. Ref. 90-7-1-165.

The proposed Consent Decree may be examined at the Region 1 Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts 02203. Copies of the Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20044, (202)347-7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.50 (25 cents per page reproduction cost) made payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-26736 Filed 11-13-90; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Ezzat E. Majd Pour, M.D., Revocation of Registration.

On March 26, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ezzat E. Majd Pour, M.D. (Respondent), of P.O. Box 40848, Indianapolis, Indiana 46240, proposing to revoke his DEA Certificate of Registration BP1498511, and to deny all pending applications for renewal of registration. The Order to Show Cause was predicted on the allegation that Respondent materially falsified his application for registration, providing a clear statutory basis for the revocation of registration under 21 U.S.C. 824(a)(1). Personal service of the Order to Show Cause was accomplished on July 26, 1990.

In a letter dated August 2, 1990, Respondent failed to request a hearing. However, the Administrator will deem the letter to be a written statement addressing the facts and law of the case, an option to which the Respondent is entitled pursuant to 21 CFR 1301.54(c). Respondent addressed the state actions which were the basis for the revocation by several states of his medical licenses to practice in those states. Respondent provided no argument which addressed the allegation of material falsification. Pursuant to the provisions of 21 CFR 1301.54(c), the Administrator hereby enters his final order in this matter based upon the investigative file and written statement provided by the Respondent.

The Administrator finds that on October 16, 1986, the Mississippi State Board of Medical Licensure temporarily suspended Respondent's medical license in that state due to his alleged inability "to practice medicine with reasonable skill and safety to patients by reason of mental illness." On March 31, 1987, after a full three-day hearing, the Board ordered that the Respondent's medical license be suspended, such suspension to be stayed upon Respondent's compliance with certain conditions dealing with psychiatric treatment. On February 26, 1987 and March 31, 1987, the DEA New Orleans Field Division requested voluntary surrender of the Respondent's DEA Certificate of Registration due to the Mississippi suspension. The Respondent did not comply with the request nor did he respond in any manner. On May 18, 1989, the Respondent petitioned the board for reinstatement of his license, which request was denied.

The Administrator further finds that, following the Mississippi action, on May 25, 1987, the Alabama State Board of Medical Examiners petitioned for the temporary suspension of the Respondent's medical license. On May 27, 1987, the Medical Licensure Commission of the State of Alabama suspended the medical license of the Respondent pending a hearing. On June 26, 1987, the Medical Licensure Commission of the State of Alabama ordered the Respondent to submit to a comprehensive physical and psychiatric examination to be performed by a named designee. The Respondent never complied with the order, and confirmed his failure to comply by letter dated July 25, 1987.

A hearing was held on July 29, 1987, at which the Respondent did not appear. Based on the Respondent's failure to comply with a direct order of the Commission, and the Respondent's statements indicating that he had no intention of cooperating with either the Commission or the Board, the Medical Licensure Commission revoked the Respondent's medical license effective August 12, 1987. Such revocation was subject to reinstatement of the license at a time when the Respondent complied with the Commission's Order and paid an administrative fine of $500.00. The Respondent was further to be allowed a hearing on the merits of the Board's petition at the time of compliance by the Respondent. The Administrator finds that the Respondent has taken no action to comply with the orders of the Medical Licensure Commission of the State of Alabama, and that his medical license remains revoked.

The Administrator finds that on April 27, 1988, an Administrative Complaint was filed before the State of Florida Department of Professional Regulation requesting revocation of the Respondent's medical license, and that service was made of the Complaint by publication pursuant to Florida Statutes. The Respondent did not answer the Complaint, and at a hearing on December 2, 1988, the Respondent did not appear. On December 12, 1988, the Respondent was found in default and his Florida medical license was revoked.

The Administrator further finds that on July 20, 1988, an application for DEA registration in the State of California was completed by the Respondent, upon which application the Respondent answered "no" to the following question:

(b) Has the applicant ever been convicted of a crime in connection with controlled substances under State or Federal law, or ever surrendered or had a DEA registration revoked, suspended or denied, or ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?

At the time of the application, the Respondent was fully aware that his Mississippi license was under suspension, his Alabama license had been revoked, and his Florida license was in revocation proceedings.

Based on the answers given by the Respondent on his application, DEA Certificate of Registration BP1498511 was issued to the Respondent on August 12, 1988. The Respondent clearly materially falsified his application by answering no to the above-quoted question. The question on the

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application specifically and distinctly asks whether a State professional license has ever been revoked or suspended. The Administrator is authorized to revoke a DEA registration based upon the material falsification of any application pursuant to 21 U.S.C. 824(a)(1). The questions on the application for registration serve a purpose which cannot be overlooked by the Administrator. Therefore, the Administrator concludes that the Respondent's registration must be revoked.

It is essential to the function of the Drug Enforcement Administration that applicants for registration answer truthfully when responding to the questions on the application. Had the Respondent answered truthfully in the present case, an investigation could have taken place, at which time the arguments of the Respondent against any State actions would have been considered. However, the Respondent intentionally falsified his application in order to divert the attention of the DEA from State actions which he considered unfair. Applicants cannot be allowed to circumvent the procedures of the DEA for reasons which they alone feel are justified. Allowing such conduct on the part of one applicant could give rise to numerous material falsifications for a variety of individual reasons. The questions propounded on the DEA application for registration do not lose their import merely because the individual applicant believes that he has been treated unfairly.

The Administrator concludes that Respondent's DEA registration must be revoked. Respondent materially falsified his application for registration with full knowledge of the true circumstances surrounding his license status in various States. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 824(a)(1) and 823(f) and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration BP1498511, previously issued to Ezzat E. Majd Pour, M.D., be, and it hereby is, revoked, and that any pending applications for renewal of registration be and they hereby are, denied.

This order is effective thirty days from the date of publication in the Federal Register.

Dated: November 6, 1990.

Robert C. Bonner,

Administrator.

[FR Doc. 90-26748 Filed 11-13-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council; Meetings and Agenda

The Fall meetings of committees of the Labor Research Advisory Council will be held on December 4, 5, and 6.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Tuesday, December 4, 1990

9:30 a.m.—Committee on Employment and Unemployment

1. Revisions to establishment survey data
2. Report on results of conversion to new SIC codes
3. Standardized, simplified reporting for business initiatives
4. New study on impact of foreign direct investment
5. Survey of training in industry
6. Possible study of foreign direct investment
7. Studies of impact of defense cutback
8. Status of job vacancy pilot study
9. Other business

1:30 p.m.—Committee on Productivity, Technology, and Growth

1. Accuracy of BLS productivity measures
2. Productivity comparisons by industry, U.S. and Europe
3. Impact of expected defense spending alternatives in the year 2000 (MLR Oct. 1990)
4. Review of selected important assumptions for new 1990–2005 projections
5. Discussion of alternative projections scenarios for key variables in new projections
6. Other business

Wednesday, December 5, 1990

9:30 a.m.—Committee on Prices and Living Conditions

1. Home ownership costs in the Consumer Price Index
2. Producer Price Program Status
3. International Price Program Status
4. Place-to-place comparisons
5. Other business

1:30 p.m.—Committee on Wages and Industrial Relations

1. New measure of compensation adjustments
2. Measuring union/nonunion earnings differences
3. Highlights from the Employment Benefits Survey: Family benefits become more widespread
4. Other business

Thursday, December 6, 1990

10 a.m.—Committee on Occupational Safety and Health Statistics

1. Transfer of recordkeeping function
2. 1989 Annual Survey results
3. Redesign of the occupational safety and health statistical system (ROSH)
4. Census of Fatal Occupational Injuries (CFOI)
5. Mine safety and health statistics
6. Work injury reports (WIR)
7. Other business.

The meetings are open. It is suggested that persons planning to attend as observers contact Henry Lowenstern, Executive Secretary, Labor Research Advisory Council on (Area Code 202) 523–1327.

Signed at Washington, DC this 6th day of November 1990.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 90-26856 Filed 11-13-90; 8:45 am]

BILLING CODE 4510-24-M

State Research Advisory Committee on Occupational Safety and Health Statistics; Meeting

The State Research Advisory Committee on Occupational Safety and Health Statistics, established to make recommendations to the Bureau's safety and health statistics program, will meet on November 29 and 30, 1990. The Committee will meet from 9 a.m. until 4:30 p.m. on November 29, and 9 a.m. until 12 noon on November 30. All meetings will be held at the Sheraton Inner Harbor Hotel, 300 South Charles Street, Baltimore, Maryland 21201. The meeting location will be posted in the hotel lobby.

Items to be discussed include current plans and directions of the redesign of the Bureau's safety and health statistical program, State participation, and plans for implementation. The public is invited to attend. It is suggested that persons planning to attend as observers contact William Eisenberg, committee liaison, on Area Code 202 501–6467.

Official records of the meeting will be available for public inspection at the Patrick Henry Building, room 4000, 600 D Street NW Washington, DC 20212.

Signed at Washington, DC, this 7th day of Nov. 1990.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 90-26857 Filed 11-13-90; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

[TA-W-23, 139]

Delta Apparel, Knoxville, TN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 13, 1989 applicable to all workers of Delta Apparel, Inc., Knoxville, Tennessee. The notice was published in the Federal Register on October 3, 1989 (54 FR 40755). An amended certification was issued on December 7, 1989 changing the termination date to January 15, 1990. The amended notice was published in the Federal Register on December 19, 1989 (54 FR 51958).

New data submitted by the company shows that the plant was shut down in phases with worker separations throughout 1990. Accordingly, the certification is amended by deleting the January 15, 1990 termination date.

The amended notice applicable to TA-W-23, 139 is hereby issued as follows:

All workers and former workers at Delta Apparel, Inc., Knoxville, Tennessee who became totally or partially separated from employment on or after June 29, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 1st day of November 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-26854 Filed 11-13-90; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period October 1990.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially sparated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-24, 778; Gallagher & David, Inc., Haverhill, MA

TA-W-24, 694; Nor East Plastic, Inc., Elmira, NY

TA-W-24, 757; Mararobles, Inc., New Holland, PA

TA-W-24, 789; White Storage & Retrieval Systems, Kenilworth, NJ

TA-W-24, 814; Associated Spring. Corry, PA

TA-W-24, 759; Modicon, Inc., Pittsburgh, PA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-24, 839; Samuel Schulman Furs, Inc. New York, NY

Increased imports did not contribute importantly to worker sperations at the firm.

TA-W-24, 790; A.C.A. Lumber, Inc., Beaver, WA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-24, 837; Renolds Metals Co., San Patricio Reduction Plant, Corpus Christi, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24, 817; Chemical Leaman Tank Truck Lines, Inc., Nazareth, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24, 772; Champion International Corp., Klickitat, WA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-24, 716; Hygrade Food Corp., Tacoma, WA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-24, 739; Amerdock Corp, Fort Lee, NJ

The workers' firm does not produce an article as required for certification under sction 222 of the Trade Act of 1974.

TA-W-24, 813; Apache Corp., Denver, CO

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-24, 838; Rich-Seapak Corp., Brownsville, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-24, 815; B & W Shake, Inc., Fork, WA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-24, 735; Creative Specialty Manufacturing, Lancaster, OH

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24, 780; ICL Retail Systems, Operations Div., Utica, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24, 844; Tubafor Mill, Morton, WA

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

TA-W-24, 795; Forest Ridge Co., Centralia, WA

The workers' firm does not produce an article as required for certification

under section 222 of the Trade Act of 1974.

TA-W-24,705; AT&T Nassau Metals, Gaton, SC

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,802; Roy Pettit Chevron, Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,801; Oil Industry Supply Co., Inc., Pleasantville, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,731; Buffalo Electric Co., Inc., Buffalo, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,784; Olin Hunt Speciality Products, Inc., Limerock, RI

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,822; G & G Drill Collar Service Co., Inc., Abilene, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,809; Wilson Industries, Downhole Div., Elk City, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,810; Houston Engineers, Elk City, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,725; Unisys Corp., Shawnee Mission, KS

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,830; Associated Spring/ Raymond, Corry, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-24,798; General Electric Co., Mattoon Lamp Plant, Mattoon, IL

A certification was issued covering all workers separated on or after August 20, 1989.

TA-W-24,826; Lakeview Building Product Inc., Beaver, WA

A certification was issued covering all workers separated on or after August 29, 1989.

TA-W-24,843; TLC Sportswear, Inc., Tullahoma, TN

A certification was issued covering all workers separated on or after August 31, 1989.

TA-W-24,979; General Electric Aerospace Div., Utica, NY

A certification was issued covering all workers separated on or after August 21, 1989.

TA-W-24,750; International Mfg Services, Inc., Portsmouth, RI

A certification was issued covering all workers separated on or after August 7, 1989.

TA-W-24,786; Ristance Corp., Mentone, IN

A certification was issued covering all workers separated on or after August 9, 1989.

TA-W-24,727; Tri-Con Industries, Ltd., Cape Girardeau, MO

A certification was issued covering all workers separated on or after July 30, 1989.

TA-W-24,691; Malouf Co., Dallas, TX

A certification was issued covering all workers separated on or after July 22, 1989.

TA-W-24,702; Tektronic, Inc., Visual System Group, Wilsonville, OR

A certification was issued covering all workers separated on or after July 21, 1989.

TA-W-24,728; Ace Sweater Mill, Union, SC

A certification was issued covering all workers separated on or after July 26, 1989.

TA-W-24,676; Tech Form Industries, Shelby, OH

A certification was issued covering all workers separated on or after July 2, 1989.

TA-W-24,737; Fashion Pet Accessories, Inc., Newark, NJ

A certification was issued covering all workers separated on or after August 10, 1989.

TA-W-24,803; Schindler Elevator Corp., Randolph, NJ

A certification was issued covering all workers separated on or after September 21, 1990.

I hereby certify that the aforementioned determinations were issued during the month of October 1990. Copies of these determinations are available for inspection in room C4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: November 6, 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-26855 Filed 11-13-90; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Minnesota State Standards; Approval

1. *Background.* Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator), under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan, which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On June 8, 1973, notice was published in the **Federal Register** (38 FR 15076) of the approval of the Minnesota plan and the adoption of subpart N of part 1952 containing the decision.

The Minnesota plan provides for the adoption of Federal standards as State standards by reference after an opportunity for public comment and/or requests for public hearings. Federal regulations (29 CFR 1953.22 and 29 CFR 1953.23) require that States respond to the adoption of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted Federal standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in part 1953, they are enforceable by the State prior to Federal review and approval. By notice published on November 13, 1989, February 26, 1990, and July 16, 1990, in the Minnesota State Register (cited as 14 S.R. 1177, 14 S.R. 2130, 15 S.R. 124), and incorporated as part of the plan, Minnesota has adopted State standards comparable to:

1. A Final Rule, 29 CFR 1926.800, Underground Construction, Final Rule, as published in the **Federal Register**, Volume 54, No. 105, dated June 2, 1989.

2. A Final Rule, 29 CFR 1910.66, Powered Platforms for Building Maintenance, as published in the **Federal Register**, Volume 54, No. 144, dated June 28, 1989.

3. Extension of partial stay and amendments to the Final Rule, 29 CFR 1910.1001 and 1910.1101, Occupational Exposure to asbestos, tremolite, anthophylite and actinolite, as published in the **Federal Register**, Volume 54, No. 139, dated July 21, 1989.

4. Final Rule, Occupational Exposure to Lead, 29 CFR 1910.1025, as published in the **Federal Register**, Volume 54, No. 131, dated July 11, 1989.

5. Final Rule, Air Contaminants, 29 CFR 1910.1000, as published in the **Federal Register**, Volume 54, No. 131, dated July 11, 1989.

6. Corrections and extended administrative stay to 29 CFR 1910.1048 and 29 CFR 1926.55, Occupational Exposure to Formaldehyde, as published in the **Federal Register**, Volume 54, Nos. 146, 166 and 174, August 1, 1989, August 29, 1989 and September 11, 1989.

7. Amendments to subpart O of 1926, Concrete and Masonry Construction Safety Standards 29 CFR, published in the **Federal Register**, Volume 54, No. 192, dated October 5, 1989.

8. A Final Rule and extension of effective date, 29 CFR 1910.147, Control Hazardous Energy Sources Lockout/ Tagout, as published in the **Federal Register**, Volume 54, Nos. 169, 199 and 213, dated September 1, 1989, October 17, 1989, and November 6, 1989.

9. A Final Rule, subpart P of 29 CFR part 1926, Excavations as published in the **Federal Register**, Volume 54, No. 209, October 31, 1989.

10. Grant of petitions for reconsideration of three exposure limits and partial stays to 29 CFR 1910.1000, Air Contaminants as published in the **Federal Register**, Volume 54, Nos. 170, 193, 219 and 233, dated September 5, 1989, October 6, 1989, November 15, 1989 and December 6, 1989.

11. Corrections and Technical Amendments to Final Rule 26 CFR 1910.1048, Occupational Exposure to Formaldehyde as published in the **Federal Register**, Volume 54, No. 133, dated July 13, 1989.

12. Approval of Collection of Information Requirement, 29 CFR 1910.1001, Occupational Exposure to Asbestos as published in the **Federal Register**, Volume 54, No. 133, dated July 13, 1989.

13. Partial Response to Court Remand, 29 CFR 1910.1001, Occupational Exposure to Asbestos, Tremolite, Anthophylite, and Actinolite as published in the **Federal Register**, Volume 54, No. 243, dated December 20, 1989.

14. Statement of Reason and Corrections to Final Rule, 29 CFR 1910.1025, Occupational Exposure to Lead, as published in the **Federal Register**, Volume 55, Nos. 20 and 30, dated January 30, 1990 and February 13, 1990.

15. Final Rule and Corrections to Occupational Exposure to 29 CFR 1910.1450 Hazardous Chemicals in Laboratories, as published in the **Federal Register**, Volume 55, Nos. 21 and 44, dated January 31, 1990 and March 6, 1990.

16. Partial Stay of effective date of two substances, 29 CFR 1910.1000, Air Contaminants, as published in the **Federal Register**, Volume 67, Nos. 24 and 67, dated February 5, 1990 and April 6, 1990.

17. Safety and Health Standards: Welding, Cutting and Brazing; Redesignation and other non-substance revisions, as published in the **Federal Register**, Volume 55, No. 70, dated April 11, 1990.

18. Corrections to Final Rule 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response as published in the **Federal Register**, Volume 55, No. 72, dated April 13, 1990.

These standards, which are contained in the Minnesota Occupational Safety and Health Codes and Rules, were promulgated after notice was published offering an opportunity for public comments and/or requests for public hearings. No written comments or requests for hearing on objections were received concerning the proposed standards. The order of adoption was published in the State Register (14 S.R. 1177, 14 S.R. 2130, 15 S.R. 124) on November 13, 1989, February 26, 1990, and July 16, 1990 pursuant to Minnesota Statute 182.655 (1974).

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards and Amendments are identical to the Federal standards and accordingly are approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 230 S. Dearborn Street, room 3244, Chicago, Illinois 60604; State of Minnesota, Department of Labor and Industry, 443 Lafayette Road, St. Paul, Minnesota 55155; and the Office of Federal-State Compliance and State Programs, room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the Review process, or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Minnesota State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective November 14, 1990.

Authority: Section 18, Public Law 91-596, 84 Stat. 1608 (29 U.S.C. 667).

Michael G. Connors,

Regional Administrator.

[FR Doc. 90-26858 Filed 11-13-90; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 90-78; Exemption Application No. D-7245 et al.]

Grant of Individual Exemptions; 7246 UNUM Corporation, UNUM Life Insurance Co., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts

and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notice of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

UNUM Corp., UNUM Life Insurance Co. located in Portland, ME

[Prohibited Transaction Exemption 90–78; Exemption Application Nos. D–7245 and D–7246]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (1) The receipt of either common stock (the Stock) of UNUM Corporation (UNUM) or cash by certain employee benefit plans, other than the Union Mutual employees' Pension Plan and the Union Mutual Group Insurance Trust, in connection with the conversion of Union Mutual Life Insurance Company Union Mutual) into UNUM Life Insurance Company (UNUM Life), under a Plan of Capitalization and Conversion (the Conversion), dated December 14, 1984, as amended, in those situations where either UNUM or UNUM Life was a party in interest with respect to such plans at the time of the transactions; and (2) the receipt of subscription rights (the Rights) by certain employee benefits plans, pursuant to the terms of the Conversion, and the purchase of additional shares of the Stock in connection with the exercise of the Rights by such plans, where either UNUM or UNUM Life was a party in interest with respect to the plans at the time of the transactions, provided that the terms of the transactions were not less favorable to the plans than those obtainable in arm's-length transactions between unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 16, 1990 at 55 FR 28961.

EFFECTIVE DATE: The effective date of this exemption is September 19, 1986.

WRITTEN COMMENTS: The Department received one comment letter in response to the notice of proposed exemption (the Notice). The comment letter was filed on behalf of the Transport Workers Union of America Local 513 Retirement Plan (the TWU Plan).

The comment letter states that the TWU Plan never received an explanation for the Conversion and that UNUM has repeatedly "stonewalled" any attempts to investigate distributions of the "adjusted surplus" that were either paid or are due to the TWU Plan as a result of the Conversion.

By letters dated September 27 and October 12, 1990, the applicant responded to the comment letter.

The applicant represents that comprehensive disclosure of information on the Conversion was made to the Maine Superintendent of Insurance and to all policyholders of Union Mutual that were eligible to receive a distribution of the "adjusted surplus" (the Eligible Policyholders). The applicant states that the TWU Plan received the same information that was sent to all the Eligible Policyholders. This information included all relevant documents pertaining to the Conversion and provided a complete explanation for the Conversion, including the manner in which distributions of the "adjusted surplus" to the Eligible Policyholders was determined. The applicant notes that the Conversion was approved by the Maine Superintendent of Insurance, as required by state law, and by a two-thirds vote of the policyholders voting on the Conversion.

In addition, the applicant denies that there has been any attempt to "stonewall" the TWU Plan regarding the distribution of the "adjusted surplus." The applicant states that the "adjusted surplus" was the amount of surplus shown on the consolidated balance sheet of Union Mutual and its subsidiaries, as of December 31, 1985. The calculation of the "adjusted surplus" was determined in accordance with generally accepted accounting principles for stock life insurance companies, was certified by independent public accountants, and was confirmed by the Maine Superintendent of Insurance prior to the distribution to the Eligible Policyholders. The applicant represents that all Eligible Policyholders, including the TWU Plan, received their allocable share of the "adjusted surplus."

Accordingly, after consideration of the entire record, the Department has determined to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department at (202) 523–8883. (This is not a toll-free number.)

Operating Engineers Pension Trust (the Plan) Located in Pasadena, CA.

[Prohibited Transaction Exemption 90–79; Exemption Application No. D–8348]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the proposed leasing (the Lease) of office space by the Plan to Buss-Shelger & Associates (BSA), a party in interest with respect to the Plan, including a possible extension of credit by the Plan to BSA under the terms of the Lease, provided all the terms of the Lease are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 1, 1990 at 55 FR 31253.

NOTICE TO INTERESTED PERSONS: The applicant represents that it was unable to comply with the notice to interested persons requirement within the time frame stated in its application. However, the applicant has represented that it notified all interested persons, in the manner agreed upon between the applicant and the Department, by September 12, 1990. Interested persons were informed that they had until October 20, 1990, to comment with respect to the proposed exemption. No comments were received by the Department.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Inventory Sales Co. Employee Stock Ownership Plan and Trust (the Plan) Located in St. Louis, MO

[Prohibited Transaction Exemption 90–80; Exemption Application No. D–8368]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1(A) through (E) of the Code, shall not apply to the cash sale of a term life insurance policy (the Policy) on the life of James S. Friedmann (the Insured), a party in interest with respect to the Plan, from the Plan to the Insured, provided the sales price is no less than the fair market value of the policy on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 12, 1990, at 55 FR 35790.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act, nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees or the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is subject to the exemption.

Signed at Washington, DC, this 8th day of November, 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90–26843 Filed 11–13–90; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–7650 et al.]

Proposed Exemptions; Metric Institutional Realty Advisors, Ltd. (MIRA), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** notice. Comments and request for a hearing should state the reasons for the writer's interest in pending exemption.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Metric Institutional Realty Advisors, Ltd. (MIRA) Located in Foster City, California

[Application No. D–7650]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 408(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to certain transactions between the retirement plans (the Plans) sponsored by Atlantic Richfield Company (ARCO) and ARCO controlled persons (as defined below) and parties in interest with respect to the Plans. The transactions involve the leasing, refinancing and disposition of real estate (the Real Estate) held by the Plans and managed by MIRA and the

purchasing of goods with respect to the Real Estate; provided that:

(1) The party in interest is not:

(a) MIRA, any person directly or indirectly controlling, controlled by or under common control with MIRA (MIRA Controlled Person); any officer, director, or highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) of MIRA or any MIRA Controlled Person; any corporation, partnership, trust or unincorporated enterprise in which MIRA, any MIRA Controlled Person, or any officer, director or highly compensated employee (as defined above) of MIRA or any MIRA Controlled Person owns a 5% or more interest; or any corporation, partnership, trust or unincorporated enterprise which owns a 5% or more interest in MIRA or any MIRA Controlled Person;

(b) ARCO, any person directly or indirectly controlling, controlled by, or under common control wit ARCO (ARCO Controlled Person); any officer, director, or highly compensated employee (as defined above) of ARCO or any ARCO Controlled Person; any corporation, partnership, trust or unincorporated enterprise in which ARCO, any ARCO Controlled Person, or any officer, director or highly compensated employee (as defined above) of ARCO or any ARCO Controlled Person owns a 5% or more interest; or any corporation, partnership, trust or unincorporated enterprise which owns a 5% or more interest in ARCO or any ARCO Controlled Person;

(c) Metropolitan Life Insurance Company (Met), any person directly or indirectly controlling, controlled by, or under common control with Met (Met Controlled Person); any officer, director, or highly compensated employee (as defined above) of Met or any Met Controlled Person; any corporation, partnership, trust or unincorporated enterprise in which Met, any Met Controlled Person, or any officer, director or highly compensated employee (as defined above) of Met or any Met Controlled Person owns a 5% or more interest, or any corporation, partnership, trust or unincorporated enterprise which owns a 5% or more interest in Met or any Met Controlled Person; or

(d) Any person who exercises discretionary authority, responsibility or control or who provides investment advice and respect to the investment of Plans' assets involved in the particular transaction;

(e) The term "interest" as applied above means with respect to ownership of an entity:

(i) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entry is a corporation;

(ii) The capital interest or the profits of the entity if the entity is a partnership; or

(iii) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(f) A person is considered to own an interest held in any capacity if the person has or shares the authority:

(i) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest or

(ii) To dispose or to direct the disposition of such interest.

(2) At the time the transaction is entered into, the terms of the transactions are at least as favorable to the Plans as the terms generally available in an arm's-length transaction between unrelated parties.

(3) The terms of the transaction are negotiated by, or under the authority and general direction of MIRA, and MIRA alone, or in conjunction with ARCO, makes the decision to enter into the transaction.

(4) MIRA shall maintain for a period of six years from the date of each transaction for which relief is requested the records necessary to enable the persons described in subparagraph (b) of this section:

(a) To determine whether the conditions of this exemption have been met, except that:

(i) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of MIRA, the records are lost or destroyed prior to the end of the six-year period, and

(ii) No party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required herein; and

(b) Except as provided in subdivision (a) of this subparagraph (3) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to herein are unconditionally available at the customary location for the maintenance and/or retention of such records, for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of a plan which is funded, in whole or part, by a trust with respect to which ARCO is a named fiduciary or any duly authorized employee or representative of such fiduciary; and

(iii) Any participant or beneficiary of any plan which is funded, in whole or part, by ARCO or any duly authorized representative of such participant or beneficiary.

(5) None of the persons described in subdivision (b) of subparagraphs (3) shall be authorized to examine the trade secrets or commercial or financial information which is privileged, confidential or of a propriety nature of either ARCO, MIRA or Met.

EFFECTIVE DATE: This exemption, if granted, will be effective for transactions occurring on or after January 12, 1988.

TEMPORARY NATURE OF EXEMPTION: The proposed exemption is temporary and, if granted, will expire five years from the date the exemption is granted. Subsequent to the expiration of the exemption, the Plans may continue to hold leases or refinancing agreements entered into during the proposed five-year exemption period.

Summary of Facts and Representations

1. ARCO, one of the nation's largest energy companies, and certain of its ARCO Controlled Persons, sponsor the Plans, which provide benefits to substantially all of their salaried and hourly non-union employees. As of August 1, 1987, there were nineteen Plans with approximately 61,860 participants. All of the assets of the Plans are held in a master trust (the Master Trust) maintained for the Plans.

2. The trustee (Trustee) of the Master Trust is State Street Bank and Trust Company, a banking corporation located in Boston, Massachusetts. As of December 31, 1986, the Master Trust held plan assets with a fair market value of approximately $2 billion. The Trustee holds title to all of the assets of the Plans, including the Real Estate.

3. MIRA, a California limited partnership, is a registered investment adviser under the Investment Advisers Act of 1940. MIRA's general partner, Metric Institutional Realty Advisors, Inc., a California corporation, is wholly owned by Metric Partners (MP). MP is the successor to the Fox Group. The Fox Group was comprised of Fox Realty Investors, Fox Institutional Realty Advisors Inc., Fox Institutional Realty Advisors, Ltd., Fox Capital Management Corporation and Fox Capital Corporation. MP is comprised of FGM Investment Partners, L.P., the managing general partner, and Metric Co. Metric Co., incorporated in Delaware in February, 1988, is a wholly-owned subsidiary of Met, a mutual life insurance company chartered in the state of New York. Met, along with Met Controlled Persons, provides a broad range of insurance and investment products and services, including investment management and advisory services.

As of September 30, 1989, MP had almost $1.9 billion in assets under management. The Fox Group and MP have organized and managed 75 real estate investment programs since 1967. These programs have acquired more than 350 properties and subsequently sold 165 of these properties for gross proceeds of over $1 billion. Most of the people at the Fox Group who were involved in acquisitions, asset and property management, and property sales are now working for MP and its subsidiaries.

MIRA was organized to provide fiduciary, asset management, advisory and consulting services principally to tax exempt and institutional organizations, including pension and profit-sharing plans, endowments and foundations, group trusts and other similar organizations in all aspects of real estate management. As of January 12, 1988, the proposed effective date of this exemption, MIRA's predecessor, Fox Institutional Realty Advisors, Ltd., did not meet the requirements of a qualified professional asset manager (QPAM) as set forth in Prohibited Transaction Exemption 84–14 (PTE 84–14, 49 FR 9494, March 13, 1984). The applicant represents that: (1) MIRA expects to qualify as a QPAM as of January 1, 1991; and (2) notwithstanding the attainment by MIRA of QPAM status, PTE 84–14 may still be unavailable for the disposition of the Real Estate, since ARCO can reject any such proposed disposition (as discussed in item 4).

4. Pursuant to the authority granted to ARCO under the Master Trust Agreement (the Agreement), ARCO has retained MIRA to manage the Real Estate held by the Master Trust.[1] The Real Estate under MIRA's management consists of four properties: The Majestic Office Building, located at 7200 East Hamden Avenue, Denver, Colorado; the Highpoint Executive Plaza, located at 1603 Babcock Road, San Antonio, Texas; and the Governor Center I, located at 777 Grant Street, Denver, Colorado; and a 50% interest in Governor Center II, located at 600 Grant Street, Denver, Colorado.[2] As of June 1988, the aggregate value of the Real Estate was $10.7 million or approximately .5 percent of the Plans' assets.

In some areas, MIRA has broad authority in connection with the Real Estate under its management. For example, MIRA has sole authority to lease space in the Real Estate and to hire, oversee and replace service providers therefor.[3] MIRA also has authority to approve non-operational and extraordinary operational expenditures.[4] In other areas however, MIRA's authority to manage the Real Estate is very limited. Specifically, MIRA does not have the authority to acquire real estate for the Master Trust. In addition, MIRA lacks on-site property management responsibility for the Real Estate and may implement capital expenditures only up to $5,000 without consultation with ARCO. In this regard, the applicant represents that, under the Agreement, ARCO may, but is not required to, hire MIRA, or a MIRA affiliate to provide on-site property management services for the Real Estate.[5] ARCO has also retained veto power to reject any proposed dispositions of the Real Estate managed by MIRA. In this regard, ARCO's authority extends only to the decision to sell or not to sell the assets for a specific price, not to negotiating or approving the identity of the buyer.

5. MIRA has requested limited exemptive relief to permit MIRA to enter into certain party in interest transactions involving the leasing, refinancing[6] and disposition of the Real Estate, and the purchasing of goods[7] in connection with the management of the Real Estate. Because MIRA is not a QPAM within the definition of PTE 84–14, an administrative exemption is necessary for such transactions. In this regard, ARCO has represented that is has co-fiduciary responsibility with respect to the transactions for which exemptive relief is requested.

6. The applicant suggests that denial of the exemption would substantially inhibit the ability of MIRA to manage prudently the Real Estate held in the Master Trust in two major areas. First, MIRA represents that, because of the size of the Master Trust, many parties in interest who deal therewith may be difficult to identify. Accordingly, MIRA might inadvertently commit a prohibited transaction. Second, the applicant represents that there are many parties in interest with respect to the Plans who are identifiable, but are not in a position to influence MIRA's management of the Real Estate.[8] Without the proposed exemption, ordinary and customary transactions in connection with the Real Estate would be precluded under the Act between the Plans and such identifiable parties in interest with respect thereto. This would be the case even where the transaction is in the best interests of the Plans, no element of fidiciary self-dealing or insider abuse is involved and the terms of the transaction are not less favorable to the Plans than an arm's-length transaction with an unrelated party. For example,

[1] It is contemplated under the Agreement that ARCO may hire MIRA or a MIRA Controlled Person to provide certain services with respect to the Real Estate. In the event that MIRA or MIRA Controlled Persons provide services to the Plans for an additional fee, the applicant represents that MIRA will not use any of its authority or influence as a fiduciary to cause ARCO to hire MIRA or MIRA Controlled Persons to provide such services. The applicant believes that such an arrangement would therefore be exempt from the restrictions of the Act under section 408(b)(2). The Department expresses no opinion herein as to whether such services are covered under section 408(b)(2), nor is the Department proposing an exemption for such services.

[2] The remaining 50% interest is owned by a real estate developer who, the applicant represents, is not a party in interest with respect to MIRA or MIRA Controlled Persons.

[3] In the course of providing its services under the Agreement, MIRA will utilize the services for its affiliates. The applicant represents that such services will be provided at no additional cost to ARCO, the Plans or the Master Trust.

[4] Extraordinary operational expenditures are unforeseen expenses other than capital expenditures, which typically are incurred as a result of an emergency or other unusual circumstances.

[5] MIRA believes that the provision of such additional services for an additional fee would not violate the prohibited transaction provisions of the Act because such arrangement would be exempt from those restrictions by reason of section 408(b)(2) of the Act, provided MIRA does not use its authority as a fiduciary to cause ARCO to hire it or one of its affiliates to provide such services. In this regard, the Department notes that the applicant is not seeking an exemption for such transactions, nor is the Department expressing an opinion as to the applicability of section 408(b)(2) of the Act to such transactions.

[6] The applicant notes that MIRA has the authority to refinance the Property pursuant to paragraph 3 of the Agreement, which states that MIRA shall have "complete control of the management and investment of the Portfolio."

[7] The purchasing of goods for which the applicant seeks exemptive relief would involve acquisitions of goods from a party in interest by a service provider in the course of rendering services to a Plan where the goods are not furnished by the service provider itself. For example, MIRA might authorize the purchase of a water heater for the Real Estate from an entity that also provides services to other properties owned by an ARCO plan, but over which MIRA has no authority or control.

[8] In this regard, the Department notes that the applicant has not requested, nor is the Department proposing, relief from the provisions of section 406(b) of the Act.

MIRA might lease space in the Real Estate to a securities brokerage firm which executes security transactions for non-MIRA managed assets held by the ARCO Plans.

7. Finally, the applicant has represented that all of the specified Real Estate transactions entered into by MIRA on behalf of the Plans will be conducted at fair market value.

8. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because: (a) The requested exemption would permit MIRA, acting on behalf of the Plans, to enter into specified transactions involving the Real Estate with certain parties in interest with respect to the Plans other than ARCO or ARCO Controlled Persons; MIRA or MIRA Controlled Persons; Met or Met Controlled Persons; or any person who exercises discretionary authority, responsibility or control or who provides investment advice with respect to the investment of Plans' assets involved in the particular transaction; (b) the Real Estate represents less than one percent of the Plans' assets and all of the transactions covered under the exemption will be negotiated by MIRA at terms no less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated party; (c) ARCO has assumed co-fiduciary responsibility for the proposed transactions; and (d) The exemption is temporary, expiring five years from the date of grant, and is limited to the specified Real Estate and transactions as described herein.

For further information contact: Ms. Kay Madsen of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

NDB Bank, N.A. (the Bank) Located in Detroit, MI

[Application No. D-8048]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406 (b)(2) and (b)(3) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(F) of the Code, shall not apply to the proposed receipt of fees by the Bank from the Woodward Funds (the Fund), an open-ended investment company registered under the Investment Company Act of 1940, for acting as the investment adviser, custodian, or transfer and dividend disbursing agent for the Fund, in connection with the investment by certain plans to which the Bank, or any of its affiliates, serves as a fiduciary (the Client Plans), as well as plans covering only employees of the Bank or its affiliates (the Bank Plans) where the Bank or any affiliate is a fiduciary, provided that the following conditions are met:

(a) No sales commissions are paid by either the Client Plans or the Bank Plans (collectively, the Plans) in connection with the purchase or sale of shares of the Fund and no redemption fees are paid in connection with the sale of shares by the Plans to the Fund;

(b) Each Client Plan and each Bank Plan receives a rebate, either through cash or the purchase of additional shares of the Fund pursuant to an annual election made by the Plan, of such Plan's proportionate share of all fees charged to the Fund by the Bank;

(c) With respect to the Client Plans, a second fiduciary who is independent of and unrelated to the Bank or any of its affiliates (the Second Fiduciary), receives full written disclosure of information concerning the Fund (including a current prospectus for the Fund and a statement describing the fee structure) and, on the basis of such information, authorizes in writing the investment of assets of a Client Plan in the Fund, the fees to be paid by the Fund to the Bank, and the purchase of additional shares of the Fund by the Client Plan with the fees rebated to the Client Plan by the Bank;

(d) The authorization referred to in paragraph (c) is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (c) with instructions on the use of the form must be supplied to the Second Fiduciary no less than annually. The instructions for such form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Second Fiduciary; and

(2) Failure to return the form will result in continued authorization of the Bank to engage in the transactions described in paragraph (c) on behalf of the Client Plan.

(e) With respect to the Bank Plans, no fees will be charged by the Bank or any of its affiliates to the Bank Plans for serving as either a trustee, directed trustee, custodian, or investment manager of the Bank Plans; and

(f) All dealings between the Plans and the Fund are on a basis no less favorable to the Plans than dealings with other shareholders of the Fund.

Summary of Facts and Representations

1. The Bank is a large national banking association with its principal office located at 611 Woodward Avenue, Detroit, Michigan. As of December 31, 1989, the total assets of the Bank and its affiliates were approximately $25 billion. The Bank has investment discretion for approximately 625 employee benefit plans, with total assets under management of approximately $2.4 billion. The Bank acts as trustee, directed trustee, custodian or investment manager for the Client Plans and the Bank Plans.

The Client Plans include various pension, profit sharing, and stock bonus plans as well as voluntary employees' beneficiary associations, supplemental unemployment benefit plans, simplified employee benefit plans, retirement plans for self-employed individuals (i.e. Keogh Plans), and individual retirement accounts (IRA's). The Client Plans have assets ranging from approximately $5,000 to approximately $2.5 billion. The Bank, in its capacity as a fiduciary of the Client Plans, may exercise investment discretion for all or a portion of the assets of the Client Plans, or may be subject to the directions of a person or entity unrelated to the Bank and its affilates that has investment discretion for all or a portion of the assets of one or more of the Client Plans.

The Bank Plans include the following: (1) NBD Bancorp, Inc. Employees Retirement Plan, which has assets of approximately $284.8 million and approximately 8,700 participants; (2) NBD Bancorp, Inc. Long Term Disability Plan, which has assets of approximately $3.7 million and approximately 11,700 participants; (3) NBD Bancorp, Inc. Trust for Medical and Dental Plans, which has assets of approximately $2.9 million and approximately 11,700 participants; (4) NBD Bancorp, Inc. Employees Savings and Investment Plan (the NBD Savings Plan), which has assets of $130.4 million and approximately 8,500 participants; and (5) NBD Bancorp, Inc. Employees Stock Ownership Plan, which has assets of approximately $2.7 million and approximately 5,000 participants. The Bank currently exercises investment discretion for all of the Bank Plans, except the NBD Savings Plan. The NBD Savings Plan allows participants to direct the investment of the assets in their individual Plan accounts.

The Bank represents that its status as a fiduciary with investment discretion for either a Client Plan or a Bank Plan arises out of its relationship as a trustee or investment manager for such Plan, but does not result from the rendering of any investment advice to a third party that has investment discretion under the Plan.

2. The Fund is a Massachusetts business trust organized on April 21, 1987 as an open-end, diversified management investment company registered under the Investment Company Act of 1940. The Fund currently has three portfolios with combined assets of approximately $691 million. The existing portfolios are essentially money market funds, respectively designed to invest in government securities, tax-exempt money market instruments, and taxable money market instruments. The Fund is in the process of establishing five additional portfolios, three of which are designed to invest in equity securities with specified characteristics and two of which are bond funds with bonds of different maturity ranges. The Bank contemplates that additional portfolios may be established in the future and that all present and future portfolios will be made available to the Plans.

3. First of Michigan Corporation (FOM), a Delaware corporation and a wholly-owned subsidiary of First of Michigan Capital Corporation, is the sponsor and distributor of the Fund's shares. FOM is unrelated to the Bank and its affiliates. Fees are paid by the Fund to FOM for certain distribution expenses, pursuant to Rule 12b-1 under the Investment Company Act of 1940, in accordance with a distribution and servicing agreement between FOM and the Fund. Shares of the Fund are offered and sold to eligible investors, which include customers of the Bank, institutional investors, the general public, and trust accounts for which the Bank, or an affiliate of the Bank, is a fiduciary or co-fiduciary. If the proposed exemption is granted, shares of the Fund will be offered to the Plans.

4. The Bank performs services for the Fund as investment adviser, custodian, and transfer and dividend disbursing agent. The Bank charges the Fund for these services in accordance with various agreements between the Bank and the Fund. These agreements have been approved by the Board of Trustees of the Fund (the Fund Trustees), as required by applicable law. Any changes in the fees charged by the Bank for services to the Fund will be approved by the Fund Trustees. With respect to the proposed investment in the Fund by the Plans, the Bank states that it will rebate to each Plan its proportionate share of all fees charged by the Bank to the Fund (see Paragraph 6 below).

5. The Bank currently invests certain assets of the Plans in group trusts established by the Bank (the Group Trusts). The Bank represents that the interests of the Plans would be better served by the collective investment of assets of the Plans in the Fund rather than in the Groups Trusts. The Fund is valued on a daily basis, whereas the Group Trusts, other than money market trusts, are valued monthly. The daily valuation permits (i) The immediate investment of contributions to a Plan in various types of investments, (ii) greater flexibility in transferring assets from one type of investment to another, and (iii) the daily redemption of shares to the Fund for purposes of making distributions under a Plan. In addition, information concerning the investment performance of the Fund is available on a daily basis in newspapers of general circulation which would allow sponsors of the Plans and participants to monitor the performance of a portfolio on a daily basis rather than monthly, quarterly, semi-annually or, in some instances, annually through reports generated by the Bank. The Bank states that the greater flexibility and availability of information for investments in the Fund is of particular importance since many of the Client Plans are individual account plans in which participants direct the investment of the assets allocated to their accounts.

6. The Bank represents that the proposed fee structure (the Fee Structure) has been designed to assure that the fees charged by the Bank, or any of its affiliates, to a Client Plan or Client Plan sponsor will be the same regardless of whether the assets of the Client Plan are invested in the Fund or the Group Trusts. The fee structure is described as follows:

(a) The Bank and its affiliates will charge their standard fees to all Client Plans for serving as either a trustee, directed trustee, custodian, or investment manager for the Client Plans.[1] The Bank states that in many cases, these fees will be paid by the Client Plan sponsor rather than by the Client Plan. The Bank also states that no such fees are or will be charged to the Bank Plans.

(b) The Bank will charge the Fund for its services to the Fund as investment adviser, custodian, and stock transfer and dividend disbursing agent, in accordance with the various agreements between the Bank and the Fund.

(c) The Bank's fees to the Fund are accrued on a daily basis and billed by the Bank to the Fund at the end of each month.

(d) At the end of each month, and essentially simultaneously with the billing described in (c) above, the Bank will rebate to each Plan such Plan's pro rata share of all investment advisory, custodian, and stock transfer and dividend disbursing agent fees charged by the Bank to the Fund (the Rebate Program). The Bank represents that the rebated fees will be paid to the Plan in cash, except that the rebate may be effectuated through the purchase of additional shares of the Fund pursuant to an annual election made by the Plan. All decisions regarding the use of rebated fees to purchase additional shares of the Fund will be made by a Second Fiduciary for a Client Plan and by the Bank for a Bank Plan (see paragraphs 7 and 8 below).

The Bank states that the Fee Structure will be at least as advantageous to the Client Plans as an offset or credit arrangement whereby fees paid by the Fund to the Bank would be offset against other fees charged directly by the Bank to the Client Plans.[2] The Rebate Program will insure that the Bank will not receive any additional fees from the Fund as a result of the Client Plans investing in the Fund. Thus, the Fee Structure with the Rebate Program essentially will have the same effect in offsetting the Bank's fees received from the Fund as an arrangement allowing for a credit of such fees against other fees charged directly to the Client Plans. The Bank notes that the Fee Structure will allow

[1] The Department is not proposing any exemptive relief herein for fees paid by the Client Plans directly to the Bank or any affiliate for the provision of services. In this regard, see section 408(b)(2) of the Act and section 2550.406b-2 of the regulations.

[2] See Prohibited Transaction Exemption 77-4 (42 FR 18732, April 8, 1977). PTE 77-4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the company, provided that, among other things, the plan does not pay an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. Section II(c) of PTE 77-4 states that this condition does not preclude the payments of investment advisory fees by the investment company under the terms of its investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940. Section II(c) states further that this condition does not preclude payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company.

the Client Plan sponsor to pay the Client Plan's fees to the Bank or its affiliates for serving as either a trustee, directed trustee, custodian or investment manager for the Client Plan, and still allow for the Client Plan to receive a rebate of such Plan's pro rata share of fees paid by the Fund to the Bank.

The Bank is responsible for establishing and maintaining a system of internal accounting controls for the Rebate Program. In addition, the Bank will retain the services of an independent accounting firm, such as Arthur Anderson & Co. of Detroit, Michigan, to audit annually the rebating of fees to the Plans under the Rebate Progam. The Bank states that such audits will provide independent verification of the proper rebating to the Plans of fees charged by the Bank to the Fund. The Bank states further that information obtained from the audits will be used in the preparation of required financial disclosure reports to the Plans' fiduciaries.

7. With respect to the Client Plans, the Bank represents that a Second Fiduciary, which will be independent of and unrelated to the Bank and its affiliates, will receive full written disclosure of information concerning the Fund and, on the basis of such information, will authorize in writing the investment of assets of a Client Plan in the Fund, the fees to be paid by the Fund to the Bank, and the purchase of additional shares of the Fund by the Client Plan with the fees rebated to the Client Plan by the Bank. The authorization will be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination. A form expressly providing an election to terminate the authorization with instructions on the use of the form will be supplied to the Second Fiduciary no less than annually. The instructions for such form will include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Second Fiduciary; and

(2) Failure to return the form will result in continued authorization of the Bank to engage in the subject transactions on behalf of the Client Plan.

The Bank states that the Second Fiduciary will receive a current prospectus for the Fund and a written statement giving full disclosure of the Fee Structure. The disclosure statement will explain why the bank believes the investment of assets of the Client Plan in the Fund is appropriate. In addition, the disclosure statement will describe whether there are any limitations on the Bank or its affiliates with respect to which Client Plan assets may be invested in shares of the Fund and, if so, the nature of such limitations.[3]

In situations where the Bank exercises investment discretion as a trustee or investment manager for the Client Plan, the Second Fiduciary will generally be either the Client Plan administrator, the sponsor of the Client Plan, or an investment committee appointed by the Client Plan sponsor to handle investments for the Client Plan. In situations where the Bank does not have investment discretion for the Client Plan, the Second Fiduciary will be a person or entity that has investment discretion, such as an independent investment adviser or investment manager, a Client Plan sponsor or investment committee, or a Client Plan participant (including an individual establishing and maintaining an IRA), who has the authority to direct the investment of his or her assets in the Client Plan. However, the Bank states that because in many instances shares of the Fund will only be a part of a Client's Plan's separate investment fund that is an investment option under the Client Plan into which a Client Plan participant has directed the investment of assets of his or her individual account, the record holder of shares of the Fund will be the Client Plan's investment fund and not the individual participant's account. The Client Plan participant's account would reflect units in the Client Plan's investment fund, the value of which would be based upon the value of all the assets of such investment fund. In such instances, fees rebated by the Bank to the Client Plan's investment fund would not be allocated to the individual participant's account but rather would be reinvested as general assets of the investment fund. Therefore, the Secondary Fiduciary which approves the reinvestment of rebated fees in shares of the Fund would be in those instances a single Client Plan fiduciary, and not the individual Client Plan participants, in order to ensure a single direction for the manner of rebated fees to the Client Plan's investment fund.

8. With respect to the Bank Plans, the Bank represents that it wil not be required to obtain approval from a Second Fiduciary prior to the investment of assets of a Bank Plan in the Fund. However, the Bank states that participants in the NBD Savings Plan, or any other individual account plan sponsored by the Bank and its affiliates which subsequently allows the participants to direct the investment of assets in their individual accounts, will receive the same information that will be provided to a Second Fiduciary of a Client Plan, including a current prospectus relating to the Fund and a statement describing the Fee Structure. The assets subject to the control of a Bank Plan participant will not be invested in the Fund, or in an investment fund holding shares of the Fund which is an investment option under the Bank Plan, except in accordance with an affirmative direction of the Bank Plan participant. The Bank states that with respect to the NBD Savings Plan, the investment funds established under the Plan will be the record holder of shares of the Fund rather than the individual accounts of participants. Therefore, fees rebated to the NBD Savings Plan will be rebated to the investment funds. All fees will be rebated in cash to such funds, unless the committee responsible for the administration of the NBD Savings Plan approves, not less frequently than annually, the reinvestment of fees in shares of the Fund. The Bank represents that all fees rebated to the NBD Savings Plan will be properly allocated to the investment funds and that all amounts resulting from such rebated fees will be appropriately credited to each participant's individual account.

9. No sales commissions will be paid by the Plan in connection with the purchase or sale of shares of the Fund. In addition, no redemption fees will be paid in connection with the sale of shares by the Plans to the Fund. However, the Fund may pay a distribution fee to FOM or any other distributor of the Fund, provided that such distributor is unrelated to the Bank and the Plans. The Bank states that all other dealings between the Plan and the Fund, the Bank, or any affiliated person, will be on a basis no less favorable to the Plans than such dealings are with the other shareholders of the Fund.

10. In summary, the Bank represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The Fund will provide the Plans with a more effective investment vehicle than the Group Trusts currently maintained by the Bank, without any increase in fees paid to the Bank or its affiliates; (b) the Bank will require annual audits by an independent accounting firm to verify the proper rebating to the Plans of fees charged by the Bank to the Fund; (c) with respect to the Plans for which the Bank does not exercise investment discretion, the appropriate Plan fiduciaries will have more information available to them about the assets invested in the Fund than is currently available for Plan assets invested in the Group Trusts, which will allow such Plan ficuciaries to make more informed decisions regarding their investments; (d) with respect to Client Plans, investments in the Fund and the payment of any fees by the Fund to the Bank will require an authorization in writing by a Second Fiduciary for a Client Plan after full written disclosure in all cases to the Second Fiduciary, including a current prospectus for the Fund and a statement describing the Fee Structure; (e) any authorization made by a Client Plan will be terminated at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination from the Second Fiduciary on a form expressly providing an election to terminate the authorization, which will be supplied to the Second Fiduciary no less than annually; (f) with respect to the Bank Plans, no fees will be charged by the Bank, or any of its affiliates, to the Bank Plans for serving as either a trustee, directed trustee, custodian, or investment manager of the Bank Plans; (g) with respect to a Bank Plan which allows for a participant to direct the investment of his or her individual account assets in the Bank Plan, the Bank Plan participant will direct the investment of the participant's assets into the Fund or into an investment fund holding shares of the Fund which is an investment option under the Bank Plan, and will aprove the fees to be paid by the Fund to the Bank based on full written disclosure, including a current prospectus for the Fund and a statement describing the Fee Structure; (h) no sales commissions or redemption fees will be paid by the Plans in connection with the acquisition or sales of shares of the Fund; and (i) all dealings between the Plans and the Fund, the Bank, or any affiliated person, will be on a basis no less favorable to the Plans than such dealings are with the other shareholders of the Fund.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523-8883. (This is not a toll-free number).

[3] See section II(d) of PTE 77-4 which requires, in pertinent part, that an independent plan fiduciary receive a current prospectus issued by the investment company and a full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including a discussion of whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company, and, if so, the nature of such limitations.

Austin Oral Surgery Associates Profit Sharing Plan (the Plan), Located in Austin, Texas

[Application No. D-8191]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act, and sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1) (A) through (E) of the Code, shall not apply to the proposed loan of $125,000 (the Loan) by the Plan to Austin Oral Surgery Associates (the Partnership), a party in interest with respect to the Plan, provided that the terms and conditions of the Loan are no less favorable to the Plan than those obtainable in an arm's-length transaction involving an unrelated third party.

Summary of Facts and Representations

1. The Plan is a profit sharing plan sponsored by the Partnership. As of June 22, 1989, the Plan had fifteen participants and $4,004,477 in assets. First City Bancorporation of Texas—Austin (First City), serves as the Plan's trustee.

2. The Partnership proposes to borrow $125,000 from the Plan at a 12½% interest rate and to offer a first lien deed of trust in the amount of $125,000 on Unit 4-A, Western Trails Medical Center in Austin, Texas County, Texas (the Condominium). As additional security for the Loan, the Partnership will assign rental income, and the Partners will offer their personal guarantees. The Partnership will repay the Loan in monthly installments of principal and interest with a 15 year amortization schedule.

3. The Loan proceeds will be used by the Partnership to pay off a note balance of $19,029.19 owed to Austin Medical Investments, an unrelated third party. The remaining proceeds from the Loan will be applied against a balance of $191,326.04 on a loan from Texas Commerce Bank—Austin, an unrelated third party.

4. The Condominium was appraised on June 20, 1989 by a qualified real estate appraiser, Leroy Michael Eide, Master Service Appraiser #4066 of Austin, Texas. The fair market value of the Condominium was calculated to be $200,000.

5. First City has acknowledged its duties, responsibilities and labilities under the Act in acting as fiduciary for the Plan. First City has reviewed the terms of the Loan and has concluded that the Loan will be a good investment for the Plan because the Plan will earn a 12½% rate of return which is in excess of what the Plan could earn on other investments. First City states that the terms of the Loan are comparable if not more favorable than terms of similar transactions between unrelated parties. Secondly, as independent fiduciary, First City has monitered two loans that the Plan has made previously to the Partnership pursuant to Prohibited Transaction Exemption 85-22 (PTE 85-22) (See 50 FR 3046, January 23, 1985). First City states that the Partnership has made each loan payment on time and complied with all terms of the previous loans. The amount of the Loan and the amount of the loans granted pursuant to PTE 85-22 constitute less than 25% of Plan assets.

First City represents that it will monitor the Loan throughout its duration on behalf of the Plan and will take all appropriate actions to safeguard the interests of the Plan and its participants and beneficiaries.

6. In summary, the applicants represent that the transaction meets the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The amount of the Loan together with the outstanding amount of the previous loans in PTE 85-22 represent less than 25% of the Plan's assets; (b) the Loan will be secured by a first lien on a condominium, assignments of rental income and personal guarantees of the Partners; and (c) First City as independent fiduciary has reviewed the terms of the Loan and has concluded that they are at least as favorable as terms with an unrelated third party.

For further information contact: Allison Padams of the Department, telephone (202) 523-8871. (This is not a toll-free number.)

International Association of Heat and Frost Insulation and Asbestos Workers Local Union No. 69 Pension Fund (the Plan) Located in Miami, Florida

[Application No. D-8297]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 71-1 (40 FR 18471, April 28, 1975). If the exemption is

granted the restrictions of sections 406(a) and 406(b) (1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed loan (the Loan) of $88,000 for a term of ten years by the Plan to Asbestos Workers Local No. 60 (the Union), a Plan sponsor and party in interest with respect to the Plan; provided that the terms of the Loan are at least as favorable as the Plan could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a multiemployer defined benefit plan with 461 participants and $10,861,301 in assets as of June 30, 1990. The Union is a labor organization serving as collective bargaining representative for approximately 200 workers, most of whom are participants in the Plan. The Union is a sponsor of the Plan along with various employers in the south Florida area.

2. The Plan proposes to loan $88,000 to the Union for the purpose of refinancing the Union Hall (the Building), located at 13000 NW. 47th Avenue, Opa Locka, (Dade County) Florida. The Loan will constitute less than 1% of the total assets of the Plan. The term of the Loan is for ten (10) years at a fixed interest rate of 11.5% per annum with equal monthly payments of principal and interest. The Loan will be secured by a first mortgage on the Building which will be duly filed and recorded with the Clerk of Court in Miami, Dade County, Florida.

3. The applicant obtained an appraisal on the Building from Carl P. Nelson (Mr. Nelson), an independent qualified appraiser located in Miami, Florida. In an appraisal dated December 4, 1989, Mr. Nelson estimated the market value of the Building to be $170,000 as of December 1, 1989.

4. The Plan has retained the American Financial Corporation (American Financial) in Coral Gables, Florida, as an independent fiduciary to review the Loan. American Financial represents that it receives less than 1% of its income from the Union. In a letter dated June 21, 1990, Richard Sox (Mr. Sox) of American Financial stated that he investigated and reviewed the proposed transaction, including relevant documents, and is of opinion that the Loan is economically appropriate for the Plan. Mr. Sox also stated that, as independent fiduciary, he will monitor and review all business and legal negotiations and documents as they pertain to the Loan. Mr. Sox represents that, as a result of a survey of the market place for 10 year interest rate quotes, he has determined that the 11.5% interest rate on the Loan is commensurate with rates being offered in the market area.

5. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act because: (1) The Loan represents less than 1% of the Plan's assets; (2) the Loan is secured by collateral with a value as determined by an independent qualified appraiser, in excess of 150% of the principal amount of the Loan; (3) an independent fiduciary has reviewed the Loan and determined that it is economically appropriate for the Plan; and (4) the independent fiduciary has agreed to monitor the Loan.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Madsen of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Profit Sharing Plan and Employees Trust of T. F. Ciurej, M.D., P.C., (the P/S Plan) and Pension Plan and Employees Trust of T.F. Ciurej, M.D., P.C., (the Pension Plan, collectively, the Plans) Located in Omaha, NE

[Application Nos. D-8393 and D-8394]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale of certain parcels of land (collectively, the Land) by the Plans to Terence F. Ciurej, M.D. (Dr. Ciurej) and Mrs. Linda Ciurej (Mrs. Ciurej), provided that the Plans receive the greater of $85,062 of the fair market value of the Land at the time of the sale.

Summary of Facts and Representations

1. The Plans are defined contribution plans which were established on April 1, 1980, and have the total of 2 participants. As of December 31, 1989, the P/S Plan and the Pension Plan had total assets of $101,325 and $90,487, respectively. The Plans are sponsored by T.F. Ciurej, M.D., P.C. (the Employer), a Nebraska corporation engaged in the practice of general surgery. Dr. Ciurej is the sole shareholder of the Employer and the trustee (the Trustee) of the Plans.

2. The Land was purchased by the Plans on May 3, 1984, from an unrelated party for $84,000 (the Acquisition Cost). The Pension Plan purchased 10.1 acres of the Land for $12,000 (Pension Plan Land) and the P/S Plan purchased 60.7 acres of the Land for $72,000. The applicant states that approximately 12.7 percent of the Pension Plan's assets and 71.6 percent of the P/S Plan's assets are currently invested in the Land.[2] The applicant states that on May 3, 1984, Mrs. Ciurej also purchased 10.1 acres (Mrs. Ciurej Land) for $123,000 from the same unrelated party. Mrs. Ciurej's Land is completely surrounded by the Land, and simultaneously with the above purchases the Pension Plan granted Mrs. Ciurej a perpetual easement (the Easement) across the Pension Plan Land. The applicant represents that in the summer of 1989, Dr. and Mrs. Ciurej established their permanent residence on Mrs. Ciurej's Land.

3. The applicant maintains that the Easement is a legal designation of the right acquired by Mrs. Ciurej to have access to her Land via a farm lane which existed for many years over the Pension Plan Land. It is represented that according to the Nebraska law, when one purchases real estate which is completely surrounded by real estate owned by others, an easement (or a right to access the real estate) is obtained by necessary implication of the law. As such, it is represented that the Easement would have been enforceable as an implied easement even if the formal granting of such Easement had not taken place. Furthermore, the applicant maintains that because the granting of the Easement was an integral part of the initial purchase transaction, the Pension Plan did not receive any monetary compensation as a result. As such, the existence of the Easement on the Land did not in any way affect the initial purchase price of $84,000 paid by the Plans for the Land.

4. Since September 1984, the Land has been used as pasturage for horses by the Cherry Hill Partnership (Cherry Hill), a Nebraska partnership of which Dr. and Mrs. Ciurej are two equal partners. No formal lease agreement was executed between Cherry Hill and the Plans, and no rental payments were made to the Plans. Cherry Hill, however, provided for the needs of the Land by spraying for weeds and thistles, erecting and repairing fences, and paying real property taxes and liability insurance premiums. The applicant maintains that Cherry Hill ceased to use the Land on June 1, 1990.

5. The applicant has voluntarily filed Form 5330 (Return of Initial Excise Taxes for Pension and Profit Sharing Plans) with the IRS and has paid excise taxes for the past prohibited leasing of the Land by Cherry Hill for the period beginning September 1, 1984 and including the year 1989. The applicant represents that he will file form 5330 with the IRS for the year 1990 and will pay excise tax the earlier of either 90 days following the date the grant of this exemption appears in the Federal Register or on January 2, 1991. In addition, Dr. and Mrs. Ciurej paid the Plans back rent of $5,186.33 (the Back Rent) for the leasing of the Land for the 1984-1990 period. The Plans will also be paid interest (the Interest) on the Back Rent.

6. The applicant maintains that such Interest will be determined by the Trustee of the Plans. The Back Rent paid the Plans for the leasing of the Land by Cherry Hill was determined by Richard F. Hansen (Mr. Hansen), an independent qualified real estate appraiser.[3] As such, the applicant represents that the payment of the excise tax, the Back Rent (plus Interest) and the seeking of prospective relief with respect to the sale of the Land were strictly unilateral actions initiated by the applicant upon the advise of his current legal counsel.

7. According to the applicant, the Land has depreciated in value primarily due to the lack of development in the surrounding areas. As a result, the applicant proposes to purchase the Land, which is unencumbered by mortgages or other liens, in a one-time cash sale. The Land was appraised by Mr. Hansen, who used the market value approach to determine that as of March 14, 1990, the fair market value of the Land was $78,500 (the Appraisal). In a September 27, 1990 update to the Appraisal, Mr. Hansen concluded that the adjacency of Mrs. Ciurej's Land to the Land merits a premium of $15.00 per acre above the fair market value, for an aggregate premium of $1,062 (the Premium). Mr. Hansen is a licensed appraiser in the State of Nebraska and a partner with Hansen Agency, Inc. The Plans will pay no costs or commissions associated with the transaction and will receive the greater of $85,062 (the Acquisition Cost plus the Premium), or the fair market value of the Land at the time of the sale.

8. The applicant represents that the proposed sale will enable the Plans to diversify their respective investment portfolios. The transaction will enable the Plans to dispose of an asset that on its own merit, is probably non-marketable and will relieve the Plans' of an investment which has depreciated in value. It is represented that the limitations of section 415 of the Internal Revenue Code regarding employer contributions to defined contribution plans will not be exceed as a result of the proposed transaction.

9. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The sale will be a one-time cash transaction and the Plans will pay no expenses or commissions with respect to the sale;

(b) As a result of the transaction, the Plans will be able to receive the greater of $85,062 or the fair market value of the Land at the time of the sale;

(c) The current fair market value of the Land has been determined by an independent, qualified appraiser;

(d) The sale will enable the Plans to divest of the Land and to liquidate their assets; and

(e) The applicant represents that the excise taxes and other payments with respect to the prohibited use of the Land By Cherry Hill have been and will be paid for all relevant periods.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

For further information contact: Ekaterina A. Uzlyan of the Department, telephone (202) 523-8194. (This is not toll-free number).

Cardiovascular & Internal Medicine Associates, Inc. Profit Sharing Plan (the Plan) Located in West Monroe, LA

[Application No. D-8479]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)((2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash of a parcel of real property (the Property) from the individual account in the Plan of James Wade (Wade) to SKE Partnership (the Partnership), a party in interest with respect to the Plan, provided the Plan receives no less than the greater of $47,500 or fair market value for the Property at the time of sale.

Summary of Facts and Representations

1. Cardiovascular & Internal Medicine Associates, Inc. (the Employer) is a medical corporation specializing in the practice of internal medicine. The Plan is a profit sharing plan having 16 participants and total assets of $651,073 as of December 31, 1989. The Plan provides that each participant may direct the investments of his or her individual account. The trustee of the Plan is Premier Bank, N.A., a national banking association located in Monroe, Louisiana.

2. The officers and shareholders of the Employer are Wade, W.D. Smith, Jr. (Smith), Ronald Koepke (Koepke) and Robert Ewing (Ewing). The assets of Wade's account in the Plan totaled $226,983 as of December 31, 1989. Those assets include the Property which consists of a parcel of approximately 19,400 square feet of unimproved land. The Property is adjacent to property on which the office building housing the practice of the Employer is located. The Plan purchased the Property for Wade's account in September 1978 for $40,500 in cash from an unrelated party. The applicant represents that the Property has not been used by any party in interest with respect to the Plan since the time of its acquisition by the Plan.

3. The Partnership is a Louisiana general partnership formed in February 1990 which is equally owned by Smith, Koepke and Ewing. The Plan proposes to sell the Property from Wade's individual account to the Partnership. The sale will be entirely for cash and the Plan will pay no expenses in connection with the transaction. The Partnership will pay no less than fair market value for the Property at the time of sale, based on an updated independent appraisal. The proceeds of the sale will be invested in assets which are more liquid and should provide a higher rate of return for Wade's individual account.

[2] The Department expresses no opinion as to whether the Plans' acquisition and holding of the Land violated any provision of part 4 of title I of the Act.

[3] In the event the excise tax or the Back Rent amounts are incorrect, the applicant will pay the difference to the IRS and the Plans within 30 days of notification thereof.

4. The Plan obtained an appraisal on the Property from Charles E. Wilkes (Wilkes), a real estate appraiser and broker located in Monroe, Louisiana. The applicant represents that Wilkes is indpendent of Wade, the Employer and the Plan. Placing emphasis on the sales comparison approach to land value and considering that the Property is contiguous to property occupied by the Employer, Wilkes estimated that the property had a value to the Partnership of $47,500 as of July 17, 1990.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The Partnership will pay no less than current fair market value for the Property; (2) the fair market value will be established by an independent real estate appraiser; (3) the sale will be entirely for cash; (4) the proceeds of the sale will be invested in assets which are more liquid and should provide a higher rate of return for Wade's individual account; and (5) the sale will affect only the individual account in the Plan of Wade and no other participants.

Notice to Interested Persons

Because Wade is the only participant in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For further information contact: Paul Kelty of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

The Investment Plan for Salaried Employees of Great Northern Nekoosa Corp. (the Great Northern Investment Plan); the Investment Plan for Certain Employees of Great Northern Nekoosa Corp.; the Great Northern Nekoosa Corp. Supplemental Retirement Plan; and the Investment Plan for Union Employees of Great Northern Nekoosa Corp. and Affiliated Cos. (collectively, the Plans) Located in Atlanta, GA

[Application Nos. D–8497 and D–8504 through D–8506]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plans of three guaranteed investment contracts (the GICs) to the Georgia-Pacific Corporation, a party in interest with respect to the Plans; provided that the purchase price for the GICs is no less than their fair market value as of the date of the sale transaction.

Effective date: This exemption, if granted, will be effective as of October 31, 1990.

Summary of Facts and Representations

1. The Plans are defined contribution pension plans sponsored by the great Northern Nekoosa Corporation (Great Northern) to benefit various groups of its employees. As of September 30, 1989, there were 7,378 participants in the Plans. The Assets of the Plans are held in a single master trust (the Trust), the trustee of which is the Wachovia Bank and Trust Company, N.A. (the Trustee). Investment decisions are made on behalf of the Plans by a benefits administration committee comprised of directors and/or officers of Great Northern. The common stock of Great Northern was purchased by a wholly-owned subsidiary of Georgia-Pacific Corporation (Georgia-Pacific) between March 8 and March 19, 1990 and, as a result, Great Northern is now a subsidiary of Georgia-Pacific. Georgia-Pacific represents that on January 1, 1991 it intends to merge the Great Northern Investment Plan into the Georgia-Pacific Savings and Capital Growth Plan (the G-P Plan), of which Georgia-Pacific is the sponsor, as part of an overall consolidation of employee benefit programs for salaried employees of Great Northern and Georgia-Pacific.

2. The assets of the Plan held by the Trust include the GICs, which are issued by the Executive Life Insurance Company (Executive Life). The GICs provide guaranteed rates of interest and are identified as follows:

(1) Contract No. CGO1301A3A issued by Executive Life on October 1, 1988 at 9.42 percent, maturity on September 30, 1994;

(2) Contract No. CGO1192A3A issued by Executive Life on March 17, 1987 at 8.75 percent, maturity on September 30, 1991;

(3) Contract No. CGO1192B3A issued by Executive Life on March 17, 1987 at 8.75 percent, maturity on September 30, 1991.

Georgia-Pacific represents that upon the merger of the Great Northern Investment Plan with the G–P Plan, the interests of the Great Northern Investment Plan with respect to the GICs will be transferred to the G–P Plan. Under the G–P Plan, all guaranteed investment contracts are commingled for purposes of determining the rate of interest credited to G–P Plan participant accounts and a blended interest rate is computed by combining all guaranteed investment contracts held by the G–P Plan. In accordance with this feature of the G–P Plan. The remaining 9 percent interest in the GICs would continue to be held by the other Plans.

3. Georgia-Pacific represents that the Standard & Poors Rating (the S&P Rating) of Executive Life was AAA at the times of the issuance of all of the GICs. During 1990, Executive Life's S&P Rating dropped to BBB. Georgia-Pacific represents that as a result of this rating drop it is concerned about Executive Life's ability to honor its contractual obligations under the GICs. In order to relieve the Plans of any risk associated with the GICs, and to prevent the G–P Plan from acquiring any such risks upon its merger with the Great Northern Investment Plan, Georgia-Pacific proposes to purchase the GICs from the Plans and is requesting an exemption to permit such transaction under the terms and conditions described herein.

4. Georgia-Pacific proposes to purchase the GICs from the Plans on October 31, 1990 and to pay the Plans cash for the GICs in the amount of the total par value of the GICs as of that date. The Trustee states that the par value of each contract is the face value plus accrued interest. Georgia-Pacific represents that the face value of each GIC is the total amount paid by the Plans to Executive Life for the GIC plus interest accrued under the GIC less any withdrawals previously made under the GIC. The Plans will not incur any expenses with respect to the transaction. Georgia-Pacific represents that the Plans will sustain no loss as a result of the proposed transaction and that the proposal to purchase the GICs from the Plans is intended to eliminate the risks associated with continued holding of the GICs while enabling the Plans to redirect the assets currently invested in the GICs to safer investments. The Trustee represents that it has investigated Executive Life's standing as an insurer and issurer of guaranteed investment contracts and has determined that under prevailing circumstances it is appropriate for the Plans to divest of the GICs. The Trustee states that it has reviewed and considered Georgia-Pacific proposal to purchase the GICs from the Plan and has determined that such purchase would be in the best interests of the participants and beneficiaries of the Plan. The Trustee represents that it has determined that the proposed purchase price of the GICs at their par value will equal or exceed their fair market value, due to the financial insecurity of Executive Life.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plans will receive cash for the GICs in the amount of the par value of the GICs as of the sale date, which the Trustee has determined to be equal to or in excess of the fair market value of the GICs; (2) The transaction will enable the Plans to avoid any risk associated with continued holding of the GICs and to redirect assets to safer investments; (3) The Plans will not incur any expenses related to the transaction; and (4) The Trustee has determined that the Plan's sale of the GICs to Georgia-Paicific at par value is in the best interests of the participants and beneficiaries of the Plans.

For further information contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respectiing the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 8th day of November, 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90–26844 Filed 11–13–90; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on November 21, 1990, in Room S–4215, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the Sixty-Sixth meeting of the Secretary's ERISA Advisory Council which will begin at 9:30 a.m., is to have each working group *i.e.,* Annuities; Pension Fund Investment Behavior; Enforcement, present its report to the council for review, discussion and finalization, and to invite public comment on any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERSIA by submitting 20 copies on or before November 19, 1990 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals, or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 523–8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 19, 1990.

Due to the schedules of senior officials who will be participating in this meeting we are unable to provide the required full fifteen days of notice for this meeting.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 90–26859 Filed 11–13–90; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL COMMISSION ON CHILDREN

Meeting of Commissioners

Background

The National Commission on Children was created by Public Law 100–203, December 22, 1987 as an amendment to the Social Security Act. The purpose of the law is to establish a nonpartisan Commission directed to study the problems of children in the areas of health, education, social services, income security, and tax policy.

The powers of the Commission are vested in Commissioners consisting of 36 voting members as follows:

1. Twelve members appointed by the President.

2. Twelve members appointed by the Speaker of the House of Representatives.

3. Twelve members appointed by the President pro tempore of the Senate.

This notice announces Meeting of the National Commission on Children to be held in Airlie, Virginia.

Meeting

Time: 1 p.m.—6 p.m., Sunday, November 18, 1990; 9 a.m.—6 p.m., Monday, November 19, 1990; 9 a.m.—3 p.m., Tuesday, November 20, 1990.

Place: The Store room, Airlie Foundation, Airlie, Virginia.

Status: Open to the public.

Agenda: Commission Meeting.

Contact: Jeannine Atalay, (202) 254–3800.

Dated: November 6, 1990.

John D. Rockefeller IV,

Chairman, National Commission on Children.

[FR Doc. 90–26788 Filed 11–13–90; 8:45 am]

BILLING CODE 6825–27–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 22, 1990 through November 2, 1990. The last biweekly notice was published on October 31, 1990 (55 FR 45876).

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 14, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket No. 50-318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of amendment request: October 22, 1990

Description of amendment request: The proposed amendment would replace the existing 0-10 effective full power years (EFPY) and 10-40 EFPY heatup and cooldown Pressure/Temperature (PT) curves in the Technical Specifications for Unit 2 with new 0-12 EFPY heatup and cooldown PT curves. These curves were developed in accordance with the requirements of 10 CFR Part 50, Appendix G, as supplemented by Appendix G to Section III of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, 1986 Edition and the final version of Regulatory Guide 1.99, Revision 2. Combustion Engineering (CE) methodology, which has been previously reviewed and approved by the NRC in support of other licensees' submittals, was used to perform the necessary analyses. The new calculations also resulted in proposed Technical Specification changes to the allowable heatup and cooldown rate of change of coolant temperature, to the low temperature overpressure protection (LTOP) controls, to the high pressure safety injection (HPSI) system controls, to the reactor coolant pump (RCP) controls, and to the pressure operated relief valve (PORV) response time. The supporting Technical Specification Bases would also be modified to be consistent with these changes.

Unit No. 2 Technical Specification (TS) Figures 3.4-2b and 3.4-2c would be changed to reflect the proposed 0-12 EFPY heatup and cooldown curves. TS 3.4.9.1a would be revised to provide a maximum heatup rate of 75 percent in any 1-hour period for all reactor coolant system (RCS) temperatures. TS 3.4.9.1.b cooldown rates would be changed to allow maximum cooldown rates of (1) 100° F in any 1-hour period for RCS temperatures greater than 180° F, (2) 40° F in any 1-hour period for RCS temperatures ranging from 180° F to 140° F, and (3) 15° F in any 1-hour period for RCS temperatures less than 140° F. The action statements in TS 3.4.9.1 and 3.4.9.2 would also be changed to reflect the new cooldown rates.

The proposed change to TS 3.4.9.3.a would lower the required PORV lift setpoint to less than or equal to 430 psia and would require system vents equivalent to the number of PORVs not available when the RCS temperature is less than or equal to 305° F and the RCS is vented to less than 8 square inches. In addition, the proposed change to TS 3.4.9.3.b will require two of three HPSI pumps to be disabled and TS 3.4.9.3.c will prevent the HPSI loop motor-operated valves from automatically aligning the HPSI pump flow to the RCS. If a HPSI pump is to be used, the proposed change to TS 3.4.9.3.d would require total flow to be throttled to less than or equal to 210 gpm or require a vent equivalent to two PORVs.

Associated TS 3.4.9.3 action statements would be changed to: (1) allow 5 days to restore the PORV to operable status and increase the time permitted to vent the RCS to 48 hours; (2) increase the vent size to greater than or equal to 2.6 square inches and the allotted time to 48 hours; (3) require that, with less than two HPSI pumps disabled, at least two HPSI handswitches be placed in the pull-to-lock position within 15 minutes and disable two HPSI pumps within the next 4 hours; (4) require that the affected HPSI motor operated valve (MOV) handswitch be immediately placed in pull-to-override position or the affected HPSI loop MOVs be closed and disabled or the affected HPSI header be isolated within 4 hours; and (5) provide required actions to be taken if the HPSI pump flow exceeds 210 gpm while an RCS vent less than 2.6 square inches exists.

TS 4.4.9.3 would be added to provide surveillance requirements to verify the new conditions in the proposed TS 3.4.9.3 for overpressure protection. The requirement would verify that the two HPSI pumps are inoperable, their discharge valves are locked shut, and the automatic opening feature of the HPSI loop MOVs is disabled. The verifications would be required at least once per 12 hours. These surveillance requirements and frequencies would replace those previously required by TS 4.5.3.2, which would be deleted.

A footnote would be added to TS 3.1.2.1 and 3.1.2.3 to provide assurance that the use of a HPSI pump for boration will not overpressurize the RCS. A footnote would be added to TS 3.5.3 to indicate that a maximum of one HPSI pump shall be operable and specify the conditions that the operable HPSI pump shall meet for cooldown and heatup evolutions. The added footnote to TS 4.5.2 would allow full flow testing at RCS temperatures of less than or equal

to 305° F only if the HPSI pump is recirculating the water, otherwise the control of TS 3.4.9.3 shall apply. Finally, a footnote would be added to TS Table 3.3-3 to define HPSI pump operation for various RCS temperatures.

An existing footnote to TS 3.4.1.3 defining when an RCP can be operated would be changed to assure LTOP protection. Conditions would be defined when an RCP pump can be started when the RCS temperature is less than or equal to 305° F based on the pressurizer water level, on the pressure and on the temperature of the secondary side of the steam generator. A footnote would be added to the applicability of TS 3.4.4.12 to assure RCP start controls are consistent with TS 3.4.1.3.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92.

The licensee has evaluated the proposed amendment against the standards provided above and determined that the operation of the facility in accordance with the proposed amendment would not:

1. Heatup and Cooldown Curves

(i) involve a significant increase in the probability or consequences of an accident previously evaluated:

The Unit 2 0-12 EFPY P-T [Pressure-Temperature] limits were conservatively developed in accordance with the fracture toughness requirement of 10 CFR [Part] 50, Appendix G as supplemented by the ASME Code Section III, Appendix G. The mechanical properties and chemical composition of the reactor vessel beltline materials used in the analysis were the same as those used to evaluate the Pressurized Thermal Shock (PTS) concern in January 1986, as approved by the NRC. The peak reactor vessel fluence was calculated using Discrete Ordinate Transport (DOT) calculations with a DOT IV.3 computer code. The analysis of the reactor vessel material irradiation surveillance specimens was used to verify the validity of the fluence calculations. The Adjusted RT_{NDT} [Reference Temperature - Non Ductility Transition] values were based on the conservative methodology provided in Regulatory Guide 1.99, Revision 2. This regulatory guide revision is based on a change in the understanding of material properties behavior in the presence of neutron flux. The present curves reflect our previous understanding of irradiated material behavior, while the proposed curves reflect the updated information. The revised P-T limits provide conservative limits on reactor coolant system pressure to minimize stresses in the RCS due to normal operating transients, and to further minimize the likelihood of a rapidly propagating fracture due to pressure transients at low temperature. Therefore, the proposed amendment does not involve an increase in the probability or consequences of accidents previously evaluated.

(ii) create the possibility of a new or different type of accident from any accident previously evaluated:

The P-T limits do not represent a significant change in the configuration or operation of the plant. Specifically, no new hardware is being added to the plant as a result of this proposed change, no existing equipment is being modified, nor are any significantly different types of operations being introduced. Therefore, the proposed amendment would not create the possibility of a new or different kind of accident from those previously evaluated.

(iii) involve a significant reduction in the margin of safety:

The 0-12 EFPY P-T curves provide an adequate margin of safety as defined by 10 CFR [Part] 50, Appendix G, as supplemented by ASME Code Section III, Appendix G. The conservative methodology of Regulatory Guide 1.99, Revision 2 also provides an adequate margin of safety for the prediction of reactor vessel neutron embrittlement.

The margin of safety has not been reduced even though a portion of the 0-12 EFPY P-T curves are less restrictive than the 10-40 EFPY curves. The 10-40 EFPY P-T curves are overly conservative. Additionally, the 10-40 EFPY P-T curves were not defined using the methods described in Regulatory Guide 1.99, Revision 2. The margin of safety is defined by 10 CFR [Part] 50, Appendix G, which is implemented by Regulatory Guide 1.99, Revision 2 and reflects the current understanding of irradiated material behavior. The proposed 0-12 EFPY curves have been developed in accordance with Regulatory Guide 1.99, Revision 2, therefore, the margin of safety has been maintained.

2. Heatup Rates

(i) involve a significant increase in the probability or consequences of an accident previously evaluated:

New heatup rates have been proposed for Unit 2. These heatup rates were developed using CE methodology that has been reviewed and approved by the NRC [Nuclear Regulatory Commission] in support of other licensees' submittals. The proposed heatup rates ensure that the reactor vessel metal temperature remains sufficiently close to the coolant temperature so that no undue stress occurs. In fact, because the proposed heatup rates reflect our improved understanding of irradiated material behavior, this change would decrease the likelihood that normal plant heatup would result in undue stress to the reactor vessel.

Additionally, the proposed action statement for cooldown of the reactor vessel and the pressurizer would require that the system be cooled down to a final pressure and temperature consistent with the 0-12 EFPY P-T curves. This eliminates any potential conflict between the pressures and temperatures defined by the 0-12 EFPY cooldown curve and the pressures and temperatures given in the action statements. Because the proposed change would preclude going to unauthorized pressures at a given temperature, this change would decrease the likelihood that plant operators would take any action that might be inimical to reactor vessel integrity while complying with an action statement.

(ii) create the possibility of a new or different type of accident from any accident previously evaluated:

No new operations or hardware changes are required to implement these proposed Technical Specifications. The heatup rate is being changed, but the method of plant operation has not changed. Therefore, the proposed amendment would not create the possibility of a new or different kind of accident from those previously evaluated.

(ii) involve a significant reduction in a margin of safety:

The evaluation of the prediction of neutron embrittlement for a period of operation through 12 EFPY provides an adequate margin of safety as required by 10 CFR [Part] 50, Appendix G. Reducing the heatup rate ensures that the reactor vessel will not be subject to stresses for which it has not been analyzed. Additionally, changing the action statement to conform to conditions required by the 0-12 EFPY curves ensures that the reactor vessel or pressurizer is not placed in a condition prohibited by Technical Specifications. These proposed changes provides adequate protection of the RCS in accordance with 10 CFR [Part] 50, Appendix G. Therefore, the proposed amendment would not reduce the margin of safety.

3. LTOP Controls

(i) involve a significant increase in the probability or consequences of an accident previously evaluated:

These proposed changes ensure that the LTOP controls will provide adequate protection against overpressuization events for the reactor vessel. An applicability statement change is proposed which would not require other LTOP controls if a large enough vent exist in the RCS. An overpressurization can only occur if sufficient venting capacity exists. The proposed vent size provides enough venting capacity to protect against any postulated event. Therefore, additional controls are not needed when a vent greater than or equal to eight square inches exists. This defines a vent capacity for which LTOP is not required.

The action statements were changed to require a vent equivalent to the number of PORVs out-of-service. All of the supporting analyses were performed assuming only one PORV opened to mitigate an overpressurization event. Since a single failure must be assumed during an overpressurization event, requiring a total vent capacity equivalent to two PORVs ensures that the most limiting single failure (loss of a PORV) can be accommodated. These changes will provide protection which is equivalent to or better than the existing controls against overpressurization events in the low temperature region. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(ii) create the possibility of a new or different type of accident from any accident previously evaluated:

This proposed Technical Specification requires larger vents when a PORV is out-of-service. It also defines a vent size beyond which LTOP is not required. This does not represent a significant change in the configuration or operation of the plant. Larger vent openings do not require a significant change to the operation of the facility. No new hardware is being added to the plant and no existing equipment is being modified. Therefore, these changes would not create the possibility of a new or different kind of accident from those previously evaluated.

(iii) involve a significant reduction in a margin of safety:

These proposed changes provide an adequate margin of safety for operations in the low temperature region. The limiting applicable vent size was chosen based on conservative analyses which show that this vent is large enough to relieve flow from any possible combination of pumps available for operation. The margin of safety has been reestablished for PORV operability by requiring an equivalent amount of vent capacity for each PORV disabled. These changes will ensure that the margin of safety provided by the LTOP system as originally approved by the NRC is maintained.

4. LTOP Control (3.4.9.3 Action Statements a and b

(i) This Technical Specification change proposed altering the PORV out-of-service time and the cooldown and depressurization time. For one PORV out-of-service, time allowed to restore it to service before a cooldown is reduced from 7 days to 5 days. The corresponding cooldown and depressurization time is increased from 8 hours to 48 hours. For two PORVs out-of-service, the depressurization must begin immediately and time allowed to cooldown and depressurize is increased from 8 hours to 48 hours. These changes in the action statement do not significantly increase the probability or consequences of an accident previously evaluated. For the case of one PORV out-of-service, the current action statement allows 7 days and 8 hours from the time the action statement is entered until the RCS is vented. The proposed action statement would allows 7 days (5 days plus 48 hours) from the time the action statement is entered until the RCS is vented. Therefore, the total amount of time that a PORV is out-of-service before a vent is opened in the RCS has been reduced from 7 days, 8 hours to 7 days.

By proposing a 48 hour depressurization time, the operators would then be allowed adequate time to safety transition through a water solid plant condition to the required vented condition. As an example, experience indicates that it takes just under 48 hours to perform the various evolutions necessary to bring the plant from 350° F to a cooled and vented condition. Given the current Technical Specifications, under the worst conditions (275° F, 450 psig), with two PORVs failed, the operators would have to cool the RCS to less than 200° F, collapse the pressurizer bubble, cooldown the pressurizer, draindown, and open a vent, within 8 hours. This would require the plant to enter its most sensitive LTOP condition, water solid, in a hurried fashion. Under conditions such as these, human error becomes an important consideration. An additional consideration is the possibility of personnel injury resulting from opening RCS vents manually before the system is cool enough. Mechanics are required to enter containment to open a vent of adequate size, because it cannot be done from the control room. If the metal in the pressurizer were still too warm, steam could form, causing serious injury to personnel attempting to remove the pressurizer manway. By approving the proposed change, BG&E [Baltimore Gas and Electric Company] believes that the probability of an LTOP event during compliance with this action statement is actually reduced.

(ii) create the possibility of a new or different type of accident from any accident previously evaluated:

The revised action statement times do not represent a change in the operation of the plant. Specifically, no new hardware is being added to the plant as a result of these proposed changes, no existing equipment is being modified, nor are any different types of operations being introduced. Additionally, more time is available for an orderly cooldown. There is less likelihood of rapid plant changes resulting in an unforeseen situation. A normal cooldown process would require about 46 hours. Therefore, the proposed amendment would not increase the possibility of a new or different kind of accident from those previously evaluated.

(iii) involve a significant reduction in a margin of safety.

For this change, the margin of safety is in minimizing the probability of an LTOP initiating event while the RCS is protected by one or less PORVs. The proposed action statement addressing one PORV operable allows a 5 day out-of-service time before RCS depressurization must begin. This is a reduction in the allowed out-of-service time for a PORV, from 7 days to 5 days. When both PORVs are out-of-service, a cooldown and depressurization must begin immediately, as in the current Technical Specifications. BG&E is requesting the cooldown and depressurization time be extended from 8 hours to 48 hours to allow adequate time for operator action to safety cooldown and depressurize the RCS. The depressurization process requires that the RCS be filled water solid to collapse the steam bubble and then drained. This is the most limiting condition for LTOP and poses the greatest vulnerability for initiation of an overpressurization event. The need to rapidly open a vent in the RCS must be balanced against the potential danger posed by rushing the plant through its most limiting LTOP transient condition. During the cooldown and depressurization required by these action statements, operators will be procedurally directed to monitor the plant status. Action to depressurize will be initiated sooner (with one PORV out-of-service) than currently stated in the Technical Specifications. With two PORVs out-of-service, action to depressurize will still be initiated immediately. BG&E believes that the margin of safety is increased by allowing additional time to conduct an orderly transition to a stable, safe condition.

5. HPSI Controls

(i) involve a significant increase in the probability or consequences of an accident previously evaluated:

Various controls are proposed to ensure that the HPSI system cannot initiate an overpressurization event by adding too much fluid mass to the RCS. The HPSI pumps will be disabled, so that they will not start automatically and the HPSI loop MOVs [motor operated valves] will be closed and disabled, so they will not allow flow to the RCS automatically. When required for use, the HPSI pump flow will be throttled to less than or equal to 210 gpm. An exception to this flow restriction (210 gpm) is permitted when the operators respond to an excessive reactor coolant leakage event. This accident response has been previously described to the NRC and been found acceptable for Unit 1. HPSI pump use could also be required to respond to an RCS boron dilution event or to recover from a loss of shutdown cooling (Generic Letter 88-17). In both of these cases, the HPSI pump is the second of two systems available to respond to the event. Additionally, the operators have a greater response time for these events when compared to an excessive reactor coolant leakage event. Therefore, the probability or consequences of a previously evaluated accident have not increased. The use of the HPSI system has been altered to provide adequate protection against an LTOP event, while maintaining its availability for required uses.

Surveillance testing of the HPSI pumps is performed at low temperature conditions. Some of these tests require the HPSI pumps to inject water into the RCS. Controls have been proposed to ensure that these tests will not overpressurize the RCS. The surveillance testing is required to ensure proper system response if an accident were to occur. By providing proper controls on the testing, the probability or consequences of an LTOP event resulting from surveillance testing requirements are not increased.

The proposed footnote added to Table 3.3-3 provides clarification. The intention of the footnote is to allow an operating band for placing the pump in the pull-to-lock position since HPSI pumps must be prevented from starting automatically while in the low temperature region of operation. The pumps are disabled prior to enabling the LTOP system. A temperature band (between 350° F and 305° F) is needed to allow this. This proposed change is administrative in nature, in that it clarifies and existing Technical Specification. It does not impact the operation of the facility and therefore, the proposed change does not increase the probability or consequences of a previously evaluated accident.

(ii) create the possibility of a new or different type of accident from any accident previously evaluated:

The proposed HPSI system controls do not represent a significant change in the configuration or operation of the facility. Specifically, no new hardware is being added as a result of these proposed changes and no equipment is being modified. Changes have been made in the way the HPSI pumps are operated. Now, when operated in the low

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temperature region, their flow must be throttled or an RCS vent provided. However, no new accident scenarios are introduced as a result of operating the HPSI system in this fashion.

System redundancy and adequate operator action time ensure that the HPSI system can continue to perform its intended function. The proposed changes do not create the possibility of a new or different kind of accident from those previously evaluated.

The proposed change to Table 3.3-3 is administrative in nature, in that it provides clarification. No new operations are introduced and no hardware changes are required. Therefore, this change does create the possibility of a new or different kind of accident from those previously evaluated.

(iii) involve a significant reduction in a margin of safety:

HPSI system operability has been altered to ensure that an inadvertent mass addition which could overpressurize the RCS does not occur. This ensures that the margin of safety is maintained in regard to low temperature overpressure protection. By providing redundant controls (disabling pumps and valves), a single failure can be tolerated in this scheme while still maintaining adequate protection. Therefore, the proposed change would not reduce the margin of safety.

No change to the margin of safety is created by the proposed change to Table 3.3-3. The change is administrative in nature and does not alter the previously approved method of operating the facility. It provides clear requirements for the operation of HPSI pumps at low temperatures. The margin of safety established by allowing these operations is not changed.

6. RCP Controls

(i) involve a significant increase in the probability or consequences of an accident previously evaluated:

The current Technical Specification allows RCP starts while the RCS is water solid as long as the difference between the RCS and secondary water temperatures is small or RCP starts with an adequate bubble in the pressurizer. The proposed Technical Specification would change these conditions for starting RCPs. Reactor coolant pump starts will be allowed only with an adequate bubble in the pressurizer, and a secondary-to-primary temperature difference that is sufficiently small to limit energy addition to the primary system. Also, a new control is being added in that the initial indicated pressurizer pressure will be limited to less than or equal to 320 psia.

This revised set of RCP start controls was selected to permit RCP starts without challenging the PORVs.

(ii) create the possibility of a new different type of accident from any accident previously evaluated:

No new type of accident is created altering the RCP start criteria in the Technical Specification. No new hardware is being added to the plant as a result of this proposed change, no existing equipment is being modified, nor are any different types of operations being introduced. Reactor coolant pumps are now only started while there is a bubble in the pressurizer. Pressurizer pressure and level are controlled during an RCP start. Therefore, the proposed change does not create the possibility of a new or different kind of accident from those previously evaluated.

(iii) involve a significant reduction in a margin of safety:

This change will ensure that the margin of safety is maintained with respect to an energy addition event. It eliminates an operation (i.e., RCP start while water solid) that is currently allowed by Technical Specifications but is no longer performed by procedure. Insufficient energy is available to cause an overpressurization event as long as the indicated secondary-to-primary side temperature difference is less than or equal to 30° F, initial indicated pressurizer level is less than or equal to 170 inches, and the initial indicated pressurizer pressure is less than or equal to 320 psia. Therefore, this proposed amendment ensures the margin of safety is maintained, in that the acceptance criteria of 10 CFR [Part] 50 Appendix G continue to be satisfied for all postulated energy addition LTOP transients.

The staff has reviewed and agrees with the licensee's analysis of the significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick Maryland.

Attorney for licensee: Jay E. Silbert, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: May 8, 1989, as supplemented September 20, 1989 and September 19, 1990.

Description of amendment request: The initial amendment request dated May 8, 1989, as supplemented September 20, 1989 requested a change in the Technical Specifications (TS) to: (1) add operability and associated surveillance requirements for battery chargers, (2) add provision of an action statement and clarify surveillance requirements related to the station batteries, and (3) provide editorial clarifications in Section 3.7.

The proposed revision would change Section 4.6.3.6 from that proposed in the May 8, 1989 request and would require the performance of a service test on the station batteries at each refueling interval. Additionally, Carolina Power & Light Company (CP&L) proposed to take exception to Section 5.2(3) of IEEE 450-1980 which requires annual performance testing of batteries showing signs of degradation. CP&L intends to perform the testing as required but on a refueling interval rather than annually.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c).

Carolina Power & Light Company (the licensee) has reviewed the proposed changes and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

1. Operation of the facility, in accordance with the proposed amendment, would not involve a significant increase in the probability or consequences of an accident previously analyzed. The proposed amendment does not required hardware modifications, merely the performance of additional testing. The Service Test is performed on a battery to assess its ability to meet its design duty cycle. The test will be performed with the battery removed from service and the plant at cold shutdown. Under these conditions, only one DC supply is required operable. Since the performance of a service test is done only when the battery to be tested is taken out of service, the previously analyzed accidents are those which occur in the cold shutdown condition, i.e., boron dilution, misloading of a fuel assembly, fuel handling accident, or spent fuel cask drop accident. Each of these accidents can be mitigated without the subject battery in service since the other safety related DC power channel is capable of supplying the normal DC loads.
2. Operation of the facility, in accordance with the proposed amendment, would not create the possibility of a new or different kind of accident from any accident previously evaluated since the battery to be tested will be removed from service and not be in a physical interface with the plant. Normal DC loads would be provided by the redundant DC power channel. Further, the amendment does not require a change in equipment or configuration.
3. Operation of the facility, in accordance with the proposed amendment, would not involve a significant reduction in a margin of safety since normal shutdown operations would be amply supplied by the normal and emergency AC power supplies and the redundant DC channel. Further, the battery is not credited with mitigation of any credible postulated accident under cold shutdown conditions. The the margin of safety is enhanced since the capability of meeting the design duty cycle is reconfirmed with the proposed amendment.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration. A prior notice was issued regarding this action on November 2, 1989 (54 FR 46141).

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: October 10, 1990

Description of amendments request: The proposed amendment request is to remove the Technical Specification (TS) requirements for the High Pressure Core Spray (HPCS) System Condensate Storage Tank (CST) suction valve. Also, the proposal adds containment isolation requirements for a new Reactor Core Isolation Cooling (RCIC) system full flow test line to the suppression pool.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Based on the staff review, the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The cycled condensate system has no safety design basis (UFSAR Section 9.2.7.1.1.). Deleting the capability of the HPCS system to draw water from the CST has no impact on the plant accident analysis. The amendment proposal deletes all references in the TS to the HPCS system automatic suction transfer and related instrumentation. The HPCS system will be permanently aligned to the suppression pool.

Also, the RCIC will be modified to the suppression pool. This line will penetrate the primary containment and have isolation valves. Primary containment integrity will be ensured by making the controls and testing requirements for this new installation consistent with other existing containment isolation valves. Overall primary containment leakage rate limits will not be affected. The licensee also states, "the equipment of concern is not an initiator for any accidents and therefore, will not affect the probability of a significant increase or consequences of an accident previously evaluated."

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The CST does not have a safety design bases, therefore, the deletion of the HPCS automatic suction transfer from the TS will not create the possibility of a new or different kind of accident.

Extending the TS to include the new RCIC full flow test line will ensure primary containment integrity. The proposal does not relax or alter any requirements such that the possibility of a new or different kind of accident is created.

(3) Involve a significant reduction in the margin of safety.

The UFSAR does not take credit for the CST water volume for HPCS, therefore, permanently aligning the HPCS suction to the suppression pool would have a minimal impact on safety. This alignment would have a positive affect by eliminating the consequences of suction transfer failure. The new RCIC system valves will have no affect on the margin of safety because the controls being applied to the new valves are consistent with those placed on other primary containment isolation valves. Leak rate limits will not be changed for the primary containment, therefore, no reduction in the margin of safety is postulated.

For the reasons stated above, the staff proposes to determine that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: March 26, 1990

Description of amendment request: The amendment revises the Technical Specification by removing the existing cycle-specific parameters and placing them in a Core Operating Limits Report under the control of the licensee. The proposed changes are consistent with guidance provided in the NRC Generic Letter 88-16.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change against the above standards required by 50.92. The licensee concluded the following: The proposed revision to the TS is in accordance with the guidance provided in Generic Letter 88-16 for licensees requesting removal of the values of cycle-specific parameter limits from TS. The establishment of these limits in accordance to an NRC-approved methodology and the incorporation of these limits into the Fermi-2 Core Operating Limits Report (COLR) will ensure that proper steps have been taken to establish the values of these limits. Furthermore, the submittal of the COLR will allow the staff to continue to trend the values of these limits without the need for prior approval of the limits and without introduction of an unreviewed safety question. The revised specifications with the removal of the values of cycle-specific parameter limits and that addition of the referenced report for theses limits does not create the possibility of a new or different kind of accident from those previously evaluated. They do not involve a significant reduction in the margin of safety since the change does not alter the methods used to establish these limits. Consequently, the proposed change on the removal of the values of cycle-specific limits do not involve a significant increase in the probability or

consequences of an accident previously evaluated.

Because the values of cycle-specific parameter limits will continue to be determined in accordance with an NRC-approved methodology and consistent with the applicable limits of the safety analysis, these changes are administrative in nature and do not impact the operation of the facility in a manner that involve significant hazards considerations.

The proposed amendment does not alter the requirement that the plant be operated within the limits for cycle-specific parameters nor the required remedial actions that must be taken when these limits are not met. While it is recognized that such requirements are essential to plant safety, the values of limits can be determined in accordance with NRC-approved methods without affecting nuclear safety. With the removal of the values of these limits from the TS they have been incorporated into the COLR that is submitted to the NRC. Hence, appropriate measures exist to control the values of these limits. These changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards consideration.

Based on the above consideration, the staff proposes to find that the proposed changes to the TS do not involve a significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Robert Pierson.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: September 28, 1990

Description of amendment request: The proposed amendment would provide a one-time 9-month extension to the interval presently required for visual inspection of the hydraulic snubbers. All snubbers were inspected during the recent outage and two were declared inoperable. Present Technical Specifications therefore require a reduced inspection interval of 6 months. This would require an otherwise unnecessary forced plant shutdown by January 30, 1991. The requested amendment would delay the inspection until a planned outage in October 1991.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following information and evaluated the proposed change request against the standards provided above, as follows:

1. The inspections performed for the three previous inspection intervals have shown no visual inspection failures. Based on this, FPC concludes that a trend in snubber failures for the balance of the snubber population does not exist.
2. The root cause of the recent two snubber failures is unrelated. MUH-36A had a tubing fitting leak and RCH-70 had a damaged front seal. The two snubbers were rebuilt and subsequently functionally tested satisfactorily.
3. The American Society of Mechanical Engineers (ASME) Standard on Snubber Testing, proposed revision to OM-4d, addresses the basic interval for visual inspections and the relation of snubber population and number of failures to surveillance intervals. This Standard, when published, will allow a surveillance inspection interval of 48 months (as opposed to six months) for a snubber population of CR-3's size with similar inspection results. The NRC staff participated in the development of this standard. Formal endorsement is being processed within the agency.

Florida Power Corporation has reviewed the requirements of 10CFR50.92 as they relate to the proposed change to the snubber visual inspection requirements and considers the proposed change not to involve a significant hazards consideration. In support of this conclusion the following analysis is provided:

1. The proposed change will not significantly increase the probability or consequences of an accident previously evaluated because the bulk of the support systems (e.g. rigid restraints, other snubbers, etc.) [remain] intact. The support components and structures are very conservatively designed; typically one failure on a particular line will not produce loads in excess of code allowable for appropriate load combinations. Snubbers are generally provided for seismic loading which is very unlikely in peninsular Florida.
2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated because the change will not alter plant configuration or change parameters governing normal plant operation.
3. The proposed change will not involve a significant reduction to the margin of safety because the requirements to visually inspect 100% of the snubber population along with the required functional testing of safety-related snubbers will continue to provide adequate assurance that the snubber system will continue to be fully capable of performing its intended safety function.

The NRC staff has reviewed the licensee's no significant hazards determination and agrees with the licensee's analysis. Therefore, the staff purposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Attorney for licensee: A. H. Stephens, General Counsel, Florida Power Corporation, MAC - A5D, P. O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: October 31, 1989, as supplemented August 10, 1990

Description of amendment request: With respect to the present Technical Specifications (TS), the proposed amendment would add a limiting condition for operation (LCO) for low temperature overpressure protection (LTOP) features. The proposed amendment would also revise the reactor coolant system pressure/temperature (P/T) limits to allow reactor operation for up to 15 effective full power years (EFPY) of operation. The proposed P/T limits are based on revised plant heatup and cooldown rates that more accurately reflect actual plant capability.

Proposed LTOP features were described in a notice published in the **Federal Register** on October 31, 1990 (55 FR 45881). This notice addresses the proposed P/T limit changes. The licensee's application also proposed to modify the improved TS which are not yet in place. These proposed changes are not addressed here.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change request against the standards provided above, as follows:

Florida Power Corporation (FPC) proposes the revision to the pressure/temperature limit curves and the reduction in the maximum allowable heatup and cooldown rates does not involve a significant hazard[s] consideration. The revision of the pressure/temperature limit curves is necessary to ensure conservative protection of the [reactor coolant pressure boundary] [(RCPB)] for the first 15 EFPY of reactor operation. Furthermore, the limit curves were prepared in accordance with an NRC-approved methodology. Technical Specifications will continue to require the plant to be operated within the limits of the curves and allowable heatup and cooldown limitations and include appropriate actions to be taken in the event the limits are violated.

FPC concludes this change will not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated because the revision of the pressure/temperature limit curves and the reduction in allowable heatup and cooldown rates has no influence or impact on the probability of a Design Basis Accident (DBA) occurrence.

CR-3 Technical Specifications will continue to require operation of the RCS within the pressure/temperature and heatup/cooldown limits. The reduction in the magnitude of the allowable heatup and cooldown rates results in generally lower thermal stresses applied to the reactor vessel than are currently allowed. The methodology used in preparation of the curves has been reviewed and approved by the NRC and is unchanged from previous pressure/temperature limit revisions (With the exception of the current usage of Regulatory Guide 1.99 Revision 2). Regulatory Guide 1.99 Revision 2 has been endorsed by the NRC Staff as providing improved empirical correlations for predicting the effects of irradiation on the properties of reactor vessel materials.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because updating the pressure/temperature limit curves and reducing the allowable RCS heatup and cooldown rates introduces no new mode of plant operation nor does it require a physical modification to the plant.
3. Involve a significant reduction in the margin of safety because the CR-3 15 EFPY pressure/temperature limits are prepared using the same NRC-approved methodology used to generate the current 8 EFPY pressure/temperature limit curves. The decrease in reactor vessel fracture toughness (due to accumulated neutron exposure) has been accounted for in the preparation of the 15 EFPY pressure/temperature limit curves using the methodology of NRC Regulatory Guide 1.99 Revision 2. This has resulted in lower allowable RCS pressures for given RCS temperatures in order to maintain acceptable levels of stress within the vessel and ensure the margin of safety is not decreased.

The NRC staff has reviewed the licensee' no significant hazards determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the proposed amendment does not involve a significant hazards considerations.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Attorney for licensee: A. H. Stephens, General Counsel, Florida Power Corporation, MAC - A5D, P. O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: September 25, 1990

Description of amendment request: Would revise reactor building purge valve surveillance testing to replace flexible valve seats on the basis of durometer testing rather than 5 year intervals.

Basis for proposed no significant hazards consideration determination: GPU Nuclear Corporation (the licensee) has determined that this Technical Specification Change Request involves no significant hazards consideration as defined by the NRC in 10 CFR 50.92.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed change is not expected to decrease the effectiveness of the purge valve seats. Operability of the purge valve seats will continue to be verified by performance of Technical Specification surveillances including quarterly pressurization leak testing during power operation. Therefore, this change does not increase the probability of occurrence or the consequences of an accident previously evaluated.
2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change will allow replacement of the purge valve seats based on the results of Technical Specification surveillances which are consistent with Vendor Recommended criteria for extended service of the seat material (e.g., visual examinations, durometer testing). Therefore, this change has no effect on the possibility of creating a new or different kind of accident from any accident previously evaluated.
3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The bases for Technical Specification 4.4.1.7 state, in part, "purge valve interspace pressurization test operability requirements and inspections provide a high degree of assurance of purge valve performance as a containment isolation barrier." The proposed change does not affect the current Technical Specification surveillances which verify the containment isolation ability of the purge valves. Rather, the proposed change adds a requirement to perform a durometer test to measure the hardness of the purge valve seats pursuant to vendor recommended criteria for extended service life.

The purge valve seat material is calculated to have a service life of at least 40 years at current TMI-1 RB ambient temperatures; thus, degradation due to thermal aging is not expected to occur. Additionally, there is an extremely large margin of safety between the expected cumulative dose for each purge valve at the start of the 9R outage (i.e., 6000 rads beta and gamma) compared to the threshold radiation for the valve seat material (i.e., 1×10^6 rads gamma). Therefore, it is concluded that operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed and agrees with the licensee's determination. Therefore, the NRC staff proposes to determine that the requested amendment involves no significant hazards considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, D.C. 20037.

NRC Project Director: John F. Stolz

Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: September 10, 1990

Description of amendments request: The proposed amendments would conservatively modify the temperature

limitation for the control room emergency ventilation system from 120° F to 95° F. The associated bases would also change.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The license provided an analysis that addressed the above three standards in the amendment application.

Criterion 1

The change to the T/S temperature limit is in the conservative direction. The temperature selected is consistent with the American Society of Heating Refrigeration and Air Conditioning Engineers, Inc. (ASHRAE) guidance (1989 Edition page 8.23, figure 23) on heat stroke protection and was developed considering qualified life of control room equipment. We therefore, conclude that the change will not involve a significant increase in the probability or consequences of a previously evaluated accident.

Criterion 2

The change involves no physical changes to the plant nor any new modes of plant operation. The change will not, therefore, create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated.

Criterion 3

The change is in the conservative direction, placing additional restrictions on plant operation. Therefore, the change should increase, rather than decrease, the margin of safety.

Lastly, we note that the Commission has provided guidance concerning the determination of significant hazards by providing examples (48 FR 14870) of amendments considered not likely to involve significant hazards consideration. The second example refers to changes that constitute additional limitations, restrictions, or controls not presently included in the T/S. Since this change reduces the maximum allowable T/S temperature for which operation may continue, we conclude that the example cited is applicable, and that the change should not involve significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and concurs with their findings. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert Pierson.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of amendment request: April 3, 1990, as supplemented June 29, 1990

Description of amendment request: This amendment, as proposed by the licensee, would revise Nine Mile Point Unit 2 Operating License NPF-69 to delete License Condition 2.C(9). License Condition 2.C(9) is composed of three parts. Part (a) requires that the licensee complete the DCRDR and correct all Human Engineering Discrepancies (HEDs) according to schedule and commit-ments documented in two letters dated April 14, and June 9, 1986. Part (b) and Part (c) of the License Condition require that the licensee, prior to start up following the first refueling outage, 1) provide the results of the reevaluation of normally lit and nuisance alarms for NRC review and 2) complete permanent zone banding of meters.

The effect of the proposed amendment would be to provide for the processing of changes to the HEDs pursuant to 10 CFR 50.59 and thereby to avoid the processing of potential multiple revisions to the license as a result of future deviations to HEDs.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed license amendment transfers the method of processing HED changes from 10 CFR 50.90, 91, and 92 to 10 CFR 50.59. A safety evaluation written in accordance with 10 CFR 50.59 addresses the same issues as required under 10 CRF 50.90, 91 and 92; therefore, and HED change cannot be made that would result in a significant increase in the probability or consequences of an accident previously evaluated. If a 10 CFR 50.59 evaluation were to determine that an unreviewed safety question exists, then NRC review and approval would be required.

The operation of Nine Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Since a 10 CFR 50.59 evaluation addresses the same issues as required by 10 CFR 50.90, 91, and 92, an HED change cannot be made that would create the possibility of a new or different kind of accident from any accident previously evaluated. If a 10 CFR 50.59 evaluation were to determine that an unreviewed safety question exists, then NRC review and approval would be required.

The operation of Nine Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

An HED change must be assessed regarding the impact on the margin of safety in accordance with the requirements of 10 CFR 50.59. If a 10 CFR 50.59 evaluation were to determine that an unreviewed safety question exists, then NRC review and approval would be required.

The staff has reviewed and agrees with the licensee's analysis of the significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark Wetterhahn, Esq., Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, DC 20006.

NRC Project Director: Robert A. Capra

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment request: September 13, 1990

Description of amendment request: The proposed amendment would revise the Technical Specifications by adding a reference to the administrative section (6.7.A.6b) of the technical specification. The reference is the Westinghouse Topical Report (WCAP-10924.p) volume 1 addendum 4 describing analytical methods used in establishing the reactor core operating limits.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The license provided an analysis that addressed the above three standards in the amendment application.

In accordance with the requirements of 10 CFR 50.91(a), the licensee has provided an analysis, using the standards of 10 CFR 50.92, of the issue of no significant hazards consideration. The licensee's analysis states that the proposed change is purely an administrative change intended only to clarify the existing technical specification.

The staff has reviewed the licensee's analysis and made a proposed determination that no significant hazards considerations exist. The proposed determination was made because no Limiting Conditions for Operation, Safety Limits, Surveillance Requirements, Limiting Safety Systems Settings or Administrative Controls will be affected by the change. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Robert Pierson.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: July 17, 1990 (Reference LAR 90-05)

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to increase the surveillance test intervals (STIs), allowed outage times (AOTs), and channel bypass times for certain of the instrumentation in the Reactor Trip System (RTS) and Engineered Safety Features Actuation System (ESFAS). The proposed changes are based on generic analyses performed as part of a Westinghouse Owners Group program. The analyses are contained in WCAP-10271 and its supplements; NRC approvals have been issued in a Safety Evaluation Report dated February 22, 1989, and a Supplemental Safety Evaluation Report dated April 30, 1990. The amendments would make the following specific changes:

1. TS 3.3.1, Table 3.3-1

a. Delete Note 1, which indicates that the specified reactor trip functional units also provide inputs to the ESFAS.

b. Add new Action 26 to allow 6 hours to restore an inoperable channel to operable status before requiring shutdown to Hot Standby within the next 6 hours and to allow bypass of a channel for up to 4 hours for surveillance testing, provided the other channel is operable. Make new Action 26 applicable to Functional Units 18 (Safety Injection Input from ESF) and 21 (Automatic Trip and Interlock Logic), rather than Action 10.

2. TS 4.3.1, Table 4.3-1

a. Delete Note 12, which requires channels to be tested at least every 92 days on a staggered test basis.

b. Delete Note 13, which indicates that specified reactor trip functional units also provide inputs to ESFAS.

3. TS 3.3.2, Table 3.3-3

a. Delete Action 15, which requires placing an inoperable channel in the tripped condition within 1 hour, and replace with Action 20, which requires an inoperable channel be placed in the tripped condition within 6 hours.

b. Revise Actions 14, 22 and 25 to allow 6 hours to restore an inoperable channel to operable status before requiring shutdown to Hot Standby within the next 6 hours and increase the allowed bypass time from 2 to 4 hours for surveillance testing.

c. Revise Action 17 to increase the time a second containment pressure high-high channel may be bypassed to allow testing of the channel from 2 to 4 hours.

d. Revise Action 20.a to increase the time an inoperable channel may be maintained in an untripped condition from 1 to 6 hours and 20.b to increase the time an inoperable channel may be bypassed to allow surveillance testing of other channels in the same function from 2 to 4 hours.

e. Delete Notation from item 4.d of the steam line isolation functional unit to reflect the actual plant actuation logic [i.e., the Steam Line Isolation function cannot be blocked in Mode 3 (Hot Standby) below P-12 (Low-low T_{avg} Interlock)].

4. TS 4.3.2.1, Table 4.3-2

a. Revise the Analog Channel Operational test entries to increase the STI from monthly to quarterly for all functional units generically approved for such change by the NRC.

Increasing the STI for the ESFAS instrumentation minimizes the potential number of inadvertent ESFAS actuations and reactor trips during surveillance testing. Less frequent surveillance testing has been estimated to result in 0.5 fewer inadvertent reactor trips, per unit, per year. Also, increasing the surveillance interval enhances the operational effectiveness of plant personnel. The amount of time plant personnel spend performing surveillance testing will be reduced. This allows manpower to be used for other tasks, such as preventive maintenance. The increased AOTs have been shown to result in fewer human factor errors, since more time is allowed to perform actions.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment will not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of July 17, 1990, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The determination that the results of the change are within all acceptable criteria has been established in the ESFAS SER and SSER prepared for WCAP-10271 Supplement 2 and WCAP-10271 Supplement 2, Revision 1 as documented in the NRC's letters dated February 22, 1989, and April 30, 1990. The SER and SSER conclude that implementation of the proposed changes is expected to result in an acceptable increase in total ESFAS unavailability. This increase, which is primarily due to less frequent surveillance, results in a small increase in CDF [core damage frequency] and public health risk. The values determined by the WOG and presented in the WCAP for the increase in CDF were verified by Brookhaven National Laboratory as part of an audit and sensitivity analyses for the NRC Staff. Based on the small increase in CDF compared with the

range of uncertainty in the CDF, the increase is considered acceptable.

Increasing STIs and AOTs is not expected to affect the consequences of previously evaluated accidents. Removal of the table notation is administrative only.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed revisions to the TS will not result in physical alteration to any plant system, nor will there be a change in the method by which any safety-related system performs its functions.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The impact of reduced testing, other than as addressed above, is to allow a longer time interval over which instrument uncertainties may act.

Implementation of the proposed changes is expected to result in an overall improvement in safety, as follows:

i. Reduced testing will result in fewer inadvertent reactor trips, less frequent actuation of ESFAS components, and less frequent distraction of operations personnel.

ii. Longer repair times associated with increased AOTs will lead to higher quality repairs and improved equipment reliability.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the proposed change and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, the staff proposes to determine that the change does not involve a significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: James E. Dyer

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: September 11, 1990 (Reference LAR 90-07)

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to permit a one-time extension of the inspection period, for the case of one inoperable snubber of a given type, from 12 months plus or minus 25 percent to 15 months plus or minus 25 percent for Unit 1, Cycle 4.

TS 4.7.7.1.b requires that a visual inspection of snubbers be performed at the surveillance interval determined by the number of inoperable snubbers found during the previous inspection. For Unit 1, the inspection interval for small, inaccessible, Anchor-Darling snubbers is 12 months plus or minus 25 percent because one snubber of this type was found to be inoperable during the previous inspection on October 3, 1989.

Since the inoperable snubber (22-543SL) was found on October 3, 1989, the subsequent visual inspection of the affected group of Anchor-Darling snubbers is required to be performed between July 13, 1990 and January 13, 1991, in accordance with TS 4.7.7.1.b. Inspection of all 46 Anchor-Darling snubbers requires that the unit be in Mode 5 or 6 since the snubbers are located in high radiation areas. Unit 1 is scheduled to start the next refueling outage on February 15, 1991. Therefore, performance of the snubber visual inspection in accordance with TS 4.7.7.1.b would require an unscheduled unit shutdown.

The proposed TS change would allow Unit 1 to continue operation until the scheduled refueling outage begins. Increasing the visual inspection surveillance interval eliminates the need to shut down the plant and lowers the probability of transient events, which are more likely to occur during heatup and cooldown than at full power steady state operation. Performing the visual inspections during the refueling outage is also advantageous from an ALARA standpoint, because radiation levels in these inaccessible areas will be substantially lower than during a shorter duration outage. The NRC has previously approved similar license amendment requests for the San Onofre and Farley power plants.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment will not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of September 11, 1990, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

While the proposed change increases the inspection period between visual inspections, which may reduce confidence in the snubber operability by the end of the period, the current inspection period and attendant confidence level for large snubber populations is conservative. Since 1986, Diablo Canyon has conducted over 10,000 snubber inspections between Units 1 and 2. There has been one snubber declared inoperable in this time period, corresponding to a failure rate of 0.01 percent.

Based upon this inspection history and a BNL [Brookhaven National Laboratory] study, PG&E believes that the proposed one-time extension of the visual inspection surveillance interval from 12 months [plus or minus] 25 percent to 15 months [plus or minus] 25 percent will not significantly affect the probability or consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed Technical Specification change does not change the number, type, design, function or remaining service life of snubbers in the unit. It affects only the frequency of snubber visual inspection. The proposed change does not alter the configuration of the facility or its operation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

Past operating experience indicates that PG&E's current snubber program adequately minimizes snubber failures. The probability of a snubber failure occurring during the increased visual inspection time interval, which is still less than the normal 18 month interval for no observed failures, is not significant.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the proposed change and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, the staff proposes to determine that the change does not involve a significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: James E. Dyer

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: September 11, 1990 (Reference LAR 90-08)

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to incorporate changes to management titles, clarify the roles of Shift Supervisor and Shift Foreman, provide additional flexibility for the Shift Technical Advisor (STA) position, and correct an erroneous value of the minimum contained borated water volume of the Refueling Water Storage Tank (RWST). The specific TS changes proposed are as follows:

(1) TS 6.1, "Responsibility," TS 6.2, "Organization," TS 6.5, "Review and Audit," TS 6.6, "Reportable Event Action," and TS 6.7, "Safety Limit Violation," would be revised to change all references from Vice President, Nuclear Power Generation, to Senior Vice President and General Manager, Nuclear Power Generation.

(2) TS 6.1, "Responsibility," would be revised to change the initial reference from Plant Manager to Vice President, Diablo Canyon Operations and Plant Manager. All subsequent references to Plant Manager shall be understood to mean Vice President, Diablo Canyon Operations and Plant Manager.

(3) TS 6.1, "Responsibility," and TS 6.2, "Organization," would be revised to change all references from Shift Supervisor to Shift Foreman.

(4) TS 6.2, "Organization," Table 6.2-1, "Minimum Shift Crew Composition," would be revised to change the footnote for the STA position to allow an individual with a Senior Operator License, who fulfills the requirements and qualifications of an STA, to meet the STA position requirements in Modes 1, 2, 3, and 4.

(5) TS 3.1.2.6, "Borated water Sources - Operating," would be revised to correct an administrative error. Currently, this TS specifies that for Units 1 and 2, Cycle 5 and after, the RWST shall have a minimum contained borated water volume of 50,000 gallons. This is an erroneous value and should be corrected to specify a minimum volume of 400,000 gallons.

The proposed TS changes are administrative in nature based on Nuclear Power Generation organizational changes and a need to clarify the roles of Shift Supervisor and Shift Foreman. The management title changes (1) from Vice President, Nuclear Power Generation, to Senior Vice President and General Manager, Nuclear Power Generation, and (2) from Plant Manager to Vice President, Diablo Canyon Operations and Plant Manager, are a part of the licensee's continuing effort to improve the effectiveness, efficiency, and safety of Diablo Canyon operations. The changes in TS 6.2.2.a from Shift Supervisor to Shift Foreman will clarify the intended roles of each position at DCPP. The change in STA manning requirements allows additional flexibility without compromising the existing qualifications for an STA.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment will not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of September 11, 1990, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes are administrative in nature and do not affect the probability or consequences of any accident identified in the Diablo Canyon FSAR Update.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes are administrative in nature and do not affect any plant systems, plant operations, or the type of accidents that might occur at Diablo Canyon.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The proposed changes are administrative in nature and do not affect the margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the proposed changes and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, the staff proposes to determine that the changes do not involve a significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: James E. Dyer

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: September 11, 1990 (Reference LAR 90-09)

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to (a) clarify the requirement that two redundant steam supply sources are needed for the turbine-driven auxiliary feedwater pump (AFW) to be operable and (b) remove the differential pressure values from the surveillance requirements for the AFW pumps and perform the testing pursuant to Technical Specification 4.0.5. The specific TS changes proposed are as follows (the associated Bases would also be revised):

(1) TS 3.7.1.2 would be revised to specifically require two operable and redundant steam supply sources and to identify surveillance requirements for the non-automatic valve in the steam supply path for the steam turbine-driven AFW pump.

(2) TS 4.7.1.2.1.a.1) would be revised to require testing of the steam turbine-driven pump and both motor-driven pumps pursuant to TS 4.0.5 and to include an exemption to the provisions of TS 4.0.4 for entry into Mode 3 for the steam turbine-driven pump. The exemption to the provisions of TS 4.0.4 for the steam turbine-driven pump is currently included in TS 4.7.1.2.1.a.2).

(3) TS 4.7.1.2.1.a.2) would be deleted and TS 4.7.1.2.1.a.3) would be renumbered to TS 4.7.1.2.1.a.2).

The AFW system provides sufficient feedwater to the steam generators (SGs) to ensure heat removal from the reactor coolant system in the event of a loss of normal feedwater to the SGs. The proposed technical specification changes would not alter the function or make any changes to the response and operation of the AFW system or components. All AFW functional safety performance requirements would remain unchanged. The first part of this LAR proposes additional clarification of TS 3.7.1.2 to ensure that the operability requirement to have two redundant steam sources for the turbine-driven AFW pump is met. This clarification will promote a better understanding of the system design basis, which enhances the fulfillment of the AFW system safety function.

The second part of the licensee's amendment request proposes to revise TS 3/4.7.1.2 to reference ASME Section XI, and to provide for potential changes in the acceptance criteria to be administratively controlled by PG&E. PG&E's administrative controls for procedure revisions ensure adequate plant management review and evaluation in accordance with TS 6.8.2. Also, a 10 CFR 50.59 evaluation and Plant Staff Review Committee review will be conducted prior to any safety significant revision to the AFW pump differential pressure values in the applicable surveillance test procedure. Should the 10 CFR 50.59 evaluation determine that Commission approval is required, the NRC will be notified and prior approval requested. These proposed changes are administrative in nature and do not affect the capability of the AFW system to fulfill its system safety function.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment will not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of September 11, 1990, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The first part of the proposed license amendment would clarify the operability requirements for the turbine-driven AFW pump and does not affect the probability or consequences of analyzed accidents.

The second part of the proposed license amendment would constitute an administrative improvement by relocating the surveillance acceptance criteria to other PG&E controlled documents. This change will provide enhanced flexibility in accommodating changes to the surveillance criteria while providing for careful review and analysis by competent individuals of any changes to the surveillance acceptance criteria. The careful review and analysis of a change and the requirement for prior Commission approval through the 10 CFR 50.59 review process provides assurance that nuclear safety is not adversely affected. The proposed changes to the TS clarify the compliance with ASME Section XI and state the functional requirement for the surveillance test. In addition, the proposed license amendment would not alter the function or the operation of the system.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

There is no physical alteration to the AFW system, nor is there a change in the method by which the AFW system performs its functions.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

As indicated above, the first proposed change would clarify the operability requirements for the turbine-driven AFW pump; however, this does not affect the function or operation of the AFW system.

Also, as indicated above, the proposed changes involving the surveillance acceptance criteria are administrative in nature to better facilitate revision to the numerical values in the surveillance acceptance criteria and would not change the purpose and application of the criteria and the test. Controls for changes are in place, including TS 6.8.2, to assure proper review and application of the 10 CFR 50.59 process as appropriate. The TS states the required adherence to the ASME code and the functional requirement of the test, which has not changed.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the proposed change and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, the staff proposes to determine that the change does not involve a significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: James E. Dyer

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: October 18, 1990 (Reference LAR 90-10)

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to revise Technical Specification (TS) 3/4.2.4, "Quadrant Power Tilt Ratio," to permit determination of the quadrant power tilt ratio (QPTR) by either a full incore flux map or by symmetric flux thimble measurement in the event that a single power range channel becomes inoperable above 75 percent rated thermal power (RTP). The existing technical specification (TS 3/4.2.4) permits only the use of the four pairs of symmetric core thimbles in this situation.

Changing the TS to permit determination of QPTR by either a full incore map or by symmetric thimble measurement will avoid (1) unnecessary reductions in plant load, and (2) subsequent adjustments of the Nuclear Instrumentation System protection bistables.

The proposed change will also provide consistency between the QPTR technical specification (TS 3/4.2.4) and the movable incore detector system technical specification (TS 3.3.3.2). The proposed revision has been previously licensed at other facilities, including South Texas, Comanche Peak, Farley, and Vogtle. The revision is also consistent with Draft Revision 5 of the Westinghouse Standard Technical Specifications and is currently included in the Westinghouse Owners Group (WOG) MERITS Technical Specifications, which are under review by the NRC.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment will not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of October 18, 1990, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed revision does not change any of the FSAR Update accident analyses initial conditions or results. Allowing either a full incore flux map or symmetric thimble measurement in the event that a single power range channel becomes inoperable, and one or more symmetric thimbles is unavailable for flux mapping, is warranted because the full incore map provides the most accurate representation of core power distribution and there is no effect on the FSAR Update accident analyses results.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident [from any accident] previously evaluated?

Allowing either a full incore flux map or symmetric thimble measurement in the event that a single power range channel becomes inoperable and one or more symmetric thimbles is unavailable for flux mapping does not require any physical alteration to any plant system nor does it change the method by which any safety related system performs its function.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Allowing either a full incore flux map or symmetric thimble measurement in the event that a single power range channel becomes inoperable and one or more symmetric thimbles is unavailable for flux mapping will not change any accident analysis assumptions, initial conditions or results.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the proposed change and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, the staff proposes to determine that the change does not involve a significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: James E. Dyer

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: January 31, 1989

Description of amendment request: The proposed amendment would revise the Trojan Technical Specifications by incorporating numerous editorial corrections and clarifications, and by making Containment Purge Noble Gas Monitors PRM-1C and PRM-1D separate entries so as to apply appropriate footnotes to the PRM-1D entry, and to renumber the rest of the Containment Purge Monitor entries accordingly.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident?

The first change corrects references between Technical Specification sections. This is an editorial change and has no effect on the probability or consequences of an accident.

The second change adds a requirement for a waste gas holdup system oxygen monitor alarm in the control room to Table 3.3-13. This change makes Table 3.3-13 consistent with Technical Specification 4.11.2.6.1 and is administrative in nature. As such, this change has no effect on the probability or consequences of an accident.

The third change makes the requirements for PRMs 1C and 1D consistent between the different functions the monitors can perform in Tables 3.3-13 and 4.3-9. The change also clarifies the TTS to more clearly describe how source checks and channel functional tests are performed for PRM-1D. This channel has an installed keep-alive source which maintains the channel reading above zero. The source check is accomplished by verifying that the channel is indicating above zero. The channel functional test is accomplished by reducing the alarm trip setpoint below the level of the keep-alive source. Neither the type of test required by the TTS nor the frequency is altered by this change. No change is proposed to actual Plant equipment design, procedures, or operations. This administrative change, therefore, does not increase the probability or consequences of a previously evaluated accident.

The fourth change corrects the number for the Containment purge effluent monitoring flow rate measuring device in Table 3.3-13, Item 3c.d. This is an editorial change and has no effect on the probability or consequences of an accident.

The fifth change adds condenser air ejector noble gas monitor PRM-6B to the gaseous and effluent monitoring instrumentation to Tables 3.3-13 and 4.3-9. This change helps ensure monitoring of the condenser air ejector noble gas monitor without reliance on the Action statement. This change has no effect on the probability or consequences of an accident.

The sixth change removes the footnote referring to the installation of the moisture removal system for the condenser air ejector monitoring system in Table 3.3-13. The moisture removal system is installed and the footnote is no longer applicable. This is an

editorial change and has no effect on the probability or consequences of an accident.

The seventh change deletes the channel check requirement for the Containment effluent, Auxiliary Building and condenser air ejector post-accident iodine samplers and replaces this surveillance requirement with a monthly Channel Functional Test. The iodine samplers provide post-accident dose information and have no effect on the probability or consequences of an accident.

The eighth change corrects a typographical error by capitalizing the "M" for the monthly channel functional test in Table 4.3-9, Item 6.e and has no effect on the probability or consequences of an accident.

The ninth change adds footnote "f", which describes the principal gamma emitters to all of the principal gamma emitter entries in Table 4.11-1. This is an editorial change and has no effect on the probability or consequences of an accident.

The tenth change adds a clarification to footnotes * and ** of Table 4.11-1 that the 10^{-5} [microcurie]/ml limit for taking samples for compositing excludes dissolved and entrained gases. The samples are for effluent monitoring and there is no increase in the probability or consequences of an accident.

The eleventh change corrects a typographical error in Table 4.11-1 footnote ** by changing 10-5 to 10^{-5} and has no effect on the probability and consequences of an accident.

The twelfth change corrects the principal gamma emitter footnote in Table 4.11-2 to footnote "e". This is an editorial change and has no effect on the probability or consequences of an accident.

The thirteenth change corrects duplicate reporting requirements for unavailable milk or fresh leafy vegetable samples and monitoring locations. This change involves administrative reporting requirements and has no effect on the probability or consequences of an accident.

The last change corrects references between Technical Specification sections. This is an editorial change and has no effect on the probability or consequences of an accident.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

As discussed above, changes 1, 2, 4, 6 and 8-14 are editorial and administrative and have no effect on the accident analysis.

The third change does not create the possibility of a new or different kind of accident. The testing requirements for PRM-1D are not relevant to accident creation since its function is to monitor for the release of radioactivity after an accident or release occurs.

The fifth change adds condenser air ejector noble gas monitor PRM-6B to the gaseous and effluent monitoring instrumentation in Tables 3.3-13 and 4.3-6. This monitor is already installed and provides additional monitoring capability. Its addition to the Technical Specification does not create the possibility of a new or different kind of accident.

The seventh change deletes the channel check requirement for the Containment effluent, Auxiliary Building and condenser air ejector post-accident iodine samplers and replaces this surveillance requirement with a monthly Channel Functional Test. This is a change to a surveillance requirement for an existing piece of monitoring equipment and does not create the possibility of a new or different kind of accident.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

As discussed above, changes 1, 2, 4, 6 and 8-14 are editorial and administrative and have no effect on the accident analysis.

The third change does not involve a significant reduction in a margin of safety because the change is administrative in order to clarify the TTS. No change to Plant equipment, procedures, operations or other factors affecting the margin of safety is proposed.

The fifth change adds condenser air ejector noble gas monitor PRM-6B to the gaseous and effluent monitoring instrumentation in Table 3.3-13. This additional monitoring capability increases the operator's ability to detect a problem and does not affect the overall margin of safety.

The seventh change deletes the channel check requirement for the Containment effluent, Auxiliary Building and condenser air ejector post-accident iodine samplers and replaces the surveillance requirement with a monthly Channel Functional Test. The samplers provide post-accident dose information and have no effect on the margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination. Based upon this review, the staff agrees with the licensee's analysis. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRR Project Director: James E. Dyer, Acting

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: March 6, 1990, and supplement dated October 25, 1990

Description of amendment request: Proposed Change Number (PCN) 216, submitted by Amendment Application No. 176, proposes to revise Technical Specification (TS) 6.4.1 to reflect changes that were made to 10 CFR 55 in March 1987. As a result of these changes, certain references which are cited by TS 6.4.1 are no longer valid. Specifically, Enclosure 1 of the March 28, 1980, NRC letter to all licencees and Appendix A of 10 CFR 55 are no longer valid references. PCN-216 makes the necessary corrections to TS 6.4.1 in this regard.

In addition to the change in TS 6.4.1, PCN-216 also proposes to make changes throughout the Technical Specifications to correct typographical and editorial errors that currently exist.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has provided the following no significant hazards consideration determination in accordance with 10 CFR 50.91(a):

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The operation of San Onofre Unit 1 in accordance with this proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated. The nature of the proposed change involves the clarification of the technical specifications to properly contain the correct information. The proposed change will improve the quality of the technical specifications. The proposed changes are administrative in nature and do not affect accident probabilities or consequences. The changes provide corrections to typographical errors and editorial oversights. It also updates the section on training to be consistent with 10CFR55.

Therefore, it is concluded that operation of the facility in accordance with this proposed change will not involve a significant increase in the probability of consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

As stated above, the proposed revisions are administrative in nature and do not create any new or different accidents. Therefore, it is concluded that operation of the facility in accordance with this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

As stated above, the proposed revisions are administrative in nature and do not impact any margin of safety. Therefore, it is concluded that operation of the facility in accordance with this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: James E. Dyer, Acting

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: October 16, 1990

Description of amendment request: Proposed Change No. (PCN) 226, which was submitted by Amendment Application No. 184, requests a revision to the basis for Technical Specification (TS) 3.1.4, "Leakage and Leakage Detection Systems." The existing basis for the TS 3.1.4 reactor coolant system (RCS) leakage rate of 6 gpm credits the ability of the RCS to remove decay heat during a loss of all alternating current power event which lasts for 12 hours. In its amendment application, the licensee stated that the existing basis for the 6 gpm limit is in error and should credit limitations associated with the gas handling portion of the radwaste system. The proposed change to TS 3.1.4 would correct this error.

In addition, PCN-226 proposes to add a paragraph to the basis of TS 3.1.4 clarifying that normal flow from both the letdown system and the reactor coolant pump first stage seals is not included in the 6 gpm reactor coolant leakage limitation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has provided the following no significant hazards consideration determinations as required by 10 CFR 50.91(a):

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed change does not change either the operation of the plant or the design basis of the plant. Only the Basis of Technical Specification 3.1.4 is changed. The basis for the 6 gpm leakage limitation is the long term capacity of certain parts of the radwaste system. If the leakage is greater than 6 gpm for an extended period of time, it would be possible to exceed the capacity of certain parts of the radwaste system. This proposed change revises the existing basis to state this more clearly. The current basis states that a 6 gpm leakage value is based on the capability to remove decay heat with a 6 gpm leakage during a loss of power event lasting up to 12 hours. This statement was the basis for the reactor coolant leakage rate of 10 gpm in the late 1960's before it was reduced to 6 gpm in 1972 in order not to exceed the limitations of the radwaste system. The discussion of the ability to remove decay heat is no longer current with plant commitments and has been removed from the Basis by this proposed change. Because this change updates only the basis section of Technical Specification 3.1.4, operation of the facility in accordance with this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

This proposed change does not change the operation of the plant or the design basis of the plant. This change only updates the basis of Technical Specification 3.1.4 to clarify the basis for the 6 gpm leakage limitation as discussed above in Question 1. Therefore, operation of the facility in accordance with this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in [the] margin of safety?

Response: No

This change only updates the Basis of Technical Specification 3.1.4 and does not affect the operation of the facility or involve a reduction in [the] margin of safety. The basis for the 6 gpm reactor coolant leakage limitation is clarified to be based on equipment limitations. The discussion of the ability to remove decay heat with a leakage rate of 6 gpm during a loss of power event lasting up to 12 hours is no longer current and has been removed. Because the operation of the facility is not altered by this proposed change, there will be no impact on a margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: James E. Dyer, Acting

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: March 8, 1990

Description of amendment request: The proposed amendments would eliminate the monthly flush requirements for the sensitized stainless steel piping installed in primary and safety systems. Instead of being flushed on a monthly basis, the sensitized steel systems would be flushed on an as necessary basis whenever chlorides and/or fluorides exceed 0.15 ppm in the refueling water storage tank (RWST) and as a minimum at each refueling outage in conjunction with safety system flow testing. In addition, a requirement to sample the RWST on a weekly basis to check the chlorides and/or fluorides would be included.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a

facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee evaluated the proposed change against the three criteria above and has determined that the proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. Eliminating the requirement to flush safety system piping, when the water chemistry does not exceed 0.15 ppm chlorides and/or fluorides, does not alter plant operation or plant design in any manner. The RWST will be sampled weekly to monitor Cl^- and F^- concentrations. As long as the Cl^- and/or F^- concentration remains below 0.15 ppm the potential for stress corrosion cracking of the sensitized piping is precluded.
2. Create the possibility of a new or different kind of accident from any accident previously evaluated. [The proposed change does] not involve any physical alterations to the plant or to procedures which introduce any new or unique operational modes or accident precursors. Additionally, the proposed [change] [is] consistent with industry experience in that sensitized stainless steel is not susceptible to stress corrosion cracking when chlorides and/or fluorides concentrations are less than 0.15 ppm.
3. Involve a significant reduction in the margin of safety. The system operation and design are not altered by this change. Modification/clarification of pipe flush frequencies to eliminate flushing that is not required does not reduce any margin of safety. Additionally, the current safety analysis remains bounding; therefore, no margin of safety is reduced by this change.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: September 17, 1990

Description of amendment request: The proposed changes would revise the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications (TS) and Facility Operating License No. DPR-43. Specifically, the proposed changes would add the NRC standard fire protection license condition to the Kewaunee operating license, and relocate fire protection requirements from the TS to the KNPP Fire Protection Program, which has been incorporated by reference into the KNPP Updated Safety Analysis Report (USAR). The proposed changes have been developed in accordance with the guidance contained in NRC Generic Letters 86-10 and 88-12, and are consistent with NRC and industry efforts to simplify the TS.

The proposed changes include the following actions: (1) Replace Section 2.c.(3) of the KNPP Operating License with the standard license condition statement as shown in Generic Letter 86-10, Section F and as recommended by Generic Letter 88-12. (2) Delete TS Sections 3.15, "Fire Protection System Limiting Conditions for Operation," and 4.15, "Fire Protection System Surveillance Requirements," and relocate the requirements into the KNPP Fire Protection Plan. (3) Delete TS 4.6.a.7, the 18-month test of emergency lighting required by 10 CFR 50 Appendix R, and relocate the requirement to the KNPP Fire Protection Plan. (4) Delete Item 7 of TS Table 4.1-3, surveillance requirements for fire detection systems, fire suppression systems, and fire barriers, and relocate the requirements in the KNPP Fire Protection Plan. (5) Delete TS 6.2.2.g and 6.4.2 which concern fire response team requirements and incorporate in the KNPP Fire Protection Plan. (6) Add the KNPP Fire Plan to the list of plans in TS 6.5.1.6.e which the Plant Operational Review Committee is responsible for reviewing.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has determined that the proposed change does not involve a significant hazards consideration on the basis of the following analysis, which was provided in its submittal of September 17, 1990:

1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. Generic Letter 86-12 encourages licensees to remove unnecessary fire protection technical specifications and incorporate the TS require ments into the Fire Protection Program. The TS requirements con cerning fire protection have been incorporated into the KNPP Fire Plan, as referenced by the KNPP USAR. This change is administrative only and does not affect current plant practices; therefore, it will not significantly increase the probability or consequences of an accident previously evaluated.
2) The proposed change does not create the possibility of a new or dif ferent kind of accident from any accident previously evaluated. The proposed change does not involve any physical alterations of plant configurations, changes to setpoints, or operating parameters. It is an administrative change only and retains all existing fire protec tion requirements, therefore, it does not create the possibility of a new or different kind of accident.
3) The proposed change does not involve a significant reduction in a margin of safety. This change is in accordance with Generic Letter 86-10 and 88-12 guidelines for incorporating the Fire Protection Program into the KNPP USAR. This change is administrative only and insures that the KNPP Fire Plan will be on a consistent status with other plant features described in the USAR. The KNPP Fire Plan retains all existing Fire Protection requirements and therefore an equivalent level of protection has been assured without a reduction in a margin of safety.

The NRC staff has made a preliminary review of the licensee's analyses of the proposed changes and agrees with the licensee's conclusion that the three standards in 10 CFR 50.92(c) are met. Therefore, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for license: David Baker, Esq. Foley and Lardner, P. O. Box 2193, Orlando, Florida, 31082.

NRC Project Director: John N. Hannon.

Previously Published Notices of Consideration of Issuance of Amendments to Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of application for amendment: August 22, 1990 and supplemented by letter dated October 17, 1990

Brief description of amendment request: The proposed amendment would permanently disable the steam condensing mode (SCM) of the residual heat removal (RHR) system. The August 22, 1990, submittal was previously noticed September 19, 1990 (55 FR 38602), and described Gulf States Utilities Company's (GSU's) plans to weld plugs in the steam supply lines. Due to the exposure rates predicted using this method, GSU provided supplemental information in the October 17, 1990, letter which described removal of two valves in each of the steam supply lines in the auxiliary building and installation of a blind flange in place of each valve. The two methods accomplish the same purpose, closing off the steam supply lines, but the latter will result in lower worker exposures. The Technical Specification modifications originally proposed remain unchanged.

Date of individual notice in **Federal Register:** October 24, 1990 (55 FR 42921)

Expiration date of individual notice: November 23, 1990

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: April 26, 1990

Brief description of amendment request: The Sacramento Municipal Utility District (SMUD, The District) has decided to permanently cease operations at the Rancho Seco Nuclear Generating Station. The Rancho Seco reactor has been defueled and the reactor fuel is currently stored in the on site spent fuel pool. The proposed amendment would modify the license to a possess-but-not-operated status ("possession only license"). This proposed amendment would allow SMUD to possess special nuclear material, but not operate the nuclear reactor by removing the authority to operate.

Date of publication of individual notice in **Federal Register:** October 10, 1990 (55 FR 41280)

Expiration date of individual notice: November 8, 1990

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

Notice of Issuance of Amendment to Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of requested amendments: August 16, 1990.

Brief description of amendments: The amendments modify the Technical Specifications to specify the requirements for the repair of a steam generator tubes by installation of sleeves with laser welded joints, using a methodology developed by Westinghouse. The amendments also include criteria for allowable wall degradation in the sleeve and for the tube in the region of the sleeve to tube joint.

Date of issuance: October 22, 1990

Effective date: October 22, 1990

Amendment Nos.: 85 and 78

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** September 19, 1990 (55 FR 38598) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 22, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: December 11, 1989

drief description of amendment: The amendment changes the minimum acceptable core spray pump flow rate for each pump from the current technical specification limit of 3600 gpm to 3300 gpm.

Date of issuance: October 22, 1990

Effective date: October 22, 1990

Amendment No.: 131

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 24, 1990 (55 FR 2432) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, et al., Docket No. 50-325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of application for amendment: March 29, 1989, as supplemented on June 27, and October 8, 1990.

Brief description of amendment: The amendment changes the Technical Specifications to implement an expanded operating domain. The expansion of the operating domain allows the fuel cycle economics to be enhanced through implementation of flow control spectral shift operation and increased core flow coast down capability.

Date of issuance: October 23, 1990

Effective date: October 23, 1990

Amendment No.: 147

Facility Operating License No. DPR-71: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 9, 1989 (55 FR 32706) The June 27, and October 8, 1990, submittals provided updated Technical Specifications pages and did not alter the action proposed or affect the initial determination published in the **Federal Register** on August 9, 1989. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 23, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, et al., Docket Nos. 50-323 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: February 15, 1989, as supplemented February 23, and Ocotober 23, 1990.

Description of amendments: The amendments revise the description of Action 23 associated with Table 3.3.2-1, Isolation Actuation Instrumentation, to differentiate between the actions to be taken in Operational Conditions 1, 2, and 3 and the actions to be taken for Operational Conditions 5 and *.

Date of issuance: October 25, 1990

Effective date: October 25, 1990

Amendment Nos.: 148 and 178

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** July 26, 1989 (54 FR 31102). The February 23, and October 23, 1990, letters revised the Technical Specifications pages to incorporate changes related to recently issued license amendments and did not change the initial determination of no significant hazards consideration as published in the **Federal Register**. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 25, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: October 17, 1986, as supplemented October 22, 1987

Brief description of amendments: These amendments modify the Zion Technical Specifications to remove references to the initial baseline inservice inspection and to a specific version of the ASME Section XI Code.

Date of issuance: October 31, 1990

Effective date: October 31, 1990

Amendment Nos.: 120 and 109

Facility Operating License Nos. DPR-39 and DPR-48. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 17, 1986 (51 FR 45195) The October 22, 1987 submittal provided additional clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

NRC Project Director: Richard J. Barrett

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: December 7, 1989

Brief description of amendment: This amendment revises the Technical Specification (TS) by removing the existing footnote on the Limiting Condition for Operation to Section 3.6.4.1 of the TS, which deals with Suppression Chamber Vacuum Breakers. The amendment also indicated that it supersedes the licensee's application dated December 22, 1988.

Date of issuance: October 22, 1990

Effective date: October 22, 1990

Amendment No.: 61

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** September 19, 1990 (55 FR 38599) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: August 8, 1990

Brief description of amendment: The amendment revised portions of Technical Specification 2.1 (Safety Limits, Reactor Core), 2.3 (Limiting Safety System Settings, Protective Instrumentation), 3.1.7 (Moderator Temperature Coefficient of Reactivity), and 3.5.2 (Control Rod Group and Power Distribution Limits). The changes support the reload for Cycle 10.

Date of issuance: October 29, 1990

Effective date: October 29, 1990

Amendment No.: 137

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 19, 1990 (55 FR 38602) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: July 28, 1989

Brief description of amendments: The amendments revise Technical Specification 3.4.9, "Pressure/Temperature Limits," and the associated bases concerning the number of effective full power years (EFPY) for which the Vogtle Unit 1 heatup and cooldown curves are applicable. The applicability of the Vogtle Unit 1 curves decreased from 16 EFPY to 13 EFPY based on an analysis performed by Westinghouse Electric Corporation in response to Generic Letter 88-11.

Date of issuance: October 19, 1990

Effective date: October 19, 1990

Amendment Nos.: 36 and 16

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 11, 1989 (54 FR 46149) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 19, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: November 20, 1989

Description of amendment request: This amendment revised the Technical Specifications to extend the allowed outage time for an inoperative automatic Self Test System (STS) in plant operating modes 4 and 5 and to use the STS in manual mode when its automatic mode is inoperative with an increased Surveillance Test Interval for the STS in manual test mode.

Date of issuance: November 1, 1990

Effective date: November 1, 1990

Amendment No.: 52

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 5, 1990 (55 FR 36343) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 1, 1990

No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: June 25, 1990 as amended August 14, 1990

Brief description of amendments: The amendments allow the use of posted roped-off areas with flashing lights in lieu of locked doors for control of entry into high radiation areas under certain plant conditions.

Date of issuance: October 24, 1990

Effective date: October 24, 1990

Amendments Nos.: 150/136

Facility Operating Licenses Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 18, 1990 (55 FR 38424). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 24, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: April 3, 1990, as supplemented August 17, 1990.

Brief description of amendment: The amendment changes the Technical Specifications to clarify that the definition of the term "Instrument Calibration" in Specification 1.1.2 involves only the verification of the operability for resistance temperature detectors and thermocouples used as sensors in instrument channels rather than removal and calibration of these sensors.

Date of issuance: November 1, 1990

Effective date: November 1, 1990

Amendment No.: 135

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 16, 1990 (55 FR 20360) The August 17, 1990 submittal provided additional clarifying information and did not change the finding of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 1, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: August 22, 1990

Brief description of amendment: The change to the Technical Specifications (TS) revises the definition of surveillance in TS 1.0.X by deleting the requirement that the combined time interval for any three consecutive surveillance intervals is not to exceed 3.25 times the specific surveillance

interval. The TS change request was made in response to Generic Letter 89-14, "Line-Item Improvements in Technical Specifications -Removal of the 3.25 Limit on Extending Surveillance Intervals."

Date of issuance: November 1, 1990
Effective date: November 1, 1990
Amendment No.: 47
Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** September 19, 1990 (55 FR 38603) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 1, 1990.
No significant hazards consideration comments received: No.
Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: July 13, 1990.
Brief description of amendment: The amendment changes the Technical Specifications related to the Control Room Emergency Ventilation System (CREVS). Specifically, the change considers an emergency ventilation system to be operable during the shutdown and refueling Modes 5 and 6 with only a normal or an emergency power source operable for the system. The amendment also provides minor modifications to the Technical Specifications to provide clarity to assure that in the event of one CREVS being declared inoperable, the other operable CREVS would have an operable normal and emergency power system available.
Date of issuance: October 29, 1990
Effective date: October 29, 1990
Amendment No.: 149
Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34375) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1990.
No significant hazards consideration comments received: No.
Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: July 17, 1990 as supplemented by letter dated September 18, 1990.
Brief description of amendment: The amendment changes the Millstone Unit 3 Technical Specifications (TSs) based on the recommendations provided by the staff in Generic Letter (GL) 87-09 related to the applicability of limiting conditions for operations (LCO) and the surveillance requirements of the TS 3.0 and 4.0. Specifically, the licensee has requested the following revisions to TS 3.0.4, 4.0.3 and 4.0.4 as follows:

Specification 3.0.4 is revised to define when its provisions apply; i.e., when the affected action statements permit continued operation for an unlimited period of time, instead of defining when the provisions of Specification 3.0.4 do not apply.

Specification 4.0.3 is revised to incorporate a 24-hour delay in implementing Action Requirements due to a missed surveillance when the Action Requirements provide a restoration time that is less than 24 hours.

Specification 4.0.4 is revised to clarify that "This provision shall not prevent passage through or to OPERATIONAL CONDITIONS as required to comply with Action Requirements."

In addition to the above, a substantial number of Limiting Conditions for Operation would be changed, consistent with the proposed changes to TS 3.0.4.
Date of issuance: October 30, 1990
Effective date: October 30, 1990
Amendment No.: 57
Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34377) The September 18, 1990 submittal provided additional clarifying information and did not change the original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 30, 1990.
No significant hazards consideration comments received: No.
Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Pennsylvania Power and Light Company, Docket No. 50-387 Susquehanna Steam Electric Station, Unit 1, Luzerne County Pennsylvania

Date of application for amendment: April 17, 1990
Brief description of amendment: The Amendment revised the Technical Specifications to incorporate new containment isolation valves in Technical Specification Table 3.6.3-1.
Date of issuance: October 31, 1990
Effective date: October 31, 1990
Amendment No.: 101
Facility Operating License No. NPF-14: This amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 11, 1990 (55 FR 28478) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 1990.
No significant hazards consideration comments received: No
Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket No. 50-387 Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: July 2, 1990
Brief description of amendment: The amendment changed the Technical Specifications (TS) in support of the cycle 6 reload. Specifically the following TSs and Bases have been changed: 3/4.2.1 Average Planar Linear Heat Generation Rate; 3/4.2.3 Minimum Critical Power Ratio; 3/4.2.4 Linear Heat Generation Rate; 3/4.4.1 Recirculation System; B 2.1 bases for Safety Limits; B 3/4.2.1 bases for Average Planar Linear Heat Generation Rate; B 3/4.2.3 bases for Minimum Critical Power Ratio; B 3/4.4.1 bases for Recirculation System; 5.3.1 Fuel Assemblies design; and 5.3.2 Control Rod Assemblies design.
Date of issuance: November 2, 1990
Effective date: November 2, 1990
Amendment No.: 102
Facility Operating License No. NPF-14: This amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 33992) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 1990.
No significant hazards consideration comments received: No
Local Public Document Room location: Osterhout Free Library,

Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: June 12, 1990
Brief description of amendment: Incorporates the Residual Heat Removal System and the Core Spray System containment isolation valves for the associated Keep-Full systems into Technical Specification Tables 3.7-1 and 4.7-2.
Date of issuance: October 24, 1990
Effective date: October 24, 1990
Amendment No.: 166
Facility Operating License No. DPR-59: Amendment revised the Technical Specification.
Date of initial notice in **Federal Register:** August 8, 1990 (55 FR 32330) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1990.
No significant hazards consideration comments received: No
Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: July 27, 1989, as supplemented September 21, 1989, April 10, 1990 and May 29, 1990.
Brief description of amendment: The proposed amendment revises Surveillance Requirement 4.8.1.1.2 of Technical Specification 3/4.8.1., "A.C. Sources," with respect to diesel fuel oil storage monitoring, sampling and analysis.
Date of issuance: October 31, 1990.
Effective date: October 31, 1990.
Amendment No.: 93
Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** January 10, 1990 (55 FR 939) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 1990
No significant hazards consideration comments received: No
Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: June 11, 1990, as supplemented by letter dated October 12, 1990
Description of amendment request: The amendment revises Technical Specifications (TS) 4.0.3, 4.0.4 and Basis Sections 3.0 and 4.0 in accordance with Generic Letter 87-09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements." The change adds a provision in TS 4.0.3 allowing a delay for up to 24 hours to permit the completion of missed surveillances before shutdown when the allowable outage time limits of the applicable action requirements are less than 24 hours. The amendment also revised TS 4.0.4 to include a provision which does not prevent passage through or to operational modes as required to comply with action requirements. The revision to the Basis for all specifications in Sections 3.0 and 4.0 provides better justification supporting their applicability.
Date of issuance: October 26, 1990
Effective date: This license amendment is effective the date of issuance and must be fully implemented no later than 30 days from date of issuance.
Amendment No.: 135
Provisional Operating License No. DPR-13: The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30311) Supplementary information was provided by letter dated October 12, 1990, which corrected an error that existed in the proposed basis for TS 3.0.4. This information was editorial and did not alter the action or affect the no significant hazards determination that was in the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 1990
No significant hazards consideration comments received: No.
Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of applications for amendment: January 12, 1990 (TS 89-25 and 89-26)
Brief description of amendment: This amendment revises the Sequoyah Nuclear Plant, Unit 2, Technical Specifications (TSs) to account for the removal of the upper head injection system (UHIS) and the deactivation of the boron injection tank (BIT) at Unit 2 during the Unit 2 Cycle 4 refueling outage. The changes to the TSs for UHIS removal delete TS 3/4.5.1.2 on the UHIS; revise Tables 3.4-1, 3.6-1, and 3.6-2 on the UHIS reactor coolant pressure isolation valves, penetrations, and containment isolation valves; revise the operability requirements in TS 3/4.5.1.1 on the cold leg injection accumulators; decrease the minium flow rates in Surveillance Requirement (SR) 4.5.2.h for emergency core cooling systems; and revise TS 3/4.2.2 to reduce the peaking factor limit in the heat flux hot channel factor.

For the BIT deactivation, the changes to the TSs increase the boron concentration in the refueling water storage tank in TSs 3/4.1.2.5, 3/4.1.2.6, and 3/4.5.5; increase the boron concentration in the cold leg injection accumulator in TS 3/4.5.1.1; delete TS 3/4.5.4 on the BIT system; and increase the minimum volume of the boric acid storage system in TS 3/4.1.2.8. In addition, the reference to boron injection throttle valves will be changed to charging pump throttle valves in SR 4.5.2.g.

There are also changes to the Bases of the affected TSs and the index of the TSs. The changes for Sequoyah Unit 1 were issued by the staff's letter dated May 11, 1990 during the Unit 1 Cycle 4 refueling outage.
Date of issuance: October 29, 1990
Effective date: October 29, 1990
Amendment No.: 131
Facility Operating Licenses No. DPR-79. Amendment revised the Unit 2 Technical Specifications.
Date of initial notice in **Federal Register:** February 7, 1990 (55 FR 4279 and 4280) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1990.
No significant hazards consideration comments received: No
Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of application for amendment: January 12, 1990 as supplemented by letter dated April 13, 1990. (TS 89-33)
Brief description of amendment: This amendment modifies the Sequoyah Nuclear Plant, Unit 2, Technical

Specifications (TSs) to permit the use of the Vantage 5 Hybrid fuel at Unit 2 in the upcoming Operating Cycle 5. The unit is currently in the Unit 2 Cycle 4 refueling outage and is scheduled to restart from this outage to begin the Unit 2 Operating Cycle 5 in early November 1990. The changes to the TSs are the following: (1) revise the TS Bases for safety limits to refer to the WRB-1 correlation and to the associated safety analysis limit for the departure from nucleate boiling ratio (DNBR); (2) revise TS 3.1.3.4 to incorporate a new rod drop time of less than or equal to 2.7 seconds; (3) revise TS 3.2.3 to delete the rod bow penalty as a function of burnup in the Nuclear Enthalpy Hot Channel Factor equation and delete Figures 3.2-3 and 3.2-4; (4) revise Table 3.2-1 and TS 3.2.5 to define the reactor coolant system (RCS) total flow rate limit, including uncertainties, to be 378,400 gallons per minute (gpm) for the departure from nucleate boiling parameters and add surveillance requirements for the RCS total flow rate; and (5) revise the Bases for TSs 3.2.3, 3.2.5, and 3.4.1. The title in the index for Section 3/4.2.3 and Bases Section 3/4.2.2 and 3/4.2.3 of the TSs are also revised.

The changes for Sequoyah Unit 1 were issued as Amendment 138 to the Unit 1 TSs in the staff's letter dated May 8, 1990.

Date of issuance: October 2, 1990
Effective date: October 2, 1990
Amendment No.: 130
Facility Operating Licenses No. DPR-79. Amendments revised the Unit 2 Technical Specifications.
Date of initial notice in **Federal Register:** February 7, 1990 (55 FR 4281) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 1990.
No significant hazards consideration comments received: No
Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: March 6, 1990, as supplemented by letters dated June 5, July 5 and July 18, 1990. The supplemental letters provided clarification and correction to the original submittal and thus do not alter the original proposed determination of no significant hazards consideration published in the Federal Register.
Brief description of amendment: The amendment revised Technical Specifications (TSs) and associated Bases, which contain cycle-specific core operating parameters in accordance with NRC Generic Letter 88-16, "REMOVAL OF CYCLE-SPECIFIC PARAMETER LIMITS FROM TECHNICAL SPECIFICATIONS," dated October 4, 1988. The revision relocated the cycle-specific core parameters from the TSs and placed them in the Core Operating Limits Report (COLR) under the control of the plant's unit review group (On-site Review Committee (ORC) for the Callaway Plant).
Date of issuance: November 1, 1990
Effective date: November 1, 1990
Amendment No.: 58
Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 13, 1990 (58 FR 24006) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 1, 1990. No significant hazards consideration comments received: No.
Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: September 26, 1990
Brief description of amendment: The amendment allowed an exception to Technical Specification (TS) 4.0.4 to facilitate the performance of a Surveillance Requirement by allowing sufficient plant conditions to be established and completion of the required surveillance prior to applying the TS Action Statement on atmospheric steam dump valve operability.
Date of issuance: November 2, 1990
Effective date: November 2, 1990
Amendment No.: 59
Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.
Public comments requested as to proposed no significant hazards consideration: Yes (55 FR 41780, October 15, 1990). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by November 14, 1990, but indicated that if the Commission makes a final determination, any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment and final no significant hazards consideration determination is contained in a Safety Evaluation dated November 2, 1990.
Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.
Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.
NRC Project Director: John N. Hannon

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: February 1, 1990, as supplemented July 30, 1990.
Brief description of amendments: These amendments replace the Independent/ Operational Event Review Group with the Management Safety Review Committee (MSRC) as the organization responsible for the offsite review function.
Date of issuance: October 18, 1990
Effective date: October 18, 1990
Amendment Nos. 148, 142
Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** March 21, 1990 (55 FR 10547) The July 30, 1990 letter provided supplemental information which did not alter the staff's initial determination of no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 18, 1990
No significant hazards consideration comments received: No
Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: May 22, 1990, as supplemented June 15, 1990.
Brief description of amendments: These amendments delete Section 3.1.A.3.a from the TS, which required that at least one pressurizer safety valve be operable whenever the reactor vessel is on the reactor vessel, except during hydrostatic testing. In addition, the amendments correct a typographical error in Section 3.7.
Date of issuance: October 24, 1990
Effective date: October 24, 1990
Amendment Nos. 148 and 144
Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 11, 1990 (55 FR 28483) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 24, 1990.
No significant hazards consideration comments received: No
Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: June 4, 1990
Brief description of amendment: Modifies Page 3/4 1-27, Surveillance Requirement 4.1.3.4.a to delete reference to control rod Group A as a control group and change the term "regulating group" to "control group" for consistency with the wording provided in Technical Specification 3.1.3.5.
Date of issuance: October 22, 1990
Effective date: October 22, 1990
Amendment No.: 137
Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** September 19, 1990 (55 FR 38607) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 1990.
No significant hazards consideration comments received: No
Local Public Document Room location; Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration and Opportunity for Hearing (Exigent or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By December 14, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition

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should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: August 25 and 29, 1990.

Brief description of amendment: The amendment will add a footnote to Technical Specification (TS) Table 3.3-2 Item 3, "Auxiliary Feedwater", Table 3.3-3 Item 2, "Steam Line Isolation" and Table 4.3-2 Item 3, "Engineered Safety Features Actuation System Instrumentation Surveillance Requirements." The footnote would redefine the operability of the auxiliary feedwater (AFW) automatic initiation system as including credit for operator action to adjust auxiliary feedwater to full flow following automatic initiation and reliance on the control air system to ensure successful automatic auxiliary feedwater initiation.

Date of issuance: October 22, 1990

Effective date: October 22, 1990

Amendment No.: 132

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated October 22, 1990.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

NRC Project Director: John F. Stolz

Duquesne Light Company, Docket No. 50-412, Beaver Valley Powar Station, Unit No. 2, Shippingport, Pennsylvania

Date of application for amendment: October 9, 1990

Brief description of amendment: The amendment modifies the Appendix A Technical Specifications (TSs) for the containment structural integrity. Specifically, the amendment modifies Surveillance Requirement (SR) 4.6.1.6.1 which prescribes how containment integrity shall be determined prior to performing periodic Type A containment testing. The modification consists of the addition of an alternative method for determining structural integrity, and a footnote to SR 4.6.1.6.1 is added to indicate that the alternative is available only for the interval including the Type A testing conducted during the second refueling outage up to the refueling outage for the next scheduled Type A test.

Date of issuance: October 23, 1990

Effective date: October 23, 1990

Amendment No.: 34

Facility Operating License No. NPF-73. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated October 23, 1990.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John F. Stolz

Dated at Rockville, Maryland, this 6th day of November, 1990.

Dated at Rockville, Maryland, this 6th day of November, 1990.

For the Nuclear Regulatory Commission

Dennis M. Crutchfield,

Director, Division of Reactor Projects-III, IV, V and Special Projects Office of Nuclear Reactor Regulation

[Doc. 90-26698 Filed 11-13-90; 8:45 am]

BILLING CODE 7590-01-D

[Docket No. 70-698]

Environmental Assessment, Finding of no Significant Impact and Opportunity for Hearing Related to Amendment of Materials License No. SNM-770; Westinghouse Electric Corp. Waltz Mill

The United States Nuclear Regulatory Commission (the Commission) is considering issuing an amendment of Materials License SNM-770, held by Westinghouse Electric Corporation, to authorize the receipt, sorting, compacting, and shipment of dry radioactive wastes which are generated offsite, as part of currently authorized Decontamination, Disposal, and Recycle (DDR) operations conducted at the Waltz Mill site.

Introduction

Westinghouse Electric Corporation, by applications dated November 30, 1987, and February 14, 1989, and supplement dated August 28, 1988, requested authorization to permit the receipt, sorting, compacting, and shipment of dry radioactive wastes which are generated offsite, as part of currently authorized Decontamination, Disposal, and Recycle (DDR) operations conducted at its Waltz Mill site. This operation will involve the receipt of the Waltz Mill site of dry radioactive wastes packaged with contaminated metallic equipment in approved shipping containers. The containers will be opened in a radiologically controlled area and the metallic equipment removed and processed in the DDR facility under currently licensed activities. The dry radioactive waste will be sorted, compacted, and repackaged into approved shipping containers for shipment offsite to a licensed disposal facility. Although these actions will aid in the overall volume reduction of contaminated by-product material, there is the potential for an increase in effluents from the Waltz Mill site. Accordingly, pursuant to 10 CFR part 51.21, the NRC has prepared this environmental assessment (EA).

Background

The Westinghouse Electric Corporation has operated the Waltz Mill site for more than 20 years. Principal activities at the Waltz Mill site include the following: (1) Engineering design and research of advanced reactors, (2) preparation and decontamination of metallic tools and equipment owned by Westinghouse and those tools and equipment related to service work performed at offsite operating nuclear power plants, and (3) chemical analysis of liquid and solid samples taken while servicing nuclear power plants.

In October 1982, the NRC issued an Environmental Impact Appraisal [1] (EIA) assessing the impacts of the Waltz Mill site operations. This document gives a detailed description of routine plant effluents and their associated environmental impacts. Based on the findings in the EIA, the NRC staff concluded that operations licensed under SNM-770 at that time would not have a significant impact and that a Negative Declaration was appropriate. In June 1985, the NRC issued an EA [2] on the addition of operation of a decontamination, disposal, and recycle (DDR) service which was also found to have no significant impact. The EA for the proposed activities covered by this document is based upon environmental information found in the 1982 EIA and the previous 1985 EA.

The Proposed Action

The proposed action is an amendment to License No. SNM-770 to authorize Westinghouse Electric Corporation's Waltz Mill site to possess, process, repackage, and compact radioactive dry waste material from other facilities for shipment offsite. Compaction will be done using a mobile supercompactor which is expected to be parked and used at the site for one week every one to two months. Currently, Westinghouse is decontaminating its own equipment and equipment received from other facilities. In this process, they are generating dry waste, compacting this dry waste with their own compactor, and shipping the dry waste to a licensed burial ground. The proposed actions would allow Westinghouse to receive and process dry waste packaged along with the processed equipment rather than requiring the waste generator to separate it from the equipment and process it themselves. The proposed actions are therefore extensions of the present operations.

Need for Proposed Action

Space at licensed burial facilities is a valuable and limited resource. As a result, the NRC has adopted a policy [3] on low-level waste volume reduction to encourage licensees to establish programs to reduce the volume of waste to be disposed. Westinghouse Electric Corporation's Waltz Mill site currently assists other licensees by accepting equipment for decontamination or reduction. Often it is not feasible, cost effective, nor consistent with ALARA principles for the waste generator to segregate the metallic equipment and dry radioactive wastes at the utility site. This leads to the disposal of equipment without waste reduction or any attempt to decontaminate the equipment for reuse, therefore increasing the amount of material sent to licensed disposal sites. Even when the waste generator separates the dry radioactive wastes, the quantity is often small enough to necessitate long storage periods on site until enough dry waste is collected to hire a mobile compactor to compact the waste before shipment to a proper disposal site. Allowing Waltz Mill to receive and segregate dry radioactive waste will allow the reduction and decontamination of more equipment and make the use of disposal capacity resources more efficient.

Allowing a mobile super compactor to visit the Waltz Mill site, lets Westinghouse further reduce the volume of dry radioactive wastes which will ultimately end up in disposal sites while avoiding the necessity of having a full-time supercompactor constructed at the site.

Alternatives to the Proposed Action

An alternative to allowing the receipt, separation, compaction, and offsite shipment of dry radioactive wastes at the Waltz Mill site would be denial of the application and either allowing these operations to be performed at another central location or continuing to have waste generators separate and dispose of their own dry radioactive waste. Allowing the operations to be done at another location does not offer any

environmental benefits as the environmental impacts would be approximately the same as performing the tasks at Waltz Mill. Allowing current practices to continue does not allow all waste generators to take advantage of waste reduction and Westinghouse's lengthy experience with waste reduction. It also does not allow for the consolidation of some dry radioactive wastes. Another alternative would be to allow dry radioactive waste to be possessed, received, separated, and shipped offsite but not allow the mobile compactor to visit the site. This alternative would have similar impacts as the proposed action, but would limit the usefulness of allowing separation activities because dry radioactive waste volume would not be reduced to its full extent.

Environmental Impacts of the Proposed Action

Dry Active Waste Receipt, Separation, Compaction, and Shipment Operations

Upon receipt of the Waltz Mill site, material will be stored in drums in the T building located in the northeast corner of the site. All removal and separation of the material will be done in the T building. The materials will include obsolete and/or contaminated equipment mixed with compactible dry radioactive waste. No liquid wastes should be associated with the incoming wastes and any found will be either returned to the waste generator, processed through Waltz Mill's existing licensed liquid waste processing facility, or solidified and shipped to a licensed offsite disposal facility. The dry radioactive wastes will be separated from the metallic equipment, sorted, surveyed, and placed in light gauge drums for compaction. The separated equipment will continue through previously licensed DDR operations.

Sorted dry radioactive waste material will be stored indoors or within closed trailers in drums until enough drums are accumulated to make the use of a mobile supercompactor economically feasible. The supercompactor is expected to be used for one week of operations every one to two months. The supercompactor will be parked adjacent to the building housing the DDR facility. The filtered trailer exhaust system will be connected to the existing filtered and monitored DDR facility exhaust system. After compaction, the compacted material is placed directly into DOT 17–H 55 gallon containers for transport to a licensed disposal site.

Solid Waste

Approximately 30 incoming and 20 outgoing shipments are estimated to result annually from this additional workscope.This is an increase of about 10 percent more shipments than are made for current operations. Most of the radioactivity associated with this material is expected to result from surface contamination (<90%) rather than activation of base material. All of the dry radioactive waste will be separated, sorted, surveyed, and placed into light gauge open head caustic soda drums. These containers will be stored either indoors or within closed trailers until compaction is economically feasible. The compacted containers will be placed in a DOT 17–H container for transport and stored until shipment to a licensed disposal site. To avoid the potential of accumulation of these packages and storage of them onsite for extended periods of time, Westinghouse will not accept material from a generator unless Westinghouse has a contract with the shipper providing for the material's return to the generator if Westinghouse cannot ship the material to an approved disposal site within 12 months from the date of receipt.

Gaseous Emissions

The proposed separation, sorting, surveying, and repackaging of the dry radioactive waste will be performed in a radiologically controlled area in the DDR facility at the Waltz Mill site. All air effluents will be exhausted through the existing DDR air effluent treatment system for filtration and monitoring prior to release to the environment. No additional volume of air will be exhausted as a result of the sorting operations. Compaction activities will be done in the mobile compactor. Gaseous emissions will go through the HEPA filtration system in the compactor and continue into the filter system in the T Building. Because the compactor exhaust is connected to the T Building filtration system, it will be monitored and released through the same exhaust system as previously licensed activities. The effluents associated with the compactor operation are estimated to increase total air volume through the T building ventilation system by an additional 4000 cubic feet per mintue which is an increase of about 5 percent over the total air effluents associated with the present radiological activities at the Waltz Mill site. Although the mobile supercompactor uses a self-contained filtration system, Westinghouse plans to also filter the exhaust from the mobile supercompactor through the T building filtration system. Because of the connection between these two filtration systems, it is recommended that procedures be established to ascertain that before each shift begins compactor operation, the interface between the compactor and T building is examined to assure proper interface.

Previous operations at the site have averaged less than 1 percent of MPC based on stack emissions from 1981 to 1987.[4] The effluent concentrations due to the proposed sorting activities are expected to be consistent with the prior information since the nature of the work is the same. Since expanded operations are expected to increase throughput by approximately 10 percent, it is expected that these operations should increase effluent concentration by less than 0 1 percent MPC. Operation of the mobile supercompactor is expected to increase gaseous effluents by less than an additional 10.1 percent MPC. In all, the operations should contribute less than 1×10^{-3} millirem total effective whole body dose equivalent at the site boundary in addition to the dose from the existing airborne effluents from the site. The total dose commitments from the site remain well below the EPA standard of 25 millirem per year to the whole body (40 CFR part 190).

Liquid Effluents

No liquid waste is expected from these proposed activities. However, in the unlikely event that liquid is found in a shipment of waste during sorting, such liquid will either be returned to the generator or characterized and processed through Waltz Mill's existing licensed liquid waste processing system or solidified and shipped to an offsite disposal facility. Because the dry radioactive waste is inspected for liquids while it is sorted, no liquid wastes are expected to reach the supercompactor. In the unlikely case that liquid wastes are compacted, they will be caught in one of two catch pans in the supercompactor and processed as mentioned above. Waltz Mill will continue to operate with its existing action level of 3 mCi per calendar quarter of beta-gamma activity for liquid discharges. Exceeding this limit requires the submittal of a report to the Commission identifying the cause for exceeding the limit and corrective action taken to reduce releases.

No chemicals or other hazardous materials will be utilized in the sorting or compaction operations. Since all dry radioactive waste will be packaged and shipped to other licensed facilities, there will be no liquid effluents containing nonradiological pollutants associated with these proposed activities.

Transportation

As a result of expanded operations, the number of incoming and outgoing trucks from the Waltz Mill site is expected to increase by approximately 10 percent. Therefore, the probability of an accident involving a shipment of radioactive material will also increase.

The environmental effects of transportation accidents involving properly packaged materials have been thoroughly analyzed and documented.[5] These analyses show that the radiological risk from transportation accidents involving radioactive materials does not contribute appreciably to the accident consequences. The increase in shipments would add very little to public risk of injuries or fatalities due to accidents.

Accident Analysis

For the purposes of environmental analysis, the impact from a postulated accidental fire in the stored compacted waste was assessed. This acccident was assessed because it has the greatest potential for release of radioactivity and would bound a spectrum of potential accidents tha could occur. It was conservatively assumed that 300 drums would be stored in a trailer on the grounds of the Waltz Mill site and that all the drums would be affected. Based on previous estimates of flyash production in incinerations, it is assumed that 1.5 percent of the inventory affected would be released to the environment (except all carbon-14 and tritium would be released.).[6] Assuming that the radiological characteristics of the waste processed are similar to those used in the NRC staff's "Environmental Assessment of Babcock & Wilcox Volume Reduction Services Facility, Park Township, Pennsylvania, (Docket 70–384), March 1986," (B&W VRSF EA), a 50-year dose commitment of 19 mrem to the whole body is estimated. Although there are no directly relevant numerical criteria for accident evaluations, the doses calculated are fractional portions of the annual occupational limits prescribed in 10 CFR part 20. Also, these estimated doses do not exceed the U.S. Environmental Protection Agency's (EPA) Protective Action Guides (PAG) of one rem whole body dose. While the estimated doses would not necessitate offsite protective actions should such an accident occur, the fire would be fought to limit dispersal, and the licensee would be expected to take approprite onsite corrective actions that would reduce the likelihood of groundwater contamination. These actions would further reduce the concentrations of radionuclides released to the environment.

Agencies and Persons Contacted

No outside agencies or persons were consulted in the preparation of this environmental assessment.

Summary and Conclusions

As previously stated, Westinghouse has conducted decontamination operations at their Waltz Mill site on their own equipment and that owned by utility generators; Westinghouse has requested amendments to License No. SNM–770 to expand present operations to allow receipt of dry radioactive waste packaged along with contaminated metallic equipment which has already been licensed under a previous amendment. All dry radioactive waste will be separated from the equipment, sorted, surveyed, compacted, and sent offsite to a licensed burial ground. Airborne and liquid releases from the Westinghouse Facility are expected to have an insignificant environemtnal impact. Therefore, a Finding of No Significant Impact is considered appropriate for this proposed action and in accordance with 10 CFR part 51.31, an environmental impact statement is not warranted.

References

(1) "Environmental Impact Appraisal for Renewal of Special Nuclear Materials License SNM–770, Westinghouse Electric Corporation, Waltz Mill Site," U.S. Nuclear Regulatory Commission, October 1982.

(2) "Environmental Assessment—Operation of a Decontamination, Disposal, and Recycle (DDR) Service, U.S. Nuclear Regulatory Commission, June 21, 1985.

(3) U.S. Nuclear Regulatory Commission, "Policy Statement on Low-Level Waste Volume Reduction" *Federal Register*, Vol. 46, No. 200, 16 Oct. 1981.

(4) "Process Description and Analysis of Environmental Impact Associated with Request for Amendment to Permit Receipt, Sorting and Shipment of Offsite Generated Dry Active Waste, Westinghouse Electric Corporation, Waltz Mill Site," Westinghouse Electric Corporation, February 14, 1989.

(5) U.S. Nuclear Regulatory Commisston, "Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes, NUREG–0170 Vols. 1 and 2, Washington, DC, December 1977.

(6) Exxon Nuclear Company, Inc., *Nuclear Fuel Recovery and Recycling Center Preliminary Safety Analysis Report*, Docket 50–564, Appendix 9A.

Finding of No Significant Impact

Based on the foregoing Environmental Assessment, the Commission has determined not to prepare an Environmental Impact Statement and has determined that a Finding of No Significant Impact is appropriate.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this amendment may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the licensee Westinghouse Electric Corporation, ATTN: Mr. A. J. Nardi, Manager, Regulatory Affairs, P.O. Box 355, Bay 268 East, Pittsburgh, Pennsylvania 15230–0355; and must comply with the requirements for requesting a hearing set forth in NRC regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings." These requirements, which the requestor must describe in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request of hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

The November 30, 1987, and February 14, 1989, and supplement dated August 26, 1988, request and the Commission's Finding of No Significant Impact and the Environmental Assessment are available for public inspection and copying at the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 7th day of November 1990.

For the Nuclear Regulatory Commission.

John E. Glenn,

Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 90-26823 Filed 11-13-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-245 50-336 50-423]

Exemption

I

In the Matter of Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Unit Nos. 1, 2 and 3)

Northeast Nuclear Energy Company (NNECO or the licensee) is the holder of Facility Operating License Nos. DPR-21, DPR-65 and NPF-49 which authorize operation of Millstone Nuclear Power Station, Unit Nos. 1, 2 and 3 (Millstone) at steady-state reactor power levels not in excess of 2011 MW(t), 2560 MW(t), and 3411 MW(t), respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facilities consist of a boiling water reactor and two pressurized water reactors located at the licensee's site in New London County, Connecticut.

II

Section 50.54(q) of 10 CFR part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans that meet the standards of 10 CFR 50.47(b) and the requirements of appendix E to 10 CFR part 50. Section IV.F.3 of appendix E requires that each licensee at each site shall exercise with offsite authorities such that the State and local government emergency plans for each operating reactor site are exercised biennially, with full or partial participation by State and local governments, within the plume exposure pathway emergency planning zone (EPZ).

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are (1) Authorized by law, will not present undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Section 10 CFR 50.12(a)(2)(v) indicates that special circumstances exist when an exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.

III

By letter dated April 18, 1990, the licensee requested an exemption from the schedular requirements of section IV.F.3 of appendix E to perform a biennial full participation emergency exercise for the Millstone Nuclear Power Station. Additional information concerning the exemption request was provided by the licensee in a letter dated August 1, 1990. The last full participation biennial emergency preparedness exercise for the Millstone Nuclear Power Station was conducted on November 16, 1988. The licensee requested that the upcoming full participation exercise, originally scheduled for December 1990, be rescheduled for October 1991. All future biennial exercises for Millstone would be conducted on a schedule based on the date the rescheduled exercise is performed.

The special circumstances for the licensee's request results from the unavailability of Federal Emergency Management Agency (FEMA) personnel who would be responsible for evaluating the offsite aspects of the exercise.

Moreover, the licensee states that the granting of this request would alleviate schedular and budgetary constraints imposed on the State of Connecticut and local agencies by the current schedule that requires two full participation exercises in one year (Haddam Neck Plant and Millstone) which typically occur within six months of each other. If the exemption is granted, Haddam Neck Plant and Millstone Nuclear Power Station would have their full participation emergency exercises on alternate years.

The licensee has provided a letter of support for this request from the State of Connecticut's Office of Emergency Management, dated July 23, 1990. The licensee states that local officials have expressed similar support. By a July 30, 1990 letter to the NRC the Federal Emergency Management Agency (FEMA) supports the schedular change for the Millstone Nuclear Power Station.

The July 30, 1990 letter from FEMA to the NRC, granting an exemption from FEMA's schedular requirements in 44 CFR 350.9(c), FEMA states:

> The proposed schedule change results in no adverse public health and safety implications. Millstone and the State of Connecticut have conducted numerous successful exercises since 1982. The State of Connecticut also exercises its offsite emergency response plans with the Connecticut Yankee (Haddam Neck) Nuclear Power Plant on the same biennial cycle as Millstone. Thus, the State's emergency response organization is exercised twice as often as required. This organization was last exercised on May 19, 1990, at Haddam Neck with no deficiencies resulting. Granting NNECO's request for an exemption from the 1990 Millstone exercise until 1991 would allow for annual exercising of the State of Connecticut's plans and promote easier planning for the NRC, FEMA, NNECO, Connecticut Yankee Atomic Power Company, and the State of Connecticut. The next full participation exercise for Millstone would be conducted in October 1991.
>
> The last full participation exercise for the Millstone Nuclear Power Station, the State of Connecticut, and local communities was conducted on November 16, 1988. FEMA identified one deficiency. That deficiency, which related to reception centers, has since been corrected in a remedial exercise conducted on April 23, 1989. Twenty-one areas requiring corrective action were also identified by FEMA in the November 16, 1988 exercise. By a letter dated May 11, 1990, FEMA notified the NRC that based on corrective actions already taken, the radiological emergency preparedness at Millstone was considered adequate to provide reasonable assurance that appropriate measures can be taken offsite to protect the health and safety of the public.
>
> Currently, full participation exercises for the State of Connecticut occur twice on even years. The current exercise cycle has been in place only since 1985, when Hurricane Gloria postponed the scheduled Millstone exercise to 1986. The State of Connecticut Office of Emergency Management, in a July 23, 1990 letter to the licensee, states that the current schedule strains its financial and staff resources. It is further stated in this letter that this schedular change would improve the level of State preparedness by allowing a more efficient training program to be administered at the State and local levels.
>
> The licensee further states that it intends to offer the State and local communities the opportunity to participate in the December 1990 Millstone partial participation exercise for training purposes. It is stated that normally, the State and local communities do participate in the partial participation exercises.
>
> The logistical and resource utilization difficulties created for the licensee and the State and local communities by the current exercise schedule, would be alleviated by the revised schedule and all participating entities could allocate their resources more efficiently.
>
> The NRC has determined that the onsite emergency preparedness capability is satisfactory through the observation of annual onsite exercises and routine inspections. Furthermore, NRC has granted a Category 1 Systematic Assessment of Licensee Performance (SALP) rating in emergency response to Millstone since 1983.

IV

Based on a consideration of the facts presented in section III above and as requested by the licensee, the NRC staff finds that the following factors support the granting of the requested exemption:

a. The revised schedule would alleviate logistical and resource difficulties for all entities involved in full participation exercises at both Millstone and Haddam Neck which currently are conducted in the same year.

b. The State of Connecticut participated in a FEMA evaluated exercise at the Haddam Neck plant in May 1990.

c. The licensee will conduct a partial participation exercise in December 1990 at Millstone. The State of Connecticut and local communities can, if they wish for training purposes, participate in the December 1990 exercise.

d. FEMA and the State of Connecticut support the revised schedule. FEMA granted an exemption to its schedular requirements in a letter dated July 30, 1990.

e. FEMA has determined that the state of offsite emergency preparedness for Millstone is adequate.

f. The licensee has maintained an acceptable level of onsite emergency preparedness.

The licensee has made a good faith effort to comply with the regulations by conducting the required full participation exercises at Millstone with State and local government agencies. The licensee has taken into consideration the various concerns of FEMA, State and local government agencies in rescheduling the Millstone exercise. All affected parties support the proposed exercise schedule change.

V

For these reasons, the Commission has determined that, pursuant to 10 CFR 50.12, (1) the Exemption requested by the licensee's letters dated April 18, and August 1, 1990, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and (2) special circumstances are presented as described above.

Accordingly, the Commission hereby approves the following exemption:

The Millstone Nuclear Power Station, Unit Nos. 1, 2 and 3, are exempt from the requirements of 10 CFR part 50, appendix E, Section IV.F.3, for the conduct of a biennial offsite full participation emergency preparedness exercise in calendar year 1990, provided that such an exercise be conducted in calendar year 1991.

This Exemption will remain in effect unless and until revoked by the Commission.

Pursuant to 10 CFR 51.32, the Commission has previously determined that the granting of this Exemption will have no significant impact on the environment (55 FR 46113).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this October 23, 1990.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-26824 Filed 11-13-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-368]

Entergy Operations, Inc. Arkansas Nuclear One, Unit 2; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commision) is considering approval of Combustion Engineering report CEN-386-P. This report was submitted to the Nuclear Regulatory Commission for review on July 20, 1989, by Arkansas Power and Light Company in support of raising the fuel pin burnup rod-average limit to 60 megawatt days per kilogram of uranium (MWd/kgM) for Arkansas Nuclear One, Unit 2.

Environmental Assessment

Identification of Proposed Action

The Commission's approval of the above referenced report would permit Entergy Operations, Incorporated (the licensee) to continue to burn its Combustion Engineering (CE) 16x16 fuel exceeding the previously approved fuel pin burnup rod average limit. Arkansas Nuclear One, Unit 2 (ANO-2), currently has a fuel pin burnup limit of 52 MWd/kgM based on the NRC's approval of the Combustion Engineering Topical Report CENPD-269-P during 1985. In the license's submittal, it was indicated that during October 1990, while in Cycle 8, ANO-2 would exceed the current burnup limit (about 4 months before the end of the 18 month fuel cycle) and indicated that the CE report would provide technical justification for completing Cycle 8. More recently, the licensee has estimated that the current burnup limit will be exceeded early in November 1990.

The Need for the Proposed Action

NRC approval of this report, as applied to the ANO-2 eighth fuel cycle, will establish a new, higher fuel burnup rod-average limit of 60 MWd/kgM and will permit the licensee to continue to operate the plant through the end of its current fuel cycle without affecting the safe operation of the reactor.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the Combustion Engineering report CEN-386-P and has found it to be acceptable. The safety considerations associated with extended irradiation of nuclear fuel have been evaluated by the NRC staff and the staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse affect on the probability of any accident. The increased burnup may slightly change the mix of fission products that might be released in the event of a serious accident, but such changes would not significantly affect the consequences of serious accidents. Routine radiological effluents are not affected. As a result, there is no increase in individual or cumulative radiation exposure.

The environmental impacts of transportation resulting from the use of higher enrichment and extended irradiation are discussed in the staff assessment entitled "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation." This assessment was published in the Federal Register on August 11, 1988 (53 FR 30355), as corrected on August 24, 1988 (53 FR 32322), in connection with the Shearon Harris Nuclear Power Plant, Unit 1: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of an increse in fuel enrichment of up to 5 weight percent U-235 and irradiation limits of up to 60 Gigawatt Days per Metric Ton (GWD/MT) are either unchanged, or may in fact be reduced from those summarized in table S-4 as set forth in 10 CFR 51.52(c). These findings are applicable to the proposed increase in the burnup rod-average limit for ANO-2. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environemental impact.

With regard to potential nonradiological impacts, the proposed change will in no way affect environs located outside the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed change in the fuel burnup rod-average limit.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the request. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Enviromental Statement for ANO-2 issued in June 1977.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed increase in the fuel pin burnup rod-average limit.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a signficant effect on the quality of the human environment.

For further detail with respect to this action, see the submittal dated July 20, 1989, which is available for public inspection at the Commisson's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Tomlison Library, Arkansas Tech University, Russellville, Arkansas.

Dated at Rockville, Maryland, this 7th day of November 1990.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Project Directorate IV-1, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-26829 Filed 11-13-90; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28597; File No. SR-NSCC-90-22]

Self-Regulatory Organizations; National Securities Clearing Corporation; Filing of Proposed Rule Change Relating to Use and Investment of Members' Clearing Fund Deposits

November 7, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 10, 1990, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC filed the proposed rule change to amend certain aspects of its rules regarding the use of its members' clearing fund deposits. The proposed rule change would permit NSCC to pledge non-defaulting members' clearing fund deposits in excess of required deposits. The proposed rule change would also revise NSCC's clearing fund rules to double the time (from thirty to sixty days) that NSCC has before it must either charge the clearing fund and assess its members for losses or repay loans collateralized by the clearing fund. NSCC also filed the proposed rule change to clarify in what instruments NSCC may invest clearing fund cash.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) The purpose of the proposed rule change is to clarify and amend NSCC rules regarding the use of members' clearing fund deposits. In addition, the proposed rule change makes various technical amendments regarding investment of members' clearing fund deposits.

NSCC rules currently provide that NSCC may pledge cash, securities, and letters of credit deposited by members as collateral for loans made to NSCC, provided that the proceeds of such loans are used for one of the enumerated purposes set out in NSCC Rule 4. Although NSCC has always interpreted this rule as applying to a member's actual deposit, NSCC is revising the rule to clarify and confirm that NSCC may pledge a member's actual clearing fund deposit even if the amount exceeds the member's required clearing fund deposit at the time of the pledge. The proposal merely restates, in a more explicit manner, NSCC's authority to pledge a clearing member's actual clearing fund deposit. Express language is included in the proposed rule change, however, to make clear that it does not affect NSCC's existing obligation to its members to return, or to allow substitution for or withdrawal of, cash, securities, and letters of credit held by NSCC under the circumstances and within the time frames specified in its rules.

Additionally, NSCC rules currently require that loans to NSCC collateralized by the clearing fund be repaid in full within thirty (30) days. If not repaid within that time, the clearing fund must be charged, and members are required to make good the charge against their clearing fund deposit. Based on recent experience, NSCC has determined that there may be circumstances where NSCC may require more than thirty (30) days within which to determine whether and how much to assess the membership in the event of a member liquidation and closeout. Accordingly, the proposed rule change amends rule 4, section 2 to allow sixty (60) days for the repayment of such temporary borrowings.

Finally, NSCC is making two technical changes to Rule 4. The first removes the reference to "bearer" in connection with government and municipal securities. This modification is in keeping with current nomenclature for the types of securities which NSCC will accept as security for members' clearing fund open account indebtedness. The second restates NSCC's ability to invest clearing fund cash in vehicles issued, guaranteed, or secured by the United States, its agencies, or instrumentalities ("government securities"); deposit accounts and certificates of deposit insured by the Federal Deposit Insurance Corporation; or otherwise pursuant to NSCC's practice of investing the cash portion of the clearing fund in repurchase agreements on government securities.

(2) Since the proposed rule change will ensure the ability of NSCC to obtain temporary credit on a timely basis and in a manner consistent with preserving the rights of its members to their collateral, it is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of NSCC. All submissions should refer to File No. SR-NSCC-90-22 and should be submitted by December 5, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-26825 Filed 11-13-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28598; File No. SR-PHILADEP-90-3]

Self-Regulatory Organizations; Philadelphia Depository Trust Company, Inc.; Proposed Rule Change Relating to Implementation of Prompt Transfer Service ("A.P.T.S.")

November 7, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 28, 1990, the Philadelphia Depository Trust Company, Inc. ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Philadep, pursuant to rule 19b-4 of the Act, submits the proposed rule change to establish an automated program for the transfer between Philadep and its transfer agents of certain securities maintained and controlled by Philadep. The proposed program, called "A Prompt Transfer Service" or "A.P.T.S.," will replace part of the present registration procedures of transferring securities to and from Philadep and selected transfer agents.

Under the proposed rule change, the use and maintenance of balance certificate agreements will be adopted as the procedure for evidencing the number of shares or obligations of deposited securities transferred into or out of Philadep by and through the transfer agents. The transfer agents will thereby have the securities in the form of balance certificates registered in Philadep's name. The balance certificates will be adjusted daily to reflect Philadep's withdrawal and deposited activity. The balance certificate agreements will be entered into by all A.P.T.S. transfer agents.

In accordance with the balance certificate agreement, each transfer agent, and/or each corporation acting as its own transfer agent, will be required to maintain an insurance policy in the form of a Bankers Blanket Bond, or similar insurance coverage, in an amount sufficient to cover the loss of any securities received from Philadep or held by the transfer agent on behalf of Philadep. Furthermore, Philadep must be given at least thirty days notice of any cancellation or limitation of such insurance. The transfer agent shall also provide Philadep, upon request, with a copy of the agent's insurance policy. In addition, the balance certificates must be held in a secured area on the transfer agent's premises.

The proposed rule change requires determination pursuant to rules 8c-1(g) and 15c2-1(g) of the Act.

II. Self-Regulatory Organization's Statement of the Propose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to improve and facilitate a safer and more effective mechanism for the transfer of securities between Philadep and its transfer agents and for control over those assets. At the present time, for example, a customer requesting the withdrawal of one hundred shares of a security would require Philadep to send an electronic or written instruction as well as the physical transfer of the

security between Philadep and the transfer agent. However, under the A.P.T.S. program, an electronic instruction would immediately effectuate the withdrawal transfer, thereby alleviating the extra step of physically transferring the security. Thus, the rule change will further Philadep's goal of reducing the exposure of securities to loss in transit between Philadep and transfer agents. The program will eliminate a significant amount of needless movement of securities. A.P.T.S. will also allow securities to be maintained in a form which will no longer permit the ready negotiation of the securities in the event of theft.

The proposed rule change is consistent with section 17A(b)(3)(A) of the Act in that it enhances Philadep's capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible and to safeguard securities and funds in its custody or control or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

Philadep does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants and others

No comments on this particular rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposir g rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of Philadep. All submissions should refer to File No. SR-PHILADEP-90-03 and should be submitted by December 5, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-26826 Filed 11-13-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17844; 811-6007]

First Investors Aggressive High Yield Fund, Inc.; Application for Deregistration

November 6, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: First Investors Aggressive High Yield Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on September 25, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 4, 1990 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 120 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Staff Attorney, (202) 272-3035, or Max Berueffy, Branch Chief, (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 738-1400).

Applicant's Representations

1. Applicant registered under the Act as an open-end, diversified management investment company on April 10, 1990. On that date, Applicant also filed a registration statement on Form N-1A to register an indefinite number of its common shares. That registration statement became effective on July 10, 1990.

2. On May 11, 1990, Applicant filed a registration statement on Form N-14. That registration statement related to the proposed reorganization of First Investors High Yield Fund, Inc. ("High Yield"), whereby the assets of High Yield would be transferred to the Applicant and to First Investors Corporate Fund, Inc. The proposed reorganization was abandoned, and on September 21, 1990, the Commission granted Applicant's request to withdraw the registration statement on Form N-14.

3. Applicant is a corporation organized and existing under Maryland law.

4. Applicant has not issued any of its securities. Applicant's sole asset is $100,000 initial capital contributed by First Investors Management Company, Inc. ("Management Company"), Applicant's investment adviser, although no shares were issued to Management Company therefor. Upon the winding-up of Applicant's affairs, the $100,000 initial capital contribution will be distributed to Management Company.

5. Applicant has no debts or liabilities.

6. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of the Applicant.

7. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant is not now engaged, and does not propose to engage, in any business activity other than that needed to wind-up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-26781 Filed 11-13-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17847; 811-6006]

First Investors Aggressive Income Fund, Inc.; Application for Deregulation

November 6, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: First Investors Aggressive Income Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on September 25, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 4, 1990 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 120 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Staff Attorney, (202) 272-3035, or Max Berueffy, Branch Chief, (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 738-1400).

Applicant's Representations

1. Applicant registered under the Act as an open-end, diversified management investment company on April 9, 1990. On that date, Applicant also filed a registration statement on Form N-1A to register an indefinite number of its common shares. That registration statement became effective on July 10, 1990.

2. On May 7, 1990, Applicant filed a registration statement on Form N-14. The registration statement related to the proposed reorganization of First Investors Fund For Income, Inc. ("Income Fund"), whereby the assets of Income Fund would be transferred to the Applicant and to First Investors Bond Fund, Inc. The proposed reorganization was abandoned, and on September 21, 1990, the Commission granted Applicant's request to withdraw the registration statement on Form N-14.

3. Applicant is a corporation organized and existing under Maryland law.

4. Applicant has not issued any of its securities. Applicant's sole asset is $100,000 initial capital contributed by First Investors Management Company, Inc. ("Management Company"), Applicant's investment adviser, although no shares were issued to Management Company therefor. Upon the winding-up of Applicant's affairs, the $100,000 initial capital contribution will be distributed to Management Company.

5. Applicant has no debts or liabilities.

6. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of the Applicant.

7. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant is not now engaged, and does not propose to engage, in any business activity other than that needed to wind-up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-26782 Filed 11-13-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17845; 811-6005]

First Investors Bond Fund, Inc.; Application for Deregistration

November 6, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: First Investors Bond Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on September 25, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 4, 1990 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 120 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Staff Attorney, (202) 272-3035, or Max Berueffy, Branch Chief, (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 738-1400).

Applicant's Representations

1. Applicant registered under the Act as an open-end, diversified management investment company on April 9, 1990. On that date, Applicant also filed a registration statement on Form N-1A to register an indefinite number of its common shares. That registration statement became effective on July 10, 1990.

2. On May 7, 1990, Applicant filed a registration statement on Form N-14. That registration statement related to the proposed reorganization of First Investors Fund For Income, Inc. ("Income Fund"), whereby the assets of Income Fund would be transferred to the Applicant and to First Investors

Aggressive Income Fund, Inc. The proposed reorganization was abandoned, and on September 21, 1990, the Commission granted Applicant's request to withdraw the registration statement on Form N–14.

3. Applicant is a corporation organized and existing under Maryland law.

4. Applicant has not issued any of its securities. Applicant's sole asset is $100,000 initial capital contributed by First Investors Management Company, Inc. ("Management Company"), Applicant's investment adviser, although no shares were issued to Management Company therefor. Upon the winding-up of Applicant's affairs, the $100,000 initial capital contribution will be distributed to Management Company.

5. Applicant has no debts or liabilities.

6. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of the Applicant.

7. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant is not now engaged, and does not propose to engage, in any business activity other than that needed to wind-up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–26783 Filed 11–13–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17846; 811–6004]

First Investors Corporate Fund, Inc.; Application for Deregistration

November 6, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: First Investors Corporate Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application on Form N–8F was filed on September 25, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 4, 1990 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 120 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Staff Attorney, (202) 272–3035, or Max Berueffy, Branch Chief, (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 738–1400).

Applicant's Representations

1. Applicant registered under the Act as an open-end, diversified management investment company on April 9, 1990. On that date, Applicant also filed a registration statement on Form N–1A to register an indefinite number of its common shares. That registration statement became effective on July 10, 1990.

2. On May 11, 1990, Applicant filed a registration statement on Form N–14. That registration statement related to the proposed reorganization of First Investors High Yield Fund, Inc. ("High Yield"), whereby the assets of High Yield would be transferred to the Applicant and to First Investors Aggressive High Yield Fund, Inc. The proposed reorganization was abandoned, and on September 21, 1990, the Commission granted Applicant's request to withdraw the registration statement on Form N–14.

3. Applicant is a corporation organized and existing under Maryland law.

4. Applicant has not issued any of its securities. Applicant's sole asset is $100,000 initial capital contributed by First Investors Management Company, Inc. ("Management Company"), Applicant's investment adviser, although no shares were issued to Management Company therefor. Upon the winding-up of Applicant's affairs, the $100,000 initial capital contribution will be distributed to Management Company.

5. Applicant has no debts or liabilities.

6. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of the Applicant.

7. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant is not now engaged, and does not propose to engage, in any business activity other than that needed to wind-up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–26784 Filed 11–13–90; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0095]

Southern Tier Capital Corp., Surrender of License

Notice if hereby given that Southern Tier Capital Corporation, 55 South Main Street, Liberty, New York 12754 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (The Act). Southern Tier Capital Corporation was licensed by the Small Business Administration June 28, 1961.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on August 31, 1990, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 11, 1990.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 90–26845 Filed 11–13–90; 8:45 am]

BILLING CODE 8025–01–M

Region IV Advisory Council Meeting; Alabama

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Birmingham, will hold a public meeting from 10 a.m. to 1 p.m. on Friday, December 7, 1990, in the Conference Room of the Birmingham District Office, 2121 8th Avenue, North, suite 200, Birmingham, Alabama, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James C. Barksdale, District Director, U.S. Small Business Administration, 2121 8th Avenue, North, suite 200, Birmingham, Alabama 35203, phone (205) 731–1341.

Dated: November 6, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90–26846 Filed 11–13–90; 8:45 am]

BILLING CODE 8025–01–M

Region IX Advisory Council Meeting; California

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Los Angeles, will hold a public meeting at 11 a.m. on Tuesday, December 11, 1990, at the Verdugo Club, 400 West Glenoaks Boulevard, Glendale, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call M. Hawley Smith, District Director, U.S. Small Business Administration, 330 N. Brand Blvd., suite 1200, Glendale, California 91203, phone (213) 894–2977.

Dated: November 6, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90–26847 Filed 11–13–90; 8:45 am]

BILLING CODE 8025–01–M

Region III Advisory Council Meeting; Maryland

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Baltimore, will hold a public meeting from 9 a.m. to 1 p.m. on Tuesday, November 27, 1990, at the Maryland Communication Center, Legg Mason Tower, suite 2200, 111 South Calvert Street, Baltimore, Maryland, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Charles J. Gaston, District Director, U.S. Small Business Administration, 10 North Calvert Street, 3rd Floor, Baltimore, Maryland 21202, phone (301) 962–2054.

Dated: November 6, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90–26848 Filed 11–13–90; 8:45 am]

BILLING CODE 8025–01–M

Region III Advisory Council Meeting; West Virginia

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Clarksburg, will hold a public meeting beginning at 1 p.m. on Thursday, November 29, 1990 and ending at 2 p.m. on Friday, November 30, 1990, at the Appalachian Power Company Building, Beckley, West Virginia, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Marvin P. Shelton, District Director, U.S. Small Business Administration, P.O. Box 1608, Clarksburg, West Virginia 26302–1608, phone (304) 623–5631.

Dated: November 6, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90–26849 Filed 11–13–90; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended November 2, 1990

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket No.: 47234

Date filed: October 30, 1990.
Parties: Members of the International Air Transport Association.
Subject: Middle East-Africa Expedited Resolutions.
Proposed Effective Date: December 1, 1990 and March 1, 1991.

Docket No. 47238

Date filed: November 1, 1990.
Parties: Members of the International Air Transport Association.
Subject: Comp Reso/P0616 dated October 15, 1990.
Proposed Effective Date: November 15 and December 1, 1990.

Docket No. 47239

Date filed: November 1, 1990.
Parties: Members of the International Air Transport Association.
Subject: Comp Reso/C0437 dated October 15, 1990.
Proposed Effective Date: December 15, 1990.

Docket No. 47240

Date filed: November 1, 1990.
Parties: Members of the International Air Transport Association.
Subject: TC3-Central/South America Expedited Reso 074rr.
Proposed Effective Date: December 1, 1990.

Docket No. 47241

Date filed: November 1, 1990.
Parties: Members of the International Air Transport Association.
Subject: Japan-North America Expedited Resos.
Proposed Effective Date: December 1, 1990 & January 1, 1991.

Docket No. 47242

Date filed: November 1, 1990.
Parties: Members of the International Air Transport Association.
Subject: Europe-Middle East Expedited Resolutions.
Proposed Effective Date: December 1, 1990 thru March 1, 1991.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90–26787 Filed 11–13–90; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended November 2, 1990

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number 47236

Date filed: October 30, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 28, 1990.
Description: Application of Air Jamaica Limited, pursuant to section 402 of the Act, and subpart Q of the Regulations.

requests the Department to amend Order 89-3-74 to allow the substitution of Orlando, Florida, for Tampa, Florida, under Air Jamaica's Route 1. Air Jamaica seeks to initiate this service on or after December 1, 1990.

Docket Number 47237

Date filed: November 1, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 29, 1990.
Description: Joint Application of United Air Lines, Inc. and Pan American World Airways, Inc., pursuant to section 401(h) of the Act, and subpart Q of the Regulations requests the Department to approve (a) the transfer to United of Pan Am's present certificate authority to serve points in the United Kingdom (except Manchester) from any point in the U.S. except Detroit and Miami, including the right to serve points in third countries beyond the United Kingdom; and (b) the transfer to United of Pan Am's present certificate authority to operate international scheduled services between certain U.S. gateways (Washington-Baltimore, Chicago, Los Angeles, San Francisco-Oakland-San Jose and Seattle), on the one hand, and points outside the U.S. (except points in Bermuda, the Bahamas, Central and South America, Mexico, and the Caribbean, and between Washington and Frankfurt), on the other hand.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 90-26786 Filed 11-13-90; 8:45 am]
BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

On August 1, 1990, Mr. Warren W.T. Fujimori petitioned NHTSA to conduct a defect investigation into alleged transmission noise and an alleged stalling problem with the 1988 Subaru Justy RS 4WD model vehicle. The agency declined to consider the transmission noise problem because it is not safety-related. The agency did conduct a technical review of the alleged stalling problem. As a result of that review, the petition is denied.

There were 3,895 1988 Subaru Justy RS 4WD vehicles imported for sale into the United States. Mr. Fujimori's complaint of engine stalling in traffic is the only known owner complaint of that problem. There were six reports of engine stalling reported to the manufacturer by its field personnel. Each of these reports indicated a different cause for the stalling. One was caused by overheating due to a stuck thermostat, one by a massive oil leak, one by an improperly adjusted idle speed, and three by loose electrical connections at different locations. The cause of Mr. Fujimori's alleged stalling problem has not been identified, while in each of the other six cases the cause was clearly indicated. Accordingly, Mr. Fujimori's complaint is an isolated incident and is not indicative of a safety-related defect trend.

After considering the available information, there is no reasonable possibility that an order concerning the notification and remedy of a safety-related defect in relation to the petitioner's allegations would be issued at the conclusion of an investigation. Since no evidence of a safety-related defect trend was discovered, further commitment of resources to determine whether such a trend may exist does not appear to be warranted. Therefore, the petition was denied.

Authority: Section 124, Public Law 93-492, 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on November 7, 1990.

Michael B. Brownlee,
Acting Associate Administrator for Enforcement.
[FR Doc. 90-26810 Filed 11-13-90; 8:45 am]
BILLING CODE 4910-59-M

Saint Lawrence Seaway Development Corporation

Advisory Board Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 2 p.m., December 11, 1990, at the Corporation's Administration Headquarters, room 5424, 400 Seventh Street, SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than, December 4, 1990, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC 20590; 202/366-0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on November 6, 1990.

Marc C. Owen,
Advisory Board Liaison.
[FR Doc. 90-26734 Filed 11-13-90; 8:45 am]
BILLING CODE 4910-61-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 6, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0093
Form Number: CF 300
Type of Review: Extension
Title: Bonded Warehouse Proprietor's Submission
Description: CF 300 is prepared by bonded warehouse proprietor's and submitted to the Customs Service annually. The document reflects all bonded merchandise entering, released and manipulated. This includes beginning and ending inventories.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 1,297
Estimated Burden House Per Response/Recordkeeping: 24 hours, 18 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/Reporting Burden: 31,541 hours

Clearance Officer: Dennis Dore (202) 535-9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports, Management Officer
[FR Doc. 90-26812 Filed 11-13-90; 8:45 am]
BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 220
Wednesday, November 14, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, November 15, 1990, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Waterbed Petition, CP 89-4

The Commission will consider a petition submitted by the Consumer Federation of America, the New York State Attorney General, and the American Academy of Pediatrics requesting a mandatory labeling standard for adult-size waterbeds.

For a Recorded Message Containing the Latest Agenda Information, Call: 301-492-5709

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Dated: November 8, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90-26955 Filed 11-9-90; 1:49 pm]

BILLING CODE 6355-01-M

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, November 20, 1990.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Docket No. AB-55 (Sub-No. 352), *CSX Transportation, Inc.—Abandonment—in Ben Hill and Irwin Counties, GA*

Ex Parte No. MC-196, *Transportation Claims and Prevention Council, Inc.—Petition to Institute Rulemaking on Contract Carriers*

Ex Parte No. MC-197, *Limitation of Consumption of Alcoholic Beverages on Buses*

Finance Docket No. 30965 (Sub-No. 1) and (Sub-No. 2), *Delaware & Hudson Railway Company—Lease and Trackage Rights Exemption—Springfield Terminal Railway Company*

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of External Affairs, Telephone: (202) 275-7252, TDD: (202) 275-1721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-26975 Filed 11-13-90; 3:57 pm]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 12, 19, 26, and December 3, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE DISCUSSED

Week of November 12

Friday, November 16

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 19—Tentative

Wednesday, November 21

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 26—Tentative

There are no meetings scheduled for the Week of November 26

Week of December 3—Tentative

Friday, December 7

10:00 a.m.
Briefing on Level of Design Detail for Part 52 (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492-0290

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: November 8, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90-26961 Filed 11-9-90; 2:09 pm]

BILLING CODE 7590-01-M

POSTAL SERVICE

Board of Governors, Vote to Close Meeting

At its meeting on November 5, 1990, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for December 3, 1990, in New Orleans, Louisiana. The members will discuss possible strategies in collective bargaining negotiations.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Griesemer, Hall, Mackie, Nevin, Pace and Setrakian; Postmaster General Frank, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Hughes.

The Board determined that pursuant to section 552b(c) (3) and (9) of title 5, United States Code, and § 7.3 (b) and (c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)) because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code.

In accordance with section 552b(f)(1) of title 5, United States Code, and § 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c) (3) and (9) of title 5, United States Code; § 410(c)(3) of title 39 United States Code; and § 7.3(b), (c) and (i) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 90-26974 Filed 11-9-90; 3:57 pm]

BILLING CODE 7710-12-M

federal register

Wednesday
November 14, 1990

Part II

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 24, et al.
Change in Responsibility for Enforced Collection of Certain Alcohol, Tobacco, and Firearms Taxes; Final Rule

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 24, 25, 70, 170, 179, 194, 197, 250, 270, 275, 285, 290, and 296

[T.D. ATF-301]

Change in Responsibility for Enforced Collection of Certain Alcohol, Tobacco, and Firearms Taxes

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This Treasury decision will transfer from the Internal Revenue Service (IRS) to ATF the functions associated with enforced collection of delinquencies of the special (occupational) tax, the domestic excise tax on distilled spirits, wine, malt beverages, tobacco products, cigarette papers and tubes, and the firearms tax imposed by subtitle E of the Internal Revenue Code. Furthermore, certain procedural and administrative rules are being adopted from IRS regulations in 26 CFR 301 to ATF regulations in 27 CFR part 70. In addition, changes in part 70 are being made to reflect amendents made to 26 U.S.C. 6651 and 6656 by the Omnibus Budget Reconciliation Act, Public Law 101-239.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Jackie White, Coordinator, Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, (202) 566-7602.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1972, ATF was established by Treasury Department Order No. 120-01 (formerly Order No. 221). This Order transferred from IRS to the newly-formed Bureau the functions, powers and duties relating to alcohol, tobacco, firearms, and explosives laws. The Order specifically stated that "all existing activities relating to the collection, processing, depositing, or accounting for taxes * * * shall continue to be performed by the Commissioner of Internal Revenue to the extent not now performed by the Alcohol, Tobacco and Firearms Division until the Director shall otherwise provide with the approval of the Secretary." ATF assumed responsibility for the collection of taxes imposed by subtitle E of the Internal Revenue Code in July, 1987, by means of T.D. ATF-251, and adopted provisions in 27 CFR part 70 similar to the portions of 26 CFR part 301 which concerned deposit and assessment of taxes. This final rule will transfer the remaining collection functions with respect to taxes administered by ATF. These functions include the use of liens and levies in enforcement of the taxes under ATF's jurisdiction. ATF is adopting regulations similar to those used by IRS in support of enforced collection.

In addition to adopting regulations on enforced collection activities, this final rule also recodifies additional regulations from 26 CFR relating to the examination, assessment, and collection functions. ATF has now determined that these additional regulations are applicable to its tax collection activities.

Existing sections in 27 CFR part 70 will be renumbered to allow insertion of new sections. These sections are redesignated by means of a table in paragraph 13. In some cases, existing sections of 27 CFR part 70 have been expanded to include material related to enforced collections, and amended to show new titles of responsible officials where appropriate. Each section in title 27 of the Code of Federal Regulations which refers to a section in 26 CFR part 301 which has been adopted in 27 CFR part 70 or to a section of 27 CFR part 70 which has been redesignated has been changed to reflect the new reference. References to the old section numbers within 27 CFR part 70 have been updated to show the new section numbers.

Administrative Procedure Act

Because this final rule is a rule of agency management that merely transfers existing requirements relating to enforced collection of taxes to ATF from the Internal Revenue Service, it is found to be unnecessary to issue this Treasury decision for notice and public procedure or subject to a delayed effective date pursuant to 5 U.S.C. 553(a)(2), (b)(B) and (d)(3).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because a general notice of proposed rulemaking is not required under 5 U.S.C. 553 or any other law.

Executive Order 12291

Because this rule relates to agency organization, management and procedure, the provisions of Executive Order 12291 do not apply.

Paperwork Reduction Act

This final rule does not affect any recordkeeping or reporting requirements.

Drafting Information

The principal author of this document is Marjorie Dundas of the Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 25

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 170

Alcohol and alcoholic beverages, Authority delegations, Claims, Customs duties and inspection, Disaster assistance, Excise taxes, Labeling, Liquors, Penalties, Reporting and recordkeeping requirements, Surety bonds, Wine.

27 CFR Part 179

Administrative practice and procedure, Arms and munitions, Authority delegation, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation.

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Wine.

27 CFR Part 197

Alcohol and alcoholic beverages, Authority delegations, Claims, Drugs, Excise taxes, Foods, Spices and flavorings, Surety bonds, Reporting and recordkeeping requirements.

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Electronic fund transfers, Excise taxes, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Puerto Rico, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 285

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses.

27 CFR Part 296

Cigarette papers and tubes, Cigars and cigarettes, Claims, Disaster assistance, Excise taxes, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

Issuance

Title 27 CFR chapter I is amended as follows:

PART 19—[AMENDED]

Par. 1. The authority citation for part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5041, 5061, 5062, 5066, 5101, 5111–5113, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9303, 9304, 9306.

§ 19.52 [Amended]

Par. 2. Section 19.52(a) is amended by removing the reference to "§ 70.105" in the last sentence and replacing it with "§ 70.113".

§ 19.519 [Amended]

Par. 3. Section 19.519 is amended by removing the two references to "§ 70.66" in the second and third sentences and replacing them with "§ 70.61".

§ 19.520 [Amended]

Par. 4. Section 19.520 is amended by removing the reference to "26 CFR 301.6676–1" in the last sentence and replacing it with "§ 70.113 of this chapter".

PART 24—[AMENDED]

Par. 5. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 24.45 [Amended]

Par. 6. Section 24.45 is amended by removing the reference to "§ 70.105" in the last sentence and replacing it with "§ 70.113".

§ 24.276 [Amended]

Par. 7. Section 24.276 is amended by removing the reference to "§ 70.66" in the last sentence and replacing it with "§ 70.61".

PART 25—[AMENDED]

Par. 8. The authority citation for part 25 continues to read as follows:

Authority: 19 U.S.C. 81c, 1309; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

§ 25.121 [Amended]

Par. 9. Section 25.121 is amended by removing the reference to "§ 70.105" in the last sentence and replacing it with "§ 70.113".

§ 25.168 [Amended]

Par. 10. Section 25.168 is amended by removing the reference to "26 CFR 301.6676–1" in the second sentence and replacing it with "§ 70.113 of this chapter".

§ 25.173 [Amended]

Par. 11. Section 25.173(b) is amended by removing the reference to "§ 70.66" and replacing it with "§ 70.61 of this chapter".

PART 70—[AMENDED]

Par. 12. The authority citation for part 70 is revised to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656, 6657, 6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7606–7610, 7622, 7623, 7653, 7805.

Par. 13. Part 70 is amended by redesignating the sections in the left-hand column below as the sections in the right-hand column:

Old section No.	New section No.
70.25	70.30
70.26	70.31
70.27	70.32
70.28	70.33
70.35	70.40
70.36	70.41
70.41	70.461
70.42	70.462
70.51	70.65
70.61	70.42
70.62	70.62
70.63	70.71
70.64	70.72
70.65	70.73
70.66	70.61
70.67	70.82
70.68	70.64
70.70	70.121
70.71	70.122
70.72	70.123
70.73	70.124
70.74	70.125
70.75	70.126
70.76	70.131
70.79	70.221
70.80	70.222
70.81	70.223
70.82	70.261
70.83	70.262
70.84	70.263
70.85	70.264
70.86	70.265
70.87	70.266
70.88	70.251
70.89	70.252
70.100	70.101
70.101	70.102
70.102	70.103
70.103	70.111
70.104	70.112
70.105	70.113
70.106	70.114
70.107	70.311
70.108	70.75
70.109	70.321
70.111	70.411
70.112	70.412
70.113	70.413
70.114	70.414
70.115	70.415
70.116	70.416
70.117	70.417
70.118	70.418
70.119	70.419
70.120	70.420
70.131	70.431
70.132	70.432
70.133	70.433
70.134	70.434
70.135	70.435
70.136	70.436
70.137	70.437
70.138	70.438
70.141	70.441
70.142	70.442
70.143	70.443
70.144	70.444
70.145	70.445
70.146	70.446
70.147	70.447
70.148	70.448
70.149	70.449
70.150	70.450
70.151(a)	70.482
70.151(b)	70.483
70.151(c)	70.484
70.152	70.471

Par. 13a. The table of contents for part 70 is revised to read as follows:

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Subpart A—Scope

Sec.
70.1 General.

Subpart B—Definitions

70.11 Meaning of terms.

Subpart C—Discovery of Liability and Enforcement of Laws

Examination and Inspection

70.21 Canvass of regions for taxable persons and objects.
70.22 Examination of books and witnesses.
70.23 Service of summonses.
70.24 Enforcement of summonses.
70.25 Special procedures for third-party summonses.
70.26 Third-party recordkeepers.
70.27 Right to intervene; right to institute a proceeding to quash.
70.28 Summonses excepted from 26 U.S.C. 7609 procedures.
70.29 Suspension of statutes of limitation.
70.30 Time and place of examination.
70.31 Entry of premises for examination of taxable objects.
70.32 Examination of records and objects.
70.33 Authority of enforcement officers of the Bureau.
70.34 Listing by regional directors (compliance) of taxable objects owned by nonresidents of ATF regions.

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70.40 Authority to administer oaths and to certify.
70.41 Rewards for information relating to violations of tax laws administered by the Bureau.
70.42 Returns prepared or executed by regional directors (compliance) or by other ATF officers.

Subpart D—Procedural and Administrative Rules Relating To Collection of Excise and Special (Occupational) Taxes

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70.52 Signature presumed authentic.

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70.63 Computations on returns or other documents.
70.64 Receipt for taxes.
70.65 Use of commercial banks.

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Additions to the Tax and Additional Amounts

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70.143 Definitions.
70.144 Special rules.
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Par. 14. Section 70.1(c) is revised to read as follows:

§ 70.1 General.

* * * * *

(c) The preparing or executing of returns; deposits; payment on notice and demand; assessment; abatements, credits and refunds; limitations on assessment; limitations on credit or refund; periods of limitation in judicial proceedings; interest; additions to the tax, additional amounts, and assessable penalties; enforced collection activities; authority for establishment, alteration, and distribution of stamps, marks, or labels; jeopardy assessment of alcohol, tobacco and firearms taxes, and registration of persons paying a special tax.

* * * * *

Par. 15. Section 70.11 is amended by adding definitions for "Chief, Tax Processing Center", "Enforced collection", "Levy", "Lien", "Person", "Provisions of 26 U.S.C. enforced and administered by the Bureau", and "Seizure" and by revising the definition for "Regional director (compliance)" to read as follows:

§ 70.11 Meaning of terms.

* * * * *

Chief, Tax Processing Center. The ATF officer principally responsible for administering regulations in this part concerning special (occupational) tax, and also responsible for filing tax liens and issuing third-party levies, and for disbursing money due to taxpayers under the provisions of 26 U.S.C. enforced and administered by the Bureau.

* * * * *

Enforced collection. Collection of taxes when a taxpayer neglects or refuses to pay voluntarily. Includes such administrative measures as liens and levies.

* * * * *

Levy. The taking of property by seizure and sale or by collection of money due to the debtor, such as wages.

Lien. A charge upon real or personal property for the satisfaction of some debt or performance of an obligation.

* * * * *

Person. An individual, a trust, estate, partnership, association or other unincorporated organization, fiduciary, company, or corporation, or the District of Columbia, a State, or a political subdivision thereof (including a city, county, or other municipality).

Provisions of 26 U.S.C. enforced and administered by the Bureau. 26 U.S.C. subtitle E (and subtitle F as it relates to subtitle E).

Regional director (compliance). The ATF regional official principally responsible for administering regulations in this part concerning commodity taxes imposed by the provisions of 26 U.S.C. enforced and administered by the Bureau, and for collecting tax by levy (other than third-party levy).

Seizure. The act of taking possession of property to satisfy a tax liability or by virtue of an execution.

* * * * *

Par. 16. Section 70.22(b) is amended by adding a reference to § 70.302 at the end of the paragraph, to read as follows:

§ 70.22 Examination of books and witnesses.

* * * * *

(b) * * * See § 70.302 of this part for rules concerning payments to certain persons who are summoned to give information to the Bureau under 26 U.S.C. 7602 and this section.

* * * * *

Par. 17. The first sentence of § 70.23(b)(2) is revised to read as follows:

§ 70.23 Service of summonses.

* * * * *

(b) * * *

(2) Chiefs, field operations, area supervisors, inspectors, regional audit managers and auditors, Compliance Operations; special agents, Internal Affairs; and all special agents, Law Enforcement. * * *

Par. 18. Sections 70.25 through 70.29 are added to read as follows:

§ 70.25 Special procedures for third-party summonses.

(a) When the Bureau summons the records of persons defined by 26 U.S.C. 7609(a)(3) as "third-party recordkeepers", the person about whom information is being gathered must be notified in advance, except when:

(1) The summons is served on the person about whom information is being gathered, or any officer or employee of such person, or

(2) The summons is served to determine whether or not records of the business transactions or affairs of an identified person have been made or kept, or

(3) The summons does not identify the person with respect to whose liability the summons is issued (a "John Doe" summons issued under the provisions of 26 U.S.C. 7609(f)), or

(4) The Director petitions, and the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying or production of records.

(b) Within 3 days of the day on which the summons was served, the notice required by paragraph (a) of this section shall be served upon the person entitled to notice, or mailed by certified or registered mail to the last known address of such person, or, in the absence of a last known address, left with the person summoned. No examination of any records required to be produced under a summons as to which notice is required under paragraph (a) of this section may be made:

(1) Before the close of the 23rd day after the day notice with respect to the summons is given in the manner provided in this paragraph, or

(2) Where a proceeding under paragraph (c) of this section was begun within the 20-day period referred to in that paragraph and the requirements of paragraph (c) of this section have been met, expect in accordance with an order of the court having jurisdiction of such proceeding or with the consent of the person beginning the proceeding to quash.

(c) If the person about whom information is being gathered has been given notice, that person has the right to institute, until and including the 20th day following the day such notice was served on or mailed, by certified or registered mail, to such notified person, a proceeding to quash the summons. During the time the validity of the summons is being litigated, the statutes of limitation are suspended under 26 U.S.C. 7609(e). Title 26 U.S.C. 7609 does not restrict the authority under 26 U.S.C. 7602 (or under any other provision of law) to examine records and witnesses without serving a summons and without giving notice of an examination.

(26 U.S.C. 7609)

§ 70.26 Third-party recordkeepers.

(a) *Definitions*—(1) *Accountant.* A person is an "accountant" under 26 U.S.C. 7609(a)(3)(F) for purposes of determining whether that person is a third-party recordkeeper if the person is registered, licensed, or certified under State law as an accountant.

(2) *Attorney.* A person is an "attorney" under 26 U.S.C. 7609(a)(3)(E) for purposes of determining whether that person is a third-party recordkeeper if the person is admitted to the bar of a State or the District of Columbia.

(3) *Credit cards—(i) Person extending credit through credit cards.* The term "person extending credit through credit cards or similar devices" under 26 U.S.C. 7609(a)(3)(C) generally includes any person who issues a credit card. It does not include a seller of goods or services that honors credit cards issued by other parties but does not extend credit on the basis of credit cards or similar devices issued by itself.

(iii) *Similar devices to credit cards.* An object is a "similar device" to a credit card under 26 U.S.C. 7609(a)(3)(C) only if it is physical in nature, such as a coupon book, a charge plate, or a letter of credit. Thus, a person who extends credit by requiring credit customers to sign sales slips without requiring use of physical objects issued by that person is not a third-party recordkeeper under 26 U.S.C. 7609(a)(3)(C).

(b) *When third-party recordkeeper status arises.* A person is a "third-party recordkeeper" with respect to a given set of records only if the person made or kept the records in the person's capacity as a third-party recordkeeper. Thus, for instance, an accountant is not a third-party recordkeeper (by reason of being an accountant) with respect to the accountant's records of a sale of property by the accountant to another person. Similarly, a credit card issuer is not a third-party recordkeeper (by reason of being a person extending credit through the use of credit cards or similar devices) with respect to:

(1) Records relating to noncredit card transactions, such as a cash sale by the issuer to a holder of the issuer's credit card; or

(2) Records relating to transactions involving the use of another issuer's credit card.

(c) *Duty of third-party recordkeeper—(1) In General.* Upon receipt of a summons, the third-party recordkeeper ("recordkeeper") must begin to assemble the summoned records. The recordkeeper must be prepared to produce the summoned records on the date which the summons states the records are to be examined regardless of the institution or anticipated institution of a proceeding to quash or the recordkeeper's intervention (as allowed under 26 U.S.C. 7609(a)(3)(C)) into a proceeding to quash.

(2) *Disclosing recordkeepers not liable—* (i) *In general.* A recordkeeper, or an agent or employee thereof, who makes a disclosure of records as required by this section, in good faith reliance on the "Certificate of the Secretary" (as defined in paragraph (c)(2)(ii) of this section) or an order of a court requiring production of records, will not be liable for such disclosure to any customer, or to any party with respect to whose tax liability the summons was issued, or to any other person.

(ii) *Certificate of the Secretary.* The Director may issue to the recordkeeper a "Certificate of the Secretary" stating both:

(A) That the 20-day period, within which a notified person may institute a proceeding to quash the summons has expired; and

(B) That no proceeding has been properly instituted within that period.

The Director may also issue a "Certificate of the Secretary" to the recordkeeper if the taxpayer, with respect to whose tax liability the summons was issued, expressly consents to the examination of the records summoned.

(3) *Reimbursement of costs.* Recordkeepers may be entitled to reimbursement of their costs of assembling and preparing to produce summoned records, to the extent allowed by 26 U.S.C. 7610, even if the summons ultimately is not enforced.

(26 U.S.C. 7609)

§ 70.27 Right to intervene; right to institute a proceeding to quash.

(a) *Notified person.* Under 26 U.S.C. 7609(a), the Bureau must give a notice of summons to any person, other than the person summoned, who is identified in the description of the books and records contained in the summons in order that such person may contest the right of the Bureau to examine the summoned records by instituting a proceeding to quash the summons. Thus, if the Bureau issues a summons to a bank requesting checking account records of more than one person all of whom are identified in the description of the records contained in the summons, then all such persons are notified persons entitled to notice under 26 U.S.C. 7609(a). Therefore, if the Bureau requests the records of a joint bank account of A and B, both of whom are named in the summons, then both A and B are notified persons entitled to notice under 26 U.S.C. 7609(a).

(b) *Right to institute a proceeding to quash—(1) In general.* Title 26 U.S.C. 7609(b) grants a notified person the right to institute a proceeding to quash the summons in the United States district court for the district within which the person summoned resides or is found. Jurisdiction of the court is based on 26 U.S.C. 7609(b). The act of filing a petition in district court does not in and of itself institute a proceeding to quash under 26 U.S.C. 7609(b)(2). Rather, the filing of the petition must be coupled with notice as required by 26 U.S.C. 7609(b)(2)(B).

(2) *Elements of institution of a proceeding to quash.* In order to institute a proceeding to quash a summons, the notified person (or the notified person's agent, nominee, or other person acting under the direction or control of the notified person) must, not later than the 20th day following the day the notice of the summons was served on or mailed to such notified person:

(i) File a petition to quash in the name of the notified person in a district court having jurisdiction.

(ii) Notify the Bureau by sending a copy of that petition by registered or certified mail to the Bureau employee and office designated to receive the copy in the notice of summons that was given to the notified person, and

(iii) Notify the recordkeeper by sending to that recordkeeper by registered or certified mail a copy of the petition.

Failure to give timely notice to either the summoned party or the Bureau in the manner described in this paragraph means that the notified person has failed to institute a proceeding to quash and the district court has no jurisdiction to hear the proceeding. Thus, for example, if the notified person mails a copy of the petition to the summoned person but not to the designated Bureau employee and office, the notified person has failed to institute a proceeding to quash. Similarly, if the notified person mails a copy of such petition to the summoned person, but instead of sending a copy of the petition by registered or certified mail to the designated employee and office, the notified person gives the designated employee and office the petition by some other means, the notified person has failed to institute a proceeding to quash.

(3) *Failure to institute a proceeding to quash.* If the notified person fails to institute a proceeding to quash within 20 days following the day the notice was served on or mailed to such notified person, the Bureau may examine the summoned records following the 23rd day after notice of the summons was served on or mailed to the notified person (see 26 U.S.C. 7609(d)(1)).

(c) *Presumption no notice has been mailed.* Title 26 U.S.C. 7609(b)(2)(E) permits a notified person to institute a proceeding to quash by filing a petition in district court and notifying both the Bureau and the summoned person. Unless the notified person has notified both the Bureau and the summoned person in the appropriate manner, the

notified person has failed to institute a proceeding to quash. If the copy of the petition has not been delivered to the summoned person or the person and office designated to receive the notice on behalf of the Bureau within 3 days from the close of the 20-day period allowed to institute a proceeding to quash, it is presumed that the notification has not been timely mailed.

(26 U.S.C. 7609)

§ 70.28 Summonses excepted from 26 U.S.C. 7609 procedures.

(a) *In aid of the collection of certain liabilities*—(1) *In general.* Title 26 U.S.C. 7609(c)(2)(B) contains an exception to the general notice requirement when a summons is issued to a third-party recordkeeper. That section excepts summonses issued in aid of the collection of the liability of any person against whom an assessment has been made or judgment rendered or the liability at law or in equity of any transferee of such a person.

(2) *Examples.* Examples of summonses referred to in paragraph (a)(1) of this section are:

(i) Summonses issued to determine the amount held in a bank in the name of a person against whom an assessment has been made or judgment rendered;

(ii) Summonses issued to enforce transferee liability for a tax which has been assessed.

(b) *Numbered account (or similar arrangement).* Under 26 U.S.C. 7609(c)(2), a summons issued solely to determine the identity of a person having a numbered account (or similar arrangement) with a bank or other institution is excepted from the requirements of 26 U.S.C. 7609. A "numbered account (or similar arrangement)" under 26 U.S.C. 7609(c)(2) is an account through which a person may authorize transactions solely through the use of a number, symbol, code name, or other device not involving the disclosure of the person's identity. A "person having a numbered account (or similar arrangement)" includes the person who opened the account and any person authorized to use the account or to receive records or statements concerning it.

(26 U.S.C. 7609)

§ 70.29 Suspension of statutes of limitations.

(a) *Suspension while a proceeding under 26 U.S.C. 7609(b) is pending.* Under 26 U.S.C. 7609(e)(1), the statutes of limitations of 26 U.S.C. 6501 and 6531 are suspended if a notified person with respect to whose liability a summons is issued, or the notified person's agent, nominee, or other person acting under the direction or control of the notified person, takes any action as provided in 26 U.S.C. 7609(b).

(1) *Agent, nominee, etc.* A person is a notified person's agent, nominee, or other person acting under the direction or control of a notified person for purposes of 26 U.S.C. 7609(e) if the person with respect to whose liability the summons is issued has the ability in fact or at law to cause the agent, etc., to take the actions permitted under 26 U.S.C. 7609(b). Thus, in the case of a corporation, direction or control by the notified person may exist even though less than 50 percent of the voting power of the corporation is held by the notified person.

(2) *Period during which a proceeding, etc., is pending.* Under 26 U.S.C. 7609(e), the statute of limitations shall be suspended for the period during which a proceeding and any appeals regarding the enforcement of such summons is pending. This period begins on the date the petition to quash the summons is filed in district court. The period continues until all appeals are disposed of, or until the expiration of the period in which an appeal may be taken or a request for a rehearing may be made. Full compliance, partial compliance, and noncompliance have no effect on the suspension provisions. The periods of limitations which are suspended under 26 U.S.C. 7609(e) are those which apply to the taxable periods to which the summons relates.

(3) *Taking of action as provided in 26 U.S.C. 7609(b).* Title 26 U.S.C. 7609(b) allows intervention by a notified person as a matter of right upon compliance with the Federal Rules of Civil Procedure. The phrase "takes any action as provided in subsection (b)", found in 26 U.S.C. 7609(e), includes any intervention whether or not 26 U.S.C. 7609(b) is specifically mentioned in the order of the court allowing intervention. The phrase also includes the fulfilling of only part of the requirements of 26 U.S.C. 7609(b)(2), relating to the right of a person to institute a proceeding to quash. Thus, for instance, if a notified person notifies a person who has been summoned by sending a copy of the petition by registered or certified mail but does not mail a copy of that notice to the appropriate person and office under 26 U.S.C. 7609(b)(2)(B), the notified person has taken an action under 26 U.S.C. 7609(e).

(b) *Suspension after 6 months of service of summons.* In the absence of the resolution of the third-party recordkeeper's response to the summons described in 26 U.S.C. 7609(c) or the summoned party's response to a summons described in 26 U.S.C. 7609(f) the running of any period of limitations under 26 U.S.C. 6501 or under 26 U.S.C. 6531 with respect to any person with respect to whose liability the summons is issued (other than a person taking action as provided in 26 U.S.C. 7609(b)) shall be suspended for the period:

(1) Beginning on the date which is 6 months after the service of such summons, and

(2) Ending with the final resolution of such response.

(26 U.S.C. 7609)

Par. 19. Section 70.34 is added to read as follows:

§ 70.34 Listing by regional directors (compliance) of taxable objects owned by nonresidents of ATF regions.

Whenever there are in any ATF region any articles subject to tax, which are not owned or possessed by, or under the care or control of, any person within such region, and of which no list has been transmitted to the regional director (compliance), as required by law or by regulations prescribed pursuant to law, the regional director (compliance), or other authorized ATF officer or employee, shall enter the premises where such articles are situated, shall make such inspection of the articles as may be necessary, and shall make lists of the same according to the forms prescribed. Such list, being subscribed by the regional director (compliance) or other authorized ATF officer or employee, shall be sufficient lists of such articles for all purposes.

(26 U.S.C. 6021)

Par. 20. Section 70.42 is amended by revising paragraphs (a)(1), (b), and (c)(1) to read as follows:

§ 70.42 Returns prepared or executed by regional directors (compliance), the Chief, Tax Processing Center, or by other ATF officers.

(a) *Preparation of returns*—(1) *General.* If any person required by provisions of 26 U.S.C. enforced and administered by the Bureau or by the regulations prescribed thereunder to make a return fails to make such return, it may be prepared by the regional director (compliance), the Chief, Tax Processing Center, or other authorized ATF officer provided the person required to make the return consents to disclose all information necessary for the preparation of such return. The return upon being signed by the person required to make it shall be received by the regional director (compliance) or the Chief, Tax Processing Center, as the return of such person.

* * * * *

(b) *Execution of returns*—(1) *General.* If any person required by provisions of 26 U.S.C. enforced and administered by the Bureau or by the regulations prescribed thereunder to make a return fails to make a return at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the regional director (compliance), the Chief, Tax Processing Center, or other authorized ATF officer shall make such return from the officer's own knowledge and from such information as the officer can obtain through testimony or otherwise.

(2) *Status of returns.* Any return made in accordance with paragraph (b)(1) of this section and subscribed by the regional director (compliance), the Chief, Tax Processing Center, or other authorized ATF officer shall be prima facie good and sufficient for all legal purposes.

(c) *Cross references.* (1) For provisions that the return executed by a regional director (compliance), the Chief, Tax Processing Center, or other authorized ATF officer will not start the running of the period of limitations on assessment and collection, see 26 U.S.C. 6501(b)(3) and § 70.222(b) of this part.

* * * * *

Par. 21. The undesignated centerheading which reads "Possessions" is removed. Subpart D is removed and subpart E is redesignated as subpart D. The heading for newly redesignated subpart D and the undesignated centerheading which immediately follows are revised to read as follows:

Subpart D—Collection of Excise and Special (Occupational) Tax

Collection—General Provisions

Par. 22. Sections 70.51 and 70.52 are added under the undesignated centerheading "Collection—General Provisions", and an undesignated centerheading immediately following them is added to read as follows:

§ 70.51 Collection authority.

The taxes imposed by provisions of 26 U.S.C. enforced and administered by the Bureau shall be collected by regional directors (compliance), the Chief, Tax Processing Center, and other ATF officials designated by the Director of the Bureau.

(26 U.S.C. 6301)

§ 70.52 Signature presumed authentic.

An individual's name signed to a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by that individual.

(26 U.S.C. 6064)

Receipt of Payment

Par. 23. Section 70.63 is added to read as follows:

§ 70.63 Computations on returns or other documents.

(a) *Amounts shown on forms.* To the extent permitted by any ATF form or instructions prescribed for use with respect to any ATF return, declaration, statement, or other document, or supporting schedules, any amount required to be reported in such form may be entered at the nearest whole dollar amount. The extent to which, and the conditions under which, such whole dollar amounts may be entered on any form will be set forth in the instructions issued with respect to such form. For the purpose of the computation to the nearest dollar, a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case the amount (determined without regard to the fractional part of a dollar) shall be increased by $1. The following illustrates the application of this paragraph:

Exact amount	To be reported as
$18.49	$18
$18.50	18
$18.51	19

(b) *Election not to use whole dollar amounts*—(1) *Method of election.* Where any ATF form, or the instructions issued with respect to such form, provide that whole dollar amounts shall be reported, any person making a return, declaration, statement, or other document on such form may elect not to use whole dollar amounts by reporting thereon all amounts in full, including cents.

(2) *Time of election.* The election not to use whole dollar amounts must be made at the time of filing the return, declaration, statement, or other document. Such election may not be revoked after the time prescribed for filing such return, declaration, statement, or other document, including extensions of time granted for such filing. Such election may be made on any return, declaration, statement, or other document which is filed after the time prescribed for filing (including extensions of time), and such an election is irrevocable.

(3) *Effect of election.* The taxpayer's election shall be binding only on the return, declaration, statement, or other document filed for a taxable year or period, and a new election may be made on the return, declaration, statement, or other document filed for a subsequent taxable year or period.

(4) *Fractional part of a cent.* For treatment of the fractional part of a cent in the payment of taxes, see 26 U.S.C. 6313 and § 70.62 of this part.

(c) *Inapplicability to computation of amount.* The provisions of paragraph (a) of this section apply only to amounts required to be reported on a return, declaration, statement, or other document. They do not apply to items which must be taken into account in making the computations necessary to determine such amounts. For example, each item of liability must be taken into account at its exact amount, including cents, in computing the amount of total liability required to be reported on a tax return or supporting schedule. It is the amount of total liability, so computed, which is to be reported at the nearest whole dollar on the return or supporting schedule.

(26 U.S.C. 6102)

Par. 24. Section 70.64 is revised to read as follows:

§ 70.64 Receipt for taxes.

The regional director (compliance) or the Chief, Tax Processing Center shall, upon request, issue a receipt for each tax payment made (other than a payment for stamps sold or delivered). In addition, the regional director (compliance) or the Chief, Tax Processing Center or other authorized ATF officer or employee shall issue a receipt for each payment of 1 dollar or more made in cash, whether or not requested. In the case of payments made by check, the canceled check is usually a sufficient receipt. No receipt shall be issued in lieu of a stamp representing a tax, whether the payment is in cash or otherwise.

(26 U.S.C. 6314)

Par. 25. Section 70.71 is revised to read as follows:

Assessment

§ 70.71 Assessment authority.

The regional director (compliance) and the Chief, Tax Processing Center are authorized and required to make all inquiries necessary to the determination and assessment of all taxes imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau. The regional director (compliance) and the Chief, Tax Processing Center are further authorized and required to make the determinations and the assessments of such taxes. The

term "taxes" includes interest, additional amounts, additions to the taxes, and assessable penalties. The authority of the regional director (compliance) and the Chief, Tax Processing Center to make assessment includes the following:

(a) *Taxes shown on return.* The regional director (compliance) or the Chief, Tax Processing Center shall assess all taxes determined by the taxpayer or by the regional director (compliance) or by the Chief, Tax Processing Center and disclosed on a return or list.

(b) *Unpaid taxes payable by stamp.* (1) If without use of the proper stamp:

(i) Any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof, or

(ii) Any transaction or act upon which a tax is required to be paid by means of a stamp occurs, the regional director (compliance) or the Chief, Tax Processing Center, upon such information as can be obtained, must estimate the amount of the tax which has not been paid and the regional director (compliance) or the Chief, Tax Processing Center must make assessment therefor upon the person the regional director (compliance) or the Chief, Tax Processing Center determines to be liable for the tax. However, the regional director (compliance) or the Chief, Tax Processing Center may not assess any tax which is payable by stamp unless the taxpayer fails to pay such tax at the time and in the manner provided by law or regulations.

(2) If a taxpayer gives a check or money order as a payment for stamps but the check or money order is not paid upon presentment, then the regional director (compliance) or the Chief, Tax Processing Center shall assess the amount of the check or money order against the taxpayer as if it were a tax due at the time the check or money order was received by the regional director (compliance) or the Chief, Tax Processing Center.

(26 U.S.C. 6201)

Par. 26. Section 70.72 is amended by revising the first sentence to read as follows:

§ 70.72 Method of assessment.

The regional director (compliance) and the Chief, Tax Processing Center shall appoint one or more assessment officers. * * *

Par. 27. Section 70.73 is revised to read as follows:

§ 70.73 Supplemental assessments.

If any assessment is incomplete or incorrect in any material respect, the regional director (compliance) or the Chief, Tax Processing Center, subject to the applicable period of limitation, may make a supplemental assessment for the purpose of correcting or completing the original assessment.

(26 U.S.C. 6204)

Par. 28. Section 70.74 is added to read as follows:

§ 70.74 Request for prompt assessment.

(a) Except as otherwise provided in § 70.223 of this part, any tax for which a return is required and for which:

(1) A decedent or an estate of a decedent may be liable, or

(2) A corporation which is contemplating dissolution, is in the process of dissolution, or has been dissolved, may be liable, shall be assessed, or a proceeding in court without assessment for the collection of such tax shall be begun, within 18 months after the receipt of a written request for prompt assessment thereof.

(b) The executor, administrator, or other fiduciary representing the estate of the decedent, or the corporation, or the fiduciary representing the dissolved corporation, as the case may be, shall, after the return in question has been filed, file the request for prompt assessment in writing with the regional director (compliance) for the ATF region in which such return was filed or with the Chief, Tax Processing Center in the case of special (occupational) tax. The request, in order to be effective, must be transmitted separately from any other document, must set forth the classes of tax and the taxable periods for which the prompt assessment is requested, and must clearly indicate that it is a request for prompt assessment under the provisions of 26 U.S.C. 6501(d). The effect of such a request is to limit the time in which an assessment of tax may be made, or a proceeding in court without assessment for collection of tax may be begun, to a period of 18 months from the date the request is filed with the proper regional director (compliance) or with the Chief, Tax Processing Center. The request does not extend the time within which an assessment may be made, or a proceeding in court without assessment shall be begun, after the expiration of 3 years from the date the return was filed. This special period of limitations will not apply to any return filed after a request for prompt assessment has been made unless an additional request is filed in the manner provided herein.

(c) In the case of a corporation the 18-month period shall not apply unless:

(1) The written request notifies the regional director (compliance) or the Chief, Tax Processing Center that the corporation contemplates dissolution at or before the expiration of such 18-month period; the dissolution is in good faith begun before the expiration of such 18-month period; and the dissolution so begun is completed either before or after the expiration of such 18-month period; or

(2) The written request notifies the regional director (compliance) or the Chief, Tax Processing Center that a dissolution has in good faith begun, and the dissolution is completed either before or after the expiration of such 18-month period; or

(3) A dissolution has been completed at the time the written request is made.

(26 U.S.C. 6501(d))

Par. 29. Section 70.75 is revised to read as follows:

§ 70.75 Jeopardy assessment of alcohol, tobacco, and firearms taxes.

(a) If the regional director (compliance) or the Chief, Tax Processing Center believes that the collection of any tax imposed under provisions of 26 U.S.C. enforced and administered by the Bureau will be jeopardized by delay, the regional director (compliance) or the Chief, Tax Processing Center shall, whether or not the time otherwise prescribed by law for filing the return or paying such tax has expired, immediately assess such tax, together with all interest, additional amounts and additions to the tax provided by law. A regional director (compliance) or the Chief, Tax Processing Center will make an assessment under this section if collection is determined to be in jeopardy because at least one of the following conditions exists.

(1) The taxpayer is or appears to be designing quickly to depart from the United States or to conceal himself or herself.

(2) The taxpayer is or appears to be designing quickly to place the taxpayer's property beyond the reach of the Government either by removing it from the United States, by concealing it, or by dissipating it, or by transferring it to other persons.

(3) The taxpayer's financial solvency is or appears to be threatened.

(b) The tax, interest, additional amounts, and additions to the tax will, upon assessment, become immediately due and payable, and the regional director (compliance) or the Chief, Tax Processing Center shall, without delay, issue a notice and demand for payment thereof in full.

(c) See 26 U.S.C. 7429 with respect to requesting the regional director (compliance) or the Chief, Tax Processing Center to review the making of the jeopardy assessment.

(d) For provisions relating to stay of collection of jeopardy assessments, see § 70.76 of this part.

(26 U.S.C. 6862 and 6863)

Par. 30. Sections 70.76 and 70.77 are added to read as follows:

§ 70.76 Stay of collection of jeopardy assessment; bond to stay collection.

(a) The collection of taxes assessed under 26 U.S.C. 6862 (referred to as a "jeopardy assessment" for purposes of this section) of any tax may be stayed by filing with the regional director (compliance) or Chief, Tax Processing Center a bond on the form to be furnished by ATF upon request.

(b) The bond may be filed:

(1) At any time before the time collection by levy is authorized under 26 U.S.C. 6331(a), or

(2) After collection by levy is authorized and before levy is made on any property or rights to property, or

(3) In the discretion of the regional director (compliance) or the Chief, Tax Processing Center, after any such levy has been made and before the expiration of the period of limitations on collection.

(c) The bond must be in an amount equal to the portion (including interest thereon to the date of payment as calculated by the regional director (compliance) or the Chief, Tax Processing Center) of the jeopardy assessment collection of which is sought to be stayed. See 26 U.S.C. 7101 and § 70.281, relating to the form of bond and the sureties thereon. The bond shall be conditioned upon the payment of the amount (together with interest thereon), for which the collection is stayed, at the time at which, but for the making of the jeopardy assessment, such amount would be due.

(d) Upon the filing of a bond in accordance with this section, the collection of so much of the assessment as is covered by the bond will be stayed. The taxpayer may at any time waive the stay of collection of the whole or of any part of the amount covered by the bond. If as a result of such waiver any part of the amount covered by the bond is paid, or if any portion of the jeopardy assessment is abated by the regional director (compliance) or the Chief, Tax Processing Center, then the bond shall (at the request of the taxpayer) be proportionately reduced.

(26 U.S.C. 6863)

§ 70.77 Collection of jeopardy assessment; stay of sale of seized property pending court decision.

(a) *General rule.* In the case of an assessment under 26 U.S.C. 6862, and property seized for the collection of such assessment shall not (except as provided in paragraph (b) of this section) be sold until the latest of the following occurs:

(1) The period provided in 26 U.S.C. 7429(a)(2) to request the regional director (compliance) or Chief, Tax Processing Center to review the action taken expires.

(2) The period provided in 26 U.S.C. 7429(b)(1) to file an action in U.S. District Court expires if a request for redetermination is made to the regional director (compliance) or Chief, Tax Processing Center.

(3) The U.S. District Court judgment in such action becomes final, if a civil action is begun in accordance with 26 U.S.C. 7429(b).

(b) *Exceptions.* Notwithstanding the provisions of paragraph (a) of this section, any property seized may be sold:

(1) If the taxpayer files with the regional director (compliance) a written consent to the sale, or

(2) If the regional director (compliance) determines that the expenses of conservation and maintenance of the property will greatly reduce the net proceeds from the sale of such property, or

(3) If the property is of a type to which 26 U.S.C. 6336 (relating to sale of perishable goods) is applicable.

(26 U.S.C. 6863)

Par. 31. Section 70.81 and an undesignated centerheading preceding it are added to read as follows:

Notice and Demand

§ 70.81 Notice and demand for tax.

(a) *General rule.* Where it is not otherwise provided by provisions of 26 U.S.C. enforced and administered by the Bureau, the regional director (compliance) or the Chief, Tax Processing Center shall, after the making of an assessment of a tax pursuant to § 70.71 of this part, give notice to each person liable for the unpaid tax, stating the basis for the tax due, the amount of tax, interest, additional amounts, additions to the tax and assessable penalties, and demanding payment thereof. Such notice shall be given as soon as possible and within 60 days. However, the failure to give notice within 60 days does not invalidate the notice. Such notice shall be left at the dwelling or usual place of business of such person, or shall be sent by mail to such person's last known address.

(b) *Assessment prior to last date for payment.* If any tax is assessed prior to the last date prescribed for payment of such tax, demand that such tax be paid will not be made before such last date, except where it is believed collection would be jeopardized by delay.

(26 U.S.C. 6303 and 7521)

Par. 32. Section 70.82 is revised to read as follows:

§ 70.82 Payment on notice and demand.

Upon receipt of notice and demand from the regional director (compliance) or the Chief, Tax Processing Center, there shall be paid at the place and time stated in such notice the amount of any tax (including any interest, additional amounts, additions to the tax, and assessable penalties) stated in such notice and demand.

(26 U.S.C. 6155)

Par. 33. The undesignated centerheadings which read "Abatements, Credits, and Refunds", "Procedure in General", "Rule of Special Application", "Limitations", "Limitations on Assessment", "Limitations on Credit or Refund", and "Periods of Limitation in Judicial Proceedings" are removed.

Par. 34. Section 70.90(a) and the third sentence of 70.90(e)(1) are revised to read as follows:

Interest

§ 70.90 Interest on underpayments.

(a) *General rule.* Interest at the underpayment rate referred to in § 70.93 of this part shall be paid on any unpaid amount of tax from the last date prescribed for payment of the tax (determined without regard to any extension of time for payment) to the date on which payment is received.

* * * * *

(e) * * * Thus, except as provided in paragraph (d) of this section, interest at the underpayment rate referred to in § 70.93 of this part is payable on any unpaid portion of the tax for the period during which such portion remains unpaid by reason of an extension of time for the payment thereof.

* * * * *

Par. 35. Section 70.91 is revised to read as follows:

§ 70.91 Interest on erroneous refund recoverable by suit.

Any portion of an internal revenue tax (or any interest, assessable penalty, additional amount, or addition to tax) which has been erroneously refunded, and which is recoverable by a civil action pursuant to 26 U.S.C. 7405, shall bear interest at the underpayment rate referred to in § 70.93 of this part.

(26 U.S.C. 6602)

Par. 36. The first sentences of sections 70.92(a), 70.92(c) and 70.92(d)(2)(i) are revised to read as follows:

§ 70.92 Interest on overpayments.

(a) *General rule.* Except as otherwise provided, interest shall be allowed on any overpayment of any tax at the overpayment rate referred to in § 70.93 of this part from the date of overpayment of the tax.

* * * * *

(c) *Period for which interest is allowable in case of refunds.* If an overpayment of tax is refunded, interest shall be allowed from the date of the overpayment to a date determined by the regional director (compliance) or the Chief, Tax Processing Center which shall not be more than 30 days prior to the date of the refund check. * * *

(d) * * *

(2) *Determination of due date.*—(i) *General.* The term "due date", as used in this section, means the last day fixed by law or regulations for the payment of the tax (determined without regard to any extension of time), and not the date on which the regional director (compliance) or the Chief, Tax Processing Center makes demand for the payment of the tax. * * *

* * * * *

Par. 37. Section 70.93 is revised to read as follows:

§ 70.93 Interest rate.

(a) *In general.* The interest rate established under 26 U.S.C. 6621(a)(2) shall be:

(1) On amounts outstanding before July 1, 1975, 6 percent per annum.

(2) On amounts outstanding:

After	And before	Rate per annum (percent)
June 30, 1975	Feb. 1, 1976	9
Jan. 31, 1976	Feb. 1, 1978	7
Jan. 31, 1978	Feb. 1, 1980	6
Jan. 31, 1980	Feb. 1, 1982	12
Jan. 31, 1982	Jan. 1, 1983	20

(3) On amounts outstanding after December 31, 1982, the adjusted rates for overpayment and underpayment established by the Commissioner of Internal Revenue under 26 U.S.C. 6621. These adjusted rates shall be published by the Commissioner in a Revenue Ruling. See § 70.94 of this part for application of daily compounding in determining interest accruing after December 31, 1982. Because interest accruing after December 31, 1982, accrues at the prescribed rate per annum compounded daily, the effective annual percentage rate of interest will exceed the prescribed rate of interest.

(b) *Applicability of interest rates.* (1) *Computation.* Interest and additions to tax on any amount outstanding on a specific day shall be computed at the annual rate applicable on such day.

(2) *Additions to tax.* Additions to tax under any section of the Internal Revenue Code that refers to the annual rate established under 26 U.S.C. 6621, shall be computed at the same rate per annum as the interest rate set forth under paragraph (a) of this section.

(3) *Interest.* Interest provided for under any section of the Internal Revenue Code that refers to the annual rate established under this section, including 26 U.S.C. 6332(d)(1), 6343(c), 6601(a), 6602, 6611(a), 7426(g), and 28 U.S.C. 1961(c)(1) or 2411, shall be computed at the rate per annum set forth under paragraph (a) of this section.

Par. 38. Section 70.94 is revised to read as follows:

§ 70.94 Interest compounded daily.

(a) *General rule.* Effective for interest accruing after December 31, 1982, in computing the amount of any interest required to be paid under any provision of 26 U.S.C. or under 28 U.S.C. 1961(c)(1) or 2411, by the Director or by the taxpayer, or in computing any other amount determined by reference to such amount of interest, or by reference to the interest rate established under 26 U.S.C. 6621, such interest or such other amount shall be compounded daily by dividing such rate of interest by 365 (366 in a leap year) and compounding such daily interest rate each day.

(b) *Applicability to unpaid amounts on December 31, 1982.* The unpaid interest (or other amount) that shall be compounded daily includes the interest (or other amount) accrued but unpaid on December 31, 1982.

(26 U.S.C. 6622)

Par. 39. Section 70.95 is amended by removing the reference to "§ 70.106" and replacing it with § 70.107".

Par. 40. Section 70.96(a)(1), the first sentence of 70.96(a)(2), the first sentence of 70.96(a)(3), paragraph 70.96(a)(4) and the second, third and fourth sentences of paragraph 70.96(c) are revised to read as follows:

§ 70.96 Failure to file tax return or to pay tax.

(a) *Addition to the tax.* (1) *Failure to file tax return.* In the case of failure to file a return required under authority of:

(i) Title 26 U.S.C. 61, relating to returns and records;

(ii) Title 26 U.S.C. 51, relating to distilled spirits, wines and beer;

(iii) Title 26 U.S.C. 52, relating to tobacco products, and cigarette papers and tubes; or

(iv) Title 26 U.S.C. 53, relating to machine guns, destructive devices, and certain other firearms; and the regulations thereunder, on or before the date prescribed for filing (determined with regard to any extension of time for such filing), there shall be added to the tax required to be shown on the return the amount specified below unless the failure to file the return within the prescribed time is shown to the satisfaction of the regional director (compliance) to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 percent thereof if the failure is not for more than one month, with an additional 5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate. The amount of any addition under paragraph (a)(1) of this section shall be reduced by the amount of the addition under paragraph (a)(2) of this section for any month to which an addition to tax applies under both paragraphs (a)(1) and (a)(2) of this section.

(2) *Failure to pay tax shown on return.* In case of failure to pay the amount shown as tax on any return required to be filed after December 31, 1989 (without regard to any extension of time for filing thereof), specified in paragraph (a)(1) of this section, on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), there shall be added to the tax shown on the return the amount specified below unless the failure to pay the tax within the prescribed time is shown to the satisfaction of the regional director (compliance) to be due to reasonable cause and not to willful neglect.* * *

(3) *Failure to pay tax not shown on return.* In case of failure to pay any amount in respect of any tax required to be shown on a return specified in paragraph (a)(1) of this section, which is not so shown (including an assessment made pursuant to 26 U.S.C. 6213(b)) within 10 days from the date of the notice and demand therefor, there shall be added to the amount shown in the notice and demand the amount specified below unless the failure to pay the tax within the prescribed time is shown to the satisfaction of the regional director (compliance) to be due to reasonable cause and not to willful neglect.* * *

(4) *Increases in penalties in certain cases.* For increases in penalties for failure to file a return or pay tax in certain cases, see 26 U.S.C. 6651(d) or (f).

* * * * *

(c) *Showing of reasonable cause.* * * * Such statement should be filed with the regional director (compliance) with jurisdiction over the state in which the liability was incurred. In addition, where special tax returns of liquor dealers are delivered to an ATF officer working under the supervision of the regional director (compliance), such statement may be delivered with the return. If the regional director (compliance) determines that the delinquency was due to a reasonable cause and not to willful neglect, the addition to the tax will not be assessed.

* * *

* * * * *

Par. 41. Section 70.98(a) is amended by revising the first two sentences to read as follows:

§ 70.98 Penalty for underpayment of deposits.

(a) *General rule.* If any person is required by the provisions of 26 U.S.C. enforced and administered by the Bureau or regulations prescribed thereunder to deposit any tax in a government depository that is authorized under 26 U.S.C. 6302(c) to receive the deposit, and fails to deposit the tax within the time prescribed therefor, a penalty shall be imposed on such person unless the failure is shown to be due to reasonable cause and not due to willful neglect. The penalty shall be:

(1) For penalties assessed before October 22, 1986, 5 percent of the amount of the underpayment without regard to the period during which the underpayment continues.

(2) For penalties assessed after October 21, 1986, on deposits of taxes required to be made before January 1, 1990, 10 percent of the amount of the underpayment without regard to the period during which the underpayment continues.

(3) For deposits of taxes required to be made after December 31, 1989.

(i) 2 percent of the amount of the underpayment if the failure is for not more than 5 days,

(ii) 5 percent of the amount of the underpayment if the failure is for more than 5 days but not more than 15 days,

(iii) 10 percent of the amount of the underpayment if the failure is for more than 15 days,

(iv) 15 percent of the amount of the underpayment if the tax is not deposited before the earlier of:

(A) The day 10 days after the date of the first delinquency notice to the taxpayer under section 6303, or

(B) The day on which notice and demand for immediate payment is given under 26 U.S.C. 6862 or the last sentence of 26 U.S.C. 6331(a). * * *

* * * * *

Par. 42. Section 70.100 is added to read as follows:

§ 70.100 Penalty for fraudulently claiming drawback.

Whenever any person fraudulently claims or seeks to obtain an allowance of drawback on goods, wares, or merchandise on which no internal revenue tax shall have been paid, or fraudulently claims any greater allowance of drawback than the tax actually paid, that person shall forfeit triple the amount wrongfully or fraudulently claimed or sought to be obtained, or the sum of $500, at the election of the regional director (compliance).

(26 U.S.C. 7304)

Par. 43. Section 70.101 is amended by revising the last sentence to read as follows:

§ 70.101 Bad checks.

* * * This section shall not apply if the person establishes to the satisfaction of the regional director (compliance) or the Chief, Tax Processing Center that such check was tendered in good faith and that such person had reasonable cause to believe that such check would be duly paid.

(26 U.S.C. 6657)

Par. 44. Section 70.113 is amended by removing from paragraph (a) the amount "$5" and replacing it with "$50"; by removing from paragraph (a) the amount "$50,000" and replacing it with "$100,000"; by removing from paragraph (b) the phrase "regional director (compliance)" and replacing it with "regional director (compliance) or the Chief, Tax Processing Center" and the informational cite immediately following the section is amended by replacing the number "6676" with the number "6723".

Par. 45. The undesignated centerheadings which read "General Provisions Relating to Stamps, Marks, or Labels", "Jeopardy Assessment" and "Registration" are removed, and two undesignated centerheadings are added immediately preceding § 70.121 to read as follows:

Abatements, Credits and Refunds

Procedure in General

Par. 46. Section 70.122 is revised to read as follows:

§ 70.122 Authority to make credits or refunds.

The regional director (compliance) or the Chief, Tax Processing Center, within the applicable period of limitations, may credit any overpayment of tax, including interest thereon, against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the person making the overpayment and the balance, if any, shall be refunded, subject to 26 U.S.C. 6402 (c) and (d) and the regulations thereunder, to such person by the regional director (compliance) or the Chief, Tax Processing Center.

(26 U.S.C. 6402)

Par. 47. Section 70.123 is amended by revising the first sentence of paragraph (a)(2), the second sentence of paragraph (b)(1), and paragraph (b)(2), and by adding the OMB control number immediately following the informational cite at the end of the section to read as follows:

§ 70.123 Claims for credit or refund.

(a) * * *

(2) All claims relating to provisions of 26 U.S.C. enforced and administered by the Bureau, together with appropriate supporting evidence, shall be filed with the regional director (compliance), for the region in which the claimant is located, or, in the case of special (occupational) tax, with the Chief, Tax Processing Center. * * *

(b) * * *

(1) * * * The claim must set forth in detail each ground upon which credit or refund is claimed and facts sufficient to apprise the regional director (compliance) or the Chief, Tax Processing Center of the exact basis thereof. * * *

(2) The regional director (compliance) and the Chief, Tax Processing Center do not have authority to refund on equitable grounds penalties or other amounts legally collected.

* * * * *

(Approved by the Office of Management and Budget under control number 1512-0141)

Par. 48. Section 70.124 is revised to read as follows:

§ 70.124 Payments in excess of amounts shown on return.

In certain cases, the taxpayer's payments in respect of a tax liability, made before the filing of the taxpayer's return, may exceed the amount of tax shown on the return. In any case in which the regional director (compliance) or the Chief, Tax Processing Center determines that the payments by the taxpayer (made within the period prescribed for payment and before the filing of the return) are in excess of the amount of tax shown on the return, the regional director (compliance) or the Chief, Tax Processing Center may make credit or refund of such overpayment without awaiting examination of the completed return and without awaiting filing of a claim for refund. However, the provisions of § 70.123 of this part are applicable to such overpayment, and taxpayers should submit claims for refund to protect themselves in the event the regional director (compliance) or the Chief, Tax Processing Center fails to make such determination and credit or refund.

(26 U.S.C. 6402)

(Approved by the Office of Management and Budget under control number 1512-0141)

Par. 49. Section 70.125 is revised to read as follows:

§ 70.125 Abatements.

(a) The regional director (compliance) or the Chief, Tax Processing Center may abate the unpaid portion of any assessment or liability, if the assessment is in excess of the correct tax liability, if the assessment is made subsequent to the expiration of the period of limitation applicable thereto, or if the assessment has been erroneously or illegally made.

(b) If more than the correct amount of tax, interest, additional amount, addition to the tax, or assessable penalty is assessed but not paid to ATF, the person against whom the assessment is made may file a claim for abatement of such overassessment. Each claim for abatement under this section shall be made on Form 2635 (5020.8), Claim—Alcohol, Tobacco and Firearms Taxes, in accordance with the instructions on the form. All such claims shall be filed with the ATF official who made demand for the amount assessed.

(c) The Director may issue uniform instructions to regional directors (compliance) and the Chief, Tax Processing Center authorizing them, to the extent permitted in such instructions, to abate amounts the collection of which is not warranted because of the administration and collection costs.

(26 U.S.C. 6404)

(Approved by the Office of Management and Budget under control number 1512-0141)

Par. 50. Section 70.126 is revised to read as follows:

§ 70.126 Date of allowance of refund or credit.

The date on which the regional director (compliance) or the Chief, Tax Processing Center, or an authorized certifying officer designated by the regional director (compliance) or the Chief, Tax Processing Center, first certifies the allowance of an overassessment in respect of any internal revenue tax imposed by the provisions of 26 U.S.C. enforced and administered by the Bureau shall be considered as the date of allowance of refund or credit in respect of such tax.

(26 U.S.C. 6407)

Par. 51. Section 70.127 is added to read as follows:

§ 70.127 Overpayment of installment.

If any installment of tax is overpaid, the overpayment shall first be applied against any outstanding installments of such tax. If the overpayment exceeds the correct amount of tax due, the overpayment shall be credited or refunded as provided in §§ 70.122 to 70.124 of this part, inclusive.

(26 U.S.C. 6403)

Par. 52. Two undesignated centerheadings are added immediately preceding § 70.131 to read as follows:

Rule of Special Application

Par. 53. New §§ 70.141 through 70.151 and an undesignated centerheading preceding them are added to read as follows:

Lien for Taxes

§ 70.141 Lien for taxes.

If any person liable to pay any tax under provisions of 26 U.S.C. enforced and administered by the Bureau neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, tangible or intangible, belonging to such person. The lien attaches to all property and rights to property belonging to such person at any time during the period of the lien, including any property or rights to property acquired by such person after the lien arises. Solely for purposes of this section and §§ 70.161 and 70.162 of this part, any interest in restricted land held in trust by the United States for an individual noncompetent Indian (and not for a tribe) shall not be deemed to be property, or a right to property, belonging to such Indian.

(26 U.S.C. 6321)

§ 70.142 Scope of definitions.

Except as otherwise provided by § 70.143 of this part, the definitions provided by §§ 70.143 apply for purposes of § 70.142 through 70.149 and §§ 70.231 through 70.234 of this part.

§ 70.143 Definitions.

(a) Security interest—(1) *In general.* The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists ay any time:

(i) If, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien (as provided in paragraph (a)(2) of this section) arising out of an unsecured obligation; and

(ii) To the extent that, at such time, the holder has parted with money or money's worth (as defined in paragraph (a)(3) of this section). For purposes of paragraph (a)(1) of this section, a contract right (as defined in § 70.232(c)(2)(i) of this part) is in existence when the contract is made. An account receivable (as defined in § 70.232(c)(2)(ii) of this part) is in existence when, and to the extent, a right to payment is earned by performance. A security interest must be in existence, within the meaning of paragraph (a) of this section, at the time as of which its priority against a tax lien is determined. For example, to be afforded priority under the provisions of § 70.145(a) of this part, a security interest must be in existence within the meaning of paragraph (a) of this section before a notice of lien is filed.

(2) *Protection against a subsequent judgment lien.* For purposes of paragraph (a) of this section, a security interest is deemed to be protected against a subsequent judgment lien on.

(i) The date on which all actions required under local law to establish the priority of a security interest against a judgment lien have been taken, or

(ii) If later, the date on which all required actions are deemed effective, under local law, to establish the priority of the security interest against a judgment lien.

For purposes of paragraph (a)(2) of this section, the dates described in paragraphs (a)(2) (i) and (ii) of this section shall be determined without regard to any rule or principle of local law which permits the relation back or the making of any requisite action retroactive to a date earlier than the date on which the action is actually performed. For purposes of paragraph (a) of this section, a judgment lien is a lien held by a judgment lien creditor as defined in paragraph (g) of this section.

(3) *Money or money's worth.* For purposes of paragraph (a) of this section, the term "money or money's worth" includes money, a security (as defined in paragraph (d) of this section), tangible or intangible property, services, and other consideration reducible to a money value. Money or money's worth also includes any consideration which otherwise would constitute money or money's worth under the preceding sentence which was parted with before the security interest would otherwise exist if, under local law, past consideration is sufficient to support an agreement giving rise to a security interest. A relinquishing or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights is not a consideration in money or money's worth. Nor is love and affection, promise of marriage, or any other consideration not reducible to a money value a consideration in money or money's worth.

(4) *Holder of a security interest.* For purposes of paragraph (a) of this section, the holder of a security interest is the person in whose favor there is a security interest. For provisions relating to the treatment of a purchaser of commercial financing security as a holder of a security interest, see § 70.232(e) of this part.

(b) *Mechanic's lienor.* The term "mechanic's lienor" means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement (including demolition) of the property. A mechanic's lienor is treated as having a lien on the later of:

(1) The date on which the mechanic's lien first becomes valid under local law against subsequent purchasers of the real property without actual notice, or

(2) The date on which the mechanic's lienor begins to furnish the services, labor, or materials.

(c) *Motor vehicle.* (1) The term "motor vehicle" means a self-propelled vehicle which is registered for highway use under the laws of any State, the District of Columbia, or a foreign country.

(2) A motor vehicle is "registered for highway use" at the time of a sale if immediately prior to the sale it is so registered under the laws of any State, the District of Columbia, or a foreign country. Where immediately prior to the sale of a motor vehicle by a dealer, the dealer is permitted under local law to operate it under a dealer's tag, license, or permit issued to the dealer, the motor vehicle is considered to be registered for highway use in the name of the dealer at the time of the sale.

(d) *Security.* The term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(e) *Tax lien filing.* The term "tax lien filing" means the filing of notice of the lien imposed by 26 U.S.C. 6321 in accordance with § 70.148 of this part.

(f) *Purchaser*—(1) *In general.* The term "purchaser" means a person who, for adequate and full consideration in money or money's worth (as defined in paragraph (f)(3) of this section), acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice.

(2) *Interest in property.* For purposes of paragraph (f) of this section, each of the following interests is treated as an interest in property, if it is not a lien or security interest:

(i) A lease of property,

(ii) A written executory contract to purchase or lease property,

(iii) An option to purchase or lease property and any interest therein, or

(iv) An option to renew or extend a lease of property.

(3) *Adequate and full consideration in money or money's worth.* For purposes of paragraph (f) of this section, the term "adequate and full consideration in money or money's worth" means a consideration in money or money's worth having a reasonable relationship to the true value of the interest in property acquired. See paragraph (a)(3) of this section for definition of the term "money or money's worth." Adequate and full consideration in money or money's worth may include the consideration in a bona fide bargain purchase. The term also includes the consideration in a transaction in which the purchaser has not completed performance of an obligation, such as the consideration in an installment purchase contract where the purchaser has not completed the installment payments.

(g) *Judgment lien creditor.* The term "judgment lien creditor" means a person who has obtained a valid judgment, in a court of record and of competent jurisdiction, for the recovery of specifically designated property or for a certain sum of money. In the case of a judgment for the recovery of a certain sum of money, a judgment lien creditor is a person who has perfected a lien under the judgment on the property involved. A judgment lien is not perfected until the identity of the lienor, the property subject to the lien, and the amount of the lien are established. Accordingly, a judgment lien does not include an attachment or garnishment lien until the lien has ripened into judgment, even though under local law the lien of the judgment relates back to an earlier date. If recording or docketing is necessary under local law before a judgment becomes effective against third parties acquiring liens on real property, a judgment lien under such local law is not perfected with respect to real property until the time of such recordation or docketing. If, under local law, levy or seizure is necessary before a judgment lien becomes effective against third parties acquiring liens on personal property, then a judgment lien under such local law is not perfected until levy or seizure of the personal property involved. The term "judgment" does not include the determination of a quasi-judicial body or of an individual acting in a quasi-judicial capacity such as the action of State taxing authorities.

(26 U.S.C. 6323)

§ 70.144 Special rules.

(a) *Actual notice or knowledge.* For purposes of 26 U.S.C. 6321 through 6327, an organization is deemed, in any transaction, to have actual notice or knowledge of any fact from the time the fact is brought to the attention of the individual conducting the transaction, and in any event from the time the fact would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of the individual's regular duties

or unless the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(b) *Subrogation:* Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by 26 U.S.C. 6321 or 6324. Thus, if a tax lien imposed by 26 U.S.C. 6321 or 6324 is not valid with respect to a particular interest as against the holder of that interest, then the tax lien also is not valid with respect to that interest as against any person who, under local law, is a successor in interest to the holder of that interest.

(c) *Disclosure of amount of outstanding lien.* If a notice of lien has been filed (see § 70.148 of this part), the amount of the outstanding obligation secured by the lien is authorized to be disclosed as a matter of public record on ATF Form 5651.2 "Notice of Federal Tax Lien Under Internal Revenue Laws." The amount of the outstanding obligation secured by the lien remaining unpaid at the time of an inquiry is authorized to be disclosed to any person who has a proper interest in determining this amount. Any person who has a right in the property or intends to obtain a right in the property by purchase or otherwise will, upon presentation of satisfactory evidence, be considered to have a proper interest. Any person desiring this information may make a request to the office of the Bureau named on the notice of lien with respect to which the request is made. The request should clearly describe the property subject to the lien, identify the applicable lien, and give the reasons for requesting the information.

(26 U.S.C. 6323)

§ 70.145 Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors.

(a) *Invalidity of lien without notice.* The lien imposed by 26 U.S.C. 6321 is not valid against any purchaser (as defined in § 70.143(f) of this part), holder of a security interest (as defined in § 70.143(a) of this part), mechanic's lienor (as defined in § 70.143(b) of this part), or judgment lien creditor (as defined in § 70.143(g) of this part) until a notice of lien is filed in accordance with § 70.148 of this part. Except as provided by 26 U.S.C. 6323, if a person becomes a purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor after a notice of lien is filed in accordance with § 70.148 of this part, the interest acquired by such person is subject to the lien imposed by 26 U.S.C. 6321.

(b) *Cross references.* For provisions relating to the protection afforded a security interest arising after tax lien filing, which interest is covered by a commercial transactions financing agreement, real property construction or improvement financing agreement, or an obligatory disbursement agreement, see §§ 70.232, 70.233, and 70.234 of this part, respectively. For provisions relating to the protection afforded to a security interest coming into existence by virtue of disbursements, made before the 46th day after the date of tax lien filing, see § 70.146 of this part. For provisions relating to priority afforded to interest and certain other expenses with respect to a lien or security interest having priority over the lien imposed by 26 U.S.C. 6321, see § 70.147 of this part. For provisions relating to certain other interests arising after tax lien filing, see § 70.231 of this part.

(26 U.S.C. 6323)

§ 70.146 45-day period for making disbursements.

Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.149 of this part, the lien is not valid with respect to a security interest which comes into existence, after tax lien filing, by reason of disbursements made before the 46th day after the date of tax lien filing, or if earlier, before the person making the disbursements has actual notice or knowledge of the tax lien filing, but only if the security interest is:

(a) In property which is subject, at the time of tax lien filing, to the lien imposed by 26 U.S.C. 6321 and which is covered by the terms of a written agreement entered into before tax lien filing, and

(b) Protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

For purposes of paragraph (a) of this section, a contract right (as defined in § 70.232(c)(2)(i) of this part) is subject, at the time of tax lien filing, to the lien imposed by 26 U.S.C. 6321 if the contract has been made by such time. An account receivable (as defined in § 70.232(c)(2)(ii) of this part) is subject, at the time of tax lien filing, to the lien imposed by 26 U.S.C. 6321 if, and to the extent, a right to payment has been earned by performance at such time. For purposes of paragraph (b) of this section, a judgment lien is a lien held by a judgment lien creditor as defined in § 70.143(g) of this part. For purposes of this section, it is immaterial that the written agreement provides that the disbursements are to be made at the option of the person making the disbursements. See § 70.143 (a) and (e) of this part for definitions of the terms "security interest" and "tax lien filing," respectively. See § 70.144(a) of this part for certain circumstances under which a person is deemed to have actual notice or knowledge of a fact.

(26 U.S.C. 6323)

§ 70.147 Priority of interest and expenses.

(a) *In general.* If the lien imposed by 26 U.S.C. 6321 is not valid as against another lien or security interest, the priority of the other lien or security interest also extends to each of the following items to the extent that under local law the item has the same priority as the lien or security interest to which it relates:

(1) Any interest or carrying charges (including finance, service, and similar charges) upon the obligation secured,

(2) The reasonable charges and expenses of an indenture trustee (including, for example, the trustee under a deed of trust) or agent holding the security interest for the benefit of the holder of the security interest,

(3) The reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

(4) The reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) The reasonable costs of insuring payment of the obligation secured (including amounts paid by the holder of the security interest for mortgage insurance, such as that issued by the Federal Housing Administration), and

(6) Amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by 26 U.S.C. 6321.

(b) *Collection expenses.* The reasonable expenses described in paragraph (a)(3) of this section include expenditures incurred by the protected holder of the lien or security interest to establish the priority of the holder's interest or to collect, by foreclosure or otherwise, the amount due the holder from the property subject to the protected holder's lien. Accordingly, the amount of the encumbrance which is protected is increased by the amounts so expended by the holder of the security interest.

(c) *Costs of insuring, preserving, etc.* The reasonable costs of insuring, preserving, or repairing described in paragraph (a)(4) of this section include expenditures by the holder of a security interest for fire and casualty insurance on the property subject to the security interest and amounts paid by the holder of the lien or security interest to repair the property. Such reasonable costs also include the amounts paid by the holder of the lien or security interest in a leasehold to the lessor of the leasehold to preserve the leasehold subject to the lien or security interest. Accordingly, the amount of the lien or security interest which is protected is increased by the amounts so expended by the holder of the lien or security interest.

(d) *Satisfaction of liens.* The amounts described in paragraph (a)(6) of this section include expenditures incurred by the protected holder of a lien or security interest to discharge a statutory lien for State sales taxes on the property subject to the lien or security interest if both the lien or security interest and the sales tax lien have priority over a Federal tax lien. Accordingly, the amount of the lien or security interest is increased by the amounts so expended by the holder of the lien or security interest even though under local law the holder of the lien or security interest is not subrogated to the rights of the holder of the State sales tax lien. However, if the holder of the lien or security interest is subrogated, within the meaning of § 70.144(b) of this part, to the rights of the holder of the sales tax lien, the holder of the lien or security interest will also be entitled to any additional protection afforded by 26 U.S.C. 6323(i)(2)

(26 U.S.C. 6323).

§ 70.148 Place for filing notice; form.

(a) *Place for filing.* The notice of lien referred to in § 70.145 of this part shall be filed as follows:

(1) *Under State laws*—(i) *Real property.* In the case of real property, notice shall be filed in one office within the State (or the county or other governmental subdivision), as designated by the laws of the State, in which the property subject to the lien is deemed situated under the provisions of paragraph (b)(1) of this section.

(ii) *Personal property.* In the case of personal property, whether tangible or intangible, the notice shall be filed in one office within the State (or the county or other governmental subdivision), as designated by the laws of the State, in which the property subject to the lien is deemed situated under the provision of paragraph (b)(2) of this section, except that State law merely conforming to or reenacting Federal law establishing a national filing system does not constitute a second office for filing as designated by the laws of such State.

(2) *With the clerk of the United States district court.* Whenever a State has not by law designated one office which meets the requirements of paragraph (a)(1) (i) or (ii) of this section, the notice shall be filed in the office of the clerk of the U.S. district court for the judicial district in which the property subject to the lien is deemed situated under the provisions of paragraph (b) of this section. For example, a State has not by law designated one office meeting the requirements of paragraph (a)(1)(i) of this section, if more than one office is designated within the State, county, or other governmental subdivision for filing notices with respect to all property located in such State, county or other governmental subdivision. A State has not by law designated one office meeting the requirements of paragraph (a)(1)(ii) of this section, if more than one office is designated in the State, county, or other governmental subdivision for filing notices with respect to all of the personal property of a particular taxpayer.

(3) *With the Recorder of Deeds of the District of Columbia.* If the property subject to the lien imposed by 26 U.S.C. 6321 is deemed situated, under the provision of paragraph (b) of this section, in the District of Columbia, the notice shall be filed in the office of the Recorder of Deeds of the District of Columbia.

(b) *Situs of property subject to lien.* For purposes of paragraph (a) of this section, property is deemed situated as follows:

(1) *Real property.* Real property is deemed situated at its physical location.

(2) *Personal property.* Personal property, whether tangible or intangible, is deemed situated at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (b)(2) of this section, the residence of a corporation or partnership is deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is not within the United States is deemed to be in the District of Columbia.

(c) *Form*—(1) *In general.* The notice referred to in § 70.145 of this part shall be filed on ATF Form 5651.2, "Notice of Federal Tax Lien under Internal Revenue Laws". Such notice is valid notwithstanding any other provision of law regarding the form or content of a notice of lien. For example, omission from the notice of lien of a description of the property subject to the lien does not affect the validity thereof even though State law may require that the notices contain a description of the property subject to the lien.

(2) *ATF Form 5651.2 defined.* The term "ATF Form 5651.2" generally means a paper form. However, if a State in which a notice referred to in § 70.145 of this part is filed permits a notice of Federal tax lien to be filed by the use of an electronic or magnetic medium the term "ATF Form 5651.2" includes an ATF Form 5651.2 filed by the use of any electronic or magnetic medium permitted by that State. An ATF Form 5651.2 must identify the taxpayer, the tax liability giving rise to the lien, and the date the assessment arose regardless of the method used to file the notice of Federal tax lien.

(26 U.S.C. 6323)

§ 70.149 Refiling of notice of tax lien.

(a) *In general*—(1) *Requirement to refile.* In order to continue the effect of a notice of lien, the notice must be refiled in the place described in paragraph (b) of this section during the required refiling period (described in paragraph (c) of this section). In the event that two or more notices of lien are filed with respect to a particular tax assessment, the failure to comply with the provision of paragraphs (b)(1) (i) and (c) of this section in respect of one of the notices of lien does not affect the effectiveness of the refiling of any other notice of lien. Except for the filing of a notice of lien required by paragraph (b)(1)(ii) of this section (relating to a change of residence), the validity of any refiling of a notice of lien is not affected by the refiling or nonrefiling of any other notice of lien.

(2) *Effect of refiling.* A timely refiled notice of lien is effective as of the date on which the notice of lien to which it relates was effective.

(3) *Effect of failure to refile.* Except as provided below, if the Chief, Tax Processing Center or the regional director (compliance) fails to refile a notice of lien in the manner described in paragraphs (b) and (c) of this section, the notice of lien is not effective, after the expiration of the required refiling period, as against any person without regard to when the interest of the person in the property subject to the lien was acquired. However, the failure of the Chief, Tax Processing Center or the regional director (compliance) to refile a notice of lien during the required refiling period will not, following the expiration of the refiling period, affect the effectiveness of the notice with respect to:

(i) Property which is the subject matter of a suit, to which the United States is a party, commenced prior to

the expiration of the required refiling period, or

(ii) Property which has been levied upon by the United States prior to the expiration of the refiling period. However, if a suit or levy referred to in the preceding sentence is dismissed or released, respectively, and property is subject to the lien at such time, a notice of lien with respect to the property is not effective after the suit or levy is dismissed or released unless refiled during the required refiling period. Failure to refile a notice of lien does not affect the existence of the lien.

(4) *Filing of new notice.* If a notice of lien is not refiled, and if the lien remains in existence, the Bureau may nevertheless file a new lien either on the prescribed form for the filing of a notice of lien or on the form prescribed for refiling a notice of lien. This new filing must meet the requirements of 26 U.S.C. 6323(f) and § 70.148 of this part and is effective from the date on which such filing is made.

(b) *Place for refiling notice of lien—*1) *In general.* A notice of lien refiled during the required refiling period (described in paragraph (c) of this section) shall be effective only:

(i) If the notice of lien is refiled in the office in which the prior notice of lien (including a refiled notice) was filed under the provisions of 26 U.S.C. 6323; and

(ii) In any case in which 90 days or more prior to the date the refiling of the notice of lien under paragraph (a)(1)(i) of this section is completed, the Bureau receives written information (in the manner described in paragraph (b)(2) of this section) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with 26 U.S.C. 6323(f)(1)(A)(ii) in the State in which such new residence is located (or, if such new residence is located in the District of Columbia or outside the United States, in the District of Columbia).

A notice of lien is considered as refiled in the office in which the prior notice or refiled notice was filed under the provisions of 26 U.S.C. 6323 if it is refiled in the office which, pursuant to a change in the applicable local law, assumed the functions of the office in which the prior notice or refiled notice was filed. If on or before the 90th day referred to in paragraph (b)(1)(ii) of this section, more than one written notice is received concerning a change in the taxpayer's residence, a notice of lien is required by this subdivision to be filed only with respect to the residence shown on the written notice received on the most recent date. Paragraph (b)(1)(ii) of this section is applicable regardless of whether the taxpayer resides at the new residence on the date the refiling of notice of lien under paragraph (b)(1)(i) of this section is completed.

(2) *Notice of change of taxpayer's residence—*(i) *In general.* For purposes of this section, a notice of change of a taxpayer's residence will be effective only if it:

(A) is received, in writing, from the taxpayer or the taxpayer's representative by the Chief, Tax Processing Center or the regional director (compliance) who filed the original notice of lien.

(B) relates to an unpaid tax liability of the taxpayer, and

(C) states the taxpayer's name and the address of the taxpayer's new residence.

Athough it is not necessary that a written notice contain the taxpayer's identifying number authorized by section 6109, it is preferable that it include such number. A return or amended return filed by the taxpayer with the Bureau which on its face indicates that there is a change in the taxpayer's address and correctly states the taxpayer's name, the address of the taxpayer's new residence, and the taxpayer's identifying number required by 26 U.S.C. 6109 is sufficient notice under this paragraph.

(ii) *Other rules applicable.* Except as provided in paragraph (b)(2)(i) of this section, no communication (either written or oral) to the Bureau will be considered effective as notice of a change of a taxpayer's residence under this section, whether or not the Bureau has actual notice or knowledge of the taxpayer's new residence. For the purpose of determining the date on which a notice of change of a taxpayer's residence is received under this section, the notice shall be treated as received on the date it is actually received by the Bureau without reference to the provisions of 26 U.S.C. 7502.

(c) *Required refiling period.* For the purpose of this section, the term "required refiling period" means:

(1) The 1-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(2) The 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(26 U.S.C. 6323)

§ 70.150 Release of lien or discharge of property.

(a) *Release of lien.* Generally, the Chief, Tax Processing Center is the ATF official charged with releasing liens or discharging property from liens, but whenever necessary to protect the interests of the government, a regional director (compliance) may also release a lien or discharge property from a lien, following the procedures set forth in this section. The Chief, Tax Processing Center shall issue a certificate of release of a lien imposed with respect to any tax imposed by a provision of 26 U.S.C. enforced and administered by the Bureau, not later than 30 days after the day on which either:

(1) The Chief, Tax Processing Center finds that the entire liability for the tax has been satisfied or has become unenforceable as a matter of law (and not merely uncollectible or unenforceable as a matter of fact). Tax liabilities frequently are unenforceable in fact for the time being, due to the temporary nonpossession by the taxpayer of discoverable property or property rights. In all cases the liability for the payment of the tax continues until satisfaction of the tax in full or until the expiration of the statutory period for collection, including such extension of the period for collection as may be agreed upon in writing by the taxpayer and the Chief, Tax Processing Center.

(2) The Chief, Tax Processing Center is furnished and accepts a bond that is conditioned upon the payment of the amount assessed (together with all interest in respect thereof and any expenses to which the Government has been put in the matter), within the time agreed upon in the bond, but not later than 6 months before the expiration of the statutory period for collection, including any period for collection agreed upon in writing by the Chief, Tax Processing Center and the taxpayer. For provisions relating to bonds, see 26 U.S.C. 7101 and 7102 and §§ 70.281 and 70.282 of this part.

(b) *Discharge of specific property from the lien—*(1) *Property double the amount of the liability.* The Chief, Tax Processing Center may, in that official's discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under 26 U.S.C. 64 if the Bureau determines that the fair market value of that part of the property remaining subject to the lien is at least double the sum of the amount of the unsatisfied liability secured by the lien and of the amount of all other liens upon the property which have priority over the lien. In general, fair market value is that amount which one ready and willing but not compelled to buy would pay to another ready and willing but not compelled to sell the property.

(2) *Part payment; interest of United States valueless—(i) Part payment.* The Chief, Tax Processing Center may, in that official's discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under 26 U.S.C. 64 if there is paid over to the Bureau in partial satisfaction of the liability secured by the lien an amount determined by the Bureau to be not less than the value of the interest of the United States in the property to be so discharged. In determining the amount to be paid, the Chief, Tax Processing Center will take into consideration all the facts and circumstances of the case, including the expenses to which the Government has been put in the matter. In no case shall the amount to be paid be less than the value of the interest of the United States in the property with respect to which the certificate of discharge is to be issued.

(ii) *Interest of the United States valueless.* The Chief, Tax Processing Center may, in that official's discretion, issue a certificate of discharge of any part of the property subject to the lien if the Bureau determines that the interest of the United States in the property to be so discharged has no value.

(iii) *Valuation of interest of United States.* For purposes of this paragraph (b)(2), in determining the value of the interest of the United States in the property, or any part thereof, with respect to which the certificate of discharge is to be issued, the Chief, Tax Processing Center shall give consideration to the value of the property and the amount of all liens and encumbrances thereon having priority over the Federal tax lien. In determining the value of the property, the Chief, Tax Processing Center may, in that official's discretion, give consideration to the forced sale value of the property in appropriate cases.

(3) *Discharge of property by substitution of proceeds of sale.* The Chief, Tax Processing Center may, in that official's discretion, issue a certificate of discharge of any part of the property subject to a lien imposed under 26 U.S.C. 64 if such part of the property is sold and, pursuant to a written agreement with the Chief, Tax Processing Center, the proceeds of the sale are held, as a fund subject to the liens and claims of the United States, in the same manner and with the same priority as the lien or claim had with respect to the discharged property. This subparagraph does not apply unless the sale divests the taxpayer of all right, title, and interest in the property sought to be discharged. Any reasonable and necessary expenses incurred in connection with the sale of the property and the administration of the sale proceeds shall be paid by the applicant or from the proceeds of the sale before satisfaction of any lien or claim of the United States.

(4) *Application for certificate of discharge.* Any person desiring a certificate of discharge under this paragraph shall submit an application in writing to the Chief, Tax Processing Center. The application shall contain such information as the Chief, Tax Processing Center may require.

(c) *Subordination of lien—*(1) *By payment of the amount subordinated.* The Chief, Tax Processing Center may, in that official's discretion, issue a certificate of subordination of a lien imposed under 26 U.S.C. 64 upon any part of the property subject to the lien if there is paid over to the Chief, Tax Processing Center an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States. For this purpose, the tax lien may be subordinated to another lien or interest on a dollar-for-dollar basis. For example, if a notice of a Federal tax lien is filed and a delinquent taxpayer secures a mortgage loan on a part of the property subject to the tax lien and pays over the proceeds of the loan to the Chief, Tax Processing Center after an application for a certificate of subordination is approved, the Chief, Tax Processing Center will issue a certificate of subordination. This certificate will have the effect of subordinating the tax lien to the mortgage.

(2) *To facilitate tax collection.* The Chief, Tax Processing Center may, in that official's discretion, issue a certificate of subordination of a lien imposed under 26 U.S.C. 64 upon any part of the property subject to the lien if the Chief, Tax Processing Center believes that the subordination of the lien will ultimately result in an increase in the amount realized by the United States from the property subject to lien and will facilitate the ultimate collection of the tax liability.

(3) *Application for certificate of subordination.* Any person desiring a certificate of subordination under this paragraph shall submit an application therefor in writing to the Chief, Tax Processing Center. The application shall contain such information as the Chief, Tax Processing Center may require.

(d) *Nonattachment of lien.* If the Chief, Tax Processing Center determines that, because of confusion of names or otherwise, any person (other than the person against whom the tax was assessed) is or may be injured by the appearance that a notice of lien filed in accordance with § 70.148 of this part refers to such person, the Chief, Tax Processing Center may issue a certificate of nonattachment. Such certificate shall state that the lien, notice of which has been filed, does not attach to the property of such person. Any person desiring a certificate of nonattachment under this paragraph shall submit an application therefor in writing to the Chief, Tax Processing Center. The application shall contain such information as the Chief, Tax Processing Center may require.

(e) *Effect of certificate—*(1) *Conclusiveness.* Except as provided in paragraphs (e) (2) and (3) of this section, if a certificate is issued under 26 U.S.C. 6325 by the Chief, Tax Processing Center and the certificate is filed in the same office as the notice of lien to which it relates (if the notice of lien has been filed), the certificate shall have the following effect:

(i) In the case of a certificate of release issued under paragraph (a) of this section, the certificate shall be conclusive that the tax lien referred to in the certificate is extinguished;

(ii) In the case of a certificate of discharge issued under paragraph (b) of this section, the certificate shall be conclusive that the property covered by the certificate is discharged from the tax lien;

(iii) In the case of a certificate of subordination issued under paragraph (c) of this section, the certificate shall be conclusive that the lien or interest to which the Federal tax lien is subordinated is superior to the tax lien; and

(iv) In the case of a certificate of nonattachment issued under paragraph (d) of this section, the certificate shall be conclusive that the lien of the United States does not attach to the property of the person referred to in the certificate.

(2) *Revocation of certificate of release or nonattachment—*(i) *In general.* If the Chief, Tax Processing Center determines that either:

(A) A certificate of release or a certificate of nonattachment of the general tax lien imposed by 26 U.S.C. 6321 was issued erroneously or improvidently, or

(B) A certificate of release of such lien was issued in connection with a compromise agreement under 26 U.S.C. 7122 which has been breached,

and if the period of limitation on collection after assessment of the tax liability has not expired, the Chief, Tax Processing Center may revoke the certificate and reinstate the tax lien.

(ii) *Method of revocation and reinstatement.* The revocation and

reinstatement described in paragraph (e)(2)(i) of this section is accomplished by:

(A) Mailing notice of the revocation to the taxpayer at the taxpayer's last known address, and

(B) Filing notice of the revocation of the certificate in the same office in which the notice of lien to which it relates was filed (if the notice of lien has been filed).

(iii) *Effect of reinstatement*—(A) *Effective date.* A tax lien reinstated in accordance with the provisions of this paragraph (e)(2) is effective on and after the date the notice of revocation is mailed to the taxpayer in accordance with the provisions of paragraph (e)(2)(ii)(A) of this section, but the reinstated lien is not effective before the filing of notice of revocation, in accordance with the provisions of paragraph (e)(2)(ii)(B) of this section, if the filing is required by reason of the fact that a notice of the lien had been filed.

(B) *Treatment of reinstated lien.* As of the effective date of reinstatement, a reinstated lien has the same force and effect as a general tax lien imposed by 26 U.S.C. 6321 which arises upon assessment of a tax liability. The reinstated lien continues in existence until the liability is satisfied or until the expiration of the period of limitation on collection after assessment of the tax liability to which it relates. The reinstatement of the lien does not retroactively reinstate a previously filed notice of lien. The reinstated lien is not valid against any holder of a lien or interest described in § 70.145 of this part until notice of the reinstated lien has been filed in accordance with the provisions of § 70.148 of this part subsequent to or concurrent with the time the reinstated lien became effective.

(3) *Certificates void under certain conditions.* Notwithstanding any other provisions of 26 U.S.C. subtitle F, any lien for Federal taxes attaches to any property with respect to which a certificate of discharge has been issued if the person liable for the tax reacquires the property after the certificate has been issued. Thus, if property subject to a Federal tax lien is discharged therefrom and is later reacquired by the delinquent taxpayer at a time when the lien is still in existence, the tax lien attaches to the reacquired property and is enforceable against it as in the case of after-acquired property generally.

(f) *Filing of certificates and notices.* If a certificate or notice described in this section may not be filed in the office designated by State law in which the notice of lien imposed by 26 U.S.C. 6321 (to which the certificate or notice relates) is filed, the certificate or notice is effective if filed in the office of the clerk of the United States district court for the judicial district in which the State office where the notice of lien is filed is situated.

(26 U.S.C. 6325)

§ 70.151 Administrative appeal of liens.

(a) *In general.* After the filing of a notice of a lien on the property or rights to property of a person, such person shall be allowed to appeal to the official who filed the lien for release of such lien alleging an error in the filing of the notice of such lien.

(b) *Certificate of release.* If the official who filed the lien determines that the filing of the notice of any lien was erroneous, that official shall expeditiously (and, to the extent practicable, within 14 days after such determination) issue a certificate of release of such lien and shall include in such certificate a statement that such filing was erroneous.

(c) *Exception.* Whenever necessary to protect the interests of the government, a regional director (compliance) or Chief, Tax Processing Center other than the official who filed the lien, may receive and act on an administrative appeal of a lien in accordance with this section.

(20 U.S.C. 6326)

Par. 54. Sections 70.161 through 70.170 and an undesignated centerheading preceding them are added to read as follows:

Seizure of Property for Collection of Taxes

§ 70.161 Levy and distraint.

(a) *Authority to levy*—(1) *In general.* If any person liable to pay any tax neglects or refuses to pay the tax within 10 days after notice and demand, the regional director (compliance) or Chief, Tax Processing Center who initiated the assessment (or, on that official's request, any other regional director (compliance) or the Chief, Tax Processing Center) may proceed to collect the tax by levy, provided the taxpayer has been furnished the notice described in § 70.162(a) of this part. The regional director (compliance) or the Chief, Tax Processing Center may levy upon any property, or rights to property, whether real or personal, tangible or intangible, belonging to the taxpayer. The regional director (compliance) or the Chief, Tax Processing Center may also levy upon property with respect to which there is a lien provided by 26 U.S.C. 6321 for the payment of the tax. For exemption of certain property from levy, see 26 U.S.C. 6334 and §§ 70.241 through 70.245 of this part. As used in 26 U.S.C. 6331 and this section, the term "tax" includes any interest, additional amount, addition to tax, or assessable penalty, together with costs and expenses. Property subject to a Federal tax lien which has been sold or otherwise transferred by the taxpayer may be seized while in the hands of the transferee or any subsequent transferee. However, see 26 U.S.C. 6323(i)(2) and § 70.144 of this part concerning the subrogation rights of certain transferees. Levy may be made by serving a Notice of Levy on any person in possession of, or obligated with respect to, property or rights to property subject to levy, including receivables, bank accounts, evidences of debt, securities, and salaries, wages, commissions, or other compensation. Except as provided in § 70.162(c) of this part with regard to a levy on salary or wages, a levy extends only to property possessed and obligations which exist at the time of the levy. Obligations exist when the liability of the obligor is fixed and determinable although the right to receive payment thereof may be deferred until a later date. For example, if on the first day of the month a delinquent taxpayer sold personal property subject to an agreement that the buyer remit the purchase price on the last day of the month, a levy made on the buyer on the 10th day of the month would reach the amount due on the sale, although the buyer need not satisfy the levy by paying over the amount to the regional director (compliance) or the Chief, Tax Processing Center until the last day of the month. Similarly, a levy only reaches property in the possession of the person levied upon at the time the levy is made. For example, a levy made on a bank with respect to the account of a delinquent taxpayer is satisfied if the bank surrenders the amount of the taxpayer's balance at the time the levy is made, including interest thereon to the date of surrender. The levy has no effect upon any subsequent deposit made in the bank by the taxpayer. Subsequent deposits may be reached only by a subsequent levy on the bank.

(2) *Jeopardy cases.* If the regional director (compliance) or the Chief, Tax Processing Center finds that the collection of any tax is in jeopardy, that official may make notice and demand for immediate payment of such tax and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in 26 U.S.C. 6331(a) or the 30-day period provided in 26 U.S.C. 6331(d).

(3) *Bankruptcy or receivership cases.* During a bankruptcy proceeding or a receivership proceeding in either a Federal or a State court, the assets of the taxpayer are in general under the control of the court in which such proceeding is pending. Taxes cannot be collected by levy upon assets in the custody of a court, whether or not such custody is incident to a bankruptcy or receivership proceeding, except where the proceeding has progressed to such a point that the levy would not interfere with the work of the court or where the court grants permission to levy. Any assets which under applicable provisions of law are not under the control of the court may be levied upon, for example, property exempt from court custody under State law or the bankrupt's earnings and property acquired after the date of bankruptcy. However, levy upon such property is not mandatory and the Government may rely upon payment of taxes in the proceeding.

(4) *Certain types of compensation.*—(i) *Federal employees.* Levy may be made upon the salary or wages of any officer or employee (including members of the Armed Forces), or elected or appointed official, of the United States, the District of Columbia, or any agency or instrumentality of either, by serving a notice of levy on the employer of the delinquent taxpayer. As used in this paragraph, the term "employer" means:

(A) The officer or employee of the United States, the District of Columbia, or of the agency or instrumentality of the United States or the District of Columbia, who has control of the payment of the wages, or

(B) Any other officer or employee designated by the head of the branch, department, or agency, or instrumentality of the United States or of the District of Columbia as the party upon whom service of the notice of levy may be made.

If the head of such branch, department, agency or instrumentality designates an officer or employee other than one who has control of the payment of the wages, as the party upon whom service of the notice of levy may be made, such head shall promptly notify the Director of the name and address of each officer or employee so designated and the scope or extent of the authority of such designee.

(ii) *State and municipal employees.* Salaries, wages, or other compensation of any officer, employee, or elected or appointed official of a State or Territory, or of any agency, instrumentality, or political subdivision thereof, are also subject to levy to enforce collection of any Federal tax.

(iii) *Seamen.* Notwithstanding the provisions of section 12 of the Seamen's Act of 1915 (46 U.S.C. 601), wages of seamen, apprentice seamen, or fishermen employed on fishing vessels are subject to levy. See 26 U.S.C. 6334(c).

(5) *Noncompetent Indians.* Solely for purposes of 26 U.S.C. 6321 and 6331, any interest in restricted land held in trust by the United States for an individual noncompetent Indian (and not for a tribe) shall not be deemed to be property, or a right to property, belonging to such Indian.

(b) *Successive seizures.* Whenever any property or rights to property upon which a levy has been made are not sufficient to satisfy the claim of the United States for which the levy is made, the regional director (compliance) or the Chief, Tax Processing Center may thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property or rights to property subject to levy of the person against whom such claim exists or on which there is a lien imposed by 26 U.S.C. 6321 (or the corresponding provision of prior law) for the payment of such claim until the amount due from such person, together with all costs and expenses, is fully paid.

(c) *Service of notice of levy by mail.* A notice of levy may be served by mailing the notice to the person upon whom the service of a notice of levy is authorized under paragraph (a)(1) of this section. In such a case the date and time the notice is delivered to the person to be served is the date and time the levy is made. If the notice is sent by certified or registered mail, return receipt requested, the date of delivery on the receipt is treated as the date the levy is made. If, after receipt of a notice of levy, an officer or other person authorized to act on behalf of the person served signs and notes the date and time of receipt on the notice of levy, the date and time so noted will be presumed to be, in the absence of proof to the contrary, the date and time of delivery. Any person may upon written notice to the Chief, Tax Processing Center or to the region director (compliance) having jurisdiction over such person, have all notices of levy by mail sent to one designated ofice. After such a notice is received by the Chief, Tax Processing Center or the regional director (compliance), notices of levy by mail will sent to the designated office until a written notice withdrawing the request or a written notice designating a difference office is received by the Chief, Tax Processing Center or the regional director (compliance).

(26 U.S.C. 6331 and 6332)

§ 70.162 Levy and distraint on salary and wages.

(a) *Notice of intent to levy.* Levy may be made for any unpaid tax only after the regional director (compliance) or the Chief, Tax Processing Center has notified the taxpayer in writing of the intent to levy. The notice must be given in person, left at the dwelling or usual place of business of the taxpayer, or be sent by certified or registered mail to the taxpayer's last known address, no less than 30 days before the day of levy. The notice of intent to levy is in addition to, and may be given at the same time as, the notice and demand described in § 70.161 of this part.

(b) *Jeopardy.* Paragraph (a) of this section does not apply to a levy if the regional director (compliance) or the Chief, Tax Processing Center has made a finding under § 70.161(a)(2) of this part that the collection of tax is in jeopardy.

(c) *Continuing effect of levy on salary or wages.* A levy on salary or wages is continuous from the time of the levy until the liability out of which the levy arose is released under 26 U.S.C. 6343 and § 70.167 of this part. For this purpose, the term "salary or wages" includes compensation for services paid in the form of fees, commissions, bonuses, and similar items. The levy attaches to both salary or wages earned but not yet paid at the time of the levy, and salary or wages earned and becoming payable (or paid in the form of an advance) subsequent to the date of the levy, until the levy is released pursuant to paragraph (d) of this section. In general, salaries or wages that are the subject of a continuing levy, if not exempt from levy under 26 U.S.C. 6334(a) (8) or (9), become payable to the official who made the levy as the payor would otherwise be obligated to pay over the money to the taxpayer. For example, if the wage earner is paid on the Wednesday following the close of each workweek, a levy made upon the taxpayer's employer on any Monday would reach both the wages due for the prior workweek and the wages for succeeding workweeks as such wages become payable. In such a case the levy would be satisfied if the employer, on the first Wednesday after the levy and on each Wednesday thereafter, pays over to the official who made the levy wages which would otherwise be paid to the employee on such Wednesday, until the employer receives a notice of release from levy described in paragraph (d) of this section. See, however, § 70.245(d) of this part for

rules which permit a delayed payment to the official who made the levy in certain cases where amounts payable to the taxpayer are exempt from levy under 26 U.S.C. 6334 (a)(9) and (d).

(d) *Release and notice of release from levy.* The official who made the levy will promptly release a continuing levy on salary or wages when the conditions of 26 U.S.C. 6343 are met. The official who made the levy will also promptly notify the person upon whom the levy was made that it has been released.

(26 U.S.C. 6331)

§ 70.163 Surrender of property subject to levy.

(a) *Requirement*—(1) *In general.* Except as otherwise provided in 26 U.S.C. 6332, relating to levy in the case of banks or life insurance and endowment contracts, any person in possession of (or obligated with respect to) property or rights to property subject to levy and upon which a levy has been made shall, upon demand of the official who made the levy, surrender the property or rights (or discharge the obligation) to the official who made the levy, except that part of the property or rights (or obligation) which, at the time of the demand, is actually or constructively under the jurisdiction of a court because of an attachment or execution under any judicial process.

(2) *Property held by banks.* (i) Any bank shall surrender any deposits (including interest thereon) in such bank only after 21 days after service of levy.

(ii) Notwithstanding paragraph (a)(1) of this section, if a levy has been made upon property or rights to property subject to levy which a bank engaged in the banking business in the United States or a possession of the United States is in possession of (or obligated with respect to), the Director shall not enforce the levy with respect to any deposits held in an office of the bank outside the United States or a possession of the United States, unless the notice of levy specifies that the regional director (compliance) or the Chief, Tax Processing Center intends to reach such deposits. The notice of levy shall not specify that the regional director (compliance) or the Chief, Tax Processing Center intends to reach such deposits unless that official believes:

(A) That the taxpayer is within the jurisdiction of a U.S. court at the time the levy is made and that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States; or

(B) That the taxpayer is not within the jurisdiction of a U.S. court a the time the levy is made, that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office outside the United States or a possession of the United States, and that such deposits consist, in whole or in part, of funds transferred from the United States or a possession of the United States in order to hinder or delay the collection of a tax imposed by provisions of 26 U.S.C. enforced and administered by the Bureau.

(b) *Enforcement of levy.*—(1) *Extent of personal liability.* Any person who, upon demand of the regional director (compliance) or the chief, Tax Processing Center, fails or refuses to surrender any property or right to property subject to levy is liable in his/her own person and estate in a sum equal to the value of the property or rights not so surrendered, together with costs and interests. The liability, however, may not exceed the amount of the taxes for the collection of which the levy was made. Interest is to be computed at the annual rate referred to in regulations under 26 U.S.C. 6221 from the date of the levy, or, in the case of a continuing levy on salary or wages (see 26 U.S.C. 6331(e)), from the date the person would otherwise have been obligated to pay over the wages or salary to the taxpayer. Any amount recovered, other than cost, will be credited against the tax liability for the collection of which the levy was made.

(2) *Penalty for violation.* In addition to the personal liability described in paragraph (b)(1) of this section, any person who is required to surrender property or rights to property and who fails or refuses to surrender them without reasonable cause is liable for a penalty equal to 50 percent of the amount recoverable under 26 U.S.C. 6332(d)(2). No part of the penalty described in this subparagraph shall be credited against the tax liability for the collection of which the levy was made. The penalty described in this subparagraph is not applicable in cases where a bona fide dispute exists concerning the amount of the property to be surrendered pursuant to a levy or concerning the legal effectiveness of the levy. However, if a court in a later enforcement suit sustains the levy, then reasonable cause would usually not exist to refuse to honor a later levy made under similar circumstances.

(c) *Effect of honoring levy.* Any person in possession of, or obligated with respect to, property or rights to property subject to levy and upon which a levy has been made who, upon demand by the regional director (compliance) or the Chief, Tax Processing Center, surrenders the property or rights to property, or discharges the obligation, to that official, or who pays a liability described in paragraph (b)(1) of this section, is discharged from any obligation or liability to the delinquent taxpayer with respect to the property or rights to property arising from the surrender or payment. If an insuring organization satisfies a levy with respect to a life insurance or endowment contract in accordance with § 70.164 of this part, the insuring organization is discharged from any obligation or liability to any beneficiaries of the contract arising from the surrender or payment. Also, it is discharged from any obligation or liability to the insured or other owner. Any person who mistakenly surrenders to the United States property or rights to property not properly subject to levy is not relieved from liability to a third party who owns the property. The owners of mistakenly surrendered property may, however, secure from the United States the administrative relief provided for in 26 U.S.C. 6343(b) or may bring suit to recover the property under 26 U.S.C. 7426.

(d) *Person defined.* In addition to the definition given in § 70.11 of this part, the term "person," as used in 26 U.S.C.A 6332(a) and this section, includes an officer or employee of a corporation or a member or employee of a partnership, who is under a duty to surrender the property or rights to property or to discharge the obligation. In the case of a levy upon the salary or wages of an officer, employee, or elected or appointed official of the United States, the District of Columbia, or any agency or instrumentality of either, the term "person" includes the officer or employee of the United States, of the District of Columbia, or of such agency or instrumentality who is under a duty to discharge the obligation. As to the officer or employee who is under such duty, see § 70.161(a)(4)(i) of this part.

(26 U.S.C. 6332)

§ 70.164 Surrender of property subject to levy in the case of life insurance and endowment contracts.

(a) *In general.* This section provides special rules relating to the surrender of property subject to levy in the case of life insurance and endowment contracts. The provisions of § 70.163 of this part which relate generally to the surrender of property subject to levy apply, to the extent not inconsistent with the special rules set forth in this section, to a levy in the case of life insurance and endowment contracts.

(b) *Effect of service of notice of levy.*—(1) *In general.* A notice of levy served by a regional director (compliance) or the chief, Tax Processing Center on an insuring organization with respect to a life insurance or endowment contract issued by the organization shall constitute:

(i) A demand by the official who made the levy for the payment of the cash loan value of the contract adjusted in accordance with paragraph (c) of this section, and

(ii) The exercise of the right of the person against whom the tax is assessed to the advance of such cash loan value.

It is unnecessary for the official who made the levy to surrender the contract document to the insuring organization upon which the levy is made. However, the notice of levy will include a certification by the official who made the levy that a copy of the notice of levy has been mailed to the person against whom the tax is assessed at that person's last known address. At the time of service of the notice of levy, the levy is effective with respect to the cash loan value of the insurance contract, subject to the condition that if the levy is not satisfied or released before the 90th day after the date of service, the levy can be satisfied only by payment of the amount described in paragraph (c) of this section. Other than satisfaction or release of the levy, no event during the 90-day period subsequent to the date of service of the notice of levy shall release the cash loan value from the effect of the levy. For example, the termination of the policy by the taxpayer or by the death of the insured during such 90-day period shall not release the levy. For the rules relating to the time when the insuring organization is to pay over the required amount, see paragraph (c) of this section.

(2) *Notification of amount subject to levy—(i) Full payment before the 90th day.* In the event that the unpaid liability to which the levy relates is satisfied at any time during the 90-day period subsequent to the date of service of the notice of levy, the official who filed the notice of levy will promptly give the insuring organization written notification that the levy is released.

(ii) *Notification after the 90th day.* In the event that notification is not given under paragraph (b)(2)(i) of this section, the official who filed the notice of levy will, promptly following the 90th day after service of the notice of levy, give the insuring organization written notification of the current status of all accounts listed on the notice of levy, and of the total payments received since service of the notice of levy. This notification will be given to the insuring organization whether or not there has been any change in the status of the accounts.

(c) *Satisfaction of levy.* The levy described in paragraph (b) of this section with respect to a life insurance or endowment contract shall be deemed to be satisfied if the insuring organization pays over to the official who made the levy the amount which the person against whom the tax is assessed could have had advanced by the organization on the 90th day after service of the notice of levy on the organization. However, this amount is increased by the amount of any advance (including contractual interest thereon), generally called a policy loan, made to the person on or after the date the orginzation has actual notice or knowledge, within the meaning of 26 U.S.C. 6323(i)(1), of the existence of the tax lien with respect to which the levy is made. The insuring organization may, nevertheless, make an advance (including contractual interest thereon), generally called an automatic premium loan, made automatically to maintain the contract in force under an agreement entered into before the organization has such actual notice or knowledge. In any event, the amount paid to the Chief, Tax Processing Center by the insuring organization is not to exceed the amount of the unpaid liability shown on the notification described in paragraph (b)(2) of this section. The amount determined in accordance with the provisions of this section, subject to the levy, shall be paid to the Chief, Tax Processing Center by the insuring organization promptly after receipt of the notification described in paragraph (b)(2) of this section. The satisfaction of a levy with respect to a life insurance or endowment contract will not discharge the contract from the tax lien. However, see 26 U.S.C. 6323(b)(9)(C) and § 70.231(i) of this part concerning the liability of an insurance company after satisfaction of a levy with respect to a life insurance or endowment contract. If the person against whom the tax is assessed so directs, the insuring organization, on a date before the 90th day after service of the notice of levy, may satisfy the levy by paying over an amount computed in accordance with the provisions of this subparagraph substituting such date for the 90th day. In the event of termination of the policy by the taxpayer or by the death of the insured on a date before the 90th day after service of the notice of levy, the amount to be paid over to the Chief, Tax Processing Center by the insuring organization in satisfaction of the levy shall be an amount computed in accordance with the provisions of this subparagraph substituting the date of termination of the policy or the date of death for the 90th day.

(d) *Other enforcement proceedings.* The satisfaction of the levy described in paragraph (b) of this section by an insuring organization shall be without prejudice to any civil action for the enforcement of any Federal tax lien with respect to a life insurance or endowment contract. Thus, this levy procedure is not the exclusive means of subjecting the life insurance and endowment contracts of the person against whom a tax is assessed to the collection of the person's unpaid assessment. The United States may choose to foreclose the tax lien in any case where it is appropriate, as, for example, to reach the cash surrender value (as distinguished from cash loan value) of a life insurance or endowment contract.

(e) *Cross references.* (1) For provisions relating to priority of certain advances with respect to a life insurance or endowment contract after satisfaction of a levy pursuant to 26 U.S.C. 6332(b), see 26 U.S.C. 6323(b)(9) and § 70.231(i) of this part.

(2) For provisions relating to the issuance of a certificate of discharge of a life insurance or endowment contract subject to a tax lien, see 26 U.S.C. 6325(b) and § 70.150(b) of this part.

(26 U.S.C. 6332)

§ 70.165 Production of books.

If a levy has been made or is about to be made on any property or rights to property, any person, having custody or control of any books or records containing evidence or statements relating to the property or rights to property subject to levy, shall, upon demand of the ATF officer who has made or is about to make the levy, exhibit such books or records to such officer.

(26 U.S.C. 6333)

§ 70.166 Levy allowed on principal residence in case of jeopardy or certain approval.

Property described in 26 U.S.C. 6334(a)(13) shall not be exempt from levy if:

(a) The regional director (compliance) personally approves (in writing) the levy of such property, or

(b) The Director finds that the collection of tax is in jeopardy.

(26 U.S.C. 6334(e))

§ 70.167 Authority to release levy and return property.

(a) *Release of levy*—(1) *Authority.* A regional director (compliance) or the Chief, Tax Processing Center may release the levy upon all or part of the

property or rights to property levied upon as provided in paragraphs (a) (2), (3) and (4) of this section. Generally, the official who made the levy will receive and act or requests for release of a levy and return of property, but whenever necessary to protect the interests of the government, any regional director (compliance) or the Chief, Tax Processing Center may release a levy and return property seized by another ATF official. A levy may be released under paragraph (a)(3) of this section only if the delinquent taxpayer complies with such of the conditions thereunder as a regional director (compliance) or the Chief, Tax Processing Center may require and if the regional director (compliance) or the Chief, Tax Processing Center determines that such action will facilitate the collection of the liability. A release pursuant to paragraph (a)(4) of this section is considered to facilitate the collection of the liability. The release under this section shall not operate to prevent any subsequent levy.

(2) *Conditions for mandatory release.* (i) A regional director (compliance) or the Chief, Tax Processing Center shall release the levy as authorized under paragraph (a)(1) of this section, if any of the following conditions exist:

(A) The liability for which such levy was made is satisfied or becomes unenforceable by reason of lapse of time,

(B) Release of such levy will facilitate the collection of such liability,

(C) The taxpayer has entered into an agreement under 26 U.S.C. 6159 to satisfy such liability by means of installment payments, unless such agreement provides otherwise (a regional director (compliance) or the Chief, Tax Processing Center is not required to release the levy in this case if release of such levy would jeopardize the secured creditor status of the United States),

(D) A regional director (compliance) or the Chief, Tax Processing Center has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer, or

(E) The fair market value of the property exceeds such liability and release of the levy on a part of such property could be made without hindering the collection of such liability.

(ii) In the case of any tangible personal property essential in carrying on the trade or business of the taxpayer, the regional director (compliance) or the Chief, Tax Processing Center shall provide for an expedited determination under paragraph (a)(2)(i) if levy on such tangible personal property would prevent the taxpayer from carrying on such trade or business.

(3) *Conditions for discretionary release.* A regional director (compliance) or the Chief, Tax Processing Center may release the levy as authorized under paragraph (a)(1) of this section, if:

(i) *Escrow arrangement.* The delinquent taxpayer offers a satisfactory arrangement, which is accepted by a regional director (compliance) or the Chief, Tax Processing Center, for placing property in escrow to secure the payment of the liability (including the expenses of levy) which is the basis of the levy.

(ii) *Bond.* The delinquent taxpayer delivers an acceptable bond to a regional director (compliance) or the Chief, Tax Processing Center conditioned upon the payment of the liability (including the expenses of levy) which is the basis of the levy. Such bond shall be in the form provided in 26 U.S.C. 7101 and § 70.281 of this part.

(iii) *Payment of amount of U.S. interest in the property.* There is paid to a regional director (compliance) or the Chief, Tax Processing Center an amount determined by ATF to be equal to the interest of the United States in the seized property or the part of the seized property to be released.

(iv) *Assignment of salaries and wages.* The delinquent taxpayer executes an agreement directing the taxpayer's employer to pay to a regional director (compliance) or the Chief, Tax Processing Center amounts deducted from the employee's wages on a regular, continuing, or periodic basis, in such manner and in such amount as is agreed upon with a regional director (compliance) or the Chief, Tax Processing Center, until the full amount of the liability is satisfied, and such agreement is accepted by the employer.

(v) *Extension of statute of limitations.* The delinquent taxpayer executes an agreement to extend the statute of limitations in accordance with 26 U.S.C. 6502(a)(2) and § 70.224 of this part.

(4) *Release where value of interest of United States is insufficient to meet expenses of sale.* A regional director (compliance) may release the levy as authorized under paragraph (a)(1) of this section if that official determines that the value of the interest of the United States in the seized property, or in the part of the seized property to be released is insufficient to cover the expenses of the sale of such property.

(b) *Return of property*—(1) *General rule.* If a regional director (compliance) or the Chief, Tax Processing Center determines that property has been wrongfully levied upon, the regional director (compliance) or the Chief, Tax Processing Center may return:

(i) The specific property levied upon,

(ii) An amount of money equal to the amount of money levied upon (together with interest thereon at the overpayment rate from the date ATF receives the money to a date not more than 30 days before the date of return), or

(iii) An amount of money equal to the amount of money received by the United States from a sale of the property (together with interest thereon at the overpayment rate from the date of the sale of the property to a date not more than 30 days before the date of return).

If the United States is in possession of specific property, the property may be returned at any time. An amount equal to the amount of money levied upon or received from a sale of the property may be returned at any time before the expiration of 9 months from the date of the levy. When a request described in paragraph (b)(2) of this section is filed for the return of property before the expiration of 9 months from the date of levy, an amount of money may be returned after a reasonable period of time subsequent to the expiration of the 9-month period if necessary for the investigation and processing of such request. In cases where money is specifically identifiable, as in the case of a coin collection which may be worth substantially more than its face value, the money will be treated as specific property and, whenever possible, this specific property will be returned. For purposes of paragraph (b)(1)(iii) of this section, if property is declared purchased by the United States at a sale pursuant to 26 U.S.C. 6335(e), the United States is treated as having received an amount of money equal to the minimum price determined by the regional director (compliance) before the sale or, if larger, the amount received by the United States from the resale of the property.

(2) *Request for return of property.* A written request for the return of property wrongfully levied upon shall be addressed to the official who authorized the levy. The written request shall contain the following information:

(i) The name and address of the person submitting the request,

(ii) A detailed description of the property levied upon,

(iii) A description of the claimant's basis for claiming an interest in the property levied upon, and

(iv) The name and address of the taxpayer, the originating ATF office, and the date of lien or levy as shown on the Notice of Tax Lien, Notice of Levy, or, in lieu thereof, a statement of the reasons why such information cannot be furnished.

(3) *Inadequate request.* A request shall not be considered adequate unless it is a written request containing the information required by paragraph (b)(2) of this section. However, unless a notification is mailed by the official who received the request to the claimant within 30 days of receipt of the request to inform the claimant of the inadequacies, any written request shall be considered adequate. If the official who received the request timely notifies the claimant of the inadequacies of the request, the claimant shall have 30 days from the receipt of the notification of inadequacy to supply in writing any omitted information. Where the omitted information is so supplied within the 30-day period, the request shall be considered to be adequate from the time the original request was made for purposes of determining the applicable period of limitation upon suit under 26 U.S.C. 6532(c).

(26 U.S.C. 6343)

§ 70.168 Redemption of property.

(a) *Before sale.* Any person whose property has been levied upon shall have the right to pay the amount due, together with costs and expenses of the proceeding, if any, to the regional director (compliance) at any time prior to the sale of the property. Upon such payment the regional director (compliance) shall restore such property to the owner and all further proceedings in connection with the levy on such property shall cease from the time of such payment.

(b) *Redemption of real estate after sale*—(1) *Period.* The owner of any real estate sold as provided in 26 U.S.C. 6335, the owner's heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of such property, at any time within 180 days after the sale thereof.

(2) *Price.* Such property or tract of property may be redeemed upon payment to the purchaser, or in case the purchaser cannot be found in the county in which the property to be redeemed is situated, then to the regional director (compliance) for the ATF region in which the property is situated, for the use of the purchaser, the purchaser's heirs, or assigns, the amount paid by such purchaser and interest thereon at the rate of 20 percent per annum. In case real and personal property (or several tracts of real property) are purchased in the aggregate, the redemption price of the real property (or of each of the several tracts) shall be determined on the basis of the ratio, as of the time of sale, of the value of the real property (or tract) to the value of the total property purchased. For this purpose the minimum price or the highest bid price, whichever is higher, offered for the property separately or in groups shall be treated as the value.

(c) *Record.* When any real property is redeemed, the regional director (compliance) shall cause entry of the fact to be made upon the record of sale kept in accordance with 26 U.S.C. 6340 and § 70.187 of this part, and such entry shall be evidence of such redemption. The party who redeems the property shall notify the regional director (compliance) of the ATF region in which the property is situated of the date of such redemption and of the transfer of the certificate of sale, the amount of the redemption price, and the name of the party to whom such redemption price was paid.

(26 U.S.C. 6337)

§ 70.169 Expense of levy and sale.

The regional director (compliance) shall determine the expenses to be allowed in all cases of levy and sale. Such expenses shall include the expenses of protection and preservation of the property during the period subsequent to the levy, as well as the actual expenses incurred in connection with the sale thereof. In case real and personal property (or several tracts of real property) are sold in the aggregate, the regional director (compliance) shall properly apportion the expenses to the real property (or to each tract).

(26 U.S.C. 6341)

§ 70.170 Application of proceeds of levy.

(a) *Collection of liability.* Any money realized by proceedings under 26 U.S.C. 6331 through 6344, or by sale of property redeemed by the United States (if the interest of the United States in the property was a lien arising under the provisions of 26 U.S.C. enforced and administered by the Bureau), is applied in the manner specified in paragraphs (a)(1), (2), and (3) of this section. Money realized by proceedings under 26 U.S.C. 6331 through 6344, includes money realized by seizure, by sale of seized property, or by surrender under 26 U.S.C. 6332 except money realized by the imposition of a 50 percent penalty pursuant to 26 U.S.C. 6332(d)(2)).

(1) *Expense of levy and sale.* First, against the expenses of the proceedings or sale, including expenses allowable under 26 U.S.C. 6341 and amounts paid by the United States to redeem property.

(2) *Specific tax liability on seized property.* If the property seized and sold is subject to a tax imposed by any provision of 26 U.S.C. which has not been paid, the amount remaining after applying paragraph (a)(1) of this section, shall then be applied against such tax liability (and, if such tax was not previously assessed, it shall then be assessed).

(3) *Liability of delinquent taxpayer.* The amount, if any, remaining after applying paragraphs (a)(1) and (2) of this section, shall then be applied against the liability in respect of which the levy was made or the sale of redeemed property was conducted.

(b) *Surplus proceeds.* Any surplus proceeds remaining after the application of paragraph (a) of this section shall, upon application and satisfactory proof in support thereof, be credited or refunded by the Chief, Tax Processing Center to the person or persons legally entitled thereto. The delinquent taxpayer is the person entitled to the surplus proceeds unless another person establishes a superior claim thereto.

(26 U.S.C. 6342)

Par. 33. Sections 70.181 through 70.188 and an undesignated centerheading preceding them are added to read as follows:

Disposition of Property

§ 70.181 Disposition of seized property.

(a) *Notice of seizure.* As soon as practicable after seizure of property, the ATF officer seizing the property shall give notice in writing to the owner of the property (or, in the case of personal property, to the possessor thereof). The written notice shall be delivered to the owner (or to the possessor, in the case of personal property) or left at the owner's usual place of abode or business, if located within the ATF region where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such region, the notice may be mailed to the owner's last known address. Such notice shall specify the sum demanded and shall contain, in the case of personal property, a list sufficient to identify the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

(b) *Notice of sale.* (1) As soon as practicable after seizure of the property, the regional director (compliance) shall give notice of sale in writing to the owner. Such notice shall be delivered to the owner or left at the owner's usual

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place of abode or business if located within the ATF region where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such region, the notice may be mailed to the owner's last known address. The notice shall specify the property to be sold, and the time, place, manner, and conditions of the sale thereof, and shall expressly state that only the right, title, and interest of the delinquent taxpayer in and to such property is to be offered for sale. The notice shall also be published in some newspaper published in the county wherein the seizure is made or in a newspaper generally circulated in that county. For example, if a newspaper of general circulation in a county but not published in that county will reach more potential bidders for the property to be sold than a newspaper published within the county, or if there is a newspaper of general circulation within the county but no newspaper published within the county, the regional director (compliance) may cause public notice of the sale to be given in the newspaper of general circulation within the county. If there is no newspaper published or generally circulated in the county, the notice shall be posted at the post office nearest the place where the seizure is made, and in not less than two other public places.

(2) The regional director (compliance) may use other methods of giving notice of sale and of advertising seized property in addition to those referred to in paragraph (b)(1) of this section, when the regional director (compliance) believes that the nature of the property to be sold is such that a wider or more specialized advertising coverage will enhance the possibility of obtaining a higher price for the property.

(3) Whenever levy is made without regard to the 10-day period provided in 26 U.S.C. 6331(a) (relating to cases in which collection is in jeopardy), a public notice of sale of the property seized shall not be made within such 10-day period unless 26 U.S.C. 6336 (relating to perishable goods) is applicable.

(c) *Time, place, manner, and conditions of sale.* The time, place, manner, and conditions of sale of property seized by levy shall be as follows:

(1) *Time and place of sale*—(i) *In general.* The time of sale shall not be less than 10 days nor more than 40 days from the time of giving public notice under 26 U.S.C. 6335(b) (see paragraph (b) of this section). The place of sale shall be within the county in which the property is seized, except that if it appears to the regional director (compliance) under whose supervision the seizure was made that substantially higher bids may be obtained for the property if the sale is held at a place outside such county, the regional director (compliance) may order that the sale be held in such other place. The sale shall be held at the time and place stated in the notice of sale.

(ii) *Right to request sale of seized property within 60 days.* The owner of any property seized by levy may request that the regional director (compliance) sell such property within 60 days after such request (or within such longer period as may be specified by the owner). The regional director (compliance) shall comply with such request unless it is determined (and the owner is notified within such period) that such compliance would not be in the best interests of the United States.

(2) *Adjournment of sale.* When it appears to the regional director (compliance) that an adjournment of the sale will best serve the interest of the United States or that of the taxpayer, the regional director (compliance) may adjourn, or cause the ATF officer conducting the sale to adjourn, the sale from time to time, but the date of the sale shall not be later than one month after the date fixed in the original notice of sale.

(3) *Minimum price.* (i) Before the sale of property seized by levy, the regional director (compliance) shall determine:

(A) A minimum price, taking into account the expenses of levy and sale, for which the property shall be sold, and

(B) Whether the purchase of such property by the United States at such minimum price would be in the best interest of the United States.

If, at the sale, one or more persons offer to purchase such property for not less than the amount of the minimum price, the property shall be declared to be sold to the highest bidder. If no person offers for such property at the sale the amount of the minimum price and the regional director (compliance) has determined that the purchase of such property by the United States would be in the best interest of the United States, the property shall be declared to be sold to the United States at such minimum price. If, at the sale, the property is not declared sold to the highest bidder or the United States, the property shall be released to the owner thereof and the expense of the levy and sale shall be added to the amount of tax for the collection of which the levy was made. Any property released to the owner under these circumstances shall remain subject to any lien imposed by 26 U.S.C. chapter 64, subchapter C.

(ii) The ATF officer conducting the sale shall either announce the minimum price before the sale begins or defer announcement of the minimum price until after the receipt of the highest bid, and, if the highest bid is greater than the minimum price, no announcement of the minimum price shall be made.

(4) *Offering of property*—(i) *Sale of indivisible property.* If any property levied upon is not divisible, so as to enable the regional director (compliance) by sale of a part thereof to raise the whole amount of the tax and expenses of levy and sale, the whole of such property shall be sold. For application of surplus proceeds of sale, see 26 U.S.C. 6342(b).

(ii) *Separately, in groups, or in the aggregate.* The seized property may be offered for sale:

(A) As separate items, or

(B) As groups of items, or

(C) In the aggregate, or

(D) Both as separate items (or in groups) and in the aggregate. In such cases, the property shall be sold under the method which produces the highest aggregate amount.

The regional director (compliance) shall select whichever of the foregoing methods of offering the property for sale as is most feasible under all the facts and circumstances of the case, except that if the property to be sold includes both real and personal property, only the personal property may be grouped for the purpose of offering such property for sale. However, real and personal property may be offered for sale in the aggregate, provided the real property, as separate items, and the personal as a group, or as groups, or as separate items, are first offered separately.

(iii) *Condition of title and of property.* Only the right, title, and interest of the delinquent taxpayer in and to the property seized shall be offered for sale, and such interest shall be offered subject to any prior outstanding mortgages, encumbrances, or other liens in favor of third parties which are valid as against the delinquent taxpayer and are superior to the lien of the United States. All seized property shall be offered for sale "as is" and "where is" and without recourse against the United States. No guaranty or warranty, express or implied, shall be made by the ATF officer offering the property for sale, as to the validity of the title, quality, quantity, weight, size, or condition of any of the property, or its fitness for any use or purpose. No claim shall be considered for allowance or adjustment or for rescission of the sale based upon failure of the property to conform with any representation, express or implied.

(iv) *Terms of payment.* The property shall be offered for sale upon whichever of the following terms is fixed by the regional director (compliance) in the public notice of sale:

(A) Payment in full upon acceptance of the highest bid, without regard to the amount of such bid, or

(B) If the aggregate price of all property purchased by a successful bidder at the sale is more than $200, an initial payment of $200 or 20 percent of the purchase price, whichever is the greater, and payment of the balance (including all costs incurred for the protection or preservation of the property subsequent to the sale and prior to final payment) within a specified period, not to exceed 1 month from the date of the sale.

(5) *Method of sale.* The regional director (compliance) shall sell the property either:

(i) At public auction, at which open competitive bids shall be received, or

(ii) At public sale under sealed bids. The following rules, in addition to the other rules provided in this paragraph, shall be applicable to public sale under sealed bids:

(A) *Invitation to bidders.* Bids shall be solicited through a public notice of sale.

(B) *Form for use by bidders.* A bid shall be submitted on a form which will be furnished by the regional director (compliance) upon request. The form shall be completed in accordance with the instructions thereon.

(C) *Remittance with bid.* If the total bid is $200 or less, the full amount of the bid shall be submitted therewith. If the total bid is more than $200, 20 percent of such bid or $200, whichever is greater, shall be submitted therewith. (In the case of alternative bids submitted by the same bidder for items of property offered separately, or groups, or in the aggregate, the bidder shall remit the full amount of the highest alternative bid submitted, if the bid is $200 or less. If the highest alternative bid submitted is more than $200, the bidder shall remit 20 percent of the highest alternative bid or $200, whichever is greater.) Such remittance shall be by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(D) *Time for receiving and opening bids.* Each bid shall be submitted in a securely sealed envelope. The bidder shall indicate in the upper left hand corner of the envelope the bidder's name and address and the time and place of sale as announced in the public notice of sale. A bid will not be considered unless it is received by the AFT officer conducting the sale prior to the opening of the bids. The bids will be opened at the time and place stated in the notice or sale, or at the time fixed in the announcement of the adjournment of the sale.

(E) *Consideration of bids.* The public notice of sale shall specify whether the property is to be sold separately, by groups, or in the aggregate or by a combination of these methods, as provided in paragraph (c)(4)(ii) of this section. If the notice specifies an alternative method, bidders may submit bids under one or more of the alternatives. In case of error in the extension of prices in any bid, the unit price will govern. The ATF officer conducting the sale shall have the right to waive any technical defects in a bid. In the event two or more highest bids are equal in amount, the ATF officer conducting the sale shall determine the successful bidder by drawing lots. After the opening, examination, and consideration of all bids, the ATF officer conducting the sale shall announce the amount of the highest bid or bids and the name of the successful bidder or bidders. Any remittance submitted in connection with an unsuccessful bid shall be returned at the conclusion of the sale.

(F) *Withdrawal of bids.* A bid may be withdrawn on written or telegraphic request received from the bidder prior to the time fixed for opening the bids. A technical defect in a bid confers no right on the bidder for the withdrawal of his bid after it has been opened.

(6) *Payment of bid price.* All payments for property sold under this section shall be made by cash or by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order. If payment in full is required upon acceptance of the highest bid, the payment shall be made at such time. If deferred payment is permitted, the initial payment shall be made upon acceptance of the bid, and the balance shall be paid on or before the date fixed for payment thereof. Any remittance submitted with a successful sealed bid shall be applied toward the purchase price.

(7) *Delivery and removal of personal property.* Responsibility of the United States for the protection or preservation of seized personal property shall cease immediately upon acceptance of the highest bid. The risk of loss is on the purchaser of personal property upon acceptance of his bid. Possession of any personal property shall not be delivered to the purchaser until the purchase price has been paid in full. If payment of part of the purchase price for personal property is deferred, the United States will retain possession of such property as security for the payment of the balance of the purchase price and, as agent for the purchaser, will cause the property to be cared for until the purchase price has been paid in full or the sale is declared null and void for failure to make full payment of the purchase price. In such case, all charges and expenses incurred in caring for the property after the acceptance of the bid shall be borne by the purchaser.

(8) *Default in payment.* If payment in full is required upon acceptance of the bid and is not then and there paid, the ATF officer conducting the sale shall forthwith proceed again to sell the property in the manner provided in 26 U.S.C. 6335(e) and this section. If the conditions of the sale permit part of the payment to be deferred, and if such part is not paid within the prescribed period, suit may be instituted against the purchaser for the purchase price or such part thereof as has not been paid, together with interest at the rate of 6 percent per annum from the date of the sale; or, in the discretion of the regional director (compliance), the sale may be declared by the regional director (compliance) to be null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided in 26 U.S.C. 6335(b), (c), and (e) and this section. In the event of such readvertisement and sale, any new purchaser shall receive such property or rights to property free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by such defaulting purchaser shall be forfeited to the United States.

(26 U.S.C. 6335)

§ 70.182 Disposition of personal property acquired by the United States.

(a) *Sale.*—(1) *In general.* Any personal property (except bonds, notes, checks, and other securities) acquired by the United States in payment of or as security for debts arising under the internal revenue laws may be sold by the regional director (compliance) who acquired such property for the United States. United States saving bonds shall not be sold by the regional director (compliance), but shall be transferred to the appropriate office of the Treasury

Department for redemption. Other bonds, notes, checks, and other securities shall be disposed of in accordance with instructions issued by the Director.

(2) *Time, place, manner and terms of sale.* The time, place, manner and terms of sale of personal property acquired for the United States shall be as follows:

(i) *Time, notice, and place of sale.* The property may be sold at any time after it has been acquired by the United States. A public notice of sale shall be posted at the post office nearest the place of sale and in at least two other public places. The notice shall specify the property to be sold and the time, place, manner, and conditions of sale. In addition, the regional director (compliance) may use such other methods of advertising as the regional director (compliance) believes will result in obtaining the highest price for the property. The place of sale shall be within the region where the property was originally acquired by the United States. However, if the regional director (compliance) believes that a substantially higher price may be obtained, the sale may be held outside the region.

(ii) *Rejection of bids and adjournment of sale.* The ATF officer conducting the sale reserves the right to reject any and all bids and withdraw the property from the sale. When it appears to the ATF officer conducting the sale that an adjournment of the sale will best serve the interest of the United States, that officer may order the sale adjourned from time to time. If the sale is adjourned for more than 30 days in the aggregate, public notice of the sale must again be given in accordance with paragraph (a)(2)(i) of this section.

(iii) *Liquidated damages.* The notice shall state whether, in the case of default in payment of the bid price, any amount deposited with the United States will be retained as liquidated damages. In case liquidated damages are provided, the amount thereof shall not exceed $200.

(3) *Agreement to bid.* The regional director (compliance) may, before giving notice of sale, solicit offers from prospective bidders and enter into agreements with such persons that they will bid at least a specified amount in case the property is offered for sale. In such cases, the regional director (compliance) may also require such persons to make deposits to secure the performance of their agreements. Any such deposit, but not more than $200, shall be retained as liquidated damages in case such person fails to bid the specified amount and the property is not sold for as much as the amount specified in such agreement.

(4) *Terms of payment.* The property shall be offered for sale upon whichever of the following terms is fixed by the regional director (compliance) in the public notice of sale:

(i) Payment in full upon acceptance of the highest bid, without regard to the amount of such bid, or

(ii) If the aggregate price of all property purchased by a successful bidder at the sale is more than $200, an initial payment of $200 or 20 percent of the purchase price, whichever is the greater, and payment of the balance (including all costs incurred for the protection or preservation of the property subsequent to the sale and prior to final payment) within a specified period, not to exceed one month from the date of the sale.

(5) *Method of sale.* The property may be sold either:

(i) At public auction, at which open competitive bids shall be received, or

(ii) At public sale under sealed bids.

(6) *Sales under sealed bids.* The following rules, in addition to the other rules provided in this paragraph, shall be applicable to public sales under sealed bids.

(i) *Invitation to bidders.* Bids shall be solicited through a public notice of sale.

(ii) *Form for use by bidders.* A bid shall be submitted on a form which will be furnished by the regional director (compliance) upon request. The form shall be completed in accordance with the instructions thereon.

(iii) *Remittance with bid.* If the total bid is $200 or less, the full amount of the bid shall be submitted therewith. If the total bid is more than $200, 20 percent of such bid or $200, whichever is greater, shall be submitted therewith. Such remittance shall be by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(iv) *Time for receiving and opening bids.* Each bid shall be submitted in a securely sealed envelope. The bidder shall indicate in the upper left hand corner of the envelope the bidder's name and address and the time and place of sale as announced in the public notice of sale. A bid will not be considered unless it is received by the ATF officer conducting the sale prior to the opening of the bids. The bids will be opened at the time and place stated in the notice of sale, or at the time fixed in the announcement of the adjournment of the sale.

(v) *Consideration of bids.* The ATF officer conducting the sale shall have the right to waive any technical defects in a bid. After the opening, examination, and consideration of all bids, the ATF officer conducting the sale shall announce the amount of the highest bid or bids and the name of the successful bidder or bidders, unless in the opinion of the officer a higher price can be obtained for the property than has been bid. In the event the highest bids are equal in amount (and unless in the opinion of the ATF officer conducting the sale a higher price can be obtained for the property than has been bid), the officer shall determine the successful bidder by drawing lots. Any remittance submitted in connection with an unsuccessful bid shall be returned to the bidder at the conclusion of the sale.

(vi) *Withdrawal of bids.* A bid may be withdrawn on written or telegraphic request received from the bidder prior to the time fixed for opening the bids. A technical defect in a bid confers no right on the bidder for the withdrawal of the bid after it has been opened.

(7) *Payment of bid price.* All payments for property sold pursuant to this section shall be made by cash or by a certified, cashier's or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order. If payment in full is required upon acceptance of the highest bid, the payment shall be made at such time. If payment in full is not made at such time, the ATF officer conducting the sale may forthwith proceed again to sell the property in the manner provided in paragraph (a)(5) of this section. If deferred payment is permitted, the initial payment shall be made upon acceptance of the bid, and the balance shall be paid on or before the date fixed for payment thereof. Any remittance submitted with a successful sealed bid shall be applied toward the purchase price.

(8) *Delivery and removal of personal property.* The risk of loss is on the purchaser of the property upon acceptance of the purchaser's bid. Possession of any property shall not be delivered to the purchaser until the purchase price has been paid in full. If payment of part of the purchase price for the property is deferred, the United States will retain possession of such property as security for the payment of the balance of the purchase price and, as agent for the purchaser, will cause the property to be cared for until the purchase price has been paid in full or the sale is declared null and void for failure to make full payment of the purchase price. In such case, all charges and expenses incurred in caring for the property after acceptance of the bid shall be borne by the purchaser.

(9) *Certificate of sale.* The ATF officer conducting the sale shall issue a certificate of sale to the purchaser upon payment in full of the purchase price.

(b) *Accounting.* In case of the resale of such property, the proceeds of the sale shall be paid into the Treasury as internal revenue collections and there shall be rendered by the regional director (compliance) a distinct account of all charges incurred in such sale. For additional accounting rules, see 26 U.S.C. 7809.

(26 U.S.C. 7505)

§ 70.183 Administration and disposition of real estate acquired by the United States.

(a) *Persons charged with.* The regional director (compliance) for the region in which the property is situated shall have charge of all real estate which has been or shall be assigned, set off, or otherwise conveyed by purchase or otherwise to the United States in payment of debts or penalties arising under provisions of 26 U.S.C. enforced and administered by the Bureau or which has been or shall be vested in the United States by mortgage, or other security for payment of such debts, or which has been redeemed by the United States, or which has been or shall be acquired by the United States for payment of or as security for debts arising under provisions of 26 U.S.C. enforced and administered by the Bureau, and of all trusts created for the use of the United States in payment of such debts due the United States.

(b) *Sale.* The regional director (compliance) for the region in which the property is situated may sell any real estate owned or held by the United States as aforesaid, subject to the following rules:

(1) *Property purchased at sale under levy.* If the property was acquired as a result of being declared purchased for the United States at a sale under 26 U.S.C. 6335, relating to sale of seized property, the property shall not be sold until after the expiration of 180 days after such sale under levy.

(2) *Notice of sale.* A notice of sale shall be published in some newspaper published or generally circulated within the county where the property is situated, or a notice shall be posted at the post office nearest the place where the property is situated and in at least two other public places. The notice shall specify the property to be sold and the time, place, manner and conditions of sale. In addition, the regional director (compliance) may use other methods of advertising and of giving notice of the sale if the regional director (compliance) believes such methods will enhance the possibility of obtaining a higher price for the property.

(3) *Time and place of sale.* The time of the sale shall be not less than 20 days from the date of giving public notice of sale under paragraph (b)(2) of this section. The place of sale shall be within the county where the property is situated. However, if the regional director (compliance) believes a substantially better price may be obtained, the sale may be held outside such county.

(4) *Rejection of bids and adjournment of sale.* The ATF officer conducting the sale reserves the right to reject any and all bids and withdraw the property from the sale. When it appears to the ATF officer conducting the sale that an adjournment of the sale will best serve the interest of the United States, that officer may order the sale adjourned from time to time. If the sale is adjourned for more than 30 days in the aggregate, public notice of the sale must be given again in accordance with paragraph (b)(2) of this section.

(5) *Liquidated damages.* The notice shall state whether, in the case of default in payment of the bid price, any amount deposited with the United States will be retained as liquidated damages. In case liquidated damages are provided, the amount thereof shall not exceed $200.

(6) *Agreement to bid.* The regional director (compliance) may, before giving notice of sale, solicit offers from prospective bidders and enter into agreements with such persons that they will bid at least a specified amount in case the property is offered for sale. In such cases, the regional director (compliance) may also require such persons to make deposits to secure the performance of their agreements. Any such deposit, but not more than $200, shall be retained as liquidated damages in case such person fails to bid the specified amount and the property is not sold for as much as the amount specified in such agreement.

(7) *Terms.* The property shall be offered for sale upon whichever of the following terms is fixed by the regional director (compliance) in the public notice of sale:

(i) Payments in full upon acceptance of the highest bid, or

(ii) If the price of the property purchased by a successful bidder at the sale is more than $200, an initial payment of $200 or 20 percent of the purchase price, whichever is the greater, and payment of the balance within a specified period, not to exceed one month from the date of the sale.

(8) *Method of sale.* The property may be sold either:

(i) At public auction, at which open competitive bids shall be received, or

(ii) At public sale under sealed bids.

(9) *Sales under sealed bids.* The following rules, in addition to the other rules provided in this paragraph (b), shall be applicable to public sales under sealed bids.

(i) *Invitation to bidders.* Bids shall be solicited through a public notice of sale.

(ii) *Form for use by bidders.* A bid shall be submitted on a form which will be furnished by the regional director (compliance) upon request. The form shall be completed in accordance with the instructions thereon.

(iii) *Remittance with bid.* If the total bid is $200 or less, the full amount of the bid shall be submitted therewith. If the total bid is more than $200, 20 percent of such bid or $200, whichever is greater, shall be submitted therewith. Such remittance shall be by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(iv) *Time for receiving and opening bids.* Each bid shall be submitted in a securely sealed envelope. The bidder shall indicate in the upper left hand corner of the envelope the bidder's name and address and the time and place of sale as announced in the public notice of sale. A bid shall not be considered unless it is received by the ATF officer conducting the sale prior to the opening of the bids. The bids will be opened at the time and place stated in the notice of sale, or at the time fixed in the announcement of the adjournment of the sale.

(v) *Consideration of bids.* The ATF officer conducting the sale shall have the right to waive any technical defects in a bid. After the opening, examination, and consideration of all bids, the ATF officer conducting the sale shall announce the amount of the highest bid or bids and the name of the successful bidder or bidders, unless in the opinion of the officer a higher price can be obtained for the property than has been bid. In the event the highest bids are equal in amount (and unless in the opinion of the ATF officer conducting the sale a higher price can be obtained for the property than has been bid), the officer shall determine the successful bidder by drawing lots. Any remittance submitted in connection with an unsuccessful bid shall be returned to the bidder at the conclusion of the sale.

(vi) *Withdrawal of bid.* A bid may be withdrawn on written or telegraphic request received from the bidder prior to the time fixed for opening the bids. A technical defect in a bid confers no right on the bidder for the withdrawal of the bid after it has been opened.

(10) *Payment of bid price.* All payments for property sold pursuant to this section shall be made by cash or by a certified cashier's or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order. If payment in full is required upon acceptance of the highest bid, the payment shall be made at such time. If payment in full is not made at such time, the ATF officer conducting the sale may forthwith proceed again to sell the property in the manner provided in paragraph (b)(8) of this section. If deferred payment is permitted, the initial payment shall be made upon acceptance of the bid, and the balance shall be paid on or before the date fixed for payment thereof. Any remittance submitted with a successful sealed bid shall be applied toward the purchase price.

(11) *Deed.* Upon payment in full of the purchase price, the regional director (compliance) shall execute a quitclaim deed to the purchaser.

(c) *Lease.* Until real estate is sold, the regional director (compliance) for the region in which the property is situated may lease such property.

(d) *Release to debtor.* In cases where real estate has or may become the property of the United States by conveyance or otherwise, in payment of or as security for a debt arising under the laws relating to internal revenue, and such debt shall have been paid, together with the interest thereon (at the rate of 1 percent per month), to the United States within 2 years from the date of the acquisition of such real estate, the regional director (compliance) for the region in which the property is located may release by deed or otherwise convey such real estate to the debtor from whom it was taken, or to the debtor's heirs or other legal representatives. If property is declared purchased by the United States under 26 U.S.C. 6335, then, for the purpose of this paragraph, the date of such declaration shall be deemed to be the date of acquisition of such real estate.

(e) *Accounting.* The regional director (compliance) for the region in which the property is situated shall, in accordance with 26 U.S.C. 7809, account for the proceeds of all sales or leases of the property and all expenses connected with the maintenance, sale, or lease of the property.

(f) *Authority of Director.* Notwithstanding the other paragraphs of this section, the Director may, when the Director deems it advisable, take charge of and assume responsibility for any real estate to which this section is applicable. In such case, the Director will notify in writing the regional director (compliance) for the region in which the property is situated. In any case where a single parcel of real estate is situated in more than one region, the Director may designate in writing a regional director (compliance) who shall have charge of and be responsible for the entire property.

(26 U.S.C. 7506)

§ 70.184 Disposition of perishable goods.

(a) *Appraisal of certain seized property.* If the regional director (compliance) determines that any property seized by levy is liable to perish or become greatly reduced in price or value by keeping, or that such property cannot be kept without great expense, the regional director (compliance) shall appraise the value of such property and return it to the owner if the owner complies with the conditions prescribed in paragraph (b) of this section or, if the owner does not comply with such conditions, dispose of the property in accordance with paragraph (c) of this section.

(b) *Return to owner.* If the owner of the property can be readily found, the regional director (compliance) shall give the owner written notice of the regional director (compliance)'s determination of the appraised value of the property. However, if the regional director (compliance) determines that the circumstances require immediate action, the regional director (compliance) may give the owner an oral notice of the determination of the appraised value of the property, which notice shall be confirmed in writing prior to sale. The property shall be returned to the owner if, within the time specified in the notice, the owner:

(1) Pays to the regional director (compliance) an amount equal to the appraised value, or

(2) Gives an acceptable bond as prescribed by 26 U.S.C. 7101 and § 70.281 of this part. Such bond shall be in an amount not less than the appraised value of the property and shall be conditioned upon the payment of such amount at such time as the regional director (compliance) determines to be appropriate in the circumstances.

(c) *Immediate sale.* If the owner does not pay the amount of the appraised value of the seized property within the time specified in the notice, or furnish bond as provided in paragraph (b) of this section within such time, the regional director (compliance) shall as soon as practicable make public sale of the property in accordance with the following terms and conditions:

(1) *Notice of sale.* If the owner can readily be found, a notice shall be given to the owner. A notice of sale also shall be posted in two public places in the county which the property is to be sold. The notice shall specify the time and place of sale, the property to be sold, and the manner and conditions of sale. The regional director (compliance) may give such other notice and in such other manner as the regional director (compliance) deems advisable under the circumstances.

(2) *Sale.* The property shall be sold at public auction to the higher bidder.

(3) *Terms.* The purchase price shall be paid in full upon acceptance of the highest bid. The payment shall be made by cash, or by a certified, cashier's or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(26 U.S.C. 6336)

§ 70.185 Certificate of sale; deed of real property.

(a) *Certificate of sale.* In the case of property sold as provided in 26 U.S.C. 6335 (relating to sale of seized property), the regional director (compliance) shall give to the puchaser's a certificate of sale upon payment in full of the purchase price. A certificate of sale of real property shall set forth the real property purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor.

(b) *Deed to real property.* In case of any real property sold as provided in 26 U.S.C. 6335 and not redeemed in the manner and within the time prescribed in 26 U.S.C. 6337, the regional director (compliance) shall execute (in accordance with the laws of the State in which the real property is situated pertaining to sales of real property under execution) to the purchaser of such real property at the sale or his assigns, upon surrender of the certificate of sale, a deed of the real property so purchased, reciting the facts set forth in the certificate.

(c) *Deed to real property purchased by the United States.* If real property is declared purchased by the United States at a sale pursuant to 26 U.S.C. 6335, the regional director (compliance) shall at the proper time execute a deed therefor and shall, without delay, cause the deed to be duly recorded in the proper registry of deeds.

(26 U.S.C. 6338)

§ 70.186 Legal effect of certificate of sale of personal property and deed of real property.

(a) *Certificate of sale of property other than real property.* In all cases of sale pursuant to 26 U.S.C. 6335 of property (other than real property), the certificate of such sale.

(1) *As evidence.* Shall be prima facie evidence of the right of the officer to make such sale, and conclusive evidence of the regularity of the officer's proceedings in making the sale; and

(2) *As conveyance.* Shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold; and

(3) *As authority for transfer of corporate stock.* If such property consists of corporate stocks, shall be notice, when received, to any corporation, company, or association of such transfer, and shall be authority to such corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the stock certificate, in lieu of any original or prior certificate, which shall be void, whether canceled or not; and

(4) *As receipts.* If the subject of sale is securities or other evidence of debt, shall be a good and valid receipt to the person holding the certificate of sale as against any person holding or claiming to hold possession of such securities or other evidences of debt; and

(5) *As authority for transfer of title to motor vehicle.* If such property consists of a motor vehicle, shall be notice, when received, to any public offical charged with the registration of title to motor vehicles, of such tranfer and shall be authority to such official to record the transfer on his books and records in the same manner as if the certificate of title to such motor vehicle were transferred or assigned by the party holding the certificate of title, in lieu of any original or prior certificate, which shall be null and void, whether canceled or not.

(b) *Deed to real property.* In the case of the sale of real property pursuant to 26 U.S.C. 6335:

(1) *Deed as evidence.* The deed of sale given pursuant to 26 U.S.C. 6338 shall be prima facie evidence of the facts therein stated; and

(2) *Deed as conveyance of title.* If the proceedings of the regional director (compliance as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the United States attached thereto.

(c) *Effect of junior encumbrances.* A certificate of sale of personal property given or a deed to real property executed pursuant to 26 U.S.C. 6338 discharges the property from all liens, encumbrances, and titles over which the lien of the United States, with respect to which the levy was made, has priority. For example, a mortgage on real property executed after a notice of a Federal tax lien has been filed is extinguished when the regional director (compliance) executes a deed to the real property to a purhcaser thereof at a sale pursuant to 26 U.S.C. 6335 following the seizure of the property by the United States. The proceeds of such a sale are distributed in accordance with priority of the liens, encumbrances, or titles. *See* 26 U.S.C. 6342(b) and 7426(a)(2) and §§ 70.170 and 70.207(a)(2) of this part with respect to surplus proceeds.

(26 U.S.C. 6339)

§ 70.187 Records of sale.

(a) *Requirement.* Each regional director (compliance) shall make a record of all sales under 26 U.S.C. 6335 of real property situated within that region and of redemptions of such property. The records shall set forth the tax for which any such sale was made, the dates of seizures and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers, and the date of the deed. In the case of redemption of the property, the records shall additionally set forth the date of such redemption and of the transfer of the certificate of sale, the amount of the redemption price, and the name of the party to whom such redemption price was paid. The orginal record shall be retained by the Chief, Tax Processing Center.

(b) *Copy as evidence.* A copy of such record, or any part thereof, certified by the Chief, Tax Processing Center shall be evidence in any court of the truth of the facts therein stated.

(26 U.S.C. 6340)

§ 70.188 Expense of levy and sale.

The regional director (compliance) shall determine the expenses to be allowed in all cases of levy and sale. Such expenses shall include the expenses of protection and preservation of the property during the period subsequent to the levy, as well as the actual expenses incurred in connection with the sale thereof. In case real and personal property (or several tracts of real property) are sold in the aggregate, the regional director (compliance) shall properly apportion the expenses to the real property (or to each tract).

(26 U.S.C. 6341)

Par. 56. Sections 70.191 through 70.193 and 70.201 through 70.213 with their undesignated centerheadings, are added to read as follows:

Judicial Proceedings

Civil Action by the United States

§ 70.191 Authorization.

(a) *In general.* No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture (with respect to the provisions of 26 U.S.C. enforced and administered by the Bureau) shall be commenced unless the Director, Bureau of Alcohol, Tobacco and Firearms, or designated delegate, or the Chief Counsel for the Bureau, or designated delegate, directs that the action be commenced.

(b) *Property held by banks.* The Director shall not authorize or sanction any civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, from any deposits held in a foreign office of a bank engaged in the banking business in the United States or a possession of the United States unless the Director believes:

(1) That the taxpayer is within the jurisdiction of a U.S. court at the time the civil action is authorized or sanctioned and that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States; or

(2) That the taxpayer is not within the jurisdiction of a U.S. court at the time the civil action is authorized or sanctioned, that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States, and that such deposits consist, in whole or in part, of funds transferred from the United States or a possession of the United States in order to hinder or delay the collection of a tax imposed by the provisions of 26 U.S.C. enforced and administered by the Bureau.

(26 U.S.C. 7401)

§ 70.192 Action to enforce lien or to subject property to payment of tax.

(a) *Civil actions.* In any case where there has been a refusal or neglect to pay any tax (with respect to the provisions of 26 U.S.C. enforced and administered by the Bureau) or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or designated delegate at the request of the Director, Bureau of Alcohol, Tobacco and Firearms, or the Chief Counsel for the Bureau or designated delegate, may direct a civil action to be filed in any court of the United States to enforce the lien of the United States under the Internal Revenue Code with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which the delinquent has any right, title or interest, to the payment of such tax or liability. In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Director or the Chief Counsel for the Bureau during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity.

(b) *Bid by the United States.* If property is sold to satisfy a first lien held by the United States, the United States may bid at the sale a sum which does not exceed the amount of its lien and the expenses of the sale. See also 31 U.S.C. 3715.

(26 U.S.C. 7403)

§ 70.193 Disposition of judgments and moneys recovered.

All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties (with respect to the provisions of 26 U.S.C. enforced and administered by the Bureau) shall be paid to the Bureau as collections of taxes imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau.

(26 U.S.C. 7408)

Proceedings by Taxpayers and Third Parties

§ 70.201 Exhaustion of administrative remedies.

(a) *In general.* Title 26 U.S.C. 7430(b)(1) provides that a court shall not award reasonable litigation costs in any civil tax proceeding in court under 26 U.S.C. 7430(a) unless the court determines that the prevailing party has exhausted the administrative remedies available to the party within the Bureau. This section sets forth the circumstances in which the Bureau normally will consider such administrative remedies exhausted.

(b) *Tax, penalty and addition to tax—*(1) *In general.* A party has not exhausted its administrative remedies available within the Bureau with respect to any tax matter for which a managerial review is available under § 70.486 of this part unless:

(i) The party, prior to filing a civil action for refund in a court of the United States:

(A) Participates, either in person or through a qualified representative described in 31 CFR part 8, in a managerial review; and

(B) Agrees under 26 U.S.C. 6501(c)(4) to extend the time for an assessment of tax if necessary to provide the appropriate manager with a reasonable time period to consider the tax matter; or

(ii) The party, if no managerial review is granted, and, prior to the issuance of a statutory notice of disallowance in the case of a civil action for refund in a court of the United States:

(A) Requests a managerial review in accordance with § 70.486 of this part;

(B) Files a written protest if a written protest is required to obtain a managerial review; and

(C) Agrees under 26 U.S.C. 6501(c)(4) to extend the time for an assessment of tax if necessary to provide the appropriate manager with a reasonable time period to consider the tax matter.

(2) *Participates.*—For purposes of this paragraph a party or qualified representative of the party described in 31 CFR part 8 participates in a managerial review if the party or qualified representative discloses to the appropriate manager all relevant information regarding the party's tax matter to the extent such information and its relevance were known or should have been known to the party or qualified representative at the time of such conference.

(c) *Actions involving summonses, levies, liens, jeopardy assessments, etc.* (1) A party has not exhausted its administrative remedies available within the Bureau with respect to a matter other than one to which paragraph (b) of this section applies (including summonses, levies, liens and jeopardy assessments) unless, prior to filing an action in a court of the United States:

(i) The party submits to the ATF officer who has jurisdiction over the dispute a written claim for relief reciting facts and circumstances sufficient to show the nature of the relief requested and that the party is entitled to such relief; and

(ii) The ATF officer has denied the claim for relief in writing or failed to act on the claim within a reasonable period after such claim is received by that officer.

(2) For purposes of this paragraph, a reasonable period is:

(i) The 5-day period preceding the filing of a petition to quash an administrative summons issued under 26 U.S.C. 7609;

(ii) The 5-day period preceding the filing of a wrongful levy action in which a demand for the return of property is made;

(iii) The period expressly provided for administrative review of the party's claim by an applicable provision of 26 U.S.C. that expressly provides for the pursuit of administrative remedies (such as the 16-day period provided under 26 U.S.C. 7429(b)(1)(B) relating to review of jeopardy assessment procedures); or

(iv) The 60-day period following receipt of the claim for relief in all other cases.

(d) *Tax matter.* For purposes of this section "tax matter" means a matter in connection with the determination, collection or refund of any tax, interest or penalty under provisions of 26 U.S.C. enforced and administered by the Bureau.

(e) *Exception to requirement that party pursue administrative remedies.* A party's administrative remedies within the Bureau are considered exhausted for purposes of 26 U.S.C. 7430 if the Bureau notifies the party in writing that the pursuit of administrative remedies in accordance with paragraphs (b) and (c) of this section is unnecessary.

(26 U.S.C. 7430)

§ 70.202 Intervention.

If the United States is not a party to a civil action or suit, the United States may intervene in such action or suit to assert any lien arising under provisions of 26 U.S.C. enforced and administered by the Bureau on the property which is the subject of such action or suit. The provisions of 26 U.S.C. 2410 (except subsection (b)) and of 28 U.S.C. 1444 shall apply in any case in which the United States intervenes as if the United States had originally been named a defendant in such action or suit. If the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such lien.

(26 U.S.C. 7424)

§ 70.203 Discharge of liens; scope and application; judicial proceedings.

(a) *In general.* A tax lien of the United States, or a title derived from the enforcement of a tax lien of the United States, may be discharged or divested under local law only in the manner prescribed in 28 U.S.C. 2410 or in the manner prescribed in 26 U.S.C. 7425. Title 26 U.S.C. 7425(a) contains provisions relating to the discharge of a lien when the United States is not joined as a party in the judicial proceedings described in subsection (a) of 28 U.S.C. 2410. These judicial proceedings are plenary in nature and proceed on formal pleadings. Title 26 U.S.C. 7425(b) contains provisions relating to the discharge of a lien or a title derived from the enforcement of a lien in the event of a nonjudicial sale with respect to the property involved. Title 26 U.S.C. 7425(c) contains special rules relating to the notice of sale requirements contained in 26 U.S.C. 7425(b).

(b) *Judicial proceedings*—(1) *In general.* Title 26 U.S.C. 7425(a) provides rules, where the United States is not joined as a party, to determine the effect of a judgment in any civil action or suit described in subsection (a) of 28 U.S.C. 2410 (relating to joinder of the United States in certain proceedings), or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of 26 U.S.C. If the United States is improperly named as a party to a judicial proceeding, the effect is the same as if the United States were not joined.

(2) *Notice of lien filed when the proceeding is commenced.* Where the United States is not properly joined as a party in the court proceeding and a notice of lien has been filed in accordance with 26 U.S.C. 6323(f) or (g) in the place provided by law for such filing at the time the action or suit is commenced, a judgment or judicial sale pursuant to such a judgment shall be made subject to and without disturbing the lien of the United States.

(3) *Notice of lien not filed when the proceeding is commenced.* Where the United States is not joined as a party in the court proceeding and either a notice of lien has not been filed in accordance with 26 U.S.C. 6323(f) or (g) in the palce provided by law for such filing at the time the action or suit is commenced, or the law makes no provision for that filing, a judgment or judicial sale pursuant to such a judgment shall have the same effect with respect to the discharge or divestment of the lien of the United States as may be provided with respect to these matters by the local law of the place where the property is situated.

(4) *Proceeds of a judicial sale.* If a judicial sale of property pursuant to a judgment in any civil action or suit to which the United States is not a party discharges a lien of the United States arising under the provisions of 26 U.S.C., the United States may claim the proceeds of the sale (exclusive of costs) prior to the time that distribution of the proceeds is ordered. The claim of the United States in such a case is treated as having the same priority with respect to the proceeds as the lien had with respect to the property which was discharged from the lien by the judicial sale.

(26 U.S.C. 7425(a))

§ 70.204 Discharge of liens; nonjudicial sales.

(a) *In general.* Title 26 U.S.C. 7425(b) contains provisions with respect to the effect on the interest of the United States in property in which the United States has or claims a lien, or a title derived from the enforcement of a lien, of a sale made pursuant to:

(1) An instrument creating a lien on the property sold.

(2) A confession of judgment on the obligation secured by an instrument creating a lien on the property sold, or

(3) A statutory lien on the property sold.

For purposes of this section, such a sale is referred to as a "nonjudicial sale." The term "nonjudicial sale" includes, but is not limited to, the divestment of the taxpayer's interest in property which occurs by operation of law, by public or private sale, by forfeiture, or by termination under provisions contained in a contract for a deed or a conditional sales contract. Under 26 U.S.C. 7425(b)(1), if a notice of lien is filed in accordance with 26 U.S.C. 6323(f) or (g), or the title derived from the enforcement of a lien is recorded as provided by local law, more than 30 days before the date of sale and the appropriate ATF official is not given notice of the sale (in the manner prescribed in § 70.205 of this part), the sale shall be made subject to and without disturbing the lien or title of the United States. Under 26 U.S.C. 7425(b)(2)(C), in any case in which notice of the sale is given to the appropriate ATF official not less than 25 days prior to the date of sale (in the manner prescribed in 26 U.S.C. 7425(c)(1)), the sale shall have the same effect with respect to the discharge or divestment of the lien or title as may be provided by local law with respect to other junior liens or other titles derived from the enforcement of junior liens. A nonjudicial sale pursuant to a lien which is junior to a tax lien does not divest the tax lien, even though notice of the nonjudicial sale is given to the appropriate ATF official. However, under the provisions of 26 U.S.C. 6323(b) and § 70.150 of this part, designated ATF officers may discharge the property from a tax lien, including a tax lien which is senior to another lien upon the property.

(b) *Date of sale.* In the case of a nonjudicial sale subject to the provisions of 26 U.S.C. 7425(b), in order to compute any period of time determined with reference to the date of sale, the date of sale shall be determined in accordance with the following rules:

(1) In the case of divestment of junior liens on property resulting directly from a public sale, the date of sale is deemed to be the date the public sale is held, regardless of the date under local law on which junior liens on the property are divested or the title to the property is transferred.

(2) In the case of divestment of junior liens on property resulting directly from a private sale, the date of sale is deemed to be the date title to the property is transferred, regardless of the date junior liens on the property are divested under local law, and

(3) In the case of divestment of junior liens on property not resulting directly from a public or private sale, the date of sale is deemed to be the date on which junior liens on the property are divested under local law. For provisions relating to the right of redemption of the United States, see 26 U.S.C. 7425(d) and § 70.206 of this part.

(26 U.S.C. 7425(b))

§ 70.205 Discharge of liens; special rules.

(a) *Notice of sale requirements*—(1) *In general.* Except in the case of the sale of perishable goods described in paragraph (c) of this section, a notice (as described in paragraph (d) of this section) of a nonjudicial sale shall be given, in writing by registered or certified mail or by personal service, not less than 25 days prior to the date of sale (determined under the provisions of § 70.204(b) of this part), to the Chief, Tax Processing Center. The provisions of 26 U.S.C. 7502 (relating to timely mailing treated as timely filing) and 7503 (relating to time for performance of acts where the last day falls on Saturday, Sunday, or legal holiday) apply in the case of notices required to be made under this paragraph.

(2) *Postponement of scheduled sale*—(i) *Where notice of sale is given.* In the event that notice of a sale is given in accordance with paragraph (a)(1) of this section, with respect to a scheduled sale which is postponed to a later time or date, the seller of the property is required to give notice of the

postponement to the Chief, Tax Processing Center, in the same manner as is required under local law with respect to other secured creditors. For example, assume that in State M local law requires that in the event of a postponement of a scheduled forclosure sale of real property, an oral announcement of the postponement at the place and time of the scheduled sale constitutes sufficient notice to secured creditors of the postponement. Accordingly, if at the place and time of a scheduled sale in State M an oral announcement of the postponement is made, the Bureau is considered to have notice of the postponement for the purpose of this paragraph (a)(2).

(ii) *Where noitce of sale is not given.* In the event that:

(A) Notice of a nonjudicial sale would not be required under paragraph (a)(1) of this section, if the sale were held on the originally scheduled date,

(B) Because of a postponement of the scheduled sale, more than 30 days elapse between the originally scheduled date of the sale and the date of the sale, and

(C) A notice of lien with respect to the property to be sold is filed more than 30 days before the date of the sale, notice of the sale is required to be given to the Chief, Tax Processing Center in accordance with the provisions of paragraph (a)(1) of this section. In any case in which notice of sale is required to be given with respect to a scheduled sale, and notice of the sale is not given, any postponement of the scheduled sale does not affect the rights of the United States under 26 U.S.C. 7425(b).

(b) *Consent to sale*—(1) *In general.* Notwithstanding the notice of sale provisions of paragraph (a) of this section a nonjudicial sale of property shall discharge or divest the property of the lien or title of the United States if the Chief, Tax Processing Center consents to the sale of the property free of the lien or title. Pursuant to 26 U.S.C. 7425(c)(2), where adequate protection is afforded the lien or title of the United States, the Chief, Tax Processing Center may, in that official's discretion, consent with respect to the sale of property in appropriate cases. Such consent shall be effective only if given in writing and shall be subject to such limitations and conditions as the Chief, Tax Processing Center may require. However, the Chief, Tax Processing Center may not consent to a sale of property under this section after the date of sale, as determined under § 70.204(b) of this part. For provisions relating to the authority of the Chief, Tax Processing Center and the regional director (compliance) to release a lien or discharge property subject to a tax lien, *see* 26 U.S.C. 6325 and § 70.150 of this part.

(2) *Application for consent.* Any person desiring the Chief, Tax Processing Center's consent to sell property free of a tax lien or a title derived from the enforcement of a tax lien of the United States in the property shall submit to the Chief, Tax Processing Center a written application, in triplicate, declaring that it is made under penalties of perjury, and requesting that such consent be given. The application shall contain the information required in the case of a noitice of sale, as set forth in paragraph (d)(1) of this section, and, in addition, shall contain a statement of the reasons why the consent is desired.

(c) *Sale of perishable goods*—(1) *In general.* A notice (as described in paragraph (d) of this section) of a nonjudicial sale of perishable goods (as defined in paragraph (c)(2) of this section) shall be given in writing, by registered or certified mail or delivered by personal service, at any time before the sale, to the Chief, Tax Processing Center. If a notice of a nonjudicial sale is timely given in the manner described in this paragraph the nonjudicial sale shall discharge or divest the tax lien, or a title derived from the enforcement of a tax lien, of the United States in the property. The provisions of 26 U.S.C. 7502 (relating to timely mailing treated as timely filing) and 7503 (relating to time for performance of acts where the last days falls on Saturday, Sunday, or a legal holiday) apply in the case of notices required to be made under this paragraph. The seller of the perishable goods shall hold the proceeds (exclusive of costs) of the sale as a fund, for not less than 30 days after the date of the sale, subject to the liens and claims of the United States, in the same manner and with the same priority as the liens and claims of the United States had with respect to the property sold. If the seller fails to hold the proceeds of the sale in accordance with the provisions of this paragraph and if the Chief, Tax Processing Center asserts a claim to the proceeds within 30 days after the date of sale, the seller shall be personally liable to the United States for an amount equal to the value of the interest of the United States in the fund. However, even if the proceeds of the sale are not so held by the seller, but all the other provisions of this paragraph are satisfied, the buyer of the property at the sale takes the property free of the liens and claims of the United States. In the event of a postponement of the scheduled sale of perishable goods, the seller is not required to notify the Chief, Tax Processing Center of the postponement. For provisions relating to the authority of the Chief, Tax Processing Center and the regional director (compliance) to release a lien or discharge property subject to a tax lien, *see* 26 U.S.C. 6325 and § 70.150 of this part.

(2) *Definition of perishable goods.* For the purpose of this paragraph, the term "perishable goods" means any tangible personal property which, in the reasonable view of the person selling the property, is liable to perish or become greatly reduced in price or value by keeping, or cannot be kept without great expense.

(d) *Forfeiture of land sales contract.* For purposes of paragraph (a) of this section, a nonjudicial sale of property includes any forfeiture of a land sales contract.

(e) *Content of notice of sale*—(1) *In general.* With respect to a noitice of sale described in paragraph (a) or (c) of this section, the notice will be considered adequate if it contains the information described in paragraph (d)(1) (i), (ii), (iii), and (iv) of this section.

(i) The name and address of the person submitting the notice of sale;

(ii) A copy of each Notice of Federal Tax Lien (ATF Form 5651.2) affecting the property to be sold, or the following information as shown on each such Notice of Federal Tax Lien:

(A) The initiating office named thereon,

(B) The name and address of the taxpayer, and

(C) The date and place of filing of the notice;

(iii) With respect to the property to be sold the following information:

(A) A detailed description, including location of the property affected by the notice (in the case of real property, the street address, city, and State and the legal description contained in the title or deed to the property and, if available, a copy of the abstract of title),

(B) The date, time, place, and terms of proposed sale of the property, and

(C) In case of a sale of perishable property described in paragraph (c) of this section, a statement of the reasons why the property is believed to be perishable; and

(iv) The approximate amount of the principal obligation, including interest, secured by the lien sought to be enforced and a description of the other expenses (such as legal expenses, selling costs, etc.) which may be charged against the sale proceeds.

(2) *Inadequate notice.* Except as otherwise provided in this subparagraph, a notice of sale described in paragraph (a) of this section which does not contain the information described in paragraph (d)(1) of this section shall be considered inadequate by the Chief, Tax Processing Center. If the Chief, Tax Processing Center determines that the notice is inadequate, that official will give written notification of the items of information which are inadequate to the person who submitted the notice. A notice of sale which does not contain the name and address of the person submitting such notice shall be considered to be inadequate for all purposes without notification of any specific inadequacy. In any case where a notice of sale, does not contain the information required under paragraph (d)(1)(ii) of this section with respect to a Notice of Federal Tax Lien, the Chief, Tax Processing Center may give written notification of such omission without specification of any other inadequacy and such notice of sale shall be considered inadequate for all purposes. In the event the Chief, Tax Processing Center gives notification that the notice of sale is inadequate, a notice complying with the provisions of this section (including the requirement that the notice be given not less than 25 days prior to the sale in the case of a notice described in paragraph (a) of this section) must be given. However, in accordance with the provisions of paragraph (b)(1) of this section, in such a case the Chief, Tax Processing Center may, in that official's discretion, consent to the sale of the property free of the lien or title of the United States even though notice of the sale is given less than 25 days prior to the sale. In any case where the person who submitted a timely notice which indicates the person's name and address does not receive, more than 5 days prior to the date of the sale, written notification from the Chief, Tax Processing Center that the notice is inadequate, the notice shall be considered adequate for purposes of this section.

(3) *Acknowledgment of notice.* If a notice of sale described in paragraph (a) or (c) of this section is submitted in duplicate to the Chief, Tax Processing Center with a written request that receipt of the notice be acknowledged and returned to the person giving the notice, this request will be honored by the Chief, Tax Processing Center. The acknowledgment by the Chief, Tax Processing Center will indicate the date and time of the receipt of the notice.

(4) *Disclosure of adequacy of notice.* The Chief, Tax Processing Center is authorized to disclose, to any person who has a proper interest, whether an adequate notice of sale was given under paragraph (d)(1) of tis section insofar as disclosure is authorized under 26 U.S.C. 6103. Any person desiring this information should submit to the Chief, Tax Processing Center a written request which clearly describes the property sold or to be sold, identifies the applicable notice of lien, gives the reasons for requesting the information, and states the name and address of the person making the request.

(26 U.S.C. 7425(c))

§ 70.206 Discharge of liens; redemption by United States.

(a) *Right to redeem*—(1) *In general.* In the case of a nonjudicial sale of real property to satisfy a lien prior to the tax lien or a title derived from the enforcement of a tax lien, the regional director (compliance) may redeem the property within the redemption period (as described in paragraph (a)(2) of this section). The right of redemption of the United States exists under 26 U.S.C. 7425(d) even though the Chief, Tax Processing Center has consented to the sale under 26 U.S.C. 7425(c)(2) and § 70.205(b) of this part. For purposes of this section, the term "nonjudicial sale" shall have the same meaning as used in § 70.204(a) of this part.

(2) *Redemption period.* For purposes of this section, the redemption period shall be:

(i) The period beginning with the date of the sale (as determined under § 70.204(b)) and ending with the 120th day after such date, or

(ii) The period for redemption of real property allowable with respect to other secured creditors, under the local law of the place where the real property is located, whichever expires later.

Which ever period is applicable, 26 U.S.C. 7425 and this section shall govern the amount to be paid and the procedure to be followed.

(3) *Limitations.* In the event a sale does not ultimately discharge the property from tax lien (whether by reason of local law or the provisions of 26 U.S.C. 7425(b)), the provisions of this section do not apply because the tax lien will continue to attach to the property after the sale. In a case in which the Bureau is not entitled to a notice of sale under 26 U.S.C. 7425(b) and § 70.205 of this part, the United States does not have a right of redemption under 26 U.S.C. 7425(d). However, in such a case, if a tax lien has attached to the property at the time of sale, the United States has the same right of redemption, if any, which is afforded similar creditors under the local law of the place in which the property is situated.

(b) *Amount to be paid*—(1) *In general.* In any case in which a regional director (compliance) exercises the right to redeem real property under 26 U.S.C. 7425(d), the amount to be paid is the sum of the following amounts:

(i) The actual amount paid for the property (as determined under paragraph (b)(2) of this section) being redeemed (which, in the case of a purchaser who is the holder of the lien being foreclosed, shall include the amount of the obligation secured by such lien to the extent legally satisfied by reason of the sale);

(ii) Interest on the amount paid (described in paragraph (b)(1)(i) of this section) at the sale by the purchaser of the real property computed at the rate of 6 percent per annum for the period from the date of the sale (as determined under § 70.204(b) of this part) to the date of redemption;

(iii) The amount, if any, equal to the excess of the expenses necessarily incurred to maintain such property (as determined under paragraph (b)(3) of this section) by the purchaser (and the purchaser's successor in interest, if any) over the income from such property realized by the purchaser (and the purchaser's successor in interest, if any) plus a reasonable rental value of such property (to the extent the property is used by or with the consent of the purchaser or the purchaser's successor in interest or is rented at less than its reasonable rental value); and

(iv) The amounts, if any, of a payment made by the purchaser or the purchaser's successor in interest after the foreclosure sale to a holder of a senior lien (to the extent provided under paragraph (b)(4) of this section).

(2) *Actual amount paid.* (i) The actual amount paid for property by a purchaser, other than holder of the lien being foreclosed, is the amount paid by the purchaser at the sale. For purposes of this paragraph, the amount paid by the purchaser at the sale includes deferred payments upon the bid price. The actual amount paid does not include costs and expenses incurred prior to the foreclosure sale by the purchaser except to the extent such expenses are included in the amount bid and paid for the property. For example, the actual amount paid does not normally include the expenses of the purchaser such as title searches, professional fees, or interest on debt incurred to obtain funds to purchase the property.

(ii) In the case of a purchaser who is the holder of the lien being foreclosed, the actual amount paid is the sum of:

(A) The amount of the obligation secured by such lien to the extent legally satisfied by reason of the sale and

(B) Any additional amount bid and paid at the sale.

For purposes of this section, a purchaser who acquires title as a result of a nonjudicial foreclosure sale is treated as the holder of the lien being foreclosed if a lien (or any interest reserved, created, or conveyed as security for the payment of a debt or fulfillment of other obligation) held by the purchaser is partially or fully satisfied by reason of the foreclosure sale. For example, a person whose title is derived from a tax deed issued under local law shall be treated as a purchaser who is the holder of the lien foreclosed in a case where a tax certificate, evidencing a lien on the property arising from the payment of property taxes, ripens into title. The amount paid by a purchaser at the sale includes deferred payments upon any portion of the bid price which is in excess of the amount of the lien being foreclosed. The actual amount paid does not include costs and expenses incurred prior to the foreclosure sale by the purchaser except to the extent such expenses are included in the amount of the lien being foreclosed which is legally satisfied by reason of the sale or in the amount bid and paid at the sale. Where the lien being foreclosed attaches to other property not subject to the foreclosure sale, the amount legally satisfied by reason of the sale does not include the amount of such lien that attaches to the other property. However, for purposes of the preceding sentences, the amount of the lien that attaches to the other property shall be considered to be equal to the amount by which the value of the other property exceeds the amount of any other senior lien on that property. Where, after the sale, the holder of the lien being foreclosed has the right to the unpaid balance of the amount due the holder, the amount legally satisfied by reason of the sale does not include the amount of such lien to the extent a deficiency judgment may be obtained therefor. However, for purposes of the preceding sentence, an amount, with respect to which the holder of the lien being foreclosed would otherwise have a right to a deficiency judgment, shall be considered to be legally satisfied by reason of the foreclosure sale to the extent that the holder has waived the holder's right to a deficiency judgment prior to the foreclosure sale. For this purpose, the waiver must be in writing and legally binding upon the foreclosing lienholder as of the time the sale is concluded. If, prior to the foreclosure, payments have been made by the foreclosing lienholder to a holder of a superior lien, the payments are included in the actual amount paid to the extent they give rise to an interest which is legally satisfied by reason of the foreclosure sale.

(3) *Excess expenses incurred by purchaser.* (i) Expenses necessarily incurred in connection with the property after the foreclosure sale and before redemption by the United States are taken into account in determining if there are excess expenses payable under paragraph (b)(1)(iii) of this section. Expenses incurred by the purchaser prior to the foreclosure sale are not considered under paragraph (b)(3) of this section. (See paragraph (b)(2)(ii) of this section for circumstances under which such expenses may be included in the amount to be paid.) Expenses necessarily incurred in connection with the property include, for example, rental agent commissions, repair and maintenance expenses, utilities expenses, legal fees incurred after the foreclosure sale and prior to redemption in defending the title acquired through the foreclosure sale, and a proportionate amount of casualty insurance premiums and ad valorem taxes. Improvements made to the property are not considered as an expense unless the amounts incurred for such improvements are necessarily incurred to maintain the property.

(ii) At any time prior to the expiration of the redemption period applicable under paragraph (a)(2) of this section, the regional director (compliance) may, by certified or registered mail or hand delivery, request a written itemized statement of the amount claimed by the purchaser or the purchaser's successor in interest to be payable under paragraph (b)(1)(iii) of this section. Unless the purchaser or the purchaser's successor in interest furnishes the written itemized statement within 15 days after the request is made by the regional director (compliance), it shall be presumed that no amount is payable for expenses in excess of income and the Bureau shall tender only the amount otherwise payable under paragraph (b)(1) of this section. If a purchaser or the purchaser's successor in interest has failed to furnish the written itemized statement within 15 days after the request therefor is made by the regional director (compliance), or there is a disagreement as to the amount properly payable under paragraph (b)(1)(iii) of this section, a payment for excess expenses shall be made after the redemption within a reasonable time following the verification by the regional director (compliance) of a written itemized statement submitted by the purchaser or the purchaser's successor in interest or the resolution of the disagreement as to the amount properly payable for excess expenses.

(4) *Payments made by purchaser or the purchaser's successor in interest to a senior lienor.* (i) The amount to be paid upon a redemption by the United States shall include the amount of a payment made by the purchaser or the purchaser's successor in interest to a holder of a senior lien to the extent a request for the reimbursement thereof (made in accordance with paragraph (b)(4)(ii) of this section) is approved as provided under paragraph (b)(4)(iii) of this section. This paragraph applies only to a payment made after the foreclosure sale and before the redemption to a holder of a lien that was, immediately prior to the foreclosure sale, superior to the lien foreclosed. A payment of principal or interest to a senior lienor shall be taken into account. Generally, the portion, if any, of a payment which is to be held in escrow for the payment of an expense, such as hazard insurance or real property taxes, is not considered under this paragraph. However, a payment by the escrow agent of a real property tax or special assessment lien, which was senior to the lien foreclosed, shall be considered to be a payment made by the purchaser or the purchaser's successor in interest for purposes of this paragraph. With respect to real property taxes assessed after the foreclosure sale, see paragraph (b)(3)(i) of this section, relating to excess expenses incurred by the purchaser.

(ii) Before the expiration of the redemption period applicable under paragraph (a)(2) of this section, the regional director (compliance) shall, in any case where a redemption is contemplated, send notice to the purchaser (or the purchaser's successor in interest of record) by certified or registered mail or hand delivery of the right under paragraph (b)(4) of this section to request reimbursement (payable in the event the right to redeem under 26 U.S.C. 7425(d) is exercised) for a payment made to a senior lienor. No later than 15 days after the notice from the regional director (compliance) is sent, the request for reimbursement shall be mailed or delivered to the office specified in such notice and shall consist of:

(A) A written itemized statement, signed by the claimant, of the amount claimed with respect to a payment made to a senior lienor, together with the supporting evidence requested in the notice from the regional director (compliance), and

(B) A waiver or other document that will be effective upon redemption by the United States to discharge the property from, or transfer to the United States, any interest in or lien on the property that may arise under local law with respect to the payment made to a senior lienor.

Upon a showing of reasonable cause, a regional director (compliance) may, in that official's discretion and at any time before the expiration of the applicable period for redemption, grant an extension for a reasonable period of time to submit, amend, or supplement a request for reimbursement. Unless a request for reimbursement is timely submitted (determined with regard to any extension of time granted), no amount shall be payable to the purchaser or the purchaser's successor in interest on account of a payment made to a senior lienor if the right to redeem under 26 U.S.C. 7425(d) is exercised. A waiver or other document submitted pursuant to paragraph (b)(4)(ii) of this section shall be treated as effective only to the extent of the amount included in the redemption price under this paragraph. If the right to redeem is not exercised or a request for reimbursement is withdrawn, the regional director (compliance) shall, by certified or registered mail or hand delivery, return to the purchaser or the purchaser's successor any waiver or other document submitted pursuant to paragraph (b)(4)(ii) of this section as soon as is practicable.

(iii) A request for reimbursement submitted in accordance with paragraph (b)(4)(ii) of this section shall be considered to be approved for the total amount claimed by the purchaser, and payable in the event the right to redeem is exercised, unless the regional director (compliance) sends notice to the claimant, by certified or registered mail or hand delivery, of the denial of the amount claimed within 30 days after receipt of the request of 15 days before expiration of the applicable period for redemption, whichever is later. The notification of denial shall state the grounds for denial. If such notice of denial is given, the request for reimbursement for a payment made to a senior lienor shall be treated as having been withdrawn by the purchaser or the purchaser's successor and the Bureau shall tender only the amount otherwise payable under paragraph (b)(1) of this section. If a request for reimbursement is treated as having been withdrawn under the preceding sentence, payment for amounts described in paragraph (b)(4) of this section may, in the discretion of the regional director (compliance), be made after the redemption upon the resolution of the disagreement as to the amount properly payable under paragraph (b)(1)(iv) of this section.

(c) *Certificate of redemption*—(1) *In general.* If a regional director (compliance) exercises the right of redemption of the United States described in paragraph (a) of this section, the regional director (compliance) shall apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption and to record title to the redeemed property in the name of the United States. If no such officer has been designated by local law or if the officer designated by local law fails to issue the necessary documents, the regional director (compliance) is authorized to issue a certificate of redemption for the property redeemed by the United States.

(2) *Filing.* The regional director (compliance) shall, without delay, cause either the documents issued by the local officer or the certificate of redemption executed by the regional director (compliance) to be filed with the local office where certificates of redemption are generally filed. If a certificate of redemption is issued by the regional director (compliance) and if the State in which the real property redeemed by the United States is situated has no office with which certificates of redemption may be filed, the regional director (compliance) shall file the certificate of redemption in the office of the clerk of the United States district court for the judicial district in which the redeemed property is situated.

(3) *Effect of certificate of redemption.* A certificate of redemption executed pursuant to paragraph (c)(1) of this section, shall constitute prima facie evidence of the regularity of the redemption. When a certificate of redemption is recorded, it shall transfer to the United States all the rights, title, and interest in and to the redeemed property acquired by the person, from whom the regional director (compliance) redeemed the property, by virtue of the sale of the property. Therefore, if under local law the purchaser takes title free of liens junior to the lien of the foreclosing lienholder, the United States takes the title free of such junior liens upon redemption of the property. If a certificate of redemption has been erroneously prepared and filed because the redemption was not effective, the regional director (compliance) shall issue a document revoking such certificate of redemption and such document shall be conclusively binding upon the United States against a purchaser of the property or a holder of a lien upon the property.

(4) *Application for release of right of redemption.* Upon application of a party with a proper interest in the real property sold in a nonjudicial sale described in 26 U.S.C. 7425(b) and § 70.204 of this part, which real property is subject to the right of redemption of the United States described in this section, the regional director (compliance) may, in that official's discretion, release the right of redemption with respect to the property. The application for the release shall be submitted in writing to a regional director (compliance) and shall contain such information as the regional director (compliance) may require. If the regional director (compliance) determines that the right of redemption of the United States is without value, no amount shall be required to be paid with respect to the release of the right of redemption.

(26 U.S.C. 7425(d))

§ 70.207 Civil actions by persons other than taxpayers.

(a) *Actions permitted.*—(1) *Wrongful levy.* If a levy has been made on property, or property has been sold pursuant to a levy, any person (other than the person against whom is assessed the tax out of which such levy arose) may bring a civil action against the United States in a district court of the United States based upon such person's claim:

(i) That the person has an interest in, or a lien on, such property which is senior to the interest of the United States; and

(ii) That such property was wrongfully levied upon.

No action is permitted under 26 U.S.C. 7426(a)(1) unless there has been a levy upon the property claimed.

(2) *Surplus proceeds.* If property has been sold pursuant to levy, any person (other than the person against whom is assessed the tax out of which such levy arose) may bring a civil action against the United States in a district court of the United States based upon the claim that the person:

(i) Has an interest in or lien on such property junior to that of the United States; and

(ii) is entitled to the surplus proceeds of such sale.

(3) *Substituted sale proceeds.* Any person who claims to be legally entitled to all or any part of the amount which is held as a fund from the sale of property pursuant to an agreement described in 26 U.S.C. 6325(b)(3) may bring a civil action against the United States in a district court of the United States to obtain the relief provided by 26 U.S.C. 7426(b)(4). It is not necessary that the

claimant be a party to the agreement which provides for the substitution of the sale proceeds for the property subject to the lien.

(b) *Adjudication*—(1) *Wrongful levy.* If the court determines that property has been wrongfully levied upon, the court may:

(i) Grant an injunction to prohibit the enforcement of such levy or to prohibit a sale of such property if such sale would irreparably injure rights in the property which are superior to the rights of the United States in such property; or

(ii) Order the return of specific property if the United States is in possession of such property; or

(iii) Grant a judgment for the amount of money levied upon, with interest thereon at the overpayment rate established under 26 U.S.C. 6621 from the date that the official who made the levy receives the money wrongfully levied upon to the date of payment of such judgment, or

(iv) Grant a judgment for an amount not exceeding the amount received by the United States from the sale of such property (which, in the case of property declared purchased by the United States at a sale, shall be the greater of the minimum amount determined pursuant to 26 U.S.C. 6335(e) or the amount received by the United States from the resale of such property), or the fair market value of such property immediately before the levy, with interest thereon at the overpayment rate established under 26 U.S.C. 6621 from the date of the sale of the property to the date of payment of such judgment.

For purposes of paragraph (b)(1) of this section, a levy is wrongful against a person (other than the taxpayer against whom the assessment giving rise to the levy is made), if the levy is upon property exempt from levy under 26 U.S.C. 6334, or the levy is upon property in which the taxpayer had no interest at the time the lien arose or thereafter, or the levy is upon property with respect to which such person is a purchaser against whom the lien is invalid under 26 U.S.C. 6323 or 6324(a)(2) or (b), or the levy or sale pursuant to levy will or does effectively destroy or otherwise irreparably injure such person's interest in the property which is senior to the Federal tax lien. A levy may be wrongful against a holder of a senior lien upon the taxpayer's property under certain circumstances although legal rights to enforce the holder's interest survive the levy procedure. For example, the levy may be wrongful against such a person if the property is an obligation which is collected pursuant to the levy rather than sold and nothing thereafter remains for the senior lienholder, or the property levied upon is of such a nature that when it is sold at a public sale the property subject to the senior lien is not available for the senior lienholder as a realistic source for the enforcement of the holder's interest. Some of the factors which should be taken into account in determining whether property remains or will remain a realistic source from which the senior lienholder may realize collection are: The nature of the property, the number of purchasers, the value of each unit sold or to be sold, whether, as a direct result of the distraint sale, the costs of realizing collection from the security have or will be so substantially increased as to render the security substantially valueless as a source of collection, and whether the property subject to the distraint sale constitutes substantially all of the property available as security for the payment of the indebtedness to the senior lienholder.

(2) *Surplus proceeds.* If the court determines that the interest or lien of any party to an action under 26 U.S.C. 7426 was transferred to the proceeds of a sale of the property, the court may grant a judgment in an amount equal to all or any part of the amount of the surplus proceeds of such sale. The term "surplus proceeds" means property remaining after application of the provisions of 26 U.S.C. 6342(a).

(3) *Substituted sale proceeds.* If the court determines that a party has an interest in or lien on the amount held as a fund pursuant to an agreement described in 26 U.S.C. 6325(b)(3), the court may grant a judgment in an amount equal to all or any part of the amount of such fund.

(26 U.S.C. 7426)

§ 70.208 Review of jeopardy assessment or jeopardy levy procedures; information to taxpayer.

Not later than 5 days after the day on which an assessment is made under 26 U.S.C. 6862 or when a levy is made less than 30 days after the notice and demand described in 26 U.S.C 6331(a), the official who authorized the assessment or levy shall provide the taxpayer a written statement setting forth the information upon which that official relies in authorizing such assessment or levy.

(26 U.S.C. 7429(a)(1))

§ 70.209 Review of jeopardy assessment or levy procedures; administrative review.

(a) *Request for administrative review.* Any request for the review of a jeopardy assessment or levy provided for by 26 U.S.C. 7429(a)(2) shall be filed with the official who authorized the assessment or levy, within 30 days after the statement described in § 70.208 of this part is given to the taxpayer. However, if no statement is given within the 5-day period described in § 70.208, any request for review of the jeopardy assessment shall be filed within 35 days after the date the assessment is made. Such request shall be in writing, shall state fully the reasons for the request, and shall be supported by such evidence as will enable the reviewing official to make the redetermination described in 26 U.S.C. 7429(a)(3).

(b) *Administrative review.* In determining whether the assessment or levy is reasonable and the amount assessed appropriate, the reviewing official shall take into account not only information available at the time the assessment is made but also information which subsequenbtly becomes available.

(26 U.S.C. 7429(a)(2))

§ 70.210 Review of jeopardy assessment or levy procedures; judicial action.

(a) *Time for bringing judicial action.* An action for judicial review described in 26 U.S.C. 7429(b) may be instituted by the taxpayer during the period beginning on the earlier of:

(1) The date of the reviewing official notifies the taxpayer of the determination described in 26 U.S.C. 7429(a)(3); or

(2) The 16th day after the request described in 26 U.S.C. 7429(a)(2) was made by the taxpayer; and ending on the 90th day thereafter.

(b) Extension of the period for judicial review. The U.S. Government may not seek an extension of the 20-day period described in 26 U.S.C. 7429(b)(2), but it may join with the taxpayer in seeking such an extension.

(26 U.S.C. 7429)

§ 70.211 Damages for failure to release lien.

(a) *General.* If any officer or employee of the Bureau knowingly, or by reason of negligence, fails to release a lien under 26 U.S.C. 6325 on property of the taxpayer, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

(b) *Damages.* In any action brought under paragraph (a) of this section, upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of:

(1) Actual, direct economic damages sustained by the plaintiff which, but for the actions of the defendant, would not have been sustained, plus

(2) The costs of the action.

(c) *Limitations*—(1) *Requirement that administrative remedies be exhausted.* A judgment for damages shall not be awarded under paragraph (b) of this section unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Bureau.

(2) *Mitigation of damages.* The amount of damages awarded under paragraph (b)(1) of this section shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

(3) *Period for bringing action.* Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date of the right of action accrues.

(d) *Notice of failure to release lien.* The requirements covering release of liens and administrative appeal of liens appear at §§ 70.150 and 70.151 of this part, respectively. If a lien is not released when the conditions for release are met, the taxpayer should notify the Chief, Tax Processing Center in writing of ATF's failure to release the lien. The Chief, Tax Processing Center will release the lien or notify the taxpayer of any additional actions required on the taxpayer's part to effect release of the lien within 30 days from receipt of the notice of failure to release lien. Whenever necessary to protect the interests of the government, a regional director (compliance) may also release a lien under this section.

(26 U.S.C. 7432)

§ 70.212 Damages for unauthorized collection actions.

(a) *In general.* If, in connection with any collection of tax under the provisions of 26 U.S.C. enforced and administered by the Bureau with respect to a taxpayer, any officer or employee of the Bureau recklessly or intentionally disregards any provision of 26 U.S.C. enforced and administered by the Bureau or any regulation thereunder, such taxpayer may bring a civil action for damages against the United States in a district court of the United States. Except as provided in 26 U.S.C. 7432 and § 70.211 of this part, such civil action shall be the exclusive remedy for recovering damages resulting from such actions.

(b) *Damages.* In any action brought under paragraph (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the lesser of $100,000 or the sum of:

(1) Actual, direct economic damages sustained by the plaintiff as a proximate result of the reckless or intentional actions of the officer or employee, and

(2) The costs of the action.

(c) *Limitations*—(1) *Requirement that administrative remedies be exhausted.* A judgment for damages shall not be awarded under paragraph (b) unless the court determines that the plaintiff has exhausted the administrative remedies available to such plaintiff within the Bureau.

(2) *Mitigation of damages.* The amount of damages awarded under paragraph (b)(1) of this section shall be reduced by the amount of such damages which could have reasonably been mitigated by the plaintiff.

(3) *Period for bringing action.* Notwithstanding any other provision of law, an action to enforce liability created under this section may be brought without regard to the amount in controversy and may be brought only within 2 years after the date the right of action accrues.

(d) *Damages for frivolous or groundless claims.* Whenever it appears to the court that the taxpayer's position in proceedings before the court instituted or maintained by such taxpayer under this section is frivolous or groundless, damages in an amount not in excess of $10,000 shall be awarded to the United States by the court in the court's decision. Damages so awarded shall be assessed at the same time as the decision and shall be paid upon notice and demand from the regional director (compliance) or the Chief, Tax Processing Center.

(26 U.S.C. 6673 and 7433)

§ 70.213 Repayments to officers or employees.

The Director is authorized to repay to any officer or employee of the Bureau the full amount of such sums of money as may be recovered against such officer or employee in any court for any taxes imposed under provisions of 26 U.S.C. enforced and administered by the Bureau collected by such officer or employee with the cost and expense of suit, and all damages and costs recovered against any officer or employee of the Bureau in any suit brought against such officer or employee by reason of anything done in the official performance of duties under the provisions of 26 U.S.C. enforced and administered by the Bureau.

(26 U.S.C. 7423)

Par. 57. Undesignated centerheadings are added immediately preceding § 70.221 to read as follows:

Limitations

Limitations on Assessment and Collection

Par. 58. Section 70.223(d) is amended by revising the first sentence to read as follows:

§ 70.223 Exceptions to general period of limitations on assessment and collection.

* * * * * *

(d) *Extension by agreement.* The time prescribed by 26 U.S.C. 6501 for the assessment of any tax imposed by provisions of 26 U.S.C. enforced and administered by the Bureau may, prior to the expiration of such time, be extended for any period of time agreed upon in writing by the taxpayer and the regional director (compliance) or the Chief, Tax Processing Center. * * *

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Par. 59. Sections 70.224 through 70.227 are added to read as follows:

§ 70.224 Collection after assessment.

(a) *Length of period*—(1) *General rule.* In any case in which a tax has been assessed within the statutory period of limitation properly applicable thereto, a proceeding in court to collect such tax may be begun, or levy for the collection of such tax may be made, within 6 years after the assessment thereof.

(2) *Extension by agreement.* (i) The 6-year period of limitation on collection after assessment of any tax may, prior to the expiration thereof, be extended for any period of time agreed upon in writing by the taxpayer and the regional director (compliance). Whenever necessary to protect the revenue, the Chief, Tax Processing Center may also execute a written agreement with the taxpayer to extend the period of limitation. The extension shall become effective upon execution of the agreement by both the taxpayer and the regional director (compliance) or the Chief, Tax Processing Center.

(ii) The period of limitation on collection after assessment of any tax (including any extension of such period) may be extended after the expiration thereof if there has been a levy on any part of the taxpayer's property prior to such expiration and if the extension is agreed upon in writing prior to a release of the levy under the provisions of 26 U.S.C. 6343. An extension under this paragraph has the same effect as an agreement made prior to the expiration of the period of limitation on collection after assessment, and during the period of the extension collection may be enforced as to all property or rights to property owned by the taxpayer

whether or not seized under the levy which was released.

(iii) Any period agreed upon under the provisions of paragraph (a)(1) of this section may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(3) If a timely proceeding in court for the collection of a tax is commenced, the period during which such tax may be collected by levy shall be extended and shall not expire until the liability for the tax (or a judgment against the taxpayer arising from such liability) is satisfied or becomes unenforceable.

(b) *Date when levy is considered made.* The date on which a levy on property or rights to property is made is the date on which the notice of seizure provided in 26 U.S.C. 6335(a) is given.

(26 U.S.C. 6502)

§ 70.225 Suspension of running of period of limitation; assets of taxpayer in control or custody of court.

Where all or substantially all of the assets of a taxpayer are in the control or custody of the court in any proceeding before any court of the United States, or any State of the United States, or the District of Columbia, the period of limitations on collection after assessment prescribed in 26 U.S.C. 6502 is suspended with respect to the outstanding amount due on the assessment for the period such assets are in the control or custody of the court, and for 6 months thereafter.

(26 U.S.C. 6503)

§ 70.226 Suspension of running of period of limitation; taxpayer outside of United States.

The running of the period of limitations on collection after assessment prescribed in 26 U.S.C. 6502 (relating to collection after assessment) is suspended for the period during which the taxpayer is absent from the United States if such period is a continuous period of absence from the United States extending for 6 months or more. In a case where the running of the period of limitations has been suspended under the first sentence of this paragraph and at the time of the taxpayer's return to the United States the period of limitations would expire before the expiration of 6 months from the date of the taxpayer's return, the period of limitations shall not expire until after 6 months from the date of the taxpayer's return. The taxpayer will be deemed to be absent from the United States for purposes of this section if the taxpayer is generally and substantially absent from the United States, even though the taxpayer makes casual temporary visits during the period.

(26 U.S.C. 6503)

§ 70.227 Suspension of running of period of limitation; wrongful seizure of property of third party.

The running of the period of limitations on collection after assessment prescribed in 26 U.S.C. 6502 (relating to collection after assessment) shall be suspended for a period equal to a period beginning on the date property (including money) is wrongfully seized or received by a regional director (compliance) and ending on the date 30 days after the date on which the regional director (compliance) returns the property pursuant to 26 U.S.C. 6343(b) (relating to authority to return property) or the date 30 days after the date on which a judgment secured pursuant to 26 U.S.C. 7426 (relating to civil actions by persons other than taxpayers) with respect to such property becomes final. The running of the period of limitations on collection after assessment shall be suspended under this section only with respect to the amount of such assessment which is equal to the amount of money or the value of specific property returned.

(26 U.S.C. 6503)

Par. 60. Sections 70.231 through 70.234 and an undesignated centerheading preceding them are added to read as follows:

Limitations on Liens

§ 70.231 Protection for certain interests even though notice filed.

(a) *Securities.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid with respect to a security (as defined in § 70.143(d) of this part) against:

(1) A purchaser (as defined in § 70.143(f) of this part) of the security who at the time of purchase did not have actual notice or knowledge (as defined in § 70.144(a) of this part) of the existence of the lien;

(2) A holder of a security interest (as defined in § 70.143(a) of this part) in the security who did not have actual notice or knowledge (as defined in § 70.144(a) of this part) of the existence of the lien at the time the security interest came into existence or at the time such security interest was acquired from a previous holder for a consideration in money or money's worth (as defined in § 70.143(a) of this part); or

(3) A transferee of an interest protected under paragraph (a) (1) or (2) of this section to the same extent the lien is invalid against the transferor to the transferee. For purposes of this paragraph, no person can improve that person's position with respect to the lien by reacquiring the interest from an intervening purchaser or holder of a security interest against whom the lien is invalid.

(b) *Motor vehicles*—(1) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid against a purchaser (as defined in § 70.143(f) of this part) of a motor vehicle (as defined in § 70.143(c) of this part) if:

(i) At the time of purchase, the purchaser did not have actual notice or knowledge (as defined in § 70.144(a) of this part) of the existence of the lien, and

(ii) Before the purchaser obtains such notice or knowledge, the purchaser has acquired actual possession of the motor vehicle and has not thereafter relinquished actual possession to the seller or seller's agent.

(2) *Cross reference.* For provisions relating to additional circumstances in which the lien imposed by 26 U.S.C. 6321 may not be valid against the purchaser of tangible personal property (including a motor vehicle) purchased at retail, see paragraph (c) of this section.

(c) *Personal property purchased at retail*—(1) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed (with respect to any tax imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau) in accordance with § 70.148 of this part, the lien is not valid against a purchaser (as defined in § 70.143(f) of this part) of tangible personal property purchased at a retail sale (as defined in paragraph (c)(2) of this section) unless at the time of purchase the purchaser intends the purchase to (or knows that the purchase will) hinder, evade, or defeat the collection of any tax imposed by the provisions of 26 U.S.C. enforced and administered by the Bureau.

(2) *Definition of retail sale.* For purposes of paragraph (c) of this section, the term "retail sale" means a sale, made in the ordinary course of the seller's trade or business, of tangible personal property of which the seller is the owner. Such term includes a sale in customary retail quantities by a seller who is going out of business, but does not include a bulk sale or an auction sale in which goods are offered in quantities substantially greater than are customary in the ordinary course of the seller's trade or business or an auction sale of goods the owner of which is not in the business of selling such goods.

(d) *Personal property purchased in casual sale*—(1) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid against a purchaser (as defined in § 70.143(f) of this part) of household goods, personal effects, or other tangible personal property of a type described in § 70.241 of this part (which includes wearing apparel, school books, fuel, provisions, furniture, arms for personal use, livestock, and poultry (whether or not the seller is the head of a family); and books and tools of a trade, business, or profession (whether or not the trade, business, or profession of the seller)), purchased, other than for resale, in a casual sale for less than $250 (excluding interest and expenses described in § 70.147 of this part). For purposes of this paragraph, a casual sale is a sale not made in the ordinary course of the seller's trade or business.

(2) *Limitation.* This paragraph applies only if the purchaser does not have actual notice or knowledge (as defined in § 70.144(a) of this part):

(i) Of the existence of the tax lien, or

(ii) That the sale is one of a series of sales.

For purposes of paragraph (d)(2)(ii) of this section, a sale is one of a series of sales if the seller plans to dispose of, in separate transactions, substantially all of the seller's household goods, personal effects, and other tangible personal property described in § 70.241 of this part.

(e) *Personal property subject to possessory liens.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid against a holder of a lien on tangible personal property which under local law secures the reasonable price of the repair or improvement of the property if the property is, and has been, continuously in the possession of the holder of the lien from the time the possessory lien arose. For example, if local law gives an automobile mechanic the right to retain possession of an automobile the mechanic has repaired as security for payment of the repair bill and the mechanic retains continuous possession of the automobile until such lien is satisfied, a tax lien filed in accordance with 26 U.S.C 6323(f)(1) which has attached to the automobile will not be valid to the extent of the reasonable price of the repairs. It is immaterial that the notice of tax lien was filed before the mechanic undertook the work or that the mechanic knew of the lien before undertaking the work.

(f) *Real property tax and special assessment liens.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid against the holder of another lien upon the real property (regardless of when such other lien arises), if such other lien is entitled under local law to priority over security interests in real property which are prior in time and if such other lien on real property secures payment of:

(1) A tax of general application levied by any taxing authority based upon the value of the property, or

(2) A special assessment imposed directly upon the property by any taxing authority, if the assessment is imposed for the purpose of defraying the cost of any public improvement; or

(3) Charges for utilities or public services furnished to the property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

(g) *Residential property subject to a mechanic's lien for certain repairs and improvements.* Even though a notice of lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid against a mechanic's lienor (as defined in § 70.143(b) of this part) who holds a lien for the repair or improvement of a personal residence if:

(1) The residence is occupied by the owner and contains no more than four dwelling units, and

(2) The contract price on the prime contract with the owner for the repair or improvement (excluding interest and expenses described in § 70.147 of this part) is not more than $1,000. For purposes of this paragraph, the amounts of subcontracts under the prime contract with the owner are not to be taken into consideration for purposes of computing the $1,000 prime contract price. It is immaterial that the notice of tax lien was filed before the contractor undertakes the work or that the contractor knew of the lien before undertaking the work.

(h) *Attorney's liens*—(1) *In general.* Even though notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid against an attorney who, under local law, holds a lien upon, or a contract enforceable against, a judgment or other amount in settlement of a claim or of a cause of action. The priority afforded an attorney's lien under this paragraph shall not exceed the amount of the attorney's reasonable compensation for obtaining the judgment or procuring the settlement. For purposes of this paragraph, reasonable compensation means the amount customarily allowed under local law for an attorney's service for litigating or settling a similar case or administrative claim. However, reasonable compensation shall be determined on the basis of the facts and circumstances of each individual case. It is immaterial that the notice of tax lien is filed before the attorney undertakes the work or that the attorney knows of the tax lien before undertaking the work. This paragraph does not apply to an attorney's lien which may arise from the defense of a claim or cause of action against a taxpayer except to the extent such lien is held upon a judgment or other amount arising from the adjudication or settlement of a counterclaim in favor of the taxpayer. In case of suits against the taxpayer, see § 70.150(d)(2) of this part for rules relating to the subordination of the tax lien to facilitate tax collection.

(2) *Claim or cause of action against the United States.* Paragraph (h)(1) of this section does not apply to an attorney's lien with respect to:

(i) Any judgment or other fund resulting from the successful litigation or settlement of an administrative claim or cause of action against the United States to the extent that the United States, under any legal or equitable right, offsets its liability under the judgment or settlement against any liability of the taxpayer to the United States, or

(ii) Any amount credited against any liability of the taxpayer in accordance with 26 U.S.C. 6402.

(i) *Certain insurance contracts.* Even though a notice of a lien imposed by 26 U.S.C. 6321 (with respect to any tax imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau) is filed in accordance with § 70.148 of this part, the lien is not valid with respect to a life insurance, endowment, or annuity contract, against an organization which is the insurer under the contract, at any time:

(1) Before the insuring organization has actual notice or knowledge (as defined in § 70.144(a) of this part) of the existence of the tax lien.

(2) After the insuring organization has actual notice or knowledge of the lien (as defined in § 70.144(a) of this part) with respect to advances (including contractual interest thereon as provided in § 70.147(a) of this part) required to be made automatically to maintain the contract in force under an agreement entered into before the insuring organization had such actual notice or knowledge, or

(3) After the satisfaction of a levy pursuant to 26 U.S.C. 6332(b), unless and until the Chief, Tax Processing Center delivers to the insuring organization a notice (for example, another notice of

levy, a letter, *etc.*), executed after the date of such satisfaction, that the lien exists.

Delivery of the notice described in paragraph (i)(3) of this section may be made by any means, including regular mail, and delivery of the notice shall be effective only from the time of actual receipt of the notification by the insuring organization. The provisions of this paragraph are applicable to matured as well as unmatured insurance contracts.

(j) *Passbook loans*—(1) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid against an institution described in 26 U.S.C. 581 or 591 to the extent of any loan made by the institution which is secured by a savings deposit, share, or other account evidenced by a passbook (as defined in paragraph (j)(2) of this section) if the institution has been continuously in possession of the passbook from the time the loan is made. This paragraph applies only to a loan made without actual notice or knowledge (as defined in § 70.144(a) of this part) of the existence of the lien. Even though an original passbook loan is made without actual notice or knowledge of the existence of the lien, this paragraph does not apply to any additional loan made after knowledge of the lien is acquired by the institution even if it continues to retain the passbook from the time the original passbook loan is made.

(2) *Definition of passbook.* For purposes of paragraph (j) of this section, the term "passbook" includes:

(i) Any tangible evidence of a savings deposit, share, or other account which, when in the possession of the bank or other savings institution, will prevent a withdrawal from the account to the extent of the loan balance, and

(ii) Any procedure or system, such as an automatic data processing system, the use of which by the bank or other savings institution will prevent a withdrawal from the account to the extent of the loan balance.

(26 U.S.C. 6323)

§ 70.232 Protection for commercial transactions financing agreements.

(a) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid with respect to a security interest which:

(1) Comes into existence after the tax lien filing,

(2) Is in qualified property covered by the terms of a commercial transactions financing agreement entered into before the tax lien filing, and

(3) Is protected under local law against a judgment lien arising, as of the time of the tax lien filing, out of an unsecured obligation.

See § 70.143 (a) and (e) of this part for definitions of the terms "security interest" and "tax lien filing," respectively. For purposes of this section, a judgment lien is a lien held by a judgment lien creditor as defined in § 70.143(g) of this part.

(b) *Commercial transactions financing agreement.* For purposes of this section, the term "commercial transactions financing agreement" means a written agreement entered into by a person in the course of such person's trade or business:

(1) To make loans to the taxpayer (whether or not at the option of the person agreeing to make such loans) to be secured by commercial financing security acquired by the taxpayer in the ordinary course of the taxpayer's trade or business, or

(2) To purchase commercial financing security, other than inventory, acquired by the taxpayer in the ordinary course of the taxpayer's trade or business.

Such an agreement qualifies as a commercial transactions financing agreement only with respect to loans or purchases made under the agreement before the 46th day after the date of tax lien filing or the time when the lender or purchaser has actual notice or knowledge (as defined in § 70.144(a) of this part) of the tax lien filing, if earlier. For purposes of this paragraph, a loan or purchase is considered to have been made in the course of the lender's or purchaser's trade or business if such person is in the business of financing commercial transactions (such as a bank or commercial factor) or if the agreement is incidental to the conduct of such person's trade or business. For example, if a manufacturer finances the accounts receivable of one of its customers, the manufacturer is considered to engage in such financing in the course of its trade or business. The extent of the priority of the lender or purchaser over the tax lien is the amount of the disbursement made before the 46th day after the date the notice of tax lien is filed, or made before the day (before such 46th day) on which the lender or purchaser has actual notice or knowledge of the filing of the notice of the tax lien.

(c) *Commercial financing security*—(1) *In general.* The term "commercial financing security" means:

(i) Paper of a kind ordinarily arising in commercial transactions,

(ii) Accounts receivable (as defined in paragraph (c)(2) of this section),

(iii) Mortgages on real property, and

(iv) Inventory.

For purposes of this subparagraph, the term "paper of a kind ordinarily arising in commercial transactions" in general includes any written document customarily used in commercial transactions. For example, such written documents include paper giving contract rights (as defined in paragraph (c)(2) of this section), chattel paper, documents of title to personal property, and negotiable instruments or securities. The term "commercial financing security" does not include general intangibles such as patents or copyrights. A mortgage on real estate (including a deed of trust, contract for sale, and similar instrument) may be commercial financing security if the taxpayer has an interest in the mortgage as a mortgagee or assignee. The term "commercial financing security" does not include a mortgage when the taxpayer is the mortgagor of realty owned by the taxpayer. For purposes of this subparagraph, the term "inventory" includes raw materials and goods in process as well as property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

(2) *Definitions.* For purposes of §§ 70.143 and 70.146 of this part, and this section:

(i) A contract right is any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper, and

(ii) An account receivable is any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper.

(d) *Qualified property.* For purposes of paragraph (a) of this section, qualified property consists solely of commercial financing security acquired by the taxpayer-debtor before the 46th day after the date of tax lien filing. Commercial financing security acquired before such day may be qualified property even though it is acquired by the taxpayer after the lender received actual notice or knowledge of the filing of the tax lien. For example, although the receipt of actual notice or knowledge of the filing of the notice of the tax lien has the effect of ending the period within which protected disbursements may be made to the taxpayer, property which is acquired by the taxpayer after the lender receives actual notice or knowledge of such filing and before such 46th day, which otherwise qualifies as commercial financing security, becomes commercial financing security to which the priority of the lender extends for loans made before the lender received the actual notice or knowledge. An account receivable (as defined in paragraph (c)(2)(ii) of this section) is acquired by a taxpayer at the time, and to the extent, a right to payment is earned by performance. Chattel paper, documents of title, negotiable instruments, securities, and mortgages on real estate are acquired by a taxpayer when the taxpayer obtains rights in the paper or mortgage. Inventory is acquired by the taxpayer when title passes to the taxpayer. A contract right (as defined in paragraph (c)(2)(i) of this section) is acquired by a taxpayer when the contract is made. Indentifiable proceeds, which arise from the collection or disposition of qualified property by the taxpayer, are considered to be acquired at the time such qualified property is acquired if the secured party has a continuously perfected security interest in the proceeds under local law. The term "proceeds" includes whatever is received when collateral is sold, exchanged, or collected. For purposes of this paragraph, the term "identifiable proceeds" does not include money, checks and the like which have been commingled with other cash proceeds. Property acquired by the taxpayer after the 45th day following tax lien filing, by the expenditure of proceeds, is not qualified property.

(e) *Purchaser treated as acquiring security interest.* A person who purchases commercial financing security, other than inventory, pursuant to a commercial transactions financing agreement is treated, for purposes of this section, as having acquired a security interest in the commercial financing security. In the case of a bona fide purchase at a discount, a purchaser of commercial financing security who satisfies the requirements of this section has priority over the tax lien to the full extent of the security.

(26 U.S.C. 6323)

§ 70.233 Protection for real property construction or improvement financing agreements.

(a) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid with respect to a security interest which:

(1) Comes into existence after the tax lien filing,

(2) Is on qualified property covered by the terms of a real property construction or improvement financing agreement entered into before the tax lien filing, and

(3) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

For purposes of this section, it is immaterial that the holder of the security interest had actual notice or knowledge of the lien at the time disbursements are made pursuant to such an agreement. See § 70.143 (a) and (e) of this part for general definitions of the terms "security interest" and "tax lien filing." For purposes of this section, a judgment lien is a lien held by a judgment lien creditor as defined in § 70.143(g) of this part.

(b) *Real property construction or improvement financing agreement.* For purposes of this section, the term "real property construction or improvement financing agreement" means any written agreement to make cash disbursements (whether or not at the option of the party agreeing to make such disbursements):

(1) To finance the construction, improvement, or demolition of real property if the agreement provides for a security interest in the real property with respect to which the construction, improvement, or demolition has been or is to be made;

(2) To finance a contract to construct or improve, or demolish real property if the agreement provides for a security interest in the proceeds of the contract; or

(3) To finance the raising or harvesting of a farm crop or the raising of livestock or other animals if the agreement provides for a security interest in any property subject to the lien imposed by 26 U.S.C. 6321 at the time of tax lien filing, in the crop raised or harvested, or in the livestock or other animals raised.

For purposes of paragraphs (b) (1) and (2) of this section, construction or improvement may include demolition. For purposes of any agreement described in paragraph (b)(3) of this section, the furnishing of goods and services is treated as the disbursement of cash.

(c) *Qualified property.* For purposes of this section, the term "qualified property" includes only:

(1) In the case of an agreement described in paragraph (b)(1) of this section, the real property with respect to which the construction or improvement has been or is to be made;

(2) In the case of an agreement described in paragraph (b)(2) of this section, the proceeds of the contract to construct or improve real property; or

(3) In the case of an agreement described in paragraph (b)(3) of this section, property subject to the lien imposed by 26 U.S.C. 6321 at the time of tax lien filing, the farm crop raised or harvested, or the livestock or other animals raised.

(26 U.S.C. 6323)

§ 70.234 Protection for obligatory disbursement agreements.

(a) *In general.* Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.148 of this part, the lien is not valid with respect to security interest which:

(1) Comes into existence after the tax lien filing,

(2) Is in qualified property covered by the terms of an obligatory disbursement agreement entered into before the tax lien filing, and

(3) Is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

See § 70.143 (a) and (e) of this part for definitions of the terms "security interest" and "tax lien filing." For purposes of this section, a judgment lien creditor as defined in § 70.143(g) of this part.

(b) *Obligatory disbursement agreement.* For purposes of this section, the term "obligatory disbursement agreement" means a written agreement, entered into by a person in the course of the person's trade or business, to make disbursements. An agreement is treated as an obligatory disbursement agreement only with respect to disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer. The obligation to pay must be conditioned upon an event beyond the control of the obligor. For example, the provisions of this section are applicable where an issuing bank obligates itself to honor drafts or other demands for payment on a letter of credit and a bank, in good faith, relies upon that letter of credit in making advances. The provisions of this section are also applicable, for example, where a bonding company obligates itself to make payments to indemnify against loss or liability and, under the terms of the bond, makes a payment with respect to a loss. The priority described in this section is not applicable, for example, in the case of an accommodation endorsement by an endorser who assumes the obligation other than in the course of the endorser's trade or business.

(c) *Qualified property.* Except as provided under paragraph (d) of this section, the term "qualified property," for purposes of this section, means property subject to the lien imposed by 26 U.S.C. 6321 at the time of tax lien filing and, to the extent that the

acquisition is directly traceable to the obligatory disbursement, property acquired by the taxpayer after tax lien filing.

(d) *Special rule for surety agreements.* Where the obligatory disbursement agreement is an agreement insuring the performance of a contract of the taxpayer and another person, the term "qualified property" shall be treated as also including:

(1) The proceeds of the contract the performance of which was insured, and

(2) If the contract the performance of which was insured is a contract to construct or improve real property, to produce goods, or to furnish services, any tangible personal property used by the taxpayer in the performance of the insured contract.

For example, a surety company which holds a security interest, arising from cash disbursements made after tax lien filing under a payment or performance bond on a real estate construction project, has priority over the tax lien with respect to the proceeds of the construction contract and, in addition, with respect to any tangible personal property used by the taxpayer in the construction project if its security interest in the tangible personal property is protected under local law against a judgment lien arising, as of the time the tax lien was filed, out of an unsecured obligation.

(26 U.S.C. 6323)

Par. 61. Sections 70.241 through 70.245 and an undesignated centerheading preceding them are added to read as follows:

Limitations on Levies

§ 70.241 Property exempt from levy.

(a) *Enumeration.* There shall be exempt from levy:

(1) *Wearing apparel and school books.* Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of the taxpayer's family. Expensive items of wearing apparel, such as furs, which are luxuries and are not necessary for the taxpayer or for members of the taxpayer's family, are not exempt from levy.

(2) *Fuel, provisions, furniture, and personal effects.* If the taxpayer is the head of a family, so much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed $1,650 in value. For purposes of this provision, an individual who is the only remaining member of a family and who lives alone is not the head of a family.

(3) *Books and tools of a trade, business or profession.* So many of the books and tools necessary for the trade, business, or profession of an individual taxpayer as do not exceed in the aggregate $1,100 in value.

(4) *Unemployment benefits.* Any amount payable to an individual with respect to that individual's unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State, or of the District of Columbia or of the Commonwealth of Puerto Rico.

(5) *Undelivered mail.* Mail, addressed to any person, which has not been delivered to the addressee.

(6) *Certain annuity and pension payments.* Annuity or pension payments under the Railroad Retirement Act (45 U.S.C. chapter 9), benefits under the Railroad Unemployment Insurance Act (45 U.S.C. chapter 11), special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 562), and annuities based on retired or retainer pay under 10 U.S.C. chapter 73.

(7) *Workmen's compensation.* Any amount payable to an individual as workmen's compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico.

(8) *Judgments for support of minor children.* If the taxpayer is required under any type of order or decree (including an interlocutory decree or a decree of support pendente lite) of a court of competent jurisdiction, entered prior to the day of levy, to contribute to the support of such taxpayer's minor children, so much of the taxpayer's salary, wages, or other income as is necessary to comply with such order or decree. The taxpayer must establish the amount necessary to comply with the order or decree. The Chief, Tax Processing Center is not required to release a levy until such time as that official is satisfied that the amount to be released from levy will actually be applied in satisfaction of the support obligation. The Chief, Tax Processing Center may make arrangements with a delinquent taxpayer to establish a specific amount of such taxpayer's salary, wage, or other income for each pay period which shall be exempt from levy. Any request for such an arrangement shall be directed to the Chief, Tax Processing Center. Where the taxpayer has more than one source of income sufficient to satisfy the support obligation imposed by the order or decree, the amount exempt from levy may at the discretion of the Chief, Tax Processing Center be allocated entirely to one salary, wage, or source of other income or be apportioned between the several salaries, wages, or other sources of income.

(9) *Minimum exemption for wages, salary, and other income.* Amounts payable to or received by the taxpayer as wages or salary for personal services, or as other income, to the extent provided in §§ 70.242 through 70.245 of this part.

(10) *Certain service-connected disability payments.* Any amount payable to an individual as a service-connected (within the meaning of 38 U.S.C. 101(16)) disability benefit under:

(i) 38 U.S.C. chapter 11, subchapter II, III, IV, V, or VI, or

(ii) 38 U.S.C. chapter 13, 21, 23, 31, 32, 34, 35, 37, or 39 shall be exempt from levy.

(11) *Certain public assistance payments.* Any amount payable to an individual as a recipient of public assistance under:

(i) Title 42 U.S.C. subchapter IV (relating to aid to families with dependent children) or 42 U.S.C. subchapter XVI (relating to supplemental security income for the aged, blind, and disabled), or

(ii) State or local government public assistance or public welfare programs for which eligibility is determined by a needs or income test shall be exempt from levy.

(12) *Assistance under job training partnership act.* Any amount payable to a participant under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*) from funds appropriated pursuant to such Act shall be exempt from levy.

(13) *Principal residence exempt in absence of certain approval or jeopardy.* Except to the extent provided in § 70.166 of this part, the principal residence of the taxpayer (within the meaning of 26 U.S.C. 1034) is exempt from levy.

(b) *Appraisal.* The ATF officer seizing property of the type described in 26 U.S.C. 6334(a) shall appraise and set aside to the owner the amount of such property declared to be exempt. If the taxpayer objects at the time of the seizure to the valuation fixed by the officer making the seizure, such officer shall summon three disinterested individuals who shall make the valuation.

(c) *Other property.* No other property or rights to property are exempt from levy except the property specifically exempted by 26 U.S.C. 6334(a). No provisions of a State law may exempt property or rights to property from levy for the collection of any Federal tax. Thus, property exempt from execution under State personal or homestead exemption laws is, nevertheless, subject to levy by the United States for collection of its taxes.

(26 U.S.C. 6334)

§ 70.242 Wages, salary and other income.

(a) *In general.* Under 26 U.S.C. 6334(a)(9) and (d) certain amounts payable to or received by a taxpayer as wages, salary or other income are exempt from levy. This section described the income of a taxpayer that is eligible for the exemption from levy (paragraph (b) of this section) and how exempt amounts are to be paid to the taxpayer (paragraph (c) of this section). Section 70.243 of this part describes the sum which will be exempt from levy for each of the taxpayer's payroll periods. Payroll periods are described in § 70.244 of this part. Amounts exempt from levy are determined in part by the number of persons claimed by the taxpayer as dependents. Section 70.245 of this part describes the manner in which the taxpayer is to claim any dependent exemptions and the manner in which the employer is to compute the exempt amount and pay the balance to the Chief, Tax Processing Center.

(b) *Eligible taxpoyer income.* Only wages, salary or other income payable to the taxpayer after the levy is made on the payor may be exempt from levy under 26 U.S.C. 6334 (a)(9). No amount of wages, salary or other income which is paid to the taxpayer before levy is made on the payor will be so exempt from levy.

(c) *Payment of exempt amounts to taxpayer—(1) From wages, salary or other income not subject to levy.* In the case of a taxpayer who has more than one source of wages, salary or other income, the Chief, Tax Processing Center may elect to levy on only one or more such source while leaving other sources of salary or other income free from levy. If those wages, salary or other income which the Chief, Tax Processing Center leaves free from levy equal or exceed the amount to which the taxpayer is entitled as an exemption from levy under 26 U.S.C. 6334(a)(9) and (d) and § 70.243 of this part (and ar not otherwise exempt), then no amount of the taxpayer's wages, salary or other income on which the Chief, Tax Processing Center elects to levy is exempt from levy. The Chief, Tax Processing Center shall notify the employer or other person subject to levy that no amount of the taxpayer's wages, salary or other income is exempt from levy.

(2) *From wages, salary or other income subject to levy.* If the taxpayer's income upon which the Chief, Tax Processing Center does not levy is less than that amount to which the taxpayer is entitled as an exemption, then an amount determined pursuant to § 70.243 of this part is to be paid to the taxpayer from those wages, salary or other income which are subject to levy. The Chief, Tax Processing Center will designate those wages, salary or other income subject to levy from which such amount will be paid to the taxpayer. The Chief, Tax Processing Center will generally make this designation by delivering to the employer, or other person levied upon, the form upon which the taxpayer is to claim any dependent exemption. The form will acompany the notice of levy. The person receiving the form from the Chief, Tax Processing Center must promptly deliver it to the taxpayer. In the case of some employers having a large number of employees, however, the Chief, Tax Processing Center will send the form upon which an employee is to claim any dependent exemption diretly to the employee. In such a case, the notice of levy will indicate that the form for claiming dependent exemptions has been sent to the taxpayer. If a notice of levy is not accompanied by the form for claiming dependent exemptions and does not indicate that the form was sent directly to the taxpayer, then the person levied upon must make payment to the Chief, Tax Processing Center without regard to amounts prescribed by § 70.243 of this part as exempt from levy. If a notice of levy is accompanied by the form for claiming dependent exemptions or indicates that the form was sent directly to the taxpayer, then the person levied upon is to pay over to the taxpayer, amounts determined to be exempt from levy pursuant to § 70.243 and § 70.245 (b) and (c) of this part (relating to the requirement that the taxpayer submit a claim for any dependent exemption). Amounts not exempt from levy are to be paid to the Chief, Tax Processing Center in accordance with the terms of the levy.

(26 U.S.C. 6334)

§ 70.243 Exempt amount.

Amount payable to the taxpayer as wages, salary, or other income for each payroll period described in § 70.244 of this part are exempt from levy as follows:

(a) If the payroll period is weekly, an amount equal to:

(1) The sum of:

(i) The standard deduction, and

(ii) The aggregate amount of the deductions for personal exemption allowed the taxpayer under 26 U.S.C. 151 in the taxable year in which such levy occurs, divided by

(2) 52.

(b) If the payroll period is not weekly, the amount exempt from levy shall be an amount which as nearly as possible will result in the same total exemption from levy for such individual over a period of time as such individual would have under paragraph (a) of this section if (during such period of time) the individual were paid or received such wages, salary or other income on a regular weekly basis.

(26 U.S.C. 6334)

§ 70.244 Payroll period.

For purpose of determining the amount of wages, salary or other income exempt from levy under 26 U.S.C. 6334(a)(9):

(a) *Regularly used calendar periods.* In the case of wages, salary or other income paid to the taxpayer on the basis of an established calendar period regularly used by the employer or other person levied upon for payroll or payment purpose (e.g., daily, weekly, biweekly, semimonthly, or monthly), that period is the taxpayer's payroll period.

(b) *Amounts paid on recurrent but irregular basis.* In the case of wages, salary, or other income paid to the taxpayer on a recurrent but irregular basis, the first day of the taxpayer's payroll period is that day following the day upon which the wages, salary, or other income were last paid to the taxpayer. The last day of the payroll period is that day upon which the current payment becomes payable to him or her. However, in any case in which:

(1) Amounts are paid to the taxpayer on a recurrent but irregular basis, and

(2) the last payment was paid to the taxpayer more than 60 days before the current payment becomes payable, the current payment will be deemed a one-time payment (*see* paragraph (c) of this section).

(c) *Nonrecurrent payments.* In the case of wages, salary or other income paid to the taxpayer on a one-time basis, the taxpayer's payroll period is deemed to be weekly (*i.e.*, the 1-week period ending on the day of payment).

(26 U.S.C. 6334)

§ 70.245 Computation of exempt amount and payment of amounts not exempt from levy to the Chief, Tax Processing Center.

(a) *General.* Unless advised by the Chief, Tax Processing Center that no

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part of the money due to the taxpayer is exempt from levy, the employer or other person levied upon will compute the exempt amount, using the formula in § 70.243 of this part and the taxpayer's statement of exemptions and filing status described in paragraph (b) of this section.

(b) *Statement of exemptions and filing status.* Unless the taxpayer submits a statement of exemptions and filing status to the employer or other person levied upon, the exempt amount will be applied as if the taxpayer were a married individual filing a separate return with only 1 personal exemption. A statement of exemptions and filing status shall be made by either:

(1) Completion of the form provided for this purpose by the Bureau, or

(2) A written statement that:

(i) Gives the taxpayer's filing status for income tax purposes,

(ii) Shows any additional standard deduction if the taxpayer or the taxpayer's spouse is at least 65 and/or blind,

(iii) Identified by name and by relationship to the taxpayer each person for whom a dependent exemption is claimed,

(iv) Is signed by the taxpayer, and

(v) Contains a declaration that it is made under the penalties of perjury.

(c) *Time for submission of statement.* The taxpayer must submit the statement of exemptions and filing status to the employer or other person levied upon no later than the later of:

(1) The third day before the last day of the payroll period for which the exemption is claimed (that is, the third day before payday), or

(2) If the Chief, Tax Processing Center delivers the forms for the statement of exemption and filing status to the employer or other person levied upon (see § 70.242(c)(2) of this part), the second day after the date the taxpayer receives the form.

For purposes of paragraphs (c) (1) and (2) of this section, the term "day" does not include Saturdays, Sunday or a legal holiday within the meaning of 26 U.S.C. 7503. Failure on the part of the taxpayer to submit a timely statement of exemptions and filing status will result in the computation of the exempt amount as if the taxpayer were a married individual filing a separate return with only 1 personal exemption for the applicable pay period, except that the employer or other person levied upon may accept a statement of exemptions and filing status not timely submitted in accordance with this paragraph, and may prepare a disbursement to the taxpayer based upon the information properly verified therein, if payment to the Chief, Tax Processing Center in accordance with the levy is not thereby delayed.

(d) *Payment of amounts not exempt form levy to the Chief, Tax Processing Center*—(1) *In General.* Wages, Salary, or other income the subject of a levy are payable to the Chief, Tax Processing Center on the date the payor is otherwise obligated to pay the taxpayer (*see* § 70.242(c) of this part).

(2) *Delayed payment in certain cases.* If, however, as described in paragraph (c)(2) of this section, the taxpayer may submit a statement of exemptions and filing status after the third day before payday, amounts payable to the taxpayer on that payday, to the extent not exempt from levy , are payable to the Chief, Tax Processing Center on the third day following the date on which the taxpayer may timely submit the statement of exemptions and filing status under paragraph (c)(2) of this section. For purposes of this rule, the term "day" does not include Saturday, Sunday or a legal holiday within the meaning of 26 U.S.C. 7503.

(26 U.S.C. 6334)

Par. 62. An undesignated centerheading is added immediately preceding § 70.251 and that section is amended by revising the second sentence of (a)(2) and the last sentence of (b), to read as follows:

Periods of Limitation in Judicial Proceedings

§ 70.251 Periods of limitation on suits by taxpayers.

(a) * * *

(2) * * * Except as provided in paragraph (b) of this section, no suit or proceeding for the recovery of any tax, penalty, or other sum imposed under the provision of 26 U.S.C. enforced and administered by the Bureau may be brought after the expiration of 2 years from the date of mailing, by either registered or certified mail, by a regional director (compliance) or the Chief, Tax Processing Center, to a taxpayer of a statutory notice of disallowance of the part of the claim to which the suit or proceeding relates.

(b) * * * The agreement will not be effective until signed by a regional director (compliance) or the Chief, Tax Processing Center.

* * * * * *

Par. 63. Section 70.253 and an undesignated centerheading immediately following are added to read as follows:

§ 70.253 Periods of limitation on suits by persons other than taxpayers.

(a) *General rule.* No suit or proceeding, except as otherwise provided in 26 U.S.C. 6532(c)(2) and paragraph (b) of this section, under 26 U.S.C. 7426 and § 70.207 of this part relating to civil actions by persons other than taxpayers, shall be begun after the expiration of 9 months from the date of levy or agreement under 26 U.S.C. 6325(b)(3) giving rise to such action.

(b) *Period when claim is filed.* The 9-month period described in 26 U.S.C. 6532(c)(1) and paragraph (a) of this section shall be extended to the shorter of

(1) 12 months from the date of filing by a third party of a written request under § 70.67(b)(2) of this part for the return of property wrongfully levied upon, or

(2) 6 months from the date of mailing by registered or certified mail by the regional director (compliance) to the party claimant of a notice of disallowance of the part of the request to which the action relates. A request which, under § 70.67(b)(3) of this part, is not considered adequate does not extend the 9-month period described in paragraph (a) of this section.

(26 U.S.C. 6532)

Limitations on Credit or Refund

Par. 64. Section 70.262(c)(2) is amended by revising the first sentence to read as follows:

§ 70.262 Limitations on allowance of credits and refunds.

* * * * * *

(c) * * *

(2) If no claim is filed, the amount of the credit or refund allowed or made by the regional director (compliance) or the Chief, Tax Processing Center shall not exceed the portion of the tax paid within the 3 years immediately preceding the allowance of the credit or refund. * * *

* * * * * *

Par. 65. Section 70.271 and an undesignated centerheading preceding it are added to read as follows:

Transferees

§ 70.271 Procedure in the case of transferred assets.

(a) *Method of collection.* (1) The liability, at law or in equity, of a transferee of property of any person liable in respect of any tax imposed under provisions of 26 U.S.C. enforced and administered by the Bureau, in any case where the liability of the transferee arises on the liquidation of a corporation or partnership, or a corporate reorganization within the meaning of 26 U.S.C. 368(a), shall be assessed against such transferee and paid and collected in the same manner and subject to the same provisions and limitations as in the case of the tax with respect to which such liability is incurred, except as hereinafter provided.

(2) *Applicable provisions.* The provisions of 26 U.S.C. made applicable by 26 U.S.C. 6901(a) to the liability of a transferee referred to in paragraph (a)(1) of this section, include the provisions relating to:

(i) Delinquency in payment after notice and demand and the amount of interest attaching because of such delinquency;

(ii) The authorization of distraint and proceedings in court for collection; and

(iii) The prohibition of claims and suits for refund.

For detailed provisions relating to assessments, collections, and refunds, see 26 U.S.C. chapters 63, 64, and 65, respectively.

(b) *Definition of transferee.* As used in this section, the term "transferee" includes the shareholder of a dissolved corporation, the assignee or donee of an insolvent person, the successor of a corporation, a party to a reorganization as defined in 26 U.S.C. 368, and all other classes of distributees.

(c) *Period of limitations on assessment.* The period of limitations for assessment of the liability of a transferee is as follows:

(1) *Initial transferee.* In the case of the liability of an initial transferee, 1 year after the expiration of the period of limitations for assessment against the transferor.

(2) *Transferee of transferee.* In the case of the liability of a transferee of a transferee, 1 year after the expiration of the period of limitations for assessment against the preceding transferee, or 3 years after the expiration of the period of limitations for assessment against the taxpayer, whichever of such periods first expires.

(3) *Court proceeding against taxpayer or last preceding transferee.* If, before the expiration of the period specified in paragraph (c)(1) or (2) of this section, (whichever is applicable), a court proceeding against the taxpayer or last preceding transferee for the collection of the tax or liability in respect thereof, respectively, has been begun within the period of limitation for the commencement of such proceeding, then within 1 year after the return of execution in such proceeding.

(d) *Extension by agreement*—(1) *Extension of time for assessment.* The time prescribed by 26 U.S.C. 6901 for the assessment of the liability of a transferee may, prior to the expiration of such time, be extended for any period of time agreed upon in writing by the transferee and the regional director (compliance) or the Chief, Tax Processing Center. The extension shall become effective when the agreement has been executed by both parties. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(2) *Extension of times for credit or refund.* (i) For the purposes of determining the period of limitations on credit or refund to the transferee of overpayments made by such transferee or overpayments made by the taxpayer to which such transferee may be legally entitled to credit or refund, an agreement and any extension thereof referred to in paragraph (d)(1) of this section, shall be deemed an agreement and extension thereof for purposes of 26 U.S.C. 6511(c) (relating to limitations on credit or refund in case of extension of time by agreement).

(ii) For the purpose of determining the limit specified in 26 U.S.C. 6511(c)(2) on the amount of the credit or refund, if the agreement is executed after the expiration of the period of limitations for assessment against the taxpayer with reference to whom the liability of such transferee arises, the periods specified in 26 U.S.C. 6511(b)(2) shall be increased by the period from the date of such expiration to the date the agreement is executed.

(e) *Period of assessment against taxpayer.* For the purpose of determining the period of limitations for assessment against a transferee, if the taxpayer is deceased, or, in the case of a corporation, has terminated its existence, the period of limitations for assessment against the taxpayer shall be the period that would be in effect had the termination of existence not occurred.

(26 U.S.C. 6901)

Par. 66. Sections 70.281 and 70.282 and a related undesignated centerheading are added to read as follows:

Bonds

§ 70.281 Form of bond and security required.

(a) *In general.* Any person required to furnish a bond under the provisions of this part shall execute such bond:

(1) On the appropriate form prescribed by the Bureau (which may be obtained from the regional director (compliance) or the Chief, Tax Processing Center), and

(2) With satisfactory surety.

For provisions as to what will be considered "satisfactory surety", see paragraph (b) of this section. The bonds referred to in this paragraph shall be drawn in favor of the United States.

(b) *Satisfactory surety*—(1) *Approved surety company or bonds or notes of the United States.* For purposes of paragraph (a) of this section, a bond shall be considered executed with satisfactory surety if:

(i) It is executed by a surety company holding a certificate of authority from the Secretary as an acceptable surety on Federal bonds; or

(ii) It is secured by bonds or notes of the United States as provided in by 31 U.S.C. 9303.

(2) *Other surety acceptable in discretion of ATF officials.* Unless otherwise expressly provided in 26 U.S.C. or this part, a bond may, in the discretion of the regional director (compliance) or the Chief, Tax Processing Center, be considered executed with satisfactory surety if, in lieu of being executed or secured as provided in paragraph (b)(1) of this section, it is:

(i) Executed by a corporate surety (other than a surety company) provided such corporate surety establishes that it is within its corporate powers to act as surety for another corporation or an individual;

(ii) Executed by two or more individual sureties, provided such individual sureties meet the conditions contained in paragraph (b)(3) of this section;

(iii) Secured by a mortgage on real or personal property;

(iv) Secured by a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or any State, Territory, or possession of the United States, or by a U.S. postal, bank, express or telegraph money order;

(v) Secured by corporate bonds or stocks, or by bonds issued by a State or political subdivision thereof, of recognized stability; or

(vi) Secured by any other acceptable collateral. Collateral shall be deposited with the regional director (compliance) or the Chief, Tax Processing Center or, in that official's discretion, with a responsible financial institution acting as escrow agent.

(3) *Conditions to be met by individual sureties.* If a bond is executed by two or more individual sureties, the following conditions must be met by each such individual surety:

(i) The surety must reside within the State in which the principal place of

business or legal residence of the primary obligor is located;

(ii) The surety must have property subject to execution of a current market value, above all encumbrances, equal to at least the penalty of the bond;

(iii) All real property which the surety offers as security must be located in the State in which the principal place of business or legal residence of the primary obligor is located;

(iv) The surety must agree not to mortgage, or otherwise encumber, any property offered as security while the bond continues in effect without first securing the permission of the official with whom the bond is filed; and

(v) The surety must file with the bond, and annually thereafter so long as the bond continues in effect, an affidavit as to the adequacy of the security, executed on the appropriate form furnished by the regional director (compliance) or the Chief, Tax Processing Center.

Partners may not act as sureties upon bonds of their partnership. Stockholders of a corporate principal may be accepted as sureties provided their qualifications as such are independent of their holdings of the stock of the corporation.

(4) *Adequacy of surety.* No surety or security shall be accepted if it does not adequately protect the interest of the United States.

(26 U.S.C. 7101)

§ 70.282 Single bond in lieu of multiple bonds.

In the case of bonds required under this part, a single bond will not be accepted in lieu of two or more bonds.

(26 U.S.C. 7102)

Par. 67. Sections 70.301 through 70.306 and an undesignated centerheading preceding them are added to read as follows:

Miscellaneous Provisions

§ 70.301 Reproduction of returns and other documents.

(a) *In general.* The Director may contract with any Federal agency or any person to have such agency or person process films and other photoimpressions of any return, statement, document, or of any card, record, or other matter required under the provisions of 26 U.S.C. enforced and administered by the Bureau, and make reproductions from such films and photoimpressions.

(b) *Safeguards*—(1) *By private contractor.* Any person entering into a contract with the Bureau for the performance of any of the services described in paragraph (a) of this section shall agree to comply, and to assume responsibility for compliance by that person's employees, with the following requirements:

(i) The films or photoimpressions, and reproductions made therefrom, shall be used only for the purpose of carrying out the provisions of the contract, and information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract;

(ii) All the services shall be performed under the supervision of the person with whom the contract is made or that person's responsible employees;

(iii) All material received for processing and all processed and reproduced material shall be kept in a locked and fireproof compartment in a secure place when not being worked upon;

(iv) All spoilage of reproductions made from the film or photoimpressions supplied to the contractor shall be destroyed, and a statement under the penalties of perjury shall be submitted to the Bureau that such destruction has been accomplished; and

(v) All film, photoimpressions, and reproductions made therefrom, shall be transmitted to the Bureau by personal delivery, first-class mail, parcel post, or express.

(2) *By Federal agency.* Any Federal agency entering into a contract with the Bureau for the performance of any services described in paragraph (a) of this section, shall treat as confidential all material processed or reproduced pursuant to such contract.

(3) *Inspection.* The Bureau shall have the right to send its officers and employees into the office and plants of Federal agencies and other contractors for inspection of the facilities and operations provided for the performance of any work contracted or to be contracted for under this section.

(4) *Criminal sanctions.* For penalty provisions relating to the unauthorized use and disclosure of information in violation of the provisions of this section, *see* 26 U.S.C. 7213(c).

(26 U.S.C. 7513)

§ 70.302 Fees and costs for witnesses.

(a) *Introduction.* Title 26 U.S.C. 7610 provides that the Bureau may make payments to certain persons who are summoned to give information to the Bureau under 26 U.S.C. 7602 and § 70.22 of this part. Under 26 U.S.C. 7610 witnesses generally will not be reimbursed for actual expenses incurred but instead will be paid in accordance with the payment rates established by regulations. Paragraph (b) of this section contains elaborations of certain terms found in 26 U.S.C. 7610 and definitions of other terms used in the regulations under 26 U.S.C. 7610 (a) and (b); and paragraphs (c) and (d) of this section contain rules and rates applicable to payments under 26 U.S.C. 7610.

(b) *Definitions*—(1) *Directly incurred costs.* Directly incurred costs are costs incurred solely, immediately, and necessarily as a consequence of searching for, reproducing, or transporting records in order to comply with a summons. They do not include a proportionate allocation of fixed costs, such as overhead, equipment depreciation, etc. However, where a third party's records are stored at an independent storage facility that charges the third party a search fee to search for, reproduce, or transport particular records requested, these fees are considered to be directly incurred by the summoned third party.

(2) *Reproduction cost.* Reproduction costs are costs incurred in making copies or duplicates of summoned documents, transcripts, and other similar material.

(3) *Search costs.* Search costs include only the total cost of personnel time directly incurred in searching for records or information and the cost of retrieving information stored by computer. Salaries of persons locating and retrieving summoned material are not included in search costs. Also, search costs do not include salaries, fees, or similar expenditures for analysis of material or for managerial or legal advice, expertise, or research, or time spent for these activities.

(4) *Third party.* A third party is any person served with a summons, other than a person with respect to whose liability a summons is issued, or an officer, employee, agent, accountant, or attorney of that person.

(5) *Third party records.* Third party records are books, papers, records, or other data in which the person with respect to whose liability a summons is issued does not have a proprietary interest at the time the summons is served.

(6) *Transportation costs.* Transportation costs include only costs incurred to transport personnel to search for records or information requested and costs incurred solely by the need to transport the summoned material to the place of examination. These costs do not include the cost of transporting the summoned witness for appearance at the place of examination. See paragraph (c)(2) of this section for payment of travel expenses.

(c) *Conditions and rates of payments*—(1) *Basis for payment.* Payment for search, reproduction, and transportation costs will be made only to third parties served with a summons to produce third party records or information and only for material requested by the summons. Payment will be made only for those costs both directly incurred and reasonably necessary. No payment will be made until the third party has satisfactorily complied with the summons and has submitted an itemized bill or invoice showing specific details concerning the costs to the Bureau employee before whom the third party was summoned. If a third party charges any other person for any cost for which the third party is seeking payment from the Bureau, the amount charged to the other person must be subtracted from the amount the Bureau must pay.

(2) *Payment rates.* The following rates are established.

(i) *Search costs.* (A) For the total amount of personnel time required to locate records or information, $8.50 per person hour.

(B) For retrieval of information stored by computer in the format in which it is normally produced, actual costs, based on computer time and necessary supplies, except that personnel time for computer search is payable only under paragraph (c)(2)(i)(A) of this section.

(ii) *Reproduction costs.* (A) For copies of documents $.20 per page.

(B) For photographers, films and other materials, actual cost, except that personnel time is payable only under paragraph (a)(2)(i)(A) of this section.

(iii) *Transportation costs.* For transportation costs, actual cost, except that personnel time is payable only under paragraph (c)(2)(i)(A) of this section.

(d) *Appearance fees and allowances*—(1) *In general.* Under 26 U.S.C. 7610(a)(1) and this paragraph, the Bureau shall pay a summoned person certain fees and allowances. No payments will be made until after the party summoned appears and has submitted any necessary receipts or other evidence of costs to the Bureau employee before whom the person was summoned.

(2) *Attendance fees.* A summoned person shall be paid an attendance fee for each day's attendance. A summoned person shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance at the beginning and end of the attendance or at any time during the attendance. The attendance fee is the higher of $30 per day or the amount paid under 28 U.S.C. 1821(b) to witnesses in attendance at courts of the United States at the time of the summoned person's appearance.

(3) *Travel allowances.* A summoned person who travels by common carrier shall be paid for the actual expenses of travel on the basis of the means of transportation reasonably utilized and the distance necessarily traveled to and from the summoned person's residence by the shortest practical route in going to and returning from the place of attendance. Such a summoned person shall utilize a common carrier at the most economical rate reasonably available. A receipt or other evidence of actual cost shall be furnished. A travel allowance equal to the mileage allowance which the Administrator of General Services has prescribed, under 5 U.S.C. 5704, for official travel of employees of the Federal Government shall be paid to each summoned person who travels by privately owned vehicle. Computation of mileage under this paragraph shall be made on the basis of a uniform table of distances adopted by the Administrator of General Services. Toll charges for toll roads, bridges, tunnels and ferries, taxicab fares between places of lodging and carrier terminals, and parking fees (upon presentation of a valid parking receipt) shall be paid in full to a summoned person incurring those expenses.

(4) *Subsistence allowances.* A subsistence allowance shall be paid to a summoned person (other than a summoned person who is incarcerated) when an overnight stay is required at the place of attendance because the place is so far removed from the residence of the summoned person as to prohibit return thereto from day to day. A subsistence allowance for a summoned person shall be paid in an amount not to exceed the maximum allowance prescribed by the Administrator of General Services, under 5 U.S.C. 5702(a), for official travel in the area of attendance by employees of the Federal Government. An alien who has been paroled into the United States by the Attorney General, under 8 U.S.C. 1182(d)(5)(A), or an alien who either has admitted belonging to a class of aliens who are deportable or has been determined under 8 U.S.C. 1252(b) to be deportable, shall be ineligible to receive the fees or allowances provided for under 26 U.S.C. 7610(a)(1).

(26 U.S.C. 7610)

§ 70.303 Rules and regulations.

(a) *Issuance.* The Director, with the approval of the Secretary, shall prescribe all needful rules and regulations for the enforcement of provisions of 26 U.S.C. enforced and administered by the Bureau (except where this authority is expressly given by 26 U.S.C. to any other person other than an officer or employee of the Treasury Department), including all rules and regulations as may be necessary by reason of any alteration of law in relation to taxes within the Director's jurisdiction.

(b) *Retroactivity.* The Director, with the approval of the Secretary, may prescribe the extent, if any, to which any regulation or Treasury decision relating to the laws within the Director's jurisdiction shall be applied without retroactive effect. The Director may prescribe the extent, if any, to which any ruling relating to the laws within the Director's jurisdiction, issued by or pursuant to authorization from the Director, shall be applied without retroactive effect.

(c) *Preparation and distribution of regulations, forms, stamps, and other matters.* The Director, under the direction of the Secretary, shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of taxes within the Director's jurisdiction.

(26 U.S.C. 7805)

§ 70.304 Place for filing documents other than returns.

(a) If a document, other than a return, is required to be filed with a regional office, such document may be hand delivered to such office.

(b) For purposes of this section, a return or document will be considered to be hand carried if it is brought to the regional director (compliance) or designated delegate by the person required to file the return or other document, or by the person's agent. Examples of persons who will be considered to be agents, for purposes of the preceding sentence, are: Members of the taxpayer's family, an employee of the taxpayer, the taxpayer's attorney, accountant, or tax advisor, and messengers employed by the taxpayer. A return or document will not be considered to be hand carried if it is sent to the Bureau through the U.S. Mail.

(26 U.S.C. 6091)

§ 70.305 Timely mailing treated as timely filing.

(a) *General rule.* Title 26 U.S.C. 7502 provides that, if the requirements of such section are met, a document shall be deemed to be filed on the date of the postmark stamped on the cover in which such document was mailed. Thus, if the cover containing such document bears a timely postmark, the document will be

considered filed timely although it is received after the last date, or the last day of the period, prescribed for filing such document. Title 26 U.S.C. 7502 is applicable only to those documents which come within the definition of such term provided by paragraph (b) of this section and only if the document is mailed in accordance with paragraph (c) of this section and is delivered in accordance with paragraph (d) of this section.

(b) *Document defined.* The term "document," as used in this section, means any return, claim, statement, or other document required to be filed within a prescribed period or on or before a prescribed date under authority of any provisions of 26 U.S.C. enforced and administered by the Bureau.

(c) *Mailing requirements.* (1) Title 26 U.S.C. 7502 is not applicable unless the document is mailed in accordance with the following requirements:

(i) The document must be contained in an envelope or other appropriate wrapper, properly addressed to the agency, officer, or office with which the document is required to be filed.

(ii) The document must be deposited within the prescribed time in the mail in the United States with sufficient postage prepaid. For this purpose, a document is deposited in the mail in the United States when it is deposited with the domestic mail service of the U.S. Postal Service, as defined by the postal regulations (39 CFR Part 2). Title 26 U.S.C. 7502 does not apply to any document which is deposited with the mail service of any other country.

(iii)(A) If the postmark on the envelope or wrapper is made by the U.S. Postal Service, such postmark must bear a date on or before the last date, or the last day of the period, prescribed for filing the document. If the postmark does not bear a date on or before the last date, or the last day of the period, prescribed for filing the document, the document will be considered not to be filed timely, regardless of when the document is deposited in the mail. Accordingly, the sender who relies upon the applicability of 26 U.S.C. 7502 assumes the risk that the postmark will bear a date on or before the last date, or the last day of the period, prescribed for filing the document, but see paragraph (c)(2) of this section, with respect to the use of registered mail or certified mail to avoid this risk. If the postmark on the envelope or wrapper is not legible, the person who is required to file the document has the burden of proving the time when the postmark was made. Furthermore, in case the cover containing a document bearing a timely postmark made by the U.S. Postal Service is received after the time when a document postmarked and mailed at such time would ordinarily be received, the sender may be required to prove that it was timely mailed.

(B) If the postmark on the envelope or wrapper is made other than by the U.S. Postal Service, the postmark so made must bear a date on or before the last date, or the last day of the period, prescribed for filing the document, and the document must be received by the agency, officer, or office with which it is required to be filed not later than the time when a document contained in an envelope or other appropriate wrapper which is properly addressed and mailed and sent by the same class of mail would ordinarily be received if it were postmarked at the same point of origin by the U.S. Postal Service on the last date, or the last day of the period, prescribed for filing the document. However, in case the document is received after the time when a document so mailed and so postmarked by the U.S. Postal Service would ordinarily be received, such document will be treated as having been received at the time when a document so mailed and so postmarked would ordinarily be received, if the person who is required to file the document establishes that it was actually deposited in the mail before the last collection of the mail from the place of deposit which was postmarked (except for the metered mail) by the U.S. Postal Service on or before the last date, or the last day of the period, prescribed for filing the document, that the delay in receiving the document was due to a delay in the transmission of the mail, and the cause of such delay. If the envelope has a postmark made by the U.S. Postal Service in addition to the postmark not so made, the postmark which was not made by the U.S. Postal Service shall be disregarded, and whether the envelope was mailed in accordance with this section shall be determined solely by applying the rules of paragraph (c)(1)(iii)(A) of this section.

(2) If the document is sent by U.S. registered mail, the date of registration of the document shall be treated as the postmark date. If the document is sent by U.S. certified mail and the sender's receipt is postmarked by the postal employee to whom such document is presented, the date of the U.S. postmark on such receipt shall be treated as the postmark date of the document. Accordingly, the risk that the document will not be postmarked on the day that it is deposited in the mail may be overcome by the use of registered mail or certified mail.

(3) As used in this section, the term "the last date, or the last day of the period, prescribed for filing the document" includes any extension of time granted for such filing. Except as provided in 26 U.S.C. 5061 for the filing of returns and payment of a tax under 26 U.S.C. subtitle E, when the last date, or the last day of the period, prescribed for filing the document falls on a Saturday, Sunday, or legal holiday, 26 U.S.C. 7503 is also applicable, so that, in applying the rules of this paragraph, the next succeeding day which is not a Saturday, Sunday, or legal holiday, shall be treated as the last date, or the last day of the period, prescribed for filing the document.

(d) *Delivery.* (1) Title 26 U.S.C. 7502 is not applicable unless the document is delivered by U.S. mail to the agency, officer, or office with which it is required to be filed. However, if the document is sent by registered mail or certified mail, proof that the document was properly registered or that a postmarked certified mail sender's receipt was properly issued therefor, and that the envelope or wrapper was properly addressed to such agency, officer or office shall constitute prima facie evidence that the document was delivered to such agency, officer or office.

(2) Title 26 U.S.C. 7502 is applicable only when the document is delivered after the last date, or the last day of the period, prescribed for filing the document.

(e) *Exceptions.* This section shall not apply with respect to:

(1) The filing of a document in, or the making of a payment to, any court,

(2) Currency or other medium of payment unless actually received and accounted for, or

(3) Returns, claims, statements, or other documents, or payments, which are required under any provision of 26 U.S.C. enforced and administered by the Bureau or the regulations thereunder to be delivered by any method other than by mailing.

(26 U.S.C. 5061 and 7503)

§ 70.306 Time for performance of acts other than payment of tax or filing of any return where last day falls on Saturday, Sunday, or legal holiday.

(a) *In general.* Title 26 U.S.C. 7503 provides that when the last day prescribed under provisions of 26 U.S.C. enforced and administered by the Bureau, for the performance of any act falls on a Saturday, Sunday, or legal holiday, such act shall be considered performed timely if performed on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For this purpose, any authorized extension of time shall be included in the determining of the last day for performance of any act. Title 26 U.S.C. 7503 is not applicable to the filing of returns and payment of tax under 26 U.S.C. subtitle E. Title 26 U.S.C. 7503 is applicable only in case an act is required under authority of any provisions of 26 U.S.C. enforced and administered by the Bureau to be performed on or before a prescribed date or within a prescribed period. Title 26 U.S.C. 7503 applies to acts to be performed by the taxpayer (such as the filing of a claim for credit or refund of tax) and acts to be performed by the Director, the Chief, Tax Processing Center, or a regional director (compliance), (such as, the giving of any notice with respect to, or making any demand for the payment of, any tax; the assessment or collection of any tax). For rules concerning the payment of any tax or filing of any return required under the authority of 26 U.S.C. subtitle E, relating to alcohol, tobacco, and certain other excise taxes, see 26 U.S.C. 5061 and the regulations covering the specific commodity.

(b) *Legal holidays.* (1) For the purpose of 26 U.S.C. 7503, the term "legal holiday" includes the legal holidays in the District of Columbia. Such legal holidays found in 5 U.S.C. 6103(a), as enacted and made effective by the Act of November 2, 1983 (97 Stat. 917), are:

(i) January 1, New Year's Day,

(ii) Third Monday in January, Birthday of Martin Luther King, Jr.,

(iii) January 20, when such day is Inauguration Day,

(iv) Third Monday in February, Washington's Birthday,

(v) Last Monday in May, Memorial Day,

(vi) July 4, Independence Day,

(vii) First Monday in September, Labor Day,

(viii) Second Monday in October, Columbus Day,

(ix) November 11, Veterans' Day,

(x) Fourth Thursday in November, Thanksgiving Day, and

(xi) December 25, Christmas Day.

When a legal holiday in the District of Columbia falls on a Sunday, the next day is a legal holiday in the District of Columbia. For the purpose of 26 U.S.C. 7503, when a legal holiday in the District of Columbia (other than Inauguration Day) falls on a Saturday it shall be treated as falling on the preceding Friday.

(2) In the case of any statement or other document required to be filed, or any other act required under the authority of provisions of 26 U.S.C. enforced and administered by the Bureau to be performed at any office of the Bureau or any other office or agency of the United States, located outside the District of Columbia, but within an ATF region, the term "legal holiday" includes, in addition to the legal holidays enumerated in paragraph (b)(1) of this section, any statewide legal holiday of the State where the act is required to be performed. If the act is performed in accordance with law at an office of the Bureau or any other office or agency of the United States located in a Territory or possession of the United States, the term "legal holiday" includes, in addition to the legal holidays described in paragraph (b)(1) of this section, any legal holiday which is recognized throughout the Territory or possession in which the office is located.

(26 U.S.C. 5061 and 7503)

Par. 68. An undesignated centerheading is added immediately preceding § 70.311 to read as follows:

General Provisions Relating to Stamps, Marks or Labels

Par. 69. An undesignated centerheading is added immediately preceding § 70.321 to read as follows:

Registration

Par. 70. Section 70.321 is amended by adding the OMB control number immediately following the informational cite at the end of the section to read as follows:

§ 70.321 * * *

* * * * *

(Approved by the Office of Management and Budget under control number 1512-0472)

Par. 71. Sections 70.331 through 70.333 and a related undesignated centerheading are added to read as follows:

Crimes, Other Offenses and Forfeitures

§ 70.331 Fraudulent returns, statements, or other documents.

Any person who willfully delivers or discloses to any officer or employee of the Bureau any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than $10,000 ($50,000 in the case of a corporation) or imprisoned not more than 1 year, or both.

(26 U.S.C. 7207)

§ 70.332 Unauthorized use or sale of stamps.

Any person who buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in the Internal Revenue Code or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device prescribed by the Director under provisions of 26 U.S.C. enforced and administered by the Bureau for the collection or payment of any tax imposed thereunder, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 6 months, or both.

(26 U.S.C. 7209)

§ 70.333 Offenses by officers and employees of the United States

Any officer or employee of the United States acting in connection with any provisions of 26 U.S.C. enforced and administered by the Bureau required to make a written report under the provisions of 26 U.S.C. 7214(a)(8) shall submit such report to the Director, or to a regional director (compliance) or to the Chief, Tax Processing Center.

(26 U.S.C. 7214)

Par. 72. Subpart F is redesignated as subpart E.

Par. 73. Section 70.411 is amended by adding the OMB control number immediately following the end of the section to read as follows:

§ 70.411 Imposition of taxes, qualification requirements, and regulations.

* * * * *

(Approved by the Office of Management and Budget under control number 1512-0472)

Par. 74. Section 70.412 is amended by removing the reference to "§ 70.111(c)" in the last sentence of paragraph (a) and replacing it with "§ 70.411(c)" and by adding the OMB control number immediately following the end of the section to read as follows:

§ 70.412 Excise taxes.

* * * * *

(Approved by the Office of Management and Budget under control number 1512-0472)

Par. 75. Section 70.413 is amended by revising paragraph (b) and revising the first sentence of paragraph (c)(1) and by adding the OMB control number immediately following the end of the section to read as follows:

§ 70.413 Claims.

* * * * *

(b) *Claims for abatement.* When the tax on distilled spirits, wines, or beer is assessed and the taxpayer thinks that the tax is not due under the law, such taxpayer may file a claim for abatement of the tax on ATF Form 5620.8 with the official who made demand for the tax. ATF Form 5620.8 may be procured from the regional director (compliance) or the

Chief, Tax Processing Center. The regional director (compliance) or the Chief, Tax Processing Center may call upon the taxpayer to file a bond in double the amount of the tax in order to insure collection of the tax if the claim is rejected. When the claim is acted upon, the taxpayer is notified of the allowance or rejection of the claim. If the claim is rejected, the regional director (compliance) or the Chief, Tax Processing Center, will initiate action to collect the tax.

(c) *Claims for refund—(1) Taxes illegally, erroneously, or excessively collected.* A claim for refund of taxes illegally, erroneously, or excessively collected may be filed by the taxpayer with the official who collected the tax. * * *

* * * * *

(Approved by the Office of Management and Budget under control number 1512-0141)

Par. 76. Section 70.414 is amended by revising the first sentence of paragraph (k) and by adding the OMB control number immediately following the end of the section to read as follows:

§ 70.414 Preparation and filing of claims.

* * * * *

(k) *Reopening claims.* A claimant who wishes to have a rejected claim reopened must, within the applicable statutory period of limitations, submit a written application to the official who originally rejected the claim for reconsideration of the claim. * * *

* * * * *

(Approved by the Office of Management and Budget under control number 1512-0141)

Par. 77. Section 70.415 is revised to read as follows:

§ 70.415 Offers in compromise.

Procedure in the case of offers in compromise of liabilities under 26 U.S.C. chapter 51 and of penalties for violation of the Federal Alcohol Administration Act, is set forth in §§ 70.482 through 70.484.

Par. 78. Section 70.417 is revised to read as follows:

§ 70.417 Rulings.

The procedure for rulings in alcohol tax matters is set forth in § 70.471.

Par. 79. Section 70.418 is revised to read as follows:

§ 70.418 Conferences.

Any person desiring a conference in the office of the regional director (compliance) of the region in which such person is located, the Chief, Tax Processing Center, in Cincinnati, or of the Director, in Washington, relative to any matter arising in connection with such person's operations, will be accorded such a conference upon request. No formal requirements are prescribed for such conference.

Par. 80. Section 70.419 is revised to read as follows:

§ 70.419 Representatives.

Title 31 CFR part 8 is applicable to all representatives of the taxpayer, in the office of the Director, the Chief, Tax Processing Center, or the regional director (compliance).

Par. 81. Section 70.420 is revised to read as follows:

§ 70.420 Forms.

For forms to be used, *see* § 70.411(c).

Par. 82. Section 70.431 is amended by adding the OMB control number immediately following the end of the section to read as follows:

§ 70.431 Imposition of taxes, regulations.

* * * * *

(Approved by the Office of Management and Budget under control number 1512-0472)

Par. 83. Section 70.432(e) is amended by revising the second sentence and § 70.432(f) is revised to read as follows:

§ 70.432 Qualification and bonding requirements.

* * * * *

(e) *Drawback of tax.* * * * Drawback may be allowed only to the person who paid the tax on such articles and who files a claim and otherwise complies with the provisions contained in the applicable regulations referred to in § 70.431. * * *

(f) *General.* Detailed information relating to the qualification and bonding requirements, including the forms to be used and the procedure to be followed, is fully set forth in the regulations referred to in § 70.431.

Par. 84. Section 70.433 is amended by revising paragraph (d) and by adding the OMB control number immediately following the end of the section to read as follows:

§ 70.433 Collection of taxes.

* * * * *

(d) *General.* Detailed information about the payment of taxes on tobacco products, and cigarette papers and tubes, including the forms to be used, records to be kept, and reports and inventories to be filed, is contained in the respective regulations referred to in § 70.431.

(Approved by the Office of Management and Budget under control number 1512-0472)

Par. 85. Section 70.435(a) is revised to read as follows:

§ 70.435 Claims.

(a) *General.* Detailed requirements, including the procedure to be followed in the filing of a claim, the form to be used, the supporting documents which must be submitted, the time within which a claim must be filed, and any other limitations or instructions are contained in the applicable regulations referred to in § 70.431.

* * * * *

Par. 86. Section 70.436 is revised to read as follows:

§ 70.436 Offers in compromise.

Procedure in the case of offers in compromise of liabilities under 26 U.S.C. chapter 52 is set forth in §§ 70.482 through 70.484.

Par. 87. Section 70.437 is revised to read as follows:

§ 70.437 Rulings.

The procedure for rulings in tobacco tax matters is set forth in § 70.471.

Par. 88. Section 70.446 is revised to read as follows:

§ 70.446 Rulings.

The procedure for rulings in the firearms and explosives area is set forth in § 70.471.

Par. 89. Section 70.447 is revised to read as follows:

§ 70.447 Assessments.

Where the evidence disclosed by investigation establishes that additional or delinquent tax liability has been incurred and not paid, the regional director (compliance) or the Chief, Tax Processing Center will list the tax as an assessment. Notification and demand for payment of assessed taxes will be issued to the taxpayer by the regional director (compliance) or the Chief, Tax Processing Center.

Par. 90. Section 70.448 (b) and (c) are revised to read as follows:

§ 70.448 Claims.

* * * * *

(b) Claims for abatement of making and transfer taxes, and claims for abatement of occupational taxes and penalties erroneously assessed, are prepared and filed in accordance with the procedures set forth in § 70.413(b).

(c) Claims may be reopened or amended in accordance with the provisions of § 70.414 (k) and (l).

Par. 91. Section 70.449 is revised to read as follows:

§ 70.449 Offers in compromise.

Procedure in the case of offers in compromise of liabilities under 26 U.S.C. chapter 53 is set forth in §§ 70 482 through 70.484.

Par. 92. An undesignated centerheading is added immediately preceding § 70.450 to read as follows:

Seized Property

Par. 93. An undesignated centerheading is added immediately preceding § 70.461 to read as follows:

Possessions

Par. 94. Section 70.471 is amended by revising (a)(3) to read as follows:

§ 70.471 Rulings.

(a) * * *

(3) The taxes relating to machine guns, destructive devices, and certain other firearms imposed by chapter 53 of the Internal Revenue Code; the registration by importers and manufacturers of, and dealers in, such firearms; the registration of such firearms; the licensing of importers and manufacturers of, and dealers in, firearms and ammunition, and collectors of firearms and ammunition curios and relics under chapter 44 of title 18 of the United States Code; the licensing of manufacturers, importers, limited manufacturers of, and dealers in, explosives and issuance of permits for users of explosives under chapter 40 of title 18 of the United States Code; and registration of Importers of, and permits to import, arms, ammunition, and implements of war, under section 38 of the Arms Export Control Act of 1976, may request a ruling thereon by addressing a letter to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, to the Chief, Tax Processing Center, or to the regional director (compliance) of the ATF region in which the inquirer's business is located. Since a ruling can issue only from the Bureau Headquarters, any such request made to the Chief, Tax Processing Center or to the regional director (compliance) will be referred to the Director for reply unless the issues involved are clearly covered by currently effective rulings or come within the plain intent of the statutes or regulations. * * *

* * * * *

Par. 95. Section 70.481 and an undesignated centerheading preceding it are added to read as follows:

Administrative Remedies

§ 70.481 Agreements for payment of liability in installments.

(a) *Authorization of agreements.* The regional director (compliance) or the Chief, Tax Processing Center, is authorized to enter into written agreements with any taxpayer under which such taxpayer is allowed to satisfy liability for payment of any tax in installment payments if the regional director (compliance) or the Chief, Tax Processing Center determines that such agreement will facilitate collection of such liability.

(b) *Extent to which agreements remain in effect.*—(1) *In general.* Except as otherwise provided in this paragraph (b), any agreement entered into by an authorized ATF official under paragraph (a) of this section shall remain in effect for the term of the agreement.

(2) *Inadequate information or jeopardy.* The official who entered into an installment agreement under paragraph (a) of this section may terminate such agreement if:

(i) Information which the taxpayer provided prior to the date such agreement was entered into was inaccurate or incomplete, or

(ii) The regional director (compliance) or the Chief, Tax Processing Center believes that collection of any tax to which an agreement under this section relates is in jeopardy.

(3) *Subsequent change in financial conditions*—(i) *In general.* If the official who entered into an installment agreement under paragraph (a) of this section makes a determination that the financial condition of the taxpayer has significantly changed, the official may alter, modify, or terminate such agreement.

(ii) *Notice.* Action may be taken by the regional director (compliance) or the Chief, Tax Processing Center under paragraph (b)(3)(i) of this section only if:

(A) Notice of such determination is provided to the taxpayer no later than 30 days prior to the date of such action, and

(B) Such notice includes the reasons why the official believes a significant change in the financial condition of the taxpayer has occurred.

(4) *Failure to pay an installment or any other tax liability when due or to provide requested financial information.* The official who entered into an installment agreement under paragraph (a) of this section may alter, modify, or terminate such agreement in the case of the failure of the taxpayer:

(i) To pay an installment at the time such installment payment is due under such agreement,

(ii) To pay any other tax liability at the time such liability is due, or

(iii) To provide a financial condition update as requested by the regional director (compliance) or the Chief, Tax Processing Center.

(26 U.S.C. 6159)

Par. 96. Section 70.482 is revised to read as follows:

§ 70.482 Offers in compromise of liabilities (other than forfeiture) under 26 U.S.C.

(a) *In general.* The Director may compromise any civil or criminal liability arising under the provisions of 26 U.S.C. enforced and administered by ATF prior to reference of a case involving such liability to the Department of Justice for prosecution or defense. (For compromise of forfeiture liability, see § 70.484 of this part.) Any such liability may be compromised only upon one or both of the following two grounds:

(1) Doubt as to liability; or

(2) Doubt as to collectibility.

No such liability will be compromised if the liability has been established by a valid judgment or is certain, and there is no doubt as to the ability of the Government to collect the amounts owing with respect to such liability.

(b) *Scope of compromise agreement.* A compromise agreement may relate to civil or criminal liability for taxes, interest, ad valorem penalties, or specific penalties. However, a criminal liability may be compromised only if it involves a violation of a regulatory provision of 26 U.S.C., or a related statute, and then only if such violation was not deliberately committed with an intent to defraud.

(c) *Effect of compromise agreement.* A compromise agreement relates to the entire liability of the taxpayer (including taxes, ad valorem penalties, and interest) with respect to which the offer in compromise is submitted and all questions of such liability are conclusively settled thereby. Specific penalties, however, shall be compromised separately and not in connection with taxes, interest, or ad valorem penalties. Neither the taxpayer nor the Government shall, upon acceptance of an offer in compromise, be permitted to reopen the case except by reason of falsification or concealment of assets by the taxpayer, or mutual mistake of a material fact sufficient to cause a contract to be reformed or set aside. However, acceptance of an offer in compromise of a civil liability does not remit a criminal liability, nor does acceptance of an offer in compromise of a criminal liability remit a civil liability.

(d) *Procedure with respect to offers in compromise*—(1) *Submission of offers.* Offers in compromise under this section shall be submitted on Form 5640.1, along with any additional information required by the official authorized to accept or reject the offer. If the offer in compromise is based on inability to pay, the proponent must submit any financial statement required by such official. Each

regional director (compliance) has the authority to accept or reject offers in compromise of:

(i) Tax liabilities arising from:

(A) The illegal production of untaxpaid distilled spirits, wines, or beer.

(B) The failure to file returns of, or to pay, occupational taxes with respect to distilled spirits, wines, beer, tobacco products, cigarette papers and tubes, or firearms.

(C) The failure to pay firearms making or transfer taxes; and

(ii) Criminal liabilities of retail dealers in liquor arising from violations of the internal revenue laws relating to liquor, including the reuse or refilling of liquor bottles. The Associate Director (Compliance Operations) has the authority to accept or reject offers in compromise of civil liability (of less than $100,000) and criminal liability arising under 26 U.S.C. chapters 51, 52, and 53 in cases not subject to compromise by regional directors (compliance). The Director accepts or rejects all other offers in compromise except those in compromise of liabilities listed in §§ 70.483 and 70.484 of this part. In civil cases involving liability of $500 or over and in criminal cases the functions of the General Counsel under 26 U.S.C. 7122(b) are performed by the Chief Counsel of the Bureau of Alcohol, Tobacco and Firearms. The offer should generally be accompanied by a remittance representing the amount of the compromise offer or a deposit if the offer provides for future installment payments. When final action has been taken, the regional director (compliance), when applicable, and the proponent are notified of the acceptance or rejection of the offer.

(2) *Stay of collection.* The submission of an offer in compromise shall not automatically operate to stay the collection of any tax liability. However, enforcement of collection may be deferred if the interests of the United States will not be jeopardized thereby.

(3) *Acceptance.* An offer in compromise shall be considered accepted only when the proponent thereof is so notified in writing. As a condition to accepting an offer in compromise, the taxpayer may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interests of the United States. If the final payment on an accepted offer is contingent upon the immediate or simultaneous release of a tax lien in whole or in part, such payment must be in cash, or in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States or any State, Territory, or possession of the United States, or by a U.S. postal, bank, express, or telegraph money order.

(4) *Withdrawal or rejection.* An offer in compromise may be withdrawn by the proponent at any time prior to its acceptance. In the event an offer is rejected, the proponent shall be promptly notified in writing. Frivolous offers or offers submitted for the purpose of delaying the collection of tax liabilities shall be immediately rejected. If an offer in compromise is withdrawn or rejected, the amount tendered with the offer, including all installments paid, shall be refunded without interest, unless the taxpayer has stated or agreed that the amount tendered may be applied to the liability with respect to which the offer was submitted.

(e) *Record.* Except as otherwise provided in this paragraph, if an offer in compromise is accepted, there shall be placed on file the opinion of the Chief Counsel for the Bureau with respect to such compromise, with that official's reason therefor, and including a statement of:

(1) the amount of tax assessed,

(2) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed, and

(3) The amount actually paid in accordance with the terms of the compromise.

However, no such opinion shall be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than $500.

(f) *Requirement with respect to statute of limitations.* No offer in compromise shall be accepted unless the taxpayer waives the running of the statutory period of limitations on both or either assessment or collection of the tax liability involved for the period during which the offer is pending, or the period during which any installment remains unpaid, and for one year thereafter.

(g) *Inspection with respect to accepted offers in compromise.* For provisions relating to the inspection of returns and accepted offers in compromise, *see* 26 U.S.C. 6103(k)(l).

(26 U.S.C. 7122)

(Approved by the Office of Management and Budget under control number 1512-0472)

Par. 97. Sections 70.483 through 70.484 are revised to read as follows:

§ 70.483 Offers in compromise of violations of Federal Alcohol Administration Act.

The Federal Alcohol Administration Act provides penalties for violations of its provisions. The Associate Director (Compliance Operations), Bureau of Alcohol, Tobacco and Firearms is authorized to compromise such liabilities. Persons desiring to submit offers in compromise may submit such offers on Form 5640.2 to the regional director (compliance) or an ATF officer. Such offers are considered by the regional director (compliance) and are forwarded to the Associate Director (Compliance Operations) for final action. When the offer is acted upon, the proponent and the regional director (compliance) are notified of the acceptance or rejection of the offer. If the offer is rejected, the sum submitted with the offer in compromise is returned to the proponent. If the offer is accepted, the proponent is notified and the case is closed.

§ 70.484 Offers in compromise of forfeiture liabilities.

The Director or designated delegate is authorized to compromise liabilities to administrative forfeiture of personal property seized under the laws administered and enforced by the Bureau. Persons desiring to submit offers in compromise of such liabilities may submit such offers on Form 656-E to the Director or designated delegate. When the offer is acted upon, the proponent is notified of the acceptance or rejection of the offer. If the offer is rejected, the sum submitted with the offer in compromise is returned to the proponent. If the offer is accepted, the proponent is notified and the case is closed. Acceptance of an offer in compromise of civil liabilities does not remit criminal liabilities, nor does acceptance of an offer in compromise of criminal liabilities remit civil liabilities.

Par. 98. Sections 70.485 through 70.487 are added to read as follows:

§ 70.485 Closing agreements.

(a) *In general.* The Director may enter into a written agreement with any person relating to the liability of such person (or of the person or estate for whom the person acts) in respect of any tax imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau for any taxable period ending prior or subsequent to the date of such agreement. A closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or if good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the Director that the United States will sustain no disadvantage through consummation of such an agreement.

(b) *Scope of closing agreement*—(1) *In general.* A closing agreement may be executed even though under the agreement the taxpayer is not liable for any tax for the period to which the agreement relates. There may be a series of closing agreements relating to the tax liability for a single period.

(2) *Taxable periods ended prior to date of closing agreement.* Closing agreements with respect to taxable periods which ended prior to the date of the agreement may relate to the total tax liability of the taxpayer or to one or more separate items affecting the tax liability of the taxpayer.

(3) *Taxable periods ending subsequent to date of closing agreement.* Closing agreements with respect to taxable periods ending subsequent to the date of the agreement may relate to one or more separate items affecting the tax liability of the taxpayer.

(c) *Finality.* A closing agreement which is approved within such time as may be stated in such agreement, or later agreed to, shall be final and conclusive, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

(1) The case shall not be reopened as to the matters agreed upon or the agreement modified by any officer, employee, or agent of the United States, and

(2) In any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

However, a closing agreement with respect to a taxable period ending subsequent to the date of the agreement is subject to any change in, or modification of, the law enacted subsequent to the date of the agreement and made applicable to such taxable period, and each closing agreement shall so recite.

(d) *Procedure with respect to closing agreements*—(1) *Submission of request.* A request for a closing agreement which relates to a prior taxable period may be submitted at any time before a case with respect to the tax liability involved is filed with a court of the United States. The procedure with respect to requests for closing agreements shall be under such rules as may be prescribed from time to time by the Director in accordance with the regulations under this section.

(2) *Collection, credit, or refund.* Any tax or deficiency in tax determined pursuant to a closing agreement shall be assessed and collected, and any overpayment determined pursuant thereto shall be credited or refunded, in accordance with the applicable provisions of law.

(26 U.S.C. 7121)

§ 70.486 Managerial review.

If at any step in the collection process a taxpayer does not agree with an ATF employee under the authority of the regional director (compliance) or the Chief, Tax Processing Center, the taxpayer has the right to discuss the matter with the employee's immediate supervisor. The ATF employee will give the taxpayer the name and telephone number of the person to be contacted.

§ 70.487 Taxpayer assistance orders.

(a) *Authority to issue.* Upon application filed by a taxpayer, the Chief, Revenue Programs Division or the Assistant Chief, Revenue Programs Division may issue a Taxpayer Assistance Order, if, in the determination of that official, the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which provisions of 26 U.S.C. are being administered by the Bureau. Applications for Taxpayer Assistance Orders shall be prepared and filed in accordance with instructions available from the Revenue Programs Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226.

(b) *Terms of a taxpayer assistance order.* The terms of a Taxpayer Assistance Order may require ATF

(1) To release any property of the taxpayer levied upon, or

(2) To cease any action, or refrain from taking any action with respect to the taxpayer under any provision of law which is specifically described by the Chief, Revenue Programs Division or the Assistant Chief, Revenue Programs Division in the Taxpayer Assistance Order.

(c) *Authority to modify or rescind.* Any Taxpayer Assistance Order issued by an ATF official under this section may be modified or rescinded only by that official, or by any superior of such person.

(d) *Suspension of running of period of limitation.* The running of any period of limitation with respect to any action described in paragraph (b) of this section shall be suspended for:

(1) The period beginning on the date of the taxpayer's application under paragraph (a) of this section and ending on the date of ATF's decision with respect to such application, and

(2) Any period specified by ATF in a Taxpayer Assistance Order issued pursuant to such application.

(e) *Independent action by ATF official.* Nothing in this section shall prevent the Chief, Revenue Programs Division or the Assistance Chief, Revenue Programs Division taking any action in the absence of an application under paragraph (a) of this section. (26 U.S.C. 7811)

PART 170—[AMENDED]

Par. 99. The authority citation for Part 170 continues to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5064, 5111, 5121, 5171, 5205, 5291, 5301,5362, 7805; 31 U.S.C. 9304, 9306.

§ 170.91 [Amended]

Par. 100. Section 170.91 is amended by removing the reference to "26 CFR 301.6091-1(b)" in the second sentence and replacing it with "§ 70.304 of this chapter".

PART 179—[AMENDED]

Par. 101. The authority citation for part 179 continues to read as follows:

Authority: 5 U.S.C. 552a; 18 U.S.C. 926; 22 U.S.C. 2778; 26 U.S.C. Chapter 53, 6091, 6511, 6676, 6805, 7805; 27 U.S.C. 205; 44 U.S.C. 3504(h), unless otherwise noted.

§ 179.35 [Amended]

Par. 102. Section 179.35(a) is amended by removing the reference to "§ 70.105" and replacing it with "§ 70.113".

PART 194—[AMENDED]

Par. 103. The authority citation for part 194 continues to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5025, 5111-5117, 5121-5124, 5142, 5143, 5145, 5146, 5205-5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6051, 6091, 6065, 6071, 6091, 6109, 6311, 6314, 6402, 6601, 6657, 6676, 6511, 7011, 7805.

§ 194.106a [Amended]

Par. 104. Section 194.106a is amended by removing the reference to "§ 70.105" and replacing it with "§ 70.113".

PART 197—[AMENDED]

Par. 105. The authority citation for part 197 continues to read as follows:

Authority: 5 U.S.C. 552; 26 U.S.C. 5131-5134, 6511, 6676, 7213, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 197.5 [Amended]

Par. 106. Section 197.5 is amended by removing the reference to "26 CFR 301.7502 through 301.7503-1" and replacing it with "§§ 70.305 and 70.306 of

this chapter" under the definition of "Filed".

§ 197.29 [Amended]

Par. 107. Section 197.29e(n) is amended by removing the reference to "§ 70.105" and replacing it with "§ 70.113".

PART 250—[AMENDED]

Par. 108. The authority citation for part 250 continues to read as follows:

Authority: 19 U.S.C. 81(c); 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5061, 5062, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5316, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 250.112 [Amended]

Par. 109. Section 250.112(c)(3) is amended by removing the reference to "§ 70.66" and replacing it with "§ 70.61 of this chapter".

PART 270—[AMENDED]

Par. 110. The authority citation for part 270 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 270.34 [Amended]

Par. 111. Section 270.34(a) is amended by removing the reference to "§ 70.105" and replacing it with "§ 70.113".

§ 270.166 [Amended]

Par. 112. Section 270.166 is amended by removing the reference to "§ 70.66" and replacing it with "§ 70.61 of this chapter".

§ 270.168 [Amended]

Par. 113. Section 270.168 is amended by removing the reference to "§ 70.66" and replacing it with "§ 70.61 of this chapter".

§ 270.169 [Amended]

Par. 114. Section 270.169 is amended by removing the reference to "26 CFR 301.6676–1" and replacing it with "§ 70.113 of this chapter".

PART 275—[AMENDED]

Par. 115. The authority citation for part 275 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 275.115 [Amended]

Par. 116. Section 275.115 is amended by removing the reference to "§ 70.66" and replacing it with "§ 70.61 of this chapter".

PART 285—[AMENDED]

Par. 117. The authority citation for Part 285 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711, 5721–5723, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6302, 6402, 6404, 6676, 6806, 7011, 7212, 7325, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 285.29 [Amended]

Par. 118. Section 285.29 is amended by removing the reference to "26 CFR 301.6676–1" and replacing it with "§ 70.113 of this chapter".

§ 285.30 [Amended]

Par. 119. Section 285.30d(e)(1) is amended by removing the reference to § 70.105 and replacing it with "§ 70.113".

PART 290—[AMENDED]

Par. 120. The authority citation for part 290 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 6061, 6065, 6151, 6402, 6404, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9302, 9304, 9306.

§ 290.34 [Amended]

Par. 121. Section 290.34(a) is amended by removing the reference to "§ 70.105" and replacing it with "§ 70.113".

PART 296—[AMENDED]

Par. 122. The authority citation for part 296 continues to read as follows:

Authority: 31 U.S.C. 9304, 9306; 18 U.S.C. 2341–2346; 26 U.S.C. 5708, 5751, 5761–5763, 7805; 44 U.S.C. 3504(h); 49 U.S.C. 782.

§ 296.7 [Amended]

Par. 123. Section 296.7 is amended by removing the reference to "26 CFR 301.6901–1(b)" and replacing it with "§ 70.304 of this chapter".

Signed: August 8, 1990.

Stephen E. Higgins,

Director.

Approved: August 29, 1990.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 90–23802 Filed 11–13–90; 8:45 am]

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Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1926

Safety Standards for Stairways and Ladders Used in the Construction Industry; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

RIN 1218-AA57

[Docket No. S-207]

Safety Standards for Stairways and Ladders Used in the Construction Industry

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) hereby amends its Construction Industry Standards by revising and relocating the existing provisions for stairways and ladders from existing Subpart L—Ladders and Scaffolds and Subpart M—Floors and Wall Openings, and Stairways, into subpart X. This final rule reformats the rules into a more logical grouping of topics. This revision also focuses on the principal hazards involved when working on stairways and ladders and eliminates what OSHA believes to be unnecessary and redundant provisions in the existing standards. The provisions of existing Subpart X—Effective Dates are deleted as they are no longer necessary.

EFFECTIVE DATE: This revision of Subpart X becomes effective January 14, 1991.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), the Agency designates for receipt of petitions for review of the standard, the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, room S-4004, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION:

I. Background

Congress amended the Contract Work Hours Standards Act (40 U.S.C. 327 *et seq.*) in 1969 by adding a new section 107 (40 U.S.C. 333) to provide employees in the construction industry with a safer work environment and to reduce the frequency and severity of construction accidents and injuries. The amendment, commonly known as the Construction Safety Act (CSA) significantly strengthened employee protection by authorizing the promulgation of construction safety and health standards for employees of the building trades and construction industry working on federal and federally financed or federally assisted construction projects. Accordingly, the Secretary of Labor issued Safety and Health Regulations for Construction in 29 CFR part 1518 (36 FR 7340, April 17, 1971).

The Occupational Safety and Health Act (the Act) (29 U.S.C. 651 *et seq.*), was enacted by Congress in 1970 and authorized the Secretary of Labor to adopt established federal standards issued under other statutes, including the CSA, as occupational safety and health standards. Accordingly, the Secretary of Labor adopted the Construction Standards, which had been issued under the CSA, as OSHA standards (36 FR 10466, May 29, 1971). The Safety and Health Regulations for Construction were subsequently redesignated as part 1926 (36 FR 25232, December 30, 1971). The standards addressing ladders (§ 1926.450 in subpart L) and stairways (§ 1926.501 in subpart M) were adopted as OSHA standards as part of this process.

Section 6(a) of the Act authorized OSHA to adopt national consensus standards without rulemaking for the first two years after the Act took effect. This enabled the Agency to implement safety and health regulations much faster than would have been possible if OSHA had been required to conduct rulemaking. Many provisions of the existing standards for stairways and ladders were adopted from consensus standards during that period.

The organizations which produce consensus standards expect that compliance will be voluntary, based on agreement among interested parties regarding the need for particular precautions. It is implicit that the primary concern of the standard-producing organizations is to improve the overall safety of a workplace by fostering compliance with the spirit, rather than the letter, of the consensus standards. On the other hand, OSHA standards, including those adopted from consensus standards, impose mandatory burdens, because of the Agency's statutory duty to require protection of employee safety and health. As noted elsewhere in this preamble, OSHA has carefully reviewed the ongoing efforts of nationally recognized standards-producing organizations to update pertinent consensus standards that were initially adopted for stairways and ladders under subparts L and M.

In the course of reviewing information, such as the provisions of revised consensus standards, obtained by the Agency, OSHA became aware of the need to revise subparts L and M, including the provisions for ladders and stairways. In 1977, OSHA determined, after several meetings with the Advisory Committee on Construction Safety and Health (ACCSH) to review the provisions of subparts L and M, that a piecemeal approach to the revision of those provisions would not be acceptable. Therefore, a complete review of subparts L and M was begun. Since that time, ACCSH has reviewed these subparts several times and transcripts of these meetings, including recommendations, have been submitted to the Assistant Secretary. The transcripts are part of the public record (Ex. 1). The Committee's recommendations, and those of other interested parties, have been carefully analyzed in connection with the present rulemaking. Many of the changes in the final standard reflect the recommendations and suggestions of the Advisory Committee and interested persons. Relevant ACCSH comments are discussed below in the Summary and Explanation section. Committee discussions that were inconclusive or did not result in a specific recommendation have also been considered, but are not discussed in depth in this preamble.

On November 25, 1986, OSHA proposed to revise the provisions of subparts L and M of the Construction Industry Standards that regulate ladders and stairways, respectively, and to relocate the revised provisions to subpart X (51 FR 42750). Concurrently, the Agency proposed to revise the standards in subparts L and M that cover scaffolds (51 FR 42680) and fall protection (51 FR 42718), respectively, in construction employment. The proposal established a period, ending February 23, 1987, during which interested parties could submit written comments or request a hearing regarding the proposals.

The period for submitting written comments and hearing requests was extended twice at the request of commenters. On February 26, 1987, OSHA extended that period until June 1, 1987 (52 FR 5790). Then, on June 2, 1987, the Agency announced the extension of the period until August 14, 1987 (52 FR 20616). OSHA received 45 comments in response to proposed subpart X.

After reviewing and evaluating the provisions for ladders and stairways, OSHA believes that certain provisions in the existing standards either are redundant or ambiguous or are not clearly applied to all situations. Some provisions simply are not feasible in all situations, while others are unnecessarily detailed. To eliminate these problems, this rulemaking has focused on the principal hazards involved when working on stairways and ladders and eliminates provisions that OSHA believes are unnecessary. To the extent possible, the final rule has been written in performance-oriented language, so employers have the flexibility to implement compliance strategies that both protect employees from occupational hazards and minimize disruption of operations.

To make it easier for employers and employees to find specific provisions, this final rule relocates the topics of stairways and ladders from subparts L and M to a revised subpart X titled "Stairways and Ladders." The existing subpart X in part 1926, "Effective Dates," is no longer needed as those effective dates have passed. Therefore, existing subpart X is being deleted and replaced with this new subpart X.

On January 28, 1988, OSHA announced it would convene an informal public hearing beginning on March 22, 1988, to elicit additional input on specific issues related to stairways and ladders, scaffolds, and fall protection. The hearings were conducted on March 22 and 23, 1988, with Administrative Law Judge Joel Williams presiding. At the close of the hearings, Judge Williams set a period, ending May 9, 1988, for the submission of additional comments and information. On August 11, 1989, Judge Williams certified the rulemaking record, including the hearing transcript and all written submissions to the docket, thereby closing the record for this proceeding. OSHA received 45 comments on this subpart in response to its NPRM and 18 comments in response to the hearing notice. A wide range of employees, businesses, trade associations, state governments, and other interested parties contributed to the development of this record. The Agency appreciates these efforts to help develop a rulemaking record that provides a sound basis for the promulgation of the final rule.

Based on its review of the record, OSHA has determined that the revision and reorganization of the regulations for stairways and ladders are necessary to address the significant hazards, such as fall hazards, faced by employees who use stairways and ladders while performing construction work. The Agency has determined that compliance with the provisions of this standard will best ensure the safety of employees using stairways and ladders.

OSHA believes that the clarified and reformatted language of the final rule will help employers to understand the requirements for stairways and ladders, and will improve safety by minimizing subjective interpretations of the provisions.

II. Hazards Involved

Fall accidents resulting in injuries and fatalities continue to occur at construction sites despite the promulgation of the OSHA Construction Standards in 1971. Examination of available data indicates that these accidents are primarily the result of noncompliance with existing OSHA standards, and that the current standards, in general, properly address the stairway and ladder hazards confronted by construction workers. Nevertheless, upon reviewing compliance problems and public comments received since 1972, OSHA believes that the regulations addressing stairways and ladders need to be updated, reformatted, and clarified to provide employers with appropriate guidance and to make the standards easier to use and understand. OSHA believes that revision of these provisions will significantly increase employer compliance.

Precise accident data for the entire construction industry are not available. However, based upon the 1987 BLS data that have been compiled, OSHA estimates that the annual number of injuries associated with falls from surfaces covered under subpart X is about 24,882.

Although specific accident ratios cannot be projected for the 4.5 million construction workers potentially covered by subpart X, OSHA prepared the following statistical estimates to support proposed subpart X.

- On a yearly basis, OSHA estimated that as many as four fatalities, 5,360 impact injuries, and 1,900 sprain or strain injuries occur on stairways used in construction (summary of Bureau of Labor Statistics data; Exs. 3–15 and 3–16); and
- 65 percent of those injured in stairway accidents require medical treatment (Ex. 3–3, p. 150).

In a Bureau of Labor Statistics study of 1,400 ladder accidents that resulted in injuries (Ex. 3–5), the following findings were made:

- 23 percent of the accidents were in construction;
- 42 percent of those injured were working on the ladder when the accident occurred;
- 66 percent of those injured had not been trained in how to inspect ladders for defects before using them;
- 4 percent of the ladders involved in the accidents did not have uniformly spaced steps;
- 19 percent of the ladders involved in the accidents had one or more defects;
- 39 percent of the ladders involved in the accidents had not been extended three feet above the landing level;
- 53 percent of the non-self-supporting ladders had not been secured or braced at the bottom, and 61 percent had not been secured at the top; and
- 53 percent of the ladders involved in the accidents broke during use.

More recent information prepared for the final regulatory impact analysis (see section IV, below) indicates that a considerable number of accidents still occur. The following summarizes findings made in that analysis:

- On a yearly basis, OSHA estimated that as many as 36 fatalities and 24,882 injuries occurred due to falls from stairways and ladders used in construction.
- On a yearly basis, OSHA estimated that there were 11,570 lost workday injuries and 13,312 non-lost workday injuries due to falls from stairways and ladders used in construction.

Based on its analysis of the above data, and its field experience enforcing construction standards, the Agency has determined that employees using ladders and stairways in construction are exposed to a significant risk of harm. In addition, the above data suggest that compliance with the revised provisions would have prevented accidents more effectively than compliance with the existing standards. Consequently, OSHA believes that the revised standards are necessary to improve employee protection. OSHA has determined that the revised provisions in the final rule provide clearer guidance regarding employers' duties and the appropriate measures for compliance.

For a further discussion of accident rates and significance of risk, see section IV, Regulatory Impact Assessment and Regulatory Flexibility Analysis.

III. Summary and Explanation of the Final Rule

The following discussion, which tracks the final rule paragraph by paragraph, summarzies and explains the significant substantive changes that this final rule makes to the ladder provisions currently in subpart L and the stairway provisions currently in subpart M. The discussion also shows how the final rule differs from the proposed rule and

explains how OSHA determined what the final rule would require. In addition, the Agency received comments on 14 separate specific issues raised in the preamble to the proposed rule and in the hearing notice. These issues are discussed with the appropriate provisions in this preamble.

Section 6(b)(8) of the OSH Act requires OSHA to explain "why a rule promulgated by the Secretary differs substantially from an existing national consensus standard," by publishing "a statement of the reasons why the rule as adopted will better effectuate the purposes of the Act than the national consensus standard." In compliance with that requirement, the Agency has reviewed the standards proposed through this rulemaking with reference to the pertinent consensus standards. OSHA has discussed the relationship between individual regulatory provisions and the corresponding consensus standards in the Summary and Explanation of the final rule. This process was facilitated by the fact that the existing OSHA standards for stairways and ladders, the starting points for development of the proposed rule, are, in effect, the American National Standards Institute (ANSI) consensus standards that were in effect when OSHA was created. Therefore, even allowing for subsequent revisions to the ANSI standards and the Agency's consideration of a widely varied and substantial body of information in the rulemaking record, the requirements of the OSHA final rule would tend to resemble the corresponding provisions of the current ANSI standards. In a case where the Agency has determined that the pertinent ANSI language indicates appropriately what regulation is needed to protect employees from recognized hazards, the Summary and Explanation so indicates. Any case where the Agency has determined that the pertinent ANSI language would not provide appropriate guidance to employers is addressed in the Summary and Explanation.

Subpart X—Stairways and Ladders. As the title states, new subpart X covers the topics of stairways and ladders. The subpart includes provisions for construction, inspection, maintenance, use, fall protection, and the training necessary for employees involved with stairway and ladder construction, use, and repair.

Section 1926.1050 Scope, Application, and Definitions Applicable to This Subpart

Paragraph (a) of § 1926.1050 states the scope and application of subpart X. The subpart applies to all stairways and ladders found in construction, alteration, repair (including painting and decorating), and demolition workplaces. OSHA notes that additional requirements for ladders used or with scaffolds will be set forth in revised subpart L—Scaffolds, which will be published at a later date. The final rule differs slightly from the proposal in that the references to § 1926.451 (c) and (d) in the proposal have been changed to the more appropriate reference, "subpart L," to clarify the applicable regulation to which OSHA is referring.

OSHA received one comment (Ex. 2–35) on § 1926.1050(a), "Scope." The commenter recommended including "window cleaning" in the scope of subpart X. However, the Agency is not acting on this recommendation because such cleaning operations or services are covered by part 1910, General Industry Safety and Health Standards, not by part 1926, Construction Standards.

Paragraph (b) of § 1926.1050 presents definitions for certain terms used in the standard. Three definitions in this final rulemaking ("cleat," "double-cleat ladder," and "nosing") are the same as those in the existing standard. Except where otherwise indicated, the proposed definitions have elicited no comments and are being promulgated as proposed. Some definitions have been reworded for uniformity with proposed provisions that were revised in the final rule, or for clarity, as noted in the discussion of the terms, below. The following terms have either been added to the final rule or reflect revisions of existing or proposed definitions, as noted.

"Equivalent." This term replaces the existing term "standard strength and construction." It is used in the text of the standard to indicate the circumstances under which OSHA allows alternative means of complying with the standard. The definition states that the employer must demonstrate that an alternative means of compliance will provide a degree of safety that is either equal to or greater than that attained by using a method or item specified in the standard. OSHA's intent is to allow employers to use or design alternate methods or items that provide at least the same level of protection as that afforded by materials of equal strength and construction. There were no comments submitted to the record regarding this term.

"Extension trestle ladder." This word is used to mean a self-supporting portable ladder, adjustable in length, consisting of a trestle ladder base and a vertically adjustable extension section, with a suitable means for locking the ladders together. (Ladders that meet the criteria set out in the pertinent consensus standards would be considered to be covered by this definition). OSHA has added this definition to the final rule to facilitate compliance with § 1926.1053(a)(3)(iii), which sets the allowed range of rung spacing for extension trestle ladders.

"Failure." This word is used in performance-oriented provisions, such as § 1926.1052(c)(5) (which deals with stairrail strength). To ensure that the term would not be interpreted to mean only breakage or a physical separation of component parts, the proposed definition has been revised to make it clear that load the point where the structural members lost their ability to carry loads, is also considered to be failure. This is a change from the proposed wording that "Load refusal is the point where the ultimate strength is exceeded." The change is made to clarify OSHA's intent.

The one comment (Ex. 2–29) OSHA received concerning this definition expressed the view that OSHA should "[f]ind a better definition for 'failure' " because "[l]oad refusal is nebulous at best." The commenter did not explain the basis for this concern or suggest alternative wording. OSHA notes that in some cases failure will be evidenced by breakage or separation of components that can be easily detected through visual inspection. In other cases the ability of a component to hold its rated load will be destroyed without any permanently visible breakage or separation. Such cases include situations where an object, such as a ladder siderail, buckles after it has been loaded to the point of collapse. The siderail will not support the load and will not return to its original shape when the load is removed. Although the siderail could be straightened, the fact that the rail has sustained severe damage and will easily bend again may not be visibly apparent. While such structural members may show no signs of breakage or separation, the prior damage precludes their future use. Given these circumstances, the Agency believes that the definition, as revised, provides the appropriate guidance to employers.

"Fixed ladder." This term refers to a ladder that, unlike a portable ladder, cannot be readily moved or carried because it is an integral part of a building or structure. The term "fixed ladder" was not defined in the proposal. A commenter (Ex. 2–29) and the ACCSH (Tr. 6/10/87, pp 19–23) suggested that OSHA add such a definition. OSHA agrees with the above suggestions and recognizes the need to state clearly the types of ladders that may be used by construction workers.

The final rule's definition of fixed ladder is based on the definitions for "side-step" fixed ladder and "through" fixed ladder found in the ANSI A14.3–1984 Americal National Standard for Ladders-Fixed-Safety Requirements (Ex. 3–13). OSHA notes that the existing standard regarding fixed ladders, § 1926.450(a)(5), currently references the 1956 edition of ANSI A14.3 (Ex. 3–10). Thus, the promulgation of this definition simply reflects the Agency's interest in updating ANSI references and incorporating them directly into regulatory text.

"Handrail." The definition states that handrails are rails used to provide employees with a handhold for support. "Handrail" is defined in existing § 1926.502(c) as "a bar or pipe supported on brackets from a wall or partition * * * (to provide) a handhold in case of tripping." The revised definition recognizes there are handrails that are adequate even though they are not wall- or partition-mounted bars or pipes and are not used solely to protect employees if they were to trip. For example, OSHA has determined that the top rail of a stairrail system may serve as a handrail when installed according to new § 1926.1052(c)(7).

"Individual-rung/step ladders" means ladders without a side rail or center rail support. Such ladders are made by mounting individual steps or rungs directly to the side or wall of the structure. In the final rule, the term has been defined to clarify the difference from other types of fixed ladders for the design criteria of the rungs.

"Job-made ladder." Existing § 1926.450(b) presents requirements for "job-made ladders", but only implicitly defines the term. The term appeared in § 1926.1053(b)(5) and Issue #4 of the NPRM, but was not defined in the proposal. Job-made ladders are those built by employees, typically at the jobsite (custom-made) for a particular application, rather than manufactured commercially for general sale. The term is being defined in the final rule in response to a suggestion in a written comment (Ex. 2–29) to add a definition for this type of ladder. OSHA recognizes the need to state clearly what the types of ladders are addressed by particular provisions of this standard. This new definition reflects features listed in paragraph 1.3 of ANSI A14.4–1979, Safety Requirements for Job-made Ladders (Ex. 3–14), and the Agency's understanding of what the term means as used in existing § 1926.450(b).

In addition, another comment (Ex. 2–18) stated that § 1926.1053(a)(5), which addresses individual-rung ladders, should not apply to job-made ladders. In response to this comment, OSHA has determined that the definition of job-made ladders should exclude individual-rung/step ladders to be consistent with § 1926.1053(b)(5)(ii) of the final rule. Therefore, the Agency is promulgating this definition as part of the final rule.

"Lower levels." This term, not found in the existing OSHA standards, is being added for the sake of clarity and uses examples of the areas to which an employee could fall. The term does not apply to the surface on which the employee is working and from which the employee could fall.

"Maximum intended load." This new term means the total load of all employees, equipment, tools, materials, transmitted loads, and other loads. The term is used in § 1926.1053(a)(1) to state clearly the types of loads that must be considered when building a ladder, and is used in § 1926.1053(b)(3) to limit the amount of load that may be placed on a ladder.

The Agency received one comment (Ex. 2–39) relating to the definition in paragraph (b) for "maximum intended load" proposing that OSHA add a definition for "duty rating." The commenter envisioned using the new term in conjunction with the definition of "maximum intended load," to use with labels and markings on the ladder that give the "ladder's rated capacity." The Agency has determined, however, that the pertinent proposed provisions, including the definition of "maximum intended load," provide the appropriate regulation for ladders, so that it is unnecessary to define or use the term "duty rating." Therefore, OSHA is declining to adopt this suggested definition in the final rule.

"Point of access." This new term means all areas such as doorways, passageways, stairway openings, studded walls, and temporary openings, that are used by employees for work-related passage from one area or level to another. The term is used in § 1926.1051(a) of this subpart to indicate where a stairway or ladder must be provided when there is a break in elevation, and includes permanent and temporary travel ways. This definition, which was not set out in the proposed rule, has been added in response to the ACCSH discussion concerning Issue #2 of the specific issues raised in the proposal (Tr. 6–9–87, pp. 233–243, and 6–10–87, pp. 3–6). It is intended to state clearly what OSHA meant when it proposed § 1926.1051(a).

"Portable ladder." This term refers to a ladder that, unlike a fixed ladder, can readily be moved or carried. This term was not defined in the proposal. As discussed above, the Agency is adding a definition for "fixed ladder" to § 1926.1050(b) in response to a request from a commenter. OSHA is also adding this definition of "portable ladder" to state clearly the distinction between fixed and portable ladders. This definition is consistent with the definitions of "portable ladder"; that appear in the current editions of the pertinent ANSI standards. (A14.1–1982 and A14.2–1982).

Again, OSHA recognizes a need to clarify the types of ladders that are addressed by specific paragraphs in this subpart and therefore promulgates this definition.

"Riser height." This term replaces "rise," which was defined in existing § 1926.502(g). The existing and proposed definitions were identical. The definition, as promulgated, has been amended to clarify that OSHA intends for employers to take the distance between treads and/or platforms/landings and the next higher tread and/or platform/landing into account when measuring riser height dimensions. For the purpose of this standard, the term "tread" used in the new definition includes platforms and landings. In response to a comment concerning the definition of "tread depth" ("tread width" in the proposed rule), discussed further below, the Agency has also added a matching explanation of a stairstep tread's horizontal dimensional components.

One commenter (Ex. 2–27) suggested that the definition of "open riser" from the draft of the proposed ANSI A12.64 standard covering safety requirements for workplace floor openings, stairs, and railing systems, "should be included as more descriptive." However, the commenter did not provide a rationale for this suggestion. Under the most recent ANSI A12.64 draft, the term "open riser" means the "space between the treads of stairs without upright members." OSHA notes that the term "riser height" is used in a provision of the revised standard, § 1926.1052(a)(3), which concerns itself solely with the uniformity of stairway dimensions. The Agency has not concerned itself with the distinction between risers that are open and those that are not because it is not directly relevant to safety. Therefore, OSHA believes there is no need to explain further or expand the terminology concerning this aspect of the standard and therefore declines to adopt the term "open riser." The new term, "riser height," comes directly from the wording in § 1926.1052(a)(3) of the proposal.

"Side-step fixed ladder." This term describes the kind of fixed ladder from which a person getting off at the top has to step to the side of the ladder to reach the landing. This type of ladder was not defined in the proposed rulemaking for subpart X but was used in § 1926.1053(a)(28) and (28) of the proposal. The definition is based on ANSI A14.3–1984 (Ex. 3–13).

"Single-cleat ladder." The existing definition from § 1926.452(a)(2) is expanded to include ladders with side rails that are joined together with rungs and steps, as well as ladders with side rails that are joined by cleats. The revised definition reflects OSHA's belief that rungs and steps can also be safely used to join side rails. The term single-cleat ladder is retained because that is the term in general use by industry.

"Single-rail ladder." This term describes a type of portable ladder that has only one rail, instead of the two or more rails used on other ladders. This definition, while not in the proposed rule, has been added in response to comments (Exs. 2–12, 2–19 and 2–35) and an ACCSH recommendation (Tr. 6–9–87, p. 243) relating to Issue #3 of the proposal. Under that issue, OSHA requested comment on a possible prohibition of the use of this type of ladder, based on paragraph 5.2.10 of A14.1–1968 (Ex. 3–8), and a reference to that standard in existing § 1926.450(a)(3). The Agency noted that existing § 1926.450(a)(3) effectively bars the use of single-rail ladders and asked whether or not such ladders should continue to be prohibited. Based on the comments received for Issue #3, OSHA is explicitly retaining the prohibition on the use of single-rail ladders, under § 1926.1053(b)(19). The Agency recognizes that the definition of "single-rail ladder" is needed to state clearly the types of ladders that are covered by that prohibition, and therefore promulgates this definition.

"Spiral stairway." This term describes stairways that wind around a vertical pole in a cylindrical space. The term, although not defined in the proposal, was used in two paragraphs in proposed subpart X concerning spiral stairways, §§ 1926.1051(a)(1) and 1926.1052(a)(2). A commenter (Ex. 2–27) noted that OSHA had not proposed a definition for this term. OSHA recognized a need to clarify what type of stairway the Agency was referring to in the two paragraphs from the proposed rule that mentioned spiral stairways. Therefore, the Agency is promulgating this definition in the final rule.

"Stairrail system." This term replaces "stair railing," which was defined in existing § 1926.502(i). "Stair railing" has apparently been incorrectly understood by some persons as referring only to the top member of the required vertical barrier. The revised definition also clearly incorporates OSHA's determination, reflected in proposed § 1926.1052(c), that the top surface of a stairrail system may also serve as a handrail. The final rule is identical to the proposed rule.

"Step stool (ladder type)." This term describes a self-supporting, foldable, portable ladder, nonadjustable in length, 32 inches or less in overall size, with flat steps and without a pail shelf, designed to be climbed on the ladder top cap as well as all steps. The side rails may continue above the top cap. (Step stools that meet the criteria set out in the pertinent consensus standards would be considered to be covered by this definition.) OSHA has added this definition to the final rule to facilitate compliance with § 1926.1053(a)(3)(iii), which sets the allowed range of rung spacing for step stools.

"Through fixed ladder." This term describes the kind of fixed ladder from which a person getting off at the top has to step between the ladder's side rails to reach the landing. This term, though not defined in the proposed rule, was used in proposed § 1926.1053(a)(18), (26), and (27). A commenter (Ex. 2–14) indicated that, without a definition, this term was unclear. The definition in this final rule is based on the ANSI A14.3–1984 (Ex. 3–13) definition for such ladders.

"Tread depth." This term describes the distance, from front to back, of a horizontal stairstep surface (that is, the area intended to be used to walk on). The language in the final rule is essentially indentical with that in existing § 1926.502(n) and in the proposal. The term has been changed from tread "width" to tread "depth," in response to a suggestion in the one comment (Ex. 2–8) OSHA received regarding the definition. The commenter stated that "[i]t is ludicrous to describe a stairway [that is] 60 inches wide, for example, as having a tread width of 10 inches." In response to the comment, OSHA notes that tread depth is measured in the direction of travel.

"Unprotected sides and edges." This term refers to areas where there is no wall or guardrail system 39 inches or more in height, or where there is no stairrail system 36 inches or more in height. This definition is consistent with the term as used in existing § 1926.502(p)(8) (which explains the terms used in existing § 1926.500(g), for guarding low-pitched roof perimeters during built-up roofing work) and in proposed § 1926.500(b) in subpart M–Fall Protection (which expands the coverage of the existing provision to all surfaces regulated by Subpart M).

The following existing definitions are deleted because they are not used in the new subpart: Existing § 1926.502(h) "stair platform" and existing § 1926.502(i) "stair, stairways."

OSHA has used the term "competent person" in subpart X as it is defined in existing § 1926.32(f). Under that definition, a competent person can recognize hazards, knows how to control them, and has the authority to implement the appropriate hazard control measures. OSHA notes that a competent person will have certain skills, knowledge, and authority depending on the work situation confronted. Therefore, someone may be a competent person for the purpose of compliance with one standard, but not for the purposes of another standard.

The Agency further notes that existing § 1926.20(b)(2) requires employers to have competent persons perform frequent and regular inspections of the job sites, materials, and equipment. The Agency has included the term competent person in the final rule, where justified by the record, to underscore the existing requirement and provide clear guidance to employers.

Section 1926.1051 General Requirements

This section specifies where stairways and ladders are to be provided so that employees have safe means of access between levels.

The introductory text of § 1926.1051(a) requires that wherever there is a personnel point of access with no ramp, runway, sloped embankment, or personnel hoist, and the break in elevation is 19 inches or more, a ladder or stairway must be provided. In the final rule, the words "where there is" have been removed the second time they appeared. The provision, as promulgated, is essentially identical with the pertinent existing and proposed provisions, except that the final rule specifies the minimum break in elevation, 19 inches, at which point a means of access between levels is required. Existing § 1926.450(a)(1), like proposed § 1926.1051(a), requires a means of access at all breaks in elevation. By contrast, OSHA notes that existing § 1926.501(a) requires a stairway, ladder, or ramp only where the structure is two or more floors (20 feet) high. This provision only indicates that ladders are an acceptable means of access to those structures. It does not establish 20 feet as the minimum height at which ladders must be provided. The Agency has maintained consistently that

existing § 1926.450, not existing § 1926.501, establishes requirements for the use of ladders in construction work, and carries this coverage forward in the revised standard. OSHA anticipates that one of the benefits of this rulemaking will be the elimination of any apparent inconsistency between the existing standards.

OSHA requested public comment in Issue #2 of the NPRM regarding the height above which the Agency should require employers to provide a means of access. OSHA noted that one suggestion was to require a ladder, stairway, runway or ramp wherever there is a break in elevation of at least 19 inches, or the equivalent of two standard (9½–inch) steps. The Agency points out that this was derived from table D–1, which appears in existing § 1910.24(e), regarding fixed industrial steps.

Eight commenters responsed to the issue. Two (Exs. 2–12 and 2–23) favored the suggested 19–inch provison. Two others (Exs. 2–29 and 2–35) suggested using 24 inches. One commenter (Ex. 2–25) backed a 10–foot limit; and three others (Exs. 2–11, 2–31, and 2–37) wanted the existing standards retained without change. In addition to the eight commenters who responded to Issue #2, two commenters (Exs. 2–1 and 2–24) provided input directed at this paragraph. One of these commenters (Ex. 2–1) suggested using a height of 3 feet, and the other (Ex. 2–24) indicated a preference for 2 feet. The ACCSH recommended a 10-inch height limit as the appropriate point at which to require ladders, stairways, runways, or ramps for general and work points of access, entrances, and exits (Tr. 6/9/87, pp. 233–243 and 6/10/87, pp. 3–6).

The two commenters who offered 24 inches as an alternative did not provide data or details for their choice (one of those two (Ex. 2–35) suggested using two standard steps at breaks in elevation). The three respondents who wanted to retain the existing standards without change indicated that the regulations do not specify a height requirement and thus provide flexibility. However, OSHA disagrees, as § 1926.450(a)(1) requires that a stairway, ramp, runway, or ladder be provided to "all elevations." The ACCSH recommended a 10–inch limit in contrast with 24 inches in terms of providing for emergency escape. In that light, OSHA does not consider the ACCSH recommendation a direct dismissal of the suggested 19–inch limit requirement for a means of access. Once a means of access is provided, the required 9½–inch step height differs only slightly from the ACCSH's suggestion of 10 inches.

OSHA chose 19 inches, the equivalent height of two standard steps, as a middle ground that clarifies, in performance language, the point at which a means of access must be used. The 19-inch height limit provides a fairly easy climb for employees, who will often be carrying some burden or piece of equipment and thus may be unable to readily pull or push themselves up or down a higher elevation break. If further provides for entry and exit in an emergency.

Accordingly, after consideration of these comments and in light of the ACCSH discussion, OSHA is amending § 1926.1051(a) to require a stairway or ladder at all personnel points of access where there is a break in elevation of 19 inches or more and no ramp, runway, sloped embankment or personnel hoist is provided. Also, in the final rule, OSHA has clarified the paragraph to avoid the misconception that the provision addresses two independent criteria for providing a stairway or ladder. The Agency intends for the introductory text of § 1926.1051(a) to apply to personnel points of access where there is both a break in elevation and an absence of other enumerated means of crossing the break.

The Agency, therefore, is promulgating the introductory text of pararaph (a) as amended.

Under paragraph (a)(1) employees shall not use any spiral stairway during construction when such stairway will not be a permanent part of a structure. This requirement is essentially the same as existing § 1926.501(m), except the language has been changed to clarify that a stairway that will be a permanent part of the installation may be used for access.

OSHA received two comments (Exs. 2–8 and 2–27) about proposed paragraph (a)(1). In response to one of these comments (Ex. 2–8), the Agency has amended the standard to remove the proposed exemption allowing the use of temporary spiral stairways where they provide the only practical means of access during construction. The Agency has removed the words "after completion of the structure" and removed the phrase "except where they provide the only practical means of access during construction.

CAL/OSHA (Ex. 2–8) stated that the exception for temporary spiral stairways should be deleted because:

> Spiral stairs have an inherent hazard in that the tread depth is not uniform across the whole width of the tread. This makes for hazardous footing, and could lead to injuries due to slipping or missing a tread completely in the process of climbing or descending the stairs.

OSHA notes that, while CAL/OSHA objects only to the use of temporary spiral stairs, the concern raised by the commenter applies to both the permanent and temporary ladders. OSHA has determined that spiral stairways that are permanently installed and that comply with subpart X, especially § 1926.1052, will afford safe means of access for employees. Upon consideration of the CAL/OSHA comment, the Agency agrees that the use of spiral stairways that will not be made a permanent part of the structure should not be permitted. In particular, OSHA has determined that there would always be a mutual alternative means of access available. Therefore, OSHA believes that there are not situations where the exception would be appropriate. In addition, the Agency believes that efforts to comply with the other provisions of subpart X will not control the hazards that concern CAL/OSHA regarding those spiral stairs that will not be a permanent part of the structure. Therefore, OSHA has made the recommended deletion.

In response to the other comment (Ex. 2–27), OSHA is adding a definition of "spiral stariway" under § 1926.1050(b), as discussed above. That comment also pointed out that the proposal did not explicitly cover permanent installation of spiral stairways. OSHA believes that paragraph (a)(1) as changed, provides sufficient guidance.

Therefore, the Agency is promulgating paragraph (a)(1) as amended.

Paragraph (a)(2) requires that when ladders either provide the only means of access for 25 or more employees, or serve simultaneous two-way traffic, either those ladders must be double-cleated or two or more separate ladders must be used. This is based on existing § 1926.450(b)(1), which covers job-made ladders. The existing paragraph provides only for the use of double-cleated ladders. The final rule recognizes the alternative of using two or more ladders. The language of the final rule is identical to that in the proposal.

Paragraphs (a) (3) and (4) are new requirements addressing the necessity to keep points of access open to permit the free passage of employees. These provisions were not in the proposal. OSHA added these provisions to the standard in response to the ACCSH discussion about Issue #2 (Tr. 6/9/87, pp. 233–243), concerning means of access at breaks in elevation, and to ensure that the Agency's intent in proposing paragraph (a) is clearly understood. Under paragraph (a)(3), when buildings or structures have a

single point of access, the access-way shall be kept clear for employee passage or a second point of access shall be provided. This can occur, for example, when a scaffold is erected in a stairway to do finishing work. Such a scaffold would block the exit so another means of access such as a ladder, is necessary. Paragraph (a)(4) further clarifies OSHA's intention to require open access for employee passage in buildings or structures with two or more more points of access.

The ACCSH addressed the need to keep points of access open while the members were discussing the question of what should be considered an appropriate minimum height at which to require a ladder, stairway, runway, or ramp. OSHA believes that the added requirements were implicit in proposed paragraph (a). Indeed, the purpose for which OSHA is requiring stairways and ladders would be defeated if employees were denied free passage through personnel points of access to those stairways and ladders. Accordingly, during the ACCSH review of Issue #2 on June 9, 1987 (Tr. 6/9/87, pp. 233–243), OSHA stated that keeping points of access open was an element of compliance with proposed paragraph (a). The ACCSH, in turn, recommended that OSHA expressly require open access. The Agency agrees that adding explicit regulatory language will provide the clearest guidance to employers. Accordingly, OSHA is promulgating paragraphs (a) (3) and (4) as discussed above.

Paragraph (b) requires employers to provide and install all stairway and ladder fall protection systems required by this subpart and to comply with all other pertinent requirements of this subpart before employees begin the work that necessitates the installation and use of stairways, ladders, and their respective fall protection systems. Compliance with paragraph (b) will ensure that work activities involving the use of stairways and ladders to reach other levels do not begin until the ladder or stairway is safe to use. OSHA has made minor editorial changes in the proposal in response to a comment (Ex. 2–24) that the provisions are too restrictive (noting that ladders are often used to install fall protection equipment) and a comment (Ex. 2–27) requesting clarification. As revised, paragraph (b) distinguishes clearly between the work required to install fall protection systems on stairways and ladders and the work employees perform once those systems have been installed.

OSHA is therefore promulgating paragraph (b) as amended.

Section 1926.1052 Stairways

This section specifies the requirements for all stairways used by construction employees.

Paragraph (a) sets forth the general requirements for the construction of stairways. Paragraph (a)(1) requires stairs that will not be a permanent part of the structure on which construction work is performed to have landings at least 30 inches long and at least 22 inches wide at every 12 feet or less of vertical rise. Except for the provision about the width dimension and where a minor amendment was made for the sake of clarity, the final rule is identical to the proposed rule. This requirement is the same as existing § 1926.501(i), except the existing term "temporary stairs" has been deleted and the phrase "stairways that will not be a permanent part of the structure on which construction work is being performed" has been added to ensure that the requirement is clearly understood. For the final rule, the Agency believes it is appropriate to set out a minimum width for stairways, based on § 1910.24(d) of OSHA's existing general industry standards for fixed industrial stairs. The Agency does not consider this to be a substantive amendment and believes that providing this regulatory language was implicit in the proposal and will give employers necessary guidance.

OSHA did not receive any comments regarding paragraph (a)(1). Therefore, the Agency promulgates § 1926.1052(a)(1) with the changes noted above.

Paragraph (a)(2) requires stairs to be installed at an angle between 30 and 50 degrees from horizontal. This requirement is the same as existing § 1926.501(j) and the proposed rule.

Paragraph (a)(3) requires riser height and tread depth to be uniform, within ¼ inch, for each flight of stairs, including any foundation structure that serves as a tread of the stairway. This is the same requirement as the proposed rule and existing § 1926.501(k), except that the term "tread width" has been changed to "tread depth," and OSHA has clarified, in response to comments discussed below, the extent to which riser height or tread depth can vary from the "uniform dimensions." The change from "width" to "depth" matches the change made in § 1926.1050(b) for the definition of "tread depth," again reflecting a recommendation from CAL/OSHA (Ex. 2–6).

Two commenters (Exs. 2–6 and 2–24) replied to proposed paragraph (a)(3). Neither indicated they disagreed with the standard, but they suggested that the provisions should allow for minor variations. In particular, CAL/OSHA (Ex. 2–8) suggested that the Agency limit variations to ¼-inch. OSHA agrees that the standard should allow for minor variation from uniformity and has determined that the suggested limit is appropriate. Accordingly, OSHA has added a new sentence spelling out that such variations should not be more than ¼-inch in any stairway system.

Paragraph (a)(4) requires that platforms be provided wherever a door or gate opens onto a stairway, and that the swing of the door not reduce the effective width of the platform to less than 20 inches. This requirement is the same as existing § 1926.500(b)(9) and the proposed rule. OSHA did not receive any comments regarding paragraph (a)(4).

Paragraph (a)(5) requires metal pan landings and metal pan treads to be secured in place before filling. This is based on the requirement to secure only metal pan landings, found in existing § 1926.501(h) and the proposed rule. In response to a comment, the final rule incorporates a requirement that metal pan treads also be secured.

The sole commenter (Ex. 2–8) who addressed paragraph (a)(5) suggested OSHA add the words "and metal pan treads" following "metal pan landings," because of the danger of displacement posed by unsecured metal pan steps. The Agency agrees and has made this change to the paragraph.

Therefore, OSHA is promulgating § 1926.1052(a)(5) as amended.

Paragraph (a)(6) requires all parts of stairways to be free of hazardous projections, such as protruding nails. This requirement is the same as existing § 1926.501(c) and the proposal. No comments were submitted regarding paragraph (a)(6).

Paragraph (a)(7) requires that slippery conditions on stairs be eliminated before stairways can be used to reach other levels. This requirement is similar to existing § 1926.501(e) and the proposed rule, except that the final rule requires the employer to eliminate the hazard before allowing use of the stairway to reach other levels, instead of requiring that the hazard be eliminated as soon as possible.

The one commenter (Ex. 2–1) who addressed proposed paragraph (a)(7) suggested that "as soon as possible" be replaced with the phrase "before the stairways are utilized for general use," because the commenter believed that "the proposal as written would be unenforceable and too restrictive." In response to this comment, the Agency has reworded the provision to provide clearer guidance, as noted above.

Paragraph (b) of § 1926.1052 contains rules relating to temporary treads and landings used on stairways.

Paragraph (b)(1) prohibits foot traffic on stairways with pan stairs that have not received their permanent fillings unless they have been temporarily fitted with wood or other solid material up to the top edge of each pan. This requirement clarifies existing § 1926.501(f). In addition, paragraph (b)(1) requires that such temporary treads and landings must be replaced when they are worn below the level of the top edge of the pan, so that employees are not endangered while using stairs on which permanent treads and landings have not yet been installed. As in the existing standard, temporary treads and landings are not required during construction of the stairway itself.

The one commenter (Ex. 2–33) who addressed this paragraph recommended modifying the paragraph to add language specifying that the full width of the tread opening be filled and that the fill material extend ½ inch above the nosing. The commenter based the ½-inch recommendation on concern that employees may be injured while walking on temporary stairs because the metal pans may have "give," which would expose the metal nosing as a tripping hazard for wet work shoes. OSHA points out that the provisions in paragraph (b)(3) already addresses the requirement for filling the full width and depth of the tread. OSHA has also decided not to adopt the recommendation that the fill material extend ½ inch above the nosing because the Agency believes that the provisions as proposed provide adequate employee protection. In addition, the commenter suggested that the words "wood or other" be added to describe more clearly the type of acceptable solid material that would be usable in a temporary arrangement for the filling. OSHA agrees with this suggestion and has modified the proposed provision accordingly, because the Agency believes that providing an example (wood) of acceptable fill material will help employers comply with the requirements of paragraph (b)(1).

After considering the comments received in response to proposed paragraph (b)(1), OSHA is promulgating paragraph (b)(1) as revised.

Paragraph (b)(2), which is a new provision, requires skeleton metal stairs to be provided with temporary treads and landings prior to any foot traffic if the permanent treads or landings are not be placed until a later date.

Public comment was requested under Issue #10 of the proposed rule (51 FR 42759) regarding the adequacy of or need for § 1926.1052(b) (1) and (2). Both commenters responding to the issue (Exs. 2–23 and 2–29) expressed approval of the proposed provisions. One of the commenters (Ex. 2–29) also stated that the rule regarding metal pan-type stairways should be written as a performance standard, but did not give any specific information on what revisions were needed. In addition, the ACCSH recommended (Tr. 6/9/87, pp. 268–269) that OSHA prohibit the use of skeleton stairs "until either temporary or permanent treads and landings are installed."

In view of the comments and ACCSH recommendation, OSHA is promulgating praragraph (b)(2) as proposed.

Paragraph (b)(3) requires that treads be made of wood or other solid material, for temporary service on a stairway (i.e., to fill a metal stair pan for temporary use prior to concrete placement) and that the treads be the full width and depth of the stair. The final rule is basically the same as the proposal and existing § 1926.501(g), except that the term "wood treads" has been changed to "treads, made of wood or other solid material" to state clearly that other solid materials can be used. In addition, the Agency has changed the words "full width" to read "installed the full width and depth of the stair," so that the provision reflects OSHA's determination that a stair pan must be filled in completely. Although no commenters directly addressed paragraph (b)(3), OSHA has modified the final rule slightly to be consistent with changes made to paragraphs (b) (1) and (2) of this section and to clarify the regulatory intent. For the reasons discussed above, OSHA is promulgating paragraph (b)(3) as amended.

Two existing provisions pertaining to stairways, paragraphs (d) and (1) of § 1926.501, are not being incorporated into this revision of subpart X because they are redundant with other provisions in the construction standards. Existing § 1926.501(d) requires debris removal on and under stairways. This is already required by existing § 1926.25(a), Housekeeping. Similarly, existing § 1926.501(1), requiring illumination of stairways, simply references existing § 1926.56, Illumination. OSHA received no comments on those proposed deletions. Therefore, the Agency is deleting existing § 1926.501 (d) and (1).

Paragraph (c) of § 1926.1052 sets forth the requirements for stairrails and handrails. It replaces existing § 1926.501(b), which requires stairway railings and guardrails to meet the requirements for stairway railings and guards and for standard specifications that appear in existing § 1926.500 (f) and (g), respectively. As a minor editorial change in the final rule, OSHA has deleted the phrase "regardless of their height above lower levels" from the introductory text of paragraph (c). OSHA notes that the provisions of the final rule still apply to all stairways regardless of their height above lower levels.

Paragraph (c)(1) requires stairways having four or more risers or rising more than 30 inches (76 cm), whichever is less, to be equipped with one stairrail system along each unprotected side or edge, and with at least one handrail. Proposed paragraph (c)(1) did not provide a 30-inch threshold for installation of stairrail and handrail systems.

As briefly discussed in the definitions section above, a stairrail system is a vertical barrier erected along unprotected sides and edges of a stairway to prevent employees from falling to a lower level. A handrail is a rail used to provide employees a handhold for support while climbing, descending, or resting on a stairway. On many stairways, the top of the stairrail system doubles as the required handrail. The criteria for a stairrail system that also serves as a 55 handrail are set out in paragraph (c)(7), below. If the stairrail is too high or does not provide a proper grasping surface, or if no stairrail is needed because the stairway is enclosed on both sides with walls, then a separate handrail and handrail support must be provided. These requirements are essentially the same as the requirements in existing § 1926.500(e)(1), except that the width-related requirements of the existing rule have been deleted because they are unnecessarily specific and, in any event, do not significantly relate to employee safety.

OSHA did not receive any comments specifically in response to paragraph (c)(1), but three commenters (Exs. 2–12, 2–23, and 2–29) responded to Specific Issue #11, in which OSHA asked whether or not the four-riser threshold for stairrail requirement was appropriate. These three commenters stated that the four-riser threshold was acceptable. The ACCSH discussion of this issue (Tr. 6/10/87, pp. 6–11), while inconclusive, pointed out the need to take variation in riser height into account by setting a minimum height above which stairrails would be required. Based on the ACCSH discussion and OSHA's field experience, the Agency has determined that 30 inches is the appropriate height above

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which stairs shall be provided with stairrails. OSHA believes that a threshold height should be set to protect employees from exposure to fall hazards when they use stairs that extend above a minimum height, regardless of the number of risers.

For the reasons discussed above, OSHA is promulgating paragraph (c)(1) as final and incorporating the additional wording described above.

Paragraph (c)(2) requires winding and spiral stairways to be equipped with a handrail offset to prevent employees from walking on those portions of the stairways where the treads are less than 6 inches wide. This is the same requirement as existing § 1926.500(e)(2), except that revised subpart X expands the standard's coverage to include spiral stairways. Spiral stairways have been included under the provision because the problem of too narrow a tread is common to both types of stairways. The final rule unchanged from the proposed rulemaking. No comments were received addressing paragraph (c)(2).

Paragraph (c)(3) regulates stairrail height. OSHA has made some editorial changes for the sake of clarity and has reorganized the proposed provision.

Paragraph (c)(3)(i) requires the height of stairrails installed after the effective date of subpart X to be not less than 36 inches as measured from the upper surface of the stairrail system down to a point on the upper surface of the tread, in line with the face of the riser at the forward edge of the tread.

Paragraph (c)(3)(ii) requires that stairrails installed before the effective date of subpart X have a minimum height of 30 inches and a maximum height of 34 inches, measured the same way as required by paragraph (c)(3)(i) of this section. This provision, which is identical with existing § 1926.500(f)(2), indicates OSHA's recognition that it would be unreasonably burdensome to require that employers retrofit existing stairrails to comply with the revised standard. The Agency notes that employers who replace stairrail systems will be required to comply with paragraph (c)(3)(i). OSHA also observes that the existing specifications for stairrails are identical with the specifications for handrails in existing § 1926.500(f)(4)(ii). OSHA has thus allowed one rail to serve as both a handrail and a stairrail, which will allow employers the flexibility to use a single system to meet both requirements.

A study by the University of Michigan (Ex. 3–6:56) shows that the minimum height for stair railings should be 42 inches, and suggests that even 42 inches may be too low as "the height of the stair railing several steps below the point where the fall originates is considerably lower than the stair railing height at the point where the fall originates, thus, it appears that a fall during descent may be more likely to project the subject in the direction of this 'lower' railing, and possibly over the railing" (Ex. 3–6:57).

The one commenter responding to proposed paragraph (c)(3) (Ex. 2–27) questioned the rationale for the 36-inch minimum height and stated that the explanation for this requirement needed to be expanded. While the Agency has not adopted the 42-inch minimum height suggested by this study, OSHA's decision to use 36 inches as the minimum height in the final rule reflects its belief that adequate provisions for employee safety require an increased minimum stairrail height. The Agency also points out that this will recognize the limits already established by some existing building codes and allow employers to continue the common practice of combining stairrails and handrails into one railing system.

Paragraph (c)(4) requires midrails, screens, mesh, intermediate vertical members (such as balusters), or equivalent structural members to be placed between the stairway steps and the top of the stairrail system. This is essentially identical to the proposal and essentially the same as existing § 1926.500(f)(2), which requires stairrails to be similar in construction to guardrails. In the final rule, however, the phrase "when there is no wall at least 21 inches (53 cm) high," has been removed from the introductory text of paragraph (c)(4). OSHA has removed the language to avoid any possible conflicting interpretation of paragraphs (c)(4) (i) through (iv) regarding the height at which intermediate rails would be required. The Agency believes this change will clarify its intent without affecting safety, and allow employers flexibility in addressing these provisions.

Paragraph (c)(4)(i) requires midrails to be located midway in height on a stairrail system. This is the same requirement as contained in existing § 1926.500(f)(1). Paragraph (c)(4)(ii) requires screens or mesh, when used, to fill the entire opening between top rails and stairway steps, and paragraph (c)(4)(iii) requires baluster-type members to be no more than 19 inches apart. Paragraph (c)(4)(iv) allows other arrangements of structural members, provided no opening in the system is more than 19 inches wide. These provisions are new requirements as the existing rule only addresses the use of midrails. However, these new rules allow greater flexibility for the contractor providing fall protection, and are consistent with proposed § 1926.502(b) in the subpart M rulemaking.

No comments were received addressing paragraph (c)(4). Therefore, OSHA is promulgating § 1928. 1052(c)(4) as amended.

Paragraph (c)(5) requires handrails and the top rails of stairrail systems to be capable of withstanding, without failure, a force of at least 200 pounds applied within 2 inches of the top surface, in any downward or outward direction, and at any point along the top edge. This is identical to the proposal and essentially the same requirement as contained in existing § 1926.501(b), which references existing § 1926.500(f). The phrase "with a minimum of deflection" that appears in existing § 1926.500(f)(1)(iv) was not carried forward in the new subpart X rulemaking because the Agency believes that the regulatory focus should be on preventing failure rather than on deflection and because of its belief that deflection should not be automatically equated with failure. In § 1926.1050(b), OSHA has defined the term "failure" to mean "load refusal, breakage, or separation of component parts" and further explained in the same definition that "load refusal is the point where the ultimate strength is exceeded." The Agency also notes that, in some cases, deflection indicates failure while in other cases, rail deflection does not indicate failure (where the rail deflects but still restrains falls).

The one comment (Ex. 2–27) regarding paragraph (c)(5) suggested that "greater clarification would be obtained by deletion of "within 2 inches of the top edge." However, OSHA believes that any clarification attained through deleting this language would be more than offset by a lessening of the employee safety OSHA requires from these railings. Therefore, § 1926.1052(c)(5) is promulgated, unchanged from the proposed rule.

Paragraphs (c) (6) and (7) specify the maximum and minimum height for handrails and stairrails that are to serve as handrails, respectively. Although existing § 1926.500(f) (2) and (4)(ii) both specify 30 and 34 inches as appropriate limits, a study by the University of Michigan (Ex. 3–6:43) indicates that 33 inches is the optimum height for handrails, and that a variance from this height of plus-or-minus 3 inches is appropriate. Paragraph (c)(6) requires that handrails be between 30 inches and 37 inches in height throughout the length of the stairway. OSHA has decided that

providing the adequate employee safety requires an increased handrail height.

There were two comments on paragraph (c)(6). One comment (Ex. 2–29) supported handrail height specifications "within the limits of 30 inches to 42 inches per existing standards." However, as noted above, the existing limits for handrail height are 30 to 34 inches.

The other commenter (Ex. 2–27) who addressed § 1926.1052(c)(6) suggested that either the standard or Appendix A should have a drawing to depict "the recommended handrail height as the degree of angle of the stairway increases." While OSHA declines to include such a drawing at this time, the Agency may consider the use of some such illustrative representation in future rulemaking.

Paragraph (c)(7) allows any stairrail system between 36 and 37 inches in height to double as a handrail. OSHA intends the proposed 37-inch upper limit for handrails to provide a measure of flexibility, allowing a 1-inch tolerance for the height of a stairrail that also serves as a handrail. There were no comments on paragraph (c)(7). OSHA has revised paragraph (c)(7) to indicate clearly that stairrails that comply with its terms may also be used as handrails. This change also reflects the deletion of the reference to paragraph (c)(7) from the note to paragraph (c)(1).

Paragraph (c)(8) requires stairrail systems and handrails to be surfaced so as to prevent clothes from being snagged (which in turn could cause an employee to trip), and to prevent employee injuries resulting from contacting these rails. This is identical to the proposed rule and is the same requirement as existing § 1926.500(f) (1)(vi)(*a*) and (4)(i).

The one comment (Ex. 2–29) received addressing paragraph (c)(8) stated that the Agency should "[d]elete any reference to 'snagging of clothing' for this has no appropriate reference in standards for stairways or ladders." However, OSHA notes that while this particular requirement is not based directly on the ANSI consensus standards referenced by the existing OSHA standards, the language clearly indicates the degree of smoothness considered necessary under the standard.

Paragraph (c)(9) requires handrails to provide an adequate handhold for anyone using them. This is identical to the proposed rule and is the same requirement as in existing § 1926.500(f)(4)(i). OSHA did not receive any comments regarding paragraph (c)(9).

Paragraph (c)(10) requires that the ends of stairrail systems and handrails be constructed so as not to constitute projection hazards. This is identical to the proposed rule and is the same requirement as in existing § 1926.500(f) (1)(vi)(*d*) and (4)(i). OSHA did not receive any comments regarding paragraph (c)(10).

Paragraph (c)(11) requires handrails that will not be a permanent part of the structure being built to be spaced a minimum of 3 inches away from walls, stairrail systems, and other objects. The proposal would have changed the requirement in existing § 1926.500(f)(4)(iii) for a minimum clearance of 3 inches to a minimum clearance of 1½ inches. The proposed change, which OSHA believed would not affect safety, would have brought the construction standards into conformity with the requirements of many local building codes as well as with paragraph 7.6 of ANSI A12.1–1973, Safety Requirements for Floor and Wall Openings, Railings, and Toeboards (Ex. 3–7). However, OSHA recognizes that local building code requirements are not intended to address the types of temporary handrails covered by this OSHA standard. In drafting the final rule, for reasons discussed further below, OSHA has decided to retain the minimum clearance at 3 inches, and to add the phrase "that will not be a permanent part of the structure being built" to clarify that this paragraph is intended to regulate temporary handrails. Therefore, this provision will not conflict with existing building codes or other criteria that apply to permanent structures.

OSHA received six comments (Exs. 2–1, 2–11, 2–24, 2–31, 2–33, and 2–37) directed at the provisions of proposed paragraph (c)(11). All six were of the opinion that 1½ inches was an insufficient amount of clearance for workers who had items, such as gloves or rings, on their hands. Most of these respondents further stated that the existing 3-inch minimum clearance requirement was appropriate. In response to these comments, the Agency has changed the clearance specification back to 3 inches, the same as set out in the existing standard.

Paragraph (c)(12) requires unprotected sides and edges of stairway landings to be provided with guardrail systems. The provision references the criteria for guardrail systems presented in subpart M. Paragraph (c)(12), which carries forward requirements from existing § 1926.500 (d) and (f) is intended to state clearly that the guardrail requirements, not the stairrail requirements, apply to landing areas. As a minor editorial change, OSHA has incorporated the explanatory note found after the proposed paragraph into the text of paragraph (c)(12). No comments were received addressing paragraph (c)(12).

Section 1926.1053 Ladders

This section sets forth requirements for all ladders used for construction work. The existing standard, in paragraphs (a) (3), (4), and (5) of § 1926.450, requires manufactured and fixed ladders to comply with the provisions of pertinent American National Standards Institute safety codes. OSHA referenced those ANSI standards when it promulgated § 1926.450 in 1971, to provide guidance for proper design, manufacture, and maintenance of ladders. While specific ANSI standards were identified, the applicable paragraphs were not specified. To eliminate confusion as to which provisions apply and the need for employers to refer to documents outside part 1926, the applicable provisions of the ANSI standards are being incorporated into the text of subpart X. Those provisions are identified in the following discussion. Where the applicable ANSI provisions have been revised in recent editions, the final rule incorporates the more recent language. In addition, OSHA has consolidated the requirements for ladders, to the extent appropriate, so that employers have consistent guidance, whatever type of ladder they use.

Paragraph (a) sets forth the general requirements for constructing and equipping ladders.

Paragraph (a)(1) sets the minimum loads that ladders shall be capable of supporting without failure. After reviewing the pertinent consensus standards, OSHA proposed to adopt the load requirements of ANSI A14.1–1982 and A14.2–1982 for portable ladders and the load requirements of A14.3–1984 for fixed ladders, respectively. Ladders built and tested in conformance with appendix A will be deemed by OSHA to meet the strength requirements of paragraph (a)(1). This includes extra-heavy-duty type 1A ladders built and tested in accordance with the ANSI standards for portable metal ladders (A14.2) and portable reinforced plastic ladders (A14.5). In paragraphs 7.2.1.1 and 7.2.3 (which cite tables 5 and 9) of A14.2–1982, and paragraphs 8.2.1 and 8.2.3 (which cite tables 10 and 14) of A14.5–1982, ANSI prescribes test loads of 300 lbs. and working loads of 1000 lbs. for these extra-heavy-rated ladders. ANSI requires these types of ladders to have a safety factor of only 3.3. However, OSHA believes ANSI's use of the 3.3 factor instead of 4.0 will not present a problem or result in a

lessening of safety. OSHA notes that a high factor of safety is more important on light duty ladders where the residual strength is more significant. For example, a 200 pound capacity ladder is required by ANSI to actually support 800 pounds. Assuming the ladder is properly used by one employee weighing between 200 and 250 pounds, the residual strength is 550–600 pounds. A heavy duty ladder with a 300 pound capacity, under the same circumstances, would have a 750–800 pound residual strength, if a 3.3 factor of safety is used, and a 950–1000 pound residual capacity if a factor of 4.0 is used. Although ANSI does not set forth its rationale for setting a 3.3 safety factor for heavy duty ladders, OSHA believes that the residual capacity obtained by using 3.3 on heavy duty ladders is sufficient. In addition, OSHA believes that the extensive testing procedures required by the ANSI standards are sufficient to ensure that ladders in use are safe.

Appendix A of the final rule references the current ANSI standards for portable wood ladders, portable metal ladders, portable reinforced plastic ladders, fixed ladders, and job-made ladders (Exs. 3–11 through 3–14 and 3–17). While existing § 1926.450(a)(3), (4), and (5) require compliance with the provisions of the referenced ANSI standards, the revised standard takes a performance-oriented approach. This allows design freedom to employers who desire to engineer their own ladders, while notifying employers that compliance with ANSI would be acceptable. Thus, employers who do not desire to or cannot engineer the systems they use have information on how to obtain equipment which complies with the standard.

The Agency notes that, in keeping with ANSI, the load requirements for portable ladders are framed in terms of a safety factor, while the load requirements for fixed ladders are framed in terms of 250-pound loads plus anticipated loads imposed by weather or other factors. The Agency has determined that the distinctions drawn between portable and fixed ladders by the ANSI committees are appropriate. In particular, OSHA believes that the variety of uses to which portable ladders are put and the wear-and-tear those ladders sustain justify the imposition of a strength factor requirement. The Agency believes that compliance with the safety factor requirement will provide appropriate assurance of safety to employees using portable ladders. On the other hand, the Agency believes the comparatively stable and controlled conditions under which fixed ladders are used justify the imposition of specific weight requirements, instead of a strength factor requirement.

Job-made ladders do not have minimum strength criteria either in the existing OSHA rules or in the ANSI standard for job-made ladders A14.4–1979 (Ex. 3–14). However, their potential use is the same as that of manufactured portable ladders. Therefore, revised subpart X imposes the same strength requirements on them.

In the final rule, OSHA is relocating proposed paragraph (a)(1)(ii) to paragraph (a)(1)(iii) and is adding new paragraph (a)(1)(ii) immediately following the portable ladders provision. OSHA has inserted this other paragraph to reflect its determination that self-supporting portable ladders, such as stepladders, may be properly placed at angles other than 75½ degrees. The amendment serves to indicate clearly that non-self supporting portable ladders, unlike self-supporting ladders, are subject to the 75½-degree inclination test criterion that was applied to all portable ladders in proposed paragraph (a)(1)(i). The Agency has determined that the provisions, as clarified, are consistent with the pertinent ANSI standards.

Paragraph (a)(1)(i) requires each self-supporting portable ladder to be capable of supporting, without failure, four times the maximum intended load applied or transmitted to that ladder. Extra-heavy-duty self-supporting portable metal or reinforced plastic ladders are required to satisfy a strength factor requirement of 3.3. Ladders built and tested in conformance with the applicable provisions of appendix A are deemed to meet the requirements.

The minimum strength requirement for portable ladders is under paragraph (a)(1)(i) is essentially the same requirement as contained in the existing § 1926.450(a) (3) and (4) references to the A14.1–1968 ANSI standard for portable wood ladders (Ex. 3–8) (paragraph 4.1.2.1), and the A14.2–1956 ANSI standard for portable metal ladders (Ex. 3–9) (paragraph 4.2.1). However, the 200-pound load specified by the ANSI provisions noted above has been deleted in favor of the revised rule's performance-oriented language, which addresses more situations.

In the revised rule, breakage, separation of component parts, or load refusal are used as the failure criteria, as some rung deformation will normally result when such loads are applied, and a deformed rung does not necessarily indicate a ladder that is unsafe for use. OSHA is promulgating this rule so that employers will determine if a rung is so deformed as the result of use that it meets at least one of the failure criteria.

In Issue #6, OSHA asked for comments about possible methods of measuring a ladder's ability to maintain its designed load capacity once it has been placed in service. Following the ANSI A14.1–1982 standard specifications, the proposal required that ladders have a four-to-one strength capacity. Under this issue, OSHA presented deflection as a possible method of evaluating a ladder's strength capacity and integrity, once the ladder is in use.

Ten commenters responded to Issue #6. Several commenters (Exs. 2–16, 2–28, 2–29, and 2–35) approved of visual inspections as sufficient to ensure ladder strength and integrity. Four commenters (Exs. 2–23, 2–30, 2–35, and 2–39) disapproved of deflection as a strength test. In particular, two commenters expressed concern that the deflection testing would not yield accurate results. Another commenter (Ex. 2–35) stated that "the deflection criteria outlined in proposed OSHA could structurally damage the ladder." Also, a commenter (Ex. 2–39) stated that "Testing for maximum allowable deflection would be difficult to conduct in the field and it might be counterproductive."

Three others (Exs. 2–11, 2–31, and 2–37) noted that the explanation of proposed § 1926.1052(c)(5) (51 FR 42754) regarding handrails and the top rail of stairrail systems, states that "deflection should not be automatically equated with failure." The commenters added that "this same theory should be applied to ladder strength capacity." They further stated that "there is no practicable or workable method of measuring ladder deflections in construction industry job site situations." The ACCSH also disapproved of deflection as a test and added that a "competent person's" inspection should be sufficient (Tr. 6/9/87, pp. 255–257).

In light of these comments, OSHA is not adding provisions to subpart X prescribing a test or method for measuring the integrity of a ladder once it has been placed in service. OSHA notes that existing § 1926.20(b)(2) requires that frequent and regular inspections of job sites, materials, and equipment be made by competent persons. Therefore, the Agency has determined that compliance with the above-noted requirement provides the appropriate assurance that ladders are safe for use.

OSHA received two comments (Exs. 2–24 and 2–33) regarding paragraph (a)(1)(i). One commenter (Ex. 2–33) stated that a 20-foot ladder "should be able to hold four workers." The commenter also emphasized the need for OSHA to consider that workers today are generally supposed to be heavier than they were 20 years ago, an apparent reference to the period intervening since the ANSI standards referenced by the existing standards were adopted. OSHA believes that the use of performance-oriented regulatory language is appropriate to deal with the circumstances encountered at construction worksites, including any increase over time in the size of the employees using ladders. Accordingly, proposed paragraph (a)(1)(i) addressed the need to support the maximum intended load and did not set out any requirements based on a specific ladder length or number of workers. Given that employers will be required to provide ladders that support the workers using them, however many or heavy those workers may be, OSHA believes that § 1926.1053(a)(1) (i) and (ii) address the commenters' concerns.

The other commenter (Ex. 2–24) stated that it supported "the inclusion of the nonmandatory appendix" outlining "specific methods for meeting the standards." As noted in paragraphs (a)(1) (i) through (iii), OSHA deems ladders built in conformance with appendix A to meet the strength requirements of paragraph (a)(1). While the appendix does not describe specific methods for meeting the standards, it lists ANSI safety standards that have requirements for building and testing ladders to determine that they have the minimum strength required by the final rule. OSHA notes that ladders that satisfy the pertinent ANSI requirements are readily available. Therefore, OSHA anticipates that employers will have no difficulty in complying with paragraph (a)(1)(i), using the information in appendix A, as currently worded.

Accordingly, after considering the above-discussed comments, OSHA is promulgating paragraph (a)(1)(i) as amended.

Paragraph (a)(1)(ii) requires each non-self supporting portable ladder to be capable of supporting, without failure, at least four times the maximum intended load applied or transmitted to that ladder when the ladder is placed at an angle of 75½ degrees from the horizon. Extra-heavy-duty non-self-supporting portable metal or reinforced plastic ladders are required to be capable of supporting, without failure, at least 3.3 times the maximum intended load applied in the same manner for other duty-rated ladders of this same type. Ladders built and tested in conformance with the applicable provisions of appendix A are deemed to meet the requirement. The 75½-degree angle of inclination is consistent with the prescribed angle in the design test requirements for portable ladders set out in paragraph 7.3 of ANSI A14.1–1982 (Ex. 3–11) and paragraph 7.2 of ANSI A14.2–1982 (Ex. 3–12). OSHA believes that setting portable ladders at a 75½-degree pitch from horizontal provides the appropriate assurance that those ladders provide the necessary strength, balance, and resistance to sliding. This is also consistent with paragraph 8.3.3 of both ANSI A14.1–1982 (Ex. 3–11) and A14.2–1982 (Ex. 3–12).

As a matter of clarification, in the final rule, OSHA is adding paragraph (a)(1)(ii) to differentiate between portable ladders that would not be subject to the 75½-degree test criteria and those that would be subject.

Paragraph (a)(1)(iii) requires fixed ladders to be capable of supporting, without failure, at least two loads of 250 pounds each, concentrated between any two consecutive points of attachment, plus other anticipated loads such as those caused by winds and ice buildup. The paragraph also requires that each step and rung be capable of supporting a minimum concentrated load of 250 pounds, applied in the middle of its span. This requirement, which is identical to the proposed rule, is based on ANSI A14.3–1984 (Ex. 3–13), paragraph 4.2.1.1. The Agency notes that the ANSI requirement, which is based on loads of 250 pounds, is consistent with OSHA's belief that 250 pounds is the average design weight of an employee with tools.

The single comment (Ex. 2–39) directed to § 1926.1053(a)(1)(ii) simply expressed a preference for the use of "shall" rather than "will" in the parenthetical explanation at the end of the paragraph, where OSHA states that "(Ladders built in conformance with the applicable provisions of appendix A will be deemed to meet this requirement)." OSHA believes that the requirement, as proposed, provide appropriate guidance. Therefore, the Agency declines to make the suggested change. The commenter also suggested that OSHA delete the parentheses, and this has been done.

Paragraph (a)(2) requires ladder rungs, cleats, and steps to be parallel, level, and uniformly spaced when the ladder is in position for use. This requirement is identical to the proposed rule and is based on the existing § 1926.450(a)(3) reference to the ANSI standard for portable wood ladders, A14.1–1968 (Ex. 3–8), which addresses this in paragraph 4.2.1.2. This provision is based in part on paragraphs 6.2.1.2 and 6.3.5.8 of A14.1–1982 (Ex. 3–11); paragraphs 5.3, 6.1.4, 6.5.4, and 6.6.4 of ANSI A14.2–1982 (Ex. 3–12); and paragraph 5.1.1 of A14.3–1984 (Ex. 3–13). This requirement is also consistent with existing § 1910.25(c)(2)(i)(b). The requirements in paragraph (a)(2) do not currently apply in their entirety to portable metal or fixed ladders. OSHA believes that such requirements should apply to all ladders to protect all employees who use ladders.

The one comment (Ex. 2–24) that addressed proposed paragraph (a)(2) suggested that the regulation include a definition of "uniformly," to allow for "some minor variation due to difficulties of on-site construction." However, the commenter did not suggest any appropriate limits such as those suggested by commenters addressing stairway uniformity. OSHA recognizes that some employers may experience difficulty with on-site construction of ladders whose rungs are to be uniformly spaced. However, OSHA believes that this provision, which restates, in part, paragraph 6.2.1.2 of A14.1–1982 (Ex. 3–11); paragraph 5.3 of ANSI A14.2–1982 (Ex. 3–12), reflects established good industry practice. Furthermore, the Agency anticipates that employers who use reasonable care will encounter no difficulty in obtaining ladders that comply with paragraph (a)(2).

The Agency is therefore promulgating § 1926.1053(a)(2) without change.

Paragraph (a)(3) sets the rung spacing requirements for ladders. Paragraph (a)(3)(i) requires that rungs, cleats, and steps of portable ladders (except step stools and wood extension trestle ladders) and fixed ladders be spaced not less than 10 inches apart, nor more than 14 inches apart, as measured along the side rail. Paragraph (a)(3)(ii) requires that rungs, cleats, and steps on step stools be spaced not less than 8 inches nor more than 18 inches apart. Paragraph (a)(3)(iii) requires that the steps, rungs and cleats on the base section of wood extension trestle ladders be spaced not less than 8 nor more than 18 inches apart and that steps, rungs and cleats on the extension section of such an extension trestle ladder be spaced not less than 6 inches nor more than 12 inches apart. Proposed paragraph (a)(3) had separate requirements for portable and fixed ladders (proposed (a)(3)(i) set rung spacing between 6 and 12 inches) and individual step or rung ladders (proposed paragraph (a)(3)(ii) set

spacing between 6 and 16½ inches). Currently, spacing limits are specified by the ANSI standards for portable wood ladders, portable metal ladders, and fixed ladders, which are referenced in existing § 1926.450(a), (3), (4), and (5), respectively (Exs. 3–8, 3–9, and 3–10). The new limits are based in part on the most recent editions of the pertinent ANSI standards for the most commonly used types of ladders (Exs. 3–11 through 3–14 and 3–17). The consensus standards, as referenced by the existing standards and as revised, in general, provide rung spacing of 12 inches. The exceptions to the general rule are covered by paragraphs (a)(3) (ii) and (iii) of the final rule. The spacing of step stools is based on paragraphs 6.5.4 and 5.3 of ANSI A14.1–1982 and ANSI 14.2–1982, respectively. The spacing for extension trestle ladders is based on paragraph 6.3.5.8 of ANSI A14.1–1982. OSHA has determined that compliance with those ANSI-based provisions will provide appropriate protection to employees who use the specified ladders.

Paragraph (a)(3) is also based on OSHA's review of the record developed for the revision of the Agency's general industry standards for walking or working surfaces (Docket S–041). For example, a study performed for OSHA by the University of Michigan (Ex. 1) noted that the National Safety Council and the Liberty Mutual Insurance Company recommend 12-inch spacing. The authors, however, concluded that:

> Though standard practice would appear to agree with the anthropomorphic and biomechanical concerns in this matter, it is still not believed to be significant evidence to support a regulation which would require all fixed ladders to be at a uniform rung spacing at this time. A range of between 10 and 14 inches would, however, seem reasonable for all new ladders until further research could be conducted.

Therefore, OSHA has revised proposed paragraph (a)(3) to reflect the University of Michigan study, the pertinent consensus standards and the rulemaking record.

Issue #7 of the proposed rule solicited comments on two particular points regarding the specifications for the minimum and maximum vertical spacing between ladder rungs, steps, and cleats (§ 1926.1053(a)(3)), and minimum widths for rungs, steps, and cleats (§ 1926.1053(a)(4)). First, the Agency sought comment on the appropriateness of the proposed limits, requesting that commenters who suggested that the limits be made either more or less specific explain their positions.

Most of the comments on Issue #7 did not make clear which of the paragraphs they intended to address. Most of the commenters on the issue (Exs. 2–23, 2–33, and 2–39) agreed generally with the suggested limits. In addition, one commenter (Ex. 2–12) stated that "as long as it is standard throughout a project, it does not matter. Our ladders are 12" top of rung to top of rung." Also, one comment (Ex. 2–6) suggested that the requirement for rung spacing should be more performance-oriented so that configurations which provide equivalent protection would be allowed. OSHA has determined that it would not be appropriate to adopt the suggestion (Ex. 2–6) to use more performance-oriented language in paragraph (a)(3) because the Agency believes that the proposed requirements are needed to guide employers. Another commenter (Ex. 2–26) stated that 14-inch rung spacing makes more sense than 12-inch spacing because "Fourteen inch is much easier for the average person to climb." OSHA notes that paragraph (a)(3), as revised, sets the upper end of the allowable range for rung spacing at 14 inches. Therefore, a ladder with the rung spacing suggested by the commenter will be permitted. Another commenter (Ex. 2–22) stated that "from a biomechanic/ergonomic standpoint" there is no reason to deviate from 12-inch rung separation. As discussed above, OSHA believes that allowing rungs to be spaced not less than 10 inches nor more than 14 inches provides appropriate protection for employees.

Under Issue #7, OSHA also asked if the proposed limits should be further consolidated so that there is one set of rules for vertical spacing and one minimum width limit. All of the comments on this question favored further consolidation. Several commenters affiliated with the Associated General Contractors of America (Exs. 2–11, 2–31, 2–37 and 2–38) stated that—

> Further consolidation of these limits would permit employer flexibility in providing for the varied ladder situations present in field construction operations. The establishment of realistic and workable minimum limits would be the most appropriate solution.

Two comments (Exs. 2–12 and 2–35) simply stated it was a good idea to establish one set of rules for vertical spacing. One comment (Ex. 2–29) suggested that the uniform spacing should be 6 to 16½ inches.

OSHA believes that paragraph (a)(3), as revised, is responsive to those commenters who suggested that OSHA further consolidate the rung spacing requirements. In particular, paragraph (a)(3)(i) sets the same rung spacing range for all fixed ladders and for virtually all portable ladders.

Paragraph (a)(4) specifies the minimum rung/step length for portable and fixed ladders. Proposed paragraph (a)(4) has been reformatted and amended, for the sake of clarity, so that paragraph (a)(4)(i) covers fixed ladders and individual-rung/step ladders, and paragraph (a)(4)(ii) covers portable ladders.

Paragraph (a)(4)(i) requires that the minimum clear distance between the side rails of fixed ladders (except individual-rung/step ladders) and the minimum clear distance between the sides of individual-rung/step ladders shall be 16 inches. This provision is based on paragraph 5.1.2 of ANSI A14.3–1984.

Paragraph (a)(4)(ii), which is based on ANSI A14.1–1968 (Ex. 3–8), paragraph 4.2.1.3, and ANSI A14.1–1982 (Ex. 3–11), paragraph 6.3.2.4, requires that the minimum clear distance between the side rails of all portable ladders shall be 11½ inches. This provision differs from that which was proposed and from that which has been applied through the existing § 1926.450(a)(4) reference to A14.2–1956. OSHA had already decided, for the sake of clarity, that the minimum clear distance requirements should be consolidated in proposed paragraph (a)(4). Therefore, when the Agency proposed requirements for all portable wood and metal ladders, OSHA adopted the minimum distance requirement (11½ inches) for the most commonly used portable wood ladders, based on the ANSI provisions cited above, and the minimum distance requirement (12 inches) for the most commonly used portable metal ladders (based on the ANSI standard provisions in paragraphs 3.2.1 and 3.3.2 of ANSI A14.2–1956 (Ex. 3–9) and 6.1.3 and 6.2.1 of A14.2–1982 (Ex. 3–12)). In the course of drafting proposed paragraph (a)(4), OSHA decided that it would no longer require the spread between portable ladder rails to increase along with the ladder's height (generally 1 inch per foot of length) because the Agency determined that it was unreasonably burdensome to comply with the requirements for progressive spread. By contrast, OSHA believes that setting a minimum clear distance between the side rails of all ladders provides the appropriate guidance to employers.

As discussed above, OSHA received a unanimously favorable response when it raised the possibility, in Issue #7, that it would further consolidate the minimum width provisions of proposed paragraph (a)(4). In particular, one comment (Ex. 2–8) stated that OSHA should set 12 inches as the minimum rung length for all portable ladders. Another comment (Ex. 2–22) stated that OSHA should consider setting the minimum ladder width at 15 inches "to allow short-heavy subjects to assume their preferred hand separation." Yet another comment (Ex. 2–33) indicated some concern about the adequacy of the 11½-inch minimum width proposed for portable wood ladders, stating that "11½ inches gives my Triple E's only one inch to spare on a ladder width." On the other hand, the ACCSH unanimously recommended that OSHA further consolidate the proposed rung-width requirements by setting the requirement at 11½ inches (Tr. 6/9/87, pp. 257–262). The ACCSH based its suggestion on its perception that an 11½-inch width would enable an "average person" to get both feet on the same rung.

OSHA has determined, consistent with the recommendation of the ACCSH and the comments received, that 11½ inches is the appropriate minimum clear distance between side rails for all portable ladders. The Agency has chosen 11½ inches instead of other limits for portable ladders because OSHA believes that an 11½ inch minimum clear distance will allow safe passage by employees. Indeed, the Agency believes that setting a higher minimum clear distance for portable ladders would not provide significantly greater protection and would unnecessarily make many existing ladders obsolete. Therefore, the Agency has deleted the proposed rule's required 12-inch-minimum clear length for portable metal ladders and reinforced plastic ladders and removed the word "wood" at the end of the sentence. On the other hand, OSHA has retained the existing 16-inch minimum clear distance for fixed and individual-rung/step ladders, as proposed, because the Agency believes that provision is still appropriate. No comments were directed at the provisions for these ladders.

Accordingly, OSHA is promulgating paragraph (a)(4) as revised.

Paragraph (a)(5) requires individual-rung ladders to be shaped such that employees' feet cannot slide off rung ends. This is identical to the proposed rule and is the same requirement applied through the existing § 1926.450(a)(5) reference to ANSI A14.3–1956 (Ex. 3–10), which contains this provision in paragraph 4.1.5.

OSHA received a comment (Ex. 2–18) expressing the view that ANSI A14.3 was "intended to be applied to manufactured ladders, not to job-made ladders." The comment further stated that the use of job-made ladders constructed with round steel pipe and other materials lacking skid-resistant properties "has not resulted in any significant injuries." The Agency agrees that the proposed paragraph did not explicitly state that job-made ladders would be excluded from coverage. However, OSHA notes that individual-rung/step ladders, that is, those without side rails, such as may be found in use for manhole access, are not job-made ladders, and the rule does not apply to such ladders. To clarify this point, OSHA is adding language to the definition of job-made ladder in the final rule explaining that, by definition, no job-made ladders are individual-rung/step ladders. Therefore job-made ladders would not be subject to the requirements of paragraph (a)(5) and other provisions that specifically address individual-rung/step ladders.

Paragraph (a)(6) requires employers to minimize slipping hazards on ladders. In the final rule, OSHA has divided paragraph (a)(6) into two parts for the sake of clarity. Paragraph (a)(6)(i) requires that the rungs and steps of *fixed* metal ladders manufactured more than 60 days after the effective date of revised subpart X be corrugated, knurled, dimpled, coated with skid-resistant material, or otherwise treated to minimize slipping. OSHA notes that no such provision is currently applied to fixed ladders and also that ANSI A14.3–1984 does not contain such a requirement. The Agency has determined, however, that such a requirement is necessary for the protection of employees climbing fixed metal ladders.

Paragraph (a)(6)(ii) requires that all portable metal ladders be treated to minimize slipping. This requirement is found in both paragraph 3.1.5 of ANSI A14.2–1956 (Ex. 3–9), which is referenced by existing §1926.450(a)(4), and in the most recent ANSI edition, A14.2–1982, paragraph 5.5 (Ex. 3–12).

An area of concern addressed by the one commenter (Ex. 2–18) who addressed paragraph (a)(6) was that rebuilding or upgrading existing fixed ladders to meet the newly applicable requirements would impose large costs. The commenter stated that "in our estimation, if all existing fixed ladders would have to be rebuilt or otherwise upgraded to meet these requirements, the cost would be staggering." However, the commenter indicated that existing fixed ladder installations that already substantially met the performance requirements of ANSI A14.3, beginning with the 1974 edition, were exempted in the new ANSI standards.

OSHA based paragraph (a)(6) on the previous and existing ANSI provisions addressing portable metal ladders, as noted above. OSHA recognizes that there may be some employers whose fixed ladders do not have skid-resistant rungs, and that the process of bringing those existing fixed ladders into compliance would be unreasonably burdensome. OSHA believes that most fixed ladders, though not currently subject to slip-resistance requirements under the ANSI provisions (Ex. 2–14) referenced by existing § 1926.450(a)(5), already have the necessary anti-slip features. However, to avoid imposing unreasonable burdens, the Agency has amended the proposal so that paragraph (a)(6)(i) applies only to fixed ladders installed 60 days after the effective date of revised subpart X. This allows those employers who have not already been using ladders that minimize slipping hazards to bring their operations into conformance with the new requirement, as they replace their existing equipment.

As indicated above, the same commenter (Ex. 2–18) submitted the only substantive response to both proposed paragraphs (a) (5) and (6). As regards paragraph (a)(6), the commenter questioned the application of the proposed provisions to job-made ladders. In particular, the commenter stated that the original ANSI A14.2 standards for portable metal ladders and ANSI A14.3 standard for fixed ladders were not intended to cover job-made ladders. The commenter stated that "For years, standard design of job-made ladders has utilized rungs made of round steel pipe, steel bars, wood dowels or wood slats. In our experience, this practice has not resulted in any significant injuries." However, this was the sole response to the provision, and the commenter offered no evidence to substantiate that contention. OSHA's experience in construction safety and enforcement of its standards indicates that compliance with paragraph (a)(6) will provide appropriate protection from slipping hazards associated with ladder use. Based on that determination, the Agency declines to revise the proposed paragraph to distinguish between job-made ladders and other ladders.

Therefore, § 1926.1053(a)(6) incorporates the changes from the proposed rule discussed above and is being promulgated as amended.

Paragraph (a)(7) prohibits the tying together of ladder sections to make a longer ladder, unless the sections are designed for such use. This is identical to the proposed rule and is the same requirement found in paragraphs 5.2.9 of ANSI A14.1–1968 (Ex. 3–8) and 5.5.6 of ANSI A14.2–1956 (Ex. 3–9), which are imposed through the references to ANSI

in existing § 1926.450(a) (3) and (4), respectively. This provision is also consistent with paragraph 8.3.11 of both A14.1–1982 (Ex. 3–11) and A14.2–1982 (Ex. 3–12), the most recent editions of the pertinent ANSI standards. As discussed earlier, part of the Agency's purpose in revising subpart X is to incorporate particular applicable ANSI provisions that were cited as references under existing OSHA regulations. OSHA did not receive any comments regarding paragraph (a)(7).

Paragraph (a)(8) requires that each stepladder be provided with a metal spreader or other locking device to keep the ladder in an open position when being used. This is unchanged from the proposed rule and is the same requirement as in paragraphs 4.2.1.6 of ANSI A14.1–1968 (Ex. 3–8) and 3.3.8 of ANSI A14.2–1956 (Ex. 3–9), which are imposed through the references to ANSI in existing § 1926.450(a) (3) and (4), respectively. This provision is also consistent with paragraph 6.2.1.6 of A14.1–1982 (Ex. 3–11), and paragraphs 6.1.9 and 8.3.13.2 of A14.2–1982 (Ex. 3–12), the most recent editions of the pertinent ANSI standards. No comments were received addressing paragraph (a)(8).

Paragraph (a)(9) requires that a spliced side rail be equivalent in strength to a side rail of the same length made of one piece of the same material. This is the same requirement as existing § 1926.450(b)(7), which covers job-made ladders. OSHA has determined that proper splices are important on all ladders and has framed this provision accordingly. OSHA did not receive any comments regarding paragraph (a)(9).

Paragraph (a)(10) requires that, except when portable ladders are used to gain access to fixed ladders, two or more separate ladders used to reach an elevated work area shall be offset with a platform or landing between the ladders. This requirement is essentially the same as existing § 1926.450(b)(3), which covers job-made ladders, and the proposed rule, which extended the provision to cover most multiple ladder situations, not just those involving job-made ladders. Proposed (a)(10) required that any separate ladders used to reach an elevated work area be offset with a platform or landing between the ladders, because the Agency believed that the protection required by existing § 1926.450(b)(3) for employees using job-made ladders was also needed by employees using manufactured ladders. In the final rule, OSHA is excluding situations where portable ladders are used to access fixed ladders, such as those used for utility towers, billboards, and other structures where the bottom of a fixed ladder is elevated to limit access. OSHA notes that is such situations, the most practical means of gaining access to the fixed ladder is the use of a hook-on type portable ladder. Therefore, a platform or landing would not be needed. In addition, OSHA has consolidated the guardrail and falling object protection requirements of proposed paragraphs (a) (11) and (12), respectively, into paragraph (a)(10), so that employers who use platforms and landings will have clear and concise guidance on what fall protection and falling object protection is required.

In Issue #4, OSHA requested public comment on whether or not it is appropriate to extend the coverage of existing § 1926.450(b)(3) to all ladders. OSHA received six comments on the issue. None of the comments referred to the proposed requirements for platforms or landings. One commenter (Ex. 2–28) indicated that the existing requirement is "followed when other than job-made ladders are used." One commenter (Ex. 2–12) stated that they "use only job-made ladders." In addition, a commenter (Ex. 2–6), who apparently opposed merging any of the requirements for job-made and manufactured ladders, expressed the view that "job-built ladders do not have minimum strength criteria in the current standard or in the ANSI standards." The other three commenters (Exs. 2–29, 2–33, and 2–35) supported OSHA's proposal to extend the provisions to all ladders. The ACCSH also recommended that the provisions be applied to all ladders (Tr. 6/9/87, pp. 244–253). Therefore, based on the record, including the comments received, OSHA has decided to promulgate paragraph (a)(10) unchanged.

OSHA has determined that the references to subpart M in proposed paragraphs (a)(11) and (a)(12) can be consolidated into paragraph (a)(10), which will simplify paragraph (a). OSHA notes the provisions of proposed paragraphs (a) (11) and (12) are the subject of another rulemaking and that restating them in this subpart would involve duplication of the Agency's efforts in the other rulemaking. In addition, the Agency notes that the revision produces a paragraph (a)(10) that more closely resembles existing § 1926.450(b)(3).

Three commenters (Exs. 2–11, 2–31, and 2–37) stated that proposed paragraph (a)(12) was not the same as existing § 1922.450(b)(3), because the existing standard does not provide a requirement for overhead protection. Also, the commenters indicated they wanted OSHA to clarify the proposed requirement so that overhead protection is required only "where the hazard of falling objects exists," to conform with the requirement for toeboards in proposed § 1926.502(j)(1). OSHA observes that the terms "overhead protection" and "falling object protection" refer to the same measures, and that compliance with the requirement for toeboards (defined in existing § 1926.452(a)(31)) in existing § 1926.450(b)(3) results in provision of falling object protection. In addition, regarding the request for clarification, OSHA notes that proposed § 1926.502(j)(1) already provides that toeboards are only required where needed to protect employees from falling objects. The Agency, therefore, has determined that further guidance is not needed but has included a reference to these subpart M provisions in this final rule.

After considering the comments received concerning this provision, OSHA is promulgating paragraph (a)(10) as amended and incorporating the provisions that were proposed as paragraphs (a)(11) and (a)(12) into paragraph (a)(10) of the final rule.

Paragraph (a)(11), which was paragraph (a)(13) of the proposed rule, requires ladder surfaces to be free of puncture and laceration hazards. The Agency has determined that it is appropriate to apply this requirement to both manufactured and job-made ladders, because OSHA believes that ladders, whatever their origin, should not pose risks of puncture wounds, lacerations, or snagging. This provision consolidates and is essentially identical to those imposed through the existing § 1926.450(a) (3), (4), and (5) references to ANSI A14.1–1968 (Ex. 3–8), paragraph 3.1.1.1, ANSI A14.2–1956 (Ex. 3–9), paragraph 3.1, and ANSI A14.3–1956 (Ex. 3–10), paragraphs 4.1.4 and 4.2, respectively. This provision is also consistent with ANSI A14.1–1982 (Ex. 3–11) paragraph 5.1.1.1; A14.2–1982 (Ex. 3–12), paragraph 5; and A14.3–1984 (Ex. 3–13), paragraph 4.1.5, the most recent editions of those standards. These paragraphs from ANSI require ladders to be without defects, such as sharp edges, splinters, and burrs.

Two commenters (Exs. 2–16 and 2–29) addressed proposed paragraph (a)(13) (now paragraph (a)(11) of the final rule). In response to the first commenter, the provision has been slightly reworded to add "be" after the word "shall." The other commenter (Ex. 2–29) stated that OSHA should "delete any reference to 'snagging of clothing' for this has no appropriate reference in standards for

stairways and ladders." However, OSHA has determined that the requirement to prevent snagging hazards, while not based directly on the ANSI consensus standards, is appropriate both to protect employees from snagging hazards and to clarify the Agency's intent concerning the degree of smoothness considered necessary under the standard. Therefore, the Agency has retained the requirement in the final rule.

After considering the comments discussed above, OSHA is promulgating paragraph (a)(11), incorporating the minor change noted above.

Paragraph (a)(12), which was proposed as paragraph (a)(14), prohibits wood ladders from being coated with any opaque covering except as necessary for identification or warning labels. This provision is intended to prohibit covering or painting over any splits or cracks in any wood ladder component that might cause the defect to be undetected by a ladder user. This requirement is consistent with the existing § 1926.450(a)(3) reference to ANSI A14.1–1968 (Ex. 3–8), which addresses this requirement in paragraph 5.1.9. The specific wording of paragraph (a)(12) is based on the most recent editions of the pertinent standards, ANSI A14.1–1982 (Ex. 3–11), paragraph 8.4.6.3, and A14.3–1984 (Ex. 3–13), paragraph 9.3.10. OSHA did not receive any comments regarding proposed paragraph (a)(14) (paragraph (a)(12) of the final rule).

Paragraph (a)(13) (paragraph (a)(15) in the proposed rule) requires a minimum perpendicular clearance of 7 inches between fixed ladder rungs, cleats, and steps, and any obstruction behind the fixed ladder, except in the case of elevator pit ladders. This is essentially the same requirement as contained in the existing § 1926.450(a)(5) reference to ANSI A14.3–1956 (Ex. 3–10), which addresses this in paragraph 5.4. However, in both the proposed and final rule, OSHA has removed the existing provision that allowed for the reduction of minimum clearance to account for unavoidable obstructions. This change is consistent with the most recent edition of the pertinent ANSI A14.3–1984 (Ex. 3–13), paragraph 5.4.2.1. The Agency believes that, in general, the minimum clearance requirement is necessary, regardless of any obstructions, so that employees can get safe footholds on ladders. The final rule differs from the proposal in that, in response to a comment, an exception for elevator pit ladders has been added to the final.

The Agency received one comment (Ex. 2–13) responding to this paragraph (now § 1926.1053(a)(13)). The commenter requested that OSHA exempt pit ladders mounted to walls inside elevator hoistways from the provisions of the standard because these "ladders are used infrequently for maintenance and then by trained personnel." The commenter added that "There is also a necessity to maintain clearance between the elevator car and the ladder." OSHA has determined that this request is appropriate and notes that elevator hoistways and/or shafts are usually screened or secured from general traffic areas. The Agency considers it reasonable to expect that only those employees who are performing construction work on elevators and elevator areas would have the requisite training and access to the elevator pit ladders. In addition, the Agency observes that paragraph 5.4.2.1 of ANSI A14.3–1984 (Ex. 3–13) specifically excludes elevator pits that comply with the clearance requirements of ANSI A17.1–1981 from its coverage. Therefore, the paragraph has been amended to set the minimum perpendicular clearance for elevator pit ladders at 4½ inches.

As noted above, this revision of subpart X codifies specific ANSI provisions that were cited as references in existing OSHA regulations. For that reason, and based on the rulemaking record, the Agency is promulgating paragraph (a)(13) as revised.

Paragraph (a)(14) (paragraph (a)(16) in the proposed rule) requires a minimum clearance of 30 inches between fixed ladders and any obstruction on the climbing side of the ladder. Where the clearance is less than 30 inches because of unavoidable obstructions, paragraph (a)(15) (redesignated from paragraph (a)(17) in the proposed rule) requires a deflection device to be installed that would guide employees around the obstruction. These requirements are consistent with those imposed through the existing § 1926.450(a)(5) reference to ANSI A14.3–1956 (Ex. 3–10), which addresses these matters in paragraphs 5.1 and 5.7. Paragraphs (a) (14) and (15) are effectively identical to the proposed rule, which reflected the modifications contained in the pertinent provisions in the more recent edition of the consensus standard, ANSI A14.3–1984 (Ex. 3–13), paragraphs 5.4.1.1 and 5.4.1.3, respectively. No comments were received addressing paragraphs (a) (14) and (15) (as renumbered).

Paragraph (a)(16) (paragraph (a)(18) in the proposed rule) specifies minimum and maximum step-across distances at landings for fixed ladders of 7 inches and 12 inches, respectively. The text of the final rule is identical to the proposed paragraph. It is consistent with paragraph 5.6 of ANSI A14.3–1956 (Ex. 3–10), which is referenced in existing § 1926.450(a)(5), except that the existing 2½-inch minimum limit has been replaced by a minimum limit of 7 inches, to be consistent with paragraph (a)(13) in the final rule and with paragraph 5.4.2.2 of the most recent edition of the consensus standard, ANSI A14.3–1984 (Ex. 3–13).

The one commenter (Ex. 2–14) who responded to proposed paragraph (a)(18) (now renumbered as § 1926.1053(a)(16)) pointed out that the term "through fixed ladder" used in the proposal was unclear. To resolve this concern regarding the meaning of the term, the Agency has added a definition for "through fixed ladder" in § 1926.1050(b) of this subpart, as discussed earlier.

Paragraph (a)(17) (paragraph (a)(19) in the proposed rule) requires a minimum of 15 inches of side clearance (from the ladder centerline) for all fixed ladders that do not have cages or wells. This requirement is identical to paragraph 5.20 of ANSI A14.3–1956 (Ex. 3–10), which is applied through the reference to the ANSI standard in existing § 1926.450(a)(5). It is also identical to paragraph 5.4.3 of the most recent edition of the consensus standard, ANSI A14.3–1984 (Ex. 3–13). No comments were received addressing paragraph (a)(17).

Paragraph (a)(18) (paragraph (a)(20) of the proposal) requires fixed ladders to be provided with cages, wells, ladder safety devices, or self-retracting lifelines where the length of climb is less than 24 feet but the top of the ladder is more than 24 feet above lower levels. This requirement is based in part on the existing § 1926.450(a)(5) reference to ANSI A14.3–1956 (Ex. 3–10), which addresses this concept in paragraph 6.1.2. The provision also reflects the updated and clarified language of A14.3–1984 (Ex. 3–13); paragraph 4.1.2. The final rule also allows the use of self-retracting lifelines as alternative fall protection to wells, cages, and ladder safety devices.

One comment (Ex. 2–35) objected to the inclusion of self-retracting lifelines in the list of devices to be used, stating that "We do not expect it was OSHA's intention to have self-retracting lifelines be utilized when the length of line is less than 24'." OSHA notes that this exact requirement appears in the most recent ANSI standard. The Agency believes that the ANSI provisions are appropriate to protect workers in those circumstances. Furthermore, such lifelines are listed as one of several options the employer can select from, and are not items required on all fixed ladders. The Agency expects that

employers will choose devices from the given list of options that adequately protect employees.

After considering the response to the proposed rule, OSHA is issuing paragraph (a)(18) as final, unchanged from the proposed rule.

Paragraph (a)(19) (paragraph (a)(21) of the proposal) requires that employers who install fixed ladders whose total length of climb is at least 24 feet, equip those ladders with either ladder safety devices, self-retracting lifelines together with rest platforms at intervals not to exceed 150 feet, or a cage or well with ladder sections offset and landing platforms provided at mixinum intervals of 50 feet. This provision is based on ANSI A14.3–1984 (Ex. 3–13), paragraph 4.1.2.

OSHA received one comment (Ex. 2–43) addressing paragraph (a)(21) (§ 1926.1053(a)(19) of the final rule). The commenter noted that the paragraph requires rest platforms for fixed ladders at intervals of 150 feet, in apparent contradiction with the requirement that ladder sections not exceed 50 feet in length. OSHA notes that the provisions of paragraph (a)(19) (ii) and (iii) are alternatives between which employers will choose, so they need not be consistent.

After considering the response to the proposed rule, OSHA is promulgating paragraph (a)(19) without change.

Paragraphs (a) (20) and (21) (paragraphs (a) (22) and (23) of the proposed rule, respectively) establish the requirements for fixed ladder cage and well construction. Paragraph (a)(20), which addresses cages for fixed ladders, covers placement and spacing of horizontal bands and vertical bars; internal clearances; keeping the insides clear of projections; and requirements for cage tops and bottoms. Paragraph (a)(21), which addresses wells for fixed ladders, covers ladder encirclement; keeping them free of projections; inside clear widths; and bottom heights. Those provisions are based, in part, on paragraph 6.1 of the ANSI standard that is referenced by existing § 1926.450(a)(5), A14.3–1956 (Ex. 3–10). However, the language in the paragraphs in this rulemaking reflects the updated and clarified language of ANSI A14.3–1984 (Ex. 3–13), paragraphs 6.1 and 6.2. Significant differences between the 1956 and 1984 ANSI documents, and therefore, between the existing and revised rule, are as follows:

- Maximum cage size is increased from 28 to 30 inches to allow easier employee movement;
- Wells are now required to encircle the ladder completely and be free of projections; wells must now have an inside clear width of at least 30 inches; and
- The bottom access opening shall not be less than 7 feet nor more than 8 feet high.

No comments were received addressing paragraphs (a) (20) and (21) (as redesignated).

Paragraph (a)(22) (paragraph (a)(24) of the proposed rule) sets forth the requirements for ladder safety devices. Those provisions are based, in part, on the reference in existing § 1926.450(a)(5) to ANSI A14.3–1956 (Ex. 3–10), which covers this topic in paragraph 6.5. Those paragraphs also reflect the updated and clarified language of ANSI A14.3–1984 (Ex. 3–13), paragraph 7. Based on the Agency's review of the record, as discussed below, OSHA promulgates paragraph (a)(22) without change.

Paragraph (a)(22)(i) requires that ladder safety devices and related support systems (such as a ladder to which they are attached) be capable of withstanding, without failure, a drop test consisting of an 18-inch (.41 m) drop of a 500-pound (226 kg) weight. This provision is based on ANSI A14.3–1984 (Ex. 3–13), paragraph 7.1.3.

Paragraph (a)(22)(ii) requires the devices to be of a design that permits employees using the system to ascend or descend without continually having to manipulate any part of the system. The requirement is based on paragraph 7.3.1 of ANSI A14.3–1984.

Paragraph (a)(22)(iii) requires that ladder safety devices limit the descending velocity of an employee to 7 feet (2.1 m) per second or less within 2 feet (.61 m) after a fall occurs. In establishing the velocity limit for ladder safety devices, OSHA reviewed a National Bureau of Standards (NBS) report (Ex. 3–18) that suggested a maximum descent rate for descent devices of 15 feet per second for an uninjured employee and 10 feet (3.1 m) per second for an injured employee. Descent devices are used for escapes, with workers traveling down a rope or line without obstructions in the descent path. In adapting the NBS recommendations into regulatory language, OSHA proposed a more conservative velocity limit of 7 feet (2.1 m) per second for ladder safety devices because the Agency believes that an employee descending faster than that could be injured through contact with the ladder during a fall. Seven feet per second represents the speed attained after a free-fall of approximately 1 foot (30.5 cm). OSHA believes that in addition to providing protection from the force of the fall, this limit enables an employee to either regain control on the ladder or descend at a reasonable and safe speed.

OSHA requested comments and data in Issue #12 of the proposal on whether or not the descent rates suggested by NBS would provide adequate protection. The only comment on this issue came from the ACCSH, which recommended that OSHA adopt the 7 feet-per-second limit (Tr. 6/10/87, pp. 11–13). The one comment (Ex. 2–3) specifically made on § 1926.1053(a)(24) (§ 1926.1053(a)(22) of the final rule) was directed to paragraph (a)(24)(iii), and expressed the belief that these requirements, as specified, would "effectively eliminate all flexible and rigid rail systems in use today." The commenter added that "I believe the intent is to have those units with descent capability only meet the descent per second criteria." OSHA disagrees with this comment. The specified criteria do not prohibit the use of systems that completely stop or arrest the fall of employees. The provision is intended to limit the maximum fall velocity, not the minimum fall velocity. Upon review of the record, including the above-mentioned comment, OSHA believes that the requirements of paragraph (a)(22)(iii) are necessary for protection of employees who use ladder safety devices including those equipped with a descent slide mechanism. However, OSHA requests that interested parties submit any additional information that would be pertinent to this issue. The Agency would take any such information into account and would initiate further regulatory action if that was appropriate.

Paragraph (a)(22)(iv) requires that the maximum length of the connection between the carrier or lifeline and the point of attachment to the body belt not exceed 9 inches (23 cm). This requirement is based on a recommendation contained in Drs. Chaffin and Stobbe's report, "Ergonomic Considerations Related to Selected Fall Prevention Aspects of Scaffolds and Ladders as Presented in OSHA Standard, 29 CFR part 1910, subpart D" (Ex. 3–19), which indicates that this distance is needed to ascend and descend a ladder in a position that is not awkward. No comments were received on this paragraph.

Paragraph (a)(23) (paragraph (a)(25) of the proposed rule) specifies the mounting requirements for ladder safety devices for fixed ladders. The final rule is the same as the proposal except that the introductory text has the additional language "The mounting of" and "for fixed ladders" to clarify its application. Paragraph (a)(23)(i) requires mountings for rigid carriers to be attached at each

end of the carrier, with intermediate mountings spaced along the entire length of the carrier. This is based on ANSI A.14.3–1984 (Ex. 3–13), paragraph 7.3.4. Paragraph (a)(23)(ii) requires that mountings for flexible carriers be attached at each end of the carrier, and that when the system is exposed to wind, cable guides be installed at a minimum spacing of 25 feet (7.6 m) and a maximum spacing of 40 feet (12.2 m) along the entire length of the carrier to prevent wind damage to the system. These are the same requirements as in ANSI A.14.3–1984, paragraph 7.3.5. Paragraph (a)(23)(iii) requires that the design and installation of mountings and cable guides not reduce the design strength of the ladder. This is based on ANSI A14.3–1984, paragraph 7.1.4. OSHA did not receive any comments addressing paragraph (a)(23). Accordingly, OSHA promulgates § 1926.1053(a)(23) as clarified.

Paragraphs (a) (24) through (26) (paragraphs (a) (26) through (28) of the proposed rule), respectively) address extensions for side rail ladders.

Paragraph (a)(24) requires that side rails extend 42 inches above the top of the access level or landing platform served by the ladder. This provision is based on paragraph 5.3.2.1 of ANSI A14.3–194 (Ex. 3–13). Existing § 1926.450(a)(9) requires that ladder side rails extend at least "36 inches above the landing." OSHA has increased the minimum extension for fixed ladders to coordinate this requirement and the requirements for guardrails. The extension requirement for portable ladders (still at least 36 inches) appears in paragraph (b)(1), below.

Paragraph (a)(25), which is based on paragraph 5.3.2.2 of ANSI A14.3–1984 (Ex. 3–13), requires that the extension of a through ladder have no steps or rungs, that the extension be flared so the side rails provide between 24 and 30 inches of clearance when ladder safety devices are not provided, and that the extension be flared no more than 36 inches when ladder safety devices are provided. These are the same requirements as in ANSI A14.3–1956 (Ex. 3–10), paragraph 6.3, referenced by existing § 1926.450(a)(5), except the minimum and maximum side rail flare is changed from 18 inches and 24 inches, to 24 inches and 30 inches, respectively, to reflect ANSI A14.3–1984 (Ex. 3–13) and to provide employees with appropriate protection from fall hazards.

Paragraph (a)(26) requires that the side rails and the steps or rungs shall be continuous for side-step fixed ladder extensions. This provision is based on paragraph 5.3.2.3 of ANSI A14.3–1984 (Ex. 3–13). OSHA did not receive any comments regarding paragraphs (a) (24) through (26).

Paragraph (a)(27) (paragraph (a)(29) of the proposed rule) requires individual-rung ladders, except those covered by manhole covers or hatches, to extend at least 42 inches above access levels or landing platforms or be equipped with either horizontal or vertical grab bars. The final rule differs from the proposal only insofar as the proposal has been revised to state that the extension shall be "at least" 42 inches, rather than exactly 42 inches. This additional language, which was inadvertently omitted from the proposal, is needed to keep the OSHA standard consistent with ANSI A14.3–1984 (Ex. 3–13), paragraph 5.3.3.1, and to avoid imposing unreasonable burdens on employers whose individual-rung/step ladders extend more than 42 inches above access levels or landing platforms. This provision is also consistent with A14.3–1956, paragraph 6.3, which is referenced by existing § 1926.450(a)(5). No comments were received addressing redesignated paragraph (a)(27).

Paragraph (b) sets forth the requirements for safe ladder use by construction employees. The introductory text explains that these requirements apply to all ladders, including job-made ladders except as otherwise indicated. One commenter (Ex. 2–14) suggested a rearrangement of certain provisions, OSHA has determined that the format of the ladder use requirements, as proposed, is appropriate because the regulatory language has been organized so that employers receive clear guidance and the proper emphasis is placed on the ladder use requirements.

Paragraph (b)(1) requires that side rails of portable ladders extend at least 3 feet above the upper level or surface to which the ladder is used to gain access. The requirement further provides that when such extensions are not possible because of the ladder length, the ladder shall be secured at the top to a rigid, nondeflecting support, and employees shall be provided with a grasping device such as a grabrail. This is essentially the same provision as in existing § 1926.450(a)(9), except that the revised rule requires the securing of the ladder and does not limit alternative solutions to grabrails. This provision also differs from existing § 1926.450 (a)(9) in that this provision unlike the existing standard applies only to portable ladders. The side rail extension requirements for fixed ladders appear in paragraph (a)(24), as redesignated, above. The final rule is identical to proposed paragraph (b)(1) except that where the 3-foot extension is not possible, the final rule requires that the ladder be secured "at its top to a rigid support that will not deflect," while the proposal only required securing the ladder "at the top." In addition, OSHA added the term "portable" to the proposed provision to make it clear that only portable ladders were covered by this paragraph and has inserted a new sentence to clarify that the ladder deflection under load should not, by itself, cause the ladder to slip off its support.

The one commenter (Ex. 2–21) regarding paragraph (b)(1), stated that the proposed paragraph should be clarified to address specifically how much less than 3 feet above the upper landing surface a ladder which complied with paragraph (b)(1) could be. The commenter also stated that OSHA should "set a minimum ladder length necessary to prevent the ladder from slipping from its support due to bending deflection even though the ladder is secured at the top." To address this concern, the Agency has revised proposed paragraph (b)(1) to require that ladders extending less than three feet be secured at the top to a rigid support that will not deflect and that such ladders be of sufficient length that they will not slip from the support due to bending deflection.

Accordingly, the Agency is promulgating paragraph (b)(1) as revised.

Paragraph (b)(2) requires ladders to be free of oil, grease, and other slipping hazards. This requirement, which is identical to the proposed rule, is based on paragraph 8.3.4. of both ANSI A14.1–1982 (Ex. 3–11) and A14.1–1982 (Ex. 3–12) and paragraph 9.2.5 of ANSI A14.3–1984 (Ex. 3–13), the pertinent provisions of the most recent editions of the consensus standards. The provisions of the final rule, unlike the existing provisions in § 1926.450(a) (3), (4), and (5) (which cover only oil and grease), covers all slip hazards. Paragraph (b)(2) is otherwise consistent with the existing § 1926.450(a)(3) reference to ANSI A14.1–1968 (Ex. 3–8), which in paragraph 5.1.1 requires ladder rungs to be "kept free of grease and oil"; the existing § 1926.450(a)(4) reference to ANSI A14.2–1956 (Ex. 3–9), which requires in paragraph 8 that ladders "be maintained in safe condition;" and the existing 1926.450(a)(5) reference to ANSI A14.3–1956 (Ex. 3–10), which requires in paragraph 5.2.6.4 that ladders be "cleaned of oil, grease, or slippery materials." However, oil and grease are only two of many slip-causing substances and, therefore, paragraph (b)(2) uses broader language. OSHA did

not receive any comments regarding paragraph (b)(2).

Paragraph (b)(3) requires that ladders not be loaded beyond the maximum intended load for which they were built, nor beyond their manufacturer's rated capacity. This requirement is consistent with paragraph 6.1 of ANSI A14.1–1982 (Ex. 3–11), paragraph 5 of ANSI A14.2–1982 (Ex. 3–12), and paragraph 4.2 of ANSI A14.3–1984 (Ex. 3–13). This paragraph is also consistent with requirements set through the existing § 1926.450(a)(3) reference to ANSI A14.1–1968 (Ex. 3–8), which addressed portable wood ladders in paragraph 5.2.2. Under the proposed rule, employers were required to ensure that ladders, whether fixed or portable, were not loaded beyond their maximum intended load-carrying capacity, or the rated capacity. OSHA has revised the proposed paragraph in response to a commenter's request for clarification (Ex. 2–29), by changing "their maximum intended load-carrying capacity" to "the maximum intended load for which they were built," and adding the word "manufacturer's" to "rated capacity" in the final rule. OSHA believes that the language changes clarify the provision's intended applicability without altering any material provision of the standard.

After consideration of the above-noted comment on the proposed rule, OSHA is promulgating paragraph (b)(3) as clarified.

Paragraph (b)(4) requires that ladders be used only for the purpose for which they were designed. The final rule is identical to the proposed rule. This provision is based on paragraphs 8.3.1 and 8.4.3 of ANSI A14.1–1982 (Ex. 3–11), paragraph 8.3.1 of ANSI A14.2–1982 (Ex. 3–12), and paragraph 9.1 of ANSI A14.3–1984 (Ex. 3–13). It is also consistent with the requirements applied through the existing § 1926.450(a)(3) reference to ANSI A14.1–1968 (Ex. 3–8). Paragraph 5.2.12 of A14.1–1968 prohibits using ladders as guys, braces, skids, or for other than their intended purpose. This provision is also based on existing § 1926.450(a)(7), which prohibits using ladders in a horizontal position as a scaffold platform, or a runway. OSHA determined that it was appropriate for this requirement to apply to all ladders, not just to portable ladders, because misuse of any ladder can result in employee injury. OSHA did not receive any comments regarding paragraph (b)(4).

Paragraph (b)(5) sets requirements for the angles at which ladders must be positioned. These provisions reflects OSHA determination of how ladders must be positioned so they are stable when climbed. The requirements for specific types of ladders have been reformatted to appear as separate subparagraphs in the final rule, for the sake of clarity.

Paragraph (b)(5)(i) requires non-self-supporting ladders to be used at an angle such that the horizontal distance between the top support and the foot of the ladder is approximately one-quarter of the working length of the ladder. This provision is based on paragraph 8.3.3 of both ANSI A14.1–1982 (Ex. 3–11) and ANSI A14.2–1982 (Ex. 3–12).

Paragraph (b)(5)(ii) incorporates paragraph 4.4.1 of ANSI A14.4–1979 (Ex. 3–14), Safety Requirements of Job-Made Ladders, which requires that wood job-made ladders with spliced side rails be used at an angle such that the horizontal distance is one eighth the working length of the ladder. In the final rule, the word "ratio" in the second sentence has been replaced with "horizontal distance," to match the terminology of the first sentence. OSHA is making this minor editorial change for the sake of clarity.

Paragraph (b)(5)(iii) requires fixed ladders to be used at a pitch no greater than 90 degrees from the horizontal as measured to the back side of the ladder. This provision is based on paragraph 1.4.3 of the most recent edition of the ANSI standard, A14.3–1984 (Ex. 3–13), and is consistent with the requirement set out in paragraph 7.1 of ANSI A14.3–1956 (Ex. 3–10), which is applied through the reference to ANSI in existing § 1926.450(a)(5). No comments were received addressing paragraph (b)(5). The Agency is therefore promulgating § 1926.1053(b)(5) with the minor revision discussed above.

Paragraphs (b) (6) through (8) replace existing § 1926.450(a)(6), which requires that ladder feet be set on a substantial base, and existing § 1926.450(a)(10), which requires portable ladders that are in use to be tied, blocked, or otherwise secured to prevent their being displaced. The revised rules more clearly identify the hazards to be protected against by requiring employers to secure ladders where the footing is unstable, not level, or slippery, or where the ladder can accidentally be displaced by traffic or workplace activities.

Paragraph (b)(6) requires ladders to be used only on stable and level surfaces unless secured to prevent accidental displacement. This requirement is consistent with existing § 1926.450(a)(6), which requires "a substantial base;" and with the existing § 1926.450(a)(3) reference to ANSI A14.1–1968 (Ex. 3–8), which in paragraphs 5.2.3 and 5.2.5 require a "secure" and "stable" footing for ladders. The requirement that the surface that must be level or the ladders must be secured is based on ANSI A14.1–1982 (Ex. 3–11), paragraph 8.3.4, and is included because surfaces that are not level may not provide suitable support for unsecured ladders.

OSHA did not receive any public comments addressing paragraph (b)(6). The ACCSH discussed the provisions of this paragraph at considerable length, together with paragraphs (b) (7) through (9) of this same section (Tr. 6/10/87, pp. 28–45), but did not recommend that OSHA make any changes to the language in § 1926.1053(b)(6). Therefore, OSHA is promulgating § 1926.1053(b)(6) as a final rule, without change from the proposed rule.

Paragraph (b)(7) prohibits the use of ladders on slippery surfaces unless they are secured or provided with slip-resistant feet. In the final rule the proposed explanatory note that slip-resistant feet not be used as a substitute for placing, lashing, or holding the ladder has been edited and incorporated into the text of the paragraph. This requirement is based on ANSI A14.1–1982 (Ex. 3–11), paragraph 8.3.4. This provision is also consistent with the requirement applied through the existing § 1926.450(a)(3) reference to ANSI A14.1–1968 (Ex. 3–8), which addresses slip resistance in paragraph 5.2.20.

OSHA did not receive any public comments addressing paragraph (b)(7). The ACCSH discussed this paragraph along with paragraphs (b) (6) through (9) and recommended that the explanatory note specifying that slip-resistant feet are not a substitute for the various methods of securing ladders on slick or slippery surfaces be merged into the text of the paragraph (Tr. 6/10/87, pp. 43–46). The ACCSH mentioned this provision while discussing the requirements for ladders, but did not make a recommendation (Tr. 6/10/87, p. 42). In Issue X–1 of the notice of informal public hearing (53 FR 2048, Jan. 26, 1988) (Ex. 5), OSHA sought testimony and supporting information regarding the ACCSH recommendation.

OSHA did not receive any testimony regarding either paragraph (b)(7) or Issue X–1. Nonetheless, the Agency agrees with the ACCSH that it is appropriate to incorporate the note as part of the text of the paragraph. OSHA, therefore, promulgates the § 1926.1053(b)(7) note as consolidated, with minor revisions.

Paragraph (b)(8) requires ladders placed in passageways, doorways, or any location where they can be displaced by workplace activities or traffic, to be secured in place, or a barricade system used to keep activities and traffic away from the ladder. This

provision is very similar to existing § 1926.450(a)(6). The only substantive change from the existing rule is the addition of language allowing the ladders to be tied off or otherwise secured. OSHA believes that if a ladder is secured against displacement then no problem exists. The type of tie-off required would vary, depending on the type of activity taking place and the likelihood of ladder displacement.

OSHA did not receive any comments regarding paragraph (b)(8). Therefore, § 1926.1053(b)(8) is promulgated as final, incorporating the above-described editorial change.

Paragraph (b)(9) requires the area around the top and bottom of ladders to be kept clear. This is unchanged from the proposed rule and is the same requirement that is already applied to portable ladders through existing § 1926.450(a)(6), OSHA has determined that it is appropriate for this requirement to cover all ladders.

No comments were received addressing paragraph (b)(9). The ACCSH mentioned this provision while discussing the requirements for ladders, but did not make a recommendation (Tr. 6/10/87, p. 42). OSHA is therefore promulgating § 1926.1053(b)(9) as final, unchanged from the proposed rule.

Paragraph (b)(10) requires the tops of non-self-supporting ladders to be placed such that the two side rails are equally supported, or provided with a single support attachment. The final rule is identical to the proposed rule. This requirement is intended to ensure proper ladder stability and is based on the requirements imposed through the existing § 1926.450(a)(4) reference to ANSI A14.2–1956 (Ex. 3–9), which addresses this in paragraph 5.3.2, and on paragraph 8.3.5 of both ANSI A14.1–1982 (Ex. 3–11) and ANSI A14.2–1982 (Ex. 3–12). OSHA did not receive any comments regarding paragraph (b)(10).

Paragraph (b)(11) provides that ladders shall not be moved, shifted, or extended while occupied. The final rule is unchanged from the proposal. Essentially, this is a new provision, although existing § 1926.450(a)(3) references ANSI A14.1–1968 (Ex. 3–8), which, in paragraph 5.2.17, contains a prohibition against extending a ladder while occupied. The final rule is, effectively, based on paragraph 8.3.15 of both ANSI A14.1–1982 (Ex. 3–11) and A14.2–1982 (Ex. 3–12), which prohibit relocating a ladder while it is occupied, and on paragraph 8.3.13.1 of both 1982 ANSI standards, which prohibit extending a ladder while it is occupied. No comments were received addressing paragraph (b)(11).

Paragraph (b)(12) requires ladders to have nonconductive side rails if those ladders are used where the employee or the ladder could contact exposed energized equipment, except as provided in § 1926.951(c)(1) of Subpart V—Power Transmission and Distribution. This provision is based on paragraphs 8.3.8 and 8.3.21 of both ANSI A14.1–1982 (Ex. 3–11) and ANSI A14.2–1984 (Ex. 3–12). It is also consistent with the requirements of existing § 1926.450(a)(11), which prohibits using portable metal ladders for or near electrical work, except insofar as the existing rule does not reference subpart V and, therefore, potentially conflicts with that standard (see, for example, § 1926.951(c)(1)). This final rule is substantively the same as the proposed rule, except the final rule has been editorially revised to be consistent with the related 29 CFR part 1910 provision contained in the final rule for the Electrical Safety Related Work Practices published August 6, 1990 (55 FR 32019).

The one comment (Ex. 2–44) regarding paragraph (b)(12) suggested that OSHA require protection for employees working on ladders near power lines. The commenter recommended that the Agency adopt the provisions of existing § 1926.451(d)(6) to protect employees working on ladders from electrical hazards. OSHA has determined that compliance with final rule (b)(12) and with § 1926.951(c) will adequately protect employees performing construction work on ladders from powerline hazards. Therefore, OSHA has not made the suggested change. Accordingly, § 1926.1053(b)(12) is promulgated as a final rule, incorporating the above-discussed revision.

Paragraph (b)(13) prohibits using the tops or top step of a stepladder as a step. The final rule is almost identical to the proposed rule, except that the final rule clarifies OSHA's concern that the top step of a step ladder without a cap should not be used for this purpose, either. This provision is based on paragraph 8.3.2 of both ANSI A14.1–1982 (Ex. 3–11) and ANSI A14.2–1982 (Ex. 3–12). The same provision appears in ANSI A14.1–1968 (Ex. 3–8), paragraph 5.2.13, which is applied to portable wood ladders through the existing § 1926.450(a)(3) reference to ANSI. The revised rule, however, applies to all stepladders and not just to wood stepladders.

OSHA received one comment (Ex. 2–16) responding to paragraph (b)(13). The commenter expressed the view that the prohibition on the use of tops of stepladders as steps should be extended to "the top step of stepladders and the top two steps or rungs of straight ladders." However, the commenter did not provide a rationale for this recommendation, and OSHA believes that such a rule would preclude ladders from being used as access between levels. As noted in the proposed rule, this provision is based on an ANSI standard and referenced by an existing OSHA regulation. On the basis of the one comment received, the Agency does not believe it has sufficient data to support making the recommended change.

After consideration of the comment to paragraph (b)(13), OSHA is promulgating the paragraph as final, without any change from the version found in the proposed rulemaking.

Paragraph (b)(14) prohibits using the cross-balancing on the rear support section of stepladders for climbing unless the rear section is so designed and recommended for such use by the manufacturer by providing steps for climbing on both front and rear sections. This provision is based, in part, on paragraph 8.3.2(2) of ANSI A14.1–1982 (Ex. 3–11) and paragraph 8.3.16 of ANSI A14.2–1982 (Ex. 3–12). It is also consistent with the requirements applied through the existing § 1926.450(a)(3) reference to ANSI A14.1–1968 (Ex. 3–8), paragraph 5.2.22, except it applies to all stepladders and not just to wood stepladders. OSHA notes that the current ANSI provisions allow ladder users to step or stand on "rear braces of a self-supporting ladder" if the braces are designed and recommended for that purpose by the manufacturer. OSHA has revised the proposed provision to reflect the wording in the consensus standards in this final rule. No comments were received addressing paragraph (b)(14).

Paragraph (b)(15) requires that ladders be inspected for visible defects by a competent person on a periodic basis, based on use and wear, and after any occurrence that could affect their safe use. This provision is based on paragraph 8.4.1 of both ANSI A14.1–1982 (Ex. 3–11) and ANSI A14.2–1982 (Ex. 3–12) and paragraph 8.3.1 of ANSI A14.3–1984 (Ex. 3–13). It is also consistent with the requirements applied through the references to ANSI A14.1–1968, ANSI A14.2–1956, and ANSI A14.3–1956 in existing § 1926.450(a) (3), (4), and (5), respectively. This provision also clarifies the requirements of existing § 1926.450(a)(2). Proposed paragraph (b)(15) would have required ladders to be inspected for visible defects prior to the first use of each workshift and after any occurrence that could affect their use. This proposed provision was not fully consistent with the requirements

imposed through the references to ANSI in the existing standards. In particular, paragraphs 5.1.10 and 5.2.4 of A14.1–1968 and A14.2–1956, respectively, required "frequent" inspection and paragraph 8 of A14.3–1956 required "regular" inspection. As explained below, the Agency has changed the proposal's wording "prior to the first use of each workshift" to read "on a periodic basis," and has also added the words "by a competent person" after "shall be inspected."

Public comment was requested on the inspection requirement in paragraph (b)(15) in Issue #5 of the proposed rulemaking. In particular, OSHA solicited comments on the specified frequency of inspections. OSHA noted that the proposed requirement for inspection prior to first use in a workshift was suggested, rather than required by the pertinent ANSI standards.

A number of respondents (Exs. 2–11, 2–28, 2–29, 2–30, 2–31 and 2–37) expressed some opposition to the proposed changes in the inspection requirements. One of these commenters (Ex. 2–29) stated that "[t]he existing standard for inspection of ladders is adequate" and that the proposed change is "not necessary."

Other commenters who supported retention of the existing standard (Exs. 2–11, 2–31, and 2–37) stated, in part, that inspection prior to the first use of each workshift would be "restrictive" and "unworkable." They added that "there is little evidence to substantiate that ladder accidents are caused by defective ladders." Another (Ex. 2–30) stated that substantial evidence did "not exist that defective ladders chiefly cause ladder accidents." However, the commenters who stated that defective ladders were not a chief casue of ladder accidents did not provide further data or evidence to substantiate their contentions. One more comment (Ex 2–28) expressing some opposition to the proposed requirement stated, in part, that the proposed frequency of inspections would be unnecessary as this type of inspection should be conducted before ladder is used in the field.

On the other hand, as discussed above in the Hazards Involved section, a Bureau of Labor Statistics survey (Ex. 3–5) indicates that of the ladders that were involved in the accidents studied, 19 percent had one or more defects, and 53 percent of all non-self-supporting ladders broke during use (51 FR 42751). Notwithstanding the comments discussed above, OSHA is not convinced of the merit of the argument that defective ladders are not a chief cause of ladder accidents. The record reflects that ladder defects are important factors in many ladder accidents.

Six other commenters (Exs. 2–12, 2–16, 2–23, 2–33, 2–35, and 2–42) basically supported the required frequency of inspections from the proposal. One of these four (Ex. 2–23) considered the proposal "practical," while another (Ex. 2–12) added that inspections should be performed "frequently." Yet another (Ex. 2–16) suggested "prior to each use and formally once a year" as the criteria for the required frequency. One commenter (Ex. 2–35) commended OSHA for providing ANSI inspection procedures, and recommended that OSHA reference the 1982 editions and require that reinforced plastic ladders meet the same inspection procedures. One other commenter (Ex. 2–33) indicated he favored ladder inspection but did not specify a preferred interval for this inspection stating: "The brief time to make sure a ladder is safe is better than the many hours trying to figure out why a ladder failed later on." Also, a commenter (Ex. 2–42) stated that ladders should be inspected on a "regular" basis, as necessary, and that a ladder "moved around a lot or moved often requires inspection more often." In addition, the ACCSH supported the requirement for inspections prior to each use, as found in the proposal (Tr. 6/9/87, pp. 253–255).

Based on the BLS study, the variety of responses from the commenters, the ACCSH recommendation, and the existing OSHA rules and ANSI consensus standard, OSHA finds these inspections to be of considerable importance. However, while the Agency believes that inspection prior to the first use in each workshift can be an important way of ensuring that only safe ladders are used, the record, including the comments, and ANSI do not support a requirement for inspections on a daily basis. OSHA has decided, therefore, to maintain the thrust of the proposal to emphasize the need for ladder inspections, and to allow some flexibility at the same time. Consequently, OSHA is replacing "prior to the first use of each workshift" in the proposed rule with the words "on a periodic basis" in the final, and is thus matching the ANSI terminology for this requirement.

In addition, while responding under Issue #5, some commenters (Exs. 2–11, 2–30, 2–31, and 2–37) indicated that any record retention provision associated with the inspections under this paragraph would be burdensome to employers. OSHA notes, however, that the provision did not require recordkeeping. The ACCSH recommended that a "competent person" (defined in § 1926.32(f)), representing the employer, should examine ladders covered under the standard (Tr. 6/9/87, p. 266). OSHA agrees with the ACCSH and, accordingly, has added language regarding inspection by a competent person to the standard.

The issue also referred to the applicable ANSI standards, paragraph 8.4.1 of both ANSI A14.1–1982 (Ex. 3–11) and ANSI A14.2–1982 (Ex. 3–12), regarding the nature of inspections required after a ladder has been put into service. One commenter (Ex. 2–28) questioned how such inspections are to be performed, and asked whether they had to remove and lay a ladder down to meet the requirements of paragraph (b)(15). The commenter went on to suggest that "A general visual inspection from the bottom of the ladder and while climbing the ladder conducted before [the] first use would be reasonable." OSHA intends that these inspections can be performed visually from a ladder's base by a competent person, without taking a ladder down.

After considering the comments submitted to the record, the Agency is issuing paragraph (b)(15) as a final rule, incorporating the changes to the final rule discussed above.

Paragraph (b)(16) provides that portable ladders with structural defects be immediately withdrawn from service and marked or tagged to show that they should not be used until repaired. To allow for fixed ladders and to take into account that these ladders likely cannot be readily removed from service until repaired, the proposed rule gave employers the alternative of either tagging defective ladders or removing them from service. This was essentially the same rule as existing § 1926.450(a)(2). One difference, however, was that the existing requirement to check for rung corrosion was being deleted because the requirement is now covered in paragraph (b)(15). The proposal also added an exception allowing tagging for defective ladders that are not immediately removed from service or cannot be removed. The proposed language was intended to make it clear that ladders can be reused after they have been properly repaired. In the final rule, OSHA has made serval minor editorial and format changes. Paragraph (b)(16) now applies only to portable ladders. A new paragraph (b)(17) applies to fixed ladders, and proposed paragraph (b)(17) has been renumbered as paragraph (b)(18) of the final rule to accommodate the new paragraph (b)(17).

The one comment (Ex. 2–29) OSHA received regarding paragraph (b)(16) stated that "Ladders with structural defects shall be immediately withdrawn from service." The commenter further stated that "[r]egulations should not allow alternate action of 'do not use' tag." In consideration of this comment, OSHA has revised and redesignated provisions of the proposed rule to differentiate between fixed ladders, which may not necessarily be physically removed from service, and portable ladders, to which the provision regarding immediate removal from service will apply. Therefore, paragraph (b)(16) now applies only to portable ladders. OSHA intends that portable ladders be marked or tagged and removed from use so they are not inadvertently used before they are repaired. Accordingly, OSHA promulgates paragraph (b)(16), as revised.

In paragraph (b)(17) of the final rule, covering fixed ladders, the language from proposed paragraph (b)(16) explaining that tagging is allowed as an alternative to physical removal of a defective ladder from service has been supplemented by two additional alternatives for fixed ladders. Paragraph (b)(17) has been reformatted to indicate clearly that complying with any one of the three alternatives will satisfy the standard. The final standard states, in paragraph (b)(17)(ii), that fixed ladders may also be marked in a manner that readily identifies them as defective, or, in paragraph (b)(17)(iii), blocked to prevent access or use (such as with a plywood attachment that spans several rungs). The language change for the final rule reflects OSHA's determination that employees can be warned not to use a defective ladder by means other than tagging. In recognition of the permanent placement of fixed ladders, which makes it burdensome to physically remove them for repair, OSHA has determined that either tagging, marking, or blocking defective fixed ladders is appropriate. Accordingly, the Agency has shifted the requirements for fixed ladders to paragraph (b)(17) of the final rule.

Therefore, OSHA is promulgating paragraph (b)(17) as final, incorporating the changes to the proposed rule as discussed above.

Paragraph (b)(18) (paragraph (b)(17) of the proposed rule) requires ladder repairs to restore the ladder to a condition meeting the design criteria of the ladder, before the ladder is returned to use. This requirement is part of the ANSI standards (A14.1–1968, A14.2–1956, A14.3–1956) referenced in existing § 1926.450(a) (3), (4), and (5), and is also covered in the pertinent provisions of the current ANSI standards, require that ladders be kept in "safe condition." OSHA determined that the existing requirements do not clearly state what constitutes a safe condition. Based on its review of the record, the Agency concluded that a repaired ladder must satisfy the same criteria that applied when the ladder was built or manufactured for it to be considered safe for use. This means that if, for example, a Type 1A extra-heavy-duty-rated ladder has a broken rung, the replacement rung also must be capable of satisfying the requirements set out in § 1926.1053(a)(1). The Agency proposed to add paragraph (b)(18) (as renumbered) to indicate what an employer must do before returning a ladder to service after it has been removed from service in compliance with paragraph (b)(16) or (b)(17) of the final rule. OSHA has added the language "before the ladder is returned to use" to paragraph (b)(18) (as renumbered) to clarify the proposed provision. The additional language does not change employers' responsibilities from those set by the proposed standard. It simply makes explicit the Agency's intention to prohibit reuse of ladders which have uncorrected defects. The Agency did not receive any comments addressing this paragraph.

These provisions are being promulgated to reduce the significant risk of harm for employees using ladders and to eliminate the need for employers to refer to documents outside part 1926. OSHA has determined that paragraph (b)(18) provides additional and necessary language to convey its regulatory intent and is, therefore, issuing § 1926.1053(b)(18) as a final rule.

Paragraph (b)(19) prohibits the use of single-rail ladders. Although this prohibition was not set out as § 1926.1053(b)(19) in the proposal, it was addressed in Issue #3 of the proposed rule. OSHA raised the issue based on the existing § 1926.450(a)(3) reference to ANSI A14.1–1968 (Ex. 3–6), which, in paragraph 5.2.10, prohibited the use of wooden single-rail ladders. (This provision is not found in the more recent version of ANSI's standard.) In the issue, OSHA raised the question whether it should continue its prohibition on the use of wooden single-rail ladder or expand it to all types of construction materials, such as metal and plastic. The issue also noted that subsequent editions of ANSI A14.1 have not contained the prohibition. However, paragraph 6 of the most recent edition, A14.1.–1982, clearly indicates that the consensus standard covers only multiple-rail ladders, so the absence of an explicit prohibition does not mean that ANSI now accepts the use of single-rail ladders.

OSHA received three comments directed at Issue #3. Two of the three commenters (Exs. 2–29 and 2–35) backed the prohibition against the use of all single-rail ladders, and the third (Ex. 2–12) stated that his company does not use this kind of ladder. The ACCSH also recommended that OSHA continue to prohibit single-rail ladders (Tr. 6/9/87, p. 243).

Based on the comments received and OSHA's belief that single-rail ladders are inherently difficult to use and hazardous because of their instability, the Agency is promulgating paragraph (b)(19) as final.

Paragraph (b)(20), which originally appeared in Issue X–2 of the hearing notice (53 FR 2054), provides that a person using a ladder to ascend or descend shall be directed to face the ladder. This provision is based on existing § 1910.26(c)(3)(v) of the general industry standards and on input from the ACCSH (Tr. 6/10/87, pp. 13–19), regarding safe methods of climbing ladders. OSHA does not currently apply the general industry standard to construction operations. The language has been renumbered from paragraph (b)(18) (as it was originally designated under the issue) to accommodate other provisions that are being added to the final rule.

OSHA received no imput in response to the issue. Based on OSHA's determinations that facing the ladder while climbing, as required in general industry by existing § 1910.26(c)(3)(v), is also necessary to address the Agency and ACCSH concerns for the safety of construction industry employees using ladders, OSHA is promulgating the provision as paragraph (b)(20) in the final rule.

Paragraph (b)(21), which originally appeared as a provision of paragraph (b)(19) in Issue X–2 of the hearing notice (53 FR 2054), requires that each employee use at least one hand to grasp the ladder when progressing up and/or down the ladder. This provision addresses the importance of proper and careful use of ladders in situations when a worker needs to take an item up or down a ladder. Based on former § 1910.25(d)(2)(vi), which was deleted in 1984 because it was written using the word "should" rather than "shall," and was thus unenforceable, paragraph (b)(21) has been renumbered from paragraph (b)(19) (as set out in Issue X–2 of the hearing notice), to accommodate

other provisions being added to the final rule. The former general industry standard had not been applied to construction operations. The other provision of paragraph (b)(19) in Issue X-2, which limited what could be carried by employees climbing a ladder, has been relocated to paragraph (b)(22) of the final rule, for the sake of clarity.

At its meeting of June 10, 1987, the ACCSH discussed safe methods of climbing ladders and the concerns raised by the need to carry materials or equipment up or down a ladder (Tr. 6/10/87, pp. 13–19). The ACCSH recommended that OSHA prohibit employees from carrying loads up a ladder that will prevent the employees from having one hand on the ladder at all times. OSHA adopted this recommendation and added some other points addressed by the ACCSH in their discussion as the basis for paragraph (b)(19) under Issue X-2 of the hearing notice (Ex. 5). Since that time, it has been determined that the provision can be read in a way that allows unsafe climbing. It can be read to mean that only one hand needs to be on (touching) the ladder at all times; that it may be the same hand at all times; and that the one hand may simply slide up the ladder side rail, thus permitting the carrying of objects of any size, weight, or bulk. OSHA decided that the provisions needed to be written to state more clearly the ACCSH's intent, which the Agency believes was to require that one hand grasp the ladder at all times, so that as one hand moves, the other hand maintains contact by grasping the ladder. No comments were received on this issue before the record was closed August 11, 1989.

The Agency notes that the ANSI requirements for the use of portable wood and metal ladders state, in paragraph 8.3.7 of both A14.1–1982 (Ex. 3–11) and A14.2–1982 (Ex. 3–12), respectively, that a "user shall maintain a firm hold on the ladder." OSHA also points out that under section (4) of the ANSI labeling requirements for proper climbing and use of portable ladders, in paragraphs 9.2.2. and 9.2.3 of these same code editions, users are instructed to "maintain a firm grip" and "use both hands in climbing." This language from the ANSI labeling requirements is the wording with which the public and workforce has become familiar through reading the warning/instructional labels that manufacturers affix to their portable ladders. Consequently, OSHA has modified the language recommended by the ACCSH to reflect the ANSI consensus language. However, the Agency has decided not to adopt the ANSI phrase "use both hands in climbing" because that language might be interpreted to mean that small items could not be carried by hand when an individual is climbing a ladder.

In the final rule, OSHA has clarified its intent by changing the words "at least one hand on the ladder at all times," used in the hearing notice, to read "at least one hand to grasp the ladder when progressing up and/or down the ladder." This rephrasing more clearly reflects the Agency's intention to require employees to grasp the ladder with at least one hand while climbing.

In concurrence with the ACCSH recommendation, OSHA is promulgating paragraph (b)(21) as a final rule, and incorporating the editorial change noted above.

Paragraph (b)(22) requires that an employee climbing a ladder shall not carry any object or load that could cause the employee to lose balance and fall. As noted above, paragraph (b)(22) is based on the provision in paragraph (b)(19) of Issue X-2 that limited what an employee could carry while climbing. This provision addresses the importance of proper and careful use of ladders in situations when a worker needs to take an item up or down a ladder. Based on former § 1910.25(d)(2)(vi), which was deleted in 1984 because it was written using the word "should" rather than "shall" and was thus unenforceable, paragraph (b)(22) has been renumbered from paragraph (b)(19) in Issue X-2 of the hearing notice. The former general industry standard had not been applied to construction operations.

As discussed in relation to paragraph (b)(21), the ACCSH recommended that OSHA limit carrying of loads while climbing ladders (Tr. 6/10/87, pp. 13–19). The Agency has framed paragraph (b)(22) to take the ACCSH concerns into account. Although OSHA believes that small items such as hammers, pliers, measuring tapes, nails, paint brushes, and similar items should be carried in pouches, holster, or belt loops, the language in the final rule would not preclude an employee from carrying such items while climbing a ladder so long as the items don't impede the employee's ability to maintain full control while climbing or descending the ladder. It is OSHA's belief that the employee's focus and attention while climbing up and/or down a ladder should be on making a safe ascent or descent and not on transporting items up and down the ladder. OSHA notes that an employee who needs to take a large or heavy object to a different level by means of a ladder can pull the object up or lower it with a handline.

In concurrence with the ACCSH recommendation and for the reasons described above, OSHA is promulgating paragraph (b)(22) as a final rule.

A number of paragraphs from existing § 1926.450 are being deleted as they are to be replaced by the more performance-oriented provisions of § 1926.1053(a)(1): Existing § 1926.450(b)(2); the first line of paragraph (b)(3); and paragraphs (b) (4), (5), (6), and (8) through (12) of that same section are specification-type requirements for job-made ladders. OSHA has determined that these paragraphs do not adequately address all necessary aspects of job-made ladder construction. In addition, the provisions of existing § 1926.450(b) (6), (10), and (11) were developed for manufactured portable wood ladders and not job-made ladders. The language of the final rule corrects these problems. Contractors who wish to refer to a guide table for the construction of job-made ladders may use their own design tables if they are compatible with § 1926.1053(a)(1), or use the ANSI standard for job-made ladders, A14.4–1979, which is listed in appendix A.

Section 1926.1060 Training

The introductory text states that this section clarifies the requirements of § 1926.21(b)(2). Upon reviewing the record and the provisions of proposed § 1926.1060, the Agency has determined that the training requirements in this section simply clarify the safety training and education requirements in existing § 1926.21. Therefore, OSHA is deleting the proposed language "In addition to the requirements of § 1926.21, Safety training and education, the following training requirements apply to this subpart." In addition, the Agency is deleting the rest of the introductory text to § 1926.1060, which read "However, the provisions of this section may be cited only when a citation is being issued concurrently under the provisions of § 1926.1051, § 1926.1052, or § 1926.1053 of this subpart." OSHA has determined that the sentence is not appropriate regulatory language.

Under the introductory text to paragraph (a), employers are required to provide a training program for each employee who uses ladders or stairways, as necessary. This training is intended to instruct each employee to recognize and minimize the hazards associated with ladder or stairway use.

Paragraph (a)(1) clarifies the types of hazards and lists subject areas to be addressed in the training programs conducted for employees using ladders and stairways. Stairways and ladders are safe only when they are designed, built, located, maintained, and used properly. This paragraph identifies components of the requisite training, but does not specify the details of the training program. Employers are required to ensure that each employee is trained by a competent person in the following areas, as applicable: The nature of fall hazards in the work area; the correct procedures for providing fall protection; the proper way to build, use, place, and maintain stairways and ladders; the maximum intended loads of the ladders used; and the standards contained in subpart X.

This approach to training provides flexibility for the employer in designing the training program. The proposed paragraph has been amended to require that the training be provided by a "competent person." This provision was added at the recommendation of the ACCSH (Tr. 6/9/87, p. 266). OSHA agrees that the involvement of a competent person in the program provides appropriate assurance that employees will be adequately trained. OSHA has also deleted the words "and instructed" from the introductory text of proposed paragraph (a)(1), for the sake of clarity.

OSHA solicited comments under Issue #8 regarding employee training and retraining on stairway and ladder use. Altogether, the Agency received 16 comments for both Issue #8 and proposed § 1926.1060. In the issue, OSHA asked for data on the costs and effectiveness of training requirements in reducing the risk of injuries or fatalities, and whether more or less specific requirements were appropriate. In addition, commenters were asked to respond with information about currently available safety programs and their adequacy; the safety records of employees who have been trained; the scope and necessary elements of training programs; the relationship of the additional specific provisions in § 1926.1060(a)(2) (redesignated as paragraph (b) in the final rule) with the more general § 1926.21 requirements; the relationship of costs to benefits under this issue area; and possible recordkeeping burdens these provisions might involve.

Costs or burdens attributable to such training or retraining are already imposed through OSHA's regulations in § 1926.21. OSHA notes that § 1926.21(b)(2) requires employers to "instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury." The Agency's intent in Issue #8 was to get some comment and discussion on whether a specific clarification of the training requirements would be worthwhile, and not to broaden or expand the scope of the training or add a burden to the industry not already imposed by § 1926.21.

The Associated General Contractors of America, Inc. (AGC) (Ex. 2–37) and two of the local chapters (Exs. 2–11 and 2–31) indicated that they had "flexible, cost effective, and practical" training programs already in place. A number of commenters (Exs. 2–6, 2–11, 2–14, 2–23, 2–24, 2–30, 2–31, 2–37, and 2–38) stated that the existing training requirements of § 1926.21 were adequate and should not be expanded as proposed. Most of them (Exs. 2–11, 2–23, 2–24, 2–37, and 2–38) indicated that the existing training requirements were already burdensome given, among other factors, the industry's high employee turnover. OSHA recognizes that employee turnover can substantially increase an employer's training burden. The Agency, however, has determined that the required training and retraining are needed to protect employees from serious hazards. OSHA has framed the training requirements in performance-oriented language, allowing employers the flexibility to establish cost-effective programs and thus to reconcile the need for training with the employers' circumstances.

Some comments (Exs. 2–11, 2–24, 2–30, 2–31, and 2–37) stated that having two training requirements would place employers in "double jeopardy" because, as one comment (Ex. 2–24) explained, employers could receive "two citations for what really is a single violation." However, OSHA has determined that the commenters' are mistaken in their interpretation of the proposal. The Agency notes that in a case where two or more provisions could apply to a single violation the more specific rule always takes precedence over the more general rule. Therefore, only § 1926.1060 would be cited if an employer does not adequately train employees in relation to subpart X.

One comment (Ex. 2–14) stated that placing training requirements in proposed § 1926.1060 was redundant and reduced the effectiveness of the existing standard. That comment also suggested that any change in training requirements should be accomplished through revision of existing § 1926.21.

OSHA notes that § 1926.21(b)(2) requires employers to:

> Instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or the exposure to illness or injury.

The Agency believes that the specific training requirements in this final rule are necessary to provide additional information as a supplement to the existing general training requirements that apply to stairways and ladders. The specific requirements are also necessary to indicate what subpart X training programs are expected to cover and how frequently training is to be provided. Rather than take on the complex task of revising a general provision that applies to many different activities, OSHA has included the necessary additional information in revised subpart X, along with the rest of the provisions that relate specifically to stairways and ladders.

Three commenters (Exs. 2–28, 2–29, and 2–39) stated that the training provisions should be more specific. Two of those commenters (Exs. 2–29 and 2–39) submitted information on particular training programs and materials. OSHA has not made the suggested change because the Agency believes that employers are in the best position to select the training program and materials that are appropriate for their operations. The training materials in the record are available for employers who wish to use them in designing their own programs.

Other comments (Exs. 2–13, 2–22, 2–27, 2–28, 2–39, and 2–42) supported the proposed training requirements. One comment (Ex. 2–28) indicated that proposed § 1926.1060 did not appear to impose a recordkeeping burden. Another comment (Ex. 2–43) suggested that OSHA also require training in tying off. Yet another comment (Ex. 2–27) supported "further expansion" of the training requirements. OSHA has not made these suggested changes because the Agency believes that the proposed performance-oriented language allows employers the flexibility necessary to establish programs that appropriately address their circumstances.

Paragraph (b) requires retraining to be provided for each employee, as necessary, so that the employee maintains the understanding and knowledge acquired through compliance with this section. This provision was proposed as § 1926.1060(a)(2), and has been redesignated as paragraph (b) for editorial purposes. To clarify OSHA's intent and allow flexibility regarding the frequency of such retraining, the final rule differs from the proposal in several minor respects: OSHA has removed the words "Training and" from the beginning of the paragraph and has added the phrase "so that each employee maintains the understanding

and knowledge acquired through compliance with this section" at the end of the provision.

OSHA requested public comment on the frequency of retraining in Issue #8 of the NPRM. As noted above, OSHA is aware of the construction industry's generally high level of employee turnover and current training responsibilities. The Agency notes, however, that none of the commenters had recommendations regarding the appropriate frequency of retraining. Therefore, OSHA continues to believe that the most reasonable course is to require retraining as necessary. Accordingly, the Agency is promulgating (b) as amended.

Appendix A to subpart X provides information for employers seeking to comply with the ladder loading and strength requirements of § 1926.1053(a)(1), and lists the applicable ANSI standards that an employer can use to purchase, design, or build ladders that would be considered to meet the OSHA standard. In the final rule, proposed appendix A has been amended for the sake of clarity and to eliminate redundancy.

Specific Issues

In the specific issues section of the proposed rule (51 FR 42758 and 42759, Nov. 25, 1986), OSHA sought public comments on 12 separate issues to identify or raise particular points encompassed by this rulemaking that it felt merited attention. In addition, OSHA sought testimony on two specific issues in the hearing notice (53 FR 2954, Jan. 26, 1988). All but two of these issues have already been discussed above. The provisions addressed in the two remaining issues are discussed below.

OSHA sought comments under Issue #1 on the following concerns affected by the revised subpart: The level of current industry practices meeting the new or revised provisions; the practicality and effectiveness of the suggested changes in preventing or lessening the severity of accidents; any previously undiscussed costs or savings; and any pertinent reports indicating the need for additional changes. In the responses to the proposed rule, OSHA received three comments directed to this issue.

One commenter (Ex. 2-30) stated that while it had no specific injury data, it urged the use of the American National Standards Institute's (ANSI) Bi-Level Fall Victim Report Form for ladders in the A14 Portable Ladder Standard (from the Appendixes to ANSI A14.1-1982 and A14.2-1982) as a way to pinpoint ladder injury problems. OSHA appreciates the suggestion and will consider ways in which these forms can be used in consultation with the Department's Bureau of Labor Statistics, to enhance data collection efforts.

Two of the three commenters (Exs. 2-23 and 2-28) who responded to Issue #1 indicated that they felt the industry generally complied with the current requirements. One of them (Ex. 2-23) further indicated that the new regulations would add clarity and uniformity.

Issue #9 of the proposed rule (p. 42759) asked for comments regarding the use of specific numerical limits, such as the stairway slope requirement in proposed § 1926.1052(a)(2). OSHA proposed those provisions, which are based on existing rules and consensus standards, to state clearly what the Agency has determined is necessary for workplace safety. OSHA stated its belief that the use of specific limits in certain provisions promotes consistency, while minimizing legal disputes over the intent of a requirement, but also noted this may: increase costs without increasing safety; discourage technical innovation; prevent the use of safe alternatives; and fail to anticipate the varying needs and situations covered by the standard.

OSHA received nine comments in response to Issue #9. Two commenters (Exs. 2-23 and 2-35) supported the balance of specific numeric limits and performance language that the Agency has set out under the standards. Responses from two more commenters (Exs. 2-6 and 2-12) did not clearly support either approach. The ACCSH recommended continuing the use of specification language as already required in the standard (Tr. 6/9/87, pp. 266-268). On the other hand, one commenter (Ex. 2-29) came out against specification language altogether, and the other four (Exs. 2-11, 2-31, 2-37, and 2-38) favored performance-oriented language, but indicated that adding a non-mandatory appendix as a guideline to applying the standard would be of value to contractors.

OSHA notes that there was some balance of opinion among the nine commenters and the ACCSH recommendation in response to the issue, and no position was backed by a substantial number of proponents. In addition, those commenters who stated their support for performance-oriented language did not specify particular points where specification language was inappropriate. As noted in the proposal, OSHA has drafted the new standard largely using performance language, and the standard includes only such specification language as the Agency considers necessary for employee safety.

IV. Regulatory Impact Assessment and Regulatory Flexibility Analysis

Introduction

In accordance with Executive Order 12291 (46 FR 13193, Feb. 17, 1981) OSHA has analyzed the economic impact of this final rulemaking. Under the criteria established in Executive Order 12291, the promulgation of this revision of subpart X will be a "minor" action. This rule will not cause a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions, and will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Revised subparts L, M, and X cover surfaces and areas that are currently covered under the existing subparts L and M. OSHA has reorganized these subparts in order to construct a more logical ordering of its standards and to facilitate employers in finding the sections appropriate to their concerns.

Affected industries and population at risk. The entire construction industry would be affected by the changes to the existing subparts L and M in view of the extensive use of ladders and stairways in all sectors of the industry. In terms of the two-digit Standard Industrial Classification (SIC) codes, OSHA determined that the revision could potentially affect all firms in SIC 15 (Building Construction—General Contractors and Operative Builders), SIC 16 (Construction Other Than Building Construction—General Contractors), and SIC 17 (Construction—Special Trades Contractors). In 1987, there were approximately 540,000 establishments affected by subparts L and M. The majority of business firms classified under SIC 17 are subcontractors to the general contractors classified under SICs 15 and 16. Rather than classifying these sectors by their two-digit SIC designations, OSHA used the type of finished construction product as the basis for classifying the construction industry into the following four general sectors:

1. Single-family housing,
2. Other residential, (e.g., hotels, apartments),
3. Nonresidential (e.g., commercial and institutional buildings), and
4. Heavy construction (e.g., bridges, utilities).

OSHA estimated that all of the approximately 4.5 million construction workers frequently work on ladders and stairways.

Significance of risk. On the basis of data from the Supplementary Data System (SDS) and Occupational Injury and Illness (OII) reports from the Bureau of Labor Statistics (BLS), OSHA estimates that the annual number of injuries in construction due to falls from ladders and stairways would be 208,280.

In addition, there are approximately 36 fatalities associated with falls from ladders and stairways in construction each year.

Consequently, OSHA concludes that the construction injuries and fatalities due to falls from ladders and stairways present a significant hazard which should be reduced.

Feasibility. OSHA determined that compliance with the revised subpart X will be technologically feasible because it requires the use of readily available technology and equipment, such as sufficiently strong stair rails and ladders.

Benefits. Benefits from this revision to the standard would accrue to those workers who are at risk from hazards associated with practices involving ladders and stairways in the construction industry. OSHA estimates that full compliance with the revised standard would prevent approximately 24 fatalities, 18,757 injuries (of which 8,722 would have been lost workday injuries and 10,035 would have been non-lost workday injuries), and 156,996 lost workdays (see table A). OSHA also determined that full compliance with the existing standard would prevent 21 fatalities, 17,800 injuries (of which 8,277 would have been lost workday injuries and 9,523 would have been non-lost workday injuries), and 148,986 lost workdays. Under conditions of full compliance, therefore, the revised standard would be more protective than the existing standard as three more fatalities would be prevented, 957 more injuries would be prevented (including 445 lost workday injuries and 512 non-lost workday injuries), and 8,010 fewer workdays would be lost.

TABLE A—FATALITIES AND INJURIES PREVENTABLE BY FULL COMPLIANCE WITH THE REVISED AND EXISTING STANDARDS

Nature of accident	Number of accidents prevented		
	Revised standard	Existing standard	Difference
Fatalities	24	21	3
Injuries:			
Lost workday	8,722	8,277	445
Non-lost workday	10,035	9,523	512
Total	18,757	17,800	957
Lost workdays	156,996	148,986	8,010

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

The prevention of accidents involves significant nonmonetizable benefits (such as the avoidance of pain and suffering) but also involves substantial monetizable benefits to workers, industry, and society.

Using a willingness-to-pay methodology, the benefits of injuries prevented by the revised standard would be $265 million annually. In addition, approximately 24 fatalities per year would be prevented.

Another measure of the benefits of the reduction of accidents is the savings to industry of Workers' Compensation payments. Full compliance with the revised standard could substantially reduce compensation payments, which cover medical costs and part of lost wages; accidents also cause significant costs to industry through lost productivity, administrative costs, and new hiring and training costs.

Full compliance with the revised standard would prevent approximately 3 fatalities and 957 injuries more than would be prevented by full compliance with the existing standard. The corresponding monetizable annual benefits (not including the lives saved) would be from $6 million to $14 million more than those under the existing standard.

Costs. Using the baseline of current industry practice, OSHA estimated that the total costs of full compliance with the revised standard would be $27.61 million annually, and that the annual costs of full compliance with the existing standard would be $20.11 million.

Thus, the incremental cost increase in going from full compliance with the existing provisions to full compliance with the revised subpart X would amount to $7.50 million, which is attributable to additional labor time associated with increased training and the use of safe work practices. Table B shows the costs of the revised and existing standards by construction sector.

Cost Effectiveness

Full compliance with the revised standard would provide a safer construction work environment but at a higher cost than that provided by full compliance with the existing standard. After carefully evaluating both regulatory and nonregulatory alternatives, OSHA has concluded that the revised subpart X standard is the more cost-effective alternative. The revised subpart X standard will increase the number of lives saved and injuries prevented without unnecessarily burdening industry. As a result, the potential annual monetizable benefits to society may be over $200 million.

OSHA also believes that overall compliance with the provisions of the revised standard is likely to be greater than it has been under the existing standard. This is due to the performance-oriented requirements which increase the flexibility of compliance, and to the training requirements which increase awareness of hazards and compliance with safe work practice requirements. The reorganization and clarification of requirements is also expected to contribute to improved compliance levels.

TABLE B—COMPARISON OF COSTS OF COMPLIANCE WITH THE REVISED SUBPART X AND WITH THE EXISTING SUBPARTS L AND M BY CONSTRUCTION SECTOR BASELINE: CURRENT INDUSTRY PRACTICE

[Dollar amounts in millions]

Sector	Costs of compliance		Net increase for revised standard
	Revised subpart X	Existing subparts L and M	
Single-family housing	$6.98	$5.08	$1.90
Other residential	4.76	3.47	1.29
Nonresidential	8.74	7.06	2.65
Heavy	8.13	4.47	1.66
Total	27.61	20.11	7.50

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

Regulatory flexibility certification. Pursuant to the Regulatory Flexibility Act (Pub. L. 96-353, 84 Stat, 1164 [5 U.S.C. 60 et seq.]), OSHA has made an assessment of the impact of the revised standard and has concluded that it would not have a significant impact upon a substantial number of small entities. The important criterion that governs a Regulatory Flexibility Analysis is whether the revised standard would impose significant costs upon small entities. "Significance" is determined by the impact upon profits, market share, and on the entities' financial viability. In particular, the revised standards' effect upon small entities relative to its effect upon large entities needs to be specifically evaluated. That is, OSHA must determine whether the revision will have a relatively greater negative effect on small entities than upon large

entities, thereby putting small entities at a competitive disadvantage, and if so, whether there are ways to minimize any differentially adverse effects without increasing worker risk.

If the costs of compliance for small firms are relatively minor and are proportional to the size of the firm, then there is no significant differential effect. In those cases involving larger absolute costs, small firms may have greater difficulty in obtaining financing, and in those cases involving economies of scale in compliance, the burden on small firms will be greater than the burden on large firms. The revised subpart X, however, requires minimal capital expenditures. The costs of compliance primarily depend upon the amount of ladder use and stairway footage, which typically depend upon the scale of operation of the entity. In addition, these costs would be a minimal component of the overall costs of the facilities. As a result, small entities would not be put at a competitive disadvantage due to these compliance costs. Thus, OSHA concluded that this revised standard will not have a significant adverse impact upon a substantial number of small entities.

V. Environmental Assessment

Finding of No Significant Impact

This final rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR part 1500), and OSHA's DOL NEPA Procedures (29 CFR part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the final rule will have no significant environmental impact.

The revisions to 29 CFR 1926.1050–1926.1060, subpart X—Stairways and Ladders, focus on the reduction of accidents or injuries by means of work practices and procedures, proper use and handling of equipment, and training, as well as on changes in language, definition, and format of the standard. These revisions do not impact on air, water, or soil quality, plant or animal life, the use of land, or other aspects of the environment. As such, these revisions are, therefore, categorized as excluded actions according to subpart B, § 11.10, of the DOL NEPA regulations.

IV. Regulatory Impact Assessment and Regulatory Flexibility Analysis.

Introduction

In accordance with Executive Order 12291 (46 FR 13193, Feb. 17, 1981) OSHA has analyzed the economic impact of this final rulemaking. Under the criteria established in Executive Order 12291, the promulgation of this revision of subpart X will be a "minor" action. This rule will not cause a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions, and will not result in significant adverse effects on

VI. Recordkeeping

There are no collections of information in this final rule. Therefore, approval by OMB under the Paperwork Reduction Act is not necessary. However, public comment was requested in Issue #8 regarding whether the training requirements impose an implicit recordkeeping requirement on employers. The one comment (Ex. 2–28) received on this issue supported OSHA's finding that no recordkeeping burden is imposed by the training provisions of § 1926.1060.

VII. State Plan Standards

The 25 states and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within 6 months of the publication date of the final rule. These states and territories are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, New York (for state and local government employees only), Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a comparable standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these states and territories.

VIII. Federalism

The Final Rule has been reviewed in accordance with Executive Order 12812 (52 FR 41685, Oct. 30, 1987) regarding Federalism. The Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with states prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt State laws relating to issues with respect to which Federal OSHA has promulgated occupational safety and health standards. Under the OSH Act, a State can avoid preemption only if it submits, and obtains Federal approval of a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan States must, among other things, be at least as effective in providing safe and obtains Federal approval of a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Where such standards are applicable to products distributed or used in interstate commerce, they may not unduly burden commerce and must be justified by compelling local conditions, see section 18(c)(2).

The Federal standard on construction operations involving stairways and ladders addresses hazards that are not unique to any one state or region of the country. Nonetheless, States with occupational safety and health plans approved under section 18 of the OSH Act will be able to develop their own State standards to deal with any special problems which might be encountered in a particular State. Moreover, because this standard is written in general, performance-oriented terms, there is considerable flexibility fo State plans to require, and for affected employers to use, methods of compliance which are appropriate to the working conditions covered by the standard.

In brief, this final rule addresses a clear national problem related to occupational safety and health in the construction industry. Those states which have elected to particiapte under section 18 of the OSH Act are not preempted by this standard, and will be able to address any special conditions within the framework of the Federal Act while ensuring that the state standards are at least as effective as that standard.

Authority: This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

List of Subjects in 29 CFR Part 1926

Construction safety, Construction industry, Ladders and scaffolds, Occupational safety and health, Protective equipment, Safety.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR part 1911, 29 CFR part 1926 is amended as set forth below.

Signed at Washington, DC, this 5th day of November, 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

PART 1926—[AMENDED]

1. The authority citation for subpart L of part 1926 continues to read as follows:

Authority: Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 37536) as applicable.

2. The heading for subpart L is revised to read as follows:

Subpart L—Scaffolding

§ 1926.450 [Reserved]

3. Section § 1926.450 is removed and reserved.

§ 1926.452 [Amended]

4. Paragraph (a) of 1926.452 is removed and reserved.

Subpart M—[Amended]

5. The authority citation for subpart M of part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 37536) * * *.

6. The heading for subpart M is revised to read as follows:

Subpart M—Floor and Wall Openings

§ 1926.500 [Amended]

7. Paragraphs (e) and (f)(2) of § 1926.500 are removed and reserved.

§ 1926.501 [Reserved]

8. Section 1926.501 is removed and reserved.

9. Subpart X of part 1926 is revised to read as follows:

Subpart X—Stairways and Ladders

Sec.

1926.1050 Scope, application, and definitions applicable to this subpart.
1926.1051 General requirements.
1926.1052 Stairways.
1926.1053 Ladders.
1926.1054–1926.1059 [Reserved]
1926.1060 Training requirements.

Appendix A to Subpart X—Ladders

Subpart X—Stairways and Ladders

Authority: Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1–90 (55 FR 9033); and 29 CFR part 1911.

§ 1926.1050 Scope, application, and definitions applicable to this subpart.

(a) *Scope and application.* This subpart applies to all stairways and ladders used in construction, alteration, repair (including painting and decorating), and demolition workplaces covered under 29 CFR part 1926, and also sets forth, in specified circumstances, when ladders and stairways are required to be provided. Additional requirements for ladders used on or with scaffolds are contained in Subpart L—Scaffolds.

(b) *Definitions.*

Cleat means a ladder crosspiece of rectangular cross section placed on edge upon which a person may step while ascending or descending a ladder.

Double-cleat ladder means a ladder similar in construction to a single-cleat ladder, but with a center rail to allow simultaneous two-way traffic for employees ascending or descending.

Equivalent means alternative designs, materials, or methods that the employer can demonstrate will provide an equal or greater degree of safety for employees than the method or item specified in the standard.

Extension trestle ladder means a self-supporting portable ladder, adjustable in length, consisting of a trestle ladder base and a vertically adjustable extension section, with a suitable means for locking the ladders together.

Failure means load refusal, breakage, or separation of component parts. Load refusal is the point where the structural members lose their ability to carry the loads.

Fixed ladder means a ladder that cannot be readily moved or carried because it is an integral part of a building or structure. A *side-step fixed ladder* is a fixed ladder that requires a person getting off at the top to step to the side of the ladder side rails to reach the landing. A *through fixed ladder* is a fixed ladder that requires a person getting off at the top to step between the side rails of the ladder to reach the landing.

Handrail means a rail used to provide employees with a handhold for support.

Individual-rung/step ladders means ladders without a side rail or center rail support. Such ladders are made by mounting individual steps or rungs directly to the side or wall of the structure.

Job-made ladder means a ladder that is fabricated by employees, typically at the construction site, and is not commercially manufactured. This definition does not apply to any individual-rung/step ladders.

Lower levels means those areas to which an employee can fall from a stairway or ladder. Such areas include ground levels, floors, roofs, ramps, runways, excavations, pits, tanks, material, water, equipment, and similar surfaces. It does not include the surface from which the employee falls.

Maximum intended load means the total load of all employees, equipment, tools, materials, transmitted loads, and other loads anticipated to be applied to a ladder component at any one time.

Nosing means that portion of a tread projecting beyond the face of the riser immediately below.

Point of access means all areas used by employees for work-related passage from one area or level to another. Such open areas include doorways, passageways, stairway openings, studded walls, and various other permanent or temporary openings used for such travel.

Portable ladder means a ladder than can be readily moved or carried.

Riser height means the vertical distance from the top of a tread to the top of the next higher tread or platform/landing or the distance from the top of a platform/landing to the top of the next higher tread or platform/landing.

Side-step fixed ladder. See "Fixed ladder."

Single-cleat ladder means a ladder consisting of a pair of side rails, connected together by cleats, rungs, or steps.

Single-rail ladder means a portable ladder with rungs, cleats, or steps mounted on a single rail instead of the normal two rails used on most other ladders.

Spiral stairway means a series of steps attached to a vertical pole and progressing upward in a winding fashion within a cylindrical space.

Stairrail system means a vertical barrier erected along the unprotected sides and edges of a stariway to prevent

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employees from falling to lower levels. The top surface of a stairrail system may also be a "handrail."

Step stool (ladder type) means a self-supporting, foldable, portable ladder, nonadjustable in length, 32 inches or less in overall size, with flat steps and without a pail shelf, designed to be climbed on the ladder top cap as well as all steps. The side rails may continue above the top cap.

Through fixed ladder. See "Fixed ladder."

Tread depth means the horizontal distance from front to back of a tread (excluding nosing, if any).

Unprotected sides and edges means any side or edge (except at entrances to points of access) of a stairway where there is no stairrail system or wall 36 inches (.9 m) or more in height, and any side or edge (except at entrances to points of access) of a stairway landing, or ladder platform where there is no wall or guardrail system 39 inches (1 m) or more in height.

§ 1926.1051 General requirements.

(a) A stairway or ladder shall be provided at all personnel points of access where there is a break in elevation of 19 inches (48 cm) or more, and no ramp, runway, sloped embankment, or personnel hoist is provided.

(1) Employees shall not use any spiral stairways that will not be a permanent part of the structure on which construction work is being performed.

(2) A double-cleated ladder or two or more separate ladders shall be provided when ladders are the only mean of access or exit from a working area for 25 or more employees, or when a ladder is to serve simultaneous two-way traffic.

(3) When a building or structure has only one point of access between levels, that point of access shall be kept clear to permit free passage of employees. When work must be performed or equipment must be used such that free passage at that point of access is restricted, a second point of access shall be provided and used.

(4) When a building or structure has two or more points of access between levels, at least one point of access shall be kept clear to permit free passage of employees.

(b) Employers shall provide and install all stairway and ladder fall protection systems required by this subpart and shall comply with all other pertinent requirements of this subpart before employees begin the work that necessitates the installation and use of stairways, ladders, and their respective fall protection systems.

§ 1926.1052 Stairways.

(a) *General.* The following requirements apply to all stairways as indicated:

(1) Stairways that will not be a permanent part of the structure on which construction work is being performed shall have landings of not less than 30 inches (76 cm) in the direction of travel and extend at least 22 inches (56 cm) in width at every 12 feet (3.7 m) or less of vertical rise.

(2) Stairs shall be installed between 30° and 50° from horizontal.

(3) Riser height and tread depth shall be uniform within each flight of stairs, including any foundation structure used as one or more treads of the stairs. Variations in riser height or tread depth shall not be over ¼-inch (0.6 cm) in any stairway system.

(4) Where doors or gates open directly on a stairway, a platform shall be provided, and the swing of the door shall not reduce the effective width of the platform to less than 20 inches (51 cm).

(5) Metal pan landings and metal pan treads, when used, shall be secured in place before filling with concrete or other material.

(6) All parts of stairways shall be free of hazardous projections, such as protruding nails.

(7) Slippery conditions on stairways shall be eliminated before the stairways are used to reach other levels.

(b) *Temporary service.* The following requirements apply to all stairways as indicated:

(1) Except during stairway construction, foot traffic is prohibited on stairways with pan stairs where the treads and/or landings are to be filled in with concrete or other material at a later date, unless the stairs are temporarily fitted with wood or other solid material at least to the top edge of each pan. Such temporary treads and landings shall be replaced when worn below the level of the top edge of the pan.

(2) Except during stairway construction, foot traffic is prohibited on skeleton metal stairs where permanent treads and/or landings are to be installed at a later date, unless the stairs are fitted with secured temporary treads and landings long enough to cover the entire tread and/or landing area.

(3) Treads for temporary service shall be made of wood or other solid material, and shall be installed the full width and depth of the stair.

(c) *Stairrails and handrails.* The following requirements apply to all stairways as indicated:

(1) Stairways having four or more risers or rising more than 30 inches (76 cm), whichever is less, shall be equipped with at least one handrail and one stairrail system along each unprotected side or edge. However, when the top edge of a stairrail system also serves as a handrail, paragraph (c)(7) of this section applies.

(2) Winding and spiral stairways shall be equipped with a handrail offset sufficiently to prevent walking on those portions of the stairways where the tread width is less than 6 inches (15 cm).

(3) The height of stairrails shall be as follows:

(i) Stairrails installed after March 15, 1991, shall be not less than 36 inches (91.5 cm) from the upper surface of the stairrail system to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

(ii) Stairrails installed before March 15, 1991, shall be not less than 30 inches (76 cm) nor more than 34 inches (86 cm) from the upper surface of the stairrail system to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

(4) Midrails, screens, mesh, intermediate vertical members, or equivalent intermediate structural members, shall be provided between the top rail of the stairrail system and the stairway steps.

(i) Midrails, when used, shall be located at a height midway between the top edge of the stairrail system and the stairway steps.

(ii) Screens or mesh, when used, shall extend from the top rail to the stairway step, and along the entire opening between top rail supports.

(iii) When intermediate vertical members, such as balusters, are used between posts, they shall be not more than 19 inches (48 cm) apart.

(iv) Other structural members, when used, shall be installed such that there are no openings in the stairrail system that are more than 19 inches (48 cm) wide.

(5) Handrails and the top rails of stairrail systems shall be capable of withstanding, with failure, a force of at least 200 pounds (890 n) applied within 2 inches (5 cm) of the top edge, in any downward or outward direction, at any point along the top edge.

(6) The height of handrails shall be not more than 37 inches (94 cm) nor less than 30 inches (76 cm) from the upper surface of the handrail to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

(7) When the top edge of a stairrail system also serves as a handrail, the height of the top edge shall be not more than 37 inches (94 cm) nor less than 36 inches (91.5 cm) from the upper surface of the stairrail system to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

(8) Stairrail systems and handrails shall be so surfaced as to prevent injury to employees from punctures or lacerations, and to prevent snagging of clothing.

(9) Handrails shall provide an adequate handhold for employees grasping them to avoid falling.

(10) The ends of stairrail systems and handrails shall be constructed so as not to constitute a projection hazard.

(11) Handrails that will not be a permanent part of the structure being built shall have a minimum clearance of 3 inches (8 cm) between the handrail and walls, stairrail systems, and other objects.

(12) Unprotected sides and edges of stairway landings shall be provided with guardrail systems. Guardrail system criteria are contained in subpart M of this part.

§ 1926.1053 Ladders.

(a) *General.* The following requirements apply to all ladders as indicated, including job-made ladders.

(1) Ladders shall be capable of supporting the following loads without failure:

(i) Each self-supporting portable ladder: At least four times the maximum intended load, except that each extra-heavy-duty type 1A metal or plastic ladder shall sustain at least 3.3 times the maximum intended load. The ability of a ladder to sustain the loads indicated in this paragraph shall be determined by applying or transmitting the requisite load to the ladder in a downward vertical direction. Ladders built and tested in conformance with the applicable provisions of appendix A of this subpart will be deemed to meet this requirement.

(ii) Each portable ladder that is not self-supporting: At least four times the maximum intended load, except that each extra-heavy-duty type 1A metal or plastic ladders shall sustain at least 3.3 times the maximum intended load. The ability of a ladder to sustain the loads indicated in this paragraph shall be determined by applying or transmitting the requisite load to the ladder in a downward vertical direction when the ladder is placed at an angle of 75½ degrees from the horizontal. Ladders built and tested in conformance with the applicable provisions of appendix A will be deemed to meet this requirement.

(iii) Each fixed ladder: At least two loads of 250 pounds (114 kg) each, concentrated between any two consecutive attachments (the number and position of additional concentrated loads of 250 pounds (114 kg) each, determined from anticipated usage of the ladder, shall also be included), plus anticipated loads caused by ice buildup, winds, rigging, and impact loads resulting from the use of ladder safety devices. Each step or rung shall be capable of supporting a single concentrated load of at least 250 pounds (114 kg) applied in the middle of the step or rung. Ladders built in conformance with the applicable provisions of appendix A will be deemed to meet this requirement.

(2) Ladder rungs, cleats, and steps shall be parallel, level, and uniformly spaced when the ladder is in position for use.

(3)(i) Rungs, cleats, and steps of portable ladders (except as provided below) and fixed ladders shall be spaced not less than 10 inches (25 cm) apart, nor more than 14 inches (36 cm) apart, as measured along the ladder's side rails.

(ii) Rungs, cleats, and steps of step stools shall be not less than 8 inches (20 cm) apart, nor more than 12 inches (31 cm) apart, as measured between center lines of the rungs, cleats, and steps.

(iii) Rungs, cleats, and steps of the base section of extension trestle ladders shall be not less than 8 inches (20 cm) nor more than 18 inches (46 cm) apart, as measured between center lines of the rungs, cleats, and steps. The rung spacing on the extension section of the extension trestle ladder shall be not less than 6 inches (15 cm) nor more than 12 inches (31 cm).

(4)(i) The minimum clear distance between the sides of individual-rung/step ladders and the minimum clear distance between the side rails of other fixed ladders shall be 16 inches (41 cm).

(ii) The minimum clear distance between side rails for all portable ladders shall be 11½ inches (29 cm).

(5) The rungs of individual-run/step ladders shall be shaped such that employees' feet cannot slide off the end of the rungs.

(6)(i) The rungs and steps of fixed metal ladders manufactured after January 14, 1991, shall be corrugated, knurled, dimpled, coated with skid-resistant material, or otherwise treated to minimize slipping.

(ii) The rungs and steps of portable metal ladders shall be corrugated, knurled, dimpled, coated with skid-resistant material, or otherwise treated to minimize slipping.

(7) Ladders shall not be tied or fastened together to provide longer sections unless they are specifically designed for such use.

(8) A metal spreader or locking device shall be provided on each stepladder to hold the front and back sections in an open position when the ladder is being used.

(9) When splicing is required to obtain a given length of side rail, the resulting side rail must be at least equivalent in strength to a one-piece side rail made of the same material.

(10) Except when portable ladders are used to gain access to fixed ladders (such as those on utility towers, billboards, and other structures where the bottom of the fixed ladder is elevated to limit access), when two or more separate ladders are used to reach an elevated work area, the ladders shall be offset with a platform or landing between the ladders. (The requirements to have guardrail systems with toeboards for falling object and overhead protection on platforms and landings are set forth in subpart M of this part.)

(11) Ladder components shall be surfaced so as to prevent injury to an employee from punctures or lacerations, and to prevent snagging of clothing.

(12) Wood ladders shall not be coated with any opaque covering, except for identification or warning labels which may be placed on one face only of a side rail.

(13) The minimum perpendicular clearance between fixed ladder rungs, cleats, and steps, and any obstruction behind the ladder shall be 7 inches (18 cm), except in the case of an elevator pit ladder, for which a minimum perpendicular clearance of 4½ inches (11 cm) is required.

(14) The minimum perpendicular clearance between the center line of fixed ladder rungs, cleats, and steps, and any obstruction on the climbing side of the ladder shall be 30 inches (76 cm), except as provided in paragraph (a)(15) of this section.

(15) When unavoidable obstructions are encountered, the minimum perpendicular clearance between the centerline of fixed ladder rungs, cleats, and steps, and the obstruction on the climbing side of the ladder may be reduced to 24 inches (61 cm), provided that a deflection device is installed to guide employees around the obstruction.

(16) Through fixed ladders at their point of access/egress shall have a step-across distance of not less than 7 inches (18 cm) nor more than 12 inches (30 cm) as measured from the centerline of the steps or rungs to the nearest edge of the landing area. If the normal step-across distance exceeds 12 inches (30 cm), a landing platform shall be provided to reduce the distance to the specified limit.

(17) Fixed ladders without cages or wells shall have a clear width to the

nearest permanent object of at least 15 inches (38 cm) on each side of the centerline of the ladder.

(18) Fixed ladders shall be provided with cages, wells, ladder safety devices, or self-retracting lifelines where the length of climb is less than 24 feet (7.3 m) but the top of the ladder is at a distance greater than 24 feet (7.3 m) above lower levels.

(19) Where the total length of a climb equals or exceeds 24 feet (7.3 m), fixed ladders shall be equipped with one of the following:

(i) Ladder safety devices; or

(ii) Self-retracting lifelines, and rest platforms at intervals not to exceed 150 feet (45.7 m); or

(iii) A cage or well, and multiple ladder sections, each ladder section not to exceed 50 feet (15.2 m) in length. Ladder sections shall be offset from adjacent sections, and landing platforms shall be provided at maximum intervals of 50 feet (15.2 m).

(20) Cages for fixed ladders shall conform to all of the following:

(i) Horizontal bands shall be fastened to the side rails of rail ladders, or directly to the structure, building, or equipment for individual-rung ladders;

(ii) Vertical bars shall be on the inside of the horizontal bands and shall be fastened to them;

(iii) Cages shall extend not less than 27 inches (68 cm), or more than 30 inches (76 cm) from the centerline of the step or rung (excluding the flare at the bottom of the cage), and shall not be less than 27 inches (68 cm) in width;

(iv) The inside of the cage shall be clear of projections;

(v) Horizontal bands shall be spaced not more than 4 feet (1.2 m) on center vertically; horizontally;

(vi) Vertical bars shall be spaced at intervals not more than 9½ inches (24 cm) on center;

(vii) The bottom of the cage shall be at a level not less than 7 feet (2.1 m) nor more than 8 feet (2.4 m) above the point of access to the bottom of the ladder. The bottom of the cage shall be flared not less than 4 inches (10 cm) all around within the distance between the bottom horizontal band and the next higher band;

(viii) The top of the cage shall be a minimum of 42 inches (1.1 m) above the top of the platform, or the point of access at the top of the ladder, with provision for access to the platform or other point of access.

(21) Wells for fixed ladders shall conform to all of the following:

(i) They shall completely encircle the ladder;

(ii) They shall be free of projections;

(iii) Their inside face on the climbing side of the ladder shall extend not less than 27 inches (68 cm) nor more than 30 inches (76 cm) from the centerline of the step or rung;

(iv) The inside clear width shall be at least 30 inches (76 cm);

(v) The bottom of the wall on the access side shall start at a level not less than 7 feet (2.1 m) nor more than 8 feet (2.4 m) above the point of access to the bottom of the ladder.

(22) Ladder safety devices, and related support systems, for fixed ladders shall conform to all of the following:

(i) They shall be capable of withstanding without failure a drop test consisting of an 18-inch (41 cm) drop of a 500-pound (226 kg) weight;

(ii) They shall permit the employee using the device to ascend or descend without continually having to hold, push or pull any part of the device, leaving both hands free for climbing;

(iii) They shall be activated within 2 feet (.61 m) after a fall occurs, and limit the descending velocity of an employee to 7 feet/sec. (2.1 m/sec.) or less;

(iv) The connection between the carrier or lifeline and the point of attachment to the body belt or harness shall not exceed 9 inches (23 cm) in length.

(23) The mounting of ladder safety devices for fixed ladders shall conform to the following:

(i) Mountings for rigid carriers shall be attached at each end of the carrier, with intermediate mountings, as necessary, spaced along the entire length of the carrier, to provide the strength necessary to stop employees' falls.

(ii) Mountings for flexible carriers shall be attached at each end of the carrier. When the system is exposed to wind, cable guides for flexible carriers shall be installed at a minimum spacing of 25 feet (7.6 m) and maximum spacing of 40 feet (12.2 m) along the entire length of the carrier, to prevent wind damage to the system.

(iii) The design and installation of mountings and cable guides shall not reduce the design strength of the ladder.

(24) The side rails of through or side-step fixed ladders shall extend 42 inches (1.1 m) above the top of the access level or landing platform served by the ladder. For a parapet ladder, the access level shall be the roof if the parapet is cut to permit passage through the parapet; if the parapet is continuous, the access level shall be the top of the parapet.

(25) For through-fixed-ladder extensions, the steps or rungs shall be omitted from the extension and the extension of the side rails shall be flared to provide not less than 24 inches (61 cm) nor more than 30 inches (76 cm) clearance between side rails. Where ladder safety devices are provided, the maximum clearance between side rails of the extensions shall not exceed 36 inches (91 cm).

(26) For side-step fixed ladders, the side rails and the steps or rungs shall be continuous in the extension.

(27) Individual-rung/step ladders, except those used where their access openings are covered with manhole covers or hatches, shall extend at least 42 inches (1.1 m) above an access level or landing platform either by the continuation of the rung spacings as horizontal grab bars or by providing vertical grab bars that shall have the same lateral spacing as the vertical legs of the rungs.

(b) *Use.* The following requirements apply to the use of all ladders, including job-made ladders, except as otherwise indicated:

(1) When portable ladders are used for access to an upper landing surface, the ladder side rails shall extend at least 3 feet (.9 m) above the upper landing surface to which the ladder is used to gain access; or, when such an extension is not possible because of the ladder's length, then the ladder shall be secured at its top to a rigid support that will not deflect, and a grasping device, such as a grabrail, shall be provided to assist employees in mounting and dismounting the ladder. In no case shall the extension be such that ladder deflection under a load would, by itself, cause the ladder to slip off its support.

(2) Ladders shall be maintained free of oil, grease, and other slipping hazards.

(3) Ladders shall not be loaded beyond the maximum intended load for which they were built, nor beyond their manufacturer's rated capacity.

(4) Ladders shall be used only for the purpose for which they were designed.

(5)(i) Non-self-supporting ladders shall be used at an angle such that the horizontal distance from the top support to the foot of the ladder is approximately one-quarter of the working length of the ladder (the distance along the ladder between the foot and the top support).

(ii) Wood job-made ladders with spliced side rails shall be used at an angle such that the horizontal distance is one-eighth the working length of the ladder.

(iii) Fixed ladders shall be used at a pitch no greater than 90 degrees from the horizontal, as measured to the back side of the ladder.

(6) Ladders shall be used only on stable and level surfaces unless secured to prevent accidental displacement.

(7) Ladders shall not be used on slippery surfaces unless secured or provided with slip-resistant feet to prevent accidental displacement. Slip-resistant feet shall not be used as a substitute for care in placing, lashing, or holding a ladder that is used upon slippery surfaces including, but not limited to, flat metal or concrete surfaces that are constructed so they cannot be prevented from becoming slippery.

(8) Ladders placed in any location where they can be displaced by workplace activities or traffic, such as in passageways, doorways, or driveways, shall be secured to prevent accidental displacement, or a barricade shall be used to keep the activities or traffic away from the ladder.

(9) The area around the top and bottom of ladders shall be kept clear.

(10) The top of a non-self-supporting ladder shall be placed with the two rails supported equally unless it is equipped with a single support attachment.

(11) Ladders shall not be moved, shifted, or extended while occupied.

(12) Ladders shall have nonconductive siderails if they are used where the employee or the ladder could contact exposed energized electrical equipment, except as provided in § 1926.951(c)(1) of this part.

(13) The top or top step of a stepladder shall not be used as a step.

(14) Cross-bracing on the rear section of stepladders shall not be used for climbing unless the ladders are designed and provided with steps for climbing on both front and rear sections.

(15) Ladders shall be inspected by a competent person for visible defects on a periodic basis and after any occurrence that could affect their safe use.

(16) Portable ladders with structural defects, such as, but not limited to, broken or missing rungs, cleats, or steps, broken or split rails, corroded components, or other faulty or defective components, shall either be immediately marked in a manner that readily identifies them as defective, or be tagged with "Do Not Use" or similar language, and shall be withdrawn from service until repaired.

(17) Fixed ladders with structural defects, such as, but not limited to, broken or missing rungs, cleats, or steps, broken or split rails, or corroded components, shall be withdrawn from service until repaired. The requirement to withdraw a defective ladder from service is satisfied if the ladder is either:

(i) Immediately tagged with "Do Not Use" or similar language,

(ii) Marked in a manner that readily identifies it as defective;

(iii) Or blocked (such as with a plywood attachment that spans several rungs).

(18) Ladder repairs shall restore the ladder to a condition meeting its original design criteria, before the ladder is returned to use.

(19) Single-rail ladders shall not be used.

(20) When ascending or descending a ladder, the user shall face the ladder.

(21) Each employee shall use at least one hand to grasp the ladder when progressing up and/or down the ladder.

(22) An employee shall not carry any object or load that could cause the employee to lose balance and fall.

§§ 1926.1054–1926.1059 [Reserved]

§ 1926.1060 Training requirements.

The following training provisions clarify the requirements of § 1926.21(b)(2), regarding the hazards addressed in subpart X.

(a) The employer shall provide a training program for each employee using ladders and stairways, as necessary. The program shall enable each employee to recognize hazards related to ladders and stairways, and shall train each employee in the procedures to be followed to minimize these hazards.

(1) The employer shall ensure that each employee has been trained by a competent person in the following areas, as applicable:

(i) The nature of fall hazards in the work area;

(ii) The correct procedures for erecting, maintaining, and disassembling the fall protection systems to be used;

(iii) The proper construction, use, placement, and care in handling of all stairways and ladders;

(iv) The maximum intended load-carrying capacities of ladders used; and

(v) The standards contained in this subpart.

(b) Retraining shall be provided for each employee as necessary so that the employee maintains the understanding and knowledge acquired through compliance with this section.

Appendix A to Subpart X—Ladders

This appendix serves as a non-mandatory guideline to assist employers in complying with the ladder loading and strength requirements of § 1926.1053(a)(1). A ladder designed and built in accordance with the applicable national consensus standards, as set forth below, will be considered to meet the requirements of § 1926.1053(a)(1):

- Manufactured portable wood ladders: American National Standards Institute (ANSI) A14.1–1982—American National Standard for Ladders-Portable Wood-Safety Requirements.
- Manufactured portable metal ladders: ANSI A14.2–1982—American National Standard for Ladders—Portable Metal-Safety Requirements.
- Manufactured fixed ladders: ANSI A14.3–1984—American National Standard for Ladders-Fixed-Safety Requirements.
- Job-made ladders: ANSI A14.4–1979—Safety Requirements for Job-Made Ladders.
- Plastic ladders: ANSI A14.5–1982—American National Standard for Ladders-Portable Reinforced Plastic-Safety Requirements.

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Wednesday,
November 14, 1990

Part IV

Department of the Interior

Bureau of Indian Affairs

Consultation Meetings on Indian Education Topics; Notice of Consultation Hearings

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Consultation Meetings on Indian Education Topics

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of consultation hearings.

SUMMARY: In May 1990, the Bureau of Indian Affairs conducted consultation meeting with Tribes, parents, school boards, and other interested parties concerning potential changes or issues in Indian education programs which were under consideration by the Bureau for future action.

As a follow-up to the spring consultation activities, the Bureau is conducting additional consultation meetings for purposes of obtaining additional written/oral comments from Tribes, parents, school boards and other interested parties on the following items/topics:

1. Adult Education Program—Proposed Rule
2. Higher Education Program—Proposed Rule
3. Early Childhood Development Programs—Proposed Rule
4. Minimum Academic Standards for the Basic Education of Indian Children and National Criteria for Dormitory Situations—Proposed Rule
5. Program Eligibility—Definition of Indian
6. Chapter 1 Program—Proposed change in distribution formula.

DATE AND TIME: Meeting Date: January 23, 1991, 9 a.m. until 6 p.m. (local time) at each site.

ADDRESSES: Meeting locations:

Albuquerque, New Mexico
Anchorage, Alaska
Gallup, New Mexico
Minneapolis, Minnesota
Aberdeen, South Dakota
Portland, Oregon
Oklahoma City, Oklahoma
Phoenix, Arizona
Sacramento, California
Nashville, Tennessee
Billings, Montana

Location contact persons:

New Mexico	Val Cordova	505/766-3034
New Mexico (Gallup).	Larry Holman	505/786-6150
Alaska	Gerald Jones	907/586-7193
Minnesota	Betty Walker	612/349-3835
South Dakota	Harry Eagle Bull or, Richard Bordeaux.	605/226-7431 605/964-8722
Oregon	Van Peters	503/230-5682
Oklahoma	Jim Baker or Sam Johnson	918/687-2460 405/247-6673
Arizona	Peter Soto or Harvey Jacobs	602/241-6741 602/562-3557
California	Fayetta Babby	916/978-4680
Tennessee	Reginald Rodriguez.	703/235-3233
Montana	Larry Parker	406/657-6375

Interested persons may present oral testimony or file written statements concerning the consultation items/topics. All written statements on the consultation items/topics should include the respondent's name, address and organization and must be received no later than February 26, 1991, in the Bureau of Indian Affairs, Office of Indian Education Programs, room 3511-MIB, 1849 C Street NW., Washington, DC 20240, ATTN: Edward Parisian, Deputy to the Assistant Secretary—Indian Affairs/Director (Indian Education Programs).

FOR FURTHER INFORMATION CONTACT: Edward Parisian, Joe Christie or Jim Martin, Bureau of Indian Affairs, Office of Indian Education Programs, room 3511/MIB, 1849 C Street, NW., Washington, DC 20240, (202) 208-6123; (202) 208-6175; or (202) 208-3562.

SUPPLEMENTARY INFORMATION: The purpose of the consultation process is to provide, as required by 25 U.S.C. 2010(b), Tribes, school boards, Indian organizations, parents and other interested parties with an opportunity to comment on potential changes or issues being considered by the Bureau of Indian Affairs regarding Indian education programs

The consultation package to be used in the January consultation meetings is being distributed to each federally recognized Indian tribe and each Bureau funded school. Consultation packages are also available from each of the local contact persons and will be available at each of the consultation meetings.

Dated: October 30, 1990.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 90-26739 Filed 11-13-90; 8:45 am]

BILLING CODE 4310-02-M

federal register

Wednesday,
November 14, 1990

Part V

Department of Education

Office of Special Education and Rehabilitative Services

Arbitration Panel Decision Under the Randolph-Sheppard Act: Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Arbitration Panel Decision

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on March 19, 1990, an arbitration panel rendered a decision in the matter of *Billy Godsey, Vendor, v. State of Tennessee, Tennessee Department of Human Services, State Licensing Agency* (Docket No. R–S/88–10). This panel was convened by the Secretary of the Department of Education pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner Billy Godsey on August 17, 1988. Under this section of the Act, a blind licensee who is dissatisfied with the State's operation or administration of the vending facility program may request a full evidentiary hearing from the State licensing agency. If the licensee is dissatisfied with the State agency's decision, the licensee may complain to the Secretary, who is then required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: George F. Arsnow, Chief, Vending Facility Branch, Division for Blind and Visually Impaired, Rehabilitation Services Administration, room 3230, Mary E. Switzer Building, Department of Education, 330 C Street SW., Washington, DC 20202–2738. Telephone: (202) 732–1317 or TTY (202) 732–1298. A synopsis of the panel's decision follows. The full text of the arbitration panel decision can be obtained from this contact.

Dated: November 7, 1990.

Dr. Robert R. Davila,

Assistant Secretary for Special Education and Rehabilitative Services.

Synopsis of Arbitration Panel Decision

Procedural History

Billy Godsey, Grievant, is a blind vendor duly licensed by the respondent, the Tennessee Department of Human Services, Division of Services for the Blind, Tennessee Business Enterprise Program (TBE). Pursuant to the Randolph-Sheppard Act, 20 U.S.C. 107 *et seq.*, Grievant has been a vendor at the Steam Plant in Oak Ridge, Tennessee for six years and has been licensed in the Tennessee Business Enterprise Program since 1976.

At that time, there wa only one vending facility in operation at the Watts Bar Nuclear Power Plant, Facility No. 328, when the Tennessee Valley Authority (TVA) required that TBE establish additional service at the Watts Bar Nuclear Power Plant. Sometime in late April, 1986, TBE issued an announcement to all blind vendors in the program, informing them that a second facility, No. 391, was available for assignment and that all qualified individuals interested should submit applications by May 7, 1986. Grievant filed an application for Facility No. 391 and was selected and inventoried on May 15, 1986, as the second vendor at the power plant.

On or about May 15, 1986, TBE issued another announcement with a deadline date of May 21, 1986, requesting a third facility, No. 376, at the power plant. It was opened and announced about two weeks after Facility No. 391 was assigned to Grievant. Facility No. 376 opened under a temporary manager and was later awarded to a permanent manager. In TBE's 1986 announcements of Facility Nos. 391 and 376, TBE stated its intention not to establish additional facilities at Watts Bar.

In the summer and fall of 1987, TVA built two new buildings and assigned several hundred employees to those two locations. In August, 1987, TVA contacted TBE, indicating a need for additional vending machines in the new training center at the Watts Bar Nuclear Power Plant. In September and October, 1987, further assessment of TVA's vending needs was made by TVA and TBE personnel, which revealed that two buildings had been constructed on the site, one to house training and the other to house administrative personnel.

After the assessment by TBE regarding the new buildings and the preliminary figures regarding personnel and trade potential at Watts Bar, TBE concluded that there was potential at the power plant for a fourth vending facility.

In the fall of 1987, TVA informed TBE that these personnel assignments would continue for several years and asked TBE to provide additional vending service for the benefit of these employees, who did not have satisfactory access to an existing vending facility.

On November 4, 1987, responding to TVA's request, TBE established a fourth facility, No. 401, to serve the two locations. Facility No. 401 was opened, and a temporary manager was appointed for a six-month trial period. The trial period was intended to allow TBE to evaluate the impact, if any, the new facility would have on the three existing facilities and to ascertain whether Facility No. 401 would produce sufficient revenue to support assigning a fourth facility on an indefinite basis.

The controversy between Grievant and TBE arose at about the time the training center was completed and the fourth facility was established. According to the testimony of Grievant, he had applied for Facility No. 391 in May, 1986, on the assumption that it would be a permanent facility. He further testified that he had questioned a TBE representative on the permanency of the facility on the day he installed his vending machines. Grievant stated that he had become concerned because his vending machines were all being installed into temporary aluminum buildings. According to Grievant, the TBE representative assured him that his machines would be moved into permanent buildings. Grievant relied on that assurance until he realized that the fourth facility was being installed in permanent buildings. He questioned TBE as to why his machines were not being installed into permanent buildings as was Facility No. 401. He was then told for the first time that TBE regarded his facility as serving the construction project and that his facility would terminate upon completion of construction.

Grievant requested a Fair Hearing on November 17, 1987, contesting the establishment of a fourth vending facility by TBE at the TVA Watts Bar Nuclear Power Plant.

A full evidentiary hearing was provided pursuant to 20 U.S.C. 107d–1(a). The Initial Order dated June 10, 1988, denied the appeal in full. On June 20, 1988, Grievant filed a petition requesting reconsideration of the Initial Order. By letter dated July 12, 1988, the hearing officer denied the petition. A Final Order was entered by TBE on August 3, 1988, denying Grievant's appeal.

On August 17, 1988, Grievant filed a complaint with the Department of Education requesting the Secretary to convene an arbitration panel under the Randolph-Sheppard Act in 20 U.S.C. 107d–1(a).

Arbitration Panel Decision

Upon receipt of a complaint filed by Billy Godsey on August 17, 1988, the Secretary of Education convened an arbitration panel that conducted a hearing on August 11, 1989. The central issues were whether the Tennessee Department of Human Services had the authority to establish a fourth vending facility at the Watts Bar Nuclear Power Plant and, in so doing, whether the fourth vending facility had an adverse impact on the income potential of the existing vending facility operated by complainant.

The Federal panel found first that TBE had negligently omitted notifying complainant that Facility No. 391 was temporary and that it would terminate with the completion of construction. The panel found that TBE's failure to indicate the *"property management's future"* deprived all vendors of necessary information to evaluate bid opportunities (emphasis added).

The arbitration panel unanimously agreed that Mr. Godsey should be assigned a permanent facility at Watts Bar because, at a minimum, the notice of vacancy at Facility No. 391 had not informed the blind vendors, including complainant, that the new facility would terminate with the end of construction. Two members of the panel also concluded: (a) That the fourth facility had been established in violation of the regulations of the respondent agency and should be closed if it was necessary to afford full relief to complainant; and (b) that complainant should be awarded the costs of litigation, including reasonable attorney's fees.

One panel member dissented on the grounds that the agency did not violate its regulations, that complainant had not been harmed by any such violation in any event, and that the panel lacked authority to award any form of monetary damages, including costs and fees against the State.

The decision of the arbitration panel is judicially reviewable pursuant to 20 U.S.C. 107d–2. Pursuant to this provision, the Tennessee Department of Human Services filed suit in may of 1990 to set aside the panel decision. The suit was filed against Mr. Godsey and the Department of Education. The views and opinions expressed by the panel do not necessarily represent the view of the Department of Education.

[FR Doc. 90–26785 Filed 11–13–90; 8:45 am]

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Wednesday
November 14, 1990

Part VI

Environmental Protection Agency

Department of Energy Waste Isolation Pilot Plant; Notice of Final No-Migration Determination

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3860-1]

Conditional No-Migration Determination for the Department of Energy Waste Isolation Pilot Plant (WIPP)

AGENCY: Environmental Protection Agency.

ACTION: Notice of final no-migration determination.

SUMMARY: In response to a petition from the Department of Energy (DOE), the Environmental Protection Agency (EPA) is today making a determination of no migration for placement of hazardous waste at DOE's Waste Isolation Pilot Plant (WIPP), located near Carlsbad, New Mexico. Today's determination imposes several conditions on such placement and is for a maximum of ten years. As a result of this determination, DOE may place a limited amount of untreated hazardous waste subject to the land disposal restrictions of the Resource Conservation and Recovery Act (RCRA) in the WIPP for the purposes of testing and experimentation. DOE submitted a petition to EPA for a no-migration determination in March 1989; EPA proposed to grant the petition in April 1990. After a careful review of public comments on the proposal, EPA has concluded that DOE has demonstrated, to a reasonable degree of certainty, that hazardous constituents will not migrate from the WIPP disposal unit during the testing period proposed by DOE, and that DOE has otherwise met the requirements of 40 CFR 268.6 for the WIPP. The approved petition requires DOE to remove the hazardous wastes from the underground repository if it cannot demonstrate the long-term acceptability of the disposal site by the end of the test period.

EFFECTIVE DATE: November 14, 1990.

ADDRESSES: The public docket for this determination is available for public inspection in Room M2427, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC, 20460, Monday through Friday, excluding Federal holidays. Members of the public may make an appointment to review docket materials by calling (202) 475-9327. Copies of docket materials may be made at no cost, with a maximum of 100 pages of material from any one regulatory docket. Additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: General questions about the regulatory requirements under RCRA should be directed to the RCRA/Superfund Hotline at 800-424-9346 (toll free) or 202-382-3000 (local).

Specific questions about the issues discussed in this notice should be directed to Matthew Hale, Office of Solid Waste (OS-341), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, at 202-382-4746.

SUPPLEMENTARY INFORMATION:

Preamble Outline

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I. Background

A. RCRA Land Disposal Restrictions

The Hazardous and Solid Waste Amendments (HSWA) of 1984, which amend the Resource Conservation and Recovery Act (RCRA), imposed substantial new requirements on the land disposal of hazardous waste. In particular, the amendments prohibit the continued land disposal of hazardous wastes, unless either (1) the wastes meet treatment standards specified by EPA, or (2) the Administrator determines that the prohibition is not required in order to protect human health and the environment. This latter determination must be based on a demonstration by the owner/operator of the facility receiving the waste "that there will be no migration of hazardous constituents from the disposal unit or injection zone as long as the wastes remain hazardous." (RCRA sections 3004(d)(1), (e)(1), and (g)(5).) The Department of Energy (DOE) has chosen to comply with the land disposal restrictions for certain transuranic (TRU) wastes to be shipped for testing and experimentation at its Waste Isolation Pilot Plant (WIPP) by pursuing the second option. Today's notice approves, with conditions, DOE's petition for the WIPP site.

EPA first promulgated standards and procedures for review of no-migration petitions under 40 CFR 268.6 in November 1986. These regulations, which apply to land disposal units other than underground injection wells, codify the statutory standard for no-migration findings, specify the information required in no-migration petitions, and establish EPA's procedures for approving or denying petitions (November 7, 1986, 51 FR 40572). EPA amended these regulations on August 17, 1988 (53 FR 31138) to add further procedural requirements and standards.[1] EPA is now developing additional no-migration standards to clarify or expand on certain parts of the current regulations. The Agency expects to propose these standards in the near future. In conjunction with this proposal, EPA has also developed draft no-migration guidance, a copy of which is available in the docket for this rulemaking.

To date, EPA has received 31 no-migration petitions submitted in accordance with 40 CFR 268.6. Today's notice, which addresses disposal of mixed radioactive and hazardous waste in a mined salt bed, is the Agency's first decision on any of these petitions under § 268.6. The other § 268.6 petitions, which primarily address land treatment operations, are currently under Agency review. In addition, EPA has received approximately 85 no-migration petitions for underground injection wells under 40 CFR part 148. Of these, 30 have been approved, 26 are still under review, and a number of others have been withdrawn.

B. Regulatory Status of Mixed Wastes

The hazardous wastes that are subject to today's notice are "mixed wastes." Mixed wastes are defined as a mixture of hazardous wastes regulated under Subtitle C of RCRA and radioactive wastes regulated under the Atomic Energy Act (AEA). Because section 1004 of RCRA excludes "source," "special nuclear," and "byproduct materials," as defined under the Atomic Energy Act,

[1] On July 26, 1988, EPA also promulgated standards under 40 CFR part 148 for no-migration determinations for underground injection wells (53 FR 28122).

from the definition of RCRA "solid waste," there has been some confusion in the past as to the scope of EPA's authority over mixed waste under RCRA. EPA clarified this question in a Federal Register notice on July 3, 1986.

EPA's clarification stated that the section 1004 exclusion applies only to the radioactive portion of mixed waste, not to the hazardous constituents. Therefore, a mixture of "source," "special nuclear," or "byproduct materials" and a RCRA hazardous waste must be managed as a hazardous waste, subject to the requirements of RCRA subtitle C (that is, RCRA standards for the management of hazardous waste). EPA's oversight under RCRA, however, extends only to the hazardous waste components of the mixed waste, not to the source, special nuclear, or byproduct materials themselves. The exempted radionuclides are instead addressed under the AEA.[2] DOE subsequently confirmed and clarified this interpretation in the Federal Register on May 1, 1987. Sections I.D and V.A of this notice further discusses the relationship between the AEA standards and the no-migration finding.

EPA's July 3, 1986 interpretation went into effect immediately in states not authorized to administer the RCRA hazardous waste program—that is, in the ten states and territories where EPA directly regulates hazardous waste under the Federal RCRA regulations. At the same time, the July 3, 1986 notice informed authorized states that they were required to apply for and receive authorization from EPA to regulate mixed waste under RCRA. To date, twenty-three states and territories (including New Mexico, where the WIPP is located) have obtained authority to regulate mixed waste under the state RCRA hazardous waste programs. Thus, mixed wastes are currently regulated as hazardous under Federal RCRA requirements in thirty-three states and territories.

C. WIPP Project

Today's notice addresses mixed waste that DOE intends to ship for testing and experimentation to the WIPP site near Carlsbad, New Mexico, during a preliminary test phase. At the site, the waste will be placed in a mined underground repository, located in a salt bed approximately 2,150 feet below the earth's surface. Over an approximately five-year period, DOE plans to test and evaluate the behavior of the waste in the repository, as well as the characteristics of the surrounding formation, to determine the site's acceptability for the long-term disposal of radioactive waste. Today's no-migration determination requires DOE to remove the waste from the repository if the site proves to be unacceptable for long-term disposal.

Over the long-term, the WIPP repository has been designed as a permanent disposal site for transuranic (TRU) radioactive wastes resulting from nuclear weapons production at ten DOE sites around the country.[3] TRU wastes are defined as wastes contaminated with alpha-emitting radionuclides with an atomic number greater than 92 (that is, heavier than uranium) in concentrations of greater than 100 nanocuries per gram of waste. In addition, TRU wastes by definition have half-lives of more than twenty years, although the actual half-lives of radionuclides in waste to be placed in the WIPP are often hundreds or thousands of years. The TRU wastes targeted for the WIPP consist of a variety of materials, including tools, equipment, protective clothing, rags, graphite, glass, and other material contaminated during the production and reprocessing of plutonium; contaminated organic and inorganic sludges; contaminated process and laboratory wastes; and contaminated items from decontamination and decommissioning activities at DOE facilities. As TRU wastes, these wastes are distinguished from high-level radioactive waste, such as used reactor fuel, and low-level radioactive waste. Other disposal strategies are being developed for high-level and low-level radioactive wastes.

The land in the area of the WIPP is owned by the Federal government and administered by the Bureau of Land Management. The four-mile by four-mile plot of land overlying the repository has been temporarily withdrawn from public use by the Department of Interior; it is now under the control of DOE. Before DOE can bring waste to the site, however, either Congress or the Department of Interior must take new land withdrawal action. The repository is designed to hold TRU wastes that are currently stored at the DOE generating facilities, as well as new TRU wastes that will be generated over the next 25 years. The underground waste disposal area of the WIPP, when completed, will cover 100 acres, with a total design capacity of 6.45 million cubic feet (or approximately 850,000 drums of waste). To date, 15 acres of underground disposal rooms have been mined.

Although DOE has conducted extensive studies of the WIPP site and the repository performance, uncertainties still remain. For example, concerns have been raised over the possibility that gas generated underground at the WIPP could, over the long term, build up to unacceptable pressures, leading to possible releases from the repository. To address this and other questions, DOE plans to conduct testing and experimentation over the next several years. This testing will include in-situ experiments with actual TRU wastes underground, as well as other investigations. These in-situ tests would initially involve wastes amounting to approximately 0.5 percent of the total repository capacity. From these tests, DOE hopes to gather data that will allow it to demonstrate compliance with EPA's standards for disposal of radioactive materials (40 CFR part 191 subpart B) and long-term no-migration of RCRA hazardous constituents, as well as in identifying any engineering modifications that may be necessary to meet these standards. DOE is also considering the need for an "operations demonstration" during the test period. The purpose of this demonstration, which might involve up to an additional three to eight percent of the total WIPP capacity, would be to show DOE's operational readiness to ship waste to the WIPP and to place it underground. (Today's approval does not cover placement of wastes for the purposes of the "operations demonstration." DOE would have to submit for EPA's consideration an amendment to its no-migration petition; any EPA decision on such an amendment would be proposed in the Federal Register, with opportunity for public comment.)

As a condition to today's approved petition, DOE must remove all hazardous wastes from the repository if it is unable to meet EPA standards for permanent disposal of hazardous and radioactive wastes at the conclusion of the test period.[4] However, if the WIPP

[2] This interpretation, however, does not preclude EPA from requiring data on radionuclide content of wastes where necessary to carry out EPA's authorities under RCRA—for example, to ensure protection of personnel carrying out RCRA inspection or oversight sampling.

[3] The DOE facilities that intend to send TRU waste to the WIPP are Idaho National Engineering Laboratory, Idaho Falls, Idaho; Rocky Flats Plant, Golden, Colorado; Los Alamos National Laboratory, Los Alamos, New Mexico; Argonne National Laboratory, Argonne Illinois; Savannah River Plant, Aiken, South Carolina; Oak Ridge National Laboratory, Oak Ridge, Tennessee; Hanford Reservation, Richland, Washington; Mound Plant, Miamisburg, Ohio; Lawrence Livermore National Laboratory, Livermore, California; and Nevada Test Site, Mercury, Nevada.

[4] Under 40 CFR 268.6(a)(5), petitioners seeking a no-migration demonstration must provide sufficient

Continued

proves acceptable as a permanent repository, and if DOE successfully petitions EPA for a long-term no-migration determination, DOE will then be able to begin full-scale disposal of waste at the site. Drums, metal boxes, and metal canisters of waste will be shipped to the WIPP from the generating sites and placed in underground rooms. Under current plans, the rooms will be backfilled with crushed salt and sealed. After an operating period of approximately 25 years, DOE plans to seal the shafts of the mine with cement-clay plugs and compacted salt and decommission the facility. After decommissioning, the salt of the Salado Formation will creep inward and is expected to encapsulate the waste within 60 to 200 years.

Access to the WIPP site will be restricted. The Department of Interior temporarily withdrew the lands on the WIPP site from public use in 1983, allowing DOE to begin construction of the facility. Before DOE can bring waste to the site, however, either Congress or the Department of Interior must take new land withdrawal action. In addition, DOE and the State of New Mexico have agreed to prohibit in perpetuity all subsurface mining, drilling, and resource exploration unrelated to the WIPP project at the WIPP site. As a further protection, the Federal government has acquired the entire surface and subsurface estate at the WIPP site. Finally, to discourage drilling in the vicinity of the repository in the distant future, DOE intends to place permanent warning markers at the site.

D. Regulatory Status of the WIPP

The WIPP is located in the State of New Mexico, which received authorization for mixed waste on July 25, 1990. (See 55 FR 28397, July 11, 1990.) As an "existing" hazardous waste management facility at the time of New Mexico's authorization for mixed waste, the WIPP is eligible for RCRA interim status. Facilities "in existence" (which include facilities under construction) at the time a waste is identified as hazardous under RCRA can obtain interim status if their owner/operators submit a part A application to EPA or the appropriate state. If DOE submits an application to New Mexico and secures interim status, it will be legally authorized to receive mixed waste at the WIPP—subject of course to the land disposal restrictions. The WIPP must also comply with the RCRA interim status standards, codified at 40 CFR part 265, and eventually obtain a RCRA permit under 40 CFR parts 264 and 270.

The interim status requirements of part 265 establish general facility standards. For example, the WIPP is required under these standards to have a waste analysis plan for its mixed waste, a contingency plan describing procedures that DOE will take in the case of an emergency, and a closure plan describing how the facility will be closed. In addition, the State of New Mexico has recently requested that DOE submit to it the RCRA part B permit application for the WIPP; this application must be submitted no later than six months after the State's request, or by February 28, 1991. The RCRA permit for the WIPP (if granted) will establish detailed operating, closure, and post-closure conditions in accordance with 40 CFR part 264, subpart X. (As a geological repository, the WIPP is regulated under the RCRA category of subpart X "miscellaneous units.") The permit's scope would extend to all facility activities related to mixed waste.

Several commenters on EPA's proposed decision on the WIPP expressed confusion over the relationship between a no-migration decision by EPA and a RCRA permit issued by the State. In explanation, EPA notes that its no-migration determination is relatively narrow in scope, only addressing the question of whether hazardous constituents will or will not migrate from the underground repository. To ensure no-migration, EPA's determination imposes certain conditions (e.g., a volume limitation and retrievability of waste); these conditions will be enforced by EPA. On the other hand, the State RCRA permit is significantly broader than a no-migration finding, since it will impose the full technical and general facility standards of 40 CFR part 264, and it will apply to the above-ground operations as well as operations underground. The permit may include certain requirements already imposed under EPA's no-migration determination, or it may establish more stringent requirements, if the State of New Mexico determines that they are necessary. The State permit will be issued under State procedures, which include public notice, comment, and an opportunity for a public hearing. The conditions of the permit will be enforced by the State.

As discussed earlier, EPA's authority under RCRA over waste destined for the WIPP extends only to mixed hazardous and radioactive waste, and it is further limited to the hazardous components of the mixed waste. The potential release of radioactive material from the WIPP is addressed under the Atomic Energy Act (AEA). EPA has promulgated standards under the AEA limiting releases associated with the disposal of radioactive wastes. These standards, which are codified at 40 CFR part 191, consist of two parts: Subpart A dealing with releases during the operational phase of a permanent disposal facility, and subpart B, dealing with long-term releases after decommissioning. Under these regulations, a facility is not defined as a disposal site until it has been designated as a permanent respository and removal is not contemplated; since this decision will not be made for the WIPP until after the test phase, the WIPP is not legally subject to the part 191 standards. Under an agreement with the State of New Mexico, however, DOE has agreed to comply with the subpart A standards, beginning with the initial receipt of waste at the WIPP—that is, before the facility has been designated as a permanent repository. The subpart standards also do not yet apply to the WIPP because they have been remanded to EPA by the U.S. Court of Appeals at the First Circuit, and therefore are not in effect at this time. DOE, however, has agreed with the State of New Mexico to demonstrate compliance with the remanded standards (if final standards have not been developed) before a final decision is made to dispose of waste permanently in the repository. This decision will be made on the basis of data gathered during the test phase at the WIPP.

Finally, EPA emphasizes that today's finding addresses only the specific question of whether hazardous constituents will or will not migrate from the WIPP as long as the waste remains hazardous. Issues raised by the transportation of waste to the WIPP site, or by handling and possible treatment of waste before it reaches the WIPP, are beyond the scope of EPA's legal authority in evaluating no-migration petitions, and thus are not addressed in this notice.

II. DOE Petition and EPA Proposed Determination

The mixed waste DOE intends to ship to the WIPP for testing includes solvent-contaminated wastes, which became subject to the land disposal restrictions on November 8, 1988, and characteristic wastes (containing heavy metals such as lead), which became subject to the land disposal restrictions on August 8, 1990. (However, it should be noted that EPA granted a two-year national capacity variance to mixed characteristic wastes, deferring the effective date of the disposal prohibition until May 8, 1992 (June 1, 1990, 55 FR 22520).) In addition, some mixed wastes are likely to include wastes that are hazardous under EPA's new toxicity characteristics rule (55 FR 11798), although the Agency has not yet promulgated land disposal restrictions for these wastes.

To comply with the land disposal restrictions, DOE has sought to demonstrate to EPA, in a non-migration petition submitted in March 1989, that placement of these wastes untreated in the WIPP repository will not lead to migration of hazardous constituents beyond the disposal unit boundary. In response to EPA concerns, DOE provided additional supporting material after its initial submission, including addenda in October 1989 and January 1990. DOE's final petition was bound into eight volumes in March 1990 (DOE/WIPP 89-003, Revision 1) and is included in the docket for this rulemaking.

After careful review of DOE's petition as well as information from numerous other sources, EPA proposed in the Federal Register of April 6, 1990 to grant DOE's petition with certain conditions. (See 55 FR 13068 for a more detailed discussion of the information provided by DOE and of the basis for EPA's proposed decision.) Under EPA's proposal, DOE would be allowed to place untreated mixed waste in the WIPP repository within the scope of the testing and experimentation activities described in the petition. EPA's proposal would not have allowed DOE to conduct its proposed operations demonstration, nor would it have allowed DOE to conduct two pilot-room tests, which had originally been suggested by EPA. If the testing failed to show that the WIPP could meet the no-migration standards for the longterm disposal of mixed waste, DOE would be required to remove the waste from the underground repository. The proposal also included the following conditions: (1) The waste must be placed in the WIPP in a retrievable form; (2) DOE must provide annual written reports on the test phase progress to EPA; (3) a carbon adsorption device capable of achieving a 95 percent efficiency must be installed in the discharge system of the bin experiment rooms; (4) DOE must implement a specific air monitoring plan; (5) DOE must certify that it has secured control of the surface and subsurface estate at the WIPP site before wastes can be placed in the repository;[a] and (6) during the test phase, DOE must provide detailed waste characterization and analyses on the waste emplaced in the WIPP.

EPA provided a 60-day public comment period on its proposed determination and held public hearings in Carlsbad, Albuquerque, and Santa Fe, New Mexico, during the comment period. The Agency received 103 written comments on its proposal from both individuals and organizations, and more than 300 people testified at the three hearings. Today's decision is based on a careful review of the public's comments and clarifying information provided by DOE, as well as EPA's further evaluation of the suitability of the site based on a field visit to the WIPP site on July 23, 1990.

III. Summary of EPA Determination

After a review of DOE's petition, supporting information, and public comment, EPA finds that DOE has demonstrated, to a reasonable degree of certainty, that hazardous constituents will not migrate from the WIPP repository as a result of its planned test activities, as required by the statute and regulations at 40 CFR 268.6. This determination is based on the condition that DOE only place hazardous waste within the scope of the test phase operations described in its no-migration petition and its performance assessment test plan. Consistent with the determination, EPA is approving DOE's no-migration petition for the WIPP for the test phase operations, subject to the conditions laid out in section VI of this notice. It should be noted that the proposed operations demonstration and pilot room tests cannot be conducted under the terms of today's decision. Before these activities could be carried out, DOE would have to submit an amendment to its no-migration petition, which EPA would evaluate. EPA would then propose a decision for comment before a final decision would be made.

EPA's action today allows DOE to place untreated mixed waste subject to the RCRA land disposal restrictions in the WIPP for testing and experimentation to determine whether the site is appropriate for the long-term disposal of mixed waste (that is, whether disposal at the site will conform with standards for the permanent disposal of hazardous wastes). Only the waste specified by DOE in its petition may be placed in the WIPP under this determination.[b] The quantity of waste that may be placed in the WIPP is limited to 8,500 drums, or 1 percent of the facility's final capacity. DOE may not begin permanent disposal of the mixed waste subject to the RCRA land disposal prohibitions at the site and must remove all waste from the underground repository if it cannot demonstrate no migration of hazardous constituents over the long term. (In addition to EPA's requirement that hazardous waste be removed from the respository, DOE has also committed to carry out such a removal in a consent agreement with the State of New Mexico.)

In making its no-migration finding, EPA concentrated on whether releases of non-radioactive hazardous constituents from the repository might occur during the test phase. In doing so, EPA addressed all possible routes of release, but focused in particular on the potential for volatile organic constituents released during testing to migrate out of the WIPP unit through the ventilation exhaust shaft. Because of the nature of the tests that will be conducted in the WIPP and their relatively short duration, EPA has concluded that releases of hazardous constituents from the unit through brine, salt, or other geological media is implausible during the test phase.

The retrievability of waste placed in the WIPP during the test phase is central to EPA's finding. Therefore, EPA has reviewed both the technical feasibility of retrieval and the practicability of DOE's retrieval plan. EPA has concluded that retrieval of wastes from the WIPP can be accomplished safely, and that DOE's commitment to retrieving the wastes and taking it above ground, if it proves necessary, is satisfactory. Finally, EPA considered the general design, construction, and mine maintenance program at the WIPP and has concluded that the mine is well-designed and will remain stable during

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information to assure the Administrator that the disposal unit will comply with other applicable Federal, State, and local laws. Therefore, if the WIPP cannot comply with radioactive disposal standards under 40 CFR part 191, it would not satisfy the conditions for a long-term no-migration determination.

[a] DOE recently secured the last outstanding mineral lease at the WIPP site, thereby satisfying this condition. As a result, EPA has eliminated this condition in its final determination.

[b] In its no-migration petition, DOE identified listed solvents and EP (Extraction Procedure) characteristic wastes as hazardous under RCRA. In addition, some of the waste described in DOE's petition may now be hazardous under the EPA's recently promulgated Toxicity Characteristics (TC) rule (55 FR 11798). EPA has not yet promulgated treatment standards for TC wastes; however, it is required to do so under the statute. Once these standards have been promulgated, TC wastes placed in the WIPP will be subject to the land disposal restrictions. Because EPA's review of DOE's petition considered potential migration of hazardous constituents from all of the waste DOE identified as scheduled for the WIPP, today's no-migration determination applies to wastes that are hazardous under the TC rule, as well as solvents and EP characteristics wastes, as long as the wastes were included in the petition.

the test period and well beyond. The specific conditions of today's finding are discussed in the following section and listed in summary form in section VI of this notice.

Although EPA's granting of DOE's petition is specifically based on a finding of no-migration of hazardous constituents from the unit during the test phase, EPA has thoroughly reviewed available information on the expected long-term performance of the WIPP repository. Given the geological stability of the area; the depth, thickness, and very low permeability of the salt formation in which the repository has been mined; and the properties of rock salt as an encapsulating medium, EPA believes that the WIPP is a promising site for the permanent disposal of mixed waste. To be sure, a number of uncertainties related to the long-term performance of the WIPP remain—for example, the extent and effects of gas generation, the effects of brine inflow into the repository, and the influence of a "disturbed rock zone" around the mined repository. DOE will be investigating these uncertainties in the test phase at the WIPP, and it will review whether technical modifications to the repository design or the waste are necessary to ensure compliance with the regulatory standards.

It should be remembered that today's decision is only for the disposal of mixed waste during the test phase for testing and experimentation to determine whether the site is appropriate for the long-term disposal of mixed wastes. Before DOE may move from the test phase to full-scale operations, it must petition EPA again and demonstrate no migration over the long term—that is, it must successfully address current uncertainties about long-term WIPP performance. Information gathered by DOE during the test phase will be central to such a demonstration. Any EPA decision to approve (or deny) a no-migration petition for permanent disposal at the conclusion of the test phase will be made with full opportunity for public comment, as prescribed in 40 CFR 268.6(g).

Further technical details regarding EPA's final decision are provided in a background document. In addition, major issues raised by public commenters are discussed in section V of today's notice, as well as in a response to comments document. Both the background document and the response to comments document are available in the public docket for this action.

IV. Discussion of EPA Determination and Conditions of Determination

A. No-Migration Finding

To make a no-migration determination, sections 3004 (d)(1), (e)(1), and (g)(5) of RCRA require EPA to find that "there will be no migration of hazardous constituents from the disposal unit or injection zone as long as the wastes remain hazardous." As EPA explained in the preamble to its proposed decision, it interprets this requirement to mean that constituents listed in appendix VIII of 40 CFR part 261 cannot migrate at hazardous levels from the disposal unit during the time that hazardous waste is present in the unit. If the hazardous waste within the unit becomes non-hazardous or if it is removed from the unit, further migration from the unit ceases to be an issue. In the case of the WIPP, DOE will have to remove all hazardous waste from the underground repository if it cannot demonstrate the long-term acceptability of the site; therefore, the effective period of EPA's finding is the test phase. Thus, EPA's decision today is based on the conclusion that the Appendix VIII constituents will not migrate at hazardous levels from the underground repository during the test phase and that DOE will remove all hazardous waste from the unit if testing cannot show that the site meets long-term no-migration standards.

EPA's no-migration finding for the WIPP test phase falls into several categories: Migration of hazardous constituents under anticipated test conditions in the repository; short-term stability of the repository; feasibility of retrieval; possible effect of accidents and spills; and effectiveness of controls against human intrusion during the test phase. These aspects of EPA's determination are discussed below.

No migration of hazardous constituents beyond the unit boundary. In the proposal, EPA explained in some detail its definition of the unit boundary for the WIPP and its standards for determining whether a constituent migrating from the unit is "hazardous." The proposed unit boundary was the Salado Formation at the WIPP site, bounded by the four-mile by four-mile land withdrawal area, except that, for air emissions during operations, the unit boundary was the point where the air exhaust ventilation shaft met the surface. EPA's definition of the unit boundary in today's decision is largely unchanged from the proposal; however, in response to public comment, it has slightly modified the unit definition as it applies to air emissions. In the final decision, the unit referes to that portion of the Salado Formation that falls within the WIPP land withdrawal area: specifically, any movement of constituents above "hazardous" levels into overlying or underlying formations, or beyond the lateral boundaries of the land withdrawal area would constitute migration. This unit boundary would apply to migration via air emissions during operations as well as via ground water or other routes after closure of the unit. (This issue is discussed in more detail in section V.H of today's notice.) EPA's definition of "hazardous" levels of migration remains unchanged from the proposal. As discussed below in section V.G, EPA is relying on "health-based levels" to define migration—that is, levels that would be hazardous to a person exposed at the unit boundary for an entire lifetime.

The no-migration standard applies to all possible routes of release from the unit. EPA, however, has concluded that migration of hazardous constituents out of the unit during the test period is implausible by any route other than air. Waste will be containerized during the test period, and even if it were released from a container, there is no possibility that waste could migrate from the unit by ground water or directly through the salt rock within the test period. No commenters questioned this conclusion, which EPA discussed in the proposal.

Potential for Migration via Air Emissions. For air emissions during the test period, EPA's finding is based on a careful review of possible releases from the bin-scale and alcove tests DOE is planning to conduct during the test period. For reasons described below, EPA has concluded that any releases from the alcove-scale tests will be negligible. Therefore, it has focused its attention on the bin-scale tests. In these tests, headspace gases will be vented into the bin discharge system whenever the bins become pressurized through a pressure relief valve installed on each bin. The gases will then be passed on to the exhaust shaft. Because the purpose of the experiments is to gather data on the gas generation potential for the various types of wastes intended for disposal at the WIPP, the rate of gas generation and thus the amount of hazardous constituents expected to be released can only be estimated. Because of this uncertainty, DOE has proposed and EPA's decision today requires the inclusion of a carbon canister in the bin gas discharge system to remove any volatile organic constituents released from the bins. This carbon adsorption control device must be designed to achieve a control efficiency of at least 95 percent. As explained in its proposal, EPA has taken this control device into account in its no-migration finding for air emissions.

For its assessment of releases from the bin-scale tests, EPA used the concentrations of volatile organic compounds measured in the headspace of 210 drums containing waste generated at DOE's Rocky Flats Plant and stored at the Idaho National Engineering Laboratory. As described in the WIPP no-migration proposal, DOE has been able to provide little or no information on sampling plans, sample handling procedures, or quality assurance/quality control measures for these data. Therefore, EPA views the analytical results on these headspace samples as being semiquantitative. Nevertheless, even if these data underestimate the constituent concentrations by as much as an order of magnitude, the concentration of constituents at the unit boundary are still expected to be below health-based levels.

The results of EPA's assessment are shown in Table 1 below along with levels of regulatory concern.

TABLE 1.—TEST PHASE COMPLIANCE POINT CONCENTRATIONS IN AIR

Constituents	Average headspace concentrations (g/m3)	Compliance point concentrations (g/m3)	Levels of regulatory concern* (g/m3)
Carbon tetrachloride	1.86	0.0027	0.03
Methylene chloride	0.47	0.00068	0.3
Trichloroethylene	8.79	0.0010	0.3
1,1,1-Trichloroethane	13.2	0.019	10,000
1,1,2-Trichloro-1,2,2-trifluoroethane	1.22	0.0018	30,000

EPA conservatively assumed that both test rooms planned for the bin-scale tests are filled to capacity. The capacity of each room is 120 bins; therefore, the total number of bins is 240. EPA then assumed an average gas generation rate of 5 moles per drum per year, a figure that DOE characterizes as representing the upper bound of the range of credible gas generation rates (Test Plan: WIPP Bin-Scale CH TRU Waste Tests, January 1990; SAND 89-0462). Each bin can hold the equivalent of six drum volumes of waste. Therefore, DOE's upper bound gas generation rate is equivalent to a total gas generation rate from all 240 experimental bins of 0.5 cubic meters per day. DOE has specified the general ventilation rate through the repository as 425,000 cubic feet per minute, which is equivalent to 17 million cubic meters per day. This entire volume of air is exhausted at the exhaust shaft and is available to mix with any gases released from the bin discharge system. The resulting dilution factor at the exhaust shaft is 34 million. EPA applied the dilution factor to the average headspace concentrations, together with the control device efficiency, to calculate the concentration of constituents in the exhaust shaft.

The compliance point concentrations (with the carbon adsorption control device installed in the bin discharge system) are an order of magnitude below the level of regulatory concern for carbon tetrachloride and are two to seven orders of magnitude below any other level of regulatory concern. These figures represent the bin-scale tests alone; however, the contribution of the alcoves is negligible by comparison. Although it would not be allowable under today's decision, DOE has provided data to show that even when 10 percent of the wastes, equivalent to 85,000 drums are emplaced in the repository before sealing of the rooms, the concentrations in the exhaust shaft would be two to eight orders of magnitude below the levels of regulatory concern.

Because the alcove experiments involve only 3,650 drums (more than a factor of 20 lower), the concentrations in the exhaust shaft from the alcove drums would be a factor of at least three to nine orders of magnitude below the level of a regulatory concern. The actual concentrations would be even lower than this once the alcoves are sealed at the start of the experiment.

EPA recognizes that the actual bin gas generation rate may be higher than 5 moles per drum per year. However, even if the rate were significantly higher, concentrations at the unit boundary would still be below health-based levels, given the requirement for a carbon adsorption system designed for 95 percent efficiency. Therefore, EPA finds that DOE has demonstrated, to a reasonable degree of certainty, that hazardous constituents will not migrate beyond the repository boundary during the test phase at greater than health-based levels.

Short-term stability of the site. In the long term, salt creep will be the primary mechanism to seal the WIPP repository. In the short term, however, salt creep—which can lead to localized fracturing and rock fall—must be mitigated to ensure a stable repository environment. Repository stability has been greatly enhanced during the test phase by several design modifications to the experimental area. The most significant alteration is rockbolting, a standard mining technique to ensure stability. The roofs of all test alcoves and bin test rooms will be rockbolted. This practice alone should prevent excessive cracking and rockfall during the entire test phase. The effects of early room closure, however, are of greater significance for the test alcoves because they cannot be inspected while the tests are underway, and because drums must be retrievable after the tests have been completed. For this reason, DOE will be reducing the dimensions of the test alcoves, which will slow down the rate of creep closure. Finally, DOE intends partially to backfill several alcoves with crushed salt to simulate disposal conditions. Backfilled test alcoves will be fitted with "stand-off" walls between the backfill and the mine walls, so that room closure does not impinge on the backfilled drums. These modifications ensure the successful retrieval of the drums from the alcoves at the conclusion of the test phase, if it proves necessary.

Feasibility of retrieval. Several commenters expressed concern that retrieval may not be technically feasible, and that, given this uncertainty, EPA cannot assume removal in its no-migration finding. These commenters pointed out specific instances where retrieval might be difficult or infeasible, such as in the case of fire or explosion. They also suggested that creep closure of the test alcoves would preclude removal—an issue discussed in the previous section. Finally, they argued that retrieval from backfilled alcoves has not been demonstrated and that considerable shuffling of waste underground during retrieval may have inherent risks.

EPA has concluded that DOE's Waste Retrieval Plan, in combination with mock retrievals, demonstrates that retrieval is technically feasible. All major aspects of the retrieval process are addressed in the plan, including radiological and hazardous waste contamination control, drum and bin handling, overpacking procedures for corroded or damaged drums, clean up of contamination, and backfill retrieval. While release or leakage of hazardous constituents from containers within the repository during the test period would certainly complicate retrieval, it would not render retrieval technically infeasible. Such events are adequately addressed by emergency response procedures defined for the WIPP. The specifics of the various emergency response procedures are detailed in several DOE publications referenced in the Waste Retrieval Plan. In addition, while EPA agrees with commenters that a fire or explosion would make retrieval more difficult, the Agency is imposing additional conditions to minimize the potential for such an event. (See section V.I.1 of today's notice for a detailed

description of this point.) Thus, adequate safeguards have been imposed and will be implemented in the event of an accidental release of hazardous constituents.

It should be noted that the Waste Retrieval Plan is backed by successful mock retrieval demonstrations, although EPA recognizes that mock retrieval demonstrations performed thus far at the WIPP did not include removal of waste from the alcoves themselves. Other aspects of the removal process, however, were simulated in the retrieval demonstration. Mock retrieval experiments on backfilled alcoves and on bins will be performed before any waste is placed in the WIPP.

EPA agrees with commenters that shuffling of the waste during the retrieval process could increase the risk of a release; however, safe movement of the waste containers is technically feasible, and EPA has concluded that DOE's routine container-management procedures are adequate. Furthermore, any removal activities will be conducted under the oversight of the State of New Mexico, either during RCRA interim status or under permit conditions, which will ensure an appropriate level of care. Finally, the Environmental Evaluation Group, an independent group established by Congress to provide review of the WIPP project, provides oversight over waste management and safety aspects of WIPP operations, including removal.

A number of commenters raised the possibility of drum corrosion during the test phase, which could lead to spillage and complicate retrieval. EPA has concluded, however, that the potential for significant drum corrosion during the test phase is limited and will not substantially affect the retrieval of wastes. While it is true that salt is very corrosive, the rate of corrosion of the drums being stored in the repository is expected to be low. This is because several key factors affecting the rate of drum corrosion allow for favorable drum storage conditions. In particular, the rate of corrosion is affected by the composition of the brine contacting the drums. That is, corrosion proceeds most rapidly if the brine is unsaturated and contains dissolved oxygen. However, the brine in the WIPP repository is both saturated with salt and contains low levels of dissolved oxygen; therefore, drum corrosion would be inhibited. Moreover, the rate of corrosion is directly affected by the amount of brine contacting the drums. Since the repository is expected to remain dry during the test period and thus there will be minimal drum-brine contact, EPA does not expect the drums to corrode significantly. For these reasons, EPA has concluded that the useful drum life in the WIPP will exceed the period of this determination, including retrieval time, and it sees no reason to question DOE's statement that the drums will maintain integrity for twenty years.

In addition, EPA notes that containers at the WIPP will be subject to monitoring and inspection procedures required under RCRA 40 CFR part 265 (and, once a permit has been issued, under 40 CFR part 264). These requirements will be adminstered by the New Mexico Environmental Improvements Division, with EPA oversight. If any questionable drums were identified, mitigative measures—such as overpacking—could be undertaken. To be sure, drums that are sealed in the alcoves during the alcove tests cannot be routinely inspected. However, under DOE's test plan, these tests are expected to last approximately five years. Thus, inspection would be possible well within the useful life of the drum.

Finally, as EPA discusses in this and the following section, spillage from drums (however unlikely) can be contained and cleaned up, and corroded drums can be overpacked. Thus, EPA disagrees with commenters that drum corrosion might prevent the safe removal of drums from the WIPP, if removal proves necessary.

Limited effect of accidents and spills. Numerous commenters argued that accidents or spills at the WIPP site would complicate retrieval of wastes or might lead to migration. EPA agrees that accidents or spills might complicate retrieval, but it has nevertheless concluded that the cleanup of spills and the removal of contaminated material from the WIPP is technically feasible. The WIPP Retrieval Plan outlines DOE's planned approach to the removal of contaminated material; in addition, the feasibility of safe removal of such material was demonstrated in DOE's mock retrievals. Moreover, neither EPA nor public commenters identified any spill situations that by themselves would lead to a release from the repository.

EPA has addressed the possibility of fire or explosion in the WIPP by new waste characterization requirements in today's decision. Under these requirements, DOE must test every container shipped to the WIPP for flammable gases. If flammable gases are identified, the waste cannot be placed in the repository. Therefore, under the terms of EPA's determination, explosion or fire in the WIPP is not a credible event. (After DOE has developed a greater body of data on wastes shipped to the WIPP, it is likely that waste characterization requirements addressing flammability can be relaxed. However, this could only take place through a modification of the determination, with opportunity for public comment.)

Effectiveness of controls against human intrusion. During the period covered by today's determination, DOE will maintain active control over the WIPP site, and unauthorized access will be prohibited. Furthermore, the site will be operating under RCRA interim status and permit conditions, administered by the State of New Mexico, and therefore will have to comply with the RCRA security requirements. These requirements include prevention of unknown entry of persons or livestock to the active portion of the facility. Finally, DOE has secured all mineral leases at the WIPP site, eliminating the possibility of the disturbance of the repository as a result of mining or drilling. For these reasons, the Agency has concluded that migration resulting from human intrusion will not occur during the term of the determination.

B. Conditions of Determination

1. Limitation to Testing and Experimentation

In EPA's proposed finding, it limited activities involving mixed waste at the WIPP repository to the testing and experimentation described in DOE's petition and referenced documents. The Agency has retained this condition in its final determination. Consequently, DOE will be restricted to its planned test phase activities, as described in the "WIPP Test Phase Plan: Performance Assessment," Revision O (DOE/WIPP 89-011, April 1990). Before DOE could conduct activities beyond the scope of this test plan, it would have to petition EPA to modify its no-migration finding.

Several commenters on the proposal expressed uncertainty about what specific activities would fall under the definition of "testing and experimentation"; in addition, the commenters asked for clarification of when DOE would have to notify EPA of changes from activities described in the performance assessment test plan.

With respect to the first point, DOE could conduct in the repository only those tests or experiments designed to provide data to demonstrate the long-term acceptability of the WIPP. Thus, DOE's planned "operations demonstration" has been explicitly excluded from the allowed activities; other nontesting activities would similarly be excluded. For clarification, EPA has modified this condition, which originally read "placement of waste for the primary purpose of conducting an operations demonstrated is prohibited under this variance * * *," by dropping the word "primary." Several commenters suggested that the inclusion of the word "primary" amounted to an invitation to DOE to conduct a full-scale operations demonstration with the excuse that some testing was also going on. This was not EPA's intention, and therefore it has modified the condition accordingly. EPA, however, stresses that it does not understand this condition as preventing DOE from incidentally testing some operational aspects of its system when it places waste underground for permissible testing. Such activity, in EPA's view, would not constitute an "operations demonstration" in the sense that DOE as well as DOE critics have used the phrase up to this point. In addition, EPA recognizes that some mixed wastes might be generated underground as a result of legitimate experimentation or air monitoring in the WIPP repository. These wastes, which might no longer have any experimental purposes, could nevertheless be stored in the repository until a final determination on the site was made. Because the materials were originally placed in the WIPP for permissible testing, continued storage of the wastes in the repository would be consistent with the terms of EPA's decision.

With respect to the second point, tests and experiments conducted under today's determination would have to be consistent with the activities described in DOE's performance assessment test plan and its no-migration petition. For example, where substantially different wastes or waste containers are used, where waste volumes were increased above 0.5 percent (but less than one percent), or where tests outside DOE's planned three-phase bin and alcove-scale tests are contemplated, DOE would be required to notify EPA and, if the changes might affect the basis of EPA's finding, seek a modification to that finding. The only exception to this would be those wastes that are described in DOE's no-migration petition that are modified through various treatment technologies; because the composition of these wastes, if changed, would contain fewer toxic constituents, the Agency does not believe it would have to be notified before the wastes could be placed in the repository. EPA does note, however, that the pilot-room tests originally suggested by EPA and now contemplated by DOE, would be excluded under today's decision, because they go substantially beyond the program described in DOE's test plan and furthermore are inconsistent with other conditions of the determination (*e.g.*, the volume limit and retrievability of wastes).

2. Limitation on Volume

In its proposed determination, EPA did not set a specific limit on the amount of mixed waste that DOE could place in the repository during the test phase. Instead, EPA argued that, because of the experimental nature of the test phase, DOE needed a reasonable degree of flexibility in carrying out its experimental program. Although several commenters supported EPA's approach, many opposed it, arguing that it was open-ended and allowed DOE to expand the scope of the test phase indefinitely. Although EPA continues to believe that its no-migration finding, as proposed, significantly restricts the nature of DOE activities during the test phase, the Agency nonetheless understands the concerns of the commenters. Therefore, it has decided to place a volume limitation of 8,500 drums or 1 percent of the total projected WIPP volume on wastes that can be placed in the repository under this determination.

In setting a volume limit, EPA notes that DOE's "WIPP Test Phase Plan" called for bin and alcove-scale testing of waste amounting to 0.5 percent of the projected WIPP capacity, while in Congressional testimony, DOE indicated that bin, alcove, and pilot-room tests might require waste amounting to approximately 2 percent of the WIPP capacity. Because EPA has determined that the pilot-room tests, as currently planned, could not be conducted under the proposed no-migration finding, it believes that the 2 percent volume limit would be inappropriate. At the same time, EPA also believes that limiting DOE to the amounts specified in the current test plan might not provide sufficient flexibility for DOE to modify those plans, particularly in response to comments from reviewing organizations. Consequently, EPA has decided to impose a limit of 1 percent of total WIPP capacity (or 8,500 drums), a figure that provides some flexibility to DOE and at the same time gives the public assurance of an opportunity to comment if significant increases over DOE's proposed waste volumes are needed.

EPA emphasizes that it is not basing the 1 percent limit on any technical determination of how much waste would be necessary for DOE to carry out an adequate testing program. Rather, EPA in effect is defining a limit that it would consider to be a significant departure from the activities described in DOE's no-migration petition and its final test plan. Before DOE could exceed that limit, it would have to repetition EPA, and any EPA approval of an expanded test program would have to undergo public comment. EPA also emphasizes that the 1 percent figure represents an upper limit on the amount of waste that may be placed in the WIPP under today's determination. This limit would not override the condition that waste could be placed in the WIPP only for testing and experimentation within the scope of DOE's test plan. Waste would not be allowed in the repository for purposes other than testing and experimentation, even if the volume of waste involved did not exceed the 1 percent limit.

Many commenters also suggested that EPA shorten the proposed ten-year expiration date for petition approval. EPA has not adopted this suggestion, because, as it discussed in the proposed decision, it believes such a limit might artificially constrain legitimate testing. EPA does not believe the difference between five years (the projected length of DOE's test phase) and ten years is significant in terms of the likelihood of release of hazardous constituents from the repository. Furthermore, it has concluded that this difference in time will not significantly effect retrievability. However, EPA acknowledges that the timing and procedures for removal of waste if DOE is not able to demonstrate the long-term acceptability of the WIPP at the close of the ten-year period was not clear in the proposed finding. Therefore, the Agency has amended the conditions of the finding to address this concern. This issue is discussed below.

3. Waste Retrieval

The requirement that DOE retrieve wastes from the repository if it cannot demonstrate the long-term acceptability of the site remains unchanged from the proposal. As discussed above in section IV.A, EPA has found such retrieval to be feasible within the general parameters of the plans submitted with the petition. In addition, EPA has added a clause spelling out in more detail the timing of retrieval. Under this requirement, DOE must submit to EPA a specific retrieval schedule no later than six months after it is determined that the WIPP cannot meet the long-term disposal standards, or six months before the expiration of the petition approval (*i.e.*, 10 years after petition approval), whichever comes first. This schedule would have to detail

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retrieval procedures and include a schedule for the removal of the waste as rapidly as technically feasible. Before retrieval took place, the plan would be subject to public comment and EPA approval.

4. Waste Retrievability

DOE is required to place all waste in the repository in a readily retrievable manner. This condition is unchanged from the proposal. By "readily retrievable," EPA means adoption of the specific measures identified in DOE's petition to maintain room stability (*i.e.*, room sizing, rock bolting), the use of easily retrieved waste containers (*e.g.*, boxes, bins, and drums), and the absence of backfilling—except in alcove tests where standoff walls will be used. (EPA notes that testing in pilot-scale rooms, which the Agency originally suggested and DOE is now considering, would not be allowed under this condition, because—as currently planned—they would involve backfilling of waste in the pilot rooms without standoff walls. DOE would have to seek a modification of the no-migration finding, with opportunity for public comment, before conducting such tests.)

5. Carbon Adsorption Device

Today's decision requires DOE to install a carbon adsorption control device in the bin discharge system of each room designed to achieve a 95 percent control efficiency. The Agency believes a 95 percent control efficiency is readily achievable. (See 55 FR 25454.) The design must be based on a total design gas volume consisting of a design gas generation value of at least 5 moles per drum per year from the bins and the volume of gas used to purge the bin exhaust manifold. EPA also wishes to clarify that the design value for the frequency of carbon replacement must be verified by testing and modified as needed to prevent breakthrough from occurring. The testing must consist of measurements of the adsorption capacity of carbon for the bin exhaust gases, as described in the petition. EPA is also requiring DOE to maintain design records, including any test data, and operating records in the facility operating record, as described in the notice of the proposed decision. (See 55 FR 13068, Section IV.J.) Records must be maintained for the term of today's determination (i.e., ten years from today's date), or three years after the creation of the records, whichever is longer. In addition, the records must be maintained during the course of any enforcement action for which they are relevant.

EPA is not requiring DOE to perform testing to verify the control efficiency of the carbon bed. However, DOE must monitor the bin exhaust manifold to show that no migration above health-based levels occurs at the unit boundary. This must be further confirmed by monitoring at the exhaust shaft. Although the 5 moles per drum per year design value for gas generation is believed to be conservative, the overall average rate of gas generation from TRU wastes is not known with certainty; this is the purpose of the bin and alcove tests. The control efficiency actually achieved will be higher or lower depending on the rate at which gas is generated during the tests. However, even if gas generation rates were to be as high as 25 moles per drum per year, the design would still achieve the no-migration standard.

6. Air Monitoring Plan

EPA is requiring air monitoring for activities conducted under today's no-migration finding to confirm that there is no migration of hazardous constituents above health-based levels beyond the unit boundary. As described in its notice of proposed decision (55 FR 13068), EPA has concluded that the only possible migration pathway during the test phase is through the exhaust shaft. Therefore, in accordance with the requirements of 40 CFR 268.6(c), the Agency is requiring DOE to implement the air monitoring plan submitted with its petition, subject to the clarifications, modifications, and reporting requirements described in the notice of proposed decision, except as noted below.

In its proposed decision, EPA solicited comment on whether additional monitoring should be conducted in the underground repository with portable explosimeters to detect any buildup of methane, hydrogen, or other flammable gases. No comments were received in favor of portable explosimeters. Therefore, EPA has decided not to require their use. At the same time, however, EPA has determined that only by testing individual waste containers to be placed in the WIPP can it be assured that no fire or explosion hazard exists. Thus, EPA is including an additional condition requiring such testing, as described in section IV.B.7.a of today's notice.

EPA also solicited comment on whether to allow a reduction in monitoring frequency from weekly to monthly. EPA received no comments on this question and has decided to retain a weekly minimum monitoring frequency. Furthermore, EPA solicited comment on whether other constituents, in addition to the five constituents proposed, should be targeted for routine quantitation. No comments were received on this question; therefore, EPA has decided to retain the five target constituents listed in the notice of proposed decision, with provisions for targeting additional constituents, as described in the proposal.

In the proposal, EPA spelled out a variety of quality assurance and quality control requirements, making mention of the "Report on Minimum Criteria to Assure Data Quality." Since that time, EPA has revised this report and has retitled it "Quality Assurance and Quality Control" (August 1990), a copy of which has been placed in the docket to this rule. Therefore, EPA is requiring DOE to follow the requirements of the revised report, in addition to adhering to the specific quality control requirements described in the DOE monitoring plan and EPA's notice of proposed decision. EPA wishes to clarify that it intends the "method limit of quantitation," the term used in the notice of its proposed decision, to be synonymous with the term "method detection limit," or MDL, used in the report, "Quality Assurance and Quality Control." In addition, EPA is requiring DOE to maintain documentation of all aspects of quality assurance and quality control, as described in the revised report, in the WIPP facility operating record; this documentation must be available for inspection by the Agency. The records must be maintained for the term of today's determination or three years after they are created, whichever is longer. In addition, the records must be maintained during the course of any enforcement action for which they are relevant.

Initial monitoring results underground at the WIPP have revealed significant background levels of 1,1,1-trichloroethane and carbon tetrachloride.[7] The levels measured can interfere with the evaluation of accuracy if the approach described in the notice of proposed decision is used. Therefore, EPA is changing the method by which relative accuracy is determined. Instead of computing accuracy based on a matrix spike alone (as the relative difference between the concentration recovered from the sampler and the concentration of the targeted analyte as determined from the known concentration in the audit gas cylinder), the computation should be adjusted for the actual background concentration measured in a matrix duplicate at the time the matrix spike is collected. Therefore, DOE must collect and analyze both a matrix spike and a concurrent matrix duplicate.

[7] Significant levels of methylene chloride were also detected in background samples. However, laboratory contamination is the most likely explanation for the measured levels of methylene chloride.

EPA further solicited comment on what specific quality assurance (QA) objectives it should require for data acceptability. DOE requested that EPA allow less accurate measurements at concentrations near the detection limit. The data provided by DOE, however, gave no basis for establishing an alternative QA objective for accuracy, due to high background levels. Because of this, and because EPA is not requiring data that are below the method detection limit (MDL) to be used in the evaluation of relative accuracy (the MDL is generally considerably higher than the limit of sensitivity of the analytical procedure), EPA has concluded that the plus or minus 10 percent requirement can be achieved. Therefore, no change is being made to the QA objectives established in the notice of proposed decision.

Finally, EPA proposed to require calibration of the ventilation exhaust fans on a quarterly basis. In its comments on the proposal, DOE interpreted this to mean a full dynamic calibration, which it argued is needed only on a yearly basis. EPA means to require only a check on the fan calibration on a quarterly basis, using the methods described in the notice of proposed decision. EPA agrees that a full calibration is needed only on a yearly basis.

Several commenters expressed concern that EPA is allowing monitoring at the top of the exhaust shaft instead of at the entrance to the shaft. They argued that EPA should require DOE to monitor the entrance and exit of the shaft to demonstrate EPA's statement that there will be no difference between measurements. EPA disagrees with these commenters. Even if, as suggested by one commenter, the integrity of the concrete shaft liner were compromised, it is inconceivable that any depletion of concentrations of hazardous constituents could be detected, given the large volume of air that the exhaust shaft is designed to handle during operation. EPA's overriding concern regarding the specific location of the exhaust shaft monitoring station is that it be situated so as to enable ready access for operation and maintenance purposes. Indeed, EPA views ready accessibility as one of a number of important quality assurance objectives. Therefore, EPA continues to accept monitoring at the top of the exhaust shaft.

7. Waste Analysis

a. *Flammability.* EPA received a number of comments that flammable gases could build up in waste containers, creating a fire and explosion hazard. After reviewing these comments and new information made available during the public comment period, EPA has concluded that, while a fire or explosion is unlikely, the possibility of accidental ignition of flammable gases in waste containers cannot be ruled out. Were a fire or explosion to occur as a result of accidental ignition of flammable gases in the void space of a waste container, retrieval could be much more difficult, should retrieval become necessary. Moreover, such an event could itself cause migration above hazardous levels beyond the uniboundary.

For these reasons, EPA believes that no waste container should be emplaced in the underground repository if it contains flammable mixtures of gases in any layer of confinement, or mixtures of gases that could become flammable when mixed with air. To assure a sufficient margin of safety, EPA defines any mixture as potentially flammable if it exceeds 50 percent of the lower explosive limit (LEL) of the mixture in air.

To ensure that individual waste containers have met the prohibition on flammable gases, the Agency is requiring that every waste container be tested for hydrogen, methane, and volatile organic compounds (VOCs) as a class. Given the heterogeneity of the waste package, the Agency is also requiring that headspace sampling be representative of the entire void space of the waste container. EPA expects that all layers of confinement in a container will have to be sampled until DOE can demonstrate to the Agency, based on the data collected, that sampling of all layers is either unnecessary or can be safely reduced. The testing of wastes that exhibit high rates of radiolysis should be performed a relatively short time before the container is actually emplaced underground. Otherwise, hydrogen levels could build up to flammable levels following sample collection and analysis. Therefore, DOE must determine, and document, the length of time that headspace gases can be expected to remain below flammable levels (i.e., 50 percent of the mixture LEL) after sampling has been performed, for both newly generated and retrievably stored wastes, and to ensure that the waste containers are emplaced in the WIPP within that time.

If testing reveals the presence of significant levels of flammable VOCs, DOE must perform an explicit flame test to determine if a flammable mixture can be formed with air. Significant levels of flammable VOCs are defined as measured concentrations (excluding methane) of 500 parts per million or greater. If testing shows that VOCs are insignificant, i.e., below 500 parts per million, DOE may determine the lower explosive limit of the mixture from the lower explosive limits of methane and hydrogen using the Le Chatelier formula, as described in Section V.I.a of today's notice.

All testing must satisfy the quality assurance and quality control requirements described in EPA's report "Quality Assurance and Quality Control" (August 1990) and must meet quality assurance objectives of plus or minus 10 percent on precision and accuracy. DOE must also maintain records on all testing performed and other documentation needed to comply with this condition at the generating site or in the WIPP facility operating record. These records must be available for inspection by EPA, and must include documentation of all aspects of quality assurance and quality control, as described in the above-referenced document. Records must be maintained for the term of today's decision, or three years after they are generated, whichever is longer. They also must be retained for the duration or any enforcement action related to this part of today's decision.

b. *RCRA Constituents—Short-term characterization.* In response to comments regarding the accuracy of the waste composition estimates provided by DOE in its no-migration petition, EPA is modifying its proposal to require that DOE analyze headspace gases in containers that are shipped to the WIPP and compare the results of this analysis to the estimated values provided in the no-migration petition. Since it was the values in the petition that EPA evaluated in today's decision, DOE must ensure that the analytical data derived from the actual test-phase wastes are similar to the petition estimates. Wastes that are not compositionally similar may not be placed in the WIPP.

(1) *Bin-scale tests.* DOE must compare actual measurements of headspace concentrations of volatile organics in each of the drums containing wastes to be used in the bin-scale tests to the headspace concentrations reported in DOE's petition. The comparisons must be made in terms of both maximum and mean concentrations. (EPA considers only headspace concentrations to be

necessary because migration through air was determined to be the only viable route of migration during the test phase.)

The comparison of the maximum concentrations is designed to ensure that the wastes to be emplaced in the WIPP are in fact similar to the wastes described in the petition. In its proposed decision, EPA noted concerns with the precision and accuracy of some of the analytical data in the petition and took this uncertainty into account during its evaluation. To address concerns over the quality of its data, DOE will be conducting an extensive characterization program on wastes to be shipped to the WIPP for the bin-scale and alcove tests under greatly improved quality assurance/quality control (QA/QC) procedures. (See e.g., DOE's Pre-Test Waste Characterization Plan, Revision 6, in the docket to today's decision.) Because of improved data quality, EPA expects these new data to differ somewhat from those contained in the petition. However, the Agency believes that the measured maximum concentrations identified in individual drums in DOE's pretest waste characterization program should be generally comparable to the maximum values reported in the petition.

There are no established criteria for quantitatively defining "comparability" in this context. EPA, however, has concluded that, if the measured headspace concentration in a given drum are no more than a factor of two over the maximum reported for the drum in the petition, the wastes are reasonably comparable. In selecting a factor of two, EPA notes that some differences between the new data and that contained in the petition are expected. This is because the new data will represent a larger sample and analytical results may be more accurate. (As noted in EPA's proposal, the precision and accuracy of the analytical data in the petition were not always well documented.) For these reasons, EPA has concluded that it is reasonable to expect some concentrations will be measured that will exceed the maximum values reported in the petition. EPA, however, also believes that the data should not be significantly different and concludes that a factor of two represents a reasonable expectation.

Accordingly, DOE may place the contents of individual drums into bins for the bin-scale tests if the measured headspace concentrations do not exceed the reported maximums by more than a factor of two.[8] Testing and verification must be completed before the waste is shipped to the WIPP. If the measured concentration of any of the pertinent hazardous constituents in a drum headspace exceeds the allowable maximum, the contents of the drum from which the sample was collected cannot be shipped to or emplaced in the WIPP, unless DOE subsequently treats the waste so as to reduce headspace concentrations to below the maximum levels. Alternatively, DOE may petition EPA to modify the conditions of its determination. Any such modification would require public comment. Further, DOE must maintain records of all relevant test data at the generating site or the WIPP for the term of today's determination, or three years after the data are generated, whichever is longer. In addition, records must also be retained for the duration of any enforcement action for which they are relevant.

The maximum allowable concentrations for hazardous constituent by waste type (the maximum reported concentrations multiplied by two) are presented in Table 2.

TABLE 2.—MAXIMUM HEADSPACE CONCENTRATIONS

[In volume percent]

Constituent	Type I	Type II	Type III	Type IV
Carbon tetrachloride	0.08	0.18	0.56	8.18
Methylene chloride	0.44	0.84	0.50	1.42
1,1,1-Trichloroethane	1.88	5.68	2.12	14.96
Trichloroethylene	0.09	0.34	0.26	0.26
1,1,2-Trichloro-1,2,2-trifluoroethane	0.05	1.62	5.74	20.80

EPA's no-migration finding for air releases was based upon the mean headspace concentrations of volatile constituents reported by DOE. Accordingly, EPA has concluded that comparison of the new, pre-test characterization data with the mean concentrations reported in the petition is also necessary to ensure that EPA's estimates of volatile emissions are valid for the actual test-phase wastes. In determining a reasonable factor for this comparison, EPA considered the "safety margin" indicated by the no-migration demonstration. For the constituents of concern, this safety margin ranges from approximately eleven to well over sixteen million, varying by constituent. EPA has no reason to believe that the headspace concentrations for 1,1,1-trichloroethane and 1,1,1-trichloro-1,2,2-trifluoroethane (with safety factors of six and seven orders of magnitude, respectively) could be high enough to alter the no-migration finding. For the other constituents (carbon tetrachloride, methylene chloride, and trichloroethylene), the safety factors are lower (one, two, and two orders of magnitude, respectively). EPA, therefore, has concluded that DOE must compare the new headspace data for these constituents to the mean values reported in the petition.[9] To ensure that the no-migration finding remains valid for these constituents, EPA is requiring that the mean values for the test phase wastes cannot exceed ten times the mean values reported in the petition.

EPA is confident that the factor of ten (back-calculated from the modeling for carbon tetrachloride) is sufficiently conservative for all three of the constituents. Even though no additional safety factor has been added for carbon tetrachloride, EPA notes that the modeling upon which the calculation was based contains several conservative assumptions (e.g., that both test rooms are filled to capacity). EPA also notes that, during the test phase, emissions will be monitored and it will be clear well in advance if emission levels are approaching the no-migration limits, and corrective measures could be taken. Therefore, EPA is comfortable with a safety factor of ten for the comparison of the mean values.

DOE must compare the predicted mean values (multiplied by ten) against the average of the measured concentrations of the headspaces of all drums of a single waste type used to make up each bin. That is, the mean from the population of drums going to each bin (by waste type) must be compared with the reported mean for that waste type. If the calculated mean exceeds the reported mean by more than a factor of ten, that bin cannot be emplaced at the WIPP under today's decision. Testing and verification must be completed before the waste is shipped to or emplaced in the WIPP. As with comparisons of maximum concentrations, DOE must maintain records of all relevant test data at the generating site or at the WIPP facility for the term of today's determination, or for three years after generation, whichever is longer.

The allowable average concentrations for each waste type in drums to be used in a single bin are presented in Table 3.[10]

TABLE 3.—MEAN HEADSPACE CONCENTRATIONS

[In volume percent]

Constituent	Type I	Type II	Type III	Type IV
Carbon tetrachloride	0.24	0.26	0.30	8.90
Methylene chloride	0.59	0.42	0.33	0.93
Trichloroethylene	0.25	0.28	0.29	0.38

(2) *Alcove tests.* EPA has found emissions from the alcove tests to be inconsequential in comparison to the bin-scale tests. Accordingly, EPA is not requiring testing of the headspace of drums used in the alcove tests to demonstrate comparability with reported concentrations in DOE's petition.[11] Before any drums can be shipped to the WIPP for alcove tests, however, DOE must verify (by waste type), through results of the bin-scale tests conducted up to that point, that the measured mean concentrations for specific hazardous constituents do not exceed the reported mean values by more than a factor of ten. (See Table 3.) (This condition would not require DOE to conduct all bin-scale tests before the alcove tests could proceed; however, based on discussions with DOE, EPA believes that most of the bin-scale tests will be conducted before the alcove tests begin.) EPA is also not requiring DOE to test the drums to determine maximum concentrations for specific hazardous constituents, because it believes that sufficient data will have been compiled from tests conducted in bin-scale drums to determine if there is a concern. In this regard, EPA notes that the drums for both the bin-scale and the alcove tests will be randomly selected from the population of each appropriate waste type. Therefore, there is no reason to believe that the wastes used in the alcove tests will be any more or less accurately characterized by the data in the petition than will be the wastes used in the bin-scale tests. For this reason, EPA has concluded that the data collected from the drums selected for the bin-scale tests can be appropriately extrapolated to the drums for the alcove tests.

c. *RCRA Constituents—Long-term characterization.* In its proposed decision, EPA expressed some concern over the limited waste characterization data provided by DOE in support of its petition. While EPA concluded that the data were sufficient for the no-migration demonstration for the test phase, it also believed that further characterization was required, before any finding could be made for the operational and post-closure phases. EPA believes that this further characterization will be necessary both to further confirm DOE's estimates of waste composition and to ensure that the wastes are sufficiently similar to allow the results of test-phase experimentation to be extrapolated to the wastes that DOE wishes to emplace at the WIPP in the operational phase. That is, the Agency wished to ensure that the test-phase wastes are accurately represented by the estimates and are representative of the remainder of the wastes.[12] In addition, more accurate source term data may prove necessary, EPA believes, in long-term modeling exercises. Toward these ends, the Agency proposed to require DOE to report all characterization data that will be collected.

After carefully reviewing public comments, EPA continues to believe that the data provided by DOE in its petition are sufficient for its finding with respect to the WIPP test phase, where air emissions are the major concern (especially given the standards on headspace concentrations and flammability imposed in today's decision). The additional waste characterization data under development by DOE during the test phase will be important for any review of a subsequent no-migration petition for operational and post-closure periods, where groundwater migration and other issues may arise; however, the data are not needed for today's decision. Accordingly, EPA has not included detailed requirements for waste characterization of the test-phase wastes (beyond the headspace concentrations and flammability limits) or of wastes generated at the ten DOE sites as a condition for today's final decision. However, DOE is developing waste characterization plans, including sample collection, preservation, and analytical procedures, to demonstrate the extent to which the test phase wastes are representative of the other wastes from the ten sites, and to confirm the actual levels of RCRA constituents in headspace gases and sludges. If certain wastes that are generated at the ten sites are not represented (as defined in footnote 12) by the wastes that were tested during the test phase, they could not be shipped to the WIPP without further Agency evaluation, including the possibility for public comment or treatment of the waste.

Over the past several months, EPA—and the state of New Mexico—has reviewed a number of documents concerning DOE's pre-test waste characterization plans. EPA will continue to provide comments to DOE to assist DOE in evaluating whether the waste characterization data that DOE will be collecting are sufficient to make a long-term finding for the WIPP. If adequate data are not collected, EPA will not be in a position to approve any no-migration petition for the operational and post-closure phases, if DOE submits such a petition. At a minimum, the wastes should be analyzed for the following constituents:

Acetone	Hydrazine
Benzene	Methanol
Bromoform	Methylene chloride
Butanol	4-Methyl-2-pentanone
Nitrobenzene	1,1,1-Trichloroethane
1,1,2,2-Tetrachloroethane	Trichloroethylene
Tetrachloroethylene	1,1,2-Tricholoro-1,2,2-trifluoroethane
Toluene	1,3,5-Trimethylbenzene
2-Butanone	1,2,4-Trimethylbenzene
Carbon tetrachloride	m-Xylene
Chloroform	o-Xylene
Chlorobenzene	p-Xylene
Cyclohexane	Cadmium
1,1-Dichloroethane	Chromium
1,2-Dichloroethane	Lead
1,2-Dichloroethene	Murcury
cis-1,2-Dichloroethane	Selenium
Ethyl benzene	Silver
Ethyl ether	
Formaldehyde	

Testing for these constituents should include headspace analysis of all waste types for the organic compounds, as well as total analysis of the sludges for both the organic compounds and the metals.[13] Since these date are not

[8] As with the condition related to flammability discussed previously, DOE must demonstrate that samples collected for these analyses are representative of the entire headspace within the drum, including the headspace within inner bags.

[9] See footnote 8.

[10] The allowable concentrations are the reported mean concentrations for each waste type multiplied by ten. In calculating the mean headspace concentrations, EPA used one-half the detection limit indicated in the no-migration petition to represent concentrations where the constituent was not detected.

[11] Although today's decisions does not require DOE to characterize RCRA constituents in the drums to be used in the alcove tests, DOE has informed EPA that it intends to test some statistical number of drums that are to be used in the alcove test. In addition, as discussed earlier, DOE will be required to test the headspace of drums used in the alcove tests for flammability.

[12] By "representative," EPA is referring to those factors that should contribute to migration of hazardous constituents. The purpose of the test-phase experiments is to evaluate gas-generation processes and provide a database of information that can be used to predict gas generation potential of the wastes that are planned to be emplaced during the operational phase. Thus, the issue of whether the test-phase wastes are "representative" deals with whether the results of the test-phase experiments can be extrapolated to the remaining wastes. To that end, DOE's approach is based upon an "envelope" or "bounding" concept wherein wastes whose characterization (for gas-generation potential) is within that envelope would be considered "represented" by the test-phase wastes.

[13] As indicated in Section I.D of today's notice, the state of New Mexico is responsible for enforcing

Continued

necessary for today's finding, but rather will be evaluated as part of a subsequent review of a petition for the operational and post-closure periods (if DOE chooses to submit such a petition). EPA has concluded that the specifics of this testing should not constitute a condition in today's decision.

8. Reporting Requirements

Reporting requirements associated with EPA's final no-migration determination are unchanged from the proposal—that is, annual written reports are required on the status of DOE's performance assessment during the test phase—except that the final determination requires that DOE send reports to EPA's Region VI office in Dallas, Texas, as well as to the EPA Office of Solid Waste at EPA headquarters. Because Region VI will have direct enforcement authority over the WIPP, EPA believes that it is important for reports to go directly to the regional office as well as to EPA headquarters.

V. Discussion of Major Issues

EPA received more than 400 comments on its proposal, some supporting EPA's proposed decision and others opposing it. Commenters raised a wide variety of issues, including the general scope of EPA's review and its proposed decision; the suitability of the site; the consistency of EPA's proposed approach with the statutory no-migration standards; adequacy of waste characterization; the feasibility and likelihood of retrieval; the impact of possible human intrusion; and many other issues. The major issues raised by the public are discussed below as well as in other sections of this notice. These and the other issues raised by commenters are also discussed in detail in a Response to Comment document prepared by EPA. This document is available in the public docket to this decision.

A. Appropriateness of "Exemption" for DOE

A number of commenters criticized EPA for proposing to grant to DOE what they regarded as an "exemption" from the hazardous waste regulations for its WIPP operations. They questioned why EPA would grant an "exemption" or "variance" to DOE for radioactive wastes, given the risks of this material. Numerous commenters also questioned DOE's record at other sites, and argued that DOE should be required to comply with all applicable regulations—without special "exemptions" or "variances"—before it was allowed to place waste in the WIPP repository for any purposes.

EPA stresses that it is not granting an "exemption" to DOE from the hazardous waste regulations. This action, however, is a "variance" only in a very narrow sense. HSWA establishes two routes by which a regulated party may dispose of waste in compliance with the land disposal restrictions: It may pretreat wastes according to specified treatment standards, or it may dispose of the waste in a unit that meets the stringent no-migration standard. DOE has chosen the second route of complying with these restrictions—an option that is in some respects the more stringent of the two. For example, if DOE were to choose treatment as its approach, DOE would no longer be required to demonstrate that no hazardous constituents would migrate from the WIPP before the treated waste (which might still remain hazardous) could be placed underground. In any case, EPA reemphasizes that its action today in no way exempts DOE from the hazardous waste regulations; instead, it is a determination by EPA that the placement of untreated mixed waste in the WIPP during the test phase complies with the statutory and regulatory restrictions on land disposal under RCRA. Furthermore, it should be noted that the WIPP must also comply with the other hazardous wastes standards of RCRA, as well as other applicable standards. Other standards applicable to the WIPP are described in Section I.D of this notice.

EPA recognizes the concerns of many commenters over acknowledged problems at other DOE sites. EPA, however, does not believe that problems at other sites should rule out approval of a no-migration petition for the WIPP. The issue at hand is whether there will be any migration of hazardous constituents from the WIPP disposal unit. EPA has carefully and independently reviewed all the information from other sources. As a consequence of this review, EPA has concluded that DOE has demonstrated, to a reasonable degree of certainty, that hazardous constituents will not migrate from the disposal unit, under the conditions prescribed in Section VI of this notice.

B. Timing of EPA Decision

A number of commenters expressed concern about what they considered to be EPA's undue haste in proposing to grant DOE's no-migration petition for the WIPP, and they criticized EPA's tentative schedule for a final decision. They suggested that EPA may have taken undue shortcuts in the regulatory process, or that DOE's petition was given an insufficient level of technical review.

EPA disagrees with these commenters. The Agency deliberated on DOE's original petition for more than a year before its proposed no-migration determination for the WIPP in April 1990, and it spent an additional five months in the review of public comments before reaching a final decision. In the course of this review, EPA conducted a complete and thorough evaluation of DOE's petition, material provided by DOE in support of its petition, independent studies of the WIPP, and public comments on the proposed no-migration determination. In addition, EPA staff conducted three investigatory visits to the WIPP site. The results of EPA's review are summarized in today's notice and in the Agency's proposed decision in April 1990. Technical details are provided in EPA's Response to Comments Document and its Background Document, both of which are available in the docket for this rulemaking.

EPA acknowledges that it placed a high priority on the review of DOE's WIPP petition. The Agency disagrees, however, that it took any undue shortcuts in the review or omitted any significant procedural steps. EPA's decision was made in full accord with the procedures for no-migration determinations, codified at 40 CFR 268.6, and with EPA's procedures for site-specific decisions under RCRA. EPA modeled its procedures for handling the WIPP no-migration petition (as well as other no-migration petitions now under review) on its procedures for handling RCRA delisting petitions. These procedures ensure a thorough and complete Agency review, with public notice and full opportunity for public comment.

C. Scope of Determination

In its proposed no-migration determination for the WIPP, EPA noted that it did not consider the release and possible risks associated with radioactivity; rather, its review addressed the release of hazardous constituents from the disposal unit. EPA pointed out in its proposal that the statutory language on no-migration referred to the release of hazardous constituents, which do not include radionuclides, and risks of radioactivity from the materials DOE is placing in the WIPP fall within the scope of the Atomic Energy Act rather than RCRA. The Agency further noted that risks associated with transportation lay outside the scope of its no-migration review. Finally, EPA did not seek to determine whether the approach proposed by DOE—that is, deep geologic disposal of TRU wastes at the WIPP site—was the best possible alternative for handling that waste. Despite EPA's explanation of the scope of its no-migration review, numerous commenters raised issues related to radioactivity, transportation, and alternatives to the WIPP. EPA understands that concerns of these commenters; however, its continues to believe these concerns lie outside the scope of its legal authority and are better addressed in other forums.

Radioactivity was a major concern of many commenters. A number, in particular, argued that, since EPA's charge is to protect human health and the environment, it must address the release of radionuclides in any evaluation of the non-migration potential of waste from the WIPP. EPA, however, believes that the potential for radioactive releases from source, special nuclear, and byproduct material is not within the scope of the non-migration determination. First, as EPA explained in its proposed no-migration finding for the WIPP, the Agency's authority over mixed wastes under RCRA extends only to the hazardous components of the waste, not to the radionuclides exempted from RCRA. (EPA explained this position more fully in its mixed waste clarification notice of July 3, 1986, 53 FR 37045. See also Section I.B above). Second, release of radionuclides is not within the specific mandate of the no-migration language in RCRA or the regulatory standards codified at 40 CFR 268.6. Under the statute, EPA may not find a method of disposal protective of human health unless "* * * it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit * * * for as long as the waste remains hazardous." Hazardous constituents are a term of art under the statute, referring to compounds listed in 40 CFR part 261, appendix VIII. No type of radionuclide is listed in the appendix. Moreover, EPA regulations at 40 CFR 268.6 do not contemplate evaluation of the radioactive risks of a given unit.

EPA acknowledges that it has a general authority and responsibility under RCRA and other acts to protect human health and the environment, and that this standard is an overriding consideration in any no-migration decision, including a decision regarding the WIPP. The Agency believes, however, that the standards issued by EPA under the Atomic Energy Act and the Clean Air Act are the proper standards for protection of human health and the environment for radiation risks at the WIPP site. Air emissions from the WIPP during the test phase will have to comply with the Clean Air Act standards for radioactive releases in 40 CFR part 61 and (under agreement with the State of New Mexico) with AEA standards issued under 40 CFR part 191 subpart A. In chapter 6 of its Final Safety Analysis Report, DOE calculated radionuclide emissions from the WIPP according to EPA-approved models to document compliance with Clean Air Act and AEA standards. DOE is also preparing a NESHAP notice of anticipated start-up to file with EPA, in accordance with Clean Air Act standards. Finally, long-term releases of radionuclides will be controlled under AEA disposal standards codified at 40 CFR part 191 subpart B. These regulations, which were specifically designed to address potential radioactive releases, are the appropriate authority for addressing any such releases at the WIPP site.

EPA also acknowledges public concerns about transportation safety and agrees that it is important for DOE to take every necessary measure to ensure the safety of shipments to the WIPP. The question of transportation risks, however, lies outside the scope of EPA's no-migration authority, and therefore the Agency has not addressed them in its review. Instead, overall issues of transportation safety for the WIPP project are addressed under the National Environmental Policy Act (NEPA) through the Environmental Impact Statement process and by the Nuclear Regulatory Commission, which by agreement with DOE has oversight over shipping containers and the waste form during transportation.

Finally, EPA has reviewed comments suggesting that alternatives other than the WIPP—for example, long-term storage of TRU wastes at the sites of generation—should be chosen for management of TRU wastes. The Agency continues to believe that deep geological burial is a promising strategy for the disposal of radioactive waste. But, in any case, the question of whether acceptable alternatives to the WIPP exist, or whether other approaches might be preferable, lies outside the scope of EPA's review. Under the statute, DOE may place untreated mixed waste in the WIPP repository if it can meet the statutory standards for no migration. Alternative approaches to deep geological burial are more appropriately addressed under the NEPA process.

D. EPA Oversight Over the Test Phase

Several commenters of EPA's proposed determination argued that EPA should assert direct oversight over the testing and experimentation during the test phase. For example, some commenters argued that, before any waste was placed in the repository, EPA should make a finding that in-situ testing at the repository was both necessary and sufficient. Others identified what they considered to be flaws in DOE's test plans—e.g., sealing the alcoves in the alcove-scale tests—and argued that EPA should not allow waste to be placed in the repository before those flaws were addressed.

Although EPA believes that DOE has generally laid out a reasonable test program for the WIPP, it disagrees with commenters who argue that the Agency must find, as part of today's determination, that DOE's test plans are necessary and sufficient. The question before EPA is whether there will be any migration of hazardous constituents beyond the unit boundary for as long as the waste remains hazardous, not whether alternatives to in-situ testing are available, or whether DOE's testing program has shortcomings. If DOE can demonstrate no migration for the test phase, which EPA concludes it has done, then it has met the statutory standard for placement of untreated hazardous wastes in the WIPP.

At the same time, the results of the test phase will be critical in review of a no-migration petition for long-term disposal at the WIPP, if DOE chooses to submit one. EPA, therefore, has put DOE on notice that data from the bin and alcove tests must be of good quality. For example, if the adequacy of alcove seals cannot be demonstrated, any data derived from the alcove tests will be of questionable value. Similarly, it is essential for the long-term finding that DOE adequately characterize test waste for RCRA constituents. Toward this end, EPA has described in some detail in section IV.B.7 of this notice the types and quality of data on waste characterization it expects to see in any petition for long-term disposal. However, for the reasons discussed above, the Agency has concluded that it is not appropriate to address the scope or details of DOE's test plans in today's decision—except insofar as they involve possible migration of waste from the disposal unit or the retrievability of the waste.

RCRA interim status standards at the WIPP and for issuing a RCRA permit to the facility. In carrying out these responsibilities, the State may require additional or more stringent waste characterization requirements.

E. Site Suitability

In reaching its proposed determination, EPA reviewed more than 300 studies of the WIPP site, not only by DOE and its contractors, but also by independent researchers and groups such as the U.S. Geological Survey and the Environmental Evaluation Group. The overwhelming conclusion that EPA drew from these studies is that the WIPP has been located in a remarkably stable formation, and that it is a promising site for the permanent disposal of radioactive waste. Although there remain some questions about the site, which DOE will be addressing during the test phase, EPA expressed its conclusion that the site was sufficiently well characterized for the test phase to proceed. Thus, EPA agreed with the National Academy of Sciences and DOE's Blue Ribbon Panel that it makes sense to begin testing in the WIPP repository as soon as regulatory requirements are satisfied.

Several commenters on the petition, however, raised issues associated with the suitability of the WIPP site. Commenters, for example, expressed concern about the possibility of karst formation in the vicinity of the WIPP site and the general role of dissolution processes in the area; the assumed existence of a pressurized brine pool below the repository; and the rate of brine inflow into the repository. These issues are discussed briefly below and are addressed in more detail in EPA's Response to Comment document for this rulemaking.

A number of commenters expressed concern that the WIPP landscape had the characteristics of a karst terrain. A karst terrain is a kind of topography that is typically formed over limestone, dolomite, or gypsum through dissolution processes; it is usually characterized by closed depressions or sinkholes, caves, and underground drainage. The implication for the WIPP, according to commenters, is that contamination from the repository if it reached the overlying Rustler formation, could be transported rapidly to the accessible environment. Commenters also suggested that ground water in overlying karst formations might attack the repository shaft seals, after closure, and enter the Salado Formation—the salt bed in which the WIPP repository has been constructed. This might lead to dissolution of the halite, allowing a potential pathway for migration past the unit boundary.

The commenters argument that the WIPP area is karstic is based primarily on the presence of several acknowledged and alleged dissolution features in the WIPP area. These include sinkholes in Nash Draw, several kilometers from the WIPP site; dissolution features identified in the WIPP 33 drill hole, just outside the site boundary; and "Barrows Bathtub," a depression about one kilometer from the proposed underground disposal area. Such features, according to commenters, demonstrate that the WIPP site is found in a mature karst area and that wastes can be expected to leak from the WIPP shortly after closure.

As a result of commenters' concerns, EPA reevaluated the question of karst in reaching its final decision. This reevaluation included a field investigation of the WIPP site, in the company of one of the commenters. The tour covered the most important features that the commenters believed were karstic in the vicinity of the WIPP. The closest of these was approximately one kilometer from the surface buildings at the facility. On the basis of this review, EPA has concluded that karst is not now an issue at the WIPP, and is unlikely to become one for many thousands of years, if ever.

EPA recognizes the presence of some localized, surface dissolution features in the general area of the WIPP, particularly in Nash Draw. This is not surprising, given that the geologic units within the area are composed of rock that would be susceptible to dissolution under the correct hydrologic and geochemical conditions. However, evidence suggests that these are ancient features and that current rates of dissolution are extremely slow. For example, dissolution rates at the Nash Draw have been estimated at one-third of a foot every one thousand years, rates that would not threaten the WIPP repository for millions of years. In addition, the widespread occurrence of caliche—a surface feature indicating arid conditions and limited surface dissolution—in the WIPP area suggest the stability of the surface landscape over at least the last 10,000 years. At the same time, borings drilled at and near the WIPP site have failed to encounter solution channels indicative of a karst environment. Finally, it should be noted that the Salado Formation lies 260 meters below the surface, shielded by relatively impermeable rocks. Thus, the repository horizon is isolated from any ongoing dissolution process. The fact that the Salado Formation in the area of the WIPP has remained largely unaffected by dissolution processes over its 225-million-year history is evidence of its stability.

Numerous commenters also expressed concern about the presence and possible effects of pressurized brine in the Castile formation underlying the Salado. One bore hole in the immediate vicinity of the repository—WIPP 12—encountered a large brine pocket in the Castile. Geophysical measurements suggest that this pocket extends underneath the repository itself. Commenters expressed the concern that this brine might, in the long run, threaten the WIPP through dissolution processes or, if a bore hole were drilled at some future date through the repository into the brine pocket, pressurized brine might force contamination to the surface.

After reviewing the comments and other data in the record, EPA continues to believe that the brine pockets in the Castile formation—although they contain a substantial amount of fluid—do not offer a significant threat to the repository. Castile deformation, which led to the formation of the brine pockets, was initiated millions of years ago in association with major tectonic tilting of strata in the Delaware Basin. The region is tectonically inactive at present, implying that new development of major Castile features is not occurring. In addition, the brine pool is completely saturated with respect to halite and therefore has no potential to dissolve the surrounding host rock. Since the Castile and Salado Formations are hydrologically distinct, there is no credible hydrologic connection between the two formations. Finally, because of restrictions on access, there is no realistic possibility of a borehole reaching brine pockets below the repository during the test period. Therefore, this issue does not arise for today's determination. DOE's performance assessment, however, is addressing the possible effects of such a borehole after repository closure.

A number of commenters also expressed concern about the effects of brine inflow into the repository and the validity of permeability values used for the Salado Formation. EPA has reviewed the information pertinent to this discussion and believes that, while a good understanding of brine inflow into the repository exists, additional studies must be conducted to understand the true nature of brine inflow and to quantify inflow in a manner more indicative of facility conditions. These tests will be performed during the WIPP teat phase. They will be important in any decision on the long-term acceptability of the WIPP site. Brine inflow, however, will not be a problem during the test phase and thus is not an issue for today's decision.

Finally, commenters expressed concern that DOE's petition and EPA's proposed decision did not fully address the long-term closure scenario expected at the repository. Commenters cited data predicting high rates of gas generation and argued that this gas might delay or prevent creep closure of the repository. As a worst case, gas generation exceeding lithostatic pressure might fracture surrounding salt or threaten the seal system of the repository. In fact, DOE, EPA, and other groups have recognized that the issue of gas generation, and its relation to repository performance, must be adequately addressed before permanent disposal of waste takes place at the WIPP. The major purpose of DOE's in-situ tests in the WIPP with actual wastes is to explore the issue of gas generation. Today's decision will allow these tests to proceed. The Agency believes that the end of the test phase is the appropriate time for it to make a determination of whether the repository is or is not suited for long-term disposal, since the results of the experiments performed during the test phase will help quantify gas generation rates, as well as identify different mitigative measures if the rates prove unacceptable.

F. Conditional Determination

Several commenters took issue with EPA's "conditional" approach in its proposed decision. EPA's proposed determination was based on: (1) The finding that hazardous constituents would not migrate from the disposal unit during the test period, and (2) the requirement that DOE remove the waste at the conclusion of the test period unless it could demonstrate that there would be no migration over the long-term. According to commenters, this approach is inconsistent with the statute, which requires a finding that hazardous constituents will not migrate from the unit as long as the waste remains hazardous. The commenters argued that, under the statutory standard, DOE should be required to demonstrate that hazardous waste permanently place in the repository would not migrate from the unit before DOE could place any waste underground, even temporarily. EPA, however, continues to believe that its proposed approach is consistent with the statute and has not amended its finding.

As commenters point out, RCRA specifies that hazardous constituents must not migrate from the unit for as long as the waste remains hazardous. The phrase "from the unit" is a key element of this standard. If the waste is removed from the unit at the end of the test period, migration of hazardous constituents from the unit after that time is clearly impossible, because there are no longer any hazardous constituents in the unit to migrate. Consequently, in the case of temporary placement, for example during the WIPP test phase, the appropriate question is whether hazardous constituents will migrate during the period of temporary placement. (As discussed elsewhere in today's notice, EPA has concluded that hazardous constituents will not migrate from the unit during the test phase.) At the same time, of course, it is important to see that removal at the end of the test period is reasonably assured. EPA judge DOE's no-migration petition for the WIPP on these grounds. (See Section V.G for discussion of this point.)

One group of commenters argued further that, if EPA were to continue with its "conditional" approach, it should review DOE's test plan to ensure that in-situ testing at the WIPP was necessary to demonstrate long-term no migration and that the specific tests to be conducted would be sufficient. Although EPA has commented on DOE's test plan, EPA disagrees with these commenters on the type of EPA review that is necessary. On the basis of its review, EPA has concluded that DOE's test plan is well designed and the testing will yield important information on the long-term performance of the repository. EPA, however, has not and believes that it should not formally analyze DOE's in-situ testing at the WIPP to determine whether it is necessary of sufficient, and it does not believe such an analysis is within the scope of a no-migration review. As long as DOE can demonstrate that hazardous constituents will not migrate from the disposal unit, it is legally entitled to place prohibited waste in the WIPP. There is nothing in the statute that further compels a petitioner to demonstrate that placement in the unit is "necessary."

G. Definition of No Migration

Sections 3004 (d)(1), (e)(1), and (g)(5) of RCRA state that land disposal is prohibited, unless "it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone as long as the waste remains hazardous." In its proposed no-migration decision on the WIPP, EPA adopted the same interpretation of this standard as it had in its no-migration regulations for underground injection wells; that is, the Agency interpreted the standard to prohibit the migration of hazardous constituents in concentrations high enough to render the waste hazardous. (See 53 FR 28122, July 26, 1988.) Critics of this approach argued that Congress clearly meant that not a single molecule of a hazardous constituent could migrate from the unit, as long as the waste remaining in the unit was hazardous. Under this standard, DOE's WIPP no-migration petition could not have been approved, because at least some molecules of volatile organics listed as hazardous constituents will migrate via the air route during operations—although most likely at several orders of magnitude below levels of detection.

In today's decision, EPA is retaining its proposed definition of "no migration" of hazardous constituents. As explained in detail in the preamble to the proposed decision, EPA believes that this approach is fully consistent with the language of the statute and is protective of human health and the environment. EPA also notes that its interpretation of "no migration" was recently upheld in a decision on the underground injection well rules by the U.S. Court of Appeals for the District of Columbia. (*NRDC* v. *EPA* No. Slip. Op. (D.C. Cir. 1990).) In this decision, the Court accepted EPA's argument that "no migration of hazardous constituents * * * for as long as the waste remains hazardous" may be read to mean no migration of constituents above hazardous (or health-based) levels. As a result, EPA has decided to retain the same standard in its final decision on the WIPP petition.

H. Definition of Unit Boundary

In today's finding, EPA has slightly modified its definition of the disposal unit boundary in response to public comments. In the proposal, EPA defined the unit boundary (or point of compliance) for groundwater migration as the Salado Formation, laterally bounded by the limits of the four-mile by four-mile land withdrawal area. For air emissions during operations of the WIPP, EPA defined the unit boundary as the point where the air shaft met the surface.

Numerous commenters expressed concern about the extent of the unit boundary for groundwater, arguing that it might allow broad areas of contamination underground; they objected to EPA arguing that there would be no migration from the unit even if the hazardous constituents moved up to two miles laterally. Several commenters suggested that the unit boundary in no case should be greater than the mined repository, and should probably be less. One group of

commenters also pointed to what they believed was an inconsistency between the unit boundary for air and for groundwater. They argued that the unit boundary should be the same in both cases and that the unit boundary for air, therefore, should be no farther than the top of the Salado. After reviewing these comments, EPA has decided to retain its definition of the lateral boundary of the unit (i.e., the boundary of the land withdrawal area within the Salado Formation), but to define the boundary for air emissions as the top of the Salado Formation.

EPA has rejected commenters suggestion that the unit boundary be defined as the mined area (or some smaller area). As the Agency explained in detail in its proposed finding, it believes that, in the context of a geological repository, some credit should be given for the surrounding formation in which a waste is placed. The purpose of placing waste in a geologic repository is to isolate it from the general environment; it is not to prevent any movement of waste, however slight, within that formation. In fact, some lateral movement of waste into the surrounding formation can be an inevitable, and desirable, aspect of repository performance—as it is in the case of the WIPP. A no-migration standard that prohibited any lateral movement would run counter to the concept of a geological repository, without providing for any additional environmental protection or protecting against any meaningful release.

In taking this general position, EPA believes that it is being consistent with the intent of Congress, for example as expressed in the Senate Report on the 1984 HSWA amendments: "In determining appropriate confinement from which migration shall not be allowed to occur, the term disposal unit or injection zones should be construed * * * in terms of the overall integrity of the disposal practice, keeping in mind, in particular, the potential for contamination of ground-water or surface water resources" (S. Rep. No. 284 98th Cong. 1st Sess. at 15). Wastes confined to the boundaries of the unit, as defined in EPA's final determination, would remain more than 1,000 feet from the nearest unconfined ground water. EPA also notes that its position is consistent with the recent court decision on its no-migration rules for underground injection wells. (*NRDC* v. *EPA* No. Slip. Op. (D.C. Cir. 1990).) In this decision, the court supported EPA's position that the term injection zone (which for underground injection wells is analogous to the unit) includes confining material surrounding the porous formation into which the waste is actually injected. Similarly, EPA believes it is appropriate to consider at least a portion of the confining salt at the WIPP as part of the unit.

Ciritics of EPA's proposed definition of the WIPP unit suggested no alternative boundaries, other than somewhere within the furthest extent of the mined area. As discussed above, EPA has rejected this alternative. In the absence of any rationale for an intermediate boundary between the mined area and the proposed boundary, EPA has decided to retain the proposed approach. EPA emphasizes that the WIPP unit, under this definition, is fully isolated from the surrounding environment. If waste remains within the unit boundary, no meaningful movement of waste will have occurred, and no contamination of ground-water resources will result. Further, although there will undoubtedly be some lateral migration of contaminated material along marker beds within the salt formation, all projections indicate that this migration will be very limited, in no way approaching the boundaries of the unit. (The most likely route of migration, instead, would be up the closed shafts to overlying formations.) Therefore, extensive underground movement of waste is not expected, regardless of the definition of unit.

In the case of air migration, EPA recognizes that its proposed definition caused some confusion. To address commenters' concerns, EPA has amended the unit definition for air during operations, placing the boundary at the top of the Salado Formation. The issue of where DOE should monitor to demonstrate compliance at that point, however, is a different question. (See section IV.B.6 for a discussion of this point.)

I. Waste Characterization

1. Flammability

In evaluating the potential for release of hazardous constituents in its proposed decision, EPA considered the potential for fire and explosion at the WIPP. The Agency noted that the Waste Acceptance Criteria (WIPP-WAC) prohibits explosives and compressed gases in TRU Wastes and requires that pyrophoric materials be rendered safe by mixing them with chemically stable materials, such as concrete or glass, or be processed to render them nonhazardous. In addition, the Nuclear Regulatory Commission requires that all waste containers be equipped with one or more carbon composite filters designed to prevent pressure buildup or the accumulation of flammable gases prior to shipment to the WIPP, as specified in "TRUPACT-II Authorized Methods for Payload Control" (TRAMPAC).[14] EPA suggested that these requirements, in conjunction with the maintenance of general ventilation in the underground repository, make the possibility of fire or explosion extremely unlikely.[15]

EPA continues to believe that a fire or explosion is unlikely. It acknowledges, however, the concerns of commenters that flammable gases could build up in waste containers, creating a fire and explosion hazard. The Agency has reanalyzed the available information and has concluded that the accidental ignition of flammable gases in waste containers cannot be ruled out, given the available data on waste characterization. At the same time, EPA has concluded that spontaneous combustion within as individual waste container, i.e., without an ignition source, is not credible.[16]

Were a fire or explosion to occur as a result of accidental ignition of flammable gases in the void space of a waste container, retrieval could become more difficult, should retrieval be necessary. Moreover, such an event could itself cause migration of hazardous constituents above health-based levels beyond the unit boundary. For these reasons, EPA has concluded that no waste container should be emplaced in the underground repository if it contains flammable mixtures of gases in any layer of confinement, or mixtures of gases that could become flammable when mixed with air. To assure a sufficient margin of safety, EPA considers any mixture to be potentially flammable if it exceeds 50 percent of the lower explosive limit (LEL) of the mixture in air.

EPA, consequently, is requiring DOE to ensure that individual waste containers have met the prohibition of flammable gases. DOE must implement this provision by testing each waste drum or individual container for hydrogen, methane, and volatile organic compounds (VOCs) as a class. EPA is

[14] The Agency notes that TRAMPAC also sets limits on the thermal wattage, i.e., decay heat of individual waste containers to control the rate of generation of hydrogen gas by radiolysis (DOE, *Safety Analysis Report for the TRUPACT-II Shipping Package, Appendix 1.3.7. revision 2, June 1989*).

[15] The Agency notes that the WIPP-WAC also place restrictions on the total quantity of fissile material in a waste container to ensure criticality safety.

[16] See the conclusions in the Sandia National Laboratory memorandum from Siezak and Lappin to Marcer and Fredrickson, January 5, 1990.

establishing this condition because it does not judge available process knowledge to be sufficiently reliable or accurate to allow a determination on the flammability hazard of individual waste packages.

EPA recognizes that headspace testing of every drum or individual container on a continuing basis may pose a significant burden on DOE. Without sufficient data, however, EPA feels compelled to require that DOE conduct testing, given the potential consequences of a fire or explosion. Once sufficient data have been collected, however, EPA will consider the extent to which continued testing is necessary. Test data may well show that flammable gases are only present at levels well below the lower explosive limit, either for certain wastes (e.g., TRUCON content code or item description code) or from particular generating sites. If the test data in fact show that no fire or explosion hazard exists, DOE should submit the data to EPA and request that the testing requirement be modified accordingly. Any change in the terms of this condition will be made under the procedures of 40 CFR 268.6(e), which include public notice and opportunity for comment.

EPA is also requiring that headspace sampling be representative of the entire void space of the waste container. Initially, the Agency believes that each individual layer of confinement within the container will have to be sampled, given the limited data available for inner bags. EPA, however, expects that once DOE accumulates enough data, it may be able to show that for most package configurations in which bags are twisted and taped, similar levels of flammable gases will be found in all layers of confinement.[17] However, it is anticipated that the occurrence of detectable quantities of free liquids, as determined by real-time radiography of visual inspection, will continue to indicate the need to sample the layer in which it occurs, unless DOE can demonstrate otherwise.

EPA also believes that testing of wastes that exhibit high rates of radiolysis should be conducted within a relatively short time period of when the container is actually placed underground. Otherwise, hydrogen levels could build up to flammable levels following sample collection and analysis. DOE has accumulated considerble data on radiolysis rates for various materials in TRU wastes. DOE used such data in its application to the Nuclear Regulatory Commission for a certificate of compliance for the TRUPACT–II shipping package to determine the length of time a waste drum must aspirate (i.e., vent) before it can be shipped after retrieval from storage.[18] Similarly, EPA is requiring DOE to determine, and document, the length of time during which headspace gases can be expected to remain below flammable levels (i.e., 50 percent of the mixture LEL) after sampling has been performed, for both newly generated and retrievably stored wastes, and to ensure that waste containers are emplaced at the WIPP within that time.

If testing reveals the presence of significant levels of flammable VOCs, an explicit flame test must be performed to determine if a flammable mixture can be formed with air. American Society for Testing and Materials (ASTM) Method E 681–85, "Concentration Limits of Flammability of Chemicals," or equivalent, are acceptable test methods. Significant levels of flammable VOCs are indicated by measured concentrations (excluding methane) of 500 parts per million or greater, as propane, as determined by gas chromatography and flame ionization detection (GC/FID) or of 500 parts per million or greater, by volume, as determined by gas chromatography and mass spectrometry (GC/MS.)[19] If testing shows that VOCs are insignificant, i.e., below 500 parts per million, the lower explosive limit of the mixture may be determined from the lower explosive limits of methane and hydrogen using the Le Chatelier formula as follows: If LEL_1, and LEL_2 are the lower explosive limits of hydrogen and methane, reseptively, and C_1 and C_2 are the measured concentrations of hydrogen and methane, respectively, expressed as volume percent, then if the fraction, C_1/LEL_1 and C_2/LEL_2 sum to 0.5 or greater, the mixture is considered to be flammable when mixed with air.[20]

[17] EPA notes that DOE intends to open up and disassemble the drums selected for the bin-scale tests for visual inspection. Therefore, this requirement should not increase radiation exposure to workers.

[18] DOE, *TRUPACT–II Content Codes (TRUCON)*, DOE–WIPP 89–004, Revision 3, July 1989, and DOE, *Safety Analysis Report for the TRUPACT–II Shipping Package*, Appendix 1.3.7, Revision 2, June 1988.

[19] For purposes of determining concentration levels using GC/MS, only noncombustible compounds may be excluded from the sum total of non-methane VOC, e.g., carbon tetrachloride, tetrachloroethylene, chloroform, and bromoform.

[20] The lower explosive limits of hydrogen and methane are 4.0 and 5.0 percent, respectively, in air (Bureau of Mines, "Flammability Characteristics of Combustible Gases and Vapors," Bulletin 627, 1965).

2. RCRA Constituents

In its proposal, EPA expressed some concern with the quality of the waste characterization data provided by DOE in support of its petition. However, given the nature of the wastes, the safety margins between predicted emission levels and health-based levels, and required controls on air emissions, EPA concluded that the information provided by DOE (based primarily upon process knowledge) was sufficient to demonstrate, to a reasonable degree of certainty, no migration of hazardous constituents during the test phase. Many commenters, nevertheless, criticized the quality and completeness of DOE's waste characterization information and DOE's approach to waste characterization. Several commenters noted the critical role played by waste characterization in the prediction of no migration and stressed that EPA needed accurate waste descriptions, supported by detailed analysis, to evaluate the potential evironmental impacts of waste disposal. In responding to these comments, EPA has differentiated between short-term issues (relevant to today's decision for the test phase) and long-term issues (relevant to a decision for the operational and post-closure phases, should DOE submit a petition for these phases).

a. *Short-term issues.* Many of the commenters expressed concern with the Agency's acceptance of waste characterization data based primarily upon process knowledge. Commenters stated that, in the case of the WIPP, waste characterization requirements have not been met.

EPA disagrees with the commenters' position that DOE's waste characterization information is insuffient for a no-migration determination for the test phase. DOE's analysis of the wastes incuded an evaluation of the materials and processes from which the wastes were generated as well as actual chemical analysis of the wastes. In the former case, DOE provided flow diagrams and narrative descriptions of the processes that generated all 128 of the identified waste Content Codes as well as an identification of the RCRA hazardous constituents used in the process. DOE also provided estimated concentrations for each of the hazardous constituents expected in the wastes. This was designed to be a conservative characterization, in which it was assumed that any hazardous constituents that were used in a process would be present in the resulting waste stream, regardless of known physical

processes that would reduce the likelihood that the constituents would in fact be present (e.g., volatilization). EPA notes that no comments were received indicating that wastes from the processes described by DOE would be expected to be compositionally different from the DOE-estimated compositions.

The bulk of the analytical data presented by DOE to corroborate the conclusions of the above-described characterization were focused on the only viable route of release during the test phase—namely, through the air. For this characterization, DOE provided results from over 200 headspace analyses, representing all four of the identified waste types; these samples were analyzed for numerous gases, including nine organics. Other analyses for which results were reported included Toxicity Characteristic and Extraction Procedure leaching tests, total volatiles, and total metals. While these analyses were not typically conducted on all four of the waste types, EPA notes that these tests are not directly relevant for characterizing the most likely route of release during the period that is subject to today's decision (i.e., the test phase).

Additionally, EPA in its proposal considered the "safety margin" indicated by calculations of air emissions. That is, even if the concentrations of hazardous constituents were significantly underestimated, the no-migration standard would still be met during the test phase.[21] Additional assurances are provided by the air monitoring systems that will be operated to allow detection of emissions. Based upon the safety margin indicated by these factors, the Agency concludes that the level of waste characterization is acceptable for the test phase. Nevertheless, to ensure that the wastes to be used in the binscale tests are similar in composition to those described in the no-migration petition, EPA is requiring that DOE test the headspace of the wastes shipped to the WIPP (as a measure of the waste constituents' propensity to migrate through air) and compare the results to the values provided in DOE's no-migration petition. This comparison must be conducted and the waste must be found to be compositionally similar before the waste can be sent to and emplaced in the WIPP; if the waste is not similar to the estimated concentrations provided in the no-migration petition, the waste cannot be shipped to the WIPP unless it is modified compositionally, such that it is compositionally similar. The details of this comparison are described in section IV.B.7.b of today's notice.

Other commenters stated that, to the extent that DOE has provided any laboratory analysis of wastes intended for the WIPP, it is solely headspace analysis (i.e., analysis of the constituents' concentrations in the air under the lid of the drum) used as a surrogate for the waste in the drum. These commenters maintained that headspace analysis, while extremely useful for homogeneous phases, is limited, at best, for analyzing heterogeneous wastes such as those intended for the WIPP. In the opinion of these commenters, headspace analysis is unreliable as a surrogate for direct analysis of liquids and solids in drums due to uneven partitioning of constituents.

The Agency recognizes that there are limitations on the utility of headspace analysis as a surrogate for analysis of waste composition. Certainly headspace analysis is not appropriate for all evaluations for all waste types. In some cases, however, headspace analysis is the most relevant measurement. For purposes of the test-phase determination, headspace analysis is primarily used in the evaluation of gas generation and explosivity hazards. Since it is the composition of the gas that is of concern, analysis of the headspace (*i.e.*, the actually evolved gas) is the most appropriate parameter to consider. If concentrations in the waste were used for the explosivity evaluation, the composition of the evolved gas would be modeled, or predicted, rather than actually measured.

EPA agrees with the commenters' concerns regarding the validity of a single headspace sample (under the lid) as representative of potentially evolved gases from heterogeneous wastes. This is especially problematic when the drums contain several inner layers of confinement, as do the drums that will be emplaced in the WIPP. Specifically, questions exist as to whether the headspace beneath the lid is compositionally different from the headspace in the inner layers. EPA is addressing this issue in the context of the testing condition related to headspace analysis. In that condition, EPA is requiring that DOE take representative samples of the headspace (which may require, in some cases, for DOE to take samples from inner bags) and analyze them to confirm its assertion that the headspace beneath the lid is, in fact, representative of the total evolved gas within the drums.

EPA also agrees that headspace analysis is not a suitable surrogate for direct analyses of the waste for purposes of evaluations where the total composition is a factor. However, for volatile organic constitutents, EPA believes that headspace analysis can be a useful tool for determining whether the constituents are present. That is, if a volatile constituent is present in the waste, it is reasonable to assume that it will also be present in the headspace. Accordingly, results from headspace analyses were used to confirm the presence of volatile hazardous constituents, not to quantify their concentrations in the wastes.

Several commenters argued that DOE's quality assurance/quality control of waste characterization data was deficient. Others noted that DOE had been unable to provide adequate sampling plans and sample handling procedures for analytical work. EPA raised similar concerns with DOE's procedures, but, for the reasons described in the proposal and further elaborated upon above, the Agency has concluded that the data are sufficient for the test phase demonstration. At the same time, EPA advises DOE that it expects additional analytical data to support a long-term demonstration, where significantly greater quantities of waste are involved and routes of possible migration are not limited to release of volatiles to the air during operations.

b. *Long-term issues.* EPA notes that the "safety margin" for the long-term showing (*i.e.*, the operational and post-closure phases) has not been determined. For that reason, the Agency believes that additional waste characterization data are needed to reduce the uncertainties before a decision on a long-term no-migration determination can be made. EPA, however, has decided not to make such testing a condition of today's decision, because the collection of such data is not relevant to the decision during the test phase; EPA, however, expects DOE to develop and implement waste characterization plans, including appropriate sample collection, preservation, and analytical procedures, that will allow a demonstration of the extent to which the test phase wastes are representative of the other wastes from the ten generating sites and that allows greater precision in estimating potential for long-term migration (*e.g.*, through routes such as ground water). If such data are not collected, EPA will not be in a position to approve a no-migration petition for the operational and post-closure phases, if DOE submits such a petition. EPA's expectations related to these data are presented in Section IV.B.7.b of today's notice.

Many commenters expressed concerns regarding the extent to which the wastes that will be used for the test phase are representative of the other wastes that DOE wishes to emplace at the WIPP during the operational phase. It was stated by many commenters that, for the test phase, adequate waste characterization is vital to assure that tests will be performed on representative wastes. Commenters pointed out that almost 70 percent of the wastes proposed for storage do not yet exist. They asked what controls and safeguards were in place to ensure that these future wastestreams are adequately represented by existing wastes.

The Agency agrees with commenters' concern that the use of representative wastes in the test phase will be critical to the success of any DOE no-migration petition for the later (operational and post-closure) phases. More specifically, the test-phase wastes must be sufficiently representative of the other wastes that DOE wishes to emplace at the WIPP to allow extrapolation of data from the test-phase experiments to the behavior of the other wastes.[22] This issue is, in fact, the basis for the selection of wastes that will be used in the test phase experiments. The selection process will be based upon those parameters that contribute to gas generation and is designed to identify wastes that represent the spectrum of expected values for those parameters. Since waste selection and characterization, as part of the design of the experiments, is the responsibility of DOE, EPA believes that it is DOE's responsibility to establish and implement procedures to demonstrate that the wastes are, in fact, sufficiently representative.

Many commenters also argued that EPA's proposed decision did not clearly establish whether all waste analysis data would be provided to EPA prior to emplacement of any waste or whether the data would be provided incrementally as waste is being emplaced. These commenters stated that they had serious concerns if the Agency is proposing to allow DOE to provide waste analysis data simultaneously with waste emplacement. They argued that waste analysis should be provided to the Agency not only before the waste is put into the ground, but before EPA can make a decision about a no-migration variance. They believed that this condition would allow EPA independently to asses the quality of the data. In the opinion of some commenters, delivering waste analysis information while the waste was "riding the Carlsbad elevators" would essentially render EPA's independent technical review of the data inconsequential.

EPA is not requiring that DOE submit the analytical data on the test waste for EPA review before the test wastes are emplaced. Much of the analytical work to be conducted by DOE is related to the eventual demonstration of no-migration over the long term. Since EPA will evaluate these data as part of any subsequent petition for the later phases, EPA disagrees with the commenters' statement that this evaluation will be "inconsequential." Rather, it will be a critical element of that evaluation.

EPA, however, is requiring DOE during the test phase to evaluate headspace data before waste is placed in the repository, as described earlier. For example, DOE must evaluate the explosivity-related testing before shipping test wastes to the WIPP. Similarly, DOE must compare the analytical results of newly conducted headspace analyses to the waste characterization data in the no-migration petition before the waste is emplaced in the underground repository. Because the standards for both the flammability and the RCRA constituent analyses are objective and straightforward, EPA does not believe that Agency review of the data before placement is necessary.

The flammability and RCRA constituent requirements, described in detail in section IV.B.7, will address many of the commenters' concerns with the accuracy of the data. These requirements will also ensure that the wastes emplaced during the test phase are, in fact, the wastes characterized by DOE in the petition and evaluated by the Agency and the public.

J. Retrievability

Commenters also raised concerns about whether waste would ever be retrieved from the WIPP if it were placed in the repository, regardless of the technical feasibility of retrieval. Some questioned DOE's commitment to retrieval, even if the WIPP site proved unacceptable. Others argued that, even if DOE were willing to remove the waste, no other site would accept it, and therefore the waste would not be retrieved. Several commenters argued that DOE should identify a permitted site ready to receive retrieved waste before any waste should be allowed underground.

EPA believes that it has placed adequate safeguards in today's determination to ensure that DOE in fact removes the hazardous waste from the repository, if it cannot demonstrate the repository's long-term acceptability. Condition 3 in Section VI of today's determination explicitly requires retrieval of wastes if DOE cannot demonstrate compliance with the standards of 40 CFR Part 268 before the expiration of the petition approval. Failure on the part of DOE to remove wastes under these circumstances would constitute a violation of the terms of EPA's determination, leading to possible enforcement action by EPA. In addition, citizens could sue DOE under section 7002 to enforce retrieval of waste from the repository.

Because of this condition, EPA has not found it necessary to require DOE to identify a specific site where waste retrieved from the WIPP would be stored, or to require that a permit be granted for storage of retrieved waste before any waste is placed underground. Furthermore, EPA questions whether any such condition would be useful, given that wastes would probably not be removed (if removal proved necessary) for a five-to-ten year period. Current predictions on the best storage site for the waste up to ten years in the future would be at best open to question, and valuable permitting resources would be expended on a site that might never receive the waste.

K. Human Intrusion

Commenters generally accepted that DOE could maintain institutional controls over the test period to preclude human intrusion. One group of commenters, however, argued that EPA must consider the possible effects of human intrusion in the distant future before allowing the placement of any waste for testing. These commenters expressed particular concern about potential mineral resources at the WIPP site, and the possibility that knowledge of the site would disappear after decommissioning. Other commenters argued that permanent markers should be erected at the WIPP site once the facility is closed, and information regarding the type and location of the markers should be published.

[21] The safety factor assumes that an explosivity hazard is not present. To ensure against such a hazard, EPA placed an additional condition on the decision (see section IV.B.7).

[22] It should be noted that, if one or more wastes that are generated at any of the DOE sites are not "represented" by the test wastes, these wastes could not be sent to the WIPP without further evaluation. However, this would not invalidate the testing for all other wastes that are generated at the ten DOE sites and are represented by the test wastes.

EPA generally believes that the issue of human intrusion is a long-term question, not relevant to the short-term operation of the WIPP during the test and operational phases. In the short-term, DOE management of the site and RCRA permit controls will ensure limited access. Long-term issues would be addressed at the time a petition is considered for permanent disposal. For this reason, EPA disagrees with commenters who argue that it must consider human intrusion in the distant future before allowing any testing at the WIPP.

More generally, EPA believes that, in the context of RCRA no-migration decisions, it should address the question of human intrusion by considering the likelihood of the intrusion, and imposing controls to make such intrusions unlikely. EPA agrees that permanent markers will be necessary (in fact, they are required under 40 CFR part 191 subpart B) and that information on the markers should be published. These issues will be addressed in any no-migration decision allowing permanent disposal.

In its final determination, EPA has removed one proposed condition related to human intrusion. In the proposal, EPA required that "DOE certify to EPA that it has secured control of the entire surface and subsurface estate at the WIPP site." This condition is now moot, because DOE has now secured control over all oil and gas and mineral leases at the site. EPA has placed documentation of this fact in the record for this rulemaking. Thus, because the condition has been satisfied, EPA has dropped it from its final determination.

VI. Conditions of No-Migration Determination

As a condition of granting DOE's no-migration petition, EPA is requiring that the following conditions by met by DOE:

(1) No wastes subject to this determination may be placed in the WIPP repository for purposes other than testing or experimentation to determine the long-term acceptability of the WIPP. In accordance with 40 CFR 268.6(e), DOE must notify EPA before it conducts any testing or experimentation not within the scope of the "WIPP Test Phase Plan: Performance Assessment," April 1990 (DOE/WIPP 89-011, Revision O), as further explained in Section IV.B.1 of this notice. Placement of waste for the purpose of conducting an operations demonstration is prohibited.

(2) Wastes placed in the repository may not exceed 8,500 drums or 1 percent of the total capacity of the repository, as currently planned.

(3) All wastes placed in the WIPP must be removed if DOE cannot demonstrate compliance with the standards of 40 CFR 268.6, before the expiration of this petition approval, with respect to permanent disposal of mixed waste in the repository. DOE must submit a detailed schedule for retrieval of the waste, including times for completing retrieval as quickly as reasonably feasible, no later than six months after a determination that the repository cannot meet standards for long-term disposal under 40 CFR 268.6 or six months before the expiration of this petition approval, whichever occurs first.

(4) All wastes placed in the WIPP must be placed in a readily retrievable manner, as described in section IV.B.4 of this notice.

(5) DOE must install and operate a carbon adsorption device designed to achieve a control efficiency of 95 percent in the discharge system of the bin experiment rooms. DOE must monitor the control device outlet airstream in accordance with the monitoring plan described in section IV.K of EPA's proposed decision (55 FR 13089) as amended by section IV.B.7 of today's notice, and it must maintain design and operating records as described in section IV.J of EPA's proposed decision, as amended by section IV.B.6 of today's notice. Records must be maintained at the WIPP facility for the term of this determination or for three years after they are created, whichever is longer. Records must also be maintained during the course of any enforcement actions for which they are relevant.

(6) DOE must implement the air monitoring plan described in section IV.K of EPA's proposed decision (55 FR 13089), as amended in section IV.B.7 of today's notice. Records must be maintained at the WIPP facility for the term of this determination or for three years after they are created, whichever is longer. Records must be maintained during the course of any enforcement action for which they are relevant.

(7) Conditions relating to waste analysis:

(a) DOE must ensure that each waste container emplaced underground at the WIPP has no layer of confinement which contains flammable mixtures of gases *or* mixtures of gases that could become flammable when mixed with air. This prohibition must be implemented by analytical testing of a representative sample of headspace gases from each waste drum or individual container, as described in section IV.B.7.a and V.F.1.a of today's notice.

(b) DOE must analyze representative samples of the headspaces of containers to be used in the bin-scale test and compare these results to the estimated compositions provided in its petition for each waste type, as detailed in IV.B.7.b of today's notice. If the waste is not compositionally similar, as defined in Tables 2 and 3 in IV.B.7.b, that waste cannot be shipped to the WIPP until the waste has been treated or modified such that it is compositionally similar to the estimates provided in the no-migration petition. In addition, as prescribed in IV.B.7.b, DOE must demonstrate the comparability of bin-scale wastes to wastes described in DOE's petition before placing waste in the WIPP for the alcove tests.

(c) Waste analysis records must be maintained for the term of this determination or for three years after generation, whichever is longer. Records must also be maintained during the course of any enforcement action for which they are relevant. The records may be maintained at the generating site or at the WIPP facility.

(8) DOE must provide to the EPA Office of Solid Waste and EPA Region VI annual written reports on the status of DOE's performance assessment during the test phase. These reports must include: A description of the tests to date and their results, modifications to the test plan, a summary of DOE's current understanding of the repository's performance, waste characterization data from pre-test waste characterization, and an annual summary of air monitoring data required in Item 6 above.

Beyond these specific conditions, the wastes placed by DOE in the WIPP and DOE's activities under this variance must be consistent with those described in the petition. Under § 268.6(e), DOE must notify EPA of "any changes in conditions at the unit and/or environment that significantly depart from the conditions described in the variance and affect the potential for migration of hazardous constituents from the unit * * *." If the change is planned, EPA must be notified in writing 30 days in advance of the change; if it is unplanned, EPA must be notified within ten days.

Under § 268.6(f), if DOE determines that there has been migration of hazardous constituents from the repository in violation of part 268, it must suspend receipt of prohibited wastes at the unit and notify, EPA within ten days of the determination. Within 60 days, EPA is required to determined whether DOE may continue to receive prohibited waste in the unit

and whether the variance should be revoked.

Finally, under § 268.6(h), the term of today's petition approval runs for ten years, that is until November 14, 2000.

Dated: October 31, 1990.

Don R. Clay,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 90-26836 Filed 11-13-90; 8:45 am]

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federal register

Wednesday
November 14, 1990

Part VII

The President

Proclamation 6224—National Women Veterans Recognition Week, 1990

Proclamation 6225—National Philanthropy Day, 1990

Federal Register
Vol. 55, No. 220
Wednesday, November 14, 1990

Presidential Documents

Title 3—

The President

Proclamation 6224 of November 9, 1990

National Women Veterans Recognition Week, 1990

By the President of the United States of America

A Proclamation

Each November 11, on the anniversary of the signing of the armistice that ended World War I, we pause as a Nation to express our respect and gratitude for veterans of the United States Armed Forces. Today more than one million women stand among this group of distinguished Americans. Indeed, women have served our country with pride, skill, and courage in every overseas combat theater of every conflict since World War I. It is therefore fitting that we mark the week beginning on the anniversary of Armistice Day as a special time to honor America's women veterans.

Serving in every branch of the Armed Forces and in a variety of challenging occupations, women have made vital contributions to our national security. In peacetime as well as in times of conflict and peril, they have demonstrated exemplary devotion to our country and to the principles for which it stands. Many have put themselves in harm's way to help ensure the success of our Nation's military operations. Some have been wounded, and others have given their lives, in the line of duty.

During recent years, the role of women in the Armed Forces has grown. With it has grown public appreciation for the talent, patriotism, and expertise that female military personnel bring to their work. Last December, many Americans noted the important contribution women made to Operation Just Cause, the superbly planned and executed mission to defend the cause of freedom and democratic government in Panama. Today, on the other side of the world, women are among those American troops who are deterring aggression on the sands and off the shores of Saudi Arabia. To these women, and to those who have gone before them in service to our country, we pay a grateful tribute.

In recognition of those women who have volunteered for service in the United States Armed Forces, the Congress, by Senate Joint Resolution 307, has designated November 11 through November 17, 1990, as "National Women Veterans Recognition Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of November 11 through November 17, 1990, as National Women Veterans Recognition Week. I encourage all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of November, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

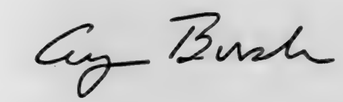

[FR Doc. 90-27006
Filed 11-13-90; 10:47 am]
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Presidential Documents

Proclamation 6225 of November 9, 1990

National Philanthropy Day, 1990

By the President of the United States of America

A Proclamation

Henry David Thoreau once observed that "the virtue we appreciate, we to some extent appropriate." We therefore do well to recognize the thoughtfulness and generosity of all those Americans who devote their time, talent, and material resources to philanthropic organizations and activities. By celebrating their many contributions to society, we reaffirm the spirit of voluntary giving and service to others that is one of our Nation's greatest strengths.

Our Nation's history provides ample evidence of the power of individual initiative and voluntary service to others. For example, private donors and individual volunteers have helped to expand educational, recreational, and employment opportunities for our youth; they have established and maintained specialized programs for senior citizens and persons with disabilities; and they have helped to promote the public health and safety. These Americans have also supplied our churches and other religious institutions with valuable material support.

Each day more and more Americans are becoming engaged in philanthropic activities. During 1989 alone, an estimated 75 percent of all households in the United States contributed to charitable organizations, giving a total of nearly $96 billion. In addition to such generous financial contributions, many Americans are giving of another precious commodity: their time. Through nonprofit philanthropic organizations across the United States, concerned citizens are donating billions of volunteer hours to others.

On National Philanthropy Day, we proudly express our respect and appreciation for all those Americans who devote their time, energy, and material resources to philanthropic endeavors. Our entire country benefits from their magnanimity and hard work, and all of us can be inspired by their example.

In recognition of those who conduct and support the work of our Nation's philanthropic organizations, the Congress, by Senate Joint Resolution 293, has designated November 16, 1990, as "National Philanthropy Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim November 16, 1990, as National Philanthropy Day. I call upon the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of November, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-27007
Filed 11-13-90; 10:48 am]
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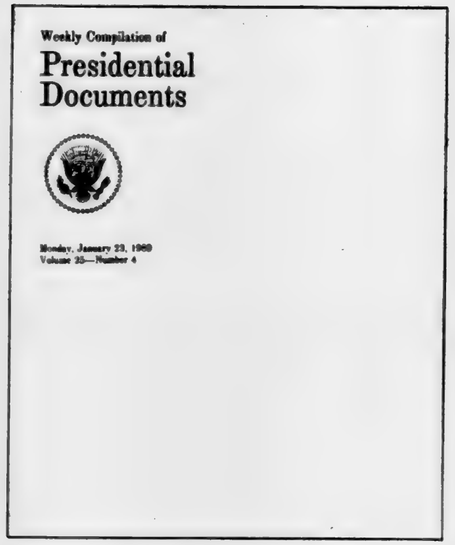

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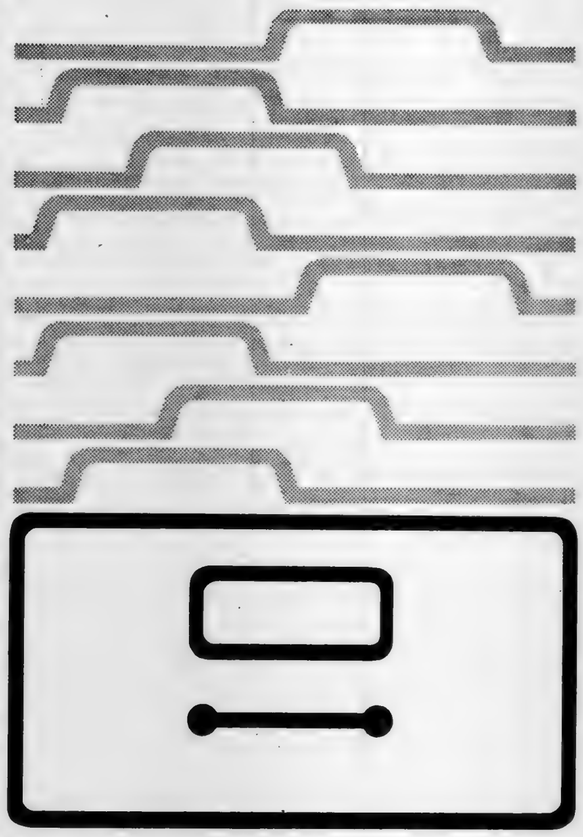

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in the Code of Federal Regulations (CFR)

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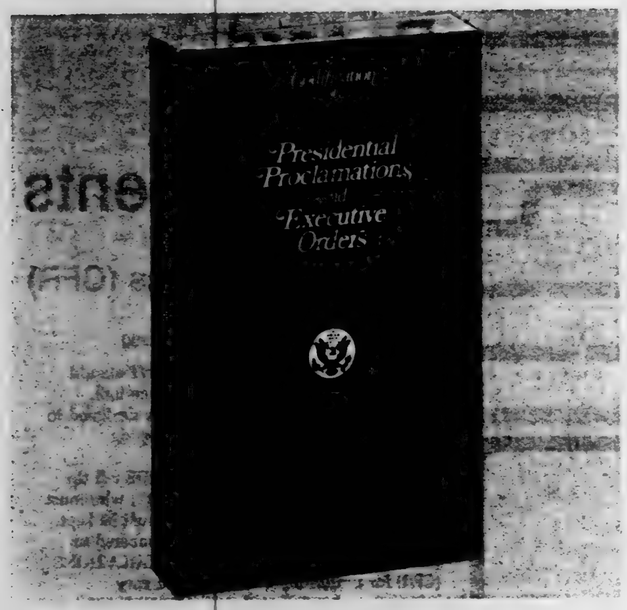

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federal register

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federal register

Thursday
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Title 3—

The President

Proclamation 6228 of November 13, 1990

American Education Week, 1990

By the President of the United States of America

A Proclamation

While a sound education is a great and lasting treasure in its own right, it is also vital to the advancement of individuals and nations. Through their educational experiences, young people develop the knowledge and skills needed to become innovative, productive citizens. They also gain an understanding of our Nation's history and an appreciation for our rights and responsibilities as members of a free and democratic society. Thus, if the United States is to remain a free, strong, and prosperous country, one that is competitive in the rapidly changing global marketplace, our educational system must be marked by excellence.

Our success in strengthening America's educational system may be measured by our progress toward the six national education goals established last year following my Education Summit with the Nation's Governors. First, by the year 2000, all American children must start school ready to learn. High school graduation rates must increase to 90 percent. American students must demonstrate competence in five critical subjects with their progress assessed in grades 4, 8, and 12, and they must rank first in the world in science and mathematics. Every American adult must be literate and possess the skills—including the technical skills—necessary to compete in the global economy. Finally, every school in the United States must be safe, disciplined, and drug-free. These goals form a binding standard of excellence for our Nation's schools, a standard that both animates and guides our ongoing efforts to revitalize American education.

In July, I joined with the Nation's Governors in establishing the National Education Goals Panel, which will measure and report progress toward these crucial objectives. Achieving our national education goals is not, however, a job for panel members and government officials alone. Ensuring a high-quality education for every American will depend on the personal commitment and sustained cooperation of all Americans—parents, teachers, students, local school administrators, business leaders, and elected officials, as well as the general public.

Because education is a lifelong process of learning, growth, and discovery, our ability to achieve excellence in the Nation's schools begins at home. What goes on in the classroom is only part of a child's educational experience, and parents have primary responsibility for what—and how—their children learn. Parents can contribute substantially to the quality of our educational system by taking active interest in their youngsters' homework and academic progress; by participating in parent-teacher organizations; and by insisting on fair and effective local school boards. Government can encourage parental involvement by expanding choice in education.

At home, in the classroom, in public office, and in the community at large, all of us can and must work toward achieving our national education goals. Each of us is accountable for the quality of American education, and each of us has a vital stake in its future. This week let us reaffirm our determination to make excellence, once again and always, the hallmark of American education.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week beginning November 11, 1990, as American Education Week. I urge all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of November, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-27071
Filed 11-13-90; 2:07 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6227 of November 13, 1990

Geography Awareness Week, 1990

By the President of the United States of America

A Proclamation

From the vast, frozen tundra of the Arctic to the exotic reaches of South American rain forests, the world in which we live is a beautiful and fascinating place. As varied as the climates, terrain, and natural resources found on our planet, however, are the peoples who inhabit it.

Americans who lack fundamental knowledge of the world's peoples and their surroundings cannot fully appreciate or enjoy Earth's diversity and splendor. On a larger scale, the lack of even elementary geographic knowledge among many Americans places our entire Nation at a disadvantage in matters of foreign policy and international commerce.

Geography has been a pivotal factor in the social, economic, and political development of virtually every country in the world. Thus the study of geography is not only exciting but also essential to understanding history and to participating successfully in today's global community. We Americans cannot formulate or maintain effective foreign policies, trade strategies, and business practices if the physical characteristics and cultural and political boundaries of the world are unfamiliar to us. We cannot respond effectively to dramatic changes around the globe if we do not fully comprehend the location and significance of such events. Moreover, our ability to promote international understanding and cooperation depends, in large part, on our ability to understand the languages, customs, and beliefs of other peoples, as well as the physical circumstances in which they live.

Despite the importance of public awareness of world geography, statistics indicate that many Americans lack basic knowledge in this field. For example, a survey sponsored by the Federal Government found that many of the Nation's 12th graders do not know that the Mississippi River flows into the Gulf of Mexico. The Department of Education reports that one-third of all adults in the United States cannot name any of the countries that belong to the North Atlantic Treaty Organization, and a National Governors' Association report approximately two years ago indicated that one in seven adults could not locate the United States on a globe. Although such findings underscore the dire need to improve general knowledge of the subject, geography as a distinct discipline has been disappearing from academic curricula around the country.

Fortunately, however, the Administration and the Nation's Governors are working to revitalize America's educational system through efforts that include renewed emphasis on the basics. By raising our expectations and reaffirming the value of learning—including the study and mastery of elementary geography—we can better equip young Americans for the challenges and opportunities of the future.

To focus attention on the importance of the study and mastery of geography, the Congress, by Senate Joint Resolution 323, has designated the week of November 11 through November 17, 1990, as "Geography Awareness Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of November 11 through November 17, 1990, as Geography Awareness Week. I urge all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of November, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-27072
Filed 11-13-90; 2:06 pm]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 91-6 of October 30, 1990

Determination Under Section 405 of Public Law 101-246

Memorandum for the Secretary of State

Pursuant to Section 405 of Public Law 101-246, I hereby determine that the United Nations

a. has continued implementation of consensus decision-making procedures on budgetary matters which assure that sufficient attention is paid to the views of the United States and other member states who are major financial contributors to the assessed budget;

b. is making further progress toward the elimination of the abuse of secondment; and

c. is implementing the 15 percent reduction in the staff of the United Nations Secretariat and that such reduction is being equitably applied among the different nationalities on such staff.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, October 30, 1990.

[FR Doc. 90-27143
Filed 11-13-90; 4:16 pm]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 91-7 of October 30, 1990

Determination Under Section 405 of Public Law 101-246

Memorandum for the Secretary of State

Pursuant to Section 405 of Public Law 101-246, I hereby determine that the International Civil Aviation Organization, the International Labor Organization, the United Nations Industrial Development Organization, the World Health Organization, and the World Meteorological Organization have continued implementation of decision-making procedures on budgetary matters which assure that sufficient attention is paid to the views of the United States and other member states who are major financial contributors to such budgets.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, October 30, 1990.

[FR Doc. 90-27144
Filed 11-13-90; 4:17 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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Thursday, November 15, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 90-212]

7 CFR Part 301

Mexican Fruit Fly; Deletion of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mexican fruit fly regulations by removing a portion of Los Angeles County near Compton, California, from the list of areas regulated because of the Mexican fruit fly, and by removing California from the list of States quarantined because of the Mexican fruit fly. We have determined that the Mexican fruit fly has been eradicated from California, and that restrictions are no longer needed to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. This action relieves unnecessary restrictions on the interstate movement of regulated articles from the previously regulated area.

DATES: Interim rule effective November 9, 1990. Consideration will be given only to comments received on or before January 14, 1991.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies of written comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-212. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is an extremely destructive pest of certain fruits and vegetables. The Mexican fruit fly can cause serious economic losses. The short life cycle of this pest allows the rapid development of serious outbreaks.

The Mexican fruit fly regulations contained in 7 CFR 301.64 *et seq.* (referred to below as the regulations) impose restrictions on the interstate movement of regulated articles from regulated areas in quarantined States in order to prevent the artificial spread of the Mexican fruit fly to noninfested areas. Regulated articles include citrus fruit, avocados, apples, peaches, pears, lemons, limes, plums, prunes, and pomegranates.

In a document effective June 26, 1990, and published in the **Federal Register** on July 2, 1990, (55 FR 27180-27182, Docket Number 90-065), we added California to the list of States quarantined because of the Mexican fruit fly and designated as regulated areas in California a portion of Los Angeles County, near Compton, and a portion of San Diego County, near El Cajon.

In a document effective October 18, 1990, and published in the **Federal Register** on October 23, 1990 (55 FR 42698-42699, Docket Number 90-207), we removed the portion of San Diego County near El Cajon from the list of regulated areas.

Based on insect trapping surveys by inspectors of California State and county agencies and by inspectors of Plant Protection and Quarantine, a unit within the Animal and Plant Health Inspection Service, United States Department of Agriculture, we have determined that the Mexican fruit fly has now been eradicated from the portion of Los Angeles County near Compton, California. The last finding of the Mexican fruit fly thought to be associated with the infestation in this area was made on May 8, 1990.

Since then, no evidenced of Mexican fruit fly infestations has been found in this area. We have determined that the Mexican fruit fly no longer exists in this area, and we are therefore, removing it from the list of areas in § 301.64-3(c) regulated because of the Mexican fruit fly. Since this areas was the only remaining area in California regulated because of the Mexican fruit fly, we have also determined that the Mexican fruit fly no longer exists in California. We are therefore removing California from the list in § 301.64-3 of States quarantined because of the Mexican fruit fly.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this rule without prior opportunity for public comment. The area in California affected by this document was regulated due to the possibility that the Mexican fruit fly could be spread to noninfested areas of the United States. Since this situation no longer exists, and the continued regulated status of this area would impose unnecessary restrictions on the public, we are taking immediate action to remove the restrictions.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibilty Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers,

individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation removes restrictions on the interstate movement of regulated articles from a portion of Los Angeles County near Compton, California. Within this area there are approximately 135 entities that could be affected, including 30 fruit/produce markets, 100 nurseries, and 5 community gardens. These entities comprise less than 1 percent of the total number of similar enterprises operating in the State of California.

The effect of this rule on these entities should be insignificant since most of these small entities handle regulated articles primarily for local intrastate movement, not interstate movement, and the distribution of these articles was not affected by the regulatory provisions we are removing.

Many of these entities also handle other items in addition to the previously regulated articles so that the effect, if any, of this regulation on these entities is minimal. Further, the conditions in the Mexican fruit fly regulations and treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allowed interstate movement of most articles without significant added costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Mexican fruit fly, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301 DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.64 [Amended]

2. In § 301.64, paragraph (a), the phrase "the States of California and Texas" is changed to read "the State of Texas".

§ 301.64–3 [Amended]

3. Section 301.64–3, paragraph (c) is amended by removing the entry for "California" and the description of the regulated area for Los Angeles County, California.

Done in Washington, DC, this 9th day of November 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–26934 Filed 11–14–90; 8:45 am]

BILLING CODE 3410–34–M

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7 CFR Part 301

[Docket No. 90–211]

Mediterranean Fruit Fly; Removal of Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are removing the Mediterranean fruit fly (Medfly) regulations that designated a portion of Los Angeles County in California as a quarantined area and imposed restrictions on the interstate movement of regulated articles from the quarantined area. The regulations were established to prevent the spread of the Medfly into noninfested areas of the United States. We have determined that the Medfly has been eradicated from Los Angeles County, California, which was the only remaining area in California regulated because of the Medfly. Therefore, the Medfly regulations are no longer necessary. This action removes restrictions on the interstate movement of regulated articles from California.

DATES: Interim rule effective November 9, 1990. Consideration will be given only to comments received on or before January 14, 1991.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90–211. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

We established the Medfly regulations and quarantined an area in Los Angeles County, California (7 CFR 301.78 *et seq.*, referred to below as the regulations), in a document effective August 23, 1989, and published in the **Federal Register** on August 29, 1989 (54 FR 35629–35635, Docket Number 89–146). We have published a series of interim rules amending these regulations by adding or removing certain portions of Los Angeles, Orange, Riverside, San Bernardino, and Santa Clara Counties, California, from the list of quarantined areas. Amendments affecting California were made effective on September 14, October 11, November 17, and December 7, 1989; and on January 3, January 25, February 16, March 9, May 9, June 1, August 3, September 6, September 14, September 21, October 12, and October 19, 1990 (54 FR 38643–38645, Docket Number 89–169; 54 FR 42478–42480, Docket Number 89–182; 54 FR 48571–48572, Docket Number 89–202; 54 FR 51189–51191, Docket Number 89–206; 55 FR 712–715, Docket Number 89–212; 55 FR 3037–3039, Docket Number 89–227; 55 FR 6353–6355, Docket Number 90–014; 55 FR 9719–9721, Docket Number 90–031; 55 FR 19241–19243, Docket Number 90–050; 55 FR 22320–22323, Docket Number 90–061; 55 FR 32236–32238, Docket Number 90–151; 55 FR 37687–37689, Docket Number 90–175; 55 FR 38529–38530, Docket Number 90–179; 55 FR 39261–39162, Docket Number 90–182; 55 FR 41981–41983, Docket Number 90–199; 55 FR 42953–42954, Docket Number 90–205).

The regulations imposed restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Medfly to noninfested areas of the United States. The regulations also designated soil, and a large number of fruits, nuts, vegetables, and berries, as regulated articles.

Based on insect trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS), we have determined that the Medfly has been eradicated from the quarantined areas in California in Los Angeles County, near Echo Park, Glassel Park and Rosemead. The last finding of the Medfly thought to be associated with the infestation in these areas was made on June 27, 1990, in the Echo Park area, and on July 10, 1990, in the Glassel Park and Rosemead areas.

Since then, no evidence of Medfly infestations has been found in these areas. We have determined that the Medfly infestation no longer exists in Los Angeles County, California, and we are removing it from the list of areas in § 301.78–3(c) quarantined because of the Medfly. Since portions of Los Angeles County were the only remaining areas in California regulated because of the Medfly, we have now determined that the Medfly no longer exists in California. We are therefore removing the Medfly regulations.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. The areas in California affected by this document were quarantined due to the possibility that the Medfly could spread to noninfested areas of the United States. Since this situation no longer exists, and the continued quarantined status of these areas would impose unnecessary regulatory restrictions on the public, we have taken immediate action to remove these restrictions.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from portions of Los Angeles County in California. Within the regulated areas being removed there are approximately 2,203 entities that could be affected, including 125 nurseries, 1,188 fruit/produce vendors, 5 community gardens, 5 swap meets, 62 commercial growers, 6 farmers market, 316 yard maintenance services, 462 mobile vendors, and 22 miscellaneous (i.e., packing, processing, and dehydrator sites and small backyard sellers).

The effect of this rule on these entities should be insignificant since most of these small entities handle regulated articles primarily for local intrastate movement, not interstate movement, and the distribution of these articles was not affected by the regulatory provisions we are removing.

Many of these entities also handle other items in addition to the previously regulated articles so that the effect, if any, on these entities is minimal. Further, the conditions in the Medfly regulations and treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allowed interstate movement of most articles without significant added costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that his action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Mediterranean fruit fly, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§§ 301.78 through 301.78–10 [Removed]

2. "Subpart—Mediterranean Fruit Fly" (7 CFR 301.78 through 301.78–10) is removed.

Done in Washington, DC, this 9th day of November 1990.

Robert Melland,

Acting Administrator Animal and Plant Health Inspection Service.

[FR Doc. 90–26935 Filed 11–14–90; 8:45 am]

BILLING CODE 3410–34–M

Foreign Agricultural Service

7 CFR PART 1530

Sugar To Be Re-exported in Refined Form; Sugar To Be Re-exported in Sugar Containing Products; Sugar for Production of Polyhydric Alcohol

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Interim rule; extension of comment period.

SUMMARY: Because of requests by the public, this Notice announces a 30-day extension of time, until December 13, 1990, for comments on the interim rule published in the **Federal Register** on October 12, 1990 (55 FR 41487). The interim rule amended the regulations governing three programs—"Sugar to be Re-exported in Refined Form" (7 CFR 1530.100 et seq.), "Sugar To Be Re-exported in Sugar Containing Products" (7 CFR 1530.200 et seq.), and "Sugar for Production of Polyhydric Alcohol" (7 CFR 1530.300 et seq.)—administered by the Foreign Agricultural Service.

DATES: All comments on the interim rule must be submitted on or before December 13, 1990 in order to be assured of consideration.

ADDRESSES: Comments should be mailed or delivered to the Team Leader, Import Quota Programs, Foreign Agricultural Service, room 6095, South Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may also be inspected at room 6095 between 9 a.m. and 4:30 p.m., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: Cleveland Marsh (Team Leader, Import Quota Programs), 202–447–2916 or Dale McNiel (Attorney), 202–447–3780.

SUPPLEMENTARY INFORMATION: Presidential Proclamation No. 6179 of September 13, 1990, 55 FR 38293, converted the U.S. sugar import quota into a tariff-rate quota, effective October 1, 1990. This Proclamation provided for raw cane sugar described in subheading 1701.11.02 of the Harmonized Tariff Schedule of the United States (HTS) to be imported subject to the lower duty rates (or duty free) of the tariff-rate quota, and exempt from the quota limitations otherwise applicable to sugars imported at such lower duty rates, provided that such sugar is used only for the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, or is re-exported in refined form or in sugar containing products and further provided that duties paid at the higher duty rates are not refunded, as drawback, on the basis, or as a result, of the exportation of such polyhydric alcohol, refined sugar or sugar containing products. Accordingly, the Proclamation enabled the Department of Agriculture to renew three programs—"Sugar for Production of Polyhydric Alcohol" (7 CFR 1530.300 et seq.), "Sugar to be Re-exported in Refined Form" (7 CFR 6.100 et seq.), and "Sugar To Be Re-exported in Sugar Containing Products" (7 CFR 1530.200 et seq.)—that were in effect under the former absolute import quota.

The interim rule published on October 12, 1990 amended the regulations governing these programs primarily in order to conform the regulations to the provisions of the HTS, as modified by Proclamation No. 6179. In addition to the requirements previously applicable, license holders are required to certify whether or not any drawback refunds of higher rate duties under the tariff-rate quota have or will be claimed on the basis, or as a result, of the exportation of polyhydric alcohol, refined sugar, or sugar containing products produced or exported pursuant to these programs. In addition, the interim rule made numerous minor amendments to update or clarify former provisions and transferred the regulations in 7 CFR part 6, "Subpart—Importation of Sugar Free From Quota" to 7 CFR part 1530—"Sugar Import Licensing" in order to consolidate in one part of the CFR all of the regulations governing the program referred to above.

Notice

Notice is hereby given that the period of time for submitting comments on the interim rule published on October 12, 1990 (55 FR 41487) is extended to December 13, 1990.

R.E. Anderson, Jr.,

Administrator, Foreign Agricultural Service.

[FR Doc. 90–27021 Filed 11–13–90; 12:28 pm]

BILLING CODE 3410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 0 and 1

RIN 3150–AD74

Statement of Organization and General Information; Minor Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is revising its statement of organization and general information to reflect the establishment of the Office of Inspector General (OIG) by formally removing references to the Office of Inspector and Auditor (OIA) from its regulations. The authority and responsibility for OIA functions have been transferred to the OIG. This final rule is necessary to inform the public of organizational changes within the NRC.

EFFECTIVE DATE: The rule will become effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Freedom of Information and Publications Services, Office of Administration, Washington, DC 20555, Telephone: 301–492–7211.

SUPPLEMENTARY INFORMATION: On April 17, 1989, the Office of the Inspector General was established as a result of Public Law 100–504, "The Inspector General Amendments Act of 1988." The Nuclear Regulatory Commission (NRC) formally announced the establishment of the OIG in a final rule published in the **Federal Register** on December 28, 1989 (54 FR 53312).

The amendments presented in this final rule are necessary to formally remove references to the Office of Inspector and Auditor (OIA) from 10 CFR chapter I. The authority and responsibility for OIA functions have been transferred to the OIG.

Because these are amendments dealing with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in the effective date, because these amendments are of a minor and administrative nature, dealing with the agency's reorganization.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0025.

List of Subjects

10 CFR Part 0

Conflict of interest, Penalty.

10 CFR Part 1

Organization and functions (Government Agencies).

For the reason set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 0 and 1.

PART 0—CONDUCT OF EMPLOYEES

1. The authority citation for part 0 continues to read in part as follows:

Authority: Section 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 0.735–3 [Amended]

2. In § 0.735–3, paragraphs (d)(2) and (g), remove the words "Office of Inspector and Auditor," and add in their place the words "Office of Inspector General."

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

3. The authority citation for part 1 continues to read in part as follows:

Authority: Section 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 1.21 [Removed]

4. Section 1.21 is removed.

Dated at Rockville, Maryland, this 2nd day of November 1990.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Acting Executive Director for Operations.

[FR Doc. 90–26921 Filed 11–14–90; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0699]

Exemption Permitting Banks To Offer Reduced-Rate Credit Cards to Customers of Their Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971, 1972(1)) ("section 106") generally prohibits banks from offering reduced consideration for credit or other services on the condition that the customer also obtain some additional service from the bank or a holding company affiliate of the bank. This exemption would permit banks to offer a price reduction on credit cards issued to their customers if the customer also obtains a traditional banking product from any of the credit card bank's affiliates.

EFFECTIVE DATE: December 18, 1990.

FOR FURTHER INFORMATION CONTACT: Robert deV. Frierson, Senior Attorney (202/452–3711) or Mark J. Tenhundfeld, Attorney (202/452–3612), Legal Division; or Anthony Cyrnak, Economist (202/452–2917), Division of Research and Statistics, Board of Governors. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

Section 106 generally prohibits banks from offering reduced consideration for credit or other services if that reduction is conditioned on a requirement that the customer also obtain some additional service from the bank or a holding company affiliate of the bank.[1] However, section 106 provides that the Board may, by regulation or order, "permit such exceptions . . . as it considers will not be contrary to the purposes" of section 106.

Pursuant to this exemptive authority, the Board recently approved separate requests by Norwest Corporation, Minneapolis, Minnesota ("Norwest"), and NCNB Corporation, Charlotte, North Carolina ("NCNB"), to consolidate their credit card operations into card-issuing banks and to offer reduced-rate credit cards to customers of their affiliate banks.[2]

Norwest and NCNB proposed to vary the consideration (including interest rates and fees) charged on a credit card issued by one of their banks if the cardholder also obtained a "traditional banking product" (defined by section 106 as a loan, discount, deposit or trust service) from any of their other subsidiary banks.[3] Regardless of the combination of banking services offered, the proposed variation in consideration would occur on the credit card (the tying product) and was conditioned upon the customer also obtaining traditional banking products (the tied products) from a subsidiary bank of the card-issuing bank's parent holding company. In addition, all products offered under this arrangement were also available to customers for separate purchase.

The Norwest and NCNB proposals were prohibited under the literal terms of section 106. Under its provisions, a bank may not offer reduced-rate credit on the condition that a customer also obtain some additional service from an affiliate of that bank.[4] Accordingly, without an exemption under section 106 from the Board, a multi-bank holding company like Norwest and NCNB would be prohibited from offering a reduced-rate credit card at one of its banks on the condition that a customer also obtain a traditional banking product from one of its other affiliated banks.

In order to grant an exemption, section 106 requires the Board to find that the reduced-rate credit card arrangement would not be contrary to the purposes of the section. The legislative history indicates that the purpose of the section was to address an underlying Congressional concern regarding fair competition and that its prohibitions were "intended to provide specific statutory assurance that the use of the economic power of a bank will not lead to a lessening of competition or unfair competitive practices." [5]

This legislative history also indicates that the Board should exercise its exemptive authority selectively. The Senate banking committee's report states that "the committee expects that by such regulation or order the Board will continue to allow appropriate traditional banking practices." [6] The

[1] Such arrangements constitute tie-ins and may result in a customer being forced or induced to purchase a product that the customer does not want (the "tied product") in order to obtain a product that the customer desires (the "tying product").

[2] *Norwest Corporation and NCNB Corporation*, 76 Federal Reserve Bulletin 702 (1990).

[3] For example, a depositor maintaining a minimum deposit balance at any of their affiliate banks might be eligible for a credit card with no membership fee.

[4] Section 106 permits a bank to reduce consideration for credit or other services if the customer obtains some other traditional banking service from that bank. This exception does not apply, however, where the credit from one bank is conditioned on obtaining an additional product from an affiliate. Thus, while section 106 permits a bank to require a customer to obtain its own traditional banking services as a condition for reduced-rate credit, its does not permit a bank to impose the same requirements for a traditional banking service offered by an affiliate of the bank.

[5] S. Rep. No. 1084, 91st Cong., 2d Sess. 16 (1970) ("Senate Report"). The Senate banking committee's report explains: "The purpose of [section 106] is to prohibit anticompetitive practices which require bank customers to accept or provide some other service or product or refrain from dealing with other parties in order to obtain the bank product or service they desire." Senate Report at 17.

[6] Senate Report at 17.

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Supplementary Views of Senator Brooke filed with the Senate Report note that "adequate discretion is vested in the Federal Reserve Board to provide exceptions where such are founded on sound economic analysis." [7]

In determining whether the proposed exemption would be inconsistent with section 106's purpose and legislative history, the Board has considered it appropriate to analyze the competitiveness of the relevant credit card market. In the Board's view, unless it would be likely that the seller's market power in the credit card market for the tying product is high enough to force a consumer to also purchase on uncompetitive terms a traditional banking service in the tied product market, a reduced-rate credit card arrangement would not appear to produce anticompetitive effects.

The Board has found the relevant market for credit cards to be national in scope [8] and, with nearly 5,000 card-issuers, relatively unconcentrated. In the case of Norwest and NCNB, their small market shares and the presence of many other competitors providing credit cards in the tying product market indicated that they could not exercise sufficient market power to impair competition in the tied product market for traditional banking services.[9] The Board also noted that both companies would continue to offer credit cards and traditional banking services separately,[10] and, given the competitive nature of the credit card market, these separately available products would be required to be offered at competitive prices.

Under these circumstances, the Board concluded that the Norwest and NCNB proposals were not contrary to the purpose of section 106, and that granting the exemptions was consistent with the legislative history of the Board's authority to permit exemptions for traditional banking services on the basis of economic analysis. Approval was conditioned, however, on the Board's right to terminate the credit card proposals if conditions developed to indicate that the arrangement was resulting in anticompetitive practices that were inconsistent with the purpose of section 106.

In light of section 106's purpose of preventing unfair competitive practices, and the relatively unconcentrated nature of the national credit card market, the Board also considered it appropriate to permit reduced-rate credit card arrangements by bank holding companies, without the need for acting on individual requests. Accordingly, the Board proposed an amendment to Regulation Y authorizing bank holding companies generally to offer reduced rates on credit cards for customers of their affiliated depository institutions under the same circumstances discussed in the Norwest and NCNB approvals.[11] During the regulatory comment period, the Board received 49 written comments, with 40 in favor of and 9 opposed to the proposal.

Discussion

Commenters opposing the proposed amendment generally argued that reduced-rate credit card arrangements would permit larger bank holding companies to compete unfairly against smaller holding companies for credit card customers. The Board believes, however, that the proposed exemption addresses the potential for unfair competitive practices in several respects. As the Board has previously noted, concerns regarding reduced-rate credit card proposals from an antitrust perspective are substantially reduced when the buyer is free to obtain the tying or tied product separately, thus assuring the availability of these products to customers not wishing to obtain all the products offered in the arrangement. Moreover, the competitiveness of the credit card market would require that the separately available credit cards be offered at competitive prices. In any event, the Board has reserved the right to terminate any reduced-rate credit card arrangement offered under the proposed exemption that results in anticompetitive practices.

One commenter disputed the conclusions to be drawn from the data on credit card receivables and alleged that the credit card industry is highly concentrated. As previously discussed in the Norwest and NCNB Order, however, these data confirm the relatively unconcentrated nature of the credit card market. The approximately 5,000 card-issuers in the market for credit card services substantiate the existence of numerous competitors in the present market and the absence of significant barriers for entry by prospective competitors. The largest single issuer has less than 20 percent of all credit card outstandings and cannot be characterized as being dominant enough to exercise significant market power through its market share. In addition, the credit card market is also national in geographic scope. This national scope implies that, regardless of local banking market structure, customers can choose from many competitive alternatives for basic credit card services, thus making it unlikely that any one competitor would be able to exert monopolistic power in any local market for credit cards. And, as noted above, the Board can terminate any reduced-rate credit card program if the facts demonstrate that competitors offering the program can exert sufficient power in this market to result in anticompetitive practices.

Seventeen of the commenters in favor of the proposal have requested that the Board expand the proposal to include one or both of the following: (i) A variation in consideration for any traditional banking product; and (ii) traditional banking products offered by nonbanking subsidiaries in addition to depository subsidiaries of the card-issuing bank's parent holding company.

As discussed above, section 106 permits the Board to approve only exemptions that are not contrary to the purpose of preventing anticompetitive practices. In the case of the reduced-rate credit cards, an analysis of the current credit card market indicates that no seller's market power in this tying product market is high enough to force a consumer to also purchase on uncompetitive terms a traditional banking product in the tied product market.

In the Board's view, analyses of the market for other tying banking products would be appropriate before the Board expanded the scope of the proposed amendment. The Board has found that the competitive characteristics of the credit card market are an appropriate consideration in determining whether an exemption for credit cards would not be contrary to the purposes of section 106 for purposes of exercising its exemptive authority. Accordingly, the Board believes that market analyses for the other proposed tying products would be relevant to the Board's determination of whether those tying products would result in anticompetitive practices and thus would be inconsistent with the purposes of section 106. In this regard, staff reviews market characteristics of banking products may be concluded in the future.[12]

The Board believes it appropriate, however, to expand the proposed exemption to include traditional banking products offered by both depository and nonbanking subsidiaries of the card-issuing bank's parent holding company. Multi-bank holding companies today offer a variety of traditional banking products through nonbanking subsidiaries. In addition, the Board notes that subsequent Congressional action in other contexts regarding prohibitions similar to section 106 tends to support the inclusion of all subsidiaries within the exemption. For example, Federal thrifts are permitted to offer arrangements with traditional banking services obtained from any of the thrift's affiliates.[13] In the Competitive Equality Banking Act of 1987 ("CEBA"), which applied the prohibitions of section 106 to nonbank banks, Congress indicated that these restrictions "would not be violated by tying one of these traditional banking services offered by a grandfathered nonbank of another traditional banking service offered by an affiliate." [14] While this excerpt does not accurately reflect the literal terms of section 106, it lends support for expanding the proposed exemption to include traditional banking products offered by any of the card-issuing bank's affiliates, given the lack of economic evidence of anticompetitive effects.[15]

Analysis of the final rule

The final rule would permit a bank owned by a bank holding company to vary the consideration (including interest rates and fees) charged on extensions of credit made pursuant to a credit card offered by the bank (including a credit card bank) on the basis of the condition or requirement that a customer also obtain traditional banking products from another subsidiary of the card-issuing bank's parent holding company. However, both the credit card and the traditional banking products offered in the arrangement must be separately available for purchase by the customer. Moreover, the Board may terminate any exemption if facts develop to indicate that the arrangement is resulting in anticompetitive practices.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that this final rule will not have a significant economic impact on a substantial number of small entities that will be subject to the regulation.

List of Subjects in 12 CFR Part 225

Administrative practices and procedure, Appraisals, Banks, Banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and record keeping requirements, Securities, State member banks.

For the reasons set forth in this document, the Board amends 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3907, 3909, 3310, and 3331-3351.

2. In § 225.4, paragraph (d) is redesignated as paragraph (d)(1), the heading to newly redesignated paragraph (d)(1), is revised, and new paragraph (d)(2) is added to read as follows:

§ 225.4 Corporate practices.

* * * * *

(d)(1) *Limitation on tie-in arrangements.*

* * * * *

(2) *Exemption for credit cards.* A bank (including a credit card bank) owned by a bank holding company may vary the consideration (including interest rates and fees) charged on extensions of credit made pursuant to a credit card offered by the bank on the basis of the condition or requirement that a customer also obtain a loan, discount, deposit, or trust service (but no other products) from another subsidiary of the card-issuing bank's parent holding company, if the credit card and the loan, discount, deposit, or trust service offered in the arrangement are also separately available for purchase by a customer. The exemption granted pursuant to this paragraph shall terminate upon a finding by the Board that the arrangement is resulting in anticompetitive practices.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 8, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-26901 Filed 11-14-90; 8:45 am]

BILLING CODE 6210-01-M

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[7] Senate Report at 98.

[8] *First Chicago Corporation*, 73 Federal Reserve Bulletin 800 (1987); *RepublicBank Corporation*, 73 Federal Reserve Bulletin 310 (1987).

[9] According to market data as of December 31, 1988, Norwest accounted for less than 1 percent of total credit card balances outstanding and NCNB held only 1 percent among the top 100 care-issuers. Moreover, the top 100 card-issuing institutions accounted for approximately 80 percent of total industry outstandings and Citicorp, the largest single issuer, accounted for 18 percent of all credit card balances outstanding.

[10] Under antitrust precedent, anticompetitive concerns are substantially reduced where the buyer is free to take either product by itself even though the seller may also offer the two items as a unit at a single price. *Northern Pacific Ry. Co.* v. *United States*, 356 U.S. 1, 6, n.4 (1958).

[11] 55 FR 25453 (1990).

[12] For example, staff has recently completed an analysis of the lending market for small businesses. According to this study, the market for these services is relatively local in scope.

[13] 12 U.S.C. 1464(q)(1). During the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, amendments to similarly exempt traditional banking services offered by subsidiaries of bank holding companies from section 106's prohibitions were unsuccessfully offered in both House and Senate banking committees.

[14] H.R. Conf. Rep. No. 261, 100th Cong., 1st Sess. 128-29 (1987).

[15] In light of section 106's applicability to nonbank banks, the Board notes that the proposed amendment to Regulation Y for reduced-rate credit cards would also apply to holding companies entitled to grandfathered treatment under CEBA, subject to any additional restrictions imposed on such companies.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM86-7-002; Order No. 473-B]

Compression Allowances and Protest Procedures Under NGPA Section 110

Issued November 7, 1990.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on remand clarifying procedures under order Nos. 473 and 473-A.

SUMMARY: The Federal Energy Regulatory Commission is clarifying the procedures under 18 CFR 271.1104, in response to *Phillips Petroleum Co. et al.* v. *FERC*, 902 F.2d 795 (10 Cir. 1990). The order clarifies that the presumption incorporated in 18 CFR 271.1104 that an area rate clause entitles a producer to a delivery allowance but not a compression allowance has no applicability outside of the protest procedures established in Order Nos. 473 and 473-A.

EFFECTIVE DATE: This order is effective November 7, 1990.

FOR FURTHER INFORMATION CONTACT: Richard Mattingly, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, 202-208-2294.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, this Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street NE., Washington, DC 20426. The Commission Issuance Posting System (CIPS), an electronic bulletin board service,

provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon;

Order on Remand Clarifying Procedures Under Order Nos. 473 and 473–A

On April 30, 1990, the United States Court of Appeals for the Tenth Circuit issued its decision in *Phillips Petroleum Co., et al.* v. *FERC*, 902 F.2d 795, affirming in part and remanding in part for clarification Commission Order Nos. 473[1] and 473–A.[2] These orders established protest procedures whereby interstate pipelines or their customers could contest whether express contractual authority existed for the payment to producers of NGPA section 110 generic delivery (gathering) and compression allowances authorized by the Commission.[3] This order implements the court's decision.

As a part of the protest procedures established in Order Nos. 473 and 473–A, the Commission adopted the presumption that the existence of an area rate clause in the parties' contract is sufficient to authorize the producer to collect a delivery allowance, but is insufficient to authorize the collection of a compression allowance. A hearing was provided for in those instances where a pipeline or third party disputed the producer's right to collect a delivery allowance or a producer claimed the right to collect a compression allowance. The order also provided that express contractual authorization was reuqired for a producer to collect interest on "that portion of the amount due but not yet collected * * * 18 CFR 271.1104(e)(2).

In *Phillips*, the court generally affirmed Order Nos. 473 and 473–A but remanded the orders for clarification on two points. First, the court directed the Commission to make clear that the presumption concerning the effect of an area rate clause had no applicability outside of the protest procedure. The court was concerned that absent a protest the Commission would rule on a particular claim for compression costs in accordance with the presumption, *viz.*, a producer with an area rate clause in its contract would be entitled to collect a delivery allowance but would not be permitted to collect a compression allowance. The court held that this result would render the rule substantive rather than procedural in nature and would be inconsistent with the governing principle that the intent of the contracting parties is controlling. *Phillips*, 902 F.2d at 801–802. Under the clarification of procedures mandated by the court, a producer with an area rate clause is entitled to collect a compressiona allowance in all cases where there is no protest to its claim.

The court also directed the Commission to clarify (1) that in the event a protest is filed and the party against whom the presumption operates produces evidence challenging the presumed fact, the presumption is eliminated from the analysis, and (2) that in making specific determinations of intent in the protest proceeding, the Commission is obligated to take account of and follow any differences with general contract law that state contract law may require. Finally, the court instructed the Commission to clarify that its "requirement for express contract authority for interest in Orders 473 and 473–A applies only to 'retroactive' allowances as stated in 18 CFR 271.1104(e) and not to non-retroactive late paid or unpaid production-related cost allowances." 902 F.2d at 805.

Accordingly, the Commission clarifies that a producer with an area rate clause is entitled to collect a compression allowance in all cases where there is no protest to its claims. In the event of a protest, specific determinations of intent will be governed by the procedures set forth above. Further, the requirement for expires contract authority for interest as stated in 18 CFR 271.1104(e) is clarified as set forth above.

The Commission orders: The provisions of Order Nos. 473 and 473–A are clarified in accordance with the terms of this order.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 90–28884 Filed 11–14–90; 8:45 am]

BILLING CODE 6717-01-M

[1] 32 Fed. Reg. 21,880 (June 9, 1967); III FERC Stats. and Regs. ¶ 30, 747 (1987).

[2] 53 Fed. Reg. 15 (Jan. 4, 1988); III FERC Stats. and Regs. ¶ 30,788 (1988).

[3] *See* Order No. 94–A, Final Rule and Order on Rehearing of Order No. 94, 48 Fed. Reg. 5152 (Feb. 3, 1983); FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,419 (1983), *reh'g denied*, Order No. 94–C 48 Fed. Reg. 24,039 (May 31, 1983); FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,454 (codified at 18 CFR 271.1100–271.1104) (1983).

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. AFT 304; Ref: Notice No. 703]

RIN 1512–AA07

Mt. Harlan, CA (89F–39P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule establishes a viticultural area located entirely within San Benito County, California to be known as "Mt. Harlan." This final rule is based on a notice of proposed rulemaking published in the Federal Register on June 5, 1990, at 55 FR 22925, Notice No. 703. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers identify the wines they may purchase. The establishment of viticultural areas also allows wineries to specify further the origin of wines they offer for sale to the public.

EFFECTIVE DATES: December 17, 1990.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin. Section 4.25a(e)(1), title 27, CFR defines an American viticultural area as a delimited grape-growing region which has been delineated in subpart C of part 9.

Section 4.25a(e)(2), title 27, CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF received a petition proposing a viticultural area to be known as Mt. Harlan. Mt. Harlan has a prominent 3,274 foot peak, and is in the upper elevations of the Gabilan (also known as Gavilan) Mountain Range. The Gabilan Range is a short mountain range, the watershed of which serves as the boundary line between San Benito and Monterey counties.

The Mt. Harlan viticultural area lies inland, approximately twenty-five miles east of Monterey Bay and nine miles south of the city of Hollister. The eastern border of the Mt. Harlan viticultural area nearly abuts the approved viticultural areas of "Cienega Valley," "Lime Kiln Valley" and "San Benito," but is included in none. The combined effects that unique soil composition, elevation and microclimate have upon the production of grapes grown in the Mt. Harlan viticultural area distinguish it from the other viticultural areas in San Benito County which are at lower elevations.

The Mt. Harlan viticultural area consists of approximately 7,440 acres and measures six miles at its widest point east-west and three miles north-south. Total vineyard acreage at this time consists of 44 acres with plans to establish more than 100 additional acres. Both the planned and current vineyards are planted at an elevation of around 2,200 feet, distinguishing them from any other vineyards in San Benito County.

1. Evidence That the Name of the Area is Locally or Nationally Known

A. Historical Name Recognition and Usage

"Mt. Harlan" is named for Ulysses Grant Harlan, a rancher who settled in the northwestern region of San Benito County between 1860 and 1880. A map produced by the Department of the Interior in 1884 shows the location of two homesites for U.G. Harlan in this area: "Harlan's Cabin" in section 28, Township 14 South, Range 5 East; and "Harlan's Upper Cabin", in section 23 of the same township and range. The Harlan family was well established in the area by 1884. There are direct descendants of Ulysses Grant Harlan in the area to this day.

B. Current Name Recognition and Usage

Because of its prominence, Mt. Harlan is firmly fixed as a place name and landmark, and is currently recognized and referred to as a distinct region of San Benito County. The California Department of Forestry, the California Department of Fish and Game, and the United States Geological Survey Division of the Department of the Interior, all use Mt. Harlan to pinpoint areas of interest respective to their department's particular needs. The name is also used to identify the area surrounding the summit.

It was the size of Mt. Harlan in relation to the surrounding features in this area of the county which led the United States Geographical Survey ("U.S.G.S.") to name the 7.5 minute topographic map quadrangle of this region, "Mt. Harlan." U.S.G.S. states on its field report name sheet that the name Harlan, as attached to the mountain, has been in local usage for over sixty years. This fact is corroborated by the appearance of Mt. Harlan on a map of California produced in 1928.

The U.S.G.S map also uses the Harlan name for physical features other than the mountain. Harlan Creek flows from the area south of Mt. Harlan to Grass Valley in the north. Harlan Mountain Road connects the area west of the summit with the area known as Lime Kiln, a low-lying area to the east. Local residents are familiar with both Harlan Mountain Road and Harlan Creek.

2. Historical or Current Evidence for the Boundaries of the Viticultural Area

The petitioner submitted two U.S.G.S. Quadrangle (7.5 Minute Series) maps titled "Mt. Harlan" and "Paicines."

The peak of Mt. Harlan is in the center of the viticultural area. The western boundary is the ridge top which serves as the dividing line between Monterey and San Benito Counties and also the watershed division. The boundary also follows, in part, two drainage channels: Thompson Creek to the south and Pescadero Creek to the west. The 1,800 foot contour defines the remainder of the viticultural area.

The preponderance of geological, geographical, historical, and contemporary evidence supports the boundaries herein established.

3. Evidence Relating to the Geographic Features (Climate, Soil, Elevation, Physical Features, etc.)

A. Climate; Elevation; Aspect

The vineyards around Mt. Harlan are located at an elevation of around 2,200 feet where special microclimatic conditions exist. The Mt. Harlan viticultural area is distinguished from the lower elevations and valley floor by (1) cooler temperatures, (2) less incidence of fog, and (3) higher rainfall with less danger of frost as a result of differing air drainage on upland and lowland areas.

According to the *Soil Survey of San Benito County (hereafter, Soil Survey)*, the average annual temperature within the Mt. Harlan viticultural area is between 58 and 60 degrees F. This contrasts with the warmer average annual temperatures of Lime Kiln and Cienega Valleys to the northeast (60–62 degrees F.).

This dissimilarity in temperature translates into differing maturation periods for mountain grapes and valley grapes. In the mountains, the cooler temperatures retard the ripening of the grapes. Therefore, more time is required for the grapes to reach acceptable sugar levels. The warmer temperatures of the valley floor allow the varieties planted there to ripen earlier. Generally, harvest will occur two to four weeks later in Mt. Harlan than in Lime Kiln and Cienega Valleys. This difference in harvest dates further distinguishes the Mt. Harlan viticultural area from its immediate neighbors to the east.

Fog also plays a major role in distinguishing the Mt. Harlan viticultural area. Because of the higher elevations at Mt. Harlan, fog is not nearly so prevalent as it is in Cienega and Lime Kiln Valleys. As the air over the California Central Valley heats each morning, it rises, creating a suction effect that pulls the moist Pacific Ocean air inland. The Gabilan Range acts as a natural barrier to this eastward flowing cool air, keeping the cooling, moist breezes west of the valley areas. Yet the Pacific air from Monterey Bay flows into the interior through Chittenden Pass and

Pacheco Pass, bringing the effects of fog and moist air through San Benito County and into the Central Valley.

As the fog enters Cienega and Lime Kiln Valleys it may often reach the 1,400 foot elevation. At the same time that vineyards in Cienega and Lime Kiln Valleys are blanketed under fog, the vineyards on Mt. Harlan are exposed to full sun. When the fog occasionally does reach the mountain vineyards, it burns off early in the morning, sometimes a full two hours ahead of the valley. The result is more hours of sunlight on Mt. Harlan than in the valleys.

Rainfall also distinguishes the Mt. Harlan viticultural area from the neighboring viticultural areas. The disparity in rainfall between Ciénega/Lime Kiln Valleys (average 16 inches annually) and Mt. Harlan (35 to 40 inches annually) is a major point of distinction.

B. Soils; Geology

In Lime Kiln Valley and in Cienega Valley the dominant soil series comprising the vineyards is the Hanford series. The Soil Survey characterizes this series as lowland soils which are "nearly level to sloping" and as "occurring on flood plains and fans." They occur primarily in the larger valleys. According to the Soil Survey, bedrock or hardpan is always reached at depths greater than five feet. The average depth of these soils is 70 inches. The available water holding capacity ranges from 7.5 to 8.5 inches per representative soil profile. Because they are lowland soils, they exhibit very slow runoff and only slight to moderate erosion potential. In contrast to the lowland soils which are present in Lime Kiln Valley and Cienega Valley, upland soils of the Sheridan series comprise nearly 70% of the soils in the Mt. Harlan viticultural area. These are mountainous soils which, as noted in the Soil Survey, occur west of Cienega Road and northwest of Lime Kiln Road. Bedrock or hardpan may be reached in as little as 1.5 feet from the surface. The average soil depth is 3.5 feet. The runoff is rapid, a natural result of the slope and elevation of the area (anywhere from 15%–75% slope). Therefore, the available water holding capacity ranges from two to seven inches per representative profile. Concomitantly, the erosion potential is severe to very severe.

Associated with the Sheridan soils are the Cieneba and Auberry series which together make up the remaining 30% of the soils in the Mt. Harlan viticultural area. Both associated series are upland soils with similar slope to the Sheridan series (15%–75%). All three soil series exhibit similar erosion potential and available water holding capacity.

In addition to the uniformity of its soil characteristics, Mt. Harlan contains an important and distinguishing geological feature—the presence of limestone. In discussing the Cieneba soils series, the Soil Survey, notes that there "are a few small areas of limestone * * * in the mountains to the west of Cienega Road." In addition, the soil Survey notes that within the Sheridan series are "areas of soils underlain by limestone." A special report issued by the California Division of Mines corroborates the findings of the soil survey. "Limestone deposits of different sizes are found in the Mt. Harlan vicinity of Cienega Valley between Pescadero Canyon and McPhails Peak." These citations place outcroppings of limestone within the Mt. Harlan viticultural area and not within Cienega Valley or Lime Kiln Valley in which the soils overlie a bedrock of limestone and dolomite.

Notice of Proposed Rulemaking

On June 5, 1990, Notice No. 703 was published in the **Federal Register** with a 45-day comment period. In that notice, ATF requested comments regarding the proposal to establish Mt. Harlan as an American viticultural area. ATF was particularly interested in comments concerning the eastern border of the proposed area which follows the 1,800-foot contour line. This border nearly abuts the Lime Kiln and Cienega Valley viticultural areas which have their border on the 1,400-foot contour line. In Notice No. 703, ATF stated its understanding that there are no vineyards or grape growing in the 400-foot gap between the three areas. ATF requested comments on whether the eastern boundary of the Mt. Harlan viticultural area should meet the western boundary of the Lime Kiln and Cienega Valley viticultural areas.

During the 45-day comment period, no comments were received. ATF believes the eastern boundary of the Mt. Harlan viticultural area should follow the 1,800 foot contour line.

Miscellaneous

ATF does not wish to give the impression by approving "Mt. Harlan" as a viticultural area that it is approving or endorsing the quality of the wine derived from this area. ATF is approving this area as being distinct and not better than other areas. By approving this viticultural area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes.

Any commercial advantage gained can only come from consumer acceptance of wines from "Mt Harlan."

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the final rule is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there is no requirement to collect information.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority And Issuance

27 CFR part 9, American Viticultural Areas, is amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of contents in 27 CFR part 9, subpart C, is amended to add the title of § 9.131 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

§ 9.131 Mt. Harlan.

Par. 3. Subpart C is amended by adding § 9.131 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.131 Mt. Harlan.

(a) *Name.* The name of the viticultural area described in this section is "Mt. Harlan."

Approved Maps. The appropriate maps for determining the boundaries of the "Mt. Harlan" viticultural area are two U.S.G.S. Quadrangle (7.5 Minute Series) maps. They are titled:

(1) Mt. Harlan, California (Photorevised (1984)).

(2) Paicines, California (Photorevised (1984)).

(c) *Boundaries.* (1) The point of beginning is the unnamed 3,063' peak on the county line between San Benito and Monterey Counties in Township 14 S., Range 5 E., Section 34 of the "Mt. Harlan," California Quadrangle map.

(2) From the point of beginning on the Mt. Harlan Quadrangle map proceed in a generally northwesterly direction along the county line through Sections 34 and 33, briefly into Section 28 and back through Section 33, and then through Sections 32, 29, and 30 all in Township 14 S., Range 5 E., to the point at which the county line intersects the line between Sections 30 and 19 of said Township and Range.

(3) Thence proceed in a straight line northeast approximately 750 feet to the commencement of the westernmost stream leading into Pescadero Creek. The stream commences in the southwest corner of Section 19 in Township 14 S., Range 5 E.

(4) Thence following the stream in a northeasterly direction to its intersection with the 1,800-foot contour line near the center of Section 19 in Township 14 S., Range 5 E.

(5) Thence following the 1,800' contour line in a southeasterly and then northeasterly direction through Sections 19, 20, 17, 16, 15, 14, then through the area north of Section 14, then southerly through Section 13 on the Mt. Harlan Quadrangle map and continuing on the "Paicines," California Quadrangle map to the point at which the 1800-foot contour line intersects the line between Sections 13 and 24 of Township 14 S., Range 5 E.

(6) Thence along the 1,800' contour line through Section 24, back up through Section 13, and then in a southerly direction through Sections 18, 19, and 30 (all on the Paicines Quadrangle map), then westerly through Section 25 on the Paicines Quadrangle map and continuing on the Mt. Harlan Quadrangle map, and then through Section 26 to the point of intersection of said 1,800' contour and Thompson Creek near the center of Section 26 in Township 14 S., Range 5 E., on the Mt. Harlan Quadrangle map.

(7) Thence southwesterly along Thompson Creek to its commencement in the northwest corner of Section 34, Township 14 S., Range 5 E.

(8) Thence in a straight line to the beginning point.

Signed: October 10, 1990.

Daniel R. Black,

Acting Director.

Approved: October 19, 1990.

Dennis M. O'Connell,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 90–26890 Filed 11–14–90; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 9

[T.D. ATF–305 Re; Notice No. 705]

RIN 1512–AA07

Establishment of San Ysidro District, Viticultural Area (89F018P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Treasury decision; Final rule.

SUMMARY: This final rule establishes a viticultural area in Santa Clara County, California, to be known as "San Ysidro District." This final rule is based on a notice of proposed rulemaking published in the **Federal Register** on July 5, 1990, at 55 FR 27652, Notice No. 705. ATF believes the establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will allow wineries to designate the specific grape-growing area in which the grapes used in their wines were grown and will enable consumers to better identify wines they purchase.

EFFECTIVE DATE: December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Marjorie Dundas, Wine and Beer Branch, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added to title 27 a new part 9 for the listing of approved American viticultural areas. Section 4.25a(e)(1) of 27 CFR defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition shall include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the proposed viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and,

(e) A copy of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF initially received a petition from Mr. Barry Jackson of Harmony Wine Co. proposing, on behalf of the owners of the Mistral Vineyard and the San Ysidro Vineyard, the establishment of a viticultural area in Santa Clara County, California, to be known as "San Ysidro." The petitioner subsequently amended the petition to request that the name be changed to "San Ysidro District." The viticultural area is located in southern Santa Clara County, California, about four miles east of the town of Gilroy. There are approximately 520 acres planted to winegrape varieties at the two commercial vineyards within the 2,340 acre area. The petitioner provided the following information as evidence that the area meets the regulatory criteria.

Evidence of Name

The petitioner provided documentation from various sources to support the name "San Ysidro." The

petition states that the name San Ysidro derives from the name of the original Spanish rancho granted in 1809 or 1810 by Governor Arrillaga to Ignacio Ortega. The petitioner also submitted an article from the February 1988 edition of *Wines & Vines* entitled "Special Wines from San Ysidro Vineyard," which states that there are "two vineyards in the San Ysidro area, San Ysidro itself and the Mistral Vineyard; each vineyard has about 250 planted acres. The San Ysidro growing area is located in a cool microclimate east of Hollister in Santa Clara county, south of San Francisco."

In support of the name "San Ysidro District," the petitioner submitted an article entitled "Winery shines in Santa Clara—Awards boost Congress Springs' reputation," (*San Jose Mercury News*, June 7, 1988) which refers to vineyards in the "San Ysidro District, which is cooled by sea breezes that find their way inland by way of Watsonville."

Local Viticultural History

Until the turn of the century, the dominant agricultural activity in the area was dairying. From 1876 to the early 1930's, although dairying remained important, some orchards and vineyards were planted. Beginning in the late 1930's, increased awareness of the benefits of a cool climate in the growing of premium white varietals led to a gradual increase in the amount of land on which grapes were commercially grown.

There are two commercial vineyards within the viticultural area: Mistral Vineyard and San Ysidro Vineyard. The two vineyards comprise approximately 520 acres under cultivation. There are currently five wineries producing vineyard designated wines from the area.

Geographical/Climatological Features

The San Ysidro District is entirely within the Santa Clara Valley viticultural area which was established by T.D. ATF–286. The San Ysidro District lies to the east of the town of Gilroy, on the eastern edge of the Santa Clara Valley and in the foothills of the Diablo Range. The San Ysidro Creek runs through the vineyards and is part of the upper watershed for the Pajaro River. This proximity to the Pajaro River and the resultant effect on the microclimate at San Ysidro is the primary factor distinguishing this area from the rest of the Santa Clara Valley. The Pajaro Gap and Chittenden Pass, through which the river flows, act as a funnel for cool maritime air being pulled into the San Joaquin Valley through the Pacheco Pass. Because of the cool ocean air flowing over the area, fog in the San Ysidro District area is subject to earlier accumulation in the evening and later burn-off in the morning than in the surrounding area. This maritime influence also results in afternoon breezes that moderate the daily high temperature, even during summer months. The average temperature, due to the marine influence, is 2085 degree-days. This corresponds to a Region I climate, based on the University of California-Davis heat summation method. Much of the Santa Clara Valley area is classified as a Region II climate, based on 2700 degree-days. Even the nearby town of Gilroy is substantially warmer, at 2630 degree-days.

The soil is loamy, with some clay and gravel, and is generally well drained. The primary soil associations in the lower slopes are the Zamora-Pleasanton-San Ysidro loams. The soil associations in the upland-foothill areas are the Azule-Altamont-Los Gatos-Gaviota complexes. By contrast, the soil of the Santa Clara Valley, the approved viticultural area within which the San Ysidro District is located, is composed primarily of the Yolo and Zamora-Arbuckle-Pleasanton Associations.

Boundary

The northern, eastern and southern boundaries of the San Ysidro District viticultural area consist primarily of streams and ridges reaching a maximum of 600 feet above sea level. The higher areas of the Diablo Range to the north and east of the boundary are not cultivated. The petitioner presented evidence that Highway 152, used as a western boundary, had been an Indian trail and a pioneer wagon road. The petitioner stated that the historical tendency of travellers to follow this route derives from the fact that it represents "a natural boundary between drier, upland foothill, and lower, poorly drained valley bottom land * * *."

Notice of Proposed Rulemaking

On July 5, 1990, Notice No. 705 was published in the **Federal Register** with a 45-day comment period. In that notice, ATF requested comments regarding the proposal to establish San Ysidro District as an American viticultural area. During the comment period, no comments were received.

Miscellaneous

ATF does not wish to give the impression by approving "San Ysidro District" as a viticultural area that it is approving or endorsing the quality of the wine derived from the area. ATF is approving this area as being distinct and not better than other areas. By approving this area, ATF will allow wine producers to claim a distinction on labels and in advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of wines from "San Ysidro District."

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the final rule is not expected (1) to have secondary, or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Marjorie Dundas, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Paragraph 2. The Table of sections in subpart C is amended to add the title of § 9.130 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.130 San Ysidro District.

* * * * *

Paragraph 3. Subpart C is amended by adding § 9.130 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.130 San Ysidro District.

(a) Name. The name of the viticultural area described in this section is "San Ysidro District."

(b) Approved maps. The appropriate maps for determining the boundaries of the San Ysidro District viticultural area are four U.S.G.S. Quadrangle (7.5 minute series) maps. They are titled:

(1) Gilroy, Calif., 1955 (photorevised 1981);

(2) Chittenden, Calif., 1955 (photorevised 1980);

(3) San Felipe, Calif., 1955 (photorevised 1971);

(4) Gilroy Hot Springs, Calif., 1955 (photorevised 1971, photoinspected 1978.)

(c) Boundary. The San Ysidro District viticultural area is located in Santa Clara County, California, within the Santa Clara Valley viticultural area. The boundary is as follows:

(1) The beginning point is the intersection of California State Highway 152 and Ferguson Road with an unnamed wash, or intermittent stream, on the Gilroy, Calif., U.S.G.S. map;

(2) From the beginning point, the boundary follows the wash northeast as it runs co-incident with the old Grant boundary for approximately 3,800 feet;

(3) The boundary then follows the wash when it diverges from the old Grant boundary and continues approximately 2,300 feet in a northeasterly direction, crosses and recrosses Crews Road, then follows the wash southeast until the wash turns northeast in section 35, T.10S., R.4E., on the Gilroy Hot Springs, Calif., map;

(4) The boundary then diverges from the wash, continuing in a straight line in a southeasterly direction, across an unimproved road, until it intersects with the 600 foot contour line.

(5) The boundary then proceeds in a straight line at about the 600 foot elevation in a southeasterly direction until it meets the minor northerly drainage of the San Ysidro Creek;

(6) The boundary then follows the minor northerly drainage of San Ysidro Creek southeast for approximately 2,000 feet to the seasonal pond adjacent to Canada Road;

(7) From the seasonal pond, the boundary follows the southerly drainage of San Ysidro Creek for about 1,300 feet until it reaches the southwest corner of section 36, T.10S., R.4E.;

(8) The boundary then continues in a straight line in a southerly direction across Canada Road for approximately 900 feet until it intersects with the 600 foot contour line;

(9) The boundary follows the 600 foot contour line for approximately 6,000 feet in a generally southeasterly direction, diverges from the contour line and continues southeast another 1,200 feet until it meets an unimproved road near the north end of a seasonal pond on the San Felipe, Calif., U.S.G.S. map;

(10) The boundary follows the unimproved road to Bench Mark 160 at Highway 152.

(11) The boundary then follows Highway 152 in a northwesterly direction across the northeast corner of the Chittenden, Calif., U.S.G.S. map, and back to the beginning point at the junction of Ferguson Road and Highway 152.

Signed: October 17, 1990.

Stephen E. Higgins,

Director.

Approved: October 19, 1990.

Dennis M. O'Connell,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 90–26889 Filed 11–14–90; 8:45 am]

BILLING CODE 4810–31–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning December 1, 1990. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after December 1, 1990 and will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: December 1, 1990.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Senior Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202–778–8850, (202–778–8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619. Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required. (Such plans may value benefit liabilities that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since November 1, 1990. This amendment adds to appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after December 1, 1990, which set reflects a decrease of ¼ percent in the immediate interest rate from 7¾ to 7½ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates

and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after December 1, 1990, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2619 of chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362 (1988).

2. Rate Set 88 of appendix B is revised and Rate Set 89 of appendix B is added to read as follows: The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used To Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities				
	On or after	and before		k_1	k_2	k_3	n_1	n_2
•	•	•	•	•	•	•	•	
88	11-1-90	12-1-90	7.75	1.0700	1.0575	1.0400	7	8
89	12-1-90		7.50	1.0675	1.0550	1.0400	7	8

James B. Lockhart III,
Executive Director, Pension Benefit Guaranty Corporation.
[FR Doc. 90-26795 Filed 11-14-90; 8:45 am]
BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employees Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of December 1990.

EFFECTIVE DATE: December 1, 1990.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. § 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. § 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§2676.15 Interest.

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month:	The values for i_t are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
•		•		•		•		•		•		•		•		
December 1990..	08875	.08625	.08375		.08	.07625	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.05875

Issued at Washington, DC, on this 7th day of November 1990.

James B. Lockhart III,
Executive Director, Pension Benefit Guaranty Corporation.
[FR Doc. 90-26794 Filed 11-14-90; 8:45 am]
BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010-AB41

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends the regulatory program of the Minerals Management Service (MMS) Governing offshore oil and gas operations by correcting a number of typographical errors and making minor revisions to several sections in 30 CFR PART 250. some of the revisions contain requirements that were previously contained in the Outer Continental Shelf (OCS) Orders to 30 CFR part 250 prior to the [illegible] and consolidation of the offsh[illegible] operating requirements under 30 CFR part 250.

EFFECTIVE DATE: December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070-4817, telephone (703) 787-1600 or (FTS) 393-1600.

SUPPLEMENTARY INFORMATION: The final rule published by MMS in the **Federal Register** on April 1, 1988 (53 FR 10596), consolidated and restructured existing rules contained in the regulations, OCS Orders, and Notices to Lessees and Operators. Since the final rule has been in effect, MMS has discovered a number of typographical errors and several minor inconsistencies between the previous regulations and OCS Orders and the final rule. These inconsistencies could be viewed as a change from previous requirements when no change was intended. On March 8, 1990 (55 FR 8485), MMS issued a notice of proposed rulemaking (NPR) in the **Federal Register** to correct these typographical errors and minor inconsistencies that existed between the previous regulations and OCS Orders and the final rule. The comment period for the proposed rule closed on May 7, 1990.

Public Comments and Agency Response

The following discussion summarizes the public comments received in response to the NPR. The MMS received six written comments on the proposed rule. Among the commenters were three gas pipeline and transmission companies, two trade organizations, and one oil and gas exploration and production company. Sections 250.72, Equipment movement, and 250.183, Site security, were the only portions of the proposed rule that were commented upon.

Section 250.72 Equipment Movement

Comment—Two commenters recommended that MMS should not replace the phrase "shut-in back-pressure valve" with "subsurface safety valve." One commenter stated that the term "back-pressure valve" should continue to be used because a subsurface safety valve does not provide an adequate margin of safety for the removal of the blowout preventer when installing the tree. The second commenter recommended that the terminology used in this section should be consistent with that used in Subpart F—Well-Workover Operations in § 250.92, Equipment movement. Section 250.92 uses the term "back-pressure valve."

Response—This recommendation was adopted. The MMS agrees that the terminology used throughout the regulations should be consistent. In addition, the use of a back-pressure valve versus a subsurface safety valve is a more appropriate safety precaution because a subsurface safety valve may already be used to shut in the well during the movement of well-completion equipment.

Section 250.183 Site Security

Comment—Five commenters strongly opposed the proposed requirements for sealing gas metering units and recommended that the proposal be dropped from further rulemaking. All of these commenters indicated that they had never experienced any security problems with gas meter units and that they were not aware of any reported instances of tampering with gas meters in the OCS. They stated that modifying the gas meter units to accommodate the seals required by the NPR would place an unnecessary and costly burden upon the owners of the gas meters. They further stated that under the provisions of the NPR many seals on the gas meters would have to be broken and replaced on a daily or weekly basis, increasing the cost and time burden for maintaining the seals and their associated recordkeeping. One commenter stated that this revision to the regulations was not a minor amendment as purported by MMS in the preamble to the NPR. The overall consensus of the commenters was that the proposed requirements for sealing gas meter unit components were unjustified and unnecessary. However, three of the commenters advised that sealing the crank to the orifice-fitting housing would provide adequate security measures if MMS was still convinced that increased security for gas metering units was necessary.

Response—The proposed requirements regarding site security for gas production have not been included in the final rule; therefore, § 250.183 will not be amended at this time. The MMS has decided that the issues associated with site security for gas measurement warrant further review and analysis. Two MMS task forces are scheduled to address production measurement and

inspection issues. They will review these issues and make appropriate recommendations. If it is decided that amendments to the regulations for site security for gas measurement are needed, those amendments will be published in the Federal Register in a separate final rule document, unless it is determined that a new NPR should be published for public review and comment.

Author

This document was prepared by William S. Hauser, Offshore Rules and Operations Division, MMS.

Executive Order (E.O.) 12291

The Department of the Interior (DOI) has determined that this final rule does not constitute a major rule under E.O. 12291 because it will not result in a cost impact of more than $100 million annually. Therefore, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

The DOI has also determined that this final rule will not have a significant economic effect on a substantial number of small entities because, in general, the entities that engage in activities offshore are not considered small due to the technical complexities and financial resources necessary to conduct such activities.

Paperwork Reduction Act

The information collection contained in this rule has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010-0030.

Takings Implication Assessment

The DOI certifies that the final rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The DOI has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: October 2, 1990.

Barry Williamson,

Director, Minerals Management Service.

For the reasons set forth in the preamble, 30 CFR part 250 is amended as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: Section 204, Pub. L. 95-372, 92 Stat. 629 (43 U.S.C. 1334).

2. Section 250.0, paragraph (a) is amended by adding two sentences at the end of the paragraph to read as follows:

§ 250.0 Authority for information collection.

(a) * * * Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer; Minerals Management Service; Mail Stop 2300, 381 Elden Street; Herndon, Virginia 22070-4817, and the Office of Management and Budget; Paperwork Reduction Project 1010-0030; Washington, DC 20503.

* * * * *

§ 250.1 [Amended]

3. Section 250.1, in paragraph (d)(3), remove citation "§ 250.51(g)" and add in its place the citation "§ 250.20(c)".

§ 250.19 [Amended]

4. Section 250.19, in paragraph (a), remove the citation "§ 250.41(b)" and add in its place the citation "§ 250.41(c)".

5. Section 250.20, add a new paragraph (c) as follows:

§ 250.20 Safe and workmanlike operations.

* * * * *

(c) *Crane operations.* Cranes installed on fixed platforms shall be operated and maintained in accordance with the provisions of the American Petroleum Institute (API) Recommended Practice (RP) for Operation and Maintenance of Offshore Cranes (API RP 2D) to ensure the safety of facility operations. Records of inspection, testing, maintenance, and crane operator qualifications in accordance with the provisions of API RP 2D shall be kept by the lessee at the lessee's field office nearest the Outer Continental Shelf (OCS) facility for a period of 2 years.

6. Section 250.32, add a new paragraph (c) as follows:

§ 250.32 Well location and spacing.

* * * * *

(c) The lessee shall drill and produce the wells the Regional Supervisor determines are necessary to protect the lessor from loss by reason of production on other properties or in lieu thereof, with the approval of the Regional Supervisor, pay a sum determined by the Regional Supervisor as adequate to compensate the lessor for the lessee's failure to drill and produce any well. Payment of that sum shall be considered as the equivalent of production in paying quantities for the purpose of extending the lease term.

§ 250.34 [Amended]

7. Section 250.34, in the second sentence of paragraph (t), remove the phrase "All applications for an APD to drill" and add in its place the phrase "All APD's".

§ 250.51 [Amended]

8. Section 250.51, remove paragraph (g) and redesignate paragraphs (h) and (i) as paragraphs (g) and (h), respectively.

§ 250.60 [Amended]

9. Section 250.60, remove the word "enclosed" from the title of paragraph (e).

§ 250.72 [Amended]

10. Section 250.72, in the last sentence, remove the phrase "shut-in".

§ 250.86 [Amended]

11. Section 250.86, in the fourth sentence of paragraph (b)(2), remove the word "the" at the beginning of the sentence and add in its place the word "The" and remove the last word "operation" and add in its place the word "operations".

§ 250.87 [Amended]

12. Section 250.87, in the first sentence of paragraph (d) add the phrase "shall have a pressure rating greater than the shut-in tubing pressure and" between the words "equipment" and "shall".

§ 250.107 [Amended]

13. Section 250.107, in the first sentence of paragraph (d) add the phrase "shall have a pressure rating greater than the shut-in tubing pressure and" between the words "equipment" and "shall".

§ 250.123 [Amended]

14. Section 250.123, in the first sentence of paragraph (b)(1)(iii) remove the phrase "a significant change in operating pressures" and add in its place the phrase "a change in operating pressures that requires new settings for the high-pressure shut-in sensor and/or the low-pressure shut-in sensor as provided herein".

§ 250.123 [Amended]

15. Section 250.123, in the first sentence of paragraph (b)(7) introductory text remove the phrase "section A8" and add in its place the phrase "sections A4 and A8".

§ 250.124 [Amended]

16. Section 250.124, remove the last sentence of paragraph (a)(1)(ii).

§ 250.126 [Amended]

17. Section 250.126, in paragraph (e)(2), remove the phrase "API RP 14A or API RP 14D" and add in its place the phrase "API Spec 14A or API Spec 14D".

§ 250.159 [Amended]

18. Section 250.159, in paragraph (c)(7)(i), add the phrase "determine to be reasonable, taking into account, among other things," between the words "parties," and "conservation".

[FR Doc. 90-26908 Filed 11-14-90; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-90-76]

Drawbridge Operation Regulations; St. Johns River, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the State of Florida, the Coast Guard is changing the regulations governing the operation of three drawbridges across the St. Johns River at Jacksonville, Florida, the Main Street (US17) Bridge, mile 24.7, the Acosta (SR13) Bridge, mile 24.9 and the Fuller Warren (I10/I95) Bridge, mile 25.4, in order to improve the flow of peak morning commuter traffic. This action accommodates the needs of vehicular traffic and still provides for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Gary D. Pruitt, (305) 536-4103.

SUPPLEMENTARY INFORMATION: On August 17, 1990 the Coast Guard published a proposed rule (55 FR 33723) concerning this change. The Commander, Seventh Coast Guard District, also published the proposal as Public Notice 24-90 dated August 24, 1990.

Interested persons were given until October 1, 1990 to comment.

Drafting Information

The drafters of these regulations are Bridge Administration Specialist Gary D. Pruitt, project officer, and Lieutenant Genelle G. Tanos, project attorney.

Discussion of Comments

No comments were received on the proposed change. The final rule is unchanged from the proposed rule published on August 17, 1990.

Federalism

This action has been analyzed in accordance with the principals and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the final rulemaking will not change the total amount of time these bridges are allowed to be maintained in the closed position. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 USC 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.325(a) is revised to read as follows:

§ 117.325 St. Johns River.

(a) The draws of the Main Street (US17) Bridge, mile 24.7, the Acosta (SR13) Bridge, mile 24.9 and the Fuller Warren (I10/I95) Bridge, mile 25.4, all at Jacksonville, shall open on signal except that, from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m., Monday through Saturday except federal holidays, the draws need not be opened for the passage of vessels. The draws shall open at any time for vessels in an emergency involving life or property.

* * * * *

Dated: October 29, 1990.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 90-26897 Filed 11-14-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR 82

[FRL-3850-9]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Technical amendment.

SUMMARY: Today's notice amends the list of Article 5 Parties in appendix E of the stratospheric ozone protection regulations (40 CFR part 82). Article 5 Parties are developing countries that are Party to the Montreal Protocol on Substances that Deplete the Ozone Layer and whose per capita consumption of certain chlorofluorocarbons controlled by the Protocol is less than 0.3 kilograms. The Protocol and EPA's implementing regulations permit companies that export controlled substances to Article 5 Parties to increase their production of such substances up to the specified limits. The countries added to appendix E today have been designated by the

United Nations Environmental Programme (UNEP), which serves as the Protocol's Secretariat, as Parties operating under Article 5. The countries are Jordan and Malaysia. This amendment also clarifies the Agency's position regarding the granting of requests for authorizations to convert potential production rights to actual production rights after the end of the control period.

DATES: This technical amendment is effective November 15, 1990.

ADDRESSES: Comments and other information relevant to this rulemaking are maintained in Docket A–87–20 at the Air Docket Room M–1500, First Floor, Waterside Mall, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 3:30 p.m. on weekdays. As provided in 20 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Lena Nirk, Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR–445, 401 M Street SW., Washington, DC 20460. (202) 382–7750.

SUPPLEMENTARY INFORMATION: On August 12, 1988, EPA promulgated a final rule to limit the production and consumption of certain chlorofluorocarbons (CFCs) and brominated compounds (halons) to reduce the risks of stratospheric ozone depletion. The rule implements the requirements of the Montreal Protocol, which the United States ratified on April 21, 1988, by allocating production and consumption allowances to firms that produced and imported these chemicals in 1986, based on their 1986 levels of these activities. In addition, producers received potential production allowances equal to 10 percent of their 1986 production levels. These potential production allowances can be converted to production allowances upon proof of export of controlled substances to Article 5 Parties.

Amendment to Appendix E

On June 22, 1990 the Agency published a final rule designating three countries as Article 5 Parties in appendix E (55 FR 25812). These countries are Mexico, Venezuela and Thailand. At that time, the Agency noted that it would amend that list if additional information warranted or if the Secretariat formally designated a country as an Article 5 Party. The Agency stated that if the Secretariat made such a designation, the Agency would view the addition of that country to appendix E as a purely ministerial task for which notice and comment was not necessary.

At the London meetings held in June, 1990 to revise the Protocol, the Secretariat published the Revised Report on Data on Production, Imports, Exports and Consumption of Substances Listed in Annex A of the Montreal Protocol. In communications with the Secretariat, EPA learned that this report has again been revised based on data received June 19, 1990. This revised report designates additional countries as Parties to the Protocol operating under Article 5 status. Two of the countries, Venezuela and Mexico, were designated as Article 5 Parties in appendix E in the June, 1990 final rule. Jordan and Malaysia are added to appendix E today based on their designation as Article 5 Parties by the Secretariat. This revised appendix E is effective retroactively for the first control period.

As stated in the June 22, 1990 final rule, EPA reserves the right to modify this list based on additional information, or if the Secretariat further designates Parties as operating under Article 5. As in today's technical amendment, if the Secretariat formally designates a country as an Article 5 Party, the Agency views the addition of that country to appendix E as purely a ministerial task for which notice and comment are unnecessary. If the Agency receives information which would lead it to classify a country as an Article 5 Party, the Agency will propose to add the country to appendix E through notice and comment rulemaking if it has not been formerly designated by UNEP.

Granting of Requests for Authorizations to Convert

The Agency has had several requests for information regarding the granting of requests for authorizations to convert after the end of the control period. Authorizations are required to convert potential production allowances to production allowances, and are granted for exports to Article 5 countries. Because additional allowances and authorizations from exports are only valid for the control period in which the export occurred, the Agency did not anticipate receiving requests after the end of the control period. As a result of an exemption to the excise tax on CFCs for exports to Article 5 countries, however, some companies have requested authorization to convert after the end of the control period which ended June 30, 1990. The authorizations to convert allow companies to designate previous production as production exported to Article 5 countries. Such production is exempt from the tax.

The Agency intends to allow companies to request authorizations to convert for 45 days after the end of the control period (the same amount of time allowed for submission of the final quarterly reports). This time limit only applies to submissions documenting exports to existing Article 5 countries. The approval letter will clearly spell out that these authorizations may not be used in the current control period. After 45 days, the control period is "closed" and not further requests will be processed. Requests for authorizations to convert for exports are the only transactions that will be approved after the end of the control period (except for the final quarterly reports and end-of-year export reports). No other transactions will be approved after the end of the control period (including all trades, transfers and feedstock requests). The Agency intends to follow this procedure as an administrative interpretation of the final rule, without further rulemaking.

Additional Information

1. Executive Order 12291

Executive order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in cost or prices for consumers, individual industries, federal, state or local government agencies, or geographic industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

EPA determined that its August 12, 1988 final rule to protect stratospheric ozone met with the definition of a major rule, and therefore prepared a regulatory impact analysis (RIA). Since these amendments do not impose any significant burdens as defined by E.O. 12291, the RIA prepared for the final rule fulfills the executive order's requirement for these proposals.

2. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment and initial regulatory flexibility analysis (RFA). Such and analysis is not required if the head of the agency certifies that a rule will not have a significant impact on a large number of small entities, pursuant to 5 U.S.C. 605(b). EPA prepared an initial RFA in support of its final rule, and no additional RFA need be prepared for these amendments.

3. List of Docket Material

(1) Report of the Executive Director of the United Nations Environment Programme, Secretariat of the Montreal Protocol, Addendum: Revised Report on Data on Production, Imports, Exports and Consumption of Substances Listed in Annex A of the Montreal Protocol.

(2) Fax to Lena Nirk, Global Change Division, from Megumi Seki, Ozone Secretariat.

Dated: November 2, 1990.

Michael Shapiro,

Acting Assistant Administrator.

List of Subject in 40 CFR Part 82

Stratospheric Ozone.

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The Authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7457 (b)

2. Part 82 is amended by revising appendix E to read as follows:

Appendix E—Article 5 Parties

Mexico, Venezuela, Thailand, Jordan, Malaysia.

[FR Doc 90–26033 Filed 11–14–90; 8:45 am]
[BILLING CODE 6560–50–M]

ACTION

45 CFR Part 1214

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by ACTION

AGENCY: ACTION.

ACTION: Final rule.

SUMMARY: This regulation requires that ACTION operate all of its programs and activities so that qualified handicapped persons are not subjected to discrimination by ACTION. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for handicapped person and qualified handicapped person, and establishes a detailed complaint mechanism for resolving allegations of discrimination against ACTION. This regulation implements section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal executive agencies.

EFFECTIVE DATE: January 14, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Voss, Director, Equal Opportunity Staff, ACTION at (202) 634–9312 (Voice) or (202) 634–9256 (TDD). These are not toll-free numbers. Copies of this regulation are available on tape for persons with visual impairments.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by ACTION. As amended by the Rehabilitation, Comprehensive Services, and Development Disabilities Amendments of 1978 (Sec. 199, Pub. L. 95–602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

On September 18, 1989, ACTION published a notice of proposed Rulemaking (NPRM) for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs and activities conducted by ACTION. 54 FR 38401. ACTION received one response with comments on the NPRM. After analysis of the comments received and the final section 504 regulation that the Department of Justice issued for its own programs and activities, ACTION decided to adopt this final rule.

The substantive nondiscrimination obligations of the agency, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. (See 28 CFR part 41 (section 504 coordination regulation for federally assisted programs)). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13897 (remarks of Rep. Brademas); *id.* at 38552 (remarks of Rep. Sarasin).

There are, however, some language differences between this rule and the Federal government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting Davis and section 504. *See Dopico* v. *Goldschmidt*, 687 F.2d 1272 (D.C. Cir. 1981) (*APTA*); *see also Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300, and explicitly noted that "[the regulations implementing 504 [for federally assisted programs] are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access.]" *Id.* at 301 n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 Federally conducted programs consistent with the Federal government's regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the Supreme Court in *Davis*, by lower courts interpreting *Davis*, and by the Supreme Court in *Alexander*; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must

be interpreted to reflect the holdings of the Federal judiciary. Hence, the agency believes that there are no significant differences between this proposed rule for federally conducted programs and the Federal government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12550 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies. This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section-by-Section Analysis and Response To Comments

Section 1214.101 Purpose.

Section 1214.101 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

No comments were received on this section and it remains unchanged from the proposed rule.

Section 1214.102 Application.

The regulation applies to all programs or activities conducted by the agency. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: Those involving general public contact as part of ongoing agency operations and those directly administered by the agency for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the agency's facilities. Activities in the second category include programs that provide Federal services or benefits. This regulation does not, however, apply to programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

No comments were received on this section.

Section 1214.103 Definitions.

Agency. For purposes of this regulation "agency" means ACTION.

Assistant Attorney General. Refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids. "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 1214.160(a)(1), they may also be necessary to meet other requirements of the regulation. Auxiliary aids are addressed in § 1214.160(a)(1). Comments on the definition of "auxiliary aids" are discussed in connection with that section.

Complete complaint. "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition of "complete complaint" enables the agency to determine the beginning of its obligation to investigate a complaint (see § 1214.170(d)).

Facility. The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted because the term "facility" as used in this regulation refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "facility" is used on §§ 1214.149, 1214.150, and 1214.170(f). Comments on the definition of "facility" are discussed in connection with § 1214.151.

Individual with handicaps. The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31).

Qualified individual with handicaps. The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) is an adaptation of existing definitions of "qualified handicapped person" for purposes of federally assisted preschool, elementary, and secondary education programs (*see*, e.g., 45 CFR 84.3(k)(2)). It provides that an individual with handicaps is qualified for preschool, elementary, or secondary education programs conducted by the agency, if he or she is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive these services from the agency. In other words, a handicapped person is qualified, if, considering all factors other than the handicapping condition, he or she is entitled to receive education services from the agency.

Paragraph (2) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program other than those covered by paragraph (1) under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Davis*. In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program was modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable an applicant with handicaps applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

The commenter suggested that the fundamental alteration portion of this definition should reference §§ 1214.150(a) and 1214.160(d) which specifies the steps taken before a final determination is made as to whether the agency met the necessary burden of proof. The agency does not believe such a reference is appropriate in a definitional section.

The commenter argued that the agency's virtually exclusive reliance on *Davis* above: (1) Creates a rule which is inconsistent with the federally assisted regulation guideline; (2) allows consideration of criteria extraneous to the activity sought to be engaged in, especially as it relates to employment; (3) contradicts HEW's interpretation regarding employment regarding the requirement to be able to perform the essential functions of the job, because the phrase "level of accomplishment" is used; (4) ignores the title VI prohibition of using criteria or methods of administration which have the effect of subjecting individuals to discrimination; and (5) does not make it explicit in the rule that modifications of a program must occur if the purpose of the program can be achieved. The commenter also states that HEW has interpreted *Davis* to prohibit discrimination against persons with disabilities where such prohibition does not impose undue financial and administrative burdens, and that this must reflect the intent of Congress since it was not changed in the 1978 amendments.

The agency believes that *Davis*, a 1979 Supreme Court case, clarifies the meaning of "essential eligibility requirements" with respect to programs in which an individual "is required to perform services or to achieve a level of accomplishment." In such a program, the Court held in *Davis*, an individual is not qualified if he or she cannot achieve the purpose of the program without modifications that would fundamentally alter its nature. The agency believes that it is appropriate to reflect this clarification in the regulation.

Further, paragraph (4) defines "qualified individual with handicaps" for purposes of employment, and incorporate EEOC's regulations at 29 CFR part 1613.702(f). § 1214.130 sets forth the general prohibitions against discrimination and § 1214.130(b)(3) specifically states the title VI prohibition of using criteria or methods of administration which have the effect of subjecting individuals to discrimination. The agency believes its placement of these standards is organizationally more appropriate.

The agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in §§ 1214.150(a) and 1214.160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

For programs or activities that do not fall under either of the first two paragraphs, paragraph (3) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

Paragraph (4) explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 163.702(f), which is made applicable to this part by § 1214.140. Nothing in this part changes existing regulations applicable to employment.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 1214.110 Self-Evaluation.

The agency shall conduct a self evaluation of its compliance with section 504 within one year of the effective date of this regulation.

The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be valuable as a means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

The commenter recommended that ACTION consider including in this section: (1) An assurance to be submitted with the self-evaluation that will include, among other things, that the effects of the discriminatory policy will be eliminated; (2) a transition plan for compliance; (3) specific modification requirements for all disabilities including those with impaired vision or hearing; and (4) a list of interested persons consulted.

The agency believes no modification is needed. The section uses the same provision adopted by the Department of Justice in its final rule implementing section 504 for its federally conducted programs. 28 CFR part 39.110. The Department of Justice determined that this regulatory language was appropriate after it analyzed the Federal Advisory Committee Act (5 U.S.C. app.), Executive Order 12024, and 41 CFR part 101–6, the regulation of the General Services Administration implementing the Act.

The final rule provides that the agency shall provide an opportunity for interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process and development of transition plans by submitting comments (both oral and written). § 1214.150(d) specifically sets forth the standards for transition plans.

Section 1214.111 Notice.

Section 1214.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of the rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; and the broadcast of information by television or radio.

The commenter felt that notification of agency policy regarding nondiscrimination should also be specifically distributed in recruitment materials as well as general information. Since recruitment of both volunteers and employees is a program or activity of the agency, the agency has not adopted this suggestion.

Section 1214.130 General prohibitions against discrimination.

Section 1214.130 is an adaption of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 1214.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 1214.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Subparagraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 1214.149–1214.151) and communications (§ 1214.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, subparagraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities. Subparagraph (b)(1)(iv) requires that different or separate aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, subparagraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Subparagraph (b)(1)(v) prohibits the agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Subparagraph (b)(1)(vi) prohibits the agency from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

The commenter argued that subparagraph (b)(1) should include a prohibition to "aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit or service to beneficiaries of the recipient's program," because this provision is included in the Department of Justice's coordination regulations for federally assisted programs (28 CFR part 41.51(b)(5)).

To the extent that assistance from the agency would provide significant support to an organization, it would constitute Federal financial assistance and the organization, as a recipient of such assistance, would be covered by the section 504 regulation for federally assisted programs. The regulatory "significant assistance" provision however, would be inappropriate in a regulation applying only to federally conducted programs or activities.

Subparagraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and to the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Subparagraph (b)(4) specifically applies the prohibition enunciated in § 1214.130(b)(3) to the process of selecting sites for construction of new facilities or selecting facilities to be used by the agency. Subparagraph (b)(4) does not apply to construction of additional buildings at an existing site.

Subparagraph (b)(5) prohibits the agency, in the selection or procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive Order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (d), discussed above, provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, *i.e.*, in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Section 1214.140 Employment.

Section 1214.140 prohibits discrimination on the basis of handicap in employment by the agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner* v. *Morris*, 75 F.2d 1271, 1277 (8th Cir. 1985); *Smith* v. *United States Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt* v. *United States Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra McGuiness* v. *United States Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd* v. *United States Postal Service*, 752, F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that, in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Morgan* v. *United States Postal Service*, 798 F.2d 1162, 1164–65 (8th Cir. 1986); *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, § 1214.140 (Employment) of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR part 1613. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. In addition to this section, § 1214.70(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

No comments were received on this section.

Section 1214.149 Program accessibility: Discrimination prohibited.

Section 1214.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 1214.150 and 1214.151.

No comments were received on this section.

Section 1214.150 Program accessibility: existing facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR part 41.57), with certain modifications. Thus, § 1214.150 requires that each agency program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 1214.150(a)(1)). However, § 1214.150, unlike 28 CFR part 41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 1214.150(a)(2)).

Subparagraph (a)(2) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that, in meeting the program accessibility requirement, the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 1214.160(d). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modifications sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis* (*APTA*), 655 F.2d 1272 (DC Cir. 1981).

Subparagraph (a)(2) and paragraph 1214.160(d) are also supported by the Supreme Court's decision in *Alexander* v. *Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers," *id.* at 301, and that "*reasonable adjustments* in the meaningful access." *Id.* at n.21 (emphasis added). However, section 504 does not require " 'changes', 'adjustments', or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration(s) in the nature of a program.' " *Id.* at n.20 (citations omitted). *Alexander* supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus, failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to individuals with handicaps. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 1214.150(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 1214.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee and must be accompanied by a written statement of the reasons for that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 1214.170.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other

feasible way to make the agency's program accessible. It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alterations to a load-bearing structural member. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR part 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

No comments were received on this section.

Section 1214.151 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction and alterations under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 1214.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of, the agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR parts 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance here because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of this standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § 1214.150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 1214.151.

The commenter suggests that the regulation should require that buildings leased after the effective date of the regulation should meet the new construction standards of § 1214.151, rather than the program accessibility standards for existing facilities in § 1214.150.

Federal practice under section 504 has always treated newly leased buildings subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the agency believes the same program accessibility standard should apply to both owned and leased existing buildings.

In Rose v. *United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The agency may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 1214.160 Communications.

Section 1214.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 1214.160 (a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency [§ 1214.160(a)(1)(i)]. The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 1214.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble discussion of § 1214.150(a)(2)). Unless not required by § 1214.160(d), the agency shall provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § 1214.150(a), Program Accessibility: Existing Facilities, regarding the determination of undue financial and administrative burdens also applies to this section and should be referred to for a complete understanding of the agency's obligation to comply with § 1214.160.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a person with impaired hearing. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For persons with impaired vision, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to inform the public of: (1) The communications services it offers to afford individuals with handicaps and equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with persons with impaired vision or hearing involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 1214.160(a)(1)(ii)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide a sign at inaccessible facilities that directs users to locations with information about accessible facilities.

The commenter suggested that the definition of auxiliary aids should be expanded to include examples for people with physical impairments such as attendant services that may be needed to aid disabled persons to travel to meetings. The agency has not adopted the approach recommended by these comments.

To the extent that the services of an attendant are not directly related to a federally conducted program or activity, it would be inappropriate to require them at Federal expense. For example, the services of a sign language interpreter make a workshop as available to any deaf participant as it is to other participants. The need for services of interpreters arises directly out of the presentation of the information in a form that can be understood by hearing persons. However, the agency views the services of an attendant for a disabled person as generally personal in nature and not directly related to the federally conducted program.

A different conclusion, however, might be reached for Federal employees or other persons traveling for the agency. Where a disabled person who is unable to travel without an attendant is required to perform official travel, the travel expenses of an attendant, including per diem and transportation expenses, may be paid by ACTION. See 5 U.S.C. 3102(d).

The commenter argues that the term "auxiliary" implies something that is extra or discretionary, and encourages ACTION to change the term to "aids for reasonable accommodation." While the agency agrees the terms may imply something that is extra, the proposed change does not alleviate this implication. Therefore, the agency has not adopted this suggestion.

The commenter contends that reference to the *Davis* standard regarding undue burden is problematic. The agency has chosen to retain reference to this standard for the reasons stated regarding § 1214.150.

The commenter also says it should be recognized that all agency resources should be considered when determining whether or not an accommodation can be made, rather than just the funds attached with the program. The commenter contends the totality of the agency's budget should be the determining factor. However, this ignores the way ACTION's budget is appropriated by Congress, and therefore the agency has not adopted this suggestion.

Section 1214.170 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints, in accordance with procedures established in existing regulations of the EEOC (29 CFR part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

The agency is required to accept and investigate all complete complaints for which it has jurisdiction (§ 1214.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to facilitate the referral of the complaint to any appropriate entity of the Federal government (§ 1214.170(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board (ATBCB) upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

The commenter recommends providing for consultation with ATBCB to help resolve deficiencies rather than merely notifying the Board upon receipt of a complaint. This recommendation has not been incorporated since not all situations will require the Board's expert assistance.

The commenter also recommended inclusion of: (1) A provision for judicial review at the initial complaint level and not just at the appeal level; (2) a provision to ensure that all other regulations, forms and directives issued by ACTION are superceded by the nondiscrimination requirements of this regulation; (3) a provision for the availability of the Federal agency to award attorney fees in administrative proceedings; and (4) a provision for the availability of compensation to the prevailing party.

To the degree that these comments relate to employment, the agency has incorporated the regulations of EEOC in 29 CFR part 1613. Regarding nonemployment complaints, the 1978 amendments to section 504 failed to provide a specific statutory remedy for violations of section 504 in federally conducted programs. The amendment's legislative history suggesting parallelism between section 504 for federally conducted and federally assisted programs is unhelpful in this area because the fund termination mechanism used in section 504 federally assisted regulations depends on the legal relationship between a Federal funding agency and the recipients to which the Federal funding is extended.

In addition, nothing contained in title V of the Rehabilitation Act provides for the agency award of attorneys fees in administrative proceedings other than those involving Federal employment. Nor does the Equal Access to Justice Act (5 U.S.C. 504) provide for such awards in hearings conducted in agency administrative proceedings. The agency has therefore not amended its regulations to include these provisions.

Paragraph (g) requires the agency provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal. (§ 1214.179(g)). One appeal within the agency shall be provided (§ 1214.170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance.

Paragraph (l) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of complaince or noncompliance may not be delegated.

List of Subjects in 45 CFR Part 1214

Blind, Civil Rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Handicapped.

Title 45, Chapter XII of the Code of Federal Regulations is amended by adding a new part 1214 to read as follows:

PART 1214—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY ACTION

Sec.

1214.101 Purpose.
1214.102 Application.
1214.103 Definitions.
1214.104–1214.109 [Reserved]
1214.110 Self-evaluation.
1214.111 Notice.
1214.112–1214.129 [Reserved]
1214.130 General prohibitions against discrimination.
1214.131–1214.139 [Reserved]
1214.140 Employment.
1214.141–1214.148 [Reserved]
1214.149 Program accessibility: Discrimination prohibited.
1214.150 Program accessibility: Existing facilities.
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Sec.
1214.152–1214.159 [Reserved]
1214.160 Communications.
1214.161–1214.169 [Reserved]
1214.170 Compliance procedures.

Authority: 29 U.S.C. 794; 42 U.S.C. 5057.

§ 1214.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1214.102 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 1214.103 Definitions.

For purposes of this part, the term—

Agency means ACTION.

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504 of the Act. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Individuals with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limit major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified individual with handicaps means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive educational services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 1214.140.

Section 504 of the Act means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810), and the Civil Rights Restoration Act of 1987 (Pub. L. 100–259, 102 Stat. 28). As used in this part, section 504 of the Act applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 1214.104–1214.109 [Reserved]

§ 1214.110 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 1214.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 of the Act and this part.

§§ 1214.112–1214.129 [Reserved]

§ 1214.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would be to—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 1214.131–1214.139 [Reserved]

§ 1214.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 1214.141–1214.148 [Reserved]

§ 1214.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1214.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 1214.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1214.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing

facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the agency official responsible for implementation of the plan.

§ 1214.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 1214.152–1214.159 [Reserved]

§ 1214.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid will be provided, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide a sign at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be displayed at each primary entrance to each accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1214.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 1214.161–1214.169 [Reserved]

§ 1214.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Director, Equal Opportunity Staff.

Dated: November 2, 1990.

Jane A. Kenny,

Director.

[FR Doc. 90–26876 Filed 11–14–90; 8:45 am]

BILLING CODE 6650-28-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–103; RM–7174]

Radio Broadcasting Service; Mt. Pleasant, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KILJ, Inc., substitutes Channel 288C3 for Channel 288A at Mt. Pleasant, Iowa, and modifies the license for Station KILJ to specify operation on the higher powered channel. See 55 FR 9930, March 16, 1990. Channel 288C3 can be allotted to Mt. Pleasant in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.8 kilometers (7.3 miles) southeast to avoid a short-spacing to Station KOKZ, Channel 289C, Waterloo, Iowa, and to the proposed allotments of Channel 288C3 at Chariton, Iowa, and Channel 291A at Washington, Iowa. The coordinates for Channel 288C3 at Mt. Pleasant are North Latitude 40–54–04 and West Longitude 91–26–21. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 24, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–103, adopted October 26, 1990, and released November 9, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 288A and adding Channel 288C3 at Mt. Pleasant.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–26909 Filed 11–14–90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90–286; RM–7285]

Radio Broadcasting Services; Woodward, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Fuchs Communications, Inc., substitutes Channel 261C1 for Channel 228A at Woodward, Oklahoma, and modifies its license for Station KWFX to specify operation on the higher powered channel. See 55 FR 23108, June 6, 1990. Channel 261C1 can be allotted to Woodward in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.2 kilometers (7.6 miles) southwest of the community to accommodate petitioner's desired transmitter site. The coordinates for Channel 261C1 are North Latitude 36–20–40 and West Longitude 99–28–00. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 24, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–286, adopted October 29, 1990, and released November 9, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 228A and adding Channel 261C1 at Woodward.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–26910 Filed 11–14–90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 25; Notice 62]

RIN 2127–AB21

Consumer Information Regulations; Uniform Tire Quality Grading Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: The Uniform Tire Quality Grading Standards (UTQGS) require that manufacturers and brand name owners of passenger car tires provide consumers with information about the relative performance of a tire in terms of treadwear, traction, and temperature resistance. This notice amends the treadwear grading procedures by adopting four proposals that are intended to reduce the variability of the test results and simplify the calculations related to treadwear grades. First, the rule requires the wheel alignment of a test vehicle to be set more precisely, based on the vehicle manufacturer's alignment specifications. Second, the rule amends the requirements related to tire rotation so that each tire in a test convoy is driven on each wheel position on each vehicle for the same distance. Third, the rule permits the use of a simplified treadwear grading method so that tire tread depth measurements may be taken twice rather than nine times. Fourth, the rule replaces the previous practice of assigning grades in 10-point intervals to reflect the differences in treadwear with a new practice of assigning grades in 20-point intervals.

DATES: *Effective date:* These amendments are effective 30 days after the publication of the final rule; except the amendment on the grading interval § 575.104(d)(2)(i) is effective one year after the publication of the final rule.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than December 17, 1990.

ADDRESSES: Any petition for reconsideration should refer to the

docket and notice number set forth in the heading of this notice and be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Nelson Gordy, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4797.

SUPPLEMENTARY INFORMATION:

I. Background Information

Section 203 of the National Traffic and Motor Vehicle Safety Act ("Vehicle Safety Act") requires the Secretary of Transportation to prescribe a "uniform quality grading system for motor vehicle tires." As explained in that section, the purpose of this system is to "assist the consumer to make an informed choice in the purchase of motor vehicle tires." The agency has specified these requirements in the Uniform Tire Quality Grading Standards (UTQS) regulation (49 CFR 575.104), which requires that manufacturers or brand name owners of passenger car tires provide consumers with information about their tires' relative performance in terms of treadwear, traction, and temperature resistance.

The primary purpose of the treadwear grades is to aid consumers in the selection of new tires by informing them of the relative amount of expected tread life for each tire offered for sale. This allows the tire purchaser to compare passenger car tires based on tread life. Although these treadwear grades are not intended to be used to predict the actual mileage that a particular tire will achieve, they must be reasonably accurate to help consumers predict the relative tread life.

The treadwear grades are based on the test results of tires traveling 6,400 miles over a single, predetermined course on public roads near San Angelo, Texas. These grades represent a comparative rating of treadwear on tested tires. For example, a tire graded 160 would last one and a half times as long on the government course as a tire graded 120. The relative performance of tires, however, depends on the actual conditions of their use and may depart significantly from the norm due to variations in driving habits, service practices, and differences in road characteristics and climate.

Since the treadwear upon which the grades are based occurs under outdoor road conditions, any comparison between candidate tire performances must involve a standardization of results by correction for the particular environmental conditions of each test. Accordingly, the treadwear performance of a candidate tire is measured by comparing its wear rate with that of a "course monitoring tire" (CMT) run in the same test conditions. The treadwear of the CMT reflects changes in course severity due to factors such as road surface wear and environmental conditions, and is used to adjust the measured treadwear of the candidate tire.

Under the current regulations, each test convoy consists of one rear-wheel-drive passenger car with four CMTs and up to three other rear-wheel-drive passenger cars with the candidate tires of the same construction type. 49 CFR 575.104(e)(1)–(2). Candidate tires on the same axle must be of the identical manufacturer and line, but front tires on a test vehicle may differ from rear tires as long as all four are of the same size designation. After a two circuit (800 mile) break-in period, the initial tread depth of each tire is determined by averaging the depth measures in each groove at six equally spaced points. After each 800 miles of the test, each tire's tread depth is measured again in the same manner, the tires are rotated on the car, the order of the cars in the convoy is changed, and the wheel alignments are readjusted if necessary to come within the ranges of the vehicle manufacturer's specifications. At the end of the 16-circuit test, each tire's overall wear rate is calculated from the tread depths measured after each interval by using the regression line technique in appendix C of § 575.104.

NHTSA has long been concerned with variability in the treadwear test results and grades. Less variability in treadwear test results will provide consumers with more precise information on relative tread life of different tires. To the extent that the variability in treadwear results is reduced, the treadwear grades calculated from them will provide consumers with more accurate information. Accordingly, the agency has examined possible means to reduce the variability of treadwear. These studies indicate that differences in treadwear are caused by variability in such factors as tire pressure, loading, wheel alignment and suspension, vehicle make and model, the impact of different driver characteristics, tire rotation, and environmental factors such as temperature, presence of moisture, and season.

II. Notice of Proposed Rulemaking

The agency issued a notice of proposed rulemaking on January 19, 1989 (54 FR 2167), which proposed four methods that the agency tentatively concluded would make the treadwear grades more representative by reducing the variability or simplifying the calculations related to these grades. First, it proposed to require the wheel alignment of the test vehicle to be set at the midpoint of the permissible range specified by the manufacturer. Second, it proposed to amend the rotation provisions to require convoys to contain four cars so that each tire would be driven on each wheel position on each vehicle for the same distance throughout the convoy. Third, it proposed to simplify the treadwear grading method so that tire tread depth measurements would be taken only after the break-in period and at the conclusion of the test. Fourth, it proposed to replace the current practice of assigning grades in 10-point intervals to reflect differences in treadwear with a new practice of assigning grades in 20-point intervals. Each proposal will be discussed in detail later in the notice.

Comments to NPRM

In response to the NPRM, NHTSA received comments from the Rubber Manufacturers Association (RMA), the European Tyre and Rim Technical Organization (ETRTO), the Japanese Automobile Tire Manufacturers' Association (JATMA), and Standards Testing Laboratories (STL). The agency considered all the comments in developing this final rule and addresses the significant ones below. For the convenience of the readers, this rule uses the NPRM's organization and format.

III. Amendments to the UTQGS Treadwear Requirements

A. Wheel Alignment Specifications

The current UTQGS provisions require the evaluator to "adjust wheel alignment to that specified by the vehicle manufacturer" after the break-in period and after each 800 miles. (§ 575.104(e)(2)(iv)). Because manufacturers typically specify a permissible range for each alignment factor, this means, in practice, that wheel alignment factors such as toe-in, caster, and camber currently may vary by as much as ½ inch. [Toe-in is the degree to which the front wheels turn in so that their forward radii are closer together. Caster is the tilting of the steering axis either forward or backward from the vertical. Camber is the inward or outward tilting of the front wheels from the vertical.]

The NPRM proposed to require a test vehicle's wheel alignment for toe-in, caster, and camber be set at the midpoint of the permissible range specified by the vehicle manufacturer. The agency tentatively concluded that a requirement that precisely specified wheel alignment would serve to reduce the variability of treadwear grades. This proposal was based on a 1983 study by the Southwest Research Institute which determined that a range of ⅛ inch between permissible wheel alignment settings resulted in a variance of as much as 14 percent in the average wear rate for three convoys. ("An Evaluation of the Effects of Load and Pressure on Tire Treadwear," *SRI*, Docket 00–25–GR–256, DOT HS–806 456, June 1983).

In its comment, RMA recommended that "realistic tolerances be established for each of the alignment settings." Similarly, STL stated that maintaining alignment at the midpoint of the permissible range would, at times, be impossible to achieve. Even if possible to achieve, it commented that such a requirement would raise costs unreasonably.

NHTSA notes that the purpose of the amendment is to reduce variability by prescribing exact alignment settings rather than a range. Thus, allowing a "tolerance," (i.e., a permissible range of variation) is contrary to the purpose of this amendment. Furthermore, based on NHTSA's actual experiences with wheel alignment, the agency believes that setting precise alignment settings, while difficult, is nonetheless feasible. Once wheel alignment is set, it can be checked and maintained throughout a convoy test. The current procedure requires wheel alignment to be adjusted at the beginning of the test and after each 800 miles. The amendment does not alter the number of alignments but does require greater precision. Even so, because it typically takes less than twenty minutes per car to measure and adjust wheel alignment, the increase in costs, if any, are minimal.

ETRTO commented that even though setting the test vehicle's wheel alignment at the midpoint of the manufacturer's specified range would reduce variability of tread wear grades, they believed that the vehicle manufacturer's procedures for setting wheel alignment must be followed.

In response the ETRTO's comment and after additional review of practices related to wheel alignment, NHTSA has decided to modify its proposal. The agency notes that vehicle manufacturers sometimes specify nominal settings that are not at the midpoint. For instance, Ford has specified the camber setting for its Crown Victoria to be at a nominal setting of −½ inch with a minimum setting of −¾ inch and maximum setting at +¼ inch. The agency believes that because a vehicle manufacturer is uniquely situated to prescribe the proper use of its vehicles, its procedures should be followed in setting wheel alignment. Thus, the agency is modifying the final rule to address those cases in which the vehicle manufacturer specifies a nominal setting that is not at the midpoint of the specified range. As amended, the requirements related to wheel alignment in § 575.104(e)(2) provide that the midpoint will be used, unless the manufacturer specifies another setting, in which case the manufacturer's setting will be used. As a practical matter, the agency notes that most testing organizations align wheel settings to the middle of the manufacturer's specifications, or to the nominal setting for caster, camber, and toe-in. Thus, this amendment will formalize current testing and enforcement practices and establish a uniform procedure for all contractors to follow.

B. Tire Rotation Among Convoy Vehicles

The current UTQGS provisions require that tires be rotated to each wheel position on a given passenger car in a test convoy. (§ 575.104(e)). However, tires are not required to be rotated to the other cars in a convoy.

NHTSA proposed amending the treadwear grading provisions to require that tires be rotated among the four passenger cars composing a test convoy. As proposed, each tire would occupy each of the four wheel positions on each of the four cars in a convoy for 400 miles. The agency believed that this proposal would help to eliminate variability in treadwear grades caused by tires being tested on different cars. The proposal was designed to reduce variability caused by driver and vehicle factors that affect the treadwear rates, because each tire would be exposed to the same factors at each wheel position on each car in the convoy. The NPRM cited a study which attributed a 30-percent difference between the highest and lowest treadwear rates to factors other than the qualities of the tires themselves. (see "Analysis of Course Monitoring Tires on Vehicles of Different Makes," NHTSA, Docket 00–25–GR–269, June 1988). Based on the study, NHTSA tentatively concluded that this proposal would significantly reduce the variability in treadwear grades resulting from the test car and driver factors.

Several commenters stated that the proposal would be infeasible and create hardships to the testing organizations. RMA stated that the large number of tire and wheel sizes would make the proposal "impossible to achieve." ETRTO stated that the proposal would be restrictive because each vehicle in a convoy would have to be the same type to allow the wheels to be interchangeable. RMA and ETRTO also commented that the proposal would result in a great deal of expense because CMTs would be needed in virtually every size from 13 inch to 17 inch diameters. JATMA similarly believed that the proposal would result in restricting treadwear testing to a single tire size. STL and ETRTO were concerned that the proposal would result in significant cost increases but failed to provide cost data to support this claim. Like RMA, STL stated that the proposal would force testing companies to increase their fleet sizes to accommodate different four-car convoys for each tire size. STL was also concerned that it would be more difficult to get tires of a given test.

NHTSA disagrees with the commenters' concerns about the feasibility and the cost of the proposal to require tire rotation among cars in the test convoy. The agency believes that even though the amendment will require that each vehicle must be able to accommodate all of the tires within the convoy regardless of size, this requirement is necessary to reduce the effects of driver and vehicle variability. The agency does not believe it will be a significant hardship to the industry. The agency notes that manufacturers have established an industry practice in which they test 14-inch tiers and apply the test results to grade both 14-inch and 15-inch tires. As a result, approximately 85 percent of the treadwear tests are conducted on 14-inch tires. As for the remaining 15 percent of tires, the agency acknowledges that evaluators will have to test 13-inch and 16-inch tires. However, the agency believes that the manufacturers can minimize the effects of this requirement through planning and coordination. As an option to running separate convoys for each tire size, it is possible to use versatile vehicles that can be equipped with tires of different sizes. The agency further notes that tires of a certain diameter but of differing tire widths could be part of a four-car convoy because such tires are interchangeable. Similarly, NHTSA does not foresee the amendment resulting in any significant changes in the number of cars in treadwear test convoys, since 89 percent of the convoys in 1988 were composed of four cars.

NHTSA anticipates only a minimal cost impact from the rotation of tires among cars in a treadwear test convoy.

The agency expects that the amendment will result in a marginal labor cost increase of approximately $20 per vehicle, which represents only 0.7 percent of the current test cost of $2,750 per vehicle. As for costs associated with the size of a testing organization's vehicle fleet, the agency acknowledges that the amendment may require a testing laboratory to acquire a greater variety of test vehicles for its overall fleet. However, the overall vehicle fleet size will be essentially the same because the miles per vehicle will be unchanged. Thus, the long-term impact of this amendment is to affect the mix of vehicle types and not the overall size of vehicle fleets.

Conversely, the agency anticipates several cost savings and other benefits as a result of this amendment. Most importantly, NHTSA believes that this amendment will further reduce variability by serving as an impetus for UTQGS testing organizations to standardize the type of vehicles selected for the majority of its convoys. It should also serve to reduce the number of convoys, increase the number of candidate tires to be tested by each convoy, and result in a cost savings since the ratio of CMTs to candidate tires will likely be smaller since four car test convoys will be the norm. In addition, the revision to the test procedures will allow radial CMTs to be used in all tests since the tires will be rotated among convoy vehicles in sets of four. Thus, there will be no problem with mixing tires of different construction types on any convoy vehicle. As a result, bias or bias-belted CMTs will no longer be needed.

In response to RMA's concern that some tire and wheel assemblies are so unique to a single vehicle (e.g., the Chevrolet Corvette, which specifies P275/40ZR17 front and P315ZR17 rear tires) as to preclude their use on any other vehicle, NHTSA notes that similar problems occur under the existing rotation requirements. For instance, the vehicle on which the Corvette's 17-inch tires were recently tested had to be modified, because of loading problems. Nevertheless, to reduce the potential hardships of testing tires used on unique vehicles, the agency has modified the final rule to permit two-car convoys along with four-car convoys. Thus, if tires used on unique vehicles need to be tested, only two rather than four cars will have to be modified or leased to test the tires used on such vehicles. The agency notes that tire rotation in a two-car convoy will still require each tire to be tested on each wheel position for the same distance. Therefore, the agency expects that non-tire sources of variability will be similarly reduced in both two-car and four-car convoys.

NHTSA agrees with STL's comment that if different vehicle types are included within a convoy, vehicle weights may have to be adjusted when tires are rotated to a different type of vehicle. Nevertheless, the agency notes that such a situation poses similar problems under the current requirements, which permit candidate tires of different brands or tire lines to be on each axle. Thus, the only significant difference under the amendment will be that tire rotation will be to other vehicles rather than on one vehicle. In addition, as the agency explained above, any requirement that results in an increased standardization of vehicle types in a test convoy is beneficial because it helps to reduce variability.

RMA recommended that NHTSA run one radial CMT convoy each testing day to uniformly define environmental and road surface variations. Under this suggestion, candidate tires would be run in separate convoys of one to four vehicles. RMA stated that its suggestion would have the advantage of requiring only one size and type of CMT.

NHTSA notes that under both the present procedure and the proposal, four CMT tires must accompany the candidate tires in each convoy. This procedure serves to limit the effects of the non-tire sources of variability such as the driver, the test vehicle, and environmental factors. For instance, over the 6,400 mile course, variability caused by changes in weather and the time of day affect treadwear. Therefore, it is essential that the CMTs accompany each convoy to monitor the conditions uniquely affecting that particular convoy.

After reviewing the proposal in light of the comments, NHTSA continues to believe that requiring rotation of tires to each wheel position of each car in a test convoy will limit the effects of vehicle and driver variability. Along with the factors considered in the NPRM, the agency has determined that rotating tires among convoy cars reduces the coefficient of variation for treadwear to 3 percent from the 10 percent level experienced under the current requirement. Accordingly, the notice amends § 575.104(e) to require tires to be rotated among convoy vehicles so that each tire is at each wheel position in the test convoy for the same distance. As mentioned above, in response to RMA's concern about the testing of tires used with unique vehicles, the agency has modified the final rule to permit convoys containing either two or four cars.

C. Simplification of the Treadwear Grading Procedure

NHTSA also proposed to simplify the grading procedures for measuring tread depth. Under the current procedure, the evaluator must measure tread depth nine times during the 6,400 mile test. Accordingly, an evaluator using a four-car convoy must make 4,320 measurements (the number of cars in a convoy (four) times the number of tires on each car (four) times the grooves on each tire (five) times equally spaced points on each groove (six) times the number of measurements due to tire rotation (nine)). After making these 4,320 measurements, the evaluator must calculate the measured treadwear rate by making a regression analysis of tread depth versus mileage.

NHTSA proposed amending the treadwear grading procedures to reduce the number of tread depth measurements from 9 to 2: after the break-in period and the end of the testing. The proposal would thus reduce the total measurements from the current 4,320 to 960 measurements.

The agency tentatively concluded that the proposal simplifying the method of measuring tread depth would provide sufficient data to determine treadwear for several reasons. First, since wear rates are essentially linear, only two points are needed to establish the slope of tread wear. Second, an agency study determined that treadwear grades obtained by the simplified two-point method were not significantly different from the nine-point method. ("Treadwear Grade Comparison Between Standard and Simplified Methods," NHTSA, Docket 00–25–GR–270, June 21, 1988). Third, it noted that the calculation of tires' treadwear rates would also be simplified because a simple arithmetical formula would be used to calculate treadwear rather than the currently required regression analysis.

RMA, ETRTO, JATMA, and STL opposed the proposal to change the treadwear measurements procedures. RMA claimed that the simplified grading method would result in increased variability. It further stated that recording intermediate measures provides a check against errors and treadwear anomalies. ETRTO objected to the simplified method, claiming that the grades obtained by the simplified grading method would differ significantly from the current grading procedure. JATMA also favored the current grading practice because the regression analysis is "highly precise."

In response to RMA's specific criticism that variability would increase under the simplified grading method, the agency used both methods to calculate treadwear grades. These calculations indicated that the differences between the two methods were not statistically significant. In the few situations where grade calculations did differ, the differences were typically within the 10-point round off increment. Thus, the differences between the two grading methods would have little, if any, effect on the final grade determination.

In response to RMA's and JATMA's arguments supporting the need for intermediate measurements, the agency notes that its experience with the two-point method is that it accurately measures treadwear without the need for intermediate measurements. The agency wishes to emphasize that the simplified "two-point" grading method is in some respects a misnomer because each data point is actually the average of 30 measurements per tire (five grooves on a tire times six equally spaced points on a groove). Each of the 30 measurements per tire should be the same or only slightly different for that tire; if they differ significantly, the treadwear for that tire will be remeasured. In addition, under the simplified grading measure, the evaluator is still required to inspect for treadwear anomalies when the tires are rotated. Similarly, the tire is immediately inspected if a vehicle experiences an event which may adversely affect treadwear such as hitting an obstacle or hard braking. Thus, even without intermediate measurements, the simplified procedure will still allow for detection of any significant treadwear anomalies.

NHTSA disagrees with ETRTO's comment that "valuable technical data" will be lost if the simplified two-point method is substituted for the nine-point method. While intermediate measurements may provide some information about the trend the treadwear is taking, the agency does not believe that this information is of sufficient importance to warrant requiring the intermediate measurements. The agency further notes that a tire manufacturer or test facility can take the intermediate measurements, if it finds such information worthwhile.

ETRTO stated that because treadwear is non-linear, the grades obtained by the simplified method will differ significantly from the current procedure. The agency agrees that while treadwear is not perfectly linear for radial tires, the differences in terms of assigning treadwear grades will not be significant. In the agency's view, the critical issue is not whether treadwear is perfectly linear but whether the two methods yield approximately the same grades for radial tires. The agency study cited earlier found that the treadwear grades for radial tires by either the simplified two-point method or the present method are not significantly different. In view of this finding, the agency has determined that the simplified treadwear grading procedure serves as a reasonable measure of radial tire treadwear.

JATMA and STL commented that the regression analysis would be a more precise way to approximate a linear function than the two-point arithmetical formula. NHTSA disagrees with this contention based on its study comparing the two methods. The agency conducted an evaluation of treadwear testing at the San Angelo test center which showed tread life to be linear for the initial readings of radial tires. However, as the mileage increased, treadwear for radial tires became nonlinear and in fact wear rate decreased. See: "Uniform Tire Quality Grading Course Monitoring," Southwest Research institute, DOT Institute, DOT–HS 802–526. Because treadwear is not perfectly linear for radial tires, an increase in the number of data points will not improve the precision of the estimated slope for wear. In fact, because the treadwear rate decreases with mileage, the slope based on the two end points is a better projection of the overall tread life for a radial tire than the current method.

After reviewing the comments, NHTSA has decided to permit but not require the simplified treadwear grading method. The agency continues to believe that the simplified grading method will provide representative treadwear grades, while simplifying the test procedures, reducing costs, and reducing the complexity of the calculations. Nevertheless, given that the industry prefers the existing more burdensome grading method, that the proposal was offered as a replacement that is comparable to but not superior to the existing test, and that the agency is aware of no compelling reason to eliminate the more complex procedure, the agency has decided to permit evaluators to rely on it as an alternative. Consequently, § 575.104(e)(2)(ix) permits both the present procedure and the simplified procedure. The manufacturer will be required to identify the method used when the tire grade data are submitted to the agency for compliance verification.

D. Increase Treadwear Grade Interval From 10 to 20 Points

In determining the treadwear grade to be assigned to a tire, the evaluator currently expresses the projected mileage for a candidate tire as a percentage of 30,000 miles, rounded off to the next lowest 10 percentage points (§ 575.104[e](ix)(F)). For example, a tire with a projected mileage of 21,000 miles would be graded 70, as would a tire with a projected mileage of 23,000 miles. A tire with a projected mileage of 24,000 miles would be graded 80. Under this 10-point scale, each single grade level interval (i.e., 60 vs. 70) represents a difference of 3,000 miles in projected tread life on the test course.

As explained in the NPRM, the 10-unit scale was designed when most tires were of bias or bias-belted construction. Tires of those constructions generally have projected mileages between 20,000 and 40,000 miles; thus the 3,000 mile difference in projected tread life for each grade interval represents between 7.5 and 15 percent of a tire's projected tread life. In earlier rulemakings, NHTSA determined that this was the proper percentage difference for treadwear grades. In contrast, radial tires, which now comprise approximately 91 percent of the new passenger care tire market, usually have projected treadlife of approximately 60,000 miles; thus the 3,000 mile difference in projected tread life for each grade interval represents approximately 5 percent of a radial tire's projected tread life. Based on these considerations, the agency proposed to increase treadwear grades to 20-point intervals.

The agency proposed that, if adopted, this amendment of the treadwear grade interval would become effective one year after publication of the final rule. (The three other proposals would become effective 30 days after publication of the final rule.) The agency proposed this longer leadtime because it believed that tire manufacturers would need more than 30 days to recompute the grades of some of their existing tire lines, print new labels and brochures with the changed grades, and change their molds to show the changed grades on the sidewall of those tires.

RMA and ETRTO commented that the proposal to increase the grade interval to 20 points would provide no benefit to consumers but would result in significant costs to the tire manufacturers. RMA estimated that the cost of mold reworking and relabeling for treadwear grades of 90, 110, 130 etc would exceed $2 million. JATMA and

ETRTO noted that if the agency adopted the proposal for radial tires, it still should continue to use the 10-point interval for bias and bias belted tires. Alternatively, RMA suggested that radial tires should have a 10-point increment up to a grade of 300 and 20 points above 300.

After reviewing the comments, the agency has decided to adopt the 20-point interval, as proposed. Since the passenger car tire market is now comprised predominantly of radial tires whose treadwear grades typically run above 200, with many approaching 300, the 10-point interval has become less relevant to a consumer's buying decision. For instance, it would be unlikely for a consumer to view the difference between a 290 tire and a 280 tire as significant. In addition, the normal variation of treadlife inherent among tires with given tire lines means that the 10-point interval, which represents intervals of only 5 percent, might convey information that was not useful and even misleading to consumers. Given the agency's goal of having a treadwear scale that allows for reasonable comparisons among tire lines, without unduly emphasizing the precision of the measurement, the agency has decided to adopt the 20-point treadwear grade interval.

The agency also disagrees that the amendment to increase the grade interval to 20 points will significantly increase costs. First, 68 percent of tire lines currently correspond to the proposed 20-point interval (200, 220, 240 etc.). Thus, only the remaining 32 percent of the tire lines need to have the treadwear grade reassigned. Even these tire lines need not be retested, since a manufacturer may lower a grade (e.g., from 210 to 200). Moreover, the one year leadtime should further reduce the cost impact given that molds are typically refurbished each year, labels are typically exhausted within six months to one year, and brochures are updated and distributed to dealers on an annual basis.

NHTSA has decided to reject the suggestion that the treadwear grade interval remain at 10-point intervals for bias and bias-belted tires. As noted above, such tires are currently a very small segment of the total passenger care tire market. In the last few years, only two bias-belted tire convoys and one bias-ply convoy have been run at the San Angelo UTQGS test course. Thus, a separate grade interval for non-radial tires is not needed and would be contrary to the agency's goal to standardize treadwear grading procedures. To effectuate such standardization of treadwear grades, the agency must select a single grade interval. Because the vast majority of passenger car tires are and will increasingly be of radial construction, the agency has decided to replace the 10-point interval with the 20-point interval.

NHTSA is also rejecting RMA's suggestion to have a 10-point scale until a treadwear grade of 300 and then a 20-point scale over 300. The agency believes that such a dual scale would unnecessarily complicate treadwear grading without providing any significant benefit. Based on the above considerations, the agency has determined that the 20-point scale should apply to all treadwear grades, not just to grades above 300.

In response to RMA's comment that existing radial tires graded prior to the effective date need not be regraded thus precluding the need to remark thousands of tire molds, the agency notes that the rule will not require tires with treadwear grades molded before the effective date to be remolded. Nevertheless, given § 575.104(d)(1)'s molding and labeling requirements in relation to § 575.104(d)(2)(i)'s new requirement that "treadwear grades shall be in multiples of 20. (e.g., 80, 120, 160)," the rule will require the treadwear grade to be remolded and relabeled when the one year leadtime expires (see also the grading requirement in § 575.104(e)(2)(ix)(F)). This leadtime should be adequate to exhaust existing inventories. As for regrading, a manufacturer can avoid hardship by merely grading the tire to the next lower 20-point interval (e.g., a tire with a raw grade of "131" would be assigned a treadwear grade of "120" rather than "130.") Of course, if the manufacturer retests such tires and wishes to change the grade, the 20-point interval will apply.

Miscellaneous Considerations:

RMA suggested that the agency should consider alternative test vehicles to include light trucks and front-wheel-drive vehicles. STL also commented that front-wheel-drive vehicles and pickup trucks should be used as test vehicles. The agency notes that whether to use non-passenger cars or front-wheel-drive cars is beyond the scope of the rulemaking.

STL stated that specific instructions would be helpful on those tires which have directional tread designs. The agency notes that unusual tire features, such as directional tread design, are generally accommodated by making appropriate modifications in the test procedures. For example, tire depth measurements are taken at more points around the tire for those with two or three grooves. For directional tires, rotation could be limited to one side or the tire could be remounted on the rim when rotated to the other side of the vehicle.

Economic and Other Impacts

NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency believes that a full regulatory evaluation is not required because the rule will have only minimal economic impacts. The agency believes that there will be no significant additional costs related to the first amendment because it merely entails changes to the current testing procedures. Although the second amendment will result in additional labor costs and initial costs related to obtaining CMTs, these costs are minimal and may be offset by the savings resulting from the third amendment. As for tire rotation, the test procedure had required tires be rotated after the first 400 miles, at the completion of break-in (800 miles), and seven times thereafter in 800-mile increments, or a total of nine times during the 6,400 mile test. Under the second amendment, tires will be rotated 17 times, thus adding to the time and cost of testing. Specifically, 16 tires will be removed from the four vehicles in the convoy and rotated to different wheel or vehicle positions every 400 miles, after break-in. According to agency staff in San Angelo, this operation generally takes two people approximately 30 minutes to complete, or one labor-hour per convoy. Thus, this amendment will result in eight additional labor-hours per four vehicle test convoy. The number of convoys (each composed of four vehicles) which completed treadwear testing at San Angelo was 200 in 1986 and 174 in 1987. Accordingly, based on a two-year average from 1986 and 1987 (187 convoys), the amendment requiring eight additional tire rotations will add 1,496 labor hours to the test. Assuming a labor and overhead rate of $10 per hour for tire changes, the increased cost will be $14,960 per year.

As for the third amendment permitting a simplified treadwear grading method, the treadwear grading method had required tread-depth measurements for each tire at nine intervals during a test sequence. With this method, two people took approximately two hours to measure and record tread depth at each

interval. However, under the simplified grading procedure, an evaluator need only measure and record two intervals per test sequence per convoy. This amendment thus permits seven fewer intervals, resulting in 28 fewer labor hours per convoy (seven intervals x two workers x two hours). Based on the two year average of 187 convoys, this amendment has the potential of resulting in an annual savings of 5,236 labor hours. Assuming a labor rate of $10 per hour, permitting the simplified grading method has the potential to save $52,360. Assuming evaluators adopt this simplified grading method, the savings from this amendment will offset the $14,960 additional cost from the second amendment requiring tire rotation among convoy vehicles.

The agency notes that the one-year leadtime for the fourth amendment to change the grade interval will ensure that there are no additional printing or similar costs.

The agency has also reviewed this rule in accordance with the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant impact on a substantial number of small entities. The parties affected by these changes are tire manufacturers and brand name owners. Few, if any, of the tire manufacturers are small entities, but some of the brand name owners may qualify as small entities. However, the economic impacts of these amendments will be minimal, as described above. Hence, any impacts on brand name owners and tire manufacturers will not be significant. Small organizations and small governmental entities may be affected by these amendments, as purchasers of new tires. Again, however, any economic impacts on these small entities will not be substantial.

The agency has also reviewed the rule under the National Environmental Policy Act and determined that it will not have a significant effect on the human environment.

The rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

As noted in the NPRM, the Office of Management and Budget (OMB) has already approved NHTSA's requirements that treadwear grades be disseminated by being molded on the sidewall of tires, by paper labels, and by brochures, based on the current testing procedures. This rule simplifies the existing testing procedures and changes the grade interval used when disseminating this information; however, the rule does not change the collection and information requirements previously approved by OMB pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The approval number is OMB # 2127-0519, and the approval is valid through April 30, 1992.

List of subjects in 49 CFR part 575

Consumer protection, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 575—CONSUMER INFORMATION REGULATIONS

In consideration of the foregoing, 49 CFR Part 575 is amended as follows:

1. The authority citation for Part 575 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407, 1421, 1423; delegation of authority at 49 CFR 1.50.

§ 575.104 [Amended]

2. Section 575.104(d)(2)(i) is revised to read as follow:

* * * * *

(d) * * *

(2) *Performance*—(i) *Treadwear.* Each tire shall be graded for treadwear performance with the word "Treadwear" followed by a number of two or three digits representing the tire's grade for treadwear, expressed as a percentage of the NHTSA nominal treadwear value, when tested in accordance with the conditions and procedures specified in paragraph (e) of this section. Treadwear grades shall be in multiples of 20. (e.g., 80, 120, 160).

* * * * *

3. Section 575.104(e) is revised to read as follows:

* * * * *

(e) *Treadwear grading conditions and procedures*—(1) *Conditions.* (i) Tire treadwear performance is evaluated on a specific roadway course approximately 400 miles in length, which is established by the NHTSA both for its own compliance testing and for that of regulated persons. The course is designed to produce treadwear rates that are generally representative of those encountered by tires in public use. The course and driving procedures are described in appendix A of this section.

(ii) Treadwear grades are evaluated by first measuring the performance of a candidate tire on the government test course, and then correcting the projected mileage obtained to account for environmental variations on the basis of the performance of the course monitoring tires run in the same convoy. The course monitoring tires are made available by the NHTSA at Goodfellow Air Force Base, San Angelo, Tex., for purchase by any persons conducting tests at the test course.

(iii) In convoy tests, each vehicle in the same convoy, except for the lead vehicle, is throughout the test within human eye range of the vehicle immediately ahead of it.

(iv) A test convoy consists of two or four passenger cars, each having only rear-wheel drive.

(v) On each convoy vehicle, all tires are mounted on identical rims of design or measuring rim width specified for tires of that size in accordance with 49 CFR 571.109, S4.4.1(a) or (b), or a rim having a width within −0 to + .0.50 inches of the width listed.

(2) *Treadwear grading procedure.* (i) Equip a convoy as follows: Place four course monitoring tires on one vehicle. Place four candidate tires with identical size designations on each other vehicle in the convoy. On each axle, place tires that are identical with respect to manufacturer and line.

(ii) Inflate each candidate and each course monitoring tire to the applicable pressure specified in table 1 of this section.

(iii) Load each vehicle so that the load on each course monitoring and candidate tire is 85 percent of the test load specified in § 575.104(h).

(iv) Adjust wheel alignment to the midpoint of the vehicle manufacturer's specifications, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment to the manufacturer's recommended setting.

(v) Subject candidate and course monitoring tires to "break-in" by running the tires in the convoy for two circuits of the test roadway (800 miles). At the end of the first circuit, rotate each vehicle's tires by moving each front tire to the same side of the rear axle and each rear tire to the opposite side of the front axle. Visually inspect each tire for any indication of abnormal wear, tread separation bulging of the sidewall, or any sign of tire failure. Void the grading results from any tire with any of these anomalies, and replace the tire.

(vi) After break-in, allow the air pressure in the tires to fall to the applicable pressure specified in table 1 of this section or for 2 hours, whichever occurs first. Measure, to the nearest 0.001 inch, the tread depth of each candidate and each course monitoring tire, avoiding treadwear indicators, at six equally spaced points in each groove. For each tire compute the average of the measurements. Do not measure those shoulder grooves which

are not provided with treadwear indicators.

(vii) Adjust wheel alignment to the midpoint of the manufacturer's specifications, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment according to the manufacturer's recommended setting.

(viii) Drive the convoy on the test roadway for 6,400 miles.

(A) After each 400 miles, rotate each vehicle's tires by moving each front tire to the same side of the rear axle and each rear tire to the opposite side of the front axle. Visually inspect each tire for treadwear anomalies.

(B) After each 800 miles, rotate the vehicles in the convoy by moving the last vehicle to the lead position. Do not rotate driver positions within the convoy. In four-car convoys, vehicle one shall become vehicle two, vehicle two shall become vehicle three, vehicle three shall become vehicle four, and vehicle four shall become vehicle one.

(C) After each 800 miles, if necessary, adjust wheel alignment to the midpoint of the vehicle manufacturer's specification, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment to the manufacturer's recommended setting.

(D) After each 800 miles, if determining the projected mileage by the 9-point method set forth in paragraph (e)(2)(ix)(A)(*1*) of this section, measure the average tread depth of each tire following the procedure set forth in paragraph (e)(2)(vi) of this section

(E) After each 1,600 miles, move the complete set of four tires to the following vehicle. Move the tires on the last vehicle to the lead vehicle. In moving the tires, rotate them as set forth in paragraph (e)(2)(viii)(A) of this section.

(F) At the end of the test, measure the tread depth of each tire pursuant to the procedure set forth in paragraph (e)(2)(vi) of this section.

(ix)(A) Determine the projected mileage for each candidate tire either by the nine-point method of least squares set forth in paragraph (e)(2)(ix)(A)(*1*) of this section and appendix C to this section, or by the two-point arithmetical method set forth in paragraph (e)(2)(ix)(A)(*2*) of this section. Notify NHTSA about which of the alternative grading methods is being used.

(*1*) *Nine-Point Method of Least Squares.* For each course monitoring and candidate tire in the convoy, using the average tread depth measurements obtained in accordance with paragraphs (e)(2)(vi) and (e)(2)(viii)(D) of this section and the corresponding mileages as data points, apply the method of least squares as described in appendix C to this section to determine the estimated regression line of y on x given by the following formula:

$$y = a + \frac{bx}{1000}$$

Where:
y = average tread depth in mils
x = miles after break-in,
a = y intercept of regression line (reference tread depth) in mils, calculated using the method of least squares; and
b = the slope of the regression line in mils of tread depth per 1,000 miles, calculated using the method of least squares. This slope will be negative in value. The tire's wear rate is defined as the absolute value of the slope of the regression line.

(*2*) *Two-Point Arithmetical Method.* For each course monitoring and candidate tire in the convoy, using the average tread depth measurements obtained in accordance with paragraph (e)(2)(vi) and (e)(2)(viii)(F) of this section and the corresponding mileages as data points, determine the slope (m) of the tire's wear in mils of tread depth per 1,000 miles by the following formula:

$$m = 1000\,\frac{(Y1 - To)}{(X1 - Xo)}$$

Where:
Yo = average tread depth after break-in, mils
X1 = average tread depth at 6,400 miles, mils
Xo = 0 miles (after break-in).
X1 = 6,400 miles of travel

This slope (m) will be negative in value. The tire's wear rate is defined as the slope (m) expressed in mils per 1000 miles.

(B) Average the wear rates of the four course monitoring tires as determined in accordance with paragraph (e)(2)(ix)(A) of this section.

(C) Determine the course severity adjustment factor by dividing the base wear rate for the course monitoring tires (see note below) by the average wear rate for the four course monitoring tires.

Note: The base wear rates for the course monitoring tires will be furnished to the purchaser at the time of purchase.

(D) Determine the adjusted wear rate for each candidate tire by multiplying its wear rate determined in accordance with paragraph (e)(2)(ix)(A) of this section by the course severity adjustment factor determined in accordance with paragraph (e)(2)(ix)(C) of this section.

(E) Determine the projected mileage for each candidate tire by applying the appropriate formula set forth below:

(*1*) If the projected mileage is calculated pursuant to paragraph (e)(2)(ix)(A)(*1*) of this section, then:

$$\text{Projected mileage} = \frac{1000\,(a - 62)}{b^1} + 800$$

Where:
a = y intercept of regression line (reference tread depth) for the candidate tire as determined in accordance with paragraph (e)(2)(ix)(A)(*1*) of this section.
b^1 = the adjusted wear rate for the candidate tire as determined in accordance with paragraph (e)(2)(ix)(D) of this section.

(*2*) If the projected mileage is calculated pursuant to (e)(2)(ix)(a)(*2*) of this section, then:

$$\text{Projected mileage} = \frac{-1000\,(Yo - 62)}{mc} + 800$$

Where:
Yo = average tread depth after break-in, mils
mc = the adjusted wear rate for the candidate tires as determined in accordance with paragraph (e)(2)(ix)(D) of this section.

(F) Compute the percentage (P) of the NHTSA nominal treadwear value for each candidate tire using the following formula:

$$P = \frac{\text{Projected mileage}}{30{,}000} \times 100$$

Round off the percentage to the nearest lower 20-point increment.

* * * * *

Issued on: November 9, 1990.

Jerry Ralph Curry,

Administrator.

[FR Doc. 90-26962 Filed 11-14-90; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

[Docket No. 900777-0273]

RIN 0648-AC00

High Seas Salmon Fishery off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 3 to the Fishery Management Plan for the High Seas Salmon Fisheries off the Coast of Alaska East of 175 Degrees East Longitude (FMP). Amendment 3 revises the FMP to: (1) Incorporate recent scientific data on the salmon stocks and information on the salmon harvests by the troll fishery, (2) correct existing errors, (3) provide for the annual harvest levels (optimum yields (OYs)) to be established by the Pacific Salmon Commission under provisions of the Pacific Salmon Treaty, (4) defer regulation of the salmon fisheries in the Exclusive Economic Zone (EEZ) to the State of Alaska to be regulated consistent with the FMP and applicable Federal law, (5) make the FMP consistent with recent provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act) requiring consideration of vessel safety issues and fish habitat, and (6) provide for extending the jurisdiction of the FMP over the EEZ west of 175 degrees east longitude should the International Convention for the High Seas Fisheries of the North Pacific Ocean (International Convention) be terminated and not be replaced by an equivalent international agreement to which the United States is a party. Amendment 3 is intended to improve regulation of the salmon fisheries in Alaska's waters and in the EEZ off the coast of Alaska. It should reduce duplicative State and Federal fishery management efforts, maintain Council oversight of the fishery in the EEZ while eliminating Federal involvement in routine fishery management actions, and streamline the regulatory procedures for setting season measures and making inseason management adjustments.

EFFECTIVE DATE: December 10, 1990.

ADDRESSES: Individual copies of Amendment 3 and the Environmental Assessment and Regulatory Impact Review may be obtained from the North Pacific Fishery Management Council, P.O. box 103136, Anchorage, Alaska 99510 (telephone: 907-271-2809). Individual copies of the Federalism Assessment or the Environmental Assessment may be obtained from Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. box 21668, Juneau, Alaska 99802-1668 (telephone: 907-586-7228).

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery Management Biologist, NMFS, Alaska Region, Juneau, Alaska (telephone: 907-586-7228).

SUPPLEMENTARY INFORMATION:

Background

Salmon fishing in the EEZ off Alaska is managed under the FMP that was prepared by the North Pacific Fishery Management Council (Council) and approved and implemented by the Secretary of Commerce in 1979. Implementing regulations appear at 50 CFR part 674.

The Council adopted Amendment 3 for submission to the Secretary of Commerce (Secretary) under section 304(b) of the Magnuson Act. The receipt date for Secretarial review of this amendment was June 3, 1990. The Magnuson Act requires the Secretary, or his designee, to approve, disapprove, or partially disapprove fishery management plans or plan amendments before the close of the 95th day following receipt. Following receipt of Amendment 3, the Secretary immediately commenced a review to determine whether it was consistent with the provisions of the Magnuson Act and any other applicable law. A Notice of Availability of the amendment was published in the **Federal Register** (55 FR 23454, June 8, 1990; corrected 55 FR 28788, July 13, 1990). It invited review of, and comment on, the amendment until August 2, 1990. A proposed rule was filed with the Office of the **Federal Register** on July 6, 1990, and published on July 12, 1990 (55 FR 28661). It invited comments until August 20, 1990. No public comments on Amendment 3 or on the proposed rule were received.

The preamble to the proposed rule described and presented the reasons for each measure contained in the amendment. The Regional Director, Alaska Region, NMFS (Regional Director) reviewed each measure and the reasons for it. He determined that each measure is consistent with the Magnuson Act and other applicable law. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), concurred on September 6, 1990.

The following is a summary from the proposed rule of what each measure requires or accomplishes:

Amendment 3 renames the FMP as the "Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska." It reorganizes and shortens the FMP, incorporates recent scientific data on the salmon stocks and statistics on the salmon harvests by the troll fishery in recent years, and corrects existing FMP errors. Amendment 3 provides for the OYs to be set by the Pacific Salmon Commission under procedures established by the Pacific Salmon Treaty. Further, it defers regulation of the salmon fisheries in the EEZ to the State of Alaska to be regulated consistent with the FMP and applicable Federal law, including Federal law implementing applicable treaties. Alaska's regulations will then apply to all fishing vessels registered under the laws of the State whether they are fishing in State waters or in the EEZ. Amendment 3 discusses fish habitat issues and vessel safety concerns and identifies ongoing and future Council actions to address these matters; it does not contain specific management measures implemented by regulations regarding these concerns. Finally, Amendment 3 provides for extending the jurisdiction of the FMP over salmon in the EEZ west of 175 degrees east longitude should the International Convention be terminated and not be replaced by an equivalent international organization to which the United States is a party.

Amendment 3 retains the previous ban on salmon fishing with nets in both the "East Area" and "West Area," retains the ban on commercial salmon fishing in the West Area, allows commercial handtroll and power-troll

salmon fishing in the East Area, and allows sport fishing in both Areas.

Finally, Amendment 3 provides that the Secretary of Commerce may review the applicability of a State statute or regulation to the EEZ. Any member of the public may obtain that review by properly appealing any State statute or any regulation (i.e., any perennial, annual, or inseason regulation) issued by the State for the salmon fisheries in the EEZ off the Coast of Alaska. Such public appeals of State statutes and perennial or annual regulations would be directed first to the State and, if unsuccessful, then to the Secretary. Public appeal to the State is not required in advance of an appeal to the Secretary for an inseason rule, but simultaneous pursuit of State and Secretarial review is expressly endorsed by Amendment 3. Secretarial review of all public appeals is limited by Amendment 3 to the issue of whether the challenged State statute or regulation is consistent with the FMP, the Magnuson Act, and other applicable Federal law, including Federal law implementing applicable treaties (the applicable criteria). The Secretary is constrained from responding to public comments that merely object to a State statute or regulation or simply indicate that an alternative State statute or regulation would provide for better management of the salmon fishery. The appellant must tie the objection to the applicable criteria for Secretarial review. This limitation on Secretarial review of State regulations will allow the Secretary to disregard frivolous comments and should encourage persons with serious concerns to participate fully in the State regulatory procedures before seeking Secretarial intervention.

Initial public appeals to the State are to follow procedures of the Alaska Administrative Procedure Act, which are outlined in Amendment 3. These State procedures provide for the Council, National Marine Fisheries Service, and NOAA's Office of General Counsel to submit comments to the State concerning the extent to which the appealed State regulation falls within the scope of the FMP, the Magnuson Act, and other applicable Federal law.

If, in response to a public appeal or as a result of routine review of the State's salmon regulations and statutes by NMFS, the Secretary makes a preliminary determination that a State statute or perennial or annual regulation is inconsistent with the applicable criteria, the Secretary will: (1) Publish a proposed rule for salmon fisheries in the EEZ in the **Federal Register** that is consistent with the applicable criteria, and request comments for 30 days, (2) provide notice of the rule to the Council and the Commissioner of the Alaska Department of Fish and Game, and (3) hold an informal public hearing if requested by the State. After reviewing all public and State comments, the Secretary will decide whether or not the State regulation or statute appealed or found questionable is consistent with the applicable criteria. Depending upon his decision, the Secretary will either publish a notice withdrawing his proposed Federal rule or promulgate a final Federal rule for salmon fisheries in the EEZ superseding the inconsistent State regulation or statute.

If the Secretary receives a public appeal of a State inseason regulation, which is alleged to be inconsistent with the applicable criteria, he will: (1) Immediately provide a copy of the appeal to the Council and the Alaska Department of Fish and Game Commissioner, (2) consider any comments from the Council and Commissioner, and (3) either (A) notify the appellant that he has found the State's inseason regulation consistent with the applicable criteria or (B) if the State regulation is found inconsistent with the applicable criteria, immediately issue a Federal regulation for salmon fisheries in the EEZ superseding the State regulation unless there is sufficient time to follow the procedure for an annual or perennial regulation that has been determined preliminarily to be inconsistent with the applicable criteria.

Changes to the Regulations Implementing the FMP

Because Amendment 3 defers regulation of the sport and commercial salmon fisheries in the EEZ off the coast of Alaska to the State of Alaska, this final rule implementing Amendment 3 removes all the specific management measures presently contained in 50 CFR 674, subpart B (Management Measures—fishing times and areas, harvest limits, gear restrictions, and inseason adjustment procedures).

Subpart B of 50 CFR 674 will now simply refer to relevant State of Alaska salmon fishing regulations. Subpart A of 50 CFR 674 is amended to eliminate references to specific management measures no longer contained in subpart B.

Classification

The Regional Director determined that Amendment 3 is necessary for the conservation and management of the Alaskan salmon fisheries and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an Environmental Assessment (EA) for Amendment 3. The Assistant Administrator found, based on the EA, that there will be no significant impacts on the quality of the human environment as a result of this rule. A copy of the EA may be obtained from the Regional Director at the above address.

The Assistant Administrator has determined that this final rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination was based on a review of the Regulatory Impact Review (RIR) prepared by the Council which concluded that Amendment 3 does not change the FMP in a manner affecting the actual functioning of the fishery. A summary of the RIR was published with the proposed rule at 55 FR 28661.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on small entities. As a result, a regulatory flexibility analysis was not prepared. A summary of the reasons for this certification was published with the proposed rule at 55 FR 28661.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination was submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act. The responsible State agency did not comment within the statutory time period.

The Federalism Official for the Department of Commerce determined that Amendment 3 and the proposed rule had sufficient federalism implications to warrant preparation of a Federalism Assessment (FA) under Executive Order 12612 (E.O. 12612). An FA was prepared and is available, upon request, at the above address. The FA contains the Federalism Official's certification that the provisions and policies of Amendment 3 and the implementing rule are consistent with the federalism principles, criteria, and requirements set forth in sections 2 through 5 of E.O. 12612. Amendment 3 and the final rule do not appear to affect Alaska's ability to discharge traditional State governmental functions, or other aspects of State sovereignty; additional costs or burdens to the State are not expected.

List of Subjects in 50 CFR Part 674

Fisheries, Fishing, International organizations, Reporting and Recordkeeping requirements.

Dated: November 8, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 674 is amended as follows:

PART 674—HIGH SEAS SALMON FISHERY OFF ALASKA [AMENDED]

1. The authority citation for part 674 continues to read as follows:

Authority: 16 U.S.C. 3631 *et seq;* 16 U.S.C. 1801 *et seq.*

2. Section 674.2 is amended by revising the definition of *"West Area"* under *"management area"* to read as follows:

§ 674.2 Definitions.

* * * * *

Management area * * *

(a) *West Area* means the waters of the EEZ seaward of Alaska which are west of 143°53'36" W. longitude (Cape Suckling).

* * * * *

3. Section 674.7 is revised to read as follows:

§ 674.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for, take, or retain any salmon in violation of the Act or this part.

(b) Engage in fishing for salmon in the management area except to the extent authorized by § 674.4(a) of this part.

4. Subpart B is revised to read as follows:

Subpart B—Management Measures

Sec.

674.20 General.
674.21 Commercial fishing.
674.22 Personal use fishing.

Subpart B—Management Measures

§ 674.20 General.

The management measures specified in this subpart shall apply to all fishing for salmon in the management area by vessels registered under laws of the State of Alaska.

§ 674.21 Commercial fishing.

(a) For State of Alaska statutes and regulations governing commercial fishing, see Alaska Statutes, title 16—Fish and Game; title 5 of the Alaska Administrative Code, chapters 1–39.

(b) For State of Alaska Regulations specifically governing the salmon troll fishery, see 5 Alaska Administrative Code 30 (Yakutat Area), and 5 Alaska Administrative Code 33 (Southeastern Alaska Area).

§ 674.22 Personal use fishing.

(a) For State of Alaska statutes and regulations governing sport and personal use salmon fishing other than subsistence fishing, see Alaska Statutes, title 16—Fish and Game; 5 Alaska Administrative Codes 42.010 through 75.995.

(b) For State of Alaska statutes and regulations governing subsistence fishing, see Alaska Statutes, title 16—Fish and Game; 5 Alaska Administrative Codes 01, 02, 39, and 99.010.

[FR Doc. 90–26892 Filed 11–9–90; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 221
Thursday, November 15, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 360

[Docket No. 90-225]

Noxious Weeds; Notice of Public Meetings; Change in Meeting Dates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meetings.

SUMMARY: We are rescheduling two public meetings that will be held to obtain information concerning whether melaleuca should be designated as a Federal noxious weed.

DATES: Consideration will be given to comments received on or before December 24, 1990. The public meetings will be held on December 14, 1990, in For Lauderdale, Florida, and on December 18, 1990, in San Francisco, California.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6506 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-158. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue, SW, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

The public meetings will be held in Rooms 437A and 437B of the Broward County Governmental Center, 115 South Andrews Avenue, Fort Lauderdale, Florida, on December 14, 1990, and in Room 1415, 630 Sansome Street, San Francisco, California, on December 18, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas G. Flanigan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, Room 646, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION: In a document published in the Federal Register on September 24, 1990 (55 FR 39010-39011, Docket Number 90-158), we gave notice of two public meetings, to be held on October 29 and 31, for the purpose of obtaining information concerning whether *Melaleuca quinquenervia* (cav.) should be designated as a Federal noxious weed. On October 30, 1990, we published a document in the Federal Register rescheduling the meetings to November 16 and 20, 1990 (55 FR 45611 Docket Number 90-217).

We have received a request to reschedule the meetings again, to allow participation by certain interested persons who would not be able to attend on the previously announced dates. We are granting this request, since it appears that rescheduling the meeting will allow fuller participation by interested individuals. The new meeting dates and locations are listed under the "**DATES**" section of this document. The meeting times, from 10 a.m. to 5 p.m., are unchanged.

We are also extending the comment period until December 24, 1990.

Authority: Secs. 4, 10; 88 Stat. 2149, 2151; 7 U.S.C. 2803, 2809; 41 FR 4251.

Done in Washington, DC, this 13th day of November 1990.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-27036 Filed 11-13-90; 1:02 p.m.]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-90-91]

Drawbridge Operation Regulations; Great Canal, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of David McWilliams, the bridgeowner, the Coast Guard is considering a change to the regulations governing the bridge across the Great Canal to Lansing Island at Mile 0.7 by requiring that advance notice for opening be given during certain periods. This proposal is being made because of a lack of requests for opening the Lansing Island or the nearby Tortoise Island and Mathers drawbridges at night. This provision would relieve the bridge owner of the burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before December 31, 1990.

ADDRESSES: Comments should be mailed to Commander (oan) Seventh Coast Guard District, 909 SE. 1st Ave. Miami, FL 33131-3050. The comments and other materials referenced in this notice will be available for inspection and copying at Brickell Plaza Federal Building, room 484, 909 SE. 1st Avenue, Miami, FL. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Walt Paskowsky, (305) 536-4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self addressed postcard or envelope. The Commander, Seventh Coast Guard District will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Walt Paskowsky, project officer, and Lt. Genelle Tanos, project attorney.

Discussion of Proposed Regulations

The Bridge which has been used to transport workers and construction material to Lansing Island opens on signal. When no work is taking place, the span has been left in the open position. It is proposed that the bridge

be tended full time and opened on signal except for an 8 hour period from 10 pm to 6 am each night from Sunday evening through Friday morning when 15 minutes advance notice would be required. The bridge would be constantly attended during Friday and Saturday evening and during evenings preceding a federal holiday. Notification would be given by radio or telephone to an adjacent gatehouse which will be manned 24 hours. The proposed rule would be identical to the existing operating rules for the Tortoise Island bridge across the same waterway at mile 2.6, and the Mathers Bridge across the Banana River at mile 0.5.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because of a lack of bridge openings at night. Since the economic impact of the proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The Authority citation for part 117 continues to read as follows:

Authority: 33 USC 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.285 is revised by designating the existing text as paragraph (b) and adding a new paragraph (a) to read as follows:

§ 117.285 Great Canal.

(a) The draw of the Lansing Island bridge, mile 0.7 shall open on signal, except that during the evening hours from 10 p.m. to 6 a.m. from Sunday evening until Friday morning, except on evenings preceding a federal holiday, the draw shall open on signal if at least 15 minutes notice is given.

* * * * *

Dated: November 1, 1990.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 90-26686 Filed 11-14-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Office of Child Support Enforcement

45 CFR Part 303

RIN 0970-AA78

Child Support Enforcement Program; Federal Parent Locator Service Fees

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Office of Child Support Enforcement operates the Federal Parent Locator Service as part of its program of assisting States in securing support for children. We have decided to seek reimbursement from States for use of the Federal Parent Locator Service in IV-D cases in which support is not required to be assigned to the State, beginning when this rule is published in final form. States may pay the fees themselves or charge the individuals involved in the case. The user fee is anticipated to be a minimal amount, not exceeding $2.00 per request.

DATES: Consideration will be given to comments received by January 14, 1991.

ADDRESSES: Address comments to: Director, Office of Child Support Enforcement, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Attention: Director, Policy and Planning Division, Mail Stop: OCSE/PPD. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m., on the 4th floor of the Department's offices at the above address.

FOR FURTHER INFORMATION CONTACT: Andrew J. Hagan, (202) 252-5375.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

There are no information collection requirements in this proposed regulation which require approval under the Paperwork Reduction Act.

Statutory Authority

This regulation is published under the authority of sections 453(c)(3), 453(e)(2) and 1102 of the Social Security Act (the Act).

Section 453 of the Act was enacted as part of Public Law 93-647, the Social Services Amendments of 1974. Section 453 established the Federal Parent Locator Service and specifies the conditions under which authorized persons may request information concerning the whereabouts of absent parents. Under section 453(c)(3), "the resident parent, legal guardian, attorney, or agent of a child (other than a child receiving aid under part A of this title) (as determined by regulations prescribed by the Secretary) without regard to the existence of a court order against an absent parent who has a duty to support and maintain any such child" is authorized to request Federal Parent Locator Service information. Section 453(e)(2) requires that "Whenever such services are furnished to an individual specified in subsection (c)(3), a fee shall be charged such individual. The fee so charged shall be used to reimburse the Secretary or his delegate for the expense of providing such services."

Section 1102 of the Act requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Background

The Federal Parent Locator Service is a computerized network through which States may request location information from the Federal government to find absent parents for purposes of establishing paternity and securing support.

Under the Child Support Enforcement program, each State is required to operate a State parent locator service. See regulations at 45 CFR 302.35. The State parent locator service uses all relevant sources of information available to it in the State, such as unemployment, employer and wage information, tax records, motor vehicle records and property ownership information. In addition, the State parent locator service has access to the Federal Parent Locator Service, which obtains information available in Federal and State data bases, such as records of the Internal Revenue Service, the Social Security Administration, the Department

of Defense, the National Personnel Records Center, the Selective Service, the Veterans Administration, and the State Employment Security Agencies.

The process of obtaining this location information is carefully controlled under regulations at 45 CFR 303.70 and by program instructions. A State request must come only from State parent locator service offices and authorized local offices. States must submit an annual certification, signed by the director of the State child support enforcement agency (known as the IV–D agency) or his designee attesting that requests are being made solely to locate an individual for Child Support Enforcement program purposes, or in connection with a parental kidnapping or child custody case as authorized by Public Law 96–611. All information obtained through the Federal Parent Locator Service must be safeguarded and treated as confidential.

Until now, the Department has not collected Federal Parent Locator Service fees in most child support cases, using the rationale that only individuals who did not avail themselves of the full range of Child Support Enforcement program services (*i.e.*, non–IV–D child support cases in which the only service requested is location of an absent parent) should be required to pay the location fee. (See OSCE–AT–76–3, dated February 13, 1976.)

Changes to Existing Regulations

Fees for use of the Federal Parent Locator Service in child support enforcement cases are covered in current regulations at § 303.70(e)(1), (2), (4) and (5). Under paragraph (e)(1), the State IV–D agency must pay the fees required under section 453(e)(2) of the Act. Under paragraph (e)(2), the IV–D agency shall charge the fee to the resident parent, attorney or agent of a child who is not receiving aid under title IV–A of the Act. (To date, this has been interpreted to mean an individual who has requested location services only.) Paragraph (e)(4) requires that the fee be reasonable and as close to actual costs as possible so as not to discourage use of services by authorized individuals. Under paragraph (e)(5), the Office of Child Support Enforcement will collect the fees from the IV–D agency by an offset of the State's quarterly grant award. Other parts of paragraph (e) cover Federal Parent Locator Service fees charged to States for location requests made in parental kidnapping and child custody cases.

In this document, we propose to revise § 303.70(e)(1) to make clear that, effective when this rule is published in final form, the State must pay the Federal Parent Locator Service fee in any child support case in which individuals are not required to assign their support rights to the State. This is consistent with the requirements of section 453(e)(2) of the Act, and the original intent of Congress in 1975, that a fee shall be charged to reimburse the Secretary for the expense of providing Federal Parent Locator Services. Moreover, we are using our authority under section 1102 of the Act to expand the cases not subject to the fee to include, in addition to AFDC cases, other IV–D cases in which an assignment of support rights to the State is required (*e.g.*, IV–E foster care and Medicaid cases).

We propose to revise paragraph (e)(2) to permit the State to charge the resident parent, attorney or agent of a child the fee or to pay the fee itself without charging the individual. This provision in the proposed paragraph (e)(2)(i) conforms to current Federal policy in paragraph (e)(3) on Federal Parent Locator Service fees paid in parental kidnapping and child custody cases. The new paragraph (e)(2)(i) would give States the same payment option in all three types of cases (IV–D cases in which no assignment of support rights to the State is required, non–IV–D cases in which location of an absent parent is the only service requested, and parental kidnapping/child custody cases). Paragraph (e)(2)(ii) would allow the IV–D agency to recover the fee from the absent parent in non-AFDC cases and repay the applicant or itself, as permitted with application fees for non-AFDC cases under § 302.33. Paragraph (e)(2)(iii) would provide that the payment of a fee by the IV–D agency is not a reimbursable expense under the IV–D program. Rather, such amounts would be counted as program income and, in accordance with § 304.50, would be excluded from quarterly expenditure claims. The current paragraph (e)(3) would be deleted.

We propose to retain the current paragraph (e)(4) and redesignate it as a new paragraph (e). It would continue to require that fees be reasonable and as close to actual costs as possible so as not to discourage use of Federal Parent Locator Services.

Current paragraph (e)(5) provides that the Federal government will collect the fees from the States by an offset of the quarterly grant awards. We propose to change this procedure to more closely match the procedure used in collecting fees from the States in parental kidnapping and child custody cases. This process is contained in current paragraph (e)(6) and may be summarized as follows.

For costs of processing requests to use the Federal Parent Locator Service, the Federal government will bill the IV–D agency periodically. As is currently the case, a fee will be charged to submit a case with a social security number to the Federal Parent Locator Service and an additional fee will be charged to cover costs of searching for a social security number before processing a request for location information. Upon receipt of a bill, the State must transmit payment to the Federal government. If a State fails to pay the fees charged, Federal Parent Locator Services may be suspended for cases subject to the fees until payment is received. Finally, fees shall be transmitted in the amount and manner prescribed by the Office of Child Support Enforcement in instructions. We propose to place the procedures for Federal collection of fees outlined above in a new paragraph (e)(4) that would cover fees in applicable child support cases and all parental kidnapping/child custody cases. Current paragraphs (e) (5) and (6) would be deleted.

We expect that States will be able to have mechanisms in place to collect and transmit the fees with minimal lead time, since they have already developed procedures for handling FPLS user fees in parental kidnapping and non–IV–D cases. To simplify procedures, States may wish to collect the FPLS fee "up front" along with the application fee for IV–D services.

Based on the number of requests for FPLS services anticipated for FY 1991, we expect to recover approximately $1 million per year through the charges proposed by this regulation.

Fees Currently in Effect

Most of the billing and payment procedures, proposed for extension in this regulation to all child support cases subject to a fee, have been in effect for parental kidnapping and child custody cases since 1981 when the final regulations on use of the Federal Parent Locator Service in parental kidnapping and child custody cases were published. These procedures result in a direct payment to the Office of Child Support Enforcement, through an HHS account, and expedite availability of funds specific to operation of the Federal Parent Locator Service.

Under current policies on use of the Federal Parent Locator Service in parental kidnapping and child custody cases (OCSE Action Transmittal 81–12, dated June 15, 1981), we charge a fee of $10 for each request that contains a social security number, and an additional fee of $4 for each request submitted without a social security number. If the social security number cannot be found, the $10 fee is not charged since location requests cannot be processed without this number. A similar fee is charged for non–IV–D location requests pursuant to OCSE–AT–82–17 (dated November 12, 1982). States are notified by action transmittal in advance of any change in the fee amounts. States are currently billed on an annual basis to minimize the administration and paperwork connected with this process. Thus, despite the implementation of this rule when it is published in final form, States that expect to pay the fees themselves rather than charge for the services should have ample time to obtain any budget authorization needed to cover the cost of the fees.

We propose to extend procedures used in parental kidnapping and child custody cases to all child support cases subject to the fee, so that these requests are handled in the same manner. OCSE is currently reviewing the costs and determining a user fee which is anticipated to be substantially less than is currently charged, due to technological improvements and an expected increase in requests and the resulting economies of scale. At present, we expect the fee will not exceed $2.00 per request. Because of the low fee, the volume of requests should not be affected.

An Action Transmittal will be issued setting forth fees and procedures for billing and payment for all requests for Federal Parent Locator Services in parental kidnapping and child custody cases, cases in which an assignment of support rights to the State is not required, and requests for location in non–IV–D cases. We will review costs periodically and make adjustments to the fees and revise the Action Transmittal, if appropriate. Upon publication of the final regulation, OCSE–AT–76–3 will be rescinded, effective when this rule is published in final form.

Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act of 1980 (Public Law 96–354), we are required to prepare a regulatory flexibility analysis for those rules which would have a significant economic impact on a substantial number of small entities. Because the impact of these regulations is on States and, at State option, individuals, these regulations would not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a "major" rule for the following reasons:

(1) The annual effect on the economy would be less than $100 million;

(2) This rule would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) This rule would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 45 CFR part 303

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program)

Dated: August 21, 1990.

Jo Anne B. Barnhart,

Director, Office of Child Support Enforcement.

Dated: September 27, 1990.

Louis W. Sullivan,

Secretary.

PART 303—STANDARDS FOR PROGRAM OPERATIONS

1. The authority citation for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

2. For the reasons set forth in the preamble, we propose to revise 45 CFR 303.70(e) to read as follows:

§ 303.70 Requests by the State parent locator service for information from the Federal Parent Locator Service (PLS).

* * * * *

(e)(1) The IV–D agency shall pay the fees required under sections 454(17) and 453(e)(2) of the Act in cases other than those in which individuals are required to assign their support rights to the State.

(2)(i) The IV–D agency may charge an individual requesting information or pay without charging the individual the fee required under sections 453(e)(2) and 454(17) of the Act.

(ii) The State may recover the fee collected under section 453(e)(2) from the absent parent who owes a support obligation to a non-AFDC family on whose behalf the IV–D agency is providing services and repay it to the applicant or itself.

(iii) State funds used to pay the fee under section 453(3)(2) are not program expenditures under the State plan but are program income under § 304.50 of this chapter.

(3) The fees required under sections 453(e)(2) and 454(17) of the Act shall be reasonable and as close to actual full costs as possible so as not to discourage use of Federal PLS services by authorized individuals.

(4)(i) For costs of processing requests for information under sections 453(e)(2) and 454(17) of the Act, the Federal government will bill the IV–D agency periodically. A fee will be charged for submitting a case to the Federal PLS for location information. If a social security number is not submitted with the case, an additional fee will be charged to cover the costs of searching for a social security number before processing a request for location information. If a social security number cannot be found, only the additional fee will be charged.

(ii) The IV–D agency shall transmit payment to the Federal government upon receipt of a bill. If a State fails to pay the appropriate fees charged by the Office under this section, the Federal PLS services provided in cases subject to the fees may be suspended until payment is received.

(iii) Fees shall be transmitted in the amount and manner prescribed by the Office in instructions.

[FR Doc. 90–26877 Filed 11–14–90; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–531, RM–7497]

Television Broadcasting Services; Tuscaloosa, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Black Warrior Broadcasting seeking the allotment of UHF television Channel 23 to Tuscaloosa, Alabama, as that community's third local commercial television broadcast service. Coordinates used for this proposal are 33–08–16 and 87–30–26.

Although the Commission has imposed a freeze on new TV allotments in specified metropolitan areas pending

the outcome of an inquiry into the uses of advanced television systems in broadcasting, this proposal is not affected thereby.

DATES: Comments must be filed on or before December 31, 1990, and reply comments on or before January 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Thomas J. Dougherty, Jr. and Frank R. Jazzo, Esqs., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–531, adopted October 25, 1990, and released November 9, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–26912 Filed 11–14–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–532, RM–7199]

Radio Broadcasting Services; Sheldon, IA, and Jackson and Springfield, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Sheldon Broadcasting Company, Inc., seeking the substitution of Channel 287C2 for Channel 288A at Sheldon, Iowa, and the modification of its license for Station KIWA–FM accordingly. To accommodate the allotment at Sheldon, petitioner also requests the modification of Station KRAQ's license to specify Channel 289A in lieu of Channel 287A at Jackson, Minnesota, and the modification of Station KLPR's construction permit to specify operation on Channel 234A in lieu of its present Channel 289A at Springfield, Minnesota.

DATES: Comments must be filed on or before December 31, 1990, and reply comments on or before January 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark E. Fields, Esq., Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making and Orders to Show Cause, MM Docket No. 90–532, adopted October 25, 1990, and released November 9, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Channel 287C2 can be allotted to Sheldon, Iowa, in compliance with the Commission's minimum distance separation requirements and can be used at Station KIWA–FM's present transmitter site. The coordinates for Channel 287C2 at Sheldon are North Latitude 43–11–00 and West Longitude 95–52–05. Channel 289A can be allotted to Jackson, Minnesota, in compliance with the Commission's minimum distance separation requirements and can be used at Station KRAQ's licensed transmitter site, at coordinates North Latitude 43–37–42 and West Longitude 94–59–12. Channel 234A can be alloted to Springfield, Minnesota, and can be used at the transmitter site specified in Station KLPR's construction permit, at coordinates North Latitude 44–14–13 and West Longitude 95–06–20. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 287C2 at Sheldon or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–26911 Filed 11–14–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–533, RM–7529]

Radio Broadcasting Services; Florence, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Coast Broadcasting Co., Inc., seeking the allotment of Channel 295A to Florence, Oregon, as the community's second local FM service. Channel 295A can be allotted to Florence in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 295A at Florence are North Latitude 43–58–06 and West Longitude 124–06–30.

DATES: Comments must be filed on or before December 31, 1990, and reply comments on or before January 15, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jon Thompson, 1231–18th Street, P.O. Box 20000, Florence, Oregon 97439 (Petitioner); Duane J. Polich, P–N–P Broadcasting, Inc., P.O. Box 2869, Othello, Washington 99344 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–533, adopted October 26, 1990, and released November 9, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–26913 Filed 11–14–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 901187–0287]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed 1991 fishing quotas.

SUMMARY: NOAA issues a notice of proposed quotas for the surf clam and ocean quahog fisheries for 1991. These quotas were selected from a range defined as optimum yield (OY) for each fishery. The intended effect of this action is to establish allowable harvests of surf clams and ocean quahogs from the exclusive economic zone in 1991.

DATES: Comments will be accepted until December 10, 1990.

ADDRESSES: Send comments on the proposed 1991 fishing quotas to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. Please mark the outside of the envelope "Surf Clam Quota Comments". Information used to justify the quota is available for public inspection during business hours at this address; copies may be requested in writing.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (Resource Policy Analyst) 508–281–9252.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from within ranges that have been identified as OY for each fishery.

In specifying the quota values in this action, the Secretary considered the latest available stock assessments prepared by NMFS, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas likely to be reopened to fishing. This information was presented in a written report prepared by the Council and adopted by the Regional Director, Northeast Region, NMFS. The Secretary has also received and taken into account specific recommendations from the Council.

The proposed quotas for the surf clam and ocean quahog fisheries for 1991 are:

1991 PROPOSED SURF CLAM/OCEAN QUAHOG QUOTAS

[In bushels]

Fishery	1991 proposed quotas
Surf clam	2,850,000
Ocean quahog	5,300,000

The implementation of Amendment 8 to the FMP (55 FR 24184, June 14, 1990) combined the three surf clam management areas (Mid-Atlantic, Nantucket Shoals, Georges Bank) into one. Prior to Amendment 8, quotas were specified for each area. The amendment removed the quarterly quotas for furf clams and the rollover provision that allowed for the addition or subtraction of unused or overharvested quota amounts from quarter to quarter and year to year.

The proposed surf clam quota for 1991 is the same as the sum of the base quotas for the Mid-Atlantic and Nantucket Shoals Areas for each of the years 1986 through 1990. The base quota of 300,000 bushels for the Georges Bank Area in those years was not included in the proposed overall quota for 1991 because the Council anticipates a continuation of a closure of the area east of 69° west longitude and south of 42° 20' north latitude. This area, encompassing the old Georges Bank Area, Was closed (54 FR 33700, August 16, 1989; 54 FR 47364, November 14, 1989; and 55 FR 22336, June 1, 1990) when it was determined that high concentrations of paralytic shellfish poison toxin were present in the area. The area is closed until November 21, 1990. (55 FR 35435, August 30, 1990) after which a continuing closure (55 FR 37500, September 12, 1990) proposed under the authority of the amended FMP is expected to be implemented. If the 300,000 bushels were allocated, the likley results is that increased effort and landings would occur in the areas previously designated as the Mid-Atlantic or Nantucket Shoals Areas.

The proposed ocean quahog quota is the same as was allocated in 1990. This amount reflects anticipated 1991 landings based upon what occurred in the 1990 fishery. In recommending this amount, the Council intent was to minimize the impact on the fishery and market that a significant increase in harvest could cause.

BEST COPY AVAILABLE

Comments on the proposed quotas will be accepted for 30 days. Comments will be considered by the Secretary, who will determine appropriate final annual quotas for each fishery and publish those quotas by notice in the Federal Register.

Others Matters

This action is taken under authority of 50 CFR 652.21 and is taken in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 652

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 9, 1990.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90-26960 Filed 11-9-90; 2:24 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 221
Thursday, November 15, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Exceptions to Reporting Requirement, under the IC/DV Procedures.

Form Number: Agency—EAR § 775.3(i)(3) and 775. 9(g)(2); OMB—Control No. 0694-0001.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 61 respondents; 32 reporting/recordkeeping hours. Average time per respondent is 30 minutes for reporting and 1 minute for recordkeeping.

Needs and Uses: This reporting requirement allows U.S. exporters to request an exception to the import certificate (or its equivalent) procedure. This reporting requirement also covers requests for exceptions to the delivery verification procedure.

Affected Public: Businesses or other for-profit institutions; small business or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: November 8, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-26868 Filed 11-14-90; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-588-817]

Postponement of Preliminary Antidumping Duty Determination: High Information Content Flat Panel Displays and Subassemblies Thereof from Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is postponing its preliminary determination in the antidumping duty investigation of high information content flat panel displays and subassemblies thereof (FPDs) from Japan. The statutory deadline for issuing this preliminary determination is no later than February 13, 1991.

EFFECTIVE DATES: November 15, 1990.

FOR FURTHER INFORMATION CONTACT: Bradford Ward (202-377-5288), Karmi Leiman (202-377-8498), or Joel Fischl (202-377-1778 , Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: On August 7, 1990, the Department initiated an antidumping duty investigation of FPDs from Japan. The notice stated that we would issue our preliminary determination on or before December 26, 1990 (55 FR 33148, August 14, 1990).

Respondents allege that this investigation is "extraordinarily complex" under section 733(c)(1)(B) of the Tariff Act of 1930, as amended (the Act). Accordingly, they request that the Department postpone the preliminary determination until February 13, 1991.

We determine that this case is extraordinarily complicated because it involves further manufacturing of subject merchandise by the respondents' U.S. subsidiaries before sale to an unrelated party, constructed value, third country sales data, a large number of transactions and because of the complex nature of the product. We have determined that the parties concerned are cooperating and that additional time is necessary to make a preliminary antidumping duty determination.

For these reasons, we determine that this investigation is extraordinarily complicated in accordance with section 733(c)(1)(B)(i) (I) and (II) of the Act and that additional time is necessary to make this preliminary determination in accordance with section 733(c)(1)(B)(ii) of the Act. The statutory deadline for issuing this determination is no later than February 13, 1991.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(b)(3)(d).

Dated: November 7, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-26946 Filed 11-14-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-030]

Large Power Transformers From France; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 1, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on large power transformers from France. The review covered one manufacturer of this merchandise to the United States and the period November 1, 1973 through May 31, 1983.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we published the final results of review on September 20, 1984. However, we deferred our final analysis of two units shipped in 1980. We have now completed our review of these units.

EFFECTIVE DATE: November 15, 1990.

FOR FURTHER INFORMATION CONTACT: Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–5253.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1984, the Department of Commerce (the Department) published in the **Federal Register** (49 FR 10288) the preliminary results of its administrative review of the antidumping finding on large power transformers from France (37 FR 11772, June 14, 1972). We gave interested parties an opportunity to comment on the preliminary results. At the requests of the petitioner, Westinghouse, and respondent, Alsthom-Atlantique, we held a hearing on April 9, 1984. On September 20, 1984, we published the final results of review (49 FR 36888), deferring the final analysis of two units. The Department has now completed the administrative review of those two units in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of large power transformers; that is, all types of transformers rated 10,000 kVA (kilovolt/amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term "transformers" includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. During the review period covered merchandise was classifiable under item numbers 682.0765, 682.0765, and 682.0775 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) items 8504.22.00, 8504.23.00, 8504.34.33, 8504.40.00, and 8504.50.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer of transformers, Alsthom-Atlantique (Alsthom), and two units shipped during the period May 1, 1980 through May 31, 1983.

Analysis of Comments

Westinghouse had three comments regarding our analysis of U.S. units H 66820–01 and H 66820–02 and one comment regarding the home market comparison model, 4475–L (see comments 19–22 of the September 20, 1984 notice of final results). In response, we deferred our analysis of the units, pending further investigation.

Comment 1: Westinghouse questions the veracity of price information submitted on U.S. transformers H 66820–01 and H 66820–02. Alsthom maintains that there is no reason to question the value of these transformers.

Department's position: We have reviewed the information Alsthom submitted to the Department on its U.S. prices of units H 66820–01 and H 66820–02 and have found no reason to question the accuracy of the information. In addition, we confirmed with the Customs Service that the entered values of the transformers were appropriate. Therefore, we are satisfied that Alsthom reported the prices appropriately.

Comment 2: Westinghouse argues that the Department did not properly account for the high accuracy class on the bushing current transformers (BCTs) on U.S. transformers H 66820–01 and H 66820–02. Westinghouse argues that Westinghouse Price Rules (WPR) 48–420, Section 8, Rule 2 requires a $9,504 adjustment for the six high voltage BCTs, a $1,977 adjustment for the three low voltage bushings, and a $659 adjustment for the neutral bushings.

Department's position: We agree and have made the appropriate adjustments to the calculations.

Comment 3: Westinghouse argues that the Department did not correctly account for the extra creep bushings on U.S. transformers H 66820–01 and H 66820–02, and submits that the Department should extrapolate from the WPR to make the adjustment.

Department's position: We agree with petitioner's proposal to extrapolate from the WPR to make the necessary adjustment for the extra creep bushings.

Comment 4: Westinghouse argues that the Department erred in calcuating the adjustment for the impedance limits under WPR 48–240, section 5, rule 22 and that a 6 percent, rather than 14 percent, adjustment is warranted on home market transformer 4475–L.

Department's position: We agree and have made the appropriate adjustments to the calculations.

Final Results of Review

We have recalculated the margin for these units according to the methodology established in the September 20, 1984 notice of final results. As a result of our analysis, there is no dumping margin for these units.

The Department will issue appraisement instructions for the appropriate entries directly to the Customs Service.

The cash deposit requirements in our notice of final results of administrative reviews (52 FR 36294, September 28, 1987) remain in effect for Alsthom and all other firms.

This administrative review and notice are in accordance with section 751(a)(1)) and 19 CFR 353.22.

Dated: November 6, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–26947 Filed 11–14–90; 8:45 am]

BILLING CODE 3510–DS–M

[Application No. 89–A0016]

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an amended Export Trade Certification of Review.

SUMMARY: The Department of Commerce, has issued an amendment to the Export Trade Certificate of Review granted to the National Geothermal Association. Notice of issuance of the Certificate was published in the **Federal Register** on February 9, 1990 (55 FR 4647).

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 89–00016 was issued to the National Geothermal Association (NGA) on February 5, 1990. Notice of issuance of the Certificate was published in the **Federal Register** on February 9, 1990 (55 FR 4647).

NGA has amended its Certificate as follows:

(1) By adding the following companies as "Members" of the Certificate: Ballew Tool Company; Big Bear Mud & Engineering Company; Calpine Corporation; Anna Carter & Associates; Exergy, Inc.; GeoProducts Corporation; Geothermal Development Associates; Independent Power Corporation; M–I Drilling Fluids Company, and its controlling entity Dresser Industries, Inc.; Maxwell Laboratories, S–CUBED Division, and its controlling entity Maxwell Laboratories, Inc.; U.S. Geothermal Industries Corporation; Valley Engineers, Inc.; Karen Venable; Western Atlas International, Inc.; and Williams Tool Company, Inc.; and

(2) By indicating that Eastman Christensen, a current Member of the Certificate, is now a wholly-owned subsidiary of Baker Hughes Incorporated, having recently been acquired from the Norton Company.

EFFECTIVE DATE: August 9, 1990.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

Dated: November 7, 1990.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 90–26886 Filed 11–14–90; 8:45 am]

BILLING CODE 3510–DR–M

Export Trade Certificate of Review

ACTION: Notice of Application for an Amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether the Certificate should be amended. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 90–2AE05."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 90–00005, which was issued on August 10, 1990 (55 FR 33740, August 17, 1990). The applicant has requested expedited review of the application pursuant to 15 CFR 325.8. The California Kiwifruit Commission ("CKC") has previously submitted an application (No. 90–A0005) to amend its Certificate by adding California Kiwifruit Exporters Association ("CKEA") as a member of the Certificate (FR 41871, October 16, 1990). The application for the first amendment is currently under review.

Summary of the Application

Applicant: California Kiwifruit Commission, 1540 River Park Drive, suite 110, Sacramento, California 95815.

Contact: Jennifer K. Wirick, Esquire.

Telephone: (202) 347–9300.

Application No.: 90–2AE05.

Date Deemed Submitted: November 1, 1990.

Request for Amended Conduct

CKC seeks to amend its Certificate to:

1. Add the following three companies as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Coast-To-Coast Produce Co., San Luis Obispo, California; Nash De Camp Company, Visalia, California; and Tufts Ranch, Winters, California;

2. Delete Pandol Brothers, Inc., Delano, California as a "Member" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1));

3. Clarify that CKEA was established by CKC to conduct Export Trade Facilitation Services on behalf of its Members, and to participate in the Export Trade Activities and Methods of Operation contained in CKC's original certificate;

4. Clarify that the actual physical export of kiwifruit will not take place through CKC, but will be performed by individual Members and facilitated by CKC and/or CKEA;

5. Add "establishment of brokerage fees" as an Export Trade Activities and Methods of Operation and provide that information may be exchanged among Members concerning brokerage fees.

6. Provide that CKEA directors may be elected by the Members casting votes weighted in proportion to the volume of the Members' kiwifruit exports.

Dated: November 8, 1990.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 90–26887 Filed 11–14–90; 8:45 am]

BILLING CODE 3510–DR–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Request for Panel Review of Final Determination made by the Canadian International Trade Tribunal continuing the finding of material injury originally made on April 15, 1983, respecting Certain Dumped Integral Horsepower Induction Motors, One Horsepower (1 HP) to Two Hundred Horsepower (200 HP) Inclusive, with Exceptions, Originating in or Exported from the United States of America, filed by Baldor Electric Company, Dryden Agencies Ltd. and Canadian Electro Drives (1982) Ltd. with the Canadian Section of the Binational Secretariat on October 31, 1990.

SUMMARY: On October 31, 1990, a Request for Panel Review was filed with the Canadian Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final determination made by the Canadian International Trade Tribunal continuing the finding of material injury originally made on April 15, 1983, respecting Certain Dumped Integral Horsepower Induction Motors, One Horsepower (1HP) to Two Hundred Horsepower (200 HP) Inclusive, with Exceptions, Originating in or Exported from the United States of America, which was published in the *Canada Gazette*, part I (Vol. 124, No. 42) on October 20, 1990. The Binational Secretariat has assigned Case Number CDA-90-1904-01 to this Request for Panel Review.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter will be conducted in accordance with these rules.

Filing Deadlines

Rule 35(2) of the rules requires the United States Secretary to publish a notice stating that a Request for Panel Review has been received. The Request for Panel Review was filed with the Canadian Section of the Binational Secretariat on October 31, 1990, pursuant to Article 1904 of the Agreement.

Rule 35(1)(c) of the Rules provides that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is November 30, 1990);

(b) a party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the dealine for filing a Notice of Appearance is December 17, 1990);

(c) in the case of a final determination made in Canada, any person that would be entitled to appear and be represented in a judicial review of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is December 17, 1990); and

(d) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: November 8, 1990.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 90-26940 Filed 11-14-90; 8:45 am]

BILLING CODE 3510-GT-M

Harvard University, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket number: 90-102. *Applicant:* Harvard University, Cambridge, MA 02138. *Instrument:* Gas Chromatograph/Mass Spectrometers, Model JMS-SX102. *Manufacturer:* JEOL, Japan. *Intended use:* See notice at 55 FR 30952, July 30, 1990. *Reasons:* The foreign instrument provides (1) FAB ionization, (2) a scan rate to 0.1 seconds per decade and (3) resolution to 60 000.

Docket number: 90-104. *Applicant:* The University of Alabama, Tuscaloosa, AL 35487-0336. *Instrument:* Mass Spectrometer, Model VG AutoSpec-R. *Manufacturer:* VG Instruments, Inc., United Kingdom. *Intended use:* See notice at 55 FR 30952, July 30, 1990. *Reasons:* The foreign instrument provides: (1) EBE geometry for linked scans, (2) FAB ionization and (3) a scan rate to 0.1 seconds per decade.

Docket number: 90-110. *Applicant:* Massachusetts Institute of Technology, Cambridge, MA 02139. *Instrument:* Refractometer, Model R-1. *Manufacturer:* Cannon Europa NV, The Netherlands. *Intended use:* See notice at 55 FR 30953, July 30, 1990. *Reasons:* The foreign instrument permits measurement of visual accommodation without rigid head fixation and employs a see-through visual field for a wide selection of display targets.

Docket number: 90-117. *Applicant:* National Institute of Standards and Technology, Gaithersburg, MD 20899. *Instrument:* Velocity Selector for Small Angle Neutron Scattering Instrument, Model MDR-8-410-420. *Manufacturer:* Transelektro, Hungary. *Intended use:* See notice at 55 FR 32675, August 10, 1990. *Reasons:* The foreign instrument provides: (1) A beam size of 50 × 50 mm, (2) 75% transmission, and (3) a wavelength range of −4.0 to 35 angroms.

Docket number: 90-120. *Applicant:* Pennsylvania State University, University Park, PA 16802. *Instrument:* Modulated Chlorophyll Fluorescence Measuring System. *Manufacturer:* Heinz Walz GmbH, West Germany. *Intended use:* See notice at 55 FR 32675, August 10, 1990. *Reasons:* The foreign instrument uses a pulse modulated source to provide in situ measures of chlorophyll fluorescence that are independent of ambient light intensity.

The National Institutes of Health advises in its memoranda dated September 18, 1990, that (1) The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-26948 Filed 11-14-90; 8:45 am]

BILLING CODE 3510-DS-M

University of California, San Diego, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket number: 90-109. *Applicant:* University of California, San Diego, La Jolla, CA 92093-3017. *Instrument:* Mass Spectrometer, Model MAT 252. *Manufacturer:* Finnigan Corporation, West Germany. *Intended use:* See notice at 55 FR 30952, July 30, 1990. REASONS: The foreign instrument provides an internal precision of 0.006‰ for 10 bar μ1 samples of SO_2 or SF_6.

Docket number: 90-111. *Applicant:* Duke University Medical Center, Durham, NC 27710. *Instrument:* Mechanical and Optical Measurement of Muscle Contractile Biophysics Station. *Manufacturer:* Wissenschaftliche Gerate, Dr. Guth, West Germany. *Intended use:* See notice at 55 FR 30953, July 30, 1990.

Reasons: The foreign instrument can measure the shortening of a contractile tissue with: (1) Sensitivity to velocity in the 300μm/s range, (2) force resolution of 0.3mg and (3) capability to rapidly change ambient solutions.

Docket number: 90-124. *Applicant:* Research Foundation of State University of New York, Stony Brook, NY 11794. *Instrument:* Mass Spectrometer, Model 262V. *Manufacturer:* Finnigan MAT, West Germany. *Intended use:* See notice at 55 FR 32675, August 10, 1990. *Reasons:* The foreign instrument can measure 10 nanogram samples with a precision of 20 ppm for Nd, 50 ppm for Sr, and 0.5% for Pb and B.

Docket number: 90-127. *Applicant:* Lamont-Doherty Geological Observatory of Columbia University, Palisades, NY 10964. *Instrument:* Mass Spectrometer, Model Sector 54. *Manufacturer:* VG Isotech, United Kingdom. *Intended use:* See notice at 55 FR 32676, August 10, 1990. *Reasons:* The foreign instrument provides: (1) A nine-collector Faraday cup array, (2) an ion-counting Daly detector and (3) peak flatness better than ± 1 part in 10^4 over 240 ppm in mass.

Docket number: 90-131. *Applicant:* National Institutes of Health, Bethesda, MD 20892. *Instrument:* Gas Chromatograph Mass Spectrometer, Model JMS-SX102. *Manufacturer:* JEOL, Japan. *Intended use:* See notice at 55 FR 32676, August 10, 1990. REASONS: The foreign instrument provides: (1) Resolution to 60 000, (2) a scan speed to 0.1 second per decade and (3) a dual FAB target probe.

The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-26949 Filed 11-14-90; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket number: 90-029R. *Applicant:* University of Vermont, Department of CRC, MFU Building, Burlington, VT 05405. *Instrument:* Mass Spectrometer, Model VG SIRA SERIES II. *Manufacturer:* VG Isogas, United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of March 13, 1990.

Docket number: 90-036R. *Applicant:* Cornell University, Ithaca, NY 14853. *Instrument:* Mass Spectrometer, Model 252. *Manufacturer:* Finnigan MAT, West Germany. Original notice of this resubmitted application was published in the **Federal Register** of March 13, 1990.

Docket number: 90-048R. *Applicant:* University of Virginia, Department of Environmental Sciences, Charlottesville, VA 22903. *Instrument:* Mass Spectrometer, Model PRISM Series II. *Manufacturer:* VG Instruments, United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of April 17, 1990.

Docket number: 90-065R. *Applicant:* Louisiana State University Medical Center, 6400 Perkins Road, Baton Rouge, LA 70808. *Instrument:* Mass Spectrometer, Model Delta S. *Manufacturer:* Finnigan MAT, West Germany. Original notice of this resubmitted application was published in the **Federal Register** of May 2, 1990.

Docket number: 90-184. *Applicant:* Hawaii Institute of Geophysics, 2525 Correa Road, Honolulu, HI 96822. *Instrument:* Two (2) Field Portable Remote Radon Detectors, Model 611. *Manufacturer:* Alpha Nuclear Corporation, Canada. *Intended use:* The instrument will be used for long-term monitoring study of hourly changes in shallow soil gas radon concentrations on the island of Hawaii and an analysis of correlations between observed short-term variations in radon activities and the occurrence of earthquakes and meteorological changes. Another experiment involves investigation of the effects of soil permeability and soil moisture on subsurface radon concentrations and on the variability of radon with changing weather conditions. *Application received by commissioner of customs:* October 9, 1990.

Docket number: 90-185. *Applicant:* University of Arizona, Department of Geosciences, Gould-Simpson Building 208, Tucson, AZ 85719. *Instrument:* Mass Spectrometer, Model Delta S. *Manufacturer:* Finnigan, MAT, GmbH, West Germany. *Intended use:* The instrument will be used in electron impact ionization mass spectrometry for the measurement of the isotopic rations of carbon, nitrogen, oxygen and hydrogen. *Application received by commissioner of customs:* October 9, 1990.

Docket number: 90-186. *Applicant:* Cornell University Medical Center, 1300 York Avenue, New York, NY 10021. *Instrument:* Electron Microscope, Model CM 10/PC. *Manufacturer:* N.V. Philips, The Netherlands. *Intended use:* The instrument will be used in research

related to brain functions involved in neurological disorders focusing on the following morphological studies: (1) Synaptology and plasticity; (2) localization of the beta adrenergic receptor mRNA; (3) transmitter-specific interactions of mesolimbic and nigrostriatal dopaminergic neurons; (4) cellular interactions between neurons in circumventricular organs; (5) circuitry of the septo-hippocampal pathway that may be implicated in memory dysfunctions; (6) synaptic interactions associated with central control of the circulation through the nuclei of the solitary tracts, rostral ventrolateral medulla, and spinal cord; (7) local neural control of cerebral blood flow and metabolism; and (8) neuropathological changes caused by accumulation of excessive hydrogen ions. *Application received by commissioner of customs* October 9.

Docket number: 90-187. *Applicant:* University of Michigan, Department of Anatomy and Cell Biology, Medical Science II Building, Ann Arbor, MI 48109-0616. *Instrument:* Electron Microscope, Model CM 10/PC. *Manufacturer:* N.V. Philips, The Netherlands. *Intended use:* The instrument will be used to study biological materials in medical research projects, specifically the inner ears of guinea pigs, muscles of rats, epithelial cells from frog urinary bladder, mouse and chick embryos and goldfish eyes. In all cases the instrument will be used to study the ultrastructure of these tissues. *Application received by commissioner of customs:* October 9, 1990.

Docket number: 90-188. *Applicant:* The Ohio State University, Campus Chemical Instrument Center, 176 West 19th Avenue, Columbus, OH 43210. *Instrument:* Mass Spectrometer System, Model MAT 900. *Manufacturer:* Finnigan MAT Corp., West Germany. *Intended use:* The instrument will be used for the analysis of chemical compounds isolated or synthesized by faculty research groups. Experiments will include but are not limited to accurate-mass measurement to determine chemical formula, gas- or liquid- chromatography/mass spectrometry, fast ion bombardment for detection of involatile and/or polar species, chemical ionization and the extensive software needed for routine interpretation thereof. *Application received by commissioner of customs:* October 10, 1990.

Docket number: 90-189. *Applicant:* Cedars-Sinai Medical Center, 8700 Beverly Boulevard, Los Angeles, CA 90048. *Instrument:* Electron Microscope, Model EM 902A PC/ST/G45. *Manufacturer:* Carl Zeiss, West Germany. *Intended use:* The instrument will be used for studies of the following which depend upon ultrastructural examinations and/or fine structural localization of cellular constituents: (1) Ultrastructural abnormalities in the skeletal dysplasias, (2) human bone organ culture and human chondrocytes; (3) osteoporosis and bone cell function, (4) distribution of lead in bone and kidney and (5) matrix vesicles and calcification. *Application received by commissioner of customs:* October 15, 1990.

Docket number: 90-190. *Applicant:* University of California, San Diego, 8655 Production Avenue, San Diego, CA 92121. *Instrument:* AMG Streamer 37/43. *Manufacturer:* AMG Ateliers Mecaniques, France. *Intended use:* The instrument will be used at sea to study the structure and character of the sediments and rocks beneath the sea floor. Experiments will consist of seismic stratigraphic and age studies, surveys to determine where the most productive sites are for a Deep Ocean Drilling Program. *Application received by commissioner of customs:* October 16, 1990.

Docket number: 90-191. *Applicant:* San Diego State University, Department of Geological Sciences, San Diego, CA 92812. *Instrument:* Mass Spectrometer, Model VG Sector 54. *Manufacturer:* Vacuum Generators, Inc., United Kingdom. *Intended use:* The instrument will be used for the precise determination of isotope ratios of elements such as U, Th, Pb, Pu, Rb, Sr, Nd, Sm, Ca, K, Cs, Ba, and B in geologic materials (rock and minerals). In addition, the instrument will be used in the courses Isotope Geochemistry and Groundwater Geochemistry to train undergraduate and graduate students in isotope geochemical research including radiometric age dating, isotope tracer studies and isotope dilution studies. *Application received by commissioner of customs:* October 24, 1990.

Docket number: 90-192. *Applicant:* University of Southern California, University Park Campus VHE 506, Los Angeles, CA 90089-0241. *Instrument:* Electron Microscope, Model EM-002B with Accessories. *Manufacturer:* Akashi Beam Technology, Japan. *Intended use:* The instrument will be used for the study of a range of semiconductor materials relevant to optoelectronic and photonic devices including III-V and II-VI semiconductors. The experiments involve high resolution lattice imaging of atomic planes in optoelectronic and photonic device structures made of ultrathin films of the materials. *Application received by commissioner of customs:* October 24, 1990.

Docket number: 90-193. *Applicant:* NOAA-PMEL-MSRD, 7600 Sandpoint Way N.E., Seattle, WA 98115. *Instrument:* (3) Loran-C Drifting Buoys, SIEMAC Ltd., Canada. *Intended use:* The instruments will be deployed in the water and allowed to drift with the currents while their locations relative to each other are collected aboard the ship. They will be recovered after two days and redeployed. *Application received by commissioner of customs:* October 24, 1990.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-26950 Filed 11-14-90; 8:45 am]

BILLING CODE 3510-DS-M

University of Wyoming, et al., Consolidated Decision of Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 90-115. *Applicant:* University of Wyoming, Laramie, WY 82071. *Instrument:* System Upgrade for Mass Spectrometer. *Manufacturer:* VG Isotopes Ltd., United Kingdom. *Intended use:* See notice at 55 FR 30953, July 30, 1990.

Docket Number: 90-116. *Applicant:* University of Miami, Coral Gables, FL 33124. *Instrument:* Digital Controller and Hall Effect Transducer Set with Accessories and DTI. *Manufacturer:* GDS Instruments, Ltd., United Kingdom. *Intended use:* See notice at 55 FR 32675, August 10, 1990.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States. *Reasons:* These are compatible accessories for instruments previously imported for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer. We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-26951 Filed 11-14-90; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 900630-0230]

Standard Reference Data Grants and Cooperative Agreements

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Announcing NIST Standard Reference Data Grants and Cooperative Agreements.

SUMMARY: The purpose of this notice is to inform potential applicants that the Standard Reference Data Program (SRD) of the National Institute of Standards and Technology is continuing its program for grants and cooperative agreements to provide critically evaluated data to the scientific and engineering communities (Catalog of Federal Domestic Assistance No. 11-603 "National Standard Reference Data System (NSRDS)"). This year, the areas of priority are crystallographic and electron diffraction, thermochemistry, thermophysics of industrial fluids, analytical chemistry, molecular spectroscopy, and surface characterization. Typical data projects are supported on the order of $30,000 to $100,000 annual funding. In many cases, however, no funds are transferred and the parties work together cooperatively, each funding its own work.

CLOSING DATE FOR APPLICATIONS: Proposals must be received no later than close of business December 31, 1990.

ADDRESSES: Applicants must submit one signed original plus two (2) copies of the proposal along with the Grant Application, revised Standard Form 424 to: Standard Reference Data Program, Attention: Dr. Malcolm W. Chase, National Institute of Standards and Technology, A323 Physics Building, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: John Rumble, (301) 975-2203.

ELIGIBILITY: Academic institutions, Non-Federal agencies, and independent and industrial laboratories.

SUPPLEMENTARY INFORMATION: As authorized by section 16 of the Act of March 3, 1901, as amended (15 U.S.C. 290) and by the Standard Reference Data Act of 1968 (Pub. L. 90-396), the NIST Standard Reference Data (SRD) program conducts directly and through grants and cooperative agreements a program to collect, evaluate, and disseminate scientific and technical data. The emphasis of the program is on data evaluation, that is, the assessment of the quality and reliability of data by examining their documentation, their adherence to known scientific and engineering laws and principles, and the comparison to related data.

Because of the high cost of data programs and as authorized by the Standard Reference Data Act, the SRD Program looks to maximize cooperation between all interested groups. Many SRD projects involve cooperative efforts, thereby maximizing the output from limited resources.

Generally speaking, a Grant provides financial assistance to the recipient and no substantial NIST involvement in the data project except for dissemination of the final results. A Cooperative Agreement for data projects involves a close working relationship between a group of NIST experts and the recipient and, in some cases, financial assistance. Cooperative Agreements with SRD are anticipated to run for 3 to 5 years. However, any financial assistance, whether for Grants or for Cooperative Agreements, will be on a yearly basis.

All data work produced under both grants and cooperative agreements are property of the U.S. Government and may qualify for copyright protection as enabled by the Standard Reference Data Act of 1968 (Pub. L. 90-396).

Program Objectives

a. Diffraction Data: Evaluated diffraction data on organic compounds and surfaces.

b. Thermodynamic Data: Evaluated thermochemistry and thermophysics data for elements, organic substances, and industrial fluids.

c. Surface Characterization Data: Evaluated data from X-Ray photoelectron spectroscopy and closely related techniques.

d. Analytical Chemistry Data: Evaluated data from techniques such as mass spectrometry and NMR spectroscopy.

e. Molecular Spectroscopy: Evaluated data for diatomic molecules.

Proposal Review Process

All proposals are assigned to the appropriate Program Manager of the programs listed above for review, including internal and external peer review, and recommendations on funding. The followintg items will be taken into consideration in the Program Manager's recommendation to the Program Chief.

1. The existence or planned existence of a NIST data activity in this area (see Program Objectives above).

2. Previous data experiences of the applicant.

3. The importance to the U.S. industrial scientific and engineering community.

Applicants should allow up to 60 days processing time. Proposals are evaluated for technical merit by at least three professionals from NIST, the Standard Reference Data Program, or technical experts from other government agencies or the data community at large.

Evaluation Criteria

	Points
a. Need for data activity	0-10
b. Complementary to existing or planned NIST data activity	0-40
c. Related to priority list for SRD FY91 program	0-50
d. Experience of proposing group with respect to	
i. Previous data evaluation—general	0-10
ii. Previous data evaluation in this area	0-30
iii. Experience in computerized databases—general	0-10
iv. Experience in computerized databases in this data area	0-30
e. Experience and expertise of personnel	0-20
f. Need for data evaluation and computerized dissemination by industry	0-30
g. Feasibility of completing project in proposed time	0-20
Total	0-250

Paperwork Reduction Act

The SF-424 mentioned in this notice is subject to the requirements of the Paperwork Reduction Act and it has been approved by OMB under Control No. 0348-0006.

Additional Requirements

All applicants must submit a certification ensuring that employees of the applicant are prohibited from engaging in the unlawful manufacturing, distribution, dispensing, possession or use of a controlled substance at the work site as required by the regulations implementing the Drug-Free Workplace of 1988, 15 CFR part 26, subpart F.

Applicants are subject to Government-wide Debarment and Suspension (nonprocurement) requirements as stated in 15 CFR part 26.

Section 319 of Public Law 101-121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with

a specific contract, grant, or loan. A "Certification of Contracts, Grants, Loans, and Cooperative Agreements" and SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required to be submitted with any application.

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment.

Any recipient/applicant who has an outstanding indebtedness to the Federal Government will not receive a new award until the debt is paid or arrangements satisfactory to the Department are made to pay the debt.

Awards under the Standard Reference Data Program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal Assistance Awards.

Applicants are reminded of the applicability of Executive Order 12372, "Intergovernmental Review of Federal Programs."

Dated: November 8, 1990.

John Lyons,

Director.

[FR Doc. 90–26919 Filed 11–14–90; 8:45 am]

BILLING CODE 3510–13–M

Patent and Trademark Office

[Docket No. 901183–0283]

Request for Information Regarding Process Patent Amendments Made by the Omnibus Trade and Competitiveness Act of 1988

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Request for information from domestic industries regarding possible adverse effects of the process patent amendments made by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–417).

DATES: Comments must be received on or before January 31, 1991.

FOR FURTHER INFORMATION CONTACT: Documents and questions should be submitted to Michael K. Kirk, Assistant Commissioner for External Affairs, Box 4, Patent and Trademark Office, Washington, DC 20231. Telephone at (703) 557–3065.

SUPPLEMENTARY INFORMATION: The Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–417) was enacted on August 23, 1988. Among other things, the Act amended title 35, United States Code, to extend the protection of a process patented in the United States also to products made by that process. As a consequence, whoever without authority imports into the United States, or sells or uses in this country, a product made by a patented process shall be liable as an infringer, if the importation, sale or use occurs during the term of the process patent. (Sections 9002 and 9003 of Pub. L. 100–417). The effective date of that amendment was February 23, 1989.

Section 9007 of the Act requires the Secretary of Commerce to report to the Congress, at the end of each one-year period from the effective date of the above amendments, on the effect of these amendments on those domestic industries that submitted complaints during such period, alleging that their legitimate sources of supply have been adversely affected. Such reports must be submitted for five successive years.

The second report from the Secretary of Commerce to the Congress will be submitted on February 23, 1991, covering the preceding one-year period. Accordingly, it is requested that domestic industries wishing their complaints reflected in the Secretary's report ensure that any submission on this subject is received by the Department of Commerce not later than January 31, 1991.

Dated: October 31, 1990.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 90–26985 Filed 11–14–90; 8:45 am]

BILLING CODE 3510–16–M

COMMODITY FUTURES TRADING COMMISSION

Regulatory Coordination Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Regulatory Coordination Advisory Committee will conduct a public meeting in the Fifth Floor Hearing Room at the Commission's Washington, DC headquarters located at room 532, 2033 K Street NW., Washington, DC 20581, on November 28, 1990, beginning at 2 p.m. and lasting until 5 p.m. The agenda will consist of:

Agenda

1. Report to the Committee from the Working Group on Speculative Limits.
2. Report to the Committee from the Working Group on Regulation of Managed Accounts.
3. Presentation of IOSCO Working Party 5 report comparing international regulatory schemes.
4. Follow-up on Commission activities concerning technical questions raised at last meeting:

(a) Report on transfer of account procedures;

(b) Report on CPO/CTA performance record disclosure—Adjustments for Additions and Withdrawals to Computations of Rate of Return in Performance Records of CPOs and CTAs; and

(c) Status report on pending approval of foreign equity index derivative products—Sydney Futures Exchange, Limited All Ordinaries Share Price Index Futures Contract.

5. Other issues for Committee consideration; additional working groups; timing of next meeting; other Committee business.

The purpose of this meeting is to solicit the views of the Committee on the agenda matters listed above. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on ways to improve coordination and to facilitate cross market transactions, including cross border transactions. The purposes and objectives of the Advisory Committee are more fully set forth in the April 16, 1990 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Chairman Wendy L. Gramm, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Regulatory Coordination Advisory Committee, c/o Ms. Kate Hathaway, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Hathaway in writing to the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on November 9, 1990.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–26987 Filed 11–13–90; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Women in Services Advisory Committee; Meeting

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Executive Committee of the (DACOWITS). The purpose of the meeting is to review unresolved resolutions made by the committee at the DACOWITS 1990 Fall Conference; review the Subcommittee Issue Agenda; and discuss issues relevant to women in the Services. All meeting sessions will be open to the public.

DATE: December 10, 1990, 9:30 a.m.–4 p.m.

ADDRESS: SECDEF Conference room 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Mary C. Pruitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, room 3D769, Washington, DC 20301–4000; telephone (202) 697–2122.

Dated: November 9, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–26938 Filed 11–14–90; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Ad Hoc Committee on the Extension of Dormant Munitions Storage Life and Insensitive High Explosives Research and Development will meet on 18–19 December 1990, from 8 a.m. to 5 p.m. at the ANSER Corp., 1215 Jefferson Davis Highway, Arlington, VA.

The purpose of this meeting is to gather information in support of the SAB study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–26866 Filed 11–14–90; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Availability of the Draft Environmental Impact Statement (DEIS) for the Disposal of Chemical Munitions Stored at Anniston Army Depot, Alabama

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the Notice of Availability of the DEIS on the potential impact of the construction and operation of the proposed chemical agent demilitarization facility at Anniston Army Depot, Alabama. The proposed facility will be used to demilitarize all chemical agents and munitions currently stored at the Anniston Army Depot. The DEIS examines the potential impacts of on-site incineration, alternative sites within Anniston Army Depot and the "no-action" alternative. The "no-action" alternative is considered to be deferral of demilitarization with continued storage of the agents and munitions at Anniston Army Depot.

SUPPLEMENTARY INFORMATION: In its Record of Decision (53 FR, No. 38, pp. 5816–5817) for the Final Programmatic Environmental Impact Statement on the Chemical Stockpile Disposal Program, the Department of the Army selected on-site disposal by incineration at all eight chemical munitions storage sites within the continental United States as the method by which it will destroy its lethal chemical stockpile. The Department of the Army published a Notice of Intent on December 1, 1988 (53 FR, No. 231, pp. 48573–48574) which provided notice that, pursuant to the National Environmental Policy Act and implementing regulations, it was preparing a DEIS for the Anniston chemical munitions disposal facility.

The Department of the Army prepared an EIS to assess the site-specific health and environmental impacts of on-site incineration of chemical agents and munitions stored at Anniston Army Depot. The DEIS for Anniston is now available for comment. Copies may be obtained by writing the Program Manager for Chemical Demilitarization, ATTN: SAIL-PMM-E (Ms. Peggy Thompson), Aberdeen Proving Ground, Maryland 21010–5401. The comments must be received by December 31, 1990, for consideration in the preparation of the Final Anniston EIS. During the public comment period, a public hearing will be scheduled, if necessary.

ADDITIONAL INFORMATION: The Environmental Protection Agency will also publish a Notice of Availability for the DEIS in the **Federal Register.**

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 90–26923 Filed 11–14–90; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub.L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Nuclear Facility Safety.

Date and Time: Thursday, November 29, 1990, 8 p.m. to 10 p.m.; Friday, November 30, 1990, 1 p.m. to 5 p.m.

Place: U.S. Department of Energy, Savannah River Site—Main Entrance, Building 703–41A, Rainbow Conference Rooms, Aiken, South Carolina 29808.

Contact: Wallace R. Kornack, Executive Director, ACNFS, AC–21, 1000 Independence Ave., SW., Washington, DC 20585, 202/586–1770.

Purpose of the Committee: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

TENTATIVE AGENDA

November 29, 1990

8 p.m. Public Comment Session
10 p.m. Meeting Adjourned

November 30, 1990

1 p.m. Chairman Ahearne opens meeting; Selected Safety Issues at the Savannah River Site; Subcommittee Reports; Committee Business
5 p.m. Meeting Ends.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is

empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE-190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on November 9, 1990.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 90-26956 Filed 11-14-90; 8:45 am]

BILLING CODE 6450-01-M

National Environmental Policy Act Guidelines, Revocation

AGENCY: Office of Environment, Safety and Health, DOE.

ACTION: Notice of proposed revocation and request for public comment.

SUMMARY: The Department of Energy (DOE) today proposes revocation of its National Environmental Policy Act (NEPA) Guidelines, as amended, as a technical, conforming change to take effect when new regulations codifying a modified version of the NEPA Guidelines take effect. DOE proposed such a modified version in a notice of proposed rulemaking at 55 FR 46444 (November 2, 1990).

DATES: Written comments on this notice should be submitted on or before December 17, 1990, to ensure their consideration. The public hearing to be held on December 5, 1990, with regard to the notice of proposed rulemaking published at 55 FR 46444 (November 2, 1990) will also apply to this notice.

ADDRESSES: Written comments on this notice and requests to speak at the public hearing should be submitted to Carol M. Borstrom, Director, Office of NEPA Oversight, EH-25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, or may be hand-delivered to the same address on workdays between the hours of 8 a.m. and 4:30 p.m.

The public hearing will be held at the U.S. Department of Energy, room GJ-015, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with the procedures set forth in the notice of proposed rulemaking published at 55 FR 46444 (November 2, 1990).

FOR FURTHER INFORMATION CONTACT: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH-25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600.

SUPPLEMENTARY INFORMATION: DOE originally published its NEPA Guidelines on March 28, 1980, at 45 FR 20694. These Guidelines implemented the procedural provisions of the NEPA as required by the Council of Environmental Quality regulations, 40 CFR parts 1500-1508.

The NEPA Guidelines were subsequently revised a number of times and were republished in their entirety on December 15, 1987 at 52 FR 47662. The Guidelines were further amended on March 27, 1989 at 54 FR 12474 and on September 7, 1990, at 55 FR 37174.

As indicated above, on November 2, 1990, DOE proposed to codify a modified version of the Guidelines as regulations, 55 FR 46444 (November 2, 1990). When DOE issues a notice of final rulemaking based on that proposal, it will be necessary to issue a notice revoking the existing Guidelines in order to terminate their prospective legal effect as of the date that the new regulations take effect. Today's notice proposes that revocation for public comment.

It is hereby proposed to revoke the DOE NEPA Guidelines, as amended, 52 FR 47662 (December 15, 1987), 54 FR 12474 (March 27, 1989), and 55 FR 37174 (September 7, 1990).

Issued in Washington, DC, November 7, 1990.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 90-26957 Filed 11-14-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TM91-6-28-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

November 7, 1990.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on November 2, 1990 tendered for filing the tariff sheets to its FERC Gas Tariff, Original Volume No. 2 listed on the appendix attached on the filing.

These revised tariff sheets reflect changes to Rate schedules TS-4 and TS-1 of Panhandle's FERC gas Tariff, Original Volume No. 2 to reflect (1) ANR Pipeline Company's (ANR) effective transportation charges in ANR's Docket Nos. RP86-169-000, *et al.*, RP89-161-000, *et al.*, CP89-2210-001, TA90-1-48-001, RP88-105 and RP87-25, (2) ANR's effective take-or-pay surcharges in ARN's Docket Nos. RP89-45-007, RP89-127-003, RP89-193-003, TM89-2-48-000, RP90-18-000, RP89-161-000, RP90-46-000, RP90-3-48-000, CP89-2210-04, and RP91-6-000, (3) ANR Storage Company's (ANR Storage) settlement storage charges to Panhandle effective June 1, 1990 as approved by the Commission's Letter Order dated July 9, 1990 in ANR Storage's Docket No. RP89-168-000, and (4) Panhandle's currently effective Annual Charge Adjustments (ACA) effective October 1, 1987, October 1, 1988, October 1, 1989, and proposed effective October 1, 1990 in Docket Nos. RP87-94-002 & 000, TM89-1-28-000, TM90-1-28-000 and TM91-1-28-001, respectively.

Panhandle proposes that the tariff sheets listed on the attached Appendix become effective November 1, 1986, July 1, 1987, October 1, 1987, March 1, 1988, April 1, 1988, July 1, 1988, October 1, 1988, May 1, 1989, July 10, 1989, October 1, 1989, November 1, 1989, November 25, 1989, December 27, 1989, February 1, 1990, May 1, 1990, June 1, 1990, October 1, 1990, November 1, 1990 and November 5, 1990, respectively. Panhandle requests waiver of Section 154.22 of the Commission's Regulations.

Panhandle states that copies of this filing have been sent to ANR Storage and ANR, to the various Panhandle storage customers under Rate Schedules TS-4 and TS-5, and to the respective state regulatory commissions.

Any person desiring to be heard or to protests said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 285.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 15, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protests parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26882 Filed 11-14-90; 8:45 am]

BILLING CODE 6717-01-M

Issuance of Decisions and Orders by the Office of Hearings and Appeals During the Week of September 24 through September 28, 1990

During the week of September 24 through September 28, 1990, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Donald J. Anderson, 9/28/90, LFA-0071

Donald J. Anderson filed an Appeal from a determination issued by the Albuquerque Operations Office (AOO) in which AOO withheld the name of the author of a memorandum Mr. Anderson requested in his Freedom of Information Act (FOIA) request. In considering the Appeal, the DOE found that the justification for withholding the requested information was adequate under the FOIA. The Appeal was, therefore, denied.

Jim Cooper, 9/26/90, LFA-0070

Jim Cooper (Cooper) filed an appeal from a denial by the Albuquerque Operations Office (AOO) of the Department of Energy (DOE) of a Request for Information which he had submitted under the Freedom of Information Act (FOIA). Cooper had requested information concerning the registration of automobiles at the Kirtland Air Force Base in the name of Alvin J. Campbell, Sheriff, Bernalillo County, New Mexico. AOO withheld the information on the grounds that disclosure would constitute an invasion of personal privacy. In considering the Appeal, the DOE found that AOO had failed to address, as a preliminary matter, the existence of a privacy interest in the requested information. Accordingly, Cooper's appeal was granted, and the matter was remanded either for release of the requested information or for issuance of a formal determination which clearly explains the basis for withholding the information.

Remedial Order

Highway Oil Co., Inc., Economic Regulatory Administration, 9/24/90, HRO-0123, KRD-0031, LRZ-0008, LRZ-0007

The DOE issued a Decision and Order concerning a Proposed Remedial Order (PRO) issued by the Economic Regulatory Administration (ERA) to Highway Oil Company, Inc. (Highway). Highway filed a Motion to Dismiss based on the fact that relevant documents that were used to support ERA's findings in the PRO had been withheld by ERA. Under the circumstances, the DOE determined that the PRO should be remanded to ERA for a new determination based on only those overcharges which can be supported by workpapers that have been provided to Highway. Further, a Motion for Discovery filed by Highway and a Motion to Strike filed by ERA were dismissed as moot, as was the Motion to Dismiss.

Request for Exception

Virgin Islands Energy Office, 9/26/90, LEE-0017

The Virgin Islands Energy Office (VIEO) filed an Application for Exception from the Institutional Conservation Program (ICP), 10 CFR part 455.13(d), which provides that ICP grant funds not allocated by a state or territory within a fiscal year cannot be retained by that state and carried over to the subsequent fiscal year. The VIEO stated that, as a result of the severe damage caused by Hurricane Hugo in September 1989, it is unable to complete its grant application or allocate its Fiscal Year 1990 funds within the required time period. The VIEO plans on using its 1990 ICP funds to replace inefficient lighting fixtures in its schools and hospitals with new, energy-efficient fixtures, but stated that it is unable to allocate funds for lighting replacement until repairs funded by the Federal Emergency Management Agency and the Department of Education to lighting fixtures which were damaged by Hurricane Hugo are completed in October 1990. In considering the request, the DOE found that the VIEO was suffering a gross inequity from the requirement that it complete its ICP allocation by the end of Fiscal Year 1990, and determined that some form of exception relief is warranted. However, because the situation which the Virgin Islands faces is only temporary, the DOE also determined that only limited exception relief is necessary to alleviate the gross inequity imposed by the ICP requirement. Consequently, the VIEO will not be required to complete its FY 1990 grant application until January 31, 1991, and will not be required to obligate its Cycle 12 funds until April 30, 1991.

Refund Applications

Empire Sand & Gravel Co. et al., 9/26/90, RF272-31635 et al., RD272-31635 et al.

The DOE issued a Decision and Order concerning applications for refunds filed in the subpart V crude oil proceeding by four asphalt manufacturing and road construction firms. A group of States and Territories (States) objected to the applications on the grounds that the applicants were able to pass through increased petroleum costs to consumers during the consent order period. The only evidence submitted by the States was an affidavit, by an economist stating that, in general, road construction firms were able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicants should receive a refund. However, one of the applicants was unable to determine what percentage of its contracts were covered by cost escalation agreements and, consequently, the DOE reduced this applicant's total volume claim by the amount of its liquid asphalt gallonage claim. The sum of the refunds granted in this Decision is $69,485.

Shell Oil Co./Dow Chemical Co., 9/26/90, RF315-3175, RF315-3176, RF315-7541, RF315-8856.

The DOE issued a Decision and Order granting four Applications for Refund filed by Dow Chemical Co. in the Shell Oil Company special refund proceeding. Dow was granted a refund under the presumption for end-users after it verified that it had not used the petroleum products it purchased to produce other covered products. The total refund granted in the Decision was $79,526 ($61,341 principal plus $18, 185 in interest).

Texaco Inc./ Camino Texaco et al., 9/24/90, RF-321-37 et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed in the Texaco Inc. special refund proceeding. Each of the applicants purchased directly from Texaco and was a reseller whose allocable share is less than $10,000. Two applicants disagreed with their Texaco purchase volume printouts and submitted alternative monthly gallonage figures which they requested that the DOE accept in lieu of Texaco's figures. The remaining two applicants relied solely on monthly schedules of purchases. All of the applicants in this Decision based their monthly gallonage figures on regularly kept business records from the consent order period and documented that they were in business during the time period for which they requested refunds. Accordingly, the DOE accepted the applicants' volume information and determined that each applicant was eligible to receive a refund equal to its

full allocable share. The sum of the refunds granted in this Decision is $18,702 ($15,820 principal and $2,882 interest).

Texaco Inc./Gruver Texaco Wholesale et al., 9/27/90, RF321-221 et al.

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning Applications for Refund filed by a jobber, a consignee that was converted to a jobber during the consent order period, and six retail outlets that were supplied exclusively by the jobber or the consignee/jobber. All eight applicants were owned by the same individual. The DOE noted that consignees are entitled to a refund on the same basis as resellers in order to compensate for possible allocation violations during the refund period, and that the purchase volumes of affiliated firms should be combined in order to calculate one allocable share and in order to determine the appropriate presumption level. The applicants stated that they accepted the presumption of injury; accordingly they were not required to demonstrate injury. Under the mid-level presumption of injury, the jobber and the consignee/jobber were granted a refund of $11,822 ($10,000 principal and $1,822 interest). The applications by the six retail outlets were denied, because applicants are entitled to only one refund for the same refined product purchases and the volumes purchased by the retail outlets were included in calculating the refund amount due the jobber and consignee/jobber.

Vickers Energy Corp. et al./Oklahoma, 9/24/90, RM1-216 et al., RO31-559

The State of Oklahoma requested permission to use a total of $254,733.30 in second-stage funds in two restitutionary programs. These programs would be funded by $1,085, exclusively interest, allocated to the State from the Worldwide Energy Corporation consent order monies; and $253,648.30 in second-stage monies from various sources which were previously disbursed to the State, but not expended on approved programs. The State will utilize $108,000 of this funding on the Low-Income Weatherization Assistance Program to aid Oklahoma's low-income individuals in weatherizing their homes. Oklahoma will devote $146,733.30 to the Elderly and Handicapped Transportation Program, under which residents will be transported to health, shopping, and recreation facilities throughout the State. Oklahoma's second-stage Application for Refund and Motions for Modification were approved in full because the two programs should provide the restitutionary benefits of reduced fuel consumption and expanded transportation services, respectively, to the State's consumers of petroleum products in a timely manner.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Case name	Case No.	Date
Donald M. Downey, Jr. Lahabra Chevron Service Center.	RF272-58553	9/25/90
Exxon Corp./Brooklyn Union Gas Company.	RF307-5707	9/24/90
Exxon Corp./Sartain's Exxon Service, Steve Hunt Exxon, Dan's Harbor Exxon.	RF307-4476 RF307-5706 RF307-9855	9/26/90
Gulf Oil Corp./Public Service of New Hampshire.	RF300-9605	9/25/90
Shell Oil Co./Indiana Harbor Belt Railroad.	RF315-10049	9/27/90
Texaco Inc./Allen's Texaco.	RF321-746 RF321-8286	9/28/90
Texaco Inc./Auto Service & Supply Co., Inc. *et al.*	RF321-1520	9/27/90
Texaco Inc./Doyle Distributing, Inc.	RF321-1792 RF321-4041	9/28/90
Texaco Inc./Eastside Texaco.	RF321-1011 RF321-4599	9/28/90
Texaco Inc./Flick's Texaco.	RF321-1883 RF321-6372	9/28/90
Texaco Inc./Glaub's Texaco Service.	RF321-1558 RF321-7679	9/28/90
Texaco Inc./J.M. Bernard's Garage Inc. *et al.*	RF321-2234	9/27/90
Texaco Inc./Mission Center Texaco *et al.*	RF321-372	9/27/90
Texaco Inc./ Russell K. Kuehl.	RF321-9679	9/26/90
Texaco Inc./Star-Tex Oil Inc., *et al.*	RF321-3218	9/25/90
William E. Baker	RC272-97	9/28/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Allen Boulevard Shell	RF315-5547
Berg's Shell Service	RF315-138
Barron's Welding and Dozer Work	RF315-5550
Boulevard Exxon	RF307-9038
Clint's Texaco	RF321-5000
Cornelius Shell	RF315-5546
Des Moines Asphalt	RF272-42154
Henry Serpa & Sons	RF321-6029
Hill City Oil Co., Inc.	RF315-298
Hillsboro Shell	RF315-5543
Jenney Freight	RF272-70301
Jimmy L. Gregory	RF315-5549
Lamm's Exxon	RF307-8770
Lee Street Texaco	RF321-8393
Morse's Exxon Service	RF307-8878
Norwood Service Corp.	RF315-5655
Pine Cash Grocery	RF315-5551
Portage Oil Company	RF315-275
Progress Shell	RF315-5542
Shop and Tote	RF315-5548
T.V. Highway Shell	RF315-5545
Valley Shell	RF315-5544
Vern's Texaco	RF321-1451

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: November 8, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-26958 Filed 11-14-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3860-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Accidental Release Information Program (EPA ICR# 1331.04; OMB# 2050-0065). This ICR requests renewal of the existing clearance.

Abstract: The Accidental Release Information Program (ARIP) applies trigger criteria (death/injury, large releases above a multiple of the CERCLA reportable quantity, frequent releases from the same facility, and releases of chemicals listed as extremely hazardous substances under SARA § 302) to select for additional reporting certain hazardous substance releases reported to the National Response Center, the EPA or the U.S. Coast Guard. Fixed facilities responsible for the selected release are required to complete and return a questionnaire which asks for more detailed information on the causes and consequences of accidental releases, as well as actions that have been or could have been effective in preventing them from occurring.

The collected information will serve to support a range of chemical accident prevention and preparedness efforts involving industry, local and state government, and EPA regions and headquarters.

Burden Statement: The estimated public reporting burden for this collection of information is 24.5 hours per respondent. This estimate includes time to read the instructions, gather existing information, and prepare and submit the final questionnaire.

Respondents: Owners/operators of fixed facilities with accidental releases meeting trigger criteria.

Estimated No. of Respondents: 1425.

Estimated Total Annual Burden on Respondents: 34,912 hours.

Frequency of Collection: On occasion, when releases meet specific triggers.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460
and
Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530.

Dated: November 6, 1990.

Paul Lapsley, Director,

Regulatory Management Division.

[FR Doc. 90-26932 Filed 11-14-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3860-4; LAG 551000]

Proposed NPDES General Permit for Domestic Wastewater Discharges in the State of Louisiana

AGENCY: Environmental Protection Agency.

ACTION: Notice of draft general NPDES permit.

SUMMARY: The Director now proposes to issue a General Permit for privately owned and publicly owned sewage treatment facilities in the State of Louisiana with design flows of 2,500 gallons per day (gpd) (0.0025 gpd) and greater, but less than 25,000 gpd (0.025 gpd) who treat domestic wastes. When issued, this General Permit will establish effluent limitations, prohibitions, and other conditions on discharges. This Draft General Permit is based on the administrative record available for public review in Region 6 of the Environmental Protection Agency (EPA). The fact sheet sets forth the principal facts and the significant factual, legal and policy questions considered in the development of the Draft General Permit. A copy of the Draft General Permit is available for public review at EPA Region 6 and at the Louisiana Department of Environmental Quality.

DATES: Comment Period: Comments must be received by December 14, 1990.

ADDRESSES: Mail comments to: U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. Documents may also be reviewed at the Louisiana Department of Environmental Quality, 625 Fourth Street, 9th Floor, Baton Rouge, Louisiana 70804-4091.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Caldwell, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733, Telephone: (214) 655-7190.

I. Supplemental Information and Fact Sheet

A. General Permit

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) Permit. In the past, such permits have generally been issued to individual dischargers. However, EPA's regulations authorize the issuance of General Permits to categories of discharges (40 CFR 122.28). EPA may issue a single, General Permit to a category of point sources located in the same geographic area whose discharges warrant similar pollution control measures. The Director (with delegation to the Water Management Division Director) is authorized to issue a General Permit if there are a number of point sources operating in a geographic area that:

1. Involve the same or substantially similar types of operations;
2. Discharge the same types of wastes;
3. Require the same effluent limitations or operating conditions;
4. Require the same or similar monitoring requirements; and
5. In the opinion of the Director, are more appropriately controlled under a General Permit than under individual permits.

B. Any discharger desiring coverage under the General Permit must submit a (1) Notice of Intent, (2) a General Information Form 1 (EPA Form 3510-1) and (3) an EPA Application Form For Facilities That Do Not Discharge Process Wastewater (EPA Form 3510-2E), or Standard Form A-Municipal (EPA Form 7550-22) for publicly owned treatment works.

C. Violations of any conditions of a General Permit constitutes a violation of the Act and subjects the discharger to the penalties specified in Section 309 of the Act. Any owner or operator authorized by a final General Permit may be excluded from coverage by applying for an individual permit. This request may be made by submitting a NPDES permit application, together with reasons supporting the request. New facilities, that apply, may be covered under this General Permit unless they apply for an individual permit using the appropriate application.

D. The Director may require any facility that is applying to discharge under a final General Permit to apply for and obtain an individual permit. In addition, any interested person may petition the Director to take this action. However, an individual permit will not be issued for any point source covered by a General Permit unless it can be demonstrated that inclusion under a General Permit is clearly inappropriate.

E. The Director may consider the issuance of individual permits according to the criteria in 40 CFR 122.28(b)(2). These criteria include:

1. The discharge(s) is a significant contributor of pollution;
2. The discharger is not in compliance with the terms and conditions of the General Permit;
3. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
4. Effluent limitation guidelines are subsequently promulgated for the point sources covered by the General Permit;
5. A Water Quality Management Plan containing requirements applicable to such point sources is approved; or

6. The requirements listed in 40 CFR 122.28(a) and identified in the previous paragraphs are not met.

II. Conditions in the General Permit

A. Expiration Date

This NPDES General Permit shall expire five (5) years from the effective date of the permit or for coverage of a facility under the General Permit upon termination of discharge and closure of the facility.

B. Water Quality Based Effluent Limitations

1. The Louisiana Department of Environmental Quality, Office of Water Resources, has promulgated area wide policies which update the Water Quality Management Plan for all domestic wastewater treatment facilities which discharge to U.S. waters in the State of Louisiana.

2. Minimum levels of effluent quality attainable by secondary treatment are established by 40 CFR 133.102. The State of Louisiana has established more stringent requirements for all facilities with anticipated flows of 2,500 gpd (0.0025 mgd), or greater, but less than 25,000 gpd (0.025 MGD). This General Permit is based on facility design flows in accordance with 40 CFR 122.44. Conventional pollutants are controlled at the following levels: 30 mg/1 30-day average and 45 mg/1 daily maximum for BOD_5 and TSS respectively. Disinfection and 15 mg/1 Daily Max for Oil and Grease is required by the State of Louisiana. The pH limits within the range of 6.0 and 9.0 standard units are based on 40 CFR 133.102(c).

C. Monitoring Requirements

All facilities operating under conditions of this General Permit are required to monitor each parameter once every three months by grab sample. Howver, if the daily maximum limit in any sample is exceeded then the monitoring frequency increases to once per month. This increased frequency shall continue until a sample demonstrates a value less than or equal to the daily maximum.

D. The Nature of Discharges From Privately Owned Sources

All facilities operating under conditions of this General Permit will be required to document the domestic nature of the discharge. The sources of wastewater discharges from treatment plants are domestic sewage amendable to biological treatment.

E. Geographic Areas and Covered Facilities

The General Permit will authorize discharges from facilities within the State of Louisiana, to various storm sewers, tributaries, stream segments and river basins. The permit will be applicable only to facilities which have direct discharges to "waters of the United States" as defined in 40 CFR 122.2 and are therefore subject to the requirements of sections 301 and 402 of the Act. It does not apply to facilities that are specifically listed in the Louisiana Water Quality Management Plan with previously designated limitations.

F. Privately Owned Discharges

The General Permit will be applicable to facilities with discharges of domestic waste only. Toxic or priority pollutants shall not be present in the discharges. The privately owned facilities covered by this permit include multi-family residences, trailer parks, restaurants, entertainment centers, hospitals, shopping centers, motels and office buildings. The nature of effluent from these facilities involves the same type of operations, discharge of the same types of wastewater, and the same effluent limitations and monitoring requirements. Therefore, these facilities are more appropriately controlled by a General Permit.

G. Publicly Owned Facilities

The General Permit will be applicable to facilities with discharges of domestic waste only. Toxic or priority pollutants shall not be present in the discharges. Publicly owned facilities covered include cities, towns, boroughs, counties, parishes, districts, associations, or other public bodies created under State law and having jurisdiction over disposal of sewage, or an indian tribe, or indian tribal organizations, or a designated and approved management agency under section 308 of the CWA located within the State of Louisiana. The nature of effluent from these facilities involves the same type of operations, discharge of the same types of wastewater, and the same effluent limitations and monitoring requirements. Therefore, these facilities are more appropriately controlled by a General Permit.

III. Other Legal Requirements

A. State Certification

Under section 401(a)(1) of the Act, EPA may not issue a NPDES permit until the State in which the discharge will originate, grants or waives certification to ensure compliance with appropriate requirements of the Act and State law, including water quality standards. Region VI has requested the State of Louisiana to certify this Draft General Permit.

B. Water Quality Standards

Section 301(b)(1)(C) of the Act requires that NPDES permits contain limitations necessary to meet water quality standards established pursuant to State law or regulation or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to the Act. In accordance with the Statewide Sanitary Effluent Limitations Policy, as established in the Louisiana Water Quality Management Plan, the maximum 30-day average load allowed by this General Permit for either BOD or TSS is 6.2 lb/day. Therefore, no water quality standard violations are expected.

C. Duty To Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request, to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. Reports shall be supplied as specified by the permit.

D. Planned Changes

The permittee shall give notice to the Director within 30 days of any planned physical alterations or additions to the permitted facility or in the nature or characteristic of the discharge.

E. Endangered Species Act

The Endangered Species Act and its implementing regulations (50 CFR part 402) require that each Federal Agency shall ensure that any of their actions, such as permit issuance, do not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modifications of their critical habitats. To ensure protection of endangered or threatened species and their habitats toxic materials and priority pollutants are prohibited by this permit. Discharges that are permitted are for treated domestic wastewater only. Based on the terms, conditions, and limitations of this General Permit, EPA has concluded that the discharges authorized by this general permit are not likely to adversely affect any endangered or threatened species nor adversely affect their critical habitat. The State of Louisiana has a similar general permit with an effective date of March 16, 1989 covering the same facilities for which this permit is written. EPA will provide copies of the Draft General Permit and Fact Sheet to the U.S. Fish and Wildlife Service and the National Marine Fisheries Service prior to issuing the General Permit and will request their concurrence on EPA's not likely to adversely affect determination.

F. The Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) and its implementing regulations (15 CFR part 930) require that any Federally licensed or permitted activity affecting the coastal zone of a State with an approved Coastal Zone Management Program (CZMP) be consistent with the CZMP (section 307(c)(3)(A) subpart D). The State of Louisiana has a CZMP that has been approved by the National Oceanic and Atmospheric Administration (NOAA). The Region has reviewed Louisiana's Coastal Use Guidelines and believe that this draft permit action is consistent with the intent of those guidelines. A copy of the draft permit along with a consistency determination will be submitted to Louisiana for a consistency determination.

G. The Marine Protection, Research and Sanctuaries Act

The Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972 regulates the dumping of all types of materials into ocean waters and establishes a permit program for ocean dumping. In addition the MPRSA establishes the Marine Sanctuaries Program, implemented by NOAA, which requires NOAA to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or aesthetic values. Section 302(i) of MPRSA requires that the Secretary of Commerce, after designation of a marine sanctuary, consult with other Federal agencies, and issue necessary regulations to control any activities permitted within the boundaries of the marine sanctuary. It provides that no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary shall certify that the permitted activity is consistent with the purpose of the marine sanctuaries program and/or can be carried out within its promulgated regulations. There are presently no existing marine sanctuaries in the coastal waters of Louisiana.

IV. Administrative Requirements

A. Economic Impact (Executive Order 12291)

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order.

B. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this Draft General Permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act. In addition, the General Permit will eliminate or reduce, for the Agency, the time consuming process of drafting and issuing individual permits.

C. The Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify, pursuant to the provisions of 5 U.S.C. 605(b), that this general NPDES permit will have a positive benefit on a substantial number of small entities. Moreover, it will reduce a significant administrative burden on regulated sources.

Joe D. Winkle,

Acting Regional Administrator, Region 6.

[FR Doc. 90-26930 Filed 11-14-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3860-5]

Draft General NPDES Permit for Domestic Wastewater Discharges in the State of Louisiana: LAG556000

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of Draft General NPDES Permit.

SUMMARY: The Director now proposes to issue a General Permit for publicly and privately owned sewage treatment facilities, in the State of Louisiana, with design flows of 25,000 gallons per day (gpd) (0.025 mgd) and greater, but less than 50,000 gpd (0.050 mgd) who treat domestic wastewater. When issued, this General Permit will establish effluent limitations, prohibitions, and other conditions on discharges. This Draft General Permit is based on the administrative record available for public review in Region 6 of the Environmental Protection Agency (EPA). The fact sheet sets forth the principal facts and the significant factual, legal and policy questions considered in the development of the Draft General Permit. A copy of the Draft General Permit is available for public review at EPA Region 6 and at the Louisiana Department of Environmental Quality.

DATES: *Comment Period:* Comments must be received by December 17, 1990.

ADDRESSES: Mail comments to: U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. Documents may also be reviewed at the Louisiana Department of Environmental Quality, 625 Fourth Street, 9th floor, Baton Rouge, Louisiana 70804-4091.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Caldwell, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2723. Telephone: (214) 655-7190.

I. Supplemental Information and Fact Sheet

A. General Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) Permit. In the past, such permits have generally been issued to individual dischargers. However, EPA's regulations authorize the issuance of General Permits to categories of dischargers (40 CFR 122.28). EPA may issue a single, General Permit to a category of point sources located in the same geographic area whose discharges warrant similar pollution control measures. The Regional Administrator (with delegation to the Water Management Division Director) is authorized to issue a General Permit if there are a number of point sources operting in a geographic area that:

1. Involve the same or substantially similar types of operations;
2. Discharge the same types of wastes;
3. Require the same effluent limitations or operating conditions;
4. Require the same or similar monitoring requirements; and
5. In the opinion of the Director, are more appropriately controlled under a General Permit than under individual permits.

B. Any discharger desiring coverage under the General Permit must submit a (1) a Notice of Intent, (2) General Information Form 1 (EPA Form 3510-1), and (3) an EPA Application Form For Facilities That Do Not Discharge Process Wastewater (EPA Form 3510-2E) (Private Domestic), or Standard

Form A-Municipal (EPA Form 7550-22) for publicly owned treatment works.

C. Violations of any condition of a General Permit constitutes a violation of the Act and subjects the discharger to the penalties specified in section 309 of the Act. Any owner or operator authorized by a final General Permit may be excluded from coverage by applying for an individual permit. This request may be made by submitting a NPDES permit application, together with reasons supporting the request. New facilities, that apply, may be covered under this General Permit unless they apply for an individual permit using the appropriate application.

D. The Director may require any facility that is applying to discharge under a final General Permit to apply for and obtain an individual permit. In addition, any interested person may petition the Director to take this action. However, an individual permit will not be issued for any point source covered by a General Permit unless it can be demonstrated that inclusion under a General Permit is clearly inappropriate.

E. The Director may consider the issuance of individual permits according to the criteria in 40 CFR 122.28(b)(2). These criteria include:

1. The discharge(s) is a significant contributor of pollution;
2. The discharger is not in compliance with the terms and conditions of the General Permit;
3. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
4. Effluent limitation guidelines are subsequently promulgated for the point sources covered by the General Permit;
5. A Water Quality Management Plan containing requirements applicable to such point sources is approved; or
6. The requirements listed in 40 CFR 122.28(a) and identified in the previous paragraphs are not met.

II. Conditions in the Draft General Permit

A. Expiration Date

This NPDES General Permit shall expire five (5) years from the effective date of the permit or for coverage of a facility under the General Permit upon termination of discharge and closure of the facility.

B. Water Quality Based Effluent Limitations

1. The Louisiana Department of Environmental Quality, Office of Water Resources, has promulgated area wide policies which update the Water Quality Management Plan for all domestic waste treatment facilities which discharge to U.S. waters in the State of Louisiana.

2. Minimum levels of effluent quality attainable by secondary treatment are established by 40 CFR 133.102. The State of Louisiana has established more stringent requirements for all facilities with anticipated flows of 25,000 gpd (0.025 mgd), or greater, but less than 50,000 gpd (0.050 mgd). This General Permit is based on facility design flows in accordance with 40 CFR 122.44. Conventional pollutants are controlled at the following levels: 20 mg/l 30-day average and 30 mg/l daily maximum for BOD_5 and TSS respectively. Disinfection and 15 mg/l Daily Max. for Oil and Grease is required by the State of Louisiana. The pH limits within the range of 6.0 and 9.0 standard units are based on 40 CFR 133.102(c).

C. Monitoring Requirements

All facilities operating under conditions of this General Permit are required to monitor each parameter once per month by grab sample. However, if the daily maximum limit in any sample is exceeded then the monitoring frequency increases to once per week. This increased frequency shall continue until a sample demonstrates a value less than or equal to the daily maximum.

D. The Nature of Discharges From Privately Owned Sources

Facilities operating under conditions of this permit will be required to document the domestic nature of the discharge. The sources of wastewater discharges from privately owned treatment plants are domestic sewage amenable to biological treatment.

E. Geographic Areas and Covered Facilities

The General Permit will authorize discharges from facilities within the State of Louisiana, to various storm sewers, tributaries, stream segments and river basins. The permit will be applicable only to facilities which have direct discharges to "waters of the United States" as defined in 40 CFR 122.2 and are therefore subject to the requirements of sections 301 and 402 of the Act. It does not apply to facilities that are specifically listed in the Louisiana Water Quality Management Plan with previously designated limitations.

F. Privately Owned Discharges

The General Permit will be applicable to facilities with discharges of domestic waste only. Toxic or priority pollutants shall not be present in the discharges. The privately owned facilities covered by this permit include multi-family residences, trailer parks, restaurants, entertainment centers, hospitals, shopping centers, motels and office buildings. The nature of effluent from these facilities involves the same type of operations, discharge of the same types of wastewater, and the same effluent limitations and monitoring requirements. Therefore, these facilities are more appropriately controlled by a General Permit.

G. Publicly Owned Facilities

The General Permit will be applicable to facilities with discharges of domestic waste only. Toxic or priority pollutants shall not be present in the discharges. Publicly owned facilities include cities, towns, boroughs, counties, parishes, districts, associations, or other public bodies created under State law and having jurisdiction over disposal of sewage, or an Indian tribe, or Indian tribal organizations, or a designated and approved management agency under section 208 of the CWA located within the State of Louisiana. Therefore, these facilities are more appropriately controlled by a General Permit.

III. Other Legal Requirements

A. State Certification

Under section 401(a)(1) of the Act, EPA may not issue a NPDES permit until the State in which the discharge will originate, grants or waives certification to ensure compliance with appropriate requirements of the Act and State law, including water quality standards. Region VI has requested the State of Louisiana to certify this Draft General Permit.

B. Water Quality Standards

Section 301(b)(1)(C) of the Act requires that NPDES permits contain limitations necessary to meet water quality standards established pursuant to State law or regulation or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to the Act. The maximum 30-day average load allowed by this General Permit for either BOD or TSS is 8.3 lb/day, in accordance with the Statewide Sanitary Effluent Limitations Policy established in the Louisiana Water Quality Management Plan. Therefore, no water quality standard violations are expected.

C. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage of this General Permit, or to determine compliance with this General Permit. Reports shall be supplied as specified by this General Permit.

D. Planned Changes

The permittee shall give notice to the Director within 30 days of any planned physical alterations or additions to the permitted facility or in the nature or characteristic of the discharge.

E. Endangered Species Act

The Endangered Species Act and its implementing regulations (50 CFR part 402) require that each Federal Agency shall ensure that any of their actions, such as permit issuance, do not jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of their critical habitats. To ensure protection of endangered or threatened species and their habitats this general permit prohibits toxic or priority pollutants in the effluent discharges. Discharges that are permitted include treated domestic wastewater only. Based on the terms, conditions, and limitations of this General Permit, EPA has concluded that the discharges authorized by this general permit are not likely to adversely affect any endangered or threatened species nor adversely affect their critical habitat. The State of Louisiana has a similar general permit with an effective date of July 31, 1989 covering the same facilities for which this permit is written. EPA will provide copies of the Draft General Permit and fact sheet to the U.S. Fish and Wildlife Service and the National Marine Fisheries Service prior to issuing the General Permit and will request their concurrence on EPA's not likely to adversely affect determination.

F. The Coastal Zone Management Act

The Coastal Management Act (CZMA) and its implementing regulations (15 CFR part 930) require that any Federally licensed or permitted activity affecting the coastal zone of a State with an approved Coastal Zone Management Program (CZMP) be consistent with the CZMP (Section 307 (c)(3)(A) supart D). The State of Louisiana has a CZMP that has been approved by the National Oceanic and Atmospheric Administration (NOAA). The Region has reviewed Louisiana's Coastal Use Guidelines and believe that this draft permit action is consistent with the intent of those guidelines. A copy of the draft permit and fact sheet will be submitted to the State of Louisiana for a consistency determination.

G. The Marine Protection, Research and Sanctuaries Act

The Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972 regulates the dumping of all types of materials into ocean waters and establishes a permit program for ocean dumping. In addition to MPRSA establishes the Marine Sanctuaries Program, implemented by NOAA, which requires NOAA to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or aesthetic values. Section 302(i) of MPRSA requires that the Secretary of Commerce, after designation of a marine sanctuary, consult with other Federal agencies, and issue necessary regulations to control any activities permitted within the boundaries of the marine sanctuary. It provides that no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary shall certify that the permitted activity is consistent with the purpose of the marine sanctuaries program and/or can be carried out within its promulgated regulations. There are presently no existing marine sanctuaries in the coastal waters of Louisiana.

III. Administrative Requirements

A. Economic Impact (Executive Order 12291)

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order.

B. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this Draft General Permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act. In addition, the General Permit will eliminate or reduce, for the Agency, the time consuming process of drafting and issuing individual permits.

C. The Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify, pursuant to the provisons of 5 USC 605(b), that this general NPDES permit will have a positive benefit on a substantial number of small entities. Moreover, it will reduce a significant administrative burden on regulated sources.

Dated: September 4, 1990.

Joe D. Winkle,

Acting Regional Administrator, Region 6.

[FR Doc. 90-26931 Filed 11-14-90; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59897; FRL 3840-2]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 16 such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 91-16, November 1, 1990.
Y 91-17, November 6, 1990.
Y 91-18, 91-19, 91-20, 91-21, November 12, 1990.
Y 91-22, November 14, 1990.
Y 91-23, 91-24, 91-25, 91-26, 91-27, 91-28, 91-29, 91-30, November 12, 1990.
Y 91-31, November 14, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-545, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above

address between 8:00 a.m. and noon, and 1:00 p.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 91-16

Manufacturer. Confidential.
Chemical. (G) Pentaerythritol ester or esters of linseed fatty acid, sebasic acid succunic anhydride with some polyesters of same.
Use/Production. (G) Ink vehicle. Prod. range: Confidential.

Y 91-17

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) An additive used in the plastics industry. Prod. range: Confidential.

Y 91-18

Manufacturer. Confidential.
Chemical. (S) Neopentyl glycol; propylene glycol; isophtalic acid; maleic anhydride.
Use/Production. (S) Polymer for coating resin. Prod. range: Confidential.

Y 91-19

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Styrene-acrylic acid polymer salt.
Use/Production. (G) Surfactant and dispersant aid. Prod. range: Confidential.

Y 91-20

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Styrene-acrylic acid polymer salt.

Y 91-21

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Styrene-acrylic acid polymer salt.
Use/Production. (G) Surfactant and dispersant aid. Prod. range: Confidential.

Y 91-22

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Styrene-acrylic acid polymer salt.
Use/Production. (G) Surfactant and dispersant aid. Prod. range: Confidential.

Y 91-23

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Styrene-acrylic acid polymer salt.
Use/Production. (G) Surfactant and dispersant aid. Prod. range: Confidential.

Y 91-24

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Styrene-acrylic acid polymer salt.
Use/Production. (G) Polymer modifiers. Prod. range: Confidential.

Y 91-25

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Styrene-acrylic acid polymer salt.

Use/Production. (G) Polymer modifiers. Prod. range: Confidential.

Y 91-26

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Styrene-acrylic acid polymer salt.
Use/Production. (G) Polymer modifiers. Prod. range: Confidential.

Y 91-27

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Styrene-acrylic acid polymer salt.
Use/Production. (G) Polymer modifiers. Prod. range: Confidential.

Y 91-28

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Styrene-acrylic acid polymer salt.
Use/Production. (G) Polymer modifiers. Prod. range: Confidential.

Y 91-29

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Styrene-acrylic acid polymer salt.
Use/Production. (G) Polymer modifiers. Prod. range: Confidential.

Y 91-30

Manufacturer. Air Products and Chemicals, Inc.
Chemical. (G) Styrene-acrylic acid polymer salt.
Use/Production. (G) Polymer modifiers. Prod. range: Confidential.

Y 91-31

Manufacturer. Confidential.
Chemical. (G) Diepoxide polyol.
Use/Production. (G) Dehydration agent. Prod. range: Confidential.

Dated: November 8, 1990.

Steve Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90-26937 Filed 11-14-90; 8:45 am]
BILLING CODE 6560-50-F

[OPP-30309; FRL 3837-6]

Valent U.S.A. Corp.; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comment by December 17, 1990.

ADDRESSES: By mail submit comments identified by the document control number [OPP-30309] and the registration/file number to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Attention PM 23, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, Attention PM 23, Registration Division (H7505C), Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: PM 23, Joanne I. Miller, Rm. 237, CM #2, (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 239-EANG. Applicant: Valent U.S.A Corporation, 1333 N. California Blvd., Walnut Creek, CA 94596-8025. Product name: Chevron Clethodim Technical. Herbicide. Active ingredient: Clethodim (*E*)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one at 83.5 percent. Proposed classification/Use: General. For terrestrial food use on cotton and soybeans. Type registration: Conditional. (PM 23)

2. File Symbol: 59639-G. Applicant: Valent U.S.A Corporation, 1333 N. California Blvd., Walnut Creek, CA 94596-8025. Product name: Select Herbicide. Herbicide. Active ingredient: Clethodim (*E*)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one at 25 percent. Proposed classification/Use: General. For control of annual and perennial grasses in cotton and soybeans. Type registration: Conditional. (PM 23)

3. File Symbol: 59639-E. Applicant: Valent U.S.A Corporation. Product name: Clethodim Technical. Herbicide. Active ingredient: Clethodim (*E*)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one at 83.5 percent. Proposed classification/Use: General. For terrestrial food use on cotton and soybeans. Type registration: Conditional. (PM 23)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: October 22, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-26936 Filed 11-14-90; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 5, 1990

The Federal Communications Commission has submitted the following information collection requirement on OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Bruce McConnell, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0188.

Title: Section 75.3550, Requests for new or modified call sign assignments.

Action: Extension.

Respondents: Non-profit institutions and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 1,400 responses; .667 hours average burden per response; 934 hours total annual burden.

Needs and Uses: Section 73.3550 requires that a licensee, permittee, or assignee of transferee file a letter with the Commission when requesting a new or modified call sign. The data is used by FCC staff to ensure that the call sign requested is not already in use by another station and that the proper "K" or "W" designation is used in accordance with the station location (east or west of the Mississippi River).

BEST COPY AVAILABLE

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-28914 Filed 11-14-90; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 90-479; FCC 90-330]

Applications, Hearings, Determinations, etc.; Quests, Inc.

AGENCY: Federal Communications Commission.

ACTION: Order to show cause and hearing designation order.

SUMMARY: This action is an Order to show cause to determine if Quests, Inc., licensee of Radio Station WAST(AM), Ashtabula, Ohio, violated §§ 73.1740(a)(4) and 73.1750 of the Commission's Rules by remaining silent without authority, and if so, whether the license for that station should be revoked.

EFFECTIVE DATE: Upon publication in the Federal Register.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ben Halprin, Enforcement Division, Mass Media Bureau, (202) 632-3860.

SUPPLEMENTARY INFORMATION:

Order to Show Cause and Hearing Designation Order

In the Matter of Quests, Inc., Linesville, Pennsylvania, Licensee of Radio Station WAST(AM), Ashtabula, Ohio, Order to Show Cause Why the License of Station WAST(AM), Ashtabula, Ohio, Should Not Be Revoked.

Adopted: October 4, 1990; *Released:* November 7, 1990.

By the Commission:

1. The Commission has before it for consideration: (a) The license of Quests, Inc., for daytime only Radio Station WAST(AM), Ashtabula, Ohio; and, (b) the results of the Commission's investigation into WAST(AM)'s unauthorized silent status.

2. WAST(AM), Ashtabula, Ohio, has been off the air since 1981. From 1981 until 1984 the licensee had permission to be silent. The station has been off the air since 1984 without permission. Due, in part, to a civil suit judgment against the licensee, it no longer possesses the station's real or broadcast related property. The discord that has been demonstrated between the majority and minority shareholders in the licensee have apparently left the licensee unable to engage in a transfer to an entity willing and able to restore service. Since the licensee has been off the air for an extended period of time, lacks the equipment to operate the station, does not have Commission permission to remain off the air, and has not turned in its license, it is in apparent violation of §§ 73.1740(a)(4) and 73.1750 and the Commission's Rules.[1]

3. Accordingly, *It is ordered,* That pursuant to section 312(a)(3), (4) and (c) of the Communications Act of 1934, as amended, Quests, Inc., is Directed to Show Cause why the license for Radio Station WAST(AM), Ashtabula, OH, should not be Revoked, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

(a) To determine whether Quests, Inc., violated §§ 73.1740(a)(4) and/or 73.1750 of the Commission's Rules.

(b) To determine, in light of the evidence adduced under the foregoing issue, whether Quests, Inc., possesses the requisite qualifications to be or to remain licensee of the captioned radio station.[2]

4. *It is further ordered,* That the Chief, Mass Media Bureau, is directed to serve upon Quests, Inc., within thirty (30) days of the release of this Order, a Bill of Particulars with respect to Issues (a) and (b) above.

5. *It is further ordered,* That pursuant to section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the evidence and the burden of proof shall be upon the Mass Media Bureau as to both issues.

6. *It is further ordered,* That to avail itself of the opportunity to be heard, the licensee, pursuant to § 1.91(c) of the Commission's Rules, in person or by attorney, shall file with the Commission within thirty (30) days of the receipt of the Order to Show Cause a written appearance stating that it will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. Where a hearing is waived, a written statement denying or seeking to mitigate or justify the conduct may be submitted within thirty (30) days of the receipt of the Order to Show Cause. *See* § 1.92(a) of the Commission's Rules. In the event the right to a hearing is waived, the presiding officer, or the Chief Administrative Law Judge if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission in the regular course of business and an appropriate Order will be entered. *See* § 1.92 (c) and (d) of the Commission's Rules.[3]

7. *It is further ordered,* That if it is determined that the hearing record does not warrant an Order revoking the license for Station WAST(AM), Ashtabula, OH, it shall be determined if Quests, Inc., willfully or repeatedly violated § 73.1740(a)(4) or § 73.1750 of the Commission's Rules. If so, it shall also be determined whether an Order for Forfeiture shall be issued pursuant to section 503(b) of the Communications Act of 1934, as amended, in an amount up to $250,000 for the willful or repeated violations of § 73.1740(a)(4) and/or § 73.1750 of the Commission's Rules.

8. *It is further ordered,* That, in connection with the possible forfeiture liability noted above, this document constitutes notice pursuant to section 503(b)(3) of the Communications Act of 1934, as amended. The Commission has determined that in every case designated for hearing involving the potential revocation of a station license, for alleged violations which also come within the purview of section 503(b) of the Communications Act of 1934, as amended, it shall, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action. Since the procedure is thus a routine or standard one, we stress that the inclusion of this notice is not to be taken as in any way indicating what the initial or final disposition of the case should be; that judgment is, of course, to be made on the facts of each case.

9. *It is further ordered,* That the Chief, Mass Media Bureau, send a copy of this Order by *Certified Mail-Return Receipt Requested,* to: Quests, Inc., Radio Station WAST(AM), P.O. Box 307, Linesville, PA 16424.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-28908 Filed 11-14-90; 8:45 am]

BILLING CODE 6712-01-M

[1] Section 73.1740(a)(4) provides:

In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, DC not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

Section 73.1750 provides:

The licensee of each station shall notify the FCC in Washington, DC of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, DC for cancellation.

[2] We note that WAST(AM) has had action on a license renewal application deferred since December 1, 1981. Should the instant action be decided against the licensee, that deferred renewal application will be dismissed as moot.

[3] The Commission has delegated authority for cases such as this to the Mass Media Bureau. *See In the Matter of Radio Northwest Broadcasting Company,* 4 FCC Rcd 596 n. 3 (1989).

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224-200438.

Title: Baltimore Independent Marine Terminal Forum Marine Terminal Discussion Agreement.

Parties: I.T.O. Corporation of Baltimore, Ceres Corporation.

Synopsis: The Agreement establishes the Baltimore Independent Marine Terminal Forum ("BIMTF"), a group of private, independent marine container terminal operators. Under the terms of the Agreement, the parties will be authorized to meet, discuss and agree upon: (1) Rules, regulations, terms and conditions of service for the loading and unloading of containers onto and from cars, trucks, barges and vessels; and (2) other marine terminal matters pertaining to the receipt, handling and/or delivery of containerized cargo at the public wharves of the Port of Baltimore ("Port") and/or pertaining to the operation of independent marine container terminals in the Port. Membership in BIMTF is open to any private party that is not a subsidiary of an ocean common carrier and that provides marine terminal container services in connection with common carriers by water in the foreign commerce of the United States at a public wharf within the Port. All actions taken under the Agreement shall be by a majority vote.

By Order of The Federal Maritime Commission.

Dated: November 8, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-28872 Filed 11-14-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding apending agrement

Agreement No.: 217-010420-003.

Title: American-Flag Common Carrier Charter Agreement.

Parties: American President Lines, Ltd. Lykes Bros. Steamship Co., Inc., Sea-Land Service, Inc., United States Lines, Inc., Waterman Steamship Corporation.

Synopsis: The proposed amendment would delete Lykes Bros. Steamship Co., Inc., United States Lines, Inc. and Waterman Steamship Corporation as parties to the Agreement. It would also make other nonsubstantive changes.

Agreement No.: 202-010689-040.

Title: Transpacific Westbound Rate Agreement.

Parties: American President Lines, Ltd., Hanjin Container Lines, Ltd., Hyundai Merchant Marine Co., Ltd., Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Neptune Orient Lines, Ltd., Nippon Liner System, Nippon Yusen Kaisha, Ltd., Sea-Land Service, Inc.

Synopsis: The proposed amendment would amend guidelines for taking follow-up independent actions by allowing a party to give notice to the manager not earlier than seven days after the original notice is given and it could increase the monetary value of the rate.

Agreement No.: 203-010977-011.

Title: Hispaniola Discussion Agreement.

Parties: United States Atlantic and Gulf/Hispaniola Steamship Freight Association, United States/Dominican Republic Freight Association, Zim Israel Navigation Co., U.S.A. Tecmarine Incorporated d/b/a/ Tecmarine Lines, Seaboard Marine Ltd., Tropical Shipping and Construction Co. Ltd., Antillean Marine Shipping Corporation.

Synopsis: The proposed amendment would add a clause in Article 5 to authorize direct communication prior to and during any meeting among individual carrier members of a conference party and independent carrier parties.

Agreement No.: 203-011038-006.

Title: Southeastern Caribbean Discussion Agreement.

Parties: United States Atlantic and Gulf/Southeastern Carribean Conference, Trailer Marine Transport Corporation, Tecmarine Line, Inc., Bernuth Lines, North American Caribbean Line Ltd., Blue Caribe Line.

Synopsis: The proposed amendment would add a clause in Article 5 to authorize direct communication prior to and during any meeting among individual carrier members of a conference party and independent carrier parties.

Agreement No: 232-011253-001.

Title: Deppe/Lykes Reciprocal Space Charter and Coordinated Sailing Agreement.

Parties: Lykes Bro. Steamship Co., Inc., Deppe Linie GmbH & Co.

Synopsis: The proposed amendment would expand the geographic scope of the Agreement to include service to the Mediterranean. It would also reflect a change in the maximum vessel capacity allowed because of the expansion of the scope.

By Order of the Federal Maritime Commission.

Dated: November 8, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-26873 Filed 11-14-90; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

AEL Specialist, Inc., 2210 Goldsmith Lane, Louisville, KY 40218. Officers: Judy A. Matthews, President/Director, George E. Mercker, Director/Secretary/Treasurer, Robert L. Hawkins, Stockholder, Paul E. Schmitt, Stockholder

Royal Flight Enterprises, Inc. dba Royal Sea, Services, 6100 N.W. 84th Ave., Miami, FL 33166. Officers: George N. Pappas, President, Christopher L. Pappas, Vice President, Nancy Pappas, Vice President

Ambassador International Ltd., 4600 Eisenhower Ave., Alexandria, VA 22304. Officer: Robert S. Matthews, President

Transco Ltd., Inc., 4707 Orange Drive, Ft. Lauderdale, FL 33314. Officer: Gerhard Walk, President

Advantage Forwarding Inc., 9360 SW 16 Street, Miami, FL 33165. Officers: Antonio M. Menendez, President/Director/Treasurer, Lillian Hernandez, Director/Secretary

Freight Forwarder Inc., 6001 Gulf Freeway, C–135, Houston, TX 77023. Officers: Faber F. McMullen, III, President, Gregory E. Hall, Treasurer/Vice President, James D. Farasey, Secretary/General Manager

Franz Kroll, Inc., 467 North Oak Street, Inglewood, CA 90302. Officers: Detlev-Michael Deregoski, President, Douglas A. Turner, Vice President, Dieter Meached, Secretary

Bayside International Export, 180 Colusa Court, San Bruno, CA 94066. Officer: German Humberto Soto, Sole Proprietor

Griffin & Associates, Ltd., 1001–P Nicholas Blvd., Elk Grove Village, IL 60007. Officers: Patrick M. Griffin, President, Harry William Dohner, Vice President, Fran Cruz, Vice President, John A. Delaney, Vice President

Walker International Transportation Inc., 182–16 147th Ave., Jamaica, NY 11413. Officers: Emmett Walker, President, Roger Moll, Vice President

By the Federal Maritime Commission.

Dated: November 8, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–28674 Filed 11–14–90; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 2928
Name: United Freight Systems, Inc.
Address: 145 Hook Creek Blvd., Valley Stream, NY 11581
Date Revoked: October 11, 1990
Reason: Failed to furnish a valid surety bond.
License Number: 2919
Name: LOH International Movers, Inc.
Address: 114 Adeline St., Oakland, CA 94607
Date Revoked: October 13, 1990
Reason: Failed to furnish a valid surety bond.
License Number: 3367
Name: Border Enterprises, Inc.
Address: 660 Plaza Drive, Suite 2350, Detroit, MI 48226
Date Revoked: October 24, 1990
Reason: Surrendered license voluntarily

Bryant L. VanBrakle,

Acting Director, Bureau of Domestic Regulation.

[FR Doc. 90–26875 Filed 11–14–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

[Docket No. R–0712]

Federal Reserve Fees for Check Collection Services; Modification of Criteria for Tiered Pricing Structure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board is requesting comment on proposed modifications to the criteria for offering a tiered pricing structure in the check collection service. The proposed modifications would allow tiered pricing in all collection zones; would allow for more than two tiers where clear cost differences exist to justify them; would eliminate the current requirement to offer a blended (fixed) fee within each collection zone; and would conform the approval process for the implementation of tiered pricing in other Federal Reserve Bank offices to the approval process for other price and service level changes. The proposed modifications would enable Reserve Banks to reflect more precisely their costs to collect checks drawn on paying banks within a given check collection zone. These costs are generally based on the location of, and volume of checks presented to, each endpoint. If adopted, the Board anticipates that the revised criteria would become effective mid-1991.

DATES: Comments must be submitted on or before January 25, 1991.

ADDRESSES: Comments, which should refer to Docket No. R–0712, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Attention: Mr. William W. Wiles, Secretary; or may be delivered to room B–2223 between 8:45 a.m. and 5 p.m. All comments received at the above address will be included in the public file and may be inspected at room B–1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452–3874) or Nalini Rogers, Senior Financial Services Analyst (202/452–3801) Division of Federal Reserve Bank Operations; for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: In November 1986, the Board approved a proposal to implement tiered pricing as a permanent price structure for RCPC deposits in the Minneapolis office and country deposits in the Kansas City office, and to establish criteria for the expansion of tiered pricing in other Federal Reserve Bank offices. [51 FR 43470, December 2, 1986.] Under a tiered pricing structure, different fees are assessed depending on whether a check is presented to a high-cost or low-cost endpoint [1] in a given check collection zone.[2] A high-cost endpoint is typically defined as one on which a low volume of checks is drawn, and/or one that is located in a remote location. A low-cost endpoint would typically be presented with high volumes of checks, and/or be centrally located. A small, remotely located paying bank could be included in the low-cost tier if its checks are presented to an intercept processor that also received presentments on behalf of other paying banks and is designated as a low-cost endpoint. Tiered pricing was originally proposed because the costs of clearing checks in collection zones may vary considerably between high- and low-cost endpoints and charging a single average blended fee does not reflect costs as precisely. The criteria that were approved by the Board in 1986 are as follows:

1. Adoption of tiered pricing by any additional Federal Reserve Bank will require approval by the Board.

2. Tiered pricing will be offered as an option to the sender; an alternative fixed per item fee also will be offered for each deposit category.

3. Tiered prices may be used only where clear cost differences exist between groups of items within the collection zone.

4. Tiered prices may be used only where they have the potential to provide net savings for a substantial amount of deposited volume or a substantial number of depositing institutions. In addition, the Board indicated that tiered pricing could be applied to all types of deposits in RCPC and country collection zones and that the number of price tiers within a collection zone should generally be limited to two.

Currently, 48 percent of the RCPC volume in the Minneapolis office and 77 percent of the country volume in the Kansas City is deposited under the tiered pricing structure. In October 1990, the Board approved the implementation of tiered pricing in seven additional Federal Reserve offices; effective January 1991, tiered RCPC pricing will be implemented in the Lewiston, Philadelphia, Cleveland, Pittsburgh, Cincinnati, and Columbus offices; tiered country pricing will be implemented in the Denver office.

Tiered pricing enables Reserve Banks to establish prices that more precisely reflect their costs to collect checks drawn on paying banks within a given check collection zone. These costs are generally based on the location of, and volume of checks presented to each endpoint. The Board believes that the ability of Reserve Banks to reflect more precisely their costs through the use of tiered pricing would be facilitated if certain modifications were made to the tiered pricing criteria that were approved by the Board in November 1986. The Board is proposing the following modifications to the criteria:

1. Tiered pricing may be applied to desposits in all collection zones, provided clear cost differences exist. In 1986, the Board indicated that the application of tiered pricing would be restricted to RCPC and country collection zones. The city zone was not included in the tiered pricing approach because the Federal Reserve believed that, due to the compact geographic nature of a city zone, the cost differences that warrant a tiered approach to pricing would not exist. Analyses of city zones have shown, however, that the volume distribution of checks among endpoints has a signifcant impact on check processing costs. In certain city zones, approximately 20 percent of the endpoints receive 70 to 90 percent of all checks presented in that zone. The checks drawn on these high-volume city endpoints are less costly to process than are checks drawn on lower-volume city endpoints. In addition, the transportation costs for certain high-volume city endpoints are low or nonexistent.

2. Reserve Banks may offer more than two price tiers within a collection zone, provided that clear cost differences exist to justify more than two tiers. When the Board authorized tiered pricing in 1986, it indicated that, although there were no plans to approve more than two tiers to the price structure at that time, the Board might approve additional tiers and would request public comment on a proposal to expand beyond two tiers if conditions warranted. Currently, in certain collection zones, the variation of processing and transportation costs to collect checks presented at different endpoints could result in a range of costs that can be clearly grouped into more than two cost tiers. The Board anticipates that if this modification were adopted, certain Reserve Bank offices would be able to justify three pricing tiers in a collection zone.

3. Blended fees will not be offered as an alternative to tiered prices in a collection zone in which tiered pricing has been implemented. Currently, Reserve Banks are required to offer a blended fee as an option to the tiered pricing structure. This requirement was initially adopted to offer a pricing alternative to small depositors concerned with the potential reconcilement difficulties associated with tiered pricing. Over the past several years, however, Federal Reserve depositors have become accustomed to component pricing, i.e., pricing individual checks within a given deposit at different prices, since this is the billing procedure for the mixed deposit option used primarily by small depositors.[3] The elimination of a blended fee in the tiered pricing structure is consistent with the Federal Reserve's policy of pricing mixed deposits based on the actual composition of checks in a given deposit.

The Board believes that Federal Reserve depositors can easily use the reconcilement procedures related to mixed cash letter deposits to reconcile the component pricing associated with tiered pricing. Experience has shown that billing for tiered pricing has been easily incorporated by the depositors in the Minneapolis and Kansas City offices that have opted for the tiered prices rather than the blended fee. These depositors have not indicted any billing difficulties. (Currently, there are 352 tiered pricing depositors in these offices, which represent 39 percent of all Minneapolis RCPC and Kansas City country depositors.) Federal Reserve billing statements clearly indicate the breakdown of volume for high- and low-cost tiers with appropriate prices; this detailed information should facilitate reconcilement.

4. The approval process for implementation of tiered pricing in additional Federal Reserve offices will be the same as the approval process for other routine price and service level changes. Given the fact that the adoption of a tiered pricing structure would be subject to the specific criteria established by the Board, the Board is proposing to handle approval of tiered pricing structures in additional Federal Reserve offices in the same manner as other routine price and service level changes. The Director of the Division of Fedral Reserve Bank Operations, under delegated authority from the Board, has the authority to approve routine price and service level changes.

If the Board were to approve the proposed modifications to the tiered pricing critiera, the revised criteria would be as follows:

1. Tiered prices may be used only where clear cost differences exist between groups of checks within a collection zone.

2. Tiered prices may be used only where they have the potential to provide net savings for a substantial amount of deposited volume or a substantial number of depositing institutions.

3. Tiered pricing may be applied to deposits in all collection zones, provided clear cost differences exist.

4. Reserve Banks may offer more than two price tiers within a collection zone, provided clear cost differences exist to justify more than two tiers.

If adopted, the Board anticipates that the revised criteria would become effective mid–1991. Reserve Bank offices that implemented tiered pricing under the original criteria would eliminate the blended fee option no later than January 1992.

Competitive Impact Analysis. All operational and legal changes considered by the Board that have a substantial effect on payments system participants are subject to the competitive impact analysis described in the March 1990 policy statement "The Federal Reserve in the Payments Mechanism." In this analysis, the Board determines whether the proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints or due to a dominant market position of the

[1] An endpoint refers to the physical location designated by the paying bank as the location at which the Federal Reserve is authorized to deliver items drawn on the paying bank for presentment.

[2] A collection zone is a geographic subdivision of a Federal Reserve territory. Each collection zone has a specified availability schedule under which credit will be given for a check deposited for collection at the Federal Reserve office serving that territory.

[3] Checks deposited in mixed cash letters are charged separate fees depending on whether the check is drawn on a bank in that Reserve Bank office's city, RCPC, or country zone, or a paying bank located in another Federal Reserve territory. Collecting banks are billed for the checks in mixed deposits based on the actual compositon of checks in a given mixed cash letter.

Federal Reserve deriving from such legal differences.

The Board believes that the proposed tiered pricing structure will not have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve. Tiered pricing is an accepted structure in the banking industry and is utilized by other providers of check collection services. The proposed modifications will more accurately reflect the cost of collecting checks drawn on a particular paying bank in the price assessed for collecting those checks. A more precise alignment of costs and prices will not adversely effect the ability of other service providers to compete effectively with the Federal Reserve.

Board of Governors of the Federal Reserve System, November 8, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-26900 Filed 11-14-90; 8:45 am]

BILLING CODE 6210-01-M

First Western Bancorp, Inc., et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 5, 1990.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. First Western Bancorp, Inc., New Castle, Pennsylvania; to engage *de novo* through its subsidiary, First Western Trust Services Company, New Castle, Pennsylvania, and thereby engage in trust and fiduciary activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

2. First Commonwealth Financial Corporation, Indiana, Pennsylvania; to engage *de novo* through its subsidiary, First Commonwealth Trust Company, Indiana, Pennsylvania, in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Mid Town Bancorp, Inc., Chicago, Illinois; to engage *de novo* through its subsidiary, Falcon Financial Advisors, Inc., Chicago, Illinois, in providing bank management consulting advice concerning loan administration to nonaffiliated bank and nonbank depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y. These activities will be conducted in Illinois, Indiana, Wisconsin, and Michigan.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Old National Bancorp, Evansville, Indiana; to engage *de novo* through its subsidiary, Old National Service Corp., Evansville, Indiana, in providing data processing services to affiliate and correspondent banks pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted within approximately a 150–200 mile radius of Evansville, Indiana.

Board of Governors of the Federal Reserve System, November 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26902 Filed 11-14-90; 8:45 am]

BILLING CODE 6210-01-M

Harbor Banc Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 5, 1990.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Harbor Banc Financial Corporation, Camden, Maine; to become a bank holding company by acquiring 100 percent of the voting shares of Harbor National Bank, Camden, Maine, a *de novo* bank.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Synovus Financial Corp., Columbus, Georgia, and TB&C Bancshares, Inc., Columbus, Georgia; to merge with Sea Island Bankshares, Inc., Statesboro, Georgia, and thereby indirectly acquire Sea Island Bank, Statesboro, Georgia.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. The Moorcroft Corporation, Moorcroft, Wyoming; to merge with The Newcastle Corporation, Newcastle, Wyoming, and thereby indirectly acquire National Bank of Newcastle, Newcastle, Wyoming.

2. North Platte Corporation, Torrington, Wyoming, and Dawson Corporation, Lexington, Nebraska; to acquire The Moorcroft Corporation, Moorcroft, Wyoming, and thereby indirectly acquire Moorcroft State Bank, Moorcroft, Wyoming, and National Bank of Newcastle, Newcastle, Wyoming.

Board of Governors of the Federal Reserve System, November 8, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26903 Filed 11-14-90; 8:45 am]

BILLING CODE 6210-01-M

The Summit Bancorporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 5, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. The Summit Bancorporation, Chatham, New Jersey; to acquire S & S Interim Federal Savings Bank, Chatham, New Jersey, and thereby engage in operating a savings association pursuant to § 225.25(b)(9).

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Valley Financial Services, Inc., Mishawaka, Indiana; to acquire Northern Indiana Savings Association, F.A., Chesterton, Indiana, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 8, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26904 Filed 11-14-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0390]

Ciba-Geigy Corp., et al.; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) withdraws approval of 43 new drug applications (NDA's). This action is based on the written requests of the applicants because they no longer market these drug products.

EFFECTIVE DATES: December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Ron Lyles, Center for Drug Evaluation nad Research (HFD–53), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4320.

SUPPLEMENTARY INFORMATION: The holders of the NDA's listed below have informed FDA that they no longer market these drug products and have requested that FDA withdraw approval of the applications. The applicants have also, by request, waived their opportunity for a hearing.

NDA No.	Drug name	Applicant's name and address
0-843	Percorten Acetate in Oil Injection	Ciba Pharmaceutical Co., Ciba-Geigy Corp., Summit, NJ 07901.
4-305	Sulfadiazine Tablets	The Upjohn Co., Kalamazoo, MI 49001.
6-044	Diasone Sodium Tablets and capsules	Abbott Laboratories, Abbott Park, IL 60064.
6-250	Prophylthiouracil Tablets	The Upjohn Co.
7-131	Epsilan Phosphate Sterilized Solution Injection	Adria Laboratories, P.O. Box 16529, Columbus, OH 43216-6529.
8-041	Evans Blue Dye Injection	Parke-Davis, Division of Warner-Lambert, 201 Tabor Rd., Morris Plains, NJ 07950.
8-114	Prantal Tablets	Schering Research, Schering-Plough Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033.
8-310	Dramamine Suppositories	G.D. Searle and Co., 4901 Searle Parkway, Skokie, IL 60077.
8-358	Sunewept Cream	Rydelle Labs., Inc., Div. of S.C. Johnson and Sons, Inc., Racine, WI 53403-5011.
8-788	6% Gentran in 0.9% Sodium Chloride and 6% Gentran in 10% Travert	Baxter Healthcare Corp., Route 120 and Wilson Rd., Round Lake, IL 60073.
8-794	Chlor-Trimeton Injection	Schering Corp.
9-303	Camoform HCL Tablets	Parke-Davis.
9-378	Cortef Acetate Sterile Suspension Injection	The Upjohn Co.
9-751	Dipaxin Tablets	The Upjohn Co.
9-795	Hydrocortisone Tablets	Rorer Pharmaceutical Corp., 500 Virginia Dr., Ft. Washington, PA 19034.
9-864	Cortef Sterile Suspension Injection	The Upjohn Co.
9-958	Pamine Bromide Sterile Solution Injection	Do.
11-305	Midicel Tablets	Parke-Davis.
11-376	Medrol Ointment	The Upjohn Co.
11-570	Medrol Acetate Cream	Do.
11-747	Oxylone Ointment	Do.

NDA No.	Drug name	Applicant's name and address
11-895	Gammacortan Tablet	Ciba-Geigy Corp.
12-631	Dorbantyl Capsules and Dorbantyl Forte Capsules	Riker Laboratories, Inc., Bldg. 270-3A 3M Center, St. Paul, MN 55144-1000.
13-267	Dexamoth Tablets	Rorer Pharmaceutical Corp.
16-010	Tinactin Aerosol Spray	Schering Corp.
16-054	Repoise Tablets	A.H. Robins Co., 1211 Sherwood Ave., Richmond, VA 23261-6609.
16-123	Orinase Oral Diagnostic Tablets	The Upjohn Co.
16-196	Tinactin Cream	Schering Corp.
16-225	Repository Corticotropin Injection	Wyeth Laboratories, Inc., P.O. Box 8299, Philadelphia, PA 19101.
16-228	Tinactin Powder	Schering Corp.
16-231	Vantage Soap	Puritan Chemical Co., 916 Ashby St., NW., Atlanta, GA 30318.
16-628	10% Gentran 40 in 5% Dextrose and 10% Gentran in 0.9% Sodium Chloride.	Travenol Laboratories, Inc., P.O. Box 490, Round Lake, IL 60073.
16-902	Plasmapheresis Blood Pack	Do.
16-934	Demulen-Fe 28	G.D. Searle & Co.
16-935	Demulen-28	Do.
17-096	Heparin Sodium Injection	Baxter Healthcare Corp.
17-065	Parda Capsules	Parke-Davis.
17-231	Oleic Acid I-125 Capsules	Mallinckrodt, Inc., 675 Brown Rd., St. Louis, MO 63134.
17-318	Sodium Rose Bengal I-242 Injection	Cis-us, Inc., 1983 Marcus Ave., Lake Success, NY 11042.
17-336	Progesterone Injection	Elkins-Sinn, Inc., Two Esterbrook Lane, Cherry Hill, NJ 08034.
17-541	Sterile Progesterone Suspension	Do.
17-832	Instant Microspheres	3M Medical Products Div., Medical-Surgical Division, 3M Center, St. Paul, MN 55144-1000.
18-678	4% Branchamin	Baxter Healthcare Corp.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the NDA's listed above, and supplements thereto, is hereby withdrawn, effective December 17, 1990.

Dated: November 1, 1990.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 90-26905 Filed 11-14-90; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92-463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress: National Advisory Council on Health Professions Education

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC, or weekdays between 9 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Law Library, HHS North Building, room G-619, 330 Independence Avenue, SW., Washington, DC, telephone (202) 245-6791. Copies may be obtained from: Ms. Wilma Johnson, Executive Secretary, National Advisory Council on Health Professions Education, room 8C-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6880.

Dated: November 9, 1990.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 90-26904 Filed 11-14-90; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-920-01-4111-13; MTM 72513]

Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas lease MTM 72513, Carbon County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this notice.

Dated: November 6, 1990.

June A. Bailey,

Chief, Leasing Unit.

[FR Doc. 90-26907 Filed 11-14-90; 8:45 am]

BILLING CODE 4310-DN-M

[ID-050-01-4212-13; IDI-27631]

Realty Action; Exchange of Public Lands in Blaine County, ID

AGENCY: Bureau of Land Mangement, Interior.

ACTION: The following described lands in Blaine County, Idaho have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T. 2 N., R. 18 E., Boise Meridian

Section 23: SW¼NE¼; containing 40 acres.

In exchange for these lands, the Federal Government will acquire the following non-Federal lands in Blaine County from Denis R. Perron:

T. 2 N., R. 18 E. Boise Meridian

Section 13: W½SW¼
Section 14: NE¼, SE¼NW¼, S½SE¼
Section 24: N½NW¼
Containing 440 acres.

SUMMARY: The purpose of the exchange is to consolidate the public land base in the Wood River Valley area while disposing of an isolated parcel that is uneconomical and difficult to manage.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

The terms and condition applicable to the exchange are:

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Reserving to the United States a road right-of-way, serial number IDI 22110, over and across a strip of land in T. 2 N., R. 18 E., Section 23: SW¼NE¼, 40 feet in width and 660 feet long.

3. A right-of-way for a ditch through the NW¼ Section 24, T. 2 N., R. 18 E., B.M., Blaine County Idaho, granted in Deed from Peter Weber to P.S. Dittoe, recorded February 9, 1920, in Book 98 of Deeds, p. 620.

The publication of this notice in the **Federal Register**, will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant.

The non-Federal lands described above are subject to prior Federal reserved minerals. The prior Federal interests are hereby segregated to the extent that such interests will not be considered to appropriation under mining laws until a notice pursuant to 43 CFR 2200.3(a) is issued.

Detailed information concerning this exchange is available for review at the Shoshone District BLM office at 400 West F Street, Shoshone, Idaho.

For a period of 45 days from the date of publication on this notice, interested parties may submit comments regarding this exchange to the District Manager, BLM Shoshone District Office, P.O. Box 2-B, Shoshone, ID 83352.

Dated: November 5, 1990.

Harold O. Brown,

Acting District Manager.

[FR Doc. 90-26870 Filed 11-14-90; 8:45 am]

BILLING CODE 4310-GG-M

[OR-090-00-4212-11: GPI-034; OR 45215]

Realty Action; Conveyance of Public Land for Recreation and Public Purposes; Lane County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—Recreation and Public Purposes Act classification and conveyance of public land in Lane County, Oregon.

SUMMARY: The following land has been examined and found suitable for classification for conveyance out of Federal ownership under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The land will not be conveyed until at least 60 days after the date of publication of this notice in the **Federal Register:**

Willamette Meridian, Oregon

T. 18 S., R. 12 W.
Sec. 15: SE¼NW¼.
Containing 40.00 acres.

The land is not required for Federal purposes and conveyance is consistent with current BLM land use planning and would be in the national interest. The land will be conveyed without monetary consideration to the City of Florence, Oregon, to be managed for open space recreation.

The patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior and will contain the following reservations to the United States:

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 20, 1890 (26 Stat. 391, 43 U.S.C. 945).

2. All minerals, together with the right to prospect for, mine and remove such deposits under applicable law and such regulations as the Secretary of the Interior may prescribe.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

DATES: On or before December 31, 1990, interested parties may submit comments to the District Manager, Bureau of Land Management, at the address below. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective January 14, 1991.

ADDRESSES: Detailed information concerning the classification and conveyance, including the reservations and planning and environmental documents, is available at the Eugene District Office, P.O. Box 10226, 1255 Pearl Street, Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Ronald Wold, Eugene District Office at (503) 683-6403.

Dated November 5, 1990.

Ronald L. Kaufman,

District Manager.

[FR Doc. 90-26869 Filed 11-14-90; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-01-4130-12; GP1-031; OR-39718(WASH)]

Conveyance of Public Lands; Order Providing for Opening Lands; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 2,210.53 acres of public land out of Federal ownership, with a reservation of oil and gas to the United States. Of the 8,907.72 acres reconveyed to the United States, this action will open 8,842.72 acres of reconveyed lands to surface entry, and 2,495 acres to mining and mineral leasing, except to oil and gas. The mineral estate in the 6,347.72-acre balance is not in Federal ownership. The 65-acre balance is within the Juniper Dunes Wilderness withdrawal and will not be opened to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756; 43 U.S.C. 1716, a patent has been issued transferring 2,210.53 acres in Franklin County, Washington, from Federal to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 15 N., R. 23 E.,
Secs. 11 and 13.
T. 15 N., R. 24 E.,
Sec. 7, lots 1, 2, 3, and 4, E½, and E½W½;
Secs. 13 and 21.
T. 15 N., R. 25 E.,
Secs. 11 and 17.
T. 15 N., R. 26 E.,
Sec. 7, S½N½ of lot 1, S½ of lot 1, lots 2, 3, and 4, E½, and E½W½;
Sec. 9, N½NE¼NE¼, SW¼NE¼NE¼, N½SE¼NE¼NE¼, SW¼SE¼NE¼NE¼, W½NE¼, W½NE¼SE¼NE¼, SE¼NE¼SE¼NE¼, W½SE¼NE¼, SE¼SE¼NE¼, W½, and SE¼;
Sec. 11.
T. 10 N., R. 31 E.,

Sec. 13.
T. 11 N., R. 31 E.,
Secs. 23, 25, and 35.

The areas described aggregate 8,907.72 acres in Franklin and Grant Counties.

3. The minerals are not in Federal ownership in T. 15 N., Rgs. 23, 24, 25, and 26, and are not open to location and entry under the United States mining laws, including the mineral leasing laws.

4. That portion of the SE¼ in Sec. 25, T. 11 N., R. 31 E., is within the boundary of the Juniper Dunes Wilderness withdrawal dated July 3, 1984, and will not be open to operation of the public land laws, including the mining and mineral leasing laws.

5. At 8:30 a.m., on December 17, 1990, the lands described in paragraph 2, except as provided in paragraph 4, will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on December 17, 1990, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

6. At 8:30 a.m., on December 17, 1990, the following described lands, except as provided in paragraph 4, will be opened to location and entry under the United States mining law, except to oil and gas. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts:

Willamette Meridian

T. 10 N., R. 31 E.,
Sec. 13.
T. 11 N., R. 31 E.,
Secs. 23, 25, and 35.

7. At 8:30 a.m., on December 17, 1990, the lands described in paragraph 6, except as provided in paragraph 4, will be opened to applications and offers under the mineral leasing laws.

Dated: November 2, 1990.

Robert E. Mollohan,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-26868 Filed 11-14-90; 8:45 am]
BILLING CODE 4310-33-M

[ID-942-01-4730-12]

Idaho; Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., November 5, 1990.

The plat representing the corrective dependent resurvey of portions of the subdivisional lines and the subdivision of section 28, T. 56 N., R. 1 W., Boise Meridian, Idaho, Group No. 750, was accepted December 12, 1988.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: November 5, 1990.

Gary T. Oviatt,
Acting Chief, Cadastral Surveyor for Idaho.

[FR Doc. 90-26871 Filed 11-14-90; 8:45 am]
BILLING CODE 4310-GG-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-753389

Applicant: Ruby Catherine Lewis; Gerrardstown, West Virginia.

The applicant requests a permit to purchase one pair of captive hatched nene geese (*Nesochen (=Branta) sandvicensis*) from Charles Nugent, Kimbolton, Ohio, for the purpose of captive propagation.

PRT-744878

Applicant: Institute of wildlife Studies, Arcata, California.

The applicant requests the following amendments to their current permit which allows live-trapping, bleeding, and placement of telemetry transmitters on bald eagles (*Haliaeetus leucocephalus*): (1) Addition of Big Bear Lake, San Bernadino County, California as an authorized trapping site; (2) authorization to obtain captive-bred bald eagle chicks from zoos and other breeding facilities in the U.S. for placement in bald eagle nests on Santa Catalina Island; (3) authorization to obtain wild golden eagle chicks (*Aquila chrysaetos*), wild red-tailed hawk chicks (*Buteo jamaicensis*), and captive-bred Harris hawk chicks (*Parabuteo unicinctus*) for placement in bald eagle nests as initial surrogate chicks, on Santa Catalina Island, for enhancement of the propagation of the species.

PRT-753541

Applicant: Mr. Felipe Gonzalez, Miami, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (Damaliscus dorcas dorcas) to be culled from the captive herd maintained by Mr. Frank Bowker, Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-753543

Applicant: Mr. Roberto Cayon, Hialeah, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) to be culled from the captive herd maintained by Mr. Frank Bowker, Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-753542

Applicant: Mr. Peter Brito, Miami, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) to be culled from the captive herd maintained by Mr. Frank Bowker, Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-752759

Applicant: Mr. Jose Garcia, Garza Garcia, Mexico.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) to be culled from the captive herd maintained by Mrs. C.P. Human of Bredasdorp, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-753819

Applicant: New York Zoological Society, New York, New York.

The applicant requests a permit to import three captive-bred white-naped cranes (*Grus vipio*) from the Vogel Park in Germany, for the purpose of zoological display and captive-breeding.

PRT-753816

Applicant: Chicago Zoological Society, Brookfield, IL.

The applicant requests a permit to import 50 blood samples taken from captive-held black-handed spider monkeys (*Ateles geoffroyi frontus*) and (*Ateles geoffroyi panamensis*) for taxonomic research for developing better breeding and management programs for these subspecies held in captivity.

PRT-753821

Applicant: California State University, Haycoard, CA.

The applicant requests a permit to trap, mark, transport, implant with mirco telemetry transitors, and release Santa Cruz long-toed salamanders (*Ambystoma macrodactylum croceum*) in Valencia and Ellicott Ponds of Santa Cruz County, California for population censusing and monitoring of the species.

PRT-752415

Applicant: John M. Rife, Jr., Winter Park, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by M.J. D'Alton, P.O. Box 400, Bredasdorp, 7280 Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-752731

Applicant: The Planning Center, Newport Beach, CA.

The applicant requests a permit to live-trap and release Stephen's kangaroo-rats (*Dipodomys stephensi*) on the southeast quarter of section 34, T4S, R6W of Lake Mathews Quad (Riverside county), California, for preliminary biological survey purposes.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) room 430, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, 4401 N. Fairfax Drive, room 432, Arlington, VA 22203.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: November 9, 1990.

Karen Wilson,
Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 90-26942 Filed 11-14-90; 8:45 am]
BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

Global Competitiveness of U.S. Advanced-Technology Manufacturing Industries

In the matter of Investigation No. 332-301, Global Competitiveness of U.S. Advanced-Technology Manufacturing Industries: Communications Technology and Equipment; Investigation No. 332-302, Global Competitiveness of U.S. Advanced-Technology Manufacturing Industries: Pharmaceuticals; Investigation No. 332-303, Global Competitiveness of U.S. Advanced-Technology Manufacturing Industries: Semiconductor Manufacturing and Testing Equipment.

AGENCY: United States International Trade Commission.

ACTION: Institution of investigations and scheduling of a single public hearing.

EFFECTIVE DATE: November 8, 1990.

FOR FURTHER INFORMATION CONTACT: General inquiries regarding the three names investigations may be directed to Mr. Aaron Chesser, Office of Industries (202-252-1380). Industry-specific information regarding the three investigations may be obtained from the following staff members, also located in the Office of Industries, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436:

Inv. No. 332-301 (Communications Technology and Equipment), Ms. Sylvia McDonough (202-252-1393);
Inv. No. 332-302 (Pharmaceuticals), Mr. Edmund Cappuccilli (202-252-1368); and
Inv. No. 332-303 (Semiconductor Manufacturing and Testing Equipment), Mr. Nelson Hogge (202-252-1395).

For information on legal aspects of these investigations contact Mr. William Gearhart of the Commission's Office of General Counsel (202-252-1091).

BACKGROUND: On July 20, 1990, at the request of the Senate Committee on Finance, and in accordance with section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the U.S. International Trade Commission instituted investigation No. 332-294, Identification of U.S. Advanced-Technology Manufacturing Industries for Monitoring and Possible Comprehensive Study. The Committee requested the Commission to expand its collection of, and ability to analyze, information on the competitiveness of advanced-technology manufacturing industries in the United States, pursuant to sections 332(b), 332(d), and 332(g) of the Tariff Act of 1930.

Specifically, the Committee requested that the Commission, under a two-stage investigation, (1) within 3 months of receipt of the letter, identify for the purpose of monitoring, using criteria provided by the Committee and any additional criteria of the Commission's choosing, U.S. advanced-technology manufacturing industries, and recommend three of those industries as subjects for comprehensive Commission studies; and (2) within 12 months of the receipt of the Committee's approval (or modification) of the Commission's recommendations, submit its report on three industries the subject of comprehensive studies.

Notice of the Commission's investigation was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the **Federal Register** (55 FR 30530) of July 26, 2990. All persons were afforded the opportunity to submit written views concerning the industries to be included on the list and that may be the subject of a comprehensive study.

The Commission's report on investigation No. 332-294 (USITC Publication 2319, September 1990) was transmitted to the Senate Committe on Finance on September 21, 1990. In its report, the Commission identified ten advanced-technology industries and recommended the following three for comprehensive study: communications technology and equipment; pharmaceuticals; and semiconductor manufacturing and testing equipment.

By letter of September 27, 1990, the Senate Committee on Finance acknowledged receipt of the Commission's report on investigation No. 332-294 and approved the Commission's recommendation concerning the three industries for comprehensive study; the Committee further indicated its desire that the Commission complete its study of the three industries within 12 months.

In identifying the industries to be monitored, the Committee requested that the Commission consider the following criteria as well as any other criteria it may choose—

(1) Industries producing a product that involves use or development of new or advanced technology, involves high value-added, involves research and development expenditures that, as a percentage of sales, are substantially above the national average, and is expected to experience above-average growth of demand in both domestic and international markets; and

(2) benefits in foreign markets from coordinated—though not necessarily sector specific—policies that include, but are not limited to, protection of the home market, tax policies, export promotion policies, antitrust exemptions, regulatory policies, patent and other intellectual property policies, assistance in developing technology and bringing it to market, technical or extension services, performance requirements that mandate either certain levels of investment or exports or transfers of technology in order to

gain access to that country's market, and other forms of Government assistance.

The Committee requested that the report on the three industries to be selected include at least the following information—

Existing or proposed foreign government policies that assist or encourage these industries to remain or to become globally competitive, existing or proposed U.S. Government policies that assist or encourage these industries to remain or become globally competitive, and impediments in the U.S. economy that inhibit increased competitiveness of these U.S. industries.

As requested by the Committee, the Commission will attempt to include the aforementioned information in its reports.

PUBLIC HEARING: A consolidated public hearing in connection with the three investigations will be held in the Commission Hearing Room, 500 E Street SW., Washington, DC 20436, beginning at 9:30 a.m. on January 17, 1991, and continuing as required on January 18, 1991. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, not later than the close of business on January 3, 1991. Posthearing briefs must be filed by January 31, 1991.

WRITTEN SUBMISSIONS: In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigations. Written statements are encourage early in the investigative process, but should be received no later than the close of business on June 7, 1991. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Infromation" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Office of the Secretary of the Commission in Washington, DC.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commisison's TDD terminal on (202) 252–1810.

By order of the Commission.

Issued: November 8, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–26928 Filed 11–14–90; 8:45 am]

BILLING CODE 7020–02–M

[Inv. No. 337–TA–311]

Certain Air Impact Wrenches; Commission Decision Not to Review an Initial Determination Designating the Investigation More Complicated

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) designating the above-captioned investigation more complicated and extending the administrative deadline for filing the final ID by three months. The Commission has also extended the deadline for completion of the investigation by three months, *i.e.*, until August 5, 1991.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1092.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On October 3, 1990, the presiding ALJ issued an ID designating the investigation more complicated and extending the administrative deadline for filing the ALJ's final ID by three months. No petitions for review or agency comments were received. The investigation was designated more complicated because of the serious illness of the president of respondent Astro Pnenmatic Tool Co. (Astro) that temporarily jeopardizes the ability of Astro and respondent Kuan–I Gear Co. to defend themselves in the investigation.

Authority for the Commission action is found in section 337(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(1)) and in Commission interim rule 210.59 (19 CFR 210.59).

By order of the Commission.

Issued: November 7, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–26926 Filed 11–14–90; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–455 (Final)]

Certain Laser Light-Scattering Instruments and Parts Thereof From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is threatened with material injury [3] by reason of imports from Japan of certain laser light-scattering instruments (LLSIs) and parts thereof,[4] provided for in subheadings 9027.30.40 and 9027.90.40 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than their fair value (LTFV).

Background

The Commission instituted this investigation effective July 6, 1990, following a preliminary determination by the Department of Commerce that imports of LLSIs and parts thereof from Japan were being sold at LTFV within the meaning of section 733(a) of the act (19 U.S.C. 1673b(a)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was

[1] The record is defined in sec. 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Acting Chairman Brunsdale and Commissioner Lodwick dissenting.

[3] Commissioners Rohr and Newquist further determine that, pursuant to section 735(b)(4)(B), they would not have found material injury by reason of the imports subject to the investigation but for the suspensions of liquidation of the entries of the subject merchandise.

[4] The products covered by this investigation are laser light-scattering instruments and parts thereof from Japan that have classical measurement capabilities, whether or not also capable of dynamic measurements. The following parts are included in the scope of the investigation when they are manufactured according to specifications and operational requirements for use only in such an LLSI: Scanning photomultiplier assemblies, immersion baths, sample-containing structures, electronic signal-processing boards, molecular characterization software, preamplifier/discriminator circuitry, and optical benches.

given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 25, 1990 (55 FR 30284). The hearing was held in Washington, DC, on September 25, 1990, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 2, 1990. The views of the Commission are contained in USITC Publication 2328 (November 1990), entitled, "Certain Laser Light-Scattering Instruments and Parts Thereof from Japan: Determination of the Commission in Investigation No. 731–TA–455 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation,"

By order of the Commission.

Issued: November 5, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–26929 Filed 11–14–90; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31757]

Crystal City Railroad, Inc.; Acquisition and Operation Exemption, Railroad Switching Service of Missouri, Inc.; Texas Railroad Switching, Inc.

Crystal City Railroad, Inc. (CC), and Texas Railroad Switching, Inc. (TRS), noncarriers, have filed a notice of exemption for CC to acquire and TRS to lease and operate approximately 53.41 miles of rail line owned by Railroad Switching Service of Missouri, Inc., (RSSM), extending: (1) Between milepost 105.14, near Gardendale, TX, and milepost 147.4 near Crystal City, TX; and (2) between milepost 145.2, near Crystal City, and milepost 156.35, near Carrizo Springs, TX.[1] CC will acquire the rail lines from RSSM and will immediately lease them to RSSM's affiliate TRS, which will assume the common carrier obligation on the line. These transactions were expected to be consummated on or after October 23, 1990.

These transactions are related to a notice of exemption filed concurrently, under 49 CFR 1180.2(d)(2), in Finance Docket No. 31758, Merchants Management Corp.—Continuance in Control Exemption—Texas Railroad Switching, Inc., for the continued control by Merchants of TRS and two other non-connecting Class III rail carriers.

Any comments must be filed with the Comission and served on: William P. Jackson, Jr., Jackson & Jessup, P.C., P.O. Box 1240, Arlington, VA 22210.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 7, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–26818 Filed 11–14–90; 8:45 am]

BILLING CODE 7035–01–M

[1] RSSM purchased the lines from the Missouri Pacific Railroad Company. *See* Finance Docket No. 31616, *Railroad Switching Service of Missouri, Inc.—Acquisition—Missouri Pacific Railroad Company Lines Between Gardendale, Crystal City and Carrizo Springs, TX* (not printed), served July 31, 1990.

[Finance Docket No. 31758]

Merchants Management Corp.; Continuance in Control Exemption, Texas Railroad Switching, Inc.

Merchants Management Corp. (MMC), a noncarrier, has filed a notice of exemption to continue to control the Poseyville and Owensville Railroad Company (P&O) and Railroad Switching Service of Missouri, Inc. (RSSM), existing class III rail carriers, and Texas Railroad Switching, Inc. (TRS), upon TRS's becoming a rail carrier. TRS will be the operator of lines in the State of Texas leased from Crystal City Railroad, Inc. (CC), that were previously owned by RSSM. CC and TRS have concurrently filed a notice of exemption in Finance Docket No. 31757, Crystal City Railroad, Inc.—Acquisition and Operation Exemption—Railroad Switching Service of Missouri, Inc.; Texas Railroad Switching, Inc.—Lease and Operation Exemption—Crystal City Railroad, Inc. After the acquisition and lease transactions are consummated, MMC will be in control of three rail carriers.

MMC indicates that: (1) The properties operated by P&O, RSSM, and TRS will not connect with each other; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail carriers with each other or with any other railroad in their corporate family; and (3) the transaction does not involve a Class I carrier.

Therefore, this transaction involves the continuance in control of nonconnecting carriers and is exempt from the prior review requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock. Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: William P. Jackson, Jr., Jackson & Jessup, P.C., P.O. Box 1240, Arlington, VA 22210.

Decided: November 7, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–26819 Filed 11–14–90; 8:45 am]

BILLING CODE 7035–01–M

Exemption

[Finance Docket No. 31772]

The Bloomer Shippers Railway Redevelopment League—Trackage Rights Exemption—Illinois Central Railroad Co. and Norfolk and Western Railway Co.

Illinois Central Railroad Company (IC) and Norfolk and Western Railway Company (NW) have agreed to grant The Bloomer Shippers Railway Redevelopment League (Bloomer) terminal trackage rights accessing IC's interchange track at Gibson City, IL.

IC will grant rights over 4 miles of track between milepost 109 and 113 on its Gilman District line, at Gibson City. NW will grant rights over approximately 2 miles of track between the NW/IC north wye switch and milepost 342 on NW's Peoria District line, also at Gibson City. The trackage rights were to become effective November 9, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Thomas W. Leach, The Bloomer Shippers Railway Redevelopment League, P.O. Box 455, 100 E. Locust Street, Chatsworth, IL 60921.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected

pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: November 8, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-26959 Filed 11-14-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 370X)]

Exemption; CSX Transportation, Inc.—Abandonment Exemption—In Lake County, IN

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—Exempt Abandonments to abandon its 0.32-mile line of railroad between valuation stations 185+94 and 202+59, at Whiting, in Lake County, IN.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. the appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 15, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by November 26, 1990.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by December 5, 1990, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 20, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 8, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-26953 Filed 11-14-90; 8:45 a.m.]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No 366X)]

Exemption; CSX Transportation, Inc.—Abandonment Exemption—In Kanawha County, WV

Applicant has filed a notice of exemption under 49 CFR part 1152 Subpart F—Exempt Abandonments to abandon its 26.12-mile line of railroad: (1) Between milepost 0.00, at Cabin Creek Junction, and milepost 16.43, near Kayford; (2) between milepost 0.00, at Leewood, and milepost 7.04, at United; and (3) between milepost 0.00, at Decota, and milepost 2.65, at Republic, in Kanawha County WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user or rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation on service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 16, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by November 26, 1990.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by December 6, 1990, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ad initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 21, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision

Decided: November 8, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-26954 Filed 11-14-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31734]

Green Bay Packaging Inc.—Control—Kwt Railway, Inc. and Atlantic and Western Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission retroactively exempts Green Bay Packaging Inc. from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, for its control of KWT Railway, Inc., and Atlantic and Western Railway Company, subject to the conditions for the protection of railroad employees in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

DATES: This notice is effective on December 15. Petitions for stay must be filed November 26, 1990, and petitions for reconsideration must be filed by December 5, 1990.

ADDRESSES: Send pleadings referring to Finance Docket No. 31734 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representatives:

Donald G. Avery, Esq., Slover & Loftus, 1224 17th Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, (TDD for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: November 6, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickand, Jr.,

Secretary.

[FR Doc. 90-26592 Filed 11-14-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 103X)]

Norfolk and Western Railway Co.; Abandonment Exemption in Pike County, KY

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its 3.6-mile line of railroad between milepost HL-11.4, at Bama, and milepost HL-15.0, at Bane, in Pike County, KY.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 15, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by November 26, 1990.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by December 5, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Richard W. Kienle, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 20, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 31, 1990.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

By the Commission, David M. Konschnik, Director, Office of Proceedings.
Sidney L. Strickland, Jr.,
Secretary.
[FR Doc. 90-26920 Filed 11-14-90; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 88-53]

Robert L. Weeks, D.O. Edmond, Oklahoma, Hearing

Notice is hereby given that on October 24, 1989, the Drug Enforcement Administration, Department of Justice, issued to Robert L. Weeks, D.O., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, BW1258993, and deny any pending applications for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on November 28, 1990, commencing at 9:30 a.m., at the U.S. Tax Court, Main Place Building, 420 West Main Street, Courtroom 1020, Oklahoma City, Oklahoma.

Dated: November 8, 1990.
Robert C. Bonner,
Administrator, Drug Enforcement Administration.
[FR Doc. 90-26885 Filed 11-14-90; 8:45 am]
BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 90-98]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by November 17, 1990. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D. A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-0054), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (703) 271-5542.

Reports

Title: NASA FAR Supplement Part 18-43, Contract Modifications.
OMB Number: 2700-0054.
Type of Request: Extension.
Frequency of Report: On occasion.
Type of Respondent: State or local governments, businesses or other for profit, non-profit institutions, small businesses or organizations.
Number of respondents: 720.
Responses per respondent: 2.
Annual Responses: 1,440.
Hours per response: 50.
Annual Burden Hours: 72,000.
Abstract-Need/Uses: Contractor submittal of proposals in response to change orders.

Dated: November 5, 1990.
D. A. Gerstner,
Director, IRM Policy Division.
[FR Doc. 90-26920 Filed 11-14-90; 8:45 am]
BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Establishment

The Assistant Director for Mathematical and Physical Sciences has determined that the establishment of the Special Emphasis Panel in Astronomical Sciences is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 U.S.C. 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Special Emphasis Panel in Astronomical Sciences.

Purpose: Primarily, to advise on the merit of special emphasis proposals or applications submitted to the Division of Astronomical Sciences for financial support.

Balanced Membership Plan: Membership will be selected on an "as needed" basis in response to specific proposals, applications, or sites to be reviewed. Members will be selected for their demonstrated scientific and engineering expertise so as to represent a reasonable balance of capability in the various subfields of the proposals to be reviewed. Consideration will also be given to achieving geographic balance and to enhancing representation for women, minority, younger and disabled scientists.

Responsible NSF Official: Dr. Jim Wright, Program Director for Cross-Directorate Programs, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Dated: November 9, 1990.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 90-26943 Filed 11-14-90; 8:45 am]
BILLING CODE 7555-01-M

Committee Management; Establishment

The Assistant Director for Biological, Behavioral, and Social Sciences has determined that the establishment of the Special Emphasis Panel in Behavioral and Neural Sciences is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science foundation (NSF) by 42 U.S.C. 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Special Emphasis Panel in Behavioral and Neural Sciences.

Purpose: Primarily, to advise on the merit of special emphasis proposals or applications submitted to the Division of Behavioral and Neural Sciences for financial support.

Balanced Membership Plan: Membership will be selected on an "as needed" basis in response to specific proposals, applications, or sites to be reviewed. Members will be selected for their demonstrated scientific and engineering expertise so as to represent a reasonable balance of capability in the various subfields of the proposals to be reviewed. Consideration will also be given to achieving geographic balance and to enhancing representation for women, minority, younger and disabled scientists.

Responsible NSF Official: Dr. Richard T. Louttit, Director, Division of Behavioral and Neural Sciences, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Dated: November 9, 1990.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 90-26944 Filed 11-14-90; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes; Meeting

The Advisory Committee on the Medical uses of Isotopes will conduct a meeting by teleconference at 11 a.m., on December 5, 1990. The purpose of the meeting is to discuss the training and experience credentials of an individual who has been proposed as an authorized user for medical use. This meeting will be closed to discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

I have determined in accordance with subsection 10(d) Public Law 92-463 that it is necessary to close this meeting to discuss information the release of which would represent an unwarranted invasion of personal privacy (5 U.S.C. 552b(2)(6)).

For further information, contact John Glenn, Ph.D., at (301) 492-3418.

Dated: November 8, 1990.
John C. Hoyle,
Advisory Committee Management Officer.
[FR Doc. 90-26916 Filed 11-14-90; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-259, 50-260, and 50-296]

Tennessee Valley Authority; Consideration of Issuance of Amendment to Facility Operating Licensing and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-33, DPR-52, and DPR-68 issued to the Tennessee Valley Authority (TVA) (the licensee) for operation of the Browns Ferry Nuclear Plant, Units 1, 2, and 3 located in Limestone County Alabama.

The proposed amendment would revise Technical Specifications (TS) as follows: (1) clarify equipment requirements for Table 3.2.B and Limiting Conditions for Operation (LCO) 3.5.B.11, 3.5.E.1, 3.5.F.1, 3.5.G.1, 3.6.D.1, and the Bases Section of 3.6.D.&.D, when the reactor is in the cold shutdown condition, (2) correct the maximum operating power level, allowed by Table 3.2.B for an inoperable Recirculation Pump Trip (RPT) system(s), from 85 percent to 30 percent power, and (3) correct two typographical errors in Table 3.2.B. This amendment was originally proposed by TVA in a letter dated May 18, 1990, which was published in the Federal Register (FR) on June 27, 1990 (55 FR 26295) as a proposed no significant hazards consideration (NSHC). The licensee has since superseded, by letter dated October 30, 1990, their original amendment application. TVA's amendment application only changes the revised LCO requirements of TS section 3.6.D as specified in TS revision (1), identified above. Consequently, the Commission is publishing another FR notice of proposed NSHC. Although, in this case, the Commission's prior proposed determination of NSHC has not changed, as documented below, the Commission is constrained by its rule to re-assess and renotice its prior determination of NSHC in the FR.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not involved a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident from any accident previously evaluated; or involve a significant reduction in a margin of safety.

In the October 30, 1990 letter, the licensee provided the following revised analysis of their modified TS changes, as required by 10 CFR 50.92:

1. The proposed [TS amendment does] not involve a significant increase in the probability or consequences of an accident previously evaluated. [TS revision (1), identified above,] clarifies equipment operability requirements with the reactor in the cold shutdown condition. With the reactor in the cold shutdown condition, primary system energy is minimal and the control rods are inserted. Reactor pressure is normally atmospheric except during performance of inservice hydrostatic tests, inservice leakage tests, and integrated Leak Rate Tests (ILRT). This change would inhibit the drywell high pressure instruments which function to detect primary system leaks. With minimal system energy and no steam generation, this function is not required. The High Pressure Coolant Injection (HPCI) and Reactor Core Isolation Cooling (RCIC) systems are not required because there is no steam supply to operate them and Residual Heat Removal (RHR) and Core Spray (CS) are operable and capable of providing makeup in cases of leaks to protect the fuel from being uncovered. The Automatic Depressurization System (ADS) is not reburied for leaks considered possible during the inservice hydrostatic test. Reactor pressure would decrease fast enough to allow residual heat removal and core spray injection in time to preclude water level decreasing to an unsafe level. The relief valves are not required to be operable because alternate means of overpressurization protection are provided in the tests. During inservice hydrostatic testing, 11 of the 13 relief valves are disabled by removing the pilot cartridges and blanking the pilot ports. Overpressurization protection is provided by the two remaining relief valves which have their setpoint established in accordance with ASME Section XI. The RHR crosstie is not required because there is no high energy potential to breach the torus in the cold shutdown condition. The change is consistent with industry practice and the GE BWR Standard TSs (NUREG 0123).

[TS revision (2), identified above,] is a more conservative requirement. The RPT system provides an automatic trip of both recirculation pumps after a turbine trip or a generator load reject. This reduction in flow increases the core voids and provides immediate negative reactivity to reduce the severity of the transient. There are two RPT systems. If both RPT systems are inoperable or if one RPT system is operable for more than 72 hours, reactor power shall be less than 30 percent within four hours (vs. the current 85 percent). The proposed value of 30 percent power is consistent with the BFN RPT analysis and the BFN Updated Final Safety Analysis Report. Therefore, this change involves no significant increase in the probability or consequences of an accident previously analyzed.

[TS revision (3), identified above] is an administrative change that corrects typographical errors.

2. The proposed [TS amendment] does not create the possibility of a new or different kind of accident from an accident previously evaluated. [TS revision (1), identified above,] does not involve changes in plant hardware or method of operation from that currently practiced. The changes are clarifications to TSs to facilitate performance of required TS testing with the reactor in the cold shutdown condition. The methods of performance are consistent with industry practice.

[TS revision (2), identified above,] will ensure that when both RPT systems are inoperable or when one RPT system is inoperable more than 72 hours, reactor power is dropped to a level consistent with the analysis performed for the RPT installation.

[TS revision (3), identified above,] corrects two typographical errors so the TSs will be more consistent.

3. The proposed [TS amendment does] not involve a significant reduction in the margin of safety. [TS revision (1), identified above,] clarifies equipment operability requirements with the reactor in the cold shutdown condition. Sufficient safety equipment is still available to ensure the fuel remains covered, even in the event of leaks. It does not reduce the equipment available to mitigate an accident and as such does not reduce the margin of safety.

[TS revision (2), identified above,] is more conservative than the current TS. When the RPT system is inoperable the maximum allowed reactor power will be reduced. This is consistent with the analysis performed for the RPT installation and the FSAR and does not reduce the margin of safety.

[TS revision (3), identified above,] is an administrative change which does not reduce the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, based on the above considerations, the staff has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 14, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition to leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at the Athens Public Library, South Street, Athens, Alabama. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in providing the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that a failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Frederick J. Hebdon (petitioner's name and telephone number) (date petition was mailed) (plant name), and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the applications for amendment dated March 16, 1990 as superseded by October 30, 1990, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at the Athens Public Library, South Street, Athens, Alabama.

Dated at Rockville, Maryland, this 9th day of November 1990.

For the Nuclear Regulatory Commission.

Thierry M. Ross,

Project Manager, Project Directorate II-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-26922 Filed 11-4-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF NATIONAL DRUG CONTROL POLICY

President's Drug Advisory Council; Meeting Cancellation

AGENCY: President's Drug Advisory Council; Office of National Drug Control Policy.

ACTION: Notice of cancellation of meeting.

SUMMARY: Notice of an open meeting of the President's Drug Advisory Council, to be held on November 16, 1990, was published in the **Federal Register** on Tuesday, November 6, 1990 (55 FR 46745). Due to the absence of several members of the Council, this meeting will be cancelled. The meeting will be rescheduled for a later date, and notice of the meeting will be published in the **Federal Register** at the appropriate time.

FOR FURTHER INFORMATION CONTACT: Mr. Nelson Cooney, Staff Assistant, President's Drug Advisory Council, Executive Office of the President, Washington, DC 20503, (202) 466-3100.

John Walters,

Chief of Staff, Office of National Drug Control Policy.

[FR Doc. 90-27068 Filed 11-13-90; 1:55 pm]

BILLING CODE 3180-02-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Information Collection Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed information collection.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, (chapter 35 of title 44, United States Code), this notice announces a request submitted by the Office of Personnel Management (OPM) to the Office of Management and Budget (OMB) for expedited clearance of two new information collections: Nonforeign Area Cost-of-Living Allowance Background Survey and Nonforeign Area Cost-of-Living Allowance Price Survey. These information collections will be used for annual living cost surveys and for background surveys that will be conducted approximately once every 5 years to evaluate the program. This year Runzheimer International will conduct the surveys for OPM under contract. Selected retail, service, realty, and other businesses and local government will be surveyed in nonforeign allowance areas and in the Washington, DC, area to obtain living cost data. OPM will use these data to develop cost-of-living allowances as authorized by section 5941 of title 5, United States Code. Approximately 300 establishments will be contacted in the background survey, and approximately 4,600 establishments will be contacted in the price survey. OPM estimates that the average background survey interview will take approximately 10 minutes, for a total burden of 50 hours. The average price survey interview will take approximately 7 minutes, for a total burden of 540 hours. For copies of this proposal, call Ronald Trueworthy, Agency Clearance Officer, on (202) 606-2281.

OPM is requesting that OMB approve these information collections within 14 days after the date of publication in the **Federal Register**.

DATES: Comments on this proposal should be received within 10 working days after the date of this notice.

ADDRESSES: Send or deliver comments to: C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, room 6410, 1900 E Street, NW., Washington, DC 20415, and Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Donald L. Paquin (202) 606-2848.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

BILLING CODE 6325-01-M

Nonforeign Area Cost-of-Living Background Survey Information Collection

Contact Date: _____ Allowance Area: _____

Contact
Name:
Address:
Phone #:

Purpose of Contact	☞
Product/Service Info.	
Outlet Availability/Usage	
Transportation Info.	
Local Taxes and Fees	
Mortgage Information	
Real Estate Information	
Other: (specify)	

Findings:

Remarks:

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Nonforeign Area Cost-of-Living
Housing Component - Information Collection for Comparable Sales

Location: _____ Community: _____ Collection Date: _____

Address	Selling Price	Sale Date	Room Count			Square Feet	Price/ Sq Foot	Taxes	Other
			Total	Bed	Bath				

Appreciation Rate:

Current Market Conditions:

Remarks:

[FR Doc. 90-26879 Filed 11-14-90; 8:45 am]

BILLING CODE 6325-01-C

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA-14]

Privacy Act of 1974; Revocation of Systems of Records

AGENCY: Securities and Exchange Commission.

ACTION: Notification of revocation of certain descriptions of systems of records which are within the scope of the consolidated description of the system of records for enforcement files.

SUMMARY: In 1989, the Commission consolidated its descriptions of enforcement systems of records. At the time of consolidation, a number of descriptions of systems of records were revoked as no longer necessary. Since that time, the Commission has concluded that certain additional descriptions of systems of records also are redundant, and these descriptions have been revoked.

EFFECTIVE DATE: November 15, 1990.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Hall, Senior Counsel, Division of Enforcement, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In 1989, pursuant to the Privacy Act of 1974, the Commission published a description of its enforcement system of records, designated SEC–102 (Enforcement Files). *See* Privacy Act Release No. 11 (May 30, 1989, 54 FR 24454 (June 7, 1989) (consolidation of systems of records); Securities Exchange Act Release No. 26875 (May 30, 1989), 54 FR 24329 (June 7, 1989) (related rule amendments). This description was a consolidation of previously-published descriptions of systems of records for the Commission's investigation and litigation files.

Prior to the consolidation of descriptions of enforcement systems of records, the Commission maintained more than twenty descriptions of systems of records for its enforcement files. The consolidation of descriptions was intended to reflect the actual practice of requestors and Commission staff of treating such files as falling into a single system of records, and to bring the consolidated descriptions up to date. To ensure that all enforcement-related files were covered, the consolidated description was drafted to cover all records related to investigations or litigation, including computerized records. At the time of consolidation, however, the Commission did not include the descriptions of SEC–35 (Investigations and Actions Index System) or SEC–101 (Matter Under Inquiry) ("MUI") in the list of descriptions to be revoked. SEC–35 is the description of a paper index reflecting the dates on which investigations or enforcement actions were authorized and instituted. The description of this system was inadvertently omitted from the list of descriptions to be revoked in the notice announcing the consolidation of enforcement systems of records. SEC–101 is the description of a computerized system containing index information that relates the name of an individual to the subject of a preliminary inquiry. At the time of consolidation, the description of this system contained retention and disposal requirements that were different from those applicable in the consolidated description. Those differences have been eliminated. Accordingly, there is no longer a need to maintain a separate description for this system. For the foregoing reasons, both SEC–35 and SEC–101 have been revoked.

Dated: November 7, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–26924 Filed 11–14–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–28599; File No. SR–NSCC–90–23]

Self-Regulatory Organizations; National Securities Clearing Corporation; Filing of Proposed Rule Change Relating to the Elimination of the Correspondent Delivery and Collection Service

November 7, 1990.

Pursuant to section 19(b) (1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 18, 1990, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR–NSCC–90–23) as described in Items I, II, and III below, which items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to eliminate NSCC's Correspondent Delivery and Collection Service ("CDCS"). Additionally, the proposed rule change modifies NSCC's fee structure to reflect the elimination of CDCS.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to eliminate CDCS. CDCS is a service which provides for the physical delivery of securities in exchange for payment between NSCC Members and non-Members ("CDCS Participants") at various locations throughout the United States. Currently, NSCC has agreements with nine banks, clearing agencies, exchanges, and depositories that act as CDCS facilities for the purpose of receiving and/or delivering securities on behalf of CDCS Participants.

NSCC is eliminating the service due to the minimal volume and participation in recent years. The volume has declined from a daily average of thirty-one transactions in 1988 to a daily average of fourteen transactions to date in 1990. There are currently only eight NSCC Members who use the service on a daily basis. Due to the limited usage, NSCC is unable to cover its costs of providing the service. This year NSCC increased its fee for the service in an effort to cover its costs but continues to suffer a loss. A further increase would not remedy the problem because it would make CDCS more expensive for participants than alternative solutions.

The decline in the use of CDCS is primarily due to the decline in the use of physical securities. With the industry's movement to a book entry environment, there is and will be a significantly reduced need to transfer physical certificates in securities transactions. In addition, in the event that a minimal need for this kind of service remains, there are viable alternatives available for CDCS Participants. Banks offer draft services for a fee comparable to NSCC's. In addition, firms can use express mail, registered mail, or telemail. The Midwest Clearing Corporation also has a similar service which could be used.

NSCC has contacted each of the eight CDCS Participants who utilize the service on a daily basis to determine whether the elimination of the service would negatively impact them. None of the firms expressed an objection, and in fact, all of them stated that they were aware of alternatives.

The proposed rule change also modifies NSCC's fee structure to reflect the elimination of the CDCS service.

Since the proposed rule change will eliminate a service which has minimal volume and thus is not cost effective to maintain, it is consistent with section 17A of the Act and the rules and regulations thereunder applicable to NSCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NSCC consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

NSCC requests accelerated effectiveness of the proposed rule filing in order to allow NSCC to eliminate the service by December 1, 1990. NSCC would like to eliminate the service as soon as possible in order to minimize its financial loss incurred in providing the service.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–90–23 and should be submitted by December 6, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–26925 Filed 11–14–90; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Senior Executive Service Performance Review Board; List of Members

AGENCY: Small Business Administration.

ACTION: Listing of personnel serving as members of this agency's senior executive service performance review boards.

SUMMARY: Section 4314(c)(4) of title 5, U.S.C. requires Federal agencies publish notification of the appointment of individuals who serve as members of that Agency's Performance Review Boards (PRB). The following is a listing of those individuals currently serving as members of this Agency's PRB:

1. Johnnie L. Albertson, Deputy to the Associate Deputy Administrator for Special Programs.
2. Michael P. Forbes, Assistant Administrator for Congressional and Legislative Affairs.
3. Bernard Kulik, Assistant Administrator for Disaster Assistance.
4. Catherine Marschall, Associate Deputy Administrator for Special Programs.
5. Sally B. Narey, General Counsel.
6. Richard L. Osbourn, Director of Personnel.
7. George H. Robinson, Director, Equal Employment Opportunity and Compliance.
8. Lawrence R. Rosenbaum, Comptroller.
9. John Whitmore, Deputy Associate Administrator for Programs (MSB & COD).
10. Lejuene Wilson, Regional Administrator, Dallas.

Dated: November 8, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90–26895 Filed 11–14–90; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 90–27–IP–NO. 1]

Cooper Tire & Rubber Co.; Receipt of Petition for Determination of Inconsequential Noncompliance

Cooper Tire & Rubber Company (Cooper), of Findlay, Ohio has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.109, Federal Motor Vehicle Safety Standard No. 109, "New Pneumatic Tires," on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

Standard No. 109, S4.3(a) requires that tires have molded into or onto both sidewalls, one size designation, except that equivalent inch and metric size designations may be used. Cooper manufactured 10,931 Tempra Year Round polyester/steel belted, tubeless, white sidewall, radial tires that do not comply with this labeling requirement of Standard No. 109. These tires were stamped with the incorrect size designation of P255/75R15 on the non serial side of the tire, in the area between the maximum section width of the tire and the bead, with characters .156 inch in height. The correct size designation for these tires is P225/75R15.

Cooper supports its petition for inconsequential noncompliance with the following:

(1) "The tires in question are correctly stamped on the serial side, in the area between the maximum section width of the tire and the bead, with the designation P225/75R15. The tires are correctly stamped on both sides in the upper sidewall of the tire with the designation P225/75R15 in characters .625 inches in height. In addition each tire contains an adhesive paper tread label indicating the correct size of P225/75R15."

(2) "The single mislabel on each tire is incorrect only as to the cross section width, that is 255, of the tire. The series 75, the designation of radial, and the rim diameter of 15 are all correct. Also the maximum load and inflation stamping on both sidewalls of each tire are correct for a P225/75R15 tire."

(3) "A P255/75R15 has never been produced by Cooper, has never been standardized by the Tire & Rim Association, and to the best of our knowledge has never been produced by anyone, therefore the possibility of misapplication does not exist."

(4) "The tires * * * comply with all other requirements of 49 CFR 571."

Interested persons are invited to submit written data, views and arguments on the petition of Cooper described above. Comments should refer to the Docket Number and be submitted to: Docket section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: December 17, 1990.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.78.

Issued on November 9, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-25915 Filed 11-14-90; 8:45 am]

BILLING CODE 4910-59-M

NHTSA's Priority Plan 1990-1992

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the publication of NHTSA's Priority Plan (1990-1992). The plan was developed to provide a coordinated program for improving highway traffic safety over the next three years. The document outlines the agency's major goals and strategies to achieve improved highway safety by enacting both vehicular and behavioral countermeasures. The priority plan includes proposed rulemaking initiatives for improving motor vehicle safety, planned technical and financial assistance for State highway safety initiatives, and public education and information campaigns to create public awareness of traffic safety issues. The agency plan also identifies cooperative programs with the public and private sectors to materially reduce the risk and severity of motor vehicle crashes.

FOR FURTHER INFORMATION: Interested persons may obtain a copy of the plan free of charge by sending a self-addressed label to the National Highway Traffic Safety Administration, 400 Seventh Street, SW., *Attention*: NAD-51, Washington, DC 20590.

Issued on November 9, 1990.

Donald C. Bischoff,

Acting Associate Administrator for Plans and Policy.

[FR Doc. 90-26899 Filed 11-14-90; 8:45 a.m.]

BILLING CODE 4910-59-M

Research and Special Programs Administration, Hazardous Materials Transportation; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before December 14, 1990.

ADDRESSES COMMENTS TO: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10483-N	City of Plattsburgh, Plattsburgh, NY	49 CFR 174.67(i)	To authorize chlorine filled tank cars to stand with unloading connections attached during unloading without being attended by an unloader. (Mode 2.)
10484-N	Active Aero Charter, Inc., Belleville, MI.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), Part 107, Appendix B.	To authorize carriage of Class A, B and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Mode 4.)
10485-N	M & M Industries, Inc., Chattanooga, TN.	49 CFR 178.19-14	To authorize the manufacture, marking and sell of non-DOT specification polyethylene drums with 4" opening for transportation of corrosive, flammable, poison and oxidizer materials for which DOT Specification 34 and 21C containers are authorized. (Mode 1.)
10486-N	Aeropres Corporation, Shreveport, LA.	49 CFR 172.101, 173.302, 173.304, 173.305.	To offer and transport mixtures of flammable and nonflammable gases in DOT Specification MC-330 and 331 cargo tanks. (Mode 1.)
10487-N	Degussa Corporation, South Plainfield, NJ.	49 CFR 173.154	To authorize shipment of flammable solid in DOT Specification 37A drums, equipped with an automatic release divice, overpacked in freight containers. (Modes 1, 2, 3.)
10488-N	TEN-E Packaging Services, Inc. Eagan, MN.	49 CFR Part 173, Subpart D & F	To authorize the manufacture, marking and sell of a non-DOT specification open-head 5 gallon capacity polyethylene pail for shipment of certain corrosive and flammable liquids. (Mode 1.)
10490-N	Goex International, Inc., Cleburne, TX.	49 CFR 173.100(v)	To authorize transportation of tubing cutters containing more than 23 grams, but not more than 30 grams of high explosives to be classes as a class C explosive. (Modes 1, 2, 3, 4, 5.)
10492-N	Detroit Water and Sewerage Department, Detroit, MI.	49 CFR 174.67(i)(j)(k)	To authorize chlorine filled tank cars to stand with unloading connections attached during unloading without being attended by an unloader. (Mode 1.)
10495-N	First Corporate Air, Inc., Howell, MI	49 CFR 172.101, 175.30	To authorize the transportation of class A, B, and C explosives not premitted for shipment by air or in quantity greater than those prescribed for shipment by air on cargo—only aircraft. (Mode 4.)
10500-N	Thermedics Inc., Woburn, MA	49 CFR Parts 100-177	To authorize the transportation of permeation tubes and vials containing small quantities (1½ grams or less) of liquid and gas material by cargo-only and passenger-carrying aircraft. (Modes 4, 5.)
10501-N	Semi-Bulk Systems, Inc., St. Louis, MO.	49 CFR 173(K)(L)(M)(O), 173.154, 173.167, 173.168, 173.182, 173.204, 173.217, 173.245b, 173.366.	To authorize the manufacture, mark and sell of a reusable, palletized, collapsable, bulk container for the transport of solid hazardous materials classed as oxidizers, flammable solids, corrosive materials, poison B materials and other regulated materials. (Modes 1, 2, 3.)
10502-N	Thiokol Corporation, Huntsville, AL	49 CFR 172.101, 173.88(e)(2)(ii), 173.92(a), 173.92(b).	To authorize shipment of a rocket motor, class B explosive, in a propulsive state; and an explosive projectile, class A explosive by cargo aircraft only. (Mode 4.)
10503-N	Photographic Solutions, Inc., Buzzards Bay, MA.	49 CFR Parts 100-199	To authorize the transportation of limited quantities of certain products to be shipped as non-regulated commodities. (Mode 1.)
10504-N	Solkatronic Chemicals, Inc., Morrisville, PA.	49 CFR 173.119, 173.245, 173.302, 173.304, 173.328, 173.346, 49 CFR 173.24.	To authorize use of a non-DOT specification full opening head salvage cylinder of 33 gallon capacity for overpacking damaged or leaking packages of pressurized and non-pressurized hazardous materials. (Mode 1.)

This notice or receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on November 7, 1990.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 90-26883 Filed 11-14-90; 8:45 am]

BILLING CODE 4910-60-M

Research and Special Programs Administration

Hazardous Materials Transportation; Applications for Renewal or Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before November 29, 1990.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
1479-X	U.S. Department of Defense, Falls Church, VA.	1479
2000-X	Linde Gases of New England, Inc., West Hartford, CT.	2000
2000-X	Linde Gases of Southern California, Inc., Santa Ana, CA.	2000
2000-X	Union Carbide Industrial Gases, Inc., Danbury, CT.	2000
2000-X	Linde Gases of Florida, Inc., Tampa, FL.	2000
2582-X	Air Products and Chemicals, Inc., Allentown, PA.	2582
2582-X	Linde Gases of New England, Inc., West Hartford, CT.	2582
2582-X	Union Carbide Industrial Gases, Inc., Danbury, CT.	2582
2582-X	Solkatronic Chemicals, Inc., Fairfield, NJ.	2582
2582-X	Ozark-Mahoning Company, Tulsa, OK.	2582
2582-X	Linde Gases of Florida, Inc., Tampa, FL.	2582
2582-X	Linde Gases of the Midwest, Inc., Hillside, IL.	2582
4338-X	Rhone-Poulenc Basic Chemicals Company, Shelton, CT.	4338
4453-X	Maynes Explosives Company, Lee's Summit, MO.	4453
4453-X	Woodard Explosives, Inc., Albuquerque, NM.	4453
4453-X	Explosives Technologies International, Inc. (ETI), Wilmington, DE.	4453
4453-X	SherDeb Corporation, Lehigh Valley, PA.	4453
4453-X	Laurel Explosives, Inc., East Bernstadt, KY.	4453
4453-X	Kentucky Powder Company, Lexington, KY.	4453
4453-X	Maurer & Scott, Inc., Lehigh Valley, PA.	4453
4453-X	Quick Supply Company, Des Moines, IA.	4453
4453-X	Strawn Explosives, Inc., Hurst, TX.	4453
4453-X	IRECO, Incorporated, Salt Lake City, UT.	4453
4453-X	Cherokee Products, Inc., Jefferson City, TN.	4453
4453-X	Ladshaw Explosives, Inc., New Braunfels, TX.	4453
4453-X	Energy Ventures Corp. dba Columbus Powder Company, Columbus, IN.	4453
4453-X	Austin Powder Company, Cleveland, OH.	4453
5604-X	Airco Industrial Gases—Division of The BOC Group, Murray Hill, NJ.	5604
6443-X	Montana Sulphur & Chemical Company, Billings, MT.	6443
6614-X	Bison Laboratories, Inc., Buffalo, NY.	6614
6637-X	Russell-Stanley Corporation, Red Bank, NJ (See Footnote 1).	6637
6658-X	Ensign-Bickford Company, Simsbury, CT.	6658
6946-X	Badger Welding Supplies, Inc., Madison, WI.	6946
7051-X	Advanced Research Chemicals, Inc., Catoosa, OK.	7051
7052-X	Honeywell, Inc., Albuquerque, NM.	7052
7252-X	Explosives Technologies International, Inc., (ETI), Wilmington, DE.	7252
7274-X	Linde Gases of Southern California, Inc., Santa Ana, CA.	7274
7274-X	Linde Gases of New England, Inc., West Hartford, CT.	7274
7274-X	Linde Gases of the Mid-Atlantic, Inc., Keasbey, NJ.	7274
7274-X	Linde Puerto Rico, Inc., Gurabo, PR.	7274
7274-X	Linde Gases of the Northwest, Inc., Portland, OR.	7274
7274-X	Union Carbide Industrial Gases, Inc., Danbury, CT.	7274
7274-X	Linde Gases of the Midwest, Inc., Hillside, IL.	7274
7277-X	Structural Composites Industries, Inc., Pomona, CA (See Footnote 2).	7277
7451-X	Linde Gases of the Mid-Atlantic, Inc., Keasbey, NJ.	7451
7451-X	Linde Gases of New England, Inc., West Hartford, CT.	7451
7451-X	Union Carbide Industrial Gases, Inc., Danbury, CT.	7451
7451-X	Linde Gases of the Midwest, Inc., Hillside, IL.	7451
7526-X	Sherex Chemical Company, Inc., Dublin, OH.	7526
7526-X	Schering AG, West Berlin, West Germany.	7526
7607-X	The Foxboro Company, East Bridgewater, MA.	7607
7616-X	Burlington Northern Railroad Company, Overland Park, KS.	7616
7616-X	CSX Transportation, Inc., Jacksonville, FL.	7616
7616-X	Wisconsin Central, Ltd., Rosemont, IL.	7616
7616-X	Grand Trunk Western Railroad Company, Pontiac, MI.	7616
7625-X	Hydrite Chemical Company, Milwaukee, WI.	7625
7774-X	Wedge Wireline, Inc., Arlington, TX.	7774
7774-X	Pipe Recovery Systems, Incorporated, Houston, TX.	7774
7835-X	Messer Griesheim Industries, Inc., Valley Forge, PA.	7835
7835-X	Wilson Oxygen and Supply, Inc., Austin, TX.	7835
7835-X	General Air Service & Supply Company, Denver, CO.	7835
7835-X	AGA Gas, Inc., Cleveland, OH.	7835
8009-X	Martin Gas Transport, Inc., Clearwater, FL.	8009

Application No.	Applicant	Renewal of exemption
8084-X	IRECO, Incorporated, Salt Lake City, UT.	8084
8084-X	Explosives Technologies International, Inc., (ETI), Wilmington, DE.	8084
8084-X	Austin Powder Company, Cleveland, OH.	8084
8086-X	Boeing Aerospace Company, Seattle, WA.	8086
8099-X	Rhone-Poulenc Ag Company, Research Triangle Park, NC.	8099
8151-X	Ropak Corporation, La Mirada, CA (See Footnote 3).	8151
8196-X	GCS Container Service, SA, Chiasso, Switzerland.	8196
8214-X	Mercedes-Benz of North America, Inc., Montvale, NJ.	8214
8214-X	Morton International, Inc., Ogden, UT.	8214
8214-X	Volkswagen of America, Inc., Troy, MI.	8214
8214-X	Isuzu Motors America, Inc., Whittier, CA.	8214
8220-X	Applied Companies, San Fernando, CA.	8220
8232-X	GCS Container Service, SA, Chiasso, Switzerland.	8232
8451-X	Aerojet Propulsion Division, Sacramento, CA.	8451
8453-X	Atlas Powder Company, Dallas, TX.	8453
8518-X	Gallighen, Inc., Ventura, CA.	8518
8518-X	Speed's Oil Tool Service, Inc., Santa Maria, CA.	8518
8518-X	Pacific Petroleum Corporation, Orcutt, CA.	8518
8519-X	Polish Ocean Lines, Gdynia, Poland.	8519
8539-X	Aero Taxi-Rockford, Inc., Rockford, IL.	8539
8569-X	General Dynamics Corporation, Fort Worth, TX.	8569
8571-X	EM Science, Cincinnati, OH.	8571
8620-X	Polar Tank Trailer, Inc., Holdingford, MN.	8620
8678-X	Eurotainer US, Inc., Somerset, NJ.	8678
8692-X	Mitsubishi International Corporation, New York, NY.	8692
8748-X	Battelle, Pacific Northwest Laboratories, Richland, WA.	8748
8921-X	Hoover Group, Inc., Beatrice, NE (See Footnote 4).	8921
8936-X	Great Lakes Chemical Corporation, El Dorado, AR.	8936
8955-X	Western Atlas International, Inc., Houston, TX.	8955
8966-X	Jones Chemicals, Inc., LeRoy, NY.	8966
8968-X	Degussa Corporation, Ridgefield Park, NJ.	8968
8971-X	Western Atlas International, Inc., Houston, TX.	8971
8977-X	Eurotainer US, Inc., Somerset, NJ.	8977
8986-X	GOEX International, Inc., Cleburne, TX.	8986
8986-X	Schlumberger Well Services, Houston, TX.	8986
8988-X	Halliburton Logging Services, Inc., Houston, TX.	8988
8988-X	Western Atlas International, Inc., Houston, TX.	8988
8988-X	Wedge Wireline, Inc., Arlington, TX.	8988
8988-X	Owen Oil Tools, Inc., Forth Worth, TX.	8988
8990-X	Amirol, Inc., West Warwick, RI.	8990
8995-X	Worum Chemical Company, St. Paul, MN.	8995
8995-X	Olin Corporation, Stamford, CT.	8995
8995-X	Flexible Products Company, Marietta, GA.	8995
9024-X	Ermetainer S.A., Geneva, France.	9024
9024-X	SLEMI, Paris, France	9024
9034-X	Linde Gases of The Southeast, Inc., Wilmington, NC.	9034
9034-X	Linde Gases of New England, Inc., West Hartford, CT.	9034
9034-X	Linde Gases of Southern California, Inc., Santa Ana, CA.	9034
9034-X	Linde Gases of the South, Inc., Houston, TX.	9034
9034-X	Linde Gases of the Northwest, Inc., Portland, OR.	9034
9034-X	Union Carbide Industrial Gases, Inc., Danbury, CT.	9034
9034-X	Linde Gases of Florida, Inc., Tampa, FL.	9034
9034-X	Linde Gases of the Midwest, Inc., Hillside, IL.	9034
9106-X	Explosive Technologies International, Inc. (ETI), Wilmington, DE.	9106
9106-X	Atlas Powder Company, Dallas, TX.	9106
9106-X	Ensign-Bickford Company, Simsbury, CT.	9106
9169-X	Hugo Neu & Sons, Inc., New York, NY.	9169
9174-X	National Aeronautics & Space Administration (NASA), Washington, DC.	9174
9275-X	Marion Merrell Dow, Inc., Cincinnati, OH.	9275
9275-X	Hercules, Inc., Wilmington, DE.	9275
9275-X	BIC Corporation, Milford, CT.	9275
9275-X	Amway Corporation, Ada, MI.	9275
9275-X	A.H. Robins Company, Richmond, VA.	9275
9275-X	Warner-Lambert Company, Morris Plains, NJ.	9275
9275-X	Upjohn Company, Kalamazoo, MI.	9275
9275-X	Shaklee Corporation, Hayward, CA.	9275
9275-X	Scentura Creations, Atlanta, GA.	9275
9275-X	Proctor & Gamble Distribution Company, Cincinnati, OH.	9275
9275-X	Mary Kay Cosmetics, Dallas, TX.	9275
9275-X	Liz Claiborne Cosmetics, North Bergen, NJ.	9275
9275-X	Fritzsche, Dodge & Olcott, Inc., New York, NY.	9275
9275-X	Noxell Corporation, Hunt Valley, MD.	9275
9275-X	International Flavors & Fragrances (IFF-US), Hazlet, NJ.	9275
9275-X	Avon Products, Inc., New York, NY.	9275
9275-X	Giorgio of Beverly Hills, Santa Monica, CA.	9275
9275-X	Carter Wallace, Inc., Princeton, NJ.	9275
9289-X	ICI Americas, Inc., Wilmington, DE.	9289
9332-X	Engelhard Corporation, Edison, NJ.	9332
9346-X	Witco Corporation, Bradford, PA.	9346
9370-X	Norris Cylinder Company, Longview, TX (See Footnote 5).	9370
9374-X	Poly Processing Company, Inc., Monroe, LA.	9374
9374-X	Poly Cal Plastics, Inc., French Camp, CA.	9374
9377-X	Austin Powder Company, Cleveland, OH.	9377
9408-X	Ethyl Corporation, Baton Rouge, LA.	9408
9413-X	EM Science, Cincinnati, OH	9413
9433-X	Aldrich Chemical Company, Inc., Milwaukee, WI.	9433
9443-X	Hercules, Inc., Wilmington, DE.	9443
9579-X	Pepin-Iroco, Inc., Ishpeming, MI.	9579
9637-X	Connelly Containers, Inc., Bala-Cynwyd, PA (See Footnote 6).	9637
9658-X	Fluoroware, Inc., Chaska, MN.	9658
9666-X	Fluoroware, Inc., Chaska, MN.	9666
9705-X	E. I. du Pont de Nemours and Company, Inc., Wilmington, DE.	9705
9706-X	Taylor-Wharton Cylinders, Harrisburg, PA.	9706
9710-X	Union Carbide Industrial Gases, Inc., Danbury, CT.	9710
9718-X	Eurotainer US, Inc., Somerset, NJ.	9718
9764-X	Worthington Cylinder Corporation, Columbus, OH.	9764
9797-X	LTV Missiles and Electronics Group, Dallas, TX (See Footnote 7).	9797
9972-X	Lubrizol Corporation, Wickliffe, OH.	9972
10001-X	Linde Puerto Rico, Inc., Gurabo, PR.	10001
10001-X	Linde Gases of the Southeast, Inc., Wilmington, NC.	10001
10001-X	Air Products and Chemicals, Inc., Allentown, PA.	10001
10001-X	Linde Gases of the South, Inc., Houston, TX.	10001
10001-X	Linde Gases of the Mid-Atlantic Inc., Keasbey, NJ.	10001
10001-X	Linde Gases of Southern California, Inc., Santa Ana, CA.	10001
10001-X	Linde Gases of the Northwest, Portland, OR.	10001
10001-X	Linde Gases of the West, Inc., San Ramon, CA.	10001
10001-X	Union Carbide Industrial Gases, Inc., Danbury, CT.	10001
10001-X	Linde Gases of Florida, Inc., Tampa, FL.	10001
10001-X	Linde Gases of the Midwest, Inc., Hillside, IL.	10001

Application No.	Applicant	Renewal of exemption
10022-X	Linde Gases of New England, Inc., West Hartford, CT.	10022
10022-X	Linde Puerto Rico, Inc., Guraabo, PR.	10022
10022-X	Linde Gases of the Southeast, Inc., Wilmington, NC.	10022
10022-X	Linde Gases of the South, Inc., Houston, TX.	10022
10022-X	Linde Gases of the Mid-Atlantic, Inc., Kearsbey, NJ.	10022
10022-X	Linde Gases of Southern California, Inc., Santa Ana, CA.	10022
10022-X	Linde Gases of the Northwest, Inc., Portland, OR.	10022
10022-X	Union Carbide Industrial Gases, Inc., Danbury, CT.	10022
10022-X	Linde Gases of Florida, Inc., Tampa, FL.	10022
10028-X	E.I. du Pont de Nemours and Company, Inc., Wilmington, DE.	10028
10097-X	Hercules Aerospace Company, Magna, UT.	10097
10172-X	Hoover Group, Inc., Beatrice, NE (See Footnote 8).	10172
10172-X	Hoover Group, Inc., Beatrice, NE (See Footnote 9).	10172
10260-X	Olin Hunt Specialty Products, Inc., West Paterson, NJ (See Footnote 10).	10260
10261-X	Olin Hunt Specialty Products, Inc., West Paterson, NJ (See Footnote 11).	10261
10320-X	Worthington Cylinder Corporation, Columbus, OH (See Footnote 12).	10320
10353-X	Walpole, Inc., Mt. Holly, NJ (See Footnote 13).	10353
10453-X	E.I. du Pont de Nemours and Company, Inc., Wilmington, DE (See Footnote 14).	10453

(1) To modify exemption to provide for shipment of 15% sodium persulfate solution, classified as oxidizer, in DOT specification 34 polyethylene drums.

(2) To extend the service life to 18 years for model ALT 59 cylinders currently authorized as components of self container breathing apparatus.

(3) To renew and modify exemption to provide for new removable head covers equipped with special fittings installed on five-gallon plastic pails for shipment of corrosive and flammable liquids.

(4) To modify exemption to provide for shipment of certain oxidizers and blasting agents as additional commodities authorized for transportation in bulk containers.

(5) To renew and modify the chemical composition of steel used for construction of non-DOT spec cylinders used for the transportation of flammable and nonflammable, liquefied and nonliquefied gases.

(6) To authorize rail as an additional mode of transportation.

(7) To authorize shipment of a non-DOT spec. container consisting of space erectable radiator system panels together with a radiator-evaporator assembly containing certain flammable; nonflammable gas.

(8) To authorize a minimum wall thickness for polyethylene tanks of 0.140 inches instead of the present requirements of 0.196 for the shipment of corrosive liquids, flammable liquids or oxidizers.

(9) To modify exemption to provide for a smaller polyethylene portable tank and to authorize additional type resins for material of construction.

(10) To modify exemption to provide for additional commodities classified as either flammable or corrosive for shipment in non-DOT polyethylene containers.

(11) To modify exemption to provide for additional commodities classified as either flammable or corrosive for shipment in non-DOT polyethylene containers.

(12) To modify exemption to authorize the manufacture, marking and sell of smaller cylinders for acetylene.

(13) To modify exemption to eliminate separate polyethylene film liner for bulk bag shipment of material classed as blasting agents.

(14) To reissue exemption originally issued on an emergency basis to authorize a change in the definition of dispersant and refrigerated gases.

Application No.	Applicant	Parties to exemption
6418-P	Coastal Chemical Corporation, Greenville, NC.	6418
6530-P	Iveco, Inc., Houston, TX	6530
6691-P	Iveco, Inc., Houston, TX	6691
6805-P	Texas Gas Transport Company, Austin, TX.	6805
7052-P	Bell Aerospace Systems Group, Boulder, CO.	7052
7052-P	Promark Electronics, Inc., Columbus, OH.	7052
7052-P	SuperFlow Corporation, Colorado Springs, CO.	7052
7840-P	Northrop Corporation, Pico Rivera, CA.	7840
8009-P	Texas Gas Transport Company, Austin, TX.	8009
8013-P	Iveco, Inc., Houston, TX	8013
8063-P	Iveco, Inc., Houston, TX	8063
8162-P	Northrop Corporation, Pico Rivera, CA.	8162
8248-P	Cabot Corporation, Revere, PA.	8248
8307-P	Conax Florida Corporation, St. Petersburg, FL.	8307
8451-P	Day & Zimmermann, Inc., Texarkana, TX.	8451
8495-P	Northrop Corporation, Pico Rivera, CA.	8495
8526-P	Transbas, Inc., Billings, MT	8526
8569-P	Northrop Corporation, Pico Rivera, CA.	8569
8735-P	Northrop Corporation, Pico Rivera, CA.	8735
8915-P	Iveco, Inc., Houston, TX	8915
8958-P	Northland Sports, Inc., Minot, ND.	8958
8958-P	Dakco Distributors, Inc., Minot, ND.	8958
8968-P	Younger Transporation, Houston, TX.	8968
9357-P	Tiphook Tank Rental, Limited, Kent, England.	9357
9401-P	Ermetainer S.A., Geneve, France.	9401
9750-P	Puritan Bennett Corporation, Lenexa, KS.	9750
10001-P	Iveco, Inc., Houston, TX	10001
10094-P	LaRoche Industries, Inc., Atlanta, GA.	10094
10129-P	Day & Zimmermann, Inc., Parsons, KS.	10129
10295-P	Schering Berlin Polymers, Inc., Dublin, OH.	10295
10441-P	Findly Chemical Disposal, Inc., Fontana, CA.	10441

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on November 8, 1990.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 90-26894 Filed 11-14-90; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

November 8, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer, listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: 8826.
Type of Review: New collection.
Title: Disabled Access Credit.
Description: New Code section 44 allows eligible small businesses to claim a nonrefundable income tax credit of 50% of the amount of eligible public accommodations access credit expenditures for any tax year that exceed $250 but do not exceed $10,250. The Form 8826 computes the credit and the tax limitations.
Respondents: Individuals or households, farms, businesses or other for-profit, small businesses or organizations.
Estimated Number of Respondents: 50,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—4 hours, 18 minutes.
Learning about the law or the form—47 minutes.
Preparing and sending the form to IRS—54 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 300,000 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90-26916 Filed 11-14-90; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 221
Thursday, November 15, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, November 21, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 13, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–27119 Filed 11–13–90; 4:05 pm]

BILLING CODE 6210–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Personnel Committee Meeting

TIME AND DATE: 8:00 a.m., Tuesday, November 20, 1990.

PLACE: U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Suite 7100, Washington, DC 20012.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Martha A. Diaz-Ortiz, Acting Secretary, (202) 376–2400.

Agenda

I. Officers' Compensation; and
II. Report from Korn/Ferry on Search for Executive Director

Martha A. Diaz-Ortiz,

Acting Secretary.

[FR Doc. 90–26989 Filed 11–13–90; 8:59 am]

BILLING CODE 7570–09–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting; Changes

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: FR Doc. 90–26878, 55 FR 47427.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Meeting commencing at 12:00 noon on November 19, 1990.

CHANGES IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Date Issued: November 13, 1990.

Maureen R. Bozell,

Corporation Secretary.

[FR Doc. 90–27133 Filed 11–13–90; 4:05 pm]

BILLING CODE 7050–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, November 19, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 9, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–26983 Filed 11–13–90; 8:59 a.m.]

BILLING CODE 6210–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, November 20, 1990.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5137B
Highway Accident Report: Collapse of the Harrison Road Bridge Spans, Miamitown, Ohio, May 26, 1989.

NEWS MEDIA CONTACT: Alan Pollock 382–6600.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: November 9, 1990.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 90–26990 Filed 11–13–90; 8:59 am]

BILLING CODE 7533–01–M

Corrections

Federal Register
Vol. 55, No. 221
Thursday, November 15, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 900795-0258]

RIN 0648-AC96

Snapper-Grouper Fishery of the South Atlantic

Correction

In rule document 90-25994 beginning on page 46213 in the issue of Friday, November 2, 1990, make the following correction:

On page 46214, in the first column, in the second amendatory instruction on the first line, "paragraph (1)" should read "paragraph (l)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1094-AA40

White Earth Reservation Land Settlement Act of 1985

Correction

In proposed rule document 90-25845 beginning on page 46530 in the issue of Monday, November 5, 1990, make the following corrections:

1. On page 46531, in the first column:
a. In the paragraph labeled "*Section 4.350(a)*", in the 20th line "of" should read "on"; and
b. In the ninth line from the bottom of the page "indicated" should read "dictated".

2. On the same page, in the third column:
a. In the fifth line "other" was misspelled; and
b. In the 27th line from the bottom, "an" should read "and".

3. On page 46532:
a. In the first column, in the 23rd line, "determination" was misspelled;
b. In the same column, in the fourth line from the bottom, "had" should read "has", and in the third line from the bottom "process" was misspelled;
c. In the second column, in the paragraph labeled "*Section 4.352(d)*", in the sixth line, "4.353(b)" should read "4.352(b)"; and
d. In the third column, in the 12th line, "and, second" should read "and, second,".

4. On page 46533, in the first column, in the last paragraph, in the third line, "requiring" was misspelled.

§ 4.350 [Corrected]

5. On page 46534, in the first column, in § 4.350(c)(2), in the first line "Broad" should read "Board" and in the second line "Appeals" was misspelled.

§ 4.352 [Corrected]

6. On the same page, in the third column, in § 4.352(c), in the seventh line "request" should read "requests".

BILLING CODE 1505-01-D

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federal register

Thursday
November 15, 1990

Part II

The President

Proclamation 6228—To Suspend Indefinitely the Import Quota on Cotton Comber Waste

Executive Order 12733—Authorizing the Extension of the Period of Active Duty of Personnel of the Selected Reserve of the Armed Forces

Federal Register
Vol. 55, No. 221
Thursday, November 15, 1990

Presidential Documents

Title 3—

The President

Proclamation 6228 of November 13, 1990

To Suspend Indefinitely the Import Quota on Cotton Comber Waste

By the President of the United States of America

A Proclamation

1. Presidential Proclamation No. 2351 of September 20, 1939, issued pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624) (the Act), limited the total quantity of cotton waste that may be entered in any 12-month period beginning September 20 in any year and provided country-specific allocations of such quantity. This action was taken in order that the entry of cotton waste would not render or tend to render ineffective, or materially interfere with, the programs with respect to cotton undertaken by the Department of Agriculture.

2. In accordance with section 22 of the Act, the Secretary of Agriculture has advised me that he has reason to believe that the quantitative restrictions on imports of cotton comber waste, wherever classified in the Harmonized Tariff Schedule of the United States (HTS), should be terminated or modified because the circumstances requiring the imposition of the restrictions have changed and the quota is being underutilized.

3. Based upon this advice, I directed the United States International Trade Commission (the Commission) to initiate an investigation under section 22(d) of the Act (7 U.S.C. 624(d)) to determine whether the quota on cotton comber waste should be terminated or modified, including globalizing country quota allocations, eliminating the staple length restrictions on cotton used to make cotton comber waste, or distinguishing between bleached and unbleached cotton comber waste, or whether the quota should otherwise be adjusted to take account of circumstances that have changed since the quota was proclaimed.

4. After reviewing the facts and taking into account the report of the Commission based upon the investigation that it conducted, I have determined that the circumstances requiring the current import quotas on cotton comber waste do not exist at this time. Accordingly, I find that the quantitative restrictions imposed under section 22 of the Act on all imported cotton comber waste should be suspended indefinitely, and that the staple length restrictions on cotton comber waste should be eliminated.

5. Section 604 of the Trade Act of 1974 (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the provisions of that Act, of other acts affecting import treatment, and actions taken thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 22 of the Act and section 604 of the Trade Act of 1974 (19 U.S.C. 2483), do hereby proclaim that:

(1) In subheading 9904.30.50 of the HTS, the title of quota quantity column (A), "Minimum Quota for certain comber wastes", is modified to read "Quota for cotton comber waste".

(2) In subheading 9904.30.50 of the HTS, the title of quota quantity column (B), "Unreserved Quota", is modified to read "Quota for other cotton wastes".

(3) In subheading 9904.30.50 of the HTS, the quota quantity column (C), with its title "Total Quota", is stricken.

(4) U.S. Note 3(b) to subchapter IV of chapter 99 of the HTS is deleted, and the words "See U.S. note 3(b) of this subchapter" in subheading 9904.30.50 of the HTS are deleted.

(5) The quantitative restrictions on imports of cotton comber waste, as provided under subheading 9904.30.50 of the HTS, as revised, are hereby suspended indefinitely.

(6) Proclamation No. 2351 is superseded to the extent inconsistent with this proclamation.

(7) This proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on and after the date of publication of this proclamation in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of November, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-27193
Filed 11-14-90; 11:45 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12733 of November 13, 1990

Authorizing the Extension of the Period of Active Duty of Personnel of the Selected Reserve of the Armed Forces

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 673b(i) of title 10 of the United States Code, I hereby determine that, in the interests of national security, extending the period of active duty is necessary for the following: units of the Selected Reserve, and members of the Selected Reserve not assigned to a unit organized to serve as a unit of the Selected Reserve, now serving on or hereafter ordered to active duty pursuant to section 673b(a) of title 10 of the United States Code and Executive Order No. 12727 of August 22, 1990. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when the latter is not operating as a service in the Department of the Navy, to extend the period of active duty of such units and members of the Selected Reserve.

This order is intended only to improve the internal management of the executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

This order shall be published in the **Federal Register** and transmitted promptly to the Congress.

George Bush

THE WHITE HOUSE,
November 13, 1990.

[FR Doc. 90-27183
Filed 11-14-90; 10:56 am]
Billing code 3195-01-M

Reader Aids

Federal Register
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Thursday, November 15, 1990

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 523-6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 3562/Pub. L. 101-535
Nutrition Labeling and Education Act of 1990. (Nov. 8, 1990; 104 Stat. 2353; 15 pages) Price: $1.00

H.R. 4090/Pub. L. 101-536
Pecos National Historical Park Expansion Act of 1990. (Nov. 8, 1990; 104 Stat. 2366; 2 pages) Price: $1.00

H.R. 4299/Pub. L. 101-537
Great Lakes Fish and Wildlife Restoration Act of 1990. (Nov. 8, 1990; 104 Stat. 2370; 6 pages) Price: $1.00

H.R. 5004/Pub. L. 101-538
To amend the Wild and Scenic Rivers Act to designate certain segments of the Mills River in the State of North Carolina for potential addition to the wild and scenic rivers system. (Nov. 8, 1990; 104 Stat. 2376; 1 page) Price: $1.00

H.R. 5433/Pub. L. 101-539
To direct the Secretary of Agriculture to release on behalf of the United States a condition in a deed conveying certain lands to the Conservation Commission of West Virginia, and for other purposes. (Nov. 8, 1990; 104 Stat. 2377; 2 pages) Price: $1.00

H.R. 5872/Pub. L. 101-540
To amend title I of the Employee Retirement Income Security Act of 1974 to require qualifying employer securities to include interest in publicly traded partnerships. (Nov. 8, 1990; 104 Stat. 2379; 1 page) Price: $1.00

H.J. Res. 649/Pub. L. 101-541
Approving the extension of nondiscriminatory treatment (most favored nation treatment) to the products of Czechoslovakia. (Nov. 8, 1990; 104 Stat. 2380; 1 page) Price: $1.00

S. 580/Pub. L. 101-542
Student Right-To-Know and Campus Security Act. (Nov. 8, 1990; 104 Stat. 2381; 8 pages) Price: $1.00

S. 1756/Pub. L. 101-543
Maine Acadian Culture Preservation Act. (Nov. 8, 1990; 104 Stat. 2389; 4 pages) Price: $1.00

S.J. Res. 375/Pub. L. 101-544
To designate October 30, 1990, as "Refugee Day". (Nov. 8, 1990; 104 Stat. 2393; 1 page) Price: $1.00

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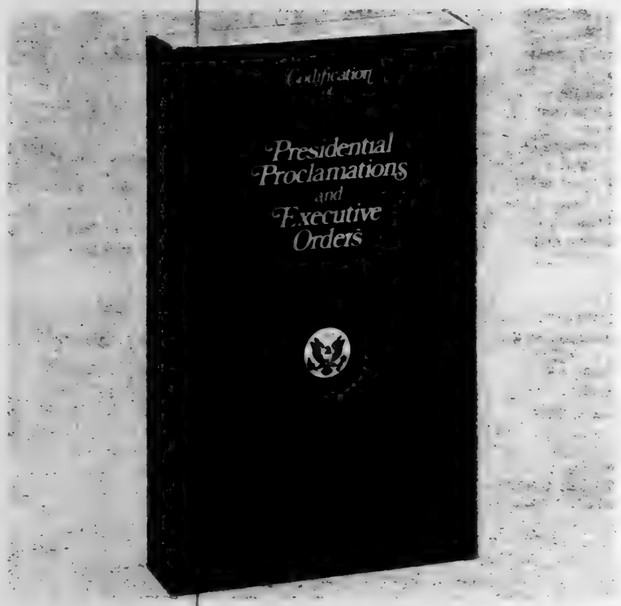

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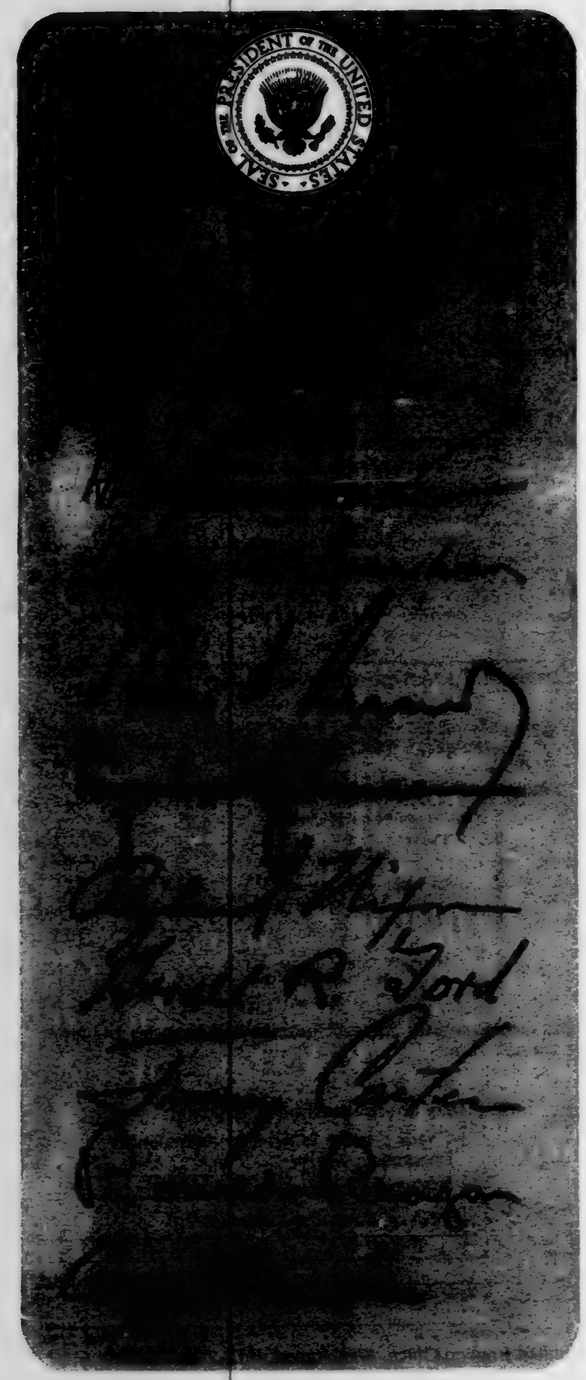

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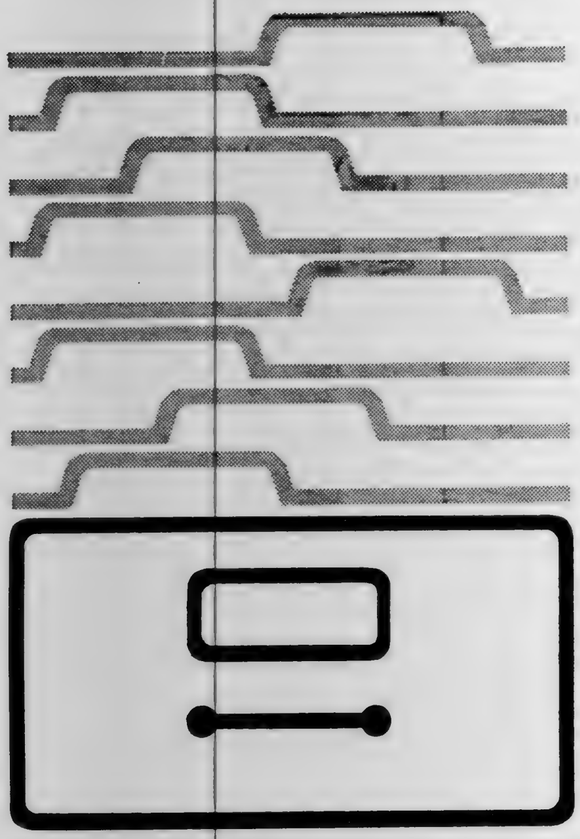

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Friday, November 16, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF SPECIAL COUNSEL

5 CFR Parts 1800, 1810, 1820, 1830, 1840

Implementation of the Whistleblower Protection Act

AGENCY: U.S. Office of Special Counsel.

ACTION: Final rule.

SUMMARY: On November 14, 1989, the U.S. Office of Special Counsel (OSC) published interim rules of practice and procedure in Volume 54, **Federal Register**, No. 218, pp. 47341–47345. The interim rules implemented The Whistleblower Protection Act of 1989, Pub. L. No. 101–12, 103 Stat. 16, effective July 9, 1989, which established the Office of Special Counsel (formerly the Office of the Special Counsel of the U.S. Merit Systems Protection Board) as an independent agency, and made other specified changes in agency regulations. Accordingly, the OSC is adopting these interim rules as final with minor revisions.

EFFECTIVE DATE: November 16, 1990.

FOR FURTHER INFORMATION CONTACT: John Marshall Meisburg, Jr. at 202/653–7307.

SUPPLEMENTARY INFORMATION: On November 14, 1989, the U.S. Office of Special Counsel published interim regulations to implement the Whistleblower Protection Act of 1989 (Pub. L. 101–12) and to make other specified changes in agency regulations. The public was invited to comment on the interim regulations. No comments were received. Minor revisions have been made in the wording of certain regulations in the Final Rule, *i.e.*, as to the language used in §§ 1800.2 and 1820.1, to conform more closely to the provisions of the statute, and to seek telephone numbers from complainants so they may be contacted by this agency at a time and place at which they may speak in private in order to protect their confidentiality and to prevent retaliation against them for their disclosures to this agency.

List of Subjects

5 CFR Part 1800

Equal employment opportunity, Government employees, Reporting and recordkeeping requirements, Whistleblowing.

5 CFR Part 1810

Authority delegations (Government agencies), Equal employment opportunity, Government employees, Investigations.

5 CFR Part 1820

Freedom of information.

5 CFR Part 1830

Privacy, Reporting and recordkeeping requirements.

5 CFR Part 1840

Administrative practice and procedure, Government employees.

Dated: November 7, 1990.

Mary F. Wieseman,

Special Counsel.

1. For the reasons set out in the preamble, chapter VIII of title 5, Code of Federal Regulations, is amended as set forth below:

CHAPTER VIII—OFFICE OF SPECIAL COUNSEL

The portion of the interim rule establishing chapter VIII in title 5 of the Code of Federal Regulations, published on November 14, 1989, at 54 FR 47341, is adopted as final without change.

PART 1800—FILING OF COMPLAINTS AND ALLEGATIONS

The portion of the interim rule adding part 1800, published on November 14, 1989, at 54 FR 47341, is adopted as final with the following change:

1. The authority citation for part 1800 continues to read as follows:

Authority: 5 U.S.C. 1212(e).

2. Section 1800.1 is amended by revising paragraphs (b) introductory text, and (b)(1) to read as follows:

§ 1800.1 Filing complaints of prohibited personnel practices or other prohibited activities.

* * * * *

(b) Complaints, allegations, and information may be submitted in any written form, but should include:

(1) The name, mailing address, and telephone number(s) of the complainant(s), and a time when the person(s) making the disclosure(s) can be safely contacted, unless the matter is submitted anonymously;

* * * * *

3. Section 1800.2 is amended by revising paragraphs (b) introductory text, and (b)(1), to read as follows:

§ 1800.2 Filing disclosures of information.

* * * * *

(b) Information may be submitted in any written form, but should include:

(1) The name, mailing address, and telephone number(s) of the person(s) making the disclosure(s), and a time when that person(s) can be safely contacted by this agency, unless the matter is submitted anonymously;

* * * * *

PART 1810—INVESTIGATIVE AUTHORITY OF THE SPECIAL COUNSEL

The portion of the interim rule adding part 1810, published at November 14, 1989, at 54 FR 47342, and corrected on December 7, 1989, at 54 FR 50749, is adopted as final without change.

PART 1820—PUBLIC INFORMATION

The portion of the interim rule adding Part 1820, published on November 14, 1989, at 54 FR 47342, is adopted as final with the following change:

1. The authority citation for part 1820 continues to read as follows:

Authority: 5 U.S.C. 552(a)(3), 552(a)(4), 1212(g), 1219.

2. Section 1820.1(a) is revised to read as follows:

§ 1800.1 Public list and reports.

(a) Pursuant to 5 U.S.C. 1219, the Special Counsel maintains and makes available to the public a list of:

(1) Noncriminal matters referred to heads of agencies under 5 U.S.C. 1213 (c) and (g)(1), and reports received as a result of such referrals;

(2) Matters referred by the Special Counsel to heads of agencies under 5 U.S.C. 1215(c)(2); and

(3) Matters referred to heads of agencies under 5 U.S.C. 1214(e), together with certifications from the heads of agencies under such subsection.

* * * * *

PART 1830—PRIVACY

The portion of the interim rule adding part 1830, published on November 14, 1989, at 54 FR 47344, is adopted as final without change.

PART 1840—SUBPOENAS

The portion of the interim rule adding part 1840, published on November 14, 1989, at 54 FR 47345, is adopted as final without change.

[FR Doc. 90-27092 Filed 11-15-90; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[FV-90-206-FR]

Expenses and Assessment Rate for Walnuts Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate for 1990–91 marketing year under Marketing Order No. 984 for walnuts produced in California. Funds to administer this program are derived from assessment on handlers. This action is needed in order for the Walnut Marketing Board (Board), the agency responsible for the administration of the order to have sufficient funds to meet the expenses of operating the program. This facilitates program operations. An annual budget of expenses is prepared by the Board and submitted to the U.S. Department of Agriculture (Department) for approval.

EFFECTIVE DATE: August 1, 1990, through July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2524–S, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 984 (7 CFR part 984), as amended, regulating the handling of walnuts grown in California. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of walnuts grown in California who are subject to regulation under the walnut marketing order and approximately 5,000 producers of walnuts in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual revenues of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of walnut producers and handlers may be classified as small entities.

The walnut marketing order requires that the assessment rate for a particular marketing year shall apply to all assessible walnuts handled from the beginning of such year. An annual budget of expenses is prepared by the Board and submitted to the Department for approval. The Board consists of handlers, producers, and a non-industry member. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Board is derived by dividing anticipated expenses by expected shipments of walnuts. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Board shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Board will have funds to pay its expenses.

The Board met on September 14, 1990, and unanimously recommended 1990–91 marketing order expenditures of $1,703,505 and an assessment rate of $0.0088 per kernelweight pound of walnuts. Assessment income for the 1990–91 marketing year is estimated at $1,711,370 based on a merchantable supply of 194,474,000 kernelweight pounds of walnuts. Comparative actual expenditures in 1989–90 were $1,321,415 and the assessment rate of $0.0085 per kernelweight pound of walnuts. Estimated assessment income in 1989–90 was $1,539,707 based on a merchantable supply of 181,142,000 kernelweight pounds of walnuts.

Major budget categories for the 1990–91 marketing year are $855,000 for the domestic market research and development program, $346,382 for walnut production research, $126,840 for administrative and office salaries, and $40,000 for walnut crop estimates. Comparable actual expenditures for the 1989–90 marketing year were $664,368, $298,122, $121,654, and $37,000, respectively. The domestic market research and development program increase from $664,368 to $855,000 is due to the Board's recommendation to further expand and improve existing markets and create new markets for California walnuts.

The increase from $298,122 to $346,382 for walnut production research is due to seven new additional research projects that were recommended by the Board. The majority of these studies concern various methods to control codling moths which cause walnut tree damage. The increase in the administrative and office salaries category reflects a 4.7 percent raise in administrative and office salaries which was recommended by the Board.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds a new § 984.342 and is based on Board recommendations and other information. A proposed rule on the expenses and assessment rate was published in the October 15, 1990, issue of the Federal Register (55 FR 41694). Comments on the proposed rule were invited from interested persons until October 25, 1990. No comments were received.

After consideration of the information and recommendation submitted by the Board and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This rule should be expedited because the Board needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the Board at public meetings. Therefore, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication of the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 984

Marketing agreements, Reporting and recordkeeping requirements, and Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Sections. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 984—WALNUTS GROWN IN CALIFORNIA

2. A new § 984.342 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 984.342 Expenses and assessment rate.

Expenses of $1,703,505 by the Walnut Marketing Board are authorized, and an assessment rate of $0.0088 per kernelweight pound of merchantable walnuts is established for the 1990–91 marketing year ending on July 31, 1991. Unexpended funds from the 1989–90 fiscal year may be carried over as a reserve.

Dated: November 13, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-27051 Filed 11-15-90; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 312, 329, and 381

[Docket No. 89-006F]

RIN 0583-AB10

Product Detentions

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Federal meat and poultry products inspection regulations by deleting the requirement of issuing a Preliminary Notice of Detention to the owner, agent, or custodian of detained meat or poultry articles and by requiring only the issuance of a Notice of Detention. This rule also revises the references to the detention tags and notices to reflect current FSIS form numbers. This action eliminates an unnecessary recordkeeping requirement for FSIS and expedites the product detention process.

EFFECTIVE DATE: December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Richard T. Van Blargan, Director, Evaluation and Enforcement Division, Compliance Program, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–5643.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this rule is not a "major rule" under Executive Order 12291. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This rule will expedite the product detention process by relieving FSIS of an unnecessary paperwork step and updates detained tag and notice form numbers.

Background

Section 402 of the Federal Meat Inspection Act (21 U.S.C. 672) provides, in part, that "Whenever any carcass, part of a carcass, meat or meat food product * * * or any product exempted from the definition of a meat food product, or any dead, dying, disabled, or diseased cattle, sheep, swine, goats, horses, mules, or other equines is found by any authorized representative of the Secretary upon any premises where it is held for purposes of, or during or after distribution, in commerce or otherwise subject to title I or II of this Act, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of title I of this Act or of any other Federal law or the laws of any State or Territory, or the District of Columbia, or that such article or animal has been or is intended to be, distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed twenty days, pending action under section 403 of this Act (21 U.S.C. 673) or notification of any Federal, State, or other governmental authorities having jurisdiction over such article or animal, and shall not be moved by any person, firm, or corporation from the place at which it is located when so detained, until released by such representative." Section 19 of the Poultry Products Inspection Act (21 U.S.C. 467A) contains similar provisions for poultry and poultry products.

Part 329 and part 381, subpart U, of the Federal meat and poultry products inspection regulations (9 CFR parts 329 and 381, subpart U) prescribe, among other things, the procedures for detaining meat and poultry products. Upon finding product to be detained, an authorized representative of the Secretary (hereinafter referred to as an FSIS representative) detains the product by affixing an official U.S. Detained Tag (Form MP–483) to such product. At this time, the FSIS representative provides oral notification and a Preliminary Notice of Detention (Form MP–479) to the owner of the detained product, whenever possible, or to the owner's agent or the immediate custodian of the detained product. If the detention is to continue after 48 hours, the regulations further require that a Notice of Detention (Form MP–484) be provided to the owner or the owner's agent or the custodian of the detained product. Unless seizure action is initiated against the product, the FSIS representative must terminate the detention within 20

days of detaining the product. Detentions are terminated when it has been determined that proper disposition of the detained product has been made. Disposition includes returning the product to an official establishment for reinspection, proper product denaturing or identification prior to further movement or use for animal food, or destroying the product for human food purposes. When terminating a detention, the FSIS representative provides a Notice of Termination of Detention (Form MP–487) to the person receiving the Preliminary Notice of Detention. Until termination of the detention is made, the detained product cannot be moved from the premises where it was located when so detained, except that the FSIS representative may approve movement of the product to another location for refrigeration, freezing, or storage. During any such movement, the product must be maintained under continuous detention.

Proposed Rule

On March 2, 1990, FSIS published a proposed rule (55 FR 7499) to amend the Federal meat and poultry products inspection regulations by eliminating the issuance of a Preliminary Notice of Detention and requiring issuance of only a Notice of Detention at the time product is detained. In most instances, the owners, agents, and other custodians of detained products took immediate action when products were detained and the preliminary notice was issued. By the time the Notice of Detention reached the owner, agent, or custodian, disposition of the product had normally already occurred. As previously stated, the Notice of Detention was issued if the detention was to continue after 48 hours.

FSIS did not receive any comments in response to the proposal.

Final Rule

Therefore, FSIS is amending §§ 329.3 and 381.212 of the Federal meat and poultry products inspection regulations (9 CFR 329.3 and 381.212) by eliminating the issuance of Form MP–479, Preliminary Notice of Detention.

The rule also updates the detention form numbers referenced in the Federal meat and poultry products inspection regulations (9 CFR 312.9, 329.2, 329.3, 329.5, 381.211, 381.212, and 381.214). All detention forms were renumbered under a new form numbering system instituted by the Agency in 1985. However, the regulations were not changed to reflect this fact. The Notice of Detention is FSIS Form 8080–1, the Notice of Termination of Detention is FSIS Form 8400–1, and the U.S. Detained tag is FSIS Form 8400–2. In addition, amendments to §§ 329.3, 329.5, 381.211, and 381.212 now require an authorized representative of the Secretary to furnish copies of completed "Notice of Detention" and "Notice of Termination of Detention" to the immediate custodian and to the owner, or the owner's agent, if the owner is not the custodian. Sections 329.5 and 381.212 are further modified to require that an authorized representative of the Secretary give oral notification of detention termination to the custodian prior to furnishing a completed "Notice of Termination of Detention" to persons notified when the product is detained. Finally, the rule divides §§ 329.3, 329.5, 381.211, and 381.212 into subparagraphs for clarity.

List of subjects

9 CFR part 312

Marks and devices, Meat inspection.

9 CFR part 329

Detention, Meat inspection.

9 CFR part 381

Detention, Poultry products inspection.

For the reasons set out in the preamble, FSIS is amending parts 312, 329, and 381 of the Code of Federal Regulations, title 9, as set forth below.

PART 312—OFFICIAL MARKS, DEVICES AND CERTIFICATES

1. The authority citation for part 312 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*

2. Section 312.9 is revised to read as follows:

§ 312.9 Official detention marks and devices.

The official mark for articles and livestock detained under part 329 of this subchapter shall be the designation "U.S. Detained" and the official device for applying such mark shall be the official "U.S. Detained" tag (FSIS Form 8400–2) as prescribed in § 329.2 of this subchapter.

PART 329—DETENTION; SEIZURE AND CONDEMNATION; CRIMINAL OFFENSES

3. The authority citation for Part 329 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 466–466k.

4. Section 329.2 is revised to read as follows:

§ 329.2 Method of detention; form of detention tag.

An authorized representative of the Secretary shall detain any article or livestock to be detained under this part, by affixing an official "U.S. Detained" tag (FSIS Form 8400–2) to such article or livestock.

5. Section 329.3 is revised to read as follows:

§ 329.3 Notification of detention to the owner of the article or livestock detained, or the owner's agent, and person having custody.

(a) When any article or livestock is detained under this part, an authorized representative of the Secretary shall:

(1) Orally notify the immediate custodian of the article or livestock detained, and

(2) Promptly furnish a copy of a completed "Notice of Detention" (FSIS Form 8080–1) to the immediate custodian of the detained article or livestock.

(b) If the owner of the detained article or livestock, or the owner's agent, is not the immediate custodian at the time of detention and if the owner, or owner's agent, can be ascertained and notified, an authorized representative of the Secretary shall furnish a copy of the completed "Notice of Detention" to the owner or the owner's agent. Such copy shall be served, as soon as possible, by delivering the notification to the owner, or the owner's agent, or by certifying and mailing the notification to the owner, or the owner's agent, at his or her last known residence or principal office or place of business.

6. Section 329.5 is amended by redesignating the first sentence as paragraph (a) and the remainder of the text as paragraphs (b) and (c). Newly redesignated paragraphs (b) and (c) are revised to read as follows:

§ 329.5 Movement of article or livestock detained; removal of official marks.

(a) * * *

(b) Upon terminating the detention of such article or livestock, an authorized representative of the Secretary shall:

(1) Orally notify the immediate custodian of the released article or livestock, and

(2) Furnish copies of a completed "Notice of Termination of Detention" (FSIS Form 8400–1) to the persons notified when the article or livestock was detained. The notice shall be served by either delivering the notice to such persons or by certifying and mailing the notice to such persons at their last known residences or principal offices or places of business.

(c) All official marks may be required by such representative to be removed from such article or livestock before it is released unless it appears to the satisfaction of the representative that the article or livestock is eligible to retain such marks.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

7. The authority citation for part 381 continues to read as follows:

Authority: 21 U.S.C. 463, 468; 7 CFR 2.17 (g) and (i), 2.55.

8. Section 381.211 is revised to read as follows:

§ 381.211 Method of detention; form of detention tag.

An authorized representative of the Secretary shall detain any poultry or other article to be detained under this subpart, by affixing an official "U.S. Detained" tag (FSIS Form 8400–2) to such article.

9. Section 381.212 is revised to read as follows:

§ 381.212 Notification of detention to the owner of the poultry or other article, or the owner's agent, and person having custody.

(a) When any poultry or other article is detained under this Subpart, an authorized representative of the Secretary shall:

(1) Orally notify the immediate custodian of the poultry or other article detained, and

(2) Promptly furnish a copy of a completed "Notice of Detention" (FSIS Form 8080–1) to the immediate custodian of the detained poultry or other article.

(b) If the owner of the detained poultry or other article, or the owner's agent, is not the immediate custodian at the time of detention and if the owner, or owner's agent, can be ascertained and notified, an authorized representative of the Secretary shall furnish a copy of the completed "Notice of Detention" to the owner, or the owner's agent. Such copy shall be served, as soon as possible, by delivering the notification to the owner, or the owner's agent, or by certifying and mailing the notification to the owner, or the owner's agent, at his or her last known residence or principal office or place of business.

10. Section 381.214 is amended by redesignating the first sentence as paragraph (a) and the remainder of the text as paragraphs (b) and (c). Newly redesignated paragraphs (b) and (c) are revised to read as follows:

§ 381.214 Movement of poultry or other article detained; removal of official marks.

(a) * * *

(b) Upon terminating the detention of such article, an authorized representative of the Secretary shall:

(1) Orally notify the immediate custodian of the released article, and

(2) Furnish copies of a completed "Notice of Termination of Detention" (FSIS Form 8400–1) to the persons notified when the article was detained. The notice shall be served by either delivering the notice to such persons or by certifying and mailing the notice to such persons at their last known residences or principal offices or places of business.

(c) All official marks may be required by such representative to be removed from such article before it is released unless it appears to the satisfaction of the representative that the article is eligible to retain such marks.

Done at Washington, DC, on October 19, 1990.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 90–26986 Filed 11–15–90; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0700.]

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System is amending the portion of Regulation Y, 12 CFR part 225, implementing the Change in Bank Control Act (the "CIBC Act") to remove the current regulatory requirement that a person that has already received regulatory clearance to acquire 10 percent or more of the voting shares of a state member bank or bank holding company file additional notices under the CIBC Act for subsequent acquisitions resulting in ownership of between 10 and 25 percent of the shares of the bank or bank holding company. This amendment is intended to reduce the regulatory burden under the CIBC Act without impairing the Board's ability to properly evaluate acquisitions under the statutory factors set forth under the CIBC Act.

EFFECTIVE DATE: November 9, 1990.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Assistant General Counsel (202/452–3583), Mark J. Tenhundfeld, Attorney (202/452–3612), or Elizabeth Thede, Attorney (202/452–3274), Legal Division; or Sidney M. Sussan, Assistant Director (202/452–2638), or Beverly L. Evans, Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202/452–2573). For the hearing impaired only, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

A. *Background.* Under the CIBC Act, 12 U.S.C. § 1817(j), persons acting directly or indirectly or through or in concert with one or more other persons to acquire control of any state member bank or bank holding company must provide the Board with 60 days prior written notice describing the proposed acquisition. The transaction may proceed at the end of the 60-day period unless the Board disapproves the transaction or extends the notice period. Alternatively, an acquisition may proceed prior to the expiration of the 60-day review period if the Board issues a written statement of its intent not to disapprove the transaction.

Regulation Y identifies certain transactions that are presumed to constitute the acquisition of control and require the filing of prior notice with the Board. In particular, § 225.41(b)(2) of Regulation Y establishes a regulatory presumption requiring the filing of a notice under the CIBC Act if, after an acquisition, any person or group of persons acting in concert will own, control, or hold with power to vote 10 percent or more of a class of voting securities of a bank or bank holding company and if either: (i) The institution has registered securities under section 12 of the Securities Exchange Act of 1934 (5 U.S.C. § 781), or (ii) no other person will own a greater percentage of that class of voting securities immediately after the transaction. 12 CFR 225.41(b)(2).

Under this regulation, a person must make CIBC Act filings for each acquisition of additional voting shares of the bank or bank holding company until the person acquires 25 percent or more of the shares of the bank or bank holding company. The Board's regulations provide that a shareholder that continuously controls 25 percent or more of a class of voting securities and that has received regulatory approval for that acquisition is generally not required to file further notices under the CIBC Act to acquire additional voting shares. 12 CFR 225.42(a).

Many of the notices currently filed with the Board under the CIBC Act involve situations where a shareholder that has already been subject to the regulatory review process under the CIBC Act seeks to acquire a small number of additional shares with a minimal expenditure of funds. In other instances, a person that has already received regulatory clearance to own less than 25 percent of the shares of a bank or bank holding company may be required by the Board's current regulations to file a notice in connection with a redemption by the bank or bank holding company of shares of another shareholder, even though the percentage ownership of the individual increases only minimally and the individual expends no funds and acquires no additional shares.

On July 2, 1990 (55 FR 26,716 (July 10, 1990)), the Board sought public comment on a proposal to amend subpart E of Regulation Y, which implements the CIBC Act, to eliminate the filing requirement under the CIBC Act for most acquisitions of shares of a state member bank or bank holding company where the shareholder has already received regulatory clearance to control 10 percent or more of the voting shares of the bank or bank holding company and, after the proposed acquisition, the shareholder would control less than 25 percent of the voting shares of the bank or bank holding company. The Board received 40 comments from interested individuals and organizations regarding this proposal. The principal issues raised by the comments are discussed below.

Comments in support of the proposed amendment. All but three of the commenters favored adoption of the Board's proposal. Most of these comments concluded that the current regulation requires filings that are unnecessary in connection with *de minimis* acquisitions. A number of commenters stated that the proposed amendment would reduce the regulatory burden on banks and bank holding companies without impairing the Board's ability to evaluate persons that have acquired control of a state member bank or bank holding company.

Comments in opposition to the proposed amendment. Three commenters opposed the proposed amendment. One of these commenters stated that the acquisition of additional shares above 10 percent could increase the ability of an individual to control a bank or bank holding company and, therefore, the ability of such an individual to disrupt the target institution. Another commenter suggested that the Board's review of a notice to acquire 10 percent of the voting shares of an institution could be less critical than would be its review of a notice to acquire 24 percent. In this commenter's view, the holder of 24 percent of an institution's voting shares would have greater ability and incentive to control the institution, thereby making a closer review of the financial resources and character of the shareholder more important than if the shareholder intended to acquire only 10 percent of the shares for investment purposes. The remaining commenter opposed to the proposal argued that each acquisition of voting shares should remain subject to regulatory review in order to assure that there has been no adverse change in circumstances since the time the person was permitted to acquire 10 percent of the company's shares. This commenter also suggested that the proposed amendment will place small financial institutions whose stock is not registered under the Securities Exchange Act of 1934 at a disadvantage because these institutions rely on the public notice provided under the CIBC Act to monitor acquisitions of the company's shares in the 10 to 25 percent range.

Modifications to Address Comments. The Board has reviewed the public comments and, in light of the entire record, has determined to amend its regulation as proposed, with the modifications discussed below. In the Board's experience, the requirement for additional filings by a person that has already been subject to regulatory review and seeks to control less than 25 percent of the voting shares of the same bank or bank holding company imposes significant burdens on the acquiring person without identifying significant financial, managerial, competitive, or other problems.

Under this amendment, in considering proposals to acquire between 10 and 25 percent of the voting shares of a bank or bank holding company, the Board will review the financial, managerial, competitive and other statutory factors under the CIBC Act to determine whether any of these factors warrant a requirement that the notificants file additional notices for subsequent acquisitions under 25 percent of the shares of the bank or bank holding company. The Board also retains supervisory authority over bank holding companies and state member banks that the Board believes is adequate to address situations where a change in circumstances would make additional acquisitions by a current owner unsafe or unsound for the bank or bank holding company. Moreover, the Board continues to require the filing of a notice under the CIBC Act when a person (or persons acting in concert) intends to acquire 25 percent or more of the voting shares of a bank or bank holding company. The amended regulation is similar to the approach taken by the Comptroller of the Currency and the Federal Deposit Insurance Corporation, both of which permit a shareholder that has already received clearance under the CIBC Act for an acquisition above 10 percent of the voting shares of a bank to make additional acquisitions of voting shares without further filings under the CIBC Act.

The Board has made several modifications to its original proposal to address concerns raised by commenters. First, the Board has clarified in the final rule that the exception proposed in the amendment is available to persons whose acquisition of shares has been reviewed in connection with a transaction approved under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) ("BHC Act") or section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) ("FDI Act"). This modification is consistent with the Board's current regulations that provide an exception from the CIBC Act notice requirements for transactions that are subject to review under section 3 of the BHC Act or section 18(c) of the FDI Act. In this regard, in connection with its review of proposals under section 3 of the BHC Act or under 18(c) of the FDI Act, the Board currently applies the standards of the CIBC Act to persons that will control 10 percent or more of the voting shares of the acquiring bank or bank holding company, including conducting a name check of the shareholder where appropriate. Because this review is conducted as part of the review under the BHC Act or the FDI Act, the Board believes that it is appropriate to permit a person subject to this review the same exemption as is available to persons whose initial acquisition is reviewed under the CIBC Act. A person that acquired between 10 and 25 percent of the voting securities of a company in connection with an application under section 3 of the BHC Act or section 18(c) of the FDI Act still must file a notice under the CIBC Act if the person seeks to acquire additional voting shares sufficient to raise the person's aggregate shareholdings to 25 percent or more of any class of securities of the bank or bank holding company, or if the person is notified at the time the application is approved by the Board or Reserve Bank that additional filings are otherwise required.

Another commenter suggested that the proposed amendment apply to additional acquisitions by person that acquired ownership of between 10 and 25 percent of a bank holding company prior to the effective date of this amendment. The Board intends that this amendment will apply to all persons that have received approval under the CIBC Act or, as explained above, through section 3 of the BHC Act or section 18(c) of the FDI Act, to hold between 10 and 25 percent of the voting shares of a bank or bank holding company, regardless of when the approval was granted, unless further acquisitions by these persons have been limited by the Board or appropriate Reserve Bank. The final regulation adopts this interpretation by *not* including a provision that the amendment applies only to persons that have obtained regulatory clearance after the effective date of this amendment.

Another commenter suggested that a person should be allowed to acquire up to 100 percent of the shares of a bank or bank holding company without filing any additional notice under the CIBC Act where the person is the largest shareholder and has received approval to acquire 10 percent or more of the bank or bank holding company. The Board continues to believe that it is appropriate to require a single additional notice under the CIBC Act by such a person (or persons acting in concert) prior to the person's acquisition of 25 percent or more of the bank or bank holding company. At the time such an acquisition is proposed, the Board will evaluate whether the acquiror has sufficient financial and managerial resources to acquire up to 100 percent of a class of voting securities of the bank or bank holding company, and whether other relevant statutory factors are consistent with a decision not to disapprove the acquisition of all of the shares of the bank or bank holding company by the acquiror.

Another commenter requested clarification as to how the proposed amendment would treat additional acquisitions by persons acting in concert. Specifically, the commenter sought clarification of whether persons that have filed a joint notice under the CIBC Act to acquire less than 25 percent of the voting shares of a bank or bank holding company would be permitted by the proposed amendment to make additional acquisitions without further filings under the CIBC Act so long as the aggregate of all such acquisitions by the persons acting in concert remained below 25 percent. The Board intends that persons filing a joint notice will be covered by this amendment so long as the persons collectively do not acquire 25 percent or more of the voting shares of the bank or bank holding company. The Board notes, however, that any person that is a member of a group acting in concert and has not received approval to acquire, in his or her individual capacity, 10 percent or more of the voting shares of the bank or bank holding company continues to be required to file a notice under the CIBC Act prior to acquiring 10 percent or more of the company's voting shares individually.

One of the commenters opposing the Board's proposed amendment recommended that, as an alternative to the proposed amendment, the Board should require a notice when a specific increment of stock is acquired (for instance, five percent) or, in the alternative, when a certain amount of time (for instance, 12 months) has expired since the date of last approval. Similarly, another of the commenters opposing the Board's proposed amendment recommended that the Board revise the proposed amendment to authorize only a 5 percent increase in the ownership of shares beyond what the Board has authorized a person to hold.

The Board notes that, under its amendment, the Federal Reserve System retains the authority to require filings under the CIBC Act for additional acquisitions where the Board or Reserve Bank believes that the financial and managerial resources or other circumstances of a proposed acquiror indicate that monitoring of additional acquisitions in a specific case is appropriate. In these cases, the Board or the Reserve Bank will notify a bank, bank holding company, or acquiring shareholder at the time the initial notice (or application under section 3 of the BHC Act or section 18(c) of the FDI Act) is approved that additional notices under the CIBC Act would be required for subsequent acquisitions of shares resulting in the ownership or control of between 10 and 25 percent of the voting securities of the bank or bank holding company.[1] In light of this, and for the reasons discussed above, the Board believes that it is unnecessary to require in all instances additional notices under the CIBC Act for acquisitions of between 10 and 25 percent of the voting shares of a bank or bank holding company by persons that have received approval under the CIBC Act to acquire 10 percent or more of the bank or bank holding company.

[1] Failure to file additional notices after having been informed that such notices are required will be treated as a violation of the Board's regulation and, as such, may result in the Board or the Reserve Bank initiating enforcement proceedings.

Regulatory Flexibility Act Analysis

This amendment to the Board's Regulation Y will decrease the burden on small companies by narrowing the circumstances under which shareholders of small banks and bank holding companies must file notices under the CIBC Act. No additional regulatory burden will be placed on such companies. Moreover, the amendment will not impose any additional regulatory burden on banks or bank holding companies of any size that are targets of a proposed change in control. Thus, the proposal is not expected to have any adverse economic impact on small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act Analysis

This amendment reduces the number of instances in which notices must be filed with the Federal Reserve System under the CIBC Act. Accordingly, the regulation will lessen the paperwork burden for individuals, small businesses, and other "persons," as defined in the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Appraisals, Banks, Banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, State member banks.

For the reasons set out in this document, and pursuant to the Board's authority under section 13 of the Change in Bank Control Act (12 U.S.C. 1817(j)(13)), the Board amends 12 CFR part 225 as follows:

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3907, 3909, 3310, and 3331–3351.

2. In § 225.42, paragraph (a) is redesignated as paragraph (a)(1), the heading to paragraph (a)(1) is revised, and new paragraph (a)(2) is added to read as follows:

§ 225.42 Transactions not requiring prior notice.

* * * * *

(a)(1) *Increase of previously authorized acquisitions above 25 percent.* * * *

(2) *Increase of previously authorized acquisitions between 10 percent and 25*

percent. Unless the Board or Reserve Bank otherwise provides by order, the acquisition of additional shares of a class of voting securities of a state member bank or bank holding company by any person (or persons acting in concert) who has lawfully acquired and maintained control of 10 percent or more of that class of voting securities either after filing the notice required under § 225.41(b)(2) of this subpart to acquire voting securities of the bank or bank holding company or in connection with an application approved under section 3 of the Bank Holding Company Act or section 18(c) of the Federal Deposit Insurance Act, if the aggregate amount of voting securities held following the acquisition is less than 25 percent of any class of voting securities of the institution.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 9, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-26984 Filed 11-15-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-95-AD; Amendment 39-6809]

Airworthiness Directives; Boeing Model 737-200, -300, and -400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires a visual inspection for H-11 bolts and replacement, if necessary, with A286 stainless steel bolts. This amendment is prompted by reports of H-11 steel bolts used instead of A286 stainless steel bolts to attach the outboard flap forward support fitting to the wing structure. This condition, if not corrected, could lead to fracture of the fastener in the fitting attachment, which could result in a loss of the outboard flaps.

EFFECTIVE DATE: December 24, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2775. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 737 series airplanes, which requires a visual inspection for H-11 bolts and replacement, if necessary, with A286 stainless steel bolts, was published in the Federal Register on August 14, 1990 (55 FR 33101).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America commented on behalf of its members. One member operator requested that a provision be added which would allow for delayed bolt replacement until the next fuel tank entry. This member stated that this request is similar to a request for alternate means of compliance to AD T89-18-51, which was approved by the Seattle Aircraft Certification Office. This commenter also stated that Boeing issued guidance material (Boeing Telex M-7272-5344, dated September 8, 1989) which describes how long bolt replacement could be deferred, depending on the number of incorrect bolts found. This member believes that similar relief should be provided for the proposed rule as well. The FAA does not concur. In developing an appropriate compliance time for this AD action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of accomplishing the required inspection and necessary replacement during normal maintenance schedules. In light of these factors, as well as the service history pertaining to the failure rates of H-11 bolts, the FAA has determined that 12 months represents the maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. Although for certain isolated cases, the FAA has approved requests to delay bolt replacement until the next fuel tank entry, it is the FAA's intention to continue to address this issue on a case-by-case basis through alternate means of compliance provided for by paragraph B. of this AD. As for the Boeing telex referenced by the commenter, the FAA notes that the guidance material contained in that telex is applicable to a different problem with the attachment hardware of the flap track support assembly. (Specifically, that telex deals with a production problem where understrength hardware was known to have been installed.)

Another ATA member indicated that a torque check of an H-11 bolt may prove misleading if corrosion is present and requested that another bolt check procedure be developed instead of that proposed. The FAA does not concur that a different procedure is necessary. The FAA has determined that the bolts are located in an area that is well protected from the environment and corrosion should not be a significant factor in the torque check.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 1,438 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 623 airplanes of U.S. registry will be affected by this AD, that it will take approximately 51 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,270,920.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737-200 series airplanes, listed in Boeing Alert Service Bulletin 737-57A1206, dated April 12, 1990; and Model 737-300 and 737-400 series airplanes, listed in Boeing Alert Service Bulletin 737-57A1206, dated March 29, 1990; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent fastener fracture in the fitting attachment which could result in a loss of the outboard flap, accomplish the following:

A. Prior to the accumulation of 5,000 flight hours or within 12 months after the effective date of this AD, whichever occurs later, perform a visual inspection of the outboard flap support fitting attach bolts in accordance with Boeing Alert Service Bulletin 737-57A1206, dated April 12, 1990, or Boeing Alert Service Bulletin 737-57A1206, dated March 29, 1990, as applicable.

1. If the bolts are confirmed as BACB30LE6 or BACB30US6, no further action is required at that location.

Note: A bolt head marking of BACB30LE6, BACB30US6, B30LE6, or B30US6 confirms the correct bolt installation. Oversize bolts BACB30LE7 or BACB30US7 may be installed and are acceptable.

2. If a bolt BACB30MT is found, prior to further flight, and thereafter at intervals not to exceed 1,000 flight hours, perform torque inspections in accordance with Boeing Alert Service Bulletin 737-57A1206, dated March 29, 1990, or Boeing Alert Service Bulletin 737-57A1206, dated April 12, 1990, as applicable. If the bolt turns at or below the specified torque range, prior to further flight, replace it with BACB30LE or BACB30US in accordance with the previously mentioned service bulletins. Replacement of any bolt with bolt BACB30LE or BACB30US constitutes terminating action for the repetitive torque inspections for that bolt.

3. If a bolt other than the one listed in paragraph A.1. or A.2. of this AD is found, prior to further flight, replace the bolt with bolt BACB30LE or BAC30US in accordance with Boeing Alert Service Bulletin 737-57A1206, dated March 29, 1990, or Boeing Alert Service Bulletin 737-57A1206, dated April 12, 1990, as applicable.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle Aircraft Certification Office (ACO), and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective December 24, 1990.

Issued in Renton, Washington, on November 6, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27000 Filed 11-15-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-222-AD; Amendment 39-6806]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) 90-21-11, which was previously made effective as to all known U.S. owners and operators of British Aerospace Model ATP series airplanes by individual letters. This AD requires a one-time inspection of the normal operating linkage to ensure that 2BA bolts Part No. A59-4C are installed, and installation of these bolts, if necessary; and repetitive operational tests of the hydraulic landing gear change-over valve mechanism. This action is prompted by reports of difficulty in lowering the landing gear using the normal and auxiliary systems. This condition, if not corrected, could result in a gear-up landing.

DATES: Effective November 29, 1990, as to all persons except those persons to whom it was made immediately effective by priority letter AD 90-21-11, issued October 12, 1990, which contained this amendment.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: On October 12, 1990, the FAA issued priority letter AD 90-21-11, applicable to all British Aerospace Model ATP series airplanes, which requires a one-time inspection of the normal operating linkage to ensure that 2BA bolts Part No. A59-4C are installed, and installation of these bolts, if necessary; and repetitive operational tests of the hydraulic landing gear change-over valve mechanism. That action was prompted by reports of difficulty in lowering the landing gear using the normal and auxiliary systems. The difficulties were traced to installation of an improper bolt which caused binding in the normal operating system lingage for the landing gear, and corrosion and lack of lubrication in the actuator system for the change-over selector valve. This condition, if not corrected, could result in a gear-up landing.

British Aerospace has issued Alert Service Bulletin A-ATP-32-28, Revision 1, dated September 25, 1990, which describes procedures for a one-time inspection of the normal operating linkage to ensure that 2BA bolts, Part Number A59-4C, are installed, and installation of these bolts, if necessary; and repetitive operational tests of the hydraulic landing gear change-over valve mechanism. The United Kingdom Civil Aviation Authority has classified this service bulletin as mandatory, and has issued CAA Airworthiness Directive 013-09-90 addressing this subject.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires a one-time inspection of the normal operating linkage to ensure that 2BA bolts Part No. A59-4C are installed, and installation of these bolts, if necessary; and repetitive operational tests of the hydraulic landing gear change-over valve mechanism, in accordance with service bulletin previously described.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on October 12, 1990, to all known U.S. owners and operators of British Aerospace Model ATP series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Federal Aviation Administration has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applicable to all Model ATP series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure proper operation of the landing gear and to prevent a gear-up landing, accomplish the following:

A. Within 24 hours after the effective date of this AD, perform an inspection of the normal operating linkage to determine if 2BA bolts Part Number A59-4C are installed. If any other part-numbered bolts are installed, prior to further flight, remove those bolts and replace them with Part Number A59-4C bolts, in accordance with British Aerospace Alert Service Bulletin A-ATP-32-26, Revision 1, dated September 25, 1990.

B. Within 24 hours after the effective date of this AD, and thereafter at intervals not to exceed 30 hours time-in-service, perform an operational test of the hydraulic landing gear change-over valve mechanism, in accordance with British Aerospace Alert Service Bulletin A-ATP-32-26, Revision 1, dated September 25, 1990. Any binding or stiffness must be corrected prior to further flight, in accordance with instructions in the manufacturer's maintenance manual.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base or order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective November 29, 1990, as to all persons, except those persons to whom it was made immediately effective by priority letter AD90-21-01, issued October 12, 1990, which contained this amendment.

Issued in Renton, Washington, on November 2, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27001 Filed 11-15-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-ANE-32; Amendment 39-6812]

Airworthiness Directives; Pratt & Whitney Canada PW100 Series Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney Canada (PWC) PW123 and PW124B turboprop engines, which requires a repetitive inspection program for the turbomachinery magnetic chip detector (MCD), and MCD system functional check. A one-time inspection of the rear inlet case oil system is also required. This amendment is prompted by a bearing failure event which caused the low pressure turbine (LPT) stub shaft to fracture, resulting in an LPT overspeed condition and an uncontained LPT disk failure. This condition, if not corrected, could result in an LPT overspeed event, uncontained disk failure, and damage to the aircraft.

DATES: Effective November 16, 1990.

Comments for inclusion in the docket file must be received on or before December 14, 1990.

ADDRESSES: Submit comments in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, attn: Rules Docket No. 90-ANE-32, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to room 311 at the above address.

Comments may be inspected at the above location between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorian, Longueuil, Quebec J4G1A1. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7094.

SUPPLEMENTARY INFORMATION: There has been one bearing failure event which caused the LPT integral stub shaft to fracture, resulting in an LPT overspeed and an uncontained LPT disk failure. The noted bearing failure was caused by oil starvation due to a plugged oil supply tube. This condition, if not corrected, could result in an LPT overspeed event, uncontained disk failure, and damage to the aircraft.

The FAA has reviewed and approved PWC Service Bulletins (SB) No. 20938, dated October 12, 1990, and SB No. 20939, dated October 12, 1990, which describe a repetitive inspection program of the turbomachinery MCD and the MCD system, and a one-time borescope inspection of the rear inlet case oil system, respectively.

Since this condition is likely to exist or develop on other engines of the same type design, this AD requires repetitive inspection of the MCD for metallic chips, and the MCD system for operation. A one-time borescope inspection of the rear inlet case oil system to determine system cleanliness is also required. This action will help ensure that the oil system passages are open, and will help detect metal contamination of the engine oil due to bearing deterioration.

Since this condition could result in an uncontained disk failure and damage to the aircraft, there is a need to minimize the exposure of revenue service aircraft to this uncontained failure mode. Therefore, safety in air transportation requires adoption of this regulation without prior notice and public comment. In addition, based on the above and the need to inspect the MCD to identify impending bearing failure as soon as practicable, a situation exists that requires the immediate adoption of this regulation. Therefore, it is found that notice and public procedure are impracticable, and good cause exists for the adoption of the amendment without public comment, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted in duplicate to the FAA, Office of the Assistant Chief Counsel, attn: Rules Docket No. 90-ANE-32, 12 New England Executive Park, Burlington, Massachusetts 01803. All communications received by the deadline date indicated above will be considered by the Administrator, and the AD may be changed in light of the comments received.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedure of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transporation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Pratt & Whitney Canada: Applies to Pratt & Whitney Canada (PWC) PW123 and PW124B turboprop engines, installed on, but not limited to, DeHavilland of Canada DHC-8 Series 300, Canadair CL-215T, and Aerospatiale ATR-72 type aircraft.

Compliance is required within 5 days from the effective date of this AD, unless already accomplished.

To prevent an LPT overspeed event, uncontained disk failure, and damage to the aircraft, accomplish the following:

(a) For engines with less than 100 hours time in service since new on the effective date of this AD, borescope inspect the rear inlet case oil system in accordance with appendix I of this AD.

(b) Perform a turbomachinery magnetic chip detector (MCD) inspection in accordance with part A of appendix II of this AD

(c) Perform an MCD system functional check in accordance with part B of appendix II of this AD

(d) For PW123 engines only, perform an MCD airframe circuitry check in accordance with part C of appendix II of this AD

(e) Thereafter, perform the MCD inspection specified in paragraph (b) above at intervals not to exceed 25 flight hours since last inspection

(f) Thereafter, perform the MCD system functional check specified in paragraph (c) above, at intervals not to exceed 300 flight hours since last inspection

(g) Thereafter, for PW123 engines, perform the MCD airframe circuitry check specified in paragraph (d) above, at intervals not to exceed 300 flight hours since last inspection

(h) Remove from service, prior to further flight, engines having MCD indications exceeding serviceable limits in accordance with appendix II of this AD

(i) Repair, prior to further flight, the MCD electrical indicating system, if found not functional during inspections in accordance with appendix I of this AD.

(j) Aircraft may be ferried in accordance with the provision of FAR 21.197 and 21.199 to a base where the AD can be accomplished

(k) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method

of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803.

Appendix I

Engine Turbine Turboprop Rear Inlet Case Oil System-Borescope Inspection

1. Effectivity:

—All PW123 (BS707) engines prior to Serial Number (S/N PC-E123121.

—All PW124B (BS724/728) engines prior to S/N PC-E124405 excluding PC-E124411.

2. Reason: To verify cleanliness of the oil system.

3. Description: A PWC representative is to borescope the rear inlet case oil passages on affected engines with less than 100 flight hours since new. Reference: PWC Service Bulletin 20939, dated October 12, 1990.

4. Reference:

—Model PW123; Maintenance Manual P/N 3036432, Chapter 72-01-50.

—Model PW124; Maintenance Manual P/N 3037332, Chapter 72-01-50.

—Model PW100; Service Bulletin 20939 (10-12-90).

5. Accomplishment Instructions:

A. Remove No. 1 and 2 bearing oil feed tube in accordance with referenced maintenance manual.

B. Remove accessory gearbox (AGB) oil feed tube in accordance with reference maintenance manual.

Warning: When using compressed air for cleaning, wear goggles for face shield to protect eyes.

C. Ensure that no oil remains in oil cavities by flushing with compressed air via No. 1 and 2 oil feed cavity Collect any ejected oil by covering AGB feed tube cavity with absorbent shop rags.

D. Remove T6 trim thermocouple in accordance with reference maintenance manual.

E. Inspect oil cavities, A, B, C, and D for cleanliness and blockage using borescope. Insert borescope into cavities as far as possible or until No. 1 bearing outer race or carbon seal housing is seen. Cavities A and B are inspected by inserting borescope probe through T6 trim thermocouple office. If debris is found, replace engine.

F Install T6 trim thermocouple in accordance with referenced maintenance manual.

G Disconnect oil transfer tube between AGB and angle drive box in accordance with referenced maintenance manual.

H. Inspect strainer for cleanliness. If debris is found, replace engine

I. Connect AGB port with a flexible hose to a suitable container

J. Ensure engine oil tank is empty

K. Remove oil tank sight glass.

L. Insert borescope probe into oil tank through sight glass opening. Direct probe upward into strut adjacent to oil jet pump and bend probe tip toward No. bearing.

M. Apply pressurized oil to No. 1 and 2 bearing feed port and check that oil flows through No. 1 bearing jets. If oil does not flow, replace engine.

N. Check oil flowing out of angle drive feed port.

O. Bend borescope tip toward No. 2 bearing.

P. Re-apply pressurized oil to No. 1 and 2 bearing feed port and check that oil flows through No. 2 bearing jets. If oil does not flow, replace engine.

Q. Re-install No. 1 and 2 bearing oil feed line and T6 trim thermocouple in accordance with referenced maintenance manual.

R. Install transfer tube between AGB and angle drive in accordance with referenced maintenance manual.

S. Install oil tank sight glass in accordance with referenced maintenance manual.

T. Reidentify rear inlet case by marking SB 20939 using vibropeen method of marking.

U. Annotate engine log to include PWC SB 20939 (PW100-TP-72-853).

Appendix II

Engine Turbine/Turboprop Turbomachinery Chip Detector Continuity & Circuitry Checks

1. Effectively:

—All PW123 (BS707)

—All PW124B (BS724/BS726)

2. Reason: To check for oil system contamination.

3. Description:

A. Perform a turbomachinery chip detector continuity check (Part A).

B. Perform a chip detector functional check (Part B).

C. Perform a chip detector airframe circuitry check (Part C) for PW123 (SB707) engines.

D. Reference: PWC SB 20938, dated October 12, 1990.

4. References:

A. PW123; Maintenance Manual P/N 3036432, Chapter 72-01-50.

B. PW124B; Maintenance Manual P/N 3037332, Chapter 72-01-50.

C. PW100; Service Bulletin 20938 (10-12-90).

5. Accomplishment Instructions:

Part A

A. Perform turbomachinery chip detector continuity check in accordance with aircraft maintenance manual. For PW123 (BS707) Installations perform an engine condition panel flag check.

B. If the turbomachinery chip detector circuit is completed:

(1) Remove and inspect chip detector in accordance with referenced maintenance manual.

(2) If chip detector is contaminated, remove main oil filter and chip detector strainer, and visually inspect for debris.

(3) Debris is classified as follows:

(a) *Allowable:* Material which is due to normal wear of engine and may also be residual machining swarf, etc. following manufacture. Unrestricted operation of engine is applicable.

(b) *Non-allowable:* Material which indicated potential abnormal conditions in the engine. Restrictions on further engine operation are applicable.

Note: Pratt & Whitney Canada (PWC) recommends that any non-allowable debris be spectrographically analyzed by a qualified laboratory If bearing material (AMS 6444 (52100) of AMS 6491 (M-50)) is identified, replace turbomachinery module.

(4) Categorize debris using magnifying glass or microscope into "allowable" or "non-allowable".

(a) *Allowable:* Small quantity of hair like filaments or powder, spiral curls (machining swarf) and silver plating. If machining swarf is found, have them properly identified with engine S/N and module and forward them to the local PWC representative.

(b) *Non-allowable:* 1. Large quantity of hair like filaments (fuzz) or powder.

Note: Large quantity is considered when chip detector magnetic poles are completely covered by fuz and/or powder.

2. Dark irregular magnetic chips (minimum dimension 0.010 in. (0.254 mm).

Note: Thin shiny flakes with feathered edges and more than .020 in. (0.508 mm) in size are generated when bearing surfaces break down due to excessive load (spalling). The outer surface of the flakes is highly polished and may show parallel impressions. The inner surface has a rough, vary or granule texture. After the bearing surface breaks down, the underlying material disintegrates and chips having a dark, course and irregular shape are produced.

3. Identifiable fragments (i.e. keywasher keys, tooth segments, etc.).

Note: Replace affected module if identifiable fragments are found.

4. Small clusters of magnetic flakes (three or more).

(5) If allowable debris is found, clean and reinstall chip detector, strainer and main oil filter in accordance with referenced maintenance manual. The aircraft may be returned to normal operation. The occurrence should be recorded for trend monitoring purposes.

(6) If non-allowable debris is found:

a. Clean and reinstall chip detector strainer and filter in accordance with referenced engine maintenance manual.

b. Run engine at 80% torque for 10 minutes in accordance with referenced engine maintenance manual.

c. Remove and inpsect chip detector for debris in accordance with referenced maintenance manual.

d. If no debris is found, aircraft may be returned to normal operation. The occurrence should be recorded for trend monitoring purposes.

e If debris is found:

(1) Remove main oil filter and associated chip detector strainer from turbomachinery module in accordance with referenced maintenance manual.

(2) Remove debris from pressure oil filters using patch procedure.

(3) Identify patch with engine S/N and hours run.

(4) Transfer chip detector debris into clean plastic bag in accordance with referenced engine maintenance manual.

(5) Flush engine in accordance with referenced engine maintenance manual and power plant (Ref. Airframe Maintenance Manual) oil system as applicable.

(6) Install clean chip detector, strainer and oil filter in accordance with referenced engine maintenance manual.

(7) Fill engine oil system with new oil in accordance with referenced engine maintenance manual and power plant (Ref. Aircraft Maintenance Manual).

(8) Run engine at 80% torque for 10 minutes in accordance with referenced engine maintenance manual.

(9) Remove and inspect chip detector in accordance with referenced maintenance manual.

(10) If debris is found, replace turbomachinery module.

(11) If no debris is found, engine may be returned to normal operation.

(12) If no debris is found, aircraft may be returned to normal operation. The occurrence should be recorded for trend monitoring purposes.

C. Annotate engine log to include PWC SB 20938 Part A (PW100-TP-72-854).

Part B

A. At 300 flight hour intervals or less, perform chip detector functional check in accordance with applicable engine maintenance manual. If chip detector fails functional check, proceed as follows:

(1) Remove and inspect chip detector in accordance with reference engine maintenance manual.

(2) If no debris is found, engines may be returned to normal operation, however, chip detector must be removed and inspected at 25 flight hour intervals, or less until a function chip detector is installed.

(3) If debris is found, follow instructions from: Part A; B(2).

B. Annotate engine log to include PWC 20938 Part B (PW100-TP-72-854).

Part C

A. At 300 flight hour intervals or less, perform a chip detector airframe circuitry check in accordance with aircraft maintenance manual.

B. Annotate engine log to include PWC SB 20938 Part C (PW100-TP-72-854).

Note: The applicable service information may be obtained from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorian, Longueuil, Quebec J4G1A1. This information may be examined at the FAA; New England Region, Office of the Assistant Chief Counsel, Room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective November 16, 1990.

Issued in Burlington, Massachusetts, on November 6, 1990.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90-27002 Filed 11-15-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 25

[Docket No. [70871-0121]]

RIN 0690-AA14

Program Fraud Civil Remedies

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule will implement the Program Fraud Civil Remedies Act of 1986, which authorizes the Department of Commerce (and certain other federal agencies) to impose through administrative adjudication civil penalties and assessments against persons making false claims or statements to it.

EFFECTIVE DATE: December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Wayne Weaver, Counsel to the Inspector General, room 7989-C, 14th & Constitution Avenue NW., Washington, DC 20230 (202) 377-5992.

SUPPLEMENTARY INFORMATION:

I. Background

This rule will implement the Program Fraud Civil Remedies Act (the Act), which was enacted on October 21, 1986 as sections 6103-6104 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509, 100 Stat. 1874), and codified at 31 U.S.C. 3801-3812. The Act establishes an administrative remedy against anyone who makes a false claim or written statement to any of certain Federal agencies, including the Department of Commerce (the Department). In brief, any person who submits a claim or written statement to an affected agency knowing or with reason to know that it is false, fictitious, or fraudulent, is liable for a penalty of up to $5,000 per claim or statement and, in addition, with respect to claims, for an assessment of up to double the amount falsely claimed.

The Act requires each affected Federal agency to promulgate rules and regulations necessary to implement the provisions of the Act. 31 U.S.C. 3809. The Senate Governmental Affairs Committee stated in its report on the Act that it "expects that the regulations would be substantially uniform throughout government." S. Rep. No. 99-212, 99th Cong., 1st Sess. 12 (1985). In keeping with that expression, in November, 1986 the President's Council on Integrity and Efficiency (PCIE) requested the Department of Health and Human Services (HHS) to form a task force to develop model regulations for implementation of the Act by all affected Federal agencies. HHS was asked to lead the task force because it has since 1983 been administering a statute similar to the Act, the Civil Monetary Penalty Law, 42 U.S.C. 1320a-7a. (The Civil Monetary Penalty Law authorizes the Secretary of HHS to impose penalties and assessments against those who submit false claims to the Medicare, Medicaid, or the Maternal and Child Health Block Grant Programs.) The task force completed a model set of regulations on March 6, 1987, and the PCIE recommended that all affected Federal agencies adopt them.

A notice of proposed rulemaking was published in the **Federal Register** on July 6, 1989 (54 FR 28430). A 30-day comment period was provided. No comments were received.

Therefore, the Department will adopt without substantive change the final model regulations recommended by the PCIE, incorporating, where appropriate, definitions and procedures specific to the Department's organization.

II. General Description of the Statutory Scheme

The Act provides for administrative adjudication of cases where a person makes a claim or written statement to the Department that the person knows, or has reason to know, is false, fictitious, or fraudulent. Liability attaches under the Act for any false, fictitious, or fraudulent claim for property, services, or money and for any written statement that is false, fictitious, or fraudulent with respect to any claim, contract, bid, proposal for contract, grant, loan or benefit.

If a person making such a claim or statement to the Department does so with actual knowledge or deliberate ignorance of its falsity, or acts with reckless disregard for the truth of falsity of the claim or statement, he or she can be held liable for a penalty of up to $5,000 per claim or statement. In addition, with respect to claims, the person may be subject to an assessment of up to double the amount falsely claimed.

Role of Major Actors in Bringing Cases

The Act prescribes roles for four major actors within the Department in bringing cases under the Act: The investigating official, the reviewing official, the presiding official, and the authority head.

The *investigating official* is vested with the authority to investigate all allegations of liability under the Act,

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including the power to subpoena documents and other information. If the investigating official concludes that an action under the Act is warranted, he or she submits a report of the investigation to the reviewing official.

The *reviewing official* must be someone within the Department independent of the investigating official. The reviewing official reviews the investigative report to determine whether there is adequate evidence to believe that the person named in the report is liable under the Act. If so, the reviewing official sends to the Department of Justice a written notice of intent to issue a complaint. The Act then gives the Attorney General, or a designated Assistant Attorney General, 90 days to approve or disapprove the issuance of a complaint.

If the appropriate Justice Department official approves a case, the reviewing official may serve a complaint on the respondent. The respondent may request a hearing by filing an answer within 30 days of receiving the complaint. If the respondent does so, the reviewing official sends the complaint and answer to a presiding officer.

The *presiding official* serves a notice of hearing upon the respondent, supervises discovery, rules on motions, conducts the hearing, and issues an initial decision. The initial decision will contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed. Any respondent who is determined to be liable for a civil penalty or assessment in an initial decision, may appeal that decision to the authority head.

The *authority head* may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment. Should the authority head determine that the respondent is liable for a penalty or assessment, the respondent may obtain judicial review of such determination in an appropriate United States District Court.

This rule names as the investigating official the Inspector General of the Department, or a designee within the Office of Inspector General (OIG) compensated at or above the basic rate of pay for grade GS–16 under the General Schedule. The General Counsel or a designee within the Office of General Counsel, also compensated at or above that rate, will act as the reviewing official. Administrative Law Judges (ALJs) will be presiding officials, and the Secretary of the Department, or designee, will function as the authority head.

III. Discussion of Major Issues

1. Definitions

Most of the definitions set forth in 15 CFR 25.2 come directly from the Act.

2. Basis for civil penalties and assessments

For the most part, language contained in 15 CFR 25.3 comes directly from the Act or the legislative history. However, the regulation provides that liability for assessments is joint and several among all respondents; whereas, each respondent may be held liable separately for a penalty of up to $5,000 per claim or statement.

3. Investigation

The regulation at 15 CFR 25.4 provides that the investigating official must submit a report to the reviewing official only where he or she concludes that action under the Act may be warranted. This section also prescribes basic procedures for the investigating official to follow in issuing investigatory subpoenas under the Act for documents or other information. In addition, this section makes it clear that the Act does not prevent the investigating official from exercising the subpoena powers that he or she may have under other authorities or from pursuing other remedies.

4. Review by reviewing official

Section 3809 of title 31 requires the reviewing official to determine that there is a reasonable prospect of collecting the amount of penalties and assessments for which a person may be liable. The regulation at 15 CFR 25.5 will not interpret this to require the reviewing official to determine that a respondent could pay the statutory maximum, but rather that the respondent could pay an "appropriate amount."

5. Prerequisites for Issuing a Complaint

Most of the language contained in 15 CFR 25.6 is derived directly from the Act. Under 31 U.S.C. 3803(c)(1), the remedies provided in the Act do not apply with respect to any claim if the amount of money (or value of property or services) falsely demanded or requested in such claim or in a group of related claims submitted at the same time exceeds $150,000. This section interprets the term "related group of claims submitted at the same time" narrowly to prevent attempts to evade liability under the Act.

The regulation also makes it clear that the reviewing official may join in a single complaint claims that are unrelated or that were not submitted at the same time, even if the total amount of money (or value of property or services) falsely claimed exceeds $150,000.

6. Issuance of Complaints

The regulation specifies what must be included in a complaint (15 CFR 25.7) and an answer by which a respondent requests a hearing (15 CFR 25.9). 15 CFR 25.8 specifies the means by which service of the complaint is made.

7. Default Upon Failure To File an Answer

15 CFR 25.10 requires the ALJ (after another notice to the respondent) to impose penalties and assessments at the statutory maximum whenever the facts alleged in the complaint establish liability under the Act and the respondent fails to file a timely answer. An initial decision of the ALJ becomes the final decision of the Department and will not be subject to further challenge unless the respondent demonstrates that extraordinary circumstances prevented the filing of a timely answer.

8. Hearings

The provisions at 15 CFR 25.14 through 25.16 are designed to ensure the fairness of a hearing by (a) providing for the separation of functions among those within the agency investigating, litigating, and deciding these cases, (b) prohibiting ex parte contacts with the ALJ on any matters in issue, and (c) providing a mechanism for the disqualification of either a reviewing official or an ALJ.

9. Rights of Parties; Authorities of the ALJ

The provisions at 15 CFR 25.17 and 25.18 list the rights of the parties and the authorities of the ALJ not specifically provided in other sections of the regulation.

10. Prehearing Conferences

The ALJ may order a prehearing conference at his or her discretion, but must order at least one on the request of either party. Prehearing conferences may be held over the telephone at the ALJ's discretion. (15 CFR 25.19).

11. Disclosure of Documents

The Act requires the disclosure of certain types of materials to the respondent. 31 U.S.C. 3803(e) (1) and (2). Generally speaking, these materials consist of any relevant and material documents and other materials that relate to the allegations in the complaint and upon which the findings and conclusions of the investigating official under 15 CFR 25.4(b) are based, unless such materials are subject to a privilege under Federal law. In addition, the respondent may also obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint. (15 CFR 25.20).

12. Discovery

Congress has provided for limited discovery in these proceedings. The Act provides only for such discovery as the ALJ determines is "necessary for the expeditious, fair, and reasonable consideration of the issues * * * " 31 U.S.C. 3803(g)(3)(B)(ii). In addition, the Senate Governmental Affairs Committee stated:

> In the ordinary case, the committee anticipates that the timely exchange of proposed exhibits, witness lists and witness statements will constitute sufficient discovery. It is clearly the committee's hope that this alternative administrative mechanism will not become entangled in the unchecked "discovery wars" that render many court cases excessively costly and time-consuming.

S. Rep. No. 99–212, *supra*, at 15.

In order to ensure that discovery is reasonably controlled, the regulation (15 CFR 25.21) provides that all discovery must be approved by the ALJ, unless the parties agree otherwise. The burden of proof with respect to a discovery request is on the proponent of that request.

13. Exchange of Witness Lists, Statements, and Exhibits

15 CFR 25.22 provides for the exchange of certain documents before the hearing, including witness lists, copies of prior statements of witnesses, and copies of hearing exhibits. The ALJ may exclude witnesses and documents in instances where a party did not receive such documents before the hearing. In addition, any documents so exchanged would be deemed authentic for purposes of admissibility at the hearing unless a party objected before the hearing.

14. Subpoenas

15 CFR 25.23 prescribes procedures for the ALJ to issue, and for parties and prospective witnesses to contest, subpoenas to appear at the hearing, as authorized by 31 U.S.C. 3804(b). 15 CFR 25.24 permits parties and prospective witnesses to seek protective orders to restrict discovery or to limit the disclosure of information at the hearing.

15. Sanctions

The regulation at 15 CFR 25.29 expressly recognizes an ALJ's authority to sanction parties and their representatives for failing to comply with regulations or orders of the ALJ. These sanction provisions are modeled on those of the Merit Systems Protection Board at 5 CFR 1201.43.

16. The Hearing and Burden of Proof

15 CFR 25.30 requires that the Department has the burden of proof on the issues of liability and the existence of any factors that might aggravate or increase the amount of penalties and assessments that may be imposed. Conversely, the respondent has the burden of proof on any affirmative defenses and any factors that might mitigate or reduce the amount of penalties and assessments.

17. Determining the Amount of Penalties and Assessments

The Act authorizes the imposition of penalties ranging up to $5,000 for each false claim or statement, and in addition, with respect to claims, an assessment ranging up to twice the amount falsely claimed. However, the Act is silent on how the appropriate amount of penalties or assessments should be determined. The regulation at 15 CFR 25.31 would provide guidance to the ALJ and the Secretary in exercising this discretion. The regulation notes that because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others, a significant penalty and double damages ordinarily should be imposed. It then lists factors that should be considered, but notes that the list is not exhaustive. The ALJ and Secretary remain free to consider other factors that may aggravate or mitigate the amount of penalties and assessments as such factors are presented in particular cases.

18. Witnesses

Under 15 CFR 25.33, the ALJ allows testimony to be admitted in the form of a written statement or deposition so long as the opposing parties have a sufficient opportunity to subpoena the person whose statement is being offered.

Cross-examination may, at the discretion of the ALJ, exceed the scope of direct examination. The provisions in subparagraphs (c) and (e) are derived from Rule 611 of the Federal Rules of Evidence.

19. Evidence

Paragraphs (a) through (d) of 15 CFR 25.34 were included to comply with the recommendations of the Administrative Conference of the United States in Recommendations 86–2, 1 CFR 305.86–2, 51 FR 25,641 (July 16, 1986). The Federal Rules of Evidence are not, with some exceptions, generally binding on the ALJ. However, the ALJ may apply the Federal Rules of Evidence to exclude unreliable evidence.

20. Post-Hearing Briefs

It is within the ALJ's discretion to order post-hearing briefs, although parties are entitled to file one if they desire. (15 CFR 25.36).

21. Initial Decision

15 CFR 25.37 provides that within 90 days of the filinig of final post-hearing briefs, the ALJ shall serve on the parties an initial decision making specific findings of fact and conclusions of law on whether the claims or statements alleged in the complaint violate the Act and the appropriate amount of penalties and assessments considering any aggravating or mitigating factors in the case. The initial decision would become final within 30 days unless stayed by the filing of an appeal or a motion for reconsideration.

22. Reconsideration of Initial Decision

15 CFR 25.38 permits any party to file with the ALJ a motion to the ALJ for reconsideration of the initial decision, allowing the primary decision-maker an opportunity to correct any errors in the initial decision.

23. Appeal to Authority Head

15 CFR 25.39 prescribes procedures for a respondent who has been found liable for penalties and assessments in an initial decision to appeal that decision to the authority head, as guaranteed by 31 U.S.C. 3803(i)(2). The rule provides that there is no appeal of an ALJ's interlocutory orders.

24. Miscellaneous

15 CFR 25.40 through 25.46 largely reiterate statutory provisions, except § 25.41, which provides that there will be no administrative stay of the authority head's final decision.

25. Limitation

The Act provides that the ALJ must serve a notice of hearing within six years of the date the claim or statement is made. The regulation (15 CFR 25.47) provides that service of a notice of intent to issue an initial decision in the event of default would be deemed to meet this statutory requirements

IV. Rulemaking Requirements

Executive Order 12291

Executive Order 12291 requires the Department to prepare and publish regulatory impact analysis for major rules. A major rule is defined as any regulation that is likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation does not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. In general, the rule establishes procedures governing the scope and conduct of administrative adjudications to impose civil penalties and assessments upon persons who submit false claims or statements to the Department. As such, this rule has no direct effect on the economy or on Federal or State expenditures. Consequently, we have concluded regulatory impact analysis is not required.

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 604(a)), we prepare and publish an initial regulatory flexibility analysis for regulations unless the General Counsel certifies that the regulation would not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect the regulatory action by the agency would have on small businesses and other small entities and to develop lower cost or burden alternatives. As indicated above, regulations would not have a significant economic impact. While some of the penalties and assessments the Department could impose as a result of these regulations might have an impact on small entities, we do not anticipate that a substantial number of these small entities would be significantly affected by this rule-making. Therefore, the General Counsel certified to the Chief Counsel for Advocacy, Small Business Administration, that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980 (Pub. L. 96–511), all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirements contained in both proposed and final rules. It has been determined that this rule-making does not contain specific information collection requirements and would not increase the Federal paperwork burden on the public and private sector.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 25

Administrative Practice and Procedure, Fraud, Investigations, Organizations and functions (Government agencies) and Penalties.

For the reasons stated in the preamble, title 15 of the Code of Federal Regulations, subtitle A, is amended by adding a new part 25, to read as follows:

PART 25—PROGRAM

Fraud Civil Remedies

Sec.

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Authority: Secs. 6101–6104, Pub. L. 99–509, 100 Stat. 1874 (31 U.S.C. 3801–3812).

Fraud Civil Remedies

§ 25.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Public Law 99–509, section 6101–6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part (1) establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and (2) specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 25.2 Definitions.

ALJ means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

Authority means the Department of Commerce.

Authority head means the Secretary of the Department of Commerce, or designee.

Benefit means, except as the context otherwise requires, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the authority or

to a party to a contract with the authority—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

Compliant means the administrative complaint served by the reviewing official on the respondent under § 25.7.

Department means the Department of Commerce.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by §§ 25.10 or 25.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Department of Commerce or an officer or employee of the Office of the Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Knows or has reason to know, means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberative ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made*, shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, or private organization and includes the plural of that term.

Representative means any attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

Respondent means any person alleged in a complaint under § 25.7 to be liable for a civil penalty or assessment under § 25.3.

Reviewing official means the General Counsel of the Department or his or her designee who is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from,

the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 25.3 Basis for civil penalties and assessments.

(a) *Claims.*

(1) Any person who makes a claim that the person knows or has reason to know—

(i) Is false, ficitious, or fraudulent;

(ii) Includes, or is supported by, any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes, or is supported by, any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made payment (including transferred property or provided services) or a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of the section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains, or is accompanied by, an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has

made payment (including transferred property or provide services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 25.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official, or the person designated to receive the documents, a certification that—

(i) The documents sought have been produced;

(ii) Such documents are not available and the reasons therefore; or

(iii) Such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 25.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 25.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 25.3, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 25.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money, or the value of property, services, or other benefits, requested or demanded in violation of § 25.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

§ 25.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 25.7 only if—

(1) The Department of Justice approved the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 25.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money, or the value of property or services, demanded or requested in violation of § 25.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (*e.g.*, grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 25.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the respondent, as provided in § 25.8.

(b) The complaint shall state—

(1) The allegations of liability against the respondent, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the respondent may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the respondent's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the respondent with a copy of these regulations.

§ 25.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure.

(b) Proof of service, stating the name of address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual making service;

(2) An acknowledged United States Postal Service return receipt card; or

(3) Written acknowledgment of the respondent or his or her representative.

§ 25.9 Answer.

(a) The respondent may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the respondent—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the respondent intends to rely;

(3) May state any reasons why the respondent contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the respondent to act as respondent's representative, if any.

§ 25.10 Default upon failure to file an answer.

(a) If the respondent does not file an answer within the time prescribed in § 25.9(a), the reviewing official may refer the complaint to the ALJ along with the proof of service, as provided in § 25.8(b).

(b) Upon the referral of the complaint, the ALJ shall promptly serve on the respondent in the manner prescribed in § 25.8, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 25.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the respondent waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the respondent files motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the respondent from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the respondent can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the respondent an opportunity to answer the complaint.

(g) A decision of the ALJ denying a respondent's motion under paragraph (e) of this section is not subject to reconsideration under § 25.38.

(h) The respondent may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the respondent files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the respondent's failure to file a timely answer based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excused the respondent's failure to file a timely answer, the authority head shall remand the case of the ALJ with instructions to grant the respondent an opportunity to answer.

(l) If the authority head decides that the respondent's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 25.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 25.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the respondent in the manner prescribed by § 25.8. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the respondent, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 25.13 Parties to the hearing.

(a) The parties to the hearing shall be the respondent and the authority

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 25.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

(c) The reviewing official shall, after consulting with the Inspector General, designate the representative for the Government, who shall be an attorney with either the Office of General Counsel or the Office of the Inspector General. The reviewing official's decision is final.

§ 25.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 25.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 25.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 25.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 25.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 25.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the respondent may review any relevant and material documents, transcripts, records, and other materials that related to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 25.4(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the respondent may obtain copies of such documents.

(b) Upon written request to the reviewing official, the respondent also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 25.5 is not discoverable under any circumstances.

(d) The respondents may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 25.9.

§ 25.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 25.22 and 25.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within two days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 25.34.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fair and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery

(5) The ALJ may grant discovery subject to a protective order under § 25.24.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 25.8.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 25.22 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 25.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 25.23 Subpoena for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefore not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown: Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 25.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 25.24 Protective order.

(a) A party of a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as direct by the ALJ.

§ 25.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the Department of Commerce, a check for witness fees and mileage need not accompany the subpoena.

§ 25.26 Form, filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ shall include an original and one copy.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (*e.g.*, motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of, the party of the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than the complaint or notice of hearing shall be made by deliverying or mailing a copy to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 25.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by mail, an additional five days will be added to the time permitted for any response.

§ 25.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 25.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative, for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 25.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the respondent is liable for a civil penalty or assessment under § 25.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove respondent's liability and any aggravating factors by a preponderance of the evidence.

(c) The respondent shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 25.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted ordinarily double assessment, in lieu of damages, and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the respondent's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such program;

(8) Whether the respondent has engaged in a pattern of the same or similar misconduct;

(9) Whether the respondent attempted to conceal the misconduct;

(10) The degree to which the respondent has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the respondent, the extent to which the respondent's practices fostered or attempted to preclude such misconduct;

(12) Whether the respondent cooperated in or obstructed an investigation of the misconduct;

(13) Whether the respondent assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the respondent's sophistication with respect to it, including the extent of the respondent's prior participation in the program or in similar transactions;

(15) Whether the respondent has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State directly or indirectly; and

(16) The need to deter the respondent and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 25.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the respondent resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the respondent and the ALJ.

(b) Each party shall have the opportunity to present arguments with respect to the location of the hearing

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 25.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statements must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 25.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to—

(1) Make the interrogation and presentation effective for the ascertainment of the truth;

(2) Avoid needless consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 25.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and inmaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 25.24.

§ 25.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 25.24.

§ 25.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 25.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 25.3.

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 25.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permittted) has expired. The ALJ shall as the same time serve all respondents with a statement describing the right of any respondent determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ

§ 25.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the

ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 25.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 25.39.

§ 25.39 Appeal to authority head.

(a) Any respondent who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b) (1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 25.38 has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The authority head may extend the initial 30 day period for an additional 30 days if the respondent files with the authority head a request for an extension within the initial 30 day period and shows good cause.

(c) If the respondent files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there was reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a respondent has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the respondent with a copy of the authority head's decision, a determination that a respondent is liable under § 25.3 is final and is not subject to judicial review.

§ 25.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process and it shall be resumed only upon receipt of the written authorization of the Attorney General.

§ 25.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

§ 25.42 Judicial review.

Section 3805 of title 31, United States Code, authorized judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 25.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 25.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under §§ 25.42 and 25.43, or any amount agreed upon in a compromise or settlement under § 25.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the respondent.

§ 25.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 25.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision. If the designated representative of the Government is not with the Office of General Counsel, the representative shall forward all settlement offers to the reviewing official and cannot negotiate a compromise or settlement with the respondent except as directed by the reviewing official.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 25.42 or during the pendency of any action to collect penalties and assessments under § 25.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 25.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 25.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 25.8 within 6 years after the date on which such claim or statement is made.

(b) If the respondent fails to file a timely answer, service of a notice under § 25.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

Dated: October 3, 1990.

Robert A. Mosbacher,

Secretary, Department of Commerce.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM91-2-000; Docket Nos. RP86-119-000, TA84-2-9-015, and TA85-1-6-003]

Tennessee Gas Pipeline Co.; Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs

Issued: November 1, 1990.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on remand staying collection of take-or-pay fixed charges and directing filing of revised tariff provisions.

SUMMARY: The Federal Energy Regulatory Commission is staying the authority of certain pipelines to collect fixed take-or-pay charges based on a purchase deficiency allocation method. Specifically, this order stays the effectiveness of each tariff provision under which the affected pipelines bill such charges. The order also states that pipelines may file revised tariff provisions to replace the stayed provisions. The order does not prescribe a particular method for allocating and recovering the amounts previously recovered through the stayed tariff provisions, but sets forth principles that the Commission will use to evaluate revised allocation methods. Pipelines filing revised tariff provisions must at the same time file some plan for crediting, distributing, or allocating amounts previously collected under the stayed tariff provisions. A pipeline that does not file revised tariff provisions within 120 days of the November 1, 1990 issuance of Order No. 528 must file a refund report showing its distribution of all amounts collected under the stayed provisions, except that pipelines which have been billed fixed charges by upstream pipelines need not file a refund report until 30 days after the upstream pipeline files its refund report. Finally, the order states that the December 31, 1990 sunset date applicable to the special recovery mechanisms set out in 18 CFR 2.104 (1990) does not apply to the filings pipelines must make pursuant to this order.

EFFECTIVE DATE: The stay provided in this order is effective December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., (202 208-1274), Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 28, 1989, the United States Court of Appeals for the District of Columbia Circuit vacated and remanded the Commission's orders in the Tennessee Gas Pipeline Company proceedings listed above, concluding that the purchase deficiency method for allocating a portion of Tennessee's take-or-pay settlement costs violates the filed rate doctrine.[1] On October 9, 1990, the Supreme Court of the United States denied the petition for certiorari filed by the Solicitor General on behalf of the Commission in those proceedings.[2] The court of appeals decision became effective on October 17, 1990, when the court of appeals issued its mandate in *AGD II*. Since there are many other contested proceedings in which parties have raised objections to the purchase deficiency allocation method of other pipelines, the Commission is issuing this generic order to deal not only with the remanded Tennessee proceedings, but also with all other such contested proceedings.

The purchase deficiency allocation method was a feature of the policy formulated in Order No. 500[3] under which interstate pipelines could allocate to their customers the costs of settling take-or-pay liabilities with the pipelines' gas suppliers. The costs so allocated could be recovered through fixed charges. Under that policy, if pipelines absorbed from 25 to 50 percent of the amounts paid to producers to settle take-or-pay liabilities, or to reform or terminate contracts with take-or-pay provisions, the pipelines could recover an equal amount from their firm sales customers in the form of fixed charges. Any balance could be recovered in the form of a volumetric surcharge on all throughput (sales and transportation volumes).

The amounts to be recovered through fixed charges were allocated on the basis of each customer's "purchase deficiency." The purchase deficiency was calculated by measuring the customer's purchases in the "deficiency period," the period during which the pipeline incurred the bulk of the take-or-pay liability in question, against the customer's purchases in a prior "base period." Thus customers were assigned a portion of the pipeline's take-or-pay costs in proportion to the extent their purchases declined during the deficiency period.

The petitioners in the Tennessee proceedings (*AGD II*) argued that the purchase deficiency method of allocating such costs violated the filed rate doctrine[4] because the fixed charges, even though recovery of a current cost, were in fact charges for purchases during the deficiency period. The Court of Appeals concurred and remanded those proceedings to the Commission, stating,

> [T]he relevant question is not which costs are "current" and which are "past." Rather, the appropriate inquiry seeks to identify the purchase decisions to which the costs are attached. After making this inquiry, we have little doubt that the mechanism at issue violates the filed rate doctrine.[5]

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[1] Associated Gas Distributors v. FERC, 893 F.2d 349 (D.C. Cir. 1989) (AGD II).

[2] FERC v. Associated Gas Distributors, 59 U.S.L.W. 3271 (Oct. 9, 1990).

[3] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 52 FR 30,334 (Aug. 14, 1987) (Interim Rule), FERC Stats. & Regs., Regulations Preambles ¶ 30,761, *extension granted*, Order No. 500-A, FERC Stats. & Regs., Regulations Preambles ¶ 30,770, *modified*, Order No. 500-B, FERC Stats. & Regs., Regulations Preambles ¶ 30,772, *modified further*, Order No. 500-C, FERC Stats. & Regs., Regulations Preambles ¶ 30,786 (1987), *modified further*, Order No. 500-D, FERC Stats. & Regs., Regulations Preambles ¶ 30,800, *reh'g denied*, Order No. 500-E, 43 FERC ¶ 61,234, *modified further*, Order No. 500-F, FERC Stats. & Regs., Regulations Preambles ¶ 30,841 (1988), *reh'g denied*, Order No. 500-G, 46 FERC ¶ 61,148 (1989), American Gas Association v. FERC, 888 F.2d 136 (D.C. Cir. 1989) (remanding interim rule), Order No. 500-H, FERC Stats. & Regs., Regulations Preambles ¶ 30,867 (1989) (Final Rule), *modified*, Order No. 500-I, FERC Stats. & Regs. ¶ 30,880 (1990), *aff'd in part & remanded in part*, American Gas Association v. FERC, 912 F.2d 1496 (D.C. Cir. 1990).

[4] Under the filed rate doctrine, a pipeline may charge only the rate on file with the Commission for that service during the period in question and rates can be changed only on 30 days advance notice to the Commission. *See* Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571, 578 (1981), and Columbia Gas Transmission Corp. v. FERC, 831 F.2d 1135 (D.C. Cir. 1987), *modified on reh'g*, 844 F.2d 879 (D.C. Cir. 1988).

[5] Associated Gas Distributors v. FERC, 893 F.2d 349, 355.

The court's ruling addressed only the method for allocating the amount recovered in a fixed charge. The court did not address the lawfulness of the Commission's policy of allowing recovery of take-or-pay costs through fixed charges, or of requiring pipelines to absorb a portion of those costs as a requisite to their recovery through fixed charges. These features of Order No. 500 are unaffected by the court's *AGD II* decision.

Since the *AGD II* decision, the court of appeals has generally upheld the Commission's final rules in Order No. 550–H and I.[6] Specifically, the court upheld the Commission's decision not to act under Section 5 of the Natural Gas Act with respect to pipeline-producer contracts and approved in most respects the Commission's take-or-pay crediting rules. Thus what emerges from *AGD II* and *AGA II* is that the Commission's overall plan for addressing the take-or-pay situation is valid. It is against this background that certain pipelines must develop a revised method for allocating the costs included in their fixed charges.

At the same time, the Commission is mindful that the gas industry has changed dramatically over the past several years. The gas market is more competitive today than ever. And while the transition has not always been easy, the Commission remains committed to fostering to the greatest extent possible, competition in the gas industry. Currently, this is occurring in the implementation of the Commission's rate design policy statement, its policies on GICs and streamlining as much as possible the process by which new pipeline capacity is certificated. Thus, in developing the approach set out below the Commission seeks to minimize the disruption to this ongoing process while providing an equitable allocation method that allows the recovery of these transitional costs.

Some pipelines have settlements approved by the Commission under which their customers have agreed to the allocation of take-or-pay costs and waived any objections on the basis of the filed rate doctrine (or the similar doctrine prohibiting retroactive ratemaking). Such proceedings are not affected by the court's remand or this order. Costs to be recovered under such settlements, and under filings approved by Commission orders that have become final and nonappealable, constitute a large portion of the total take-or-pay settlement costs on an industry-wide basis.

A total of 23 pipelines have filed to recover approximately $9 billion in settlement costs under Order No. 500. Of these pipelines, six have entered into settlements with their customers, which the Commission has approved and which have become effective.[7] Another four pipelines have recovery mechanisms which have become final and nonappealable.[8] Two additional pipelines have filed settlements concerning their recovery of take-or-pay costs that are currently pending before the Commission.[9] The six pipelines with approved settlements account for approximately $3 billion of the $9 billion total settlements costs filed by all pipelines. The four pipelines whose mechanisms have not been appealed account for about $50 million. The two with pending settlements account for another approximately $2 billion. Thus, the Commission's order here currently applies to the allocation of take-or-pay settlement costs on 13 primary pipelines [10] and on all downstream pipelines, including those downstream of the ten primary pipelines with settlements or whose mechanisms have not been appealed.

II. Stay of Authority to Collect Fixed Charges and Direction to Refile

A Stay of Existing Tariff Provisions

Effective 30 days after publication of this order in the **Federal Register**, the authority of all pipelines (except those listed in Appendix A as not affected by this order) to collect fixed charges based on a purchase deficiency allocation method is stayed. Specifically, the Commission is staying the effectiveness of each tariff provision under which the pipelines bill such charges. All billing of fixed charges under such tariff provisions is stayed effective 30 days after publication of this order in the **Federal Register**. Refunds of amounts collected under such tariff provisions prior to issuance of this order are not required at this time. However, each pipeline will be required to provide data showing the amounts directly billed when it files either a revised allocation method in accordance with this order, or a refund report within 120 days of this order if it does not file a revised method. Existing volumetric surcharges to collect take-or-pay settlement costs under currently effective tariff provisions may continue to be assessed.

The Commission recognizes that pipelines may file revised tariff provisions before the stay takes effect. The Commission will act upon any such filings within the statutory 30 day notice period. The Commission does not intend to waive the 30 day notice requirement. Any tariff filings to recover additional take-or-pay settlement costs filed on or after the date of this order will be evaluated as a proposal for a new recovery mechanism under the principles set forth below. This order shall by published in the **Federal Register** and shall constitute notice under sections 4 and 5 of the Natural Gas Act, 15 U.S.C. 717c and d, to all potential customers that take-or-pay settlement costs may be collected through Commission approved rates, filed in response to this order, by means of one or more of the methodologies described in this order, or through another methodology that makes use of current or test year contract demand or some other measure of usage of the pipeline system. Thus, a pipeline proposal filed in response to this order may seek to recover take-or-pay costs that were previously being recovered under a fixed charge mechanism that has been invalidated by the court of appeals. A proposal may also seek to recover take-or-pay costs that accrue during the interim period between the effective date of the stay and when a new allocation method becomes effective.

B. Filing of New Recovery Provisions

Pipelines subject to this order may file new tariff provisions to replace the stayed provisions. Pipelines choosing not to file new tariff provisions to replace the stayed provisions will be subject to a stay of their fixed charge recovery mechanism and will be required to file a refund report showing the distribution of all amounts previously collected under the stayed provisions (as detailed in section II.A.). Pipelines must meet with and negotiate with their customers and other affected parties (including downstream pipelines, producers, end-users and other shippers) concerning proposals for a new allocation method for the recovery of the take-or-pay settlement costs currently included in the fixed charge. The Commission recognizes that pipelines may file before they have an opportunity to meet with affected parties. The Commission is aware, however, that many pipelines have been in the process of netogitating take-or-pay recovery in the context of other proceedings and expects parties to continue those negotiations after filing revised tariff provisions.

Since pipeline systems and the composition of parties affected by each pipeline differ, the Commission will entertain proposals for allocating the fixed charge that are tailor-made for each pipeline and its situation, subject to evaluation in light of the guidelines described below. Negotiations related to these tariff filings should take place as soon as possible; in any event take-or-pay settlement cost tariff filings do not have to be made by December 31, 1990. That date had been established in Order No. 500–H as the deadline for filing to recover take-or-pay costs under the special recovery mechanisms set out in § 2.104 of the regulations, including the purchase deficiency method. 18 CFR 2.104 (1990). Since the sunset date applied only to the special recovery mechanism invalidated by the court in *AGD II*, the sunset date does not apply to the filings that pipelines must make under this order.

In negotiating revised allocation methods, pipelines and their customers must consider how to handle the take-or-pay settlement costs previously recovered through fixed charges, *i.e.*, whether to provide for refunds of amounts collected under the stayed mechanism or for crediting of such amounts against liabilities under the proposed mechanism. The pipelines must file some plan for crediting, distributing, or allocating amounts previously collected in fixed charges when they file tariff sheets to implement a new recovery mechanism. Generally, the Commission does not allow a party's refund obligation under one proceeding to be offset against amounts due the same party under another proceeding, and a United States Court of Appeals has reversed a Commission decision allowing such offsets. *Interstate Natural Gas Association of America* v. *FERC*, 756 F.2d 166 (D.C. Cir. 1985). However, here the refunds would be in the same proceeding so that pipelines may seek to implement some form of crediting as a means of reconciling liabilities under one recovery method with liabilities under a different method.

The process of developing new allocation methods for the fixed charge necessitates pipelines meeting with all affected parties to discuss and negotiate the provisions of the new allocation proposals. The Commission encourages parties to negotiate the provisions of such a method together with any other issues in contention that feasibly can be addressed, and to resolve take-or-pay issues as part of comprehensive settlements that deal generally with the restructuring of the pipelines' rates and services.[11] In order to accommodate these discussions, the Commission may convene technical conferences or the discussions could take place within the context of a pipeline's existing rate case. The administrative law judges should extend existing schedules in pending rate cases, if necessary, to allow parties time to engage in such negotiations. However, the Commission does not envision that the filings to revise the take-or-pay fixed charge allocation method will be automatically consolidated with a pipeline's pending rate case, simply that a pending rate case may be a convenient forum for the parties to discuss the relevant issues.

If a pipeline fails to file an alternative proposal within 120 days of the issuance of this order, it must file within that time a refund report for all amounts previously collected under the fixed charge provisions of its tariff, except that pipelines billed fixed charges by an upstream pipeline need not file a refund report until 30 days after the refund report of the upstream pipeline is filed. In such cases, all refunds must be paid by upstream and downstream pipelines to the customers that actually paid the fixed charges, notwithstanding any other provision in the pipeline's existing tariff. In addition, if the pipeline has not filed an alternative proposal, it will be ordered to remove the stayed provisions from its tariff when it files its refund report.

The Commission urges all of the pipelines, customers and affected parties to bargain in good faith, in light of the Commission's policies on these issues. The Commission reiterates its conviction that *all* segments of the industry must share the responsibility for paying for these transition costs. However, the Commission also acknowledges that the time has come to afford parties the maximum flexibility possible to achieve equitable and individual resolutions of this problem. Accordingly, the Commission will give consideration to any proposal for allocating the fixed charge—whether contested or uncontested, in whole or in part—that satisfies the court's concerns in *AGD II* and is generally consistent with the principles set out below. As the Commission has previously said in § 2.104(d)(2) of the policy statement concerning the passthrough of take-or-pay settlement costs: the Commission intends to exercise its authority to the full extent permitted by the Natural Gas Act to approve take-or-pay settlements. However, nothing in this order is intended to disturb or change the Commission's Order No. 500 take-or-pay policy settlement or the precedents established in subsequent cases, except with respect to the method by which pipelines recover the costs currently collected through the fixed charge.

III. Guidelines for Acceptable Allocation Methods for Fixed Charge

A. Principles

Although the Commission is not prescribing a particular method for allocating the fixed charge, there are several principles that the Commission will use to evaluate revised allocation methods:

1. *The costs must be spread as broadly as possible throughout the industry.* The Commission reaffirms the principle that all segments of the industry—pipelines, producers, LDCs, industrial end-users, and other consumers—should contribute to funding the pipelines' take-or-pay costs.

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[6] American Gas Association v. FERC, No. 87–1588 (D.C. Cir. Aug. 24, 1990).

[7] Columbia Gas Transmission Corp., 49 FERC ¶ 61,074 (1989), *reh'g denied, clarification granted*, 51 FERC ¶ 61,194 (1990); CNG Transmission Corp., 49 FERC ¶ 61,034 (1989); Northern Natural Gas Co., 49 FERC ¶ 61,437 (1989), *reh'g denied*, 51 FERC ¶61,157 (1990); Sea Robin Pipeline Co., 51 FERC ¶ 61,046 (1990); Southern Natural Gas Co., 48 FERC ¶ 61,330, at p. 62,028 (1989); and Transcontinental Gas Pipe Line Corp., 48 FERC ¶ 61,442 (1990), *order on reh'g and clarification*, 50 FERC ¶ 61,442 (1990).

[8] These are Colorado Interstate Gas Co., Questar Pipeline Co., West Texas Gathering Co., and Valero Interstate Transmission Company.

These are the pipelines which fit into this category that the Commission has been able to identify to date. There may be other pipelines or specific filings by other pipelines which also fall into this category and would be unaffected by this order. Any pipeline which believes it belongs in this category should file with the Commission indicating that and the basis for its position.

[9] The pipelines are El Paso Natural Gas Co. and United Gas Pipeline Co.

To the extent that a settlement was entered into prior to the denial of certiorari in AGD II, the Commission believes it is in the public interest to assess this settlement as agreed to by the parties. The Commission expects all parties to honor their agreements. If a party has not claimed that the settlement violated the file rate doctrine, the Commission does not believe it would be appropriate for a party to change unilaterally its position because of events that have occurred subsequent to the entering of the settlement.

[10] The pipelines are: ANR Pipeline Co., Arkla Energy Resources Co., El Paso Natural Gas Co., Natural Gas Pipeline Company of America, Northwest Pipeline Co., Panhandle Eastern Pipe Line Co., Tennessee Gas Pipeline Co., Texas Gas Transmission Corp., Transwestern Pipeline Co., Trunkline Gas Co., United Gas Pipe Line Co., Williams Natural Gas Co., and Williston Basin Interstate Pipeline Co.

[11] To secure agreement of customers to a new allocation method for the fixed charges, a pipeline could offer, for example, changes in service, a moratorium on filing rate increases while remaining take-or-pay costs are being collected, or to negotiate other rate adjustments that meet the needs of its customers. *See* Columbia Gas Transmission Corp., 49 FERC ¶ 61,074 (1989), *reh'g denied, clarification granted*, 51 FERC ¶ 61,194 (1990); and Transcontinental Gas Pipe Line Corp., 48 FERC ¶ 61,442 (1990), *order on reh'g and clarification*, 50 FERC ¶ 61,442 (1990).

No single segment of the industry is to blame for the take-or-pay problems and all segments should share in the costs of making the transition to a more competitive market, since all segments are benefitting from the transition.

To this end, the Commission urges state commissions to use the full extent of their authority to equitably allocate between LDCs and retail customers take-or-pay costs that flow through an interstate pipeline's rates. As the Commission stated in Order No. 500–H,[12] to ensure that all segments of the industry share in contributing towards the resolution of the take-or-pay problem,

> state regulators may consider reclassifying, as commodity costs, take-or-pay costs billed to an LDC as a fixed charge and incorporating such costs into LDC sales or transportation rates, or both, thereby spreading such costs to the maximum extent possible and subjecting them to market forces. Furthermore, state regulatory agencies may implement, as some have, an equitable sharing mechanism similar to that established by the Commission which requires LDCs to absorb a portion of the costs if they desire to assess a fixed charge.

In the Commission's view nothing precludes a state commission from requiring an LDC to absorb a share of the costs as the Commission is requiring of interstate pipelines here.

The Commission intends by separate letter to request information from each state regulatory commission on how it has addressed recovery of take-or-pay costs at the state level; what guidelines the state commission used in developing its allocation plans; and whether, as a general matter, the state commission expects any changes to its schemes as a result of the invalidation of the purchase deficiency allocation method. The Commission will request to receive this information within 30 days so it has time to analyze fully the wellhead to burner tip impact of any pipeline proposals filed in response to this order.

2. *The pipeline must absorb a significant portion of the costs.* While the commission firmly believes that all segments of the industry should share in paying the costs of resolving the take-or-pay problem, the Commission only has jurisdiction over the rates of the interstate pipelines. Consistent with the principle that all segments of the industry should share in paying the costs of resolving the take-or-pay problem, interstate pipelines also must share in paying a portion of the costs. Thus, absent agreement with its customers and all other affected parties, the Commission will continue to require absorption as provided in Order No. 500 and the cases decided after Order No. 500. Therefore, absent agreement, a pipeline must continue to absorb the same amount of its take-or-pay settlement costs as it is currently absorbing under its existing passthrough mechanism.

As the court of appeals has recognized in a case where the Commission disallowed a pipeline's recovery of the costs of a failed gas supply project,[13]

> we therefore assume that the natural gas pipeline and its ratepayers were equally blameless for the losses at issue. That assumption, however, need not lead to the conclusion that Natural's ratepayers must, through the utility's cost of service, make good on all or any part of the money Natural lost. The Natural Gas Act simply does not guarantee the shareholders of even a prudently managed utility that ratepayers can always be stuck with the bill for supply projects that turn out to be total failures. however, praiseworthy the utility's motives for undertaking those projects may have been.

Here, just as with failed supply projects, the Commission needs to spread the costs of pipeline take-or-pay settlements equitably between the pipelines and other segments of the industry.

3. *Minimize burdens on the pipelines' captive sales customers, especially small customers.* The Commission is concerned that the captive sales customers—namely residential and small commercial gas users—should not bear a disproportionate share of take-or-pay costs. These customers, including small municipalities, generally serve a primarily residential market, and may lack the ability to make a substantial contribution towards paying the pipelines' take-or-pay costs without a substantial adverse economic impact. An allocation methodology that shifted a disporportionate amount of costs to these customers would be inconsistent with the Commission's goals of spreading take-or-pay costs as broadly as possible. It is in this regard that actions taken by state regulatory agencies can be specially helpful. The Commission strongly encourages state regulatory commissions to use the full extent of their authority to allocate equitably between LDCs and retail customers take-or-pay costs that flow through an interstate pipeline's rates.

4. *Pipelines and producers should abide by existing settlement agreements.* A substantial amount of progress has been made to date by producers and pipelines in renegotiating contracts to reflect the current realities of the pipelines' sales markets. The Commission does not want to reverse or upset the substantial progress to resolving the take-or-pay problem that has been achieved to date. The action taken here with respect to the recovery of take-or-pay costs through the fixed charge is not intended to serve as the basis for any pipeline or producer to disturb take-or-pay settlements previously entered into between pipelines and their producer suppliers.

B. *General examples of acceptable allocation methods*

While the Commission intends to consider any method for allocating the fixed charge filed by the pipeline that is consistent with the general principles set forth above and the court's decision in *AGD II*, the Commission offers here a few general examples of allocation methods that would be acceptable. These are intended to serve as a guide to the parties.

1. *Fixed charges based on some current measure.* The fixed charge portion of take-or-pay settlement costs could be allocated on the basis of some current measure of demand or usage. For example, pipelines may seek to allocate the portion of their take-or-pay costs to be recovered through fixed charges:

- *Contract Demand.* First, the fixed charge could be allocated on the basis of current contract demand. Fixed charges could be assessed on the basis of both sales and transportation contract demand.
- *Actual Throughput.* Second, the fixed charge could be allocated among all firm sales and firm transportation customers pro rata on the basis of actual throughput during the most recent rate case test period or other current period for which data are available.
- *Three-Day Peak.* Third, the fixed charge could be allocated on the basis of actual average demands of firm customers on the three peak days during the test period.
- *Other Measure of Annual Usage.* Finally, the fixed charge could be allocated on the basis of some other measure of annual usage, such as the D–2 component of a two part demand charge.

Regardless of the allocation method chosen, the fixed charge could be subject to an annual periodic adjustment to reflect customers' altered levels of throughput or demand, or lost or added firm customers.

2. *Volumetric surcharges.* Pipelines may seek to recover the amounts previously recovered through the fixed charge by volumetric surcharges alone.

3. *Combination fixed charges and volumetric surcharges.* Pipelines may use a combination of fixed charges and volumetric surcharges as in the Order No. 500 mechanisms or any combination of allocation methods to allocate the portion previously direct billed on some basis other than purchase deficiencies, as discussed above.

4. *Any agreed upon methodology.* Finally, to reiterate, pipelines can propose any other allocation method that the pipeline and the users of its system agree to use, that is generally consistent with the principles set forth above. The Commission reiterates, however, that following discussion between pipelines and affected parties, the Commission will consider any proposal that is generally consistent with the principles established here.

The Commission orders:

(A) The effectiveness of tariff provisions of pipelines that provide for assessment of fixed charges or direct bills to recover take-or-pay settlement costs on the basis of a purchase deficiency allocation method are stayed 30 days after publication of this order in the **Federal Register**. The tariff provisions of the pipelines listed in Appendix A, are not affected by this ordering paragraph.

(B) If any pipeline affected by the stay in ordering paragraph (A) above has not filed tariff provisions superseding those stayed in paragraph (A) within 120 days after the issuance of this order, it shall file by that date a refund report showing its distribution of all amounts collected under the stayed provisions, except that pipelines which have been billed fixed charges by upstream pipelines need not file a refund report until 30 days after the upstream pipeline files its refund report.

(C) The effectiveness of this order is made subject to leave of court for the pipelines, listed in Appendix B, for which an appeal is pending in the court of appeals concerning their take-or-pay passthrough mechanism.

By the Commission. Commissioner Trabandt concurred in part and dissented in part with a separate statement attached.

Lois D. Cashell,

Secretary.

Appendix A—Pipelines That Are Not Subject To The Stay *

1. CNG Transmission Corp., Docket Nos. RP89–124–000, RP90–56–000, and RP90–152–000.
2. Colorado Interstate Gas Co., Docket Nos. RP89–96–000, RP89–133–000, and RP90–95–000.
3. Columbia Gas Transmission Corp., Docket Nos. RP88–207–000 and RP89–116–000.
4. Northern Natural Gas Co., Docket Nos. RP89–136–000 and RP90–82–000.
5. Questar Pipeline Co., Docket No. RP89–120–000.
6. Sea Robin Pipeline Co., Docket Nos. RP89–141–000 and RP90–129–000.
7. Southern Natural Gas Co., Docket No. RP86–63–000.
8. Transcontinental Gas Pipe Line Corp., Docket Nos. RP88–68–000, RP89–122–000, RP89–163–000, RP90–99–000, and RP90–179–000.
9. Valero Interstate Transmission Co., Docket No. RP89–43–000.
10. West Texas Gathering Co., Docket No. RP89–121–000.

Appendix B—Cases in Which Leave of Court Will Be Requested

1. Alabama Tennessee Natural Gas Company, D.C. Cir. No. 88–1864 et al.
   Involves Alabama Tennessee's passthrough of costs in Docket No. RP88–205 billed by an upstream pipeline.
2. Arkla Energy Resources, Inc., D.C. Cir. No. 90–1130
   Involves Arkla's recovery in Docket No. RP89–135 of the costs of its own settlements with producers.
3. Baltimore Gas & Electric Company, D.C. Cir. No. 88–1161
   Involves United Gas Pipe Line Company's recovery in Docket No. RP88–27–000 of the costs of its own settlements with producers.
4. Columbia Gas Transmission Corporation, D.C. Cir. No. 88–1568
   Involves Texas Eastern Transmission Corporation's pass through in Docket No. RP89–154 of settlement costs billed by an upstream pipeline.
5. Columbia Gas Transmission Corporation, D.C. Cir. No. 89–1569
   Involves Texas Eastern's passthrough in Docket No. RP89–153–000 of settlement costs billed by an upstream pipeline.
6. Columbia Gas Transmission Corporation, D.C. Cir. No. 89–1750
   Involves Texas Gas Transmission Corporation's recovery of the costs of its own settlements with producers in Docket No. TM89–3–18–000.
7. Columbia Gas Transmission Corporation, D.C. Cir. No. 89–1567
   Involves Texas Eastern's passthrough in Docket No. RP89–150–000 of settlement costs billed by upstream pipeline.
8. Columbia Gas Transmission Corporation, D.C. Cir. No. 89–1646 and 89–1658
   Involves Texas Eastern's passthrough in Docket No. RP89–184–000 of settlement costs billed by an upstream pipeline.
9. Columbia Gas Transmission Corporation, D.C. Cir. No. 89–1738
   Involves United's recovery in Docket No. RP89–138 of the costs of its own settlements with producers.
10. Chattanooga Gas Company, D.C. Cir. No. 90–1185
    Involves East Tennessee Natural Gas Company's passthrough of settlement costs in Docket No. RP88–201 billed to it by an upstream pipeline.
11. Consolidated Edison Company of New York, D.C. Cir. No. 89–1028
    Involves Texas Eastern's passthrough in Docket No. RP88–251–000 of costs billed to it by an upstream pipeline.
12. Consolidated Edison Company of New York, D.C. Cir. No. 90–1315
    Involves Texas Eastern's passthrough of costs in Docket No. RP90–73–000 billed to it by an upstream pipeline.
13. Equitable Gas Company, D.C. Cir. No. 88–1848
    Involves Texas Eastern's passthrough in Docket No. RP88–223–000 of costs billed it by an upstream pipeline.
14. Equitable Gas Company, D.C. Cir. No. 88–1405
    Involves Texas Eastern's passthrough of costs in Docket No. RP88–80–000 billed to it by an upstream pipeline.
15. Illinois Power Company, D.C. Cir. No. 88–1410
    Involves Mississippi River Transmission Corporation's passthrough in Docket No. TA88–2–25 of costs billed to it by an upstream pipeline.
16. Illinois Power Company, D.C. Cir. No. 89–1415
    Involves Natural Gas Pipeline Company's recovery in Docket No. RP88–94–000 of the costs of its own settlements with producers.
17. Indiana Gas Company & Ohio River Pipeline, D.C. Cir. No. 88–1704
    Involves Texas Gas' passthrough in Docket No. RP88–115–000 of costs billed to it by an upstream pipeline.
18. Kansas Power & Light Company, D.C. Cir. No. 89–1155
    Involves Transwestern Pipeline Company's recovery in Docket No. RP88–198–000 of costs of its own settlements with producers.
19. Kansas Power & Light Company, D.C. Cir. No. 89–1680
    Involves Williams Natural Gas Company's passthrough in Docket No. TM89–2–43–000 of the costs billed by an upstream pipeline.
20. Kansas Power & Light Company, D.C. Cir. No. 89–1675
    Involves Arkla's recovery in Docket No. RP89–135–000 of the costs of its own settlement with producers.
21. Kansas Power & Light Company, D.C. Cir. No. 89–1766
    Involves Williams Natural Gas Company's passthrough in Docket No. RP89–233–000 of costs billed by an upstream pipeline.
22. Kansas Power & Light Company, D.C. Cir. No. 89–1437
    Involves Williams Natural Gas Company's passthrough in Docket No. RP89–40–000 of the costs billed by an upstream pipeline.
23. Laclede Gas Company, D.C. Cir. No. 89–1575
    Involves Mississippi River Transmission Corporation's passthrough in Docket No.

[12] FERC Stats. & Regs., Regulations Preambles ¶ 30,867 at pp. 31,575–6 (1989) (Order No. 500–H); *see also, Id.* ¶ 30,880 at p. 31,723 (1990) (Order No. 500–I).

[13] Natural Gas Pipeline Company of America v. FERC, 765 F.2d 1155, 1163–1164 (D.C. Cir. 1985).

* These are the pipelines which the Commission has been able to identify to date. There may be other pipelines or specific filings which also fall into this category. Any pipeline which believes that it belongs on this list should file with the Commission indicating that and the basis for its position.

RP89-158 of costs billed to it by an upstream pipeline.
24. Michigan Consolidated Gas Company, D.C. Cir. No. 88-1984
Involves Trunkline Gas Company's passthrough in Docket No. RP88-239 of its own costs of settling with producers.
25. Michigan Consolidated Gas Company, D.C. Cir. No. 88-1908
Involves Panhandle Eastern Pipe Line Company's recovery in Docket No. RP88-240-000 of the costs of its own settlements with producers and of downstream costs billed it by Trunkline.
26. Michigan Consolidated Gas Company, D.C. Cir. No. 89-1464
Involves Trunkline Gas Company's passthrough in Docket No. RP88-239 of its own costs of settling with producers.
27. Michigan Consolidated Gas Company, D.C. Cir. No. 89-1465
Involves Panhandle Eastern Pipe Line Company's abandonment of certain customers in Docket No. CP88-490.
28. Michigan Consolidated Gas Company, D.C. Cir. No. 89-1442
Involves ANR Pipeline Company's recovery in Docket No. RP89-45-000 of the costs of its own settlements with producers.
29. Columbia Gas Transmission Corp., D.C. Cir. No. 90-1422
Involves United's recovery in Docket No. RP90-91 of the costs of its own settlements with producers.
30. Michigan Consolidated Gas Company, D.C. Cir. No. 89-1669
Involves ANR Pipeline Company's recovery in Docket No. RP89-45-000 of the costs of its own settlements with producers.
31. Mississippi River Transmission Corp., D.C. Cir. No. 89-1157
Involves Mississippi River Transmission Corporation's passthrough in Docket No. RP89-13-000 of costs billed to it by an upstream line
32. Mississippi River Transmission Corp., D.C. Cir. No. 89-1255
Involves Mississippi River Transmission Corporation's passthrough in Docket No. RP89-13-000 of costs billed to it by an upstream line
33. Northern Illinois Gas Company, D.C. Cir. No. 88-1468
Involves Natural Gas Pipeline Company's recovery in Docket No. RP88-94-000 of the costs of its own settlements with producers.
34. Tennessee Gas Pipeline Company, D.C. Cir. No. 88-1660
Involves Tennessee's compliance filing in Docket No. RP88-191-000 to recover the costs of its own settlements with producers sought in the main *AGD II* case (RP86-119-00).
35. Texas Gas Transmission Corporation, D.C. Cir. No. 89-1037
Involves United's recovery in Docket No. RP88-27-000 of the costs of its own settlements with producers.
36. Texas Gas Transmission Corporation, D.C. Cir. No. 89-1699
Involves United's recovery in Docket No. RP88-27-000 of the costs of its own settlements with producers.
37. Transwestern Pipeline Company, D.C. Cir. No. 89-1630
Involves Transwestern's recovery in Docket No. RP89-130-000 of its costs of its own settlements with producers.
38. Consolidated Edison Company of New York, D.C. Cir. No. 90-1435
Involves Texas Eastern's passthrough in Docket No. RP90-96-000 of costs billed it by an upstream pipeline.
39. Columbia Gas Transmission, D.C. Cir. No. 90-1445
Involves Texas Eastern's passthrough in Docket No. TA90-7-017 of costs billed it by an upstream pipeline.
40. Wisconsin Fuel and Light Co., D.C. Cir. No. 89-1759
Involves ANR Pipeline Company's recovery in Docket No. RP88-127-000 of the costs of its own settlements with producers.
41. Missouri Public Service Corp., D.C. Cir. No. 89-1463
Involves Williams Pipeline's recovery in Docket No. RP89-140-000 of its own settlement with producers.
42. Northern Illinois Gas Company, D.C. Cir. No. 88-1488
Involves Natural Gas Pipeline's recovery in Docket No. RP88-94-000 of its own settlement with producers.
43. North Penn Gas Company, D.C. Cir. No. 88-1579
Involves North Penn's passthrough in Docket No. TA88-1-27-000 of costs billed it by upstream pipelines.
44. Peoples Natural Gas Company, D.C. Cir. No. 89-1002
Involves CNG Transmission Co.'s recovery in Docket No. RP88-217-000 of its own settlements with producers.
45. South Georgia Natual Gas Company, D.C. Cir. No. 89-1460
Involves South Georgia's passthrough in Docket No. RP88-267-000 of costs billed it by an upstream pipeline.
46. Michigan Consolidated Gas Company, D.C. Cir. No. 90-1279
Involves Trunkline's recovery in Docket No. RP88-239-000 of its own settlements with producers.
47. Michigan Consolidated Gas Company, D.C. Cir. No. 89-1698
Involves ANR's recovery in Docket No. RP88-127-000 of its own settlements with producers.
48. Arkla Energy Resources, Inc., D.C. Cir. No. 89-1787
Involves Arkla's recovery in Docket No. RP89-135-000 of the costs of its own settlements with producers.
49. Arkla Energy Resources, Inc., D.C. Cir. No. 90-1131
Involves Arkla's challenge in Order Nos. 500H and I (RM 87-34-000) to the absorption requirement.
50. Peoples Light and Coke Co., D.C. Cir. No. 89-1743
Involves Midwestern Gas Transmission Co.'s passthrough of costs in Docket No. RP88-193-000 billed by an upstream pipeline.
51. Boston Gas Company, D.C. Cir. No. 90-1452
Involves CNG Transmission Corporation's settlement in Docket No. RP89-124-000 under which the pipeline would recover a portion of the monies it paid producers as well as monies billed by upstream suppliers.
52. Baltimore Gas and Electric Co., D.C. Cir. No. 88-1779
Involves Columbia Gas Transmission Corporation's passthrough, in Docket No. RP88-187-000 of costs billed by upstream pipelines.

Mechanisms For Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs, and Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.

[Docket Nos. RM91-2-000; and RP86-119-014, TA84-2-9-015, TA85-1-6-003]

Issued November 1, 1990.

TRABANDT, Commissioner, *Concurring in Part and Dissenting in Part:*

I concur in part and dissent in part with the instant order on procedural and substantive grounds. I dissent in part because of the Commission's failure to seek public comment before acting in these dockets and also because of several substantive features of the action taken in this order. I concur in part as to the remainder of the action taken, albeit with particular comments on certain specific procedural and substantive aspects of the order. I will develop those conclusions in the body of this separate opinion in the hope of sharpening the focus of this debate for all interested parties in the rehearing process.

I. Opportunity for Public Comment

The majority here has rejected the formal requests of numerous parties from various sectors, including the Interstate Natural Gas Pipeline Association of America, the Independent Producers Association of America, and the bipartisan leadership of the U.S. Senate Committee on Energy and Natural Resources, for prior public comments before the Commission takes any action in these dockets. In the famous words of former President Reagan, "there *we* go again" in yet another immediately effective order on the take-or-pay issue without public comment. In an ultimately fruitless fit of enthusiasm for public comment and current data for analysis before final action here, I recommended an alternative approach in the form of a Notice of Proposed Policy Statement (NOPPS) prior to the Commission meeting of October 24, 1990. For record purposes and for purposes of comparison in subsequent discussion, that NOPPS with slight modifications is attached hereto as Appendix A.

Ironically, there is no real necessity for immediate action today in the absence of public comment. I do not believe that action by November 1 is necessary to satisfy the court remand in these dockets, because there is ample precedent, as INGAA and individual pipelines persuasively point out, for fashioning an alternative passthrough allocation mechanism for directly billed buyout and buydown costs with the benefit of public comment *before* terminating the existing mechanism, as long as that effort is completed in a reasonable time. Certainly, the U.S. Court of Appeals for the District of Columbia Circuit has made unambiguously clear its disdain for commission action to

pressure the participants in the natural gas industry to dispose of the take-or-pay problem without the Commission first taking a final, reasoned position on how this should be done, particularly where it has done so in a manner that may be highly prejudicial to the bargaining power of pipelines which were facing a deadline. As that distinguished American philosopher, Yogi Berra said, "this may be deja vu all over again."

Second, I am not persuaded that the Commission has to act now at all, in the first place, or secondly cannot act now by seeking public comment on a proposed course of action, as in a NOPPS, in order to support the Commission's position on Order No. 451 now pending further judicial review before the Supreme Court. The Supreme Court is well aware that *certiorari* was just denied last month and the Circuit Court mandate only issued on October 17. Consequently, I believe it is rather unpersuasive to argue that, but for the issuance of the instant order today, the Commission's position on the take-or-pay aspects of the Fifth Circuit's opinion is undercut. And, I take that view as an original participant in the development of the Notice of Proposed Rulemaking in 1985 that led to the adoption of Order No. 451 and a strong supporter of that Commission initiative, then and now. Rather, this relatively arbitrary deadline has served to limit Commission and public consideration of this proposal.

Third, it is noteworthy that the Commission has received a flood of formal filings and communications from various parties potentially affected by this order in response to the public discussion of the original staff proposal at the October 24, 1990 Commission meeting. It is slightly astonishing from a procedural due process perspective that the instant order nonetheless fails to acknowledge the existence of those highly relevant formal filings, let alone address the procedural and substantive protests argued in opposition to the original proposal and the action taken here. And, rather than a proposed rule or an interim rule subject to public comment, the instant order is final and immediately effective, subject only to the statutorily mandated rehearing requirement.

Perhaps, in the end, the Commission quite simply will never learn the procedural lessons of our relatively sad Order No. 500 experience and the distinct advantages of prior public comment as a critical element in the eventual resolution of the take-or-pay problem. That would be an unfortunate conclusion, indeed. The practical reality, however, is that the majority here does not support seeking public comment at this time. Thus, the question must become the substance of action to be taken now in the absence of any public comment. The balance of this opinion, therefore, addresses the substantive merits of the instant order.

II. Instant Order

A. Original Staff Proposal

In order to analyze the substantive merits of the instant order, it is perhaps useful to grasp the basic concepts of the original staff proposal, for which the NOPPS alternative in Appendix A was intended as the counterpoint for Commission debate at the October 24 meeting. The original proposal would use a similar 120 day procedural approach as in the instant order, but with a number of significant differences. Direct billing using the deficiency based allocation formula would be terminated as of the date of issuance. Pipelines would be authorized and virtually directed to negotiate new, individual take-or-pay recovery mechanisms, involving all aspects of the recovery of take-or-pay costs. Those aspects could include any number of issues previously resolved since issuance of Order No. 500, including significantly the requirement for absorption by pipelines of a minimum of 25 percent of the eligible take-or-pay buyout and buydown costs. Also, such key elements of current policy as what costs are eligible for recovery and how the PGA mechanism can be used would be "up for grabs" in negotiations.

In essence, any form of alternative recovery mechanism would likely be acceptable as a part of a settlement in these dockets. That result, of course, would reopen the entire Order No. 500 debate on a case-by-case, pipeline-by-pipeline basis, with no continuing direct billing in the interim and under the threat of a refund requirement in 120 days. These new take-or-pay cases would be consolidated with ongoing section 4 cases, many of which are Rate Design Policy Statement cases underway for many months and ripe in many dockets for near term decision.

At the same time, there would be no new sunset date for pipelines filing new take-or-pay costs in the future. Thus, as a practical matter, the alternative passthrough mechanism originally established in Order No. 500 as a short-term, transitional mechanism would now be a permanent program without any limitation in time and, therefore, in total dollars subject to passthrough by this means. That feature of the original proposal is retained in the instant order, as discussed below.

The proposal also would require for the first time absorption by downstream pipelines, which would involve literally hundreds of new downstream absorption cases and would reverse all prior precedents. The proposal again would press state public utility commissions to impose absorption requirements on local distribution companies subject to their jurisdiction and request individual PUC responses as to their response. The proposal also would attempt to enforce filed, but unapproved, settlements on pipelines and their customers and also attempt to prevent renegotiation of existing producer-pipeline take-or-pay settlements.

B. Problems with the Original Proposal

1. The approach inevitably would engender further delay in rate design policy cases, GIC-related cases, and restructuring cases, among others. Of necessity, the affected pipelines and their customers would have to stop all other proceedings to address the broad based reconsideration of the entire take-or-pay recovery mechanism.

2. There would be no "baseline" recovery methodology in place, as under Order No. 500 and under the NOPPS alternative, for purposes of implementation in the absence of a settlement or to be used as the basis for negotiating some flexibility from the baseline, as occurred in the Columbia and Transco settlements. Thus, we would have a free-form, *ad hoc* negotiation without a concrete, Commission imposed starting point. I would characterize the approach as a regulatory Hulk Hoganesque tag-team wrestling match without any rules or limits on participation.

3. Once again, as in "is there no end," we would go into yet another winter heating season with a large uncertainty as to the billing of take-or-pay related costs and the rates for affected services. At the same time, pipelines would face the inevitable financial community "fallout" of immediately terminated direct billing and the threat of enormous refunds on March 1, 1991. I am persuaded that the Commission would be on solid legal ground to allow continuation of current direct billing for a few months, while seeking public comment, and then adopting and implementing an alternative to deficiency based allocation of direct billing. Thus, any such uncertainty or financial "fallout," in my judgment, would be a "self-inflicted wound" by the Commission.

4. As discussed above, the entire take-or-pay recovery mechanism would be "up for grabs," whereas the remand as a legal matter need only focus on the narrow issue of a replacement for the deficiency based allocation formula. This issue is discussed in more detail in, and is a central alternate feature of, the NOPPS proposal in Appendix A.

5. There is no compelling reason to reconsider at this eleventh hour the requirement for absorption by pipelines of a minimum of 25 percent of the eligible costs under the equitable shaving formulation of Order No. 500. If that were not a primary objective of the original proposal, it was the clear and present result of the procedural approach and substantive discussion throughout the draft order.

6. There was some confusion as to what pipeline would be affected by the original proposal, and if so or if not, on what theory of law or policy. That confusion, in fairness, was a function of the speed of development of the original proposal and has been corrected, at least in part, in the instant order. In any event, I believe that the Commission has an obligation to articulate the criteria for designating affected pipelines and making an initial cut to reduce uncertainty under this order.

7. There was some confusion and inconsistency as to the exact nature of the refund requirement, as between refund reports, plans, and informational filings, as a function of the individual pipeline's situation at any point in time. That confusion and inconsistency also has been corrected, at least in part, in the instant order. Again, I believe the Commission has an obligation to be quite precise as to the exact nature of the refund obligations imposed on pipelines and the mechanics by which those obligations and related requirements may be satisfied, given the magnitude of the dollars potentially subject to refund and the financial impact of such refunds, as well as any uncertainty that may be created.

8. The mandated consolidation of the numerous upstream and new downstream

take-or-pay cases with other pending cases for affected pipelines would materially disrupt many, if not most, other pending policy matters for the foreseeable future, as discussed above. Thus, for example, the flow of Rate Design Policy Statement cases would come to a screeching halt and remain dead in their tracks, while pipelines, customers and other interested parties pursued urgent negotiations driven by already terminated direct billing and impending total refunds.

9. The requirement for downstream pipeline absorption would add hundreds of new absorption sub-cases to current dockets in a massive complication of the Commission's administrative process. That requirement quite conceivably could have added months of brand new negotiation as a completely new element of the process. Also, apart from the reverential invocation of the equitable sharing principle, there is no compelling legal or policy rationale to support reversing past decisions in opposition to downstream absorption already subjected to judicial review. Also that reversal would be doubly difficult if the upstream pipeline absorption obligation was reduced or removed, as discussed above.

10. The renewed pressure on PUCs to require absorption by jurisdictional LDCs appears to be equally misplaced, particularly in the light of the new flexibility on upstream pipeline absorption. Furthermore, the real legal and policy questions are more properly focused on the narrow issue of replacement of the deficiency based allocation formula for direct billing, rather than any broad-based, wholesale reconsideration of the alternative recovery mechanism under Order No. 500. Again, the only proffered rationale for the renewed pressure on the PUCs is the invocation of the equitable sharing principle. I am satisfied that Orders No. 500–H and 500–I have disposed of this issue and it does not need further attention at this juncture.

11. The original proposal invoked the Commission's abandoned plant policy in electric power regulation as a new rationale to support the notion of equitable sharing and some amount of absorption by all parties. That policy, particularly as refined in 1988, directly reflected Commission decisions in Order No. 500 made in 1987, so at least to that extent the new argument was somewhat circular, at best.

12. The proposal stated rather categorically that pipelines and producers should remain bound by their existing take-or-pay settlements unless the settlements expressly provided for renegotiation as a result of these events. That directive was apparently intended to preemptively negate any suggestion that producers might wish to re-open take-or-pay negotiations now that one of the fundamental assumptions for the original negotiations (that the pipeline would have to absorb at least 25 percent of the negotiated buyout and buyout costs) was subject to *ad hoc*, case-by-case reconsideration. Also, to the extent that a pipeline had assumed that at least 25 percent of those costs could be directly billed to customers on a purchase deficiency allocation basis, the pipeline might now wish to reopen the settlement, so the theory went.

Those settlements are not jurisdictional in the first instance, and in any event, it would seem quite presumptuous for the Commission to attempt to direct those parties to remain bound by the settlements, even if the Commission decides to allow wholesale renegotiation of the pipeline's recovery mechanism for the eligible costs resulting from the prior producer-pipeline settlements, which were premised on the cost recovery mechanism under Order No. 500. Similarly, and unacceptably for analogous reasons, the original proposal sought to bind parties to settlements not yet finally approved by the Commission between pipelines and customers for the recovery under variations of Order No. 500 of buyout and buydown costs.

13. The practical effect of the draft order taken as a whole was to reopen the many settled issues related to the take-or-pay alternative recovery mechanism, as discussed above, such as eligible costs, prudence, non-jurisdictional customers, interruptible customers, etc. That reopening would not support early or effective Commission review of the many (hundreds?) of individual upstream and downstream cases that would have to be decided by the Commission in the many, many months ahead. Thus, take-or-pay would once again appear to be, and perhaps actually would be, intractable as the Commission would have to replow the old ground and confront the same difficult, hard decisions under new flexible rules.

14. There were too many identified options and express invitations for any and every conceivable new approach to take-or-pay recovery. The proposal was replete with statements such as the "time has come for maximum flexibility * * * and we will give consideration to any proposal contested or uncontested, in whole or in part." I characterized this approach to equitable sharing under Order No. 500 as a "predictably unlimited negotiating task" or PUNT by the Commission as a matter of policy.

15. There was no reflection of the Order No. 94 cost recovery issue and its relationship to the direct billing allocation mechanism under the instant order for those pipelines affected by both remands. I believe the Commission is obligated to provide those affected pipelines the opportunity to address both Order No. 94 and Order No. 500 cost recovery and provide some appropriate guidance in that regard.

C. Improvements in the Instant Order

1. The Order No. 500 upstream absorption requirement is categorically restored, as in the NOPPS. However, the retained flexibility for options may invite some challenge to that requirement in a particular case.

2. Downstream pipeline absorption is removed, as in the NOPPS.

3. Consolidation of the new direct billing cases with existing cases is not mandatory, but still possible, as in the NOPPS.

4. There is somewhat more specificity with regard to the nature of the refund obligations and requirements.

5. There is somewhat more precision as to the criteria for designation and the identification of affected pipelines.

6. Direct billing will be continued for about 45 days (30 days after publication of this order in the **Federal Register**) during which pipelines can file and the Commission can accept, to be effective at the same time as direct billing terminates, reasonable alternative direct billing allocations, subject to further review. The practical effect approximates the NOPPS, but would be less direct.

7. The issue at hand has been narrowed from the entire alternative recovery mechanism under Order No. 500 to the specific allocation of direct billing costs, as in the NOPPS. However, the retained flexibility for options may invite broader formulations affecting other aspects of take-or-pay recovery, such as volumetric surcharges and absorption.

8. The use of the Commission's abandoned plant policy as a new rationale is removed.

9. The discussion about producer-pipeline take-or-pay settlements has been modified to remove the directive nature.

10. The order expressly saves all prior Order No. 500 precedents except those expressly related to allocation of direct billing and affected by this order, as in the NOPPS. However, the retained flexibility in options may invite challenges to certain precedents in a particular case.

D. Remaining Problems in the Instant Order

1. There is no sunset for pipelines filing new take-or-pay buyout and buydown costs for recovery under the Order No. 500 program. Thus, the program is no longer transitional in nature, but rather it is now permanent. Consequently, as a matter of law and a matter of policy, the Commission has institutionalized the take-or-pay problem as a permanent fixture in the regulation of interstate pipelines, without any regard to whether that's needed or not and any concern about the impact on other related Commission policies. That result is a significant reversal of past Commission policy first enunciated in August, 1987 in Order No. 500 and reiterated as recently as this year in Order No. 500–I. And, it is a reversal clearly not required by the Court's opinion in *AGA–II*.

2. The Commission does not adopt a specific baseline method for allocation of direct billing costs to replace deficiency based allocation. Thus, there is no "baseline" for further negotiation by the parties or for use by the Commission in reviewing the pipeline proposals.

3. There still is too much flexibility indicated with some of the same language noted above, and with the express suggestion that almost any methodology could be acceptable under the PUNT theory. We will only know how flexible the Commission will eventually be after the individual cases are decided on an *ad hoc* basis.

4. There would be far less uncertainty and far more regulatory predictability if the Commission, as suggested in the NOPPS, simply required affected pipelines with deficiency based allocations of direct billing to make a section 4(e) filing within 15 days, to be effective on December 1 with waivers or January 1, 1991 without waivers, with a new direct billing allocation methodology developed in accordance with the guidelines

and accompanied by a refund plan based on the new allocation methodology. I see no legal or policy basis for the indirect approach, with an approximate 45 day delay in the stay of direct billing and the threat of immediate refunds in 120 days. There is no persuasive reason why the Commission can't and shouldn't just simply require affected pipelines to make the necessary filings and proceed in an orderly, predictable and rational fashion to replace the deficiency-based allocation formula with a new formula, since funds already collected were collected subject to refund and the court decision. And, if we don't have the authority to do just that, I fail to see how we have the authority to use the approach in the instant order.

5. The renewed pressure on PUCs to require LDC absorption remains in a slightly modified way.

6. There is no reflection of the Order No. 94 cost recovery issue and its relationship to the Order No. 500 direct billing allocation method, despite more recent pleadings seeking such action.

E. Related Comments

1. I would urge the Commission to consider promptly the virtually inevitable requests for stay, clarification and rehearing of this order. In light of the magnitude of the costs at issue in these cases, their impact on the financial situation of affected parties and the ramifications for other Commission policies and many pending cases, I do not believe that it would be appropriate to take the "business-as-usual" tack of tolling and deferring such requests for some extended period. Also, we tested the tolerance of the D.C. Circuit Court of Appeals on that score in the Order No. 500 series and lost badly as a result in certain cases. We need not repeat that mistake here.

2. There are a number of examples in this case of highly debatable legal arguments driving policy decisions. For example, the purported significance of the November 1 deadline, the requirement to stop direct billing immediately, the threat of refunds in 120 days, the total opposition to any sunset date at any point in the future (1995?), the new found flexibility on absorption (now rejected), among others, have been premised as legal requirements under one possible judicial review scenario or another. A similar assertion of "legal requirements" formed the basis for the Interim Rules associated with construction certification and the section 311 "on behalf of" test. I believe the Commission needs to do a better job of sifting the legal wheat from the policy chaff, and distinguish those decisions which are fundamentally policy decisions from those driven truly by legal considerations, if not requirements.

III. The Big Picture and Broader Policy Implications

A. General Take-or-Pay Issue

Now is decidedly *not* the time to reopen the entire take-or-pay cost recovery issue or the equitable sharing mechanism. All that's needed as a matter of law is a replacement for the deficiency based allocation for direct bill. What we do not need, as a matter of national policy, is an instant replay of the take-or-pay wars in the natural gas industry. The industry does not need and, in my judgment, really cannot stand a new round of financial uncertainty and regulatory unpredictability caused by a wholesale reconsideration of the entire take-or-pay issue at this time. If natural gas is going to take its appropriate place in the North American energy economy in the early 1990's, the natural gas industry and regulators should not willingly precipitate again the perception that take-or-pay remains an intractable, unmanageable and unsolvable problem.

Rather, we must act promptly to demonstrate that the natural gas industry really can (1) tell potential customers what services will be available and how they will be priced, and (2) tell the financial community what the proverbial bottom line will be with take-or-pay largely resolved; without once again extensively footnoting the tariff sheets and the financial reports to reflect new uncertainty about the recovery of massive take-or-pay costs. We quite simply do not need to prove the naysayers about natural gas correct on the take-or-pay issue; *i.e.*, it is a snake that will never die and an albatross that never leaves. That's why a permanent program with a PUNT approach just is not acceptable. Rather, we need to adopt promptly a largely self-executing, completely predictable, and narrow, surgical replacement for the deficiency based allocation formula, preferably with the benefit of prior public comments to ensure that we make a well-informed and well-reasoned decision.

B. Non-discriminatory Open Access Transportation

I remain concerned that the multi-option approach could lead to a plethora of separate take-or-pay mechanisms on affected interstate pipelines, since there will be no Commission-approved baseline approach. That result may serve to complicate further the Commission's efforts to complete the necessary regulatory steps to finish the transition and make non-discriminatory open access transportation a permanent reality in the U.S. natural gas industry. Also, as a legal matter, we must finally satisfy the D.C. Circuit Court of Appeals that we have resolved the outstanding take-or-pay issues in order to relieve the open access transportation program of that continued constraint. Both of those considerations argue forcefully for a quick, narrow, and surgical response to the *AGD–II* court remand. Additionally, there is some reason to believe that a permanent take-or-pay program with a rather free-form recovery approach could lessen support for gas inventory charges, or their functional equivalent, and reduce the drive to comparable firm transportation services and new rate designs more consistent with the 1989 Rate Design Policy Statement. Thus, progress towards a competitive and permanent open access transportation system could be slowed or stalled on substantive merits, as well as by the fact that there inevitably will be delays in other cases while the interested parties of an affected pipeline seek a negotiated settlement (and even longer because of the multiple option approach, in lieu of a baseline approach).

Earlier this week, at the 1990 American Gas Association Annual Meeting, I expressed concern that for other reasons the Commission appeared to be moving in a policy direction that would introduce new uncertainty as to (1) *when* the transition to permanent open access will be complete, and (2) *what* the permanent open access transportation result will really be. The multiple-option approach here could add a major new element to that additional uncertainty, as we proceed case-by-case over the months ahead. Also, it's now a real horse race between the end of the natural gas "bubble" and the completion of the regulatory transition to permanent open access transportation.

My own view is that the Commission could complete that regulatory transition and make the open access program permanent by administrative action in the coming year, if we were committed to that result at this time. However, if the new multi-option and permanent take-or-pay program combines with those other factors to frustrate our achieving that objective, then it may be time to see appropriate Congressional action to statutorily mandate the open access program. I have always believed that FERC had ample authority to complete the transition without legislation and I think the courts have generally supported that view, even with the take-or-pay problem. So I continue to hope that the Commission will exercise its administrative authority to resolve in the near term this matter and the other remaining issues to make permanent open access transportation, without having to resort to legislation as the only viable option.

IV. Conclusion

I have set forth as comprehensively as time would allow the specific details associated with the development of the instant order, including the alternative NOPPS. (In that regard, I apologize to the reader for the rather unrefined nature of this narrative.) I cannot support the procedural result of no public comments prior to the adoption of this new take-or-pay direct billing allocation policy. I also have significant concerns about the substantive aspects of the new policy, as discussed openly above. At the same time, there have been substantial improvements introduced into the instant order by comparison to the original staff proposal, as noted previously. The critical and, at this point, largely unanswerable question is whether this multi-option approach will work without serious financial dislocations and negative operational impacts as we begin the winter heating season, as well as without negative impact on permanent open access transportation. Only time will tell as the industry responds to this immediately effective directive from the Commission in the months ahead and the Commission makes case-by-case decisions. As Casey Stengel once quipped, "if you don't know where you're going, you're liable to end up someplace else." In sincerely hope that where this order takes the Commission and the industry is a relatively quick and effective resolution of the direct billing allocation issue

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and a major positive step towards permanent open access transportation.

For these reasons, I concur in part and dissent in part.

Charles A. Trabandt,

Commissioner.

Appendix A—Commissioner Trabandt's Suggestion for PR–1

1. Notice of Proposed Policy Statement (NOPPS)

In response to *AGD–II*, Commission proposes to modify § 2.104 *Mechanisms for passthrough of pipeline take-or-pay buyout and buydown costs* in PART 2—General Policy and Interpretations of the Commission's regulations.

Pipelines which have settlements approved by the Commission under which their customers have agreed to the allocation of take-or-pay costs and waived any objections on the basis of the filed rate doctrine (or the similar doctrine prohibiting retroactive ratemaking) would *not* be affected by the court's remand or the modifications proposed in this Notice of Proposed Policy Statement. The discussion here would pick up the specifics from the staff draft of PR–1 on those settlements and the pipelines that would and would not be affected (see pp. 5, 6, 7 and nn. 7, 8, 9, 10).

There would be no stay of existing tariff provisions for take-or-pay recovery at this time for affected pipelines. Rather, as Tennessee argued in its petition, the Commission would allow those tariff provisions to continue in force for a relatively brief additional period of a few months while seeking public comment on the modifications necessitated by *AGD–II*. The final revised Policy Statement would be issued promptly after review of the public comments (no later than January, 1991).

The proposed modifications would make clear that the Commission does not intend to change in any material way our Order No. 500 program, except as to the allocation methodology for direct billing required by *AGD–II* and a slight adjustment to the percentage ranges allowable for absorption/direct bill/volumetric surcharge under the alternative mechanism. Thus, the bulk of all past and otherwise settled case-by-case precedents for Order No. 500 would remain in force. All of this, of course, would facilitate the ultimate objective of equitably getting take-or-pay behind us ASAP.

2. Sec. 2.104 would be proposed to be revised to achieve the following effects (with appropriate technical language)

a. General Policy

The Commission as a matter of policy will provide two distinct mechanisms for passthrough of take-or-pay buyout and buydown costs of interstate natural gas pipelines. The first is pursuant to existing, general policy and practice. Under this method, the pipelines may pass through prudently incurred take-or-pay buyout and buydown costs in their sales commodity rates. The second method is available to pipelines which agree to an equitable sharing of take-or-pay costs and which transport under part 284 of this chapter * * *. Qualifying pipelines may utilize the alternative passthrough mechanisms described in this section. Where a pipeline agrees to absorb from 25 to 40 percent of take-or-pay buyout and buydown costs, the Commission will permit the pipeline to recover through a fixed charge an amount equal to (but not greater than) the amount absorbed. A minimum of 20 percent of take-or-pay buyout and buydown costs must be recovered either through a commodity rate surcharge or a volumetric surcharge on total throughput. Any remaining costs up to 50 percent of total buyout and buydown costs (above 20 percent minimum and not recovered by a fixed charge) also may be recovered either through a commodity rate surcharge or a volumetric surcharge on total throughput. Thus, recovery by the alternative means could vary from (i) 25 percent absorption, 25 percent fixed charge, and 50 percent commodity rate or volumetric surcharge to (ii) 40 percent of absorption, 40 percent fixed charge, and 20 percent commodity rate or volumetric surcharge.

b. Cost Allocation Procedures

A pipeline's volume-based surcharges must be based on the volumes which underlie its most recent Commission-approved rates. Fixed charges shall not be based on the customer's purchase deficiency in recent years measured in relation to that customer's purchases during a representative base period, because that allocation method was invalidated in *AGD–II*. Rather, fixed charges must be based on each customer's combined sales and transportation contract demand quantities relative to all other customer's combined contract demands. The initial allocation of fixed costs would be subject to an adjustment at a point in time 50 percent through the amortization term for the fixed charges (as opposed to annual or other periodic basis) to adjust the direct bill charges to reflect any changes in contract demand amounts or to reflect lost or added customers.

c. Implementing Procedures

(1) Pipelines acting pursuant to this section may submit on or before *December 31, 1991*, a non-PGA rate filing under sec. 4(e) of the NGA. Pipelines may include in their filings a fixed charge and a volumetric surcharge to recover buyout and buydown costs actually paid as of the date of filing plus similar costs which are known and measurable within the following nine months, etc., etc.

d. Prudence

The prudence policy as developed under Order No. 500 would remain in effect pursuant to the cases interpreting § 2.104(d) without any change, with one exception. Any *new* filings by pipelines for recovery under the alternative mechanism could be challenged on prudence grounds in the procedural manner set forth in prior cases.

e. Flowthrough by Downstream Pipelines

Downstream pipelines shall not use the purchase deficiency basis for allocation of the flowthrough of approved take-or-pay fixed charges. Rather, the flowthrough of fixed charges must be based on each customer's combined sales and transportation contract demand relative to all other customers combined contract demands. There would be *no* new requirements for downstream pipelines to absorb a percentage of fixed costs.

f. Ongoing Proceedings

The current policy on ongoing proceedings in § 2.104(f) would be continued.

g. Scope

The current statement in § 2.104(g) would be revised to reflect the current status of issues addressed therein (e.g., take-or-pay prepayments and Title I pricing provisions of the NGPA).

h. Reallocation of Fixed Charge Costs

A new section would be added specifying that a pipeline with past recovery by means of fixed charges would be required to file a reallocation report with the Commission. To the extent that customers previously billed under the purchase deficiency allocation method would remain responsible for fixed costs under the new combined contract demand allocation method, the pipeline is authorized to retain the past fixed charge payments as a credit to offset that customer's new fixed charge billings. To the extent that a customers previously billed under the purchase deficiency allocation method would have no responsibility for fixed charges under the new allocation method, the pipeline would have to refund the payments with interest. There would be no requirement for reallocation or refund of past volumetric surcharges payments by customers. Pipelines would be authorized to continue billing already approved until the new Policy Statement is final. Thus, the *status quo* would be maintained until a final Policy Statement is adopted in this docket.

i. Existing Policy

A new section would state that all prior policy and guidelines that have been articulated in the individual passthrough cases, unless expressly modified in this Proposed Policy Statement, remain in full force and effect (see discussion in 500–H at pp. 196–199). Thus, all prior decisions on eligible costs, relationship to PGA, prudence challenges, downstream passthrough, state commission/consumer counsel rights, etc. would continue to govern the rights and obligations of all parties, except as expressly modified here. That approach would provide legal and policy certainty for the revised program.

j. Settlements

A new section would discuss the flexibility allowed by the Commission in various settlements of the recovery of take-or-pay under Order No. 500 and § 2.104, such as *Columbia, Transco, Northern Natural, SoNat*, and indicate our willingness to entertain similar flexibility in settlement involving full participation of all interested parties and widely supported by affected parties. There would not, however, be any suggestion that there could be a wholesale revamping of the recovery mechanism. Additionally, the general principles developed in those settlement cases would provide guidance as to the type and degree of flexibility the Commission would be likely to entertain. Thus, nothwithstanding *AGD–II*, the Commission still intends to adhere to the general direction developed heretofore in case-by-case development of the take-or-pay buyout and buydown cost recovery policy under Order No. 500 (stated in a most respectful way for the court).

3. The discussion in the NOPPS would indicate that the Commission believes that the industry and American natural gas consumers are best served by preserving as much of the existing Order No. 500 body of law, policy, practice, and passthrough of buyout and buydown cost in order to provide maximum legal certainty and regulatory predictability, while still responding to the decision in *AGD–II* with regard to deficiency based allocation. The use of a CD allocation methodology would be defended on the basis of the January options paper and the fact that the Commission told the court that CD allocation would be the likely alternative (but to no avail). The new requirement for a minimum of 20 percent volumetric surcharge would be offered as a partial mitigation measure to the potential hardship/windfalls that would *possibly* flow from a simple, one-to-one substitution of CD allocation for purchase deficiency allocation and a 50 percent absorption/50 percent direct bill (as under Order No. 500).

Current direct billing would continue, subject to refund and subject to this NOPPS, for a short additional period of time (a few months) while the Commission reviewed public comments on the proposed policy statement. Once the new policy statement was final, the pipelines would proceed to implement the reallocation procedures with resulting offsets and refunds, where required.

5. Public Comment

Initial Comments in 30 days.

Reply comments in 15 days, if deemed necessary.

6. Sunset Date of December 31, 1991

In the absence of *some* sunset date for new filings of take-or-pay buyout and buydown costs, pipelines can continue to use the direct billing mechanism in perpetuity. While the court has made clear that December 31, 1990, would be "novel" and difficult to defend, the real test is whether pipelines would have a reasonable opportunity to negotiate settlements and file for recovery after *AGA–II* settled the section 5 issue and this proposed policy statement responds to *AGD–II* on the type fo authorized allocation mechanism for direct billing. That is particularly so, since the new mechanism would be very similar to the old mechanism insofar as the rights of the pipeline to recover buyout and buydown costs. In effect, the only changes are

(1) The CD allocation method and

(2) The minimum requirement for 20/30 percent volmetric surcharage. Otherwise, the pipeline itself sees no change (and most recent filings have had at least 20 or 30 percent volumetric surcharge, in any event).

7. Order No. 94

The Commission also would seek comment on the relationship of handling of Order No. 94 costs and take-or-pay buyout and buydown costs for those pipelines affected by both court remands.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 630

[Docket No. 85N–0052]

Additional Standards for Viral Vaccines; Measles Virus Vaccine Live, Mumps Virus Vaccine Live, Rubella Virus Vaccine Live, and Measles Live and Smallpox Vaccine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations governing clinical trials for three viral vaccines: Measles Virus Vaccine Live, Mumps Virus Vaccine Live, and Rubella Virus Vaccine Live. The amendments are intended to make the clinical testing requirements for these viral vaccines more flexible and consistent with current scientific knowledge. FDA is also amending the regulations by removing one of the tests for Mumps Virus Vaccine Live as the remaining tests provide adequate assurances of safety; by removing the additional standards for Measles Live and Smallpox Vaccine, as all licenses for this combined viral vaccine are revoked and no future licenses are anticipated; by removing the reference to the use of Measles Virus Vaccine Live with gamma globulin; and by increasing manufacturers' flexibility to use alternative cell lines for the propagation of Rubella Virus.

DATES: This rule is effective for currently licensed vaccines with the new production lots initiated on December 17, 1990. New vaccines manufactured and clinically tested in accordance with the revised regulations will be eligible for licensure on December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Joanne Binkley, Center for Biologics Evaluation and Research (HFB–130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–295–8188.

SUPPLEMENTARY INFORMATION:

I. Introduction

The regulations to qualify Measles Virus Vaccine Live, Mumps Virus Vaccine Live, and Rubella Virus Vaccine Live for license require that the antigenicity of these vaccines be determined by clinical trials conducted with five consecutive lots of vaccine which have been manufactured by the same methods, each of which has shown satisfactory results in all prescribed tests. In the Federal Register of February 3, 1989 (54 FR 5487), FDA proposed to remove the requirement that the lots of these vaccines used in clinical trials be consecutively manufactured because the requirements is unnecessary to ensure the safety, purity, and potency of the vaccines and is an unnecessary burden on manufacturers conducting clinical studies. Any five lots of vaccine manufactured with the same methodology regardless of the sequence may, in some cases, be appropriate for use in clinical trials to demonstrate antigenicity. Manufacturers of a licensed vaccine will still be required to demonstrate consistency of manufacture of the vaccine by producing consecutive lots of each virus seed strain for neurovirulence tests in monkeys. The amendments in this rule only remove the requirement for consecutive lots in the clinical trials of an unlicensed, investigational vaccine and correspondingly remove the reference to the lots used in the clinical trials in the amendment to the neurovirulence test.

The agency also proposed to eliminate the requirement that each lot of the vaccine used in clinical trials show satisfactory results in all prescribed tests. The elimination of this requirement would permit the use of alternative test procedures as long as the tests continue to ensure the safety and effectiveness of the vaccine.

Under the applicable requirements of FDA's investigational new drug regulations (21 CFR part 312), FDA will continue to require that all investigational vaccines are shown by appropriate methods to be suitable for administration to humans before permitting their use in clinical trials in the United States. In addition, 21 CFR 601.2 requires that to obtain a license, manufacturers must submit "* * * data derived from nonclinical laboratory and clinical studies which demonstrate that the manufactured product meets prescribed standards of safety, purity, and potency * * *."

Thus, FDA proposed to amend § 630.31 (21 CFR 630.31) by removing the word "consecutive" and the phrase "each of which has shown satisfactory results in all prescribed tests." Because *§ 630.51 Clinical trials to qualify for license* of Mumps Virus Vaccine Live and *§ 630.61 Clinical trials to qualify for*

license of Rubella Virus Vaccine Live of the regulations require the manufacturers to "* * * follow the procedures prescribed in § 630.31 * * *." the meaning of these sections would also be changed (21 CFR 630.51 and 630.61). Consistent with the amendment to § 630.31 and the change in meaning of §§ 630.51 and 630.61, FDA proposed the following: To amend § 630.30(c)(1) by removing the reference to § 630.31; to amend § 630.50(c)(1) by removing the reference to § 630.51; and to amend § 630.60(e)(1) by removing the reference to § 630.61.

FDA also proposed to amend the current requirement in § 630.31, that the vaccine be administered by subcutaneous injection, to permit the use of alternative routes of administration. Other routes of administration, such as by aerosol, have been used experimentally, and in the future an alternative route of administration may be shown to be effective.

Years ago, Measles Virus Vaccine Live was administered with human gamma globulin. Currently, licensed Measles Virus Vaccine Live is no longer administered with human gamma globulin. Accordingly, FDA proposed to amend § 630.31 by removing the phrase "i.e., either with or without human gamma globulin".

FDA proposed to amend the regulation for Mumps Virus Vaccine Live in § 630.55(a)(4) by removing the phrase "and in chick embryo liver" from the second sentence. The safety tests performed in chick embryo kidney, in addition to the remaining safety tests in § 630.55(a), provide adequate assurances of safety. FDA believes that testing in chick embryo liver is unnecessary and provides no additional assurance of the safety of the product.

FDA proposed to amend the regulation for Rubella Virus Vaccine Live in § 630.62(a) by inserting the phrase "or in a cell line found by the Director, Center for Biologics Evaluation and Research, to meet the requirements of § 610.18(c) of this chapter." This change adds flexibility to the regulation by allowing changes of the cell substrate for culturing vaccine virus consistent with scientific knowledge.

FDA proposed to remove the additional standards for Measles Live and Smallpox Vaccine in §§ 630.80 and 630.86 (21 CFR 630.80 through 630.86). The remaining product license for the Measles Live and Smallpox Vaccine was revoked at the request of the licensed manufacturer (Merck, Sharp, and Dohme; License No. 2), on March 12, 1987. FDA does not believe any licenses will be issued for this product in the future.

II. Comments

FDA provided interested persons 60 days to submit written comments on the proposal. FDA received a written request from one manufacturer for an extension of the comment period. A 2-week extension to the comment period was granted and a memorandum announcing the extension was placed in the public file at FDA's Dockets Management Branch under Docket No. 85N-0053.

FDA received one letter of comment from a licensed manufacturer of viral vaccines, listing the specific changes the firm supported. The firm expressed concerns regarding the remaining changes set forth in the proposed rules. The firm requested that FDA proceed with these amendments only after scientific documentation is developed demonstrating that the safety, purity, and potency of the vaccines will not be compromised and that FDA should provide further discussion and documentation of the effect of the proposed changes on safety and efficacy of the vaccines.

The following discussion provides additional information regarding the changes in the proposed rules. The agency finds that the amendments will not adversely affect the safety or efficacy of viral vaccines, and indeed may contribute to their safety and efficacy. Because the firm did not specifically list the amendments causing concern, FDA discusses below each of the amendments not specifically supported by the letter of comment.

A. The "Consecutive Manufacture" Amendment

FDA proposed to amend § 630.31 by striking the word "consecutive" so that the five lots of virus vaccine used in clinical trials need not be consecutively manufactured. Consistent with the amendments to § 630.31, FDA proposed to amend §§ 630.30(c)(1), 630.50(c)(1), and 630.60(e)(1) by striking the corresponding references to §§ 630.31, 630.51, and 630.61, respectively. To improve clarity, FDA has edited §§ 630.30(c)(1), 630.50(c)(1), and 630.60(e)(1) of the final rule.

The "consecutive manufacture" requirement was intended to ensure that the manufacturer can control the virus manufacturing process. The agency has concluded, however, that the use of five consecutive lots for clinical trials is not always necessary to assure the safety, purity, and potency of the vaccine and could be the cause of a waste of effort and vaccine by a manufacturer conducting clinical studies in the United States or abroad. However, the agency will continue to monitor manufacturers' ability to consistently produce a safe and effective vaccine. There are numerous means to demonstrate this ability, including using a specified number of consecutive lots in clinical trials.

The agency believes that, in some cases, any five lots of virus vaccine manufactured using the same methods, regardless of the sequence of manufacture, may be appropriate for use in clinical trials to demonstrate antigenicity. In some cases, there may be scientific advantages to conducting clinical trials using vaccine that has been manufactured over a long period of time. Using vaccine lots manufactured over several years, rather than several months, may provide a better indication of the manufacturer's ability to consistently produce a safe and consistently antigenic vaccine.

In addition to ensuring the continued safety, purity, and potency of vaccine used in clinical trials, the amendment will provide manufacturers greater flexibility in scheduling clinical trials. The opportunity to conduct clinical trials of a vaccine is often limited by such factors as difficulty in identifying a suitable, nonimmunized test population, and a shortage of qualified clinical scientists to conduct the trials. By removing the consecutive lot requirement, the sponsoring manufacturer will have greater flexibility in selecting the appropriate times and opportunities for conducting the required clinical trials.

The agency further notes that, since the agency first issued § 630.31, a number of clinical studies have been performed in other countries to demonstrate the antigenicity of various viral vaccines. Some of the studies were performed to qualify the vaccine for approval in the host nation, or to demonstrate that the vaccine continues to display adequate antigenicity in humans. FDA believes that many of these clinical studies may provide an appropriate demonstration of the antigenicity and safety of the vaccine. Because many of these studies were not performed on five consecutive lots of vaccine, the studies would not meet the requirements of § 630.31. This amendment gives FDA the flexibility to ascertain whether or not the data from these clinical trials may be the basis for approving U.S. licensure.

B. The "Testing" Amendment

FDA is also amending § 630.31 by removing the provision that the five lots of viral vaccine used in the required clinical trials each show satisfactory results in all prescribed tests. In some cases it may continue to be appropriate to require satisfactory results in all tests prescribed in FDA's standards to confirm the safety and effectiveness of the vaccine. However, safety and efficacy can be shown by other means. For example, a firm that has been manufacturing vaccine for a number of years for use in other countries, but not licensed for U.S. distribution, will have a long record of vaccine production. The vaccine has been tested according to that country's standards, which may or may not be consistent with the tests prescribed by FDA in its regulations. Prior to licensure in the U.S., extensive data will be required to document the safety and efficacy of the vaccine. FDA will review the data to determine the adequacy of the testing of the vaccine used in clinical trials. Based on FDA's review, the agency may find that tests other than the tests prescribed in FDA's regulations, are appropriate to ascertain the safety and efficacy of the vaccine. While this amendment will allow the manufacturer additional flexibility, it does not diminish vaccine safety and efficacy. Any vaccine licensed by FDA must still be manufactured according to appropriate standards which assure the safety and efficacy of the vaccine. Accordingly, FDA is adopting the proposed regulation without change.

C. The "Cell Line" Amendment

FDA is amending § 630.62(a) by inserting "or in a cell line found by the Director, Center for Biologics Evaluation and Research, to meet the requirements of § 610.18(c) of this chapter." To promote uniformity and to standardize the information that each manufacturer is required to submit to FDA concerning cell lines, the agency issued a final rule in the **Federal Register** of December 10, 1986 (51 FR 44451). This final rule added § 610.18(c) that requires information adequate to document the safety of a cell line used in the manufacture of a biological product.

FDA shares the concern that there be adequate documentation of a cell line before it is used for vaccine production. FDA has found several vaccines manufactured using approved cell lines to be safe and effective. FDA will continue to require the adequate data to document the safety of a cell line used in the production of a new vaccine. Therefore, FDA is adopting the above regulation as proposed.

III. Economic, Environmental, and Paperwork Considerations

The agency has determined under 21 CFR 25.24(c)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has examined the economic impact of this rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Public Law 96-354). The rule removes unnecessary restrictions in the regulations governing clinical trials of three viral vaccines and removes standards that have no applicability. No additional burdens are imposed upon manufacturers. Therefore, the agency concludes that this rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. Also, this rule does not impose any additional record keeping or reporting requirements on the regulated industry. The reporting and record keeping requirements of this rule are governed by the current good manufacturing practice for finished pharmaceuticals regulations in 21 CFR part 211 (OMB Control No. 0910-0139).

List of Subjects in 21 CFR Part 630

Biologics, Labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 630 is amended as follows:

PART 630—ADDITIONAL STANDARDS FOR VIRAL VACCINES

1. The authority citation for 21 CFR part 630 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

2. Section 630.30 is amended by revising the introductory text of paragraph (c)(1) to read as follows:

§ 630.30 Measles virus vaccine live.

* * * * *

(c) *Neurovirulence safety test of the virus seed strain in monkeys*—(1) *The test.* A demonstration shall be made in monkeys of the lack of neurotropic properties of the seed strain of attenuated measles virus used in the manufacture of measles virus vaccine. For this purpose and to establish consistency of manufacture of the vaccine, vaccine from each of five consecutive lots shall be tested separately in the following manner:

* * * * *

3. Section 630.31 is revised to read as follows:

§ 630.31 Clinical trials to qualify for license.

To qualify for license, the antigenicity of the vaccine shall have been determined by clinical trials of adequate statistical design, by a suitable route of administration of the product. Such clinical trials shall be conducted with five lots of measles virus vaccine which have been manufactured by the same methods. There shall be a demonstration under circumstances in which adequate clinical and epidemiological surveillance of illness has been maintained to show that the measles virus vaccine, when administered as recommended by the manufacturer, is free of harmful effect upon administration to approximately 1,000 susceptible individuals, in that there were no detectable neutralizing antibodies before vaccination and there was serological conversion after vaccination. The five lots of vaccine shall be distributed as evenly as possible among the 1,000 individuals tested. Demonstration shall be made of immunogenic effect by the production of specific measles neutralizing antibodies (i.e., sero-conversion from less than 1:4 to 1:8 or greater) in at least 90 percent of each of five groups of measles susceptible individuals, each having received a virus vaccine dose which is not greater than that which was demonstrated to be safe in field studies (§ 630.30(b)) when used under comparable conditions. Such clinical trials shall be conducted in compliance with part 56 of this chapter unless exempted under § 56.104 or granted a waiver under § 56.105, and with the requirements for informed consent set forth in part 50 of this chapter.

4. Section 630.50 is amended by revising the introductory text of paragraph (c)(1) to read as follows:

§ 630.50 Mumps Virus Vaccine Live.

* * * * *

(c) *Neurovirulence safety test of the virus seed strain in monkeys*—(1) *The*

test. A demonstration shall be made in monkeys of the lack of neurotropic properties of the seed strain of attenuated mumps virus used in the manufacture of mumps vaccine. For this purpose and to establish consistency of manufacture of the vaccine, vaccine from each of five consecutive lots shall be tested separately in monkeys shown to be serologically negative for mumps virus antibodies in the following manner:

* * * * *

5. Section 630.55 is amended by revising paragraph (a)(4) to read as follows:

§ 630.55 Test for safety.

(a) * * *

(4) *Inoculation of other cell cultures.* The mumps virus pool shall be tested for adventitious agents in the volume and following the procedures prescribed in § 630.35(a)(3), in rhesus or cynomolgus monkey kidney, in whole chick embryo, and in human cell cultures. In addition, each virus pool shall be tested in chick embryo kidney in the same manner except that the volume tested in each cell culture shall be equivalent to 250 human doses or 25 milliliters, whichever represents a greater volume. The mumps virus pool is satisfactory only if results equivalent to those in § 630.35(a)(3) are obtained.

* * * * *

6. Section 630.60 is amended by revising the introductory text of paragraph (e)(1) to read as follows:

§ 630.60 Rubella Virus Vaccine Live.

* * * * *

(e) *Neurovirulence safety test of the virus seed strain in monkeys*—(1) *The test.* A demonstration shall be made in monkeys of the lack of neurotropic properties of the seed strain of attenuated rubella virus used in the manufacture of rubella vaccine. For this purpose and to establish consistency of manufacture of the vaccine, vaccine from each of five consecutive lots shall be tested separately in monkeys shown to be serologically negative for rubella virus antibodies in the following manner:

* * * * *

7. Section 630.62 is amended by revising paragraph (a) to read as follows:

§ 630.62 Production.

(a) *Virus cultures.* Rubella virus shall be propagated in duck embryo cell cultures, rabbit renal cultures, or in a cell line found by the Director, Center for Biologics Evaluation and Research, to meet the requirements of § 610.18(c) of this chapter.

* * * * *

§§ 630.80 through 630.86 [Removed]

8. Part 630 is amended by removing subpart I consisting of §§ 630.80 through 630.86.

Dated: October 18, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-26996 Filed 11-15-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 720

[SECNAVINST 5820.9]

Compliance With Court Orders

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This rule establishes policy and procedures for requesting the return of Department of the Navy (DON) members and employees serving outside the United States, and family members accompanying them, in compliance with court orders. The publication of this DON instruction will assist members of the public in requesting the return of these individuals. It implements Department of Defense (DoD) Directive 5525.9 of December 27, 1988, codified in 32 CFR part 146, regarding the compliance with court orders of Department of Defense members, employees, and family members outside the United States.

EFFECTIVE DATE: May 29, 1990.

FOR FURTHER INFORMATION CONTACT: Jan Gnerlich, Counsel, Office of Civilian Personnel Management, Department of the Navy, 800 Quincy Street, Arlington, VA 22203-1998, telephone 703-696-4717.

SUPPLEMENTARY INFORMATION: This rule implements DoD Directive 5525.9 of December 27, 1988, codified in 32 CFR part 146. It establishes policy and procedures for requesting the return to the United States of DON members and employees serving outside the United States, and family members accompanying them, in compliance with court orders. In addition to providing an orderly means for requesting the appearances of these individuals pursuant to court order, its provisions also protect the interests of the United States by allowing for denial of requests when a member's return is inconsistent with mission requirements, the provisions of applicable international agreements, and ongoing DoD investigations and courts-martial. This rule assigns points of contact for requests, and designates responsible officials for acting on requests to return. It also establishes time limitations for completion of action on requests for return. This rule is not subject to public comment. 32 CFR part 296 states that the implementation by a subordinate component of a regulation adopted by DoD does not fall within the scope of the obligation to invite public comment on its provisions.

List of Subjects in 32 CFR Part 720

Courts, Government employees.

For the reasons set out in the preamble, in 32 CFR part 720, subpart D (720.40-720.47) is added to read as follows:

Subpart D—Compliance With Court Orders by Department of the Navy Members, Employees, and Family Members Outside the United States

Sec.

720.40 Purpose.
720.41 Definitions.
720.42 Policy.
720.43 Points of contact.
720.44 Responsible Officials.
720.45 Procedures.
720.46 Overseas Screening Programs.
720.47 Report.

Authority: DoD Directive 5525.9, 54 FR 296, 32 CFR part 146.

Subpart D—Compliance With Court Orders by Department of the Navy Members, Employees, and Family Members Outside the United States

§ 720.40 Purpose.

This instruction:

(a) Implements 32 CFR part 146.

(b) Establishes policy and procedures for requesting the return to the United States of, or other action affecting, Department of the Navy (DON) personnel and employees serving outside the United States, and family members accompanying them, in compliance with court orders.

§ 720.41 Definitions.

Court. Any judicial body in the United States with jurisdiction to impose criminal sanctions on a Department of the Navy member, employee, or family member.

Employee. A civilian employed by the Department of the Navy or a component service, including an individual paid from non-appropriated funds, who is a citizen or national of the United States.

Family member. A spouse, natural or adopted child, or other lawful dependent of a Department of the Navy employee or member accompanying the Department of the Navy member or employee assigned to duty outside the United States.

Felony. A criminal offense that is punishable by incarceration for more than one year, regardless of the sentence that is imposed for commission of that offense.

Member. An individual on active duty in the Navy, Naval Reserve, Marine Corps, or Marine Corps Reserve.

Request for return. Any request or order received from a court, or from federal, state or local authorities concerning a court order, for the return to the United States of members, employees, or family members, for any reason listed in § 720.42.

Respondent. A member, employee, or family member whose return to the United States has been requested, or with respect to whom other assistance has been requested under this instruction.

Responsible Official. Officials designated in this instruction to act on a request to return, or take other action affecting, members, employees or family members to the United States under this instruction.

United States. The 50 states, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the Virgin Islands.

§ 720.42 Policy.

(a) It is Department of the Navy policy to cooperate, as prescribed in this instruction, with courts and federal, state and local officials in enforcing court orders. The Department of the Navy will cooperate with requests when such action is consistent with mission requirements (including operational readiness), the provisions of applicable international agreements, and ongoing Department of Defense (DoD) investigations and courts-martial.

(b) Every reasonable effort will be made to resolve the matter without the respondent returning to the United States, or other action being taken against the respondent under this instruction.

(c) Requests to return members for felonies or for contempt involving unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a parent or other person awarded custody by a court order will normally be granted, but only if the member cannot resolve the issue with the court without return to the United States. When the member's return is inconsistent with mission requirements, applicable international agreements, or ongoing DoD investigations or courts-martial, DoD approval of denial will be requested.

(d) For all other requests involving members, return will be based on the circumstances of the individual case as provided in this instruction.

(e) Members will normally be returned on a temporary additional duty (TAD) basis unless there are compelling reasons the return should be a permanent change of duty station (PCS).

(f) The involuntary return of employees or family members in response to a request for return is not authorized. However, the following action will be taken:

(1) Employees will be strongly urged to comply with court orders. Failure to comply with court orders involving felonies or contempt involving unlawful or contemptuous removal of a child from the jurisdiction of the court or the custody of a parent or other person awarded custody by a court order will normally require processing for adverse action, up to and including removal from federal service. Failure to comply with other court orders may require adverse action, depending on the circumstances of the individual case.

(2) Family members will be strongly encouraged to comply with court orders. Family members who fail to comply with court orders involving felonies or contempt involving unlawful or contemptuous removal of a child from the jurisdiction of the court or the custody of a parent or other person awarded custody by a court order will normally have their command sponsorship removed. Failure to comply with other court orders may also result in removal of command sponsorship, depending on the circumstances of the individual case.

(g) To facilitate prompt resolution of requests for return of members, minimize the burden on operating units, and to provide consistency during initial implementation of this new program, a limited number of responsible officials, designated in § 720.44, will respond to requesting officials.

§ 720.43 Points of contact.

(a) Authorities issuing requests for return or for other action under this instruction may contact the following activities:

(1) Chief of Naval Personnel (Pers-14), Washington, DC 20370-5000 (For Navy members and their family members).

(2) Commandant, U.S. Marine Corps (Code JAR), Washington, DC 20380-0001 (For Marine Corps members and their family members).

(3) Director, Office of Civilian Personnel Management (Code OOL), 800 N. Quincy Street, Arlington, VA 22203-1998 (For civilian personnel, including non-appropriated fund employees and their family members).

(b) Upon receipt of a request for action under this instruction, the Office of Civilian Personnel Management will forward the request to the appropriate responsible official for action in accordance with § 720.44.

§ 720.44 Responsible Officials.

The following officials are designated responsible officials for acting on requests to return or to take other action affecting members, employees or family members to the United States.

(a) The Chief of Naval Personnel (CHNAVPERS) for requests involving Navy members and their family members who are not employees. The CHNAVPERS may delegate this authority within his headquarters, not below the 0-6 level for routine matters and not lower than the flag officer level for decisions to deny the request for return.

(b) The Commandant of the Marine Corps (CMC) for requests involving Marine Corps members and their family members who are not employees. The CMC may delegate this authority within his headquarters, not below the 0-6 level for routine matters and no lower that the general officer level for decisions to deny the request for return.

(c) The local commanding officer or officer in charge for requests involving employees and their family members who are not active duty military members.

(d) The Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN(M&RA)) for requests not covered by §§ 720.44 (a) through (c).

§ 720.45 Procedures.

(a) If the request pertains to a felony or to contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a parent or another person awarded custody by court order, and the matter cannot be resolved with the court without the respondent returning to the United States:

(1) For members: The responsible official shall direct the commanding officer or officer in charge to order the member to return to the United States. Failure to comply will normally be the basis for disciplinary action against the member.

(2) For employees, military and civilian family members: The responsible official shall strongly

encourage the respondent to comply. Failure to comply may subject employees to adverse action, to include removal from the Federal service, and subject military and civilian family members to withdrawal of command sponsorship.

(b) For all other requests when the matter cannot be resolved with the court without returning the respondent to the United States, the responsible official shall take the action described in this instruction when deemed appropriate with the facts and circumstances of each particular case, following consultation with legal staff.

(c) When a member's return is inconsistent with mission requirements, the provisions of applicable international agreements, or ongoing DoD investigations and courts-martial, the Department of the Navy will ask DoD to approve denial of the request for the military member's return. To initiate this action, there must be an affirmative showing of articulable harm to the unit's mission or violation of an international agreement.

(d) When a responsible official has determined a request for return is apparently based on an order issued by a court of competent jurisdiction, the responsible official shall complete action on the request for return within 30 days of receipt of the request for return by the responsible official, unless a delay is authorized by the ASN(M&RA).

(e) When a delay to complete the action is warranted, the ASN(M&RA) will grant a 45 day delay, and provide a copy of that approval to the Assistant Secretary of Defense (Force Management & Personnel (ASD(FM&P)) and the General Counsel, DoD. The 45 day period begins upon request by the responsible official of the request for return. Conditions which, when accompanied by full supporting justification, will warrant the granting of the 45 day delay are:

(1) Efforts are in progress to resolve the matter to the satisfaction of the court without the respondent's return to the United States.

(2) To provide sufficient time for the respondent to provide evidence to show legal efforts to resist the request or to show legitimate cause for noncompliance.

(3) To provide commanding officers an opportunity to detail the specific effect on command mission and operational readiness anticipated from the loss of the member or Department of the Navy employee, and to present facts relating to any international agreement, or ongoing DoD investigation or courts-martial.

(f) A commanding officer or officer in charge who receives a request for the return of, or other action affecting, a member, family member, or employee not of his/her command will forward the request to the appropriate commanding officer or officer in charge, copy to the responsible official, and advise both of them by message that a request for return or other action has been forwarded to them.

(g) A commanding officer or officer in charge who receives a request for the return of, or other action affecting, a member, family member, or employee of his/her command will:

(1) Notify the respondent of the right to provide evidence to show legal efforts to resist the request, or to show legitimate cause for noncompliance for inclusion in the submission to the responsible official.

(2) For members and their family members who are not employees, forward the request immediately to the appropriate responsible official, together with:

(i) Any information the individual desires to provide to show legal efforts to resist the request, or otherwise to show legitimate cause for noncompliance.

(ii) Facts detailing the specific impacts on command missions and readiness anticipated from loss of the member.

(iii) Facts relating to any international agreements or ongoing DoD investigations or courts-martial involving the respondent.

(iv) Information regarding conditions expected to interfere with a member's return to the command after completion of proceedings. If, in the opinion of the commanding officer, there are compelling reasons for the member to be returned to the United States PCS, provide full justification to support that recommendation to the cognizant officer.

(3) If a delay in processing is warranted under § 720.42 or § 720.45(e), make a recommendation with supporting justification to the responsible official.

(4) Monitor, and update as necessary, information provided to the responsible official.

(h) The responsible official shall:

(1) Determine whether the request is based on an order issued by a court of apparent competent jurisdiction and if so, complete action on the request no later than 30 days after its receipt by the responsible official. If a conflicts of law issue is presented between competing state interests, or between a state and a foreign host-nation, or between two different foreign nations, the matter shall be referred to the ASN(M&RA) on the first issue and to the Judge Advocate General (Code 10) on the second and third issues.

(2) Encourage the respondent to attempt to resolve the matter to the satisfaction of the court or other requesting authority without return of or other action affecting the member, employee, or family member.

(3) When a delay to complete action under this section is warranted, request the delay from ASN(M&RA) with full supporting justification.

(4) Examine all information the respondent desires to provide to show legal efforts to resist the request, or otherwise to show legitimate cause for noncompliance.

(5) Requests for exception from the requirements of this instruction shall be submitted, with supporting justification, to the ASN(M&RA) for submission to the ASD(FM&P).

(6) If a member will be ordered to return to the United States, determine if the member will be ordered TAD or PCS and advise the member's commanding officer of the determination.

(7) If a member will be ordered to return to an appropriate port of entry to comply with a request, ensure:

(i) The requesting officer has given official notification to the responsible official that the requesting official or other appropriate party will initiate action with the receiving jurisdiction to secure the member's delivery/extradition, as appropriate, per chapter 6 of the Manual of the Judge Advocate General, and provide for all costs incident thereto, including any escort if desired.

(ii) If applicable, the necessary accounting data are provided to the commanding officer of the member or orders are issued.

(iii) The member has arranged satisfactory foster care for any lawful minor dependents who will be left unaccompanied overseas upon the member's return to the United States.

(8) Notify the requesting official at least 10 days before the member's return to the selected port of entry.

(9) In the case of an employee or of a family member, the commanding officer or officer in charge of the activity to which the family member's sponsor is attached, or by which the employee is employed, will carry out the following steps:

(i) An employee shall be strongly encouraged to comply with the court order or other request for return. Failure to comply may be the basis for adverse action to include removal from Federal service. Adverse action should only be taken after coordination with the cognizant civilian personnel office and legal counsel and in compliance with Civilian Personnel Instruction 752.

(ii) If a family member of either a member or an employee is the subject of a request for return, the family member shall be strongly encouraged to comply with the court order. Failure to respond may be the basis for withdrawal of command sponsorship of the family member.

(10) Report promptly to the ASN(M&RA) any actions taken under § 720.45 (a) or (b).

(i) The ASN(M&RA):

(1) May grant delays of up to 45 days from the date of a request for delay in accordance with § 720.45(e).

(2) Will report promptly all delays of requests for the return of members to the ASD(FM&P) and to the General Counsel of the Department of Defense.

(3) Will request from the ASD(FM&P), when warranted, exception to the policies and procedures of DoD Directive 5525.9 of December 27, 1988.

(4) Consolidate and forward reports of action taken under § 720.45 (a) or (b) to the ASD(FM&P) and the General Counsel, DoD as required by DoD Directive 5525.9 of December 27, 1988.

§ 720.46 Overseas Screening Program.

The Chief of Naval Operations (CNO) and the CMC shall incorporate procedures requiring members and employees to certify they have legal custody of all minor dependents accompanying them outside the United States into service overseas screening programs.

§ 720.47 Report.

The report requirement in this instruction is exempt from reports control by SECNAVINST 5214.2B.

Dated: November 6, 1990.

Wayne T. Baucino,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 90-27066 Filed 11-15-90; 8:45 am]

BILLING CODE 3810-AE-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-46; RM-7145]

Radio Broadcasting Services; Ketchum, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of LeeMay Broadcasting Company, Inc., substitutes Channel 298C1 for Channel 298C2 at Ketchum, Oklahoma, and modifies its license for Station KGND to specify operation on the higher powered channel. See 55 FR 7345, March 1, 1990. Channel 298C1 can be allotted to Ketchum in compliance with the Commission's minimum distance separation requirements with a site restriction of 47.5 kilometers (29.5 miles) northwest to avoid a short-spacing to Stations KAYI, Channel 295C, Muskogee, Oklahoma, KMOQ, Channel 296A, Baxter Springs, Kansas, and KLMK, Channel 297C, Poteau, Oklahoma, and to accommodate petitioner's desired transmitter site. The coordinates for Channel 298C1 are North Latitude 36-46-33 and West Longitude 95-27-15. LeeMay is also to submit an application to relocate the transmitter of its co-owned Station KWFN at Fredonia, Kansas, to avoid prohibited overlap of the 3.16mV/m contours of the two stations. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 28, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report Order, MM Docket No. 90-46, adopted October 24, 1990, and released November 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 298C2 and adding Channel 298C1 at Ketchum.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27064 Filed 11-15-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-140; RM-7197]

Radio Broadcasting Services; Pierre, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Robert E. Ingstad, substitutes Channel 224C1 for Channel 224A at Pierre, South Dakota, and modifies his license for Station KGFX-FM to specify operation on the higher powered channel. See 55 FR 11412, March 28, 1990. Channel 224C1 can be allotted to Pierre in compliance with the Commission's minimum distance separation requirements and can be used at the presently licensed site of Station KGFX-FM. The coordinates for Channel 224C1 are North Latitude 44-22-15 and West Longitude 100-24-17. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 28, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-140, adopted October 24, 1990, and released November 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by removing Channel 224A and adding Channel 224C1 at Pierre.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27065 Filed 11-15-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-509; RM-6816]

Radio Broadcasting Services; Denison-Sherman, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 289C3 for Channel 289A at Denison-Sherman, Texas, and modifies the license for Station KDSQ(FM) to specify operation on the higher class channel, as requested by Transcontinental Broadcasting Co. See 54 FR 48852, November 24, 1989. The coordinates for Channel 289C3 and 33-41-24 and 96-40-28.

EFFECTIVE DATE: December 28, 1990.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-509, adopted October 24, 1990, and released November 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 289A and adding Channel 289C3 at Denison-Sherman.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27089 Filed 11-15-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-218; RM-C086]

Radio Broadcasting Services; Black River Falls, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 259C3 for Channel 259A at Black River Falls, Wisconsin, and modifies the construction permit of WWIS Radio, Inc. for Channel 259A to specify operation on Channel 259C3. The coordinates for Channel 259C3 are 44-19-11 and 90-53-31. See, (cite to FR summary for notice) 54 FR 26 220, June 22, 1989. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 28, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-218, adopted October 24, 1990, and released November 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Wisconsin by removing Channel 259A and adding Channel 259C3 at Black River Falls.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27090 Filed 11-15-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 9011910291]

RIN 0648-AD69

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim final rule with request for comment.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, issues this interim final rule which establishes a provision for timely consideration and granting of an affirmative finding under the yellowfin tuna importation regulations to a nation which prohibits its vessels from making intentional purse seine sets on marine mammals in the course of harvesting yellowfin tuna by purse seine in the eastern tropical Pacific Ocean (ETP). With an affirmative finding, yellowfin tuna and tuna products from the harvesting nation can be imported into the United States.

DATES: This interim final rule is effective November 15, 1990. Comments are invited and must be received on or before January 2, 1991.

ADDRESSES: E. Charles Fullerton, Regional Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton, Regional Director, or J. Gary Smith, Deputy Regional Director, Southwest Region, NMFS, Phone: (213) 514-6196.

SUPPLEMENTARY INFORMATION: On March 30, 1990, NMFS promulgated a final rule (55 FR 11921) to implement portions of the Marine Mammal Protection Act (MMPA) Amendments of 1988. This rule governs the importation of yellowfin tuna and tuna products.

The 1988 amendments require that a harvesting nation must meet a two-part test to determine whether its marine mammal program is comparable to that of the United States before its yellowfin tuna and yellowfin tuna products are allowed to enter this country. A nation must provide documentary evidence that it has a regulatory program for taking marine mammals in the fishery which is comparable to the program of the United States and that the average rate of incidental mortality of marine mammals in the fishery is comparable to the rates for the U.S. fleet as specified in the 1988 amendments. A harvesting nation failing to meet these requirements receives a negative finding which results in a prohibition on the nation's yellowfin tuna and tuna products entering the United States. A ban is also imposed within 90 days on the entry of any yellowfin tuna and tuna products from any intermediary nations trading with the embargoed nation and the United States if the intermediary nation fails to ban entry of the tuna from the embargoed harvesting nation within 60 days.

On April 12, 1990, the three major U.S. tuna canners announced they would no longer purchase tuna caught in association with marine mammals. This "dolphin safe" policy was supported by NMFS and major environmental groups as a means of eliminating marine mammal mortality in the tuna purse seine fishery. The "dolphin safe" policy applied to the United States and other nations harvesting yellowfin tuna in the ETP and selling their catch to U.S. processors.

The Government of Ecuador, wishing to avoid rejection of its yellowfin tuna catches from international markets in the future, issued Resolution No. 203 on May 10, 1990, prohibiting Ecuadorian flag, or foreign vessels operating in association with or leased to domestic companies, from fishing on tunas associated with marine mammals. The Government of Panama passed similar legislation on October 15, 1990. The final rule (55 FR 11921) does not include specific provisions for a nation which prohibits its vessels from making intentional purse seine sets on marine mammals to obtain an affirmative finding to allow its yellowfin tuna and tuna products to enter the United States.

These regulations provide, consistent with the purposes and policies of the MMPA, specific criteria for issuing initial, and subsequent affirmative findings to a harvesting nation which implements a prohibition against the intentional purse seine sets on marine mammals by its vessels. The nation must also have an acceptable compliance program which uses observers approved by the Assistant Administrator for Fisheries or which are under the direction of the Inter-American Tropical Tuna Commission (IATTC) to monitor every fishing trip of vessels of greater than 400 tons carrying capacity. The nation must submit statements by the observers, within 30 days after completion of each trip and verified by the IATTC, certifying that no intentional purse seine sets were made on marine mammals during the trips. The nation must also submit a list of purse seine vessels greater than 400 tons when initially seeking a finding under this regulation, and a list of changes to that list within 30 days of when a change occurs. For an initial affirmative finding under this provision, the comparable rate tests are deemed to be met.

Additionally, for a renewal of an affirmative finding, an annual report must also be submitted to the Assistant Administrator for review, which must include: (1) The total number of observed trips; (2) the percent observer coverage of all purse seine fishing trips; (3) the total number, if any, of observed purse seine sets on marine mammals; and (4) the number by species of any marine mammals killed or seriously injured, if any. These data will be reviewed for compliance with this rule and, if necessary, comparability to United States mortality rates.

If a vessel is found to have set on marine mammals as documented by an observer, the Assistant Administrator immediately will impose a 180-day probationary period on the harvesting nation. If during the probationary period there are any sets on marine mammals, the Assistant Administrator will impose a ban on the importation of yellowfin tuna and tuna products into the United States from the harvesting nation. This embargo will remain in force until the harvesting nation requests reconsideration and obtains an affirmative finding. The Assistant Administrator will make an affirmative finding upon request for reconsideration only if: (1) the harvesting nation provides documentation that there have not been any intentional purse seine sets on marine mammals for a minimum period of 90 days preceding the request for reconsideration; and (2) the comparability tests of the current rule are met for total marine mammal mortality (kill-per-set rate) and the mortality percentage limitations for eastern spinner and coastal spotted dolphin.

If a harvesting nation's purse seine vessel is determined to have left port on a fishing trip in the ETP without an approved observer, the Assistant Administrator will impose a 1 year probationary period on the harvesting nation effective upon the date the vessel returns to port to unload. If during that probationary period, a second purse seine vessel returns to port to unload tuna and it is determined that an approved observer was not aboard the vessel during a trip in the ETP, the Assistant Administrator will immediately revoke the harvesting nation's affirmative finding. Although there is no provision for a reconsideration of a revocation of a finding for failure to impose 100 percent observer coverage, harvesting nations may apply for reconsideration under the general findings provision of the regulations.

Classification

This rule is being published as an interim final rule without opportunity for prior public comment and without a delayed effectiveness period because it involves a foreign affairs function of the United States. If NOAA provided an opportunity for prior public comment, there clearly would be an adverse impact on our relations with those nations wishing to qualify under this rule because they would not have sufficient time to enact the necessary legislation to comply with this rule before the expiration of their current findings on December 31, 1990. Public comment is solicited until January 2, 1991, and comments received will be considered in preparing a final rule.

The Assistant Administrator has determined that the procedural changes to be made at 50 CFR 216.24(e) by this rule will not have a significant impact on the human environment. This determination is based on the impact analysis provided in the Environmental Assessment (EA) prepared for the interim final yellowfin tuna import rule which was published on March 7, 1989. Therefore, an environmental impact statement is not required. The EA is available upon request (see **ADDRESS**).

This interim final rule is not subject to review under Executive Order 12291 because it involves a foreign affairs function of the United States (section 1(a)(2)). Likewise, because this rule is being published as an interim rule rather than a proposed rule, the requirements of the Regulatory Flexibility Act do not apply. Since notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act and since no other law requires that notice and opportunity for comment be given for this rule, under section 603(a) and 604(a) of the Regulatory Flexibility Act, no initial or final regulatory flexibility analysis has to be or will be prepared.

This rule does not contain collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) The information that is required to be provided will be collected by professional observers from an international program and transmitted to the United States Government by the harvesting nation's government.

Therefore, this rule does not impose additional reporting burdens on individuals or industries. Related collections of information have been approved by the Office of Management and Budget under OMB Control Number 0648–0040.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: November 9, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons stated above, 50 CFR part 216 is amended as follows:

PART 216—[AMENDED]

1. The authority for part 216 continues to read as follows:

Authority: 16 U.S.C. 1367 *et. seq.* unless otherwise stated.

2. Section 216.3 is amended by adding in alphabetical order a definition of "intentional purse seine set" to read as follows:

§ 216.3 Definitions.

* * * * *

"Intentional purse seine set" means that a tuna purse seine vessel or associated vessels chase marine mammals and subsequently make a purse seine set.

* * * * *

3. Section 216.24 is amended by revising the introductory text of paragraph (e)(5)(i), redesignating paragraphs (e)(5)(vii), (e)(5)(viii) and (e)(v)(ix) as (e)(5)(xii), (e)(5)(xiii) and (e)(5)(xiv), and adding new paragraphs (e)(5)(vii), (e)(5)(viii), (e)(5)(ix), (e)(5)(x) and (e)(5)(xi) to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

* * * * *

(e) * * *

(5) * * *

(i) Any tuna or tuna products in the classifications listed in paragraph (e)(2)(i) of this section, from harvesting nations whose vessels of greater than 400 short tons carrying capacity operate in the ETP tuna purse seine fishery as determined by the Assistant Administrator, may not be imported into the United States unless the Assistant Administrator makes an affirmative finding under either paragraph (e)(5)(v) or (e)(5)(ix) of this section and publishes the finding in the Federal Register that:

* * * * *

(vii) *Application for Finding.* The Assistant Administrator's determination on a nation's application for a finding will be announced and published in the **Federal Register.** A harvesting nation which has implemented a regulatory program which prohibits the intentional setting of any purse seine net to encircle marine mammals and desires an initial finding under these regulations that will allow it to impost into the United States those products listed in paragraph (e)(2)(i) of this section must provide the Assistant Administrator with the following:

(A) Documentary evidence establishing that its regulatory program includes:

(*1*) A law prohibiting the intentional setting of purse seine nets on marine mammals (a copy of the law must be submitted);

(*2*) A requirement that a certificate from an observer be obtained within 30 days of the completion of each and every trip of the nation's purse seine vessels greater than 400 short tons carrying capacity, stating that the observer was aboard the vessel during the entire trip and that there were no intentional purse seine sets on marine mammals;

(B) A complete list of the nation's vessels and any certified charter vessels of greater than 400 tons carrying capacity which purse seine for yellowfin tuna in the ETP, indicating the status of each vessel as of October 1.

(B) A summary, with copies of relevant laws, of any changes in the nation's laws or regulatory program regarding marine mammals for the purse seine fishery in the ETP;

(C) A summary of any enforcement actions taken to ensure compliance with the nation's marine mammal protection laws.

(ix) *Review of Finding.* The Assistant Administrator will renew an affirmative finding obtained under paragraph (e)(5)(viii) of this section if:

(A) The harvesting nation has provided all of the information required by paragraph (e)(5)(viii) of this section and the conditions under which the original finding was made under paragraph (e)(5)(vii) continue to exist; and

(B) Either 100 percent observer coverage is provided for all purse seine vessels as required by paragraph (e)(5)(vii)(A)(*2*) of this section; or the harvesting nation is in a probationary status in accordance with paragraph (e)(5)(x)(B)(*1*) of this section; and

(C) The harvesting nation meets the criteria of paragraphs (e)(5)(v)(E), and (e)(5)(v)(G) of this section; and

(D) Certificates have been provided to the Assistant Administrator within 30 days of the completion of each and every trip of the nation's purse seine vessels greater than 400 short tons carrying capacity from an observer approved by the Assistant Administrator or under the direction of the Inter-American Tropical Tuna Commission, and verified by the Inter-American Tropical Tuna Commission, stating that the observer was aboard the vessel during the entire trip and that there were no intentional purse seine sets on marine mammals or the nation received a positive reconsideration for an affirmative finding under paragraph (e)(5)(xi)(A) of this section.

(x) *Probation and Revocation.* (A)(*1*) If it is determined that during any trip, a purse seine was intentionally set on marine mammals, the nation will enter into a probationary status for 180 days effective upon the date the vessel returns to port to unload.

(*2*) If during the probationary period of 180 days there are any additional intentional purse seine sets made on marine mammals, the Assistant Administrator will immediately revoke the affirmative finding.

(B)(*1*) If it is determined that during any trip an observer is not aboard a nation's purse seine vessel greater than 400 short tons carrying capacity fishing in the ETP, that nation will enter into a probationary status for 1 year effective upon the date the vessel returns to port to unload.

(*2*) If during the 1 year probationary period, a nation's purse seine vessel returns to port to unload and, it is determined that an observer was not aboard the vessel during a trip in the ETP, the Assistant Administrator will immediately revoke an affirmative finding made under paragraphs (e)(5)(vii) or (e)(5)(ix) of this section.

(xi)(A) *Reconsideration.* The Assistant Administrator will reconsider a revocation of an affirmative finding upon request from a harvesting nation which had its affirmative finding revoked under paragraph (e)(5)(x)(A) if:

(*1*) the number of marine mammals taken in purse seine nets that were intentionally set on marine mammals does not exceed the comparability standards established in paragraphs (e)(5)(v)(E) and (e)(5)(v)(G) and;

(*2*) that nation provides documentary evidence that no additional purse seines were intentionally set on marine mammals during the 90 day period immediately preceding the request for reconsideration.

(B) A harvesting nation which had its affirmative finding revoked under paragraph (e)(5)(x)(B) or its reconsideration under paragraph (e)(5)(xi)(A) denied, may request reconsideration for an affirmative finding under paragraph (e)(5)(xiii) of this section.

* * * * *

[FR Doc. 90–26985 Filed 11–15–90; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Parts 672 and 675

[Docket No. 900813–0213]

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Extension of an emergency interim rule.

SUMMARY: An emergency interim rule, which is in effect from August 14 through November 10, 1990 (55 FR 33715), exempts certain hook-and-line fisheries and the use of jigging gear and pot gear from existing closures that were implemented when the prohibited species catch (PSC) mortality limit for Pacific halibut by hook-and-line gear for 1990 was reached in the Gulf of Alaska (GOA). The emergency rule also defines pelagic trawl gear for use in the GOA and the Bering Sea and Aleutian Islands (BSAI) and applies the new definition of pelagic trawl to existing closures of the "DAP other fishery" in the BSAI area. Finally, the emergency rule requires halibut exclusion devices on pot gear used in the GOA. The Secretary of Commerce (Secretary) extends the emergency interim rule from November 11, 1990, through December 31, 1990. This action is necessary to limit the effects of the closures to just those fisheries that have significant bycatch mortality of halibut. The intended effect of this action is to promote the fishery management objectives of the Fishery Management Plans for Groundfish of the Gulf of Alaska and Groundfish of the Bering Sea and Aleutian Islands.

EFFECTIVE DATE: The interim regulations published on Friday, August 17, 1990 (55 FR 33715), that suspended and added portions of §§ 672.2, 672.20, 672.24, 675.2, and 675.21 through November 10, 1990, is extended through December 31, 1990.

ADDRESSES: Copies of the environmental assessment may be obtained from Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, NMFS, 907–586–7230.

SUPPLEMENTARY INFORMATION: The Secretary promulgated an emergency interim rule under section 305(e) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) applicable to the groundfish fisheries in the GOA and in the BSAI area (55 FR 33715, August 17, 1990). This rule is effective from August 14, 1990, through November 10, 1990, and includes the following measures:

(1) Exempts the demersal shelf rockfish fishery with hook-and-line gear in the Southeast Outside District of the Eastern Regulatory Area in the GOA;

(2) Exempts the use of pot gear in the GOA groundfish fisheries;

(3) Exempts the use of jigging gear, including rod-and-reel, troll gear, and jigging machines in the GOA groundfish fisheries;

(4) Requires the restrictions of pot openings to specific dimensions with the use of halibut exclusion devices;

(5) Redefines pelagic trawl gear as clarified at 55 FR 41191 (October 10, 1990);

(6) Amends a current regulation (§ 675.21(c)(2)(iv)) applicable to the BSAI area by prohibiting the directed fishery for Pacific cod and pollock in the aggregate with other than pelagic trawls, rather than prohibiting the use of bottom trawls in the directed fishery; and amends closure notices of the "DAP other fishery" when the primary halibut PSC was reached on May 30, 1990 (55 FR 22919, June 5, 1990), and when the secondary halibut PSC was reached on June 30, 1990 (55 FR 27643, July 5, 1990).

At its meeting of September 24–29, 1990, the North Pacific Fishery Management Council (Council) reviewed the conditions warranting the emergency interim rule and recommended that it should be extended through December 31, 1990.

The Secretary finds that conditions justifying the emergency action remain unchanged and concurs with the Council's recommendation. The Secretary is extending the effectiveness of the emergency rule from November 11 through December 31, 1990, under section 305(e)(3)(B) of the Magnuson Act. Further background and descriptive information is contained in the preamble of the original promulgation of this emergency rule.

Lists of Subjects in 50 CFR Part 672 and 675

Fisheries.

Authority: (16 U.S.C. 1801 *et seq.*)

Dated: November 9, 1990.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90–26973 Filed 11–9–90; 3:43 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 55, No. 222
Friday, November 16, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 90-187]

Importation of Sandpears From Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Fruits and Vegetables regulations by specifying definite areas (Provinces) in Chile which the Administrator of the Animal and Plant Health Inspection Service believes to be free from certain injurious insect pests and from which sandpears (*Pyrus pyrifolia*) may be imported without treatment for these pests. This action would allow the importation in accordance with the regulations of this fruit from the specified definite areas.

DATES: Consideration will be given only to comments received on or before December 3, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 90-187. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Frank E. Cooper, Senior Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, Room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6799.

SUPPLEMENTARY INFORMATION: The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* (referred to below as the regulations) impose restrictions on the importation of fruits and vegetables in order to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed within and throughout the United States.

Section 319.56-2 (e)(4) and (f) provides requirements for importation of certain fruits and vegetables based on their origin in a definite area or district. The definite area or district must meet criteria designed to ensure that it is free from all or certain injurious insects, and other criteria.

Section 319.56-2(e)(4) allows importation of a fruit or vegetable that is imported from a definite area that is free from certain injurious insects provided that all other injurious insects have been eliminated by treatment or other prescribed procedures. Additionally, criteria of paragraph (f) must be met.

Paragraph (f) of § 319.56-2 contains the criteria by which the Administrator designates definite areas or districts. These criteria include: (1) Within the past 12 months, the plant protection service of the country of origin has established the absence of infestations of injurious insects known to attack fruits or vegetables in the definite area or district based on surveys performed in accordance with requirements approved by the Administrator as adequate to detect these infestations; (2) the country of origin has adopted and is enforcing requirements to prevent the introduction of injurious insects known to attack fruits and vegetables into the definite area or district of the country of origin that are deemed by the Administrator to be at least equivalent to those requirements imposed under 7 CFR chapter III to prevent the introduction into the United States and interstate spread of injurious insects; and (3) the plant protection service of the country of origin has submitted to the Administrator written detailed procedures for the conduct of surveys and the enforcement of requirements under this § 319.56-2(f) paragraph to prevent the introduction of injurious insects.

Recently the Minister of Agriculture of Chile requested that we consider allowing the entry of sandpears from certain areas in Chile. The Administrator of the Animal and Plant Health Inspection Service believes that all Provinces in Chile except Arica, Iquique, and Parinacota meet all the criteria contained in § 319.56-2 (e)(4) and (f) for importation of fruit from definite areas free from Mediterranean fruit fly (Medfly) (*Ceratitis capitata*) (*Wiedemann*).

The criteria of § 319.56-2(e)(4) appear to be met in that the designated areas are free from the insect pest Medfly. The criteria of paragraph (f) appear to be met with regard to the Medfly (as discussed below), and any other insect pests would be eliminated by inspection in accordance with 7 CFR part 319.

Specifically, the criteria contained in § 319.56-2(f) appear to be met in the following ways. Surveys in Chile during the past 12 months have shown that no Mediterranean fruit flies exist in areas from which sandpears would be imported. The plant protection service of Chile (Servicio Agricola Y Ganadero (SAG)) has submitted written detailed procedures for the conduct of surveys and the enforcement of requirements for preventing the movement of Medflies into the designated areas.[1] Chile prevents the introduction of Medflies into these areas through internal and international quarantine systems. Control stations staffed by SAG officials have been established to inspect land, air, and maritime vehicle traffic entering the Medfly-free areas of Chile from other areas. Vehicles, luggage, and cargo are inspected for signs of Medfly. Agricultural shipments are allowed to enter the designated areas only if they are accompanied by SAG paperwork authorizing the movement and indicating that the products have undergone fumigation or other procedures required by SAG to ensure that the articles are free of Medfly.

Based on the procedures submitted by the Chilean Ministry of Agriculture, we believe that sandpears may be imported from Chile without significant pest risk and without treatment for Medfly. Therefore, we propose to add a new paragraph (j) to § 319.56-2 to read as follows:

(j) The Administrator has determined that all Provinces in Chile except Arica, Iquique, and Parinacota meet the criteria of § 319.56-2 (e) and (f) with regard to the insect pest Mediterranean fruit fly (Medfly) (*Ceratitis capitata*) (Wiedemann). Sandpears may be imported from these areas without treatment for Medfly. Sandpears from Arica, Iquique, and Parinacota may be imported only if they are treated for Medfly in accordance with § 319.56-2d or § 319.56-2n.

[1] This data is available upon written request from the Administrator, c/o Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Public Comment

Dr. James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by allowing a 15-day comment period on this proposal. This comment period would allow the Agency to promulgate and implement a final rule on an expedited basis. Earlier implementation of a final rule would allow procedures to be in place for importation of sandpears from Chile in time for the next harvest and shipping season. This would provide an additional source of sandpears for consumers, and would benefit interested U.S. importers, shippers, and distributors by allowing them the opportunity to import Chilean sandpears during the next harvest season.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We are proposing to allow the importation of sandpears from certain provinces in Chile, without treatment for the Mediterranean fruit fly. Although there are no published U.S. production statistics, most sandpears are grown in California, and production is very limited. Rough estimates from officials of that State indicate that between 2,300 and 4,500 tons are currently produced per year. If Chile is allowed to export sandpears to the United States, estimates from the government of Chile indicate that approximately 900 tons would be sent during the first growing season.

While these figures represent 20% to 40% of U.S. sandpear production per growing season, Chilean sandpears would be exported to the United States from mid-January through the end of February. U.S. production occurs from August to October. Since there is no overlap in production seasons, U.S. sandpear growers will probably be unaffected by this change. Chilean sandpear exports could substantially increase the quantity of sandpears imported to the United States during the winter months. These exports represent less than 0.1% of total U.S. pear production. It is unlikely that this regulatory change will significantly affect the U.S. pear industry.

It is also unlikely that there will be an impact on U.S. producers of other fruits (e.g., apples and citrus fruits) since the quantity of sandpears to be imported from Chile is minuscule in comparison with U.S. production. Sandpears are also considerably more expensive than apples and most citrus fruits and will probably appeal to a limited number of consumers. Thus, newly imported sandpears would not act as direct substitutes for traditional fruits.

Therefore, there appear to be few, if any, adverse effects on U.S. producers of sandpears, other pears, or other fruits. U.S. consumers will benefit from this action, as will U.S. sandpear importers, since a greater quantity will be available at a time of year when there is no domestically produced supply.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR, subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, we propose to amend 7 CFR part 319 as follows:

1. The authority citation for 7 CFR part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151-167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 319.56-2, a new paragraph (j) is added to read as follows:

§ 319.56-2 Restrictions on entry of fruits and vegetables.

* * * * *

(j) The Administrator has determined that all Provinces in Chile except Arica, Iquique, and Parinacota meet the criteria of § 319.56-2 (e) and (f) with regard to the insect pest Mediterranean fruit fly (Medfly) (*Ceratitis capitata*) (Wiedemann). Sandpears may be imported from these areas without treatment for Medfly. Sandpears from Arica, Iquique, and Parinacota may be imported only if they are treated for Medfly in accordance with § 319.56-2d or § 319.56-2n.

Done in Washington, DC., this 9th day of November.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-26978 Filed 11-15-90; 8:45 am]
BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-232-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all British Aerospace Model ATP series airplanes, which would require repetitive visual inspections to detect damaged wires in the primary flight control cables in the fuselage and the wings, and repair or replacement, if necessary. This proposal is prompted by reports of increased wear in the primary flight control cables. This condition, if not corrected, could result in failure of the primary control

cables and reduced controllability of the airplane.

DATES: Comments must be received no later than January 9, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-232-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing data for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-232-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all British Aerospace Model ATP series airplanes. There have been recent reports of increased wear of cables resulting in broken wires in the cables of the primary flight control systems. Worn cables or cables with broken wires can result in failed or frayed cables. Failed cables or jammed, frayed cables could render a control surface inoperative. This condition, if not corrected, could result in failure or jamming of a primary flight control cable and reduced controllability of the airplane.

British Aerospace has issued Service Bulletin ATP-27-26, dated April 5, 1990, which describes procedures for repetitive visual inspections of the primary flight control cables in the fuselage and wings, and repair of broken wires, or replacement of cables, if necessary. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, and AD is proposed which would require repetitive visual inspections to detect damaged wires in the primary flight control cables in the fuselage and wings, and repair of broken wires or replacement of cables, if necessary, in accordance with the service bulletin previously described.

It is estimated that 15 airplanes of U.S. registry would be affected by this AD, that it would take approximately 200 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on those figures, the total cost impact of the AD on U.S. operators is estimated to be $120,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to all Model ATP series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect damaged wires in the primary flight control cables, accomplish the following:

A. For airplanes in Pre-Modification 10060A configuration:

1. Within 250 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 125 hours time-in-service, perform a visual inspection of the aileron primary control cables in the wings for wear and broken wires, in accordance with the Accomplishment Instructions in British Aerospace Service Bulletin ATP-27-26, dated April 5, 1990.

2. Prior to the accumulation of 2,500 hours time-in-service or within 200 hours airplane time-in-service after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 2,500 hours time-in-service perform a visual inspection of the fuselage primary control cables for wear and broken wires, in accordance with the Accomplishment Instructions in British Aerospace Service Bulletin ATP-27-26, dated April 5, 1990.

Note: The repetitive inspection intervals shown herein should not be interpreted as extending the published life limits of any control cables being inspected.

B. For airplanes in Post-Modification 10060A configuration: Within 125 hours time-in-service after the effective date of this AD, or within 750 hours time-in-service following accomplishment of Modification 10060A, whichever occurs later, and thereafter at intervals not to exceed 250 hours time-in-service, perform a visual inspection of the aileron primary control cables in the wings for wear and broken wires, in accordance with the Accomplishment Instructions in British Aerospace Service Bulletin ATP-27-26, dated April 5, 1990.

C. If defective wires are found as a result of the inspections required by this AD, prior to further flight, accomplish the following in accordance with the Accomplishment Instructions in British Aerospace Service Bulletin ATP-27-26, dated April 5, 1990.

1. In the event of a single wire break, the ends must be trimmed to lie flush with the cable assembly and a full and free check of control travel must be carried out to ensure that the wire ends do not "snag". If cables do "snag", the cable must be replaced prior to further flight, in accordance with the service bulletin.

2. If two or more wires are found to be broken, prior to further flight, replace the damaged cable and replace any associated damaged fairlead rollers, in accordance with the service bulletin.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 6, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27004 Filed 11-15-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-221-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires external inspections of the circumferential fuselage splices and internal inspections of certain bonded doublers for delamination, cracking, corrosion, and repair, if necessary. This action would expand the applicability of the AD, expand the area of inspection, and update the inspection procedures. This proposal is prompted by reports from operators of additional skin cracks, corrosion, and delamination between the skin and doubler. This condition, if not corrected, could result in rapid decompression of the airplane.

DATES: Comments must be received no later than January 9, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-221-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2775. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-221-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On October 27, 1988, the FAA issued AD 88-22-12, Amendment 39-6060 (53 FR 44168, November 1, 1988), to require external inspections of the circumferential fuselage splices and internal inspections of certain bonded doublers on Model 737 series airplanes for delamination, cracking, and corrosion. That action was prompted by two reports of cracking on the circumferential fuselage skin splice and several reports for delamination of the bonded doubler. This condition, if not corrected, could result in rapid decompression of the airplane.

Since issuance of the AD, operators have reported additional skin cracks, corrosion, and delamination between the skin and doubler. Also, the FAA has determined that airplanes with line numbers 465 through 519 must also be inspected because these airplanes were assembled using the hot bonding process on the doublers, but were manufactured before the incorporation of the improved surface preparation which resulted in a more reliable bonding.

The FAA has reviewed and approved Boeing Service Bulletin 737-53-1070, Revision 2, dated February 8, 1990, which describes procedures for visual, ultrasonic, high frequency eddy current, and low frequency eddy current inspections; repair; and a terminating modification consisting of replacement of fasteners with protruding head fasteners.

Additionally, the FAA has re-evaluated the fatigue life of repairs made using blind fasteners. The FAA

has determined that such repairs should be repetitively inspected for cracks and loose or missing fasteners every 3,000 flight cycles, and must be replaced prior to the accumulation of 10,000 flight cycles.

Since the unsafe condition, described above, is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 88-22-12 with a new airworthiness directive that would expand the applicability of the existing AD to include airplane line numbers 465 through 519; and expand the area requiring ultrasonic inspections to detect disbonding to include all non-riveted areas of bonded doublers around each major skin cut-out and bonded doubler in the area from body station (BS) 360 and BS 420 between stringer (S)-15L to S-25L; in accordance with the service bulletin previously described. This action would also revise the interval for repetitive inspections of blind fasteners from 1,000 to 3,000 flight cycles; and the interval for replacement of blind fasteners from 3,000 to 10,000 flight cycles.

There are approximately 519 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 213 airplanes of U.S. registry would be affected by this AD, that it would take approximately 262 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,232,240.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6060 (53 FR 44160, November 1, 1988), AD 88-22-12, with the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, listed in Boeing Service Bulletin 737-53-1076, Revision 2, dated February 8, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent decompression of the airplane, accomplish the following:

A. Within 1,000 flight cycles or 3 months after the effective date of this AD, whichever occurs first, unless accomplished within the last 12 months, perform an external close visual inspection for corrosion or evidence of delamination in all circumferential skin butt splices from body station (BS) 259.5 to BS 1016, and in the areas of the bonded internal doublers around the major skin cutouts for entry, cargo, nose landing gear, overwing exit doors, and in the area from BS 360 to BS 420 between stringer (S)-15L to S-25L, in accordance with Boeing Service Bulletin 737-53-1076, Revision 2, dated February 8, 1990 (hereinafter called "the Service Bulletin").

1. If no corrosion or evidence of delamination is found, repeat the external close visual inspection at intervals not to exceed 4,500 flight cycles or 15 months, whichever occurs first.

2. If corrosion is found, prior to further flight, repair in accordance with paragraph D. of this AD. Following repair, continue to repeat the external close visual inspection at intervals not to exceed 4,500 flight cycles or 15 months, whichever occurs first.

3. If delamination is found, prior to further flight, repair in accordance with paragraph E. of this AD. Following repair, continue to repeat the external close visual inspection at intervals not to exceed 4,500 flight cycles or 15 months, whichever occurs first.

B. Within 500 flight cycles after the effective date of this AD; or prior to the accumulation of 40,000 flight cycles for Group 1 airplanes and 60,000 flight cycles for Group 2 airplanes; whichever occurs later, unless accomplished within the last 4,000 flight cycles; accomplish the following:

1. Perform the following inspections:

a. An external high frequency eddy current (HFEC) inspection for cracks in the skin common to the forward-most and aft-most row of fasteners in the circumferential skin splice over the crown from S-10L to S-10R, in accordance with the Service Bulletin.

b. An external close visual inspection for skin cracks, corrosion, delamination, and loose or missing fasteners in all circumferential skin butt splices from BS 259.9 to BS 1016, in accordance with the Service Bulletin.

c. An external close visual inspection for skin cracks, corrosion, and delamination in the area of the bonded internal doublers around the skin cutouts for entry, galley, cargo, nose landing gear, overwing exit doors, and in the area from BS 360 to BS 420 between S-15L to S-25L, in accordance with the Service Bulletin.

2. As a result of the inspections required by this paragraph:

a. If no cracks, corrosion, or delamination is found, repeat the inspections required by B.1. of this AD at intervals not to exceed 4,500 flight cycles or 15 months, whichever occurs first; or accomplish the terminating action in accordance with the Service Bulletin.

b. If corrosion is found, prior to further flight, repair in accordance Federal Register with paragraph D. of this AD. Following repair, continue to inspect in accordance with paragraph B.1. of this AD at intervals not to exceed 4,500 flight cycles or 15 months, whichever occurs first.

c. If cracks or delamination is found, prior to further flight, repair in accordance with paragraph E. of this AD. Following repair, continue to inspect in accordance with paragraph B.1. of this AD at intervals not to exceed 4,500 flight cycles or 15 months, whichever occurs first.

3. Replacement of all fasteners in the forward-most and aft most row of fasteners with standard oversize protruding head solid fasteners at all circumferential fuselage splices, in accordance with the Service Bulletin, constitutes terminating action for the inspections required by this AD.

C. For Group 1 airplanes, within the next 4,500 flight cycles of 15 months after the effective date of this AD, which ever occurs first; or prior to the accumulation of 40,000 flight cycles; whichever occurs later; unless previously accomplished within the last 7,500 flight cycles; accomplish the following:

1. Perform the following inspections:

a. An internal close visual inspection for corrosion and delamination of the bonded doublers at each circumferential butt splice joint from BS 277 through CS 1016, and in the area from BA 360 to BS 420 between S-15L to S-25L, in accordance with the Service Bulletin.

b. An internal close visual inspection and ultrasonic inspection for corrosion and delamination of all non-mechanically fastened areas of the bonded internal doublers around each major skin cutout for the entry, galley, cargo, nose landing gear, and overwing exit doors, in accordance with the Service Bulletin.

2. As a result of the inspections required by this paragraph:

a. If no cracks, corrosion, or delamination is found, repeat the inspections required by paragraph C.1. of this AD at intervals not to exceed 12,000 flight cycles or 4 years, whichever occurs first.

b. If corrosion is found, prior to further flight, repair in accordance with paragraph D. of this AD. Following repair, continue to inspect in accordance with paragraph C.1. of this AD at intervals not to exceed 12,000 flight cycles or 4 years, whichever occurs first.

c. If cracks or delamination is found, prior to further flight, repair in accordance with paragraph E. of this AD. Following repair, continue to inspect in accordance with paragraph C.1. of this AD at intervals not to exceed 12,000 flight cycles or 4 years, whichever occurs first.

D. In areas where corrosion is found, but evidence of cracking is NOT found, as a result of the inspections required by paragraphs A., B., and C. of this AD, prior to further flight, perform a low frequency eddy current (LFEC) inspection to determine the amount of material loss.

1. If material loss is less than 10% of this skin or doubler thickness, prior to further flight, accomplish either subparagraph a. or b., below:

a. Accomplish the repair in accordance with the Service Bulletin; or

b. Conduct repetitive LFEC inspections thereafter at intervals not to exceed 2,250 flight cycles or 6 months, whichever occurs first, until the repair is accomplished.

2. If material loss is equal to or greater than 10% of the skin or doubler thickness, prior to further flight, repair in accordance with the Service Bulletin.

E. In areas where cracks or delamination are found as a result of the inspections required by paragraphs A., B., and C. of this AD, prior to further flight, repair in accordance with the Service Bulletin.

1. Blind fasteners may be used as a temporary repair only. Repairs using blind fasteners must be repetitively inspected for loose or missing fasteners at intervals not to exceed 3,000 flight cycles following installation, and replaced with protruding head solid fasteners within 10,000 flight cycles following installation.

2. Repairs previously installed with blind fasteners prior to the effective date of this AD must be inspected for loose or missing fasteners within 1,000 flight cycles after the effective date of this AD and thereafter at intervals not to exceed 3,000 flight cycles. Blind fasteners must be replaced with protruding head solid fasteners within 10,000 flight cycles following installation.

3. If any loose or missing blind fasteners are found, prior to further flight, replace with solid type fasteners in accordance with the Service Bulletin.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 6, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27005 Filed 11-15-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-ANE-31]

Airworthiness Directives; Pratt & Whitney Canada (PWC) PW100 Series Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to PWC PW115, PW118, PW118A, PW120, PW120A, PW121, PW123, PW124, PW124A, PW124B, PW125B, and PW126A turboprop engines, which would require installation of a new design fuel filter cover assembly. This proposal is prompted by two events of significant fuel leakage from the fuel filter cover due to improper installation. This condition, if not corrected, could result in a fire hazard in the engine nacelle.

DATES: Comments must be received on or before December 14, 1990.

ADDRESSES: Comments on the proposal may be mailed in duplicate to FAA, New England Region, Office of the Assistant Chief Counsel, attn: Rules Docket No. 90-ANE-31, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to room 311 at the above address.

Comments may be inspected at the above location in room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorien, Longueuil, Quebec J4G1A1, or may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Office, ANE-140, FAA, New England Region, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 273-7085.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 90-ANE-31." The postcard will be date/time stamped and returned to the commenter.

Discussion

There have been two events of significant fuel leakage from the fuel filter cover assembly on PW100 series turboprop engines. One event resulted in an inflight fire. It has been determined that fuel filter cover O-ring damage can occur during normal engine operation if the cover assembly is not properly torqued. The O-ring damage can allow fuel to leak from the fuel filter cover and collect in the engine nacelle. The proposed rule would require installation of a new design fuel filter cover

assembly, which is less likely to experience O-ring damage and fuel leakage in the event of improper torquing of the filter cover. To incorporate this modification, one model is required to have a newer design fuel pump installed. This condition, if not corrected, could result in a fire hazard in the engine nacelle.

The FAA has reviewed and approved PWC Service Bulletins (SB) 20897, dated August 20, 1990, and JB 20907, dated August 20, 1990, which concern installation of a new fuel filter cover assembly; and SB 20355, Revision 1, dated August 1, 1990, which concerns installation of a new fuel pump.

Since this condition is likely to exist or develop on other engines of the same type design, an AD is proposed which would require installation of a new design fuel filter cover assembly in accordance with the service bulletins previously described.

There are approximately 558 PW100 series engines of the affected design in the U.S. fleet. It is estimated that it would take approximately one manhour per engine to install the new fuel filter cover, and approximately 6 manhours to install the new fuel pump, and that the average labor cost would be $40 per manhour. The required fuel filter cover hardware is being supplied by the manufacturer at no cost, however, the required fuel pump cost is estimated to be $11,500 per engine. Approximately 20% of affected engines will require installation of the new fuel pump. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be approximately $1,350,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Pratt & Whitney Canada: Applies to Pratt & Whitney Canada (PWC) PW115, PW118, PW118A, PW120, PW120A, PW121, PW123, PW124, PW124A, PW124B, PW125B and PW126A turboprop engines installed on, but not limited to, Aerospatiale ATR-42 and ATR-72, British Aerospace ATP, DeHavilland of Canada DHC-8, Embraer EMB-120, Fokker F-50, and Canadair CL-215T type aircraft.

Compliance is required within the next 1,200 hours time in service after the effective date of this AD, unless already accomplished.

To prevent fuel leakage from the fuel filter cover assembly which could result in a fire hazard in the engine nacelle, accomplish the following:

(a) For PWC PW115, PW118, PW118A, PW120, PW120A, PW121, PW124, PW124A, PW124B, PW125B and PW126A engines, incorporate new fuel pump filter cover assembly in accordance with either PWC Service Bulletin (SB) No. 20897, dated August 20, 1990, *or* PWC SB No. 20907, dated August 20, 1990, as applicable.

(b) For PWC PW123 engines, incorporate a new fuel pump in accordance with PWC SB No. 20355, Revision 1, dated August 1, 1990.

(c) For PWC PW123 engines, incorporate a new fuel pump filter cover assembly in accordance with PWC SB No. 20897, dated August 20, 1990.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD, or adjustments to the compliance schedule specified in this AD, may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorian, Longueuil, Quebec J4G1A1. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on November 5, 1990.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90-27003 Filed 11-15-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to address the concerns of other State and Federal agencies, to enhance the clarity of Illinois' rules, and to meet State codification rules and guidelines. It concerns changes made to the Illinois Administrative Code (IAC), title 62, Mining, chapter I. This notice sets forth the times and locations that the Illinois program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on December 17, 1990. If requested, a public hearing on the proposed amendment will be held at 1 p.m. on December 11, 1990. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on December 3, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James F. Fulton, Director, Springfield Field Office, at the address listed below. Copies of the Illinois program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting OSM's Springfield Office.

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 511 West Capitol, suite 202, Springfield, Illinois 62704, Telephone: (217) 492-4495.

Illinois Department of Mines and Minerals, 300 West Jefferson Street, suite 300, Springfield, Illinois 62791, Telephone: (217) 782-4970

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office; (217) 492-4495.

SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Information pertinent to the general background of the Illinois program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23882). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.11, 913.15, 913.16, and 913.17.

II. Discussion of Proposed Amendment

Illinois by letter dated July 17, 1989 (Administrative Record No. IL-1075), submitted a proposed amendment to its program. On April 10, 1990 (Administrative Record No. IL-1100), Illinois submitted additional changes to this proposed amendment. This Illinois program amendment was approved, with certain exceptions, by the Director on August 29, 1990 (55 FR 35301). On July 26, 1990 (Administrative Record No. IL-1104), Illinois submitted to OSM the adopted version of the amendment, which contained the following changes from the version approved by OSM. Most of these changes were made by the Illinois Department of Mines and Minerals pursuant to comments and direction received from the Illinois Joint Committee on Administrative Rules.

At 62 IAC 1700.11, a heading of "Existing structures" for subsection (d) and a heading of "Effective dates" for subsection (e) were added.

At 62 IAC 1761.11(a) the word "future" was added before the word "guidelines."

At 62 IAC 1761.12, a heading of "Federal recreational systems; public buildings; cemeteriers" for subsection (b), a heading of "Occupied dwellings" for subsection (d), and a heading of "Publicly owned parks; places included in the National Register of Historic Places" for subsection (e) were added.

At 62 IAC 1772.12(b)(8)(D), the phrase, "based upon consultation with the Illinois State Historic Preservation Agency" was added after the word "resources."

At 62 IAC 1773.15(b)(1), the phrase, "as defined in 62 Ill. Adm. Code 1843.11(b)," was added after the word "orders" in the second line and the phrase," as defined in 61 Ill. Adm. Code 1843.11(a)," was added after the word "orders" in the third line.

At 62 IAC 1773.20(b)(2)(B), the phrase, "pursuant to 62 Ill. Adm. Code 1843 or 1845, or in accordance with like procedures in other regulatory jurisdictions," was added following the word "appeal" in the first line.

At 62 IAC 1773.20(c)(2), the words, "a reasonable," was changed to "the specified."

At 62 IAC 1773.21(b), the phrase, "including, but not limited to, maintenance and monitoring," was added after the word "measures."

At 62 IAC 1778.13(b), the word "Federal" was added before the word "employer."

At 62 IAC 1778.13(c)(5), the phrase, "State or Federal" was added before the word "identifier."

At 62 IAC 1778.13(j), the word "any" was changed to the word "the."

A revision was made at 62 IAC 1778.13(i) and 62 IAC 1778.14(e) to specify that information submitted as a change shall be evaluated in the same manner as the original application.

At 62 IAC 1778.14(c), the citation, "(Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq.)," was added after the phrase "the Federal Act."

At 62 IAC 1779.12 the original subsection designations were deleted and two paragraphs created labelled "a" and "b."

Section 1779.12(b) was amended to: (a) Add the sentence, "Indications of cultural, archeological, and historical resources shall be based upon such factors including, but not limited to, topographic and physiographic characteristics and other cultural, archeological, and historical resource data for the proposed permit or adjacent areas," after the first sentence; (b) add the phrase, "if such field investigation will provide the information required by subsection (a)," after the word "Agency;" and (c) add the sentence, "A field investigation is a pedestrian archeological survey supplemented by shovel testing, where appropriate," at the end of this subsection.

At 62 IAC 1780.16(a)(1)(B)(i), the phrase, "pertinent unpublished," was added after the word "other."

At 62 IAC 1780.21(f)(3)(C), the phrase, "such as recreational and fish and wildlife uses" was added after the word "purposes."

At 62 IAC 1780.21(f)(3)(D)(v), the phrase, "based upon public comment, Interagency Committee comment, and the Department's technical review," was added after the word "Department."

The Illinois regulation at 64 IAC 1780.31(a)(1) was amended by adding, "caused by surface mining related activities including, but not limited to, loss or destruction of historic artifacts and damage to historic structures or property;" after the phrase "adverse impacts."

Section 1780.31(b) was changed by adding, "taking into account mining plans and the amount of materials present," after the phrase "permit issuance" in the second sentence; and by deleting the word "reasonable" and by deleting the word ", taking" and inserting in its place the phrase, "that takes," in the last sentence of the subsection.

At 62 IAC 1783.12, the subsection label (b)(1) was removed and the information was added to subsection (a) and subsection (b)(2) was changed to subsection (b). Subsection (a) was amended by changing the word "features" to "sites." Subsection (b) was amended by: (a) Changing the subsection reference from (b)(1) to (a); (b) changing the word "provided" to "available;" (c) adding the word, "shadow" after the word "permit" in the first sentence; (d) adding the sentence, "Indications of cultural, archeological and historical resources shall be based upon such factors including, but not limited to, topographic and physiographic characteristics, and other cultural, archeological, and historical resource data for the proposed permit, shadow, and adjacent areas," as the second sentence; (e) adding the phrase, "in consultation with the Illinois State Historic Preservation Agency, if such field investigations will provide the information required by subsection (a)," after Department in the third sentence; and (f) adding a new sentence, "A field investigation is a pedestrian archeological survey supplemented by

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shovel testing, where appropriate," at the end of the subsection.

At 62 IAC 1784.14(e)(3)(C)(v), the phrase, "based upon public comment, Interagency Committee comment and the Department's technical review," was added after the word "Department."

At 62 IAC 1784.17(a)(1), "adverse impacts" was clarified by adding the phrase, "caused by surface mining related activities including, but not limited to, loss or destruction of historic artifacts and damage to historic structures or property."

Section 1784.17(b) was amended by adding the phrase, "taking into acount mining plans and the amount of materials present," after the word "issuance" in the second sentence; and by deleting the word "reasonable" and the comma after "time" and changing the word "taking" to the phrase "that takes" in the last sentence.

The Illinois regulation at 62 IAC 1784.21(a)(1)(B)(i) was changed by adding the phrase, "pertinent unpublished," before the word "information."

At 62 IAC 1784.21(a)(2)(C), the phrase, "State or Federal law," was deleted and "the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) or the Illinois Endangered Species Protection Act (Ill. Rev. Stat. 1987, ch. 8, par. 331 *et seq.*)" was inserted.

At 62 IAC 1800.21(d), a heading "Bond value of collateral," was added.

At 62 IAC 1800.40(a)(2), a sentence, "The operator shall submit a certification of publication for such advertisement prior to the Department's final administrative decision releasing bond," was added at the end of the section.

Sections 1800.40(a)(2), 1800.40(b)(1), 1800.40(b)(2), and 1800.40(e) were amended by deleting the July 17, 1989, proposed time periods and returning to the original time periods in order to be consistent with the Act.

At 62 IAC 1816.49(a)(1) and 62 IAC 1817.19(a)(1), "(1989)" was added after "30 CFR 77.216" in the first sentence and "30 CFR 77.216 does not include any later editions or amendments," was inserted as the second sentence.

A cross-reference to the Department's rules on bond release at 62 IAC 1800.40 was provided at 62 IAC 1816.49(a)(10) and 62 IAC 1817.49(a)(10).

The Illinois regulations at 62 IAC 1816.67 and 62 IAC 1817.67 were amended by adding a heading "Air blast limits" for subsection (b) and a heading "Air blast monitoring" for subsection (c).

The Illinois regulations at 62 IAC 1816.97(b) and 62 IAC 1817.97(b) were amended to include a citation to the Illinois Endangered Species Protection Act (Ill. Rev. Stat. 1987, ch. 8, par. 331 *et seq.*) immediately after the citation to the Federal Act.

A heading "Blasting prohibitions" was added at 62 IAC 1817.66(d). At 62 IAC 1843.11, a heading "Imminent harm and danger" for subsection (a) and a heading "Failure to abate" for subsection (b) were added.

Illinois labelled the three definitions at 62 IAC 1846.5 as "a," "b," and "c."

At 62 IAC 1846.14(a)(3), the word "demonstrated" was changed to the word "determined."

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendments satisfy the applicable program approval criteria of 30 CFR 732.15.

If the amendments are deemed adequate, they will become part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the OSM Springfield Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on December 3, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**". All such meetings will be open to the public, and, if possible, notices of meetings will be posted at the locations under "**ADDRESSES**". A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 8, 1990.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 90-27080 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-05-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Permanent Regulatory Program; Board of Review; Office of Administrative Hearings

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed amendments to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concern proposed changes to the Code of Maryland Administrative Regulations (COMAR) and are intended to incorporate regulatory changes initiated by the State. The proposed amendments would abolish the Board of Review of the Department of Natural Resources and create an Office of Administrative Hearings as an independent unit in the Executive Branch.

This notice sets forth the times and locations that the Maryland program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on December 17, 1990. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on December 11, 1990. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on December 3, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, at the address listed below. Copies of the proposed amendments and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Charleston Field Office.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158

Maryland Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532, Telephone: (301) 689-4136.

FOR FURTHER INFORMATION CONTACT: James C. Blankenship, Jr., Director, Charleston Field Office, Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214-7217). Subsequent actions concerning amendments to the Maryland program are contained in 30 CFR 920.15 and 30 CFR 920.16.

II. Discussion of Proposed Amendments

Perceived inconsistencies and ambiguities in the standards and procedures of many of the Maryland State agencies prompted the Maryland Executive Office in 1987 to appoint a Task Force on Administrative Hearing Officers to explore the possibility of establishing one central agency. The task force recommended the creation of an independent agency to combine hearing examiners, with few exceptions, into one office within the Executive Department. Senate Bill (SB) 658, enacted during the 1989 legislative session, created the Office of Administrative Hearings which "organizes the State's scattered network of hearing examiners into a centralized corps of professional administrative law judges legally trained to hear cases in a number of areas." It is intended that the new "agency should lend consistency, uniformity and efficiency to the administration of Maryland's administrative contested case hearings in a cost effective manner" (Administrative Record No. MD-466).

Under current Maryland State Law, there exists within the Department of Natural Resources (DNR) a Board of Review which provides an avenue of administrative appeal for contested cases at the DNR, including the Maryland Bureau of Mines' (MDBOM) surface mine regulatory program. The composition, authority and duties of the DNR Board of Review are defined in the Natural Resources Article, Sections 1-106 and 1-107 of the Annotated Code of Maryland (1989 replacement volume).

On September 28, 1990, the MDBOM proposed the following statutory changes to Maryland's federally approved program (Administrative Record No. MD-469).

Under the authority of SB 658, the duties of the DNR Board of Review now fall within the purview of the Maryland Office of Administrative Hearings. Accordingly, SB 144 of the 1990 legislative session repealed Sections 1-106 and 1-107 of the Natural Resources Article of the Maryland Annotated Code, thus eliminating the possibility of a redundant Administrative appeals system under the Maryland surface mine regulatory program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(b), OSM is now seeking comments on whether the amendments proposed by Maryland satisfy the applicable program approval criteria of 30 CFR 732.17. If the amendments are deemed adequate, they will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on December 3, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations under "**ADDRESSES**." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 920

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 7, 1990.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 90-27079 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3851-5]

South Coast Air Quality Management District and Yolo-Solano Air Pollution Control District; California State Implementation Plan Revision

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA is soliciting public comments on this notice of proposed rulemaking to approve rule revisions submitted to EPA from the California Air Resources Board (CARB) on February 7, 1989. The rule revisions effect the South Coast Air Quality Management District (AQMD) and the Yolo-Solano Air Pollution Control District (APCD) and involve reorganizing and strengthening of administrative and non-prohibitory rules. EPA proposes to approve these rule revisions in order to maintain and strengthen the California State Implementation Plan (SIP).

DATES: Comments must be received on or before December 17, 1990.

ADDRESSES: Comments may be mailed to: Colleen McKaughan, Environmental Protection Agency, Region 9, Air and Toxics Division, State Implementation Plan (A-3-2), 1235 Mission Street, San Francisco, CA 94103.

Copies of the rule revisions and EPA's evaluation reports for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Post Office Box 2815, Sacramento, CA 95814

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731

Yolo-Solano Air Pollution Control District, 323 First Street #5, P.O. Box 1006, Woodland, CA 95695

FOR FURTHER INFORMATION CONTACT: Doris Lo (A-2-3), State Implementation Plan Section, Air and Toxics Division, Environmental Protection Agency, Region 9, 1235 Mission Street, San Francisco, CA 94103, telephone: (415) 556-5244, FTS: 556-5244.

SUPPLEMENTARY INFORMATION:

Background

The following revised rules were submitted by the CARB on February 7, 1989 for incorporation into the SIP. The rule revisions have been evaluated for consistency with ERA policy. These are administrative and non-prohibitory rules and appear to be noncontroversial in nature.

South Coast AQMD

Rule 102, Definition of Terms
Rule 110, Rule Adoption Procedures to Assure the Protection and Enhancement of the Environment
Rule 219, Equipment Not Requiring a Permit Pursuant to Regulation II

Yolo-Solano APCD

Rule 3.7 (e,f), Information

EPA Evaluation

Rule 102: The submitted rule as compared to the federally approved SIP rule involves the following revisions:

(1) The addition of the first paragraph which references basic defimitions found in Division 26 of the Health and Safety Code.

(2) The following definitions have been reorganized into Rule 102 from the federally approved SIP Rule 2, Definitions, for Los Angeles County, Orange County, Riverside County and San Bernardino County:

Air Contaminant
Basic Equipment
Combustible Refuse
Combustible Contaminants
Dusts
Multiple-Chamber Incinerator
Oil-Effluent Water Separator
Orchard Heaters
Particulate Matter
Persons
Process Weight
Process Weight Per Hour

These revisions to 102 were originally submitted to EPA in April of 1976 and were never acted upon. It appears that during the merger of the above counties to form the South Coast AQMD, these definitions were intended to be reorganized from each county's Rule 2 to the South Coast AQMD's Rule 102 in order to maintain the District's rules. The February 7, 1989 submittal of Rule 102 contains these definitions. EPA has evaluated and compared the above definitions in Rule 102 to the same definitions in Rule 2 for each of the counties and is now proposing to approve the above definitions into Rule 102 in order to maintain the SIP.

(3) The addition of the following definitions to the current federally approved SIP Rule 102:

Agricultural Operations
Breakdown
Compliance Schedule
Control Equipment
District
Equipment
Gasoline
Hearing Board
Increments of Progress
Motor Vehicle
PPM
Receptor Area
Reduction of Animal Matter
Schedule of Increments of Progress
Solid Particulate Matter
Source Area
Standard Conditions
Submerged Full Pipe
Vehicle

Similar to the definitions found in part (2) of this discussion, the above definitions were originally submitted in April of 1976 and never acted upon by EPA, but unlike the definitions found in part (2), these definitions were not previously a part of the federally approved SIP Rule 2 definitions for each of the merging counties. The above definitions are found in the February 7, 1987 submittal, and EPA has evaluated these definitions for consistency with EPA policy and plans to approve them into Rule 102 in order to maintain and strengthen the SIP.

(4) Finally, the revision of the Small Business definition in order to bring consistency to all the District's small business definitions. The federally approved SIP Rule 102 defines small businesses for manufacturers as having 25 employees or fewer, or annual receipts less than $1,000,000 and for non-manufacturers as having 50 employees or fewer, or annual receipts less than $5,000,000. The revised rule defines small businesses as having 10 employees or less and total annual receipts of $500,000 or less. EPA plans to approve this revision as it strengthens the small business definition found in the federally approved SIP Rule 102.

Rule 110: The revisions in this rule consist of minor language changes regarding the District staff reports and environmental impact report preparation. It appears that the changes have been made for clarification. EPA is proposing to approve these revisions in order to maintain the SIP.

Rule 219: This is an administrative rule that lists the types of equipment that do not require a permit because of minimal emissions output. The revisions made in the rule involve the deletion of certain equipment and processes from the rule's current list of exemptions, a decrease in the threshold values for current exemptions and the addition of certain equipment currently requiring permits. These revisions should lead to the issuance of approximately 18,000 new permits and will eliminate the need for approximately 800 permits. There are also some language changes for clarification. The revisions are necessary in order to keep up with changes in technology and industrial processes. These rule revisions should lead to a more comprehensive emission inventory of sources and possible emissions reductions for the District. EPA is proposing to approve the revisions as they should strengthen the existing SIP rule.

Yolo-Solano APCD

Rule 3.7e: This is an addition to Rule 3.7 which allows the District to inspect any source that has been issued a permit to operate without providing prior notice to the source. The revision improves the enforceability of the rule for the District. Thus, EPA is proposing to approve this rule revision into the SIP.

Rule 3.7f: This amendment to Rule 3.7 requires a permitted source to conduct a source test if the source's emissions have been found to be equal to or greater than 90% of the new source review best available control technology (BACT) level. This addition should improve the enforceability of the rule, and EPA is proposing to approve this revision into the SIP.

Proposed Action

The rules listed above have been evaluated for consistency with section 110 of the Clean Air Act, 40 CFR part 51, and EPA policy. The rules were found to be consistent with those requirements and are being proposed for approval in the Federal Register. Copies of the rules and of EPA's evaluation report for each rule are available at EPA's Regional Office in San Francisco. EPA is soliciting comments for a 30-day period beginning on the date of publication of this notice.

The above proposed changes related to operating permit rules in the South Coast AQMD involve minor strengthening revisions to rules in the existing SIP. Today's action does not constitute proposed approval of or action on an operating permit program pursuant to 40 CFR 51.66(b)(17) (54 FR 27281) with respect to the federal enforceability of operating permits under the Federal New Source Review rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under 5 U.S.C. 605(b) I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

Air Pollution control, Hydrocarbons, Particulate matter, and Reporting and recordkeeping requirements

Authority: 42 U.S.C. 7401-7642.

Dated: September 17, 1990.

Daniel W. McGovern,

Regional Administrator.

[FR Doc. 90-27028 Filed 11-15-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-5-36, RM-7525]

Radio Broadcasting Services; Claxton, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Evans Broadcasting Company, Inc., requesting the substitution of Channel 297C3 for Channel 296A at Claxton, Georgia, and modification of its license for Station WCLA(FM) to specify the higher powered channel. Channel 297C3 can be allotted to Claxton in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.4 kilometers (0.8 miles) northwest, in order to avoid a short-spacing to Station WCRJ(FM), Channel 297C1, Jacksonville, Florida, and Station WKQB, Channel 298C, St. George, South Carolina. The coordinates are North Latitude 32-10-20 and West Longitude 81-55-09. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the higher powered channel at Claxton or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before January 4, 1991, and reply comments on or before January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Edward W. Hummers, Jr. and Estelle Salvatierra, Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., suite 400, Washington, DC 20036 (Attorneys for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Wells, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-536, adopted October 24, 1990, and released November 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27089 Filed 11-15-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-535, RM-7529]

Radio Broadcasting Services; Bowling Green, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Daily News Broadcasting Company requesting the substitution of channel 252C3 for Channel 252A at Bowling Green, Kentucky, and modification of its license for Station WDNS(FM) to specify the higher powered channel. Channel 252C3 can be allotted to Bowling Green in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates are North Latitude 36–59–18 and West Longitude 86–27–18. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the higher powered channel at Bowling Green or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before January 4, 1991, and reply comments on or before January 22, 1991.

ADDRESSES: Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter Guttman, Pepper & Corazzini, 200 Montgomery Building, 1776 K Street, NW., Washington, DC 20006 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–535, adopted October 24, 1990, and released November 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–27087 Filed 11–15–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–534, RM–7519]

Radio Broadcasting Services; Mount Olive, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Radio Latino seeking the allotment of Channel 287A to Mount Olive, Illinois, as that community's first local FM service. The coordinates for this proposal are North Latitude 39–04–20 and West Longitude 89–43–38.

DATES: Comments must be filed on or before January 4, 1991, and reply comments on or before January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bradford D. Carey, Marjorie R. Esman, Walker, Bordelon, Hamlin, Theriot and Hardy, 701 South Peters Street, New Orleans, Louisiana 70130 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–534, adopted October 24, 1990, and released November 13, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete test of this decision may also be purchased from the Commission's copy contractors, international Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–927086 Filed 11–15–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 245

Department of Defense Acquisition Regulations; Reports of Government Property

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council published a proposed rule on October 18, 1990 (55 FR 42222). The original date for receipt of comments expired on November 19, 1990. This document extends the comment period because of numerous requests from the public.

DATES: Comments on the proposed rule should be submitted on or before December 19, 1990, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Col (sel) Nancy L. Ladd, Director, DAR System, ODASD(P), c/o OUSD(A) (M&RS), Room 3D139, Pentagon, Washington, DC 20301–3062. Please cite DAR Case 90–006 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Col (sel) Nancy L. Ladd, 703–697–7266.

Authority: (5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3).

Nancy L. Ladd,

Colonel (sel), USAF, Director, Defense Acquisition Regulatory System.

[FR Doc. 90–27165 Filed 11–15–90; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 901186–0284]

Foreign fishing; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed quantities for (a) 1991 initial specifications of groundfish, (b) apportionment of reserves, (c) assignment of sablefish total allowable catch (TAC), (d) quarterly allocations of pollock TAC, (e) prohibited species catch (PSC) limits for fully utilized species, (f) halibut PSC limits and allocation; and request for comments.

SUMMARY: NOAA proposes initial harvest specifications or groundfish and management measures in the Gulf of Alaska for the 1991 fishing year. This action is necessary to inform the public about the harvest specifications and management measures and to solicit public comments. The measures are intended to carry out management objectives contained in the Fishery Management Plan for the Gulf of Alaska Groundfish Fishery (FMP).

DATE: Comments are invited on or before December 10, 1990.

ADDRESSES: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 021668, Juneau, Alaska 99802, or be delivered to the Federal Building Annex, Suite 6, 9109 Mendenhall Mall Road, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Bert (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION:

Background

This FMP, developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act, is implemented by regulations appearing at 50 CFR 611.92 and part 672. This notice publishes the following proposals for the 1991 fishing year: (1) Establishment of TACs for each category of groundfish in the Gulf of Alaska and apportionments thereof among domestic annual processing (DAP), joint venture processing (JVP), total allowable level of foreign fishing (TALFF), and reserves; (2) apportionments of reserves to DAP; (3) assignments of the sable fish TAC to authorized fishing gear users; (4) quarterly apportionments of the pollock TAC; (5) prohibited species catch (PSC) limits relevant to fully utilized groundfish species; (6) halibut PSC limits; and (7) seasonal allocations of the halibut PSC limits.

1. Establishment of TACs and Apportionments Thereof Among DAP, JVP, TALFF, and Reserves

Regulations implementing the FMP provide the following process for implementing groundfish specifications. Under § 672.20(c)(1), the Secretary of Commerce (Secretary), in consultation with the Council, publishes a notice in the **Federal Register** proposing specifications of preliminary annual TAC, DAP, JVP, and TALFF for each target species, "other species" category, and species determined to be fully utilized by DAP fisheries. Under § 672.20(a)(2)(i), the sum of the TACs for all species must fall within the combined optimum yield (OY) range established for these species of 116,000–800,000 metric tons (mt). According to § 672.20(c)(1), comments on the amounts specified in this notice are invited from the public for 30 days after this notice is filed for public inspection at the Office of the Federal Register. After consultation with the Council, the Secretary will publish a final notice in the **Federal Register** specifying the final PSC amounts, annual TACs, and apportionments for the new fishing year. These amounts will replace the corresponding amounts for the previous year.

The TACs are apportioned initially among DAP, JVP, TALFF, and reserves for each species under § 611.92(c)(1) and § 672.20(a). The DAP amounts are intended for harvest by U.S. fishermen for delivery and sale to U.S. processors; JVP amounts are intended for joint ventures in which U.S. fishermen deliver these catches to foreign processors at sea; and TALFF amounts are intended for harvest by foreign fishermen.

Under § 672.20(a)(2)(ii), the reserves for the Gulf of Alaska are 20 percent of the sum of the TACs for pollock, Pacific cod, flounder (flatfish species), and "other species." Under § 672.20(a)(2)(ii) and (d)(1)(i), these reserve amounts may be set aside, if necessary, for possible reapportionment to DAP and/or to JVP if the initial apportionment prove inadequate. Reserves which are not reapportioned to DAP or JVP may be reapportioned to TALFF. Other groundfish target species, including sablefish, "other rockfish," pelagic shelf rockfish, demersal shelf rockfish, and thornyhead rockfish are fully utilized by DAP and no reserves are established.

Amendment 21 to the FMP was adopted by the Council and submitted to the Secretary for review and approval under section 304 of the Magnuson Act. Regulations are proposed at 55 FR 38347, September 18, 1990. One measure included in the proposed amendment stipulates that one-fourth of the preliminary TACs and apportionments among DAP, JVP, TALFF, and reserves adopted by the Council at its annual September meeting would be implemented on an interim basis on January 1 of a new fishing year. Seasonal apportionment of TACs under provisions of other regulations may be superseded by this interim stipulation.

The Council met September 25–29, 1990, to review the best available scientific information concerning groundfish stocks. At the time of the Council meeting, no new information was available on the status of groundfish stocks relative to current information used for management by the NMFS Regional Director during the 1990 fishing year. A Stock Assessment and Fishery Evaluation Report for the 1990 Gulf of Alaska Groundfish Fishery (SAFE Report) was prepared and presented to the Council by the Gulf of Alaska Plan Team, summarizing 1990 information contained in the November 1989 SAFE Report. That information is also summarized in the **Federal Register** notice that implemented the 1990 groundfish specifications (January 31, 1990, 55 FR 3223). Except for the quantities specified for Pacific cod, the Council proposes the same groundfish specifications in 1991 as specified for the 1990 fishing season. The Council adopted the Advisory Panel's recommendations for a proposed Pacific cod TAC of 80,500 mt. This amount, also recommended by the Plan Team for the 1991 fishing year, is based on fishing mortality equal to Fmsy. (Fmsy is the fishing mortality rate that would yield maximum sustainable yield for the fishery under current environmental conditions). TACs for each species are summarized in Table 1.

TABLE 1

[Preliminary ABCs, TACs, one-fourth TACs, DAPs, and one-fourth DAPs of groundfish (metric tons) for the Western/Central (W/C), Western (W), Central (C), and Eastern (E) Regulatory Areas and in the West Yakutat (WYK), Southeast Outside/East Yakutat (SEO/EYK), Gulf-Wide (GW), and Southeast Outside (SEO) Districts of the Gulf of Alaska. Amounts specified as joint venture processing (JVP) and total allowable level of foreign fishing (TALFF) are proposed to be zero and are not shown in this table. Reserves are proposed to be apportioned to DAP on January 1 and are included in these amounts.]

Species	Area[1]	ABC	TAC–DAP–DAH	¼ TAC–DAP
Pollock	W/C	83,750	83,750	15,938
	Shelikof	6,250	6,250	1,562
	E	3,400	3,400	850
Total		73,400	73,400	18,350
Pacific cod	W	29,500	19,800	4,950
	C	59,500	39,700	9,925
	E	1,000	1,000	250
Total		90,000	60,500	15,125
Flatfish (deepwater)[2]	W	16,300	3,650	912
	C	77,700	15,300	3,825
	E	14,400	3,050	763
Total		108,400	22,000	5,500
Flatfish (shallow water)[3]	W	30,200	3,570	892
	C	52,200	6,180	1,545
	E	2,100	250	63
Total		84,500	10,000	2,500
Arrowtooth flounder	W	27,000	4,450	1,112
	C	141,000	23,170	5,793
	E	26,600	4,380	1,095
Total		194,600	32,000	8,000
Sablefish	W	3,800	3,770	942
	C	11,800	11,700	2,925
	WYK	4,600	4,550	1,138
	SEO/WYK	6,000	5,980	1,495
Total		26,200	26,000	6,500
Other Rockfish[4 5]	W	4,300	4,300	1,075
	C	7,700	7,700	1,925
	E	5,700	5,700	1,425
Total		17,700	17,700	4,425
Pelagic shelf rockfish[6]	W	1,400	1,400	350
	C	5,800	5,800	1,450
	E	1,000	1,000	250
Total		8,200	8,200	2,050
Demersal shelf rockfish[7]	SEO	Unknown	470	118
Thornyhead rockfish	GW	3,800	3,800	950
Other Species[8]	GW	N/A	14,179	3,545
Total		606,800	268,249	67,063

[1] See figure 1 of § 672.20 for description of regulatory areas/districts.
[2] The category "deepwater flatfish" means rex sole, Dover sole, and flathead sole.
[3] The category "shallow-water flatfish" means flatfish not including rex sole, Dover sole, flathead sole, or arrowtooth flounder.
[4] The category "other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat and East Yakutat Districts includes Slope rockfish and Demersal shelf rockfish. The category "other rockfish" in the Southeast Outside District includes Slope rockfish.
[5] The category slope rockfish includes *Sebastes polyspinis* (Northern rockfish), *S. aleutianus* (Rougheye), *S. zacentrus* (Sharpchin), *S. borealis* (Shortraker), *S. aurora* (Aurora), *S. melanostomus* (Blackgill), *S. goodei* (Chilipepper), *S. crameri* (Darkblotch), *S. elongatus* (Greenstriped), *S. variegatus* (Harlequin), *S. wilsoni* (Pygmy), *S. babcocki* (Red banded), *S. jordani* (Shortbelly), *S. diploproa* (Splitnose), *S. saxicola* (Stripetail), *S. miniatus* (Vermilion), and *S. reedi* (Yellowmouth).
[6] The category pelagic shelf rockfish includes *Sebastes melanops* (Black) *S. mystinus*, (Blue) *S. ciliatus* (Dusky) *S. entomelas* (Widow), and *S. flavidus* (Yellowtail)
[7] The category demersal shelf rockfish includes *Sebastes paucispinis* (Bocaccio), *S. nebulosus* (China), *S. caurinus* (Copper), *S. maliger* (Quillback), *S. proriger* (Redstripe), *S. helvomaculatus* (Rosethorn), *S. brevispinis* (Silvergrey), *S. nigrocinctus* (Tiger), *S. rubemmis* (Yelloweye), *S. pinningers* (Canary).
[8] The category "other species" includes Atka mackerel, sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. The TAC is equal to 5 percent of the TACs of the target species.

The sum of the TACs proposed by the Council is 268,249 mt, which falls within the OY range specified by the FMP. The Council, after adopting the TACs, then proposed the 1990 apportionments of the TACs for each species among DAP, JVP, TALFF, and reserve. New information was not available from the U.S. processing industry regarding industry processing capacity and the extent to which that capacity will be used for groundfish species in 1991. No TALFF or JVP specifications were established in the Gulf of Alaska during the 1990 fishing year, the Council proposed no TALFF or JVP specifications for the 1991 fishing year at this time.

The Secretary has reviewed the Council's recommendations for TAC specifications and apportionments and hereby proposes these specifications under § 672.20(c)(1). The Secretary recognizes that public comment and new information may be forthcoming that could cause the Council to change its recommendations at its December 1990 meeting.

2. Proposed Apportionment of Reserves to DAP

The FMP stipulates that 20 percent of each TAC for pollock, Pacific cod, flounder (flatfish species), and the "other species" category be set aside in a reserve for possible reapportionment at a later date (§ 672.20(a)(2)(i) and (d)). Although surveys of DAP processing intent are not yet available under

§ 672.20(d)(2), the Secretary is proposing to reapportion reserves for each species category to DAP, anticipating that domestic harvesters and processors will need all the DAP amounts so specified. The Secretary has reapportioned all the reserves effective on January 1 for the preceding 3 years, including 1990. Specifications of DAP shown in Table 1 of this notice reflect apportioned reserves.

3. Assignments of the Sablefish TAC to Authorized Fishing Gear Users

Under § 672.24(b), which was temporarily redesignated as § 672.24(c) through November 10, 1990, sablefish TACs for each of the regulatory areas and districts are assigned to hook-and-line and trawl gear. In the Central and Western Regulatory Areas, 60 percent of the TAC is assigned to hook-and-line gear and 20 percent is assigned to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is assigned to hook-and-line gear and 5 percent is assigned to trawl gear. Vessels in the Eastern Regulatory Area using gear types other than hook-and-line and trawl gear must treat any catch of sablefish as a prohibited species. Table 2 shows the proposed assignments of sablefish TACs to each gear type.

TABLE 2.—PROPOSED ASSIGNMENT OF SABLEFISH TAC TO GEAR TYPES

[All values are in mt]

Area/district	TAC	Hook-and-line share	Trawl share
Western	3,770	3,020	750
Central	11,700	9,360	2,340
West Yakutat	4,550	4,320	230
Southeast Outside/East Yakutat	5,980	5,680	300
Total	26,000	22,380	3,620

4. Quarterly Apportionments of Pollock TAC

Amendment 19 to the FMP, if approved, would require apportionment of the pollock TAC into equal calendar quarters under § 672.20(a)(2)(ii) of the proposed rule (55 FR 37907, September 14, 1990). If this rule is approved and implemented by the Secretary and the TAC remains the same as in 1990, the proposed quarterly allowances of the pollock TAC will be those listed in Table 3.

TABLE 3.—QUARTERLY ALLOCATION OF POLLOCK TAC

[All values are in mt]

Quarter	Western and central regulatory area	Shelikof Strait
1	11,250	6,250
2, 3, 4	17,500 each quarter including catches in Shelikof Strait.	

According to the proposed § 672.20(a)(2)(ii), the TAC of pollock for the Central and Western regulatory areas will be divided equally into four calendar quarters. Within any fishing year, any unharvested amount of a quarterly allowance will be added in equal proportions to the quarterly allowances of the remaining quarters of that fishing year. Within any fishing year, harvests in excess of a quarterly allowance will be deducted in equal proportions from the quarterly allowances of the following quarters of that fishing year. The TAC for pollock in the Eastern Regulatory Area of 3,400 mt will not be allocated quarterly.

The Regional Director will separately close the pollock directed fishing season in the Western/Central Regulatory Area or the Shelikof Strait District during the first quarter when the TAC for that area or district is reached. He will close the pollock directed fishing season in the Western/Central Regulatory Area, including the Shelikof Strait District, at 12:00 noon, Alaska local time (A.l.t.), on a date during the first calendar quarter when the pollock harvest reaches 17,500 mt in the Western/Central Regulatory Area and the Shelikof Strait District combined.

He will reopen the directed fishing season for pollock in the Western/Central Regulatory Area, including the Shelikof Strait District, at 12:00 noon, A.l.t., during the second, third, and fourth calendar quarters on April 1, July 1, and September 30, respectively. He then will close the pollock directed fishing season during each quarter when the harvest reaches the assigned quarterly apportionment.

Because pollock bycatches will be counted against TAC, the Regional Director intends to manage the pollock harvest during the fourth quarter such that the total annual catch, including any bycatch amounts taken in other directed fisheries during the year, does not exceed the TAC.

5. PSC Limits Relevant to Fully Utilized Species

Under § 672.20(b)(1), if the Secretary determines after consultation with the Council that the TAC for any species or species group will be fully utilized in the DAP fishery, he may specify for each calendar year the PSC limit applicable to the JVP and TALFF fisheries for that species or species group. Any PSC limit specified shall be for bycatch only. Species with a PSC limit shall be treated in the same manner as prohibited species under § 672.20(e) and cannot be retained. Under § 672.20(c)(6), if the Regional Director determines that a PSC limit applicable to a directed JVP or TALFF fishery has been or will be reached, the Secretary will publish a notice of closure in the **Federal Register** prohibiting all further JVP or TALFF fishing in all or part of the regulatory area concerned. The Council has proposed that DAP equal TAC for each species category; therefore, no amounts of groundfish are available for JVP or TALFF.

6. Halibut Prohibited Species Catch Limits

Under § 672.20(f)(2)(i), the Secretary, after consultation with the Council, will publish a notice in the **Federal Register** specifying proposed Pacific halibut PSCs for JVP vessels and DAP vessels. The Council has proposed the following Pacific halibut PSC mortality limits: JVP, 0 mt; DAP, 2,750 mt.

The proposed rule implementing Amendment 21 to the FMP establishes separate limits for hook-and-line and pot gear (55 FR 38347; September 18, 1990). The Council has proposed that DAP Pacific halibut PSC mortality limits be apportioned as follows: trawl, 2,000 mt; hook-and-line, 700 mt; and pot gear, 50 mt. Although the Secretary has not yet made a decision to approve that part of Amendment 21, comments are invited on these proposed apportionments.

The Council is not constrained to any particular PSC limit for the Gulf of Alaska Management Area (GOA). The International Pacific Halibut Commission recommended that (1) halibut bycatch mortality not exceed 6,000 mt in the North Pacific, (2) halibut bycatch mortality in the Bering Sea and Aleutian Islands Management Area be limited to 4,000 mt, and (3) halibut bycatch mortality in the GOA be limited to 2,000 mt.

During each year from 1986 through 1989, the Council has recommended a 2,000 mt bycatch mortality limit for Pacific halibut in the GOA. Only fishing with bottom trawls would have been

affected if this limit had been reached in those years.

In 1990, however, the Council recommended an additional bycatch mortality limit of 750 mt for fixed gear. An emergency rule published on August 17, 1990 (55 FR 33715), that is in effect until November 12, 1990, exempted pot gear from the fixed gear halibut PSC mortality limit because observer data indicated that bycatch rates in groundfish pot fisheries were very low. Accordingly, all 750 mt was allocated to hook-and-line gear.

Under § 672.20(f)(2), the Secretary is proposing the Council's recommendations for Pacific halibut PSC limits applicable to DAP for 1991. He will base final determinations on the annual halibut PSC limits upon the following information required by this section:

(A) Estimated halibut bycatch in prior years

In the preliminary SAFE Report, total halibut bycatch mortalities through August 25, 1990, attributed to each gear category were as follows: trawl, 1,493 mt; hook-and-line, 954 mt; and pot gear, 22 mt. This mortality is based on bycatch information obtained from observers during the 1990 fishing year and extrapolated to total bycatches of halibut by these three gear categories.

Some halibut die after being caught and discarded at sea. Rates of halibut mortality for the various DAP fisheries are assumed to be 50 percent for halibut caught with trawl gear, 13 percent for halibut caught with hook-and-line gear, and 12 percent for halibut caught with pot gear. Information on the condition of halibut will be obtained from the NMFS Observer Program Office and will be reviewed by the Council's Plan Team for consideration by the Council at its December 1990 meeting. Comments are invited from the public, however, on the appropriateness of the above listed mortality rates.

(B) Expected changes in groundfish catch and (C) expected changes in groundfish biomass

At this time, no information is available on expected changes in groundfish catch or biomass.

(D) Current estimates of halibut biomass and stock condition

The SAFE Report indicates that, although the condition of halibut stocks is good, a general coast-wide annual decline of about 5 percent in halibut biomass is apparent. In the Gulf of Alaska, annual biomass decline is about 15 percent in Area 2C (Southeast Alaska). In Area 3A, however, no decline in biomass is apparent.

(E) Potential Impacts of Expected Fishing for Groundfish on Halibut Stocks and U.S. Halibut Fisheries; (F) Methods Available for and Costs of Reducing Halibut Bycatches in Groundfish Fisheries; and (G) other Biological and Socioeconomic Information That Affects the Consistency of Halibut PSC Limits With the Objectives of This Part

Information for (E), (F), and (G) is not available at this time, although relevant information will be available for public comment at the December 3–7, 1990, meeting of the Council in Anchorage, Alaska. The public also is invited to provide information about all the above types. The Secretary will make all relevant information available when he makes final determinations on PSC limits.

7. Seasonal Allocations of the Halibut PSC Limits

Under § 672.20(f)(2) of the proposed rule implementing Amendment 21 to the FMP, the Secretary, after consultation with the Council, will publish a notice in the Federal Register specifying the final halibut PSC limits and seasonal allocations thereof, as well as target fishery categories for the next year. Although the Secretary has not yet made a decision to approve that part of Amendment 21, comments are invited on these proposed allocations. The Council recommended that the PSC limits be seasonally allocated among trawl, hook-and-line, and pot gear as listed in table 4.

TABLE 4.—PROPOSED SEASONAL ALLOCATION OF HALIBUT PSC LIMITS BETWEEN GEAR TYPES AND SEASONS.

(All values are in mt)

Gear	Quarter	Percentage	Amount
Trawl	1	20	400
	2	30	600
	3	30	600
	4	20	400
Total			2,000
Hook-and-line	1	20	140
	2	30	210
	3	30	210
	4	20	140

TABLE 4.—PROPOSED SEASONAL ALLOCATION OF HALIBUT PSC LIMITS BETWEEN GEAR TYPES AND SEASONS.—Continued

[All values are in mt]

Gear	Quarter	Percentage	Amount
Total			700
Pot	1,2	50	25
	3,4	50	25
Total			50

Under § 672.20(f)(2) of the proposed rule implementing Amendment 21 top the FMP, the Secretary will make final determinations on seasonal allocations of halibut PSC based on the following types of information:

(A) Seasonal distribution of halibut,
(B) Seasonal distribution of target groundfish species relative to halibut distribution,
(C) Expected halibut bycatch needs on a seasonal basis relevant to changes in halibut biomass and expected catches of target groundfish species,
(D) Expected variations in bycatch rates throughout the fishing year,
(E) Expected changes in directed groundfish fishing seasons,
(F) Expected start of fishing effort, and
(G) Economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

At this time, these types of information are not available. Again, relevant information will be available for public comment at the December 3–7, 1990, Council meeting in Anchorage, Alaska. Comments are invited, which the Secretary may use when making his final determinations.

Classification

This action is taken under § 611.92 and § 672.20 and complies with Executive Order 12291.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: November 8, 1990.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90–26880 Filed 11–9–90; 5:06 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 222
Friday, November 16, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 9, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) How often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin, Bldg., Washington, DC 20250, (202) 447–2118.

Reinstatement

- Farmers Home Administration

7 CFR 1956–B, Debt Settlement—Farmer Programs and Housing FmHA 1956–1
On occasion
Individuals or households; State or local governments; farms; businesses or other for-profit; small businesses or organizations; 29,900 responses; 14,825 hours; not applicable under 3504(h)
Jack Holston (202) 382–9736

Emergency

Forest Service
36 CFR part 223—Disposal of National Forest Timber/Timber Export and Substitution Restrictions
Recordkeeping; one time only
Businesses or other for-profit; Federal agencies or employees; small businesses or organizations; 400 responses; 965 hours; not applicable under 3504(h)
Ron Lewis (202) 475–3755

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 90–27016 Filed 11–15–90; 8:45 am]

BILLING CODE 3110-01-M

Animal and Plant Health Inspection Service

[Docket No. 90–224]

General Conference Committee of the National Poultry Improvement Plan; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

PLACE, DATES, AND TIMES OF MEETING: The meeting will be held at the United States Department of Agriculture, Room 3854, South Building, 14th and Independence Avenue SW., Washington, DC, on December 5, 1990, from 9 a.m. to 4:30 p.m. The meeting will reconvene the following day, December 6, from 9 a.m. to noon.

FOR FURTHER INFORMATION CONTACT: Dr. Irvin L. Peterson, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, Room 771, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7768.

SUPPLEMENTARY INFORMATION: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan (Committee). The Committee makes recommendations to the Department concerning the poultry industry and the poultry improvement regulations contained in 9 CFR Parts 145 and 147.

Topics to be discussed at the meeting include:

1. Status of *Salmonella enteritidis* control in the egg industry.
2. Review of actions developed during the Biennial Conference.
3. Review of mycoplasma programs and availability of mycoplasma reagents.
4. Plans for the National Poultry Improvement Plan and possible changes in the program's format.

The meeting will be open to the public. Those interested in expressing their views concerning the above topics or other aspects of the National Poultry Improvement Plan should send their written comments, prior to or following the meeting, to Dr. Irvin L. Peterson at the address listed under **"FOR FURTHER INFORMATION CONTACT."** The Committee will also accept written comments at the time of the meeting. Please refer to Docket Number 90–224 when submitting your comments.

Written comments received by Dr. Peterson may be inspected in Room 771 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

This notice is given in compliance with the Federal Advisory Committee Act (Pub. L. 92–463).

Done in Washington, DC, this 9th day of November.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–26979 Filed 11–15–90; 8:45 am]

BILLING CODE 3410-34-M

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 Stat. 770–776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.
Date and Time: December 6, 1990, 8:30 a.m.–5:00 p.m.; December 7, 1990, 8:30 a.m.–12:00 Noon.
Place: Hacienda del Sol, 5601 N. Hacienda del Sol Road, Tucson, Arizona 85718.
Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.
Comments: The public may file written comments before or after the meeting with the contact person listed below.
Purpose: To evaluate and recommend proposals for cooperative research on

problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State Agricultural Experiment Stations.

Contact Person for Agenda and More Information: Dr. John A. Naegele, Executive Secretary, U.S. Department of Agriculture, Cooperative State Research Service, Room 328, Aerospace Building, Washington, DC 20250–2200, Telephone: 202–401–4587.

Done at Washington, DC this 2nd day of November, 1990.

John Patrick Jordan,

Administrator Cooperative State Research Service.

[FR Doc. 90–27052 Filed 11–15–90; 8:45 am]

BILLING CODE 3410–22–M

Food Safety and Inspection Service

[Docket No. 90–024N]

SLD Policy Memoranda; Semi-Annual Listing

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document lists and makes available to the public memoranda issued by the Standards and Labeling Division (SLD), Regulatory Programs, Food Safety and Inspection Service (FSIS), which contain significant new applications or interpretations of the Federal Meat Inspection Act, the Poultry Products Inspection Act, the regulations promulgated thereunder, or departmental policy concerning labeling.

FOR FURTHER INFORMATION CONTACT: Ashland L. Clemons, Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6042.

SUPPLEMENTARY INFORMATION: FSIS conducts a prior approval program for labels or other labeling (specified in 9 CFR 317.4, 317.5, 381.132 and 381.134) to be used on federally inspected meat and poultry products. Pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), and the regulations promulgated thereunder, meat and poultry products which do not bear approved labels may not be distributed in commerce.

FSIS's prior label approval program is conducted by label review experts within SLD. A variety of factors, such as continuing technological innovations in food processing and expanded public concern regarding the presence of various substances in foods, has generated a series of increasingly complex issues which SLD must resolve as part of the prior label approval process. In interpreting the Acts or regulations to resolve these issues, SLD may modify its policies on labeling or develop new ones.

Significant or novel interpretations or determinations made by SLD are issued in writing in memorandum form. This document lists four SLD policy memoranda which were issued during the period of April 1, 1990, through October 1, 1990.

Persons interested in obtaining copies of the following SLD policy memoranda, or in being included on a list for automatic distribution of future SLD policy memoranda, may write to: Printing and Distribution Section, Paperwork Management Branch, Administrative Services Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Memo No.	Title and date	Issue	Reference
041A	Labeling of Boneless Ham Products, August 2, 1990.	Under what circumstances are the product names for ham products acceptable without qualification and when must the product names be qualified?	(Supersedes Policy Memo 041); 9 CFR 317.2(b)(13).
090A	Protective Coverings, September 26, 1990	Under what circumstances can immediate containers be considered protective coverings?	(Supersedes Policy Memo 090); 9 CFR 318.17.
098B	Labeling and Use of Beef Cheek Meat and Beef Head Meat, and Pork Cheek Meat and Pork Head Meat, August 1, 1990.	What guidelines should be followed for the labeling and use of beef cheek meat and/or beef head meat, and pork cheek meat and/or pork head meat?	(Supersedes Policy Memo 098A); 9 CFR 319.15, 319.81, 319.100, 319.300, 319.301, and 319.503.
120	Sausage Type Products with Fruits and Vegetables, August 1, 1990.	What are the standards and labeling requirements for sausage type products that contain unexpected ingredients, such as fruits, vegetables, wild rice, or nuts?	Policy Memos 010 and 011.

The SLD policy specified in these memoranda will be uniformly applied to all relevant labeling applications unless modified by a future memoranda or more formal Agency actions. Applicants retain all rights of appeal regarding decisions based upon these memoranda.

Done at Washington, DC, on: November 13, 1990.

Ashland L. Clemons,

Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service.

[FR Doc. 90–27030 Filed 11–15–90; 8:45 am]

BILLING CODE 3410–DM–M

Forest Service

Establishment of Guatay Mountain Purchase Unit, San Diego County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of establishment of Guatay Mountain Purchase Unit.

SUMMARY: The Secretary of Agriculture has established the Guatay Mountain Purchase Unit in San Diego County, California.

EFFECTIVE DATE: Establishment of the Guatay Mountain Purchase Unit was effective October 11, 1990.

FOR FURTHER INFORMATION CONTACT: Gordon H. Small, Director, Lands, USDA, Forest Service, P.O. box 96090, Washington, DC 20090–6090, (202) 453–8248 or Ralph Bauman, Director, Lands and Real Estate Management, 630 Sansome Street, San Francisco, California 94111, (415) 705–2744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority under section 17, Public Law 94–588 (90 Stat. 2949), the Secretary of Agriculture has established the 522-acre Guatay Mountain Purchase Unit in San Diego County, California. The Guatay Mountain Purchase Unit is adjacent to the Cleveland National Forest.

A copy of the Secretary's establishment document which includes the legal description of the lands within the Guatay Mountain Purchase Unit appears at the end of this notice.

November 2, 1990.

F. Dale Robertson,

Chief, Forest Service.

Guatay Mountain Purchase Unit San Diego County, California

Pursuant to the Secretary of Agriculture's authority under section 17, Public Law 94–588 (90 Stat. 2949) a 521.99-acre purchase unit is being established as described in Exhibit A attached hereto.

These 521.99 acres, more or less, are adjacent to the Cleveland National Forest boundary created under the Organic Administration Act of June 4, 1897.

In addition to the watershed suitability of the lands described in Exhibit A, the area is vital for the production and preservation of the Tecate cypress, a State of California listed rare species.

Dated: October 11, 1990.

Clayton Yeutter,

Secretary.

Exhibit A—Legal Description of Proposed Purchase Unit Guatay Mountain, Cleveland National Forest

Being a portion of land adjacent to the administrative boundary of the Cleveland National Forest, within San Diego County, located within the Cuyamaca Rancho, in Township 15 South, Range 4 East, San Bernardino Meridian, more particularly described as follows:

Beginning at the intersection of the Easterly Right-of-Way limit of State Highway 79 and the most Southerly boundary line of the Cuyamaca Rancho (which is coincidental with the North section line of section 30, T.15S., R.4E., S.B.M.); thence, Northeasterly along the Easterly Right-of-Way limit of State Highway 79 to the junction of State Highway 79 and Old Highway 80 (now known as Forest Road 16S06); thence, along the Southerly Right-of-Way limit of Old Highway 80 to a point on the intersection of the Southerly Right-of-Way of Old Highway 80 and the Easterly boundary of the Cuyamaca Rancho (which is coincidental with the Westerly section line of Section 21, T.15S., R.4E., S.B.M.); thence, S 36° 05' 10" W, 4104.47 feet along the Easterly boundary of said rancho to Corner Number 9 of the said rancho; thence, N 87° 07' 53" W, 3926.21 feet along the Southerly boundary of said rancho to the point of beginning; land is also described in Deeds 90–013385, 87–052553 and 83–062111 in the Book of Official Records, San Diego County, California.

Contains 521.99 acres, more or less.

[FR Doc. 90–26793 Filed 11–15–90; 8:45 am]

BILLING CODE 3410–1–M

Soil Conservation Service

Lick Creek Watershed, Virginia

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Lick Creek Watershed, Russell, Wise, and Dickinson Counties, Virginia.

FOR FURTHER INFORMATION CONTACT: George C. Norris, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240–9999, telephone 804/771–2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federallyy assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, George C. Norris, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood prevention and critical area treatment. The planned works of improvement include two small dams, approximately 4,000 feet of channel clearing, and snagging and stream bank stabilization.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting William H. Farmer, Jr., 4405 Bland Road, suite 205, Raleigh, North Carolina 27609, telephone 919/790–2890.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Dated: November 7, 1990.

George C. Norris,

State Conservationist.

Introduction

Lick Creek Watershed is proposed for federal assistance under Public Law 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was developed along with the watershed plan. This assessment was conducted in consultation with local, state, and federal agencies, as well as interested organizations and individuals. Data developed during the assessment is available for public review at the following location: United States Department of Agriculture, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240–9999.

Recommended Action

The recommended plan consists of two floodwater retarding structures, approximately 4,000 feet of clearing and snagging, and approximately one-half acre of stream bank stabilization. The flood prevention structures will be constructed of roller compacted concrete, and will store rainfall runoff from a 100-year, 24-hour storm.

Effects of Recommended Action

The proposed action will reduce floodwater damages in the Dante, Virginia, community. Quality of life in the area will be enhanced along with a significant reduction of threat of loss of life.

During the scoping process there were very few environmental effects that appear to be of concern. One concern was the amount of sediment that will enter the streams during construction. This issue was resolved by informing the Virginia Department of Game and Inland Fisheries that erosion and sediment control measures will be practiced prior to, during, and after construction of the dams. Concrete mixing will occur a safe distance from the stream so as to avoid spills into the water body. Specifications for such measures will be part of the contractor's package. An herbaceous plant mixture selected to provide habitat value to wildlife will be established in areas effected by construction. In addition, scattered plantings of wildlife shrubs will be established to replace the limited loss of habitat.

The direct effect of constructing a floodwater retarding structure on both Sawmill Hollow and Straight Hollow will be the loss of 3,168 feet of free flowing stream of limited habitat diversity. In addition, 10 acres of poor quality upland wildlife habitat will be converted to permanent water dams, and access roads.

Impoundments on Sawmill Hollow and Straight Hollow are expected to improve downstream water quality by settling out sediments and the attached pollutants carried in the inflow. Organic material and other nutrients will also settle out or be utilized by riparian vegetation and the plant life and organisms in the water profile.

The State Historic Preservation Office has been contacted to verify if any known historical or archaeological resources exist at the project sites. In addition, Geneva Mullens, president of the local historical society, in consultation with local references has been contacted. No historical or archaeological sites are known to exist in the project area.

Alternatives

Alternatives to the recommended action are:

1. No action.
2. Construction of one structure only

Consultation—Public Participation

Input and involvement of the public have been solicited throughout the planning of the project.

On September 14, 1988, a public meeting was held at the Dante firehouse to discuss public solutions to flood problems and the role and process of the Public Law 83-566 program. The NC/VA Watershed Planning staff presented results of hydrologic, hydraulic, economic, and engineering studies. The meeting participation indicated a strong support for potential solutions and identified additional problems with the lack of adequate sewage treatment and the need for a water supply.

In addition, an interagency scoping meeting was held on February 28, 1990, with federal, state, and local agencies to surface any environmental concerns regarding the project. Those agencies invited are listed below.

US Army Corps of Engineers
US Fish and Wildlife Service
US Environmental Protection Agency
US Forest Service
Virginia State Water Control Board
Virginia Department of Game and Inland Fisheries [1]
Virginia Department of Transportation [1]
Virginia State Historic Preservation Office
Clinch Valley Soil and Water Conservation District [1]
Russell County Board of Supervisors [1]
Intergovernmental Review Office
Council on the Environment

On August 8, 1990, a public meeting was held at the Dante Elementary School to answer questions about the recommended project. The meeting was well attended and generated frank discussions. A video illustrating how the project would appear upon completion was shown to all attenders.

Conclusion

The environmental assessment summarized for Lick Creek Watershed indicates that this federal action will have no significant adverse local, regional, or national impacts on the environment, and further documented action under NEPA guidelines is not needed.

Dated: November 7, 1990.

George C. Norris,

State Conservationist.

[FR Doc. 90-27069 Filed 11-15-90; 8:45 am]

BILLING CODE 3410-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of a Request for Bilateral Consultations with the People's Republic of Bangladesh

November 9, 1990.

[1] Denotes agencies attending the February 28, 1990, scoping meeting.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On October 31, 1990, under the terms of Article 3 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, as further extended on July 31, 1986, the Government of the United States requested consultations with the Government of the People's Republic of Bangladesh concerning cotton shop towels in Category 369-S (only HTS number 6307.10.2005), produced or manufactured in Bangladesh.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the People's Republic of Bangladesh, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton shop towels in Category 369-S, produced or manufactured in Bangladesh and exported during the twelve-month period which began on October 31, 1990 and extends through October 30, 1991, at a level of not less than 688,801 kilograms.

A summary market statement concerning Category 369-S follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 369-S, or to comment on domestic production or availability of products included in Category 369-S is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230, Attn: Public Comments.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 369-S. Should such a solution be reached in consultations with the Government of the People's Republic of Bangladesh, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Import Situation and Conclusion

U.S. imports and the cotton shop towels, Category 369-S, from Bangladesh reached 22,153,750 units in the year ending July 1990, 16 times the 1,380,000 units imported a year earlier. During the first seven months of 1990, Bangladesh shipped 18,242,500 units, 35 times their January-July 1989 level and four times their total calendar year 1989 level. Bangladesh is the largest supplier of cotton shop towels accounting for 19 percent of total Category 369-S imports during January-July 1990. In calendar year 1989, Bangladesh was the ninth largest supplier accounting for 3 percent of total Category 369-S imports.

The sharp and substantial increase of Category 369-S imports from Bangladesh is disrupting the U.S. market for cotton shop towels.

Import Penetration and Market Share

U.S. production of cotton shop towels dropped to 148,000,000 units in calendar year 1989, 10 percent below the calendar year 1988 level. U.S. production contained to decline in 1990, dropping 6 percent in the first six months of 1990 compared to the same period of 1989. In contrast, U.S. imports of Category 369-S from all sources increased 19 percent in calendar year 1989. Imports continue to increase in 1990, up 11 percent in the first seven months of 1990 over the January-July 1989 level.

The U.S. producers' share of the cotton shop towel market dropped 7 percentage points, falling from 61 percent in 1988 to 54 percent in 1989. The drop in the U.S. producers' market share continued in 1990, falling to 49 percent during the first half of 1990, the lowest level on record. The ratio of imports to domestic production increased from 65 percent in 1988 to 86 percent in 1989 and reached a record level of 104 percent during January-June 1990.

Duty-Paid Value and U.S. Producers' Price

Category 369-S imports from Bangladesh entered under HTSUSA number 6307.10.2005, cotton shop-towels. These shop towels entered the U.S. at duty paid landed value below the U.S. producers' price for comparable shop towel.

[FR Doc. 90-28977 Filed 11-15-90; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List, Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletion from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from the Procurement List commodities to be produced and services to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 17, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Pin, Ground Safety
1730-00-817-1051

Mask, Surgical
6515-00-982-7493
(Remaining Government Requirement)

Wrapper, Sterilization
6530-01-026-0398

Deck, Covering
7220-00-205-0189

Toothbrush
8530-01-293-1387
8530-01-293-1388

Services

Commissary Warehousing
Nellis Air Force Base, Nevada
Janitorial/Custodial
Federal Building
1st & Oak Streets
Port Angeles, California

Relooping of Link Tube Carriers
Savanna Army Depot Activity
Savanna, Illinois

Deletion

It is proposed to delete the following commodity from the Procurement List:

Creeper, Mechanic's
4910-00-105-7834

Beverly L. Milkman,

Executive Director.

[FR Doc. 90-27077 Filed 11-15-90; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: December 17, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On August 31, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (55 FR 35708) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified workshop to produce these commodities at a fair market price, the impact of the addition on the current or most recent contractor, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 52-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodities listed.

c. The action will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to the Procurement List:

Portfolio
7510-00-579-8554
7510-00-610-0767

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 90-27078 Filed 11-15-90; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board Advisory Committee; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 26-27 November 1990 from 0830 until 1700 both days in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. app. II, (1982)), it has been

determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: November 13, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-27013 Filed 11-15-90; 8:45 am]

BILLING CODE 3105-01-M

Department of the Air Force

Intent To Prepare Environmental Impact Statement for Disposal/Reuse of Mather AFB, CA

The United States Air Force will prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts of disposal and reuse of the property that is now Mather Air Force Base (AFB) near Sacramento, California. On May 14, 1990 the Air Force signed a Record of Decision (ROD) for closure of Mather AFB.

The disposal/reuse EIS will address disposal of the property to public or private entities and the potential impacts of reuse alternatives. All available property will be disposed of in accordance with provisions of the Base Closure and Realignment Act, Public Law 100-526, and applicable federal property disposal regulations.

The Air Force is planning to conduct a scoping and screening meeting on December 5, 1990 at 6:30 p.m. in the Sacramento Board of Education meeting room located at 9738 Lincoln Village Drive, Rancho Cordova, CA. The purpose of the meeting is to determine the environmental issues and concerns to be analyzed, to solicit comments on the proposed action and to solicit proposed reuse/alternatives that should be addressed in the EIS. In soliciting disposal/reuse inputs, the Air Force intends to consider all reasonable alternatives to the proposed action offered by any Federal, State, and local government agency and any Federally-sponsored or private entity or individual with an interest in acquiring available property at Mather AFB. These alternatives will be analyzed in the EIS. The resulting environmental impacts will be considered in making disposal decisions to be documented in the Air Force's Final Disposal Plan for Mather AFB.

To ensure the Air Force will have sufficient time to consider public inputs on issues to be included in the disposal/reuse EIS and disposal alternatives to be included in the Final Disposal Plan, comments and reuse proposals should be forwarded to the address listed below by December 21, 1990. However, the Air Force will accept comments at the address below at any time during the environmental impact analysis process.

For further information concerning the study of Mather AFB disposal/reuse and EIS activities, contact: Lt Col Tom Bartol, AFRCE-BMS/DEV, Norton AFB, CA 92409-6448, (714) 382-4891.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-28867 Filed 11-15-90; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Intent To Prepare an Environmental Impact Statement for Proposed Construction and Operation of an Optical Interferometer, Monterey County, CA

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500-1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of proposed construction and operation of an optical interferometer in Monterey County, California.

The optical interferometer is a type of astronomical telescope which would provide high accuracy measurement of exact star positions. This instrument would provide important new information on the diameters and position of stars. Data obtained would be used in military and civilian navigation, the space program, and many fields of astronomical science.

The optical interferometer requires very stable atmospheric conditions in order to operate efficiently. Based on atmospheric test data, three alternative sites have been identified for evaluation in the EIS:

1. Adjacent to the existing U.S. Air Force satellite tracking station on Anderson Peak, Los Padres National Forest, Monterey County, California.
2. Adjacent to an existing private observatory on Chew's Ridge, Los Padres National Forest, Monterey County, California.
3. Adjacent to the existing Naval Observatory near Flagstaff, Coconino County, Arizona.

The facility would consist of three small buildings totalling 1,020 square feet (each about 340 square feet) to house optical mirrors; an underground optical facility of about 4,025 square feet for mirrors, measurement equipment and electronic equipment; and an operations support building of about 4,760 square feet for computer equipment, offices, optical shop/lab, mechanical equipment, storage spaces, and sleeping and dining space for transient personnel. Total constructed area would be about 10,600 square feet of building and parking area; a fence encompassing three to five acres would provide physical security. Access to the site would be provided by existing roadways. The facility would generate minimal traffic as facility staff would consist of no more than six scientists.

The U.S. Forest Service has agreed to act as a cooperating agency pursuant to 40 CFR 1501.6. Should a site on land administered be the Forest Service by selected for construction of the proposed facility, the Forest Service would issue a special use permit for construction, operation and maintenance of the proposed facility.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold a public scoping meeting on December 11, 1990, beginning at 6:30 pm, in the Big Sur Lodge Conference Center, Julia Pfeiffer Burns State Park, Monterey, California. This meeting will be advertised in Monterey County area newspapers.

A formal presentation will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to 5 minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address.

While a scoping meeting will not be held in the Flagstaff area, the public is encouraged to provide written comment on this proposed action. Written statements and or questions regarding the scoping process should be mailed no later than January 15, 1990 to Ms. Patricia Duff (telephone (415) 244-3715), Western Division, Naval Facilities Engineering Command, P.O. Box 727, San Bruno, California 94066.

Dated: November 13, 1990.

Wayne Baucino,

I.T. JAGC, USNR., Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 90-27194 Filed 11-15-90; 8:45 am]

BILLING CODE 3810-AE-M

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Energy Task Force will meet December 10, 1990 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to assess the Navy's potential role in strategic defense architecture, and related intelligence. The entire agenda for the meeting will consist of discussions of key issues regarding strategic defense systems in support of U.S. national security. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense, and, are in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this matter, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: November 2, 1990.

Wayne T. Baucino,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 90-27050 Filed 11-15-90; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy, and the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangements to be carried out under the above-mentioned agreements involves approval of the following retransfers: RTD/JA(NO)-4, for the transfer from Norway to Japan of 7 irradiated test fuel rods for post irradiation examination and re-irradiation. The fuel rods contain 1,730 grams of uranium, enriched to approximately 2.54 percent in the isotope uranium-235, and 29 grams of plutonium.

RTD/JA(NO)-5, for the transfer from Norway to Japan of 6 irradiated test fuel rods for post irradiation examination. The fuel rods contain 2,170 grams of uranium, enriched to approximately 1.43 percent in the isotope uranium-235, and 17 grams of plutonium.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on November 13, 1990.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 90-27056 Filed 11-15-90; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement, Peaceful Uses of Atomic Energy

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/SD(EU)-59, for the retransfer of 5,460 fuel spheres, containing 32.626 kilograms of uranium, enriched to 16.75 percent in the isotope uranium-235, from the Federal Republic of Germany to Switzerland, for research at the PROTEUS critical experimental facility.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on November 13, 1990.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 90-27507 Filed 11-15-90; 8:45 am]

BILLING CODE 6450-01-M

Response Actions at a FUSRAP Site in Maywood, NJ: Intent To Prepare a Remedial Investigation/Feasibility Study-Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of intent to prepare a Remedial Investigation/Feasibility Study-Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Department of Energy (DOE), as part of its Formerly Utilized Sites Remedial Action Program (FUSRAP), intends to conduct a comprehensive environmental review and analysis of the Maywood site to determine the nature, extent, and environmental impacts of existing contamination at the site and to evaluate alternative response actions. The Maywood site is comprised of the Maywood Interim Storage Site (MISS) and various vicinity properties—including the adjacent Stepan Company property and numerous residential, commercial, and governmental (Federal, State, and municipal) properties in Maywood, Rochelle Park, and Lodi, New Jersey. The environmental review and analysis will integrate the requirements of both the National Environmental Policy Act (NEPA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA)—hereafter referred to as CERCLA. The environmental impact statement (EIS) requirements under NEPA will be incorporated into the remedial investigation/feasibility study (RI/FS) requirements of CERCLA. The resulting report will be the RI/FS-EIS. DOE also announces its intent to conduct a public scoping meeting.

ADDRESSES: Comments or suggestions on the scope of the RI/FS–EIS and requests to speak at the scoping meeting discussed below in the Scoping section should be addressed to: Mr. Lester K. Price, Director, Technical Services Division, U.S. Department of Energy, Oak Ridge Operations Office, Post Office Box E, Oak Ridge, Tennessee 37831, (615–576–0948).

FURTHER INFORMATION: For further information on DOE's EIS process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202–586–4600).

For further information on DOE's RI/FS process, please contact: Ms. Kitty Taimi, Director, Office of Environmental Compliance, EH–22, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202–586–9024)

DATES: Written comments or suggestions postmarked on or before December 17, 1990 will be considered in the course of implementing the integrated CERCLA/NEPA process and its documentation. Comments or suggestions postmarked after that date will be considered to the maximum extent practicable. A scoping meeting will be held at the Nellie K. Parker School, 261 Maple Hill Drive, Hackensack, New Jersey 07601, on December 6, 1990, at 7:00 p.m. local time. Requests to speak at this meeting should be forwarded to Mr. Price at the above address by December 3, 1990. Requests to speak may also be made during registration for the meeting.

SUPPLEMENTARY INFORMATION:

Background.

The FUSRAP was established in 1974 by the Atomic Energy Commission (AEC), a predecessor agency of the DOE. The primary objective of FUSRAP is to identify and decontaminate sites where radioactive contamination remains from the early years of the nation's atomic energy program or from commercial operations causing conditions that Congress has mandated DOE to remediate. The goals of decontamination under FUSRAP are to (1) control radioactive contamination at the sites, in compliance with applicable or relevant and appropriate requirements for the protection of human health and the environment, and (2) to the extent possible, certify the sites for use without radiological restrictions following decontamination.

The Maywood site is in a highly developed area that is north-northwest of downtown Manhattan (New York City) and northeast of Newark, New Jersey. The site is located within the borough of Maywood, the borough of Lodi, and the township of Rochelle Park, New Jersey. The Maywood site includes the MISS; the Stepan Company property (former Maywood Chemical Works), a vicinity property; and numerous other vicinity properties (residential, commercial, Federal, State, and municipal). (A vicinity property is an area, not owned or controlled by DOE, that is radioactively contaminated above DOE guidelines for residual radioactive material as a result of previous processing of radioactive materials.) The MISS and Stepan Company property are adjacent to each other on the site of the former Maywood Chemical Works property. The MISS contains an interim storage pile. The Stepan Company property contains three sites on which radioactive processing wastes, left from past Maywood Chemical Works operations, were buried by the Stepan Company. The other vicinity properties are roughly to the south and west of the MISS in Maywood, Lodi, and Rochelle Park.

The Maywood site became radioactively contaminated as a result of thorium processing at the former Maywood Chemical Works. In addition, some properties in the borough of Lodi became contaminated as a result of materials being removed from the Maywood site for fill or stream deposits being carried by Lodi Brook, which originates at the Maywood Chemical Works. Radioactive contaminants identified for the Maywood site are those associated with the thorium-232 and uranium-238 radioactive decay chains.

The Maywood Chemical Works was established in 1895. In 1916, the company began processing monazite sand to extract thorium for use in manufacturing gas mantles for various lighting devices and to extract rare earth metals. The company continued extraction operations until 1956 and processing operations with stockpiles until 1959. Process wastes from manufacturing operations were pumped to areas surrounded by earthen dikes on property west of the plant. Subsequently, some of these contaminated wastes migrated onto adjacent properties. In 1932, New Jersey Route 17 was built through the Maywood Chemical Works property over the earthen dikes, separating the property into two areas. Tunnels were constructed under Route 17, apparently to allow continued access between the two areas.

In 1954, the AEC (now the Nuclear Regulatory Commission) issued a license to the Maywood Chemical Works to possess, process, manufacture, and distribute radioactive materials, specifically thorium. The Stepan Company (at that time the Stepan Chemical Company) purchased the Maywood facility in 1959 but has never been involved in the manufacture or processing of any radioactive materials at this facility. In 1961, the AEC issued the Stepan Company a license for storage of radioactive materials because of the contaminated wastes buried on-site. Beginning in 1963, the Stepan Company began to stabilize or excavate and rebury radioactive materials on-site. A number of radiological surveys of the property and its vicinity have been conducted to identify the locations of radioactive contamination resulting from past manufacturing and processing activities. Limited chemical sampling has also been performed.

In December 1982, the Environmental Protection Agency (EPA) proposed to include the Maywood site (i.e., the former Maywood Chemical Works site) on its National Priorities List under CERCLA; this listing occurred on September 8, 1983, under the designation, "Maywood Chemical Company Site."

Subsequently, DOE was authorized to undertake a decontamination research and development project at the Maywood site under the FUSRAP by the Energy and Water Development Appropriations Act of 1984, Public Law No. 98–50. In September 1985, a 4.7-ha (11.7-acre) portion of the Stepan Company property was transferred to DOE for use as a storage facility for contaminated materials in order to expedite the cleanup of properties associated with Maywood Chemical Works contamination. This piece of property was designated as the Maywood Interim Storage Site or the MISS.

In 1984, DOE began a program to identify, survey, and designate vicinity properties for cleanup, and then characterize and conduct decontamination actions on the designated properties. To date, 82 vicinity properties have been designated for cleanup. Of the 82 designated properties, 25 have been fully and 1 partially decontaminated, 47 have been characterized, and 9 have been designated but not yet characterized. Designation for cleanup is currently being considered for 10 additional properties.

Soil excavated during decontamination of the 26 fully or partially decontaminated vicinity properties is currently stored on the MISS pending a decision on its final disposition. The interim storage pile at the MISS contains about 27,000 m^3 (35,000 yd^3) of contaminated materials. Removal actions at designated but not yet decontaminated properties would result in the excavation and storage of additional contaminated materials at the MISS. Decontamination efforts have been suspended pending resolution of issues with the borough of Maywood.

The Maywood site—i.e., the MISS, Stepan Company property, and other vicinity properties—may also be contaminated with nonradioactive contaminants. The EPA is conducting a separate RI/FS to determine the nature and extent of nonradioactive contaminants at the Stepan Company property and adjacent properties and to evaluate alternative response actions. At the MISS, limited chemical characterization has detected low levels of volatile organic compounds and one semivolatile organic compound in groundwater. Several metals at levels above background and various organic compounds at low levels were detected in the soil; however, no characteristic hazardous waste, as defined in 40 CFR part 261 (subpart C), has been identified. The EPA has performed additional chemical characterization at the Stepan Company site and adjacent properties. Volatile and semivolatile contaminants were detected at low levels, but no characteristic hazardous waste has been identified.

The responsibility for cleanup of contamination identified at the Maywood site will be divided between DOE and the EPA, based upon DOE's assigned responsibility under the 1984 congressional authorization and a negotiated Federal Facilities Agreement (FFA) between DOE and EPA Region II. The FFA was executed by both parties on September 19, 1990 and is currently available for public review and comment. The public comment period expires on November 19, 1990. The final agreement shall become effective after resolution of significant public comments, if any. Under the FFA, DOE will assume responsibility for:

- All contamination, both radioactive and chemical, whether commingled or not, at the MISS,
- All radioactive contamination occurring on any vicinity property that is above DOE action levels and is related to thorium processing at the former Maywood Chemical Works, and
- Any chemical or nonradioactive contamination on vicinity properties that
  - —Is mixed or commingled with radioactive contamination above DOE action levels, or
  - —Originated at the MISS, or
  - —Was associated with specific thorium manufacturing or processing activities at the former Maywood Chemical Works that resulted in the radioactive contamination.

The FFA does not assign responsibility to DOE for managing areas, other than the MISS, that are only chemically contaminated with no connection to processing or radioactive materials at the former Maywood Chemical Works.

Environmental Review Process

The DOE intends to conduct a comprehensive environmental review and analysis to meet the requirements of CERCLA and NEPA for implementing response actions at Maywood and three other New Jersey sites for which DOE has responsibility for remediation under FUSRAP. The three other sites—located at Wayne, Middlesex, and New Brunswick—have similar contaminants and environmental issues. The Wayne site is located 21 km (13 mi) west of the Maywood site in Passaic County, and the Middlesex and New Brunswick sites are located 50 km (31 mi) southwest of the Maywood site in Middlesex County. The Maywood site involves about 260,000 m^3 (340,000 yd^3) of contaminated materials whereas the Wayne site involves 83,000 m^3 (109,000 yd^3) and the Middlesex site 68,000 m^3 (88,000 yd^3). The New Brunswick site is a recently assigned FUSRAP site and, as such, specific information (i.e., site description, estimated waste volume, and waste characteristics) has not yet been incorporated into planning documents for the new Brunswick site. Because the four sites are not located near each other, DOE is planning to conduct separate response actions under CERCLA at each site.

The CERCLA environmental review and analysis process has two major phases, a remedial investigation and a feasibility study, which are also the titles or partial titles of the reports resulting from these phases. It is DOE policy to integrate the requirements of the CERCLA and NEPA processes for remedial actions at sites for which it has responsibility. Under the integrated policy, the CERCLA process is supplemented, as appropriate, to meet the procedural and documentational requirements of NEPA.

The integrated CERCLA/NEPA process begins with a scoping and planning phase that culminates in a series of planning documents, including the RI/FS work plan. In the work plan, the problems at a site are scoped by analyzing existing data, identifying the contaminants of concern, projecting potential exposure routes, identifying any additional specific information that is available, and specifying tasks required throughout the entire remediation process to fully remediate the site problem.

From the work plan, a field sampling plan is written to obtain the required data. Companion documents include the health and safety plan, the quality assurance project plan, and the community relations plan. The health and safety plan specifies the procedures needed to protect workers and the general public. The quality assurance project plan specifies the procedures, detection levels, and data quality checks to be used in laboratory analyses. The community relations plan outlines procedures to ensure that the public is kept informed and given an opportunity to offer input.

The RI phase of the remediation decision-making process includes activities associated with site investigations, sample analyses, and data evaluation, which are performed to characterize the site and determine the nature and extent of contamination. In addition, applicable or relevant and appropriate requirements must be identified to determine what standards, criteria, regulations, or other constraints should be applied to the proposed action; and bench-scale or pilot studies may be performed to test potentially applicable technologies. The RI phase also includes a baseline risk assessment, i.e., a quantitive assessment of the primary health and environmental threats under various scenarios, including a no-action scenario.

The FS phase is based upon the RI results and includes screening of remedial technologies, identification and screening of response alternatives, development of general performance criteria for each alternative, and detailed evaluation and comparison of plausible alternatives (consistent with both CERCLA and NEPA). Alternatives to be considered include (1) no action; (2) treatment and disposal of wastes either on-site or off-site (off-site disposal would be considered generically, not specifically); and (3) containment or institutional control alternatives that control the threats posed by the hazardous substances and/or prevent exposure.

Examples of specific alternatives for the Maywood site that could be retained through screening include, but are not limited to: (1) no action, (2)

decontamination of the site, and (3) in-site stabilization of the wastes at the site. (The no-action alternative will be developed, as required under NEPA and CERCLA, to provide a baseline for assessing the impacts of the alternatives being considered.

The RI and FS phases can be carried out concurrently. The data collected during the RI phase influence the development of the remedial alternatives in the FS phase, which in turn affects the data needs and scope of treatability studies and can result in additional field investigations.

The RI/FS process will be supplemented as necessary to satisfy NEPA and Council on Environmental Quality regulations (40 CFR parts 1500–1508). The DOE has determined that an EIS is the appropriate NEPA document for the Maywood site. It is DOE policy to prepare an EIS implementation plant to record the results of the NEPA scoping process and to present the approach for preparation of an EIS. An EIS implementation plan will be prepared following the scoping meeting and will be appended to the work plan for Maywood.

The DOE intends to use the RI/FS-EIS for the Maywood site as a lead document for CERCLA/NEPA compliance for the four New Jersey FUSRAP sites. The Maywood RI/FS-EIS will address common issues and cumulative impacts associated with response actions at all of the sites. The CERCLA-NEPA documents for the other sites will present site-specific impacts and summarize, reference, and update the information presented in the lead Maywood document as appropriate.

In addition to the RI/FS for the Stepan Company property, EPA Region II is currently conducting an RI at the Lodi municipal well field in Lodi, New Jersey. The RI/FS-EIS for the Maywood site will include an assessment of the potential impacts of remedial activities proposed for the Lodi well field the Stepan property. Any cumulative impacts identified will be factored into development of the final remedy for the Maywood site.

Nothing in this NOI or in other documents to be prepared is intended to represent a statement on the legal applicability of NEPA to remedial actions under CERCLA.

Preliminary List of Potential Issues

Potential issues related to response actions at the Maywood site include potential environmental impacts as well as factors that may result from or be influenced by implementation of one or more of the remedial alternatives. The preliminary list that follows is based on issues that have been raised relative to other DOE proposals of this nature. Interested parties are invited to participate in the scoping process discussed below and to help refine this list to arrive at the significant issues to be analyzed in depth in the integrated CERCLA/NEPA process and to eliminate from detailed study the issues that are not significant.

The potential major issues that may require analysis in the integrated CERCLA/NEPA process are as follows:

1. Potential radiological impacts in terms of both radiation doses and resulting health risks:
   - –On people, including workers and the public, i.e., individuals and the total population, children and adults, present and future generations;
   - –Along transportation routes and near other sites relevant to the proposed alternatives;
   - –Associated with routine operations and accidents
   - –Associated with various pathways to humans, including surface waters, groundwaters, gases, dusts, particulates, and biota;
   - –Due to natural forces such as erosion and flooding; and
   - –Associated with human intrusion into the contaminated materials.
2. Potential chemical impacts in terms of does and resulting health risks:
   - –On people, including workers and the public; i.e., individuals and the total population, children and adults, present and future generations;
   - –Along transportation routes and near other sites relevant to the proposed alternatives;
   - –Associated with routine operations and accidents;
   - –Associated with various pathways to humans, including air, soil, surface waters, groundwaters, and biota;
   - –Due to natural forces such as erosion and flooding; and
   - –Associated with human intrusion into the contaminated materials.
3. Potential engineering and technical issues:
   - –The most reasonable engineering options for each type of waste/residue;
   - –Probable duration of isolation;
   - –Rates and magnitude of loss of containment;
   - –Related to site-specific geohydrology and ecology;
   - –Related to site-specific wind dispersion patterns; and
   - –Site characterization and research and development work necessary before the decision or before actual implementation of an alternative.
4. Potential issues relative to mitigative measures and monitoring:
   - –Health-physics procedures for workers; and
   - –Control measures for erosion, gases, and dusts.
5. Potential institutional issues:
   - Project-specific criteria for decontamination, effluents, environmental concentrations, and release of a site for use without radiological restrictions;
   - Future institutional controls (monitoring and maintenance); and
   - Institutional issues that need to be resolved before an alternative can be implemented.
6. Potential socioeconomic issues:
   - Effects on land uses, values, and marketability; and
   - Effects on local transportation systems.
7. Cumulative impacts associated with issue categories 1–6 above for the remedial actions proposed to be taken or reasonably foreseeable at the Maywood, Wayne, Middlesex, and New Brunswick sites and at the Lodi well field.
8. Issues related to the CERCLA criteria for selection of a remedial action:
   - Overall protection of human health and the environment;
   - Compliance with applicable or relevant and appropriate requirements;
   - Long-term effectiveness and permanence;
   - Reduction of waste toxicity, mobility, and volume through treatment;
   - Short-term effectiveness;
   - Implementability;
   - Cost;
   - State acceptance; and
   - Community acceptance.

Scoping

The results of the integrated CERCLA/NEPA assessment process for the Maywood site will be presented in the RI/FS-EIS. The draft work plan and companion documents, fact sheets, technical reports, and other information related to DOE activities at the Maywood site have been placed in the Maywood Borough Library at the address noted below. When information repositories are established for the other New Jersey sites, Maywood documents related to those sites will also be placed there.

The scoping process will involve all interested agencies (Federal, State, and local), groups, and members of the public. Comments are invited on the alternatives and the issues t be considered in the integrated CERCLA/NEPA process, as discussed in this NOI and in the draft RI/FS-EIS work plan. A public scoping meeting is scheduled starting at 7 p.m., to be held on December 6, 1990 in Nellie K. Parker School, 261 Maple Hill Drive, Hackensack, New Jersey 07601. This will be an informal meeting but a complete record will be taken and copies of the transcript will be made available as detailed below.

The meeting will be presided over by an independent facilitator, who will explain DOE procedures for conducting the meeting. The meeting will not be conducted as an ev dentiary hearing.

and those who choose to make statements will not be subject to cross examination by other speakers. However, to facilitate the exchange of information and to clarify issues, the DOE and its representatives may respond by answering questions and making short clarifying statements, as necessary or appropriate. To ensure that everyone who wishes to speak has a chance to do so, 5 minutes will be allotted for each speaker and speakers are encouraged to submit a written summary of comments. Depending on the number of persons requesting to be heard, DOE may allow longer times for representatives of organizations; persons wishing to speak on behalf of an organization should identify the organization in their request.

Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting; they will be called on to present their comments if time permits. Written comments or suggestions will also be accepted at the meeting or should be sent to Mr. Lester K. Price at the address given above in the Addresses section, postmarked no later than 30 days after the publication of this notice. Comments or suggestions postmarked after that date will be considered to the maximum extent practicable. Oral and written scoping comments will be given equal weight.

Copies of the scoping meeting transcript, CERCLA/NEPA documents, and major references used in preparing the documents will be available during normal business hours at the Maywood Borough Library, 459 Maywood Avenue, Maywood, NJ, 07607, and at other locations as appropriate. Certain materials have already been placed at the library, e.g., the DOE/Stepan cooperative agreement, contamination surveys and yearly monitoring reports, documentation of the basis for waste volume estimates, information on NRC-licensed burial sites, and draft project plans. The transcript of the scoping meeting will be retained by DOE and a copy will be made available for inspection at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Ave., S.W., Washington, D.C. 20585, during business hours, Monday through Friday. In addition, anyone may make arrangements with the recorder to purchase a copy. When the draft RI/FS-EIS is available, a notice will be published in the Federal Register and local newspapers to announce the locations where the documents can be reviewed.

Those interested parties who do not wish to submit comments or suggestions during the scoping period but who would like to receive a copy of the draft RI/FS-EIS for review and comment, should notify Mr. Lester K. Price at the address given above in the Addresses section.

By mid-summer 1993, DOE expects to issue the final RI/FS-EIS, which will include the proposed plan and responses to public comments received on the draft RI/FS-EIS (responsiveness summary). The DOE will select a remedial action alternative for the site in the Record of Decision to be issued no sooner than 30 days after the final RI/FS-EIS is issued.

Issued in Washington, DC., this 9th day of November, 1990.

Paul D. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 90-27052 Filed 11-15-90; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 et. seq.). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act; nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before December 17, 1990. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–577(A).
3. 1902–0161.
4. Gas Pipeline Certificates: Environmental Impact Statements, Re Interim Rule in Docket No. RM90–14–000, Revisions to Regulations Governing the Replacement of Facilities under the NGA and Construction of Facilities under NGPA Sec. 311 or until Final Rule in Docket No. RM89–1–000 (NOPR) terminates. FERC–577(A) information collection.
5. Extension.
6. On occasion.
7. Mandatory.
8. Business or other for-profit.
9. 55 respondents.
10. 4 responses.
11. 4 hours per response.
12. 880 hours.
13. The Interim Rule in Docket No. RM90–14–000 requires natural gas pipelines to provide at least 30 days notice to the Commission prior to replacing certain facilities or the construction of facilities pursuant to Section 311 of the NGPA. This request is for a two-year extension of existing authority through November 30, 1992.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. § 764(a), 764(b), 772(b), and 790a.

BEST COPY AVAILABLE

Issued in Washington, DC, November 13, 1990.

Yvonne M. Bishop,

Director, Statistical Standards Energy Information Administration.

[FR Doc. 90-27094 Filed 11-15-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. EL87-61-001, et al.]

PSI Energy, Inc., et al.; Electric rate, Small power production, and Interlocking Directorate filings

November 7, 1990.

Take notice that the following filings have been made with the Commission:

1. PSI Energy, Inc.

[Docket Nos. 87EL-61-000 and EL87-61-001]

Take notice that on October 12, 1990 PSI Energy, Inc. (PSI), formerly named Public Service Company of Indiana, Inc., tendered for filing its Refund Compliance Report pursuant to the Commission's Letter Order, dated September 19, 1990.

Comment date: November 21, 1990, in accordance with Standard Paragraph E end of this notice.

2. Niagara Mohawk Power Corp.

[Docket No. ER91-104-000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk.), on November 5, 1990, tendered for filing an agreement between Niagara Mohawk and Public Service Company of New Hampshire (PSNH) dated November 1, 1989.

The November 1, 1989 agreement is to provide for the sale by Niagara Mohawk of up to 92 MW of peaking capacity and related energy to Boston Edison. The term of the agreement was for the period November 1, 1989 through April 30, 1990.

Copies of this filing were served upon Boston Edison Company and the New York State Public Service Commission.

Comment date: November 22, 1990, in accordance with Standard paragraph E at the end of this notice.

3. Louisville Gas and Electric Co.

[Docket No. ER91-34-000]

Take notice that Louisville Gas and Electric Company (Louisville) tendered for filing on October 16, 1990 a Second Supplemental Agreement dated as of July 1, 1990 to the interconnection Agreement dated February 3, 1988, between Louisville and the Wabash Valley Power Association, Inc. (Wabash Valley).

The Second Suplemental Agreement cancels existing Service Schedules and replaces those schedules with new Service Schedules for Emergency Service, Interchange, Seasonal, Short Term, Limited Term and Diversity Power and adopts a new Service Schedule for Reserve Capacity and Back-up Energy. The new Service Schedules establish the applicable charges. There is not estimate of increased revenues from the charges since transactions will occur only as load and capacity conditions dictate. A November 1, 1990 effective date has been requested.

Louisville states that the rates and services were negotiated by the parties.

Copies of the filing were served upon Wabash Valley and the Public Service Commission of Kentucky.

Comment date: November 21, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corp.

[Docket No. ER91-103-000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk), on November 5, 1990, tendered for filing an agreement between Niagara Mohawk and Boston Edison Company dated November 1, 1989.

The November 1, 1989 agreement is to provide for the sale by Niagara Mohawk of 175 MW of peaking capacity and related energy to Boston Edison. The term of the agreement was for the period November 1, 1989 through April 30, 1990.

Copies of this filing were served upon Boston Edison Company and the New York State Public Service Commission.

Comment date: November 22, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26971 Filed 11-15-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-24-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

November 8, 1990.

Take notice that Equitrans, Inc. Equitrans) on November 7, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Orignial Volume No. 1, to become effective December 1, 1990:

Twentieth Revised Sheet No. 10
Eleventh Revised Sheet No. 34
Alternate Twentieth Revised Sheet No. 10
Alternate Eleventh Revised Sheet No. 34

This filing implements an Out-of-Cycle Purchased Gas Cost Adjustment (PGA) to reflect an increase in Equitrans's pipeline supplier rates to be effective December 1, 1990, under Texas Eastern Transmission Corporation's (TETCO) Rate Schedule CD-1 filed in Docket Nos. RP90-119-000 on October 31, 1990. The filing in necessary in order to have the rates charged to Equitrans' jurisdictional customers more closely reflect the experienced cost of gas being incurred by the Applicant. Equitrans hereby submitted primary tariff sheets Twentieth Revised Sheet No. 10 and Eleventh Revised Sheet No. 34 to reflect the increase in TETCO's gas costs.

Equitrans is also submitted alternate tariff sheets to reflect an adjustment to Equitrans' non-gas cost base rates which Equitrans requested to become effective on December 1, 1990 in an abbreviated section 4(e) filing it made on October 31, 1990 in Docket No. RP90-13-000. By that filing, Equitrans tendered tariff sheets to reflect the actual costs of transmission and compression of gas by others that are recorded in Equitrans' FERC Account No. 858.

It is requested that the Commission accept for filing and make effective on December 1, 1990 Alternate Twentieth Revised Sheet No. 10 and Alternate Eleventh Revised Sheet No. 34 if the RP91-13 filing is made effective on December 1, 1990 as was requested by Equitrans in that proceeding, or that the Commission accept for filing and make effective on December 1, 1990 the primary tariff sheets if the RP91-13 filing is not made effective on December 1, 1990.

The changes proposed in this filing to the purchased gas cost adjustment under Rate Schedule PLS is an increase in the demand cost of $0.3201 per dekatherm (Dth) and an increase in the commodity cost of $0.0354 per Dth. The purchased gas cost adjustment to Rate Schedule ISS is an increase of $0.0460 per Dth.

Pursuant to § 154.51 of the Commission's regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective on December 1, 1990.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 16, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26967 Filed 11-15-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-4-000, TM91-2-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

November 8, 1990.

Take notice that on November 5, 1990, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on January 1, 1991:

Purchased Gas Cost Adjustment

Second Revised Sheet No. 21

and

Alternate Second Revised Sheet No. 21

Gas Research Institute Surcharge

First Revised Sheet No. 23

According to Granite State, the revised sales rates on Second Revised Sheet No. 21 and Alternate Second Revised Sheet No. 21 reflect a current adjustment for projected gas costs and sales during the first quarter of 1991 and a revised surcharge for unrecovered purchased gas costs. Granite State further States that the revised rates are filed on a primary and alternate basis to correspond with rate changes filed by Tennessee Gas Pipeline Company (Tennessee) in Docket No. TA91-1-9-000 for effectiveness on January 1, 1991. According to Granite State, Tennessee filed a primary rate proposal which reflected as-billed treatment of two-part demand and commodity costs for certain purchases from producers and an alternate proposal that reflects commodity-only treatment of the costs for such purchases. Granite State further states that its primary and alternate tariff sheets reflect the effect on its rates for projected purchases from Tennessee under Tennessee's Rate Schedule CD-6 during the first quarter of 1991.

It is further stated that the filing comprises Granite State's annual purchased gas cost filing in compliance with § 154.305 of the Commission's Regulations.

According to Granite State, First Revised Sheet No. 23 states the Gas Research Institute surcharge, effective January 1, 1991, as authorized in Docket No. RP90-120-000 which is applicable to Granite State's purchases of Canadian gas from Shell Canada, Limited.

It is stated that the proposed rate changes are applicable to Granite State's wholesale sales to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 29, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26966 Filed 11-15-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-108-002]

National Electric Associates Limited Partnership; Filing

November 7, 1990.

Take notice that on October 22, 1990, National Electric Associates Limited Partnership (NEA) filed certain information as required by Ordering Paragraph (L) of the Commission's March 20, 1990 order in this proceeding, 50 FERC ¶ 61,378 (1990). Copies of NEA's informational filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26970 Filed 11-15-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-224-030, RP89-203-000, and RP90-139-000]

Southern Natural Gas Co.; Informal Settlement Conference

November 8, 1990.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding on November 27, 1990, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Betsy Carr (202) 208-1240 or Don Williams (202) 208-0743.

Lois D. Cashell,

Secretary.

[FR Doc. 90-26969 Filed 11-15-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Docket No. 90-55-NG]

Washington Natural Gas Co. Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Energy.

ACTION: Notice of application to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on October 10, 1990, of an application filed by Washington Natural Gas Company (Washington Natural) to import from Canada up to 15,000 MMBtu per day (14,434 Mcf/d) of natural gas beginning on the first day of the month following the issuance of the authorization and extending until October 31, 1999. Washington Natural proposes importing the natural gas at a point on the U.S.-Canadian border near Sumas, Washington, pursuant to a gas purchase contract between Washington Natural and Poco Petroleums Ltd. (Poco). Existing facilities would be used for the importation and transportation of the proposed imports.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protects, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., December 17, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Linda Silverman, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H–087, 1000 Independence Avenue S.W., Washington, DC 20585, (202) 586–7249

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION:

Washington Natural, a Washington corporation with its principal place of business in Seattle, Washington, is a natural gas distribution company serving 61 cities and towns and adjacent unincorporated areas within its five-county service area in the State of Washington. Washington Natural provides service to approximately 330,000 customers in its service area.

The gas that Washington Natural will purchase from Poco will be supplied initially from Poco's Alberta Pool in the Province of Alberta, Canada. Poco will be responsible for arranging the delivery of the gas on a firm basis through the facilities of Westcoast Energy Inc. (WEI) to the point of delivery under the contract at the international border near Sumas, Washington/Huntingdon, B.C. At the delivery point, the gas will enter the facilities of Northwest Pipeline Corporation (Northwest). Washington Natural will be responsible for arranging the transportation of the gas from the delivery point through the facilities of Northwest to Washington Natural's distribution system. Northwest will provide firm transportation for Washington Natural under Northwest's Rate Schedule TF–1. Washington Natural asserts that it has adequate available firm capacity under its transportation contract with the pipeline to accept delivery of the gas. Poco will file for approval from the provincial authority in Alberta for removal of the gas committed under the contract. Poco has applied to the National Energy Board of Canada (NEB) for approval to export the gas.

As a result of both Washington Natural's reduction in firm domestic and Canadian purchase commitments with Northwest under the pipeline's open access program and Washington Natural's growing market requirements, the company maintains that it must contract for approximately 95,000 MMBtu per day of firm gas supply. According to Washington Natural, the 10-year contract with Poco for 15,000 MMBtu per day is an important component of the firm gas supply needed to supplement the current firm service provided by Northwest. The company maintains that it requires the firm supply that will be purchased from Poco to provide continuous reliable service to its firm residential, commercial and small industrial customers who purchase all their gas requirements from Washington Natural.

The term of the sale is November 1, 1989, to October 31, 1999. Upon completion of the term, the gas purchase contract will be terminated. The contract provides for a firm daily volume of up to 15,000 MMBtu per day (14,434 Mcf/d), the maximum daily contract quantity (MDQ). Washington Natural is committed under the Poco contract to purchase a minimum annual quantity equal to 55 percent of the MDQ multiplied by 365, and a minimum monthly quantity equal to the lesser of 33⅓ percent of the contract quantity per day multiplied by the number of days in the month *or* 10 percent of Washington Natural's total purchases of gas supplies for utilization in its system market. In the event that Washington Natural fails to nominate the minimum annual quantity, Poco may reduce the MDQ as its sole remedy. Washington Natural anticipates no difficulty in meeting the monthly and annual takes under the contract.

The contract price is composed of two parts, a demand charge and a commodity charge. The demand charge is equal to the cost of transportation of the gas on the Westcoast system for delivery of gas at the international border near Sumas, Washington, and is the aggregate of the WEI firm service gathering, treatment, processing and transportation demand charges as approved by Canadian regulatory authorities. This charge is equivalent to the actual monthly toll charges on WEI's system.

The commodity component of the price for the first contract year, by agreement, is U.S. $1.25 per MMBtu for quantities purchased in excess of 3,000,000 MMBtu and U.S. $1.05 per MMBtu for quantities purchased in excess of 3,000,000 MMBtu, which is approximately equal to the minimum annual purchase obligation. The commodity component is subject to renegotiation annually in order to assure that the price of the gas remains continuously responsive over the life of the contract to the competitive prices of both alternative fuels and U.S. domestic gas supplies available in Washington Natural's market area. The contract provides that the commodity price will continue from year to year unless either party objects sixty days prior to the end of the contract year. The decision on the application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that imports made under this requested arrangement would be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Washington Natural's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on November 9, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–27055 Filed 11–15–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AD–3861–3]

Renewal for the National Pollution Control Techniques Advisory Committee

The U.S. Environmental Protection Agency (EPA) announces the renewal of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) following consultation with the Committee Management Secretariat, General Services Administration. The EPA has determined that renewal of this advisory committee is in the public interest in connection with the performance of duties imposed on the EPA by law. The charter which continues this advisory committee for two more years, unless otherwise sooner terminated, will be filed with the appropriate Congressional committees and the Library of Congress. The NAPCTAC will operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations issued in the implementation of the Act.

FOR FURTHER INFORMATION CONTACT: Jack R. Farmer, Director, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, (919) 541–5572.

Dated: November 9, 1990.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 90–27027 Filed 11–15–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3861–2]

Renewal for the Management Advisory Group to the Assistant Administrator for Water

The U.S. Environmental Protection Agency announces the renewal for the Management Advisory Group to the Assistant Administrator for Water following consultation with the Committee Management Secretariat, General Services Administration. EPA has determined that renewal of this advisory committee is in the public interest in connection with the performance of duties imposed on the Agency by law. The charter which continues this advisory committee for two more years, unless otherwise sooner terminated, will be filed with the appropriate Congressional committees and the Library of Congress. The committee will operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations issued in implementation of the Act.

FOR FURTHER INFORMATION CONTACT: Elizabeth Jester, Designated Federal Official (WH–556), U.S. Environmental Protection Agency, 401 M. Street SW., Washington, DC 20460, 202–382–5818.

Dated: November 9, 1990.

Elizabeth Jester,

Acting Director, WPO.

[FR Doc. 90–27028 Filed 11–15–90; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3861–5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements Filed November 5, 1990 Through November 9, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900411, Draft EIS, FHW, AL, Corridor X Construction, U.S. 78 Eight Miles West of Jasper near the Walker/Jefferson County Line, Funding, U.S. Coast Guard Permit and COE Section 404 Permit, Walker County, AL, Due: January 3, 1991.

Contact: Joe D. Wilkerson (205) 632–7370.

EIS No. 900412, Draft EIS, FHW, AS, Territorial Route 50 in Pago Pago Park, Construction, Funding, U.S. Coast Guard Bridge Permit, and COE Section 10 and 404 Permits, Island of Tutuila, As, Due: December 31, 1990, Contact: William R. Lake (808) 541–2700.

EIS No. 900413, Final Supplement, COE, WA, Chehalis River Flood Control Project, South Aberdeen and Cosmopolis, Design Modifications, Implementation, Gray Harbor County, WA, Due: December 17, 1990, Contact: Mike Scuderi (206) 764–3479.

EIS No. 900414, Draft EIS, UAF, AL, Anniston Army Depot On-Site Facility for Disposal of Stockpiled Chemical Agents and Munitions, Construction and Operation, Calhoun County, AL, Due: December 31, 1990, Contact: Margaret Thompson (301) 671–3633.

EIS No. 900415, Draft EIS, FHW, CA, CA–150/Rincon Creek Two Bridges Replacement, 1.0 miles east of CA–101 to 1.9 miles east of CA–101, Funding, Santa Barbara and Ventura Counties, CA, Due: January 10, 1991, Contract: John Schultz (916) 551–1140.

EIS No. 900416, Final EIS, USN, CA, San, Diego Navy Broadway Complex Redevelopment, Implementation, CA, Due: December 17, 1990, Contact: W.M. Robinson (619) 532–3291.

EIS No. 900417, Final Supplement, EPA, CA, City of Los Angeles Wastewater Treatment Facilities Plan, Construction and Operation, Updated Information, Grant, Los Angeles County, CA, Due: December 17, 1990, Contact: John Ong (415) 744–1932.

EIS No. 900418, Final, EIS, FHW, WA, WA–509/East-West Corridor Improvements or Relocation, I–705 to East 11th Street and Marine View Drive, Funding, US Coast Guard Section 9, and US COE Sections 10 and 404 Permits, City of Tacoma, Pierce County, WA, Due: December 17, 1990, Contact: Barry F. Morehead (206) 753–2120.

Amended Notices

EIS No. 900342, Draft EIS, COE, CA, Port of Long Beach and Los Angeles Phase I 2020 Plan, Channel Improvements and Landfill Development, Implementation Los Angeles County, CA, Due: December 1, 1990, Contact, John Bellinger (202) 272–0166. Published FR 9–21–90—Review period extended.

EIS No. 900368, Draft Supplement, COE, GA, SC, Richard B. Russell Dam and Lake Project, Implementation, Updated Information on Pumped Storage Operations, Fish Protection Alternatives, Section 404 Permit, Savannah District, Several Counties, GA and Several Counties, SC, Due: January 19, 1991, Contact: David Coleman (912) 944–5792. Published FR–10–5–90—Review period extended.

Dated: November 13, 1990.

Anne N. Miller,

Director, SPAD, Office of Federal Activities.

[FR Doc. 90–27093 Filed 11–15–90; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-3861-6]

Environmental Impact Statements and Regulations, Availability of EPA Comments

Availability of EPA comments prepared October 29, 1990. Through November 2, 1990 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 13949).

Draft EISs

ERP No. D–COE–K36096–CA, Rating EC2, Hanson Dam Flood Control and Recreation Project, Construction, Operation, and Maintenance, San Gabriel Rivers, Los Angeles County, CA.

Summary: EPA expressed environmental concerns: the sources of water and lake design to prevent sedimentation and contamination from poor quality basin waters; impacts to wetlands and riparian areas; air quality impacts; and the need to provide mitigation to protect air quality, water quality and other natural resources.

ERP No. D–FAA–K51053–HI, Rating EC2, Kalaupapa Airport, Roadway and Wharf Improvement, Construction and Funding, Island of Molokai, Kalawao County, HI.

Summary: EPA expressed environmental concerns that increased erosion and sedimentation may have adverse impacts on water quality and near shore coral communities. EPA requested that the final EIS more fully assess project impacts on coral communities and adopt mitigation adequate to protect natural resources.

ERP No. D–UAF–K11041–CA, Rating EC2, Los Angeles Air Force Base Closure and Headquarters Space Systems Division Relocation, Implementation, COE Section 404 Permit and EPA NPDES Permit, Los Angeles County, CA.

Summary: EPA expressed environmental concerns regarding the direct and indirect impacts of base closure and realignment activities, including potential impacts on: air quality, wetlands, water supply sources, water supply systems and biological communities.

ERP No. D–UMT–G54004–TX, Rating LO, South Oak Cliff Corridor Transit Improvements, South Oak Cliff Communities to the Dallas Central Business District, Funding, Dallas County, TX.

Summary: EPA has no objections to the proposed project.

ERP No. D–USN–L11011–AK, Rating EC2, Second Relocatable-Over-The-Horizon-Radar (ROTHR) System/Surveillance Installations in the Northwest Pacific Base Camp Facilities, Improvement and Construction, Section 404 and 10 Permits, NPDES Permit, Amchitka Island, AK.

Summary: EPA has environmental concerns based on the potential for adverse environmental degradation, and lack of a wetlands mitigation plan. Additional information and clarification is needed on wetland and water quality mitigation measures.

Final EISs

ERP No. F–FHW–D40241–VA, VA–17 Bypass Extension, VA–17/29 Business to VA–17 northwest of Warrenton, Construction, Funding and COE General Permit, Town of Warrenton, Fauquier County, VA.

Summary: EPA recommended that noise abatement be reconsidered at noise barrier sites 2 and 3. EPA strongly recommends the revision of the stormwater management facilities to protect the water quality of the Warrenton Reservoir

ERP No. FS–FHW–LA0122–ID, Banks-Lowman Highway/ID Forest Highway-24 Improvement, Sweet Creek to Little Gallagher Creek, Funding, Boise County, ID.

Summary: Review of the final EIS has been completed and the project found to be satisfactory.

ERP No. F1–BLM–J61071–WY, Great Divide Resource Areas, (Formerly Medicine Bow) Land and Mineral Management Plan, Implementation and Bennett Mountain, Encampment River Canyon and Prospect Mountain WSA's Wilderness Recommendations, Designation or Nondesignation, Larmie, Carbon, Albany and Sweetwater Counties, WY.

Summary: Review of the final EIS has been completed and the project found to be satisfactory.

Regulations

ERP No. R–FRC–A03084–00, 18 CFR Parts 157 and 284; Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates (55 FR 33017).

Summary: EPA supports the proposed rule's expansion of various environmental requirements, but is concerned about continued and newly proposed exemptions of natural gas pipeline projects from National Environmental Policy Act (NEPA) analysis. EPA also requests a programmatic NEPA analysis for the overall Natural Gas Policy Act Section 311 program.

Dated: November 13, 1990.

Anne N. Miller,

Director, SPAD, Office of Federal Activities.

[FR Doc. 90–27094 Filed 11–15–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3861–1]

Indiana's Application to Administer the National Pollutant Discharge Elimination System (NPDES) Pretreatment Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of application for State program revision.

SUMMARY: In a letter dated December 12, 1989, Mr. Charles Bardonner, Assistant Commissioner, Office of Water Management, Indiana Department of Environmental Management (IDEM), requested approval of the State of Indiana's Pretreatment Program. In support of that request, IDEM has submitted:

(1) A signed statement from the Indiana Attorney General that the State of Indiana has the necessary statutory and regulatory authority to implement the requirements of 40 CFR 403;

(2) Copies of all statutes and regulations cited in the Attorney General's statement;

(3) A description of the funding levels and personnel available to implement the program;

(4) A description of the procedures developed to implement the program; and

(5) A signed revision to the NPDES Memorandum of Agreement.

U.S. EPA Region V has reviewed the submittal and intends to notice its recommended approval by the Administrator once additional work years are allocated to IDEM's Pretreatment Group and certain regulatory updates are made. Specifically, IDEM must add a minimum of two-and-a-half work years to its Pretreatment Group (for a total of five), and update its State pretreatment regulations to incorporate the Pretreatment Implementation Review Taskforce (PIRT) revisions adopted by U.S. EPA on October 17, 1988, the Domestic Sewage Study (DSS) revisions adopted on July 24, 1990, and the categorical pretreatment standards for those categories not subject to the 1976 NRDC–EPA Consent Decree. (40 CFR parts 417, 418, 424, 426, 427, 428, 446, 447, 443, 458, 406 (subparts C & E), 409 (subpart A) and 412 (subparts) A & B), as well as part 414 (organic chemicals, plastics and synthetic fibers)). IDEM is in the process of addressing these concerns.

A comment period and an opportunity to request a public hearing will be provided when the intended notice of recommended approval is issued by the Administrator.

FOR FURTHER INFORMATION CONTACT: Matt Gluckman, Permits Section (5WQP), U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6089.

SUPPLEMENTARY INFORMATION: On June 16, 1978, the United States Environmental Protection Agency (U.S. EPA) promulgated the General Pretreatment Regulations (40 CFR part 403). Amendments to the General Pretreatment Regulations were promulgated on October 17, 1988 and July 24, 1990. These regulations, mandated by the Clean Water Act as amended by Public Law 100–4, 1987, govern the control of industrial wastes introduced into publicly owned treatment works (POTWs), commonly referred to as municipal sewage treatment plants. The objectives of the regulations are to: (1) Prevent introduction of pollutants into POTW's which will interfere with plant operations and/or disposal or use of municipal sludges; (2) prevent introduction pollutants into POTW's which will pass through treatment works or otherwise be incompatible with such works; and (3) improve the opportunity to recycle and reclaim municipal and industrial wastewaters and sludges.

The establishment of State pretreatment programs to supplement existing State National Pollutant Discharge Elimination System (NPDES) permit programs is required by the General Pretreatment Regulations, and is fundamental in achieving the above-stated objectives. In order to be approved, a request for State pretreatment program approval must demonstrate that the State has legal authority, procedures, available funding, and qualified personnel to implement a State Pretreatment Program as specified in § 403.10 of the regulations. The State of Indiana received NPDES permit authority on January 1, 1975. Generally, local pretreatment programs will be the primary vehicle for administering, applying, and enforcing Pretreatment Standards and Requirements for Industrial users of POTWs. The State will be the control authority and will be required to apply and enforce pretreatment standards and requirements directly against industries that discharge to POTWs where local programs are not required or have not been developed.

The Administrator's decision to approve or disapprove the proposed pretreatment program will be based on a determination of whether the proposed program meets the requirements of the Clean Water Act and 40 CFR part 403, and on comments received.

The Indiana submission may be reviewed by the public at the State of Indiana Department of Environmental Management, 105 South Meridian Street, P.O. box 6015, Indianapolis, Indiana 46206–6015, and at the U.S. EPA office in Chicago at the address appearing at the beginning of this notice. Copies of the submittal may also be obtained from these offices; a copying fee will be assessed.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Valdas V. Adamkus,

Regional Administrator

[FR Doc. 90–27026 Filed 11–15–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 90–478; FCC 90–331]

Commercial Television; Bozeman, MT; Bee Broadcasting Associates

AGENCY: Federal Communications Commission.

ACTION: HDO, notice of apparent liability.

SUMMARY: The Commission is designating for hearing the applications of Bee Broadcasting Associates for assignment of the construction permit of Station KCTZ(TV), Bozeman, Montana, and for the license to cover the construction permit. The Commission

was unable to grant the applications because it found a substantial and material question of fact that the station had undergone an unauthorized transfer of control, and a hearing is necessary to determine whether grant of the applications is warranted.

EFFECTIVE DATE: November 8, 1990.

FOR FURTHER INFORMATION CONTACT: Mark L. Berlin, Mass Media Bureau, (202) 632-6357.

SUPPLEMENTARY INFORMATION: On October 4, 1990, the Commission adopted an Order designating the license and assignment applications (BLCT-870906KG and BAPCT-871029KH) of Bee Broadcasting Associates for hearing upon the following issues:

(a) To determine whether the permittee has undergone an unauthorized transfer of control.

(b) To determine, in light of the evidence adduced pursuant to the foregoing issue, whether the permittee, Benny Bee, or Thom Curtis possess the requisite qualifications to be or remain a permittee of Station KCTZ(TV).

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, and pursuant to Section 309(e) of the Communications Act, whether the grant of the applications will serve the public interest, convenience, and necessity.

A copy of the complete HDO in this proceeding (FCC 90-331) is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Wasington, DC 20037 (telephone No. (202) 875-3800).

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90-27091 Filed 11-15-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 90-31]

Safbank Line Limited v. Valmont Industries Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Safbank Line Limited ("Safbank") against Valmont Industries, Inc. ("Valmont") was served November 9, 1990. Safbank alleges that Valmont has violated sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1) and (b)(1), by refusing to pay the applicable ocean freight for a shipment of irrigation equipment.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by November 12, 1991, and the final decision of the Commission shall be issued by March 11, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 90-26982 Filed 11-15-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Citizens Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summerizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 6, 1990.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Citizens Bancorp, Inc.*, Coudersport, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Trust Company, Coudersport, Pennsylvania.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First National BancShares, Inc.*, Williston, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank & Trust Co. of Williston, Williston, North Dakota.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Belleville Bancshares, Inc.*, Belleville, Kansas; to acquire 100 percent of the voting shares of Scandia State Bank, Scandia, Kansas.

Board of Governors of the Federal Reserve System, November 9, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26991 Filed 11-15-90; 8:45 am]

BILLING CODE 6210-01-M

First Bank Holding Company Employee Stock Ownership Plan, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 6, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Bank Holding Company Employee Stock Ownership Plan*, Lakewood, Colorado; to acquire First Bank Holding Company, Lakewood, Colorado, and there by engage in the issuance and sale of money orders, traveler's checks, and savings bonds pursuant to § 225.25(b)(12); issuance and sale of official checks and domestic money orders with a maximum face value of $10,000 pursuant to Board approval dated January 12, 1987; sale of credit-related insurance through Colorado FirstBank Life Insurance Company pursuant to § 225.25(b)(8)(i); and making and servicing loans, including residential mortgage loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. *Haviland Bancshares, Inc.*, Haviland, Kansas; to acquire Banco Insurance Agency, Inc., Haviland, Kansas, and thereby engage in the sale of general insurance within a nine-mile radius of Haviland, Kansas, a community with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 9, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26992 Filed 11-15-90; 8:45 am]

BILLING CODE 6210-01-M

William Eugene Rowland, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control ACt (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 30, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *William Eugene Rowland*, Murfreesboro, Tennessee, to acquire up to 16.1 percent; Robert Bell Murfree, Murfreesboro, Tennessee, to acquire up to 15.1 percent; and William Kent Coleman, Murfreesboro, Tennessee, to acquire up to 11.8 percent of the voting shares of First City Bancorp, Inc., Murfreesboro, Tennessee, and thereby indirectly acquire First City Bank, Murfreesboro, Tennessee.

2. *Oscar Zimmerman*, Boca Raton, Florida; to retain 1.16 percent of the voting shares of First Commercial Bancorporation, Boca Raton, Florida, for a total of 10.55 percent, and thereby indirectly acquire First Commercial Bank of Florida, Boca Raton, Florida. Mr. Zimmerman also seeks prior approval to acquire additional shares, up to 24.9 percent.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Alice L. Campbell* and Richard W. Campbell; to acquire 100 percent of the voting shares of First Belleville Bancshares, Inc., Belleville, Kansas, and thereby indirectly acquire The First National Bank in Belleville, Belleville, Kansas.

Board of Governors of the Federal Reserve System, November 9, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-26993 Filed 11-15-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0391]

Chelsea Laboratories, Inc.; Withdrawal of Approval of Abbreviated Antibiotic Drug Application for Doxycycline Hyclate Tablets and Abbreviated New Drug Application for Ergoloid Mesylates Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of abbreviated antibiotic drug application (AADA) 62-392 for doxycycline hyclate tablets 100 milligram (mg) and abbreviated new drug application (ANDA) 88-207 for ergoloid mesylates tablets 1.0 mg, both of which are held by Chelsea Laboratories, Inc., 896 Orlando Ave., West Hempstead, NY 11552 (Chelsea). Chelsea has requested that approval of the applications be withdrawn and has waived its opportunity for a hearing. This action stems from an independent audit sponsored by Chelsea. The audit showed that the product formulations and manufacturing procedures for the batches used in bioequivalency testing for both drug products differ from the representations that were the basis for FDA's approval of the firm's applications for the products.

EFFECTIVE DATE: November 16, 1990.

FOR FURTHER INFORMATION CONTACT: Harry T. Schiller, Center for Drug Evaluation and Research (HFD-368), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: Recently, FDA became aware of discrepancies in the data submitted by Chelsea in support of the approval of several abbreviated new drug applications. In response to FDA investigations, Chelsea undertook an audit of many of its products by contract with outside consultants. The audit of AADA 62-392 for doxycycline hyclate tablets 100 mg revealed that the batch Chelsea submitted for bioequivalency testing contained an inactive ingredient, which was not included in the formulation submitted to FDA for AADA approval or used in Chelsea's commercial production batches of this drug product. The audit of ANDA 88-207 for ergoloid mesylate tablets 1.0 mg revealed that the batch Chelsea submitted for

bioequivalency testing contained several inactive ingredients, none of which were included in the formulation submitted to FDA and ANDA approval or used in Chelsea's commercial production batches of this drug product. Additional manufacturing differences involving both drug products included alterations in the order in which ingredients were blended, blending times, and other discrepancies. Chelsea has ceased marketing and has recalled both products. In a letter dated April 2, 1990, Chelsea requested that approval of its applications be withdrawn and waived its opportunity for a hearing.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of abbreviated antibiotic drug application 62-392 and abbreviated new drug application 88-207, and all amendments and supplements thereto, is hereby withdrawn, effective November 16, 1990.

Dated: November 7, 1990.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 90-27070 Filed 11-15-90; 8:45 am]

BILLING CODE 4160-51-M

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Immunology Devices Panel

Date, time and place. December 6, 1990, 10 a.m., and December 7, 1990, 9 a.m., room 503-A, Hubert A. Humphrey Building, 200 Independence Avenue SW., Washington, DC.

Type of meeting and contact person. Open public hearing, December 6, 1990, 10 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 5 p.m.; open committee discussion, December 7, 1990, 9 a.m. to 12 p.m.; Srikrishna Vadlamudi, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 1390 Piccard Drive, Rockville, MD 20850, 301-427-1096

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 23, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addressed of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On December 6, 1990, the committee will discuss a premarket approval application (PMA) for a device used to quantify a tumor marker as an aid in the prognosis and management of established prostate cancer patients. If necessary, discussion will continue on December 7, 1990.

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. December 13 and 14, 1990, 9 a.m., John Masur Auditorium, Building 10, National Institutes of Health, 900 Rockville Pike, Bethesda, MD. Parking in the Clinical Center visitor area is reserved for clinical center patients and their visitors. If you must drive, please use an outlying lot such as Lot 41B. Free shuttle bus service is provided from Lot 41B to the Clinical center every 8 minutes during rush hour and every 15 minutes at other times.

Type of meeting and contact person. Open public hearing, December 13, 1990, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion 10 a.m. to 5 p.m.; open committee discussion, December 14, 1990, 9 a.m to 4 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419-259-6211 or 301-443-4730.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 29, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On December 13, 1990, the committee will discuss Betapace tablets (sotalol hydrochloride), new drug application (NDA) 19-865, Bristol Myers Co., for use in cardiac arrhythmias, and Kerlidex tablets (betaxolol HC1/chlorthalidone), NDA 19-807, Lorex Pharmaceuticals, for use in hypertension. On December 14, 1990, the committee will discuss ticlopidine (ticlid), NDA 19-979, Syntex, indicated for use in risk reduction of threatened and recurrent stroke; the committee will also review proposed revised labeling for antiarrhythmic drugs.

Anti-Infective Drugs Advisory Committee Subcommittee on Ophthalmic Drugs

Date, time, and place. December 17, 1990, 8 a.m., Conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4 p.m.; Gretchen Hascall, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695. A meeting agenda and list of committee members will be available upon request.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in infectious and ophthalmic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 30, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. From 9 a.m. to 1 p.m., the committee will discuss clinical studies of ophthalmic quinolones in the treatment of conjunctivitis and corneal ulcers. From 2 p.m. to 4 p.m., the committee will discuss whether a vasoconstrictor/antihistamine ophthalmic drug product should be marketed as an over-the-counter product.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: November 13, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-27073 Filed 11-15-90; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of December 1990.

Name: National Advisory Council on the National Health Service Corps.

Date and Time: December 8-11, 1990, 6 p.m.

Place: Johnson and Wales Airport Hotel, 2081 Post Road, Warwick, Rhode Island 02886. The meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: Registration is from 6-7 p.m. in the main lobby of the hotel. After registration there will be a presentation by Audrey F. Manley, M.D., M.P.H., Deputy Assistant Secretary for Health, Department of Health and Human Service; Bureau of Health Care Delivery and Assistance and NHSC update by Donald L. Weaver, M.D.; and an NHSC Region I update by Mr. Wayne Opel. The meeting on Sunday will begin at 8:30 a.m. and adjourn at 5 p.m. On Monday, the meeting will be from 8:30-11:30 a.m. Monday afternoon, the Council will be visiting health centers and Brown University in the Providence, Rhode Island area. No transportation will be provided for visitors and observers. The Tuesday meeting will begin at 8:30 a.m. and adjourn at 2 p.m. Topics of discussion will be strategies for fulfilling primary care manpower needs, NHSC scholarships and Loan Repayment.

Anyone requiring information regarding the subject Council should contact Anna Mae Voigt, National Advisory Council on the National Health Service Corps, room 7A-39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-1470.

Agenda Items are subject to change as priorities dictate.

Dated: November 9, 1990.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 90-26997 Filed 11-15-90; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, November 2, 1990.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. Qualifications Evaluation Inquiry Form—0925-0036—The Qualification Evaluation Inquiry Form for Health Scientist Administrators and Grants Associates is used to supplement the

SF–171 and is used by panel members and selecting officials in the rating and selection process. *Respondents:* Individuals or households, Federal agencies or employees; *Number of Respondents:* 374; *Number of Responses per Respondent: 1; Average Burden per Response:* .116 hours; *Estimated Annual Burden:* 44 hours.

2. National Disease Surveillance Program—II. Disease Summaries—0920–0004—Surveillance data are essential to measure trends in disease incidence and evaluate effectiveness of prevention efforts. State and territorial health departments compile these summaries from data collected during disease investigations and from data furnished by local health departments. *Respondents:* State or local governments; Number of Respondents: 63; *Number of Responses per Respondent:* 294.61; *Average Burden per Response:* 267 hours; *Estimated Annual Burden:* 4,964 hours.

3. The Cohort Surveys for the Community Intervention Trial for Smoking Cessation (COMMIT)—0925–0309—The National Cancer Institute (NCI) is undertaking the Community Intervention Trial for Smoking Cessation (COMMIT). This large scale trial will test community-based strategies to produce long-term cessation among smokers, particularly heavy smokers. Clearance is herein being requested for the continued fielding of cohort surveys which assess and monitor the progress of this trial. *Respondents:* Individuals or households.

	No. of respondents	No. of hours per response	No. of responses per respondent
Evaluation Cohort Surveys	8,000	0.1898	1
Endpoint Cohort Surveys	15,644	0.0833	1

Estimated Annual Burden—2,822 hours.

4. Case Control Study of Risk Factors for Listeriosis—0920–0247—This study focuses on classifying certain foods as well as behaviors as risk factors for developing Listeriosis Monocytogenes. Respondents will complete a questionnaire designed to determine food preparation habits. Results from this study will assist health professionals to develop educational programs designed to reduce morbidity from listeriosis. *Respondents:* Individuals or households; *Number of Respondents:* 450; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .36 hours; *Estimated Annual Burden:* 163 hours.

5. The Prevalence of Alcohol and Other Drug Abuse and Dependence in Short-Term General Hospitals and the Impact of Abuse and Dependence on Hospital Utilization, Charges and Costs—new—The purpose of this study is to determine the national prevalence of alcohol abuse/dependence and other drug abuse among hospital inpatients and the associated costs. This information is needed to inform health policy and to provide a basis for educational programs targeted toward physicians and other health professionals. The study will be based on a representative national sample of short-term, non-Federal hospitals and patients within these hospitals. *Respondents:* Individuals or households, Businesses or other for-profit, non-profit institutions.

	No. of respondents	No. of hours per response	No. of responses per respondent
Hospital Inpatients	1,836	18	1
Hospitals	12	21.0	1

Estimated annual burden—575 hours.

6. 1991 National Health Interview Survey—0920–0214—The National Health Interview survey, an ongoing survey of the civilian, non-institutionalized population, monitors the Nation's health. The 1991 NHIS will include supplements on "Year 2000 Objectives", "Drug Use", "Income", and "AIDS Knowledge and Attitudes". *Respondents:* Individuals or households; *Number of Respondents:* 48,500; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 1.59 hours; *Estimated Annual Burden:* 76,970 hours.

7. Survey of Preventive Medicine Residency Program Graduates—New—A survey of physicians who were graduated from preventive medicine residency programs will be conducted. The purpose is to determine the nature of the medical activities engaged in and the extent to which these physicians continue their involvement in public health. *Respondents:* Individuals or households; *Number of Respondents:* 1,336; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 0.167 hours; *Estimated Annual Burden:* 223 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: November 9, 1990.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 90–26998 Filed 11–15–90; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on October 19, 1990.

(Call Reports Clearance officer on (301) 965–4149 for copies of package)

1. Request To Be Selected As Payee—0960–0014—The information collected on the form SSA–11–BK is used by the Social Security Administration to help determine the proper payee for a person who cannot receive or who is otherwise unable to manage his/her Social Security, Black Lung or Supplemental Security Income benefits. The affected public consists of individuals and/or institutions filing on behalf of someone else.

Number of respondents: 605,000.

Frequency of response: 1.

Average burden per response: 10.5 minutes.

Estimated annual burden: 105,875 hours.

OMB desk officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: November 13, 1990.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 90–26976 Filed 11–15–90; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–90–1917; FR–2606–N–98]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: November 16, 1990.

ADDRESSES: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Service (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made avialable to the homeless for use on an interim basis the propety will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Dept. of Interior: Lola D. Knight, Department of Interior, 18th and C Sts. NW., Mailstop 5512, Washington, DC 20240; (202) 343–2704; U.S. Army: HQ–DA, Attn: DAEN–ZCI–P–Robert Conte; room 1E671 Pentagon, Washington, DC 20360–2600; (202) 693–4583; Corps of Engineers: Bob Swieconek, HQ–US Army Corps of Engineers, Attn: CERE–MN, 20 Massachusetts Avenue NW., Washington, DC 20415–1000; (202) 272–1750; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067; Dept. of Commerce: Jim McCombs, Chief, National Program Division, room 1037, 14th St. and Constitution Ave. NW., Washington, DC 20237; ;(202) 377–3580. (These are not toll-free numbers.)

Dated: November 9, 1990.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Suitable Land (by State)

Washington

NOAA Western Regional Center
7600 Sand Point Way, NE
Seattle, Wa, Co: King
Landholding Agency: Commerce
Property Number: 279040001
Status: Unutilized Comment: 35 acres with 6000 sq. ft.; two story wood frame Bldg. #7; presence of asbestos; structurally deteriorated.

Suitable Buildings (by State)

Alabama

Federal Building
109 W. Columbus Avenue
Vernon, Al, Co: Lamar
Landholding Agency: GSA
Property Number: 549040003
Status: Excess
Comment: 7774 sq. ft.; 2 story brick frame; most recent use—post office; possible asbestos on pipe joints.
GSA NO. 4–G–AL–572

Colorado

Peterson House
Bear Creek Lake Project
Lakewood, CO, Co: Jefferson
Location: Highway 8 or Morrison Road—2 miles west of Kipling Intersection.
Landholding Agency: COE
Property Number: 319040003
Status: Excess
Comment: 1200 sq. ft.; one story wood frame with basement; needs repair; off-site use only.

Georgia

Bldg. 34421
Fort Gordon

Augusta, GA, Co: Richmond
Location: Located on Kilbourne between Brainard and Avenue of State.
Landholding Agency: Army
Property Number: 219040376
Status: Unutilized
Comment: 4524 sq. ft.; two story wood frame; needs major rehab; off-site use only.
Bldg. 40422
Fort Gordon
Augusta, GA, Co: Richmond
Location: Located on Brainard Avenue between 40th and 42nd street.
Landholding Agency: Army
Property Number: 219040377
Status: Unutilized Comment: 4524 sq. ft.; two story wood frame; needs major rehab; off-site use only.
Bldg. 40424
Fort Gordon
Augusta, GA, Co: Richmond
Location: Located on Brainard Avenue between 40th and 42nd street.
Landholding Agency: Army
Property Number: 219040378
Status: Unutilized
Comment: 4524 sq. ft.; two story wood frame; most recent use—storage; needs major rehab; off-site use only.

Kentucky

Bldg. 2
Green River Lake
544 Lake Road
Campbellsville, KY, Co: Taylor
Landholding Agency: COE
Property Number: 319040005
Status: Unutilized
Comment: 1620 sq. ft.; one story brick veneer residence; presence of asbestos; off-site use only.
Bldg. 1
Green River Lake
544 Lake Road
Campbellsville, KY, Co: Taylor
Landholding Agency: COE
Property Number: 319040006
Status: Unutilized
Comment: 1620 sq. ft.; one story brick veneer residence; presence of asbestos; off-site use only.
Mobile Home
Kentucky River Lock and Dam Number 2
Highway 389
Lockport, KY, Co: Henry
Landholding Agency: COE
Property Number: 319040007
Status: Unutilized
Comment: 792 sq. ft.; one story mobile home; off-site use only.
Storage Building
Kentucky River Lock and Dam Number 2
Highway 389
Lockport, KY, Co: Henry
Landholding Agency: COE
Property Number: 319040008
Status: Unutilized
Comment: 40 sq. ft.; metal storage building; needs rehab; off-site use only.
Bldg. 2
Kentucky River Lock and Dam Number 4
1021 Kentucky Avenue
Frankfort, KY, Co: Franklin
Landholding Agency: COE
Property Number: 319040010
Status: Unutilized
Comment: 1613 sq. ft.; 2 story wood frame residence; needs rehab; off-site use only.
Garage
Kentucky River Lock and Dam Number 4
1021 Kentucky Avenue
Frankfort, KY, Co: Franklin
Landholding Agency: COE
Property Number: 319040011
Status: Unutilized
Comment: 528 sq. ft.; wood frame; most recent use—garage/storage; needs rehab; off-site use only.
Bldg. 1
Kentucky River Lock and Dam Number 4
1021 Kentucky Avenue
Frankfort, KY, Co: Franklin
Landholding Agency: COE
Property Number: 319040012
Status: Unutilized
Comment: 1613 sq. ft.; 2 story wood frame; needs rehab; off-site use only.

Maryland

Bldg. 186
Fort George G. Meade
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219040367
Status: Underutilized
Comment: 4720 sq. ft.; two story wood frame; possible asbestos; intermittent use only; secured with alternate access.
Bldg. 2466
Fort George G. Meade
5th Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219040373
Status: Unutilized
Comment: Two story wood frame; most recent use—storage; needs rehab; possible asbestos; secured with alternate access.
Bldg. 2713
Fort George G. Meade
Earnie Pyle Street
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219040374
Status: Unutilized
Comment: 2284 sq. ft.; 1 story wood frame; most recent use—storage; structurally unsound; possible asbestos; secured with alternate access.
Bldg. 6209
Fort George G. Meade
Corners Rock and Taylor avenue
Fort Meade, MD, Co: Anne Arundel
Landholding Agency: Army
Property Number: 219040375
Status: Unutilized
Comment: One story; most recent use—storage; needs major rehab; possible asbestos; secured with alternate access.

Oklahoma

Bldg. T–834
Fort Sill
834 McComb Road
Lawton, OK, Co: Comanche
Landholding Agency: Army
Property Number: 219040356
Status: Excess
Comment: 3983 sq. ft.; one story wood frame; most recent use—stables, possible asbestos; needs rehab.
Bldg. TM865
Fort Sill
865 McComb Road
Lawton, OK, Co: Comanche
Landholding Agency: Army
Property Number: 219040357
Status: Unutilized
Comment: 41513 sq. ft.; wood and sand structure, most recent use—riding pen; no utilities.
Bldg. T–1434
Fort Sill
1434 King Road
Lawton, OK, Co: Comanche
Landholding Agency: Agency
Property Number: 219040358
Status: Unutilized
Comment: 2500 sq. ft.; one story wood frame; most recent use—youth center; needs rehab; possible asbestos.
Bldg. T–1435
Fort Sill
1435 King Road
Lawton, OK, Co: Comanche
Landholding Agency: Army
Property Number: 219040359
Status: Unutilized
Comment: 3068 sq. ft.; one story wood frame; most recent use—youth center; needs rehab; possible asbestos.
Bldg. P–1436
Fort Sill
1436 King Road
Lawton, OK, Co: Comanche
Landholding Agency: Army
Property Number: 219040360
Status: Unutilized
Comment: 4000 sq. ft.; two story concrete block; most recent use—youth center; needs rehab; possible asbestos.
Bldg. PM 5055
Fort Sill
5055 Post Road
Lawton, OK, Co: Comanche
Landholding Agency: Army
Property Number: 21904361
Status: Unutilized
Comment: 5616 sq. ft.; concrete slabs/tennis courts; no utilities.

South Dakota

Fort Randall Dam
Lake Francis Case Project
Chamberlain, SD, Co: Brule
Location: Exit 265 off I–90 then 2 miles west—1 mile south—2½ miles west then 1½ mile north on private road.
Landholding Agency: COE
Property Number: 319040002
Status: Excess
Comment: 800 sq. ft., two story concrete block; needs major rehab; off-site use only.

Texas

Bldg. 56318
Fort Hood
Avenue D
Fort Hood, TX, Co: Coryell
Landholding Agency: Army
Property Number: 219040364
Status: Unutilized
Comment: 8509 sq. ft.; one story; most recent use—classroom/assembly hall; potential utilities; structurally deteriorated.

Bldg. T09021
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040382
Status: Unutilized
Comment: 648 sq. ft.; one story metal trailer; most recent use—billeting facility; possible lease restrictions.
Bldg. T09022
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040383
Status: Unutilized
Comment: 648 sq. ft.; one story metal trailer; most recent use—billeting facility; possible lease restrictions.
Bldg. T09023
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040384
Status: Unutilized
Comment: 648 sq. ft.; one story metal trailer; most recent use—billeting facility; possible lease restrictions.
Bldg. T09024
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040385
Status: Unutilized
Comment: 648 sq. ft.; one story metal trailer; most recent use—billeting facility; possible lease restrictions.
Bldg. T09025
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040386
Status: Unutilized
Comment: 648 sq. ft.; one story metal trailer; most recent use—recreation billeting facility; possible lease restrictions.
Bldg. T09026
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040387
Status: Unutilized
Comment: 648 sq. ft.; one story metal trailer; most recent use—general storehouse; possible lease restrictions.
Bldg. T09027
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040388
Status: Unutilized
Comment: 648 sq. ft.; one story metal trailer; most recent use—general storehouse; possible lease restrictions.
Bldg. T09033
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040389
Status: Unutilized
Comment: 1078 sq. ft.; one story metal frame; most recent use—3 sided storage shed; possible lease restrictions.
Bldg. S9035
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040390
Status: Unutilized
Comment: 480 sq. ft.; one story metal frame; most recent use—boat house; limited utilities; possible lease restrictions.
Bldg. 9036
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040391
Status: Unutilized
Comment: 747 sq. ft.; one story concrete block; most recent use—service office; possible lease restrictions.
Bldg. S9037
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040392
Status: Unutilized
Comment: 695 sq. ft.; one story concrete block; most recent use—bath house; possible lease restrictions.
Bldg. T9038
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040393
Status: Unutilized
Comment: 800 sq. ft.; one story wood frame; most recent use—exchange branch; possible lease restrictions.
Bldg. 9039
Possum Kingdom Rec Area
Star Route Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040394
Status: Unutilized
Comment: 3380 sq. ft.; one story wood frame; most recent use—billeting facility; possible lease restrictions.
Bldg. 9040
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040395
Status: Unutilized
Comment: 4656 sq. ft.; two story wood frame; most recent use—billeting facility; possible lease restrictions.
Bldg. 9041
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040396
Status: Unutilized
Comment: 6920 sq. ft.; two story wood frame; most recent use—billeting facility; possible lease restrictions.
Bldg. 9043
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040398
Status: Unutilized
Comment: 134 sq. ft.; one story metal frame; most recent use—water treatment building; possible lease restrictions.
Bldg. 9048
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040401
Status: Unutilized
Comment: 1223 sq. ft.; one story concrete block; possible lease restrictions; most recent use—water treatment building.
Bldg. S85210
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto
Landholding Agency: Army
Property Number: 219040402
Status: Unutilized
Comment: 8248 sq. ft.; possible lease restrictions; most recent use parking area.

Virginia

Bldg. T–11802
U.S. Army Logistics Center and Fort Lee
"A" Avenue
Fort Lee VA
Landholding Agency: Army
Property Number: 219040355
Status: Excess
Comment: 4682 sq. ft.; one story; most recent use—golf club house; possible asbestos; structurally deteriorated; off-site use only
Bldg. T–1329
U.S. Army Logistics Center and Fort Lee
"B" Avenue
Fort Lee VA
Landholding Agency: Army
Property Number: 219040362
Status: Unutilized
Comment: 1525 sq. ft.; one story; structurally deteriorated; fire damage; presence of asbestos; off-site use only.

Washington

Haas Barn
% Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA, Co: Grays Harbor
Landholding Agency: Interior
Property Number: 619040001
Status: Excess
Comment: 1408 sq. ft.; one story wood frame barn; potential utilities poor condition; off-site use only.
Haas Shed
% Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA, Co: Grays Harbor
Landholding Agency: Interior
Property Number: 619040002
Status: Excess
Comment: 480 sq. ft.; wood frame shed; poor condition; off-site use only.
Haas Shed
% Quinault Ranger Station

Route 2, Box 76
Amanda Park, WA, Co: Grays Harbor
Landholding Agency: Interior
Property Number: 619040003
Status: Excess
Comment: 64 sq. ft.; wood frame shed; poor condition; off-site use only.

Haas Residence
% Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA, Co: Grays Harbor
Landholding Agency: Interior
Property Number: 619040006
Status: Excess
Comment: 624 sq. ft.; one story wood frame residence; potential utilities; poor condition; off-site use only.

Bldg. 1323
Jensen Barn
% Quinault Ranger Station, Route 2, Box 76
Amanda Park, WA, Co: Grays Harbor
Landholding Agency: Interior
Property Number: 619040007
Status: Excess
Comment: 4200 sq. ft.; wood frame barn; most recent use—storage; no utilities; off-site use only.

Universe of Properties:
Total = 69
Suitable = 50
Suitable Buildings = 49
Suitable Land = 1
Unsuitable = 19
Unsuitable Buildings = 17
Unsuitable Land = 2
Number of Resubmissions = 0

[FR Doc. 90-26981 Filed 11-15-90 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-01-4740-10-CDLE]

Temporary Closure of Public Lands in San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure of public lands in San Bernardino County, CA.

SUMMARY: Notice is hereby given that certain Public Lands in California that were used previously as courses and starting, pitting, spectating, and finishing areas for the Barstow to Las Vegas (B-V) Motorcycle Race, will be closed from November 21 through December 2, 1990 to all vehicle use. This closure begins on Public Lands north of I-15 in the Alvord Road area. From this location the closure covers the various routes and pit areas of previous Barstow to Vegas races, traveling in a generally northeasterly direction to the Nevada State border.

Order: Effective at 0001 hours (12:01 a.m., PST) Wednesday, November 21 through 2400 hours (Midnight, pst) Sunday, December 2, 1990, all Public Lands used for course routes, starting, pitting, spectating, and finishing areas for the Barstow to Las Vegas motorcycle race will be closed to vehicles. The legal land descriptions for the start, spectator, and pit areas affected by this closure are as follows:

San Bernardino Meridian:

T.10 N, R.3 E, sec. 1, 2, 3, 10, 11, 12, 14, 15.
T.10 N, R.4 E, sec. 5, 6, 7.
T.11 N, R.3 E, sec. 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36.
T.11 N, R.4 E, sec. 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, 32.
T.12 N, R.3 E, sec. 22, 23, 24, 25, 26, 27, 34, 35, 36.
T.12 N, R.4 E, sec. 19, 20, 29, 30, 21, 32.
T.15 N, R.8 E, sec. 19, 20, 29, 30.
T.12 N, R.7 E, sec. 11, 12, 13, 14.
T.15 N, R.10 E, sec. 2, 3, 10, 11.
T.17 N, R.15 E, sec. 7.

A map showing vehicle routes of travel affected by this closure is available from any of the offices listed below.

No person may use, drive, move, transport, let stand, park, or have charge or control over any type of motorized vehicle within this closure area. Exemptions to this order are granted to employees of valid right of way holders in the course of normal duties associated with maintenance of the right of way. All other exemptions to this order are by written authorization of the California Desert District Manager and Barstow and Needles Area Managers.

BACKGROUND: The purpose of this temporary closure is to protect all Public Land resources on or adjacent to Barstow to Las Vegas race courses and associated areas from the impacts of unauthorized vehicle use. Resources most critical to these areas are the desert tortoise and its habitat. The desert tortoise is listed as a threatened species under the Federal Endangered Species Act and is afforded increased protection under the terms of the Act. The environmental assessment prepared for this closure action has shown there will be no significant impacts to recreational use or the natural environment as a result of this closure.

EFFECTIVE DATE: This closure will be in effect from 0001 hours (12:01 a.m., PST) Wednesday, November 21, 1990 through 2400 hours (Midnight, PST) Sunday December 2, 1990.

FOR FURTHER INFORMATION CONTACT:
District Manager, California Desert District, 1695 Spruce St., Riverside, CA 92507, 714-276-6394
Area Manager, Barstow Resource Area, 150 Coolwater Lane, Barstow, CA 92311, 619-256-3591
Area Manager, Needles Resource Area, 101 W. Spikes Road, Needles, CA 92363, 619-326-3896

SUPPLEMENTARY INFORMATION: The environmental assessment and maps showing the areas affected by this closure order is available by contacting the aforementioned offices.

Authority for this temporary closure and use restrictions is found in 43 CFR 8364.1. Violation of this closure is punishable by a fine not to exceed $1000 and/or 12 months in jail.

Dated: November 9, 1990.

Gerald E. Hillier,
District Manager.

[FR Doc. 90-27112 Filed 11-15-90; 8:45 am]
BILLING CODE 4310-40-M

Bureau of Land Management

[G-910-G1-0406-4214-10; NMNM 55234]

Amended Record of Decision (ROD), Waste Isolation Pilot Plant (WIPP) Project; NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Amended, ROD, WIPP.

SUMMARY: The BLM's ROD for the WIPP Project Final Environmental Impact Statement was published in the Federal Register (FR) on September 19, 1990, implementing the Department of Energy's (DOE's) Proposed Action by recommending that the Secretary of Interior approve the DOE's request for an amended administrative withdrawal for the WIPP. The ROD is amended as outlined in the Supplementary Information listed below.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504-1449, 505-988-6071.

SUPPLEMENTARY INFORMATION: The FR notice appearing in FR Doc. 90-22097, published at pages 38586 and 38587, in the issue of Wednesday, September 19, 1990, (Vol. 55 No. 182), is hereby amended as follows:

On page 38586, column 2, the sentence beginning 10 lines from the bottom of the page reading: "Approval of the administrative withdrawal State and Federal Agencies." is hereby deleted. In its place insert: "The Public Land Order (PLO) for the WIPP withdrawal if approved, will contain the following stipulation: No transuranic or other forms of radioactive waste will be transported to or emplaced at the WIPP until such time as the DOE has obtained all required permits and provided copies to the Department of Interior (DOI), BLM, or certifies that all environmental permitting requirements have been met, and the BLM issues a Notice to Proceed."

On page 38587, column 3, paragraph D., Mitigation and Monitoring, the last sentence is deleted. In its place insert: "No transuranic or other forms of radioactive waste will be transported to or emplaced at the WIPP until such time as the DOE has obtained all required permits and has provided copies to the DOI, BLM, or certifies that all environmental permitting requirements have been met, and the BLM issues a Notice to Proceed."

Dated: November 7, 1990.

Larry L. Woodard,
State Director.

[FR Doc. 90-27108 Filed 11-15-90; 8:45 am]
BILLING CODE 4310-FB-M

[NV-050-91-4210-02]

Las Vegas District Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the Interior Notice is hereby given in accordance with Public Law 920463 that a meeting of the Bureau of Land Management, Las Vegas District Advisory Council will be held December 11, 1990, at 9 a.m. to 3 p.m. in the Las Vegas BLM District Office, Las Vegas, Nevada.

The meeting agenda will include:

1. Observe ongoing Wild Horse and Burro adoption.
2. Tortoise Habitat Conservation Plan—Update and Progress.
3. Rocky Gap Road.
4. Stateline Resource Management Plan—Progress Report.
5. Sandy Valley Sanitary Landfill Closure.

Advisory Council Meetings are open to the public. Persons wishing to make oral statements to the Council must notify the District Manager, Bureau of Land Management, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89125, prior to December 7, 1990.

Minutes of the meeting will be available, upon request, at the Las Vegas District Office on December 21, 1990.

Dated: November, 7, 1990.

Gary Ryan,
Associate District Manager, Las Vegas, Nevada.

[FR Doc. 90-27109 Filed 11-15-90; 8:45 am]
BILLING CODE 4310-HC

[MT-060-01-4320-02]

Lewistown District Grazing Advisory Board Meetings

AGENCY: Bureau of Land Management, Lewistown District, Interior.

ACTION: Notice of Grazing Advisory Board meeting.

SUMMARY: The Lewistown District Grazing Advisory Board will meet December 18, 1990. The agenda will be:

10 a.m.—Introduction and Welcome
10:15 a.m.—Fiscal Year 1991 Range Improvements
11 a.m.—Preferred Alternative, Judith, Valley, Phillips Resource Management Plan
12 noon—Lunch
1 p.m.—Preferred Alternative (continued)
2 p.m.—Payment of Fees
2:30 p.m.—Grazing Fee Distributions to Counties
3:30 p.m.—Adjourn

Public comment will be sought at the end of each agenda item.

LOCATION: Bureau of Land Management, Airport Road, Lewistown, Montana.

FOR FURTHER INFORMATION CONTACT: Wayne Zinne, District Manager, Bureau of Land Management, 80 Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The Lewistown District Grazing Advisory Board is authorized under the Federal Advisory Committee.

Act, 5 U.S.C., Appendix 1. The board advises the Lewistown District Manager concerning the development of allotment management plans and the utilization of range betterment funds.

Dated: November 5, 1990.

Wayne Zinne,
District Manager.

[FR Doc. 90-27098 Filed 11-15-90; 8:45 am]
BILLING CODE 4310-DN-M

[OR-050-4320-02; GP1-035]

Grazing Advisory Board Meeting, Prineville, Oregon District

November 5, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Grazing Advisory Board Meeting Thursday, December 13, 1990, 10 a.m.

SUMMARY: There will be a meeting of the Prineville Oregon District, Bureau of Land Management Grazing Advisory Board on Thursday, December 13, 1990 at 10 a.m. in the District Office conference room. Topics for discussion will be:

1. The impacts to the range program as a result of current funding levels
2. Rangeland project update for fiscal years 1990 and 1991
3. Summary of allotment evaluations completed in fiscal year 1990 and those to be completed in fiscal year 1991
4. Proposed staffing changes in the district which will affect the rangeland management program
5. Completion report for the Bridge Creek Public Lands Restoration Task Force volunteer project
6. New procedures related to late payment of grazing fees
7. Programs report on various Coordinated Resource Management Plan (CRMP) efforts in the district

Following completion of the above agenda and adjournment of the District Grazing Advisory Board, the Taylor Grazing Board for Crook and Deschutes counties will meet to discuss allocation of federal grazing receipts.

FOR FURTHER INFORMATION CONTACT: James L. Hancock, District Manager, BLM Prineville District Office, 185 E. 4th Street, Prineville, OR 97754 (Telephone: 503-447-4115).

James L. Hancock,
District Manager.

[FR Doc. 90-27099 Filed 11-15-90; 8:45 am]
BILLING CODE 4310-33-M

[NM-060-01-4351-11-600]

Intent of Interim Road and Area Closures; Fort Stanton Reservation, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent of interim road and area closures at the Fort Stanton Reservation.

SUMMARY: Pursuant to 43 CFR part 8364, the Bureau of Land Management (BLM) will temporarily close roads and access areas to off-road motorized vehicle use in areas of public lands in the Roswell Resource Area.

DATE: This action is effective December 1, 1990, and will remain in effect until approval of the Final Roswell Resource Area Resource Management Plan.

ADDRESSES: Maps showing the location of designated routes and information pertaining to the above closures will be available at the BLM Roswell Resource Area Office, Federal Building, 5th and Richardson; BLM Roswell District Office, 1717 West 2nd St., Roswell, New Mexico; and the U.S. Forest Service Smokey Bear Ranger District, 901 Mechem Drive, in Ruidoso, New Mexico.

FOR FURTHER INFORMATION CONTACT: Saundra L. Porenta, Area Manager, Roswell Resource Area, P.O. Drawer 1857, Roswell, New Mexico 88202–1857, Telephone (505) 624–1790.

SUPPLEMENTARY INFORMATION: Approximatelyy 12 miles of roads and trails within the Ft. Stanton Reservation will be closed and temprary off-road motorized vehicle use closures will be imposed over the following described areas.

Vehicular use will be restricted to designated roads and trails delineated on maps available from the Bureau of Land Management.

New Mexico Principal Meridian

Fort Stanton Reservation

T. 9 S., R. 14 E.,
Surveyed and unsurveyed portions of secs. 13, 14, 23, 24, 26–29, incl., 32, 33, and 36., and protracted secs. 25, 34, and 35.
T. 10 S., Range 14 E.,
Surveyed and unsurveyed portions of secs. 1, 2, 3, 9–15, incl., 22, and protracted secs. 3 and 4.
T. 10 S., R. 15 E.,
Protracted secs. 19, 30, and 31.
T. 10 S., R. 15 E.,
Surveyed and unsurveyed portions of secs. 5, 6, and 7.

The area is generally the west half of the Reservation bounded by New Mexico Highway 214 on the east, the south and west Reservation boundaries, and the Reservation boundary and State Highway 380 on the north.

This temporary road and area closure will be in effect for a period from December 1, 1990, until the Final Resource Management Plan for the Roswell Resource Area is approved. The purpose of the closure and restriction is to prevent excessive erosion of fragile soils, provide protection of wildlife habitat and riparian areas, protect a Federally-listed endangered cactus, protect important cultural sites, preserve scenic values, promote safety, and prevent the development of new travelways. Motorized vehicle access for administrative purposes by Federal and State agencies may be approved by the authorized officer. Only lands within the boundary of the Fort Stanton Reservation are affected by this action.

Dated: November 9, 1990.

David L. Mari,

Associate District Manager.

[FR Doc. 90–27102 Filed 11–15–90; 8:45 am]

BILLING CODE 4310–FB–M

[D–943–00–4212–13; IDI–22680]

Order Providing for Opening of Public Land; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: This order opens lands received in a private exchange to the land, mining, and mineral leasing laws.

EFFECTIVE DATE: December 5, 1990.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1720.

1. In an exchange made under the provisions of section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been reconveyed to the United States:

Boise Meridian

T. 7 N., R. 37 E.,
Sec. 23, NW¼NW¼.
T. 8 N., R. 38 E.,
Sec. 27, E½NW¼.
T. 8 N., R. 39 E.
Sec. 18, lots 1 and 2.

The areas described aggregate 186.43 acres in Fremont and Jefferson Counties.

2. At 9 a.m. on December 5, 1990, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on December 5, 1990, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on December 5, 1990, the lands described in paragraph 1 will be opened to location and entry under the United States mining laws and to applications and offers under the mineral leasing laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: June 29, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90–27044 Filed 11–15–90; 8:45 am]

BILLING CODE 4310–66–M

Realty Action; Lassen County, CA

AGENCY: Bureau of Land management, Department of the Interior, Susanville, California.

ACTION: Amendment of notice of realty action; exchange of public lands in Lassen County, California (CACA 22471).

SUMMARY: The Notice of Realty Action (CACA 22471) published in the **Federal Register** on February 1, 1990 (55 FR 3491–92) is hereby amended to add the following public lands to the lands to be treated to Henry Schechert through an exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

T. 29 N., R. 14 E., M.D.M.
Section 4, NESW. (40 acres)

These lands have been examined and found suitable for disposal by exchange. An environmental analysis, including a cultural resources clearance and threatened/endangered species clearance, has been completed for this parcel. Those documents are available for review at the Bureau of Land Management, 705 Hall Street, Susanville, CA 96130.

COMMENTS: For a period of 45 days from the date of publication of this amended notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, CA 96130. Comments will be evaluated by the California State Director of the Bureau of Land Management, who may affirm, vacate or modify this amendment.

INFORMATION: For additional information on this matter, call or write Peter Humm, District Realty Specialist, Bureau of Land Management, 705 Hall Street, Susanville, CA 96130. Telephone (916) 257–5381.

Robert J. Sherve,

Acting District Manager.

[FR Doc. 90–27100 Filed 11–15–90; 8:45 am]

BILLING CODE 4310–40–M

[CA–940–01–4212–12; CACA 21579]

California; Realty Action; Exchange of Public and Private Lands in Riverside, Imperial, Mendocino, Trinity, and San Bernardino Counties and Order Providing for Opening of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document and opening order.

ADDRESSES: Inquiries concerning the land should be addressed to Chief, Branch of Adjudication and Records, Bureau of Land Management, California State Office, 2800 Cottage Way (room E–2841), Sacramento, California 95825.

SUMMARY: The purpose of this exchange was to acquire lands within a variety of special management areas identified by the Bureau of Land Management including the East Mojave National Scenic Area, Mule Mountain Long Term Visitor Area, Imperial Sand Hills Recreation Area, Mammoth Wash Off-Highway-Vehicle Area and Yolla Bolly—Middle Eel Wilderness Area.

FOR FURTHER INFORMATION CONTACT: Mike DeKeyrel, Barstow Resource Area, Bureau of Land Management, 150 Coolwater Lane, Barstow, CA 92311, Telephone (619) 256–3591.

1. The United States issued land exchange conveyance documents to the State of California on September 28, 1988, pursuant to the authority of section 206 of the Act of October 21, 1976 (43 U.S.C. 1716) for the following described lands:

San Bernardino Meridian, California

T. 9 N., R. 2 E.,
Sec. 26, S½SW¼, SW¼SE¼, S½NE¼ SE¼SE¼, S½NW¼SE¼SE¼, S½SE¼ SE¼;
Sec. 27, S½SE¼;
Sec. 34, lots 1 and 3;
Sec. 35, lots 1–4, inclusive.
T. 2 N., R. 5 E.,
Sec. 1, lot 2 NE¼, lot 2 NW.
T. 9 N., R. 2 W.,
Sec. 6, NE¼SW¼.
T. 6 N., R. 3 W.,
Sec. 10, NW¼SW¼;
Sec. 21, NW¼;
Sec. 26, E½NE¼.
T. 6 N., R. 4 W.,
Sec. 24, E½SW¼SW¼, SE¼SW¼.

The areas described contain 847.41 acres in San Bernardino County.

2. In exchange for the lands described in paragraph 1, on January 3, 1990, the United States accepted title to the following described private lands from the State of California.

Mount Diablo Meridian, California

T. 25 N., R. 12 W.,
Portion of Tract 74 (formerly described as the NW¼NW¼, S½NW¼, SW¼ sec. 36).

San Bernardino Meridian, California

T. 9 N., R. 11 E.,
Secs. 16, 36, all.
T. 10 N., R. 11 E.,
Sec. 16, all.
T. 10 N., R. 12 E.,
Secs. 16, 36, all.
T. 12 S., R. 16 E.,
Sec. 36, all.
T. 13 S., R. 17 E.,
Sec. 36, NW¼, SW¼ (excepting 17.13 acres previously conveyed to the United States), SE¼.
T. 13 S., R. 17½ E.,
Sec. 36, all.
T. 14 S., R. 18 E.,
Sec. 16, all.
Sec. 36, NE¼, N½SE¼, SE¼SE¼.
T. 8 S., R. 20 E.,
Sec. 16, all.

The areas described contain 6,782.67 acres in Mendocino, Trinity, Imperial, Riverside, and San Bernardino Counties.

3. The above land descriptions contain exceptions too numerous to list here. A precise description of the exceptions is available in the case file CACA 21579 in the California State Office.

4. The appraised value of the non-Federal land is $671,000; the Federal land is $670,990.50. The value difference of $9.50 is approximately .00001 percent of the total Federal land value and qualifies under the cash equalization waiver provision under section 9 of the Federal Land Exchange Facilitation Act of 1988 (102 Stat. 1086). Therefore an equalization payment between the non-Federal and Federal lands is not required.

5. At 10 a.m. on December 17, 1990, the following lands acquired in the exchange shall be open to operation of the public land laws, to location under the United States mining laws and to the provisions of the mineral leasing laws, subject to valid existing rights and applicable law. All mineral locators assume the responsibility for assuring that the minerals being located were actually acquired by the United States.

San Bernardino Meridian, California

T. 9 N., R. 11 E.,
Secs. 16, 36, all.
T. 10 N., R. 11 E.,
Sec. 16, all.
T. 10 N., R. 12 E.,
Secs. 16, 36, all.
T. 12 S., R. 16 E.,
Sec. 36, all.
T. 13 S., R. 17 E.,
Sec. 36, NW¼, SW¼ (excepting 17.13 acres previously conveyed to the United States), SE¼.
T. 13 S., R. 17½ E.,
Sec. 36, all.
T. 14 S., R. 18 E.,
Sec. 16, all.
Sec. 18, NE¼, N½SE¼, SE¼SE¼.
T. 8 S., R. 20 E.,
Sec. 16, all.

Robert C. Nauert,

Chief, Branch of Adjudication and Records.

[FR Doc. 90–27096 Filed 11–15–90; 8:45 am]

BILLING CODE 4310–40–M

[CA–060–01–4212–14; CACA 25287]

California Desert District, Realty Action; Non-Competitive (Direct) Sale of Public Land and Partial Revocation of Small Tract Classification, Serial Number CACA 25287, San Bernadino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-competitive (direct) sale of public land, CACA 25287.

SUMMARY: The public land described below has been examined and found suitable for disposal under sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713 and 1719):

San Bernardino Meridian, California

T. 3 N., R. 4 E.
Sec. 14, W½NW¼SE¼SW¼;

Containing 5.00 acres.

The parcel will be offered by direct sale to Arnold and Stella Goularte, the owners of contiguous land and who own improvements inadvertently located on the public land.

The sale will be made on or about January 15, 1991. The appraised fair market value of the parcel is 7,000 dollars.

All mineral interests will be conveyed simultaneously with the surface estate. The United States mineral interests offered for conveyance have no known value. At the time of the sale, Arnold and Stella Goularte will be required to deposit a $50.00 nonrefundable application fee for conveyance of the mineral estate.

The parcel is difficult and uneconomic to manage as part of the public lands, and is not suitable for transfer to another Federal, State or local agency. There is a need to recognize the established use and resolve the inadvertent trespass situation.

Sale of the parcel is consistent with land use planning decisions and current policy. There is no conflict with local plans and zoning. The public interest would be served by completing the sale.

The portion of Bureau of Land Management Order of Classification Small Tract 430 (October 18, 1954) affecting the above described public

land is hereby revoked effective upon issuance of patent to the parcel. Prior to conveyance, this Small Tract classification will continue to segregate the public land from appropriation under the public land laws, including the mining law. Publication of this notice will additionally segregate, for a period of 270 days, the above public land parcel from mineral leasing.

The terms and conditions applicable to the sale are:

A. Reservations to the United States.

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

There will be no mineral reservation to the United States. All minerals will be conveyed in the sale patent.

B. The public land will be conveyed subject to the following:

1. A right-of-way not to exceed 33 feet in width, for roadway and public utilities purposes, to be located along the boundaries of said parcel.

Additional information about this sale is available from the Barstow Resource Area Office, 150 Coolwater Lane, Barstow, California 92311 (619–256–3591) and the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager at the above address. In the absence of any objections, this realty action will become the final determination of the Department of the Interior, and the required payments requested from the Goularte. Payment of the purchase price in full shall be in accordance with 43 CFR 1822.1–2 and 2711.3–3(b).

The land will not be offered for direct sale to the Goularte for at least 60 days after the date of this notice.

Dated: November 8, 1990.

James L. Williams,

Acting District Manager.

[FR Doc. 90–27159 Filed 11–15–90; 8:45 am]

BILLING CODE 4310–JB–M

[CO–050–4212–14; COC–51325]

Realty Action, Boulder County, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed sale of public land in Boulder County, Colorado (COC–51325); segregation of land from appropriation under the public land laws, including the mining laws.

SUMMARY: The following land is being evaluated for sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713):

Sixth Principal Meridian, Colorado

T.1N., R.71W. Section 19: a portion of the SE¼SE¼SE¼ bounded by patented mining claims MS 427 (Durock), MS 439 (Smith) and MS 504 (Clipper).

The above land contains approximately 3 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first.

ADDRESS: Bureau of Land Management, Northeast Resource Area, Building 41, DFC, P.O. Box 25047, Denver, Colorado 80225–0047

FOR FURTHER INFORMATION CONTACT: Priscilla McLain at the Northeast Resource Area Office at (303) 236–4399.

SUPPLEMENTARY INFORMATION: Detailed information on the bidding procedures and appraisal price will be published following survey, at least 45 days before the sale.

Donnie R. Sparks,

District Manager.

[FR Doc. 90–27105 Filed 11–15–90; 8:45 am]

BILLING CODE 4310–JB–M

[ID–943–01–4212–13; IDI–23538]

Issuance of Land Exchange Conveyance Document; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to Wesley R. Wootan and Christine W. Wootan, of Hammett, Idaho, 83627, for the following described land under seciton 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian

T. 6 S., R. 10 E.,
- Sec. 1, NE¼SW¼, S½SW¼, W½SE¼, and SE¼SE¼;
- Sec. 2, SE¼SE¼;
- Sec. 11, E½NE¼, SW¼NE¼, and S½;
- Sec. 12;
- Sec. 13, N½, N½SW¼, and SE¼;
- Sec. 14, N½, NE¼SW¼, and N½SE¼;
- Sec. 24, NE¼ and N½SE¼.

T. 6 S., R. 11 E.,
- Sec. 6, lot 7;
- Sec. 7;
- Sec. 17, W½NW¼ and NW¼SW¼;
- Sec. 18, lots 1 to 4, inclusive, NE¼, E½W½, N½SE¼, and SW¼SE¼;
- Sec. 19, lots 1 to 3, inclusive.

Comprising 4,097.57 acres of public land.

In exchange for these lands, the United States acquired the following described lands:

Boise Meridian

T. 13 N., R. 4 W.,
- Sec. 18, lots 1 to 3, inclusive;
- Sec. 19, lots 3 and 4, SE¼NE¼, SE¼NW¼, E½SW¼, and SE¼;
- Sec. 20, SW¼NW¼, N½SW¼, and SW¼SW¼;
- Sec. 29, W½NE¼ and NW¼NW¼;
- Sec. 30, lots 1 and 2, NE¼, E½NW¼, N½SE¼, and SW¼SE¼.

T. 13 N., R. 5 W.,
- Sec. 10, NW¼NE¼, S½NE¼, N½SE¼, SW¼SE¼, N½SE¼SE¼, and SW¼SE¼SE¼;
- Sec 11, N½SW¼SW¼, SE¼SW¼, and SE¼SE¼;
- Sec. 12, NE¼SW¼, S½S½, and NW¼SE¼;
- Sec. 13;
- Sec. 14, N½NE¼, SE¼NE¼, E½E½NW¼, NE¼NE¼SW¼, S½N½SW¼, and S½SW¼;
- Sec. 15, W½E½NE¼, W½NE¼, NW¼NE¼SE¼, S½NE¼SE¼, and SE¼SE¼;
- Sec. 22, NE¼NE¼;
- Sec. 23, S½NE¼, NW¼, and N½S½;
- Sec. 24, NW¼, N½SW¼, and W½SE¼;
- Sec. 25, N½NE¼ and SE¼NE¼.

Comprising 3,891.74 acres of private land.

The purpose of the exchange was to acquire non-federal land which has high public value for critical habitat for Columbia sharp-tailed grouse and numerous other wildlife species. The public interest was well served through completion of this exchange.

Dated: October 12, 1990.

John Davis,

Deputy State Director for Operations.

[FR Doc. 90–27045 Filed 11–15–90; 8:45 am]

BILLING CODE 4310–GG–M

[G–010–4212–23/G1–0101]

Albuquerque District, NM; Realty Action—Life Estate Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action for NM84035, Life estate lease of public land in San Juan County, New Mexico.

SUMMARY: The following described land has been determined suitable for leasing under section 302 of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA), 43 U.S.C. 1732.

New Mexico Principal Meridian

T. 24 N., R. 11 W.
- Sec. 7 S½S½NE¼NE¼SE¼, N½N½SE¼ NE¼ SE½.

Containing/aggregating approximately 5 acres of public land in the proposed lease.

The Bureau of Land Management proposes to issue a life estate lease on the above described land to Mrs. Bessie Woody. This would be for continued residential use for the term of the lease. After fulfillment of the lease, the Executor or Administrator of the estate, or people from the Huerfano Chapter will remove the property from the public land. Issuance of this lease is authorized and addressed in the De-Na-Zin Wilderness Management Plan approved August 1989. Preparation and implementation of the Management Plan was addressed in the Farmington Resource Area Management Plan approved July 1988.

COMMENT DATES: On or before December 31, 1990, interested parties may submit comments to the Bureau of Land Management at the address given below. Any adverse comments will be evaluated by the Bureau of Land Management, New Mexico State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Interior.

FURTHER INFORMATION: Information related to this proposed lease is available by contracting Danny Charlie or Jerry Crockford at the Bureau of Land Management, Farmington Resource Area, 1235 LaPlata Highway, Farmington, New Mexico 87401, telephone (505) 327–5344.

Dated: November 6, 1990.

Robert T. Dale,

District Manager.

[FR Doc. 90–27103 Filed 11–15–90; 8:45 am]

BILLING CODE 4310–FB–M

[OR–050–4212–11: GP1–038]

Realty Action—Recreation and Public Purposes Classification in Jefferson County, OR

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of realty action.

SUMMARY: OR–46596.

The following described lands have been examined and found to be suitable for classification under the Recreation and Public Purposes Act of June 14, 1926 as Amended (43 U.S.C. 869 Et. seq.)

T. 12 S., R. 12 E., W.M., Jefferson County, Oregon,
- Sec. 11: N½SW¼ SW¼SW¼;
- Sec. 14: NW¼.

The described lands, comprising 280 acres, are being made available for conveyance to the State of Oregon as an addition to Cove Palisades State Park. This classification is an interim measure to segregate the public lands from entry. The lands are contained within the boundaries of the State Park.

The land is located approximately eight miles southwest of the City of Madras in Jefferson County, Oregon. Both the surface estate and mineral estate of the entire 280 acres are public domain in Federal ownership. The land is characterized by steep canyon slopes adjacent to the reservoir and the elevation above sea level varies from 1,945 feet at the reservoir to more than 2,400 feet at the rim of the canyon. The reservoir was established under FERC license for the Portland General Electric Company Round Butte Hydroelectric Project. The land is adjacent to a variety of land ownership, including BLM public land, State Parks, private land, and the Crooked River National Grass Lands.

The land is overlapped by the withdrawal for Power Project No. 2030 which affects approximately 140 acres below the 1,950-foot contour line, inundated by the Billy Chinook Reservoir on the Crooked River. By determinations (DVOR–584) dated February 27, 1987, and (DVOR–611) dated November 8, 1989, FERC concurs that the subject land located within the Boundary of Power Project No. 2030 can be opened to conveyance to the State of Oregon subject to the provisions of section 24 of the Federal Power Act. The 120 acres in section 11 were previously opened to entry subject to the provisions of section 24 of the Federal Power Act by the Secretarial Order of April 23, 1934. In addition to the Billy Chinook Reservoir, there is a County Road (Jordan Rd.) extending through the property. There are no other improvements or facilities on the land; the land is not contaminated by hazardous materials.

It has been determined by Bureau of Land Management mineral specialists that the land does not contain any locatable minerals of more than nominal value; that there has not been any serious interest expressed in locatable mineral development; and that there are no mining claims of record on the subject land or on adjacent lands. This classification would segregate the land from location and entry under the mining laws but not from applications and offers under the mineral leasing laws.

This classification action is consistent with the Bureau's Decision as outlined in the land report for Revocation of the Deschutes Reclamation Project Withdrawal, serialized OR–20313. This revocation met the categorical exclusion criteria contained in 516 Departmental Manual 6, appendix 5.4B (5) and (8). Accordingly, neither an enviornmental assesment nor an environmental impact statement is required.

Information concerning this classification, including the land report, OR–20313, is available for review at the Prineville District Office, P.O. box 550, Prineville, Oregon 97754.

Classification for Recreation and Public Purposes is approved as to the land described above.

On or before January 7, 1991, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. box 550, Prineville, OR 97754. Objections will be reviewed by the State Director who may sustain, vacate or modify the realty action. In the absence of any objections, this realty action will become the final determination of this department.

Dated: November 7, 1990.

Harry R. Cosgriffe,

Acting District Manager.

[FR Doc. 90–27097 Filed 11–15–90; 8:45 am]

BILLING CODE 4310–33–M

[CO–050–4333–09]

San Luis Resource Management Area, CO; Interim Management for Protection of Wild and Scenic River Values

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management, Canon City District, has determined that 41 miles of the Rio Grande River are eligible for consideration as a potential addition to the National Wild and Scenic River System. This required resource management plan determination was made as a part of the San Luis Resource Management Plan in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), 43 CFR part 1600, the Guidance for the Identification and Evaluation of Potential Additions to the National Wild and Scenic Rivers System, the USDI–USDA Final Revised Guidelines for Eligibility, Classification and Management of River Areas, and BLM Manual section 1623.41A2d.

SUMMARY: A resource management plan (RMP) is being prepared for the San Luis Resource Area of Colorado. Assessment of potential additions to the National Wild and Scenic River System is included in this planning effort.

BEST COPY AVAILABLE

Within the San Luis RMP, a total of 32 streams or segments of streams have been analyzed to date, and the 41-mile segment of the Rio Grande River in Colorado meets the eligibility criteria. This segment is the 41 miles of river above the state line. This segment of the river is "free-flowing" and has "outstandingly remarkable" values; therefore, adequate interim protection is needed until a final decision is reached.

The 41-mile segment of the Rio Grande River, which is the last 41 miles within Colorado has been tentatively classified as follows: the upper 33 miles meet the "scenic" classification criteria, and the lower 8 miles meet the "wild" classification criteria. These tentative classifications are based on conditions of the river corridor as they exist at this time. Management activities and authorized uses on BLM-administered lands shall not be allowed to adversely affect the eligibility or classification of this river. Management prescriptions affecting BLM-administered lands within the one-mile corridor along this river should provide for protection in three ways:

1. The free-flowing characteristics of the river cannot be modified, to the extent that BLM is authorized under law to control stream impoundments and diversions.

2. Outstandingly remarkable values must be protected and, to the extent practicable, enhanced.

3. Management and development of the river corridor cannot be modified to the degree that eligibility or classification is changed.

A study report has been prepared for the segment of the Rio Grande River and will be included as an appendix to the San Luis Proposed Resource Management Plan/Final Environmental Impact Statement. This study report documents the application of the wild and scenic river eligibility, classification, and suitability criteria and is an integral part of the RMP process documentation. The determination within the RMP will reflect tentative eligibility, classification, and suitability of the river corridor for inclusion in the national system of rivers designated under the Wild and Scenic Rivers Act. The RMP will include a finding on eligibility, classification, and suitability. The RMP will include specific management prescriptions to protect the resource values identified in the study and may contain a preliminary administrative recommendation. The final decisions on wild and scenic rivers will be made by the U.S. Congress.

DATES: Interim protective management on public lands along the described stream/river corridors will exist for a period not exceeding 5 years from the date of this publication or until such time as a final decision has been made, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain more information by writing RMP Project, Bureau of Land Management, P.O. Box 1171, Canon City, Colorado 81215–1171 or by contacting the RMP Project Manager, Dave Taliaferro at (719) 275–0631.

Donnie R. Sparks,
District Manager.

[FR Doc. 90–27104 Filed 11–15–90; 8:45 am]
BILLING CODE 4310–JB–M

[ID–942–01–4730–12]

Idaho: Filing of Plats of Survey

The plats of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., November 9, 1990.

The supplemental plat prepared to correct a lot in section 27, T. 48 N., R. 2 E., Boise Meridian, Idaho, was accepted November 2, 1990.

The supplemental plat prepared to correct certain lots in sections 11 and 14, T. 1 N., R. 3 E., Boise Meridian, Idaho, was accepted November 5, 1990.

The supplemental plat prepared to correct the bearing on the west boundary of, and lot 6 (now lot 12), section 29, T. 11 N., R., 14 E., Boise Meridian, Idaho, was accepted November 2, 1990.

These supplemental plats were prepared to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: November 9, 1990.

Duane E. Olsen,
Chief Cadastral Surveyor for Idaho.

[FR Doc. 90–27106 Filed 11–15–90; 8:45 am]
BILLING CODE 4310–GG–M

[OR–933–01–4332–09; GP1–021]

Public Review Period for USGS/USBM "Mineral Survey Report" Prepared for BLM Wilderness Study Areas; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Oregon Bureau of Land Management (BLM) is requesting public review of the U.S. Geological Survey (USGS) and U.S. Bureau of Mines Open-File Report for the following Wilderness Study Area (WSA). This WSA has been preliminarily recommended suitable for inclusion into the National Wilderness Preservation System:

1. Mountain Lakes (OR–011–001), Klamath County, Oregon (USGS Open-File Report 89–541).

If the public provides a new interpretation of the data presented in the mineral reports or submits new mineral data for consideration, BLM will send these comments to the USGS. Significant new findings, if any, will be documented in the BLM "Wilderness Study Report" which will be reviewed by the Secretary, the President, and by Congress before a final decision on wilderness designation is made.

Copies of the mineral survey report are available for review in BLM offices in Portland, Salem, Eugene, Roseburg, Medford, Coos Bay, Lakeview, Burns, Prineville, Vale, and Spokane. These copies are not available for sale or removal from BLM offices. Copies, of the report, however, may be purchased from the following address: Books and Open-File Report Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225, (303) 236–7476. Payment by check or money order must accompany all orders.

DATES: The public review of the mineral survey report named in this notice shall conclude on January 18, 1991.

ADDRESSES: Send comments and information to: State Director (920), BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Eric Hoffman, Division of Mineral Resources at (503) 280–7039 or David Harmon, Division of Lands and Renewable Resources at (503) 280–7062, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208.

SUPPLEMENTARY INFORMATION: Section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, directed the Secretary of the Interior to inventory lands having wilderness characteristics as described in the Wilderness Act of September 3, 1964, and from time to time report to the President his recommendations as to the suitability or non-suitability of each area for preservation as wilderness. The USGS and US Bureau of Mines (USBM) are charged with conducting mineral surveys for areas that have been preliminarily recommended suitable by BLM for inclusion into the wilderness

system to determine the mineral values, if any, that may be present in such areas.

There are about 2.8 million acres of Wilderness Study Areas identified by BLM in Oregon, of which about 1.3 million acres have been preliminarily recommended as suitable. This report is a part of 35 mineral survey reports that have been prepared by USGS and USBM. This is also the final mineral survey report scheduled for Oregon WSAs.

The BLM Oregon State Director is providing this public review and comment period in order to insure that all available minerals data are considered by Congress prior to making its final wilderness suitability decisions. BLM will review the public comments and will forward to USGS/USBM any significant new minerals data or new interpretations of the minerals data submitted by the public.

The information requested from the public via this invitation is not limited to any specific energy or mineral resource. Comments should be provided in writing and should be as specific as possible and include:

1. The name and number of the subject Wilderness Study Area and USGS/USBM Mineral Survey Report;
2. Mineral(s) of interest;
3. A map or land description by subdivision of the public land survey grid or protracted surveys showing the specific parcel(s) of concern within the subject Wilderness Study Area;
4. Information and documents that depict the new data or reinterpretation of data;
5. The name, address, and phone number of the person who may be contacted by technical personnel of the BLM, USGS, or USBM assigned to review the information.

Dated: November 8, 1990.

Patrick H. Geehan,
Deputy State Director for Mineral Resources.

[FR Doc. 90–27101 Filed 11–15–90; 8:45 am]
BILLING CODE 4310–33–M

[ID–943–01–4214–10; IDI–05278]

Termination of Proposed Withdrawal and Reservation of Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Withdrawal application termination.

SUMMARY: The Forest Service has relinquished in its entirety a withdrawal application affecting various administrative and recreation sites within the Boise National Forest. This action terminates the segregative effect of the application and opens the lands to such disposition as may, by law, be made of National Forest lands.

EFFECTIVE DATE: December 17, 1990.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1597.

1. Notice of an application, serial number I–05278, for withdrawal and reservation of lands was published as **Federal Register** Document No. 58–5832 on pages 5794–5802 of the issue for July 31, 1958. The applicant agency has cancelled its application insofar as it affects the remaining lands involved, which are described as follows:

Boise Meridian

Boise National Forest

T. 1 N., R. 7 E.,
Sec. 19, N½SE¼NE¼NE¼.
T. 1 N., R. 8 E.
Sec. 10, S½NE¼SW¼NW¼SE¼.
T. 1 N., R. 9 E.
Sec. 2, NE¼SW¼SE¼SW¼, E½SE¼SW¼SE¼SW¼, and W½SW¼SE¼SW¼.
T. 3 N., R. 9 E.,
Sec. 6, lot 3;
Sec. 18, W½SE¼SW¼NW¼NE¼.
T. 4 N., R. 5 E.,
Sec. 35, W½SE¼SW¼SE¼NW¼, NE¼NW¼NE¼SW¼, E½SE¼NW¼NE¼SW¼, W½NE¼NE¼SW¼, W½NE¼NE¼NE¼SW¼, SE¼NE¼SW¼SW¼SE¼, NE¼SE¼SW¼SW¼SE¼, SW¼NW¼SE¼SW¼SE¼, NW¼SW¼, and SE¼SW¼SE¼.
T. 4 N., R. 7 E.,
Sec. 4, that portion of lot 8 described as follows:
Beginning at the NE corner of lot 10 which is the true point of beginning;
Thence north to a point on the north meander line of lot 8; thence in a southerly direction along the west meander line of lot 8 to a point on the north meander line of lot 8;
Thence is a southerly direction along the west meander line of lot 8 to the SW corner of lot 8;
Thence east along the south boundary of lot 8 to the NE corner of lot 10, the point of beginning.
T. 5 N., R. 3 E.,
Sec. 15, S½N½SW¼SE¼NW¼, N½S½SW¼SE¼NW¼, and SW¼;
Sec. 21, E½;
Sec. 22, N½NW¼ and SW¼NW¼.
T. 5 N., R. 6 E.,
Sec. 28, S½N½SW¼NE¼NW¼.
T. 5 N., R. 11 E.,
Sec. 3, that portion of lot 1 described as follows:
Beginning at the NE corner of lot 1, thence S. 35° W., 600 feet to the real point of beginning;
Thence south 0° E., 495 feet;
Thence south 90° W., 660 feet;
Thence north 0° W., 330 feet;
Thence north 90° E., 330 feet;
Thence north 0° E., 330 feet; to the real point of beginning.
T. 6 N., R. 6 E.,
Sec. 32, S½S½NW¼NW¼SE¼.
T. 6 N., R. 9 E.,
Sec. 34, S½S½NE¼SE¼SE¼, N½N½SE¼SE¼SE¼, NE¼SE¼NE¼SE¼SE¼, and SE¼NE¼NE¼SE¼NE¼;
Sec. 35, SW¼SW¼NE¼SW¼, S½S½NW¼SW¼SW¼, N½N½SW¼SW¼SW¼, S½SW¼NE¼SW¼SW¼, N½NW¼SE¼SW¼SW¼, SW¼NW¼NW¼SW¼SW¼, and NW¼SW¼NW¼SW¼SW¼.
T. 6 N., R. 10 E.,
Sec. 6, that portion of lot 4 described as follows:
Beginning at the NW corner of lot 4;
Thence east 495 feet to a point on the north boundary line which is the true point of beginning;
Thence south 330 feet to a point;
Thence east 165 feet to a point;
Thence north 330 feet to a point;
Thence west 165 feet to the true point of beginning.
T. 6 N., R. 11 E.,
Sec. 34, that portion of lot 7 described as follows:
Beginning at the SE corner of section 34;
Thence N. 50° W. 495 feet to a point, the true point of beginning;
Thence north 330 feet to a point;
Thence east 165 feet to a point;
Thence north 330 feet to a point;
Thence west 165 feet to a point;
Thence south 165 feet to a point;
Thence west 330 feet to a point;
Thence south 495 feet to a point;
Thence east 330 feet to the true point of beginning.
T. 7 N., R. 6 E.,
Sec. 12, S½SW¼SE¼NE¼NE¼.
T. 7 N., R. 7 E.,
Sec. 3, W½SE¼SE¼SE¼, W½SE¼SE¼SE¼SE¼, and W½NE¼SE¼SE¼SE¼;
Sec. 32, S½SE¼NE¼NE¼SE¼.
T. 7 N., R. 9 E.,
Sec. 28, N½SE¼SW¼SE¼NW¼ and S½NE¼SW¼SE¼NW¼.
T. 8 N., R. 5 E.,
Sec. 6, that portion of lot 7 described as follows:
Beginning at the NW corner of lot 7;
Thence south 1155 feet to a point on the west boundary line and the true point of beginning;
Thence east 660 feet to a point;
Thence south 330 feet to a point;
Thence west 660 feet to a point;
Thence north 330 feet to the true point of beginning.
T. 8 N., R. 7 E.,
Sec. 6, that portion of lot 5 described as follows:
Beginning at the NW corner of lot 5;
Thence south 660 feet along the western boundary of lot 5 to a point that is the true point of beginning;
Thence east 330 feet to a point;
Thence north 660 feet to a point on the north boundary of lot 5;

Thence east along the north boundary 660 feet to a point;
Thence south 660 feet to a point on the south meander line;
Thence in a south-westerly direction to the SW corner of lot 5;
Thence north along the west boundary to the true point of beginning.
T. 8 N., R. 10 E.,
Sec. 9, N½NW¼NW¼SE¼SE¼.
T. 9 N., R. 3 E.,
Sec. 32, that portion of lot 6 described as follows:
Beginning at the NE corner of lot 6;
Thence south 330 feet to a point on the east boundary line of lot 6 and the true point of beginning;
Thence west to a point on the meander line;
Thence in a southerly direction to the SW corner of lot 6;
Thence east to the SE corner of lot 6;
Thence north 990 feet to the true point of beginning.
T. 9 N., R. 6 E.,
Sec. 12, W½NW¼SW¼SW¼SW¼;
Sec. 21, S½NE¼SW¼SE¼SW¼ and N½SE¼SW¼SE¼SW¼.
T. 9 N., R. 7 E.,
Sec. 13, SW¼SW¼SE¼NW¼, SE¼SE¼SW¼NW¼, NE¼NE¼NW¼SW¼, and NW¼NW¼NE¼SW¼;
Sec. 29, that portion of lot 3 described as follows:
Beginning at the SE corner of lot 3 which is the true point of beginning;
Thence west 330 feet to a point on the south boundary line of lot 3;
Thence north 330 feet to a point;
Thence east to the meander line;
Thence in a southerly direction along the east meander line to the true point of beginning.
Sec. 35, that portion of lot 1 lying below 3920 feet above sea level and that portion of lot 2 lying below 3890 feet above sea level.
T. 9 N., R. 8 E.,
Sec. 28, SW¼NW¼NE¼;
Sec. 32, that portion of lots 4 and 5 lying below 4000 feet above sea level.
T. 9 N., R. 9 E.,
Sec. 32, S½NW¼SW¼NE¼NE¼ and N½SW¼SW¼NE¼NE¼.
T. 9 N., R. 10 E.,
Sec. 7, S½SW¼NW¼NE¼NW¼.
T. 10 N., R. 3 E.,
Sec. 4, that portion of lot 15 described as follows:
Beginning at the SE corner of lot 15 which is the true point of beginning;
Thence in a northerly direction along the east meander line to a point 330 feet north of the south boundary;
Thence west 165 feet on a line parallel to the southern boundary to a point;
Thence south 330 feet to a point on the southern boundary line;
Thence 165 feet east to the true point of beginning;
Sec. 9, that portion of lot 2 described as follows:
Beginning at the NE corner of lot 2, the true point of beginning;
Thence in a southerly direction along the east meander line of lot 2 to a point 330 feet south of the northern boundary of lot 2;
Thence west 165 feet to a point;
Thence north 330 feet to a point on the northern boundary of lot 2;
Thence east to the true point of beginning;
Sec. 16, that portion of lot 7 described as follows:
Beginning at the NW corner of lot 7;
Thence S. 62° E. 660 feet to a point and the true point of beginning;
Thence south 330 feet to a point;
Thence east to a point on the east meander line of lot 7;
Thence in a northerly direction to a point on a line parallel to the east west boundary;
Thence east to the true point of beginning;
Sec. 21, that portion of lot 2 described as follows:
Beginning at the SW corner of lot 2, the true point of beginning;
Thence north 660 feet to the NW corner of lot 2;
Thence east to a point on the meander line;
Thence in a southerly direction along the east meander line of lot 2 to the SE corner of lot 2;
Thence west to the true point of beginning;
Sec. 29, that portion of lot 7 described as follows:
Beginning at the SW corner of lot 7 which is the true point of beginning;
Thence north 660 feet along the west boundary line of lot 7 to a point;
Thence east on a line parallel to the south boundary to a point on the east meander line of lot 7 to a point;
Thence in a southerly direction along the west meander line of lot 7 to the SE corner of lot 7;
Thence west along the south boundary line of lot 7 to the SW corner the point of beginning.
T. 10 N., R. 4 E.,
Sec. 12, E½NE¼SW¼SW¼SE¼ and NW¼SE¼SW¼SE¼.
T. 10 N., R. 5 E.,
Sec. 6, that portion of lot 1 described as follows:
Beginning at the NW corner of lot 1;
Thence south 330 feet to a point which is the true point of beginning;
Thence east 330 feet to a point;
Thence south 165 feet to a point;
Thence west 330 feet to a point;
Thence north 165 feet to the true point of beginning.
T. 10 N., R. 6 E.,
Sec. 19, S½SW¼SW¼NW¼SE¼.
T. 10 N., R. 10 E.,
Sec. 31, that portion of lot 3 described as follows:
Beginning at the SE corner of lot 3;
Thence N. 330 feet along E. line of lot 3 to the true point of beginning;
Thence W. 330 feet;
Thence N. 330 feet;
Thence E. 330 feet;
Thence S. 330 feet to the true point of beginning.
T. 11 N., R. 5 E.,
Sec. 20, S½NW¼NE¼SE¼SE¼, SW¼NE¼SE¼SE¼, and N½NW¼SE¼SE¼SE¼;
Sec. 21, W½SE¼NW¼NW¼;
Sec. 29, N½NE¼SW¼SW¼NE¼ and N½NW¼SE¼SW¼NE¼;
Sec. 31, W½NE¼NE¼SE¼SE¼ and E½NW¼NE¼SE¼SE¼.
T. 11 N., R. 8.,
Sec. 17, W½NW¼SE¼SE¼NW¼ and E½NE¼SW¼SE¼NW¼.
T. 11 N., R. 9 E.,
Sec. 29, N½NE¼SW¼SW¼SE¼.
T. 11 N., R. 10 E.,
Sec. 9, E½SE¼NE¼SE¼NE¼, E½SW¼SE¼SE¼NE¼, W½SE¼SE¼SE¼NE¼, E½NW¼NE¼NE¼SE¼, W½E½NE¼NE¼SE¼, and NE¼SE¼NE¼SE¼.
T. 12 N., R. 2 E.,
Sec. 35, NW¼NE¼SE¼NE¼, N½NW¼SE¼NE¼, SW¼NW¼SE¼NE¼, SE¼NE¼SW¼NE¼, and SW¼SE¼SE¼NE¼.
T. 12 N., R. 5 E.,
Sec. 21, N½N½NE¼NE¼SE¼;
Sec. 22, S½NE¼SW¼NW¼NW¼ and N½SE¼SW¼NW¼NW¼.
T. 12 N., R. 6 E.,
Sec. 7, S½NW¼SW¼NW¼SE¼ and N½SW¼SW¼NW¼SE¼;
Sec. 19, N½SE¼NW¼SE¼SE¼;
Sec. 20, E½NW¼SE¼NW¼NW¼, W½NE¼SE¼NW¼NW¼, W½NE¼SW¼SW¼NW¼, and NW¼SW¼SW¼NW¼.
T. 12 N., R. 7 E.,
Sec. 21, W½SW¼NE¼NW¼ and E½SE¼NW¼NW¼.
T. 13 N., R. 9 E.,
Sec. 25, NW¼NW¼SE¼SW¼ and SW¼SW¼NE¼SW¼;
Sec. 34, S½NW¼NE¼SE¼SW¼, SW¼NE¼SE¼SW¼, NW¼SE¼SE¼SW¼, S½NE¼NW¼SE¼SW¼, NW¼NW¼SE¼SW¼, N½SW¼NW¼SE¼SW¼, and SE¼NW¼SE¼SW¼.
T. 14 N., R. 9 E.,
Sec. 10 W½SW¼SE¼SW¼NW¼.
T. 15 N., R. 6 E.,
Sec. 2, S½SE¼NE¼SW¼;
Sec. 11, S½NW¼NW¼;
Sec. 12, lots 1 to 6, inclusive, NE¼NE¼ and NW¼SW¼;
Sec. 13, lots 2, 3, and N½ of lot 5, SE¼NW¼ and N½NE¼SW¼;
Sec. 36, S½SW¼SE¼SW¼.
T. 15 N., R. 7 E.,
Sec. 1, S½SE¼SE¼SE¼;
Sec. 6, lot 7 and SE¼SW¼;
Sec. 7, lots 1, 2, and N½ of lot 3, E½NW¼ and N½NE¼SW¼;
Sec. 10, N½SE¼NW¼SE¼SE¼.
T. 15 N., R. 8 E.,
Sec. 7, W½ of lot 1.
T. 16 N., R. 7 E.,
Sec. 1, S½SW¼NE¼SE¼SW¼ and N½NW¼SE¼SE¼SW¼;
Sec. 8, W½SW¼NW¼SE¼SW¼.
T. 16 N., R. 8 E.,
Sec. 31, that portion of lot 2 described as follows:
Beginning at the NW corner of lot 2;
Thence S. along the lot line 495 feet;
Thence W. 330 feet to the real point of beginning;
Thence S. 330 feet;
Thence W. 330 feet;
Thence N. 330 feet;
Thence E. 330 feet to the real point of beginning.
T. 18 N., R. 6 E.,
Sec. 4, N½S½SE¼NW¼SE¼ and S½N½SE¼NW¼SE¼.
T. 18 N., R. 9 E.,
Sec. 29, N½NE¼NE¼NW¼SW¼.
T. 19 N., R. 8 E.,
Sec. 29, S½SE¼SW¼SE¼NE¼, N½NE¼NW¼NE¼SE¼, SW¼NE¼NE¼SE¼, S½SE¼NE¼NE¼SE¼, and E½NW¼NE¼SE¼.
Sec. 33, NE¼SE¼SE¼SW¼ and N½NW¼SE¼SE¼SW¼.

The areas described aggregate 1,687.40 acres in Elmore and Valley Counties.

2. Pursuant to the regulation contained in 43 CFR subpart 2091, the lands described above will be at 9 a.m. on December 17, 1990, relieved of the segregative effect of the above mentioned application and opened to such disposition as may, by law, be made of national forest lands.

Dated: November 9, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-27107 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-66-M

[ID-943-01-4214-11; IDI-05384]

Proposed Continuation of Withdrawal, Correction; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice will correct an error in the land description for a notice of proposed continuation of withdrawal for the Seafoam Administrative Site.

EFFECTIVE DATE: September 6, 1989.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1720.

The land description in the notice of proposed continuation of withdrawal published on September 6, 1989, page 37385, third column, under Seafoam Administrative Site is hereby corrected to change line five to read "within SE¼ SE¼;" and to add a sixth line reading "sec. 24, metes and bounds description within N½NW¼."

Dated: October 29, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-27043 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-01-4214-11; IDI-04319, IDI-014817, IDI-939]

Proposed Continuation of Withdrawals, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that the withdrawals of 4,054.00 acres for administrative and recreation sites in the St. Joe and Kaniksu National Forests be continued for the period of years shown below. The lands are still being used for the purposes for which they were withdrawn. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

DATES: Comments should be received on or before February 14, 1991.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1720.

The U.S. Forest Service proposes that the existing land withdrawals made by Public Land Order Nos. 1479, 3364, and 4498 be continued for the period of years shown below pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

To be continued for 25 years:

IDI-939 (PLO 4498)
St. Joe Lake Campground
T. 42 N., R. 11 E.,
Sec. 4, lot 2 and lot 3 less the west 422 ft.
Surveyors Ridge Lookout
T. 42 N., R. 7 E.,
Sec. 11, E½NE¼SE¼SE¼;
Sec. 12, W½NW¼SW¼SW¼.

To be continued for 50 years:

IDI-04319 (PLO 1479)
Priest Lake Recreation Area
T. 59 N., R. 4 W.,
Sec. 5, lot 1.
T. 60 N., R. 4 W.,
Sec. 3, lots 3, 6, 7, and 9, and Mineral Survey No. 1873;
Sec. 5, lots 1 and 2;
Sec. 6, lot 12;
Sec. 7, lots 1 to 5, inclusive, and SE¼NE¼;
Sec. 8, lots 1 and 3, inclusive;
Sec. 16, lots 1 and 2;
Sec. 17, lots 1, 2, 4, and 5, and SW¼SE¼;
Sec. 19, lots 1 to 4, inclusive, and 7, and NE¼SE¼SE¼;
Sec. 20, lots 1 to 4, inclusive;
Sec. 28, lot 2;
Sec. 29, lots 1 to 4, inclusive, and W½SW¼;
Sec. 30, lot 6;
Sec. 32, lots 1 to 4, inclusive, and W½W½;

Papoose Island, an unsurveyed island in Priest Lake containing 6.97 acres in sec. 19 and described by metes and bounds.

T. 60 N., R. 5 W.,
Sec. 12, lot 5;
Sec. 13, lots 1 to 4, inclusive, and E½E½W½;
Sec. 24, lots 1 to 4, inclusive, and NW¼SE¼.
T. 61 N., R. 4 W.,
Sec. 4, lots 1 to 3, inclusive;
Sec. 5, that portion of lots 1, 2, and 4 and SW¼NE¼and E½SE¼lying east of the centerline of West Side Priest Lake Road No. 2512;
Sec. 8, that portion of lots 1 and 2 and the E½NE¼lying east of the centerline of West Side Priest Lake Road No. 2512;
Sec. 9, lots 2 and 3;
Sec. 17, that portion of lot 2 lying south and east of the centerline of Reeder Creek Road No. 1339;
Sec. 19, lot 3 less the NE¼NE¼and W½NE¼and N½NE¼of lot 6;
Sec. 20, that portion of lots 2 to 5, inclusive, lying south and east of the centerline of Reeder Creek Road No. 1339.
T. 62 N., R. 4 W.,
Sec. 4, lots 4, 5, 8, and 9, and SW¼SW¼;
Sec. 9, lots 1, 2, 4 to 6, inclusive, and 8, W½NW¼, E½E½SW¼, and NW¼SE¼;
Sec. 10, lot 7;
Sec. 21, lot 5 and that portion of lots 1 to 4, inclusive, SW¼SW¼, and NE¼SW¼ lying east of the centerline of West Side Priest Lake Road No. 2512;
Sec. 28, lots 1 and 3 and that portion of lot 2 and the NW¼NW¼ lying south and east of the centerline of West Side Priest Lake Road No. 2512;
Sec. 29, lot 1 and that portion of lot 2, SE¼NE¼, SE¼SW¼, and N½SE¼ lying south and east of the centerline of West Side Priest Lake Road No. 2512;
Sec. 32, lots 1, 3, and 4, and that portion of lot 2, N½NW¼, SW¼NW¼, and SW¼ lying east of the centerline of West Side Priest Lake Road No. 2512.
T. 63 N., R. 4 W.,
Sec. 19, lots 4 to 7, inclusive;
Sec. 29, lot 4;
Sec. 30, lots 1, 2, and 5 to 7, inclusive, SE¼NW¼, NW¼SE¼, and SE¼SE¼;
Sec. 32, lots 1 to 4, inclusive, and 6, W½NW¼, NW¼SE¼, NW¼NE¼SE¼, and S½NE¼SE¼;
Sec. 33, lots 4 and 5.
T. 63 N., R. 5 W.,
Sec. 24, lot 4, NW¼NE¼SW¼NE¼, S½NE¼SW¼NE¼, NW¼SW¼NE¼, S½SW¼NE¼, SW¼SE¼NE¼, W½SE¼SE¼NE¼, and NE¼SE¼.
IDI-014817 (PLO 3364)
Priest Lake Administrative Site
T. 60 N., R. 5 W.,
Sec. 2, E½SW¼SW¼ and W½SE¼SW¼;
Sec. 11, E½NW¼NW¼ and NE¼NW¼.

The areas described aggregate 4,054.00 acres in Bonner and Shoshone Counties.

The withdrawals are essential for protection of substantial capital improvements on the sites. The withdrawals closed the lands to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the lands is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: October 24, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-27037 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-01-4214-11; IDI-2291, et al.]

Proposed Continuation of Withdrawals, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that the withdrawals of 4,621.64 acres for administrative, recreation, research, and scenic sites in the Clearwater, Coeur d'Alene, St. Joe, and Kaniksu National Forests be continued for the period of years shown below. The lands are still being used for the purposes for which they were withdrawn. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

DATES: Comments should be received on or before February 14, 1991.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1720.

The U.S. Forest Service proposes that the existing land withdrawals made by Public Land Order Nos. 4647, 5328, 5467, 604, 1642, and 4189 be continued for the period of years shown below pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

IDI-2291 (PLO 4647)
To be continued for 20 years:
Red Ives Administrative Site
T. 43 N., R. 9 E.,
Sec. 20, E½SE¼SE¼NW¼ and E½E½ NE¼SW¼.
IDI-15467 (PLO 984)
Red Ives Administrative Site
T. 43 N., R. 9 E.,
Sec. 20, W½SW¼NE¼, S½SE¼SW¼ NE¼, S½SW¼SE¼NE¼, N½NE¼ NW¼SE¼, and W½NW¼SE¼.
IDI-06430 (PLO 1842)
Shoshone Creek Administrative Site
T. 50 N., R. 4 E.,
Sec. 5, lot 10 and W½SE¼SE¼;
Sec. 8, lot 1.
To be continued for 25 years:
IDI-4799 (PLO 5328)
Devil's Lake
T. 42 N., R. 6 E.,
Sec. 25, E½SW¼NE¼, W½SE¼NE¼, NW¼NE¼SE¼, and NE¼NW¼SE¼.
Fawn Lake
T. 42 N., R. 7 E.,
Sec. 25, S½SW¼NE¼NE¼, S½SE¼NW¼ NE¼, E½SW¼NE¼, E½W½SW¼ NE¼, and SE¼NE¼.
Skyland Lake
T. 42 N., R. 7 E.,
Sec. 25, S½SW¼NW¼SW¼ and W½ SW¼SW¼;
Sec. 26, SE¼NE¼SE¼ and SE¼SE¼;
Sec. 35, NE¼NE¼NE¼ and N½NW¼ NE¼NE¼;
Sec. 36, N½NW¼NW¼NW¼.
Northbound Lake
T. 42 N., R. 7 E.,
Sec. 34, SE¼SW¼NW¼, SW¼SE¼NW¼, W½SE¼SE¼NW¼, W½NE¼NE¼ SW¼, NW¼NE¼SW¼, N½SW¼NE¼ SW¼, E½NW¼SW¼, and E½NW¼ NW¼SW¼.
Hero Lake and Gnat Lake
T. 42 N., R. 7 E.,
Sec. 21, S½S¼SW¼NW¼ and W½SW½;
Sec. 28, N½NE¼NW¼NW¼ and NW¼ NW¼NW¼.
Crag Lake (formerly Craig Lake)
T. 42 N., R. 7 E.,
Sec. 26, S½NE¼SW¼SW¼, E½SW¼ SW¼SW¼, SE¼SW¼SW¼, and SW¼ SE¼SW¼;
Sec. 33, NW¼NE¼NW¼ and N½NW¼ NW¼.
Heart Lake
T. 42 N., R. 7 E.,
Sec. 33, SW¼NE¼, S½NW¼SE¼NE¼, SW¼SE¼NE¼, E½SE¼NW¼, SW¼ SE¼NW¼, NE¼NE¼SW¼, N½SE¼ NE¼SW¼, W½NW¼NE¼SE¼, and NW¼SE¼.
Mudd Lake
T. 42 N., R. 7 E.,
Sec. 29, S½SW¼NW¼NE¼, N½SW¼ NE¼, SW¼SW¼NE¼ N½SE¼SW¼ NE¼, E½SE¼NW¼, and NE¼SE¼SE¼ NW¼.
Larkins Lake
T. 42 N., R. 7 E.,
Sec. 29, SW¼NE¼SW¼, SW¼SE¼NE¼ SW¼, SE¼NW¼SW¼, NE¼SW¼ SW¼, NE¼SE¼SW¼SW¼, and SE¼ SW¼.
Bacon Lake
T. 42 N., R. 9 E.,
Sec. 24, SW¼SW¼NE¼, SW¼SE¼SW¼ NE¼, SE¼SE¼NW¼, E½NE¼SW¼, N½NW¼SE¼, SW¼NW¼SE¼, and NW¼SE¼NW¼SE¼.
Forage Lake
T. 42 N., R. 9 E.,
Sec. 13, NE¼SW¼SW¼, N½SE¼SW¼ SW¼, SE¼SE¼SW¼SW¼, SE¼SW¼ SW¼NW¼SW¼SE¼, and W½SW¼ SW¼SE¼.
Halo Lake
T. 42 N., R. 9 E.,
Sec. 13, S½NE¼SE¼SE¼, SE¼NW¼SE¼ SE¼, and S½SE¼SE¼;
Sec. 24, N½NE¼NE¼.
T. 42 N., R. 10 E.,
Sec. 18, SW¼NW¼ of lot 4 and SW¼ of lot 4;
Sec. 19, NW¼ of lot 1.
High Mountain Lakes, Mallard-Larkins Area
T. 41 N., R. 7 E.,
Sec. 23, E½E½SW¼SW¼, W½SE¼ SW¼, and W½E½SE¼SW¼.
T. 41 N., R. 8 E., unsurveyed,
Sec. 19, W½E½NE¼SE¼, W½NE¼SE¼, NE¼SW¼SE¼, and E½SE¼SE¼SE¼;
Sec. 20, W½SW¼SW¼SW¼;
Sec. 29, SW¼NE¼NW¼SW¼, S½NW¼ NW¼SW¼, SW¼NW¼SW¼, SW¼ SW¼SW¼SW¼, and W½SE¼NW¼ SW¼;
Sec. 30, S½SE¼SE¼SE¼;
Sec. 31, NE¼NE¼NE¼ and N½SE¼NE¼ NE¼;
Sec. 32, W½NW¼NW¼NW¼.
T. 42 N., R. 7 E.,
Sec. 34, E½NE¼SE¼SW¼, NE¼SE¼SE¼ SW¼, NW¼SW¼SE¼, and N½SW¼ SW¼SE¼;
Sec. 36, S½SW¼SE¼NE¼, SW¼SE¼ SE¼NE¼, W½NE¼NE¼SE¼, and NW¼NE¼SE¼.
To be continued for 50 years:
IDI-5053 (PLO 5467)
Upper Fishhook Research Natural Area
T. 44 N., R. 5 E.,
Sec. 32, N½.
IDI-017475 (PLO 4189)
Upper Priest Lake Scenic Area
T. 63 N., R. 4 W.,
Sec. 30, lots 3, 4, 8, and 9, E½SW¼ and SW¼SE¼;
Sec. 31, lot 1, N½NE¼ of lot 2, NE¼, and NE¼NW¼, NE¼SE¼NW¼, N½NW¼ SE¼NW¼, SE¼NW¼SE¼NW¼, N½ SE¼SE¼NW¼, SE¼SE¼SE¼NW¼, NE¼SE¼, N½NW¼SE¼, SE¼NW¼ SE¼, NE¼SE¼SE¼, N½NW¼SE¼ SE¼, SE¼NW¼SE¼SE¼, N½SE¼SE¼ SE¼, and SE¼SE¼SE¼SE¼;
Sec. 32, SW¼ and S½SE¼.
T. 63 N., R. 5 W.,
Sec. 23, S½SW¼NE¼NE¼, E½SW¼ NE¼, SE¼NW¼SW¼NE¼, E½SW¼ SW¼NE¼, SE¼NE¼, SE¼SE¼SW¼, NE¼SE¼, S½NW¼SE¼, NE¼NW¼ SE¼, E½NW¼NW¼SE¼, and S½SE¼;
Sec. 24, S½NW¼NW¼NE¼, NE¼NW¼ NW¼NE¼, SW¼NW¼NE¼, SE¼NE¼ NE¼NW¼, NE¼SW¼NE¼NW¼, S½ SW¼NE¼NW¼, SE¼NE¼NW¼, S½ SE¼NW¼NW¼, S½NW¼, SW¼, NW¼SE¼, and S½SE¼;
Sec. 25;
Sec. 26, E½, E½NE¼NW¼, E½SW¼NE¼ NW¼, E½SE¼NW¼, E½NW¼SE¼ NW¼, NE¼SW¼SE¼NW¼, E½NE¼ SW¼, E½SW¼NE¼SW¼, E½SE¼ SW¼, NW¼SE¼SW¼, E½SW¼SE¼ SW¼, and NW¼SW¼SE¼SW¼;
Sec. 35, N½NE¼, NE¼SW¼NE¼, E½ NW¼SW¼NE¼, N½SE¼SW¼NE¼, N½SE¼NE¼, N½SW¼SE¼NE¼, SE¼ SW¼SE¼NE¼, SE¼SE¼NE¼, NE¼ NE¼NW¼, E½NW¼NE¼NW¼, and NE¼SE¼NE¼NW¼;
Sec. 36, N½NE¼, SW¼NE¼, N½NW¼ SE¼NE¼, SW¼NW¼SE¼NE¼, NW¼ SW¼SE¼NE¼, N½NW¼, N½SW¼ NW¼, SW¼SW¼NW¼, N½SE¼SW¼ NW¼, N½SE¼NW¼, N½SW¼SE¼ NW¼, and SE¼SE¼NW¼.

The areas described aggregate 4,621.64 acres in Bonner and Shoshone Counties.

The withdrawals are essential for protection of substantial capital improvements on the sites. The withdrawals closed the lands to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the lands is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: September 28, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-27038 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-00-4214-11; IDI-013935, et al.]

Proposed Continuation of Withdrawals, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that the withdrawal of 743.62 acres for administrative, recreation, and historic sites in the Clearwater National Forest be continued for an additional 20 years. The lands are still being used for the purposes for which they were withdrawn. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

DATES: Comments should be received on or before February 14, 1991.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1720.

The U.S. Forest Service proposes that the existing land withdrawals made by Public Land Order Nos. 3151, 4032, and 4244 and the Secretarial Order dated December 20, 1907, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

IDI-013935 (PLO 3151)
Lochsa Work Center
T. 35 N., R. 9 E.,
Sec. 27, SW¼SW¼SW¼;
Sec. 34, N½NW¼NW¼.
Kelly Creek Ranger Station and Administrative Site
T. 39 N., R. 11 E.,
Sec. 16, N½NE¼SW¼ and N½S½NE¼ SW¼.
Cold Springs Mill Site and Pond
T. 39 N., R. 9 E.,
Sec. 14, SW¼NW¼SW¼, N½SE¼NW¼ SW¼, and N½NW¼SW¼SW¼;
Sec. 15, NE¼SE¼NE¼SE¼, S½S½NE¼ SE¼ and N½N½SE¼SE¼.
Kelly Forks Administrative Site and Pasture
T. 39 N., R. 9 E.,
Sec. 13, SW¼NE¼SE¼, S½NW¼SE¼, NE¼SW¼SE¼, and SE¼SE¼.
T. 39 N., R. 10 E.,
Sec. 18, S½SW¼NW¼SW¼ and NW¼ SW¼SW¼.
Canyon Work Center (formerly Canyon Ranger Station Administrative Site)
T. 40 N., R. 7 E.,
Sec. 4, north half of lots 9 and 10 above Forest Service Road 247.
IDI-017100 (PLO 4032)
Wilderness Gateway Campground
T. 35 N., R. 9 E.,
Sec. 26, SW¼NW¼SW¼ and W½SW¼ SW¼;
Sec. 27, E½SE¼NE¼SE¼, S½S½SW¼ SE¼, and E½SE¼SE¼;
Sec. 34, N½NE¼NE¼, SW¼NE¼NE¼, NW¼NE¼, N½SW¼NE¼, SE¼SW¼ NE¼, W½SE¼NE¼, E½NE¼NW¼, and NE¼SE¼NW¼.
IDI-199 (PLO 4244)
Lolo Pass Information Site
T. 38 N., R. 15 E.,
Sec. 16, W½NW¼SE¼.
Snowbank Camp (formerly Wendover Ridge Campsite)
T. 37 N., R. 13 E.,
Sec. 4, SW¾NE¼NE¼.
Bears Oil and Root (formerly Spring Mountain Campsite)
T. 37 N., R. 12 E.,
Sec. 2, SE¼NE¼SW¼SE¼, NE¼SE¼ SW¼SE¼, SW¼NW¼SE¼SE¼, and NW¼SW¼SE¼SE¼.
Indian Post Office Rock Cairns (formerly Indian Post Office Site)
T. 37 N., R. 12 E.,
Sec. 17, W½NW¼SW¼.
Lonesome Cove Campsite
T. 37 N., R. 12 E.,
Sec. 18, SW¼NE¼SW¼SE¼, SE¼NW¼ SW¼SE¼, NE¼SW¼SW¼SE¼, and NW¼SE¼SW¼SE¼.
Singer Hole Campsite
R. 37 N., R. 10 E.,
Sec. 36, E½SW¼NW¼SE¼ and W½SE¼ NW¼SE¼.
Indian Grave Campsite
T. 36 N., R. 10 E.,
Sec. 1, S½NE¼NW¼NE¼ and N½SE¼ NW¼NE¼.
Smoking Place Historical Site
T. 36 N., R. 10 E.,
Sec. 1, W½E½NW¼SE¼, W½NW¼SE¼, NW¼NE¼SW¼SE¼, and N½NW¼ SW¼SE¼.
Bald Mountain Historical Site
T. 36 N., R. 10 E.,
Sec. 19, S½SE¼NW¼NE¼ and N½NE¼ SW¼NE¼.
Greensward Campsite (formerly Bald Mountain Campsite)
T. 36 N., R. 10 E.,
Sec. 28, S½N½NE¼NW¼ and N½S½ NE¼NW¼.
Dry Campsite
T. 36 N., R. 9 E.,
Sec. 25, SW¼SW¼NW¼NE¼, NW¼ NW¼SW¼NE¼, SE¼SE¼NE¼NW¼, and NE¼NE¼SE¼NW¼.
Sherman Peak Historical Site
T. 36 N., R. 9 E.,
Sec. 34, SW½NE¼SW¼ and E½SE¼ NW¼SW¼.
Cache Mountain Site
T. 35 N., R. 8 E.,
Sec. 12, SW¼NW¼NE¼.
Hungery Campsite
T. 35 N., R. 8 E.,
Sec. 14, SW¼NE¼SW¼ and NW¼SE¼ SW¼.
Retreat Campsite
T. 35 N., R. 8 E.,
Sec. 15, NE¼NW¼SW¼.
Portable Soup Campsite (formerly Soup Campsite)
T. 35 N., R. 8 E.,
Sec. 8, S½NW¼NE¼SE¼.
Jerusalem Campsite (formerly Elbow Bend Campsite)
T. 35 N., R. 7 E.,
Sec. 13, W½SW¼SW¼NE¼ and E½SE¼ SE¼NW¼.
Horse Steak Meadow Campsite
T. 35 N., R. 7 E.,
Sec. 14, SE¼NE¼SW¼NE¼, NE¼SE¼ SW¼NE¼, SW¼NW¼SE¼NE¼, and NW¼SW¼SE¼NE¼.
IDI-15448 (SO 12/20/07)
Musselshell Work Center
T. 35 N., R. 6 E.,
Sec. 19, NE¼SE¼;
Sec. 20, NW¼SW¼.

The areas described aggregate 743.62 acres in Clearwater and Idaho Counties.

The withdrawals are essential for protection of substantial capital improvements on the administrative and

recreation sites and for protection of historic sites on the Lewis and Clark Trail. The withdrawals closed the lands to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the lands is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final detmination is made.

Dated July 20, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-27039 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-90-4214-11; IDI-07547, et al.]

Proposed Continuation of Withdrawals, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that the withdrawal of 376.58 acres for administrative and recreation sites in the Payette and Sawtooth National Forests to be continued for the period of years shown below. The lands are still being used for administrative and recreation sites. Two administrative sites withdrawn under separate orders will be combined into one site under one name and one serial number. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

DATES: Comments should be received on or before February 14, 1990.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1720.

The U.S. Forest Service proposes that the existing land withdrawals made by the Secretarial Order and Public Land Orders listed below be continued for the period of years shown pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. Two administrative sites will be combined into one site under one name and one serial number. The lands are described as follows:

Boise Meridian

To be continued for 20 years:

IDI–012628 (PLO 3070)
Carey Creek Recreation site
T. 24 N., R. 4 E.,
Sec. 3, lot 7, by metes and bounds.
Fall Creek Recreation Area
T. 24 No., R. 4 E.,
Sec. 6, lot 10, by metes and bounds.
IDI–14880 (PLO 725)
Burgdorf Campground and Summer Home Area
T. 22 No., R. 4 E.,
Sec. 1, lot 3 and W½SW¼NE¼.

To be continued for 30 years:

The following sites are to be continued under the name of Warren Administrative Site under serial number IDI–012060:

IDI–07547 (PLO 5148)
Warren Ranger Station House Lot Addition (Original Name)
(Original Description)
T. 22 N., R. 6 E.,
Sec. 12, by metes and bounds.
IDI–012060 (PLO 2931)
Warren Adminstrative Site
(Original Description)
T. 22 N., R. 6 E.,
Secs. 11 and 12, by metes and bounds.
Combined Description of above sites for Warren Administrative Site
T. 22 No., R. 6 E.,
Secs. 11 and 12, by metes and bounds.
IDI–012060 (PLO 2931)
Big Creek Administrative Site
T. 21 N., R. 9 E.,
Secs. 23 and 26, by metes and bounds.
IDI–012626 (PLO 3070)
Big Creek Public Service Site
T. 21 N., R. 9 E.,
Sec. 26, unsurveyed, by metes and bounds.
IDI–017204 (PLO 4043)
Smith Knob Administrative Site
T. 23 N., R. 6 E.,
Sec. 31, by metes and bounds.
IDI–4637 (PLO 5462)
Peck Mountain Lookout Administrative Site
T. 18 N., R. 2 W.,
Sec. 29, N½SW¼SE¼SW¼.
IDI–14880 (PLO 725)
Boardman Recreation Area
T. 3 N., R. 13 E.,
Sec. 7, S½NE¼NE¼NE¼, SW¼NE¼NE¼, N½SE¼NE¼NE¼, S½SE¼NW¼NE¼, and NE¼SW¼NE¼;
Sec. 8, SW¼NE¼NW¼, S½NW¼NW¼NW¼, NE¼NW¼NW¼NW¼, S½NW¼NW¼, NE¼SW¼NW¼, NW¼NE¼SE¼NW¼, SW¼NE¼SE¼NW¼, NW¼SW¼NW¼, and N½SE¼SE¼NW¼.
IDI–15481 (SO 12/16/08)
Hard Creek Recreation Area (formerly Hard Creek Administrative Site)
T. 21 N., R. 2 E.,
Sec. 11, NE¼SE¼SE¼NE¼;
Sec. 12, NW¼SW¼SW¼NW¼.

To be continued for 40 years:

IDI–012060 (PLO 2931)
South Fork Administrative Site
T. 21 N., R. 7 E.,
Sec. 10, lots 3 and 4;
Sec. 11, W½ of lot 5 and W½NW¼SW¼.
IDI–14880 (PLO 725)
Burgdorf Administrative Site
T. 22 N., R. 4 E.,
Sec. 1, SE¼SW¼ and SW¼SW¼SE¼;
Sec. 12, NE¼NE¼NW¼.

The areas described aggregate 376.58 acres in Adams, Camas, Idaho, and Valley Counties.

The withdrawals are essential for protection of capital improvements on the administrative and recreation sites. The withdrawals closed the lands to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the lands is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The exsiting withdrawals will continue until such final determination is made.

Dated: June 21, 1990.

Willam E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-27040 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-90-4214-11; IDI-016341, IDI-14965]

Proposed Continuation of Withdrawals, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that the withdrawal of 35.00 acres for recreation areas in the Boise and Payette National Forests be continued for the period of years shown below. The lands are still being used for recreation sites. Two recreation sites withdrawn under separate orders will be combined into one site under one name and one serial number. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

DATES: Comments should be received on or before February 14, 1991.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1720.

The U.S. Forest Service proposes that the existing land withdrawals made by Secretarial Order dated October 19, 1908, and Public Land Order No. 3797 be continued for the period of years shown below pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. Two recreation sites will be combined into one site under one name and one serial number. The lands are described as follows:

Boise Meridian

To be continued for 20 years:

IDI–016341 (PLO 3797)
French Creek Recreation Area (formerly French Creek Campground)
T. 14 N., R. 3 E.,
Sec. 29, NE¼NE¼NE¼ and N½SE¼NE¼NE¼.

The following sites are to be continued for 30 years under the name of Cabin Creek Recreation Area under serial number IDI–016341:

IDI–016341 (PLO 3797)
Cabin Creek Campground (Original Name)
(Original Description)
T. 15 N., R. 1 E.,
Sec. 12, SE¼SW¼NE¼NE¼, SW¼SE¼NE¼NE¼, and N½NE¼SE¼NE¼.
IDI–14965 (SO 10–19–08)
Middle Fork Administrative Site (Original Name)
(Original Description)
T. 15 N., R. 1 E.,
Sec. 12, NW¼SE¼NE¼.
Combined Description of above sites for Cabin Creek Recreation Area
T. 15 N., R. 1 E.,
Sec. 12, SE¼SW¼NE¼NE¼, SW¼SE¼NE¼NE¼, N½NE¼SE¼NE¼, and NW¼SE¼NE¼.

The areas described aggregate 35.00 acres in Adams and Valley Counties.

The withdrawals are essential for protection of capital improvements on the recreation sites. The withdrawals closed the lands to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the lands is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continued until such final determination is made.

Dated: June 21, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-27041 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-01-4214-11; IDI-15249, IDI-15251]

Proposed Continuation of Withdrawals, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Bureau of Reclamation, Department of the Interior, proposes that the withdrawals of 6,312.08 acres for the Palisades and Upper Snake River Projects in Bonneville County be continued for an additional 67 years. The lands are still being used for the purposes for which they were withdrawn. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

DATES: Comments should be received on or before February 19, 1991.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–334–1720.

The U.S. Bureau of Reclamation proposes that the existing land withdrawals made by Bureau of Land Management Orders dated April 15, 1953, and December 29, 1938, be continued for a period of 67 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

IDI–15249 (BLM O 4/15/53)
Palisades Project
T. 1 S., R. 45 E.
Sec. 13, S½SW¼SE¼;
Sec. 28, lot 7 and SW¼SW¼;
Sec. 29, lot 6, SE¼SW¼, NW¼SE¼, and S½SE¼;
Sec. 31, E½SE¼;
Sec. 32, N½NE¼, SW¼NE¼, E½NW¼, SW¼NW¼, N½SW¼, and SW¼SW¼.
T. 2 S., R. 45 E.,
Sec. 25, lot 1.
T. 1 S., R. 46 E.,
Sec. 18, lot 4 and SE¼SW¼;
Sec. 19, lots 1 and 2 and NE¼NW¼.
IDI–15251 (BLM O 12/29/38)
Upper Snake River Project
T. 1 S., R. 45 E.,
Sec. 8, lots 7 and 8 and SW¼SW¼;
Sec. 14, S½SW¼;
Sec. 17, lots 2, 3, and 6, E½NW¼, N½SW¼, N½SW¼SW¼, and W½S½SW¼SW¼;
Sec. 20, lot 1, S½NW¼NE¼, SW¼NE¼, W½SE¼NE¼, SE¼NW¼, W½E½NE¼SE¼, W¼NE¼SE¼, NW¼SE¼, W½E½SE¼SE¼, and W½SE¼SE¼;
Sec. 21, lots 7 to 9, inclusive E½SW¼SE¼NE¼, SE¼SE¼NE¼, E½NE¼SE¼, E½NW¼NE¼SE¼, and E½E½SE¼SE¼;
Sec. 22, S½NW¼SW¼NW¼, SW¼SW¼NW¼, S½SE¼SW¼NW¼, SW¼, S½NW¼SE¼, SW¼SE¼, SW¼NE¼SE¼SE¼, NW¼NW¼SE¼SE¼, S½NW¼SE¼SE¼, and S½SE¼SE¼;
Sec. 23, W½SE¼;
Sec. 24, NE¼NE¼ and S½NE¼;
Sec. 25, W½SE¼;
Sec. 26, lots 3 and 6 to 8, inclusive, SW¼NW¼NW¼NW¼, SW¼NW¼NW¼, SW¼SE¼NW¼NW¼, SW¼NW¼, and W½SW¼;
Sec. 27, NE¼NE¼, NE¼SE¼, and S½SE¼;
Sec. 28, lots 1 to 4, inclusive, and Homestead Entry Survey 755;
Sec. 29, lots 1 and 5 and Homestead Entry Survey 755;
Sec. 34, W½NE¼, E½NW¼, W½SE¼, and SE¼SE¼;
Sec. 35, lots 1 to 8, inclusive, and SE¼NW¼.
T. 2 S., R. 45 E.,
Sec. 2, lots 2, 3, 7, and 8, SW¼SW¼NW¼, W½NW¼SW¼, SE¼NW¼SW¼, and SW¼SW¼;
Sec. 3, lots 1 and 5 and Homestead Entry Survey 748;
Sec. 11, lot 1, NW¼SW¼NE¼, S½SW¼NE¼, NW¼, and SE¼;
Sec. 12, lot 1;
Sec. 13, lots 6 and 9 and NW¼SW¼;
Sec. 14, lots 1, 2, 5, and 6;
Sec. 24, lot 1, SW¼NE¼, NE¼NW¼, NW¼SE¼, and SE¼SE¼.
T. 1 S., R. 46 E.,
Sec. 31, lots 3 and 4.
T. 2 S., R. 46 E.
Sec. 18, S½NE¼;
Sec. 27, lot 4 and NW¼SW¼;
Sec. 30, NW¼NW¼, S½NW¼, and E¼SW¼;
Sec. 31, E½NW¼, NE¼SW¼, and W½SE¼;
Sec. 32, lot 1, SE¼NE¼ and E½SE¼.
T. 3 S., R. 46 E.,
Sec. 5, lots 4 and 7, and SW¼SW¼;
Sec. 6, lots 1 and 2, S½NE¼ and S½;

Sec. 8, lots 2 to 4, inclusive, N½NW¼, SE¼NW¼, and N½SE¼;
Sec. 8, lot 7 and SW¼SW¼;
Sec. 10, lot 8.

The areas described aggregate 6,312.08 acres in Boonsville County.

The withdrawals are essential for continued administrative jurisdiction for control, operation, and maintenance of the projects. The withdrawals closed the lands to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the lands is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Dated: October 24, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-27042 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-06-M

[OR-943-01-4214-11; GP1-037; ORE-015334, et al.]

Proposed Continuation of Withdrawals; Oregon and Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that all or portions of five separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The following described lands and projects are involved:

Umpqua National Forest

1. ORE-015334, Public Land Order No. 3688 dated June 10, 1965. Layng Creek Geological Area, 5 acres located in Sec. 30, T. 21 S., R. 1 E., W.M., in Lane County, approximately 12 miles west of Oakridge.

Steamboat Point Lookout, 7.44 acres located in Sec. 33, T. 25½ S., R. 1 E., W.M., in Douglas County, approximately 33 miles northeast of Roseburg.

Hemlock Lake Campground, 20 acres located in Sec. 28, T. 27 S., R. 1 E., W.M., in Douglas County, approximately 34 miles east of Roseburg.

Pig Iron Lookout, 5 acres located in Sec. 32, T. 26 S., R. 4 E., W.M., in Douglas County, approximately 42 miles east of Roseburg.

Acker Rock Lookout, 5 acres located in Sec. 13, T. 29 S., R. 1 E., W.M., in Douglas County, approximately 36 miles southeast of Roseburg.

Whiskey Camp, 10 acres located in Sec. 32, T. 30 S., R. 1 E., W.M., in Douglas County, approximately 42 miles southeast of Roseburg.

White Creek Campground, 10 acres located in Sec. 7, T. 27 S., R. 1 W., W.M., in Douglas County, approximately 25 miles east of Roseburg.

Pickett Butte Lookout, 5 acres located in Sec. 29, T. 30 S., R. 1 W., W.M., in Douglas County, approximately 25 miles east of Winston.

Threehorn Campground, 10 acres located in Sec. 7, T. 32 S., R. 1 W., W.M., in Douglas County, approximately 15 miles southeast of Canyonville.

Horseshoe Bend Campground, 20 acres located in Sec. 19, T. 28 S., R. 2 E., W.M., in Douglas County, approximately 42 miles east of Roseburg.

Big Twin Lakes Campground, 20 acres located in Sec. 9, T. 27 S., R. 2 E., W.M., in Douglas County, approximately 40 miles east of Roseburg.

Red Butte Lookout, 10 acres located in Sec. 1, T. 28 S., R. 2 W., W.M., in Douglas County, approximately 28 miles east of Winston.

Soda Springs Geological Area, 20 acres located in Sec. 18, T. 26 S., R. 3 E., W.M., in Douglas County, approximately 45 miles east of Roseburg.

Watson Butte Lookout, 5 acres located in Sec. 19, T. 28 S., R. 3 E., W.M., in Douglas County, approximately 60 miles east of Roseburg.

Garwood Butte Lookout, 5 acres located in Sec. 7, T. 28 S., R. 5 E., W.M., in Douglas County, approximately 60 miles southeast of Roseburg.

Cinnamon Butte Lookout, 5 acres located in Sec. 9, T. 27 S., R. 6 E., W.M., in Douglas County, approximately 66 miles east of Roseburg.

2. OR-21317, Secretarial Order dated November 17, 1908. Long Prairie Administration Site, 120 acres located in Sec. 2, T. 1 S., R. 10 E., W.M., in Hood River County, approximately 4 miles south of Mt. Hood.

3. ORE-012067, Public Land Order No. 2974 dated March 18, 1963. Lostine River Roadside Zone, 160 acres located in Sec. 36, T. 3 S., R. 43 E., W.M., and 40 acres in Sec. 5, T. 4 S., R. 44 E., in Wallowa County, approximately 12 miles southwest of Enterprise.

Imnaha River Roadside Zone, 300 acres located in Secs. 25, 26, 27, T. 5 S., R. 47 E., W.M., in Wallowa County, approximately 22 miles southeast of Joseph.

4. ORE-02851-A, Public Land Order No. 3502 dated December 2, 1964. Fall Creek Road, 75 acres located in Sec. 24, T. 18 S., R. 3 E., W.M., in Lane County, approximately 18 miles southwest of Eugene.

5. WASH-05805, Public Land Order No. 10355 dated November 2, 1965. Blewett Pass Highway Roadside Zone, 250 acres located in Secs. 3, 10, T. 20 N., R. 17 E., W.M., and Secs. 15, 22, 27, 34, T. 21 N., R. 17 E., Fall Creek Road, 75 acres located in Sec. 24, T. 18 N., R 3. E., W.M., in Kittitas County, approximately 18 miles northwest of Ellensberg.

The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws, and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will continue until such final determination is made.

Dated: November 7, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-27110 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-01-4214-10; GP1-032; OR-22213(WASH), OR-22370(WASH)]

Proposed Continuation of Withdrawals, Washington; Correction

The sentence which was omitted in FR Doc. 90-23481 published on page 40724, in the issue of Thursday, October 4, 1990, is hereby corrected as follows:

On page 40724, paragraph 2 is hereby corrected to begin with the sentence "The purpose of the withdrawals are to protect the Bumping Lake Dam and Reservoir Project."

Dated: November 1, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-27111 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-33-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (Interior), Washington, DC 20503, telephone 202-395-7340.

Title: Individual Civil Penalties, 30 CFR part 724.

OMB Number: 1029-

Abstract: 30 CFR 724 allows individuals to submit documentation that demonstrates he or she has taken all reasonable steps within his or her legal authority to bring about abatement of a violation of the Surface Mining Control and Reclamation Act of 1977 after being notified of his or her potential liability under interium program requirements.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Individual corporate officials.

Annual Responses: 0

Annual Burden Hours: 1.

Estimated Completion Time: 6 hours.

Bureau clearance officer: Andrew F. DeVito (202) 343-5150.

Dated: October 9, 1990.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 90-27047 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-05-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (Interior), Washington, DC 20503, telephone 202-395-7340.

Title: Individual Civil Penalties, 30 CFR part 846.

OMB Number: 1029-

Abstract: 30 CFR 724 allows individuals to submit documentation that demonstrates he or she has taken all reasonable steps within his or her legal authority to bring about abatement of a violation of the Surface Mining Control and Reclamation Act of 1977 after being notified of his or her potential liability under permanent program requirements.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: Individual corporate officials.

Annual Responses: 15.

Annual Burden Hours: 90.

Estimated Completion Time: 6 hours.

Bureau clearance officer: Andrew F. DeVito (202) 343-5150.

Dated: October 9, 1990.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 90-27048 Filed 11-15-90; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-294]

Commission Determination To Provisionally Accept a Joint Petition To Rescind Consent Order

In the Matter of certain carrier materials bearing ink compositions to be used in a dry adhesive-free thermal transfer process and signfaces made by such a process.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to provisionally accept a joint petition filed by Minnesota Mining and Manufacturing of St. Paul, Minnesota (3M) and Signtech Inc. (Signtech) of Missaugua, Ontario, Canada to rescind the consent order issued at the termination of the above-captioned investigation. The petition states that Signtech has become a licensee of 3M and that 3M no longer has any objection to importation of Signtech's products.

ADDRESSES: Copies of the petition and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1104.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1104.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting he Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: On February 14, 1989, 3M filed a complaint with the Commission alleging that Signtech and eight U.S. importers were in violation of section 337 of the Tariff Act of 1930 by reason of infringement or contributory infringement of U.S. Letters Patent 4,737,224 (the '224 patent) owned by 3M. The '224 patent covers a process for making commercial signs. 3M alleged that Signtech's products were used in a process that infringed the '224 patent by the domestic importers. The Commission instituted an investigation was terminated by a consent order prohibiting Signtech's from exporting its

products to the United States. The consent order also prohibited the named domestic importers from buying or importing Signtech's products.

On October 24, 1990, 3M and Signtech jointly petitioned the Commission under Commission interim rule 211.57(a), 19 CFR 211.57(a), to rescind its consent order because Signtech has become a licensee of the '224 patent, and as a result, 3M no longer opposes the importation of Signtech's products. The domestic respondents, Acme Wiley Corporation, Dualite Incorporated, Fairmont Sign Company, Graflex Incorporated, Harlan Laws Corporation, McHenry Industries, Persona Incorporated, and Superior Electrical Advertising, did not join in the petition.

Under Commission interim rule 211.57(b), all parties to the investigation will be served with a copy of the petition and this notice. The parties' responses to the petition must be received by the Commission within 30 days after service of the petition and notice.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 211.57(b) of the Commission's Interim Rules of Practice and Procedure (19 CFR 211.57(b)).

Issued: November 9, 1990.

Kenneth R. Mason,

Secretary

[FR Doc. 90-27032 Filed 11-15-90; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent Corporation and address of principal office: Burlington Industries Equity Inc., 3330 West Friendly Avenue, P O Box 21207 Greensboro, NC 27420.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Burlington Industries, Inc., DE.
(ii) B.I. Transportation, DE.
(iii) Burlington Fabrics Inc., DE.
(iv) Burlington Canada Inc., Canada
(v) Textile Maselo S.A. de C.V., Mexico.
(vi) Noblis-Lees, S.A. de C.V., Mexico.
(vii) C.H. Masland & Sons, PA.

B. 1. Parent Corporation and address of principal office: Fiber Conversion Inc., 21 East Elm Street, Broadalbin, New York 12025.

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation:

(i) Fiber Conversion Transport, Ltd., NY.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-27076 Filed 11-15-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31754]

Kyle Railroad Co.—Lease and Trackage Rights in Northern Kansas—Missouri Pacific Railroad Co. and Union Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission is accepting for consideration the application filed on October 18, 1990, by Kyle Railroad Company (Kyle), Missouri Pacific Railroad Company (MP), and Union Pacific Railroad Company (UP) (collectively applicants), pursuant to 49 U.S.C. 11343, *et seq.*, for Kyle to: (1) Lease 346.747 miles of MP and UP rail lines known as the Northern Kansas Rail Lines; and (2) acquire trackage rights over 12.86 miles of UP's Salina Subdivision. Pursuant to 49 CFR part 1180, the Commission finds this to be a minor transaction.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than December 17, 1990 and concurrently served on applicants' representatives, the United States Secretary of Transportation, and the Attorney General of the United States. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by January 2, 1991. The Commission will issue a service list shortly thereafter. Comments must be served on all parties of record within 10 days of the Commission's issuance of a service list and a certificate of service filed with the Commission indicating that all designated individuals and organizations on the service list in this proceeding have been properly served copies of these comments. Applicants' reply is due January 22, 1991.

ADDRESSES: Send an original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31754, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and each of the applicants' representatives:

Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, room 8201, 400 Seventh Street, SW., Washington, DC 20590.

Attorney General of the United States, United States Department of Justice, 10th & Constitution Avenue, NW., Washington, DC 20530.

Fritz R. Kahn (Kyle), Verner, Liipfert, Bernard, McPherson, and Hand, Chartered, 901 15th Street, NW., c700, Washington, DC 20005-2301.

Joseph D. Anthofer (MP and UP), Jeanna L. Regier, 1416 Dodge Street, c830, Omaha, Nebraska 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: The Kyle Railroad Company (Kyle), Missouri Pacific Railroad Company (MP), and Union Pacific Railroad Company (UP), collectively "applicants," seek Commission approval under 49 U.S.C. 11343, *et seq.*, for Kyle to: (1) Lease 346.747 miles of MP and UP rail lines Known as the Northern Kansas Rail Lines; and (2) acquire trackage rights over 12.86 miles of UP's Salina Subdivision. Applicants state that this is a minor transaction under 49 CFR 1180.2(c), and they submitted a conforming application in accordance with the Railroad Consolidation Procedures set out in 49 CFR part 1180. Applicants also state that time is of the essence as operations over the lines need to commence prior to the spring wheat harvest. As a result, they request expedited handling of their application so that a Commission decision can be served by March 1991.

The properties to be leased that are subject to statutory prior approval requirements consist of: (1) 171.507 miles of MP line between Stockton (milepost 580.626) and Frankfort, KS (milepost 409.119) (Concordia Branch); (2) 84.86 miles of MP line between Downs (milepost 623.60) to Lenora, KS (milepost 538.72) (Lenora Branch); (3) 33.40 miles of MP line between Jamestown (milepost 496.30) and Burr Oak, KS (milepost 529.70) (Burr Oak Branch); and (4) 56.96 miles of UP line between Solomon (milepost 0.93) and Beloit (milepost 57.89) (Solomon Branch). The 12.86-mile line over which Kyle seeks trackage rights, and which is subject to statutory prior approval by the Commission, runs between Solomon (milepost 173.14) and Salina, KS (milepost 186.0) (Salina Subdivision).

Kyle, a Kansas Corporation and wholly owned subsidiary of Kyle Railways, Inc., is a Class III rail carrier operating 420 miles of rail lines in the states of Kansas and Colorado. Kyle's present system intersects MP's lines at Mankato and Clifton, KS. Kyle also has trackage rights over MP between Yuma and Concordia, KS. MP and UP are Class I common carriers by railroad, and operate approximately 20,843 miles of rail lines in 19 states. The MP-UP traffic handled over the lines in question consists of, among other commodities, agricultural products, industrial equipment, raw materials, and chemicals.

There are currently 50 active shippers situated on the Concordia Branch, which produced 4,476 originating or terminating carloads in 1989. On the Lenora Branch, there are approximately nine active shippers. In 1989, these shippers originated or terminated 409 carloads. The Burr Oak Branch has approximately six active shippers, originating or terminating 393 carloads in 1989. There are eight active shippers on the Solomon Branch, for which MP-UP handled 73 originating or terminating carloads in 1989. Traffic over these four lines (collectively the Northern Kansas Rail Lines) consists primarily of agricultural products, agricultural and other types of chemicals, forest products, and some manufactured products. Kyle seeks trackage rights over the Salina Subdivision in order to interchange traffic with UP at Salina.

Applicants contend that the proposed transaction will not substantially reduce competition, create a monopoly, or restrain trade in freight surface transportation in any region of the United States. According to applicants, the shippers served by the Northern Kansas Rail Lines enjoy ample intermodal competition that will not be reduced by this transaction. The area at issue here is also served by the Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company. The substitution of Kyle for MP-UP as the operator of the lines in this transaction, it is argued, will enhance intramodal competition. Applicants state that this transaction will enable Kyle to operate in a new market, provide shippers with more responsive and economical rail service, and develop new rail business, thereby improving the financial viability of Kyle while relieving MP and UP of a marginal operation. Through more effective intermodal competition and efficient service, Kyle anticipates capturing motor carrier traffic. Kyle does not presently compete with MP or UP for originating and terminating freight on the lines.

Kyle plans to operate the line with its own employees under its own work rules, rates of pay and benefits. It is expected that approximately 24 positions will be eliminate on the MP and UP as a result of this transaction. MP and UP intend to honor their obligations to their adversely affected employees under 49 U.S.C. 11347 and existing collective bargaining agreements. MP and UP have not negotiated any alternate employee protection arrangements in conjunction with this matter. Morover, Kyle does not believe it is responsible for employees of MP and UP.

Any authority granted herein will be subject to the conditions set forth in *Mendocino Coast Railway, Inc.—Lease and Operate, modified*, 354 I.C.C. 732 (1978) and in *Norfolk & Western Railway Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), *modified, Mendocino Coast Railway, Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), as clarified in *Wilmington Term. R.R. Inc. Pur. Lease—CSX Transportation, Inc.*, 6 I.C.C. 2d 799 (1990).

Under 49 CFR 1180.4(b)(2)(iv), we must determine whether a proposed transaction is major, significant, minor, or exempt. The proposal here involves a Class I (MP-UP) and a Class III rail carrier. It has no regional or national significance and will not result in a major market extension. Accordingly, we find the proposal to be a minor transaction, under 49 CFR 1180.2(c). Since the application substantially complies with the applicable regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested persons, including government entities, may participate in this proceeding by submitting written comments. Any person who files timely written comments shall be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that this proposal is a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably. We will wait for interested parties to file comments before ruling on applicants' request for expedited handling.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This application is accepted for consideration as a minor transaction under 49 CFR 1180.2(c).

2. The parties shall comply with all provisions stated above.

3. This decision is effective on November 16, 1990.

Decided: November 13, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

Secretary

[FR Doc. 90-27075 Filed 11-15-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; CERCLA

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on November 1, 1990, a proposed consent decree in *United States v. James and Carolyn Curtis*, Civil Action No. 87-673-B, was lodged with the United States District Court for the Southern District of Iowa. The proposed consent decree resolves a judicial enforcement action brought by the United States against James and Carolyn Curtis under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607(a).

In this action filed on September 16, 1987, the United States sought recovery of response costs incurred by the United States in connection with removal activities at a pesticides facility owned by the Curtises in Corning, Iowa. The proposed decree requires the Curtises to pay a total sum of $100,000 within ten days from the date of entry of the decree, in satisfaction of and to settle all claims raised against the Curtises in this lawsuit.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division of the Department of Justice, Washington, DC 20530, and should refer to *United States* v. *James and Carolyn Curtis*, D.J. Ref. 90–11–3–256.

The proposed consent decree may be examined at the office of the United States Attorney, 115 U.S. Courthouse, Des Moines, Iowa 50309, and at the Region VII office of the United States Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–27049 Filed 11–15–90; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Surface Cleaning Technology Consortium

Notice is hereby given that, on October 16, 1990, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the Surface Cleaning Technology Consortium ("SCTC") filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of the SCTC. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the potential recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are given below.

The current members of SCTC are: International Business Machines Corporation, Fujitsu Limited, Kobe Steel, Ltd., Storage Technology Corporation.

Membership in SCTC remains open, and members intend to file additional written notification disclosing all changes in membership.

On March 1, 1990, SCTC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 26, 1990, 55 FR 11068.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90–27067 Filed 11–15–90; 8:45 am]

BILLING CODE 4410–01–M

[Civil No. 90–0188]

United States v. American Safety Razor Co. et al; Antitrust Procedures

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Pennsylvania in *United States* v. *American Safety Razor Company; Ardell Industries, Inc.; and The Jordan Company*, Civil Action No. 90–0188, E.D. Pa.

The Complaint alleged that the effect of the acquisition of Ardell by ASR may be substantially to lessen competition in the following United States markets: (1) Single edge industrial blades and (2) all types of industrial blades other than single edge industrial blades, in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

Prior to the negotiations that led to the proposed Final Judgment the United States independently concluded that the acquisition of Ardell by ASR will not substantially lessen competition in the non-single edge blade market, and had intended to move to amend the complaint to eliminate that claim. Thus, the proposed Final Judgment does not address concerns regarding that market.

The proposed Final Judgment: (1) Orders and directs Ardell to sell four backing and shelling machines and related technology and, for up to three months, to assist the purchaser or purchasers in installing, debugging, and operating the machines, (2) orders and directs ASR to waive and release any rights it has to acquire Techni-Edge Manufacturing Corporation under a Right of First Refusal Agreement between Techni-Edge and ASR, (3) orders and directs ASR and Ardell to waive and release any claims they may have against Techni-Edge arising out of Techni-Edge's use of any of Ardell's proprietary manufacturing or engineering information or know-how, (4) orders and directs Ardell to terminate its consulting relationship with Bert Ghavami, (5) orders and directs ASR to release Hans Rath from any claims it may have arising out of three employment contracts between ASR and Hans Rath, and (6) orders and directs ASR to release Hans Rath from any claim arising out of an October 25, 1988 Consulting Agreement which might prevent Hans Rath from providing services to competitors of ASR after the expiration of the Consulting Agreement, and to release Hans Rath from any other obligations he may have under the Consulting Agreement.

The proposed Final Judgment requires ASR and Ardell to divest the above described assets by May 31, 1991, unless the United States grants an additional three months to do so. If the divestiture is not accomplished within that period, the Court, upon application of the United States, will appoint a trustee to effect the divestiture. The divestiture is to be made to persons acceptable to the United States in its sole determination. The trustee may require ASR and Ardell to provide assistance in obtaining grinding capability to purchasers of the backers and shellers, if needed.

Should the Court enter the proposed Final Judgment, the complaint against The Jordan Company will be dismissed.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to John J. Hughes, Chief, Middle Atlantic Office, Antitrust Division, United States Department of Justice, The Curtis Center, suite 650, 7th & Walnut Streets, Philadelphia, PA 19106, (Area Code 215) 597–7401, within the statutory 60-day comment period.

John W. Clark,

Acting Director of Operations, Antitrust Division.

Filed October 24, 1990.

Judge Newcomer.

Stipulation

It is stipulated by and between the undersigned parties, by their respective officers or attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendants and by filing that notice with the Court.

(2) The parties shall abide by and comply with the provisions of the Final Judgment pending entry of the Final Judgment.

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation will be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the Plaintiff United States of America.

Alison L. Smith,

Acting Assistant Attorney General.

John W. Clark,

John J. Hughes,

Robert E. Connolly,

Attorneys, Antitrust Division, U.S. Department of Justice.

Richard S. Rosenberg,

Willard S. Smith,

Anne R. Spiegelman,

Attorneys, Antitrust Disision, Department of Justice, Middle Atlantic Office, The Curtis Center, suite 650, 7th and Walnut Streets, Philadelphia, Pennsylvania 19106, Telephone: (215) 597–7401.

For The Defendants American Safety Razor Company; Ardell Industries, Inc.; and The Jordan Company:

Pepper, Hamilton & Scheetz.

Peter Hearn,

Pepper, Hamilton & Scheetz, 3000 Two Logan Square, Eighteenth & Arch Streets, Phildelphia, Pennsylvania 19103.

United States District Judge.

Dated:

So Ordered.

Filed October 24, 1990.

Judge Newcomer.

Final Judgment

Whereas, plaintiff, United States of America, having filed its Complaint herein on January 9, 1990, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain divestiture is the essence of this agreement, and defendants have represented to plaintiff that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. *ASR* means defendant American Safety Razor Company; each division and subsidiary thereof, except Ardell; and each officer, director, employee, agent or other person acting for or on behalf of any of the foregoing.

B. *Ardell* means defendant Ardell Industries, Inc.; each division and subsidiary thereof; and each officer, director, employee, agent or other person acting for or on behalf of any of the foregoing.

C. *Divestiture assets* means and includes all of the following: (a) Four (4) existing Ardell backers and shellers being identified as Nos. 4, 5, 6 and 7; and (b) License to the Original Purchaser to use only in the normal course of the Original Purchaser's business the drawings and specifications for the backers and shellers on a perpetual, royalty free basis. The license granted to the Original Purchaser shall be transferable by the Original Purchaser to a subsequent purchaser or purchasers of one or more of the divested backers and shellers on the same terms and conditions as granted to the Original Purchaser.

D. *Divestiture time period* means the period ending May 31, 1991 and any extension thereof pursuant to Section IV.B hereof.

E. *Person* means any natural person corporation, association, firm, partnership or other business or legal entity.

F. *Original purchaser* means a Person to whom one or more of the backers and shellers are sold by ASR and Ardell pursuant to Section IV hereof or by the Trustee pursuant to Section V hereof.

G. *Trustee* means a Person appointed by the Court pursuant to Section V hereof.

III. Applicability

A. The provisions of this Final Judgment shall apply to ASR and Ardell, to their successors and assigns, to their officers, directors, employees and agents and to all other Persons acting for or on behalf of ASR or Ardell who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Prior to the expiration of this Final Judgment, ASR and Ardell shall require, as a condition of the sale or other disposition of all or substantially all of their assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

C. Nothing herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing shall be construed to provide any rights to any third party.

IV. Divestiture

A. ASR and Ardell are hereby ordered and directed to divest all of their direct and indirect ownership and control of the Divestiture Assets to an Original Purchaser or Purchasers within the Divestiture Time Period. ASR and Ardell shall be deemed to have complied with this obligation if, within the Divestiture Time Period, they have entered into a binding contract or contracts, subject only to the provisions of this Final Judgment, for the sale of the Divestiture Assets to a purchaser or purchasers then or thereafter approved by plaintiff and on terms then or thereafter approved by plaintiff, provided, such sale is consummated on such terms or such other terms as plaintiff may approve.

B. ASR and Ardell shall take all reasonable steps to accomplish the above-described divestiture on or before May 31, 1991. Plaintiff may, in its sole discretion, upon ASR's and Ardell's request and at any time on or before May 31, 1991, extend said period for an additional three months.

C. At the request of an Original Purchaser, ASR and Ardell shall provide

technical assistance as such Original Purchaser may reasonably require to enable it to install, to debut, and to operate the Divestiture Assets until the time required to achieve operational status of the Divestiture Assets exceeds fifteen (15) person days, then ASR and Ardell shall be compensated for such additional technical assistance in an amount equal to the salaries, benefits, and reasonable out-of-pocket expenses incurred in providing such assistance, and provided, further, ASR and Ardell shall not be required to provide such technical assistance after three months following delivery of the Divestiture Assets to the Original Purchaser.

D. Subject to Section IV.E hereof, a proposed divestiture of some or all of the Divestiture Assets shall be approved by plaintiff if plaintiff determines, in its sole discretion, that a proposed purchaser is purchasing Divestiture Assets for the purpose of competing effectively in the production and sale of strip ground single edge industrial blades in the United States and that a proposed purchaser has or has the ability to obtain the managerial, operational, and financial capability to become an effective competitor in the production and sale of strip ground single edge industrial blades in the United States.

E. The divestiture required by Section IV.A hereof shall not be made to Crescent Manufacturing Company, Industrial Blades Unlimited, SDI Corporation (formerly known as Shuen Der Industry Co., Ltd.), The Stanley Works, or Techni-Edge Manufacturing Corp.

F. ASR or Ardell shall not finance all or any part of any purchaser of Divestiture Assets by an Original Purchaser without the prior written approval of the plaintiff.

V. Trustee

A. If ASR and Ardell have not accomplished the divestiture required under Section IV.A hereof within the Divestiture Time Period, the Court shall appoint a Trustee for the purpose of accomplishing said divestiture in accordance with the provisions of this Section V. Within twenty days of the expiration of the Divestiture Time Period without divestiture having been accomplished, plaintiff shall furnish ASR and Ardell with the names and qualifications of at least two nominees for the Trustee. Within ten days of receiving plaintiff's names and qualifications, ASR and Ardell shall advise plaintiff of either their acceptance of one of those nominees or the names and qualifications of one or more other nominees for the Trustee. If the parties fail to agree on the appointment of a nominee within ten days, plaintiff shall promptly apply to the Court for the appointment of a Trustee. The Court may hear the parties as to the qualifications of their respective nominees to be the Trustee.

B. Upon his or her appointment the Trustee shall have the exclusive right and authority to sell the Divestiture Assets to an Original Purchaser approved by plaintiff at such price and on such terms as are then obtainable upon a reasonable effort by said Trustee, provided, however, the Trustee shall not sell Divestiture Assets to any Person enumerated in Section IV.E hereof. ASR and Ardell may object to a sale of Divestiture Assets by the Trustee on the ground of the Trustee's malfeasance. Any such objection shall be conveyed in writing to plaintiff and the Trustee within fifteen (15) days of the Trustee's notification to the parties of a proposed sale.

C. If requested by the Trustee in order to facilitate a sale to an Original Purchaser not already engaged in producing strip ground industrial blades, ASR and Ardell shall agree to provide technical assistance as such Original Purchaser may reasonably require to enable such purchaser to procure, install, debug and operate strip grinding equipment of the same general type and efficiency as the strip grinding equipment currently used by Ardell to produce single edge industrial blades until such strip grinding equipment is operational, provided, however, ASR and Ardell are only required to provide such technical assistance if the Original Purchaser agrees (a) to compensate ASR and Ardell for such technical assistance in an amount equal to the salaries, benefits and reasonable out-of-pocket expenses incurred in providing such assistance; and (b) to hold harmless and indemnify ASR and Ardell from and against any and all claims arising out of the provision of such assistance, and, provided, further, ASR and Ardell shall not be required to provide such technical assistance after three months following delivery of such strip grinding equipment to such Original Purchaser.

D. In making the divestiture pursuant to this Section, the Trustee shall give preference to an otherwise qualified Person ready, willing and able to purchase a greater portion or all of the Divestiture Assets over an otherwise qualified Person ready, willing and able to purchase a lesser portion of the Divestiture Assets subject to the need to sell all of the Divestiture Assets.

E. The Trustee shall serve at the cost and expense of ASR and Ardell, shall receive compensation based on a fee arrangement providing an incentive based on price and terms of the divestiture and the speed with which it is accomplished, and shall serve on such other terms and conditions as the Court may prescribe, provided, however, that the Trustee shall receive no compensation nor incur any costs or expenses prior to the date of his or her appointment. The Trustee shall account for all monies derived from the sale of Divestiture Assets and for all costs and expenses incurred in connection therewith. After the Court's approval of the Trustee's accounting, including the Trustee's fees, all remaining monies shall be paid to Ardell and the Trust shall then be terminated.

F. ASR and Ardell shall assist the Trustee in his or her efforts to accomplish the required divestiture to the extent reasonably requested and shall take no action to impede such efforts. The Trustee shall have full access to personnel, books, records and facilities related to the Divestiture Assets, and ASR and Ardell shall develop such financial or other information relevant to the Divestiture Assets as the Trustee may reasonably request, subject to appropriate protections for confidential information.

G. The Trustee shall provide the parties with monthly reports setting forth his or her efforts to accomplish the required divestiture. Each report shall contain (a) The name and address of each Person who, during the preceding month, expressed any interest in purchasing, made any inquiry regarding, or was contacted regarding the Divestiture Assets; and (b) a detailed description of all communications from and to each such Person. The Trustee shall maintain full records of all such communications.

H. If the Trustee has not accomplished the required divestiture within six months of his or her appointment, he or she shall within twenty days of the expiration of said six-month period submit a report to the parties and the Court setting forth (a) The Trustee's efforts to accomplish the divestiture, (b) the reasons, in the Trustee's judgment, why divestiture has not been accomplished, and (c) the Trustee's recommendations. The parties shall thereupon have the right to be heard and to make their own recommendations. The Court shall thereafter enter such orders as it deems appropriate, which may include extension of the Trust and the Trustee's appointment for some specified further period.

VI. Notification

ASR and Ardell or the Trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of any proposed divestiture pursuant to Section IV or V hereof. If the Trustee is responsible, he or she shall also notify ASR and Ardell. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each Person not previously identified who offered to acquire, or expressed an interest in acquiring or desire to acquire any ownership interest in the Divestiture Assets, together with full details of same. Within fifteen (15) days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestiture and the proposed purchaser. ASR and Ardell or the Trustee shall furnish any additional information requested within twenty (20) days of the receipt of any such request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within twenty (20) days after plaintiff has been provided the additional information requested, whichever is later, plaintiff shall provide written notice to ASR and Ardell and any Trustee, stating whether or not plaintiff objects to the proposed divestiture. If plaintiff provides written notice to ASR and Ardell or the Trustee that it does not object, then the divestiture may be consummated, subject only to ASR's and Ardell's rights to object to the sale pursuant to Section V.B hereof. Upon objection by plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff or by ASR and Ardell, a divestiture proposed under Section V. shall not be consummated unless approved by the Court.

VII. Preservation of Assets

Until the divestiture required by this Final Judgment has been accomplished, defendants (a) Shall take all reasonable steps to assure that the Divestiture Assets are maintained as distinct and saleable assets; (b) shall not sell, lease, assign, transfer or otherwise dispose of the Divestiture Assets or further pledge them as collateral for any loan; (c) shall, so long as the Divestiture Assets remain within ASR's or Ardell's custody, possession or control, preserve the Divestiture Assets in at least the same condition of operation and repair as such conditions existed on October 15, 1990, ordinary wear and tear excepted; and (d) preserve the documents, books and records relating to the Divestiture Assets.

VIII. Techni-edge Relationship

A. ASR is hereby ordered and directed to waive and release any and all rights, which ASR may have to acquire Techni-Edge Manufacturing Corp., ("Techni-Edge") under the Right of First Refusal Agreement between Techni-Edge Manufacturing Corp. and ASR, dated April 28, 1989.

B. ASR and Ardell are hereby ordered and directed to waive and release any and all claims which ASR and Ardell may have against Techni-Edge arising out of Techni-Edge's use of any of Ardell's existing (as of the date of this Final Judgment) proprietary manufacturing or engineering information and know-how.

C. Ardell is hereby ordered and directed to terminate its consulting relationship with Bert Ghavami no later than six months after entry of this Final Judgment.

IX. Hans Rath Relationship

A. ASR is hereby ordered and directed to waive and release any and all claims which ASR may have against Hans Rath arising out of Hans Rath's Employee Patent and Confidential Information Agreements dated December 16, 1963, May 18, 1966 and May 5, 1981.

B. ASR is hereby ordered and directed to release Hans Rath from any and all executory obligations he may have under a Consulting Agreement between Hans Rath and ASR, dated October 25, 1988, provided, Hans Rath releases ASR from any executory obligations ASR may have under said Consulting Agreement. Notwithstanding the foregoing, ASR is hereby ordered and directed to waive and release any and all claims which ASR may have against Hans Rath arising out of Paragraph VIII(e) of said Consulting Agreement.

X. Compliance Inspection

For the purposes of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permittted:

1. Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees, and agents of such defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided herein shall be divulged by a representative of the Department of Justice to any Person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by any defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under rule 26(c)(7) of the Federal Rule of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XII. Termination

This Final Judgment will expire one year after the completion of the divestiture of the Divestiture Assets in

accordance with the provisions of Section IV or Section V hereof.

XIII. Dismissal of Complaint Against the Jordan Co.

The Amended Complaint is hereby dismissed with prejudice against The Jordan Company, each party to bear its own costs.

XIV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

Filed October 24, 1990.
Judge Newcomer.

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On January 9, 1990, the United States filed a civil antitrust complaint under section 15 of the Clayton Act, 15 U.S.C. 25, challenging the acquisition of Ardell Industries, Inc. ("Ardell") by the American Safety Razor Company ("ASR") as a violation of section 7 of the Clayton Act, 15 U.S.C. 18. The original complaint named ASR and Ardell as defendants. On August 15, 1990, the complaint was amended to add The Jordan Company ("Jordan") as a defendant. The complaint alleges that the effect of the acquisition may be substantially to lessen competition for the manufacture and sale in the United States markets of two product categories: (1) Single edge industrial blades and (2) all types of industrial blades other than single edge industrial blades. As defined in the complaint, industrial blades are strip ground, disposable razor blades not for wet shaving or medical use.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the Government withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

II. Events Giving Rise To The Alleged Violation

On April 28, 1988, ASR acquired Ardell. ASR is a manufacturer of soap and shaving, industrial, and medical blades. Its principal blade manufacturing facility is located in Staunton, Virginia. Ardell is a manufacturer of industrial blades and hand tools. Its principal manufacturing facility is located in Union, New Jersey. Both ASR and Ardell manufacture and sell throughout the United States a wide variety of industrial blades, including single edge industrial blades.

Industrial blades are produced for numerous uses and are sold in industrial and do-it-yourself markets. The different types of blases are produced using a similar process. First, a coil strip of steel is run through a perforating punch press. The press contains a die, and the shape of the blade is determined by the width of the steel and the die that is inserted in the press. The press perforates the steel but does not cut it. Next, the steel strip is heat treated. The strip is fed into a hardening furnace, through a water-cooled quench block, then into a tempering furnace. The steel then is fed through a grinder which sharpens the blade. Different blades require different strip guides, which ensure that the blade is ground at the correct angle and to the correct thickness. Single edge blades may require stopping as well as grinding. As the sharpened steel exits the grinder, the individual blades are broken off by a breaker machine.

Most single edge blades are sold "backed" and "shelled," thus requiring additional processing. To back, a pre-cut aluminum or steel blade back is bent lengthwise down the middle. The back is then fed onto the unsharpened edge of the blade and crimped to become part of the blade. To shell, a sheet of paper is fed around the edged side of the blade, cut, and glued to form a protective sleeve.

Each type of industrial blade, including single edge blades, typically is used for specific purposes. Whether or not other types of products could be used interchangeably with single edge blades, in practice there is little overlap in usage. Consumers purchase single edge blades either as components and replacement blades for cutting and scraping tools, or for use without a tool. Because the tools in which single edge blades are used are designed specifically to hold only single edge blades, there are no substitute products for use in such tools. For most customers who use single edge blades without a tool, the superior cutting edge protected by the shelling and the ready grip provided by the backing produces a result far superior to that any alternative blade could produce. Although some consumers do purchase alternative blades to accomplish certain tasks for which single edge blades typically are used, a small but significant and nontransitory change in the price of single edge blades is unlikely to cause a significant number of users of single edge blades to switch to another type of blade.

Whether or not they currently do so, manufacturers of one type of industrial blade would shift into the manufacture of other non-single edge industrial blades in response to a small but significant and nontransitory price increase. Because of the additional requirement of backing and shelling, however, industrial blade manufacturers not currently manufacturing single edge industrial blades would not shift into the manufacture of single edge blades in response to a similar price increase.

The complaint alleges that the markets for single edge industrial blades both and for industrial blades other than single edge industrial blades both are highly concentrated. Based on 1988 sales data, ASR and Ardell have, respectively, about 50 percent and 18 percent of the single edge industrial blade market and about 36 percent and 11 percent of the market for industrial blades other than single edge blades. Only three companies other than ASR and Ardell have more than one percent of the single edge blade market. ASR has a right of first refusal to purchase one of them, Techni-Edge Manufacturing Corp. ("Techni-Edge"), a company owned by the family of Ardell's President at the time the complaint was filed.

As a result of ASR's acquisition of Ardell, the Herfindahl-Hirschman Index increased by about 1800 points to over 4900 in the single edge industrial blade market, and by about 800 points to over 2600 in the market for other types of industrial blades. A market with an HHI of 1800 is highly concentrated.

Entry into the market for single edge industrial blades is time consuming and requires the commitment of substantial non-recoverable costs. The acquisiton of efficient backing and shelling equipment alone likely requires more than two years. Moreover, the cost of this equipment is wholly non-recoverable should a firm choose to exit the market. Backing and shelling equipment typically is manufactured in-house by producers of single edge blades. Such equipment is not available for purchase off-the-shelf, and used equipment is rarely available. Similarly, equipment that can economically back and shell blades is difficult to design, and existing designs are not readily available. Successful competitors in the single edge blades market, including ASR and Ardell, carefully protect their proprietary technology relating to backing and shelling equipment. While grinding equipment is more readily available than backers and shellers, it may be difficult to acquire such equipment in fewer than two years. Entry that takes more than two years is not quick enough to deter or dispel noncompetitive performance resulting from a merger.

Entry into the market for industrial blades other than single edge blades is less difficult than for single edge blades because there is no need to obtain backing and shelling equipment. As discussed further below, the government has determined that because of the ease of entry into the production and sale of other industrial blades, as well as for other reasons, ASR's acquisition of Ardell will not have anticompetitive effects in the market for other blades.

III. Explanation of the Proposed Final Judgment

The United States brought this action because it believed the effect of this acquisition may be substantially to lessen competition in the United States markets for single edge industrial blades and for all types of industrial blades other than single edge blades, in violation of section 7 of the Clayton Act. As described below, the provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the proposed acquisition in the single edge blade market. Prior to negotiations that led to this proposed Final Judgment the United States independently concluded that the acquisition will not substantially lessen competition in the non-single edge blade market, and had intended to move to amend the complaint to eliminate that claim. Thus, the proposed Final Judgment does not address concerns regarding that market.

Concerns regarding the effect of ASR's acquisition of Ardell is based on the highly concentrated nature of the single edge industrial blade market and the difficulty potential new entrants face in achieving the ability to produce single edge industrial blades. The risk to competition posed by this transaction would be substantially reduced by the creation of a new competitor in the market. To this end, the proposed Final Judgment is designed to facilitate the entry of at least one new company with the capacity to manufacture a substantial quantity of single edge blades.

Section IV of the proposed Final Judgment requires defendant Ardell to sell four backing and shelling machines, the most difficult aspect of entry into the market, to a company or companies with the managerial, operational, and financial capability of becoming effective competitors in the production and sale of single edge industrial blades in the United States, and who intend to compete in that market. The proposed Final Judgment precludes the sale of the backers and shellers to currently viable single edge blade manufacturers, as well as to the Stanley works, a likely potential market entrant.

Four backers and shellers will provide the purchaser with sufficient capacity to compete effectively in the single edge blade market. Moreover, Section IV of the proposed Final Judgment also requires ASR and Ardell to license to the purchaser the drawings and specifications for the backers and shellers on a perpetual, royalty-free basis. The purchaser will be able to use this technology to build additional backers and shellers, if required in the normal course of business. Finally, the proposed Final Judgment requires ASR and Ardell to provide assistance to the purchaser in installing, debugging and operating the equipment for a period of three months following delivery of the assets.

The proposed Final Judgment also requires divestiture of ASR's right-of-first-refusal interest in Techni-Edge. Section VIII is intended to ensure that Techni-Edge, one of the few companies capable of manufacturing single edge industrial blades, will be a truly independent competitor. Techni-Edge was founded by the family of Bert Ghavami who, at the time of its founding, was a high ranking employee of Ardell. The proposed Final Judgment also eliminates uncertainty about the ownership of single edge technology practiced by Techni-Edge. Pursuant to the proposed Final Judgment, Ardell will waive any possible claim against Techni-Edge based on the use of Ardell's proprietary information. Furthermore, within six months after entry of the proposed Final Judgment, Ardell must terminate an existing consulting agreement with Bert Ghavami, who until recently was President of Ardell. These injunctions relating to Techni-Edge will ensure the independence of Techni-Edge from ASR and Ardell as a competitor in the single edge blade market.

Section IX of the proposed Final Judgment requires ASR to refrain from asserting any claim against Hans Rath arising out of three employment agreements. It also requires ASR to release Mr. Rath from his obligations under an October 25, 1988 consulting agreement provided Mr. Rath agrees to release ASR from its obligations under the consulting agreement. In any event, ASR will waive provisions in the consulting agreement that may preclude Mr. Rath from involvement in blade manufacturing with anyone other than ASR beyond the four year term of the agreement. The United States believes Mr. Rath is one of the few people in the United States with expertise in the design of single edge industrial blade manufacturing equipment, and his availability to assist potential market entrants in achieving the ability to manufacture single edge industrial blades may facilitate their entry into the market.

Under the terms of the proposed Final Judgment, defendants must take all reasonable steps necessary to accomplish quickly the sale of the four backers and shellers. Should Ardell fail to complete the sale of the backers and shellers by May 31, 1991, or an additional three months if granted by the United States, the Court will appoint a trustee to accomplish the divestiture. Following the trustee's appointment, only the trustee will have the right to sell the backers and shellers, and ASR and Ardell will assist the trustee in the trustee's efforts to accomplish the required divestitute. ASR and Ardell will be required to pay for all of the trustee's sale-related expenses.

Should a trustee be responsible for accomplishing the divestiture, preference would be given to a potential purchaser of a greater number or all of the backers and shellers over a potential purchaser of a lesser number of backers and shellers. Such a purchaser would begin operation with greater blade-making capacity, providing a greater deterrent to anticompetitive price rises by existing manufacturers. Because obtaining single edge blade grinding equipment may be difficult, the proposed Final Judgment also empowers the trustee to require defendants ASR and Ardell to provide assistance in achieving grinding capability to a purchaser, if necessary.

At the end of six months, if the trustee has not accomplished the sale, the trustee and the parties will make recommendations to the Court and the Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may include extending the trust or the term of the trustee's appointment.

The proposed Final Judgment provides that until the required divestiture has been accomplished, ASR and Ardell will maintain the divestiture assets in operable condition as distinct and saleable assets.

The proposed Final Judgment provides the United States an opportunity to review any proposed sale before it

occurs. If the United States requests information from defendants to assess a proposed sale, the sale may not be consummated until at least 20 days after defendants supply the information. If the United States objects to a proposed sale, the sale may not be completed.

The proposed Final Judgment provides that The Jordan Company will be dismissed as a defendant upon entry of the Final Judgment. Jordan was named as a defendant primarily due to its roles in the acquisition and operations of ASR and Ardell. For purposes of carrying out the terms of the proposed Final Judgment, Jordan is not a necessary defendant. Obligations in the proposed Final Judgment, however, bind partners and principals of Jordan to the extent they are officers or shareholders of ASR or Ardell.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedure Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: John J. Hughes, Chief, Middle Atlantic Office, Antitrust Division, The Curtis Center, Suite 650 West, 7th & Walnut Streets, Philadelphia, Pennsylvania 19106.

VI. Alternatives to the Proposed Final Judgment

An alternative to settling this action pursuant to the proposed Final Judgment would be for the United States to litigate the issues and, if successful, to seek an injunction requiring ASR to divest all of its ownership interest in Ardell.

As noted above, the United States decided not to press its claim concerning a violation in the non-single edge industrial blade market for reasons independent of the negotiations that led to the proposed Final Judgment. Because other types of industrial blades are not backed and shelled, entry into the market for non-single edge blades is significantly easier than entry into the market for single edge blades. Additionally, while there are few foreign companies capable of manufacturing single edge industrial blades who are reasonable sources for United States customers, foreign sources of non-single edge blades are more numerous and constitute a growing presence in the United States market. Finally, several types of non-single edge industrial blades face growing competition from non-disposable industrial blade products.

Regarding the single edge industrial blade market, the United States could have proceeded with the litigation, but the outcome of the trial, as with any litigation, is uncertain. The divestiture of four backers and shellers and related technology will provide the means for entry into the relevant market of a new, viable competitor. The proposed Final Judgment also assures the independence from ASR and Ardell of Techni-Edge, itself a source of new and significant competition, and the availability to potential entrants of the services of an individual possessing unique expertise in single edge blade manufacturing. The United States expects that these measures will provide new competition sufficient to prevent the ASR acquisition of Ardell from having anticompetitive effects.

The United States is satisfied that the proposed Final Judgment fully resolves the anticompetitive effects of the acquisition alleged in the complaint.

VII. Determinative Materials and Documents

There are no materials or documents that the United States considered to be determinative in formulating the proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Respectfully submitted,

Richard S. Rosenberg, Robert E. Connolly, Willard S. Smith, Anne R. Spiegelman,

Attorneys, Antitrust Division, Department of Justice, Middle Atlantic Office, The Curtis Center, suite 650, 7th and Walnut Streets, Philadelphia, Pennsylvania 19106, Telephone: (215) 597-7401.

[FR Doc. 90-26960 Filed 11-15-90; 8:45 am]

BILLING CODE 4410-01-M

Bureau of Prisons

Intent To Prepare Draft Environmental Impact Statement (DEIS) for the Construction of a Federal Correctional Complex in Sumter County, FL

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statetment (DEIS).

SUMMARY:

Proposed Action

The U.S. Department of Justice, Federal Bureau of Prison has determined that a new Federal correctional complex is needed in its system. A 1,350 acre tract of land located north of County Road 470 between Sumterville and Okahumpka will be evaluated. The proposal calls for the construction of facilities to house approximately 2,750 minimum, low, medium and high custody inmates.

The acreage would be used for road access, inmate housing, administration and program and service spaces and services and support facilities. In addition, exercise areas would be included in the needed acreage.

In the process of evaluating the tract of land, several aspects will receive a detailed examination including: Utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources, and socio-economic impacts.

Alternatives

In developing the DEIS the options of no action and alternative sites for the proposed facility will be fully and thoroughly examined.

Meeting

During the preparation of the DEIS there will be numerous opportunities for public involvement in order to determine the issues to be examined. A scoping meeting will be held at a location convenient to the citizens of Sumter County. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, a number of informal meetings have already been held and will be continued by representatives of the Bureau of Prisons with interested community leaders and officials.

Public notice will be given concerning the availability of the DEIS for public review and comment.

Address

Questions concerning the proposed action and the DEIS can be answered by: Kevin W. McMahon, Site Acquisition Specialist, Office of Facilities Development and Operations, Administration Division, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone: (202) 514-6698.

William J. Patrick,

Chief, Facilities Development and Operations, Federal Bureau of Prisons, Department of Justice.

[FR Doc. 90-26283 Filed 11-15-90; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of recordkeeping/reporting requirements under review: As necessary, the Department of labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

COMMENTS AND QUESTIONS: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics

National Longitudinal Survey of Labor Market Experience of Youth

1220-0109

Annually

Individuals or Households

9060 responses; 6493 total hours; 43 minutes per response; 1 form

The information provided in this survey will be used by the Department of Labor and other government agencies to help understand and explain the employment, unemployment, and related problems faced by young men and women in this age group.

Extension

U.S. Department of Labor, Employment Cost Index, 1220-0038; BLS 3038.

Form No.	Affected Public	Respondents	Frequency	Average time per response
BLS 3038A	State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.	1,260	Once	5 minutes.
BLS 3038B	State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.	6,705	Quarterly	35 minutes.
BLS 3038C	State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.	6,705	Quarterly	15 minutes.
BLS 3038D	State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.	1,260	Once	3 hours.
BLS 3038E	State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.	6,705	Quarterly	15 minutes.

15,510 total hours

The Employment Cost Index measures trends in employee compensation costs. The ECI is used to analyze the relationships between changes in productivity, employment, output prices, and compensation costs. The survey covers the private nonfarm economy and State and local governments.

Signed at Washington, DC this 13th day of November, 1990.

Marizetta Scott,

Acting Departmental Clearance Officer.

[FR Doc. 90-27083 Filed 11-15-90; 8:45 am]

BILLING CODE 4510-24-M

BEST COPY AVAILABLE

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey:
NJ90-2 (Jan. 5, 1990) ..... p. 665, p. 669.
NJ90-3 (Jan. 5, 1990) ..... p. 685, p. 689.
Pennsylvania:
PA90-5 (Jan. 5, 1990) .... p. 951, p. 952.
PA90-7 (Jan. 5, 1990) .... p. 977, pp. 978-979.
PA90-8 (Jan. 5, 1990) .... p. 987, pp. 988-989.
PA90-9 (Jan. 5, 1990) .... p. 997, p. 998.
PA90-12 (Jan. 5, 1990) .. p. 1013, p. 1014.
PA90-14 (Jan. 5, 1990) .. p. 1019, p. 1021.
PA90-17 (Jan. 5, 1990) .. p. 1035, p. 1036.
PA90-18 (Jan. 5, 1990) .. p. 1041, p. 1042.
PA90-19 (Jan. 5, 1990) .. p. 1049, p. 1050.
PA90-20 (Jan. 5, 1990) .. p. 1055, p. 1056.
PA90-21 (Jan. 5, 1990) .. p. 1063, p. 1064.
PA90-22 (Jan. 5, 1990) .. p. 1067, p. 1068.
PA90-23 (Jan. 5, 1990) .. p. 1079, p. pp. 1080-1081.
PA90-24 (Jan. 5, 1990) .. p. 1085, p. 1086.
PA90-28 (Jan. 5, 1990) .. p. 1093, p. 1094.
Index ..... pp. xxi-xxviii.

Volume II

Illinois:
IL90-9 (Jan. 5, 1990) ..... p. 143, p. 144.
IL90-11 (Jan. 5, 1990) .... p. 153, pp. 155-156.
IL90-19 (Jan. 5, 1990) .... p. 231, p. 232.
Indiana, IN90-6 (Jan. 5, 1990). p. 303, p. 304.
Michigan:
MI90-1 (Jan. 5, 1990) ..... p. 421, pp. 422, 426, 433.
MI90-7 (Jan. 5, 1990) ..... p. 495, pp. 496, 498-500, pp. 505-508, 511, pp. 513-514.
Missouri:
MO90-2 (Jan. 5, 1990) ... p. 647, pp. 649, 651, pp. 654-655.
MO90-6 (Jan. 5, 1990) ... p. 677, pp. 678-684.
New Mexico:
NM90-1 (Jan. 5, 1990) ... p. 747, p. 753.
NM90-2 (Jan. 5, 1990) ... p. 763, pp. 765-768.
Ohio:
OH90-1 (Jan. 5, 1990) ... p. 777, p. 779.
OH90-2 (Jan. 5, 1990) ... p. 791, pp. 793-794.
OH90-3 (Jan. 5, 1990) ... p. 813, p. 814.
OH90-29 (Jan. 5, 1990). p. 873, p. 877.
OH90-35 (Jan. 5, 1990). p. 918c, p. 918d.

Volume III

Montana, MT90-1 (Jan. 5, 1990). p. 171, p. 173.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 9th day of November 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90-26994 Filed 11-15-90; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-90-162-C]

Dominion Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Dominion Coal Corporation, P.O. Box 70, Vansant, Virginia 24656, has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its Dominion No. 18 Mine (I.D. No. 44-06577) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that boreholes be drilled not more than 6 feet apart in the rib to a distance of at least 20 feet and at an angle of 45 degrees.

2. As an alternate method, petitioner proposes to drill five holes in the face of the entry, spaced at 5-foot intervals, in a pattern that would provide a 10-foot barrier in all directions to the cut to be taken.

3. Petitioner states that the proposed alternate method will provide a degree of safety for the miners that will equal or exceed that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 17, 1990. Copies of the petition are available for inspection at that address.

Dated: November 8, 1990.

Patricia W. Silver,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-27081 Filed 11-15-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-156-C]

Mason and Dixon Coal Company; Petition for Modification of Application of Mandatory Safety Standard

Mason and Dixon Coal Company, P.O. Box 188, Muir, Pennsylvania 17957 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 1 Slope (I.D. No. 36-07893) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Effective safety catches or other devices are not available for the conveyances used on the steeply pitching and undulating slopes with numerous curves and knuckles in the main haulage slopes of this anthracite mine.

3. If "makeshift" safety devices were installed they would activate on knuckles and curves when no emergency exists and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 17, 1990. Copies of the petition are available for inspection at that address.

Dated: November 8, 1990.

Patricia W. Silver,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-27082 Filed 11-15-90; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

California State Programs; Approval

I. Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator-OSHA), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(e) of the Act and 29 CFR part 1902. On May 1, 1973, notice was published in the **Federal Register** 38 FR 10717 of the approval of the California plan and the adoption of subpart K to part 1952 of title 29 containing the decision. The California plan provides for the adoption of Federal standards and State standards through legislative procedures.

By a letter dated September 27, 1990, from Robert W. Stranberg to Frank Strasheim and incorporated as part of the plan, the State submitted a State standard revision identical to 29 CFR 1910.120, Hazardous Waste and Emergency Response (54 FR 9294 and April 13, 1990; 55 FR 14072).

This standard was promulgated through California legislative action, Assembly Bill (AB) 3018, and became effective on signature by the Governor on September 21, 1990. AB 3018 specifies that the State will enforce the Federal standard until such time as the California Occupational Safety and Health Standards Boards adopts a standard equivalent to the Federal standard (29 CFR 1910.120, Hazardous Waste and Emergency Response, as noted above) and it becomes effective. In accordance with the terms of the Operational Status Agreement (signed by Federal OSHA and the State of California on October 5, 1989), with the State's adoption of this standard, the State has resumed authority over the

enforcement of the Hazardous Waste and Emergency Response standard.

2. Decision

Having reviewed the State submission in comparison with the Federal standard, it has been determined that the standard is identical to the Federal standard and accordingly is approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 71 Stevenson Street, San Francisco, California 94105; Division of Occupational Safety and Health, 395 Oyster Point Boulevard, Wing C/3rd Floor, South San Francisco, California 94080–1913; and Directorate of Federal State-Operations, room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the California State plan as a proposed change and for making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard are identical to the Federal Standard which was promulgated in accordance with Federal law, including meeting requirements for public participation.

2. The standard was adopted in accordance with procedural requirements of State law and further participation would be unnecessary.

This decision is effective November 16, 1990.

Authority: Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667).

Signed at San Francisco, California this 5th day of October 1990.

Frank Strasheim,

Regional Administrator.

[FR Doc. 90–27095 Filed 11–15–90; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

Folk Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Folk Arts Advisory Panel (Organizations; State Arts Apprenticeships Section) to the National Council on the Arts will be held on December 4–7, 1990 from 9 a.m.–6 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 7, 1990, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: November 8, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–27058 Filed 11–15–90; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Advancement Section) to the National Council on the Arts will be held on December 5, 1990 from 9 a.m.–5:30 p.m. in room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m.–10 a.m. The topic will be introductory remarks.

The remaining portion of this meeting from 10 a.m.–5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 7, 1990, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observors, meetings, or portions, thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: November 8, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–27059 Filed 11–15–90; 8:45 am]

BILLING CODE 7537–01–M

Opera-Musical Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (Overview Section) to the National Council on the Arts will be held on December 3–4, 1990, from 9 a.m.–5:30 p.m. in room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be guidelines for Professional Companies, New American Works/Organizations & Individuals, Regional Touring and Services to the Art, Special Projects.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guideline.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532. TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms.Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: November 8, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–27060 Filed 11–15–90; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Playwrights Fellowships Section) to the National Council on the Arts will be held on December 7, 1990 from 9:30 a.m.–6 p.m. in room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9:30 a.m.–10 a.m. and 5:30 p.m.–6 p.m. The topics will be introductory remarks and guidelines discussion.

The remaining portion of this meeting from 10 a.m.–5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 7, 1990, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: November 8, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–27062 Filed 11–15–90; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Visual Artists Organizations Section) to the National Council on the Arts will be held on December 3–6, 1990 from 9 a.m.–9 p.m. and December 7 from 9:30 a.m.–5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 7 from 4 p.m.–5 p.m. The topics will be policy and guidelines discussion.

The remaining portions of this meeting on December 3–6 from 9 a.m.–9 p.m. and December 7 from 9:30 a.m.–4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 7, 1990, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: November 8, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–27061 Filed 11–15–90; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The U.S. Nuclear Regulatory Commission has recently submitted to OMB for review of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C chapter 35).

1. Type submission, new revision, or extension: Revision.

2. The title of the information collection: 10 CFR part 53, "Criteria and Procedures for Determining the Adequacy of Available Spent Nuclear Fuel Storage Capacity."

3. The form number if applicable: Not applicable.

4. How often the collection is required: As necessary in order for NRC to determine that facilities for interim storage of spend nuclear fuel are consistent with the provisions of the Nuclear Waste Policy Act of 1982.

5. Who will be required or asked to report: Licensees authorized to operate utilization facilities.

6. An estimate of the number of responses: 8 annually.

7. An estimate of the total number of hours needed to complete the requirements or request: Approximately 1,320 hours per licensee (7,920 hours annually).

8. An indication of whether section 3504(h), Public Law 96-511 applies: Not applicable.

9. Abstract: The Nuclear Waste Policy Act of 1982 (Pub. L. 97-425, January 7, 1983) established a framework for the disposal of spent nuclear fuel and high-level radioactive waste generated by nuclear power plants, which includes an interim program for the storage of spend nuclear fuel while the repository for ultimate disposal is selected and developed.

ADDRESSES: Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room 2120 L Street, NW., Lower Level, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150-0126), Office of Information and Regulatory Affairs (NEOB-3019), Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3084.

NRC Clearance Office is Brenda J. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 7th day of November, 1990.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Designated, Senior Official for Information Resources Management.

[FR Doc. 90-27010 Filed 11-15-90; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The U.S. Nuclear Regulatory Commission has recently submitted to OMB for review of the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions".

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion. Upon submittal of an application for construction permit, operating license, early site review, design certification review, decommissioning review, manufacturing license, materials license, or upon submittal of a petition for rulemaking.

5. Who will be required or asked to report: Licensees and applicants requesting approvals for actions proposed in accordance with the provisions of 10 CFR parts 40, 50, 52, 54, 61, 70 and 72.

6. An estimate of the number of responses: 28 annually.

7. An annual estimate of the total number of hours needed to complete the requirement or request: 33,902 (approximately 1,304 hours per response)

8. An indication of whether Section 3504(h), Public Law 96-511 applies: Not applicable.

9. Abstract: 10 CFR part 51 of the NRC's regulations, specifies information and data to be provided by applicants and licensees so that the NRC can make determinations necessary to adhere to the policies, regulations, and public laws of the United States, which are to be interpreted and administered in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended.

ADDRESSES: Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20037.

FOR FURTHER INFORMATION: Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150-0021), Office of Information and Regulatory Affairs, NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3084. NRC Clearance Officer is Brenda J. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 7th day of November, 1990.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Designated Senior Official for Information Resources Management.

[FR Doc. 90-27011 Filed 11-15-90; 8:45 am]

BILLING CODE 7590-01-M

Low-Level Radioactive Waste Policy Amendments; Milestone for Governors' Certifications

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Publication of Governors' Certification.

SUMMARY: This notice is to inform the public of the receipt and publication of the Governors' Certification for the State of Vermont. Section 5(e)(1)(E) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA or Pub. L. 99-240) requires NRC to publish the Certification.

Concurrently, NRC has dispatched copies of the Certification to Congress and the Department of Energy (DOE). These copies are accompanied by a statement signed by an NRC official authorized to verify NRC's official receipt of such correspondence. The statement verifies that the Certification, as described in the Act, signed by the Governor of the State, was filed with NRC on September 13, 1990. These actions fulfill NRC's statutory obligations under the Act.

For the 1990 milestone, States or Compacts are required to demonstrate through one of three mechanisms, i.e., submittal of completed license application, Governors' Certification, or disposal agreement, that they will be capable of storing, disposing, or managing any low-level radioactive waste generated within the State and requiring disposal after December 31, 1992. Refer to **Federal Register** dated February 22, 1989 (54 FR 7616) for a detailed description of these mechanisms.

FOR FURTHER INFORMATION CONTACT: Robert Hogg, Operations Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-0579.

Dated at Rockville, Maryland, this 2nd day of November, 1990.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Chief, Operations Branch, Division of Low-Level Waste Management and Decommissioning, NMSS.

September 13, 1990

Honorable Kenneth M. Carr,
Chairman, U.S. Nuclear Regulatory Commission, Office of the Commissioner, Washington, DC 20555.

Dear Mr. Carr: The State of Vermont generates approximately 9,000 cubic feet of low level radioactive waste annually. Greater than 99% of this is generated by two generators. The Vermont Yankee nuclear power plant generates about 95% of the total waste and the University of Vermont generates about 4% of the waste.

The State of Vermont was out of compliance with the 1988 and 1990 milestones of the Low Level Radioactive Waste Policy Amendments Act of 1985. The legislature in Vermont passed a bill (H. 534) on April 27, 1990 which we believe will permit us to come back into compliance. I signed that bill (Title 10 V.S.a., Section 7001-7050) on June 29, 1990 and appointed the Low Level Waste Authority members on July 3, 1990. The Agency of Natural Resources is presently establishing a program and staffing a new division of radioactive waste management the purpose of which is to implement the regulatory requirements mandated in the new law. This package is submitted to you to give you the information necessary to make the determination that Vermont is now in compliance with the federal law.

Because of the passage of enabling legislation, I can now certify that Vermont will be capable of providing for, and will provide for, the storage, disposal, or management of any low level radioactive waste generated within its borders and requiring disposal after December 31, 1992. The actions to be taken to ensure such capacity exists are explained in the attached outline with Appendices.

Sincerely yours,

Madeleine M. Kunin,

Governor.

State of Vermont

Certification plan submitted in fulfillment of Public Law 99-240, section 5(e)(1)(C)(ii) of the Low-Level Radioactive Waste Policy Amendments Act of 1985.

Madeleine M. Kunin,

Governor.

August 1990

Outline of the Essential Elements of House Bill (H. 534) Title 10, Vermont Statutes Annotated, Sections 7001-7050 for Establishing a Low Level Radioactive Waste Disposal Facility in Vermont

The following is designed to meet the Low Level Radioactive Waste Policy Amendments Act requirements for Public Law 99-240, section 5.e(1), (C)(ii).

On April 27, 1990, the Vermont legislature passed a comprehensive low level radioactive waste (LLW) disposal bill (H. 534), (copy attached as Appendix A). The statement of purpose of this bill is as follows:

This bill proposes to:

(1) Require renewed efforts by the state to negotiate an agreement for the out-of-state disposal of low-level radioactive waste generated in Vermont.

(2) Establish the basic criteria, procedures, and the regulatory structure for the siting and licensing of a low-level radioactive waste disposal facility.

(3) Create a low-level radioactive waste authority.

(4) Provide for the preparation of a siting plan, (Section 7011(4)(D)).

(5) Provide, if necessary, for the siting, construction, operation, closing (including post-closure activities), and the long-term care of a low-level radioactive waste disposal facility in this state.

In summary form, the bill does the following:

- Creates an Authority.
- Charges the Authority with siting, designing, building, operating, and closing a LLW disposal facility.
- Charges the Agency of Natural Resources with continuing to pursue a compact with another state or states.
- Creates a timetable of necessary actions.
- Establishes a LLW fund to receive payments from the LLW generators to fund the actions required by the bill.
- Charges the Agency of Natural Resources with regulating the screening, siting, and facility design processes.
- Charges the Public Service Board with approving necessary fees of the Authority and determining the financial assurance requirements.
- Establishes minimum siting requirements (Appendix B, Section 7021).
- Requires a waste separation study.
- Prohibits shallow land burial of LLW.
- Requires the parallel screening of the state for sites and the characterization of a potential site on the property of the Vermont Yankee Nuclear Power Corporation.
- Requires a vote of the host municipality and the state legislature before a site can be developed.
- Requires public participation throughout the entire process.

As stated in the purpose of the bill, a Low Level Radioactive Waste Authority is created. The Authority consists of three Vermont residents, each having 6-year terms. The responsibilities of the Authority as delineated in the bill are given in Appendix C.

The bill contains a timetable to be met in establishing a LLW disposal facility in Vermont. That timetable is enclosed as Appendix D. In addition, a timeline of necessary actions is enclosed as Appendix E.

We believe this timetable is adequate to accomplish the task of developing and making operational a LLW disposal facility in Vermont by 1996. If the time required is longer than presently anticipated, Vermont generators can store waste for up to 5 years. The capacity to store waste on-site has been demonstrated because Vermont has been shut off from the existing LLW disposal sites since January 1989. Enclosed, as Appendices F and G are letters from the two major generators of LLW in Vermont stating they have the necessary storage capacity. These two generators together account for over 99% of Vermont's 8,000-9,000 cubic feet annual generation of LLW.

Appendix A

No. 296. An Act Creating A Low-Level Radioactive Waste Authority And Providing For A Possible Low-Level Radioactive Waste Facility.

(H. 534)

(Title 10 Vermont Statutes Annotated, Chapter 161, Sections 7001-7050)

It is hereby enacted by the General Assembly of the State of Vermont:

[*1] Sec. 1. Legislative Findings

(a) Low-level radioactive wastes are generated through the operation of nuclear power plants and as byproducts of medical, research, and industrial activities. In Vermont, a very high percentage of the state's current low-level radioactive wastes are generated by the Vermont Yankee nuclear facility It is very likely that Vermont Yankee will, during its operating life and during the period of its decommissioning, continue to produce the vast majority of Vermont's low-level radioactive waste.

(b) Vermont has been dependent on low-level radioactive waste disposal sites in other states that are no longer required to accept waste from Vermont

under the provisions of the federal Low-Level Radioactive Waste Policy Act.

(c) The state's efforts to join an interstate compact, or to sign a long-term agreement with a state or compact, for the disposal of some or all of Vermont's low-level radioactive waste have not been successful to date.

(d) Under the federal Low-Level Radioactive Waste Policy Act, Vermont could regain a right to access to out-of-state disposal facilities through December 31, 1992 by complying with the Act's milestones and it is the intent of the legislature that this act would achieve compliance and will allow the governor to meet the 1990 milestone by written certification of compliance.

(e) The federal Low-Level Radioactive Waste Policy Act states that if a state is unable to provide for the disposal of all low-level radioactive waste generated within the state by January 1, 1996, then upon the request of the generator the state shall take title and possession of the waste. Thus, Congress has created a new potential cost of waste disposal; that is, the cost to the state of its own ownership, possession and liability. It is therefore necessary that the state of Vermont establish a process that will assure that all such costs be fully provided by the time when they may be incurred. It is appropriate that these costs be met by the entities that may choose to exercise the option to pass ownership, possession and liability to the state.

(f) Low-level radioactive wastes are defined by the federal government. The definition includes some wastes that are radioactive for millions of years. The definition also includes some highly concentrated wastes, some of which are short-lived and some long-lived.

(g) Low-level radioactive waste currently generated in Vermont since the beginning of 1980 is being stored in temporary storage facilities by each of the generators without state evaluation of the site, monitoring of the waste or public input. Such storage cannot be continued indefinitely.

(h) The long-term storage in temporary facilities, and any related transfer of title or possession of such waste to the state because of the absence of disposal facility availability, could pose a threat to the economy, the public health and welfare, and the environment of the state. The nuclear power plant, medical institutions, research facilities, and other industries within the state could be adversely affected.

(i) It is in the best interests of the state to vigorously pursue opportunities to join an interstate compact, or to sign an agreement with a state or compact, for the disposal of some or all of the low-level radioactive waste generated in Vermont, provided that the terms of such an agreement adequately protect the environment of the host state and minimize the future possibility of the disposal of any low-level radioactive waste in Vermont.

(j) In the absence of a compact or a long-term agreement, it is in the best interests of the state to carry out its responsibilities under the present federal law and its responsibilities to the present and future inhabitants of this area by siting and constructing a facility which would satisfy the federal requirements for disposal of all the waste but would segregate that portion of the waste containing most of the long-lived isotopes. The facility would contain the short-lived isotopes for at least their hazardous life—thus, "disposing" of them and would contain the segregated long-lived isotopes in a manner that would allow recovery after an evaluation and decision on alternatives for permanent disposal of those wastes. It is also in the best interests of the state to "dispose" of the long-lived isotopes in a manner which isolates them from the biosphere for as long as reasonably necessary.

(k) A disposal facility larger than that necessary to dispose of reasonably expected low-level radioactive waste would present avoidable risks to the environment and public safety; reasonably expected waste includes only waste from the normal operation of the Vermont Yankee facility, during its licensed operating life, and including decommissioning waste, and from the normal operations of the currently licensed low-level radioactive waste generators in Vermont through the expected date for completing the decommissioning of Vermont Yankee plus a small emergency contingency reserve. The exhaustion of disposal capacity at an early and uncertain future date, because of the acceptance or generation of waste in excess of the reasonably expected amount, would burden the resources of the state, risk disruption of the economy of the state and would add avoidable risks of harm to the environment to public health and welfare.

(l) For a number of reasons, including the minimization of transportation, a site for the disposal facility in the vicinity of the Vermont Yankee Nuclear Power Plant should be initially studied to detemine if it is a qualified and environmentally acceptable site.

[*2] Sec. 2. Agreements and Compacts

(a) The secretary of the agency of natural resources shall vigorously pursue all opportunities to join an interestate compact (pursuant to the Low-Level Radioactive Waste Act of 1980 as amended), or to sign an agreement with a state or compact, for the disposal of some or all of Vermont's low-level radioactive waste and shall negotiate the terms of such an agreement so as to minimize the future possibility of the disposal of any low-level radioactive waste in Vermont and to adequately protect the environment of the host state. The secretary shall report, every January 15, to the legislature on the status of any negotiations.

(b) The secretary of the agency of natural resources shall discontinue the pursuit of such an agreement or compact for the disposal of waste designated as short-lived wastes under chapter 161 of Title 10 when a license is issued for the construction of a low-level radioactive waste disposal facility in Vermont.

(c) The secretary of the agency of natural resources shall discontinue the pursuit of such an agreement or compact for the disposal of waste designated as long-lived wastes under chapter 161 of Title 10 when a final decision is made by the legislature for the permanent disposal of that waste.

(d) Any interstate agreement that would extend for more than four years or any compact dealing with the disposal of low-level radioactive waste generated in Vermont shall be submitted to the legislature for ratification or adoption. Any such interstate agreement that would extend for four years or less, shall become effective, on an interim basis, upon receiving approval of the emergency board, and shall become final upon receiving legislative approval before the end of the next session of the general assembly.

(e) The authority established in this act shall, after public comment, present a report to the legislature on the environmental strengths and weaknesses of the host state site or siting process and criteria.

[*3] Sec. 3. 10 V.S.A. chapter 161 is added to read:

[A> Chapter 161. Disposal of Low-Level Radioactive Waste <A]

[A> § 7001. Definitions <A][A> As used in this chapter: A]

[A> (1) "Adequate financial assurance requirements" mean a requirement, or combination of requirements, for the authority and for generators of low-level radioactive waste to have financial responsibility instruments or arrangements that, considering the fund established by

sect.on 7013 of this chapter and all other relevant information, are sufficient to assure, to a high probability, that the authority will be financially able to carry out its responsibilities under this chapter. <A]

[A> (2) "Agency" means the agency of Natural Resources. <A]

[A> (3) "Authority" means the Vermont Low-Level Radioactive Waste Authority. <A]

[A> (4) "Closure" includes post-closure observation and maintenance. <A]

[A> (5) "Construction Costs" means pre-operational capital costs, site acquisition costs and any permit and license fees for the facility authorized by this chapter. <A]

[A> (6) "Expected low-level radioactive waste" means the low-level radioactive waste from the normal operation of the Vermont Yankee Facility, during its licensed operating life, including decommissioning waste, and from the normal operations of the currently licensed low-level radioactive waste generators in Vermont through the expected date for completing the decommissioning of Vermont Yankee, plus a small emergency contingency reserve. <A]

[A> (7) "Low-level radioactive waste" means radioactive material that is not high-level radioactive waste, spent nuclear fuel, transuranic waste or byproduct material, as defined in 42 U.S.C. SEC. 2014(E)(2), which the United States Atomic Energy Act of 1954, Section 11(E)(2), and that material the United States Nuclear Regulatory Commission, consistent with existing law, classifies as low-level radioactive waste. <A]

[A> (8) "NRC" means the Nuclear Regulatory Commission or any successor agency. <A]

[A> (9) "Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, or other legal entity or any legal successor to or representative, or agent. <A]

[A> (10) "Public Comment" means ample opportunities for public input, including at least prior availability of a draft decision, policy or rule, two public hearings in different areas of the state, warned at least twice with a first warning not less than 30 days prior to the hearing by notice to daily media outlets in the area and statewide, and preparation and distribution of a response summary to all comments received. <A]

[A> (11) "Shallow land burial" means the burial of waste within an unlined subsurface trench without additional engineered structures or enhancements designed to minimize migration of radionuclides. <A]

[A> (12) "Sitting plan" means a plan which reflects the standards, procedures and timetables of this chapter and meets the requirements for a sitting plan of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Public Law 99-240) (42 U.S.C. 2021B et seq.). <A]

[A> (13) "Yankee site" means a site for a low-level radioactive waste disposal facility on land presently owned by and contiguous to the Vermont Yankee Nuclear Generating Facility. <A]

[A> § 7002. Timetable and Responsibilities <A]

[A> (A) The following timetable and responsibilities shall be adhered to: <A]

[A> (1) Within 60 days of the effective date of this chapter, the Governor shall appoint the initial members of the authority. <A]

[A> (2) As soon as practicable, the authority shall, after public comment, initiate a study to determine the maximum appropriate separation of long-lived waste, the appropriate level of recoverability of such waste, and the appropriate permanent disposal technology and cost for that waste. <A]

[A> (3) As soon as practicable, the authority shall initiate the site characterization of the Yankee site. <A]

[A> (4) As soon as practicable, the authority shall begin collecting data for the screening of the town of Vernon and of the rest of the state in order to identify potential alternative sites for a disposal facility. <A]

[A> (5) Within 270 days of the effective date of this chapter, the Agency shall, after public comment, adopt rules establishing the siting, screening and certification requirements under Sections 7021 and 7022. <A]

[A> (6) On or before November 1, 1991, the Authority shall: <A]

[A> (A) Complete the characterization of the Yankee site; <A]

[A> (B) After public comment, select at least three potential alternate sites, including one in the town of Vernon. <A]

[A> (7) Within 60 days of the submission by the authority of a request for certification of a potential alternative site, the Agency shall decide if the site meets the applicable siting requirements. <A]

[A> (8) As soon as practicable, the authority shall, after public comment, decide whether to characterize a certified site other than the Yankee site or to complete the requirements of subsection 7012(F) for the Yankee site. Then, if the Yankee site has been certified by the Agency as meeting the siting requirements and if the requirements of subsection 7012(F) have been completed, the authority may decide whether to prepare a draft license application for a disposal facility at the Yankee site. <A]

[A> (9) On or before December 15, 1991, the authority must decide either to characterize an alternative site or to prepare a draft license application for a facility at a previously characterized site. Then initially before January 15, 1992, and subsequently within 30 days of any similar decision, the authority must petition the legislature, under chapter 157 of this Title, for approval of its decision. <A]

[A> (10) If the legislature approves a petition to characterize an alternate site or sites or if it directs the characterization of an alternate site or sites, then the authority must begin characterization and, within 15 months of the legislative decisions, the authority must complete characterization. Following the completion of characterization, the authority must again decide whether to characterize another certified site, or sites, or to complete the requirements of subsection 7012(F) for the characterized site. Then, if the requirements of subsection 7012(F) have been completed, the authority may decide whether to prepare a draft license application for a disposal facility at a characterized site. <A]

[A> (11) If the legislature approves a petition to prepare a draft license application or directs the preparation of a draft license for a disposal facility at a particular characterized site, the authority shall, within six months of the legislative action or the effective date of the rules required by sections 7023 and 7024, whichever is later, after public comment, submit a draft license application to the Agency for review. <A]

[A> (12) Within 18 months of the effective date of this act, based on the results of the study required in subdivision (A)(2) of this section and after public comment, the authority shall: <A]

[A> (A) Make recommendations to the Agency for rules on separation and recoverability of long-lived waste; <A]

[A> (B) Make recommendations to the Agency for rules on the disposal facility design standards; and <A]

[A> (C) Make an initial report to the legislature and to the Public Service Board on the possible appropriate technologies, and their costs, for the permanent disposal of the long-lived waste. <A]

[A> (13) Within six months of receiving the authority's recommendations and after public comment, the Agency shall adopt the separation, recoverability and design standards under section 7023 and the draft license application standards and review procedures under section 7024. <A]

[A> (14) By July 1, 1992 after public comment, the authority shall petition the Public Service Board for approval of a service fee under subsections 7013(E) and 7020(B) of this chapter and shall propose adequate financial assurance requirements as part of the same proceeding. <A]

[A> (15) Within six months of receiving the draft license application, the agency must complete its review. <A]

[A> (16) Not later than 30 days after completion of the review of the draft license application by the Agency, the authority shall apply to the United States Nuclear Regulatory Commission for a license to construct and operate a disposal facility in the State. <A]

[A> (17) Not later than 30 days after completion of the review of the draft license application by the Agency, the authority shall apply for a land use permit under Chapter 151 of this Title. <A]

[A> (18) Within 180 days of obtaining a licence and a land use permit, the authority shall begin construction of the disposal facility. <A]

[A> (19) As soon as practicable, the authority shall begin operation of the disposal facility. <A]

[A> (20) Every year after the initial report required by subdivision (A)(12) of this section, and until otherwise directed by the Legislature, the authority shall, after public comment, report to the Legislature its recommendations for the permanent disposal of the long-lived waste and, no later than the beginning of operations of the disposal facility authorized by this chapter, proposed to the Legislature a specific disposal plan for the permanent disposal of the long-lived waste. <A]

[A> (21) Within 120 days of the completion of decommissioning of the Vermont Yankee Nuclear Generating Facility, the authority shall begin closure of the disposal facility. <A]

[A> (B) Subdivisions (A)(3) and (A)(6) through (A)(21) of this section may be, but need not be, complied with if, at the time the action is required, the State has entered into a compact or agreement adequately providing for the out-of-state disposal of the expected low-level radioactive waste. <A]

[A> § 7010. Creation of the Vermont Low-Level Radioactive Waste Authority <A]

[A> (A) The Vermont Low-Level Radioactive Waste Authority is established as a body corporate and politic, with the duties and powers set forth in this chapter. The Authority is a public instrumentality and the exercise by the authority of its powers constitutes the performance of an essential governmental function. The Authority is a company within the scope of chapter 5 of title 30 and is within the juridiction of the Public Service Board and the Department of Public Service only regarding the fees of subdivision 7011(4)(K) and subsections 7012(P) and 7013(E) and the financial assurance requirements and permanent disposal costs of subsection 7020(B). <A]

[A> (B) The Authority shall consist of three Vermont residents appointed by the Governor and confirmed by the Senate. The Governor shall designate a chair.

[A> (C) The members shall be appointed for six-year terms, except that the terms of all initial appointments shall be staggered in two-year increments. The initial appointment to the two-year term shall be from the town of Vernon. Notwithstanding 3 V.S.A. § 2004, or any other provision of law, members of the Authority may be removed only for cause. <A]

[A> (D) The chair shall be a full-time employee and shall receive the same annual salary as that fixed for each superior court judge. Other members shall be part time and shall receive an annual salary equal to 50 percent of that received by the chair. All members shall be entitled to actual expenses, as reasonable and necessary. However, after June 30, 1998, the compensation of the chair and the other members of the Authority shall be on the per diem basis provided for in section 1010 of title 32. <A]

[A> § 7011. Powers of the Authority

[A> In addition to any powers conferred or implied eleswhere by this chapter: <AS]

[A> (1) The members may meet as often as necessary to carry out the responsibilities of the authority. Meetings shall be held at the call of the chair or on written request to the chair by two members. The authority shall keep complete minutes of all its meetings and other proceedings and shall preserve its records of all kinds. <A]

[A> (2) As soon as practical after appointment, and at appropriate intervals thereafter, the authority shall hold public hearings in various locations throughout the state to obtain the reaction of the general public to the way the authority proposes to carry out its responsibilities. <A]

[A> (3) The authority may appoint a director to be the Chief Administrative Officer of the Authority. In addition to any other duties authorized by the Authority, the director may: <A]

[A> (A) Hire and supervise staff and negotiate and execute contracts as authorized by the authority and as necessary to fulfill its responsibilities; <A]

[A> (B) Attend meetings of the authority; <A]

[A> (C) Ensure that the minutes and records of the authority are properly maintained and preserved; <A]

[A> (D) Approve all accounts of the authority, including but not limited to accounts for salaries, per diems and allowable expenses of any employee or consultant thereof, and expenses incidental to the operation of the authority; <A]

[A> (E) Prepare an annual report of the actions of the authority, and prepare such other reports as the authority may request; and <A]

[A> (F) Perform such other duties as may be directed by the authority in the carrying out of the purposes of this chapter. <A]

[A> The Authority may: <A]

[A> (A) Adopt and amend bylaws necessary to properly carry out this chapter; <A]

[A> (B) Do all things necessary, convenient or desirable to carry out the purposes of this chapter, or the responsibilities imposed or necessarily implied in this chapter; <A]

[A> (C) Acquire, construct, reconstruct, purchase, hold, maintain, repair, operate, lease as lessor or lessee, dispose of and use any real or personal property or any interest therein necessary, convenient or desirable to carry out the purpose of this chapter and to sell, transfer and dispose of any property or interest therein at any time required by it in the exercise of its powers; <A]

[A> (D) Prepare a siting plan for obtaining compliance with the Federal Low-Level Radioactive Waste Policy Act; <A]

[A> (E) Apply for, accept, receive, and administer gifts, grants, and other funds available from any source; <A]

[A> (F) Enter into contracts and agreements with the Federal Government and its agencies, interstate agencies, local governmental entities, or private entities, as necessary, convenient or desirable for the authority

in the performance of its duties and the execution or carrying out of any of its powers under this chapter. <A]

[A> (G) Make, conduct, request, and participate in studies, plans, surveys, investigations, and research relating to selection, preparation, construction, operation, maintenance, closure, and financing of a disposal facility; <A]

[A> (H) Obtain necessary insurance; <A]

[A> (I) Enforce all contracts and agreements as necessary, convenient or desirable for the authority; <A]

[A> (J) Distribute appropriate impact fees; <A]

[A> (K) Set and collect the service fees, and otherwise administer the low-level radioactive waste, as required by section 7013 of this title; <A]

[A> (L) Ensure that all waste is properly packaged before being placed in the disposal facility; and <A]

[A> (M) The authority may refuse to accept at facilities established pursuant to this chapter any low-level radioactive waste from a generator who has failed to follow the reporting requirements established by the agency under section 7020(A). <A]

[A> (5) The authority may not prepare a draft license application for any site nor initiate characterization of any site other than the Vermont Yankee site, without legislative approval. <A]

[A> (6) The authority may acquire real property, or any interest in it (including the right to perform site characterization or other investigatory activities) by eminent domain in accordance with the procedures of sections 3604 through 3610 of title 24, except that: <A]

[A> (A) "Necessity" shall mean only a reasonable need which considers the greatest public good and the least inconvenience and expense to the condemning party and to the property owner; it shall not be measured merely by expense or convenience to the condemning party, but shall, nevertheless, consider the importance of carrying out the purposes of this chapter; <A]

[A> (B) When the right to do a site characterization or other investigatory activity is sought, the "survey" required by those sections need only be a legal description of the property plus a statement of the activities to be conducted; and <A]

[A> (C) Nothing contained in those sections shall be construed to prevent the Authority from bringing any proceeding to remove a cloud on title or from acquiring any property by negotiation or purchase. <A]

[A> § 7012. Responsibilities of the authority <A]

[A> (A) The authority, while informing and consulting the public throughout, shall carry out the actions necessary to fulfill the requirements of the timetable in section 7002 of this chapter. <A]

[A> (B) The authority must comply with the rules adopted by the agency and with any fee approval conditions of the Public Safety Service Board under sections 7020 through 7024, even if the impose requirements most stringent than Federal requirements, and the authority must obtain all applicable state and local permits for the disposal facility authorized by this chapter, except that the facility is not subject to certification under section 6605 of this title. <A]

[A> (C) If a low-level radioactive waste disposal facility is constructed by the authority, the authority shall provide for the operation, maintenance and closure of the facility and shall provide for all necessary actions during the insitutional control period. The authority shall place information about the facility and the waste placed in the facility in appropriate state and local records. <A]

[A> (D) In performing the study to determine the appropriate permanent disposal technology for long-lived waste, required by subdivision (A)(2) of section 7002, the authority shall consider a deep-mined facility in-state, technologies not normally examined in the United States for disposal of low-level radioactive waste, and all other technologies reasonably available. <A]

[A> (E) In performing the study, required by subdivision (A)(2) of section 7002, to determine the maximum appropriate separation of long-lived waste, the authority shall consider the various techniques potentially available, their costs and incremental risks. The risks to be considered should include radiological and other risks to workers, the public and the environment from the separation process and from the disposal of the separated wastes in the facility authorized by this chapter and in any expected permanent disposal facility for the long-lived waste. <A]

[A> (F) Prior to a decision to prepare a draft license application and the submission of that decision to the legislature, the authority shall: <A]

[A> (1) Conduct a social and economic impacts study to determine the short-term and long-term effects from the proposed disposal facility on the Vermont municipalities which contain, or which are adjacent to municipalities containing, the proposed site and determine the appropriate impact fees to be paid; <A]

[A> (2) Prepare a report on the strengths and weaknesses of the site that has been characterized and comparing the site to the best potential alternative site as identified by the authority; <A]

[A> (3) Negotiate with the municipality, or each municipality, where the proposed site is located any impact fees, other payments, or conditions to be included in the proposal to be submitted to the voters and in the petition to be submitted to the legislature; <A]

[A> (4) Hold at least one public hearing near each site; and <A]

[A> (5) Obtain the consent of a majority of the voters, present and voting at a duly warned meeting, of the municipality, or of each municipality, where the proposed site is located. <A]

[A> (G) For any particular site, including the Yankee site, the authority may perform any of the requirements of subsection 7012(F) as soon as appropriate. <A]

[A> (H) Prior to a decision to characterize another certified site, the report on the strengths and weaknesses of the previously characterized site must be completed. However, a decision to characterize another site will not prohibit a later decision to prepare a draft license for any previously characterized site, if otherwise appropriate. <A]

[A> (I) A petition to the legislature to prepare a draft license application must be accompanied by a proposed financing plan for legislative enactment to cover the construction costs of the facility, unless the authority has opted to raise construction funds under the provisions of section 7015 of this chapter. <A]

[A> (J) The authority in deciding on the specific disposal plan required by subdivision (A)(20) of section 7002 for the permanent disposal of the long-lived waste shall thoroughly examine all reasonable alternatives to leaving the waste at the disposal facility authorized by this chapter and the option of leaving it there shall not be given undue weight. <A]

[A> (K) The authority shall advise, consult, and cooperate with the Federal Government and its agencies, the state and its other agencies, interstate agencies, other states, local governmental entities within this state, and private entities. <A]

[A> (L) The authority initially shall prepare a budget in reasonable detail, allocating funds for the year, and shall periodically revise the budget, as

necessary. The authority shall keep an accurate account of all its activities and of all its receipts and expenditures. Prior to the first day of September in each year, the authority shall submit a report of its activities for the preceding fiscal year to the governor and to the general assembly. The report shall set forth a complete operating and financial statement covering its operations during the year. The authority shall cause an audit of its books and accounts to be made at least once in each year by a certified public accountant and its cost shall be considered an expense of the authority and a copy shall be included in the annual report. <A]

[A> (M) The auditor of accounts of the state and the auditor's authorized representatives may at any time examine the accounts and books of the authority including its receipts, disbursements, contracts, funds, investments and any other matters relating to its financial statements. <A]

[A> (N) The authority shall prepare an annual report on the quantities, characteristics and any expected treatment of the low-level radioactive waste generated in Vermont during the calendar year and reasonably expected to be generated through the date anticipated by the authority for the completion of the decommissioning of Vermont Yankee. <A]

[A> (O) The authority shall administer a grant program for Vermont municipalities where a certified site is located which the authority has decided to characterize and may administer a similar grant program for Vermont municipalities which are within five miles of such a site. The grants shall be subject to the approval of the Public Service Board and shall be used by the municipality to provide technical assistance and to otherwise assist the community to effectively participate in the consideration of the site for a disposal facility under this chapter. <A]

[A> (P) Prior to the commencement of operation of the disposal facility, the authority shall establish a disposal fee, to be approved by the Public Service Board, for any waste that must be accepted by the facility for disposal on which the service fee has not been paid under subsection 7014(E) or for which capacity has not been contracted for under section 7015. The disposal fee must cover, pro rata, all costs and expenses contemplated by this chapter. <A]

[A> (Q) The authority shall provide free of charge a copy of any public document within its possession, upon request, to any municipalities which contain, or which are adjacent to municipalities containing, an alternative site or the Yankee site. <A]

[A> § 7013. Low-level Radioactive Waste Fund <A]

[A> (A) There is hereby created in the state treasury a fund to be known as the low-level radioactive waste fund, to be administered and expended by the Vermont Low-Level Radioactive Waste Authority. <A]

[A> (B) The fund shall consist of: <A]

[A> (1) The balance in the radioactive waste management fund as of the repeal of section 6512 of this title; <A]

[A> (2) Fees assessed under subsections (E) and (G) of this section and under subsection 7012(P); <A]

[A> (3) Any monies required for the financial assurances, and pre-paid construction funds raised under section 7015 of this title; <A]

[A> (4) Any grants from the Federal Government or from other sources accepted by the governor for deposit into the fund; and <A]

[A> (5) Rebates of any surcharges collected for the disposal of low-level radioactive waste generated in Vermont pursuant to the Federal Low-Level Radioactive Waste Policy Amendments of 1985 (P.L. 99-240) and deposited in escrow pursuant to section 5(D)(2) of such law (42 U.S.C. 2021E(D)(2)). <A]

[A> (C) All balances in the fund at the end of any fiscal year shall be carried forward and remain a part of the fund. Interest accruing from the fund shall remain in the fund and shall be allocated proportionately among the accounts provided for in subsection (I) of this section based on the average principal balance of each account. Disbursements from the fund shall be made by the state treasurer on warrants drawn by the director or chair of the authority. <A]

[A> (D) The fund shall be used to: <A]

[A> (1) Provide staff for the authority, and to pay for all costs related to the performance of its reponsibilities under this chapter; <A]

[A> (2) Reimburse any state entity for all costs incurred in the issuance and enforcement of regulations and adjudications authorized by section 7020 and for all other costs for actions and proceedings authorized by this chapter; <A]

[A> (3) Provide for all costs of the long-term monitoring and care of the disposal facility authorized under this chapter; <A]

[A> (4) Cover costs of emergency responses, remedial action, personal injury and property damage during construction, operations, closure and long-term monitoring and care of the disposal facility authorized by this chapter; <A]

[A> (5) Cover the costs of the permanent disposal of the long-lived waste; <A]

[A> (6) Pay the costs associated with any community and project safety plan required under subdivision 7024(A)(9) of this title; and <A]

[A> (7) Cover any liability of the authority or of any other state entity arising out of activities under this chapter. <A]

[A> (E) A service fee shall be levied on all low-level radioactive waste generated in this state, whether shipped to a disposal facility or stored awaiting disposal. Initially, the service fee shall be $10.00 per cubic foot. Periodically or as necessary, the service fee shall be set by the authority in an amount sufficient for all current and future expenses allowed under subsection (D) of this section, except for construction costs of the facility authorized by this chapter. The service fee shall be approved by the Public Service Board under section 7020 of this chapter. Whenever the authority requests approval of a service fee by the Public Service Board, it shall estimate the totals needed in each of the segregated accounts required by subsection (I) of this section. The estimates shall contain appropriate contingency amounts. The authority may set the service fee on the basis of volume, curies, hazardous constituents or a combination of those characteristics, as appropriate. <A]

[A> (F) The service fee of subsection (E) of this section and the assessment of subsection (G) of this section, shall not apply to low-level radioactive waste which was authorized, as of January 1, 1990, under regulations of the United States Nuclear Regulatory Commission, to be stored for decay on the site of generation for less than one year and disposed of as though it were not radioactive. The authority shall identify those wastes which are exempt from the service fee, consistent with the intent of this section. <A]

[A> (G) In order to provide funds for the timely commencement of the regulatory responsibilities of state agencies and for the initial activities of the authority, there shall be imposed an immediate assessment of $1,000,000.00 levied proportionately on all generators of low-level radioactive waste, based on the volume of waste generated in calendar years 1986-1989. The authority shall make these assessments within 60 days of the effective date of this chapter and the generators shall pay them within 30 days of the assessment. <A]

[A> (H) The service fee for Vermont Yankee shall be adjusted such that its portion of the total funds needed for all current and future expenses will be accumulated no later than the end of the operating life of the plant. The service fee for all other generators shall be adjusted to accumulate their shares no later than the date they expect to cease generating waste and in no case later than the expected date for closure of the disposal facility authorized by this chapter. <A]

[A> (I) The fund established by this section shall be segregated into four accounts: one account for expenses expected prior to the end of the operating life of Vermont Yankee, except construction costs; a second account for expenses, including ongoing captial costs, expected after the end of the operating life of Vermont Yankee; a third account for the costs of the permanent disposal of the long-lived waste; and a fourth account for construction costs. Funds in each account shall be used only for the stated purpose of the account and shall not be transferred between accounts without approval of the Public Service Board. If the Public Service Board finds, upon petition, that any of the accounts contains funds substantially in excess of those reasonably expected to be sufficient for all current and future expenses of the account, the Public Service Board may require any excess in that account to be returned to the generators on an equitable basis. <A]

[A> § 7014. Tax Ramifications <A]

[A> (A) All property and business of the authority is devoted to an essential public and governmental function and purpose and is exempt from all taxes, franchise fees, and special assessments of whatever nature of the state or any subdivision of the state. <A]

[A> (B) The authority annually shall pay a municipality, in which a disposal site is located, an amount in lieu of taxes equal to the amount of property tax that would be paid on such a disposal site by an owner subject to property tax. <A]

[A> (C) The authority shall pay all applicable state and local permit fees, including any fees negotiated pursuant to § 7012(F)(3) of this chapter. <A]

[@> § 7015. Construction Costs <A]

[A> (A) In lieu of proposing a financing plan for the construction costs to the legislature under subsection 7012(I) of this title, the authority may solicit offers to purchase or otherwise commit or contract for disposal capacity in the disposal facility authorized by this chapter. In the solicitation the authority should provide an estimate of the proposed design capacity and the expected construction costs. <A]

[A> (B) No offer may be accepted unless the terms of all such commitments or contracts, taken together, provide for the complete pre-payment of all construction costs, exhaust the proposed capacity contain acceptable terms and conditions and are otherwise in the best interest of the state. <A]

[A> (C) The commitments or contracts shall be nontransferable, without approval of the authority, shall provide for payment on an equal and pro rata basis for all generators and shall provide for, the right of the authority to reacquire, at any time, pro rata from all such commitments or contracts sufficient capacity to meet emergencies or necessary contingencies. <A]

[A< (D) If the total capacity of all offered commitments or contracts is less than the expected low-level radioactive waste, or if the commitments or contracts provide less than all the construction costs, or if the offers are for any other reason unsatisfactory, then the Authority shall reduce the design capacity of the facility, try to negotiate terms and conditions which will provide the complete construction costs and carry out the purposes of this chapter. <A]

[A< (E) The Authority may, for any reason, decide to not accept all offers received under this section and decide to pursue an alternative method of financing the construction costs of the disposal facility. If the Authority decides not to accept any such offers, it shall propose a financing plan to the legislature within 90 days or by the date set out in subdivision 7002(A)(9) of this title, whichever is later. <A]

[A< § 7020. State Regulation; Responsibilities and Authority <A]

[A< (A) The agency, after public comment and after consultation with the Public Service Board and the Department of Public Service, shall by rule establish the siting requirements, the screening and certification procedures and criteria, the separation, recoverability and facility design standards, and the draft license review procedures and standards. These rules must at least include the minimum requirements of sections 7021, 7022, 7023 and 7024 of this title and be sufficient to protect the environment and the public health for the hazardous life of materials likely to be deposited in the disposal facility. The agency shall by rule establish procedures and requirements for public comment under this chapter. The agency shall also by rule establish procedures and requirements for reports and manifests from generators of low-level radioactive waste concerning the quantities, concentrations, characteristics, expected generation rates, packaging, storage conditions and any other information reasonably necessary for the agency and the authority to carry out their responsibilities. <A]

[A< (B) The Public Service Board shall: <A]

[A< (1) Approve the service fees and disposal fees set by the authority under sections 7011(4)(K), 7012(P) and 7013(E) of this title; <A]

[A< (2) Utilize procedures substantially similar to the rate-setting procedures in chapter 5 of title 30, including the procedures for temporary rates in section 226 of that chapter but not including the time limits of section 227; <A]

[A< (3) Review and approve, during any fee approval proceeding, an amount for (a) expenses expected prior to the end of the operating life of Vermont Yankee, except construction costs, (b) expenses, including ongoing capital costs, expected after the end of the operating life of Vermont Yankee, and (c) costs of the permanent disposal of the long-lived waste, and (d) construction costs; and <A]

[A< (4) Determine, after public hearing, adequate financial assurance requirements to be specified as a condition for approval of fees under this subsection. <A]

[A< (C) The Department of Public Service shall appear in all proceedings before the Public Service Board under this chapter and represent the interests of the people of the state. The Department of Public Service shall review and may present testimony on any issue, including the service or disposal fees, the costs of permanent disposal of the long-lived waste, the financial assurance requirements and the relationship of the fees, costs and requirements to the costs of decommissioning the Vermont Yankee Nuclear Power Station. <A]

[A< (D) Rules adopted under this section must be at least as stringent as applicable Federal standards, performance objectives and requirements. <A]

[A< (E) No officers, departments, boards, agencies, divisions and commissions of the state may render any services to the Authority that would compromise their ability to perform their regulatory functions under this chapter.

but they shall cooperate with and provide any information available to them as may be requested by the Authority for the performance of its responsibilities if otherwise allowed by law. <A]

[A< (F) The Agency of Natural Resources, the Public Service Board and the Department of Public Service may allocate to the Authority the portion of the expenses incurred by them, including expenses from the use of additional personnel and regular employees, for all actions and proceedings authorized by this chapter. At least quarterly, the agency and the Department of Public Service shall send to the Authority detailed statements showing the money expended, and the Authority shall pay those statements out of the low-level radioactive waste fund. <A]

[A< § 7021. Siting Requirements <A]

[A< (A) Under the authority of section 7020 of this title, the Agency shall adopt rules establishing the siting requirements for a low-level radioactive waste disposal facility which shall, at a minimum, require that: <A]

[A< (1) The disposal site shall not be located in an area that is incapable of being thoroughly characterized, modeled, analyzed, and monitored; <A]

[A< (2) The disposal site shall not be located in an area where projected population growth and future development are likely to affect the ability of the disposal facility to meet the performance objectives; <A]

[A< (3) The disposal site shall not be located in areas having known natural resources which, if exploited, would result in the failure of the disposal facility to meet the requirements objectives; <A]

[A< (4) The disposal site shall not be located in a 500-year floodplain, coastal high-hazard zone or wetland and must be generally well drained and free of areas of flooding or frequent ponding; <A]

[A< (5) The disposal site shall not be located in areas with excessive upstream drainage which could erode, expose, or inundate the waste disposal units; <A]

[A< (6) The disposal site shall not be located in an area with insufficient depth to watertable so that groundwater intrusion, perennial or otherwise, could occur; <A]

[A< (7) The hydrogeologic unit used for disposal shall not discharge groundwater to the surface within the disposal site; <A]

[A> (8) The disposal site shall avoid areas where tectonic processes such as faulting, folding, seismic activity, or vulcanism may occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives; <A]

[A> (9) The disposal site shall avoid areas where surface geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives; <A]

[A> (10) The disposal site shall not be located where nearby facilities or activities or any existing radioactive materials could adversely impact the ability of the site to meet the performance objectives or significantly mask the environmental monitoring program; <A]

[A> (11) The disposal site shall not be located above 2,500 feet in elevation; <A]

[A> (12) The disposal site shall not be located within a watershed of class A waters or of a public water supply, or within or adjacent to an aquifer protection areas, within or adjacent to class I or class II aquifers, or where surface water quality standards could be reasonably expected to be violated by the facility; <A]

[A> (13) The disposal facility shall not be located within 100 meters of a wetland, stream, river, lake or pond, within 200 meters of designated outstanding resource waters, or within distances found critical by site investigation; <A]

[A> (14) The disposal site shall not be located in areas where failure of a dam or impoundment could adversely affect the ability of the disposal site to meet the performance objectives; <A]

[A> (15) The disposal site must be of sufficient size to allow the satisfaction of the performance objectives; and <A]

[A> (16) The disposal site must retard, or be capable of being modified to retard, the movement of radionuclides. <A]

[A> (B) The rules establishing the siting requirements for a low-level radioactive waste disposal facility shall also consider the following: <A]

[A> (1) The proximity of the disposal site to schools, historical sites, wilderness areas, parks (municipal, state or national), state or wildlife refuges or management areas, military sites, or unique cultural areas; <A]

[A> (2) The potential for adverse effects on rare or endangered species; <A]

[A> (3) The population density of the area surrounding the disposal site and the likely impacts on local governmental units; and <A]

[A> (4) Mitigation or avoidance of harm from unanticipated releases and from transportation accidents. <A]

[A> § 7022. Screening and Certification Process <A]

[A> Under the authority of section 7020 of this title, the agency shall adopt rules, regarding screening for potential alternative sites and certification of sites, which must, at least, establish the procedures and criteria for: <A]

[A> (1) Screening, by the authority, of the town of Vernon and the rest of the state; <A]

[A> (2) Selecting and studying potential alternative sites by the authority; <A]

[A> (3) Submission, by the authority, of each selected potential alternative site to the agency for certification; <A]

[A> (4) Certification, by the agency, of alternative sites and the Yankee site as meeting applicable siting requirements; <A]

[A> (5) Characterization of an alternative site; <A]

[A> (6) Deciding, by the authority, to characterize a certified alternative site or to prepare a draft license application for a disposal facility at a characterized site. <A]

[A> § 7023. Waste Separation; Recoverability; and Minimum Facility Design Standards <A]

[A> (A) Under the authority of section 7020 of this title, the agency shall adopt rules establishing waste separation, recoverability and minimum facility design standards for any low-level radioactive waste disposal facility including: <A]

[A> (1) A prohibition on shallow land burial; <A]

[A> (2) Definitions of short-lived waste and long-lived waste; <A]

[A> (3) Definition of hazardous life of the short-lived waste; <A]

[A> (4) Requirements for maximum separation of short-lived and long-lived waste; <A]

[A> (5) Requirements that the design be compatible with and complement the characteristics of the site as necessary for the performance objectives; <A]

[A> (6) Requirements for active management during, and setting the length of, an institutional control period; <A]

[A> (7) Requirements to control the dilution of long-lived waste where the purpose is to convert long-lived waste to short-lived waste or to change the Federal classification; <A]

[A> (8) Requirements for enhanced containment sufficient to meet the performance objectives; <A]

[A> (9) Requirements for recoverability of the separated long-lived waste which are compatible with the performance objectives; <A]

[A> (10) Requirements for structural integrity during the design life of the facility; <A]

[A> (11) Requirements for monitoring, until the end of the institutional control period, which are adequate to detect failure of the facility in time to take reasonable remedial action and which provide for independent review and verification; <A]

[A> (12) Requirements for long-term passive isolation of the waste from the environment including the minimization of water intrusion and protection against intruders; <A]

[A> (13) Requirements for the permanent unmistakeable marking of the facility identifying it as hazardous to future human inhabitants; <A]

[A> (14) Performance objectives for each stage of the life of the facility to ensure the protection of individuals and the general population from releases of radioactivity, the protection of individuals and the general population from direct radiation, the protection of individuals from and during intrusion; and <A]

[A> (15) Capacity specifications to limit the size of the disposal facility to that necessary to dispose of the expected low-level radioactive waste. <A]

[A> (B) In establishing the definitions of short-lived and long-lived waste and in establishing the requirements for maximum separation of those wastes, the agency shall ensure that the hazardous life of the short-lived waste is less than the institutional control period and shall consider the costs of separation and all risks from separating and disposing of the separated wastes. This should include the risks associated with the separation process, the placement of the separated wastes in the facility authorized by this chapter, the recovery of the long-lived waste and any transportation and preparation of that waste for permanent disposal. <A]

[A> § 7024. Agency standards and procedures for review of the draft license application <A]

[A> (A) The agency shall adopt rules establishing standards for a draft license application for a low-level radioactive waste disposal facility which shall, at a minimum, include: <A]

[A> (1) Compliance with the rules promulgated by the agency under this chapter; <A]

[A> (2) Consent for entry into the facility by state regulatory personnel; <A]

[A> (3) Requirements to the extent permitted by law, to limit waste disposal access in order to prevent the exhaustion of disposal capacity at an early or uncertain future date; <A]

[A> (4) The financial assurance requirements established by the Public Service Board under section 7020 of this title; <A]

[A> (5) Requirements for operating procedures; <A]

[A> (6) Requirements for on-site supervision of the operation of the disposal facility; <A]

[A> (7) Requirements for closure and for closure monitoring and observation, including a minimum five-year post-closure period; <A]

[A> (8) Requirements for long-term management by the state; <A]

[A> (9) Requirements for a community and project safety plan including an emergency response plan and a training plan for facility personnel and public safety officials, all based on a worst case analysis; <A]

[A> (10) Requirements for emergency response and monitoring for operator or facility failure; and <A]

[A> (11) Requirements for detailed annual reports, including requirements for reporting all waste in storage and, after disposal has begun, all waste placed in the facility. <A]

[A> (B) The agency shall adopt rules establishing procedures for its review of a draft license application which shall, at a minimum, include: <A]

[A> (1) Submission of the draft application and other specified information; <A]

[A> (2) Submission of pre-operational radiation survey in the vicinity of the site; <A]

[A> (3) Submission of environmental and public health impact analysis; <A]

[A> (4) An opportunity for public review and inspection of, and public comment on, the draft license application in the locality of the approved site; and <A]

[A> (5) A procedure for complying with conditions or changes, to the licensing application, required by the NRC or the environmental board. <A]

[A> § 7030. Enforcement and judicial review <A]

[A> (A) Any person who violates this chapter or any rule adopted under this chapter or refuses to comply with any of the provisions of this chapter shall be subject to enforcement actions under chapters 201 and 211 of this title, except that for the failure to pay the service fees under section 7013 of this title, the penalty shall be no more than 25 percent of the fees owed. <A]

[A> (B) Any person, upon a well-rounded belief that there has been a violation of this chapter or any rule adopted under this chapter or a refusal to comply with any of the provisions of this chapter, or of the rules adopted under this chapter, may commence an action in Washington Superior Court for injunctive relief, or other appropriate relief, or for penalties and attorneys' fees. <A]

[A> § 7040. Immunity and liability <A]

[A> (A) No provision of this act shall constitute a waiver of sovereign immunity. <A]

[A> (B) Nor shall any state official or employee (including members of the authority and its director and staff) be held financially responsible for acts taken within the scope of employment, or for failure to take any discretionary act, related to this chapter or the rules authorized by this chapter. <A]

[A> § 7050. Generator Obligations <A]

[A> In addition to any other obligation imposed by this chapter, any person who generates low-level radioactive waste in Vermont shall comply with the reporting and financial assurance requirements as established under section 7020 of this title. <A]

[*4] Sec. 4. Repeal of subchapter 2 of Chapter 157 of Title 10: Advisory Commission on Low-Level Radioactive Waste.

Sections 6510 through 6512 of Title 10, being Subchapter 2 of Chapter 157 regarding the "Advisory Commission on Low-Level Radioactive Waste," are repealed.

[*5] Sec. 5. 30 V.S.A. § 2(d) is added to read:

[A> (D) In any proceeding where the decommissioning fund for the Vermont Yankee Nuclear Facility is involved, the department shall represent the consuming public in a manner that acknowledges that the general public interest requires that the consuming public, rather than either the state's future consumers who never obtain benefits from the facility or the state's taxpayers, ought to provide for all costs of decommissioning. The department shall seek to have the decommissioning fund be based on all reasonably expected costs. <A]

[*6] Sec. 6. 10 V.S.A. § 6001b is added to read:

[A> § 6001B. Low-level Radioactive Waste Disposal Facility <A]

[A> Any low-level radioactive waste disposal facility proposed for construction under chapter 161 of this title shall be a development, for purposes of this chapter, independent of the acreage involved. Any construction of improvements which is likely to generate low-level radioactive waste is a development, for purposes of this chapter, independent of the acreage involved. The criteria and procedures for obtaining a permit shall be the same as for any other development. <A]

[*7] Sec. 7. 10 V.S.A. § 6086a is added to read:

[A> § 6086A. Generators of Radioactive Waste <A]

[A> No land use permit will be issued for a development which generates low-level radioactive waste unless it shows that it will have access to a low-level radioactive waste disposal facility and that the facility is expected to have sufficient capacity for the waste. <A]

[*8] Sec. 8. 10 V.S.A. § 6501(a) is added to read:

(a) No facility for deposit, storage, reprocessing or disposal of spent nuclear fuel elements or radioactive waste material shall be constructed or established in the state of Vermont unless the general assembly first finds that it promotes the general good of the state and approves, through either bill or joint resolution, a petition for approval of the facility. [A> No facility for the incineration of low-level radioactive waste, as defined in subsection 7001(7) of this title, shall be constructed or established without a similar finding and approval. <A]

[*9] Sec. 9. Vermont State Nuclear Advisory Panel; Sunset

Sec. 2 of Act No. 242 of the Acts of 1978, as amended by Sec. 2 of Act No. 181 of the Acts of 1984, as further amended by Sec. 1 of Act No. 155 of the Acts of 1986, is amended as follows:

Sec. 2. This act shall [D> be effective only until July 1, 1990 <D] [A> Expire on July 1, 1994. <A]

[*10] Sec. 10. 10 V.S.A. § 8003(a) is amended to read:

(a) The secretary may take action under this chapter to enforce the following statutes:

(1) 3 V.S.A. chapter 51, relating to the certification of site technicians, and trailer camps and tent sites;

(2) 10 V.S.A. chapter 23, relating to air quality;

(3) 10 V.S.A. chapters 37 and 47, relating to water pollution control and water quality standards;

(4) 10 V.S.A. chapters 41 and 43, relating to dams and stream alterations;

(5) 10 V.S.A. chapter 37, relating to the introduction of algicides, pesticides and herbicides;

(6) 10 V.S.A. chapter 48, relating to well drillers;

(7) 10 V.S.A. chapter 53, relating to beverage containers;

(8) 10 V.S.A. chapter 59, relating to underground storage tanks;

(9) 10 V.S.A. chapter 61, relating to water supply and wastewater;

(10) 10 V.S.A. chapter 151, relating to land use;

(11) 10 V.S.A. chapter 153, relating to mobile home parks;

(12) 10 V.S.A. chapter 159, relating to solid waste, hazardous waste and hazardous materials;

[A> (13) 10 V.S.A. chapter 161, relating to low-level radioactive waste; <A]

[D> (13) <D] [A> (14) <A] 18 V.S.A. chapter 23, relating to subdivisions; and

[D> (14) <D] [A> (15) <A] 29 V.S.A. chapter 11, relating to lands under public waters.

[*11] Sec. 11. Positions Established

The following permanent classified positions are established until June 30, 1994:

(1) Eight (8) new permanent classified positions—one (1) director, one (1) geologist/environmental specialist, one (1) environmental engineer C, one (1) public information specialist, one (1) attorney, one (1) health physics specialist, and two (2) secretaries—are authorized in the agency of natural resources for fiscal year 1991 for the purpose of administering this act.

(2) One (1) new permanent classified position—one (1) financial analyst—is authorized in the department of public service for fiscal year 1991 for the purpose of administering this act.

(3) One (1) new permanent exempt position—one (1) utilities analyst—is authorized in the public service board for fiscal year 1991 for the purpose of administering this act.

[*12] Sec. 12. Appropriations

The following sums are appropriated from the low-level radioactive waste fund in fiscal year 1991:

(1) $430,000.00 to the Vermont Low-Level Radioactive Waste Authority;

(2) $370,000.00 to the Agency of Natural Resources;

(3) $80,000.00 to the Public Service Board; and

(4) $60,000.00 to the Public Service Department.

[*13] Sec. 13. Effective Date

This act shall take effect upon passage.

Approved: June 29, 1990.

Appendix B.—Siting Requirements

(Title 10 VSA, Section 7021)

Section 7021 Siting Requirements

(a) Under the authority of section 7020 of this title, the agency shall adopt rules establishing the siting requirements for a low-level radioactive waste disposal facility which shall, at a minimum, require that:

1. The disposal site shall not be located in an area that is incapable of being thoroughly characterized, modeled, analyzed, and monitored;

2. The disposal site shall not be located in an area where projected population growth and future development are likely to affect the ability of the disposal facility to meet the performance objectives;

3. The disposal site shall not be located in areas having known natural resources which, if exploited, would result in the failure of the disposal facility to meet the performance objectives;

4. The disposal site shall not be located in a 500-year floodplain, coastal high-hazard zone or wetland and must be generally well drained and free of areas of flooding or frequent ponding;

5. The disposal site shall not be located in areas with excessive upstream drainage which could erode, expose, or inundate the waste disposal units;

6. The disposal site shall not be located in an area with insufficient depth to watertable so that groundwater intrusion, perennial or otherwise, could occur;

7. The hydrologic unit used for disposal shall not discharge groundwater to the surface within the disposal site;

8. The disposal site shall avoid areas where tectonic processes such as faulting, folding, seismic activity, or vulcanism may occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives;

9. The disposal site shall avoid areas where surface geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives;

10. The disposal site shall not be located where nearby facilities or activities or any existing radioactive materials could adversely impact the ability of the site to meet the performance objectives or significantly mask the environmental monitoring program;

11. The disposal site shall not be located above 2,500 feet in elevation;

12. The disposal site shall not be located within a watershed of Class A water or of a public water supply, or within or adjacent to an aquifer protection area, within or adjacent to Class I or Calss II aquifers, or where surface water quality standards could be reasonably expected to be violated by the facility;

13. The disposal facility shall not be located within 100 meters of a wetland, stream, river, lake, or pond, within 200 meters of designated outstanding resource waters, or within distances found critical by site investigation;

14. The disposal site shall not be located in areas where failure of a dam or impoundment could adversely affect the ability of the disposal site to meet the performance objectives;

15. The disposal site must be of sufficient size to allow the satisfaction of the performance objectives; and

16. The disposal site must retard, or be capable of being modified to retard, the movement of radionuclides.

(b) The rules establishing the siting requirements for a low-level radioactive waste disposal facility shall also consider the following:

1. The proximity of the disposal site to schools, historical sites, wilderness areas, parks (municipal, state or national), state or wildlife refuges or management areas, military sites, or unique cultural areas;

2. The potential for adverse affects on rare or endangered species;

3. The population density of the area surrounding the disposal site and the likely impacts on local governmental units; and

4. Mitigation or avoidance of harm from unanticipated releases and from transportation accidents.

Appendix C.—Responsibilities of the Authority

(Title 10 VSA, Section 7012)

Section 7012 Responsibilities of the Authority

(a) The authority, while informing and consulting the public throughout, shall carry out the actions necessary to fulfill the requirements of the timetable in Section 7002 of this chapter.

(b) The authority must comply with the rules adopted by the agency and with any fee approval conditions of the public service board under Sections 7020 through 7024, even if they impose requirements more stringent than federal requirements, and the authority must obtain all applicable state and local permits for the disposal facility authorized by this chapter, except that the facility is not subject to certification under Section 6605 of this title.

(c) If a low level radioactive waste disposal facility is constructed by the authority, the authority shall provide for the operation, maintenance and closure of the facility and shall provide for all necessary actions during the institutional control period. The authority shall place information about the facility and the waste placed in the facility in appropriate state and local records.

(d) In performing the study to determine the appropriate permanent disposal technology for long-lived waste, required by subdivision (a)(2) of Section 7002, the authority shall consider a deep-mined facility in-state, technologies not normally examined in the United States for disposal of low-level radioactive waste, and all other technologies reasonably available.

(e) In performing the study, required by subdivision (a)(2) of Section 7002, to determine the maximum appropriate separation of long-lived waste, the authority shall consider the various techniques potentially available, their costs and incremental risks. The risks to be considered should include radiological and other risks to workers, the public and the environment from the separation process and from the disposal of the separated wastes in the facility authorized by this chapter and in any expected permanent disposal facility for the long-lived waste.

(f) Prior to a decision to prepare a draft license application and the submission of that decision to the legislature, the authority shall:

1. Conduct a social and economic impacts study to determine the short-term and long-term effects from the proposed disposal facility on the Vermont municipalities which contain, or which are adjacent to municipalities containing the proposed site and determine the appropriate impact fees to be paid;

2. Prepare a report on the strengths and weaknesses of the site that has been characterized;

3. Negotiate with the municipality, or each municipality where the proposed site is located any impact fees, other payments, or conditions to be included in the proposal to be submitted to the voters and in the petition to be submitted to the legislature;

4. Hold at least one public hearing near each site; and

5. Obtain the consent of a majority of the voters, present and vote at a duly warned meeting, of the municipality, or of each municipality, where the proposed site is located.

(g) For any particular site, including the Yankee site, the authority may perform any of the requirements of subsection 7012(f) as soon as appropriate.

(h) Prior to a decision to characterize another certified site, the report on the strengths and weaknesses of the previously characterized site must be completed. However, a decision to characterize another site will not prohibit a later decision to prepare a draft license for any previously characterized site, if otherwise appropriate.

(i) A petition to the legislature to prepare a draft license application must be accompanied by a proposed financing plan for legislative enactment to cover the construction costs of the facility, unless the authority has opted to raise construction funds under the provisions of Sec. 7015 of this chapter.

(j) The authority in deciding on the specific disposal plan required by subdivision (a)(20) of Section 7002 for the permanent disposal of the long-lived waste shall thoroughly examine all reasonable alternatives to leaving the waste at the disposal facility authorized by this chapter and the option of leaving it there shall not be given undue weight.

(k) The authority shall advise, consult, and cooperate with the federal government and its agencies, the state and its other agencies, interstate agencies, other states, local governmental entities within this state, and private entities.

(l) The authority initially shall prepare a budget in reasonable detail, allocating funds necessary for the year, and shall periodically revise the budget, as necessary. The authority shall keep an accurate account of all its activities and of all its receipts and expenditures. Prior to the first day of September in each year, the authority shall submit a report of its activities for the preceding fiscal year to the governor and to the general assembly. The report shall set forth a complete operating and financial statement covering its operations during the year. The authority shall cause an audit of its books and accounts to be made at least once each year by a certified public accountant and its cost shall be considered an expense of the authority and a copy shall be included in the annual report.

(m) The auditor of accounts of the state and the auditor's authorized representatives may at any time examine the accounts and books of the authority including its receipts, disbursements, contracts, funds, investments and any other matters relating to its financial statements.

(n) The authority shall prepare an annual report on the quantities, characteristics and any expected treatment of the low level radioactive waste generated in Vermont during the calendar year and reasonably expected to be generated through the date anticipated by the authority for the completion of the decommissioning of Vermont Yankee.

(o) The authority shall administer a grant program for Vermont municipalities where a certified site is located which the authority has decided to characterize and may administer a similar grant program for Vermont municipalities which are within five miles of such a site. The grants shall be subject to the approval of the public service board and shall be used by the municipality to provide technical assistance and to otherwise assist the community to effectively participate in the consideration of the site for a disposal facility under this chapter.

(p) Prior to the commencement of operation of the disposal facility, the authority shall establish a disposal fee, to be approved by the public service board, for any waste that must be accepted by the facility for disposal on which the service fee has not been paid under the subsection 7013(e) or for which capacity has not been contracted for under Section 7015. The disposal fee must cover, pro rata, all costs and expenses contemplated by this chapter.

(q) The authority shall provide free of charge a copy of any public document within its possession, upon request, to any municipalities which contain, or which are adjacent to municipalities containing, an alternative site or the Yankee site.

Appendix D.—Timetable and Responsibilities

(Title 10 VSA, Section 7002)

Section 7002 Timetable and Responsibilities

(a) The following timetable and responsibilities shall be adhered to:

1. Within 60 days of the effective date of this chapter, the governor shall appoint the initial members of the authority.

2. As soon as practicable, the authority shall, after public comment, initiate a study to determine the maximum appropriate separation of long-lived waste, the appropriate level of recoverability of such waste, and the appropriate permanent disposal technology and cost for that waste.

3. As soon as practicable, the authority shall initiate the site characterization of the Yankee site.

4. As soon as practicable, the authority shall begin collecting data for the screening of the town of Vernon and of the rest of the state in order to identify potential alternative sites for a disposal facility.

5. Within 270 days of the effective date of this chapter, the agency shall, after public comment, adopt rules establishing the siting, screening and certification requirements under Section 7021 and Section 7022.

6. On or before November 1, 1991, the authority shall:

(A) Complete the characterization of the Yankee site;

(B) After public comment, select at least three potential alternate sites, including one in the town of Vernon.

7. Within 60 days of the submission by the authority of a request for certification of a potential alternative site, the agency shall decide if the site meets the applicable siting requirements.

8. As soon as practicable, the authority shall, after public comment, decide whether to characterize a certified site other than the Yankee site or to complete the requirements of subsection 7012(f) for the Yankee site. Then, if the Yankee site has been certified by the agency as meeting the siting requirements and if the requirements of subsection 7012(f) have been completed, the authority may decide whether to prepare a draft license application for a disposal facility at the Yankee site.

9. On or before December 15, 1991, the authority must decide either to characterize an alternative site or to prepare a draft license application for a facility at a previously characterized site. Then initially before January 15, 1992 and subsequently within 30 days of any similar decision, the authority must petition the legislature, under chapter 157 of this title for approval of its decision.

10. If the legislature approves a petition to characterize an alternative site or sites or if it directs the characterization of an alternative site or sites, then the authority must begin characterization and, within 18 months of the legislative decisions, the authority must complete characterization. Following the completion of characterization, the authority must again decide whether to characterize another certified site, or sites, or to complete the requirements of subsection 7012(f) for the characterized site. Then, if the requirements of subsection 7012(f) have been completed, the authority may decide whether to prepare a draft license application for a disposal facility at a characterized site.

11. If the legislature approves a petition to prepare a draft license application or directs the preparation of a draft license for the disposal facility at a particular characterized site, the authority shall, within six months of legislative action or the effective date of the rules required by Section 7023 and Section 7024, whichever is later, after public comment, submit a draft license application to the agency for review.

12. Within 18 months of the effective date of this act, based on the results of the study required in subdivision (a)(2) of this section and after public comment, the authority shall:

(A) Make recommendations to the agency for rules on separation and recoverability of long-lived waste;

(B) Make recommendations to the agency for rules on the disposal facility design standards; and

(C) Make an initial report to the legislature and to the public service board on the possible appropriate technologies, and their costs, for the permanent disposal of the long-lived waste.

13. Within six months of receiving the authority's recommendations and after public comment, the agency shall adopt the separation, recoverability and design standards under Section 7023 and the draft license application standards and review procedures under Section 7024.

14. By July 1, 1992 after public comment, the authority shall petition the public service board for approval of a service fee under subsections 7013(e) and 7020(b) of this chapter and shall propose adequate financial assurance requirements as part of the same proceeding.

15. Within six months of receiving the draft license application, the agency must complete its review.

16. Not later than 30 days after compeletion of the review of the draft license application by the agency, the authority shall apply to the United States Nuclear Regulatory Commission for a license to construct and operate a disposal facility in the state.

17. Not later than 30 days after completion of the review of the draft license application by the agency, the authority shall apply for a land use permit under chapter 151 of this title.

18. Within 180 days of obtaining a license and a land use permit, the authority shall begin construction of the disposal facility.

19. As soon as practicable, the authority shall begin operation of the disposal facility.

20. Every year after the initial report required by subsection (a)(12) of this section, and until otherwise directed by the legislature, the authority shall, after public comment, report to the legislature its recommendations for the permanent disposal of the long-lived waste and, no later than the beginning operations of the disposal facility authorized by this chapter, propose to the legislature a specific disposal plan for the permanent disposal of the long-lived waste.

21. Within 120 days of the completion of decommissioning of the Vermont Yankee nuclear generating facility, the authority shall begin closure of the disposal facility.

(b) Subdivisions (a)(3) and (a)(6) through (a)(21) of this section may be, but need not be, complied with if, at the time the action is required, the state has entered into a compact or agreement adequately providing for the out-of-state disposal of the expected low-level radioactive wastes.

Appendix E

Timeline Matrix for Necessary Actions

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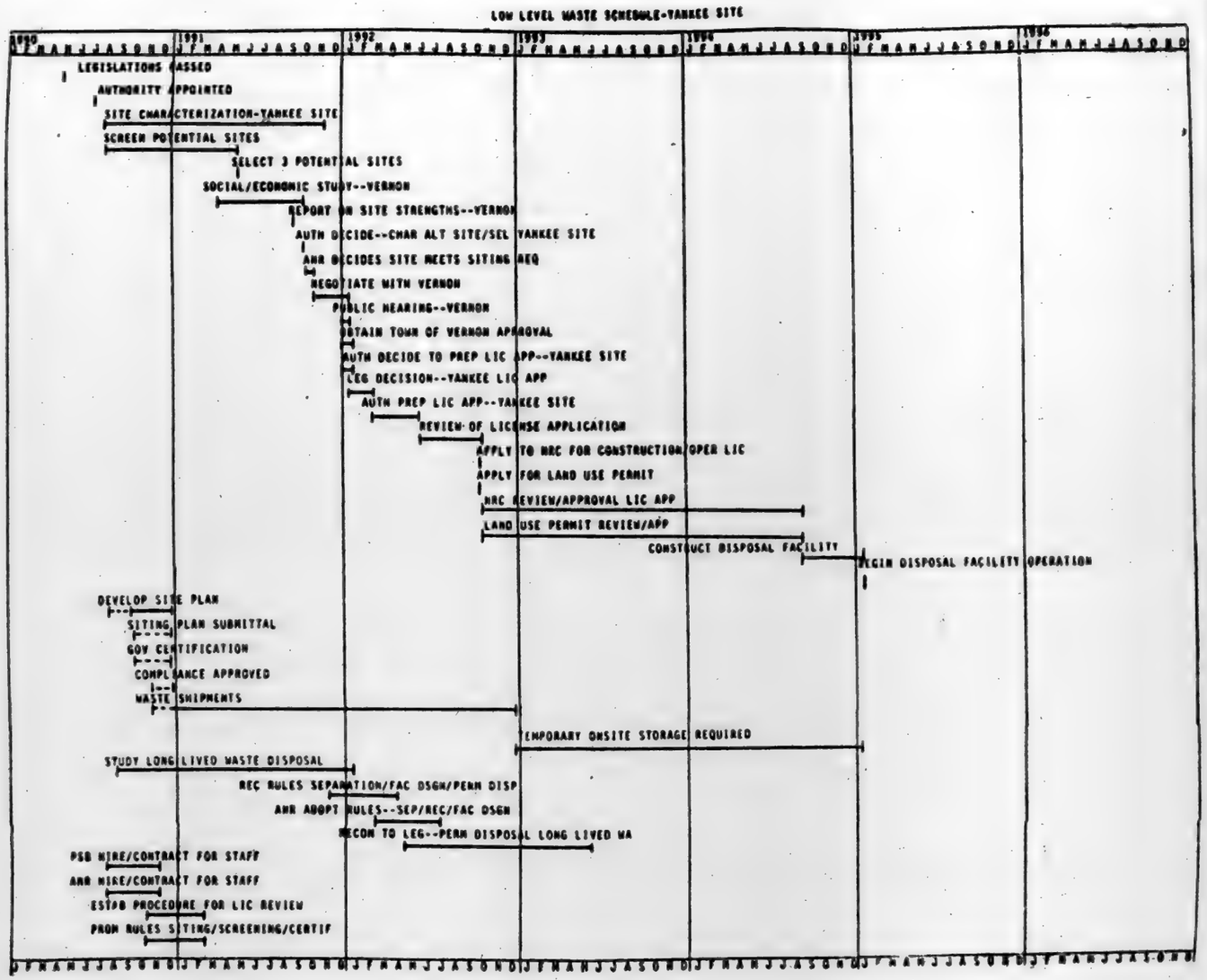

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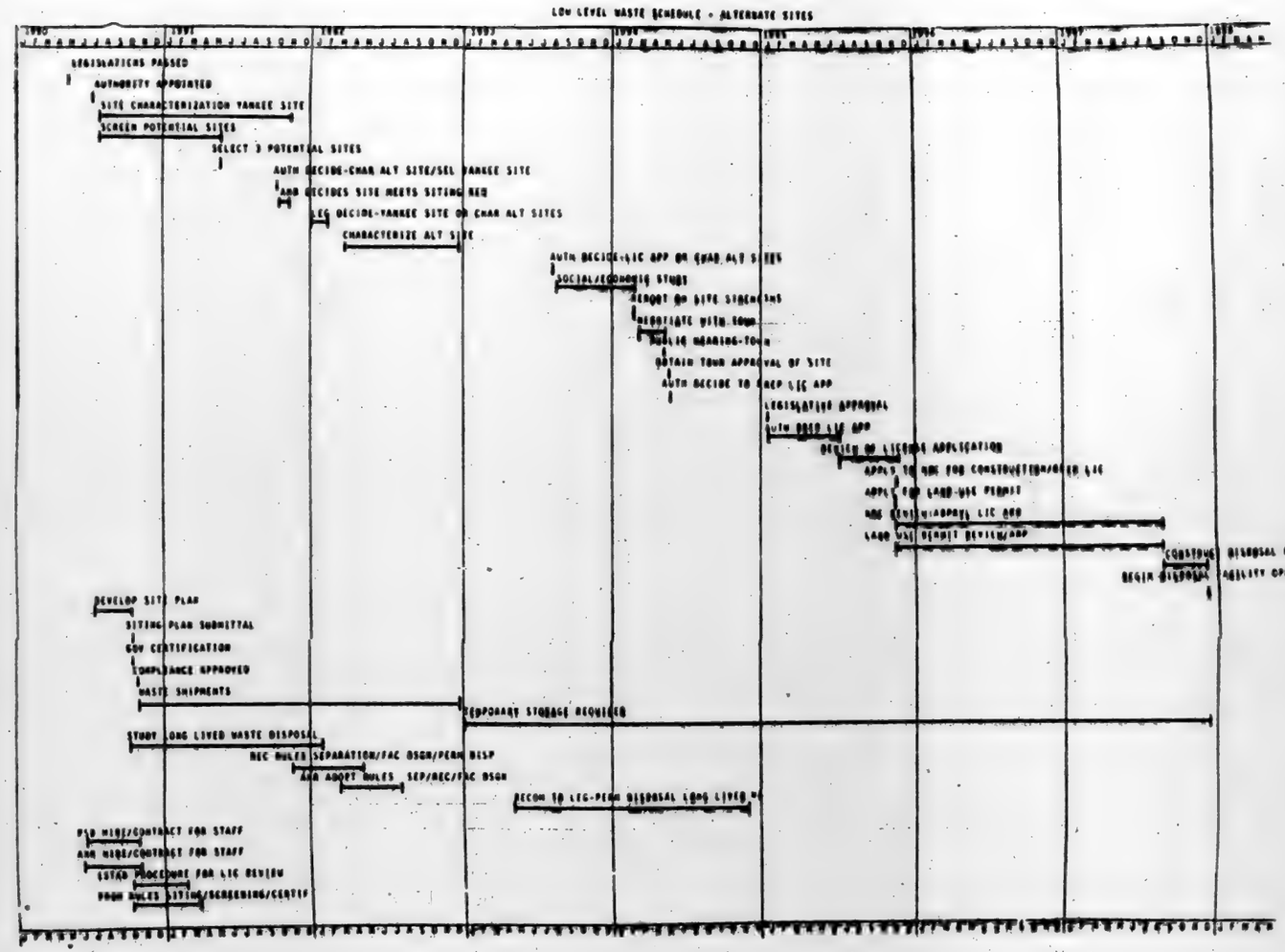

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Appendix F

Vermont Yankee Nuclear Power Corporation letter indicating capabilities for temporary storage of its radioactive waste.

July 30, 1990.

Dr. Charles Ratte,
State Geologist,
Agency of Natural Resources, 103 South Main Street, Center Building, Waterbury, Vermont 05676.

Dear Dr. Ratte: The purpose of this letter is to explain the capabilities Vermont Yankee has for temporarily storing its radioactive waste at the plant site in Vernon.

In 1985, because of the uncertainties of continued availability of radioactive waste disposal sites, Vermont Yankee constructed a waste storage facility. The facility is a fenced in pad with concrete storage modules to hold the waste. NRC has permitted licensees, under certain conditions, to construct facilities to store waste for up to 5 years. The pad at Vermont Yankee was designed to do that.

The storage pad was first put into use in 1989 because Vermont was out of compliance with the federal law. Existing disposal sites were allowed to, and did, deny access to Vermont generators. If Vermont can come into compliance again, we can ship the stored waste for disposal at the existing sites. That would permit us to regain the full 5 years storage capability for future use, if necessary.

In summary, Vermont Yankee has in existence proven capability to store radioactive waste for up to 5 years. If you have any questions concerning this, please feel free to contact me.

Very truly yours,

G. Dean Weyman,
Senior Enviornmental Program Manager

Appendix G

University of Vermont Radiation Safety Office letter indicating its temporary storage capacity for radioactive waste.

August 6, 1990.

Charles Ratte,
Geologist Office, 103 South Main St, Waterbury, VT 05676.

Dear Chuck: As you requested, here is an update on UVM's capacity to store low-level radioactive waste at it's storage room on Spear Street in South Burlington.

UVM has been using the specially constructed room, which is part of the "Large Animal Facility", since the State of Vermont was banned from shipping low-level radioactive waste to other states on 1/1/89. This room, as now constructed, has the capacity to store low-level radioactive waste until 7/1/91. After that time, UVM will need to modify the building to increase storage capacity.

I urge the Governor and the Low-Level Radioactive Waste Siting Authority to take whatever action is necessary to get Vermont back into compliance with the federal milestones so that UVM, and other generators of waste in Vermont, can ship waste for permanent disposal until, such time that the state of Vermont has the capacity to handle radioactive waste within the state.

Please feel free to contact me if you need additional information.

Sincerely:

Louis M. Izzo,
Director.

[FR Doc. 90-26405 Filed 11-15-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

November 1, 1990.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of November 1, 1990, of 7 deferrals contained in the first special message for FY 1991. This message was transmitted to Congress on October 4, 1990.

Rescissions

As of the date of this report, no rescission proposals are pending before the Congress.

Deferrals (Table A and Attachment A)

As of November 1, 1990, $1,120.2 million in budget authority was being deferred from obligation. Attachment A shows the history and status of each deferral reported during FY 1991.

Information from Special Messages

The special message containing information on deferrals covered by this cumulative report is printed in the **Federal Register** cited below:

55 FR 41436, Thursday, October 11, 1990.

Richard G. Darman,
Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF FY 1991 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	1,120.2
Routine Executive releases through November 1, 1990	0
Overturned by the Congress.....	0
Currently before the Congress.....	1,120.2

Attachments

ATTACHMENT A
Status of FY 1991 Deferrals - As of November 1, 1990
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 11-1-90
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund.....	D91-1	149,319		10-04-90					149,319
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal.....	D91-2	135,955		10-04-90					135,955
Cooperative work.....	D91-3	273,468		10-04-90					273,468
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense.....	D91-4	1,186		10-04-90					1,186
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses (construction).....	D91-5	7,127		10-04-90					7,127

ATTACHMENT A
Status of FY 1991 Deferrals - As of November 1, 1990
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 11-1-90
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive....	D91-6	14,529		10-04-90					14,529
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund).....	D91-7	538,659		10-04-90					538,659
TOTAL, DEFERRALS.....		1,120,244	0		0	0		0	1,120,244

[FR Doc. 90-27123 Filed 11-15-90; 8:45 am]
BILLING CODE 3110-01-C

ISS 2 2 2 NO 16 1990 UMI

RAILROAD RETIREMENT BOARD

Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on November 19, 1990, 9 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Congressional Reaction to the Possible Closing of the Raleigh, North Carolina, Base Point.
(2) Incentive Awards Plan.
(3) Proposed Occupational Disability Physical Standards.
(4) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act.
(5) Regulations—Part 203, Employees Under the Act.
(6) Regulations—Parts 200, 209 and 234, Railroad Employers' Reports and Responsibilities; Lump-Sum Payments.
(7) Regulations—Part 216, Eligibility for an Annuity.
(8) Regulations—Part 255, Recovery of Overpayments.
(9) Regulations—Part 320, Initial Determinations Under the Railroad Unemployment Insurance Act and Review of and Appeals from Such Determinations.
(10) Regulations—Parts 320 and 340, Initial Determinations Under the Railroad Unemployment Insurance Act and Reviews of and Appeals from Such Determinations; Recovery of Benefits.
(11) Regulations—Part 330, Determination of Daily Benefit Rates.
(12) Regulations—Part 200, General Administration.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary of the Board, COM No. 312–751–4920, FTS No. 386–4920.

Dated: November 9, 1990.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 90–27074 Filed 11–15–90; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 28606; File No. 600–20]

Order Approving on an Accelerated Basis an Extension of Registration as a Clearing Agency Until November 30, 1991

November 9, 1990.

In the matter of the registration as a clearing agency of International Securities Clearing Corporation.

On May 12, 1989, the Securities and Exchange Commission ("Commission") granted the application of International Securities Clearing Corporation ("ISCC") for registration as a clearing agency, pursuant to sections 17A and 19(a) of the Securities Exchange Act of 1934 ("Act"), and Rule 17Ab2–1(c) thereunder, for a period of 18 months.[1] At that time, the Commission granted ISCC an exemption from compliance with section 17A(b)(3)(C) of the Act.[2] On October 16, 1990, ISCC requested that the Commission extend ISCC's registration for a period of one year.[3] Notice of the request for an extension of temporary registration was published in the **Federal Register** on October 24, 1990.[4] No comments have been received.

As discussed in detail in the order first granting ISCC's registration as a clearing agency, one of the primary reasons for ISCC's registration was to enable it to provide for the safe and efficient clearance and settlement of international securities transactions by providing links to centralized, efficient processing systems in the United States and at foreign financial institutions. Although ISCC has succeeded in this mission in the past 18 months, business conditions generally in the international securities markets have not been favorable, and ISCC's capacity and linkage agreements with foreign financial institutions therefore have not yet been adequately challenged. ISCC also is working on changes to its rules that would no longer require that ISCC be registered with an exemption from section 17A(b)(3)(C) or any other section of the Act.

ISCC has functioned effectively as a registered clearing agency for the past 18 months, and since 1986 functioned in this capacity under the terms of several no-action letters issued by the Commission's Division of Market Regulation.[5] Accordingly, in light of the past performance of ISCC, as well as the need for ISCC to provide continuity of services to its participants and members, the Commission believes that "good cause" exists, pursuant to section 19 of the Act, for extending ISCC's registration for an additional 12 months before the expiration of the comment period on such extension.[6] Any comments received concerning ISCC's request for an extension of temporary registration will be considered in conjunction with the Commission's consideration of whether to grant ISCC permanent registration as a clearing agency under section 17A of the Act.

It is therefore ordered That ISCC's registration as a clearing agency be, and hereby is, approved until November 30, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–27035 Filed 11–15–90; 8:45 am]

BILLING CODE 8010–01–M

[1] Securities Exchange Act Release No. 26812 (May 12, 1989), 54 FR 21691 (May 19, 1989).

[2] Section 17A(b)(3)(C) requires that ISCC's rules assure fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.

[3] See letter from Karen Saperstein, Associate General Counsel, ISCC, to Brandon Becker, Associate Director, Commission, dated October 16, 1990.

[4] Securities Exchange Act Release No. 28561 (October 18, 1990), 55 FR 42923.

[5] See Securities Exchange Act Release No. 26812, n.1, *supra*, at 21692.

[6] On or before the end of 12 months, the Commission expects to consider whether to grant ISCC permanent registration as a clearing agency

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[Release No. 34–28603; SR–GSCC–90–06]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Proposed Change Relating to the Netting of Zero Coupon Government Securities

November 8, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 26, 1990, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposal will allow GSCC to include in its netting system book-entry zero coupon securities. GSCC will also develop margin factor designed to accommodate the volatility associated with zeros. The text of the proposed rule change may be examined at place specified in Item IV below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

rule change. The text of these statement may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) STRIPS (Separate Trading of Registered Interest and Principal of Securities)—which are pre-stripped, book-entry, zero coupon securities that are direct obligations of the U.S. Treasury—and other book-entry zero coupon Government securities, other than Treasury Bills, which have a maturity of one year or less, (collectively "zeros") have not yet been made eligible for netting by GSCC. GSCC now proposes to make all zeros eligible for its net. In so doing, it recognizes that these securities require different considerations from a margining perspective than do other Treasury securities, because zeros generally are subject to greater price volatility than coupon bearing securities with the same maturity.

GSCC is not aware of any satisfactory third-party source of historical price volatility data on zeros from which to establish applicable margin factors or disallowance percentages. (GSCC intends to develop and maintain its own historical price volatility base for zeros, as it does for all other securities eligible for the net, commencing at the time that it starts to net zeros). In order to allow GSCC to make such securities eligible for the net in a prudent fashion that does not present undue risk to GSCC or its members, GSCC will make changes to its margin factor and offset class schedule, and disallowance percentage schedule, as regards the margining of zeros for clearing fund purposes. Non-Treasury zeros will not be distinguished from Treasury zeros, as they do not differ significantly as regards their price volatility.

First, a new, separate margin factor schedule will be established for zeros, which will take into account the greater price volatility presented both generally by zeros and that which arises as the remaining maturity of a zero security increases. The applicable margin percentages for zeros will range from being the same as those for coupon securities on the short-end of the maturity spectrum to two-and-a-half times that applicable to coupon securities on the longest-term end. These differences are comparable to the differences in amount of net position haircut factors (which are designed to reflect the price volatility of debt instruments between zeros and coupon securities found in the Treasury Department's liquid capital requirements for Government securities brokers and dealers (17 CFR 402.2) (the "Treasury capital requirements"); it is that haircut schedule that has been used by GSCC as a basis for deriving its current offset classes and disallowance percentage schedule.

Second, in view of the current lack of sufficient historical data from which to derive offsets among zeros and coupon securities, GSCC will take a conservative approach by setting the disallowance percentage for zeros at 100 percent as against coupon securities (as against other zeros issues, the current disallowance percentage schedule will be followed). This may be contrasted with the approach taken in the Treasury capital requirements, where the hedging disallowance haircut factors (which reflect the risk inherent in hedges across categories of securities) allow for a certain degree of offset between zeros and coupon securities.

In addition, as a further measure designed to ensure that a netting member's activity in zeros will not present undue exposure to GSCC, GSCC will monitor the level of each member's activity in zeros, and will expressly establish the following daily concentration levels, the triggering of which will lead to GSCC determining whether it is appropriate to call for additional clearing fund deposit:

1. Concentration in CUSIPS within the same range of remaining maturities

The level of a netting member's net settlement positions, measured by dollar value, in all zeros constitutes 50 percent or more of the total dollar value of all Netting Members' net settlement positions in zeros.

2. Concentration in all zeros issues as against activity in all issues

The level of a netting member's net settlement positions, measured by dollar value, in all zeros constitutes 25 percent or more of the dollar value of its net settlement positions in all issues eligible for the net.

This new procedure for the collection of clearing fund collateral related to the meeting of zeros will be reviewed on a regular basis by the Membership and Standards Committee of the GSCC Board, which review will be facilitated by the growing base of historical data to be maintained by GSCC on the price volatility of zeros.

(b) The proposed rule change will help further GSCC's ability to ensure orderly settlement in the Government securities marketplace, by expanding the scope of Government securities eligible for its netting system. Thus, it is consistent with the requirements of section 17A the Act and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule changes have not yet been solicited or received. Members will be notified of the proposed rule change, and comments will be solicited, by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at

the principle office of GSCC. All submissions should refer to file number SR–GSCC–90–06 and should be submitted by December 7, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–27033 Filed 11–15–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28604; SR–GSCC–90–07]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Allocation of Clearance Costs

November 8, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 24, 1990, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would change the fee GSCC charges for clearing services. GSCC would no longer use its current method of assessing clearing charges based on the member's percentage of the total number of deliver and receive obligations. GSCC will charge each member a standard fee of $3.25 for each deliver or receive obligation. The full context of the proposed rule change may be examined at the places specified in Item IV below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Most of the cost incurred by GSCC as the result of the clearing of netted deliver and receive obligations are passed through to all non-inter-dealer broker netting members ("dealer members"). (Certain costs, such as the space and personnel costs incurred by GSCC in its coordination and monitoring of the settlement process related to the netting system are not directly passed through to members but, rather, constitute a general expense of GSCC.) The allocation method currently used for such pass-through is based on each dealer member's portion, measured on a separate product basis, of the total number of settled deliver and receive obligations of all dealer members.

With over a year of experience in the provision of clearance and settlement services, GSCC is now simplifying this method of allocating clearance charges (clearance charges do not include financing charges, the allocation of which would not be changed). Effective on November 1, 1990, (to be first reflected in the billings issued in December 1990) GSCC will establish a fixed standard cost of $3.25 per deliver/receive obligation of a dealer member, which amounts in total would recover the clearance costs currently passed through by GSCC. This standard cost will be the same for all obligations, regardless of product, and will be allocated based on the absolute number of a dealer member's settlement obligations and not by reference to such member's portion of all dealer members' settlements.

There are numerous advantages associated with this revised method of allocating clearance costs, including the following:

- *Improved expense control and budget planning for GSCC.*

GSCC will be better able to budget, monitor, and control the expenses that it incurs for clearance and settlement, and its overall cash flow.

- *Improved expense planning for Netting Members.*

Members will better be able to anticipate and budget for their GSCC clearance charges, because such charges would be based on their absolute settlement volume (and not on the proportion of their value to total GSCC volume) and would be consistent across all product lines.

- *More equitable method of allocation.*

This will be a more direct method and, thus, a more equitable one, of allocation of all of the costs of the provision by GSCC of a clearance and settlement service.

- *Not a cost increase to members.*

The standard cost will represent the average cost currently passed through to dealer members.

The fixed cost per obligation established by GSCC will be reviewed on a periodic basis by its Audit and Finance Committee and the Board of Directors, and be adjusted as necessary.

(b) The proposed fee structure changes will improve expense control and budget planning for GSCC and its members and provide a more equitable method of allocation of clearance charges and, thus, are consistent with the requirements of section 17A of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited. Members will be notified of the rule filing, and comments will be solicited, by an Important Notice. GSCC will notify the Commission if GSCC receives any written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act because the proposal changes a fee charged by GSCC. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the

submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to file number SR–GSCC–90–07 and should be submitted by December 7, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–27034 Filed 11–15–90; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before December 17, 1990. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., room 200, Washington, DC 20416, Telephone: (202) 653–8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: SBA Long-Term Counseling Evaluation Form.

Form No.: SBA Form 1434.

Frequency: Semi-Annually.

Description of Respondents: Recipients of SBI Counseling Services.

Annual Responses: 6,600.

Annual Burden: 2,200.

Title: SBA Private Retirement Plan Survey.

Form No.: SBA Temp. Form 1752.

Frequency: On-time survey.

Description of Respondents: Small Businesses.

Annual Responses: 918.

Annual Burden: 448.

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 90–27031 Filed 11–15–90; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice No. 1290]

Study Group 12 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 12 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting on December 4, 1990, at the Department of Commerce, 14th and Pennsylvania Avenue NW., Washington, DC, from 1:30 to 4:30 p.m. in room 1605.

Study Group 12 was established at the 1990 Plenary Assembly of the CCIR to deal with matters concerning Inter-Service Sharing and Compatibility. Initially the Study Group will conduct studies in three topical areas: (i) Compatibility between the broadcasting service (88–108 MHz) and aeronautical services (108–137 MHz); (ii) Frequency Sharing between the broadcasting service and the fixed and mobile services in the VHF and UHF bands; and (iii) Coordination area of an earth station and certain space services.

The meeting on December 4, 1990 will be organizational in nature with an agenda intended to review work previously carried out in the CCIR, identify future U.S. work efforts, prepare for an organizational meeting of Study Group 12 in Geneva, January 14–15, 1991 and undertake preparations for a Study Group 12 meeting, May 13–17, 1991.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. William Hatch, National Telecommunications and Information Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230, phone (202) 377–1138, telefax (202) 377–1865.

Dated: October 29, 1990.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 90–27063 Filed 11–15–90; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice No. 1289]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Study Group A Meeting

The Department of State announces that Study Group A (Policy and Services) of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Thursday, December 13, 1990, 10 a.m., in conference room 1107, Department of State, 2201 C Street NW., Washington, DC 20520.

The Agenda for the meeting is as follows:

1. Debrief and review of results of CCITT Study Group III (Geneva, November 12–21).
2. Debrief and review of results of CCITT Study Group I (Geneva, October 30–November 9).
3. Update of Ad Hoc Group for Resolution #18 and its continuing activities.
4. Debrief and review of Plan Asia and Oceania meeting (October 31–November 7).
5. Future Schedule of Work Activities.
6. Other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should so advise the Office of Earl S. Barbely, Department of State, 202–647–2592 (fax 202–647–7407). The above includes government and non-government attendees. All attendees must use the C Street entrance.

Dated: October 31, 1990.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman, U.S. CCITT National Committee.

[FR Doc. 90–27064 Filed 11–15–90; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice No. 1288]

Study Group 7 of the U.S. Organization International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 7 (formerly Study Groups 2 & 7) of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting November 29, 1990 at NASA Headquarters, 600 Independence Avenue, SW., Washington, DC in room 521] commencing at 10 a.m.

Study Group 7 deals with matters relating primarily to the space research systems and standard frequency and time systems. The purpose of the meeting is to review the Report of the recently completed meeting of Interim Working Party (IWP) 2/2 as well as the reports of other CCIR technical groups charged with preparing material for the 1992 World Administrative Radio Conference. Additional work necessary to prepare for the 1992 Conference will be identified.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to Mr. John Postelle, ARC Professional Services Group, Herndon, Virginia 22070, phone (703) 834–5607.

Dated: October 30, 1990.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 90–27065 Filed 11–15–90; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 98–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 88–2–69 established the first interim SFFL, and Order 9–7–85 established the currently effective two-month SFFL applicable through September 30, 1990.

In establishing the SFFL for the two-month period beginning October 1, 1990, we have projected non-fuel costs based on the year ended June 31, 1990 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels, including those for the month of August, as reported to the Department.

These projections register the beginning of the dramatic increase in fuel prices precipitated by the August Mid East crisis. Future SFFL revisions, beginning with that scheduled for December 1, 1990, will capture additional increases in fuel costs.

By Order 90–11–10 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.3039
Latin America	1.4255
Pacific	1.8965
Canada	1.4128

FOR FURTHER INFORMATION CONTACT: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 90–28095 Filed 11–15–90; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE–90–46]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 29, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on November 7, 1990.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 17681
Petitioner: Kenmore Air Harbor
Sections of the FAR affected: 14 CFR 135.103(a)(1)
Description of relief sought: To extend Exemption No. 2528, as amended, which allows petitioner to conduct operations under visual flight rules (VFR) outside of controlled airspace, over water, at an altitude below 500 feet. Exemption No. 2528, as amended, will expire on March 31, 1991.

Docket No.: 25659
Petitioner: Eastern Air Charter, Inc.
Sections of the FAR affected: 14 CFR 91.511(a)(4) and 135.165(b)(5), (b)(6), and (b)(7)
Description of relief sought: To extend Exemption No. 5982, which allows petitioner to operate its Cessna Citation CE–500, registration No. N305B, in extended overwater operations with only one operative long-range navigational system and one operative high-frequency communication system.

Docket No.: 26340
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 121.391(d) and 121.311(f)
Description of relief sought: To extent Exemption No. 4298, as amended, which allows required flight attendant(s) to be located at the midcabin flight attendant station during takeoff and landing on B–767 aircraft operated by petitioner's member airlines and other similarly situated Part 121 certificate holders who may apply for approval from their Principal Operations Inspector. Exemption No. 4298, as amended, will expire on March 31, 1991.

Docket No.: 26356
Petitioner: Allied-Signal Aerospace Company
Sections of the FAR affected: 14 CFR 21.325(b)
Description of relief sought: To allow the issuance of a U.S. export airworthiness approval for Gas Turbine Auxiliary Power Units (and parts for such power units) that are manufactured and produced in Germany under an extension of Garrett Auxiliary Power Division U.S. Technical Standard order (TSO) C77a authorization.

Docket No.: 26358
Petitioner: Empire Airlines
Sections of the FAR affected: 14 CFR 121.547(c)
Description of relief sought: To allow petitioner to carry Federal Express personnel who have the responsibility to observe and monitor cargo operations in the jumpseat of its leased Fokker Mark 500 series F–27 aircraft that are not equipped with seats in the passenger compartment.

Dispositions of Petitions

Docket No.: 21789
Petitioner: Air Transport Association of America
Sections of the FAR affected: 14 CFR 61.49
Descriptions of relief sought/disposition: To extend Exemption No. 3474, as amended, which permits the airman employees of the petitioner's member airlines and similarly situated part 121 certificate holders to apply for retesting without waiting 30 days after a second (or subsequent) failure of the written or flight test, provided that a part 121-authorized instructor has given that applicant additional flight or ground instruction, as appropriate, and finds that applicant competent to pass the test. *Partial Grant, October 30, 1990, Exemption No. 3474E*

Docket No.: 26138
Petitioner: Air Berlin, Inc.
Sections of the FAR affected/disposition: 14 CFR 121.61(a)(1) and (a)(2)
Descriptions of relief sought/disposition: To allow Captain Gilbert Marriner, employed by the petitioner, to assume the duties of Director of Operations without having the required 3 years of experience. *Denial, October 29, 1990, Exemption No. 5247.*

Docket No.: 26353
Petitioner: British Aerospace Commercial Aircraft Limited/Air Wisconsin
Sections of the FAR Affected: 14 CFR 121.312(a)(2)
Description of relief sought/disposition: To allow operation of three airplanes that do not fully comply with the heat release and smoke density requirements or interior materials as specified in § 121.312(a)(2). The exemption would allow the operation of three aiplanes, whose dates of manufacture are after August 20, 1990, with certain interior components that do not comply with the heat release and smoke emission requirements of § 121.312(a)(2). *Grant, October 12, 1990, Exemption No. 5243*

[FR Doc. 90–28099 Filed 11–15–90; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 147, Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C., appendix I), notice is hereby given for the thirty-fourth meeting of RTCA Special Committee 147 on Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment to be held December 11–13, 1990, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington DC, 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review of meeting agenda; (3) Approval of minutes of the thirty-third meeting held on August 14–15, 1990; (4) TCAS program status reports; (a) Manufacturers update; (b) FAA TCAS Program; (c) TCAS Transition Program; (d) TCAS III; (5) Reports of Working Group activities; (a) Pilot Working Group; (b) Requirements Working Group; (6) Review of EUROCAE Working Group 34 activities; (7) Report of RTCA Special Committee 142 (Mode S) activities; (8) Review of new trouble reports or proposed modifications to TCAS II Logic; (9) Other business; (10) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 9, 1990.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 90–27008 Filed 11–15–90; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C., appendix I), notice is hereby given for the meeting of the Executive Committee with the International Associates to be held December 5, 1990, at Loews L'Enfant Plaza Hotel, Quorum Room, 480 L'Enfant Plaza, SW., Washington DC, 20024, commencing at 2:15 p.m.

The agenda for this meeting is as follows: (1) Chairman's remarks and introductions; (2) Approval of the minutes of meeting held November 16, 1990; (3) Executive Director's report; (4) Special Committee activities report; (5) Consideration of proposals to establish new Special Committees; (6) Report on EUROCAE Working Group activities; (7) Comments and reports by International Associates; (8) Other business; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW. suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 9, 1990.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 90–27009 Filed 11–15–90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

November 9, 1990.

The Department of Treasure has submitted the following public

information collection requirement(s) OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Office, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0019
Form Number: ATF Form 6A (5330.3C)
Type of Review: Extension
Title: Release and Receipt of Imported Firearms, Ammunition and Implements of War
Description: This information collection is needed to verify importation of firearms, ammunition and implements of war. ATF Form 6A is completed by Federal firearms licensees, active duty military members, nonresident U.S. citizens returning to the U.S., and aliens immigrating to the United States.
Respondents: Individuals or households, businesses or other for-profit, small businesses or organizations
Estimated Number of Respondents: 20,000
Estimated Burden Hours Per Response: 24 minutes
Frequency of Response: On occasion
Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Department Reports Management Officer.

[FR Doc. 90-27012 Filed 11-15-90; 8:45 am]
BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

November 9, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0128.
Form Number: IRS Form 1120-L.
Type of Review: Revision.
Title: U.S. Life Insurance Company Income Tax Return.
Description: Life insurance companies are required to file an annual return of income and compute and pay the tax due. The data is used to insure that companies have correctly reported taxable income and paid the correct tax.
Respondents: Businesses of other for-profit.
Estimated Number of Respondents: 2,440.
Estimated Burden Hours Per Respondent:
Recordkeeping—75 hours, 20 minutes.
Learning about the law or the form—23 hours, 53 minutes.
Preparing the form—37 hours, 20 minutes.
Copying, assembling, and sending the form to IRS—3 hours, 13 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 341,039 hours.
OMB Number: 1545-1027.
Form Number: IRS Form 1120-PC.
Type of Review: Revision.
Title: U.S. Property and Casualty Insurance Company Income Tax Return.
Description: Property and casualty insurance companies are required to file an annual return of income and pay the tax due. The data is used to insure that companies have correctly reported income and paid the correct tax.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 7,500.
Estimated Burden Hours Per Respondent:
Recordkeeping—106 hours, 25 minutes.
Learning about the law or the form—33 hours, 19 minutes.
Preparing the form—54 hours, 12 minutes.
Copying, assembling, and sending the form to IRS—5 hours, 5 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1,492,725 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 90-27015 Filed 11-15-90; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

November 9, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Due to the short deadline imposed by Congress on November 9, 1990, the Department requested an emergency approval by the Office of Management and Budget by November 14, 1990, to allow time to deliver printed forms and instructions to dealers so that they may insure the correct payment of the floor stocks tax which goes into effect January 1, 1991.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: New
Forms Number: ATF F 5000.28
Type of Review: New collection
Title: Floor Stocks Tax Return (90F-269P) Recordkeeping and Reporting Requirements
Description: The Omnibus Budget Reconciliation Act of 1990, raises the excise tax on alcoholic beverages, tobacco products, and perfume containing ethyl alcohol. The Act also imposes a floor stocks tax affecting wholesale and retail dealers in these commodities as well as proprietors of producing/warehouse facilities. AFT F 5000.28 and these regulations implement the law and are necessary to protect the revenue
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 500,000

Estimated Burden Hours Per Response/ Recordkeeping: 5 hrs., 18 mins
Frequency of Response: Taken Jan. 91 and Jan. 93 (Cigarettes)
Estimated Total Recordkeeping/ Reporting Burden: 2,650,000 hours
Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Report, Management Officer.

BILLING CODE 4810-31-M

DEPARTMENT OF THE TREASURY - BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

FLOOR STOCKS TAX RETURN

(See Instructions)

DRAFT

SECTION I - TAXPAYER IDENTIFYING INFORMATION

1. NAME AND ADDRESS:

2. TAXPAYER IDENTIFICATION NUMBER:

3. NUMBER OF LOCATIONS COVERED BY THIS RETURN:

SECTION II - EXEMPTIONS (Check the appropriate block(s))

4. ☐ I am not engaged in a business involving DISTILLED SPIRITS, WINE, BEER, IMPORTED PERFUME OR CIGARETTES liable for floor stocks tax. Do not complete Section III or IV, if you checked this block. Complete only Section V (Items 18,19 and 20).

5. ☐ The total (DISTILLED SPIRITS, WINE, BEER AND IMPORTED PERFUME) held by me, on January 1, 1991, does not exceed 500 wine gallons (standard U.S. gallons). Do not complete items 7 through 10 of Section III if you checked this block.

6. ☐ The total large and small (CIGARETTES) held by me, on January 1, 1991, does not exceed 30,000 cigarettes. Do not complete items 11 through 13 of Section III if you checked this block.

SECTION III - CALCULATION OF TAXES

Compute tax in column (f) by multiplying inventory total, column (b), by rate of tax in column (c) minus any tax credits shown in column (e).

ALCOHOL

ARTICLE (a)	INVENTORY TOTAL (See Instructions) (b)	FLOOR STOCKS TAX RATE (c)	COMPUTED TAX (d)	TAX CREDIT (See Instructions) (e)	ADJUSTED TAX ((d)minus(e)) (f)
7. DISTILLED SPIRITS (Report in Proof Gallons)		$1.00			
8. WINE (Report in Wine Gallons)		$.90			
9. BEER (Report in Barrels)		$9.00			
10. IMPORTED PERFUME (Report in Wine Gallons)		$1.00			
CIGARETTES					
11. SMALL CIGARETTES (Class A) (All Standard Sizes including 100mm and 120mm)		$2. Per Thousand .002 x Column (b)			
12. LARGE CIGARETTES (Class B) (Weighing More Than 3 Pounds Per Thousand)		$4.20 Per Thousand .0042 x Column (b)			
13. TOTAL COMPUTED CIGARETTE TAX (Add Lines 11(d) and 12(d)) →					

SECTION IV - TAX AND PAYMENT SUMMARY

14. TOTAL TAX DUE (Lines 7(f) through 13(f)) →

15. METHOD OF PAYMENT → ☐ EFT ☐ CHECK ☐ MONEY ORDER ☐ OTHER (Specify)

MAKE CHECK OR MONEY ORDER PAYABLE TO "BUREAU OF ALCOHOL, TOBACCO AND FIREARMS." WRITE YOUR TAXPAYER IDENTIFICATION NUMBER ON THE CHECK AND SEND IT ALONG WITH THE TAX RETURN IN THE RETURN ENVELOPE, OR ADDRESS ENVELOPE TO BUREAU OF ATF, P.O. BOX 371987, PITTSBURGH, PA 15250-7987.

16. OFFICIAL USE ONLY	PF	FP	I	
17. OFFICIAL USE ONLY				

SECTION V - TAXPAYER CERTIFICATION

Under penalties of perjury, I declare that I have examined this return (including any supporting inventory records and accompanying statements) and to the best of my knowledge and belief it is true, correct, complete, and includes all tax liabilities required by law or regulations to be reported

18. SIGNATURE	19. TITLE	20. DATE

ATF F 5000.28 (12-90)

INSTRUCTIONS

Section I — Taxpayer Identifying Information

Items 1 and 2. Verify and correct all pre-printed information. If you receive a blank tax return, enter your complete business name, address, and ZIP code in Item 1. Enter your Employer Identification Number (EIN) in Item 2. If you do not have an EIN, enter your Social Security Number (SSN).

Item 3. Specify the number of locations covered by this return. You may file a separate return for each place of business or a consolidated return covering multiple locations. Enter the number "1" if the return covers only one location.

Section II — Exemptions

Items 4 through 6. Check the appropriate box(es) if you meet any of the exemptions listed.

Section III — Calculation of Taxes

Items 7 through 10. Enter your inventory totals for each product on the appropriate line in Column (b). Multiply Column (b) by the tax rate in Column (c) and enter the result in Column (d). In Column (e) enter any tax credits allowed (see detailed instructions). Subtract the tax credit and enter the adjusted tax in Column (f).

The tax credits mentioned above apply to dealers and producers liable for floor stocks tax. Dealers and producers may be eligible for a tax credit of $240 for distilled spirits, $270 for wine and $87 for beer. Small domestic wine producers may also be eligible to take a tax credit based on their 1990 production and removals. Refer to the supplemental instructions for the restrictions which apply to these credits.

Items 11 through 13. Enter inventory totals in Column (b). Multiply Column (b) by the tax rate in Column (c) and enter the result in Column (d). Add Items 11 and 12, Column (d), and enter total in Item 13, Column (d). Subtract the $60 tax credit and enter the adjusted tax in Column (f).

Section IV — Tax and Payment Summary

Item 14. Enter the total amount of tax due in Item 14 column (f). This amount is the total of Items 7(f) through 13(f).

Item 15. Check the appropriate box for the method of payment.

Section V — Taxpayer Certification

Items 18 through 20. Sign the tax return in Item 18 and enter the title of the signing official in Item 19. Enter the date the return is signed in Item 20. The person signing the tax return must be authorized to act on behalf of the business. Agents signing on behalf of a business must have a power of attorney on file with ATF or may attach a copy with the tax return.

Mailing. Use the enclosed pall-addressed envelope to submit the return and payment, or mail to:

Bureau of Alcohol, Tobacco and Firearms
P.O. Box 371987
Pittsburgh, PA 15250-7987

This floor stocks tax return is not a special tax return. File each return and payment in the separate envelopes provided.

Correspondence. Do not include letters or inquiries with your tax return. Send letters and inquiries directly to your ATF regional office listed in the supplemental instructions.

Electronic Funds Transfer (EFT). Submit your floor stocks tax payment by EFT if you currently pay your Federal excise taxes by EFT.

Retention of Records. Keep your inventory sheets and other supporting records available for inspection by ATF officers for a period of 3 years from the date you file your return. It is also recommended that you maintain a copy of this tax return for your records.

Inspection Authority. Whenever it is necessary to establish, verify, or investigate floor stocks tax liabilities, ATF officers are authorized by 26 U.S.C. Section 7602 and 7606 to:

(a) Examine any books, records, or other data which may be relevant to an investigation of floor stocks tax, and

(b) Enter premises where articles subject to the floor stocks tax are stored and inventory or examine these articles, and

(c) Issue summonses compelling the production of books of account or other data, or the appearance of appropriate persons.

Penalties. Civil and criminal penalties are imposed for failure to file, failure to pay, failure to allow ATF officers access to premises where taxable articles are stored, failure to furnish officers access to records pertinent to tax liabilities, or filing a fraudulent return.

PAPERWORK REDUCTION ACT NOTICE

This request is in accordance with the Paperwork Reduction Act of 1980. The purpose of this information is to identify taxpayers and the amount of tax due for each tax return. The information is used by the Government to ensure that the correct tax was determined and paid. This information is mandated by Public Law 101-508.

5.3

The estimated average burden associated with this collection is / hours per respondent or recordkeeper depending on individual circumstances. The time will vary widely depending on inventory.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Reports Management Officer, Information Programs Branch, Room 7011, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226; AND the Office of Management and Budget, Paperwork Reduction Project (1512-), Washington, DC 20503

ATF F 5000.28

[FR Doc. 90-27014 Filed 11-15-90; 8:45 am]
BILLING CODE 4810-31-C

Office of Thrift Supervision

Florida Federal Savings, F.S.B.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Florida Federal Savings, F.S.B., St. Petersburg, Florida, on November 9, 1990.

Dated: November 9, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-27022 Filed 11-15-90; 8:45 am]

BILLING CODE 6720-01-M

Louisiana Savings Bank, F.S.B.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Louisiana Savings Bank, F.S.B., Metairie, Louisiana, on November 9, 1990.

Dated: November 9, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-27023 Filed 11-15-90; 8:45 am]

BILLING CODE 6720-01-M

Colonial Savings and Loan Association, F.A.; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) and of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Colonial Savings and Loan Association, F.A., Cape Girardeau, Missouri, Docket No. 8737, with the Resolution Trust Corporation as sole Receiver for the Association on November 9, 1990.

Dated: November 9, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-27017 Filed 11-15-90; 8:45 am]

BILLING CODE 6720-01-M

Florida Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Florida Federal Savings Bank, St. Petersburg, Florida, Docket No. 1943, on November 9, 1990.

Dated: November 9, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-27024 Filed 11-15-90; 8:45 am]

BILLING CODE 6720-01-M

Home Federal Savings Bank of Worcester; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Home Federal Savings Bank of Worcester, Worcester, Massachusetts, Docket No. 8871, with the Resolution Trust Corporation as sole Receiver for the Association on November 9, 1990.

Dated: November 9, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-27018 Filed 11-15-90; 8:45 am]

BILLING CODE 6720-01-M

Louisiana Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Louisiana Federal Savings Bank, Metairie, Louisiana, Docket No. 8031, on November 9, 1990.

Dated: November 9, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-27025 Filed 11-15-90; 8:45 am]

BILLING CODE 6720-01-M

Valley Savings, A Federal Savings and Loan Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Valley Savings, A Federal Savings and Loan Association, Hutchinson, Kansas, Docket No. 8652, with the Resolution Trust Corporation as sole Receiver for the Association on November 9, 1990.

Dated: November 9, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-27019 Filed 11-15-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-63: OTS No. 0846]

Davidson Federal Savings Bank, Lexington, NC; Final Action; Approval of Conversion Application

Notice is hereby given that on November 2, 1990, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of Davidson Federal Savings Bank, Lexington, North Carolina for permission to convert to the stock form of organization. Copies of the applications are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

By the Office of Thrift Supervision.

Dated November 7, 1990.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-27020 Filed 11-15-90; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OBM Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer December 17, 1990.

Dated: November 8, 1990.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Reinstatement

1. Veterans Benefits Administration.
2. Application for Dependency and Indemnity Compensation or Death Pension by a Surviving Spouse or Child (Including Accrued Benefits and Death Compensation, where Applicable).
3. VA Form 21-534.
4. This form is used by claimants to file an application for benefits subsequent to the death of the veteran. The information is used to determine the claimant's eligibility for dependency and indemnity compensation benefits.
5. On occasion.
6. Individuals or households.
7. 162,720 responses.
8. 1¼ hour.
9. Not applicable.

[FR Doc. 90-28986 Filed 11-15-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 222
Friday, November 16, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Tuesday, November 20, 1990.

PLACE: Room 410, 1825 K Street, NW., Washington, DC 20006.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Oral Argument before the Commission in *Montfort of Colorado, Inc.*, OSHRC Docket No. 87-1220.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller, (202) 634-4015.

This notice of meeting is published pursuant to the Government in the Sunshine Act (Pub.L. 94-409) 5 U.S.C. 552b.

Dated: November 13, 1990.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 90-27152 Filed 11-14-90; 10:50 am]

BILLING CODE 7600-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of November 19, 1990.

A closed meeting will be held on Tuesday, November 20, 1990, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 20, 1990, at 2:30 p.m., will be:

Litigation matter.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Regulatory matter bearing enforcement implication.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Kincaid at (202) 272-2000.

Dated: November 14, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-27240 Filed 11-14-90; 4:04 pm]

BILLING CODE 8010-01-M

federal register

Friday
November 16, 1990

Part II

Environmental Protection Agency

40 CFR Parts 122, 123, and 124
National Pollutant Discharge Elimination System Permit Application Regulations for Storm Water Discharges; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, and 124

[FRL-3834-7]

RIN 2040-AA79

National Pollutant Discharge Elimination System Permit Application Regulations for Storm Water Discharges

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's final rule begins to implement section 402(p) of the Clean Water Act (CWA) (added by section 405 of the Water Quality Act of 1987 (WQA)), which requires the Environmental Protection Agency (EPA) to establish regulations setting forth National Pollutant Discharge Elimination System (NPDES) permit application requirements for: storm water discharges associated with industrial activity; discharges from a municipal separate storm sewer system serving a population of 250,000 or more; and discharges from municipal separate storm sewer systems serving a population of 100,000 or more, but less than 250,000.

Today's rule also clarifies the requirements of section 401 of the WQA, which amended CWA section 402(1)(2) to provide that NPDES permits shall not be required for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of such operations. This rule sets forth NPDES permit application requirements addressing storm water discharges associated with industrial activity and storm water discharges from large and medium municipal separate storm sewer systems.

DATES: This final rule becomes effective December 17, 1990. In accordance with 40 CFR 23.2, this rule shall be considered final for purposes of judicial review on November 30, 1990, at 1 p.m. eastern daylight time. The public record is located at EPA Headquarters, EPA Public Information Reference Unit, room 2402, 401 M Street SW., Washington DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information on the rule contact: Thomas J. Seaton, Kevin Weiss, or Michael Mitchell Office of Water Enforcement and Permits (EN-336), United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-9518.

SUPPLEMENTARY INFORMATION:

I. Background and Water Quality Concerns
II. Water Quality Act of 1987
III. Remand of 1984 Regulations
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V. Consent Decree of October 20, 1989
VI. Today's Final Rule and Response to Comments
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8. Application Requirements for Construction Activities
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G. Municipal Separate Storm Sewer Systems
1. Municipal Separate Storm Sewers
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4. Large and Medium Municipal Storm Sewer Systems
a. Overview of proposed options and comments
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3. Major Outfalls
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a. Screening Analysis for Illicit Discharges
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7. Storm Water Quality Management Plans
a. Measures to Reduce Pollutants in Runoff from Commercial and Residential Areas
b. Measures for Illicit Discharges and Improper Disposal
c. Measures to Reduce Pollutants in Storm Water Discharges Associated with Industrial Activity Through Municipal Systems
d. Measures to Reduce Pollutants in Runoff from Construction Sites Through Municipal Systems
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J. Application Deadlines
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SUPPLEMENTARY INFORMATION:

I. Background and Water Quality Concerns

The 1972 amendments to the Federal Water Pollution Control Act (referred to as the Clean Water Act or CWA), prohibit the discharge of any pollutant to navigable waters from a point source unless the discharge is authorized by an NPDES permit. Efforts to improve water quality under the NPDES program traditionally and primarily focused on reducing pollutants in discharges of industrial process wastewater and municipal sewage. This program emphasis developed for a number of reasons. At the onset of the program in 1972, many sources of industrial process wastewater and municipal sewage were not adequately controlled and represented pressing environmental problems. In addition, sewage outfalls and industrial process discharges were easily identified as responsible for poor, often drastically degraded, water quality conditions. However, as pollution control measures were initially

developed for these discharges, it became evident that more diffuse sources (occurring over a wide area) of water pollution, such as agricultural and urban runoff were also major causes of water quality problems. Some diffuse sources of water pollution, such as agricultural storm water discharges and irrigation return flows, are statutorily exempted from the NPDES program.

Since enactment of the 1972 amendments to the CWA, considering the rise of economic activity and population, significant progress in controlling water pollution has been made, particularly with regard to industrial process wastewater and municipal sewage. Expenditures by EPA, the States, and local governments to construct and upgrade sewage treatment facilities have substantially increased the population served by higher levels of treatment. Backlogs of expired permits for industrial process wastewater discharges have been reduced. Continued improvements are expected for these discharges as the NPDES program continues to place increasing emphasis on water quality-based pollution controls, especially for toxic pollutants.

Although assessments of water quality are difficult to perform and verify, several national assessments of water quality are available. For the purpose of these assessments, urban runoff was considered to be a diffuse source or nonpoint source pollution. From a legal standpoint, however, most urban runoff is discharged through conveyances such as separate storm sewers or other conveyances which are point sources under the CWA. These discharges are subject to the NPDES program. The "National Water Quality Inventory, 1988 Report to Congress" provides a general assessment of water quality based on biennial reports submitted by the States under section 305(b) of the CWA. In preparing the section 305(b) Reports, the States were asked to indicate the fraction of the States' waters that were assessed, as well as the fraction of the States' waters that were fully supporting, partly supporting, or not supporting designated uses. The Report indicates that of the rivers, lakes, and estuaries that were assessed by States (approximately one-fifth of stream miles, one-third of lake acres and one-half of estuarine waters), roughly 70% to 75% are supporting the uses for which they are designated. For waters with use impairments, States were asked to determine impacts due to diffuse sources (agricultural and urban runoff and other sources), municipal sewage, industrial process wastewaters, combined sewer overflows, and natural and other sources, then combine impacts to arrive at estimates of the relative percentage of State waters affected by each source. In this manner, the relative importance of the various sources of pollution that are causing use impairments was assessed and weighted national averages were calculated. Based on 37 States that provided information on sources of pollution, industrial process wastewaters were cited as the cause of nonsupport for 7.5% of rivers and streams, 10% of lakes, and 6% of estuaries. Municipal sewage was the cause of nonsupport for 13% of rivers and streams, 5% lakes, 46% estuaries, 41% of the Great Lake shoreline, and 11% of coastal waters. The Assessment concluded that pollution from diffuse sources, such as runoff from agricultural, urban areas, construction sites, land disposal and resource extraction, is cited by the States as the leading cause of water quality impairment. These sources appear to be increasingly important contributors of use impairment as discharges of industrial process wastewaters and municipal sewage plants come under increased control and as intensified data collection efforts provide additional information. Some examples of diffuse sources cited as causing use impairment are: for rivers and streams, 9% from separate storm sewers, 6% from construction and 13% from resource extraction; for lakes, 28% from separate storm sewers and 26% from land disposal; for the Great Lakes shoreline, 10% from separate storm sewers, 34% from resource extraction, and 82% from land disposal; for estuaries, 28% from separate storm sewers and 27% from land disposal; and for coastal areas, 20% from separate storm sewers and 29% from land disposal.

The States conducted a more comprehensive study of diffuse pollution sources under the sponsorship of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) and EPA. The study resulted in the report "America's Clean Water—The States' Nonpoint Source Assessment, 1985" which indicated that 38 States reported urban runoff as a major cause of beneficial use impairment. In addition, 21 States reported construction site runoff as a major cause of use impairment.

To provide a better understanding of the nature of urban runoff from commercial and residential areas, from 1978 through 1983, EPA provided funding and guidance to the Nationwide Urban Runoff Program (NURP). The NURP included 28 projects across the Nation, conducted separately at the local level but centrally reviewed, coordinated, and guided.

One focus of the NURP was to characterize the water quality of discharges from separate storm sewers which drain residential, commercial, and light industrial (industrial parks) sites. The majority of samples collected in the study were analyzed for eight conventional pollutants and three metals. Data collected under the NURP indicated that on an annual loading basis, suspended solids in discharges from separate storm sewers draining runoff from residential, commercial and light industrial areas are around an order of magnitude greater than solids in discharges from municipal secondary sewage treatment plants. In addition, the study indicated that annual loadings of chemical oxygen demand (COD) are comparable in magnitude to effluent from secondary sewage treatment plants. When analyzing annual loadings associated with urban runoff, it is important to recognize that discharges of urban runoff are highly intermittent, and that the short-term loadings associated with individual events will be high and may have shockloading effects on receiving water, such as low dissolved oxygen levels. NURP data also showed that fecal coliform counts in urban runoff are typically in the tens to hundreds of thousands per 100 ml of runoff during warm weather conditions, although the study suggested that fecal coliform may not be the most appropriate indicator organism for identifying potential health risks in storm water runoff. Although NURP did not evaluate oil and grease, other studies have demonstrated that urban runoff is an extremely important source of oil pollution to receiving waters, with hydrocarbon levels in urban runoff typically being reported at a range of 2 to 15 mg/l. These hydrocarbons tend to accumulate in bottom sediments where they may persist for long periods of time and exert adverse impacts on benthic organisms.

A portion of the NURP study involved monitoring 120 priority pollutants in storm water discharges from lands used for residential, commercial and light industrial activities. Seventy-seven priority pollutants were detected in samples of storm water discharges from residential, commercial and light industrial lands taken during the NURP study, including 14 inorganic and 63 organic pollutants. Table A-1 shows the priority pollutants which were detected in at least ten percent of the discharge samples which were sampled for priority pollutants.

BEST COPY AVAILABLE

TABLE A-1.— PRIORITY POLLUTANTS DETECTED IN AT LEAST 10% OF NURP SAMPLES

[In percent]

	Frequency of detection
Metals and inorganics:	
Antimony	13
Arsenic	52
Beryllium	12
Cadmium	48
Chromium	56
Copper	91
Cyanides	23
Lead	94
Nickel	43
Selenium	11
Zinc	94
Pesticides:	
Alpha-hexachlorocyclohexane	20
Alpha-endosulfan	19
Chlordane	17
Lindane	15
Halogenated aliphatics:	
Methane, dichloro-	11
Phenols and cresols:	
Phenol	14
Phenol, pentachloro-	19
Phenol, 4-nitro	10
Phthalate esters:	
Phthalate, bis(2-ethylhexyl)	22
Polycyclic aromatic hydrocarbons:	
Chrysene	10
Fluoranthene	16
Phenanthrene	12
Pyrene	15

The NURP data also showed a significant number of these samples exceeded various EPA freshwater water quality criteria.

The NURP study provides insight on what can be considered background levels of pollutants for urban runoff, as the study focused primarily on monitoring runoff from residential, commercial and light industrial areas. However, NURP concluded that the quality of urban runoff can be adversely impacted by several sources of pollutants that were not directly evaluated in the study and are generally not reflected in the NURP data, including illicit connections, construction site runoff, industrial site runoff and illegal dumping.

Other studies have shown that many storm sewers contain illicit discharges of non-storm water and that large amounts of wastes, particularly used oils, are improperly disposed in storm sewers. Removal of these discharges present opportunities for dramatic improvements in the quality of storm water discharges. Storm water discharges from industrial facilities may contain toxics and conventional pollutants when material management practices allow exposure to storm water, in addition to wastes from illicit connections and improperly disposed wastes.

In some municipalities, illicit connections of sanitary, commercial and industrial discharges to storm sewer systems have had a significant impact on the water quality of receiving waters. Although the NURP study did not emphasize the identification of illicit connections to storm sewers (other than to assure that monitoring sites used in the study were free from sanitary sewage contamination), the study concluded that illicit connections can result in high bacterial counts and dangers to public health. The study also noted that removing such discharges presented opportunities for dramatic improvements in the quality of urban storm water discharges.

Studies have shown that illicit connections to storm sewers can create severe, wide-spread contamination problems. For example, the Huron River Pollution Abatement Program inspected 660 businesses, homes and other buildings located in Washtenaw County, Michigan and identified 14% of the buildings as having improper storm drain connections. Illicit discharges were detected at a higher rate of 60% for automobile related businesses, including service stations, automobile dealerships, car washes, body shops and light industrial facilities. While some of the problems discovered in this study were the result of improper plumbing or illegal connections, a majority were approved connections at the time they were built.

Intensive construction activities may result in severe localized impacts on water quality because of high unit loads of pollutants, primarily sediments. Construction sites can also generate other pollutants such as phosphorus and nitrogen from fertilizer, pesticides, petroleum products, construction chemicals and solid wastes. These materials can be toxic to aquatic organisms and degrade water for drinking and water-contact recreation. Sediment loadings rates from construction sites are typically 10 to 20 times that of agricultural lands, with runoff rates as high as 100 times that of agricultural lands, and typically 1,000 to 2,000 times that of forest lands. Even a small amount of construction may have a significant negative impact on water quality in localized areas. Over a short period of time, construction sites can contribute more sediment to streams than was previously deposited over several decades.

II. Water Quality Act of 1987

The WQA contains three provisions which specifically address storm water discharges. The central WQA provision governing storm water discharges is section 405, which adds section 402(p) to the CWA. Section 402(p)(1) provides that EPA or NPDES States cannot require a permit for certain storm water discharges until October 1, 1992, except: for storm water discharges listed under section 402(p)(2). Section 402(p)(2) lists five types of storm water discharges which are required to obtain a permit prior to October 1, 1992:

(A) A discharge with respect to which a permit has been issued prior to February 4, 1987;

(B) A discharge associated with industrial activity;

(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more;

(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more, but less than 250,000; or

(E) A discharge for which the Administrator or the State, as the case may be, determines that the storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the United States.

Section 402(p)(4)(A) requires EPA to promulgate final regulations governing storm water permit application requirements for storm water discharges associated with industrial activity and discharges from large municipal separate storm sewer systems (systems serving a population of 250,000 or more), "no later than two years" after the date of enactment (*i.e.*, no later than February 4, 1989). Section 402(p)(4)(B) also requires EPA to promulgate final regulations governing storm water permit application requirements for discharges from medium municipal separate storm sewer systems (systems serving a population of 100,000 or more but less than 250,000) "no later than four years" after enactment (*i.e.*, no later than February 4, 1991).

In addition, section 402(p)(4) provides that permit applications for storm water discharges associated with industrial activity and discharges from large municipal separate storm sewer systems "shall be filed no later than three years" after the date of enactment of the WQA (*i.e.*, no later than February 4, 1990). Permit applications for discharges from medium municipal systems must be filed "no later than five years" after enactment (*i.e.*, no later than February 4, 1992).

The WQA clarified and amended the requirements for permits for storm water discharges in the new CWA section 402(p)(3). The Act clarified that permits for discharges associated with industrial activity must meet all of the applicable provisions of section 402 and section 301 including technology and water quality based standards. However, the new Act makes significant changes to the permit standards for discharges from municipal storm sewers. Section 402(p)(3)(B) provides that permits for such discharges:

(i) May be issued on a system- or jurisdiction-wide basis;

(ii) Shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers; and

(iii) Shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

These changes are discussed in more detail later in today's rule.

The EPA, in consultation with the States, is required to conduct two studies on storm water discharges that are in the class of discharges for which EPA and NPDES States cannot require permits prior to October 1, 1992. The first study will identify those storm water discharges or classes of storm water discharges for which permits are not required prior to October 1, 1992, and determine, to the maximum extent practicable, the nature and extent of pollutants in such discharges. The second study is for the purpose of establishing procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality. Based on the two studies the EPA, in consultation with State and local officials, is required to issue regulations no later than October 1, 1992, which designate additional storm water discharges to be regulated to protect water quality and establish a comprehensive program to regulate such designated sources. This program must, at a minimum, (A) Establish priorities, (B) establish requirements for State storm water management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

Section 401 of the WQA amends section 402(1)(2) of the CWA to provide that the EPA shall not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities if the storm water discharge is not contaminated by contact with, or does not come into contact with, any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of such operations.

Section 503 of the WQA amends section 502(14) of the CWA to exclude agricultural storm water discharges from the definition of point source.

III. Remand of 1984 Regulations

On December 4, 1987, the United States Court of Appeals for the District of Columbia Circuit vacated 40 CFR 122.26, (as promulgated on September 26, 1984, 49 FR 37998, September 26, 1984), and remanded the regulations to EPA for further rulemaking (*NRDC* v. *EPA*, No. 80-1607). EPA had requested the remand because of significant changes made by the storm water provisions of the WQA. The effect of the decision was to invalidate the storm water discharge regulations then found at § 122.26.

Storm water discharges which had been issued an NPDES permit prior to February 4, 1987, were not affected by the Court remand or the February 12, 1988, rule implementing the court order (53 FR 4157). (*See* section 402(p)(2)(A) of the CWA.) Similarly, the remand did not affect the authority of EPA or an NPDES State to require a permit for any storm water discharge (except an agricultural storm water discharge) designated under section 402(p)(2)(E) of the CWA. The notice of the remand clarified that such designated discharges meet the regulatory definition of point source found at 40 CFR 122.2 and that EPA or an NPDES State can rely on the statutory authority and require the filing of an application (Form 1 and Form 2C) for an NPDES permit with respect to such discharges on a case-by-case basis.

IV. Codification Rule and Case-by-Case Designations

Codification Rule

On January 4, 1989, (54 FR 255), EPA published a final rule which codified numerous provisions of the WQA into EPA regulations. The codification rule included several provisions dealing with storm water discharges. The codification rule promulgated the language found at section 402(p) (1) and (2) of the amended Clean Water Act at 40 CFR 122.26(a)(1). In addition, the codification rule promulgated the language of Section 503 of the WQA which exempted agricultural storm water discharges from the definition of point source at 40 CFR 122.2, and section 401 of the WQA addressing uncontaminated storm water discharges from mining or oil and gas operations at 40 CFR 122.26(a)(2).

EPA also codified the statutory authority of section 402(p)(2)(E) of the CWA for the Administrator or the State Director, as the case may be, to designate storm water discharges for a permit on a case-by-case basis at 40 CFR 122.26(a)(1)(v).

Case by Case Designations

Section 402(p)(2)(E) of the CWA authorizes case-by-case designations of storm water discharges for immediate permitting if the Administrator or the State Director determines that the storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

In determining that a storm water discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States for the purpose of a designation under section 402(p)(2)(E), the legislative history for the provision provides that "EPA or the State should use any available water quality or sampling data to determine whether the latter two criteria (contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States) are met, and should require additional sampling as necessary to determine whether or not these criteria are met." Conference Report, *Cong. Rec.* S16443 (daily ed. October 16, 1986). In accordance with this legislative history, today's rule promulgates permit application requirements for certain storm water discharges, including discharges designated on a case-by-case basis. EPA will consider a number of factors when determining whether a storm water discharge is a significant contributor of pollution to the waters of the United States. These factors include: the location of the discharge with respect to waters of the United States; the size of the discharge; the quantity and nature of the pollutants reaching waters of the United States; and any other relevant factors. Today's rule incorporates these factors at 40 CFR 122.26(a)(1)(v).

Under today's rule, case-by-case designations are made under regulatory procedures found at 40 CFR 124.52. The procedures at 40 CFR 124.52 require that whenever the Director decides that an individual permit is required, the Director shall notify the discharger in writing that the discharge requires a permit and the reasons for the decision. In addition, an application form is sent with the notice. Section 124.52 provides a 60 day period from the date of notice for submitting a permit application. Although this 60 day period may be appropriate for many designated storm water discharges, site specific factors may dictate that the Director provide

additional time for submitting a permit application. For example, due to the complexities associated with designation of a municipal separate storm sewer system for a system- or jurisdiction-wide permit, the Director may provide the applicant with additional time to submit relevant information or may require that information be submitted in several phases.

V. Consent Decree of October 20, 1989

On April 20, 1989, EPA was served notice of intent to sue by Kathy Williams *et al.* because of the Agency's failure to promulgate final storm regulations on February 4, 1989, pursuant to Section 402(p)(4) of the CWA. A suit was filed by the same party on July 20, 1989, alleging the same cause of action, to wit: the Agency's failure to promulgate regulations under section 402(p)(4) of the CWA. On October 20, 1989, EPA entered into a consent decree with Kathy Williams *et al.*, wherein the Federal District Court, District of Oregon, Southern Division, decreed that the Agency promulgate final regulations for storm water discharges identified in sections 402(p)(2) (B) and (C) of the CWA no later than July 20, 1990. *Kathy Williams et al., v. William K. Reilly, Administrator, et al.*, No. 89-6265-E (D-Ore.) In July 1990, the consent degree was amended to provide for a promulgation date of October 31. Today's rule is promulgated in compliance with the terms of the consent decree as amended.

VI. Today's Final Rule and Response to Comments

A. Overview

Section 405 of the WQA alters the regulatory approach to control pollutants in storm water discharges by adopting a phased and tiered approach. The new provision phases in permit application requirements, permit issuance deadlines and compliance with permit conditions for different categories of storm water discharges. The approach is tiered in that storm water discharges associated with industrial activity must comply with sections 301 and 402 of the CWA (requiring control of the discharge of pollutants that utilize the Best Available Technology (BAT) and the Best Conventional Pollutant Control Technology (BCT) and where necessary, water quality-based controls), but permits for discharges from municipal separate storm sewer systems must require controls to reduce the discharge of pollutants to the maximum extent practicable, and where necessary water quality-based controls, and must include a requirement to effectively prohibit non-storm water discharges into the storm sewers. Furthermore, EPA in consultation with State and local officials must develop a comprehensive program to designate and regulate other storm water discharges to protect water quality.

This final regulation establishes requirements for the storm water permit application process. It also sets forth the required components of municipal storm water quality management plans, as well as a preliminary permitting strategy for industrial activities. In implementing these regulations, EPA and the States will strive to achieve environmental results in a cost effective manner by placing high priority on pollution prevention activities, and by targeting activities based on reducing risk from particularly harmful pollutants and/or from discharges to high value waters. EPA and the States will also work with applicants to avoid cross media transfers of storm water contaminants, especially through injection to shallow wells in the Class V Underground Injection Control Program.

In addition, EPA recognizes that problems associated with storm water, combined sewer overflows (CSOs) and infiltration and inflow (I&I) are all interrelated even though they are treated somewhat differently under the law. EPA believes that it is important to begin linking these programs and activities and, because of the potential cost to local governments, to investigate the use of innovative, non-traditional approaches to reducing or preventing contamination of storm water.

The application process for developing municipal storm water management plans provides an ideal opportunity between steps 1 and 2 for considering the full range of nontraditional, preventive approaches, including municipalities, public awareness/education programs, use of vegetation and/or land conservancy practices, alternative paving materials, creative ways to eliminate I&I and illegal hook-ups, and potentials for water reuse. EPA has already announced its plans to present an award for the best creative, cost effective approaches to storm water and CSOs beginning in 1991.

This rulemaking establishes permit application requirements for classes of storm water discharges that were specifically identified in section 402(p)(2). These priority storm water discharges include storm water discharges associated with industrial activity and discharges from a municipal separate storm sewer serving a population of 100,000 or more.

This rulemaking was developed after careful consideration of 450 sets of comments, comprising over 3200 pages, that were received from a variety of industries, trade associations, municipalities, State and Federal Agencies, environmental groups, and private citizens. These comments were received during a 90-day comment period which extended from December 7, 1988, to March 7, 1989. EPA received several requests for an extension of the comment period from 30-days up to 90-days. Many arguments were advanced for an extension including: the extent and complexity of the proposal, the existence of other concurrent EPA proposals, and the need for technical evaluations of the proposal. EPA considered these comments as they were received, but declined to extend the comment period beyond 90 days. The standard comment period on proposals normally range from 30 to 60 days. In light of the statutory deadline of February 4, 1989, additional time for the comment period beyond what was already a substantially lengthened comment period would have been inappropriate. The number and extent of the comments received on this proposal indicated that interested parties had substantially adequate time to review and comment on the regulation. Furthermore, the public was invited to attend six public meetings in Washington DC, Chicago, Dallas, Oakland, Jacksonville, and Boston to present questions and comments. EPA is convinced that substantial and adequate public participation was sought and received by the Agency.

Numerous commenters have also requested that the rule be reproposed due to the extent of the proposal and the number of options and issues upon which the Agency requested comments. EPA has decided against a reproposal. The December 7, 1988, notice of proposed rulemaking was extremely detailed and thoroughly identified major issues in such a manner as to allow the public clear opportunities to comment. The comments that were received were extensive, and many provided valuable information and ideas that have been incorporated into the regulation. Accordingly, the Agency is confident it has produced a workable and rational approach to the initial regulation of storm water discharges and a regulation that reflects the experience and knowledge of the public as provided in the comments, and which was developed in accordance with the procedural requirements of the Administrative Procedures Act (APA). EPA believes that while the number of issues raised by the proposal was extensive, the number of detailed comments indicates that the public was able to understand the issues in order to comment adequately. Thus, a reproposal is unnecessary.

B. Definition of Storm Water

The December 7, 1988, notice requested comment on defining storm water as storm water runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration (other than infiltration contaminated by seepage from sanitary sewers or by other discharges) and drainage related to storm events or snow melt. This definition is consistent with the regulatory definition of "storm sewer" at 40 CFR 35.2005(b)(47) which is used in the context of grants for construction of treatment works. This definition aids in distinguishing separate storm water sewers from sanitary sewers, combined sewers, process discharge outfalls and non-storm water, non-process discharge outfalls.

The definition of "storm water" has an important bearing on the NPDES permitting scheme under the CWA. The following discusses the interrelationship of NPDES permitting requirements for storm water discharges addressed by this rule and NPDES permitting requirements for other non-storm water discharges which may be discharged via the storm sewer as a storm water discharge. Today's rule addresses permit application requirements for storm water discharges associated with industrial activity and for discharges from municipal separate storm sewer systems serving a population of 100,000 or more. Storm water discharges associated with industrial activity are to be covered by permits which contain technology-based controls based on BAT/BCT considerations or water quality-based controls, if necessary. A permit for storm water discharges from an industrial facility may also cover other non-storm water discharges from the facility. Today's rule establishes individual (Form 1 and Form 2F) and group application requirements for storm water discharges associated with industrial activity. In addition, EPA or authorized NPDES States with authorized general permit programs may issue general permits which establish alternative application or notification requirements for storm water discharges covered by the general permit(s). Where a storm water discharge associated with industrial activity is mixed with a non-storm water discharge, both discharges must be covered by an NPDES permit (this can be in the same permit or with multiple permits). Permit application requirements for these "combination" discharges are discussed later in today's notice.

Today's rule also addresses permit application requirements for discharges from municipal separate storm sewer systems serving a population of 100,000 or more. Under today's rule, appropriate municipal owners or operators of these systems must obtain NPDES permits for discharges from these systems. These permits are to establish controls to the maximum extent practicable (MEP), effectively prohibit non-storm water discharges to the municipal separate storm sewer system and, where necessary, contain applicable water quality-based controls. Where non-storm water discharges or storm water discharges associated with industrial activity discharge through a municipal separate storm sewer system (including systems serving a population of 100,000 or more as well as other systems), which ultimately discharges to a waters of the United States, such discharges through a municipal storm sewer need to be covered by an NPDES permit that is independent of the permit issued for discharges from the municipal separate storm sewer system. Today's rule defines the term "illicit discharge" to describe any discharge through a municipal separate storm sewer that is not composed entirely of storm water and that is not covered by an NPDES permit. Such illicit discharges are not authorized under the CWA. Section 402(p)(3)(B) of the CWA requires that permits for discharges from municipal separate storm sewers require the municipality to "effectively prohibit" non-storm water discharges from the municipal separate storm sewer. As discussed in more detail below, today's rule begins to implement the "effective prohibition" by requiring municipal operators of municipal separate storm sewer systems serving a population of 100,000 or more to submit a description of a program to detect and control certain non-storm water discharges to their municipal system. Ultimately, such non-storm water discharges through a municipal separate storm sewer must either be removed from the system or become subject to an NPDES permit (other than the permit for the discharge from the municipal separate storm sewer). For reasons discussed in more detail below, in general, municipalities will not be held responsible for prohibiting some specific components of discharges or flows listed below through their municipal separate storm sewer systems, even though such components may be considered non-storm water discharges, unless such discharges are specifically identified on a case-by-case basis as needing to be addressed. However, operators of such non-storm water discharges need to obtain NPDES permits for those discharges under the present framework of the CWA (rather than the municipal operator of the municipal separate storm sewer system). (Note that section 516 of the Water Quality Act of 1987 requires EPA to conduct a study of de minimis discharges of pollutants to waters of the United States and to determine the most effective and appropriate methods of regulating any such discharges.)

EPA received numerous comments on the proposed regulatory definition of storm water, many of which proposed exclusions or additions to the definition. Several commenters suggested that the definition should include or not include detention and retention reservoir releases, water line flushing, fire hydrant flushing, runoff from fire fighting, swimming pool drainage and discharge, landscape irrigation, diverted stream flows, uncontaminated pumped ground water, rising ground waters, discharges from potable water sources, uncontaminated waters from cooling towers, foundation drains, non-contact cooling water (such as HVAC or heating, ventilation and air conditioning condensation water that POTWs require to be discharged to separate storm sewers rather than sanitary sewers), irrigation water, springs, roof drains, water from crawl space pumps, footing drains, lawn watering, individual car washing, flows from riparian habitats and wetlands. Most of these comments were made with regard to the concern that these were commonly occurring discharges which did not pose significant environmental problems. It was also noted that, unless these flows are classified as storm water, permits would be required for these discharges.

In response to the comments which requested EPA to define the term "storm water" broadly to include a number of classes of discharges which are not in any way related to precipitation events, EPA believes that this rulemaking is not an appropriate forum for addressing the appropriate regulation under the NPDES program of such non-storm water discharges, even though some classes of non-storm water discharges may typically contain only minimal amounts of pollutants. Congress did not intend that the term storm water be used to describe any discharge that has a de minimis amount of pollutants, nor did it intend for section 402(p) to be used to

provide a moratorium from permitting other non-storm water discharges. Consequently, the final definition of storm water has not been expanded from what was proposed. However, as discussed in more detail later in today's notice, municipal operators of municipal separate storm sewer systems will generally not be held responsible for "effectively prohibiting" limited classes of these discharges through their municipal separate storm sewer systems.

The proposed rule included infiltration in the definition of storm water. In this context one commenter suggested that the term infiltration be defined. Infiltration is defined at 40 CFR 35.2005(b)(20) as water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections or manholes. Infiltration does not include, and is distinguished from, inflow. Another commenter urged that ground water infiltration not be classified as storm water because the chemical characteristics and contaminants of ground water will differ from surface storm water because of a longer contact period with materials in the soil and because ground water quality will not reflect current practices at the site. In today's rule, the definition of storm water excludes infiltration since pollutants in these flows will depend on a large number of factors, including interactions with soil and past land use practices at a given site. Further infiltration flows can be contaminated by sources that are not related to precipitation events, such as seepage from sanitary sewers. Accordingly the final regulatory language does not include infiltration in the definition of storm water. Such flows may be subject to appropriate permit conditions in industrial permits. As discussed in more detail below, municipal management programs must address infiltration where identified as a source of pollutants to waters of the United States.

One commenter questioned the status of discharges from detention and retention basins used to collect storm water. This regulation covers discharges of storm water associated with industrial activity and discharges from municipal separate storm sewer systems serving a population of 100,000 or more into waters of the United States. Therefore, discharges from basins that are part of a conveyance system for a storm water discharge associated with industrial activity or part of a municipal separate storm sewer system serving a population of 100,000 or more are covered by this regulation. Flows which are channeled into basins and which do not discharge into waters of the United States are not addressed by today's rule.

Several commenters requested that the term illicit connection be replaced with a term that does not connote illegal discharges or activity, because many discharges of non-storm water to municipal separate storm sewer systems occurred prior to the establishment of the NPDES program and in accordance with local or State requirements at the time of the connection. EPA disagrees that there should be a change in this terminology. The fact that these connections were at one time legal does not confer such status now. The CWA prohibits the point source discharge of non-storm water not subject to an NPDES permit through municipal separate storm sewers to waters of the United States. Thus, classifying such discharges as illicit properly identifies such discharges as being illegal.

A commenter wanted clarification of the terms "other discharges" and "drainage" that are used in the definition of "storm water." As noted above, today's rule clarifies that infiltration is not considered storm water. Thus the portion of the definition of storm water that refers to "other discharges" has also been removed. However, the term drainage has been retained. "Drainage" does not take on any meaning other than the flow of runoff into a conveyance, as the word is commonly understood.

One commenter stated that irrigation flows combined with storm water discharges should be excluded from consideration in the storm water program. The Agency would note that irrigation return flows are excluded from regulation under the NPDES program. Section 402(l)(1) states that the Administrator or the State shall not require permits for discharges composed entirely of return flows from irrigated agriculture. The legislative history of the 1977 Clean Water Act, which enacted this language, states that the word "entirely" was intended to limit the exception to only those flows which do not contain additional discharges from activities unrelated to crop production. Congressional Record Vol. 123 (1977), pg. 4360, Senate Report No. 95–370. Accordingly, a storm water discharge component, from an industrial facility for example, included in such "joint" discharges may be regulated pursuant to an NPDES permit either at the point at which the storm water flow enters or joins the irrigation flow, or where the combined flow enters waters of the United States or a municipal separate storm sewer.

Some commenters expressed concern about including street wash waters as storm water. One commenter argued including street wash waters in the definition of storm water should not be construed to eliminate the need for management practices relating to construction activities where sediment may simply wash into storm drains. EPA agrees with these points and the concerns that storm sewers may receive material that pose environmental problems if street wash waters are included in the definition. Accordingly, such discharges are no longer in the definition as proposed, and must be addressed by municipal management programs as part of the prohibition on non-storm water discharges through municipal separate storm sewer systems.

Several commenters requested that the terms discharge and point source, in the context of permits for storm water discharge, be clarified. Several commenters stated that the EPA should clarify that storm water discharge does not include "sheet flow" off of an industrial facility. EPA interprets this as request for clarification on the status of the terms "point source" and "discharge" under these regulations. In response, this rulemaking only covers storm water discharges from point sources. A point source is defined at 40 CFR 122.2 as "any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff." EPA agrees with one commenter that this definition is adequate for defining what discharges of storm water are covered by this rulemaking. EPA notes that this definition would encompass municipal separate storm sewers. In view of this comprehensive definition of point source, EPA need clarify in this rulemaking only that a storm water discharge subject to NPDES regulation does not include storm water that enters the waters of the United States via means other than a "point source." As further discussed below, storm water from an industrial facility which enters and is subsequently discharged through a municipal separate storm sewer is a "discharge associated with industrial activity" which must be covered by an individual or general permit pursuant to today's rule.

EPA would also note that individual facilities have the burden of determining whether a permit application should be submitted to address a point source discharge. Those unsure of the classification of storm water flow from a facility, should file permit applications addressing the flow, or prior to submitting the application consult permitting authorities for clarification.

One commenter stated that "point source" for this rulemaking should be defined, for the purposes of achieving better water quality, as those areas where "discharges leave the municipal [separate storm sewer] system." EPA notes in response that "point source" as currently defined will address such discharges, while keeping the definition of discharge and point source within the framework of the NPDES program, and without adding potentially confusing and ambiguous additional definitions to the regulation. If this comment is asserting that the term point source should not include discharges from sources through the municipal system, EPA disagrees. As discussed in detail below, discharges through municipal separate storm sewer systems which are not connected to an operable treatment works are discharges subject to NPDES permit requirements at (40 CFR 122.3(c)), and may properly be deemed point sources.

One industry argued that the definition of "point source" should be modified for storm water discharges so as to exclude discharges from land that is not artificially graded and which has a propensity to form channels where precipitation runs off. EPA intends to embrace the broadest possible definition of point source consistent with the legislative intent of the CWA and court interpretations to include any identifiable conveyance from which pollutants might enter the waters of the United States. In most court cases interpreting the term "point source", the term has been interpreted broadly. For example, the holding in *Sierra Club* v. *Abston Construction Co., Inc.*, 620 F.2d 41 (5th Cir. 1980) indicates that changing the surface of land or establishing grading patterns on land will result in a point source where the runoff from the site is ultimately discharged to waters of the United States:

> Simple erosion over the material surface, resulting in the discharge of water and other materials into navigable waters, does not constitute a point source discharge, absent some effort to *change the surface*, to *direct* the water flow or otherwise impede its progress * * * Gravity flow, resulting in a discharge into a navigable body of water, may be part of a point source discharge if the (discharger) at least initially collected or channeled the water and other materials. A point source of pollution may also be present where (dischargers) design spoil piles from discarded overburden such that, during periods of precipitation, erosion of spoil pile walls results in discharges into a navigable body of water by means of ditches, gullies and similar conveyances, even if the (dischargers) have done nothing beyond the mere collection of rock and other materials * * * Nothing in the Act relieves (dischargers) from liability simply because the operators did not actually construct those conveyances, so long as they are reasonably likely to be the means by which pollutants are ultimately deposited into a navigable body of water. Conveyances of pollution formed either as a result of natural erosion or by material means, and which constitute a component of a * * * drainage system, may fit the statutory definition and thereby subject the operators to liability under the Act." 620 F.2d at 45 (emphasis added).

Under this approach, point source discharges of storm water result from structures which increase the imperviousness of the ground which acts to collect runoff, with runoff being conveyed along the resulting drainage or grading patterns.

The entire thrust of today's regulation is to control pollutants that enter receiving water from storm water conveyances. It is these conveyances that will carry the largest volume of water and higher levels of pollutants. The storm water permit application process and permit conditions will address circumstances and discharges peculiar to individual facilities.

One industry commented that the definition of waters of the State under some State NPDES programs included municipal storm sewer systems. The commenter was concerned that certain industrial facilities discharging through municipal storm sewers in these states would be required to obtain an NPDES permit, despite EPA's proposal not to require permits from such facilities generally. In response, EPA notes that section 510 of the CWA, approved States are able to have stricter requirements in their NPDES program. In approved NPDES States, the definition of waters of the State controls with regard to what constitutes a discharge to a water body. However, EPA believes that this will have little impact, since, as discussed below, all industrial dischargers, including those discharging through municipal separate storm sewer systems, will be subject to general or individual NPDES permits, regardless of any additional State requirements.

One municipality commented that neither the term "point source" nor "discharge" should be used in conjunction with industrial releases into urban storm water systems because that gives the impression that such systems are navigable waters. EPA disagrees that any confusion should result from the use of these terms in this context. In this rulemaking, EPA always addresses such discharges as "discharges through municipal separate storm sewer systems" as opposed to "discharges to waters of the United States." Nonetheless, such industrial discharges through municipal storm sewer systems are subject to the requirements of today's rule, as discussed elsewhere.

One commenter desired clarification with regard to what constituted an outfall, and if an outfall could be a pipe that connected two storm water conveyances. This rulemaking defines outfall as a point of discharge into the waters of the United States, and not a conveyance which connects to Sections of municipal separate storm sewer. In response to another comment, this rulemaking only addresses discharges to waters of United States, consequently discharges to ground waters are not covered by this rulemaking (unless there is a hydrological connection between the ground water and a nearby surface water body. *See, e.g., Exxon Coro.* v. *Train*, 554 F.2d 1310, 1312 n.1 (5th Cir. 1977); *McClellan Ecological Seepage Situation* v. *Weinberger*, 707 F.Supp. 1182, 1195–96 (E.D. Cal. 1988)).

In the WQA and other places, the term "storm water" is presented as a single word. Numerous comments were received by EPA as to the appropriate spelling. Many of these comments recommended that two words for storm water is appropriate. EPA has decided to use an approach consistent with the Government Printing Office's approved form where storm water appears as two words.

C. Responsibility for Storm Water Discharges Associated With Industrial Activity Through Municipal Separate Storm Sewers

The December 7, 1988, notice of proposed rulemaking requested comments on the appropriate permitting scheme for storm water discharges associated with industrial activity through municipal separate storm sewers. EPA proposed a permitting scheme that would define the requirement to obtain coverage under an NPDES permit for a storm water discharge associated with industrial activity through a municipal separate storm sewer in terms of the classification of the municipal separate storm sewer. EPA proposed holding municipal operators of large or medium

municipal separate storm sewer systems primarily responsible for applying for and obtaining an NPDES permit covering system discharges as well as storm water discharges (including storm water discharges associated with industrial activity) through the system. Under the proposed approach, operators of storm water discharges associated with industrial activity which discharge through a large or medium municipal separate storm sewer system would generally not be required to obtain permit coverage for their discharge (unless designated as a significant contributor of pollution pursuant to section 402(p)(2)(E)) provided the municipality was notified of: The name, location and type of facility and a certification that the discharge has been tested (if feasible) for non-storm water (including the results of any testing). The notification procedure also required the operator of the storm water discharge associated with industrial activity to determine that: The discharge is composed entirely of storm water; the discharge does not contain hazardous substances in excess of reporting quantities; and the facility is in compliance with applicable provisions of the NPDES permit issued to the municipality for storm water.

In the proposal, EPA also requested comments on whether a decision on regulatory requirements for storm water discharges associated with industrial activity through other municipal separate storm sewer systems (generally those serving a population of less than 100,000) should be postponed until completion of two studies of storm water discharges required under section 402(p)(5) of the CWA.

EPA favored these approaches because they appeared to reduce the potential administrative burden associated with preparing and processing the thousands of permit applications associated with the rulemaking and provide EPA additional flexibility in developing permitting requirements for storm water discharges associated with industrial activity. EPA also expressed its belief, based upon an analysis of ordinances controlling construction site runoff in place in certain cities, that municipalities generally possessed legal authority sufficient to control contributions of industrial storm water pollutants to their separate storm sewers to the degree necessary to implement the proposed rule. EPA commented that municipal controls on industrial sources implemented to comply with an NPDES permit issued to the municipality would likely result in a level of storm water pollution control very similar to that put directly on the industrial source through its own NPDES permit. This was to be accomplished by requiring municipal permittees, to the maximum extent practicable, to require industrial facilities in the municipality to develop and implement storm water controls based on a consideration of the same or similar factors as those used to make BAT/BCT determinations. (See 40 CFR 125.3 (d)(2) and (d)(3)).

The great majority of commenters on the December 7, 1988, notice addressed this aspect of the proposal. Based on consideration of the comments received on the notice, EPA has decided that it is appropriate to revise the approach in its proposed rule to require direct permit coverage for all storm water discharges associated with industrial activity, including those that discharge through municipal separate storm sewers. In response to this decision, EPA has continued to analyze the appropriate manner to respond to the large number of storm water discharges subject to this rulemaking. The development of EPA's policy regarding permitting these discharges is discussed in more detail in the section VI.D of today's preamble.

EPA notes that the status of discharges associated with industrial activity which pass through a municipal separate storm sewer system under section 402(p) raises difficult legal and policy questions. EPA believes that treating these discharges under permits separate from those issued to the municipality will most fully address both the legal and policy concerns raised in public comment.

Certain commenters supported EPA's proposal. Some commenters claimed that EPA lacked any authority to permit industrial discharges which were not discharged immediately to waters of the U.S. Other commenters agreed with EPA's statements in the proposal that its approach would result in a more manageable administrative burden for EPA and the NPDES states. However, numerous comments also were received which provided various arguments in support of revising the proposed approach. These comments addressed several areas including the definition of discharge under the CWA, the requirements and associated statutory time frames of section 402(p), as well as the resource and enforcement constraints of municipalities. EPA is persuaded by these comments and has modified its approach accordingly. The key comments on this issue are discussed below.

EPA disagrees with commenters who suggested that EPA lacks authority to permit separately industrial discharges through municipal sewers. The CWA prohibits the discharge of a pollutant except pursuant to an NPDES permit. Section 502(12)(A) of the CWA defines the "discharge of a pollutant" as "any addition of any pollutant to navigable waters from any point source." [1] There is no qualification in the statutory language regarding the source of the pollutants being discharged. Thus, pollutants from a remote location which are discharged through a point source conveyance controlled by a different entity (such as a municipal storm sewer) are nonetheless discharges for which a permit is required.

EPA's regulatory definition of the term "discharge" reflects this broad construction. EPA defines the term to include

> additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man; *discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which does not lead to a treatment works;* and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

40 CFR § 122.2 (1989) (emphasis added). The only exception to this general rule is the one contemplated by section 307(b) of the CWA, *i.e.*, the introduction of pollutants into publicly-owned treatment works. EPA treats these as "indirect discharges," subject not to NPDES requirements, but to pretreatment standards under section 307(b).

In light of its construction of the term discharge, EPA has consistently maintained that a person who sends pollutants from a remote location through a point source into a water of the U.S. may be held liable for the unpermitted discharge of that pollutant. Thus, EPA asserts the authority to require a permit either from the operator of the point source conveyance, (such as a municipal storm sewer or a privately-owned treatment works), or from any person causing pollutants to be present in that conveyance and discharged through the point source, or both. *See Decision of the General Counsel (of EPA) No. 43* ("In re Friendswood Development Co.") (June 11, 1976) (operator of privately owned treatment work and dischargers to it are both subject to NPDES permit requirements). *See also*, 40 CFR 122.3(g), 122.44(m)

[1] Indeed, the DC Circuit has held, in the storm water context, that EPA may not exempt any point source discharges of pollutants from the requirement to obtain an NPDES permit. *NRDC* v. *Costle*, 568 F.2d 1369, 1377 (DC Cir. 1977).

(NPDES permit writer has discretion to permit contributors to a privately owned treatment works as direct dischargers). In other words, where pollutants are added by one person to a conveyance owned/operated by another person, and that conveyance discharges those pollutants through a point source, EPA may permit either person or both to ensure that the discharge is properly controlled. Pollutants from industrial sites discharged through a storm sewer to a point source are appropriately treated in this fashion.

Furthermore, EPA believes that storm water from an industrial plant which is discharged through a municipal storm sewer is a "discharge associated with industrial activity." Today's rule, as in the proposal, defines discharges associated with industrial activity solely in terms of the origin of the storm water runoff. There is no distinction for how the storm water reaches the waters of the U.S. In other words, pollutants in storm water from an industrial plant which are discharged are "associated with industrial activity," regardless of whether the industrial facility operates the conveyance discharging the storm water (or whether the storm water is ultimately discharged through a municipal storm sewer). Indeed, there is no distinction in the "industrial" nature of these two types of discharges. The pollutants of concern in an industrial storm water discharge are present when the storm water leaves the facility, either through an industrial or municipal storm water conveyance. EPA has no data to suggest that the pollutants in industrial storm water entering a municipal storm sewer are any different than those in storm water discharged immediately to a water of the U.S. Thus, industrial storm water in a municipal sewer is properly classified as "associated with industrial activity." Although EPA proposed not to cover these discharges by separate permit, the Agency believes that it is clearly not precluded from doing so.

Many comments also supported the proposed approach, noting that holding municipalities primarily responsible for obtaining a permit which covers industrial storm water discharges through municipal systems would reduce the administrative burden associated with preparing and processing thousands of permit applications—permit applications that would be submitted if each industrial discharger through a large or medium municipal separate storm sewer system had to apply individually (or as part of a group application).

EPA appreciates these concerns. Yet EPA also recognizes that there are also significant problems with putting the burden of controlling these sources on the municipalities (except for designated discharges) which must be balanced with the concerns about the permit application burden on industries. The industrial permitting strategy discussed in section VI.D below attempts to achieve this balance.

EPA also does not believe that the administrative burden will be nearly as significant as originally thought, for several reasons. First, as discussed in section VI.F.2 below and in response to significant public comment, EPA has significantly narrowed the scope of the definition of "associated with industrial activity" to focus in on those facilities which are most commonly considered "industrial" and thought to have the potential for the highest levels of pollutants in their storm water discharges. EPA believes this is a more appropriate way to ensure a manageable scope for the industrial storm water program in light of the statutory language of section 402(p), since it does not attempt to arbitrarily distinguish industrial facilities on the basis of the ownership of the conveyance through which a facility discharges its storm water. Second, EPA's industrial permitting strategy discussed in section VI.D is designed around aggressive use of general permits to cover the vast majority of industrial sources. These general permits will require industrial facilities to develop storm water control plans and practices similar to those that would have been required by the municipality. Yet, general permits will eliminate the need for thousands of individual or group permit applications, greatly reducing the burden on both industry EPA/States. Finally, even under the proposal, EPA believes that a large number of industrial dischargers would have been appropriate for designation for individual permitting under section 402(p)(2)(E), with the attendant individual application requirements. Today's approach will actually decrease the overall burden on these facilities; rather than filing an individual permit application upon designation, these facilities will generally be covered by a general permit.

By contrast, several commenters asserted that not only does EPA have the authority to cover these discharges by separate permit, it is required to by the language of section 402(p). As discussed above, storm water from an industrial plant which passes through a municipal storm sewer to a point source and is discharged to waters of the U.S. is a "discharge associated with industrial activity." Therefore, it is subject to the appropriate requirements of section 402(p). The operator of the discharge (or the industrial facility where the storm water originates) must apply for a permit within three years of the 1987 amendments (*i.e.*, Feb. 4, 1990); [2] EPA must issue a permit by one year later (Feb. 4, 1991); and the permit must require compliance within three years of permit issuance. That permit must ensure that the discharge is in compliance with all appropriate provisions of sections 301 and 402. Commenters asserted that EPA's proposal would violate these two requirements of the law. First, the statute requires all industrial storm water discharges to obtain a permit in the first round of permitting (*i.e.*, February 4, 1990). However, Congress established a different framework to address discharges from small municipal separate storm sewer systems. Section 402(p) requires EPA to complete two studies of storm water discharges, and based on those studies, promulgate additional regulations, including requirements for state storm water management programs by October 1, 1992. EPA is prohibited from issuing permits for storm water discharges from small municipal systems until October 1, 1992 unless the discharge is designated under section 402(p)(2)(E). Thus, industrial storm water discharges from these systems would not be covered by a permit until later than contemplated by statute. Second, permits for municipal storm sewer systems require controls on storm water discharges "to the maximum extent practicable," as opposed to the BAT/BCT requirements of section 301(b)(2). Yet, all industrial storm water discharges must comply with section 301(b)(2). Thus, covering industrial storm water under a municipal storm water permit will not ensure the legally-required level of control of industrial storm water discharges.

In addition to comments on the requirements of section 402(p), EPA received several comments questioning whether EPA's proposal to cover industrial pollutants in municipal separate storm sewers solely in the permit issued to the municipality would ensure adequate control of these pollutants due to both inadequate

[2] It should be noted that EPA did not promulgate the required storm water regulations by February, 1989, as contemplated by section 402(p)(4)(A). As discussed below, today's rule generally requires industrial storm water discharges to file a permit application in one year.

resources and enforcement. Some municipalities stated that the burdens of this responsibility would be too great with regard to source identification and general administration of the program. These commenters claimed they lacked the necessary technical and regulatory expertise to regulate such sources. Commenters also noted that additional resources to control these sources would be difficult to obtain given the restrictions on local taxation in many states and the fact that EPA will not be providing funding to local governments to implement their storm water programs.

Municipalities also expressed concerns regarding enforcement of EPA's proposed approach. Some municipalities remarked that they did not have appropriate legal authority to address these discharges. Several commenters also stated that requiring municipalities to be responsible for addressing storm water discharges associated with industrial activity through their municipal system would result in unequal treatment of industries nationwide because of different municipal requirements and enforcement procedures. Several municipal entities expressed concern with regard to their responsibility and liability for pollutants discharged to their municipal storm sewer system, and further asserted that it was unfair to require municipalities to bear the full cost of controlling such pollutants. Other municipalities suggested that overall municipal storm water control would be impaired, since municipalities would spend a disproportionate amount of resources trying to control industrial discharges through their sewers, rather than addressing other storm water problems. In a related vein, certain commenters suggested that, where industrial storm water was a significant problem in a municipal sewer, EPA's proposed approach would hamper enforcement at the federal/state level, since all enforcement measures could be directed only at the municipality, rather than at the most direct source of that problem.

In response to all of these concerns, EPA has decided to require storm water discharges associated with industrial activity which discharge through municipal separate storm sewers to obtain separate individual or general NPDES permits. EPA believes that this change will adequately address all of the key concerns raised by commenters.

The Agency was particularly influenced by concerns that many municipalities lacked the authority under state law to address industrial storm water practices. EPA had assumed that since several cities regulate construction site activities, that they could regulate other industrial operations in a similar manner. Several commenters suggested otherwise. In light of these concerns, EPA agrees with certain commenters that municipal controls on industrial facilities, in lieu of federal control, might not comply with section 402(p)(3)(A) for those facilities.[3] This calls into question whether EPA's proposed approach would have reasonably implemented Congressional intent to address industrial storm water early and stringently in the permitting process.

EPA also agrees with those commenters who argued that municipal controls on industrial storm water sources were not directly analogous to the pretreatment program under section 307(b), as EPA suggested in the preamble to the proposal. The authority of cities to control the type and volume of industrial pollutants into a POTW is generally unquestioned under the laws of most states, since sewage and industrial waste treatment is a service provided by the municipality. Thus, EPA has greater confidence that cities can and will adopt effective pretreatment programs. By contrast, many cities are limited in the types of controls they can impose on flows into storm sewers; cities are more often limited to regulations on quantity of industrial flows to prevent flooding the system. So too, the pretreatment program allows for federal enforcement of local pretreatment requirements. Enforcement against direct dischargers (including dischargers through municipal storm sewers) is possible only when the municipal requirements are contained in an NPDES permit.

Although today's rule will require industrial discharges through municipal storm sewers to be covered by separate permit, EPA still believes that municipal operators of large and medium municipal systems have an important role in source identification and the development of pollutant controls for industries that discharge storm water through municipal separate storm sewer systems is appropriate. Under the CWA, large and medium municipalities are responsible for reducing pollutants in discharges from municipal separate storm sewers to the maximum extent practicable. Because storm water from industrial facilities may be a major contributor of pollutants to municipal separate storm sewer systems, municipalities are obligated to develop controls for storm water discharges associated with industrial activity through their system in their storm water management program. (See section VI.H.7. of today's preamble.) The CWA provides that permits for municipal separate storm sewers shall require municipalities to reduce pollutants to the maximum extent practicable. Permits issued to municipalities for discharges from municipal separate storm sewers will reflect terms, specified controls, and programs that achieve that goal. As with all NPDES permits, responsibility and liability is determined by the discharger's compliance with the terms of the permit. A municipality's responsibility for industrial storm water discharged through their system is governed by the terms of the permit issued. If an industrial source discharges storm water through a municipal separate storm sewer in violation of requirements incorporated into a permit for the industrial facility's discharge, that industrial operator of the discharge may be subject to an enforcement action instituted by the Director of the NPDES program.

Today's rule also requires operators of storm water discharges associated with industrial activity through large and medium municipal systems to provide municipal entities of the name, location, and type of facility that is discharging to the municipal system. This information will provide municipalities with a base of information from which management plans can be devised and implemented. This requirement is in addition to any requirements contained in the industrial facility's permit. As in the proposal, the notification process will assist cities in development of their industrial control programs.

EPA intends for the NPDES program, through requirements in permits for storm water discharges associated with industrial activity, to work in concert with municipalities in the industrial component of their storm water management program efforts. EPA believes that permitting of municipal storm sewer systems and the industrial dischargers through them will act in a complementary manner to fully control the pollutants in those sewer systems. This will fully implement the intent of Congress to control industrial as well as large and medium municipal storm water discharges as expeditiously and effectively as possible. This approach will also address the concerns of municipalities that they lack sufficient authority and resources to control all industrial contributions to their storm sewers and will be liable for discharges outside of their control.

The permit application requirements for large and medium municipal separate storm sewer systems, discussed in more detail later in today's preamble, address the responsibilities of the municipal operators of these systems to identify and control pollutants in storm water discharges associated with industrial activity. Permit applications for large and medium municipal separate storm sewer systems are to identify the location of facilities which discharge storm water associated with industrial activity to the municipal system (see section VI.H.7. of the preamble). In addition, municipal applicants will provide a description of a proposed management program to reduce, to the maximum extent practicable, pollutants from storm water discharges associated with industrial activity which discharge to the municipal system (see section VI.H.7.c of this preamble). EPA notes that each municipal program will be tailored to the conditions in that city. Differences in regional weather patterns, hydrology, water quality standards, and storm sewer systems themselves dictate that storm water management practices will vary to some degree in each municipality. Accordingly, similar industrial storm water discharges may be treated differently in terms of the requirements imposed by the municipality, depending on the municipal program. Nonetheless, any individual or general permit issued to the industrial facility must comply with section 402(p)(3)(A) of the CWA.

EPA intends to provide assistance and guidance to municipalities and permitting authorities for developing storm water management programs that achieve permit requirements. EPA intends to issue a guidance document addressing municipal permit applications in the near term.

Controls developed in management plans for municipal system permits may take a variety of forms. Where necessary, municipal permittees can pursue local remedies to develop measures to reduce pollutants or halt storm water discharges with high levels of pollutants through municipal storm sewer systems. Some local entities have already implemented ordinances or laws that are designed to reduce the discharge of pollutants to municipal separate storm sewers, while other municipalities have developed a variety of techniques to control pollutants in storm water. Alternatively, where appropriate, municipal permittees may develop end-of-pipe controls to control pollutants in these discharges such as regional wet detention ponds or diverting flow to publicly owned treatment works. Finally, municipal applicants may bring individual storm water discharges, which cannot be adequately controlled by the municipal permittees or general permit coverage, to the attention of the permitting authority. Then, at the Director's discretion, appropriate additional controls can be required in the permit for the facility generating the targeted storm water discharge.

One commenter suggested that municipal operators of municipal separate storm sewers should have control over all storm water discharges from a facility that discharges both through the municipal system and to waters of the United States. In response, under this regulatory and statutory scheme, industries that discharge storm water directly into the waters of the United States, through municipal separate storm sewer systems, or both are required to obtain permit coverage for their discharges. However, municipalities are not precluded from exercising control over such facilities through their own municipal authorities.

It is important to note that EPA has established effluent guideline limitations for storm water discharges for nine subcategories of industrial dischargers (Cement Manufacturing (40 CFR part 411), Feedlots (40 CFR part 412), Fertilizer Manufacturing (40 CFR part 418), Petroleum Refining (40 CFR part 419), Phosphate Manufacturing (40 CFR part 422), Steam Electric (40 CFR part 423), Coal Mining (40 CFR part 434), Ore Mining and Dressing (40 CFR part 440) and Asphalt (40 CFR part 441)). Most of the existing facilities in these subcategories already have individual permits for their storm water discharges. Under today's rule, facilities with existing NPDES permits for storm water discharges through a municipal storm sewer will be required to maintain these permits and apply for an individual permit, under § 122.26(c), when existing permits expire. EPA received numerous comments supporting this decision because requiring facilities that have existing permits to comply with today's requirements immediately would be inefficient and not serve improved water quality.

Sections 402(p) (3) and (4) of the CWA provide that discharges from municipal separate storm sewer systems serving a population of less than 100,000 are not required to obtain a permit prior to October 1, 1992, unless designated on a case-by-case basis under section 402(p)(2)(E). However, as discussed above, storm water discharges associated with industrial activity through such municipal systems are not excluded. Thus, under today's rule, all storm water discharges associated with industrial activity that discharge through municipal separate storm sewer systems are required to obtain NPDES permit coverage, including those which discharge through systems serving populations less than 100,000. EPA believes requiring permits will address the legal concerns raised by commenters regarding these sources. In addition, it will allow for control of these significant sources of pollution while EPA continues to study under section 402(p)(6) whether to require the development of municipal storm water management plans in these municipalities. If these municipalities do ultimately obtain NPDES permits for their municipal separate storm sewer systems, early permitting of the industrial contributions may aid those cities in their storm water management efforts.

In the December 7, 1988, proposal, EPA recognized that storm water discharges associated with industrial activity from Federal facilities through municipal separate storm sewer systems may pose unique legal and administrative situations. EPA received numerous comments on this issue, with most of these comments coming from cities and counties. The comments reflected a general concern with respect to a municipality's ability to control Federal storm water discharges through municipal separate storm sewer systems. Most municipalities stated that they do not have the legal authority to adequately enforce against problem storm water discharges from Federal facilities and that these facilities should be required to obtain separate storm water permits. Some commenters stated that they have no Constitutional authority to regulate Federal facilities or establish regulation for such facilities. Some commenters indicated that Federal facilities could not be inspected, monitored, or subjected to enforcement for national security and other jurisdictional reasons. Some commenters argued that without clearly stated legal authority for the municipality, such dischargers should be required to obtain permits. One

[3] EPA notes that the legal issue raised by commenters regarding whether industrial storm water would be controlled to BAT if covered by a municipal permit at the MEP level is primarily a theoretical issue. As explained above, the proposal assumed that cities would establish controls on industry very similar to those established in an NPDES permit using best professional judgment. EPA's key concern, rather, is whether cities can, in fact, establish such controls. Thus, today's final rule should not appreciably change the requirements to be imposed on industrial sources, only how those requirements are enforced.

municipality pointed out that Federal facilities within city limits are exempted from their Erosion and Sediment Control Act and that permits for these facilities should be required.

Under today's rule, Federal facilities which discharge storm water associated with industrial activity through municipal separate storm sewer systems will be required to obtain NPDES permit coverage under Federal or State law. EPA believes this will cure the legal authority problems at the local level raised by the commenters. EPA notes that this requirement is consistent with section 313(a) of the CWA.

D. Preliminary Permitting Strategy for Storm Water Discharges Associated With Industrial Activity

Many of the comments received on the December 7, 1988, proposal focused on the difficulties that EPA Regions and authorized NPDES States, with their finite resources, will have in implementing an effective permitting program for the large number of storm water discharges associated with industrial activity. Many commenters noted that problems with implementing permit programs are caused not only by the large number of industrial facilities subject to the program, but by the difficulties associated with identifying appropriate technologies for controlling storm water at various sites and the differences in the nature and extent of storm water discharges from different types of industrial facilities.

EPA recognizes these concerns; and based on a consideration of comments from authorized NPDES States, municipalities, industrial facilities and environmental groups on the permitting framework and permit application requirements for storm water discharges associated with industrial activity, EPA is in the process of developing a preliminary strategy for permitting storm water discharges associated with industrial activity. In developing this strategy, EPA recognizes that the CWA provides flexibility in the manner in which NPDES permits are issued.[4] EPA intends to use this flexibility in designing a workable and reasonable permitting system. In accordance with these considerations, EPA intends to publish in the near future a discussion of its preliminary permitting strategy for implementing the NPDES storm water program.

The preliminary strategy is intended to establish a framework for developing permitting priorities, and includes a four tier set of priorities for issuing permits to be implemented over time:

- *Tier I—baseline permitting:* One or more general permits will be developed to initially cover the majority of storm water discharges associated with industrial activity;
- *Tier II—watershed permitting:* Facilities within watersheds shown to be adversely impacted by storm water discharges associated with industrial activity will be targeted for permitting.
- *Tier III—industry specific permitting:* Specific industry categories will be targeted for individual or industry-specific permits; and
- *Tier IV—facility specific permitting:* A variety of factors will be used to target specific facilities for individual permits.

Tier I—Baseline Permitting

EPA intends to issue general permits that initially cover the majority of storm water discharges associated with industrial activity in States without authorized NPDES programs. These permits will also serve as models for States with authorized NPDES programs.

The consolidation of many sources under one permit will greatly reduce the otherwise overwhelming administrative burden associated with permitting storm water discharges associated with industrial activity. This approach has a number of additional advantages, including:

- Requirements will be established for discharges covered by the permit;
- Facilities whose discharges are covered by the permit will have an opportunity for substantial compliance with the CWA;
- The public, including municipal operators of municipal separate storm sewers which may receive storm water discharges associated with industrial activity, will have access under section 308(b) of the CWA to monitoring data and certain other information developed by the permittee;
- EPA will have the opportunity to begin to collect and review data on storm water discharges from priority industries, thereby supporting the development of subsequent permitting activities;
- Applicable requirements of municipal storm water management programs established in permits for discharges from municipal separate storm sewer systems will be enforceable directly against non-complying industrial facilities that generate the discharges;
- The public will be given an opportunity to comment on permitting activities;
- The baseline permits will provide a basis for bringing selected enforcement actions by eliminating many issues which might otherwise arise in an enforcement proceeding; and
- Finally, the baseline permits will provide a focus for public comment on the development of subsequent phases of the permitting strategy for storm water discharges, including the development of priorities for State storm water management programs developed under section 402(p)(6) of the CWA.

Initially, the coverage of the baseline permits will be broad, but the coverage is intended to shrink as other permits are issued for storm water discharges associated with industrial activities pursuant to Tier II through IV activities.

2. Tier II—Watershed Permitting

Facilities within watersheds shown to be adversely impacted by storm water discharges associated with industrial activity will be targeted for individual and general permitting. This process can be initiated by identifying receiving waters (or segments of receiving waters) where storm water discharges associated with industrial activity have been identified as a source of use impairment or are suspected to be contributing to use impairment.

3. Tier III—Industry Specific Permitting

Specific industry categories will be targeted for individual or industry-specific general permits. These permits will allow permitting authorities to focus attention and resources on industry categories of particular concern and/or industry categories where tailored requirements are appropriate. EPA will work with the States to coordinate the development of model permits for selected classes of industrial storm water discharges. EPA is also working to identify priority industrial categories in the two reports to Congress required under section 402(p)(5) of the CWA. In addition, group applications that are received can be used to develop model permits for the appropriate industries.

4. Tier IV—Facility Specific Permitting

Individual permits will be appropriate for some storm water discharges in addition to those identified under Tier II and III activities. Individual permits should be issued where warranted by: the pollution potential of the discharge; the need for individual control mechanisms; and in cases where reduced administrative burdens exist. For example, individual NPDES permits for facilities with process discharges should be expanded during the normal process of permit reissuance to cover storm water discharges from the facility.

5. Relationship of Strategy to Permit Applications Requirements

The preliminary long-term permitting strategy described above identifies several permit schemes that EPA anticipates will be used in addressing storm water discharges associated with industrial activity. One issue that arises with this strategy is determining the appropriate information needed to develop and issue permits for these discharges. The NPDES regulatory scheme provides three major options for obtaining permit coverage for storm water discharges associated with industrial activity: (1) Individual permit applications; (2) group applications; and (3) case-by-case requirements developed for general permit coverage.

a. *Individual permit application requirements.* Today's notice establishes requirements for individual permit applications for storm water discharges associated with industrial activity. These application requirements are applicable for all storm water discharges associated with industrial activity, except where the operator of the discharge is participating in a group application or a general permit is issued to cover the discharge and the general permit provides alternative means to obtain permit coverage. Information in individual applications is intended to be used in developing the site-specific conditions generally associated with individual permits.

Individual permit applications are expected to play an important role in all tiers of the Strategy, even where general permits are used. Although general permits may provide for notification requirements that operate in lieu of the requirement to submit individual permit applications, the individual permit applications may be needed under several circumstances. Examples include: where a general permit requires the submission of a permit application as the notice of intent to be covered by the permit; where the owner or operator authorized by a general permit requests to be excluded from the coverage of the general permit by applying for a permit (*see* 40 CFR 122.28(b)(2)(iii) for EPA issued general permits); and where the Director requires an owner or operator authorized by a general permit to apply for an individual permit (*see* 40 CFR 122.28(b)(2)(ii) for EPA issued general permits).

b. *Group applications.* Today's rule also promulgates requirements for group applications for storm water discharges associated with industrial activity. These applications provide participants of groups with sufficiently similar storm water discharges an alternative mechanism for applying for permit coverage.

The group application requirements are primarily intended to provide information for developing industry specific general permits. (Group applications can also be used to issue individual permits in authorized NPDES States without general permit authority or where otherwise appropriate). As such, group application requirements correlate well with the Tier III permitting activities identified in the long-term permitting Strategy.

c. *Case-by-case requirements.* 40 CFR 122.21(a) excludes persons covered by general permits from requirements to submit individual permit applications. Further, the general permit regulations at 40 CFR 122.28 do not address the issue of how a potential permittee is to apply to be covered under a general permit. Rather, conditions for notification of intent (NOI) to be covered by the general permit are established in the permits on a case-by-case basis, and operate in lieu of permit application requirements. Requirements for submitting NOIs to be covered by a general permit can range from full applications (this would be Form 1 and Form 2F for most discharges composed entirely of storm water discharges associated with industrial activity), to no notice. EPA recommends that the NOI requirements established in a general permit for storm water discharges associated with industrial activity be commensurate with the needs of the permit writer in establishing the permit and the permit program. The baseline general permit described in Tier I is intended to support the development of controls for storm water discharges associated with industrial activity that can be supported by the limited resources of the permitting Agency. In this regard, the burdens of receiving and reviewing NOI's from the large number of facilities covered by the permit should also be considered when developing NOI requirements. In addition, NOI requirements should be developed in conjunction with permit conditions establishing reporting requirements during the term of the permit.

NOI requirements in general permits can establish a mechanism which can be used to establish a clear accounting of the number of permittees covered by the general permit, the nature of operations at the facility generating the discharge, their identity and location. The NOI can be used as an initial screening tool to determine discharges where individual permits are appropriate. Also, the NOI can be used to identify classes of discharges appropriate for more specific general permits, as well as provide information needed to notify such dischargers of the issuance of a more specific general permit. In addition, the NOI can provide for the identification of the permittee to provide a basis for enforcement and compliance monitoring strategies. EPA will further address this issue in the context of specific general permits it plans to issue in the near future.

Today's rule requires that individual permit applications for storm water discharges associated with industrial activity be submitted within one year from the date of publication of this notice. EPA is considering issuing general permits for the majority of storm water discharges associated with industrial activity in those States and territories that do not have authorized State NPDES programs (MA, ME, NH, FL, LA, TX, OK, NM, SD, AZ, AK, ID, District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) before that date to enable industrial dischargers of storm water to ascertain whether they are eligible for coverage under a general permit (and subject to any alternative notification requirements established by the general permit in lieu of the individual permit application requirements of today's rule) or whether they must submit an individual permit application (or participate in a group application) before the regulatory deadlines for submitting these applications passes. Storm water application deadlines are discussed in further detail below.

E. Storm Water Discharge Sampling

Storm water discharges are intermittent by their nature, and pollutant concentrations in storm water discharges will be highly variable. Not only will variability arise between given events, but the flow and pollutant

[4] The courts in *NRDC* v. *Train*, 396 F.Supp. 1393 (D.D.C. 1975) *aff'd. NRDC* v. *Costle*, 568 F.2d 1369 (DC Cir. 1977), have acknowledged the administrative burden placed on the Agency by requiring individual permits for a large number of storm water discharges. These courts have recognized EPA's discretion to use certain administrative devices, such as area permits or general permits to help manage its workload. In addition, the courts have recognized flexibility in the type of permit conditions that are established, including requirements for best management practices.

concentrations of such discharges will vary with time during an event. This variability raises two technical problems: how best to characterize the discharge associated with a single storm event; and how best to characterize the variability between discharges of different events that may be caused by seasonal changes and changes in material management practices, for example.

Prior to today's rulemaking, 40 CFR 122.21(g)(7) required that applicants for NPDES permits submit quantitative data based on one grab sample taken every hour of the discharge for the first four hours of discharge. EPA has modified this requirement such that, instead of collecting and analyzing four grab samples individually, applicants for permits addressing storm water discharges associated with industrial activity will provide data as indicators of two sets of conditions: data collected during the first 30 minutes of discharge and flow-weighted average storm event concentrations. Large and medium municipalities will provide data on flow-weighted average storm event concentrations only.

Data describing pollutants in a grab sample taken during the first few minutes of the discharge can often be used as a screen for non-storm water discharges to separate storm sewers because such pollutants may be flushed out of the system during the initial portion of the discharge. In addition, data from the first few minutes of a discharge are useful because much of the traditional structural technology used to control storm water discharges, including detention and retention devices, may only provide controls for the first portion of the discharge, with relatively little or no control for the remainder of the discharge. Data from the first portion of the discharge will give an indication of the potential usefulness of these techniques to reduce pollutants in storm water discharges. Also, such discharges may be primarily responsible for pollutant shocks to the ecosystem in receiving waters.

Studies such as NURP have shown that flow-weighted average concentrations of storm water discharges are useful for estimating pollutant loads and for evaluating certain concentration-based water quality impacts. The use of flow-weighted composite samples are also consistent with comments raised by various industry representatives during previous Agency rulemakings that continuous monitoring of discharges from storm events is necessary to adequately characterize such discharges.

EPA requested comment on the feasibility of the proposed modification of sampling procedures at § 122.21(g)(7) and the ability to characterize pollutants in storm water discharges with an average concentration from the first portion of the discharge compared to collecting and separately analyzing four grab samples. It was proposed that an event composite sample be collected, as well as a grab sample collected during the first 30 minutes of runoff. Comments were solicited as to whether or not this sampling method would provide better definition of the storm load for runoff characterization than would the requirement to collect and separately analyze four grab samples.

Many commenters questioned the ability to obtain a 30 minute sample in the absence of automatic samplers. Some believed that pollutants measured by such a sample can be accounted for in the event composite sample. Others argued that this is an unwarranted sampling effort if municipal storm water management plans are to be geared to achieving annual pollutant load reductions. Many commenters advised that problems accessing sampling stations and mobilizing sampling crews, particularly after working hours, made sampling during the first 30 minutes impractical. These comments were made particularly with respect to municipalities, where the geographical areas could encompass several hundred square miles. Several alternatives were suggested including: the collection of a sample in the first hour, and representative grab sampling in the next three hours, one per hour; or perform time proportioned sampling for up to four hours.

Because of the logistical problems associated with collecting samples during the first few minutes of discharge from municipal systems, EPA will only require such sampling from industrial facilities. Municipal systems will be spread out over many square miles with sampling locations potentially several miles from public works departments or other responsible government agencies. Reaching such locations in order to obtain samples during the first few minutes of a storm event may prove impossible. For essentially the same reasons, the requirement has been modified to encompass the first 30 minutes of the discharge, instead of 20 minutes, for industrial discharges. The rule also clarifies that the sample should be taken during the first 30 minutes or as soon thereafter as practicable. Where appropriate, characterization of this portion of the discharge from selected outfalls or sampling points may be a condition to permits issued to municipalities. With regard to protocols for the collection of sample aliquots for flow-weighted composite samples, § 122.21(g)(7) provides that municipal applicants may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the Director or Regional Administrator. In other words, the period may be extended from 15 minutes to 20 or 25 minutes between sample aliquots, or decreased from 15 to 10 or 5 minutes.

Other comments raised issues that apply both to the impact of runoff characterization and the first discharge representation. These primarily pertained to regions that have well defined wet and dry seasons. Comments questioned whether or not it is fair to assume that the initial storm or two of a wet season, which will have very high pollutant concentrations, are actually representative of the runoff concentrations for the area.

In response, EPA believes that it is important to represent the first part of the discharge either separately or as a part of the event composite samples. This loading is made up primarily of the mass of unattached fine particulates and readily soluble surface load that accumulates between storms. This load washes off of the basin's directly connected paved surfaces when the runoff velocities reach the level required for entrainment of the particulate load into the surface flow. It should be noted that for very fine particulates and solubles, this can occur very soon after the storm begins and much sooner than the peak flow. The first few minutes of discharge represents a shock load to the receiving water, in terms of concentration of pollutants, because for many constituents the highest concentrations of the event will occur during this initial period. Due to the need to properly quantify this load, it is not necessary to represent the first discharge from the upper reaches of the outfall's tributary area. In runoff characterization basins, the assumption is that the land use in the basin is homogeneous, or nearly so, and that the first discharge from the lower reaches for all intents and purposes is representative of the entire basin. If a sample is taken during the first 30 minutes of the runoff, it will be composed primarily of first discharge. If the sample is taken at the outfall an hour into the event, it may contain

discharge from the remote portions of the basin. It will not be representative of the discharge because it will also contain later washoff from the lower reaches of the basin, resulting in a low estimation of the first discharge load of most constituents. Conversely, larger suspended particulates that normally are not present in first discharge due to inadequate velocities will appear in this later sampling scenario because of the influence of higher runoff rates in the lower basin. Many commonly used management practices are designed based on their ability to treat a volume of water defined by the first discharge phenomenon. It is important to characterize the first discharge load because most management practices effectively treat only, or primarily, this load.

It should be noted that first discharge runoff is sometimes contaminated by non-storm water related pollutants. In many urban catchments, contaminants that result from illicit connections and illegal dumping may be stored in the system until "flushed" during the initial storm period. This does not negate the need for information on the characteristic first discharge load, but does indicate that the first phase field screen results for illicit connections should be used to help define those outfalls where this problem might exist.

Several methods can be used to develop an event average concentration. Either automatic or manual sampling techniques can be used that sample the entire hydrograph, or at least the first four hours of it, that will result in several discrete samples and associated flow rates that represent the various flow regimes of an event. These procedures have the potential for providing either an event average concentration, an event mean concentration, or discrete definition of the washoff process. Automatic sampling procedures are also available that collect a single composite sample, either on a time-proportioned or flow proportioned basis.

When discrete samples are collected, an event average composite sample can be produced by the manual composite of the discrete samples in equal volumes. Laboratory analysis of time proportioned composite samples will directly yield the event average concentration. Mathematical averaging of discrete sample analysis results will yield an event average concentration.

When discrete samples are collected, a flow-weighted composite sample can be produced based on the discharge record. This is done by manually flow proportioning the volumes of the individual samples. Laboratory analysis of flow weighted composite samples will directly yield an event mean concentration. Mathematical integration of the change in concentrations and mass flux of the discharge for discrete sample data can produce an event mean concentration. This procedure was used during the NURP program.

EPA wishes to emphasize that the reason for sampling the type of storm event identified in § 122.21(g)(7) is to provide information that represents local conditions that will be used to create sound storm water management plans. Based on the method to be used to generate system-wide estimates of pollutant loads, either method, discrete or event average concentrations, may be preferable to the other. If simulation models will be used to generate loading estimates, analysis of discrete samples will be more valuable so that calibration of water quality and hydrology may be performed. On the other hand, simple estimation methods based on event average or event mean concentrations may not justify the additional cost of discrete sample analysis.

EPA believes that the first discharge loading should be represented in the permit application from industrial facilities and, if appropriate, permitting authorities may require the same in the discharge characterization component of permits issued to municipalities. The first discharge load should also be represented as part of an event composite sample. This requirement will assist industries in the development of effective storm water management plans.

EPA requested comments on the appropriateness of the proposed rules and of proposed amendments to the rules regarding discharge sampling. Comments were received which addressed the appropriateness of imposing uniform national guidelines. Several commenters are concerned that uniform national guidelines may not be appropriate due to the geographic variations in meteorology, topography, and pollutant sources. While some assert that a uniform guideline will provide consistency of the sample results, others prefer a program based on regional or State guidelines that more specifically address their situation.

Several commenters, addressing industrial permit application requirements, preferred that the owner/operator be allowed to set an individual sampling protocol with approval of the permit writer. Some commenters were concerned that one event may not be sufficient to characterize runoff from a basin as this may result in gross over-estimation or underestimation of the pollutant loads. Others indicated confusion with regard to sampling procedures, lab analysis procedures, and the purpose of the program.

In response, today's regulations establish certain minimum requirements. Municipalities and industries may vary from these requirements to the extent that their implementation is at least as stringent as outlined in today's rule. EPA views today's rule as a means to provide assurance as to the quality of the data collected; and to this end, it is important that the minimum level of sampling required be well defined.

In response to EPA's proposal that the first discharge be included in "representative" storm sampling, several commenters made their concerns known about the possible equipment necessary to meet this requirement. Several commenters are concerned that in order to get a first discharge sample, automatic sampling equipment will be required. Concerns related to the need for this equipment surfaced in the comments frequently; most advised that the equipment is expensive and that the demand on sampling equipment will be too large for suppliers and manufacturers to meet. Although equipment can be leased, some commenters maintained that not enough rental equipment is available to make this a viable option in many instances.

EPA is not promoting or requiring the use of automated equipment to satisfy the sampling requirements. A community may find that in the long run it would be more convenient to have such equipment since sampling is required not only during preparation of the application, but also may be required during the term of the permit to assure that the program goals are being met. Discharge measurement is necessary in order for the sample data to have any meaning. If unattended automatic sampling is to be performed, then unattended flow measurement will be required too.

EPA realizes that equipment availability is a legitimate concern. However, there is no practical recommendation that can be made relative to the availability of equipment. If automatic sampling equipment is not available, manual sampling is an appropriate alternative.

F. Storm Water Discharges Associated With Industrial Activity

1. Permit Applicability

a. *Storm water discharges associated with industrial activity to waters of the United States.* Under today's rule dischargers of storm water associated

with industrial activity are required to apply for an NPDES permit. Permits are to be applied for in one of three ways depending on the type of facility: Through the individual permit application process; through the group application process; or through a notice of intent to be covered by general permit.

Storm water discharges associated with the industrial activities identified under § 122.26(b)(14) of today's rule may avail themselves of general permits that EPA intends to propose and promulgate in the near future. The general permit will be available to be promulgated in each non-NPDES State, following State certification, and as a model for use by NPDES States with general permit authority. It is envisioned that these general permits will provide baseline storm water management practices. For certain categories of industries, specific management practices will be prescribed in addition to the baseline management practices. As information on specific types of industrial activities is developed, other, more industry-specific general permits will be developed.

Today's rule requires facilities with existing NPDES permits for storm water discharges to apply for individual permits under the individual permit application requirements found at 122.26(c) 180 days before their current permit expires. Facilities not eligible for coverage under a general permit are required to file an individual or group permit application in accordance with today's rule. The general permits to be proposed and promulgated will indicate what facilities are eligible for coverage by the general permit.

b. *Storm water discharges through municipal storm sewers.* As discussed above, many operators of storm water discharges associated with industrial activity are not required to apply for an individual permit or participate in a group application under § 122.26(c) of today's rule if covered by a general permit. Under the December 7, 1988, proposal, dischargers through large and medium municipal separate storm sewer systems were not required, as a general rule, to apply for an individual permit or as a group applicant. Today's rule is a departure from that proposal. Today's rule requires all dischargers through municipal separate storm sewer systems to apply for an individual permit, apply as part of a group application, or seek coverage under a promulgated general permit for storm water discharges associated with industrial activity.

Municipal operators of large and medium municipal separate storm sewer systems are responsible for obtaining system-wide or area permits for their system's discharges. These permits are expected to require that controls be placed on storm water discharges associated with industrial activity which discharge through the municipal system. It is anticipated that general or individual permits covering industrial storm water dischargers to these municipal separate storm sewer systems will require industries to comply with the terms of the permit issued to the municipality, as well other terms specific to the permittee.

c. *Storm water discharges through non-municipal storm sewers.* Under today's rulemaking all operators of storm water discharges associated with industrial activity that discharge into a privately or Federally owned storm water conveyance (a storm water conveyance that is not a municipal separate storm sewer) will be required to be covered by an NPDES permit (e.g. an individual permit, general permit, or as a co-permittee to a permit issued to the operator of the portion of the system that directly discharges to waters of the United States). This is a departure from the "either/or" approach that EPA requested comments on in the December 7, 1988, notice. The "either/or" approach would have allowed either the system discharges to be covered by a permit issued to the owner/operator of the system segment that discharged to waters of the United States, or by an individual permit issued to each contributor to the non-municipal conveyance.

EPA requested comments on the advantages and disadvantages of retaining the "either/or" approach for non-municipal storm sewers. An abundance of comment was received by EPA on this particular part of the program. A number of industrial commenters and a smaller number of municipalities favored retaining the "either/or" approach as proposed, while most municipal entities, one industry, and one trade association favored requiring permits for each discharger.

Two commenters stated that private owners of conveyances may not have the legal authority to implement controls on discharges through their system and would not want to be held responsible for such controls. EPA agrees that this is a potential problem. Therefore, today's rule will require permit coverage for each storm water discharge associated with industrial activity.

One commenter supported the concept of requiring all the facilities that discharge to a non-municipal conveyance to be co-permittees. EPA agrees that this type of permitting scheme, along with other permit schemes such as area or general permits, is appropriate for discharges from non-municipal sewers, as long as each storm water discharge through the system is associated with industrial activity and thus currently subject to NPDES permit coverage.

One State agency commented that in the interest of uniformity, all industries that discharge to non-municipal conveyances should be required to conform to the application requirements. One industry stated that the rules must provide a way for the last discharger before the waters of the U.S. to require permits for facilities discharging into the upper portions of the system. EPA agrees with these comments. Today's rule provides that each discharger may be covered under individual permits, as co-permittees to a single permit, or by general permit rather than holding the last discharger to the waters of the United States solely responsible.

In response to one commenter, the term "non-municipal" has been clarified to explain that the term refers to non-publicly owned or Federally-owned storm sewer systems.

Some commenters supporting the approach as proposed, noted that industrial storm water dischargers into such systems can take advantage of the group application process. EPA agrees that in appropriate circumstances, such as when industrial facilities discharging storm water to the same system are sufficiently similar, group applications can be used for discharges to non-municipal conveyances. However, EPA believes that it would be inappropriate to approve group applications for those facilities whose only similarity is that they discharge storm water into the same private conveyance system. The efficacy of the group application procedures is predicated on the similarity of operations and other factors. The fact that several industries discharge storm water to the same non-municipal sewer system alone may not make these discharges sufficiently similar for group application approval.

One commenter suggested that EPA has not established any deadlines for submission of permit applications for storm water discharges associated with industrial activity through non-municipal separate storm sewer systems. EPA wants to clarify that industrial storm water dischargers into privately owned or Federally owned storm water conveyances are required to apply for permits in the same time frame as individual or group applicants (or as otherwise provided for in a general permit).

One commenter stated that the operator of the conveyance that accepts discharges into its system has control and police power over those that discharge into the system by virtue of the ability to restrict discharges into the system. This commenter stated that these facilities should be the entity required to obtain the permit in all cases. Assuming that this statement is true in all respects, the larger problem is that one's theoretical ability to restrict discharges is not necessarily tied to the reality of enforcing those restrictions or even detecting problem discharges when they exist. In a similar vein one commenter urged that a private operator will not be in any worse a position than a municipal entity to determine who is the source of pollution up-stream. EPA agrees that from a hydrological standpoint this may be true. However, from the standpoint of detection resources, police powers, enforcement remedies, and other facets of municipal power that may be brought to bear upon problem dischargers, private systems are in a far more precarious position with respect to controlling discharges from other private sources.

In light of the comments received, EPA has decided that the either/or approach as proposed is inappropriate. Operators of non-municipal systems will generally be in a poorer position to gain knowledge of pollutants in storm water discharges and to impose controls on storm water discharges from other facilities than will municipal system operators. In addition, best management practices and other site-specific controls are often most appropriate for reducing pollutants in storm water discharges associated with industrial activity and can often only be effectively addressed in a regulatory scheme that holds each industrial facility operator directly responsible. The either/or approach as proposed is not conducive to establishing these types of practices unless each discharger is discharging under a permit. Also, some non-municipal operators of storm water conveyances, which receive storm water runoff from industrial facilities, may not be generating storm water discharges associated with industrial activity themselves and, therefore, they would otherwise not need to obtain a permit prior to October 1, 1992, unless specifically designated under section 402(p)(2)(E). Accordingly, EPA disagrees with comments that dischargers to non-municipal conveyances should have the flexibility to be covered by their permit or covered by the permit issued to the operator of the outfall to waters to the United States.

2. Scope of "Associated with Industrial Activity"

The September 26, 1984, final regulation divided those discharges that met the regulatory definition of storm water point source into two groups. The term Group I storm water discharges was defined in an attempt to identify those storm water discharges which had a higher potential to contribute significantly to environmental impacts. Group I included those discharges that contained storm water drained from an industrial plant or plant associated areas. Other storm water discharges (such as those from parking lots and administrative buildings) located on lands used for industrial activity were classified as Group II discharges. The regulations defined the term "plant associated areas" by listing several examples of areas that would be associated with industrial activities. However, the resulting definition led to confusion among the regulated community regarding the distinctions between the Group I and Group II classifications.

In amending the CWA in 1987, Congress did not explicitly adopt EPA's regulatory classification of Group I and Group II discharges. Rather, Congress required EPA to address "storm water discharges associated with industrial activity" in the first round of storm water permitting. In light of the adoption of the term "associated with industrial activity" in the CWA, and the ongoing confusion surrounding the previous regulatory definition, EPA has eliminated the regulatory terms "Group I storm water discharge" and "Group II storm water discharge" pursuant to the December 7, 1987, Court remand and has not revived it. In addition, today's notice promulgates a definition of the term "storm water discharge associated with industrial activity" at § 122.26(b)(14) and clarified the scope of the term.

In describing the scope of the term "associated with industrial activity", several members of Congress explained in the legislative history that the term applied if a discharge was "directly related to manufacturing, processing or raw materials storage areas at an industrial plant." (Vol. 132 Cong. Rec. H10932, H10936 (daily ed. October 15, 1986); Vol. 133 Cong. Rec. H176 (daily ed. January 8, 1987)). Several commenters cited this language in arguing for a more expansive or less expansive definition of "associated with industrial activity." EPA believes that the legislative history supports the decision to exclude from the definition of industrial activity, at § 122.26(b)(14) of today's rule, those facilities that are generally classified under the Office of Management and Budget Standard Industrial Classifications (SIC) as wholesale, retail, service, or commercial activities.

Two commenters recommended that all commercial enterprises should be required to obtain a permit under this regulation. Another commenter recommended that all the facilities listed in the December 7, 1988, proposal, including those listed in paragraphs (xi) through (xvi) on page 49432 of the December 7, 1988, proposal, should be included. EPA disagrees since the intent of Congress was to establish a phased and tiered approach to storm water permits, and that only those facilities having discharges associated with industrial activity should be included initially. The studies to be conducted pursuant to section 402(p)(5) will examine sources of pollutants associated with commercial, retail, and other light business activity. If appropriate, additional regulations addressing these sources can be developed under section 402(p)(6) of the CWA. As further discussed below, EPA believes that the facilities identified in paragraphs (xi) through (xvi) are more properly characterized as commercial or retail facilities, rather than industrial facilities.

Today's rule clarifies the regulatory definition of "associated with industrial activity" by adopting the language used in the legislative history and supplementing it with a description of various types of areas that are directly related to an industrial process (*e.g.*, industrial plant yards, immediate access roads and rail lines, drainage ponds, material handling sites, sites used for the application or disposal of process waters, sites used for the storage and maintenance of material handling equipment, and known sites that are presently or have been used in the past for residual treatment, storage or disposal). The agency has also incorporated some of the suggestions offered by the public in comments.

Three commenters suggested that the permit application should focus only on storm water with the potential to come into contact with industrial-related pollutant sources, rather than focusing on how plant areas are utilized. These commenters suggested that facilities that are wholly enclosed or have their operations entirely protected from the elements should not be subject to permit requirements under today's rule. EPA agrees that these comments have merit with regard to certain types of facilities. Today's rule defines the term "storm water discharge associated with

industrial activity" to include storm water discharges from facilities identified in today's rule at 40 CFR 122.21(b)(14)(xi) (facilities classified as Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25) only if:

areas where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery at these facilities are exposed to storm water. Such areas include: material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment; storage or disposal; shipping and receiving areas; manufacturing buildings; material storage areas for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

The critical distinction between the facilities identified at 40 CFR 122.26(b)(14)(xi) and the facilities identified at 40 CFR 122.26(b)(14)(i)–(x) is that the former are not classified as having "storm water discharges associated with industrial activity" unless certain materials or activities are exposed to storm water. Storm water discharges from the latter set of facilities are considered to be "associated with industrial activity" regardless of the actual exposure of these same materials or activities to storm water.

EPA believes this distinction is appropriate because, when considered as a class, most of the activity at the facilities in § 122.26(b)(14)(xi) is undertaken in buildings; emissions from stacks will be minimal or non-existent; the use of unhoused manufacturing and heavy industrial equipment will be minimal; outside material storage, disposal or handling generally will not be a part of the manufacturing process; and generating significant dust or particulates would be atypical. As such, these industries are more akin or comparable to businesses, such as retail, commercial, or service industries, which Congress did not contemplate regulating before October 1, 1992, and storm water discharges from these facilities are not "associated with industrial activity." Thus, these industries will be required to obtain a permit under today's rule only when the manufacturing processes undertaken at such facilities would result in storm water contact with industrial materials associated with the facility.

Industrial categories in § 122.26(b)(14)(xi) all tend to engage in production activities in the manner described in the paragraph above. Facilities under SIC 20 process foods including meats, dairy food, fruit, and flour. Facilities classified under SIC 21 make cigarettes, cigars, chewing tobacco and related products. Under SIC 22, facilities produce yarn, etc., and/or dye and finish fabrics. Facilities under SIC 23 are in the business of producing clothing by cutting and sewing purchased woven or knitted textile products. Facilities under SIC 2434 and 25 are establishments engaged in furniture making. SIC 265 and 267 address facilities that manufacture paper board products. Facilities under SIC 27 perform services such as bookbinding, plate making, and printing. Facilities under SIC 283 manufacture pharmaceuticals and facilities under 285 manufacture paints, varnishes, lacquers, enamels, and allied products. Under SIC 30 establishments manufacture products from plastics and rubber. Those facilities under SIC 31 (except 311), 323, 34 (except 3441), 35, 36, and 37 (except 373) manufacture industrial and commercial metal products, machinery, equipment, computers, electrical equipment, and transportation equipment, and glass products made of purchased glass. Facilities under SIC 38 manufacture scientific and electrical instruments and optical equipment. Those under SIC 39 manufacture a variety of items such as jewelry, silverware, musical instruments, dolls, toys, and athletic goods. SIC 4221–25 are warehousing and storage activities.

In contrast, the facilities identified by SIC 24 (except and 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, 373 when taken as a group, are expected to have one or many of the following activities, processes occurring on-site: storing raw materials, intermediate products, final products, by-products, waste products, or chemicals outside; smelting; refining; producing significant emissions from stacks or air exhaust systems; loading or unloading chemical or hazardous substances; the use of unhoused manufacturing and heavy industrial equipment; and generating significant dust or particulates. Accordingly, these are classes of facilities which can be viewed as generating storm water discharges associated with industrial activity requiring a permit. Establishments identified under SIC 24 (except 2434) are engaged in operating sawmills, planing mills and other mills engaged in producing lumber and wood basic materials. SIC 26 facilities are paper mills. Under SIC 28, facilities produce basic chemical products by predominantly chemical processes. SIC 29 describes facilities that are engaged in the petroleum industry. Under SIC 311, facilities are engaged in tanning, currying, and finishing hides and skins. Such processes use chemicals such as sulfuric acid and sodium dichromate, and detergents, and a variety of raw and intermediate materials. SIC 32 manufacture glass, clay, stone and concrete products form raw materials in the form quarried and mined stone, clay, and sand. SIC 33 identifies facilities that smelt, refine ferrous and nonferrous metals from ore, pig or scrap, and manufacturing related products. SIC 3441 identifies facilities manufacturing fabricated structural metal. Facilities under SIC 373 engage in ship building and repairing. The permit application requirements for storm water discharges from facilities in these categories are unchanged from the proposal.

Today's rule clarifies that the requirement to apply for a permit applies to storm water discharges from plant areas that are no longer used for industrial activities (if significant materials remain and are exposed to storm water) as well as areas that are currently being used for industrial activities. EPA would also clarify that all discharges from these areas including those that discharge through municipal separate storm sewers are addressed by this rulemaking.

One commenter questioned the use of the word "or" instead of the word "and" to describe storm water "which is located at an industrial plant 'or' directly related to manufacturing, processing, or raw material storage areas at an industrial plant." The comment expressed the concern that discharges from areas not located at an industrial plant would be subject to permitting by this language and questioned whether this was EPA's intent. EPA agrees that this is a potential source of confusion and has modified this language to reflect the conjunctive instead of the alternative. This change has been made to provide consistency in the rule whereby some areas at industrial plants, such as administrative parking lots which do not have storm water discharges commingled with discharges from manufacturing areas, are not included under this rulemaking.

Two commenters wanted clarification of the term "or process water," in the definition of discharge associated with industrial activity at § 122.26(b)(14). This rulemaking replaces this term with the term "process waste water" which is defined at 40 CFR part 401.

One commenter took issue with the decision to include drainage ponds, refuse sites, sites for residual treatment, storage, or disposal, as areas associated with industrial activity, because it was the commenter's view that such areas are unconnected with industrial activity. EPA disagrees with this comment. If refuse and other sites are used in conjunction with manufacturing or the by-products of manufacturing they are clearly associated with industrial activity. As noted above, Congress intended to include discharges directly related to manufacturing and processing at industrial plants. EPA is convinced that wastes, refuse, and residuals are the direct result or consequence of manufacturing and processing and, when located or stored at the plant that produces them, are directly related to manufacturing and processing at that plant. Storm water drainage from such areas, especially those areas exposed to the elements (*e.g.* rainfall) has a high potential for containing pollutants from materials that were used in the manufacturing process at that facility. One commenter supported the inclusion of these areas since many toxins degrade very slowly and the mere passage of time will not eliminate their effects. EPA agrees and finalizes this part of the definition as proposed. One commenter requested clarification of the term "residual" as used in this context. Residual can generally be defined to include material that is remaining subsequent to completion of an industrial process. One commenter noted that the current owner of a facility may not know what areas or sites at a facility were used in this manner in the past. EPA has clarified the definition of discharge associated with industrial activity to include areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. The Agency believes that the current owner will be in a position to establish these facts.

One commenter suggested including material shipping and receiving areas, waste storage and processing areas, manufacturing buildings, storage areas for raw materials, supplies, intermediates, and finished products, and material handling facilities as additional areas "associated with industrial activity." EPA agrees that this would add clarification to the definition, and has incorporated these areas into the definition at § 122.26(b)(14).

One commenter stated that the language "point source located at an industrial plant" would include outfalls located at the facility that are not owned or operated by the facility, but which are municipal storm sewers on easements granted to a municipality for the conveyance of storm water. EPA agrees that if the industry does not operate the point source then that facility is not required to obtain a permit for that discharge. A point source is a conveyance that discharges pollutants into the waters of the United States. If a facility does not operate that point source, then it would be the responsibility of the municipality to cover it under a permit issued to them. However, if contaminated storm water associated with industrial activity were introduced into that conveyance by that facility, the facility would be subject to permit application requirements as is all industrial storm water discharged through municipal sewers.

EPA disagrees with several comments that road drainage or railroad drainage within a facility should not be covered by the definition. Access roads and rail lines (even those not used for loading and unloading) are areas that are likely to accumulate extraneous material from raw materials, intermediate products and finished products that are used or transported within, or to and from, the facility. These areas will also be repositories for pollutants such as oil and grease from machinery or vehicles using these areas. As such they are related to the industrial activity at facilities. However, the language describing these areas of industrial activity has been clarified to include those access roads and rail lines that are "used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility." For the same reasons haul roads (roads dedicated to transportation of industrial products at facilities) and similar extensions are required to be addressed in permit applications. Two industries stated that haul roads and similar extensions should be covered by permits by rule. EPA is not considering the use of a permit by rule mechanism under this regulation, however this issue will be addressed in the section 402(p)(5) reports to Congress and in general permits to be proposed and promulgated in the near future. EPA would note however that facilities with similar operations and storm water concerns that desire to limit administrative burdens associated with permit applications and obtaining permits may want to avail themselves of the group application and/or general permits.

In response to comments, EPA would also like to clarify that it intends the language "immediate access roads" (including haul roads) to refer to roads which are exclusively or primarily dedicated for use by the industrial facility. EPA does not expect facilities to submit permit applications for discharges from public access roads such as state, county, or federal roads such as highways or BLM roads which happen to be used by the facility. Also, some access roads are used to transport bulk samples of raw materials or products (such as prospecting samples from potential mines) in small-scale prior to industrial production. EPA does not intend to require permit applications for access roads to operations which are not yet industrial activities.

EPA does agree with comments made by several industries that undeveloped areas, or areas that do not encompass those described above, should generally not be addressed in the permit application, or a storm water permit, as long as the storm water discharge from these areas is segregated from the storm water discharge associated with the industrial activity at the facility.

Numerous commenters stated that maintenance facilities, if covered, should not be included in the definition. EPA disagrees with this comment. Maintenance facilities will invariably have points of access and egress, and frequently will have outside areas where parts are stored or disposed of. Such areas are locations where oil, grease, solvents and other materials associated with maintenance activities will accumulate. In response to one commenter, such areas are only regulated in the context of those facilities enumerated in the definition at § 122.26(b)(14), and not similar areas of retail or commercial facilities.

Another commenter requested that "storage areas" be more clearly defined. EPA disagrees that this term needs further clarification in the context of this section of the rule. However, in response to one comment, tank farms at industrial facilities are included. Tank farms are in existence to store products and materials created or used by the facility. Accordingly they are directly related to manufacturing processes.

Regarding storage areas, one commenter stated that the regulations should emphasize that only facilities that are not totally enclosed are required to submit permit applications. EPA does not agree with this interpretation since use of the generic term storage area indicates no exceptions for certain physical characteristics. Thus discharges from enclosed storage areas are also covered by today's rule (except as discussed above). EPA also disagrees with one

comment asserting that small outside storage areas of finished products at industrial facilities should be excluded under the definition of associated with industrial activity. EPA believes that such areas are areas associated with industrial activity which Congress intended to be regulated under the CWA. As noted above, the legislative history refers to storage areas, without reference to whether they are covered or uncovered, or of a certain size.

The same language, in the legislative history cited above, was careful to state that the term "associated with industrial activity" does not include storm water "discharges associated with parking lots and administrative and employee buildings." To accommodate legislative intent, segregated storm water discharges from these areas will not be required to obtain a permit prior to October 1, 1992. Many commenters stated that this was an appropriate method in which to limit the scope of "associated with industrial activity." However, if a storm water discharge from a parking lot at an industrial facility is mixed with a storm water discharge "associated with industrial activity," the combined discharge is subject to permit application requirements for storm water discharges associated with industrial activity. EPA disagrees with some commenters who urged that office buildings and administrative parking lots should be covered if they are located at the plant site. EPA agrees with one commenter that inclusion of storm water discharge from these areas would be overstepping Congressional intent unless such are commingled with storm water discharges from the plant site. Several commenters requested that language be incorporated into the rule which establishes that storm water discharges from parking lots and administrative areas not be included in the definition of associated with industrial activity. EPA agrees and has retained language used in the proposal which addresses this distinction.

Storm water discharges from parking lots and administrative buildings along with other discharges from industrial lands that do not meet the regulatory definition of "associated with industrial activity" and that are segregated from such discharges may be required to obtain an NPDES permit prior to October 1, 1992, under certain conditions. For example, large parking facilities, due to their impervious nature may generate large amounts of runoff which may contain significant amounts of oil and grease and heavy metals which may have adverse impacts on receiving waters. The Administrator or NPDES State has the authority under section 402(p)(2)(E) of the amended CWA to require a permit prior to October 1, 1992, by designating storm water discharges such as those from parking lots that are significant contributors of pollutants or contribute to a water quality standard violation. EPA will address storm water discharges from lands used for industrial activity which do not meet the regulatory definition of "associated with industrial activity" in the section 402(p)(5) study to determine the appropriate manner to regulate such discharges.

Several commenters requested clarification that the definition does not include sheet flow or discharged storm water from upstream adjacent facilities that enters the land or comingles with discharge from a facility submitting a permit application. EPA wishes to clarify that operators of facilities are generally responsible for its discharge in its entirety regardless of the initial source of discharge. However, where an upstream source can be identified and permitted, the liability of a downstream facility for other storm water entering that facility may be minimized. Facilities in such circumstances may be required to develop management practices or other run-on/run-off controls, which segregates or otherwise prevents outside runoff from comingling with its storm water discharge. Some commenters expressed concern about other pollutants which may arrive on a facility's premises from rainfall. This comment was made in reference to runoff with a high or low pH. If an applicant has reason to believe that pollutants in its storm water discharge are from such sources, then that needs to be addressed in the permit application and brought to the attention of the permitting authority, which can draft appropriate permit conditions to reflect these circumstances.

EPA requested comments on clarifying the types of facilities that involve industrial activities and generate storm water. EPA preferred basing the clarification, in part, on the use of Standard Industrial Classification (SIC) codes, which have been suggested in comments to prior storm water rulemakings because they are commonly used and accepted and would provide definitions of facilities involved in industrial activity. Several commenters supported the use by EPA of Standard Industrial Classifications for the same reasons identified by EPA as a generally used and understood form of classification. It was also noted that using such a classification would allow targeting for special notification and educational mailings. Three municipalities and three State authorities commented that SICs were appropriate and endorsed their use as a sound basis for determining which industries are covered.

One municipality questioned how SIC classifications will be assigned to particular industries. SICs have descriptions of the type of industrial activity that is engaged in by facilities. Industries will need to assess for themselves whether they are covered by a listed SIC and submit an application accordingly. Another commenter questioned if Federal facilities that do not have an SIC code identification are required to file a permit application. Federal facilities will be required to submit a permit application if they are engaged in an industrial activity that is described under § 122.26(b)(14). The definition of industrial activity incorporates language that requires Federal facilities to submit permit applications in such circumstances. The language has been further clarified to include State and municipal facilities.

EPA requested comments on the scope of the definition (types of facilities addressed) as well as the clarity of regulation. EPA identified the following types of facilities in the proposed regulation as those facilities that would be required to obtain permits for storm water discharges associated with industrial activity:

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards which are also identified under category (xi) of this paragraph). One commenter (a municipality) agreed with EPA that these industries should be addressed in this rulemaking. No other comments were received on this category. EPA agrees with this comment since these facilities are those that Congress has required EPA to examine and regulate under the CWA with respect to process water discharges. The industries in these categories have generally been identified by EPA as the most significant dischargers of process wastewaters in the country. As such, these facilities are likely to have storm water discharges associated with industrial activity for which permit applications should be required.

One commenter stated that because oil and gas producers are subject to effluent guidelines, EPA is disregarding the intent of Congress to exclude

facilities pursuant to section 402(1). EPA disagrees with this comment. EPA is not prohibited from requiring permit applications from industries with storm water discharge associated with industrial activity. EPA is prohibited only from requiring a permit for oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water that is not contaminated by contact with or has not come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations such discharges. In keeping with this requirement, EPA is requiring permit applications from oil and gas exploration, production, processing, or treatment operations, or transmission facilities that fall into a class of dischargers as described in § 122.26(c)(iii).

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3411, 373 and *(xi). Facilities classified as Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25.* One large municipality and one industry agreed with EPA that facilities covered by these SICs should be covered by this rulemaking. Many commenters, however, took exception to including all or some of these industries. However as noted elsewhere these facilities are appropriate for permit applications.

One commenter stated that within certain SICs industries, such as textile manufacturers use few chemicals and that there is little chance of pollutants in their storm water discharge. EPA agrees that some industries in this category are less likely than others to have storm water discharges that pose significant risks to receiving water quality. However, there are many other activities that are undertaken at these facilities that may result in polluted storm water. Further, the CWA is clear in its mandate to require permit applications for discharges associated with industrial activity. Excluding any of the facilities under these categories, except where the facility manufacturing plant more closely resembles a commercial or retail outlet would be contrary to Congressional intent.

One State questioned the inclusion of facilities identified in SIC codes 20–39 because of their temporary and transient nature or ownership. Agency disagrees that simply because a facility may transfer ownership that storm water quality concerns should be ignored. If constant ownership was a condition precedent to applying for and obtaining a permit, few if any facilities would be subject to this rulemaking.

One State estimated that the proposed definition would lead to permits for 18,000 facilities in its State. Consequently this commenter recommended that the facilities under SIC 20–39 should be limited to those facilities that have to report under section 313 of title III, Superfund Amendments and Reauthorization Act. However, as noted by another commenter, limiting permit requirements to these facilities would be contrary to Congressional intent. While use of chemicals at a facility may be a source of pollution in storm water discharges, other every day activities at an industrial site and associated pollutants such as oil and grease, also contribute to the discharge of pollutants that are to be addressed by the CWA and these regulations. While the number of permit applications may number in the thousands, EPA intends for group applications and general permits to be employed to reduce the administrative burdens as greatly as possible.

Two commenters felt the permit applications should be limited to all entities under SIC 20–39. EPA disagrees that all the industrial activities that need to be addressed fall within these SICs. Discharges from facilities under paragraphs (i) through (xi) such as POTWs, transportation facilities, and hazardous waste facilities, are of an industrial nature and clearly were intended to be addressed before October 1, 1992.

Two commenters stated that SIC 241 should be excluded in that logging is a transitory operation which may occur on a site for only 2–3 weeks once in a 20–30 year period. It was perceived that delays in obtaining permits for such operations could create problems in harvest schedule and mill demand. This commenter stated that runoff from such operations should be controlled by BMPs in effect for such industries and that such a permit would not be practical and would be cost prohibitive.

EPA agrees with the commenter that this provision needs clarification. The existing regulations at 40 CFR 122.27 currently define the scope of the NPDES program with regard to silvicultural activities. 40 CFR 122.27(b)(1) defines the term "silvicultural point source" to mean any discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States. Section 122.27(b)(1) also excludes certain sources. The definition of discharge associated with industrial activity does not include activities or facilities that are currently exempt from permitting under NPDES. EPA does not intend to change the scope of 40 CFR 122.27 in this rulemaking. Accordingly, the definition of "storm water discharge associated with industrial activity" does not include sources that may be included under SIC 24, but which are excluded under 40 CFR 122.27. Further, EPA intends to examine the scope of the NPDES silvicultural regulations at 40 CFR 122.27 as it relates to storm water discharges in the course of two studies of storm water discharges required under section 402(p)(5) of the CWA.

In response to one comment, EPA intends that the list of applicable SICs will define and identify what industrial facilities are required to apply. Facilities that warehouse finished products under the same code at a different facility from the site of manufacturing are not required to file a permit application, unless otherwise covered by this rulemaking.

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990 and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations. Several commenters urged that Congress intended to require permits or permit applications only for the manufacturing sector of the oil and gas industry (or those activities that designated in SIC 20 through 39). EPA disagrees with this argument. The fact that Congress used the language cited above and not the appropriate the SIC definition explicitly does not indicate that a broader definition or less exclusive definition was contemplated. According to these comments, all storm water discharges from oil and gas

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exploration and production facilities would be exempt from regulation. However, EPA is convinced that a facility that is engaged in finding and extracting crude oil and natural gas from subsurface formations, separating the oil and gas from formation water, and preparing that crude oil for transportation to a refinery for manufacturing and processing into refined products, will have discharges directly relating to the processing or raw material storage at an industrial plant and are therefore discharges associated with industrial activity.

For further clarification EPA is intending to focus only on those facilities that are in SIC 10-14. Furthermore, in response to several comments, this rulemaking will require permit applications for storm water discharges from currently inactive petroleum related facilities within SIC codes 10-14, if discharges from such facilities meet the requirements as described in section VI.F.7.a. and § 122.26(c)(1)(iii). Inactive facilities will have storm water associated with industrial activity irrespective of whether the activity is ongoing. Congress drew no distinction between active and inactive facilities in the statute or in the legislative history.

(iv) Hazardous waste treatment, storage, or disposal facilities that are operating under interim status or a permit under Subtitle C of the Resource, Conservation and Recovery Act. One commenter believed that all RCRA and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) facilities should be specifically identified using SIC codes for further clarification. EPA considers this to be unnecessarily redundant, since the RCRA/CERCLA identification is sufficient.

Several industries asserted that storm water discharge from landfills, dumps, and land application sites, properly closed or otherwise subject to corrective or remedial actions under RCRA, should not be included in the definition. One commenter noted that the runoff from these areas is like runoff from undeveloped areas. One commenter also concluded that landfills, dumps, and land application sites should also be excluded if they are properly maintained under RCRA.

One commenter also rejected the idea of requiring permits from all active and inactive landfills and open dumps that have received any industrial wastes, and subtitle C facilities. This commenter felt that these facilities were already adequately covered under RCRA.

Two industry commenters felt that it would be redundant to have hazardous waste facilities regulated by RCRA and the NPDES storm water program. One felt this was especially so if there are current pretreatment standards.

The Agency disagrees that all activities that may contribute to storm water discharges at RCRA subtitle C facilities are being fully controlled and that requiring NPDES permits for storm water discharges at RCRA subtitle C facilities is redundant. First, the vast majority of permitted hazardous waste management facilities are industrial facilities involved in the manufacture or processing of products for distribution in commerce. Their hazardous waste management activities are incidental to the production-related activities. While RCRA subtitle C regulations impose controls in storm water runoff from hazardous waste management units and require cleanup of releases of hazardous wastes, they generally do not control non-systematic spills or process. These releases, from the process itself or the storage of raw materials or finished products are a potential source of storm water contamination. In addition, RCRA subtitle C (except via corrective action authority) does not address management of "non hazardous" industrial wastes, which nevertheless could also potentially contaminate storm water runoff.

Second, at commercial hazardous waste management facilities, the RCRA subtitle C permitting requirements and management standards do not control all releases of potentially toxic materials. For example, some permitted commercial treatment facilities may store and use chemicals in the treatment of RCRA hazardous wastes. Releases of these treatment chemicals from storage areas are a potential source of storm water contamination.

Finally, many RCRA subtitle C facilities have inactive Solid Waste Management Units (SWMU's) on the facility property. These SWMU's may contain areas on the land surface that are contaminated with hazardous constituents. RCRA requires that hazardous waste management facilities must investigate these areas of potential contamination, and then perform corrective action to remediate any SWMU's that are of concern. However, the corrective action process at these facilities will not be completed for a number of years due to the complexity of the cleanup decisions, and due to the fact that many hazardous waste management facilities do not yet have RCRA permits. Until corrective action has been completed at all such subtitle C facilities, SWMU's are a potential source of storm water contamination that should be addressed under the NPDES program. Finally, under section 1004(27) of RCRA, all point source discharges, including those at RCRA regulated facilities, are to be regulated by the NPDES program. Thus, there is no concern of regulatory overlap, and to the extent that the storm water regulations are effectively implemented, it will help address these units in a way that alleviates the need for expensive corrective action in the future.

(v) Landfills, land application sites, and open dumps that receive or have received industrial wastes and that are subject to regulation under subtitle D of RCRA. EPA received numerous comments supporting the regulation of municipal landfills which receive industrial waste and are subject to regulation under subtitle D of RCRA. EPA agrees with these comments. These industries have significant potential for storm water discharges that can adversely affect receiving water.

Two States argued that landfills should be addressed under the non-point source program. EPA disagrees that the non-point source program is sufficient for addressing these facilities. Further, addressing a class of facilities under the non-point source program does not exempt storm water discharges from these facilities from regulation under NPDES. The CWA requires EPA to promulgate regulations for controlling point source discharges of storm water from industrial facilities. Point sources from landfills consisting of storm water are such discharges requiring an NPDES permit. Several commenters argued that these discharges are adequately addressed by RCRA and that regulating them under this storm water rule would be redundant. However, as discussed above, RCRA expressly does not regulate point source discharges subject to NPDES permits. Given the nature of these facilities and of the material stored or disposed, EPA believes storm water permits are necessary. Similarly EPA rejects the comment that storm water discharges from these facilities are already adequately regulated by State authority. Congress has mandated that storm water discharges associated with industrial activity have an NPDES permit.

One commenter wanted EPA to define by size what landfills are covered. In response, it is the intent of these regulations to require permit applications from all landfills that receive industrial waste. Storm water discharges from such facilities are addressed because of the nature of the material with which the storm water comes in contact. The size of facility will not dictate what type of waste is exposed to the elements.

One commenter requested that the definition of industrial wastes be clarified. For the purpose of this rule, industrial waste consists of materials delivered to the landfill for disposal and whose origin is any of the facilities described under § 122.26(b)(14) of this regulation.

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093. One commenter suggested that the recycling of materials such as paper, glass, plastics, etc., should not be classified as an industrial activity. EPA disagrees that such facilities should be excluded on that basis. These facilities may be considered industrial, as are facilities that manufacture such products absent recycling.

Other facilities exhibit traits that indicate industrial activity. In junkyards, the condition of materials and junked vehicles and the activities occurring on the yard frequently result in significant losses of fluids, which are sources of toxic metals, oil and grease and polychlorinated aromatic hydrocarbons. Weathering of plated and non-plated metal surfaces may result in contributions of toxic metals to storm water. Clearly such facilities cannot be classified as commercial or retail.

One municipality felt that "significant recycling" should be defined or clarified. EPA agrees that the proposed language is ambiguous. It has been clarified to require permit applications from facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093. These SIC codes describe facilities engaged in dismantling, breaking up, sorting, and wholesale distribution of motor vehicles and parts and a variety of other materials. The Agency believes these SIC codes clarify the term significant recycling.

One municipality stated that regulation of these facilities under NPDES would be duplicative if they are publicly owned facilities. One State expressed the view that automobile junkyards, salvage yards could not legitimately be considered industrial activity. As noted above, EPA disagrees with these comments. Facilities that are actively engaged in the storage and recycling of products including metals, oil, rubber, and synthetics are in the business of storing and recycling materials associated with or once used in industrial activity. These activities are not commercial or retail because they are engaged in the dismantling of motors for distribution in wholesale or retail, and the assembling, breaking up, sorting, and wholesale distribution of scrap and waste materials, which EPA views as industrial activity. Further, being a publicly owned facility does not confer non-industrial status.

(vii) Steam electric power generating facilities, including coal handling sites, and onsite and offsite ancillary transformer storage areas. Most of the comments were against requiring permit applications for onsite and offsite ancillary transformer facilities. One commenter stated that these transformers did not leak in storage and if there were leakage problems in handling transformers, such leaks were subject to Federal and State spill clean-up procedures. The same commenter suggested that if EPA required applications from such facilities that it exclude those that have regular inspections, management practices in place, or those that store 50 transformers at any one time.

EPA agrees that such facilities should not be covered by today's rule. As one commenter noted, the Toxic Substances Control Act (TSCA) addresses pollutants associated with transformers that may enter receiving water through storm water discharges. EPA has examined regulations under TSCA and agrees that regulation of storm water discharges from these facilities should be the subject of the studies being performed under section 402(p)(5), rather than regulations established by today's rule. Under TSCA, transformers are required to be stored in a manner that prevents rain water from reaching the stored PCBs or PCB items. 40 CFR 761.65(b)(1)(i). EPA considers transformer storage to be more akin to retail or other light commercial activities, where items are inventoried in buildings for prolonged periods for use or sale at some point in the future, and where there is no ongoing manufacturing or other industrial activity within the structure.

One commenter stated that this category of industries should be loosened so that all steam electric facilities are addressed—oil fired and nuclear. EPA believes that the language as proposed broadly defines the type of industrial activity addressed without specifying each mode of steam electric production. One commenter noted that the EPA has no authority under the CWA (*Train* v. *CPIR, Inc.*, 426 U.S. 1 (1976) to regulate the discharge of source, special nuclear and by-product materials which are regulated under the Atomic Energy Act. EPA agrees permit applications may not address those aspects of such facilities, however the facility in its entirety may not necessarily be exempt. A permit application will be appropriate for discharges from non-exempt categories.

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, material handling facilities, equipment cleaning operations or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or which are identified in another subcategory of facilities under EPA's definition of storm water discharges associated with industrial activity. One commenter requested clarification of the terms "vehicle maintenance." Vehicle maintenance refers to the rehabilitation, mechanical repairing, painting, fueling, and lubricating of instrumentalities of transportation located at the described facilities. EPA is declining to write this definition into the regulation however since "vehicle maintenance" should not cause confusion as a descriptive term. One commenter wanted railroad tracks where rail cars are set aside for minor repairs excluded from regulation. In response, if the activity involves any of the above activities then a permit application is required. Train yards where repairs are undertaken are associated with industrial activity. Train yards generally have trains which, in and of themselves, can be classified as heavy industrial equipment. Trains, concentrated in train yards, are diesel fueled, lubricated, and repaired in volumes that connote industrial activity, rather than retail or commercial activity.

One commenter argued that if gasoline stations are not considered for permitting, then all transportation facilities should be exempt. EPA disagrees with the thrust of this comment. Transportation facilities such as bus depots, train yards, taxi stations, and airports are generally larger than individual repair shops, and generally engage in heavier more expansive forms of industrial activity. In keeping with Congressional intent to cover all industrial facilities, permit applications from such facilities are appropriate. In contrast, EPA views gas stations as retail commercial facilities not covered

by this regulation. It should be noted that SIC classifies gas stations as retail.

(ix) POTW lands used for land application treatment technology/ sludge disposal, handling or processing areas, and chemical handling and storage areas. One commenter wanted more clarification of the term POTW lands. Another commenter requested clarification of the terms sludge disposal, sludge handling areas, and sludge processing areas. One State recommended that a broader term than POTW should be used. EPA notes that on May 2, 1989, it promulgated NPDES Sewage Sludge Permit Regulations; State Sludge Management Program Requirements at 40 CFR part 501. This regulation identified those facilities that are subject to section 405(f) of the CWA as "treatment works treating domestic sewage."

In response to the above comments, EPA has decided to use this language to define what facilities are required to apply for a storm water permit. Under this rulemaking "treatment works treating domestic sewage," or any other sewage sludge or wastewater treatment device or system used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge, with a design flow of 1.0 mgd or more, or facilities required to have an approved pretreatment program under 40 CFR part 403, will be required to apply for a storm water permit. However, permit applications will not be required to address land where sludge is beneficially reused such as farm lands and home gardens or lands used for sludge management that are not physically located within the confines (offsite facility) of the facility or where sludge is beneficially reused in compliance with section 405 of the Clean Water Act (proposed rules were published on February 6, 1989, at 54 FR 5746). EPA believes that such activity is not "industrial" since it is agricultural or domestic application (non-industrial) unconnected to the facility generating the material.

EPA received many comments on the necessity and appropriateness of requiring permit applications for storm water discharges from POTW lands. It was anticipated by numerous commenters that the above cited sludge regulations would adequately address storm water discharges from lands where sludge is applied. However, the sewage sludge regulations do not directly address NPDES permit requirements for storm water discharges from POTW lands and related areas to the extent required by today's rulemaking; the regulations cover only permits for use or disposal of sludge. Also, the regulations proposed on February 4, 1989, cover primarily the technical standards for the composition of sewage sludge which is to be used or disposed. They do not include detailed permitting requirements for discharges of storm water from lands where sludge has been applied to the land. To that extent, EPA is not persuaded by these commenters that POTWs and POTW lands should be excluded from these storm water permit application requirements.

Two commenters noted that some States already regulate sludge use or disposal activities substantially and that EPA should refrain from further regulation. EPA disagrees that this is a basis for excluding facilities from Federal requirements. Notwithstanding regulations in existence under State law, EPA is required by the CWA to promulgate regulations for permit application for storm water associated with industrial activity. Under the NPDES program, States are able to promulgate more rigorous requirements. However a minimum level of control is required under Federal law. One commenter also indicated that a State's sludge land application sites must follow a well defined plan to ensure there is no sludge related runoff. Notwithstanding that a State may require storm water controls for sludge land applications, as noted above, EPA is required to promulgate regulations requiring permit applications from appropriate facilities. EPA views facilities such as waste treatment plants that engage in on-site sludge composting, storage of chemicals such as ferric chloride, alum, polymers, and chlorine, and which may experience spills and bubbleovers are suitable candidates for storm water permits. Facilities using such materials are not characteristic of commercial or retail activities. Use and storage of chemicals and the production of material such as sludge, with attendant heavy metals and organics, is activity that is industrial in nature. The size and scope of activities at the facility will determine the extent to which such activities are undertaken and such materials used and produced at the facility. Accordingly, EPA believes limiting the facilities covered under this category to those of 1.0 mgd and those covered under the industrial pretreatment program is appropriate.

To the extent that permit applicants are already required to employ certain management practices regarding storm water, these may be incorporated into permits and permit conditions issued by Federal and State permitting authorities. EPA has selected facilities identified under 40 CFR part 501 (*i.e.* those with a design flow of 1.0 mgd or more or those required to have an approved pretreatment program) since these facilities will have largest contribution of industrial process discharges. Sludge from such facilities will contain higher concentrations of heavy metal and organic pollutants.

One commenter stated that sludge disposal is a public activity that should be addressed in a public facility's storm water management program under a municipal storm water management program. EPA disagrees. Industrial facilities, whether publicly owned or not, are required to apply for and obtain permits when they are designated as industrial activity.

Another comment stated that a permit should not be required for facilities that collect all runoff on site and treat it at the same POTW. EPA believes that a permit application should be required from such facilities. However, the above practice can be incorporated as a permit condition for such a facility. One commenter stated storm water from sludge and chemical handling areas can be routed through the headworks of the POTW. The agency agrees that this may be an appropriate management practice for POTWs as long as other NPDES regulatory requirements are fulfilled with regard to POTWs.

(x) Construction activities, including clearing, grading and excavation activities except operations that result in the disturbance of less than five acre total land area which are not part of a larger common plan of development or sale. EPA addresses whether these facilities should be covered by today's rule in section VI.F.8.

The December 7, 1988, proposal also requested comments on including the following other categories of discharges in the definition of industrial activities: (xii) Automotive repair shops classified as Standard Industrial Classification 751 or 753; (xiii) Gasoline service stations classified as Standard Industrial Code 5541; (xiv) Lands other than POTW lands (offsite facilities) used for sludge management; (xv) Lumber and building materials retail facilities classified as Standard Industrial Classification 5211; (xvi) Landfills, land application sites, and open dumps that do not receive industrial wastes and that are subject to regulation under subtitle D of RCRA; (xvii) Facilities classified as Standard Industrial Classification 46 (pipelines, except natural gas), and 492 (gas production and distribution); (xviii) Major electrical powerline corridors.

EPA received numerous comments on whether to require permit applications for these particular facilities. The December 7, 1988, proposal reflected EPA's intent not to require permits for these facilities, but rather to address these facilities in the two studies required by CWA sections 402(p)(5) and (6). After reviewing the comments on this issue, EPA believes that these facilities should be addressed under these sections of the CWA. Most of these facilities are classified as light commercial and retail business establishments, agricultural, facilities where residential or domestic waste is received, or land use activities where there is no manufacturing. It should be noted that although EPA is not requiring the facilities identified as categories (xii) to (xviii), in the December 7, 1988, proposal to apply for a permit application under this rulemaking, such facilities may be designated under section 402(p)(2)(E) of the CWA.

Three commenters recommended that EPA clarify that non-exempt Department of Energy and Department of Defense facilities should be covered by the storm water regulation. The regulation clearly states that Federal Facilities that are engaged in industrial activity (*i.e.* those activities in § 122.26(b)(14)(i)–(xi)) are required to submit permit applications. Those applying for permits covering Federal facilities should consult the Standard Industrial Classifications for further clarification.

One commenter questioned how EPA intended to regulate municipal facilities engaged in industrial activities. Municipal facilities that are engaged in the type of industrial activity described above and which discharge into waters of the United States or municipal separate storm sewer systems are required to apply for permits. These facilities will be covered in the same manner as other industrial facilities. The fact that they are municipally owned does not in any way exclude them from needing permit applications under this rulemaking.

One commenter suggested exempting those facilities that have total annual sales less than five million dollars or occupy less than five acres of land. Another commenter thought that all minor permittees should be exempt. EPA believes that the quality of storm water and the extent to which discharges impact receiving water is not necessarily related to the size of the facility or the dollar value of its business. What is important in this regard, is the extent to which steps are taken at facilities to curb the quantity and type of material that may pollute storm water discharges from these facilities. Therefore EPA has not excluded facilities from permitting on such a basis. This same commenter stated that the proposed rules should not address facilities with multiple functions (industrial and retail). EPA disagrees. If a facility engages in activity that is defined in paragraphs (i) through (xi) above, it is required to apply for a permit regardless of the fact that it also has a retail element. Such facilities need only submit a permit application for the industrial portion of the facility (as long as storm water from the non-industrial portion is segregated, as discussed above). This commenter also felt that more studies needed to be undertaken to determine the best way to regulate industries. EPA agrees that storm water problems need further study and for that reason EPA has devoted substantial manpower and resources to complete comprehensive studies under section 402(p)(5), while also addressing industrial sources that need immediate attention under this rulemaking.

One commenter requested that EPA give examples of storm water discharges from each of the facilities that have been designated for submitting permit applications. Agency believes that this is unnecessary and impractical since every facility, regardless of the type of industry, will have different terrain, hydrology, weather patterns, management practices and control techniques. However, EPA intends to issue guidance on filing permit applications for storm water discharges from industrial facilities which details how an industry goes about filing an industrial permit and dealing with storm water discharges.

Today's rulemaking for storm water discharges associated with industrial activity at § 122.26(c)(1)(i) includes special conditions for storm water discharges originating from mining operations, oil or gas operations (§ 122.26(c)(1)(iii)), and from the construction operations listed above (§ 122.26(c)(1)(ii)). These requirements are discussed in more detail in section VI.F.7 and section VI.F.9 of today's notice.

3. Individual Application Requirements

Today's rule establishes individual and group permit application requirements for storm water discharges associated with industrial activity. These requirements will address facilities precluded from coverage under the general permits to be proposed and promulgated by EPA in the near future. EPA considers it necessary to obtain the information required in individual permit applications from certain facilities because of the nature of their industrial activity and because of existing institutional mechanisms for issuing and tracking NPDES permits. Furthermore, some States will not have general permitting authority. Facilities located in such States will be required to submit individual applications or participate in a group application. The following response to comments received on these requirements pertains to these facilities.

Under the September 26, 1984, regulation operators of Group I storm water discharges were required to submit NPDES Form 1 and Form 2C permit applications. In response to post-regulation comments received on that rule, EPA proposed new permit application requirements (March 7, 1985, (50 FR 9362) and August 12, 1985, (50 FR 32548)) which would have decreased the analytical sampling requirements of the Form 2C and provided procedures for group applications. Passage of the WQA in 1987 gave the EPA additional time to consider the appropriate permit application requirements for storm water discharges. On December 7, 1988, application requirements were proposed and numerous comments were received. Based upon these comments, modifications and refinements have been made to the industrial storm water permit application.

Some commenters expressed the view that the permit application requirements are too burdensome, require too much paperwork, are of dubious utility, and focus too greatly on the collection of quantitative data. EPA disagrees. In comparison to prior approaches for permitting storm water discharges and other existing permitting programs, EPA has streamlined the permit application process, limited the quantitative data requirements, and required narrative information that will be used to determine permit conditions that relate to the quality of storm water discharge. To the extent that EPA needs non-quantitative information to develop appropriate permit conditions, EPA disagrees with the view of some commenters that the information required is excessive. In response to comments on earlier rulemakings and a comment received on the December 7, 1988, proposal (stressing that the emphasis should be on site management, rather than monitoring, sampling, and reporting) EPA has shifted the emphasis of the permit application requirements for storm water discharges associated with industrial activity from the existing requirements for collection of

quantitative data (sampling data) in Form 2C towards collection of less quantitative data supplemented by additional information needed for evaluation of the nature of the storm water discharges.

The permit application requirements proposed for storm water discharges reduce the amount of quantitative data required in the permit application and exempt discharges which contain entirely storm water (*i.e.* contain no other discharge that, without the storm water component, would require an NPDES permit), from certain reporting requirements of Form 2C. The proposed modifications also would exempt applicants for discharges which contain entirely storm water from several non-quantitative information collection provisions currently required in the Form 2C. The proposed modifications would rely more on descriptive information for assessing impacts of the storm water discharge. One commenter proposed that information that the applicant has submitted for other permits be incorporated by reference into the storm water permit application. EPA disagrees that incorporation by reference is appropriate. The permitting authority will need to have this information readily available for evaluating permit application and permit conditions. Furthermore, EPA feels that the applicant is in the best position to provide the information and verify its accuracy. However, if the applicant has such information and it accurately reflects current circumstances, then the applicant can rely on the information for meeting the information requirements of the application. Another commenter suggested that EPA should only require the information in § 122.26(c)(1) (A) and (B) (*i.e.*, the requirement for a topographic map indicating drainage areas and estimate of impervious areas and material management practices). As explained in greater detail below, EPA is convinced that some quantitative data and the other narrative requirements are necessary for developing appropriate permit conditions.

Form 2F addressing permit applications for storm water discharges associated with industrial activity is included in today's final rule. A complete permit application for discharges composed entirely of storm water, will be comprised of Form 2F and Form 1. Operators of discharges which are composed of both storm water and non-storm water will submit, where required, a Form 1, an entire Form 2C (or Form 2D) and Form 2F when applying. In this case, the applicant will provide quantitative data describing the discharge during a storm event in Form 2F and quantitative data describing the discharge during non-storm events in Form 2C. Non-quantitative information reported in the Form 2C will not have to be reported again in the Form 2F.

Under today's rule, Form 2F for storm water discharges associated with industrial activity would not require the submittal of all of the quantitative information required in Form 2C, but would require that quantitative data be submitted for:

- Any pollutant limited in an effluent guideline for an industrial applicant's subcategory;
- Any pollutant listed in the facility's NPDES permit for its process wastewater;
- Oil and grease, TSS, COD, pH, BOD5, total phosphorus, total Kjeldahl nitrogen; nitrate plus nitrite nitrogen; and
- Any information on the discharge required under 40 CFR 122.2l(g)(7) (iii) and (iv).

In order to characterize the discharge(s) sampled, applicants need to submit information regarding the storm event(s) that generated the sampled discharge, including the date(s) the sample was taken, flow measurements or estimates of the duration of the storm event(s) sampled, rainfall measurements or estimates from the storm event(s) which generated the sampled runoff, and the duration between the storm event sampled and the end of the previous storm event. Information regarding the storm event(s) sampled is necessary to evaluate whether the discharge(s) sampled was generally representative of other discharges expected to occur during storm events and to characterize the amount and nature of runoff discharges from the site.

One commenter stated that the quantitative information should be limited to those pollutants that are expected to be known to the applicant. EPA believes this would be inappropriate since there will be no way of determining initially whether these pollutants are present despite the expectations of the applicant. Once the data is provided, permits can be drafted which address specific pollutants. This rulemaking requires that the applicant test for oil and grease, COD, pH, BOD5, TSS, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen and total phosphorus. Oil and grease and TSS are a common component of storm water and can have serious impacts on receiving waters. Oxygen demand (COD and BOD5) will help the permitting authority evaluate the oxygen depletion potential of the discharge. BOD5 is the most commonly used indicator of potential oxygen demand. COD is considered a more inclusive indicator of oxygen demand, especially where metals interfere with the BOD5 test. The pH will provide the permitting authority with important information on the potential availability of metals to the receiving flora, fauna and sediment. Total Kjeldahl nitrogen, nitrate plus nitrite nitrogen and total phosphorus are measures of nutrients which can impact water quality. Because this data is useful in developing appropriate permit conditions, EPA disagrees with the argument made by one commenter that quantitative data requirements should be a permit condition and not part of the application process.

In the proposed rule, the Agency used total nitrogen as a parameter. This has been changed to total Kjeldahl nitrogen and nitrate plus nitrite nitrogen for clarity.

Today's rule defines sampling at industrial sites in terms of sampling for those parameters that have effluent limits in existing NPDES permits, as well as for any other conventional or nonconventional parameter that might be expected to be found at the outfall. Comments on the appropriateness of the defined parameters were solicited by the proposal. Numerous commenters maintained that either the parameter list be made industry specific, or that pollutant categories not detected in the initial screen be exempted from further testing. Some suggested that only conventional pollutants, inorganics, and metals be sampled unless reason for others is found.

In terms of specific water quality parameters, it was recommended that surfactants not be tested for unless foam is visible. One commenter also suggested that fecal coliform sampling is inappropriate for industrial permits applications. One commenter favored testing for TOC instead of VOC. In response, VOC has been eliminated from the list of parameters because it will not yield specific usable data. VOC is not specifically required in any sampling in today's rule, except where priority pollutant scans are required.

Some recommended that procedures be modified to facilitate quicker, less expensive lab analyses. Concern was also raised that industry might be required to collect its own rainfall data if there is no nearby observation station. Some commenters stated that EPA should not allow automatic sampling for either biological or oil and grease sampling due to the potential for contamination in sampling equipment.

In response, EPA believes that the sampling requirements for industry in today's rule are reasonable and not burdensome. These requirements address parameters that have effluent limits in existing NPDES permits, as well as for any other conventional or nonconventional parameter that might be expected to be found at the applicants outfall. Under this procedure both industry-specific and site-specific contaminants are already identified in the existing permit. Whether all these parameters need to be made a part of any discharge characterization plans, under the terms of the permit, will be a case-by-case determination for the permitting authority. EPA maintains that the test for surfactants (if in effluent guidelines or in the facility's NPDES permit for process water) is justifiable even when a foam is not obvious at the outfall. The presence of detergents in storm water may be indicated by foam, but the absence of foam does not indicate that detergents are not present.

EPA requested comments on fecal coliform as a parameter. Fecal coliform was included on the list as an indicator of the presence of sanitary sewage. In large concentrations, fecal coliform may be an effective indicator of sanitary sewage as opposed to other animal wastes. EPA believes that sanitary cross connections will also be found at industrial facilities. Furthermore, the test for fecal coliform is an inexpensive test and its inclusion or exclusion should make little impact financially on the individual application costs. Sampling for volatile organic carbon shall be accomplished when required, as it is an appropriate indicator of industrial solvents and organic wastes.

In response to comments, EPA acknowledges that there are certain pollutants that are capable of leaving residues in automatic sampling devices that will potentially contaminate subsequent samples. In these cases, such as for biological monitoring, if such a problem is perceived to exist and it is expected that the contaminant will render the subsequent samples unusable, manual grab samples may be needed. This would include grab samples for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. EPA is not disallowing the use of automatic sampling because of possible contamination, as this type of sampling may be the best method for obtaining the necessary samples from a selected storm events.

In addition to the conventional pollutants listed above, this final rule requires applicants, when appropriate, to sample other pollutants based on a consideration of site-specific factors. These parameters account for pollutants associated with materials used for production and maintenance, finished products, waste products and non-process materials such as fertilizers and pesticides that may be present at a facility. Applicants must sample for any pollutant limited in an effluent guideline applicable to the facility or limited in the facility's NPDES permit. These pollutants will generally be associated with the facility's manufacturing process or wastes. Other process and non-process related pollutants, will be addressed by complying with the requirements of 40 CFR 122.21(g)(7) (iii) and (iv).

Section 122.21(g)(7)(iii) requires applicants to indicate whether they know or have reason to believe that any pollutant listed in Table IV (conventional and nonconventional pollutants) of appendix D to 40 CFR part 122 is discharged. If such a pollutant is either directly limited or indirectly limited by the terms of the applicant's existing NPDES permit through limitations on an indicator parameter, the applicant must report quantitative data. For pollutants that are not contained in an effluent limitations guideline, the applicant must either report quantitative data or describe the reasons the pollutant is expected to be discharged. With regard to pollutants listed in Table II (organic pollutants) or Table III (metals, cyanide and total phenol) of appendix D, the applicant must indicate whether they know or have reason to believe such pollutants are discharged from each outfall and, if they are discharged in amounts greater than 10 parts per billion (ppb), the applicant must report quantitative data. An applicant qualifying as a small business under 40 CFR 122.21(g)(8), (*e.g.*, coal mines with a probable total annual production of less than 100,000 tons per year or, for all other applicants, gross total annual sales averaging less than $100,000 per year (in second quarter 1980 dollars)), is not required to analyze for pollutants listed in Table II of appendix D (the organic toxic pollutants).

Section 122.21(g)(7)(iv) requires applicants to indicate whether they know or have reason to believe that any pollutant in Table V of appendix D to 40 CFR part 122 (certain hazardous substances) is discharged. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged and report any existing quantitative data it has for the pollutant.

When collecting data for permit applications, applicants may make use of 40 CFR 122.2l(g)(7), which provides that "when an applicant has two or more outfalls with substantially identical effluents, the Director may allow the applicant to test only one outfall and report that the quantitative data also applies to the substantially identical outfalls." Where the facility has availed itself of this provision, an explanation of why the untested outfalls are "substantially identical" to tested outfalls must be provided in the application Where the amount of flow associated with the outfalls with substantially identical effluent differs, measurements or estimates of the total flow of each of the outfalls must be provided. Several commenters stated that the time and expense associated with sampling and analysis would be saved if the applicant was able to pick substantially identical outfalls without prior approval of the permitting authority. EPA disagrees that this would be an appropriate devolution of authority to the permit applicant. The permitting authority needs to ensure that these outfalls have been grouped according to appropriate criteria (for example do the outfalls serve similar drainage areas at the facility). Furthermore, EPA is not requiring that the permit applicant engage in sampling to demonstrate that the outfalls are indeed substantially identical, because that would of course defeat the purpose of § 122.21(g)(7). The procedure for establishing identical outfalls is not that onerous and provides a means for industry to save substantially on time and resources for sampling.

EPA proposed and requested comment on a requirement that the facility must sample a storm event that is typical for the area in terms of duration and severity The storm event must be greater than 0.1 inches and must be at least 96 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. In general, variance of the parameters (such as the duration of the event and the total rainfall of the event) should not exceed 50 percent from the parameters of the average rainfall event in that area. EPA also requested comments on addressing snow melt events under this definition.

Commenters stated that: median or average rainfall is not an acceptable approach; the minimum depth and duration of rainfall must be specified; the allowable 50% variation is questionable; the total depth of the storm is irrelevant; and the storm should be viewed based on the average intensity of the storm. One commenter

suggested that using the median rainfall event would be a better approach than the average rainfall event.

Others insisted that "representative" or typical storms do not exist in semi-arid climates and that representative rainfall must be site-specific (regional) and seasonal. Several commenters contended that the requirement for 96 dry hours between events is not acceptable, with 48 and 72 hours identified as possible alternatives.

One commenter believed that a typical standard design storm, such as the 1-year, 24-hour, or 10-year, 1-hour, would be preferable. Another commenter felt that the storm event should be based on the rainfall required to generate a minimum discharge level. One commenter questioned whether the storm is to be sampled at all sites simultaneously.

To clarify its decision on what storm event should be sampled, EPA notes that its selection of the storm event considers both regional and seasonal variation of precipitation. This is evidenced in the rule with regard to sites in the municipal application (three events sampled), and in the requirements for industrial group applications (a minimum of two applicants, or one applicant in groups of less than 10, to be represented in each precipitation zone (*see* section VI.F.4 below).

The definition of a 0.1 inch minimum was determined by NURP and other studies to be the minimum rainfall depth capable of producing the rainfall/runoff characteristics necessary to generate a sufficient volume of runoff for meaningful sample analysis. EPA believes by requiring the average storm to be used as the basis for sampling that depth, duration, and therefore average rainfall intensity are being regionally defined. The Agency has also added the option of using the median rainfall event instead of the average. The potential for monitoring events that may not meet this specification should be minimized by allowing the proposed 50 percent variation in rainfall depth and/or duration from event statistics. However, the 50 percent variation need only be met when possible. Further, there is flexibility in the rule where the Director may allow or establish site specific requirements such as the minimum duration between the previous measurable storm event and the storm event sampled, the amount of precipitation from the storm event to be sampled, and the form of precipitation sampled (snowmelt or rainfall). If data is obtained from a rain event that does not meet the criteria above, the Director has the discretion to accept the data as valid.

The December 7, 1988, proposal called for a 96-hour period between events of measurable rainfall, here defined as 0.1 inch, which provided a four day minimum for the accumulation of pollutants on the surface of the outfalls' tributary areas. The key word in the definition is "measurable", which means that the 96-hour period did not necessarily have to be dry, only that no cleansing rainfall (*i.e.* 0.1 inch rain event) has occurred. However, after reviewing comments on this issue EPA has decided to change the period to 72 hours. Many commenters indicated that 96 hours is too restrictive and that securing a sample under such circumstances would be unnecessarily difficult. EPA agrees that the quality or representativeness of the sample would not be adversely affected by this change.

EPA does not agree with comments that the requirement of a particular "design" storm would be appropriate. Many commenters have expressed concern that they might sample an event not meeting the requirements for industrial group applications as defined. Because there is no way to know with sufficient certainty beforehand that an upcoming event will approximate a one-year, twenty-four hour storm, many events would be unnecessarily sampled before this event is realized.

EPA does not intend that a municipality or industry be required to sample all required outfalls for a single storm. This would represent a unmanageable investment in equipment and manpower. In some areas, it may be necessary to sample multiple sites for a single event due to the irregularity of rainfall, but not all sites.

EPA described parameters for selecting storm events for sampling of municipal and industrial outfalls in the December 7, 1988, proposal. EPA has received several comments regarding the problems that rainfall measurement in general presents. A recurring comment relative to reporting rainfall, and in verifying that the storm itself is representative, deals with the spatial distribution of rainfall. The rainfall measured at an airport does not always represent rainfall at the site, particularly in summer months when thunderstorms are prevalent. One commenter stated that it would be easier to base the selected storm on either a minimum discharge, or on a discharge duration other than on the total precipitation, because these parameters are easily measured at the site and are not dependent on the airport gauges receiving the same rainfall as the site. A few commenters questioned how to determine typical storm characteristics. One commenter advised that NOAA rainfall reporting stations provide data that represent only daily rainfall totals, not storm event data. One commenter pointed out that the time frame of the sampling requirement does not consider that a particular region may be in the midst of a multi-year drought cycle, and that what little rainfall occurs may have uncharacteristically high levels of pollutants.

The type of rain event sampled is an important parameter in any attempt to characterize system-wide loads based on the sampling results. Rainfall gauges that report only event total depth will provide the information necessary to characterize most events, provided that a reasonable estimate of the event duration can be made. If simulation models are to be used in estimating system-wide loads, rainfall measurement based on time and depth of rainfall will be needed. If the recording stations are not believed to accurately reflect this distribution, then the data will need to be collected by the applicant at a location central to the tributary area of the outfall.

The rainfall data collected by NOAA are in most cases available in the form of hourly rainfall depths. This information can be analyzed to develop characteristic storm depths and durations. In some cases, this information has already been analyzed for many long term reporting stations by various municipalities, states, and universities. The results of these investigations should be available to the applicants.

EPA realizes that prolonged rainless periods occur for both semi-arid areas and areas experiencing droughts and that the first storm after a prolonged dry period may well not be representative of "normal" runoff conditions. In order for the appropriate system-wide characterization of loads to be made, data must be collected. With regard to the municipal permit application, today's rule states that runoff characterization data will be collected during three events at from five to ten sites. The rule gives the Director the flexibility of modifying these requirements.

EPA has defined the parameters for selecting the storm event to be sampled such that at the discretion of the Director, seasonal, including winter, sampling might be required. EPA has received several comments regarding the problems that snowmelt sampling may present. Several commenters are opposed to monitoring of snowmelt events. The reasons cited include equipment problems and the unreasonableness of expecting this sampling, because of temperatures and the time required for personnel to be waiting for events. A few comments addressed the issues of snow pack depth, ambient temperature, and solar radiation levels, and that the snow pack may filter suspended solids or refreeze such that final melting is uncharacteristically over-polluted relative to normal conditions. Another commenter contended that it is impossible to manage the melting process and therefore unreasonable to expect controls to be implemented relative to snowmelt. In essence, it is contended that there is no first discharge unless the snow pack depth is low and melts quickly.

A few commenters favor monitoring snowmelt, for precisely the same reason that most oppose it: that the runoff from snowmelt is the most polluted runoff generated in some areas on an annual basis. Where this is the case, sampling snowmelt should be undertaken in order to accurately assess impacts to receiving streams. EPA is confident that in areas where automated sampling cannot be relied upon, grab sampling can probably be performed because the nature of the snowmelt process tends to make the timing of samples less of a problem when compared to typical rainfall events. EPA disagrees that management practices, either at industrial facilities or with regard to municipalities, cannot address snowmelt. Some areas may need to reassess their salt application procedures. In addition retention and detention devices may address snowmelt, as well as erosion controls at construction sites. Thus, obtaining samples of snowmelt is appropriate to allow development of such permit conditions.

Today's rule also modifies the Form 2C requirements by exempting applicants from the requirements at § 122.21(g)(2) (line drawings), (g)(4) (intermittent flows), (g)(7) (i), (ii), and (v) (various sampling requirements to characterize discharges) if the discharge covered by the application is composed entirely of storm water. Permit applications for discharges containing storm water associated with industrial activity would require applicants to provide other non-quantitative information which will aid permit writers to identify which storm water discharges are associated with industrial activity and to characterize the nature of the discharge.

Numerous comments were received regarding the requirement to submit a topographic map and site drainage map. Many of these comments offered alternatives to EPA's proposal. Two commenters suggested that a simple sketch of the site would be sufficient. Two commenters stated that one or the other should be adequate. One commenter believed that the drainage map was a good idea, but that the topographic map should be optional. Several commenters submitted that a topographic map was sufficient and that only SPCC plans or SARA submittals should supplement that. Another commenter argued that information relating to the location of the nearest surface water or drinking wells would be sufficient. Other commenters believed that a drainage map alone would indicate all relevant site specific information. Numerous commenters expressed concern that the drainage area map would be too detailed and that one which depicts the general direction of flow should be sufficient. Clarification was requested on whether the final rule would require the location of any drinking water wells. One commenter stated that a U.S.G.S. 7.5 quadrangle map will not illustrate drainage systems in all cases, and that therefore the requirement should be optional.

Several commenters agreed with EPA's proposal. One commenter maintained that drainage maps should be required from developments greater than three acres and from all individual applicants. Several commenters agreed with EPA's proposal that both maps should be provided, with arrows indicating site drainage and entering and leaving points. It was advised that drainage maps are useful in locating sources of storm water contamination, and it is useful to identify areas and activities which require source controls or remedial action. One commenter recommended that the map should extend far enough offsite to demonstrate how the privately owned system connects to the publicly owned system.

After considering the merits of all the comments and the reasons supporting EPA's proposal, EPA is convinced that a topographic map and a site drainage map are necessary components of the industrial application. Existing permit application regulations at 40 CFR 122.21(f)(7) require all permit applicants to submit as part of Form 1 a topographic map extending one mile beyond the property boundaries of the source depicting: the facility and each intake and discharge structure; each hazardous waste treatment, storage, or disposal facility; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in the map area in public records or otherwise known to the applicant within one-quarter mile of the facility property boundary. (*See* 47 FR 15304, April 8, 1982.) However, as indicated by the comments the information provided under § 122.21(f)(7) is generally not sufficient by itself for evaluating the nature of storm water discharges associated with industrial activity.

As stated in comments, a drainage map can provide more important site specific information for evaluating the nature of the storm water discharge in comparison to existing requirements, which require a larger map with only general information. The volume of storm water discharge and the pollutants associated with it will depend on the configuration and activities occurring at the industrial site. One commenter suggested that it would be appropriate to submit an aerial photograph of the site with all the topographic and drainage information superimposed on the photograph. EPA agrees that this may be an appropriate method of providing this information. EPA is not requiring a specific format for submitting this information.

EPA is also requiring that a narrative description be submitted to accompany the drainage map. The narrative will provide a description of on-site features including: existing structures (buildings which cover materials and other material covers; dikes; diversion ditches, etc.) and non-structural controls (employee training, visual inspections, preventive maintenance, and housekeeping measures) that are used to prevent or minimize the potential for release of toxic and hazardous pollutants; a description of significant materials that are currently or in the past have been treated, stored or disposed outside; and the method of treatment, storage or disposal used. The narrative will also include: a description of activities at materials loading and unloading areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; a description of the soil; and a description of the areas which are predominately responsible for first flush runoff. This requirement is unchanged from the proposal.

Some commenters believed that information on pesticides, herbicides, and fertilizers and similar products is irrelevant, incidental to the facility's production activities, and should not be

addressed by this rulemaking. EPA disagrees. As these materials are applied outside and hence subject to storm events, they are significant sources of pollutants in storm water discharges whether applied in residential or industrial settings. By providing this information in the permit application the permit writer will be able to determine whether such activity is associated with industrial activity and the subject of appropriate permit conditions. Nominal or incidental application of these materials at industrial facilities and non-detects in sampling of storm water discharges for the permit application will result, in most cases, in these materials not being addressed specifically in storm water permits.

Today's rule also requires that permit applicants for storm water discharges associated with industrial activity certify that all of the outfalls covered in the permit application have been tested or evaluated for non-storm water discharges which are not covered by an NPDES permit. (The applicant need not test for nonstorm water if the certification of the plant storm water discharges can be evaluated through the use of schematics or other adequate method). Section 405 of the WQA added section 402(p)(3)(B)(ii) to the CWA to require that permits for municipal separate storm sewers effectively prohibit non-storm water discharges to the storm sewer system. As discussed in part VI.F.7.b of today's preamble, untreated non-storm water discharges to storm sewers can create severe, widespread contamination problems and removing such discharges presents opportunities for dramatic improvements in the quality of such discharges. Although section 402(p)(3)(B)(ii) specifically addresses municipal separate storm sewers, EPA believes that illicit non-storm water discharges are as likely to be mixed with storm water at a facility that discharges directly to the waters of the United States as it is at a facility that discharges to a municipal storm sewer. Accordingly, EPA feels that it is appropriate to consider potential non-storm water discharges in permit applications for storm water discharges associated with industrial activity. The certification requirement would not apply to outfalls where storm water is intentionally mixed with process waste water streams which are already identified in and covered by a permit.

This rulemaking requires applicants for individual permits to submit known information regarding the history of significant spills at the facility. Several commenters indicated that the extent to which this information is required should be modified. One commenter stated that the requirement should be limited to those spills that resulted in a complaint or enforcement action. EPA disagrees. EPA believes that significant spills at a facility should generally include releases of oil or hazardous substances in excess of reportable quantities under section 311 of the Clean Water Act (*see* 40 CFR 110.10 and 40 CFR 117.21) or section 102 of CERCLA (*see* 40 CFR 302.4). Such a requirement is consistent with these regulations and the perception that such spills are significant enough to mandate the reporting of their occurrence. Some commenters stated that industries have already submitted this information in other contexts and should not be required to have to do it again. For the same reason another commenter felt that submittal of this information represents a waste of manpower and resources. EPA disagrees that requiring this information is unduly burdensome. If this information has already been provided for another purpose it follows that it is readily available to the industrial applicant. Thus, the burden of providing this information cannot be considered undue. Furthermore, the permit authority will need to have this available in order to determine which drainage areas are likely to generate storm water discharges associated with industrial activity, evaluate pollutants of concern, and develop appropriate permit conditions. However, to keep this information requirement within reasonable limits and limited to information already available to individual facilities, EPA has declined to expand the reporting requirements to spills of other materials, such as food as one commenter has suggested. However, EPA has decided to add raw materials used in food processing or production to the list of significant materials. Materials such as these may find their way into storm water discharges in such quantities that serious water quality impacts occur. These materials may find there way into storm water from transportation vehicles carrying materials into the facility, loading docks, processing areas, storage areas, and disposal sites.

One commenter urged that any information requested should be limited to a period of three years, which is the general NPDES records retention requirement under 40 CFR 122.21(p) and 40 CFR 112.7(d)(8). EPA agrees with this comment and has limited historical information requirements to the 3 years prior to the date the application is submitted. In this manner this regulation will be consistent with records keeping practices under the NPDES and Oil Spill Prevention programs, except sludge programs.

The December 7, 1988, proposal required the applicant to submit a description of each past or present area used for outdoor storage or disposal of significant materials. One commenter felt that the definition of significant material was too imprecise. EPA disagrees that the language should be made more precise by delineating every conceivable material that may add pollutants to storm water. Rather the definition is broad, to encourage permit applicants to list those materials that have the potential to cause water quality impacts. Stating what materials are addressed in meticulous detail may result in potentially harmful materials remaining unconsidered in permits. However, EPA has decided to add "fertilizers, pesticides, and raw materials used in the production or processing of food" to the definition in response to the comment of one State authority that such materials need to be accounted for due to their potential danger to storm water discharge quality. This same commenter recommended that "hazardous chemicals" should be added. EPA agrees, and will delineate those chemicals as "hazardous substances" which are designated under section 101(14) of CERCLA. Further clarification has been added by requiring the listing of any chemical the facility is required to report pursuant to section 313 of title III of SARA.

Another commenter felt that EPA should not require information of past storage of significant materials. EPA agrees that this proposed requirement is overbroad and has limited the time frame to those materials that were stored in areas 3 years or fewer from the date of the permit application. The 3-year limit is consistent with other Agency reporting requirements as discussed above.

One commenter questioned EPA's proposal not to provide for a waiver from the requirement to submit quantitative data if the applicant can demonstrate that it is unnecessary for permit issuance. Another commenter said that a waiver is inappropriate. EPA believes relevant quantitative data are essential to the process, but in this rulemaking the number of pollutants that must be sampled and analyzed is reduced compared to previous regulations. The proposed requirements for quantitative data are limited to pollutants that are appropriate for given site-specific operations, thereby making a waiver unnecessary.

Although the concept of a waiver is attractive because of the perceived potential reduction in burdens for applicants, EPA believes that because the storm water discharge testing requirements have already been streamlined, a waiver would not in practice provide significant reductions in burden for either applicants or permit issuing authorities. Requirements to provide and verify data demonstrating that a waiver is appropriate for a storm water discharge may prove to be more of a burden to the applicant and the permitting authorities. Establishing such a waiver procedure would be administratively complex and time-consuming for both EPA and the applicants, without any justifiable benefit. Therefore, this rulemaking does not include a waiver provision.

In response to one commenter, EPA wishes to emphasize that if a facility has zero storm water discharge because it is discharging to a detention pond only, a permit application is not required. Only those discharges to the waters of the United States or municipal systems need submit notifications, individual or group permit applications, or notices of intent where applicable. However, if the detention pond overflows or the discharger anticipates that it may overflow, then a permit application should be submitted.

Two commenters agreed with EPA's proposed requirement to have a description of past and present material management practices and controls. EPA believes that this is important information directly relating to the quality of storm water that can be expected at a particular facility and this requirement is retained in today's rule. However, as with other historical information requirements, EPA is limiting past practices to those that occurred within three years of the date that the application is submitted. One commenter argued that past practices should not be considered unless there is evidence that past practices cause current storm water quality problems. EPA anticipates that the information submitted by the applicant will be used to make this determination and that appropriate permit conditions can be developed accordingly.

One commenter requested clarification on the certification requirement that the data and information in the application is true and complete to the best of the certifying officer's knowledge. This is a fundamental and integral part of all NPDES permit applications. It essentially requires the signatory to assure the permit writer, based upon his or her personal knowledge, that the information has been submitted without a negligent, reckless, or purposeful misrepresentation. EPA intends to interpret this requirement in the same manner for storm water applications as other applications.

4. Group Applications

Today's final rule provides some industries with the option of participating in a group application, in lieu of submitting individual permits. There are several reasons for the group application. First, the group application procedure provides adequate information for issuing permits for certain classes of storm water discharges associated with industrial activity. Second, numerous commenters supported the concept of the group application as a way to reduce the costs and administrative burdens associated with storm water permit applications. Third, group applications will reduce the burden on the regulated community by requiring the submission of quantitative data from only selected members of the group. Fourth, the group application process will reduce the burden on the permit issuing authority by consolidating information for reviewing permit applications and for developing general permits suited to certain industrial groups. Where general permits are not appropriate or cannot be issued, a group application can be used to develop model individual permits, which can significantly reduce the burden of preparing individual permits.

As noted above in today's preamble, EPA intends to promulgate a general permit that will cover many types of industrial activity. Industrial dischargers eligible for such permits will generally be required to seek coverage by submittal of a notice of intent. Facilities that are ineligible for coverage under the general permit will be required to submit an individual permit application or submit a group application. The group application process promulgated today will serve as an important component to implement Tier III of EPA's industrial storm water permitting strategy discussed above. The general permit which EPA intends to promulgate in the near future shall set forth what types of facilities are eligible for coverage.

Some commenters criticized the group application procedure as an abdication of EPA's responsibility to effectively deal with pollutants in storm water discharges. One commenter stated that every facility subject to these regulations should be required to submit quantitative data. In response EPA believes, as do numerous commenters, that the group application procedure is a legitimate and effective way of dealing with a large volume of currently uncontrolled discharges. The only difference between the group application procedure and issuing individual permits based on individual applications is that the quantitative data requirements from individual facilities will be less if certain procedures are followed. EPA is convinced that marked improvements in the process of issuing permits will be achieved when these procedures are followed. Where the storm water discharge from a particular facility is identified as posing a special environmental risk, it can be required to submit individual applications and therefore separate quantitative data. It should also be noted that submittal of a group application does not exempt a facility from submitting quantitative data on its storm water discharge during the term of the permit.

The final rule refines and clarifies some of the requirements of the group application approach set forth in the December 7, 1988 proposal. Several commenters requested that EPA add a provision which would allow a facility that becomes subject to the regulations to "add on" to a group application after that group application has already been submitted. One commenter indicated that some trade associations are prohibited from engaging in an activity which would not apply to all its members, and that an "add on" provision was needed in the event such a prohibition was invoked. Another commenter noted that where a group is particularly large, for example one that consists of several thousand members, that it would be a logistical feat to ensure that all facilities eligible as members of the group are properly identified and listed on the application within the 120 day deadline for submitting part 1A of the application.

EPA believes that a group applicant should have a limited ability to add facilities to the group after part 1A has been submitted and that a provision which allows a group or group representative an unbridled ability to "add on" is impractical for a number of reasons. First, 10% of the facilities must submit quantitative data. Adding facilities after the group has been formed and approved would change the number of facilities that have to submit quantitative data on behalf of the group. This would result in an unwarranted administrative burden on the reviewing authority, which is in the position of having to examine the quantitative data and determine the appropriateness of group members (and those that are

required to submit quantitative data) within 2 months of receiving part 1 of the group application. Further, during the permit application process permitting authorities will be developing permit conditions for an identified and pre-determined group of facilities. Allowing potentially significant numbers of permit applicants to suddenly inject themselves into a group application could unnecessarily hamper or disrupt the timely development of general and model permits. In addition, if a facility were "added on" the number of facilities having to submit quantitative data may drop below 10%. Thus the facility desiring to "add on" may be put in the position of having to submit the quantitative data themselves, which would clearly defeat the purpose of being a part of the group application.

Nevertheless, EPA has added a provision to 122.26(e) which enables facilities to add on to a group application at the discretion of the EPA's Office of Water Enforcement and Permits, and upon a showing of good cause by the group applicant. For the reasons noted above, EPA anticipates this provision will be invoked only in limited cases where good cause is shown. Facilities not properly identified in the group application, and which cannot meet the good cause test will be required to submit individual permit applications. EPA will advise such facilities within 30 days of receiving the request as to whether the facility may add on.

However, the "add on" facility must meet the following requirements: The application for the additional facility is made within 15 months of the final rule; and the addition of the facility does not reduce the percentage of the facilities that are required to submit quantitative data to below 10% unless there are over 100 facilities that are submitting quantitative data. Approval to become part of a group application is obtained from the group or the trade association and is certified by a representative of the group; approval for adding on to a group is obtained from the Office of Water Enforcement and Permits.

Several commenters stated that the application requirements for groups are so burdensome that the advantages of the process are undermined. These concerns are addressed in greater detail below. Among the requirements which commenters objected are the requirements to list every group member's company by name and address. EPA is convinced that a condition precedent to approving a group application is at least identifying the members of the group. Without such information it would be impossible to determine if all the facilities are sufficiently similar. EPA disagrees that industries will be dissuaded from using the group application process because the advantages of the process are undermined. Although commenters perceived many burdens associated with individual permit applications, by far the most significant burden identified by the comments is the requirement for obtaining and submitting quantitative data. The group application significantly reduces this burden by requiring only10% of the facilities to submit quantitative data if the number in the group is over 100. If the number in the group is over 1000, then only 100 of the facilities need submit quantitative information. If group applicants develop cost sharing procedures to reduce the financial and administrative burdens of submitting quantitative data, it is evident that utilizing the group application could save industries as much as 90% on the most economically burdensome aspect of the application.

Several commenters perceived that the group application procedure did not offer them significant savings because under the proposal their particular industry would only be required to test for COD, BOD5, pH, TSS, oil and grease, nitrogen, and phosphorous. These commenters stated that sampling for these pollutants is not particularly expensive. EPA believes that even if a group is required only to submit minimal quantitative data on particular pollutants, substantial savings can accrue to a particular industry if the group has many members. This is particularly true when the number of outfalls to be sampled, the information on storm events, and flow measurements are factored into the cost analysis. An additional benefit for members of the group as well as for permit issuing agencies is that the process of developing a permit, including drafting and responding to public comments on the permit, is consolidated by the group application process. Accordingly, it is less resource intensive for the group to work with permit issuance authorities to develop well founded permit conditions.

One commenter raised a concern about the situation where one of the facilities that is designated for submitting quantitative data drops out of the group. If this happened, then another facility would have to submit quantitative data. In response, EPA notes that one approach would be for the group to have one or two more facilities submit quantitative data than needed to avoid problems from such a departure or to account for new additions to the group. Certainly this issue goes directly to the facility selection process which is a critical component of the group application; the facilities need to be carefully selected and reviewed by the group to prevent such difficulties.

Several comments indicated a confusion over what facilities are eligible to take advantage of the group application procedure. Any industry or facility that is required to submit a storm water permit application under these regulations is eligible to participate in a group application. However, whether a facility can obtain a storm water permit under a group application procedure will depend upon whether that facility is a member of the same effluent guideline subcategory, or is sufficiently similar to other members of the group to be appropriate for a general permit or individual permit issued pursuant to the group application. Accordingly, group applications are not limited to national trade associations. The agency believes that the language in § 122.26(c)(2) adequately addresses these concerns. The process does not prohibit a particular company with multiple facilities from filing a group application as long as those facilities are sufficiently similar.

One commenter expressed concern that a single company would not be able to take advantage of the group application benefits unless the company had more than ten facilities. Under such circumstances the company would have to become integrated with a larger group of facilities owned by other companies in order to take advantage of the benefits afforded by the group application procedure. In response, the Agency is providing for a group application of between four and ten members, however at least half the facilities must submit data. One commenter stated that the number of facilities required to submit quantitative data should be determined on a case by case basis. EPA believes that 10 percent for groups with over ten members will be easiest to implement for both industry and EPA, and will ensure that adequate representative quantitative data are obtained so that meaningful determinations of facility similarity can be made and appropriate permit conditions in general or model permits can be developed.

Another commenter suggested that one facility with a multitude of storm water discharge points should be able to use the group permit application to reduce the amount of quantitative data

that it is required to submit. This is an accurate observation but only to the extent that the facility combines with several other facilities to form a group, in which case only 10% of the facilities need submit quantitative data. The group application procedure in today's rule is designed for use by multiple facilities only. However, if an individual facility has 10 outfalls with ten substantially identical effluents the discharger may petition the Director to sample only one of the outfalls, with that data applying to the remaining outfalls. See § 122.21(g)(7). Thus, existing authority already allows for a "group-like" process for sampling a subset of storm water outfalls at a single facility.

Concern was expressed that the spill reporting requirement from each facility in part 1B would preclude any group from demonstrating that the facilities sampled are "representative," because the incidence of past spills is very site-specific. EPA notes that since it has dropped the part 1B requirements for other reasons discussed below, this comment is now moot.

Numerous commenters noted that if a facility is part of a group application and is subsequently rejected as a group applicant, such an entity would not have a full year to submit an individual permit application. EPA agrees that this is a significant concern. Accordingly, those facilities that apply as a member of a group application will be afforded a full year from the time they are notified of their rejection as a member of the group to file an individual application. EPA notes that it intends to act on group application requests within 60 days of receipt; thus this approach will only provide facilities that are rejected from a group application a short extension of the deadline for other individual applications.

One commenter complained that the cost of defending a group's choice of representative facilities may exceed the cost of submitting an individual permit application, thereby reducing the incentive to apply as group. The agency anticipates that the selection process will be one open to negotiation between the affected parties and one that will end in a mutually satisfactory group of facilities. It is the intent of EPA to reduce the costs of submitting a permit application as much as possible, while providing adequate information to support permitting activities.

Another commenter argued that the use of model permits will create a disincentive for participating in a group because model permits may be used by the permit issuing authority to issue individual permits for discharges from similar facilities that did not participate in the group application. EPA does not agree. The benefit of applying as a group applicant is to take advantage of reduced representative quantitative data requirements. This incentive will exist regardless of whether or how model permits are used. Further, technology transfer can occur during the development of permits based on individual applications as well as those based on group applications.

One commenter suggested moving some of the facility specific information requirements of part 1 of the group application to part 2 of the group application in order to provide more incentive to apply as a group. EPA has considered this and believes such a change would be inappropriate. Part 1 information will be used to make an informed decision about whether individual facilities are appropriate as group members and appropriate for submitting representative quantitative data. Furthermore, information burdens from providing site specific factors in part 1 is relatively minimal, and the information requirements in the proposed part 1B application have been eliminated.

One commenter suggested that trade associations develop model permits since they have the most knowledge about the characteristics of the industries they represent. As noted above, EPA expects that the industries and trade associations will have input, through the permit application process, as to how permit conditions for storm water discharges are developed. While the applicant can submit proposed permit conditions with any type of application, EPA however cannot delegate the drafting of model permits to the permittees. EPA is developing and publishing guidance in conjunction with this rulemaking for developing permit conditions.

One commenter suggested that new dischargers should be able to take advantage of general permits developed pursuant to group applications. As with other general permits, EPA anticipates that such discharges will be able to fall within the scope of a general permit based on a group application where appropriate.

One commenter stated that the group application does not benefit municipalities since there is no requirement for industrial discharges through municipal sewers to apply for a permit. As noted in a previous discussion, industrial discharges through municipal sewers must be covered by an NPDES permit. Such facilities may avail themselves of the group application procedure. Also, municipalities are not precluded from developing a group application procedure under their management plan for industries that discharge into their municipal system, in order to streamline developing controls for such industries.

One industry wanted clarification that facilities located within a municipality would be eligible to participate in a group application. All industrial activities required to submit an individual permit are entitled to submit as part of group application, except those with existing NPDES permits covering storm water. Those facilities that discharge through a municipal separate storm sewer systems required to submit an individual application (because they do not fall within a general permit) are not precluded from using the group application procedure if appropriate.

Other municipalities expressed confusion over the industrial group application concept. The following responds to these comments. First, municipalities are not eligible for participation in a group application because the group application process is designed for industrial activities. Sampling requirements for municipal permit applications are already limited to a small subset of the outfalls from the system, as discussed below. Furthermore, permits for municipal separate storm sewer systems will be issued on a system-wide or jurisdiction-wide basis, rather than individually for each outfall. Thus, today's regulation already incorporates a "grouplike" permit application process for municipalities. Furthermore, it is highly unlikely that various municipal storm sewer systems would be "substantially similar" enough to justify group treatment in the same way as industrial facilities. In response to another comment, this regulation does not directly give the municipality enforcement power over members of an industrial group who may be discharging through its system. Only the permitting authority and private citizens and organizations (including the municipality acting in such a capacity) will have enforcement power over members of the group once permits are issued to those members.

One commenter believed that the States with authorized NPDES programs rather than EPA should establish permit terms for permits based on group applications. In response to this comment, EPA wishes to clarify its role in the group application process. Group applications will be submitted to EPA headquarters where they will be reviewed and summarized. The

summaries of the group application will be distributed to authorized NPDES States. EPA wishes to emphasize that NPDES States are not bound by draft model permits developed by EPA. States may adopt model permits for use in their particular area, making adjustments for local water quality standards and other regional characteristics. Where general permit coverage is believed to be inappropriate, facilities may be required to apply for individual permits. One commenter objected to the group application procedure because it is not consistent with existing Federal permitting procedures, which will lead to confusion in the regulated community. The agency disagrees with this assessment. The group application is a departure from established NPDES program procedures. However, the comments, when viewed in their entirety, reflect widespread support from the regulated community for a group application procedure. Further, the comments reflect that those affected by this rulemaking understand the components of the group application and the procedures under which permits will be obtained pursuant to the group application.

One commenter expressed concern regarding how BAT limits for groups of similar industries will be developed. Technology based limits will be developed based on the information received from the group applicants. If the group applicants possess similar characteristics in terms of their discharge, BAT/BCT limitations and controls will be developed accordingly for those members of the group. If the discharge characteristics are not similar then applying industries are not appropriate for the group.

One commenter has suggested that the proposed group application is too complex with regard to the part 1A, part 1B, and part 2 group application requirements and that EPA should repropose these provisions. As discussed below, EPA has simplified the industrial group application requirements by eliminating the part 1B application. Thus, reproposal is unnecessary.

One commenter criticized the group application concept as not achieving any type of reduction in administrative burden for NPDES States. EPA disagrees with this assessment. If industries take advantage of the group application procedure, EPA will have an opportunity to review information describing a large number of dischargers in an organized manner. EPA will perform much of the initial review and analysis of the group application, and provide NPDES States with summaries of the applications thereby reducing the burden on the States. Furthermore, the procedure encourages a potentially large number of facilities to be covered by a general permit, which will clearly reduce the administrative burden of issuing individual permits.

The final rule establishes a regulatory procedure whereby a representative entity, such as a trade association, may submit a group application to the Office of Water Enforcement and Permits (OWEP) at EPA headquarters, in which quantitative data from certain representative members of a group of industrial facilities is supplied. Information received in the group application will be used by EPA headquarters to develop models for individual permits or general permits. These model permits are not issued permits, but rather they will be used by EPA Regions and the NPDES States to issue individual or general permits for participating facilities in the State. In developing such permits, the Region or NPDES State will, where necessary, adapt the model permits to take into account the hydrological conditions and receiving water quality in their area. One commenter expressed the view that having this procedure managed by EPA headquarters would cause delays and it should be delegated to the States and Regions. EPA disagrees that delay will ensue using this procedure. Furthermore, consistency in development of model and general permits can be achieved if application review is coordinated at EPA headquarters.

a. Facilities Covered. Under this rule the group application is submitted for only the facilities specifically listed in the application and not necessarily for an entire industry. The facilities in the group application selected to do sampling must be representative of the group, not necessarily of the industry.

Facilities that are sufficiently similar to those covered in a general permit (issued pursuant to a group application) that commence discharging after the general permit has been issued, must refer to the provisions of that general permit to determine if they are eligible for coverage. Facilities that have already been issued an individual permit for storm water discharges will not be eligible for participation in a group application. Several commenters believed that this restriction is inequitable since they have experienced the administrative burden of submitting a permit application. EPA disagrees. Industries that have already obtained a permit for storm water discharges have developed a storm water management program, engaged in the collection of quantitative data, and possess familiarity and experience with submitting storm water permit applications. The Agency sees no point to instituting an entirely new permit application process for facilities that have storm water permits issued individually. It makes little sense for these industries to be involved with submitting another permit application before their current permit expires.

As noted above, once a general permit has been issued to a group of dischargers, a new facility may request that they be covered by the general permit. The permitting authority can then examine the request in light of the general permit applicability requirements and determine whether the facility is suitable or not.

b. Scope of Group Applications. Numerous comments were received on how facilities should be evaluated as members of a group application. Several commenters stated that effluent limitation guideline subcategories are not relevant to pollutants found in storm water, but rather to the facility's everyday activities, and therefore similarity should be based on each facility's discharge or the similarity of pollutants expected to be found in a facility's discharge. Other commenters felt that similarity of operations at facilities should be the criteria. Others, believed that an examination of the facility's impact on storm water quality should be the applied criteria. Other commenters suggested that EPA provide more guidance as to how broadly groups can be defined and that a failure to do so would discourage facilities from going to the trouble and expense of entering into the group application process. Some commenters were concerned that facilities would be rejected as a group because of variations in processes and process wastewater characteristics.

EPA does not agree that effluent limitation guideline subcategories are inappropriate as a method for determining group applications. EPA guideline subcategories are functional classifications, breaking down facilities into groups, for purposes of setting effluent limitations guidelines. The use of EPA subcategories will save time for both applicants and permitting authorities in determining whether a particular group is appropriate for a group application. Furthermore, EPA believes that this method of grouping provides adequate guidance for determining what facilities are grouped together. Establishing groups on the extent to which a facility's discharge affects storm water quality would not provide applicants with sufficient guidance as to the appropriateness of individual industries for group applications and would not provide information needed to draft appropriate model permit conditions for potentially different types of industries, industrial processes, and material management practices.

However, EPA recognizes that the subcategory designations may not always be available or an effective methodology for grouping applicants. Also, there are situations where processes that are subject to different subcategories are combined. EPA agrees that the group application option should be flexible enough to allow groups to be created where subcategories are too rigid or otherwise inappropriate for developing group applications or where facilities are integrated or overlap into other subcategories. For these reasons, this rulemaking does not limit the submission to EPA subcategories alone, but rather allows groups to be formed where facilities are similar enough to be appropriate for general permit coverage.

In determining whether a group is appropriate for general permit coverage, EPA intends that the group applicant use the factors set forth in 40 CFR 122.28(a)(2)(ii), the current regulations governing general permits, as a guide. If facilities all involve the same or similar types of operations, discharge the same types of wastes, have the same effluent limitation and same or similar monitoring requirements, where applicable, they would probably be appropriate for a group application. To that extent, facilities that attempt to form groups where the constituent makeup of its process wastewater is dissimilar may run the risk of not being accepted for purposes of a group application.

Some commenters expressed the view that categories formed using general permit factors are too broad or that the language is too vague. One commenter expressed the view that the standard is too subjective and that permit writers will be evaluating the similarity of discharge too subjectively, while other commenters felt that the criteria should be broad and flexible. Other commenters stated that the effluent guideline subcategory or general permit coverage factors are not related to storm water discharges, because much of the criteria are based upon what is occurring inside the plant, rather than activities outside of the plant. EPA believes that these criteria are reasonable for defining the scope of a group application. EPA disagrees that the procedure, which is adequate for the issuance of general permits, is inadequate for the development of a group application. EPA believes that the activities inside a facility will generally correspond to activities outside of the plant that are exposed to storm events, including stack emissions, material storage, and waste products. Furthermore, if facilities are able to demonstrate their storm water discharge has similar characteristics, that is one element in the analysis needed for establishing that the group is appropriate. EPA disagrees that the criteria are too vague. If facilities are concerned that general permit criteria is insufficient guidance, then subcategories under 40 CFR subchapter N should be used. EPA believes that the program will function best if flexibility for creating groups is maintained.

If a NPDES approved State feels that a tighter grouping of applicants is appropriate individual permit applications can be requested from those permit applicants. One commenter indicated that it was not clear whether the group application procedure could be used for all NPDES requirements. EPA would clarify that the group application is designed only to cover storm water discharges from the industrial facilities identified in § 122.26(b)(14).

As noted above, EPA wishes to clarify that facilities with existing individual NPDES permits for storm water are not eligible to participate in the group application process. From an administrative standpoint EPA is not prepared to create an entirely different mechanism for permitting industries which already have such permits.

c. Group Application Requirements. The group application, as proposed, included the following requirements in three separate parts. Part 1A of a group application included: (A) Identification of the participants in the group application by name and location; (B) a narrative description summarizing the industrial activities of participants; (C) a list of significant materials stored outside by participants; and (D) identification of 10 percent of the dischargers participating in the group application for submitting quantitative data. A proposed part 1B of the group application included the following information from each participant in the group application: (A) A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) and related information; (B) an estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall and a narrative description of significant materials; (C) a certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested for the presence of non-storm water discharges; (D) existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility; (E) a narrative description of industrial activities at the facility that are different from or that are in addition to the activities described under part 1A; and (F) a list of all constituents that are addressed in a NPDES permit issued to the facility for any of non-storm water discharge. Part 2 of a group application required quantitative data from 10 percent of the facilities identified.

Some commenters felt that spill histories, drainage maps, material management practices, and information on significant materials stored outside are too burdensome or meaningless for evaluating similarity of discharges among group applicants. Several commenters stated that such requirements where the group may consist of several thousand facilities were impractical and would not assist EPA in developing model permits. Many commenters insisted that the requirements imposed in part 1B would effectively discourage use of the group application procedure. EPA agrees in large part with these comments. After reevaluating the components of part 1B, and the entire rationale for instituting the group application procedure, EPA has decided to excise part 1B from the requirements, and rely on part 1A and part 2 for developing appropriate permit condition. Where appropriate, EPA may require facilities to submit the information, formerly in part 1B, during the term of the permit. In other cases, EPA will establish which facilities must submit individual permit applications where more site specific permits are appropriate.

Under the revised part 1 and part 2, EPA will receive information pertaining to the types of industrial activity engaged in by the group, materials used by the facilities, and representative quantitative data. EPA can use such information to develop management practices that address pollutants in storm water discharges from such facilities. For most facilities, general good housekeeping or management practices will eliminate pollutants in storm water. Such requirements can be further refined by determining the nature of a group's industrial activity and by obtaining information on material used at the facility and representative quantitative data from a

percentage of the facilities. Thus, EPA is confident that model permits and general permits can be developed from the information to be submitted under part 1 and part 2.

One commenter felt that more guidance on what makes a facility representative for sampling as part of a group is needed. In response, the Agency believes the rule as currently drafted provides adequate notice.

Another commenter asked how much sampling needed to be done and how much monitoring will transpire over the life of the permit for members of a group. This will vary from permit to permit and will be determined in permit proceedings. This rulemaking only covers the quantitative data that is to be submitted in the context of the group permit application.

One commenter indicated that because of the amount of diversity in the operations of a particular industry, obtaining a sample that could be considered representative would be extremely difficult. EPA recognizes that obtaining representative quantitative data through the group application process will prove to be difficult; however, EPA has sought to minimize these perceived problems. Under the group application concept, industries must be sufficiently similar to qualify. Industries which have significantly different operations from the rest of the group that affects the quality of their storm water discharge may be required to obtain an individual permit. Use of the nine precipitation zones will enable the data in the permit application to be more easily analyzed and patterns observed on the basis of hydrology and other regional factors. How EPA will evaluate the representativeness of the sample is discussed below.

Several commenters asked why the precipitation zone of group members is relevant to the application. The need to identify precipitation zones arises because the amount of rainfall is likely to have a significant impact on the quality of the receiving water. According to an EPA study (Methodology for Analysis of Detention Basins for Control of Urban Runoff Quality; Office of Water, Nonpoint Source Branch, Sept. 1986) the United States can be divided into nine general precipitation zones. These zones are characterized by differences in precipitation volume, precipitation intensity, precipitation duration, and precipitation intervals. Industrial facilities that seek general permits via the group application option may show significantly different loading rates as a result of these regional precipitation differences. As an example, precipitation in Seattle, Washington, located in Zone 7, approaches the mean annual storm intensity of .024 inches/hour with a mean annual storm duration of 20 hours for that Zone. In contrast, precipitation in Atlanta, Georgia, located in Zone 3 approaches the mean annual storm intensity of .102 inches/hour and a mean storm duration of 6.2 hours for that Zone. Atlanta, receives on the average four times more precipitation per hour with storms lasting one-third as long. As a result of these differences, if identical facilities within a group application were situated in each of these areas, their storm water discharges would likely exhibit different pollutant characteristics. Accordingly, data should be submitted from facilities in each zone.

One commenter felt that the EPA should abandon or modify its rainfall zone concept, because storm water quality will depend more on what materials are used at the facility than rainfall. EPA disagrees. Because storm water loading rates may differ significantly as a result of regional precipitation differences, it is necessary that for each precipitation zone containing representatives of a group application, the group must provide samples from some of those representatives. In comments to previous rulemakings it was argued that the amount of rainfall will affect the degree of impact a storm water discharge may have on the receiving stream.

One commenter stated that the precipitation zones illustrated in appendix E of the proposed rulemaking do not adequately reflect regional differences in precipitation and that in some cases the zones cut through cities where there are concentrations of industries without differences in their precipitation patterns. The rainfall zone map is a general guide to determining what areas of the country need to be addressed when determining representative rainfall events and quantitative data. When dealing with rainfall on a national scale, it is near impossible to make generalized statements with a great deal of accuracy. In the case of rainfall zones, rainfall patterns may be similar for facilities in close proximity to each other but none the less in different rainfall zones. In response, EPA has created these zones to reflect regional rainfall patterns as accurately as possible. Because of the variable nature of rainfall such circumstances are sure to arise. However, in order to obtain a degree of representativeness EPA is convinced that the use of these rainfall zones as described is appropriate for the submittal of group applications and the quantitative data therein.

The second and third requirements of part 1 of the group application instruct the applicant to describe the industrial activity (processes) and the significant materials used by the group. For the significant materials listed, the applicant is to discuss the materials management practices employed by members of the group. For example, the applicant should identify whether such materials are commonly covered, contained, or enclosed, and whether storm water runoff from materials storage areas is collected in settling ponds prior to discharge or diverted away from such areas to minimize the likelihood of contamination. Also, the approximate percentage of facilities in the group with no practices in place to minimize materials stored outside is to be identified.

EPA considers that the processes and materials used at a particular facility may have a bearing on the quality of the storm water. Thus, if there are different processes and materials used by members of the group, the application must identify those facilities utilizing the different processes and materials, with an explanation as to why these facilities should still be considered similar.

One commenter felt that a facility should be able to describe in its permit application the possibility of individual materials entering receiving waters. EPA supports the applicant adding site specific information which will assist the permit writer making an informed decision about the nature of the facility, the quality of its storm water discharge, and appropriate permit conditions.

The fourth element of part 1 of the group application is a commitment to submit quantitative data from ten percent of the facilities listed. EPA proposed that there must be a minimum of ten and a maximum of one hundred facilities within a group that submit data. Comments reflected some dissatisfaction with this requirement. Some commenters asserted that ten percent was too high a number and would discourage group applications, while one commenter suggested a lesser percentage would be appropriate where the group can certify that facilities are representative. One commenter suggested that EPA have the discretion to allow for a smaller percentage. Several commenters argued that EPA should be satisfied with fewer than ten percent because EPA often relies on data from less than ten percent of the plants in a subcategory when promulgating effluent guidelines and that EPA should rely on data collection goals

with affected groups as was done in the 1985 storm water proposal. Other commenters pointed out that an anomalous situation could arise where the group was small and facilities were scattered throughout the precipitation zones. For example, if a group consisted of 20 members where a minimum of ten facilities had to submit samples, and two or more members were in each precipitation zone; a total of 18 facilities (90% of the group) would have to submit quantitative data. EPA believes that there must be a sufficient number of facilities submitting data for any patterns and trends to be detectable. However, in light of these comments EPA has decided to modify the language in § 122.26(c) to allow 1 discharger in each precipitation zone to submit quantitative data where 10 or fewer of the group members are located in a particular precipitation zone. EPA believes, however, that one hundred facilities would in most cases be sufficient to characterize the nature of the runoff and thus 100 should remain the maximum. If the data are insufficient, EPA has the authority to request more sampling under section 308 of the CWA.

One commenter suggested that the ten facility cutoff was unreasonable, and that instead of cutting off the group at ten, allow a smaller number in the group and allow the facilities to sample ten percent of their outfalls instead. EPA agrees, in part, and will allow groups of between four and ten to submit a group application. However, the ten percent rule would not be effective in such cases. Therefore, at least half the facilities in a group of four to ten will be required to provide quantitative data from at least one outfall, with each precipitation zone represented by at least one facility.

For any group application, in addition to selecting a sufficient number of facilities from each precipitation zone, facilities selected to do the sampling should be representative of the group as a whole in terms of those characteristics identifying the group which were described in the narrative, i.e., number and range of facilities, types of processes used, and any other relevant factors. If there is some variation in the processes used by the group (40 percent of the group of food processors are canners and 60 percent are canners and freezers, for example), the different processes are to be represented. Also, samples are to be provided from facilities utilizing the materials management practices identified, including those facilities which use no materials management practices. The representation of these different factors, to the extent feasible, is to be roughly equivalent to their proportion in the group.

EPA wishes to emphasize that the provision that ten percent of the facilities need to submit quantitative data only applies to the permit application process. The general or individual permit itself may require quantitative data from each facility.

Submittal of Part 2 of the Group Application. As with part 1, part 2 of the Group Application would be submitted to the Office of Water Enforcement and Permits, in Washington, DC. If the information is incomplete, or simply is found to be an inadequate basis for establishing model permit limits, EPA has the authority under section 308 of the Clean Water Act to require that more information be submitted, which may include sampling from facilities that were part of the group application but did not provide data with the initial submission. If the group application is used by a Region or NPDES State to issue a general permit, the general permit should specify procedures for additional coverage under the permit.

If a part 2 is unacceptable or insufficient, EPA has the option to request additional information or to require that the facilities that participated in the group application submit complete individual applications (e.g. facilities that have submitted Form 1 with the group application may be required to submit Form 2F, or facilities which have submitted complete Form 1 and Form 2F information in the group application generally would not have to submit additional information).

Once the group applications are reviewed and accepted, EPA will use the information to establish draft permit terms and conditions for models for individual and general permits. NPDES approved States and EPA regional offices will continue to be the permit-issuing authority for storm water discharges. The NPDES approved States accepting the group application approach and the EPA Regions may then take the model permits and adapt them for their particular area, making adjustments for local water quality standards and other localized characteristics, and making determinations as to the need for an individual storm water permit where general permit coverage is felt to be inappropriate. Permits would be proposed by the Region or NPDES approved State in accordance with current regulations for public comment before becoming final. In NPDES States without general permit authority, or where an individual permit is deemed appropriate, the model permit can serve as the basis for issuing an individual permit.

The group application is an NPDES permit application just like any other and, as such, would be handled through normal permitting procedures, subject to the regulatory provisions applicable to permit issuance. Incomplete or otherwise inadequate submissions would be handled in the same manner as any other inadequate permit application. The permit issuing authority would retain the right to require submission of Form 1, Form 2C and Form 2F from any individual discharger it designates.

Some commenters offered other procedures for developing a group application procedure; however, these were frequently entirely different approaches or so novel that a reproposal would be required. One commenter suggested that those industries that are identified as being likely to pollute should be required to submit quantitative data. Numerous commenters contended that a generic approach for meeting the required information requirements for group applications would allow EPA to develop adequate general permits. EPA does not view these approaches as appropriate.

5. Group Application: Applicability in NPDES States

Many commenters expressed concern about how the group application procedure will work within the framework of an NPDES approved State. The relationship between EPA and the States that are authorized to administer the NPDES program, including implementation of the storm water program, is a complicated aspect of this rulemaking. Approved States (there are 38 States and one territory so approved) must have requirements that are at least as stringent as the Federal program; they may be more stringent if they choose. Authority to issue general permits is optional with NPDES States.

EPA has determined that ten percent of the facilities must provide quantitative data in the permit application as noted above. Furthermore, these applications are submitted to EPA headquarters. Consequently States, whether NPDES approved or not, are not in a position to reject or modify this requirement. Such States may determine the amount of sampling to be done pursuant to permit conditions. If they choose to issue general permits they may include such authority in their NPDES program and.

upon approval of the program by EPA, may then issue general permits. Within the context of the NPDES provisions of the CWA, if States do not have general permitting authority, then general permits are not available in those States.

In response to one comment, EPA does not have authority to issue general or individual permits to facilities in NPDES approved states. Today's rule provides a means for affected industries to be covered by general permits developed via the group application procedure as well as from general permits developed independently of the group application process. Accordingly, today's rule anticipates that most NPDES States will seek general permit issuance authority to implement the storm water program in the most efficient and economical way. Without general permit issuance authority NPDES States will be required to issue individual permits covering storm water discharges to potentially thousands of industrial facilities.

One commenter recommended that States with approved NPDES programs should be involved in determining what industries are representative for submitting quantitative data. EPA recognizes that States will have an interest in this determination and may possess insight as to the appropriateness of using some facilities. However, EPA may be managing hundreds of group applications and approving or disapproving them as expeditiously as possible. EPA believes that involving the States in this already administratively complex and time consuming undertaking would be counterproductive. In any event, NPDES approved States are not bound by the determinations of EPA as to the appropriateness of groups or the issuance of permits based on model permits or individual permits. However, States will be encouraged to use model permits that are developed by EPA. EPA will endeavor to design general and model permits that are effective while also adaptable to the concerns of different States. Again, States are able to develop more stringent standards where they deem it to be appropriate. There are currently seventeen States that have authority to issue general permits: Arkansas, Colorado, Illinois, Kentucky, Minnesota, Missouri, Montana, New Jersey, North Dakota, Oregon, Rhode Island, Utah, Washington, West Virginia and Wisconsin. As suggested in the comments, EPA is encouraging more States to develop general permit issuing authority in order to facilitate the permitting process.

One commenter advised that the rules should state that a NPDES approved State may accept a group application or require additional information. EPA has decided not to explicitly state this in the rule. However, this comment does raise some points that need to be addressed. Because the group application option is a modification of existing NPDES permit application requirements, the State is free to adopt this option, but is not required to. If the State chooses to adopt the group application and it does not have general permit authority, the group application can be used to issue individual permits. If an approved NPDES State chooses to not issue permits based on the group application, facilities that discharge storm water associated with industrial activity that are located in that State must submit individual applications to the State permitting authority. Before submitting a group application, facilities should ascertain from the State permitting authority whether that State intends to issue permits based upon a group application approved by EPA for the purpose of developing general permits. For facilities that discharge storm water associated with industrial activity which are named in a group application, the Director may require an individual facility to submit an individual application where he or she determines that general permit coverage would be inappropriate for the particular facility.

One commenter stressed that EPA should streamline the procedure for States desiring to obtain general permit coverage. EPA has, over the last year, streamlined this procedure and encourages States to take advantage of this procedure. EPA recommends that States consider obtaining general permit authority as a means to efficiently issue permits for storm water discharges. These States should contact the Office of Water Enforcement and Permits at EPA Headquarters as soon as possible.

6. Group Application: Procedural Concerns

One commenter claimed that the proposed group application process and procedures violated federal law. This commenter claimed that EPA was abrogating its responsibility by allowing a trade association to design a data collection plan in lieu of completing an NPDES application form designed by EPA, thus violating the Federal Advisory Committee Act. The commenter stated that EPA would be improperly influenced by special interests if trade associations were able to design their own storm water data gathering plans. The commenter further asserted that any decisions by EPA on the content of specific group applications would be rulemakings and thus subject to the provisions of the Administrative Procedure Act.

EPA disagrees with the comment that the group application violates the Federal Advisory Committee Act (FACA). FACA governs only those groups that are established or "utilized" by an agency for the purpose of obtaining "advice" or "recommendations." The group application option does not solicit or involve any "advice" or "recommendations." It simply allows submission of data by certain members of a group in accordance with specific regulatory criteria for determining which facilities are "representative" of a group. As such, the group application is merely a submission in accordance and in compliance with specific regulatory requirements and does not contain discretionary uncircumscribed "advice" or "recommendations" as to which facilities are representative of a group.

Thus, the determination of which facilities should submit testing data in accordance with regulatory criteria is little different from many other regulatory requirements where an applicant must submit information in accordance with certain criteria. For example, under 40 CFR 122.21 all outfalls must be tested except where two or more have "substantially identical" effluents. Similarly, quantitative data for certain pollutants are to be provided where the applicant knows or "has reason to believe" such pollutants are discharged. Both of these provisions allow the applicant to exercise discretion in making certain judgments but such action is circumscribed by regulatory standards. EPA further has authority to require these facilities to submit individual applications. In none of these instances are "recommendations" or "advice" involved. EPA also notes that it is questionable whether, in providing for group applications, it is "soliciting" advice or recommendations from groups or that such groups are being "utilized" by EPA as a "preferred source" of advice. See 48 FR 19324 (April 28, 1983). Furthermore, this data collection effort may be supplemented by EPA if, after review of the data, EPA determines additional data is necessary for permit issuance. Other information gathering may act as a check on the group applications received.

EPA also does not agree with this commenter's claim that the group application scheme represents an impermissible delegation of the Administrator's function in violation of the CWA regarding data gathering. The Administrator has the broadest discretion in determining what information is needed for permit development as well as the manner in which such information will be collected. The CWA does not require every discharger required to obtain a permit to file an application. Nor does the CWA require that the Administrator obtain data on which a permit is to be based through a formal application process (see 40 CFR 122.21). For years "applications" have not been required from dischargers covered by general permits. EPA currently obtains much information beyond that provided in applications pursuant to section 308 of the CWA. This is especially true with respect to general permit and effluent limitations guidelines development. The group application option is simply another means of data gathering. The Administrator may always collect more data should he determine it necessary upon review of a groups' data submission. And, he may obtain such additional data by whatever means permissible under the Statute that he deems appropriate. Thus, it can hardly be said that by this initial data gathering effort the Administrator has delegated his data gathering responsibilities. In addition, since groups are required to select "representative" facilities, etc., in accordance with specific regulatory requirements established by the Administrator and because EPA will scrutinize part 1 of the group applications and either accept or reject the group as appropriate for a group application, no impermissible delegation has occurred. EPA will make an independent determination of the acceptability of a group application in view of the information required to be submitted by the group applicant, other information available to EPA (such as information on industrial subcategories obtained in developing effluent limitations guidelines as well as individual storm water applications received as a result of today's rule) and any further information EPA may request to supplement part 1 pursuant to section 308 of the CWA. Moreover, any concerns that a general permit may be based upon biased data can be dealt with in the public permit issuance process.

Finally, EPA also does not agree that the group application option violates the Administrative Procedures Act. Again, the group application scheme is simply a data gathering device. EPA could very well have determined to gather data informally via specific requests pursuant to section 308 of the CWA. In fact, general permit and effluent limitations guideline development proceed along these lines. It would make little sense if the latter informal data gathering process were somehow illegal simply because it is set forth in a rule that allows applicants some relief upon certain showings. In this respect, several of EPA's existing regulations similarly allow an applicant to be relieved from certain data submission requirements upon appropriate demonstrations. For example, testing for certain pollutants and or certain outfalls may be waived under certain circumstances. Most importantly, the operative action of concern that impacts on the public is individual or general permit issuance based upon data obtained. As previously stated, ample opportunity for public participation is provided in the permit issuance proceeding.

7. Permit Applicability and Applications for Oil and Gas and Mining Operations

Oil, gas and mining facilities are among those industrial sites that are likely to discharge storm water runoff that is contaminated by process wastes, toxic pollutants, hazardous substances, or oil and grease. Such contamination can include disturbed soils and process wastes containing heavy metals or suspended or dissolved solids, salts, surfactants, or solvents used or produced in oil and gas operations. Because they have the potential for serious water quality impacts, Congress recognized, throughout the development of the storm water provisions of the Water Quality Act of 1987, the need to control storm water discharges from oil, gas, and mining operations, as well as those associated with other industrial activities.

However, Congress also recognized that there are numerous situations in the mining and oil and gas industries where storm water is channeled around plants and operations through a series of ditches and other structural devices in order to prevent pollution of the storm water by harmful contaminants. From the standpoint of resource drain on both EPA as the permitting agency and potential permit applicants, the conclusion was that operators that use good management practices and make expenditures to prevent contamination must not be burdened with the requirement to obtain a permit. Hence, section 402(1)(2) creates a statutory exemption from storm water permitting requirements for uncontaminated runoff from these facilities.

To implement section 402(1)(2), EPA intends to require permits for contaminated storm water discharges from oil, gas and mining operations. Storm water discharges that are not contaminated by contact with any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations will not be required to obtain a storm water discharge permit.

The regulated discharge associated with industrial activity is the discharge from any conveyance used for collecting and conveying storm water located at an industrial plant or directly related to manufacturing, processing or raw materials storage areas at an industrial plant. Industrial plants include facilities classified as Standard Industrial Classifications (SIC) 10 through 14 (the mining industry), including oil and gas exploration, production, processing, and treatment operations, as well as transmission facilities. See 40 CFR 122.26(b)(14)(iii). This also includes plant areas that are no longer used for such activities, as well as areas that are currently being used for industrial processes.

a. Oil and Gas Operations. In determining whether storm water discharges from oil and gas facilities are "contaminated", the legislative history reflects that the EPA should consider whether oil, grease, or hazardous materials are present in storm water runoff from the sites described above in excess of reportable quantities (RQs) under section 311 of the Clean Water Act or section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). [Vol. 132 Cong. Rec. H10574 (daily ed. October 15, 1986) Conference Report].

Many of the comments received by EPA regarding this exemption focused on the concern that EPA's test for requiring a permit is and would subject an unnecessarily large number of oil and gas facilities to permit application requirements. Specific comments made in support of this concern are addressed below.

A primary issue raised by commenters centered on how to determine when a storm water discharge from an oil or gas facility is "contaminated", and therefore subject to the permitting program under section 402 of the CWA. Many of the comments received from industry representatives objected to the Agency's intent as expressed in the proposal to use past discharges as a trigger for submitting permit applications.

The proposed rule provided that the notification requirements for releases in excess of RQs established under the CWA and CERCLA would serve as a

basis for triggering the submittal of permit applications for storm water discharges from oil and gas facilities. As described in the proposal, oil and gas operations that have been required to notify authorities of the release of either oil or a hazardous substance via a storm water route would be required to submit a permit application. In other words, any facility required to provide notification of the release of an RQ of oil or a hazardous substance in storm water in the past would be required to apply for a storm water permit under the current rule. In addition, any facility required to provide notification regarding a release occurring from the effective date of today's rule forward would be required to apply for a storm water permit.

Commenters maintained that the use of historical discharges to require permit applications is inconsistent with the language and intent of section 402(1)(2) of the CWA, and relevant legislative history, both of which focus on present contamination. Requiring storm water permits based solely on the occurrence of past contaminated discharges, even where no present contamination is evident, would go beyond the statutory requirement that EPA not issue a permit absent a finding present contamination. Commenters also noted that the proposal did not take into account the fact that past problems leading to such releases may have been corrected, and that requiring an NPDES permit may no longer be necessary. The result of such a requirement, commenters maintained, would be an excessive number of unnecessary permit applications being submitted, at significant cost and minimal benefit to both regulated facilities and regulating authorities.

Commenters also indicated that using the release of reportable quantities of oil, grease or hazardous substances as a permit trigger would identify discharges of an isolated nature, rather than the continuous discharges, which should be the focus of the NPDES permit program under section 402. Such an approach, commenters maintained, is inconsistent with existing regulations under section 311 of the CWA, and would result in permit applications from facilities that are more appropriately regulated under section 311.

Despite these criticisms, many commenters recognized that the Agency is left with the task of determining when discharges from oil and gas facilities are contaminated, in order to regulate them under section 402(1)(2). It was suggested by numerous commenters that the EPA adopt an approach similar to that used under section 311 of the CWA for Spill Prevention Control and Countermeasure (SPCC) Plans. Under SPCC, facilities that are likely to discharge oil into waters of the United States are required to maintain a SPCC plan. In the event the facility has a spill of 1,000 gallons or 2 or more reportable quantities of oil in a 12 month period, the facility is required to submit its SPCC plan to the Agency. The triggering events proposed by the commenters for storm water permits for oil and gas operations are six reportable sheens or discharges of hazardous substances (other than oil) in excess of section 311 or section 102 reportable quantities via a storm water point source route over any thirty-six month period. It was suggested that if this threshold is reached, an operator would then file a permit application (or join a group application) based upon the presumption that its current storm water discharges are contaminated.

In response to these comments, the Agency believes that past releases that are reportable quantities can be a valid indicator of the potential for present contamination of discharges. The legislative history as cited above supports this conclusion. EPA would note that the existence of a RQ release would serve only as a triggering mechanism for a permit application. Under the proposed rule, evidence of past contamination would merely require submission of a permit application and would not be used as conclusive evidence of current contamination. The determination as to whether a permit would be actually required due to current contaminated discharge would be made by the permitting authority after reviewing the permit application. The fact of a past RQ release does not necessarily imply a conclusive finding of contamination, only that sufficient potential for contamination exists to warrant a permit application or the collection of other further information. Today's rule does not change the proposed approach in this respect. Thus, EPA does not believe that today's rule exceeds the authority of section 402(1)(2).

EPA believes that there is no legal impediment to using past RQ discharges as a trigger for requiring a storm water permit application. EPA notes that, as mentioned above, even those commenters who objected to the proposed test on legal authority grounds merely offered an alternate test that requires more releases to have occurred within a shorter period of time before a permit application is required.

Therefore, the only disagreement that remains is over what constitutes a reasonable test that will identify facilities with the potential for storm water contamination. EPA notes that neither the statute nor the legislative history provides any guidance on this question. Furthermore, EPA disagrees with the commenters who suggested that 6 releases in the past 3 years or 2 releases in the past year are necessarily more valid measures of the potential for current contamination than EPA's proposed test. There is no statistical or other basis for preferring one test to the other. However, EPA does agree with those commenters that suggest that a single release in the distant past may not accurately reflect current conditions and the current potential for contamination.

EPA has therefore amended today's rule to provide that only oil and gas facilities which have had a release of an RQ of oil or hazardous substances in storm water in the past three years will be required to submit a permit application. EPA believes that limiting the permit trigger to events of the past three years will address commenters' concerns regarding the use of "stale history" in determining whether an application is required. EPA notes that the three year cutoff is consistent with the requirement for industrial facilities to report significant leaks or spills at the facility in their storm water permit applications. See 40 CFR 122.26(c)(1)(i)(D).

Commenters asserted that EPA and the States must have some reasonable basis for concluding that a storm water discharge is contaminated before requiring permit applications or permits. Commenters believed that § 122.26(c)(1)(iii)(B) as proposed implied that the Agency's authority in this respect is unrestricted. In response, EPA may collect such data by whatever appropriate means the statute allows, in order to obtain information that a permit is required. Usually, the most practical tool for doing so is the permit application itself. However, if necessary to supplement the information made available to the Agency, EPA has broad authority to obtain information necessary to determine whether or not a permit is required, under section 308 of the Clean Water Act. Given the plain language of the CWA and the Congressional intent as manifested in the legislative history, the Agency is convinced that the approach described above is appropriate. Yet, as further discussed below, EPA has also deleted as redundant § 122.26(c)(1)(iii)(B).

Regarding the types of facilities included in the storm water regulation, a number of commenters suggested that the Agency has misconstrued the meaning of facilities "associated with industrial activity", and has proposed an overly broad definition of such facilities in the oil and gas industry. Specifically, commenters suggested that only the manufacturing sector of the oil and gas industry should be subject to storm water permit application requirements, and that exploration and production activities, gas stations, terminals, and bulk plants should all be exempted from storm water permitting requirements. Commenters maintain that this broad interpretation would subject many oil and gas facilities to the storm water permit requirements, when these were not intended by Congress to be so regulated. As a second point related to this issue, some commenters felt that transmission facilities were not intended to be regulated under the storm water provisions, and should be exempted from permit requirements. This would be consistent, it was argued, with legislative history which concluded that transmission facilities do not significantly contribute to the contamination of water.

The Agency disagrees that these facilities do not fall under the storm water permitting requirements as envisioned by Congress. SIC 13, which is relied upon by EPA to identify these oil and gas operations, describes oil and gas extraction industries as including facilities related to crude oil and natural gas, natural gas liquids, drilling oil and gas wells, oil and gas exploration and field services. Moreover, legislative history as it applies to industrial activities, and thus to oil and gas (mining) operations, expressly includes exploration, production, processing, transmission, and treatment operations within the purview of storm water permitting requirements and exemptions. EPA's intent is for storm water permit requirements (and the exemption at hand) to apply to the activities listed above (exploration, production, processing, treatment, and transmission) as they relate to the categories listed in SIC 13.

Commenters requested clarification from the Agency that storm water discharges from oil and gas facilities require a permit or the filing of a permit application only when they are contaminated at the point of discharge into waters of the United States. Commenters noted that large amounts of potentially contaminated stormwater may not enter waters of the United States, or may enter at a point once the discharge is no longer "contaminated". In these cases, it should be clear that no permit or permit application is required.

EPA agrees that oil and gas exploration, production, processing, or treatment operations or transmission facilities must only obtain a storm water permit when a discharge to waters of the U.S. (including those discharges through municipal separate storm sewers) is contaminated. A permit application will be required when any discharge in the past three years or henceforth meets the test discussed above.

Under the proposed rule, the Agency stated at § 122.26(c)(1)(iii)(B) that the Director may require on a case-by-case basis the operator of an existing or new storm water discharge from an oil or gas exploration, production, processing, or treatment operation, or transmission facility to submit an individual permit application. The Agency has removed this section since CWA section 402(1)(2), as codified in 122.26(c)(1)(iii)(A), adequately addresses every situation where a permit should be required for these facilities.

b. Use of Reportable Quantities to Determine if a Storm Water Discharge from an Oil or Gas Operation is Contaminated. Section 311(b)(5) of the CWA requires reporting of certain discharges of oil or a hazardous substance into waters of the United States (see 44 FR 50766 (August 29, 1979)). Section 304(b)(4) of the Act requires that notification levels for oil and hazardous substances be set at quantities which may be harmful to the public health or welfare of the United States, including but not limited to fish, shellfish, wildlife, and public or private property, shorelines and beaches. Facilities which discharge oil or a hazardous substance in quantities equal to or in excess of an RQ, with certain exceptions, are required to notify the National Response Center (NRC).

Section 102 of CERCLA extended the reporting requirement for releases equal to or exceeding an RQ of a hazardous substance by adding chemicals to the list of hazardous substances, and by extending the reporting requirement (with certain exceptions) to any releases to the environment, not just those to waters of the United States.

Pursuant to section 311 of the CWA, EPA determined reportable quantities for discharges by correlating aquatic animal toxicity ranges with 5 reporting quantities, i.e., 1-, 10-, 100-, 1000-, and 5000- pounds per 24 hour period levels. Reportable quantity adjustments made under CERCLA rely on a different methodology. The strategy for adjusting reportable quantities begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each designated hazardous substance. The intrinsic properties examined, called "primary criteria," are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, and chronic toxicity. In addition, substances that were identified as potential carcinogens have been evaluated for their relative activity as potential carcinogens. Each intrinsic property is ranked on a five-tier scale, associating a specific range of values on each scale with a particular reportable quantity value. After the primary criteria reportable quantities are assigned, the hazardous substances are further evaluated for their susceptibility to certain extrinsic degradation processes (secondary criteria). Secondary criteria consider whether a substance degrades relatively rapidly to a less harmful compound, and can be used to raise the primary criteria reportable quantity one level.

Also pursuant to section 311, EPA has developed a reportable quantity for oil and associated reporting requirements at 40 CFR part 110. These requirements, known as the oil sheen regulation, define the RQ for oil to be the amount of oil that violates applicable water quality standards or causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited.

Reportable quantities developed under the CWA and CERCLA were not developed as effluent guideline limitations which establish allowable limits for pollutant discharges to surface waters. Rather, a major purpose of the notification requirements is to alert government officials to releases of hazardous substances that may require rapid response to protect public health, welfare, and the environment. Notification based on reportable quantities serves as a trigger for informing the government of a release so that the need for response can be evaluated and any necessary response undertaken in a timely fashion. The reportable quantities do not themselves represent any determination that releases of a particular quantity are actually harmful to public health, welfare, or the environment.

EPA requested comment on the use of RQs for determining contamination in discharges from oil and gas facilities. As noted above numerous commenters supported the concept of using reportable quantities under certain circumstances. Comments on the measurement of oil sheens for the purpose of triggering a permit application were divided. Some commented that it is much too stringent because the amount of oil creating a

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sheen may be a relatively small amount. Others viewed the test as a quick, easy, practical method that has been effective in the past.

In relying on the reporting requirements associated with releases in excess of RQs for oil or hazardous substances to trigger the submittal of permit applications for oil and gas operations, the Agency believes that the use of the reporting requirements for oil will be particularly useful. The Agency believes that the release of oil to a storm water discharge in amounts that cause an oil sheen is a good indicator of the potential for water quality impacts from storm water releases from oil and gas operations. In addition, given the extremely high number of such operations (the Agency estimates that there are over 750,000 oil wells alone in the United States), relying on the oil sheen test to determine if storm water discharges from such sites are "contaminated" will be a far easier test for operators to determine whether to file a storm water permit application than a test based on sampling. The detection of a sheen does not require sophisticated instrumentation since a sheen is easily perceived by visual observation. EPA agrees with those comments calling the oil sheen test an appropriate measure for triggering a storm water permit application. In adopting this approach, EPA recognizes, as pointed out by many commenters that an oil sheen can be created with a relatively small amount of oil.

One commenter suggested that contamination must be caused by contact with on-site material before being subject to permit application requirements. The Agency agrees with this comment. Those facilities that have had releases in excess of reportable quantities will generally have contamination from contact with on-site material as described in the CWA. Thus, use of the RQ test is an appropriate trigger. As discussed above, determination of whether contamination is present to warrant issuance of a permit will be made in the context of the permit proceeding.

One commenter believed that the use of RQs is inappropriate because "the statute intended to exempt only oil and gas runoff that is not contaminated at all." The Agency wishes to clarify that reportable quantities are being used to determine what facilities need to file permit applications and to describe what is meant by the term "contaminated." The Director may require a permit for any discharges of storm water runoff contaminated by contact with any overburden, raw material, intermediate product, finished product, by product or waste product at the site of such operations. The use of RQs is solely a mechanism for identifying the facilities most likely to need a storm water permit consistent with the legislative history of section 402(l)(2).

c. Mining Operations. The December 7, 1988 proposal would establish background levels as the standard used to define when a storm water discharge from a mining operation is contaminated. When a storm water discharge from a mining site was found to contain pollutants at levels that exceed background levels, the owner or operator of the site was required to submit a permit application for that operation. The proposal was founded upon language in the legislative history stating that the determination of whether storm water is contaminated by contact with overburden, raw material, intermediate product, finished product, byproduct, or waste products "shall take into consideration whether these materials are present in such stormwater runoff . . . above natural background levels". [Vol. 132 Cong. Rec. H10574 (daily ed. Oct. 15, 1986) Conference Report].

Comments received on this component of the rule suggested that background levels of pollutants would be very difficult to calculate due to the complex topography frequently encountered in alpine mining regions. For example, if a mine is located in a mountain valley surrounded on all sides by hills, the site will have innumerable slopes feeding flow towards it. Under such circumstances, determining how the background level is set would prove impractical. Commenters indicated that it is very difficult to measure or determine background levels at sites where mining has occurred for prolonged periods. In many instances, data on original background levels may not be available due to long-term site activity. As a result, any background level established will vary based on the type and level of previous activity. In addition, mining sites typically have background levels that are naturally distinct from the surrounding areas. This is due to the geologic characteristics that makes them valuable as mining sites to begin with. This also makes it difficult to establish accurate background levels.

Because of these concerns EPA has decided to drop the use of background levels as a measure for determining whether a permit application is required. Accordingly, a permit application will be required when discharges of storm water runoff from mining operations come into contact with any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site. Similar to the RQ test for oil and gas operations, EPA intends to use the "contact" test solely as a permit application trigger. The determination of whether a mining operation's runoff is contaminated will be made in the context of the permit issuance proceedings.

If the owner or operator determines that no storm water runoff comes into contact with overburden, raw material, intermediate product, finished product, byproduct, or waste products, then there is no obligation to file a permit application. This framework is consistent with the statutory provisions of section 402(1)(2) and is intended to encourage each mining site to adopt the best possible management controls to prevent such contact.

Several commenters stated that EPA's use of total pollutant loadings for determining permit applicability is not consistent with the general framework of the NPDES program. Their concern is that such evaluation criteria depart from how the NPDES program has been administered in the past, based on concentration limits. In addition, commenters requested that EPA clarify that information on mass loading will be used for determining the need for a permit only. Since the analysis of natural background levels as a basis for a permit application has been dropped from this rulemaking, these issues are moot.

Commenters noted that the proposed rule did not specify what impact this rulemaking has on the storm water exemptions in 40 CFR 440.131. The commenters recommended not changing any of these provisions. Some commenters indicated that mining facilities that have NPDES permits should not be subject to additional permitting under the storm water rule. EPA does not intend that today's rule have any effect on the conditional exemptions in 40 CFR 440.131. Where a facility has an overflow or excess discharge of process-related effluent due to stormwater runoff, the conditional exemptions in 40 CFR 440.131 remain available.

Several commenters note that the term overburden, as used in the context of the proposed storm water rule, is not defined and recommended that this term should be defined to delineate the scope of the regulation. EPA agrees that the term overburden should be defined to help properly define the scope the storm water rule. In today's rule, the term

overburden has been clarified to mean any material of any nature overlying a mineral deposit that is removed to gain access to that deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations. This definition is patterned after the overburden definition in SMCRA, and is designed to exclude undisturbed lands from permit coverage as industrial activity. However, the definition provided in this regulation may be revised at a later date, to achieve consistency with the promulgation of RCRA Subtitle D mining waste regulations in the future.

Numerous commenters raised issues pertaining to the inclusion of inactive mining areas as subject to the stormwater rule. Some commenters indicated that including inactive mine operations in the rule would create an unreasonable hardship on the industry. EPA has included inactive mining areas in today's rule because some mining sites represent a significant source of contaminated stormwater runoff. EPA has clarified that inactive mining sites are those that are no longer being actively mined, but which have an identifiable owner/operator. The rule also clarifies that active and inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities required for the sole purpose of maintaining the mining claim are undertaken. The Agency would clarify that claims on land where there has been past extraction, beneficiation, or processing of mining materials, but there is currently no active mining are considered inactive sites. However, in such cases the exclusion discussed above for uncontaminated discharges will still apply.

EPA's definition of active and inactive mining operations also excludes those areas which have been reclaimed under SMCRA or, for non-coal mining operations, under similar applicable State or Federal laws. EPA believes that, as a general matter, areas which have undergone reclamation pursuant to such laws have concluded all industrial activity in such a way as to minimize contact with overburden, mine products, etc. EPA and NPDES States, of course, retain the authority to designate particular reclaimed areas for permit coverage under section 402(p)(2)(E).

The proposed rule had included an exemption for areas which have been reclaimed under SMCRA, although the language of the proposed rule inadvertently identified the wrong universe of coal mining areas. The final rule language has been revised to clarify that areas which have been reclaimed under SMCRA (and thus are no longer subject to 40 CFR part 434 subpart E) are not subject to today's rule. Today's rule thus is consistent with the coal mining effluent guideline in its treatment of areas reclaimed under SMCRA.

In response to comments, EPA has also expanded this concept to exclude from coverage as industrial activity non-coal mines which are released from similar State or Federal reclamation requirements on or after the effective date of this rule. EPA believes it is appropriate, however, to require permit coverage for contaminated runoff from inactive non-coal mines which may have been subject to reclamation regulations, but which have been released from those requirements prior to today's rule. EPA does not have sufficient evidence to suggest that each State's previous reclamation rules and/or Federal requirements, if applicable, were necessarily effective in controlling future storm water contamination.

8. Application Requirements for Construction Activities

As discussed above, EPA has included storm water discharges from activities involving construction operations that result in the disturbance of five acres total land in the regulatory definition of storm water discharges associated with industrial activity.

This is a departure from the proposed rule which required permit applications for discharges from activities involving construction operations that result in the disturbance of less than one acre total land area and (which are not part of a larger common plan of development or sale; or operations that are for single family residential projects, including duplexes, triplexes, or quadruplexes, that result in the disturbance of less than five acre total land areas and which are not part of a larger common plan of development or sale). The reasons for this change are noted below.

Many commenters representing municipalities, States, and industry requested that clearing, grading, and excavation activities not be included in the definition of storm water discharges associated with industrial activity. It was suggested that EPA delay including construction activities until after the studies mandated in section 402(p)(5) of the CWA are completed. Other commenters felt that NPDES permits are not appropriate for construction discharges due to their short term, intermediate and seasonal nature. Another commenter felt that only the construction activities on the sites of the industrial facilities identified in the other subsections of the definition of "associated with industrial activity" should be included.

EPA believes that storm water permits are appropriate for the construction industry for several reasons. Construction activity at a high level of intensity is comparable to other activity that is traditionally viewed as industrial, such as natural resource extraction. Construction that disturbs large tracts of land will involve the use of heavy equipment such as bulldozers, cranes, and dump trucks. Construction activity frequently employs dynamite and/or other equipment to eliminate trees, bedrock, rockwork, and to fill or level land. Such activities also engage in the installation of haul roads, drainage systems, and holding ponds that are typical of the industrial activity identified in § 122.26(b)(14)(i-x). EPA cannot reasonably place such activity in the same category as light commercial or retail business.

Further, the runoff generated while construction activities are occurring has potential for serious water quality impacts and reflects an activity that is industrial in nature. Where construction activities are intensive, the localized impacts of water quality may be severe because of high unit loads of pollutants, primarily sediments. Construction sites can also generate other pollutants such as phosphorus, nitrogen and nutrients from fertilizer, pesticides, petroleum products, construction chemicals and solid wastes. These materials can be toxic to aquatic organisms and degrade water for drinking and water-contact recreation. Sediment runoff rates from construction sites are typically 10 to 20 times that of agricultural lands, with runoff rates as high as 100 times that of agricultural lands, and 1,000 to 2,000 times that of forest lands. Even small construction sites may have a significant negative impact on water quality in localized areas. Over a short period of time, construction sites can contribute more sediment to streams than was previously deposited over several decades.

EPA is convinced that because of the impacts of construction discharges that are directly to waters of the United States, such discharges should be addressed by permits issued by Federal or NPDES State permitting authorities. It is evident from numerous studies and reports submitted under section 319 of the CWA that discharges from construction sites continue to be a major source of water quality problems and water quality standard violations.

Accordingly EPA is compelled to address these source under these regulations and thereby regulate these sources under a nationally consistent program with an appropriate level of enforcement and oversight.

Techniques to prevent or control pollutants in storm water discharges from construction are well developed and understood. A primary control technique is good site planning. A combination of nonstructural and structural best management practices are typically used on construction sites. Relatively inexpensive nonstructural vegetative controls, such as seeding and mulching, are effective control techniques. In some cases, more expensive structural controls may be necessary, such as detention basins or diversions. The most efficient controls result when a comprehensive storm water management system is in place. Another reason that EPA has decided to address this class of discharges is that it is part of the Agency's recent emphasis on pollution prevention. Studies such as NURP indicate that it is much more cost effective to develop measures to prevent or reduce pollutants in storm water during new development than it is to correct there problems later on. Many of these prevention and control practices, which can take the form of grading patterns as well as other controls, generally remain in place after the construction activities are completed.

a. Permit Application Requirements. In today's rulemaking, EPA has set forth distinct permit application requirements for these construction activities, at § 122.26(c)(1)(ii), to be used where general permits to be developed and promulgated by EPA are inapplicable. Such facilities will be required to provide a map indicating the site's location and the name of the receiving water and a narrative description of:

- The nature of the construction activity;
- The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;
- Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a description of applicable Federal requirements and State or local erosion and sediment control requirements;
- Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a description of applicable State or local requirements, and
- An estimate of the runoff coefficient (fraction of total rainfall that will appear as runoff) of the site and the increase in impervious area after the construction addressed in the permit application is completed, a description of the nature of fill material and existing data describing the soil or the quality of the discharge.

Permit application requirements for construction activities do not include the submission of quantitative data. EPA believes that the changing nature of construction activities at a site to be covered by the permit application requirements generally would not be adequately described by quantitative data. The comments received by EPA support this determination. One State commented that a program they instituted has been based on quantitative data for the past 10 years and has proven to be very awkward, even unworkable.

Twenty commenters responded to the issue of appropriate construction site application deadlines including: Three towns (<100,000 population); one medium municipality; one large municipality; one agency associated with a large municipality; three agencies associated counties; three agencies associated with States; two industries; five industrial associations; and one private organization representing industry. The commenters primarily focused on actual deadlines and permitting authority response time.

Applicants for permits to discharge storm water into the waters of the United States from a construction site would normally be required to submit permits in the same time frame as new sources and new discharges. This rulemaking requires permit applications from such sources to be submitted at least 180 days prior to the date on which the discharge is to commence. Four commenters agreed with the application deadline of 180 days prior to commencement of discharge. Three commenters felt it would be difficult to apply 180 days prior to when the discharge was to begin. Three commenters recommended shortening the time period to 90 days. Numerous other commenters were concerned over delays during the permitting authority's review of the permit application. The commenters requested that a maximum response time be set in the regulation. Suggested maximum response times were 90 and 30 days.

In response to these comments, EPA has changed the application deadline for construction permits from at least 180 days prior to discharge to at least 90 days prior to the date when construction is to commence. This change reflects EPA's recognition of the nature of construction operations in that developers/builders may not be aware of projects 180 days before they are scheduled to begin.

Numerous commenters expressed concern over who should be responsible for applying for the permit. Two commenters felt the owner should be responsible so that construction bid documents can include the storm water management requirements and to avoid confusion among multiple subcontractors. One commenter thought that either the owner/developer, or general contractor should be responsible. Another commenter suggested that the designer should obtain the permit which would allow all necessary erosion controls to be part of the project plan. Several commenters requested that the responsibility simply be more clearly defined.

In response to these comments, EPA would clarify that the operator will generally be responsible for submitting the permit application. Under existing regulations at § 122.21(b), when a facility is owned by one person but operated by another, then it is the duty of the operator to apply for the permit Due to the temporary nature of construction activities, EPA believes that the operator is the most appropriate person to be responsible for both short and long term best management practices included on the site. EPA considers the term "operator" to include a general contractor, who would generally be familiar enough with the site to prepare the application or to ensure that the site would be in compliance with the permit requirements. General contractors, in many cases, will often be on site coordinating the operation among his/her staff and any subcontractors. Furthermore, the operator/general contractor would be much more familiar with construction site operations than the owner and should be involved in the site planning from its initial stages. The application requirements in today's rule are designed to provide flexibility in developing controls to reduce pollutants in storm water discharges from construction sites. A significant aspect to this is the role of State and local authorities in control of construction storm water discharges. Sixty-three commenters addressed the question of what the role of State and local authorities should be. Most of these commenters supported local government control of construction discharges and that qualified State programs should satisfy Federal requirements.

Many commenters representing municipalities, States, and industry, felt that local government should have full control over construction storm water discharges, either under existing programs or those required by their municipal permit. EPA agrees with these comments as far as discharges through municipal storm sewers are concerned. EPA is requiring municipalities that are required to submit municipal permit applications under this regulation to describe their program for controlling storm water discharges from construction activities into their separate storm sewers. It is envisioned that municipalities will have primary responsibility over these discharges through NPDES municipal storm water permits. However, EPA also plans to cover such discharges under general permits to be promulgated in the near future.

In response to several comments that the regulation should provide flexibility for qualified State programs to satisfy Federal requirements, the application requirements recognize that many States have implemented erosion and sediment control programs. The permit application requires a brief description of these programs. This is intended to ensure consistency between NPDES permit requirements and other State controls. Permit applicants will be in the best position to pass on this site-specific information to the permitting authority. States or Federal NPDES authorities will have the ability to exercise authority over these discharges as will other State and local authorities responsible for construction. EPA envisions NPDES permitting efforts will be coordinated with any existing programs.

The proposed rule requested comments on appropriate measures to reduce pollutants in construction site runoff. Numerous commenters representing municipalities, States, and industry responded. Some commenters recommended specific best management practices (BMPs) whereas others suggested ways in which the measures should be incorporated into the program. One commenter suggested that EPA establish design and performance standards for appropriate BMPs. One State commenter recommended requiring a schedule or sequence for use of BMPs. A municipality suggested developing guidance on erosion control at construction sites and disseminating the guidance to educate contractors and construction workers in proper erosion control techniques. The Agency is continuing to review these recommendations for the purposes of permit development and issuance.

Another commenter suggested that further research be done to determine the effectiveness of particular BMPs in reducing pollutants in construction site runoff. EPA agrees that more research and studies can be undertaken to develop methodologies for more effective storm water controls and will continue to lookat these concerns pursuant to section 402(p)(5) studies. However, EPA is convinced that enough information, technology, and proven BMP's are available to address these discharges in this regulation.

Specific BMPs suggested by the commenters include: wheel washing; locked exit roadways, street cleaning methods which exclude sheet washing; clearing and grading codes; construction standards; riparian corridors; solids retention basins; soil erosion barriers; selected excavation; adequate collection systems; vegetate disturbed areas; proper application of fertilizers; proper equipment storage; use of straw bales and filter fabrics; and use of diversions to reduce effective length of slopes. EPA is continuing to evaluate these suggestions for developing appropriate permit conditions for construction activity.

b. Administrative Burdens. Many commenters representing municipalities, States, and industry commented on the administrative burdens of individually permitting each construction site discharging to waters of the United States. The extensive use of general permits for storm water discharges from construction activities that are subject to NPDES requirements is anticipated to minimize administrative delays associated with permit issuance. Many commenters strongly endorsed extensive use of general permits. In addition the Agency will provide as much assistance as possible for developing appropriate permit conditions.

Many commenters responded to the use of acreage limits in determining which construction sites are required to submit a permit application, including several cities, counties and States. Some commenters generally supported the use of an acre limit. Many commenters suggested increasing the acreage limit. Several suggested using a five acre limit for both residential and nonresidential development. Others suggested greater acreage as the cutoff. Two commenters concurred with the proposed limit of one acre/five acres and one commenter suggested lowering the residential limit to one acre.

Other factors were suggested as a means to create a cutoff for requiring permit applications. Several commenters suggested exempting construction that would be completed with a certain time frame, such as construction of less than 12 months. EPA believes that this is inappropriate because some construction can be intensive and expansive, but nonetheless take place over a short period of time, such as a parking lot. One commenter suggested basing the limit on the quantity of soil moved, i.e., cubic yards. In response, this approach would not be particularly helpful since removal of soil will not necessarily relate to the amount of land surface disturbed and exposed to the elements. Another commenter suggested that where there is single family detached housing construction that should trigger applications as well as the proposed acreage limit. This would not be appropriate since EPA is attempting to focus only on those construction activities that resemble industrial activity. After considering these and similar comments EPA has limited the definition of "storm water discharge associated with industrial activity" by exempting from the definition those construction operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale. In considering the appropriate scope of the definition of storm water discharge associated with industrial activity as it relates to construction activities, EPA recognized that a wide variety of factors can affect the water quality impacts associated with construction site runoff, including the quality of receiving waters, the size of the area disturbed, soil conditions, seasonal rainfall patterns, the slope of area disturbed, and the intensity of construction activities. These factors will be considered by the permit writer when issuing the permit. However, as noted above, EPA views such site-specific factors to be too difficult to define in a regulatory framework that is national in scope. For example, attempting to adjust permit application triggers based upon a myriad of regional rainfall patterns is not a practical solution. However, permit conditions adjusted for specific geographical areas may be appropriate.

Under the December 7, 1988, proposal the definition of industrial activity exempted: construction operations that resulted in the disturbance of less than one acre total land area which was not part of a larger common plan of development or sale; or operations for single family residential projects, including duplexes, triplexes, or quadruplexes, that result in the disturbance of less than five acre total land areas which were not part of a larger common plan of development or sale. EPA distinguished between single family residential development and

other commercial development because other commercial development is more likely to occur in more densely developed areas. Also, it was reasoned that other commercial development provides a more complete opportunity to develop controls that remain in place after the construction activity is completed, since continued maintenance after the permit has expired, is more feasible.

However, EPA has decided to depart from the proposal and use an unqualified five acre area in today's final rule. This limit has been selected, in part, because of administrative concerns. EPA recognizes that State and local sediment and erosion controls may address construction activities disturbing less five acres for residential development; the five acre limit in today's rule is not intended to supersede more stringent State or local sediment and erosion controls. In light of the comments, EPA is convinced that the acreage limit is appropriate for identifying sites that are amount to industrial activity. Several comments suggested higher acreage limits without giving a supporting rationale except administrative concerns. Several commenters agreed that the five acre limit is suitable, but again without specifying why they agreed. EPA is convinced, however, that the acreage limits as finalized in today's rule reflect an earth disturbance and/or removal effort that is industrial in magnitude. Disturbances on large tracts of land will employ more heavy machinery and industrial equipment for removing vegetation and bedrock.

For construction facilities that are not included in the definition of storm water discharge associated with industrial activity, EPA will consider the appropriate procedures and methods to reduce pollutants in construction site runoff under the studies authorized by section 402(p)(5) of the CWA. EPA will also consider under section 402(p)(5) appropriate procedures and methods during post-construction for maintaining structural controls developed pursuant to NPDES permits issued for storm water discharges associated with industrial activity from construction sites.

Numerous commenters requested clarification as to whether permits for storm water discharges from construction activities at an industrial facility are required. EPA is requiring permits for all storm water discharges from construction activities where the land disturbed meets the requirements established in § 122.26(b)(14)(x) and which discharge into waters of the United States. The location of the construction activity or the ultimate land use at the site does not factor into the analysis.

G. Municipal Separate Storm Sewer Systems

1. Municipal Separate Storm Sewers

Today's rule defines "municipal separate storm sewer" at § 122.26(b)(8) to include any conveyance or system of conveyances that is owned or operated by a State or local government entity and is designed for collecting and conveying storm water which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2. It is important to note that today's permit application requirements for discharges from municipal separate storm sewer systems serving a population of 100,000 or more do not apply to discharges from combined sewers (systems designed as both a sanitary sewer and a storm sewer). For purposes of calculating whether a municipal separate storm sewer system meets the large or medium population criteria, a municipality may petition to have the population served by a combined sewer deducted from the total population. Section 122.26(f) of today's rule describes this procedure.

EPA requested comments on whether different language for the definition of municipal separate storm sewer would clarify responsibility under the NPDES permit system. Comments were also requested on whether the definition needed to be clarified by explicitly stating that municipal streets and roads with drainage systems (curb and gutter, ditches, etc.) are part of the municipal storm sewer system, and that the owners or operators of such roads are responsible for such discharges. Numerous comments were received by EPA on this issue. Some commenters questioned whether road culverts and road ditches were municipal separate storm sewers, while others specifically recommended that further clarifying language should be added so that owners and operators of roads and streets understand that they are covered by this regulation. In light of these comments, EPA has clarified that municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains that discharge into the waters of the United States are municipal separate storm sewers. One commenter asked if "other wastes" in the proposed definition of municipal separate storm sewer (40 CFR 122.26 (b)(8)(i)) included storm water. In response, EPA has added "storm water" to this definition in order to clarify that the rule addresses such systems.

EPA requested comments on whether legal classifications such as "storm sewers that are not private (e.g. public, district or joint district sewers)" would provide a clearer definition of municipal separate storm sewer than an owner or operator criterion, especially for the purpose of determining responsibility under the NPDES program. Most commenters agreed that the owner/operator concept, and the additional language noted above, is sufficient for this purpose. EPA also requested comments on to what extent the owner/operator concept should apply to municipal governments with land-use authority over lands which contribute storm water runoff to the municipal storm sewer system, and how the responsibility should be clarified. In response to comments on this point, EPA has addressed these concerns in the context of clarifying what municipal entities are responsible for applying for a permit covering storm water discharges from municipal systems in section VI.H. below.

One commenter expressed a desire for clarification as to whether conveyances that were once used for the conveyance of storm water, but are no longer used in that manner, are covered by the definition. EPA emphasizes that this rulemaking only addresses conveyances that are part of a separate storm sewer system that discharges storm water into waters of the United States.

One commenter stated that if EPA intends to regulate roadside collection systems then EPA must repropose since these were not considered by the public. EPA disagrees with this comment since one of the options specifically addressed the inclusion of roadside drainage systems and roads in the definition of municipal separate storm sewer system. In addition, the public recognized the issue in comments on the proposal. EPA would note that several commenters specifically endorsed EPA's inclusion of these conveyances.

2. Effective Prohibition on Non-Storm Water Discharges

Section 402(p)(3)(B)(ii) of the amended CWA requires that permits for discharges from municipal storm sewers shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers. Based on the legislative history of section 405 of the WQA, EPA does not interpret the effective prohibition on non-storm water discharges to municipal separate storm sewers to apply to discharges that are not composed entirely of storm water, as long as such discharge has been issued a separate NPDES permit. Rather, an "effective prohibition" would require separate NPDES permits for non-storm water discharges to municipal storm sewers. In many cases in the past, applicants for NPDES permits for process wastewaters and other non-storm water discharges have been granted approval to discharge into municipal separate storm sewers, provided that the permit conditions for the discharge are met at the point where the discharge enters into the separate storm sewer. Permits for such discharges must meet applicable technology-based and water-quality based requirements of Sections 402 and 301 of the CWA. If the permit for a non-storm water discharge to a municipal separate storm sewer contains water-quality based limitations, then such limitations should generally be based on meeting applicable water quality standards at the boundary of a State established mixing zone (for States with mixing zones) located in the receiving waters of the United States.

All options will be considered when an applicant applies for a NPDES permit for a non-storm water discharge to a municipal separate storm sewer. In some cases, permits will be denied for discharges to storm sewers that are causing water quality problems in receiving waters. However, not all discharges present such problems; and in these cases EPA or State permit writers may allow such discharges to municipal separate storm sewers within appropriate permit limits.

Today's rule has two permit application requirements that are designed to begin implementation of the effective prohibition. The first requirement discussed in VI.H.6.a., below, addresses a screening analysis which is intended to provide sufficient information to develop priorities for a program to detect and remove illicit discharges. The second provision, discussed in VI.H.7.b., requires municipal applicants to develop a recommended site-specific management plan to detect and remove illicit discharges (or ensure they are covered by an NPDES permit) and to control improper disposal to municipal separate storm sewer systems.

Several commenters suggested that either the definition of "storm water" should include some additional classes of nonprecipitation sources, or that municipalities should not be held responsible for "effectively prohibiting" some classes of nonstorm water discharges into their municipal storm sewers. The various types of discharges addressed by these comments include detention and retention reservoir releases, water line flushing, fire hydrant flushing, runoff from fire fighting, swimming pool drainage and discharge, landscape irrigation, diverted stream flows, uncontaminated pumped ground water, discharges from potable water sources, uncontaminated waters from cooling towers, foundation drains, non-contact cooling water (such as heating, ventilation, air conditioning (HVAC) water that POTWs require to be discharged to separate storm sewers rather than sanitary sewers), irrigation water, springs, roofdrains, water from crawl space pumps, footing drains, lawn watering, individual car washing, flows from riparian habitats and wetlands. Most of these comments were made with regard to the concern that these were commonly occurring discharges which did not pose significant environmental problems.

EPA disagrees that the above described flows will not pose, in every case, significant environmental problems. At the same time, it is unlikely Congress intended to require municipalities to effectively prohibit individual car washing or discharges resulting from efforts to extinguish a building fire and other seemingly innocent flows that are characteristic of human existence in urban environments and which discharge to municipal separate storm sewers. It should be noted that the legislative history is essentially silent on this point. Accordingly, EPA is clarifying that section 402(p)(3)(B) of the CWA (which requires permits for municipal separate storm sewers to 'effectively' prohibit non-storm water discharges) does not require permits for municipalities to prohibit certain discharges or flows of nonstorm water to waters of the United States through municipal separate storm sewers in all cases. Accordingly, § 122.26(d)(2)(iv)(B)(1) states that the proposed management program shall include: "A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; the program description shall address the following categories of non-storm water discharges or flows only where such discharges are identified by the municipality as sources of pollutants to waters of the United States: Water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers, uncontaminated pumped ground water discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash waters. Program descriptions shall address discharges from fire fighting only where such discharges or flows are identified as significant sources of pollutants to waters of the United States."

However, the Director may include permit conditions that either require municipalities to prohibit or otherwise control any of these types of discharges where appropriate. In the case of fire fighting it is not the intention of these rules to prohibit in any circumstances the protection of life and public or private property through the use of water or other fire retardants that flow into separate storm sewers. However, there may be instances where specified management practices are appropriate where these flows do occur (controlled blazes are one example).

Conveyances which continue to accept other "non-storm water" discharges (e.g. discharges without an NPDES permit) with the exceptions noted above do not meet the definition of municipal separate storm sewer and are not subject to section 402(p)(3)(B) of the CWA unless the non-storm water discharges are issued separate NPDES permits. Instead, conveyances which continue to accept non-storm water discharges which have not been issued separate NPDES permits are subject to sections 301 and 402 of the CWA. For example, combined sewers which convey storm water and sanitary sewage are not separate storm sewers and must comply with permit application requirements at 40 CFR 122.21 as well as other regulatory criteria for combined sewers.

3. Site-Specific Storm Water Quality Management Programs for Municipal Systems

Section 402(p)(3)(iii) of the CWA mandates that permits for discharges from municipal separate storm sewers shall require controls to reduce the discharge of pollutants to the maximum extent practicable (MEP), including management practices, control techniques and systems, design and engineering methods, and such other provisions as the Director determines appropriate for the control of such pollutants.

When enacting this provision, Congress was aware of the difficulties in regulating discharges from municipal

separate storm sewers solely through traditional end-of-pipe treatment and intended for EPA and NPDES States to develop permit requirements that were much broader in nature than requirements which are traditionally found in NPDES permits for industrial process discharges or POTWs. The legislative history indicates, municipal storm sewer system "permits will not necessarily be like industrial discharge permits. Often, an end-of-the-pipe treatment technology is not appropriate for this type of discharge." [Vol. 132 Cong. Rec. S16425 (daily ed. Oct. 16, 1986)].

A shift towards comprehensive storm water quality management programs to reduce the discharge of pollutants from municipal separate storm sewer systems is appropriate for a number of reasons. First, discharges from municipal storm sewers are highly intermittent, and are usually characterized by very high flows occurring over relatively short time intervals. For this reason, municipal storm sewer systems are usually designed with an extremely high number of outfalls within a given municipality to reduce potential flooding. Traditional end-of-pipe controls are limited by the materials management problems that arise with high volume, intermittent flows occurring at a large number of outfalls. Second, the nature and extent of pollutants in discharges from municipal systems will depend on the activities occurring on the lands which contribute runoff to the system. Municipal separate storm sewers tend to discharge runoff drained from lands used for a wide variety of activities. Given the material management problems associated with end-of-pipe controls, management programs that are directed at pollutant sources are often more practical than relying solely on end-of-pipe controls.

In past rulemakings, much of the criticism of the concept of subjecting discharges from municipal separate storm sewers to the NPDES permit program focused on the perception that the rigid regulatory program applied to industrial process waters and effluents from publicly owned treatment works was not appropriate for the site-specific nature of the sources which are responsible for the discharge of pollutants from municipal storm sewers.

The water quality impacts of discharges from municipal separate storm sewer systems depend on a wide range of factors including: The magnitude and duration of rainfall events, the time period between events, soil conditions, the fraction of land that is impervious to rainfall, land use activities, the presence of illicit connections, and the ratio of the storm water discharge to receiving water flow. In enacting section 405 of the WQA, Congress recognized that permit requirements for municipal separate storm sewer systems should be developed in a flexible manner to allow site-specific permit conditions to reflect the wide range of impacts that can be associated with these discharges. The legislative history accompanying the provision explained that "[p]ermits for discharges from municipal separate stormwater systems * * * must include a requirement to effectively prohibit non-stormwater discharges into storm sewers and controls to reduce the discharge of pollutants to the maximum extent practicable, * * * These controls may be different in different permits. All types of controls listed in subsection [(p)(3)(C)] are not required to be incorporated into each permit" [Vol. 132 Cong. Rec. H10576 (daily ed. October 15, 1986) Conference Report]. Consistent with the intent of Congress, this rule sets out permit application requirements that are sufficiently flexible to allow the development of site-specific permit conditions.

Several commenters agreed with this approach. One municipality recommended that there be as much flexibility as possible so that the permitting authority can work with each municipality in developing meaningful long-term goals with plans for improving storm water quality. This commenter noted that too many specific regulations that apply nationwide do not take into consideration the climatic and governmental differences within the States. EPA agrees that as much flexibility as possible should be incorporated into the program. However, flexibility should not be built into the program to such an extent that all municipalities do not face essentially the same responsibilities and commitment for achieving the goals of the CWA. EPA believes that these final regulations build in substantial flexibility in designing programs that meet particular needs, without abandoning a nationally consistent structure designed to create storm water control programs.

4. Large and Medium Municipal Storm Sewer Systems

During the 1987 reauthorization of the CWA, Congress established a framework for EPA to implement a permit program for municipal separate storm sewers and establishing phased deadlines for its implementation. The amended CWA establishes priorities for EPA to develop permit application requirements and issue permits for discharges from three classes of municipal separate storm sewer systems. The CWA requires that NPDES permits be issued for discharges from large municipal separate storm sewer systems (systems serving a population of more than 250,000) by no later than February 4, 1991. Permits for discharges from medium municipal separate storm sewer systems (systems serving a population of more than 100,000, but less than 250,000) must be issued by February 4, 1992. After October 1, 1992, the requirements of sections 301 and 402 of the CWA are restored for all other discharges from municipal separate storm sewers.

The priorities established in the Act are based on the size of the population served by the system. Municipal operators of these systems are generally thought to be more capable of initiating storm water programs and discharges from municipal separate storm sewers serving larger populations are thought to present a higher potential for contributing to adverse water quality impacts. NURP and other studies have verified that the event mean concentration of pollutants in urban runoff from residential and commercial areas remains relatively constant from one area to another, indicating that pollutant loads from urban runoff strongly depend on the total area and imperviousness of developed land, which in turn is related to population.

The term "municipal separate storm sewer system" is not defined by the Act. By not defining the term, Congress intended to provide EPA discretion to define the scope of municipal systems consistent with the objectives of developing site-specific management programs in NPDES permits. EPA considered two key issues in defining the scope of municipal separate storm sewer system: (1) What is a reasonable definition of the term "system," and (2) how to determine the number of people "served" by a storm sewer system. EPA found these two issues to be intertwined. Different approaches to defining the scope of a system allowed for greater or lesser certainty in deterining the population served by the system.

In the December 7, 1988, proposal, EPA described seven options for defining "municipal separate storm sewer system." In developing these options the EPA considered:

- The inter-jurisdiction complexities associated with municipal governments;
- The fact that many municipal storm water management programs have traditionally focused on water quantity concerns, and have not evaluated water quality impacts of system discharges or developed measures to reduce pollutants in such discharges;
- The advantages of developing system-wide storm water management programs for municipal systems;
- The geographic basis necessary for planning of comprehensive management programs to reduce pollutants in discharges from municipal separate storm sewers to the maximum extent practicable;
- The geographic basis necessary to provide flexibility to target controls on areas where water quality impacts associated with discharges from municipal systems are the greatest and to provide an opportunity to develop cost effective controls;
- The need to establish a reasonable number of permits for municipal systems during the initial phases of program development that will provide an adequate basis for a storm water quality management program for over 13,000 municipalities after the October 1, 1992 general prohibition on storm water permits expires; and
- Congressional intent to allow the development of jurisdiction-wide, comprehensive storm water management programs with priorities given to the most heavily populated areas of the country.

a. Overview of Proposed Options and Comments. The December 7, 1988, proposal requested comment on seven options for defining large and medium municipal separate storm sewer system. With the addition of a watershed-based approach suggested by certain commenters, eight options or approaches were addressed by the over 200 commenters on this issue: Option 1—systems owned or operated by incorporated places augmented by integrated discharges; Option 2—systems owned or operated by incorporated places augmented with significant other municipal discharges; Option 3—systems owned or operated by counties; Option 4—systems owned and operated by States or State departments of transportation; Option 5—systems within the boundaries of an incorporated place; Option 6—systems within the boundaries of counties; Option 7—systems in census designated urbanized areas; and Option 8—systems defined by watershed boundaries.

Generally, these options can be classified into two categories. The first category of options, Options 1, 2 and 3, define municipal systems in terms of the municipal entity which owns or operates storm sewers within municipal boundaries of the requisite population. The second category of options would define municipal systems on a geographic basis. Under Options 4, 5, 6, 7 and 8 all municipal separate storm sewers within the specified geographic area would be part of the municipal system, regardless of which municipal entity owns or operates the storm sewer. EPA did not propose to define the scope of a municipal separate storm sewer system in engineering terms because of practical problems determining the boundaries of and the populations served by "systems" defined in such a manner. In addition an engineering approach based on physical interconnections of storm sewer pipes by itself does not provide a rational basis for developing a storm water program to improve water quality where a large number of individual storm water catchments are found within a municipality.

In the December 7, 1988, proposal, EPA favored those options that relied primarily on the municipal entity which owns or operates or otherwise has jurisdiction over storm sewers. These options were preferred because it was anticipated that the administrative complexities of developing the permit programs would be reduced by decreasing the number of affected municipal entities. However, most commenters were not satisfied that such an approach would reduce administrative burdens or complexities.

The diversity of arguments and rationales offered in comments justifying the selection of particular option, or combinations thereof, were generally a function of geographic, climatic, and institutional differences around the country. As such, there was little substantive agreement with how this program should be implemented as far as defining large and medium municipal separate storm sewer systems. Of all the options, Option 1 generally received the most favorable comment. However, the overwhelming majority of comments suggested different options or other alternatives. Having reviewed the comments at length, EPA is convinced that the definition of municipal separate storm sewers should possess elements of several of the options enumerated above and a mechanism that enables States or EPA Regions to define a system that best suits their various political and geographical conditions.

The following comments were the most pervasive, and represent those issues and concerns of greatest importance to the public: (1) The approach chosen initially must be realistic and achievable administratively; (2) the definition must be flexible enough to accommodate development of the program on a watershed basis, and incorporate elements of existing programs and frameworks and regional differences in climate, geography, and political institutions; (3) permittees must have legal authority and control over land use; (4) discharges from State highways, identified as a significant source of runoff and pollutants, should be included in the program and combined in some manner with one or more of the other options; (5) the definition should address how the inclusion of interrelated discharges into the municipal separate storm sewer system are timed, decided upon, dealt with, etc.; (6) any approach must address the major sources of pollutants; (7) development of co-permittee management plans must be coordinated or developed on a regional basis and in the same time frame—fragmented or balkanized programs must be avoided; (8) municipalities should be regulated as equitably as possible; (9) flood control districts should be addressed as a system or part of a system; (10) the definition must conform to the legal requirements of the Clean Water Act; and (11) the definition should limit the number of co-permittees as much as possible.

b. Definition of large and medium municipal separate storm sewer system. A combination of the options outlined in the 1988 proposal would address most of these concerns, while achieving a realistic and environmentally beneficial storm water program. Accordingly, EPA has adopted the following definition of large and medium municipal separate storm sewer systems. Large and medium separate storm sewer systems are municipal separate storm sewers that:

(i) Are located in an incorporated place with a population of 100,000 or more or 250,000 or more as determined by the latest Decennial Census by the Bureau of Census (see appendices F and G of part 122 for a list of these places based on the 1980 Census);

(ii) Are located within counties having areas that are designated as urbanized areas by latest decennial Bureau of Census estimates and where the population of such areas exceeds 100,000, after the population in the incorporated places, townships or towns within such counties is excluded (see appendices H and I for a listing of these counties based on the 1980 census) (incorporated places, towns, and townships within these counties are excluded from permit application requirements unless they fall under paragraph (i) or are designated under paragraph (iii)); or (iii) are owned or

operated by a municipality other than those described in paragraph (i) or (ii) that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraphs (i) or (ii). In making this determination the Director may consider the following factors:

(A) Physical interconnections between the municipal separate storm sewers;

(B) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subparagraph (i);

(C) The quantity and nature of pollutants discharged to waters of the United States;

(D) The nature of the receiving waters; or

(E) Other relevant factors.

(iv) The Director may, upon petition, designate as a system, any municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraphs (i), (ii), and (iii).

Under today's rule at § 122.26(a)(3)(iii) the regional authority shall be responsible for submitting a permit application under the following guidelines: The regional authority together with co-applicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time part 1 of the application is due; the permit applicant or co-applicants shall establish their ability to make a timely submission of part 1 and part 2 of the municipal application; each of the operators of municipal separate storm systems described in paragraphs 122.26(b)(4) (i), (ii), and (iii) and (7)(i), (ii), and (iii), that are under the purview of the designated regional authority, shall comply with the application requirements of § 122.26(d).

As noted above, the finalized definition of large and medium municipal separate storm sewer system is combination of the approaches as proposed. (In the following discussion "paragraph (i)" refers to §§ 122.26 (b)(4)(i) and (b)(7)(i); "paragraph (ii)" refers to §§ 122.26(b)(4)(ii) and (b)(7)(ii); "paragraph (iii)" refers to §§ 122.26 (b)(4)(iii) and (b)(7)(iii); and "paragraph (iv)" refers to §§ 122.26 (b)(4)(iv) and (b)(7)(iv)). Paragraph (i) originates from proposed Option 5 (boundaries of incorporated places); paragraph (ii) originates from Option 6 (boundaries of counties) and Option 7 (urbanized areas); paragraph (iii) originates from Options 1 and 5; and paragraph (iv) is an outgrowth of comments on all options, especially Option 4 (State owned systems/State highways) and Option 8 (watersheds).

This definition creates a system by virtue of the fact that storm sewers within defined geographical and political areas, and the owner/operators of separate storm sewers in those areas, are addressed or required to obtain permits. Although within these systems, different segments and discharges of storm water conveyances may be owned or operated by different public entities, EPA is convinced by comments that discharges from such conveyances are interrelated to such an extent that all of these conveyances may be properly considered a "system." These comments are identified and discussed in greater detail below.

c. Response to comments. Many commenters urged that the approach taken must be administratively achievable. Option 5 of the proposal (boundaries of incorporated places), which can be equated to paragraphs (i) and (iii) above, was identified by several commenters as the most workable of all the options. Many commenters stated that Option 1 (systems owned or operated by incorporated places) was inappropriate because of special districts and other owners of systems within the incorporated area; and although EPA proposed a designation provision for interrelated discharges in Option 1, commenters advised that it would be impossible to identify these systems, account for their discharges, and exclude or include them in a timely manner if Option 1 was selected (Option 1 only addresses those systems owned or operated by the incorporated place). The final rule would obviate these concerns, since all the publicly owned sewers within the boundaries of the municipality will be required to be covered by a permit.

Other commenters noted that cities sometimes have storm water conveyances owned or operated by numerous entities. One municipality commented that these problems could be more easily resolved using a unified permit/district wide approach, which the final approach outlined above can accomplish. One county stated that Option 1 of the proposal would result in a permanent balkanization of stormwater programs and that a regional approach focusing on the entire system should be established. Another municipality recommended that all the systems of conveyances within the incorporated city boundaries be issued a permit. In rejecting Option 1 of the proposal, one municipality stated that program inefficiencies would result from implementing a piecemeal program in a contiguous urban environment with different owners and operators. One State conveyed similar concerns. Using a geographical approach, as described in paragraph (i) of the final definition, will best address all of these concerns.

One commenter criticized proposed Option 1 as being contrary to the legal requirements of the WQA, and a further example of EPA's continuing attempt to minimize the scope of a national storm water program. It was noted that the legislative history regarding requirements for large and medium municipal separate storm sewer systems in section 402(p) of the CWA generally does not reference incorporated cities or towns. As a result, the commenter recommended that the term "municipal" in municipal separate storm sewer system refer to separate storm sewers operated by municipal entities meeting the definition of "municipality" in section 502 of the CWA and that the scope of the term "municipal separate storm sewer system" be defined as broadly as possible. This approach would result in defining large and medium municipal separate storm sewer systems to include all municipal separate storm sewers within the 410 counties with a population of 100,000 or more. EPA has adopted the commenter's recommendation to extend the scope of the program to the extent that today's rule covers all municipal separate storm sewers within certain areas rather than only those operated by an incorporated place. EPA disagrees however that it must define the term "system" to include sewers within any municipal boundary of sufficient population with reference to section 502(4). By not providing explicit definitions, section 402(p)(3)(B) of the CWA gives EPA discretion to define how municipal separate storm sewer systems are defined. There is no indication in the language of the CWA or the legislative history that Congress intended that the scope of "municipality" and the scope of "municipal separate storm sewer system" to be identical, particularly since the latter term is not defined in the statute. Furthermore, for the reasons discussed elsewhere in this section, EPA believes that today's definition is a reasonable accommodation of the many conflicting concerns surrounding the proper way to delineate the extent of a

municipal separate storm sewer system serving over 100,000 people.

Several commenters concluded that EPA should be flexible enough to allow the permitting authority broad discretion to establish system wide permits, with flood control districts and/or counties acting as co-permittees with the various incorporated cities within the district boundaries. Commenters expressed concern that Option 1 would not allow for such flexibility.

Arguments that were advanced by commenters in support of proposed Option 1 are equally applicable to paragraph (i), above. Like proposed Option 1, the approach outlined above targets major cities. However, it also has the advantage of addressing municipal separate storm sewer systems which may be interrelated to those owned by the city, a benefit recognized by one municipality that endorsed the selection of proposed Option 5. This will also give the permitting authority more discretion to establish co-permittee relationships.

Paragraph (ii) of the final definition also uses a geographical approach to the definition of municipal storm sewer systems to include municipal storm sewers within urbanized counties. Thus, it closely resembles Option 7 of the proposal. The counties identified in paragraph (ii) have, based on the 1980 Census, a population of 100,000 or more in urbanized,[5] unincorporated portions of the county. In the unincorporated areas of these counties (or in the 20 States where the Census recognizes minor civil divisions, unincorporated county areas outside of towns or townships), the county is the primary local government entity. In these cases, the county performs many of the same functions as incorporated cities with a population of 100,000, and is generally expected to have the necessary legal and land use authority in these areas to begin to implement storm water management programs. Due to the urbanized nature of their population, discharges from the municipal separate storm sewers in these counties will have many similarities to discharges from municipal systems in incorporated cities with a population of 100,000 or more. Addressing these counties in this fashion will not adversely affect small municipalities (incorporated places, towns and townships) within the county, as municipal separate storm sewers that are located in the small incorporated places, townships or towns within these counties are not automatically included as part of the system.

EPA has focused on the unincorporated areas because permit applications cannot be required from systems that serve a population less than 100,000, unless designated. EPA received the comment that if the sewers in incorporated places within such counties were included as part of the system for that county, there would be the potential for systems serving a population less than 100,000 to be improperly subject to permit requirements. EPA agrees with the comment, except that EPA reserves the authority to designate sewers in small incorporated places as part of the system subject to permitting, pursuant to paragraph (iii) of the final definition. Incorporated areas within the identified counties will be required to file permit applications if the population served by the municipal separate storm sewer system is 100,000 or more.

As one commenter noted, the counties addressed by the definition will generally be areas of high growth with a growing tax base that can finance a storm water management program. Numerous counties affected by paragraph (ii) commented on the proposal. Several of these indicated a preference for the county government as the permittee. Others indicated that their county had the ability to perform the functions of the permit applicant and permittee. One county brought to EPA's attention that the county had laid plans for a storm water utility scheduled to be in operation in 1989. Several of the counties supported the use of watersheds, or flexible regional approaches, as the basis for the definition of municipal separate storm sewer systems. The modified definition should satisfy these concerns.

EPA recognizes that some of the counties addressed by today's rule have, in addition to areas with high unincorporated urbanized populations, areas that are essentially rural or uninhabited and may not be the subject of planned development. While permits issued for these municipal systems will cover municipal system discharges in unincorporated portions of the county, it is the intent of EPA that management plans and other components of the programs focus on the urbanized and developing areas of the county. Undeveloped lands of the county are not expected to have many, if any, municipal separate storm sewers.

Paragraphs (i) and (ii) above will help resolve the problems associated with permittees not having adequate land use controls, the legal authority to implement controls, and the ownership of the conveyances. This factor was mentioned by numerous commenters on the proposed options, especially county governments. Under paragraphs (i) and (ii), all publicly owned separate storm sewers within the appropriate municipal boundaries will be defined as part of the municipal system. In many cases, a number of municipal operators of these storm sewers will be responsible for discharges from these systems. Since a number of co-permittees may be addressed in the permits for these discharges, problems associated with the ability to control pollutants that are contributed from interrelated discharges will be minimized. State highways or flood control districts, which may have no land use authority in incorporated cities, will be co-permittees with the city which does possess land use authority. EPA envisions that permit conditions for these systems will be written to establish duties that are commensurate with the legal authorities of a co-permittee. For example, under a permit, a flood control district may be responsible for the maintenance of drainage channels that they have jurisdiction over, while a city is responsible for implementing a sediment and erosion ordinance for construction sites which relates to discharges to the drainage channel. Confusion over ownership of conveyances or systems, at least for the purposes of determining whether they require a permit, will be minimized since all conveyances will be covered. Similarly, under paragraph (ii), the affected counties are expected to have the necessary legal and land use authority to implement programs and controls in unincorporated, urbanized areas because the county government is the primary political or governing entity in these geographical areas.

Many commenters from all levels of State and local government expressed concern about controlling pollutants from State highways. Paragraphs (i) and (ii) will result in discharges from separate storm sewers serving State highways and other highways through storm sewers that are located within incorporated places with the appropriate population or highways in unincorporated portions of specified counties being included as part of the large or medium municipal separate storm sewer system, since all municipal separate storm sewers within the boundaries of these political entities are included. Paragraph (iv) can facilitate

[5] The Bureau of Census defines urbanized areas to provide a description of high-density development. Urbanized areas are comprised of a central city (or cities) with a surrounding closely settled area. The population of the entire urbanized area must be greater than 50,000 persons, and the closely settled area outside of the city, the urban fringe, must generally have a population density greater than 1,000 persons per square mile (just over 1.5 persons per acre) to be included

the submission of a permit application for storm sewers operated as part of an entire State highway system. Paragraph (iv) would allow an entire system in a geographical region under the purview of a State agency (such as a State Department of Transportation) to be designated, where all the permit application requirements and requirements established under § 122.26(a)(iii)(C) can be met.

Paragraphs (i) and (ii) can effectively deal with many of the major sources of pollutants. One municipality noted that Option 5 (paragraph (i)) would require all systems in the incorporated boundaries to obtain permits and institute control measures, rather than just the few owned or operated by incorporated cities. Another municipality noted that this approach could deal with many of the regional variations in sources of pollution. Many commenters, including environmental groups, believed that proposed Option 3 (systems owned or operated by counties), Option 6 (systems within the boundaries of counties), and Option 7 (system in urbanized areas) were good approaches because more sources of pollution would be addressed. It was also maintained that Options 3, 6 and 7 could incorporate watershed planning which, in the view of some commenters, is the only effective way to address pollutants in storm water.

Commenters noted that addressing counties and urbanized areas would focus attention on developing areas which would otherwise be left out in the initial phases of permitting. One commenter noted that most new development in large urbanized areas occurs outside of core cities (incorporated cities with a population of 100,000 or more). Newly developing areas provide opportunities for installing pollutant controls cost effectively. EPA agrees with these comments and notes that paragraph (ii) addresses a significant number of counties with highly developed or developing areas.

However, EPA is convinced that addressing all counties or urbanized areas in the initial phases of the storm water program is ill-advised. Commenters noted that some counties have inappropriate or nonexistent governmental structures, and that a program that addressed all counties in the country with a population of 100,000 or more would be unmanageable, because too many municipal entities nationwide would be involved in the program initially. Commenters advised that defining municipal storm sewer systems solely in terms of the boundaries of census urbanized areas (Option 7) would result in systems which did not correspond to jurisdictions that are in a position to implement a storm water programs. Thus, EPA has modified Option 7 and combined it with Option 6 to create paragraph (ii) above.

Paragraph (iii) incorporates a designation authority such that municipalities that own or operate discharges from separate storm sewers systems other than those described in paragraph (i) or (ii) may be designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the other discharges of the designated storm sewer and the discharges from the large or medium municipal separate storm sewers. In making this determination the physical interconnections between the municipal separate storm sewers, the location of discharges from the designated municipal separate storm sewer relative to discharges from large or medium municipal separate storm sewers, the quantity and nature of pollutants discharged to waters of the United States, the nature of the receiving waters, or other relevant factors may be considered.

Comments indicated that the designation authority as proposed and described above should be retained. One State noted that this approach gives the most flexibility in making the case-by-case designations, while also delineating in sufficient detail what criteria are used to make the determination. This commenter was concerned about being able to regulate many of the interrelated discharges from counties surrounding incorporated cities.

Paragraph (iv) of the final definition allows the permitting authority, upon petition, to designate as a medium or large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraphs (i), (ii), (iii).

Paragraph (iv) was added to the final definitions to respond to a variety of concerns of commenters. One of the prime concerns of commenters was that the definition of large and medium municipal separate storm sewer systems must be flexible enough to accommodate: Programs on a watershed basis, existing storm water programs and frameworks and regional differences in climate, geography, and political institutions. Some States were particularly expressive regarding this concern. One State maintained that an inflexible program could totally disrupt ongoing State efforts. Other commenters urged that the regulation encourage the establishment of regional storm water authorities or other mechanisms that can deal with storm water quality on a watershed basis. One State proposed defining the municipal separate storm sewer system to include all municipal separate storm sewers within a core incorporated place of 100,000 or more, and all surrounding incorporated places within the State defined watershed. One of the State water districts advised that the regulations should be flexible enough to allow regional water quality boards to apply the regulations geographically. One national association expressed concern that existing institutional arrangements for flood control and drainage would be ignored, while another warned against fostering a proliferation of inconsistent patchwork programs based on arbitrary definitions and jurisdictions which bear no relationship to water quality.

EPA is convinced that the mechanism described in paragraph (iv) provides a means whereby the mechanisms and concepts identified above can be utilized or created in appropriate circumstances. In addition, § 122.26(f)(4) provides a means for State or local government agencies to petition the Director for the designation of regional authorities responsible for a portion of the storm water program. For example, some States or counties may currently or in the near future have regional storm water management authorities that have the ability to apply for permits under today's rule and carry out the terms of the permit. Some of these authorities may encompass within their jurisdiction large or medium municipal separate storm sewer systems as defined in today's rule. EPA wishes to encourage such entities to assume the role as permittee under today's rule. That is the purpose of paragraph (iv). Such authorities may petition the Director to assume such a role.

Many commenters expressed the view that municipal management plans must be coordinated or developed among co-permittees on a regional basis and in the same timeframe. Paragraphs (i), (iii) and (iv) would bring in all appropriate municipal entities with jurisdiction over a specified geographical area in the same timeframe. Several commenters, including one State, noted proposed Option 1 would lead to fragmented, ill-coordinated programs. Paragraphs (i), (iii), and (iv) do not suffer this drawback to the same extent since all the municipal separate storm sewers are addressed within the incorporated place, instead of only those owned or operated by the incorporated place.

Equal treatment of municipalities within a watershed or other specified area was a major subject of comment. Many commenters urged that a degree of fairness could be achieved by requiring permit applications, and the concomitant expenditure of municipal dollars and resources, from all municipalities within an entire urban area that contributes to storm water pollution, rather than from a discrete system within an arbitrary political boundary. Paragraph (i), especially when coupled with paragraphs (ii), (iii), and (iv), can best accomplish a more equitable approach, because all owners and operators of municipal separate storm sewers within a system have responsibilities. In addition, some of the areas outside the incorporated city limits which are engaged in expansive urban or suburban development will be brought into the program. Paragraph (iv) will provide a means for State or regional authorities to use existing or emerging mechanisms to set up storm water management programs, and would require multiple agencies either to become regional co-permittees or to be subject to a regional permit.

Paragraphs (i), (ii), (iii), and (iv) could also require flood control districts to be co-permittees, which was a major concern of counties and numerous cities. One municipality stated that the inclusion of flood control districts would greatly reduce the administrative burden required to prepare a single inter-city discharge agreement and would establish a common legal authority to implement the program. Numerous county agencies believed it imperative that flood control districts be brought into a system-wide permit strategy.

Paragraphs (i) and (iii) may not accommodate the concern of several commenters that the number of co-permittees be kept to a minimum. The fact that all the municipal separate storm sewers within the boundaries of the appropriate incorporated places will be addressed dictates that some permits will have several co-permittees. This is a major concern since it goes directly to achieving an effective initial storm water program. There is concern about being able to bring all the co-permittees together under intra-municipal agreements or contracts within regulatory deadlines. This problem would be resolved in the short term by selecting Option 1. However, Option 1 may still require inter-municipal agreements because of the designation authority under § 122.26 (b)(4)(ii) and (b)(7)(ii) of the proposal. In addition, such inter-jurisdictional problems will arise after October 1, 1992 when the moratorium on requiring NPDES permits for discharges from other municipal separate storm sewers ends. Under the permitting goals established by the CWA, multi-jurisdictional storm water programs and agreements cannot be avoided. Despite interest in limiting the number of co-permittees, EPA decided not to adopt Option 1 for the reasons already stated.

Section 402(p)(3)(B)(i) of the amended CWA provides that permits for municipal discharges from municipal storm sewers may be issued on a system-wide or jurisdiction-wide basis. This provision is an important mechanism for developing the comprehensive storm water management programs envisioned by the Act.

Under the permit application requirements of today's rule, if the appropriate co-applicants are identified, one permit application may be submitted for a large or medium municipal separate storm sewer system (see section VI.G.4 above). System-wide permit applications can in turn be used to issue system-wide permits which could cover all discharges in the system.

Where several municipal entities are responsible for obtaining a permit for various discharges within a single system, EPA will encourage system-wide permit applications involving the several municipal entities for a number of reasons. The system-wide approach not only provides an appropriate basis for planning activities and coordinating development, but also provides municipal entities participating in a system-wide application the means to spread the resource burden of monitoring, evaluating water quality impacts, and developing and implementing controls.

The system-wide approach provided in today's rule recognizes differences between individual municipalities with responsibilities for discharges from the municipal system. Today's application rule requires information to be submitted that enables the permit issuing authorities to develop tailored programs for each permittee with responsibility for certain components, segments, or portions of the municipal separate storm sewer system. The permit application requirements allow individual municipal entities, participating in system-wide applications, to submit site specific information regarding storm water quality management programs to reduce pollutants in system discharges as a whole, or from specific points within the system.

In some cases, it may be undesirable for all municipal entities with storm water responsibility within a municipal system to be co-permittees under one system-wide permit. The permit application requirements in today's rule allow individual municipal entities within the system to submit permit applications and obtain a permit for that portion of the storm sewer system for which they are responsible. Thus, several permits may be issued to cover various subdivisions of a single municipal system.

In summary, EPA believes that the definition of municipal storm sewer system adopted in today's rule has several distinct advantages that were identified in comments:

- The definition adopts features of several options;
- The definition targets areas that have the necessary police powers and land use authority to implement the program;
- The definition can utilize watersheds or accommodate existing administrative frameworks and storm water programs;
- The definition provides that all systems within a geographical area including highways and flood control districts will be covered, thereby avoiding fragmented and ill-coordinated programs;
- The definition has flexible designation authority; and
- The definition addresses major sources of pollutants without being overly broad.

H. Permit Application Requirements for Large and Medium Municipal Systems

1. Implementing the Permit Program

Given the differing nature of discharges from municipal separate storm sewer systems in different parts of the country and the varying water quality impacts of municipal storm sewer discharges on receiving waters, today's permit application requirements are designed to lead to the development of site-specific storm water management programs. In order to effectively implement this goal, EPA intends to retain the overall structure of the municipal permit application as proposed in the December 7, 1988, proposal.

2. Structure of the Permit Application

EPA proposed a two-part permit application designed to meet the goal of

developing site-specific storm water quality management programs in NPDES permits. In response to a request for comments on this aspect of the proposal, numerous comments were received. After reviewing these comments, EPA has decided to retain the two-part permit application. Many commenters agreed that the approach as proposed is appropriate for phasing in and developing site specific storm water management programs. One large municipality strongly endorsed the two-part application, stating that it would facilitate the identification of water quality problem areas and the development of priorities for control measures, thereby allowing for more cost-effective program development. Two State agencies expressed the same view, and noted that the two-part approach is reasonable and well structured for efficient development of programs. One large municipality noted it would allow the permit authority and the permit applicant the time needed to gain the knowledge and data to develop site-specific permits. A medium municipality expressed similar views.

Numerous commenters submitted endorsements of a proposal offered by one of the national municipal associations. This approach responded to EPA's request for comments on alternatives to a two-part application process. These comments recommended having permit applicants submit information regarding their existing legal authority, prepare source identification information, describe existing management plans, provide discharge characterization information based on existing data, and prepare a monitoring, characterization and illicit discharge and removal plan in a one-part application. The remaining requirements such as: implementing plans to remove illicit connections, obtaining legal authority, monitoring and characterization, plans for structural controls, preparation of control assessments, preparation of fiscal analysis, and management plan implementation would be part of the permit and take place during the compliance period of the permit. It was argued that this would result in a more orderly development of stormwater management programs while allowing for quick implementation of efforts to eliminate illicit discharges and initiate some BMPs.

After careful review and consideration of these comments, EPA is convinced that this approach would not meet the goals and requirements of section 402 of the Clean Water Act. Section 402(p)(3)(B) of the CWA requires that permits effectively prohibit non-storm water discharges into storm sewers and incorporate controls that reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system design and engineering methods. The above comments suggesting an alternative for achieving this goal are not entirely compatible with these requirements. In light of the language in the statute, permit conditions should do more than plan for controls during the term of the permit. A strong effort to have the necessary police powers and controls based on pollutant data should be undertaken before permits are issued. In short, the one-part application described by these comments would result in permits that would focus too much on preparation and not enough on implementing controls for pollutants.

In comparison, EPA's approach requires municipalities to submit a two-part application over a two year period. Part one of the application would require information regarding existing programs and the means available to the municipality to control pollutants in its storm water discharges. In addition, part one would require field screening of major outfalls to detect illicit connections. Part two of the permit application would require a limited amount of representative quantitative data and a description of proposed storm water management plans. The purpose of the two-part application process is to develop information, in a reasonable time frame, that would build successful municipal storm water management programs and allow the permit writer to make informed decisions with regard to developing permit conditions. This will include initiating efforts to effectively prohibit non-storm water discharges into storm sewers, and initially implementing controls that reduce the discharge of pollutants to the maximum extent practicable, including management practices and control techniques during the term of the permit. Such an approach clearly meets the statutory mandate of section 402(p)(3)(B).

a. Part 1 Application. Part 1 of the permit application is intended to provide an adequate basis for identifying sources of pollutants to the municipal storm sewer system, to preliminarily identify discharges of storm water that are appropriate for individual permits, and to formulate a strategy for characterizing the discharges from municipal separate storm sewer systems. Several commenters supported retaining these components of the application process. The components of part 1 of the permit application include:

- General information regarding the permit applicant or co-applicants (§ 122.26(d)(1)(i));
- A description of the existing legal authority of the applicant(s) to control pollutants in storm water discharges and a plan to augment legal authority where necessary (§ 122.26(d)(1)(ii));
- Source identification information including: a topographic map, description of the historic use of ordinances or other controls which limited the discharge of non-storm water discharges to municipal separate storm sewer systems, the location of known municipal separate storm sewer outfalls, projected growth, location of structural controls, and location of waste disposal facilities (§ 122.26(d)(1)(iii));
- Information characterizing the nature of system discharges including existing quantitative data, the results of a field screening analysis to detect illicit discharges and illegal dumping to the municipal system, an identification of receiving waters with known water quality impacts associated with storm water discharges, a proposed plan to characterize discharges from the municipal storm sewer system by estimating pollutant loads and the concentration of representative discharges, and a plan to obtain representative data (§ 122.26(d)(1)(iv)); and
- A description of existing structural and non-structural controls to reduce the discharge of pollutants from the municipal storm sewer (§ 122.26(d)(1)(v)).

One commenter disagreed that source identification should be made part of the permit application process beyond the identification of major municipal storm sewer outfalls. In reply, EPA is convinced that the other elements of the source identification are critical for identifying sources of pollutants and creating a base of knowledge from which informed decisions about permit conditions and further data requirements can be determined. One county stated that it already had engaged in extensive monitoring and modeling of watersheds and that its programs should be substituted for EPA's. In response, EPA anticipates that information collected under various State, county or city programs that matches the information requirements in this rulemaking may be used by the applicants in submissions under this rulemaking where the requirements of the rule are met. However, because of the divergence in data collection techniques and information collected by

these programs, EPA disagrees that it would be appropriate to accept a substitution in its entirety without tailoring such a program to today's specific information requirements. One municipality noted that municipal systems are not well documented and responsibility for them is in question. In response, EPA notes that the source identification procedure is designed, in part, to address such shortcomings.

Several municipalities suggested that legal authority could be demonstrated by providing EPA with copies of appropriate local ordinances to demonstrate their legal authority and a statement from the city attorney. EPA agrees that these methods are appropriate for making this demonstration.

Several commenters noted that there was adequate existing municipal legal authority to carry out the program requirements or such authority could be obtained by the municipality. Other commenters stated that municipalities possess some authority over certain activities but may not have authority over discharges from roads and construction. Numerous commenters, however, claimed that certain municipalities had no existing legal authority to carry out the permit requirements and that obtaining all the necessary legal authority could take several years due to cumbersome legislative and political processes. In response, part 1 of the permit application will establish a schedule for the development of legal authority that will be needed to accomplish the goals of the permit application and permits. Some municipalities will have more advanced storm water programs with appropriate legal authority or the ability to establish necessary ordinances. Providing an appropriate schedule will not present difficulties in these circumstances. EPA also notes that the definitions of large and medium municipal separate storm sewer systems finalized in today's rule will in many cases result in a number of co-applicants participating in a system wide application. It is anticipated that the development of adequate inter-jurisdictional agreements specifying the various responsibilities of the co-permittees may in some cases be very complex, thereby justifying the development of a schedule to complete the task. For example, clarifying the authority over discharges from roads may present difficulties where a number of municipal entities operate different roads in a given jurisdiction. In other limited cases, the MEP standard for municipal permits may translate into permit conditions that extend the schedule for obtaining necessary legal authority into the term of the permit. These situations will be evaluated on a case-by-case basis by permit issuing authorities.

Numerous commenters supported the field screening analysis as proposed. Comments from three municipalities noted that it would be a cost effective means of identifying problem areas. One municipality noted that illicit connections can be reliably detected by the screening method proposed. In view of these comments EPA has decided to retain this portion of the regulation. However many commenters expressed concern over how the proposed approach would work given the particular circumstances under which some municipal storm water systems are arranged. Several commenters questioned the effectiveness of dry weather monitoring for several reasons, including the shallow depth of some cities' water tables. Accordingly, an alternative approach may be utilized by the municipal permittee, and this is discussed later in section VI.H.3.

Some comments suggested that if any field screening is required that it be done during the term of the permit. EPA believes that field screening should not be done during the term of the permit exclusively. Unless a field screening is accomplished during the permit application phase there will be scant knowledge, if any, upon which illicit connection programs can be established for the term of the permits. EPA views field screening during the application process as an appropriate means of beginning to meet the CWA's requirement of effectively prohibiting non-storm water discharges into municipal separate storm sewers.

The submittal of part 1 of the permit application will allow EPA, or approved NPDES States, to adjust part 2 permit application requirements to assure flexibility for submitting information under part 2, given the site specific characteristics of each municipal storm sewer system.

EPA agrees with the concerns of commenters regarding the estimate of the reduction of pollutant loads from existing management programs. EPA agrees that sufficient data may not be available to establish meaningful estimates. Therefore this component of the proposed part 1 is not a requirement of today's rule.

b. Part 2 Application. Part 2 of the proposed permit application is designed to supplement information found in part 1 and to provide municipalities with the opportunity of proposing a comprehensive program of structural and non-structural control measures that will control the discharge of pollutants, to the maximum extent practicable, from municipal storm sewers. The components of the proposed part 2 of the permit application included:

- A demonstration that the legal authority of the permit applicant satisfies regulatory criteria (§ 122.26(d)(2)(i));
- Supplementation of the source identification information submitted in part 1 of the application to assure the identification of all major outfalls and land use activities (§ 122.26(d)(2)(ii);
- Information to characterize discharges from the municipal system;
- A proposed management program to control the discharge of pollutants to the maximum extent practicable, from municipal storm sewers (§ 122.26(d)(2)(iv));
- Assessment of the performance of proposed controls (§ 122.26(d)(2)(v));
- A financial analysis estimating the cost of implementing the proposed management programs along with identifying sources of revenue § 122.26(d)(2)(vi);
- A description of the roles and responsibilities of co-applicants (§ 122.26(d)(2)(vii)).

One municipality agreed that the assessment of the performance of controls was a critical component of establishing a viable program and one that could be accomplished within the time frame of the permit application deadlines. One commenter suggested that the applicant describe what financial resources are currently available. In response, EPA will require applicants to describe the municipality's existing budget for storm water programs in part 1 of the permit application requirements. This information will be useful to evaluate the municipality's ability to prepare and implement management plans. In response to other comments, this information will also include an overview of the municipality's financial resources and a description of the municipality's budget, including overall indebtedness and assets.

EPA has retained the financial analysis in this portion of the rule on the advice of two municipal commenters, who agreed that this was an important component of establishing a viable program and one that could be accomplished within the time frame of the permit application deadlines. Another commenter noted that this requirement is appropriate to justify a municipality's proposed management plan.

3. Major Outfalls

In past rulemakings, a controversial issue has been the appropriate sampling requirements for municipal separate storm sewer systems. Earlier storm water rulemakings have been based primarily on the principle that all discharges to waters of the United States from municipal separate storm sewers located in urban areas must be covered by an individual permit. This approach requires that individual permit applications contain quantitative data to be submitted for all such discharges. This approach was criticized because of a potentially unmanageable number of outfalls in some municipal separate storm sewer systems. Most incorporated cities with a population of 100,000 or more do not know the exact number of outfalls from their municipal systems; but based on the comments, the number ranges from 500 to 8,000 or more.

In light of the increased flexibility provided by the WQA and the development of EPA's system-wide approach for regulating municipal separate storm sewer discharges, today's rule will not require submittal of individual permit applications with quantitative data for each outfall of a municipal system. Rather today's rule will encourage system-wide permit applications to provide information suitable for developing effective storm water management programs. Under this approach, not all outfalls of the municipal system will be sampled, but rather more specific and accurate models for estimating pollutant loads and discharge concentrations will be used. The use of these models will require the identification of sources which are responsible for discharging pollutants into municipal separate storm sewers and will not require as much data to calibrate due to the source-specific nature of the model. A number of standard and localized models have been developed for estimating pollutant loads from storm water discharges.

Several commenters support the use of models for developing management plans and estimating pollutant loadings and concentrations. EPA encourages their use where applicable to particular systems.

By adopting an approach that incorporates source identification measures, the amount of quantitative data required to characterize discharges from the municipal system will be reduced because of the increased accuracy of the site-specific models which can be used. Consistent with a system-wide permit application approach, EPA proposed to focus source identification measures on "major outfalls." The proposed definition of major outfalls includes any municipal separate storm sewer outfall that discharges from a pipe with a diameter of more than 36 inches or its equivalent (discharges from a drainage area of more than 50 acres), or for municipal separate storm sewers that receive storm water from lands zoned for industrial activities, an outfall that discharges from a pipe with a diameter of more than 12 inches or its equivalent (discharges from a drainage area of 2 acres or more).

Numerous entities offered comments on this definition. Several commenters concurred with this proposed definition. One commenter maintained that the data collected at such outfalls would be sufficient to estimate pollutant loads as well as concentrations using well calibrated models. Another municipality stated that 50 acres was an excellent approximation for the average drainage area served by a 36-inch storm sewer. Two States and one county supported the definition as proposed. One large municipal entity supported the definition, stating that screening major outfalls could be accomplished with available staff over a three month period. In light of these comments, EPA has decided to retain, in part, the definition as proposed.

Numerous commenters suggested alternative definitions or otherwise disagreed with the proposed definition. Most of these comments expressed concern about the number of outfalls that would have to be tested or screened if the definition was retained. For this reason EPA has decided to limit the total number of major outfalls or equivalent sampling points that have to be tested to 250 or 500 for medium or large systems respectively. This change is discussed in further detail below.

The following are examples of comments that opposed the definition of a "major outfall" as proposed. Several commenters stated that, in the southwest, 6 to 12 foot outfalls are the norm, and that smaller outfalls should not be addressed unless there is a compelling reason to suspect illicit connections. One commenter suggested a size of 54 inches and 50 acres, while another commenter suggested that 48 inches would be appropriate. One commenter suggested that the diameter for industrial pipes should be 18 inches, while another commenter suggested that 50 acres should be the only criterion.

One commenter noted that pipe size will vary according to rainfall patterns and that a single approach would not work universally. This comment, and other similar points of view as noted herein, convinces that Agency that a more flexible approach is needed to identify field screening and sampling locations. However, EPA is also convinced that a universal standard is necessary for purposes of identifying drainage areas within the municipal system and discrete areas of land use that are drained by certain sized outfalls. This information is critical since these conveyances, and lands they drain, are sources of pollutants to waters of the United States from municipal systems and are properly the subject of appropriate permit conditions.

Many commenters suggested placing a limit on the number of major outfalls addressed during the field screening phase of the permit application. Two municipalities stated that the proposed definition of major outfalls in terms to the pipe diameter was too small and that too many outfalls would be covered. One municipality stated that under the proposed definition, it would have over 4700 "major outfalls," a number viewed as being unacceptably large. Several municipalities argued that they would be penalized for over-design of their storm drain system. One municipality stated field screening of outfalls should be limited to 200 for medium cities and 500 for large cities. Some commenters suggested EPA set a percentage of major outfalls for screening, because all pipes in some municipalities meet the definition of major outfall. One commenter suggested that a sliding scale be used to determine the number of outfalls tested: those with 50 test all, those with 100–200 test 50%, etc. Other commenters suggested a flat percentage of outfalls or flat number such as 100.

4. Field Screening Program

EPA also received several comments in response to the proposed field screening methodology. Among the major concerns were: End of pipe sampling may not be practical and the more appropriate and accessible location is likely to be the nearest upstream manhole; the type of discharge should be the criterion for selecting sampling points as opposed to pipe size; a system wide evaluation is more appropriate than checking each outfall; within some systems, major outfalls or pipe size will not reflect discharges from suspect or old land use areas; efforts should be focused on locations where illicit connections are expected; sites should be determined by looking at sites within drainage basin areas based on land use within those basins; land use and hydrology of the watershed should be the criteria for selecting points;

screening should be performed at locations that will allow for the location of upstream discharges; the focus should be exclusively on drainage areas rather than pipe size, since pipe size will vary with slope; a prescribed percentage of total flow may be more appropriate; state water quality standards should be utilized along with focusing on actual quality in the reaches of a stream.

EPA is convinced by these comments that today's rule should allow applicants to either field screen all major outfalls as proposed (first procedure) or use a second procedure to provide for the strategic location of sampling points to pinpoint illicit connections. EPA agrees with comments that the size of the outfall will not always reflect the chance of uncovering illicit connections or discharges, and that field screening points should be easily accessible.

This second procedure is as follows: field screening points and/or outfalls are randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a major outfall or segment of the storm sewer system. The grid shall be established using the following guidelines and criteria:

(1) A grid system consisting of perpendicular north-south and east-west lines spaced 1/4 mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;

(2) All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

(3) Field screening points or major outfalls should be located downstream of any sources of suspected illegal or illicit activity;

(4) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

(5) The assessment and selection of cells shall use the following criteria: Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; land use types;

(6) For medium municipal separate storm sewer systems, no more than 250 cells need have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points for detecting illicit connections; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible);

(7) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in paragraphs (1) through (6) above, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen at least 250 or 500 major outfalls respectively using the following method: the applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart overlaid on a map of the boundaries of a large or medium municipal entity described at § 122.26(b), thereby creating a series of cells; major outfalls in as many different cells as possible shall be selected until 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

The methodology outlined above is in response to public comments which indicated that the field screening and sampling of major outfalls as proposed would lead to insurmountable logistical problems in some municipal systems. EPA believes that the above is an effective approach to pinpointing suspected problem points along a given trunkline or segment of separate storm sewer system. Jurisdictions with no extensive or previous history of monitoring, or lack of an intensive monitoring program can utilize the methods described in establishing a program. Furthermore, the approach will allow for the prioritization of outfalls, sampling points, or areas within the municipality where there are suspected illicit connections or discharges, or other circumstances creating higher concentrations and loadings of pollutants.

Paragraph (7) enables municipalities to select major outfalls without regard to the municipal sewer system map that is required for using the procedure described in paragraphs (1) through (6). However, the applicant must still select outfalls within the cells created by overlaying a 1/4 mile grid over a map of the boundaries of the large or medium municipal entity defined under § 122.26(b), and select major outfalls within as many of those cells as possible, up to 500 (large municipal systems) or 250 (medium municipal systems). In this manner, as many different areas and land uses within the municipal system will be covered by the field screening component of the municipal application.

In order to keep the costs of the program within the anticipated limits of the proposed regulation, the number of outfalls or sampling locations using the grid system is to be limited to 500 for large municipal separate storm sewer systems and 250 for medium municipal separate storm sewer systems.

In response to several comments, EPA has clarified the definition of major outfalls with regard to the words, "pipe with an inside diameter of 36 inches or more or its equivalent" and "a pipe with an inside diameter of 12 inches or more or its equivalent." This definition has been modified to specify that single pipes or single conveyances with the appropriate diameter or equivalent are covered.

EPA's proposal required municipal permit applicants to submit a fiscal analysis of expenditures that will be required in order to implement the proposed management plans required in part 2 of the application. The description of fiscal resources should include a description of the source of the funds. Some commenters felt that a fiscal analysis should only be required during the term of the permit. In response, EPA believes that during the two years of permit application development, the permit applicant should be in a position to submit information on the ability and means for financing storm water management programs during the term of the permit. EPA views this information as an important means of evaluating the scope of program and whether the permittee will be devoting adequate resources to implementing the program before that program is mapped out in the permit itself.

5. Source Identification

The identification of sources which contribute pollutants to municipal separate storm sewers is a critical step in characterizing the nature and extent of pollutants in discharges and in developing appropriate control measures. Source identification can be useful for providing an analysis of pollutant source contribution and for identifying the relationship between pollutant sources and receiving water quality problems. In cases where end-of-pipe controls alone are not practicable, it is essential to identify the source of pollutants into the municipal storm

sewer systems to support a targeted approach to control pollutant sources.

The relative contribution of pollutants from various sources will be highly site-specific. The first step in developing a targeted approach for controlling pollutants in discharges from municipal storm sewer systems is identifying the various sources in each drainage basin that will contribute pollutants to the municipal storm sewer system.

This rulemaking phases in the source identification requirements of the permit program by establishing minimum objectives in part 1 of the application and by requiring applicants to submit a source identification plan in part 2 of the application to provide additional information during the term of the permit. The minimum source identification requirements of part 1 of the application have been designed to provide sufficient information to provide an initial characterization of pollutants in the discharges from the municipal storm sewer system. EPA realizes that with many large, complex municipal storm sewer systems, it may be difficult to identify all outfalls during the permit application process. Accordingly, EPA is requiring that known outfalls be reported in part 1 of the application. Part 1 of the application will also include: A description of procedures and a proposed program to identify additional major outfalls; the identification of the drainage area associated with known outfalls; a description of major land use classifications in each drainage area, descriptions of soils, the location of industrial facilities, open dumps, landfills or RCRA hazardous waste facilities which discharge storm water to the municipal storm sewer system; and ten year projections of population growth and development activities (population data and development projections will be useful for future predictions of loadings to receiving waters from municipal storm sewer systems, and capacities required for treatment systems). In general, population projections should reflect various scenarios of development (high, medium, low relative to recent trends).

Part 2 of the application will supplement the information reported in part 1 of the application so that, at a minimum, all major outfalls are identified.

Under today's rule, municipal or public entities responsible for applying for and obtaining an NPDES permit will be required to identify the location of an open dump, sanitary landfill, municipal incinerator or hazardous waste treatment, storage, and disposal facility under RCRA which may discharge storm water to the system as well as all facilities which discharge storm water associated with industrial activity into a large or medium municipal separate storm sewer system.

Requiring these source identification measures is supported by the legislative history of section 405 of the WQA, which instructs that "[i]n writing any permit for a municipal separate storm sewer, EPA or the State should pay particular attention to the nature and uses of the drainage area and the location of any industrial facility, open dump, landfill, or hazardous waste treatment, storage, or disposal facility which may contribute pollutants to the discharge." (emphasis added) [Vol 133 Cong. Rec. S752 (daily ed. Jan. 14, 1987].

One municipality questioned the purpose of the topographic map and commented that the scale of the topographic map is too large to indicate any of the required outfall, drainage, industrial or structural control information. In response, the purpose of the topographic map is to identify receiving waters, major storm water sewer lines that contribute discharges to these waters, and potential sources of storm water pollution. EPA disagrees that a USGS 7.5 scale map is inappropriate for identifying these features within a municipal system. The scale afforded by such a map provides sufficient detail to allow specified delineation of outfalls, while not requiring an overly burdensome map in terms of size. Numerous commenters noted the value of source identification information and generally supported submitting this information in the permit application.

Many commenters questioned the value of the source identification information for the purpose of characterizing pollutant loads and concentrations. Conversely, one commenter opined that the requirement would provide sufficient information to estimate pollutant loadings from each outfall using loading models to estimate loadings by watershed. In response, the source identification information serves several purposes. It is the first step for identifying potential sources of pollutants from which more in depth analysis can be accomplished, under the discharge characterization component of the application. Also, where appropriate, it may be used in conjunction with models to estimate loadings and concentrations. EPA has also taken note of the many comments that question or dismiss the concept of determining pollutant loads and concentrations solely from source identification. Accordingly, EPA is convinced that at least some of the sampling requirements as proposed are necessary to facilitate more accurate system specific estimates of pollutant concentrations and loadings. These are discussed below, in the discharge characterization section.

One commenter suggested that aerial photos be submitted in lieu of topographic maps. EPA agrees that an aerial photograph of the appropriate scale that communicates the same information as a topographic map may be substituted. Today's final rule reflects this flexibility.

The source identification component of the municipal application also requires that municipal applicants identify the industrial activity within the drainage area associated with each major outfall. One commenter stated that where multiple storm sewers outfalls discharge to a stream reach, municipalities should be allowed to delineate a single sewer-shed for identifying sources of industrial activity. In response, the rule does not delimit an applicant's ability to identify industries in groups according to a common series of storm sewer outfalls, if that is an easier or more appropriate methodology for that particular applicant. However, EPA would view this as appropriate only where the land use is of one type, such as industrial. Where land use is mixed within the drainage area associated with each major outfall, such differences need to be identified.

In response to comments, to the extent that EPA is requesting that applicants identify the types of industrial facilities operating within the municipality, the municipality is free to use Standard Industrial Classification (SIC) or other systems which identify the principal products or services of the facility. One commenter disagreed with EPA's decision to require a list of water bodies that are listed under CWA sections 304(1), 319(a), 314(a), and 320, because the States already have this information and that requesting it from permittees could result in "omissions, misunderstandings, and mistakes." EPA believes that these waters should be identified in the application so that appropriate permit conditions can be developed that address storm water discharges that are adversely effecting such waters. EPA believes that having this information immediately at the disposal of the municipality and the permit writer will speed the process and alert the municipality of storm water discharges to listed water bodies and potentially polluted storm water discharges to those waters.

6. Characterization of Discharges

The characterization plan and data collection required in today's rule as elements of Part-one and Part-two of the municipal permit application is comprised of several major components:

- A screening analysis to provide information to develop a program for detecting and controlling illicit connections and illegal dumping to the municipal separate storm sewer system;
- Initial quantitative data to allow the development of a representative sampling program to be incorporated as a permit condition;
- System-wide estimates of annual pollutant loadings and the mean concentration of pollutants in storm water discharges, and a schedule to provide estimates during the term of the permit for each major outfall of the seasonal pollutant loadings and the event mean concentration of pollutants in storm water discharges; and
- An identification of receiving waters with known water quality impacts associated with storm water discharges.

Several commenters noted the importance of developing and targeting management programs based on discharge characterization data and monitoring. Numerous other commenters stressed the importance of a program to identify and eliminate illicit connections and improper disposal. EPA agrees that discharge characterization is an important component of developing management programs. Most of the discharge characterization components of the municipal application procedure have been retained as proposed. However some changes and clarifications have been made, and these are noted below.

a. *Screening analysis for illicit discharges (part 1 of application).* Illicit discharges (non-storm water discharges without a NPDES permit), and illegal dumping to municipal separate storm sewer systems occur in a relatively haphazard manner. Due to the unpredictability of such discharges, today's permit applications require a field analysis for the development of priorities for detecting and controlling such discharges. A field screening approach will provide a means of detecting high levels of pollutants in dry weather flows, which is one indicator of illicit connections. Results of a field test of such discharges will provide further information about the nature of the discharge to determine if further investigation is warranted. Visual observation of dry weather flows has been shown to be one the mos' effective means for tracking down illicit connections and improper disposal.

As discussed in greater detail in section VI.H.7.b of today's preamble, EPA is proposing to require that municipal applicants submit a comprehensive plan to develop a program to detect and control illicit connections and illegal dumping. In order to develop appropriate priorities for these programs, applicants shall submit the results of a screening analysis to be performed on major outfalls or "field screening points" in the systems to detect the presence of illicit hookups and illegal dumping. The results of the screening analysis, referred to as the field screen, would be reported in part 1 of the permit application.

Under the requirements for a field screen, the applicant or co-applicants will submit a description of observations of dry weather discharges from major outfalls or "field screening points" identified in part 1 of the application. At a minimum, the field screen would include a description of visual observations made during a dry weather period. If any flow is observed during a dry weather period, two grab samples will be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observation regarding the potential presence of non-storm water discharges or illegal dumping would be provided. In addition, the applicant should provide the results of a field screen which includes on-site estimates of pH, total chlorine, total copper, total phenol, detergents (or surfacants) along with a description of the flow. EPA is not requiring analytical methods approved under 40 CFR part 136 be used exclusively in the field screen. Rather, the use of inexpensive field sampling techniques such as the use of colormetric detection methods is anticipated. Where the field screen does not involve analytical methods approved under 40 CFR part 136, the applicant is required to provide a description of the method used which includes the name of the manufacturer of the test method, including the range and accuracy of the test. Appropriate field techniques for a field screen of dry weather discharges are discussed in EPA guidance for municipal storm water discharge permit applications.

It should be clarified that data from the field screen is generally not appropriate for comprehensive evaluation of water quality impacts, or estimating pollutant loadings. Rather, the information from the field screen in part 1 of the application will be used along with other information, such as the age of development and degree of industrial activity in the drainage basin, to identify areas or outfalls which are appropriate targets for management programs and for investigations directed at identifying and controlling non-storm water discharges to separate storm sewers during the term of the permit.

In the December 7, 1988, proposal, EPA proposed a second phase of the screening analysis requiring that wet-weather and dry-weather samples be collected and analyzed in accordance with analytical methods approved under 40 CFR part 136 from designated major outfalls for a larger set of pollutants identified with illicit connections. Comments essentially viewed this proposal as too ambitious for the permit application. One commenter recommended that this procedure could best be accomplished during the term of the permit. Some comments maintained that the collection of analytical samples as a follow up to an initial field screen analysis was not the most cost-effective, practicable or efficient method for pinpointing illicit connections. EPA recognizes that several municipal programs to detect and control illicit connections and other non-storm water discharges have been successfully developed and implemented without the use of extensive analytical sampling (for example, programs in Fort Worth, TX and Washtenaw County, MI). After identifying and analyzing the comments on this aspect of the proposal EPA has withdrawn this element of the proposal from today's rule. EPA believes that a follow-up phase to the initial field screening is more appropriate during the term of the permit. Thus, EPA has dropped the field screening requirement proposed for Part 2 of the application.

b. *Representative data (Part 2 of application).* The NURP study showed that pollutant concentrations in urban runoff can exhibit significant variation. Pollutant concentrations in such discharges vary during storm events and from storm event to storm event. Given the complex, variable nature of storm water discharges from municipal systems, EPA favors a permit scheme where the collection of representative data is primarily a task that will be accomplished through monitoring programs during the term of the permit. Permit writers have the necessary flexibility to develop monitoring requirements that more accurately reflect the true nature of highly variable and complex discharges.

Today's rule provides for an initial assessment of the quality of discharges from municipal separate storm sewers based primarily on source identification measures and existing information received in the permit application. This information will be used to begin to characterize system discharges. The analysis developed under this approach will not rely soley on sampling data collected during the application process, but will also incorporate existing data bases such as the one developed under the NURP study. Today's rule requires that some quantitative data will be collected to ensure the system discharges can be appropriately represented by the various existing data bases and to provide a basis for developing a monitoring plan to be implemented as a permit condition.

Today's rule requires that quantitative data be submitted for discharges from selected storm events at between 5 and 10 outfalls or field screening points. The municipality will recommend and the Director will then designate the outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system, on the basis of information received in part 1 of the application. The applicant will be required to collect samples of a storm discharge from three storm events occurring one month apart for each designated outfall or field screening point. This is a modification to the December 7, 1988, proposal wherein only one of the 5 to 10 outfalls was to be sampled during three storm events, and the remaining sampled only once. This requirement may be modified by the Director if the type and frequency of storm events require different sampling. The Director may require samples of discharges to be collected during snow melts or during specified seasons. The Director may also require additional testing during a single event if it is unlikely that there will be three storm events suitable for sampling during the year. Furthermore, the Director may allow exemptions to the three storm event requirement when climatic conditions create good cause for such exemptions; for example, arid regions or areas experiencing drought conditions during the period when applications are developed could be exempted.

EPA has added requirements to sample more storm events in response to comments that the sampling procedure proposed would not necessarily yield representative data. Commenters indicated that: rain events of different intensity may yield different levels and types of pollutants; a rain event after a dry spell of several months will not be representative when compared to rain events occurring closer together, due to the build up of constituents; one sample may reflect short term effects such as improper disposal rather than long term effects; and that rain events are generally too variable to rely on the limited sampling as proposed. Clearly the data collected from sampling storm water discharges has a tendency to vary greatly. The more sampling that is accomplished, the greater extent to which this variability may be accounted for and appropriate management programs developed.

In selecting the amount of data to be collected during the permit application process, EPA has attempted to balance the usefulness of this data against the economic and logistical constraints in actually obtaining it. In some cases the data obtained will support initial loading and concentration estimates obtained using various modeling techniques, from which appropriate permit conditions can be developed. Data obtained may be supplemented with further data collection during the term of the permit.

EPA believes that the requirement that selected major municipal outfalls or "field screening points" be sampled for more than one event will provide verification that the characterization of discharge is valid. Where an ongoing sampling program is defined for the term of the permit, samples taken during the first few years of this period can be used to verify the application results. If a municipality or an industry questions the conclusions drawn from the characterization sampling, it may at its discretion choose to perform additional sampling to either confirm or dispel these concerns.

All samples collected will be analyzed for all pollutants listed in Table II, (organic pollutants), and Table III, (toxic metals, cyanide and total phenol) of appendix D of 40 CFR part 122, and for the pollutants listed in Table M–1 below:

Table M–1

Total suspended solids (TSS).	Total dissolved solids.
COD	BOD_5.
Oil and grease	Fecal coliform.
Fecal streptococcus	pH.
Dissolved phosphorus	
Total ammonia plus organic nitrogen.	Total phosphorus.
Total Kjeldahl nitrogen	Nitrate plus nitrite.

A portion of the NURP program involved monitoring 120 priority pollutants in storm water discharges from lands used for residential, commercial and light industrial activities. The NURP program excluded testing for asbestos and dioxin. Results for seven other organic priority pollutants were not considered valid due to changes in, or constraints on test methods. Seventy-seven priority pollutants were detected in samples of storm water discharges from lands used for residential, commercial and light industries taken during the NURP study, including 14 inorganic and 63 organic pollutants. Table M–2 shows the priority pollutants which were detected in at least ten percent of the discharge samples which were sampled for priority pollutants.

TABLE M–2.—PRIORITY POLLUTANTS DETECTED IN AT LEAST 10% OF NURP SAMPLES

[In percent]

Metals and inorganics	Frequency of detection
Antimony	13
Arsenic	52
Beryllium	12
Cadmium	48
Chromium	58
Copper	91
Cyanides	23
Lead	94
Nickel	43
Selenium	11
Zinc	94
Pesticides:	
Alpha-hexachlorocyclohexane	20
Alpha-endosulfan	19
Chlordane	17
Lindane	15
Halogenated aliphatics:	
Methane, dichloro-	11
Phenols and cresols:	
Phenol	14
Phenol, pentachloro-	19
Phenol, 4-nitro	10
Phthalate esters:	
Phthalate, bis(2-ethylhexyl)	22
Polycyclic aromatic hydrocarbons:	
Chrysene	10
Fluoranthene	16
Phenanthrene	12
Pyrene	15

The NURP data also showed a significant number of these samples exceeded various freshwater water quality criteria. The exceedence of water quality criteria does not necessarily imply that an actual violation of standards will exist in the receiving water body in question. Rather, the enumeration of exceedences serves as a screening function to identify those constituents whose presence in urban storm water runoff may warrant high priority for further evaluation.

Members of this group represent all of the major organic chemical fractions found in Table II of appendix D of 40 CFR part 122 (volatiles, acid compounds, base/neutrals, pesticides). Today's rule requires testing for all organic constituents in Table II rather than limiting the sampling requirements to the 24 toxic constituents found in the NURP study because they will provide a better description of the discharge at essentially the same cost. (The cost of analyzing samples for organic chemicals strongly depends on the number of major organic chemical fractions tested). The NURP study focused on characterizing storm water discharges from lands used for residential, commercial and light industrial activities. In general, the NURP study did not focus on other sources of pollutants to municipal separate storm sewer systems and, therefore, does not reflect all potential pollutants that may be present in discharges from municipal separate storm sewer systems.

The sampling requirements for the permit application address a limited number of sampling locations but require analysis for a wide range of pollutants. Sampling for a wide range of pollutants as a permit application requirement should provide permit writers with appropriate data to target more specific pollutants when developing requirements for a monitoring program during the term of the permit.

Numerous commenters stated that monitoring for all priority pollutants seemed excessive. However, EPA is convinced that it is more appropriate for permit conditions to focus on and prioritize particular pollutant problems after data covering a broad spectrum of pollutants are developed. As noted above, NURP identified 77 priority pollutants in urban runoff, but only from residential, commercial, and light industrial (*e.g.* industrial parks) areas. One municipal entity stated that this approach is a reasonable and realistic means of providing some useful baseline data, while others recommended sampling a variety of parameters that are included in Tables M–1 and M–2. Another municipal entity stated that characterization of outfall discharge quality during storm events is necessary as a means of targeting source control activities.

EPA is working with the United States Geological Survey (USGS) to evaluate the availability of USGS technical assistance to municipalities through cooperative funding programs to aid in collecting representative quantitative data of storm water discharges from municipal systems.

USGS data collection programs with municipalities typically include storm water discharge samples obtained at various times during a storm hydrograph event. Various USGS field procedures can be used to obtain discharge data for pipes, culverts, etc., typically found in urban areas. Pollutant models can be calibrated with data and long-term rainfall records to simulate the quality of system discharges and compared to other storm water models.

In addition, EPA recognizes that many municipalities have participated in studies, such as NURP, that involve sampling of urban runoff as well as other components of discharges from municipal separate storm sewer systems. All existing storm water sampling data along with relevant water quality data, sediment data, fish tissue data or biosurvey data taken over the last ten years is considered relevant and, under today's rule, must be submitted with part I of the application. Sampling data that is submitted must be accompanied with a narrative description of the drainage area served by the outfall monitored, a description of the sampling and quality control program, and the location of receiving water monitoring.

EPA requested comments on the use of existing data, such as that generated under the NURP study, to satisfy the requirement of providing representative sampling data. Commenters did not agree on the value of NURP results as an indicator of representative data. Several commenters expressed the view that existing data could be used to satisfy in whole or in part the representative sampling requirements of the storm water permit application. However, commenters generally did not offer suggested criteria that could be used to verify the validity of existing data. One commenter believed that intensive sampling over a period of ten years in 12 basins, when combined with NURP data, would be adequate.

One commenter supported the use of data, such as that obtained from the NURP study, to target sampling programs. EPA supports such a methodology and has retained this portion of the proposed discharge characterization component. EPA received strong support from an environmental group for retaining this information requirement in part 1 of the application.

In light of these comments EPA believes it is appropriate to retain the representative sampling requirements without resorting to the use of existing data exclusively. Because of the inherent variability in reliability and applicability of existing data, EPA is convinced that a nationally consistent methodology for collecting data is appropriate. This data can then be used in conjunction with other existing data and models to develop appropriate site specific management programs and more generalized management program strategies. Where existing data and data collected under today's rule varies or does not match, further sampling under the term of the permit will be accomplished to more accurately assess the discharge of pollutants.

c. Loading and Concentration Estimates (part 2 of application). The assessment of the water quality impacts of discharges from municipal separate storm sewer systems on receiving waters requires the analysis of both pollutant loadings and concentrations of pollutants in discharges.

The loading and concentration estimates in today's rule will be used to evaluate two types of water quality impacts: (1) Short-term impacts; and (2) long-term impacts. Specifically, the regulation requires estimates of the annual pollutant load of the cumulative discharges to waters of the United States from municipal outfalls and the event mean concentration of the cumulative discharges to waters of the United States municipal outfalls during a storm event for BOD_5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods. Municipalities have options in the use of methodologies, including those presented in NURP for calculating loads.

Short term impacts from discharges from municipal separate storm sewers involve changes in water quality that occur during and shortly after storm events. Examples of short-term impacts that can lead to impairments include periodic dissolved oxygen depression due to the oxidation of contaminants, high bacteria levels, fish kills, acute effects of toxic pollutants, contact recreation impairments and loss of submerged macrophytes. Characterization of instream pollutant concentrations based on estimated pollutant concentrations in system discharges are important for evaluating these types of impacts.

Long-term water quality impacts from discharges from municipal separate storm sewers may be caused by contaminants associated with suspended solids that settle in receiving water sediments and by nutrients which enter receiving water systems with long

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retention times. Pollutant loading data are important for evaluation of impairments such as loss of storage capacity in streams, estuaries, reservoirs, lakes and bays, lake eutrophication caused by high nutrient loadings, and destruction of benthic habitat. Other examples of the long-term water quality impacts include depressed dissolved oxygen caused by the oxidation of organics in bottom sediments and biological accumulation of toxics as a result of uptake by organisms in the food chain. An estimate of annual pollutant loading associated with discharges from municipal storm water sewer systems is necessary to evaluate the magnitude and severity of the environmental impacts of such discharges and to evaluate the effectiveness of controls which are imposed at a later time.

Municipal storm water sewer systems generally handle runoff from large drainage areas and the sources of pollution are usually very diffuse. The concentrations of many pollutants in discharges from these systems are often low relative to many industrial process and POTW discharges. The water quality impacts of low concentration pollution discharges tend to be cumulative and need to be evaluated in terms of aggregate loadings as well as pollutant concentrations. A site-specific loading analysis can be used to evaluate the relative contribution of various pollutant sources.

7. Storm Water Quality Management Plans

Today's rule facilitates the development of site-specific permit conditions by requiring large and medium municipal permit applicants to submit, along with other information, a description of existing structural and non-structural prevention and control measures on discharges of pollutants from municipal storm sewers in part 1 of the permit application. Section 122.26(d)(2)(iv) requires the applicant to identify in part 2 of the application, to the degree necessary to meet the MEP standard, additional prevention or control measures which will be implemented during the life of the permit. Although, in many cases, it will not be possible to identify all prevention and control measures that are appropriate as permit conditions, EPA believes that the process of identifying components of a comprehensive prevention and/or control program should begin early and that applicants should be given the opportunity to identify and propose the components of the program that they believe are appropriate for first preventing or controlling discharges of pollutants.

As noted earlier, EPA recognizes that problems associated with storm water, combined sewer overflows (CSOs) and infiltration and inflow (I&I) are all interrelated even though they are treated somewhat differently under the law. EPA believes that it is important to begin linking these programs and activities and, because of the potential cost to local governments, to investigate the use of innovative, nontraditional approaches to reducing or preventing contamination of storm water. The application process for developing municipal storm water management plans provides an ideal opportunity between steps 1 and 2 for considering the full range of nontraditional, preventive approaches.

The permit application requirements in today's rule require the applicant or co-applicants to develop management programs for four types of pollutant sources which discharge to large and medium municipal storm sewer systems. Discharges from large and medium municipal storm sewer systems are usually expected to be composed primarily of: (1) Runoff from commercial and residential areas; (2) storm water runoff from industrial areas; (3) runoff from construction sites; and (4) non-storm water discharges. Part 2 of the permit application has been designed to allow the applicant the opportunity to propose MEP control measures for each of these components of the discharge. Discharges from some municipal systems may also contain pollutants from other sources, such as runoff from land disposal activities (leaking septic tanks, landfills and land application of sewage sludge). Where other sources, such as land disposal, contribute significant amounts of pollutants to a municipal storm sewer system, appropriate control measures should be included on a site-specific basis. Proposed management programs will then be evaluated in the development of permit conditions.

There is some overlap in the manner in which these pollutant sources are characterized and their sources identified. For instance, improper disposal of oil into storm drains is often associated with do-it-yourself automobile oil changes in residential areas, or improper application or over-use of herbicides and pesticides in residential areas can also occur in industrial areas. Also, some control measures will reduce pollutant loads for multiple components of the municipal storm sewer discharge. These measures should be identified under all appropriate places in the application; as discussed below, however, double counting of pollutant removal must be avoided when the total assessment of control measures is performed.

Although many land use programs have multiple purposes, including the reduction of pollutants in discharges from municipal separate storm sewer systems, the proposed management programs in today's rule are intended to address only those controls which can be implemented by the permit applicant or co-applicants. EPA cannot abrogate its responsibilities under the CWA to implement the NPDES permit program by relying on pollution control programs that are outside the NPDES program. For example, municipal permit management programs may not rely exclusively on erosion or sediment control laws for implementing that portion of management programs that address discharges from construction sites, unless such laws implement NPDES permit program requirements entirely and that such implementation is a part of the permit.

EPA anticipates that storm water management programs will evolve and mature over time. The permits for discharges from municipal separate storm sewer systems will be written to reflect changing conditions that result from program development and implementation and corresponding improvements in water quality. The proposed permit applications will require applicants to provide a description of the range of control measures considered for implementation during the term of the permit. Flexibility in developing permit conditions will be encouraged by providing applicants an opportunity to identify in the permit application priority controls appropriate for the initial implementation of management programs. Many commenters endorsed the flexible site-specific storm water program approach as proposed as a method for addressing regional water quality control programs in a cost effective manner. To this extent, EPA agrees with one municipality that management programs should focus on more serious problems and sources of pollutants identified in the municipal system. However, EPA believes that to implement section 402(p)(3), comprehensive storm water management programs which address a number of major sources of pollutants to a system are necessary. Municipal programs should not be focused solely on a single source of pollution, such as illicit connections.

One commenter maintained that management program development should be flexible enough to allow for consideration of what is attainable based on the area's climate, vegetation, hydrology, and land uses. EPA agrees with this comment. Some strategies for reducing pollutants in the northeast will not be practical in the southwest, such as management programs for deicing activities. The permit application process will determine what strategies are appropriate in different locations.

Several commenters supported addressing storm water pollutant problems through management practices or programs rather than end of pipe controls or treatment. EPA agrees with this comment to the extent that storm water management practices are a general theme of this rulemaking with regard to municipal permits. However, there will be cases where such discharges are best addressed through technology such as retention, detention or infiltration ponds.

One commenter reacted unfavorably to the flexible site-specific management plan approach stating that there is no hard criteria upon which to judge the adequacy of programs. Another commenter felt that there should be a BAT standard for municipal permits. Another commenter stated that the rule should contain specific BMPs that the permittee must comply with. EPA disagrees with these comments. The Clean Water Act requires municipalities to apply for permits that will reduce pollutants in discharges to the maximum extent practicable and sets out the types of controls that are contemplated to deal with storm water discharges from municipalities. The language of CWA section 402(p)(3) contemplates that, because of the fundamentally different characteristics of many municipalities, municipalities will have permits tailored to meet particular geographical, hydrological, and climatic conditions. Management practices and programs may be incorporated into the terms of the permit where appropriate. Permit conditions, which require that storm water management programs be developed and implemented or require specific practices, are enforceable in accordance with the terms of the permit. EPA disagrees with the notion that this regulation, which addressed permit application requirements, should create mandatory permit requirements which may have no legitimate application to a particular municipality. The whole point of the permit scheme for these discharges is to avoid inflexibility in the types and levels of control. Further, to the degree that such mandatory requirements may be appropriate, these requirements should be established under the authority of section 402(p)(6) of the CWA and not in this rulemaking, which addresses permit application requirements.

Some commenters suggested that management programs should be developed as part of the permit conditions and not as part of the permit application. EPA agrees that management programs and their ongoing development should be part of the permit term. However, EPA is convinced, and many commenters agree, that the permit application should contain information on what the permittee has done to date and what it proposes and plans to do during the permit term based upon its discharge characterization and source identification data. This is a reasonable and logical approach and one that meets the intent and letter of section 402(p)(3) of the CWA. As stated above, this would be an appropriate method for implementing storm water management programs that should mature and evolve over time.

Applicants will propose priorities based on a consideration of appropriate controls including, but not limited to, consideration of controls that address: reducing pollutants to municipal separate storm sewer system discharges that are associated with storm water from commercial and residential areas (§ 122.26(d)(2)(iv)(A)); illicit discharges and illegal disposal (§ 122.26(d)(2)(iv)(B)); storm water from industrial areas (§ 122.26(d)(2)(iv)(C)); and runoff from construction sites (§ 122.26(d)(2)(iv)(D)). Permits for different municipalities will place different emphasis on controlling various components of discharges from municipal storm sewers. For example, the potential for cross-connections (such as municipal sewage or industrial process wastewater discharges to a municipal separate storm sewer) is generally expected to be greater in municipalities with older developed areas. On the other hand, municipalities with larger areas of new development will have a greater opportunity to focus controls to reduce pollutants in storm water generated by the area after it is developed, discharges from construction sites, and other planning activities.

EPA requested comments on the process and methods for developing appropriate priorities in management programs proposed in applications and how the development of these priorities can be coordinated with controls on other discharges to ensure the achievement of water quality standards and the goals of the CWA.

Discharges from diffuse sources in residential areas was recognized by several commenters as a significant source of pollutants. Accordingly, these elements of the management plans have been retained. In conjunction with the importance of developing programs for illicit connections, numerous commenters stated that education programs are a priority. Another commenter emphasized that ordinances prohibiting such discharges and their enforcement is a crucial means of a successful program in this regard. EPA agrees with these comments and consequently will retain those portions of management program development that include a description of a program for educational activities such as public information for the proper disposal of oil and toxic materials and the use of herbicides, pesticides and fertilizers.

Some commenters noted that discharge characterization is necessary for development of appropriate management plans. EPA agrees with these comments and has retained the discharge characterization components in this rulemaking. However, EPA disagrees that the results of all discharge characterization procedures (*i.e.*, part 1 and part 2) are necessary to describe and propose a program as required in part 2 of the application. The application of various models is available to permit applicants, where needed, to develop appropriate management programs. All available site specific discharge characterization data should be available to the permit writer to draft appropriate conditions for the term of the permit.

One commenter noted that an important aspect of developing management plans is establishing the necessary legal authority to improve water quality. EPA agrees with this comment and has retained those aspects of the regulation which call for development and attainment of adequate legal authority in both parts of the municipal application.

One commenter stated that programs should address previously identified water quality problems in other programs that are required by section 304(1) of the CWA. EPA agrees that identified water quality problems need to be addressed by management programs, and the municipal permit application will call for an identification of these waters. However, EPA does not endorse addressing these waters to the exclusion of all others within the boundaries of the municipal separate storm sewer system. Some waters may experience substantial degradation after rain events and still not be listed under

section 304(1). Further, water quality impacts in listed waters may not be related to storm water discharges, while other non-listed waters do have water quality impacts from storm water discharges. Similarly, EPA agrees with one commenter that it may be desirable to focus attention and resources on certain problem watersheds within a municipality, and controls may be imposed and programs prioritized on that basis. However, such a focus should not be to the exclusion of other waters and watersheds that have water quality problems (although less troublesome) traceable to storm water discharges. The CWA requires that permits address discharges to waters of the United States, not just waters previously targeted under special programs.

Some commenters expressed concern that the permit application requires the design of management programs before knowing what will be in the permits. EPA disagrees with the thrust of this comment, that is that the order of requirements is inappropriate. The permit applicant will have two years to develop proposed plans which can be considered by permit writers in the development of the permit. Based upon a consideration of the management program proposed by the municipality and other relevant information, permits can be tailored for individual programs. One commenter stated that the cornerstone of management programs are inspection and enforcement programs. EPA agrees that these two elements are important components. Without inspection and enforcement mechanisms the programs will undoubtedly falter. Accordingly these requirements in the description of management programs in the permit application have been retained. In a similar vein, one commenter emphasized the importance of developing legal authority, financial capability, and administrative infrastructure. EPA agrees with this comment and has retained those aspects of the regulation that call for a description of applicants plans and resources in these areas.

One commenter stressed that control of discharges into the municipal system from industries is an important goal of municipal storm water management programs. EPA agrees with this comment and has retained the proposed description of management programs to address discharges from industrial sources. Other commenters identified industries as the principal contributors of pollutants to municipal separate storm sewer systems.

In addition, EPA will continue to evaluate procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality in the studies required under section 402(p)(5) of the CWA. One purpose of these studies will be to evaluate the costs and water quality benefits associated with implementing these procedures and methods. This evaluation will address a number of factors which impact the implementation costs associated with these programs, such as the extent to which similar municipal ordinances are currently being implemented, the degree to which existing municipal programs (such as flood management programs or construction site inspections) can be expanded to address water quality concerns, the resource intensiveness of the control, and whether the control program will involve public or private expenditures. This information, along with information gained during permit implementation will aid in the dynamic long-term development of municipal storm water management programs.

a. *Measures to reduce pollutants in runoff from commercial and residential areas.* The NURP program evaluated runoff from lands primarily dedicated to residential and commercial activities. The areas evaluated in the study reflect some other activities, such as light industry, which are commonly dispersed among residential and commercial areas. The NURP study selected sampling locations that were thought to be relatively free of illicit discharges and storm water from heavy industrial sites including storm water runoff from heavy construction sites. Of course, in a study such as NURP it was impossible to totally isolate various contributions to the runoff. In developing the permit application requirements in today's rule EPA has, in general, relied on the NURP definition of urban runoff—runoff from lands used for residential, commercial and light industrial activities.

NURP and numerous other studies have shown that runoff from residential and commercial areas washes a number of pollutants into receiving waters. Of equal importance is the volume of storm water runoff leaving urban areas during storm events. Large intermittent volumes of runoff can destroy aquatic habitat. As the percentage of paved surfaces increases, the volume and rate of runoff and the corresponding pollutant loads also increase. Thus, the amount of storm water runoff from commercial and residential areas and the pollutant loadings associated with storm water runoff increases as development progresses; and they remain at an elevated level for the lifetime of the development.

Proposed § 122.26(d)(2)(iv)(A) requires municipal storm sewer system applicants to provide in part 2 of the application a description of a proposed management program that will describe priorities for implementing management programs based on a consideration of appropriate controls including:

- A description of maintenance activities and a maintenance schedule for structural controls;
- A description of planning procedures including a comprehensive master plan to control after construction is completed, the discharge of pollutants from municipal separate storm sewers which receive discharges from new development and significant redevelopment after construction is completed (in response to comment this contemplates an engineering policy and procedure strategy with long term planning);
- A description of practices for operating and maintaining public highways and procedures for reducing the impact on receiving waters of such discharges from municipal storm sewer system;
- A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies; and
- A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

Water quality problems caused by municipal storm sewer discharges will generally be most acute in heavily developed areas. Prevention measures may be desirable and cost effective. However, structural control measures may also be effective, although opportunities for implementing these measures may be limited in previously developed areas. Commonly used structural technologies include a wide variety of treatment techniques, including first flush diversion systems, detention/infiltration basins, retention basins, extended detention basins, infiltration trenches, porous pavement, oil/grit separators, grass swales, and swirl concentrators. A major problem associated with sound storm water management is the need for operating

and maintaining the system for its expected life.

The unavailability of land in highly developed areas often makes the use of structural controls infeasible for modifying many existing systems. Non-structural practices can play a more important role. Non-structural practices can include erosion control, streambank management techniques, street cleaning operations, vegetation/lawn maintenance controls, debris removal, road salt application management and public awareness programs.

As noted above, the first component of the proposed program to reduce pollutants in storm water from commercial and residential areas which discharge to municipal storm sewer systems is to describe maintenance activities and schedule. The second component of the proposed program to reduce pollutants in storm water from commercial and residential areas which discharge to municipal storm sewer systems provides that applicants describe the planning procedures and a comprehensive master plan that will assure that increases of pollutant loading associated with newly developed areas are, to the maximum extent practicable, limited. These measures should address storm water from commercial and residential areas which discharge to the municipal storm sewer that occur after the construction phase of development is completed. Controls for construction activities are addressed later in today's rule. One commenter noted the feasibility of developing management plans for newly developing areas. EPA agrees with this comment and has retained that portion of the regulation that deals with a description of controls for areas of new development. Similarly, one municipality stressed the importance and achievability of addressing storm water discharges from construction sites.

As urban development occurs, the volume of storm water and its rate of discharge increases. These increases are caused when pavement and structures cover soils and destroy vegetation which otherwise would slow and absorb runoff. Development also accelerates erosion through alteration of the land surface. Areas that are in the process of development offer the greatest potential for utilizing the full range of structural and non-structural best management practices. If these measures are to provide controls to reduce pollutant discharges after the area has been developed, comprehensive planning must be used to incorporate these measures as the area is in the process of developing. These measures offer an important opportunity to limit increases in pollutant loads.

The third component of § 122.26(d)(2)(iv)(A) provides a description of practices for operating and maintaining public roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems. General guidelines recommended for managing highway storm water runoff include litter control, pesticide/herbicide use management, reducing direct discharges, reducing runoff velocity, grassed channels, curb elimination, catchbasin maintenance, appropriate streetcleaning, establishing and maintaining vegetation, development of management controls for salt storage facilities, education and calibration practices for deicing application, infiltration practices, and detention/retention practices.

The fourth component of § 122.26(d)(2)(iv)(A) provides that applicants identify procedures that enable flood management agencies to consider the impact of flood management projects on the water quality of receiving streams. A well-developed storm water management program can reduce the amount of pollutants in storm water discharges as well as benefit flood control objectives. As discussed above, increased development can increase both the quantity of runoff from commercial and residential areas and the pollutant load associated with such discharges. Disturbing the land cover, altering natural drainage patterns, and increasing impervious area all increase the quantity and rate of runoff, thereby increasing both erosion and flooding potential. An integrated planning approach helps planners make the best decisions to benefit both flood control and water quality objectives.

The fifth component of § 122.26(d)(2)(iv)(A) would provide that municipal applicants submit a description of a program to reduce, to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer. Such a program may include controls such as educational activities and other measures for commercial applicators and distributors and controls for application in public rights-of-way and at municipal facilities. Discharges of these materials to municipal storm sewer systems can be controlled by proper application of these materials. Some commenters noted that insecticides used in residential areas are a probable source of pollutants in storm water discharges from residential areas, as well as salting and other de-icing activities. In response to this comment, part of a community management plan may include controls or education programs to limit the impacts of these sources of pollutants. One commenter noted that many communities already have household toxic disposal programs. Where appropriate these can be incorporated into municipal management programs.

Some commenters suggested substituting the management program description for residential and commercial areas with a simple identification of applicable management practices. EPA agrees that identification of appropriate management practices is a critical component of a program description for these areas. In essence, this is what the program description is designed to achieve. However, for the reasons discussed in greater detail above, EPA is convinced that an appropriate program must address all of the components of the management program for residential and commercial areas that are outlined in today's rule. Further, for the purposes of writing a permit with enforceable conditions, the application should identify a schedule to implement management practices. The applicant should be able to estimate the reduction in pollutant loads as a result of the development of certain management practices and programs (§ 122.26(d)(2)(v). A program may also include public education programs, which are not necessarily viewed as traditional BMPs.

b. *Measures for illicit discharges and improper disposal.* The CWA requires that NPDES permits for discharges from municipal storm sewers "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers." In today's rule, EPA will begin to implement this statutory mandate by focusing on two types of discharges to large and medium municipal separate storm sewer systems. *See* § 122.26(d)(1)(iv)(D) and (d)(2)(iv)(B). One type of non-storm water discharges are illicit discharges which are plumbed into the system or that result from leakage of sanitary sewage system. The other class of non-storm water discharges result from the improper disposal of materials such as used oil and other toxic materials.

Illicit discharges. In some municipalities, illicit connections of sanitary, commercial and industrial discharges to storm sewer systems have had a significant impact on the water quality of receiving waters. Although the

NURP study did not emphasize identifying illicit connections to storm sewers other than to assure that monitoring sites used in the study were free from sanitary sewage contamination, the study concluded that illicit connections can result in high bacterial counts and dangers to public health. The study also noted that removing such discharges presented opportunities for dramatic improvements in the quality of urban storm water discharges.

Other studies have shown that illicit connections to storm sewers can create severe, wide-spread contamination problems. For example, the Huron River Pollution Abatement Program inspected 660 businesses, homes and other buildings located in Washtenaw County, Michigan and identified 14% of the buildings as having improper storm drain connections. Illicit discharges were detected at a higher rate of 60% for automobile related businesses, including service stations, automobile dealerships, car washes, body shops and light industrial facilities. While some of the problems discovered in this study were the result of improper plumbing or illegal connections, a majority were approved connections at the time they were built. Many commenters emphasized the identification and elimination of illicit connections as a priority, including leakage from sanitary sewers. EPA agrees with these comments and intends to retain this portion of the program without modification.

A wide variety of technologies exist for detecting illicit discharges. The effectiveness of these measures largely depends upon the site-specific design of the system. Under today's rule, permit applicants would develop a description of a proposed management program, including priorities for implementing the program and a schedule to implement a program to identify illicit discharges to the municipal storm sewer system. This rulemaking will require the initial priorities for analyzing various portions of the system and the appropriate detection techniques to be used.

Improper disposal. The permit application requirements for municipal storm sewer systems include a requirement that the municipal permit applicant describe a program to assist and facilitate in the proper management of used oil and toxic materials. Improper management of used oil can lead to discharges to municipal storm sewers that in turn may have a significant impact on receiving water bodies. EPA estimates that, annually, 267 million gallons of used oil, including 135 million gallons of used oil from do-it-yourself automobile oil changes, are disposed of improperly. An additional 70 million gallons of used oil, most coming from service stations and repair shops, are used for road oiling. Many commenters emphasized the elimination of discharges composed of improperly disposed of oil and toxic material. One commenter identified motor oil as the major source of oil contamination and that EPA needs to encourage proper disposal of used oil. Several other commenters emphasized the importance of recycling programs for oil. EPA agrees with these comments and intends to retain this portion of the program without modification. One commenter identified public awareness and timely reporting of illegal dumping as critical components of this portion of the program. EPA agrees with this comment and intends for management programs to deal with this problem.

c. *Measures to reduce pollutants in storm water discharges through municipal separate storm sewers from municipal landfills, hazardous waste treatment, disposal and recovery facilities that are subject to section 313 of title III of SARA.* As discussed in section VI.C of today's preamble, industrial facilities that discharge storm water through a large or medium municipal separate storm sewer system are required to apply for a permit under § 122.26(c) or seek coverage under a promulgated general permit. Today's rule also requires the municipal storm sewer permittee to describe a program to address industrial dischargers that are covered under the municipal storm sewer permit. Today's rule requires the municipal applicant to identify such discharges (*see* source identification requirements under § 122.26(d)(2)(ii)), provide a description of a program to monitor pollutants in runoff from certain industrial facilities that discharge to the municipal separate storm sewer system, identify priorities and procedures for inspections, and establish and implement control measures for such discharges. Should a municipality suspect that an individual discharger is discharging pollutants in storm water above acceptable limits, and the owner/operator of the system has no authority over the discharge, the municipality should contact the NPDES permitting authority for appropriate action. Two example of possible action are: if the facility already has an individual permit, the permit may be reopened and further controls imposed; or if the facility is covered by a promulgated general permit, then an individual site-specific permit application may be required.

In the December 7, 1988, proposal, EPA requested comments concerning what storm water discharges from industrial facilities through municipal systems should be monitored. One of the proposed approaches was to require data on portions of the municipal system which receive storm water from facilities which are listed in the proposed regulatory definition at § 122.26(b)(14) of "storm water discharge associated with industrial activity" (with the exception of construction activities and uncontaminated storm water from oil and gas operations) which discharge through the municipal system. However, given the large number of facilities meeting this definition that discharge through municipal systems, a monitoring program that requires the submission of quantitative data regarding portions of the municipal systems receiving storm water from such facilities may not be practicable. Such a requirement could, for some systems, potentially become the most resource intensive requirements in the municipal permit. Therefore, EPA proposed various ways to develop appropriate targeting for monitoring programs.

EPA requested comments on a requirement that, at a minimum, monitoring programs address discharges from municipal separate storm sewer outfalls that contain storm water discharges from municipal landfills, hazardous waste treatment, disposal and recovery facilities, and runoff from industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Section 313 of title III requires that operators or certain facilities that manufacture, import, process, or otherwise use certain toxic chemicals report annually their releases of those chemicals to any environmental media. Section 313(b) of title III specifies that a facility is covered for the purposes of reporting if it meets all of the following criteria:

- The facility has ten or more full-time employees;
- The facility is in Standard Industrial Classification (SIC) codes 20 through 39;
- The facility manufactured (including quantities imported), processed, or otherwise used a listed chemical in amounts that exceed certain threshold quantities during the calendar year for which reporting is required.

Listed chemicals include 329 toxic chemicals listed at 40 CFR 372.45. After 1989, the threshold quantities of listed chemicals that the facility must manufacture, import or process (in order to trigger the submission of a release report) is 25,000 pounds per year. The threshold for a use other than manufacturing, importing or processing of listed toxic chemicals is 10,000 pounds per year. EPA promulgated a final regulation clarifying these reporting requirements on February 16, 1988. (53 FR 4500).

EPA received numerous comments regarding limiting the types of facilities that are initially subject to monitoring and municipal management programs. Numerous municipalities agreed that focusing on the above facilities is an appropriate means for setting priorities for the development of control measures to eliminate or reduce pollutants associated with industrial facilities. Commenters agreed that the potential for toxic materials in discharges is high because of the high volume of such materials at these facilities and that information regarding discharges and material management practices will be available through section 313 of SARA. One commenter noted that building on an established program will contribute to establishing an effective storm water program. Accordingly, EPA has specified at § 122.26(d)(2)(ii)(C) that the municipal applicant must describe a program that identifies priorities and procedures for inspections and establishing and implementing control measures for these facilities.

Several commenters suggested that these facilities should not be singled out because the presence of the threshold amounts of SARA 313 chemicals does not indicate that significant quantities of those chemicals are likely to enter the facility's storm water runoff. Instead it was suggested that municipalities should monitor storm sewers as a whole to determine what chemicals are present and therefore what facilities are responsible. EPA disagrees with these comments. The object of these requirements is initially to set priorities for monitoring requirements. Then, if the situation requires, controls can be developed and instituted. If a facility is a member of this class of facilities and does not discharge excessive quantities of SARA 313 chemicals, then it may not be subjected to further monitoring and controls. As noted above, the selection of facilities is only a means of setting priorities for facilities for the development of municipal plans.

EPA agrees, however, that there will be other facilities that are significant sources of pollutants and should be addressed by municipalities as soon as possible under management programs. Accordingly, those industrial facilities that the municipal permit applicant determines to be contributing a substantial pollutant loading to the municipal storm sewer system shall be addressed in this portion of the municipal management program.

EPA also requested comments on monitoring programs for municipal discharges including the submission of quantitative data on the following constituents:

- Any pollutants limited in an effluent guidelines for the industry subcategories, where applicable;
- Any pollutant listed in a discharging facility's NPDES permits for process wastewater, where applicable;
- Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;
- Any information on discharges required under 40 CFR 122.21(g)(7)(iii) and (iv).

These are the same constituents that are to be addressed in individual permit applicants for storm water discharges associated with industrial activity.

Several industries and municipalities submitted comments on this issue. Some commenters agreed that these are appropriate parameters. Some commenters advised that the ability of municipalities to implement this aspect of the program depended on industries submitting this data. Several industries provided comments suggesting that the approach should allow the permittee flexibility in determining which parameters are chosen because of the burdens of monitoring and the complexity of materials and flows in municipal systems.

In light of these comments, EPA has retained § 122.26(d)(2)(iv)(C) as proposed requiring municipalities to describe a monitoring program which utilizes the above parameters. Monitoring for these parameters provides consistency with the individual application requirements for industries, provides uniformity in municipal applications, and will narrow the parameters to conform to the types of industries discharging into the municipal systems. Monitoring programs may consist of programs undertaken by the municipality exclusively or requirements imposed on industry by the municipality, or a combination of approaches. Appropriate procedures are discussed in municipal permit application guidance.

EPA requested comments on appropriate means for municipalities to determine what facilities are contributing pollutants to municipal systems. Many commenters responded with numerous methodologies. Some of these have been addressed in guidance. Municipalities will have options in selecting the most appropriate methodology given their circumstances as described in their permit applications.

EPA initially favors establishing monitoring requirements to be applied to those outfalls that directly discharge to waters of the United States. EPA received one comment from a municipality with regard to this issue which agreed that this was the most logical approach. Monitoring of outfalls close to the point of discharge to waters of the United States is generally preferable when attempting to identify priorities for developing pollutant control programs. However, under certain circumstances, it may be preferable to monitor at the point where the runoff from the industrial facility discharges to the municipal system. For example, if many facilities discharge substantially similar storm water to a municipal system it may be more practicable to monitor discharges from representative facilities in order to characterize pollutants in the discharge.

As noted by numerous industries, if municipal characterization plans reveal problems from certain industrial dischargers, then such facilities may be required to provide further data from their own monitoring. As noted above, EPA envisions that this data could then be used to develop appropriate control practices or techniques and/or require individual permit applications if a general permit covering the facility proves inadequate.

Comments were also solicited as to whether end-of-pipe treatment generally was more appropriate than source controls for storm water from industrial facilities which discharge to municipal systems. Many commenters, including both municipalities and industries, stated that source controls are the only practical and feasible means of controlling pollutants in storm water runoff, and specifically opposed the concept of end-of-pipe treatment or other controls. Some commenters maintained that, from an economic and environmental standpoint, end-of-pipe treatment may be the only effective means. One advised that the prompt cleanup of spills, controlled wash down of process areas, covering of material loading areas, storm water runoff diversion, covered storage areas, detention basins or other such mechanisms would prevent storm water from mixing with pollutants and possibly discharging them into receiving waters. Another noted that in the urban areas, there is little potential for treatment; consequently, it would seem

that controls and/or retrofitting existing facilities would be necessary when violations are found and that citizens will be better served by source controls appropriate to the individual problem.

EPA agrees with these comments to the extent that source controls and management programs are the general thrust of these regulations. However, in some situations end-of-pipe treatment, such as holding ponds, may be the only reasonable alternative. EPA disagrees with one industrial commenter that the municipalities should be almost entirely responsible for treating municipal discharges at the end of-the-pipe without reliance on source controls by industrial dischargers. Municipal programs may require controls on industrial sources with demonstrated storm water discharge problems. One industrial association noted that its member companies already have incentive to properly handle their materials and facilities because of other environmental programs with spill and erosion controls.

Numerous commenters stated that the program addressing industrial dischargers through municipal systems needs to be clearly defined in order to eliminate, as much as possible, potential conflicts between the system operator and dischargers. EPA has provided a framework for development of management plans to control pollutants from these particular sources. However, because of the differences in municipal systems and hydrology nationwide, EPA is not convinced that program specificity is an appropriate approach. The concept of the management program is to provide flexibility to the permit applicants to develop regional site specific control programs.

One commenter suggested that required controls should be limited to a facility's proportional contribution (based on concentration) of pollutants. EPA disagrees. Most facilities discharging through a municipal separate storm sewer will need to be covered by a general or individual permit. These permits will control the introduction of pollutants from that facility through the municipal storm sewer to the waters of the U.S. Any additional controls placed on the facility by the municipality will be at the discretion of the municipality. EPA is not requiring municipalities to adopt a particular level of controls on industrial facilities as suggested by the commenter.

One commenter questioned how dischargers that discharged both into the waters of the United States and through a municipal system will be addressed and whether there is a potential for inconsistent requirements. Industries that discharge storm water associated with industrial activity into the waters of the United States are required to be covered by individual permits or general permits for such discharges. Dischargers of storm water associated with industrial activity through municipal separate storm sewer systems will be subject to municipal management programs that address such discharges as well as to an individual or general NPDES permit for those discharges. EPA does not believe there is a significant risk of inconsistent requirements, since each industrial facility must meet BAT/BCT-level controls in its NPDES permit. EPA doubts that municipalities will impose much more stringent controls.

Many commenters stated that if cities and municipalities are to be responsible for industrial storm water discharges through their system, then municipalities should have authority to make determinations as to what industries should be regulated, how they are regulated, and when enforcement actions are undertaken. In response, EPA notes that the proposal has been changed and that municipalities will not be solely responsible for industries discharging through their system. Nonetheless, municipalities will be required to meet the terms of their permits related to industrial dischargers. Municipalities may undertake programs that go beyond the threshold requirements of the permit. Some municipal entities stated that municipal permittees should be able to require permit applications from industries in the same manner that EPA does and also require permits. In response, if operators of large and medium municipal separate storm sewer systems wish to employ such a program, then this portion of the management program may incorporate such practices.

d. *Measures to reduce pollutants in runoff from construction sites into municipal systems.* Section VI.F.8 of today's rule discusses EPA's proposal to define the term "storm water discharge associated with industrial activity" to include runoff from construction sites, including preconstruction activities except operations that result in the disturbance of less than 5 acres total land area which are not part of a larger common plan of development or sale. Under today's rule, facilities that discharge runoff from construction sites that meet this definition will be required to submit permit applications unless they are to be covered by another individual or general NPDES permit. Permit application requirements for such discharges are at 40 CFR 122.26(c)(1)(ii).

Section 122.26(d)(2)(iv)(D) of today's rule requires applicants for a permit for large or medium municipal separate storm sewer systems to submit a description of a proposed management program to control pollutants in construction site runoff that discharges to municipal systems. Under this provision, municipal applicants will submit a description of a program for implementing and maintaining structural and non-structural best management practices for controlling storm water runoff at construction sites. The program will address procedures for site planning, enforceable requirements for nonstructural and structural best management practices, procedures for inspecting sites and enforcing control measures, and educational and training measures. Generally, construction site ordinances are effective when they are implemented. However, in many areas, even though ordinances exist, they have limited effectiveness because they are not adequately implemented. Maintaining best management practices also presents problems. Retention and infiltration basins fill up and silt fences may break or be overtopped. Weak inspection and enforcement point to the need for more emphasis on training and education to complement regulatory programs. Permits issued to municipalities will address these concerns.

8. Assessment of Controls

EPA proposed that municipal applicants provide an initial assessment of the effectiveness of the control method for structural or non-structural controls which have been proposed in the management program. Some commenters stated that the assessment of controls should be left to the term of the permit because the effectiveness of controls will be hard to establish. EPA believes that an initial estimate or assessment is needed because the performance of appropriate management controls is highly dependent on site-specific factors. The assessment will be used in conjunction with the development of pollutant loading and concentration estimates (*see* VI.H.6.c) and the evaluation of water quality benefits associated with implementing controls. Such assessments do not have to be verified with quantitative data, but can be based on accepted engineering design practices. Further more precise assessments based upon quantitative data can be undertaken during the term of the permit.

I. Annual Reports

As discussed earlier in today's preamble, EPA has provided for proposed flexible permit application requirements to facilitate the development of site-specific programs to control the discharge of pollutants from large and medium municipal separate storm sewer systems. Many municipalities are in the early stages of the complex task of developing a program suitable for controlling pollutants in discharges under a NPDES permit, while other municipalities have relatively sophisticated programs in place. In order to ensure that such site-specific programs are developed in a timely manner, EPA proposed to require permittees of municipal separate storm sewer systems to submit status reports every year which reflect the development of their control programs.

The reports will be used by the permitting authority to aid in evaluating compliance with permit conditions and where necessary, modify permit conditions to address changed conditions. EPA requested comments on the appropriate content of the annual reports. Based on these comments EPA has added the following in these reports: an analysis of data, including monitoring data, that is accumulated throughout the year; new outfalls or discharges; annual expenditures; identification of water quality improvements or degradation on watershed basis; budget for year following each annual report; and administrative information including enforcement activities, inspections, and public education programs. EPA views this information as important for evaluating the municipal program. Annual monitoring data and identified water quality improvements are important for evaluating the success of management programs in reducing pollutants. If new outfalls come into existence during the term of the permit, these may be sources of pollutants and appropriate permit conditions will be developed. Annual reports should reflect the level of enforcement activity and inspections undertaken to ensure that the legal authority developed by the municipality is properly exercised. Many of the management programs depend upon an ongoing high level of public education. Accordingly, the undertaking of these programs on an annual basis should be documented.

J. Application Deadlines

The CWA provided a statutory time frame for implementing the storm water permit application process and issuance and compliance with permits.

The CWA requires EPA to promulgate permit application requirements for storm water discharges associated with industrial activity and for large municipal separate storm sewer systems by "no later than two years" after the date of enactment (*i.e.* no later than February 4, 1989). In conjunction with this requirement, the Act requires that permit applications for these classes of discharges be submitted within one year after the statutory date by which EPA is to promulgate permit application requirements by providing that such applications "shall be filed no later than three years" after the date of enactment of the WQA (*i.e.*, no later than February 4, 1990).

The CWA also requires EPA to promulgate final regulations governing storm water permit application requirements for discharges from municipal separate storm sewer systems serving a population of 100,000 or more but less than 250,000 by "no later than four years" after enactment (*i.e.* no later than February 4, 1991). Permit applications for medium municipal separate storm sewer systems "shall be filed no later than five years" after the date of enactment of the CWA (*i.e.*, no later than February 4, 1992). The CWA did not establish the time period between designation and permit application submittal for case-by-case designations under section 402(p)(2)(E).

Comments on earlier rulemakings involving storm water application deadlines have established that applicants need adequate time to obtain "representative" storm water samples. Many commenters have indicated that at least one full year is needed to obtain such samples. This is because many discharges are located in areas where testing during dry seasons or winter would not be feasible. The intermittent and unpredictable nature of storm water discharges can result in difficult and time-consuming data gathering. Moreover, some operators of municipal separate storm sewer systems have many storm water discharges associated with industrial activity, which can require considerable time to identify, analyze, and submit applications. This creates a tremendous practical problem for the extremely high number of unpermitted storm water discharges. The public's interest in a sound storm water program and the development of a useful storm water data base is best served by establishing an application deadline which will allow sufficient time to gather, analyze, and prepare meaningful applications. Based on a consideration of these factors, EPA proposed that individual permit applications for storm water discharges associated with industrial activity which currently are not covered by a permit and that are required to obtain a permit, be submitted one year after the final rule is promulgated.

EPA received numerous comments from industries on the one year requirement for submitting applications. Several commenters supported the proposed deadline as realistic, while others believed more time was needed to meet the information and quantitative requirement.

EPA rejects the assertion by some commenters that a year is too short a period of time to obtain the required quantitative data. Today's rule generally requires applications for storm water discharges associated with industrial activity to be submitted on or before November 18, 1991. Operators of storm water discharges associated with industrial activity which discharge through a municipal separate storm sewer are subject to the same application deadline as other storm water discharges associated with industrial activity. Since final regulation at § 122.21(g)(7) provides considerable latitude for selecting rain events for quantitative data, EPA is convinced that in most cases data can be obtained during the one year time frame. If data cannot be collected during the one year time frame because of anomalous weather (*e.g.* drought conditions), then permitting authorities may grant additional time for submitting that data on a case-by-case basis. *See* § 122.21(g)(7).

Operators of storm water discharges which are currently covered by a permit will not be required to submit a permit application until their existing permit expires. In recognition of the time required to collect storm water discharge data, EPA will allow facilities which currently have a NPDES permit for a storm water discharge and which must reapply for permit renewal during the first year following promulgation of today's permit application requirements the option of applying in accordance with existing Form 1 and Form 2C requirements (in lieu of applying in accordance with the revised application requirements).

As discussed in section VI.D.4 and section VI.F.6 of today's preamble, EPA has established a two part permit application both for both group applications for sufficiently similar facilities that discharge storm water associated with industrial activity and for operators of large or medium municipal separate storm sewer systems. The deadlines for submitting

permit applications in today's rule provide adequate time for: (1) Applicants to prepare Part 1 of the application; (2) EPA or an approved State to adequately review applications; and (3) applicants to prepare the contents of the part 2 application.

Part 1 of the group application for storm water discharges associated with industrial activity must be submitted within 120 days from the publication of these final permit application regulations. This time is necessary to form groups and for individual members of the group to prepare the non-quantitative information required in part 1 of the application. Part 1 of the group application will be submitted to EPA Headquarters in Washington, DC and reviewed within 60 days after being received. Part 2 of the application would then be submitted within one year after the part 1 application is approved. It should be noted that many facilities located in States in which general permits can be issued, will be eligible for coverage by a storm water general permit to be promulgated in the near future. Such facilities may either seek coverage under such general permits or participate in the group application.

Several comments were received by EPA that indicated that a period of 120 days was too short a period for groups to be formed. EPA disagrees with these comments. The information that EPA is requiring to be submitted by the group or group representative is information that is generally available such as the location of the facility, its industrial activity, and material management practices. EPA believes that 120 days is sufficient to gather and submit this information along with an identification of 10% of the facilities which will submit quantitative data. To ameliorate any difficulties for applicants, EPA has provided a means for late facilities to "add on" where appropriate, on a case-by-case basis, as discussed in section VI.F.4. above.

Several comments were received with regard to the requirement that new dischargers submit an application at least 180 days before the date on which the discharge is to commence. One commenter noted that it will be difficult for a facility to know when a storm water discharge is to commence since precipitation and runoff cannot be predicted to any degree of accuracy. In response, new dischargers must apply for a storm water permit application 180 days before that facility commences manufacturing, processing, or raw material storage operations which may result in the discharge of pollutants from storm water runoff, and 90 days for new construction sites.

For large municipal separate storm sewer systems (systems serving a population of more than 250,000), EPA proposed that part 1 of the permit application be submitted within one year of the date of the final regulations, with approval or disapproval by the permit issuing authority of the provisions of the part 1 permit application within 90 days after receiving part 1 of the application. The Part 2 portion of the application was to be submitted within two years of the date of promulgation.

For medium municipal separate storm sewer systems (systems serving a population of more than 100,000, but less than 250,000), EPA proposed that permit applications would be required nine months after the date of the final rule, with approval or disapproval of the provisions of the part 1 permit application within 90 days after receiving the part 1 application. The part 2 portion of the application would then be submitted no later than one year after the part 1 application has been approved.

Numerous comments were received by EPA from municipalities on these proposed deadlines. Many of these comments reflect the sentiment that the deadlines are too tight and that the required information would not be available for submission within the required time frame. Some commenters suggested deadlines that would add over three years to the permit application process. Other commenters suggested a revamped application process and a shorter deadline of 18 months. Some commenters explained that additional time would be needed to obtain adequate legal authority, while another stated that an inventory of outfalls required more time. One commenter maintained that intergovernmental agreements will require more time to prepare, and others expressed the view that more time was needed for the review of part 1 of the application by permitting authorities. Others felt more time was needed for collecting data, or hiring additional staff to accomplish the work. Most of these commenters did not provide specific details regarding what would be an appropriate amount of time and why.

After reviewing these comments EPA has decided to modify some of the deadlines as proposed. EPA is convinced that to properly achieve the goals of the CWA, the permit application requirements as discussed in previous sections are appropriate; but that the deadlines for medium municipal separate storm sewer systems should be adjusted so that the program's goals can be properly accomplished. After reviewing comments, EPA believes that medium municipalities will have fewer resources and existing institutional arrangements than large cities and therefore more time should be granted to these cities for submitting parts 1 and 2 of the application.

Accordingly EPA will require large municipal systems to submit part 1 of the permit application no later than November 18, 1991. Part 1 will be reviewed and approved or disapproved by the Director within 90 days. Part 2 of the application will then be submitted November 16, 1992. Medium municipal systems will submit part 1 of the application on May 18, 1992. Approval or disapproval by the Director will be accomplished within 90 days. Part 2 of the application will be submitted by May 17, 1993. These deadlines will give large systems two years to complete the application process, and medium systems 2 years and 6 months to submit applications. EPA is convinced that the permit application schedule is warranted and should provide adequate time to prepare the application.

In establishing these regulatory deadlines EPA is fully aware that they are not synchronized with the statutory deadlines as established by Congress. One commenter argued that the deadlines as proposed were contrary to the deadlines established by Congress and that EPA had no authority to extend these deadlines. (For large municipal separate storm sewer systems and storm water discharges associated with industrial activity, Congress established a deadline of February 4, 1990, for submission of permit applications; for medium municipal separate storm sewer systems, the deadline is February 4, 1992.) In response, this regulation provides certain deadlines for meeting the substantive requirements of this rulemaking—requirements which EPA is convinced are necessary for the development of enforceable and sound storm water permits. EPA believes it is important to give applicants sufficient time to reasonably comply with the permit application requirements set out today. EPA will therefore accept applications for storm water discharge permits up to the dates specified in today's rule. By establishing these regulatory deadlines, however, EPA is not attempting to waive or revoke the statutory deadlines established in Section 402(p) of the CWA and does not assert the authority to do so. The statutory permit application deadlines

continue to be enforceable requirements.

EPA was not able to promulgate the final application regulations for storm water discharges before the February 4, 1990, deadline for industrial and large municipal dischargers despite its best efforts. Further, as noted above, EPA is not able to waive the statutory deadline. Dischargers concerned with complying with the statutory deadline should submit a permit application as required under this rulemaking as expeditiously as possible.

Operators of storm water discharges that are not specifically required to file a permit application under today's rule may be required to obtain a permit for their discharge on the basis of a case-by-case designation by the Administrator or the NPDES State.

The Administrator or NPDES State may also designate storm water discharges (except agricultural storm water discharges), that contribute to a violation of a water quality standard or that are significant contributors of pollutants to waters of the United States for a permit. Prior to a case-by-case determination that an individual permit is required for a storm water discharge, the Administrator or NPDES State may require the operator of the discharge to submit a permit application. 40 CFR 124.52(c) requires the operator of designated storm water discharges to submit a permit application within 60 days of notice, unless permission for a later date is granted. The 60-day deadline is consistent with the procedures for designating other discharges for a NPDES permit on a case-by-case basis found at 40 CFR 124.52. The 60-day deadline recognizes that case-by-case designations often require an expedited response, however, flexibility exists to allow for case-by-case extensions.

The December 7, 1988, proposal also proposed Part 504 State Storm Water Management Programs. The Agency has not included this component in today's rule. The Agency believes this program element is appropriate for addressing in regulations promulgated under section 402(p)(6) of the CWA.

VII. Economic Impact

EPA has prepared an Information Collection Request for the purpose of estimating the information collection burden imposed on Federal, State and local governments and industry for revisions to NPDES permit application requirements for storm water discharges codified in 40 CFR part 122. EPA is promulgating these revisions in response to Section 402(p)(4) of the Clean Water Act, as amended by the Water Quality Act of 1987 (WQA). The revisions would apply to: Storm water discharges associated with industrial activity; discharges from municipal separate storm sewer systems serving a population of 250,000 or more and discharges from municipal separate storm sewer systems serving a population of 100,000 or more, but less than 250,000.

The estimated annual cost of applying for NPDES permits for discharges from municipal separate storm sewer systems is $4.2 million. EPA estimates that an average permit application for a large municipality will cost $76,681 and require 4,534 hours to prepare. The average application for a medium municipality will cost $49,249 (2,912 hours) to prepare. The annual respondent cost for NPDES permit applications, notices of intent, and notifications for facilities with discharges associated with industrial activity is estimated to be $9.5 million (271,248 hours). EPA estimates that the average preparation cost of an individual industrial permit application would be $1,007 (28.6 hours). Average Group application will cost $74.00 per facility (2.1 hours). The average cost of the notification and notice of intent to be covered by general permit is $17.00 (0.5 hours).

The annual cost to the Federal Government and approved States for administration of the program is estimated to be $588,603. The total cost for municipalities, industry, and State and Federal authorities is estimated to be $14.5 million annually.

In general, the cost estimates provided in the ICR focus primarily on the costs associated with developing, submitting and reviewing the permit applications associated with today's rule. EPA will continue to evaluate procedures and methods to control storm water discharges to the extent necessary to mitigate impacts on water quality in the studies required under section 402(p)(5) of the CWA. Executive Order 12291 requires EPA and other agencies to perform regulatory analyses of major regulations. Major rules are those which impose a cost on the economy of $100 million or more annually or have certain other economic impacts. Today's proposed amendments would generally make the NPDES permit application regulations more flexible and less burdensome for the regulated community. These regulations do not, satisfy any of the criteria specified in section 1(b) of the Executive Order and, as such, do not constitute a major rule. This regulation was submitted to the Office of Management and Budget (OMB) for review.

VIII. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under provision of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2040-0086.

Public reporting burden for permit applications for storm water discharges associated with industrial activity (other than from construction facilities) is estimated to average 28.6 hours per individual permit application, 0.5 hours per notice of intent to be covered by general permit, and 2.1 hours per group applicant. The public reporting burden for permit applications for storm water discharges associated with industrial activity from construction activities submitting individual applications is estimated to average 4.5 hours per response. The public reporting burden for facilities which discharge storm water associated with industrial activity to municipal separate storm sewers serving a population over 100,000 to notify the operator of the municipal separate storm sewer system is estimated to average 0.5 hours per response.

The reporting burden for system-wide permit applications for discharges from municipal separate storm sewer systems serving a population of 250,000 or more is estimated to average 4,534 hours per response. The reporting burden for system-wide permit applications for discharges from municipal separate storm sewer systems serving a population of 100,000 or more, but less than 250,000 is estimated to average 2,912 hours per response. Estimates of reporting burden include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

IX. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's amendments to the regulations would generally make the NPDES permit applications regulations more flexible and less burdensome for permittees. Accordingly, I hereby

certify, pursuant to 5 U.S.C. 605(b), that these amendments do not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Parts 122, 123, and 124

Administrative practice and procedure, Environmental protection, Reporting and recordkeeping requirements, Water pollution control.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: October 31, 1990.

William K. Reilly,

Administrator.

For the reasons stated in the preamble, parts 122, 123, and 124 of title 40 of the Code of Federal Regulations are amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS; THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart B—Permit Application and Special NPDES Program Requirements

1. The authority citation for part 122 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.1 is amended by revising paragraph (b)(2)(iv) to read as follows:

§ 122.1 Purpose and scope.

* * * * *

(b) * * *

(2) * * *

(iv) Discharges of storm water as set forth in § 122.26; and

* * * * *

3. Section 122.21 is amended by revising paragraph (c)(1), by removing the last sentence of paragraph (f)(7), by removing paragraph (f)(9), by adding two sentences at the end of paragraph (g)(3), by revising paragraph (g)(7) introductory text, by removing and reserving paragraph (g)(10) and by revising the introductory text of paragraph (k) to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

* * * * *

(c) *Time to apply.* (1) Any person proposing a new discharge, shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Director. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Facilities described under § 122.26(b)(14)(x) shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. See also paragraph (k) of this section and § 122.26 (c)(1)(i)(G) and (c)(1)(ii).

* * * * *

(g) * * *

(3) * * * The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

* * * * *

(7) *Effluent characteristics.* Information on the discharge of pollutants specified in this paragraph (except information on storm water discharges which is to be provided as specified in § 122.26). When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the Director may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in paragraphs (g)(7) (iii) and (iv) of this section that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the Director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes (applicants submitting permit applications for storm water discharges under § 122.26(d) may collect flow weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the Director). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in § 122.26(c)(1). For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in § 122.26 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The Director may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR part 136, and additional time for submitting data on a

case-by-case basis. An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

* * * * *

(k) *Application requirements for new sources and new discharges.* New manufacturing, commercial, mining and silvicultural dischargers applying for NPDES permits (except for new discharges of facilities subject to the requirements of paragraph (h) of this section or new discharges of storm water associated with industrial activity which are subject to the requirements of § 122.26(c)(1) and this section (except as provided by § 122.26(c)(1)(ii)) shall provide the following information to the Director, using the application forms provided by the Director:

* * * * *

4. Section 122.22(b) introductory text is revised to read as follows:

§ 122.22 Signatories to permit applications and reports (applicable to State programs, see § 123.25).

* * * * *

(b) All reports required by permits, and other information requested by the Director shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

* * * * *

5. Section 122.26 is revised to read as follows:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* (1) Prior to October 1, 1992, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except:

(i) A discharge with respect to which a permit has been issued prior to February 4, 1987;

(ii) A discharge associated with industrial activity (see § 122.26(a)(4));

(iii) A discharge from a large municipal separate storm sewer system;

(iv) A discharge from a medium municipal separate storm sewer system;

(v) A discharge which the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under paragraph (a)(2) of this section or agricultural storm water runoff which is exempted from the definition of point source at § 122.2.

The Director may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Director may consider the following factors:

(A) The location of the discharge with respect to waters of the United States as defined at 40 CFR 122.2.

(B) The size of the discharge;

(C) The quantity and nature of the pollutants discharged to waters of the United States; and

(D) Other relevant factors.

(2) The Director may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

(3) *Large and medium municipal separate storm sewer systems.* (i) Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

(ii) The Director may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

(iii) The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must either:

(A) Participate in a permit application (to be a permittee or a co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system;

(B) Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible; or

(C) A regional authority may be responsible for submitting a permit application under the following guidelines:

(*1*) The regional authority together with co-applicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time part 1 of the application is due;

(*2*) The permit applicant or co-applicants shall establish their ability to make a timely submission of part 1 and part 2 of the municipal application;

(*3*) Each of the operators of municipal separate storm sewers within the systems described in paragraphs (b)(4)(i), (ii), and (iii) or (b)(7) (i), (ii), and (iii) of this section, that are under the purview of the designated regional authority, shall comply with the application requirements of paragraph (d) of this section.

(iv) One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The Director may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

(v) Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.

(vi) Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

(4) *Discharges through large and medium municipal separate storm sewer systems.* In addition to meeting the requirements of paragraph (c) of this section, an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing NPDES permit number.

(5) *Other municipal separate storm sewers.* The Director may issue permits for municipal separate storm sewers that are designated under paragraph (a)(1)(v) of this section on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.

(6) *Non-municipal separate storm sewers.* For storm water discharges associated with industrial activity from point sources which discharge through a non-municipal or non-publicly owned separate storm sewer system, the Director, in his discretion, may issue: a single NPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into waters of the United States; or, individual permits to each discharger of storm water associated with industrial activity through the non-municipal conveyance system.

(i) All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to waters of the United States, with each discharger to the non-municipal conveyance a co-permittee to that permit.

(ii) Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

(iii) Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

(7) *Combined sewer systems.* Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain NPDES permits in accordance with the procedures of § 122.21 and are not subject to the provisions of this section.

(8) Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this section shall have no bearing on whether the owner or operator of the discharge is eligible for funding under title II, title III or title VI of the Clean Water Act. *See* 40 CFR part 35, subpart I, appendix A(b)H.2.j.

(b) *Definitions.* (1) *Co-permittee* means a permittee to a NPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

(2) *Illicit discharge* means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

(3) *Incorporated place* means the District of Columbia, or a city, town, township, or village that is incorporated under the laws of the State in which it is located.

(4) *Large municipal separate storm sewer system* means all municipal separate storm sewers that are either:

(i) Located in an incorporated place with a population of 250,000 or more as determined by the latest Decennial Census by the Bureau of Census (appendix F); or

(ii) Located in the counties listed in appendix H, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or

(iii) Owned or operated by a municipality other than those described in paragraph (b)(4) (i) or (ii) of this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(4) (i) or (ii) of this section. In making this determination the Director may consider the following factors:

(A) Physical interconnections between the municipal separate storm sewers;

(B) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (b)(4)(i) of this section;

(C) The quantity and nature of pollutants discharged to waters of the United States;

(D) The nature of the receiving waters; and

(E) Other relevant factors; or

(iv) The Director may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraph (b)(4) (i), (ii), (iii) of this section.

(5) *Major municipal separate storm sewer outfall* (or "major outfall") means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

(6) *Major outfall* means a major municipal separate storm sewer outfall.

(7) *Medium municipal separate storm sewer system* means all municipal separate storm sewers that are either:

(i) Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the latest Decennial Census by the Bureau of Census (appendix G); or

(ii) Located in the counties listed in appendix I, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or

(iii) Owned or operated by a municipality other than those described in paragraph (b)(4) (i) or (ii) of this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(4) (i) or (ii) of this section. In making this determination the Director may consider the following factors:

(A) Physical interconnections between the municipal separate storm sewers;

(B) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (b)(7)(i) of this section;

(C) The quantity and nature of pollutants discharged to waters of the United States;

(D) The nature of the receiving waters; or

(E) Other relevant factors; or

(iv) The Director may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraphs (b)(7) (i), (ii), (iii) of this section.

(8) *Municipal separate storm sewer* means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;

(ii) Designed or used for collecting or conveying storm water;

(iii) Which is not a combined sewer; and

(iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

(9) *Outfall* means a *point source* as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

(10) *Overburden* means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

(11) *Runoff coefficient* means the fraction of total rainfall that will appear at a conveyance as runoff.

(12) *Significant materials* includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

(13) *Storm water* means storm water runoff, snow melt runoff, and surface runoff and drainage.

(14) *Storm water discharge associated with industrial activity* means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR part 122. For the categories of industries identified in paragraphs (b)(14) (i) through (x) of this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (b)(14)(xi) of this section, the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State, or municipally owned or operated that meet the description of the facilities listed in this paragraph (b)(14)(i)–(xi) of this section) include those facilities designated under the provisions of paragraph (a)(1)(v) of this section. The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection:

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) in paragraph (b)(14) of this section);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined

materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221–25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (b)(14) (i)–(vii) or (ix)–(xi) of this section are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR part 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the CWA;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25, (and which are not otherwise included within categories (ii)–(x));

(c) *Application requirements for storm water discharges associated with industrial activity*—(1) *Individual application.* Dischargers of storm water associated with industrial activity are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the Director is evaluating for designation (*see* 40 CFR 124.52(c)) under paragraph (a)(1)(v) of this section and is not a municipal separate storm sewer, and which is not part of a group application described under paragraph (c)(2) of this section, shall submit an NPDES application in accordance with the requirements of § 122.21 as modified and supplemented by the provisions of the remainder of this paragraph. Applicants for discharges composed entirely of storm water shall submit Form 1 and Form 2F. Applicants for discharges composed of storm water and non-storm water shall submit Form 1, Form 2C, and Form 2F. Applicants for new sources or new discharges (as defined in § 122.2 of this part) composed of storm water and non-storm water shall submit Form 1, Form 2D, and Form 2F.

(i) Except as provided in § 122.26(c)(1)(ii)–(iv), the operator of a storm water discharge associated with industrial activity subject to this section shall provide:

(A) A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR 262.34); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

(B) An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

(C) A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by a NPDES permit; tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

(D) Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

(E) Quantitative data based on samples collected during storm events and collected in accordance with § 122.21 of this part from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

(*1*) Any pollutant limited in an effluent guideline to which the facility is subject;

(*2*) Any pollutant listed in the facility's NPDES permit for its process wastewater (if the facility is operating under an existing NPDES permit);

(*3*) Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

(*4*) Any information on the discharge required under paragraph § 122.21(g)(7)(iii) and (iv) of this part;

(*5*) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

(*6*) The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

(F) Operators of a discharge which is composed entirely of storm water are exempt from the requirements of § 122.21 (g)(2), (g)(3), (g)(4), (g)(5), (g)(7)(i), (g)(7)(ii), and (g)(7)(v); and

(G) Operators of new sources or new discharges (as defined in § 122.2 of this part) which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in paragraph (c)(1)(i)(E) of this section instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in paragraph (c)(1)(i)(E) of this section within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the NPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of § 122.21 (k)(3)(ii), (k)(3)(iii), and (k)(5).

(ii) The operator of an existing or new storm water discharge that is associated with industrial activity solely under paragraph (b)(14)(x) of this section, is exempt from the requirements of § 122.21(g) and paragraph (c)(1)(i) of this section. Such operator shall provide a narrative description of:

(A) The location (including a map) and the nature of the construction activity;

(B) The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

(C) Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements;

(D) Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements;

(E) An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

(F) The name of the receiving water.

(iii) The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with paragraph (c)(1)(i) of this section, unless the facility:

(A) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at anytime since November 16, 1987; or

(B) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or

(C) Contributes to a violation of a water quality standard.

(iv) The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

(v) Applicants shall provide such other information the Director may reasonably require under § 122.21(g)(13) of this part to determine whether to issue a permit and may require any facility subject to paragraph (c)(1)(ii) of this section to comply with paragraph (c)(1)(i) of this section.

(2) *Group application for discharges associated with industrial activity.* In lieu of individual applications or notice of intent to be covered by a general permit for storm water discharges associated with industrial activity, a group application may be filed by an entity representing a group of applicants (except facilities that have existing individual NPDES permits for storm water) that are part of the same subcategory (*see* 40 CFR subchapter N, part 405 to 471) or, where such grouping is inapplicable, are sufficiently similar as to be appropriate for general permit coverage under § 122.28 of this part. The part 1 application shall be submitted to the Office of Water Enforcement and Permits, U.S. EPA, 401 M Street, SW., Washington, DC 20460 (EN–336) for approval. Once a part 1 application is approved, group applicants are to submit Part 2 of the group application to the Office of Water Enforcement and Permits. A group application shall consist of:

(i) *Part 1.* Part 1 of a group application shall:

(A) Identify the participants in the group application by name and location. Facilities participating in the group application shall be listed in nine subdivisions, based on the facility location relative to the nine precipitation zones indicated in appendix E to this part.

(B) Include a narrative description summarizing the industrial activities of participants of the group application and explaining why the participants, as a whole, are sufficiently similar to be a covered by a general permit;

(C) Include a list of significant materials stored exposed to precipitation by participants in the group application and materials management practices employed to diminish contact by these materials with precipitation and storm water runoff;

(D) Identify ten percent of the dischargers participating in the group application (with a minimum of 10 dischargers, and either a minimum of two dischargers from each precipitation zone indicated in appendix E of this part in which ten or more members of the group are located, or one discharger from each precipitation zone indicated in appendix E of this part in which nine or fewer members of the group are located) from which quantitative data will be submitted in part 2. If more than 1,000 facilities are identified in a group application, no more than 100 dischargers must submit quantitative data in Part 2. Groups of between four and ten dischargers may be formed. However, in groups of between four and ten, at least half the facilities must submit quantitative data, and at least one facility in each precipitation zone in which members of the group are located must submit data. A description of why the facilities selected to perform sampling and analysis are representative of the group as a whole in terms of the information provided in paragraph (c)(1) (i)(B) and (i)(C) of this section, shall accompany this section. Different factors impacting the nature of the storm water discharges, such as processes used and material management, shall be represented, to the extent feasible, in a manner roughly equivalent to their proportion in the group.

(ii) *Part 2.* Part 2 of a group application shall contain quantitative

data (NPDES Form 2F), as modified by paragraph (c)(1) of this section, so that when part 1 and part 2 of the group application are taken together, a complete NPDES application (Form 1, Form 2C, and Form 2F) can be evaluated for each discharger identified in paragraph (c)(2)(i)(D) of this section.

(d) *Application requirements for large and medium municipal separate storm sewer discharges.* The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Director under paragraph (a)(1)(v) of this section, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under paragraph (a)(1)(v) of this section shall include:

(1) *Part 1.* Part 1 of the application shall consist of:

(i) *General information.* The applicants' name, address, telephone number of contact person, ownership status and status as a State or local government entity.

(ii) *Legal authority.* A description of existing legal authority to control discharges to the municipal separate storm sewer system. Where existing legal authority is not sufficient to meet the criteria provided in paragraph (d)(2)(i) of this section, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria.

(iii) *Source identification.* (A) A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any Publicly Owned Treatment Works serving the same area as the municipal separate storm sewer system.

(B) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

(*1*) The location of known municipal storm sewer system outfalls discharging to waters of the United States;

(*2*) A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agricultural and industrial uses) accompanied with estimates of population densities and projected growth for a ten year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;

(*3*) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

(*4*) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a NPDES permit;

(*5*) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and

(*6*) The identification of publicly owned parks, recreational areas, and other open lands.

(iv) *Discharge characterization.* (A) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

(B) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

(C) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

(*1*) Assessed and reported in section 305(b) reports submitted by the State, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act (CWA) goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

(*2*) Listed under section 304(l)(1)(A)(i), section 304(l)(1)(A)(ii), or section 304(l)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;

(*3*) Listed in State Nonpoint Source Assessments required by section 319(a) of the CWA that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

(*4*) Identified and classified according to eutrophic condition of publicly owned lakes listed in State reports required under section 314(a) of the CWA (include the following: A description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

(*5*) Areas of concern of the Great Lakes identified by the International Joint Commission;

(*6*) Designated estuaries under the National Estuary Program under section 320 of the CWA;

(*7*) Recognized by the applicant as highly valued or sensitive waters;

(*8*) Defined by the State or U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and

(*9*) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

(D) *Field screening.* Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR part 136, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (or

any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

(*1*) A grid system consisting of perpendicular north-south and east-west lines spaced ¼ mile apart shall be overlayed on a map of the municipal storm sewer system, creating a series of cells;

(*2*) All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

(*3*) Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

(*4*) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

(*5*) Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; and land use types;

(*6*) For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and

(*7*) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in paragraphs (d)(1)(iv)(D) (*1*) through (*6*) of this section, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if less); in such circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced ¼ mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

(E) *Characterization plan.* Information and a proposed program to meet the requirements of paragraph (d)(2)(iii) of this section. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under paragraph (d)(2)(iii)(A) of this section, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (*see* paragraph (d)(1)(iv)(C) of this section) to the extent practicable.

(v) *Management programs.* (A) A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to: Procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under State law as well as local requirements.

(B) A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented.

(vi) *Fiscal resources.* (A) A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs.

(2) *Part 2.* Part 2 of the application shall consist of:

(i) *Adequate legal authority.* A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:

(A) Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

(B) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

(C) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;

(D) Control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

(E) Require compliance with conditions in ordinances, permits, contracts or orders; and

(F) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

(ii) *Source identification.* The location of any major outfall that discharges to waters of the United States that was not reported under paragraph (d)(1)(iii)(B)(*1*) of this section. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity;

(iii) *Characterization data.* When "quantitative data" for a pollutant are required under paragraph (d)(a)(iii)(A)(*3*) of this paragraph, the applicant must collect a sample of effluent in accordance with 40 CFR 122.21(g)(7) and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

(A) Quantitative data from representative outfalls designated by the Director (based on information received

in part 1 of the application, the Director shall designate between five and ten outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls covered in the application, the Director shall designate all outfalls) developed as follows:

(*1*) For each outfall or field screening point designated under this subparagraph, samples shall be collected of storm water discharges from three storm events occurring at least one month apart in accordance with the requirements at § 122.21(g)(7) (the Director may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

(*2*) A narrative description shall be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

(*3*) For samples collected and described under paragraphs (d)(2)(iii)(A)(*1*) and (A)(*2*) of this section, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of appendix D of 40 CFR part 122, and for the following pollutants:

Total suspended solids (TSS)
Total dissolved solids (TDS)
COD
BOD_5
Oil and grease
Fecal coliform
Fecal streptococcus
pH
Total Kjeldahl nitrogen
Nitrate plus nitrite
Dissolved phosphorus
Total ammonia plus organic nitrogen
Total phosphorus

(*4*) Additional limited quantitative data required by the Director for determining permit conditions (the Director may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representativeness);

(B) Estimates of the annual pollutant load of the cumulative discharges to waters of the United States from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the United States from all identified municipal outfalls during a storm event (as described under § 122.21(c)(7)) for BOD_5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods;

(C) A proposed schedule to provide estimates for each major outfall identified in either paragraph (d)(2)(ii) or (d)(1)(iii)(B)(*1*) of this section of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under paragraph (d)(2)(iii)(A) of this section; and

(D) A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.

(iv) *Proposed management program.* A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

(A) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

(*1*) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

(*2*) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. (Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in paragraph (d)(2)(iv)(D) of this section;

(*3*) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

(*4*) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible;

(*5*) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under paragraph (d)(2)(iv)(C) of this section); and

(*6*) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

(B) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate NPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

(*1*) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of non-storm water discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the United States: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)) to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from fire fighting only where such discharges or flows are identified as significant sources of pollutants to waters of the United States);

(*2*) A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

(*3*) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

(*4*) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

(*5*) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

(*6*) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

(*7*) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

(C) A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

(*1*) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges;

(*2*) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in paragraph (d)(2)(iv)(C) of this section, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing NPDES permit for a facility; oil and grease, COD, pH, BOD_5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under 40 CFR 122.21(g)(7) (iii) and (iv).

(D) A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

(*1*) A description of procedures for site planning which incorporate consideration of potential water quality impacts;

(*2*) A description of requirements for nonstructural and structural best management practices;

(*3*) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

(*4*) A description of appropriate educational and training measures for construction site operators.

(v) *Assessment of controls.* Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water.

(vi) *Fiscal analysis.* For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under paragraphs (d)(2) (iii) and (iv) of this section. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.

(vii) Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination.

(viii) Where requirements under paragraph (d)(1)(iv)(E), (d)(2)(ii), (d)(2)(iii)(B) and (d)(2)(iv) of this section are not practicable or are not applicable, the Director may exclude any operator of a discharge from a municipal separate storm sewer which is designated under paragraph (a)(1)(v), (b)(4)(ii) or (b)(7)(ii) of this section from such requirements. The Director shall not exclude the operator of a discharge from a municipal separate storm sewer identified in appendix F, G, H or I of part 122, from any of the permit application requirements under this paragraph except where authorized under this section.

(e) *Application deadlines.* Any operator of a point source required to obtain a permit under paragraph (a)(1) of this section that does not have an effective NPDES permit covering its storm water outfalls shall submit an application in accordance with the following deadlines:

(1) For any storm water discharge associated with industrial activity identified in paragraph (b)(14) (i)–(xi) of this section, that is not part of a group application as described in paragraph (c)(2) of this section or which is not covered under a promulgated storm water general permit, a permit application made pursuant to paragraph (c) of this section shall be submitted to the Director by November 16, 1991:

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(2) For any group application submitted in accordance with paragraph (c)(2) of this section:

(i) Part 1 of the application shall be submitted to the Director, Office of Water Enforcement and Permits by March 18, 1991;

(ii) Based on information in the part 1 application, the Director will approve or deny the members in the group application within 60 days after receiving part 1 of the group application.

(iii) Part 2 of the application shall be submitted to the Director, Office of Water Enforcement and Permits no later than 12 months after the date of approval of the part 1 application.

(iv) Facilities that are rejected as members of a group by the permitting authority shall have 12 months to file an individual permit application from the date they receive notification of their rejection.

(v) A facility listed under paragraph (b)(14) (i)–(xi) of this section may add on to a group application submitted in accordance with paragraph (e)(2)(i) of this section at the discretion of the Office of Water Enforcement and Permits, and only upon a showing of good cause by the facility and the group applicant; the request for the addition of the facility shall be made no later than February 18,1992; the addition of the facility shall not cause the percentage of the facilities that are required to submit quantitative data to be less than 10%, unless there are over 100 facilities in the group that are submitting quantitative data; approval to become part of group application must be obtained from the group or the trade association representing the individual facilities.

(3) For any discharge from a large municipal separate storm sewer system:

(i) Part 1 of the application shall be submitted to the Director by November 18, 1991;

(ii) Based on information received in the part 1 application the Director will approve or deny a sampling plan under paragraph (d)(1)(iv)(E) of this section within 90 days after receiving the part 1 application;

(iii) Part 2 of the application shall be submitted to the Director by November 16, 1992.

(4) For any discharge from a medium municipal separate storm sewer system:

(i) Part 1 of the application shall be submitted to the Director by May 18, 1992.

(ii) Based on information received in the part 1 application the Director will approve or deny a sampling plan under paragraph (d)(1)(iv)(E) of this section within 90 days after receiving the part 1 application.

(iii) Part 2 of the application shall be submitted to the Director by May 17, 1993.

(5) A permit application shall be submitted to the Director within 60 days of notice, unless permission for a later date is granted by the Director (*see* 40 CFR 124.52(c)), for:

(i) A storm water discharge which the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States (see paragraph (a)(1)(v) of this section);

(ii) A storm water discharge subject to paragraph (c)(1)(v) of this section.

(6) Facilities with existing NPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. New applications shall be submitted in accordance with the requirements of 40 CFR 122.21 and 40 CFR 122.26(c) 180 days before the expiration of such permits. Facilities with expired permits or permits due to expire before May 18, 1992, shall submit applications in accordance with the deadline set forth under paragraph (e)(1) of this section.

(f) *Petitions.* (1) Any operator of a municipal separate storm sewer system may petition the Director to require a separate NPDES permit (or a permit issued under an approved NPDES State program) for any discharge into the municipal separate storm sewer system.

(2) Any person may petition the Director to require a NPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(3) The owner or operator of a municipal separate storm sewer system may petition the Director to reduce the Census estimates of the population served by such separate system to account for storm water discharged to combined sewers as defined by 40 CFR 35.2005(b)(11) that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the NPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(4) Any person may petition the Director for the designation of a large or medium municipal separate storm sewer system as defined by paragraphs (b)(4)(iv) or (b)(7)(iv) of this section.

(5) The Director shall make a final determination on any petition received under this section within 90 days after receiving the petition.

6. Section 122.28(b)(2)(i) is revised to read as follows:

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(2) *Requiring an individual permit.* (i) The Director may require any discharger authorized by a general permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take action under this paragraph. Cases where an individual NPDES permit may be required include the following:

(A) The discharger or "treatment works treating domestic sewage" is not in compliance with the conditions of the general NPDES permit;

(B) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

(C) Effluent limitation guidelines are promulgated for point sources covered by the general NPDES permit;

(D) A Water Quality Management plan containing requirements applicable to such point sources is approved;

(E) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(F) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general NPDES permit; or

(G) The discharge(s) is a significant contributor of pollutants. In making this determination, the Director may consider the following factors:

(*1*) The location of the discharge with respect to waters of the United States;

(*2*) The size of the discharge;

(*3*) The quantity and nature of the pollutants discharged to waters of the United States; and

(*4*) Other relevant factors;

* * * * *

7. Section 122.42 is amended by adding paragraph (c) to read as follows:

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).

* * * * *

(c) *Municipal separate storm sewer systems.* The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Director under § 122.26(a)(1)(v) of this part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:

(1) The status of implementing the components of the storm water management program that are established as permit conditions;

(2) Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with § 122.26(d)(2)(iii) of this part; and

(3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under § 122.26(d)(2)(iv) and (d)(2)(v) of this part;

(4) A summary of data, including monitoring data, that is accumulated throughout the reporting year;

(5) Annual expenditures and budget for year following each annual report;

(6) A summary describing the number and nature of enforcement actions, inspections, and public education programs;

(7) Identification of water quality improvements or degradation;

7a. Part 122 is amended by adding appendices E through I as follows:

Appendix E to Part 122—Rainfall Zones of the United States

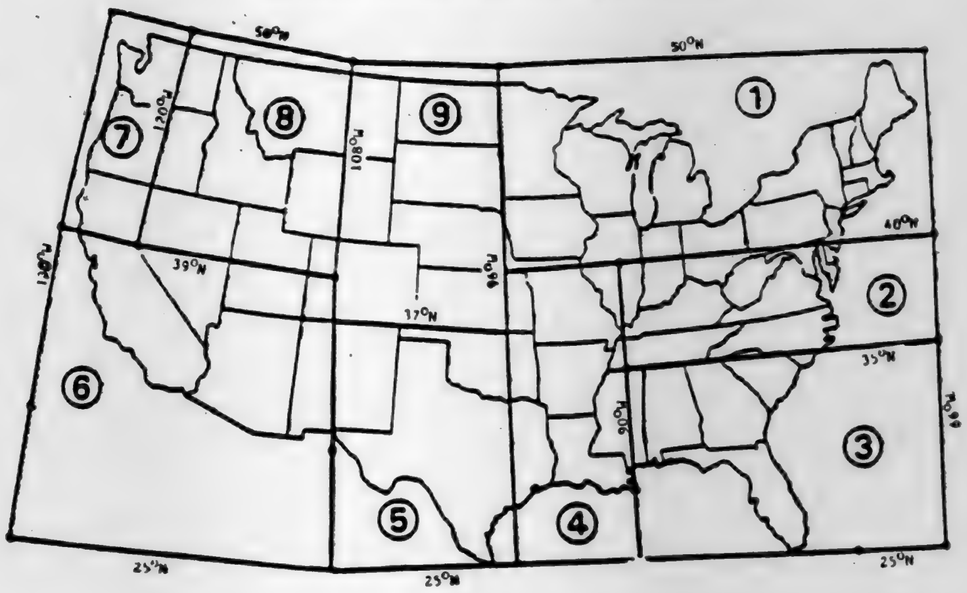

Not Shown: Alaska (Zone 7); Hawaii (Zone 7); Northern Mariana Islands (Zone 7); Guam (Zone 7); American Samoa (Zone 7); Trust Territory of the Pacific Islands (Zone 7); Puerto Rico (Zone 3) Virgin Islands (Zone 3).

Source: Methodology for Analysis of Detention Basins for Control of Urban Runoff Quality, prepared for U.S. Environmental Protection Agency, Office of Water, Nonpoint Source Division, Washington, DC, 1986.

Appendix F to Part 122—Incorporated Places With Populations Greater Than 250,000 According to Latest Decennial Census by Bureau of Census.

State	Incorporated place
Alabama	Birmingham.
Arizona	Phoenix.
	Tucson.
California	Long Beach.
	Los Angeles.
	Oakland.
	Sacramento.
	San Diego.
	San Francisco.
	San Jose.
Colorado	Denver.
District of Columbia	
Florida	Jacksonville.
	Miami.
	Tampa.
Georgia	Atlanta.
Illinois	Chicago.
Indiana	Indianapolis.
Kansas	Wichita.
Kentucky	Louisville.
Louisiana	New Orleans.
Maryland	Baltimore.
Massachusetts	Boston.
Michigan	Detroit.
Minnesota	Minneapolis
	St. Paul.

State	Incorporated place
Missouri	Kansas City.
	St. Louis.
Nebraska	Omaha.
New Jersey	Newark.
New Mexico	Albuquerque.
New York	Buffalo.
	Bronx Borough.
	Brooklyn Borough.
	Manhattan Borough.
	Queens Borough.
	Staten Island Borough.
North Carolina	Charlotte.
Ohio	Cincinnati.
	Cleveland.
	Columbus.
	Toledo.
Oklahoma	Oklahoma City.
	Tulsa.
Oregon	Portland.
Pennsylvania	Philadelphia.
	Pittsburgh.
Tennessee	Memphis.
	Nashville/Davidson.
Texas	Austin.
	Dallas.
	El Paso.
	Fort Worth.
	Houston.
	San Antonio.
Virginia	Norfolk.
	Virginia Beach.
Washington	Seattle.
Wisconsin	Milwaukee.

Appendix G to Part 122—Incorporated Places With Populations Greater Than 100,000 and Less Than 250,000 According to Latest Decennial Census by Bureau of Census

State	Incorporated place
Alabama	Huntsville.
	Mobile.
	Montgomery.
Alaska	Anchorage.
Arizona	Mesa.
	Tempe.
Arkansas	Little Rock.
California	Anaheim.
	Bakersfield.
	Berkeley.
	Concord.
	Fremont.
	Fresno.
	Fullerton.
	Garden Grove.
	Glendale.
	Huntington Beach.
	Modesto.
	Oxnard.
	Pasadena.
	Riverside.
	San Bernadino.
	Santa Ana.
	Stockton.
	Sunnyvale.
	Torrance.
Colorado	Aurora.
	Colorado Springs.
	Lakewood.
	Pueblo.
Connecticut	Bridgeport.
	Hartford.
	New Haven.
	Stamford.
	Waterbury.
Florida	Fort Lauderdale.
	Hialeah.
	Hollywood.
	Orlando.
	St. Petersburg.
Georgia	Columbus.
	Macon.
	Savannah.
Idaho	Boise City.
Illinois	Peoria.
	Rockford.
Indiana	Evansville.
	Fort Wayne.
	Gary.
	South Bend.
Iowa	Cedar Rapids.
	Davenport.
	Des Moines.
Kansas	Kansas City.
	Topeka.
Kentucky	Lexington-Fayette.
Louisiana	Baton Rouge.
	Shreveport.
Massachusetts	Springfield.
	Worcester.
Michigan	Ann Arbor.
	Flint.
	Grand Rapids.
	Lansing.
	Livonia.
	Sterling Heights.
	Warren.
Mississippi	Jackson.
Missouri	Independence.
	Springfield.
Nebraska	Lincoln.
Nevada	Las Vegas.
	Reno.
New Jersey	Elizabeth.
	Jersey City.
	Paterson.
New York	Albany.
	Rochester.
	Syracuse.
	Yonkers.
North Carolina	Durham.
	Greensboro.
	Raleigh.
	Winston-Salem.
Ohio	Akron.
	Dayton.
	Youngstown
Oregon	Eugene.
Pennsylvania	Allentown.
	Erie.
Rhode Island	Providence.
South Carolina	Columbia.
Tennessee	Chattanooga.
	Knoxville.
Texas	Amarillo.
	Arlington.
	Beaumont.
	Corpus Christi.
	Garland.
	Irving.
	Lubbock.
	Pasadena.
	Waco.
Utah	Salt Lake City.
Virginia	Alexandria.
	Chesapeake.
	Hampton.
	Newport News.
	Portsmouth.
	Richmond.
	Roanoke.
Washington	Spokane.
	Tacoma.
Wisconsin	Madison.

Appendix H to Part 122— Counties with Unincorporated Urbanized Areas With a Population of 250,000 or More According to the Latest Decennial Census by the Bureau of Census

State	County	Unincorporated urbanized population
California	Los Angeles	912,564
	Sacramento	449,056
	San Diego	304,758
Delaware	New Castle	257,184
Florida	Dade	781,949
Georgia	DeKalb	386,379
Hawaii	Honolulu	688,178
Maryland	Anne Arundel	271,458
	Baltimore	601,308
	Montgomery	447,993
	Prince George's	450,188
Texas	Harris	409,601
Utah	Salt Lake	304,632
Virginia	Fairfax	527,178
Washington	King	336,800

Appendix I to Part 122—Counties With Unincorporated Urbanized Areas Greater Than 100,000, But Less Than 250,000 According to the Latest Decennial Census by the Bureau of Census

State	County	Unincorporated urbanized population
Alabama	Jefferson	102,917
Arizona	Pima	111,479
California	Alameda	187,474
	Contra Costa	156,452
	Kern	117,231
	Orange	210,693
	Riverside	115,719
	San Bernardino	148,644
Florida	Broward	159,370
	Escambia	147,892
	Hillsborough	238,292
	Orange	245,325
	Palm Beach	157,089
	Pinellas	194,389
	Polk	104,150
	Sarasota	110,009
Georgia	Clayton	100,742
	Cobb	204,121
	Richmond	118,529
Kentucky	Jefferson	224,958
Louisiana	Jefferson	140,836
North Carolina	Cumberland	142,727
Nevada	Clark	201,775
Oregon	Multnomah	141,100
	Washington	109,348
South Carolina	Greenville	135,398
	Richland	124,584
Virginia	Arlington	152,599
	Henrico	161,204
	Chesterfield	106,348
Washington	Snohomish	103,493
	Pierce	196,113

PART 123—STATE PROGRAM REQUIREMENTS

8. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

9. Section 123.25 is amended by revising paragraph (a)(9) to read as follows:

§ 123.25 Requirements for permitting.

(a) * * *

(9) § 122.26—(Storm water discharges);

* * * * * *

PART 124—PROCEDURES FOR DECISIONMAKING

10. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

11. Section 124.52 is revised to read as follows:

§ 124.52 Permits required on a case-by-case basis.

(a) Various sections of part 122, subpart B allow the Director to determine, on a case-by-case basis, that certain concentrated animal feeding operations (§ 122.23), concentrated aquatic animal production facilities (§ 122.24), storm water discharges (§ 122.26), and certain other facilities covered by general permits (§ 122.28) that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(b) Whenever the Regional Administrator decides that an individual permit is required under this section, except as provided in paragraph (c) of this section, the Regional Administrator shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit under § 122.21 within 60 days of notice, unless permission for a later date is granted by the Regional Administrator. The question whether the designation was proper will remain open for consideration during the public comment period under § 124.11 or § 124.118 and in any subsequent hearing.

(c) Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this section (*see* 40 CFR 122.26 (a)(1)(v) and (c)(1)(v)), the Regional Administrator may require the discharger to submit a permit application or other information regarding the discharge under section 308 of the CWA. In requiring such information, the Regional Administrator shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit under § 122.26 within 60 days of notice, unless permission for a later date is granted by the Regional Administrator. The question whether the initial designation was proper will remain open for consideration during the public comment period under § 124.11 or § 124.118 and in any subsequent hearing.

Note: The following form will not appear in the Code of Federal Regulations.

BILLING CODE 6560-50-M

Please print or type in the unshaded areas only

EPA ID Number (copy from Item I of Form 1)

Form Approved. OMB No. 2040-0086
Approval expires 5/31/92

Form 2F NPDES

United States Environmental Protection Agency
Washington, DC 20460

Application for Permit To Discharge Stormwater Discharges Associated with Industrial Activity

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 28.6 hours per application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate, any other aspect of this collection of information, or suggestions for improving this form, including suggestions which may increase or reduce this burden to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Outfall Location

For each outfall, list the latitude and longitude of its location to the nearest 15 seconds and the name of the receiving water.

A. Outfall Number (list)	B. Latitude	C. Longitude	D. Receiving Water (name)

II. Improvements

A. Are you now required by any Federal, State, or local authority to meet any implementation schedule for the construction, upgrading or operation of wastewater treatment equipment or practices or any other environmental programs which may affect the discharges described in this application? This includes, but is not limited to, permit conditions, administrative or enforcement orders, enforcement compliance schedule letters, stipulations, court orders, and grant or loan conditions.

1. Identification of Conditions, Agreements, Etc.	2. Affected Outfalls		3. Brief Description of Project	4. Final Compliance Date	
	number	source of discharge		a. req.	b. proj.

B. You may attach additional sheets describing any additional water pollution (or other environmental projects which may affect your discharges) you now have under way or which you plan. Indicate whether each program is now under way or planned, and indicate your actual or planned schedules for construction.

III. Site Drainage Map

Attach a site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) depicting the facility including: each of its intake and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each known past or present areas used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied; each of its hazardous waste treatment, storage or disposal units (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR 262.34); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility.

Continued from the Front

IV. Narrative Description of Pollutant Sources

A. For each outfall, provide an estimate of the area (include units) of impervious surfaces (including paved areas and building roofs) drained to the outfall, and an estimate of the total surface area drained by the outfall.

Outfall Number	Area of Impervious Surface (provide units)	Total Area Drained (provide units)	Outfall Number	Area of Impervious Surface (provide units)	Total Area Drained (provide units)

B. Provide a narrative description of significant materials that are currently or in the past three years have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage, or disposal; past and present materials management practices employed, in the last three years, to minimize contact by these materials with storm water runoff; materials loading and access areas; and the location, manner, and frequency in which pesticides, herbicides, soil conditioners, and fertilizers are applied.

C. For each outfall, provide the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the schedule and type of maintenance for control and treatment measures and the ultimate disposal of any solid or fluid wastes other than by discharge.

Outfall Number	Treatment	List Codes from Table 2F-1

V. Nonstormwater Discharges

A. I certify under penalty of law that the outfall(s) covered by this application have been tested or evaluated for the presence of nonstormwater discharges, and that all nonstormwater discharges from these outfall(s) are identified in either an accompanying Form 2C or Form 2E application for the outfall.

Name and Official Title (type or print)	Signature	Date Signed

B. Provide a description of the method used, the date of any testing, and the onsite drainage points that were directly observed during a test.

VI. Significant Leaks or Spills

Provide existing information regarding the history of significant leaks or spills of toxic or hazardous pollutants at the facility in the last three years, including the approximate date and location of the spill or leak, and the type and amount of material released.

Continued from Page 2

EPA ID Number (copy from Item I of Form 1)

VII. Discharge Information

A,B,C, & D: See instructions before proceeding. Complete one set of tables for each outfall. Annotate the outfall number in the space provided. Tables VII-A, VII-B, and VII-C are included on separate sheets numbered VII-1 and VII-2.

E: Potential discharges not covered by analysis - is any pollutant listed in Table 2F-2 a substance or a component of a substance which you currently use or manufacture as an intermediate or final product or byproduct?

☐ Yes (list all such pollutants below) ☐ No (go to Section VIII)

VIII. Biological Toxicity Testing Data

☐ Yes (list results below) ☐ No (go to Section IX)

IX. Contract Analysis Information

☐ Yes ☐ No (go to Section X)

A. Name	B. Address	C. Area Code & Phone No.	D. Pollutants Analyzed

X. Certification

A. Name & Official Title (type or print)	B. Area Code and Phone No.
C. Signature	D. Date Signed

EPA ID Number (copy from Item I of Form 1)

Form Approved. OMB No. 2040-0086
Approval expires 5/31/92

VII. Discharge Information (Continued from page 3 of Form 2F)

Part A - You must provide the results of at least one analysis for every pollutant in this table. Complete one table for each outfall. See instructions for additional details.

Pollutant and CAS Number (if available)	Maximum Values (include units)		Average Values (include units)		Number of Storm Events Sampled	Sources of Pollutants
	Grab Sample Taken During First 30 Minutes	Flow-weighted Composite	Grab Sample Taken During First 30 Minutes	Flow-weighted Composite		
Oil and Grease						
Biological Oxygen Demand (BOD5)						
Chemical Oxygen Demand (COD)						
Total Suspended Solids (TSS)						
Total Kjeldahl Nitrogen						
Nitrate plus Nitrite Nitrogen						
Total Phosphorus						
pH	Minimum	Maximum	Minimum	Maximum		

Part B - List each pollutant that is limited in an effluent guideline which the facility is subject to or any pollutant listed in the facility's NPDES permit for its process wastewater (if the facility is operating under an existing NPDES permit). Complete one table for each outfall. See the instructions for additional details and requirements.

Pollutant and CAS Number (if available)	Maximum Values (include units)		Average Values (include units)		Number of Storm Events Sampled	Sources of Pollutants
	Grab Sample Taken During First 30 Minutes	Flow-weighted Composite	Grab Sample Taken During First 30 Minutes	Flow-weighted Composite		

Continued from the Front

Part C - List each pollutant shown in Tables 2F-2, 2F-3, and 2F-4 that you know or have reason to believe is present. See the instructions for additional details and requirements. Complete one table for each outfall.

Pollutant and CAS Number (if available)	Maximum Values (include units)		Average Values (include units)		Number of Storm Events Sampled	Sources of Pollutants
	Grab Sample Taken During First 30 Minutes	Flow-weighted Composite	Grab Sample Taken During First 30 Minutes	Flow-weighted Composite		

Item I

You may use the map you provided for item XI of Form 1 to determine the latitude and longitude of each of your outfalls and the name of the receiving water.

Item II-A

If you check "yes" to this question, complete all parts of the chart, or attach a copy of any previous submission you have made to EPA containing the same information.

Item II-B

You are not required to submit a description of future pollution control projects if you do not wish to or if none is planned.

Item III

Attach a site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) depicting the facility including:

each of its drainage and discharge structures;

the drainage area of each storm water outfall;

paved areas and building within the drainage area of each storm water outfall, each known past or present areas used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied;

each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste for less than 90 days under 40 CFR 262.34);

each well where fluids from the facility are injected underground; and

springs, and other surface water bodies which receive storm water discharges from the facility;

Item IV-A

For each outfall, provide an estimate of the area drained by the outfall which is covered by impervious surfaces. For the purpose of this application, impervious surfaces are surfaces where storm water runs off at rates that are significantly higher than background rates (e.g., predevelopment levels) and include paved areas, building roofs, parking lots, and roadways. Include an estimate of the total area (including all impervious and pervious areas) drained by each outfall. The site map required under item III can be used to estimate the total area drained by each outfall.

Item IV-B

Provide a narrative description of significant materials that are currently or in the past three years have been treated, stored, or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of these materials; past and present materials management practices employed, in the last three years, to minimize contact by these materials with storm water runoff; materials loading and access areas; and the location, manner, and frequency in which pesticides, herbicides, soil conditioners, and fertilizers are applied. Significant materials should be identified by chemical name, form (e.g., powder, liquid, etc.), and type of container or treatment unit. Indicate any materials treated, stored, or disposed of together. "Significant materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

Item IV-C

For each outfall, structural controls include structures which enclose material handling or storage areas, covering materials, berms, dikes, or diversion ditches around manufacturing, production, storage or treatment units, retention ponds, etc. Nonstructural controls include practices such as spill prevention plans, employee training, visual inspections, preventive maintenance, and housekeeping measures that are used to prevent or minimize the potential for releases of pollutants.

Item V

Provide a certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by an NPDES permit. Tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. Part B must include a description of the method used, the date of any testing, and the onsite drainage points that were directly observed during a test. All non-storm water discharges must be identified in a Form 2C or Form 2E which must accompany this application (see beginning of instructions under section titled "Who Must File Form 2F" for a description of when Form 2C and Form 2E must be submitted).

Item VI

Provide a description of existing information regarding the history of significant leaks or spills of toxic or hazardous pollutants at the facility in the last three years.

Item VII-A, B, and C

These items require you to collect and report data on the pollutants discharged for each of your outfalls. Each part of this item addresses a different set of pollutants and must be completed in accordance with the specific instructions for that part. The following general instructions apply to the entire item.

General Instructions

Part A requires you to report at least one analysis for each pollutant listed. Parts B and C require you to report analytical data in two ways. For some pollutants addressed in Parts B and C, if you know or have reason to know that the pollutant is present in your discharge, you may be required to list the pollutant and test (sample and analyze) and report the levels of the pollutants in your discharge. For all other pollutants addressed in Parts B and C, you must list the pollutant if you know or have reason to know that the pollutant is present in the discharge, and either report quantitative data for the pollutant or briefly describe the reasons the pollutant is expected to be discharged. (See specific instructions on the form and below for Parts A through C.) Base your determination that a pollutant is present in or absent from your discharge on your knowledge of your raw materials, material management practices, maintenance chemicals, history of spills and releases, intermediate and final products and byproducts, and any previous analyses known to you of your effluent or similar effluent.

A. **Sampling:** The collection of the samples for the reported analyses should be supervised by a person experienced in performing sampling of industrial wastewater or storm water discharges. You may contact EPA or your State permitting authority for detailed guidance on sampling techniques and for answers to specific questions. Any specific requirements contained in the applicable analytical methods should be followed for sample containers, sample preservation, holding times, the collection of duplicate samples, etc. The time when you sample should be representative, to the extent feasible, of your treatment system operating properly with no system upsets. Samples should be collected from the center of the flow channel, where turbulence is at a maximum, at a site specified in your present permit, or at any site adequate for the collection of a representative sample.

For pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform, grab samples taken during the first 30 minutes (or as soon thereafter as practicable) of the discharge must be used (you are not required to analyze a flow-weighted composite for these parameters). For all other pollutants both a grab sample collected during the first 30 minutes (or as soon thereafter as practicable) of the discharge and a flow-weighted composite sample must be analyzed. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period of greater than 24 hours.

All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area.

A grab sample shall be taken during the first thirty minutes of the discharge (or as soon thereafter as practicable), and a flow-weighted composite shall be taken for the entire event or for the first three hours of the event.

Grab and composite samples are defined as follows:

Grab sample: An individual sample of at least 100 milliliters collected during the first thirty minutes (or as soon thereafter as practicable) of the discharge. This sample is to be analyzed separately from the composite sample.

Flow-Weighted Composite sample: A flow-weighted composite sample may be taken with a continuous sampler that proportions the amount of sample collected with the flow rate or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire event or for the first three hours of the event, with each aliquot being at least 100 milliliters and collected with a minimum period of fifteen minutes between aliquot collections. The composite must be flow proportional; either the time interval between each aliquot or the volume of each aliquot must be proportional to either the stream flow at the time of sampling or the total stream flow since the collection of the previous aliquot. Aliquots may be collected manually or automatically. Where GC/MS Volatile Organic Analysis (VOA) is required, aliquots must be combined in the laboratory immediately before analysis. Only one analysis for the composite sample is required.

Data from samples taken in the past may be used, provided that:

All data requirements are met;

Sampling was done no more than three years before submission; and

All data are representative of the present discharge.

Among the factors which would cause the data to be unrepresentative are significant changes in production level, changes in raw materials, processes, or final products, and changes in storm water treatment. When the Agency promulgates new analytical methods in 40 CFR Part 136, EPA will provide information as to when you should use the new methods to generate data on your discharges. Of course, the Director may request additional information, including current quantitative data, if they determine it to be necessary to assess your discharges. The Director may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rainfall), protocols for collecting samples under 40 CFR Part 136, and additional time for submitting data on a case-by-case basis.

B. **Reporting:** All levels must be reported as concentration and as total mass. You may report some or all of the required data by attaching separate sheets of paper instead of filling out pages VII-1 and VII-2 if the separate sheets contain all the required information in a format which is consistent with pages VII-1 and VII-2 in spacing and in identification of pollutants and columns. Use the following abbreviations in the columns headed "Units."

Concentration		Mass	
ppm	parts per million	lbs	pounds
mg/1	milligrams per liter	ton	tons (English tons)
ppb	parts per billion	mg	milligrams
ug/1	micrograms per liter	g	grams
kg	kilograms	T	tonnes (metric tons)

All reporting of values for metals must be in terms of "total recoverable metal," unless:

(1) An applicable, promulgated effluent limitation or standard specifies the limitation for the metal in dissolved, valent, or total form; or

(2) All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium); or

(3) The permitting authority has determined that in establishing case-by-case limitations it is necessary to express the limitations on the metal in dissolved, valent, or total form to carry out the provisions of the CWA. If you measure only one grab sample and one flow-weighted composite sample for a given outfall, complete only the "Maximum Values" columns and insert "1" into the "Number of Storm Events Sampled" column. The permitting authority may require you to conduct additional analyses to further characterize your discharges.

If you measure more than one value for a grab sample or a flow-weighted composite sample for a given outfall and those values are representative of your discharge, you must report them. You must describe your method of testing and data analysis. You also must determine the average of all values within the last year and report the concentration mass under the "Average Values" columns, and the total number of storm events sampled under the "Number of Storm Events Sampled" columns.

C. **Analysis:** You must use test methods promulgated in 40 CFR Part 136; however, if none has been promulgated for a particular pollutant, you may use any suitable method for measuring the level of the pollutant in your discharge provided that you submit a description of the method or a reference to a published method. Your description should include the sample holding time, preservation techniques, and the quality control measures which you used. If you have two or more substantially identical outfalls, you may request permission from your permitting authority to sample and analyze only one outfall and submit the results of the analysis for other substantially identical outfalls. If your request is granted by the permitting authority, on a separate sheet attached to the application form, identify which outfall you did test, and describe why the outfalls which you did not test are substantially identical to the outfall which you did test.

Part VII-A

Part VII-A must be completed by all applicants for all outfalls who must complete Form 2F.

Analyze a grab sample collected during the first thirty minutes (or as soon thereafter as practicable) of the discharge and flow-weighted composite samples for all pollutants in this Part, and report the results except use only grab samples for pH and oil and grease. See discussion in General Instructions to Item VII for definitions of grab sample collected during the first thirty minutes of discharge and flow-weighted composite sample. The "Average Values" column is not compulsory but should be filled out if data are available.

Part VII-B

List all pollutants that are limited in an effluent guideline which the facility is subject to (see 40 CFR Subchapter N to determine which pollutants are limited in effluent guidelines) or any pollutant listed in the facility's NPDES permit for its process wastewater (if the facility is operating under an existing NPDES permit). Complete one table for each outfall. See discussion in General Instructions to Item VII for definitions of grab sample collected during the first thirty minutes (or as soon thereafter as practicable) of discharge and flow-weighted composite sample. The "Average Values" column is not compulsory but should be filled out if data are available.

Analyze a grab sample collected during the first thirty minutes of the discharge and flow-weighted composite samples for all pollutants in this Part, and report the results, except as provided in the General Instructions.

Part VII-C

Part VII-C must be completed by all applicants for all outfalls which discharge storm water associated with industrial activity, or that EPA is evaluating for designation as a significant contributor of pollutants to waters of the United States, or as contributing to a violation of a water quality standard. Use both a grab sample and a composite sample for all pollutants you analyze for in this part except use grab samples for residual chlorine and fecal coliform. The "Average Values" column is not compulsory but should be filled out if data are available. Part C requires you to address the pollutants in Table 2F-2, 2F-3, and 2F-4 for each outfall. Pollutants in each of these Tables are addressed differently.

Table 2F-2: For each outfall, list all pollutants in Table 2F-2 that you know or have reason to believe are discharged (except pollutants previously listed in Part VII-B). If a pollutant is limited in an effluent guideline limitation which the facility is subject to (e.g., use of TSS as an indicator to control the discharge of iron and aluminum), the pollutant should be listed in Part VII-B. If a pollutant in table 2F-2 is indirectly limited by an effluent guideline limitation through an indicator, you must analyze for it and report data in Part VII-C. For other pollutants listed in Table 2F-2 (those not limited directly or indirectly by an effluent limitation guideline), that you know or have reason to believe are discharges, you must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

Table 2F-3: For each outfall, list all pollutants in Table 2F-3 that you know or have reason to believe are discharged. For every pollutant in Table 2F-3 expected to be discharged in concentrations of 10 ppb or greater, you must submit quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, you must submit quantitative data if any of these four pollutants is expected to be discharged

in concentrations of 100 ppb or greater. For every pollutant expected to be discharged in concentrations less than 10 ppb (or 100 ppb for the four pollutants listed above), then you must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

Small Business Exemption - If you are a "small business," you are exempt from the reporting requirements for the organic toxic pollutants listed in Table 2F-3. There are two ways in which you can qualify as a "small business". If your facility is a coal mine, and if your probable total annual production is less than 100,000 tons per year, you may submit past production data or estimated future production (such as a schedule of estimated total production under 30 CFR 795.14(c)) instead of conducting analyses for the organic toxic pollutants. If your facility is not a coal mine, and if your gross total annual sales for the most recent three years average less than $100,000 per year (in second quarter 1980 dollars), you may submit sales data for those years instead of conducting analyses for the organic toxic pollutants. The production or sales data must be for the facility which is the source of the discharge. The data should not be limited to production or sales for the process or processes which contribute to the discharge, unless those are the only processes at your facility. For sales data, in situations involving intracorporate transfer of goods and services, the transfer price per unit should approximate market prices for those goods and services as closely as possible. Sales figures for years after 1980 should be indexed to the second quarter of 1980 by using the gross national product price deflator (second quarter of 1980 = 100). This index is available in National Income and Product Accounts of the United States (Department of Commerce, Bureau of Economic Analysis).

Table 2F-4: For each outfall, list any pollutant in Table 2F-4 that you know or believe to be present in the discharge and explain why you believe it to be present. No analysis is required, but if you have analytical data, you must report them. **Note:** Under 40 CFR 117.12(a)(2), certain discharges of hazardous substances (listed at 40 CFR 177.21 or 40 CFR 302.4) may be exempted from the requirements of section 311 of CWA, which establishes reporting requirements, civil penalties, and liability for cleanup costs for spills of oil and hazardous substances. A discharge of a particular substance may be exempted if the origin, source, and amount of the discharged substances are identified in the NPDES permit application or in the permit, if the permit contains a requirement for treatment of the discharge, and if the treatment is in place. To apply for an exclusion of the discharge of any hazardous substance from the requirements of section 311, attach additional sheets of paper to your form, setting forth the following information:

1. The substance and the amount of each substance which may be discharged.
2. The origin and source of the discharge of the substance.
3. The treatment which is to be provided for the discharge by:
   a. An onsite treatment system separate from any treatment system treating your normal discharge;
   b. A treatment system designed to treat your normal discharge and which is additionally capable of treating the amount of the substance identified under paragraph 1 above; or
   c. Any combination of the above.

See 40 CFR 117.12(a)(2) and (c), published on August 29, 1979, in 44 FR 50766, or contact your Regional Office (Table 1 on Form 1, Instructions), for further information on exclusions from section 311.

Part VII-D

If sampling is conducted during more than one storm event, you only need to report the information requested in Part VII-D for the storm event(s) which resulted in any maximum pollutant concentration reported in Part VII-A, VII-B, or VII-C.

Provide flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, the method of flow measurement, or estimation. Provide the data and duration of the storm event(s) sampled, rainfall measurements, or estimates of the storm event which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event.

Part VII-E

List any toxic pollutant listed in Tables 2F-2, 2F-3, or 2F-4 which you currently use or manufacture as an intermediate or final product or byproduct. In addition, if you know or have reason to believe that 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) is discharged or if you use or manufacture 2,4,5-trichlorophenoxy acetic

acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); then list TCDD. The Director may waive or modify the requirement if you demonstrate that it would be unduly burdensome to identify each toxic pollutant and the Director has adequate information to issue your permit. You may not claim this information as confidential; however, you do not have to distinguish between use or production of the pollutants or list the amounts.

Item VIII

Self explanatory. The permitting authority may ask you to provide additional details after your application is received.

Item X

The Clean Water Act provides for severe penalties for submitting false information on this application form.

Section 309(c)(4) of the Clean Water Act provides that "Any person who knowingly makes any false material statement, representation, or certification in any application, . . . shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 2 years, or by both. If a conviction of such person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both." 40 CFR Part 122.22 requires the certification to be signed as follows:

> **(A) For a corporation:** by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
>
> **Note:** EPA does not require specific assignments or delegation of authority to responsible corporate officers identified in 122.22(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate position under 122.22(a)(1)(ii) rather than to specific individuals.
>
> **(B) For a partnership or sole proprietorship:** by a general partner or the proprietor, respectively; or
>
> **(C) For a municipality, State, Federal, or other public agency:** by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

Table 2F-1
Codes for Treatment Units

	Physical Treatment Processes		
1-A	Ammonia Stripping	1-M	Grit Removal
1-B	Dialysis	1-N	Microstraining
1-C	Diatomaceous Earth Filtration	1-O	Mixing
1-D	Distillation	1-P	Moving Bed Filters
1-E	Electrodialysis	1-Q	Multimedia Filtration
1-F	Evaporation	1-R	Rapid Sand Filtration
1-G	Flocculation	1-S	Reverse Osmosis (Hyperfiltration)
1-H	Flotation	1-T	Screening
1-I	Foam Fractionation	1-U	Sedimentation (Setting)
1-J	Freezing	1-V	Slow Sand Filtration
1-K	Gas-Phase Separation	1-W	Solvent Extraction
1-L	Grinding (Comminutors)	1-X	Sorption
	Chemical Treatment Processes		
2-A	Carbon Adsorption	2-G	Disinfection (Ozone)
2-B	Chemical Oxidation	2-H	Disinfection (Other)
2-C	Chemical Precipitation	2-I	Electrochemical Treatment
2-D	Coagulation	2-J	Ion Exchange
2-E	Dechlorination	2-K	Neutralization
2-F	Disinfection (Chlorine)	2-L	Reduction
	Biological Treatment Processes		
3-A	Activated Sludge	3-E	Pre-Aeration
3-B	Aerated Lagoons	3-F	Spray Irrigation/Land Application
3-C	Anaerobic Treatment	3-G	Stabilization Ponds
3-D	Nitrification-Denitrification	3-H	Trickling Filtration
	Other Processes		
4-A	Discharge to Surface Water	4-C	Reuse/Recycle of Treated Effluent
4-B	Ocean Discharge Through Outfall	4-D	Underground Injection
	Sludge Treatment and Disposal Processes		
5-A	Aerobic Digestion	5-M	Heat Drying
5-B	Anaerobic Digestion	5-N	Heat Treatment
5-C	Belt Filtration	5-O	Incineration
5-D	Centrifugation	5-P	Land Application
5-E	Chemical Conditioning	5-Q	Landfill
5-F	Chlorine Treatment	5-R	Pressure Filtration
5-G	Composting	5-S	Pyrolysis
5-H	Drying Beds	5-T	Sludge Lagoons
5-I	Elutriation	5-U	Vacuum Filtration
5-J	Flotation Thickening	5-V	Vibration
5-K	Freezing	5-W	Wet Oxidation
5-L	Gravity Thickening		

Table 2F-2
Conventional and Nonconventional Pollutants Required To Be Tested by Existing Discharger if Expected To Be Present

Bromide
Chlorine, Total Residual
Color
Fecal Coliform
Fluoride
Nitrate-Nitrite
Nitrogen, Total Kjedahl
Oil and Grease
Phosphorus, Total Radioactivity
Sulfate
Sulfide
Sulfite
Surfactants
Aluminum, Total
Barium, Total
Boron, Total
Cobalt, Total
Iron, Total
Magnesium, Total
Molybdenum, Total
Magnesium, Total
Tin, Total
Titanium, Total

Table 2F-3

Toxic pollutants required to be identified by applicant if expected to be present

Toxic Pollutants and Total Phenol

Antimony, Total	Copper, Total	Silver, Total
Arsenic, Total	Lead, Total	Thallium, Total
Beryllium, Total	Mercury, Total	Zinc, Total
Cadmium, Total	Nickel, Total	Cyanide, Total
Chromium Total	Selenium, Total	Phenols, Total

GC/MS Fraction Volatiles Compounds

Acrolein	Dichlorobromomethane	1,1,2,2,-Tetrachloroethane
Acrylonitrile	1,1-Dichloroethane	Tetrachloroethylene
Benzene	1,2-Dichloroethane	Toluene
Bromoform	1,1-Dichloroethylene	1,2-Trans-Dichloroethylene
Carbon Tetrachloride	1,2-Dichloropropane	1,1,1-Trichloroethane
Chlorobenzene	1,3-Dichloropropylene	1,1,2-Trichloroethane
Chlorodibromomethane	Ethylbenzene	Trichloroethylene
Chloroethane	Methyl Bromide	Vinyl Chloride
2-Chloroethylvinyl Ether	Methyl Chloride	
Chloroform	Methylene Chloride	

Acid Compounds

2-Chlorophenol	2,4-Dinitrophenol	Pentachlorophenol
2,4-Dichlorophenol	2-Nitrophenol	Phenol
2,4-Dimethylphenol	4-Nitrophenol	2,4,6-Trichlorophenol
4,6-Dinitro-O-Cresol	p-Chloro-M-Cresol	

Base/Neutral

Acenaphthene	2-Chloronaphthalene	Fluroranthene
Acenaphthylene	4-Chlorophenyl Phenyl Ether	Fluorene
Anthracene	Chrysene	Hexachlorobenzene
Benzidine	Dibenzo(a,h)anthracene	Hexachlorobutadiene
Benzo(a)anthracene	1,2-Dichlorobenzene	Hexachloroethane
Benzo(a)pyrene	1,3-Dichlorobenzene	Indeno(1,2,3-cd)pyrene
3,4-Benzofluoranthene	1,4-Dichlorobenzene	Isophorone
Benzo(ghi)perylene	3,3'-Dichlorobenzidine	Napthalene
Benzo(k)fluoranthene	Diethyl Phthalate	Nitrobenzene
Bis(2-chloroethoxy)methane	Dimethyl Phthalate	N-Nitrosodimethylamine
Bis(2-chloroethyl)ether	Di-N-Butyl Phthalate	N-Nitrosodi-N-Propylamine
Bis(2-chloroisopropyl)ether	2,4-Dinitrotoluene	N-Nitrosodiphenylamine
Bis(2-ethylyhexyl)phthalate	2,6-Dinitrotoluene	Phenanthrene
4-Bromophenyl Phenyl Ether	Di-N-Octylphthalate	Pyrene
Butylbenzyl Phthalate	1,2-Diphenylhydrazine (as Azobenzene)	1,2,4-Trichlorobenzene

Pesticides

Aldrin	Dieldrin	PCB-1254
Alpha-BHC	Alpha-Endosulfan	PCB-1221
Beta-BHC	Beta-Endosulfan	PCB-1232
Gamma-BHC	Endosulfan Sulfate	PCB-1248
Delta-BHC	Endrin	PCB-1260
Chlordane	Endrin Aldehyde	PCB-1016
4,4'-DDT	Heptachlor	Toxaphene
4,4'-DDE	Heptachlor Epoxide	
4,4'-DDD	PCB-1242	

Table 2F-4

Hazardous substances required to be identified by applicant if expected to be present

Toxic Pollutant

Asbestos

Hazardous Substances

Acetaldehyde	Dinitrobenzene	Napthenic acid
Allyl alcohol	Diquat	Nitrotoluene
Allyl chloride	Disulfoton	Parathion
Amyl acetate	Diuron	Phenolsulfonate
Aniline	Epichlorohydrin	Phosgene
Benzonitrile	Ethion	Propargite
Benzyl chloride	Ethylene diamine	Propylene oxide
Butyl acetate	Ethylene dibromide	Pyrethrins
Butylamine	Formaldehyde	Quinoline
Carbaryl	Furfural	Resorcinol
Carbofuran	Guthion	Strontium
Carbon disulfide	Isoprene	Strychnine
Chlorpyrifos	Isopropanolamine	Styrene
Coumaphos	Kelthane	2,4,5-T (2,4,5-Trichlorophenoxyacetic acid)
Cresol	Kepone	TDE (Tetrachlorodiphenyl ethane)
Crotonaldehyde	Malathion	2,4,5-TP [2-(2,4,5-Trichlorophenoxy) propanoic acid]
Cyclohexane	Mercaptodimethur	Trichlorofan
2,4-D (2,4-Dichlorophenoxyacetic acid)	Methoxychlor	Triethylamine
Diazinon	Methyl mercaptan	Trimethylamine
Dicamba	Methyl methacrylate	Uranium
Dichlobenil	Methyl parathion	Vanadium
Dichlone	Mevinphos	Vinyl acetate
2,2-Dichloropropionic acid	Mexacarbate	Xylene
Dichlorvos	Monoethyl amine	Xylenol
Diethyl amine	Monomethyl amine	Zirconium
Dimethyl amine	Naled	

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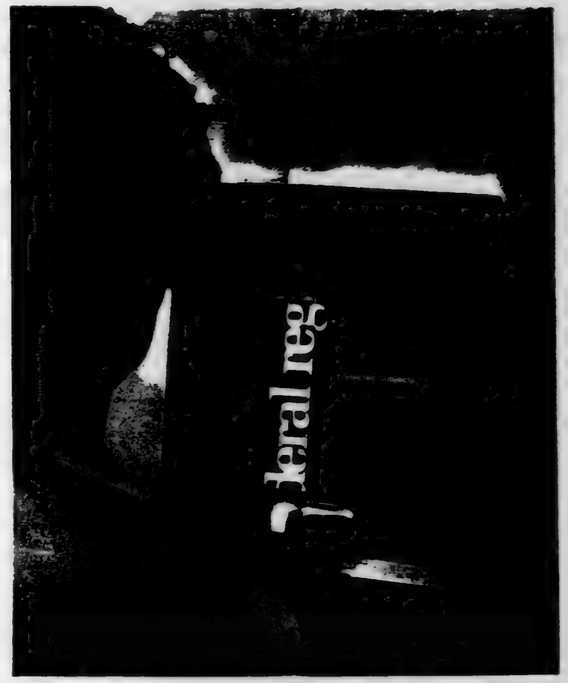

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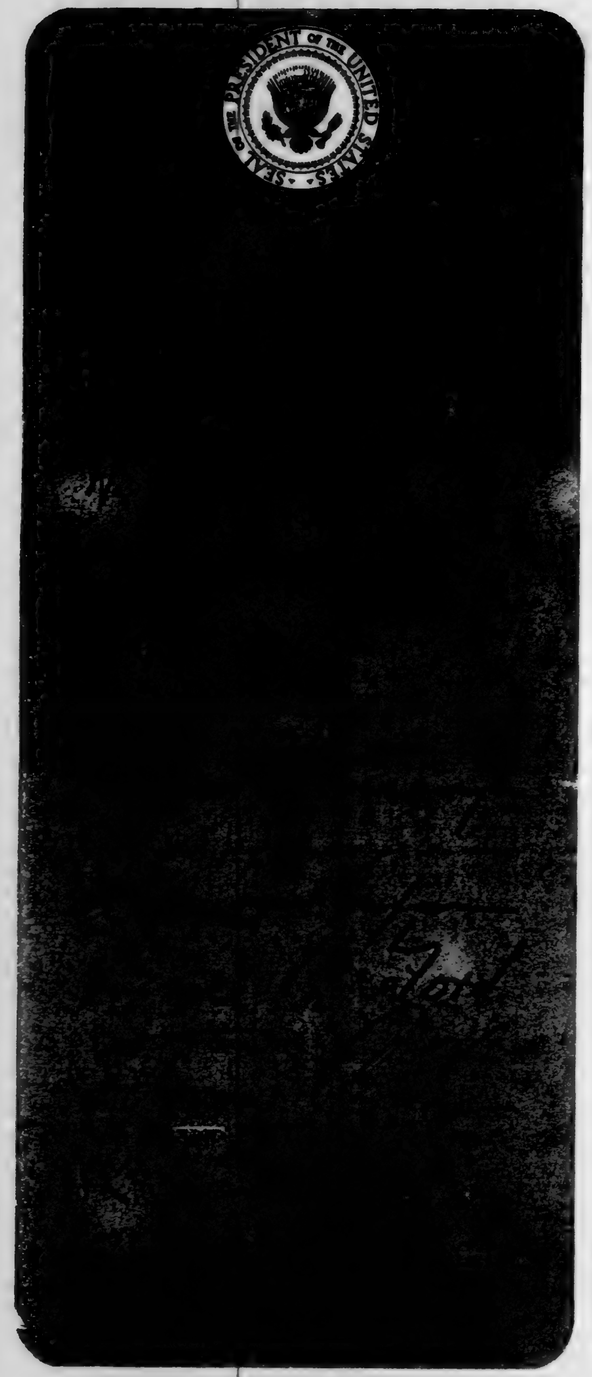

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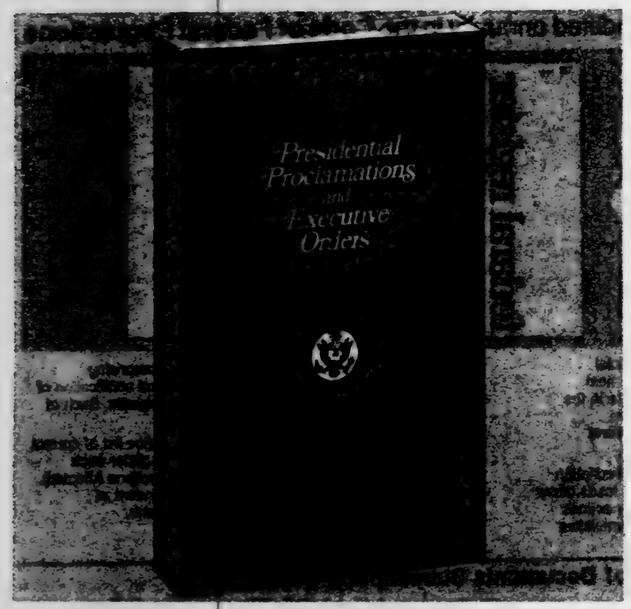

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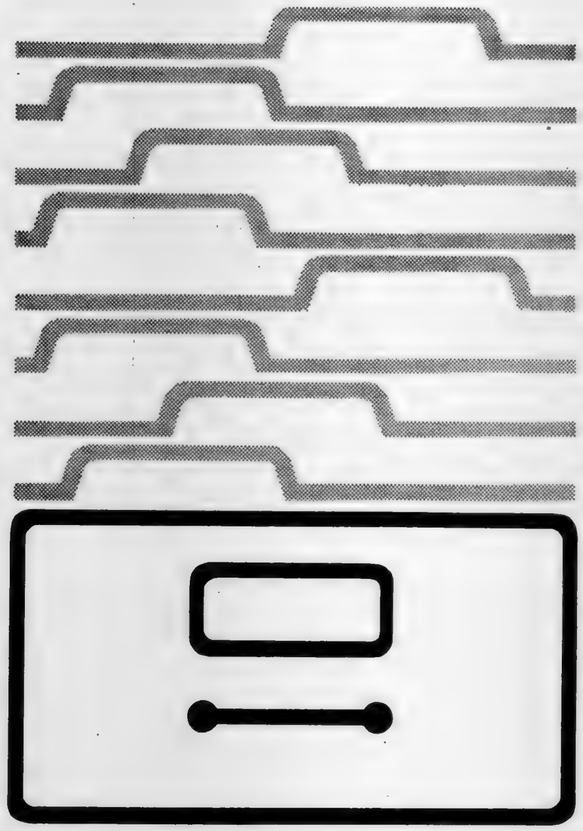

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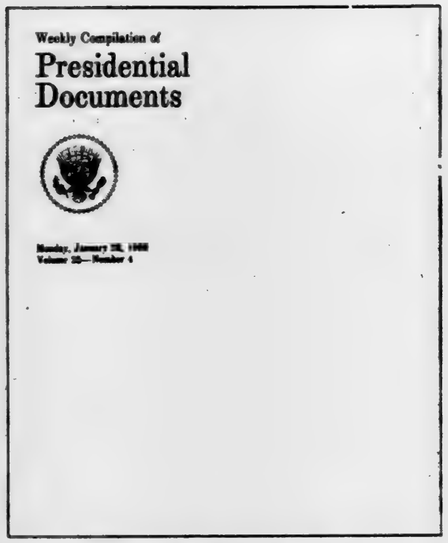

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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Monday, November 19, 1990

Presidential Documents

Title 3—

The President

Proclamation 6229 of November 14, 1990

Thanksgiving Day, 1990

By the President of the United States of America

A Proclamation

In the first Presidential Thanksgiving Day proclamation, George Washington observed that "it is the Duty of all Nations to acknowledge the Providence of Almighty God, to obey his Will, to be grateful for his Benefits, and humbly to implore His Protection and Favor." As a people who have long enjoyed unparalleled material prosperity and the priceless blessings of peace and freedom, we Americans cannot fail to fulfill this great, yet joyous, duty. Thus, we pause each year on Thanksgiving Day to express our gratitude for the goodness and generosity of our Creator and to ask His continued protection and guidance in all our endeavors, both as individuals and as a Nation.

The observance of Thanksgiving was a cherished tradition in America long before George Washington called his countrymen "to the service of that great and glorious Being who is the beneficent Author of all the good that was, that is, or that will be." Indeed, we trace the tradition of giving thanks back to some of the earliest settlers in this country—not only the Pilgrims at Plymouth but also early colonists at Jamestown, New Amsterdam, and St. Augustine. With hands clasped in prayer and hearts full of gratitude, these men and women gave public thanks to God for having been sustained through times of hardship and peril.

William Bradford's account of the experience of the settlers at Plymouth Colony is not only a moving description of the trials of emigration to a wilderness but also captures their profound faith and contains a timeless exhortation to succeeding generations:

> Being thus passed the vast ocean . . . they had now no friends to welcome them, nor inns to entertain or refresh their weatherbeaten bodies, no houses or much less towns to repair to. . . . And for the season it was winter, and they that know the winters of that country know them to be sharp and violent. . . . Besides, what could they see but a hideous and desolate wilderness? . . . Neither could they, as it were, go to the top of Pisgah, to view from this wilderness a more goodly country to feed their hopes, for which way soever they turned their eyes (save upwards to the heavens) they could have little solace or content. . . . What could now sustain them but the spirit of God and His grace? They cried to the Lord, and He heard their voice, and looked on their adversity. Let them therefore praise the Lord, because He is good, and His mercies endure for ever.

The historic observance of a day of thanksgiving at Plymouth in 1621 was one of many occasions on which our ancestors paused to acknowledge their dependence on the mercy and favor of Divine Providence. Today, on this Thanksgiving Day, likewise observed during a season of celebration and harvest, we have added cause for rejoicing: the seeds of democratic thought sown on these shores continue to take root around the world. In Central and Eastern Europe, in Latin America, and elsewhere, courageous men and women are beginning to reap the blessings of freedom and self-government. Peoples who once suffered under the heavy yoke of totalitarianism have begun to claim the liberty to which all are heirs.

Our gratitude for the rights and opportunities we enjoy as Americans may be measured by how carefully we use and preserve these gifts, as when we cultivate in our children a love of freedom and an understanding of the responsibilities that freedom demands of us. We tend the precious blossom of

our liberty when we recall the example of our ancestors and strive to ensure that our own lives are firmly rooted in faith. Like our forebears, we must cherish the values and beliefs that are the foundation of strong, loving families and caring communities and recognize the importance of learning and hard work, because these are the wellspring of progress and prosperity.

The great freedom and prosperity with which we have been blessed is cause for rejoicing—and it is equally a responsibility. Indeed, Scripture tells us that much will be asked of those to whom much has been given. Our "errand in the wilderness," begun more than 350 years ago, is not yet complete. Abroad, we are working toward a new partnership of nations. At home, we seek lasting solutions to the problems facing our Nation and pray for a society "with liberty and justice for all," the alleviation of want, and the restoration of hope to all our people.

This Thanksgiving, as we enjoy the company of family and friends, let us gratefully turn our hearts to God, the loving Source of all Life and Liberty. Let us seek His forgiveness for our shortcomings and transgressions and renew our determination to remain a people worthy of His continued favor and protection. Acknowledging our dependence on the Almighty, obeying His Commandments, and reaching out to help those who do not share fully in this Nation's bounty is the most heartfelt and meaningful answer we can give to the timeless appeal of the Psalmist: "O give thanks to the Lord for He is good: for his steadfast love endures forever."

Finally, on this Thanksgiving Day, let us also remember all those Americans abroad who labor to advance the ideals for which this great Nation stands. Whether Peace Corps volunteers or military or diplomatic personnel, these selfless individuals often accept great personal risks and sacrifices to serve our country. Let us remember, in particular, those Americans held hostage and members of the Armed Forces serving in the Persian Gulf region. On this day, let us pray for their well-being and their safe return to the United States. And let us be thankful that such fine men and women are still willing to answer the call of duty to country and to defend the cause of liberty.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby call upon the American people to observe Thursday, November 22, 1990, as a National Day of Thanksgiving and to gather together in homes and places of worship on that day of thanks to affirm by their prayers and their gratitude the many blessings God has bestowed upon us.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of November, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

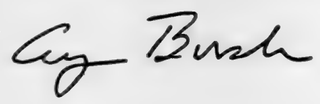

[FR Doc. 90-27338
Filed 11-15-90; 2:32 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks of Nov. 14 on Thanksgiving Day, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 46).

Presidential Documents

Proclamation 6239 of November 14, 1990

National American Indian Heritage Month, 1990

By the President of the United States of America

A Proclamation

Long before European explorers set foot on the North American continent, this great land had been cultivated and cherished by generations of American Indians. Unbeknownst to their fellowman halfway around the world, these Native peoples had developed rich, thriving cultures, as well as their own systems of social order. They also possessed a wealth of acquired wisdom and skills in hunting, tracking, and farming—knowledge and skills that would one day prove to be invaluable to traders and settlers from Europe.

Today Americans of all ages recognize the many outstanding achievements of this country's original inhabitants and their descendants. Young and old alike know the story of Sacajawea, the Shoshone woman who helped to guide Lewis and Clark on their historic expedition and, in so doing, helped to open the door to the Great West. The giant redwood trees protected in a number of our national parks bear the name of Sequoia, in honor of the great Cherokee leader who taught thousands of Indians to read and write and, in so doing, helped to unite and strengthen the Cherokee Nation. We also recall the achievements of Charles Curtis, the proud descendant of Native Americans who served this country not only as a member of Congress but also as Vice President. However, such celebrated examples constitute only a small portion of the rich, centuries-old heritage of American Indians. Indeed, each of the many tribes that have inhabited this great land boasts a long and fascinating legacy of its own.

Last year, when signing into law the "National Museum of the American Indian Act," I noted that our Nation would be moving forward with a new and deeper understanding of the diverse heritage of Native Americans. Like the many educational and cultural events currently being held across the country in observance of National American Indian Heritage Month, the development of a national museum dedicated to the preservation of American Indian history, art, language, literature, anthropology, and culture will help to enhance public awareness of—and appreciation for—these proud peoples.

During National American Indian Heritage Month, as we celebrate the fascinating history and time-honored traditions of Native Americans, we also look to the future. Our Constitution affirms a special relationship between the Federal Government and Indian tribes and—despite a number of conflicts, inequities, and changes over the years—our unique government-to-government relationship has endured. In recent years, we have strengthened and renewed this relationship. Today we reaffirm our support for increased Indian control over tribal government affairs, and we look forward to still greater economic independence and self-sufficiency for Native Americans.

The Congress, by Public Law 101-343, has designated November 1990 as "National American Indian Heritage Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim November 1990 as National American Indian Heritage Month. I encourage all Americans and their elected representatives at the Federal, State, and local levels to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of November, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-27339
Filed 11-15-90; 2:33 pm
Billing code 3195-01-M

Presidential Documents

Proclamation 6231 of November 14, 1990

National Farm-City Week, 1990

By the President of the United States of America

A Proclamation

For nearly four decades, we Americans have observed National Farm-City Week in honor of this country's farmers and all those who play a role in the production and distribution of U.S. agricultural goods. It is fitting that this week coincides with our annual celebration of Thanksgiving, a time when Americans traditionally give thanks for our many blessings—including our abundant supplies of safe, wholesome, and affordable foodstuffs.

American farmers are the most enterprising and efficient in the world. Constituting less than 2 percent of our population, these men and women feed the other 98 percent—and millions of people around the globe as well. Nowhere else does such a small percentage of a nation's population feed so many.

These hardworking Americans are assisted in their efforts, however, by millions of people in urban areas—by researchers who develop improved methods and technology for farming; by the manufacturers and suppliers of equipment, seeds, and fertilizers; by those who transport and process raw agricultural goods; and by retailers who distribute and sell finished farm products to consumers. Viewed in its broadest sense, agriculture is one of our Nation's largest employers, involving the storage, transportation, processing, distribution, and merchandising of U.S. agricultural products. Millions of Americans earn their living in farming and agriculture-related industries.

The rural and urban ties we celebrate during National Farm-City Week are steadily being strengthened as more and more American farmers begin to supply not only food and fiber but also raw materials for industrial use. These materials include biodegradable plastics, alternative fuels and fuel additives, as well as printing inks and newsprint. The development of these and other products is contributing to the creation of new and diverse agro-industries.

The Americans who work in our Nation's thriving agricultural sector make an invaluable contribution to the well-being of our families and to the economic strength of the entire country. During this special season, as we prepare to share a traditional Thanksgiving dinner with our loved ones, we do well to recognize all those who bring this Nation's agricultural bounty from field to table.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of November 16 through November 22, 1990, as National Farm-City Week. I call upon all Americans, in rural areas and cities alike, to join in recognizing the accomplishments of our Nation's farmers and of all those who cooperate in producing the abundance of agricultural goods that enrich and strengthen the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of November, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-27360
Filed 11-15-90; 4:20 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12734 of November 14, 1990

National Emergency Construction Authority

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and 3 U.S.C. 301, I declared a national emergency by Executive Order No. 12722, dated August 2, 1990, to deal with the threat to the national security and foreign policy of the United States caused by the invasion of Kuwait by Iraq. To provide additional authority to the Department of Defense to respond to that threat, and in accordance with section 301 of the National Emergencies Act (50 U.S.C. 1631), I hereby order that the emergency construction authority at 10 U.S.C. 2808 is invoked and made available in accordance with its terms to the Secretary of Defense and, at the discretion of the Secretary of Defense, to the Secretaries of the military departments.

This order is effective immediately and shall be transmitted to the Congress and published in the **Federal Register**.

George Bush

THE WHITE HOUSE,
November 14, 1990.

[FR Doc. 90-27324
Filed 11-15-90; 1:28 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 55, No. 223
Monday, November 19, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[CS-89-010]

RIN 0581-AA19

Citrus Juices and Certain Citrus Products; Fee Revision for Analyses

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the fee charged by the Department for laboratory analysis of citrus juice and certain other citrus products performed by the newly formed Commodities Scientific Support Division of the Agricultural Marketing Service. The purpose of the fee increase is to recover increased costs of providing such laboratory services. The "Definition" section of the regulations is amended by adding a definition for the Commodities Scientific Support Division (CSSD). The rule also amends the title of the section concerning laboratory testing and analysis to more accurately reflect the types of services provided.

EFFECTIVE DATE: December 19, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Craig A. Reed, Commodities Scientific Support Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 3064 South Building, Washington, DC 20090-6456, Telephone (202) 447-5231.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 10, 1990 (55 FR 13280), the Agricultural Marketing Service published a proposed rule to revise fees for laboratory analysis of citrus juice and certain other citrus products. This rule makes final the provision of the proposed rule without change. No comments were received concerning the proposal.

This rule has been reviewed under Executive Order 12291 and Department Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices to consumers, individual industries, Federal, State or local government agencies, or geographic regions. It will not result in significant adverse effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities. The Administrator, Agricultural Marketing Service (AMS), has determined that this action will not have a significant economic impact on a substantial number of small entities. The rule reflects only those fee increases needed to recover the cost of laboratory services provided by the Commodities Scientific Support Division (CSSD) in the analysis of citrus juice and certain other citrus products. CSSD was established on January 15, 1989, by the AMS Administrator to consolidate the analytical laboratory testing services of AMS under one Division. Furthermore, the use of these services is voluntary.

This action reflects a fee increase needed to recover the cost of services rendered in accordance with the Agricultural Marketing Act of 1946 (AMA). The AMA authorizes voluntary official inspection, grading, and certification, on a user fee basis, of processed food products, including processed fruits, vegetables, and processed products made from these. The AMA provides that reasonable fees be collected from users of the program services to cover, as nearly as practicable, the cost of services rendered.

Laboratory analyses by AMS of citrus juice and other citrus products are currently being done only in Florida. Such products produced in Florida are required to meet certain standards through laboratory analyses in order to satisfy the Florida Citrus Code. This rule would amend § 52.47 of the regulations by increasing fees to be paid to AMS for laboratory services rendered by CSSD to the Florida citrus industry to reflect the costs currently associated with the program. The title of the section is also amended by inserting the word "microbiological" in lieu of "micro". In addition § 52.2, "Definitions", amended by adding a definition of the term "Commodities Scientific Support Division."

AMS regularly reviews its programs to determine if fees are adequate to cover costs. Since the last fee change effective June 5, 1986, (51 FR 20437), program operating costs have increased. Major contributing factors have been increased costs for reagents and instrumentation required for the more complex analyses performed by CSSD. There have also been four salary increases for Federal employees—a 3 percent pay increase effective January 1, 1987, a 2 percent pay increase effective January 1, 1988, a 4.1 percent pay increase effective January 1, 1989, and a 3.6 percent pay increase effective January 1, 1990.

Employee salaries and fringe benefits are major program costs that account for approximately 85 percent of the total operating budget. In fiscal year 1990, the following increases in program operating expenses were incurred: (1) A Government-wide salary increase of 3.6 percent effective January 1, 1990; (2) a 28.3 percent increase in the Agency's contribution to the Federal Employees Health Benefits Program (applicable to all Government agencies) effective January 1, 1990; (3) a 10 percent Government-wide increase in travel entitlements effective in October 1988; and (4) an inflationary cost increase of 4.0 percent for fiscal year 1990 (this includes increased instrument and reagent costs). The Agency has determined that due to the aforementioned increases in program operating costs, citrus juice and citrus product laboratory testing programs performed by CSSD will incur more than a $113,000 loss in fiscal year 1991 if the hourly laboratory fee is not raised. Based on the Agency's analysis of increased costs since 1986, it is determined that in order to cover the cost of services rendered, the fees charged for microbiological, chemical, and certain other special laboratory analyses performed by the CSSD on citrus juice and certain other citrus products are increased from $25 per

hour to $29 per hour. The current $25 per hour fee for other services charged in accordance with § 52.47 is not changed by this action. Accordingly, a new paragraph (b) is added to § 52.47 to reflect the proposed fee increase, and the current paragraph in § 52.47 is designated as paragraph (a) with conforming changes made for clarity.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

For the reasons set out in the preamble, 7 CFR part 52 is amended as follows:

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

1. The authority citation for 7 CFR part 52 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; (7 U.S.C. 1622, 1624).

2. Section 52.2 is amended by adding a definition in alphabetical order to read as follows:

§ 52.2 Terms defined.

* * * * *

Commodities Scientific Support Division (CSSD). A Division of the Agricultural marketing Service (AMS) which performs analytical laboratory testing services for AMS.

* * * * *

3. Section 52.47 is revised to read as follows:

§ 52.47 Fees to be charged for microbiological, chemical and certain other special analyses.

(a) Unless otherwise provided in paragraph (b) of this section, fees charged for micro, chemical and certain other special analyses made at the request of the applicant, or because of additional specification requirements, and other applicable services, shall be at the rate of $25.00 per hour. Other applicable services include, but are not restricted to, grading unofficial samples, providing copies of score sheets and additional copies of certificates.

(b) Fees charged for microbiological, chemical and certain other special laboratory analyses performed by Commodities Scientific Support Division on citrus juice and certain other citrus products, requested by the applicant, or because of additional specification requirements and other applicable services, shall be at the rate of $29 per hour. Other applicable services include, but are not restricted to, analyzing unofficial samples, and providing original and additional copies of certificates.

Done at Washington, DC, November 14, 1990.

Daniel D. Haley,
Administrator.

[FR Doc. 90-27207 Filed 11-16-90; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 907

[Navel Orange Regulation 713]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from November 16 through November 22, 1990. Consistent with program objectives, such action is needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges for the specified week. This action was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATE: Regulation 713 (7 CFR part 907) is effective for the period from November 16 through November 22, 1990.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–3139.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,070 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented 89 percent of the total production in 1989–90. District 2 is located in the southern coastal area of California and represented 9 percent of 1989–90 production; District 3 is the desert area of California and Arizona, and it represented slightly less than 1 percent; and District 4, which represented slightly less than 1 percent, is northern California. The Committee's estimate of 1990–91 production is 79,350 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 89,000 cars during the 1989–90 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic fresh (regulated) market is a preferred market for California-Arizona navel oranges while the export market continues to grow. The Committee estimates that about 65 percent of the 1990–91 crop of 79,350 cars will be utilized in fresh domestic channels (51,250 cars), with the remainder being exported fresh (12 percent), processed (21 percent), or designated for other uses (2 percent). This compares with the 1989–90 total of 54,000 cars shipped to fresh domestic markets, about 61 percent of that year's crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to producers. Producers benefit from increased returns and improve market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual producers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to producers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance producer revenue. Prices for navel oranges tend to be relatively inelastic at the producer level. Thus, even a small variation in shipments can have a great impact on prices and producer revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to producers, particularly smaller producers.

The Committee adopted its marketing policy for the 1990–91 season on July 10, 1990. The Committee revised its marketing policy at district meetings as follows: (1) Districts 1 and 4 on September 25, 1990, in Visalia, California; (2) District 3 on October 2, 1990, in Tempe, Arizona; and (3) District 2 on October 9, 1990, in Redlands, California. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Pello. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on November 13, 1990, in Bakersfield, California, to consider the current and prospective conditions of supply and demand and recommended, with nine members voting in favor, one opposing, and one abstaining, that 1,513,008 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions, and weather and transportation conditions.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1990–91 marketing policy. The recommended amount of 1,513,008 cartons represents all requests for early maturity allotments made by handlers and compares to the 1,500,000 cartons specified for all districts in the Committee's October 9 revised shipping schedule. Of the 1,513,008 cartons, 1,423,507 cartons are allotted for District 1 and 89,501 cartons are allotted for District 3. Handlers in Districts 2 and 4 made no requests for early maturity allotment and have not yet begun to ship.

During the week ending on November 8, 1990, shipment of navel oranges to fresh domestic markets, including Canada, totaled 735,000 cartons compared with 1,060,000 cartons shipped during the week ending on November 9, 1989. Export shipments totaled 46,000 cartons compared with 242,000 cartons shipped during the week ending on November 9, 1989. Processing and other uses accounted for 116,000 cartons compared with 365,000 cartons shipped during the week ending on November 9, 1989.

Fresh domestic shipments to date this season total 1,134,000 cartons compared with 2,231,000 cartons shipped by this time last season. Export shipments total 51,000 cartons compared with 370,000 cartons shipped by this time last season. Processing and other use shipments total 223,000 cartons compared with 892,000 cartons shipped by this time last season.

The average f.o.b. shipping point price for the week ending on November 8, 1990, was $10.20 per carton based on a reported sales volume of 436,000 cartons compared with last week's average of $9.99 per carton on a reported sales volume of 201,000 cartons. The season average f.o.b. shipping point price to date is $10.14 per carton. The average f.o.b. shipping point prices for the week ending on November 9, 1989, was $9.23 per carton; the season average f.o.b. shipping point price at this time last year was $9.56.

At the meeting, several Committee members reported that maturity of the navel crop is variable throughout the producing districts and that, depending on how maturity progresses, a large amount of mature fruit could be available for shipment during the upcoming week. Committee members discussed the pros and cons of implementing volume regulation at this time. One Committee member favored open movement while the majority of Committee members favored the issuance of early maturity allotment, indicating that such action would help alleviate the potential risk of disorderly marketing conditions should maturity progress as anticipated.

According to the National Agricultural Statistics Service, the 1989–90 season average fresh equivalent on-tree price for California-Arizona navel oranges was $4.05 per carton, 64 percent of the season average parity equivalent price of $6.34 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1990–91 season average fresh on-tree price is estimated at $4.33 per carton, about 66 percent of the estimated fresh on-tree parity equivalent price of $6.56 per carton. It is currently estimated that there is a less than one percent probability that the 1990–91 season average fresh on-tree price will exceed the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of navel oranges that may be shipped during the period from November 16 through November 22, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has

determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the 1990–91 season was published in the Sepetember 6, 1990, issue of the **Federal Register** (55FR 36653). That rule provided interested persons the opportunity to comment until October 9, 1990, on the need for regulation during the 1990–91 season, the proposed shipping schedule, and other factors relevant to the implementation of such regulations.

Nevertheless, pursuant to 5 U.S.C. 553, it is found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice on this action, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the delcared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until November 13, 1990, and this act action needs to be effective for the regulatory week which begins on November 16, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provison effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Sections 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.1013 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.1013 Navel orange regulation 713.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from November 16 through November 22, 1990, is established as follows:
(a) District 1: 1,423,507 cartons;
(b) District 2: unlimited cartons;
(c) District 3: 89,501 cartons;
(d) District 4: unlimited cartons;

Dated: November 15, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–27311 Filed 11–16–90; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 910

[Lemon Regulation 744]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona lemons that may be shipped to domestic markets during the period from November 18 through November 24, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh lemons with the demand for such lemons during the period specified. This action was recommended by the Lemon Administrative Committee (Committee), which is responsible for local administration of the lemon marketing order.

EFFECTIVE DATE: Regulation 744 [7 CFR part 910] is effective for the period from November 18 through November 24, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 910 [7 CFR part 910], as amended, regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1521–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,000 lemon producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

The California-Arizona lemon industry is characterized by a large number of growers located over a wide area. The Committee's estimate of the1990–91 production is 42,140 cars (one car equals 1,000 cartons at 38 pounds net weight each), compared to 37,881 cars during the 1989–90 season. The production area is divided into three districts which span California and Arizona. The Committee estimates District 1, central California, 1990–91 production at 6,600 cars compared to the 4,158 cars produced in 1989–90. In District 2, southern California, the crop is expected to be 24,700 cars compared to the 24,292 cars produced last year. In District 3, the California desert and Arizona, the Committee estimates a production of 10,840 cars compared to the 9,436 cars produced last year. According to the National Agricultural Statistics Service, 1990–91 lemon production is expected to total 40,200 cars, 8 percent above the 1989–90 season and 1 percent more than the crop utilized in 1988–89.

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona lemons. Based on its crop estimate of 42,140 cars, the Committee estimates that about 42.5 percent of the 1990–91 crop will be utilized in fresh domestic channels (17,900 cars), compared with the 1989–90 total of 16,600 cars, about 44 percent of the total production of 37,881 cars in 1989–90. Fresh exports are projected at 20.1 percent of the total 1990–91 crop utilization compared with 22 percent in 1989–90. Processed and other uses would account for the residual 37.4 percent compared with 34 percent of the 1989–90 crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 910 are intended to provide benefits to growers and consumers. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of lemons in the market throughout the marketing season and to avoid unreasonable fluctuations in supplies and prices.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the lemon marketing order are required by the Committee from handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

The Committee submitted its marketing policy for the 1990–91 season to the Department on June 19. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Rodriguez. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on November 13, 1990, in Newhall, California, to consider the current and prospective conditions of supply and demand and unanimously recommended that 268,000 cartons is the quantity of lemons deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, the preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1990–91 marketing policy. This recommended amount is the same as the estimated projections in the Committee's current shipping schedule.

During the week ending on November 10, 1990, shipments of lemons to fresh domestic markets, including Canada, totaled 316,000 cartons compared with 301,000 cartons shipped during the week ending on November 11, 1989. Export shipments totaled 166,000 cartons compared with 159,000 cartons shipped during the week ending on November 11, 1989. Processing and other uses accounted for 344,000 cartons compared with 273,000 cartons shipped during the week ending on November 11, 1989.

Fresh domestic shipments to date for the 1990–91 season total 4,599,000 cartons compared with 4,378,000 cartons shipped by this time during the 1989–90 season. Export shipments total 2,222,000 cartons compared with 2,363,000 cartons shipped by this time during 1989–90. Processing and other use shipments total 3,880,000 cartons compared with 3,508,000 cartons shipped by this time during 1989–90.

For the week ending on November 10, 1990, regulated shipments of lemons to the fresh domestic market were 316,000 cartons on an adjusted allotment of 364,000 cartons which resulted in net undershipments of 48,000 cartons. Regulated shipments for the current week (November 11 through November 17, 1990) are estimated at 270,000 cartons on an adjusted allotment of 276,000 cartons. Thus, undershipments of 6,000 cartons could be carried over into the week ending on November 24, 1990.

The average f.o.b. shipping point price for the week ending on November 10, 1990, was $10.03 per carton based on a reported sales volume of 313,000 cartons compared with last week's average of $10.98 per carton on a reported sales volume of 302,000 cartons. The 1990–91 season average f.o.b. shipping point price to date is $12.79 per carton. The average f.o.b. shipping point price for the week ending on November 11, 1989, was $13.28 per carton; the season average f.o.b. shipping point price at this time during 1989–90 was $14.45 per carton.

The Department's Market News Service reported that, as of November 13, the demand for lemons is "fairly good" and the market for lemons is "steady." At the meeting, several Committee members indicated that the market had stabilized somewhat. One Committee member indicated that the market had improved from the prior week. Several members cautioned against increasing supplies too rapidly, whereas other members cautioned against unduly restricting supplies.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the California-Arizona 1990–91 season average fresh on-tree price is estimated at $8.83 per carton, 106 percent of the projected season average fresh on-tree parity equivalent price of $8.35 per carton. The California-Arizona 1989–90 season average fresh on-tree price is estimated at $9.02, 121 percent of the projected season average fresh on-tree parity equivalent price of $7.47 per carton.

Limiting the quantity of lemons that may be shipped during the period from November 18 through November 24, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly, flow of lemons to market.

Based on considerations of supply and market conditions, it is found that this action will tend to effectuate the declared policy of the Act.

Based on the above information, the Administrator of the AMS has determined that issuance of this rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary

to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until November 13, 1990, and this action needs to be effective for the regulatory week which begins on November 18, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.1044 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.1044 Lemon Regulation 744.

The quantity of lemons grown in California and Arizona which may be handled during the period from November 18 through November 24, 1990, is established at 288,000 cartons.

Dated: November 14, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-27296 Filed 11-16-90; 8:45 am]

BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards

AGENCY: Small Business Administration.

ACTION: Statement of General Policy SBA Size Policy Statement No. 2.

SUMMARY: The Small Business Administration (SBA) is issuing this notice to explain its intended application of a recent revision to its size regulations. On December 21, 1989, SBA published a final rule governing its size standards regulation which, among other amendments, required, with certain exceptions, all small businesses whose size status is determined pursuant to annual receipts to restate their books of account to the accrual method of accounting. 13 CFR 121.402. This notice will explain the procedures SBA will follow in effecting this revision.

FOR FURTHER INFORMATION CONTACT: Catherine B. Thomas, Size Determinations Program Manager, (202) 653–6588.

SUPPLEMENTARY INFORMATION: The Small Business Administration (SBA) hereby gives notice of its intended application and interpretation of the method of determining annual receipts found at 13 CFR 121.402(d)(1). Size regulations were promulgated by the Agency substantially revising many of the provisions of Part 121 and reorganizing the numbering of paragraphs. These regulations appeared in the **Federal Register** on December 21, 1989, at 54 FR 52843 *et seq.* The particular paragraph in question relative to this size policy statement contains a proviso that ". . . revenues shown on the regular books of account or the Federal Income Tax return on a basis other than accrual is restated to show revenue on an accrual basis." This requirement for restatement of revenue to reflect an accrual basis of accounting is a change from earlier regulations which permitted revenues to be measured as entered on the regular books of account whether on a cash, accrual or other basis of accounting. See 13 CFR 121.2(c)(1)(1988). In making this change to a requirement for a uniform method of accounting that would apply to all firms, SBA desired to achieve a more fair and consistent manner of establishing the size of various concerns. The Agency became aware that the method of accounting elected could cause firms of differing economic strengths to be unfairly considered as possessing equivalent economic strengths for purposes of size. Further, SBA discovered that concerns of equivalent economic strength could demonstrate different levels of annual receipts depending upon which accounting method was elected by the firm for size determination purposes.

SBA continues to believe that a uniform system of accounting is appropriate when firms need to consider whether or not they are small for purposes of availing themselves of small business programs, and for SBA's purposes of performing formal size determinations. However, in the application and interpretation of the regulation, a question has arisen which requires clarification. The question is whether firms are required to restate their revenues for the years prior to the fiscal year beginning in 1990 to the accrual method of accounting before determining whether they are small. The answer is no.

SBA measures the annual receipts of a firm based on revenues which is has received for the firm's last three completed fiscal years. § 121.402(c). This three year average period of measurement has not changed with the regulations that were published on December 21, 1989. Because of the new requirement for restatement, however, small firms which employed the cash method of accounting prior to 1990, will begin in 1990 to have their books of account kept and annual statements prepared based on an accrual method of accounting for purposes of establishing their size status.For example, a firm whose fiscal year ends on May 31, 1990 would be expected to reflect its revenues based on an accrual method for the year beginning June 1, 1990, but may have revenues shown on a cash basis of accounting for the two prior years of May 31, 1990 and May 31, 1989. This would give rise to a size determination based on a "mixed" accounting system over the applicable three year period of time, unless the earlier two years are restated to accrual. This potential for mixed accounting periods will continue until the completion of any fiscal year beginning on or before December 31, 1992. To require the restatement of earlier fiscal years would require small firms to undergo the expense of new accounting statements, and, more significantly, would cause many small firms who had planned their growth and development with SBA's size standards in mind to suddenly find that, because of the new requirement for restatement of its revenues received up to two years ago, they have now become large businesses. In general, a firm with an expanding business and growing revenues need not realize those revenues for tax purposes or SBA size purposes as soon if it follows a cash method of accounting rather than an accrual method of accounting. There are many small businesses which have been close to the size standard for their industry and which legitimately have incorporated their size status into their business planning strategy based upon an expectation that the cash method of accounting would continue to apply as to fiscal years already completed.

SBA's regulations do not explicitly address revenue shown on the books of

account of a concern for its *prior* years. As a matter of application and interpretation, the Agency gives notice that prior years of revenue need not be restated. Beginning with the effective date of the regulations, January 1, 1990, firms are required to reflect their revenues on an accrual basis for the fiscal year which begins in 1990 and for all subsequent fiscal years, but such firms are not required to recalculate their revenues for fiscal years ending in 1990 and 1989.

Thus, SBA will permit a three year period of revenues for size purposes which includes cash-based revenues for fiscal years ending in 1990 or 1989 if that was the method of accounting already employed by the firm for its fiscal years ending in those years. Firms who have used an accrual method of accounting during 1990 and 1989 may not elect to restate their receipts to a cash method of accounting, since SBA's new restatement requirement does not affect such firms. Concerns who have followed the cash method of accounting in their fiscal years ending in 1990 and 1989 may elect to restate such revenues to reflect an accrual method of accounting.

Dated: November 13, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90-27204 Filed 11-14-90; 2:21 pm]

BILLING CODE 8025-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 88N-0437]

Cheeses; Amendment of Standards of Identity To Permit Use of Antimycotics on the Exterior of Certain Bulk Cheeses During Curing and Aging; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date for the final rule that amended the standards of identity for edam cheese (and, by cross-reference, gouda cheese), swiss and emmentaler cheese, and swiss cheese for manufacturing to permit the use of antimycotics on the exterior of those bulk cheeses during curing and aging and on the exterior of the cheese for manufacturing.

EFFECTIVE DATE: April 30, 1990, for all products initially introduced or initially delivered for introduction into interstate commerce on or after this date.

FOR FURTHER INFORMATION CONTACT: James F. Lin, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0122.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 27, 1990 (55 FR 6794), FDA issued a final rule to amend the standards of identity for edam cheese (21 CFR 133.138), (and by cross-reference, gouda cheese (21 CFR 133.142)), swiss and emmentaler cheese (21 CFR 133.195), and swiss cheese for manufacturing (21 CFR 133.196) to permit the use of antimycotics on the exterior of these bulk cheeses during curing and aging and on the exterior of the cheese for manufacturing. These standards of identity already permit antimycotics to be applied to the surface of slices or cuts of these cheeses in consumer-size packages.

The final rule provided that any person who would be adversely affected by the regulation could at any time, on or before March 29, 1990, file written objections and request a hearing on the specific provisions to which there were objections. No objections or requests for a hearing were received in response to the final regulation.

List of Subjects in 21 CFR Part 133

Cheese, Food grades and standards.

PART 133—CHEESE AND RELATED CHEESE PRODUCTS

Therefore, under sections 201, 401, 403, 409, 701, and 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Food and Safety and Applied Nutrition (21 CFR 5.62), notice is given that no objections were received and that the final regulation amending the standards of identity for edam cheese (21 CFR 133.138), (and by cross-reference, gouda cheese (21 CFR 133.142)), swiss and emmentaler cheese (21 CFR 133.195), and swiss cheese for manufacturing (21 CFR 133.196) as promulgated in the **Federal Register** of February 27, 1990 (55 FR 6794), became effective April 30, 1990.

Dated: November 8, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-27177 Filed 11-16-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8318]

RIN 1545-AO36

Limitations on Passive Activity Losses and Credits; Developer Rule Amendments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Amendments of temporary regulations.

SUMMARY: This document amends the temporary regulations relating to the limitations on passive activity losses and passive activity credits. The amendments clarify the treatment of lease-up services under the net income recharacterization rule for certain property the rental of which is incidental to development activity. The text of the temporary regulations also serves as the text of the proposed regulations for the notice of proposed rulemaking on this subject. The notice of proposed rulemaking appears in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These amendments of the regulations are effective for taxable years beginning after December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Dexter A. Johnson at 202–566–4751 (not a toll-free number), or at Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, room 4429, Washington, DC 20044 (Attn: CC:CORP:T:R (PS–071–89)).

SUPPLEMENTARY INFORMATION:

Background

Section 1.469–2T(f)(5) reduces a taxpayer's passive activity gross income by the net income and gain from certain rental property. This rule applies to certain property that is not used in an activity involving the rental of the property for a period of at least 12 months between its development and its disposition. A taxpayer is subject to the rule if the taxpayer materially or significantly participated for any taxable year in an activity that involved for that year the performance of services for the purpose of enhancing the property's value.

Section 1.469–2T(f)(5)(ii) provides that the use of property in an activity involving its rental begins when the performance of value-enhancing services is complete and substantially all of the property is first held out for

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rent and is in a state of readiness for rental. Under § 1.469–2T(f)(5)(iii)(C), services performed for the purpose of enhancing the value of property include "lease-up" (*e.g.*, the solicitation of tenants) if, as of the time the taxpayer acquires an interest in the property, a substantial portion of the property is not leased. Numerous commentators have asked when lease-up is complete for purposes of commencing the 12-month rental period preceding a disposition of property. Commentators have also asked for guidance on when a substantial portion of property is not leased.

Treatment of Lease-up Clarified

These amendments of the regulations clarify that lease-up is treated as a value-enhancing service under § 1.469–2T(f)(5) unless more than 50 percent of the property is leased when the taxpayer acquires an interest in the property. The Internal Revenue Service has determined that this objective test will help taxpayers determine whether lease-up is a value-enhancing service in any given case.

Although lease-up may be treated as a value-enhancing service under the net income recharacterization rule in § 1.469–2T(f)(5), the Service believes that the commencement of the 12-month rental period should not be delayed until lease-up has been completed. Accordingly, these amendments of the regulations clarify that property is used in an activity involving its rental beginning on the first date on which (1) The taxpayer owns an interest in the item of property, (2) substantially all of the property is rented (or is held out for rent and is in a state of readiness for rental), and (3) no significant value-enhancing services (within the meaning of § 1.469–2T(f)(5)(ii)(B)) remain to be performed. Under § 1.469–2T(f)(5)(ii)(B), significant value-enhancing services excludes lease-up.

These amendments of the regulations apply as if they had been included in § 1.469–2T(f)(5) as promulgated in Treasury Decision 8175, 53 FR 5686, February 25, 1988, and as amended by Treasury Decision 8253, 54 FR 20527, May 12, 1989. Under § 1.469–11T(a)(2), § 1.469–2T(f)(5) applies for taxable years beginning after December 31, 1987.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Dexter A. Johnson, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.441–2 Through 1.483–2

Accounting, Deferred compensation plans, Income taxes.

Adoption of Amendments to the Regulations

Accordingly, title 26, chapter 1, part 1 of the Code of Federal Regulations is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * * §§ 1.469–1T, 1.469–2T, 1.469–3T, 1.469–5T, and 1.469–11T also issued under 26 U.S.C. 469(l).

Par. 2. Section 1.469–2T is amended as follows:

Paragraphs (f)(5)(i)(B), (f)(5)(ii), (f)(5)(iii)(C), and (f)(5)(iv) are revised to read as set forth below.

§ 1.469–2T Passive activity loss (temporary).

* * * * *

(f) *Recharacterization of passive income in certain situations.* * * *

(5) *Net income from certain property rented incidental to development activity*—(i) * * *

(B) The taxpayer's use of the item of property in an activity involving the rental of the property commenced less than 12 months before the date of the disposition (within the meaning of paragraph (c)(2)(iii)(B) of this section) of such property; and

* * * * *

(ii) *Commencement of use*—(A) *In general.* For purposes of paragraph (f)(5)(i)(B) of this section, a taxpayer's use of an item of property in an activity involving the rental of the property commences on the first date on rental of the property commences on the first date on which—

(*1*) The taxpayer owns an interest in the item of property;

(*2*) Substantially all of the property is rented (or is held out for rent and is in a state of readiness for rental); and

(*3*) No significant value-enhancing services (within the meaning of paragraph (f)(5)(ii)(B) of this section) remain to be performed.

(B) *Value-enhancing services.* For purposes of this paragraph (f)(5)(ii), the term "value-enhancing services" means the services described in paragraphs (f)(5)(i)(C) and (iii) of this section, except that the term does not include lease-up. Thus, in cases in which this paragraph (f)(5) applies solely because substantial lease-up remains to be performed (*see* paragraph (f)(5)(iii)(C) of this section), the twelve month period described in paragraph (f)(5)(i)(B) of this section will begin when the taxpayer acquires an interest in the property if substantially all of the property is held out for rent and is in a state of readiness for rental on that date.

(iii) * * *

(C) Lease-up (unless more than 50 percent of the property is leased on the date that the taxpayer acquires an interest in the property).

(iv) *Examples.* The following examples illustrate the application of this paragraph (f)(5):

Example (1). (i) A, a calendar year individual, is a partner in calendar year partnership P, which develops real estate. In 1988, P acquires an interest in undeveloped land and arranges for the financing and construction of an office building on the land. Construction is completed in February 1990, and substantially all of the building is either rented or held out for rent and in a state of readiness for rental beginning on March 1, 1990. Twenty percent of the building is leased as of March 1, 1990.

(ii) P rents the building (or holds it out for rent) for the remainder of 1990 and all of 1991, and sells the building on February 1, 1992, pursuant to a contract entered into on January 15, 1991. P did not hold the building (or any other buildings) for sale to customers in the ordinary course of P's trade or business (*see* paragraph (c)(2)(v) of this section). A's distributive share of P's taxable losses from the rental of the building is $50,000 for 1990 and $30,000 for 1991. All of A's losses from the rental of the building are disallowed under § 1.469–1T(a)(1)(i) (relating to the disallowance of the passive activity loss for the taxable year). A's distributive share of P's gain from the sale of the building is $150,000. A has no other gross income or deductions from the activity of renting the building.

(iii) The real estate development activity that A holds through P involves in 1988, 1989, and 1990 the performance of services (*e.g.*, construction) for the purpose of enhancing the value of the building. Accordingly, an amount equal to A's net rental activity income from the building may be treated as gross income that is not from a passive activity if A's use of the building in an activity involving the rental of the building commenced less than 12 months before the date of the disposition of the building. In this case, the date of the disposition of the building is January 15, 1991, the date of the binding contract for its sale.

(iv) A taxpayer's use of an item of property in an activity involving the rental of the property commences on the first date on which (A) The taxpayer owns an interest in the item of property, (B) substantially all of the property is rented (or is held out for rent and is in a state of readiness for rental), and (C) no significant value-enhancing services (within the meaning of paragraph (f)(5)(ii)(B) of this section) remain to be performed. In this case, A's use of the building in an activity involving the rental of the building commenced on March 1, 1990, less than 12 months before January 15, 1991, the date of disposition. Accordingly, if A materially (or significantly) participated in the real estate development activity in 1988, 1989, or 1990 (without regard to whether A materially participated in the activity in more than one of those years), an amount of A's gross rental activity income from the building for 1992 equal to A's net rental activity income from the building for 1992 is treated under this paragraph (f)(5) as gross income that is not from a passive activity. Under paragraph (f)(9)(iv) of this section, A's net rental activity income from the building for 1992 is $70,000 ($150,000 distributive share of gain from the disposition of the building minus $80,000 of reasonably allocable passive activity deductions).

Example 2. (i) X, a calendar-year taxpayer subject to section 469, acquires a building on February 1, 1992, when the building is 25 percent leased. During 1992, X rents the building (or holds it out for rent) and materially participates in an activity that involves the lease-up of the building. X's activities do not otherwise involve the performance of construction or other services for the purpose of enhancing the value of the building, and X does not hold the building (or any other building) for sale to customers in the ordinary course of X's trade or business. X sells the building on December 1, 1992.

(ii) Under paragraph (f)(5)(iii)(C) of this section, lease-up is considered a service performed for the purpose of enhancing the value of property unless more than 50 percent of the property is leased on the date the taxpayer acquires an interest in the property. Under paragraph (f)(5)(ii)(B) of this section, however, lease-up is not considered a value-enhancing service for purposes of determining when the taxpayer commences using an item of property in an activity involving the rental of the property. Accordingly, X's acquisition of the building constitutes a commencement of X's use of the building in a rental activity, because February 1, 1992 is the first date on which (A) The taxpayer owns an interest in the item of property, (B) substantially all of the property is held out for rent, and (C) no significant value-enhancing services (within the meaning of paragraph (f)(5)(ii)(B) of this section) remain to be performed. In this case, X disposes of the property within 12 months of the date X commenced using the building in a rental activity. Accordingly, an amount of X's gross rental activity income for 1992 equal to X's net rental activity income from the building for 1992 is treated under this paragraph (f)(5) as gain that is not from a passive activity.

Example 3. The facts are the same as in example (2) except that at the time X acquires the building it is 60 percent leased. Under paragraph (f)(5)(iii)(C) of this section, lease-up is not considered a service performed for the purpose of enhancing the value of property if more than 50 percent of the property is leased on the date the taxpayer acquires an interest in the property. Therefore, additional lease-up performed by X is not taken into account under this paragraph (f)(5). Since X's activities do not otherwise involve the performance of services for the purpose of enhancing the value of the building, none of X's gross rental activity income from the building will be treated as income that is not from a passive activity under this paragraph (f)(5).

* * * * *

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Approved: October 30, 1990.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 90–27122 Filed 11–16–90; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 91045–0006]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure to directed fishing in the Aleutian Islands subarea; request for comments.

SUMMARY: The Secretary of Commerce is establishing a directed fishing allowance for pollock in the Aleutian Islands subarea and is prohibiting further directed fishing for pollock by vessels fishing in that area from 12 noon, Alaska local time (A.l.t.), November 14, 1990, through December 31, 1990. This action is necessary to prevent the total allowable catch (TAC) for pollock in the Aleutian Islands subarea from being exceeded before the end of the year. The intent of this action is to ensure optimum use of groundfish while conserving pollock stocks.

DATES: Effective from noon, A.l.t., November 14, 1990, through midnight, A.l.t., December 31, 1990.

Comments are invited on or before November 29, 1990.

ADDRESSES: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802, or be delivered to Federal Building Annex, suite 6, 9109 Mendenhall Mall Road, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Bering Sea/Aleutian Islands Groundfish (FMP) governs the groundfish fishery in the exclusive economic zone within the Bering Sea and Aleutian Islands (BSAI) Management Area under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council and is implemented by regulations at 50 CFR 611.93 and part 675.

Section 675.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 1.4 to 2.0 million metric tons (mt) for all groundfish species in the BSAI Management Area. The TACs for target species and the "other species" category are specified annually within the OY range and apportioned by subarea under § 675.20(a)(2).

The 1990 initial TAC specified for pollock in the Aleutian Islands subarea is 85,000 mt, all of which was apportioned to DAP (55 FR 1434, January 16, 1990). By earlier notices, the Secretary prohibited any further DAP directed fishing for pollock and Pacific cod in the aggregate with trawl gear other than pelagic trawl gear in the entire BSAI area when the secondary prohibited species catch allowance of Pacific halibut (3,966 mt) was reached (55 FR 27643, July 5, 1990; 55 FR 33715, August 17, 1990). Currently, the Regional Director is establishing a directed fishing allowance for all gear of 82,000 mt for pollock in the Aleutian Islands subarea. The directed fishing allowance of 82,000 mt for pollock in the Aleutian Islands subarea will be reached on November 14, 1990. Therefore, pursuant to § 675.20(a)(8), the Regional Director is prohibiting further directed fishing for

pollock in the Aleutian Islands subarea effective 12 noon, A.l.t., November 14, 1990.

After the closure date, in accordance with § 675.20(h) (1) and (5), amounts of pollock retained on board vessels in the Aleutian Islands subarea must be less than 20 percent of the aggregate catch of the other fish or fish products retained at the same time on the vessel during the same trip. The previous closure published at 55 FR 27843 (July 5, 1990) remains in effect for vessels fishing with trawl gear other than pelagic trawl gear.

Classification

This action is taken under §§ 675.20(a)(8), (h)(1), and (h)(5) and is the compliance with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide for prior notice and comment or to delay the effective date of this notice. The entire TAC for pollock in the Aleutian Islands subarea will be reached unless this notice takes effect promptly. If this should happen, all pollock taken in the area by other fisheries would be required to be discarded, resulting in considerable wastage. However, interested persons are invited to submit comments in writing to the previously cited address for a period of 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801, et seq.

Dated: November 14, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 90-27216 Filed 11-14-90; 2:12 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 223
Monday, November 19, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Docket Nos. AO-144-A14-ROI and FV-90-102FR]

Lemons Grown in California and Arizona; Termination of Proceeding on Proposed Amendment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule and termination of proceeding.

SUMMARY: This action terminates the proceeding on a proposed amendment of the Federal marketing order regulating lemons grown in California and Arizona. Public hearing sessions were held by the U.S. Department of Agriculture (Department) in 1983 and 1984 to consider proposed changes to the lemon marketing order. After the hearing sessions, the Department received numerous comments and briefs expressing widely divergent views on many of the changes proposed in the proceeding. On the basis of the hearing record, the Department issued a Recommended Decision in 1985. Exceptions to the Recommended Decision were received from numerous sectors of the industry which, once again, expressed divergent views on the proposals. After careful consideration of the entire rulemaking record, the Department is unable to conclude that the proposed amendment described in the Recommended Decision would tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601 *et seq.*], hereinafter referred to as the "Act." Accordingly, the Department has determined to withdraw the proposed rule and to terminate the proceeding.

EFFECTIVE DATE: November 19, 1990.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2528-S, P.O. box 96456, Washington, DC 20090-6456; telephone: (202) 382-1754.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of hearing issued on January 10, 1983, and published in the **Federal Register** on January 13, 1983 [48 FR 1508]; amended notice of hearing issued on January 20, 1983, and published in the **Federal Register** on January 26, 1983 [48 FR 3624]; notice of opportunity to comment on proposed rulemaking issued on September 30, 1983, and published in the **Federal Register** on October 6, 1983 [48 FR 45565]; notice of reopened hearing issued on December 8, 1983, and published in the **Federal Register** on December 13, 1983 [48 FR 55472]; notice of an additional hearing session issued on January 27, 1984, and published in the **Federal Register** on February 1, 1984 [49 FR 4004]; extension of time for filing briefs issued on July 11, 1984, and published in the **Federal Register** on July 13, 1984 [49 FR 28566]; further extension of time for filing briefs issued on September 18, 1984, and published in the **Federal Register** on September 20, 1984 [49 FR 36862]; notice of recommended decision and opportunity to file exceptions issued on July 31, 1985, and published in the **Federal Register** on August 7, 1985 [50 FR 31850]; and extension of time for filing of exceptions to recommended decision issued on August 27, 1985, and published in the **Federal Register** on August 30, 1985 [50 FR 35238].

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and therefore is not subject to the requirements of Executive Order 12291 and Departmental Regulation 1512-1.

Preliminary Statement

This proceeding is conducted pursuant to the Act, and the applicable rules of practice and procedure governing the formulation and amendment of marketing agreements and orders [7 CFR part 900].

On November 18, 1982, the Lemon Administrative Committee (LAC), which locally administers the marketing order for California/Arizona lemons, requested that the Department hold a public hearing to consider proposed changes to the lemon marketing order. Proposals made by the LAC and other interested persons were included in the notice of hearing published in the **Federal Register** on January 13, 1983. The first session of the public hearing was subsequently held during February 14-18, 1983, in Oak View, California.

After analyzing the hearing record, the Department concluded that additional evidence was needed concerning the proposed changes initially under consideration as well as additional changes subsequently proposed by the LAC and other interested persons. Thus, four more public hearing sessions were held as follows: January 10-16, 1984, in Ventura, California; January 18-20, 1984, in Yuma, Arizona; January 23-27, 1984, in Bakersfield, California; and February 13-20, 1984, in Ventura, California. Following the additional hearing sessions, numerous comments were submitted to the Department expressing widely divergent views on many of the proposed changes.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service, on August 2, 1985, filed with the Hearing Clerk, U.S. Department of Agriculture, a recommended decision setting forth various proposed changes to the marketing agreement and order and provided an opportunity to file written exceptions thereto by September 6, 1985. Due to the many substantial issues raised in the exceptions, the deadline for the receipt of written exceptions was extended to October 7, 1985. Eleven exceptions were filed expressing widely divergent views.

Withdrawal of Proposed Rule and Termination of Proceeding

The Department has carefully considered the entire rulemaking record including the testimony and evidence presented at the hearing, the comments and briefs filed following the hearing, and the exceptions filed to the recommended decision. Based upon a thorough review of the proposed amendment and of the rulemaking record for this proceeding, the Department is unable to conclude that the proposed amendment specified in the recommended decision would tend to effectuate the declared policy of the Act, as amended. Accordingly, the proposed rule issued August 2, 1985, is withdrawn and the proceeding is hereby terminated.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: November 9, 1990.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 90–27151 Filed 11–16–90; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138, and 1139

[Docket No. AO–160–A66, etc; DA–90–024]

Milk in the Middle Atlantic and Other Marketing Areas; Emergency Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR Part	Marketing area	AO Nos.
1004	Middle Atlantic	AO-160-A66
1001	New England	AO-14-A65
1002	New York-New Jersey	AO-71-A78
1005	Carolina	AO-388-A2
1006	Upper Florida	AO-355-A25
1007	Georgia	AO-366-A32
1011	Tennessee Valley	AO-251-A34
1012	Tampa Bay	AO-347-A31
1013	Southeastern Florida	AO-286-A38
1030	Chicago Regional	AO-361-A27
1032	Southern Illinois-Eastern Missouri	AO-313-A36
1033	Ohio Valley	AO-166-A59
1036	Eastern Ohio-Western Pennsylvania	AO-179-A54
1040	Southern Michigan	AO-225-A41
1044	Michigan Upper Peninsula	AO-299-A25
1046	Louisville-Lexington-Evansville	AO-123-A61
1049	Indiana	AO-319-A37
1050	Central Illinois	AO-355-A26
1064	Greater Kansas City	AO-23-A59
1065	Nebraska-Western Iowa	AO-86-A46
1068	Upper Midwest	AO-178-A44
1075	Black Hills, South Dakota	AO-246-A20
1076	Eastern South Dakota	AO-260-A29
1079	Iowa	AO-296-A40
1093	Alabama-West Florida	AO-366-A10
1094	New Orleans-Mississippi	AO-103-A62
1096	Greatern Louisiana	AO-257-A39
1097	Memphis, Tennessee	AO-219-A45
1098	Nashville, Tennessee	AO-184-A54
1099	Paducah, Kentucky	AO-183-A44
1106	Southwest Plains	AO-210-A51
1108	Central Arkansas	AO-243-A42
1120	Lubbock-Plainview, Texas	AO-328-A29
1124	Pacific Northwest	AO-368-A18
1126	Texas	AO-231-A69
1131	Central Arizona	AO-271-A28
1132	Texas Panhandle	AO-362-A39
1134	Western Colorado	AO-301-A21
1135	Southwestern Idaho-Eastern Oregon	AO-380-A8
1137	Eastern Colorado	AO-326-A25
1138	Rio Grande Valley	AO-335-A35
1139	Great Basin	AO-309-A29

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This emergency decision changes the formula for computing butterfat differentials in all Federal milk marketing orders. The change in the formula is based on industry proposals that were considered at a public hearing held on July 31, 1990, in Alexandria, Virginia. The changes to all orders are necessary to reflect current marketing conditions in that the current formula for computing butterfat differentials no longer adequately reflects the value of butterfat in the marketplace. The formula change lowers butterfat differentials and results in placing more of the value of milk on the skim milk portion and less value on the butterfat. Also the formula recognizes changes in both butter and skim milk prices.

The Secretary of Agriculture will determine whether producers favor the issuance of the proposed amended order.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would reduce the regulatory burden of handlers and minimize the economic impact on producers.

Prior documents in this proceeding:

Notice of Hearing: Issued July 5, 1990; published July 11, 1990 (55 FR 28403).

Supplemental Notice of Hearing: Issued July 17, 1990; published July 23, 1990 (55 FR 29853).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Middle Atlantic and certain other marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR part 900), at Alexandria, Virginia, on July 31, 1990. Notices of such hearing were issued on July 5, 1990 (55 FR 28403) and July 17, 1990 (55 FR 29853).

Interested parties were given until August 15, 1990, to file post-hearing briefs on the proposals as published in the hearing notice and on whether the proposals should be considered on an expedited basis.

The material issues on the record of the hearing relate to:

1. Changing the formula for computing butterfat differentials.

2. Whether emergency marketing conditions exist that would warrant the omission of a recommended decision and the opportunity to file written exceptions with respect to issue No. 1.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Changing the Formula for Computing Butterfat Differentials

All Federal orders should be amended to provide for a new formula for calculating butterfat differentials that are used to adjust payments to producers for the butterfat content of their milk. Also, the same resulting butterfat differential would be used to adjust the Minnesota-Wisconsin price to 3.5 percent butterfat content. Such adjusted Minnesota-Wisconsin price is the "basic formula" price for determining class price for milk under all Federal orders. The revised formula reduces butterfat differentials and thus results in placing more of the value of milk on the skim milk portion and less value on the butterfat. Also, the formula provides a mechanism that recognizes the varying values of butterfat and skim milk as the values of these components of milk fluctuate.

Under Federal orders, blend prices to producers are announced for milk that contains 3.5 percent butterfat. Butterfat differentials are used to adjust such prices when the milk being paid for contains more or less than 3.5 percent butterfat. The prices are increased or decreased, respectively, for each one-tenth of one percent variation from 3.5 percent butterfat content. Thus, for milk that contains 4.0 percent butterfat, for example, the prices are increased to reflect the extra value of the additional half pound of butterfat in one hundred pounds of milk.

Since milk is paid for on a hundredweight basis, the price adjustment to recognize the additional half pound of butterfat must also recognize the fact that there is one-half pound less of skim milk in the one hundred pounds of milk. Under the current application of butterfat differentials, the differentials represent the difference between the value of a tenth of a pound of butterfat and a tenth of a pound of skim milk in a hundredweight of milk. As a result, the value of a tenth of a pound of butterfat is the butterfat differential plus the value of a tenth of a pound of skim milk.

Most Federal orders do not specify a butterfat differential that is applicable to class prices to handlers. However, since handlers are required to pay producers for their milk on the basis of its butterfat content, they must reflect in some manner the cost of butterfat in the various uses of milk. Thus, a handler's minimum order cost for surplus butterfat is likely to be the surplus class price adjusted by the producer butterfat differential. In terms of the cost of a pound of surplus butterfat, a handler's cost thus would be the butterfat differential times ten plus the cost of a pound of skim milk in a hundredweight of milk that is priced in surplus use.

The producer butterfat differential is currently based on the price of butter and in most orders is computed by multiplying the Chicago Grade A (92-score) bulk butter price per pound by a factor of .115. Thus, for May of 1990, with a butter price of 96.95 cents per pound, the butterfat differential was 11.4 cents per tenth of a pound of butterfat. Also, all Federal orders utilize a butterfat differential to adjust the Minnesota-Wisconsin price to 3.5 percent butterfat content for use as the basic formula price for establishing minimum class prices for handlers. Such butterfat differential is computed by multiplying the Chicago butter price by a factor of .120 and in May 1990 was 11.9 cents for a tenth of a pound of butterfat.

Current butterfat differentials are dependent upon changes in only one variable, the price of butter, while a handler's cost for surplus butterfat depends upon the surplus class price level and the relative values of butterfat and skim milk. Consequently, an increase in the basic formula price can result in an increase in the cost of butterfat even if the price of butter and the resulting butterfat differential remain the same. This can occur because the increase in the skim milk value is added to the butterfat differential to reflect the minimum order cost for butterfat. For example, between October and November 1989 the basic formula price increased by 82 cents per hundredweight while the butter price remained at $1.205 per pound, with a constant butterfat differential of 12.9 cents. Thus, the cost of a pound of surplus butterfat increased by almost a cent per pound even though the butter price remained constant.

Since the current formulas for establishing butterfat differentials only recognize one variable, the minimum cost of butterfat under Federal orders can become distorted relative to the value of butter. Basically, industry proponents representing both producer and handler interests contend that such a situation currently exists and that a formula to establish a butterfat differential that considers both butterfat and skim milk values must be implemented on an emergency basis in all Federal orders. Industry representatives contend that the current formula for establishing butterfat differentials no longer reflects the value of butterfat, is resulting in substantial losses in handling surplus butterfat, is causing disorderly marketing conditions and that the problem is a result of the changes in the relative values of butter and nonfat dry milk under the Price Support Program and in the marketplace. As a result, two proposals were considered at an emergency hearing to revise the formula for computing butterfat differentials. Both proposals would result in lowering the cost of butterfat under current conditions and are based on an identical method to recognize the relative values of butterfat and skim milk in establishing a butterfat differential.

One of the proposals was submitted by Agri-Mark, Inc., the largest cooperative association that represents producers under the New England order. The other proposal was submitted by the Milk Industry Foundation/International Ice Cream Association, a trade association that represents fluid milk processors and ice cream makers throughout the United States, and by Prairie Farms Dairy, Inc., a cooperative association that represents producers and operates or manages 27 dairy processing plants. Both proposals utilize the same procedure to develop a formula for computing butterfat differentials to be used under all orders. The two formulas yield different results only because of the use of a different beginning assumption concerning the value of cream relative to the price of butter and because of the use of different butter prices in the calculations. These differences, which are explained later in this decision, are relatively minor. As a result, the primary issue of changing the formula to compute the butterfat differential, as well as the methodology to establish such formula, is the same under both proposals. In addition, all hearing participants testified in support of the methodology or to the need to adopt a revised formula because of substantial losses that are being incurred in handling surplus butterfat.

All participants testified that losses are being incurred in marketing surplus cream because current butterfat differentials overstate the value of butterfat in the marketplace. In addition to those previously mentioned, proponents include Allied Federated Cooperatives, Cabot Farmers' Cooperative, Dairylea Cooperative, Eastern Milk Producers Cooperative, St. Albans Cooperative Creamery, Upstate Milk Cooperative, Mid-America Dairymen, Associated Milk Producers/Morning Glory Farms Region, Milk Marketing, Inc., Florida Dairy Farmers' Association and Michigan Milk Producers Association. Such cooperative associations represent a substantial number of dairy farmers under a number of Federal orders.

Testimony in support of the proposed methodology or the need to change the butterfat differential formula was presented also by the National Milk Producers Federation, National All-Jersey, Inc. and the American Jersey Cattle Club. Representatives of proprietary handlers, including Dean Foods, Inc., Kroger Company, Frigo Cheese Corporation, Borden, Inc., Marigold Foods, Inc., and Kraft General Foods, Inc., similarly testified in support of the proposed changes. Also a representative of the United States Cheese Makers Association, the American Producers of Italian Type Cheese Association, the Wisconsin Cheese Makers Association and the Ohio Swiss Cheese Association testified in support of the proposed changes.

No one who testified or who filed subsequent briefs opposed changing the current formulas for establishing butterfat differentials.

Numerous examples of the current problems associated with the marketing of surplus cream as a result of current butterfat differentials were presented at the hearing. Agri-Mark testified that in May 1990, with a basic formula price of $12.78 per hundredweight and a butterfat differential of 11.4 cents, the cost of eight-tenths of a pound of butterfat that is used to produce a pound of butter was $.9823. Such cost was about equal to the support price for butter but was almost two cents above the market price for Grade A butter of $.9650 on the Chicago Mercantile

Exchange. As a result, butter manufactueres with their own producer milk or handlers with surplus cream incurred substantial losses on surplus cream since there was no margin between the cost of butterfat and the price of butter. Agri-Mark testified that such losses occurred during the previous months of 1990 and were continuing at the time of the hearing, and were likely to continue in the future if no change were made in the formula to compute the butterfat differential.

Agri-Mark presented data showing the production margin (the difference between the price of a pound of butter and the cost of butterfat used to produce butter) over a period of time. From 1980 through 1986 the price of a pound of butter exceeded the butterfat cost by 6 to 8 cents. Agri-Mark testified that in 1989 the margin fell to below 5 cents as a result of changes in the relationship of the price of butter and nonfat dry milk under the Price Support Program on April 1 and July 1 of that year. Also, Agri-Mark testified that the price support adjustments in 1990 have exacerbated the problem. On a monthyly basis the margin dropped to 1.4 cents in November 1989 and has average 1.5 cents for January through July of 1990 on the basis of the calculation method used by Agri-Mark. For the months of May, June and July, the Chicago butter price was less than 1 cent above the ingredient cost of butterfat.

Agri-Mark testified that a 1989 Cornell University study indicated that the cost of butter production averages 13 cents per pound but falls as low as 5.7 cents per pound for large plants operating at 100 percent of capacity. As a result, Agri-Mark testified that the recent losses incurred by butter manufacturers were obviously substantial when there was little or no margin between the ingredient cost of butterfat and the price of butter. Agri-Mark further testified that such losses are not incurred on cream purchases from other handlers because butter manufacturers lower the price for cream purchased from other handlers. The losses then are incurred by the handlers selling the cream since they are required to pay the minimum order prices for butterfat. It was Agri-Mark's position that some handlers are changing their purchasing patterns to minimize their losses and Agri-Mark anticipates that handlers will reduce their milk purchases from producers and purchases only enough raw milk to cover their butterfat needs. Agri-Mark contends that the current cost of butterfat is causing chaotic and unstable marketing conditions.

The Milk Industry Foundation/International Ice Cream Association (MIF) also testified that substantial losses are being incurred because the current method for computing butterfat differentials overstates the value of butterfat and its cost to processors. MIF testified that although the disposal of excess butterfat has been an ongoing, major concern to processors, the situation is becoming even more critical as consumers more and more shift to the use of low-fat dairy products. MIF noted that on the basis of the basic formula price, the butter price and the butterfat differential for June 1990, a fluid milk processor would lose about $3,150 on each tanker load of cream. MIF testified that this loss would occur because the minimum Federal order cost for a load of cream would total $26,170. Such cost is based on both the minimum order cost of the butterfat ($1.2232 per pound) and the cost of the skin ($.0932 per pound) in a tanker load of 40 percent cream that contains 19,200 pounds of butterfat and 28,800 pounds of skim milk. MIF indicated that such load of cream could only be sold for $23,014 since the value of the cream in butter is worth 1.22 times the butter price. On a national basis, MIF estimated that such a loss represents almost $80 million per year for the fluid milk industry.

Prairie Farms Dairy, Inc. (Prairie Farms), also testified that it incurs substantial losses in handling surplus cream and that such losses have been increasing dramatically. Prairie Farms testified that in June 1989 its losses on a tanker load of cream due to Federal order pricing were about $1,500. For June 1990, Prairie Farms testified that the loss per load was about $3,100. For the period of January 1990 through June, Prairie Farms estimated that its total losses due to Federal order pricing exceeded $2.7 million.

All other handlers who appeared at the hearing testified on the substantial losses that are being incurred in marketing surplus cream. Also, all testified that such losses are a direct result of the current method employed under Federal orders to establish butterfat differentials. These handlers, as well as the proponents, contended that a new method for establishing butterfat differentials must be implemented to recognize that the cost of butterfat depends upon both butterfat and skim milk values.

In this regard, Agri-Mark testified that the current formula of .115 times the butter price to establish a butterfat differential was established almost two decades ago in most Federal orders. At that time, Agri-Mark noted that the butter price was about 70 cents per pound while the skim milk price was about $1.84 per hundredweight. In June 1990, the butter price was 89 cents per pound, representing a 40 percent increase, while the skim milk price had increased by about 400 percent to $9.32 per hundredweight. Agri-Mark testified that the butterfat differential should change in response to changes in both butter and skim milk values since a butterfat differential represents the difference between the value of butterfat and the value of skim. In fact, Agri-Mark testified that the primary reason that the butterfat differential needs to be adjusted is because the current formula has no mechanism to account for the higher skim milk value.

MIF also presented examples of the inability of the current formula for computing butterfat differentials to recognize an appropriate cost of butterfat in terms of its use in butter. The examples assume different butter and basic formula price changes and the resulting changes that would be incurred by handlers in marketing surplus cream. The first MIF calculation assumes a butter price of $1.0925 per pound which results in a butterfat differential of $.1256 under the current formula. With a basic formula price of $13.28 per hundredweight, the resulting costs per pound of butterfat and skim milk would be $1.3448 and $0.0888, respectively. Thus the minimum Federal order cost for a tanker load of 40 percent cream would be $28,347 (19,200 pounds of butterfat times $1.3448 plus 28,800 pounds of skim milk times $0.0888). The value of the surplus cream in the marketplace at 1.22 times the butter price would equal $25,591, indicating a loss of $2,756 by MIF's calculations.

MIF noted that if the butter price were to drop to $0.9625 per pound, while the basic formula price stayed the same, the butterfat differential would drop to $0.113 and the costs per pound of butterfat and skim milk would be $1.2232 and $0.0932, respectively. Thus, the minimum Federal order cost for a tanker load of 40 percent cream would be $26,170 while the value of the cream sold at 1.22 times the butter price would be $23,014. Consequently, even with a butter price and butterfat differential decrease, the loss on a tanker load of cream would increase to more than $3,501.

These examples merely indicate what was shown previously, namely, that the cost of butterfat depends upon both butter and skim milk values while the butterfat differential depends only on changes to the butter price.

The previous examples clearly indicate that the formula for computing butterfat differentials should be revised. A preponderance of evidence indicates that the current procedure results in a butterfat differential that establishes a cost for butterfat that is excessive in view of its value in butter, which is the primary use for surplus butterfat. Consequently, significant losses are being incurred in marketing an increasing supply of surplus cream. In addition, it is clear that any revised formula must incorporate the skim milk value that is associated with butterfat that is marketed as surplus cream.

As previously stated, both proposals rely on the same methodology to derive a formula to compute a butterfat differential. Both of the proposals result in the use of a skim milk value as well as a butter price in establishing a butterfat differential. The use of such a formula would not have resulted in a substantial difference from the butterfat differentials that existed under the current formula during 1980 through 1988. For example, under the Agri-Mark proposal, the proposed butterfat differential would have averaged one-tenth of a cent less than the actual butterfat differentials during such period, with a range of minus two-tenths of a cent to plus one-tenth of a cent. Also, on a monthly basis from January 1989 through June 1990, the actual and proposed butterfat differentials were fairly close until the fall of 1989, when the support price for butter was reduced and the Minnesota-Wisconsin price was increased. During this period, the proposed differential was as much as 1.6 cents less than the actual differential in December 1989. Thus, the proposal provides for a change in the butterfat differential as the prices of both butter and skim milk change and provides a mechanism to continually adjust to the relative values of butter and skim milk.

In order to reflect both the butter and skim milk values in the butterfat differential, the formula adopted herein includes a factor times the butter price minus a factor times the Minnesota-Wisconsin price at test. The factors that are used to multiply the respective prices are derived from an algebraic equation that relates the value of cream to the price of butter (cream-to-butter price ratio) to the cost of skim milk and butterfat. The end result of solving the equation is the adopted formula for the butterfat differential. Such formula is:

Butterfat differential = (.138 × Butter price) − (.0028 × M–W Price at test)

The derivation of the formula begins with the recognition that the current cost of a pound of butterfat to a handler is the butterfat differential times 10 plus the cost of one pound of skim milk that is priced in surplus use, as previously explained. In addition, it is recognized that surplus cream that contains 40 percent butterfat also contains 60 percent skim milk. Thus, there are 1.5 pounds of skim milk associated with each pound of butterfat in 40 percent cream. Consequently, a handler's cost of cream that contains one pound of butterfat is equal to the cost of 1.5 pounds of skim milk plus the cost of one pound of butterfat. Since the cost of a pound of butterfat includes the cost of one pound of skim milk, the cost of a pound of butterfat in cream (cream value) is equal to the cost of 2.5 pounds of skim milk plus the butterfat differential times 10, or:

Cream value = value of 2.5 lbs. skim + (BF Diff × 10).

The value of 2.5 pounds of skim milk is the cost of a hundredweight of skim milk times 2.5 percent, or:

Cream value = (.025 × Skim price) + (BF Diff × 10).

The hundredweight skim milk cost is the same as is currently defined, namely, the hundredweight cost of surplus milk adjusted by a butterfat differential to reflect the absence of butterfat. For example, the surplus value of a hundredweight of skim milk is the M–W price minus the butterfat test times 10 times the butterfat differential. The butterfat test is multiplied by 10 since the butterfat differential applies to each 10th of a pound (point) of butterfat. Thus, milk that tests 3.67 percent butterfat (3.67 pounds of butterfat in a hundredweight of milk) contains 36.7 points of butterfat.

In this regard, a constant 3.67 percent butterfat test is assumed in the methodology to derive the butterfat differential formula. The assumption of a constant butterfat test, which was utilized under each of the proposals, simplifies the process and provides for the use of a constant butterfat differential formula. Absent such a constraint, a varying butterfat test would require a monthly derivation of the formula during those months when the butterfat test is significantly different from the annual average butterfat content.

In equation form, the skim milk value in the M–W price is:

Skim milk value = M–W Price − (BF% × BF Diff. × 10), with the butterfat test held constant at 3.67.

Substituting this skim milk value in the previous cream value equation results in the following:

Cream value = .025 × (M–W Price − (3.67 × 10 × BF Diff.)) + (BF Diff × 10),

Multiplying these numbers results in the following:

Cream value = .025 × M–W Price − .9175 BF Diff + 10 BF Diff., or

Cream value = .025 × M–W Price + 9.0825 BF Diff.

In order to solve this equation for the butterfat differential formula, it is only necessary to determine an appropriate cream-to-butter price ratio to be used in the equation. In this regard, virtually all parties who participated at the hearing testified that cream is sold on the basis of some factor times the butter price since the value of butter influences the value of butterfat in cream. The factors testified to at the hearing ranged from less than 1.20 to more than 1.30 times the butter price, depending on supply/demand conditions, the seasons of the year and the ultimate products in which the cream would be used. In the context of the value of cream in butter, however, only the two factors (or ratios) that were proposed are relevant to the issue. Agri-Mark proposed that a factor of 1.25 be used since it represents the value at butter plants, while MIF proposed that a factor of 1.22 be used since it represents the surplus value of butterfat at a distributing plant.

MIF, and others, testified that a cream-to-butter price ratio of 1.22 yields a butterfat differential formula that provides a breakeven point to milk processors on the sale of surplus cream. Such parties testified that using the higher factor of 1.25 represents the value of cream at a butter plant and thus includes transportation costs that result in losses to milk processors.

Agri-Mark acknowledged that surplus cream is worth less at a distributing plant than at a butter plant. However, Agri-Mark also testified that a 1.25 ratio of cream to the butter price is a standard used by Agri-Mark and other butter manufacturers. Furthermore, Agri-Mark testified that there is a strong historical basis for such a ratio in that it averaged 1.25 during 1980 through 1988, with a range of 1.24 to 1.26 under Federal orders. The cream-to-butter ratio increased to 1.29 for 1989 when butter and skim milk price relationships changed. Agri-Mark also testified that significant amounts of cream are utilized in other uses than butter at facilities that generally are not as distant from fluid processing plants as are butter plants. Consequently, Agri-Mark testified that the lower ratio, which would result in a lower butterfat differential, should not be used since it could encourage inefficient movements of surplus cream while metropolitan handlers should be

encouraged to find local outlets for surplus cream.

A cream-to-butter price ratio of 1.25 should be used to derive the butterfat differential formula. There is a strong historical basis for the use of such a factor as indicated previously by data presented at the hearing. Furthermore, it is noted from testimony presented at the hearing that cream is sold at factors in excess of 1.25 times the butter price for use in products other than butter. Consequently, fluid milk processors should be encouraged to seek such outlets for surplus cream to the extent possible. Also, there is no evidence to suggest that a ratio of 1.22 has any historical justification.

A cream-to-butter price ratio of 1.25 provides the final component that is necessary to derive the butterfat differential formula. All that is necessary is to divide the previous cream value equation by the butter price as follows:

$$\frac{\text{Cream value}}{\text{Butter price}} = \frac{(.025 \times \text{M–W Price}) + 9.0625 \text{ BF Diff.}}{\text{Butter Price}}$$

With a constant ratio of 1.25, the equation is as follows:

$$1.25 = \frac{(.025 \times \text{M–W Price}) + 9.0625 \text{ BF Diff.}}{\text{Butter Price}}$$

Solving for the butterfat differential formula yields the following:

(1.25 × Butter Price) = (.025 × M–W Price) + 9.0625 BF Diff.

(1.25 × Butter Price) – (.025 × M–W Price) = 9.0625 BF Diff.

Dividing each side of the equation by 9.0625 yields the butterfat differential formula:

(.138 × Butter Price) – (.025 × M–W Price) = Butterfat Differential

The use of such equation in all orders will result in lowering the butterfat differential and will reflect the value of butterfat in the marketplace. The formula adjusts to changes in the values of both butterfat and skim milk.

The price per pound of butter that is used in the formula should be the Chicago Mercantile Exchange price for Grade A (92-score) butter rather than the Chicago butter price that is currently used to calculate butterfat differentials. The use of such price was proposed by MIF while Agri-Mark proposed the continued use of the Chicago butter price. Most of the witnesses at the hearing supported a change to the Mercantile price. It is noted that the Mercantile price is currently utilized in the Class II price formula on the basis of a final decision that was issued on July 8, 1981 (46 FR 36151) of which official notice was taken at the hearing.

The only basis presented by Agri-Mark for continued use of the Chicago butter price is that such price takes into account the support price for butter. Since a significant proportion of butter is sold to the Commodity Credit Corporation, Agri-Mark contended that the support price should continue to be considered in determining butter prices. In this regard, the support price for butter is obviously a factor that affects the butter price on the Chicago Mercantile Exchange.

The Chicago butter price is estimated by the Agricultural Marketing Service as a result of its use under Federal orders. The estimated price itself is based on the Exchange price. On the other hand, the Chicago Mercantile price for butter is an actual price on a regulated exchange. Also, most witnesses were familiar with and relied on the Exchange price for butter as a basis for selling cream.

Since the Exchange price appears to be more readily relied upon as an indicator of butter and cream values by the industry, such price should be used in the butterfat differential formula. A monthly average of the butter price should be computed by the Director of the Dairy Division from the prices of the Chicago Mercantile as reported and published weekly by the Dairy Division, Agricultural Marketing Service. A reported price should be used for that day and all following days of the month until a different price is reported. Such procedure results in utilizing a butter price for each day of each month to compute a monthly average price.

The Minnesota-Wisconsin price is used in the butterfat differential formula as the skim milk value. The monthly price at its announced butterfat test must obviously be used for this purpose since the price at 3.5 percent butterfat content, or any other test, will not be known until after a butterfat differential is computed. The computed butterfat differential will be used to adjust prices to producers for butterfat content as well as to adjust the Minnesota-Wisconsin price to 3.5 percent butterfat for use as the basic formula price in establishing class prices to handlers. Currently, different butterfat differentials are used for the two different adjustments. The application of two different butterfat differentials should be discontinued as proposed.

The primary issue involved in revising the butterfat differential formula is that the current formulas result in establishing a cost for butterfat that is excessive in terms of the value of butter. Consequently, it would be inconsistent to recognize such fact in the producer butterfat differential and ignore the same fact in adjusting the Minnesota-Wisconsin price to 3.5 percent butterfat for use as the basic formula price under Federal orders. To continue to use two different butterfat differentials would result in establishing two different costs for butterfat when the evidence establishes that current butterfat costs are excessive.

The formula adopted herein results in establishing a lower butterfat differential. As a result of using a lower butterfat differential to adjust the Minnesota-Wisconsin price, the basic formula price will be somewhat higher than would otherwise be the case if the butterfat test of the announced Minnesota-Wisconsin price exceeds 3.5 percent butterfat. However, such an increase in the basic formula price would basically offset a decrease in producer prices for milk that contains more than 3.5 percent butterfat. Actually, record evidence indicates that the application of the lower butterfat differential to both prices results in essentially no change in total dollars paid to producers. Although there will be little change in aggregate dollars paid, there will be some redistribution of payments to producers. The difference in payments between high-test and low-test producers will narrow as high-test producers will receive somewhat less than currently while low-test producers will receive somewhat more than currently due to the application of a lower butterfat differential. This occurs because a lower butterfat differential places a lesser value on butterfat and greater value on skim milk. Such a redistribution is consistent with the shift in values between butterfat and skim milk in the marketplace and under the Price Support Program.

A number of orders currently specify that the basic formula price shall not be less than $4.33 for the purpose of computing Class I prices. However, such a "floor price" is not included in orders that have been promulgated in recent years, and it has been eliminated in a number of amended orders. Although the level of the basic formula price was not an issue in this proceeding, the $4.33 is not included in the regulatory language accompanying this decision in order to recognize that such a "floor price" is outdated and serves no useful purpose.

The amendatory language for most of the orders includes the revised butterfat differential in the section of the order (which is not the same in all orders) that specifies the butterfat differential that is used to adjust prices to producers. The section pertaining to the basic formula price specifies the butterfat differential to be used by referencing the appropriate section of the order that contains the butterfat differential formula.

A number of conforming changes are necessary in three Federal orders to incorporate the revised butterfat differential formula and to carry out the objective of recognizing a cost for butterfat that is consistent with the price of butter. Two of the orders, Michigan Upper Peninsula (part 1044) and Black Hills, South Dakota (part 1075), currently provide for handler butterfat differential adjustments to class prices and a producer butterfat differential that is a weighted average of the handler adjustments. Such orders are being revised to provide for one butterfat differential and as a result a number of sections in each of the orders are revised. These revisions include the deletion of the computation of the weighted average butterfat content of producer milk, the adjustment to a handler's net pool obligation to reflect the butterfat content of producer milk as well as the requirements to compute and announce handler butterfat differentials.

Different modifications are necessary for the Great Basin order (part 1139) which provides for a component pricing plan. Such order does not provide for a producer butterfat differential but rather provides for the calculation of a butterfat price per pound and a skim milk price per hundredweight. The order does, however, provide for the use of a butterfat differential to adjust the Minnesota-Wisconsin price to 3.5 percent butterfat to determine the basic formula price. Consequently, the revised butterfat differential formula is being included in the section of the order that determines the basic formula price. Such butterfat differential, in conjunction with the basic formula price, is then used to compute the price per pound of butterfat and the price per hundredweight of skim milk. These modifications obtain the same results as the butterfat differential formula that is to be applicable in other orders.

2. Emergency Marketing Conditions.

Evidence presented at the hearing clearly establishes that current butterfat differentials are resulting in costs for butterfat that are excessive in terms of current butter prices. As a result, handlers are incurring substantial losses in the marketing of surplus cream. Consequently, the issuance of a recommended decision and the opportunity to file written exceptions is being omitted as requested by all parties who testified at the hearing. Emergency action is clearly needed to implement the revised formula at the earliest possible date.

In view of the situation, amended orders will be issued as soon as the required procedures are completed to ascertain whether producers favor the issuance of the amended orders. In this regard, it is noted that the butterfat differential is announced on the fifth day of the month and applies to milk marketed during the previous month. Consequently, any order published on or before the fifth of the month will be applicable to milk marketed the previous month. Such application is consistant with the current application of these provisions.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when each of the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the aforesaid marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire

decision and the two documents annexed hereto be published in the Federal Register.

Referendum Order to Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that referendums be conducted and completed on or before the 25th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the orders as amended and as hereby proposed to be amended, regulating the handling of milk in the New York-New Jersey, Eastern Ohio-Western Pennsylvania, Louisville-Lexington-Evansville, Alabama-West Florida, Georgia, and Nashville, Tennessee marketing areas is approved or favored by producers, as defined under the terms of the orders (as amended and as hereby proposed to be amended), who during the representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

The representative period for the conduct of such referendums is hereby determined to be May 1990 for the New York-New Jersey order and September 1990 for the Eastern Ohio-Western Pennsylvania, Louisville-Lexington-Evansville, Alabama-West Florida, Georgia, and Nashville, Tennessee orders.

The agents of the Secretary to conduct such referendums are hereby designated to be the respective market administrators of the aforesaid orders.

Determination of Producer Approval and Representative Periods for All Other Orders

May 1990 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the New England and Middle Atlantic marketing areas, August 1990 for Chicago Regional, and September 1990 for orders regulating the handling of milk in all other marketing areas except those for which a referendum is provided, is approved or favored by producers, as defined under the terms of each of the orders (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138 and 1139

Milk marketing orders.

Signed at Washington, DC, on November 9, 1990.

John E. Frydenlund,
Deputy Assistant Secretary, Marketing and Inspection Services.

Order Amending the Orders Regulating the Handling of Milk in the Middle Atlantic and Other Marketing Areas

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid orders.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

1. The authority citation for 7 CFR parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138, and 1139 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

2. Section 1004.51 is revised to read as follows:

§ 1004.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1004.74 shall be used.

3. Section 1004.74 is revised to read as follows:

§ 1004.74 Butterfat differential.

In making payments to producers and cooperative associations required pursuant to § 1004.73, each handler shall add for each one-tenth of 1 percent of average butterfat content above 3.5 percent, or may deduct for each one-tenth of 1 percent of average butterfat content below 3.5 percent, as a butterfat differential an amount per hundredweight which shall be computed by the market administrator as follows: Round to the nearest one-tenth cent, 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

4. Section 1001.51 is revised to read as follows:

§ 1001.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1001.76(b) shall be used.

5. Section 1001.76(b) is revised to read as follows:

§ 1001.76 Butterfat differential.

* * * * *

(b) Round to the nearest one-tenth cent, 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

6. Section 1002.50 is revised to read as follows:

§ 1002.50 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1002.81 shall be used.

7. Section 1002.81 is revised to read as follows:

§ 1002.81 Butterfat differential.

The butterfat differential for the adjustment of prices as specified in this part shall be plus or minus for each one-tenth of 1 percent of butterfat therein above or below 3.5 percent an amount computed as follows: Round to the nearest one-tenth cent, 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1005—MILK IN THE CAROLINA MARKETING AREA

8. Section 1005.51 is revised to read as follows:

§ 1005.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1005.74 shall be used.

9. Section 1005.74 is revised to read as follows:

§ 1005.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

10. Section 1006.51 is revised to read as follows:

§ 1006.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1006.74 shall be used.

11. Section 1006.74 is revised to read as follows:

§ 1006.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1007—MILK IN THE GEORGIA MARKETING AREA

12. Section 1007.51 is revised to read as follows:

§ 1007.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants

in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1007.74 shall be used.

13. Section 1007.74 is revised to read as follows:

§ 1007.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices for base and excess milk shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

14. Section 1011.51 is revised to read as follows:

§ 1011.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1011.74 shall be used.

15. Section 1011.74 is revised to read as follows:

§ 1011.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price(s) shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

16. Section 1012.51 is revised to read as follows:

§ 1012.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1012.74 shall be used.

17. Section 1012.74 is revised to read as follows:

§ 1012.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

18. Section 1013.51 is revised to read as follows:

§ 1013.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1013.74 shall be used.

19. Section 1013.74 is revised to read as follows:

§ 1013.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

20. Section 1030.51 is revised to read as follows:

§ 1030.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1030.74 shall be used.

21. Section 1030.74 is revised to read as follows:

§ 1030.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1032—MILK IN THE SOUTHERN ILLINOIS-EASTERN MISSOURI MARKETING AREA

22. Section 1032.51 is revised to read as follows:

§ 1032.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1032.74 shall be used.

23. Section 1032.74 is revised to read as follows:

§ 1032.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

24. Section 1033.50 is revised to read as follows:

§ 1033.50 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1033.73 shall be used.

25. Section 1033.73 is revised to read as follows:

§ 1033.73 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent at a rate (rounded to the nearest one-tenth cent) determined by multiplying 0.138 by the butter price less 0.002 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

26. Section 1036.51 is revised to read as follows:

§ 1036.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1036.74 shall be used.

27. Section 1036.74 is revised to read as follows:

§ 1036.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent at a rate (rounded to the nearest one-tenth cent) determined by multiplying 0.138 by the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

28. Section 1040.51 is revised to read as follows:

§ 1040.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1040.74 shall be used.

29. Section 1040.74 is revised to read as follows:

§ 1040.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the

daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1044—MILK IN THE MICHIGAN UPPER PENINSULA MARKETING AREA

§ 1044.18 [Removed and Reserved]

30. Section 1044.18 is removed and reserved.

31. Section 1044.22 is amended by revising paragraphs (i)(1)(i), (i)(1)(ii), (i)(1)(iii) and (i)(2) to read as follows:

§ 1044.22 Additional duties of the market administrator.

* * * * *

(i) * * *

(1)(i) The Class I price for the following month;

(ii) The butterfat differential for the preceding month;

(iii) The Class II price for the preceding month; and

(2) The 12th day of each month the uniform price for the proceeding month;

* * * * *

32. Section 1044.46(c) is revised to read as follows:

§ 1044.46 Allocation of skim milk and butterfat classified.

* * * * *

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class.

33. Section 1044.50 is revised to read as follows:

§ 1044.50 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to 1044.62 shall be used.

§ 1044.52 [Removed and Reserved]

34. Section 1044.52 is removed and reserved.

35. Section 1044.61(a) is revised to read as follows:

§ 1044.61 Computation of uniform price.

* * * * *

(a) Add the value obtained pursuant to 1044.60;

* * * * *

36. Section 1044.62 is revised to read as follows:

§ 1044.62 Butterfat differential.

The applicable uniform prices to be paid pursuant to § 1044.70 shall be increased or decreased for each one-tenth of one percent which the butterfat content of milk is above or below 3.5 percent respectively, by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

37. Section 1046.51 is revised to read as follows:

§ 1046.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1046.74 shall be used.

38. Section 1046.74 is revised to read as follows:

§ 1046.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1049—MILK IN THE INDIANA MARKETING AREA

39. Section 1049.51 is revised to read as follows:

§ 1049.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential as specified in § 1049.74 shall be used.

40. Section 1049.74 is revised to read as follows:

§ 1049.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

41. Section 1050.51 is revised to read as follows:

§ 1050.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1050.74 shall be used.

42. Section 1050.74 is revised to read as follows:

§ 1050.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

43. Section 1064.51 is revised to read as follows:

§ 1064.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1064.74 shall be used.

44. Section 1064.74 is revised to read as follows:

§ 1064.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

45. Section 1065.51 is revised to read as follows:

§ 1065.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1065.74 shall be used.

46. Section 1065.74 is revised to read as follows:

§ 1065.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

47. Section 1068.51 is revised to read as follows:

§ 1068.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1068.74 shall be used.

48. Section 1068.74 is revised to read as follows:

§ 1068.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1075—MILK IN THE BLACK HILLS, SOUTH DAKOTA MARKETING AREA

§ 1075.22 [Removed and Reserved]

49. Section 1075.22 is removed and reserved.

50. Section 1075.27 is amended by revising paragraphs (j)(1)(i), (j)(1)(ii), (j)(1)(iii) and (j)(2) to read as follows:

§ 1075.27 Additional duties of the market administrator.

* * * * *

(j) * * *

(1)(i) The Class I price for the following month;

(ii) The butterfat differential for the preceding month; and

(iii) The Class II price for the preceding month; and

(2) The 10th day of each month, the uniform price for the proceeding month;

* * * * *

51. Section 1075.46(c) is revised to read as follows:

§ 1075.46 Allocation of the skim milk and butterfat to each class.

* * * * *

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class.

52. Section 1075.50 is revised to read as follows:

§ 1075.50 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1075.81 shall be used.

§ 1075.52 [Removed and Reserved]

53. Section 1075.52 is removed and reserved.

54. Section 1075.70(a) is revised to read as follows:

§ 1075.70 Computation of the net pool obligation of each handler.

* * * * *

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1075.46(c), by the applicable class prices (adjusted pursuant to § 1075.53);

* * * * *

§ 1075.71 [Amended]

55. In § 1075.71 paragraph (b) is removed and paragraphs (c) and (d) are redesignated as (b) and (c) respectively.

56. Section 1075.81 is revised to read as follows:

§ 1075.81 Butterfat differential.

The uniform price to be paid shall be increased or decreased for each one-tenth of 1 percent that the butterfat content of the milk is above or below 3.5 percent, respectively, at a rate determined by rounding to the nearest one-tenth cent, 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

57. Section 1076.51 is revised to read as follows:

§ 1076.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1076.74 shall be used.

58. Section 1076.74 is revised to read as follows:

§ 1076.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1079—MILK IN THE IOWA MARKETING AREA

59. Section 1079.51 is revised to read as follows:

§ 1079.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1079.74 shall be used.

60. Section 1079.74 is revised to read as follows:

§ 1079.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month.

The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported

PART 1093—MILK IN THE ALABAMA-WEST FLORIDA MARKETING AREA

61. Section 1093.51 is revised to read as follows:

§ 1093.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1093.74 shall be used.

62. Section 1093.74 is revised to read as follows:

§ 1093.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price(s) shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as

reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

63. Section 1094.51 is revised to read as follows:

§ 1094.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1094.74 shall be used.

64. Section 1094.74 is revised to read as follows:

§ 1094.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

65. Section 1096.51 is revised to read as follows:

§ 1096.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1096.74 shall be used.

66. Section 1096.74 is revised to read as follows:

§ 1096.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1097—MILK IN THE MEMPHIS, TENNESSEE MARKETING AREA

67. Section 1097.51 is revised to read as follows:

§ 1097.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1097.74 shall be used.

68. Section 1097.74 is revised to read as follows:

§ 1097.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1098—MILK IN THE NASHVILLE, TENNESSEE MARKETING AREA

69. Section 1098.51 is revised to read as follows:

§ 1098.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1098.74 shall be used.

70. Section 1098.74 is revised to read as follows:

§ 1098.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1099—MILK IN THE PADUCAH, KENTUCKY MARKETING AREA

71. Section 1099.51 is revised to read as follows:

§ 1099.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1099.74 shall be used.

72. Section 1099.74 is revised to read as follows:

§ 1099.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

73. Section 1106.51 is revised to read as follows:

§ 1106.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1106.74 shall be used.

74. Section 1106.74 is revised to read as follows:

§ 1106.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

75. Section 1108.51 is revised to read as follows:

§ 1108.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1108.74 shall be used.

76. Section 1108.74 is revised to read as follows:

§ 1108.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1120—MILK IN THE LUBBOCK-PLAINVIEW, TEXAS MARKETING AREA

77. Section 1120.51 is revised to read as follows:

§ 1120.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1120.74 shall be used.

78. Section 1120.74 is revised to read as follows:

§ 1120.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

79. Section 1124.51 is revised to read as follows:

§ 1124.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1124.74 shall be used.

80. Section 1124.74 is revised to read as follows:

§ 1124.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1124.74 shall be used.

PART 1126—MILK IN THE TEXAS MARKETING AREA

81. In § 1126.51 is revised to read as follows:

§ 1126.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1126.74 shall be used.

82. Section 1126.74 is revised to read as follows:

§ 1126.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

83. Section 1131.51 is revised to read as follows:

§ 1131.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1131.74 shall be used.

84. Section 1131.74 is revised to read as follows:

§ 1131.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1132—MILK IN THE TEXAS PANHANDLE MARKETING AREA

85. Section 1132.51 is revised to read as follows:

§ 1132.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1132.74 shall be used.

86. Section 1132.74 is revised to read as follows:

§ 1132.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1134.74 shall be used.

PART 1134—MILK IN THE WESTERN COLORADO MARKETING AREA

87. Section 1134.51 is revised to read as follows:

§ 1134.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1134.74 shall be used.

88. Section 1134.74 is revised to read as follows:

§ 1134.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per

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hundredweight, at test, for manufacturing grade milk, fob. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

89. Section 1135.51 is revised to read as follows:

§ 1135.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1135.74 shall be used.

90. Section 1135.74 is revised to read as follows:

§ 1135.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent of one percent variation from 3.5 percent by a butterfat differential rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

91. Section 1137.51 is revised to read as follows:

§ 1137.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to 1137.74 shall be used.

92. Section 1137.74 is revised to read as follows:

§ 1137.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1138—MILK IN THE RIO GRANDE VALLEY MARKETING AREA

93. Section 1138.51 is revised to read as follows:

§ 1138.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1138.74 shall be used.

94. Section 1138.74 is revised to read as follows:

§ 1138.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

95. Section 1139.50 is amended by revising paragraphs (d) and (f) to read as follows.

§ 1139.50 Class prices and component prices.

* * * * *

(d) The butterfat price per pound shall be the total of: (1) The skim milk value per hundredweight for the month, computed pursuant to paragraph (f) of this section, divided by 100; and (2) the butterfat differential for the month, computed pursuant to § 1139.51(a) multiplied by 10.

(e) * * *

(f) The skim milk price per hundredweight shall be the basic formula price for the month less an amount computed by multiplying the butterfat differential computed pursuant to 1139.51(a) by 35.

96. Section 1139.51(a) is revised to read as follows:

§ 1139.51 Basic formula price.

(a) The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, fob. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

* * * * *

United States Department of Agriculture

Agricultural Marketing Service

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ —[1] to —, all inclusive, of the order regulating the handling of milk in the said marketing area (7 CFR parts [2]) which is annexed hereto; and

II. The following provisions:

§ [3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ [3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In witness whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature)
By
(Name) (Title)
(Address)
(Seal)
Attest
Date

[1] First and last sections of the respective orders.
[2] Appropriate part number.
[3] Next consecutive section number.

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BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-218-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which currently requires repetitive inspections for cracks of the forward entry doorway forward frame, repair if necessary, and an optional terminating modification. This action would require repetitive inspections of airplanes previously modified. This proposal is prompted by reports of cracking of the forward entry doorway forward frame of airplanes previously modified. This condition, if not corrected, could result in loss of the structural integrity of the forward entry doorway.

DATES: Comments must be received no later than January 10, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-218-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2772. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-218-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On April 1, 1988, the FAA issued AD 83-03-01 R1, Amendment 39-5283 (51 FR 11713, April 7, 1986), to require repetitive inspections of the forward entry doorway forward frame for cracks, and repair, if necessary. An optional terminating modification was included in the AD. That action was prompted by numerous reports of fatigue cracks originating in the frame web. This condition, if not corrected, could result in loss of structural integrity of the forward entry doorway.

Since issuance of that AD, there have been reports of cracking of the forward entry doorway forward frame on airplanes that have incorporated the terminating modification specified in AD 83-03-01 R1.

The FAA has reviewed and approved Boeing Service Bulletin 727-53-0153, Revision 5, dated December 14, 1989, which describes the procedures for inspection, repair, and modification of the forward entry doorway forward frame. The new modification described in this revision to the service bulletin consists of a reinforcement of the door frames.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 83-03-01 R1 with a new airworthiness directive that would retain the inspection requirements of AD 83-03-01 R1, and add repetitive inspections for airplanes previously modified in accordance with earlier revisions of the service bulletin previously described. The new modification specified in Revision 5 of the service bulletin is included as an optional terminating action for the required inspections.

There are approximately 336 Model 727 series airplanes that have been modified in accordance with Boeing Service Bulletin 727-53-0153, or Revisions 1 through Revision 4, in the worldwide fleet. It is estimated that 245 airplanes of U.S. registry would be affected by this AD, that it would take approximately 58 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $568,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-5283 (51 FR 11713, April 7, 1986), AD 83-03-01 R1, with the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes, listed in Boeing Service Bulletin 727-53-0153, Revision 5, dated December 14, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure the structural integrity of the forward entry doorway forward frame, accomplish the following:

A. Visually inspect the forward entry doorway frame for cracks in accordance with Boeing Service Bulletin 727-53-0153, dated February 1, 1980, or Revisions 1 through 5 of that Service Bulletin, at the earlier of the times indicated in subparagraphs A.1. or A.2. of this AD, and repeat the inspection at intervals not to exceed 3,700 landings:

1. Within the next 1,850 landings after March 11, 1983 (the effective date of Amendment 39-4561), or prior to accumulating 25,000 landings, whichever occurs later; or

2. Within the next 1,850 landings after May 16, 1986, (the effective date of Amendment 39-5283), or prior to accumulating 15,000 landings, whichever occurs later.

B. For airplanes modified in accordance with Boeing Service Bulletin 727-53-0153, dated February 1, 1980, or Revisions 1 through Revision 4 of that Service Bulletin, dated November 8, 1985, conduct the inspections described in paragraph A. of this AD prior to the accumulation of 10,000 landings after the modification or within the next 3,700 landings after the effective date of this AD, whichever occurs later. Repeat the inspection at intervals not to exceed 3,700 landings.

C. Cracked structure must be repaired prior to further flight, in accordance with Boeing Service Bulletin 727-53-0153, Revision 5, dated December 14, 1989, or earlier FAA-approved revisions of that Service Bulletin. Repair in accordance with Revisions 2 through 5 of the service bulletin constitutes terminating action for the requirements of this AD.

D. Modification in accordance with Boeing Service Bulletin 727-53-0153, Revision 5, dated December 14, 1989, constitutes terminating action for the requirements of this AD.

E. For the purpose of complying with this AD, subject to acceptance by the assigned FAA Principal Maintenance Inspector, the number of landings may be determined by dividing each airplane's number of hours time-in-service by the operator's fleet average time from takeoff to landing for the airplane type.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 7, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27165 Filed 11-16-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-235-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which would require disconnecting the stall warning contoured airframe heaters from the essential busbars and reconnecting them to the non-essential busbars. This proposal is prompted by a report that, in the event of a single transformer rectifier unit (TRU) failure, a potential for overload exists on the remaining TRU. This condition, if not corrected, could result in the loss of all DC (battery) electrical power.

DATES: Comments must be received no later than January 10, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-235-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-235-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model ATP series airplanes. During a system review, the manufacturer determined that, in the event of a single transformer rectifier unit (TRU) failure, a potential for overload exists on the remaining TRU. TRU's provide power for all DC (battery) loads, including power to recharge the main batteries. This condition, if not corrected, could result in the loss of all DC electrical power.

British Aerospace has issued Service Bulletin ATP-27-18, Revision 1, dated January 31, 1990, which describes procedures to disconnect the stall warning contoured airframe heaters from the essential 28V DC busbars and reconnecting them to the non-essential busbars. This modification will prevent the potential overload situation. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require disconnecting the stall warning contoured airframe heaters from the essential 28V DC busbars and reconnecting them to the non-essential busbars, in accordance with the service bulletin previously described.

It is estimated that 15 airplanes of U.S. registry would be affected by this AD, that it would take approximately four manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for required parts is $168. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,920.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment:

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the rules docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model ATP series airplanes, Serial Numbers 2002 through 2018, inclusive, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent the loss of all DC electrical power, accomplish the following:

A. Within 60 days after the effective date of this AD, disconnect the stall warning contoured airframe heaters from the essential 28V DC busbars and reconnect them to the non-essential busbars, in accordance with the Accomplishment Instructions in British Aerospace Service Bulletin ATP-27-18, Revision 1, dated January 31, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest

Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Issued in Seattle, Washington, on November 7, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–27168 Filed 11–16–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–NM–234–AD]

Airworthiness Directives; British Aerospace Model BAe 125–800A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all British Aerospace Model BAe 125–800A series airplanes, which would require a one-time visual inspection of the left and right main landing gear (MLD) side stay to wing pick-up fitting for adequate clearance; a visual inspection to detect distortion of the left and right MLG side stay center pivot; and a dye penetrant inspection to detect cracks in the left and right MLG side stay attachment lugs; and repair, if necessary. This proposal is prompted by reports of damage to various MLG components due to severe vibration on takeoff and landing. This condition, if not corrected, could result in reduced structural integrity of the MLG.

DATES: Comments must be received no later than January 10, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–234–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 227–2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90–NM–234–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all British Aerospace Model BAe 125–800A series airplanes. There have been recent reports of damage to various components of the main landing gear (MLD) due to severe vibration on takeoff and landing. This includes cracks in the MLG side stay attachment lug; failure of the aft lug in the MLG side stay mounting fitting; and excessive wear of the MIG side stay center pivot, which can lead to distortion of the attaching nut. These conditions, if not corrected, could result in reduced structural integrity of the MLG.

British Aerospace has issued the following service bulletins:

(1) Service Bulletin 32–227, dated August 30, 1990, which describes procedures for inspections to detect damage, wear, and cracking in the MLG side stay assemblies and torque link assemblies, and repair, if necessary.

(2) Service Bulletin 32–224, Revision 1, dated August 30, 1990, which describes procedures for an inspection of the MLG side stay to wing pick-up fitting for required clearance, and repair, if necessary.

(3) Service Bulletin 32–225, dated May 30, 1990, which describes procedures for an inspection to detect distortion of the MLG sidestay center pivot, and repair, if necessary.

(4) Service Bulletin 57–72, dated January 28, 1990, which describes procedures for a dye penetrant inspection to detect cracking in the MLG side stay attachment lug, and repair, if necessary.

The United Kingdom CAA has classified these service bulletins as mandatory.

It should be noted that British Aerospace Service Bulletin 32–227 references British Aerospace Service Bulletin 32–222, which is not addressed in this proposed rule since a separate airworthiness directive has been issued to address it [reference AD 90–21–22, Amendment 39–6772 (55 FR 41513, October 12, 1990)].

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require a one-time inspection of the left and right MLG side stay to wing pick-up fitting for adequate clearance, an inspection to detect distortion of the left and right MLG side stay center pivot, and a dye penetrant inspection to detect cracks in the left and right MLG side stay attachment lugs, and repair, if necessary, in accordance with the service bulletins previously described.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

It is estimated that 108 airplanes of U.S. registry would be affected by this AD, that it would take approximately 36 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $155,520.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to all Model BAe 125–800A series airplanes, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished.

To detect damage to main landing gear (MLG) components and to prevent reduced structural integrity of the MLG, accomplish the following:

A. Perform a visual inspection of the left and right MLG side stay to wing pick-up fitting for adequate clearance, in accordance with British Aerospace Service Bulletin 32–224, Revision 1, dated August 30, 1990.

1. If clearance is less than 0.025 inch, prior to further flight, perform a dye penetrant inspection and repair, in accordance with British Aerospace Service Bulletin 57–72, dated January 28, 1990, and then proceed to paragraph B. of this AD.

2. If there is a minimum clearance of 0.025 inch around the full circumference, prior to further flight, proceed to paragraph B. of this AD.

B. Disassemble, clean, lubricate, and reassemble and recheck clearance in accordance with British Aerospace Service Bulletin 32–224, Revision 1, dated August 30, 1990.

1. If a minimum clearance of 0.025 inch does not exist, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Airplane Transport Directorate.

2. If there is a minimum clearance of 0.025 inch, proceed to paragraph C. of this AD.

C. Unless accomplished in accordance with paragraph A.1. of this AD, perform a dye penetrant inspection of the left and right MLG side stay attachment lugs, in accordance with British Aerospace Service Bulletin 57–72, dated January 28, 1990.

1. If a crack is found, prior to further flight, repair in accordance with paragraph 2.A.(5) of the service bulletin, and repeat dye penetrant inspection to ensure all cracks have been removed.

2. If cracks are still evident, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA Transport Airplane Directorate.

3. If no cracks are found, prior to further flight, thoroughly degrease the blended area, restore protective treatment and surface finish, reinstall side stay assembly, and torque tighten upper side stay locating pin retaining nut to 500 inch-pounds +/− 50 inch-pounds in accordance with paragraphs 2.A. (9) and (10) of the service bulletin.

D. Perform a visual inspection of the left and right MLG side stay center pivot for distortion, in accordance with British Aerospace Service Bulletin 32–225, dated May 30, 1990.

1. If distortion is less than 0.002 inch, prior to further flight, reinstall nut to side stay center pivot, in accordance with paragraph 2.A.(3) of the service bulletin.

2. If distortion is greater than 0.002 inch, prior to further flight, discard nut and replace with new nut, in accordance with paragraphs 2.A.(4) through 2.A.(9) of the service bulletin.

3. If a side stay center pivot nut was found to be distorted and was replaced, prior to further flight, remove the affected side stay from the airplane, disassemble, and perform the following, in accordance with British Aerospace Service Bulletin 32–227, dated August 30, 1990:

a. Conduct a visual inspection for cracks using an 8X magnifying glass.

b. Conduct an eddy current inspection of the upper side stay assembly.

c. Conduct a magnetic particle inspection of the lower side stay assembly.

4. If cracked parts are found, prior to further flight, replace with new parts having the same part numbers, and accomplish the following:

a. Restore protective treatment, bond any detached washers, replace any worn or damage items, and reassemble side stay upper arm to lower arm, and reinstall side stay on airplane in accordance with the service bulletin.

b. Perform adjustment/test procedures in accordance with the service bulletin.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM–113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM–113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 8, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–27169 Filed 11–16–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–NM–118–AD]

Airworthiness Directives; Short Brothers, PLC, Model SD3–30 and SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice proposes to amend an earlier proposed airworthiness directive (AD), applicable to all Short Brothers, PLC, Model SD3–30 series airplanes and certain Model SD3–60 series airplanes, which would have required changing the power source for the pitot/static heaters from the shedding busbars to the associated main busbars. This proposal would amend the proposed AD by clarifying the accomplishment procedures to ensure that proper methods are used to change the power source for the pitot/static heaters from the shedding busbars to the associated main busbars. This proposal would also reduce the compliance time.

DATES: Comments must be received no later than December 20, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane

Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-118-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202-3719. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-118-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations, which would have required changing the power source for the pitot/static heaters from the shedding busbars to the associated main busbars, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on August 14, 1990 (55 FR 33135).

That NPRM was prompted by recent reports of loss of electrical power to the pitot/static heaters due to a generator failure. This condition, if not corrected, could result in incorrect airspeed and altitude information being provided to the pilot and/or co-pilot in the event of a generator or engine failure in certain flight conditions.

One commenter, the Air Line Pilots Association (ALPA), supported the proposed rule but recommended that the compliance time be reduced to 60 days. The FAA concurs. Upon further review of the available data, the FAA has determined that the compliance time for this AD action should be reduced from the proposed 4,800 hours time-in-service to 60 days in order to ensure the safety of the fleet, in light of the serious consequences of erroneous airspeed and altitude information provided to pilots under certain flight conditions.

Since a reduction in the proposed compliance time would expand the scope of the proposed rule, the FAA has determined that it is necessary to revise the Notice accordingly and provide additional time for public comment.

Additionally, since the issuance of the NPRM, Short Brothers has issued Service Bulletin SD360-24-18, Revision 2, dated September 14, 1990, and Service Bulletin SD360-24-25, Revision 1, dated September 14, 1990, which recommend a reduction in the suggested compliance times and corrects the procedures to change the power source for the pitot/static heaters from the shedding busbars to the associated main busbars. The FAA has determined that it is appropriate to cite these latest revisions as the service information documents applicable to this AD action. In doing so, the FAA has deleted previously proposed paragraph D., since the procedures that would have been required by that paragraph are now incorporated in Revision 2 of Service Bulletin SD340-24-18.

This airplane model is manufactured in United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

It is estimated that 120 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required modification kit will be provided to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $31,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising the Notice of Proposed Rulemaking, Docket No. 90-NM-118-AD, FR Doc. 90-19060, published in the **Federal Register** on August 14, 1990 (55 FR 33135).

Short Brothers, PLC: Applies to all Model SD3-30 series airplanes; and Model SD3-60 series airplanes, Serial Numbers SH3601 through SH3762, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent loss of power to the pitot/static heaters and subsequent incorrect airspeed and altitude information being provided to the pilot and/or co-pilot in the event of a generator or engine failure, accomplish the following:

A. For Model SD3-30 series airplanes: Within 60 days after the effective date of this AD, revise the power source for the pitot/static heaters, in accordance with the Accomplishment Instructions in Short Brothers Service Bulletin SD330-24-25, Revision 1, dated September 14, 1990.

B. For Model SD3-60 series airplanes, Serial Numbers SH3601 through SH3661, inclusive, and SH3663 through SH3685, inclusive: Within 60 days after the effective date of this AD, revise the power source for the pitot/static heaters, in accordance with part A of the Accomplishment Instructions of Short Brothers Service Bulletin SD360-24-18, Revision 2, dated September 14, 1990.

C. For Model SD3-60 series airplanes, Serial Numbers SH3662 and SH3686 through SH3762, inclusive: Within 60 days after the effective date of this AD, revise the power source for the pitot/static heaters, in accordance with Part B of the Accomplishment Instructions of Short Brothers Service Bulletin SD360-24-18, Revision 2, dated September 14, 1990.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Shorts Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202-3719. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Seattle, Washington, on November 8, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27167 Filed 11-16-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-071-89]

RIN 1545-AO61

Limitations on Passive Activity Losses and Credits; Developer Rule Amendments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations that amend previously issued temporary regulations concerning the limitations on passive activity losses and passive activity credits. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Comments and requests for a public hearing must be delivered by February 19, 1991. These regulations are proposed to apply for taxable years beginning after December 31, 1987.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, room 4429, Washington, DC 20044 (Attn: CC:CORP:T:R (PS-071-89)).

FOR FURTHER INFORMATION CONTACT: Dexter A. Johnson at 202-566-4751 (not a toll-free number), or at Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, room 4229, Washington, DC 20044 (Attn: CC:CORP:T:R (PS-071-89)).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amends § 1.469-2T(f)(5) in title 26 of the Code of Federal Regulations. Section 1.469-2T(f)(5) excludes certain net income and gain from passive activity gross income. This document proposes to adopt the temporary regulations as final regulations. Accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations explains the proposed and temporary rules.

For the text of the temporary regulations, see T.D. 8318, published in the Rules and Regulations portion of this issue of the **Federal Register**.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably a signed original and seven copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be scheduled and held upon written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Dexter A. Johnson of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing regulations on matters of both substance and style.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 90-27121 Filed 11-16-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Montana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSM is announcing receipt of additional explanatory information pertaining to a previously proposed amendment to the Montana permanent regulatory program (hereinafter, the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information pertains to design precipitation event standards for structures that control runoff from the area above and from the surface of

waste disposal structures, as proposed in the June 19, 1990 amendment submittal.

This notice sets forth the times and locations that the Montana program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.s.t. December 4, 1990.

ADDRESSES: Written comments should be mailed or hand-delivered to Guy Padgett at the address listed below.

Copies of the Montana program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holiday. Each requester may receive one copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82601-1918, Telephone: (307) 261-5776

Montana Department of State Lands, Reclamation Division, Capitol Station, 1625 Eleventh Avenue, Helena, MT 59620, Telephone: (406) 444-2074.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Casper Field Office, on telephone number (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Montana program can be found in the April 1, 1980 **Federal Register** (45 FR 21560). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.12, 926.15, and 926.16.

II. Proposed Amendment

By letter dated June 19, 1990 (administrative record No. MT-7-01), Montana submitted a proposed amendment to its program pursuant to SMCRA. Montana submitted the proposed amendment at its own initiative in response to changes to the Montana program and mining conditions in the State and to more closely comply with current Federal regulations.

OSM published a notice in the July 11, 1990 **Federal Register** (55 FR 28414) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (administrative record No. MT-7-01). The public comment period ended August 10, 1990.

During its review of the amendment, OSM identified a concern relating to the use of a 24-hour design precipitation event standard for structures that control runoff from the area above and from the surface of waste disposal structures. The Federal regulations use a 6-hour design precipitation event standard. OSM notified Montana of the concerns by letter dated September 7, 1990 (administrative record No. MT-7-13). Montana responded in a letter dated October 29, 1990 by submitting additional explanatory information justifying the use of the 24-hour design precipitation event standard (administrative record No. MT-7-15).

III. Public Comment Procedures

OSM is reopening the comment on the proposed Montana program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Montana program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 7, 1990.

Richard E. Dawes,

Acting Assistant Director, Western Support Center.

[FR Doc. 90-27208 Filed 11-16-90; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 946

Virginia Regulatory Program; Ownership and Control Data; Improvidently Issued Permits

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Reopening and extension of comment period on proposed amendment.

SUMMARY: OSM is announcing the receipt of revisions to a previously proposed amendment to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter dated October 18, 1990 (Administrative Record No. VA-776), Virginia submitted additional information to both support and modify its proposed amendment dated June 29, 1990 (Administrative Record No. VA-752), relating to ownership and control data and improvidently issued permits. Accordingly, OSM is reopening and extending the public comment period on Virginia's June 29, 1990, proposed amendment. OSM will consider the new information, the existing proposed amendment, and any previous comments when making a final decision on the proposed amendment.

This notice sets forth the times and locations that the Virginia program and proposed amendment to the program are available for public inspection, the comment period during which interested parties may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is required.

DATES: Written comments must be received on or before 4 p.m. on December 4, 1990. If requested, a public hearing on the proposed amendment will be held on November 29, 1990; requests to present testimony at the hearing must be received on or before 4 p.m. November 26, 1990.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Mr. Douglas E. Stone, Acting Director, Big Stone Gap Field Office at the first address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Virginia program, proposed amendment, and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSM Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Drawer 1216, Powell Valley Square Shopping Center, room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523-4303.

Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone (703) 523-6100.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas E. Stone, Acting Director, Big Stone Gap Field Office, Telephone (703) 523-4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the Virginia program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval, can be found in the December 15, 1981 **Federal Register** (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of Proposed Amendment

By letter dated June 29, 1990 (Administrative Record No. VA-752), Virginia submitted a proposed amendment to its program pursuant to SMCRA. OSM announced in the August 7, 1990 **Federal Register** (55 FR 32100-32101) receipt of the amendment and invited public comment. By letter dated September 24, 1990 (Administrative Record No. VA-767), OSM notified Virginia of three items contained in the proposed amendment that required either clarification or revision. By letter dated October 18, 1990 (Administrative Record No. VA-776), Virginia submitted clarifications and revisions to the proposed amendment as described below.

1. Proposed rule VR 480-03-19.773.15(d)(1). OSM requested Virginia to clarify that it is interpreting this rule as applying to unabated enforcement actions and delinquent civil penalties incurred under any State or Federal program, not just those actions and penalties issued by OSM or Virginia. Virginia has provided this clarification.

2. Proposed rule VR 480-03-19.773.17(h). Virginia's proposed amendment required ownership and control data to be updated only after the State issued cessation orders. OSM requested Virginia to revise this rule to reference both Federal and State regulations. This rule requires that the ownership and control data be updated 30 days after a cessation order is issued regardless of the issuing authority. Virginia has revised this rule referencing both State and Federal regulations.

3. Proposed rule VR 480-03-19.773.20(b). OSM requested Virginia to submit "a policy statement or acknowledge that it will adhere to violations review criteria consistent with those set forth in the preamble to 30 CFR 773.20(b) (54 FR 18440-18441, April 28, 1989)." Virginia has responded that "Virginia will adhere to the violations review criteria that are set forth in the preamble to 30 CFR 773.20(b) to the extent they do not conflict with the criteria in effect in Virginia at the time the permit was issued."

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Virginia satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by close of business on November 26, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Big Stone Gap Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**". All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "**ADDRESSES**". A written summary of each public meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 9, 1990.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 90-27140 Filed 11-16-90; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. 89-18; Notice 03]

Intent To Prepare Environmental Impact Statement for Fuel Economy Program; Announcement of Public Scoping Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Announcement of public scoping meeting.

SUMMARY: On September 12, 1989, NHTSA published a notice of intent to prepare a programmatic Environmental Impact Statement (EIS) to address the environmental impacts of the Corporate Average Fuel Economy (CAFE) program for passenger cars and light trucks (55 FR 37702). In that notice, NHTSA announced that the agency would hold a public scoping meeting concerning the EIS. This notice announces the time and

location of the public scoping meeting and presents a draft outline of the EIS.

DATES: The public scoping meeting will be held on December 13, 1990, beginning at 9 a.m. Written comments on the outline of the EIS or the meeting must be received by NHTSA's docket section no later than December 27, 1990.

ADDRESSES: The public scoping meeting will be held at the Federal Aviation Administration Auditorium, Third Floor, 800 Independence Avenue, SW., Washington, DC. Written comments on the outline of the EIS or the meeting should refer to Docket No. 89-19; Notice 03 and be submitted to the following: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested that 10 copies be submitted. The Docket is open from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: All questions concerning the public scoping meeting should be directed to: Mr. Paul Spencer, Office of Market Incentives, NRM-21, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366-4794. Any other questions should be directed to Mr. Orron Kee, Office of Market Incentives, NRM-21, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366-0846.

SUPPLEMENTARY INFORMATION: Title V of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*) requires the Secretary of Transportation to administer a program for regulating the average fuel economy of new passenger cars and light trucks in the U.S. market. The authority to administer the program has been delegated by the Secretary to the Administrator of NHTSA.

NHTSA's general responsibilities with regard to fuel economy include (1) Establishing and amending average fuel economy standards for manufacturers of passenger cars and light trucks, as appropriate, (2) promulgating regulations concerning procedures, definitions, and reports necessary to administer the fuel economy standards, and (3) enforcing fuel economy standards and regulations.

Section 502 sets the CAFE standard for passenger cars at 27.5 mpg for model year (MY) 1985 and beyond. Section 502(a)(4) of the Act authorizes, but does not require, NHTSA to amend the 27.5 mpg standard for 1985 or any subsequent model year. If the standard is amended for a particular model year, it must be set at a level which is the maximum feasible average fuel economy for that year. In determining the maximum feasible average fuel economy level, the agency is required by section 502(e) of the Act to consider the following four factors: (1) Technological feasibility, (2) economic practicability, (3) the effect of other Federal motor vehicle standards on fuel economy, and (4) the need of the nation to conserve energy.

Pursuant to section 502(f)(2), any amendment that has the effect of making a CAFE standard more stringent must be promulgated at least 18 months prior to the beginning of the model year in question. The legislative history of the Act provides that amendments reducing a standard must be promulgated before the commencement of the model year in question.

The Act does not require absolute achievement of the standard by manufacturers for each model year. Instead, it allows a shortfall in one year (or years) to be offset if a manufacturer exceeds the standard for another year (or years). Credits for exceeding average fuel economy standards may be carried back for three model years, or carried forward for three model years. If a manufacturer still does not meet the standard after taking credits into account, it is liable to the Federal government for civil penalties under section 508.

Acting in accordance with the provisions discussed above, NHTSA has on several occasions reduced the statutory passenger car CAFE standard. It reduced the 27.5 mpg standard to 26.0 mpg for MY's 1986, 1987, and 1988, and to 26.5 mpg for MY 1989. On May 22, 1989, NHTSA issued a notice terminating a rulemaking proceeding that it had commenced to consider amending the standard for MY 1990. As a result, the standard for MY 1990 remained at the statutory level of 27.5 mpg. A detailed discussion of these rulemakings and the bases for the agency's decisions is found in the May 22, 1989 termination notice (54 FR 21985).

Although NHTSA's authority to amend the statutory standard for passenger cars is discretionary, the agency is required by section 502(b) of the Cost Savings Act to set standards each model year for light trucks. Such standards must be prescribed at least 18 months prior to the beginning of the affected model year. Following the same statutory criteria as for passenger car standards regarding selection of the maximum feasible level, in recent years NHTSA set the light truck standard at 20.0 mpg for MY 1986, 20.5 mpg for MY 1987 through MY 1989, 20.0 mpg for MY 1990, and 20.2 mpg for MY 1991 (alternative standards for 2-wheel drive and 4-wheel drive light trucks are also provided for each of those years). For MY 1992, NHTSA set the standard for light trucks at 20.2 mpg, without alternative standards for two-wheel drive and four-wheel drive trucks. A comprehensive discussion of the agency's decisions with regard to light truck fuel economy standards is found in the April 5, 1988 final rule setting light truck standards for MY's 1990 and 1991 (53 11090).

In the May 22, 1989 termination notice regarding the MY 1990 standard cars, MHTSA announced that the agency had determined that it would be appropriate to prepare a programmatic EIS. This programmatic EIS would address the possible cumulative environmental impacts of NHTSA's past and possible future actions relating to amending passenger car standards, as well as those from setting or amending standards for light trucks. In recent years, NHTSA has not prepared an EIS in connection with the CAFE program. Instead, on the basis of environmental assessments and supplements addressing the potential impacts of each proposed action, the agency concluded those actions would not have a significant environmental impact.

Under the Council on Environmental Quality (CEQ) regulations, the first step following an agency decision to prepare an EIS is to initiate the scoping process to identify significant issues and determine the scope of issues to be addressed. Therefore, on September 12, 1989, NHTSA published a notice of intent to prepare a programmatic EIS to address the environmental impacts of the CAFE program for passenger cars and light trucks (54 FR 37702). NHTSA requested comments on the types of impacts which should be analysis and their relative significance so that the detail of analyzed and their relative significance so that the detail of analysis may be geared to potential significance of impact. NHTSA also requested comments on the extent to which any mitigation measures are available to NHTSA in light of its statutory mandate to set CAFE standards at the maximum feasible level.

NHTSA received a number of comments on these issues. Based on those comments and other information, NHTSA has prepared a draft outline of the EIS which is presented below. The outline includes all significant environmental topics suggested by commenters. However, NHTSA did not include a number of non-environmental (*e.g.*, economic) matters suggested by commenters in the EIS outline. An agency is not required to evaluate non-environmental matters in an EIS. Further, NHTSA believes that non-environmental matters are best discussed in documents other than an EIS (*e.g.*, a Regulatory Impact Analysis.). NHTSA expects that the EIS will be completed in about two years. The completion of the EIS is contingent upon the availability of appropriated funds.

Public involvement and interagency coordination will be maintained throughout the development of the EIS. In the notice of intent, NHTSA announced that the agency would hold a public scoping meeting concerning the EIS. The public scoping meeting will begin at 9 a.m. on December 13, 1990 and will be held in the Federal Aviation Administration Auditorium, Third Floor, 800 Independence Avenue, SW., Washington, DC. Members of the public and interested Federal, state and local agencies are invited to attend the scoping meeting. Persons who wish to speak at the meeting should contact Mr. Paul Spencer (whose address and telephone number are provided near the beginning of this notice), no later than December 7, 1990. The request may be made by telephone or made in writing. If the request is mailed to Mr. Spencer, it should be received by December 7, 1990. Persons should indicate the estimated length of their presentation and whether they will need any special equipment, such as projectors. NHTSA reserves the right to limit the length of any presentation if necessary for the timely conclusion of the public meeting. A verbatim written transcript will be prepared of the meeting and will be available for public review in the docket indicated above. NHTSA will prepare a schedule of persons making presentations at the meeting, which will be available at the beginning of the meeting. If the schedule is prepared sufficiently far in advance of the meeting, NHTSA will send a copy of the schedule to all persons scheduled to speak at the meeting. However, NHTSA requests that all speakers be available to speak both earlier and later than scheduled since the meeting may not proceed precisely according to schedule.

The meeting will begin with NHTSA personnel briefly discussing the outline of the EIS and the agency plans for completing the EIS. Next, persons who have previously indicated an interest in speaking at the meeting, will speak in the order indicated in the schedule. A NHTSA official will serve as moderator of the meeting. A panel of NHSTA and cooperating agency personnel will hear the speakers and may ask questions at the conclusion of each presentation. Other meeting attendees will not be permitted to question speakers directly. However, meeting attendees may submit written questions to Mr. Spencer. The moderator may ask the questions of the speaker, at his or her discretion. Persons submitting questions should indicate their name and affiliation with the written questions.

Persons making oral presentations are requested to submit at least 15 copies of either the full text or an outline of their presentation to Mr. Spencer no later than December 12, 1990. This will aid NHTSA and cooperating agency personnel in asking questions of the persons speaking. Persons whose presentations include visual aids should submit copies of them to Mr. Spencer at the meeting. Copies of visual aids and written copies of presentations will be included in the docket indicated above. If time allows, when all scheduled speakers have finished their presentations, the moderator may allow persons to make additional brief remarks.

The following is a draft outline of the EIS:

Environmental Impact Statement Outline

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As indicated above, persons may submit written comments on the EIS outline or the meeting to the docket. It is requested but not required that 10 copies be submitted.

All comments should not exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary points in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address. To the extent possible, comments filed after the closing date will also be considered. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued: November 14, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-27248 Filed 11-14-90; 5:01 pm]

BILLING CODE 4910-59-M

Notices

Federal Register

Vol. 55, No. 223

Monday, November 19, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 90-219]

Safety Issues Related to Genetically Engineered Wheat and Corn; Public Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: A workshop will be held by the Keystone Center to identify and discuss biological and environmental safety issues related to small and large-scale plantings of genetically engineered wheat and corn.

DATES: The 3-day workshop will be held on December 6, 1990, from noon to 6 p.m., December 7, 1990, from 8 a.m. to 6 p.m., and December 8, 1990, from 8 a.m. to noon.

ADDRESSES: The workshop will be held at the Keystone Center in Keystone, Colorado. Workshop participants will be directed to appropriate conference rooms upon arriving at the center. No street address for the center exists, specific directions to the center and other logistical assistance can be obtained by contacting the Keystone Center representatives listed below under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: John R. Ehrmann or Denise Seibert, The Keystone Center, Box 606, Keystone, CO 80435, 303-468-5822, or Dr. Sivramiah Shantharam, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of regulated articles. A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for release into the environment of a regulated article.

The Keystone Center will hold a 3-day workshop to discuss biosafety issues associated with open and wind pollinated crops, specifically wheat and corn. APHIS believes it would be desirable to hold such a workshop to identify and discuss biological and environmental safety issues related to small and large-scale plantings of genetically engineered wheat and corn.

The 3-day workshop will focus on three major areas of discussion: (1) The potential for gene exchange with non-target organisms, (2) the potential environmental consequences of gene exchange, and (3) appropriate safeguards for preventing or monitoring gene exchange.

The workshop will be open to the public. Its goal is to provide an opportunity for open discussion of views concerning the above issues as they relate to genetically-engineered wheat and corn released into the environment.

A more detailed agenda and additional background information can be obtained by contacting the Keystone Center representatives listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 14th day of November 1990.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-27209 Filed 11-16-90; 8:45 am]

BILLING CODE 3410-34-M

Farmers Home Administration

Limiting to the Redelegation of Authority to Approve Debt Settlements and Releases of Liability in Connection With Voluntary Liquidations

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of redelegation of authority.

SUMMARY: On October 20, 1989, The Farmers Home Administration (FmHA) Administrator redelegated certain authorities to all State Directors dealing with the settlement of and/or release of liability on FmHA debts, owed by borrowers, who made application to settle their FmHA debts or requested release of liability. Notice of this redelegation was published in 54 FR 43840 (October 27, 1989). The redelegation authority granted on October 20, 1989, expired on September 30, 1990, and the Administrator now gives notice to renew that redelegation through September 30, 1991, but reduces the State Directors' approval authority not to exceed $1,000,000 (including principal, interest and other charges). All debt settlement/release of liability cases in excess of $1,000,000 must be submitted to the National Office for settlement/release of liability cases in excess of $1,000,000 must be submitted to the National Office for approval by the Administrator. This action is taken to expedite the processing of debt settlement applications/requests of borrowers who are unable to repay all of their FmHA debts. The effect of the extension of the redelegation of the Administrator's authority is the continued expediting of the administrative reivew process for debt settlements and releases of liability permitting more timely debt relief to FmHA borrowers, and to correspondingly reduce the Agency's portfolio of inactive uncollectible accounts.

EFFECTIVE DATES: October 1, 1990, through September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas B. Baden, Senior Loan Officer, Farmer Programs Loan Servicing Division, Farmers Home Administration, USDA, room 5437, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 475-4008.

SUPPLEMENTARY INFORMATION: The Catalog of Federal Domestic Assistance programs affected by this notice are:

10.410 Very Low and Low Income Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.428 Economic Emergency Loans

Notice: The notice of the delegation of authority for approving debt settlement/release of liability cases reads as follows:

This extends the authority given under the unnumbered memorandum dated October 20, 1989, entitled "Limiting the Redelegation of Authority for Approving Debt Settlement/Release of Liability Cases" but reduces the approval authority not to exceed $1,000,000 (including principal, interest and other charges). All debt settlement/release of liability cases in excess of $1,000,000 must be submitted to the National Office for approval by the Administrator.

Pursuant to authority delegated to me as Administrator, Farmers Home Administration, I hereby redelegate to State Directors approval authority not to exceed $1,000,000 (including principal, interest, and other charges) for the following:

1. Debt settlement cases in accordance with Section 1956.58(a) of FmHA Instruction 1956–B, "Debt Settlement-Farmer Programs and Single Family Housing, (Revised 7–29–87, PN 59)."

2. Release of liability cases in accordance with §§ 1955.10(f)(2) and 1955.20(b)(2) of FmHA Instruction 1955–A, "Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property."

3. Release of liability cases in accordance with § 1962.34(h) of FmHA Instruction 1962–A, "Servicing and Liquidation of Chattel Security," and §§ 1965.26(f)(5)(ii) and 1965.27(f) of FmHA Instruction 1965–A, "Servicing of Real Estate Security for Farmer Programs and Certain Note-Only Cases."

This authority DOES NOT extend to debt settlement of Nonprograms loans, Economic Opportunity loans, and claims against third-party converters.

This extension of the redelegation shall be effective through September 30, 1991, unless revoked or otherwise modified in writing. The authority delegated to the State Director cannot be further delegated.

Dated: October 30, 1990.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 90-27205 Filed 11-16-90; 8:45 am]

BILLING CODE 3410-07-M

Forest Service

Opening of the Oil Spill Public Information Center; Anchorage, AK

AGENCY: USDA, Forest Service.

ACTION: Information notice.

SUMMARY: Today's notice is provided to inform the public of the opening of the Oil Spill Public Information Center ("the Center" or "OSPIC") in Anchorage, Alaska. The Federal trustee agencies for the *Exxon Valdez* Oil Spill (the Departments of Agriculture and the Interior and the National Oceanic and Atmospheric Administration (NOAA)), the Department of Justice and the Environmental Protection Agency (EPA), and the State of Alaska are making oil spill-related information available to the public through the Center. Scientific data, restoration planning documents, and other information will be accessible, including material on injuries caused by the grounding of the *Exxon Valdez* on Bligh Reef in Prince William Sound on March 24, 1989. The "OSPIC" project was initiated by the Federal Government and is operated and, at the current time, funded by the Federal agencies.

DATES: The Center began operations on September 27, 1990.

FOR FURTHER INFORMATION CONTACT: The Oil Spill Public Information Center, The Simpson Building, suite 402, 645 G Street, Anchorage, Alaska 99501 or call one of the following telephone numbers to reach the Center directly: 1–800–283–7745 (toll-free, outside Alaska), 1–800–478–7745 (toll-free, within Alaska), or (907) 278–8008 (in Anchorage). The Center's Director of Information Services is Mary McGee. Documents discussed in the notice can be obtained by contacting the Center.

I. Background

The March 24, 1989, grounding of the tanker *Exxon Valdez* in Alaska's Prince William Sound led to the largest oil spill in U.S. history. The nearly 11 million gallons of crude oil that spilled from the vessel spread west along the Gulf of Alaska to cover more than 1,000 miles of coastline. The spill injured areas extremely rich in natural resources. In particular, it injured fish, birds, mammals, intertidal and subtidal plants and animals. and their associated habitats. The majority of those lands affected are managed or held in trust by the State of Alaska, the Department of the Interior, or the USDA, Forest Service. NOAA is the Federal trustee for the Nation's marine resources, and, as such, is the Federal trustee for marine resources injured as a consequence of the *Exxon Valdez* Oil Spill. The Federal trustees and the State of Alaska are conducting a damage assessment under applicable laws to determine the extent of the injuries or destruction to all natural resources, their associated uses, and intrinsic values.

II. Opening of the Oil Spill Public Information Center

The Federal trustees and the Department of Justice opened the Oil Spill Public Information Center in Anchorage, Alaska. The purpose of this facility is to make available to the public scientific and other information related to the *Exxon Valdez* Oil Spill. The goal of the Federal agencies is to provide as much factual information to the public as possible in order to enable the public to participate in developing approaches to restoration. The Center will contain a wide array of data and information related to the oil spill from a number of sources. The reference and research collection will include information from numerous disciplines in the natural and social sciences, economics, and law.

The Federal trustees, EPA, and the State of Alaska are seeking to persuade the Exxon Corporation to join in providing scientific data, documents, and funding for the Center to ensure the greatest possible flow of information to the public. As scientific data samples are validated and become available, they will be subjected to a quality assurance/quality control ("QA/QC") process before being considered for inclusion in the Center. The purpose of "QA/QC", in this context, is to ensure that the parameters, protocols, and definitions needed to allow independent analysis are mutually understood. The Federal trustees expect that additional oil spill response information and scientific damage assessment study data will be made available in the Center in the near future while restoration planning is underway.

Among the documents now available through the Center are the 1989 and 1990 State/Federal Natural Resource Damage Assessment and Restoration Plans for the *Exxon Valdez* Oil Spill. These documents describe the nature and extent of the scientific studies that have been undertaken by the State and Federal agencies to assess damage caused by the oil spill. In addition, the Center holds the recent report entitled: "Restoration Planning Following the *Exxon Valdez* Oil Spill: August 1990 Progress Report," describing the restoration planning process.

Also available are several documents compiled by the Restoration Planning Work Group (RPWG), which is cochaired by EPA and the State of Alaska and also composed of representatives from the U.S. Department of Agriculture, U.S. Department of the Interior, and NOAA. EPA has been directed by the President to coordinate long-term restoration planning on behalf of the Federal trustees. The RPWG task is planning for the restoration of the areas affected by the *Exxon Valdez* Oil Spill. A literature search undertaken by EPA yielded approximately 200 publications that will soon be available at the Center. These include publications that discuss subarctic restoration techniques, the past restoration of various types of resources, the creation of new aquatic habitats, the success of organisms grown in oil-contaminated substrates, long-term monitoring techniques, and other matters.

The information in the Center will be available in various media, such as microfilms, microfiche, audio/video tapes, photographs, and computerized data bases. Printed material, such as technical reports, newspaper and magazine articles, and books, are also available in a reading room. Equipment will be on hand for accessing these resources, such as microfilm reader-printers, computers, video equipment, and photocopiers. The Center will also be equipped to serve users outside the Anchorage area. The Center will be a contributing member of the Western Library Network (WLN).

Through the WLN, the Center will be able to share its resources with other libraries throughout the United States, Canada, and other countries.

Dated: November 8, 1990.

Robert W. Williams,

Deputy Regional Forester.

[FR Doc. 90-27155 Filed 11-16-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Semiconductor Technical Advisory Committee, Partially Closed Meeting

A meeting of the Semiconductor Technical Advisory Committee will be held, December 6, 1990, 9 a.m., Herbert C. Hoover Building, room 1629, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to semiconductors and related equipment or technology.

Agenda: General Session

1. Opening Remarks by the Chairman and Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Discussion of Results of Round Two U.S. Proposed Core List for Electronics.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials or comments at least one week before the meeting to the address listed below: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue, NW., room 4069A Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Dated: November 9, 1990.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 90-27215 Filed 11-16-90; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-201-601]

Certain Fresh Cut Flowers From Mexico; Termination in Part of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of termination in part of Antidumping Duty Administrative Review.

SUMMARY: On May 17, 1989, the Department of Commerce initiated an administrative review of the antidumping order on certain fresh cut flowers from Mexico. The Department has now terminated this review with respect to five exporters.

EFFECTIVE DATE: November 19, 1990.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Steve Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–8830 or (202) 377–1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 24, 1989, the Department published a notice of initiation of administrative review of the antidumping order on certain fresh cut flowers from Mexico. This notice stated that we would review entries from eight exporters during the period April 1, 1988, through March 31, 1989.

Las Flores de Mexico, San Marcos, Agro-Export, and Super Rosa Monrog subsequently withdrew their requests for review on July 6, 1989. Rancho Mision el Descanso withdrew its request for review on July 12, 1989. Accordingly, the Department has terminated the administrative review with respect to Las Flores de Mexico, San Marcos, Agro-Export, Super Rosa Monrog and Rancho Mision el Descanso.

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and § 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)).

Dated: November 9, 1990.

Francis J. Sailer,

Deputy Assistant Secretary for Investigations, Import Administration.

[FR Doc. 90-27125 Filed 11-16-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-813]

Antidumping Duty Order; Light Scattering Instruments and Parts Thereof (LSIs) From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce (the Department) determined that LSIs from Japan are being sold in the United States at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being threatened with material injury by reason of imports of LSIs from Japan. The ITC did not determine, pursuant to section 735(b)(4)(B) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(b)(4)(B)), that, but for the suspension of liquidation of entries of LSIs from Japan, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, but does not determine that material injury would have occurred if liquidation had not been suspended, the "Special Rule" provision of section 736(b)(2) of the Act (19 U.S.C. 1673e(b)(2)) applies. Therefore, all unliquidated entries of LSIs from Japan, as described in this notice, which were entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's final determination in the **Federal Register**, will be liable for the assessment of antidumping duties. We will direct the U.S. Customs Service to terminate the suspension of liquidation for entries entered, or withdrawn from warehouse, for consumption before the date on which the ITC publishes its final determination in the **Federal Register**, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

A cash deposit of estimated antidumping duties must be made on all entries of LSIs from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication in **Federal Register** of the ITC's final determination.

EFFECTIVE DATE: November 19, 1990.

FOR FURTHER INFORMATION CONTACT: Erik Warga or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377 8922 or 377–1769, respectively.

SUPPLEMENTARY INFORMATION: The products covered by this investigation are light scattering instruments, and the parts thereof specified below, from Japan that have classical measurement capabilities, whether or not also capable of dynamic measurements. Classical measurement (also known as static measurement) capability usually means the ability to measure absolutely (i.e., without reference to molecular standards) the weight and size of macromolecules and submicron particles in solution, as well as certain molecular interaction parameters, such as the so-called second virial coefficient. (An instrument that uses single-angle instead of multi-angle measurement can only measure molecular weight and the second virial coefficient.) Dynamic measurement (also known as quasi-elastic measurement) capability refers to the ability to measure the diffusion coefficient of molecules or particles in suspension and deduce therefrom features of their size and size distribution. LSIs subject to this investigation employ laser light and may use either the single-angle or multi-angle measurement technique.

The following parts are included in the scope of the investigation when they are manufactured according to specifications and operational requirements for use only in an LSI as defined in the preceding paragraph: Scanning photomultiplier assemblies, immersion baths (to provide temperature stability and/or refractive index matching), sample-containing structures, electronic signal-processing boards, molecular characterization software, preamplifier/discriminator circuitry, and optical benches. LSIs subject to this investigation may be sold inclusive or exclusive of accessories such as personal computers, cathode ray tube displays, software, or printers. LSIs are currently classifiable under Harmonized Tariff Schedule (HTS) subheading 9027.30.40. LSI parts are currently classifiable under HTS subheading 9027.90.40. HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

Different items with the same name as subject parts may enter under subheading 9027.90.40. To avoid the unintended suspension of liquidation of non-subject parts, those items entered under subheading 9027.90.40 and generally known as scanning photomultiplier assemblies, immersion baths, sample-containing structures, electronic signal-processing boards, molecular characterization software, preamplifier/discriminator circuitry, and optical benches must be accompanied by an importer's declaration to the Customs Service to the effect that they are not manufactured for use in a subject LSI.

In accordance with section 735(a) of the Act (19 U.S.C. 1673d(a)), on August 21, 1990, the Department made its final determination that LSIs from Japan are being sold at less than fair value (55 FR 34952, August 27, 1990). On November 2, 1990, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such imports threaten a U.S. industry with material injury. The ITC did not determine, pursuant to section 735(b)(4)(B) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(b)(4)(B)), that, but for the suspension of liquidation of entries of LSIs from Japan, the domestic industry would have been materially injured by subject imports.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of LSIs from Japan. These antidumping duties will be assessed on all unliquidated entries of LSIs from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's final determination in the **Federal Register**. We will direct the U.S. Customs Service to terminate the suspension of liquidation for entries entered, or withdrawn from warehouse, for consumption before the date on which the ITC publishes its final affirmative determination of threat of material injury in the **Federal Register**, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated duties with respect to these entries.

On or after the date of publication of the ITC's final determination in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/producers/exporters	Margin percentage
Otsuka Electronics Co., Ltd.	129.71
All Others	129.71

This notice constitutes an antidumping duty order with respect to LSIs from Japan, pursuant to section 736(a) of the Act (19 U.S.C. 1673e(a)). Interested parties may contact the Central Records Unit, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act (19 U.S.C. 1673e(a)) and 19 CFR 353.21.

Dated: November 9, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-27124 Filed 11-16-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-019]

Preliminary Results of Antidumping Duty Administrative Review; Cyanuric Acid From Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Cyanuric acid from Japan: preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on cyanuric acid from Japan. This review covers one manufacturer/exporter of cyanuric acid to the United States and one trading company for the period April 1, 1989, through March 31, 1990. The review indicates the existence of dumping margins for Shikoku Chemicals Co. (Shikoku) and Mitsubishi Corporation (Mitsubishi), an unrelated trading company.

We invite interested parties to comment on these preliminary results. If this review proceeds as expected, we will issue final results on or before January 18, 1991.

EFFECTIVE DATE: November 19, 1990.

FOR FURTHER INFORMATION CONTACT: Carole A. Showers or Julie Anne Osgood, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–3217 and 377–0167, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On April 27, 1984, the Department published in the **Federal Register** (49 FR 18148) the antidumping duty order on cyanuric acid and its chlorinated derivatives from Japan. On November 21, 1988, the Department published in the **Federal Register** its tentative determination to revoke in part the antidumping duty order on chlorinated derivatives (*i.e.*, dichloro isocyanurates (DCA) and tricholoro isocyanuric acid (TCA)) (53 FR 46896). The Department is currently reviewing entries of the chlorinated derivatives for the period April 1, 1988, through November 20, 1988, the sixth or "gap" review period, to determine if sales at less than fair value are likely to occur. The Department will make its final determination whether to revoke the order with respect to chlorinated derivatives upon completion of the sixth review.

On January 18, 1990, the Department published the final results of its most recently completed administrative reviews which covered the periods April 1, 1985, through March 31, 1986, and April 1, 1986, through March 31, 1987, (55 FR 1690). On April 27 and 30, 1990, Monsanto Company, Shikoku and Mitsubishi, respectively, requested that the Department conduct an administrative review for the period April 1, 1989, through March 31, 1990, in accordance with § 353.22(a) of the Department's regulations. We published a notice of initiation of this antidumping duty administrative review on June 1, 1990, (55 FR 22366) covering Shikoku and Mitsubishi. As a result of the Department's tentative determination to revoke the order on the chlorinated derivatives, we are conducting a review of cyanuric acid separate from its chlorinated derivatives for this seventh review period.

On June 18, 1990, we issued questionnaires pertaining only to cyanuric acid. A request for information was inadvertently mailed to Toyo Menka Kaisha, Ltd., a trading company. Because no interested party requested that the Department review shipments or sales of cyanuric acid made by Toyo Menka Kaisha, Ltd., it is not covered in this administrative review. On August 17, 1990, Shikoku and Mitsubishi stated in a letter to the Department that they would not respond to the Department's request for information.

The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of cyanuric acid, (also known as isocyanuric acid) used in the swimming pool trade. Cyanuric acid is sold in three basic consistencies: powder, granular, and tablet. During the review period, cyanuric acid was classifiable under item 425.1050 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item 2933.69.50.50 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Use of Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available is appropriate for entries of the subject merchandise from Shikoku and Mitsubishi.

In deciding what to use as best information available, § 353.37(b) of the Department's regulations provides that the Department may take into account whether a party refused to provide requested information. Thus, the Department determines on a case-by-case basis what is best information available. When a company refuses to provide the information requested in a timely manner, or otherwise significantly impedes the Department's review, the Department assigns to that company the highest margin for the subject merchandise of: (1) The highest margin calculated for that company in any previous review; (2) the highest margin calculated for any respondent within that country that supplied adequate responses in any previous review; or, (3) the margin for that company calculated in the less than fair value (LTFV) investigation.

Because Shikoku and Mitsubishi refused to respond to the Department's request for information, as best information available, we used the margin calculated for Shikoku in the LTFV investigation, 10.93 percent.

Preliminary Results of the Review

We preliminarily determine the margins to be:

Manufacturer/exporter	Time period	Margin (percent)
Shikoku Chemicals Co.	04/1/89–3/31/90	10.93
Shikoku Chemicals Co./ Mitsubishi Corporation	04/1/89–3/31/90	10.93

Upon completion of this administrative review, the Department will issue appraisement instructions concerning Shikoku and Mitsubishi directly to the U.S. Customs Service. Furthermore, the following deposit requirements will be effective upon publication of our final results of this administrative review for all shipments of cyanuric acid entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for any shipments of this merchandise manufactured or exported by the remaining known manufacturers/exporters not covered in this review will continue to be at the rate published in the final results of the most recently completed review applicable to each of these firms (55 FR 1690, January 18, 1990); (2) the cash deposit rate for the companies included in this review will be that established in the final results of this administrative review; and (3) the cash deposit rate for any future entries of this merchandise from a new producer and/or exporter, not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1990, and who is unrelated to any reviewed firm, will be 5.76 percent. This is the calculated rate applicable to new manufacturers and/or exporters from the most recently completed administrative review where shipments were made.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

In accordance with § 353.38 of the Department's regulations, we will hold a public hearing, if requested, on December 18, 1990, at 2 p.m. in room 3708, to afford interested parties an opportunity to comment on these preliminary results. Interested parties who wish to request or participate in a hearing must submit a written request within ten days of the date of publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and, (4) a list of the issues to be discussed.

In addition, ten copies of the business proprietary version and five copies of the non-proprietary version of case briefs must be submitted to the Assistant Secretary no later than December 4, 1990. Ten copies of the business proprietary version and five copies of the non-proprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than December 11, 1990. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal brief. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal briefs. Written argument should be submitted in accordance with section 353.38 of the Department's regulations and will be considered if received within the time limits specified in this notice.

This administrative review and notice are in accordance with sections 751(a)(1) of the Act and § 353.22(c)(5) of the Department's regulations.

Dated: November 9, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-27213 Filed 11-16-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-815]

Postponement of Final Antidumping Duty Determination and Postponement of Public Hearing: Gray Portland Cement and Clinker From Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from respondents in this antidumping duty investigation to postpone the final determination, as permitted in section 735(a)(2) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673d(a)(2)). Based on this request, we are postponing our final determination as to whether sales of gray portland cement and clinker from Japan have occurred at less than fair value until not later than March 15, 1991.

EFFECTIVE DATE: November 19, 1990.

FOR FURTHER INFORMATION CONTACT: V. Irene Darzenta (202) 377-0186 or Louis Apple (202) 377-1769, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On October 31 and November 2, 1990, Nihon Cement Co., Ltd. and Onoda Cement Co., Ltd., the only two producers of the subject merchandise in this investigation, requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2) of the Act. Accordingly, we are postponing the date of the final determination until not later than March 15, 1991.

The public hearing which was scheduled for December 28, 1990, will now be held on March 1, 1991, at 9:30 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington DC. Case briefs are now due on February 22 and rebuttal briefs are due on February 26, 1991.

The U.S. International Trade Commission is being advised of this postponement in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: November 9, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-27214 Filed 11-16-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-437-601]

Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the Republic of Hungary

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On September 27, 1990, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the Republic of Hungary. This review covers MGM, the exporter who accounts for all Hungarian exports to the United States of the subject merchandise. The period of review is June 1, 1988 through May 31, 1989. The final dumping margin is 1.84 percent.

EFFECTIVE DATE: November 19, 1990.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Mary Jenkins, or James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-8371, 377-1756, or 377-3965, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 1990, the Department published in the **Federal Register** (55 FR 39497) the preliminary results of this administrative review of the antidumping duty order on TRBs from the Hungarian People's Republic, (52 FR 23319, June 19, 1987). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of TRBs from Hungary. During the review period, until January 1, 1989, such merchandise was classifiable under items 680.30, 680.39, 681.10, and 692.32 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 8482.20.00, 8482.91.00.60, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, and 8483.90.80. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one manufacturer/exporter of Hungarian TRBs and the period June 1, 1988 through May 31, 1989.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772 of the Act. Purchase price was based on either the FOB Hamburg port price to unrelated purchasers or the ex-factory price to unrelated purchasers. With respect to FOB Hamburg sales, we made deductions for foreign inland freight, and brokerage and handling charges. We used Portuguese freight costs as a surrogate for inland freight costs in Hungary. We selected Portugal as the surrogate country for the reasons explained below in the Foreign Market Value section of this notice. We have used market-economy data where provided. Deductions for brokerage and handling were based on the charges paid in Deutsche Marks by the Hungarian producer, Magyar Gordulocsapagy Muvek (MGM), to a West German freight forwarder.

Foreign Market Value

We have concluded that Hungary is a non-market-economy country for purposes of this administrative review. Respondent has not contested non-market-economy country treatment in this administrative review; therefore, we have calculated foreign market value in accordance with section 773(c) of the Act. Given that this review was initiated subsequent to the effective date of section 1316 of the Omnibus Trade and Competitiveness Act of 1988 (1988 Act), section 773(c) of the Act requires us to use the constructed value based on the valuation of factors of production or prices of such or similar merchandise in a market economy country as the basis for determining foreign market value. The Act further provides that the Secretary will value the factors of production in a market economy country which is comparable in terms of economic development to the non-market country.

Where possible, we valued the factors on the basis of prices paid by MGM to market-economy suppliers in convertible currency. Where MGM did not pay market-economy prices, we relied on publicly available factor price data in Portugal. We chose Portugal as the surrogate for valuing the factors of production because we were able to obtain more complete publicly available data pertaining to Portugal than for other potential surrogate countries with comparable economies.

The material costs for each component were determined by multiplying the gross weight of steel used to produce each component by the steel unit price les the salable scrap value. The respondent did not identify waste and miscalculated the cost of materials by adding the scrap value to the net value of steel. Therefore, the scrap factor was adjusted to reflect only that portion considered salable; the porton considered as waste is included in the cost of materials.

We valued the factors of production as follows:

- Certain raw material costs were based on MGM's imports of steel products from market economies for which MGM paid in freely convertible currency.
- In the absence of market-economy prices paid by MGM, we relied on EUROSTAT data in the surrogate country. Given that Portugal does not have the capacity to produce the bearing quality steel that is used to produce TRBs, we used EUROSTAT Portuguese import data to value steel rods, hot-rolled steel rods and steel strips.
- We valued steel scrap, factory overhead, indirect labor and inland freight using information supplied by the American Embassy in Lisbon. The information provided by the Embassy reflected the costs a producer of TRBs would incur in Portugal.
- We valued labor using Portuguese labor rate data obtained from the U.S. Bureau of Labor Statistics (BLS). We used the OECD Main Economic Indicators Labor Wage Index to adjust the labor rate to coincide with the period of review. This rate is representative of actual labor rates in Portugal for all categories of labor workers, therefore, we have only calculated one labor rate. *See* DOC position on comment 5.
- We used the OECD Main Economic Indicators Consumer Price Index to adjust factor values drawn from periods outside the review period. In the absence of data coinciding precisely with the review period, we determined that such adjustments would provide data representative of the period of review.
- We used the statutory minimum of ten percent of the sum of material and fabrication costs for general expenses.
- We used the statutory minimum of eight percent of material and fabrication costs plus general expenses for profit.
- Consistent with our valuation of packing in *TRBs from the Hungarian People's Republic*, 52 FR 17428 (May 8, 1987), (*TRBs from the HPR*), *TRBs from the Socialist Republic of Romania*, 52 FR 17433 (May 8, 1987), *TRBs from the People's Republic of China*, 52 FR 19748 (May 27, 1987), we valued packing on the basis of publicly available data contained in the public file of the antidumping investigation of TRBs from Italy, 52 FR 24198 (June 29, 1987).

Currency Conversion

We made currency conversions in accordance with section 353.60(a) of the Department's regulations (19 C.F.R. 353.60(a)). All currency conversions were made at the rates certified by the Federal Reserve Bank.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received case and rebuttal briefs from respondent, MGM, and from petitioner, the Timken Company.

Comment 1

Petitioner argues that the Department should reject MGM's response and use best information available (BIA) because the factors of production reported by MGM were: (1) Not based on MGM's actual experience, (2) not related to the review period, and (3) not responsive to the Department's questionnaire and deficiency letters. petitioner objects to respondent's

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reporting technological production norms in lieu of factors of production based on actual usage. Petitioner contends that the data was non-responsive because MGM refused to provide actual cost data despite the Department's explicit request for it. Further, petitioner argues that MGM's actual data have never been verified and that the Department's preliminary acceptance of this nonresponsive data is an abuse of discretion. In addition, petitioner claims that MGM's data is nonresponsive because it has not reported "quantity produced" data. Finally, petitioner asserts that the financial information reported by MGM was not based on actual company records and should be ignored.

Respondent states that it submitted its production factors based on norms because the production factors, unlike cost factors, are constant. Respondent states that its production did not vary materially between the investigation and subsequent periods of review; therefore, as long as its production process does not vary and its technology does not change, the norms are the "best information available" of the ratios and quantities of inputs.

Respondent further contends that the Department has conducted verification of respondent's data in the original investigation. Respondent also points out that its financial information was provided in the format specified by the Department. Finally, respondent alleges that it complied with the Department's request for reporting the quantity produced for each TRB type.

DOC Position

Although the Department requested that MGM report actual production factors for the period of review, MGM's reported technological norms are reasonably representative of MGM's actual production experience. These technological norms are the company's own estimate of its factors, are based at least in part on actual company records, and have been relied upon in previous departmental proceedings. Contrary to petitioner's assertion, the Department verified in the original investigation that thee was little variance between MGM's actual factors and its technological norms. Nothing in MGM's response, or other information on the record, suggests that MGM's production methods have changed significantly. Hence, there is no indication that MGM's actual factors would vary from the technological norms more now then during the original investigation. Finally, the financial statements were not used by the Department and, contrary to petitioner's assertion, the "quantity produced" data was submitted by respondent.

Comment 2

Petitioner argues that the Department's precedent indicates that where the information submitted by respondents cannot be verified, it is appropriate to select data that is unfavorable to respondents. As BIA, petitioner encourages the Department to assign the largest reported labor input to all part numbers, to reject all reported scrap adjustments, and to use the highest reported steel price to value all steel components. As another alternative, petitioner argues that the Department should assign to MGM the dumping rate contained in Timken's original petition.

Respondent argues that it would not be acceptable for the Department to resort to BIA since it has submitted its variable production costs, based on constant production factors. Respondent claims that the Department's use of its data is appropriate and permissible under the statute.

DOC Position

For reasons discussed in DOC Position to Comment #1, we have relied upon respondent's factors information.

Comment 3

Respondent argues that the Department did not use the correct price to calculate the steel input price of the cups and cones of TRB type K2580/20.

Petitioner, for the reasons cited in comments 1 and 2, argues that this correction is unwarranted.

DOC Position

We agree with respondent. We mistakenly used the tube price in the preliminary results. We have used the surrogate steel input price for hot-rolled steel rods for the price of the cups and cones of TRB type K25580/20 in the final results.

Comment 4

Respondent argues that the 24.3 percent overhead rate used for the preliminary results is preferable to the 30 percent rate reported by the American Embassy in Lisbon because the Department has a financial statement supporting the 24.3 percent rate. Respondent objects to the use of the 30 percent overhead rate because it is derived from an unidentified source without any classification of expenses.

Petitioner argues that the 24.3 percent factory overhead rate used for the preliminary results in unreliable because it is based on a financial statement for 1987, which predates the review period. Moreover, this financial statement indicates that all overhead expenses are not captured by the Department's overhead calculation. In addition, petitioner argues that the Department's overhead calculation does not account for indirect labor costs.

Department's Position

We agree with respondent that the 24.3 percent factory overhead rate is more appropriate. While the 30 percent rate reported by the U.S. Embassy in Lisbon purportedly covers a later period, no source documentation was provided to support it. Given that the financial statement of the Portuguese bearing manufacturer covering the earlier period is on the record, we have relied on the 24.3 percent rate. We disagree with respondent, however, that indirect labor costs are accounted for under the category "Other Epenses and Charges" section of the Portuguese bearing manufacturer's financial statement in question. Therefore, we have included as best information available an additional 15 percent of total labor costs for indirect labor costs. The 15 percent figure was provided by the American Embassy in Lisbon and is reported to reflect indirect labor expenses of a Portuguese bearing manufacturer.

Comment 5

Petitioner argues that the Departmen' should value labor based on the "fully-loaded," skill-specific labor rates provided by the American Embassy in Lisbon. Petitioner argues that the BLS labor rate dilutes the labor costs incurred for a highly technical production process.

Respondent argues that the skill-specific labor rates, provided by the American Embassy in Lisbon, should not be used in lieu of the BLS labor rate. Respondent states that the BLS rate is "fully-loaded" and is more reliable than the information received from the American Embassy in Lisbon.

DOC Position

We have determined that the BLS labor data is a more reliable source for labor rate data than the data provided by the American Embassy in Lisbon. We compared labor rates provided by the American Embassy in Lisbon for two different time periods and were unable to reconcile the data contained in those submissions. The BLS is responsible for monitoring and reporting labor rates worldwide and, as such, is a reliable source of information for this purpose. Moreover, analysis of the BLS data indicates that it takes skill ratios into consideration. Therefore, for purposes of the final results of this review, we determined that the information published by the BLS was the best information on the record for use in valuing the labor factors of production provided by MGM.

Comment 6

Petitioner argues that the Department should reduce U.S. price for credit costs incurred by MGM. Petitioner states that the Department should calculate credit costs based on the longest credit period estimated by MGM, valued at the average discount rate that prevailed in Portugal throughout the review period.

Respondent states that an extension of credit cannot be appropriately inferred by petitioner merely because the banking system in Hungary necessitates such a time delay or because respondent itself may elect, for a number of reasons, to delay its draw on the letter of credit.

DOC Position

We disagree with petitioner. There is no statutory basis for deducting credit expenses from the United States price in purchase price transactions. Moreover, in this instance the specificity of the data obtained for valuing factors is not sufficient for us to identify the directly related selling expense adjustment which would have to be made to the foreign market value. See TRBs from the HPR.

Final Results of the Review

As a result of this review, we determine the margin to be:

Manufacturer/ exporter	Review period	Margin (percent)
Magyar Gordulocsopagy Muvek	6/1/88–5/31/89	1.84

The Department will instruct the Customs Service to assess antidumping duties at that rate on all appropriate entries. Individual differences between United States Price and Foreign Market Value may vary from the percentage stated above. The Department will issue appraisement instructions concerning MGM directly to the Customs Service.

Furthermore, as provided for in section 751(a)(1) of the Act, the Department will require a cash deposit of estimated antidumping duties based on the above margin on entries of this merchandise from MGM. For any entries of this merchandise from a new exporter, whose first shipments occurred after May 31, 1989, and who is unrelated to MGM or any previously reviewed firm, a cash deposit of 1.84 percent shall be required. This deposit requirement is effective for all shipments of certain TRBs from Hungary entered or withdrawn from warehouse, for consumption on or after the date of publication this notice and shall remain in effect until the publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(8) of the Department's regulations (19 CFR 353.22(c)(8)(1990)).

Dated: November 9, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-27212 Filed 11-16-90; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 90-00016." A summary of the application follows:

Summary of the Application

Applicant: International Trading Organization, Inc. (ITO), 1330 Connecticut Avenue, NW., suite 300, Washington, DC 20036, *Contact:* Ms. Susan A. Kernus, Manager. Telephone: 202/822-8760.

Application No.: 90-00016.

Date Deemed Submitted: November 1, 1990.

Members (in addition to the applicant): Dixie Chemical Company, Inc., Houston, Texas (controlling entity: DX Holding, Inc., Houston, Texas); Flint Ink, Cincinnati, Ohio (controlling entity: none); Inolex Chemical Company, Philadelphia, Pennsylvania (controlling entity: none); Koch Chemical Company, Wichita, Kansas (controlling entity: Koch Refining Co., Wichita, Kansas); PCR, Inc., Jacksonville, Florida (controlling entity: none); Sherex Chemical Company, Dublin, Ohio (controlling entity: Schering Aktiengesellschaft, Berlin, Germany).

Export Trade

1. Products

Alkyds (Standard Industrial Classification (SIC) code 2821400); presscake/dry pigment flushed color (SIC 2865300); pigment dispersions, including black (SIC 2851533); waterproofing compounds (SIC 2899581; specific antineoplastic agents (SIC 2834145); laboratory reagents and chemicals for research purposes, only (SIC 2869537); textile finishing agents (SIC 2843061); bulk surface active agents (SIC 2843085); other chemical specialties (SIC 2899597), industrial organic chemicals (SIC 2869598), and miscellaneous end-use chemicals and chemical products (SIC 2869600).

2. Services

Engineering, design and related services related to Products and to contracts that substantially incorporate Products; servicing of Products; and training with respect to the use of Products.

3. Technology Rights

Proprietary rights to all kinds of technology associated with Products or Services including but not limited to

patents, trademarks, service marks, trade names, copyrights (including neighboring rights), trade secrets, know-how, semiconductor mask works, utility models (including petty patents), plant breeders rights, industrial designs, and *sui generis* forms of biotechnology protection and computer software protection.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services and Technology Rights)

Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; transportation; trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; financing; taking title to goods; services related to compliances with customs requirements; and liaison with foreign government agencies, trade associations, and banking institutions.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. ITO and/or one or more of its Members may:

a. Engage in joint bidding or other joint selling arrangements for Products, Services, and/or Technology Rights in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products, Services, and/or Technology Rights by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to specifications and requirements demanded by specific potential customers for Products for Export Markets;

d. With respect to Products, Services, and/or Technology Rights, refuse to quote prices for, or to market or sell in, Export Markets;

e. Provide and/or jointly negotiate for and purchase from Suppliers Export Trade Facilitation Services for Members;

f. Solicit non-Member Suppliers to sell their Products, Services, and/or Technology Rights or offer their Export Trade Facilitation Services through the certified activities of ITO and/or its Members;

g. Coordinate with respect to the servicing of Products in Export Markets, including the establishment of joint service and training centers in such markets;

h. License associated Technology Rights in conjunction with the sale of Products;

i. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets;

j. Bring together groups of Members to plan and discuss how to fulfill the Product, Service, and/or Technology Rights requirements of specific export customers or Export Markets;

k. Operate and establish jointly owned subsidiaries or other joint venture entities, owned exclusively by Members, to export Products to Export Markets, operate service and training centers in Export Markets, and provide Export Trade Facilitation Services to Members; and

l. Jointly procure transportation services for Products exported or in the course of being exported for any or all of the Members, or non-Members.

2. ITO and/or its Members may enter into agreements wherein ITO and/or one or more Members agree to act in certain countries or markets as the Members' exclusive or nonexclusive Export Intermediary for Products, Services and/or Technology Rights in that country or market. In such agreements, (i) ITO or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through ITO or the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary.

3. ITO and/or its Members may exchange and discuss the following types of information:

a. Information that is already generally available to the trade or public;

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by ITO and its Members;

d. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

e. Information about expenses specific to exporting to and within Export Markets, including without limitation transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

f. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

g. Information about ITO or its Members' export operations, including without limitation sales and distribution networks established by ITO or its Members in Export Markets, and prior export sales by Members (including export price information).

4. ITO may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Services to facilitate the export of Products to Export Markets. This may be accomplished by ITO itself, or by agreement with Members or other parties.

5. ITO and/or its Members may meet to engage in the activities described in paragraphs one through four above.

6. ITO and/or its Members may refuse to provide Export Trade Facilitation Services to non-Members. ITO and/or its Members may refuse to allow participation in the other activities described in paragraphs one through five above, by non-Members.

7. ITO and/or its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

8. Members may license and sub-license Technology Rights in Export Markets to non-Members, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and such non-Member without coordination with ITO or any other Member. Such licenses and sub-licenses may: convey exclusive or non-exclusive rights in Export Markets; impose requirements as to the prices at which Products or Services incorporating, or manufactured or produced using, Technology Rights may be sold or leased in Export Markets; impose requirements as to pricing and other terms and conditions of sub-licenses of Technology Rights in Export Markets; restrict licensees and sub-licensees as to fields of use, or maximum sales or operations, in Export Markets; impose territorial restrictions (relating to any Export Market) on foreign licensees and sub-licensees; require the assignment back or exclusive or non-exclusive grantback to the licensor Member of rights (in Export Markets) to all improvements in Technology Rights, whether or not such improvements fall within the field of use authorized in such license; require package licensing of Technology Rights; and require products or services (including, but not limited to, Products and Services) to be used, sold, or leased as a condition of the license of Technology Rights.

Definitions

1. An *Export Intermediary* means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. A *Supplier* means a person who produces, provides, or sells a Product, Service, Technology Right associated with a Product or Service, and/or an Export Trade Facilitation Service, whether a Member or non-Member.

3. *Members* comprise member companies of ITO listed in this Federal Register Notice of Application and those member companies of ITO subsequently incorporated in the Certificate pursuant to the amendment procedures set forth below.

Abbreviated Amendment Procedure

Additional ITO members may be incorporated in the Certificate through an abbreviated amendment procedure which shall consist of a written notification to the Secretary of Commerce and the Attorney General identifying the ITO members that desire to become a Member under the Certificate, and certifying for each such ITO member the sales of individual Products in its prior fiscal year. Notice of the members so identified shall be published in the Federal Register. However, ITO may withdraw one or more individual members from the application for the abbreviated amendment. If 30 days or more following publication in the Federal Register, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of these members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate of Review to incorporate such members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the Federal Register so amend the Certificate of Review, such amendment must be sought through the non-abbreviated amendment procedure.

Dated: November 13, 1990.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 90-27114 Filed 11-16-90; 8:45 am]

BILLING CODE 3510-DR-M

Short-Supply Determination; Certain Type 409 CB Welding Quality Stainless Steel Wire Rod

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of Short-Supply Determination on certain type 409 CB welding quality stainless steel wire rod.

Short-Supply Review Number: 25

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a short-supply allowance for 25 net tons of certain Type 409 CB welding quality stainless steel wire rod for the fourth quarter of 1990 and the first quarter of 1991 under the U.S.–EC and U.S.–Japan steel arrangements.

EFFECTIVE DATE: November 28, 1990.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230; (202) 377-0159.

SUPPLEMENTARY INFORMATION: On October 9, 1990, the Secretary received an adequate petition from National-Standard Company ("National-Standard") requesting a short-supply allowance for 540,000 pounds (270 net tons) of this product for the fourth quarter of 1990 and the first quarter of 1991 under Article 8 of the Arrangement Between and European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products and paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products. National-Standard requested short supply due to both the inability of the only potential domestic supplier to produce material meeting its specifications and the unavailability of export licenses for National-Standard's foreign suppliers. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures. 19 CFR 357.102.

The requested material meets the following specifications:

1. *Chemistry:*

	Flange	Aim
Carbon	0.05 max	Low
Manganese	0.45–0.75 max	0.55–0.75
Phosphorus	0.020 max	
Sulfur	0.020 max	
Silicon	0.45–0.75 max	0.55–0.75
Nickel	0.50 max	
Chromium	11.00–12.00	
Molybdenum	0.50 max	Low
Iron	Balance	
Copper	0.25 max	Low
Aluminum	0.10 max	
Columbium	10XC min./.80 max	

Co+Ti+V=<0.50

2. *Size:* 0.218 inch (5.5mm) Diameter
3. *Size Tolerance:* ±0.008 inch (0.20mm)
4. *Condition:* Hot-rolled, annealed and pickled rod for redraw.
5. *Tensile:* 70,000 PSI Max.
6. *Reduction:* 75% Min.
7. *Inclusions:* #3 Heavy Max.
8. *Grain Size:* Aim ASTM 4 to 7
9. *Ovality:* 0.011 inch (0.28mm) Max.
10. *Surfaces:*
    Individual surface imperfections: 0.006 inch (0.152mm) max.
    Cumulative surface imperfections: 0.012 inch (0.306mm) max.
11. *Metallurgical Structure:* Tensile and Reduction-Average results on 10% sample. (Minimum 2 samples).

On October 9, 1990, the Secretary established an official record on this short-supply request (Case Number 25) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce at the above address. On October 18, 1990, the Secretary published a notice in the Federal Register announcing a review of this request and soliciting comments from interested parties. Comments were required to be received no later than October 25, 1990, and interested parties were invited to file replies to any comments no later than five days after that date. In order to determine whether this product could be supplied in the

U.S. market for the last quarter of 1990 and the first quarter of 1991, the Secretary sent questionnaires to Carpenter Technology Corporation ("CarTech"), Al Tech Specialty Steel Corporation ("Al Tech"), and Baltimore Specialty Steels Corporation ("BSSC"). The Secretary received adequate questionnaire responses from the three companies and comments from the petitioner.

Questionnaire Responses

CarTech is the only company of the three that produces this product. CarTech stated that it is willing and able to supply 80,000 pounds per month of the requested product to National-Standard. Its current order-to-delivery period is 60 days.

Analysis

National-Standard's short-supply petition stated that CarTech's material is unacceptable due to grain size and structure, but it did not provide sufficient evidence to support this claim. In addition, the Secretary was informed during the review by CarTech and National-Standard that CarTech is currently supplying commercial quantities of Type 409 CB welding quality stainless steel wire rod to National-Standard and has orders for the balance of 1990. Based on the facts that National-Standard is continuing to buy commercial quantities of this product from CarTech, and National-Standard was unable to provide definitive evidence that CarTech supplied unacceptable material, the Secretary can only conclude that CarTech is an acceptable supplier of the requested product.

CarTech is willing and able to supply 80,000 pounds per month of National-Standard's 90,000 pound per month requirement during the requested six-month period. Because the first month of this request has lapsed, the Secretary cannot authorize short supply for any National-Standard shortfall during this period. In addition, the Secretary cannot conclude that CarTech cannot supply material during the balance of 1990 because its order-to-delivery time is 60 days. The Secretary's practice is to grant short supply only when a domestic mill cannot supply material within a normal order-to-delivery time period, and 60 days represents a normal order-to-delivery period. Because CarTech can supply 80,000 pounds per month, and National-Standard needs 90,000 pounds month, there is a monthly shortfall of 10,000 pounds. Therefore, the total shortfall for November 1990 through March 1991 is 50,00 pounds (25 net tons).

Conclusion

Because CarTech has supplied Type 409 CB welding quality stainless steel wire rod to National-Standard and is continuing to supply this product, it must be regarded as an acceptable supplier. However, it cannot meet National-Standard's entire monthly needs. The difference between National-Standard's requirements and CarTech's offer to supply is 25 net tons. Therefore, pursuant to section 4(b)(4)(A) of the Act and 357.102 of Commerce's Short-Supply Regualtions, the Secretary hereby grants a short-supply allowance for 25 net tons of Type 409 CB welding quality stainless steel wire rod for the fourth quarter of 1990 and the first quarter of 1991 under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products and paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products.

Dated: November 8, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-27126 Filed 11-16-90; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Determination; Certain Alloy Steel Plate

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain alloy steel plate.

SHORT-SUPPLY REVIEW NUMBER: 26.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a request for a short-supply allowance of 200 metric tons of certain alloy steel plate for the remainder of 1990 under Paragraph 8 of the U.S.-Japan steel arrangement.

EFFECTIVE DATE: November 9, 1990.

FOR FURTHER INFORMATION CONTACT: Marissa Rauch or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377-1390 or (202) 377-0159.

SUPPLEMENTARY INFORMATION: On October 12, 1990, the Secretary received an adequate short-supply petition from U.S. Metalsource requesting a short-supply allowance for 200 metric tons of certain NAK 55 steel plate for the balance of 1990 under Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States Concerning Trade in Certain Steel Products. U.S. Metalsource alleges that NAK 55 steel plate is not produced in the United States and Daido Steel Company in Japan (its foreign supplier) has no regular export licenses to meet its needs for this material.

The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.102 ("Commerce's Short-Supply Procedures").

The requested material meets the following specifications:

Chemical Composition, Typical

C	Mn	S	Si	Cu	Ni	Al
0.15	1.50	0.10	0.30	1.00	3.00	1.00

Manufacturing Practice

NAK 55 is initially air melted to restrictive clean steel standards and then Vacuum Arc Remelted to obtain the level of internal soundness and cleanliness necessary. The ingots are then hot rolled or forged to the billet, plate, or bar sizes.

Thermal Treatment

NAK 55 is solution treated and age hardened to obtain the desired mechanical properties and hardness.

Mechanical Properties, Typical:

Tensile strength	183 ksi
Yield strength	147 ksi
Reduction of area	38%
Elongation in 2 inches	15%
Hardness	40 HRC

Size Ranges

Thickness: 0.750 inch to 4.000 inches.
Widths: 15 inches to 40 inches.

Polishability

NAK 55 can be readily polished to a uniform mirror finish.

Weldability

Using prescribed welding procedure and welding rods, NAK 55 can be readily weld repaired. The welded component can then be re-aged to obtain the same properties and characteristics in the weld region as in the parent metal with no distortion.

Action: On October 12, 1990, the Secretary established an official record on this short-supply request (Case Number 26) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce at the above address. On October 25, 1990, the Secretary published a notice in the **Federal Register** announcing a review of this request and soliciting comments from interested parties. Comments were required to be received no later than November 1, 1990, and interested parties were invited to file replies to any comments no later than November 6, 1990. The Secretary also sent questionnaries to Bethelehem Steel Corporation, Lukens Steel Company, and USX Corporation. The Secretary received adequate questionnaire responses from all three companies and no comments to the **Federal Register** notice.

Questionnaire responses: All three respondents stated that they currently do not produce the requested product and do not have the capability to make it.

Conclusion: Because no U.S. producer indicated that it produces or has the capability to produce the requested NAK 55 plate, and because this material is not available from offshore suppliers with regular licenses, the Secretary determines that short supply exists for the requested 200 metric tons of this product meeting U.S. Metalsource's specifications. Pursuant to section 4(b)(4)(A) of the Act, and § 357.102 of Commerce's Short-Supply Procedures, the Secretary grants U.S. Metalsource's request for a short-supply allowance of 200 metric tons of certain NAK 55 steel plate for the remainder of 1990.

Dated: November 9, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-27211 Filed 11-16-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meetings and Public Hearing

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council (Council), and the Council's Administrative Committee will hold separate public meetings on November 27-29, 1990. Additionally, the Council will convene a public hearing on November 28, as discussed below. The public meetings and the public hearing will take place in the conference room of the Hotel Pierre, Santurce, Puerto Rico. Fishermen and other interested persons are invited to attend the public meetings, which will be conducted in English; however, simultaneous English/Spanish translation services will be available during the Council meeting. The public will be allowed to submit oral or written statements regarding the agenda items.

Council. The Council will begin its 71st regular public meeting on November 28, 1990, at 9 a.m., to discuss, among other topics, Amendment #2 to the Shallow-water Reef Fish Fishery Management Plan (FMP) and Amendment #1 to the Spiny Lobster FMP. The Council will recess at 5 p.m., on November 28. On November 29 the Council will reconvene at 9 a.m., and adjourn at approximately noon.

The Council will convene a public hearing on November 27 from 1:30 p.m., to 2:30 p.m., to discuss the overfishing definition for the Spiny Lobster FMP.

Administrative Committee. The Council's Administrative Committee will meet on November 27 from 1:30 p.m., to approximately 5 p.m., to discuss matters pertaining to the Caribbean Council's administrative operations.

For more information contact Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, suite 1108, Hato Rey, Puerto Rico 00918-2577; telephone: (809) 766-5926.

Dated: November 13, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-27115 Filed 11-16-90; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pelagic Subpanel of the Western Pacific Fishery Management Council's Advisory Panel will hold a public meeting on November 19, 1990, at 6:30 p.m., at the Kalani Center, 2058 Maluhia Road, Fort DeRussy, room #2, Honolulu, HI.

The Pelagic Subpanel will provide input for consideration by the Western Pacific Fishery Management Council regarding a proposed 3-year moratorium on new entry into the Hawaii longline fisheries. The Subpanel will discuss impacts of alternative eligibility criteria, announced earlier by the Western Pacific Council, such as the June 21, 1990, control date. Other Council fishery management issues to be discussed are the relationships between the proposed moratorium and gear conflicts between longliners and other pelagic fishermen in the Main Hawaiian Islands. A public comment period is scheduled.

For more information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368; fax: (808) 526-0624.

Dated: November 13, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-27116 Filed 11-16-90; 8:45 am]

BILLING CODE 3510-22-

[Modification No. 1 to Permit No. 588]

Marine Mammals; Modification of Permit; Mystic Marinelife Aquarium

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. 588 issued to Mystic Marinelife Aquarium, 55 Coogan Boulevard, Mystic, Connecticut 06355-1997, on May 11, 1987 (52 FR 19374) is modified in the following manner:

Section B.6 is deleted and replaced by:

6. The authority to acquire the marine mammals authorized herein shall extend from the date of issuance through December 31, 1992. The terms and conditions of this Permit (Sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

This modification becomes effective upon publication in the **Federal Register**.

Documents submitted in connection with the above modification are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East West Highway, room 7324, Silver Spring, Maryland, 20910 (301/427-2289);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281-9200); and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger

Boulevard, St. Petersburg, Florida 33702 (813/893–3141).

Dated: November 9, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90–27117 Filed 11–16–90; 8:45 am]

BILLING CODE 3510–22–M

Public Meeting on Final Management Plan for the North Carolina National Estuarine Research Reserve; Addition of Masonboro Island Component

AGENCY: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Public meeting notice.

SUMMARY: Notice is hereby given that the Department of Environment, Health, and Natural Resources, of the State of North Carolina, will hold public meetings to present and disucuss the proposed final management plan for the North Carolina National Estuarine Research Reserve. This plan includes Masonboro Island as an additional reserve component to the already designated Rachel Carson, Currituck Banks, and Zeke's Island components. The purpose of the meeting is to receive the views of interested parties on the final management plan.

As part of the procedures leading to the designation of the reserve, the State of North Carolina must submit the proposed final management plan to NOAA for its review and approval. Copies of the plan will be made available for review before the meeting by Friday, November 16, 1990 at the Currituck County Library, Dare County Library, Carteret County Library and the New Hanover Country Library.

Meetings will be held in the following locations:

Currituck Banks: Monday, November 26, 1990, 7 p.m., North Carolina Aquarium at Roanoke Island, Manteo, North Carolina

Rachel Carson: Tuesday, November 27, 1990, 7 p.m., North Carolina Maritime Museum, 315 Front Street, Beaufort, North Carolina

Masonboro Island and Zeke's Island: Wednesday, November 28, 1990, 7 p.m., Bryan Auditorium, Morton Hall, University of North Carolina at Wilmington Campus, 601 South College Road, Wilmington, North Carolina

FOR FURTHER INFORMATION CONTACT: Cheryl A. Graham, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235 (202) 673–5122.

(Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Estuarine Sanctuaries)

Dated: November 14, 1990.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 90–27184 Filed 11–16–90; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea

November 9, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 15, 1990.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–8041. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 1706, published on January 18, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

November 9, 1990.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 11, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. This directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Republic of Korea and exported during the period which began on January 1, 1990 and extends through December 31, 1990.

Effective on November 15, 1990, you are directed to amend further the directive of January 11, 1990 to include adjusted limits for the following categories, in accordance with the provisions of the current bilateral agreement between the Governments of the United States and the Republic of Korea:

Category	Adjusted 12-mo limit [1]
Sublevels in Group I	
201	1,378,000 kilograms.
300/301	2,691,970 kilograms.
410	3,412,500 square meters.
604	304,694 kilograms.
611	3,360,000 square meters.
613/614	5,400,000 square meters.
619/620	92,555,000 square meters.
624	7,410,000 square meters.
Group II	
237, 239, 330–354, 359, 431–448, 459, 630–654 and 659, as a group.	564,590,000 square meters equivalent.
Sublevels in Group II	
333/334/335	238,500 dozen of which not more than 121,900 dozen shall be in Category 335.
336	51,352 dozen.
340	569,270 dozen of which not more than 295,582 dozen shall be in Category 340–D.[2]
341	147,294 dozen.
342/642	180,124 dozen.
345	101,115 dozen.
347/348	440,084 dozen.
351	131,302 dozen.
352	149,318 dozen.
433	13,994 dozen.
445/446	53,000 dozen.
459–W [3]	93,904 kilograms.
631	267,098 dozen pairs.
636	256,755 dozen.
640–D [4]	2,981,930 dozen.
641	1,091,081 dozen of which not more than 39,617 dozen shall be in Category 641–Y [5]
647/648	1,259,743 dozen.
650	21,653 dozen.
659–S [6]	159,245 kilograms.

Category	Adjusted 12-mo limit [1]
Group III	
831–844 and 847–859, as a group.	12,476,802 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

[2] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[3] Category 459–W: only HTS number 6506.90.4060.

[4] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.2030 and 6205.90.4030.

[5] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[6] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–27127 Filed 11–16–90; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 19, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: James O'Donnell (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from James O'Donnell at the address specified above.

Dated: November 13, 1990.

James O'Donnell,

Acting Director, Office of Information Resources Management.

Office of Postsecondary Education

Type of review: Extension
Title: Performance Report for the Student Support Services Program
Frequency: Annually
Affected Public: Non-profit institutions
Reporting burden
Responses: 704
Burden hours: 3168
Recordkeeping burden
Recordkeepers: 0
Burden hours: 0
Abstract: Grantees who participate in the Student Support Services Program submit this report to the Department. The Department uses the information to assess the accomplishment of project goals and objectives, and to aid in effective program management.

Office of Special Education and Rehabilitative Services

Type of review: Revision
Title: Grant Application under the Education of the Handicapped Act
Frequency: Annually
Affected public: State or local governments
Reporting burden
Responses: 2710
Burden hours: 94000
Recordkeeping Burden
Recordkeepers: 0
Burden hours: 0
Abstract: This form will be used by State educational agencies to apply for funding under the Education of the Handicapped Act. The Department uses this information to make grant awards.

Office of Educational Research and Improvement

Type of review: Extension
Title: Integrated Postsecondary Education Data Systems (IPEDS)
Frequency: Annually
Affected public: Businesses or other for profit; Non-profit institutions
Reporting burden
Responses: 42,400
Burden hours: 78,440
Recordkeeping Burden
Recordkeepers: 0
Burden hours: 0
Abstract: The information collected for the OPEDS is used to report statistics on the condition of postsecondary education. IPEDS provides data on a broad range of topics including postsecondary students, faculty and staff, programs, institutions and finances.

Type of review: New
Title: National Adult Literacy Survey (Field Test)
Frequency: One-time
Affected public: Individuals or households
Reporting burden
Responses: 2000
Burden hours: 2340
Recordkeeping Burden
Recordkeepers: 0
Burden hours: 0
Abstract: The Department is in the process of developing a survey of literacy skills of a nationally representative sample of adults. This field test will try out background questions and procedures to be used in the main survey.

[FR Doc. 90–27134 Filed 11–16–90; 8:45 am]

BILLING CODE 4000–01–M

[CFDA Nos. 84.003A and 84.003E]

Transitional Bilingual Education and Special Alternative Instructional Program

AGENCY: Department of Education.

ACTION: Notice extending the closing date for new awards under the Transitional Bilingual Education Program and the Special Alternative

Instructional Program for fiscal year (FY) 1991.

SUMMARY: On September 17, 1990, the Department of Education published a notice in the **Federal Register** inviting applications under the Transitional Bilingual Education Program and the Special Alternative Instructional Program for FY 1991 (55 FR 38197). Detailed information concerning these competitions was included in that notfce. The purpose of this notice is to extend the closing date for transmittal of applications under these programs from December 7, 1990, to January 17, 1991. This extension will allow potential applicants additional time to develop their proposals. The Intergovernmental Review date is also extended from February 5, 1991, to March 10, 1991.

FOR APPLICATIONS OR INFORMATION CONTACT: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202–6641. Telephone: (202) 732–5701.

Authority: 20 U.S.C. 3291(a)(1)(3).

Dated: October 26, 1990.

Rita Esquivel,

Director, Office of Bilingual Education, and Minority Languages Affairs.

[FR Doc. 90–27135 Filed 11–16–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Sweden

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning the Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/SW(EU)–148, for the transfer from Belgium to Sweden of 5 irradiated fuels rods, containing 2,612 grams of uranium, enriched to 2.55 percent in the isotope uranium-235, and 15.6 grams of plutonium, for destructive and non-destructive testing.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on November 13, 1990.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 90–27200 Filed 11–16–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 90–68–NG]

Washington Natural Gas Co.; Order Granting Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order granting authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order in FE Docket No. 90–68–NG granting authorization to Washington Natural Gas Company (Washington Natural) to import from Canada, on a firm basis, up to 10,000 MMBtu per day (9635 Mcf/d) of natural gas through October 31, 1992, and 15,000 MMBtu per day (14,452 Mcf/d) commencing November 1, 1992, through October 31, 2003. The natural gas would be imported from Canada at a point on the U.S.-Canadian border near Sumas, Washington, pursuant to a gas purchase agreement between Washington Natural and Mobil Oil Canada, Ltd.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday and Friday, except Federal holidays.

Issued in Washington, DC, November 9, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–27201 Filed 11–16–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 2056–005 Minnesota]

Northern States Power Company; Availability of Environmental Assessment

November 9, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a license amendment for the proposed St. Anthony Falls Lower Dam Redevelopment Project located on the Mississippi River in Hennepin County, near Minneapolis, Minnesota, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE, Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 90–27148 Filed 11–16–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP88–180–011]

Algonquin Gas Transmission Company; Proposed Changes in FERC Gas Tariff

November 9, 1990.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on November 1, 1990, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1 proposed to be effective December 1, 1990, as set forth in the attached tariff sheet list.

Algonquin states that the attached Tariff sheets are to implement service pursuant to Rate Schedule FTP as authorized by the Federal Energy Regulatory Commission's ("Commission") Order issued July 2, 1990 in Docket No. CP88–180 *et al.* ("Order"). The Order approved Rate Schedule FTP and Form of Service Agreement for Rate Schedule FTP with certain modifications reflected on the enclosed sheets. Specifically those modifications are as summarized below:

- Revised Original Sheet No. 596B—revised to conform contract year with underlying Texas Eastern Transmission Corporation ("Texas Eastern") service.
- Revised Original Sheet No. 798A—revised to conform term with underlying Texas Eastern service.
- Revised Original Sheet No. 798D—revised to indicate that interpretation of the Service Agreement would be in accordance with the laws of the state in which the delivery point is located.

Additionally a rate sheet number was inserted at section 4.2 of Revised Original Sheet No. 596C.

Algonquin also filed Original, First and Second Revised Sheet No. 225 to implement initial rates under Rate Schedule FTP. Such rate sheet contains Phase II rates commencing November 1, 1991 as authorized in the Order and interim rates for the period December 1, 1990 through October 31, 1991. Such interim rates are pending Commission approval in Docket No. CP88–185–004 filed on October 25, 1990. In that amendment, Algonquin requested authority to commence interim service by means of alternative arrangements at reduced rates developed in accordance with the methodology employed by the Commission to set the initial rates contained in the Order.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 19, 1900. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–27145 Filed 11–16–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER90–278–000]

Dartmouth Power Associates Limited Partnership; Issuance of Commission Order and Comment Period

November 9, 1990.

Take notice that on October 29, 1990 the Federal Energy Regulatory Commission issued an Order Accepting Rates For Filing and Granting and Denying Waivers (Order). On March 21, 1990, as completed October 5, 1990, Dartmouth Power Associates Limited Partnership (Dartmouth) submitted a Power Purchase Agreement between Dartmouth and Commonwealth Electric Company (Commonwealth Electric), and an Amendment to the Agreement. The rates from Dartmouth to Commonwealth Electric were negotiated between the parties, and Dartmouth requested that the Commission find that its rates were just and reasonable, as market-based rates. In the Order, the Commission found that Dartmouth's market-pricing proposal would result in rates to Commonwealth Electric within the legally mandated zone of reasonableness.

The Commission's October 29, 1990, Order in Ordering Paragraphs (F), (G) and (H) reads as follows:

(F) Within thirty (30) days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liability by Dartmouth should file a motion to intervene or protest with the Federal Energy Regulatory commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR and 385.214 (1990)).

(G) Absent a request for hearing within the period set forth in Ordering Paragraph (F) above, Dartmouth is authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Commonwealth Electric's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing a motion to intervene or protest, as set forth above, is November 28, 1990.

Copies of the full text of the order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol St., NE., Washington, DC, 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 90–27149 Filed 11–16–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–4–4–000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

November 9, 1990.

Take notice that on November 7, 1990, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 filed the revised tariff sheets, listed below, in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on the dates indicated:

Revised tariff sheets	Proposed effective dates
Second Revised Original Sheet No. 21.	November 7, 1990.
Second Revised First Revised Sheet No. 21.	November 27, 1990.

According to Granite State, this filing revises the purchased gas cost adjustment submitted on November 1, 1990 in Docket No. TQ91–3–4–000. It is further stated that the revised rates are based on the same projected purchase costs for the remainder of the fourth quarter as those in the November 1 filing, except for a change in the cost of gas purchased from Shell Canada, Limited (Shell). Granite State states that the Commodity charge for purchases from Shell is based on weighted average of the costs for alternate fuels available in Granite States's markets based on a formula that includes the costs for No. 2 and No. 6 fuel oil and other natural gas supplies. According to Granite State, since the crises in the Persian Gulf, the costs for the fuel oil components have been rising rapidly. It is stated that this out-of-cycle purchased gas adjustment is necessary to avoid undercollections of purchased gas costs.

Granite State states that the revised rates on Second Revised Original Sheet No. 7 are proposed for effectiveness on November 7, 1990. It is further stated that the revised rates on Second Revised First Sheet No. 21 are identical to those on the former tariff sheet; however, when the restated Base Tariff Rates filed by Granite State in Docket No.

RP91-12-000 become effective on November 27, 1990, the rates on Second Revised First Revised Sheet No. 21 will supersede those on Second Revised Original Sheet No. 21.

It is stated that the proposed rate changes are applicable to Granite State's jurisdictional sales services rendered to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 19, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27147 Filed 11-16-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-15-000]

Natural Gas Pipeline Company of America; Changes in FERC Gas Tariff

November 9, 1990.

Take notice that on November 5, 1990, Natural Gas Pipeline Company of America (Natural) filed the below listed tariff sheets to be a part of its FERC Gas Tariff, First Revised Volume No. 1A, to be effective December 1, 1990:

Original Sheet No. 35.1
Original Sheet No. 35.2
First Revised Sheet No. 111
Original Sheet No. 111A

Natural states that the tariff revisions were submitted to satisfy certain commitments made by Natural in connection with the Stipulation and Agreement on Gas Inventory Demand Charge filed June 4, 1990 in Docket No. CP89-1281 (Settlement). The filing reflects certain revisions which Natural undertook in its Reply Comments on the Settlement. The changes include: (1) establishment of a procedure for Shippers to request that Natural enter into operational balancing agreements; and (2) introduction into Natural's FTS tariff of the concept of a "feeder agreement" under which an FTS Agreement may be linked with another FTS Agreement at designated points. Natural reserved the right to withdraw the proposed tariff sheets if the Settlement is not timely approved by the Commission.

Natural requested waiver of the Commission's Regulations to be extent necessary to permit the proposed tariff sheets to become effective December 1, 1990.

Natural states that a copy of this filing was mailed to Natural's jurisdictional customers, interested state regulatory agencies and all parties set out on the official service list at Docket No. CP89-1281.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 19, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27146 Filed 11-16-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3857-5]

Approval of PSD Permits and the Rescission of a PSD Permit; Region 6

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. PSD-TX-696M-2—Warren Petroleum Company: PSD-TX-696M-2 modifies PSD-TX-696M-1 by authorizing an increase in the allowable emission rate for carbon monoxide from 72.2 lb/hr to 81.2 lb/hr for those times when the gas turbine is operating without the heat recovery steam generator at loads at or below 9MW at the existing natural gas fractionation plant located on Highway 146 in Mount Belvieu, Chambers County, Texas. This modified permit was issued on January 18, 1990.

2. PSD-TX-767—Hill Petroleum Company: This permit, issued on February 2, 1990, authorizes the construction of a gas turbine cogeneration facility at the existing refinery located at 9701 Manchester in Houston, Harris County, Texas.

3. PSD-TX-695M-2—Rhone-Poulenc Basic Chemicals Group: PSD-TX-695M-2 modifies PSD-TX-695M-1 to authorize the use of a one-hour averaging time for the limits on the sulfuric acid furnace oxygen content and outlet temperature at the existing sulfuric acid plant located at 3439 Park Street in Baytown, Harris County, Texas. This modified permit was issued on February 28, 1990.

4. PSD-TX-285M-2—Shintech, Incorporated: PSD-TX-285M-2 modifies PSD-TX-285M-1 to authorize the relocation of point sources and performing of ambient monitoring for vinyl chloride monomer, and also corrects an error in the maximum allowable emission rate table for Plant 2 at the existing polyvinyl chloride facility located at 5618 Highway 332 East, Freeport, Brazoria County, Texas. This modified permit was issued on March 9, 1990.

5. PSD-TX-118M-2—Union Carbide Chemical and Plastics Company, Inc.: PSD-TX-118M-2 modifies PSD-TX-118M-1 to: (1) Allow the production of Flexomer products in one of the two reaction trains in the low pressure polyethylene facility; (2) add two new storage bins; (3) add a purge bin vent recovery system; (4) update emissions from the large flare; (5) authorize an increase in the VOC fugitive emissions, and add three additional fugitive points; (6) add new PM emission points for a new additive system and a transfer filter system; (7) eliminate emission points 499 and 517 through 520; (8) update the PSD permit to reflect PM emission sampling results performed prior to 1985; (9) update PSD permit for the addition of blending and finishing equipment that occurred in 1979 and 1985; (10) change the procedure for fugitive emission testing in Special Provision No. 2.a from the EPA OAQPS Guideline Series to NSPS appendix A, Method 21; (11) change the authorized operating hours from 8000 per year to 8760 hours per year; (12) put emission limits in lb/occ for intermittent PM emission points and lb/hr for all others; (13) include the

Texas Air Control Board fugitive monitoring program; (14) indicate applicable NSPS regulations; (15) report compliance test results quarterly; and (16) reduce emissions from shutdown before new equipment starts up. This low pressure polyethylene plant is located approximately 14 miles south of Port Lavaca, Calhoun County, Texas. This modified permit was issued on March 14, 1990.

6. PSD-TX-769—Simpson Pasadena Paper Company: This permit, issued on March 16, 1990, authorizes the construction of two 213 MMBtu/hr boilers for steam generation at the existing paper mill located on N. Shaver Street, Pasadena, Harris County, Texas.

7. PSD-TX-120M-2—Capitol Aggregates, Inc.: PSD-TX-120M-2 modifies PSD-TX-120M-1 to authorize the change of nitrogen oxide emissions from the level projected based on calculations to the level measured by stack sampling at the existing Portland Cement Plant located at 11551 Nacogdoches Road, San Antonio, Bexar County, Texas. This modified permit was issued on April 23, 1990.

8. PSD-TX-739M-3—Tenaska III Texas Partners: PSD-TX-739M-3 modifies PSD-TX-739M-2 to permanently change the maximum firing rate of the duct burners from 333 MMBtu/hr to 225 MMBtu/hr and to increase the emissions of carbon monoxide from 62 T/yr to 128 T/yr and volatile organic compounds from 2 T/yr to 4 T/yr. There will also be a decrease in nitrogen oxides from 175 T/yr to 99 T/yr and sulfur dioxide from 22 T/yr to 15 T/yr at the gas turbine cogeneration facility located adjacent to the Campbell Soup Plant at 500 Loop 286, NW in Paris, Lamar County, Texas. This modified permit was issued on April 25, 1990.

9. PSD-TX-741M-1—Oryx Energy Company: PSD-TX-741M-1 modifies PSD-TX-741 to reflect the use of actual site conditions (ASC) for the purpose of determining No_x emission levels from their compressor engines instead of adjusting the emission levels to Reference Ambient Day Conditions (RAC) as specified by § 60.324 of the proposed NSPS, subpart FF. These compressor engines are at the existing natural gasoline plant located off FM Road 2294, approximately 4.5 miles southwest of San Isidro, Starr County, Texas. This modified permit was issued on April 25, 1990.

10. PSD-TX-332M-3—Texas Eastman Company: PSD-TX-332M-3 modifies PSD-TX-332M-2 to revise Special Provisions 4 and 5 to require the sampling and analysis of certain liquid streams when these streams are being burned as fuel in the boilers covered by this permit at the existing chemical process plant located on Kodak Boulevard, approximately five miles southeast of Longview, Harrison County, Texas. This modified permit was issued on June 4, 1990.

11. PSD-TX-324M-5—Valero Refining Company: PSD-TX-324M-5 modifies PSD-TX-324M-4 to allow Valero to use their own QA/QC procedures instead of the QA/QC procedures of Appendix F for the continuous emissions monitors required by Special Provisions 5, 6, 7, 8, and 22. The refinery is located at 5900 Up River Road, Corpus Christi, Nueces County, Texas. This modified permit was issued on June 6, 1990.

12. PSD-TX-777—Koch Refining Company: This permit, issued on June 22, 1990, authorizes the expansion of the existing xylene complex at the refinery located on Suntide Road in Corpus Christi, Nueces County, Texas.

13. PSD-TX-773—Hill Petroleum Company: This permit, issued on June 28, 1990, authorizes the construction of a combined cycle gas turbine cogeneration facility at the existing petroleum refinery located at Loop 297 and 14th Street, Texas City, Galveston County, Texas.

14. PSD-TX-500M-3—Shell Western E&P, Inc.: PSD-TX-500M-3 modifies PSD-TX-500M-2 to authorize: (1) The installation of a new Sulferox℠ sulfur recovery unit to replace a 3-stage claus and tail gas incinerator; (2) the increase in gas throughput from 180 to 290 MMSCFD; and (3) the installation of a new heater at the existing CO_2 recovery plant located off FM Road 1939, approximately 1.5 miles north of Denver City, Yoakum County, Texas. This modified permit was issued on June 28, 1990.

These permits have been issued under EPA's Prevention of Significant Air Quality Deterioration Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. No petitions for review of these permits have been filed with the Administrator.

Notice is hereby given that the Environmental Protection Agency (EPA) Region 6, rescinded the following Prevention of Significant Deterioration (PSD) permit:

1. PSD-OK-183a—Texaco Pipeline, Incorporated: This permit was issued to Getty Pipeline (now Texaco Pipeline) on February 7, 1979, to authorize the construction of five (5) petroleum storage tanks near Glenpool, Tulsa County, Oklahoma. This permit was issued under 40 CFR 52.21, as in effect on June 19, 1978. The PSD regulations, as amended on August 7, 1980, do not apply to the storage tanks. The source no longer constitutes a major stationary source since, under the new definition of "potential to emit," its controlled emissions will be less than 250 tons per year for any pollutant regulated under the Act. Therefore, EPA determined that a PSD permit is no longer required for the storage tanks and rescinded the permit on May 2, 1990.

A notice of EPA's proposed action to rescind the PSD permit was published in a newspaper in the affected area of the facility.

Documents relevant to the above actions are available for public inspection during normal business hours at the Air, Pesticides and Toxics Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of these actions is available, if at all, only by the filing of a petition for a review in the United States Fifth Circuit Court of Appeals for Texas and the Tenth Circuit Court of Appeals for Oklahoma within 60 days of January 19, 1991. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

This notice will have no effect on the National Ambient Air Quality Standards.

The Office of Management and Budget has exempted this information notice from the requirements of section 3 of Executive Order 12291.

Dated: October 18, 1990.

Joe D. Winkle,

Acting Regional Administrator, Region 6.

[FR Doc. 90-27198 Filed 11-16-90; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59276C; FRL-3837-7]

Toxic and Hazardous Substances; Certain Chemicals; Approval of Modification to a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of modification of the test marketing period for a test marketing

exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated the original test marketing application as TME–89–26. The test marketing conditions are described below.

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Andrea Pfahles-Hutchens, New Chemical Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St., SW., Washington, DC 20460, (202) 382–2255.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves the modification of the test marketing period for TME–89–26. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the modified time period specified in the modification request, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the original notice of approval of test marketing application remain the same.

T–89–26

Notice of Approval of Original Application: October 10, 1989 (54 FR 42840).

Modified Test Marketing Period: Confidential.

Commencing on: Confidential.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: October 9, 1990.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc 90–27203 Filed 11–16–90; 8:45 am]

BILLING CODE 6560–50–F

[WH–FRL–3861–4]

Prince William Sound and Gulf of Alaska; Restoration Work Plan and Program

AGENCY: Environmental Protection Agency and Alaska Department of Fish and Game.

ACTION: Notice of intent to prepare a draft restoration work plan and to propose a 1991 restoration program.

SUMMARY: The Environmental Protection Agency (EPA), on behalf of the Federal trustees (the Departments of the Interior and Agriculture and the National Oceanic and Atmospheric Administration) and the Alaska Department of Fish and Game (ADF&G), on behalf of the State Trustee, are announcing the intent of the Federal and State governments to prepare a draft restoration work plan for the Prince William Sound and the Gulf of Alaska, and to propose a restoration program for the 1991 field season.

DATES: The Federal and State of Alaska governments intend to jointly publish a draft restoration work plan and a restoration program for the 1991 field season in the **Federal Register** on or about December 28, 1990, and will accept comments on the draft plan and proposed 1991 projects for 30 days after the publication of that notice.

FOR FURTHER INFORMATION CONTACT: Susan MacMullin—EPA, Washington, DC (202/483–7166) or Stanley Senner—ADF&G, Anchorage, AK (907/271–2461).

SUPPLEMENTARY INFORMATION:

I. Background

The March 24, 1989, grounding of the tanker *Exxon Valdez* in Alaska's Prince William Sound caused the largest oilspill in U.S. history. A slick containing about 11 million gallons of North Slope crude oil covered the western portion of the Sound and moved to Cook Inlet and along the Gulf of Alaska. More than 1,000 miles of shoreline were affected, including State and national forests, wildlife refuges, and parks. The spill damaged areas extremely rich in natural resources. It injured fish, birds, mammals, intertidal and subtidal plants and animals and their associated habitats. The area's important historical and archaeological resources also were injured as a result of oiling and cleanup activities. The oil also adversely affected intrinsic values.

Soon after the spill occurred, President Bush and Alaska Governor Cowper expressed the desire that the environment and economy of Prince William Sound and the Gulf of Alaska be fully restored. Responsibility for full restoration of these natural resources and the services they provide rests with Federal and State agencies.

Both Federal and State law provide authority for response, damage assessment, and restoration actions undertaken following the *Exxon Valdez* oilspill. Under Federal law, section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and section 311(f) of the Federal Water Pollution Control Act (Clean Water Act) provide for Federal and State officials to act as trustees on behalf of the injured, lost and destroyed natural resources and to pursue recovery of damages for injury, loss or destruction of these resources. Federal law authorizes the State and Federal governments to present claims to the responsible parties for damages for injury, loss or destruction of natural resources and their uses. The funds received from these claims must be used to restore, replace or acquire the equivalent of the natural resources and services injured, lost or destroyed by the spill.

CERCLA applies to releases of hazardous substances other than oil, while the Clean Water Act applies to oilspills. Both laws are supplemented by the National Contingency Plan (40 CFR part 300) and the Natural Resource Damage Assessment (NRDA) regulations (43 CFR part 11) which set out a process, which is not mandatory, for determining proper compensation to the public for injury, loss or destruction of natural resources. In this case, the natural resource trustees have not made a final decision on whether to follow the NRDA regulations. In combination, these laws and regulations provide the structure for the Federal/State response, damage assessment, and restoration activities following the *Exxon Valdez* oilspill.

Restoration (including actions to restore, replace or acquire the equivalent of resources) is one component of this process. Combined with response, cleanup and the damage assessment process, these efforts seek to minimize adverse impacts and compensate the public for natural resource injury, loss, or destruction and

lost use and intrinsic values, by restoring the resources and the services they provide.

Response activities include the initial emergency measures to contain the spilled oil and minimize adverse impacts, as well as the subsequent efforts to clean up oil from the spill area. The magnitude of and circumstances surrounding the *Exxon Valdez* oil spill resulted in relatively little of the spilled oil being contained. Consequently, cleanup activity has focused primarily on removing oil from the shoreline areas affected by the spill. Cleanup activities continued through the summer of 1990 and are expected to resume next year.

In 1989, State and Federal natural resource trustee agencies initiated scientific studies after the oil spill to assess the amount of damage. Most of these studies were continued into 1990, with a number of new studies being initiated as well. This damage assessment process, which is comprised of data collection and analysis components, will continue in 1991. It is designed to identify and quantify the specific resource injury, loss, or destruction and to determine corresponding monetary values. These monetary values include restoration costs, as well as lost-use and intrinsic values. Claims for those damages will be presented to the responsible parties, and under Federal law, the monies received must be used for restoration, replacement or acquisition of equivalent resources.

Restoration builds upon the spill response and damage assessment process by planning for, and then implementing, activities to restore the injured, lost or damaged environment.

The NRDA regulations define "restoration" or "rehabilitation" as . . . "actions undertaken to return an injured resources to its baseline condition as measured in terms of the injured resource's physical, chemical, or biological properties or the services it previously provided . . ." The preceding definition of restoration from the NRDA regulations is provided in this notice for informational purposes. As mentioned earlier, the NRDA regulations are not mandatory.

Generally, the concept of "restoration" includes direct restoration, replacement and the acquisition of equivalent resources:

- Direct restoration refers to measures, in addition to response actions, taken, usually on-site, to directly rehabilitate an injured, lost or destroyed resource.
- Replacement refers to substituting one resource for an injured, lost or destroyed resource of the same or similar type.
- Acquisition of equivalent resources includes the purchase or protection of resources to enhance the recovery, productivity, and survival of the ecosystems affected by the oil spill.

The goal of the restoration planning effort is to identify appropriate measures that can be taken to restore natural resources affected by the *Exxon Valdez* oil spill. Specific objectives include:

- Identify or develop technically feasible restoration options for natural resources and services potentially affected by the oil spill.
- Determine the nature and pace of natural recovery of injured resources, and identify where direct restoration measures may be appropriate.
- Incorporate an approach to restoration that, where appropriate, focuses on recovery of ecosystems, rather than on the individual components of those systems.
- Identify the costs associated with implementing restoration measures, in support of the overall natural resource damage assessment process.
- Encourage, provide for and be responsive to public participation and review during the restoration planning process.

Among the documents now available on the restoration program are several compiled by the Restoration Planning Work Group (RPWG), which is composed of representatives from the U.S. Departments of Agriculture and the Interior, NOAA, EPA and the Alaska Departments of Environmental Conservation, Fish and Game, and Natural Resources. The RPWG is responsible for planning for the restoration of the areas affected by the *Exxon Valdez* oil spill. To that end, the RPWG has undertaken to gather and develop information on all aspects of restoration related to oil spills.

During the past 18 months, EPA conducted a computerized literature search to identify restoration approaches that have potential for success, as well as actions to avoid. The databases searched were: Aquatic Science Abstracts (1978–1988), BIOSIS Previews (1970–1990) Environmental Bibliography (1969–1989), ENVIROLINE (1970–1989), Pollution Abstracts (1970–1990), and NTIS (1964–1990). The search yield approximately 450 publications. EPA then reviewed the titles and abstracts and identified the most relevant publications for acquisition and detailed review. Articles were selected according to the following criteria:

- Techniques potentially applicable to sub-arctic conditions;
- Restoration of the same resources as those that may have been damaged by the *Exxon Valdez* oil spill;
- Creation of new aquatic habitats (by dredge-and-fill techniques, construction of artificial reefs, etc);
- success of organisms grown in or transplanted to oil-contaminated substrates;
- Approaches and techniques for long-term monitoring studies.

This selective bibliography (approximately 200 citations) is found in appendix A to this notice. The full bibliography of about 450 citations (Item 1, appendix B) is available as noted in appendix B.

The RPWG has developed two reports which are publicly available. One documents the proceedings of an oil spill restoration symposium held on March 26–27, 1990, in Anchorage, Alaska (Item 2, appendix B). The symposium began with introductory statements by Dennis Kelso, Commissioner of the Alaska Department of Environmental Conservation, and Tom Dunne, Acting Regional Administrator of the U.S. Environmental Protection Agency. These opening remarks described the restoration planning process and its objectives. Three keynote speakers addressed the symposium on legal issues related to the damage assessment and restoration process, experiences with restoration of nonmarine ecosystems and public participation in the planning process. A final keynote speaker provided an overview of restoration concepts.

Panel discussions comprised the remainder of the symposium. Sessions addressed direct and indirect restoration of six categories of resources or their uses: Coastal habitats, fisheries, marine and terrestrial mammals, birds, cultural resources and recreation uses. Panelists included experts on restoration in each of these six categories, as well as representatives from various resource user groups, Alaska Native corporations, public land managers, environmental interest groups and the timber and tourism industries. All panel sessions included opportunities for questions and comments from the public, and an extended public comment session took place at the end of the symposium.

Restoration concepts and ideas discussed at the symposium can be grouped into three categories. Broad restoration approaches and philosophies; recommendations for public participation during the restoration planning process; and ideas addressing restoration of specific

resources (e.g., fisheries, mammals, cultural resources).

The second report is the August 1990 progress report, "Restoration Planning Following the *Exxon Valdez* Oil Spill" (Item 3, appendix B), which summarizes the RPWG activities to date. Its chapters present discussions on public participation programs, a technical workshop, the literature review, and restoration feasibility studies. The report also organizes a possible restoration program in a series of matrices for birds, mammals, fish and shellfish, coastal habitats, recreational uses, cultural resources and multiple resources and values. Within each matrix, categories of potentially injured, lost or destroyed resources are cross-referenced to potential restoration approaches.

The report also offers a discussion of future restoration planning activities, including the evaluation and selection of restoration options and development of a final restoration plan.

The RPWG has undertaken a series of restoration studies designed to assess the potential of direct restoration techniques for some of the resources injured by the oil spill. The study titles are as follows:

Restoration Feasibility Study No. 1.	Re-establishment of *Fucus in Rocky Intertidal Ecosystems.*
Restoration Feasibility Study No. 2.	Re-establishment of Critical Fauna in Rocky Intertidal Ecosystems.
Restoration Feasibility Study No. 3.	Identification of Potential Sites for Stabilization and Restoration of Beach Wild Rye.
Restoration Feasibility Study No. 4.	Identification of Upland Habitats used by Wildlife Affected by the Exxon Valdez oil spill.
Restoration Feasibility Study No. 5.	Land Status, Uses, and Management Plans in Relation to Natural Resources and Service.

There Restoration Technical Support Projects are also being carried out in 1990. The first project will support development of detailed plans for potential restoration studies in 1991, including, but not limited to:

- "Natural recovery" monitoring;
- Pink salmon stock identification;
- Herring stock identification/spawing site inventory;
- Artifical habitat construction for fish and shellfish;
- Alternative recreation site/facility identification;
- Historic site/artifact restoration; and,
- Forage fish availability.

A second Restoration Technical Support Project will develop and implement a scientific peer review process for the feasibility studies and potential restoration projects.

The third Restoration Technical Support Project will assess and summarize existing beach segment survey data to identify sites for future restoration projects.

These studies are summarized in the document "The 1990 State/Federal Natural Resource Damage Assessment and Restoration Plans for the Exxon Valdez Oil Spill (Item 4, appendix B). Included in this document are responses to public comments received concerning the 1989 damage assessment report (Item 5, appendix B). Commenters responded to a general section that briefly discussed restoration planning as a goal for the upcoming year.

II. Notice of Intent to Publish a Draft Restoration Work Plan and a Proposed Restoration Program for the 1991 Field Season

EPA, on behalf of the Federal trustee agencies, and ADF&G, on behalf of the State Trustee, are announcing the intent of the Federal and State of Alaska governments to jointly publish in the **Federal Register** on or about December 28, 1990 the following:

- A draft restoration work plan that addresses appropriate steps for long-range restoration or Prince William Sound and the Gulf of Alaska.
- A proposed restoration program for the 1991 field season.

The draft restoration work plan is expected to provide the public with information about the restoration plans of the Federal and State trustees and identify a proposed program, including restoration projects, that may be implemented in 1991. Development of this work plan is not required by the NRDA regulations. The Federal and State governments expect the parties responsible for the oil spill to pay for these projects.

The State and Federal governments will request public comment on restoration priorities and methods upon the publication of the draft restoration work plan in the **Federal Register**. The restoration work plan will not be the final restoration plan, but an opportunity for further public participation in the restoration planning process.

Dated: October 24, 1990.

LaJuana S. Wilcher,

Assistant Administrator, Office of Water, Environmental Protection Agency.

Dated: October 30, 1990.

Gregg K. Erickson,

Director, Division of Oil Spill Impact Assessment and Restoration, Alaska Department of Fish and Game.

Appendix A

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Appendix B

Item 1: "Ecological Restoration of PWS and the GOA: An Annotated Bibliography of Relevant Literature." RPWG and EPA-ORD, March 1990.
Item 2: "Restoration Following the Exxon Valdez Oil Spill: Proceedings the Public Symposium," Prepared by the RPWG, July 1990.
Item 3: "Restoration Following the Exxon Valdez Oil Spill: August 1990 Progress Report." Prepared by the RPWG, August 1990.
Item 4: "State/Federal Natural Resource Damage Assessment Plan for the Exxon Valdez Oil Spill—Sept. 1990." Trustee Council.
Item 5: "State/Federal Natural Resource Damage Assessment Plan for the Exxon Valdez Oil Spill—Aug. 1989." Trustee Council.

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FEDERAL RESERVE SYSTEM

Central Bancshares of the South, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 10, 1990.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Central Bancshares of the South, Inc.*, Birmingham, Alabama, and Compass Bancshares, Inc., Houston, Texas; to acquire Trust Company, Houston, Texas, and Trust Corporation, Houston, Texas, and thereby engage in trust company activities pursuant to section 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted in the State of Texas.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Chambers Bancshares, Inc.*, Danville, Arkansas; to acquire Petit Jean Insurance Agency, Danville, Arkansas, and thereby engage in general insurance agency activities such as the sale of automobile, home, business, life and health insurance in a community with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y. The activity will be limited to the subsidiary bank's primary service area out of the bank's sole office located in Danville, Arkansas.

Board of Governors of the Federal Reserve System, November 13, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90–27163 Filed 11–16–90; 8:45 am]
BILLING CODE 6210–01–M

John B. DeNault; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than December 3, 1990.

A. **Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Assistant Vice President), 101 Market Street, San Francisco, California 94105:

1. *John B. DeNault*; to acquire 28.28 percent of the voting shares of Liberty Bank, South San Francisco, California.

Board of Governors of the Federal Reserve System, November 13, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90–27162 Filed 11–16–90; 8:45 am]
BILLING CODE 6210–01–M

First Midwest Corporation of Delaware, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Comapny Act (12 U.S.C 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications msut be received not later than December 10, 1990.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Midwest Corporation of Delaware*, Elmwood Park, Illinois; to acquire 100 percent of the voting shares of Oquawka Bancshares, Inc., Oquawka, Illinois, and thereby indirectly acquire Bank of Oquawka, Oquawka, Illinois.

2. *First Neighborhood Bancshares, Inc.*, Toledo, Illinois; to become a bank holding company by acquring 100 percent of the voting shares of The First National Bank in Toledo, Toledo, Illinois.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Security State Bank Holding Company*, Hannaford, North Dakota; to acquire at least 98.56 percent of the voting shares of First State Bank of New Rockford, New Rockford, North Dakota.

Board of Governors of the Federal Reserve System, November 13, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90–27164 Filed 11–16–90; 8:45 am]
BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b) (2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and require that notice of his action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 102990 AND 110990

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Signet Banking Corporation, United Counties Bancorporation, United Counties Trust Company	91-0060	10/29/90
Lee-GN Holding Corp., American Health Companies Inc., American Health Companies Inc	91-0065	10/29/90
George L. Argyros, U.S. Computer Services dba Cable Data, U.S. Computer Services	91-0048	10/30/90
Toufic Aboukheir, The Henley Group, Inc., The Henley Group, Inc	91-0070	10/30/90
BM Group PLC, Blackwood Hodge p.l.c., Blackwood Hodge p.l.c	91-0032	10/31/90
Ishihara Sangyo Kaisha, Ltd., AB Industrivarden, SDS Enterprises, Inc	91-0061	10/31/90
The Fuji Bank, Limited, Kroy, Inc., Kroy, Inc	91-0102	10/31/90
Canadian Pacific Limited, Bessemer Securities Corporation, Overhead Door Corporation	91-2258	11/01/90
The Hearst Trust, Capital Cities/ABC, Inc., ESPN Inc	91-0021	11/01/90
Edisto Resources Corporation, Hall-Houston Oil Company (Delaware)-Joint Venture, Hall-Houston Oil Company (Delaware)-Joint Venture	91-0062	11/02/90
Gary L. Hall, Hall-Houston Oil Company (Delaware)-Joint Venture, Hall-Houston Oil Company (Delaware)-Joint Venture	91-0077	11/02/90
Edisto Resources Corporation, Hall-Houston Oil Company (Delaware)-Joint Venture, Hall-Houston Offshore Partnership	91-0079	11/02/90
General Motors Corporation, Xerox Corporation, NAVCO Corp	91-0086	11/02/90
Kobe Steel, Ltd., PrarieTek Corporation, PrarieTek Corporation	91-0091	11/02/90
President and Fellows of Harvard College, Harken Energy Corporation, E-Z Serve Holding Company, Inc., and Tejas Power Corp	91-0104	11/02/90
ICM Property Investors Incorporated, Peter B. Bedford, Peter B. Bedford	91-0116	11/02/90
Gannett Co., Inc., Peter C. and Sharon M. Labovitz, Twelve Entities	91-0025	11/06/90
Cavel Corp., Ryder System, Inc., Ryder Temperature Controlled Carriage, Inc	91-0038	11/06/90
Nabors Industries, Inc., Loyal Trust No. 1, Henley Drilling Company	91-0092	11/06/90
Penrzoil Company, Oryx Energy Company, Sun Operating Limited Partnership	91-0109	11/06/90
Fuji Heavy Industries, Ltd., Robert S. Lee, Penn Jersey Subaru, Inc	91-0125	11/06/90
Fuji Heavy Industries, Ltd., John W. Merriam, Penn Jersey Subaru, Inc	91-0126	11/06/90
Neste Oy, Creative Pultrusions, Inc., Creative Pultrusions, Inc	91-0128	11/06/90
Carl E. Hirsch, Jacor Communications, Inc., Jacor Communications, Inc	91-0131	11/06/90
Trivest Institutional Fund, Ltd., Daniel J. Sullivan, The Shannon Group, Inc	91-0026	11/08/90
Radex Heraklith Industriebeteiligungs AG, National Refractories Holding Co., National Refractories Holding Co	91-1737	11/09/90
Mitsubishi Metal Corporation, Mitsubishi Mining & Cement Co., Ltd., Mitsubishi Mining & Cement Co., Ltd	91-0039	11/09/90
Sanken Electric Co., Ltd., Sprague Technologies, Inc., Sprague Electric Company	91-0050	11/09/90
Compagnie Financiere Ehrbar, P.J. Carroll and Company plc, P.J. Carroll and Company	91-0127	11/09/90
Tomoku Co., Ltd., Longview Fibre Company, Longview Fibre Company	91-0130	11/09/90
ConAgra International, Inc., Harlin Holdings Pty. Limited, Elders IXL Ltd. (three divisions thereof)	91-0149	11/09/90
Quantum Fund N.V., Sharon Steel Corporation, Mueller Industries, Inc	91-0151	11/09/90

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-27188 Filed 11-16-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Aid to Families With Dependent Children, Medicaid, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 1991 through September 30, 1992

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: The Federal Percentages and Federal Medical Assistance Percentages for Fiscal Year 1992 have been calculated pursuant to the Social Security Act (the Act). These percentages will be effective from October 1, 1991 through September 30, 1992. This notice announces the calculated "Federal percentages" and " Federal medical assistance percentages" that we will use in determining the amount of Federal matching in State welfare and medical expenditures. The table gives figures for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Programs under title XIX of the Act exist in each jurisdiction; title IV-A programs in all jurisdictions except American Samoa and the Northern Mariana Islands; programs under titles I, X, and XIV operate only in Guam and the Virgin Islands; while a program under title XVI (AABD) operates only in Puerto Rico. The percentages in this notice apply to State expenditures for assistance payments and medical services (except family planning which is subject to a higher matching rate). The statute provides separately for Federal matching of administrative costs.

Sections 1101(a)(8) and 1905(b) of the Act, as revised by section 9528 of Pub. L. 99-272, require the Secretary of Health and Human Services to publish these percentages each year. The Secretary is to figure the percentages, by formulas in sections 1101(a)(8), and 1905(b) of the Act, from the Department of Commerce's statistics of average income per person in each State and in the Nation as a whole. The percentages are within upper and lower limits given in those two sections of the Act. The statute specifies the percentages to be applied to Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

The "Federal percentages" are for Aid to Families with Dependent Children (AFDC) and aid to needy aged, blind, or disabled persons, and the "Federal medical assistance percentages" are for Medicaid. However, under section 1118 of the Act, States with approved Medicaid plans may claim Federal matching funds for expenditures under approved State plans for these other programs using either the Federal percentage or the Federal medical assistance percentage. These States may claim at the Federal medical assistance percentage without regard to any maximum on the dollar amounts per recipient which may be counted under paragraphs (1) and (2) of sections 3(a), 403(a), 1003(a), 1403(a), and 1603(a) of the Act.

EFFECTIVE DATES: The percentages listed will be effective for each of the 4 quarter-year periods in the period beginning October 1, 1991 and ending September 30, 1992.

FOR FURTHER INFORMATION CONTACT:
Mr. Emmett Dye, Office of Family Assistance, Family Support Administration, Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone (202) 252-5041.

(Catalog of Federal Domestic Assistance Program Nos. 13.808—Assistance Payments—Maintenance Assistance (State Aid); 13.614—Medical Assistance Program)

Dated: November 13, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

FEDERAL PERCENTAGES AND FEDERAL MEDICAL ASSISTANCE PERCENTAGES

[Effective October 1, 1991-September 30, 1992 (Fiscal year 1992)]

State	Federal percentages	Federal medical assistance percentages
Alabama	65.00	72.93
Alaska	50.00	50.00
American Samoa	50.00	* 50.00
Arizona	58.45	62.61
Arkansas	65.00	75.86
California	50.00	50.00
Colorado	50.00	54.79
Connecticut	50.00	50.00
Delaware	50.00	50.12
District of Columbia	50.00	50.00
Florida	50.00	54.69
Georgia	57.54	61.78
Guam	50.00	* 50.00
Hawaii	50.00	52.57
Idaho	65.00	73.24
Illinois	50.00	50.00
Indiana	59.84	63.85
Iowa	61.15	65.04
Kansas	54.70	59.23
Kentucky	65.00	72.82
Louisiana	65.00	75.44
Maine	58.22	62.40
Maryland	50.00	50.00
Massachusetts	50.00	50.00
Michigan	50.45	55.41
Minnesota	50.00	54.43
Mississippi	65.00	79.99
Missouri	56.49	60.84
Montana	65.00	71.70
Nebraska	60.56	64.50
Nevada	50.00	50.00
New Hampshire	50.00	50.00
New Jersey	50.00	50.00
New Mexico	65.00	74.33
New York	50.00	50.00
North Carolina	62.80	66.52
North Dakota	65.00	72.75
Northern Mariana Islands	50.00	50.00
Ohio	56.26	60.63
Oklahoma	65.00	70.74
Oregon	59.50	63.55
Pennsylvania	52.05	56.84
Puerto Rico	50.00	* 50.00
Rhode Island	50.00	53.29
South Carolina	65.00	72.66
South Dakota	65.00	72.59
Tennessee	64.90	68.41
Texas	60.20	64.18
Utah	65.00	75.11
Vermont	57.08	61.37
Virgin Islands	50.00	* 50.00

FEDERAL PERCENTAGES AND FEDERAL MEDICAL ASSISTANCE PERCENTAGES—Continued

[Effective October 1, 1991-September 30, 1992 (Fiscal year 1992)]

State	Federal percentages	Federal medical assistance percentages
Virginia	50.00	50.00
Washington	50.00	54.98
West Virginia	65.00	77.68
Wisconsin	55.98	60.38
Wyoming	65.00	69.10

* For purposes of section 1118 of the Social Security Act, the percentage used under titles I, X, XIV, and part A of title IV will be 75 per centum.

[FR Doc. 90-27192 Filed 11-16-90; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 90P-0358]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Mayfield Dairy Farms, Inc., to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 19, 1991.

FOR FURTHER INFORMATION CONTACT:
Howard A. Anderson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0348.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Mayfield Dairy Farms, Inc., 813 East Madison Ave., P.O. box 310, Athens, TN 37303.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 8.25 percent to 1 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "33% fewer calories" and "80% less fat than regular eggnog".

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 90,000 quarts (85,170 liters) of the test product. The product will be manufactured at Mayfield Dairy Farms, 813 East Madison Ave., Athens, TN 37303, and distributed in Tennessee and Georgia.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 19, 1991.

Dated: November 7, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-27180 Filed 11-16-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90P-0366]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Gillette Dairy to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 19, 1991.

FOR FURTHER INFORMATION CONTACT: Howard A. Anderson, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0349.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Gillette Dairy, 700 East Omaha Ave., P.O. box 19, Norfolk, NE 68701.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog".

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 200,000 quarts (189,260 liters) of the test product. The product will be manufactured at Gillette Dairy, 700 East Omaha Ave., P.O. box 19, Norfolk, NE 68701, and distributed in Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Dakota, and Wyoming.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 19, 1991.

Dated: November 11, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90–27181 Filed 11–16–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90P–0367]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Western Dairymen Cooperative, Inc., to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 19, 1991.

FOR FURTHER INFORMATION CONTACT: Frederick E. Boland, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0227.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Western Dairymen Cooperative, Inc., 175 South West Temple, Salt Lake City, UT 84101.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and 75% less fat than regular eggnog".

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 60,000 quarts (56,778 liters) of the test product. The product will be manufactured at 1225 Wall Ave., Ogden, UT 84404, and distributed in Arizona, Colorado, Idaho, Nevada, Utah, and Wyoming.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 19, 1991.

Dated: November 7, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90–27182 Filed 11–16–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90P–0355]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Schucks Mid States Dairy to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than (February 19, 1991.

FOR FURTHER INFORMATION CONTACT: Frederick E. Boland, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0117.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Schucks Mid States Dairy, 6040 North Lindbergh Blvd., Hazelwood, MO 63042.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog".

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 46,000 quart-size units (43,529 liters) and 54,000 half-gallon size units (102,200 liters) of the test product. The product will be manufactured at Schnucks Mid States Dairy, 6040 North Lindbergh Blvd., Hazelwood, MO 63042, and distributed in central Illinois, southwestern Indiana, west central Kansas, and Missouri.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 19, 1991.

Dated: November 7, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90–27178 Filed 11–16–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90P–0357]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to the Galliker Dairy Co. to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than Fedruary 19, 1991.

FOR FURTHER INFORMATION CONTACT: Howard A. Anderson, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0349.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to the Galliker Dairy Co., 143 Donald Lane, P.O. box 159, Johnstown, PA 15907–0159.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog".

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fact content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 50,000 quarts (47,315 liters) of the test product. The product is to be manufactured at the Galliker Dairy Co., 143 Donald Lane, Johnstown Industrial Park, Johnstown, PA 15907–0159, and distributed in Maryland and Pennsylvania.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 19, 1991.

Dated: November 7, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-27179 Filed 11-16-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90P-0331]

Sour Cream Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to the Knudsen Division, Kraft General Foods, to market test a product designated as "light sour cream" that deviates from the U.S. standard of identity for sour cream (21 CFR 131.160). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 9, 1991.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0343.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to the Knudsen Division, Kraft General Foods, 1900 West Slauson Ave., Los Angeles, CA 90047.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for sour cream in 21 CFR 131.160 in that: (1) The fat content of the product is reduced from 18 percent to 9 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 2-tablespoon (28.35-gram) serving of the product contains 4 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to sour cream but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light sour cream." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ fewer calories" and "50% less fat sour cream".

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 7,500,000 pounds (3,402,000 kilograms) of the test product. The product will be manufactured at Knudsen Division, 715 West Divisadero St., Visalia, CA 93291, and distributed in Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, and Washington.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 19, 1991.

Dated: November 7, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-27176 Filed 11-16-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-660-00-4143-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provision of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Projects (1004-0142), Washington, DC 20503, telephone (202) 395-7340.

Title: Solid Minerals (Other than Coal) Exploration and Mining Operations Reporting (43 CFR 3590).

OMB Clearance Number: 1004-0142.

Abstract: Requirements are given in this part for exploration and mining plans, including surface and underground maps. These maps are required to be furnished to the authorized officer annually or as otherwise specified. Other information required in this part include records of all core or test holes made on the leased or permit lands, mining methods, and changes to exploration and/or mining plans. Normally this information is received on an "on occasion" basis and does not require formal or routine reporting. Production maps which show the extent of mining activities are required on a routine basis (usually monthly or quarterly) to enable the authorized officer to verify production.

The information contained in 43 CFR part 3590 is being collected to permit the authorized officer to determine whether proposed and existing exploration and mining operations for solid leasable minerals, other than coal, on the Federal lands are in compliance with the applicable statutory and regulatory requirements, and to ensure that production reported for royalty purposes is accurate.

Bureau form number: None.

Frequency: On occasion, monthly, quarterly, and annually.

Description of Respondents: Solid mineral (other than coal) lessees, permittees and operators.

Estimated completion time: On average, 2 hours.

Annual Responses: 1,993.

Annual Burden Hours: 3,986.

Bureau Clearance Officer: (Alternate) Gerri Jenkins (202) 653-8853.

Dated: September 27, 1990.

Adam A. Sokoloski,

Acting Assistant Director, Energy and Mineral Resources.

[FR Doc. 90-27160 Filed 11-16-90; 8:45 am]

BILLING CODE 4310-84-M

[NV-930-91-4212-11; N-33414]

Termination of Recreation and Public Purpose Classification; NV

November 8, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates Recreation and Public Purpose (R&PP) Classification N-33414 in its entirety. The land will be opened to the public land laws generally, including the mining and mineral leasing laws.

EFFECTIVE DATE: Termination is effective with the publication of this document. The land will be open to entry effective 10 a.m. on December 19, 1990.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, BLM, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-785-6526.

SUPPLEMENTARY INFORMATION: Pursuant to section 7 of the Taylor Grazing Act (48 Stat. 1272) and the authority delegated by appendix 1 of Bureau of Land Management Manual 1203 dated April 14, 1987, Recreation and Public Purpose Classification N-33414 is hereby terminated in its entirety:

Mount Diablo Meridian, Nevada

T. 32 N., R. 23 E.,
Sec. 23, NW¼NW¼.

The area described contains 40 acres in Washoe County.

The classification made pursuant to the Act of June 14, 1926, as amended, segregated the public land from all other forms of appropriation under the public land laws, including location under the United States mining laws and the mineral leasing laws. The land was leased to Gerlach General Improvement District for wastewater treatment facility. The lease expired February 15, 1990. The facility is now authorized pursuant to title V of the Federal Land Policy and Management Act. The Recreation and Public Purpose classification is, therefore, no longer considered appropriate.

At 10 a.m. on December 19, 1990, the land will be open to the operation of the public land laws and the mineral leasing laws, subject to valid existing rights, existing classifications and withdrawals, and requirements of applicable law. All valid applications received prior to or at 10 a.m. on December 19, 1990, will be considered as simultaneously filed. All other applications received will be considered in order of filing.

At 10 a.m. on December 19, 1990, the land will also be open to the operation of the mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Fred Wolf,

Acting State Director, Nevada.

[FR Doc. 90-27156 Filed 11-16-90; 8:45 am]

BILLING CODE 4310-HC-M

[ID-050-01-4410-08]

Meeting of the Shoshone District Advisory Council

AGENCY: Bureau of Land Management (BLM); Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone (Idaho) District Advisory Council.

DATES: Thursday, January 10, 1991.

ADDRESSES: BLM District Office, 400 West F Street, Shoshone, ID 83352.

FOR FURTHER INFORMATION CONTACT: District Manager K Lynn Bennett, Shoshone District Office, P.O. Box 2-B, Shoshone, ID 83352. Telephone (208) 886-2206 or FTS 554-6110.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items:

(1) Review of issues identified during public scoping for the Bennett Hills Resource Area Resource Management Plan and formulation of planning criteria for the Plan.

(2) Miscellaneous or other topics as needed.

The Shoshone District Advisory Council is established under section 309 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579; 43 U.S.C. 1701 *et seq.*) as amended. Operation and administration of the Council will be in accordance with the Federal Advisory Committee Act of 1972 (Pub. L. 92-463; 5 U.S.C. appendix 1) and Department of Interior regulations, including 43 CFR part 1784.

The meeting will be open to the public. Anyone may present oral statement before the Council at 9:15 a.m. or may file a written statement with the Council regarding matters on the agenda. Oral statements will be limited to ten minutes.

Anyone wishing to make an oral statement should notify the District Manager by January 8, 1991. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

K Lynn Bennett,

District Manager.

[FR Doc. 90-27158 Filed 11-16-90; 8:45 am]

BILLING CODE 4310-GG-M

[CA-050-4410-04]

Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting, Ukiah, California, District Advisory Council.

SUMMARY: Pursuant to Public Law 94-579 and 43 CFR 1780, the Ukiah District Advisory Council will meet in Eureka, California, December 13-14, 1990. Agenda items will include a tour of the Mad River Slough and Dunes Management Area, the Draft Environmental Impact Statement and River Management Plan for the South Fork Eel Wild and Scenic River, a supplement to the Arcata Resource Management Plan, and the Draft King Range Visitor Services Plan. A complete agenda is available from the Ukiah BLM Office.

DATES: December 13, 10 a.m. to 5 p.m. and December 14, 8 a.m. to 12 p.m.

ADDRESSES: Carter House Hotel, 3rd & L Streets, Eureka, California.

FOR FURTHER INFORMATION CONTACT: Barbara Taglio, Ukiah District Office, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482, (707) 462-3873.

SUPPLEMENTARY INFORMATION: All meetings of the Ukiah District Advisory Council are open to the public. Individuals may submit oral or written comments for the Council's consideration. Opportunity for oral comments will be provided at 4 p.m. Thursday, December 13. Summary minutes of the meeting will be maintained by the Ukiah District Office and will be available for inspection and reproduction within 30 days of the meeting.

Dated: November 9, 1990.

Alfred W. Wright,

District Manager.

[FR Doc. 90-27161 Filed 11-16-90; 8:45 am]

BILLING CODE 4310-84-M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

Intent To Prepare Draft Environmental Impact Statement for Operations and Maintenance of the Lower Rio Grande Flood Control Project; Hidalgo County Texas, et al

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of intent to prepare a draft environmental Impact statement (DEIS).

SUMMARY: This notice advises the public that pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the United States Section ("U.S. Section") of the International Boundary and Water Commission ("Commission") proposes to gather information necessary for the preparation of a DEIS to be used to determine specific options to the operations and maintenance of the Lower Rio Grande Flood Control Project that could be implemented to minimize, consistent with the law and international agreements, the impact of the operations and maintenance of the flood control project on ecological and environmental resources in Hidalgo, Cameron, and Willacy Counties, Texas. A public meeting regarding this proposal will also be held and, dependent on availability of funding, a DEIS will be prepared. This notice is being provided as required by the Council on Environmental Quality Regulations (40 CFR 1501.7) and the U.S. Section's Operational Procedures for Implementing section 102 of the National Environmental Policy Act of 1969, published in the **Federal Register** September 2, 1981 (46 FR 44083–44094; Rule 100.7.b.6.b.) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the DEIS.

The DEIS will discuss separately, among other laws and regulations, the requirements of international agreements with Mexico regarding the operations and maintenance of the project, the Endangered Species Act, and the U.S. Fish and Wildlife Service's Land Protection Plan. It will also present an analysis of the impacts of various alternative operations and maintenance practices, including existing ones, as affected by changes in land use practices in the Lower Rio Grande Valley.

The U.S. Section will conduct a scoping meeting to obtain information on which to base operations and maintenance practice options to be analyzed in the NEPA process. The U.S. Section will be the lead agency in the development of the DEIS. The Advisory Council on Historic Preservation, Army Corps of Engineers, Bureau of Reclamation, Environmental Protection Agency, Federal Emergency Management Agency.

Fish and Wildlife Service, Geological Survey, Immigration and Naturalization Service, and Soil Conservation Service have indicated that they will participate as cooperating agencies pursuant to 40 CFR 1501.6, to the extent possible.

DATES: Written comments will be accepted for an indefinite period of time, which shall continue until receipt of appropriation funds necessary for completion of the DEIS. A public meeting will be held on January 29, 1991, at a time and place to be determined later.

ADDRESS: All interested parties are invited to submit written comments and suggestions, for inclusion in the formal record, to the U.S. Section prior to, during, or after the public scoping meeting. Comments should be sent to Dr. Conrad G. Keyes, Jr., Principal Engineer, Planning, U.S. Section, International Boundary and Water Commission, United States and Mexico, 4171 North Mesa Street, C–310, El Paso, Texas 79902–1422. Telephone: 915/534–6703, FTS 570–6703.

SUPPLEMENTARY INFORMATION: The U.S. Section proposes to gather information necessary for the preparation of a DEIS to be used to determine specific options to the operations and maintenance of the Lower Rio Grande Flood Control Project that could be implemented to minimize, consistent with the law and international agreements, the impact of the operations and maintenance of the flood control project on ecological and environmental resources in the "Lower Rio Grande Valley of South Texas," including the lower Laguna Madre.

The Governments of the United States and Mexico pursuant to an agreement reached in 1932, developed through the Commission a coordinated plan for an international project for protection of the Lower Rio Grande Valley in both countries against flooding of the river.

The United States portion of the project is operated to divert and convey excess floodwaters from the Rio Grande to the Gulf of Mexico through the river and interior floodways. Two diversion dams, Anzalduas Dam and Retamal Dam, are operated jointly by the United States and Mexico for flood control, with Anzalduas Dam also operated to divert water as required by the Treaty of February 3, 1944, "Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande" (TS 994; 59 Stat. 1219). Flood operations of the project also involve very close coordination of the United States and Mexican Sections of the Commission in the operation of two upstream reservoirs (Amistad and Falcon) to control floodwaters reaching the project area. The two Sections work closely on the division of excess floodwaters diverted into each country. Normal operations of the project include the daily operation of Anzalduas Dam for division of waters between the two countries and inspection of the entire project to ensure flood readiness.

Maintenance activities are divided into the following general categories: levees, interior floodways, river channel, and diversion dams (Anzalduas and Retamal). The United States portion of the project includes the following features for protection of the Lower Rio Grande Valley of Texas: (a) Rio Grande Floodway from Penitas to the Gulf of Mexico; (b) Anzalduas Diversion Dam on the Rio Grande south of Mission; (c) Retamal Diversion Dam on the Rio Grande south of Donna; (d) interior floodways, including Banker, Main, North, and Arroyo Colorado; (e) an earth weir in the North Floodway; (f) 270 miles of river and interior floodway levees; (g) 64 miles of pilot channels within the interior floodways; (h) approximately 600 drain and irrigation structures crossing the levees; and (i) 16 bridges including seven multiple box structures crossing the pilot channel in the Banker Floodway.

Recent activities by the U.S. Fish and Wildlife Service to preserve and protect what has come to be known as "The Wildlife Corridor," and new U.S. Section studies of hydraulic capabilities of the flood control project have necessitated a reevaluation of operations and maintenance practices for the project.

The DEIS will consider a range of alternatives based on the issues and concerns associated with the project. Two alternatives that can be specified at present are discontinuance of current operations and maintenance practices (the No Action alternative) and the alternative to continue current operations and maintenance of the project. Other alternatives may consist of modifications or changes in the various elements of current operations and maintenance practices such as: (a) Modification of certain maintenance practices where hydraulic studies have shown project facilities are adequate to allow for establishment of wildlife corridor vegetation along the river and in the interior floodways; (b) raising of levees where needed to protect areas from flooding yet allow for establishment of wildlife corridor vegetation; and (c) relocation of levees in designated areas along the Rio Grande.

The DEIS will identify, describe, and evaluate the existing environmental, cultural, sociological and economical, and recreational resources; explain the flood protection project; describe current practice toward establishment of wildlife corridors throughout the valley to connect key wildlife areas with the river and other wildlife areas; and evaluate the impacts associated with the alternatives under consideration. Significant issues which will be analyzed and addressed in the DEIS are affects on: (a) Fish and wildlife; (b) terrestrial habitat; (c) endangered species; (d) aquatic habitats; (e) cultural resources; (f) water quality; and (g) living marine and estuarine resources from changes in quantity, quality, timing and location of fresh water inflows to the Laguna Madre and tidal reach of the Rio Grande.

Coordination has been ongoing and will continue with the U.S. Fish and Wildlife Service and National Marine Fisheries Service to insure compliance with section 7 of the Endangered Species Act of 1973, as amended. Cultural resources reconnaissance for the project area will be coordinated with the Texas State Historic Preservation Officer.

The environmental review of this project will be conducted in accordance with the requirements of NEPA, CEQ Regulations (40 CFR parts 1500–1508), other appropriate federal regulations, and the U.S. Section procedures for compliance with those regulations. Copies of the DEIS will be transmitted to federal and state agencies and other interested parties for comments and will be filed with the Environmental Protection Agency in accordance with 40 CFR parts 1500–1508 and U.S. Section procedures.

The U.S. Section estimates, pending receipt of appropriation funds necessary for completion, the DEIS will be made available to the public by April 1993.

Dated: November 5, 1990.

Suzette Zaboroski,

Staff Counsel.

[FR Doc. 90–27157 Filed 11–16–90; 8:45am]

BILLING CODE 4710–03–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 489]

Railroad Revenue Adequacy, 1989 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: On November 16, 1990, the Commission served a decision announcing the 1989 revenue adequacy determinations for the Nation's Class I railroads. Two carriers (Burlington Northern and Norfolk Southern) are found to be revenue inadequate.

EFFECTIVE DATE: This decision shall be effective on November 19, 1990.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr. (202) 275–7489 (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: This annual determination of railroad revenue adequacy is made in accordance with the standards developed in "Standards for Railroad Revenue Adequacy", 364 I.C.C. 803 (1981), as modified in Standards for Railroad Revenue Adequacy", 3 I.C.C. 2d 261 (1986), and "Supplemental Reporting on Consolidated Information for Revenue Adequacy Purposes", 5 I.C.C. 2d 65 (1988). It also incorporates modifications made in "Railroad Revenue Adequacy—1988 Determination", 6 I.C.C. 2d 933 (1990). This decision applies the rate of return standard to data for the year 1989.

A railroad will be considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment at least equal to the current cost of capital for the railroad industry for 1989, determined to be 11.5 percent in "Railroad Cost of Capital—1989", 6 I.C.C. 2d 836 (1990). Additional information is contained in the full decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.] This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: November 8, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–27189 Filed 11–16–90; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–7958 et al.]

Proposed Exemptions; Shearson Lehman Hutton, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state the reasons for the writer's interest in pending exemption.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall

include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Shearson Lehman Hutton Inc. (Shearson) Located in New York, NY

[Application No. D–7958]

Proposed Exemption

I. Transactions

A. Effective March 6, 1989, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective March 6, 1989, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) An obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective march 6, 1989, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) the pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective March 6, 1989, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by a virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in rule 501(a)(1) of regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) Such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. *Certificate* means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

With respect to certificates defined in (1) and (2) above for which Shearson or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means:

(1) Shearson;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Shearson; or

(3) Any member of an underwriting syndicate or selling group of which Shearson or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted group* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be *independent* of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified administrative fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified equipment note secured by a lease* means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. *Qualified motor vehicle lease* means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *Pooling and servicing agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

EFFECTIVE DATE: This exemption, if granted, will be effective for transactions occurring on or after March 5, 1989.

Summary of Facts and Representations

The facts and representations contained in the application are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. Shearson itself and through its affiliated companies is a full-service global banking organization that engages in securities transactions as both a principal and agent and which provides underwriting, research and financial services to institutional, corporate and private investment clients as well as governments, foundations and charitable organizations. Shearson is one of only a few firms that are members of the New York, London and Tokyo exchanges and are actively involved in the equity and debt markets of those financial centers. The firm is prominent in Eurobond and Euroequity markets and is a major factor in international government securities markets, international research and foreign exchange. Shearson has extensive experience in underwriting and trading asset-backed pass-through securities such as the certificates.

Trust Assets

2. Shearson seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts; [4] (2) motor vehicle receivables investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts. [5]

3. commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. In all cases, the term of any ground lease to secure a mortgage will be at least ten years longer than the term of that mortgage.

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, by an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

Prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Shearson, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. Most sales will be either firm commitment underwritings or private placements. In connection with a private placement, Shearson may act either as agent or principal. Shearson may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders are entitled to receive monthly, quarterly or semi-annually installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

5. Some of the certificates will be multi-class certificates. Shearson requests exemptive relief for two types of multi-class certificates: "Strip" certificates and "fast-pay/slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest. [6]

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. In certain transactions of this type, interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate which is eligible for the exemption be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to such certificateholders is less than the amount required to be so distributed, all such certificateholders will share in the amount distributed on a pro rata basis. [7]

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for substitution of assets by the sponsor only in the event of defects in loan or lease documentation discovered within a relatively short time after issuance of trust certificates (within 120 days, except in the case of 30-year obligations in which case the period may be as long as two years). Shearson represents that the sponsor's "right of substitution" is in effect a remedy for certificateholders in the event of the sponsor's breach of its warranty of representations regarding the assests in a trust. Any obligation so substituted is required to have characteristics substantially similar to those of the original obligation.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The originator of a receivable is the entity that initially lends money to a

[4] The Department notes that PTE 83–1 (48 FR 895, January 7, 1983), a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. Shearson requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure.

[5] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates, because the certificates in the trusts are plan assets.

[6] It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

[7] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

borrower (obligor), such as a homeowner or automobile purchaser, or leases property to the lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be businesses experienced in the origination of receivables of the type included in a trust. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The duties of a trust sponsor are typically limited to depositing receivables in a trust in exchange for certificates issued by the trust that are then sold to investors. The sponsor of a trust typically selects the trustee.

9. The trustee of a trust is the legal owner of the receivables in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to Shearson, the trust sponsor or the servicer. Shearson represents that the trustee will be a substantial financial institution experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer, sponsor, or the trust as specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The servicer of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be "subserviced" by their respective originators and for a single entity to "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

In most cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to Shearson. In some cases, however, affiliates of Shearson may originate or service receivables included in a trust, or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a finance company pursuant to a purchase and sale agreement related to the specific offering of certificates. However, in some cases, the sponsor will purchase the receivables from other sources in the secondary market.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust. The sponsor sells these certificates for cash to investors or securities underwriters, or may retain a portion of the certificates for its own account.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similiar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is generally equal to the interest rate on receivables included in the trust minus a specified servicing fee.[6] This rate is generally determined by the same market forces that determine the price of a certificate. There is a direct relationship between the price of certificates and the pass-through rate. For example, if certificates backed by comparable pools of mortgages are sold at different pass-through rates, the certificates having the higher pass-through rate would have a higher purchase price.

[6] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor, and receive fees for acting in that capacity) will typically retain most or all of the difference between payments received on the receivables and payments payable (at the pass-through rate) to certificateholders. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer will be required to pay the administrative expenses of servicing the trust, including, in some cases, the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the payments received on the receivables in excess of the pass-through payments made to certificateholders or paid in a lump sum at the time the trust is established.

14. The servicer(s) may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) Prepayment fees; (b) late payment and payment extension fees and other fees related to the modification of the terms of an obligation as permitted by the provisions of the pooling and servicing agreement (including the partial release of collateral to the extent provided therein); and (c) fees and charges associated with foreclosure or repossession, the management of foreclosed or repossessed property, or any conversion of a secured obligation into cash proceeds, upon default of an obligation held by a trust.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In the event that payments on receivables are held in non-interest bearing accounts or commingled with the servicer's funds, the servicer will be required to make deposits attributable to such payments by a date specified in the pooling and servicing agreement into an account from which payments are made to certificateholders.

16. Shearson will receive a fee in exchange for its services in connection with the securities underwriting or private placement of certificates. In a securities underwriting, this fee would normally consist of the difference between what Shearson receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor.

Purchase of Receivables by Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payment or repurchase, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable will be at least equal to the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as surety bonds, letters of credit, reserve funds, cash flow subordination or guarantees) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of credit support is set by the rating agencies at a level that is a multiple of the very worst historical credit loss experience for obligations of the type included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (*i.e.* act as an insurer). Typically, in these cases, the master servicer will first advance funds in a timely manner to cover any delinquent payments to the extent that it expects to recover those moneys out of future payments, or the master servicer, as the provider of the credit support, will be called upon (by itself on behalf of the trustee or directly by the trustee) to provide funds in such capacity to cover such payments to the full extent of its obligations under the credit support mechanism. However, in some cases the master servicer may not be obligated to advance funds, but instead will be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, the master servicer typically can recover advances either from the provider of credit support or from the future payment stream.

If the master servicer fails to advance funds and fails to call upon the credit support mechanism to provide funds to cover delinquent payments, the trustee may exercise its rights as beneficiary of the credit support to obtain funds under the credit support mechanism. Therefore, in all cases, the independent trustee will be ultimately responsible for deciding when to exercise its rights as beneficiary of that credit support.

When a master servicer advances funds, the amount so advanced is recoverable by the servicer from the provider of credit support or out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the dollar limit on the credit support declines as payments on receivables included in the trust are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee;

(d) The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information

pertinent to a plan's decision to invest in the certificates, including:

(a) Information concerning the certificates, including payment terms, tax consequences of owning and selling certificates, the legal investment status and rating of the certificates, and any risk factors with respect to the certificates;

(b) Information about the underlying receivables, including the types of receivables, the diversification of the receivables, their payment terms, and legal aspects of the receivables;

(c) Information about the servicing of the receivables, including the identity of the master servicer and servicing compensation;

(d) Information about the sponsor of the trust;

(e) A full description of all material provisions of the pooling and servicing agreement; and

(f) Information about the scope and nature of the secondary market, if any, for such certificates.

21. Certificateholders will be provided with information concerning the amount of principal and interest to be paid on certificates at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the status of the trust.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the master servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report will also be delivered or made available to the rating agency or agencies that have rated the trust's certificates. Such report will be available to investors and its availability will be made known to potential investors. In addition, promptly after each distribution date, certificateholders will receive a statement summarizing information regarding the trust and its assets, including underlying obligations.

Secondary Market Transactions

24. Shearson normally attempts to make a market for securities for which it is lead or co-managing underwriter. It is also Shearson's policy to facilitate sales by investors who purchase certificates if Shearson has acted as agent or principal in the original placement of the certificates and if such investors request Shearson's assistance.

Retroactive Relief

25. Shearson represents that it has engaged in transactions related to mortgage-backed and asset-backed securities based on the assumption that retroactive relief would not be granted. However, since March 1989, it is possible that some transactions may have occurred that arguably would be prohibited. For example, because many certificates are held in street or nominee name, it is not always possible to identify whether the percentage interest of plans in a trust is or is not "significant" for purposes of the Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(f)). In addition, with respect to the "publicly-offered security" exception contained in that regulation (29 CFR 2510.3–101(b)), Shearson represents that it is difficult to determine whether each purchaser of a certificate is independent of all other purchasers.

Therefore, Shearson requests relief retroactive for transactions which have occurred on or after March 6, 1989, the date Shearson originally filed its exemption application with the Department.

Summary

26. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which Shearson seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) Shearson has made, and anticipates that it will continue to make, a secondary market in certificates.

Discussion of Proposed Exemption

I. Differences between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 (46 FR 7520, January 23, 1981), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 (48 FR 895, January 7, 1983).

PTE 83–1 applies to mortage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 of the Act for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406(b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insuer. Finally, PTE 83–1 provides conditional exemptive relief from section 406(a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[9]

III. Limited Section 406(b) and Section 407(a) Relief for Sales

Shearson represents that in some cases a trust sponsor, trusts, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[10] In these cases, a direct or indirect sale of certificates by the party in interest to the plan would be a prohibited sale or exchanged of property under section 406(a)(1)(A) of the Act.[11] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, Shearson represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be fiduciary with respect to an investing plan. Shearson represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, Shearson represents that to the extent there is a plan asset "look through" to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

For further information contact: Paul Kelty of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Building Services Local 32B–J Pension Fund (the Pension Fund); Building Services Local 32B–J Health Fund (the Health Fund); Building Services Local 32B–J Legal Service Fund (the Legal Service Fund, collectively the Funds); Located in New York, NY

[Application Nos. D–8396, L–8397 and L–8398]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18571, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the leasing of an office building (the Building) between the Funds and the 101 Limited Partnership (the Landlord), a party in interest with respect to the Funds, pursuant to certain triple net leases (the Leases), leasehold improvement agreements (the LIA's), and an operating agreement (the Operating Agreement, collectively, the Agreements); provided that neither the Landlord, nor the owners of the Landlord: (a) Are fiduciaries with respect to such Funds, or (b) directly or indirectly, influence or exercise any decision making authority in connection with the selection of the fiduciaries for such Funds or in connection with the decision of such fiduciaries to enter into the Agreements on behalf of the Funds or to exercise any rights or obligations conferred upon the Funds under such Agreements; and provided further that the terms of the Agreements are at least as favorable to the Funds as those obtainable in arm's length transactions between unrelated parties.[12]

[9] In referring to different "types" of asset-backed securities, the Department means certificates representing interests in trusts containing different "types" of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been "seasoned" (*e.g.*, originated at least one year prior to the plan's investment in the trust).

[10] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which Shearson or any of its affiliates is either (a) The sole underwriter or manager or comanager of the underwriting syndicate, or (b) a selling or placement agent.

[11] The applicant represents that where a trust sponsor is an affiliate of Shearson, sales to plans by the sponsor may be exempt under PTE75–1, Part II (relating to purchases and sales of securities by broker-dealers adn their affiliates), if Shearson is not a fiduciary with respect to plan assets to be invested in certificates.

[12] For purposes of this proposed exemption, references to specific provisions of title I of the Act,

Continued

Summary of Facts and Representations

1. The Funds provide benefits for members of the Services Employees International Union (the Union) employed in the building service and maintenance industry throughout New York City, Long Island, and portions of New Jersey. As of June 30, 1989, each of the Funds had approximately 60,000 participants. As of that same date, the Pension Fund, the Health Fund, and the Legal Services Fund had assets of approximately $561.7 million, $22.2 million, and $16.8 million, respectively.

The Funds are Taft-Hartly Plans jointly administrated by four employer designated trustees and four Union designated trustees (the Board of Trustees). The Realty Advisory Board, a multiemployer bargaining association which represents building owners and management agents, appoints two of the employer designated trustees, while the Midtown Owners Association, a multiemployer association which represents building owners in lower midtown Manhattan, and the Service Employers Association, a multiemployer association which represents cleaning contractors, each appoint one of the remaining two employer designated trustees. It is represented that some of the individuals serve as Trustees for more than one of the Funds.

2. The Landlord is a Delaware limited partnership, with offices located at 767 Fifth Avenue, New York, New York. The general partners of the Landlord are 101 Silver Corporation and 101 Equities Corporation, both Delaware corporations which are controlled, respectively, by Allen Silverman (Mr. Silverman) and by Edward J. Minskoff (Mr. Minskoff). The limited partners of the Landlord are: (1) A and E Limited Partnership, and (2) 101 Avenue of the Americas Limited Partnership. Substantially all of the interests in each of the limited partners is owned by Mr. Minskoff, Mr. Silverman, or by entities which Mr. Minskoff, Mr. Silverman, or Mr. Silverman's immediate family control.

In addition, Mr. Silverman is the president and 60% shareholder of Royal-Prudential Services, Inc. (Royal), and Mr. Silverman's wife and children own the remaining 20% of the shares in Royal. Royal, an office cleaning business, employs members of the Union under the terms of a collective bargaining agreement and is a contributing employer to the Funds. Accordingly, Mr. Silveman, an owner, directly or indirectly, of 50% or more of Royal, an employer any of whose employees are covered by the Funds, is a party in interest with respect to the Funds, pursuant to section 3(14) (E) of the Act. It is represented, however, that Royal is not a member of any of the multiemployer associations which select the fiduciaries for the Funds.

Prior to the execution of the Agreements, Mr. Silverman, through entities he owns, controlled approximately 68.75% of the Landlord. It is represented that once it was realized that this ownership level caused the Landlord to become a party in interest pursuant to section 3(14)(G) of the Act, Mr. Silverman reduced his ownership interest in the Landlord to 49.75% by transferring a 19% interest in the Landlord to one of the entities owned by Mr. Minskoff. In this way, Mr. Minskoff, through entities he owns, obtained control of 50.25% of the Landlord. It is represented that Mr. Minskoff does not now own any entity that employs Union members, nor does he make contributions to any of the Funds. Accordingly, neither Mr. Minskoff nor the Landlord is a party in interest with respect to the Funds. Further, it is represented that neither Mr. Minskoff nor Mr. Silverman is a fiduciary to the Funds, nor directly or indirectly, influences or exercises any decision making authority in connection with the selection of fiduciaries for the Funds or in connection with the decision of such fiduciaries to enter into the Agreements on behalf of the Funds or the exercise of any rights or obligations conferred upon the Funds under such Agreements.

Pursuant to an option agreement dated December 19, 1989, entities owned by Mr. Silverman obtained the right to repurchase the 19% interest in the Landlord (the Option to Repurchase) for approximately $2.1 million. The Option to Repurchase must be exercised within two years from the date entered and may only be exercised if this prohibited transaction exemption has been granted. Upon execution of the Option to Repurchase, entities owned by Mr. Silverman, a party in interest with respect to the Fund, will again own 50% or more of the Landlord. Consequently, the Landlord will become a party in interest with respect to the Funds, pursuant to section 3(14(G). Thus, the Agreements between the Funds and the Landlord will become subject to the prohibited transaction restrictions of section 406(a) of the Act. For this reason, the applicant requests an exemption from the point in time that the Option to Repurchase is executed by Mr. Silverman or by entities which he owns or controls.

3. Currently, the Funds and the Union lease facilities at various locations. The Pension Fund and Health Fund rent offices located at 60 Madison Avenue, New York, New York, while the Legal Services Fund has offices at 1 Penn Plaza, New York, New York. The Health Fund operates a health center at 920 Ninth Avenue a/k/a/ 345 West 58th Street, New York, New York. It is represented that the size of the existing rental facilities are inadequate, and the premises are in poor condition and are inefficient. For these and various other reasons, the Funds have long wanted to consolidate their administrative offices and operations at a single location, which would also house the Union's offices.

4. To this end, on December 19, 1989, the Landlord entered into the Leases and the LIA's with the Funds to construct the Building, a 23 story build-to-suit office facility, which the Funds will occupy as tenants. On the same date, the Landlord executed a separate lease and leasehold improvement agreement with the Union, concerning the Union's occupancy of the same Building. Simultaneously, both the Union and the Funds entered into the Operating Agreement with the Landlord concerning the operation and management of the Building following construction. Contemporaneously, the Landlord also entered into a 99 year ground lease (the Trinity Lease) with the Rector, Church Wardens and Vestrymen of Trinity Church to lease the land (the Land) (located at 95–109 Avenue of the Americas, 8–18 Grand Street, and 45–61 Watts Street, New York, New York) upon which the Building will be constructed.

Upon completion, the Building will have approximately 401,846 square feet of above-ground rentable space, consisting of office space and street level retail space. There will also be approximately 7,396 useable square feet of storage space, and approximately 5,294 useable square feet of space for accessory parking. The Funds and the Union will occupy approximately 78% and 22%, respectively, of the space in the Building. It is represented that the Union will lease all of the retail and parking space in the Building and some of the storage and office space. The Funds will lease the remainder of the office and storage space. The Building will contain for the benefit of the Union and the Funds, an auditorium/cafeteria for meetings, a health center for medical diagnosis and treatment, a school and training facility for continuing education, a legal services clinic, and benefit/pension service areas. In addition, the Building will house general and executive office space for the benefit of the Union and the Funds.

The leases between the Funds and the Landlord and the lease entered between the Union and the Landlord concerning the occupancy of the Building are represented to contain identical initial twenty (20) year terms. Further, the Funds and the Union, as tenants, (the Tenant or Tenants) have discretion to execute eight (8) successive renewal options which, if exercised, would extend the term in increments of 5 years for the first period; 10 years for the second year, 14 years for the third period, 10 years for the fourth period, 10 years for the fifth period, 10 years for the sixth period, 10 years for the seventh period, and approximately 10 years for the eighth period, covering a total period of 99 years. Although the Tenants do not have the ability to cancel or terminate the leases upon short-term notice during any of the rental periods, the Funds can terminate the Leases following the end of the initial twenty (20) year term of the Leases and any renewal period thereafter.

The rent for office space or retail space will, during the first year of the Leases, be $26.11 per rentable square foot and will increase by increments to $43.78 per rentable square foot by the twentieth year of the Leases. The rent for storage or parking space will, during the first year of the Leases, be $17.00 per useable square foot and will increase by increments to $28.24 per useable square foot by the twentieth year of the Leases. In addition, the terms of the Leases provide for increases in these rental rates for each period for which the Leases are extended. All rent is on a triple net basis, which means that the Tenants will be responsible for all costs of operating and maintaining the Building, including without limitation, the cost of ground rent, utilities, real estate taxes, maintenance of base building, shell, core, and systems, structural and non-structural repairs and replacement, management, insurance, casualty and condemnation restorations.

The Landlord is required to develop, design and construct the shell and core of the Building, except that the Tenants will contribute $21.67 per rentable square foot towards the cost of building the standard tenant improvements (the Building Standard Tenant Improvements). The Building Standard Tenant Improvements means the general facilities, electrical construction, heating, ventilation, and air conditioning (HVAC) specifications, finish work and materials set forth in Schedule F of the LIA's. The Tenants will pay for all HVAC, plumbing, and other requirements that they desire in excess of such Building Standard Tenant Improvements. Tenants are also required to pay for all of their own furnishing and equipment.

It is represented that the rentals and the costs which are not specific to the leased premises of any one of the Tenants in the Building are allocated in proportion to the actual use by such Tenant of space in the Building. The cost of improvements for the design and construction of interior space of the specifically leased premises of any one of the Tenants will be paid for by such Tenant. In addition, each of the Tenants is responsible for its *pro rata* share of the costs of operating and maintaining the Building, including their *pro rata* share of the costs which are allocable to the common areas of the Building. It is represented by counsel for the Funds and the Unions that the Operating Agreement is written in such a way that no Tenant will be responsible for the default of any other Tenant with respect to the payment of its obligations.

Under certain terms, conditions, and limitations contained in the Leases with the Funds, the lease with the Union, and the Operating Agreement, both the Funds and the Union: (a) Have a right of first refusal to purchase all or any part of the Landlord's leasehold estate in the Building and the Land under the Trinity Lease or all or any portion of the partnership interests (general or limited) in the Landlord in the event of a bona-fide third party offer, within twenty (20) days after such bona-fide offer, and under similar terms and conditions as those in such bona-fide offer, (b) may participate proportionately to the extent of an aggregate 20% interest in the excess net proceeds, as defined in section 46.02 of the Leases,[13] of any sale, transfer, or certain refinancing of all or a portion of the partnership interests in the Landlord or the Landlord's leasehold estate under the Trinity Lease, (c) will receive proportionately an aggregate 11% interest in the net cash flow from the Building in the 11th year, which will increase to 20% in the 16th year and continue at 20% for each year thereafter, (d) may execute an option to purchase, either the Landlord's leasehold estate under the Trinity Lease or all of the partnership interests in the Landlord, after the 20th year, at the then fair market value, and (e) have an option proportionately to acquire an aggregate 20% limited partnership interest in the Landlord during the 31st year.[14] In addition, the Operating Agreement provides for the appointment by the Tenants of a tenant representative who will represent the Tenants with respect to the exercise of certain rights and options of the Tenants under the Leases and LIA's.

5. The Board of Trustees represent that the Funds entered into the Agreements only after careful consideration of the alternatives and on the basis of the Board of Trustees' conclusion that the terms of the Agreements were advantageous to the Funds. It is represented that it is in the interest of the Funds to consolidate their operations at one location at commercially reasonable rental rates and that the Agreements accomplish this purpose.

With regard to the Funds inability under the terms of the Agreements to cancel or terminate within a reasonably short period of time, the Board of Trustees state that the impetus behind the terms of the Agreements was the Funds' desire for a permanent facility designed to meet their special needs. In this regard, the Funds will expand considerable funds (approximately $10 million) in improving the interior space of the Building, especially with respect

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unless otherwise specified, refer also to the corresponding provisions of the Code.

The Department notes that the Agreements, copies of which were submitted with the application, describe the overall relationship between the Landlord and the Funds with respect to the construction, leasing, and management of the Building. The LIA's relate to services to be supplied by the Landlord to the Funds during the construction of the Building. The Operating Agreement describes the responsibilities of the parties, pursuant to the terms set forth in the Leases, with respect to the operation and management of the Building after it is constructed. The Department notes that section 408(b)(2) and the regulations promulgated thereunder (29 CFR 2580.408(b)(2)), would not apply to the Leases as a result of the Funds' inability to terminate such Leases without penalty on reasonably short notice under the circumstances. Therefore, the Department is proposing to exempt the Leases from the point in time where the Landlord becomes a party in interest with respect to the Funds. However, the Department also recognizes that the Agreements contain many provisions that can be characterized as the provision of services between the Landlord and the Funds which may be entitled to relief under section 408(b)(2). In this regard, the Department notes that it is not proposing relief for such provision of services. The Department believes that any relief from section 408(e) that may be necessary for the provision of services in connection with the leasing transactions described in this proposal is provided by the statutory exemption contained in section 408(b)(2) of the Act.

[13] For purposes of this clause (b) excess net proceeds generally refers to the gross proceeds of any such sale, transfer, or refinancing less allowable deductions relating to the expenses of the Landlord in connection with such sale, transfer, or refinancing, determinable on a rentable square footage basis.

[14] The Department is not providing any exemptive relief at this time for the execution of any of the above described provisions of the Leases which could involve the sale or exchange of property between the Plan and a party in interest.

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to the development of a state-of-the-art health center which will occupy approximately 100,000 square feet of space in the Building. In the opinion of the Board of Trustees, it is unlikely that the Funds, having expended such substantial amounts for the specialized development of the Building, have any intention of cancelling the Leases or vacating the Building in a relatively short period of time.

It is also represented that the membership of the Union has experienced steady growth for a period in excess of thirty years since 1934 when the Union was first formed. Therefore, there is no significant risk that the Funds will be burdened with unneeded space in the Building. It is further represented that the building service and maintenance industry is stable and not subject to economic fluctuations, so that there is no concern that the Funds, which derive their income from employer contributions, will ever be unable to fulfill the financial obligations of the Agreements. Accordingly, it is represented that the Board of Trustees agreed to the terms of the Agreements, even though such terms do not permit the Funds to vacate their respective space in the Building or otherwise terminate the Agreements on short notice.[15]

In addition, Ronald Raab, Esq., partner in Manning, Raab, Dealy & Strum, counsel for the Funds and for the Union, represents that in order for the Landlord to obtain financing of the magnitude needed to construct the Building (approximately $100 million), it was necessary to obtain the Funds' and the Union's long-term commitments for the space in the Building in order to provide enough cash flow to service the debt. In this regard, the Funds and the Unions intentionally sought to enter into long-term agreements whereby they would secure many of the benefits of ownership of the Building, without being burdened by the risks inherent in the construction of a major office building in mid-town Manhattan. It is represented that the Board of Trustees prudently entered into the long-term commitment to obtain a permanent facility on behalf of the Funds, because they believed that the substantial ownership rights and benefits, as described in paragraph #4 above, derived from provisions in the Agreements outweighed the benefits of a short-term cancellation provision.

6. Before entering into the Agreements, the Funds and the Union secured professional advice from a consulting architect, and expert real estate legal counsel, and from appraisers. In this regard, Appraisers and Planners, Inc., was engaged by the Plan and the Union as a qualified independent appraiser to review the terms of the transactions to determine the reasonableness of the projected rents, equity participations, and cash flow participation described in paragraph #4 above. In the opinion of James Levy, ASA, MAI, SRPA, an associate of Appraisers and Planners, Inc., the proposed rental schedule, equity participation, and cash flow participation are reasonable in conjunction with the entire proposal based on an analysis of the existing market.

The Funds and the Union also hired James O'Rorke, Esq. (Mr. O'Rorke), partner in Skadden, Arps, Slate, Meagher, & Flom, as expert real estate counsel. Mr. O'Rorke has actively practiced in the field of real property law for 28 years and is a member of the American College of Real Estate Lawyers. Mr. O'Rorke was engaged to specifically address the issue of why the Agreements entered into by the Funds did not contain a provision which would permit each of the Funds to cancel within a reasonably short period of time. In the opinion of Mr. O'Rorke, a long-term lease was necessary: (a) To avoid the risks associated with financing, constructing, and developing the Building; (b) to justify the considerable expense of improving the interior of the Building and to amortize such costs of customizing the Building over a useful life of twenty years for the built-in fixtures; (c) to obtain financing, because the Building was not designed as a speculative office building and, as a custom-built facility, would be difficult to re-let; (d) to insulate the Funds from market rental risks; (e) to obtain benefits from a 99 year term which is longer than the anticipated useful life of the Building, and (f) to obtain advantageous ownership rights and benefits, such as those described in paragraph #4 above.

7. In summary, it is represented that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Funds and the Union will be able to consolidate operations in one location;

(b) An independent appraiser has determined that the rental rate to be paid by the Funds and the other terms of the Agreements are reasonable;

(c) The Funds will obtain permanent headquarters constructed to their specifications without the attendant risks of financing the purchase and/or constructing the Building;

(d) The Board of Trustees has determined that the benefits obtained from the long-term commitment provisions in the Agreements outweigh the benefits to be derived from a provision which would permit the Funds to terminate or cancel the Agreements on reasonably short notice; and

(e) Neither Mr. Silverman nor Mr. Minskoff is a fiduciary with respect to the Funds, nor does either, directly or indirectly, influence or exercise any decision making authority in connection with the selection of fiduciaries of the Funds or in connection with the decision of such fiduciaries to enter into the Agreements on behalf of the Funds or to exercise any rights or obligations conferred upon the Funds under such Agreements.

Notice to interested persons: Notice of this proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department within nine (9) days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing. Comments and hearing requests on the proposed exemption are due thirty-nine (39) days after the date of publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit to the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of November 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90-27186 Filed 11-16-90; 8:45 am]

BILLING CODE 4510-29-M

[15] The Department herein is not expressing any opinion as to whether the Trustees' decision to enter into the Agreements on behalf of the Funds satisfied ERISA's general standards of fiduciary conduct. Section 404 requires, among other things, a fiduciary to discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, the plan fiduciaries are held to the prudence standard with respect to the decision to enter into the Agreements on behalf of the Funds, as well as to the exercise of the Funds' rights and obligations under the Agreements.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Public Partnership Office Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office of Public Partnership Advisory Panel (Locals Section) to the National Council on the Arts will be held on December 4, 1990 from 9 a.m.-5:30 p.m. and December 5 from 9 a.m.-5 p.m. in room M-09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on December 4 from 9 a.m.-5:30 p.m. and December 5 from 3 p.m.-5 p.m. The topics will be application review and policy discussion.

The remaining portion of this meeting on December 5 from 9 a.m.-3 p.m. is for the purpose of Panel evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended. In accordance with the determination of the Chairman of November 7, 1990, this session will be closed to the public pursuant to subsection (c)(9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting. Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: November 8, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-27120 Filed 11-16-90; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL COMMISSION ON MIGRANT EDUCATION

Meetings

ACTION: Notice of meeting.

SUMMARY: The National Commission on Migrant Education will hold its seventh meeting on December 3 and 4, 1990, for the purpose of holding a hearing. The Commission was established by Public Law 100-297, April 28, 1988.

DATE, TIME, AND PLACE: Monday, December 3, 1 to 5 p.m. and 7 to 10 p.m.; December 4, 8 a.m. to noon, Fairway Resort, Tee Room, 2105 South 10th Street, McAllen, Texas.

STATUS: Open—public hearing.

AGENDA:

Monday, December 3

1-5 p.m.—Testimony on (1) MSRTS utilization, (2) interestate/interagency coordination in migrant education, and (3) parental involvement.

7-10 p.m.—Testimony from migrant parents and students.

Tuesday, December 4

8-9 a.m.—Business Session

9-Noon—Testimony from the public on any and all matters relevant to migrant education.

For Additional Information: Contact Nancy Watson, 301-492-5336, National Commission on Migrant Education, 8120 Woodmont Avenue, Fifth Floor, Bethesda, Maryland 20814.

Linda Chavez,

Chairman.

[FR Doc. 90-27199 Filed 11-16-90; 8:45 am]

BILLING CODE 6820-DE-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Establishment

The Assistant Director for Scientific, Technological, and International Affairs has determined that the establishment of the International Programs Review Panel is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of the Committee: International Programs Review Panel.

Purpose: To advise on the merit of special initiative proposals or applications submitted to the Division of International Programs.

Balanced Membership Plan: The panel will consist of up to about 25 panelists. Criteria used to maintain balanced membership are demonstrated capabilities in scientific research, age, gender, minority, geographic origin, and disabled.

Responsible NSF Official: Dr. Robert Hardy, Deputy Division Director, International Programs, (202) 357-9552.

Dated: November 13, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-27130 Filed 11-16-90; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for BBS Research Training Groups; Meeting

The National Science foundation announces the following meeting:

Name: Advisory Panel for BBS Research Training Groups.

Date and Time: Thursday, December 6, 1990 from 8:30–6 Friday, December 7, 1990 from 8:30–5.

Place: Room 312, National Science Foundation, 1800 G St. NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Gerald Selzer, Program Director, Special Projects, Division of Instrumentation and Resources, room 312, National Science Foundation, 1800 G St. NW., Washington, DC 20550, Telephone: (202) 357–9880.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for training activities in research areas supported by the Biological, Behavioral and Social Sciences Directorate of the National Science Foundation.

Agenda: To review and evaluate preliminary proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated November 13, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–27128 Filed 11–16–90; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Social and Economic Science; Meeting

The National Science Foundation announces the following meeting:

Name: Human Dimensions of Global Environmental Change Panel.

Date/Time: December 3, 1990, 8:30 a.m. to 5 p.m.

Place: State Plaza Hotel, 2117 E St, NW., Washington, DC

Type of Meeting: Closed.

Contact Person: Dr. Thomas J. Baerwald, Program Director, Geography and Regional Science, National Science Foundation, 1800 G St., NW., room 336, Washington, DC 20550, Telephone: 202/357–7328.

Purpose of Meeting: To provide advice and recommendations concerning research proposals on the Human Dimensions of Global Environmental Change.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals reviewed contained information of a proprietary or confidential nature, including technical information, financial data (such as salaries), and personal information concerning individuals associated with the proposals. These matters are within the exemptions (4) and (6) of 5 U.S.C. 552b, Government in the Sunshine Act. February 18, 1977.

Dated: November 13, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–27129 Filed 11–16–90; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panels; Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings(s) to be held at 1800 G. Street, NW., Washington, DC 20550 (except where otherwise indicated).

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to provide advice and recommendations to the National Science Foundation concerning the support of research, engineering, and science education. The agenda is to review and evaluate proposals as part of the selection process for awards. The entire meeting is closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the prosposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), the Government in the Sunshine Act.

CONTACT PERSON: M. Rebecca Winkler, Committee Management Officer, room 208, 357–7363

Dated: November 13, 1990.

M. Rebecca Winkler,

Committee Management Officer.

Committee name	Agenda	Date(s)	Times	Room *
Special Emphasis Panel in Teacher Preparation and Enhancement.	Teacher Prep. Panel	12/06/90 12/08/90	8:30 a.m.–5 p.m.	635
Special Emphasis Panel in Physics	Pres. Young Invest. Award	11/30/90	9 a.m.–5 p.m.	523
Special Emphasis Panel in Physics	Research Experiences	12/03/90	9 a.m.–5 p.m.	540
Special Emphasis Panel in Astronomical Sciences	Pres. Young Invest. Award	12/05/90	8:30 a.m.–5 p.m.	540B
Special Emphasis Panel in Mathematical Sciences	Pres. Young Invest. Award	12/03/90 12/04/90	8:30 a.m.–5 p.m.	536

* At 1800 G Steet, NW., Washington, DC.

Committee name	Date(s)	Time	Location
International Programs Review Panel Agenda: Proposal Review—INT	11/29/90	9:30a.m.–3:30 p.m.	State Plaza Hotel, 2117 E Street, NW., Washington, DC.

[FR Doc. 90–27131 Filed 11–16–90; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report, Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG–0090, Vol. 13, No. 2).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event that the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and by-product material are abnormal occurrences.

The report to Congress is for the second calendar quarter of 1990. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described.

The report discusses six abnormal occurrences, none involving a nuclear power plant. There were five abnormal occurrences at NRC licensees: (1) Deficiencies in brachytherapy program; (2) a radiation overexposure of a radiographer; (3) a medical diagnostic misadministration; (4) administration of I–131 to a lactating female with uptake by her infant; and (5) a medical therapy misadministration. An Agreement State (Arizona) reported an abnormal occurrence involving a medical diagnostic misadministration. The report also contains information that updates a previously reported abnormal occurrence.

A copy of the report is available for public inspection and/or copying at the NRC Public Document room, 2120 L Street, NW; (Lower Level), Washington DC 20555, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of NUREG–0090, Vol. 13, No. 2 (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. A year's subscription to the NUREG–0090 series publication, which consists of four issues, is also available.

Copies of the report may also be purchased from the National Technical Information Service, Springfield, VA 22161.

Dated at Rockville, MD this 13th day of November 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90–27190 Filed 11–16–90; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Schedules A, B and C

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: John Daley, (202) 606–0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on October 3, 1990 (55 FR 12973). Individual authorities established or revoked under Schedules A, B, or C between September 1, 1990, and September 30, 1990, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30, 1990.

Schedule A

The following exception was established:

Department of the Air Force

One position of Supervisory Logistics Management Specialist, GS–346–15, in the 2762nd Logistics Squadron (Special) at Wright-Patterson Air Force Base, Ohio. Effective September 14, 1990.

Schedule B

The following exceptions were established:

Department of Defense, Interdependent Activities

Four positions, GS–15 or below, in the White House Military Office providing support for airlift operations, special events, security, and/or administrative services to the Office of the President. Effective September 4, 1990. The following exception was revoked:

Federal Deposit Insurance Corporation

Up to 569 positions at GS–15 and below engaged in exploring methods to promote stability in the thrift industry, restore the industry to profitability, and protect individual savers. No additional appointments may be made under this authority after September 30, 1990. Effective September 18, 1990.

Schedule C

Department of the Air Force

One Staff Assistant to the Assistant to the Vice President for National Security Affairs. Effective September 28, 1990.

Agency for International Development

One Supervisory Public Affairs Specialist to the Deputy Assistant Administrator, Bureau for External Affairs. Effective September 17, 1990.

One Executive Assistant to the Administrator. Effective September 27, 1990.

Department of Agriculture

One Special Assistant to the Director, Office of Public Affairs. Effective September 17, 1990.

One Confidential Assistant to the Director, Office of Public Affairs. Effective September 17, 1990.

One Confidential Assistant to the Administrator, Food and Nutrition Service. Effective September 27, 1990.

One Special Assistant to the Director, Office of Public Affairs. Effective September 27, 1990.

One Director, Office of Congressional and Public Affairs, to the Manager, Federal Crop Insurance Corporation. Effective September 28, 1990.

Administrative Office of the U.S. Courts

One Writer-Editor to the Legislative and Public Affairs Officer. Effective September 20, 1990.

Department of Commerce

One Confidential Assistant to the Assistant Secretary for Trade Development. Effective September 4, 1990.

One Special Assistant to the Deputy Assistant Secretary for Basic Industries. Effective September 4, 1990.

One Director of Legislative and Intergovernmental Affairs to the Under Secretary for Travel and Tourism. Effective September 4, 1990.

One Special Assistant to the Chief of Staff. Effective September 4, 1990.

One Confidential Assistant to the Deputy Under Secretary for Technology Administration. Effective September 7, 1990.

One Congressional Affairs Specialist to the Congressional Affairs Officer. Effective September 12, 1990.

One Director, Officer of International Technology Policy and Programs, to the Assistant Secretary for Technology Policy. Effective September 17, 1990.

One Confidential Assistant to the Deputy Assistant Secretary for Science and Electronics. Effective September 17, 1990.

One Director of Congressional Affairs to the Under Secretary for Technology. Effective September 17, 1990.

One Director, Office of Policy Coordination, to the Deputy Assistant Secretary for International Economic Policy. Effective September 24, 1990.

One Confidential Assistant to the Under Secretary for Technology. Effective September 25, 1990.

One Confidential Assistant to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs.

Consumer Product Safety Commission

One Staff Assistant to the Chairman. Effective September 25, 1990.

Department of Defense

One Special Assistant to the Deputy Assistant Secretary (Inter-American Affairs). Effective September 24, 1990.

Department of Energy

One Deputy to the Director, Office of Scheduling and Logistics. Effective September 7, 1990.

One Staff Assistant to the Director, Office of Civilian Radioactive Waste Management. Effective September 7, 1990.

One Special Assistant to the Assistant Secretary for Defense Programs. Effective September 7, 1990.

One Staff Assistant to the Associate Director, Office of Waste Operations. Effective September 7, 1990.

One Director of Scheduling and Logistics to the Secretary. Effective September 7, 1990.

One Staff Assistant to the Special Assistant to the Secretary (Special Projects). Effective September 10, 1990.

Two Public Affairs Specialists to the Director, Office of Public Affairs. Effective September 10, 1990.

One Staff Assistant to the General Counsel. Effective September 17, 1990.

One Staff Assistant to the Senior Policy Specialist, Office of New Production Reactors. Effective September 24, 1990.

Department of Transportation

One Staff Assistant to the Chief of Staff. Effective September 10, 1990.

Department of Education

One Confidential Assistant to the Assistant Secretary for Educational Research and Improvement. Effective September 7, 1990.

One Confidential Assistant to the Assistant Secretary for Postsecondary Education. Effective September 7, 1990.

One Special Assistant for Domestic Policy to the Secretary. Effective September 17, 1990.

One Confidential Assistant to the Director, Office of Public Affairs. Effective September 18, 1990.

One Confidential Assistant to the Director, Center for International Education. Effective September 18, 1990.

One Special Assistant to the Director, Intergovernmental Affairs Staff. Effective September 24, 1990.

One Senior Policy Analyst to the Assistant Secretary for Educational Research and Improvement. Effective September 27, 1990.

Environmental Protection Agency

One Program Advisor to the Assistant Administrator for International Activities. Effective September 7, 1990.

One Staff Assistant to the Director, External Relations and Education Division, Office of Communications and Public Affairs. Effective September 7, 1990.

One Special Assistant to the Deputy Associate Administrator for Communications and Public Affairs. Effective September 27, 1990.

One Program Advisor to the Associate Administrator, Office of Administration and Resources Management. Effective September 30, 1990.

Federal Emergency Management Agency

One Special Assistant to the Director. Effective September 24, 1990.

Federal Maritime Commission

One Confidential Assistant to a Commissioner. Effective September 7, 1990.

One Special Assistant to a Commissioner. Effective September 17, 1990.

Government Printing Office

One Congressional Relations Officer to the Public Printer. Effective September 30, 1990.

General Services Administration

One Special Assistant to the Chief of Staff. Effective September 4, 1990.

One Confidential Assistant to the Deputy Administrator. Effective September 6, 1990.

One Staff Assistant to the Director of Child Care and Development Programs. Effective September 20, 1990.

Department of Health and Human Services

One Special Assistant to the Assistant Secretary for Legislation. Effective September 17, 1990.

One Special Assistant to the Secretary. Effective September 24, 1990.

Department of Housing and Urban Development

One Special Assistant to the General Counsel. Effective September 7, 1990.

One Special Assistant to the Deputy Assistant Secretary for Enforcement and Compliance. Effective September 20, 1990.

One Staff Assistant to the Assistant Secretary for Public and Indian Housing. Effective September 20, 1990.

One Special Assistant to the Under Secretary. Effective September 28, 1990.

Department of the Interior

One Staff Assistant to the Deputy Director, Minerals Management Service. Effective September 4, 1990.

One Special Assistant to the Solicitor. Effective September 12, 1990.

One Special Assistant to the Associate Director, Information and Analysis. Effective September 17, 1990.

One Special Assistant to the Assistant Secretary, Policy, Management and Budget. Effective September 17, 1990.

One Special Assistant to the Assistant Director, Office of Legislative and Congressional Affairs, National Park Service. Effective September 24, 1990.

One Special Assistant to the Executive Assistant to the Secretary. Effective September 24, 1990.

Department of Justice

One Confidential Assistant (Private Secretary), to the Assistant Attorney General, Criminal Division. Effective September 4, 1990.

One Special Assistant to the Director, Bureau of Justice Statistics. Effective September 17, 1990.

One Attorney-Advisor to the Assistant Attorney General, Legislative Affairs. Effective September 20, 1990.

One Special Assistant to the Assistant Attorney General, Civil Division. Effective September 28, 1990.

Department of Labor

One Staff Assistant to the Chief of Staff. Effective September 4, 1990.

One Staff Assistant to the Secretary. Effective September 17, 1990.

National Endowment for the Humanities

One Special Assistant to the Deputy Chairman. Effective September 17, 1990.

Office of Government Ethics

One Attorney-Advisor General to the Director. Effective September 28, 1990.

Office of Management and Budget

One Special Assistant to the Associate Director for Legislative Affairs. Effective September 4, 1990.

Office of National Drug Control Policy

One Confidential Assistant to the Press Secretary. Effective September 4, 1990.

One Confidential Assistant to the Special Assistant to the Director. Effective September 4, 1990.

Pension Benefit Guaranty Corporation

One Staff Assistant to the Deputy Executive Director for Insurance Operations. Effective September 4, 1990.

Small Business Administration

One Special Assistant to the Associate Deputy Administrator for Finance, Investment, and Procurement. Effective September 24, 1990.

Department of State

One Policy Adviser to the Ambassador-at-Large/Permanent Representative to the Organization of American States. Effective September 4, 1990.

One Secretary to the Principal Deputy Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs. Effective September 4, 1990.

One Staff Assistant to the Under Secretary for Political Affairs. Effective September 4, 1990.

One Secretary (Typing), to the Assistant Secretary for Legislative Affairs. Effective September 4, 1990.

Department of the Treasury

One Staff Assistant (Correspondence Review), to the Executive Secretary. Effective September 10, 1990.

One Legislative Analyst to the Assistant Secretary (Legislative Affairs). Effective September 10, 1990.

One Confidential Assistant to the Treasurer of the United States. Effective September 10, 1990.

One Review Officer to the Executive Secretary. Effective September 11, 1990.

One Director, Office of Congressional Relations, to the Director, Office of Thrift Supervision. Effective September 25, 1990.

One Special Assistant to the Assistant Secretary for Public Affairs and Public Liaison. Effective September 27, 1990.

United States Information Agency

One Corporate Liaison Officer to the Associate Director for Programs. Effective September 21, 1990.

Authority: 5. U.S.C. 3301; E.O. 10555, 3 CFR 1954–1958 Comp, P. 218.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90–27132 Filed 11–16–90; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–28606; SR–NSCC–89–13]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change Concerning the Automated Settlement of Mutual Fund Dividends

November 9, 1990.

The National Securities Clearing Corporation ("NSCC"), on August 14, 1989, filed a proposed rule change (File No. SR–NSCC–89–13) with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The rule change modifies NSCC's Rules to provide for the automated settlement of mutual fund dividends through NSCC's Networking Service. Notice of this proposal was published in the Federal Register on September 8, 1989, to solicit comments from interested persons.[2] No comments were received. On September 29, 1989, the Commission granted approval of the proposal on a temporary basis through December 31, 1989,[3] and on December 29, 1989, the Commission extended the temporary approval through February 28, 1990.[4] On March 1, 1990, the Commission extended the temporary approval for eight months through October 31, 1990, to collect further information about the operation of the proposed service.[5] On October 17, 1990, NSCC filed an amendment to its proposed rule change.[6] On October 17, 1990, NSCC also requested permanent approval of the proposal.[7] This order approves the proposal as discussed below.

I. Description of the Proposal

The rule change amends NSCC's rule 52, section 17 (captioned "Networking").[8] The proposal authorizes NSCC to establish a networking dividend service and provide automated settlement of cash dividends paid by mutual funds on mutual fund holdings maintained in Networking accounts. This proposal enables a Fund member (*i.e.*, the mutual fund) to make only one distribution payment to NSCC, instead of separate payments to each broker that participates in NSCC's Fund/Serv Networking Service. The Fund member's distribution payment to NSCC is re-distributed by NSCC, through the Networking Service, to the various brokers.[9]

Under the proposal, NSCC provides to the broker-dealer and Fund members using Networking a new file termed the Networking Settlement Summary File ("Summary File"). The Summary File consists of two sub-files: (1) The Networking Settlement Summary Detail Output Record ("Output Record"), and (2) the Networking Settlement Summary Trailer Record ("Trailer Record").

The Output Record details on a daily basis for each Fund member and each broker as of the day before a distribution's payable date ("Payable–1"): (1) The payable and settlement dates,[10] (2) the settlement amounts, and (3) all dividend updates (*i.e.*, additions and corrections) up to and including Payable–1. The Trailer Record details the identical information on a daily basis as of settlement date. NSCC makes the Summary File available at approximately 11 a.m. daily.[11]

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[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Rel. No. 27199 (August 30, 1989), 54 FR 37395.

[3] *See* Securities Exchange Act Rel. No 27324 (September 29, 1989), 54 FR 41707.

[4] *See* Securities Exchange Act Rel. No. 27581 (December 29, 1989), 55 FR 1126.

[5] *See* Securities Exchange Act Rel. No. 27754 (March 1, 1990), 55 FR 8275.

[6] *See* letter from Alison N. Hoffman, Associate Counsel, NSCC to Ester Saverson, Jr., Branch Chief, SEC, dated October 15, 1990. The amendment added that for any mutual fund with a history of late dividend payment to NSCC's dividend service, the service will not distribute dividends in excess of $10 million unless the mutual fund first renders payment to NSCC.

[7] *Id.*

[8] "Networking" is an NSCC mutual fund service, provided on a subscription basis, that permits automated transmission of mutual fund customer account data among NSCC broker-dealers and Fund members. *See* Securities Exchange Act Release No. 26376 (December 20, 1988), 53 FR 52544 (File No. SR–NSCC–88–08).

Section 17, prior to this rule change, had authorized NSCC's member broker-dealers and Fund members to use NSCC's Networking Service for the transmission, among themselves, of mutual fund customer account data. NSCC notes that such services were part of Networking's "initial phase," which provided NSCC members with a centralized data communications system for the exchange of customer information and securities positions. *See* NSCC Important Notice No. A3232, dated August 10, 1989.

[9] NSCC states in its filing that a valid payable date for this purpose will be defined as any date on which New York banks are open for business.

[10] Under the proposal, payable dates and settlement dates ordinarily will be the same. But a Fund member could report its dividend payable information after the payable date. In that case, the settlement date would be the date on which the information was reported. *See* NSCC's Important Notice No. A3232, dated August 10, 1989.

[11] Unless noted otherwise in this order, all times refer to Eastern Time.

Under the proposal, Fund members must pay their cash dividend settlement figures in same-day funds, via Fedwire,[12] no later than NSCC's close-of-business ("COB") on the payable date.[13] NSCC pays its broker members in next-day funds at approximately 3 p.m. daily. Inasmuch as NSCC is paid in same-day funds but pay its members in next-day funds, it credits its broker members with interest earned on those funds.

Under the proposal, dividend payments constitute independent obligations of the Fund members. Accordingly, NSCC ordinarily will not net these payments against the Funds member's other settlement balances. If however, as a result of Networking dividend corrections and reversals, a Fund member's settlement figure results in a credit balance, NSCC will repay the balance in next-day funds.[14] NSCC also has amended its proposal concerning distribution of dividends in excess of $10 million: (1) If a mutual fund payor has a history of late dividend payments to NSCC, NSCC will not distribute a dividend in excess of $10 million to its members on behalf of such mutual fund, unless NSCC first has received payment; and (2) where a mutual fund payor has no history of late dividend payments to NSCC, NSCC will make credit determinations of whether to distribute funds on a case-by-case basis.[15]

II. NSCC's Rationale for the Proposal

NSCC states that the proposed rule change is consistent with section 17A of the Act inasmuch as automating the settlement of mutual fund dividends would promote the prompt and accurate clearance and settlement of securities transactions.

III. Discussion

The Commission believes that the proposal is consistent with the Act, particularly section 17A of the Act. Specifically, sections 17A(b)(3) (A) and (F) of the Act provide that a clearing agency be organized to facilitate and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[16]

The proposal will allow a mutual fund participating in NSCC's Fund/Serv to make a single dividend payment to NSCC, and NSCC then will distribute the dividends to the appropriate broker-dealers, via its Networking Service, in next-day funds. Thus, the Commission believes that the proposal will promote the prompt and accurate clearance and settlement of mutual fund dividends.

In the temporary approval order issued on March 1, 1990,[17] the Commission requested further information about the operation of the proposed service in the form of: (1) Financial safeguards in connection with the extension of credit to mutual funds,[18] and (2) data concerning the timeliness of payments to NSCC by participating mutual funds. In this regard, NSCC has amended its filing to provide that it will restrict credit to any mutual fund payor with a history of late dividend payments to NSCC's dividend service so that the service will not distribute amounts in excess of $10 million on behalf of such mutual funds unless NSCC first has received payment.[19] Additionally, NSCC has provided the Commission with the statistical results for a six month period (March 1, 1990 through August 31, 1990) of the service's mutual fund payment, which shows that of $30,519,723 in expected payments, $29,822,238 (97.71%) was timely received (*i.e.*, received by COB on payable day) and that an additional $694,559 (2.27%) was received the following day. The remainder (0.02%) was received in full within three days after payable day.[20] Thus, the Commission believes that the proposal, as amended, seems to provide adequate procedures to safeguard mutual fund dividends. Moreover, the receipt of payment records (as portrayed by NSCC's six month statistical report) indicate that NSCC's controls are adequate to safeguard mutual fund dividends.

IV. Conclusion

For the reasons discussed in this order, the Commission finds that the proposal is consistent with the requirements of the Act, particularly section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (SR–NSCC–89–13) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–27141 Filed 11–16–90; 8:45 am]

BILLING CODE 8010–01–M

[12] "Fedwire" is an acronym for the Federal Reserve System wire facility which provides a system for transferring funds among all 12 Federal Reserve Banks, their 24 branches, the Federal Reserve offices in Washington, DC and Chicago, and the Commercial Credit Corporation. *See* Division of Market Regulation, Securities and Exchange Commission, The October 1987 Market Break, at 1–12 (1988).

[13] The original proposal applied a payment deadline of 1:00 p.m. on settlement day. For technical reasons involving the routine of Fedwire transmissions, the 1 p.m. deadline proved unworkable. Accordingly, the proposal, as amended, has adopted a deadline of COB on settlement day. *See* letter from Alison N. Hoffman, Associate Counsel, NSCC, to Thomas C. Etter, Attorney, SEC, dated February 21, 1990.

[14] NSCC notes in its filing that the dividend payments will not be a guaranteed service. If NSCC were to credit a broker with a dividend and not receive the corresponding debit from the Fund member, the credit would be subject to reversal.

[15] *See, supra,* note 6.

[16] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[17] *See, supra,* note 5.

[18] Financial safeguards, previously cited to the Commission by NSCC in connection with this service, that would help protect NSCC in its extension of credit to mutual funds include: (1) NSCC's authority under Fund/Serv to reverse the payments it makes to broker-dealers; (2) NSCC's policy of receiving mutual fund dividends from mutual funds in same-day funds and of rendering payment to broker-dealers in next-day funds, which gives NSCC an opportunity to "stop payment" on funds it has issued to broker-dealers; (3) the fact that mutual fund dividends distributed through Networking tend to be in comparatively small amounts relative to NSCC's assets, which itself minimizes NSCC's degree of exposure; and (4) inasmuch as NSCC has the right to recover against either a mutual fund or a broker-dealer, the only risk of loss to NSCC would come from a simultaneous failure of both the payor mutual fund and the payee broker-dealer, a likelihood which NSCC regards as remote. Telephone conversation between Alison N. Hoffman, Associate Counsel, NSCC, and Thomas C. Etter, Jr., Attorney, SEC (December 20, 1989).

[19] *See, supra,* note 6.

[20] *See* letter from Alison N. Hoffman, Associate Counsel, NSCC, to Thomas C. Etter, Attorney, SEC, dated September 28, 1990.

[21] 17 CFR 200.30–3(a)(12).

[Rel. No. 34–26809; International Series Rel. No. 169; File No. SR–NASD–90–55]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Accelerated Approval to Proposed Rule Change Extending the Informational Linkage With the Stock Exchange of Singapore Ltd. for 6 Month Period

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 16, 1990, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD has filed, pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, for Commission authorization to extend for a 6 month period the operation of its Pilot Program with the Stock Exchange of Singapore Limited ("SES"). The Pilot Program currently consist of an interchange of closing price and volume data on 27 NASDAQ securities that are also traded through the SES's facilities. With the thirteen hour time difference (twelve hours during EDT), the trading hours of the SES and NASD markets do not overlap. Hence, the end-of-day information being exchanged under the Pilot Program primarily assist the establishment of opening prices for the following business day. The Pilot Program currently involves no automated order routing or execution capabilities, and no such capability will be established during the proposed extension.

The Commission originally authorized operation of the NASD–SES Pilot Program for a two-year term [1] that was recently extended through November 12, 1990.[2] Commission approval of the instant filing would permit continuation of this Pilot Program through May 12, 1991. During this interval, the NASD will consult with the SES regarding the future structure and operation of the linkage. Prior to the conclusion of the proposed extension, the NASD expects to compile and submit certain additional information requested by the Commission staff on the operation of the NASD–SES linkage.[3] Such information will facilitate the Commission's deliberations on any longer-term extension of this Pilot Program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD–SES Pilot Program commenced operation with the Commissions's approval of File No. SR–NASD–87–40 on March 14, 1988. The principal features of this program were fully described in section 1 of that form 19b–4, which description is hereby incorporated by reference.[4]

The current authorization of the NASD–SES Pilot Program will expire on November 13, 1990. The NASD, on its own as well as the SES's behalf, hereby request that the Commission approve an interim extension of the Pilot Program for 6 months. This period will enable continuation of the Pilot while the NASD and SES staffs consult on the future direction and structure of the Pilot Program. These matters will be detailed in a subsequently Rule 19b–4 filing.

During the proposed extension, the Pilot Program will continue operating in its present form. Specifically, each market will transmit to the other static price/volume information compiled at the end of each trading day on selected NASDAQ securities.[5] The SES will transmit the closing inside quotation and cumulative reported volume (collectively referred to as "SES information") respecting each Pilot security quoted on the SES. Similarly, the NASD will transmit for each Pilot security the closing inside quotes, cumulative volume, last sale price (for NASDAQ/NMS issues only) and the closing quote of every NASDAQ market maker in each of the 27 Pilot securities (collectively referred to as "NASD information"). Because the SES now employs an order-driven system (known as the "CLOB") rather than a system of competing market makers, SES information received under the Pilot Program no longer includes the closing quotes of individual market makers in Pilot securities.[6] Although some SES members continue to function as dealers, they are not obliged to maintain continuous, two-sided quotes in any of the NASDAQ securities designated as Pilot securities. Hence, the closing inside quotes received from the SES in these securities (which might entirely consist of open limit orders of public investors) may be somewhat wider than the corresponding inside quotes calculated from the bids/offers of NASDAQ market makers that are transmitted to the SES.

The exchange of static, end-of-day information will remain the principal function of the Pilot Program for the duration of the proposed extension. Nonetheless, subject to mutual agreement of the NASD and the SES, the number of Pilot securities may be increased to 35, the number originally authorized by the Commission in 1988. SES information will continue to be provided only to subscribers of NASDAQ Level ⅔ services. Similarly, NASD information transmitted to Singapore will be available only on the terminals used by SES members to access the exchange's CLOB system. Finally, the original agreement between the NASD and the SES will remain in effect for the term of the extended Pilot Program. This agreement, which provides for the sharing of regulatory information as needed, is believed adequate given the limited nature and limited scope of the Pilot Program.[7]

Regarding the statutory basis for the extended Pilot Program, the NASD relies on sections 11A(a)(1) (B) and (C), 15A(b)(6), and 17(A)(a)(1) of the Act. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through the application of new data processing and communications techniques. Section 15A(b)(6) requires in part that the rules of the NASD be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to

[1] *See* Rel. No. 34–25457 (March 14, 1988), 53 FR 9156 (March 21, 1988).

[2] *See* Rel. No. 34–28331 (August 13, 1990), 55 FR 33797 (August 17, 1990) approving File No. SR–NASD–90–42 that authorized the Pilot Program's operation through November 12, 1990.

[3] *See* letter dated September 21, 1990 to Frank J. Wilson, Executive Vice President and General Counsel, NASD, from Kathryn V. Natale, Esq., Assistant Director, Division of Market Regulation, Securities and Exchange Commission.

[4] *See also* Rel. No. 34–25065 (October 28, 1987), 52 FR 42167 (November 3, 1987).

[5] When the Pilot Program commenced operation, 35 NASDAQ securities were selected for inclusion. These securities were listed in Exhibit 2 to File No. SR–NASD–87–40. Over time, 8 securities were deleted for reasons unrelated to the Pilot Program, *e.g.*, mergers and listing on a national securities exchange. At this point, end-of-day information continues to be exchanged on the remaining 27 NASDAQ securities.

[6] This modification in the SES's market structure was not contemplated when the NASD submitted File No. SR–NASD–87–40.

[7] The NASD notes that any substantive enhancement to the Pilot Program, including introduction of an automated order routing and/or execution system, would require concurrent authorizations from the Commission and the Monetary Authority of Singapore. No such enhancement will be implemented during the requested extension.

remove impediments to and perfect the mechanism of a free and open market * * *" Finally, section 17A(a)(1) reflects the Congressional goals of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD submits that extension of the Pilot Program will further these ends by providing the cooperative regulatory environment and operating experience needed for advancement of these goals in the context of internationalization of securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The extended Pilot Program will permit the continued exchange of static market data on a limited group of NASDAQ securities between the NASD and SES on a non-exclusive basis. The cost of supporting the Pilot Program is nominal, and the sponsoring markets absorb their respective costs. The market information being exchanged by the NASD and SES under the Pilot Program is deemed to constitute an exchange of equivalent value. Hence, no additional fee is paid by NASD and SES member firms for receipt of the static data being provided on Pilot securities.

The NASD submits that neither the structure nor operation of the present Pilot Program poses any burden on competition. The brief extension being sought will enable the sponsoring markets to formalize the future objectives and structure of the Pilot Program. These matters will be addressed in a subsequent rule 19b–4 filing that will provide a further opportunity for public comment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A(a)(1) (B) and (C), 15A(b)(6), 17A(a)(1) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing of notice of filing thereof. The Commission believes that accelerated approval is appropriate to avoid termination of the Pilot Program pending formalization of the sponsors' plans for the future operation of this program. The brief extension being approved should allow sufficient time for the NASD to prepare another rule 19b–4 filing regarding this program, which filing will incorporate certain additional information germane to the Commission's deliberations on this matter.[8] Further, the Commission acknowledges the limited nature of the Pilot Program and that no substantive changes will be implemented during the proposed extension. Accordingly, the Commission believes that the Pilot Program should not be terminated under these circumstances.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 10, 1990.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved for a period of 6 months, allowing the NASD–SES Pilot Program to continue through May 12, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: November 9, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–27142 Filed 11–16–90; 8:45 am]

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[8] *See* note 3. The Commission reiterated in that letter its concerns regarding the approval of the Pilot Program on a permanent basis. As previously communicated, permanent approval will not be granted until the Commission has received information regarding: (1) The monitoring of quotations received from the Stock Exchange of Singapore; (2) procedures established for sharing surveillance information; and (3) data regarding system capacity. In response, the Division has been informed that both the NASD and the SES will take appropriate measures to meet these requirements. Furthermore, as previously communicated to the NASD, this extension is granted with the proviso that the information requested be submitted for Commission review no later than 90 days before expiration of the extension (*i.e.*, February 12, 1991).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Notice of Review of Petition and Public Hearing

SUMMARY: The purpose of this notice is to announce the acceptance of a petition filed by the American International Group, Inc. (AIG) and the schedule for the public hearing and comment period. A decision on accepting this petition as part of the 1990 GSP Annual Review was deferred at the time this review was initiated (55 FR 34878).

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 414, Washington, DC 20506. The telephone number is (202) 395–6971. Public versions of all documents are also available for review by appointment with the USTR Public Reading room. Documents will be available in the reading room shortly after the filing deadlines. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395–6186.

SUPPLEMENTARY INFORMATION:

I. Acceptance of Petition for Review

1. Notice is hereby given of acceptance for review of the petition filed by the American International Group, Inc. (AIG) requesting that the GSP status of Peru be reviewed with respect to the criteria listed in subsection 502(b)(4) of the Trade Act of 1974 (the Act), as amended (19 U.S.C. 2461–65).

The AIG petition was filed on June 1, 1990, pursuant to a prior **Federal Register** notice (55 FR 14029) as part of the 1990 GSP Annual Review. In the **Federal Register** notice announcing the petitions accepted as part of the 1990 Annual Review (55 FR 34878), a decision on accepting the AIG petition was deferred. The President's decision regarding the disposition of this petition will be made along with all other petitions being considered as part of the 1990 Annual Review.

2. *Information Subject to Public Inspection.* Information submitted in connection with the hearing will be subject to public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2006.10. Briefs or statements must be submitted in twelve copies in English. If the document contains business confidential information, twelve copies of a nonconfidential version of the submission along with twelve copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "non-confidential").

3. *Communications.* All communications with regard to the hearing should be addressed to: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 414, Washington, DC 20506. The telephone number of the Secretary of the GSP Subcommittee is (202) 395–6971. Questions may be directed to any member of the staff of the GSP Information Center.

Acceptance for review of the petition listed herein does not indicate any opinion with respect to a disposition on the merits of the petition. Acceptance indicates only that the petition has been found to be eligible for review by the GSP Subcommittee and the Trade Policy Staff Committee (TPSC), and that such review will take place.

II. Deadline for Receipt of Requests to Participate in the Public Hearing

The GSP Subcommittee of the TPSC invites submissions in support of or in opposition to the AIG petition. All such submissions should conform to 15 CFR part 2007, particularly §§ 2007.0, 2007.1(a)(1), 2007.1(a)(2), and 2007.1(a)(3).

A hearing is scheduled to be held on January 8 beginning at 10 a.m. in the U.S. International Trade Commission's Hearing room, 500 E Street, SW., Washington, DC The hearing will be open to the public and a transcript of the hearing will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

Pre-hearing briefs and requests to present oral testimony in connection with public hearing should be accompanied by twelve copies, in English, of all written briefs or statements and should be received by the Chairman of the GSP Subcommittee no later than 5 p.m. Thursday, December 13. Requests to make an oral presentation at the hearing must submit the name, address, and telephone number of the witness(es) representing the requestor. A pre-hearing brief is required of all parties wishing to testify. Oral testimony before the GSP Subcommittee will be limited for each party submitting a brief to five-minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Substitution of witnesses will be permitted until 5 p.m. Wednesday, December 19. Rebuttal briefs should be submitted in twelve copies, in English, by 5 p.m. Wednesday, January 23, 1991. In order to complete the review by April 1, no opportunity to submit post-hearing briefs concerning this petition will be provided.

David A. Weiss,

Chairman, Trade Policy Staff Committee.

[FR Doc. 90–27191 Filed 11–16–90; 8:45 am]

BILLING CODE 3190–01–M

[Docket No. 301–81–M]

Initiation of Section 302 Investigation, Notice of Proposed Determinations, Notice of Public Hearing, and Request for Written Comments: Denial of Benefits Under a Trade Agreement by the European Communities

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302(b) of the Trade Act of 1974, as amended ("the Trade Act"); notice of proposed determinations; request for written comments; and notice of public hearing.

SUMMARY: The United States Trade Representative (USTR) has determined to initiate an investigation under section 302(b) of the Trade Act with respect to denial of benefits under a trade agreement by the European Communities (EC). The USTR proposes to determine that such benefits have been denied and to take appropriate action. USTR invites written comments and will conduct public hearings on this matter.

DATES: This investigation is effective November 15, 1990. The hearing will be held on November 28, 1990. Written comments from interested persons not participating in the hearing must be filed by 5 p.m. on November 23, 1990, and rebuttal briefs must be filed by noon on November 27, 1990.

ADDRESSES: Comments should be addressed to the Chairman, section 301 Committee, Office of the United States Trade Representative, room 223, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Bennett Harman, Director, European Community Affairs, (202) 395–3074, or Marilyn Moore, Senior Agricultural Economist, (202) 395–5006, or Richard Steinberg, Assistant General Counsel, (202) 395–7305.

SUPPLEMENTARY INFORMATION: As part of the arrangements for the accession of Portugal and Spain to the European Economic Communities (EEC), the EEC withdrew tariff concessions on products from Portugal and Spain, imposed variable levies on Spanish imports of corn and sorghum, and took other actions affecting U.S. exports, effective beginning March 1, 1986. The average annual value of U.S. exports affected by the EEC's actions exceeded one billion dollars in the 1981–83 period.

In discussions with the EC in 1986, the United States Government sought the removal of certain restrictions and, in accordance with U.S. rights under Articles XXIV and XXVIII of the General Agreement on Tariffs and Trade (GATT), sought appropriate compensation from the EC for the tariff and variable levy actions

On January 29, 1987, the United States Government entered into an "Agreement for the Conclusion of Negotiations Between the United States nd the European Community Under GATT Article XXIV:6." That agreement set forth several measures to be taken by the EC and temporarily compensated the United States by, *inter alia*, reducing duty rates on an autonomous basis on 29 tariff lines and ensuring a minimum access level of imports of two million metric tons of corn and of three hundred thousand metric tons of sorghum into Spain for consumption from non-EC sources. Those measures were to apply until December 31, 1990. The agreement also specified that both parties would initiate in July 1990 a "major review of the situation * * * with the objective of determining at that time what new action, if any, might be appropriate." Both parties reserved "full GATT rights including those which would otherwise be time-limited."

In July 1990, representatives of the Government of the United States and the EC met to initiate a review of the situation. Notwithstanding the U.S. right under GATT Article XXIV to continue compensation for the withdrawal of

concessions associated with the addition of Portugal and Spain to the EEC, the EC has refused to extend such compensation beyond December 31, 1990.

Where a contracting party to the GATT has withdrawn a concession in the expansion of a customs union, Article XXIV of the GATT entitles other contracting parties to negotiated compensation, or, in the absence of a successful negotiation, to use Article XXVIII to "withdraw substantially equivalent concessions." The Article XXVIII right is time-limited and could be construed, in this case, to expire at midnight on December 31, 1990, unless exercised.

Unless the trade measures in the 1987 agreement are extended or a new agreement is reached with the EC, certain trade rights or measures contained in the 1987 agreement might expire at midnight on December 31, 1990. Article XXVIII requires that notice of intent to withdraw substantially equivalent concessions be received by the GATT Contracting Parties thirty days prior to the date that such concessions are withdrawn.

Thus, the United States Government considers itself to be obliged to give notice by December 1, 1990, of the intent of the United States to exercise its Article XXVIII rights after December 31, 1990.

Legal Authority

Section 302(b) of the Trade Act authorizes the USTR to initiate an investigation to determine, *inter alia*, whether United States rights under a trade agreement are being denied. When the USTR has determined, pursuant to section 304 of the Trade Act, that the rights of the United States under a trade agreement are being denied, section 301 of the Trade Act authorizes the USTR to, *inter alia*, suspend the benefits of trade agreement concessions to carry out a trade agreement.

Investigation

Pursuant to section 302(b)(1)(A) of the Trade Act of 1974, as amended, the USTR has determined that an investigation under section 302 should be initiated with respect to the EC's policy and practice in this matter, in order to determine whether it is actionable under section 301.

Proposed Determinations

The USTR proposes that if the United States and the EC are unable to negotiate by midnight on December 31, 1990, a mutually acceptable solution that compensates the United States in accordance with its rights under the GATT, then the USTR will determine that the EC will be denying benefits to the United States under a trade agreement as of midnight December 31, 1990.

Under Article XXVIII of the GATT, the United States Government would have to give thirty days notice prior to withdrawing concessions if negotiations to compensate the United States in accordance with its GATT rights were not successful. Therefore, the USTR proposes to continue attempting to engage the EC in negotiations for compensation, and, if no agreement is reached by December 1, 1990, to give notice to the GATT Contracting Parties on December 1, 1990, of the United States Government's intent to suspend its obligation to maintain tariffs at their appropriate rates on products listed in the Annex. The USTR further proposes that if no agreement is reached by December 31, 1990, then the USTR may increase tariffs after December 31, 1990, on products listed in the Annex.

Expeditious Action Required

Section 304(b) of the Trade Act requires, *inter alia*, consultation with interested persons after giving not less than thirty days notice thereof, unless expeditious action is required. The USTR has determined that expeditious action is required because failure to act by December 1, 1990, could result in forfeiture of United States international legal rights under Article XXVIII of the GATT. Moreover, failure to act by December 1, 1990, could result in the loss of U.S. international legal rights to act after midnight on December 31, 1990, when trade rights or measures contained in the 1987 agreement might expire. Accordingly, it was not possible to provide thirty days notice for comment or hearings on this matter.

Public Hearing

A public hearing requiring this matter will be held at 9 a.m. on November 26, 1990 in Courtroom A, room 106, at the International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Interested persons wishing to testify orally must provide a written request to do so by noon on November 23, 1990, to Ms. Dorothy Balaban, Staff Assistant to the section 301 Committee, Office of the U.S. Trade Representative, room 222, 600 17th Street, NW., Washington, DC 20506. In addition, they must provide the following information: (1) Name, address, telephone number, and firm or affiliation; and (2) a summary of their presentation. After consideration of a request to present oral testimony at the public hearing, the Chairman of the section 301 Committee will notify the applicant of the time of his or her testimony, if the request conforms to the requirements set forth in the regulations promulgated under section 301 of the Trade Act, published at 55 FR 20,580, 20,597 (May 18, 1990) (to be codified at 15 CFR 2006.9). (The citations to regulatory provisions set forth below refer to the sections in 15 CFR part 2006 at which the relevant provisions of the regulations published on May 18, 1990, will be codified.) Remarks at the hearing will be limited to 5 minutes.

In addition, persons presenting oral testimony must submit 20 copies of their complete written testimony, in English, by noon on November 23, 1990, to Ms. Balaban at the address listed above. All written submissions must be filed in accordance with 15 CFR 2006.8.

The public is invited to comment on: (1) Whether the EC policy and practice at issue is actionable under section 301, including comments on whether it denies benefits under a trade agreement; and if so, (2) the appropriateness of subjecting the products listed in the Annex to a suspension of bound duties or an increase in duties in response to the EC policy and practice; (3) the amount of the burden or restriction on U.S. commerce caused by the EC policy and practice; (4) levels at which U.S. customs duties on particular products should be set; and (5) the degree to which increased duties might have an adverse effect on U.S. consumers of the products concerned. The comments submitted will be considered in determining actionability under section 301 and in recommending any action under section 301 to the USTR.

Written Comments

Persons not wishing to participate in the public hearing may submit written comments, in 20 copies, by 5 p.m. on November 23, 1990. All written comments must be filed in accordance with 15 CFR 2006.8.

In order to assure each party an opportunity to contest the information provided by other parties, the section 301 Committee will entertain rebuttal briefs filed by any party, in accordance with 15 CFR 2006.8(c), by noon on November 27, 1990.

Comments will be placed in a file (Docket 301–81) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. (Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the public file.) The docket shall be available for public inspection at the USTR Reading Room, room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC. An appointment to review the docket may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading room is open to the public from 10 a.m. to noon and from 1 p.m. to 4 p.m., Monday to Friday.

Andrew W. Shoyer,

Acting Chairman, Section 301 Committee.

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Annex

HTS Subheading 1/	Article
	[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]
	Cheese and curd:
	Blue-veined cheese:
	[Roquefort]
	Other:
0406.40.60	In original loaves
0406.40.80	Other
	Other cheese:
0406.90.15	Edam and Gouda cheeses
	Lettuce (Lactuca sativa) and chicory (Cichorium spp.), fresh or chilled:
	Chicory:
0705.21.00	Witloof chicory (Cichorium intybus var. foliosum)
0705.29.00	Other
	Other nuts, fresh or dried, whether or not shelled or peeled:
0802.40.00	Chestnuts (Castanea spp.)
	Starches; inulin:
	Starches:
1108.13.00	Potato starch
	Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products:
	Mucilages and thickeners, whether or not modified, derived from vegetable products:
	[Agar-agar]
	[Mucilages and thickeners, whether or not modified, derived from locust beans, locust bean seeds or guar seeds]
1302.39.00	Other
	Rapeseed, colza or mustard oil, and fractions thereof, whether or not refined, but not chemically modified:
	[Crude oil]
	Other:
	[Imported to be used in the manufacture of rubber substitutes or lubricating oil]
	Other:
	[Denatured]
1514.90.90	Other
	Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols:
	Industrial fatty alcohols:
	Derived from fatty substances of animal or vegetable origin:
	[Oleyl]
1519.30.40	Other

1/ Harmonized Tariff Schedule of the United States.

Annex
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HTS Subheading 1/	Article
	Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid:
	[Cucumbers including gherkins]
	[Onions]
	Other:
	[Capers]
	Other:
	Vegetables:
2001.90.25	Artichokes
	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen:
	[Sweet corn (Zea mays var. saccharata)]
	Other vegetables and mixtures of vegetables:
	Fruits of the genus Capsicum (peppers) or of the genus Pimenta (e.g., allspice):
2005.90.50	Pimientos (Capsicum anuum)
2005.90.80	Artichokes
	Yeasts (active or inactive); other single-cell microorganisms, dead (but not including vaccines of heading 3002); prepared baking powders:
	Inactive yeasts; other single-cell microorganisms, dead:
	[Yeasts (except dried brewers' yeast)
	[Dried brewers' yeast, crude]
2102.20.60	Other
	Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavored; ice and snow:
2201.10.00	Mineral waters and aerated waters
	Wine of fresh grapes, including fortified wines; grape must other than that of heading 2009:
	[Sparkling wine]
	Other wine; grape must with fermentation prevented or arrested by the addition of alcohol:
	In containers holding 2 liters or less:
	[Effervescent wine]
	Other:
	Of an alcoholic strength by volume not over 14 percent vol.:
	Valued not over $1.05/liter:
2204.21.4015	White
	Other:
	In containers holding over 2 liters but not over 4 liters:
	Of an alcoholic strength by volume not over 14 percent vol.:
	Valued not over $1.05/liter:
2204.29.2015	White
	Valued over $1.05/liter:
2204.29.2045	White
	Vermouth and other wine of fresh grapes flavored with plants or aromatic substances:
	In containers holding 2 liters or less:
2205.10.30	Vermouth
	Other:
	Vermouth:
2205.90.20	In containers each holding over 2 liters but not over 4 liters
2205.90.40	In containers each holding over 4 liters

1/Harmonized Tariff Schedule of the United States.

Annex
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HTS Subheading 1/	Article
	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages; compound alcoholic preparations of a kind used for the manufacture of beverages:
	Spirits obtained by distilling grape wine or grape marc (grape brandy):
	[Pisco and singani]
	Other:
	In containers each holding not over 4 liters:
2208.20.40	Valued over $3.43/liter
	In containers each holding over 4 liters:
2208.20.60	Valued over 2.38/liter
2208.50.00	Gin and Geneva
	Other:
	Brandy:
	[Slivovitz]
	Other:
	In containers each holding not over 4 liters:
2208.90.30	Valued over $3.43/liter
	In containers each holding over 4 liters:
2208.90.40	Valued over $2.38/liter
2208.90.45	Cordials, liqueurs, kirschwasser and ratafia
	Vegetable alkaloids, natural or reproduced by synthesis, and their salts, ethers, esters and other derivatives:
	[Alkaloids of opium and their derivatives; salts thereof]
	[Alkaloids of cinchona and their derivatives; salts thereof]
	[Caffeine and its salts]
	[Ephedrines and their salts]
	[Theophylline and aminophylline (Theophylline-ethylenediamine) and their derivatives; salts thereof]
	[Alkaloids of rye ergot and their derivatives; salts thereof]
	[Nicotine and its salts]
	Other:
	[Natural]
2939.90.50	Other
	Sheep or lamb skin leather, without wool on, other than leather of heading 4108 or 4109:
	Parchment-dressed or prepared after tanning:
4105.20.30	Not fancy
4105.20.60	Fancy
4111.00.00	Composition leather with a basis of leather or leather fiber, in slabs, sheets or strip, whether or not in rolls

1/ Harmonized Tariff Schedule of the United States.

[FR Doc. 90-27333 Filed 11-16-90; 8:45 am]
BILLING CODE 3190-01-C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Draft Change 3, Advisory Circular 27-1, Certification of Normal Category Rotorcraft, and Draft Change 2, Advisory Circular 29-2A, Certification of Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Availability of draft advisory circular (AC) changes.

SUMMARY: This notice announces the availability of and request for comments on Draft Change 3, AC 27-1, Certification of Normal Category Rotorcraft, and Draft Change 2, AC-29-2A, Certification of Transport Category Rotorcraft. The Draft changes contain guidance material for demonstrating compliance with 14 CFR parts 27 and 29 of the Federal Aviation Regulations (FAR).

DATES: Comments must identify Draft Change 3, AC 27-1, or Draft Change 2, AC 29-2A, and must be received by February 22, 1991.

ADDRESSES: Comments may be mailed to FAA, Rotorcraft Standards Staff, ASW-110, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193-0110.

FOR FURTHER INFORMATION CONTACT: Ms. Jannette Fletcher, Rotorcraft Standards Staff, ASW-110, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193-0110, telephone (817) 624-5122.

SUPPLEMENTARY INFORMATION: Copies of the draft changes have been mailed to all known affected industry and government entities, both foreign and domestic. Any interested person not receiving these draft changes may obtain a copy by contacting the person named under "**FOR FURTHER INFORMATION CONTACT.**"

Interested persons are invited to submit comments on these draft changes. Comments received may be inspected at the office of the Rotorcraft Standards Staff, FAA, building 3B, room 142, 4400 Blue Mound Road, Fort Worth, Texas.

Issued in Fort Worth, Texas, on November 5, 1990.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-27170 Filed 11-16-90; 8:45 am]
BILLING CODE 4910-13-M

Proposed Advisory Circular; Crash Resistant Fuel Systems in Normal and Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments; draft advisory circular material.

SUMMARY: This notice announces the availability of proposed advisory material pertaining to crash resistant fuel systems (CRFS) in normal and transport category rotorcraft. This material is being developed to provide guidance on rulemaking to add comprehensive CRFS design and test criteria to the airworthiness standards.

DATES: Comments must be received on or before April 3, 1991.

ADDRESSES: Comments on the draft advisory material should be mailed to the FAA, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0110.

FOR FURTHER INFORMATION CONTACT: Mrs. Debra H. Myers, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0110; telephone (817) 624-5118.

SUPPLEMENTARY INFORMATION: The FAA has issued Notice of Proposed Rulemaking No. 90-24 (55 FR 41000, October 5, 1990), which proposes to add design and test criteria to parts 27 and 29 to minimize fuel (and other flammable fluid) spillage near ignition sources, minimize potential ignition sources and, therefore, improve the evacuation time needed for crew and passengers to escape a postcrash fire. The draft advisory material will provide an acceptable means of compliance with the new CRFS standards, when adopted.

Copies of the draft advisory material have been mailed to all known, affected industry and government entities, both foreign and domestic. Any interested person not receiving this draft advisory material may obtain a copy by contacting the person named under "**FOR FURTHER INFORMATION CONTACT.**"

All comments received may be inspected at the office of the Rotorcraft Standards Staff, building 3B, room 142, 4400 Blue Mound Road, Fort Worth, Texas.

Issued in Fort Worth, Texas, on November 8, 1990.

James D. Erickson,

Manager, Rotorcraft Directorate Aircraft Certification Service.

[FR Doc. 90-27172 Filed 11-16-90; 8:45 am]
BILLING CODE 4910-13-M

Proposed Advisory Circular; Dynamic Evaluation of Seat Restraint Systems and Occupant Restraint for Rotorcraft (Normal and Transport)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments; proposed advisory circular material.

SUMMARY: This notice announces the availability of proposed advisory circular material pertaining to dynamic evaluation of seat restraint systems and occupant restraint for normal and transport category rotorcraft. This advisory circular material will provide guidance on recently adopted amendments to the airworthiness standards that significantly improve occupant protection for normal and transport category rotorcraft in a survivable emergency landing impact mode.

DATES: Comments must be received on or before February 22, 1991.

ADDRESSES: Comments on the draft advisory material should be mailed to the FAA, Rotorcraft Standards Staff, Forth Worth, Texas 76193-0110.

FOR FURTHER INFORMATION CONTACT: Mrs. Debra H. Myers, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0110; telephone (817) 624-5118.

SUPPLEMENTARY INFORMATION: The FAA adopted Amendments 27-25 and 29-29 (55 FR 47310, November 13, 1989), effective December 13, 1989, that added two dynamic crash impact design conditions for seat and occupant restraint systems and that also increased the static design load factors for the occupant seating devices. This advisory material will provide an acceptable means of compliance with the new occupant restraint standards.

Copies of the draft advisory material have been mailed to all known, affected industry and government entities, both foreign and domestic. Any interested person not receiving this draft advisory material may obtain a copy by contacting the person named under "**FOR FURTHER INFORMATION CONTACT.**"

All comments received may be inspected at the office of the Rotorcraft Standards Staff, building 3B, room 142, 4400 Blue Mound Road, Fort Worth, Texas.

Issued in Forth Worth, Texas, on November 8, 1990.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-27171 Filed 11-16-90; 8:45 am]
BILLING CODE 4910-13-M

Environmental Impact Statement; Memphis International Airport Master Plan; Memphis, Shelby County, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Aviation Administration intends to prepare an Environmental Impact Statement to address environmental and related impacts expected to be associated with the implementation of the Master Plan, Memphis International Airport, Memphis, Shelby County, Tennessee.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Planner, FAA Airports District Office, 3973 Knight Arnold Road, suite 105, Memphis, TN 38118-3004. Telephone Number 901-544-3495.

SUPPLEMENTARY INFORMATION: The proposed airfield development will involve: Construction of Runway 18E-36E, 9000 feet long and 150 feet wide, 927 feet east of Runway 16L-36R; construction of parallel taxiways, high-speed exists, and connecting taxiways; installation of runway, taxiway, and approach lighting systems for Category III approaches to Runway 18L-36E; removal of Swinnea Road between Winchester Road and Shelby Drive and relocation of utilities; construction of replacement for Swinnea Road along alignment of Nancy Street; relocation and channelization of Hurricane Creek; lowering of Winchester Road to provide clearances and extension of tunnel under Runway 18L-36R; extension of Runway 18L-36R up to 2,700 feet to the south, with connecting taxiways and relocation of navigation aids; reconstruction and strengthening of Winchester road tunnel; lowering of Shelby Drive; construction of other taxiways; reconstruction of Runways 18L-36R, 18L-36L and 9-27; extension of Taxiway A; relocation of the VORTAC; and deactivation of Runways 15-33 and 3-21. The proposed development will involve acquisition of approximately 313 acres primarily east and south of the airport. Other proposed development includes increased passenger and employee parking, rental car service facilities and increased passenger terminal facilities. The area south of the existing passenger terminal between the two parallel runways will be reserved for potential long-term terminal development. The area east of Runway 18E-36E will be developed for airline and airport support facilities.

The FAA plans to coordinate with Federal, State, and local agencies which have jurisdiction by law or have special expertise with respect to any environmental impacts associated with the project. Preliminary project scoping meetings were held in 1986 and 1989. A formal project scoping meeting was held in February 1989. Several agencies have been involved in the preparation and/or review of the Environmental Assessment. Public workshops were held and public hearings were conducted by the Memphis Shelby County Airport Authority. Comments by the public have been received as a result of these meetings and incorporated in the Environmental Assessment. All interested agencies, organizations, and persons are invited to provide input and comments for refining the Environmental Impact Statement. Comments should be directed to FAA Airports District Office, 3973 Knight Arnold Rd., Suite 105, Memphis, TN 38118-3004.

The Environmental Assessment for the Master Plan, Memphis International Airport, Memphis, Tennessee, is available for review at the Memphis-Shelby County Airport Authority's office, FAA Memphis Airports District Office and at libraries in the vicinity of the airport.

Comments should be made within 30 days of the date of this notice.

Issued on November 1, 1990.

Billy J. Langley,

Manager, Memphis ADO.

[FR Doc. 90-27166 Filed 11-16-90; 8:45 am]

BILLING CODE 4910-13-M

[Special Committee 159]

Radio Technical Commission for Aeronautics (RTCA); Minimum Operational Performance Standards for Supplemental Airborne Navigation Equipment Using Global Positioning System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the Sixteenth Meeting of Special Committee 159 on Minimum Operational Performance Standards for Supplemental Airborne Navigation Equipment using Global Positioning System (GPS) to be held December 13-14, 1990, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) Approval of minutes of the Fifteenth Meeting held on July 30-August 1, 1990; (3) Reports of Working Group activities; (a) Integrity implementation; (b) Operations; (c) Test requirements; (4) Reports on GPS/GLONASS activities; (5) Review of EUROCAE and other comments; (6) Review of second draft of the Committee Report; (7) Assignment of tasks; (8) Other business; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 13, 1990.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 90-27173 Filed 11-16-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTION

Federal Railroad Administration

Petition for Exemption or Waiver; Wabash and Grand River Railway, Co., et al

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that seven railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91-189, 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on-duty in excess of 12 hours. However, the Hours of Service Act contains a provision permitting a railroad which employs not more than 15 employees subject to the statute, to seek an exemption from the 12-hour limitation.

Wabash & Grand River Railway, Company (WGRY)

[FRA Waiver Petition Docket No. HS-90-17]

The WGRY seeks an exemption so it may permit certain employees to remain on-duty not more than 16 hours in any 24-hour period. The WGRY states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The WGRY provides service over 40 miles of trackage between Norfolk Southern connection at Brunswick, Missouri, to Chillicothe, Missouri.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitoner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Wiregrass Central Railroad Company, Inc. (WCGR)

[FRA Waiver Petition Docket No. HS-90-22]

The WCGR seeks an exemption so it may permit certain employees to remain on-duty not more than 16 hours in any 24-hour period. The WCGR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The WCGR provides service over 23 miles of trackage between CSX Transportation connection at Waterford, Alabama, to Enterprise, Alabama.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Mississippi Delta Railroad (MSDR)

[FRA Waiver Petition Docket No. HS-90-16]

The MSDR seeks an exemption so it may permit certain employees to remain on-duty not more than 16 hours in any 24-hour period. The MSDR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The MSDR provides service over 60 miles of trackage between Illinois Central connection at Swan Lake, Mississippi, to Jonestown, Mississippi.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Alabama & Florida Railroad Company (AFLR)

[FRA Waiver Petition Docket No. HS-90-21]

The AFLR seeks an exemption so it may permit certain employees to remain on-duty not more than 16 hours in any 24-hour period. The AFLR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The AFLR provides service over 78 miles of trackage between CSX Transportation connection at Georgianna, Alabama, to Geneva, Alabama.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Ontario Midland Railroad (OMID)

[FRA Waiver Petition Docket No. HS-90-15]

The OMID seeks continuation of a previously issued exemption so it may permit certain employees to remain on-duty not more than 16 hours in any 24-hour period. The OMID states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The OMID provides service, on two interconnected lines joined at Wallington, New York. The first line is between Newark, New York and Sodus Point, New York, a distance of 15 miles. The second line is between West Webster, New York and Red Creek, New York, a distance of 40.6 miles. Total mileage operated by the OMID is 55.6 miles.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Ontario Central Railroad (ONCT)

[FRA Waiver Petition Docket No. HS-90-20]

The ONCT seeks continuation of a previously issued exemption so it may permit certain employees to remain on-duty not more than 16 hours in any 24-hour period. The ONCT states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The ONCT provides service over 13 miles of trackage between East Shortsville and West Victor, New York.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Pioneer Valley Railroad (PVRR)

[FRA Waiver Petition Docket No. HS-90-18]

The PVRR seeks continuation of a previously issued exemption so it may permit certain employees to remain on-duty not more than 16 hours in any 24-hour period. The PVRR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The PVRR provides service over 26 miles of trackage between Westfield and Holyoke, and between Westfield and Easthampton, all within the State of Massachusetts.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled a public hearing since facts do not appear to so warrant. If any interested party desires a public hearing, he or she should notify FRA in writing, before the end of the comment period and specify the basis for his or her request. Any communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number HS-90-XX) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before January 15, 1991, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.-5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on November 7, 1990.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 90-27154 Filed 11-16-90; 8:45 am]

BILLING CODE 4910-16-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket S-873]

Lykes Bros. Steamship Co., Inc.; Extension of Time for Comments in the Matter of Docket S-873

Notice is hereby given that the closing date for comments in Docket S-873 application of Lykes Bros. Steamship Co., Inc. is extended to December 14, 1990. The Notice of Application of Docket S-873 was published in the Federal Register of November 8, 1990 (55 FR 47024-47025).

(Catalog of Federal Domestic Assistance Program No. 20.804 [Operating-Differential Subsidies]).

By Order of the Maritime Administrator.

Dated: November 14, 1990.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 90-27202 Filed 11-16-90; 8:45 am]

BILLING CODE 4910-81-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 223
Monday, November 19, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Executive Committee Meeting

DATE AND TIME:

December 11 and 12, 1990
1:00 p.m.—9:00 p.m.; and
9:00 a.m.—4:30 p.m., respectively

PLACE: Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

Opening Remarks, Chairman Reid
General Discussion
NCLIS Budget, FY 1991 and 1992
Discussion, Orientation for New Members
Discussion, January Reorganization Meeting
White House Conference Update
NCLIS Program Plans
Discussion, Hearings for Native Americans
NCLIS Unfinished Business
Review, NCLIS Meeting Agendas and Dates for Future Meetings
New Business

Special provisions will be made for handicapped individuals by calling Barbara Whiteleather, (202) 254-3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Barbara Lee Whiteleather, Special Assistant to the Director, 1111 18th Street, N.W. (310), Washington, D.C. 20036, (202) 254-3100.

Dated: November 8, 1990.

Peter R. Young,

NCLIS Executive Director.

[FR Doc. 90-27203 Filed 11-15-90; 12:10 pm]

BILLING CODE 7527-01-M

BEST COPY AVAILABLE

Corrections

Federal Register
Vol. 55, No. 223
Monday, November 19, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 301

[Docket No. 90-114]

RIN 0579-AA29

Citrus Canker

Correction

In rule document 90-21351 beginning on page 37442 in the issue of Tuesday, September 11, 1990, make the following correction:

On page 37450, in the third column, § 301.75-2(c) should read as follows:

§ 301.75-2 [Corrected]

* * * * *

(c) Regulated articles moved interstate with a limited permit to an area of the United States that is not a commercial citrus-producing area may not subsequently be moved interstate into any commercial citrus-producing area.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3848-2]

Standards of Performance for New Stationary Sources; Test Methods in Appendix A and Performance Specifications in Appendix B; Technical Amendment

Correction

In rule document 90-24498 beginning on page 47471 in the issue of Wednesday, November 14, 1990, make the following correction:

On page 47473, in the first column, in the fifth line, the second "5A" should read "5A˚".

BILLING CODE 1505-01-D

federal register

Monday
November 19, 1990

Part II

Department of the Interior

Bureau of Indian Affairs

Environmental Impact Statement (EIS) for Proposed Lease to Construct a Hazardous Waste Incinerator and Landfill on Kaw Tribal Lands, Formerly Part of Chilocco School Reserve, Kay County, OK; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Environmental Impact Statement (EIS) for Proposed Lease to Construct a Hazardous Waste Incinerator and Landfill on Kaw Tribal Lands, Formerly Part of Chilocco School Reserve, Kay County, Oklahoma

AGENCY: Bureau of Indian Affairs (BIA), Interior.

ACTION: Notice of intent and public scoping meetings.

SUMMARY: This notice advises the public that the Department of the Interior, Bureau of Indian Affairs, in cooperation with the Kaw Indian Tribe and Waste-Tech Services, intends to gather information necessary for the preparation of an EIS for the proposal to lease approximately 855 acres of Indian trust land for use as a hazardous waste incineration facility and associated ash landfill in Kay County, Oklahoma.

Public scoping meetings will be held to solicit suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. This notice is required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7).

DATES: Comments should be received on or before December 27, 1990. The scoping meetings will be held to identify issues and alternatives to be evaluated in the EIS. The dates and locations of the scoping meetings are as follows:

November 28, 1990, 7 p.m., New Kirk High School Auditorium, 9th and Main, New Kirk, Oklahoma; November 29, 1990, 7 p.m., Northwest Community Center, 615 West Birch, Arkansas City, Kansas.

Comments and participation in the scoping process are solicited and should be directed to the addresses noted below. Significant issues to be covered during the scoping process will include socioeconomic conditions, surface use, air quality, surface and subsurface water quality, archeological, cultural, and historic site concerns, biotic resources, State and Federal permitting requirements, and site closure and post closure stipulations.

ADDRESSES: Comments should be addressed to William Collier, Area Director, Bureau of Indian Affairs, Anadarko Area Office, P.O. Box 368, Anadarko, OK 73005, or ENSR Consulting and Engineering, 1716 Heath Parkway, Fort Collins, CO 80524.

FOR FURTHER INFORMATION CONTACT: Mike Reed, Environmental/Coordinator, Bureau of Indian Affairs, Anadarko Area Office, P.O. Box 368, Anadarko, Oklahoma 73005, telephone (405) 247–6673.

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs, in cooperation with Waste Tech Services Inc., of Golden, Colorado, will prepare an EIS for the proposed lease of approximately 855 acres of Kaw Tribal land located on the old Chilocco School Reserve in north central Oklahoma (sections 21 & 22, township 29N, range 2E, Indian Meridian). The lease would allow Waste-Tech to install a RCRA permitted treatment, storage, and disposal facility (TSD).

The TSD facility would be fully integrated, consisting of a receiving and waste analysis station, a rotary kiln incinerator to thermally destruct hazardous chemical waste regulated under RCRA and an adjacent landfill for the disposal of ash. Treated wastes would be primarily from the chemical and refinery industry and would arrive at the site by truck or rail. The facility is not designed to accept or treat radioactive wastes, explosives, dioxins, PCB's in amounts greater than 50 parts per million, infectious medical waste or municipal solid wastes.

The TSD facility would occupy approximately 130 acres of approximately 855 acres under lease. The landfill would eventually occupy slightly less than 100 acres. Construction of the facility would require approximately two years. An operational work force of approximately 110 people would be expected for the life of the facility.

Information describing the proposed TSD facility will be sent to all Federal, Tribal, State or Local agencies or to any private organization(s) and citizen(s) expressing an interest in this proposal.

Principal alternatives identified for consideration in the EIS are the proposed action of an incinerator and landfill on-site, an incinerator facility as in the proposed action but without an adjacent landfill, an incinerator and landfill on-site but with different facility access and transportation routes, and no development of the site (no action).

A draft EIS is expected to be available by the end of February, 1991.

This notice is published pursuant to Sec. 1501.7 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 437 *et seq.*), Department of the Interior Manual (516 DM 1–6) and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM–8.

Dated: November 9, 1990.

Stan Speaks,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 90–27153 Filed 11–16–90; 8:45 am]

BILLING CODE 4310–02–M

federal register

Monday
November 19, 1990

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 139

Airport Certification and Operations; Clarification of Various Provisions; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

[Docket No. 25698; Amdt. No. 139-17]

RIN 2120-AD10

Airport Certification and Operations; Clarification of Various Provisions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule makes two changes to the certification and operations regulations of land airports serving air carriers. The first change revises the certification requirements to provide that a person operating an uncertificated airport may serve, when authorized by the Administrator, unscheduled air carrier operations with aircraft having a seating capacity of more than 30 passengers. As revised, airport certification requirements and the regulations applicable to air carrier operations are consistent in this regard. The second change clarifies responsibility for the establishment of and compliance with rules for airport ground vehicle operations by tenants, contractors, and employees. This change is necessary to address the responsibility of certificate holders with regard to ground vehicle operations.

EFFECTIVE DATE: December 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jose Roman, Airport Safety and Operations Division (AAS-300), Office of Airport Safety and Standard, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 724-0356.

SUPPLEMENTARY INFORMATION:

Background

Part 139 of the Federal Aviation Regulations (FAR) prescribes rules governing the certification and operation of land airports servicing certain air carrier operations conducted with aircraft having a seating capacity of more than 30 passengers. In 1987, FAA issued a final rule, Amendment No. 139-14 (52 FR 44276; November 18, 1987), that revised and reorganized part 139 to clarify it, to define certain requirements more specifically, and to impose additional safety requirements. After the issuance of the final rule, it became evident to the FAA that changes were necessary to make these regulatory requirements consistent with air carrier operations regulations and to further clarify the requirements of part 139. In addition, on October 11, 1988, FAA received a joint petition for rulemaking from the Airport Operators Council International (AOCI) and the American Association of Airport Executives (AAAE) to clarify responsibility for regulatory violations concerning airport ground vehicle operations. As a result, FAA issued a Notice of Proposed Rulemaking (NPRM) No. 89-30 on October 10, 1989 (54 FR 42912; October 18, 1989).

The NPRM proposed two changes. First, it proposed to amend § 139.329(b) to allow the Administrator to authorize the operator of an uncertificated airport to serve unscheduled air carrier operations with aircraft having a seating capacity of more than 30 passengers. This change was proposed to make the certification regulations in part 139 consistent with the operations regulations in § 121.590 that permit such operations when authorized by the Administrator.

Second, in response to the AOCI/AAAE petition, the NPRM proposed to clarify the obligations of airport operators under § 139.329 with regard to the operation of ground vehicles where there is access to the airport movement areas. Section 139.329 currently states, in pertinent part, "Each certificate holder shall—" * * * (e) Ensure that each employee, tenant, or contractor who operates a ground vehicle on any portion of the airport which has access to the movement area is familiar and complies with the airport's rules and procedures for the operation of ground vehicles * * *."

The petitioners raised the concern that the words "and complies" in paragraph (e) of § 139.329 could be interpreted to place strict liability on airport operators for any ground vehicle violations. The petitioners noted that the words "and complies," found in the 1987 final rule revising part 139, were not included in the proposed rule language of the antecedent NPRM published in 1985 (50 FR 43098; October 23, 1985). The petitioners noted also that the change in the wording of the rule provision from the 1985 NPRM to the 1987 final rule was not discussed in the preamble of that final rule.

A summary of the petition was published in the **Federal Register** on November 14, 1988 (53 FR 45771). In response to the petition, the FAA received approximately 20 comments supporting the request for change. No responses were received opposing the petition, although the Air Line Pilots Association (ALPA) has since stated that it submitted opposing comments in response to the petition summary. The FAA has no record of receipt of ALPA's comments at that time; however, its comments were resubmitted in response to the NPRM in this rulemaking (NPRM No. 89-30), and have been considered and addressed in the discussion of comments below.

The FAA concurred with AOCI/AAAE that the language in § 139.329(e) should be revised, and the petitioners' issue was addressed in NPRM No. 89-30 issued last October. The preamble to the NPRM stated that it was not the intent of the FAA in the 1987 revision to establish strict liability on the part of the airport operators with regard to ground vehicle operations; rather, the intent was to require airport operators to have adequate procedures to control ground vehicle operations where there is access to the airport movement areas. The NPRM proposed to delete the words "and complies" from § 139.329(e) and to modify paragraphs (b) and (e) of § 139.329 to clarify the responsibilities of airport operators.

Discussion of Comments

The FAA received 194 comments in response to the NPRM. None of these comments addresses the proposed revision to § 139.101(b); hence, the revision is adopted as proposed. As revised, § 139.101(b) will permit the operator of an uncertificated airport, when authorized by the Administrator, to serve unscheduled air carrier operations with aircraft having a seating capacity of more than 30 passengers. This revision is designed to address emergency and unusual circumstances.

Of the 194 comments that addressed the issue of control of ground vehicles, 192 are in general agreement. Most of the comments received were from airport operators representing a broad spectrum of airports. Almost 90 percent of the comments received were similar letters that used text suggested by AAAE. This text urged adoption of the proposed revision. The text stated further that, on a broader level, there is concern about the FAA's apparent general policy of holding airport operators liable for violations of regulations by tenants, independent contractors, and others whose behavior the airport operator cannot reasonably control. Four commenters submitted essentially identical letters that used language developed by AOCI. These commenters state that, while they prefer the AOCI proposal to revise § 139.329(e) by simply deleting "and complies," they do not oppose the FAA's more extensive proposal to revise paragraph (b) as well. While applauding FAA's action to clarify the strict liability concerns raised by § 139.329(e), these commenters point out that airports are subject to strict liability for violations of other regulations by tenants and contractors, *e.g.*, certain security violations of FAR part 107; they urge FAA to change its policy of holding airports strictly liable under such regulations for the actions of others which these commenters believe they cannot reasonably control.

The two commenters who oppose this clarification of airport operator liability argue that responsibility for safe ground vehicle operations should reside with the airport operator and should not be abrogated. One, an aviation service company, a tenant on a public-use airport, adamantly disagrees with the proposed revision that it views as relieving airport operators from ground vehicle operation responsibility. This commenter states that mismanagement of operational aspects of an airport rightly should place the airport operator's certificate in jeopardy. The other, Air Line Pilots Association (ALPA), also opposes the clarification that limits airport operators' responsibility. In particular, ALPA notes that control of ground vehicles is a significant safety problem at many airports, and "* * * the airport is the proper authority to regulate and enforce the movement of ground vehicles."

Additionally, ALPA believes that the FAA should assist each airport operator in developing a program addressing every aspect of ground vehicle movement. In ALPA's view, such a program would include a requirement to train and license drivers and to establish and enforce penalties for noncompliance. It further suggests that the FAA incorporate the provisions of future advisory circulars (AC's) relating to ground vehicle operations into the pertinent regulatory text.

The FAA agrees with ALPA that ground vehicle operations in airport movement areas must adhere to established airport procedures. Indeed, the final rule clarifies the airport operator's obligation in this regard by requiring the airport operator to "establish and implement procedures" for ground vehicle operation, including "identifying the consequences of noncompliance." And, as ALPA further notes, there are several airports with noteworthy ground vehicle operations programs currently in effect. While the FAA acknowledges the necessity for each airport to develop comprehensive ground vehicle operations procedures, it also recognizes that such procedures must reflect the specific needs of each airport. The procedures may vary based upon airport size and complexity, the number and type of ground vehicle operations, and other differences among airports. Therefore, while the FAA has not mandated a specific uniform program, it will continue to assist airport operators in developing procedures consistent with each airport's particular circumstances.

The National Air Transportation Association (NATA) in its comments does not object to the language proposed in the NPRM, but it does express concern about what it describes as a continuing effort by airport operators to avoid responsibility for activities occurring on airports. NATA favors airport operators establishing and implementing adequate procedures for the safe operation of ground vehicles. Not only is it in the tenant's best interest to operate ground vehicles safely, adds NATA, but the potential cost of unsafe operations is an economic incentive for employers of ground vehicle operators to ensure that their employees are properly trained.

Concurring with NATA's argument for retention of airport operators' responsibility for airport operations, the FAA is issuing this rule revision—not to relieve airport operators of responsibility—but rather to clarify the extent of their duties and obligations. FAA agrees also with NATA's focus on training regarding ground vehicle safety. It is the FAA's position that ground vehicle operation safety on airports can best be accomplished by developing comprehensive guidelines and appropriate training requirements for airport personnel, tenants, contractors and others who operate these vehicles. Consequently, a jointly developed FAA and industry report entitled "A Guide to Ground Vehicle Operations on the Airport," soon to be issued by the FAA, addresses employee instruction regarding safe ground vehicle operation, and includes information on signs, lights, markings and tower communications.

While supportive of this clarification of existing regulatory text, the Air Transport Association (ATA) believes that the revision should address "reasonableness" with regard to program establishment and implementation. The FAA finds that the "reasonableness" of any vehicle operations program is fostered by the exchange of information among the airport sponsor, tenants, air carriers and other operators on the airport who meet regularly with the airport sponsor to discuss operational and other matters. The FAA's review of ground vehicle control procedures when they are initially established, during the annual airport certification inspection, and during surveillance or other inspections provides ample opportunities to address the reasonableness of an airport's program.

Another commenter suggests that additional language be added to § 139.329 (b) and (e) to specify in detail the consequence of violations, "including fines and/or temporary loss of driving privileges." The FAA does not agree that such specificity in the regulations is necessary. Because of the size, complexity, and diversity of airport operations, the specific consequences of violations are best addressed in each airport's procedures.

Several commenters articulate concerns that are far broader than the issues presented for consideration in the NPRM. Some of these concerns—such as airport operators' liability for the actions of tenants and contractors in circumstances unrelated to ground vehicle operations—were incorporated in the text provided by AAAE and AOCI and used by the majority of commenters. For example, the Tupelo (Mississippi) Airport Authority's submission, after noting its support of the proposed revision, adds: "We also urge a review of FAA's policy of holding airport operators liable for an array of other tenant infractions * * *."

Other commenters make reference to fines imposed for regulatory infractions. For example, comments submitted by the Ocala (Florida) Municipal Airport note that, unlike the impact on larger airports such as those in Atlanta, Chicago or Orlando, imposition of significant fines on the Ocala Municipal Airport would "have a devastating impact."

In a similar vein, comments submitted by the New Orleans International Airport state that "airports already face liability for violations by tenants and others over which we have no control. These violations and the attendant fines are levied in spite of the fact that the airports have taken corrective action in an expeditious manner."

While expressing strongly held opinions, these comments are beyond the scope of this rulemaking action and, therefore, do not directly affect the issuance of this final rule. The FAA has worked and will continue to work cooperatively with airport operators to assure compliance with the requirements of Part 139.

This amendment to § 139.329 differs from the proposed rule in one minor respect. The word "procedures" is used in both paragraphs (b) and (e) in lieu of the words "program" and "rules and procedures" contained in the NPRM. This change is intended to maintain consistent terminology.

In summary, this final rule amending § 139.329(b) requires operators to establish and implement procedures for safe ground vehicle operation in airport movement and safety areas, including identifying and consequences of noncompliance with the procedures by employees, tenants, and contractors. In contrast, the text of this section prior to revision mandated that airport operators only provide procedures for such ground vehicle operations. Consequently, the final rule clearly holds airport operators responsible for developing and implementing procedures appropriate to the airport, as well as for identifying the consequences of noncompliance.

Additionally, this final rule changes § 139.329(e) to require that airport operators ensure that employees, tenants, and contractors operating ground vehicles where there is access to the movement areas are familiar with the consequences of noncompliance with the procedures. The requirement for the airport operator to ensure that employees, tenants, and contractors are familiar with the procedures remains unchanged. Prior to this revision, this section included language that an airport operator ensure that each individual who operates a ground vehicle "complies with" the airport's procedures for ground vehicle operations. The revised rule eliminates the language that created uncertainty about airport operators' liability and clearly establishes airport operators' responsibility for communicating the consequences for noncompliance.

Paperwork Reduction Act

The amendment to §§ 139.101 and 139.329 do not change any recordkeeping or reporting burden associated with those sections. Information collection requirements in part 139 have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0083.

Regulatory Evaluation

The changes to Part 139 will likely result in some regulatory relief and impose negligible costs upon certificate holders. The amendment to § 139.329(e) will provide some regulatory relief through language clarification because the airport operator will no longer be misperceived as the guarantor of the compliance of all its tenants and contractors. The FAA has not quantified any specific economic benefits, although there are some perceived benefits, as reflected in the AOCI/AAAE petition. The amendment to § 139.329(b), however, may impose negligible costs because the standard will require the certificate holder to also identify the consequences of noncompliance. In conclusion, the FAA has determined that the expected economic impact of the amendments are minimal and, therefore, a full Regulatory Evaluation is not warranted.

International Trade Impact Analysis

The amendments affect only airports subject to part 139 of the Federal Aviation Regulations. Accordingly, the amendments have no impact on trade opportunities for U.S. firms doing business overseas and foreign firms doing business in the United States.

Federalism Implications

The regulations herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Evaluation and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291 and not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Additionally, it is certified that, under the criteria of the Regulatory Flexibility Act, this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities.

List of Subjects in 14 CFR Part 139

Air carriers, Aircraft, Airports, Airplanes, Air Safety, Aviation Safety, Air transportation, Safety, Transportation.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends part 139 of the Federal Aviation Regulations (14 CFR part 139) as follows:

PART 139—CERTIFICATION AND OPERATIONS: LAND AIRPORTS SERVING CERTAIN AIR CARRIERS

1. The authority citation for part 139 is revised to read as follows:

Authority: 49 U.S.C. App. 1354(a) and 1432; 49 U.S.C. section 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

2. Section 139.101 is revised to read as follows:

§ 139.101 Certification requirements: general.

(a) No person may operate a land airport in any State of the United States, the District of Columbia, or any territory or possession of the United States, serving any scheduled passenger operation of an air carrier operating an aircraft having a seating capacity of more than 30 passengers without an airport operating certificate, or in violation of that certificate, the applicable provisions of this part, or the approved airport certification manual for that airport.

(b) Unless otherwise authorized by the Administrator, no person may operate a land airport in any State of the United States, the District of Columbia, or any territory or possession of the United States, serving any unscheduled passenger operation of an air carrier operating an aircraft having a seating capacity of more than 30 passengers without a limited airport operating certificate, or in violation of that certificate, the applicable provisions of this part, or the approved airport specifications for that airport.

3. By amending § 139.329 by revising paragraphs (b) and (e) to read as follows:

§ 139.329 Ground vehicles.

* * * * *

(b) Establish and implement procedures for the safe and orderly access to, and operation on, the movement area and safety areas by ground vehicles, including provisions identifying the consequences of noncompliance with the procedures by an employee, tenant, or contractor;

* * * * *

(e) Ensure that each employee, tenant, or contractor who operates a ground vehicle on any portion of the airport that has access to the movement area is familiar with the airport's procedures for the operation of ground vehicles and the consequences of noncompliance; and

* * * * *

Issued in Washington, DC, on November 13, 1990.

James B. Busey,

Administrator.

[FR Doc. 90–27174 Filed 11–16–90; 8:45 am]

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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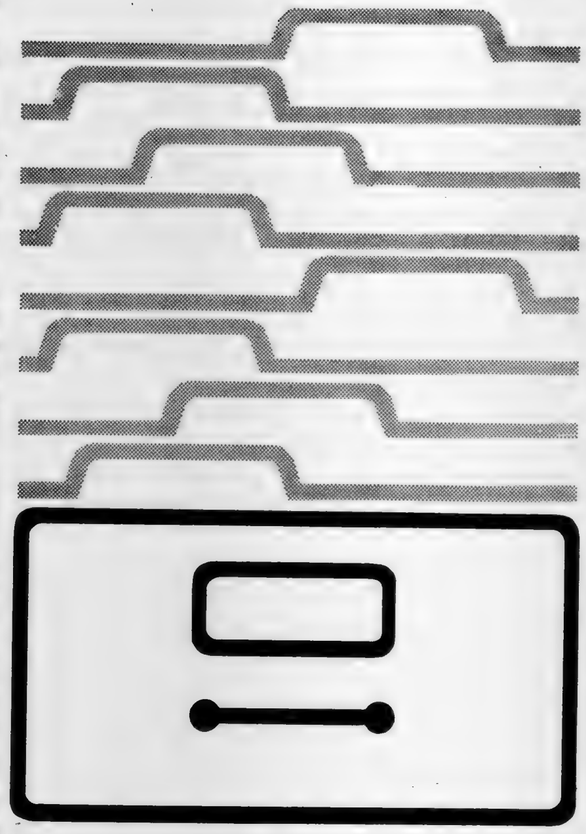

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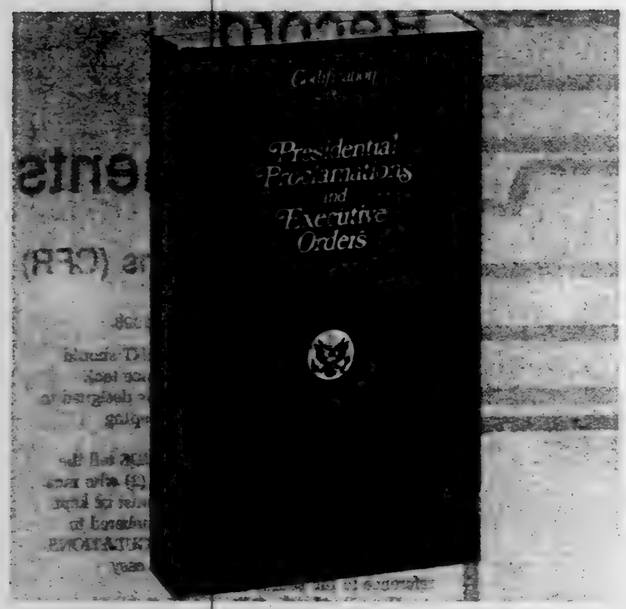

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Presidential Documents

Title 3—

The President

Proclamation 6232 of November 15, 1990

National Federation of the Blind Day, 1990

By the President of the United States of America

A Proclamation

Since its founding half a century ago, the National Federation of the Blind has been a leading advocate for Americans affected by severe visual loss. Its administrators, staff, and supporters know that persons who are blind possess not only the desire but also the ability to lead full, independent, and productive lives, and they have encouraged all Americans to recognize this fact as well.

Through an effective community outreach program, the Federation has been working to enhance the public image of blind Americans and to promote real equality of opportunity for these members of our society. This outreach program includes television and radio appearances by Federation members, public presentations, and the distribution of educational materials. In addition, the Federation produces monthly and quarterly publications that serve as a valuable source of news and information on issues affecting Americans with impaired eyesight.

If the United States is to remain a strong and prosperous country, one that is competitive in the rapidly changing global marketplace, we must utilize the talent, creativity, and skill of all our citizens. Helping more blind Americans to enter this country's social and economic mainstream is, therefore, not only a moral imperative but also a wise investment in our Nation's future. On July 26, I was pleased to sign into law the Americans with Disabilities Act of 1990. The world's first comprehensive declaration of equality for persons with disabilities, this legislation prohibits employers covered by the Act from discriminating against qualified applicants or employees on the basis of a disability; it guarantees persons with disabilities access to public accommodations, such as offices, hotels, and shopping centers; and it calls for improved access to transportation, State and local government services, and telecommunications as well. This legislation—like the efforts of the National Federation of the Blind—reflects our commitment to ensuring equality of opportunity for all Americans.

In recognition of the Federation and its outstanding work, the Congress, by House Joint Resolution 667, has designated November 16, 1990, as "National Federation of the Blind Day" and has authorized and requested the President to issue a proclamation in observance of that day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim November 16, 1990, as National Federation of the Blind Day. I encourage all Americans to observe this day through appropriate programs and activities that reaffirm our appreciation of the rights needs, and abilities of persons who are blind.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of November, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-27445
Filed 11-16-90; 2:30 pm]
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Federal Register
Vol. 55, No. 224
Tuesday, November 20, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 436

[Docket No. CAS-RM-79-107]

Federal Energy Management and Planning Programs; Life Cycle Cost Methodology and Procedures

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of final rulemaking.

SUMMARY: The Department of Energy today gives notice of final amendments to 10 CFR part 436 to update the guidelines applicable to Federal agency in-house energy management programs. The principal purpose of this rulemaking is to make changes in the guidelines to conform to the provisions of the Federal Energy Management Improvement Act of 1988 (Pub. L. 100-615). The changes made final today mainly involve amendments to the life cycle cost methodology and procedures to provide for an annually determined, market-based discount rate and for a more effective system to revise annually the energy cost escalation rates Federal agencies are required to assume.

EFFECTIVE DATE: December 20, 1990.

FOR FURTHER INFORMATION CONTACT:
K. Dean DeVine, P.E., Federal Energy Management Program, CE-44, Office of Conservation and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8784.
Neal J. Strauss, Office of General Counsel, Conservation and Regulations, GC-12, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Energy (DOE) today publishes final amendments to some of the rules in 10 CFR part 436 which are applicable to programs for the management of energy consumption by Federal agencies. The amendments are directed principally toward updating the life cycle cost methodology and procedures in subpart A of 10 CFR part 436 in light of provisions in the Federal Energy Management Improvement Act of 1988 (FEMIA) granting DOE more discretion in setting discount and energy cost escalation rates, and of ten years of experience under the existing rule (Pub. L. 100-615). These amendments will promote improved energy cost efficiency in: (1) The design of new Federal buildings, and the application of energy conservation measures to existing Federal buildings, (2) leasing of buildings for Federal use, and (3) construction of buildings, structures and facilities in all segments of the economy. Secondarily, the amendments also are designed to make necessary revisions to other subparts of part 436 to take account of the execution of some provisions of section 10 of Executive Order 11912, as amended by Executive Order 12003, 42 FR 37523 (July 20, 1977) related to Fiscal Year 1985 building energy reduction goals and the expiration of part II of title V of the National Energy Conservation Policy Act (NECPA), Public Law 95-619, which provided for the Solar in Federal Buildings Demonstration Program.

The proposed version of today's amendments was noticed for public comment at 55 FR 2590 (January 25, 1990). Further details with regard to the background of this rulemaking may be found in the supplementary information portion of the January 25 notice of proposed rulemaking.

DOE received one comment from the Natural Resources Defense Council (NRDC) which is addressed in detail below. Except for the changes made in response to the NRDC comment, and one technical change to § 436.10, Purpose, there are no substantial differences between the proposed and final amendments.

The proposed version of today's amendments stated that the purpose of the life cycle costing methodology is attainment of the 10 percent Btu per gross square foot 1995 reduction goal. That statement was too narrow. As a technical change to conform the rule more precisely to NECPA's stated purpose for the life cycle costing methodology as revised by FEMIA (Pub. L. 100-615), DOE has revised § 436.10 to state that the purpose of subpart A is to provide the life cycle cost methods and procedures to be used for the design of new Federal buildings and the application of energy conservation measures to existing buildings. 42 U.S.C. 8254(b).

In developing the amendments which are finalized today, DOE actively consulted with the Office of Management and Budget (OMB), the Department of Defense (DOD), and the General Services Administration (GSA). DOE received substantial assistance from the National Institute of Standards and Technology (NIST).

II. Discussion of Comments

A. Discount Rate Selection Method

In general, the NRDC agrees with DOE that measuring the interest rate on U.S. Treasury bonds and removing the effects of inflation is the appropriate procedure for setting a market-based discount rate to be used in performing life cycle cost analyses for purposes of estimating and comparing the cost effects of investing in greater energy efficiency in Federal buildings. However, for a variety of reasons, the NRDC takes issue with the proposed use of the inflation projections of the President's Council of Economic Advisers, arguing instead for use of long-term averages of past rates of inflation. The NRDC also criticizes the use of current market interest rates for long-term U.S. Treasury bonds and argues instead for historic averages of long-term U.S. Treasury bond rates. The NRDC expressed concern about a potential for extreme fluctuations which might result in some energy conservation measures being included one quarter and others with the same characteristics being excluded the very next quarter. Finally, the NRDC contends that long-term real discount rates are desirable because they tend to offset a bias toward supply-side resources resulting from the effects of taxes and inflation.

Inflation Projections v. Long-Term Averages of Past Inflation Rates

The NRDC's chief objections to the proposed use of the inflation projections of the President's Council of Economic Advisers are that: (1) Inflation may not be the same as projected; and (2) the projections are biased toward the "lower end of the credible range of inflation." NRDC Comment, p. 3. Their chief arguments in favor of using long-term averages of past inflation rates are: (1) Greater reliability; (2) variations in inflation are not important unless they persist over a long period of time; and (3) greater objectivity.

While the inflation projections of the President's Council of Economic Advisers may not be precisely predictive of the actual rate of inflation for any given year, long-term averages of past inflation rates are not infallibly predictive either. Long-term averages of past rates are insensitive to changes in current market conditions. Consequently, from time to time, the discrepancy between the long-term average of past inflation rates and actual inflation for any given year is going to be larger, perhaps considerably larger, than the discrepancy between the inflation projections of the President's Council of Economic Advisers and actual inflation.

Although recognizing that such a discrepancy might occur from time to time, the NRDC downplays its significance, and argues that, over the long term, discrepancies of this nature will even out and the program as a whole will be cost effective over that term. It is unclear what the NRDC means precisely by long term. (At some points in its comments, the NRDC seems to argue in favor of a 50-year or even a 100-year time frame.) But even assuming for the sake of argument that the long term is 25 or 30 years, and accepting that long run averages are more objective because some subjective policy considerations are screened out, the danger of distortion over the short and intermediate term, stemming from rigid adherence to long run averages, is not worth incurring when, as the NRDC itself has pointed out, the inflation projections of the President's Council of Economic Advisers are within the "credible range of inflation."

In general, if market conditions change significantly, those changes should be reflected to a reasonable extent in the results of life cycle cost analyses conducted by Federal agencies. Use of the inflation projections of the President's Council of Economic Advisers rather than long run averages of past rates is consistent with that policy preference.

Avoidance of Extreme Fluctuations

In arguing against reliance on current market interest rates for long-term U.S. Treasury bonds and projected inflation rates, the NRDC contends that such reliance could result in inappropriate quarterly changes in the list of energy conservation measures which are cost-justified. This contention apparently reflects a misreading of the Notice of Proposed Rulemaking. As proposed, the discount rate would be established at the beginning of each fiscal year and would not change over the year. Consequently, there would be no quarterly variations.

Nevertheless, the NRDC comment caused DOE to reexamine the proposed rule to determine whether additional modifications were warranted to avoid extreme fluctuations on a year-to-year basis. While DOE wants the real discount rate to be responsive to market conditions, DOE agrees with the NRDC that extreme fluctuations would be disruptive.

To avoid such fluctuations, DOE has modified the proposed rule to lengthen the period of time over which long-term U.S. Treasury bond rates are to be averaged from the most recent three months, prior to the cut-off date for preparing the annual supplement to the Life Cycle Cost Manual for the Federal Energy Management Program (NIST 85-3273), to the entire year preceding. The effect of this modification will be to avoid seasonal fluctuations in the current long-term bond rate.

As a further modification to avoid extreme fluctuations, DOE has altered the proposed rule to provide for a ceiling and a floor on the real discount rate. In the Notice of Proposed Rulemaking, DOE described an adjustment procedure to account for the fact that the Council of Economic Advisors inflation projection is for a five-year period, while the U.S. Treasury bond maturity is 10 years and longer. DOE today modifies the proposed rule by imposing a ceiling set at the real discount rate prescribed by the Office of Management and Budget in its Circular A-94, "Discount Rates to be Used in Evaluating Time-Distributed Costs and Benefits." The effect of this ceiling would be to avoid a discount rate for energy efficiency and renewable energy projects higher than the discount rate applicable to most other capital-intensive Federal projects. The floor is at 3 percent (real), the approximate average of long-term real rates of return in the U.S. The effect of this floor is to avoid negligible or negative discount rates.

Offsetting the Alleged Bias for Supply-Side Resources

In arguing for use of long-term real discount rates, the NRDC points out that one of the effects of using such rates is to counteract the alleged bias in favor of supply technologies with high capital costs, such as nuclear power and offshore oil drilling. This alleged bias is reflected in relatively low implicit discount rates for such projects which are cited by the NRDC but for which no source is given. Although the NRDC does not explain precisely what accounts for the relatively low implicit discount rates, part of the explanation seems to be tax policies to which the NRDC objects.

For a variety of reasons, DOE does not think that the alleged bias to which the NRDC points is a persuasive reason for using long-term averages of past real discount rates. First, setting a real discount rate involves accounting for the time value of money, and the alleged bias is irrelevant to that task. Second, DOE does not think that it is appropriate to use the discretion given by Congress to set a discount rate in order to counteract tax policy that has been enacted into law. Third, it is very unlikely that any investment decision in the Federal Energy Management Program, as currently authorized, will involve a proposal or proposals to which the alleged bias would apply.

B. Study Period

The NRDC criticizes the 25-year limit on analysis period on the ground that it is arbitrary to limit the life of buildings for purposes of analysis to 25 years. This criticism ignores section 544(a)(1) of NECPA which compels DOE to use 25 years as the outside limit on the analysis period. DOE also doubts the desirability of extending the period from 25 to 50 or more years, as the NRDC recommends, because: (1) There is no reliable method of forecasting energy price escalation beyond 25 years; (2) estimates of cash flows that far out in time are likely to be too speculative; and (3) the effect of discounting makes estimated cash flows beyond 25 years relatively insignificant.

C. Presumptions

The NRDC also argues for modification of the provisions of 10 CFR 436.13(b) which provides, in certain circumstances, that a Federal agency may presume that an investment in an energy conservation measure to retrofit a Federal building would not be life cycle cost effective if the building is occupied under a short-term lease or if it is scheduled for demolition or retirement from service within three years. The NRDC contends that the provisions in question are too broad because many retrofits pay back in one year or less. DOE agrees and in today's notice modifies 10 CFR 436.13 (b)(1) and (b)(3) by narrowing the scope of the permissible presumption. Under the modified provisions, the presumption could be applied only if the remaining time period with respect to a short-term lease or with respect to an owned building scheduled for demolition or retirement from service is one year or less.

D. External Cost Effects

The NRDC insists that DOE include the external benefits of saving energy in the life cycle cost methodology. Among the external benefits the NRDC seems to think should be included are enhanced national security from oil import avoidance and reduced air pollution from compounds of sulfur and oxygen and of nitrogen and oxygen, as well as from "global greenhouse gas emissions."

No specifics are offered by the NRDC as to how to attach a dollar value to these external benefits. NRDC also did not comment with regard to the proposed revision of 10 CFR 436.14(f) to delete the requirement for Federal agencies to assume for purposes of a life cycle cost analysis that investment costs are 90 percent of actual investment costs. That requirement was an adjustment to reflect external cost benefits, and was originally modeled on the 10 percent Federal energy tax credit which has expired. See 45 FR 5620, 5621 (January 23, 1980).

In arguing for inclusion of external benefits, the NRDC referred to what it described as "the clear purpose of the Energy Policy and Conservation Act **** to reduce energy consumption below the levels that were being provided by market forces." The NRDC concluded: "The clear economic concept behind such a goal is that energy has a societal value in excess of its market value." Neither the text of the Energy Policy and Conservation Act (Pub. L. 94-385) nor any authoritative portion of its legislative history is cited in support of these assertions generally or with respect to life cycle cost analyses in particular. NRDC Comment, p. 9.

Historically, part of the authority for subpart A of 10 CFR part 436 has been section 381 of the Energy Policy and Conservation Act, 42 U.S.C. 6361, as implemented by Executive Order 11912, as amended. However, neither section 381 nor its specific legislative history supports the NRDC assertions. The principal authority for Subpart A has been and continues to be NECPA, and the text and related legislative history of NECPA (discussed below) are the relevant indications of legislative intent with regard to particular issues regarding the life cycle cost methodology and procedures including the issue of accounting for external benefits.

The NRDC also referred to "numerous policy statements over the last seventeen years," as well as programs and tax law provisions allegedly aimed at reducing oil imports. Based on those alleged statements, programs, and provisions of law, the NRDC argues in substance that maintenance of consistency and credibility in national energy policy warrants inclusion of external benefits in the life cycle cost methodology for Federal buildings. While the NRDC is specific in identifying some of the programs (*e.g.*, the Strategic Petroleum Reserve) and the tax law provisions (tax incentives for oil exploration or extraction) on which it relies, there is no specific reference to any particular policy statement.

Given that the Federal Energy Management Program involves public expenditures which have benefits in reducing the need for expenditures in other programs, DOE has always been receptive to the idea of including external benefits in the life cycle cost methodology and procedures so long as the method for doing so met the statutory requirement (now set forth in section 544(a)(1) of NECPA) of being "practical and effective." See also section 545(a)(1) of Public Law 95-619. This first attempt to include external benefits was the 10 percent off of actual investment costs reflected in 10 CFR 436.14(f).

The basis for the 10 percent credit reflected in the investment cost assumption required by 10 CFR 436.14(f), and deleted today, was always somewhat slender, and it eroded substantially with the expiration of energy tax credits in 1985. Moreover, that assumption appears to have contributed to a lack of credibility for the life cycle cost analysis results with some officials of the Executive Branch involved in formulating the President's annual budget request and with some Senators and Representatives on appropriating committees who want measures of cost effectiveness which substantially reflect the estimated cost effects over relevant time periods that are readily measurable in dollars. Including a measure of external cost effects, which at best was a rough approximation, without much empirical basis, seems to have contributed to a tendency to disregard the raw data results of life cycle cost analyses under 10 CFR part 436 in the energy policy decisions that really count, the decisions to seek and to provide budgetary resources for investments in increased energy efficiency.

In 1980, apparently dissatisfied with DOE efforts to resolve several issues with regard to the life cycle cost methodology and procedures, such as a procedure for estimating external benefits, more appropriate than the procedure in 10 CFR 436.14(b), Congress passed the Energy Security Act (Public Law 96-294). Section 405 of that Act amended NECPA to specify that, in establishing life cycle cost methods, the Secretary must use "marginal fuel costs." That term was not defined in the statute, but the Joint Explanatory Statement of the Committee of Conference said: "The Conferees intend that 'marginal fuel costs' are the marginal costs which a customer would pay for fuel or energy available in the region of the country where the Federal building is located." 1980 U.S. Code Congressional and Administrative News, 2077, 2171.

During the 1980's, DOE sought to comply with the above-quoted Congressional guidance which was interpreted as the legislatively preferred approach for inclusion of external benefits in the life cycle cost methodology. At the outset, by an advance notice of proposed rulemaking, DOE invited the public to respond to some tentative thinking by DOE's Energy Information Administration about setting marginal fuel costs including an oil import premium, and to make suggestions as how to proceed toward a notice of proposed rulemaking. 45 FR 66620 (October 7, 1980). DOE did not receive any useful public response to that advance notice. Repeated efforts to develop a notice of proposed rulemaking failed because DOE was unable to develop marginal price projections which appeared rational and had a sufficient rational basis to warrant proposal for public comment.

As indicated above, experience with the budget and appropriation process revealed that within the Executive Branch and the Congress the life cycle cost results produced in accordance with DOE's existing methodology were diluted or disregarded. The credibility of those results became an increasingly serious policy concern for DOE and the other Federal agencies. That concern, together with the problems encountered in projecting marginal fuel costs, led to the conclusion that reflecting external benefits in the life cycle cost

methodology was neither "practical" nor "effective". Accordingly, the Administration did not object to statutory amendments to NECPA in FEMIA substituting a requirement for use of average fuel costs for the previous requirement for marginal fuel costs.

While the change in law does not necessarily bar inclusion of external benefits in the life cycle cost methodology and procedures in some form other than marginal fuel costs, it does suggest that the inclusion of such benefits is not mandatory. In the absence of any credible way of projecting such benefits, DOE must reject the NRDC insistence that the methodology be amended to account for them. However, in rejecting the NRDC's viewpoint on external benefits, DOE is not saying that external benefits should not affect decisions related to the Federal Energy Management Program. Those kind of benefits should be taken into account, in addition to the results of life cycle cost analyses, in the formulation of a budget request, in legislating appropriations, and in the drafting of new laws which affect Federal energy consumption.

DOE believes that the methodology and procedures, as amended today, will yield life cycle cost analyses with results which will represent a more credible and compelling argument for greater investment in increased energy efficiency in the Federal sector than the analyses produced in the past.

III. Review Under Executive Order 12291

Today's regulatory amendments were reviewed under Executive Order 12291. DOE has concluded that the rule is not a "major rule" because it will not result in: (1) An annual effect on the economy of $100 million of more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete in domestic export markets. In accordance with the requirements of Executive Order 12291, the notice has been reviewed by OMB.

IV. Review Under the Regulatory Flexibility Act

These regulatory amendments were reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601–612, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, *i.e.*, small businesses and small government jurisdictions. DOE has certified that these regulatory amendments will not have such an impact.

V. Review Under Executive Order 12612

Executive Order 12612 requires that rules be reviewed for Federalism effects on the institutional interests of States and local governments and, if the effects are sufficiently substantial, preparation of a Federalism Assessment is required to assist senior policymakers. This rulemaking will not have any substantial direct effects on State and local governments. The final amendments will affect Federal agency buildings and operations regarding activities which are not subject to direct State regulation.

VI. Environmental Review

The life cycle costing methodology is used only to make decisions on the cost effective utilization of energy generally and on cost effective measures to reduce non-renewable energy consumption. DOE has determined that the incremental changes made in the methodology by today's rule are not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required for the final rule.

List of Subjects in 10 CFR Part 436

Energy conservation, Federal buildings and facilities, Renewable energy resources, Reporting and recordkeeping requirements.

Issued in Washington, DC, October 16, 1990.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

PART 436—[AMENDED]

10 CFR part 436 is amended as follows:

1. The authority citation for 10 CFR part 436 is revised to read as follows:

Authority: Energy Policy and Conservation Act, as amended, 42 U.S.C. 6361; Executive Order 11912, as amended, 42 FR 37523 (July 20, 1977); National Energy Conservation Policy Act, Title V, Part 3, as amended. 42 U.S.C. 8251–8281.

2. Sections 436.1 and 436.2 are revised to read as follows:

§ 436.1 Scope.

This part sets forth the rules for Federal energy management and planning programs to reduce Federal energy consumption and to promote life cycle cost effective investments in building energy systems and energy conservation measures for Federal building.

§ 436.2 General objectives.

The objectives of Federal energy management and planning programs are:

(a) To apply energy conservation measures to, and improve the design for construction of Federal buildings such that the energy consumption per gross square foot of Federal buildings in use during the fiscal year 1995 is at least 10 percent less than the energy consumption per gross square foot in 1985;

(b) To promote the methodology and procedures for conducting life cycle cost analyses of proposed investments in building energy systems and energy conservation measures; and

(c) To promote efficient use of energy in all agency operations through general operations plans.

3. 10 CFR part 436 is amended by revising subpart A as follows:

Subpart A—Methodology and Procedures for Life Cycle Cost Analyses

Sec.

436.10 Purpose.
436.11 Definitions.
436.12 Life cycle cost methodology.
436.13 Presuming cost-effectiveness results.
436.14 Methodological assumptions.
436.15 Formatting cost data.
436.16 Establishing non-fuel cost categories
436.17 Establishing energy cost data.
436.18 Measuring cost-effectiveness.
436.19 Life cycle costs.
436.20 Net savings.
436.21 Savings-to-investment ratio.
436.22 Adjusted internal rate of return.
436.23 Estimated simple payback time.
436.24 Uncertainty analysis.

Subpart A—Methodology and Procedures for Life Cycle Cost Analyses

§ 436.10 Purpose.

This subpart establishes a methodology and procedures for estimating and comparing the life cycle costs of Federal buildings, for determining the life cycle cost effectiveness of energy conservation measures, and for rank ordering life cycle cost effective energy conservation measures in order to design a new Federal building or to retrofit an existing Federal building.

§ 436.11 Definitions.

As used in this subpart—

Base Year means the fiscal year in which a life cycle cost analysis is conducted.

Building energy system means an energy conservation measure or any portion of the structure of a building or any mechanical, electrical, or other functional system supporting the building, the nature or selection of which for a new building influences significantly the cost of energy consumed.

Component price means any variable sub-element of the total charge for a fuel or energy, including but not limited to such charges as "demand charges," "off-peak charges" and "seasonal charges."

Demand charge means that portion of the charge for electric service based upon the plant and equipment costs associated with supplying the electricity consumed.

DOE means Department of Energy.

Energy conservation measures means measures that are applied to an existing Federal building that improve energy efficiency and are life cycle cost effective and that involve energy conservation, cogeneration facilities, renewable energy sources, improvements in operation and maintenance efficiencies, or retrofit activities.

Federal agency means "agency" as defined by 5 U.S.C. 551(1).

Federal building means an energy conservation measure or any building, structure, or facility, or part thereof, including the associated energy consuming support systems, which is constructed, renovated, leased, or purchased in whole or in part for use by the Federal Government and which consumes energy. Such term also means a collection of such buildings, structures, or facilities and the energy consuming support systems for such collection.

Investment costs means the initial costs of design, engineering, purchase, construction, and installation exclusive of sunk costs.

Life Cycle Cost means the total cost of owning, operating and maintaining a building over its useful life (including its fuel, energy, labor, and replacement components), determined on the basis of a systematic evaluation and comparison of alternative building systems, except that in the case of leased buildings, the life cycle cost shall be calculated over the effective remaining term of the lease.

Non-recurring costs means costs that are not uniformly incurred annually over the study period.

Non-fuel operation and maintenance costs means material and labor cost for routine upkeep, repair and operation exclusive of energy cost.

Recurring costs means future costs that are incurred uniformly and annually over the study period.

Replacement costs means future cost to replace a building energy system, energy conservation measure, or any component thereof.

Retrofit means installation of a building energy system alternative in an existing Federal building.

Salvage value means the value of any building energy system removed or replaced during the study period, or recovered through resale or remaining at the end of the study period.

Study period means the time period covered by a life cycle cost analysis.

Sunk costs means costs incurred prior to the time at which the life cycle cost analysis occurs.

Time-of-day rate means the charge for service during periods of the day based on the cost of supplying services during various times of the day.

§ 436.12 Life cycle cost methodology.

The life cycle cost methodology for this part is a systematic analysis of relevant costs, excluding sunk costs, over a study period, relating initial costs to future costs by the technique of discounting future costs to present values.

§ 436.13 Presuming cost-effectiveness results.

(a) If the investment and other costs for an energy conservation measure considered for retrofit to an existing Federal building or a building energy system considered for incorporation into a new building design are insignificant, a Federal agency may presume that such a system is life cycle cost-effective without further analysis.

(b) A Federal agency may presume that an investment in an energy conservation measure retrofit to an existing Federal building is not life cycle cost-effective if the Federal building is—

(1) Occupied under a short-term lease with a remaining term of one year or less, and without a renewal option or with a renewal option which is not likely to be exercised;

(2) Occupied under a lease which includes the cost of utilities in the rent and does not provide a pass through of energy savings to the government; or

(3) Scheduled to be demolished or retired from service within one year or less.

§ 436.14 Methodological assumptions.

(a) Each Federal Agency shall discount to present values the future cash flows established in either current or constant dollars consistent with the nominal or real discount rate, and related tables, published in the annual supplement to the Life Cycle Costing Manual for the Federal Energy Management Program (NIST 85–3273) and determined annually by DOE as follows—

(1) The nominal discount rate shall be a 12 month average of the composite yields of all outstanding U.S. Treasury bonds neither due nor callable in less than ten years, as most recently reported by the Federal Reserve Board; and

(2) Subject to a ceiling of 10 percent and a floor of three percent the real discount rate shall be a 12 month average of the composite yields of all outstanding U.S. Treasury bonds neither due nor callable in less than ten years, as most recently reported by the Federal Reserve Board, adjusted to exclude estimated increases in the general level of prices consistent with projections of inflation in the most recent Economic Report of the President's Council of Economic Advisors.

(b) Each Federal agency shall assume that energy prices will change at rates projected by DOE's Energy Information Administration and published by NIST annually no later than the beginning of the fiscal year in the Annual Supplement to the Life Cycle Costing Manual for the Federal Energy Management Program, in tables consistent with the discount rate determined by DOE under paragraph (a) of this section, except that—

(1) If the Federal agency is using component prices under § 436.14(c), that agency may use corresponding component escalation rates provided by the energy supplier.

(2) For Federal buildings in foreign countries, the Federal agency may use a "reasonable" escalation rate.

(c) Each Federal agency shall assume that the price of energy in the base year is the actual price charged for energy delivered to the Federal building and may use actual component prices as provided by the energy supplier.

(d) Each Federal agency shall assume that the appropriate study period is as follows:

(1) For evaluating and ranking alternative retrofits for an existing Federal building, the study period is the expected life of the retrofit, or 25 years from the beginning of beneficial use, whichever is shorter.

(2) For determining the life cycle costs or net savings of mutually exclusive alternatives for a given building energy system (e.g., alternative designs for a particular system or size of a new or retrofit building energy system), a uniform study period for all alternatives shall be assumed which is equal to—

(i) The estimated life of the mutually exclusive alternative having the longest life, not to exceed 25 years from the beginning of beneficial use with appropriate replacement and salvage values for each of the other alternatives; or

(ii) The lowest common multiple of the expected lives of the alternative, not to exceed 25 from the beginning of beneficial use with appropriate replacement and salvage values for each alternative.

(3) For evaluating alternative designs for a new Federal building, the study period extends from the base year through the expected life of the building or 25 years from the beginning of beneficial use, whichever is shorter.

(e) Each Federal agency shall assume that the expected life of any building energy system is the period of service without major renewal or overhaul, as estimated by a qualified engineer or architect, as appropriate, or any other reliable source except that the period of service of a building energy system shall not be deemed to exceed the expected life of the owned building, or the effective remaining term of the leased building (taking into account renewal options likely to be exercised).

(f) Each Federal agency may assume that investment costs are a lump sum occurring at the beginning of the base year, or may discount future investment costs to present value using the appropriate present worth factors under paragraph (a) of this section.

(g) Each Federal agency may assume that energy costs and non-fuel operation and maintenance costs begin to accrue at the beginning of the base year or when actually projected to occur.

(h) Each Federal agency may assume that costs occur in a lump sum at any time within the year in which they are incurred.

(i) This section shall not apply to calculations of estimated simple payback time under § 436.22 of this part.

§ 436.15 Formating cost data.

In establishing cost data under §§ 436.16 and 436.17 and measuring cost effectiveness by the modes of analysis described by § 436.19 through § 436.22, a format for accomplishing the analysis which includes all required input data and assumptions shall be used. Subject to § 436.16(b), Federal agencies are encouraged to use worksheets or computer software referenced in the Life Cycle Cost Manual for the Federal Energy Management Program.

§ 436.16 Establishing non-fuel cost categories.

(a) The relevant non-fuel cost categories are—

(1) Investment costs;

(2) Non-fuel operation and maintenance cost;

(3) Replacement cost; and

(4) Salvage value.

(b) The present value of recurring costs is the product of the base year value of recurring costs as multiplied by the appropriate uniform present worth factor under § 436.14, or as calculated by computer software indicated in § 436.16(b) and used with the official discount rate and escalation rate assumptions under § 436.14. When recurring costs begin to accrue at a later time, subtract the present value of recurring costs over the delay, calculated using the appropriate uniform present worth factor for the period of the delay, from the present value of recurring costs over the study period or, if using computer software, indicate a delayed beneficial occupancy date.

(c) The present value of non-recurring cost under § 436.16(a) is the product of the non-recurring costs as multiplied by appropriate single present worth factors under § 436.14 for the respective years in which the costs are expected to be incurred, or as calculated by computer software provided or approved by DOE and used with the official discount rate and escalation rate assumptions under § 436.14.

§ 436.17 Establishing energy cost data.

(a) Each Federal agency shall establish energy costs in the base year by multiplying the total units of energy used in the base year by the price per unit of energy in the base year as determinnd in accordance with § 436.14(c).

(b) When energy costs begin to accrue in the base year, the present value of energy costs over the study period is the product of energy costs in the base year as established under § 436.17(a), multiplied by the appropriate modified uniform present worth factor adjusted for energy price escalation for the applicable region, sector, fuel type, and study period consistent with § 436.14, or as calculated by computer software provided or approved by DOE and used with the official discount rate and escalation rate assumptions under § 436.14. When energy costs begin to accrue at a later time, subtract the present value of energy costs over the delay, calculated using the adjusted, modified uniform present worth factor for the period of delay, from the present value of energy costs over the study period or, if using computer software, indicate a delayed beneficial occupancy date.

§ 436.18 Measuring cost-effectiveness.

(a) In accordance with this section, each Federal agency shall measure cost-effectiveness by combining cost data established under §§ 436.16 and 436.17 in the appropriate mode of analysis as described in § 436.19 through § 436.22.

(b) Federal agencies performing LCC analysis on computers shall use either the Federal Buildings Life Cycle Costing (FBLCC) software provided by DOE or software consistent with this subpart.

(c) Replacement of a building energy system with an energy conservation measure by retrofit to an existing Federal building or by substitution in the design for a new Federal building shall be deemed cost-effective if—

(1) Life cycle costs, as described by § 436.19, are estimated to be lower; or

(2) Net savings, as described by § 436.20, are estimated to be positive; or

(3) The savings-to-investment ratio, as described by § 436.21, is estimated to be greater than one; or

(4) The adjusted internal rate of return, as described by § 436.22, is estimated to be greater than the discount rate as set by DOE.

(d) As a rough measure, each Federal agency may determine estimated simple payback time under § 436.23, which indicates whether a retrofit is likely to be cost-effective under one of the four calculation methods referenced in § 436.18(c). An energy conservation measure alternative is likely to be cost-effective if estimated payback time is significantly less than the useful life of that system, and of the Federal building in which it is to be installed.

(e) Mutually exclusive alternatives for a given building energy system, considered in determining such matters as the optimal size of a solar energy system, the optimal thickness of insulation, or the best choice of double-glazing or triple-glazing for windows, shall be compared and evaluated on the basis of life cycle costs or net savings over equivalent study periods. The alternative which is estimated to result in the lowest life cycle costs or the highest net savings shall be deemed the most cost-effective because it tends to minimize the life cycle cost of Federal building.

(f) When available appropriations will not permit all cost-effective energy conservation measures to be undertaken, they shall be ranked in descending order of their savings-to-investment ratios, or their adjusted internal rate of return, to establish priority. If available appropriations cannot be fully exhausted for a fiscal year by taking all budgeted energy conservation measures according to their rank, the set of energy conservation measures that will maximize net savings for available appropriations should be selected.

(g) Alternative building designs for new Federal buildings shall be evaluated on the basis of life cycle costs. The alternative design which results in the lowest life cycle costs for a given new building shall be deemed the most cost-effective.

§ 436.19 Life cycle costs.

Life cycle costs are the sum of the present values of—

(a) Investment costs, less salvage values at the end of the study period;

(b) Non-fuel operation and maintenance costs;

(c) Replacement costs less salvage costs of replaced building systems; and

(d) Energy costs.

§ 436.20 Net savings.

For a retrofit project, net savings may be found by subtracting life cycle costs based on the proposed project from life cycle costs based on not having it. For a new building design, net savings is the difference between the life cycle costs of an alternative design and the life cycle costs of the basic design.

§ 436.21 Savings-to-investment ratio.

The savings-to-investment ratio is the ratio of the present value savings to the present value costs of an energy conservation measure. The numerator of the ratio is the present value of net savings in energy and non-fuel operation and maintenance costs attributable to the proposed energy conservation measure. The denominator of the ratio is the present value of the net increase in investment and replacement costs less salvage value attributable to the proposed energy conservation measure.

§ 436.22 Adjusted internal rate of return.

The adjusted internal rate of return is the overall rate of return on an energy conservation measure. It is calculated by subtracting 1 from the Nth root of the ratio of the terminal value of savings to the present value of costs, where N is the number of years in the study period. The numerator of the ratio is calculated by using the discount rate to compound forward to the end of the study period the yearly net savings in energy and non-fuel operation and maintenance costs attributable to the proposed energy conservation measure. The denominator of the ratio is the present value of the net increase in investment and replacement costs less salvage value attributable to the proposed energy conservation measure.

§ 436.23 Estimated simple payback time.

The estimated simple payback time is the number of years required for the cumulative value of energy cost savings less future non-fuel costs to equal the investment costs of the building energy system, without consideration of future price changes or discount rates.

§ 436.24 Uncertainty analyses.

If particular items of cost data or timing of cash flows are uncertain and are not fixed under § 436.14, Federal agencies may examine the impact of uncertainty on the calculation of life cycle cost effectiveness or the assignment of rank order by conducting additional analyses using any standard engineering economics method such as sensitivity and probabilistic analysis. If additional analysis casts substantial doubt on the life cycle cost analysis results, a Federal agency should consider obtaining more reliable data or eliminating the building energy system alternative.

Appendix A to Subpart A and Subparts B, C, and D [Reserved]

4. 10 CFR part 436 is further amended by removing appendix A to subpart A, and by removing and reserving subparts B, C and D.

§ 436.100 [Amended]

5. 10 CFR part 436 is further amended by removing the last two sentences of § 436.100(a) and by revising § 436.100 (b) to read:

* * * * *

(b) *Scope.* This subpart applies to all general operations of Federal agencies and is applicable to management of all energy used by Federal agencies that is excluded from coverage pursuant to section 543(a)(2) of part 3 of title V of the National Energy Conservation Policy Act, as amended (42 U.S.C. 8251–8281).

[FR Doc. 90–27313 Filed 11–19–90; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 861CE, Special Conditions No. 23–ACE–44A]

Special Conditions; Dornier SEASTAR Model CD2 Series Airplanes

AGENCY: Federal Aviation Administratioin (FAA), DOT.

ACTION: Final special conditions, amended.

SUMMARY: This rulemaking action amends final special conditions 23–ACE–44, for the Dornier SEASTAR Model CD2 series airplanes, which were published in the Federal Register October 25, 1989 (54 FR 43417). A notice proposing this amendment was published April 6, 1990 (55 FR 12857). These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards for airplanes to be type certificated in the commuter category. The novel and unusual design features include operation from water for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This amendment adopts additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

EFFECTIVE DATE: December 20, 1990.

FOR FURTHER INFORMATION CONTACT: Norman R. Vetter, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

Type Certification Basis

The type certification basis for the Dornier SEASTAR Model CD2 series airplane is as follows: Part 21 of the Federal Aviation Regulations (FAR), § 21.29; part 23 of the FAR, effective February 1, 1965, as amended by amendments 23–1 through 23–34; Special Federal Aviation Regulation (SFAR) No. 27, effective February 1, 1974, as amended by amendments 27–1 through 27–6; part 36 of the FAR, effective December 1, 1969, as amended by amendments 36–1 through the amendment effective on the date of type certification; exemptions, if any; special conditions 23–ACE–44 and 23–ACE–44A.

Background

On November 18, 1986, Claudius Dornier SEASTAR GmbH and Company made application for a type certificate through the Luftfahrt Bundesamt to the FAA Brussels Office for the SEASTAR Model CD2 airplane. At the time of application, commuter category airplane airworthiness standards were not incorporated into part 23 of the FAR. Certification for 12 passenger airplanes would require compliance with the part

25 airworthiness standards for transport category airplanes.

The commuter category airworthiness standards, which permit a seating configuration, excluding pilot seats, of 19 or fewer, were incorporated into part 23 by amendment 23-34 (52 FR 1806, January 15, 1987), which became effective on February 17, 1987. Claudius Dornier subsequently made a new application for U.S. type certificate on July 31, 1987, for part 23 commuter category certification.

The Dornier SEASTAR Model CD2 is a high wing, twin-engine amphibious airplane with turbopropeller engines mounted on the center-top of the parasol wing in a tandem push-pull arrangement. The airframe structure utilizes composite materials. The maximum gross weight is 10,141 lbs. with a seating configuration of 12 passengers, excluding pilot seats.

Final special conditions were published in the **Federal Register** October 25, 1989 (54 FR 43417). Subsequently, the FAA determined that requirements addressing operations from water were necessary. A notice of proposed amendment to special conditions was published in the **Federal Register** (55 FR 12857, April 6, 1990) under Docket No. 080CE, Notice No. 23-ACE-51, inviting comments.

Discussion of Comments

No comments were received in response to Notice 23-ACE-51 (55 FR 12857, April 6, 1990). The closing date for comments was August 6, 1990. Accordingly, the amendment to special conditions 23-ACE-44 is adopted as proposed.

The FAA has further reviewed paragraph 2 of Special Conditions 23-ACE-44, Protection of Systems from Lightning and High Energy Radio Frequency (RF) Fields, and has determined that the FAA policy at the time that the application for type certificate was submitted did not require protection for essential systems from high energy radio frequency fields external to the airplane. This amendment deletes the requirement to protect essential systems from high energy radio frequency fields external to the airplane.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

Authority

The authority citation for these amended special conditions is as follows:

Authority: Sections 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends special conditions 23-ACE-44 as part of the type certification basis for the Dornier SEASTAR Model CD2 series airplanes by revising paragraph 2 and adding a new paragraph 6, as follows:

* * * * * *

Protection of Systems from Lightning and High Energy Radio Frequency (RF) Fields

(a) Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to: (1) Lightning and (2) high energy radio frequency fields external to the airplane.

(b) Each essential function of the system must be protected to ensure that the essential function can be recovered after the airplane has been exposed to lightning.

(c) For the purposes of the above, the following definitions apply:

(1) *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

(2) *Essential Functions.* Functions whose failure would contribute to or would cause a hazardous failure condition that would significantly impact the safety of the airplane or the ability of the flight crew to cope with adverse operating conditions.

* * * * * *

6. Water Operation

For water operation, part 23 through amendment 23-34 applies, except that:

(a) Instead of complying with § 23.51(d)(5), the following applies: For the approved takeoff surface conditions; and

(b) Instead of complying with § 23.53(c)(1), the following applies: The takeoff decision speed, V_1, is the calibrated airspeed at which, as a result of engine failure or other reasons, the pilot is assumed to have made a decision to continue or discontinue the takeoff. The takeoff decision speed, V_1, must be selected by the applicant, but may not be less than the greater of the following:

(1) 1.10 V_{SI};

(2) 1.10 V_{MC} established in accordance with § 23.149;

(3) A speed at which the airplane can be shown adequate to safely continue the takeoff, using normal piloting skill, when the critical engine is suddenly made inoperative; or

(4) V_{EF} plus the speed gained with the critical engine inoperative during the time interval between the instant that the critical engine fails and the instant at which the pilot recognizes and reacts to the engine failure as indicated by the pilot's application of the first retarding means during the accelerate-stop determination of § 23.55.

(c) Section 23.53(c)(4) does not apply.

(d) Section 23.53(c)(5) does not apply.

(e) Instead of complying with § 23.53(c)(6), the following applies: It must be shown that the takeoff can be safely continued from the point at which the airplane is 35 feet above the takeoff surface at a speed not less than 5 knots less than the established V_2 speed.

(f) Instead of complying with § 23.55(a)(2), the following applies: Decelerate to speed of 3 knots or less from the point at which V_1 is reached; assuming that, in the case of engine failure, the pilot has decided to stop as indicated by application of the first retarding means at the speed V_1.

(g) Instead of complying with § 23.55(b), the following applies: Suitable retardation means may be used in determining the accelerate-stop distance if that means is available with the critical engine inoperative and if that means—

(1) Is safe and reliable;

(2) Is used so that consistent results can be expected under normal operating conditions; and

(3) Is such that exceptional skill is not required to control the airplane.

(h) Instead of complying with § 23.57(a)(2), the following applies: The airplane must be accelerated to V_{EF}, at which point the critical engine must be made inoperative and remain inoperative for the rest of the takeoff; and

(i) Instead of complying with § 23.57(b), the following applies: During the acceleration to speed V_2, the takeoff flight path must be measurably positive in accordance with paragraph (k) of this special condition.

(j) Instead of complying with § 23.57(c)(4), the following applies: Except for automatic propeller feathering, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made until the airplane is 400 feet above the takeoff surface.

(k) Instead of complying with § 23.67(e)(1)(i), the following applies: TAKEOFF, CLEAR OF THE WATER. The minimum steady gradient of climb between the lift-off speed, V_{LOF}, and reaching takeoff safety speed, V_2, must be measurably positive at all points.

(l) Instead of complying with § 23.67(e)(1)(ii), the following applies: TAKEOFF, INITIAL CLIMB. The minimum steady gradient of climb must not be less than 2 percent at the speed V_2 until the airplane is 400 feet above the takeoff surface.

(m) Instead of complying with § 23.1587(d)(2), the following applies: The conditions under which the performance information was obtained including the takeoff surface condition and the airspeed at the 50-foot height used to determine the landing distance as required by § 23.75.

Issued in Kansas City, Missouri, on November 8, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 90-27265 Filed 11-19-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-14-AD; Amdt. 39-6813]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC-7 series airplanes, which initially requires repetitive Nondestructive Test (NDT) inspections to detect corrosion in the lower wing skins of the inboard and outboard fuel tanks, and repair, if necessary; and eventual removal of inboard fuel tank foam blocks and wing stringer modifications. This amendment is prompted by a recent report of corrosion detected in the lower wing skin, adjacent to the foam blocks, in the fuel tank areas. This condition, if not corrected, could result in degradation of the wing structure.

EFFECTIVE DATE: December 24, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Maroof, Airframe Branch, New York Aircraft Certification Office, ANE-172; telephone: (516) 791-6220. Mailing address: FAA, New England Region, 181 South Franklin Avenue, Valley Street, New York 11581.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulation to include a new airworthiness directive, applicable to certain de Havilland Model DHC-7 series airplanes, which requires repetitive low frequency eddy current inspections to detect corrosion in the upper and lower wing skins, and repair if necessary, was published in the **Federal Register** on March 9, 1990 (55 FR 8961).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter noted that no significant corrosion has been detected in the upper wing skins and requested that the proposed rule be changed to require inspection of the lower wing skins only. The FAA concurs. The FAA has been provided additional inspection results supporting the need to inspect only the lower wing skins. Therefore, paragraph A. of the final rule has been changed to required inspection of the lower wing skin only.

Another commenter requested that the proposed rule not be adopted because the exact cause of the corrosion is not known. The commenter pointed out that there has been only one documented case of corrosion penetrating the lower wing skin, and suggested that it was likely due to the unique history and operating environment of the airplane involved. The FAA concurs that the exact cause of the wing skin corrosion is not known. The FAA also concurs that there has been only one case where the corrosion penetrated the wing skin. However, there has been at least two other airplanes with fuel tank foam blocks that had significant lower wing skin corrosion either under or adjacent to the inboard fuel tank foam blocks. The evidence indicates that water entrapment under the foam/PRC (Product Research and Chemical Corporation) sealant is responsible for the corrosion. Only airplanes with the foam/PRC sealant have been reported to have significant lower wing skin corrosion. Three airplanes without foam/PRC sealant were reported to have some fuel tank corrosion, but this was found to be due to growth of microbial and fungal contaminants in the fuel. The FAA does not agree that the proposed rule should not be adopted. The requirements of the rule will ensure the detection of corrosion and the removal of the most likely cause of the lower wing skin corrosion. Additionally, removal of the inboard foam blocks opens for visual inspection a four-inch wide strip, running from the front spar to the rear spar. There currently is no method available to inspect this area for corrosion damage until the damage is so severe that the wing skin is penetrated.

This commenter also suggested that the airplane manufacturer be tasked to develop a non-destructive test (NDT) standard so that the four-inch wide strip could be inspected without foam block removal. The FAA does not concur. This area is complicated by inboard nacelle structure and it is questionable that a satisfactory NDT standard can be developed that could be routinely performed satisfactorily by maintenance personnel. Even if possible, development of a satisfactory NDT standard would take considerable development time and is almost certain to require operators to purchase more sophisticated NDT equipment and require maintenance personnel to have additional training.

Additionally, this commenter stressed that the foam block removal process can degrade the integrity of the wing structure due to stringer disbonding and/or marring or scratching of the wing skin. The FAA concurs. However, the FAA considers that the removal procedures described in the referenced de Havilland Service Bulletin 7-57-33, dated July 21, 1988, are adequate to avoid inadvertent structural damage.

Another commenter supported the intent of the proposed AD, but indicated that the proposed requirements for inboard and outboard fuel tank foam block removal essentially demanded accomplishment of both within a year to best utilize airplane downtime. This commenter suggested that a better approach would be to allow repetitive inspections to continue longer so that removal of the foam blocks could coincide with some other lengthy and scheduled maintenance outage, such as a D-check. The FAA agrees with the commenter in principal:

Service history on this subject indicates that one airplane was found to have severe corrosion in the four-inch strip area to the extent that the wing skin was penetrated. However, on four other airplanes, the inboard fuel tank foam blocks were removed and the area visually inspected, and no significant corrosion was found. Based on these inspection results, the FAA has determined that removal of the inboard tank foam block and modification of the stringers may be postponed for up to three years if no external corrosion is apparent. During this extended time, however, the areas outside the four-inch strip covered by foam block must continue to be repetitively NDT inspected at intervals not to exceed 12 months. This final rule has been revised accordingly.

Upon further review of additional technical data, the FAA has also determined that mandatory removal of the foam block from the outboard tanks is not necessary, since the entire wing skin area under the foam block can be inspected by NDT procedures. Repetitive NDT inspections, conducted every year, are adequate to detect corrosion and ensure continued airworthiness. Removal of the outboard fuel tank foam block would not be required until corrosion is detected in the area. Accordingly, the final rule has

been revised to specify that removal of the foam block may be postponed until corrosion is found, if a repetitive NDT inspection of the area is accomplished at intervals not less than one year.

New paragraphs D. and E. have been added, to specify certain actions which, if accomplished, would constitute terminating action for the required repetitive inspections of both the inboard and outboard fuel tank lower skins. These terminating actions consist of the removal of the fuel tank foam blocks and modification of the stringer.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described above. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

It is estimated that 12 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1,200 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $576,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air tranportation, Aircraft, Aviation safety, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing of Canada, Ltd., De Havilland Division: Applies to Model DHC-7 series airplanes, Serial Numbers 1 through 10, and 12 through 27, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent corrosion and reduced structural capability of the wings accomplish the following:

A. Within 180 days after the effective date of this AD, and thereafter at intervals not to exceed one year, perform a low frequency eddy current inspection of the inboard and outboard fuel tank lower wing skins in accordance with the procedure specified in Part 6, Chapter 57-10-01, of the de Havilland DHC-7 Nondestructive Testing (NDT) Manual, PSM 1-7-7A.

B. If corrosion is found as a result of the inspections required by paragraph A. of this AD, accomplish the following. Accomplishment of these actions constitutes terminating action for the repetitive inspections of the inboard and/or outboard fuel tank area, as appropriate, required by paragraph A. of this AD.

1. If corrosion is found in the inboard fuel tank, prior to further flight, permanently remove the inboard fuel tank foam blocks, restore any corroded areas, and modify the stringers in accordance with the Accomplishment Instructions, Steps 3, 4, and 5, of de Havilland Service Bulletin 7-57-33, dated July 21, 1989.

2. If corrosion is found in the outboard fuel tank, prior to further flight, permanently remove the outboard fuel tank foam blocks, restore any corroded areas, and modify the stringers in accordance with the Accomplishment Instructions, Steps 3, 4, and 5, of de Havilland Service Bulletin 7-57-33, dated July 21, 1989.

C. If no corrosion is found, within three years after the effective date of this AD, permanently remove the inboard fuel tank foam blocks and modify the stringers in accordance with the Accomplishment Instructions, Steps 3 and 5, of de Havilland Service Bulletin 7-57-33 (), dated July 21, 1989.

D. Accomplishment of the removal and modification actions specified in paragraph C. of this AD, constitutes terminating action for the repetitive inspections of the inboard fuel tank lower wing skins required by paragraph A. of this AD.

E. Accomplishment of the removal and modification actions specified in the Accomplishment Instructions, Steps 3 and 5, of de Havilland Service Bulletin 7-57-33 (), dated July 21, 1989, for the outboard fuel tanks, constitutes terminating action for the repetitive inspections of the outboard fuel tank lower wing skin required by paragraph A. of this AD.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), FAA, New England Region.

Note: The request should be submitted directly to the Manager, New York ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, New York ACO.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective December 24, 1990.

Issued in Renton, Washington, on November 7, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27267 Filed 11-19-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-81-AD; Amendment 39-6814]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, which currently requires repetitive visual inspection for cracks and repair, if necessary, and modification, of the aft pressure bulkhead (Body Station 1183) web and strap. This action would add repetitive visual inspections of airplanes modified or repaired with blind fasteners. This amendment is prompted by reports of additional cracking in airplanes repaired or modified with blind fasteners. This condition, if not corrected, could result in rapid decompression of the airplane.

EFFECTIVE DATE: December 26, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2772. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 86-02-06 R1, Amendment 39-5331 (51 FR 21511, June 13, 1986), applicable to Boeing Model 727 series airplanes, to add repetitive visual inspections of airplanes modified or repaired with blind fasteners, was published in the **Federal Register** on June 13, 1990 (55 FR 23945).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter stated that proposed paragraph G., as written, would require repetitive inspections only of airplanes that had accomplished repairs using blind fasteners. The commenter questioned whether this requirement would also apply to airplanes that had accomplished modifications using blind fasteners, and requested clarification on this point. The FAA concurs that clarification is necessary. The FAA has determined that repetitive inspections are necessary for all blind fasteners that are used in either repairs or modifications; that was the intent of the proposed rule and was specifically stated in the "**SUMMARY**" paragraph of the NPRM. Paragraph G. of the final rule has been revised to clearly state that all blind fasteners used for repairs or modification must be repetitively inspected.

Another commenter requested that the repetitive visual inspection of the blind fasteners be changed from the proposed 3,000 to 3,500 flight cycles so that it is compatible with the repetitive inspection times in paragraphs A. through C. of the proposed rule. The FAA concurs with the commenter that it is acceptable to conduct the inspection of the blind fasteners at the same time as the inspections required by paragraphs A. through C. The FAA has reviewed its data and has determined that the repetitive inspection of the blind fasteners can be extended, in this case, to 3,500 flight cycles without adversely affecting safety. Paragraph G. of the final rule has been changed accordingly.

Paragraph H. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described above. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 1,710 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,150 airplanes of U.S. registry will be affected by this AD; of these, approximately 35 airplanes have been modified using blind fasteners and will require additional repetitive inspections in accordance with paragraph G. of this AD. These additional inspections will take approximately 6 manhours to accomplish, at an average labor charge of $40 per manhour. Based on these figures, the total cost impact of the additional requirements on U.S. operators is estimated to be $8,400 per inspection cycle.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 86-02-06, Amendment 39-5222 (51 FR 3027; January 23, 1986), as amended by Amendment 39-5331 (51 FR 21511; June 13, 1986), with the following new airworthiness directive:

Boeing: Applies to all Model 727 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracks in the Body Station 1183 pressure bulkhead web and strap, accomplish the following:

A. For airplanes with 40,000 or more flight cycles on February 6, 1986 (the effective date of Amendment 39-5222), within the next 300 flight cycles, unless accomplished within the last 3,200 flight cycles, and thereafter at intervals not to exceed 3,500 flight cycles, inspect and repair, if necessary, in accordance with paragraph D. of this AD.

B. For airplanes with 33,000 or more flight cycles and less than 40,000 flight cycles on February 6, 1986, within the next 1,500 flight cycles, unless accomplished within the last 2,000 flight cycles, and thereafter at intervals not to exceed 3,500 flight cycles, inspect and repair, if necessary, in accordance with paragraph D. of this AD.

C. For airplanes with fewer than 33,000 flight cycles on February 6, 1986, prior to the accumulation of 30,000 flight cycles or within the next 3,500 flight cycles after February 6, 1986, whichever occurs later, and thereafter at intervals not to exceed 3,500 flight cycles, inspect and repair, if necessary, in accordance with paragraph D. of this AD.

D. Accomplish a close visual inspection of the web in accordance with Figure 1 of Boeing Alert Service Bulletin 727-53A0171, Revision 1, dated January 17, 1986, or Revision 2, dated December 14, 1989. If cracks are detected, prior to further flight, repair in accordance with paragraph E. or F. of the Accomplishment Instructions of the service bulletin.

E. For airplanes repaired by the installation of the doubler in accordance with Boeing Service Bulletin 727-53A0171, Original Issue, within the next 15,000 flight cycles after that repair, incorporate the vertical reinforcing strap and spacers described in paragraph F.

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of the Accomplishment Instructions of Boeing Alert Service Bulletin 727-53A0171, Revision 1, dated January 17, 1986, or Revision 2, dated December 14, 1989.

F. The following constitutes terminating action for the repetitive inspections required by paragraphs A., B., and C. of this AD:

1. The preventive modification described in paragraph D. of the Accomplishment Instructions of Boeing Alert Service Bulletin 727-53A0171, Revision 1, dated January 17, 1986, or Revision 2, dated December 14, 1989.

2. The repairs described in paragraphs E. and F. of the Accomplishment Instructions of Boeing Alert Service Bulletin 727-53A0171, Revision 1, dated January 17, 1986, or Revision 2, dated December 14, 1989.

G. For airplanes repaired or modified with blind fasteners: Within 3,500 flight cycles after the effective date of this AD, and thereafter at intervals not to exceed 3,500 flight cycles, accomplish a visual inspection for cracks and loose or missing fasteners, in accordance with Boeing Alert Service Bulletin 727-53A0171, Revision 2, dated December 14, 1989. If cracks are detected, prior to further flight, repair in accordance with the service bulletin. If loose or missing fasteners are detected, prior to further flight, replace with protruding head solid fasteners. Replacement with protruding head solid fasteners constitutes terminating action for the repetitive inspections required by this paragraph.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39-5331, AD 86-02-06 R1.

This amendment becomes effective December 26, 1990.

Issued in Renton, Washington, on November 8, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27288 Filed 11-19-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-231-AD; Amdt. 39-6815]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires inspection of the flap track forward end clevis lugs, and replacement of the flap track, if necessary. This amendment is prompted by reports of cracked or failed clevis lugs on two flap tracks. This condition, if not corrected, could result in separation of the wing trailing edge flap track from the airplane and reduction in the controllability of the airplane.

EFFECTIVE DATE: December 5, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Satish K. Pahuja, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2761. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: One operator reported finding a cracked forward clevis lug on the number 5 flap track on a Boeing Model 747 series airplane that had accumulated approximately 38,500 flight hours and 6,400 flight cycles. Another operator found both lugs broken on the number 1 flap track on an airplane that had accumulated 61,172 flight hours and 20,224 flight cycles. The flap track was held to the airplane by the flap track fail-safe strap. The analysis of the cracks showed that the cracks originated from a corrosion pit in the lug bore. Another operator of a large Model 747 fleet has reported bushing migration and/or corrosion at this location on other flap tracks. Analysis by the manufacturer indicates that the fail-safe straps have the required regulatory ultimate strength, but lack durability; therefore, they may not perform their intended function, which is to provide support to the failed flap tracks until failure is detected by normal inspection. Failure of the fail-safe strap, in the event that the failure of the flap track remains undetected, could lead to the separation of the flap track from the airplane and thereby cause reduction in the controllability of the airplane.

The FAA has determined that the flap tracks which have the old design fail-safe straps are the subject of immediate concern.

The FAA has reviewed and approved Boeing Service Bulletin 747-57-2231, Revision 2, dated September 27, 1990, which describes procedures for the inspection and modification of the flap track forward clevis lugs and replacement of the flap track if cracks are found. The airplanes that have the old design fail-safe straps are identified as Group 1 in the service bulletin. The airplanes that have the new design fail-safe straps are identified as Group 2 and 3 in the service bulletin.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires inspection of the flap track forward clevis lugs and replacement of the flap track, if necessary, in accordance with the service bulletin previously described. The Group 1 airplanes require inspection within 30 days after the effective date of this AD. The Group 2 and 3 airplanes require inspection within 120 days after the effective date of the rule.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-57-2231, Revision 2, dated September 27, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the flap tracks, accomplish the following:

A. Visually inspect the forward end clevis lugs of flap tracks for evidence of cracking, in accordance with Boeing Service Bulletin 747-57-2231, Revision 2, dated September 27, 1990, and in accordance with the following schedule:

1. For Group 1 airplanes: Perform the inspection at flap track positions 1 through 8 within the next 30 days after the effect date of this AD.

2. For Group 2 airplanes: Perform inspection at flap track positions 1, 2, 7, and 8 prior to the later of the following:

a. Prior to the accumulation of 30,000 flight hours or 8 years after airplane delivery, whichever occurs first; or

b. Within 120 days after the effective date of this AD.

3. For Group 3 airplanes: Perform the inspection at flap track positions 1 through 8 prior to the later of the following:

a. Prior to the accumulation of 30,000 flight hours or 8 years after airplane delivery, whichever occurs first; or

b. Within 120 days after the effective date of this AD.

B. If cracking is found, replace the flap track prior to further flight, in accordance with Boeing Service Bulletin 747-57-2231, Revision 2, dated September 27, 1990.

C. If no cracking is found, repeat the inspection required by paragraph A. of this AD, at intervals not to exceed 300 flight cycles for Group 1 airplanes, and 1,200 flight cycles for Group 2 and Group 3 airplanes.

D. Accomplishment of the modification of the forward end clevis lugs of flap tracks as specified in Boeing Service Bulletin 747-57-2231, Revision 2, dated September 27, 1990, constitutes terminating action for the inspections required by paragraphs A. and C. of this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective December 5, 1990.

Issued in Renton, Washington, on November 8, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27286 Filed 11-19-90; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AA26

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances; Corrections to Ranges of Comparability for Refrigerators, Refrigerator-freezers, and Freezers

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by issuing corrections to the ranges of comparability that were published on October 2, 1990 [1] for use on required labels for refrigerators, refrigerator-freezers and freezers.

This notice publishes the corrected range figures, which, under §§ 305.10, 305.11 and 305.14 of the rule, must be used on labels on refrigerators, refrigerator-freezers, and freezers manufactured on and after February 19, 1991, and in advertising of refrigerators, refrigerator-freezers, and freezers in catalogs printed after February 19, 1991. Properly labeled refrigerators, refrigerator-freezers, and freezers manufactured prior to the effective date need not be relabeled. Catalogs printed prior to the effective date in accordance with 16 CFR 305.14 need not be revised.

EFFECTIVE DATES: The withdrawal of the final rule published October 2, 1990 (55 FR 40161) is effective November 20, 1990, and the remaining amendments are effective February 19, 1991.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202-326-3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: New ranges of comparability for refrigerators, refrigerator-freezers, and freezers, which were calculated using the 1990 representative average energy cost for electricity (7.88 cents per kilowatt-hour) published by DOE on March 12, 1990,[2] were duly published in the **Federal Register** by the Commission on October 2, 1990. The staff of the Commission has learned since then that there were several inadvertent errors in all three categories of those ranges. The staff has corrected the errors, and the new ranges published today reflect the corrections. For the sake of clarity, the Commission is republishing the complete set of ranges in their corrected form. The changes are in the following capacity groupings in the applicable categories:

Refrigerators: 6.5 to 8.4 cu. ft., 16.5 cu. ft. and over

Refrigerator-freezers: 20.5 to 22.4 cu. ft., 28.5 cu. ft. and over

Freezers: 7.5 to 9.4 cu. ft., 19.5 to 21.4 cu. ft., 21.5 to 23.4 cu. ft., 23.5 to 25.4 cu. ft., 29.5 cu. ft. and over

In consideration of the foregoing, the Commission amends appendices A-1, A-2 and B of its Appliance Labeling Rule by publishing the following corrected ranges of comparability for use in the labeling and advertising of refrigerators, refrigerator-freezers, and freezers beginning February 19, 1991.

[1] 55 FR 40161.

[2] 55 FR 9184. The Commission published these figures on April 10, 1990, at 55 FR 13284.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for part 305 continues to read as follows:

Authority: Section 324 of the Energy Policy and Conservation Act (Pub. L. 94-163) (1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95-619) (1978), the National Appliance Energy Conservation Act (Pub. L. 100-12) (1987), and the National Appliance Energy Conservation Amendments of 1988 (Pub. L. 100-357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. In appendices A1, A2 and B, paragraph 1 of each and the introductory text in paragraph 2 of each are revised to read as follows:

Appendix A1 to Part 305—Refrigerators

1. Range Information:

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
Less than 2.5	$21	$29
2.5 to 4.4	25	34
4.5 to 6.4	22	49
6.5 to 8.4	28	39
8.5 to 10.4	33	39
10.5 to 12.4	39	53
12.5 to 14.4	39	44
14.5 to 16.4	55	56
16.5 to over	47	64

2. Yearly Cost Information: Estimates on the scale are based on a national average electric rate of 7.88¢ per kilowatt hour.

* * * * *

Appendix A2 to Part 305—Refrigerator-Freezers

1. Range Information:

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
Less than 10.5	$76	$97
10.5 to 12.4	59	75
12.5 to 14.4	55	88
14.5 to 16.4	58	89
16.5 to 18.4	80	82
18.5 to 20.4	66	116
20.5 to 22.4	74	114
22.5 to 24.4	82	126
24.5 to 26.4	82	129
26.5 to 28.4	86	133
28.5 and over	105	127

2. Yearly Cost Information: Estimates on the scale are based on a national average electric rate of 7.88¢ per kilowatt hour.

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Appendix B to Part 305—Freezers

1. Range Information:

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
Less than 5.5	$23	$51
5.5 to 7.4	26	43
7.5 to 9.4	29	39
9.5 to 11.4	26	56
11.5 to 13.4	30	61
13.5 to 15.4	36	66
15.5 to 17.4	34	74
17.5 to 19.4	46	86
19.5 to 21.4	40	85
21.5 to 23.4	46	88
23.5 to 25.4	(*)	(*)
25.5 to 27.4	51	62
27.5 to 29.4	100	100
29.5 and over	133	212

*No data submitted.

2. Yearly Cost Information: Estimates on the scale are based on a national average electric rate of 7.88¢ per kilowatt hour.

* * * * *

3. The final rule published in the Federal Register on October 2, 1990 (55 FR 40161), amending appendices A1, A2 and B, which was to become effective on December 31, 1990, is being withdrawn.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-27187 Filed 11-19-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Fenbendazole

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The supplement provides for extended treatment times for use of fenbendazole Type A medicated articles for making Type C medicated swine feeds for use as an anthelmintic.

EFFECTIVE DATE: November 20, 1990.

FOR FURTHER INFORMATION CONTACT: John L. Olsen, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6913.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202-206 North, Somerville, NJ 08876, has filed a supplement to NADA 131-675 which provides for use of SAFE-GUARD® Type A medicated articles (fenbendazole) for making Type C medicated swine feed. In addition to the previously approved conditions of use, the supplement provides for extending treatment time from 3 days to 3 to 12 days for removal of larvae (L3, 4 stages—liver, lung, intestinal forms) of the large roundworm (*Ascaris suum*), and larvae (L2, 3, 4 stages—intestinal mucosal forms) of the whipworm (*Trichuris suis*). The supplement was previously approved for treatment times of 3 to 12 days for other species and stages of worms.

Fenbendazole is a new animal drug used in a Type A medicated article to make a Type C medicated feed. Fenbendazole is a Category II drug which, as provided in 21 CFR 558.4(e), requires an approved Form FDA 1900 for making a Type C medicated feed as in approved NADA 131-675 and in amended 21 CFR 558.258(c)(1).

The supplement is approved as of November 20, 1990, and the regulations are amended in 21 CFR 558.258(c)(1)(i) and (c)(1)(ii) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

As provided under the Generic Animal Drug and Patent Term Restoration Act of 1988 and section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(c)(2)(F)(iii)), this supplement qualifies for 3 years of marketing exclusivity beginning November 20, 1990, for the extended treatment. The studies supporting approval of the supplement qualify as "new clinical or field controlled efficacy studies" as defined in the above section of the act.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Sections 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.258 is amended by revising paragraphs (c)(1)(i) and (c)(1)(ii) to read as follows:

§ 558.258 Fenbendazole.

* * * * *

(c) * * *

(1) * * *

(i) *Amount.* A total of 9 milligrams per kilogram of body weight given over a 3- to 12-day period.

(ii) *Indications for use.* For the removal of: adult stage lungworms (*Metastrongylus apri* and *M. pudendotectus*); adult and larvae (L3, 4 stages—liver, lung, intestinal forms) large roundworms (*Ascaris suum*); adult stage nodular worms (*Oesophagostomum dentatum, O. quadrispinulatum*); small stomach worms (*Hyostrongylus rubidus*); adult and larvae (L2, 3, 4 stages—intestinal mucosal forms) whipworms (*Trichuris suis*); adult and larvae kidney worms (*Stephanurus dentatus*).

* * * * *

Dated: November 8, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-27289 Filed 11-19-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286

[DoD 5400.7-R]

Freedom of Information Act (FOIA) Program

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule; correction.

SUMMARY: This document revises § 286.7(i)(9) and makes an administrative correction to the amendatory language for correction number 9 that was previously published on November 8, 1990 (55 FR 46950).

EFFECTIVE DATE: October 3, 1990.

ADDRESSES: Office of the Assistant Secretary of Defense (Public Affairs), Washington, DC 20301-1400.

FOR FURTHER INFORMATION CONTACT: Mr. C. Talbott, telephone (703) 697-1180.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 286

Freedom of information.

PART 286—[AMENDED]

Accordingly, 32 CFR part 286 is amended as follows:

1. The authority citation for part 286 continues to read as follows:

Authority: 5 U.S.C. 552.

§ 286.7 [Amended]

2. Section 286.7(i)(9) is revised to read as follows:

§ 286.7 Policy.

* * * * *

(i) * * *

(9) On occasion, the Department of Defense receives FOIA requests for General Accounting Office documents containing DoD information. Even though the GAO is outside the Executive Branch, and not subject to the FOIA, all FOIA requests for GAO documents containing DoD information received either from the public, or on referral from the GAO, will be processed under the provisions of the FOIA.

Appendix B to Part 286 [Corrected]

The amendatory language for correction number 9 [55 FR 46950, Nov. 8, 1990) is corrected to read as follows:

"9. Appendix B to part 286, paragraph 2.a. is amended by bringing 'Defense Systems Management College, National Defense University, Armed Forces Staff College, Department of Defense Dependent Schools, and Uniformed Services University of the Health Sciences' out to the margin."

Dated: November 15, 1990.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 90-27294 Filed 11-19-90; 8:45 am]

BILLING CODE 3810-10-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-90-79]

Special Local Regulations for Marine Events; Holidays in the City Boat Parade; Town Point, Elizabeth River, Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501, for the Holiday in the City Boat Parade and Fireworks Display. The event will consist of a boat parade with approximately 75 vessels and a fireworks display at the conclusion of the parade. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 5 p.m. to 9 p.m., November 24, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

DRAFTING INFORMATION: The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

DISCUSSION OF REGULATION: The Downtown Norfolk Council submitted an application dated October 1, 1990 to hold the Holidays in the City Boat Parade and Fireworks Display. The boat parade will be held in the Elizabeth River in the Town Point area between the Banana Landmass and the Berkley Bridge. The fireworks display will be launched from the Banana Landmass, Town Point Park, Norfolk, Virginia, and will burst over the Elizabeth River. Since many spectator vessels are expected to be in the area to watch the boat parade and fireworks display, the regulations in 33 CFR 100.501 are being implemented for these events. The waterways will be closed during the fireworks display. Since the waterway

will not be closed for an extended period, commercial traffic should not be severely disrupted.

In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. The implementation of 33 CFR 100.501 also implements regulations in 33 CFR 110.72aa and 117.1007. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and for one hour before and after the effective period under 33 CFR 100.501, except that the Coast Guard Patrol Commander may order that the draw be opened for commercial vessels.

Dated: November 9, 1990.

P. A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 90-27253 11-19-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD7-90-22]

Drawbridge Operation Regulations; Okeechobee Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the City of Fort Myers the Coast Guard is changing the operating regulations for the Edison Memorial drawbridge across the Caloosahatchee River (Okeechobee Waterway) at Fort Myers, Florida, by extending the afternoon regulated period for one hour from 5 p.m. to 6 p.m. with openings at 4:30 p.m. and 5:30 p.m. This action will accommodate current needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on December 20, 1990.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney (305) 536-4103.

SUPPLEMENTARY INFORMATION: On May 30, 1990, the Coast Guard published proposed rule (55 FR 21886) concerning this amendment with a comment limit date of July 16, 1990. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated September 6, 1990. The comment period was subsequently extended to 15 October 1990.

Drafting Information

The drafters of this notice are Ian MacCartney, project officer, and Lt. Genelle Tanos, project attorney.

Discussion of Comments

No comments were received about the proposed rule. The final rule is, therefore, unchanged from the proposed rule published on May 30, 1990.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the rule exempts tugs with tows. Since the economic impact is expected to be minimal, the Coast Guard certifies that they will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.317(j) is revised to read as follows:

§ 117.317 Okeechobee Waterway.

* * * * *

(j) Edison Memorial (US 41) bridge, mile 134.5 at Fort Myers. The draw shall open on signal; except that from 7:30 a.m. to 8:30 a.m. and from 4 p.m. to 6 p.m. Monday through Friday except federal holidays, the draw need open only at 4:30 p.m. and 5:30 p.m. Exempt vessels shall be passed at any time.

* * * * *

Dated: November 2, 1990.

R.E. Kramek,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 90-27255 Filed 11-19-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD5-90-076]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal, Chesapeake, VA.

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: At the request of the Virginia Department of Transportation, the Coast Guard is issuing a temporary rule governing the operation of the Centerville Turnpike drawbridge across the Albemarle and Chesapeake Canal, mile 15.2 in Chesapeake, Virginia. This rule will limit bridge openings 24-hours a day, seven days a week, in order to reduce unnecessary wear and tear on the structure while still providing for the reasonable needs of navigation.

DATES: This temporary rule is effective from October 29, 1990, through December 31, 1990, unless amended or terminated before that date.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398-6222.

SUPPLEMENTARY INFORMATION: The Commander, Fifth Coast Guard District published this temporary rule as a Public Notice 5-726 dated October 23, 1990.

Drafting Information

The drafters of this notice are Linda L. Gilliam, project officer, and Capt. M.K. Cain, project attorney.

Discussion of Temporary Rule

At the request of the Virginia Department of Transportation, the Coast Guard is issuing a temporary rule governing the operation of the drawbridge across the Albemarle and Chesapeake Canal, mile 15.2, in Chesapeake, Virginia. This rule is being issued because the Virginia Department of Transportation reports that the bridge's drive controls are still being operated in the emergency mode and that there are several equipment malfunctions in the drive system which have been temporarily bypassed. The Virginia Department of Transportation has indicated that a system-wide failure could occur and could place the bridge out of service for several months if draw openings are to occur more frequently than every two hours. Opening the draw every two hours on the even half hour will reportedly enable the bridge owner to accomplish balancing the wheels and adjusting the wheel and the rack assembly of the bridge. Also a number of anchor bolts on the bridge rack reportedly need to be replaced. Based on all the above, the Centerville Turnpike Bridge will being operating under a temporary schedule which restricts bridge openings to the even half-hour, once every two hours, 24-hours a day, with additional openings at 7:30 a.m., 3:30 p.m., and 5:30 p.m., for vessels waiting to pass, from October 29, 1990, to December 31, 1990, during which time the bridge will continue to undergo rehabilitation and repair work. After December 31, 1990, the Centerville Turnpike Bridge will be returned to its normal operating schedule. Since this temporary schedule is necessary for the safety of the bridge, I find that good cause exists for publishing this temporary rule without publication of a notice of proposed rulemaking and for making it effective in less than 30 days.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the temporary rule will not raise sufficient federalism implications to warrant preparation of a Federalism Assessment.

Economic Assessment and Certification

This temporary rule is not considered to be major under Executive Order 12291 on Federal Regulation nor significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are not expected to have any effect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard is temporarily amending part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citations for part 117 continue to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. A new § 117.T996 is temporarily added to read as follows:

§ 117.T996 Albemarle and Chesapeake Canal.

The draw of the S.R. 170 bridge, mile 15.2, at Chesapeake, shall open on the even half-hour, once every two hours, 24 hours a day, with additional openings at 7:30 a.m., 3:30 p.m., and 5:30 p.m. for vessels waiting to pass.

3. This rule is effective from October 29, 1990 to December 31, 1990, unless amended or terminated before that date.

Dated: November 5, 1990.

H.B. Gehring,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District Acting.

[FR Doc. 90-27256 Filed 11-19-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL-3862-3]

National Emission Standards for Hazardous Air Pollutants and Standards of Performance for New Stationary Sources; Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: On August 21, 1990, the Knox County Department of Air Pollution Control in the State of Tennessee, requested delegation of authority for implementation and enforcement of several standards in 40 CFR part 61, New Source Performance Standards (NSPS), and 40 CFR part 60, National Emission Standards for Hazardous Air Pollutants (NESHAPS). In a letter dated October 29, 1990, EPA delegated four (4) of the requested standards to the Knox County Department of Air Pollution Control.

EFFECTIVE DATE: The effective date of delegation is October 29, 1990.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation may be examined during normal business hours at the Agency's Regional Office, 345 Courtland St., NE., Atlanta, Georgia 30365. All reports required pursuant to the newly delegated standards (identified below) should be submitted to the Knox County Department of Air Pollution Control, City/County Building, suite 450, Main Avenue, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Carla E. Pierce of the EPA Region IV Air Programs Branch at the above address and telephone number 404-347-2864 or FTS-257-2864.

SUPPLEMENTARY INFORMATION: Sections 111(c)(1) and 112(d)(1) of the Clean Air Act authorize EPA to delegate authority to implement and enforce the standards set out in 40 CFR part 60, New Source Performance Standards (NSPS), and 40 CFR part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPS).

On August 21, 1990, the Knox County Department of Air Pollution Control requested delegation of several new and revised NSPS and NESHAPS standards. The following standards were requested by Knox County (the revised standards are designated by "(R)"):

40 CFR Part 60 Subpart

KKK—Onshore Natural Gas Processing—VOC (R)

SSS—Magnetic Tape Coating Facilities

40 CFR Part 61 Subpart

H—Radionuclide Emissions from Department of Energy (DOE) Facilities (R)

I—Radionuclide Emissions from DOE Facilities Licensed by the Nuclear Regulatory Commission (NRC) and Federal Facilities not covered by subpart H (R)

K—Radionuclide Emissions from Elemental Phosphorus Plants (R)

Q—Radon Emissions from DOE Facilities

R—Radon Emissions from Phosphogypsum Stacks
T—Radon Emissions from the Disposal of Uranium Mill Tailings
W—Radon Emissions from Licensed Uranium Mill Tailings (R)
BB—Benzene Emissions from Benzene Transfer Operations
FF—Benzene Emissions from Benzene Waste Operations (R)

In reference to Knox County's request for delegation of 40 CFR part 61, subparts H, I, K, Q, R, T, and W, EPA does not presently delegate NESHAPS regulations for radionuclides and radon. Therefore, EPA denied delegation approval of these referenced categories.

After a thorough review of the remaining categories requested for delegation, the Regional Administrator determined that delegation of NSPS, subparts KKK and SSS, and NESHAPS, subparts BB and FF was appropriate with all the conditions set forth in the initial delegation letters of May 20, 1977; December 13, 1985; July 1, 1988; June 1, 1988; and May 16, 1989.

EPA, thereby, delegated its authority for 40 CFR part 60, subparts KKK and SSS, and 40 CFR part 61, subparts BB and FF (excluding § 61.358) on October 29, 1990. Subpart FF contains a delegation restriction under § 61.358 for alternative means of emission limitation.

I certify, pursuant to 5 U.S.C. 605(b), that this delegation will not have a significant impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirement of section 4 of Executive Order 12291.

Authority: Sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412).

Dated: November 9, 1990.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 90-27303 Filed 11-19-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6895]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: Post Office Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, SW., room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligible—Regular Program Conversions			
Texas: Lake Bridgeport, city of, Wise County	481616	Oct. 9, 1990	Mar. 19, 1990.
Georgia: Patterson, city of, Pierce County	130457	Oct. 11, 1990	Apr. 17, 1989.
Indiana:			
Grabill, town of, Allen County	180499	Oct. 17, 1990	Sept. 28, 1990.
Monroeville, town of, Allen County	180498	....do	Do.
Woodburn, city of, Allen County	180500	....do	Do.
Missouri: Johnson County, unincorporated areas	290809	Oct. 26, 1990	Apr. 2, 1990.
New Eligible—Emergency Program			
Iowa: Rockwell, city of, Cerro Gordo County	190352	Oct. 11, 1990	Mar. 26, 1976.
Georgia: Fannin County, unincorporated areas	130248	....do	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Indiana: Madison County, unincorporated areas	180422	Oct. 23, 1990	June 23, 1978.
Texas: Lakeside City, city of, Archer County	481496	....do	July 3, 1979.
Georgia: Bartow, town of, Jefferson County	130115	Oct. 22, 1990	Aug. 22, 1975.
Indiana: Madison County, unincorporated areas	180442	Oct. 23, 1990	June 23, 1978.
Iowa: Eldridge, city of, Scott County	190574	Oct. 30, 1990	Aug. 8, 1978.
Reinstatements—Regular Program			
Minnesota:			
Lake of the Woods County, unincorporated areas	270654	July 19, 1974, Emerg., Sept. 5, 1990, Reg., Sept. 5, 1990, Susp., Oct. 11, 1990, Rein.	Sept. 5, 1990.
Murray County, unincorporated areas	270645	May 24, 1974, Emerg., May 3, 1990, Reg., May 3, 1990, Susp., Oct. 11, 1990, Rein.	May 3, 1990.
Idaho: Middleton, city of, Canyon County	160037	May 22, 1975, Emerg., Sept. 3, 1980, Reg., Sept. 28, 1990, Susp., Oct. 11, 1990, Rein.	Sept. 28, 1990.
New Hampshire: Allenstown, town of, Merrimack County	330103	Sept. 3, 1975, Emerg., Apr. 2, 1979, Reg., May 3, 1990, Susp., Oct. 18, 1990, Rein.	Apr. 2, 1979.
Pennsylvania: Beech Creek, township of, Clinton County	420321	Aug. 3, 1973, Emerg., Sept. 5, 1990, Reg., Sept. 5, 1990, Susp., Oct. 29, 1990, Rein.	Sept. 5, 1990.
West Virginia: Ritchie County,[1] unincorporated areas	540224	Sept. 1, 1976, Emerg., Aug. 15, 1990, Susp., Oct. 5, 1990, Rein.	Dec. 11, 1981.
Pennsylvania: Donegal, township of, Westmoreland County	422187	Jan. 2, 1981, Emerg., Oct. 16, 1990, Reg., Oct. 16, 1990, Susp., Oct. 25 1990, Rein.	Oct. 16, 1990.
Region III—Regular Program Conversions			
Pennsylvania:			
Rockland, township of, Venango County	422113	Oct. 16, 1990, suspension withdrawn	Oct. 16, 1990.
Sandycreek, township of, Venango County	422541	....do	Do.
Region V—Minimal Conversion			
Illinois: Dwight, village of, Livingston County	170423	Nov. 1, 1990, suspension withdrawn	Nov. 1, 1990
Region I—Regular Program Conversions			
Massachusetts: Boston, city of, Suffolk County	250286	Nov. 2, 1990, suspension withdrawn	Nov. 2, 1990
Region II			
Pennsylvania:			
Benzinger, township of, Elk County	421607	....do	Do.
Chester Hill, borough of, Clearfield County	420299	....do	Do.
Fox, township of, Elk County	421608	....do	Do.
Glenburn, township of, Lackawanna County	421754	....do	Do.
Greene, township of, Franklin County	421649	....do	Do.
Hillsgrove, township of, Sullivan County	422084	....do	Do.
Virginia: Claremont, town of, Surry County	510158	....do	Do.
Region IV			
Tennessee: Jefferson County, unincorporated areas	470097	....do	Do.
Region V			
Ohio:			
Belle Valley, village of, Noble County	390429	....do	Do.
Morgan County, unincorporated areas		....do	Do.
Rutland, village of, Meigs County	390670	....do	Do.
Region VII			
Missouri: Portageville, city of, New Madrid County	290259	....do	Do.
Region X			
Nevada: Nye County, unincorporated areas	320018	....do	Do.

[1] Emergency Program Reinstatement.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein—Reinstatement.

Issued: November 9, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-27285 Filed 11-19-90; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6894]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42

U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 *et seq.*). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended.) This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of Flood Insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region II—Regular Program Conversions				
New York: Evans Mills, village of, Jefferson County	360337	Sept. 18, 1975, Emerg.; Feb. 5, 1986, Reg.; Dec. 5, 1990 Susp.	Dec. 5, 1990	Dec. 5, 1990.
Region III				
Pennsylvania: Wilmore, borough of, Cambria County.	420244	Dec. 8, 1976, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do.
Virginia: New Kent County, unincorporated areas	510306	Aug. 19, 1975, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do.
Smithfield, town of, Isle of Wight County	510081	Sept. 24, 1974, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do.
Region IV				
Florida: Ponce De Leon, city of, Holmes County	120117	Oct. 30, 1975, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do.
Westville, town of, Holmes County	120118	Nov. 14, 1975, Emerg.; June 1, 1987, Reg.; Dec. 5, 1990, Susp.	do	Do.
Georgia: Harris County, unincorporated areas	130336	Dec. 3, 1986, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do.
Troupe County, unincorporated areas	130405	Sept. 19, 1975, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do.
Kentucky: Richmond, city of, Madison County	210157	June 20, 1975, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do.
Tennessee: Blaine, city of, Grainger County	470398	Nov. 26, 1986, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of Flood Insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region V				
Michigan: Chassell, township of, Houghton County	260411	Apr. 13, 1978, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do.
Manistique, city of, Schoolcraft County	260595	Oct. 7, 1976, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do.
Ohio: Putnam County, unincorporated areas	390465	Apr. 18, 1984, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp..	do	Do.
Springdale, city of, Hamilton County	390877	Oct. 1, 1980, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp.	do	Do.
Region VI				
Texas: Hebron, town of, Denton County	481495	Mar. 18, 1986, Emerg.; Dec. 5, 1990, Reg.; Dec. 5, 1990, Susp..	do	Do.
Region I				
Massachusetts: Russell, town of, Hampton County	250148	Aug. 8, 1975, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	Dec. 15, 1990	Dec. 15, 1990.
Region II				
Pennsylvania: Shrewsbury, township of, Lycoming County	421148	Apr. 9, 1974, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Troy, township of, Bradford County	421114	Aug. 22, 1975, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Virginia: King George County, unincorporated areas.	510312	May 16, 1975, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
West Virginia: Hardy County, unincorporated areas	540051	May 16, 1978, Emerg.; June 19, 1985, Reg.; Dec. 15, 1990, Susp.	do	Do.
Moorefield, town of, Hardy County	540052	May 12, 1975, Emerg.; July 1, 1987, Reg.; Dec. 15, 1990, susp.	do	Do.
Region IV				
Florida: Graceville, city of, Jackson County	120127	Apr. 2, 1975, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Jackson County, unincorporated areas	120125	Aug. 18, 1975, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Marianna, city of, Jackson County	120129	May 1, 1987, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Georgia: Buchanan, city of, Haralson County	130336	Apr. 9, 1976, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Carroll County, unincorporated areas	130464	May 28, 1985, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Dawson County, unincorporated areas	130304	Apr. 29, 1985, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Mississippi: Covington County, unincorporated areas.	280291	Aug. 1, 1975, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
South Carlina: Laurens County, unincorporated areas	450125	Dec. 26, 1973, Emerg.; Nov. 2, 1983, Reg.; Dec. 15, 1990, Susp.	do	Do.
Newberry County, unincorporated areas	450224	July 2, 1975, Emerg.; Sept. 17, 1986, Reg.; Dec. 15, 1990, Susp.	do	Do.
Region V				
Michigan: Three Rivers, city of, St. Joseph County	260206	Apr. 28, 1975, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Ohio: Glenmont, Village of, Holmes County	390277	July 6, 1981, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Holmes County, unincorporated areas	390276	Oct. 25, 1977, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Holmesville, village of, Holmes County	390278	June 6, 1975, Emerg.; Sept. 1, 1986, Reg.; Dec. 15, 1990, Susp.	do	Do.
Millerburg, village of, Holmes County	390280	Jan. 31, 1975, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.
Region VI				
Oklahoma: Burlington, town of, Alfalfa County	400005	July 25, 1975, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of Flood Insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Minimal Conversion				
Florida: Malone, town of, Jackson County	120623	Oct. 30, 1984, Emerg.; Dec. 15, 1990, Reg.; Dec. 15, 1990, Susp.	....do....	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: November 8, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-27286 Filed 11-19-90; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6896]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), but will be suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, then the community will not be suspended and the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: As shown in fourth column.

FOR FURTHER INFORMATION CONTACT: Mr. Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street, SW., room 416, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at saving lives and protecting new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the Federal Register that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the NFIP criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt, and submit the required documentation of, legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine whether or not a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator, Federal Insurance Administration, FEMA, finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses on both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and community name	County	Community No.	Effective date
Regular Program Communities			
Colorado:			
Fruita, town of	Mesa	080194	Dec.5, 1990.

State and community name	County	Community No.	Effective date
Delaware:			
Degsboro, town of	Sussex	100033	Do.
Frankford, town of	Sussex	100037	Do.
Frederica, town of	Kent	100009	Do.
Greenwood, town of	Sussex	100039	Do.
Laurel, town of	Sussex	100040	Do.
Leipsic, town of	Kent	100014	Do.
South Carolina:			
Chester County	Unincorporated areas	450047	Dec. 15, 1990.
Columbia, city of	Richland	450172	Do.
Lancaster County	Unincorporated areas	450129	Do.

Issued: November 14, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-27284 Filed 11-19-90; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-17; RM-7113]

Radio Broadcasting Services; Pacific Grove and Soledad, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 286B1 for Channel 285A at Pacific Grove, California, and modifies the license of Station KOCN(FM) to specify operation on the higher powered channel, as requested by C. R. Pasquier Properties, Inc. Also, in order to accommodate the modification at Pacific Grove, Channel 292A is substituted for Channel 287A at Soledad, and the permit issued to Soledad Radio Limited Partnership (File No. BPH-8806020C), is modified accordingly. *See* 55 FR 4632, February 9, 1990. Coordinates for Channel 286B1 at Pacific Grove are 36-30-38 and 121-43-57. Coordinates for Channel 292A at Soledad are 36-22-48 and 121-12-57. With this action, the proceeding is terminated.

EFFECTIVE DATE: December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-17, adopted October 30, 1990, and released November 15, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for California, is amended by removing Channel 285A and adding Channel 286B1 at Pacific Grove, and by removing Channel 287A and adding Channel 292A at Soledad.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27325 Filed 11-19-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-303; RM-7291]

Radio Broadcasting Services; Harlan, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of John Talbott d/b/a KNOD, substitutes Channel 287C3 for Channel 288A at Harlan, Iowa, and modifies the license of Station KNOD(FM) to specify operation on the higher powered channel. See 55 FR 24906, June 19, 1990. Channel 287C3 can be allotted to Harlan in compliance with the Commission's minimum distance separation requirements and can be used at Station KNOD(FM)'s licensed transmitter site. The coordinates for Channel 287C3 are North Latitude 41-37-00 and West Longitude 95-16-10. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-303, adopted October 29, 1990, and released November 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 288A and adding Channel 287C3 at Harlan.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27225 Filed 11-19-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-443; RM-6827]

Radio Broadcasting Services; Lake Arthur, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 297C3 for Channel 297A at Lake Arthur, Louisiana, and modifies the construction permit for Channel 297A to specify operation on Channel 297C3 in response to a petition filed by Jefferson Davis Broadcasting Corporation. See 54 FR 42807, October 18, 1989. The coordinates for Channel 297C3 are 30–07–01 and 92–51–35.

EFFECTIVE DATE: December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–443, adopted October 29, 1990, and released November 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 297A and adding Channel 297C3 at Lake Arthur.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–27226 Filed 11–19–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–317; RM–7312]

Radio Broadcasting Services; Nags Head, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Coastal Radio, Inc., substitutes Channel 223C3 for Channel 222A at Nags Head, North Carolina, and modifies the construction permit of Station WNHW to specify operation on the higher powered channel. See 55 FR 26707, June 29, 1990. Channel 223C3 can be allotted to Nags Head in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.7 kilometers (4.8 miles) south to avoid a short-spacing to Station WYFL, Channel 223C, Henderson, North Carolina. The coordinates for Channel 223C3 at Nags Head are North Latitude 35–53–22 and West Longitude 75–35–54. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 30, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–317, adopted October 30, 1990, and released November 15, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 222A and adding Channel 223C3 at Nags Head.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–27326 Filed 11–19–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–232; RM–7223]

Radio Broadcasting Services; Dickinson, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dickinson Broadcasting Corporation, allots Channel 256C1 to Dickinson, North Dakota, as the community's second local FM service. See 55 FR 21403, May 24, 1990. Channel 256C1 can be allotted to Dickinson in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 256C1 are North Latitude 46–52–48 and West Longitude 102–47–18. Canadian concurrence has been received since Dickinson is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective December 31, 1990; The window period for filing applications will open on January 2, 1991 and close on February 1, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–232, adopted October 31, 1990, and released November 15, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Channel 256C1 at Dickinson.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–27327 Filed 11–19–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–14; RM–7193]

Radio Broadcasting Services; Eldorado and Lawton, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Communicorp, Inc., licensee of Station KQLI(FM), Channel 232A, Lawton, Oklahoma, substitutes Channel 246A for unoccupied and unapplied for Channel 232A at Eldorado, Oklahoma. *See* 55 FR 4207, February 7, 1990. Channel 246A can be allotted to Eldorado in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 246A at Eldorado are North Latitude 34–28–24 and West Longitude 99–38–54. The substitution of channels at Eldorado will enable Station KQLI(FM) to increase power from its present 3 kW to 6 kW. Communicorp's counterproposal to substitute Channel 232C3 for Channel 232A at Lawton, Oklahoma, and the deletion of Channel 232A from Elk City, Oklahoma, was not considered because the petitioner failed to provide an engineering study demonstrating that the channel allotment could be accomplished in compliance with the Commission's minimum distance separation requirements. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–14, adopted October 29, 1990, and released November 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 232A and adding Channel 246A at Eldorado.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–27224 Filed 11–19–90; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 55, No. 224
Tuesday, November 20, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN-90-001]

Amendment to the Regulations Governing the Cotton Research and Promotion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to amend the Rules and Regulations issued under the Cotton Research and Promotion Act and Order regarding the imposition of interest and late payment charges imposed on collecting handlers who fail to remit assessments to the Cotton Board when due and to establish procedures for the publication of the names of collecting handlers who fail to submit collecting handler reports or to remit assessments. Additionally, such publication may include letters to individual producers informing them that the collecting handler has not remitted assessments to the Cotton Board as required.

This amendment would modify the existing procedures under which interest and late payment charges would be imposed on collecting handlers who do not remit assessments to the Cotton Board when due. Handlers who have been sent a second notice of delinquency would be subject to these procedures. Also, this proposed rule would further specify the date from which these charges will be applied. In specifying the conditions under which interest charges and late payments would be applied, this proposal would encourage handlers to remit assessments when due, thereby aiding in the compliance process.

This amendment would also establish procedures for the publication of the names of collecting handlers who fail to submit collecting handler reports or remit the assessments when due. The publication of the names of these collecting handlers would further encourage handlers to remit the assessments and submit the reports to the Cotton Board when due, thereby further aiding in the compliance process.

DATES: Comments to the proposed amendment must be received on or before December 20, 1990.

ADDRESSES: Written comments concerning the proposed rule should be sent in triplicate to: Craig Shackleford, Cotton Division, AMS, USDA, P.O. Box 96456, room 2641-South, Washington, DC 20090-6456. All written comments will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page of the **Federal Register** publication.

FOR FURTHER INFORMATION CONTACT: Craig Shackleford (202) 447-2259.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "non-major" since it does meet the criteria for a major regulatory action as stated in the order.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action would not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed changes would merely: (1) Modify the existing procedures under which interest and late payment charges would be imposed on handlers delinquent in remitting assessments; and (2) allow for publication of the name of any collecting handler who fails to submit collecting handler reports or remit assessments. The proposed changes impose no additional requirements on those regulated under the order.

There would be no change in the reporting or recordkeeping requirements of those subject to the order as a result of this proposed rule.

The information collection requirements contained in the sections of the regulations that would be amended by this proposed rule have been previously approved by the Office of Management and Budget and assigned OMB control number 0581-0115 under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Interest and Penalty Charges

This proposed amendment would amend § 1205.514(d) of 7 CFR part 1205 by specifying the circumstances under which interest and late payment penalties would be charged to collecting handlers who do not remit assessments to the Cotton Board when due and the date from which these charges would be applied. Handlers delinquent in remitting assessments would be charged interest on these assessments at a rate prescribed by the Cotton Board with the approval of the Secretary if the handler is sent a second certified mail notice of past-due assessments from the Cotton Board in any one marketing year (August 1-July 31). Late payment charges would be imposed on collecting handlers who do not remit the assessments on which interest is being charged within 10 days after the close of the next reporting period. Both interest and late payment charges would be applied from the first working day on or following the 20th day of the month in which the assessments were due.

The proposed change specifies the condition that allow for the imposition of interest and late payment charges. The amendment would impose these charges on collecting handlers who have been sent two notices that they have failed to remit assessments when due.

Publication of Handlers Names Who Fail to Remit Assessments and Submit Reports

The amendment would also add to § 1205.515 of 7 CFR part 1205 criteria for publication of the names (including location) of collecting handlers who fail to submit collecting handler reports or remit assessments and would describe procedures for the publication of these names. Additionally, the Cotton Board would notify producers that their assessments have not been remitted by the collecting handler to the Cotton Board as required. The names of collecting handlers who: (1) Receive a second certified mail notice of past-due assessments from the Cotton Board in any one marketing year (August 1-July 31); or (2) are required by the Cotton Board to establish an escrow account for depositing assessments due to previous failures to remit assessments when due and do not comply with the deposit and withdrawal procedures established by the Cotton Board with the approval of the Secretary; are subject to the publication and notification procedures.

It is intended that collecting handlers subject to publication would be notified by the Cotton Board that they are so subject prior to their names being published. The names of all collecting handlers who are determined to be subject to publication would be published in a monthly listing during the primary cotton marketing season (September through March) and a bi-monthly listing during the remainder of the year by the Cotton Board with the approval of the Secretary. The published listing also would be distributed by the Cotton Board to all agricultural trade associations and publications included on a list supplied by the Cotton Board and approved by the Secretary.

Also, it is proposed that the authority citation be revised for clarity.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1205 be amended as follows:

1. The authority citation for part 1205 is revised to read as follows:

Authority: 7 U.S.C. 2101-2118.

2. In § 1205.514, paragraph (d) is revised to read as follows:

§ 1205.514 Reports and remittance to the Cotton Board.

* * * * *

(d) *Interest and late payment charges.* (1) There shall be an interest charge, at rates prescribed by the Cotton Board with the approval of the Secretary, on any handler who: is sent a second certified mail notice of past-due assessments from the Cotton Board in any one marketing year (August 1-July 31).

(2) In addition to the interest charge specified in paragraph (d)(1) of this section, there shall be a late payment charge on any handler whose remittance has not been received by the Cotton Board within 10 days after the close of the reporting period in which interest charges were first accrued. The late payment charge shall be 5 percent of the unpaid balance before interest charges have accrued.

(3) The interest and late payment charges on the unremitted assessments for a particular reporting period will be applied from the first working day on or following the 20th day of the month in which the assessments were due.

3. In § 1205.515 paragraph (d) is added to read as follows:

§ 1205.515 Failure to report and remit.

* * * * *

(d) Publication of a collecting handler's name in accordance with the following provisions:

(1) The name of any collecting handler will be subject to publication if the collecting handler:

(i) Is sent two certified mail notices of past due assessments and/or collecting handler reports from the Cotton Board in any one marketing year (August 1-July 31), or

(ii) is required by the Cotton Board to establish an escrow account for depositing assessments, in accordance with paragraph (b) of this section, and does not comply with the deposit precedures established by the Cotton Board with approval of the Secretary.

(2) The names of any collecting handler who is subject to publication will be published by the Cotton Board with the approval of the Secretary in a monthly listing during the primary cotton marking season (September through March) and a bimonthly listing during the remainder of the year. The published listing will be distributed by the Cotton Board.

(3) The Cotton Board, with approval of the Secretary, may notify individual producers that the assessments collected by such producer's collecting handler, whose name is subject to publication in accordance with the provisions of paragraph (d)(1)(i) of this section, have not been remitted to the Cotton Board as required.

Dated: November 14, 1990.

Daniel Haley,

Administrator.

[FR Doc. 90-27206 Filed 11-19-90; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-214-AD]

Airworthiness Directives; Boeing Model 747-200, 747-300, and 747-400 Series Airplanes Equipped With General Electric CF6-80C2 PMC and CF6-80C2 FADEC Engines, and Pratt and Whitney PW4000 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747-200, 747-300, and 747-400 series airplanes, which would require inspection of each outboard engine fuel feed line in the engine strut to determine if interference with an adjacent pneumatic duct clamp has caused damage, and, if necessary, repair or replacement of the fuel feed tube. In addition, this proposal would require inspection and replacement of the adjacent pneumatic duct clamp with a non-rotating type clamp if a non-rotating clamp is not already installed. This proposal is prompted by reports of a fuel leak in the number 4 engine strut, due to a punctured fuel feed line that had chafed as a result of contact with the clamp. This condition, if not corrected, could result in an engine fire.

DATES: Comments must be received no later than January 10, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-214-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2686. Mailing address: FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-214-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

An operator of a Boeing Model 747 series airplane reported a fuel leak in the number 4 engine strut. Investigation of the fuel leak revealed that the leak was caused by a punctured fuel feed tube. The fuel tube was punctured as a result of chafing with the clamp, which is used to connect the flap drive duct to the pneumatic duct in the number 4 strut upper gap area. The investigation also disclosed that the tube retainer clamp for the flap drive duct could rotate around the flange and allow the screw to ride and chafe the fuel tube. Because of a similar design configuration, this same condition could possibly exist in the number 1 engine strut gap area. This condition, if not corrected, could result in an engine fire.

The FAA has reviewed and approved Boeing Service Bulletin 747-36A2097, dated August 16, 1990, which provides instructions for inspecting and replacing the fuel tube and installing non-rotating clamps.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection of the upper gap area in engine strut numbers 1 and 4, and if necessary, repair or replacement of the fuel tube, in accordance with the service bulletin previously described. Installation of non-rotating clamps, if not installed, is also required.

There are approximately 42 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 9 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Parts will be provided at no cost by the manufacturer. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,160.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, equipped with General Electric CF6-80C2 PMC and CF6-80C2 FADEC engines, and Pratt and Whitney PW4000 Engines, as listed in Boeing Service Bulletin 747-36A2097, dated August 16, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To eliminate the potential of an engine fire due to a punctured fuel feed line, accomplish the following:

A. Within the next 60 days or 450 hours time-in-service after the effective date of this AD, whichever occurs first, inspect the upper gap area in the engine strut numbers 1 and 4 to determine if interface with the adjacent pneumatic duct clamp has caused damage to the fuel feed tube, such as chafing or punctures. If any such damage is found, prior to further flight, repair or replace the fuel tube. If a non-rotating clamp is not installed, prior to further flight, install a non-rotating clamp one inch from the existing stationary clamp in accordance with Boeing Service Bulletin 747-36A2097, dated August 16, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 7, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27269 Filed 11-19-90; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 110

[CGD8-89-12]

Anchorage Grounds; Lower Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; Withdrawal.

SUMMARY: The Coast Guard is withdrawing proposed rules for establishment of an anchorage area on the lower Mississippi River near the Belmont Crossing. The proposal is being withdrawn because there is no systematic evidence available indicating that the current anchorage inventory is inadequate. There was also significant adverse public comment to the proposal.

FOR FURTHER INFORMATION CONTACT: LCDR E. N. FUNK, Project Officer, c/o Commander (oan), Eighth Coast Guard District, Hale Boggs Federal Building, room 1209, 501 Magazine Street, New Orleans, LA 70130-3396, (504) 589-4686.

SUPPLEMENTARY INFORMATION: A temporary anchorage was established at the Belmont Crossing in April, 1982. Following a one year evaluation period a notice of proposed rulemaking to establish a permanent deep draft anchorage was published on April 11, 1983, and subsequently withdrawn on September 22, 1983, for lack of compelling need. The withdrawal statement noted that the proposed anchorage could be reconsidered in the future should a need for additional anchorages develop.

The U.S. Army Corps of Engineers is responsible for Mississippi River bank and levee stabilization projects. Revetment by placing articulated concrete mats on the river banks is a common method of stabilization. Ships are prohibited from anchoring directly over revetted areas. The proposed anchorage area near the Belmont Crossing is the only area above New Orleans which would not require additional revetment in the next four years and which is of sufficient depth to accommodate deep draft ships at anchor.

According to Corps of Engineers waterborne commerce statistics, tonnage shipped to or from facilities located between miles 168-253 Above Head of Passes increased 7% from 1987 to 1988. During the same period, the number of all self-propelled ships calling at ports in that area decreased by 6%.

On November 7, 1989, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (54 FR 46736). Interested persons were requested to submit comments. The public comment period was extended twice, (55 FR 1679 and 55 FR 29837), and ended on August 31, 1990. A public hearing was advertised (55 FR 13917) and held in the St. James Parish, LA, Courthouse on May 3, 1990. The majority of comments received were in opposition to the anchorage, centering on perceived adverse impact to the local environment.

As published on November 7, 1989, the proposed anchorage was described as along the Left Descending Bank, mile 153.3 to mile 155.5 Above Head Of Passes (AHOP), Lower Mississippi River (LMR). From mile 153.3 to mile 154.5 AHOP it would have a 700 foot width measured 100 feet from the riverward edge of the Belmont Revetment located 300 feet from the Low Water Reference Plane (LWRP). From mile 154.5 to mile 155.5 the anchorage was to have a width of 1100 feet as measured from the LWRP. Based on navigation safety concerns of marine interests, the proposal was modified to locate the anchorage farther from the navigation channel. As published on April 13, 1990, the limits of the anchorage were changed to mile 153.3 to mile 154.7 AHOP along the Left Descending Bank LMR. From mile 153.3 to mile 154.5 it would have a width of 700 feet measured 100 feet riverward of the Belmont Revetment. From mile 154.5 to mile 154.7 the anchorage would have a width of 700 feet measured from the LWRP.

The Coast Guard received voluminous comments on the proposed anchorage, the overwhelming amount of which were negative. A significant portion of the commentary addresses environmental concerns from Manresa House, a religious retreat house, and Oak Alley, a historic plantation mansion. In the case of the commentary from Oak Alley, it should be noted that numerous comments were manufactured from visitors to the historic house, encouraged to do so in campaign form on literature available to visitors touring the facility. The Coast Guard does not agree with the conclusions reached by those with environmental concerns. In fact, the situation with respect to those concerns is not materially different from the 1982-3 experience. The two midstreaming operations located about one mile upriver which were identified as producing distracting noise are still in operation.

This proposal is being withdrawn primarily because information on the utilization of existing anchorages did not indicate they were being used to capacity. Further, no management scheme exists to actively manage the anchorages, nor is there even data collected that would facilitate such management. The Coast Guard is now working with the New Orleans Board of Trade to study potential anchorage management systems and to improve information collection. That effort will extend to encouraging better operations management at shoreside facilities in order to reduce the uncertainty associated with the length of time ships remain at anchor. The proposed New Orleans Vessel Traffic Service, if reestablished, could facilitate anchorage management and information collection.

An environmental assessment checklist completed by the Coast Guard indicated that an Environmental Impact Statement (EIS) would be required to proceed with establishment of the anchorage. Preparation of the EIS was expected to cost $250,000 and take 18 months to complete. Given the lack of comprehensive data on anchorage utilization, it would be premature to commit time and money to the effort.

The Coast Guard will discuss revetment-anchorage conflict with the Corps of Engineers. Alternative methods of revetment or alternative methods of mooring ships might be feasible.

Drafting Information

The drafters of these regulations are LCDR E. N. FUNK, project officer, Aids to Navigation Branch, and LT J. A. WILSON, project attorney, Eighth Coast Guard District Legal Office.

Discussion of Comments

A total of 227 written comments were received; 9 in favor of the anchorage, 212 opposed, and 6 neutral.

Three written comments in favor of the anchorage cited navigation safety concerns; three cited improved facilitation of commerce, more efficient use of the waterway and more efficient use of bulk commodity facilities; and three cited the perceived lack of anchorage space.

The neutral comments were requests to consider various information such as potential effects of the anchorage on the flood plain, tourism, etc.

Of the written comments opposed to the anchorage, 108 were essentially form letters similar to the one originating from Oak Alley. Elementary school students who visited Oak Alley on a field trip submitted 63 negative letters. Of the remaining 41 negative written comments, 23 addressed perceived adverse impact on the Oak Alley plantation (including visual distraction, noise, light, water and air pollution); 7 cited concern for the impact on tourism in general; 4 expressed concern for perceived increases in crime and vehicular traffic; 3 expressed concern about increased noise; 3 commented on perceived degradation of navigation safety; and 1 opposed the anchorage because the commenter felt that an anchorage would preclude further commercial development of the land adjacent to the anchorage.

During the public hearing, 22 people made statements; 19 were opposed and 3 were in favor of the anchorage. Eleven people cited perceived increases in pollution in their statements; 9 referred to potential noise pollution; 4 speakers mentioned concerns about increased crime; 3 felt that bank erosion would increase; 2 were opposed to any development along the river; 2 expressed concern for increased vibration; 2 were opposed, but gave no specific reasons; and 1 cited perceived increases in vehicular traffic.

All 3 speaking in favor of the anchorage cited enhanced navigation safety and 2 mentioned increased competitiveness of Mississippi River ports and the potential loss of trade.

The Coast Guard does not agree with the conclusions reached by those expressing environmental concerns. The

Coast Guard does not think the situation is materially different from that of 1982-3, but the Coast Guard realizes that an Environmental Impact Statement (EIS) will be required to proceed. Given the lack of comprehensive data on anchorage utilization, the Coast Guard will not commit time and money to the EIS effort at this time.

Notice of proposed rulemaking CGD8-89-12 is withdrawn. No further rulemaking of this subject is under consideration, however the matter may be reopened should the need for additional anchorages be clearly demonstrated in the future.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Dated: November 8, 1990.

J.M. Loy,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 90-27254 Filed 11-19-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3861-6]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Revised Regulations for Controlling Volatile Organic Compound Emissions and Adoption of a Continuous Emissions Monitoring Regulation

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Rhode Island. These revisions consist of revised volatile organic compound (VOC) emissions regulations applicable in the entire State of Rhode Island and a regulation for continuous emissions monitoring (CEM). The intended effect of this action is to propose approval of Rhode Island's revised VOC regulations to make amendments to Rhode Island's Ozone Attainment Plan and to fulfill commitments to adopt a CEM regulation. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before December 20, 1990. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection by appointment during normal business hours at the U.S. Environmental Protection Agency, Region I, One Congress Street, Tenth Floor, Boston, MA and the Division of Air and Hazardous Materials, Department of Environmental Protection, 291 Promenade Street, Providence, RI 02908.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 565-3248; FTS 835-3248.

SUPPLEMENTARY INFORMATION: On November 3, 1989, November 21, 1989, February 1, 1990, and September 19, 1990, the Rhode Island Department of Environmental Management (DEM) submitted revisions to its SIP. The revisions consist of revised VOC emissions regulations and a revised regulation requiring CEM.

Background

In the **Federal Register** on November 24, 1987, EPA's Proposed Post-1987 Policy for Ozone and Carbon Monoxide stated that air quality monitors revealed continued exceedances of the ozone standard in Rhode Island and that a SIP call would be issued. (See 52 FR 45044.) A SIP call is a finding by EPA under Clean Air Act section 110(a)(2)(H) that the SIP does not provide for attainment by the required date, and thus amounts to a revocation (for certain purposes) of EPA's approval of the SIP and the attainment demonstration. Since publishing this notice, the review of data from air quality monitors in the State has revealed additional exceedances of the standard during 1987, 1988, and 1989. On May 25, 1988, EPA sent a letter to Edward DiPrete, Governor of Rhode Island, pursuant to section 110(a)(2)(H) of the Clean Air Act as amended, notifying him that the Rhode Island SIP was substantially inadequate to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the entire state. EPA requested the State to respond to the SIP call in two phases—the first in the near future and the second following EPA's issuance of a final policy on how the States should correct their SIPs. The first phase of the response to the SIP call consists of (1) correcting identified deficiencies in the existing SIP's VOC regulations, (2) adopting VOC regulations previously required or committed to but never adopted, and (3) updating the area's base year emissions inventory.

On June 16, 1988, EPA sent a letter to the Chief of the Rhode Island Department of Environmental Management's (DEM) Division of Air and Hazardous Materials outlining the changes that needed to be made to Rhode Island's existing VOC regulations to make them consistent with EPA national guidance. On November 3, 1989, November 21, 1989, February 1, 1990, and September 19, 1990, the Rhode Island DEM submitted revised VOC regulations in response to EPA's May 25 and June 16, 1988 letters.

Additionally, the State of Rhode Island adopted a CEM regulation consistent with 40 CFR 51.214 and part 51, appendix P. The CEM regulation was adopted pursuant to an EPA requirement that CEM be installed on certain sources as outlined in appendix P. A complete discussion of all of EPA's requirements and Rhode Island's Regulations is available in the Technical Support Document prepared for this revision.

Finally, Rhode Island requested that EPA approve versions of the regulations that were not explicitly approved by their Secretary of State. The difference between the version approved by the Secretary of State and version the DEM has requested that EPA approve is that the former regulates compounds which EPA has exempted from control because of negligible photochemical reactivity. EPA will not approve regulation of these negligibly reactive compounds as part of the SIP. Rhode Island's intentions were clearly explained in the cover letter submitting its SIP proposal to EPA and, in all cases, Rhode Island's adopted version of the regulations is as stringent as EPA's requirements. However, EPA can not approve the version of the regulation which was not officially adopted by the State. Therefore, EPA proposes to act on those portions of the adopted version of the State regulations which are approvable. EPA will take no action on the sections of the regulations which the DEM clearly did not intend to submit for EPA approval.

Content of Regulations

Revised VOC Regulations

The Rhode Island DEM made the following changes to VOC Regulation Numbers 11, 15, 18, 19, and 21:

1. The applicability levels of Rhode Island's "bulk gasoline terminal" regulation and "bulk gasoline plant" regulation which are found at 11.3 and 11.4, respectively were changed such that they are now based on a 30-day rolling average. In addition, the bulk gasoline terminal regulation now states that once a loading rack exceeds the applicability cutoff of 20,000 gallons per day, it will always be subject to the 80 grams per 1000 liters of liquid loaded emission limitation. Correspondingly, the "bulk plant" regulation now states that once a loading rack exceeds 4000 gallons per day, it will always be subject to the bulk plant requirements.

2. The applicability level of Rhode Island's "Service stations—Stage I" regulation (subsection 11.5) was changed such that it is based on a rolling 30-day throughput. Any request for exemption must have been made no later than May 1, 1981.

3. The applicability of the surface coating regulations for paper, fabric, and vinyl in Regulation 19, the graphic arts Regulation Number 21, and 100 ton per year non-CTG Regulation Number 15.5 were changed such that facilities are now subject to emission limitations representative of RACT if facility-wide emissions have or ever had the potential to emit 100 tons per year of VOC. Rhode Island's previous Ozone Attainment Plan demonstrated attainment by December 31, 1982. EPA policy required that only these larger facilities be controlled in such an area. Facilities whose actual emissions have always been below 100 tons per year may be eligible for a permit restricting their emissions to below 100 tons per year in an enforceable document.

4. The emission limitations in Regulation Number 19 were changed to list limits in "pounds of VOC per gallon of coating (minus water)" and in "pounds of VOC per gallon of solids."

5. Rhode Island's generic bubble rules in 15.4, 19.4, and 21.5 were revised such that all of the applicable requirements of EPA's Emission Tracing Policy (51 FR 43814) are met. Rhode Island will not issue any bubbles while the State is a nonattainment area lacking an approved demonstration of attainment for ozone.

Further, Regulation 15.4.1(d) contains an allowable emissions formula for emission trades structured around the premise that an emission limitation be based on a unit of production. Subsection 15.3, however, requires an 85 percent control requirement for certain facilities using a "highly photochemically reactive VOC," an emission limit not expressed in units of production. EPA understands that sources subject to a percent reduction reqirement, such as under Regulation 15.3, are not eligible for an emissions trade. Additionally, EPA understands that allowable emissions, as determined by subsection 15.4.1(d), must be recalculated daily based on that day's number of units actually processed, and the appropriate emission limitation, to determine whether allowable emissions were less than actual emissions (and in violation) under the bubble for that day. EPA will enforce this regulation according to these interpretations, and EPA proposes to approve this provision conditioned on the understanding that Rhode Island's DEM will do the same.

6. The following terms were either defined or the definition of the term was revised to reflect current EPA guidance: daily throughput, best extent possible, volatile organic compound, potential emissions, emission baseline, enforceable document, person, equivalent control, and refrigerated chiller.

7. Rhode Island's regulations were changed such that the appropriate compliance averaging periods for the following emission limitations and/or requirements are now stated: (a) The "80 grams per 1000 liters of liquid loaded" limit for bulk gasoline terminals; (b) the emission reduction and capture efficiency requirements for add-on control equipment on printing equipment at graphic arts facilities; and (c) the emission reduction and capture efficiency requirements for surface coating sources using add-on control equipment.

8. Recordkeeping requirements were adopted or revised for surface coating sources, graphic arts facilities, fixed and external floating roof tanks, tank trucks used for gasoline marketing, bulk gasoline terminals and plants, degreasers, and gasoline service stations.

9. Rhode Island's tank Truck Certification program was revised to be consistent with all EPA requirements for the source category. Requirements of the program were not part of Regulation Number 11, and are not listed in 11.8.

10. Continuous monitoring requirements were adopted for major stationary sources using terminal incenerators, catalytic incinerators, condensers or refrigeration systems, or carbon adsorbers.

11. The most current EPA-approved VOC test methods were incorporated into the regulations for determining the VOC content of surface coatings and inks, the reduction efficiency of add-on control devices, the total seal gap for floating roofs, leak tightness, the efficiency of control devices at bulk gasoline terminals, and leaks from gasoline tank trucks. Furthermore, Rhode Island has committed to adopt EPA approved test methods or guidance for the determination of capture efficiency into its appropriate regulations, when available.

12. The following existing exemptions and/or variances have been changed as noted: (a) Alternative methods of control for fixed roof tanks (Regulation 11.2) now require at least a 95 percent efficiency without requiring EPA approval; (b) Any use of alternative methods of control at service stations (Regulation 11.5) or external floating roof tanks (Regulation 11.6) requires EPA approval as a SIP revision; (c) variance provisions for non-CTG RACT determinations (Regulation 15) were eliminated; (d) "equivalent control" (Regulation 18.1.9) was defined for degreasers such that EPA and DEM approval is required for any alternative methods of control; and (e) compliance date extensions and/or alternative emission limitations for either paper, vinyl, or fabric coaters (Regulation 19.3); or graphic arts facilities (Regulation 21.4) require EPA aproval as a SIP revision.

13. Miscellaneous provisions of EPA's model regulations (i.e., EPA-905/2-78-001 and EPA-450/2-79-004) for the Group I and II control techniques guidance (CTG) documents were added to the following regulations: (a) The storage of petroleum liquids in fixed roof tanks; (b) bulk gasoline terminals; (c) external floating roof tanks; (d) tank truck certification for leak tightness and (e) organic solvent metal cleaning.

14. Subsection 21.5.2(h) describes how allowable emissions are to be determined in an emissions trade for graphic arts sources. A formula to determine allowable emissions in an emissions trade is included and reads, in part, "* * * An = the applicable emission limit equivalent to 0.5 pounds of VOC/pound of solids applied) * * *" (emphasis added). Some courts have interpreted SIP's allowing for "equivalent" emission limits to permit the source and state more flexibility in restructuring emission limits than Rhode Island have intended. Although the term "equivalent to" in subsection 21.5.2(h) is not the same as the provisions those courts interpreted, EPA and DEM wish to avoid any possible confusion about the application of this provision in the SIP. For this reason, Rhode Island submitted an amendment to its SIP submittal dated September 19, 1990 which requests that the term "equivalent to" not be considered part of the submittal. Consequently, the version of Regulation 21 which EPA is proposing to approve does not include "equivalent

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to." By removing "equivalent to," the parenthetical simply reads "the applicable emission (0.5 pounds of VOC/pound of solids applied) * * *," which eliminates any potential confusion for the regulated community.

An issue associated with these revisions regards subsection 19.3.2(a). Subsection 19.3.2(a) may allow paper, fabric, or vinyl surface coating sources to come into compliance with RACT by reducing their emissions with add-on control equipment by 85 percent regardless whether the reduction complies with the emission limits of 2.9 pounds of VOC/gallon of coating (minus water) or 3.8 pounds of VOC/gallon of coating (minus water), as appropriate. This was not the DEM's intention. Subsequently, DEM withdrew this subsection from Rhode Island's SIP revision in a letter dated February 1, 1990. Additionally, the DEM has committed to revising this section of the regulation to avoid any confusion created by differing state and federal regulatory language.

CEM Regulation

Regulation Number 6 was revised to require that stationary sources as specified in title 40 of the Code of Federal Regulations (CFR) part 51, appendix P, parts 1–5, as amended shall install, calibrate, operate, and maintain a continuous emission monitoring system in accordance with all requirements set forth or referenced therein. Rhode Island adopted these requirements to fulfill a commitment to require monitoring for these sources.

EPA's review of the SIP submittal indicates that Rhode Island has addressed all of the necessary regulatory amendments in the existing VOC regulations as identified by EPA. EPA is proposing to approve the Rhode Island SIP revisions containing the revised VOC regulations in Rhode Island's Air Pollution Control Regulations Number 11, 15, 18, 19, and 21, which were submitted on November 3, 1989, November 21, 1989, February 1, 1990 and September 19, 1990. EPA is taking no action on those portions of the DEM regulations that include negligibly photochemically reactive VOCs. Additionally, EPA is proposing to approve amendments to Air Pollution Control Regulations Number 6 which now contain requirements for CEM, also included in the above submittals. For additional details on the approvability of each portion of Rhode Island's regulations, see the Technical Support Document prepared on the revision available at the locations listed in the **ADDRESSES** section of this notice. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters.

These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the **ADDRESSES** section of this notice.

Proposed Action

EPA is proposing to approve the SIP revision submitted by Rhode Island on November 3, 1989, November 21, 1989, February 1, 1990, and September 19, 1990. These revisions amend Rhode Island's VOC regulations as part of Rhode Island's Ozone Attainment Plan and adopt requirements for continuous emissions monitoring.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant impact on a substantial number of small entities. (See 46 FR 8709).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as a permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: November 11, 1990.

Julie Belaga,

Regional Administrator, Region I.

[FR Doc. 90–27304 Filed 11–19–90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW–FRL–3862–4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Denial

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to deny a petition submitted by Quanex Corporation (Quanex), South Lyon, Michigan, to exclude certain liquid waste generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until January 4, 1991. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision and/or the model used in the petition evaluation by filing a request with the Director, Characterization and Assessment Division, whose address appears below, by December 5, 1990. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS–305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Waste Identification Branch, CAD/OSW (OS–333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–90–QXDP–FFFFF".

Requests for a hearing should be addressed to the Director, Characterization and Assessment Division, Office of Solid Waste (OS–330), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., (room M2427), Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4782.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities to do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes are also considered hazardous wastes. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standards for "delisting" a treatment residue or a mixture are the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

This petition requests a delisting for a listed hazardous waste. In making the initial delisting termination, the Agency evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). EPA also evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and other additional factors which may characterize the petitioned waste (*e.g.*, the impact of the disposal of the petitioned waste on ground-water quality). Based on this review, the Agency disagrees with the petitioner's claim that the waste is non-hazardous. As a result, EPA today is proposing to deny the petition.

For this delisting demonstration, the Agency identified plausible exposure routes for hazardous constituents present in the waste, and is proposing to use a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of Quanex's petitioned waste on human health and the environment. Specifically, the model was used to predict compliance-point concentrations which were then compared directly to the levels of regulatory concerns for particular hazardous constituents.

EPA believes that this fate and transport model represents a reasonable worst-case disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the acquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very

different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that, because Quanex is seeking a delisting for waste managed on site in surface impoundments subject to the RCRA ground-water monitoring regulations, ground-water data collected from the area where the petitioned waste is contained are necessary to determine whether hazardous constituents have migrated to ground water. EPA recently proposed a rule clarifying the Agency's use of ground-water data in delisting decisions (*see* 54 FR 41930, October 12, 1989). Ground-water monitoring data collected from Quanex's monitoring wells helps characterize the impact (if any) of the disposal of Quanex's waste on ground-water quality.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

A. Quanex Corp., South Lyon, MI

1. Petition for Exclusion

Quanex Corporation (Quanex), located in South Lyon, Michigan, is engaged in the manufacture of seamless tubing for various industries. Quanex petitioned the Agency to exclude the liquid effluent discharged to and contained in two on-site surface impoundments, presently listed as EPA Hazardous Waste No. K062—"Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332)". The listed constituents for EPA Hazardous Waste No. K062 are hexavalent chromium and lead (*see* 40 CFR part 261, appendix VII).

The spent pickle liquor generated by Quanex's process is sent to its treatment plant and neutralized with lime prior to being sent to the surface impoundments. On June 5, 1984, the sludge portion of the lime-treated waste was excluded from hazardous waste regulation under 40 CFR 261.3(c)(2)(ii)(A). See 49 FR 23284. Specifically, this exemption includes sludges generated by the lime neutralization of spent pickle liquor from the iron and steel industry (K062) unless the sludge exhibits one or more of the characteristics of a hazardous waste. The Agency promulgated this exemption after determining that lime neutralization of such spent pickle liquor, when properly conducted, consistently generates a sludge waste that does not meet the criteria of the original listing. The remaining liquid portion of the lime-treated waste, hereafter referred to as the petitioned effluent, is a hazardous waste and is the subject of Quanex's petition.

Quanex petitioned to exclude its waste because it does not believe that the waste meets the criteria of the listing. Quanex claims that the effluent is not hazardous because the constituents of concern remain in insignificant concentrations following treatment of the spent pickle liquor with lime. Quanex also believes that the waste is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to deny this petition for exclusion is the result of the Agency's evaluation of Quanex's petition.

2. Background

Quanex petitioned the Agency to exclude its waste on February 5, 1986 and subsequently provided additional information. In support of its petition, Quanex submitted (1) Detailed descriptions of its manufacturing process, including schematic diagrams; (2) total constituent data for the EP toxic metals, nickel, and cyanide for representative waste samples; (3) total oil and grease analysis data for representative waste samples; and (4) test data and explanations regarding the characteristics of ignitability, corrosivity, and reactivity.

Quanex's seamless steel tubing manufacture process involves the heating of solid cylindrical bars of steel, piercing the steel bars over a point to produce a hollow shell, cooling the shells, cleaning the shells with dilute sulfuric acid to remove any surface scale (iron oxide), rinsing to remove acid residue, sizing the steel tubes, rinsing with water, and drying. The sizing of the tubes involves immersing the tubes in sulfuric acid; rinsing with water; cleaning the surface with zinc phosphate solution; coating the tubes with sodium stearate, a lubricant; and cold drawing the tubes to reduce the diameter and the wall to size. The cleaning, lubrication, and cold drawing steps are repeated until the specified size is achieved. Quanex claims that 85 percent of the tubing produced at the South Lyon facility is manufactured from carbon or alloy steel and only 15 percent is manufactured from specialty steel.

The spent pickle liquor and the associated rinse waters are sent to Quanex's wastewater treatment facility and neutralized by the addition of a lime slurry. The lime treatment of the spent pickle liquor is achieved using an automated system which monitors the pH level of the liquid. Compressed air is bubbled through the waste to promote oxidation and motorized rotary blades facilitate rapid mixing. The lime-treated waste is discharged to the first of two surface impoundments (in series). The retention time of the effluent in the surface impoundments is estimated by Quanex to be 2.2 days. The impoundment overflow is discharged from the second surface impoundment to the Yerkes Drain under a National Pollutant Discharge Elimination System (NPDES) permit. The non-hazardous sludge that settles out is removed periodically (usually annually) from the impoundments and sent to one of two drying beds.

For waste treatment units like Quanex's surface impoundments, petitioners are usually requested to divide each unit into quadrants and randomly collect five full-depth core samples from each quadrant. The five full-depth core samples are then composited (mixed) by quadrant to produce composite samples. See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste (EPA/530–SW–85–003), April 1985. Quanex, however, chose to modify these sampling procedures because the petitioned waste is a liquid and, thus, the composition of the waste is less likely to exhibit spatial variation.

In February 1986, Quanex submitted analytical data for samples of the petitioned effluent collected using a two-phase approach. During Phase I, Quanex collected four grab samples of the petitioned effluent at various points during the treatment of separate batch dumps of two wastes. Specifically, samples were collected of the petitioned effluent (1) Prior to each batch dump, (2) after each batch dump, (3) at the midpoint of treatment of each batch dump, and (4) at the end of treatment. A total of eight grab samples of the petitioned effluent were collected in Phase I, four for each batch treated. In Phase II, Quanex sampled the petitioned effluent during production and non-production shifts using a two-step process: (1) A grab sample was collected at the beginning of the day to represent non-production conditions; and (2) grab samples were collected every thirty minutes during production hours and composited daily. Quanex repeated both steps of the Phase II procedure every day for a ten-day period. Ten grab samples and ten composite samples were collected from Phase II of Quanex's sampling procedure. All samples were collected at the point of discharge into the first surface impoundment and were not filtered. All samples were preserved with nitric acid.

Quanex analyzed the eighteen grab samples and ten composite samples for the total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste) of the EP toxic metals and nickel. Quanex also analyzed the ten grab samples and ten composite samples from Phase II for total oil and grease content and total cyanide.

In November 1986, Quanex submitted additional sampling and analysis data for the petitioned waste. Quanex re-sampled the petitioned waste using the procedures followed in Phase II of the previously described sampling event. Quanex repeated both steps of this procedure every day for ten-day period in August 1986. (The tenth grab sample was collected in September 1986.) All samples were again collected at the point of discharge into the first surface impoundment. However, in this second sampling event all samples were field filtered (0.45 microns) before being preserved with nitric acid. Quanex filtered these samples because it believed that the sampling data submitted in February 1986 reflected the presence of the previously exempt sludge which might be redissolved by the nitric acid preservative. Quanex analyzed the ten grab samples and ten composite samples collected in August/September 1986 for the total constituent concentrations of the EP toxic metals and nickel.

Although the Agency agreed to the use of the 0.45 micron filter, the Agency now questions if the filter might have removed particles which were suspended in the petitioned waste. The Agency believes that, because Quanex petitioned the Agency to exclude the liquid effluent discharged to its on-site surface impoundments, Quanex's petition should have characterized this waste in its "to be disposed" state. At the point of discharge, Quanex's liquid effluent still contains suspended solids. In accordance with 40 CFR 260.22(b), a facility seeking an exclusion for a waste that is a mixture of solid and listed hazardous wastes must demonstrate that the waste is not hazardous with respect to the waste mixture as a whole. Therefore, because Quanex's liquid effluent is a mixture of a solid waste (*i.e.*, the sludge generated by the lime neutralization of spent pickle liquor) and a listed hazardous waste (*i.e.*, the spent pickle liquor), the Agency does not believe that it is appropriate for Quanex to "remove" the solids portion of the waste before analysis. By filtering the waste, Quanex has neglected to characterize the solid waste portion of the liquid effluent as required under 40 CFR 260.22(b). Further, although the solids portion of Quanex's liquid effluent settled out in the on-site surface impoundments in the past, if delisted, Quanex may not choose to discharge the liquid effluent to its on-site surface impoundments (*i.e.*, Quanex might dispose of the liquid effluent in a manner which would not include solids removal). For these reasons, both filtered and unfiltered data have been considered in today's notice.

During the review of the petition, the Agency obtained ground-water monitoring information relevant to the surface impoundments from the Michigan Department of Natural Resources and EPA Region V authorities. The ground-water monitoring information received included: (1) Well location information; (2) boring logs and well construction information; (3) water levels and water level contour maps; and (4) results of the analysis of ground-water samples.

3. Agency Analysis

Quanex used "Methods for Chemical Analysis of Water and Wastes (MCAWW)" Methods 206.2–272.1 and 335.3 to quantify the total constituent concentrations of the EP toxic metals, nickel, and cyanide in the February 1986 samples of the petitioned waste. Quanex used SW–846 Methods 7061–7950 to quantify the total constituent concentrations of the EP toxic metals and nickel in the November 1986 samples of the petitioned waste. Samples of the petitioned waste were analyzed only for total constituent concentrations because the waste is a liquid. For liquid wastes, the extraction procedure (EP) leachate concentration (*i.e.*, mass of a particular constituent per unit volume of extract) is considered equivalent to the total concentration.

Table 1 presents the maximum total constituent concentrations of the EP toxic metals, nickel, and cyanide from the unfiltered and filtered samples of the petitioned effluent (the February and November 1986 samples, respectively).

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (PPM) PETITIONED EFFLUENT

Constituents	Total Constituent Analyses	
	Unfiltered samples	Filtered samples
Arsenic	0.04	0.006fi
Barium	3.0	1.1
Cadmium	<0.01	0.02
Chromium	4.6	<0.05
Lead	<0.05	<0.05
Mercury	0.0016	0.0016
Nickel	3.2	0.18
Selenium	1.1	<0.005
Silver	0.04	0.03
Cyanide	0.04	NA

< Denotes that the constituent was not detected at the detection limit specified in the table.
NA: The filtered samples were not analyzed for cyanide.

The detection limits presented in Table 1 are sufficient to evaluate the concentrations of hazardous constituents in the petitioned waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits.)

Using Method 413.1 from "Methods for Chemical Analysis of Water and Wastes," U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio (EPA–600/4–79–020), Quanex determined that the effluent had a maximum oil and grease content of 0.015 percent. Quanex claims that the petitioned waste is neither ignitable nor reactive because the waste is aqueous; is automatically adjusted to a pH between 6.5 and 9.5; is comprised solely of non-contact cooling waters and process rinse waters; is not a sulfide- or a cyanide-bearing waste; and has no flammable liquid materials introduced to the waste stream. Quanex also submitted test data demonstrating that the pH of the petitioned waste ranges between 7.70 and 9.60 and, therefore, is not corrosive. See 40 CFR 261.21, 261.22, and 261.23.

Quanex indicated that thiourea, a hazardous constituent listed in 40 CFR part 261, Appendix VIII, is a component of a pickling additive used in the production process. Quanex submitted mass balance calculations for thiourea to quantify the maximum possible concentration of this constituent in the petitioned waste. This demonstration indicated that the maximum total concentration of thiourea that could be present in the waste is 0.16 ppm.

Quanex submitted a signed certification that (1) The maximum annual rate of effluent discharged to the surface impoundments is 325 million gallons per year (approximately 1.4 million cubic yards), and (2) the maximum volume of effluent contained in the surface impoundments at any one time is 5.8 million gallons (approximately 24,200 cubic yards). The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Quanex's certified estimate of 1.4 million and 24,200 cubic yards for the volume of effluent discharged annual and contained in the surface impoundments, repectively.

The Agency conducts a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the delisting petitions. As part of this program, the Agency conducted a spot-check sampling visit to Quanex. The results of this visit, including chemical analysis of waste and ground-water samples, are discussed later in this notice.

4. Agency Evaluation

The Agency considered the appropriateness of alternative waste management scenarios for liquid effluents like Quanex's and decided that disposal in a surface impoundment could be a reasonable, worst-case scenario for this waste. The major exposure route of concern for wastes managed in surface impoundments may be ingestion of contaminated ground water. The Agency evaluated Quanex's petitioned effluent using its vertical and horizontal spread (VHS) landfill model. See 50 FR 7882 (February 26, 1985), 50 FR 48890 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters to predict reasonable worst-case contaminant levels in grounds water at a hypotetical receptor well or compliance point (*i.e.*, the model estimates the dilution of a toxicant within the aquifer for a specific volume of waste). As explained below, the Agency feels that the VHS model, at this time, is adequate to evaluate the petitioned waste. The Agency requests comments on the use of the VHS model as applied to the evaluation of Quanex's waste.

The primary difference expected between the VHS model (used for the petitioned waste) and a model developed to evaluate the potential behavior of wastes managed in surface impoundments is the consideration (in the impoundment model) of hydraulic head, sorption and retardation, and clogging. Hydraulic head is expected to cause higher compliance-point concentrations.[1] Sorption and retardation and clogging, on the other hand, are expected to result in lower compliance-point concentrations of the contaminants.[2] To some extent, the mechanisms of sorption and retardation and clogging will counteract hydraulic head. Until a surface impoundment model is developed for use in delisting decision-making, it is difficult to predict what impact, if any, these competing mechanism will have on the calculation of compliance-point concentrations. To delay petition evaluation until such time as other analytical tools (such as a surface impoundment model) are developed would result in curtailing delisting petition processing where liquids are involved. Delay is particularly unwarranted where, as here, it is not clear that the new analytical tool whould perdict different constituent concentrations and/or change EPA's conclusion.

Furthermore, EPA believes that the VHS model is currently adequate to access the reasonable worst-case disposal scenario of wastes at surface impoundments because the VHS model is conservative in most of its assumptions. Specifically, the VHS landfill model does not accont for the likely reduction in the total concentrations of hazardous constituents occurring through degradation or sorption, thereby providing an additional margin of safety, regardless of whether the waste is disposed of in a landfill or surface impoundment. Consequently, the Agency believes that the application of the VHS model, in this case, adequately protects human health.

Specifically, the Agency used in the VHS model to evaluate the concentration of hazardous inorganic constiutents detected in Quanex's waste (*see* Table 1). The Agency's evaluation, using Quanex's estimated volume of effluent and the maximum reported total constituent concentrations, generated the compliance-point concentrations shown in Table 2. The Agency did not evaluate the remaining hazardous inorganic constituents (*i.e.*, cadmium and lead in the unfiltered samples; and chromium, lead, and selenium in the filtered samples) from Quanex's waste because they were not detected in the effluent using the appropriate analytical methods. The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

[1] Hydraulic head tends to force leachate into the aquifer, displacing ground water, and resulting in potentially higher concentrations at the receptor well (*i.e.*, compliance point).

[2] Sorption and retardation of dissolved contaminants with the aquifer solids encountered through migration in the ground water tend to reduce the concentration of the contaminant in the aquifer. Clogging occurs in surface impoundments when either fine material filters out in the impoundment bottom materials, or fine material settles on the bottom of the impoundment. A potential result of clogging is the lowing of the hydraulic conductivity of the impoundment bottom material to that which approaches the hydraulic conductivity of clay, thus reducing the leakage of impoundment liquid into the aquifer.

TABLE 2.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) PETITIONED EFFLUENT

[Compliance-Point Concentrations]

Constituents	Unfiltered samples	Filtered samples	Levels of regulatory concern [1]
Arsenic	0.008	0.001	0.05
Barium	0.5	0.2	1.0
Cadmium	ND	0.003	0.01

TABLE 2.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) PETITIONED EFFLUENT—Continued

[Compliance-Point Concentrations]

Constituents	Unfiltered samples	Filtered samples	Levels of regulatory concern [1]
Chromium	0.7	ND	0.05
Mercury	0.0002	0.0002	0.002
Nickel	0.5	0.03	0.7
Selenium	0.2	ND	0.01
Silver	0.006	0.005	0.05
Cyanide	0.006	NA	0.7

ND: Denotes that constituent was not detected in the petitioned waste (see Table 1) and, therefore, not evaluated by the VHS model.
NA: The filtered samples were not analyzed for cyanide.
[1] See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," November 1989, located in the RCRA public docket.

The unfiltered waste samples exhibited chromium and selenium levels at the compliance point above the health-based levels used in delisting decision-making. Thirteeen of the twenty-eight unfiltered samples exhibited chromium levels which failed the VHS model evaluation. Five of the twenty-eight unfiltered samples exhibited selenium levels which failed the VHS model evaluation. The unfiltered waste samples exhibited arsenic, barium, mercury, nickel, silver, and cyanide levels at the compliance point below the health-based levels used in delisting decision-making.

The filtered waste samples exhibited arsenic, barium, cadmium, mercury, nickel, and silver levels at the compliance point below the health-based levels used in delisting decision-making.

As reported in Table 1, the maximum concentration of total cyanide in Quanex's waste is 0.04 ppm. Because reactive cyanide is a specific subcategory of the general class of cyanide compounds, the Agency believes that the maximum level of reactive cyanide in the petitioned waste also will not exceed 0.04 ppm. Thus, the Agency concludes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket.

The Agency also evaluated the concentration of thiourea estimated (using a mass balance demonstration) to be present in Quanex's petitioned waste. The VHS model predicted a thiourea concentration of 0.025 ppm at the compliance point, which exceeds the delisting health-based level of 0.00002 ppm for thiourea. The Agency also reviewed Quanex's raw material list and Material Safety Data Sheets to determine whether other hazardous constituents (*e.g.*, those listed in 40 CFR part 261, appendix VIII) could be present in the petitioned waste. This review indicated that 2-propyn-1-ol, an appendix VIII constituent, is a component of the same pickling additive containing thiourea and may be present in the petitioned waste. The Agency did not request additional information regarding the use of thiourea or 2-propyn-1-o1 in Quanex's process or data quantifying the presence of these constituents in the petitioned waste because it already had sufficient basis to propose denial of Quanex's petition.

In addition, based on test results and information provided by Quanex, pursuant to 40 CFR 260.22, the Agency does not believe that Quanex's waste exhibits any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

On August 26, 1987, staff under contract to the Agency conducted a site visit to Quanex as part of the Agency's spot-check sampling and analysis program. Eight grab samples of the petitioned effluent were collected (at the point where the treated wastewater is discharged to the first surface impoundment). Four of these eight grab samples were filtered prior to analysis to remove particles greater than or equal to 6 microns in size. Two additional samples were collected from the outfall of the second surface impoundment. Five ground-water monitoring samples also were collected from one upgradient and four downgradient ground-water monitoring wells. While the EPA contract lab analyzed the filtered waste samples, the Agency now believes that filtering does not produce samples that are representative of the waste as it is discharged into the impoundment. As noted previously in this notice, because Quanex petitioned EPA to exclude the effluent discharged to the impoundments, the suspended solids contained in the liquid effluent should also be evaluated as part of the waste mixture. All of the spot-check samples were analyzed according to EPA test methods by a laboratory under contract to EPA. Total constituent analyses of the ten waste samples and five ground-water samples for the EP toxic metals, nickel, antimony, and beryllium were conducted using SW–846 Methods 6010 and 7040–7950. Total cyanide was analyzed using SW–846 Method 9010. In addition, the samples were evaluated according to routine spot-check procedure for the presence of CERCLA Hazardous Substances List (HSL) organics using SW–846 Methods 8270, 8080, and 8240.

Table 3 presents the maximum reported total constituent concentrations of the hazardous inorganic constituents and HSL organic constituents detected in the petitioned effluent (unfiltered and filtered) and outfall spot-check samples.

TABLE 3.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (PPM) SPOT-CHECK SAMPLES

Constituents	Total constituent analyses		
	Unfiltered samples	Filtered samples	Outfall samples
Antimony	<0.5	<0.1	<0.01
Arsenic	0.046	<0.01	<0.01

TABLE 3.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (PPM) SPOT-CHECK SAMPLES—Continued

Constituents	Total constituent analyses		
	Unfiltered samples	Filtered samples	Outfall samples
Barium	0.21	0.082	0.057
Beryllium	<0.01	<0.001	<0.001
Bis(2-ethylhexyl)phthalate	0.023	0.056	<0.02
Cadmium	<0.02	<0.005	<0.005
Chromium	10	<0.01	<0.01
Endrin	<0.0001	0.0037	<0.0001
Lead	0.26	<0.05	<0.05
Mercury	<0.0002	<0.0002	<0.0002
Nickel	3.9	0.041	<0.04
Phenol	0.58	0.42	<0.02
Selenium	<0.02	<0.02	<0.02
Silver	<0.01	<0.01	<0.01
Cyanide	<0.01	<0.01	<0.01

< Denotes that the constituent was not detected at the detection limit specified in the table.

The Agency's evaluation of the hazardous constituents detected in the spot-check samples using the VHS model generated the compliance-point concentration shown in Table 4.

TABLE 4.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) SPOT-CHECK SAMPLES

[Compliance-Point Concentrations]

Constituents	Unfiltered samples	Filtered samples	Outfall samples	Levels of regulatory concern[1]
Arsenic	0.008	ND	ND	0.05
Barium	0.03	0.013	0.009	1.0
Bis(2-ethylhexyl) phthalate	0.0038	0.0089	ND	0.003
Chromium	1.6	ND	ND	0.05
Endrin	ND	0.0005	ND	0.0002
Lead	0.04	ND	ND	0.05
Nickel	0.62	0.0065	ND	0.7
Phenol	0.09	0.007	ND	20

ND: Denotes that constituent was not detected in the petitioned waste (see Table 3) and, therefore, not evaluated by the VHS model.
[1] See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," November 1989, located in the RCRA public docket.

The unfiltered petitioned effluent samples exhibited bis(2-ethylhexyl)phthalate and chromium concentrations above the health-based levels used in delisting decision-making. Bis(2-ethylhexyl)phthalate levels in one of the four unfiltered petitioned effluent samples failed the VHS model evaluation. Chromium levels in all four unfiltered petitioned effluent samples failed the VHS model evaluation. The unfiltered petitioned effluent samples exhibited arsenic, barium, lead, and nickel concentrations at the compliance-point below the health-based levels used in delisting decision-making.

The filtered petitioned effluent samples exhibited bis(2-ethylhexyl)phthalate and endrin concentrations above the health-based levels used in delisting decision-making. Bis(2-ethylhexyl)phthalate levels in one of the four filtered petitioned effluent samples and endrin in another one of the four filtered petitioned effluent samples failed the VHS model evaluation. The filtered petitioned effluent samples exhibited barium, nickel, and phenol concentrations at the compliance point below the delisting health-based levels. The outfall samples exhibited barium concentrations at the compliance point below the delisting health-based level for barium.

The Agency did not evaluate the remaining hazardous inorganic constituents (*i.e.*, antimony, beryllium, cadmium, mercury, selenium, silver, and cyanide in the unfiltered samples; antimony, arsenic, beryllium, cadmium, chromium, lead, mercury, selenium, silver, and cyanide in the filtered samples; and antimony, arsenic, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, silver, and cyanide in the outfall samples) because they were not detected in the spot-check samples using the appropriate analytical test methods (*see* Table 3).

The Agency also reviewed the ground-water monitoring information available for the surface impoundments. EPA Region V has determined that Quanex's ground-water monitoring system is compliant with the applicable ground-water monitoring requirements of 40 CFR part 264, subpart F. Data from the analysis of samples collected from the existing ground-water monitoring system for the two surface impoundments indicate that the petitioned waste may have contributed to ground-water contamination. Specifically, hazardous constituents were detected in ground water downgradient of the surface impoundments at concentrations that exceed the health-based levels used in delisting decision-making. Table 5 presents the hazardous constituents which were detected at concentrations exceeding the delisting health-based levels in ground-water samples collected from downgradient wells which monitor the surface impoundments. For each of the hazardous constituents listed in Table 5, the maximum concentration of the constituent reported for the upgradient well (Well #1) is presented for comparison. Quanex's ground-water monitoring data base included the results of metals analyses performed on filtered samples. For the purpose of delisting, filtering ground-water samples is generally not considered an acceptable technique (See Superfund Ground Water Issue—Ground Water Sampling for Metals Analyses in the RCRA public docket for today's notice). As a result, the Agency believes that the concentrations of hazardous constituents in the ground-water may be greater than the concentrations reported by Quanex for these filtered samples.

TABLE 5.—CONCENTRATIONS OF HAZARDOUS CONSTITUENTS IN GROUND-WATER (PPM) SURFACE IMPOUNDMENTS

Parameter and sampling date	Level of regulatory concern[1]	Well no.	Concentration (ppm)
1,1-Dichloroethene	0.0004		
(*)		1	<0.002 (upgradient)*
10-17-86 (C)		11A	0.005
5-18-87 (C)			0.003
8-18-87 (C)			0.0028/0.0052/0.0047**
11-12-87 (C)			0.0041
2-10-88 (C) ***			0.0018/<0.0010**
10-17-86 (C)		11B	0.005
3-11-87 (C)			0.004
5-18-87 (C)			0.0021/0.0022/0.0023**
8-18-87 (C)			0.0061
11-12-87 (C)			0.0058/0.0055/0.0052**
2-10-88 (MDNR)			0.0045
2-10-88 (C)			0.0035
8-18-87 (C)		14A	0.0011
11-12-87 (C)			0.0018/0.0014/0.0011**
2-10-88 (C) ***			0.0012
8-18-87 (C)		14B	0.0011
Methylene Chloride	0.005		
9-24-85 (C)		1	0.020 (upgradient)*
9-24-85 (C)		2	0.021
9-24-85 (C)		3	0.014
9-24-85 (C)		4	0.011
Trichloroethene	0.005		
(*)		1	<0.002 (upgradient)*
8-25-87 (EPA)		19A	0.0068
Barium	1.0		
10-23-85 (C)		1	1.04 (upgradient)*
10-23-85 (C)		13A	1.10
10-23-85 (C)		14B	1.10
Cadmium	0.01		
(*)		1	<0.01 (upgradient)*
3-11-87 (C)		11D	0.05 (filtered)
2-11-87 (C)		Field Blank	0.02
Chromium	0.05		
8-14-84 (C)		1	0.005 (upgradient)*
8-28-87 (EPA)		15A	0.060
8-28-87 (EPA)		16A	0.13
Lead	0.05		
8-28-84 (C)		1	0.02 (upgradient)*
9-27-84 (C)		2	0.06
8-28-87 (EPA)		11A	0.14
8-28-87 (EPA)		15A	0.22
8-28-87 (EPA)		16A	0.14
Selenium	0.01		
2-10-88 (C)		1	0.0024 (upgradient)* (Filtered)
			0.017
9-27-84 (C)		2	0.010/0.011/0.011**
2-10-88 (C)		12A	

(EPA) EPA Delisting Spot-check Data
(MDNR) Michigan Department of Natural Resources (MDNR) Data
(C) Quanex Data
* The maximum concentration, or detection limit, of the constituent reported in samples collected from the upgradient well (#1).
** Values represent results of replicate analyses.
*** MDNR value <0.0010 ppm
[4] See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," November 1989, located in the RCRA public docket.
[5] Upgradient well concentration was below level of detection on numerous sampling dates.

With regard to the ground-water monitoring data presented in Table 5, the Agency wishes to make the following observations: (1) Data for the upgradient well presented in Table 5 indicate that methylene chloride, although detected downgradient of the surface impoundments at concentrations exceeding the health-based level, may not originate from the surface impoundments. Methylene chloride was detected in samples from upgradient Well #1 at a concentration similar to that reported in the three downgradient wells. Furthermore, Quanex believes, based on additional sampling, that they have demonstrated that the methylene chloride detected in ground-water samples collected on September 24, 1985 is attributable to sample contamination during sampling and/or analysis. (2) Data for the upgradient well presented in Table 5 indicate that barium, although detected downgradient of the surface

impoundments at concentrations exceeding the health-based level, may not originate from the surface impoundments. Specifically, barium concentrations reported in upgradient Well #1 are similar to those reported downgradient of the surface impoundments. Consequently, the barium results presented in Table 5 may be attributable to another source of barium at the Quanex facility, or sampling or analytical error. (3) The field bank data for cadmium indicate that the cadmium value reported for Well 11D may be the result of sample contamination. Quanex asserts that during the March 11, 1987 sampling event, distilled water used for decontamination was carried to the site in a steel drum, thus contaminating the water with small amounts of cadmium and subsequently causing contamination of the ground-water sample from Well 11D. (4) Although not presented in Table 5, the Agency notes that State officials have expressed concern that concentrations of arsenic detected in wells downgradient of the surface impoundments are statistically greater than background arsenic concentrations. (For more details, see the RCRA public docket for a copy of the June 23, 1988 Comprehensive Monitoring Evaluation (CME) conducted at Quanex.) Quanex believes that the detected arsenic occurs naturally in ground water at the facility, and thus is not of concern.

While the existing data suggest that detected levels of some constituents (*e.g.*, methylene chloride, barium, and cadmium) may not be significant due to possible sample contamination or high background levels, EPA believes that the data clearly show that a variety of hazardous constituents, including the listed constituents for EPA Hazardous Waste No. K062 (lead and chromium), are present in ground water above delisting health-based levels.

5. Conclusion

The Agency believes that Quanex has failed to demonstrate that the effluent discharged to and contained in its two on-site surface impoundments is not hazardous. The Agency believes that data from the analyses of samples collected from Quanex's ground-water monitoring system indicate that the petitioned waste may have contributed to ground-water contamination. The ground-water monitoring data from the existing well system are not adequate to eliminate the surface impoundments as a source of ground-water contamination and, to the contrary, provide a basis for concluding that the waste in the surface impoundments is contributing to ground-water contamination. Furthermore, the petitioned waste's potential to contribute to ground-water contamination is a sufficient basis for denial because the Agency, in its evaluation of a petition, must determine whether factors (including additional constituents) could cause the petitioned waste to be hazardous (*see* 40 CFR 260.22(a)(2)).

Both filtered and unfiltered waste sample analyses have been presented in today's notice. Although the Agency originally agreed to Quanex's use of a 0.45 micron filter for those samples collected during the November 1986 sampling event, the Agency now believes that the filter may have removed particles which were suspended in the petitioned waste. The Agency's evaluation of the petitioned effluent (unfiltered samples) using the VHS model indicated that chromium and selenium may be present at levels of regulatory concern (at the compliance point). Concentrations of both of these constituents were detected in ground water downgradient of the surface impoundment at concentrations that exceed the delisting health-based levels. In addition, the Agency believes that the petitioned waste may contain significant levels of bis(2-ethylhexyl)phthalate and endrin.

The Agency proposes to deny Quanex Corporation's petition for exclusion of the waste described in its petition as EPA Hazardous Waste No. K062 and discharged to and contained in its two on-site impoundments at its South Lyon, Michigan facility. The petitioned waste should continue to be subject to regulation under 40 CFR parts 260 through 268 and the permitting standards of 40 CFR part 270.

III. Effective Date

This rule, if finally promulgated, will become effective immediately upon such final promulgation. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would not change the existing requirements for persons generating hazardous wastes. This facility has been obligated to manage its waste as hazardous before and during the Agency's review of its petition. Because a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this denial should be effective immediately upon final promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The proposed denial of this petition, if promulgated, would not impose an economic burden on this facility because prior to submitting and during review of the petition, this facility should have continued to handle its waste as hazardous. The denial of the petition means that they are to continue managing their waste as hazardous in the manner in which they have been doing, economically, and otherwise. There is no additional economic impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities. The facility included in this notice may be considered a small entity, however, this rule only affects one facility in one industrial segment. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VII. List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Section 3001 RCRA, 42 U.S.C. 6921.

Dated: October 4, 1990.

Don R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 90–27305 Filed 11–19–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6990]

Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 55 FR 19961 on May 14, 1990. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Unincorporated Areas of El Paso County, Texas.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in El Paso County, previously published at 55 FR 19961 on May 14, 1990, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The entries under El Paso County (Unincorporated Areas) are corrected to read as follows:

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Shallow Flooding:	
On the east side of Mesa Spur Drain from approximately 0.6 mile downstream of Moon Road to approximately 0.4 mile upstream of the apex of Stream 4	1
On the east side of Mesa Spur Drain from approximately 0.4 mile upstream of the apex of Stream 4 to approximately 0.5 mile downstream at the apex of Stream 5	2
At the apex of Stream 3	2
At the apex of Stream 4	2
On the east side of Salatral Interal from approximately 0.6 mile downstream of the confluence of Ysleta Lateral to approximately 2.7 miles downstream of Calum Road	1
From approximately 0.2 mile upstream of the apex of Stream 6 to approximately 0.4 mile downstream of the apex of Stream 7	2
From approximately 500 feet upstream of the apex of Stream 8 to approximately 500 feet downstream of the apex of Stream 9	2

Issued: November 6, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90–27207 Filed 11–19–90; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–539, RM–7181]

Radio Broadcasting Services, Howland, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a proposal filed by Bay Communications, Inc., requesting the substitution of Channel 280C for 280A at Howland, Maine. Petitioner also requests modification of its construction permit for Channel 280A to specify Channel 280C. We have received concurrence of the Canadian Government for allotment of Channel 280C as a specially negotiated short-spaced allotment. The coordinates for Channel 280C are 45–07–48 and 68–21–28.

DATES: Comments must be filed on or before January 7, 1991, and reply comments on or before January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert J. Rini, Brown, Finn & Nietert, Chartered, 1920 N Street, NW., Suite 660, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–539, adopted October 29, 1990, and released November 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–27230 Filed 11–19–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–544, RM–7527]

Radio Broadcasting Services; Walker, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Thomas E. Ferebee proposing the substitution of

Channel 256C1 for Channel 256C2 at Walker, Minnesota, and modification of the construction permit for Station KLLR-FM to specify operation on the higher class channel. Canadian concurrence will be requested for the allotment of Channel 256C1 at Walker at coordinates 47–12–42 and 94–55–02.

DATES: Comments must be filed on or before January 7, 1991, and reply comments on or before January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Clifford M. Harrington, Matthew P. Zinn, Fischer, Wayland, Copper and Leader, 1255 23rd Street, NW., suite 800, Washington, DC 20037–1125 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–544, adopted October 31, 1990, and released November 15, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–27328 Filed 11–19–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–543, RM–7530]

Radio Broadcasting Services; Ripley, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by James P. Gray seeking the substitution of Channel 258C3 for Channel 258A at Ripley, Ohio, and the modification of his construction permit for Station WXKD to specify operation on the higher powered channel. Channel 258C3 can be allotted to Ripley in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.1 kilometers (12.5 miles) southwest of the community to avoid a short-spacing to Station WNXT–FM, Channel 257A, Portsmouth, Ohio, and to accommodate petitioner's desired transmitter site. The coordinates for Channel 258C3 are North Latitude 38–37–30 and West Longitude 84–01–05. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 258C3 at Ripley or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before January 7, 1991, and reply comments on or before January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James P. Gray, 10 Trinity Place, Fort Thomas, Kentucky 41075 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–543, adopted October 31, 1990, and released November 15, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–27329 Filed 11–19–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–545, RM–7504]

Radio Broadcasting Services; Copperas Cove, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Cove Broadcasting Company seeking the substitution of Channel 276C3 for Channel 276A at Copperas Cove, Texas, and modification of the license of Station KOOV to specify operation on the higher powered channel. Channel 276C3 can be allotted to Copperas Cove in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.8 kilometers (9.2 miles) southwest to avoid a short-spacing to Channel 277C3, Clifton, Texas. Grant of this request is also contingent upon the issuance of a license to cover the construction permit of Station KCRM on Channel 280C2 in lieu of its present Channel 276A. The coordinates for Channel 276C3 at Copperas Cove are North Latitude 31–03–19 and West Longitude 98–02–00.

DATES: Comments must be filed on or before January 7, 1991 and reply comments on or before January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard A. Helmick, Esq., Cohn and Marks, 1333 New Hampshire Avenue, NW., suite 600, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Fawn Wilderson, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–545, adopted October 31, 1990, and released November 15, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contracts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–27330 Filed 11–19–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–537, RM–7455]

Radio Broadcasting Services; Amarillo, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Alton Lloyd Finley, Jr., seeking the allotment of FM Channel 241A to Amarillo, Texas, as that community's tenth local FM broadcast service. Coordinates for this proposal are 35–16–00 and 101–47–37.

DATES: Comments must be filed on or before January 7, 1991. and reply comments on or before January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Alton Lloyd Finley, Jr., Rural Route #5, Box 442–M, Seneca, SC 29678.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–537, adopted October 29, 1990, and released November 14, 1990. The full text of this Commission decision is a available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230),1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–27228 Filed 11–19–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–536, RM–7508]

Radio Broadcasting Services; Tomah, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Jamie Lee Westpfahl, proposing the substitution of Channel 233C3 for Channel 233A at Tomah, Wisconsin, and modification of the construction permit for Station WZFR, Channel 233A to specify operation on Channel 233C3. The coordinates for Channel 233C3 are 43–57–19 and 90–19–20.

DATES: Comments must be filed on or before January 7, 1991, and reply comments on or before January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Riley & Bergquist, P.A., 5200 Willson Road, Suite 308, Edina, Minnesota 55424, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–538, adopted October 29, 1990, and released November 14, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–27229 Filed 11–19–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 74

[MM Docket No. 90-500; FCC 90-349]

Broadcast Service, Definition of Congested Areas in the Broadcast Auxiliary Services and the Cable Television Relay Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rule Making (Notice) grants a petition for rule making (petition) filed by the Society of Broadcast Engineers (SBE) to initiate a rule making to amend part 74 of the Commission's rules to define precisely those geographical areas that are considered "subject to frequency congestion." The action is needed to supplement rules that require all fixed auxiliary and cable television relay stations to employ antennas meeting minimum standards after October 1, 1991.

DATES: Comments are due by January 4, 1991, and reply comments are due by January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hank VanDeursen, Mass Media Bureau, Policy and Rules Division (202) 632-9660.

SUPPLEMENTARY INFORMATION:

1. This is a synopsis of the Commission's Notice of Proposed Rule Making in MM Docket No. 90-500, FCC 90-349, adopted October 18, 1990, and released November 14, 1990.

2. The complete text of this Notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Synopsis of Notice of Proposed Rule Making

3. This Notice responds to the petition filed by SBE requesting that part 74 of the rules be amended to define precisely those geographical areas that are considered "subject to frequency congestion" for purposes of supplementing the rules (§§ 74.536, 74.641, and 78.105) that require all stations to employ antennas meeting minimum standards after October 1, 1991.

4. Minimum antenna standards were first applied only to those stations operating in the 13 GHz band, and were later extended to stations operating in the 2, 7, 18, and 31 GHz bands. Currently, these rules require that all new point-to-point fixed link stations employ directional transmitting antennas with radiation patterns that meet or exceed that of the "Category B" performance level. Additionally, they require that stations operating in areas subject to frequency congestion employ more efficient antennas that meet or exceed the "Category A" performance level, thus further reducing the potential for interference by confining the signal to a smaller area. The antenna standards rules provided a 10-year "grandfathering" period during which then-existing stations would be permitted to continue use of previously installed antennas until October 1, 1991. When the original rules were adopted, we stated that we would develop criteria to designate areas subject to frequency congestion in a subsequent rule making. In this Notice, we undertake that task.

5. SBE noted that the concentration of stations serving a particular area is usually directly related to the population of that area, and that areas considered to be frequency congested therefore tend to occur in locations determined by the Department of Commerce (based on the U.S. Census) to be Metropolitan Statistical Areas (MSAs). SBE documented its petition with tables and maps depicting where the MSAs are geographically located. It accurately depicts the advantages of adopting this method of defining congested areas. The petition is included in the docket file and indicates where the proposed areas are located relative to broadcast markets. We believe that determining whether a radio link is located within an MSA is a reasonable method of deciding whether or not it is in a congested area. Such an approach appears to meet the requirements that the definition be concise and easy to use. MSAs are precisely defined and easily understood by both technical and non-technical personnel. Equally important, MSA information enjoys wide distribution, is used for many different purposes, and is periodically updated. This attribute is very attractive because it does not require expenditure of any additional resources on the part of the Commission or the industry to implement and it would automatically adjust to include new areas of congestion as they develop. SBE proposed that, because MSAs for New England States are composed of New England County Metropolitan Areas (NECMAs). For administrative convenience, county boundaries in the New England States likewise be used to determine congested areas. Accordingly, reference within the remainder of this document to MSAs encompasses both MSAs and county boundaries corresponding to NECMAs.

6. There are numerous MSAs that are subject to congestion. On the other hand, smaller MSAs may not be experiencing frequency congestion. We are sensitive to this possibility and we do not want to impose any unnecessary burdens in such cases. Thus, while the SBE proposal to include all MSAs appears to be a reasonable initial approach, we invite comment on which, if any MSAs should be excluded, the basis for such exclusion, and criteria which could lead to their future inclusion should circumstances appear to warrant it. We also seek comment on whether and how we might exclude portions of those MSAs which are extraordinarily large and encompass substantial rural areas.

7. The Commission tentatively finds SBE's proposal to constitute a reasonable course of action in this matter, therefore first proposes a new definition in §§ 74.2 and 78.5 of the Commission's rules which would designate areas subject to frequency congestion for mass media stations to include all MSAs. Under this proposal, a station would be required to comply with congestion standards if any portion of the link path falls within a designated congested area, and existing stations would have 1 year to upgrade from the date an area is designated as congested. We note that the 13, 18, and 31 GHz bands are shared with non-broadcast services which have their own standards for determining congestion. We seek comment as to whether the application of different standards in different services will lead to practical difficulties.

8. The Commission further proposes that the Chief, Mass Media Bureau maintain a list of areas not within MSAs where congestion is considered to be a problem and, if necessary, a list of excluded MSAs. These lists would be revised at the discretion of the Bureau Chief under delegated authority. The Commission proposes to review the list on an annual basis and use a Public Notice to solicit changes that appear appropriate. To establish an initial list of such special areas, we request interested parties to submit descriptions of such areas outside MSAs which they believe deserve consideration, as well as justification for such designation.

9. In the interest of simplyfying the administrative process for stations upgrading to higher category antennas, we propose to consider such upgrades as a minor modification of the license, provided that the overall height above ground level of the antenna tower structure and the elevation above ground of the antenna's center of radiation remain the same, there are no other major modifications to the license within the 1 year upgrade period, and the local frequency coordinator is advised of the upgrade prior to any change.

Paperwork Reduction Act Statement

10. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and have been found to contain no new or modified recordkeeping requirements.

Ex Parte Consideration

11. This is a non-restricted proceeding. See § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Comment Information

12. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 4, 1991, and reply comments on or before January 22, 1991. No extension of these comments periods is anticipated. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Initial Regulatory Flexibility Act Analysis

13. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, this proceeding should have a beneficial impact by ultimately providing a clear and easily understood definition of geographical areas considered subject to frequency congestion. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

14. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Inquiry, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No 96-354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.*, (1981)).

15. Authority for this action may be found at sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303.

List of Subjects in 47 CFR Part 74

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90-27227 Filed 11-19-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 552

Petitions for Rulemaking, Defect and Noncompliance Orders

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Petition for rulemaking; denial.

SUMMARY: This notice announces the denial of a rulemaking petition to amend Standard No. 206, Door Locks and Door Retention Components, to (1) ensure adequate structural strength for the door latch assembly, and (2) extend the present side door requirements to doors other than side doors, such as hatchback and other rear doors. Since the agency has an ongoing rulemaking proceeding relating to strengthening door latch assemblies, and because the petitioner is not requesting action different from that being considered in that proceeding, the first request in this petition is denied.

In regard to the second request in the petition, the agency has conducted an in-depth analysis of accident data relating to this issue and of information received from nine manufacturers regarding design specifications of back doors. Based upon this analysis, the agency has decided to deny this request also.

FOR FURTHER INFORMATION CONTACT: Mr. William Boehly, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590 (202) 366-0842.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 206, Door Locks and Door Retention Components, specifies performance requirements for front and rear side door locks and side door retention components, including latches and hinges in passenger cars, multipurpose passenger vehicles and trucks. The purpose of these requirements is to minimize the likelihood of occupants being ejected from the vehicle as a result of a crash. The standard does not cover back doors, including car hatchbacks, van rear doors, and pickup truck tailgates.

On June 19, 1990, the Insurance Institute for Highway Safety (IIHS) petitioned this agency to amend Standard No. 206 to (1) ensure adequate structural strength for the door latch assembly, and (2) extend the present side door requirements to doors other than side doors, such as hatchbacks and other rear doors.

Door Latch Assemblies

NHTSA has an ongoing rulemaking proceeding with respect to the first request in this petition. On August 19, 1988, the agency issued two Advanced Notices of Proposed Rulemaking (ANPRMs) concerning side impact protection (53 FR 31712, 31716). In both ANPRMs, the agency stated that stronger door latches may reduce the risk of ejection. Further, the agency discussed a number of approaches that could be considered in developing enhanced performance requirements for door latches. Additionally, a number of questions were posed, seeking information or comments on issues associated with door latch performance.

On the basis of comments received, the agency is conducting further research on the issue of improved door latch performance. Since the agency has an ongoing rulemaking proceeding relating to strengthening door latch assemblies, and since the petitioner is not requesting action different from that being considered in that proceeding, the first request in this petition is denied.

Back Doors

With regard to the second request in the IIHS petition, the agency conducted an in-depth accident analysis and requested information from nine manufacturers regarding design specifications for back doors.

NHTSA's accident analysis was conducted using 1982-1988 National Accident Sampling System (NASS) data and 1988 Fatal Accident Reporting System (FARS) data relating to door openings and ejections in towaway crashes. The results of this analysis were published on April 5, 1990 in a report entitled "Hatchback, Tailgate, and Back Door Opening in Crashes and Occupant Ejection through the Back Area." A copy of this report is available

in Docket 90-08-GR. Interested persons can review this report for more details of the analysis.

The agency determined that back doors open in 5-6 percent of towaway crashes, of vehicles so equipped, compared to only 1-2 percent of such crashes for side doors. Of passenger cars so equipped, an estimated 36,244 hatchbacks and tailgates opened in towaway crashes in 1988. This represents about 3 times the rate of front side door openings and about 7-8 times the rate of rear door openings. During the same year, an estimated 4,986 van back doors opened in towaway crashes. This represents about 4 times the rate of front side door openings and about 2 times the rate of right-rear side door openings in vans so equipped. (Very few passenger vans have left-rear side doors, and there were no instances of left-rear door openings investigated by NASS in 1988.)

Despite the greater frequency of back door openings, occupant ejection occurred in only 1 percent of the crashes involving back door openings. By contrast, ejections occurred in 8-13 percent of the crashes involving a front side door opening. In addition, based upon 1988 NASS data, it appears that even in crashes in which a back door opens, there are more ejections through the left front side door than through the back door. This is because there is almost always an occupant, the driver, seated next to the left front side door.

Since ejection occurs less frequently when a back door opens than when a side door opens, back door openings account for only a small percentage of ejection fatalities. According to FARS data, in 1988 there were 8,343 light vehicle occupant fatalities associated with ejections. Of these, approximately 2,200 of the ejections were from vehicles with a back door. By using ejection route percentages obtained from the NASS data, NHTSA estimates that approximately 100 of these fatalities were ejected through a back door. (See, report "Hatchback, Tailgate, and Back Door Opening in Crashes and Occupant Ejection through Back Area", Docket 90-08-GR, pages 14, 15.)

On April 5, 1990, NHTSA sent a letter to nine manufacturers (Chrysler, Ford, General Motors, Honda, Mazda, Nissan, Toyota, Volkswagen, and Volvo) requesting information on design specifications used for production of back door latch/lock systems. All manufacturers responded to this request.

None of the responding manufacturers indicated that their back door latch/lock systems currently meet the requirements of Standard No. 206. Further, none of them supported extending the standard to back door latch/lock systems. In general, the manufacturers indicated that proper use of safety belts is the most effective method for ejection reduction. Agency examination of 1982-1988 NASS files indicates that, of the 25 back door ejections investigated, only one person was using an occupant protection device. Therefore, the agency agrees that increased seat belt use in rear seats would be a more effective means of reducing back door ejections.

In conclusion, the agency has determined that there is not a safety need significant enough to justify the proposed rulemaking. In addition, the agency has determined that extending the present side door requirements to back doors would not be the most effective means of reducing back door ejections. Therefore, the agency concludes that there is no reasonable possibility that a rule extending the present side door requirement to back doors would be issued at the conclusion of the proposed rulemaking. Accordingly, NHTSA has decided to deny this second request also.

Issued on November 15, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-27310 Filed 11-19-90; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA); Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking from the State of Texas requesting NHTSA to amend Federal Motor Vehicle Safety Standard (FMVSS) 213, Child Restraint Systems, to require that the instructions provided by manufacturers for installing add-on child restraint systems be written in English and Spanish. Standard 213 currently requires that the installation instructions be in English only. NHTSA is denying the petition because information does not show that a requirement for bilingual instructions is warranted. The petitioner's concerns are also capable of being met by means other than an FMVSS, such as voluntary measures taken by manufacturers to provide bilingual instructions, and State actions providing public education and information.

FOR FURTHER INFORMATION CONTACT: Mr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590. Telephone: (202) 366-4919.

SUPPLEMENTARY INFORMATION:

Background

Safety Standard No. 213 specifies requirements for child seats to reduce the number of children killed or injured in motor vehicle crashes and in aircraft. Data on vehicle crashes show that child seats are highly effective in reducing a child's risk of death or serious injury in a crash. (The term "child seat" as used in this notice means any device considered to be a "child restraint system" as defined in paragraph S4 of Standard 213.)

Standard 213 requires manufacturers to provide installation instructions in English with each child seat. The instructions, which include diagrams, must be permanently labeled on the seat. (Paragraphs S5.5 and S5.6.) The purpose of the instructions is to encourage the correct use of child seats.

Mr. Jim Mattox, the Attorney General of Texas, petitioned NHTSA on behalf of Texas to amend Standard 213 to require manufacturers to provide bilingual installation instructions (in Spanish and English) for add-on (*i.e.*, portable) child seats. Mr. Mattox supports his petition by stating that bilingual instructions are provided with cameras, televisions, radios and other products. The petitioner believes bilingual instructions are needed because "Spanish speaking drivers and their children are not accorded the full protection intended by Texas and its sister states."

Discussion

The agency believes that installation instructions for a child seat help ensure that the seat is correctly used and that correct usage is important for achieving the maximum safety benefits for the seat. However, to justify requiring bilingual instructions for every child seat sold in this country, NHTSA must conclude that there is a safety problem of sufficient magnitude to warrant such a requirement to an FMVSS.

The agency considered the magnitude of the safety improvement that may possibly be achieved by bilingual instructions. Because a high percentage of the population speaks English, NHTSA did not find that the improvement would be sufficiently large.

The 1980 Census of Population (the latest available census) shows that a very high percentage of the total population reads English. (The census includes the entire 1980 resident population, and therefore includes minorities.) The data indicate that 90 percent of the U.S. population between the ages of five and 44 speak English as their only or primary language. Data also show that, of the remaining 10 percent of the population that speak another language as their primary language, most are able to speak and read English. These Census data indicate that the magnitude of the population that could be served by bilingual instructions and of the potential benefits of those instructions does not appear to be sufficiently large to warrant mandating bilingual instructions for all child seats.

NHTSA believes a need for Spanish installation instructions can be met in ways other than a Federal requirement mandating bilingual instructions for all child seats sold in this country. The manufacturers may be willing to voluntarily provide bilingual instructions with their child seats, particularly in those areas of the country with substantial numbers of Hispanics. The agency contacted several child safety seat manufacturers to determine their practices in providing multilingual instructions. Those manufacturers selling seats in Canada indicated that they provide English and French instructions with their seats. At least two manufacturers indicated that they are considering having trilingual (English, French and Spanish) instructions with their seats sold in the United States. The agency is sending a letter to the major child seat manufacturers informing them of Mr. Mattox's concerns about bilingual instructions and suggesting that individual manufacturers consider providing instructions in more than one language. The agency hopes the manufacturers will work with interested groups in providing bilingual instructions.

Although there are no current efforts by manufacturers involving the translation of individual child safety seat installation instructions into Spanish, some States have ongoing bilingual passenger safety programs, including those for child passenger safety. For example, under a Federal grant program administered by NHTSA (section 402 of the Highway Safety Act), the California State Office of Traffic Safety has numerous bilingual child passenger safety programs. These include a program in Monterey County, directed at the rural Spanish population, to distribute child safety educational materials in four foreign languages, including Spanish. In addition, the California Highway Patrol has an ongoing Spanish education program and has produced about 20 public service announcements for television during the past year, several of which addressed child passenger protection specifically. Similar programs exist in Texas.

A number of other States have already developed public information and education materials on child seats for the Spanish speaking and other non-English-speaking communities, using § 402 funds. (A NHTSA information sheet entitled, "Resource List of Spanish Language Materials on Traffic Safety," July 1988, is available from NHTSA's Office of Occupant Protection, NTS-11, at the address provided at the beginning of this notice.) Individual States have the flexibility to decide whether a particular population of the State has a special need concerning child seat instructions, and assuming there is such a need, how best to meet it.

With respect to the petitioner's statement that bilingual instructions are provided with various consumer products, the agency notes that these instructions are not required by Federal law. Manufacturers of these products may be providing bilingual instructions for a variety of reasons that are unrelated to safety. For example, providing instructions in several languages may be done for reasons of competition and convenience in international marketing.

The agency also notes that Standard 213 requires child safety seats to have diagrams that indicate the procedure for installing the seat in a motor vehicle, securing the seat in the vehicle, positioning a child in the seat, and adjusting the seat to fit the child. The existing requirement for diagrams reduces the need for printed installation instructions in languages other than English to ensure that child safety seats are correctly used.

Absent information or analysis justifying an FMVSS requirement for bilingual instructions, the agency will not mandate them. NHTSA has concluded that there is no reasonable possibility that a rule along the lines requested in Mr. Mattox's petition would be issued at the conclusion of the requested rulemaking proceeding. Mr. Mattox's petition for rulemaking is, therefore, denied.

PART 571—[AMENDED]

Authority: 15 U.S.C. 1392, 1407, and 1410a; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on November 15, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-27309 Filed 11-19-90; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 55, No. 224
Tuesday, November 20, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Plant Genetic Resources Board; Renewal

The Department of Agriculture has renewed the National Plant Genetic Resources Board for a 2-year period.

The Board was originally established in July 1975 by the Secretary and was last renewed on April 4, 1988.

The purpose of the Board is to advise the Secretary of Agriculture and officers of the National Association of State Universities and Land-Grant Colleges in order to assess national needs and identify high-priority programs for conserving and utilizing plant genetic resources, including such things as collection, maintenance and documentation of genetic stocks, and utilization of the stocks in plant improvement programs.

The Secretary has determined that continuation of the Board is necessary and in the public interest in order to assure adequate supplies of food, feed, and fiber by minimizing the genetic vulnerability of the crops.

Done at Washington, DC, this 9th day of November 1990.

Adis M. Vila,

Assistant Secretary for Administration.

[FR Doc. 90-27244 Filed 11-19-90; 8:45 am]

BILLING CODE 3410-33-M

Forest Service

Trout Mountain Timber Sales and Roads, Rio Grande National Forest, CO

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to implement timber sales and roadbuilding activities near Trout Mountain.

DATES: Comments concerning the scope of the analysis should be received in writing by October 30, 1991.

ADDRESSSES: Send written comments to James B. Webb, Forest Supervisor, Rio Grande National Forest, 1803 W. Highway 160, Monte Vista, Colorado 81144.

FOR FURTHER INFORMATION CONTACT: District Ranger Thurman Wilson, Del Norte District Ranger, Box 40, Highway 160, Del Norte, Colorado 81132. (719) 657-3321.

SUPPLEMENTARY INFORMATION: The proposed timber harvest and roadbuilding projects are expected to have long-term effects on the character of the area. The Trout Mountain area is currently unroaded, and there could be significant impacts to recreation and visual qualities of the area.

The Rio Grande National Forest Land and Resource Management Plan (Forest Plan) was approved January 4, 1985. The Forest Plan identified the Trout Mountain area as one scheduled to have timber and roadbuilding activities for 1994. The implementation of the Forest Plan in the Trout Mountain area relates to issues identified during the scoping process of the environmental analysis for the Forest Plan. One issue raised was how the Forest can best support local dependent timber industries. Another issue related to the Forest and its ability to provide for primitive and semi-primitive recreation opportunities in the future. These issues were addressed in chapters III and IV of the final environmental impact statement for the Forest Plan.

The Trout Mountain area is located in the central part of the Rio Grande National Forest-West Part, just west of South Fork, Colorado. The area comprises about 40,000 acres of forest and rangeland that is relatively undeveloped. The Trout Mountain area (Decker-Deep Creek) was considered for inclusion into the Wilderness System during the Roadless Area Review (RARE II) study of the 1970's. It was not included, and that decision was not appealed.

A range of alternatives will be presented and analyzed for environmental impacts. One of these will be the no-action alternative, whereby no new projects would be started in the area. Alternatives will include a reasonable range of management alternatives. Projects would be timber sales for fiber production and utilization and the roads necessary for access. Federal, State, local agencies, concerned citizens, and other interested publics will be invited to share their issues and concerns regarding the Trout Mountain projects. This scoping process will include:

Identification of potential issues through public meetings, media, citizens participation groups, newsletters, open houses, and personal contacts.

Identification of issues to be dealt with in depth.

Elimination of insignificant issues.

Determination of potential cooperating agencies.

A citizen work group committee will be established to assist in the environmental analysis process.

Dated: November 9, 1990.

James B. Webb,

Forest Supervisor.

[FR Doc. 90-27280 Filed 11-19-90; 8:45 am]

BILLING CODE 3410-11-M

Correction; Timber Management and Road Construction in the Ladder Compartment, Trinity County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent: correction.

SUMMARY: This is a correction of error in the date for input to the Environmental Impact Statement for timber management and road construction in Ladder Compartment located on the Lower Trinity Ranger District, Six Rivers National Forest, Trinity County, California. The document was published October 19, 1990, Vol. 55, page 42418. The date for input by interested and affected individuals was published as December 21, 1991. The date should have read December 21, 1990.

FOR FURTHER INFORMATION CONTACT: Jo Ann Hereford, Planning Forester, Lower Trinity Ranger District, P.O. Box 68, Willow Creek, California 95573, phone 916-629-2118 or Julie Ranieri, Environmental Coordinator, Six Rivers National Forest, 500 Fifth St., Eureka, California 95501-1033, phone 707-442-1721.

SUPPLEMENTARY INFORMATION: The notice of intent to prepare an Environmental Impact Statement for timber management and road construction in the Ladder Compartment, Trinity County, California, contained an error. The notice was published Friday, October 19, 1990, in Vol. 55, No. 203 of the **Federal Register.**

On page 42418 in the third column under the fifth line the year should be changed from "1991" to "1990" so that the section reads as follows: **DATES:** Interested and affected individuals should make their input by December 21, 1990.

Dated: November 9, 1990.

James L. Davis, Jr.,

Forest Supervisor.

[FR Doc. 90-27281 Filed 11-19-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-032]

Large Power Transformers From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration; Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on large power transformers from Japan. The review covers three manufacturers of this merchandise to the United States and various periods from September 1, 1975 through May 31, 1987. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the difference between the United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATES: November 20, 1990.

FOR FURTHER INFORMATION CONTACT: Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On June 11, 1986, the Department of Commerce (the Department) published in the **Federal Register** (51 FR 21197) the final results of its last administrative review of the antidumping finding on large power transformers from Japan (37 FR 11773, June 14, 1972). Westinghouse Electric Corporation, petitioner, requested that we conduct an administrative review for various periods from September 1, 1975 through May 31, 1987, in accordance with 19 CFR 353.53a (1985). We published notices of initiation on November 27, 1985 (50 FR 48825), July 17, 1986 (51 FR 25923), and July 17, 1987 (52 FR 27036). The Department is now conducting these reviews in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of large power transformers; that is, all types of transformers rated 10,000 kVA (kilovolt/amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term "transformers" includes, but is not limited to, shunt rectors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination units, commonly known as rectiformers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. During the review period covered merchandise was classifiable under item numbers 682.0755, 682.0765, and 682.0775 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) items 8504.22.00, 8504.23.00, 8504.34.33, 8504.40.00, and 8504.50.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover three manufacturers/exporters of transformers, Fuji Electric Corporation (Fuji), Toshiba Corporation, and Hitachi Electric Corporation, and various periods from September 1, 1975 through May 31, 1987.

United States Price

In calculating United States price the Department used purchase price as defined in section 772 of the Tariff Act. Purchase price was based on the duty-paid, delivered packed price paid by unrelated purchasers in the United States. We made adjustments, where applicable, for U.S. and foreign inland freight, ocean freight, insurance, handling charges, brokerage charges, and U.S. duties. In addition, we deducted for the cost of oil when included in the contract and supervisory charges. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the ex-factory price.

Due to the technical complexity of these products, we used the procedure developed in previous reviews to calculate the antidumping margin. We determined the theoretical price of the U.S. and home market units according to the 1968 Westinghouse Electric Corporation price rules (WPR) and found the U.S./home market ratio. We then adjusted each actual sales price to account for differences between the actual home market unit price and theoretical price of that unit, including commissions to unrelated parties, credit, installation, spare parts, and items not covered by the WPR. Further, we made an adjustment for differences in efficiency; that is, differences in internal transformer power losses. We then applied the theoretical ratio to the new home market transformer price. Finally, we converted the adjusted home market price to U.S. dollars and made circumstance of sale adjustments, added the cost of non-WPR parts which were part of the U.S. sale, and added the cost of packing the U.S. units. No other adjustments to foreign market value were claimed or allowed.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Period	Margin (percent)
Fuji Electric Corp.	9/1/75-5/31/85	7.98
Do.	6/1/85-5/31/86	*7.98
Do.	6/1/86-5/31/87	0.00
Hitachi	6/1/86-5/31/87	*9.8
Toshiba	6/1/86-5/31/87	*9.39

*No shipments; margins from last administrative review in which there were shipments.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Requests for an

administrative protective order must be made no later than 5 days after the date of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs not later than 30 days after the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after submission of the case briefs. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comment or at a hearing.

The Department shall determine, and the Customs Service will assess, antidumping duties on all appropriate entries. Individual differences between the United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties, based on the above margins, shall be required for the subject merchandise entering the United States. For Fuji, the cash deposit rate will be zero percent, based on the most recent review of its entries. For any future entries of this merchandise from an exporter not covered in this or in prior reviews, whose first shipments of the merchandise occurred after May 31, 1987, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of zero percent shall be required. These deposit requirements are effective for all shipments of Japanese transformers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 14, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-27331 Filed 11-19-90; 8:45 am]

BILLING CODE 3510-DS-M

Short-supply Determination; Certain Steel Plate

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply determination: certain steel plate.

SHORT-SUPPLY REVIEW NUMBER: 29.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a request for a short-supply allowance of 10,999.8 net tons of certain steel plate for the fourth quarter of 1990 under article 8 of the U.S.–E.C. steel arrangement.

EFFECTIVE DATE: November 14, 1990.

FOR FURTHER INFORMATION CONTACT: Norbert Gannon or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377–4037 (202) 377–0159.

SUPPLEMENTARY INFORMATION: On October 23, 1990, Berg Steel Pipe Corporation ("Berg") submitted an adequate petition requesting a short-supply allowance for 10,999.8 net tons of steel plate, 73.918 inches in width and 0.576 inch in thickness that meets or exceeds American Petroleum Institute specification X–60, to be delivered during the fourth quarter of 1990. This steel plate will be used by Berg to manufacture certain 24-inch diameter pipe. The request was made under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products. Berg's petition alleges that no mill in the United States is capable of meeting the required specifications for this plate and that its potential foreign supplier for this material does not have sufficient available quota to supply this order. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures (19 CFR 357.102) ("Commerce's Short-Supply Procedures").

Action

On October 23, 1990, the Secretary established an official record on this short-supply request (Case Number 29) in the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce at the above address. On October 31, 1990, the Secretary published a notice in the **Federal Register** announcing its review of this request and soliciting comments from interested parties. Comments were required to be received no later than November 7, 1990, and interested parties were invited to file replies to any comments not later than November 13, 1990. In order to determine whether this product could be supplied to Berg during the fourth quarter of 1990, the Secretary sent questionnaires to Bethlehem Steel Corporation ("Bethlehem"), Oregon Steel Mills ("Oregon"), and USX Corporation ("USX"), the three potential U.S. producers of this product. The Secretary received questionnaire responses from Bethlehem and USX and no comments to the **Federal Register** notice.

Questionnaire Responses

Bethlehem and USX indicated that they would not be viable suppliers of the subject plate during the fourth quarters of 1990. Bethlehem noted that it would not be able to produce a product to meet the required X–60 steel plate specifications. USX initially indicated that it could produce and supply 2,000 net tons of this material to Berg within six to eight weeks, but subsequently revised its questionnaire response to indicate that it could not supply the subject plate. USX states that its inability to supply the requested product is due to the ultrasonic testing requirement and its limited experience producing the requested plate combined with its holiday schedule at the end of the year. Oregon did not respond to the questionnaire.

Conclusion

The potential domestic suppliers of X–60 grade steel plate did not indicate a willingness or ability to supply this material to Berg during the required time frame. Furthermore, sufficient quota is unavailable to the foreign supplier for this steel plate. Therefore, the Secretary determines that short supply exists with respect to the requested product. Pursuant to section 4(b)(4)(A) of the Act, and § 357.102 of Commerce's Short-Supply Procedures (19 CFR 357.102), the Secretary grants Berg a short-supply allowance for 10,999.8 net tons of the requested plate for the fourth quarter of 1990.

Dated: November 14, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-27332 Filed 11-19-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Endangered Marine Mammals; Correction to Permit Application

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of Correction to Application for Scientific Research Permit, Walter H. Munk, Scripps Institution of Oceanography (P470).

SUMMARY: This notice revises the third paragraph under the "Summary" section previously published in the **Federal Register** October 24, 1990 (55 FR 42869–42870) as follows:

1. On page 42870, column 1, first paragraph, following "Antarctic fur seal (*Arctocephalus gazella*)," are inserted the following:

"Spectacled porpoise (*Australophocaena dioptrica*)
Strap-toothed whale (*Mesoplodon layardi*)."

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90-27245 Filed 11-19-90; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Application for public display permit, Lake Superior Zoological Gardens (P468).

SUMMARY: Notice is hereby given that an applicant has applied in due form for a Public Display Permit to obtain two female captive born harbor seals from the Denver Zoo and one male captive born harbor seal from Hogle Zoo, Salt Lake City as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Basil D. Norton, Director, Lake Superior Zoological Gardens, 7210 Fremont Street, Duluth, Minnesota 55807.

2. *Type of permit:* Public Display.

3. *Name and number of animals:* Three (3) captive born harbor seals (*Phoca vitulina*).

4. *Type of take:* The Applicant proposes to transport and obtain two female captive born harbor seals from the Denver Zoo, and one male captive born harbor seal from Hogle Zoo, Salt Lake City for public display and educational purposes. The Applicant also requests a permit to obtain polar bears. The National Marine Fisheries Service does not issue permits for polar bears. The Applicant has been informed that the U.S. Fish and Wildlife Service is responsible for issuing permits for polar bears.

5. *Location and duration of activity:* Animals will be provided for at the Lake Superior Zoological Gardens for an indefinite period of time. Arrangements and facilities for transporting and maintaining the marine mammals requested in this application have been inspected by certified veterinarians who have acknowledged that such arrangements and facilities are adequate for the well-being of the marine mammals involved. The Lake Superior Zoological Gardens is not yet licensed by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, to maintain marine mammals. The facility that is to be used for marine mammals is currently under construction and will be inspected and approved by APHIS upon its completion before any permit may be issued by the National Marine Fisheries Service.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, room 7330, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by inerested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, room 7330, Silver Spring, Maryland 20910;

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115; and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930.

Dated: November 11, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90-27246 Filed 11-19-90; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Modification; Dr. Bernd Würsig and Mr. Salvatore Cerchio (P36B)

Notice is hereby given that Dr. Bernd Würsig, Professor and Director, Marine Mammal Research Program, Texas A&M Univ., Galveston, TX 77553–1675, and Mr. Salvatore Cerchio, Moss Landing Marine Laboratories, Moss Landing, CA 95039–0450, requested a modification of Permit No. 663 issued on January 11, 1990 (54 FR 8231), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 663 (as modified) authorizes the take by inadvertent harassment of up to 250 humpback whales (*Megaptera novaeangliae*) during photographic studies. The Permit Holder requests authorization to increase the number of whales to be taken by harassment to 500 annually. The increase is required because of the unusually large number of humpbacks off Kauai. During 1990, 244 hours were spent on the water over four months time due to poor weather conditions and 200 whales were approached for photographic identification. Since the Permit Holder(s) plans to spend twice that amount of time on the water in good weather, it is probable that twice as many animals may be approached.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

BEST COPY AVAILABLE

All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification request are available for review by interested persons in the following offices:

By appointment: Permit Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD 20910;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; and

Protected Species Coordinator, Pacific Area Office, Southwest Region, 2570 Dole Street, Honolulu, HI 96822.

Dated: November 9, 1990.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 90-27247 Filed 11-19-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

November 14, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988, as amended, between the Governments of the United States and the People's Republic of China establishes limits for the 1991 agreement year. The limits for Categories 200, 239, 338/339, 338-S/339-S, 347/348, 369-S, 611, 638/639 and 642 are being reduced for carryforward used in 1990.

Importers are advised that overshipments of Category 369-S will likely result in the limit being filled upon opening. There may be additional charges made to 1991 quotas pending the outcome of ongoing investigations and consultations regarding possible Chinese transshipments.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Information regarding the 1991 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pusuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Dated: November 14, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC. 20229

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988, as amended between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 1991 and extending through December 31, 1991, in excess of the following levels of restraint:

Category levels not subject to a group	Twelve-month restraint limit
200	554,973 kilograms.
218	9,991,817 square meters.
219	2,023,296 square meters.
226	9,187,248 square meters.
237	1,521,635 dozen.
239	2,430,142 kilograms.
300/301	3,419,286 kilograms.
313	37,635,186 square meters.
314	42,655,556 square meters.
315	149,031,492 square meters.
317/326	17,206,034 square meters of which not more than 3,291,853 square meters shall be in Category 326.
331	4,448,375 dozen pairs.
333	77,561 dozen.
334	274,129 dozen.
335	352,042 dozen.
336	142,055 dozen.
338/339	2,142,622 dozen of which not more than 1,614,872 dozen shall be in knit shirts other than T-shirts and tank tops in Categories 338-S/339-S.[1]
340	768,690 dozen of which not more than 384,345 dozen shall be in shirts made from fabric with two or more colors in the warp and/or the filling, excluding napped shirts in Category 340-Z.[2]
341	608,369 dozen of which not more than 365,022 dozen shall be in blouses made from fabric with two or more colors in the warp and/or the filling in Category 341-Y.[3]
342	239,070 dozen.
345	118,111 dozen.
347/348	2,191,819 dozen.
350	131,969 dozen.
351	428,321 dozen.
352	1,633,009 dozen.
359-C [4]	480,327 kilograms.
359-V [5]	738,522 kilograms.
360	6,376,007 numbers of which not more than 4,348,053 numbers shall be in Category 360-P.[6]
361	3,565,637 numbers.
363	27,163,588 numbers.
369-D [7]	4,139,680 kilograms.
369-H [8]	4,176,341 kilograms.
369-L [9]	2,625,449 kilograms.
369-S [10]	561,511 kilograms.
410	1,882,296 square meters of which not more than 1,508,863 square meters shall be in Category 410-A [11] and not more than 1,508,863 square meters shall be in Category 410-B.[12]
433	22,151 dozen.
434	12,821 dozen.
435	23,182 dozen.
436	14,424 dozen.
438	25,242 dozen.
440	36,061 dozen of which not more than 20,606 dozen shall be in men's shirts in Category 440-M.[13]
442	40,182 dozen.
443	129,818 numbers.
444	192,595 numbers.
445/446	278,181 dozen.
447	75,022 dozen.
448	21,089 dozen.
607	2,725,089 kilograms.
611	4,523,943 square meters.

Category levels not subject to a group	Twelve-month restraint limit
613	6,395,613 square meters.
614	10,050,248 square meters.
615	20,922,790 square meters.
617	14,618,543 square meters.
631	1,012,865 dozen pairs.
634	522,206 dozen.
635	545,489 dozen.
636	485,701 dozen.
638/639	2,162,992 dozen.
640	1,347,104 dozen.
641	1,184,482 dozen.
642	271,797 dozen.
645/646	777,515 dozen.
647	1,368,137 dozen.
648	986,992 dozen.
649	763,783 dozen.
650	98,278 dozen.
651	648,182 dozen of which not more than 114,117 dozen shall be in Category 651-B.[14]
652	2,190,110 dozen.
659-C [15]	354,598 kilograms.
659-H [16]	2,373,017 kilograms.
659-S [17]	525,715 kilograms.
669-P [18]	1,604,500 kilograms.
670-L [19]	13,265,973 kilograms.
831	428,643 dozen pairs.
833	22,950 dozen.
835	107,171 dozen.
840	416,899 dozen.
842	229,505 dozen.
845	2,281,385 dozen.
846	152,982 dozen.
847	1,118,835 dozen.
863-S [20]	7,518,950 numbers.
Group II	
330, 332, 349, 353, 354, 359-O,[21] 431, 432, 439, 459, 630, 632, 633, 643, 644, 653, 654 and 659-O,[22] as a group.	113,890,580 square meters equivalent.
Sublevels in Group II	
330/630	5,035,056 dozen.
633	39,412 dozen.
643	448,255 numbers.
Group III	
201, 220, 222-225, 227, 229, 362, 369-O,[23] 400, 414, 464-469, 600, 603, 604-O,[24] 606, 618-622, 624-629, 665, 666, 669-O [25] and 670-O,[26] as a group.	305,025,445 square meters equivalent.
Group IV	
832, 834, 836, 838, 839, 843, 844, 850-852, 858 and 859, as a group.	23,900,186 square meters equivalent.
Sublevel in Group IV	
836	223,660 dozen.

[1] Categories 338-S/339-S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018, 6109.10.0023, 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[2] Category 340-Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[3] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[4] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[5] Category 359-V: only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.

[6] Category 360-P: only HTS numbers 6302.21.1010, 6302.21.1020, 6302.21.2010, 6302.21.2020, 6302.31.1010, 6302.31.1020, 6302.31.2010 and 6302.31.2020.

[7] Category 369-D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[8] Category 369-H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[9] Category 369-L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000.

[10] Category 369-S: only HTS number 6307.10.2005.

[11] Category 410-A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.6001, 5111.30.6001, 5111.90.3000, 5111.90.7000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[12] Category 410-B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2030, 5112.11.2060, 5112.19.6011, 5112.19.6021, 5112.19.6030, 5112.19.6041, 5112.19.6051, 5112.19.6060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.6011, 5112.90.6091, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[13] Category 440-M: only HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.2020, 6205.90.4020 and 6211.31.0030.

[14] Category 651-B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[15] Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[16] Category 659-H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6080, 6505.90.7060 and 6505.90.8060.

[17] Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[18] Category 669-P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[19] Category 670-L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020.

[20] Category 863-S: only HTS number 6307.10.2015.

[21] Category 359-O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359-C); 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070 (Category 359-V).

[22] Category 659-O: only HTS numbers except 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659-C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5060, 6505.90.6060, 6505.90.7060, 6505.90.8060 (Category 659-H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659-S).

[23] Category 369-O: all HTS numbers except 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369-D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369-H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.3015, 4202.92.6000 (Category 369-L); and 6307.10.2005 (Category 369-S).

[24] Category 604-O: all HTS numbers except 5509.32.0000.

[25] Category 669-O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669-P).

[26] Category 670-O: all HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

Imports charged to these limits for the period January 1, 1990 through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for this period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-27259 Filed 11-19-90; 8:45 am]

BILLING CODE 3510-DR-M

Extension of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Thailand

November 15, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending a limit.

EFFECTIVE DATE: November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, or call (202) 343–6581. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as no mutually agreed solution has been reached and to avoid continued market disruption, the limit for Category 614 is being extended for the period which began on October 30, 1990 and extends through October 29, 1991.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 48295, published on November 22, 1989; and 55 FR 5050, published on February 13, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 15, 1990

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 23, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 614, produced or manufactured in Thailand and exported during the twelve-month period beginning on October 30, 1990 and extending through October 29, 1991, in excess of 12,747,865 square meters[1].

[1] The limit has not been adjusted to account for any imports exported after October 29, 1990.

Imports charged to the limit for Category 614 for the period October 30, 1989 through October 29, 1990 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–27257 Filed 11–19–90; 8:45 am]

BILLING CODE 3510–DR–M

Extension of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

November 15, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending limits.

EFFECTIVE DATE: November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6581. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as no mutually agreed solution has been reached and to avoid continued market disruption, the limits for Categories 336/636 and 647/648 are being extended for the period which began on October 31, 1990 and extends through October 30, 1991.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 48295, published on November 22, 1989; 55 FR 5049 and 55 FR 5050, published on February 13, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 15, 1990

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 23, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Thailand and exported during the twelve-month period beginning on October 31, 1990 and extending through October 30, 1991, in excess of the following limits:

Category	12-month restraint limit [1]
336/636	99,414 dozen.
647/648	574,587 dozen.

[1] The limits have not been adjusted to account for any imports exported after October 29, 1990.

Imports charged to these category limits for the period October 31, 1989 through October 30, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set fortth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–27258 Filed 11–19–90; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, December 4, 1990; Tuesday, December 11, 1990; Tuesday, December 20, 1990 at 10 a.m. in room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20301.

Dated: November 15, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–27295 Filed 11–19–90; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Division Advisory Group (DAG) for Electronic Security Command (ESC) will meet 12–13 December 1990 from 8 a.m. to 5 p.m. at San Antonio, TX.

The purpose of this meeting is to address long range planning and ESC ROADMAPS; efforts in Multilevel Security; and the 1990 Summer Study on Technology Options and Concepts for Defeating Enemy Defenses. This meeting will involve discussions of classified defense matters listed in Section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–27270 Filed 11–19–90; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Public Forum

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting; public forum.

SUMMARY: The National Assessment Governing Board is announcing opportunity for commentary and review of the achievement levels being considered for the 1990 mathematics assessment of the National Assessment of Educational Progress (NAEP). The Board, in accordance with its statutory responsibility to identify "appropriate achievement levels for each * * * grade (and) subject * * * to be tested under the National Assessment" has appointed an ad hoc advisory panel to recommend mathematics achievement levels for grades 4, 8, and 12 to be used in reporting the 1990 NAEP. The Board intends to take final action on these recommendations at a teleconference meeting on November 29, 1990. This document is intended to notify interested individuals and organizations of their opportunity to present oral and/or written views to the Board.

DATE: November 26, 1990.

TIME: 9:30 a.m. to 3 p.m.

PLACE: Hyatt Regency Hotel, 400 New Jersey Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, 1100 L Street, NW., suite 7322, Washington, DC, 20005–4013. *Telephone:* (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 4303 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. The National Assessment Governing Board will hold a public forum in Washington on Monday, November 26, 1990, to hear comment on proposed definitions of mathematics achievement levels for grades 4, 8, and 12 to be used in reporting the National Assessment of Educational Progress. The proposed achievement levels are being prepared by an ad hoc advisory panel in accordance with the NAGB resolution of May 11, 1990. The proposals will include detailed descriptions of the subject-matter knowledge and skills proposed for each level, illustrated by representative sample items and scoring protocols.

These proposals are scheduled to be presented to the Board during its quarterly meeting in Atlanta, Georgia on November 16 and 17. Copies will be available for public review on November 19 at the office of the Board at 1100 L Street, NW., suite 7322, Washington, DC, 20005–4013. For copies of information, interested parties may also write to the above address or telephone (202) 357–6938. Persons or organizations wishing to testify are requested to notify the NAGB office in

writing or by telephone at the address or telephone number above by 3 p.m. on November 23. However, every effort will be be made to receive testimony from all persons attending the forum who wish to make a presentation. Written statements should be submitted at the forum or to the Board office by 5 p.m. on November 26. The Board plans to analyze all comments received in response to this announcement. The results of the public comments will be used by the Board in conjunction with other information to fulfill its statutory requirement to establish achievement goals on the National Assessment.

Records are kept of all Board proceedings, and are available for public inspection at U.S. Department of Education, National Assessment Governing Board office from 8:30 a.m. to 5 p.m., Monday through Friday.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90-27459 Filed 11-19-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; U.S. and Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number DE-SC05-90UEJA-210, for the supply of 22.351 kilograms of uranium, enriched to 45 percent in the isotope uranium-235, for use by the Japanese Atomic Energy Research Institute for fuel for the JRR-2 research reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on November 15, 1990.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 90-27312 Filed 11-19-90; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Public L. 96-511, 44 U.S.C. 3501 *et. seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, *e.g.*, new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number or responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.).

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586-2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA-178, 191, 191S, 627, 857 and 857S.
3. 1905-0175.
4. Natural Gas Program Package.
5. Revision—Changes to the forms were outlined in a **Federal Register** notice (55 FR 14458) published April 18, 1990. In addition, EIA is proposing to discontinue holding information collected on the EIA-176 as confidential. The EIA-191S and EIA-857S are to be cleared on a standby basis to be used when weather, natural disasters, or other catastrophic events dictate the need for more information on supplies and consumption in given areas. The EIA-191S and EIA-857S are shorter versions of the EIA-191 and EIA-857 and the data would be collected on a weekly basis.
6. Weekly, Monthly, and Annually.
7. Mandatory.
8. State or local government, Businesses or other for profit, Small businesses or organization.
9. 3,313 respondents.
10. 2.4 responses.
11. 5.42 hours per response.
12. 43,179 hours.
13. The Natural Gas Program Package forms collect production, processing, transmission, storage, consumption, and price data. The data are used to address significant energy industry issues. Data from these forms are published in various EIA publications. Respondents are pipeline companies, distributors, storage operators, plant operators, and State agencies.

Statutory Authority: Section 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790.

Issued in Washington, DC, November 14, 1990.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 90-27314 Filed 11-19-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-107-000, et al.]

Potomac Electric Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 8, 1990.

Take notice that the following filings have been made with the Commission:

1. Potomac Electric Power Co.

[Docket No. ER91-107-000]

Take notice that on November 6, 1990, the Potomac Electric Power Company (PEPCO) tendered for filing revisions to the 1982 agreement for electric service to its full requirements customer, Southern Maryland Electric Cooperative, Inc. (SMECO), including revised agreement terms and rates for the years 1991 through 1993 (increasing in the latter years), and provisions for an additional delivery point. These revisions to the PEPCO-SMECO electric service agreement are the result of extensive negotiations and are supported by both parties. An effective date of January 1, 1991 for the revised rates and terms and November 1, 1990 for the delivery point provisions is requested; waiver of notice to allow these effective dates is requested for good cause.

Comment date: November 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Northern California Power Agency v. Pacific Gas and Electric Co.

[Docket No. EL89-34-000]

Take notice that on November 6, 1990, Northern California Power Agency ("NCPA") tendered for filing an amendment to its complaint against Pacific Gas and Electric Company ("PG&E"). NCPA states that its amendment deals with billing dispute issues connected with PG&E's September 10, 1990 bill to NCPA. NCPA further states that the amendment is submitted by agreement of the parties and that PG&E and other parties to the consolidated dockets have been served with copies of the amendment.

Comment date: December 10, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corp.

[Docket No. ER91-102-000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk) on November 5, 1990, tendered for filing an agreement between Niagara Mohawk and New England Power Company (NEP) dated November 1, 1989.

The November 1, 1989 agreement is to provide for the sale by Niagara Mohawk of 80 MW of peaking capacity and related energy to NEP. The term of the agreement was for the period November 1, 1989 through April 30, 1990.

Copies of this filing were served upon NEP and the New York State Public Service Commission.

Comment date: November 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Co.

[Docket No. ER91-105-000]

Take notice that on November 5, 1990, Arizona Public Service Company (APS) tendered for filing Amendment No. 1 to Service Schedule B-1 of the Interconnection Agreement between Utah Power and Light (UP&L) and APS (APS/FPC Rate Schedule No. 26). This Amendment provides for the installation of relay protective and communication equipment at APS' Four Corners Switchyard, where APS and UP&L are interconnected, in order for UP&L to upgade its 345kv transmission system.

APS, with concurrence from UP&L respectfully requests waiver of the Commission's Notice Requirements to permit an effective date of August 27, 1990 for this Amendment.

Copies of this filing have been mailed to UP&L, the Arizona Corporation Commission and the Public Service Commission of Utah.

Comment date: November 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Tampa Electric Co.

[Docket No. ER91-101-000]

Take notice that on November 5, 1990, Tampa Electric Company (Tampa Electric) tendered for filing a revised Exhibit A to the Contract for Interchange Service between Tampa Electric and Florida Power Corporation (Florida Power), describing the points of interconnection between the utilities. The revised Exhibit A is submitted as a supplement to the Contract for Interchange Service, which is designated as Tampa Electric Rate Schedule FPC No. 6, and Florida Power Rate Schedule FPC No. 40. Tampa Electric's filing includes a Certificate of Concurrence executed by Florida Power in lieu of an independent filing.

Tampa Electric proposes an effective date of December 1, 1990, for the revised Exhibit A, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Florida Power and the Florida Public Service Commission.

Comment date: November 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party

must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27233 Filed 11-19-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-277-000, et al.]

Algonquin Gas Transmission Co., et al., Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Algonquin Gas Transmission Co.

[Docket Nos. CP91-277-000]

November 7, 1990.

Take notice that on October 30, 1990, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP91-277-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for United Illuminating Company, a marketer, under the blanket certificate issued in Docket No. CP89-948-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Algonquin states that, pursuant to an agreement dated February 2, 1990, under its Rate Schedule AIT-1, it proposes to transport up to 1,000,000 MMBtu per day equivalent of natural gas. Algonquin indicates that the gas would be transported from Mississippi, New York, Connecticut, and New Jersey, and would be redelivered in Connecticut. Algonquin further indicates that it would transport 1,000,000 MMBtu on an average day and 120,000,000 MMBtu annually.

Algonquin advises that service under § 284.223(a) commenced September 1, 1990, as reported in Docket No. ST91-1196-000.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. U-T Offshore System

[Docket No. CP91-305-000, Docket No. CP91-306-000, Docket No. CP91-307-000]

November 7, 1990.

Take notice that U-T Offshore System, P.O. Box 1396, Houston, Texas 77251, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89-99-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-305-000 (11-02-90)	V.H.C. Gas Systems, L.P. (Marketer).	400,000 400,000 146,000,000	Offshore Louisiana	Cameron Parish, Louisiana.	7-01-90, IT, Interruptible.	ST90-5104-000, 9-06-90.
CP91-306-000 (11-02-90)	Kaztex Energy Management, Inc. (End User).	25,000 25,000 9,125,000	Offshore Louisiana	Cameron Parish, Louisiana.	7-01-90, IT, Interruptible.	ST90-5101-000, 9-12-90.
CP91-307-000 (11-02-90)	Oxy U.S.A., Inc. (Producer).	50,000 50,000 18,250,000	Offshore Louisiana	Cameron Parish, Louisiana.	7-01-90, IT, Interruptible.	ST90-5102-000, 9-04-90.

3. Panhandle Eastern Pipe Line Co.

[Docket No. CP91-332-000]

November 7, 1990.

Take notice that on November 5, 1990, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP91-332-000 a request pursuant to §§ 157.205, 157.211 and 284.223 of the Commission's Regulations for authorization to construct and operate a sales tap and to transport natural gas for Kansas Pipeline Partnership, formerly Kansas Pipeline Company, L.P. (Kansas), a shipper and intrastate pipeline of natural gas, under Panhandle's blanket certificates issued in Docket Nos. CP83-83-000 and CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to construct and operate a six-inch hot tap on its thirty-inch transmission Line No. 41-03-003-1200-30" located in Miami County, Kansas. Panhandle estimates that the proposed sales tap would cost $16,000 and states that Panhandle would be reimbursed for this cost. It is stated that the construction of the proposed sales tap is required to provide the requested transportation service for Kansas.

Panhandle proposes to transport on an interruptible basis up to 10,000 dt equivalent of natural gas on a peak day, 10,000 dt equivalent on an average day and 3,650,00 dt equivalent on an annual basis for Kansas. Panhandle states that it would perform the transportation service for Kansas under Panhandle's Rate Schedule PT. Panhandle indicates that it would transport the gas from various receipt points in Texas, Colorado, Illinois, Kansas, Michigan, Ohio, and Oklahoma, to the proposed delivery point in Miami County, Kansas.

It is explained that the proposed construction and transportation service would begin upon expiration of the 45-day notice period.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of the notice.

4. Northern Natural Gas Co.

[Docket No. CP91-349-000]

November 8, 1990.

Take notice that on November 7, 1990, Northern Natural Gas Company (Northern), P.O. box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-349-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to operate and maintain an existing delivery point and appurtenant facilities as a sales delivery point under Northern's Rate Schedule CD-1 to Iowa-Illinois Gas and Electric Company (Iowa Illinois) under its blanket certificate issued in Docket No. CP82-401-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that the authorization is requested so that Iowa-Illinois may receive sales service at the existing delivery point in Benton County, Iowa referred to as the Cedar Rapids town border station. It is indicated that the Commission authorized the construction and operation of this delivery point by order issued June 18, 1990, in Docket No. CP89-1841-000. It is stated that at the time of certification, Northern anticipated that Iowa-Illinois would receive volumes at this station that were transported by Northern for Iowa-Illinois under Northern's firm transportation Rate Schedule FT-1. Northern states that Iowa-Illinois now requests that jurisdictional sales service at this point under Rate Schedule CD-1.

Northern states that the volumes to be delivered to Iowa-Illinois at the subject delivery point would be within the currently effective entitlements for Iowa-Illinois as authorized by order issued December 22, 1988, in Docket No. CP88-774-000. It is also stated that the delivery of volumes to the new delivery point would not impact Northern's peak day and annual deliveries. Northern also states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accomplish the proposed changes without detriment or disadvantage to Northern's other customers.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP91-344-000, Docket No. CP91-345-000, Docket No. CP91-346-000]

November 8, 1990.

Take notice that Northern Natural Gas Company, Division of Enron Corp., 1400 Smith Street, P.O. box 1188 Houston, Texas 77251-1188 (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-344-000 (11-6-90)	PSI Gas Marketing, Inc. (Marketer).	250,000 187,500 91,250,000	Various	TX, KS	9-14-90, IT-1, interruptible.	ST90-5100, 9-14-90
CP91-345-000 (11-6-90)	Helmerich & Payne, Inc. (Producer).	100,000 75,000 36,500,000	OK, KS, TX, IA, MN, ND	TX, KS, OK, NM	9-23-90, IT-1, interruptible.	ST91-48, 9-23-90
CP91-346-000 (11-6-90)	Conoco, Inc. (Producer)	50,000 37,500 18,250,000	Various	KS	9-7-90, IT-1, interruptible.	ST91-90, 9-7-90

6. Panhandle Eastern Pipe Line Co.

[Docket No. CP91-271-000]

November 8, 1990.

Take notice that on November 1, 1990, Panhandle Eastern Pipe Line Company (Panhandle), P.O. box 1642, Houston, Texas 77001, filed in Docket No. CP91-271-000 an application pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval to partially abandon sales service provided to Central Illinois Light Company (CILCO), The Kansas Power and Light Company (KP&L) and Ohio Gas Company (Ohio Gas), all of which are General Service Customers and Battle Creek Gas Company (Battle Creek), a Limited Service Customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that its current sales agreements with both the General Service Customers and the Limited Service Customer expire October 31, 1990. Panhandle further states that pursuant to recent negotiations, the above mentioned customers have executed new service agreements lowering their contract demand quantity. It is indicated that each of these new service agreements would become effective November 1, 1990, and

would continue until March 31, 1991. Depicted below in Table 1 is the current annualized sales CD by customer, the annualized CD reduction, resulting annualized CD and date of the superseded agreement.

TABLE 1

Customer	Current annualized CD(Mcf)	Annualized reduction CD(Mcf)	Resulting annualized CD(Mcf)	Supersedes agreement dated
CILCO	35,845,663	17,770,963	18,074,700	9-20-89
Ohio Gas	11,021,180	8,312,995	2,708,185	9-11-89
KP&L	2,750,445	1,430,252	1,320,193	10-26-88
Battle Creek	1,934,500	804,825	1,129,675	8-26-88

The following Table 2 depicts the current and requested peak day requirements.

TABLE 2

Customer	Current peak day requirements (Mcf)	Resulting peak day requirements (Mcf)
CILCO	158,000	119,700
Ohio Gas	49,500	17,935
KP&L	12,510	8,742
Battle Creek	5,300	3,095

Panhandle states that upon approval of the requested partial abandonment of service, Panhandle would make the appropriate corresponding changes to its FERC Gas Tariff, Original Volume No. 1, to reflect the reduced level of sales service provided to both the General Service Customers and the Limited Service Customer.

Comment date: November 29, 1990, in accordance with Standard paragraph F at the end of this notice.

7. Williams Natural Gas Co.

[Docket No. CP91-325-000]

November 8, 1990.

Take notice that on November 5, 1990, Williams Natural Gas Company (WNG), P.O. box 3288, Tulsa, Oklahoma 74101, filed a request with the Commission in Docket No. CP91-325-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate an additional delivery point in Douglas County, Kansas, for the sale and delivery of natural gas to Kansas Public Service (KPS), under WNG's blanket certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

WNG states that KPS has requested this additional delivery point in order to serve residential customers who currently use propane in the Lawrence, Kansas, area. WNG states that it would deliver approximately 3,575 Mcf the first year and 50 Mcf on peak days, while increasing to 4,625 Mcf annually and 80 Mcf on peak days by the fifth year. WNG estimates that the proposed delivery point would cost $16,510 to construct, which would be paid from funds on hand. WNG further states that this delivery point is not prohibited by an existing tariff and that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Comment date: December 24, 1990, in accordance with Standard paragraph G at the end of this notice.

8. Natural Gas Pipline Co. of America

[Docket Nos. CP91-293-000,[3] CP91-294-000, CP91-295-000, CP91-296-000]

November 8, 1990.

Take notice that on November 2, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the date of the interruptible transportation service agreement between Natural and the respective shipper, the reference number of the transportation service agreement, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Natural and is included in the attached appendix.

Natural alleges that it would provide the proposed service for each shipper under an executed interruptible transportation service agreement and would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. trans. agree. (ref. no.)	Applicant	Shipper name	Peak day, avg, annual [1]	Points of		Start up date, rate schedule, service type	Related dockets [2]
				Receipt	Delivery		
CP91-293-000 8-23-90 (IGP-2707)	Natural Gas Pipeline Co. of America.	Enron Gas Marketing, Inc.	200,000 100,000 36,500,000	Various existing points.	Various existing points.	9-1-90, ITS, Interruptible.	ST90-5096-000.
CP91-294-000 8-22-90 (IGP-2604)	Natural Gas Pipeline Co. of America.	ODECO Oil & Gas Company.	75,000 40,000 14,600,000	Various existing points.	Various existing points.	9-1-90, ITS, Interruptible.	ST90-5094-000.

Docket No. trans. agree. (ref. no.)	Applicant	Shipper name	Peak day, avg, annual [1]	Points of		Start up date, rate schedule, service type	Related dockets [2]
				Receipt	Delivery		
CP91-295-000 8-22-90 (IGP-2702)	Natural Gas Pipeline Co. of America.	Torch Energy Marketing, Inc.	10,000 6,000 2,190,000	Various existing points.	Various existing points.	9-1-90, ITS, Interruptible.	ST90-5098-000.
CP91-296-000 11-7-90 (IGP-2147)	Natural Gas Pipeline Co. of America.	Tejas Power Corporation.	100,000 50,000 18,250,000	Various existing points.	Various existing points.	9-1-90, ITS, Interruptible.	ST90-5350-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The ST docket indicates that 120-day transportation service was initiated under Section 284.223(a) of the Commission's Regulations.

9. Tennessee Gas Pipeline Co.

[Docket No. CP91-292-000]

November 8, 1990.

Take notice that on November 1, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-292-000 a request pursuant to §§ 157.205 and 157.212 of the Federal Energy Regulatory Commission's (Commission) Regulations under the Natural Gas Act for authorization to add an additional delivery point, for a sale service presently being rendered, to Delta Natural Gas Company (Delta), under the blanket certificate issued in Docket No. CP82-413-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that by a Commission order issued November 24, 1989 at Docket No. CP89-333-000, Tennessee was issued a certificate of public convenience and necessity authorizing sales of up to 1,611 dekatherms (Dth) of natural gas per day to Delta under Tennessee's GS-2 Rate Schedule at two delivery points located in Kentucky (Salt Lick and Farmer's).

Tennessee states that by letter dated August 15, 1990, Delta has requested that Tennessee provide an additional delivery point to be located in Rowan County, Kentucky at Tennessee's Main Line Valve 109 plus 5.4 miles, and to be known as the Kinder delivery point. Deliveries at the Kinder delivery point will not exceed 1,611 Dth per day and the addition of Kinder as a delivery point will not change the existing delivery points or the total daily quantity of 1,611 dekatherms.

Tennessee states that the total quantities to be delivered to Delta will not exceed presently authorized quantities and the change is not prohibited by Tennessee's existing tariff. Tennessee further states that it has sufficient capacity in its system to accomplish delivery of the additional gas to the Kinder delivery point without detriment or disadvantage to any other customer.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

10. K N Energy, Inc.

[Docket No. CP91-310-000]

November 8, 1990.

Take notice that on November 2, 1990, K N Energy, Inc. (K N), P.O. Box 150265, Lakewood, Colorado, 80215, filed a request with the Commission in Docket No. CP91-310-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for permission and approval to construct and operate sales taps, located in Rock, Seward and Thayer Counties, Nebraska, and Phillips County Colorado, under K N's blanket certificate issued in Docket Nos. CP83-140-000, CP83-140-001 and CP83-140-002 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

K N states that the proposed new taps would enable K N to supply an estimated annual quantity of 31,240 Mcf of natural gas to various end users located along its jurisdictional pipelines. It is also stated that the estimated cost of the facilities would be $9,400 which would be partially reimbursed by the customers. Additionally, the proposed facilities would not cause an increase in aggregate or peak requirements and are not prohibited by any existing tariffs.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

11. Natural Gas Pipeline Co. of America

[Docket No. CP91-321-000]

November 8, 1990.

Take notice that on November 5, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP91-321-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 1.57.205 and 157.211) for authority to operate an existing delivery point and associated delivery facilities as a sales tap to provide jurisdictional services, including transportation services under subpart G of part 284 of the Commission's Regulations, under its blanket certificate issued in Docket No. CP82-402-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural indicates that the facilities, which consist of a 6-inch tap and a 6-inch backup tap, are located at an interconnection with Reynolds Metals Company, an end-user, in Cook County, Illinois and were used until October 1, 1990, solely for the transportation of natural gas pursuant to section 311(a)(1) of the Natural Gas Policy Act of 1978 (NGPA) and subpart B of the Commission's Regulations.

Natural states that consistent with the Commission's Interim Rule on Transportation under section 311 of the NGPA issued August 2, 1990, in Docket No. RM90-13-000 (Ordere No. 526), the existing transportation agreements were converted on October 1, 1990, from authorization pursuant to subpart B of part 284 to authorization pursuant to subpart G of part 284. It is then indicated that in accordance with Order 526, the facilities originally build to be used solely for section 311 transportation are exempt from the requirements of Section 7(c) of the Natural Gas Act during the period Order 526 is in effect to the extent such facilities are utilized for the section 311 services that have been converted to blanket certificate authorization under subpart G of part 284. Natural states that the exemption may not continue once Order 526 if replaced and a new subpart G transportation services may not commence until the facilities have been authorized under section 7(c) of the Natural Gas Act. Natural states that it is filing this request to seek such authorization.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

12. High Island Offshore System, High Island Offshore System

[Docket No. CP91-281-000, Docket No. CP91-283-000]

November 8, 1990.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223, of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day, avg. annual [1]	Points of		Start up date, rate schedule	Related dockets [2]
				Receipt	Delivery		
CP91-281-000 10/31/90	High Island Offshore Sys. 500 Renaissance Center.	Reliance Gas Marketing Co..	60,000 60,000 21,900,000	Offshore, TX, LA	Offshore, TX, LA	IT, interruptible, 8-31-90.	RM88-14-001, RM88-15-000.
CP91-283-000 10/31/90	High Island Offshore Sys. 500 Renaissance Center.	Tex/Con Gas Marketing Co..	185,000 185,000 67,525,000	Offshore, TX, LA	Offshore, TX, LA	IT, interruptible, 8-31-90.	RM88-14-001, RM88-15-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

13. Texas Gas Transmission Corp.

[Docket Nos. CP91-301-000,[3] CP91-302-000, CP91-303-000, CP91-304-000]

November 8, 1990.

Take notice that on November 2, 1990, Texas Gas Transmission Corporation (Applicant), filed in the above referenced dockets, prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: December 24, 1990, in accordance with Standard paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper Name	Peak Day,[1] avg. annual	Points of		Start up date, rate schedule	Related dockets [2]
				Receipt	Delivery		
CP91-301-000 (11-2-90)	Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, KY 42301.	Texaco Gas Marketing, Inc.	200,000 50,000 18,250,000	LA,IN,KY,TX,TN, Off LA, Off TX,IL,AR,OH.	LA	10-5-90, IT	CP86-586-000, ST91-873-000.
CP91-302-000 (11-2-90)	Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, KY 42301.	Texas Gas Marketing, Inc.	500,000 50,000 18,250,000	LA, IN, KY, TX,TN, Off LA, Off TX, IL, AR, OH.	KY, OH, IN	10-1-90 IT	CP86-586-000, ST91-872-000.
CP91-303-000 (11-2-90	Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, KY 42301.	NGC Transportation, Inc.	300,000 20,000 7,300,000	LA, IN, KY, TX, Off LA, TN, Off TX, IL, AR, OH.	TN, MS	9-22-90, IT	CP86-586-000, ST91-866-000.

Docket No. (date filed)	Applicant	Shipper Name	Peak Day,[1] avg. annual	Points of		Start up date, rate schedule	Related dockets [2]
				Receipt	Delivery		
CP91-304-000 (11-2-90)	Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, KY 42301.	NGC Transportation, Inc.	300,000 20,000 7,300,000	LA, IN, KY, TX, Off LA, TN, Off TX, IL, AR, OH.	OH, KY	10-1-90, IT	CP86-586-000, ST91-869-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

14. Trunkline Gas Co. et al.

[Docket No. CP91-362-000 et al.]

November 9, 1990.

Take notice that on November 8, 1990, Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[6]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under §§ 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-362-000 (11-8-90)	Bishop Pipeline Corporation (Intra PL).	5,000 5,000 [2] 1,825,000	OLA, OTX, IL, LA, TN, TX.	LA	9-10-90, PT, Interruptible.	ST91-2751-000, 9-1-90.
CP91-363-000 (11-8-90)	Enron Gas Marketing, Inc. (Marketer).	100,000 100,000 [2] 36,500,000	OLA, OTX, IL, LA, TN, TX.	TN	1-7-90, PT, Interruptible.	ST91-2363-000, 9-1-90.
CP91-365-000 (11-8-90)	Arkla Energy Marketing Company (Marketer).	125,000 125,000 45,625,000	LA, AR, IL, TX	LA	8-27-90, ITS, Interruptible.	ST91-16-000, 9-1-90.
CP91-366-000 (11-8-90)	NOARK Gas Marketing Company (Marketer).	75,000 75,000 27,375,000	AR, IL, LA, TX	IL, MO, LA, TX, AR	8-8-90, ITS, Interruptible.	ST91-17-000, 9-1-90.
CP91-367-000 (11-8-90)	O & R Energy, Inc. (Marketer).	40,000 40,000 14,600,000	LA, AR, OK, TX, IL	AR, MO, TX, IL, LA	8-7-90, ITS, Interruptible.	ST90-5295-000, 9-1-90.
CP91-368-000 (11-8-90)	MidCon Marketing Corporation (Marketer).	300,000 10,000 3,650,000	OTX, OLA, TX, LA, MS, AL.	SC, TN, GA	8-15-90, IT, Interruptible.	ST90-5333-000, 9-1-90.
CP91-369-000 (11-8-90)	MidCon Marketing Corporation (Marketer).	300,000 10,000 3,650,000	OTX, OLA, TX, LA, MS, AL.	LA	8-15-90, IT, Interruptible.	ST91-5329-000, 9-1-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Trunkline's quantities are in Mcf.

Applicant's address	Blanket docket
Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124	CP89-1121-000
Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563	CP88-316-000
Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251-1642	CP86-586-000

15. Natural Gas Pipeline Co.

[Docket Nos. CP91-322-000 and CP91-323-000]

Take notice that on November 5, 1990, Natural Gas Pipeline Company of America (Applicant) 701 East 22nd Street, Lombard, Illinois 60148, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-592-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests

which are on file with the Commission and open to public inspection.[7]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[7] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day, avg. annual [1]	Points of		Start up date, rate schedule	Related dockets [2]
			Receipt	Delivery		
CP91-322-000 11-5-90	Entrade Corporation	10,000 10,000 3,650,000	TX, LA	IL, IA	9-1-90, FTS	ST91-15-000.
CP91-323-000 11-5-90	Bell-InCon Glass Packaging Corp.	3,000 3,000 1,095,000	IL, LA	IL, TX	9-1-90, FTS	ST91-14-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

16. K N Energy, Inc.

[Docket Nos. CP91-341-000, CP91-342-000 and CP91-343-000]

November 9, 1990.

Take notice that Applicant filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[8]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[8] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day avg. annual [1]	Points of		Start up date, rate schedule	Related dockets [2]
			Receipt	Delivery		
CP91-341-000 (11-06-90)	PSI, Inc.	100,000 100,000 36,500,000	OK, TX	OK, TX	09-01-90, IT-1, IT-2, & IT-3.	ST91-2209-000.
CP91-342-000 (11-06-90)	Landmark Gas Corp.	20,000 15,000 5,475,000	TX, OK	TX	10-01-90, IT-1, IT-2, & IT-3.	ST91-2210-000.
CP91-343-000 (11-06-90)	LL&E Marketing Inc.	50,000 50,000 18,250,000	KS, NE, CO, WY	CO, WY	09-21-90, IT-1, IT-2, & IT-3.	ST91-2208-000.

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.

17. Stingray Pipeline Co.

[Docket Nos. CP91-334-000, CP91-335-000 and CP91-336-000]

November 9, 1990.

Take notice that on November 6, 1990, Stingray Pipeline Company (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. RP89-70-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[9]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[9] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day, average day annual [1]	Receipt points [2]	Delivery points	Start up date, rate schedule, service type	Related docket, contract date [3]
CP91-334-000 (11-06-90)	Brooklyn Interstate Natural Gas Corp.	100,000 40,000 14,600,000	LA, OLA, OTX	LA, OTX	9-01-90, ITS, Interruptible.	ST90-5351-000, 2-15-90.
CP91-335-000 (11-06-90)	V.H.C. Gas Systems, L.P.	250,000 100,000 36,500,000	LA, OLA, OTX	LA, OTX	9-01-90, ITS, Interruptible.	ST90-5349-000, 3-01-89.
CP91-336-000 (11-06-90)	ODECO Oil & Gas Company.	20,000 10,000 3,650,000	LA, OLA, OTX	LA, OTX	9-01-90, ITS, Interruptible.	ST91-9013-000, 8-22-90.

[1] Quantities are shown in MMBtu.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX, respectively.
[3] If an ST docket is shown, 120-day transportation service was reported in it.

18. Montana Power Co.

[Docket No. CP91-312-000]

November 9, 1990.

Take notice that on November 2, 1990, Montana Power Company (Montana), 40 East Broadway, Butte, Montana 59701, filed in Docket No. CP91-312-000 an application pursuant to § 284.224 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Montana agrees to comply with the conditions set forth in § 284.224(e) and understands that any transaction authorized under a blanket certificate shall be subject to the same rates and charges, terms, conditions and reporting requirements that would apply if the transactions were authorized for an intrastate pipeline by subparts C, D and E of part 284 of the Commission's Regulations.

Comment date: November 30, 1990, in accordance with Standard Paragraph F at the end of this notice.

19. U-T Offshore System

[Docket No. CP91-347-000]

November 9, 1990.

Take notice that on November 6, 1990, U-T Offshore System (U-TOS), P.O. box 1396, Houston, Texas 77251, filed in Docket No. CP91-347-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7(c) of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-99, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

U-TOS proposes to transport natural gas on an interruptible for UGI Corporation (UGI). U-TOS explains that service commenced September 7, 1990 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90-5292-000. U-TOS states that it would transport natural gas on an interruptible basis for UGI. U-TOS explains that the peak day quantity would be 77,464 MMBtu, the average daily quantity would be 77,464 MMBtu, and that the annual quantity would be 28,274,360 MMBtu. U-TOS states that the receipt points for this service are in West Cameron Blocks 116 and 167, offshore Louisiana. U-TOS explains that the delivery points are the interconnections between U-TOS and other pipelines at the Johnson's Bayou Plant, Cameron Parish, Louisiana.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

20. Natural Gas Pipeline Co. of America

[Docket No. CP91-337-000 and CP91-338-000]

November 9, 1990.

Take notice that on November 6, 1990, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[10]

Information applicable to each transaction, including the identify of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

[10] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day average day, annual [1]	Receipt points [2]	Delivery points	Start up date, rate schedule, service type	Related docket, contract date [3]
CP91-337-000 (11-6-90)	Anadarko Trading Company	100,000 50,000 18,250,000	AR, CO, IA, IL, KS, LA, OLA, MO, NE, NM, OK, TX, OTX.	LA, OLA, OK, TX, IA, OTX, IL, NM, CO.	9-1-90, ITS interruptible.	ST89-5095-000, 8-14-90.

Docket No. (date filed)	Shipper name	Peak day average day, annual [1]	Receipt points [2]	Delivery points	Start up date, rate schedule, service type	Related docket, contract date [3]
CP91-308-000 (11-6-90)	MidCon Marketing Corp	100,000 50,000 21,900,000	AR, CO, IA, IL, KS, LA, OLA, MO, NE, NM, OK, TX, OTX.	LA, OLA, OK, TX, IA, OTX, IL, NM, CO.	9-1-90, ITS Interruptible.	ST91-0738-000, 8-20-90.

[1] Quantities are shown in MMBtu and additional volumes may be accepted pursuant to the overrun provisions of Applicant's Rate Schedule ITS.
[2] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[3] If an ST docket is shown, 120-day transportation service was reported in it.

21. U-T Offshore System

[Docket No. CP91-358-000]

November 9, 1990.

Take notice that on November 7, 1990, U-T Offshore System (U-TOS), P.O. box 1396, Houston, Texas 77251, filed in Docket No. CP91-358-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for The Polaris Pipeline (Polaris), a marketing company, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-99-000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

U-TOS requests authorization to transport, on an interruptible basis, up to a maximum of 46,100 Mcf per day of natural gas for Polaris from receipt points located in Offshore Louisiana to points of delivery in Cameron Parish, Louisiana. U-TOS anticipates transporting 46,100 Mcf of natural gas on an average day and an annual volume of 16,826,500 Mcf. U-TOS advises that service under § 284.223(a) commenced September 13, 1990, as reported in Docket No. CP90-5294-000.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

22. United Gas Pipe Line Co.

[Docket No. CP91-320-000]

November 9, 1990.

Take notice that on November 5, 1990, United Gas Pipe Line Company (United), P.O. box 1478, Houston, Texas 77251-1478, filed in Docket No. CP91-320-000, a request pursuant to § 157.211 of the Commission's Regulations under the Natural Gas Act, to construct and operate a two-inch farm tap for interruptible transportation of natural gas to serve Mississippi Valley Gas in Rankin County, Mississippi, pursuant to its blanket certificate, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the new farm tap will enable it to supply a maximum of 12 Mcf/d of natural gas for Mississippi Valley Gas, under United's DG Rate Schedule.

United further states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

23. Panhandle Eastern Pipe Line Co.

[Docket No. CP91-272-000]

November 9, 1990.

Take notice that on November 1, 1990, Panhandle Eastern Pipe Line Company (Panhandle), P.O. box 1642, Houston, Texas 77001, filed in Docket No. CP91-272-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for an order granting permission and approval to partially abandon sales service to Citizens Gas & Coke Utility Company (Citizens) and to provide amended service to Citizens by providing sales service pursuant to Panhandle's Rate Schedule G-1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that Citizens is an existing firm jurisdictional gas sales customer of Panhandle pursuant to Panhandle's Rate Schedule LS-1 and a gas sales contract dated August 26, 1988, which expired October 31, 1990. Panhandle further states that its initial service to Citizens was certificated by an order issued June 27, 1950, at Docket No. G-1083.

It is indicated that on March 29, 1989, the Commission issued an order in Docket No. CP88-727-000 authorizing Panhandle to provide firm sales service to Citizens pursuant to Rate Schedule LS-1 as opposed to Rate Schedule G-1. Panhandle states that in accordance with the March 29, 1989, order, service to Citizens commenced November 1, 1989.

Panhandle states that it is requesting authority to amend its service to Citizens by providing sales service pursuant to Panhandle's Rate Schedule G-1 under the terms of a new contract dated October 23, 1990. Panhandle further states that the term of this service would commence November 1, 1990, and would continue in effect until November 1, 1992, or until such time Panhandle has received and accepted a certificate of public convenience and necessity from the Commission authorizing a permanent Gas Inventory Charge. In addition, Panhandle states that it is requesting partial abandonment of Citizens' contract demand as illustrated by the following table.

	Existing contract demand (Mcf)	Requested contract demand (Mcf)
January	100,000	100,000
February	100,000	100,000
March	100,000	100,000
April	100,000	40,000
May	100,000	35,000
June	100,000	25,000
July	100,000	25,000
August	100,000	25,000
September	100,000	35,000
October	100,000	50,000
November	100,000	100,000
December	100,000	100,000

The partial abandonment would reduce the total annual volume to 22,285,000 Mcf from 36,500,000 Mcf.

Comment date: November 30, 1990, in accordance with Standard Paragraph F at the end of this notice.

24. Tennessee Gas Pipeline Co.

[Docket Nos. CP91-351-000 [1] and CP91-352-000]

November 9, 1990.

Take notice that on November 7, 1990, Tennessee Gas Pipeline Company (Applicant), filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket

[1] These prior notice requests are not consolidated.

certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: December 24, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Applicant	Shipper name	Peak day, avg, annual	Points of		Start up date, rate schedule	Related dockets [2]
				Receipt	Delivery		
CP91-351-000 (11-7-90)	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77252.	Woodward Marketing, Inc.	700 700 255,500	MS	MS	10-1-90, FT-A	CP87-115-000, ST91-2344-000.
CP91-352-000 (11-7-90)	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77252.	Woodward Marketing, Inc.	503 503 183,595	MS	TN	10-1-90, FT-A	CP87-115-000, ST91-2345-000.

[1] Quantities are shown in dekatherms unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 27234 Filed 11-19-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-20-000]

El Paso Natural Gas Co.; Tariff Filing

November 13, 1990.

Take notice that on November 7, 1990, El Paso Natural Gas Company ("El Paso") tendered for filing and acceptance, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, certain tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1 and Third Revised Volume No. 2 in recognition of the Commission's Order No. 528. El Paso has requested that the tendered tariff sheets be accepted for filing and permitted to become effective on December 7, 1990.

El Paso states that by Order No. 528 issued November 1, 1990 at Docket No. RM91-2-000, *et al.*, the Commission, effective 30 days after publication of the order in the **Federal Register**, stayed the authority of all pipelines (except certain pipelines identified on appendix A of the order) to collect fixed take-or-pay charges based on a purchase deficiency allocation method. Pipelines which have been excluded from the effectiveness of Order No. 528 are the pipelines which have entered into settlements with their customers, which the Commission has approved and which have been effective, or pipelines that have recovery mechanisms which have become final and nonappealable.

El Paso states that for the reasons more fully explained in a filing made concurrently with its compliance filing, it believes its take-or-pay buyout and buydown recovery mechanism also has become final and nonappealable and therefore should not be subject to the requirements of Order No. 528.

El Paso further states that in the event the Commission denies its request to be excluded from the requirements of Order No. 528, it is filing certain tariff sheets which, when accepted and approved by the Commission, will revise Section 21, Take-or-Pay Buyout and Buydown Cost Recovery, of the General Terms and Conditions contained in its FERC Gas Tariff, Second Revised Volume No. 1, and certain Statement of

Rates tariff sheets in recognition of Order No. 528. El Paso states that the take-or-pay buyout and buydown costs have been allocated among individual sales customers or customer groups based on certain percentages already agreed upon by all of El Paso's sales customers, except the City of Willcox, Arizona and the Arizona Electric Power Cooperative, Inc. ("Willcox"), in its pending offer of settlement of Docket No. RP88-44-000. El Paso also states that it believes that Willcox's claims are without merit and that the tendered tariff sheets should be applied to all customers.

El Paso states that copies of the filing were served upon all interstate pipeline system sales customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 21, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27236 Filed 11-19-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-21-000]

Florida Gas Transmission Co.; Petition for Limited Waiver of Tariff Provisions

November 13, 1990.

Take notice that on November 8, 1990, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. RP91-21-000 a petition requesting authorization for waiver of the scheduling penalty provisions of Rate Schedules FTS-1, PTS-1 and ITS-1 of FGT's FERC Gas Tariff for penalties incurred during the month of August 1990.

FGT states that, among other reasons, good cause exists to waive the scheduling penalties because August was the first month of open-access service on FGT's system.

Any person desiring to be heard or to protest said petition should on or before November 21, 1990 file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27235 Filed 11-19-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-67-000, RP88-81-000, RP88-221-000, and RP90-119-001 (Phase I/ Rates)]

Texas Eastern Transmission Corp.; Informal Settlement Conference

November 13, 1990.

Take notice that, at the request of Texas Eastern Transmission Corporation, a conference will be convened in this proceeding on December 4, 1990 at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of several issues remaining in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulation (18 CFR 385.214).

For additional information, contact Dennis H. Melvin (202) 208-0042, or Arnold H. Meltz (202) 208-0737.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27238 Filed 11-19-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-52-003]

Texas Gas Transmission Corp.; Tariff Filing

November 13, 1990.

Take notice that on November 9, 1990, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the tariff sheets listed and attached as appendices A, B, and C, hereto.

This filing is being made in compliance with the Commission's October 4, 1990 "Order Approving Settlement" in Docket No. RP90-52. This order approves the rates and provisions of the Stipulation and agreement filed June 19, 1990, in the referenced docket. The instant filing resolves all issues concerning rates and tariffs which were placed into effect on January 1, 1990, in Docket No. RP90-52.

Texas Gas states that copies of this filing have been served upon Texas Gas's jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before November 21, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27237 Filed 11-19-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed With the Office of Hearings and Appeals During the Week of September 14 Through September 21, 1990

During the Week of September 14 through September 21, 1990, the applications for relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. A submission inadvertently omitted from an earlier list has also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: November 14, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of September 14 through September 21, 1990]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 14, 1990	Texaco/Craig's Texaco Service, Washington, DC	RR321-16	Request for modification/rescission in the Texaco refund proceeding. If granted: The September 7, 1990 Decision and Order (Case No. RF321-34 and RF321-6098) issued to Craig's Texaco Service would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Sept. 18, 1990	Texaco/M&H Texaco, Waco, TX	RR321-17	Request for modification/rescission in the Texaco refund proceeding. If granted: The August 3, 1990 Decision and Order (RF321-636 & RF321-637) issued to M&H Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Sept. 20, 1990	Texaco/Ray's Texaco Service, Hamden, CT	RR321-18	Request for modification/rescission in the Texaco refund proceeding. If granted: The August 13, 1990 Decision and Order issued to Ray's Texaco Service would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.

Refund Applications Received

[Week of September 14 through September 21, 1990]

Date received	Name of refund proceeding/name of refund applicant	Case number
9/19/90	Anderson Butane Service, Inc./Louisiana	RQ14-564.
9/14/90	Pleasant Street Co.	RF323-15.
9/14/90	Gray Oil Co.	RF323-16.
9/14/90	Yarmouth Fuel Co.	RF323-17.
9/17/90	Otis' Spur	RF309-1415.
9/17/90	Rollins Leasing Corp.	RF315-10047.
9/17/90	Tidewater Barge Lines, Inc.	RF315-10048.
9/17/90	Rollins Leasing Corp.	RF307-10152.
9/18/90	Atlas Oil Corp.	RF323-22.
9/18/90	Deblois Oil Co.	RF323-23.
9/18/90	Chevron U.S.A., Inc.	RF324-4.
9/18/90	Indiana Harbor Belt RR., *et al.*	RF315-10049.
9/18/90	Dusty's Shell Service	RF315-10050.
9/18/90	Wadleigh's, Inc.	RF323-24.
9/20/90	C.W. & G.W. Nightingale Oil	RF323-25.
6/29/90	USX Corp.	RC272-98.
9/17/90	McClellan Fuel Co., Inc.	RF323-18.
9/17/90	Ginn Oil Co.	RF323-19.
9/17/90	Pauline Y. Knox Investment	RF323-20.
9/17/90	Chevron U.S.A., Inc.	RF323-21.
9/14/90 thru 9/21/90	Atlantic Richfield Refund, applications received	RF304-11962 thru RF304-12023.
9/14/90 thru 9/21/90	Texaco Refund, applications received	RF321-9579 thru RF321-9705.
9/14/90 thru 9/21/90	Crude Oil Refund, applications received	RF272-81592 thru RF272-81885.
9/14/90 thru 9/21/90	Gulf Oil Refund, applications received	RF300-12045 thru RF300-12279.

[FR Doc. 90-27315 Filed 11-19-90; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders by the Office of Hearings and Appeals During the Week of October 8 Through October 12, 1990

During the week of October 8 through October 12, 1990, the decisions and orders summarized below were issued with respect to applications for refund or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Interlocutory Order

Economic Regulatory Administration, 10/10/90, LRZ-0009

The Economic Regulatory Administration (ERA) filed a Motion for Order Requiring Production of Documents and for Leave to File a Supplemental Response (ERA Motion), relating to a Proposed Remedial Order (PRO) that was issued by the ERA to Revere Petroleum Corporation (Revere) and Richard E. Dobyns (the Respondents) on August 9, 1983. The ERA Motion sought an order: (1) Requiring the production to the ERA of certain documents which the Respondents received pursuant to a discovery order previously issued in the proceeding, *Gordon Walz*, 13 DOE ¶ 84,009 (1985), and (2) granting leave to the ERA to file a Supplemental Response to the Respondents' Statement of Objections to the PRO. In considering the ERA Motion, the DOE determined that the ERA had failed to establish its necessity for the discovery documents which it sought and that supplementing its Response to the Respondents' Statement of Objections was improper in view of the late stage of the proceedings. Accordingly, the ERA Motion was denied.

Implementation of Special Refund Procedures

Tesoro Petroleum Corp., 10/12/90, KEF-0128

The DOE issued a Decision and Order implementing procedures for the disbursement of $48,500,000, plus accrued interest, obtained by the DOE under the terms of a Consent Order entered into with the Tesoro Petroleum Corporation (Tesoro) on January 23, 1989. The DOE determined that the Tesoro funds should be distributed pursuant to subpart V. The DOE also determined that $6,000,000 of the consent order fund should be set aside for refunds to customers that purchased Tesoro refined products during the consent order period January 1, 1973, through January 27, 1981. If any funds remain after meritorious claims are paid in the first stage, they will be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. Purchasers of regulated petroleum products from Tesoro during the consent order period may file Applications for Refund from the Tesoro consent order fund. Applications for Refund must be postmarked by May 31, 1991. Instructions for the completion of refund applications are set forth in the Decision.

Refund Applications

Propst Construction Company, 10/10/90, RF272–58561

The DOE issued a Decision and Order denying an Application for Refund filed by the Propst Construction Company in the subpart V crude oil special refund proceeding. An affiliate, Propst Brothers Distributors, received a refund in the Reseller Stripper Well proceeding. The two companies are affiliated through common ownership, close family connections, and proximity of location.

Regional Ambulance, Inc., 10/11/90, RF272–80698

The DOE issued a Decision and Order granting refund monies from crude oil overcharge funds to Regional Ambulance, Inc. (Regional), based upon its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicant used unleaded gasoline to fuel its fleet of ambulances. Regional was an end-user of unleaded gasoline and was therefore presumed injured. The company submitted expenditure records instead of gallonage totals in support of its Application for Refund. These dollar figures were converted to a volume total based on the Energy Information Administration's (EIA) historical price data as reported in its 1987 Annual Energy Review. Because the EIA does not report unleaded gasoline prices for 1973–1975, these prices were estimated using the historical price ratio of leaded and unleaded gasoline. After calculating a gallonage total by this method, Regional's Application for Refund was granted. The refund granted to Regional Ambulance, Inc., is $1,014.

Shell Oil Company/Euclid Wash-N-Fill Marginal Enterprises, Inc., 10/10/90; RF315–5555, RF315–10017

The DOE issued a Supplemental Order rescinding a $1,050 refund that was issued to Raymond J. Carabotta in a June 7, 1989, Decision and Order, Shell Oil Company/Bill's Shell. Mr. Carabotta claimed a refund on the basis of the 1976 through 1979 petroleum product purchases of Marginal Enterprises, Inc., a business which he owned and operated during the price control period. The DOE later learned that another applicant in the Shell proceeding, John Attwood, purchased all of the stock of Marginal Enterprises in 1984. Because the right to collect a refund is generally considered to be transferred in a sale of stock, the DOE determined that Attwood, not Carabotta, was entitled to the Shell refund. Accordingly, John Attwood was granted a refund of $3,552, representing $2,759 in principal and $793 in interest, based on the 12,207,697 gallons of petroleum products that Marginal purchased between 1973 and 1981. Raymond Carabotta's $1,050 refund check was rescinded.

Stoneco, Inc., et al., 10/10/90; RF272–31684, et al., RD272–31684, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by three asphalt manufacturing and road construction firms in the subpart V crude oil special refund proceeding. A group of States and Territories (States) objected to the Applications on the grounds that the applicants were able to pass through increased petroleum costs to consumers during the consent order period. The only evidence submitted by the States was an affidavit by an economist stating that, in general, road construction firms were able to pass through increased petroleum costs. the DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicants should receive a refund. The DOE also denied the States' Motion for Discovery, determining that it was not appropriate since the States had not presented relevant evidence to rebut the applicants' presumption of injury. The sum of the refunds granted in this Decision is $93,690.

Refund Applications

The Office of Hearings and Appeals granted issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders and available in the Public Reference room of the Office of Hearings and Appeals.

Name	Case no.	Date
Atlantic Richfield Co./ Alamo Service *Et Al.*	RF304–11003	10/12/90
Atlantic Richfield Co./ Lockwood Boat Works, Inc., *Et Al.*	RF304–4007	10/10/90
Brooklyn Union Gas	RF272–515	10/10/90
Diamond State Telephone Co., *Et Al.*	RF272–03137	10/11/90
Evergreen International Corp., *Et Al.*	RF272–58032	10/10/90
Exxon Corp./Farrell Lines, Inc., *Et Al.*	RF307–736	10/11/90
Federal Food Service, Inc., *Et Al.*	RF272–60183	10/12/90
Gulf Oil Corp./Nino's Gulf, *Et Al.*	RF300–11068	10/10/90
Kay Management Co., Inc., *Et Al.*	RF272–58197	10/11/90
Lac Qui Parle Co-Op Oil Co., *Et Al.*	RF272–60408	10/11/90
Placid Oil Co./Wren's Garage & Grocery, *Et Al.*	RF314–41	10/10/90
RPJ Management Corporation.	RA272–30	10/12/90
Sabon P. Milligan *Et Al.*	RF272–3382	10/12/90
Service & Supply Coop.	RF272–54202	10/11/90
Shell Oil Co./Paul's Safety Service, *Et Al.*	RF315–7065	10/10/90
State of Wisconsin	RF272–80251	10/11/90
State of Wisconsin Dept. of Administration.	RF272–77903	
Texaco Inc./Kinerd's Texaco Mike Kinerd's Texaco.	RF321–1653	10/11/90
	RF321–5974	
Texaco Inc./Sam's Texaco Airline Texaco.	RF321–473	10/11/90
	RF321–732	
	RF321–6822	
Texaco Inc./ Winsauer's Texaco, *Et Al.*	RF321–30143	10/12/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Bob Wong's Arco Service Center	RF304–4171
Doug's Gulf Service	RF300–11225
Hasse Shell	RF315–5653
Race & Son Service	RF300–11205
West Metairie Shell	RF315–10010

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: November 14, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90–27316 Filed 11–19–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

Solicitation for Research Grant Proposals

[FRL–3862–2]

AGENCY: Environmental Protection Agency.

ACTION: Revision of dates and topics for the 1991 solicitation for research grants proposals.

SUMMARY: On September 28, 1990 the Environmental Protection Agency's (EPA) Office of Exploratory Research solicited research grants in six environmental disciplines and tentatively announced the issuance of four Request for Applications (RFA) titles (55 FR 39382).

With this notice the 1991 schedule of closing dates for receipt of application is revised as follows:

Discipline	Original closing dates for applications	New closing dates for applications
Biology	3/15/91 and 9/13/91	9/13/91
Health	10/19/90 and 4/12/91	8/16/91
Chem/Physics Air	2/15/91 and 8/15/91	8/16/91
Chem/Physics Water/ Soil	1/18/91 and 7/19/91	7/5/91
Engineering	2/8/91 and 8/ 23/91	8/9/91
Socioeconomics	3/23/91 and 9/20/91	3/22/91

In addition, one of the RFA titles will not be solicited this year, the title being cancelled is "Chemical Microsensors for Environmental Applications (all Media)".

These changes have been made to accommodate the exploratory research grants appropriation for fiscal year 1991.

FOR FURTHER INFORMATION CONTACT: EPA's Office of Exploratory Research at (202) 382–7445.

Dated: November 14, 1990.

Roger Cortesi,

Dir, OER.

[FR Doc. 90–27306 Filed 11–19–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3861–9]

National Drinking Water Advisory Council; Open Meeting

Under section (1)(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (Pub. L. 99–339), will be held at 9 a.m. on December 6, 1990, and at 8:30 a.m. on December 7, 1990, at the St. James Hotel, 950 24th Street NW., Washington, DC. Council Subcommittees will hold their meetings on December 4 and 5, 1990.

The purpose of the meeting will be to seek the Council's advice and comments on the Reauthorization of the Safe Drinking Water Act and the Mobilization efforts of the Office of Drinking Water. They will also receive a briefing on the National Pesticide Survey: Phase I Report. Some other issues that will be discussed include: the Draft Guidance in Developing Health Criteria for Determining Unreasonable Risks to Health; Enforcement; Implementation Strategies for the Surface Water Treatment Rule/Total Coliform Rule, Lead, Phase II, the Lead Ban and the Lead Contamination Control Act; and the Toxic Characteristics Leaching Procedures Guidance.

The meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate a portion of its meeting time for public participation. Oral statements will be limited to ten minutes. It is preferred that there be one presenter for each statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 382–2285. The petition should include the topic of the proposed statement, the petitioner's telephone number and should be received by the Council before December 3, 1990.

Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to the members before any final discussion or vote is completed. Statements received after a meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Any member of the public wishing to attend the Council meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw, Designated Federal Official, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Drinking Water (WH–550A), 401 M Street SW., Washington, DC 20460 or at (202) 382–2285.

Dated: November 13, 1990.

Michael B. Cook,

Director, Office of Drinking Water.

[FR Doc. 90–27307 Filed 11–19–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3862–1]

Science Advisory Board; Indoor Air Quality and Total Human Exposure Committee; Open Meeting

Under the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of a public meeting of the Science Advisory Board's Indoor Air Quality and Total Human Exposure Committee. This meeting will be held on December 4–5, 1990 beginning at 9 a.m. on December 4 and ending at 5 p.m. on December 5. The meeting will be held at the Days Inn Crystal City Hotel, 2000 Jefferson Davis Highway, Arlington, Virginia 22202. The phone number at the hotel is (703) 920–8600.

The purpose of the meeting is to review two EPA prepared documents concerning environmental tobacco smoke. These are: (1) Health Effects of Passive Smoking: Assessment of Lung Cancer in Adults and Respiratory Disorders in Children (EPA/600/6–90/006A) ("Risk Assessment"), and (2) Environmental Tobacco Smoke: A Guide to Workplace Smoking Policies (EPA/400/6–90/004) ("Policy Guide"). To obtain single copies of the Risk Assessment, please contact the U.S. EPA, Office of Research and Development Publications Office, CERI-FRN, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, (513) 569–7562 or FTS 684–7562. Please provide your name and mailing address and request the Risk Assessment by title and EPA number. The Policy Guide is available from the U.S. EPA, Office of Air and Radiation, Indoor Air Division (ANR–445W), 401 M Street SW., Washington, DC 20460, (703) 306–0470. These documents are not available from the Science Advisory Board.

BEST COPY AVAILABLE

The Agency seeks the advice of the SAB on the accuracy and completeness of the Risk Assessment and on the question of whether its conclusions on the weight of evidence of ETS caused cancer and other respiratory disease are well considered based on the data and accepted scientific practices. In addition, the Agency has asked the SAB to address the following specific issues:

A. *Lung cancer in adults:* 1. Has EPA met the requirements stated in its carcinogen guidelines for characterizing ETS in Category A, *i.e.* is the evidence sufficient to conclude the ETS is causally associated with lung cancer? 2. Is spousal smoking a proper measure of ETS exposure to assess lung cancer risk? 3. Are the differences in relative risk observed between studies in the U.S. and those overseas of concern, and if so, to what degree? 4. Is Meta-Analysis an appropriate tool to use in the document and has it been applied correctly? Have the epidemiological studies been properly evaluated and combined using this technique? 5. Have the most important confounders been properly addressed? Has the issue of misclassification (classifying current and former smokers as never smokers) been adequately addressed and the proper adjustments made? Are there other confounders which could be addressed in greater detail? 6. Does the document characterize the uncertainties, both in the weight-of-evidence and the number of attributable deaths, appropriately? 7. Has the quantitative risk of lung cancer been properly assessed? Would it be more properly assessed by a dose response assessment using either cotinine or respirable suspended particulates as surrogate measures of exposure (appendix C)? Would modeling approaches (appendix D)? Should a dose-response model be developed for ETS-radon interaction effects? 8. Should the Draft Report attempt to distinguish between the effects of home vs. workplace exposure to ETS?

B. *Respiratory disorders in children:* 1. Has the weight of evidence for ETS related respiratory disorders in children been properly characterized? A draft report with a detailed description and analysis of 26 recent studies has recently been prepared. Should it be included in a revised report as appendix E? 2. Have confounders in the epidemiologic studies been adequately addressed? 3. Should a meta analysis approach be attempted as in the lung cancer analysis?

The review of the Policy Guide will be limited to how the scientific issues raised in the Risk Assessment are characterized (primarily pages 6–20, inclusive of the Policy Guide).

The meeting is open to the public and seating is on a first come basis. Members of the public wishing to provide oral or written statements at the meeting must contact Mr. A. Robert Flaak, Designated Federal Official for this Committee, at the address given below no later than November 26, 1990 in order to reserve space on the agenda. Each speaker will be limited to a maximum of 5 minutes. At least 20 copies of any written statements must be submitted to Mr. Flaak no later than the time of the meeting. The SAB expects that oral statements will supplement, rather than repeat written statements. If a large number of individuals or groups ask to provide comments the amount of time each may speak may be reduced, the meeting may be extended into the evening to accommodate additional speakers, or we may ask that oral statements be limited and that additional comments be provided in writing.

For further information concerning the meeting or to request time on the agenda to speak, please contact Mr. A. Robert Flaak, Assistant Director, Science Advisory Board, U.S. EPA, (A–101F), 401 M Street SW., Washington, DC 20460. Telephone: (202) 382–2552; FTS 382–2552; FAX; 475–9693. For copies of the Agenda and the Committee Roster, please contact Ms. Carolyn Osborne, Senior Staff Secretary, at the address and numbers listed above. The Risk Assessment and Policy Guide are not available from the Science Advisory Board.

Dated: November 9, 1990.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 90–27306 Filed 11–19–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 9, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB Number: 3060–0053.

Title: Application for Consent to Transfer Control of Corporation Holding Station License.

Form Number: FCC 703.

Action: Revision.

Respondents: Non-profit institutions and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 907 responses; .6 hours average burden per response; 544 hours total annual burden.

Needs and Uses: FCC Rules require that applicants in the private Land Mobile, General Mobile, Microwave, Marine, Aviation and Experimental Radio Services submit FCC Form 703 whenever it is proposed to change, as by transfer of stock ownership, the control of a station. The data is used to determine continued eligibility for licensees. Without this information violations of ownership regulations could occur. The reason for the revision is to include fee data in the form.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90–27231 Filed 11–19–90; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: New Collection.

Title: Community Based Anti-Arson Program.

Abstract: The Community Based Anti-Arson Program has been developed to provide grants to community based organizations (CBO's) interested in mitigating the arson problem in their local jurisdictions. The program is administered by the U.S. Fire Administration, FEMA. The data collection requirements of the program include the application for a grant, quarterly reporting on approved projects, and quarterly evaluation of each CBO. The data are used to evaluate the effectiveness of the program and the need for continued funding, and to report to Congress when requested.

Type of Respondents: Non-profit institutions.

Estimate of Total Annual Reporting and Recordkeeping Burden: 407 Hours.

Number of Respondents: 20.

Estimated Average Burden Hours per Response: 1.13 Hours.

Frequency of Response: Annually, Quarterly.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646–2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395–7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: October 26, 1990.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 90–27290 Filed 11–19–90; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; City of Unalaska/ Sea-Land Services, Inc., et. al.

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200439 and 224–200439–001

Title: City of Unalaska/Sea-Land Services, Inc., Terminal Agreement.

Parties: City of Unalaska (City), Sea-Land (Sea-Land).

Filing Party: G. Nanette Thompson, Attorney At Law, 1101 West 7th Avenue, Anchorage, AK 99501.

Synopsis: Agreement No. 224–200439 provides for the lease, improvement, non-exclusive easement, and preferential use of certain City area and facilities. Sea-Land guarantees wharfage payments of $240,000 to the City for each year of the 10-year term of the Agreement. Agreement No. 224–200439–001 sets forth the terms for wharfage, the responsibility for improvement costs, and the use of dock if Sea-Land schedules export service vessels into the City's marine center.

Agreement No.: 224–200440

Title: City of Unalaska/Petro Marine Services, Terminal Agreement.

Parties: City of Unalaska (City), Petro Marine Services (Petro).

Filing Party: G. Nanette Thompson, Attorney At Law, 1101 West 7th Avenue, Anchorage, AK 99501.

Synopsis: The Agreement provides for the lease, improvement, non-exclusive easement, and preferential use of certain City area and facilities. The Agreement also provides that Petro will pay the City a certain fee for fuel delivered to the premises and authorizes Petro to sell gasoline and related marine products to the public. The Agreement's term is for 18 years and may be extended for two additional 10-year terms.

Dated: November 14, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–27222 Filed 11–19–90; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers fro Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Reponsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Epirotiki Lines, Inc. and Hellenic Company Overseas Cruise Vessels S.A., 551 Fifth Avenue, New York, NY 10176.

Vessel: World Renaissance.

Dated: November 14, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–27221 Filed 11–19–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

The Dai-Ichi Kangyo Bank, Ltd., Tokyo, Japan; Application to Underwrite and Deal in Certain Securities to a Limited Extent, Conduct Private Placements of All Types of Securities As Agent, Act as "Riskless Principal" and Engage in Full-Service Brokerage and Other Securities-Related Activities

The Dai-Ichi Kangyo Bank, Limited, Tokyo, Japan ("Applicant"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)("BHC" Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), through its wholly owned subsidiary, DKB Securities Corporation, New York, New York ("Company"), to engage *de novo* in the following activities:

(1) Underwriting and dealing, to a limited extent, in commercial paper (which will be of prime quality, short-term, sold in minimum denominations of $100,000, and exempt from the registration requirements of the Securities Act of 1933), municipal revenue bonds (including industrial development bonds that are limited to "public ownership" industrial development bonds, where the issuer or the governmental unit on behalf of which the bonds are issued is the sole owner of the financed facility), 1–4 family mortgage-related securities, and consumer receivable-related securities ("ineligible securities");

(2) The private placement, as agent, of all types of securities, including providing related advisory services;

(3) Providing financial and transaction advice to financial and nonfinancial institutions, including (i) Advice and assistance in connection with the structuring, financing and negotiating of domestic and international merger, acquisition, divestiture, joint venture, leveraged buyout,

recapitalization, capital structuring, financing and other corporate transactions, including private and public financings; (ii) Feasibility studies, principally in the context of determining the financial attractiveness and feasibility of particular corporate transactions and financing transactions; (iii) valuation services; (iv) fairness opinions in connection with domestic and international merger, acquisition, divestiture, joint venture, leveraged buyout, recapitalization, financing and other corporate transactions; (v) advice regarding the structuring of, and arranging, loan syndications and similar transactions; (vi) advice regarding the structuring of, and arranging, swaps, caps and similar transactions relating to factors such as interest rates, currency exchange rates, prices and economic and financial indices; (vii) ancillary services or functions incidental to the foregoing advisory activities;

(4) Providing securities brokerage and investment advice on a combined basis ("full-service brokerage") to institutional customers and Company's affiliates;

(5) Buying and selling all types of securities on the order of investors as "riskless principal"; and

(6) Providing investment advisory services to retail and institutional customers and Company's affiliates pursuant to § 225.25(b)(4)(i)–(v) of Regulation Y (12 CFR 225.25(b)(4)(i)–(v)).

Company would conduct the proposed activities on a domestic and international basis.

Applicant also proposes to engage, through Company, as an incident to the underwriting activities described above, in hedging its positions by engaging in forward, futures, options, and options on futures contracts. These hedging activities would be conducted in a manner consistent with the Statement of Policy in § 225.142 of the Board's Regulation Y (12 CFR 225.142).

Company is currently authorized to engage in securities brokerage, dealing and underwriting activities pursuant to §§ 225.25(b) (15) and (16) of the Board's Regulation Y (12 CFR 225.25(b) (15) and (16)).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously approved the proposed underwriting, to a limited extent, of ineligible securities, and private placement of all types of securities, and Applicant has committed to comply with substantially all of the limitations and conditions set forth in the Board's Orders, as modified for foreign banks. See, e.g., *J.P. Morgan & Company Incorporated*, 76 Federal Reserve Bulletin 26 (1960) ("*J.P. Morgan*"); *The Toronto Dominion Bank*, 76 Federal Reserve Bulletin 573 (1990) "*Toronto Dominion*"); *The Sanwa Bank, Limited*, 76 Federal Reserve Bulletin 568 (1990); *The Sanwa Bank, Limited*, 76 Federal Reserve Bulletin ____ (Order dated November 6, 1990).

Applicant has proposed to comply with the conditions of the Board's Orders approving the provision of the proposed financial and transaction advice. See, e.g., *Stichting Amro and Amsterdam-Rotterdam Bank, N.V.*, 76 Federal Reserve Bulletin 682 (1990); *Fuji Bank, Limited*, 75 Federal Reserve Bulletin 577 (1989); *The Nippon Credit Bank, Limited*, 75 Federal Reserve Bulletin 308 (1989).

The Board has previously determined that engaging in full-service brokerage activities is closely related and a proper incident to banking. See, e.g., *National Westminster Bank PLC*, 72 Federal Reserve Bulletin 584 (1986) ("*Natwest*"). Applicant has commited to conduct these activities subject to substantially all of the limitations in *Natwest*, as they were modified in *Toronto Dominion; The Bank of Tokyo, Limited*, 76 Federal Reserve Bulletin 654 (1990) ("*Bank of Tokyo*"); *Bankers Trust New York Corporation*, 74 Federal Reserve Bulletin 695 (1988); and *Manufacturers Hanover Corporation*, 73 Federal Reserve Bulletin 930 (1987). Applicant proposes to have one officer of its U.S. branch or agency act as a director of Company, as permitted in *Toronto Dominion*.

Applicant also seeks authority for Company, within defined parameters established by institutional customers, to exercise discretion in buying and selling securities on behalf of institutional customers. This service would be performed solely for institutional customers subject to the conditions in *J.P. Morgan & Company Incorporated*, 73 Federal Reserve Bulletin 810, 811 (1987).

In addition, the Board has previously approved the proposed buying and selling of all types of securities on the order of investors as "riskless principal." See, *e.g., J.P. Morgan; Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989) ("*Bankers Trust*"). Applicant commits that Company will conduct this proposed activity using substantially the same methods and procedures established by the Board in these Orders.

Finally, Applicant will conduct the proposed investment advisory services subject to the conditions of § 225.25(b)(4) of the Board's Regulation (12 CFR 225.25(b)(4)).

Applicant states that the proposed activities will benefit the public by promoting competition and providing added convenience to customers and gains in efficiency. Applicant contends that the proposed underwriting and dealing activities in municipal revenue bonds will yield the benefits of reduced costs to the governmental issuers of such securities, which in turn will reduce the public financing burden of the issuer's residents and taxpayers. Company's mortgage-related securities underwriting and dealing activities will increase, in Applicant's view, the availability of financing for home buyers and reduce their financing costs. Similarly, according to Applicant, Company's consumer receivable related securities underwriting and dealing activities will result in public benefits previously identified by the Board. *See Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation and Security Pacific Corporation*, 73 Federal Reserve Bulletin 731 (1987). Moreover, Applicant believes that the proposed activities will not result in any unsound banking practices.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 13, 1990. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, November 14, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–27252 Filed 11–19–90; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N–0274]

American Red Cross Blood Services, Northeastern New York Region, Albany, NY; Revocation of U.S. License No. 190; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the notice that announced the revocation of the establishment license (U.S. License No. 190) and the product licenses issued to the Albany, NY location of the American Red Cross, the American Red Cross Blood Services, Northeast Region, Albany, NY, published in the **Federal Register** of September 17, 1990 (55 FR 38159). In the document heading and the "**SUMMARY**" paragraph "Northeast Region" is corrected to read "Northeastern New York Region".

DATES: The revocation of the establishment and product licenses became effective July 26, 1990.

FOR FURTHER INFORMATION CONTACT: JoAnn M. Minor, Center for Biologics Evaluation and Research (HFB–130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–295–8188.

SUPPLEMENTARY INFORMATION: In FR Doc. 90–21932 appearing at page 38159 in the **Federal Register** of Monday, September 17, 1990, on the same page, in the second column, in the document heading and under the "**SUMMARY**" paragraph, line 8, "Northeast Region" is corrected to read "Northeastern New York Region".

Dated: November 13, 1990.

Janet Woodcock,

Acting Director, Center for Biologics Evaluation and Research.

[FR Doc. 90–27263 Filed 11–19–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90N–0304]

Points To Consider: Computer Assisted Submissions for License Applications; Biologic Product and Establishment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled, "Points to Consider: Computer Assisted Submissions for License Applications." The points to consider (PTC) document provides biologic product manufacturers and other interested parties with information concerning the Center for Biologics Evaluation and Research (CBER) program for computer assisted submission of product license applications (PLA's) and establishment license applications (ELA's). The PTC document further identifies topics which a manufacturer should be prepared to discuss with CBER, prior to requesting participation in the program. The PTC document was prepared by CBER's Computer Assisted Product License Application Review (CAPLAR) Steering Committee and is dated July 1990.

ADDRESSES: Submit written requests for single copies of the PTC document to the Congressional, Consumer, and International Affairs Staff (HFB–142), Park Bldg., Rm. 158, 5600 Fishers Lane, Rockville, MD 20857, 301–443–7532. Send two self-addressed, adhesive labels to assist that office in processing your requests. Submit written comments on the PTC document to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Requests for, and comments on the PTC document should be identified with the docket number found in brackets in the heading of this document. Copies of the PTC and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for further information about the CAPLAR program should be directed to the CBER contact person listed below.

FOR FURTHER INFORMATION CONTACT: Benjamin P. Lewis, Center for Biologics Evaluation and Research (HFB–3), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–443–8884.

SUPPLEMENTARY INFORMATION: CBER has instituted a program, referred to as the CAPLAR program, to assess the utility of computer assisted submission of PLA's and/or ELA's by biologic product manufacturers. The general purpose of the CAPLAR program is to evaluate the extent to which computer assisted submission enhances the timeliness, effectiveness, and efficiency of PLA and/or ELA reviews. The specific purpose of the CAPLAR program is to provide both FDA and manufacturers with practical experience in computer assisted license application submission procedures. Such practical experience is anticipated to facilitate the ongoing development, modification, and refinement of these procedures.

The PTC document provides information regarding CBER's CAPLAR program, as currently constituted. Included in the PTC document are the sequence of events to be followed in submitting a computer assisted license application; the directory, text, and graphic formats to be used for computer assisted license submissions; the modes of communication to be used between CBER and a manufacturer once the computer assisted license application has been submitted; and what paperwork needs to accompany the computer assisted license application. The PTC document further identifies topics which a manufacturer desiring to participate in the CAPLAR program should be prepared to discuss with CBER, in advance of a request to submit a computer assisted PLA or ELA.

This PTC document is intended only to provide information to biologic product manufacturers and other interested parties concerning submission of computer assisted license applications. The PTC document has neither explicit nor implicit status or impact in terms of meeting the requirements for the approval of PLA's or ELA's. (At some future date, FDA may develop a separate document and procedure for computer assisted investigational new drug (IND) reviews.)

FDA will review the received comments to determine whether revisions of the PTC document are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy.

Dated: November 9, 1990.

William L. Schwemer,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–27262 Filed 11–19–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90P–0345]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Pure Milk Co., to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food

is introduced or caused to be introduced into interstate commerce, but not later than February 19, 1991.

FOR FURTHER INFORMATION CONTACT: Joanne Travers, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0106.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Pure Milk Co., P.O. Box 1097, Waco, TX 76703.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog".

The product complies with the reduced calories labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 100,000 quarts (94,600 liters) of the test product. The test product is to be manufactured at Pure Milk Co., Waco, TX 76703, Plant #48–33–02 and will be distributed in Texas.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 19, 1991.

Dated: November 9, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90–27336 Filed 11–19–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90P–0356]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Idlenot Farm Diary, Inc., to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning of the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 19, 1991.

FOR FURTHER INFORMATION CONTACT: Joanne Travers, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0106.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Idlenot Farm Dairy, Inc., P.O. Box 10, North Springfield, VT 05150.

The permit covers listed interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog".

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 38,250 quarts 36,165 liters) of the test product. The test product will be manufactured at Idlenot Farm Dairy, Inc., River Rd., North Springfield, VT 05150, and will be distributed in Massachusetts, New Hampshire, and Vermont.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 19, 1991.

Dated: November 9, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90–27335 Filed 11–19–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90F–0446]

Mobay Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Mobay Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of dimethyl dicarbonate in dealcoholized and low alcohol wine.

FOR FURTHER INFORMATION CONTACT: Rosalie Angeles, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 0A4213) has been filed by Mobay Corp., 1575 I St. NW., Washington, DC 20005, proposing that the food additive regulations in § 172.133 *Dimethyl dicarbonate* (21 CFR 172.133) be amended to provide for the safe use of dimethyl dicarbonate in dealcoholized and low alcohol wine.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 9, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90–27337 Filed 11–19–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90E–0445]

Determination of Regulatory Review Period for Purposes of Patent Extension; Dipentum®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Dipentum® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Dipentum®. Dipentum® (olsalazine sodium) is indicated for maintenance of remission of ulcerative colitis in patients who are intolerant of sulfasalazine. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Dipentum® (U.S. Patent No. 4,559,330) from Pharmacia AB, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated October 17, 1990, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period. The letter also stated that the approval of the active ingredient, olsalazine sodium, represented the first permitted commercial marketing or use of the human drug product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Dipentum® is 2,828 days. Of this time, 1,763 days occurred during the testing phase of the regulatory review period, while 1,065 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* November 4, 1982. The applicant claims October 27, 1982, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was November 4, 1982, which was 30 days after FDA receipt of the IND application.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* September 1, 1987. FDA has verified the applicant's claim that the new drug application (NDA 19–715) was filed on September 1, 1987.

3. *The date the application was approved:* July 31, 1990. FDA has verified the applicant's claim that NDA 19–715 was approved on July 31, 1990.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extensions. In its application for patent extension, this applicant seeks 592 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 22, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 20, 1991, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 13, 1990.
Stuart L. Nightingale,
Associate Commissioner for Health Affairs.
[FR Doc. 90-27218 Filed 11-19-90; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 90E-0367]

Determination of Regulatory Review Period for Purposes of Patent Extension; Interceptor®; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is correcting some inadvertent mathematical errors, in the notice of its determination of the regulatory review period for purposes of patent extension for INTERCEPTOR® (milbemycin oxime), that appeared in the **Federal Register** of October 18, 1990 (55 FR 42272). The notice stated, "FDA has determined that the applicable regulatory review period for Interceptor® is 2,061 days. Of this time, 1,434 days occurred during the testing phase of the regulatory review period, while 627 days occurred during the approval phase." It should have stated, "FDA has determined that the applicable regulatory review period for Interceptor® is 2,125 days. Of this time, 1,500 days occurred during the testing phase of the regulatory review period, while 625 days occurred during the approval phase." This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: In FR Doc. 90-24563, appearing on page 42272 in the **Federal Register** of Thursday, October 18, 1990, the following corrections are made: On the same page, in the second column, in the second complete paragraph, in line 3, "2,061" is corrected to read "2,125"; in line 4, "1,434" is corrected to read "1,500"; and in line 6, "627" is corrected to read "625".

Dated: November 13, 1990.
Stuart L. Nightingale,
Associate Commissioner for Health Affairs.
[FR Doc. 90-27217 Filed 11-19-90; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 90D-0184]

Compliance Policy Guide; Class III Devices Subject to 515(b) Requirements; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guide (CPG) 7124.18 "Class III Devices Subject to 515(b) Requirements." This CPG establishes criteria for recommending direct reference seizure where an application for premarket approval (PMA) or the equivalent notice of completion of a product development protocol (PDP) has not been filed, or there is no approved investigational device exemption, or FDA has not granted permission to export the device in accordance with section 801(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of CPG 7124.18 "Class III Devices Subject to 515(b) Requirements" to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ-220), 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the CPG to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the CPG and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Eric Latish, Center for Devices and Radiological Health (HFZ-323), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1116.

SUPPLEMENTARY INFORMATION: This CPG sets forth criteria for recommending direct reference seizure to the Office of Regulatory Affairs, Division of Case Management and Operations (HFC-210) for devices marketed in violation of the requirement of a regulation requiring premarket approval under section 515(b) of the act (21 U.S.C. 360e), a provision that applies to preamendments devices that are subject to premarket approval and that were not previously regarded as drugs.

When FDA promulgates a final rule under section 515(b), section 501(f) of the act (21 U.S.C. 351(f)) requires that a PMA or a notice of completion of a PDP be filed for each device subject to the rule within 90 days after the date of promulgation of the final rule or 30 months after the publication of the final classification rule for the device, whichever is later. When class III medical devices (*i.e.*, medical devices subject to premarket approval) are introduced into commerce by a manufacturer, an initial distributor within the United States of an imported device, or an exporter after the date identified in the published section 515(b) regulation without a filed PMA or PDP, or an approved investigational device exemption, or without FDA permission to export the device in accordance with section 801(e)(2) of the act, the device is adulterated and subject to direct reference seizure.

A direct reference (device) seizure is one that bypasses review by the Center for Devices and Radiological Health. Instead, the district office recommendation is processed only by the Office of Regulatory Affairs, Office of General Counsel, Department of Justice, and U.S. Attorney, in that order.

Interested persons may submit to the Dockets Management Branch (address above) written comments at any time. Two copies of any comments should be submitted except that individuals may submit one copy. Comments are to be identified with the docket number in the heading of this document.

The statements made herein are not intended to create or confer any rights, privileges, or benefits on or for any private person, but are intended merely for internal guidance.

Dated: October 19, 1990.
Alan L. Hoeting,
Acting Associate Commissioner for Regulatory Affairs.
[FR Doc. 90-27261 Filed 11-19-90; 8:45 am]
BILLING CODE 4160-01-M

Office of Human Development Services

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) for approval a new information collection for the Revised General Instructions to the Head Start Grant Application Package.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Angela Antonelli, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Revised General Instructions to the Head Start Grant Application Package.

OMB No.: N/A.

Description: The revised instructions include requirements for programmatic and cost data previously contained in the Head Start Cost Instrument. The instrument was developed during Fiscal Year (FY) 1982 and revised in FY 1983 and 1984 as a tool for monitoring how effectively grantees are using Head Start funds. The need for this information is specified under the program monitoring requirements of the Office of Management and Budget Circulars A-102 and A-110 (implemented in the Department of Health and Human Services by 45 CFR parts 74 and 92) and the Head Start legislation (section 651 of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981, as amended) which require that the Secretary of the Department of Health and Human Services (DHHS) provide for the continuing evaluation of the Head Start program.

The data collected through the revised instructions will be entered into a computer which will automatically generate reports on program and management operations. Federal staff will, then, be able to analyze grantee and delegate agency data more quickly and efficiently and follow up on problems and issues with the grantees. The ability to review the data in this fashion will allow the federal staff to carry out their stewardship role in an effective and efficient manner.

Annual Number of Respondents: 1,890
Annual Frequency: 1
Average Burden Hours Per Response: 6
Total Burden Hours: 11,340

Dated: November, 9, 1990.
Mary Sheila Gall,
Assistant Secretary for Human Development Services.
[FR Doc. 90-27232 Filed 11-19-90; 8:45 am]
BILLING CODE 4130-01-M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409-24, August 31, 1982, as amended most recently at 55 FR 20210, May 15, 1990) is amended to reflect the office and division structures for the Maternal and Child Health Bureau and the Bureau of Health Resources Development.

Under HB-10, Organization and Functions amend the functional statements for the *Health Resources and Services Administration (HB)* as follows:

1. After the functional statement for the *Bureau of Health Resources Development (HBB)* add the following functional statements:

Office of the Director (HHB1). Provides leadership and direction for the programs and activities of the Bureau and oversees its relationship with other national health programs. Specifically: (1) Coordinates the internal functions of the Bureau and its relationships with other national health programs; (2) establishes program objectives, alternatives, and policy positions consistent with legislation and broad Administration guidelines; (3) develops and administers operating policies and procedures, and provides guidance and assistance to regional staff as appropriate; (4) evaluates program accomplishments; (5) serves as principal contact and advisor to the Department and other parties concerned with matters relating to planning and development of health delivery systems; (6) directs and coordinates Bureau activities carried out in support of Equal Opportunity programs; (7) provides direction for the Bureau's Civil Rights compliance activities; and (8) provides information about Bureau programs to the general public, health professions associations, and other interested groups and organizations.

Office of Program Support (HHB12). Plans, directs, coordinates, and evaluates Bureau-wide administrative and management support activities. Specifically: (1) Serves as the Bureau Director's principal source for management and administrative advice and assistance; (2) in cooperation with the Division of Personnel, HRSA, coordinates personnel activities for the Bureau; (3) in cooperation with the Division of Financial Management, HRSA, provides guidance to the Bureau on financial management activities, including budget formulation, presentation, and execution functions; (4) provides communications advice and services to the Bureau; (5) coordinates the various ADP systems of the Bureau and supplies ADP services to the Office of the Director and its immediate offices; directs the formulation of ADP policy for the Bureau, plans, develops, and evaluates the Bureau's ADP systems, and develops, manages, and operates the Bureau's information systems; (6) conducts all business management aspects of the review, negotiation, award, and administration of Bureau grants, and coordinates the Bureau's contracts and cooperative agreement operations; (7) provides support to regional staff as appropriate by program; (8) provides organization and management analysis for the Bureau, develops policies and procedures for internal Bureau requirements, and interprets and implements the Administration's management policies and procedures; interprets and implements the Administration's management policies and procedures; (9) coordinates the Bureau's program and administrative delegations of authority activities; (10) manages the Bureau's performance appraisal and employee performance management systems; (11) provides staff services to the Bureau director in day-to-day operational planning and program analysis; (12) serves as liaison or provides the Bureau with support services such as supply management, equipment utilization, printing, property management, space management, correspondence control, manual issuances, forms, records, reports, Freedom of Information Act and Privacy Act coordination, and the support of Civil Rights compliance activities; (13) provides direction regarding technological developments in office management activities; and (14) directs, conducts, and coordinates the Bureau's manpower management activities and advises the Bureau Director on the allocation of the Brueau's personnel resources.

Office of Program Development (HHB13). Serves as the Bureau focal point for planning, evaluation,

legislation, and legislative implementation activities, including the development and dissemination of program objectives, alternatives, and policy positions. Advises the Bureau Director and Division Directors in the development of plans and legislative proposals to support Administration goals. Interprets evaluation requirements and coordinates the development of annual evaluation plans, as well as specific project proposals. Coordinates its activities closely and continuously with the Office of Planning, Evaluation, and Legislation (OPEL), HRSA. Specifically: (1) Stimulates, guides, and coordinates the Bureau's program planning and development activities, and prepares the Bureau's forward planning agenda; (2) promotes and oversees evaluation and monitoring activities to provide objective measurements of program performance; (3) provides staff services and coordinates activities pertaining to legislative policy development and interpretation, including the development of legislative proposals and the analysis of existing and pending Federal and State legislation to assure the fullest possible consideration of programmatic requirements in meeting established departmental, PHS, and HRSA goals; maintains liaison with other agencies, and distributes legislative materials; (4) participates in the development and coordination of program policies, implementation plans, and processes for health facilities, AIDS, and organ transplantation programs and devises implementation plans including the development, clearance, and dissemination of regulations, criteria, guidelines, and operating procedures; (5) directs the production of program management information and progress reports; and (6) develops and administers operating policies and procedures, and provides guidance and assistance to regional staff, as appropriate.

Division of HIV Services (HBB2). Plans, develops, implements, and monitors programs which provide health care services for persons infected with HIV. Specifically: (1) Provides information and advice for programs on issues related to the delivery of health services to persons with HIV infection/AIDS; (2) manages the AIDS Service Demonstration Grant Program and provides overall administrative direction to grantees; (3) manages a program of planning grants to improve the coordination and provision of health services to HIV-infected individuals and provides overall administrative direction to grantees; (4) manages grant programs which provide reimbursement for treatment, with life-prolonging drugs, of persons with HIV infection/AIDS; (5) disseminates advice and assistance on improving health services delivery to persons with HIV infection/AIDS; (6) develops discussion papers and guidelines for communities on special topics with HIV/AIDS service delivery, with coordination and input from other PHS components; (7) carries out studies of the cost of treating HIV-infected patients and establishes modalities to control the cost and improve the quality of health care to such patients; (8) establishes and maintains liaison with Federal and non-Federal public and private entities associated with matters pertaining to services for, and treatment of, persons with HIV infection/AIDS; and (9) conducts evaluation studies of various health care delivery modalities for people with HIV infection/AIDS.

Division of Organ Transplantation (HBB3). Plans, directs, coordinates, and monitors a broad range of activities relating to the field of organ procurement and transplantation. Specifically: (1) Develops, implements, and maintains a program of grants to organ procurement organizations (OPOs); (2) provides technical assistance to OPOs receiving Federal funds; (3) establishes and maintains an Organ Procurement and Transplantation Network; (4) establishes and maintains a scientific registry for organ transplantation recipients; (5) conducts a program of public information to inform the public of the need for organ donations; (6) monitors trends and analyzes data on the efficiency and effectiveness of organ procurement, the allocation of organs among transplant centers and transplant patients, and on other aspects of organ transplantation, and prepares reports as needed; (7) in conjunction with the Divison of Information and Analysis, coordinates collection of information with other units of the Federal Government concerned with organ procurement and transplantation (e.g., the National Center for Health Services Research and Health Care Tehnology Assessment, the Health Care Financing Administration, the National Institutes of Health, the Food and Drug Administration, and the Centers for Disease Control); (8) maintains working relationships with State activities and professional organizations in the field of organ transplantation; (9) maintains and/or fosters new relationships with public and private organizations (e.g., the North American Transplant Coordination Organization, the American Hospital Association, the American Society of Transplant Surgeons, and the American Society of Transplant Physicians) to promote the concepts of organ donation, to follow trends in organ procurement, and to maintain working knowledge of the clinical status of organ transplantation; and (10) develops and provides information on organ procurement and transplantation for professional associations, health providers, consumers, health insurers, medical societies, State health departments, and the general public.

Division of Information and Analysis (HBB4). Provides national leadership in identifying, analyzing, and responding to issues of national significance relating to BHRD programs. Tracks events and trends in the health care industry to determine appropriate Bureau policy and operational responses to these events and trends. Specifically: (1) Plans, develops, coordinates, and maintains a date and information system designed to improve implementation of Bureau programs; (2) develops, coordinates, and implements systematic technical assistance and consultation on research, professional training, data and information systems, and evaluation approaches to State an local, public and private agencies, and organizations and groups concerned with the implementation of Bueau programs; (3) through grants and contracts, provides support for a broad range of research, professional, education, data collection, analyses, and synthesis projects designed to improve the health and quality of life of persons served by Bureau programs; (4) provides liaison with professional, public, private and voluntary organizations involved with research, professional education, scientific and policy matters, the provision of health services, and data and information related to the promotion of health and prevention of disease among BHRD program recipients; (45) engages in program development activities designed to improve the delivery of services and programs; (6) coordinates and provides for a program of professional consultation and technical assistance through central and regional staff to State and local agencies and organizations relating to BHRD programs; (7) collects, complies, evaluates, and analyzes various data on the health care indusry and its response to current and emerging health care issues and problems; (8) develops reports and recommendations on appropriate BHRD responses to the analyses of the information compiled on the health care industry; (9) works with the Centers for Disease Control, the National Institutes of Health, the National Center for Health Services Research and Health Care Technology Assessment, the National Center for Health Statistics, the Robert Wood Johnson Foundation, and other public and private organizations in the development and dissemination of information on current and emerging health care issues, trends, and problems; (10) performs reviews of Bureau program operations to determine if they address current and emerging problems appropriately; (11) develops, implements, and maintains information systems to support Bureau operations and needs; (12) reports on the status of health programs and facilities as a regional resource; (13) studies and analyzes trends in the availability, distribution, organization, financing, and construction of health facilities in the treatment and spread of AIDS, and in the development and operation of organ procurement programs; (14) coordinates with State and Federal Government agencies and units concerned with health programs and facilities development and management; (15) maintains working relationships with State and local agencies and professional organizations, such as the American Hospital Association, the Joint Commission on Accreditation of Hospitals, and the American Medical Association, with a common concern about health facilities and programs; (16) foster new relationships with public and private organizations to increase the Bureau's understanding of the health industry's status and trends; (17) develops and provides information and methods to public and private health care organizations, planners, providers, and consumers to assist in decision-making and efficiency in the operation of health care programs and facilities, particularly those serving special project target populations; and (18) performs special studies and collaborates with public and private organizations in carrying out special studies, as assigned.

Division of Facilities Compliance (HBB5). Substantiates health facilities' compliance with the reasonable volume of uncompensated care assurance. Specifically: (1) Establishes, develops, and monitors the implementation of regulations, policies, procedures, and guidelines for use by regional staff, State agencies, and health care facilities in ascertaining that assurances are met; (2) provides technical assistance and training, and conducts evaluations to ensure nationwide consistency in program administration; (3) maintains a system for receiving and responding to patient complaints and for their analysis, evaluation, and disposition; (4) develops and initiates monitoring activities necessary to ensure enforcement of provisions regarding the reasonable volume assurance; and (5) coordinates its activities with other components of the Bureau, HRSA, other PHS agencies, and other Departmental components.

Division of Facilities Assistance and Recovery (HBB6). Plans and directs the development of regulations and program guidelines for administering grant support for health care, health professions education, and nurse training facilities. Specifically: (1) Develops regulations, policies, and procedures for administering a grant support program designed to help health facilities eliminate or prevent imminent safety hazards or avoid noncompliance with State or voluntary licensure or accreditation standards; (2) in close coordination with the Bureau of Health Professions, HRSA, develops regulations, policy and procedures for administering and monitoring health professions education and nurse training facilities construction grant programs; (3) develops regulations, policy and procedures to ensure that the Federal Government takes appropriate waiver or recovery action as prescribed by Titles VI, VII, VIII, and XVI of the PHS Act; (4) reviews in their entirety and recommends action to, or on behalf of, the Administrator, HRSA, on: (a) Proposals for new health facilities or additions to or modernization of existing facilities under programs assigned to the Division, and (b) requests for recovery and/or waiver of recovery of Federal funds; (5) provides advice and guidance to regional staff on administering programs assigned to the Division; and (6) maintains liaison with, coordinates its activities and jointly develops pertinent programmatic materials with other components of the Bureau, HRSA, other PHS agencies, HHS, and other concerned Federal agencies.

Division of Facilities Loans (HBB7). Plans and directs the development of regulations and program guidelines for administering loan, loan guarantee and interest subsidy programs for health care facilities. Specifically: (1) Develops regulations, policy and procedures for administering loan and loan guarantee with interest subsidy programs; (2) administers the PHS responsibility for facility construction, renovation, and modification as described in interagency memoranda of agreement; (3) maintains an automated data system for the issuance of periodic and special reports and for the manipulation of institution-specific data in performing tests for financial feasibility; (4) assists the Division of Facilities Assistance and Recovery in the evaluation and analysis of applications for construction under assigned grant programs; (5) reviews and recommends action on: (a) Proposals for new health facilities or additions to or modernization of existing facilities under loan programs assigned to the Division, (b) requests for mortgage relief, such as forbearance of principal and/or interest payment, suspension of sinking fund deposits, modifications of loan terms, etc., and (c) requests for recovery and/or waiver of repayment of Federal loan funds; (6) provides advice and guidance to regional staff on statutory and regulatory provisions and policy and procedures for administering programs assigned to the Division; and (7) maintains liaison with and coordinates its activities and jointly develops pertinent programmatic materials with other components of the Bureau, HRSA, other PHS agencies, HHS, other concerned Federal agencies, and with private lending institutions and associations.

2. After the functional statement for the *Maternal and Child Health Bureau (HBM)* add the following functional statements:

Office of the Director (HBM1). Provides national leadership and policy direction for the planning, development, implementation and evaluation of the programs and actitivies of the Bureau. These programs are designed to improve the health of mothers, infants, children, youth and families, of children with special health needs, and of persons with hemophilia, regardless of their age. Specifically: (1) Oversees the day-to-day management and operations of the Bureau's Offices and Divisions; (2) coordinates all internal functions of the Bureau and its relationships with other health and related programs; (3) establishes a program mission, goals, and objectives and policy positions consistent with legislation and broad Administration guidelines; (4) develops and administers internal operating policies and procedures and provides guidance and direction to regional staff, to State Health Officers and to State Maternal and Child Health and Special Health Needs Coordinators; (5) serves as principal contact point to the agency, the Public Health Service, the Department, OMB, and the White House on matters concerning the health status of America's mothers and children; (6) directs and coordinates the Bureau's responsibilities, including the Maternal and Child Health block grants to States, a national program of discretionary

grants, contracts, and other funding arrangements in the areas of research, training, genetics, hemophilia, and health service improvement through regional and nationally significant projects, a program of consultation, technical assistance and training designed to improve health, nutrition, mental and dental health services for children in Head Start programs, a national program to improve emergency medical services for children, a demonstration program in Pediatric AIDS, and a national service demonstration program for the treatment and prevention of AIDS in persons with hemophilia; (7) provides national direction on international matters of concern to the health of mothers and children; (8) develops a policy statement and an action plan to address the health needs of mothers and children for culturally diverse groups; (9) directs and coordinates Bureau activities in support of Equal Opportunity programs; (10) provides direction for the Bureau's Civil Rights compliance efforts; and (11) provides information on the Bureau's programs to public, health, education and related professional associations, the Congress, other Federal and PHS agencies, OMB, and the White House.

Office of Program Support (HBM12). Plans, directs, coordinates, and evaluates Bureau-wide administrative and management support activities. Specifically, (1) Serves as the Bureau Director's principal source for management and administrative advice and assistance; (2) in cooperation with the Division of Personnel, HRSA, coordinates personnel activities for the Bureau; (3) in cooperation with the Division of Financial Management, HRSA, provides guidance to the Bureau on financial management activities, including budget formulation, presentation, and execution functions; (4) provides communications advice and services to the Bureau; (5) conducts all business management aspects of the review, negotiation, award, and administration of Bureau grants, and coordinates the Bureau's contract and cooperative agreement operations; (6) provides organization and management analysis for the Bureau, develops policies and procedures for internal Bureau requirements, and interprets and implements the Administration's management policies and procedures; (7) coordinates the Bureau's program and administrative delegations of authority activities; (8) manages the Bureau's performance appraisal and employee performance management systems; (9) provides staff services to the Bureau Director in day-to-day operational planning and program analysis; (10) serves as a liaison or provides the Bureau with support services such as supply management, equipment utilization, printing, property management, space management, correspondence control, manual issuances, forms, records, reports, Freedom of Information Act and Privacy Act coordination, and the support of Civil Rights compliance activities; (11) provides direction regarding technological developments in office management activities; and (12) directs, conducts, and coordinates the Bureau's manpower management activities and advises the Bureau Director on the allocation of the Bureau's personnel resources.

Office of Program Development (HEM13). Serves as the Bureau focal point for planning, evaluation, legislation, and legislative implementation activities, including the development and dissemination of program objectives, alternatives, and policy positions. Advises the Bureau Director and Division Directors in the development of plans and legislative proposals to support Administration goals. Interprets evaluation requirements and coordinates the development of annual evaluation plans, as well as specific project proposals. Coordinates its activities closely and continuously with the Office of Planning, Evaluation and Legislation, HRSA. Specifically: (1) Stimulates, guides, and coordinates the Bureau's program planning and development activities, and prepares the Bureau's forward planning agenda; (2) promotes and oversees evaluation and monitoring activities to provide objective measurements of program performance; (3) provides staff services and coordinates activities pertaining to legislative policy development and interpretation, including the development of legislative proposals and the analysis of existing and pending Federal and State legislation to assure the fullest possible consideration of programmatic requirements in meeting established departmental, PHS, and HRSA goals; maintains liaison with other agencies, and distributes legislative materials; (4) participates in the development and coordination of program policies, implementation plans, and processes for the maternal and child health programs, and devises plans for the development, clearance, and dissemination of regulations, criteria, guidelines, and operating procedures; (5) directs the production of program management information and progress reports; and (6) develops and administers operating policies and procedures, and provides guidance and assistance to regional staff, as appropriate.

Division of Services for Children with Special Health Needs (HEM2). Plans, develops, implements, directs, monitors, and evaluates national programs relating to the promotion of the health status of children with special health needs. Specifically: (1) Administers a program of block and discretionary grants which support services for those with special health needs, including those at-risk-for or suffering from genetic diseases and hemophilia and HIV infections; (2) develops policies, guidelines and standards for the delivery of professional services and effective organization and administration of services of health programs for the targt population; (3) collaborates with the Division of Systems, Education and Science in carrying out, through central and regional staff, a national program of consultation and technical assistance to State and local agencies and organizations engaged in the provision of services to those with special health needs; (4) provides liaison with professional, public and voluntary organizations involved with the provision of services to those with special health needs; (5) provides a national focus for the improvement of services focused on those at-risk-for or suffering from genetic diseases, implementing a system of projects designed to improve genetic services, counseling, information and referral; (6) emphasizes the development and implementation of community based services and systems of care designed to improve the health of children with disabling conditions and chronic illnesses; (7) implements an ongoing national program of hemophilia diagnosis, treatment and information services designed to improve significantly the health status of those suffering from hemophilia; (8) coordinates activities with the full spectrum of Federal agencies concerned with the improvement of health services and health status for those with special needs; (9) participates in the development of forward plans, legislative proposals and budget submissions relating to health services for those with special health care needs; (10) administers a national program relating to children suffering from AIDS; and (11) provides a maternal and child health focus for international health activities of the Bureau.

Division of Maternal, Infant, Child and Adolescent Health (HBM3). Plans, directs, coordinates and monitors national programs focusing on the improved health status of mothers, children, infants and adolescents. Specifically: (1) Establishes national policy and administrative guidance for nationwide health programs for mothers, children, infants and adolescents, including discretionary and block grants to carry out programs designed to meet the health care needs of the target populations; (2) develops policies, guides and standards for professional services and effective organization and administration of health programs for mothers, children, infants and adolescents; (3) collaborates with the Division of Systems, Education and Science in carrying out, through central and regional staff, a program of technical assistance and consultation to State and local agencies and organizations designed to improve the effectiveness and efficiency of health programs for the target populations; (4) provides liaison with professional public and voluntary organizations on programs designed to improve services for mothers, children, infants and adolescents; (5) serves as the national focus for programs designed to address unacceptably high rates of infant and maternal mortality and morbidity and associated problems of low birthweight infants; (6) promotes coordination at the Federal level of activities authorized under title V and title XIX of the Social Security Act; (7) disseminates information to States on preventive health services and advances in the care and treatment of mothers, children, infants and adolescents; (8) carries out a national program designed to improve the provision of pediatric emergency services; (9) works in close cooperation with the National Center for Health Statistics and other CDC components in planning, developing, and disseminating to the public a broad spectrum of data relating to the health of mothers, children, infants and adolescents, with special concern for infant mortality and morbidity; (10) carries out a national health nutrition, dental health and related services consultation and technical assistance program targeted on children in the day care setting; and (11) participates in the development of forward plans, legislative proposals and budget submissions relating to health services for mothers, children, infants and adolescents.

Division of Systems, Education and Science (HBM4). Provides national leadership in identifying, analyzing, and responding to issues of national significance relating to the promotion of health and prevention of disease among mothers, infants, children, adolescents, and children with special health care needs. Plans, directs, coordinates and monitors, and implements scientific, policy, and programmatic activities associated with Title V of the Social Security Act and with other national maternal and child health issues. Specifically: (1) Plans, develops, coordinates, and maintains a data and information system designed to improve implementation of Title V and otherwise promote the health of and prevent disease among mothers, infants, children, adolescents, and children with special health care needs; (2) develops, coordinates and implements systematic technical assistance and consultation on research, professional training, data and information systems, and evaluation approaches to State and local agencies and organizations or groups concerned with the promotion of health and prevention of disease among mothers, infants, children, adolescents, and children with special health care needs; (3) through grants and contracts, provides support for a broad range of research, professional education, data collection, analyses, and synthesis projects designed to improve the promotion of health and prevention of disease among mothers, infants, children, adolescents, and children with special health care needs; (4) plans, implements, and administers a program of research and professional education and training to develop new knowledge and professional skills designed to improve the promotion of health and prevention of disease among mothers, infants, children, adolescents, and children with special health care needs; (5) provides liaison with professional public, private and voluntary organizations involved with research, professional education, scientific and policy matters, the provision of health services, and data and information related to the promotion of health and prevention of disease among mothers, infants, children, adolescents, and children with special health care needs; (6) engages in program developmnt activities designed to improve the promotion of health and prevention of disease among mothers, infants, children, adolescents, and children with special health care needs; (7) coordinates and provides for a program of professional consultation and technical assistance through central and regional staff to State and local agencies and organizations relating to the promotion of health and prevention of disease among mothers, infants, children, adolescents, and children with special health care needs; (8) develops, coordinates and disseminates public information relating to the promotion of health and prevention of disease among mothers, infants, children, adolescents, and children with special health care needs; (9) coordinates the various ADP systems of the Bureau and supplies ADP services to the Office of the Director and its immediate offices; directs the formulation of ADP policy for the Bureau, plans, develops, and evaluates the Bureau's ADP systems, and develops, manages, and operate the Bureau's information systems; and (10) plans, implements and monitors a system of placement of Federal employees assigned to State health agencies.

Delegations of Authority

All delegations and redelegations of authorities to officers and employees of the Health Resources and Services Administration which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this reorganization.

Dated: May 15, 1990.

Robert G. Harmon,

Administrator.

FR Doc. 90-27260 Filed 11-19-90; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT U-67727]

Utah; Invitation To Participate in Coal Exploration Program; PacifiCorp Electric Operations

PacifiCorp Electric Operations is inviting all qualified parties to participate in its proposed exploration of certain federal coal deposits in the following described lands in Emery County, Utah:

T. 17 S., R. 6 E., SLM, Utah
Sec. 2, SW¼;
Sec. 3, all;
Sec. 4, lots 1, 2, 3, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 9, E½, E½W½;
Sec. 10, all;
Sec. 11, W½;
Sec. 14, W½;
Sec. 15, all;
Sec. 16, NE¼NW¼.
Containing 3,564.84 Acres

Any party electing to participate in this exploration program must send

written notice of such election to the Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155 and to Scott M. Child, PacifiCorp Electric Operations—Fuel Resources Department, P.O. Box 26128, Salt Lake City, Utah 84126-0128. Such written notice must be received within thirty days after publication of this notice in the Federal Register.

Any party wishing to participate in this exploration program must be qualified to hold a lease under the provisions of 43 CFR 3472.1 and must share all cost on a pro rata basis. A copy of the exploration plan, as submitted by PacifiCorp Electric Operations, is available for public review during normal business hours in the BLM office (Public Room, Fourth Floor), 324 South State Street, Salt Lake City, Utah under Serial Number UTU-67727.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-27282 Filed 11-19-90; 8:45 am]

BILLING CODE 4310-DQ-M

National Park Service

South Wellfleet, Ma, Cape Cod National Seashore Advisory Commission, Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App 1 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held Friday, December 7, 1990.

The Commission was reestablished pursuant to Public Law 99-349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designess, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at Headquarters, Marconi Station, South Wellfleet, Massachusetts for the regular business meeting which will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts at 1 p.m. for the following reasons:

The Commission members will meet at Headquarters, Marconic Station, South Wellfleet, Massachusetts for the regular business meeting which will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts at 1 p.m. for the following reasons:

1. Approval of minutes of the previous meeting;
2. Old business;
3. New business;
Reports of officers;
5. Superintendant's report;
6. Review of November 16 planning workshop;
7. Communications/public comment; and
8. Agenda and date for next meeting.

The business meeting in open to the public. It is expected that 15 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning this meeting may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts 02663.

Dated: November 13, 1990.

Steven H. Lewis,

Acting Regional Director.

[FR Doc. 90-27271 Filed 11-19-90; 8:45 am]

BILLING CODE 4310-70-M

Chesapeake and Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting will be held Saturday, December 8, 1990, at the John F. Kennedy Center for the Performing Arts, Washington, DC.

The Commission was established by Public Law 91-664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman, Washington, DC.
Mrs. Dorothy Tappe Grotos, Delaplane, Virginia
Mr. Samuel S.D. Marsh, Bethesda, Maryland
Mr. James F. Scarpelli, Sr., Cumberland, Maryland
Ms. Elise B. Heniz, Arlington, Virginia
Professor Charles P. Poland, Jr., Chantilly, Virginia
Captain Thomas F. Hahn, Shepherdstown, West Virginia
Mr. Rockwood H. Foster, Washington, DC
Mr. Barry A. Passett, Washington, DC
Mrs. Jo Reynolds, Potomac, Maryland
Ms. Nancy C. Long, Glen Echo, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland
Mrs. Sue Ann Sullivan, Williamsport, Maryland
Mr. Terry W. Hepburn, Hancock, Maryland
Mr. Robert L. Ebert, Cumberland Maryland

Matters to be discussed at this meeting include:

1. Old and new business.
2. Superintendent's report.
3. Committee reports.
4. Public comments

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Thomas O. Hobbs, superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: November 13, 1990.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 90-27220 Filed 11-19-90; 8:45 am]

BILLING CODE 4310-20-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 10, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by December 5, 1990.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Perry County

Camp Ouachita Girl Scout Camp Historic District (Facilities Constructed by the CCC in Arkansas MPS), Area surrounding and N of Lake Sylvia, Ouachita NF, Paron vicinity, 90001826

Pulaski County

Porter, Lamar, Athletic Field, Jct. of Johnson & 7th Sts., Little Rock, 90001827

ILLINOIS

Marion County

Badollet House, 310 N. Washington St., Salem, 90001839

IOWA

Benton County

Burlington, Cedar Rapids & Northern Passenger Station—Vinton (Advent & Development of Railroads in Iowa MPS), 612 Second Ave., Vinton, 90001852

Boone County

Champlin Memorial Masonic Temple (Proudfoot & Bird in Iowa MPS), 602 Story St., Boone, 90001853

Buena Vista County

Harker House, 328 Lake Ave., Storm Lake, 90001855

Decatur County

McClung, J. J., House, Jct. of Main & Vine Sts., Garden Grove, 90001856

Johnson County

Johnson, Sylvanus, House, 2155 Prairie du Chien Rd., Iowa City, 90001857

Polk County

Johnson, Capt. Micholas W. and Emma, House, Jct. of 21st St. & University Ave., Des Moines, 90001854

Poweshiek County

Bowers and McDonald Office Building (Grinnell MPS), 816 Commercial St., Grinnell, 90001849
Interior Telephone Company Building (Grinnell MPS), 815 5th Ave., Grinnell, 90001850

KENTUCKY

Jefferson County

Avery, B. F., and Sons Industrial District (Louisville and Jefferson Co. MPS), 1721-1821 Seventh St., Louisville, 90001837
Cedarbrook Farm (Louisville and Jefferson Co. MPS), 4800 Springdale Rd., Louisville vicinity, 90001835
Dolfinger, J., and Company Building, (Louisville and Jefferson Co. MPS), 642 S. Fourth St., Louisville, 90001836

Muhlenberg County

Thomas, Robert, House, 516 Broad St., Central City, 90001833

Nelson County

Duncan, Henry, House, Taylorsville Rd. N of Maple Grove Cemetery, Bloomfield, 90001843

Todd County

Milliken Memorial Community House, 208 W. Main St., Elkton, 90001834

MASSACHUSETTS

Worcester County

West Main Street Historic District (Boundary Increase), 83-118 W. Main St., Westborough, 90001851

MINNESOTA

Lac Qui Parle County

Hotel Lac qui Parle 202 6th Ave., Madison, 90001820

NEW HAMPSHIRE

Carroll County

Eagle Mountain House, Carter Notch Rd. N of jct. with NH 16A, Jackson, 90001846

Sullivan County

Farwell School, NH 12A S of Hope Hill Cemetery, Charlestown, 90001847

NORTH CAROLINA

Mitchell County

Peterson, John N., Farm, E side of SR 1321 just N of jct. with SR 1322, Poplar, 90001859

NORTH DAKOTA

Richland County

Adams—Fairview Bonanza Farm (Bonanza Farming in North Dakota MPS), 17170 82 R St. SE, Wahepton vicinity, 90001838

OHIO

Mahoning County

Maple-Dell, 14737 Garfield Rd., Salem vicinity, 90001821

TENNESSEE

Shelby County

Sculptures of Dionicio Rodriquez at Memorial Park Cemetery, 5668 Poplar Ave., Memphis, 90001867

TEXAS

Ellis County

Ferris School, 411 Gibson, Waxahachie, 90001858

UTAH

Wayne County

Hanksville Meetinghouse—School (Mormon Church Buildings in Utah MPS), Sawmill Basin Rd., Hanksville, 90001825

VIRGINIA

Albemarle County

Cocke's Mill House and Mill Site, VA 712 N of jct. with VA 719, North Garden vicinity, 90001828

Bedford County

Locust Level, US 460 W of jct. with VA 695, Montvale, 90001841
Mount Airy, Jct. of VA 630 & VA 631, Leesville vicinity, 90001823

Gloucester County

Airville, VA 629 S of jct. with VA 626, Gloucester vicinity, 90001824

New Kent County

Marl Hill, VA 642 E of jct. with VA 609, Talleysville vicinity, 90001832

Patrick County

Cockran Mill, US 58 of jct. with VA 632, Meadows of Dan vicinity, 90001842

Prince William County

Brentsville Historic District (Civil War Properties of Prince William Co. MPS), Roughly, Bristow Rd. from Old Church Rd. to Isaac Walton Rd., Bristow vicinity, 90001829

Danville Independent City

Main Street Methodist Episcopal Church South, 707 Main St., Danville, 90001822

Newport News Independent City

Newsome, J. Thomas, House, 2803 Oak Ave., Newport News, 90001831

Petersburg Independent City

McKenney, William, House, 250 S. Sycamore St., Petersburg, 90001830

Roanoke Independent City

First Baptist Church, 407 N. Jefferson St., NW, Roanoke, 90001840

WASHINGTON

King County

Victorian Apartments, 1234-1238 S. King St., Seattle, 90001864

Skagit County

Bethsaida Swedish Evangelical Lutheran Church Parsonage, 1754 Chilberg Rd., Pleasant Ridge, La Conner vicinity, 90001863

Snohomish County

Suiattle Guard Station, Suiattle R. E of Buck Cr., Mt. Baker—Snoqualmie NF, Darrington vicinity, 90001865

Spokane County

Lewis & Clark High School, W. 521 4th Ave., Spokane, 90001860
Nine Mile Hydroelectric Power Plant Historic District, Charles Rd. at Spokane R., Nine Mile Falls vicinity, 90001861

Walla Walla County

Northern Pacific Railway Passenger Depot, 416 N. Second Ave., Walla Walla, 90001862

Whatcom County

Austin Pass Warning Hut, SE of Bagley Lakes, Mt. Baker—Snoqualmie NF, Glacier vicinity, 90001866

WEST VIRGINIA

Fayette County

Fayetteville Historic District, Roughly bounded by SR 16, Maple & Fayette Aves., Fayetteville, 90001845

Greenbrier County

Elmhurst (Boundary Increase), US 60 at the Greenbrier R., Caldwell, 90001846

Monroe County

Union Historic District, Roughly, along Main, Dunlap, Pump & Elmwood Sts. N from Royal Oak Field, including Paradise and Monument Fields, Union, 90001844

[FR Doc. 90-27272 Filed 11-19-90; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-485 (Preliminary)]

Certain Gene Amplification Thermal Cyclers and Subassemblies Thereof From the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of institution of preliminary antidumping investigation No. 731-TA-485 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the United Kingdom of certain gene amplification thermal cyclers and subassemblies thereof,[1] provided for in subheadings 8419.89.50 and 8419.90.90, respectively, of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by December 31, 1990.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: November 14, 1990.

FOR FURTHER INFORMATION CONTACT: Janine Wedel (202-252-1178), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on November 14, 1990, by MJ Research, Inc., Watertown, MA.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information under a Protective Order and Business Proprietary Information Service List

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on December 5, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Janine Wedel (202-252-1178) not later than November 30, 1990, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before December 7, 1990, a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). If briefs contain business proprietary information, a nonbusiness proprietary version is due December 10, 1990. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submission must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than December 12, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs. A nonbusiness proprietary version of such additional comments is due December 13, 1990.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: November 16, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-27424 Filed 11-19-90; 8:45 am]

BILLING CODE 7020-02-M

[1] For purposes of this investigation, "certain" gene amplification thermal cyclers consist of Peltier-effect in vitro gene amplification thermal cyclers. Gene amplification thermal cyclers are microprocessor-based reaction controllers that regulate temperatures for small quantities of biologic reagents through a programmed and highly controlled thermal regime. They are used in biotechnology applications, including a biological protocol called in vitro gene amplification, as well as in several related sequencing and radionucleotide labeling reactions. Peltier-effect machines use one or more thermoelectric modules for heating and cooling of the biological sample.

The petitioner has identified four subassemblies that are wholly unique to and dedicated to Peltier-effect in vitro gene amplification thermal cyclers: (1) The sample block/thermoelectric/sensor/heat exchanger subassembly; (2) the sheet metal housing; (3) the membrane keypad used to program and control the machine; and (4) the proprietary software.

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 328X)]

Burlington Northern Railroad Co.—Abandonment Exemption—in Flathead County, MT

Applicant has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon its 5.49-mile line of railroad between milepost 1231.18, near Kalispell, and the end of the line at milepost 1236.67, near Somers, including the stations of Coor's Spur (milepost 1231.9) and Somers (milepost 1236.67), in Flathead County, MT.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 20, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by November 30, 1990.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by December 10, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 23, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 8, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-27293 Filed 11-19-90; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-24,589]

Cluett Shirt Group (Alatex) Andalusia, AL; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on August 29, 1990 applicable to all workers of the Cluett Shirt Group (Alatex), Andalusia, Alabama. The Certification Notice was published in the **Federal Register** on September 14, 1990 (55 FR 37984).

The Department, on its own motion, is amending TA-W-24,589 by deleting the June 2, 1990 impact date and inserting a new impact date of July 2, 1989. The intent of the certification is to cover all workers of the Cluett Shirt Group (Alatex) who were adversely affected by increased imports of articles like or directly competitive with men's shirts. The amended notice applicable to TA-W-24,589 is hereby issued as follows:

All workers and former workers at Cluett Shirt Group (Alatex), Andalusia, Alabama who became totally or partially separated from employment on or after July 2, 1989 are eligible to apply for adjustment assistance benefits under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of November 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-27318 Filed 11-19-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24, 666]

Halstead Industries, Inc. Zelienople, PA; Affirmative Determination Regarding Application for Reconsideration

The United Steelworkers Union Local # 7032 requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to

Apply for Worker Adjustment Assistance for workers and former workers of Halstead Industries, Inc., Zelienople, Pennsylvania. The negative determination was issued on September 21, 1990 and published in the Federal Register on October 10, 1990 (55 FR 41903).

The union claims that a foreign firm is importing copper tubing at a plant in North Carolina which it operates jointly with Halstead Industries and selling the tubing to Halstead's customers.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 6th day of November 1990.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-27319 Filed 11-19-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,752]

Land and Marine Rental Co.; San Antonio, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Land and Marine Rental Company, San Antonio, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-24,752; Land and Marine Rental Company, San Antonio, Texas (November 9, 1990)

Signed at Washington, DC this 9th day of November, 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-27320 Filed 11-19-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,541]

Cederroth OR Medical, Buffalo, NY, Ormed Manufacturing, Incorporated Buffalo, NY; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 22, 1989 applicable to all workers of Ormed Manufacturing, Inc., Buffalo, New York.

The Department, on its own motion, reviewed the certification for Ormed Manufacturing, Inc., Buffalo, New York and found that Cederroth OR Medical, Buffalo, New York meets all the requirements for a successor-in-interest firm. The amended notice applicable to TA-W-22,541 is hereby issued as follows:

All workers of Ormed Manufacturing, Incorporated and Cederroth OR Medical, Buffalo, New York who became totally or partially separated from employment on or after June 1, 1988 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 6th day of November 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-27317 Filed 11-19-90; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Revenue Quality Control

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of revenue quality control program design materials for review and comment.

SUMMARY: The purpose of this notice is to announce the availability of materials explaining the Revenue Quality Control (RQC) design. Interested parties are requested to obtain and comment on these materials.

DATES: Comments are requested by the close of business on January 4, 1991.

ADDRESSES: Copies of the materials may be obtained by writing to Janet Sten, S-4015 Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210. Copies may also be requested by phone at (202) 535-0634 (this is not a toll-free number). Comments should be sent to Mary Ann Wyrsch, Director, Unemployment Insurance Service, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Janet Sten, Director, Revenue Quality Control Work Group, S-4015 Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 535-0634 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Through two previous **Federal Register** Notices (at 53 FR 52108 and 54 FR 46708), the Unemployment Insurance Service (UI) of the Department of Labor solicited comments on design issues for the RQC program. The second notice announced the Department's intention to solicit comment on more detailed design specifications. The Department wishes to announce the availability of four documents explaining the RQC design in greater detail. The documents are not published in the **Federal Register** because of their length and the fact that copies have already been sent to all parties who had responded to previous notices or were otherwise known to have an interest in the RQC program.

RQC is being developed in four segments or modules, which are at different stages. Paper I, the Design Overview paper, briefly describes them all. Module I, Core RQC, embraces evaluation of most State employment security agencies (SESAs) tax processing operations (*e.g.*, Status Determination, Collections). It is the most developed module and hence two of the other attachments offer additional detail on it. Paper II gives the definitions, formulas, and rationales for proposed indicators based on required reports. The program review methodology for Module I is being pretested in seven States this summer; Paper III is the pretest handbook. Although some features of the program review approach may be modified as a result of the pretest, the handbook is included for information, as a concrete example of what RQC means by "program review." The Design Overview paper describes the other three modules in as much detail as is now available. Paper IV is the RQC glossary.

The design described in the four papers assumes stand-still funding for Quality Control (QC) as a whole, and adequate funding for all other UI activities. If these assumptions prove to be invalid—*e.g.*, due to reduced resources occasioned by a Gramm-Rudman sequester or other funding restrictions—the design will be revisited. As a result of this design process, the QC regulation (at 20 CFR part 602) will be amended to include the specifications for an RQC program which all SESAs will implement.

Comments are requested on all materials except the pretest handbook. Respondents are asked to pay particular attention to the overall design proposed for reviewing tax operations and the indicators proposed for tracking various aspects of agency performance.

Signed at Washington, DC, on November 9, 1990.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 90-27321 Filed 11-19-90; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-90-166-C]

Serendipity Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Serendipity Mining, Inc., P.O. Box 309, Bimble, Kentucky 40915, has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 2 Mine (I.D. No. 15-16836) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. As an alternate method, petitioner proposes to use handheld continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors as outlined in the petition.

3. In support of this request, petitioner states that:

(a) No methane has been detected in the mine;

(b) Each three-wheel tractor would be equipped with a handheld continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(c) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips; and

(d) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in the petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 20, 1990. Copies of the petition are available for inspection at that address.

Dated: November 13, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-27323 Filed 11-19-90; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 40-8958 and 40-8981]

Uranerz U.S.A., Inc.; Draft Finding of No Significant Impact Regarding the Issuance of Two Source Material Licenses to Uranerz U.S.A., Inc. for Commercial Operation of the Ruth In-Situ Leach Project Located in Johnson County, WY and the North Butte In-Situ Leach Project Located in Campbell County, WY

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of draft finding of no significant impact.

1. Proposed Action

The proposed administrative action is to issue two commercial Source and Byproduct Material Licenses. These licenses would allow in-situ leach uranium recovery at the Ruth operation located in Johnson County, Wyoming and the North Butte operation located in Campbell County, Wyoming.

2. Reasons for Draft Finding of No Significant Impact

An environmental assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC), Uranium Recovery Field Office, Region IV. The environmental assessment performed by the Commission's staff evaluated potential impacts on-site and off-site due to radiological releases that may occur during the course of the operation. Documents used in preparing the assessment included operational data from the Ruth Research and Development in-situ leach operation and the licensee's applications dated October 7, 1988 and March 7, 1989.

Based on the review of the operational data and the application materials, the Commission has determined that no significant impact will result from the proposed action, and therefore, an Environmental Impact Statement is not warranted.

The following statements support the draft finding of no significant impact and summarize the conclusions resulting from the environmental assessment.

A. The ground-water monitoring program proposed by Uranerz, U.S.A., Inc., is sufficient to monitor the operations and will provide a warning system that will minimize any impact on ground water. Furthermore, aquifer testing indicates that the production zone is adequately confined, thereby assuring hydrologic control of minining solutions.

B. Radiological effluents from the proposed operation of the well field and processing plant will be within regulatory limits and will be continuously monitored.

C. The environmental monitoring program is comprehensive and will detect any radiological releases resulting from the operation.

D. Radioactive wastes will be minimal and will be disposed of at an approved site in accordance with applicable Federal and State regulations.

E. Ground water, based upon previous testing, can be restored to baseline concentrations or applicable class of use standards.

In accordance with 10 CFR 51.33(a), the Director of the Uranium Recovery Field Office, made the determination to issue a draft finding of no significant impact and to accept comments on the draft finding for a period of 30 days after issuance in the **Federal Register**.

This finding, together with the environmental assessment setting forth the basis for the findings, is available for public inspection and copying at the Commission's Uranium Field Office at 730 Simms Street, Golden, Colorado.

Dated at Denver, Colorado, this 13th day of November, 1990.

For the Nuclear Regulatory Commission.

Edward F. Hawkins,

Deputy Director, Uranium Recovery Field Office, Region IV.

[FR Doc. 90-27277 Filed 11-19-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on FTOL Conversions; Meeting

The Subcommittee on FTOL Conversions will hold a meeting on December 5, 1990, room P-100, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 5, 1990—1 p.m. until the conclusion of business.

The Subcommittee will discuss the FTOL conversion for Palisades.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, Consumers Power Company, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 13, 1990.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 90–27273 Filed 11–19–90; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittees on Containment Systems and Structural Engineering; Meeting

The ACRS Subcommittees on Containment Systems and Structural Engineering will hold a joint meeting on December 5, 1990, room P–110, 7920 Norfolk Avenue, Bethesda, MD. This notice was previously published Tuesday, October 23, 1990 (55 FR 42788), and Monday, November 5, 1990 (55 FR 46591).

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 5, 1990–8:30 a.m. until 12 Noon.

The Subcommittees will discuss containment design criteria for future plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittees Chairmen; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittees, it consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairmen's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 13, 1990.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 90–27274 Filed 11–19–90; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Improved Light Water Reactors; Meeting

The Subcommittee on Improved Light Water Reactors will hold a meeting on December 4, 1990, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to the public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, December 4, 1990–8:30 a.m. until the conclusion of business.

The Subcommittee will review SECY–90–377 regarding the level of design detail.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Medhat El–Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 13, 1990.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 90–27275 Filed 11–19–90; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Planning and Procedures; Meeting

The Subcommittee on Planning and Procedures will hold a closed meeting on December 4, 1990, 3 p.m., Room P–422, 7920 Norfolk Avenue, Bethesda, MD. The Subcommittee will discuss the qualifications of candidates nominated for appointment to the Committee.

The entire meeting will be closed to public attendance, in order to discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding this meeting can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Raymond F. Fraley (telephone 301/492–8049) between 7:30 a.m. and 4:15 p.m.

Dated: November 14, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90–27276 Filed 11–19–90; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task numbers, DG–3003 (which should be mentioned in all correspondence concerning this draft guide), is titled "Format and Content for the License Application for the High-Level Waste Repository" and is intended for Division 3, "Fuels and Materials Facilities." This guide is being developed to provide guidance acceptable to the NRC staff on the information to be provided in the license application for the high-level waste repository. The guide also establishes a format for presenting the information.

It is expected that forthcoming changes to 10 CFR part 20, "Standards for Protection Against Radiation," will affect portions of this guide. These changes will be incorporated in the final version of this guide.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of Comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by March 15, 1991.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services, Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Authority: (5 U.S.C. 552(a).

Dated at Rockville, Maryland, this 13th day of November 1990.

For the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 90–27278 Filed 11–19–90; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–28613; File No. SR–AMEX–90–14]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Listing of Long-Term Options on Reduced Value Major Market Index

On July 18, 1990, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder,[2] a proposed rule change to list long-term put and call options on a broad market index which will be computed at one-twentieth the value of the Exchange's Major Market Index ("XMI"). The options on the new index, the reduced value XMI ("LT–20"), will have expirations up to 36 months.

The proposed rule change was noticed in Securities Exchange Act Release No. 28321 (August 8, 1990), 55 FR 33398. No comments have been received on the proposal.

In 1987, the Commission approved a rule change allowing the AMEX to list long-term options, with expirations up to 36 months, on any of the Exchange's broad-based indexes.[3] Pursuant to that authorization, the Amex now proposes to list long-term options on the LT–20. Except for the reduced value given to the new index, all of the specifications and calculations for the LT–20 will be the same as those used for the XMI.[4] The LT–20 will trade independently of and in addition to full-size XMI options and will be subject to the same rules that presently govern the trading of Exchange index options, including sales practice rules, margin requirements, floor trading procedures and position and exercise limits.

The Exchange has determined that because positions in full-size XMI options and those in LT–20 options will be based on the same underlying stock index, full-size XMI options will be aggregated with positions in the LT–20 for the purpose of determining adherence to position and exercise limits.[5] Because one full-size XMI contract is equivalent to 20 LT–20 contracts, each LT–20 contract will be considered 1/20 of an XMI contract when XMI and LT–20 contracts are aggregated for position and exercise limit purposes. Thus, for example, under current XMI position limits of 17,000

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] *See* Securities Exchange Act Rel. No. 25041 (October 16, 1987), 52 FR 40008 (order approving File No. SR–AMEX–87–22) ("Long-Term Option Approval Order"). As noted in the Long-Term Option Approval Order, strike price interval, bid/ask differential, and continuity rules do not apply to long term option series until the time to expiration is less than 12 months.

[4] The XMI is designed to represent a broad cross-section of American business and to reflect broad market trends. The XMI is a price-weighted index based on the stocks of 20 highly capitalized companies. The AMEX disseminates updated values of the XMI at least once each minute. The updated values are available on broker-dealer market information devices. For a more complete description of the XMI, see Securities Exchange Act Rel. No. 19610 (March 17, 1983), 48 FR 12486.

[5] *See* letter from Barbara D. Salmanson, Special Counsel, Options Division, Amex, to Thomas Gira, Branch Chief, Division of Market Regulation, dated October 15, 1990.

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contracts (with 10,000 in the near-term month), an option holder with no full size XMI contracts would be permitted to hold 340,000 LT–20 contracts (200,000 in the near-term month).

Like XMI options, the LT–20 options will feature European-style exercise, thereby restricting exercise to the last day of trading. The Exchange continuously will calculate and disseminate the underlying value of the LT–20 index in addition to the XMI value. The Amex plans to list an initial option series on the LT–20 with a December 1992 expiration and thereafter to introduce options with a 36-month expiration at the end of each December expiration.

The Exchange will list new strike prices at each December expiration. The strike prices will be near or bracketing the current index level, and the Exchange will list both a put and a call series for each strike price. The Exchange proposes to add additional strike prices only when the index makes significant moves of approximately 10–15 percent. The Amex believes that this procedure should result in the listing of only a limited number of series for any expiration, thereby eliminating the confusion that might otherwise be caused by a myriad of strike prices and expirations.

The Exchange believes that the listing of long-term options on a reduced value XMI will fit the needs of retail investors because the reduced dollar value of the underlying index and the relative long-term duration of the proposed options will offer investors the opportunity to obtain better long-term portfolio protection at an affordable price. The Amex anticipates that its proposed strike prices on the LT–20 will permit the offering of long-term options at premiums between $3 and $7 ($300 to $700 per contract) based on current market volatility and normal pricing considerations. As the LT–20 options approach expiration, however, these premiums could become smaller as the time value portion decreases.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5)[6] because the proposal is designed to remove impediments to and perfect the mechanism of a free and open market. Specifically, the Commission believes that the proposal will facilitate transactions in options by providing investors with additional means to hedge equity portfolios against long-term market risk.[7] In particular, the Commission believes that the LT–20 options will serve the needs of retail investors by providing them with the opportunity to use long-term options to protect their portfolios from long-term market moves at a known and limited cost. The Commission also believes that the reduced value LT–20 index will result in options premiums more affordable to retail investors, thereby allowing smaller equity portfolios held by retail investors to be hedged more efficiently and allowing investors to hedge or speculate in market movements with a smaller outlay of capital.

The Commission also believes that trading in LT–20 options will not have an adverse impact or be susceptible to manipulation. Previously, the Commission had determined that the XMI is a broad-based index.[8] The Commission does not believe that merely changing the XMI by dividing its value by 20 changes this determination. The LT–20 will contain the same stocks with the same weightings as the XMI and will be calculated in the same manner as the XMI (with the exception of being 1/20th the value of the XMI). Moreover, the Commission believes that any potential manipulation concerns raised by LT–20 options are minimized by the fact that positions in LT–20 options and XMI options will be aggregated for position and exercise limit purposes.[9] Finally, the Commission notes that the same Exchange surveillance procedures for XMI options wil be used for LT–20 options.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–AMEX–90–14) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

[6] 15 U.S.C. 78f(b)(5) (1982).

[7] Pursuant to section 6(b)(5) of the Act the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[8] *See* Securities Exchange Act Rel. No. 19294 (November 22, 1982), 47 FR 53081 (order approving SR–AMEX–82–6).

[9] In this regard, it is reasonable for the AMEX to count 20 LT–20 contracts as equivalent to one XMI contract for position limit purposes, as the underlying value of one XMI contract is equal to the underlying value of 20 LT–20 contracts.

[10] 15 U.S.C. 78s(b)(2) (1982).

[11] 17 CFR 200.30–3(a)(12) (1989).

Dated: November 14, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–27298 Filed 11–19–90; 8:45 am]

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[Rel. No. 34–28512; File No. SR–AMEX–90–17]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change Relating to Expansion of Options Principal Member and Limited Trading Permit Holder Trading Privileges

On August 13, 1990, the American Stock Exchange, Inc. ("AMEX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] a proposed rule change which will allow options principal members ("OPMs") and limited trading permit ("LTP") holders to trade "derivative products" in addition to standardization options. The proposed rule change was noticed in Securities Exchange Act Release No. 28401 (August 31, 1990), 55 FR 37361. No comments were received on the proposed rule change.

The AMEX has been developing several new derivative products intended to attract both institutional and retail investors. In April 1990, the Exchange's Board of Governors approved listing guidelines for unit investment trusts and other entities ("Trusts") that issue securities based on (1) A portfolio of stocks included in a stock market index, and/or (2) a portfolio of money market or other debt instruments. Holders of Trust shares or units would be able to separate the shares or units into components reflecting distinct interests and investment objectives, such as the right to dividend income, the possibility of capital appreciation, or the ability to hedge against a market decline. A Trust could operate on an open or closed-end basis. Although these guidelines were initially intended to accommodate the listing of "SuperUnits" of certain "SuperTrusts" sponsored by SuperShare Services Corporation ("SSC"),[3] the guidelines are broad enough to accommodate other trusts of varying sizes and characteristics. In addition, the Exchange is developing a new basket type product to be called Standard & Poor's Index Receipts ("SPIRS"). SPIRS, like SSC SuperUnits, represent interests in actual portfolios of securities.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1990).

[3] For further discussion of SuperTrust securities, *see* Securities Exchange Act Rel. No. 28085 (June 8, 1990), 55 FR 24016 (File No. SR–AMEX–90–02), as amended by Amendment No. 1. *See* Securities Exchange Act Rel. No. 28610 (September 6, 1990), 55 FR 37769.

The Exchange believes that in order to support trading in basket type products and to optimize the chance for an active trading crowd to develop in these products, it is important that as many members as possible be given the opportunity to trade them. The AMEX believes that a larger number of qualified traders will add liquidity and depth to the market, thereby attracting more public investors.

Accordingly, the AMEX proposes to amend its Constitution to permit LTP holders and OPMs to trade the new derivative products being developed by the Exchange, including SuperUnits and SPIRS. Presently, the Exchange Constitution allows an OPM to trade as principal in all AMEX-traded options [4] and authorizes a LTP holder to trade as principal in all AMEX-traded index option products.[5] Under the proposed rule change, OPMs and LTP holders will be permitted to trade as principal in "derivative products," in addition to options and index option products. The proposal defines "derivative products" to include "in addition to standardized options, other securities which are issued by the Options Clearing Corporation or another limited purpose entity or trust and which are based solely on the performance of an index or portfolio of other publicly traded securities * * * (and shall) not include warrants of any type or closed-end mutual funds." The AMEX has stated that the definition of derivative products is not intended to expand OPM and LTP trading privileges to include products which they are not entitled to trade currently, including currency warrants, index warrants or closed-end mutual funds.

Currently, LTP holders are required to conduct at least one-third of their total trading activity in the Exchange's Institutional Index Option ("XII") and no more than two-thirds of their trading activity in the Exchange's Major Market Index Option. The proposal will amend the one-third trading requirement by adding index-based derivative products to the category of products in which LTP holders must conduct one-third of their trading activity.[6] Thus, LTP holders will be required to conduct one-third of their total trading activity in the XII and in index-based derivative products. The Exchange has represented that it has advised its members and LTP holders of the change.[7]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) [8] because it is designed to perfect the mechanism of a free and open market. As the Commission stated in its order approving the LTP program,[9] the Commission in the past has approved proposals to create limited membership classes designed to encourage market maker participation in a new or developing market for an option product. Historically, the Commission has taken the position that decisions concerning the implementation and characteristics of a plan designed to increase the number of traders on an exchange floor were best left to the business judgment of an exchange, as long as the procedures adopted were not inconsistent with the purposes of the Act. Viewed in this context, the amendment to the LTP plan to include SuperShares and SPIRS appears to be designed for the legitimate business purpose of attracting market makers to these products. This will promote the development of an active trading crowd and increase the depth and liquidity of the market for these new products.

For the reasons stated in the LTP Approval Order, the Commission believes that the LTP plan proposed by the AMEX adequately addresses concerns regarding whether the one-third requirement would create an incentive for inappropriate trading activity. The addition of several new products to the LTP's zone does not alter this analysis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–AMEX–90–17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

[4] *See* AMEX Constitution Article IV, section 1(b)(4).

[5] *See* AMEX Constitution, Article IV, section 1(j)(3).

[6] *See* letter dated October 29, 1990, from Linda Tarr, Special Counsel, AMEX, to Thomas R. Gira, Branch Chief, SEC ("AMEX letter").

[7] *See* AMEX letter, *supra* note 6.

[8] 15 U.S.C. 78f (1982).

[9] *See* Securities Exchange Act Rel. No. 24303 (April 6, 1987), 52 FR 11780 (order approving File No. SR–AMEX–86–24) ("LTP Approval Order").

[10] 15 U.S.C. 78s(b)(2) (1982).

[11] 17 CFR 200.30–3(a)(12) (1990).

Dated: November 14, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–27299 Filed 11–19–90; 8:45 am]

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[Rel. No. 35–25189]

Filings; Ahlstrom Corp., et al.

November 13, 1990

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 7, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ahlstrom Corp. (31–844)

A. Ahlstrom Corpporation ("Ahlstrom"), Helsinki, Finland, a Finnish corporation, has filed an application pursuant to section 3(a)(5) of the Public Utility Holding Company Act of 1935 ("Act") for an order exempting it from all provisions of the Act except section 9(a)(2).

Ahlstrom is primarily engaged in manufacturing operations. Ahlstrom's total consolidated revenues for 1989 were approximately $1.8 billion. It owns or has interests in electric power generating plants in Finland, West Germany and Italy. It also owns indirectly a 14% interest in Beebee Island Corporation ("BIC") which owns and operates a small hydroelectric

generating plant in Watertown, New York. BIC is a "public-utility company" within the meaning of section 2(a)(5) of the Act. Ahlstrom represents that BIC is the only company, the principal business of which within the United States is that of a public-utility company, from which it derives any income. Ahlstrom's share of BIC revenues for 1989 was $107,981, approximately five one-thousandths of one percent (.005%).

Indiana Michigan Power Co. (70–7716); Blackhawk Coal Co.

Indiana Michigan Power Company ("I&M"), 1 Riverside Plaza, Columbus, Ohio 43215, an electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, and Blackhawk Coal Company ("Blackhawk"), 1 Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, a subsidiary of I&M, have filed an application-declaration under sections 6(a), 7, 9(a), and 10 of the Act.

By orders dated August 7, 1980, September 30, 1980 and October 19, 1981 (HCAR Nos. 21672, 21672A and 22237, respectively), Blackhawk issued, and I&M acquired, two non-interest bearing promissory notes ("Notes") with a maturity date of December 31, 1990, which now have an aggregate amount of approximately $66 million currently outstanding.

Blackhawk and I&M now propose to extend the maturity date of the Notes by issuing one new non-interest bearing promissory note with a maturity date of December 31, 2010, up to an aggregate amount of $115,952,484.

Northeast Utilities, et al. (70–7717)

Northeast Utilities ("Northeast"), a registered holding company, and its subsidiary companies, Western Massachusetts Electric Company ("WMECO"), The Quinnehtuk Company ("Quinnehtuk"), all located at 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, The Connecticut Light and Power Company ("CL&P"), Northeast Utilities Service Company ("Service"), Northeast Nuclear Energy Company ("Nuclear"), The Rocky River Realty Company ("Rocky River"), all located on Selden Street, Berlin, Connecticut 06037, and Holyoke Water Power Company ("Holyoke"), Canal Street , Holyoke, Massachusetts 01040 (collectively, "Companies"), have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 43, 45 and 50(a)(5) thereunder.

The proposal includes a request for authorization through December 31, 1992 of short-term borrowings in the form of bank notes ("Bank Notes") pursuant to lines of credit and commercial paper ("Commercial Paper"), open account advances ("Advances") by Northeast to its subsidiary companies, and the continuation of a money pool ("Pool") to be utilized by the Companies for operational, maintenance, and construction expenses, and to meet cash needs which may arise due to timing differences. The Commercial Paper is proposed to be issued under an exception from competitive bidding requirements of rule 50 under subsection 50(a)(5).

The aggregate amount of all short-term borrowings through December 31, 1992, whether through the issuance of Bank Notes, Commercial Paper, Advances, borrowings from the Pool, or through existing revolving credit agreements (HCAR No. 24943, August 18, 1989 and HCAR No. 24686, July 29, 1988) will not exceed $135 million for Northeast, $300 million for CL&P, $95 million for WMECO, $10 million for Holyoke, $50 million for Nuclear, $55 million for Rocky River, $5 million for Quinnehtuk, and $65 million for Service.

All of the Companies, except Quinnehtuk, propose to issue Bank Notes. Borrowings under each Bank Note will have a maximum maturity of 270 days, and will bear interest at a fixed or floating rate, determined with reference to an agreed upon index, such as the bank's prime rate, LIBOR, certificate of deposit rates or money market rates. The interest rate will not exceed the higher of 1% above the lending bank's prime rate or 2% above the Federal Funds Effective Rate. Floating rate Bank Notes will generally be subject to prepayment at any time at the Companies' option. Fixed rate Bank Notes may, in certain circumstances, not be prepayable, or may be prepayable only with "make whole" payments. The Companies, other than Quinnehtuk, further propose to negotiate credit lines with one or more banks, subject to compensating balance requirements not exceeding 5% of committed credit line amounts, and fees not exceeding .25% per annum.

Northeast, CL&P and WMECO propose to issue and sell Commercial Paper, with maturities of up to 270 days, to dealers at the prevailing discount rate per annum on the date of issuance for commercial paper of comparable quality and the particular maturity sold by other public utilities. Such sales will occur only if the issuer believes that the effective interest cost will be equal to or less than the cost for the issuance of Bank Notes in amounts at least equal to the principal amount of the Commercial Paper.

Northeast proposes to make Advances to the other Companies which will bear interest at a rate equal to the prime rate designated by Citibank of New York on the date of the advance. The Advances will be repayable on demand, and any outstanding Account will be repaid by December 31, 1992, unless otherwise authorized by the Commission.

The Companies propose to continue the use of the Pool administered by Service. The Pool is composed of available funds loaned by the participating Companies and borrowed by the participating Companies, except Northeast, to assist in meeting their respective short-term borrowing needs. Additionally, Northeast proposes to borrow funds by issuing Bank Notes or Commercial Paper solely for the purpose of lending those funds through the Pool to Service, Nuclear, Quinnehtuk, and Rocky River. All loans made under the Pool will bear interest, payable monthly, equal to the daily Federal Funds Effective Rate, except that loans from the proceeds of external borrowings by Northeast will bear interest at the same rate paid by Northeast on the borrowings, and any loans from external borrowings may be prepayable only with "make whole" payments. To the extent that there are any excess funds available in the Pool, such funds will be invested with the earnings allocated on a pro rata basis.

Transok, Inc. (70–7759)

Transok, Inc. ("Transok"), P.O. Box 3008, Tulsa, Oklahoma, 74101, a non-utility subsidiary company of Central and Southwest Corporation, Inc., a registered holding company, has filed an application under sections 9(a) and 10 of the Act and rule 51 thereunder.

Transok proposes, either directly or through a newly formed, wholly owned subsidiary, to construct, own and operate, or to acquire an interest in, an interstate natural gas pipeline connecting Transok's existing intrastate pipeline system in Oklahoma with one or more pipelines located in Texas, which pipeline facility will be utilized, in part, to satisfy the fuel requirements of Transok's associate electric utility companies in Texas.

Transok also expects to enter into a letter agreement with Lone Star Gas Company ("Lone Star"), a non associate gas pipeline company located in the state of Texas, concerning the construction, operation and ownership of the proposed pipeline. Transok may, however, finance up to 100% of the cost of the project and then allow Lone Star to repay it for Lone Star's share of the investment in the proposed pipeline.

Indiana Energy, Inc., et al. (70–7778)

Indiana Energy, Inc. ("IEI"), 1630 Meridian Street, Indianapolis, Indiana 46202, an Indiana corporation and public-utility holding company exempt from registration under section 3(a)(1) of the Act pursuant to rule 2, has filed an application pursuant to sections 9(a)(2) and 10 of the Act.

By order dated June 1, 1990 (HCAR No. 25099), IEI was authorized to acquire all of the issued and outstanding shares of Richmond Gas Corporation ("Richmond") and Terre Haute Gas Corporation ("Terre Haute"), each an Indiana gas utility company. IEI now proposes to reorganize its ownership of Richmond and Terre Haute by selling all of the common stock of such companies to Indiana Gas Company, Inc. ("Indiana Gas"), also a wholly owned gas utility subsidiary of IEI.

Pursuant to an Acquisition Agreement dated October 26, 1990, Indiana Gas proposes to acquire from IEI all of the issued and outstanding shares of Richmond and Terre Haute common stock for an aggregate consideration of $60,727,305.00 plus or minus an as yet undetermined amount, as described below. If the aggregate net book value of Richmond and Terre Haute as of the closing date exceeds their aggregate net book value as of July 31, 1990, such excess value shall be added to the purchase price. If the aggregate net book value of Richmond and Terre Haute as of July 31, 1990 exceeds their aggregate net book value as of the closing date, this amount will be subtracted from the purchase price. The purchase price shall be paid by Indiana Gas with a combination of cash and up to 1,850,000 newly issued shares of Indiana Gas common stock. The value of these newly issued shares of Indiana Gas common stock shall not exceed $45,000,000. The value of each of the shares of Indiana Gas common stock shall be deemed to equal its book value per share as of the closing date.

National Fuel Gas Co. (70–7803)

National Fuel Gas Company ("NFG"), 10 Lafayette Square, Buffalo, New York 14203, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rule 50(a)(5) thereunder.

NFG proposes to issue and sell from time-to-time through October 31, 1995, under an exception from the competitive bidding requirements of rule 50 under subsection (a)(5), up to 1 million shares of its authorized but unissued shares of common stock ("Common Stock") pursuant to a Customer Stock Purchase Plan ("Plan").

The Common Stock will be offered pursuant to the Plan which shall be open to the residential customers of National Fuel Gas Distribution Corporation, a subsidiary company of NFG.

Georgia Power Co. (70–7807)

Georgia Power Company ("GPC"), 333 Piedmont Avenue NE., Atlanta, Georgia 30308, an electric public-utility subsidiary company of The Southern Company, a registered holding company, has filed an application-declaration under sections 9(a), 10 and 12(d) of the Act and rule 44 thereunder.

GPC proposes to sell, pursuant to a proposed Agreement of Sale and Exchange to Oglethorpe Power Corporation ("OPC"), a Georgia Electric Membership Generation & Transmission Corporation, all of GPC's right, title and interest in and to: (1) The real and personal property, including engineering drawings, comprising up to one hundred one of GPC's distribution substation facilities; (2) the real and personal property comprising two of GPC's transmission tap lines; and (3) the revenue metering equipment associated with the substation facilities for aggregate price of $17,594,057 (collectively, "GPC Facilities"). Such sales price represents the sum of: (a) GPC's original book cost of all property, real and personal, associated with the GPC Facilities; (b) an additional negotiated amount as an adjustment for gross up to GPC's allowance for funds used during construction; and (c) an additional amount in order to insure GPC does not incur any after-tax loss on the sale. In addition, GPC proposes to convey to OPC all of GPC's right, title and interest in and to the real and personal property, including engineering drawings, comprising the Jackson E.M.C. #13 Substation Facility, commonly referred to as the Beaver Ruin Substation Facility ("Beaver Ruin Substation Facility"), in exchange for all of OPC's right, title and interest in and to the real and personal property comprising the Dillard Substation Facilities ("OPC Substation Facilities"). The estimated exchange value of the OPC Substation Facilities represents OPC's original book cost of the OPC Substation Facilities, including land, incurred as of the closing date. The estimated exchange value of the Beaver Ruin Substation Facility represents GPC's original book cost of the Beaver Ruin Substation Facility, including land, incurred as of the closing date plus an additional amount in order to insure that CPC does not incur any after-tax loss on the exchange. A payment to equalize the value of the Beaver Ruin Substation Facility and the OPC Substation Facilities will be paid by OPC to GPC at closing.

GPC will obtain from its First Mortgage Bond Trustee a release of the GPC Facilities and the Beaver Ruin Substation Facilities from the lien of GPC's First Mortgage Bond Indenture. OPC will obtain a release executed by the United States of America, Columbia Bank for Cooperatives, and Trust Company Bank, as Trustee, under OPC's Consolidated Mortgage and Security Agreement dated as of October 15, 1985, as amended, releasing the OPC Substation Facilities from the lien of said Consolidated Mortgage and Security Agreement.

Consolidated Natural Gas Co. (70–7811)

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, CNG Tower, Pittsburgh, Pennsylvania 15222–3199, has filed a declaration under sections 6(a) and 7 of the Act and rule 50(a)(5) thereunder.

Consolidated proposes to issue and sell, through December 31, 1991, up to $250 million principal amount of convertible subordinated debentures ("Debentures") maturing in not more than thirty years. The Debentures would be convertible into shares of Consolidated's common stock $2.75 par value.

The Debentures will be issued under a new closed-end indenture ("Indenture"), not allowing for any further series of debentures thereunder, between Consolidated and a bank, as trustee. The Indenture will contain provisions making the Debentures subordinate to all senior indebtedness of Consolidated, including all currently outstanding and future series of debentures issued or to be issued under the current indentures of Consolidated.

It is anticipated that the Debentures will be offered and sold at par with an annual interest rate determined by the market for similar convertible debt. Such interest is anticipated to be approximately 300 to 350 basis points lower than for senior debt of comparable terms but without the conversion feature. The conversion price per share for the Debentures would be set at an initial premium of approximately 20–25% over market.

Consolidated would have the right to call the Debentures at par plus a declining premium beginning three years after the date of issue. Beginning in the eleventh year after issuance, the outstanding Debentures would be retired through equal annual sinking

fund payments so as to retire 75% of the outstanding issue at maturity. Consolidated will also have the noncumulative option to make additional sinking fund payments equal to the mandatory sinking fund payments.

The proceeds from the sale of the Debentures will be added to the treasury funds of Consolidated and subsequently used to finance, in part, capital expenditures of Consolidated and Consolidated's subsidiaries.

Consolidated requests an exception from the requirements of rule 50 pursuant to subsection 50(a)(5) thereunder for the issuance and sale of the Debentures. Consolidated further requests authorization to begin negotiations, pursuant an exception from the requirements of rule 50 pursuant to subsection 50(a)(5) thereunder, with underwriters for the public offering of the Debentures. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-27302 Filed 11-19-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17853; International Series Rel. No. 191/812-7539]

November 13, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Consolidated TVX Mining Corporation ("Applicant").

RELEVANT 1940 ACT SECTIONS: Order requested under section 3(b)(2) of the 1940 Act or, in the alternative, section 6(c) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks (a) An order declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore is not an "investment company" as defined in the 1940 Act, or (b), in the alternative, an order exempting it from all provisions of the 1940 Act.

FILING DATE: The application was filed on June 14, 1990, and amended on September 20, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 10, 1990, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 145 King Street West, Toronto, Ontario M4H 1J8, Canada, with a copy to McPheters & Richardson, P.C., One Rockefeller Plaza, New York, New York 10020, Attention: R. Douglas McPheters, Esq.

FOR FURTHER INFORMATION CONTACT: Robert A. Robertson, Staff Attorney, at (202) 504-2283, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained from a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant represents that it has been engaged in the acquisition, ownership, operation and exploitation of precious metals mining properties in the Federative Republic of Brazil ("Brazil") since 1983 and in the Republic of Chile ("Chile") since 1988. Applicant's precious metals mining business in Brazil and Chile is carried on through indirect interests in the form of voting and non-voting shares in corporations and other entities having beneficial ownership of claims, concessions, leases or licenses with respect to precious metals mining properties located in Brazil and Chile.

2. Applicant holds these interests indirectly through holding companies in order to: (a) Minimize the effect upon Applicant and its financing arrangements of the restrictions of the laws of Brazil and Chile upon foreign investment and remittance of capital and dividends, (b) obtain favorable tax treatment under the laws of Canada with respect to Applicant's activities outside Canada, and (c) accommodate the joint venture activities of Applicant's subsidiaries and affiliates. To the extent that Applicant has minority interests in intervening holding companies, those minority interests are in closely held companies where the majority interest is owned by companies overwhelmingly owned and controlled by Eike F. Batista, the Chairman, Chief Executive Officer and a director of Applicant. Mr. Batista also is the beneficial owner of approximately 32% of Applicant's Common Shares ("Shares"), which makes him Applicant's largest shareholder.

3. Applicant's mining operations in Brazil involve principally the joint venture operation of the Brasilia mine and the operation of the Salamangone and Xapetuba gold mines. Applicant acquired, owns and operates these mining properties in concert with Brazilian corporations and other entities tht Mr. Batista controls. Applicant's mining operations in Brazil are conducted through "majority-owned subsidiaries," as defined by section 2(a)(24) of the 1940 Act (individually, a "Majority-Owned Subsidiary" and collectively, "Majority-Owned Subsidiaries") and through companies that it argues it "controls," within the meaning of section 2(a)(9) of the 1940 Act (individually, a "Controlled Company" and collectively, "Controlled Companies"). For example, the Brasilia mine, which represents Applicant's largest interest in Brazil, is operated as a joint venture with Rio Tinto Zinc plc, a publicly-trading English mining company. Applicant indirectly owns 100% of the voting securities of TVX Participacoes Ltda., which owns 49% of the voting securities of Autram Investimentos S.A., which owns 67.3% of the voting securities of Autram Mineracao e Participacoes S.A., which has a 49% ownership interest in the Brasilia mine joint venture. Where Applicant does not own 50% or more of the voting securities of the above entities, it supports its argument that these entities are Controlled Companies with, among other things, certain joint venture agreements, shareholder agreements and informal arrangements. Applicant's share of the gold that all of the Brazilian mines produced during 1989 was approximately 64,000 ounces.

4. Applicant's mining operations in Chile are conducted principally through the joint venture operation of the La Coipa mineral properties. Applicant's interest in these properties is represented by Mantos de Oro, a legal mining company created under the laws of Chile, which Applicant submits is a Majority-Owned Subsidiary, or, in the alternative, a Controlled Company. Applicant owns 100% of the voting securities of Miicre Mining, which owns 80% of the voting securities of Macaines, which owns 50% of the equity securities in the Mantos de Oro joint venture with a publicly-traded Canadian gold mining company. Applicant supports its contention that Mantos de Oro is a Controlled Company with, among other things, that entity's by-laws that require the unanimous consent of the directors for all significant decisions. A smaller tract of mineral properties in Chile also is held by Mineral La Coipa, a legal mining company created under the laws of Chile, which is Applicant's Majority-Owned Subsidiary and is operated as a joint venture in which Applicant is an equal partner. Applicant's share of the precious metals produced by the La Coipa mine during 1989 was approximately 6,500 ounces of gold and 638,000 ounces of silver.

5. In addition to the discussion above, the manner in which Applicant believes that certain companies, through which it conducts its Brazilian and Chilean mining operations, are Controlled Companies and further information concerning its complex structure is described explicitly in the application. This information includes various joint venture agreements, by-laws and shareholder agreement that are attached to the application as exhibits.

6. Approximately 63% of the value of Applicant's total assets is represented by Applicant's joint venture interests in the Brasilia mine and the La Coipa and other Chilean mineral properties and related fixed assets. An additional 27% of the value of Applicant's total assets is represented by Applicant's interests in Brazilian precious metals mining properties held through what Applicant contends are Majority-Owned Subsidiaries and Controlled Companies. In the aggregate, approximately 90% of the value of Applicant's total assets is represented by its interests in Brazilian and Chilean mining operations. Approximately 81% of Applicant's net income after taxes is derived from Applicant's joint venture interests in the Brasilia mine and in the La Coipa mineral properties, and an additional 19% of Applicant's net income after taxes is derived from Brazilian precious metals mining properties held through what Applicant claims are Majority-Owned Subsidiaries and Controlled Companies.

7. Applicant's Shares are listed on the Toronto Stock Exchange, but are not traded on any exchange in the United States or quoted on the National Association of Securities Dealers Automated Quotation system ("NASDAQ"). Applicant understands that a number of holders of its Shares reside in the United States. Applicant filed a registration statement with respect to its Shares on Form 20-F (the "Form 20-F") under section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act"), which became effective by operation of law 60 days after the date of its filing on December 30, 1986. Since the Form 20-F became effective, Applicant has filed two amendments to the Form 20-F and has filed its required reports under the Exchange Act.

8. The complex nature of Applicant's holding company structure, which was not created with the 1940 Act in mind, but which necessarily reflects the laws and business customs of the countries where Applicant carries on its mining business, as well as the way the mining business is conducted generally, pose the issue of whether Applicant should be considered an investment company within the meaning of section 3(a)(3) of the 1940 Act. Although Applicant believes that it is primarily engaged in the business of precious metals mining through Majority-Owned Subsidiaries and Controlled Companies, Applicant desires this issue to be formally resolved so that it may attempt to have its Shares quoted on NASDAQ and so that its mining business can be conducted in the future without the uncertainties created by the possibility that Applicant might be considered an investment company.

Applicant's Legal Analysis

1. Applicant seeks (a) An order under section 3(b)(2) of the 1940 Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore is not an investment company as defied in the 1940 Act, or (b), in the alternative, an order under section 6(c) of the 1940 Act exempting in from all provisions of the 1940 Act.

2. Section 3(b)(2) of the 1940 Act provides that the SEC may find that a person is not an investment company within the meaning of the 1940 Act, notwithstanding that person being an investment company within section 3(a)(3) of the 1940 Act. Section 3(a)(3) defines an "investment company" as including any issuer that, "is engaged * * * in the business of investing, reinvesting, owning, holding, or trading in securities, and owns * * * investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items)." The section 3(b)(2) exclusion applies if the SEC finds the issuer "to be primarily engaged in a business or businesses other than investing * * * in securities either directly or (A) Through majority-owned subsidiaries or (B) through controlled companies conducting similar types of businesses."

3. Section 6(c) of the 1940 Act authorizes the SEC to issue a conditional or unconditional exemption from any provision of the 1940 Act or rule thereunder if the exemption is "necessary or appropriate in the public interest" and is "consistent with the protection of investors and the purposes fairly intended by the policy and provisions of (the 1940 Act)."

4. Applicant believes that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities and should be granted an exemption under section 3(b)(2). In determining the primary business in which a company is engaged, the SEC considers, among other things: (a) The issuer's historical development, (b) the issuer's officers and directors, (d) the nature of the issuer's present assets, and (e) the sources of the issuer's present income. *Tonopah Mining Company of Nevada*, 26 S.E.C. 426 (1948).

(a) *Historical development:* Since its organization in 1981, Applicant believes it has been engaged primarily in the mining business, and in no other business. Applicant participates actively in the operation of various mining properties in Brazil and Chile and is, and has been, actively engaged in the acquisition, financing and development of interests in precious metals mining properties in those countries.

(b) *Public representatives:* Applicant has held itself out as a mining company and has never held itself out as an investment company. This is supported by materials that Applicant has prepared and published, including its annual reports, publicly filed documents and press releases. Applicant has been characterized in writing as a mining company by the Toronto Stock Exchange, in numerous newspaper articles and published reports and by the inclusion of it Shares in the Toronto Stock Exchange Gold Index.

(c) *Activities of officers and directors:* Applicant's officers and directors have considerable expertise in the mining business and are actively and directly involved on a regular basis in the acquisition, exploration, development, financing and operation of Applicant's mineral properties.

(d) *Nature of assets:* At December 31, 1989, Applicant's interests in mineral properties in Chile represented approximately 47% of the value of Applicant's total assets, and its interests in Brazilian mining properties represented approximately 43% of the value of its total assets. Therefore,

Applicant's combined interests in these mining properties represent approximately 90% of the value of Applicant's total assets.

(e) *Source of income:* Approximately 82% of Applicant's net income after taxes for the four quarters ended December 31, 1989 was derived from revenues from Applicant's joint venture interest in the Brasilia mine, while approximately 5% of Applicant's net income after taxes for the same period was derived from revenues from Applicant's La Coipa joint venture in Chile, or approximately 87% in the aggregate. Substantially all of Applicant's remaining net income after taxes was derived from revenues from Applicant's Salamangone and Xapetuba mines.

5. In the alternative to an order under section 3(b)(2), Applicant requests an order under section 6(c) of the 1940 Act. Applicant believes that an exemption under section 6(c) of the 1940 Act is warranted in the present instance. Applicant was structured for valid economic and legal reasons not common in the United States and not with the 1940 Act in mind. Therefore, it believes that its compliance with the 1940 Act would not be possible. Applicant submits that requiring its compliance with the provisions of the 1940 Act would be inconsistent with the purposes fairly intended by the policy and provisions of the 1940 Act and would neither be necessary or appropriate in the public interest nor consistent with the protection of investors.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 27301 Filed 1-19-90 8:45 am]

BILLING CODE 8010-01-M

[Investment Co. Act Rel. No. 17852; International Series Rel. No. 190; 812-7537]

Christiana Bank og Kreditkasse; Application

November 13, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Christiana Bank og Kreditkasse.

RELEVANT 1940 ACT SECTION: Section 6(c).

SUMMARY OF APPLICATION: Applicant seeks a conditional order under section 6(c) to permit it to offer and sell its equity securities in the United States without registering as an investment company under the 1940 Act.

FILING DATES: The application was filed on September 5, 1990, and an amendment was filed on November 2, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 10, 1990, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, P.O. Box 1166 Sentrum, 0107 Oslo 1, Norway, with a copy to Katheryn C. Patterson, Coudert Brothers, 200 Park Avenue, New York, New York 10166.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a commercial bank incorporated in Norway and is one of the two largest commercial banks in Norway. Applicant is engaged in regularly in, and derives a substantial portion of its business from, extending credit and accepting deposits that are customary for commercial banks in Norway. In addition to its operations in Norway, applicant has wholly owned banking subsidiaries in Luxenbourg and Sweden. Applicant maintains branches in Signapore, London, New York, Seattle, and the Cayman Islands and maintains representative offices in Bejing, Tokyo, Copenhagen, Malaga (Spain), and Sydney. At December 31, 1989, applicant had total assets of $19,678,000,000 and total deposits of $8,082,000,000.

2. The operations of applicant are subject to a wide range of regulation and administrative supervision under Norwegian law. The three most important laws in this area are the Monetary and Credit Policy Act of 1965, the Bank Act of 1961, and the Financial Services Act of 1988. The Monetary and Credit Policy Act sets forth certain requirements relating to the lending activities and liquidity of Norwegian banks, and the Bank Act and Financial Services Act contain other requirements for such banks. The Banking, Insurance and Securities Commission is the official body supervising Norwegian banks.

3. Applicant has appointed its full service branch in New York, currently located at 11 West Forty-Second Street, New York, New York, as its agent in the United States to accept service of process in connection with any action brought against applicant arising out of any offering of securities made in reliance upon any order granted with respect to the instant application.

4. Applicant desires to have access to the United States capital markets through private placements of its equity securities, either directly or in the form of American Depositary Shares evidenced by American Depositary Receipts.

Applicant's Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the SEC to issue conditional or unconditional exemptions from any provision of the 1940 Act or rule thereunder if the exemption is "necessary or appropriate in the public interest" and is "consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the 1940 Act]." Applicant submits that the application meets these requirements.

2. Applicant states that the proposed exemption would be appropriate in the public interest because it would permit qualified institutional investors in the United States to have access to applicant's equity securities. Applicant submits that the requested relief would be consistent with the protection of investors because applicant's proposed equity offering would be structured to comply with the exemption from registration afforded by the section 4(2) of the Securities Act of 1933. Applicant submits further that the requested relief would be consistent with the purposes of the 1940 Act because the public policy concerns that lead to the enactment of the 1940 Act are not applicable to banks in general and applicant in particular.

3. On August 15, 1990, the Commission approved for comment amendments to Rule 6c-9 under the 1940 Act. Investment Company Act Release No. 17682 (Aug. 17, 1990). In its present form, Rule 6c-9 provides a conditional exemption from the 1940 Act that permits foreign banks to offer and sell debt securities and non-voting preferred stock without registering under the 1940 Act. The proposed amendments would, among other things, extend the exemption from registration under the 1940 Act to foreign banks offering or selling their equity securities in the United States. Applicant has agreed to comply with Rule 6c-9 as it is proposed to be amended and as it may be reproposed, adopted, or amended in the future in connection with all offerings of securities in the United States.

Applicant's Condition

As a condition to the requested relief, applicant will comply with Rule 6c-9 under the 1940 Act as it is proposed to be amended and as it may be reproposed, adopted, or amended in the future in connection with all offerings of securities in the United States.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-27241 Filed 11-19-90; 8:45 am]

BILLING CODE 8010-01-M

Order of Suspension of Trading

In the Matter of Electronic Medical Management, Inc.; File No. 500-1

November 13, 1990

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of Electronic Medical Management, Inc. ("EMMI") and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, the history and formation of EMMI, the public tradeability of EMMI stock, the background of its promoters and other matters. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of EMMI.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the common stock of EMMI, over-the-counter or otherwise, is suspended for the period from 9:30 a.m. (EST) on November 13, 1990 through 11:59 p.m. (EST) on November 27, 1990.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-27300 Filed 11-19-90 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17851; 812-7580]

The Rodney Square Multi-Manager Fund, et al.; Application

November 13, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: The Rodney Square Milti-Manager Fund (the "Fund") and Wilmington Trust Company ("Wilmington," collectively with the Fund, "Applicants").

RELEVANT 1940 ACT SECTION: Order requested under (a) section 17(b) of the 1940 Act granting an exemption from section 17(a) of the 1940 Act, and (b) section 17(d) of the 1940 Act and Rule 17d-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit a proposed reorganization between two series of the Fund: The Total Return Portfolio, which is expected to be renamed the Growth and Income Portfolio, and the Value Portfolio (collectively, the "Portfolios"). The Total Return Portfolio plans to acquire all or substantially all of the assets and liabilities of the Value Portfolio in exchange for Total Return Portfolio shares, which then will be distributed to the shareholders of the Value Portfolio.

FILING DATE: The application was filed on August 21, 1990, and amended on October 30, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 10, 1990, and should be accomplished by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Rodney Square North, Wilmington, Delaware 19890.

FOR FURTHER INFORMATION CONTACT: Robert A. Robertson, Staff Attorney, at (202) 504-2283, or Stephanine M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Applicants represent that the Fund is a Massachusetts business trust, established on August 19, 1986, that is registered as a diversified open-end investment company under the 1940 Act. The Portfolios are two diversified series of the Fund.

2. Wilmington is a state-chartered bank organized as a Delaware corporation. On June 30, 1990, it beneficially owned on behalf of its underlying customers' accounts 99.4% of the outstanding shares of the Total Return Portfolio and 99.4% of the Value Portfolio. Wilmington also owns 100% of the outstanding shares of Rodney Square Management Corporation ("RSMC"), the Fund's investment adviser.

3. The Value Portfolio's investment objective is to seek superior long-term capital appreciation by investing in securities that are judged by its portfolio advisers to be undervalued in the marketplace.

4. The Total Return Portfolio's current investment objective is to seek superior return through capital appreciation or income, or both, by investing entirely in debt securities or entirely in equity securities at any given time. Prior to the proposed reorganization, the Total Return Portolio's shareholders will be asked to approve a change to that Portfolio's fundamental investment objective. The new investment objective would be to produce superior long-term total return through a combination of capital appreciation and income by investing in securities with attractive growth or valuation characteristics and relatively high income yields. The Total Return Portfolio also will change its name to the Growth and Income Portfolio.

5. If the Total Return Portfolio's shareholders approve the change, that Portfolio's investment objective will include investing in undervalued securities, which is the investment objective of the Value Portfolio.

Moreover, the Total Return Portfolio, like the Value Portfolio, will have a non-fundamental policy that under normal circumstances at least 65% of the Portfolio's total asset value will be invested in equity securities. The Portfolios have identical investment practices (such as repurchase agreements, options and when-issued securities) and investment limitations.

6. Applicants propose that the Total Return Portfolio will acquire all or substantially all of the assets of the Value Portfolio in exchange for shares of the Total Return Portfolio pursuant to an Agreement and Plan of Reorganization and Liquidation (the "Plan"). The Plan was unanimously approved by the Fund's board of trustees, including the disinterested trustees, on August 20, 1990.

7. The Plan provides, among other things, that the number of shares of the Total Return Portfolio to be issued to the Value Portfolio will be determined on the basis of relative net assets value of the Portfolios. The Value Portfolio then will be liquidated by establishing accounts on the share records of the Total Return Portfolio in the name of each Value Portfolio shareholder, each account representing the respective *pro rata* number of shares of the Total Return Portfolio due those Value Portfolio shareholders.

8. The expenses of the reorganization will be borne by the Total Return Portfolio and the Value Portfolio in proportion to their respective net assets as of the Plan's closing date. RSMC will be liable for all reorganization expenses that would cause either Portfolio to incur expenses in excess of 1.75%, if incurred prior to the reorganization, and 1.50%, if incurred subsequent to the reorganization, respectively, of the average daily net assets on an annualized basis.

9. The Fund's trustees, including the disinterested trustees, have reviewed the terms of the proposed reorganization under the Plan, and have voted unanimously to recommend approval of the Plan to the shareholders of the Value Portfolio. In determining to recommend approval of the Plan, the trustees considered, among other things:

(a) The effect of the reorganization on the expense ratio of the Total Return Portfolio relative to the current expense ratios of the Portfolios;

(b) The effect of the reorganization on expected investment performance;

(c) The compatibility of the Portfolios' investment objectives, policies and restrictions and the compatibility of the assets being acquired to those in the Total Return Portfolio;

(d) The costs to be incurred by the Portfolios as a result of the reorganization;

(e) The cost savings that could be achieved by combining the Portfolios;

(f) The tax consequences of the reorganization;

(g) Other possible alternatives to the proposed reorganization; and

(h) Potential benefits to other persons, especially affiliates of the Portfolios.

10. Consummation of the reorganization contemplated by the Plan is subject to, among other things, the conditions that:

(a) A majority of the outstanding shares of the Value Portfolio shall have approved the Plan;

(b) A majority of the outstanding shares of the Total Return Portfolio shall have approved the change to that Portfolio's fundamental investment objective; and

(c) Applicants have received exemptive relief from the SEC with respect to the issues that are the subject of the application.

Applicants' Legal Analysis

1. Applicants seek an exemption under section 17(b) of the 1940 Act from the provisions of section 17(a) of the 1940 Act to the extent necessary to permit the proposed reorganization under the Plan. Section 17(a) generally prohibits an affiliated person of a registered investment company, or an affiliated person of such affiliated person, from selling to or purchasing from such investment company any security or other property. Wilmington may be considered an affiliate, or an affiliate of an affiliate, of the Fund under section 2(a)(3) of the 1940 Act, and because of the nature of the proposed reorganization may not rely on Rule 17a–8 under the 1940 Act.

2. Section 17(b) of the 1940 Act authorizes the SEC to exempt any person from the provisions of section 17(a) if the evidences establishes that:

(a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(b) The proposed transaction is consistent with the policy of each registered investment company concerned; and

(c) The proposed transaction is consistent with the general purposes of the 1940 Act.

3. Applicants submit that the terms of the proposed transaction under the Plan are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the investment policies of each Portfolio and consistent with the purposes of the 1940 Act. Applicants represent that the number of shares to be issued to shareholders of the Value Portfolio will be determined on the basis of the relative net asset values of the Portfolios. Applicants also note that the reorganization should eliminate duplicative charges and expenses for the shareholders of both Portfolios and achieve economies of scale in the operation of the combined Portfolios.

4. In addition, although the nature of the affiliations precludes Applicants from relying on the exemption Rule 17a–8 under the 1940 Act affords, Applicants represent that the Fund's trustees, including the disinterested trustees, have made the findings required by that Rule. These findings are specifically that participation in the reorganization as contemplated by the Plan is in the best interests of each Portfolio and that the interests of existing shareholders of each Portfolio will not be diluted as a result of the reorganization. Applicants also note that Wilmington's interest in the Portfolios arises from Wilmington functioning in a fiduciary capacity with respect to various trust accounts, and that Wilmington exercises voting and/or investment discretion with respect to Portfolio shares not on its own behalf, but solely on behalf of the beneficiaries of those trust accounts. Finally, Applicants represent that the proposed reorganization is consistent with the policies of each Portfolio.

5. Applicants also seek an order under section 17(d) of the 1940 Act. Section 17(d) generally prohibits any affiliated person of a registered investment company or an affiliated person of such a person acting as principal from effecting any transaction in which such registered company is a joint or a joint and several participant with such person in contravention of any SEC rules and regulations. Rule 17d–1 under the 1940 Act generally provides that no joint enterprise or joint arrangement that the Rule covers may be consummated unless an application has been filed in connection with such transaction and granted by the SEC. The proposed reorganization may be deemed to be a joint enterprise or joint arrangement that Section 17(d) and Rule 17d–1 thereunder prohibits because of, among other things, the allocation of the reorganization expenses.

6. Applicants believe that proposed reorganization is warranted under section 17(d) and Rule 17d–1 thereunder because they believe that the terms of the proposed transaction is consistent with the provisions, policies and purposes of the 1940 Act in that they are reasonable and fair to all parties, do not involve overreaching, and are consistent with the investment policies of each of the Portfolios.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–27242 Filed 11–19–90; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; Sanifill, Inc., Common Stock, $.01 Par Value (File No. 1–10490)

November 14, 1990.

Sanifill, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d)a of the Securities Exchange Act of 1934 and Rule 12d2–2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's common stock recently was listed on the New York Stock Exchange ("NYSE"). Trading in the company's stock on the NYSE commenced on September 28, 1990, and concurrently such stock was suspended from trading on the Amex. In making the decision to withdraw its common stock from listing on the Amex, the company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dueal listing would fragment the market for its common stock.

Any interested person may, on or before December 6, 1990, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–27243 Filed 11–19–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice No. 1291]

Advisory Committee on Historical Diplomatic Documentation; Meeting

Four members of the Advisory Committee on Historical Diplomatic Documentation met on July 23, 1990 at the Department of State. The purpose of the meeting was to brief Committee members on the status of pending legislation regarding the series Foreign Relations of the United States and on Department planning to assure the accuracy and completeness of the series. The Advisory Committee advises the Bureau of Public Affairs, and in particular the Office of the Historian, concerning problems related to the preparation of the documentary series Foreign Relations of the United States and other responsibilities of that Office.

Persons wishing to receive a copy of a record of this meeting should contact William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1122.

William Z. Slany,

Executive Secretary.

[FR Doc. 90–27239 Filed 11–19–90; 8:45 am]

BILLING CODE 4710–11–M

[Public Notice No. 1292]

United States Organization for the International Telegraph and Telephone Consultative Committee Study Group D; Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on December 17, 1990 in Room 1205 and continuing on December 18, 1990 in Room 1107, Department of State, 2201 C Street, NW, Washington, DC.

The purpose of the meeting is to begin the work of the Message Handling System-Management Domain Group according to its agreed terms of reference, including the initial selection of officers for the Group. Any other business within the scope of Study Group D may be raised and considered.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the Office of Gary Fereno, Department of State, 202–647–2592 (fax 202–647–7407). The above includes government and non-government attendees. All attendees must use the C Street entrance.

Dated: November 6, 1990.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 90–27279 Filed 11–19–90; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–90–47]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 10, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation

Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on November 14, 1990.

Deborah Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket no.: 25731
Petitioner: Experimental Aircraft Association/Confederate Air Force
Sections of the FAR affected: 14 CFR 45.25 and 45.29
Description of relief sought: To extend Exemption No. 5019, which allows the operation of historic military airplanes with 2-inch high registration numbers located under the horizontal stabilizer. Exemption No. 5019 will expire on February 28, 1991.

Docket no.: 28294
Petitioner: Moody Aviation
Sections of the FAR affected: 14 CFR part 141, appendix A
Description of relief sought: To extend and amend Exemption No. 5032, which allows petitioner to graduate a part 141 student with a "night flying prohibited" limitation on the private pilot certificate. The amendment would remove the stipulation against reducing total flight hours. Exemption No. 5032 will expire on March 31, 1991.

Docket no.: 28374
Petitioner: Corsair, Inc.
Sections of the FAR affected: 14 CFR 36.7(d)(2) and 91.805
Description of relief sought: To allow petitioner to transport a Boeing 727 freighter from Miami International Airport to Brazil where the aircraft will be leased for 4 years to be used exclusively in foreign commerce.

[FR Doc. 90-27264 Filed 11-19-90; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Services and Research Administration (161B3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2282.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by December 20, 1990.

Dated: November 13, 1990.

By direction of the Secretary:

Frank E. Lalley,

Director, Office of Information Resources Policies.

Reinstatement

1. Veterans Health Services and Research Administration.
2. Application for Participation in Department of Veterans Affairs Health Professional Scholarship Program.
3. Department Form Numbers.
a. VA Form 10-0003—Department of Veterans Affairs Health Professional Scholarship Program Application for Scholarship.
b. VA Form 10-0003a—Letter of Enrollment.
c. VA Form 10-0003b—Employment/Volunteer Recommendation.
d. VA Form 10-0003c—Department of Veterans Affairs Health Professional Scholarship Program Contact.
4. The information collection is used to determine a student's eligibility to receive a scholarship award offered through the Department of Veterans Affairs Health Professional Scholarship Program.
a. VA Form 10-0003 is used by student applicants enrolled in associate, baccalaureate, and masters degree programs in nursing; and baccalaureate, and masters degree programs in physical or occupational therapy, to apply for a scholarship.
b. VA Form 10-0003a is used by the applicant as consent to allow the educational institution in which he/she is enrolled to release information regarding enrollment and academic standing.
c. VA Form 10-0003b is used to obtain an employment/volunteer recommendation to support the scholarship application.
d. VA Form 10-0003c is used as the contract containing the obligations of the applicant and VA.
5. Annually.
6. Individuals or households; Businesses or other for-profit; Non-profit Institutions.
7. 4,000 responses.
8. Estimate of Total Hours.
a. VA Form 10-0003—1½ hours.
b. VA Form 10-0003a—1¼ hour.
c. VA Form 10-0003b—1½ hour.
d. VA Form 10-0003c—⅛ hour.
9. Not applicable.

[FR Doc. 90-27250 Filed 11-19-90; 8:45 am]
BILLING CODE 8320-01-M

Cost-of-Living Adjustments and Headstone or Marker Allowance Rate

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension and parents' dependency and indemnity compensation (DIC) programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one year period ending September 30, 1990. VA is also giving notice of the maximum amount of reimbursement that may be paid for headstone or markers purchased in lieu of Government-furnished headstones or markers in Fiscal Year 1991 which began on October 1, 1990.

DATES: These COLAs are effective December 1, 1990. The headstone or marker allowance rate is effective October 1, 1990.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service (211B), Veterans Benefit Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Under the provisions of 38 U.S.C. 3112 and section 306 of Public Law 95-588, VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the **Federal Register.**

The Social Security Administration has announced that there will be a 5.4 percent cost-of-living increase in social security benefits effective December 1, 1990. Therefore, applying the same percentage, the following increased rates and income limitations for the VA pension and parents' DIC programs will be effective December 1, 1990:

Table 1.—Improved Pension

Maximum Annual Rates

(1) Veterans permanently and totally disabled (38 U.S.C. 521):
Veteran with no dependents, $7,133
Veteran with one dependent, $9,343
For each additional dependent, $1,213

(2) Veterans in need of aid and attendance (38 U.S.C. 521):
Veteran with no dependents, $11,409
Veteran with one dependent, $13,620
For each additional dependent, $1,213

(3) Veterans who are housebound (38 U.S.C. 521):
Veteran with no dependents, $8,718
Veteran with one dependent, $10,928
For each additional dependent, $1,213

(4) Two veterans married to one another, combined rates (38 U.S.C. 521):
Neither veteran in need of aid and attendance or housebound, $9,343
Either veteran in need of aid and attendance, $13,620
Both veterans in need of aid and attendance, $17,894
Either veteran housebound, $10,928
Both veterans housebound, $12,515
One veteran housebound and one veteran in need of aid and attendance, $15,203
For each dependent child, $1,213

(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 541):
Surviving spouse alone, $4,780
Surviving spouse and one child in his or her custody, $6,282
For each additional child in his or her custody, $1,213

(6) Surviving spouses in need of aid and attendance (38 U.S.C. 541):
Surviving spouse alone, $7,646
Surviving spouse with one child in his or her custody, $9,124
For each additional child in his or her custody, $1,213

(7) Surviving spouses who are housebound (38 U.S.C. 541):
Surviving spouse alone, $5,844
Surviving spouse and one child in his or her custody, $7,323
For each additional child in his or her custody, $1,213

(8) Surviving child alone (38 U.S.C. 542), $1,213.

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 521, 541, and 542.)

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $1,613. (38 U.S.C. 521(g).)

Parent's DIC

DIC shall be paid monthly to parents of a deceased veteran in the following amounts (38 U.S.C. 415):

TABLE 2

[*One parent.* If there is only one parent, the monthly rate of DIC paid to such parent shall be $336 reduced on the basis of the parent's annual income according to the following formula:]

For each $1 of annual income		
The $336 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.08	$800	8,113

No DIC is payable under this table if annual income exceeds $8,113.

One parent who has remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under Table 2 or under Table 4, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

Two parents not living together. The rates in Table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $241 reduced on the basis of each parent's annual income, according to the following formula:

TABLE 3

For each $1 of annual income		
The $241 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.06	$800	900
.07	900	1,100
.08	1,100	8,113

No DIC is payable under this table if annual income exceeds $8,113.

Two parents living together or remarried parents living with spouses. The rates in Table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $226 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

TABLE 4

For each $1 of annual income		
The $226 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$1,000
.03	$1,000	1,500
.04	1,500	1,900
.05	1,900	2,400
.06	2,400	2,900
.07	2,900	3,200
.08	3,200	10,900

No DIC is payable under this table if combined annual income exceeds $10,909.

The rates in this table are also applicable in the case of one surviving parent who has remarried, computed on

the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in Table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under Tables 2 through 4 shall be increased by $179 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under Tables 2 through 4 shall not be less than $5.

Table 5.—Section 306 Pension Income Limitations

(1) Veteran or surviving spouse with no dependents, $8,113 (Pub. L. 95–588, section 306(a)).

(2) Veteran with no dependents in need of aid and attendance, $8,640 (38 U.S.C. 521(d)) as in effect on December 31, 1978).

(3) Veteran or surviving spouse with one or more dependents, $10,909 (Pub. L. 95–588, section 306(a)).

(4) Veteran with one or more dependents in need of aid and attendance, $11,436 (38 U.S.C. 521(d) as in effect on December 31, 1978).

(5) Child (no entitled veteran or surviving spouse), $6,631 (Pub. L. 95–588, section 306(a)).

(6) Spouse income exclusion (38 CFR 3.262), $2,587 (Pub. L. 95–588, section 306(a)(20(B)).

Table 6.—Old-Law Pension Income Limitations

(1) Veteran or surviving spouse without dependents or an entitled child, $7,102 (Pub. L. 95–588, section 306(b)).

(2) Veteran or surviving spouse with one or more dependents, $10,241 (Pub. L. 95–588, section 306(b)).

Headstone or Marker Allowance

Under 38 U.S.C. 906(d), VA may provide reimbursement for the cost of non-Government headstones or markers at a rate equal to the actual cost or the average actual cost of Government-furnished headstones or markers during the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased, whichever is less.

The average actual cost of Government-furnished headstones or markers during any fiscal year is determined by dividing the sum of VA costs during that fiscal year for procurement, transportation, Monument Service and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by VA during that fiscal year and rounding to the nearest whole dollar amount.

The average actual cost of Government-furnished headstones or markers for Fiscal Year 1990 under the above computation method was $85. Therefore, effective October 1, 1990, the maximum rate of reimbursement of non-Government headstones or markers purchased during Fiscal Year 1991 is $85.

Dated: November 8, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 90-27251 Filed 11-19-90; 8:45 am]

BILLING CODE 8320-01-M

Medical Care Reimbursement Rates for FY 1991

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In accordance with provisions of OMB Circular A–11 section 13.5(a), revised reimbursement rates have been established by the Department of Veterans Affairs for inpatient and outpatient medical care furnished to beneficiaries of other Federal agencies during FY 1991. These rates will be charged for such medical care provided at health care facilities under the direct jurisdiction of the Secretary on and after December 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Alline Norman, Acting Director, Medical Administration Service (161B), Veterans Affairs Central Office, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2160.

SUPPLEMENTARY INFORMATION: The Interagency billing rates for FY 1991 are as follows:

Medicine	$568
Surgery	865
Spinal Cord Injury	585
Blind Rehabilitation	475
Neurology	498
Rehabilitation Medicine	406
General Psychiatry	257
Intermediate Medicine	184
Nursing Home Care	164
Alcohol—Drug	205
Prescription—Refill	17
Outpatient *	116
Dental Outpatient	75

* Rate includes Dialysis Treatment.

Prescription refill charges in lieu of the outpatient visit rate will be charged when the patient receives no service other than the Pharmacy outpatient service. These charges apply if the patient receives the prescription refills in person or by mail.

When medical services for beneficiaries of other Federal agencies are obtained by the Department of Veterans Affairs from private sources, the charges to the other Federal agencies will be the actual amounts paid by the Department of Veterans Affairs for such medical services.

Inpatient charges to other Federal agencies will be at the current interagency per diem rate for the type of bed section or discrete treatment unit providing the care.

Dated: November 9, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 90-27241 Filed 11-19-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 224
Tuesday, November 20, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the December 4, 1990, regular meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Thursday, December 13, 1990, starting at 10 a.m. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia, 22102–5090.

Dated: November 15, 1990.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 27429 Filed 11-16-90; 2:22 pm]

BILLING CODE 8705-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11 a.m., Monday, November 26, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item originally announced for a closed meeting on October 29, 1990.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 16, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27465 Filed 11-16-90; 3:40 pm]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 19, 26, December 3, and 10, 1990.

PLACE: Commissioners' Conference room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of November 19

Wednesday, November 21

8:30 a.m.
Litigation Matters: Discussion of Options (Closed—Ex. 10)

9:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 26—Tentative

There are no meetings scheduled for the Week of November 26

Week of December 3—Tentative

Friday, December 7

10 a.m.
Briefing on Level of Design Detail for part 52 (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 10—Tentative

Thursday, December 13

9 a.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified a requiring any Commission vote on this date.

To verify the status of meetings call (recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: November 15, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90-27446 Filed 11-16-90; 8:45 am]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 55, No. 224
Tuesday, November 20, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Revision of Fees For Sanitation Inspections of Cruise Ships

Correction

Notice document 90-25880 beginning on page 46102 in the issue of Thursday, November 1, 1990, was inaccurately printed. The correct text is set forth below.

SUMMARY: Revised fees for vessel sanitation inspections are presented to become effective January 1, 1991.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Anderson, Chief, Special Programs Group, Center for Environmental Health and Injury Control (F29), CDC, Atlanta, Georgia, 30333. Telephone: FTS: 236–4595, Commercial: (404) 488–4595.

SUPPLEMENTARY INFORMATION:

Purpose and Background

CDC began collecting fees for sanitation inspections of passenger cruise ships currently inspected under the Vessel Sanitation Program (VSP), on March 1, 1988; the fee schedule was first published in the **Federal Register** on Tuesday, November 24, 1987, (52 FR 45019).

The formula used to determine the fees is as follows:

$$\text{Average cost per inspection} = \frac{\text{Total Cost of VSP}}{\text{Weighted No. of Annual Inspections}}$$

The average cost per inspection is multiplied by a size/cost factor to determine the fee for vessels in each size category. The size/cost factor was established in the proposed fee schedule published in the **Federal Register** on Friday, July 17, 1987, (52 FR 27060) and revised in a schedule published in the **Federal Register** on Tuesday, November 28, 1989, (54 FR 48942) and is as follows:

	Average cost ×
Extra Small (<3,001 GRT [1])	0.25
Small (3,001–15,000 GRT)	0.5
Medium (15,001–30,000 GRT)	1.0
Large (30,001–60,000 GRT)	1.5
Extra Large (>60,000 GRT)	2.0

[1] GRT-Gross Register tonnage in cubic feet, as shown in Lloyd's Register of Shipping.

Fees

The following fee schedule will be effective January 1, 1991, through December 31, 1991. However, should there be a substantial increase in the cost of air transportation, it may be necessary to re-adjust the fees prior to December 31, 1991, since travel constitutes a sizable portion of the costs of this Program. If such a re-adjustment in the fee schedule is necessary, a notice will be published in the **Federal Register** 30 days prior to the effective date.

Vessel sizes	Fee
Extra Small Ship (<3,001 GRT)	$693
Small Ship (3,001–15,001 GRT)	1,386
Medium Ship (15,001–30,000 GRT)	2,772
Large Ship (30,001–60,000 GRT)	4,158
Extra Large Ship (>60,000 GRT)	5,544

Inspections and reinspections involve the same procedure, require the same amount of time and will therefore be charged at the same rate.

Applicability

The fees will be applicable to all passenger cruise vessels for which sanitation inspections are conducted as part of the Vessel Sanitation Program, CDC.

Dated: October 25, 1990.

BILLING CODE 1505-01-D

federal register

Tuesday
November 20, 1990

Part II

Department of Education

34 CFR Part 682

Guaranteed Student Loan Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840-AA96

Guaranteed Student Loan Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Guaranteed Student Loan (GSL) and PLUS Programs. The new GSL programs regulations will govern the Stafford Loan Program (formerly the Guaranteed Student Loan Program), the Supplemental Loans for Students (SLS) Program, the PLUS Program, and the Consolidation Program, collectively referred to as the Guaranteed Student Loan (GSL) programs. The proposed regulations address the administration of the GSL programs by schools, lenders, State and private nonprofit guarantee agencies, and the Department of Education. The proposed regulations would incorporate statutory changes made by the Consolidated Omnibus Budget Reconciliation Act of 1985 (enacted April 7, 1986) (COBRA), the Higher Education Amendments of 1986 (enacted October 17, 1986) (1986 Amendments), the Higher Education Technical Amendments Act of 1987 (enacted June 3, 1987) (Technical Amendments), Public Law 100-297 (enacted April 28, 1988), and Public Law 100-369 (enacted July 18, 1988). The proposed regulations would also implement various policy initiatives intended to improve program administration, prevent loan defaults, and generate repayment on a loan once default has occurred. The proposed regulations do not incorporate the provisions of the Omnibus Budget Reconciliation Act of 1989 (enacted December 19, 1989) (Pub. L. 101-239). Regulations covering these provisions will be issued soon.

DATES: Comments must be received on or before February 19, 1991.

ADDRESSES: Comments should be addressed to Patricia Newcombe, Acting Chief, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education, room 4310, ROB-3, 7th and D Streets, SW., Washington, DC 20202-5449.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of the preamble.

FOR FURTHER INFORMATION CONTACT: Contact Lloyd Robertson or Patricia Beavan, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education, room 4310, Mail Stop 5345, ROB-3, 7th & D Streets SW., Washington, DC 20202-5449, Telephone Number (202) 708-8242.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 1986, the GSL and PLUS Program regulations governing the participation of lenders, guarantee agencies, and educational institutions in the GSL programs, as authorized by title IV of the Higher Education Act of 1965, as amended (the Act), were published in the **Federal Register**. Those regulations did not reflect changes to the authorizing legislation for the GSL programs made by the 1986 Amendments and the Technical Amendments Act of 1987 (Pub. L. 100-50). These proposed regulations would implement the changes brought about by these statutes and by Public Law 100-297 and Public Law 100-369, and would implement various policy initiatives designed to reduce defaults and increase collections on loans that do go into default. They also include the revisions to part 682 included in the Secretary's Default Reduction Initiative. See 54 FR 24114 (June 5, 1989) (final regulations). This Notice of Proposed Rulemaking (NPRM) is not soliciting comments on the final regulations implementing the Default Reduction Initiative published on June 5, 1989 or on the NPRM published that same day. When final regulations based on the June 5, 1989 NPRM are published, those regulations will be included in the final regulation based on this NPRM. See 54 FR 24128 (June 5, 1989) (NPRM). This NPRM does not incorporate the final regulations implementing the targeted teacher deferment See 55 FR 35006 (August 27, 1990)(final regulations). Those regulations will be included in the final regulations based on this NPRM.

Important Statutory Changes Included in the Regulations

A major purpose of these regulations is to incorporate recent statutory amendments. These statutory amendments include the following important changes to the GSL programs. The section(s) of the proposed regulations principally affected by each change is indicated in parentheses for each change.

Terminology (Sections 682.100-682.712)

The proposed regulations would substitute "SLS borrower" for "student PLUS borrower" where appropriate, due to the statutory change restricting PLUS loans to parent borrowers and creating the SLS Program as successor to the student PLUS Program.

The term "Stafford Loan Program," would be used throughout, in place of "Guaranteed Student Loan Program" due to the statutory change in Public Law 100-297 renaming the GSL Program. The term "Guaranteed Student Loan" would be used throughout the regulations in referring to the Stafford Loan, SLS, PLUS, and Consolidation programs as a group.

PLUS/SLS (Sections 682.200-682.204)

The 1986 Amendments created the SLS Program. Graduate and professional students, independent undergraduate students, and, under certain circumstances, dependent undergraduate students are eligible to borrow funds under this program. Under the 1986 Amendments, PLUS program eligibility is limited to parent borrowers. A PLUS loan and an SLS loan must be repaid beginning 60 days after disbursement, unless the borrower is entitled to a deferment of repayment.

Estimated Cost of Attendance (Section 682.200)

The 1986 Amendments revised the definition of cost of attendance. Under the statute, a school may include only the allowance and other allowable charges applicable to the student in determining the cost of attendance for that student.

Loan Consolidation (Sections 682.200-682.204)

The COBRA authorized the Student Loan Marketing Association (SLMA) and most eligible lenders to enter into agreements with the Secretary or a guarantee agency for the purpose of consolidating Stafford, PLUS, and Perkins (formerly National Direct Student Loan) loans of eligible student borrowers under the Consolidation Loan Program. All eligible lenders except guarantee agencies and Rural Rehabilitation Corporations are authorized to enter into agreements with the Secretary or a guarantee agency for the purpose of consolidating loans made to students under the Stafford Loan, Perkins Loan, PLUS, SLS, and Health Professions Student Loan (HPSL) programs. PLUS loans made to parents and loans more than 90 days delinquent may not be consolidated. Any nonprofit private agency functioning in any State as a secondary market is considered an eligible lender for the purpose of loan consolidation.

New Definition of "School" (Section 682.200)

The Technical Amendments changed the definition of "institution of higher education" for purposes of the GSL programs regarding the types of educational programs offered. The proposed regulations would incorporate this change by revising the definition of the term "school" to include a hospital or health care facility offering at least a one-year training program leading to a degree or certificate for graduates of accredited health professions programs. Previously, the definition required that the institution offer either a bachelor's degree or a two-year program acceptable for full credit toward a bachelor's degree.

Disqualification of Lenders (Section 682.200)

The 1986 Amendments allow for the disqualification of a lender for use of certain incentives, conducting unsolicited mailings of loan applications to certain students, or engaging in misleading or fraudulent advertising.

Financial Need Requirements for a Stafford Loan (Section 682.201)

The 1986 Amendments require all Stafford loan applicants to show financial need to qualify for a federally subsidized Stafford loan based on an expected family contribution (EFC) calculated under a need analysis system approved by the Secretary for use in the Perkins Loan, Supplemental Educational Opportunity Grant, and College Work-Study programs, whether or not the institution participates in these programs. This change in statute repeals the application of the Stafford loan needs test tables formerly used to determine an EFC.

Restrictions on SLS Eligibility (Section 682.201)

Public Law 100-369 restricts the eligibility of dependent undergraduate students for SLS loans to those students for whom the financial aid administrator determines that "exceptional" circumstances would likely preclude the student's parents from borrowing under the PLUS program to cover the expected family contribution and that the student's family is otherwise unable to provide the expected family contribution. Documentation of the school's determination of exceptional circumstances must be retained in the school's files. These "exceptional" circumstances may include, but are not limited to, a serious illness in the family, sudden loss of employment of a family's principal wage earner, or the family's dependence on fixed incomes or public assistance. The Secretary particularly solicits comments on whether a regulatory definition of "exceptional circumstances" is feasible and, if so, what the definition should include.

Determination of Pell Grant and Stafford Loan Eligibility for SLS Applicants (Section 682.201)

Public Law 100-369 requires all undergraduate SLS applicants to have a determination of eligibility or ineligibility for a Pell Grant made for the enrollment period for which the applicant wishes to borrow, and if determined to be eligible, have filed an application for a Pell Grant prior to the certification of an SLS application for a borrower. Further, Public Law 100-369 requires all SLS applicants to also receive a determination of eligibility or ineligibility for a Stafford loan, and, if determined to be eligible, have applied for a Stafford loan prior to certification of an SLS application for the borrower.

Determination of SLS Loan Amounts (Section 682.201)

Public Law 100-369 requires the amount of an SLS applicant's Stafford Loan eligibility and other financial aid to be subtracted from the student's cost of attendance in determining the student's SLS loan amount.

Interest Rates (Section 682.202)

The 1986 Amendments changed the Stafford loan interest rate for new borrowers who obtain loans made for periods of enrollment beginning on or after July 1, 1988. The interest rate for these borrowers is 8 percent through the fourth year of repayment, and 10 percent thereafter.

The 1986 Amendments also established a variable interest rate for SLS and PLUS loans made for a period of enrollment beginning on or after July 1, 1987. The Technical Amendments changed this provision to apply the variable interest rate for the PLUS and SLS programs to loans for which the first disbursement is made on or after July 1, 1987. The variable rate is established annually on June 1, and for any July 1 through June 30 period, equals the bond equivalent rate of 52-week Treasury Bills auctioned at the final auction held prior to June 1, plus 3.25 percent.

Under the 1986 Amendments, a borrower may refinance prior fixed rate SLS and PLUS loans to secure a variable interest rate.

New Loan Limits (Section 682.204)

The 1986 Amendments increased the annual Stafford Loan limits. Under the Act, an undergraduate student attending on at least a half-time basis for periods of enrollment beginning on or after January 1, 1987, who has not successfully completed the first or second year of an undergraduate program, may borrow up to $2,625 per academic year. A student who has successfully completed the first and second year of an undergraduate program may borrow up to $4,000 per academic year. Graduate and professional students may borrow up to $7,500 per academic year. A student may borrow an aggregate maximum of $17,250 for undergraduate study and $54,750 for graduate and professional study, including undergraduate borrowing.

PLUS borrowing limits were also increased from $3,000 to $4,000 for each eligible student, with an aggregate loan maximum of $20,000 per eligible student. SLS loan limits are the same as PLUS limits. SLS limits do not include amounts borrowed under the Stafford Loan Program or amounts borrowed by parents under the PLUS Program.

Multiple Disbursement of SLS Loans (Section 682.207)

Public Law 100-369 requires SLS loans to be multiply disbursed in the same manner as Stafford Loans.

The 15-year Repayment Rule (Section 682.209)

The 1986 Amendments eliminated the requirement that loans insured under guarantee agency program must be repaid within 15 years from the date the promissory note was signed. Although COBRA eliminated this requirement for all new Federal Insured Student Loan (FISL) Program loans made on or after the effective date of COBRA, the Secretary plans to waive any liability that may be incurred on other FISL loans by borrowers or lenders for violations of the 15-year repayment rule.

Refinancing of SLS and PLUS Loans (Section 682.209)

The 1986 Amendments made refinancing options available to SLS, PLUS student, and PLUS parent borrowers to secure a variable interest rate on an outstanding fixed-rate SLS or PLUS loan, or to discharge a previous loan held by the original lender who denies the borrower the option of refinancing to secure a variable interest rate. That statute also provides borrowers with the option of a combined repayment schedule of SLS and PLUS loans held by a lender.

New Deferment Provisions (Section 682.210)

The 1986 Amendments include new deferment provisions for Stafford, SLS, and PLUS loan borrowers. The Technical Amendments extended those provisions to include all parent PLUS borrowers. The majority of these provisions apply to a borrower who, on the date the promissory note is signed, has no outstanding loan balance. Public Law 100-369 further amended provisions governing internship deferments for borrowers completing internships or residencies at institutions of higher education, hospitals, or health care facilities.

Forbearance (Section 682.211)

The proposed regulations would allow for forbearance after default, as permitted by the 1986 Amendments, provided the terms of the forbearance agreement include a new repayment schedule. Forbearance in this instance must be consistent with the minimum annual payment requirements and the ten-year maximum repayment period.

Prohibited Inducements (Sections 682.212 and 682.401)

Under the 1986 Amendments, guarantee agencies and lenders are prohibited from offering inducements to secure loan applicants, and lenders are prohibited from offering loans as an inducement for the purchase of insurance.

Payment of Special Allowance on GSL Loans Made With Tax-Exempt Funds (Sections 682.302 and 682.800)

Under the 1986 Amendments, the special allowance rate was reduced by one quarter of one percent, except for loans made with tax-exempt funds and certain loans made by Maine Educational Loan Marketing Corporation and South Carolina Student Loan Corporation.

The 1986 amendments made two changes to the requirements regarding the Plan for Doing Business that must be adopted by student loan authorities using tax-exempt financing: First, the Governor of the State in which the authority operates, rather than the Secretary, approves the Plan of the authority, in consultation with the principal guaranty agency in that State; second, the requirement that the Plan include a provision that the authority will not issue obligations in excess of the reasonable needs for student loan credit in its service area, was removed.

Basic Program Agreement (Section 682.401)

The 1986 Amendments abolished the Supplemental Reinsurance Agreement and incorporated the provisions of the Supplemental Reinsurance Agreement into the Basic (section 428(b)) Agreement.

Insurance Premiums (Section 682.401)

Under the 1986 Amendments, the maximum insurance premium an agency may charge on a loan was changed from 1 percent per year of the unpaid principal amount of the loan to 3 percent of the principal amount of the loan. The insurance premium must be deducted proportionately from each disbursement of a multiply-disbursed loan.

Reinsurance Fee (Section 682.404)

The 1986 Amendments require a guarantee agency to pay the Secretary, during each fiscal year, a reinsurance fee equal to 0.25 percent of the total principal amount of loans guaranteed by that agency during that fiscal year, or 0.5 percent for any fiscal year during which the guarantee agency reaches the five percent reinsurance "trigger" (*i.e.*, if reinsurance claims paid during a fiscal year exceed five percent of the loans in repayment at the end of the preceding fiscal year as defined in section 428(c)(1)(C) of the Act). For an agency that reaches the five percent insurance trigger, the 0.5 percent reinsurance fee is charged on the agency's total loan guarantees for that fiscal year including those guarantees already covered at the lower rate. The fee is charged on all GSL loans except Consolidation loans and refinanced PLUS and SLS loans.

Administrative Wage Garnishment (Section 682.404)

The Technical Amendments clarified previous legislation that allowed a guarantee agency to retain 35 percent of the amount recovered from a borrower in a State that enacts a qualifying garnishment law by requiring the State to enforce the law in the collection of a GSL loan. A guarantee agency must qualify for this higher retention amount on a loan-by-loan basis, but the agency should be eligible to retain the full 35% of subsequent recoveries on that loan made after it sends a notice to a borrower who has not made payments for at least 90 days, formally warning the borrower of the commencement of a wage garnishment proceeding.

Administrative Fee for Supplemental Preclaims Assistance (Section 682.404)

The Technical Amendments permit the holder of a loan to charge the cost of supplemental preclaims assistance to a borrower who begins or resumes payment, as a result of that assistance, up to 2 percent of the outstanding principal, or $100, whichever is less.

[Reserved] (Section 682.405)

The proposed regulations would delete current § 685.405—Supplemental Federal Reinsurance, since the 1986 amendments incorporated the provisions of the Supplemental Reinsurance agreement with guarantee agencies into the Basic Agreement (section 682.401).

Circumstances Under Which Loans may be Guaranteed by the Secretary (Section 682.500)

Under the 1986 Amendments, the Secretary may guarantee a Consolidation loan under certain conditions, if guarantee coverage has been denied by a guarantee agency.

A School That Makes or Originates Loans (Section 682.601)

The 1986 Amendments repealed the restrictions regarding the origination of loans by school lenders, thereby making school lenders subject to the same loan origination requirements as other eligible lenders. The Technical Amendments then reinstated the prohibitions against a school making loans to more than 50 percent of the undergraduate students enrolled at the school, or making a loan, other than to a graduate or professional student, except to a borrower who has previously received a GSL programs loan from the school, or has been denied a loan by an eligible lender other than a school lender. In addition, to be eligible to make or originate loans, the school must employ at least one person whose full-time responsibilities are limited to the administration of the financial aid programs, and the school may not be a correspondence school. However, schools are no longer required to enter into a separate agreement with the Secretary for the purpose of originating loans.

Student Address Change (Section 682.610)

Under the 1986 Amendments, a school must promptly notify the holder of a loan when it discovers that a student has changed his or her permanent address.

Disqualification Review of Limitation, Suspension, and Termination Actions Taken by Guarantee Agencies Against Lenders and Schools (Sections 682.712 and 682.713)

Under the 1986 Amendments, the Secretary may disqualify a lender or school from the GSL programs on the basis of limitation, suspension or termination action taken by a guarantee agency.

Major Regulatory Changes

In addition to the regulatory changes needed to incorporate the statutory revisions listed above, the Secretary proposes the following major changes to the regulations. The sections of the proposed regulations affected by the changes are indicated in parentheses.

Capitalization (Section 682.202)

The proposed regulations would permit lenders to capitalize accrued interest with the written consent of the borrower during the in-school period or grace period, even if capitalization has not been authorized by the promissory note. This provision is intended to assist those borrowers who might otherwise default on their entire loans due solely to an inability to make interest payments during those periods.

Security, Endorsement, and Co-makers (Section 682.206)

The proposed regulation would provide that a guarantee agency may not implement a policy to require a lender to obtain security or endorsement for a Stafford or SLS loan. These programs are intended to provide the opportunity to obtain credit to finance education for those students who are unable to obtain credit elsewhere.

Prepayment (Section 682.209)

The proposed regulations would permit a lender to apply prepayment amounts that equal three or more full payments to future installments, in the absence of a contrary indication from the borrower. The lender would have to notify the borrower that the payment has been so applied and also contact the borrower no less frequently than quarterly to remind the borrower of the repayment obligation. This change would recognize that a borrower who makes a prepayment in this large an amount typically intends that the prepayment be applied to future installments.

Deferments (Section 682.210)

For the deferment for volunteers serving in tax-exempt organizations, the Secretary would require that volunteers must earn a wage that does not equal or exceed the Federal minimum wage. This would be a change from existing regulations that restrict these borrowers to compensation equivalent to that received by full-time ACTION and VISTA volunteers.

Forbearance (Section 682.211)

The proposed regulations reflect the provision in the 1986 Amendments that permits forbearance after default, and would require that the agreement for a post-default forbearance include a new repayment schedule.

The proposed regulations would also permit the lender to grant forbearance to a borrower, upon notice to the borrower and subject to certain limits, when the lender determines that a previously granted deferment period is invalid. Further, the proposed regulations would permit the lender to grant forbearance to a delinquent borrower for the period from the first day of delinquency to the commencement date of a deferment. These provisions would assist in the handling of delinquencies that result when a deferment is invalidated or when a borrower who is delinquent at the time he or she applies for a deferment leaves deferment status.

Defenses to a Borrower's Liability to Repay a GSL Loan (Section 682.215)

The Secretary is proposing to codify his longstanding view regarding the defenses to a borrower's liability for repayment of a GSL loan. Generally, a student who borrows under the GSL Program from a third-party lender remains legally responsible for repaying the loan, even if the school fails to provide the student with the services purchased by the student. However, if an origination relationship exists between the lender and the school, the school's failure to deliver those services provides the student with a defense against the obligation to repay the lender all or part of the loan, absent a disclaimer by the lender as discussed below.

The Secretary solicits comments on how the definition of "origination" could be more precisely crafted to reflect the common law of agency, and to give a lender better notice of the circumstances under which the enforceability of a loan it holds may be jeopardized by a school's failure to comply with its educational responsibilities.

The proposed regulation would clarify that the Secretary's imposition of a requirement on a school, lender, or guarantee agency under these regulations does not mean that a violation of that requirement constitutes a defense to the borrower's obligation to repay a GSL loan.

The proposed regulations would also allow a lender that is not a corporate affiliate of a school to protect itself from defenses otherwise created by a school's failure to comply with its educational obligations by formally disclaiming responsibility for these matters to the borrower at the time of disbursement and commencement of repayment of the loan.

Members of Religious Orders (Section 682.301)

Interest benefits are paid on behalf of borrowers who have shown need as determined under an approved need analysis system. The Secretary believes that, as in the other title IV programs, members of a religious order, who are pursuing a course of study at a school and are supported by the order or are required to forego monetary compensation, do not have need for interest benefits on a Stafford loan. Therefore, the proposed regulations provide that these individuals are not eligible for interest benefits.

Termination of Special Allowance Payments (Section 682.302)

The Secretary proposes to terminate a lender's right to receive special allowance payments on a loan if it fails to file a default claim thereon, together with all required documentation, by the 45th day after default.

Annual Loan Limits (Section 682.401)

The Secretary proposes in this section to establish a minimum time period that an agency may use in applying the annual maximum loan amounts. The Secretary believes this is needed to restore the integrity of the maximum loan amount rules. Those rules are currently being circumvented by some schools that define their periods of academic progression to be as short as three months in order to qualify their students for three loans, each for the annual maximum amount, for a nine-month period of enrollment.

Student Status Confirmation Report (Section 682.401)

The Secretary proposes that guarantee agencies be required to use a standardized format approved by the Secretary for monitoring the enrollment status of student borrowers. The use of the format and data elements included in appendix B is considered to be approved for this purpose. The Secretary believes that the use of a standardized format by all guarantee agencies will enhance the development of electronic data transmission, and create uniformity throughout the

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administration of the guarantee agency programs. Additionally, a national reporting system will reduce the administrative burden encountered by lenders and financial aid administrators now faced with a variety of reporting systems.

The Secretary is particularly interested in receiving public comment as to which loans and information should be covered by a guarantee agency's student status confirmation report system.

The Secretary is also considering whether to require guarantee agencies to use standardized loan applications and/or promissory notes. The Secretary believes such uniformity would significantly accelerate application processing and reduce the administrative burden on lenders, and is soliciting public comment on this issue.

The Secretary wishes to minimize the burden on students and their families of applying for loan assistance under the GSL programs. To this end, § 682.401(d) provides that the GSL programs loan application required under section 483(a)(1) of the Act may not ask for information already provided by students and their parents on the common financial aid form also required by section 483(a)(1), other than basic identifiers such as name, address, and Social Security number.

The Secretary understands that this restriction may force lenders and guarantors to use other means to secure information needed to process the student's loan application. The Secretary therefore solicits comment on both (1) possible alternative methods for securing this information and (2) the appropriate Federal role, if any, in the orderly development of these alternatives.

Equitable Share of Borrower Payments (Section 682.404)

The Secretary proposes to reduce from 60 days to 30 days the number of days a guarantee agency has to pay the Secretary's equitable share of borrower payments to the Secretary. The Secretary believes that 30 days is a sufficient period of time for agencies to return these amounts. In addition, a 30-day period is consistent with the Department's own obligations. The Act requires the Secretary to authorize payments for interest and special allowance obligations within 30 days. More generally, the Prompt Payment Act requires Federal agencies to pay bills and claims within 30 days.

Application of Borrower Payments (Section 682.404)

In response to a recent recommendation of the General Accounting Office, proposed § 682.404 would permit a guarantee agency to apply borrower payments it receives on a defaulted loan first to defray its collection costs, rather than to accrued interest and principal as required by current regulation.

Conditions of Reinsurance Coverage (Section 682.406)

The Secretary proposes to reduce the period of time in which a guarantee agency must pay a claim to the lender, in order for all interest accruing on the loan thereafter to be reinsurable by the Secretary. The Secretary believes that 45 days provides ample time for this process.

Program Reviews of Secondary Markets (Section 682.410)

The Secretary proposes to require each guarantee agency to perform a biennial program review of each State or private nonprofit secondary market located in its State, using statistically valid techniques to calculate any liabilities that may be owed to the Secretary. Because of its status as a Federal Consolidation Program lender, SLMA would be reviewed by the Secretary, and, at the option of each guarantee agency, by the agency.

Collection Efforts on Defaulted Loans (Section 682.410)

Current § 682.410(b)(6) requires guarantee agencies to perform specific due diligence steps to collect defaulted loans. The Secretary recognizes that there may be other effective methods available to guarantee agencies to maximize recoveries on defaulted loans, most notably the use of collection contractors. For this reason, the proposed regulations substantially restructure the rules governing agencies' collection efforts to facilitate the use of some of these additional methods. The Secretary specifically solicits comments on the extension of time for a guarantee agency to litigate against a defaulted borrower that was published as a final rule on August 27, 1990 and is included in this NPRM at § 682.410(b)(6)(vii).

The proposed regulations would provide an agency with two alternative procedures for collecting a loan. Under the first alternative, the agency would follow essentially the same procedures as those required under current regulations. The provisions setting forth these procedures have been revised to replace most of the 45-day time periods in current rules with a 60-day "gap" standard. The Secretary intends that this approach result in an agency engaging in a collection effort at least as intensive as that required by current regulations, while reducing the opportunities for an agency to commit violations that do not affect loan collectibility.

Under the second alternative procedure, an agency would be subject to less stringent requirements during the initial 180 days of collection, but would be required thereafter to refer the debt to a contingency fee-based collection contractor for further collection. The agency would be required to retain at least two contractors, periodically compare the performance of the contractors, and adjust the volume of debts referred to each contractor so as to reward the best performers with increased volume. The Secretary believes that the use of commercial collection contractors, working in a competitive environment with incentives and sanctions based on recovery results, will be an effective way to maximize the collection of defaulted loans.

The proposed second alternative procedure allows the guarantee agency a period of up to six (6) months after claim payment, or the period required for completion of the IRS tax refund offset "cycle," whichever is greater, to effect collection on a loan. If, at the end of that period, the guarantee agency has been unsuccessful in securing repayment from the borrower, the guarantee agency would refer the debt to a collection contractor. The guarantee agency could also elect to refer the debt to the collection contractor at any earlier time. If the collection contractor is unable to secure payment, the agency must initiate litigation against the borrower no later than 90 days after the loan is returned by the contractor, or 365 days after referral to the contractor, whichever occurs first. The proposed regulations assume a 90-day window for a guarantee agency to initiate litigation after a loan is returned from a collection firm. By requiring litigation within 365 days after referral, the effect is to limit collection contractors to 275 days (365 minus 90) for collecting a loan.

The Secretary would require a guarantee agency using the second alternative procedure to contract with a minimum of two (2) collection contractors who would then compete for the right to receive a larger volume of debts from the agency on the basis of performance. The Secretary expects that guarantee agencies will select collection contractors using sound and prudent business practices, including selecting

contractors with successful student loan experience, checking references, and requiring bonding and financial stability. Contractor performance should be evaluated solely on objective factors established by the guarantee agency as indicative of successful collection efforts, and the volume of referrals to each contractor adjusted accordingly. For example, a guarantee agency using three collection contractors could refer 50% of total placements to the contractor with the best performance record in the prior year, 30% to the second-best performer, and 20% to the poorest performer.

Due Diligence by Lenders in the Collection of Guarantee Agency Loans (Section 682.411)

This section of the regulations, published in November 1986, established minimum due diligence procedures that a lender must follow in order for a guarantee agency to receive reinsurance on a loan. The proposed revision of this section would replace most of the 30-day time periods in current regulations with a 45-day "gap" standard. This standard is one with which many lenders are familiar in connection with their application of the "cure" procedures explained in the Department's Bulletin 88–C–138. The Secretary intends that this approach result in a lender engaging in collection efforts at least as intensive as that required by current regulations, while reducing the opportunities for a lender to commit violations that do not affect loan collectibility.

The Secretary also proposes to reduce the current 30-day time period in which the lender must send the first collection notice to a borrower to require that the first notice be sent no later than the 10th day of delinquency. This change is based on standards contained in the Collections Handbook, published by the American Banker's Association, and the Secretary's understanding of current consumer credit practice.

The Secretary proposes to clarify that telephone contacts at a time when the lender knows the borrower will not be at the number called are not considered "diligent efforts".

Default Reduction Initiative (Sections 682.603–682.606)

The Default Reduction Initiative final regulations and notice of proposed rulemaking have made or proposed a number of changes to part 682 and to the Student Assistance General Provisions Regulations (34 CFR part 668) to implement the Secretary's Default Reduction Initiative. The provisions of those documents are repeated in these proposed regulations. When final regulations based on this NPRM are published, they will include the language from final regulations based on the default reduction NPRM which will be published separately. The Secretary is not soliciting comments on the regulations included in the June 5, 1989 final rule or the proposed regulations also published on that date in connection with this regulation.

Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax exempt Obligations (Sections 682.800–682.840)

These sections of the regulations have been revised to delete provisions no longer needed and to incorporate some of those sections under former § 682.302.

Policy for Waiving the Secretary's Rights to Recover or Refuse to Pay Benefits on Guaranteed Student Loans Involving Due Diligence or Timely Filing Violations (Appendix D)

A bulletin (88–G–138) dated March 11, 1988 was sent to Guarantee Agency Directors setting forth the Secretary's policy for waiving the Secretary's rights to recover, or refuse to pay, interest benefits, special allowance, and reinsurance on GSL loans involving lenders' violations of Federal regulations pertaining to due diligence in collection or timely filing of claims. That bulletin, with technical corrections, is published in appendix D.

Other Regulatory Changes

The following is a subpart-by-subpart summary of other proposed changes to specific provisions of the regulations. In light of past experience, the Secretary also solicits comments on the effective date for new proposed requirements that are not statutorily mandated.

Subpart A—Purpose and Scope

This subpart would be revised to describe the SLS Program and the Consolidation Program, and to reflect the revised scope of the PLUS Program. SLS loans are available to eligible independent undergraduate students and all graduate or professional students who attend an eligible institution on at least a half-time basis. Dependent undergraduate students may also be eligible if the institution's financial aid administrator determines that exceptional circumstances will likely preclude the student's parents from borrowing under the PLUS program and the student's family will be unable to provide its expected family contribution. Consolidation loans are available to eligible borrowers for the purpose of consolidating eligible student loans made under the Stafford, SLS, PLUS, Perkins, and HPSL programs. PLUS loans made to parent borrowers may not be consolidated.

Subpart B—General Provisions

Section 682.200 Definitions.

The Secretary proposes to revise several definitions in this section:

National of the United States—The regulation would delete this definition since it is covered in § 668.2 ("U.S. citizen or national").

Estimated financial assistance—The regulations would be revised to provide that, in determining estimated financial assistance for a Stafford Loan or SLS borrower, or for the student for whom a parent borrows under the PLUS program, a school would not count Perkins Loan or College Work-Study (CWS) Program funds for which the borrower would qualify but that the borrower refuses, if the student provides a valid reason for not accepting those funds. For example, a student's need to care for a dependent or a student's heavy academic courseload or academic difficulties may not permit the student to accept a CWS job. In the case of a Perkins Loan, a student may wish to reject a small Perkins Loan that reduces the student's Stafford Loan eligibility rather than incur two sources of indebtedness and increase the possibility of default upon repayment.

Lender—The proposed regulations would replace the current provision that prohibits a lender from making loans that total over one-half of the lender's consumer credit volume, with a standard that is based on net income realized by the lender from GSL program activities. This change is proposed because the former approach fails to recognize that a lender's loan origination volume can be large even though its GSL activities generate only a small portion of the bank's consumer credit income.

This section would also be revised to reflect the statutory rule that renders ineligible any lender who offers inducements to secure GSL loan applicants, conducts certain unsolicited mailings of student loan application forms, or engages in fraudulent or misleading advertising.

The proposed regulations would also reflect the addition to part 682 of the following definitions: Act, Authority, Federal GSL programs and Temporarily totally disabled.

Section 682.201 Eligible Borrowers

Eligible student—Under the 1986 Amendments, student eligibility under

the Stafford, SLS, and PLUS programs has been limited for periods of enrollment beginning on or after July 1, 1987. To be eligible, a student must be enrolled or accepted for enrollment, on at least a half-time basis, in a degree or certificate program. A student may be enrolled for one period not to exceed 12 consecutive months in a course of study determined by the school to be necessary for the student to enroll in a degree or certificate program. A student may not be simultaneously enrolled in either an elementary or secondary school and be eligible for GSL program loans. The definition of an eligible student borrower has been amended further by Public Law 100-369 to allow a student to be eligible for a loan provided the otherwise eligible student is enrolled or accepted for enrollment at an eligible institution in a program which leads to a professional credential or certification from a State that is required for employment as a teacher in an elementary or secondary school in that State.

The proposed regulation would provide that in order for a borrower to be eligible to borrow a GSL loan that the borrower must reaffirm any GSL debt that was previously cancelled due to the borrower's total and permanent disability or discharged in bankruptcy. Such a borrower would also be required to obtain a physician's certification that his or her condition has improved and that he or she has the ability to engage in substantial gainful activity or attend school. Further, the borrower would be required to sign a statement that he or she is aware that the loan could not be cancelled in the future on the basis of any present impairment unless that condition substantially deteriorates to the extent that the definition of total and permanent disability is met. The Secretary believes that while such borrowers should not be denied loan eligibility because of prior debts, that in order to obtain further GSL loans, the borrower must be willing to repay the current loan and prior loans still owed.

Incarcerated student—The proposed regulations would restrict GSL loan eligibility to only those incarcerated students who are expected to be unconditionally released by the end of the grace period, as calculated based on the student's anticipated graduation date at the time the loan is made. The Secretary believes that a lender that makes a loan to an incarcerated student who is not expected to be unconditionally released at or before the time the borrower enters repayment has not exercised due diligence in making the loan, because the borrower will, in all likelihood, not be able to repay the loan.

Consolidation program—The proposed regulations reflect the statutory change permitting the making of Consolidation loans. To be eligible, a borrower must (1) Have an outstanding indebtedness of not less than $5,000 on loans eligible for consolidation, and (2) be in repayment, or in a grace period preceding repayment and not be delinquent by more than 90 days, on each of the loans to be consolidated.

PLUS program—The proposed regulations would reflect the statutory change limiting PLUS loans to parent borrowers. Prior to the 1986 Amendments, parents were permitted to borrow under the PLUS program on behalf of an eligible dependent undergraduate, and an independent undergraduate, graduate, or professional student could borrow on his or her own behalf. Effective October 17, 1986, the Act limits PLUS loan eligibility to a parent borrowing on behalf of a dependent undergraduate, graduate, or professional student.

SLS program—The proposed regulations would reflect that, as part of the 1986 Amendments, the SLS Program was made available to independent undergraduate, and graduate and professional students and that Public Law 100-369 extended eligibility for SLS loans, on the basis of documented exceptional circumstances, to dependent undergraduate students.

Section 682.202 Permissible Charges by Lenders to Borrowers

Interest rates—The proposed regulations reflect the following changes to interest rate provisions made by the 1986 Amendments and the Technical Amendments:

(1) The interest rate for Stafford loan borrowers who obtain loans to cover periods of enrollment beginning on or after July 1, 1988, is eight percent until four years after the repayment period begins, and ten percent thereafter.

(2) For PLUS and SLS loans disbursed before July 1, 1987, the interest rate is twelve percent. The applicable rate for PLUS and SLS loans disbursed on or after July 1, 1987, and for PLUS and SLS refinancing loans obtained to secure a variable rate, is a variable rate not to exceed 12 percent. (3) The interest rate on Consolidation loans is the greater of (a) the weighted average of the interest rates on the loans being consolidated, rounded to the nearest whole percent, or (b) nine percent.

Administrative charge for a refinanced SLS or PLUS loan—The proposed regulations would provide that a lender may charge a borrower up to $100 as a fee for the administrative costs of making a refinanced SLS or PLUS loan to secure a variable interest rate. The fee may be assessed only once per borrower.

Capitalization—The proposed regulations would provide that accrued interest may be capitalized by the lender during periods for which payments of principal are deferred on PLUS and SLS loans, if agreed to by the borrower and the lender. The accrued interest may be paid monthly or quarterly during periods of deferment, or capitalized on a quarterly basis by the lender.

The proposed regulations would permit lenders to capitalize accrued interest quarterly, rather than annually, for interest accruing during the in-school period, grace period, and during an authorized period of deferment and forbearance.

Collection charges—The proposed regulations would revise current regulations to reflect other costs that a lender may charge a borrower in collecting a loan.

Section 682.203 Responsible Parties

The proposed regulations would delete current § 682.203—Statement of Educational Purpose since the provisions of that section now appear in 34 CFR 668.7. Proposed § 682.203 would clarify that a school, lender, or guarantee agency may delegate or contract the performance of functions to a servicing agency, but that the lender, school or guarantee agency would still be held responsible for complying with the Act and regulations. This provision would also apply to a lender that holds a loan in its capacity as a trustee.

Section 682.204 Maximum Loan Amounts

This section would be revised to reflect the increased annual and aggregate Stafford Loan, SLS, and PLUS loan limits discussed above.

Section 682.205 Disclosure Requirements for Lenders

The Secretary is proposing that, as part of the lender disclosure requirements, the lender disclose to the borrower, in a separate statement, that the borrower will generally be required to repay the loan even if the borrower believes that he or she did not receive the quality of education, potential employment, or other services for which the loan was intended. The proposed regulations would also apply this disclosure requirement to any loan made or originated by a school lender.

The proposed regulations would revise current credit bureau reporting requirements for lenders to require that those reports be made to national credit bureaus. This change would recognize that long distance lending is now commonplace in the GSL programs, and that credit bureau reporting on a GSL loan should therefore encompass more than a single State or region of the country.

Section 682.206 Due Diligence in Making a Loan

The proposed regulations provide that prior to disbursement of a Consolidation loan, a lender shall obtain a certification from the current holders of the outstanding loans that those loans comply with the requirements for inclusion in consolidation. The consolidating lender may rely in good faith on these certifications, which the holders must provide within 10 days of a request by the consolidating lender. Under proposed § 682.413, if the certification is inaccurate, the Secretary may require the holder of the paid-off loan to repay interest benefits, special allowance, and reinsurance paid on Consolidation loan amounts attributed to the paid-off loan.

The proposed regulations would also prohibit a guarantee agency from requiring security or endorsement for a Stafford or SLS loan. In the Secretary's view, a major purpose of the Stafford and SLS programs is to provide educational credit for those who cannot obtain it elsewhere. This purpose is frustrated if only those borrowers who can obtain a co-signer or endorser are permitted to borrow. However, this proposal would not preclude a lender from obtaining security or endorsement on a GSL loan if it so chooses.

Section 682.207 Due Diligence in Disbursing a Loan

The Secretary proposes to revise the regulations governing loan disbursements to reflect new statutory requirements for multiple-disbursed loans. In addition, a proposed change would provide for the direct delivery of loan funds to students attending foreign schools, as permitted by statute. The Secretary also proposes to establish a standardized late disbursement policy to be used by all lenders, under which, among other things, a lender would be allowed to make a disbursement on a loan up to 60 days after the borrower leaves school without a case-by-case approval by the guarantee agency, if the disbursement is to cover outstanding institutional charges actually incurred prior to the date the borrower left school.

Section 682.208 Due Diligence in Servicing a Loan

The Secretary proposes to revise the regulations to reflect provisions of the 1986 Amendments governing the types of information that a lender must report to a credit bureau. Specifically, that information would include the total amount and remaining balance of the borrower's loan, and information concerning the date of default and collection of the loan, such as the repayment status of a defaulted loan for which the Secretary or guarantee agency has paid a claim and the date of cancellation of the note.

The Secretary also proposes to allow a guarantee agency, lender, or subsequent holder 90 days to report the required loan information to credit bureaus, to ensure that those reports are made within a reasonable time.

The Secretary proposes to amend § 682.208 to require the assignee of any loan to notify the borrower, in writing, of the assignment, if the transaction results in a change in the party to whom the borrower must make payments. A similar requirement has been in effect in the FISL Program since 1970. See 34 CFR 682.508(b)(2)(ii).

Section 682.209 Repayment of a Loan

Several proposed changes to §§ 682.208, 682.209, and 682.211 would encourage the use of graduated repayment schedules to assist borrowers in repaying their loans for the purpose of preventing defaults. As proposed, a lender would be encouraged to establish an original, or, with the consent of the borrower, a revised repayment schedule, that provides for graduated or income-sensitive installment payments for a period covering not more than the first 5 years of repayment, provided that no installment is scheduled to be more than three times greater than any other installment, and the amount scheduled to be repaid complies with the maximum repayment period and minimum annual payment prescribed by § 682.209(c). The Secretary proposes that the borrower's graduated repayment schedule be required to provide for level payments to begin not later than the sixth year of repayment.

Section 682.210 Deferment

New deferment provisions included in the 1986 Amendments and the Technical Amendments are implemented by the proposed regulations.

The proposed regulations would clarify that for purposes of obtaining a student deferment, a borrower is eligible if he or she is attending an institution that meets the definition of eligible institution found in section 435 of the Act. This change reflects the Secretary's current view that students are eligible for deferment as long as they are attending schools that are eligible to participate in the HEA title IV programs, regardless of whether those schools are actually participating.

Under the parental leave deferment involving care for an adopted child, deferment would be allowed for the borrower while caring for the child following the placement of the child through the adoption process. For the deferment for care of pre-school age children of a working mother, pre-school age children would be defined as children who have not yet entered first grade.

Changes would also be made to other existing deferments. The maximum unemployment deferment period was extended by statute from 12 to 24 months. The proposed regulations would also extend the period covered by a single certification of unemployment from three to six months. The Secretary proposes to require that to qualify for an unemployment deferment, a borrower may not unreasonably limit his or her search for employment by not seeking or accepting employment in kinds of positions or at salary and responsibility levels for which the borrower may feel overly qualified.

The Secretary proposes to codify his view on borrower eligibility for deferment for active duty status in the U.S. Armed Forces by specifying in the regulations that a member of the National Guard or the reserves does not qualify for this deferment, unless the borrower is serving on a full-time basis in active duty status for at least one year, as evidenced by official military orders.

The Secretary would also specify what constitutes sufficient documentation to establish eligibility for each deferment, and, in some instances, the frequency of recertification required to continue that eligibility.

The proposed regulations would provide that a deferment may have retroactive effect from the date the lender receives a substantially complete deferment request. A request would not be considered substantially complete if the documentation does not contain the signature of the official identified as the authorized certifying official. If the lender grants a deferment to a borrower based upon substantially complete documentation that nevertheless does not include some of the required information, the proposed regulations would require the lender to diligently

attempt to obtain the missing information from the borrower.

The proposed regulations would treat a certified SLS application as sufficient documentation for a student deferment for an SLS loan up through the student's anticipated graduation date indicated on the application, and for a Stafford loan guaranteed by a guarantee agency whose student status confirmation report system includes a mechanism for the school's confirmation of the borrowers' student deferment status.

Section 682.212 Prohibited Transactions

The Secretary intends to clarify that a loan sold or otherwise transferred at discount by a school may only be done on a case-by-case basis with the Secretary's explicit approval.

Section 682.214 Compliance With Equal Credit Opportunity Requirements

The Secretary proposes to revise the regulations by including a provision requiring a lender making a Stafford loan to comply with the equal credit opportunity requirement of regulation B, 12 CFR part 202, as applicable to credit assistance programs authorized by law for the benefit of an economically disadvantaged class of persons.

Subpart C—Federal Payment of Interest and Special Allowance

These sections have been renumbered to accommodate changes.

Section 682.301 Eligibility of Borrowers for Interest Benefits on Stafford Loans

A substantial amount of this section would be deleted, because, under the 1986 Amendments, need, and therefore eligibility for interest benefits, is determined through a need analysis system approved for use in the campus-based programs. Need must be determined for every applicant; therefore, the $30,000 adjusted gross income provision would be eliminated.

In addition, this subpart would be revised to reflect the Secretary's position described above with respect to interest benefits on Stafford loans made to members of a religious order.

Section 682.302 Payment of Special Allowance on GSL Loans

Proposed § 682.302(e) would be revised to refer to § 682.800, and those provisions governing special allowance payments for loans financed by tax-exempt obligations would be incorporated in § 682.800.

Section 682.303 [Reserved]

The proposed regulation would move the provisions of § 682.303 *Prohibition against discrimination as a condition for receiving special allowance payments* to § 682.840.

Section 682.305 Procedures for Payment of Interest Benefits and Special Allowance

The proposed regulations would provide that the Secretary does not consider a request for interest benefits and special allowance to be accurate if the request is not provided on a form prescribed by the Secretary, does not contain all the information required by the Secretary, or includes conflicting information.

The proposed regulations would require that a lender whose outstanding GSL loan portfolio during any fiscal year exceeds $10 million must have an annual independent financial and compliance audit of its billings for interest benefits and special allowance payments. The Secretary believes that an annual audit of such large volume lenders would reduce lender billing errors, and thus reduce the cost to the Federal Government of these payments. This change is being proposed in response to a recommendation by the General Accounting Office (GAO Report HRD 88-72).

Subpart D—Guarantee Agency Programs

Section 682.401 Basic Program Agreement

The Secretary proposes to revise this section to require that a guarantee agency require a borrower to notify the school of any change in the borrower's employer or the employer's address, to assist the holder in locating the borrower if he or she "skips", and to facilitate wage garnishment in the event of default.

Administrative fee for Consolidation loans. The Secretary proposes to limit to $50 the fee a guarantee agency may charge a lender to defray the agency's administrative costs incurred in guaranteeing a Consolidation loan.

Section 682.402 Death, Disability, and Bankruptcy Payments

The Secretary proposes to amend the regulations to address more specifically the treatment of bankruptcy petitions filed under chapters 11 and 12 of the Bankruptcy Code. In addition, a guarantee agency would be provided with the flexibility to establish a time frame, not to exceed 30 days, for lenders to file a bankruptcy claim with the agency. Proposed § 682.402(d)(2) would also expand the forms of documentation a lender may use to determine that a borrower has filed a bankruptcy petition to include other appropriate documents, *e.g.*, written notices from the debtor's attorney, in lieu of the notice of the first meeting of creditors.

The Secretary also proposes to allow a guarantee agency to submit a chapter 13 bankruptcy claim to the Secretary for reimbursement after it has paid the claim to the lender. Guarantee agencies would no longer be required to hold chapter 13 loans until a general order of discharge is entered, which can often occur up to five years after the agency pays the lender on the claim.

The proposed regulations would revise § 682.402(g) regarding the actions required of guarantee agencies in bankruptcy proceedings on loans acquired by the guarantee agencies through payment of bankruptcy claims. The proposed regulations would require the agency in a chapter 7 proceeding, if it determines that repayment would not constitute an undue hardship for the debtor, to determine whether the expected costs of opposing the discharge petition would exceed one-third of the total amount owed on the loan, and if it does not, to oppose the petition, and to seek a judgment if the borrower has defaulted on the loan.

Payment of death, disability, and bankruptcy claims by the guarantee agency. The Secretary proposes to reduce from 90 to 45 days the period within which a guarantee agency is required to pay a death, disability, and bankruptcy claim to a lender. The proposed regulations would also clarify a guarantee agency's responsibility to diligently oppose the discharge of a GSL loan in bankruptcy.

Section 682.404 Federal Reinsurance Agreement

The Secretary proposes to clarify that an agency is prohibited from double charging the Secretary for costs of supplemental preclaims assistance if those costs have already been reimbursed under the 30% retention of collection.

The Secretary proposes to revise the regulations to implement the provisions of the 1986 Amendments allowing a guarantee agency to transfer a loan guarantee issued by that agency to another guarantee agency with the approval of the receiving agency and the holder of the loan. The quarterly report (ED Form 1130) would be revised to provide for the reporting of these transfers. Therefore, in proposed § 682.404(b)(5), the definition of the "amount of loans in repayment" would be revised to include the original principal amount of all loan guarantee transfers received from other agencies, and to exclude the original principal of loan guarantees that were transferred to another agency.

The Secretary proposes to revise the regulations to require that, as a condition for receiving a reinsurance payment from the Secretary, a guarantee agency would have to ensure that a lender provided evidence that due diligence was exercised in collecting a loan. The Secretary would consider a detailed collection history and payment history to satisfy this requirement.

The proposed regulation would require a guarantee agency to remit reinsurance fees within the earlier of 90 days after the end of a quarter or within 30 days after receiving written notice from the Secretary that the fees are due. The Secretary believes this requirement would allow the agency ample time to pay those fees, and would clarify the Secretary's ability to charge interest on fees not paid in a timely manner.

Section 682.407 Administrative Cost Allowance for Guarantee Agencies

In the 1986 Amendments, the primary and secondary administrative cost allowances were combined into a single administrative cost allowance. A guarantee agency is now eligible to receive administrative cost allowance payments equal to 1 percent of the principal amount of loans insured during any fiscal year.

Proposed § 682.407(d) would clarify that, for a loan for which an agency transfers its loan guarantee to another guarantee agency, the Secretary pays an administrative cost allowance on the loan only to the original guarantor of the loan.

Section 682.408 Stafford and SLS Loan Disbursement Through an Escrow Agent

The proposed regulations would implement the provision in the Technical Amendments that reduces from 45 days to 21 days the period within which an escrow agent must transmit loan proceeds to the school for delivery to the borrower.

Section 682.410 Fiscal, Administrative, and Enforcement Requirements

The Secretary is proposing that guarantee agencies report to the Secretary (1) Each action brought against a lender or school by the agency, an accrediting agency, or a State licensing agency, (2) each action the agency takes affecting the eligibility of the lender or school, and (3) with some exceptions, each court proceeding relating to the enforceability of a GSL loan.

The proposed regulations would require a guarantee agency to charge a borrower reasonable collection charges. The Secretary believes that reasonable costs should equal the amount a guarantee agency would charge for its collection costs, as calculated under 34 CFR 30.60. However, these charges should not exceed the amount the same borrower would be charged for the cost of collection if the loan was held by the Secretary.

The proposed regulations would allow an agency to use the pre-credit bureau reporting notice under § 682.410(b)(5)(ii)(A) as the delinquency notice under § 682.410(b)(6) and (b)(7).

The Secretary proposes to add § 682.410(b)(5)(v) to eliminate bias from the administrative review process in response to a borrower's request for review of the legal enforceability or past due status of the loan(s). Proposed § 682.410(b)(5)(vi) has been added to prescribe the information that a guarantee agency must communicate to the debtor after the agency has paid a default claim.

The proposed regulations also clarify the role of a guarantee agency in the treatment of a special condition claim under proposed § 682.410(b)(6). Specifically, the Secretary proposes certain servicing and collection activities to be performed by a guarantee agency for special condition claims. The Secretary notes that the guarantee agency may not report as a default to a credit bureau a loan on which it acquires through payment of a special condition claim, unless the borrower in fact defaults on the loan.

The Secretary is interested in receiving comments on ways the burden of due diligence procedures might be further reduced, particularly for lenders and guarantee agencies which have low default rates. Any proposed means of relieving this burden should not reduce the access of needy students to the programs.

The Secretary proposes that guarantee agencies be required to review lenders which make or hold in excess of $10 million in student loans in the most recent fiscal year. In addition, the Secretary proposes to allow guarantee agencies to review schools and lenders selected under an alternative selection methodology approved by the Secretary.

The Secretary recognizes concerns recently raised about whether current regulations (§§ 682.410(b) and 682.411) prescribing actions that lenders must take to exercise due diligence in collecting delinquent GSL obligations preempt inconsistent State law.

The Secretary has recently clarified his intention to preempt inconsistent State laws in promulgating these regulatory provisions in 1986. In response to these concerns, these proposed regulations state this preemptive effect in the text of the rule itself: § 682.410(b) (2), (5), (6), and (7) preempt State laws that would prohibit or restrict lenders or guarantee agencies from performing the steps required in those sections. This preemptive regulation is proposed for the same reasons that prompted adoption of the current preemptive regulations, as explained in the recently-published Notice of Interpretation. See 55 FR 40120 (October 1, 1990) (Interpretation): To ensure that holders of GSLP loans in all States can engage in collection activity on these loans that meets a minimum, national standard, and thereby protect the public interest in recovering on these Federally-financed loans.

While the Secretary's interpretation applies only to the preemption of State law by § 682.410(b) (2), (5), (6), (7) and 682.411, the Secretary notes that the Act itself preempts State law affecting performance of other collection activities: By expressly requiring holders of GSLP loans to make reports to credit bureaus, by making borrowers liable for all reasonable collection costs incurred to enforce those loans, and by abrogating the defense of infancy on all GSLP loans, the Act itself preempts any conflicting or inconsistent State law. The Secretary also does not mean to imply that other provisions of these proposed rules would not preempt State laws where those laws created a direct conflict between meeting the requirements.

Section 682.414 Records, Reports, and Inspection Requirements for Guarantee Agency Programs

The proposed regulations would clarify that the guarantee agency must maintain required records in a system that allow ready identification of each loan's current status, and would require that the status be updated at least once every 10 business days.

The Secretary is proposing to revise this section to include specific reference to the annual "tape dump" report now required of agencies, and to note that each agency's "tape dump" must contain accurate data, and be provided in the format prescribed in the Stafford Loan, SLS, and PLUS Tape Dump Procedures (ED Form 1070).

Subpart E—Federal Guaranteed Student Loan Programs

Section 682.505 Insurance Premium

There has been some confusion as to how the calculation of the insurance

premium under § 682.506(c)(1) is consistent with section 429(c) of the Act. The Secretary is providing the following example to resolve this confusion:

Assumptions:
$1000 loan, singly disbursed Disbursement date—September 12 Anticipated graduation date—May 15

	§682.505(c)(1)	Section 429(c)
(i)	= 20 months	(.25)(.01) = .0025
(ii)	$= \frac{(.0025)(1000)}{12} = .2083$	(.0025)(1000) = 2.50
(iii)	= (.2083)(20) = 4.16	$(2.50)(\frac{20}{12}) = 4.16$

Section 682.506 Limitations on Maximum Loan Amounts

The Secretary proposes to revise the regulations to clarify that a FISL loan amount may not exceed the student's cost of attendance, minus the student's estimated financial assistance and expected family contribution.

Assignment of a Loan (§ 682.508). The proposed regulation would delete the current provision regarding risks assumed by the buyer of a FISL loan (§ 682.508(c)). This provision is covered under § 682.513 which references § 682.215.

Subpart F—Requirements, Standards, and Payments for Participating Schools

Section 682.603 Certification by a Participating School in Connection with a Loan

The Secretary proposes to revise § 682.603 to clarify that a school may not certify an application for a loan in excess of the maximum annual loan amount. If a school certifies more than one application for a student for the enrollment period, the total amount certified for those applications cannot exceed the lesser of (1) the student's cost of education, minus the student's estimated financial aid, for the enrollment period, if applicable, or (2) the annual maximum loan amount. In addition, this proposed section would be revised to reflect the statutory requirement that a school must certify loan applications for any eligible lender.

The proposed regulations would prohibit a lender or a school from charging a borrower a fee for processing a loan application.

The proposed regulations would also codify the Secretary's interpretation of current law as allowing a school to certify an application only for (1) An academic year, (2) the length of the program for a program of less than two academic years, or (3) an academic period of less than one academic year (as determined by the school) that is used by the school to bill substantially all of its students for institutional charges.

Section 682.604 Processing the Borrower's Loan Proceeds and Counseling Borrowers

The Secretary proposes to clarify that, for a student attending a foreign school, the loan funds are to be delivered directly to the student rather than to the school.

The Secretary also proposes to revise the current regulation that provides that a school may transmit loan proceeds only to a student who has maintained his or her eligibility, including enrollment on at least a half-time basis at a participating school.

Specifically, the proposed regulations would provide that, if a student notifies the school on or before the first day of classes that he or she will delay attending school for a short period and if the student thereafter commences attendance within 30 days after the date of that notification, the school may consider that student to have maintained eligibility for the loan since the first day of the period of enrollment for which the loan is intended, and may transmit the loan proceeds to the student in accordance with this section.

After a school loses its eligibility to participate in the Title IV programs, either because it no longer meets the statutory requirements for eligibility or because the Secretary has terminated the school's eligibility, that school is no longer a participating school. Under current regulations, the school may not deliver Stafford or SLS loan proceeds to a borrower after the school's loss of eligibility. Under the proposed change, in the case of a loan on which the first disbursement of loan proceeds is delivered to a student or credited to a student's account prior to the school's loss of eligibility, the school could deliver the proceeds of a second or subsequent disbursement on the loan to the borrower even after the school loses its eligibility. This change would enable the borrower to complete the period of enrollment, thus reducing the likelihood of default on the loan.

The Secretary also proposes to clarify that a school may retain the borrower's loan proceeds prior to delivery to the borrower for not more than 45 days.

The Secretary also proposes to revise the regulations to provide for the treatment of an "overaward" of a Stafford or SLS loan. If, after a school certifies a loan application, the school learns that the borrower will receive or has received financial aid for the period of enrollment for which a GSL loan was made that exceeds the student's estimated cost of attendance, or in the case of a Stafford loan subject to payment of interest benefits, the student's financial need, the school would, if no loan proceeds have been credited to the student's account or delivered to the student, immediately return to the lender any proceeds in its possession. The school would also provide the lender with a written statement describing the reason for the return of funds, and setting forth the student's revised cost of attendance or financial need. If any proceeds of the first disbursement of a multiply-disbursed loan had been credited to the student's account or delivered to the student prior to the school's learning of the excess aid, the school would promptly provide the lender with a written statement setting forth the student's revised cost of attendance or financial need, and directing the lender to reduce the second disbursement by the amount of the excess. If the entire loan proceeds had been credited to the student's account or delivered to the student, the school would attempt to eliminate the excess by reducing the amount of other financial aid, if any, that is to be delivered to the student, or had been or is to be credited to the student's account. If all efforts were made to eliminate the excess proceeds, the school would not be required to take any further action. This approach would be consistent with the treatment of overawards in other title IV programs, as well as produce a savings to the Federal Government by reducing the costs of defaults and interest benefits and special allowance payments to lenders.

The proposed regulations would revise the requirements applicable to a school concerning the treatment of a late disbursement. Unless otherwise informed by the lender, and subject to certain requirements, a school would be allowed to process a borrower's loan proceeds received within 90 days after the borrower ceased to be enrolled on at least a half-time basis, or received within 90 days after the end of the period of enrollment for which the loan was made.

The proposed regulations would eliminate the provision in current § 682.604(c) that requires schools to obtain the student's written authorization for release of funds disbursed by electronic funds transfer, if the initial counseling requirements in § 682.604(f) are provided to the student in-person or by videotape.

Section 682.605 Determining the Date of a Student's Withdrawal

The proposed regulations would revise the withdrawal date for a student enrolled in a program of study by correspondence to be the date of the last lesson submitted.

Section 682.606 Refund Policy

The proposed regulations would establish an amount not to exceed $100 for a reasonable administrative fee that a school may deduct in calculating a *pro rata* refund. This change would eliminate the current "5 percent" rule that can operate to require a school to pay refunds in very small amounts. In those cases, the purpose of the rule (discouraging enrollment of likely dropouts) is not served by requiring payment of a *pro rata* refund.

The proposed regulations would reflect a change in the calculation of a *pro rata* refund to provide that the applicable *pro rata* percentage should be rounded downward to the nearest 10 percent, but to never less than 10 percent. This change represents a technical correction to the June 5, 1989 default reduction regulations published in the September 7, 1989 Federal Register to conform the regulatory language to the original intent.

Section 682.609 Remedial Actions

The proposed regulations would clarify the Secretary's authority to make schools purchase loans that are unenforceable in whole or in part, or that include loan amounts for which the borrower was ineligible or for which the borrower was ineligible for interest benefits contrary to the school's certification. Guarantee agencies currently have this authority if provided for in their program regulations.

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility and Disqualification of Lenders and Schools

Section 682.706 Limitation or Termination Proceedings

The Secretary proposes to amend § 682.706 to provide that a lender's, or a lender's owner's or officer's conviction of, or *nolo contendere* plea or guilty plea to, a crime involving the unlawful acquisition, use, or expenditure of GSL program funds, constitutes automatic grounds for termination of a lender's eligibility to participate in the GSL programs. The fact that a conviction is being appealed would not affect the termination.

Section 682.712 Disqualification Review of Limitation, Suspension, and Termination Actions Taken by Guarantee Agencies Against Lenders

Section 682.713 Disqualification Review of Limitation, Suspension, and Termination Actions Taken by Guarantee Agencies Against a School

These sections would be added to reflect the provisions in the 1988 Amendments under which the Secretary reviews limitation, suspension, and termination actions taken by a guarantee agency against a lender or a school in order to determine whether to disqualify the lender or school from participation in the loan guarantee program of all other guarantee agencies.

The proposed rule would codify the Secretary's interpretation that the scope of the review of the action by the guarantee agency is appropriately a limited one. The Secretary considers only whether the agency took action on the basis of substantive agency requirements regarding either initial or continuing eligibility that were not more onerous than those in effect for participating in the FISLP as of January 1, 1990, and whether the agency took that action in accordance with procedures that were substantially the same as those that govern the limitation, suspension or termination of a lender or school, as applicable, from the FISLP, as those Federal procedures may be amended from time to time. The Secretary considers whether the substantive and procedural rules actually applied to that school or lender by the agency in the particular adverse action being reviewed met these requirements, and the school or lender may introduce evidence and argument relating only to these two issues. If the Secretary determines that the requirements applied by the agency to disqualify the school or lender were not more onerous than FISLP rules, and the procedure used to adjudicate those determinations was comparable to that available under the FISLP, the Secretary regards the findings as conclusively determined against the school or lender. The school or lender is thereafter precluded from disputing those findings under traditional principles of collateral estoppel.

The proceeding under §§ 682.712 and 682.713 is thus limited to determining whether the conditions on which collateral estoppel rests are established in the case on appeal: Whether the issues were substantially similar to the issues that would be raised in a FISLP limitation, suspension, or termination proceeding, and whether the agency procedures used to adjudicate those issues were comparable to FISLP so as to provide the school or lender a comparable opportunity to dispute the charges and to provide the Secretary a comparable assurance of reliability of the decisionmaking process. Therefore, if both these conditions are met, the school or lender may not relitigate before the Department the substantive merit of the agency charges. If these conditions are not met, the Secretary also does not reexamine the merits of the agency's determination, but simply declines to extend that disqualification to the programs of all other guarantee agencies.

Subpart H—Special Allowance Payments on Loans Made or Purchased With Proceeds of Tax-Exempt Obligations

Section 682.801 Provisions Required in Plan

Because of the provisions in the 1986 Amendments transferring to Governors the power to review and approve Plans for Doing Business, and deleting the requirement that a Plan provide for assessing unmet need for student loan credit in the service area of the Authority, substantial revisions have been proposed for subpart H. The changes in law apply only with regard to Plans submitted and obligations issued after November 16, 1986, the effective date of the 1986 Amendments. For purposes of entitlement to special allowance payments on loans acquired with the proceeds of tax-exempt instruments issued before November 16, 1986, Authorities remain subject to the requirements of the current regulations regarding Plan approval by the Secretary and the assessment of unmet need under subpart H. These proposed regulations will revise § 682.800 in subpart H, to differentiate between loans acquired under the new requirements and those subject to the pre-amendment requirements.

Section 682.801 as revised would reflect that, consistent with the legislative intent underlying the transfer of Plan approval authority from the Secretary to the Governors of the respective States, each Governor, rather than the Secretary, is to establish standards for determining whether proposed tax-exempt borrowing exceeds the unmet need for student loan credit in the State. The Secretary believes that the Governor's authority in this area is already implicit in the Governor's power to determine the proper allocation of tax-exempt borrowing under the Internal Revenue Code of 1986. Consistent with Congressional intent, the Secretary proposes to delete §§ 682.810—682.822 in current regulations that provide detailed methods of measuring unmet need. Those regulations would continue to apply to obligations issued prior to the effective date of the 1986 Amendments.

Sections 682.802, 682.803 Submission for Plan Approval—Required Documentation and Amendments to Plan

These sections would be revised to reflect that the Governor, rather than the Secretary, is charged with reviewing and approving or rejecting Plans and amendments to Plans. Because the substantive requirements for Plans remain the same, the revised regulation would continue to require the Authority to submit supporting documentation to accompany its proposed Plan.

Sections 682.804, 682.805 Failure to Comply With Plan and Sanctions for Material Misrepresentation

These sections would continue to effect the requirements of current regulations regarding the consequences of non-compliance with an approved Plan, or misrepresentations made to secure that approval or the approval of the issuance of a particular tax exempt obligation. The revised regulations also would reflect the fact that entitlement to special allowance payments for loans acquired under Plans approved either by a Governor or by the Secretary is conditioned on compliance with the requirements of the Plan and applicable regulations under which the Plan, or a particular obligation, was approved.

Section 682.830 Audit Standards

This section would be revised to require the Authority to provide a copy of the report of its required annual audit to the Governor of the State that approved its Plan as well as to the Department. The audit report must continue to examine and articulate conclusions regarding the authority's compliance with the specific provisions in its Plan. Simple, audited financial statements alone do not meet the requirements of the statute or the regulations, and remain unacceptable as substitutes for the required Plan audit. In addition, the audit must contain an analysis of the operation and expenditures by the Authority using cost categories that permit the Department to conduct its mandated study of the need for tax-exempt financing, and this section would continue to require such analysis according to the commonly-used standards set forth in OMB Circulars A–87 (See 46 FR 9548, January 28, 1981) and A–122 (original publication in the Federal Register on July 8, 1980, at 45 FR 46022, with corrections published on March 17, 1981, at 46 FR 17185 and amendments published on April 27, 1984, at 49 FR 18260, with corrections published on May 8, 1984, at 49 FR 19588).

Section 682.840 Prohibition Against Discrimination as a Condition for Receiving Special Allowance Payments

This section would implement the statutory requirement that Authorities may not discriminate in their loan financing policies and practices on the basis set forth in section 438(d)(3) of the Act. The regulation would require the Authority to take into account, and make accommodations to alleviate, the effect of practices of guaranty agencies that affect its service area that would be violations of the statute if implemented by the authority itself. This regulation, and the companion provision of section 438(d)(2)(D) of the Act, would not prevent the Authority from exercising its discretion, consistent with its obligation to use due diligence in making, servicing, and collecting loans, from refusing to make or purchase a student loan on grounds other than those prescribed here.

Appendix B

Existing appendix B (Guaranteed Student Loan Program Tables for Determination of Expected Family Contribution 1986–87) would be removed in accordance with the 1986 Amendments.

The Secretary is proposing to publish as a new appendix B a reprint of the Student Status Confirmation Report (ED Form 1072) to be used as a guide by a guarantee agency to establish and follow a system and procedures for monitoring the status of a student borrower. By using the format and data elements of this standardized form, a guarantee agency would be in compliance with proposed § 682.401(b)(17).

Appendix D

The Secretary is proposing to include (with technical corrections), as appendix D, Dear Guarantee Agency Director Letter 88–G–138, issued March 11, 1988, setting forth the Secretary's policy for waiving the Secretary's right to recover, or refuse to pay, interest benefits, special allowance, and reinsurance on GSL loans involving lenders' violations of the rules governing due diligence in collection and timely filing of claims. This policy was developed after extensive consultation with lender and guarantee agency representatives.

As was suggested by these groups, the waiver policy includes gradations in the Secretary's exercise of waiver authority corresponding to the seriousness of the violations at issue. In addition, the waiver policy provides more lenient treatment of past violations than for most future violations, in recognition of the fact that some lenders and guarantee agencies did not fully understand the effect a due diligence or timely filing violation has on the right of the lender or guarantee agency to receive program payments. The Bulletin also explains the application of these regulations to a number of specific situations raised by lender and guarantee agency representatives in the course of discussions on the waiver policy.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Many provisions of the proposed regulations repeat statutory requirements. Certain reporting, recordkeeping, and compliance requirements are imposed on guarantee agencies, lenders, and schools by the regulations. These regulations, however, are modeled on existing Stafford Loan and PLUS Program regulations and would not have significant impact on these institutions. Participating guarantee agencies are reimbursed for their costs.

Paperwork Reduction Act of 1980

Sections 682.205, 682.206, 682.208, 682.209, 682.210, 682.211, 682.214, 682.301, 682.305, 682.401, 682.402, 682.404, 682.405, 682.407, 682.408, 682.410, 682.411, 682.412, 682.414, 682.507, 682.508, 682.511, 682.515, 682.601, 682.602, 682.603, 682.604, 682.605, 682.606, 682.610, and 682.711 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Although preparation of this NPRM resulted in extensive consideration of the imposition of information collection and recordkeeping requirements, the Department is particularly interested in comments on ways to further reduce the paperwork burden imposed or enhance the utility of information that is collected in this program. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Dan Chenok.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in ROB–3, room 4310, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To expedite the Department's review and response, comments should be identified by specific sections of the NPRM and presented sequentially.

To assist the Department in complying with the specific requirements of Executive Order 12291, the Paperwork Reduction Act of 1980, and the overall requirement of reducing regulatory burden, the Secretary invites public comment on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

All comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice or procedure, colleges and universities, Education, Loan programs-education, Student aid, Vocational education.

Dated: November 5, 1990.

(Catalog of Federal Domestic Assistance Number 84.032, Stafford Loan Program and PLUS Program)

Laura F. Cavazos,

Secretary of Education.

The Secretary proposes to revise part 682 of title 34 of the Code of Federal Regulations to read as follows:

PART 682—GUARANTEED STUDENT LOAN (GSL) PROGRAMS

Subpart A—Purpose and Scope

Sec.

682.100 The Guaranteed Student Loan programs.
682.101 Participation in the GSL programs.
682.102 Obtaining and repaying a loan.
682.103 Applicability of subparts.

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682.201 Eligible borrowers.
682.202 Permissible charges by lenders to borrowers.
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682.205 Disclosure requirements for lenders.
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682.400 Agreements between a guarantee agency and the Secretary.
682.401 Basic program agreement.
682.402 Death, disability, and bankruptcy payments.
682.403 Federal advances for claim payments.
682.404 Federal reinsurance agreement.
682.405 [Reserved]
682.406 Conditions of reinsurance coverage.
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682.408 Stafford and SLS loan disbursement through an escrow agent.
682.409 Mandatory assignment by guarantee agencies of defaulted loans to the Secretary.
682.410 Fiscal, administrative, and enforcement requirements.
682.411 Due diligence by lenders in the collection of guarantee agency loans.
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Subpart E—Federal Guaranteed Student Loan Programs

682.500 Circumstances under which loans may be guaranteed by the Secretary.
682.501 Extent of Federal guarantee under the Federal GSL programs.
682.502 The application to be a lender.
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682.504 Issuance of Federal loan guarantees.
682.505 Insurance premium.

682.506 Limitations on maximum loan amounts.
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682.511 Procedures for filing a claim.
682.512 Determination of amount payable on a claim.
682.513 Factors affecting coverage of a loan under the loan guarantee.
682.514 Procedures for receipt or retention of payments where the lender has violated program requirements for Federal GSL loans.
682.515 Records, reports, and inspection requirements for Federal GSL program lenders.

Subpart F—Requirements, Standards, and Payments for Participating Schools

682.600 Agreement between an eligible school and the Secretary for participation in the GSL programs.
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Subpart G—Limitation, Suspension, or Termination of Lender Eligibility and Disqualification of Lenders and Schools

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682.713 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against a school.

Subpart H—Special Allowance Payments on Loans Made or Purchased with Proceeds of Tax-Exempt Obligations

682.800 Special allowance payments for loans financed by proceeds of tax-exempt obligations.
682.801 Provisions required in Plan.
682.802 Submission for Plan for approval—required documentation.
682.803 Amendments to Plan.
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682.806–682.829 [Reserved]
682.830 Audit standards.
682.831–682.839 [Reserved]
682.840 Prohibition against discrimination as a condition for receiving special allowance payments.

Appendix A—Standards for Acceptable Refund Policies by Participating Schools

Appendix B—Student Status Confirmation Report

Appendix C—Procedures for Curing Violations of the Due Diligence in Collection and Timely Filing of Claims Requirements Applicable to FISLP and Federal PLUS Program Loans and for Repayment of Interest and Special Allowance Overbillings [Bulletin L–77a]

Appendix D—Policy for Waiving the Secretary's Right to Recover or Refuse to Pay, Interests Benefits, Special Allowance, and Reinsurance on Guaranteed Student Loan, PLUS, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Dear Guarantee Agency Director Letter 88–G–138]

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

Subpart A—Purpose and Scope

§ 682.100 The Guaranteed Student Loan programs.

(a) This part governs the following four programs, collectively referred to in these regulations as "the Guaranteed Student Loan (GSL) programs", in which lenders use their own funds to make loans to enable students or their parents to pay the costs of the student's attendance at postsecondary schools:

(1) The Stafford Loan Program, which encourages the making of loans to undergraduate, graduate, and professional students.

(2) The Supplemental Loans for Students (SLS) Program, which encourages the making of loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

(3) The PLUS Program, which encourages the making of loans to parents of dependent students. Prior to October 17, 1986, the PLUS Program also provided for the making of loans to graduate, professional, and independent undergraduate students.

(4) The Consolidation Program, which encourages the making of loans to borrowers for the purpose of consolidating their repayment obligations, with respect to loans received by those borrowers while they were students, under the Stafford Loan, SLS, PLUS (as in effect prior to October 17, 1986), and Perkins Loan programs, and under the Health Professions Student Loan (HPSL) Program authorized by subpart II of part C of title VII of the Public Health Service Act.

(b)(1) Except for the loans guaranteed directly by the Secretary described in paragraph (b)(2) of this section, a guarantee agency guarantees a lender against losses due to default by the borrower on a GSL loan. If the guarantee agency meets certain Federal requirements, the guarantee agency is reimbursed by the Secretary for all or part of the amount of default claims it pays to lenders.

(2)(i) The Secretary guarantees lenders against losses—

(A) Within the Stafford Loan Program, on loans made under the Federal Insured Student Loan (FISL) Program;

(B) Within the PLUS Program, on loans made under the Federal PLUS Program;

(C) Within the SLS Program, on loans made under the Federal SLS Program; and,

(D) Within the Consolidation Program, on loans made under the Federal Consolidation Program.

(ii) The loan programs listed in paragraph (b)(2)(i) of this section are collectively referred to in these regulations as the "Federal GSL programs".

(iii) The Federal GSL programs are authorized to operate in States not served by a guarantee agency program. In addition, the FISL and Federal SLS programs are authorized, under limited circumstances, to operate in States in which a guarantee agency program does not serve all eligible students.

(Authority: 20 U.S.C. 1071 to 1087–2)

§ 682.101 Participation in the GSL programs.

(a) Eligible banks, savings and loan associations, credit unions, pension funds, insurance companies, schools, and State and private nonprofit agencies may make loans.

(b) Eligible educational institutions, including most colleges, universities, graduate and professional schools, and many vocational, technical, and correspondence schools may participate as schools, enabling an eligible student or his or her parent to obtain a loan to pay for the student's cost of education.

(c) Students who meet certain requirements, including enrollment at a participating school, may borrow under the Stafford Loan and SLS programs. Parents of eligible dependent students may borrow under the PLUS Program. Student borrowers who have at least $5,000 outstanding in Stafford, FISL, Perkins, HPSL, or student PLUS loans may borrow under the Consolidation Program.

(Authority: 20 U.S.C. 1071 to 1087–2)

§ 682.102 Obtaining and repaying a loan.

(a) *Stafford loan application.* Generally, to obtain a Stafford loan, a student completes an application and submits it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guarantee agency or the Secretary.

(b) *SLS loan application.* Generally, to obtain an SLS loan, a student completes an application and submits it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guarantee agency or the Secretary.

(c) *PLUS loan application.* Generally, to obtain a PLUS loan, both the student and the parent complete an application before submitting it to the school for certification. After the school certifies the application, the application is submitted to a participating lender. If the lender decides to make the loan, the lender obtains a loan guarantee from a guarantee agency or the Secretary.

(d) *Consolidation loan application.* Generally, to obtain a Consolidation loan, a borrower completes the application and submits it to a lender holding at least one of the borrower's loans to be consolidated. If all the holders of loans selected for consolidation by the borrower refuse to make a Consolidation loan, the borrower may submit the application to any other lender participating in the Consolidation Program. If a lender decides to make the loan, the lender obtains a loan guarantee from a guarantee agency or the Secretary.

(e) *Repaying a loan*—(1) *General.* Generally, the borrower is obligated to repay the full amount of the loan, late fees, collection costs chargeable to the borrower, and any interest not payable by the Secretary. The borrower's obligation to repay is cancelled if the borrower dies, becomes totally and permanently disabled, or has that obligation discharged in bankruptcy.

(2) *Stafford loan repayment.* Generally, a borrower is not required to make any principal payments on a Stafford loan during the time the borrower is in school. In most cases, the Secretary pays the interest on the borrower's behalf during the time the borrower is in school. When the borrower ceases to be enrolled on at least a half-time basis, a grace period begins during which no principal payments are required, and the Secretary continues to make interest payments on the borrower's behalf. At the end of the grace period, the repayment period begins. During the repayment period, the borrower pays both the principal and the interest accruing on the loan.

(3) *SLS loan repayment.* Generally, the repayment period for an SLS loan begins immediately upon disbursement of the loan by the lender. The first payment of principal and interest on an SLS loan is due from the borrower within 60 days after the loan is fully disbursed.

(4) *PLUS loan repayment.* Generally, the repayment period for a PLUS loan begins immediately upon disbursement of the loan by the lender. The first payment of principal and interest on a PLUS loan is due from the borrower within 60 days after the loan is disbursed.

(5) *Consolidated loan repayment.* Generally, the first payment of principal and interest on a Consolidation loan is due from the borrower within 60 days after the borrower's liability on all loans being consolidated has been discharged.

(6) *Deferment of repayment.* Repayment of principal on a GSL programs loan may be deferred under the circumstances described in § 682.210 of this part.

(7) *Default.* If a borrower defaults on a loan, the guarantor reimburses the lender for the amount of its loss. The guarantor then collects the amount owed from the borrower.

(Authority: 20 U.S.C. 1071 to 1087–2)

§ 682.103 Applicability of subparts.

(a) Subpart B of this part contains general provisions that are applicable to all participants in the GSL programs.

(b) The administration of the GSL programs by a guarantee agency is subject to subparts C, D, F, and G of this part.

(c) The Federal GSL programs are subject to subparts C, E, F, and G of this part.

(d) Certain requirements applicable to schools under all the GSL programs are set forth in subpart F of this part.

(Authority: 20 U.S.C. 1071 to 1087–2)

Subpart B—General Provisions

§ 682.200 Definitions.

(a) The following definitions are set forth in the Student Assistance General Provisions, 34 CFR part 668:

Academic year
Campus-based Programs
Clock hour
College Work-Study Program
Dependent student
Eligible program
Eligible student
Enrolled
Federal Insured Student Loan Program
Independent student
Institution of higher education
National of the United States
Pell Grant Program
Perkins Loan Program (formerly National Direct Student Loan Program)
PLUS Program
Secretary
State
State Student Incentive Grant Program
Supplemental Educational Opportunity Grant Program
Supplemental Loans for Students Program
Vocational school

(b) The following definitions also apply to this part:

Act. The Higher Education Act of 1965, as amended, 20 U.S.C. 1001 *et seq.*

Actual interest rate. The annual interest rate a lender charges on a loan, which may be equal to or less than the applicable interest rate on that loan.

Applicable interest rate. The maximum annual interest rate that a lender may charge under the Act on a loan.

Authority. Any private non-profit or public entity that may issue tax-exempt obligations to obtain funds to be used for the making or purchasing of GSL loans. The term *Authority* also includes any agency, including a State postsecondary institution or any other instrumentality of a State or local governmental unit, regardless of the designation or primary purpose of that agency, that may issue tax-exempt obligations, any party authorized to issue those obligations on behalf of a governmental agency, and any non-profit organization authorized by law to issue tax-exempt obligations.

Borrower. An individual to whom a GSL loan is made.

Co-maker. One of two individuals who are joint borrowers on a PLUS loan and who are equally liable for repayment of the loan.

Default. The failure of a borrower and endorser, if any, to make an installment

payment when due, or to meet other terms of the promissory note, if the Secretary or guarantee agency finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for—

(1) 180 days for a loan repayable in monthly installments; or

(2) 240 days for a loan repayable in less frequent installments.

Disbursement. The transfer of loan proceeds by a lender to a borrower, a school, or an escrow agent by issuance of a check or by electronic funds transfer.

Endorser. An individual who signs a promissory note and agrees to repay the loan in the event that the borrower does not.

Escrow agent. A party that receives the proceeds of a Stafford or SLS loan as an agent of an eligible lender for the purpose of transmitting those proceeds to the borrower or the borrower's school.

Estimated cost of attendance. The tuition and fees normally assessed to a student carrying the same academic workload as the student to whom or on whose behalf a GSL loan is sought, as determined by the school, plus the school's estimate of other expenses reasonably related to attendance at that school, for the period of enrollment for which the loan is sought. These expenses may not include the purchase of a motor vehicle. They may include, but are not limited to—

(1) The costs for rental or purchase of any equipment, materials, or supplies required of all students in the student's course of study, except with regard to a student receiving all or part of his or her instruction by means of telecommunications technology, for the cost of rental or purchase of that equipment;

(2) For a student attending the institution on at least a half-time basis, an allowance for books, supplies, transportation, and miscellaneous personal expenses;

(3) If applicable, the insurance premium for the loan;

(4) If applicable, the origination fee for the loan;

(5) An allowance, as determined by the school, for room and board costs incurred by the student that includes—

(i) For a student without dependents residing at home with parents, an allowance of at least $1,900;

(ii) For a student without dependents residing in institutionally owned or operated housing, a standard allowance based on the amount normally assessed most of the school's residents for room and board; and

(iii) For all other students, an allowance of not less than $2,500 for expenses reasonably incurred by those students for room and board;

(6) For a student enrolled in a correspondence study program, only the tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(7) For a student enrolled in an academic program that normally includes a formal program of study abroad, reasonable costs associated with that study;

(8) For a student with one or more dependents, an allowance based on the expenses reasonably incurred for dependent care based on the number and age of the dependents; and

(9) For a handicapped student, an allowance for those expenses related to his or her handicap, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided by other assisting agencies.

Estimated financial assistance. The estimated amount of assistance that a student has been or will be awarded, during the period of enrollment for which the loan is sought, from Federal, State, institutional, or other scholarship, grant, financial need-based employment, or loan programs, including but not limited to—

(1) Benefits paid under section 156 of title 42 of the United States Code (formerly Social Security Benefits);

(2) Veterans' educational benefits paid under chapters 30, 31, 32, 34, and 35 of title 38 of the United States Code;

(3) Educational benefits paid under chapters 106 and 107 of title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(4) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under chapter 2 of title 10 and chapter 2 of title 37 of the United States Code;

(5) The estimated amount of other Federal student financial aid, including, but not limited to, a Stafford loan for which interest benefits are payable under this part, Pell Grants and campus-based aid, that the student would be expected to receive if the student applied, whether or not the student has applied for that aid, but excluding Stafford loan amounts for which the interest benefits are not payable, SLS and PLUS loan amounts, and Perkins loan and College Work-Study funds that the school determines the student has declined for an acceptable reason; and

(6) If applying for a loan to cover expenses incurred within the same enrollment period as that for which a prior GSL loan was received, the amount of Stafford, SLS and PLUS loan proceeds withheld by the lender on the prior loan to cover the origination fee or insurance premium, if those costs were included in computing the borrower's estimated cost of attendance for the prior loan.

Federal GSL programs. The Federal Insured Student Loan Program, the Federal Supplemental Loans for Students Program, the Federal PLUS Program, and the Federal Consolidation Program.

Foreign school. A school not located in a State.

Full-time student. (1) A student enrolled in an institution of higher education (other than a student enrolled in a program of study by correspondence) who is carrying a full-time academic workload, as determined by the school under standards applicable to all students enrolled in that student's particular program. The student's workload may include any combination of courses, work, research or special studies, whether or not for credit, that the school considers sufficient to classify the student as a full-time student; or

(2) A student enrolled in a vocational school (other than a student enrolled in a program of study by correspondence) who is carrying a workload of not less than 24 clock-hours per week or 12 semester or quarter hours of instruction, or its equivalent.

Grace period. The period that begins on the day on which a Stafford loan borrower ceases to be enrolled as at least a half-time student at a participating school and ends on the day that the repayment period begins. See also "Post-deferment grace period".

Graduate or professional student. A student who, for a period of enrollment—

(1) Is enrolled in a program above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not receiving aid under title IV of the Act as an undergraduate student for the same period of enrollment.

Guarantee agency. A State or private nonprofit organization that has an agreement with the Secretary under which it will administer a loan guarantee program under the Act.

Half-time student. A student who is enrolled in a participating school, is carrying an academic workload that amounts to at least one-half the workload of a full-time student, as determined by the school, and is not a full-time student. A student enrolled solely in an eligible program (as defined in 34 CFR part 668) of study by correspondence is considered a half-time student.

Holder. A party who is in possession of a GSL loan note that is payable to, or has been assigned to, that party.

Legal guardian. An individual appointed by a court to be a "guardian" of a person and specifically required by the court to use his or her financial resources for the support of that person.

Lender. (1) The term "eligible lender" is defined in section 435(d) of the Act, and in paragraphs (2)–(4) of this definition.

(2) With respect to a National or State chartered bank, a mutual savings bank, a savings and loan association, a stock savings bank, a trust company, or a credit union—

(i) The phrase "subject to examination and supervision" in section 435(d) means "subject to examination and supervision in its capacity as a lender"; and

(ii) The phrase "does not have as its primary consumer credit function the making or holding of loans made to students under this part" in section 435(d) means that the lender does not, or, in the case of a bank holding company, the company's wholly-owned subsidiaries as a group do not—

(A) At any time, hold GSL loans that total more than one-half of the lender's or subsidiaries' combined consumer credit loan portfolio, including home mortgages that the lender or subsidiaries own or service; and

(B) In any 12-month period, derive more than one-half of the lender's or subsidiaries' combined net income from consumer credit activities from the lender's or subsidiaries' activities as a lender under the GSL programs;

(3) The corporate parent or other owner of a school that qualifies as an eligible lender under section 435(d) of the Act is not an eligible lender unless the corporate parent or owner itself qualifies as an eligible lender under section 435(d) of the Act.

(4) The term *eligible lender* does not include any lender that the Secretary determines, after notice and opportunity for a hearing before a designated Department official, has—

(i) Offered, directly or indirectly, points, premiums, payments, or other inducements, to any educational institution or other party to secure applicants for GSL loans;

(ii) Conducted unsolicited mailings to a student or a student's parents of GSL loan application forms, except to a student who has previously received a GSL loan from the lender or to a student's parent who has previously received a GSL loan from the lender;

(iii) Offered, directly or indirectly, a GSL loan to a prospective borrower to induce the purchase of a policy of insurance or other product or service by the borrower or other person; or

(iv) Engaged in fraudulent or misleading advertising.

National credit bureau. A credit bureau with a service area that encompasses more than a single State or region of the country.

Origination. A relationship between a school and a lender in which the lender delegates to the school, or to an entity or individual affiliated with the school, substantial functions or responsibilities normally performed by lenders before making GSL loans. In this situation, the school is considered to have "originated" a loan made by the lender.

Origination fee. A fee that a lender is allowed to charge a Stafford Loan borrower at the time the loan is made to help defray the Secretary's costs of subsidizing the loan.

Parent. A student's mother, father, or legal guardian. A parent by adoption is considered to be an individual's mother or father.

Participating school. A school that has in effect a current agreement with the Secretary under § 682.600.

Post-deferment grace period. For a loan made prior to October 1, 1981, a period of six consecutive months beginning on the day following the last day of an authorized deferment period.

School. (1) As used in this part, the term school includes—

(i) A "public or private nonprofit institution of higher education", or a "vocational school", as those terms are defined in 34 CFR part 600;

(ii) A hospital or health care facility that satisfies the definition of "a public or private nonprofit institution of higher education" in 34 CFR part 600, except that the facility need not satisfy § 600.4(a)(4), and that provides training of not less than one year for graduates of accredited health professions programs, leading to a degree or certificate upon completion of such training; or

(iii) With respect to students who are nationals of the United States, a school outside the United States that is comparable to an institution of higher education or to a vocational school and that has been approved by the Secretary for purposes of the GSL programs.

(2) The term includes only those individual units or programs within a school that have been determined by the Secretary to meet all the requirements for school eligibility, including the definition of "eligible program" in 34 CFR part 600.

(3) The term does not include any educational institution that employs or uses commissioned salespersons to promote the availability of Stafford, SLS or PLUS loans for attendance at the institution. For this purpose—

(i) A *commissioned salesperson* is one who receives compensation in any form or amount that is related to, or calculated on the basis of, student applications for enrollment, student enrollments, or student acceptances for enrollment; and

(ii) *Promote the availability* means—

(A) Provide a prospective student with GSL loan application forms, or names of eligible lenders;

(B) Provide other information relating to the GSL programs to a prospective student in order to encourage the student to finance his or her education with a GSL loan; or

(C) Otherwise use the availability of GSL loans as a recruiting tool.

School lender. A school, other than a correspondence school, that has entered into a contract of guarantee under this part with the Secretary or a similar agreement with a guarantee agency.

State lender. In any State, a single State agency or private nonprofit agency designated by the State that has entered into a contract of guarantee under this part with the Secretary or a similar agreement with a guarantee agency.

Temporarily totally disabled. The condition of an individual who, though not totally and permanently disabled, is unable to work and earn money or attend school, during a period of at least 90 days needed to recover from injury or illness. With regard to a disabled dependent of a borrower, this term means a spouse or other dependent who, during a period of injury or illness, requires continuous nursing or similar services from the borrower for a period of at least 90 days.

Totally and permanently disabled. The condition of an individual who is unable to work and earn money or attend school because of an injury or illness that is expected to continue indefinitely or result in death.

Undergraduate student. A student who is enrolled at a school in a program of study, at or below the baccalaureate level, that usually does not exceed four academic years, or is up to five

academic years in length and is designed to lead to a first degree. A student enrolled in any other length program is considered an undergraduate student for only the first four academic years.

(Authority: 5 U.S.C. 1101; 20 U.S.C. 1070 to 1087–2, 1088–1088, 1141)

§ 682.201 Eligible borrowers.

(a) *Student borrower.* Except for a refinanced SLS/PLUS loan made under § 682.209 (e) or (f), a student is eligible to receive a Stafford loan, and an independent undergraduate student, a graduate or professional student, or, subject to paragraph (a)(3) of this section, a dependent undergraduate student, is eligible to receive an SLS loan, if the student meets the requirements for an eligible student under 34 CFR part 668, and—

(1) In the case of an undergraduate student who seeks a Stafford loan or SLS loan for the cost of attendance at a school that participates in the Pell Grant Program, has received a final determination, or, in the case of a student who has filed an application with the school for a Pell Grant, a preliminary determination, from the school of the student's eligibility or ineligibility for a Pell Grant and, if eligible, has applied for the period of enrollment for which the loan is sought;

(2) In the case of an incarcerated student, is scheduled for unconditional release prior to the end of the grace period, as calculated based on the student's anticipated graduation date at the time the loan is made;

(3) In the case of any student who seeks an SLS loan for the cost of attendance at a school that participates in the Stafford Loan Program, has received a determination of need for a Stafford loan, and if determined to have need, has filed an application with a lender for a Stafford loan;

(4) For purposes of a dependent undergraduate student's eligibility for an SLS loan, is a dependent undergraduate student for whom the financial aid administrator determines and documents in the institution's files, after review of the family financial information provided by the student and consideration of the student's debt burden, that the student's parents will likely be precluded by exceptional circumstances from borrowing under the PLUS Program and the student's family is otherwise unable to provide the student's expected family contribution;

(5) Reaffirms any GSL loan debt that was previously cancelled due to the student's total and permanent disability or was discharged in bankruptcy; and

(6)(i) In the case of a student whose previous loan was cancelled due to total and permanent disability, obtains a certification from a physician that the student's condition has improved and that the student is able to engage in substantial gainful activity; and

(ii) Signs a statement acknowledging that any new GSL loan the student receives cannot be cancelled in the future on the basis of any present impairment, unless that condition substantially deteriorates.

(b) *Parent borrower.* A parent is eligible to receive a PLUS Program loan, other than a loan made under § 682.209 (e) or (f), if the parent—

(1) Is borrowing to pay for the educational costs of a dependent student who meets the requirements set forth in 34 CFR part 668;

(2) Provides his or her social security number;

(3) Meets the requirements set forth in 34 CFR part 668; and

(4) Meets the requirement of paragraphs (a)(5) and (a)(6) of this section.

(c) *Consolidation Program borrower.* An individual is eligible to receive a Consolidation loan if, at the time of application for a Consolidation loan, the individual—

(1) Has an outstanding indebtedness of not less than $5,000 on loans eligible for consolidation under this part; and

(2) Is in a grace period preceding repayment, or is in repayment and is not delinquent by more than 90 days, on each of the loans selected for consolidation.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1091)

§ 682.202 Permissible charges by lenders to borrowers.

The charges that lenders may impose on borrowers, either directly or indirectly, are limited to the following:

(a) *Interest*—(1) *Applicable interest rates under the Stafford Loan Program.* (i) Subject to paragraph (a)(1)(ii) of this section, the applicable interest rate on a Stafford loan for a borrower who, on the date the promissory note is signed, does not have an outstanding balance on any loan under this part is—

(A) Seven percent for a loan covering a period of instruction beginning before January 1, 1981;

(B) Nine percent for a loan covering a period of instruction beginning on or after January 1, 1981, but before September 13, 1983;

(C) Eight percent for a loan covering a period of instruction beginning on or after September 13, 1983, but before July 1, 1988; or

(D) For a loan covering a period of instruction beginning on or after July 1, 1988, eight percent until 48 months after the repayment period begins, and ten percent thereafter.

(ii)(A) Except as provided in paragraph (a)(1)(ii)(B) of this section, the applicable interest rate on a Stafford loan for a borrower who, on the date the promissory note evidencing the loan is signed, has an outstanding balance on a previous Stafford loan, is the applicable interest rate on the previous loan.

(B) The applicable interest rate on a Stafford loan for a borrower who, on the date the promissory note evidencing the loan is signed, has an outstanding balance on any loan under this part for which the interest rate was determined under paragraph (a)(1)(i)(D) of this section, is eight percent until 48 months after the repayment period begins, and ten percent thereafter.

(2) *Applicable interest rates under the PLUS Program.* The applicable interest rate on a PLUS loan is—

(i) Nine percent for a loan made on or after January 1, 1981, but before October 1, 1981;

(ii) Fourteen percent for a loan made on or after October 1, 1981, but before November 1, 1982;

(iii) Except as provided in paragraphs (a)(2) (iv) and (v) of this section, twelve percent for a loan made on or after November 1, 1982;

(iv) For a loan disbursed on or after July 1, 1987, and for any loan made under § 682.209 (e) or (f) of this part, a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury Bills auctioned at the final auction held prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.25 percent; or

(B) Twelve percent; and

(v) For a combined repayment schedule under § 682.209(d), the rate that is the weighted average of the rates of all loans included under that schedule.

(3) *Applicable interest rates under the SLS Program.* The applicable interest rate on an SLS Program loan is—

(i) Twelve percent for a loan covering a period of enrollment beginning on or after October 17, 1988, but before July 1, 1987;

(ii) For a loan disbursed on or after July 1, 1987, and for any loan made under § 682.209 (e) or (f) of this part, a variable rate, applicable to each July 1–June 30 period, that equals the bond equivalent rate of the 52-week Treasury Bills auctioned at the final auction held prior to the June 1 immediately

preceding that July 1–June 30 period, plus 3.25 percent; and

(iii) For a combined repayment schedule under § 682.209(d), the rate that is the weighted average of the rates of all loans included under that schedule.

(4) *Actual interest rates under the Consolidation Program.* A Consolidation Program loan bears interest at the rate that is the greater of—

(i) The weighted average of interest rates on the loans consolidated, rounded to the nearest whole percent; or

(ii) Nine percent.

(5) *Actual interest rates under the Stafford Loan, SLS, and PLUS Programs.* A lender may charge a borrower an actual rate of interest that is less than the applicable interest rate specified in paragraphs (a) (1)–(3) of this section.

(b) *Capitalization.* (1) A lender may add accrued interest and unpaid insurance premiums to the borrower's unpaid principal balance in accordance with paragraph (b)(2) of this section. This increase in the principal balance of a loan is called "capitalization."

(2) A lender may capitalize interest that has accrued—

(i) During the in-school period or grace period, if capitalization is expressly authorized by the promissory note, (or with the written consent of the borrower;)

(ii) During a period of authorized deferment;

(iii) During a period of authorized forbearance; or

(iv) During the period from the date the first installment payment was due until it was made.

(3) A lender may capitalize accrued interest under paragraphs (b)(2)(i) through (iii) of this section no more frequently than quarterly, except that capitalization is again permitted when repayment is required to begin or resume. A lender may capitalize accrued interest under paragraph (b)(2)(iv) of this section only on the date repayment of principal is scheduled to begin.

(4) Under the SLS and PLUS programs, the lender shall require the borrower to pay on a monthly or quarterly basis, or with the borrower's written consent, capitalize on a quarterly basis, interest that has accrued during periods in which the borrower—

(i) Is pursuing a full-time course of study at an eligible institution;

(ii) Is pursuing at least a half-time course of study (as determined by the institution) during an enrollment period for which the student has obtained a GSL loan;

(iii) Is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary; or

(iv) Is pursuing a rehabilitation training program for disabled individuals that is approved by the Secretary.

(c) *Origination fee for a Stafford loan.* Except in the case of a Stafford loan on which the borrower does not qualify for interest benefits under § 682.301, a lender—

(1) May charge a borrower an origination fee on a Stafford loan not to exceed the maximum rate specified by Federal statute;

(2) May deduct the origination fee from the proceeds of the loan;

(3) Shall, in the case of a loan disbursed in multiple installments, deduct a *pro rata* portion of the fee from each disbursement; and

(4) Shall refund by a credit against the borrower's loan balance the portion of the origination fee previously deducted from the loan or multiply-disbursed portion thereof attributable to the portion of the loan the proceeds of which are—

(i) Returned by the school to the lender;

(ii) Repaid within 120 days of disbursement; or

(iii) Not delivered to the borrower within 120 days of disbursement.

(d) *Insurance premium.* A lender may charge the borrower the amount of the insurance premium paid by the lender to the guarantor up to three percent of the principal amount of the loan, if that charge is provided for in the borrower's promissory note.

(e) *Administrative charge for a refinanced PLUS or SLS Loan.* A lender may charge a borrower up to $100 to cover the administrative costs of making a loan to a borrower under § 682.209(e) of this part for the purpose of refinancing a PLUS or SLS loan to secure a variable interest rate.

(f) *Late charge.* (1) If authorized by the borrower's promissory note, the lender may require the borrower to pay a late charge under the circumstances described in paragraph (f)(2) of this section. This charge may not exceed six cents for each dollar of each late installment.

(2) The lender may require the borrower to pay a late charge if the borrower—

(i) Fails to pay all or a portion of a required installment payment within 10 days after it is due; and

(ii) Fails to provide written evidence that verifies the borrower's eligibility for an authorized deferment of the payment.

(g) *Collection charges.* If provided for in the borrower's promissory note, and notwithstanding any provisions of State law, the lender may require that the borrower pay costs incurred by the lender in collecting installments not paid when due, including, but not limited to—

(1) Attorney's fees;

(2) Court costs;

(3) Telegrams;

(4) Local and long distance telephone calls;

(5) Skip-tracing costs;

(6) Credit bureau reporting costs;

(7) Costs associated with preparing letters or notices; and

(8) Collection firm charges.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1082, 1087–1, 1091–a)

§ 682.203 Responsible parties.

(a) *Delegation of functions.* A school, lender, or guarantee agency may contract or otherwise delegate the performance of its functions under the Act and this part to a servicing agency or other party. This contracting or other delegation of functions does not relieve the school, lender, or guarantee agency of its duty to comply with the requirements of the Act and this part.

(b) *Trustee responsibility.* A lender that holds a loan in its capacity as a trustee assumes responsibility for complying with all statutory and regulatory requirements imposed on any other holders of a loan.

(Authority: 20 U.S.C. 1082)

§ 682.204 Maximum loan amounts.

(a) *Stafford Loan Program annual limits.* The total amount a student may borrow for any academic year of study under the Stafford Loan Program, including the FISL Program, may not exceed—

(1) $2,625, in the case of an undergraduate student who has not successfully completed the first and second years of an undergraduate program;

(2) $4,000, in the case of an undergraduate student who has successfully completed the first and second years of an undergraduate program; and

(3) $7,500, in the case of a graduate or professional student.

(b) *Stafford Loan Program aggregate limits.* The aggregate guaranteed unpaid principal amount of all Stafford loans made to a student may not exceed—

(1) $17,250, in the case of an undergraduate student; and

(2) $54,750, in the case of a graduate or professional student, including loans for undergraduate study.

(c) *PLUS Program annual limit.* The total amount of all PLUS loans that a parent may borrow on behalf of a dependent student for any academic year of study may not exceed $4,000.

(d) *PLUS Program aggregate limit.* The total guaranteed unpaid principal amount of PLUS Program loans made on behalf of a dependent student may not exceed $20,000.

(e) *SLS Program annual limit.* The total amount of all SLS loans that a student may borrow for any academic year of study may not exceed $4,000.

(f) *SLS Program aggregate limit.* The total guaranteed unpaid principal amount of SLS Program loans made to a student may not exceed $20,000.

(g) *Treatment of consolidation loans for purposes of determining loan limits.* The percentage of the outstanding balance on a Consolidation loan counted against a borrower's aggregate loan limits under the Stafford Loan, SLS, PLUS, or Perkins Loan program shall equal the percentage of the original amount of the Consolidation loan attributable to loans made to the borrower under that program.

(h) In no case may a Stafford, PLUS, or SLS loan amount exceed the student's estimated cost of attendance for the period of enrollment for which the loan is intended, less—

(1) The student's estimated financial assistance for that period; and

(2) The borrower's expected family contribution for that period, in the case of a Stafford loan that is eligible for interest benefits.

(Authority: 20 U.S.C. 1075, 1078, 1078-1, 1078-2, 1078-3, 1079, 1082, 1089)

§ 682.205 Disclosure requirements for lenders.

(a) *Initial disclosure statement.* (1) Except in the case of a Consolidation loan, a lender shall disclose the information described in paragraph (a)(2) of this section to a borrower in writing and the borrower shall acknowledge receipt and understanding thereof by signing the lender's copy of the disclosure either before or at the time of the first disbursement on a GSL loan.

(2) The lender shall provide the borrower with—

(i) The lender's name, the address to which correspondence with the lender and payments should be sent, and a statement that the lender may sell the loan to another party, in which case the address and identity of the party to which correspondence and payments should be sent may change;

(ii) The principal amount of the loan;

(iii) The amount of any charges, including the origination fee and the insurance premium, to be collected by the lender before or at the time of the first disbursement on the loan, and an explanation of whether those charges are to be deducted from the proceeds of the loan or paid separately by the borrower;

(iv) The actual interest rate;

(v) The annual and aggregate maximum amounts that may be borrowed;

(vi) A statement that information concerning the loan, including the date of disbursement and the amount of the loan, will be reported to a national credit bureau;

(vii) An explanation of when repayment of the loan is required and when the borrower is required to pay the interest that accrues on the loan;

(viii) The minimum and maximum number of years in which the loan must be repaid and the minimum amount of required annual payments;

(ix) An explanation of any special options the borrower may have for consolidating or refinancing the loan;

(x) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty;

(xi) A statement describing the circumstances under which repayment of the loan or interest that accrues on the loan may be deferred;

(xii) A statement of availability of the Department of Defense program for repayment of loans on the basis of military service, as provided for in 10 U.S.C. 2171, note;

(xiii) The definition of "default" found in § 682.200, and the consequences to the borrower of a default, including a statement concerning likely litigation, a statement that the default will be reported to a national credit bureau, and statements that the borrower will be liable for substantial collection costs, that the borrower's Federal and State income tax refund may be withheld to pay the debt, that in certain cases the borrower's wages will be garnished or offset, and that the borrower will be ineligible for additional Federal student financial aid, as well as for assistance under most Federal benefit programs.

(xiv) An explanation of the possible effects of accepting the loan on the eligibility of the student for other forms of student financial assistance;

(xv) An explanation of any costs the borrower may incur in the making or collection of the loan; and

(xvi) In the case of a Stafford or SLS loan, other than an SLS loan made under § 682.209 (e) or (f), a statement that the loan proceeds will be transmitted to the school for delivery to the borrower; and

(xvii) A statement of the total cumulative balance, including the loan applied for, owed to that lender, and an estimate of the projected monthly payment amount based on that cumulative outstanding balance.

(b) *Separate statement of borrower rights and responsibilities.* In addition to the disclosures required by paragraph (a) of this section, the lender shall provide the borrower, at the time of the first disbursement, with a separate statement that—

(1) Summarizes the rights and responsibilities of the borrower with respect to the loan;

(2) Indicates the consequences to the borrower of defaulting on the loan described in paragraph (a)(2)(xiii) of this section; and

(3) Indicates that, except for a loan made by a school lender or a lender with an origination relationship with the school, the borrower must repay the loan, even if the student does not receive the services or equipment purchased from the school with the loan proceeds, the services or equipment provided are inadequate, the school fails to pay a refund it owes to the borrower, or the student fails to obtain employment upon graduation.

(c)(1) The lender shall disclose the information described in paragraph (c)(2) of this section in a written statement provided to the borrower at or prior to the beginning of the repayment period. The lender shall make the disclosures during the grace period, in the case of a FISL loan. If the borrower enters the repayment period without the lender's knowledge, the lender shall provide the required disclosures to the borrower in writing immediately upon discovering that the borrower has entered the repayment period.

(2) The lender shall provide the borrower with—

(i) The lender's name, and the address to which correspondence with the lender and payments should be sent;

(ii) The scheduled date upon which the repayment period is to begin;

(iii) The estimated balance, including the estimated amount of interest to be capitalized, owed by the borrower as of the date upon which the repayment period is to begin, or the date of the disclosure, whichever is later;

(iv) The actual interest rate on the loan;

(v) An explanation of any fees that may accrue or be charged to the borrower during the repayment period;

(vi) The borrower's repayment schedule, including the due date of the first installment and the number, amount, and frequency of payments;

(vii) An explanation of any special options the borrower may have for consolidating or refinancing the loan;

(viii) The estimated total amount of interest to be paid on the loan, assuming that payments are made in accordance with the repayment schedule; and

(ix) A statement that the borrower has the right to prepay all or part of the loan at any time, without penalty.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1083(a))

§ 682.206 Due diligence in making a loan.

(a) *General.* (1) Loan-making duties include processing the loan application and other required forms, approving the borrower for a loan, determining the loan amount, explaining to the borrower his or her rights and responsibilities under the loan, and completing and having the borrower sign the promissory note.

(2) A lender that delegates substantial loan-making duties to a school on a loan thereby enters into a loan origination relationship with the school respecting that loan. If that relationship exists, the lender may rely in good faith upon statements of the borrower made in the loan application process, but may not rely upon statements made by the school in that process. A non-school lender that does not have an origination relationship with a school with respect to a loan may rely in good faith upon statements of both the borrower and the school in the loan application process. Except as provided in 34 CFR part 668, subpart E, a school lender may rely in good faith upon statements made by the borrower in the loan application process.

(b) *Processing forms.* Before disbursing a loan, a lender must determine that all required forms have been accurately completed by the borrower, the student, the school, and the lender. A lender may not ask the borrower to sign any form before the borrower has provided on the form all information requested from the borrower.

(c) *Approval of borrower and determination of loan amount.* (1) A lender may make a loan only to an eligible borrower. To the extent authorized by paragraph (a)(2) of this section, the lender may rely upon the information provided on the application by the school, the borrower, and, if the borrower is a parent, the student on whose behalf the loan is sought, in determining the borrower's eligibility for a loan.

(2) In determining the amount of the loan to be made, within the limitations of § 682.204, the lender shall review the data on the student's cost of attendance and estimated financial assistance that is provided on the application form. In no case may the loan amount exceed the student's estimated cost of attendance less the sum of—

(i) The student's estimated financial assistance for the period of enrollment for which the loan is intended; and

(ii) In the case of a Stafford loan that is eligible for interest benefits, the borrower's expected family contribution for that period.

(d) *Promissory note.* (1) The lender shall obtain from the borrower an executed legally enforceable promissory note for each loan as proof of the borrower's indebtedness.

(2) Without the guarantor's prior approval, a lender may not add any clauses to, or modify any provisions of, the most current promissory note provided by the guarantor.

(3) The lender shall give the borrower a copy of each executed note.

(e) *Security, endorsement, and co-makers.* (1) A FISL or Federal PLUS loan shall be made without security or endorsement.

(2) A Federal PLUS Program loan may be made to two eligible parents who agree to be jointly liable for repayment of the loan as co-makers.

(3) A guarantee agency shall not require a lender to obtain security or endorsement for a Stafford or SLS loan.

(f) *Additional requirement for Consolidation loans.* (1) Prior to disbursement of a Consolidation loan, the lender shall obtain from the holder of each loan to be consolidated a certification with respect to the loan held by the holder that—

(i) The loan is a legal, valid, and binding obligation of the borrower;

(ii) The loan was made and serviced in compliance with applicable laws and regulations; and

(iii) In the case of a GSL loan, that the guarantee on the loan is in full force and effect.

(2) The Consolidation loan lender may rely in good faith on the certification provided under paragraph (f)(1) of this section by the holder of a loan to be consolidated.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1079, 1080, 1082, 1083, 1085)

§ 682.207 Due diligence in disbursing a loan.

(a)(1) This section prescribes procedures for lenders to follow in disbursing Stafford, SLS and PLUS loans, other than a refinancing SLS or PLUS Program loan made under § 682.209 (e) or (f). With respect to FISL, Federal SLS, and Federal PLUS loans, references to the "guarantee agency" in this section shall be understood to refer to the "Secretary."

(2) The requirements of paragraphs (b)(1) (ii) and (v) of this section must be satisfied either by the lender or by an escrow agent with which the lender has an agreement pursuant to § 682.406. The lender shall comply with paragraph (b)(1)(iii) of this section whether or not it disburses to an escrow agent.

(b)(1) In disbursing a loan, a lender—

(i) May not disburse loan proceeds prior to the issuance of the guarantee commitment for the loan by the guarantee agency, except with the agency's prior approval;

(ii) Shall disburse loan proceeds by—

(A) A check that is made payable to the borrower, or, if required by the guarantor, is made co-payable to the borrower and the school identified on the loan application, and requires the personal endorsement of the borrower in order to be cashed; or

(B) If authorized by the guarantor, electronic funds transfer to a separate account maintained by the school as trustee for the lender, the guarantee agency, the Secretary, and the borrower, that requires the written approval of the borrower for the release of those funds from the account;

(iii) Shall not disburse loan proceeds earlier than is reasonably necessary to meet the student's cost of attendance for the period for which the loan is made, and, in no case without the Secretary's prior approval, disburse loan proceeds earlier than 30 days prior to the date on which the student is scheduled to enroll;

(iv) Shall require an escrow agent to disburse loan proceeds no later than 21 days after the agent receives the proceeds from the lender; and

(v) Shall disburse—

(A) Directly to the school, in the case of a student borrower attending a school located in a State; or

(B) Directly to the borrower, in the case of a parent borrowing on behalf of an eligible student or a student attending a school not located in a State, and shall notify the school of the amount of the loan within 30 days of the date on which the first disbursement on the loan is made.

(2) Neither a lender nor a school may obtain a borrower's power of attorney or other authorization to endorse or otherwise approve the cashing of a loan check or the release of funds disbursed by electronic funds transfer, nor may a borrower provide this power of attorney or authorization to anyone else. However, the school may present the loan check to a financial institution for deposit in an account of the borrower.

(c)(1) Except for a loan made to a student attending a foreign school, a lender shall disburse a Stafford or SLS loan in multiple installments if—

(i) The amount of the loan is $1,000 or more; and

(ii) On the date of the first disbursement, the time remaining in the period of enrollment for which the loan is made is greater than six months, or 180 days, whichever is less.

(2) In multiply disbursing a loan, a lender shall disburse as follows:

(i) Disbursement must be in two or more installments.

(ii) No installment may exceed one-half of the loan.

(iii) At least one-third of the period of enrollment for which the loan is made must elapse before the second installment is disbursed, except as necessary to permit the second installment to be disbursed on or after the first day of the next semester, quarter, or similar division of the period of enrollment.

(3) For purposes of paragraph (c) of this section, a lender shall consider all loans made for the same period of enrollment as a single loan.

(d)(1) A lender may disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis or after the expiration date of the guarantee commitment, in accordance with paragraphs (d) (2) and (3) of this section.

(2) A disbursement described in paragraph (d)(1) of this section may be made—

(i) Only if the loan proceeds will be used to cover the student's outstanding institutional charges for a period of enrollment for which the loan was intended and during which the student was actually enrolled on at least a half-time basis;

(ii) Within 30 days after the date the student ceases to be enrolled on at least a half-time basis or after the expiration date of the period of enrollment for which the loan was made, whichever is earlier;

(iii) Within 31–60 days after the date the student ceased to be enrolled on at least a half-time basis or after the expiration of the period of enrollment for which the loan was made, whichever is earlier, if the lender receives a written certification from the school after that date, but prior to making the disbursement, setting forth—

(A) The beginning and ending dates during the loan period that the student was enrolled at the school as an eligible student on at least a halftime basis; and

(B) The student's outstanding institutional charges for the loan for that period of actual enrollment; and

(iv) With the guarantee agency's approval, provided on a case-by-case basis, within 61–90 days after the date the student ceased to be enrolled on at least a half-time basis or after the expiration date of the guarantee commitment, whichever is earlier.

(3) The lender shall give notice to the school that the loan proceeds have been disbursed in accordance with paragraph (d)(2) of this section at the time the lender sends the loan proceeds to the school.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1080, 1082, 1085)

§ 682.208 Due diligence in servicing a loan.

(a) The loan servicing process includes reporting to national credit bureaus, responding to borrower inquiries, and establishing the terms of repayment.

(b) An eligible lender or subsequent holder of a GSL loan shall report to at least one national credit bureau—

(1) The total amount of GSL loans the lender has made to the borrower, and the outstanding balance of the loans, within 90 days of each disbursement;

(2) Information concerning repayment of a loan, within 90 days after a change in that status from current to delinquent;

(3) The date the loan is fully repaid by, or on behalf of, the borrower, or discharged by reason of the borrower's death, bankruptcy, or total and permanent disability, within 90 days after that date;

(4) The date of default by the borrower on the loan, not earlier than 30 days nor later than 90 days after that date, unless the borrower makes payments prior to that 30th day sufficient to bring the loan to less than 150 days delinquent; and

(5) Other information required by law to be reported.

(c)(1) A lender shall respond within 30 days after receipt to any inquiries from a borrower or any endorser on a loan.

(2) When a lender learns that a Stafford loan borrower is no longer enrolled at a participating school on at least a half-time basis, the lender shall promptly contact the borrower in order to establish the terms of repayment.

(d) Subject to the rules regarding maximum duration of a repayment period and minimum annual payment described in § 682.209(a)(7), (c), and (h), nothing in this part is intended to limit a lender's discretion in establishing, or, with the borrower's consent, revising a borrower's repayment schedule to provide for graduated or income-sensitive repayment terms. The Secretary strongly encourages lenders to provide a graduated or income-sensitive repayment schedule to a borrower providing for at least the payment of interest charges, unless the borrower requests otherwise, in order to make the borrower's repayment burden commensurate with his or her projected ability to pay. The schedule may provide for graduated or income-sensitive payments for a period covering not more than the first 5 years of repayment, and equal payments must begin not later than the sixth year of repayment.

(e) If the assignment of a GSL, PLUS, or SLS loan is to result in a change in the identity of the party to whom the borrower must send subsequent payments, the assignee of the loan shall, prior to or simultaneously with its receipt of a legal interest in the assigned loan, provide notice to the borrower of the assignment, the identity of the assignee, and the name and address of the party to whom subsequent payments must be sent. For purposes of this paragraph, the term "assigned" is defined in § 682.401(b)(15)(ii).

(f)(1) A lender shall follow the procedures in § 682.412 whenever it learns that, for any reason of which the borrower, but not the school or the lender, knew or should have known when the loan or a portion thereof was made, the borrower, or, if applicable, the student on whose behalf a parent has borrowed—

(i) Did not qualify for all or a portion of a loan made under this part;

(ii) Has received a Stafford loan subject to payment of Federal interest benefits as provided under § 682.301, but is in fact ineligible for some or all of those interest benefits; or

(iii) Has received loan proceeds and has not paid those amounts to the school or repaid them to the lender if the student was a registered student who—

(A) The school notifies the lender under § 682.604(d)(4) has withdrawn or been expelled prior to the first day of classes for the period of enrollment for which the loan was intended; or

(B) Failed to attend school during that period.

(2) For purposes of this section, the term "guarantee agency" in § 682.412(e) refers to the Secretary in the case of a Federal GSL loan.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1080, 1082, 1085)

§ 682.209 Repayment of a loan.

(a) *Conversion of a loan to repayment status.* (1) For a PLUS or Consolidation loan, the repayment period begins on the date the loan is disbursed. The first payment is due within 60 days after the date of disbursement.

(2) For an SLS loan, the repayment period begins on the date of the first disbursement made on the loan. The first payment is due within 60 days after the date of the final disbursement made on the loan.

(3)(i) Except as provided in paragraphs (a) (4) and (5) of this section, for a Stafford loan the repayment period begins—

(A) For a borrower with a loan for which the applicable interest rate is seven percent per year, not less than nine nor more than twelve months following the date on which the borrower is no longer enrolled on at least a half-time basis at an eligible school. The length of this grace period is determined by the lender for loans made under the FISL Program, and by the guarantee agency for loans guaranteed by the agency; and

(B) For a borrower with a loan for which the applicable interest rate is eight or nine percent per year, six months following the month in which the borrower is no longer enrolled on at least a half-time basis at an eligible school.

(ii) The first payment on a Stafford loan is due on a date established by the lender that is no more than 45 days following the first day of the month in which the repayment period begins.

(4) For a borrower of a Stafford loan who is a correspondence student, the grace period specified in paragraph (a)(3) of this section begins on the earliest of the date—

(i) The borrower completes the program;

(ii) The borrower falls 60 days behind the due date for submission of a scheduled assignment, according to the schedule required in § 682.602. However, the school may excuse a borrower's first failure to submit a lesson within this 60-day period after the due date for submission of a particular assignment if, within the 60-day period, the borrower declares, in writing, an intention to continue in the program and an understanding that the required lessons must be submitted on time; or

(iii) That is 60 days following the latest allowable date established by the school for completing the program under the schedule required under § 682.602.

(5) For a Stafford loan, the repayment period begins prior to the end of the grace period if the borrower requests and is granted a repayment schedule that so provides. In this event, a borrower waives the remainder of the grace period.

(6) The repayment schedule may provide for substantially equal installment payments or for installment payments that increase in amount over the repayment period. If a graduated or income-sensitive repayment schedule is established, it may not provide for any single installment that is more than three times greater than any other installment.

(7)(i) Subject to paragraphs (a)(7) (ii) through (iv) of this section, a lender shall allow a borrower at least five years, but not more than ten years, to repay a Stafford, SLS, or PLUS loan, calculated from the beginning of the repayment period. Except in the case of a FISL loan for a period of enrollment beginning on or after July 1, 1986, the lender shall require a borrower to fully repay a FISL loan within 15 years after it is made.

(ii) If the borrower receives an authorized deferment or is granted forbearance, as described in § 682.210 or § 682.211, respectively, the periods of deferment or forbearance are excluded from determinations of the 5-, 10-, and 15-year periods.

(iii) If the minimum annual repayment required in paragraph (c) of this section would result in complete repayment of the loan in less than five years, the borrower is not entitled to the full 5-year period.

(iv) The borrower may, prior to the beginning of the repayment period, request and be granted by the lender a repayment period of less than five years. Subject to paragraph (a)(6)(iii) of this section, a borrower who makes such a request may, by written notice to the lender at any time during the repayment period, extend the repayment period to a minimum of five years.

(8) If, with respect to the aggregate of all loans held by a lender, the total payment made by a borrower for a monthly or similar payment period would not otherwise be a multiple of five dollars, the lender may round that periodic payment to the next highest whole dollar amount that is a multiple of five dollars.

(b) *Prepayment.* (1) The borrower may prepay the whole or any part of a loan at any time without penalty. Except as provided in paragraph (b)(2) of this section, unless the borrower requests that the lender credit the prepayment to future installments, the lender shall credit the entire prepayment to unpaid principal.

(2) If the prepayment amount equals or exceeds three full payments under the repayment schedule established for the loan, the lender may apply the prepayment to future installments, without the prior request of the borrower. If the lender does so, it shall notify the borrower that the payments have been so applied, and no less frequently than quarterly thereafter to remind the borrower of the repayment obligation and the due date of the next scheduled payment, until the next payment is made.

(c) *Minimum annual payment.* (1)(i) Subject to paragraphs (c)(1) (ii) and (iii) of this section, during each year of the repayment period a borrower's total payments to all holders of the borrower's GSL Program loans must total at least $600 or the unpaid balance of all loans, including interest, whichever amount is less.

(ii) If the borrower and the lender agree, the amount paid may be less.

(iii) If the borrower and the borrower's spouse have one or more GSL loans, only their combined annual payment must meet the requirement of paragraph (c)(1)(i) of this section.

(2) The provisions of paragraphs (c)(1) (i) and (ii) of this section may not result in an extension of the 10-year maximum repayment period unless forbearance, as described in § 682.211, has been approved.

(d) *Combined repayment of a borrower's PLUS and SLS loans held by a lender.* (1) A lender may, at the request of a borrower, combine the borrower's PLUS and SLS loans under a single repayment schedule.

(2) The repayment period on the loans included in the combined repayment schedule must be calculated based on the commencement of repayment of the most recent included loan.

(3) The interest rate on the loans included in the new combined repayment schedule must be the weighted average of the rates of all included loans.

(e) *Refinancing a fixed-rate PLUS or SLS Program loan to secure a variable interest rate.* (1) Subject to paragraph (g) of this section, a lender may, at the request of a borrower, refinance a PLUS or SLS loan with a fixed interest rate in order to permit the borrower to obtain a variable interest rate.

(2) A loan made under paragraph (e)(1) of this section—

(i) Must bear interest at the variable rate described in § 682.202(a)(2)(iv); and

(ii) May not extend the repayment period provided for in paragraph (a)(7)(i) of this section.

(3) The lender may not charge an additional insurance premium on the loan, but may charge the borrower an administrative fee pursuant to § 682.202(e).

(f) *Refinancing of a fixed-rate PLUS or SLS Program loan to secure a variable interest rate by discharge of previous loan.* (1) Subject to paragraph (g) of this section, a borrower who has applied for, but been denied, a refinanced loan authorized under paragraph (e) of this section by the holder of the borrower's fixed-rate PLUS or SLS loan, may obtain a loan from

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another lender for the purpose of discharging the fixed-rate loan and obtaining a variable interest rate.

(2) A loan made under paragraph (f)(1) of this section—

(i) Must bear interest at the variable interest rate described in § 682.202(a)(2)(iv);

(ii) May not operate to extend the repayment period provided for in paragraph (a)(7)(i) of this section; and

(iii) Must be disbursed to the holder of the fixed-rate loan to discharge the borrower's obligation thereon.

(3) Upon receipt of the proceeds of a loan made under paragraph (f)(1) of this section, the holder of the fixed-rate loan shall, within three business days thereafter, apply the proceeds to fully discharge the borrower's obligation on the fixed-rate loan, and mail to, or otherwise provide the refinancing lender with—

(i) The original promissory note evidencing the fixed-rate loan; or

(ii) The holder's written certification that the borrower's obligation on the fixed-rate loan has been fully discharged.

(4) The refinancing lender may charge the borrower an insurance premium on a loan made under paragraph (f)(1) of this section, but may not charge a fee to cover administrative costs.

(5) For purposes of deferments under § 682.210, the refinancing loan—

(i) Is considered a PLUS loan if any of the included loans is a PLUS loan made to a parent; or

(ii) An SLS loan if the combined loan does not include a PLUS loan made to a parent.

(g) *Conditions for refinancing certain loans.* (1) A lender may not refinance a loan under paragraph (e) or (f) of this section if that loan is in default, involves a violation of a condition of reinsurance described in § 682.406, or, in the case of a Federal SLS or PLUS loan, is uninsured by the Secretary.

(2)(i) Prior to refinancing a fixed-rate loan under paragraph (f) of this section, the lender shall obtain a written statement from the holder of the loan certifying that—

(A) The holder has refused to refinance the fixed-rate loan under paragraph (e) of this section; and

(B) The fixed-rate loan is eligible for reinsurance under paragraph (g)(1) of this section.

(ii) The holder of the fixed-rate loan shall, within 10 days of receiving a lender's written request to provide a certification under paragraph (g)(2)(i) of this section, provide the lender with that certification, or provide the lender and the guarantor on the loan with a written explanation of the reasons for its inability to provide the certification to the requesting lender.

(iii) The refinancing lender may rely in good faith on the certification provided by the holder of the fixed-rate loan under paragraph (g)(2)(ii) of this section.

(h) *Consolidation loans.* (1) For a Consolidation loan, the repayment period begins on the day of disbursement, with the first payment due within sixty days thereafter.

(2) If the sum of the amount of the Consolidation loan and the unpaid balance on other student loans to the applicant—

(i) Is equal to or greater than $5,000 but less than $7,500, the borrower shall repay the Consolidation loan in not more than 10 years;

(ii) Is equal to or greater than $7,500 but less than $10,000, the borrower shall repay the Consolidation loan in not more than 12 years;

(iii) Is equal to or greater than $10,000 but less than $20,000, the borrower shall repay the Consolidation loan in not more than 15 years;

(iv) Is equal to or greater than $20,000 but less than $45,000, the borrower shall repay the Consolidation loan in not more than 20 years; or

(v) Is equal to or greater than $45,000, the borrower shall repay the Consolidation loan in not more than 25 years.

(3) For the purpose of paragraph (h)(2) of this section—

(i) The unpaid balance on other student loans may not exceed the amount of the Consolidation loan; and

(ii) Does not include the unpaid balance on any loan on which the borrower is in default, unless the borrower has made satisfactory arrangements with the holder to repay that loan.

(4) A repayment schedule for a Consolidation loan—

(i) Shall be established by the lender; and

(ii) Must require that each payment equal at least the interest that accrues during the interval between scheduled payments.

(i) *Treatment by a lender of borrowers' refunds received from schools.* (1) A lender shall treat a payment of a borrower's refund of tuition or other institutional charges received by the lender from a school as a credit against the principal amount owed by the borrower on the borrower's loan.

(2)(i) If a lender receives a refund payment from a school on a loan that is no longer held by that lender, or that has been discharged by another lender by refinancing under § 682.209(f) or by a Consolidation loan, the lender shall transmit the amount of the refund payment to the lender to whom it assigned the loan within 30 days of receipt, or who so discharged the prior loan, with an explanation of the source of the payment.

(ii) Upon receipt of a refund transmitted under paragraph (i)(2)(i) of this section, the holder of the loan shall promptly provide written notice to the borrower that the holder has received the refund.

(j) *Certification on loans to be repaid through consolidation.* Within 10 days after receiving a written request for a certification from a lender under § 682.208(f), a holder shall either provide the requesting lender the certification or, if it is unable to certify to the matters described in that paragraph, provide the requesting lender and the guarantor on the loan at issue with a written explanation of the reasons for its inability to provide the certification.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1082, 1085)

§ 682.210 Deferment.

(a) *General.* (1) A borrower is entitled to have periodic installment payments of principal deferred during authorized periods after the beginning of the repayment period, pursuant to paragraph (b) of this section.

(2)(i) For a loan made before October 1, 1981, the borrower is also entitled to have periodic installments of principal deferred during the six-month period (post-deferment grace period) that commences after the completion of each deferment period or combination of those periods, except as provided in paragraph (a)(2)(ii) of this section.

(ii) Once a borrower receives a post-deferment grace period following an unemployment deferment, as described in paragraph (b)(1)(v) of this section, the borrower does not qualify for additional post-deferment grace periods following subsequent unemployment deferments.

(3) Interest accrues and is paid by the borrower during the deferment period and the post-deferment grace period, if applicable, unless, in the case of a Stafford loan, the loan was determined to be eligible for interest benefits under § 682.301 when the loan was made.

(4)(i) As a condition for receiving a deferment, the borrower shall request the deferment in writing, and provide the lender with all information and documents required to establish eligibility for a specific type of deferment.

(ii) A lender may grant a borrower a deferment based on substantially complete documentation that nevertheless does not include some required information. If the lender does so, the lender shall diligently attempt to obtain the missing information from the borrower. If the lender is unable to obtain that information, it may grant forbearance in accordance with § 682.211(f).

(5) An authorized deferment period begins on the date the condition entitling the borrower to the deferment first exists, but not more than six months before the date the lender receives a request for the deferment and substantially complete documentation, including, without limitation, the signature of the authorized certifying official, required for the deferment under this section.

(6) An authorized deferment period ends on the earlier of—

(i) The date when the condition establishing the borrower's eligibility for the deferment ends;

(ii) Except as provided in paragraph (a)(6)(iv) of this section, the date on which, as certified by an authorized official, the borrower's eligibility for the deferment is expected to end;

(iii) Except as provided in paragraph (a)(6)(iv) of this section, the expiration date of the period covered by any certification required by this section to be obtained for the deferment;

(iv) In the case of an in-school deferment for a Stafford loan guaranteed by a guarantee agency whose student status confirmation report system includes student status reports for each borrower with a student deferment, and in the case of an SLS loan to a borrower received for a period of enrollment that commences at the same time as the deferment, the student's anticipated graduation date as indicated on the loan application, and as updated by notice to the lender from the school or guarantee agency; or

(v) The date when the condition providing the basis for the borrower's eligibility for the deferment has continued to exist for the maximum amount of time allowed for that type of deferment.

(7) A lender may not deny a borrower a deferment to which the borrower is entitled, even though the borrower may be delinquent, but not in default, in making required installment payments. The 180- or 240-day period required to establish default does not run during the deferment and post-deferment grace periods. When the deferment and, if applicable, the post-deferment grace period expire, a borrower resumes any delinquency status that existed when the deferment period began.

(8) A borrower whose loan is in default is not eligible for a deferment as to that loan, unless, in the case of a loan held by a lender, the borrower has made satisfactory repayment arrangements with the holder of the loan.

(9) The borrower must promptly inform the lender when the condition entitling the borrower to a deferment no longer exists.

(10) Authorized deferments are described in paragraph (b) of this section. Specific requirements for each deferment are set forth in paragraphs (c)–(r) of this section.

(b) *Authorized deferments.* (1) Deferment is authorized for a GSL borrower during any period when the borrower is—

(i) Engaged in full-time study at a school, or at a school that is operated by the Federal Government (*e.g.*, the service academies), unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State;

(ii) Engaged in a course of study under an eligible graduate fellowship program;

(iii) Engaged in a rehabilitation training program for disabled individuals;

(iv) Temporarily totally disabled, or unable to secure employment because the borrower is caring for a spouse or other dependent who is temporarily totally disabled, for up to three years; or

(v) Conscientiously seeking, but unable to find, full-time employment in the United States, for up to two years.

(2) For a borrower of a Stafford or SLS loan, and for a parent borrower of a PLUS loan made before August 15, 1993, deferment is authorized during any period when the borrower is—

(i) On active duty status in the United States Armed Forces, or an officer in the Commissioned Corps of the United States Public Health Service, for up to three years (including any period during which the borrower received a deferment authorized under paragraph (b)(5)(i) of this section);

(ii) A full-time volunteer under the Peace Corps Act, for up to three years;

(iii) A full-time volunteer under title I of the Domestic Volunteer Service Act of 1973 (ACTION programs), for up to three years;

(iv) A full-time volunteer for a tax-exempt organization, for up to three years; or

(v) An intern, for up to two years (including any period during which the borrower received a deferment authorized under paragraph (b)(5)(iii) of this section).

(3) For a borrower of a Stafford or SLS loan who has been enrolled on at least a half-time basis at an eligible institution during the six months preceding the commencement of this deferment, deferment is authorized during a period of up to six months during which the borrower is—

(i) Pregnant, caring for his or her newborn child, or caring for his or her adopted child immediately following adoption; and

(ii) Not attending a school or gainfully employed.

(4) For a "new" borrower, as defined in paragraph (b)(7) of this section, of a Stafford, SLS, or PLUS loan, deferment is authorized during periods when the borrower is engaged in at least half-time study at a school for a period of enrollment for which the borrower received a Stafford or SLS loan, or at a school that is operated by an agency of the Federal Government (*e.g.*, the service academies), unless the borrower is not a national of the United States and is pursuing a course of study at a school not located in a State.

(5) For a new borrower, as defined in paragraph (b)(7) of this section, of a Stafford or SLS loan, deferment is authorized during any period when the borrower is—

(i) On active duty status in the National Oceanic and Atmospheric Administration Corps, for up to three years (including any period during which the borrower received a deferment authorized under paragraph (b)(2)(i) of this section);

(ii) [Reserved]; or

(iii) Engaged in an internship or residency program, for up to two years (including any period during which the borrower received a deferment authorized under paragraph (b)(2)(v) of this section); or

(iv) A mother who has preschool-age children and who is earning not more than $1.00 per hour above the Federal minimum wage, for up to 12 months of employment, and who began that employment within one year of entering or re-entering the work force on a full-time basis.

(6) For a parent borrower of a PLUS loan, deferment is authorized during any period when the student on whose behalf the parent borrower received the loan—

(i) Is dependent; and

(ii) Meets the conditions and provides the required documentation, for any of the deferments described in paragraphs (b)(1)(i)–(iii) and (b)(4) of this section.

(7) For purposes of this section, a "new borrower" with respect to a loan is a borrower who, on the date he or she signs the promissory note, has no outstanding balance on—

(i) A GSL, SLS, or PLUS loan made prior to July 1, 1987, for a period of enrollment beginning prior to July 1, 1987; or

(ii) A Consolidation loan made prior to July 1, 1987.

(c) *Student deferment.* (1) Except as provided in paragraph (c)(3) of this section, to qualify for a deferment for full-time study or half-time study at a school, the borrower shall provide the lender with—

(i) A statement from an authorized official of the school certifying that the borrower is enrolled on a full-time basis, or, in the case of a deferment described in paragraph (b)(4) of this section, on at least a halftime basis; and

(ii) In the case of a deferment described in paragraph (b)(4) of this section for a borrower who is at least half-time but less than full-time, a statement from the financial aid administrator of the school that the borrower has received, or will receive, a Stafford or SLS loan for the period of enrollment for which the deferment is sought; and

(iii) A completed deferment application, as prescribed by the guarantee agency.

(2) Except as provided in paragraph (c)(3) of this section, the period of enrollment covered in a single certification under paragraph (c)(1) of this section may not exceed one academic year.

(3) An SLS loan application certified by the school for the period of enrollment commencing at the same time as the deferment constitutes sufficient documentation for a student deferment for that SLS loan, and for any outstanding SLS loan previously made to that borrower that is held by the lender receiving the application. The lender may treat the loan application as certifying a deferment period lasting until the anticipated graduation date appearing on the application, unless and until it receives notice that the borrower has ceased the level of study (*i.e.*, full-time or half-time) required for the deferment.

(d) *Graduate fellowship deferment.* (1) To qualify for a deferment for study in a graduate fellowship program, a borrower shall provide the lender with a statement from an authorized official of the borrower's fellowship program certifying—

(i) That the borrower holds at least a baccalaureate degree conferred by an institution of higher education;

(ii) That the borrower has been accepted or recommended by an institution of higher education for acceptance into an eligible graduate fellowship program requiring full-time study in an academic or professional subject area; and

(iii) The borrower's anticipated completion date in the program.

(2) For purposes of paragraph (d)(1) of this section, an eligible graduate fellowship program is a fellowship program that—

(i) Provides sufficient financial support to graduate fellows to allow for full-time study for at least six months;

(ii) Requires a written statement from each applicant explaining the applicant's objectives before the award of that financial support;

(iii) Requires a graduate fellow to submit periodic reports, projects, or evidence of the fellow's progress; and

(iv) In the case of a course of study at a foreign university, accepts the course of study for completion of the fellowship program.

(e) *Rehabilitation training program deferment.* (1) To qualify for a rehabilitation training program deferment, a borrower shall provide the lender with a statement from an authorized official of the borrowers's rehabilitation training program certifying that the borrower is either receiving, or is scheduled to receive, services under an eligible rehabilitation training program for disabled individuals.

(2) For purposes of paragraph (e)(1) of this section, an eligible rehabilitation training program for disabled individuals is a program that—

(i) Is licensed, approved, certified, or otherwise recognized as providing rehabilitation training to disabled individuals by—

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services program;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Department of Veterans Affairs; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that—

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that would normally prevent an individual from engaging in full-time employment, either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(f) *Temporary total disability deferment.* (1) To qualify for a temporary total disability deferment, a borrower shall provide the lender with a statement from a physician, who is a doctor of medicine or osteopathy and is legally authorized to practice, certifying that the borrower is temporarily totally disabled.

(2) A borrower is not considered temporarily totally disabled on the basis of a condition that existed before he or she applied for the loan, unless the condition substantially deteriorated, as established by the statement required under paragraph (f)(1) of this section, since he or she submitted the loan application so as to render the borrower temporarily totally disabled.

(3) A lender may not grant a deferment based on a single certification under paragraph (f)(1) of this section beyond the date that is six months after the date of certification.

(g) *Dependent's temporary total disability deferment.* (1) To qualify for a deferment given to a borrower whose spouse or other dependent is temporarily totally disabled, the borrower shall provide the lender with a statement—

(i) From a physician, who is a doctor of medicine or osteopathy and is legally authorized to practice, certifying that the borrower's spouse or dependent—

(A) Is temporarily totally disabled; and

(B) Requires continuous nursing or similar services; and

(ii) From the borrower, certifying that the borrower is unable to secure full-time employment because he or she is providing nursing or similar services to the borrower's spouse or other dependent who is temporarily totally disabled. For the purpose of this paragraph, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(2) A lender may not grant a deferment based on a single certification under paragraph (g)(1) of this section beyond the date that is six months after the date of the certification.

(h) *Unemployment deferment.* (1) To qualify for an unemployment deferment, a borrower shall provide the lender with a written certification—

(i) Describing the borrower's conscientious search for full-time employment, including, for each of at least six attempts to secure employment during the period covered by the certification—

(A) The name of the employer contacted;

(B) The employer's address and phone number;

(C) The name or title of the person contacted; and

(ii) Setting forth the borrower's latest permanent home address and, if applicable, the borrower's latest temporary address; and

(iii) Affirming that the borrower has registered with a public or private employment agency, if one is accessible, specifying the agency's name and address and the date of registration.

(2) A borrower may qualify for an unemployment deferment whether or not the borrower has been previously employed.

(3) An unemployment deferment is not justified if the borrower refuses to seek or accept employment for which the borrower feels overly qualified by virtue of education or previous experience.

(4) For the purpose of this paragraph, full-time employment involves at least 30 hours of work a week and is expected to last at least three months.

(5) A lender may not grant a deferment based on a single certification under paragraph (h)(1) of this section beyond the date that is six months after the date of the certification.

(i) *Military deferment.* (1) To qualify for a military deferment, a borrower shall provide the lender with a statement from the borrower's commanding or personnel officer certifying—

(i) That the borrower is on active duty in the Armed Forces of the United States; and

(ii) The date on which the borrower's service is expected to end.

(2) For the purpose of this section, the Armed Forces means the Army, Navy, Air Force, Marine Corps and the Coast Guard.

(3) A borrower enlisted in a reserve component of the Armed Forces may qualify for a military deferment only for service on a full-time basis for a period of at least one year in length, as evidenced by official military orders.

(4) A borrower enlisted in the National Guard qualifies for a military deferment only while the borrower is on active duty status as a member of the U.S. Army or Air Force Reserves, and meets the requirements of paragraph (i)(3) of this section.

(j) *Public Health Service deferment.* To qualify for a Public Health Service deferment, the borrower shall provide the lender with a statement from an authorized official of the United States Public Health Service (USPHS) certifying—

(1) That the borrower is engaged in full-time service as an officer in the Commissioned Corps of the USPHS; and

(2) The date on which the borrower's service is expected to end.

(k) *Peace Corps deferment.* To qualify for a deferment for service under the Peace Corps Act, the borrower shall provide the lender with a statement from an authorized official of the Peace Corps certifying—

(1) That the borrower has agreed to serve for a term of at least one year; and

(2) The date on which the borrower's service is expected to end.

(l) *Full-time volunteer service in the ACTION programs.* To qualify for a deferment as a full-time paid volunteer in an ACTION program, the borrower shall provide the lender with a statement from an authorized official of the program certifying—

(1) That the borrower has agreed to serve for a term of at least one year; and

(2) The date on which the borrower's service is expected to end.

(m) *Deferment for full-time volunteer service for a tax-exempt organization.* To qualify for a deferment as a full-time paid volunteer for a tax-exempt organization, a borrower shall provide the lender with a statement from an authorized official of the volunteer program certifying—

(1) That the borrower—

(i) Serves in an organization that has obtained an exemption from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) Provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions;

(iii) Does not receive compensation that equals or exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization;

(iv) Does not, as part of his or her duties, give religious instruction, conduct worship services, engage in religious proselytizing, or engage in fund-raising to support religious activities; and

(v) Has agreed to serve on a full-time basis for a term of at least one year; and

(2) The date on which the borrower's service is expected to end.

(n) *Internship or residency deferment.* (1) To qualify for an internship or residency deferment under paragraph (b)(2)(v) or (b)(5)(iii) of this section, the borrower shall provide the lender with a statement from an authorized official of the organization with which the borrower is undertaking the internship or residency program certifying—

(i) That the internship or residency program is a supervised training program that requires the borrower to hold at least a baccalaureate degree prior to acceptance into the program;

(ii) That, except for a borrower that provides the statement from a State official described in paragraph (n)(2) of this section, the internship or residency program leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training;

(iii) That the borrower has been accepted into the internship or residency program;

(iv) That the borrower holds at least a baccalaureate degree; and

(v) The anticipated dates on which the borrower will begin and complete the internship or residency program, or, in the case of a borrower providing the statement described in paragraph (n)(2) of this section, the anticipated date on which the borrower will begin and complete the minimum period of participation in the internship program that the State requires be completed before an individual may be certified for professional practice or service.

(2) For a borrower who does not provide a statement certifying to the matters set forth in paragraph (n)(1)(ii) of this section to qualify for an internship deferment under paragraph (b)(2)(v) of this section, the borrower shall also provide the lender with a statement from an official of the appropriate State licensing agency certifying that the internship or residency program, or a portion thereof, is required to be completed before the borrower may be certified for professional practice or service.

(o) *Parental leave deferment.* (1) To qualify for the parental leave deferment described in paragraph (b)(3) of this section, the borrower shall provide the lender with—

(i) A statement from an authorized official of a participating school certifying that the borrower was enrolled on at least a half-time basis during the six months preceding the beginning of the deferment period;

(ii) A statement from the borrower certifying that the borrower—

(A) Is pregnant (or the borrower's spouse is pregnant), caring for his or her newborn child, or caring for his or her adopted child immediately following placement of the child through the adoption process;

(B) Is not, and will not be, attending school during the deferment period; and

(C) Is not, and will not be, engaged in full-time employment during the deferment period; and

(iii) A physician's statement, birth certificate, or adoption certificate demonstrating the existence of the pregnancy, birth, or adoption.

(2) For purposes of paragraph (o)(1)(ii)(C) of this section, full-time employment involves at least 30 hours of work per week and is expected to last at least three months.

(p) *NOAA deferment.* To qualify for a National Oceanic and Atmospheric Administration (NOAA) deferment, the borrower shall provide the lender with a statement from an authorized official of the NOAA corps, certifying—

(1) That the borrower is on active duty service in the NOAA corps; and

(2) The date on which the borrower's service is expected to end.

(q) *Targeted teacher deferment.* [Reserved]

(r) *Working mother deferment.* (1) To qualify for the working mother deferment described in paragraph (b)(5)(iv) of this section, the borrower shall provide the lender with a statement certifying that she—

(i) Is the mother of a preschool-age child;

(ii) Entered or reentered the workforce not more than one year before the commencement of the period for which the deferment is being sought;

(iii) Is currently engaged in full-time employment; and

(iv) Does not receive compensation that exceeds $1.00 per hour above the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage).

(2) In addition to the certification required under paragraph (r)(1) of this section, the borrower shall provide to the lender documents demonstrating the age of the child (*e.g.*, a birth certificate) and the rate of her compensation (*e.g.*, a pay stub showing her hourly rate of pay).

(3) For purposes of this paragraph—

(i) A preschool-age child is one who has not yet enrolled in first grade or a higher grade in elementary school; and

(ii) Full-time employment involves at least 30 hours of work a week and is expected to last at least 3 months.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1085)

§ 682.211 Forbearance.

(a)(1) The Secretary encourages a lender to grant forbearance for the benefit of a borrower in order to prevent the borrower from defaulting on the borrower's repayment obligation, or to permit the borrower to resume honoring that obligation after default. "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than were previously scheduled.

(2) A lender may grant forbearance of payments of principal and interest under paragraphs (b) and (c) of this section only if—

(i) The lender reasonably believes, and documents in the borrower's file, that the borrower intends to repay the loan but, due to poor health or other acceptable reasons, is currently unable to make scheduled payments; or

(ii) The borrower's payments of principal are deferred under § 682.210 and the Secretary does not pay interest benefits on behalf of the borrower under § 682.301.

(3) If two individuals are liable for repayment of a PLUS Program loan as co-makers, the lender may grant forbearance only if the ability of both individuals to make scheduled payments has been impaired.

(4) If payments of interest are forborne, they may be capitalized as provided in § 682.202(b).

(b) A lender may grant forbearance on terms that are consistent with the minimum annual payment requirement and the 10-year maximum repayment period if the lender and borrower agree in writing to the terms of the forbearance, or, in the case of forbearance of interest during a period of deferment, if the lender informs the borrower at the time the deferment is granted that interest payments are to be forborne.

(c) A lender may grant forbearance for a period of up to one year at a time on terms that are inconsistent with the minimum annual repayment and the 10-year maximum repayment period only if both the borrower and an authorized official of the lender agree in writing to the forbearance.

(d) A lender may grant forbearance to permit a borrower to resume honoring the repayment obligation after default consistent with the minimum annual payment requirements and the 10-year maximum repayment period. The terms of the forbearance agreement in this situation must include a new repayment schedule.

(e) Except in the case of forbearance of interest payments during a deferment period, if a forbearance involves the postponement of all payments, the lender must contact the borrower at least once every three months during the period of forbearance and remind the borrower of the outstanding obligation to repay.

(f) A lender may grant forbearance, upon notice to the borrower, with respect to payments of interest and principal that are overdue—

(1) For a properly granted period of deferment for which the lender learns the borrower did not qualify, plus up to 30 days for processing of the forbearance by the lender;

(2) Upon the commencement of an authorized deferment period; or

(3) If a lender is unable to obtain missing information from a borrower under § 682.210(a)(4)(ii) within 30 days of receiving substantially complete deferment documentation, for the previously granted deferment period, plus up to 30 days for processing of the forbearance by the lender.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1080, 1082)

§ 682.212 Prohibited transactions.

(a) No points, premiums, payments, or additional interest of any kind may be paid or otherwise extended to any eligible lender or other party in order to—

(1) Secure funds for making loans; or

(2) Induce a lender to make loans to either the students or the parents of students of a particular school or particular category of students or their parents.

(b) The following are examples of transactions that, if entered into for the purposes described in paragraph (a) of this section, are prohibited:

(1) Cash payments by or on behalf of a school made to a lender or other party.

(2) The maintaining of a compensating balance by or on behalf of a school with a lender.

(3) Payments by or on behalf of a school to a lender of servicing costs on loans that the school does not own.

(4) Payments by or on behalf of a school to a lender of unreasonably high servicing costs on loans that the school does own.

(5) Purchase by or on behalf of a school of stock of the lender.

(6) Payments ostensibly made for other purposes.

(c) Except when purchased by the Student Loan Marketing Association, an agency of any State functioning as a secondary market, or in other circumstances approved by the Secretary, notes, or any interest in notes, shall not be sold or otherwise transferred at discount if the underlying loans were made—

(1) By a school; or

(2) To students or parents of students attending a school by a lender having common ownership with that school.

(d) Except to secure a loan from the Student Loan Marketing Association or an agency of a State functioning as a secondary market or in other circumstances approved by the Secretary, a school or lender (with respect to a loan made to a student, or a parent of a student, attending a school having common ownership with that lender), may not use a loan made under the GSL programs as collateral for any loan bearing aggregate interest and other charges in excess of the sum of the interest rate applicable to the loan plus the rate of the then most recently-prescribed special allowance under § 682.302.

(e) The prohibitions described in paragraphs (a), (b), (c), and (d) of this section apply to any school, lender, or other party that would participate in a proscribed transaction.

(f) This section does not preclude a buyer of loans made by a school from obtaining from the seller of those loans a warranty that—

(1) Covers future reductions by the Secretary or a guarantee agency in computing the amount of loss payable on default claims filed on the loans, where the reductions are attributable to an act or failure to act on the part of the seller or previous holder; and

(2) Does not cover matters for which a purchaser is charged with responsibility under this part, such as due diligence in collecting loans.

(g) Section 490(c) of the Act provides that any person who knowingly and willfully makes an unlawful payment to an eligible lender as an inducement to make, or to acquire by assignment, a GSL loan shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1097)

§ 682.213 Prohibition against the use of the Rule of 78's.

For purposes of the calculations required by this part, a lender shall not use the Rule of 78's to calculate the outstanding principal balance of a loan.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082)

§ 682.214 Compliance with equal credit opportunity requirements.

In making a Stafford loan, a lender shall comply with the equal credit opportunity requirements of regulation B (12 CFR part 202). With regard to regulation B, the Secretary considers the Stafford loan program to be a credit assistance program authorized by Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.6(a)(1). Therefore, under 12 CFR 202.6(d), the lender may request a loan applicant to disclose his or her marital status, income from alimony, child support, and separate maintenance income, and the spouse's financial resources.

(Authority: 20 U.S.C. 1071–1087–2)

§ 682.215 Defenses to the borrower's obligation to repay a GSL loan.

(a) Except as provided in paragraph (b) of this section, a borrower may not assert as a defense to repayment of any portion of a GSL loan the failure of the school attended by the student to or for whom the loan was made to—

(1) Provide the student with a particular amount or quality of educational services for the period of enrollment for which the GSL loan is made;

(2) Make a refund of institutional charges for that period on account of the withdrawal of the student;

(3) Otherwise perform in accordance with representations made to the student regarding its services or the employment prospects in the fields for which it purports to prepare its students; or

(4) Comply with the requirements of—

(i) Accrediting agency standards; or

(ii) Applicable Federal, State, or local law.

(b) Subject to paragraph (d) of this section, a borrower may assert a defense to repayment of a GSL loan made or originated by a school due to a failure by the school described in paragraphs (a)(1) through (4) of this section—

(1) Only to the extent that the failure entitles the student to a refund of some portion of the tuition and fees paid to the school and the refund is allocable to the GSL loan under the policy adopted by the school in accordance with 34 CFR part 668; and

(2) In the case of a loan originated by a school, unless the lender or subsequent holder notifies the borrower in writing of the matters described in paragraph (c) of this section, prior to or at the time of the first disbursement on the loan, and, in the case of a Stafford loan, within 60 days prior to the beginning of the repayment period.

(c) The notice described in paragraph (b)(2) of this section shall inform the borrower that—

(1) The borrower's loan was made, and, if the loan has been sold, is held, by a lender that is not affiliated with the school attended by the borrower by common ownership, control, or management;

(2) The borrower's loan repayment obligation is therefore separate and distinct from the school's obligations to the borrower, and

(3) A failure by the school described in paragraph (a) of this section cannot excuse any portion of the borrower's obligation to repay the loan.

(d)(1) Neither the guarantee agency nor the Secretary is subject to a defense otherwise available under this section or other applicable law unless the agency had actual notice of facts establishing the defense at the time the agency paid a default claim on the loan.

(2) The Secretary is not subject to a defense otherwise available under this section or other applicable law on a Federal GSL loan unless the Secretary had actual notice of facts establishing the defense at the time that the Secretary paid a default claim on the loan.

(3) For purposes of this paragraph, the guarantor (*i.e.*, the guarantee agency or, in the case of a Federal GSL loan, the Secretary) does not have notice of a fact unless—

(i) The documents presented to the guarantor by the holder of the loan to support a claim for payment upon default on the loan demonstrate the existence of the fact;

(ii) Findings contained in a report of an audit or program review performed by the guarantor of the school attended by the student or the lender that made the loan establish the existence of the fact; or

(iii) An official of the guarantor with authority to approve default claims, or to initiate or approve an action to limit, suspend or terminate the school or lender, has actual knowledge of the existence of the fact.

(e) Upon acquiring a GSL loan, a new holder assumes responsibility for the consequences of any previous violation of applicable statutes or regulations or the terms of the loan. A GSL loan note is not a negotiable instrument, and a subsequent holder of such a note is not a holder in due course. If the borrower has a valid legal defense that could be asserted against the original holder, the borrower can also assert the defense against the new holder, unless the new holder is a guarantee agency or the Secretary and is not subject to the defense by operation of paragraph (d) of this section.

(f) The inclusion in this part of a requirement applicable to a school, lender, or guarantee agency does not mean that a violation of that requirement constitutes a defense to the

borrower's obligation to repay a GSL loan. This includes, but is not limited to, a lender's duty to engage in the due diligence activities specified in §§ 682.207, 682.208, and 682.411, and a guarantee agency's duty to engage in the due diligence activities specified in § 682.410(b).

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082)

Subpart C—Federal Payments of Interest and Special Allowance

§ 682.300 Payment of interest benefits on Stafford loans.

(a) *General.* The Secretary pays a lender a portion of the interest on a Stafford loan on behalf of a borrower who qualifies under § 682.301. This payment is known as interest benefits.

(b) *Covered interest.* (1) The Secretary pays a lender the interest that accrues on an eligible Stafford loan—

(i) During all periods prior to the beginning of the repayment period, except as provided in paragraph (b)(2) of this section;

(ii) During any period when the borrower has an authorized deferment, and, if applicable, a post-deferment grace period; and

(iii) During the repayment period for loans described in paragraph (d)(2) of this section.

(2) The Secretary's obligation to pay interest benefits on an otherwise eligible loan terminates on the earliest of—

(i) The date the borrower's loan is repaid;

(ii) With respect to the portion of a loan represented by a single disbursement of loan proceeds—

(A) The date the check for the disbursement is returned uncashed to the lender; or

(B) The 120th day after the date of that disbursement, if—

(1) The check for the disbursement has not been cashed on or before that date; or

(2) The proceeds of the disbursement made by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date;

(iii) The date of default by the borrower;

(iv) The date that the lender receives payment of a claim for loss on the loan;

(v) The date the borrower's loan is discharged in bankruptcy;

(vi) The date the lender determines that the borrower has died or has become totally and permanently disabled; or

(vii) The date the loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, with respect to that portion of the loan that ceases to be guaranteed or reinsured, regardless of whether the lender has filed a claim for loss on the loan with the guarantor.

(3) Section 682.412(a) sets forth circumstances under which a lender may be required to repay interest benefits received on a loan guaranteed by a guarantee agency.

(c) *Interest not covered.* The Secretary does not pay—

(1) Interest for which the borrower is not otherwise liable; or

(2) Interest paid on behalf of the borrower by a guarantee agency.

(d) *Rate.* (1) Except as provided in paragraph (d)(2) of this section, the Secretary pays the lender at the actual interest rate on a loan provided that the actual interest rate does not exceed the applicable interest rate.

(2) For a loan disbursed prior to December 15, 1988, or subject to a binding commitment made prior to that date, the Secretary pays an amount during the repayment period equivalent to three percent per year of the unpaid principal amount of the loan.

(Authority: 20 U.S.C. 1078, 1082)

§ 682.301 Eligibility of borrowers for interest benefits on Stafford loans.

(a) *General.* (1) A borrower must demonstrate financial need in accordance with part F of the Act to qualify for interest benefits on a Stafford loan.

(2) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need if that organization—

(i) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(ii) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(A) Directs the member to pursue the course of study; or

(B) Provides subsistence support to its members.

(b) *Application for interest benefits.* To apply for interest benefits, the student shall submit a loan application to the lender. The application must include a certification from the student's school of the following information:

(1) The estimated cost of attendance for the student for the academic period for which the loan is intended.

(2) The estimated financial assistance for the student for the academic period for which the loan is intended.

(3) The student's expected family contribution, as determined pursuant to part F of the Act, under a need analysis system approved by the Secretary.

(4) The amount of the student's need for a loan, as determined pursuant to part F of the Act, under a need analysis system approved by the Secretary.

(c) *Use of loan proceeds to replace expected family contribution.* A borrower may use the amount of a SLS, PLUS, or non-subsidized Stafford loan obtained for a period of enrollment to replace the expected family contribution determined under paragraph (b)(3) of this section for that period of enrollment.

(Authority: 20 U.S.C. 1078, 1082, 1087–1)

§ 682.302 Payment of special allowance on GSL loans.

(a) *General.* The Secretary pays a special allowance to a lender on an eligible GSL loan. The special allowance is a percentage of the average unpaid principal balance of a loan, including capitalized interest, computed in accordance with paragraph (c) of this section.

(b) *Eligible loans.* (1) Except for Stafford loans disbursed on or after October 1, 1981 that do not qualify for interest benefits under § 682.301, or as provided in paragraph (b)(2) or (e) of this section, GSL loans that otherwise meet program requirements are eligible for special allowance payments.

(2) For a loan made under the SLS or PLUS Program on or after July 1, 1987 or made under § 682.209 (e) or (f) no special allowance is paid for any period for which the interest rate determined under § 682.202(a)(2)(iv)(A) for that loan does not exceed 12 percent.

(c) *Rate.* (1) Except as provided in paragraph (c)(2) of this section, the special allowance rate for an eligible loan during a three-month period is calculated by—

(i) Determining the average of the bond equivalent rates of the 91-day Treasury bills auctioned during the three-month period;

(ii) Subtracting the applicable interest rate for that loan;

(iii) Adding—

(A) Three and one-quarter percent to the resulting percentage, for a loan made on or after November 16, 1986;

(B) Three and one-quarter percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning on or after November 16, 1986;

(C) Three and one-half percent to the resulting percentage, for a loan made prior to October 17, 1986, or for a loan described in paragraph (c)(2) of this section; or

(D) Three and one-half percent to the resulting percentage, for a loan made on or after October 17, 1986 but before November 16, 1986, for a period of enrollment beginning prior to November 16, 1986;

(iv) Rounding the result upward to the nearest one-eighth of one percent, for a loan made prior to October 1, 1981; and

(v) Dividing the resulting percentage by four.

(2) The special allowance rate determined under paragraph (c)(1)(iii)(C) of this section applies to loans made or purchased from funds obtained from the issuance of an obligation of the—

(i) Maine Educational Loan Marketing Corporation to the Student Loan Marketing Association pursuant to an agreement entered into on January 31, 1984; or

(ii) South Carolina Student Loan Corporation to the South Carolina National Bank pursuant to an agreement entered into on July 30, 1986.

(3)(i) Subject to paragraph (c)(3)(ii) of this section, the special allowance rate is one-half the rate calculated under paragraph (c)(1)(iii)(C) of this section for a loan made or guaranteed on or after October 1, 1980, that was made or purchased with funds obtained by the holder from—

(A) The issuance of obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1986;

(B) Collections or payments by a guarantor on a loan that was made or purchased with funds obtained by the holder from obligations described in paragraph (c)(3)(i)(A) of this section;

(C) Interest benefits or special allowance payments on a loan that was made or purchased with funds obtained by the holder from obligations described in paragraph (c)(3)(i)(A) of this section;

(D) The sale of a loan that was made or purchased with funds obtained by the holders from obligations described in paragraph (c)(3)(i)(A) of this section; or

(E) The investment of the proceeds of obligations described in paragraph (c)(3)(i)(A) of this section.

(ii) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section may not be less than—

(A) Two and one-half percent per year on eligible loans for which the applicable interest rate is seven percent;

(B) One and one-half percent per year on eligible loans for which the applicable interest rate is eight percent; or

(C) One-half of one percent per year on eligible loans for which the applicable rate is nine percent.

(d) *Termination of special allowance payments on a loan.* (1) The Secretary's obligation to pay special allowance on a loan terminates on the earliest of the date—

(i) The borrower's loan is repaid;

(ii) The borrower's loan check is returned uncashed to the lender;

(iii) The lender receives payment on a claim for loss on the loan;

(iv) The loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, with respect to that portion of the loan that ceases to be guaranteed or reinsured, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;

(v) Forty-five days after the borrower's default on the loan, unless the lender files a claim for loss on the loan with the guarantor together with all required documentation, prior to that 45th day; or

(vi) The 120th day after the date of disbursement, if—

(A) The loan check has not been cashed on or before that date; or

(B) The loan proceeds disbursed by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school on or before that date; or

(vii) The date the guarantee agency returns a claim for loss on the loan to the lender for additional documentation.

(2) Section 682.412(a) sets forth the circumstances under which a lender may be required to repay special allowance received on a loan guaranteed by a guarantee agency.

(e) *Special allowance payments for loans financed by proceeds of a tax-exempt obligations.* (1) The Secretary pays a special allowance on a loan described in paragraph (c)(3)(i) of this section that is held by or on behalf of an Authority only if the loan meets the requirements of § 682.800.

(2) The Secretary pays a special allowance to an Authority at the rate prescribed in paragraph (c)(1) of this section on a loan described in paragraph (c)(3)(i) of this section—

(i) After the loan is pledged or otherwise transferred in consideration of funds derived from sources other than those described in paragraph (c)(3)(i) of this section and—

(ii) If the authority retains a legal or equitable interest in the loan—

(A) The prior tax-exempt obligation is retired; or

(B) The prior tax-exempt obligation is rendered null and void by means of obligations that the Authority certifies in writing to the Secretary bear a yield that does not exceed the yield permitted under Internal Revenue Service regulations, 26 CFR 1.103–14, with regard to investments of proceeds of a tax-exempt refunding obligation.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1)

§ 682.303 [Reserved]

§ 682.304 Methods for computing interest benefits and special allowance.

(a) *General.* The Secretary pays a lender interest benefits and special allowance on eligible loans on a quarterly basis. These calendar quarters end on March 31, June 30, September 30, and December 31 of each year. A lender may use either the average daily balance method or the actual accrual method to determine the amount of interest benefits payable on a lender's loans. A lender shall use the average daily balance method to determine the balance on which the Secretary computes the amount of special allowance payable on its loans.

(b) *Average daily balance method for interest benefits.* (1) Under this method, the lender adds the unpaid principal balance outstanding on all loans qualifying for interest benefits at each actual interest rate for each day of the quarter, and divides the sum by the number of days in the quarter and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for qualified loans outstanding at each actual interest rate.

(2) The Secretary computes the interest benefits due on all qualified, loans at each actual interest rate by multiplying the average daily balance thereof by the actual interest rate, multiplying this result by the number of days in the quarter, and then dividing this result by the actual number of days in the year.

(c) *Actual accrual method for interest benefits.* (1) Under this method, the lender computes the total unpaid principal balance outstanding on all qualified loans at each actual interest rate on each day of the quarter, multiplies this result by the actual interest rate, and divides this result by the actual number of days in the year, or alternatively, 365.25 days. A lender who chooses to divide by 365.25 days must do so for four consecutive years.

(2) The interest benefits due for a quarter equal the sum of the daily interest benefits due, computed under paragraph (c)(1) of this section, for each day of the quarter.

(d) *Average daily balance method for special allowance.* (1) To compute the average daily balance outstanding for special allowance purposes, the lender

adds the unpaid principal balance outstanding on all qualified loans at each applicable interest rate for each day of the quarter and divides this sum by the number of days in the quarter and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for the quarter.

(2) The Secretary computes the special allowance payable to a lender based upon the average daily balance computed by the lender under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.305 Procedures for payment of interest benefits and special allowance.

(a) *General.* (1) To receive payments of interest benefits and special allowance, a lender must submit quarterly reports to the Secretary on a form provided or prescribed by the Secretary.

(2) The lender shall report, on the quarterly report required by paragraph (a)(1) of this section, the amount of origination fees it was authorized to collect, and the amount of those fees refunded to borrowers, during the quarter covered by the report.

(3) The Secretary reduces the amount of interest benefits and special allowance payable to the lender by the amount of origination fees the lender was authorized to collect during the quarter under § 682.202(c), whether or not the lender actually collected that amount. The Secretary increases the amount of interest benefits and special allowance payable to the lender by the amount of origination fees refunded to borrowers during the quarter under § 682.202(c).

(4)(i) If a lender sells or otherwise transfers a loan within the calendar quarter in which the loan is disbursed, either the lender making the loan or the new holder may report the amount of the origination fee to the Secretary.

(ii) A lender that makes a loan and any subsequent holder are jointly and severally liable for payment of the origination fee on the loan to the Secretary.

(b) *Penalty interest.* (1)(i) If the Secretary does not pay interest benefits or special allowance within 30 days after the Secretary receives an accurate, timely, and complete request for payment from a lender, the Secretary pays the lender penalty interest.

(ii) The payment of interest benefits or special allowance is deemed to occur, for purposes of this paragraph, when the Secretary—

(A) Authorizes the Treasury Department to pay the lender;

(B) Credits the payment due the lender against a debt that the Secretary determines is owed the Secretary by the lender; or

(C) Authorizes the Treasury Department to pay the amount due the lender to another Federal agency for credit against a debt that the agency has determined is owed it by the lender.

(2) Penalty interest is an amount that accrues daily on interest benefits and special allowance due to the lender. The penalty interest is computed at the daily rate of the sum of—

(i) The interest rate applicable to the eligible loans on which payment is requested; and

(ii) The special allowance rate applicable to loans made on or after November 16, 1986 under § 682.302(c)(1)(iii) (A), for the quarter for which payment is requested.

(3) The Secretary pays penalty interest from the later of—

(i) The 31st day after the final day of the quarter covered by the request for payment; or

(ii) The 31st day after the Secretary's receipt of an accurate, timely, and complete request for payment from the lender.

(4) Penalty interest continues to accrue through the day the Secretary pays the interest benefits and special allowance at issue, in accordance with paragraph (b)(1)(ii) of this section.

(5) A request for interest benefits and special allowance is considered timely only if it is received by the Secretary within 90 days following the end of the quarter to which the request pertains.

(6) A request for interest benefits and special allowance is not considered accurate and complete if it—

(i) Requests payments to which the lender is not entitled under § 682.300–§ 682.302;

(ii) Includes loans that the Secretary has directed the lender in writing to exclude from the request;

(iii) Does not contain all information required by the Secretary or contains conflicting information; or

(iv) Is not provided and certified on the form and in the manner prescribed by the Secretary.

(c) *Independent audits.* (1) A lender that originates in excess of or whose outstanding GSL loan volume during any fiscal year exceeds $10 million shall arrange for an independent financial and compliance audit of the lender's billings for interest benefits and special allowance payments.

(2) The audit required under paragraph (c)(1) of this section must—

(i) Examine the lender's compliance with the Act and applicable regulations.

(ii) Examine the lender's financial management of its GSL program activities.

(iii) Be conducted in accordance with the general standards for financial and compliance audits of the United States General Accounting Office's (GAO) *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.* Procedures for audits are contained in audit guides developed by and available from the Office of the Inspector General of the Department. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations, and GAO standards.

(iv) Be conducted annually and must be submitted to the Secretary within 90 days of the end of the Federal fiscal year. The first audit must cover the lender's interest and special allowance billings for the Federal fiscal year that ended September 30, 1989. Each subsequent audit must cover each fiscal year thereafter.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

Subpart D—Administration of the Guaranteed Student Loan Programs by a Guarantee Agency

§ 682.400 Agreements between a guarantee agency and the Secretary.

(a) The Secretary enters into agreements with a guarantee agency whose loan guarantee program meets the requirements of this subpart. The agreements enable the guarantee agency to participate in the GSL programs and to receive the various payments and benefits incident to that participation.

(b) There are three agreements:

(1) *Basic program agreement.* In order to participate in the GSL programs a guarantee agency must have a basic program agreement. Under this agreement—

(i) Borrowers whose Stafford loans are guaranteed by the agency may qualify for interest benefits that are paid to the lender on the borrower's behalf;

(ii) Lenders under the guarantee agency program may receive special allowance payments from the Secretary, and have death, disability, and bankruptcy claims paid by the Secretary through the guarantee agency; and

(iii) The guarantee agency may apply for the administrative cost allowance, and for the other agreements described in this section.

(2) *Federal advances for claim payments agreement.* A guarantee agency must have an agreement for Federal advances for claim payments to receive and use Federal advances to pay default claims.

(3) *Reinsurance agreement.* A guarantee agency must have a reinsurance agreement to receive reimbursement from the Secretary for its losses on default claims.

(c) The Secretary's execution of an agreement does not indicate acceptance of any current or past standards or procedures used by the agency.

(d) All of the agreements are subject to subsequent changes in the Act, in other applicable Federal statutes, and in regulations that apply to the GSL programs.

(Authority: 20 U.S.C. 1072, 1078-1, 1078-2, 1078-3, 1082, 1087, 1087-1)

§ 682.401 Basic program agreement.

(a) *General.* In order to participate in the GSL programs, a guarantee agency shall enter into a basic agreement with the Secretary.

(b) *Terms of agreement.* In the basic agreement, the guarantee agency shall agree to ensure that its loan guarantee program meets the following requirements at all times:

(1) *Aggregate loan limits.* The aggregate guaranteed unpaid principal amount for all Stafford, SLS, and PLUS loans made to a borrower may not exceed the amounts set forth in § 682.204 (b), (d), and (f).

(2) *Annual loan limits.* (i) The annual loan maximum amount for a borrower that may be guaranteed for an academic year may not exceed the amounts set forth in § 682.204 (a), (c), and (e).

(ii) A guarantee agency may make the loan amounts authorized under paragraph (b)(2)(i) of this section applicable for either—

(A) A period of not less than seven nor more than 12 months; or

(B) A period of not less than seven months in which the student earns the amount of credit in the student's program of study required by the student's school as the amount necessary for the student to advance in academic standing as normally measured on an academic year basis (for example, from freshman to sophomore) or, in the case of schools using clock hours, completion of at least 900 clock hours.

(iii) The amount of a loan guaranteed may not exceed the student's estimated cost of attendance for the academic period for which the loan is intended, less the estimated financial assistance.

(3) *Duration of borrower eligibility.* (i) A student borrower under the Stafford Loan Program or the SLS Program, and a parent borrower under the PLUS Program, is eligible to receive a guaranteed loan for any year of the student's study at a participating school; and

(ii) Loans must be available to or on behalf of any student for at least six academic years of study.

(4) *Borrower responsibilities.* (i) The borrower shall indicate his or her preferred lender on the loan application, if he or she has such a preference.

(ii) The borrower shall give the lender, as part of the application process for a Stafford, SLS, or PLUS loan—

(A) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance;

(B) Information demonstrating that the borrower is eligible for the loan;

(C) Information concerning the outstanding GSL loans of the borrower and, for a parent borrower, of the student, including the portion of any Consolidation loan used to discharge a Stafford, SLS, or PLUS loan.

(D) A statement of the sources and amount of the student's estimated financial assistance, as defined in § 682.200, for the period of enrollment for which the loan is intended;

(E) A statement from the student authorizing the school to release information relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (*e.g.*, the student's enrollment status, financial assistance, and employment records); and

(F) Information from the school demonstrating that the student qualifies as an eligible student and providing the maximum amount that may be borrowed by or on behalf of the student.

(iii) The borrower shall give the lender, as part of the application process for a Consolidation loan—

(A) Information demonstrating that the borrower is eligible for the loan under § 682.201(c); and

(B) A statement that the borrower does not currently have another application for a consolidation loan pending.

(iv) The borrower shall promptly notify—

(A) The lender or the guarantee agency of any change of name, address, or student status to less than half-time; and

(B) The school of any change in local address, employer, or employer's address.

(5) *School eligibility.* A school that has in effect a program participation agreement with the Secretary under § 682.600 is eligible to participate in the program of the agency except to the extent that—

(i) The school's eligibility is limited, suspended, or terminated by the Secretary under 34 CFR part 668, or by the guarantee agency under standards and procedures that are substantially the same as those in 34 CFR part 668;

(ii) The school is disqualified by the Secretary under section 432(h)(3) of the Act;

(iii) There is a State constitutional prohibition affecting the school's eligibility; or

(iv) The school's programs consist of study solely by correspondence.

(6) *Lender eligibility.* (i) An eligible lender may participate in the program of the agency under reasonable criteria established by the guarantee agency except to the extent that—

(A) The lender's eligibility has been limited, suspended, or terminated by the Secretary under subpart G of this part, or by the agency under standards and procedures that are substantially the same as those in subpart G of this part or in section 432(h)(2) of the Act; or

(B) The lender is disqualified by the Secretary under section 432(h)(1) of the Act and § 682.712; or

(C) There is a State constitutional prohibition affecting the lender's eligibility.

(ii) The agency may not guarantee a loan made by a school lender that is not located in the geographical area that the agency serves.

(iii) The guarantee agency may refuse to guarantee loans made by a school on behalf of students not attending that school.

(7) *Out-of-State schools.* The agency shall guarantee Stafford, SLS, and PLUS loans for students who are legal residents of any State served by the agency under § 682.404(i)(2), but who attend schools out of that State, and for parents who are legal residents of that State and are borrowing on behalf of students attending schools out of that State. In guaranteeing these loans, the agency may not impose any restrictions that it does not apply to borrowers who are legal residents of the State attending in-State schools, or to parent borrowers who are legal residents of the State and are borrowing for students attending in-State schools.

(8) *Out-of-State residents.* The agency shall guarantee Stafford, SLS, and PLUS loans for students who are not legal residents of any State served by the agency under § 682.404(i)(2), but who attend schools in that State, and for parents who are not legal residents of that State and who are borrowing on behalf of students attending schools in that State. In guaranteeing these loans, the agency may not impose any restrictions that it does not apply to borrowers who are legal residents of the State attending in-State schools, or to parent borrowers who are legal

residents of the State and who are borrowing for students attending in-State schools.

(9) *Insurance premiums.* (i) Except for a SLS or PLUS loan refinanced under § 682.209(f), the guarantee agency may charge the lender an insurance premium on each Stafford, SLS, or PLUS loan it guarantees.

(ii) The guarantee agency may use the proceeds of this charge only to guarantee loans and to cover costs incurred by the guarantee agency in the administration of its loan guarantee program.

(iii) The lender may deduct the amount of the premium from the borrower's loan proceeds. For a multiple-disbursed loan, the insurance premium must be deducted proportionately from each disbursement of the loan proceeds.

(iv) The amount of the insurance premium may not exceed three percent of the principal balance of the loan, excluding interest or other charges the lender may have added to the principal balance.

(v) The lender shall refund to the borrower, by a credit against the borrower's loan balance, all or a part of the insurance premium paid by the borrower on a loan under the following circumstances:

(A) The premium, or the portion attributable to a portion of a multiple disbursed loan, must be refunded if the loan check is returned uncashed to the lender.

(B) The premium must be refunded if, within 120 days of disbursement—

(*1*) The loan is repaid in full;

(*2*) The loan check has not been cashed; or

(*3*) The loan proceeds disbursed by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school.

(10) *Payments for lender referral service.* (i) The guarantee agency may not use insurance premiums to pay incentive fees to lenders, except to those lenders who agree to participate in, and make GSL loans (other than Stafford loans that do not qualify for interest benefits) to all eligible students referred under, a qualified lender referral service.

(ii) For purposes of this paragraph, the term "qualified lender referral service" means a lender referral service offered by a guarantee agency under which the agency refers to a participating lender each eligible student applying for the service who is either a resident of the State in which the agency is the designated guarantee agency or attending a school in that State, and who has sought and been unable to find a lender willing to make a GSL loan (other than a Stafford loan that does not qualify for interest benefits) to the student.

(11) *Administrative fee for Consolidation loans.* The guarantee agency may charge a lender a fee, not to exceed $50, reasonably calculated to cover the agency's cost of increased or extended liability incurred in guaranteeing a Consolidation loan. The lender may not pass the fee on to the borrower. If it charges the fee, the agency must charge it for all loans made under the agency's Consolidation program.

(12) *Administrative fee for refinancing fixed-rate PLUS or SLS loans.* The guarantee agency may require a lender to pay to the guarantee agency up to 50 percent of the fee the lender charges a borrower under § 682.202(e) for the purpose of defraying the agency's administrative costs incident to the guarantee of a lender's reissuance of a fixed-rate PLUS or SLS loan at a variable interest rate.

(13) *Guarantee liability.* The guarantee agency shall guarantee 100 percent of the unpaid principal balance of each loan guaranteed.

(14) *Guarantee agency administration.* In the case of a State loan guarantee program administered by a State government, the program must be administered by a single State agency, or by one or more private nonprofit institutions or organizations under the supervision of a single State agency. For this purpose, "supervision" includes, but is not limited to, setting policies and procedures, and having full responsibility for the operation of the program.

(15) *Loan assignment.* (i) The guarantee agency shall allow a loan to be assigned only to—

(A) An eligible lender;

(B) A guarantee agency, in the case of a borrower's default, death, total and permanent disability, or filing of a bankruptcy petition or for other circumstances approved by the Secretary, such as a loan made for attendance at a school that closes;

(C) An educational institution, whether or not it is an eligible lender, in connection with the institution's repayment to the agency or to the Secretary of guarantee or reinsurance claim payments made on a loan that was ineligible for those payments; or

(D) The Secretary.

(ii) For the purpose of this paragraph, "assigned" means any kind of transfer of an interest in the loan, including a pledge of such an interest as security.

(16) *Transfer of guarantees.* The guarantee agency may transfer its guarantee obligation on a loan to another guarantee agency, but only with the approval of the transferee agency and the holder of the loan.

(17) *Standards and procedures.* (i) The guarantee agency shall establish, disseminate to concerned parties, and enforce standards and procedures for—

(A) Ensuring that all lenders in its program meet the definition of "eligible lender" in section 435(d) of the Act;

(B) School and lender participation in its program;

(C) Limitation, suspension, or termination of school and lender participation;

(D) The exercise of due diligence by lenders in making, servicing, and collecting loans; and

(E) The timely filing by lenders of default, death, disability, and bankruptcy claims.

(ii) The guarantee agency shall ensure that its program, and all participants in its program, at all times meet the requirements of subparts B, C, D and F of this part.

(18) *Student status confirmation.* The guarantee agency shall use a form containing data elements and report format approved by the Secretary for monitoring the enrollment status of a student borrower that includes, at a minimum—

(i) Transmitting to the school, for attendance at which the student received a GSL loan, a student status confirmation report for completion at least semi-annually in accordance with a schedule established by the agency;

(ii) Reporting to the current holder of the loan, within 60 days of the receipt of the completed report from the school, any change in the student's enrollment status reported by the school that triggers—

(A) The commencement of the borrower's grace period; or

(B) The commencement or resumption of the borrower's immediate obligation to make scheduled payments; and

(iii) The use of the data elements and report format provided in appendix B to this part.

(19) *Submission of interest and special allowance information.* Upon the Secretary's request, the guarantee agency shall submit, or require its lenders to submit, information that the Secretary deems necessary for determining the amount of interest benefits and special allowance payable on the agency's guaranteed loans.

(20) *Submission of information for reports.* The guarantee agency shall require lenders to submit to the agency the information necessary for the agency to complete the reports required by § 682.414(b).

(21) *Guarantee agency transfer of information.* (i) A guarantee agency from which another guarantee agency requests information regarding Stafford and SLS loans made after January 1, 1987, to students who are residents of the State for which the requesting agency is the principal guarantee agency as defined in § 682.800(d), shall provide—

(A) The name and social security number of the student; and

(B) The amount borrowed under the loan and the cumulative amount borrowed by the student in loans under the Stafford and SLS programs guaranteed by the responding agency.

(ii) The reasonable costs incurred by an agency in fulfilling a request for information made under paragraph (b)(21)(i) of this section must be paid by the guarantee agency making the request.

(c)(1) *Lender of last resort.* The guarantee agency shall ensure that it, or an eligible lender described in section 435(d)(1)(D) of the Act, serves as a lender of last resort in the State in which it is the principal guarantee agency, as defined in § 682.800(d).

(2) The lender of last resort shall make a Stafford loan to any eligible student who—

(A) Qualifies for interest benefits, pursuant to § 682.301, for a loan amount of at least $200; and

(B) Has been otherwise unable, after conscientious efforts, to obtain a loan from another eligible lender for the same period of enrollment.

(3) The guarantee agency, or an eligible lender described in 435(d)(1)(D) of the Act, may arrange for a loan required to be made by this paragraph to be made by another eligible lender.

(d) *Review of forms and procedures.* (1) The guarantee agency shall submit to the Secretary its application forms, promissory notes, write-off criteria and procedures. The agency may not use these materials until the Secretary approves them. The agency's application form may request the student's and the student's parents' names, addresses, and social security numbers. However, the Secretary will not approve any application form that requests any other information from a student or the student's parents that the student or the student's parents have already provided for on the common financial aid form required by section 483(a)(1) of the Act.

(2) The guarantee agency shall promptly submit to the Secretary its regulations, statements of procedures and standards, and other materials that substantially affect the operation of the agency's program, and any proposed changes to those materials. Except as provided in paragraph (d)(1) of this section, the agency may use these materials unless and until the Secretary disapproves them.

(3) The guarantee agency shall ensure that all program materials meet the requirements of Federal and State law, including, but not limited to, the Act and the regulations in this part and part 668.

(e) *Prohibited inducements.* A guarantee agency shall not—

(1) Offer, directly or indirectly, any premium, payment, or other inducement to an employee or student of a school, or an entity or individual affiliated with a school, to secure applicants for GSL loans;

(2) Conduct unsolicited mailings of student loan application forms to students enrolled in secondary school;

(3) Conduct fraudulent or misleading advertising concerning loan availability.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

§ 682.402 Death, disability, and bankruptcy payments.

(a) *General.* (1) Rules governing the cancellation of loans due to death, total and permanent disability, or discharge in bankruptcy are set forth in paragraphs (a)(2), (b), (c), and (d) of this section.

(2)(i) If a PLUS loan was obtained by two parents as co-makers and only one of the borrowers dies, becomes totally and permanently disabled, or has his or her loan obligation discharged in bankruptcy, the other borrower remains obligated to repay the loan.

(ii) If the borrower dies or becomes totally and permanently disabled, the obligation of the borrower and any endorser to make further payments on the loan is cancelled.

(3) The Secretary does not pay a death, disability, or bankruptcy claim if the loan would not qualify either for payment of a default claim or for reinsurance payments, in the event of default.

(b) *Death.* (1) If an individual borrower dies, the obligation of the borrower and any endorser to make any further payments on the loan is cancelled.

(2) In determining that a borrower has died, the lender may rely on a death certificate or other proof of death that is acceptable under applicable State law. If a death certificate or other acceptable proof of death is not available, the borrower's obligation on the loan can be cancelled only if the guarantee agency determines that other evidence establishes that the borrower has died.

(3) After receiving information indicating that the borrower has died, the lender shall, if it believes the information to be reliable, suspend any collection activity against the borrower and promptly request that the borrower's representative provide the documentation described in paragraph (b)(2) of this section. During the suspension of collection activity, which shall not exceed 30 days, the lender shall diligently attempt to obtain documentation from the borrower's representative. If, despite the lender's diligent attempts, the borrower's representative fails to provide the documentation within 30 days, the lender shall resume collection activity from the point that it had been discontinued, and is deemed to have exercised forbearance as to repayment of the loan during the period when collection activity was suspended.

(4) Once the lender has determined, under paragraph (b)(2) of this section, that the borrower has died, the lender may not attempt to collect on the loan from the borrower's estate or from any endorser.

(5) The lender shall return to the sender any payments received from the estate or paid on behalf of the borrower after the date of the borrower's death.

(c) *Total and permanent disability.* (1) If the lender determines that an individual borrower is totally and permanently disabled, the obligation of the borrower and any endorser to make any further payments on the loan is cancelled. A borrower is not considered totally and permanently disabled on the basis of a condition that existed at the time he or she applied for the loan, unless the borrower's condition has substantially deteriorated later, so as to render the borrower totally and permanently disabled.

(2) After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender shall promptly request that the borrower or the borrower's representative submit, on a form provided or approved by the Secretary, a certification by a physician who is a doctor of medicine or osteopathy and legally authorized to practice in a State, that the borrower is totally and permanently disabled. The lender shall continue collection until it receives either the certification of total disability or a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled. Except as provided in paragraph (c)(4) of this

section, after receiving the physician's certification or letter, the lender may not attempt to collect from the borrower or any endorser.

(3) After receiving the physician's certification described in paragraph (c)(2) of this section, the lender shall return any payments that it received from or on behalf of the borrower after the date the borrower or the borrower's representative notified the lender of the borrower's claim of total disability.

(4) If the lender determines that a borrower who claims to be totally and permanently disabled is not in fact disabled, or if the lender does not receive the physician's certification of total disability within 60 days of the receipt of the physician's letter requesting additional time, as described in paragraph (c)(2) of this section, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of both principal and interest from the date the lender received the physician's letter requesting additional time and may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(d) *Bankruptcy*—(1) *General.* If a borrower files a petition for relief under the Bankruptcy Code, the Secretary reimburses the holder of the loan for unpaid principal and interest on the loan in accordance with paragraphs (d) through (i) of this section.

(2) *Notice of bankruptcy filing.* The lender shall determine that a borrower has filed a bankruptcy petition on the basis of a notice of the first meeting of creditors received from the bankruptcy court, other documents showing a petition has been filed, or written notice from the debtor's attorney of the filing date of the petition.

(3) *Suspension of collection activity.* If a lender receives notice that a borrower has filed a petition for relief in bankruptcy, the lender shall immediately suspend any collection efforts outside the bankruptcy proceeding—

(i) Against the borrower, and

(ii) If the borrower has filed for relief under chapter 13, against any co-maker or endorser.

(4) *Proof of claim.* The lender shall file a proof of claim with the bankruptcy court within 30 days after the lender receives a notice of first meeting of creditors unless, in the case of a proceeding under chapter 7, the notice states that the borrower has no assets.

(5) *Filing of bankruptcy claim with the guarantee agency.* (i) The lender shall file a bankruptcy claim on the loan with the guarantee agency, in accordance with paragraph (e) of this section, if—

(A) The borrower has filed a petition for relief under chapter 13 of the Bankruptcy Code; or

(B) The borrower has filed a petition for relief under chapters 7, 11, or 12, and—

(*1*) The loan has been in repayment for more than five years (exclusive of any applicable suspension of the repayment period) from the date of the filing of the petition for relief;

(*2*) The loan has been in repayment for less than 5 years (exclusive of any applicable suspension of the repayment period) from the date of the filing of the petition for relief, and the borrower has commenced an action to have the loan obligation determined to be dischargeable on grounds of undue hardship.

(ii) If the loan has been in repayment for less than 5 years, (exclusive of any applicable suspension of the repayment period) from the date of the filing of the petition for relief, but the borrower has not commenced an action to have the loan obligation determined to be dischargeable on grounds of undue hardship, the lender shall continue to hold the loan notwithstanding the bankruptcy proceeding. Once the bankruptcy proceeding is completed or dismissed, the lender shall treat the loan as if the lender had exercised forbearance as to repayment of principal and interest accrued from the date of the borrower's filing of the bankruptcy petition until the date the lender is notified that the bankruptcy proceeding is completed or dismissed.

(e) *Claim procedures for a loan held by a lender*—(1) *Documentation.* A lender shall provide the guarantee agency with the following documentation when filing a death, disability, or bankruptcy claim:

(i) The original promissory note.

(ii) The loan application.

(iii) In the case of a death claim, those documents that formed the basis for the determination of death.

(iv) In the case of a disability claim, a copy of the certification of disability described in paragraph (c)(2) of this section.

(v) In the case of a bankruptcy claim—

(A) Evidence that a bankruptcy petition has been filed, all pertinent documents sent to or received from the bankruptcy court by the lender, and, except in the case of a proceeding under chapter 7 in which the notice states that the borrower has no assets, an assignment to the guarantee agency of the lender's proof of claim; and

(B) A statement of any facts of which the lender is aware that may form the basis for an objection or exception to the discharge of the borrower's loan obligation in bankruptcy, and all documents supporting those facts.

(2) *Filing deadlines.* A lender shall file a death, disability, or bankruptcy claim within the following periods:

(i) A lender shall file a death or disability claim within 60 days of the date on which the lender determines that a borrower has died or is totally and permanently disabled.

(ii) As a condition for obtaining payment, a lender shall file a bankruptcy claim with the guarantee agency within the timeframe established by the guarantee agency as required to provide the agency sufficient time to oppose discharge of the loan, but in no case more than—

(A) Thirty days after the date the lender receives the notice of the first meeting of creditors, or other information described in paragraph (d)(2) of this section, in a proceeding under chapter 13 of the Bankruptcy Code;

(B) In a proceeding under chapters 7, 11, or 12 of the Bankruptcy Code, 30 days after the date the lender receives notice of the first meeting of creditors, or other information described in paragraph (d)(2) of this section, if the loan has been in repayment for more than 5 years on the date the petition for relief in bankruptcy was filed (exclusive of any applicable suspension of the repayment period); or

(C) In a proceeding under chapters 7, 11, or 12 of the Bankruptcy Code, 10 days after the holder is served with a complaint or motion to have the loan determined to be dischargeable on grounds of undue hardship if the loan has been in repayment for less than 5 years on the date the petition for relief in bankruptcy was filed (exclusive of any applicable suspension of the repayment period), unless the holder, before filing the claim, secures an extension of time within which an answer may be filed and submits the claim not less than 25 days prior to the date on which the answer must be filed.

(f) *Payment of death, disability, and bankruptcy claims by the guarantee agency*—(1) *General.* (i) The guarantee agency shall review a death, disability, or bankruptcy claim promptly and shall pay the lender on an approved claim the amount of loss in accordance with this paragraph, not later than 45 days after the claim was filed by the lender; and

(ii) In the case of a bankruptcy claim, the guarantee agency shall, upon receipt of the claim from the lender, immediately oppose the discharge of the loan by the bankruptcy court in

accordance with paragraph (g) of this section.

(2) *Amount of loss to be paid on a claim.* (i) The amount of loss payable on a death, disability, or bankruptcy claim is equal to the unpaid balance of principal and interest determined in accordance with paragraph (f)(3) of this section.

(ii) The unpaid balance of principal may include interest capitalized in accordance with § 682.202(b).

(3) *Payment of interest.* If the guarantee covers unpaid interest, the amount payable on an approved claim includes the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in paragraph (e)(2) of this section for filing the claim.

(ii) During a period not to exceed 30 days following the return of the claim to the lender by the guarantee agency for additional documentation necessary for the claim to be approved by the guarantee agency.

(iii) During the period required by the guarantee agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation.

(g) *Guarantee agency participation in bankruptcy proceedings on loans acquired by the guarantee agency through payment of bankruptcy claims in chapters 7, 11, and 12 cases.*—(1) *Undue hardship claims.* (i) In response to a petition by the borrower for discharge under 11 U.S.C. 523(a)(8)(B) on the grounds of undue hardship, the guarantee agency shall determine on the basis of reasonably available information—

(A) Whether the first payment on the loan was due less than five years (exclusive of any applicable suspension of the repayment period) before the filing of the petition for relief commencing the bankruptcy case; and

(B) Whether repayment under either the current repayment schedule or any adjusted schedule authorized under this part would impose an undue hardship on the borrower and his or her dependents.

(ii) If the agency determines that repayment would not constitute an undue hardship, the agency shall then determine whether the expected costs of opposing the discharge petition would exceed one-third of the total amount owed on the loan, including principal, interest, late charges, and collection costs.

(iii) If the expected costs of opposing the discharge petition do not exceed one-third of the total amount owed on the loan, the agency shall—

(A) Oppose the borrower's petition for a determination of dischargeability; and

(B) If the borrower is in default on the loan, seek a judgment for the amount owed on the loan.

(iv) In opposing a petition for a determination of dischargeability on the ground of undue hardship, a guarantee agency may agree to discharge a portion of the amount owed on a loan if it reasonably determines that the agreement is necessary in order to obtain a judgment on the remainder of the loan.

(2) *Mandatory repurchase by lender.* The lender shall repurchase the loan from the guarantee agency if—

(i) A judgment is entered that the loan is not dischargeable; or

(ii) A discharge is denied to the borrower on any ground.

(3) *Claim for reimbursement from the Secretary.* The guarantee agency may submit a claim to the Secretary for reimbursement—

(i) In the case of a loan in repayment more than five years (exclusive of applicable suspensions of the repayment period) before the filing of the petition for relief commencing the bankruptcy case, but after entry of a general discharge order; or

(ii) In any other case, only after the court determines that all or part of a loan is dischargeable by reason of undue hardship.

(h) *Responding to a proposed chapter 13 repayment plan.* (1) The guarantee agency shall follow the procedures in this paragraph in responding to a repayment plan proposed by a borrower who has filed for relief under chapter 13 of the Bankruptcy Code.

(2) The agency is not required to respond to a proposed repayment plan, if—

(i) The borrower proposes under the repayment plan to repay all principal, interest, late charges and collection costs on the loan; or

(ii) The repayment plan makes no provision with regard either to the loan obligation or to general unsecured claims.

(3)(i) If the borrower proposes under the repayment plan to repay less than the total amount owed on the loan, the agency shall determine from its own records and court documents—

(A) The amount of the loan obligation dischargeable under the plan by deducting the total payments on the loan proposed under the plan from the total amount owed;

(B) Whether the plan or the classification of the loan obligation under the proposed plan meets the requirements of section 1325 of the Bankruptcy Code; and

(C) Whether grounds exist under 11 U.S.C. 1307 to move for conversion or dismissal of the chapter 13 case.

(ii) Unless the agency reasonably concludes that the costs of the appropriate actions will exceed one-third of the dischargeable loan debt, the agency shall—

(A) Object to confirmation of a proposed plan that does not meet the requirements of 11 U.S.C. 1325; and

(B) If grounds can be established under 11 U.S.C. 1307, either—

(*1*) Move to dismiss the case; or

(*2*) Move to convert to a case under chapter 7 of the Code a case involving a loan on which less than 5 years of the repayment period (excluding any applicable suspension of that period) had passed before the borrower filed the petition for relief in bankruptcy.

(4)(i) The agency shall monitor the borrower's compliance with the requirements of the plan confirmed by the court. If the debtor does not make the payments required under the plan, or files a request for a "hardship discharge" under 11 U.S.C. 1328(b), the agency shall determine from its own records and any documents on file with the court—

(A) Whether grounds exist under 11 U.S.C. 1307 to convert or dismiss the case; and

(B) Whether the borrower has demonstrated entitlement to the "hardship discharge" by meeting the requirements of 11 U.S.C. 1328(b).

(ii) Unless the agency reasonably concludes that the costs of the appropriate actions, when added to the costs already incurred in taking actions authorized under this section, will exceed one-third of the dischargeable loan debt, the agency shall—

(A) If grounds can be established under 11 U.S.C. 1307—

(*1*) Move to dismiss the case; or

(*2*) Move to convert to a case under chapter 7 of the Code a case involving a loan on which less than 5 years of the repayment period (excluding any applicable suspension of that period) had passed before the borrower filed the petition for relief in bankruptcy; and

(B) Oppose the requested discharge where the debtor has not demonstrated that the requirements of 11 U.S.C. 1328(b) are met.

(iii) The agency shall follow the procedures in paragraph (g)(1) of this section if a borrower who seeks a hardship discharge under 11 U.S.C. 1328(b) also commences an action to have the loan obligation determined to be dischargeable on grounds of undue hardship.

(5) *Mandatory repurchase by lender.* The lender shall repurchase the loan from the guarantee agency if—

(i) A judgment is entered that the loan is not dischargeable; or

(ii) A discharge is denied to the borrower on any ground.

(6) *Claim for reimbursement from the Secretary.* The guarantee agency may submit a claim to the Secretary for reimbursement upon payment of a bankruptcy claim to the lender. The guarantee agency shall refund the amount of reimbursement paid by the Secretary if the lender repurchases the loan.

(i) *Claim procedures for loans acquired by a guarantee agency through payment of default claims.* (1) The Secretary pays a death, disability, or bankruptcy claim on a loan held by a guarantee agency after the agency has paid a default claim to the lender thereon and received payment under its reinsurance agreement with the Secretary only if—

(i) The guarantee agency determines that the borrower has died, become totally and permanently disabled since applying for the loan, or has filed for relief in bankruptcy, in accordance with the procedures set forth in paragraphs (b) through (d) of this section. For purposes of this paragraph, references to the "lender" and "guarantee agency" in paragraphs (b) through (d) of this section mean the guarantee agency and the Secretary respectively;

(ii) In the case of a Stafford, SLS, or PLUS loan, the guarantee agency determines that the borrower (or, in the case of a PLUS Program loan, each of the co-makers) has died, become totally and permanently disabled since applying for the loan or filed the petition for relief in bankruptcy within 10 years of the date the borrower entered repayment, exclusive of periods of deferment or periods of forbearance granted by the lender that extended the 10-year maximum repayment period;

(iii) In the case of a Consolidation loan, the guarantee agency determines that the borrower has died, become totally and permanently disabled since applying for the Consolidation loan, or filed the petition for relief in bankruptcy within the maximum repayment period described in § 682.209(h)(2), exclusive of periods of deferment or periods of forbearance granted by the lender that extended the maximum repayment period;

(iv) The guarantee agency has not written off the loan in accordance with the procedures established by the agency pursuant to § 682.410(b)(6)(x); and

(v) The guarantee agency has exercised due diligence in the collection of the loan, in accordance with the procedures established by the agency pursuant to § 682.410(b)(6)(x), until the borrower (or, in the case of a PLUS loan, each of the co-makers) died, became totally and permanently disabled, filed a chapter 12 or 13 petition, or had the loan discharged in bankruptcy; and

(vi) In the case of a bankruptcy claim, the guarantee agency has complied with the requirements of paragraph (g) or (h) of this section, as applicable.

(2)(i) The Secretary pays the guarantee agency a percentage of the outstanding principal and interest that is equal to the complement of the reinsurance percentage paid on the loan. This interest includes interest that accrues during the shorter of—

(A) The period from the date the guarantee agency determines that the borrower (or each of the co-makers) died, became totally and permanently disabled, filed a Chapter 13 bankruptcy petition or had the loan discharged in bankruptcy, until the Secretary authorizes payment; or

(B) Sixty days.

(ii) In addition, the Secretary pays the guarantee agency for any unpaid interest that the agency paid as part of the default claim and for which the agency was not previously reimbursed by the Secretary.

(j) *Payments received after the Secretary's payment of a death, disability, or bankruptcy claim.* If the guarantee agency receives any payments from or on behalf of the borrower on or attributable to a loan on which the Secretary previously paid a bankruptcy claim, the guarantee agency shall remit 100 percent of these payments to the Secretary.

(k) *Applicable suspension of the repayment period.* For purposes of this section, the term "applicable suspension of the repayment period" means any period of time during which the lender, pursuant to a request from the borrower, did not require the borrower to make payments (e.g., periods of deferment or forbearance).

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082, 1087)

§ 682.403 Federal advances for claim payments.

(a) The Secretary makes an advance to a guarantee agency that has a reinsurance agreement. The advance may be used only to pay guarantee claims. The Secretary makes an advance to—

(1) A State guarantee agency; or

(2) One or more private nonprofit guarantee agencies in a State if, during a fiscal year—

(i) The State does not have a guarantee agency program;

(ii) The Secretary consults the chief executive officer of the State and finds it unlikely that the State will have a program for that year; and

(iii) Each private nonprofit guarantee agency—

(A) Agrees to establish at least one office in the State with sufficient staff to handle written and telephone inquiries from students, eligible lenders, and other persons in the State;

(B) Agrees to encourage maximum commercial lender participation within the State, and to conduct periodic visits to at least the major lenders within the State;

(C) Agrees that the benefit of its loan guarantees will not be denied to students because of their choice of schools or lack of need; and

(D) Certifies that it is not an eligible educational institution, and that it does not have any substantial affiliation with an eligible educational institution.

(b) A guarantee agency shall apply to the Secretary in order to receive an initial advance.

(c)(1) An advance may be made to a new guarantee agency for each of five consecutive calendar years. A new agency is an agency that entered into a basic agreement on or after October 12, 1976, or that was not actively carrying on a loan guarantee program on or before October 12, 1976.

(2)(i) A guarantee agency may request that the initial advance be made on a specified date. The Secretary pays subsequent advances on the same day that the initial advance was made for each of the four succeeding calendar years.

(ii) An additional advance may be made to a private nonprofit guarantee agency only if the agency continues to qualify under paragraph (a) of this section.

(d) The Secretary makes an advance on terms and conditions specified in a Federal advances for claim payments agreement between the Secretary and the guarantee agency.

(e) In the case of a private nonprofit guarantee agency, the repayment of advances is determined separately for each State for which the agency has received an advance under this section, in accordance with section 422(c)(4).

(f) A guarantee agency shall return advances provided under this section in accordance with the provisions of sections 422 (c), (d), and (e) of the Act.

(Authority: 20 U.S.C. 1072, 1082)

§ 682.404 Federal reinsurance agreement.

(a) *General.* (1) The Secretary may enter into a reinsurance agreement with a guarantee agency that has a basic program agreement. Except as provided in paragraph (b) of this section, under a reinsurance agreement, the Secretary reimburses the guarantee agency for 100 percent of its losses on default claim payments to lenders.

(2) For purposes of this section—

(i) *Losses* means the amount of unpaid principal and accrued interest the agency paid on a default claim filed by a lender on a reinsured loan, minus payments made by, or on behalf of, the borrower after the lender's claim was paid but before the Secretary reimburses the agency, and an amount, not to exceed the lesser of $100 or two percent of the amount of unpaid principal the agency pays on a default claim, expended by the agency for the administrative costs of supplemental preclaims assistance for default prevention with regard to the loan, to the extent the agency has not been reimbursed for those costs under paragraph (g)(2)(ii) of this section or under § 682.407.

(ii) *Preclaims assistance* means collection assistance provided to the lender by the guarantee agency that involves the initiation by the agency of at least three collection activities, including at least one letter to the borrower designed to encourage the borrower to begin or resume payment.

(iii) *Administrative costs of supplemental preclaims assistance* means any administrative costs, excluding overhead costs, that are—

(A) Incurred by a guarantee agency in connection with a loan on which the guarantor has provided preclaims assistance to the lender, and on which the borrower is at least 120 days delinquent in making payments;

(B) Directly related to providing collection assistance to the lender on the loan prior to a claim being filed with the agency, including that portion of compensation of appropriate personnel that is properly allocable to the performance of collection assistance, fees paid to locate the borrower, postage, equipment, supplies, telephone, and similar charges;

(C) Directly related to collection assistance that is clearly supplemental to the preclaims assistance provided to the lender by the agency on the loan;

(D) Incurred for collection assistance that begins no earlier than 60 days following the date preclaims assistance began;

(E) Incurred for services provided by the guarantee agency directly or by another organization or entity that does not—

(*1*) Hold or service the loan;

(*2*) Own, control, or share common ownership with the holder or servicer of the loan; or

(*3*) Hold a contract with the agency to perform collection services on the loan in the event of default;

(F) Not in excess of 2 percent of the outstanding principal balance of the claim amount, or $100, whichever is less;

(G) Charged for a borrower for whom no previous such charges have been reimbursed by the Secretary; and

(H) Not charged to a borrower more than once.

(3) If supplemental preclaims assistance results in the borrower beginning or resuming payments—

(i) The guarantee agency may charge the lender for the costs of providing the assistance; and

(ii) The lender may charge the borrower the costs of supplemental preclaims assistance assessed against it by the guarantee agency.

(4) A guarantee agency's loss on a loan that was outstanding when a reinsurance agreement was executed is covered by the reinsurance agreement only if the default on the loan occurs after the effective date of the agreement.

(b) *Reinsurance rate.* (1) If the total of reinsurance claims paid by the Secretary to a guarantee agency during any fiscal year reaches five percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guarantee agency during that fiscal year equals 90 percent of its losses.

(2) If the total of reinsurance claims paid during a fiscal year by the Secretary to a guarantee agency reaches nine percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guarantee agency during that fiscal year is 80 percent of its losses.

(3) For purposes of this section, the total of reinsurance claims paid by the Secretary to a guarantee agency during any fiscal year does not include amounts paid on claims by the guarantee agency—

(i) On loans considered in default under § 682.412(e);

(ii) Under a policy established by the agency that is consistent with § 682.509(a)(1); or

(iii) That were filed by lenders at the direction of the Secretary.

(4) Notwithstanding paragraphs (b) (1) and (2) of this section, for a guarantee agency that entered into a basic program agreement under section 428(b) of the Act after September 30, 1976, or was not actively carrying on a loan guarantee program covered by a basic program agreement on October 1, 1976, the Secretary pays 100 percent of its losses during five consecutive fiscal years beginning with the first year of its operation. The Secretary monitors these programs and, if an agency does not prudently administer its program, the Secretary may determine that it does not continue to qualify for this exception.

(5) For purposes of this section, *amount of loans in repayment* means—

(i) The sum of—

(A) The original principal amount of all loans guaranteed by the agency; and

(B) The original principal amount of any loans on which the guarantee was transferred to the agency from another agency;

(ii) Minus the original principal amount of all loans on which—

(A) The loan guarantee was cancelled;

(B) The loan guarantee was transferred to another agency;

(C) The borrower has not yet reached the repayment period;

(D) Payment in full has been made by the borrower;

(E) The borrower was in deferment status at the time repayment was scheduled to begin, and remains in deferment status; and

(F) The amount paid by the agency for guarantee claims on loans, excluding the amount of all loans in which—

(*1*) The agency paid a claim under § 682.412(e);

(*2*) The agency paid a claim under a policy established by the agency that is consistent with § 682.509(a)(1); or

(*3*) The agency paid a claim filed by a lender at the direction of the Secretary.

(c) *Submission of reinsurance rate base data.* The guarantee agency shall submit to the Secretary the quarterly report required by the Secretary for the previous quarter ending September 30 containing complete and accurate data, in order for the Secretary to calculate the amount of loans in repayment at the end of the preceding fiscal year. The Secretary does not pay a reinsurance claim to the guarantee agency after the date the quarterly report is due until the guarantee agency submits a complete and accurate report.

(d) *Reinsurance fee.* (1) Except for loans made under § 682.209 (e), (f) and (h), a guarantee agency shall pay to the Secretary during each fiscal year in quarterly installments, a reinsurance fee equal to—

(i) 0.25 percent of the total principal amount of the Stafford, SLS, and PLUS loans on which guarantees were issued by that agency during that fiscal year; or

(ii) 0.5 percent of the total principal amount of the Stafford, SLS, and PLUS loans on which guarantees were issued by that agency during that fiscal year, if the agency's reinsurance claims paid reach the amount described in paragraph (b)(1) of this section at any time during that fiscal year.

(2) The agency that is the original guarantor of a loan shall pay the reinsurance fee to the Secretary even if the guarantee agency transfers its guarantee obligation on the loan to another guarantee agency.

(3) The guarantee agency shall pay the reinsurance fee required by paragraph (d)(1) of this section, due the Secretary for each calendar quarter ending March 31, June 30, September 30 and December 31, within 90 days after the end of the applicable quarter, or within 30 days after receiving written notice from the Secretary that the fees are due, whichever is earlier.

(e) *Initiation or extension of agreements.* In deciding whether to enter into or extend a reinsurance agreement, or, if an agreement has been terminated, whether to enter into a new agreement, the Secretary considers the adequacy of—

(1) Efforts by the guarantee agency and the lenders to which it provides guarantees to collect outstanding loans as required by § 682.410(b) (6) or (7), and § 682.411;

(2) Efforts by the guarantee agency to make GSL loans available to all eligible borrowers; and

(3) Other relevant aspects of the guarantee agency's program operations.

(f) *Application of borrower payments.* Payments made to a guarantee agency by a borrower may, at the agency's option, be applied first to the payment of reinsured interest owed, or to defray the agency's collection costs on the loan. The borrower's payments may be applied to other charges, such as late charges, only after the repayment of all principal and interest.

(g) *Federal share of borrower payments.* (1) If a borrower makes payments on a loan after the Secretary has paid a reinsurance claim on that loan, the agency shall pay to the Secretary the Secretary's equitable share of those payments.

(2) For purposes of this section, "the Secretary's equitable share" means that portion of borrower payments that remains after the agency has deducted—

(i) An amount equal to the complement of the reinsurance percentage that was in effect when the reinsurance payment was made by the Secretary; and

(ii) (A) 30 percent of borrower payments; or

(B) If the agency satisfies the requirements of paragraph (h) of this section, 35 percent of borrower payments on a loan that are received—

(*1*) Prior to the agency's commencement of a civil suit on the loan; and

(*2*) After the agency sends a notice of intent to initiate a garnishment proceeding, as described in paragraph (h)(1)(ii) of this section, against a borrower who has made no payments on the loan for at least 90 consecutive days.

(*3*) Unless the Secretary approves otherwise, the guarantee agency shall pay to the Secretary the Secretary's equitable share of borrower payments within 30 days of its receipt of the payments.

(h) *Administrative wage garnishment.* (1) For an agency to be eligible to retain 35 percent of payments it receives from a borrower on a loan under paragraph (g)(2)(ii)(B) of this section, the statute, regulations, and other provisions of law under which the agency would initiate the proceeding must provide—

(i) That the employer shall deduct and pay to the agency, from a borrower's pay, an amount that does not exceed 10 percent of disposable pay for a pay period, unless the borrower provides the agency or the employer with written consent to deduct a greater amount.

(ii) That the guarantee agency must provide the borrower, at least 30 days prior to initiation of garnishment proceedings, with written notice of the nature and amount of the indebtedness, the intention of the guarantee agency to initiate proceedings to collect the debt through deductions from pay, and an explanation of the borrower's rights under applicable law;

(iii) That the guarantee agency must offer the borrower an opportunity to inspect and copy records of the guarantee agency related to the debt;

(iv) That the guarantee agency must afford the borrower an opportunity to enter into a written agreement with the guarantee agency, under terms agreeable to the agency, to establish a schedule for the repayment of the debt;

(v) That the guarantee agency must afford the borrower an opportunity for a hearing in accordance with paragraph (h)(3) of this section, concerning the existence or the amount of the debt, and, in the case of a borrower whose repayment schedule is established other than by a written agreement under paragraph (h)(1)(iv) of this section, concerning the terms of the repayment schedule;

(vi) For no mandatory administrative or judicial procedure, other than those described in paragraphs (h)(1) (ii) through (v) of this section, that would delay collection of the debt by garnishment (such as reduction of the debt to a judgment);

(vii) That the employer will be liable to the guarantee agency for any amount that the employer, after receipt of the garnishment notice provided by the agency under paragraph (h)(2) of this section, fails to withhold from wages owed and payable to an employee under the employer's normal pay and disbursement cycle; and

(viii) For the imposition of a fine against any employer who discharges from employment, refuses to employ, or takes disciplinary action against any borrower subject to wage withholding required by the garnishment law because of the withholding or any obligations it imposes upon the employer.

(2)(i) A guarantee agency shall send a notice of withholding order to the employer within 20 days after the borrower fails to timely request a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after the final decision is made after the hearing to proceed with garnishment.

(ii) The notice given to the employer pursuant to paragraph (h)(2)(i) of this section shall contain only such information as may be necessary for the employer to comply with the withholding order.

(3)(i) If the borrower requests a hearing on the existence or amount of the debt or the terms of the repayment schedule on or before the 15th day following the borrower's receipt of the notice described in paragraph (h)(1)(ii) of this section, the guarantee agency shall provide a hearing to the borrower within 60 days after the date of the filing of the request in accordance with such procedures as the agency may prescribe.

(ii) The timely filing of a petition for a hearing stays the commencement of wage withholding by the employer.

(iii) The guarantee agency shall provide a hearing to a borrower pursuant to an untimely request for a hearing, but shall not delay issuance of a withholding order unless the agency determines that the delay in filing the request was caused by factors over which the borrower had no control.

(iv) A hearing may not be conducted by an individual under the supervision or control of the agency, except that an agency may appoint an administrative law judge to conduct the hearing.

(v) The hearing official shall issue a final written decision at the earliest practicable date, but not later than 60 days after the filing of the petition request for the hearing.

(4) For the purpose of this paragraph, the term "disposable pay" means that part of the pay of any individual remaining after the deduction of any amounts required by law to be withheld.

(i) *Non-discrimination.* (1) A guarantee agency may not engage in any pattern or practice that results in a denial of a borrower's access to GSL loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular school within any State served by the guarantee agency, length of the borrower's educational program, or the borrower's academic year in school.

(2) For purposes of this section a guarantee agency is deemed to be serving a State if it guarantees a loan that is—

(i) Made by a lender located in a State not served by the agency;

(ii) Made to a borrower who is a resident of a State not served by the agency; and

(iii) Made for attendance at a school located in the State.

(j) *Other terms.* The reinsurance agreement contains other terms and conditions that the Secretary finds necessary to—

(1) Promote the purposes of the GSL programs and to protect the United States from unreasonable risks of loss;

(2) Ensure proper and efficient administration of the loan guarantee program; and

(3) Ensure that due diligence will be exercised in the collection of loans.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

§ 682.405 [Reserved]

§ 682.406 Conditions of reinsurance coverage.

(a) A guarantee agency is entitled to reinsurance payments on a loan only if—

(1) With respect to the reinsurance payment on the portion of a loan represented by a single disbursement of loan proceeds—

(i) The check for the disbursement was cashed within 120 days after disbursement; or

(ii) The proceeds of the disbursement made by electronic funds transfer in accordance with § 682.207(b)(1)(ii)(B) have not been released from the restricted account maintained by the school within 120 days after disbursement;

(2) The lender provided an accurate collection history and an accurate payment history to the guarantee agency with the default claim filed on the loan showing that the lender exercised due diligence in collecting the loan through collection efforts meeting the requirements of § 682.411;

(3) The loan was in default before the agency paid a default claim filed thereon;

(4) The lender filed a default claim thereon with the guarantee agency within 90 days of default;

(5) The lender resubmitted a properly documented default claim to the guarantee agency not later than 30 days from the date the agency had rejected that claim due solely to inadequate documentation.

(6) The lender satisfied all conditions of guarantee coverage set by the agency, unless the agency reinstated guarantee coverage on the loan following the lender's failure to satisfy such a condition, pursuant to written policies and procedures established by the agency;

(7) The agency paid, or returned to the lender for additional documentation a default claim thereon filed by the lender with the agency within 90 days of the date the lender filed the claim or, if applicable, the additional documentation, except that interest accruing beyond the 45th day after the date the lender filed the claim, together with all required documentation, is not reinsured;

(8) The agency submitted a request for the payment on a form required by the Secretary no earlier than 90 days following default, in the case of a loan payable in monthly installments, no earlier than 30 days following default, in the case of a loan payable in less frequent installments;

(9) The loan was legally enforceable by the lender when the agency paid a claim on the loan to the lender;

(10) The agency exercised due diligence in collection of the loan in accordance with § 682.410(b) (6) or (7).

(11) The agency and lender complied with all other Federal requirements with respect to the loan; and

(12) The agency assigns the loan to the Secretary, if so directed, in accordance with the requirements of § 682.409.

(b) Notwithstanding paragraph (a) of this section, the Secretary may waive his right to refuse to make or require repayment of a reinsurance payment when, in the Secretary's judgment, the best interests of the United States so require. The Secretary's waiver policy for violations of paragraph (a)(3) or (a)(6) of this section is set forth in appendix D to this part.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082)

§ 682.407 Administrative cost allowance for guarantee agencies.

(a)(1) The Secretary pays an administrative cost allowance to a guarantee agency having a basic program agreement.

(2) The administrative cost allowance paid to a guarantee agency for any fiscal year equals one percent of the total principal amount of loans guaranteed by the agency during that fiscal year, other than Consolidation loans.

(b)(1) To receive an administrative cost allowance payment, the guarantee agency shall submit an application to the Secretary by January 1 of the fiscal year for which it is requesting the allowance.

(2) In addition to other information and assurances that the Secretary may reasonably require, the application must contain—

(i) Information showing the agency's ability to collect loans and provide preclaim assistance to its lenders, including descriptions of staff size and activities in these areas;

(ii) An estimate of the costs to be incurred in that fiscal year that will be eligible for payments under this section;

(iii) Assurances that the agency will use sufficient administrative and fiscal procedures, including an independent audit conducted in accordance with § 682.410(b)(1), to ensure that administrative cost allowances are used in accordance with the provisions of this section;

(iv) A report of the most recent audit, conducted in accordance with § 682.410(b)(1), submitted in a format satisfactory to the Secretary;

(v) Assurances that the guarantee agency will furnish any further information, including estimates, that the Secretary may reasonably require to carry out the provisions of this section;

(vi) An estimate of the total amount of new GSL program loans, other than Consolidation loans, expected to be guaranteed during the fiscal year; and

(vii) Assurances that the agency's program meets and will continue to meet all the requirements contained in § 682.401(b).

(4) The application for an administrative cost allowance by a guarantee agency and the Secretary's payment of that allowance establishes an agreement between the Secretary and the guarantee agency with respect

to the assurances contained in the application.

(c)(1) A guarantee agency may use the administrative cost allowance only to meet administrative costs related to the GSL programs.

(2) A guarantee agency may not use the administrative cost allowance to meet costs—

(i) For which the agency has been or will be reimbursed from the 30 or 35 percent retention of collections permitted under § 682.404(g)(2)(ii); or

(ii) For which the agency has been or will be reimbursed from a source other than the payment made under this section.

(d) The Secretary pays an administrative cost allowance on a loan only to the guarantee agency that originally guaranteed the loan, even if the guarantee agency transfers its guarantee obligation on the loan to another guarantee agency.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082)

§ 682.408 Stafford and SLS loan disbursement through an escrow agent.

(a) *General.* (1) A guarantee agency or an eligible lender may act as an escrow agent for the purpose of receiving Stafford or SLS loan proceeds disbursed by an eligible lender other than a school or State lender, and transmitting those proceeds to the borrower's school, if the lender and the escrow agent have entered into a written agreement for this purpose.

(2) The agreement must provide that—

(i) The lender may make payments into an escrow account that is administered by the escrow agent in accordance with the requirements of paragraph (c) of this section and § 682.207(b)(1)(iv);

(ii) The lender shall promptly notify the borrower's school when funds are escrowed for the borrower; and

(iii) The escrow agent is authorized to—

(A) Transmit the proceeds according to the note evidencing the loan;

(B) Commingle the proceeds of the loans paid to it pursuant to an escrow agreement;

(C) Invest the loan proceeds only in obligations of the Federal Government or obligations that are insured or guaranteed by the Federal Government; and

(D) Retain for its own use interest or other earnings on those investments.

(b) *Disbursement by the lender.* Subject to § 682.207(b)(1)(iii), the lender may disburse the loan proceeds to the escrow agent using any method agreed to by the escrow agent and the lender.

(c) *Transmittal of loan proceeds to a school by the escrow agent.* The escrow agent shall transmit loan proceeds received from a lender under this section to a school in accordance with the requirements of § 682.207(b)(1) (ii) and (iv) not later than 21 days after the agent receives the funds from the lender.

(d) *Return of untransmitted proceeds.* The escrow agent shall return any untransmitted proceeds of a loan to the lender within 15 working days after receiving information indicating that the student has not enrolled, or has ceased to be enrolled on at least a half-time basis, for the period of enrollment for which the loan was intended.

(Authority: 20 U.S.C. 1078, 1082)

§ 682.409 Mandatory assignment by guarantee agencies of defaulted loans to the Secretary.

(a) If the Secretary determines that such action is necessary to protect the Federal fiscal interest, the Secretary may direct a guarantee agency to assign to the Secretary any loan held by the agency on which the agency seeks or has received payment under §§ 682.402(d), 682.402(i), or 682.404. In making this determination, the Secretary considers all relevant information available to the Secretary, including any information and documentation submitted by the agency. The Secretary may identify particular loans to be assigned, or may require assignment of particular categories of loans that share characteristics that the Secretary determines make those loans appropriate for assignment.

(b)(1) A guarantee agency that assigns a defaulted loan to the Secretary under this section thereby releases all rights and title to that loan. The Secretary does not pay the guarantee agency any compensation for a loan assigned under this section.

(2) The agency does not share in any amounts received by the Secretary on a loan assigned under this section, regardless of the reinsurance percentage paid on the loan or the agency's previous collection costs.

(c)(1) A guarantee agency shall assign a loan to the Secretary under this section at the time, in the manner, and with the information and documentation that the Secretary requires. The agency shall submit this information and documentation in the form (*e.g.*, computer tape) and in the format specified by the Secretary.

(2) The guarantee agency shall execute an assignment to the United States of America of all right, title, and interest in the promissory note or judgment evidencing a loan assigned under this section.

(3) If the agency does not provide the required information and documentation in the form and format required by the Secretary, the Secretary may, at his option—

(i) Allow the agency to revise the agency's submission to include the required information and documentation in the specified form and format;

(ii) In the case of an improperly formatted computer tape, reformat the tape and assess the cost of that activity against the agency;

(iii) Reorganize the material submitted and assess the cost of that activity against the agency; or

(iv) Obtain from other agency records and add to the agency's submission any information from the original submission, and assess the cost of that activity against the agency.

(4) For each loan assigned, the agency shall submit to the Secretary the following documents associated for each loan, assembled in the order listed below:

(i) The promissory note.

(ii) Any documentation of a judgment entered on the loan.

(iii) A written assignment of the loan or judgment, unless this assignment is affixed to the promissory note.

(iv) The loan application.

(v) A payment history for the loan, as described in § 682.414(a)(1)(C).

(vi) A collection history for the loan, as described in § 682.414(a)(1)(D).

(5) The agency may submit certified copies of required documents in lieu of originals when no originals exist.

(d)(1) If the Secretary determines that the agency has not submitted a document or record required by paragraph (c) of this section, and the Secretary decides to allow the agency an additional opportunity to submit the omitted document under paragraph (c)(3)(i) of this section, the Secretary notifies the agency and provides a reasonable period of time for the agency to submit the omitted record or document.

(2) If the omitted document is not submitted within the time specified by the Secretary, the Secretary determines whether that omission impairs the Secretary's ability to collect the loan.

(3) The Secretary assesses against the agency that portion of the amount paid to the agency under the reinsurance agreement, and interest at the rate applicable to the borrower under § 682.410(b)(3) accrued thereon from that payment date, equal to the amount of a loan assigned by the agency the collectibility of which the Secretary determines under paragraph (d)(2) of this section to be impaired due to the failure of the agency to submit a document required by the Secretary.

(4) The Secretary reassigns to the agency that portion of the loan determined to be unenforceable by the Department.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1082)

§ 682.410 Fiscal, administrative, and enforcement requirements.

(a) *Fiscal requirements*—(1) *Reserve fund assets.* The guarantee agency shall establish and maintain a reserve fund to which the guarantee agency shall credit—

(i) Federal advances obtained and matching funds required under section 422(a) of the Act;

(ii) Funds appropriated by a State for the agency's loan guarantee program;

(iii) Federal advances obtained under section 422(c) of the Act;

(iv) Funds received by the guarantee agency as loan insurance premiums;

(v) Administrative cost allowances received by the guarantee agency under § 682.407;

(vi) Funds received by the guarantee agency for the agency's loan guarantee program from gift, grant, or other sources;

(vii) Funds collected on GSL loans;

(viii) Death, disability, bankruptcy, and reinsurance payments received from the Secretary; and

(ix) Investment earnings on the reserve fund.

(2) *Uses of reserve fund assets.* Except as provided in paragraphs (a)(3) through (a)(5) of this section, a guarantee agency may use the assets of the reserve fund established under paragraph (a)(1) of this section only to—

(i) Pay default claims;

(ii) Pay death, disability, and bankruptcy claims;

(iii) Refund overpayments of insurance premiums;

(iv) Pay to the Secretary the Secretary's equitable share of borrower payments;

(v) Repay advances and excess reserves to the Secretary; and

(vi) Make payments to lenders that participate in the loan referral service under section 428(e) of the Act.

(3) *Special rules for uses of certain reserve fund assets.* (i) Except as provided in paragraph (a)(4) of this section, a guarantee agency may also use funds received as insurance premiums, administrative cost allowances, interest or investment earnings, and receipts described in paragraph (a)(1)(vi) of this section for payments necessary for the proper administration of the guarantee agency's GSL loan guarantee activities.

(ii) The guarantee agency shall use funds received as Federal advances received under section 422(c) of the Act, and interest or other earnings on those advances, only to pay default claims.

(iii) The guarantee agency shall account separately for the funds described in paragraph (a)(4)(i) of this section.

(iv) The guarantee agency shall use the borrower payments it retains under § 682.404(g)(2)(i) of this part only for the administrative costs of collection of loans, the administrative costs of preclaims assistance for default prevention, the administrative costs of supplemental preclaims assistance for default prevention, and the administrative costs of monitoring the enrollment status of students and repayment status of borrowers, to the extent the agency has not been reimbursed for these costs under § 682.404(a)(2) or § 682.407.

(v) The terms *administrative costs of collection of loans, administrative costs of preclaims assistance for default prevention, administrative costs of supplemental preclaims assistance for default prevention,* as used in this paragraph, are defined in section 428(c)(6) of the Act. The term *administrative costs of monitoring the enrollment status of students and repayment status of borrowers,* as used in this paragraph, has the same meaning as *administrative costs of monitoring the enrollment and repayment status of students,* as defined in section 428(c)(6)(B)(iii) of the Act, except that the reference to repayment status, if the borrower is a parent, refers to that of the parent borrower.

(vi) The term *overhead costs* used in those definitions includes space and utilities costs.

(4) The guarantee agency may invest the assets of the reserve fund described in paragraph (a)(1) of this section only in low-risk securities, such as obligations issued or guaranteed by the United States or a State, and shall exercise the level of care in that investment required of a fiduciary charged with the duty of investing the money of others.

(5) If the guarantee agency uses any funds required to be credited to the reserve fund under paragraph (a)(1) of this section to develop or purchase an asset of any kind—

(i) If the agency subsequently sells or otherwise derives revenue from uses of the asset that are unrelated to GSL program guarantee activities, the agency shall promptly deposit into the reserve fund described in paragraph (a)(1) of this section, a percentage of the sale proceeds or revenue equal to the percentage of the original development cost or purchase price of the asset paid with the reserve fund monies;

(ii) If the agency subsequently converts the asset, in whole or in part, to a use unrelated to its GSL loan guarantee activities, the agency shall promptly deposit into the reserve fund described in paragraph (a)(1) of this section a percentage of the fair market value or, in the case of a temporary conversion, the rental value of the portion of the asset employed for the unrelated use, equal to the percentage of the original development cost or purchase price paid with the reserve fund monies.

(b) *Administrative requirements*—(1) *Independent biennial audits.* The guarantee agency shall arrange for an independent financial and compliance audit of the agency's GSL Program activities that meets each of the following requirements:

(i) The audit must examine the agency's compliance with the Act, applicable regulations, and agreements entered into under this part.

(ii) The audit must examine the agency's financial management of its GSL Program activities.

(iii) The audit must be conducted in accordance with the general standards and the standards for financial and compliance audits of the United States General Accounting Office's (GAO) *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.* Procedures for audits are contained in audit guides developed by, and available from, the Office of the Inspector General of the Department. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations, and GAO's *Standards.*

(iv) The audit must be conducted at least once every two years, and must be submitted to the Secretary within six months of the end of the audit period. The first audit must cover the agency's activities for a period beginning no later than December 26, 1986. Each subsequent audit must cover the agency's activities for a period beginning no later than the end of the period covered by the preceding audit.

(v) With regard to a guarantee agency that is an agency of a State government, an audit conducted in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G, satisfies the requirements of this paragraph for the period covered by the audit.

(2) *Collection charges.* Whether or not provided for in the borrower's promissory note, the guarantee agency shall charge a borrower an amount equal to reasonable costs incurred by

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the agency in collecting a loan on which the agency has paid a default or bankruptcy claim. These costs may include, but are not limited to, all attorneys' fees, collection agency charges, and court costs. The amount charged a borrower shall equal the lesser of—

(i) The amount that would be charged for the costs of collection by a guarantee agency under 34 CFR 30.60; or

(ii) The amount the same borrower would be charged for the cost of collection if the loan was held by the U.S. Department of Education.

(3) *Interest charged by guarantee agencies.* The guarantee agency shall charge the borrower interest on the amount for which the Secretary has paid a reinsurance claim to the guarantee agency, at a rate that is the greater of—

(i) The rate established by the terms of the borrower's original promissory note;

(ii) In the case of a loan for which a judgment has been obtained, the rate provided for by State law.

(4) *Capitalization of unpaid amounts.* The guarantee agency shall capitalize any unpaid charges due the lender from the borrower at the time the agency pays a default claim to the lender.

(5) *Credit bureau reports.* (i) After completion of the procedures set forth in paragraph (b)(5)(ii) of this section, the guarantee agency shall report promptly, and on a regular basis, to all national credit bureaus—

(A) The total amount of loans made to the borrower and the remaining balance of those loans;

(B) The date of default;

(C) Information concerning collection of the loan, including the repayment status of the loan;

(D) Any changes or corrections in the information reported by the agency that result from information received after the initial report; and

(E) The date the loan is fully repaid by or on behalf of the borrower or discharged by reason of the borrower's death, bankruptcy, or total and permanent disability.

(ii) The guarantee agency shall ensure that, promptly after it pays a default claim on a loan but before it reports the default to a credit bureau or assesses collection costs against a borrower, it provides the borrower with—

(A) Written notice that meets the requirements of paragraph (b)(5)(vi) of this section regarding the proposed actions;

(B) An opportunity to inspect and copy agency records pertaining to the loan obligation;

(C) An opportunity for an administrative review of the legal enforceability or past-due status of the loan obligation; and

(D) An opportunity to enter into a repayment agreement on terms satisfactory to the agency.

(iii) The procedures set forth in § 682.404(h) (administrative wage garnishment), and the procedures set forth in 34 CFR 30.20 through 30.33 (administrative offset), satisfy the requirements of paragraph (b)(5)(ii) of this section.

(iv)(A) In response to a request for access to records, an administrative review, or an opportunity to enter into a repayment agreement, submitted by a borrower after the deadlines established under agency rules, the agency shall provide the requested relief but may continue reporting the debt to credit bureaus until it determines that the borrower has demonstrated that the loan obligation is not legally enforceable or that alternative repayment arrangements satisfactory to the agency have been made with the borrower.

(B) The deadline established by the agency for requesting administrative review under paragraph (b)(5)(ii)(C) of this section must allow the borrower at least 60 days from the date the notice described in paragraph (b)(5)(ii)(A) of this section is sent, to request that review.

(v) An agency may not permit an employee, official, or agent to conduct the administrative review required under this paragraph if that individual is—

(A) Employed in an organizational component of the agency or its agent that is charged with collection of loan obligations; or

(B) Compensated on the basis of collections on loan obligations.

(vi) The notice sent by the agency under paragraph (b)(5)(ii)(A) of this section must—

(A) Advise the borrower that the agency has paid a default claim filed by the lender, and has taken assignment of the loan;

(B) Identify the lender that made the loan and the school for attendance at which the loan was made;

(C) State the outstanding principal, accrued interest, and any other charges then owing on the loan;

(D) Demand that the borrower immediately commence repayment of the loan;

(E) Explain the rate of interest that will accrue on the loan, that all costs incurred to collect the loan will be charged to the borrower, the authority for assessing these costs, and the manner in which the agency will calculate the amount of these costs;

(F) Notify the borrower that the agency will report the default to all national credit bureaus to the detriment of the borrower's credit rating;

(G) Explain the opportunities available to the borrower under agency rules for access to agency records on the loan, for an administrative review of the legal enforceability or past-due status of the loan obligation, and for reaching agreement on repayment terms satisfactory to the agency in order to avoid the reporting of the loan as defaulted to credit bureaus, and describe the deadlines for requesting this relief and the manner in which the borrower must request relief;

(H) Unless the agency uses a separate notice to advise the borrower regarding other proposed enforcement actions, describe specifically any other enforcement action, such as offset against State income tax refund or wage garnishment that the agency intends to use to collect the debt, and explain the procedures available to the borrower prior to those other enforcement actions for access to records, an administrative review, or agreement to alternative repayment terms;

(I) Describe the grounds on which the borrower may object that the loan obligation as stated in the notice is not a legally enforceable debt owed by the borrower;

(J) Describe any appeal rights available to the borrower from an adverse decision on administrative review of the loan obligation;

(K) Describe any right to judicial review of an adverse decision by the agency regarding the legal enforceability or past-due status of the loan obligation; and

(L) Describe the collection actions that the agency may take in the future if those presently proposed do not result in repayment of the loan obligation, including the filing of a lawsuit against the borrower by the agency and assignment of the loan to the Secretary for collection by offset against Federal income tax refunds or the filing of a lawsuit against the borrower by the Federal Government.

(6) *Collection efforts on defaulted loans.* (i) The guarantee agency shall engage in at least the collection activities described in paragraphs (b)(6)(iii) through (xii) of this section on a loan on which it pays a default claim filed by a lender, except that the agency may engage in the collection activities described in paragraphs (b)(7) of this section in lieu of the activities described in paragraphs (b)(6)(iii) through (vi) of this section.

(ii)(A) The periods of time set forth in paragraphs (b)(6)(iii) through (xii) and (b)(7) of this section refer to the number of days that elapse from the date the agency pays a default claim on a loan, or, in the case of a borrower whom the agency locates through the use of skip-tracing under paragraph (b)(6)(xii)(A) of this section, the number of days that elapse from the date the agency obtains the borrower's correct address. These periods of time do not include any periods during which the agency is engaged in the activities related to administrative wage garnishment described in § 682.404(h) or receiving a payment through garnishment at least once every 60 days, or during which the agency is engaged in an administrative review of the borrower's indebtedness on the loan pursuant to a request by the borrower under paragraph (b)(iv) of this section. References to the "borrower" in this paragraph and paragraph (b)(7) of this section include all endorsers on a loan.

(B) The agency may institute a civil suit against the borrower earlier than the first day of the period described in paragraph (b)(6)(vii) of this section. Upon instituting suit, the agency is not required thereafter to follow the procedures in paragraph (b)(6)(iii) or (b)(7) of this section.

(C) Upon receipt of a payment from a borrower during a period described in paragraph (b)(6) (iii) or (iv) of this section, the agency is not required to follow the specific collection efforts described in paragraphs (b)(6) (iii) through (vii), but shall diligently attempt to collect the loan for 60 days following receipt of the payment. If the agency receives no payments during the 60-day period, the agency shall resume its use of the collection efforts described in paragraphs (b)(6) (iv) through (ix) of this section, treating the first day after the end of the 60-day period as the first day of the period described in paragraph (b)(6)(iv) of this section.

(iii) One—45 days: During this period, the agency shall—

(A) Send to the borrower the written notice described in paragraph (b)(vi) of this section, or a written notice stating—

(*1*) That the agency has paid a default claim filed by the lender on the loan, and has taken assignment of the loan;

(*2*) That the borrower must immediately commence repayment of the loan;

(*3*) That all costs incurred to collect the loan will be charged to the borrower;

(*4*) That the agency will report the default to all national credit bureaus, to the detriment of the borrower's credit rating;

(*5*) That the agency may bring suit against the borrower to compel repayment of the loan;

(*6*) That the agency may assign the debt to the U.S. Department of Education for collection by offset against Federal income tax refunds due the borrower, or by other means; and

(*7*) That the agency may collect the loan by offset against State tax refunds and/or by wage garnishment, if these steps are available to the agency; and

(B) Diligently attempt to contact the borrower by telephone, as defined in § 682.411(1) (with references to "the lender" understood to mean "the agency"), to demand repayment of the loan.

(iv) Forty-six—180 days: During this period the agency shall—

(A) Engage in at least two diligent attempts to contact the borrower by telephone, as defined in § 682.411(1) (with references to "the lender" understood to mean "the agency"), to demand repayment of the loan; and

(B) Send at least three written notices to the borrower forcefully demanding that the borrower immediately commence repayment of the loan, and informing the borrower that the default has been reported to all national credit bureaus, if that is the case, and that the borrower's credit rating may thereby have been damaged. The final notice must also indicate that it is the final notice the borrower will receive before the agency will take more forceful action, including the possibility of instituting a civil suit, to compel repayment of the loan; and

(v) At no point during the periods described in paragraphs (b)(6) (iii) and (iv) of this section may the agency permit the occurrence of a gap in collection activity of more than 60 days.

(vi) For purposes of paragraph (b)(6)(v) of this section, the term "gap in collection activity" means, with respect to a loan, any period—

(A) Beginning on the date that is the day after—

(*1*) The date the agency paid a default claim to the lender thereon;

(*2*) The day on which the agency receives the correct address for a borrower who has made no payment in the preceding 60 days; or

(*3*) The day on which the agency completes a collection activity, as defined in § 682.411(k) (1) through (3) (with references to "the lender" therein understood to mean "the agency"); and

(B) Ending on the date of the earliest of—

(*1*) The day on which the agency receives the first subsequent payment;

(*2*) The day on which the agency commences the first subsequent collection activity, as defined in § 682.411(k) (1) through (3) (with references to the lender therein understood to mean "the agency"); or

(*3*) The last day of the period described in paragraph (b)(6)(iv) of this section.

(vii) One hundred eighty-one—545 days:

(A) Except as provided in paragraphs (b)(6)(vii) (B), (C), and (D) of this section, during this period, but not sooner than 30 days after sending the borrower a notice of the agency's intent to do so, the agency shall institute a civil suit against the borrower for repayment of the loan.

(B) Except as provided in paragraph (b)(6)(vii)(C) of this section, in the case of a loan that was assigned to the Secretary prior to the 545th day and returned to the agency less than 180 days prior to the 545th day, the agency has 180 days from the date it receives the returned loan to institute the civil suit.

(C) Except as provided in paragraph (b)(6)(vii)(D) of this section, in the case of a loan not assigned to the Secretary, during this period, but not sooner than 30 days after sending the final notice described in paragraph (b)(6)(iv) of this section, the agency shall institute a civil suit against the borrower by the 225th day, unless that loan is subsequently assigned to the Secretary by the deadline for the next available opportunity to collect by Internal Revenue Service (IRS) tax refund offset, or a payment is received from the borrower less than 120 days before the deadline for the next available opportunity to collect by IRS tax refund offset.

(D) The agency need not file suit if the agency determines and documents in the borrower's file that—

(*1*) The cost of litigation would exceed the judgment amount likely to be obtained if litigation were commenced; or

(*2*) The borrower does not have the means to satisfy a judgment on the debt or a substantial portion thereof, based on the agency's review of the debtor's file, and of a credit report obtained by the agency from a credit bureau serving the geographic area where the debtor resides, or if the debtor's current address is unknown, a credit bureau serving the geographic area that includes the debtor's last known address.

(viii)(A) If, as a result of a determination made pursuant to paragraph (b)(6)(vii)(C)(2) of this section, the agency does not institute a civil suit against the borrower for

repayment of the loan, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired the means to satisfy a judgment on the debt, or a substantial portion thereof.

(B) If the agency determines that the borrower has acquired the means to satisfy at least a substantial portion of the debt, and that the cost of litigation would not exceed the amount likely to be obtained if litigation were commenced, then, if subsequent collection efforts are not successful, the agency shall, no later than 60 days after the determination and before the applicable limitations period under section 484A of the Act expires, institute a civil suit against the borrower for repayment of the loan.

(C) The guarantee agency shall document in the borrower's file determinations made pursuant to this paragraph.

(ix)(A) The agency shall diligently attempt to enforce a judgment obtained against a borrower on a loan and shall ensure that the judgment is renewed as permitted by applicable law. If, despite diligent attempts, the agency cannot recover the full amount of the judgment because the borrower lacks sufficient assets or income attachable under applicable law to fully satisfy the judgment, the agency shall conduct diligent semi-annual inquiries to determine if the borrower has since acquired sufficient attachable assets or income to satisfy the remainder of the judgment.

(B) If the agency determines that the borrower has acquired sufficient attachable assets or income to satisfy the remainder of the judgment and that the cost of enforcing the judgment would not exceed the likely recovery, the agency shall, not later than 60 days thereafter, notify the borrower in writing of its intention to resume enforcement efforts on the judgment unless the borrower makes payment in full of all outstanding amounts.

(C) If the borrower does not make payment in full within 30 days of the date the agency sends the notice described in paragraph (b)(6)(ix)(B) of this section, the agency shall, within 30 days thereafter, proceed to enforce the remainder of the judgment.

(x) The agency may discontinue conducting the semi-annual inquiries concerning a borrower's means required by paragraphs (b)(6) (viii) and (ix) of this section before the expiration of the applicable statute of limitations only in accordance with criteria and procedures approved by the Secretary.

(xi) Notwithstanding paragraphs (b)(6) (vii) through (x) of this section, the agency shall file a civil suit against the borrower for repayment of the loan, and shall enforce a judgment obtained thereon, prior to the date on which the applicable statute of limitations lapses, unless the agency—

(A) Determines, and documents in the borrower's file, that the cost of litigation would exceed the judgment amount likely to be obtained if litigation were commenced, or, in the case of a proceeding to enforce a judgment, that the cost of such a proceeding would exceed the likely recovery from the debtor; or

(B) Has previously discontinued semi-annual inquiries on the debt in accordance with paragraph (b)(6) (viii) or (ix) of this section.

(xii) Not later than 10 days after its receipt of information indicating that it does not know the current address of a borrower on a loan on which the agency has neither declined to sue under paragraph (b)(6)(vii)(C)(*1*) of this section nor discontinued semi-annual inquiries under paragraph (b)(6)(x) of this section, or the 60th day after its payment of a default claim on the loan, whichever is later, the agency shall diligently attempt to locate the borrower through the use of all available skip-tracing techniques, including, but not limited to, any skip-tracing assistance available from the Internal Revenue Service, credit bureaus, and State motor vehicle departments.

(*7*) *Alternative collection procedures for defaulted loans.* (i) A guarantee agency may engage in the following collection activities in lieu of the activities described in paragraphs (b)(6)(iii) through (vi) of this section. The rules in paragraphs (b)(6)(ii) (A) and (B) of this section apply to the periods of time set forth in paragraphs (b)(7) (iii) through (v) of this section.

(ii) Upon receipt of a payment from a borrower, the agency is not required to follow the specific collection efforts described in paragraphs (b)(7) (iii) through (vi) of this section, but shall diligently attempt to collect the loan for 60 days following receipt of the payment. If the agency receives no payments during the 60-day period, the agency shall resume its use of the collection efforts described in paragraph (b)(7) (iii) through (vi) of this section, treating the first day after the end of the 60-day period as the first day of the period described in paragraph (b)(7)(iv) of this section.

(iii) One—30 days: During this period the agency shall send to the borrower a written notice stating—

(A) The information listed described in paragraph (b)(5)(vi) of this section; or

(B) The information set forth in paragraphs (b)(6)(iii)(A) (*1*) through (*7*) of this section.

(iv)(A) Thirty-one—180 days: During this period the guarantee agency shall diligently attempt to collect the loan using such collection tools and activities as it deems appropriate, provided, however, that the agency must make at least one diligent effort to contact the borrower by telephone, as defined in § 682.411(l) (with references to "the lender" understood to mean "the agency"), and send at least two forceful collection letters to the borrower.

(B) By the end of this period, or the 30th day after the Secretary's return of the loan to the agency upon completion of the first Federal tax refund offset process available for that loan, whichever is later, the agency shall refer the loan to a collection contractor in accordance with paragraph (b)(7)(iv)(C) of this section.

(C) The collection contractor to whom the agency refers a loan under paragraph (b)(7)(iv)(B) of this section must—

(1) Be compensated for its services on all GSL loans referred by the agency solely on a contingency fee basis;

(2) Be one of at least two collection contractors simultaneously providing collection services to the agency on GSL loans under a competitive system established by the agency that provides for periodic assessment by the agency of the performance of the competing contractors, and for periodic adjustments in the volume of loans referred by the agency to each competing contractor based on those assessments; and

(3) Not receive referral of more than 70% of the agency's referred loans in any calendar year.

(v) Notwithstanding the deadline for instituting a civil suit set forth in paragraph (b)(6)(vii) of this section, an agency that uses the procedures in paragraphs (b)(7) (i) through (iv) of this section shall institute a civil suit required by that paragraph prior to the earliest of—

(A) The 90th day following the collection contractor's return of the loan to the agency; or

(B) The 365th day following the later of the agency's referral of the loan to the collection contractor, or the contractor's receipt of a payment on the loan.

(8) *Special conditions for agency payment of a claim.* (i) A guarantee agency may adopt a policy under which it pays a claim to a lender on a loan under the conditions described in § 682.509(a)(1).

(ii) Upon the payment of a claim under a policy described in paragraph (b)(8)(i) of this section, the guarantee agency shall—

(A) Perform the loan servicing functions required of a lender under § 682.208, except that the agency is not required to follow the credit bureau reporting requirements of that section;

(B) Perform the functions of the lender during the repayment period of the loan, as required under § 682.209;

(C) If the borrower is delinquent in repaying the loan at the time the agency pays a claim thereon to the lender, or becomes delinquent while the agency holds the loan, exercise due diligence in attempting to collect the loan from the borrower and any endorser or co-maker; and

(D) After the date of default on the loan, if any, comply with paragraph (b)(6)(i) of this section with respect to collection activities on the loan, with the date of default treated as the claim payment date for purposes of those paragraphs.

(9) *Preemption of State law.* The provisions of paragraphs (b) (2), (5), (6) and (7) of this section preempt any State law, including State statutes, regulations or rules, that would conflict with the requirements of these provisions.

(c) *Enforcement requirements.* A guarantee agency shall take such measures, and establish such controls, as are necessary to ensure its vigorous enforcement of all Federal, State, and guarantee agency requirements, including agreements, applicable to its loan guarantee program, including, at a minimum, the following:

(1) Conducting comprehensive biennial on-site program reviews, using statistically valid techniques to calculate liabilities to the Secretary that each review indicates may exist, of at least—

(i)(A) Each participating lender whose dollar volume of GSL loans made or purchased by the lender and guaranteed by the agency in the preceding year—

(*1*) Equaled or exceeded two percent of the total of all loans guaranteed in that year by the agency;

(*2*) Was one of the ten largest lenders whose loans were guaranteed in that year by the agency; or

(*3*) Equaled or exceeded $10 million in the most recent fiscal year;

(B) Each lender described in section 435(d)(1)(D), or (J) of the Act, that is located in any State in which the agency is the principal guarantor, as defined in § 682.302(e)(3)(ii), and, at the option of each guarantee agency, the Student Loan Marketing Association; and

(C) Each participating school, located in a State for which the guarantee agency is the principal guarantee agency, that has a fiscal year default rate, as defined in 34 CFR 668.15, for either of the two immediately preceding fiscal years, as defined in § 668.15, that exceeds 20 percent, unless the school is under a mandate from the Secretary under § 668.15 to take specific default reduction measures, or if the total dollar amount of loans entering repayment in each fiscal year on which the default rate over 20 percent is based does not exceed $100,000; or

(ii) The schools and lenders selected by the agency as an alternative to the reviews required by paragraphs (c)(1) (i) through (iii) of this section, if the Secretary approves the agency's proposed alternative selection methodology.

(2) Demanding prompt repayment by the responsible parties to lenders, borrowers, the agency, or the Secretary, as appropriate, of all funds found in those reviews to be owed by the participants with regard to loans guaranteed by the agency, whether or not the agency holds the loans, and monitoring the implementation by participants of corrective actions, including these repayments, required by the agency as a result of those reviews.

(3) Referring to the Secretary for further enforcement action any instance in which repayment of funds to the Secretary is not made in full within 60 days of the date of the agency's written demand to the school, lender, or other party for payment, together with all supporting documentation and any correspondence and other documentation submitted by that party regarding the repayment.

(4) Adopting procedures for identifying fraudulent loan applications.

(5) Undertaking, or arranging with State or local law enforcement agencies for, the prompt and thorough investigation of all allegations and indications of criminal or other programmatic misconduct by its program participants, including violations of Federal law or regulations.

(6) Promptly referring to appropriate State and local regulatory agencies and to accrediting agencies for investigation information received by the guarantee agency that may affect the retention or renewal of the license or accreditation of a program participant.

(7) Promptly reporting all of the allegations and indications of misconduct having a substantial basis in fact, and the scope, progress, and results of the agency's investigations thereof, to the Secretary.

(8) Referring appropriate cases to State or local authorities for criminal prosecution or civil litigation.

(9) Promptly notifying the Secretary of—

(i) Any action it takes affecting the GSL program eligibility of a participating lender or school;

(ii) Information it receives regarding an action affecting the GSL program eligibility of a participating lender or school taken by an accrediting agency or a State licensing agency;

(iii) Any judicial or administrative proceeding relating to the enforceability of GSL loans guaranteed by the agency or in which tuition obligations of a school's students are directly at issue, other than a proceeding relating to a single borrower or student; and

(iv) Any petition for relief in bankruptcy, application for receivership, or corporate dissolution proceeding brought by or against a school or lender participating in its loan guarantee program.

(10) Cooperating with all program reviews, investigations, and audits conducted by the Secretary relating to the agency's loan guarantee program.

(11) Taking prompt and appropriate action to protect the rights of borrowers and the Federal fiscal interest respecting loans the agency has guaranteed when the agency learns that a participating school or holder of loans is experiencing problems that threaten the solvency of the school or holder, including—

(i) Conducting on-site program reviews;

(ii) Providing appropriate training and technical assistance;

(iii) Upon written request of a lender or school, acting as the escrow agent for the purpose of transmitting to borrowers proceeds of loans made for attendance at a school experiencing problems that threaten its solvency;

(iv) Filing a proof of claim with a bankruptcy court for recovery of any funds due the agency, and any refunds due the agency or other holders on GSL loans that it has guaranteed, when the agency learns that a school has filed a bankruptcy petition;

(v) Promptly notifying the Secretary that the agency has determined that a school or holder of loans is experiencing potential solvency problems; and

(vi) Promptly notifying the Secretary of the results of any actions taken by the agency to protect Federal funds involving such a school or holder.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1078-3, 1080a, 1082, 1091a, 1099)

§ 682.411 Due diligence by lenders in the collection of guarantee agency loans.

(a) *General.* In the event of delinquency on a GSL loan that is guaranteed by a guarantee agency, the

lender shall engage in at least the collection efforts described in paragraphs (c) through (l) of this section, except that, in the case of a loan made to an incarcerated borrower or to a borrower residing outside the United States, the lender may send a forceful collection letter in lieu of each telephone effort required by this section. References to the "borrower" throughout this section include all endorsers and co-makers on a loan, except that the lender is not required to attempt collection on a loan from a co-maker or endorser prior to the 90th day of delinquency.

(b) *Delinquency.* For purposes of this section, delinquency on a loan begins on the first day after the due date of the first missed payment more than half of which is not later made. The due date of the first payment is established by the lender, but must occur no later than 45 days following the end of the grace period, or, if the lender first learns after the fact that the borrower has entered the repayment period, no later than 75 days after the day the lender so learns. If a payment is made late, the first day of delinquency is the day after the due date of the next missed payment more than half of which is not later made.

(c) *One—10 days delinquent:* Except in the case where a loan is brought into this period by a payment on the loan, expiration of an authorized deferment or forbearance period, or the lender's receipt from the drawee of a dishonored check submitted as a payment on the loan, during this period the lender shall send at least one written notice or collection letter to the borrower informing the borrower of the delinquency and urging the borrower to make payments sufficient to eliminate the delinquency.

(d) *Eleven—180 days delinquent (11–240 days delinquent for a loan repayable in installments less frequent than monthly).* (1) Except as provided in paragraphs (a), (d)(3), and (f) of this section, during this period the lender shall engage in at least four diligent efforts to contact the borrower by telephone.

(2) For each instance in which its required diligent effort at telephone contact is unsuccessful, for each diligent effort that the lender is excused from making under paragraph (a) or (f) of this section, and for each successful effort to contact the borrower by telephone that occurs within 10 days of another successful effort, the lender shall send the borrower at least one forceful collection letter urging the borrower to cure the delinquency. The letter shall also warn the borrower that, if the delinquency is not cured, the lender will assign the loan to the guarantee agency that in turn will report the default to all national credit bureaus, and that the agency may bring suit against the borrower to compel repayment of the loan.

(3) Notwithstanding paragraph (d)(1) of this section, following the lender's receipt of a payment on the loan or a correct address for the borrower, the lender's receipt from the drawee of a dishonored check received as a payment on the loan, or the expiration of an authorized deferment or forbearance period, the lender—

(i) Is only required to engage in two diligent efforts to contact the borrower by telephone during this period, if the loan is delinquent by one—90 days (one—120 days for a loan repayable in installments less frequent than monthly) upon receipt of the payment, correct address, or returned check, or expiration of the deferment or forbearance; or

(ii) Is not required to engage in any efforts to contact the borrower by telephone during this period, if the loan is delinquent by more than 90 days (120 days for a loan repayable in installments less frequent than monthly) upon that receipt or expiration.

(4) At no point during this period may the lender permit the occurrence of a gap in collection activity, as defined in paragraph (i) of this section, of more than 45 days (60 days in the case of a transfer).

(e) *Final demand.* After completion of the collection steps described in paragraph (d) of this section, the lender shall send a final demand letter to the borrower requiring repayment of the loan in full and notifying the borrower that a default will be reported to a national credit bureau. After default, the lender shall allow the borrower until at least the thirtieth day after the date of default to make payments sufficient to bring the loan to less than 150 days delinquent before filing a default claim on the loan (unless the agency returns the default claim to the lender thereafter because the borrower has made those payments) or reporting that default to a credit bureau.

(f) *Collection procedures when borrower's telephone number is not available.* Upon completion of a diligent but unsuccessful effort to ascertain the correct telephone number of a borrower, as required by paragraph (d) of this section, the lender is excused from any further efforts to contact the borrower by telephone during the delinquency period in which the unsuccessful effort was made.

(g) *Skip-tracing.* (1) Within 10 days of its receipt, during the periods described in paragraphs (c) and (d) of this section, of information indicating that it does not know the borrower's current address, the lender shall diligently attempt to locate the borrower through the use of normal commercial skip-tracing techniques. These efforts must include, but are not limited to, contacting the endorser, relatives, references, and any other individuals and entities identified in the borrower's loan file.

(2) Upon receipt of information indicating that it does not know the borrower's current address, the lender shall discontinue the collection efforts described in paragraphs (c) through (e) of this section.

(3) If the lender is unable to ascertain the borrower's current address, despite its performance of the activities described in paragraph (g)(1) of this section, the lender is excused thereafter from performance of the collection activities described in paragraphs (c) through (e), and (k) of this section until it receives a payment or other communication from the borrower.

(h) *Preclaims assistance.* If the agency that guaranteed the loan offers preclaims assistance, the lender shall request that assistance within 10 days of the date established by the agency that assistance is first available from the agency, and shall, not later than 30 days after sending that request unless the loan has been brought current prior to that thirtieth day, notify the school for attendance at which the loan was made of the request by providing the school with a copy of that request, or by other means.

(i) *Gap in collection activity.* For purposes of this section, the term *gap in collection activity* means, with respect to a loan, any period—

(1) Beginning on the date that is the day after—

(i) The first day of delinquency, unless the lender does not know the borrower's address on that date;

(ii) The day on which the lender receives a payment on a loan that remains delinquent notwithstanding the payment;

(iii) The day on which the lender receives the correct address for a delinquent borrower;

(iv) The day on which the lender completes a collection activity;

(v) The day on which the lender receives from the drawee a dishonored check submitted as a payment on the loan; or

(vi) The expiration of an authorized deferment or forbearance period on a delinquent loan; and

(2) Ending on the date of the earliest of—

(i) The day on which the lender receives the first subsequent payment or properly completed deferment request or forbearance agreement;

(ii) The day on which the lender commences the first subsequent collection activity; or

(iii) Default.

(j) *Transfer.* For purposes of this section, the term *transfer* with respect to a loan means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

(k) *Collection activity.* For purposes of this section, the term *collection activity* with respect to a loan means—

(1) Mailing or otherwise transmitting to the borrower, at an address that the lender reasonably believes to be the borrower's current address, a collection letter or final demand letter that satisfies the timing and content requirements of paragraph (c) or (d) of this section;

(2) Making a diligent effort to contact the borrower by telephone to urge the borrower to commence or resume repayment;

(3) Undertaking skip-tracing efforts, in accordance with paragraph (f) of this section, to locate a borrower whose correct address is unknown to the lender; or

(4) Mailing or otherwise transmitting to the guarantee agency a request for preclaims assistance available from the agency on the loan at the time the request is transmitted.

(l) *Diligent effort for telephone contact.* For purposes of this section, the term *diligent effort* with respect to telephone contact with a borrower means—

(1) A successful effort to contact the borrower by telephone;

(2) At least two unsuccessful attempts to contact the borrower by telephone at a number that the lender reasonably believes to be the borrower's correct telephone number and at a time the lender reasonably expects the borrower to be at home; or

(3) An unsuccessful effort to ascertain the correct telephone number of a borrower, including, but not limited to, a directory assistance inquiry as to the borrower's telephone number, and an attempt to contact each reference, relative, and individual identified in the most recent loan application for that borrower held by the lender.

(m) *Preemption of State law.* The provisions of this section preempt any State law, including State statutes, regulations or rules, that would conflict with the requirements of this section.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1080a, 1082, 1087–1)

§ 682.412 Consequences of the failure of a borrower or student to establish eligibility.

(a) The lender shall immediately send to the borrower a final demand letter meeting the requirements of § 682.411(e) when it learns that, due to facts of which the borrower or student on whose behalf a parent has borrowed, but neither the school nor the lender, was or should have been aware when the loan was made, the borrower or student—

(1) Did not qualify to receive or benefit from all or a portion of a GSL loan;

(2) Has received a Stafford loan subject to payment of Federal interest benefits as provided under § 682.301, but is in fact ineligible for some or all of those interest benefits; or

(3) Has withdrawn or been expelled prior to the first day of classes for the period of enrollment for which the loan was intended, or failed to attend school during that period, but received loan proceeds and has not paid those funds to the school or repaid them to the lender.

(b) The lender shall neither bill the Secretary for, nor be entitled to, interest benefits on a loan after it learns that one of the conditions described in paragraph (a) of this section exists with respect to the loan.

(c) In the final demand letter transmitted under paragraph (a) of this section, the lender shall demand that, within 30 days, the borrower repay in full the principal amount of the ineligible portion of the loan, accrued interest thereon, and all special allowance paid by the Secretary thereon.

(d) If the borrower repays the amounts described in paragraph (c) of this section within the 30-day period, the lender shall—

(1) On its next quarterly interest billing submitted under § 682.305, refund to the Secretary the interest benefits and special allowance repaid by the borrower, and all other interest benefits and special allowance previously paid by the Secretary on the ineligible portion of the loan; and

(2) Treat that payment of the principal amount of the ineligible portion of the loan as a prepayment of principal.

(e) If a borrower fails to comply with the terms of a final demand letter described in paragraph (a) of this section, the lender shall treat the entire loan as in default, and—

(1) With its next quarterly interest billing submitted under § 682.305, refund to the Secretary the amount of the interest benefits received from the Secretary on the ineligible portion of the loan, whether or not repaid by the borrower; and

(2) Within the time specified in § 682.406(a)(4), file a default claim thereon with the guarantee agency for the entire unpaid balance of principal and accrued interest.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1)

§ 682.413 Remedial actions.

(a) The Secretary requires a lender to repay interest benefits and special allowance received on a loan guaranteed by a guarantee agency—

(1) For any period beginning on the date of a failure by the lender, with respect to the loan, to comply with any of the requirements set forth in § 682.406(a)(1) through (a)(5) and (a)(9);

(2) For any period beginning on the date of the lender's failure, with respect to the loan, to meet a condition of guarantee coverage established by the guarantee agency, to the date, if any, on which the guarantee agency reinstated the guarantee coverage pursuant to policies and procedures established by the agency;

(3) For any period in which the lender, with respect to the loan, violates the requirements of Subpart C of this part; and

(4) For any period beginning on the day after the Secretary's obligation to pay special allowance on the loan terminates under § 682.302(d).

(b) The Secretary requires a guarantee agency to repay reinsurance payments received on a loan if the lender or the agency failed to meet the requirements of § 682.406(a).

(c) In addition to requiring repayment of reinsurance payments pursuant to paragraph (b) of this section, the Secretary may take one or more of the following remedial actions against a guarantee agency that makes an incomplete or incorrect statement in connection with any agreement entered into under this part, or violates any applicable Federal requirement:

(1) Require the agency to return payments made to the agency.

(2) Withhold payments to the agency.

(3) Limit the terms and conditions of the agency's continued participation in the GSL programs.

(4) Suspend or terminate agreements with the agency.

(5) Impose a fine on the agency.

(6) Require repayment from the agency of interest, special allowance, and reinsurance paid on Consolidation loan amounts attributed to Consolidation loans that violate § 682.208(f)(1)(i) through (iii).

(7) Require repayment from the agency of any related payments that the Secretary became obligated to make to others as a result of the incomplete or incorrect statement or violation of applicable Federal requirement.

(d)(1) The Secretary follows the procedures described in 34 CFR part 668, subpart G, applicable to fine proceedings against schools, in imposing a fine against a lender or guarantee agency. Reference to "the institution" in those regulations should be understood to mean the lender or guarantee agency as applicable, for this purpose.

(2) The Secretary also follows the provisions of section 432(g) of the Act in imposing a fine against a guarantee agency.

(e)(1) The Secretary's decision to require repayment of funds, withhold funds, or to limit, suspend, or terminate a lender or agency from participation in the GSL programs does not become final until the Secretary provides the lender or agency with written notice of the intended action and an opportunity to be heard thereon, at a time and in a manner the Secretary determines to be appropriate to the resolution of the issues on which the guarantee agency requests an opportunity to be heard.

(2)(i) The Secretary may withhold payments from an agency or suspend an agreement with an agency, prior to giving notice and an opportunity to be heard, if the Secretary finds that emergency action is necessary to prevent substantial harm to Federal interests.

(ii) The Secretary follows the notice and show cause procedures described in § 682.704 applicable to emergency actions against lenders in taking an emergency action against a guarantee agency.

(3) The Secretary follows the procedures in 34 CFR 30.20 through 30.32 in collecting a debt by offset against payments otherwise due a guarantee agency or lender.

(f) Notwithstanding paragraphs (a) through (e) of this section, the Secretary may waive the right to require repayment of funds by a lender or agency if, in the Secretary's judgment, the best interests of the United States so require. The Secretary's waiver policy for violations of § 682.406(a)(3) or (a)(5) is set forth in appendix D to this part.

(g) The Secretary's final decision to require repayment of funds or to take other remedial action, other than a fine, against a lender or guarantee agency under this section is conclusive and binding on the lender or agency.

Note: A decision by the Secretary under this section is subject to judicial review under 5 U.S.C. 708 and 41 U.S.C. 321–322.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1, 1097)

682.414 Records, reports, and inspection requirements for guarantee agency programs.

(a) *Records.* (1)(i) The guarantee agency shall maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(1)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status, updated at least once every 10 business days.

(ii) The agency shall maintain—

(A) All documentation supporting the claim filed by the lender;

(B) Notices of changes in a borrower's address.

(C) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment that was attributed to principal, accrued interest, preclaims assistance, and collection costs;

(D) A collection history, showing the date and subject of each communication between the agency and the borrower or endorser relating to collection of a defaulted loan, each communication between the agency and a credit bureau regarding the loan, each effort to locate a borrower whose address was unknown at any time, and each request by the lender for supplemental preclaims assistance on the loan;

(E) Documentation regarding any wage garnishment actions initiated by the agency on the loan;

(F) Documentation of any matters relating to the collection of the loan by tax-refund offset;

(G) Any additional records that are necessary to document its right to receive or retain payments made by the Secretary under this part and the accuracy of reports it submits to the Secretary.

(2) The guarantee agency shall retain records for each loan for at least five years after the loan is paid in full or has been determined to be uncollectible in accordance with the agency's write-off procedures. For the purposes of this section, the term "paid in full" includes loans paid by the Secretary due to the borrower's death or permanent and total disability, or discharge of the loan in bankruptcy.

(3)(i) The guarantee agency shall require a participating lender to maintain current, complete, and accurate records of each loan that it holds, including but not limited to, the records described in paragraph (a)(3)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status.

(ii) The lender shall keep—

(A) A copy of the loan application;

(B) A copy of the signed promissory note, including the repayment instrument;

(C) The repayment schedule;

(D) A record of each disbursement of loan proceeds;

(E) Notices of changes in a borrower's address and status as at least a half-time student;

(F) Evidence of the borrower's eligibility for a deferment;

(G) The documents required for the exercise of forbearance;

(H) Documentation of the assignment of the loan;

(I) A payment history showing the date and amount of each payment received from or on behalf of the borrower, and the amount of each payment that was attributed to principal, interest, late charges, and other costs;

(J) A collection history, showing the date and subject of each communication between the lender and the borrower or endorser relating to collection of a delinquent loan, each communication other than regular reports by the lender showing that an account is current, between the lender and a credit bureau regarding the loan, each effort to locate a borrower whose address is unknown at any time and each request by the lender for preclaims assistance on the loan; and

(K) Any additional records that are necessary to document the validity of a claim against the guarantee or the accuracy of reports submitted under this part.

(iii) A lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower, or the lender is reimbursed on a claim. However, in particular cases, the Secretary or the guarantee agency may require the retention of records beyond this minimum period.

(4)(i) A guarantee agency or lender may store the records specified in paragraphs (a)(3)(ii) (C) through (K) of this section on microfilm or computer format.

(ii) A lender or guarantee agency holding a promissory note shall retain the original note until the loan is paid in full or assigned to the Secretary. When a loan is paid in full by the borrower, the lender or guarantee agency shall either return the original note to the borrower or notify the borrower, under an alternate procedure that is acceptable under State law, that the loan is paid in full, and retain a copy for the prescribed period.

(iii) Either the lender or guarantee agency shall retain the original loan application and, until the loan is fully repaid, the promissory note.

(b) *Reports.* A guarantee agency shall accurately complete and submit to the Secretary the following reports:

(1) A report concerning the status of the agency's reserve fund and the operation of the agency's loan guarantee program, at the time and in the manner that the Secretary may reasonably require. The Secretary will not pay the agency any funds, the amount of which are determined by reference to data in the report, until a complete and accurate report is received.

(2) Annually, for each State in which it operates, a report of the total guaranteed loan volume, default volume, and default rate for each of the following categories of originating lenders on all loans guaranteed after December 31, 1980:

(i) Schools.

(ii) State or private nonprofit lenders.

(iii) Commercial financial institutions (banks, savings and loan associations, and credit unions).

(iv) All other types of lenders.

(3) By July 1 of each year, a report on—

(i) Its eligibility criteria for schools and lenders;

(ii) Its procedures for the limitation, suspension, and termination of schools and lenders;

(iii) Any actions taken in the preceding 12 months to limit, suspend, or terminate the participation of a school or lender in the agency's program; and

(iv) The steps the agency has taken to ensure its compliance with § 682.410(c), including the identity of any law enforcement agency with which the agency has made arrangements for that purpose.

(4) Information consisting of those extracts from its computer data base, and supplied in the medium and the format, prescribed in the Stafford, SLS, and PLUS Loan Tape Dump Procedures (ED Forms 1070 and 1071).

(5) Any other information concerning its loan insurance program requested by the Secretary.

(c) *Inspection requirements.* (1) A guarantee agency shall cooperate with the Secretary, the Department of Education's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews. This cooperation must include—

(1) Providing timely access, for examination and copying, to the records required by applicable regulations and to any other pertinent books, documents, papers, and records; and

(2) Providing reasonable access to the agency's personnel associated with the agency's administration of its loan insurance program for the purpose of obtaining relevant information. Examples of restrictions that would not result in reasonable access to personnel include the following:

(i) Limiting the extent or type of relevant information to be supplied.

(ii) Requiring the presence of agency representatives during personnel interviews.

(iii) Requiring that personnel interviews be recorded, for the records of the agency.

(3) A guarantee agency shall require in its agreement with a lender, or in its published rules or procedures, that the lender, or its agent, give the Secretary or the Secretary's designee and the guarantee agency access to the lender's records for inspection and copying in order to verify the accuracy of the information provided by the lender pursuant to § 682.401(b) (18), (19), and (20), and the right of the lender to receive or retain payments made under this part, or to permit the Secretary or the agency to enforce any right acquired by the Secretary or the agency under this part.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082, 1087–1)

Subpart E—Federal Guaranteed Student Loan Programs

§ 682.500 Circumstances under which loans may be guaranteed by the Secretary.

(a) The Secretary may guarantee all—

(1) FISL, Federal SLS, and Federal PLUS loans made by lenders located in a State in which no State or private nonprofit guarantee agency has in effect an agreement with the Secretary under § 682.401 to serve as guarantor in that State;

(2) Federal Consolidation loans made by the Student Loan Marketing Association, and Federal Consolidation loans made by any other lender that has applied for and been denied guarantee coverage on Consolidation loans by the guarantee agency that guarantees the largest dollar volume of GSL loans made by the lender; and

(3) FISL, Federal SLS, Federal PLUS, and Federal Consolidation loans made by lenders located in a State in which a guarantee agency program is operating but is not reasonably accessible to students who meet the agency's residency requirements.

(b) The Secretary may guarantee FISL, Federal SLS, Federal PLUS and Federal Consolidation loans made by a lender located in a State where a guarantee agency operates a program that is reasonably accessible to students who meet the residency requirements of that program only for—

(1) A student who does not meet the agency's residency requirements;

(2) A lender who is not able to obtain a guarantee from the guarantee agency for at least 80 percent of the loans the lender intends to make over a 12-month period because of the agency's residency requirements;

(3) With the approval of the guarantee agency, a student who has previously received from the same lender a FISL loan that has not been repaid; or

(4) All students at a school located in the State, if the Secretary finds that—

(i) No single guarantee agency program is reasonably accessible to students at that school, as compared to students at other schools during a comparable period of time; and

(ii) Guaranteeing loans made in the State to students attending that school would significantly increase the access of students at that school to GSL Program loans. The Secretary may guarantee loans made to those students by a lender in that State if—

(A) The guarantee agency does not recognize the school as being eligible, but the school is eligible under the FISL program; or

(B) A majority of the persons enrolled at the school meet the conditions of student eligibility for FISL loans, but are not recognized as eligible under the guarantee agency program.

(c) For purposes of paragraph (b) of this section, a lender is considered to be located in the same State as a school if the lender—

(1) Has an origination relationship with the school;

(2) Has a majority of its voting stock held by the school; or

(3) Has common ownership or management with the school and more than 50 percent of the loans made by that lender are made to students at that school.

(d) As a condition for guaranteeing loans under the Federal GSL programs, the Secretary may require the lender to submit evidence of circumstances that would justify loan guarantees under the provisions of this section.

(e) With regard to a school lender that has entered into an agreement with the Secretary under § 682.600, the Secretary denies loan guarantees on the basis of this section only if the Secretary first determines that all eligible students at

that school who make a conscientious effort to obtain a loan from another lender will find a loan to be reasonably available. For purposes of this paragraph, the determination of loan availability is based on studies and surveys that the Secretary considers satisfactory.

(Authority: 20 U.S.C. 1071, 1078, 1078–1, 1078–2, 1078–3, 1082)

§ 682.501 Extent of Federal guarantee under the Federal GSL programs.

(a) *General.* Except as provided in paragraph (b) of this section, the Secretary's guarantee liability on any Federal GSL loan is 100 percent of the unpaid principal balance and, to the extent permitted under § 682.512, accrued interest.

(b) *Special provisions for State lenders.* (1) Except as described in paragraph (b)(2) of this section, the Secretary's guarantee liability is less than 100 percent under the following conditions:

(i) If the total of default claims under the Federal GSL programs paid by the Secretary to a State lender during any fiscal year reaches five percent of the amount of the Federal GSL loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 90 percent of the amount of the unpaid principal balance plus accrued interest.

(ii) If the total of default claims under the Federal GSL programs paid by the Secretary to a State lender during any fiscal year reaches nine percent of the amount of the Federal GSL loans in repayment at the end of the preceding fiscal year, the Secretary's guarantee liability on a claim subsequently paid during that fiscal year is 80 percent of the amount of the unpaid principal balance, plus accrued interest.

(iii) For purposes of this paragraph, the total default claims paid by the Secretary during any fiscal year do not include paid claims filed by the lender under the provisions of § 682.208(f) or § 682.509.

(2) The potential reduction in guarantee liability does not apply to a State lender during the first Federal fiscal year of its operation as a Federal GSL Program lender and during each of the four succeeding fiscal years.

(3) For the purposes of this section, the term "amount of the Federal GSL loans in repayment" means the original principal amount of all loans guaranteed by the Secretary less—

(i) The original principal amount of loans on which—

(A) Under the FISL program, the borrower has not yet reached the repayment period;

(B) Payment in full has been made by the borrower;

(C) The borrower was in deferment status at the time repayment of principal was scheduled to begin, and remains in deferment status; or

(D) The amount paid by the Secretary on a claim filed under section 437 of the Act; and

(ii) The amount paid by the Secretary for default claims on loans, exclusive of paid claims filed by the lender under § 682.208(f) or § 682.509.

(4) For the purposes of this paragraph, payments by the Secretary on a loan that the original lender assigned to a subsequent holder are considered payments made to the original lender.

(5) State lenders shall consolidate Federal GSL loans for the purpose of calculating the amount of the Secretary's guarantee liability under this section.

(Authority: 20 U.S.C. 1077, 1078–1, 1078–2, 1078–3, 1082)

§ 682.502 The application to be a lender.

(a) To be considered for participation in the Federal GSL programs, a lender shall submit an application to the Secretary.

(b) In determining whether to enter into a guarantee agreement with an applicant, and, if so, what the terms of the agreement will be, the Secretary considers—

(1) Whether the applicant meets the definition of an "eligible lender" in section 435(d)(1) of the Act and the definition of "lender" in § 682.200;

(2) Whether the applicant is capable of complying with the regulations in this part as they apply to lenders;

(3) Whether the applicant is capable of implementing adequate procedures for making, servicing, and collecting loans;

(4) Whether the applicant has had prior experience with a similar Federal, State, or private nonprofit student loan program, and the amount and percentage of loans that are currently delinquent or in default under that program;

(5) The financial resources of the applicant; and

(6) In the case of a school that is seeking approval as a lender, its accreditation status.

(c) The Secretary may require an applicant to submit sufficient materials with its application so that the Secretary may fairly evaluate it in accordance with the criteria in this section.

(d)(1) If the Secretary decides not to approve the application for a guarantee agreement, the Secretary's response includes the reason for the decision.

(2) The Secretary provides the lender an opportunity for the lender to meet with a designated Department official if the lender wishes to appeal the Secretary's decision.

(3) However, the Secretary need not explain the reasons for the denial, or grant the lender an opportunity to appeal, if the lender submits its application within six months of a previous denial.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1082)

§ 682.503 The guarantee agreement.

(a)(1) To participate in the Federal GSL programs, a lender must have a guarantee agreement with the Secretary. The Secretary does not guarantee a loan unless it is covered by such an agreement.

(2) In general, under a guarantee agreement, the lender agrees to comply with all laws, regulations, and other requirements applicable to its participation as a lender in the Federal GSL programs. In return, the Secretary agrees to guarantee each eligible Federal GSL loan held by the lender against the borrower's default, death, total and permanent disability, or bankruptcy.

(3) The Secretary may include in an agreement a limit on the duration of the contract and the number or amount of Federal GSL loans the lender may make or hold.

(b)(1) Except as otherwise approved by the Secretary, a guarantee agreement with a school lender limits the Federal GSL loans made by that school lender that will be covered by the Federal guarantee to those loans made to students, or to parents borrowing on behalf of students, who are—

(i) In attendance at that school;

(ii) In attendance at other schools under the same ownership as that school; or

(iii) Employees or dependents of employees, or whose parents are employees, of that school lender or other schools under the same ownership, under circumstances the Secretary considers appropriate for loan guarantees.

(2) The Secretary may, on a school-by-school basis, impose limits under paragraph (b)(1)(iii) of this section on a school lender that makes loans to students, or to parents of students, in attendance at other schools under the same ownership, or to employees, or to dependents or parents of employees, of those other schools.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1082)

§ 682.504 Issuance of Federal loan guarantees.

(a) A lender having a guarantee agreement shall submit an application to the Secretary for a Federal loan guarantee on each intended loan that the lender determines to be eligible for a guarantee. The application must be on a form prescribed by the Secretary. The Secretary notifies the lender whether the loan will be guaranteed and the amount of the guarantee. No disbursement on a loan made prior to the Secretary's approval of that loan is covered by the guarantee.

(b) The Secretary issues a guarantee on a Federal GSL loan in reliance on the implied representations of the lender that all requirements for the initial eligibility of the loan for guarantee coverage have been met. As described in § 682.513, the continuance of the guarantee is conditioned upon compliance by all holders of the loan, with the regulations in this part.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1082)

§ 682.505 Insurance premium.

(a) *General.* The Secretary charges the lender an insurance premium for each Federal GSL Program loan that is guaranteed, except that no insurance premium is charged on a Federal Consolidation loan, or on a Federal SLS or Federal PLUS loan made under § 682.209(f).

(b) *Rate.* The rate of the insurance premium is one-fourth of one percent per year of the loan principal, excluding interest or other charges that may have been added to the principal.

(c) *FISL loans—insurance premium calculation.* (1) The insurance premium for FISL loans is calculated by—

(i) Counting the number of months beginning with the month following the month in which each disbursement on the loan is to be made and ending 12 months after the borrower's anticipated graduation from the school for attendance at which the loan is sought;

(ii) Dividing one-fourth of one percent of the principal amount of the loan by 12; and

(iii) Multiplying the result obtained in paragraph (c)(1)(i) of this section by that obtained in paragraph (c)(1)(ii) of this section.

(2) If the lender disburses the loan in multiple installments, the insurance premium is calculated for each disbursement from the month following the month that the disbursement is made.

(d) *PLUS and SLS loans—insurance premium calculation.* The insurance premium for a Federal PLUS or SLS loan is calculated by—

(1) Using the projected repayment period as a base;

(2) Amortizing the loan in equal monthly installments over the repayment period;

(3) Determining one-fourth of one percent of each monthly declining principal balance; and

(4) Computing the total of monthly amounts calculated under paragraph (d)(3) of this section.

(e) *Collection from lenders.* (1) The Secretary may bill the lender for the insurance premium or may require the lender to pay the insurance premium to the Secretary at the time of disbursement of the loan. At the Secretary's discretion, the Secretary may alternatively collect the insurance premium by offsetting it against amounts payable by the Secretary to the lender.

(2) The Secretary's guarantee on a loan ceases to be effective if the lender fails to pay the insurance premium within 60 days of the date payment is due. The Secretary may, however, excuse late payment of an insurance premium, and reinstate the guarantee coverage on a loan, if the Secretary is satisfied that at the time the premium is paid—

(i) The loan is not in default and the borrower is not delinquent in making installment payments; or

(ii) The loan is in default, or the borrower is delinquent, under circumstances where the borrower has entered the repayment period without the lender's knowledge.

(f) *Collection from borrowers.* The lender may pass along the cost of the insurance premium to the borrower. If it does so, the insurance premium must be deducted from each disbursement of the loan in an amount proportionate to that disbursement's contribution to the premium amount.

(g) *Refund provisions.* The insurance premium is not refundable by the Secretary, and need not be refunded by the lender to the borrower, even if the borrower prepays, defaults, dies, becomes totally and permanently disabled, or files a petition in bankruptcy.

(Authority: 20 U.S.C. 1077, 1078–1, 1078–2, 1078–3, 1079, 1082)

§ 682.506 Limitations on maximum loan amounts.

(a) The Secretary does not guarantee a FISL, Federal SLS, or Federal PLUS loan in an amount that would—

(1) Result in an annual loan amount in excess of the student's estimated cost of attendance for the period of enrollment for which the loan is intended less—

(i) The student's estimated financial assistance; and

(ii) The student's expected family contribution for that period, in the case of a FISL loan; or

(2) Result in an annual or aggregate loan amount in excess of the permissible annual and aggregate loan limits described in § 682.204.

(b) The Secretary does not guarantee a Federal Consolidation loan in an amount greater than that required to discharge loans eligible for consolidation under § 682.100(a)(4).

(Authority: 20 U.S.C. 1075, 1077, 1078–1, 1078–2, 1079, 1082, 1089)

§ 682.507 Due diligence in collecting a loan.

(a) *General.* (1) Except as provided in paragraph (4) of this section, a lender shall exercise due diligence in the collection of a loan with respect to both a borrower and an endorser. In order to exercise due diligence, a lender shall implement the procedures described in this section if a borrower fails to make an installment payment when due.

(2) If two borrowers are liable for repayment of a Federal PLUS loan as co-makers, the lender shall follow these procedures with respect to both borrowers.

(3) For purposes of this section, the borrower's delinquency begins on the day after the due date of an installment payment not paid when due, except that if the borrower entered the repayment period without the lender's knowledge, the delinquency begins 30 days after the day the lender receives notice that the borrower has entered the repayment period.

(4) In lieu of the procedures described in this section, a lender may use the due diligence procedures in § 682.411 in collecting a Federal Consolidation loan.

(b) *Initial delinquency.* If a borrower is delinquent in making a payment, the lender shall remind the borrower within 10 working days of the date the payment was due by means of a letter, notice, telephone call, or personal contact. If payments do not begin or resume, the lender shall attempt to contact the borrower—

(1) At least six more times at regular intervals during the remainder of the six-month period that started on the due date of the delinquent payment, for loans repayable in monthly installments; or

(2) At least eight more times during the remainder of the eight-month period

that started on the due date of the delinquent payment, for loans repayable in installments less frequent than monthly.

(c) *Skip-tracing assistance.* (1) If a lender does not know the borrower's current address, the lender shall promptly attempt to locate the borrower through normal commercial collection activities, including contacting all individuals and entities named in the borrower's loan application. If these efforts are unsuccessful, the lender shall promptly attempt to learn the borrower's current address through use of the Department of Education's skip-tracing assistance.

(2) If the lender does not know the borrower's address when a borrower is first delinquent in making a payment, but subsequently obtains the borrower's address prior to the date on which the loan goes into default, the lender shall attempt to contact the borrower in accordance with paragraph (b) of this section, with the first contact occurring within 15 days of the date the lender obtained knowledge of the borrower's address, and shall attempt to contact the borrower at least once during each succeeding 30-day period until default.

(d) *Preclaims assistance.* When the borrower is 60 days delinquent in making a payment, the lender shall request preclaims assistance from the Department of Education. This preclaims assistance consists of sending a series of letters to the borrower, urging the borrower to contact the lender and begin or resume payments.

(e) *Final demand letter.* A lender shall send a final demand letter to the borrower at least 30 days before the lender files a default claim. The lender shall allow the borrower at least 30 days to respond to the final demand letter. However, a lender need not send a final demand letter to a borrower whose address is unknown to the lender.

(f) *Litigation.* (1) If a loan is in default and the lender determines that the borrower or an endorser has the ability to repay the loan, the lender may bring suit against the borrower or the endorser to recover the amount of the unpaid principal and interest, together with reasonable attorneys' fees, late charges, and court costs.

(2) Prior to bringing suit the lender shall—

(i) Obtain the Secretary's approval; and

(ii) Notify the borrower or endorser in writing that it has received the Secretary's approval to bring suit on the loan, and that, unless the borrower or endorser makes payments sufficient to bring the account out of default, the lender will seek a judgment under which the borrower or endorser will be liable for payment of late charges, attorneys' fees, collection agency charges, court costs, and other reasonable collection costs, in addition to the unpaid principal and interest on the loan. The lender shall mail the notice to the borrower or endorser by certified mail, return receipt requested.

(3) The lender may bring suit if the borrower or endorser does not make payments sufficient to bring the account out of default within 10 days following the date of delivery of the notice described in paragraph (f)(2)(ii) of this section to the borrower or endorser indicated on the receipt.

(4) A lender may first apply the proceeds of any judgment against its attorneys' fees, court costs, collection agency charges and other reasonable collection costs, whether or not the judgment provides for these fees and costs.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1080, 1081, 1082, 1085)

§ 682.508 Assignment of a loan.

(a) *General.* A Federal GSL loan may not be assigned except to another eligible lender. In this section, "seller" means any kind of assignor, "buyer" means any kind of assignee, and "assignment" means any kind of transfer, including assignment as security.

(b) *Procedure.* (1) A loan assigned from one lender to another must be made subject to a blanket endorsement together with other loans being assigned, or must individually bear effective words of assignment. Either the blanket endorsement or the loan note must be signed and dated by an authorized official of the seller.

(2) The buyer shall—

(i) Notify the Secretary of the assignment if the right to receive special allowance has been assigned; and

(ii) Ensure that the borrower is notified promptly if the assignment results in the borrower being required to make installment payments, or to direct other matters connected with the loan, to a party other than the party with whom the borrower dealt before the assignment. The buyer shall include in the notice to the borrower a clear statement of all the borrower's rights and responsibilities that arise from the assignment of the loan, including a statement regarding the consequences of making payments to the seller or any prior holder of the loan, subsequent to receipt of the notice.

(c) *The Secretary's approval.* The approval of the Secretary is required prior to the assignment of a note to an eligible lender that has not entered into a contract of insurance with the Secretary under § 682.503.

(d) *Warranty.* (1) Nothing in this section precludes the buyer of a loan from obtaining a warranty from the seller covering certain future reductions by the Secretary in computing the amount of guaranteed loss, if any, on a claim filed on the loan.

(2) The warranty may only cover reductions that are attributable to an act or failure to act of the seller or other previous holder.

(3) The warranty may not cover matters the buyer is responsible for under the regulations in this part.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1080, 1082)

§ 682.509 Special conditions for filing a claim.

(a) A lender shall cease collection activity on a loan and file a claim with the Secretary within the time specified in § 682.511(e)(3), if—

(1) In the case of a loan that was not made or originated by the school, the lender learns that, while the student was enrolled at the school, the school terminated its teaching activities for that student during the academic period covered by the loan; or

(2) The Secretary directs that the claim be filed.

(b) A lender may not, as a result of a claim filed with the Secretary under this section, report a borrower's loan as in default to any credit bureau or other third party.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1080, 1082)

§ 682.510 Determination of the borrower's death, total and permanent disability, or bankruptcy.

(a) The procedures in § 682.402(a) through (d) for determining whether a borrower has died, become totally and permanently disabled, or filed a bankruptcy petition, apply to the Federal GSL programs.

(b) For purposes of this section, references to the "guarantee agency" in § 682.402 (b)(2) and (d)(5) shall be understood to refer to the Secretary.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1082, 1087)

§ 682.511 Procedures for filing a claim.

(a) *Filing a claim application.* (1) A lender may file a claim against the Secretary's guarantee on a Federal GSL loan for any of the following reasons:

(i) The loan is in default, as defined in § 682.200.

(ii) Any of the conditions exist for filing a claim without collection efforts, as set forth in § 682.208(f) or § 682.509.

(iii) The borrower has died, become totally and permanently disabled, or filed a bankruptcy petition, as determined by the lender in accordance with § 682.510.

(2) If a Federal PLUS loan was obtained by two eligible parents as co-makers, the reason for filing a claim must hold true for both parents.

(3) A lender may file a claim against the Secretary's guarantee only on a form provided by the Secretary. The lender shall attach to the claim all documents required by the Secretary. If the lender fails to do so, the Secretary denies the claim.

(b) *Documentation required for claims.* (1) The Secretary requires a lender to submit the following documentation with all claims:

(i) The original promissory note.

(ii) The loan application.

(iii) The repayment instrument, in the case of a FISL loan.

(iv) A payment history, as described in § 682.414(a)(3)(ii)(I), if any payments have been made.

(v) A collection history, as described in § 682.414(a)(3)(ii)(J).

(vi) A copy of the final demand letter, if required by § 682.507(e).

(vii) The original or a copy of all correspondence addressed to, from, or on behalf of the borrower that is relevant to the loan, whether that correspondence involved the original lender, a subsequent holder, or a servicing agent.

(viii) If applicable, evidence of the lender's requests to the Department of Education for skip-tracing assistance under § 682.507(c), and for preclaims assistance under § 682.507(d).

(ix) Any additional documentation that the Secretary determines is relevant to a claim.

(2) The documentation requirements for death, total and permanent disability, or bankruptcy claims in § 682.402(e)(1) apply to the Federal GSL programs. For purposes of this section, references to the "guarantee agency" in § 682.402(e)(1) mean the Secretary.

(c) *Assignment of note.* The Secretary's payment of a claim is contingent upon receipt from the lender of an assignment to the United States of America of all rights, title, and interest of the lender in the note underlying the claim.

(d) *Bankruptcy subsequent to default.* If the lender files a default claim on a loan and subsequently receives a notice of the first meeting of creditors in the proceeding of the borrower in bankruptcy, the lender shall promptly forward that notice to the Department of Education. Under these circumstances the lender shall not file a proof of claim with the bankruptcy court.

(e) *Claim filing deadlines.* To obtain payment of a claim, a lender shall comply with the following deadlines:

(1) *Default claims.* Unless the lender has already filed suit against the borrower in accordance with § 682.507(f), it shall file a default claim on a loan with the Secretary within 90 days after a default has occurred on the loan. For a claim filed pursuant to § 682.208, the lender shall file a claim within 90 days following transmission of the final demand letter sent pursuant to § 682.411(e), if the borrower failed to comply with the terms of the letter within 30 days of the transmission.

(2) *Death, total and permanent disability, or bankruptcy claims.* The claim filing deadlines in § 682.402(e)(2) apply to the Federal GSL programs. For purposes of this section, references to the "guarantee agency" in § 682.402(e)(2) mean the Secretary.

(3) *Special condition claims.* In the case of a special condition claim filed pursuant to § 682.509, the lender shall file a claim with the Secretary within 45 days of the date the lender determines that the conditions set forth in § 682.509(a)(1) exist, or the date the Secretary directs that the claim be filed pursuant to § 682.509(a)(2).

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1080, 1082, 1087)

§ 682.512 Determination of amount payable on a claim.

(a) *Default claims*—(1) *Amount payable.* The amount of loss to be paid on a default claim depends upon the date the Secretary received the application for a guarantee commitment on the loan. If the application was received—

(i) Prior to July 1, 1972, or from August 19, 1972 through February 28, 1973, the amount payable on a valid claim is equal to the unpaid balance of the original principal loan amount disbursed; or

(ii) From July 1 through August 18, 1972, or after February 28, 1973, the amount payable on a valid claim is equal to the unpaid balance of the principal and interest in accordance with paragraph (a)(2) of this section. The unpaid principal amount of the loan may include capitalized interest to the extent authorized by § 682.202(b).

(2) *Payment of interest.* If the guarantee covers unpaid interest, the payment of a valid claim covers the unpaid interest that accrues during the following periods:

(i) During the period before the claim is filed, not to exceed the period provided for in § 682.511(e) for filing the claim.

(ii) During a period not to exceed 30 days following the return of the claim to the lender by the Secretary for additional documentation necessary for the claim to be approved by the Secretary.

(iii) During the period, after the claim is filed, that is required by the Secretary to approve the claim and to authorize payment or to return the claim to the lender for additional documentation.

(3) *Recovery of outstanding debts.* The Secretary may reduce the amount of loss due to the lender on a claim by the amount the Secretary determines is owed to the Secretary by the lender.

(b) *Death, total and permanent disability, or bankruptcy claim.* (1) In the case of a death or disability claim, the amount to be paid on a valid claim—

(i) Is equal to the unpaid balance of the original principal loan amount disbursed, if the loan was disbursed prior to December 15, 1968; or

(ii) Is calculated in accordance with § 682.402 (f)(2) and (f)(3) if the loan was disbursed after December 14, 1968.

(2) In the case of a bankruptcy claim, the amount of loss is calculated in accordance with § 682.402 (f)(2) and (f)(3).

(3) For purposes of this section, references to the "guarantee agency" in § 682.402(f)(3) mean the Secretary.

(c) *Special rules for a loan acquired by assignment.* If a claim is filed by a lender that obtained a loan by assignment, that lender is not entitled to any payment under this section greater than that to which a previous holder would have been entitled. For example, the Secretary deducts from the claim any amounts that are attributable to payments made by the borrower to a prior holder of the loan before the borrower received proper notice of the assignment of the loan.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1080, 1082, 1087)

§ 682.513 Factors affecting coverage of a loan under the loan guarantee.

(a)(1) In determining whether to approve for payment a claim against the Secretary's guarantee, the Secretary considers matters affecting the enforceability of the loan obligation under § 682.215, and whether the loan was made and administered in accordance with the Act and applicable regulations.

(2) The Secretary deducts from a claim any amount that is not a legally enforceable obligation of the borrower, except to the extent that the defense of infancy applies.

(3) Except as provided in § 682.509 the Secretary does not pay a claim unless—

(i) All holders of the loan have complied with the requirements of this part, including, but not limited to, those concerning due diligence in the making, servicing, and collecting of a loan;

(ii) The current holder has complied with the deadlines for filing a claim established in § 682.511(e); and

(iii) The current holder complies with the requirements for submitting documents with a claim as established in § 682.511(b).

(b) Except as provided in § 682.509, the Secretary does not pay a death, disability, or bankruptcy claim for a loan after a default claim for that loan has been disapproved by the Secretary or if it would not be payable as a default claim by the Secretary.

(c) The Secretary's determination of the amount of loss payable on a default claim under this part, once final, is conclusive and binding on the lender that filed the claim.

Note: A determination of the Secretary under this section is subject to judicial review under 5 U.S.C. 706 and 41 U.S.C. 321–322.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1079, 1080, 1082)

§ 682.514 Procedures for receipt or retention of payments where the lender has violated program requirements for Federal GSL loans.

(a) The Secretary may waive the right to recover or refuse to make an interest benefit, special allowance, or claim payment, or may permit a lender to cure certain defects in a specified manner if, in the Secretary's judgment, the best interests of the United States so require.

(b) To receive payment on a default claim or to resume eligibility to receive interest benefits and special allowance on a loan as to which a lender has committed a violation of the requirements of this part regarding due diligence in collection or timely filing of claims, the lender shall meet the conditions described in appendix C to this part.

(Authority: 20 U.S.C. 1078–1, 1078–2, 1078–3, 1080, 1082)

§ 682.515 Records, reports, and inspection requirements for Federal GSL program lenders.

(a) *Records.* (1) A lender shall maintain current, complete, and accurate records of each loan that it holds, including but not limited to the records described in § 682.414(a)(3)(ii). The records must be maintained in a system that allows ready identification of each loan's current status.

(2) A lender shall retain the records required for each loan for not less than five years following the date the loan is repaid in full by the borrower or the lender is reimbursed on a claim. However, in particular cases the Secretary may require the retention of records beyond this minimum period.

(3)(i) The lender may store the records specified in § 682.414(a)(3)(ii) (C) through (K) on microfilm or computer format.

(ii) The holder of the promissory note shall retain the original note and repayment instrument until the loan is fully repaid. At that time the holder shall return the original note and repayment instrument to the borrower, and retain copies for the prescribed period.

(iii) The lender shall retain the original or a copy of the loan application.

(b) *Reports.* A lender shall submit reports to the Secretary at the time and in the manner that the Secretary may reasonably require.

(c) *Inspections.* Upon request, a lender or its agent, shall cooperate with the Secretary, the Department of Education's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews. This cooperation must include—

(1) Providing timely access, for examination and copying, to the records required by applicable regulations and to any other pertinent books, documents, papers, and records; and

(2) Providing reasonable access to lender personnel associated with the lender's administration of the loan insurance programs for the purpose of obtaining relevant information. Examples of restrictions that would not result in reasonable access to personnel include the following:

(i) Limiting the extent or type of relevant information to be supplied.

(ii) Requiring the presence of lender representatives during personnel interviews.

(iii) Requiring that personnel interviews be recorded, for the records of the lender.

(Authority: 20 U.S.C. 1077, 1078–1, 1078–2, 1078–3, 1079, 1080, 1082)

Subpart F—Requirements, Standards, and Payments for Participating Schools

§ 682.600 Agreement between an eligible school and the Secretary for participation in the GSL programs.

(a) *General.* Participation of a school in the GSL programs means that the school's students are eligible to receive GSL loans. To participate in the GSL programs, a school must—

(1) Demonstrate to the satisfaction of the Secretary that it meets the elements of basic eligibility as an institution of higher education or a vocational school as defined in 34 CFR part 600 through certification by the Secretary; and

(2) Enter into a written program participation agreement with the Secretary that is signed by a duly authorized official of the school on a form approved by the Secretary.

(b) *Program participation agreement.* The school, in the program participation agreement, shall promise to comply with the applicable provisions of—

(1) The Act and the regulations in this part;

(2) The Student Assistance General Provisions, 34 CFR part 668; and

(3) The Institutional Eligibility regulations, 34 CFR part 600.

(c) *Appeal of denial or limitations.* (1) If the Secretary denies a request for an agreement or approves only limited participation in the GSL programs by a school, the Secretary's response includes the reason for the decision. The Secretary also provides the school with an opportunity to meet with a designated Department official to appeal that decision.

(2) The Secretary does not, however, grant an opportunity for appeal, or give reasons for denying the participation or approving only the limited participation of a school, if the school submits its request within six months of a previous denial or limited approval.

(d) *Foreign schools.* A foreign school is required to comply with the provisions of the regulations except only to the extent that the Secretary has stated in these regulations or in other official publications or documents that such schools do not have to so comply.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1094)

§ 682.601 Rules for a school that makes or originates loans.

(a) *General.* To make or originate loans under the GSL programs:

(1) The school shall employ full-time at least one person whose responsibilities are limited to the administration of financial aid programs for students attending the school.

(2) The school must not be a correspondence school.

(3) The school shall not make or originate loans that would be outstanding to or on behalf of more than 50 percent of the undergraduates in attendance at that school on at least a half-time basis, unless the Secretary waives this rule pursuant to paragraph (b) of this section.

(4) The school shall inform any undergraduate student who has not previously obtained a loan that was made or originated by the school, and who seeks to obtain such a loan, that he or she must first make a good faith effort to obtain a loan from a commercial lender.

(b) *Waiver of the 50 percent lending limit.* A school may request the Secretary to waive the 50 percent lending limit described in paragraph (a)(3) of this section if adherence to that limit would create a substantial hardship for the school's present or prospective students. The Secretary determines whether to grant the school a waiver after considering, among other factors—

(1) The extent to which the school provides, and expects to continue providing, educational opportunities to economically disadvantaged students, as measured by the percentage of those students enrolled at the school who—

(i) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(ii) Would not be able to enroll, or continue their enrollment, at that school without Stafford, SLS, or PLUS loans made or originated by the school; and

(iii) Would not be able to obtain a comparable education at another school;

(2) The extent to which the school offers academic programs that—

(i) Are unique in the geographical area the school serves; and

(ii) Would not be available to some students if the school adhered to the 50 percent lending limit; and

(3) The quality of the school's—

(i) Management of student financial assistance programs; and

(ii) Conformance with sound business practices.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1082, 1085)

§ 682.602 Correspondence school schedule requirements.

(a) A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students, and provide it to a prospective student prior to the student's enrollment.

(b) The school shall include in its schedule—

(1) A due date for each lesson in the course;

(2) A description of the options, if any, available to the student for altering the sequence of lesson submissions from the sequence in which they are otherwise required to be submitted;

(3) The date by which the course is to be completed; and

(4) The date by which any resident training must commence, and the period of time within which that resident training must be completed.

(c) The school's schedule must conform to the requirements set forth in the definition of "vocational school" in 34 CFR part 600.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1085)

§ 682.603 Certification by a participating school in connection with a loan application.

(a) A school shall certify that the information it provides in connection with a loan application about the borrower and, in the case of a parent borrower, the student for whom the loan is intended, is complete and accurate. Except as provided in 34 CFR part 668, subpart E, a school may rely in good faith upon statements made on the application by the student.

(b) The information to be provided by the school about the borrower making application for the loan pertains to—

(1) The borrower's eligibility for a loan, as determined in accordance with § 682.201;

(2) The student's estimated cost of attendance for the period for which the loan is sought;

(3) The student's estimated financial assistance for the period for which the loan is sought; and

(4) For a Stafford loan, the student's eligibility for interest benefits, as determined in accordance with § 682.301.

(c) Beginning not later than 60 days after a school receives notice from the Secretary that its fiscal year default rate, as defined in 34 CFR part 668, exceeded 30 percent for any fiscal year after fiscal year 1986, and continuing until the school is notified by the Secretary that its rate was equal to or less than 30 percent for a subsequent fiscal year, a school shall delay certification of the loan application of any student applying for his or her first Stafford or SLS loan for attendance at the school, so that, in compliance with § 682.604, the school ensures the student's endorsement of the check for (or written approval for the release of funds disbursed by electronic funds transfer representing) the first disbursement of the loan, the delivery of any loan proceeds to such a borrower, and the crediting of any proceeds to the borrower's account, do not occur until the borrower has attended the institution for at least 30 days during the period of enrollment for which the loan was made.

(d) A school may not certify a Stafford, PLUS, or SLS loan application, or combination of loan applications, for a loan amount that—

(1) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts set forth in § 682.204; or

(2) Exceeds the student's estimated cost of attendance, less—

(i) The student's estimated financial assistance for that period, and

(ii) In the case of a Stafford loan that is eligible for interest benefits, the borrower's expected family contribution for that period;

(e) Subject to paragraph (c) of this section, a school may not refuse to certify an application on behalf of an eligible borrower for a loan from a lender that participates in the GSL programs.

(f) A school may certify an application for a loan only for a period of enrollment corresponding to—

(1) An academic year, as defined in 34 CFR part 668;

(2) The length of the program for a program of less than two academic years in length; or

(3) An academic period of less than one academic year established by the school (such as a semester, trimester or quarter), that is used by the school as the basis for billing all of its students for institutional charges.

(g) A school may not assess the borrower a fee for the completion or certification of any GSL loan application.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1085, 1094)

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

(a) *Purpose.* This section establishes rules governing a school's processing of a borrower's Stafford or SLS loan proceeds, and for counseling borrowers. The school shall also comply with any rules for processing a loan contained in 34 CFR part 668.

(b) *General.* (1) Except in the case of a PLUS Program loan to a parent borrower, or a Stafford or SLS loan to a student attending a school not located in a State, the proceeds of a Stafford or SLS loan must be sent directly to the school by the lender.

(2)(i) Except in the case of a late disbursement under paragraph (e) of this section or as provided in paragraph (b)(2) (iii) or (iv) of this section, a school may release the proceeds of any disbursement of a loan only to a student whom the school determines, after the school receives those proceeds from the lender, has continuously maintained eligibility in accordance with the provisions of § 682.201, from the

beginning of the loan period certified by the school on the student's loan application.

(ii) In the event a student notifies the school on or before the first day of classes that he or she will be delaying attending school for a period of time and commences attendance less than 30 days after the date the student first so notifies the school, the school may consider that student to have maintained eligibility for the loan from the first day of the period of enrollment for which the loan is intended.

(iii) If, after the proceeds of the first disbursement are transmitted to the student, the student becomes ineligible due solely to the school's loss of eligibility to participate in the Title IV programs, the school may transmit the proceeds of the second or subsequent disbursement to the borrower as permitted by 34 CFR part 668.

(iv) If, prior to the transmittal of the proceeds of a disbursement to the student, the student temporarily ceases to be enrolled on at least a half-time basis, the school may transmit the proceeds of that disbursement and any subsequent disbursement to the student if the school subsequently determines and documents in the student's file—

(A) That the student has resumed enrollment on at least a half-time basis;

(B) The student's revised cost of attendance; and

(C) That the student continues to qualify for the entire amount of the loan, notwithstanding any reduction in the student's cost of attendance caused by the student's temporary cessation of enrollment on at least a half-time basis.

(c) *Processing of the loan proceeds by the school.* (1) Except as provided in paragraph (c)(3) of this section, if a school receives a borrower's loan proceeds, it shall hold the funds until the student has registered for classes for the period of enrollment for which the loan is intended, and then follow the procedures in paragraph (c)(2) of this section.

(2)(i) After the student has registered, if the loan proceeds are disbursed by means of a check that requires the endorsement only of the student, the school shall deliver the check to the student, subject to paragraph (d)(2) of this section, within 45 days of the school's receipt of the check.

(ii) If the loan proceeds are disbursed by means of a check that requires the endorsement of both the student and the school, the school shall—

(A) In the case of the initial disbursement on a loan, endorse the check on its own behalf and, after the student has registered, deliver it to the student, subject to paragraph (d)(2) of this section within 45 days of the school's receipt of the check; or

(B) Obtain the student's endorsement on the check, endorse the check on its own behalf and, after the student has registered, credit the student's account, in accordance with paragraph (d)(1) of this section, and deliver the remaining loan proceeds to the student, subject to paragraph (d)(2) of this section, within 45 days of receipt.

(3) If the loan proceeds are disbursed by electronic transfer to an account of the school on behalf of a borrower in accordance with § 682.207(b)(1)(ii)(B), the school shall, not more than 30 days prior to the first day of classes of the period of enrollment for which the loan is intended except for a student who receives the initial counseling described in paragraph (f) of this section in person or by videotape, obtain the student's written authorization for the release of the funds, and, after the student has registered, either—

(i) Deliver the proceeds to the student subject to paragraph (d)(2) of this section not later than 45 days after the student's registration; or

(ii) Credit the student's account in accordance with paragraph (d)(1) of this section, notify the student in writing that it has so credited that account, and deliver the remaining loan proceeds to the student, subject to paragraph (d)(2) of this section, not later than 45 days after the student's registration.

(4) A school shall not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence, as described in § 682.605(c).

(d) *Applying the loan proceeds.* (1)(i) For purposes of paragraphs (c)(2)(ii)(B) and (c)(3)(ii) of this section, a school may not credit a registered student's account earlier than three weeks before the first day of classes of the period of enrollment for which the loan is intended.

(ii)(A) The school may credit a registered student's account with only those loan proceeds covering costs of attendance owed to the school by the student for which substantially all of the school's students incurring those costs have been billed.

(B) The school, as a fiduciary for the benefit of the guarantee agency, the Secretary, and the student, shall hold any additional loan proceeds that the student requests in writing that the school retain in order to assist the student in managing his or her loan funds for the remainder of the academic year. The school shall deposit these funds in a designated trust account and may not commingle them with other funds or use them for any other purpose.

(2)(i) For purposes of paragraphs (c)(2)(i), (c)(2)(ii), and (c)(3) of this section, an institution may not deliver loan proceeds to a registered student earlier than 10 days before the first day of classes of the period of enrollment for which the loan is intended.

(ii) Notwithstanding the 45-day deadlines set forth in paragraph (c)(2) of this section, in the case of a second or subsequent disbursement on a multiply disbursed loan, the school may hold the loan proceeds until the beginning of the next scheduled semester, trimester, quarter, or similar division in the academic period within the period of enrollment for which the loan is intended, or, in the case of a school that does not use semesters, trimesters, quarters, or similar divisions, until the beginning of the second half of the period of enrollment for which the loan was intended, whereupon the school shall transmit the loan proceeds to the student and, if applicable, the student's account, within 30 days thereafter.

(3) If a student does not register for the period of enrollment for which the loan was made, the school shall return the loan proceeds to the lender by the latter of—

(i) Thirty days after the first day of that period of enrollment; or

(ii) In the case of a student that provides timely notice to the school of intent to register late in accordance with § 682.604(b)(2)(ii), 60 days after the date of that notice.

(4) If a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the loan is intended, or fails to attend school during that period, or the school is unable for any other reason to document that the student attended school during that period, the school shall, within 30 days of the period described in § 682.607(c) of this part, notify the lender of the student's withdrawal, expulsion, or failure to attend school, if applicable, and return to the lender—

(i) Any loan proceeds credited directly by the school to the student's account; and

(ii) The amount of payments made directly by the student to the school, to the extent that they do not exceed the amount of any loan proceeds delivered by the school to the student.

(e) *Processing a late disbursement.* (1) For the purpose of this paragraph, a disbursement is late if the lender disburses the student's loan proceeds either—

(i) After the end of the period of enrollment for which the loan was made; or

(ii) Before the end of the period of enrollment for which the loan was made, but after the student ceased to be enrolled at the school on at least a half-time basis.

(2) A school shall follow the procedures described in paragraphs (e)(3)–(6) of this section in processing a late disbursement, except that, notwithstanding those provisions, a school may not—

(i) Deliver the proceeds of a late disbursement to a student borrower whose last recorded day of attendance is earlier than the 30th day of the period of enrollment for which the loan is intended, if the loan was subject to delayed certification under § 682.603(c); or

(ii) Deliver to a borrower any portion of the proceeds of a late disbursement that, under 34 CFR part 668, is considered to be awarded for a payment period in which the student was not enrolled on at least a half-time basis at the school.

(3) If a lender makes a disbursement after the earlier of the dates set forth in paragraph (e)(1) of this section, and the lender has informed the school that its late disbursement policy prohibits a late disbursement described in § 682.207(d)(2), the school shall return the loan proceeds to the lender within 30 days after its determination that one of the conditions described in paragraph (e)(1) of this section exists. The school shall send a notice to the lender with the loan proceeds informing the lender as to which of the conditions described in paragraph (e)(1) of this section exists.

(4) If a disbursement is received by the school within 30 days after the earlier of the dates described in paragraph (e)(1) of this section, the lender has not informed the school that the lender's policy prohibits a late disbursement under § 682.207(d)(2)(i), and the total amount of the disbursement and all prior disbursements on the loan does not exceed that portion of the student's cost of attendance for the period of enrollment completed by the student before the earlier of the dates described in paragraph (e)(1) of this section, the school shall deliver the borrower's loan proceeds to the borrower in accordance with this section. If the total amount of the late disbursement and all prior disbursements is greater than that portion of the borrower's cost of attendance, the school shall—

(i) Return the borrower's loan proceeds to the lender with a notice certifying—

(A) The beginning and ending dates of the period during which the borrower was enrolled at the school as an eligible student during the loan period; and

(B) The borrower's correct financial need for the loan for that period of enrollment; and

(ii) Advise the borrower that the lender may redisburse funds for the borrower's cost of attendance incurred before the earlier of the dates described in paragraph (e)(1) of this section.

(5)(i) If a late disbursement is received by the school within 31–60 days after the earlier of the dates described in paragraph (e)(1) of this section, the lender has not informed the school that its late disbursement policy prohibits a late disbursement described in § 682.207(d)(2)(iii), and the total amount of the late disbursement and all prior disbursements does not exceed the student's cost of attendance for the period of enrollment completed by the student before the earlier of the dates described in paragraph (e)(1) of this section, the school shall deliver the borrower's loan proceeds in accordance with this section after it certifies in writing to the lender the information in paragraph (e)(4)(i) of this section.

(ii) If the total amount of a late disbursement described in paragraph (e)(5)(i) of this section and all prior disbursements exceeds the borrower's cost of attendance incurred before that date, the school shall follow the procedures described in paragraphs (e)(4) (i) and (ii) of this section.

(6)(i) If a late disbursement is received by the school within 61–90 days after the earlier of dates described in paragraph (e)(1) of this section, the lender has not informed the school that its late disbursement policy prohibits a late disbursement described in § 682.207(d)(2)(iv) and the total amount of the late disbursement and all prior disbursements does not exceed the borrower's cost of attendance incurred before that date, the school shall—

(A) Send a notice to the lender certifying the information in paragraph (e)(4)(i) of this section;

(B) Advise the borrower that the lender may choose to permit a late disbursement, if the guarantee agency, after reviewing the documentation described in paragraph (e)(4)(i) of this section, approves a late disbursement; and

(C) Upon receiving notice from the lender that the late disbursement has been approved by the guarantor, deliver the borrower's loan proceeds in accordance with this section.

(ii) If the total amount of a late disbursement described in paragraph (e)(6)(i) of this section and all prior disbursements exceeds the borrower's cost of attendance incurred before the earlier of the dates described in paragraph (e)(1) of this section, the school shall—

(A) Return the loan proceeds to the lender with a notice certifying the information in paragraphs (e)(4)(i) (A) and (B) of this section; and

(B) Advise the borrower of the matters described in paragraph (e)(6)(i)(B) of this section.

(iii) If the redisbursed loan funds are accompanied by a notice from the lender that the redisbursed late disbursement has been approved by the guarantor, deliver the borrower's loan proceeds in accordance with this section.

(f) *Initial counseling.* (1) Except in the case of a correspondence school, a school shall conduct counseling with each Stafford and SLS borrower, either in person or by videotape presentation. In each case, the school shall conduct this counseling prior to its release of the first disbursement of the proceeds of the first Stafford or SLS loan made to the borrower for attendance at the school, and shall ensure that an individual with expertise in the Title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. A correspondence school shall provide the borrower with written counseling materials by mail prior to releasing those proceeds.

(2) In conducting the initial counseling the school must—

(i) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(ii) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation; and

(iii) In the case of a student borrower of a Stafford or SLS loan (other than a loan made or originated by the school), emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the borrower purchased from the school.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in appendix D to 34 CFR part 668.

(g) *Exit counseling.* (1) A school shall conduct in-person exit counseling with each Stafford and SLS borrower shortly before the borrower ceases at least half-time study at the school, except that—

(i) In the case of a correspondence school, the school shall provide the borrower with written counseling materials by mail within 30 days after the borrower completes the program; and

(ii) If the borrower withdraws from school without the school's prior knowledge, or fails to attend an exit counseling session as scheduled, the school shall mail written counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to attend the scheduled session.

(2) In conducting the exit counseling the school must—

(i) Provide the borrower with general information with respect to the average indebtedness of the students who have obtained Stafford or SLS program loans for attendance at that school;

(ii) Inform the student as to the average anticipated monthly repayment for those students based on that average indebtedness;

(iii) Review for the borrower available repayment options (*e.g.*, loan consolidation, refinancing);

(iv) Suggest to the borrower debt management strategies that the school determines would best facilitate repayment by the borrower; and

(v) Include the matters described in paragraph (f)(2) of this section.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) The school shall maintain in the student borrower's file documents substantiating the school's compliance with paragraphs (f) through (g) of this section as to that borrower.

(h) *Treatment of excess loan proceeds.* If, after a school certifies a loan application, the school learns that the borrower will receive or has received financial aid for the period of enrollment for which a GSL loan was made that exceeds the student's estimated cost of attendance, or in the case of a Stafford loan subject to payment of interest benefits under § 682.301, the student's financial need, the school shall—

(1) If no loan proceeds have been credited to the student's account or delivered to the student, immediately return to the lender any proceeds in its possession and provide the lender with a written statement describing the reason for the return of funds, if any, and setting forth the student's revised cost of attendance or financial need.

(2) If any proceeds of the first disbursement of a multiply-disbursed loan have been credited to the student's account or delivered to the student prior to the school's learning of the excess aid, promptly provide the lender with a written statement setting forth the student's revised cost of attendance or financial need, and directing the lender to reduce the second disbursement by the amount of the excess;

(3) If the entire loan proceeds have been credited to the student's account or delivered to the student, attempt to eliminate the excess by reducing the amount of other financial aid, if any, that—

(i) Is to be delivered to the student; or

(ii) Has been or is to be credited to the student's account.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1082, 1085, 1092, 1094)

§ 682.605 Determining the date of a student's withdrawal.

(a) *Purpose.* This section establishes rules for how a school shall determine the withdrawal date for a student to whom or on whose behalf a loan has been made under this part for the purpose of reporting to the lender the date that the student has withdrawn from the school, and for determining when a refund must be paid under § 682.606 of this part.

(b) *The withdrawal date.* (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the student's withdrawal date is the earlier of—

(i) The date the student notifies the school of the student's withdrawal, or the date of withdrawal specified by the student, whichever is later; or

(ii) The date of withdrawal, as determined by the school.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c) of this section, the student's withdrawal date is the date of the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is the date of the last lesson submitted. However, if the student establishes in writing, within 60 days of the date of the last lesson submitted, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the school may restore that student to in-school status for purposes of the loan made under this part. The school may not grant the student more than one restoration to in-school status on this basis.

(4) For the purpose of a school's reporting to a lender, a student's withdrawal date is the month and year of the withdrawal date determined under paragraphs (b)(1) through (b)(3) of this section.

(c) *Leaves of absence.* A student who has been absent from school and has been granted a leave of absence by a school, in accordance with this paragraph, is not considered to have withdrawn from school for purposes of paragraph (a) of this section. In any twelve-month period, a school may grant no more than a single leave of absence to a student, provided that—

(1) The student has made a written request to be granted a leave of absence;

(2) The leave of absence involves no additional charges by the school to the student; and

(3) The leave of absence does not exceed—

(i) Sixty days; or

(ii) Six months, under either of the following circumstances:

(A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence.

(B) The leave of absence is requested because of the student's medically determinable condition, in which case the student must provide the school with a written recommendation from a physician for a leave of absence longer than 60 days.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1094)

§ 682.606 Refund policy.

(a) *General.* (1) A school shall have a fair and equitable refund policy under which the school shall make a refund of unearned tuition, fees, room and board and other charges, to a student who received a Stafford or SLS Program loan, or whose parent received a PLUS Program loan on behalf of the student, if the student—

(i) Does not register for a period of enrollment for which the loan was intended; or

(ii) Withdraws or otherwise fails to complete a period of enrollment for which the loan was made.

(2) The school shall provide a written statement containing its refund policy, together with examples of the application of this policy, to a prospective student prior to the student's enrollment, and shall make its policy known to currently enrolled students. The school shall include in its statement the procedures that a student must follow to obtain a refund, but the school shall pay to the lender the portion of a refund allocable to the student's Stafford, SLS, or PLUS program loans under 34 CFR part 668 whether or not the student follows those procedures. If the school changes its refund policy, it shall ensure that all students are made aware of the new policy.

(b) *Fair and equitable refund policy.* A school's refund policy is fair and equitable if—

(1) That policy provides for a refund of at least the larger of the amount provided under—

(i) The requirements of applicable State law; or

(ii)(A) The specific refund standards established by the school's nationally recognized accrediting agency and approved by the Secretary; or

(B) If no such standards exist, the specific refund policy standards contained in Appendix A to this part, or the refund policy standards set by another association of institutions of postsecondary education and approved by the Secretary; and

(2) Within 60 days after the school's receipt of notice from the Secretary that its fiscal year default rate, as defined in 34 CFR part 668, exceeded 30 percent for any fiscal year after 1988, and continuing until the Secretary notifies the school that its rate was equal to or less than 30 percent for a subsequent fiscal year, the school's policy conforms with the *pro rata* refund calculation described in paragraph (c) of this section or the requirements of paragraph (b)(1) of this section, whichever results in the larger refund amount. However, the provisions of paragraph (b)(2) of this section do not apply to the school's refund policy for any student whose last recorded day of attendance is after the earlier of—

(i) The halfway point (in time) for the student's program of study; or

(ii) Six months after the commencement of the student's program.

(c) (1) "*Pro rata* refund," as used in this section, means a refund by the school of not less than that portion of the tuition, fees, room and board, and other charges assessed the student by the school equal to the portion of the period of enrollment for which the student has been charged that remains on the last recorded day of attendance by the student, rounded downward to the nearest 10 percent but never less than 10 percent, of that period, less any unpaid charges owed by the student for the period of enrollment for which the student has been charged, and less—

(i) A reasonable administrative fee not to exceed the lesser of 5 percent of the tuition, fees, room and board, and other charges assessed the student, or $100; and

(ii) Charges authorized by paragraph (c)(5) of this section.

(2) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in credit hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of weeks comprising the period of enrollment for which the student has been charged into the number of week remaining in that period as of the last recorded day of attendance by the student.

(3) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in clock hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total clock hours comprising the period of enrollment for which the student has been charged into the number of clock hours remaining to be completed by the student in that period as of the last recorded day of attendance by the student.

(4) For purposes of paragraph (c)(1) of this section, in the case of a correspondence program, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of lessons comprising the period of enrollment for which the student has been charged into the total number of such lessons not submitted by the student.

(5) A school may require that equipment issued to the student by the school that the school would reissue to another student be returned by a student once the school determines that the student has withdrawn, if the school makes a written request for that return that is received by the student within 10 days of the date of that determination. If the school notified the student in writing prior to enrollment that return of the specific equipment involved would be required if the student withdrew, the school may deduct from the refund owed under this section the documented cost to the school of that equipment if the student fails to return it within 10 days of the date of the student's receipt of the request from the school. However, the school may not delay its payment of a refund to a lender under § 682.607 by reason of this process.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1082, 1094)

§ 682.607 Payment of a refund to a lender.

(a) *General.* By applying for a GSL loan, a borrower authorizes the school to pay directly to the lender that portion of a refund from the school that is allocable to the loan. A school—

(1) Shall pay that portion of the student's refund that is allocable to a GSL loan to—

(i) The original lender; or

(ii) A subsequent holder, if the loan has been transferred and the school knows the new holder's identity; and

(2) Shall provide simultaneous written notice to the borrower and, if the borrower is a parent, to the student on whose behalf the loan was made, if the school pays a refund to a lender on behalf of that student.

(b) *Allocation of refund.* In determining the portion of a student's refund for an academic period that is allocable to a GSL loan received by the borrower for that academic period, the school shall follow the procedures established in 34 CFR part 668 for allocating a refund that is payable.

(c) *Timely payment.* A school shall pay a refund that is due—

(1) Within 60 days after the earliest of the—

(i) Student's withdrawal as determined under § 682.605 (b)(1)(i) or (b)(3);

(ii) Expiration of the academic term (*e.g.*, semester, quarter, or trimester) in which the student withdrew, as determined under § 682.605(b)(1)(ii);

(iii) Expiration of the period of enrollment for which the loan was made; or

(iv) The date on which the school makes a determination that the student has withdrawn under § 682.605(b)(1)(ii); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under § 682.605(c), within 30 days after the last day of that leave of absence.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1094)

§ 682.608 Termination of a school's lending eligibility.

(a) *General.* The Secretary may terminate a school's eligibility to make loans under this part, if the school reaches the 15 percent limit on loan defaults described in paragraph (b) of this section.

(b) *The 15 percent limit.* (1) The Secretary may terminate a school's eligibility to make loans if, at the end of each of the two most recent consecutive Federal fiscal years for which data are available, the total amount of loans described in paragraph (b)(1)(i) of this section is equal to or greater than 15 percent of the total amount of loans described in paragraph (b)(1)(ii) of this section:

(i) The original principal amount of all loans the school has ever made that went into default during that period.

(ii) The original principal amount of all loans the school has ever made, including loans in deferment status that—

(A) Were in repayment status at the beginning of that period; or

(B) Entered repayment status during that period.

(2) In making the determination under this section, the Secretary considers the status of all GSL loans made by the school, whether the loans are held by the school or by a subsequent holder.

(c) *Exception based on hardship.* The Secretary does not terminate a school's lending eligibility under paragraphs (a) and (b) of this section if the Secretary determines that the termination would result in a hardship for the school or its students. The Secretary makes this determination if the school shows that—

(1) Termination is not justified in light of recent improvements the school has made in its collection capabilities that will reduce the school's loan default rate significantly within the next year. Examples of these improvements include—

(i) Adopting more efficient collection procedures; or

(ii) Employing increased collection staff; or

(2) Termination would cause a substantial hardship to the school's current or prospective students or their parents based on—

(i) The extent to which the school provides, and expects to continue to provide, educational opportunities to economically disadvantaged students, as measured by the percentage of students enrolled at the school who—

(A) Are in families that fall within the "low-income family" category used by the Bureau of the Census;

(B) Would not be able to enroll, or continue their enrollment, at that school without a loan from the school; and

(C) Would not be able to obtain a comparable education at another school;

(ii) The extent to which the school offers academic programs that—

(A) Are unique in the geographical area that the school serves; and

(B) Would not be available to some students if they or their parents could not obtain loans from the school; and

(iii) The quality of improvements the school has made in its—

(A) Management of student financial assistance programs; and

(B) Conformance with sound business practices.

(d) *Termination procedures.* (1) The Secretary notifies the school of the proposed termination and provides an opportunity for a hearing before the Secretary terminates the lending eligibility of a school under this section.

(2) The Secretary or his designee begins a termination action by sending a notice to the school. The notice is sent by certified mail with return receipt requested. The notice—

(i) Informs the school of the intent to terminate the school's lending eligibility because of the school's default experience;

(ii) Specifies the proposed effective date of the termination; and

(iii) Informs the school that it has 15 days to—

(A) Submit any written material it wants considered in determining whether its lending eligibility should be terminated under paragraphs (a) and (b) of this section, including written material in support of a hardship exception under paragraph (c) of this section; or

(B) Request an oral hearing to show why the school's lending eligibility should not be terminated.

(3) If the school does not request an oral hearing but submits written material, the Secretary or the designated official considers that material and notifies the school as to whether the termination action will be taken.

(4) The Secretary or the designated official (presiding officer) schedules the date and place of a hearing for a school that has requested an oral hearing. The date of the hearing is at least 15 days from the date of receipt of the request. A presiding officer—

(i) Conducts the hearing;

(ii) Considers all written material presented before the hearing and any other material presented during the hearing; and

(iii) Determines if termination of the school's lending eligibility is warranted.

(5) The decision of the designated official is subject to review by the Secretary.

(e) *Effects of termination.* A school that has its lending eligibility terminated under this section may not—

(1) Make further loans under this part until it has entered into a new guarantee agreement with the Secretary; or

(2) Enter into a new guarantee agreement with the Secretary until at least one year after the school's lending eligibility has been terminated under this section.

(f) *Schools under the same ownership.* If a school makes a loan to students or parents of students in attendance at other schools under the same ownership, the Secretary may make the determination required by this section by—

(1) Treating all of the schools as one school; or

(2) Treating each school on an individual basis.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1085)

§ 682.609 Remedial actions.

(a) The Secretary may require a school to repay funds paid to other program participants by the Secretary. The Secretary may also require a school to purchase from the holder of a GSL loan that portion of the loan that is unenforceable, that the borrower was ineligible to receive, or for which the borrower was ineligible to receive interest benefits contrary to the school's certification, and to make arrangements acceptable to the Secretary for reimbursement of the amounts the Secretary will be obligated to pay to program participants respecting that loan in the future. The repayment of funds and purchase of loans may be required if the Secretary determines that the payment to program participants, the unenforceability of the loan, or the disbursement of loan amounts for which the borrower was ineligible or for which the borrower was ineligible for interest benefits, resulted, in whole or in part, from—

(1) The school's violation of a Federal statute or regulation; or

(2) The school's negligent or willful false certification.

(b) In requiring a school to repay funds to the Secretary or to another party, or to purchase loans from a holder in connection with an audit or program review, the Secretary follows the procedures described in 34 CFR part 668, subpart H.

(c) Notwithstanding paragraph (a) of this section, the Secretary may waive the right to require repayment of funds or repurchase of loans by a school, if, in the Secretary's judgment, the best interest of the United States so requires.

(d) The Secretary may impose a fine or take an emergency action against a school, or limit, suspend, or terminate a school's participation in the GSL programs, in accordance with 34 CFR part 668, subpart G.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1094)

§ 682.610 Administrative and fiscal requirements for participating schools.

(a) *General.* Each school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in the regulations in this part and in 34 CFR part 668 in order to—

(i) Protect the rights of student and parent borrowers;

(ii) Protect the United States from unreasonable risk of loss; and

(iii) Comply with specific requirements in those regulations; and

(2) Submit all reports required by this part and 34 CFR Part 668 to the Secretary.

(b) *Loan record requirements.* In addition to records required by 34 CFR part 668, for each Stafford, SLS, and PLUS loan received under this part by or on behalf of its students, a school shall maintain a copy of the loan application and a record of—

(1) The name of the lender;

(2) The address of the lender;

(3) The amount of the loan and the period of attendance for which the loan was intended;

(4) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

(5) The sources and amounts of financial assistance available to the student that the school used in determining the student's estimated financial assistance for the loan period, in accordance with § 682.200.

(6) The amount of the student's tuition and fees paid for the loan period and the date the student paid the tuition and fees;

(7) The amount and basis of its calculation of any refund paid to or on behalf of a student;

(8) In the case of a Stafford loan for which the borrower applies for interest benefits under § 682.301, the data used to determine the student's expected family contribution, and the corresponding certification by the school to the lender;

(9) In the case of a Stafford or SLS loan—

(i) The date the school received each loan disbursement and the amount of that disbursement;

(ii) The date the school endorsed each loan check; and

(iii) The date or dates of transmittal of the loan proceeds by the school to the student;

(10) The student's job placement, if known; and

(11) Any other matter a record of which is required for the school to be able to document its compliance with applicable requirements with respect to the loan.

(c) *Student status confirmation reports.* A school shall—

(1) Upon receipt of a student status confirmation report form from the Secretary or a similar student status confirmation report form from any guarantee agency, complete and return that report, within 30 days of receipt, to the Secretary or the guarantee agency, as appropriate; and

(2) Unless it expects to submit its next student status confirmation report to the Secretary or the guarantee agency within the next 60 days, notify the lender within 30 days—

(i) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a student who enrolled at that school, but who has ceased to be enrolled on at least a half-time basis;

(ii) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a student who has been accepted for enrollment at that school, but who failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(iii) If it discovers that a Stafford, SLS, or PLUS loan has been made to or on behalf of a full-time student who has ceased to be enrolled on a full-time basis.

(d) *Record retention requirements.* Unless otherwise directed by the Secretary, the school or its successors—

(1) Shall keep all records required under the regulations in this part for five years following the last day of the period for which the loan was intended;

(2) Shall keep for five years after completion, copies of reports and other forms used by the school relating to the Stafford, SLS, or PLUS programs;

(3) Shall provide, in the event of the school's closure, termination, suspension, or change of ownership, for the retention of the records and reports required by the regulations in this part and for access by the Secretary or the Secretary's authorized representatives to those records and reports for inspection and copying; and

(4) May keep records and copies of reports on microfilm or in computer format.

(e) *Inspection requirements.* Upon request, a school or its agent shall cooperate with the Secretary, any guarantee agency, the Department of Education's Office of the Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews. This cooperation must include—

(1) Providing timely access, for examination and copying, to the records required by the applicable regulations and to any other pertinent books, documents, papers and records; and

(2) Providing reasonable access to institutional personnel associated with the institution's administration of the title IV, HEA programs for the purpose of obtaining relevant information. Examples of restrictions that would not result in reasonable access to personnel include the following:

(i) Limiting the extent or type of relevant information to be supplied.

(ii) Requiring the presence of institutional representatives during personnel interviews.

(iii) Requiring that personnel interviews be recorded, for the records of the institution.

(f) *Information sharing.* (1) Upon request of the Secretary, a lender, or a guarantee agency, a school shall promptly provide a lender or guarantee agency with any information the school has respecting the last known address, surname, employer, and employer address of a borrower who attends or has attended the school.

(2) If the school discovers that a student who has received a Stafford or SLS loan has changed his or her permanent address, the school shall notify the holder of the loan within 30 days thereafter, either directly or through the guarantee agency.

(g) *Reports to the Secretary.* With respect to each program for which a disclosure to a prospective student is required by 34 CFR 668.44 to be made using a form set forth in appendix A, part 668, a school shall, between October 1 and December 31 of each year, transmit to the Secretary—

(1) A completed copy of that form containing the most recent data required by part 668 to be included on the form; and

(2) Information showing the total amount of charges for tuition, fees, equipment, books, and supplies for the program.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1082, 1094)

Subpart G—Limitation, Suspension, or Termination of Lender Eligibility and Disqualification of Lenders and Schools

§ 682.700 Purpose and scope.

(a) This subpart governs the limitation, suspension, or termination by the Secretary of the eligibility of an otherwise eligible lender to participate in the GSL programs. The regulations in this subpart apply to a lender that violates any statutory provision governing the GSL programs or any regulations, special arrangements, agreements, or limitations prescribed under those programs. These regulations apply to lenders that participate only in a guarantee agency program as well as to lenders that participate in the Federal GSL programs. These regulations also govern the disqualification of a lender or

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school from participation in the GSL programs under sections 432(h)(2) and (h)(3) of the Act.

(b) This subpart does not apply—

(1) To a determination that an organization fails to meet the definition of "eligible lender" in section 435(d)(1) of the Act or the definition of "lender" in § 682.200, for any reason other than a violation of the prohibitions set forth in section 435(d)(5) of the Act;

(2) To a school's loss of lending eligibility under § 682.606; or

(3) To an administrative action by the Department of Education based on any alleged violation of—

(i) The Family Educational Rights and Privacy Act of 1974 (section 438 of the General Education Provisions Act), which is governed by 34 CFR part 99;

(ii) Title VI of the Civil Rights Act of 1964, which is governed by 34 CFR parts 100 and 101;

(iii) Section 504 of the Rehabilitation Act of 1973 (relating to discrimination on the basis of handicap), which is governed by 34 CFR part 104; or

(iv) Title IX of the Education Amendments of 1972 (relating to sex discrimination), which is governed by 34 CFR part 106.

(c) This subpart does not supplant any rights or remedies that the Secretary may have against participating lenders or schools under other authorities.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.701 Definitions of terms used in this subpart.

The following definitions apply to terms used in this subpart:

Designated Departmental official. An official of the Department of Education to whom the Secretary has delegated the responsibility for initiating and pursuing disqualification or limitation, suspension, or termination proceedings.

Disqualification. The removal of a lender's or school's eligibility for an indefinite period of time by the Secretary on review of limitation, suspension, or termination action taken against the lender or school by a guarantee agency.

Limitation. The continuation of a lender's eligibility subject to compliance with special conditions established by agreement with the Secretary or a guarantee agency, or imposed as the result of a limitation or termination proceeding.

Suspension. The removal of a lender's eligibility for a specified period of time or until the lender fulfills certain requirements.

Termination. The removal of a lender's eligibility for an indefinite period of time—

(a) By a guarantee agency; or

(b) By the Secretary, based on an action taken by the Secretary, or a designated Departmental official under § 682.706.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.702 Effect on participation.

(a) Limitation, suspension, or termination proceedings by the Secretary do not affect a lender's responsibilities, or rights to benefits and claim payments, that are based on the lender's prior participation in the program, except as provided in paragraph (c) of this section and in § 682.709.

(b) A limitation imposes on a lender—

(1) A limit on the number or total amount of loans that a lender may make, purchase, or hold under the GSL programs;

(2) A limit on the number or total amount of loans a lender may make to, or on behalf of, students at a particular school under the GSL programs; or

(3) Other reasonable requirements or conditions, including those described in § 682.709.

(c) After the effective date of the termination of a lender's eligibility, the Secretary does not guarantee new loans made by that lender or pay interest benefits, special allowance, or reinsurance on new loans guaranteed by a guarantee agency after that date. The Secretary may also prohibit the lender from making further disbursements on a loan for which a guarantee commitment has already been issued.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.703 Informal compliance procedure.

(a) The Secretary may use the informal compliance procedure in paragraph (b) of this section if the Secretary receives a complaint or other reliable information indicating that a lender may be in violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) Under the informal compliance procedure, the Secretary gives the lender a reasonable opportunity to—

(1) Respond to the complaint or information; and

(2) Show that the violation has been corrected or submit an acceptable plan for correcting the violation and preventing its recurrence.

(c) The Secretary does not delay limitation, suspension, or termination procedures during the informal compliance procedure if—

(1) The delay would harm the GSL programs; or

(2) The informal compliance procedure will not result in correction of the alleged violation.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.704 Emergency action.

(a) The Secretary, or a designated Departmental official, may take emergency action to stop the issuance of guarantee commitments by the Secretary and guarantee agencies, and to withhold payment of interest benefits and special allowance to a lender, if the Secretary—

(1) Receives reliable information that the lender is in violation of applicable laws, regulations, special arrangements, agreements, or limitations;

(2) Determines that immediate action is necessary to prevent the likelihood of substantial losses by the Federal Government, parent borrowers, or students; and

(3) Determines that the likelihood of loss exceeds the importance of following the procedures for limitation, suspension, or termination.

(b) The Secretary begins an emergency action by notifying the lender, by certified mail, return receipt requested, of the action and the basis for the action.

(c) The effective date of the action is the date the notice is mailed to the lender.

(d) (1) An emergency action does not exceed 30 days unless a limitation, suspension, or termination proceeding is begun before that time expires.

(2) If a limitation, suspension, or termination proceeding is begun before the expiration of the 30-day period—

(i) The emergency action may be extended until completion of the proceeding, including any appeal to the Secretary; and

(ii) Upon the written request of the lender, the Secretary may provide the lender with an opportunity to demonstrate that the emergency action is unwarranted.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.705 Suspension proceedings.

(a) *Scope.* (1) A suspension by the Secretary removes a lender's eligibility under the GSL programs, and the Secretary does not guarantee or reinsure a new loan made by the lender during a period not to exceed 60 days from the effective date of the suspension, unless—

(i) The lender and the Secretary agree to an extension of the suspension period, if the lender has not requested a hearing; or

(ii) The Secretary begins a limitation or a termination proceeding.

(2) If the Secretary begins a limitation or a termination proceeding before the suspension period ends, the Secretary may extend the suspension period until the completion of that proceeding, including any appeal to the Secretary.

(b) *Notice.* (1) The Secretary, or a designated Departmental official, begins a suspension proceeding by sending the lender a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender of the Secretary's intent to suspend the lender's eligibility for a period not to exceed 60 days;

(ii) Describes the consequences of a suspension;

(iii) Identifies the alleged violations on which the proposed suspension is based;

(iv) States the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice;

(v) Informs the lender that the suspension will not take effect on the proposed effective date if the Secretary receives, at least five days prior to that date, a request for an oral hearing or written material showing why the suspension should not take effect; and

(vi) Asks the lender to correct voluntarily any alleged violations.

(c) *Hearing.* (1) If the lender does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed suspension; or

(ii) Determines that the proposed suspension should be implemented and notifies the lender of the effective date of the suspension.

(2) If the lender requests an oral hearing within the time specified in paragraph (b)(2)(v) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender. No proposed suspension takes effect until a hearing is held.

(3) The oral hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues a decision, based on findings of fact and conclusions of law, that may suspend the lender's eligibility only if the presiding officer is persuaded that the suspension is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence considered at or before the hearing and matters given official notice.

(6) The initial decision of the presiding officer is mailed to the lender.

(7) The Secretary automatically reviews the initial decision of the presiding officer. The Secretary notifies the lender of the decision by mail.

(8) A suspension takes effect on either the date that the notice of a decision imposing the suspension is mailed to the lender, or on the original proposed effective date stated in the notice sent under paragraph (b) of this section, whichever is later.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.706 Limitation or termination proceedings.

(a) *Notice.* (1) The Secretary, or a designated Departmental official, begins a limitation or termination proceeding, whether or not a suspension proceeding has begun, by sending the lender a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender of the Secretary's intent to limit or terminate the lender's eligibility;

(ii) Describes the consequences of a limitation or termination;

(iii) Identifies the alleged violations on which the proposed limitation or termination is based;

(iv) States the limits which may be imposed, in the case of a limitation proceeding;

(v) States the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice;

(vi) Informs the lender that the limitation or termination will not take effect on the proposed effective date if the Secretary receives, at least five days prior to that date, a request for an oral hearing or written material showing why the limitation or termination should not take effect;

(vii) Asks the lender to correct voluntarily any alleged violations; and

(viii) Notifies the lender that the Secretary may collect any amount owed by means of offset against amounts owed to the lender by the Department and other Federal agencies.

(b) *Hearing.* (1) If the lender does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed limitation or termination; or

(ii) Notifies the lender of the effective date of the limitation or termination.

(2) If the lender requests a hearing within the time specified in paragraph (a)(2)(vi) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender. No proposed limitation or termination takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues an initial decision, based on findings of fact and conclusions of law, that may limit or terminate the lender's eligibility if the presiding officer is persuaded that the limitation or termination is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence presented at or before the hearing and matters given official notice.

(6) If a termination action is brought against a lender, and the presiding officer concludes that a limitation is more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender rather than terminating the lender's eligibility.

(7) The initial decision of the presiding officer is mailed to the lender.

(8) Any time schedule specified in this section may be shortened with the approval of the presiding officer and the consent of the lender and the Secretary or designated Department official.

(9) The presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued, unless the lender or designated Department official appeals the decision to the Secretary within this period.

(c) Notwithstanding the other provisions of this section, if a lender or a lender's owner or officer is convicted of, or pled *nolo contendere* or guilty to, a crime involving the unlawful acquisition, use, or expenditure of GSL funds, that conviction or guilty plea is automatic grounds for terminating the lender's eligibility to participate in the GSL programs.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.707 Appeals in a limitation or termination proceeding.

(a) If the lender or designated Departmental official appeals the initial decision of the presiding officer in accordance with § 682.706(b)(9)—

(1) An appeal is made to the Secretary by the submission to the Secretary and the opposing party within 15 days of the date of the appealing party's receipt of the presiding officer's decision, of a brief or other written material explaining why the decision of the presiding officer should be overturned or modified; and

(2) The opposing party shall submit its brief or other written material to the Secretary and the appealing party within 15 days of its receipt of the brief or written material of the appealing party.

(b) The Secretary issues a final decision affirming, modifying, or reversing the initial decision, including a statement of the reasons for the Secretary's decision.

(c) Any party submitting material to the Secretary shall provide a copy to each party that participates in the hearing.

(d) If the presiding officer's initial decision would limit or terminate the lender's eligibility, it does not take effect pending the appeal, unless the Secretary determines that a stay of the effective date would seriously and adversely affect the GSL programs, students, or parents.

(Authority: 2u U.S.C. 1080, 1082, 1085, 1094)

§ 682.708 Evidence of mailing and receipt dates.

(a) All mailing dates and receipt dates referred to in this subpart must be evidenced by the original receipts from the U.S. Postal Service.

(b) If a lender refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the lender refuses to accept the notice.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.709 Reimbursements, refunds, and offsets.

(a) As part of a limitation or termination proceeding, the Secretary, or a designated Departmental official, may require a lender to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment to the Secretary or recipients designated by the Secretary of any funds, and any interest thereon, that the lender improperly received, withheld, disbursed, or caused to be disbursed.

(c) If a final decision requires a lender to reimburse or make any payment to the Secretary, the Secretary may, without further notice or opportunity for a hearing, proceed to offset or arrange for another Federal agency to offset the amount due against any interest benefits, special allowance, or other payments due to the lender.

(Authority: 20 U.S.C. 1080, 1082, 1094)

§ 682.710 Removal of limitation.

(a) A lender may request removal of a limitation imposed by the Secretary in accordance with the regulations in this subpart at any time more than 12 months after the effective date of the limitation.

(b) The request must be in writing and must show that the lender has corrected any violations on which the limitation was based.

(c) Within 60 days after receiving the request, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to other limitations.

(d) (1) If the Secretary denies the request or establishes other limitations, the lender, upon request, is given an opportunity to show why all limitations should be removed.

(2) A lender may continue to participate in the GSL programs, subject to any limitation imposed by the Secretary under paragraph (c)(3) of this section, pending a decision by the Secretary on a request under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.711 Reinstatement after termination.

(a) A lender whose eligibility has been terminated by the Secretary in accordance with the regulations in this subpart may request reinstatement of its eligibility at any time more than 18 months after the effective date of the termination.

(b) The request must be in writing and must show that—

(1) The lender has corrected any violations on which the termination was based; and

(2) The lender meets all requirements for eligibility.

(c) A school lender whose eligibility as a participating school has been terminated under 34 CFR part 668 may not be considered for reinstatement as a lender until it is reinstated as a participating school. However, the school may request reinstatement as both a school and a lender at the same time.

(d) Within 60 days after receiving a request for reinstatement, the Secretary—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitations.

(e) (1) If the Secretary denies the lender's request, or allows reinstatement subject to limitations, the lender, upon request, is given an opportunity to show why its eligibility should be reinstated and all limitations removed.

(2) A lender, whose eligibility to participate in the GSL programs is reinstated subject to limitations imposed by the Secretary pursuant to paragraph (d)(3) of this section, may participate in those programs, subject to those limitations, pending a decision by the Secretary on a request under paragraph (e)(1) of this section.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

§ 682.712 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against lenders.

(a) The Secretary reviews a limitation, suspension, or termination action taken by a guarantee agency against a lender participating in the GSL programs. Upon completion of the Secretary's review, the Secretary notifies the guarantee agency and the lender of the decision by mail.

(b) The Secretary disqualifies a lender from participation in the GSL programs if—

(1) The lender waives review by the Secretary; or

(2) The Secretary conducts the review and determines that the limitation, suspension, or termination was imposed in accordance with section 428(b)(1)(U) of the Act.

(c) (1) Disqualification by the Secretary continues until the Secretary is satisfied that—

(i) The lender has corrected the failure that led to the limitation, suspension, or termination; and

(ii) There are reasonable assurances that the lender will comply with the requirements of the GSL programs in the future.

(2) Revocation of disqualification by the Secretary does not remove any limitation, suspension, or termination imposed by the agency whose action resulted in the disqualification.

(d) A guarantee agency shall refer a limitation, suspension, or termination action that it takes against a lender to the Secretary within 30 days of its final decision to limit, suspend, or terminate the lender's eligibility to participate in the agency's program.

(e) The Secretary reviews an agency's limitation, suspension, or termination of a lender's eligibility only when the guarantee agency's action is final, *i.e.*, the lender is not entitled to any further appeals within the guarantee agency. A subsequent court challenge to an agency's action does not, by itself, affect the timing of the Secretary's review.

(f) The guarantee agency's notice to the Secretary regarding a termination action must include a certified copy of the administrative record compiled by the agency with regard to the action. The record must include certified copies of the following documents:

(1) The guarantee agency's letter initiating the action.

(2) The lender's response.

(3) The transcript of the agency's hearing.

(4) The decision of the agency's hearing officer.

(5) The decision of the agency on appeal from the hearing officer's decision, if any.

(6) The regulations and written procedures of the agency under which the action was taken.

(7) The audit or lender review report that led to the action.

(8) All other documents relevant to the action.

(g) The guarantee agency's referral notice to the Secretary regarding a limitation or suspension action must include—

(1) The documents described in paragraph (f) of this section; and

(2) Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.

(h) (1) Within 60 days of the Secretary's receipt of a referral notice described in paragraph (f) or (g) of this section, the Secretary makes an initial assessment, based on the agency's record, as to whether the agency's action appears to comply with section 428(b)(1)(U) of the Act.

(2) In the case of a referral notice described in paragraph (g) of this section, the Secretary also determines whether one or more of the circumstances described in paragraph (j) of this section exist.

(3) If the Secretary concludes that the agency's action appears to comply with section 428(b)(1)(U) of the Act and, if applicable, one or more of the circumstances described in paragraph (j) of this section exists, the Secretary notifies the lender that the Secretary will review the guarantee agency's action to determine whether to disqualify the lender from further participation in the GSL programs, and affords the lender an opportunity—

(i) To waive the review and be disqualified immediately; or

(ii) To request a hearing on the record.

(i) The Secretary's review of the guarantee agency's action is limited to—

(1) Whether the agency action was taken in reliance on—

(A) Agency requirements that were no more onerous than requirements for initial and continuing participation in the Federal Insured Student Loan Program in effect on January 1, 1965; or

(B) A State constitutional prohibition affecting the eligibility of the lender; and

(2) Whether the agency action was taken in accordance with procedures that were substantially the same as procedures applicable to the limitation, suspension, termination of eligibility of a lender under the Federal Insured Student Loan Program.

(j) In the case of an action by an agency that limits or suspends a lender's eligibility to participate in the agency's program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if—

(1) The lender has not corrected the violation. A violation is corrected if, among other things, the lender has fully satisfied all liabilities incurred by the lender as a result of the violation, including its liability to the Secretary, or the lender has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;

(2) The lender has not provided assurances satisfactory to the agency of future compliance with program requirements; or

(3) The guarantee agency determines that special circumstances warrant disqualification of the lender from the GSL programs for a significant period, notwithstanding the agency's decision not to terminate the lender's eligibility to participate in the agency's program.

(Authority: 20 U.S.C. 1082)

§ 682.713 Disqualification review of limitation, suspension, and termination actions taken by guarantee agencies against a school.

(a) The Secretary reviews a limitation, suspension, or termination action taken by a guarantee agency against a school participating in the GSL programs. Upon completion of the Secretary's review, the Secretary notifies the guarantee agency and the school of the decision by mail.

(b) The Secretary disqualifies a school from participation in the GSL programs if—

(1) The school waives review by the Secretary; or

(2) The Secretary conducts the review and determines that the limitation, suspension, or termination was imposed in accordance with section 428(b)(1)(T) of the Act.

(c) (1) Disqualification by the Secretary continues until the Secretary is satisfied that—

(i) The school has corrected the failure that led to the limitation, suspension, or termination; and

(ii) There are reasonable assurances that the school will comply with the requirements of the GSL programs in the future.

(2) Revocation of disqualification by the Secretary does not remove any limitation, suspension, or termination imposed by the agency whose action resulted in the disqualification.

(d) A guarantee agency shall refer a limitation, suspension, or termination action that it takes against a school to the Secretary within 30 days of its final decision to limit, suspend, or terminate the school's eligibility to participate in the agency's program.

(e) The Secretary reviews an agency's limitation, suspension, or termination of a school's eligibility only when the guarantee agency's action is final, *i.e.*, the institution is not entitled to any further appeals within the guarantee agency. A subsequent court challenge to an agency's action does not, by itself, affect the timing of the Secretary's review.

(f) The guarantee agency's notice to the Secretary regarding a termination action must include a certified copy of the administrative record compiled by the agency with regard to the action. The record must include certified copies of the following documents:

(1) The guarantee agency's letter initiating the action.

(2) The school's response.

(3) The transcript of the agency's hearing.

(4) The decision of the agency's hearing officer.

(5) The decision of the agency on appeal from the hearing officer's decision, if any.

(6) The regulations and written procedures of the agency under which the action was taken.

(7) The audit or program review report that led to the action.

(8) All other documents relevant to the action.

(g) The guarantee agency's referral notice to the Secretary regarding a limitation or suspension action must include—

(1) The documents described in paragraph (f) of this section; and

(2) Documents describing and substantiating the existence of one or more of the circumstances described in paragraph (j) of this section.

(h) (1) Within 60 days of the Secretary's receipt of a referral notice described in paragraph (f) or (g) of this section, the Secretary makes an initial assessment, based on the agency's record, as to whether the agency's action appears to comply with section 428(b)(1)(T) of the Act.

(2) In the case of a referral notice described in paragraph (g) of this section, the Secretary also determines whether one or more of the circumstances described in paragraph (j) of this section exist.

(3) If the Secretary concludes that the agency's action appears to comply with section 428(b)(1)(T) of the Act, and, if applicable, one or more of the circumstances described in paragraph (j) of this section exists, the Secretary notifies the school that the Secretary will review the guarantee agency's action to determine whether to disqualify the school from further participation in the GSL programs, and affords the school an opportunity—

(i) To waive the review and be disqualified immediately; or

(ii) To request a hearing on the record.

(i) The Secretary's review of the guarantee agency's action is limited to—

(1) Whether the agency action was taken in reliance on—

(i) Agency requirements that were no more onerous than requirements for initial and continuing participation in the Federal Insured Student Loan Program in effect on January 1, 1985; or

(ii) A State constitutional prohibition affecting the eligibility of the school; and

(2) Whether the agency action was taken in accordance with procedures that were substantially the same as procedures applicable to the limitation, suspension, or termination of eligibility of a school under the Federal Insured Student Loan Program.

(j) In the case of an action by an agency that limits or suspends a school's eligibility to participate in the agency's program, the agency shall provide the Secretary with a referral as described in paragraph (g) of this section only if—

(1) The school has not corrected the violation. A violation is corrected if, among other things, the school has fully satisfied all liabilities incurred by the school as a result of the violation, including its liability to the Secretary, or the school has arranged to satisfy those liabilities in a manner acceptable to the parties to whom the liabilities are owed;

(2) The school has not provided assurances satisfactory to the agency of future compliance with program requirements; or

(3) The guarantee agency determines that special circumstances warrant disqualification of the school from the GSL programs for a significant period, notwithstanding the agency's decision not to terminate the school's eligibility to participate in the agency's program.

(Authority: 20 U.S.C. 1082, 1085, 1094)

Subpart H—Special Allowance Payments on Loans Made or Purchased with Proceeds of Tax-Exempt Obligations

§ 682.800 Special allowance payments for loans financed by proceeds of tax-exempt obligations.

(a) The Secretary pays a special allowance on a loan that was made or acquired with the proceeds of an obligation exempt from taxation under section 103 of the Internal Revenue Code of 1986 and is held by or on behalf of an Authority if—

(1) For loans financed by an obligation issued after December 31, 1980 and before November 16, 1986, the Secretary approved—

(A) The Plan for Doing Business of the Authority that issued the obligation; and

(B) The justification of need for the obligation, if the obligation was issued after August 14, 1983; or

(2) For loans financed by an obligation issued after November 16, 1986, the Governor of the State from which the Authority received or will seek an allocation under section 103(n) of the Internal Revenue Code of 1986 after consultation with the principal guarantee agency for the State, has approved the Plan for Doing Business of the Authority that issued the obligations.

(b) The Secretary pays a special allowance—

(1) For loans described in paragraph (a)(1) of this section, from the latest of—

(i) The date the Secretary approved the Plan for Doing Business of the Authority;

(ii) The date the Secretary approved the justification of need for the obligation, if issued after August 14, 1983; or

(iii) The date the loan was made or acquired by or on behalf of the Authority with proceeds of a tax-exempt obligation.

(2) For a loan described in paragraph (a)(2) of this section, from the latest of—

(i) The date the Governor approved the Plan for Doing Business of the Authority;

(ii) The date the loan was made or acquired by or on behalf of the Authority with proceeds of a tax-exempt obligation; or

(iii) November 16, 1986, if the loan was made or acquired with the proceeds of a tax-exempt obligation issued before that date by an Authority that did not receive before that date approval from the Secretary for its Plan for Doing Business, and, if applicable, its justification of need.

(c) The Authority shall submit a copy of the Plan for Doing Business to the Secretary under paragraph (a)(2) of this section within 60 days after receiving the Governor's approval.

(d) As used in this paragraph, the term "principal guarantee agency" means—

(1) The guarantee agency in the State with which the Secretary has signed a Basic Program Agreement under § 682.401; or

(2) If the Secretary has signed agreements with more than one agency in the State, the agency that has issued the majority of loan guarantees for students who are attending school in the State during the most recently ended Federal fiscal year.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1087-1)

§ 682.801 Provisions required in Plan.

Each Plan submitted for the approval of the Governor must contain provisions necessary to ensure that—

(a) If an Authority acts as a secondary market for student loans, it shall exclude no eligible lender in the service area from participation in its program, and shall permit all eligible lenders to participate in its program on the same terms and conditions;

(b) No director, officer, or staff member of the Authority who receives compensation from the Authority may own stock in, or receive compensation of any kind from, any agency or organization that contracts to service and collect the loans in which the Authority has a legal or equitable interest;

(c) The Authority shall not purchase student loans at a premium or discount amounting to more than one percent of the unpaid principal amount borrowed plus interest accrued to the date of acquisition;

(d) The Authority shall not pay transfer fees in excess of the costs of transferring a loan portfolio or a portion of it from the lender to the Authority;

(e) The Authority shall, within the limits of funds available and subject to applicable State and Federal law, make loans to, or purchase loans made to, all eligible borrowers who are residents of, or who seek loans for a student to attend a school within, the service area of the Authority;

(f) The Authority has a plan under which the Authority shall pursue both the recruitment of new lenders to participate in a continuing program of benefits to students under the GSL, SLS, and PLUS programs and the maintenance of existing lender commitments to the program;

(g) The Authority shall secure an annual audit of its loan program operations by a certified public accounting firm which will include a review performed in accordance with the audit standards found in § 682.830; and

(h) The Authority shall not issue tax-exempt obligations for amounts in excess of the unmet need for student loan credit in its service area.

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.802 Submission of Plan for approval—required documentation.

An Authority shall submit with, or include in, each Plan submitted for the approval of the Governor the following:

(a) If the Authority is a secondary market, a description of the procedures used to inform eligible lenders of the program of the Authority, samples of announcements to lenders regarding the program, and a listing of the types of lenders and numbers of each type so informed.

(b) If the Authority contracts with an agent to service or collect loans in which the Authority as a legal or equitable interest, a sample of the form signed by all directors, officers, and staff of the Authority who receive compensation from the Authority certifying that these persons do not own stock in or receive compensation of any kind from that agent and a list of the persons who have signed the form.

(c) If the Authority is a secondary market, a schedule of the amount of loan transfer fees paid or to be paid by the Authority to parties from whom it purchases loans and, if the amount of a loan transfer fee is based on an estimate, an explanation of how that estimated amount was determined.

(d) A copy of any Federal or State law that the Authority believes limits its ability to make or purchase loans made to any eligible borrowers who are residents of, or who obtained loans for a student to attend a school located within, its service area.

(e) A copy of the plan under which the Authority pursues both the recruitment of new lenders to participate in a continuing program of benefits to students under each of the GSL programs and the maintenance of existing lender commitments to the programs.

(f) A copy of the most recent independent audit of the Authority performed in accordance with the audit standards found in § 682.830.

(g) A copy of any survey instrument or written inquiry form to be used to solicit from schools, lenders, and secondary markets information by which the Authority measures unmet need for student loan credit.

(h) A certification that the Authority is in compliance with section 438(d)(2) of the Act (regarding patterns or practices resulting in denial of access to student loan credit for certain borrowers).

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.803 Amendments to Plan.

(a) After a Plan is approved, an Authority shall submit to the Governor or the Secretary amendments to the Plan or such documentation as may be needed to reflect accurately the policy and practice of the Authority within 30 days of the date that—

(1) An Authority amends any provision of a Plan which had previously been approved by that Governor or the Secretary; or

(2) Any documentation or representation previously submitted pursuant to § 682.802 has been revised or rendered inaccurate in any material aspect.

(b) An Authority shall promptly amend its Plan to comply with changes in applicable statutes and regulations.

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.804 Failure to comply with Plan.

(a) If the Secretary finds that an Authority has failed to comply with any requirement of its Plan or of this subpart, the Secretary takes actions necessary to protect the interests of the United States. These actions may include the following:

(1) Withholding payment of special allowances.

(2) Suspending or revoking approval of the Plan.

(3) Determining that loans made or purchased with the proceeds of a tax-exempt obligation by the Authority or any entity acting for the Authority after the date of suspension or revocation are ineligible for payments of special allowances.

(4) Requiring reimbursement from the Authority of special allowances paid on loans made or purchased by the Authority or any entity acting for the Authority.

(b) The Secretary's decision to require repayment of funds by an Authority, to withhold payments of special allowance, or to suspend or revoke approval of a Plan does not become final until the Secretary provides the Authority with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments or suspend approval of the Plan prior to giving notice and opportunity to be heard if the Secretary finds such emergency action necessary to prevent substantial harm to Federal interests.

(c) Once final, the Secretary's decision to require a repayment of funds or to take other remedial action against an Authority under this section is conclusive and binding on the Authority.

(Authority: 20 U.S.C. 1082, 1087-1)

§ 682.805 Sanctions for material misrepresentation.

(a) If at any time the Secretary determines that the submission for approval of a tax-exempt obligation or a Plan for Doing Business contains or contained a material misrepresentation, the Secretary may to the extent provided in paragraph (b) of this section—

(1) Require reimbursement from the Authority of special allowance payments to the Authority or to any other party on loans made or purchased with the proceeds of the issue with respect to which the misrepresentation was made; and

(2) Determine to be ineligible for special allowance payments any loans to be made or purchased by the Authority or any entity acting for the Authority with the unexpended proceeds of the issue with respect to which the misrepresentation was made.

(b) If an Authority uses funds from sources other than a tax-exempt obligation to retire an issue with respect to which the Secretary has determined that a material misrepresentation was made, the Secretary takes the adverse actions described in paragraph (a) of this section only with regard to those special allowance payments which accrued earlier than ninety days before that issue was retired.

(c) The Secretary's decision to require repayment of funds by an Authority, to withhold payments of special allowance, or to take any of the actions in § 682.804 does not become final until the Secretary provides the Authority with written notice of the intended action and an opportunity to be heard thereon. However, the Secretary may withhold payments or suspend approval of the Plan prior to giving notice and opportunity to be heard if the Secretary finds such emergency action necessary to prevent substantial harm to Federal interests.

(d) Once final, the Secretary's decision to require repayment of funds or to take other remedial action against an Authority under this section is conclusive and binding on the Authority.

(Authority: 20 U.S.C. 1082, 1087-1)

§§ 682.806-682.829 [Reserved]

§ 682.830 Audit standards.

(a) The Authority shall have an annual financial and compliance audit by an independent certified public

accounting firm of its loan and loan purchasing program or both. The audit must be conducted in accordance with the general standards and the standards for financial and compliance audits in the U.S. General Accounting Office (GAO) publication, *Standards for Audit of Governmental Organizations, Programs, Activities and Functions.* The Authority shall submit a copy of the audit report within 30 days after the completion of the report to its regional office of the Department of Education's Office of the Inspector General, to the Governor who approved the Plan for Doing Business, and to the principal guarantee agency consulted by that Governor in the approval of that Plan.

(b) The audit must examine the activities of the Authority for compliance with the provisions of the Plan, and must specifically articulate, with appropriate substantiation, its conclusions regarding compliance with each of the provisions of § 682.801 and with the Plan of the Authority.

(c) The audit must also examine the expenditures of the Authority using the cost principles in OMB Circular A–87 if the Authority is an agency or instrumentality of a State or local government, or, if the Authority is a non-profit corporation, in OMB Circular A–122, as follows:

(1) The GSL, SLS, and PLUS loan programs of the Authority are treated as the Federal grant or contract with regard to which costs are allocated.

(2) All costs incurred by the Authority are attributed to a cost category identified pursuant to the appropriate Circular.

(3) Each cost is examined to determine whether it is reasonable and allocable to the GSL, SLS, and PLUS loan programs of the Authority.

(4) Although costs must be attributed, where warranted, to categories of costs otherwise characterized as unallowable, no determination is to be made that a cost is disallowed merely because that cost was one for which the Circular requires advance approval by the Secretary or because the Circular classifies that cost as unallowable.

(Authority: 20 U.S.C. 1082, 1087–1)

§§ 682.831–682.839 [Reserved]

§ 682.840 Prohibition against discrimination as a condition for receiving special allowance payments.

(a) In order for an Authority to receive special allowance payments on loans made or acquired with the proceeds of a tax-exempt obligation, the Authority or its agent may not engage in any pattern or practice that results in a denial of a borrower's access to loans under the GSL programs because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular institution within the area served by the Authority, length of the borrower's education program, or the borrower's academic year in school.

(b) The Secretary considers an Authority that makes or acquires loans guaranteed by an agency or organization that discriminates on one or more grounds listed in paragraph (a) of this section to have adopted a practice of denying access to loans on that ground unless the Authority makes provision for loan guarantees from other sources necessary to serve the borrowers excluded by that discriminatory policy.

(Authority: 20 U.S.C. 1082, 1087–1)

Appendix A—Standards for Acceptable Refund Policies by Participating Schools

For purposes of § 682.606(b), the Secretary considers guidelines VI, VII, and VIII of the following document to be acceptable elements of a fair and equitable school refund policy. The document, which is reproduced in its entirety for the convenience of the reader, was developed by the National Association of College and University Business Officers. The document does not affect a school's obligation to comply with other Department of Education regulations.

Policy Guidelines for Refund of Student Charges

(I) The governing board of the institution should review and approve the schedule of all institutional charges and refund policies applicable to students. The pricing of services and refund policies have important consequences to students, parents, the institution, and society; as such, pricing and refund policies should receive board attention and approval.

(II) Institutions should seek consumer views in the process of establishing and amending charge and refund structures. Decisions regarding institutional funds are ultimately the sole responsibility of the institution's legally designated fund custodians. However, consumer concerns do affect decision making, and involving consumers in decision making related to charges and refunds is a desirable approach for assessing student needs and creating public awareness of institutional requirements.

(III) Institutions should publish a current schedule of all student charges, a statement of the purpose for such charges, and related refund policies, and have them readily available free of charge to current and prospective students. Students and parents have a right to know what charges they will be expected to pay and what will or will not be refunded. They also have a right to know what services accompany payment to the charges. Informational materials published free for students and prospective students are ideal for this purpose.

(IV) Institutions should clearly designate all optional charges as "optional" in all published schedules and related materials. Clearly, charges that are mandatory and charges that are optional must be plainly differentiated in all printed materials. Also, the institution should state clearly in its schedule if a charge is optional for some students but required for others. Statements accompanying the schedule may include institutional endorsements of the optional program or service.

(V) Institutions should clearly identify charges and deposits that are nonrefundable as "nonrefundable" on all published schedules. Institutions determine on an individual basis which of their charges are refundable or non-refundable. In general, admissions fees, application fees, laboratory fees, facility and student activity fees, and other similar charges are not refundable. These fees are generally charged to cover the cost of activities such as processing applications and other student information, reserving academic positions, and establishing the limits of institutional programs and services, reserving housing space, and otherwise setting the fixed costs of the institution for the coming academic periods.

Institutions determine on an individual basis which of their deposits are refundable or nonrefundable. Some deposits will be nonrefundable or will be credited to a student's account (*e.g.*, tuition deposits). Others are refundable according to the terms of the deposit agreement (*e.g.*, deposits for breakage).

(VI) Institutions should refund housing rental charges, less a deposit, so long as written notification of cancellation is made prior to a well-publicized date that provides reasonable opportunity to make the space available to other students. Written notification on or before the beginning of the term of the contract is necessary to ensure utilization of housing units. During the term of the contract, room charges are generally not refundable. However, based on the program offered, space availability, debt service requirements, State and local laws, and other individual circumstances, institutions may provide for some more flexible refund guideline for housing.

(VII) Institutions should refund board charges in full, less a deposit, if written notification of cancellation is made prior to a well-publicized date that falls on or before the beginning of the term of the contract. Subsequent board charges should be refunded on a pro rata basis less a withdrawal fee. It is reasonable to make a refund for those goods and services not consumed. The withdrawal charge should reflect that portion of an institution's costs that are fixed for the term of the contract.

(VIII) The institutional tuition refund policy for an academic period should include the following minimum guidelines:

A. The institution should refund 100 percent of the tuition charges, less a deposit fee, if written notification of cancellation is made prior to a well-publicized date that falls on or before the first day of classes.

B. The institution should refund at least 25 percent of the tuition charge if written notification of withdrawal is made during the first 25 percent of the academic period. It is reasonable to refund tuition charges on a sliding scale if a student withdraws from his or her program prior to the end of the first 25 percent of the academic period unless State law imposes a more restrictive refund policy.

(IX) The institution should assess no penalty charges where the institution, as opposed to the student, is in error. The institution has assessed charges in error. Penalty charges, such as those involving late registration fees, change of schedule fees, late payment fees, should not be assessed if it is determined that the student is not responsible for the action causing the charge to be levied.

(X) Institutions should advise students that any notifications of withdrawal or cancellation and requests for refund must be in writing and addressed to the designated institution officer. A student's written notification of withdrawal or cancellation and request for a refund provides an accurate record of transactions and also ensures that such request will be processed on a timely basis. Acceptance of oral requests is an undesirable practice.

(XI) Institutions should pay or credit refunds due on a timely basis. The definition of "timely basis" should include the time required to process a formal student request for refund, to process a check if required, and to allow for mail delivery, when necessary. If an institution has a policy that a refund of an inconsequential amount will not be made, this policy should be published in part of all materials related to refund policies.

(XII) Institutions should publicize, as a part of their dissemination of information on charges and refunds, that an appeal process exists for students or parents who feel that individual circumstances warrant exceptions from published policy. The informational materials should include the name, title, and address of the official responsible. Although charges and refund policies should reflect extensive consideration of student and institutional needs, it will not be possible to encompass in these structures the variety of personal circumstances that may exist or develop. Institutions are required to provide a system of due process to their students, and charges and refund policies are legitimately a part of that process. Students and parents should be informed regularly of procedures for requesting information concerning exceptions to published policies.

Appendix B—Student Status Confirmation Report

This Appendix sets forth model format and data elements for guarantee agencies to use in implementing a Student Status Confirmation Report system as required by § 682.401(b)(17).

Student Status Confirmation Report

Date: MM/DD/YY Guarantor/Institution Code: (must accommodate eight numeric characters)
Guarantor/Institution Name:
Social Security Number ———————
Name ———————
*Status ———————
Effective Date ———————
*The valid enrollment status codes are as follows:
F=Full-time
H=Half-time or more but less than full time.
L=Less than half-time. This code is used to specify students enrolled less than half-time.
X=Never attended the institution. This code is to specify those individuals on whose behalf a Stafford, SLS, or PLUS loan was made who enrolled in school but never attended classes.
Z=No record found. A thorough search of the institution's enrolled records revealed no information for this individual.
D=Deceased
A=Approved leave of absence
G=Graduated
W=Withdrawn

Appendix C—Procedures for Curing Violations of the Due Diligence in Collection and Timely Filing of Claims Requirements Applicable to FISLP and Federal PLUS Program Loans and for Repayment of Interest and Special Allowance Overbillings [Bulletin L–77a]

Note: The following is a reprint of Bulletin L–77a, issued on January 7, 1983, with minor modifications made to reflect changes in the program regulations since that date. All references to "the date of this bulletin" refer to that date. All references made to the Federal Insured Student Loan Program (FISLP) shall be understood to include the Federal PLUS Program. The bulletin includes references to the 120- and 180-day default periods that used to apply to GSLP and PLUS Program loans. Public Law 99–272 established new default periods of 180 and 240 days (as set out in 34 CFR 682.200 of these regulations) for all new loans and many existing ones. Although the discussion in this Appendix C refers to the 120- and 180-day default periods, it is equally applicable to the new 180- and 240-day default periods.

Introduction

This bulletin prescribes procedures for lenders to use (1) to cure violations of the requirements for due diligence in collection ("due diligence") and timely filing of claims under the Federal Insured Student Loan Program (FISLP), and (2) to repay interest and special allowance overbillings made on loans evidencing such violations. See 34 CFR 682.507, 682.511.[1] These procedures allow for the reinstatement of a lender's eligibility for interest and special allowance and claim payments on loans evidencing such violations, under specified circumstances. These procedures apply to loans for which the first day of the 120-day or 180-day default period occurred on or after October 21, 1979 (the effective date of the September 17, 1979 regulations), whether or not the loans have previously been submitted as claims to the Secretary.

The due diligence and timely filing requirements governing the FISLP were established in response to requests from some lenders for more detailed regulatory guidance on the proper handling of FISLP loans. Despite the promulgation of these provisions, a number of lenders have failed to exercise the requisite care in their treatment of these loans, thereby increasing the risk of default thereon and, in many cases, prejudicing the Secretary's ability to collect from the borrowers. At the time the current due diligence and timely filing rules were issued, the Secretary anticipated that violations of these rules would be so infrequent as to permit requests for cures to be handled individually. However, the unexpectedly high incidence of violations of these rules has made continued case-by-case treatment of all cure requests administratively unmanageable. After carefully considering the views of lenders and other program participants, the Secretary has decided to exercise his authority under 20 U.S.C. 1082(a)(5),(6), and institute uniform procedures by which lenders with loans involving violations of the due diligence or timely filing requirements may cure these violations.

Due Diligence

Collection activity is required to begin immediately upon delinquency by the borrower in honoring the repayment obligation. This holds true whether or not the borrower received a repayment schedule or signed a repayment agreement. Under 34 CFR 682.200, default on a FISLP loan occurs when a borrower fails to make a payment when due, provided this failure persists for 120 days for loans payable in monthly installments, or for 180 days for loans payable in less frequent installments. If, however, the lender has added the optional provision to the promissory note requiring the borrower to execute a repayment agreement not later than 120 days prior to the expiration of the grace period, the loan entered repayment prior to September 4, 1985 (*See* 50 FR 35970), the lender sends the agreement to the borrower 150 days or more before the end of the grace period, and the agreement is not executed before the end of the grace period, default occurs at that time. One exception to this rule is as follows: If the holder of the loan is not the lender that made the loan, the holder may choose to forego enforcement of the optional 120-day provision in the note.

The 120/180 day default period applies regardless of whether payments were missed consecutively or intermittently. For example, if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment three months late (June 1st), and makes no further payments, the default period begins on February 1st, with the first delinquency, and ends on August 1st, when the April 1st payment becomes 120 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time.

Note: Lenders are strongly encouraged to exercise forbearance, *prior* to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. *See* 34 CFR 682.211. The forbearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the

importance of compliance with the repayment obligation.

Timely Filing

The 90-day filing period applicable to FISLP default claims is set forth in 34 CFR 682.511(e) (1) and (3). The 90-day filing period begins at the end of the 120/180 day default period. The lender must file a default claim on a loan in default by the end of the filing period, unless the borrower brings the account current before the end of the filing period. In such a case, the lender may choose not to file a claim on the loan at that time.

In addition, for any loan less than 210 days delinquent on the date of this bulletin, the lender need not file a claim on that loan before the 210th day of delinquency (120-day default period plus 90-day filing period) if the borrower brings the account less than 120 days delinquent before such 210th day. Thus, in the above example, if the borrower makes the April 1st payment on August 2nd, the 90-day filing period continues to run from August 1st, unless the loan was less than 210 days delinquent on the date of this bulletin. If the loan was less than 210 days delinquent on the date of this bulletin, then the August 2nd payment makes the loan 91 days delinquent, and the lender may, but need not file a default claim on the loan at that time. If, however, that loan again becomes 120 days delinquent, the lender must file a default claim within 90 days thereafter (unless the loan is again brought to less than 120 days delinquent prior to the end of that 90 day period). In other words, for any loan less than 210 days delinquent on the date of this bulletin, the Secretary will permit a lender to treat payments made during the filing period as "curing" the default if such payments are sufficient to make the loan less than 120 days delinquent.

If a lender fails to comply with either the due diligence or timely filing requirements, the affected loan ceases to be insured; that is, the lender loses its right to receive interest benefits, special allowance and claim payments thereon. Some examples of violations of the due diligence requirements are set out in section I.C. below.

I. Cure Procedures

A. Definitions

The following definitions apply to terms used throughout section I of this bulletin.

"Full payment" means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of $30 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay $15 per month for a specified time, and the borrower defaulted in making the reduced payments, a "full payment" would be $30, or two $15 payments in accordance with original repayment schedule or agreement.)

"Reinstatement" with respect to insurance coverage means the reinstatement of the lender's right to receive default, death, disability, or bankruptcy claim payments for the unpaid principal balance of the loan and for unpaid interest accruing on the loan after the date of reinstatement. Upon reinstatement of insurance, the borrower regains the right to receive forbearance or deferments, as appropriate. For purposes of this bulletin, "reinstatement" with respect to insurance on a loan does not include reinstatement of the lender's right to receive interest and special allowance payments on that loan. Reinstatement of the lender's right to receive interest and special allowance payments is addressed in section I.B.1, below.

B. General

1. Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Filing Violations. For any loan on which a cure is attempted under this bulletin, the lender may resume billing for interest and special allowance on the loan only for periods following the earlier of (1) its receipt of the equivalent of three full payments thereon, after the date of this bulletin or the date of the violation, whichever is later, or (2) receipt by the borrower of an authorized deferment, after reinstatement of insurance coverage.

2. Reservation of the Secretary's Right to Strict Enforcement. While this bulletin allows cures to be attempted for particular violations in specified ways, the Secretary retains the option of refusing to permit or recognize cures in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of the due diligence or timely filing rules, and in cases where the best interests of the program otherwise require strict enforcement of these requirements. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulations.

3. Applicability of the Cure Procedures to Particular Classes of Loans. The cure procedures outlined in this bulletin apply only to a loan for which the first day of the 120/180 day default period that ended with default by the borrower occurred on or after October 21, 1979, and which involve violations *only* of the due diligence and/or timely filing requirements.

The cure procedures applicable to loans involving due diligence violations also apply to loans involving violations of both the timely filing and due diligence requirements.

4. Excusal of Certain Due Diligence Violations. A lender whose claim was previously denied *solely* for violation of the timely filing rule, and who is permitted to cure that violation under the procedures set out in this bulletin, will not be required to utilize the procedures for curing due diligence violations, or to repay interest and special allowance improperly received from the Secretary as a result of a due diligence violation for periods prior to the timely filing violation. This applies even if, upon submission of the "cured" claim, the Secretary discovers that evidence of due diligence violations appeared in the file of the previously rejected claim.

The Secretary will also excuse a due diligence violation by a lender if the account was brought current by the borrower (or another, other than the lender, on the borrower's behalf) prior to the 120th/180th day of the delinquency period during which the violation occurred.

5. Treatment of Accrued Interest on "Cured" Claims.—a. Due Diligence Violations. For any default claim involving "cured" violations of the due diligence rules, the Secretary will not reimburse the lender for any unpaid interest accruing after the first day of the 120/180 day period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any loan involving "cured" due diligence violations, the lender may capitalize unpaid interest accruing on the loan from the commencement of the 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim on that loan, the lender must deduct this capitalized interest from the amount of the claim. This deduction must be reflected in column 15 on the ED Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan, filed with the claim evidencing the cure.

b. Timely Filing Violations. For any default claim involving "cured" violations of the timely filing rules, the Secretary will not reimburse the lender for unpaid interest accruing after the end of the 120/180 day default period that culminated in default, and prior to the date of reinstatement of insurance coverage.

For any default claim involving a "cured" timely filing violation, if insurance coverage is later reinstated, the lender may capitalize unpaid interest accruing on the loan from the commencement of the original 120/180 day default period to the date of the reinstatement of insurance coverage. See sections I.C. and D. below. However, if the lender later files a claim, on that loan, the lender must deduct this capitalized interest from the amount of the claim, except that the lender need not deduct from the claim unpaid interest that accrued on the loan during the original 120/180 day default period. This deduction must be reflected in Column 15 of the ED Form 1207, Lender's Application for Insurance Claim on Federal Insured Student Loan, filed with the claim evidencing the cure.

Some timely filing cures will not reinstate insurance coverage. For treatment of accrued interest in such cases, see section I.D.1.c.

6. Documents to be Submitted with "Cured" Claims. The Secretary requests that any lender submitting a claim on a loan involving "cured" violations identify the claim as such with a note in the claim file stapled to the new ED Form 1207.

For all "cured" claims, the lender must submit:

- For loans on which a claim was previously rejected, all documents sent by the regional office with the original claim (when the claim was rejected and returned to the lender), including without limitation, the original ED Form 1207 and all documents showing the reason(s) for the original rejection;
- All documents ordinarily required in connection with the submission of a default claim, including, without limitation, the promissory note, which must bear a valid assignment to the United States of America;
- A new ED Form 1207; and
- All documents showing that the lender has complied with the applicable cure procedures and requirements.

C. Cures for Violations of the Due Diligence in Collection Requirements (34 CFR 682.507)

A violation of the due diligence in collection rules occurs when a lender fails to meet requirements found in 34 CFR 682.507. For example, a violation occurs if the lender fails to:

- Remind the borrower of the date a missed payment was due within 15 days of delinquency;
- Attempt to contact the borrower and any endorser at least 3 times at regular intervals during the rest of the 120/180 day default period;
- Request preclaims assistance from the Department of Education;
- Request skip-tracing assistance from the Secretary, if required, or
- Send a final demand letter to the borrower exercising the option to accelerate the due date for the outstanding balance of the loan, unless the lender does not know the borrower's address as of the 90th day of delinquency.

1. Reinstatement of Insurance Coverage. In the case of a due diligence violation, the lender may utilize either of the two procedures described below for obtaining reinstatement of insurance coverage on the loan. After the date of this bulletin, or after the date of the violation, whichever is later:

(a) The lender obtains a new repayment agreement signed by the borrower which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.209(a)(7); or

(b) The lender obtains 3 full payments. If the borrower later defaults, the lender must submit evidence of these payments (*e.g.*, copies of the checks) with the claim.

2. Borrower's Deemed Current As of Date of Cure. On the date the lender receives a signed copy of the new repayment agreement, or receives the third (curing) payment, insurance coverage on the loan is reinstated, and the borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection procedures set out in 34 CFR 682.507, and the timely filing requirements set out in 34 CFR 682.511.

D. Cures for Violations of the Timely Filing Requirements (34 CFR 682.511)

1. Default Claims.—a. Reinstatement of Insurance Coverage. In order to obtain reinstatement of insurance coverage on a loan in the case of a timely filing violation, the lender must first locate the borrower after the date of this bulletin, or after the date of the violation, whichever is later (see section I.D.1.d. for description of acceptable evidence of location). Then, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment agreement, to be signed by the borrower, which complies with the ten and fifteen year repayment limitations set out in 34 CFR 682.209(a)(7), along with (ii) a collection letter indicating in strong terms the seriousness of the borrower's delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed.

If, within 30 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender shall, within 5 working days thereafter, send the borrower a copy of the attached "48-Hour" collection letter, on the lender's letterhead. (See Attachment A.)

b. Borrower Deemed Current Under Certain Circumstances. If, within 45 days after the lender sends the new repayment agreement to the borrower for signature, the borrower makes a full payment or signs and returns the new repayment agreement, insurance coverage on the loan is reinstated. The borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to FISLP borrowers. If the borrower later becomes delinquent in repayment, the lender shall follow the collection steps set out in 34 CFR 682.507 and the timely filing requirements set out in 34 CFR 682.511.

c. Borrower Deemed in Default Under Certain Circumstances. If the borrower does not make a full payment, or sign and return the new repayment agreement, within 45 days after the lender sends the new repayment agreement, the lender shall deem the borrower to be in default. The lender shall then file a default claim on the loan accompanied by acceptable evidence of location (see I.D.1.d below), within 30 days after the end of such 45-day period. Although insurance coverage is not reinstated on loans involving these circumstances, the Secretary will honor default claims submitted in accordance with this paragraph on the outstanding principal balance of such loans, and on unpaid interest accruing on the loan during the 120/180 day default period.

d. Acceptable Evidence of Location. Only the following documentation is acceptable as evidence that the lender has located the borrower:

(i) Postal receipt signed by the borrower not more than 25 days prior to the date on which the lender sent the new repayment agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; *or*

(ii) A completed "Certification of Borrower Location" form (Attachment B).

2. Death, Disability, and Bankruptcy Claims. Lenders may immediately resubmit any death or disability claim which was rejected solely for failure to meet the 60 day timely filing requirements (see 34 CFR 685.511(e)(2)). However, the Secretary will not pay any such claim if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the due diligence or timely filing requirements applicable to default claims with respect to that loan. Interest that accrued on the loan after the expiration of the 60-day filing period remains uninsured by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period.

The Secretary has determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to bankruptcy claims causes irreparable harm to the Secretary's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to permit cures for violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy. In that case, the lender shall treat the loan as in default. The Secretary will honor a default claim later filed on such a loan only if the lender has met the cure requirements set out in section I.C. above for due diligence violations.

II. Repayment of Interest and Special Allowance on Loans Evidencing Violations of the Due Diligence or Timely Filing Requirements.

A. General Rule

It has always been the Secretary's interpretation of the FISLP statute and regulations that a lender's right to receive interest and special allowance payments on a FISLP loan terminates immediately following the lender's violation of the due diligence or timely filing requirements. This applies whether or not the lender has filed a claim on the loan. In other words, lenders may receive interest and special allowance only on loans which are insured by the Secretary. Since these violations result in the termination of insurance, they also result in the termination of FISLP benefits.

B. Cessation of Billing on Loans Evidencing Violations of Due Diligence or Timely Filing Requirements

Any lender currently billing the Secretary for interest and special allowance on a loan that the lender *knows* involves a due diligence or timely filing violation must cease doing so immediately. However, lenders are not required at this time to review their loan portfolios for due diligence and timely filing violations.

C. Determination of Amounts of Interest and Special Allowance That Must Be Repaid

1. Due Diligence Violations. In the case of due diligence violations, it is often difficult to ascertain the precise date on which a violation occurred. For the administrative ease of the Secretary and lenders, the Secretary has decided to waive his right to recoup interest and special allowance payments made to a lender for periods between the date of a due diligence violation and the end of the 120/180 day default period. However, any lender that has received interest and/or special allowance payments from the Secretary for periods after the end of the 120/180 day default period on a loan that the lender *knows* involves a due diligence violation must promptly repay those amounts.

2. Timely Filing Violations. In the case of timely filing violations, the lender loses its right to receive interest and special allowance payments as of the expiration of the applicable timely filing period. Therefore, any lender that has received interest and/or special allowance payments from the Secretary for periods following the end of the applicable timely filing period on a loan that the lender knows involves a timely filing violation must repay those amounts.

3. Situations in Which a Lender May Have Received Interest Benefits for Periods During Which a Loan was Uninsured. Because most due diligence violations, and timely filing violations, occur after termination of the grace period, interest payments are ordinarily not affected by such violations. However, there are three types of situations in which a lender may have received interest payments from the Secretary to which it was not entitled due to a due diligence or timely filing violation.

a. Promissory notes that include a requirement that the borrower sign a repayment agreement no later than 120 days prior to the expiration of the grace period. In such cases, a due diligence violation may occur during the grace period, when the lender may otherwise have been eligible to receive interest benefits. However, the lender need not repay that interest to the Secretary. See II.C.1. above.

b. Deferment Periods. A due diligence violation may occur prior to a deferment period when the lender would otherwise have been eligible to receive interest benefits.

c. Loans Made Prior to December 15, 1988. A loan disbursed prior to December 15, 1988, and which qualified for payment of Federal interest benefits at the time the loan was disbursed, qualifies for payment of a 3 percent interest subsidy on the unpaid principal balance during the entire repayment period, provided the loan remains insured. In the case of such a loan, a due diligence or timely filing violation terminates the lender's eligibility for the 3 percent payments.

D. Procedures for Repayment of Federal Interest Benefits and Special Allowance Received by a Lender for Periods During Which a Loan Was Uninsured

A lender must make the repayments of interest and/or special allowance discussed in II.C. above, by way of an adjustment during the two quarters immediately following the discovery of the violation. These adjustments must be reported on the normal Lender's Interest and Special Allowance Request and Report (ED Form 799). Lenders are requested not to send a check with the adjustment; the overpaid amount will be deducted by the Secretary from the lender's next regular interest and special allowance payment. For five years after any loan for which an adjustment is made is repaid in full, the lender shall retain a record of the basis for the adjustment showing the amount(s) of the overbilling(s), and the date it used for cessation of interest and/or special allowance eligibility in calculating the overbilled amount. *See* 34 CFR 682.515(a)(2).

Attachments

Note: All references to the program regulations are to part 682 of title 34 of the Code of Federal Regulations (34 CFR part 682).

Attachment A

NOTICE

Date

Social Security Number

TO:

You have previously been notified that you are severely delinquent in repaying your Guaranteed Student Loan. This notice is our final effort to remedy this delinquency. You must contact us at _____ within

48 HOURS

Failure to act upon this notice will result in transfer of your account to the Federal Government.

Official of Lender

Title

Attachment B

Certification of Borrower Location

As an employee or agent of

Name and Address of Lender

I hereby certify as follows:

1. On _____
Date
I spoke with or received written communication from (copy attached):
(circle a or b)
(a) the borrower on the loan underlying the default claim, or
(b) a parent, spouse, or sibling of the borrower.

2. The borrower, parent, spouse, or sibling represented to me that the borrower's address and telephone number are—

Address and Telephone Number

3. Within 15 days thereafter, this institution sent the borrower a new repayment agreement along with a collection letter of the type described in section I.D.1.a.ii of Bulletin L–77a, dated January 7, 1983, to the address set out in 2, above.

4. (Applicable only if 1(b), above, is used.) The letter and agreement referenced in 3, above, has not been returned undelivered.

Name of Borrower

Borrower's SSN

Signature of Employee or Agent

Typed Name of Employee or Agent

Title of Employee or Agent

Date

Lender Identification Number

Appendix D—Policy for Waiving the Secretary's Right to Recover or Refuse to Pay, Interest Benefits, Special Allowance, and Reinsurance on Guaranteed Student Loan, PLUS, Supplemental Loans for Students, and Consolidation Program Loans Involving Lenders' Violations of Federal Regulations Pertaining to Due Diligence in Collection or Timely Filing of Claims [Dear Guarantee Agency Director Letter 88–G–138]

Note: The following is a reprint of Bulletin 88–G–138, issued on March 11, 1988, with minor modifications made to reflect proposed changes in the program regulations.

Introduction

This letter sets forth the circumstances under which the Secretary, pursuant to sections 432(a) (5) and (6) of the Higher Education Act of 1965 and 34 CFR 682.406(b) and 682.413(f), will waive certain of his rights and claims with respect to Stafford Loans, PLUS, Supplemental Loans for Students (SLS), and Consolidation Program loans made under a guarantee agency program that involve violations of Federal regulations pertaining to due diligence in collection or timely filing. (These programs are collectively referred to in this letter as the GSL Programs.) This policy applies to due diligence violations on loans for which the first day of delinquency occurred on or after March 10, 1987 (the effective date of the November 10, 1986 due diligence regulations) and to timely filing violations occurring on or after December 26, 1986, whether or not the affected loans have been submitted as claims to the guarantee agency.

The Secretary has been implementing a variety of regulatory and administrative actions to minimize defaults in the GSL Programs. As a part of this effort, the Secretary published final regulations on November 10, 1986 requiring lenders and guarantee agencies to undertake specific due diligence activities to collect delinquent and defaulted loans, and establishing deadlines for the filing of claims by lenders with guarantee agencies. In recognition of the time required for agencies and lenders to modify their internal procedures, the Secretary delayed for four months the date by which lenders were required to comply with the new due diligence requirements. Thus, § 682.411 of the regulations, which established minimum due diligence procedures that a lender must follow in order for a guarantee agency to receive reinsurance on a loan, became effective for loans for which the first day of delinquency occurred on or after March 10, 1987. The regulations make clear that compliance with these minimum requirements, and with the new timely filing deadlines, is a condition for an agency's receiving or retaining reinsurance payments made by the Secretary on a loan. *See* 34 CFR 682.406 (a)(2), (e)(4), 682.413(b)(1). The regulations also specify that a lender must comply with § 682.411 and with the applicable filing deadline, as a condition for its right to receive or retain interest benefits and special allowance on a loan for certain periods. *See* 34 CFR 682.300(b)(2)(vi), 682.413(a)(1).

The Department has received inquiries regarding the procedures by which a lender may "cure" a violation of § 682.411 regarding diligent loan collection, or of the 45-day deadline for the filing of default claims found in § 682.406(a)(4), in order to reinstate the agency's right to reinsurance, and the lender's right to interest benefits and special allowance. Preliminarily, please note that, absent an exercise of the Secretary's waiver authority, a guarantee agency may not receive or retain reinsurance payments on a loan on which the lender has violated the Federal due diligence or timely filing requirements, even if the lender has followed a cure procedure established by the agency. Under §§ 682.406(b) and 682.413(f), the Secretary—not the guarantee agency—decides whether to reinstate reinsurance coverage on a loan involving such a violation, or any other violation of Federal regulations. A lender's violation of a guarantee agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. *See* §§ 682.406(a)(5); 682.413(b). As §§ 682.406(a)(6) and 682.413(b) make clear, a guarantee agency's cure procedures are relevant to reinsurance coverage *only* insofar as they allow for cure of violations of requirements established by the *agency* affecting the loan insurance it provides to lenders. In addition, all such requirements must be submitted to the Secretary for review and approval, under 34 CFR 682.401(d).

References throughout this letter to "due diligence and timely filing" rules, requirements, and violations should be understood to mean only the Federal rules cited above, unless the context clearly requires otherwise.

A. Scope

This letter outlines the Secretary's waiver policy regarding certain violations of Federal due diligence or timely filing requirements on a loan insured by a guarantee agency. Unless your agency receives notification to the contrary, or the lender's violation involves fraud or other intentional misconduct, you may treat as reinsured any otherwise reinsured loan involving such a violation that has been cured in accordance with this letter.

B. Duty of a Guarantee Agency to Enforce Its Standards

As noted above, a lender's violation of a guarantee agency's requirement that affects the agency's guarantee coverage also affects reinsurance coverage. Thus, as a general rule, an agency that fails to enforce such a requirement and pays a default claim involving a violation is not eligible to receive reinsurance on the underlying loan. However, in light of the waiver policy outlined below, which provides more stringent cure procedures for violations occurring on or after May 1, 1988 than for pre-May 1, 1988 violations, some guarantee agencies with more stringent policies than the policy outlined below for the pre-May 1 violations have indicated that they wish to relax their own policies for violations of agency rules during that period. While the Secretary does not encourage any agency to do so, the Secretary will permit an agency to take either of the following approaches to its enforcement of its own due diligence and timely filing rules for violations occurring before May 1, 1988.

(1) The agency may continue to enforce its rules, even if they result in the denial of guarantee coverage by the agency on otherwise reinsurable loans; or

(2) The agency may decline to enforce its rules as to any loan that would be reinsured under the retrospective waiver policy outlined below.

In other words, for violations of a guarantee agency's due diligence and timely filing rules occurring before May 1, 1988, a guarantee agency is authorized, but not required, to retroactively revise its own due diligence and timely filing standards to treat as guaranteed any loan amount that is reinsured under the retrospective enforcement policy outlined in section I.C.1., below. However, for any violation of an agency's due diligence or timely filing rules occurring on or after May 1, 1988, the agency must resume enforcing those rules in accordance with their terms, in order to receive reinsurance payments on the underlying loan. For these post-April 30 violations, and for any other violation of an agency's rule affecting its guarantee coverage, the Secretary will treat as reinsured all loans on which the agency has engaged in, and documented, a case-by-case exercise of reasonable discretion allowing for guarantee coverage to be continued or reinstated notwithstanding the violation. But any agency that otherwise fails, or refuses, to enforce such a rule does so without the benefit of reinsurance coverage on the affected loans, and the lenders continue to be ineligible for interest benefits and special allowance thereon.

C. Due Diligence

Under 34 CFR 682.200, default on a GSL Program loan occurs when a borrower fails to make a payment when due, provided this failure persists for 180 days for loans payable in monthly installments, or for 240 days for loans payable in less frequent installments.

The 180/240-day default period applies regardless of whether payments were missed consecutively or intermittently. For example, if the borrower, on a loan payable in monthly installments, makes his January 1st payment on time, his February 1st payment two months late (April 1st), his March 1st payment three months date (June 1st), and makes no further payments, the delinquency period begins on February 2nd, with the first delinquency, and default occurs on September 29th, when the April payment becomes 180 days past due. The lender must treat the payment made on April 1st as the February 1st payment, since the February 1st payment had not been made prior to that time. Similarly, the lender must treat the payment made on June 1st as the March 1st payment, since the March payment had not been made prior to that time.

Note: Lenders are strongly encouraged to exercise forbearance, prior to default, for the benefit of borrowers who have missed payments intermittently but have otherwise indicated willingness to repay their loans. *See* 34 CFR 682.211. The forbearance process helps to reduce the incidence of default, and serves to emphasize for the borrower the importance of compliance with the repayment obligation.

D. Timely Filing

The 45-day filing period applicable to GSL Program default claims is set forth in 34 CFR 682.406(a)(4). The 45-day filing period begins at the end of the 180/240-day default period. The lender ordinarily must file a default claim on a loan in default by the end of the filing period. However, the lender may, but need not, file a claim on that loan before the 225th day of delinquency (180-day default period plus 45-day filing period) if the borrower brings the account less than 180 days delinquent before such 225th day. Thus, in the above example, if the borrower makes the April 1st payment on September 30th, that payment makes the loan 151 days delinquent, and the lender may, but need not, file a default claim on the loan at that time. If, however, the loan again becomes 180 days delinquent, the lender must file a default claim within 45 days thereafter (unless the loan is again brought to less than 180 days delinquent prior to the end of that 45-day period). In other words, the Secretary will permit a lender to treat payments made during the filing period as curing the default if such payments are sufficient to make the loan less than 180 days delinquent.

Section I of this letter outlines the Secretary's waiver policy for due diligence and timely filing violations. As noted above, to the extent that it results in the imposition of a lesser sanction than that available to the Secretary by statute or regulation, this policy reflects the exercise of the Secretary's authority to waive the Secretary's rights and claims in this area. Section II discusses the issue of the due date of the first payment on a loan, and the application of the waiver policy to that issue. Section III provides guidance on several issues related to due diligence and timely filing as to which clarification has been requested by some program participants.

I. Waiver Policy

A. Definitions

The following definitions apply to terms used throughout this letter:

"Full payment" means payment by the borrower, or another person (other than the lender) on the borrower's behalf, in an amount at least as great as the monthly payment amount required under the existing terms of the loan, exclusive of any forbearance agreement in force at the time of the default. (For example, if the original repayment schedule or agreement called for payments of $50 per month, but a forbearance agreement was in effect at the time of default that allowed the borrower to pay $25 per month for a specified time, and the borrower

defaulted in making the reduced payments, a "full payment" would be $50, or two $25 payments in accordance with the original repayment schedule or agreement.) In the case of a payment made by cash, money order, or other means that do not identify the payor that is received by a lender after the date of this letter, that payment may constitute a "full payment" only if a senior officer of the lender or servicing agent certifies that the payment was not made by or on behalf of the lender or servicing agent.

"Reinstatement" with respect to reinsurance coverage means the reinstatement of the guarantee agency's right to receive reinsurance payments on the loan after the date of reinstatement. Upon reinstatement of reinsurance, the borrower regains the right to receive forbearance or deferments, as appropriate. "Reinstatement" with respect to reinsurance on a loan also includes reinstatement of the lender's right to receive interest and special allowance payments on that loan.

"Gap" in collection activity on a loan means:

(a) The period between the initial delinquency and the first collection activity;

(b) The period between collection activities (a request for preclaims assistance is considered a collection activity);

(c) The period between the last collection activity and default; or

(d) The period between the date a lender discovers a borrower has "skipped" and the lender's first skip-tracing activity.

[Note: the concept of "gap" is used herein simply as one measure of collection activity. Not all gaps are violations of the due diligence rules.]

"Violation" with respect to the due diligence requirements in § 682.411 means the failure to timely complete a required diligent phone contact effort, the failure to timely send a required letter (including a request for preclaim assistance), or the failure to timely engage in a required skip-tracing activity.

"Transfer" means any action, including, but not limited to, the sale of the loan, that results in a change in the system used to monitor or conduct collection activity on a loan from one system to another.

B. General

1. Resumption of Interest and Special Allowance Billing on Loans Involving Due Diligence or Timely Violations

For any loan on which a cure is required under this letter in order for the agency to receive any reinsurance payment, the lender may resume billing for interest and special allowance on the loan only for periods following its completion of the required cure procedure.

2. Reservation of the Secretary's Right to Strict Enforcement

While this letter describes the Secretary's general waiver policy, the Secretary retains the option of refusing to permit or recognize cures, or of insisting on strict enforcement of the remedies established by statute or regulation, in cases where, in the Secretary's judgment, a lender has committed an excessive number of severe violations of due diligence or timely filing rules, and in cases where the best interests of the United States otherwise require such strict enforcement. More generally, this bulletin states the Secretary's general policy and is not intended to limit in any way the authority and discretion afforded the Secretary by statute or regulation.

3. Interest, Special Allowance, and Reinsurance Repayment Required as a Condition for Exercise of the Secretary's Waiver Authority

The Secretary's waiver of the right to recover or refuse to pay reinsurance, interest benefits, or special allowance payments, and recognition of cures for due diligence and timely filing violations, are conditioned on the following:

(1) The guarantee agency and lender shall ensure that the lender repays all interest benefits and special allowance received on loans involving violations occurring prior to May 1, 1988, for which the lender is ineligible under the waiver policy for the "retrospective period" described in section I.C.1., below, or under the waiver policy for timely filing violations described in section I.E.1., below, by an adjustment to one of the next three quarterly billings for interest benefits and special allowance submitted by the lender in a timely manner after May 1, 1988. The guarantee agency's responsibility in this regard is satisfied by receipt of a certification from the lender that this repayment has been made in full.

(2) The guarantee agency, on or before October 1, 1988, shall repay all reinsurance received on loans involving violations occurring prior to May 1, 1988, for which the agency is ineligible under the waiver policy for the "retrospective period" described in section I.C.1., below, or under the waiver policy for timely filing violations described in section I.E.1., below.

Pending completion of the repayment described above, a lender or guarantee agency may submit billings to the Secretary on loans that are eligible for reinsurance under the waiver policy in this letter until it learns that repayment in full will not be made, or until the deadline for a repayment has passed without it being made, whichever is earlier.

Of course, a lender or guarantee agency is prohibited from billing the Secretary for program payments on any loan amount that is not eligible for reinsurance under the waiver policy outlined in this letter. In addition to the repayments required above, any amounts received in the future in violation of this prohibition must immediately be repaid to the Secretary.

4. Applicability of the Waiver Policy to Particular Classes of Loans

The policy outlined in this letter applies only to a loan for which the first day of the 180/240-day default period that ended with default by the borrower occurred on or after March 10, 1987, or, in the case of a timely filing violation, December 26, 1986, and that involves violations only of the due diligence and/or timely filing requirements.

5. Excuse of Certain Due Diligence Violations

In examining due diligence, the Secretary looks only at the most recent 180 days prior to default on a loan, except as noted in Section II.

6. Excuse of Timely Filing Violations Due to Performance of a Guarantee Agency's Cure Procedures

If, prior to May 1, 1988, and prior to the filing deadline, a lender commenced the performance of collection activities specifically required by the guarantee agency to cure a due diligence violation on a loan, the Secretary will excuse the lender's timely filing violation if the lender completes the additional activities within the time period permitted by the guarantee agency, and files a default claim on the loan not more than 45 days after completing the additional activities.

7. Treatment of Accrued Interest on "Cured" Claims

For any loan involving any violation of the due diligence or timely filing rules for which a "cure" is required under section I.C. or I.E., below, for the agency to receive a reinsurance payment, the Secretary will not reimburse the guarantee agency for any unpaid interest accruing after the date of the earliest unexcused violation occurring after the last payment received before the cure is accomplished, and prior to the date of reinstatement of reinsurance coverage. The lender may capitalize unpaid interest accruing on the loan from the date of the earliest unexcused violation occurring after the last payment received before the loan is accomplished, to the date of the reinstatement of reinsurance coverage. However, if the agency later files a claim for reinsurance on that loan, the agency must deduct this capitalized interest from the amount of the claim.

Some cures will not reinstate coverage. For treatment of accrued interest in such cases, see section I.E.1.c., below.

C. Waiver Policy for Violations of the Federal Due Diligence in Collection Requirements (34 CFR 682.411)

A violation of the due diligence in collection rules occurs when a lender fails to meet the requirements found in 34 CFR 682.411. However, if a lender makes all required calls and sends all required letters during any of the delinquency periods described in that section, the lender is considered to be in compliance with that section for that period, even if the letters were sent before the calls were made.

The special provisions for transfers set forth below apply whenever the violation(s) and, if applicable, the gap, were due to a transfer, as defined in section I.A., above.

1. Retrospective Period

For one or more due diligence violations occurring during the period March 10, 1987–April 30, 1988—

a. There will be no reduction or recovery by the Secretary of payments to the lender or guarantee agency if no gap of 46 days or more (61 days or more for a transfer) exists.

b. If a gap of 46–60 days (61–75 days for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period are limited to amounts accruing through the date of default.

c. If a gap of 61 days or more (76 days or more for a transfer) exists, the borrower must be located after the gap, either by the agency or the lender, in order for reinsurance on the loan to be reinstated. (*See* section I.E.1.d., below, for a description of acceptable evidence of location.) In addition, if the loan is held by the lender on or after March 15, 1988, the lender must follow the steps described in section I.E.1., or receive a full payment or a new signed repayment agreement, in order for the loan to again be eligible for reinsurance. The lender must repay all interest benefits and special allowance received for the period beginning with its earliest unexcused violation, occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

2. Prospective Period

For due diligence violations occurring on or after May 1, 1988—

a. There will be no reduction or recovery by the Secretary of payments to the lender or guarantee agency if there is no violation of Federal requirements of 6 days or more (21 days or more for a transfer.)

b. If there exist not more than 2 violations of 6 days or more each (21 days or more for a transfer), and no gap of 46 days or more (61 days or more for a transfer) exists, principal will be reinsured, but accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the date of default.

However, the lender must complete all required activities before the claim filing deadline, except that a preclaims assistance request must be made before the 215th day of delinquency. If the lender fails to make this request by the 215th day, the Secretary will not pay any accrued interest, interest benefits, and special allowance for the most recent 180 days prior to default. If the lender fails to complete any other required activity before the claim filing deadline, accrued interest, interest benefits, and special allowance otherwise payable by the Secretary for the delinquency period will be limited to amounts accruing through the 90th day before default.

c. If there exist 3 violations of 6 days or more each (21 days or more for a transfer) and no gap of 46 days or more (61 days or more for a transfer), the lender must satisfy the requirements outlined in I.E.1., or receive a full payment or a new signed repayment agreement in order for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

d. If there exists more than three violations of 6 days or more each (21 days or more for a transfer) of any type, or a gap of 46 days (61 days for a transfer) or more and at least one violation, the lender must satisfy the requirement outlined in I.D.1., for reinsurance on the loan to be reinstated. The Secretary does not pay any interest benefits or special allowance for the period beginning with the lender's earliest unexcused violation occurring after the last payment received before the cure is accomplished, and ending with the date, if any, that reinsurance on the loan is reinstated.

D. Reinstatement of Reinsurance Coverage for Certain Egregious Due Diligence Violations

1. Cures

In the case of a loan involving violations described in section I.C.2.d., above, the lender may utilize either of the two procedures described below for obtaining reinstatement of reinsurance coverage on the loan.

a. After the violations occur, the lender obtains a new repayment agreement signed by the borrower. The repayment agreement must comply with the ten-year repayment limitations set out in 34 CFR 682.209(a)(7); or

b. After the violations occur, the lender obtains one full payment. If the borrower later defaults, the guarantee agency must obtain evidence of this payment (*e.g.*, a copy of the check) from the lender.

2. Borrower Deemed Current As of Date of Cure

On the date the lender receives a new signed repayment agreement or the curing payment under section I.D.1., above, reinsurance coverage on the loan is reinstated, and the borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default. The lender shall then follow the collection and timely filing requirements applicable to the loan.

E. Cures for Timely Filing Violations and Certain Due Diligence Violations

1. Default Claims

a. Reinstatement of Insurance Coverage. Except as noted in section I.B.6., in order to obtain reinstatement of reinsurance coverage on a loan in the case of a timely filing violation, a due diligence violation described in section I.C.2.c., or a due diligence violation described in section I.C.1.c. where the lender holds the loan on or after March 15, 1988, the lender must first locate the borrower after the gap, or after the date of the last violation, as applicable. (*See* section I.E.1.d. for description of acceptable evidence of location.) Within 15 days thereafter, the lender must send to the borrower, at the address at which the borrower was located, (i) a new repayment agreement, to be signed by the borrower, that complies with the ten-year repayment limitations set out in 34 CFR 682.209(a)(7), along with (ii) a collection letter indicating in strong terms the seriousness of the borrower's delinquency and its potential effect on his or her credit rating if repayment is not commenced or resumed.

If, within 15 days after the lender sends these items, the borrower fails to make a full payment or to sign and return the new repayment agreement, the lender shall, within 5 days thereafter, diligently attempt to contact the borrower by telephone. Within 5–10 days after completing these efforts, the lender shall again diligently attempt to contact the borrower by telephone. Finally, within 5–10 days after completing these efforts, the lender shall send a forceful collection letter indicating that the entire unpaid balance of the loan is due and payable, and that, unless the borrower immediately contacts the lender to arrange repayment, the lender will be filing a default claim with the guarantee agency.

b. Borrower Deemed Current Under Certain Circumstances. If, at any time on or before the 30th day after the lender completes the additional collection efforts described in section I.E.1.a., above, or the 180th day of delinquency, whichever is later, the lender receives a full payment or a new signed repayment agreement, reinsurance coverage on the loan is reinstated on the date the lender receives the full payment or new agreement. The borrower shall be deemed by the lender to be current in repaying the loan and entitled to all rights and benefits available to borrowers who are not in default.

In the case of a timely filing violation on a loan for which the borrower is deemed current under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation to the date of reinstatement of reinsurance coverage on the loan.

c. Borrower Deemed in Default Under Certain Circumstances

If the borrower does not make a full payment, or sign and return the new repayment agreement, on or before the 30th day after the lender completes the additional collection efforts described in I.E.1.a., above, or the 180th day of delinquency, whichever is later, the lender shall deem the borrower to be in default. The lender shall then file a default claim on the loan, accompanied by acceptable evidence of location (see section I.E.1.d., below), within 30 days after the end of such 30-day period. Reinsurance coverage, and therefore the lender's right to receive interest benefits and special allowance, is not reinstated on a loan involving these circumstances. However, unless a statute of limitations bars suit on the loan by the guarantee agency at the time the reinsurance claim is filed by the agency, the Secretary will honor reinsurance claims submitted in accordance with this paragraph on the outstanding principal balance of such loans, on unpaid interest as provided in section I.B.7., above, and for reimbursement of eligible supplemental preclaims assistance costs.

In the case of a timely filing violation on a loan for which the borrower is deemed in default under this paragraph, the lender is ineligible to receive interest benefits and special allowance accruing from the date of the violation.

d. Acceptable Evidence of Location. Only the following documentation is acceptable as evidence that the lender has located the borrower:

(1) A postal receipt signed by the borrower not more than 15 days prior to the date on which the lender sent the new repayment

agreement, indicating acceptance of correspondence from the lender by the borrower at the address shown on the receipt; *or*

(2) Documentation submitted by the lender showing—

(i) The name, identification number, and address of the lender;

(ii) The name and Social Security number of the borrower; and

(iii) A signed certification by an employee or agent of the lender that—

(A) On a specified date, he or she spoke with or received written communication (attached to the certification) from the borrower on the loan underlying the default claim, or a parent, spouse, sibling, roommate, or neighbor of the borrower;

(B) The address and, if available, telephone number of the borrower were provided to the lender in the telephone or written communication; and

(C) In the case of a borrower whose address or telephone number was provided to the lender by someone other than the borrower, the new repayment agreement and the letter sent by the lender pursuant to section I.E.1.a., above, had not been returned undelivered as of 20 days after the date those items were sent, for due diligence violations described in section I.C.1.c. where the lender holds the loan on the date of this letter, and as of the date the lender filed a default claim on the cured loan, for all other violations.

2. Death, Disability, and Bankruptcy Claims

The Secretary will honor a death or disability claim on an otherwise eligible loan notwithstanding the lender's failure to meet the 60-day timely filing requirement (*see* 34 CFR 682.402(e)(2)(i)). However, the Secretary will not reimburse the guarantee agency if, before the date the lender determined that the borrower died or was totally and permanently disabled, the lender had violated the Federal due diligence or timely filing requirements applicable to that loan, except in accordance with the waiver policy described above. Interest that accrued on the loan after the expiration of the 60-day filing period remains ineligible for reimbursement by the Secretary, and the lender must repay all interest and special allowance received on the loan for periods after the expiration of the 60-day filing period.

The Secretary has determined that, in the vast majority of cases, the failure of a lender to comply with the timely filing requirement applicable to bankruptcy claims (§ 682.402(e)(2)(ii)) causes irreparable harm to the guarantee agency's ability to contest the discharge of the loan by the court, or to otherwise collect from the borrower. Therefore, the Secretary has decided not to excuse violations of the timely filing requirement applicable to bankruptcy claims, except when the lender can demonstrate that the bankruptcy action has concluded and that the loan has not been discharged in bankruptcy, or, if previously discharged, has been the subject of a reversal of the discharge. In that case, the lender shall treat the loan as in default. The Secretary will not reimburse the guarantee agency for interest accruing beyond the 30-day filing deadline for the bankruptcy claim.

II. Due Date of First Payment

Section 682.411(b) refers to the "due date of the first missed payment not later made" as one way to determine the first day of delinquency on a loan. Section 682.209(a)(3) states that, generally, the repayment period on a GSLP loan begins some number of months after the month in which the borrower ceases at least half-time study. Where the borrower enters the repayment period with the lender's knowledge, the first payment due date may be set by the lender, provided it falls within a reasonable time after the first day of the month in which the repayment period begins. In this situation, the Secretary generally permits a lender to allow the borrower up to 45 days from the first day of repayment to make the first payment.

In cases where the lender learns that the borrower has entered the repayment period after the fact, current § 682.411 treats the 30th day after the lender receives this information as the first day of delinquency. In the course of discussion with lenders, the Secretary has learned that many lenders have not been using the 30th day after receipt of notice that the repayment period has begun ("the notice") as the first payment due date. In recognition of this apparently widespread practice, the Secretary has decided that, both retrospectively and prospectively, a lender should be allowed to establish a first payment due date within 60 days after receipt of the notice, to capitalize interest accruing up to the first payment due date, and to exercise forbearance with respect to the period during which the borrower was in the repayment period but made no payment. In effect, this means that, if the lender sends the borrower a coupon book, billing notice, or other correspondence establishing a new first payment due date, on or before the 60th day after receipt of the notice, the lender is deemed to have exercise forbearance up to the new first payment due date. The new first payment due date must fall no later than 75 days after receipt of the notice. In keeping with the 5-day tolerance permitted under section I.C.2.a., for the "prospective period", a lender that sends the above-described material on or before the 65th day after receipt of the notice will be held harmless. However, a lender that does so on the 66th day will have failed by more than 5 days to send both of the collection letters required by § 682.411(c) to be sent within the first 20 days of delinquency, and will thus have committed *two* violations of more than five days of that rule.

If the lender fails to send the material establishing a new first payment due date on or before the 65th day after receipt of the notice, it may thereafter send material establishing a new first payment due date falling not more than 45 days after the materials are sent, and will be deemed to have exercised forbearance up to the new first payment due date. However, all violations and gaps occurring prior to the date on which the material is sent are subject to the waiver policies described in section I for violations falling in either the retrospective or prospective periods. This is an exception to the general policy set forth in section I.B.5., above, that only violations occurring during the most recent 180 days of the delinquency period on a loan are relevant to the Secretary's examination of due diligence.

III. Questions and Answers

The waiver policy outlined in this letter was developed after extensive discussion and consultation with participating lenders and guarantee agencies. In the course of these discussions, lenders and agencies raised a number of questions regarding the due diligence rules as applied to various circumstances. The Secretary's responses to these questions are set forth below.

Q: Section 682.411 of the program regulations requires the lender to make "diligent efforts to contact the borrower by telephone" during each 30-day period of delinquency beginning after the 30th day of delinquency. What must a lender do to comply with this requirement?

A: Generally speaking, one actual telephone contact with the borrower, or two attempts to make such contact on different days and at different times, will satisfy the "diligent efforts" requirement for any of the 30-day delinquency periods described in the rule. However, the "diligent efforts" requirement is intended to be a flexible one, requiring the lender to act on information it receives in the course of attempting telephone contact regarding the borrower's actual telephone number, the best time to call to reach the borrower, *etc.* For instance, if the lender is told during its second telephone contact attempt that the borrower can be reached at another number or at a different time of day, the lender must then attempt to reach the borrower by telephone at that number or that time of day.

Q: What must a lender do when it receives conflicting information regarding the date a borrower ceased at least half-time study?

A: A lender must promptly attempt to reconcile conflicting information regarding a borrower's in-school status by making inquiries of appropriate parties, including the borrower's school. Pending reconciliation, the lender may rely on the most recent credible information it has.

Q: If a loan is transferred from one lender to another, is the transferee held responsible for information regarding the borrower's status that is received by the transferor but is not passed on to the transferee?

A: No. A lender is responsible only for information received by its agents and employees. However, if the transferee has reason to believe that the transferor has received additional information regarding the loan, the transferee must make a reasonable inquiry of the transferor as to the nature and substance of that information.

Q: What are a lender's due diligence responsibilities where a check received on a loan is dishonored by the bank on which it was drawn?

A: Upon receiving notice that a check has been dishonored, the lender shall treat the payment as having never been made for purposes of determining the number of days delinquent that the borrower is at that time. The lender must then begin (or resume) attempting collection on the loan in accordance with § 682.411, commencing with the first 30-day delinquency period described in § 682.411 that begins after the 30-day delinquency period in which the notice of dishonor is received. The same result obtains when the lender successfully obtains a delinquent borrower's correct address through skip-tracing, or when a delinquent borrower leaves deferment or forbearance status.

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Part III

Environmental Protection Agency

40 CFR Part 61
National Emission Standards for Hazardous Air Pollutants; Asbestos NESHAP Revision; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-3814-7]

RIN 2060-AC57

National Emission Standards for Hazardous Air Pollutants; Asbestos NESHAP Revision

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This Federal Register notice promulgates rules under section 112 of the Clean Air Act (CAA) for asbestos emissions and is based on the Administrator's determination that asbestos presents a significant risk to human health as a result of air emissions from one or more source categories and is therefore a hazardous air pollutant (*see* 36 FR 3031, March 31, 1971). The purpose of the revisions promulgated today is to enhance enforcement and promote compliance with the current standard without altering the stringency of existing controls. On January 10, 1989 the Environmental Protection Agency (EPA or the Agency) proposed amendments to the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) that would require control device and fugitive emission monitoring, recordkeeping, and reporting for asbestos milling, manufacturing, and fabricating operations. For planned demolitions and renovations, revisions to the notification requirements were proposed, and safety was added as a reason for exemption from the use of wet removal methods. Recordkeeping requirements were proposed for asbestos waste disposal. Clarifying revisions to several definitions and provisions were also proposed. Numerous comments were received on the proposed revisions, and today's notice responds to those comments, and incorporates changes as a result of those comments.

EFFECTIVE DATE: November 20, 1990. Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 Days of today's publication of these rules. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background information document.* The background information document (BID) for the promulgated revisions may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina, 27711, telephone no. (919) 541-2777. Please refer to "Background Information for Promulgated Asbestos NESHAP Revisions," (Publication No. EPA 450/3-90/017). The BID contains a summary of all the public comments made on the proposed revisions and the Administrator's responses to the comments.

Dockets. Docket No. A-88-28 contains supporting information used in developing the final revisions to the asbestos NESHAP and is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket (LE-131), Room M-1500, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information and official interpretations of applicability, compliance requirements, and reporting aspects of the promulgated revisions, contact the appropriate Regional, State or local office contact as listed in 40 CFR 61.04. For further information on the background of the regulatory decisions in the promulated revisions, contact Mr. Sims Roy, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone no. (919) 541-5263. For further information on the technical aspects of the promulgated revisions, contact Mr. Ronald Myers, Industrial Studies Branch, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone no. (919) 541-5407.

SUPPLEMENTARY INFORMATION:

I. The Standards

The promulgated revisions implement section 112 of the Clean Air Act (CAA) and are based on the Administrator's determination that asbestos presents a significant risk to human health as a result of air emissions from one or more source categories and is therefore a hazardous air pollutant (*see* 36 FR 3031 (March 31, 1971)). The revisions promulgated today amend the asbestos NESHAP to enhance enforcement and promote compliance with the current standard without altering the stringency of existing controls.

Milling, Manufacturing and Fabricating

The revisions to the standards require asbestos milling, manufacturing and fabricating sources to conduct daily monitoring for visible emissions. While the absence of visible emissions does not mean there are no asbestos fibers being emitted, the presence of visible emissions does indicate a serious control device malfunction. Because visible emissions monitoring is intended primarily to detect serious control device malfunctions, weekly inspections of air cleaning devices are also required. In addition, the revisions promulgated require these sources to maintain records of the results of visible emissions monitoring and control device inspections, and to submit quarterly a copy of visible emissions monitoring records of visible emissions occurred during the quarter. The revision requires owners or operators who install fabric filters after the effective date of this rule to provide for easy inspection of the bags.

Demolition and Renovation

The revisions require the owner or operator of a demolition or renovation activity to provide additional information in notifications, and to renotify EPA if the start date of a demolition or renovation changes from that given in the original notification. Another revision requires owners or operators to give a 10-day notice for renovations. A person trained in the provisions of this rule and the means of complying with them is required to be on site when asbestos-containing material (ACM) is stripped, removed or disturbed. When wetting is suspended due to freezing temperatures, owners or operators are required to measure air temperature in the work area three times during the workday and keep daily temperature records for at least 2 years. The revisions also clarify EPA's position regarding the handling and treatment of nonfriable asbestos materials such as resilient floor covering, including vinyl asbestos floor tile, and roofing material.

Waste Disposal

The revisions require vehicles used to transport asbestos-containing waste material to be marked with the sign prescribed by the Occupational Safety and Health Administration during loading and unloading to warn people of the presence of asbestos. For all asbestos-containing waste material transported offsite, the revisions require that a waste shipment record (WSR) be provided to the waste site owner or operator at the time that the waste is delivered to the waste disposal site. If a copy of the WSR signed by the waste site owner or operator is not received within 35 days of the date the waste was accepted by the initial transporter, the revisions direct the waste generator to contact the transporter and/or disposal site owner or operator to determine the status of the waste shipment. The revisions further direct the waste generator to submit an exception report to EPA if a signed copy of the WSR is not received within 45 days of the date the waste was accepted by the initial transporter. Labels are required on containers of asbestos-containing waste material from manufacturing, fabricating, demolition and renovation activities indicating the name of the waste generator and the location where the waste was generated.

Inactive Waste Disposal Sites

The revisions require the owner or operator of an inactive waste disposal site for a milling, manufacturing or fabricating operation to notify the Administrator in writing prior to excavating or otherwise disturbing asbestos-containing waste material that has been deposited at the disposal site and to record on the deed to the property a notation that will inform future purchasers of the property that it has been used for the disposal of asbestos-containing waste material and that the survey plot and record of the location and quantity of such waste material are on file with the Administrator.

Active Waste Disposal Sites

The revisions require the owner or operator of an active waste disposal site to maintain WSRs and report in writing the receipt of a significant amount of improperly enclosed or uncovered waste to EPA by the following working day. The owner or operator of an active waste disposal site is required by the revisions promulgated today to send a signed copy of the WSR back to the waste generator no more than 30 days after receipt of the waste, to attempt to reconcile any discrepancy between the quantity given on the WSR and the quantity actually received and, failing to do so within 15 days after receiving the waste, to report the discrepancy and any attempts to reconcile it to the Administrator. The revisions promulgated today also require the owner or operator of an active disposal site to maintain records of the location, depth and area, and volume of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area. Upon closure, the owner or operator must comply with all the rules promulgated for inactive waste disposal sites. A revision requires the owner or operator of an active waste disposal site to notify the Administrator in writing prior to excavating or otherwise disturbing asbestos-containing waste material that has been deposited at the disposal site and covered.

Asbestos Conversion Processes

A section is promulgated to clarify that operations that convert asbestos-containing waste material into nonasbestos (asbestos-free) material are covered by the NESHAP. The provisions promulgated require the owner or operator of such an operation to obtain prior written approval of the Administrator to construct the facility, and conduct a start-up performance test using specified analytical methods and procedures. Requirements for continuous monitoring during and after the initial 90 days of operation, emissions control, maintenance of records of test results on site, and reports to the Administrator are also promulgated today.

II. Environmental, Energy and Economic Impacts

The environmental, energy, and economic impacts of the revisions for demolition and renovation, including waste disposal, were estimated from two baselines. One is full compliance with the NESHAP, and the other is current use of engineering controls and work practices. Enforcement experience indicates that many asbestos removal operations related to demolition and the subsequent waste disposal operations are performed out of compliance with the NESHAP. The lack of compliance with the NESHAP removal provisions leads to the improper disposal of some waste, especially demolition waste, with the result that emissions from the disposal of demolition waste greatly exceed other emissions, including process emissions from milling, manufacturing, and fabricating. Liability and other considerations generally lead the owners of buildings being renovated to follow or even exceed the requirements of the NESHAP. Thus, the appropriate baseline for demolition is current use of work practices rather than full compliance. At asbestos milling, manufacturing, and fabricating facilities, the required air pollution control devices are generally in place. Thus, for milling, manufacturing, and fabricating, full compliance with the NESHAP, including the waste disposal requirements, is assumed for the baseline.

Few emission measurement data exit for asbestos sources. Thus, emissions were estimated using engineering methods and assumptions, which resulted in substantial uncertainty. A detailed description of the approaches used to estimate emissions is found in "Asbestos Emission Estimates for Milling, Manufacturing, Fabricating, Demolition, Renovation, and Waste Disposal," which is contained in Docket A-88-28. Estimated process emissions under the current NESHAP at full compliance for milling, manufacturing, and fabricating are approximately 7,400 kg/yr. Based on current practices, estimated emissions from the removal activities associated with demolition and renovation are approximately 1,300 kg/yr and estimated waste disposal emissions from all sources are 227,000 kg/yr. If demolition and renovation were in full compliance, estimated emissions from asbestos removal activities associated with demolition and renovation would be about 700 kg/yr. Estimated emissions from waste disposal, assuming full compliance with the NESHAP by all sources, would be about 600 kg/yr.

The costs of the revisions are expected to be small relative to normal operating costs for these industries. The revisions are intended to promote compliance and enhance enforceability. Small additional costs are associated with the recordkeeping and reporting requirements of the revisions. Economic impacts of the promulgated alternatives are expected to be minimal. Adverse impacts of the promulgated revisions on water, noise, and energy were considered. Due to the nature of the revisions, no significant adverse impacts on water, noise, or energy are anticipated.

III. Public Participation

The revisions were proposed and published in the Federal Register on January 10, 1989 (54 FR 912). The preamble to the proposed standards revisions noted the availability in the docket of the supporting information used in developing the proposed revisions. Public comments were solicited at the time of proposal.

To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed revisions, a public hearing was held on February 8, 1989, at Research Triangle Park, North Carolina. The hearing was open to the public, and 6 persons presented comments.

The public comment period specified in the Federal Register notice was from January 10, 1989 to March 7, 1989. One

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hundred comment letters were received in response to the **Federal Register** proposal. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made to the proposed revisions.

IV. Significant Comments and Changes to the Proposed Revisions

Comments on the proposed revisions were received from industry, trade associations and regulatory agencies. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the ADDRESSES section of this preamble. The comments and responses summarized in the BID serve as the basis for the changes that have been made to the revisions between proposal and promulgation. The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. Significant comments have been divided into the following areas: demolition and renovation, and waste disposal.

Demolition and Renovation

Nonfriable ACM

Comment: Several commenters argued that the rule should be modified to clarify that certain products are nonfriable and, therefore, not regulated. Asbestos cement (A/C) products, including transite and exterior shingles, should be included among nonfriable products according to commenters IV–D–49, IV–D–72, and IV–D–93. Asbestos-containing flooring products, such as tile and sheet vinyl flooring, were considered by several commenters (IV–D–15, IV–D–47, IV–D–48, IV–D–55, IV–D–84, and IV–D–95) to always be nonfriable and exempt from the rule, with the exception of flooring that was being sanded (IV–D–47, IV–D–48). Another commenter, IV–D–48, in reference to asbestos roofing products, argued that there is no basis in the record for saying that severely weathered asphaltic material could become brittle. Commenters IV–D–21, IV–D–31, IV–D–48, IV–D–49, and IV–D–93 recommended that the rule be clarified to exempt all nonfriable materials as the rule is currently understood. Commenter IV–D–93 argued that in present day ACM, the asbestos fibers are locked in cement or bituminous or resinous binders and that the materials can be removed and disposed of without any significant release to the environment.

Response: In 1973 when the asbestos NESHAP rules were first promulgated for the demolition of buildings, EPA's intention was to distinguish between materials that would readily release asbestos fibers when damaged or disturbed and those materials that were unlikely to result in the release of significant amounts of asbestos fibers. To accomplish this, EPA labeled as "friable" those materials that were likely to readily release fibers. Friable materials, when dry, could easily be crumbled, pulverized, or reduced to powder using hand pressure. The term "reduced to powder" is readily understood to mean that the affected material is changed to a dust or powder that can become airborne. "Pulverized" indicates that the resulting material will include dust as well as a large number of small pieces of the original material. The term "crumbled" indicates that the affected material is easily (i.e., using hand pressure) broken into a large number of small pieces. Although dust is likely to be produced as a result of crumbling, it is possible that there are some types of materials that can be crumbled without producing dust. It is also understood that crumbling refers to an action that occurs essentially in one effort and not to repeated attempts to crumble the material. For example, floor tile in good condition can be broken by hand into a few large pieces, but it is not easily broken in one effort into many small pieces. On the other hand, floor tile that has lost its structural matrix is in poor condition and can be broken into many small pieces in one effort.

Later, EPA realized that, in some instances, nonfriable materials that were subjected to intense forces, such as the intense mechanical forces encountered during demolition, could be crumbled, pulverized, or reduced to powder. In these instances, certain materials which had been considered nonfriable appeared capable of releasing significant amounts of asbestos fibers to the atmosphere. Examples of practices that were observed by EPA to reduce otherwise nonfriable asbestos material to dust capable of becoming airborne included the breaking of nonfriable insulation from steel beams by repeatedly running over the beams with a crawler tractor. In view of the damage done to these otherwise nonfriable materials and the resulting increased potential for fiber release, these and other similar practices involving nonfriable asbestos material were considered to render nonfriable ACM into dust capable of becoming airborne.

As a result, EPA issued a policy determination in 1985 regarding the removal of nonfriable asbestos material that was consistent with EPA's intent to distinguish between material that could release significant amounts of asbestos fibers during demolition and renovation operations and those that would not. This policy determination stated in essence that any ACM, whether originally friable or nonfriable that become (or are likely to become) crumbled, pulverized, or reduced to powder are covered by the NESHAP. Specifically, the determination stated that

> * * * even though the regulations address only material that is presently friable, it does not limit itself to material that is friable at the time of notification. Rather, if at any point during the renovation or demolition, additional friable asbestos material is * * * created from nonfriable forms, then this additional friable material becomes subject to the regulations from the time of creation * * *

The issuance of this determination did not alter the intent of the NESHAP, but was consistent with the intent of the standard that was written to prevent significant emissions of asbestos fibers. The intent of the policy determination was that it apply narrowly to specific instances where otherwise nonfriable materials would be damaged during demolition or renovation to the extent that significant amounts of asbestos fibers would be released to the atmosphere. A statement in the determination to the effect that some nonfriable materials may remain nonfriable throughout demolition and renovation is evidence that this determination was intended to be narrowly interpreted and not used to require removal of all nonfriable materials. For example, materials such as resilient floor covering, asphalt roofing products, packings, and gaskets would rarely, if ever, need to be removed because, even when broken or damaged, they would not release significant amounts of asbestos fibers. But, just as it is important to recognize that some nonfriable materials do not have to be removed prior to demolition, it is also important to recognize that some nonfriable materials should be removed prior to demolition if, as a result of the forces of demolition, nonfriable material is likely to become crumbled, pulverized, or otherwise reduced to powder. For example, the A/C siding on a building that is to be demolished using a wrecking ball is very likely to be crumbled or pulverized with increased potential for the release of significant levels of asbestos fibers. Such material in this instance should be removed prior to demolition.

Since this policy determination was made, there has been some confusion in its application. As a result, contractors operating in more than one enforcement jurisdiction have encountered different interpretations for similar demolition operations. For example, there have been instances in which contractors are required, prior to demolition, to remove floor tile in one enforcement jurisdiction but not in another. Contractors and/or building owners and operators are unsure as to what materials must be removed and what materials can be left in place and are often hesitant to proceed without a ruling from EPA, which can involve significant delays.

As a consequence, EPA received a number of requests from State and regional enforcement agencies to clarify what is required under the NESHAP in dealing with nonfriable materials since the 1985 policy determination was issued. In response to these requests, a clarification of the nonfriable issue was included in the revisions proposed on January 10, 1989. These revisions were intended to clarify the intent of the original rule. Basically, EPA stated in the January 10, 1989, **Federal Register** notice that certain nonfriable materials, such as floor tile, roofing products, and packings and gaskets that are in good condition, can be left in buildings being demolished because fiber release from these materials, even if the materials are damaged, is relatively small compared to the fiber release from friable materials. Other nonfriable products such as A/C products have a greater potential to release asbestos fibers when heavily damaged and may have to be removed prior to demolition.

In response to the revisions proposed on January 10, 1989, numerous comments were submitted to EPA. Many of the commenters argued that EPA was attempting to regulate nonfriable materials, which were explicitly exempted in previous asbestos NESHAP rulemakings. Many comments stated that the proposed revisions did not help to clarify EPA's position on nonfriable material and may have made matters more confusing.

In responding to the comments, a literature survey was conducted to determine if it was possible to quantify the fiber release potential of nonfriable materials when they are damaged during demolition. All of the available data on fiber release from floor tile, roofing products, gaskets, packings, and A/C products was reviewed. In some instances, the fiber release data were measured during actual removal operations, while other data were from simulated removal activities in laboratory settings. For the materials evaluated, the potential for fiber release appeared minimal and substantially lower than for friable materials. These findings, while uncertain, support EPA's original argument that there is a basis for making a distinction between materials that readily release fibers and those that do not.

As a result of the comments received on this issue and the additional information gathered in response to comments, EPA has been able to compile a list of nonfriable ACM that, under normal conditions, do not have to be removed prior to demolition operations. These ACM are not expected to release significant amounts of asbestos fibers to the outside air during demolition and, consistent with the intent of the existing standards, are not being regulated. A definition of "category I nonfriable ACM" is added to the final rule, which lists resilient floor covering, roofing products, gaskets, and packings. However, if these materials are in poor condition and are friable or they are subjected to sanding, grinding, cutting, or abrading, they are to be treated as friable asbestos material. Category I nonfriable ACM that is in poor condition, but is not friable and will not be subjected to sanding, grinding, cutting, or abrading, is not subject to the NESHAP. "In poor condition" has been defined to mean that the binding of the material is losing its integrity as indicated by peeling, cracking, or crumbling of the material. Other nonfriable materials are identified as Category II nonfriable ACM and have to be evaluated on a case-by-case basis. Category II materials that become crumbled, pulverized, or reduced to powder during removal or during demolition are covered by the NESHAP.

Broken ACM

Comment: Commenters IV–D–47, IV–D–89, IV–D–93, and IV–D–95 explained that use of the term "broken" to describe materials that are subject to the rule is inconsistent with the current NESHAP and expands coverage of the NESHAP. These commenters stated that merely breaking nonfriable material does not equate to fiber release. One commenter, IV–D–89, noted that noncompliance may increase where nonfriable material is broken during demolition or renovation, but is not controlled or reported according to the NESHAP.

Response: After considering this issue, EPA agrees with commenters that retaining the word "broken" could be interpreted as substantially increasing the scope of the standard and, therefore, has removed it from the definition. Most nonfriable materials can be broken without releasing significant quantities of airborne asbestos fibers. It is only when the material is extensively damaged, *i.e.*, crumbled, pulverized, or reduced to powder, that the potential for significant fiber release is greatly increased. Also, in the definitions of "asbestos-containing waste material," "friable asbestos material," and elsewhere, the word "broken" is deleted. The EPA is planning to issue additional information in the future on this and other aspects of the NESHAP to help enforcement officials and the regulated community interpret and apply the NESHAP provisions.

Inspections

Comment. Three commenters argued that EPA should include mandatory asbestos surveys in the rule. Commenter IV–D–4 stated that EPA should require surveys for all buildings prior to and separate from any demolition or renovation activity. Commenter IV–D–4 stated that such building surveys could become part of a public record, making the absence of a survey a violation. Commenter IV–D–4 noted that, if the survey indicated that a structure was asbestos free, all notification and enforcement costs would be eliminated. Also, commenter IV–D–4 explained that a demolition without proper notification could be easily established later.

Commenters IV–D–57 and IV–D–84 stated that EPA's requirement to survey buildings prior to demolition and renovation is implicit and should be made explicit and require that surveys be performed by an accredited asbestos inspector. Commenter IV–D–57 also noted that OSHA requires a building survey by a competent person and stated that EPA should similarly require a site-specific survey before demolition, with details on how the building will be demolished and how the asbestos will be controlled.

Response: The EPA currently requires that a facility be inspected for asbestos prior to demolition or renovation. As a result of the survey, information on the asbestos material present, the nature of the demolition or renovation, and measures that will be taken to control emissions of asbestos must be reported to EPA. Commenters IV–D–57 and IV–D–84 are correct in saying that it is an implicit requirement and that it is not stated explicitly in the rule. The final rule expressly requires a facility survey for asbestos prior to demolition or renovation. Although previously implied, this revision clarifies EPA's position on the requirement to perform building surveys.

The EPA also considered the suggestion to require that surveys be

performed by an "accredited" inspector or by a "competent" person as required by OSHA. OSHA's requirement to have a competent person perform an engineering survey prior to demolition (29 CFR 1926.850) is to ensure that the structural integrity of a structure is sufficient to prevent worker injury caused by the unplanned collapse of any portion of the structure; a search for asbestos is not required. An accredited inspector or competent person can perform the survey although using such individuals is not required. Using an accredited inspector and following the AHERA requirements for building inspections would help ensure a thorough inspection of the facility as required by the NESHAP. However, EPA has not had this requirement before and did not propose such a requirement. The EPA will consider a requirement to use accredited inspectors in future amendments to the rule.

Commenter IV-D-4's suggestion to require the survey of all buildings in advance of demolition or renovation would increase the stringency of the regulation by requiring all owners and operators to survey their facilities for asbestos even when no demolition or renovation operations were planned. The revisions proposed on January 10, 1989, are intended to clarify the rule and promote compliance. The need for a revision that would affect stringency may be considered at a later date. However, such a requirement would require a substantial commitment of resources to perform surveys of all existing buildings. In addition, it is not clear that it would always negate the need for pre-demolition inspections in the future.

Friable Asbestos Material—Analytical Method

Comment: Commenters IV-D-17, IV-D-35, and IV-D-70 supported the proposed changes to the definition of "friable asbestos material," specifically the change to percent by area. Commenter IV-D-69 argued that to go from percent weight to percent area may have a major impact on coverage because there may be wide discrepancies in the results reported by the two methods. Commenter IV-D-69 provided an example of this, stating that a cement-based fireproofing that contained 30 percent asbestos by area contained less than 1 percent by weight. Commenter IV-D-70 felt that the definition of "friable asbestos material" was appropriate; however, the method referenced should not be limited to point counting in view of 47 FR 1982, p. 38535, which clarifies the acceptability of "an equivalent estimation method."

Commenter IV-D-78 stated that the definition would require asbestos content to be determined by transmission electron microscopy (TEM) analysis, and that the high cost of TEM should be considered. Commenter IV-D-78 recommended that the current method continue to be accepted with TEM specified over other methods.

Response: The revisions to the asbestos NESHAP proposed on January 10, 1989 would have changed the definition of "friable asbestos material" from "greater than 1 percent weight" to "greater than 1 percent area" and referenced a method for the analysis. Because the method referenced actually contains two analytical methods—polarized light microscopy (PLM) which currently measures area, and x-ray diffraction (XRD) which measures weight—EPA has modified the definition to specify the PLM method to avoid possible confusion as to which method is referenced. Because the PLM point counting method measures percent area, the phrase "by area" is not necessary and has been taken out of the definition. The difference between percent area and percent weight depends on the density and volume of materials in the sample. These relationships are described in Asbestos Content in Bulk Insulation Samples: Visual Estimates and Weight Composition (EPA-560/5-88-011, September 1988). However, the fact remains that the PLM procedure used to determine the amount of asbestos in building materials (Interim Method for the Determination of Asbestos in Bulk Insulation Samples (EPA-600/M4-82-020, December 1982) measures percent area and not percent weight. PLM laboratories polled at meetings of the National Asbestos Council admitted that percent area is what they measure and report. Accordingly, there should be no impact on the standard from the proposed change.

Point counting is not required for the PLM procedure. An equivalent visual estimation technique may be used. Visual estimation may be made during macroscopic examination with a stereobinocular microscope, resulting in a volumetric estimation of components. For most samples, quantitation by macroscopic examination is preferred. Visual estimation may also be made during polarized light microscopy (PLM) examination, resulting in a projected area estimation of components. However, if the asbestos content is estimated to be less than 10 percent by a method other than point counting, such as visual estimation, EPA has revised the definition to require that the determination be repeated using the point counting technique with PLM. Point counting, a systematic technique for estimating concentration, may also be useful in quality assurance activities, especially in establishing a relationship between point counts and visual estimation procedures.

The accuracy of quantitative data from either technique of estimation is dependent upon several factors, including: sample homogeneity, asbestos content, asbestos fiber size, the presence of interfering matrix/binder material, and the skill of the microscopist. It is suggested that the quantitation skill of the microscopist may be improved and concurrently verified through the use of calibration standards. These standards may include well-characterized bulk materials or in-house calibration standards formulated by mixing known weights of commonly available fibrous (asbestos, cellulose, glass, *etc.*) and nonfibrous (plaster, clay, vermiculite, calcium carbonate, *etc.*) materials.

For some materials, experience has shown that gravimetry (gravimetric sample reduction) is a viable technique to aid in the determination of asbestos content. The technique involves the systematic removal (and determination of the resulting weight loss) of interfering components, and the concentration of asbestos in a residue, the components of which are identified by PLM. EPA is currently conducting research to develop procedures that will help determine the appropriate analytical procedure to use based on the type of material, the level of asbestos present in the material, as well as other factors.

TEM is not recommended for routine analysis of bulk samples. TEM may be useful in the analysis of special materials containing finely divided asbestos particles. The EPA is currently reviewing procedures for analyzing bulk samples for asbestos. Under investigation are procedures that would determine what analytical techniques are appropriate for bulk samples of different materials and different asbestos contents. For example, a simple visual estimation technique may be appropriate for the initial screening of bulk samples of friable material. If the visual estimation technique indicates that the asbestos content is less than 10 percent, additional quantitation by point counting would be required. If the material to be analyzed contains asbestos fibers below the limit of resolution for PLM, which is often true of floor tile, then analysis by TEM is appropriate.

Method of Notification

Comment: Several comments were received on the requirement to use certified mail for notifying EPA. Most of the commenters objected to the use of certified mail to the exclusion of other methods.

Commenters IV-D-23, IV-D-24, IV-D-25, IV-D-42, IV-D-78, IV-D-59, and IV-D-65 considered the certified mail requirement to be unnecessary for EPA to achieve the intended purpose of the notification process. It was stated that certified mail would require a trip to a post office, which is a deterrent to timely notification. Commenters IV-D-23, IV-D-24, IV-D-41, and IV-D-78 argued that notification by telefax machine may be more practical than certified mail. Commenters IV-D-25, IV-D-65, and IV-D-83 suggested that notification by telephone or telefax be allowed, followed by a written notification. Commenters IV-D-24, IV-D-25, IV-D-42, and IV-D-65 observed that regular mailing of notices works satisfactorily and should be allowed. Commenters IV-D-28 and IV-D-66 favored allowing the use of overnight mail.

Commenter IV-D-59 argued that, if a State agency has jurisdiction, the method of notification should be left up to the State agency.

Commenter IV-D-32 argued that all notifications should be in writing because telephone notification does not result in a legally enforceable written record. Also, commenter IV-D-32 stated that allowing the use of telephones would promote schedule changes for minor reasons that would not otherwise be considered.

Response: Several of the commenters objected to the required use of certified mail even though EPA proposed the use of certified mail as a way of ensuring that owners/operators had proof of notification. In view of the negative comments and after reconsidering the issue, the EPA has decided not to require certified mail although its use would be allowed. The use of the regular mail system, *i.e.*, U.S. Postal Service, has worked satisfactorily in the past and will continue to be allowed. Also, because the rule specifies postmark "* * * or deliver * * *," private overnight mail delivery is permitted.

Regarding the use of telephone facsimile (fax) machines to transmit notices, EPA does not consider these systems to be sufficiently reliable, at this time, to allow their use. Often, it is difficult to know whether a transmission was successful. Disadvantages associated with their use include occasional incomplete transmissions and transmissions of poor quality requiring faxed messages to be followed by telephone contact to confirm proper transmission. More than one transmission may be required. In some instances, quality cannot be improved. Also, because of competing messages, it often requires a long time before a fax can be properly transmitted and verified. The EPA may consider the use of facsimile machines in the future when their reliability has been improved.

The EPA does not consider it necessary to allow the use of the telephone for the original notification of a demolition or renovation activity covered by this standard. The notification must be in writing.

Where States or local authorities enforce their own asbestos regulations, they may choose the notification procedures. But if a State is delegated authority for enforcing the NESHAP, then they must adhere to the NESHAP's requirements.

The EPA is in agreement with the commenter who favors written notifications over telephone notifications and the final rule continues to require the former.

It should be noted that OSHA has recently proposed notification requirements (55 FR 29712, July 20, 1990) similar to those in the NESHAP. The EPA is coordinating with OSHA during their rulemaking to determine the most efficient mechanism to avoid duplication and ensure that both EPA and OSHA receive adequate notice without unduly burdening industry.

Renotification

Comment: Numerous comments were received on the proposed renotification requirements. Although a few favored the requirements as proposed and a few thought the requirements should be more stringent, most of the commenters favored the use of telephone renotification. The comments were as follows:

Commenter IV-D-28 disagreed with the NADC comment in the proposal preamble that renotification by telephone should be allowed; commenter IV-D-28 recommended a 10-day written notice for all projects.

Commenter IV-D-21 suggested that the renotification provisions be made more flexible by allowing the actual start date to vary by a couple of days for projects lasting longer than 5 days before requiring the owner/operator to renotify.

Commenters IV-D-21, IV-D-25, IV-D-26, IV-D-36, IV-D-37, IV-D-41, IV-D-42, IV-D-45, IV-D-46, IV-D-49, IV-D-50, IV-D-58, IV-D-59, IV-D-60, IV-D-61, IV-D-62, IV-D-65, IV-D-69, IV-D-71, IV-D-73, IV-D-74, IV-D-76, IV-D-87, IV-D-88, and IV-D-94 suggested that EPA allow the use of some other means besides certified mail for renotification, such as same day telephone or telefax messages, when a 5-day written notice would further delay the project. This would be simpler and less time-consuming. Commenter IV-D-41 also suggested that, when it is feasible to provide a 5-day written notice, i.e., delays are known at least 5 days in advance, then such notice would be provided. Also, as commenters IV-D-46, IV-D-49, IV-D-50, IV-D-58, IV-D-60, IV-D-62, IV-D-69, and IV-D-73 suggested, a telephone notice could be followed by a written notice.

According to commenters IV-D-23, IV-D-24, IV-D-36, IV-D-37, IV-D-41, IV-D-42, IV-D-43, IV-D-45, IV-D-46, IV-D-49, IV-D-50, IV-D-51, IV-D-58, IV-D-59, IV-D-63, IV-D-64, IV-D-73, IV-D-75, IV-D-76, IV-D-78, IV-D-87, IV-D-88, and IV-D-94, there are numerous unforeseen factors, such as equipment mobilization problems, personnel availability, weather, or other project difficulties, that can cause a removal project to start on a date other than the one submitted in the original notification. These commenters explained that the proposed renotification requirements, with their additional waiting requirements, could result in unreasonable project delays and significantly increased project costs. Several of these commenters and commenter IV-D-84 suggested that EPA allow a project to start within some reasonable period of time, such as a couple of days, of the original start date without having to renotify EPA in writing. The EPA should provide for some flexibility in predicting the exact start date. In the experience of one of the commenters, jobs usually start within a day or two of the scheduled date.

Response: The EPA agrees that a 10-day advance notice is appropriate for demolitions and renovations that can be planned for and scheduled. In some situations, however, such as emergency renovations or government-ordered demolition of buildings that are in danger of imminent collapse, EPA considers shorter notification periods appropriate. For renotification, a 10-day additional waiting period would be excessively burdensome.

The EPA has considered the suggestion that telephone renotification be permitted and has determined that providing for the use of the telephone, followed by a written notice, would provide the necessary flexibility and would be in the best interests of both

the regulated community and EPA. The EPA does not want to interfere with commerce by requiring a 5-day waiting period for a written renotification when a telephone call followed by a written renotification would suffice. Nor does EPA wish to make useless visits to jobs that have been rescheduled because a written renotification of a change in start date was not received in time.

Emergency Renovation

Comment: Commenters IV–D–9, IV–D–14, IV–D–41, IV–D–42, and IV–D–49 stated that the scope of the term "emergency renovation operation" should not be limited to events resulting in "unsafe conditions," but should include events such as fires, ruptured pipes, boiler failures, and other situations that could present potential public health or safety hazards if not immediately attended to. Commenter IV–D–18 asked if the definition would include the release of asbestos into the air. Commenter IV–D–63 recommended that the definition include operations necessary to protect equipment from significant damage.

Response: Events that would necessitate an emergency renovation include those that may produce immediately unsafe conditions as well as those that, if not quickly remedied, could reasonably be foreseen to result in an unsafe or detrimental effect on health. For example, a boiler in an apartment building that suddenly malfunctions during the winter would need to be repaired immediately. To protect equipment from significant damage and to avoid imposing an unreasonable financial burden by requiring sources that experience a sudden unexpected equipment failure to wait 10 days, the final rule includes equipment damage and financial burden as additional reasons for emergency renovations, and the definition of emergency renovation is revised accordingly.

Definition of Facility

Comment: Several commenters argued that the exclusion of residential facilities having four or fewer dwelling units should be eliminated. Commenter IV–D–60 asserted that residential demolition and renovation and associated waste disposal involve significant quantities of asbestos and should be regulated. Commenter IV–D–54 argued that residential buildings having four or fewer units should not be exempt from the work practices provisions even if they are exempt from the notification requirements. Commenter IV–D–96 recommended that only facilities with one dwelling unit be excluded because renters of apartments are frequently exposed as a result of asbestos work performed by untrained workers.

Response: The recommendation to remove the exemption for residential facilities having four or fewer dwelling units would expand the scope of the rule. Revisions that alter stringency may be considered during a later rulemaking. However, EPA does not consider residential structures that are demolished or renovated as part of a commercial or public project to be exempt from this rule. For example, the demolition of one or more houses as part of an urban renewal project, a highway construction project, or a project to develop a shopping mall, industrial facility, or other private development, would be subject to the NESHAP. Nor would the conversion of a hotel or large apartment building to a condominium, a cooperative, or a loft exempt the structure from the NESHAP. To clarify that condominiums, cooperatives, and lofts which exceed four dwelling units are subject to the NESHAP, the definition of facility has been modified accordingly. The owner of a home that renovates his house or demolishes it to construct another house is not to be subject to the NESHAP.

Definition of Installation

Comment: Commenter IV–D–63 argued that the definition of "installation" needs clarification and asks whether a group of residential buildings would be excluded. The commenter argued that a group of residential buildings at one location being demolished or renovated by one developer should be covered.

Response: A group of residential buildings under the control of the same owner or operator is considered an installation according to the definition of "installation" and is, therefore, covered by the rule. As an example, several houses located on highway right-of-way that are all demolished as part of the same highway project would be considered an "installation," even when the houses are not proximate to each other. In this example, the houses are under the control of the same owner or operator, i.e., the highway agency responsible for the highway project.

Training

Comment: Commenters IV–D–18 and IV–D–66 recommended that a refresher course be attended every 2 years.

Response: Regarding the commenters who recommended that refresher courses be taken every 2 years, EPA agrees and has modified the rule to require refresher courses. The EPA considers such additional training important to maintain familiarity with the NESHAP as well as to keep abreast of any changes in the standards.

Sanding, Grinding, or Abrading Nonfriable ACM

Comment: Commenters IV–D–15, IV–D–47, IV–D–48, IV–D–55, IV–D–84, and IV–D–95 considered asbestos-containing flooring products, such as tile and sheet vinyl flooring, to always be nonfriable and exempt from the rule, with the exception of flooring that was being sanded (Commenters IV–D–47 and IV–D–48.)

Response: The EPA considers the deliberate sanding, grinding, or abrading (including drilling, cutting, and chipping) of all nonfriable materials, including resilient floor covering, asphalt roofing material, packings, and gaskets to be sources of asbestos emissions and the revisions require otherwise nonfriable ACM to be treated as if it were friable when it is sanded, ground or abraded.

Also, a definition of "grinding" is added to clarify the types of activities, especially those involving nonfriable asbestos materials, that are subject to the regulation. For example, typical floor tile removal methods, such as mechanical chipping, result in the floor tile being broken up into numerous small fragments. This removal method is subject to the NESHAP provisions. Other floor tile removal methods are available that do not result in the material being so severely damaged. Such methods include the use of heat from heat guns or electric heat machines, the use of infrared machines, flooding with water or amended water, and the use of dry ice or liquid nitrogen. These methods when properly utilized allow the tiles to be removed with a minimum of damage to the tiles and would not be subject to the NESHAP.

Definition of Nonfriable Asbestos Material

Comment: Commenters IV–D–15 and IV–D–69 asserted that the meaning of "nonfriable" is unclear because it was not defined in the revisions proposed on January 10, 1989. A problem may result if it is considered the opposite of friable. Commenter IV–D–39 also argued for a definition of "nonfriable" and asserted that, like "friable," the threshold of at least 1 percent by area should apply.

Response: The EPA agrees that the meaning of "nonfriable" needs to be clarified. A definition of "nonfriable asbestos material" has been added to the final rule. The EPA considers nonfriable asbestos material to be material containing more than 1 percent asbestos by area that cannot be crumbled, pulverized, or reduced to power by hand pressure. However, some nonfriable asbestos materials can be crumbled, pulverized, etc., in the course of demolition/renovation operations leading to asbestos emissions and are, therefore, subject to control under the NESHAP.

Waste Disposal

Marking

Comment: Commenters IV–D–61 and IV–D–96 asserted that the term "placard" is inappropriate because it has a specific application under DOT regulations for hazardous waste transport, and that the proposal should be revised to maintain the distinction between "marking" and "placarding" as was done in RCRA and TSCA rulemakings.

Response: The EPA has modified the final rule to replace the term "placard," a term used by the DOT in its regulation of the transportation of hazardous materials, with the term "mark" as suggested by the commenters. This should help avoid confusing DOT requirements with requirements under the NESHAP.

Labeling

Comment: Commenters IV–D–18, IV–D–28, IV–D–41, and IV–D–84 recommended that EPA in Section 61.150, and perhaps elsewhere, cite only OSHA labels and delete references to other labels because OSHA requires the use of their labels in all cases.

Response: The EPA agrees with the commenters who suggest that only OSHA labels be required on containers and has revised the final rule accordingly.

Offsite Disposal

Comment: Two commenters were concerned with placarding and other requirements of § 61.149(d). Commenter IV–D–22 stated that his company moves tailings from the mill by dump truck or earth-moving equipment to a disposal site on company property and would like the requirements for placards, etc., in § 61.149(d) changed so that they would apply only to transport to an offsite disposal facility.

Commenter IV–D–93 also suggested that the requirements of § 61.149(d) should apply only to vehicles transferring waste offsite.

Response: Although company personnel may not require a warning that asbestos waste is being transported, others who are on site and who are not company employees, e.g., vendor and construction personnel, clearly do. Further, OSHA requires that workers be informed of hazards to which they are exposed. Accordingly, EPA believes the provisions of § 61.149(d) are appropriate as proposed and should not be changed as suggested.

EPA Identification Number

Comment: Several comments addressed the proposal to assign identification numbers to generators of asbestos waste. Most of the commenters found the requirement confusing. Commenters IV–D–9 and IV–D–49 stated that the system of using EPA identification numbers is confusing and misleading and should be subject to public comment rather than tacked onto the final version of the amendments. Commenter IV–D–25 wondered how the system is to operate and whether they would use the number they already have for hazardous waste. Commenter IV–D–26 was unclear as to who the generator would be and suggested that the abatement contractor be considered the generator. Commenter IV–D–28 thought that this requirement would generate a list of one-time generators, and that it should be deferred for further study. Commenter IV–D–41 asked if RCRA hazardous waste identification numbers were going to be assigned to asbestos waste generators. As explained by commenter IV–D–61, not all generators will have an EPA identification number as required in § 61.150(d) (1)(i) and (4)(i). Commenters IV–D–62 and IV–D–63 expressed confusion over the proposed identification number and urged that a single number be assigned to an entire company, rather than to each building or facility. Commenter IV–D–18 asked how the identification numbers are to be determined and assigned; is it to be done now; and, if the program is delegated to a State or local program, would this require a State identification number?

Response: Because of the confusion expressed by all the commenters over how a system of assigning identification numbers to asbestos waste generators would work, EPA has reconsidered this revision and has decided to delete the requirement for an identification number. The EPA is confident that, even without such a unique numbering system, it will be possible to track waste shipments for the purpose of pursuing enforcement actions.

Semiannual Reports

Comment: Commenter IV–D–4 opposed semiannual reporting by generators or disposal sites but recommended exception reporting by both. Commenter IV–D–9 noted that semiannual reporting is also redundant in view of the Superfund Amendments and Reauthorization Act (SARA) Title III regulations. Commenters IV–D–28, IV–D–39, IV–D–41, IV–D–75, and IV–D–83 asserted that EPA should delete the semiannual reporting requirement in § 61.150(d)(4) because it is redundant since the information is also provided on the waste tracking form and will just add more paperwork. Commenter IV–D–94 was concerned that small, rural landfills will use the proposed recordkeeping requirements as an excuse to refuse to accept asbestos waste, which could increase illegal dumping. Commenter IV–D–94 stated that the regulation in effect prior to the January 10, 1989, proposal should be retained.

Commenters IV–D–24, IV–D–61, and IV–D–62 noted that most waste shipment reporting now occurs on an annual basis and that they preferred annual to semiannual reporting. Commenter IV–D–41 recommended that EPA adopt the biennial reporting used by EPA's Office of Solid Waste (OSW). Commenter IV–D–65 stated that, if necessary, EPA should supplement the existing biennial RCRA report.

Commenter IV–D–63 asserted that it is unnecessary for the generator to submit semiannual waste disposal reports. Commenter IV–D–81 stated that the proposal imposes redundant reporting requirements on owners/operators due to § 61.150(c)(4).

Commenter IV–D–51 argued that industrial landfills on site that are subject to RCRA and State statutes should be exempt from the reporting and recordkeeping requirements of § 61.150(d). Commenter IV–D–55 stated that § 61.150(d) does not define adequately who keeps disposal records and who submits semiannual reports. Commenter IV–D–55 felt that building owners are unfamiliar with the report called for in § 61.150(d)(4).

Response: Upon additional consideration of this provision, EPA has decided to omit the requirement for semiannual reporting from today's rule. This decision is based in part on several comments opposing semiannual reporting as unnecessary. In addition, because of the large commitment of enforcement resources that would be required for such a system to properly function, EPA believes that the proposal is overly ambitious at this time. The EPA believes, however, that enforcement can use the available information and adequately identify violators by comparing the waste records that are required to be kept by waste generators and waste disposal sites. At this time, a more workable

solution will be to require disposal sites to report to EPA whenever there is a discrepancy between the amount of waste received and the amount reported on the waste shipment papers. The discrepancy report should be submitted to the same agency that was notified of the demolition or renovation and, if different, to the agency responsible for administering the NESHAP program for the disposal site. In addition, new and existing disposal sites will be required to comply with the general reporting provisions of 40 CFR part 61. Specifically, new disposal sites will be required to comply with the requirement to apply for approval to construct (§ 61.07), and the requirements to notify EPA of startup dates (§ 61.09). Existing disposal sites that will accept asbestos waste after the effective date of the rule will be required to supply EPA with certain information concerning their operations (§ 61.10). This information will assist enforcement in tracking asbestos waste.

Excepted Waste Shipment Report

The proposed revisions included a requirement for waste generators to indicate, as part of a semiannual report to the Administrator, waste shipments for which 35 days or more have elapsed since the waste was shipped without the waste generator having received a copy of the WSR signed and dated by the disposal site owner or operator. While EPA has determined that semiannual reports are not necessary, it considers this requirement a vital part of the asbestos waste tracking system and a provisions for excepted waste shipment reports is included in the final rule.

Waste Conversion Processes

Comment: Commenter IV–D–21 asked that procedures for sample preparation for TEM be clarified; that comminution size of particle reduction be specified; that the standard or interim method of analysis that is acceptable be identified; and that laboratory qualifications meeting requirements of the National Institute of Standards and Technology (NIST) and AHERA be identified.

Response: Currently EPA has no protocol for TEM analysis of output materials. The final rule requires the owner or operator of waste conversion processes to submit a protocol for sampling and analysis by TEM for approval by EPA.

V. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated revisions and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

The effective date of this regulation is November 20, 1990. Section 112 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation except that in the case of an existing source, the standard shall not apply until 90 days after its effective date.

As prescribed by section 112, the promulgation of these standards was preceded by the Administrator's determination that asbestos presents a significant risk to human health as a result of air emissions from one or more source categories and is therefore a hazardous air pollutant (36 FR 3031, dated March 31, 1971). In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new standard promulgated under section 112 of the Act. Since the costs of the revision will be small, an economic impact assessment was not considered necessary for this regulation.

Information collection requirements associated with this regulation (those included in 40 CFR part 60, subpart A and subpart XXX) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number (2060–0101).

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The Agency has determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these standards impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Asbestos, Beryllium, Benzene, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl chloride, Blast furnaces, Steel mills.

Dated: October 29, 1990.

William K. Reilly,

Administrator.

40 CFR part 61 is amended as follows:

PART 61—[AMENDED]

1. The authority citation for 40 CFR part 61, subpart M, is revised to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, 7601.

2.–3. Section 61.140 is revised to read as follows:

§ 61.140 Applicability.

The provisions of this subpart are applicable to those sources specified in § 61.142 through 61.151, 61.154, and 61.155.

4. In § 61.141, the following definitions are revised: "Asbestos-containing waste materials," "Commercial asbestos," "Demolition," "Emergency renovation operation," "Fabricating," "Facility," "Facility component," "Friable asbestos materials," "Inactive waste disposal site," "Manufacturing," "Outside air," "Particulate asbestos material," "Planned renovation operation," "Remove," "Renovation," "Roadways," "Strip," and "Visible emissions."

The following definitions are added: "Adequately wet," "Category I nonfriable ACM," "Cutting," "Category II nonfriable ACM," "Fugitive sources," "Glove bag," "Grinding," "In poor condition," "Installation," "Leak-tight," "Malfunction," "Natural barrier," "Nonfriable asbestos-containing material," "Nonscheduled renovation operation," "Owner or operator of a demolition or a renovation activity," "Regulated asbestos-containing material," "Resilient floor covering," "Waste generator," "Waste shipment record," and "Working day."

The definitions, "Adequately wetted" and "Asbestos material," are removed.

§ 61.141 Definitions.

* * * * *

Adequately wet means sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

* * * * *

Asbestos-containing waste materials means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of this subpart. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovations operations, this term also includes regulated asbestos-containing material waste and materials contaminated with asbestos including disposable equipment and clothing.

* * * * *

Category I nonfriable asbestos-containing material (ACM) means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized Light Microscopy.

Category II nonfriable ACM means any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos as determined using the methods specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized Light Microscopy that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

Commercial asbestos means any material containing asbestos that is extracted from ore and has value because of its asbestos content.

Cutting means to penetrate with a sharp-edged instrument and includes sawing, but does not include shearing, slicing, or punching.

Demolition means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

Emergency renovation operation means a renovation operation that was not planned but results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by nonroutine failures of equipment.

Fabricating means any processing (*e.g.*, cutting, sawing, drilling) of a manufactured product that contains commercial asbestos, with the exception of processing at temporary sites (field fabricating) for the construction or restoration of facilities. In the case of friction products, fabricating includes bonding, debonding, grinding, sawing, drilling, or other similar operations performed as part of fabricating.

Facility means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use or function.

Facility component means any part of a facility including equipment.

Friable asbestos material means any material containing more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR part 763 section 1, Polarized Light Microscopy, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

Fugitive source means any source of emissions not controlled by an air pollution control device.

Glove bag means a sealed compartment with attached inner gloves used for the handling of asbestos-containing materials. properly installed and used, glove bags provide a small work area enclosure typically used for small-scale asbestos stripping operations. Information on glove-bag installation, equipment and supplies, and work practices is contained in the Occupational Safety and Health Administration's (OSHA's) final rule on occupational exposure to asbestos (appendix G to 29 CFR 1926.58).

Grinding means to reduce to powder or small fragments and includes mechanical chipping or drilling.

In poor condition means the binding of the material is losing its integrity as indicated by peeling, cracking, or crumbling of the material.

Inactive waste disposal site means any disposal site or portion of it where additional asbestos-containing waste material has not been deposited within the past year.

Installation means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator (or owner or operator under common control).

Leak-tight means that solids or liquids cannot escape or spill out. It also means dust-tight.

Malfunction means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner so that emissions of asbestos are increased. Failures of equipment shall not be considered malfunctions if they are caused in any way by poor maintenance, careless operation, or any other preventable upset conditions, equipment breakdown, or process failure.

Manufacturing means the combining of commercial asbestos—or, in the case of woven friction products, the combining of textiles containing commercial asbestos—with any other material(s), including commercial asbestos, and the processing of this combination into a product. Chlorine production is considered a part of manufacturing.

Natural barrier means a natural object that effectively precludes or deters access. Natural barriers include physical obstacles such as cliffs, lakes or other large bodies of water, deep and wide ravines, and mountains. Remoteness by itself is not a natural barrier.

Nonfriable asbestos-containing material means any material containing more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized Light Microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

Nonscheduled renovation operation means a renovation operation necessitated by the routine failure of equipment, which is expected to occur within a given period based on past operating experience, but for which an exact date cannot be predicted.

Outside air means the air outside buildings and structures, including, but

not limited to, the air under a bridge or in an open air ferry dock.

Owner or operator of a demolition or renovation activity means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

Particulate asbestos material means finely divided particles of asbestos or material containing asbestos.

Planned renovation operations means a renovation operation, or a number of such operations, in which some RACM will be removed or stripped within a given period of time and that can be predicted. Individual nonscheduled operations are included if a number of such operations can be predicted to occur during a given period of time based on operating experience.

Regulated asbestos-containing material (RACM) means (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

Remove means to take out RACM or facility components that contain or are covered with RACM from any facility.

Renovation means altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.

Resilient floor covering means asbestos-containing floor tile, including asphalt and vinyl floor tile, and sheet vinyl floor covering containing more than 1 percent asbestos as determined using polarized light microscopy according to the method specified in appendix A, subpart F, 40 CFR part 763, Section 1, Polarized Light Microscopy.

Roadways means surfaces on which vehicles travel. This term includes public and private highways, roads, streets, parking areas, and driveways.

Strip means to take off RACM from any part of a facility or facility components.

* * * * *

Visible emissions means any emissions, which are visually detectable without the aid of instruments, coming from RACM or asbestos-containing waste material, or from any asbestos milling, manufacturing, or fabricating operation. This does not include condensed, uncombined water vapor.

Waste generator means any owner or operator of a source covered by this subpart whose act or process produces asbestos-containing waste material.

Waste shipment record means the shipping document, required to be originated and signed by the waste generator, used to track and substantiate the disposition of asbestos-containing waste material.

Working day means Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

5. Section 61.142 is revised to read as follows:

§ 61.142 Standard for asbestos mills.

(a) Each owner or operator of an asbestos mill shall either discharge no visible emissions to the outside air from that asbestos mill, including fugitive sources, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(b) Each owner or operator of an asbestos mill shall meet the following requirements:

(1) Monitor each potential source of asbestos emissions from any part of the mill facility, including air cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during periods of operation. The monitoring shall be by visual observation of at least 15 seconds duration per source of emissions.

(2) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunction, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Administrator, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

(i) Maintenance schedule.

(ii) Recordkeeping plan.

(3) Maintain records of the results of visible emissions monitoring and air cleaning device inspections using a format similar to that shown in Figures 1 and 2 and include the following:

(i) Date and time of each inspection.

(ii) Presence or absence of visible emissions.

(iii) Condition of fabric filters, including presence of any tears, holes, and abrasions.

(iv) Presence of dust deposits on clean side of fabric filters.

(v) Brief description of corrective actions taken, including date and time.

(vi) Daily hours of operation for each air cleaning device.

(4) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the Administrator, all records required under this section.

(5) Retain a copy of all monitoring and inspection records for at least 2 years.

(6) Submit quarterly a copy of visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

BILLING CODE 6560-50-M

Date of inspection (mo/day/yr)	Time of inspection (a.m./p.m.)	Air cleaning device or fugitive source designation or number	Visible emissions observed (yes/no), corrective action taken	Daily operating hours	Inspector's initials

Figure 1. Record of Visible Emission Monitoring

1. Air cleaning device designation or number _____

2. Date of inspection _____ _____ _____ _____

3. Time of inspection _____ _____ _____ _____

4. Is air cleaning device operating properly (yes/no) _____ _____ _____ _____

5. Tears, holes, or abrasions in fabric filter (yes/no) _____ _____ _____ _____

6. Dust on clean side of fabric filters (yes/no) _____ _____ _____ _____

7. Other signs of malfunctions or potential malfunctions (yes/no) _____ _____ _____ _____

8. Describe other malfunctions or signs of potential malfunctions. _____

_____

_____

9. Describe corrective action(s) taken. _____

_____

_____

10. Date and time corrective action taken _____ _____ _____ _____

11. Inspected by

(Print/Type Name)	(Title)	(Signature)	(Date)
(Print/Type Name)	(Title)	(Signature)	(Date)

Figure 2. Air Cleaning Device Inspection Checklist

BILLING CODE 6560-50-C

6. Section 61.143 is revised to read as follows:

§ 61.143 Standard for roadways.

No person may construct or maintain a roadway with asbestos tailings or asbestos-containing waste material on that roadway, unless, for asbestos tailings.

(a) It is a temporary roadway on an area of asbestos ore deposits (asbestos mine); or

(b) It is a temporary roadway at an active asbestos mill site and is encapsulated with a resinous or bituminous binder. The encapsulated road surface must be maintained at a minimum frequency of one per year to prevent dust emissions; or

(c) It is encapsulated in asphalt concrete meeting the specifications contained in section 401 of Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP–85, 1985, or their equivalent.

7. In § 61.144, paragraph (a)(9) and paragraphs (b) (1) and (2) are revised, and paragraphs (b)(3) through (b)(8) are added to read as follows:

§ 61.144 Standards for manufacturing.

(a) * * *

(9) The manufacture of chlorine utilizing asbestos diaphragm technology.

* * * * *

(b) * * *

(1) Discharge no visible emissions to the outside air from these operations or from any building or structure in which they are conducted or from any other fugitive sources; or

(2) Use the methods specified by § 61.152 to clean emissions from these operations containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) Monitor each potential source of asbestos emissions from any part of the manufacturing facility, including air cleaning devices, process equipment, and buildings housing material processing and handling equipment, at least once each day during daylight hours for visible emissions to the outside air during periods of operation. The monitoring shall be visual observation of at least 15 seconds duration per source of emissions.

(4) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Administrator, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

(i) Maintenance schedule.

(ii) Recordkeeping plan.

(5) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format similar to that shown in Figures 1 and 2 and include the following.

(i) Date and time of each inspection.

(ii) Presence or absence of visible emissions.

(iii) Condition of fabric filters, including presence of any tears, holes and abrasions.

(iv) Presence of dust deposits on clean side of fabric filters.

(v) Brief description of corrective actions taken, including date and time.

(vi) Daily hours of operation for each air cleaning device.

(6) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the Administrator, all records required under this section.

(7) Retain a copy of all monitoring and inspection records for at least 2 years.

(8) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

8. Sections 61.146 and 61.147 are removed, and § 61.145 is revised to read as follows:

§ 61.145 Standard for demolition and renovation.

(a) *Applicability.* To determine which requirements of paragraphs (a), (b), and (c) of this section apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of paragraphs (b) and (c) of this section apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:

(1) In a facility being demolished, all the requirements of paragraphs (b) and (c) of this section apply, except as provided in paragraph (a)(3) of this section, if the combined amount of RACM is

(i) At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or

(ii) At least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

(2) In a facility being demolished, only the notification requirements of paragraphs (b)(1), (2), (3)(i) and (iv), and (4)(i) through (vii) and (4)(ix) and (xvi) of this section apply, if the combined amount of RACM is

(i) Less than 80 linear meters (260 linear feet) on pipes less than 15 square meters (160 square feet) on other facility components, and

(ii) Less than one cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously or there is no asbestos.

(3) If the facility is being demolished under an order of a State or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse, only the requirements of paragraphs (b)(1), (b)(2), (b)(3)(iii), (b)(4) (except (b)(4)(viii)), (b)(5), and (c)(4) through (c)(9) of this section apply.

(4) In a facility being renovated, including any individual nonscheduled renovation operation, all the requirements of paragraphs (b) and (c) of this section apply if the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is

(i) At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or

(ii) At least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

(iii) To determine whether paragraph (a)(4) of this section applies to planned renovation operations involving individual nonscheduled operations, predict the combined additive amount of RACM to be removed or stripped during a calendar year of January 1 through December 31.

(iv) To determine whether paragraph (a)(4) of this section applies to emergency renovation operations, estimate the combined amount of RACM to be removed or stripped as a result of the sudden, unexpected event that necessitated the renovation.

(5) Owners or operators of demolition and renovation operations are exempt from the requirements of §§ 61.05(a), 61.07, and 61.09.

(b) *Notification requirements.* Each owner or operator of a demolition or

renovation activity to which this section applies shall:

(1) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

(2) Update notice, as necessary, including when the amount of asbestos affected changes by at least 20 percent.

(3) Postmark or deliver the notice as follows:

(i) At least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material), if the operation is described in paragraphs (a) (1) and (4) (except (a)(4)(iii) and (a)(4)(iv)) of this section. If the operation is as described in paragraph (a)(2) of this section, notification is required 10 working days before demolition begins.

(ii) At least 10 working days before the end of the calendar year preceding the year for which notice is being given for renovations described in paragraph (a)(4)(iii) of this section.

(iii) As early as possible before, but not later than, the following working day if the operation is a demolition ordered according to paragraph (a)(3) of this section or, if the operation is a renovation described in paragraph (a)(4)(iv) of this section.

(iv) For asbestos stripping or removal work in a demolition or renovation operation, described in paragraphs (a) (1) and (4) (except (a)(4)(iii) and (a)(4)(iv)) of this section, and for a demolition described in paragraph (a)(2) of this section, that will begin on a date other than the one contained in the original notice, notice of the new start date must be provided to the Administrator as follows:

(A) When the asbestos stripping or removal operation or demolition operation covered by this paragraph will begin after the date contained in the notice,

(*1*) Notify the Administrator of the new start date by telephone as soon as possible before the original start date, and

(*2*) Provide the Administrator with a written notice of the new start date as soon as possible before, and no later than, the original start date. Delivery of the updated notice by the U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

(B) When the asbestos stripping or removal operation or demolition operation covered by this paragraph will begin on a date earlier than the original start date,

(*1*) Provide the Administrator with a written notice of the new start date at least 10 working days before asbestos stripping or removal work begins.

(*2*) For demolitions covered by paragraph (a)(2) of this section, provide the Administrator written notice of a new start date at least 10 working days before commencement of demolition. Delivery of updated notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

(C) In no event shall an operation covered by this paragraph begin on a date other than the date contained in the written notice of the new start date.

(4) Include the following in the notice:

(i) An indication of whether the notice is the original or a revised notification.

(ii) Name, address, and telephone number of both the facility owner and operator and the asbestos removal contractor owner or operator.

(iii) Type of operation: demolition or renovation.

(iv) Description of the facility or affected part of the facility including the size (square meters [square feet] and number of floors), age, and present and prior use of the facility.

(v) Procedure, including analytical methods, employed to detect the presence of RACM and Category I and Category II nonfriable ACM.

(vi) Estimate of the approximate amount of RACM to be removed from the facility in terms of length of pipe in linear meters (linear feet), surface area in square meters (square feet) on other facility components, or volume in cubic meters (cubic feet) if off the facility components. Also, estimate the approximate amount of Category I and Category II nonfriable ACM in the affected part of the facility that will not be removed before demolition.

(vii) Location and street address (including building number or name and floor or room number, if appropriate), city, county, and state, of the facility being demolished or renovated.

(viii) Scheduled starting and completion dates of asbestos removal work (or any other activity, such as site preparation that would break up, dislodge, or similarly disturb asbestos material) in a demolition or renovation; planned renovation operations involving individual nonscheduled operations shall only include the beginning and ending dates of the report period as described in paragraph (a)(4)(iii) of this section.

(ix) Scheduled starting and completion dates of demolition or renovation.

(x) Description of planned demolition or renovation work to be performed and method(s) to be employed, including demolition or renovation techniques to be used and description of affected facility components.

(xi) Description of work practices and engineering controls to be used to comply with the requirements of this subpart, including asbestos removal and waste-handling emission control procedures.

(xii) Name and location of the waste disposal site where the asbestos-containing waste material will be deposited.

(xiii) A certification that at least one person trained as required by paragraph (c)(8) of this section will supervise the stripping and removal described by this notification. This requirement shall become effective 1 year after promulgation of this regulation.

(xiv) For facilities described in paragraph (a)(3) of this section, the name, title, and authority of the State or local government representative who has ordered the demolition, the date that the order was issued, and the date on which the demolition was ordered to begin. A copy of the order shall be attached to the notification.

(xv) For emergency renovations described in paragraph (a)(4)(iv) of this section, the date and hour that the emergency occurred, a description of the sudden, unexpected event, and an explanation of how the event caused an unsafe condition, or would cause equipment damage or an unreasonable financial burden.

(xvi) Description of procedures to be followed in the event that unexpected RACM is found or Category II nonfriable ACM becomes crumbled, pulverized, or reduced to powder.

(xvii) Name, address, and telephone number of the waste transporter.

(5) The information required in paragraph (b)(4) of this section must be reported using a form similiar to that shown in Figure 3.

(c) *Procedures for asbestos emission control.* Each owner or operator of a demolition or renovation activity to whom this paragraph applies, according to paragraph (a) of this section, shall comply with the following procedures:

(1) Remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. RACM need not be removed before demolition if:

(i) It is Category I nonfriable ACM that is not in poor condition and is not friable.

(ii) It is on a facility component that is encased in concrete or other similarly

hard material and is adequately wet whenever exposed during demolition; or

(iii) It was not accessible for testing and was, therefore, not discovered until after demolition began and, as a result of the demolition, the material cannot be safely removed. If not removed for safety reasons, the exposed RACM and any asbestos-contaminated debris must be treated as asbestos-containing waste material and adequately wet at all times until disposed of.

(iv) They are Category II nonfriable ACM and the probability is low that the materials will become crumbled, pulverized, or reduced to powder during demolition.

(2) When a facility component that contains, is covered with, or is coated with RACM is being taken out of the facility as a unit or in sections:

(i) Adequately wet all RACM exposed during cutting or disjoining operations; and

(ii) Carefully lower each unit or section to the floor and to ground level, not dropping, throwing, sliding, or otherwise damaging or disturbing the RACM.

(3) When RACM is stripped from a facility component while it remains in place in the facility, adequately wet the RACM during the stripping operation.

(i) In renovation operations, wetting is not required if:

(A) The owner or operator has obtained prior written approval from the Administrator based on a written application that wetting to comply with this paragraph would unavoidably damage equipment or present a safety hazard; and

(B) The owner or operator uses of the following emission control methods:

(*1*) A local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping and removal of the asbestos materials. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in § 61.152.

(*2*) A glove-bag system designed and operated to contain the particulate asbestos material produced by the stripping of the asbestos materials.

(*3*) Leak-tight wrapping to contain all RACM prior to dismantlement.

(ii) In renovation operations where wetting would result in equipment damage or a safety hazard, and the methods allowed in paragraph (c)(3)(i) of this section cannot be used, another method may be used after obtaining written approval from the Administrator based upon a determination that it is equivalent to wetting in controlling emissions or to the methods allowed in paragraph (c)(3)(i) of this section.

(iii) A copy of the Administrator's written approval shall be kept at the worksite and made available for inspection.

(4) After a facility component covered with, coated with, or containing RACM has been taken out of the facility as a unit or in sections pursuant to paragraph (c)(2) of this section, it shall be stripped or contained in leak-tight wrapping, except as described in paragraph (c)(5) of this section. If stripped, either:

(i) Adequately wet the RACM during stripping; or

(ii) Use a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping. The system must exhibit no visible emissions to the outside air or be designed and operated in accordance with the requirements in § 61.152.

(5) For large facility components such as reactor vessels, large tanks, and steam generators, but not beams (which must be handled in accordance with paragraphs (c)(2), (3), and (4) of this section), the RACM is not required to be stripped if the following requirements are met:

(i) The component is removed, transported, stored, disposed of, or reused without disturbing or damaging the RACM.

(ii) The component is encased in a leak-tight wrapping.

(iii) The leak-tight wrapping is labeled according to § 61.149(d)(1)(i), (ii), and (iii) during all loading and unloading operations and during storage.

(6) For all RACM, including material that has been removed or stripped:

(i) Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with § 61.150; and

(ii) Carefully lower the material to the ground and floor, not dropping, throwing, sliding, or otherwise damaging or disturbing the material.

(iii) Transport the material to the ground via leak-tight chutes or containers if it has been removed or stripped more than 50 feet above ground level and was not removed as units or in sections.

(iv) RACM contained in leak-tight wrapping that has been removed in accordance with paragraphs (c)(4) and (c)(3)(i)(B)(*3*) of this section need not be wetted.

(7) When the temperature at the point of wetting is below 0 °C (32 °F):

(i) The owner or operator need not comply with paragraph (c)(2)(i) and the wetting provisions of paragraph (c)(3) of this section.

(ii) The owner or operator shall remove facility components containing, coated with, or covered with RACM as units or in sections to the maximum extent possible.

(iii) During periods when wetting operations are suspended due to freezing temperatures, the owner or operator must record the temperature in the area containing the facility components at the beginning, middle, and end of each workday and keep daily temperature records available for inspection by the Administrator during normal business hours at the demolition or renovation site. The owner or operator shall retain the temperature records for at least 2 years.

(8) Effective 1 year after promulgation of this regulation, no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. Every 2 years, the trained on-site individual shall receive refresher training in the provisions of this regulation. The required training shall include as a minimum: applicability; notifications; material identification; control procedures for removals including, at least, wetting, local exhaust ventilation, negative pressure enclosures, glove-bag procedures, and High Efficiency Particulate Air (HEPA) filters; waste disposal work practices; reporting and recordkeeping; and asbestos hazards and worker protection. Evidence that the required training has been completed shall be posted and made available for inspection by the Administrator at the demolition or renovation site.

(9) For facilities described in paragraph (a)(3) of this section, adequately wet the portion of the facility that contains RACM during the wrecking operation.

(10) If a facility is demolished by intentional burning, all RACM including Category I and Category II nonfriable ACM must be removed in accordance with the NESHAP before burning.

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NOTIFICATION OF DEMOLITION AND RENOVATION

Operator Project #	Postmark	Date Received	Notification #

I. TYPE OF NOTIFICATION (O=Original R=Revised C=Cancelled):

II. FACILITY INFORMATION (Identify owner, removal contractor, and other operator)

OWNER NAME:

Address:

City: | State: | Zip:

Contact: | Tel:

REMOVAL CONTRACTOR:

Address:

City: | State: | Zip:

Contact: | Tel:

OTHER OPERATOR:

Address:

City: | State: | Zip:

Contact: | Tel:

III. TYPE OF OPERATION (D=Demo O=Ordered Demo R=Renovation E=Emer.Renovation):

IV. IS ASBESTOS PRESENT? (Yes/No)

V. FACILITY DESCRIPTION (Include building name, number and floor or room number)

Bldg Name:

Address:

City: | State: | County:

Site Location:

Building Size: | # of Floors: | Age in Years:

Present Use: | Prior Use:

VI. PROCEDURE, INCLUDING ANALYTICAL METHOD, IF APPROPRIATE, USED TO DETECT THE PRESENCE OF ASBESTOS MATERIAL:

VII. APPROXIMATE AMOUNT OF ASBESTOS, INCLUDING: 1. Regulated ACM to be removed 2. Category I ACM Not Removed 3. Category II ACM Not Removed	RACM To Be Removed	Nonfriable Asbestos Material Not To Be Removed		Indicate Unit of Measurement Below	
		Cat I	Cat II	UNIT	
Pipes				LnFt:	Ln m:
Surface Area				SqFt:	Sq m:
Vol RACM Off Facility Component				CuFt:	Cu m:

VIII. SCHEDULED DATES ASBESTOS REMOVAL (MM/DD/YY) Start: Complete:

IX. SCHEDULED DATES DEMO/RENOVATION (MM/DD/YY) Start: Complete:

Continued on page two

Figure 3. Notification of Demolition and Renovation

NOTIFICATION OF DEMOLITION AND RENOVATION (continued)

X. DESCRIPTION OF PLANNED DEMOLITION OR RENOVATION WORK, AND METHOD(S) TO BE USED:

XI. DESCRIPTION OF WORK PRACTICES AND ENGINEERING CONTROLS TO BE USED TO PREVENT EMISSIONS OF ASBESTOS AT THE DEMOLITION AND RENOVATION SITE:

XII. WASTE TRANSPORTER #1

Name:

Address

City: | State: | Zip:

Contact Person: | Telephone:

WASTE TRANSPORTER #2

Name:

Address:

City: | State: | Zip:

Contact Person: | Telephone:

XIII. WASTE DISPOSAL SITE

Name:

Location:

City: | State: | Zip:

Telephone:

XIV. IF DEMOLITION ORDERED BY A GOVERNMENT AGENCY, PLEASE IDENTIFY THE AGENCY BELOW:

Name: | Title:

Authority:

Date of Order (MM/DD/YY): | Date Ordered to Begin (MM/DD/YY):

XV. FOR EMERGENCY RENOVATIONS

Date and Hour of Emergency (MM/DD/YY):

Description of the Sudden, Unexpected Event:

Explanation of how the event caused unsafe conditions or would cause equipment damage or an unreasonable financial burden:

XVI. DESCRIPTION OF PROCEDURES TO BE FOLLOWED IN THE EVENT THAT UNEXPECTED ASBESTOS IS FOUND OR PREVIOUSLY NONFRIABLE ASBESTOS MATERIAL BECOMES CRUMBLED, PULVERIZED, OR REDUCED TO POWDER.

XVI. I CERTIFY THAT AN INDIVIDUAL TRAINED IN THE PROVISIONS OF THIS REGULATION (40 CFR PART 61, SUBPART M) WILL BE ON-SITE DURING THE DEMOLITION OR RENOVATION AND EVIDENC THAT THE REQUIRED TRAINING HAS BEEN ACCOMPLISHED BY THIS PERSON WILL BE AVAILABLE FOR INSPECTION DURING NORMAL BUSINESS HOURS. (Required 1 year after promulgation)

(Signature of Owner/Operator) (Date)

XVII. I CERTIFY THAT THE ABOVE INFORMATION IS CORRECT.

(Signature of Owner/Operator) (Date)

Figure 3. Notification of Demolition and Renovation

BILLING CODE 6560-50-C

9. Section 61.148 is redesignated as § 61.146 and is amended by revising paragraphs (a), the introductory text of (b), paragraph (b)(2), and paragraph (d) to read as follows:

§ 61.146 Standard for spraying.

* * * * *

(a) For spray-on application on buildings, structures, pipes, and conduits, do not use material containing more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized Light Microscopy, except as provided in paragraph (c) of this section.

(b) For spray-on application of materials that contain more than 1 percent asbestos as determined using the method specified in appendix A, subpart F, 40 CFR part 763, section 1, Polarized Light Microscopy, on equipment and machinery, except as provided in paragraph (c) of this section:

* * * * *

(2) Discharge no visible emissions to the outside air from spray-on application of the asbestos-containing material or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

* * * * *

(d) Owners or operators of sources subject to this paragraph are exempt from the requirements of §§ 61.05(a), 61.07 and 61.09.

10. Section 61.149 is redesignated as § 61.147, paragraphs (b) (1) and (2) are revised, and paragraphs (b)(3) through (b)(8) are added to read as follows:

§ 61.147 Standard for fabricating.

* * * * *

(b) * * *

(1) Discharge no visible emissions to the outside air from any of the operations or from any building or structure in which they are conducted or from any other fugitive sources; or

(2) Use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) Monitor each potential source of asbestos emissions from any part of the fabricating facility, including air cleaning devices, process equipment, and buildings that house equipment for material processing and handling, at least once each day, during daylight hours, for visible emissions to the outside air during periods of operation. The monitoring shall be by visual observation of at least 15 seconds duration per source of emissions.

(4) Inspect each air cleaning device at least once each week for proper operation and for changes that signal the potential for malfunctions, including, to the maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this paragraph, submit to the Administrator, and revise as necessary, a written maintenance plan to include, at a minimum, the following:

(i) Maintenance schedule.

(ii) Recordkeeping plan.

(5) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format similar to that shown in Figures 1 and 2 and include the following:

(i) Date and time of each inspection.

(ii) Presence or absence of visible emissions.

(iii) Condition of fabric filters, including presence of any tears, holes, and abrasions.

(iv) Presence of dust deposits on clean side of fabric filters.

(v) Brief description of corrective actions taken, including date and time.

(vi) Daily hours of operation for each air cleaning device.

(6) Furnish upon request and make available at the affected facility during normal business hours for inspection by the Administrator, all records required under this section.

(7) Retain a copy of all monitoring and inspection records for at least 2 years.

(8) Submit quarterly a copy of the visible emission monitoring records to the Administrator if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.

11. Section 61.150 is redesignated as § 61.148 and revised to read as follows:

§ 61.148 Standard for insulating materials.

No owner or operator of a facility may install or reinstall on a facility component any insulating materials that contain commercial asbestos if the materials are either molded and friable or wet-applied and friable after drying. The provisions of this section do not apply to spray-applied insulating materials regulated under § 61.146.

12. Section 61.151 is redesignated as § 61.149 and is amended by revising paragraphs (a), (b), introductory text of (c), (c)(1) (ii) and (iii), and (c)(2), and adding new paragraphs (d) through (f) to read as follows:

§ 61.149 Standard for waste disposal for asbestos mills.

* * * * *

(a) Deposit all asbestos-containing waste material at a waste disposal site operated in accordance with the provisions of § 61.154; and

(b) Discharge no visible emissions to the outside air from the transfer of control device asbestos waste to the tailings conveyor, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air. Dispose of the asbestos waste from control devices in accordance with § 61.150(a) or paragraph (c) of this section; and

(c) Discharge no visible emissions to the outside air during the collection, processing, packaging, or on-site transporting of any asbestos-containing waste material, or use one of the disposal methods specified in paragraphs (c) (1) or (2) of this section, as follows:

(1) * * *

(ii) Discharge no visible emissions to the outside air from the wetting operation or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

* * * * *

(iii) Wetting may be suspended when the ambient temperature at the waste disposal site is less than −9.5 °C (15 °F), as determined by an appropriate measurement method with an accuracy of ± 1°C (± 2 °F). During periods when wetting operations are suspended, the temperature must be recorded at least at hourly intervals, and records must be retained for at least 2 years in a form suitable for inspection.

(2) Use an alternative emission control and waste treatment method that has received prior written approval by the Administrator. To obtain approval for an alternative method, a written application must be submitted to the Administrator demonstrating that the following criteria are met:

(i) The alternative method will control asbestos emissions equivalent to currently required methods.

(ii) The suitability of the alternative method for the intended application.

(iii) The alternative method will not violate other regulations.

(iv) The alternative method will not result in increased water pollution, land pollution, or occupational hazards.

(d) When waste is transported by vehicle to a disposal site:

(1) Mark vehicles used to transport asbestos-containing waste material during the loading and unloading of the waste so that the signs are visible. The markings must:

(i) Be displayed in such a manner and location that a person can easily read the legend.

(ii) Conform to the requirements for 51 cm × 36 cm (20 in × 14 in) upright format signs specified in 29 CFR 1910.145(d)(4) and this paragraph; and

(iii) Display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in this paragraph.

Legend
DANGER
ASBESTOS DUST HAZARD
CANCER AND LUNG DISEASE HAZARD
Authorized Personnel Only
Notation
2.5 cm (1 inch) Sans Serif, Gothic or Block
2.5 cm (1 inch) Sans Serif, Gothic or Block
1.9 cm (¾ inch) Sans Serif, Gothic or Block
14 Point Gothic

Spacing between any two lines must be a least equal to the height of the upper of the two lines.

(2) For off-site disposal, provide a copy of the waste shipment record, described in paragraph (e)(1) of this section, to the disposal site owner or operator at the same time as the asbestos-containing waste material is delivered to the disposal site.

(e) For all asbestos-containing waste material transported off the facility site:

(1) Maintain asbestos waste shipment records, using a form similar to that shown in Figure 4, and include the following information:

(i) The name, address, and telephone number of the waste generator.

(ii) The name and address of the local, State, or EPA Regional agency responsible for administering the asbestos NESHAP program.

(iii) The quantity of the asbestos-containing waste material in cubic meters (cubic yards).

(iv) The name and telephone number of the disposal site operator.

(v) The name and physical site location of the disposal site.

(vi) The date transported.

(vii) The name, address, and telephone number of the transporter(s).

(viii) A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

(2) For waste shipments where a copy of the waste shipment record, signed by the owner or operator of the designated disposal site, is not received by the waste generator within 35 days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the designated disposal site to determine the status of the waste shipment.

(3) Report in writing to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within 45 days of the date the waste was accepted by the initial transporter. Include in the report the following information:

(i) A copy of the waste shipment record for which a confirmation of delivery was not received, and

(ii) A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(4) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least 2 years.

(f) Furnish upon request, and make available for inspection by the Administrator, all records required under this section.

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Generator	1. Work site name and mailing address	Owner's name	Owner's telephone no.
	2. Operator's name and address		Operator's telephone no.
	3. Waste disposal site (WDS) name, mailing address, and physical site location		WDS phone no.
	4. Name, and address of responsible agency		
	5. Description of materials	6. Containers No. Type	7. Total quantity m^3 (yd^3)
	8. Special handling instructions and additional information		
	9. OPERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.		
	Printed/typed name & title	Signature	Month Day Year
Transporter	10. Transporter 1 (Acknowledgment of receipt of materials)		
	Printed/typed name & title	Signature	Month Day Year
	Address and telephone no.		
	11. Transporter 2 (Acknowledgment of receipt of materials)		
	Printed/typed name & title	Signature	Month Day Year
	Address and telephone no.		
Disposal Site	12. Discrepancy indication space		
	13. Waste disposal site owner or operator: Certification of receipt of asbestos materials covered by this manifest except as noted in item 12.		
	Printed/typed name & title	Signature	Month Day Year

(Continued)

Figure 4. Waste Shipment Record

INSTRUCTIONS

Waste Generator Section (Items 1-9)

1. Enter the name of the facility at which asbestos waste is generated and the address where the facility is located. In the appropriate spaces, also enter the name of the owner of the facility and the owner's phone number.

2. If a demolition or renovation, enter the name and address of the company and authorized agent responsible for performing the asbestos removal. In the appropriate spaces, also enter the phone number of the operator.

3. Enter the name, address, and physical site location of the waste disposal site (WDS) that will be receiving the asbestos materials. In the appropriate spaces, also enter the phone number of the WDS. Enter "on-site" if the waste will be disposed of on the generator's property.

4. Provide the name and address of the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program.

5. Indicate the types of asbestos waste materials generated. If from a demolition or renovation, indicate the amount of asbestos that is

   - Friable asbestos material
   - Nonfriable asbestos material

6. Enter the number of containers used to transport the asbestos materials listed in item 5. Also enter one of the following container codes used in transporting each type of asbestos material (specify any other type of container used if not listed below):

   DM - Metal drums, barrels
   DP - Plastic drums, barrels
   BA - 6 mil plastic bags or wrapping

7. Enter the quantities of each type of asbestos material removed in units of cubic meters (cubic yards).

8. Use this space to indicate special transportation, treatment, storage or disposal or Bill of Lading information. If an alternate waste disposal site is designated, note it here. Emergency response telephone numbers or similar information may be included here.

9. The authorized agent of the waste generator must read and then sign and date this certification. The date is the date of receipt by transporter.

NOTE: The waste generator must retain a copy of this form.

(continued)

Figure 4. Waste Shipment Record

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Transporter Section (Items 10 & 11)

10. & 11. Enter name, address, and telephone number of each transporter used, if applicable. Print or type the full name and title of person accepting responsibility and acknowledging receipt of materials as listed on this waste shipment record for transport. Enter date of receipt and signature.

NOTE: The transporter must retain a copy of this form.

Disposal Site Section (Items 12 & 13)

12. The authorized representative of the WDS must note in this space any discrepancy between waste described on this manifest and waste actually received as well as any improperly enclosed or contained waste. Any rejected materials should be listed and destination of those materials provided. A site that converts asbestos-containing waste material to nonasbestos material is considered a WDS.

13. The signature (by hand) of the authorized WDS agent indicates acceptance and agreement with statements on this manifest except as noted in item 12. The date is the date of signature and receipt of shipment.

NOTE: The WDS must retain a completed copy of this form. The WDS must also send a completed copy to the operator listed in item 2.

Figure 4. Waste Shipment Record

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13. Section 61.152 is redesignated as § 61.150 and is revised to read as follows:

§ 61.150 Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations.

Each owner or operator of any source covered under the provisions of §§ 61.144, 61.145, 61.146, and 61.147 shall comply with the following provisions:

(a) Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting of any asbestos-containing waste material generated by the source, or use one of the emission control and waste treatment methods specified in paragraphs (a) (1) through (4) of this section.

(1) Adequately wet asbestos-containing waste material as follows:

(i) Mix control device asbestos waste to form a slurry; adequately wet other asbestos-containing waste material; and

(ii) Discharge no visible emissions to the outside air from collection, mixing, wetting, and handling operations, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air; and

(iii) After wetting, seal all asbestos-containing waste material in leak-tight containers while wet; or, for materials that will not fit into containers without additional breaking, put materials into leak-tight wrapping; and

(iv) Label the containers or wrapped materials specified in paragraph (a)(1)(iii) of this section using warning labels specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration (OSHA) under 29 CFR 1910.1001(j)(2) or 1926.58(k)(2)(iii). The labels shall be printed in letters of sufficient size and contrast so as to be readily visible and legible.

(v) For asbestos-containing waste material to be transported off the facility site, label containers or wrapped materials with the name of the waste generator and the location at which the waste was generated.

(2) Process asbestos-containing waste material into nonfriable forms as follows:

(i) Form all asbestos-containing waste material into nonfriable pellets or other shapes;

(ii) Discharge no visible emissions to the outside air from collection and processing operations, including incineration, or use the method specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(3) For facilities demolished where the RACM is not removed prior to demolition according to §§ 61.145(c)(1)(i), (ii), (iii), and (iv) or for facilities demolished according to § 61.145(c)(9), adequately wet asbestos-containing waste material at all times after demolition and keep wet during handling and loading for transport to a disposal site. Asbestos-containing waste materials covered by this paragraph do not have to be sealed in leak-tight containers or wrapping but may be transported and disposed of in bulk.

(4) Use an alternative emission control and waste treatment method that has received prior approval by the Administrator according to the procedure described in § 61.149(c)(2).

(5) As applied to demolition and renovation, the requirements of paragraph (a) of this section do not apply to Category I nonfriable ACM waste and Category II nonfriable ACM waste that did not become crumbled, pulverized, or reduced to powder.

(b) All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:

(1) A waste disposal site operated in accordance with the provisions of § 61.154, or

(2) An EPA-approved site that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of § 61.155.

(3) The requirements of paragraph (b) of this section do not apply to Category I nonfriable ACM that is not RACM.

(c) Mark vehicles used to transport asbestos-containing waste material during the loading and unloading of waste so that the signs are visible. The markings must conform to the requirements of §§ 61.149(d)(1) (i), (ii), and (iii).

(d) For all asbestos-containing waste material transported off the facility site:

(1) Maintain waste shipment records, using a form similar to that shown in Figure 4, and include the following information:

(i) The name, address, and telephone number of the waste generator.

(ii) The name and address of the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program.

(iii) The approximate quantity in cubic meters (cubic yards).

(iv) The name and telephone number of the disposal site operator.

(v) The name and physical site location of the disposal site.

(vi) The date transported.

(vii) The name, address, and telephone number of the transporter(s).

(viii) A certification that the contents of this consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and government regulations.

(2) Provide a copy of the waste shipment record, described in paragraph (d)(1) of this section, to the disposal site owners or operators at the same time as the asbestos-containing waste material is delivered to the disposal site.

(3) For waste shipments where a copy of the waste shipment record, signed by the owner or operator of the designated disposal site, is not received by the waste generator within 35 days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the designated disposal site to determine the status of the waste shipment.

(4) Report in writing to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within 45 days of the date the waste was accepted by the initial transporter. Include in the report the following information:

(i) A copy of the waste shipment record for which a confirmation of delivery was not received, and

(ii) A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(5) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least 2 years.

(e) Furnish upon request, and make available for inspection by the Administrator, all records required under this section.

14. Section 61.153 is redesignated as § 61.151 and is amended by revising the introductory text, paragraphs (a)(2), (a)(4), and (b)(3), and adding paragraphs (d) and (e) to read as follows:

§ 61.151 Standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations.

Each owner or operator of any inactive waste disposal site that was operated by sources covered under

§§ 61.142, 61.144, or 61.147 and received deposits of asbestos-containing waste material generated by the sources, shall:

(a) * * *

(2) Cover the asbestos-containing waste material with at least 15 centimeters (6 inches) of compacted nonasbestos-containing material, and grow and maintain a cover of vegetation on the area adequate to prevent exposure of the asbestos-containing waste material. In desert areas where vegetation would be difficult to maintain, at least 6 additional centimeters (3 inches) of well-graded, nonasbestos crushed rock may be placed on top of the final cover instead of vegetation and maintained to prevent emissions; or

* * * * *

(4) For inactive waste disposal sites for asbestos tailings, a resinous or petroleum-based dust suppression agent that effectively binds dust to control surface air emissions may be used instead of the methods in paragraphs (a)(1), (2), and (3) of this section. Use the agent in the manner and frequency recommended for the particular asbestos tailings by the manufacturer of the dust suppression agent to achieve and maintain dust control. Obtain prior written approval of the Administrator to use other equally effective dust suppression agents. For purposes of this paragraph, any used, spent, or other waste oil is not considered a dust suppression agent.

(b) * * *

(3) When requesting a determination on whether a natural barrier adequately deters public access, supply information enabling the Administrator to determine whether a fence or a natural barrier adequately deters access by the general public.

* * * * *

(d) Notify the Administrator in writing at least 45 days prior to excavating or otherwise disturbing any asbestos-containing waste material that has been deposited at a waste disposal site under this section, and follow the procedures specified in the notification. If the excavation will begin on a date other than the one contained in the original notice, notice of the new start date must be provided to the Administrator at least 10 working days before excavation begins and in no event shall excavation begin earlier than the date specified in the original notification. Include the following information in the notice:

(1) Scheduled starting and completion dates.

(2) Reason for disturbing the waste.

(3) Procedures to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the Administrator may require changes in the emission control procedures to be used.

(4) Location of any temporary storage site and the final disposal site.

(e) Within 60 days of a site becoming inactive and after the effective date of this subpart, record, in accordance with State law, a notation on the deed to the facility property and on any other instrument that would normally be examined during a title search; this notation will in perpetuity notify any potential purchaser of the property that:

(1) The land has been used for the disposal of asbestos-containing waste material;

(2) The survey plot and record of the location and quantity of asbestos-containing waste disposed of within the disposal site required in § 61.154(f) have been filed with the Administrator; and

(3) The site is subject to 40 CFR part 61, subpart M.

15. Section 61.154 is redesignated as § 61.152 and amended by removing paragraph (a)(1)(i), redesignating paragraphs (a)(1)(ii)–(iv) as paragraphs (a)(1)(i)–(iii), redesignating paragraph (b)(2) as paragraph (b)(3), revising the introductory text of paragraph (a) and paragraphs (b)(1) and (b)(3), and adding paragraphs (a)(3) and (b)(2) to read as follows:

§ 61.152 Air cleaning.

(a) The owner or operator who uses air cleaning, as specified in §§ 61.142(a), 61.144(b)(2), 61.145(c)(3)(i)(B)(*1*), 61.145(c)(4)(ii), 61.145(c)(11)(i), 61.146(b)(2), 61.147(b)(2), 61.149(b), 61.149(c)(1)(ii), 61.150(a)(1)(ii), 61.150(a)(2)(ii), and 61.155(e) shall:

* * * * *

(3) For fabric filter collection devices installed after January 10, 1989, provide for easy inspection for faulty bags.

(b) * * *

(1) After January 10, 1989, if the use of fabric creates a fire or explosion hazard, or the Administrator determines that a fabric filter is not feasible, the Administrator may authorize as a substitute the use of wet collectors designed to operate with a unit contacting energy of at least 9.95 kilopascals (40 inches water gage pressure).

(2) Use a HEPA filter that is certified to be at least 99.97 percent efficient for 0.3 micron particles.

(3) The Administrator may authorize the use of filtering equipment other than described in paragraphs (a)(1) and (b)(1) and (2) of this section if the owner or operator demonstrates to the Administrator's satisfaction that it is equivalent to the described equipment in filtering particulate asbestos material.

16. Section 61.155 is redesignated as § 61.153 and amended by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5), respectively, revising the introductory text of paragraphs (a), (a)(4), and (a)(5) and revising paragraphs (a)(2), (a)(4)(ii) and (iii), and (b), and adding paragraph (a)(3) to read as follows:

§ 61.153 Reporting.

(a) Any new source to which this subpart applies (with the exception of sources subject to §§ 61.143, 61.146, and 61.148), which has an initial startup date preceding the effective date of this revision, shall provide the following information to the Administrator postmarked or delivered within 90 days of the effective date. In the case of a new source that does not have an initial startup date preceding the effective date, the information shall be provided, postmarked or delivered, within 90 days of the initial startup date. Any owner or operator of an existing source shall provide the following information to the Administrator within 90 days of the effective date of this subpart unless the owner or operator of the existing source has previously provided this information to the Administrator. Any changes in the information provided by any existing source shall be provided to the Administrator, postmarked or delivered, within 30 days after the change.

* * * * *

(2) If a fabric filter device is used to control emissions,

(i) The airflow permeability in $m^3/min/m^2$ ($ft^3/min/ft^2$) if the fabric filter device uses a woven fabric, and, if the fabric is synthetic, whether the fill yarn is spun or not spun; and

(ii) If the fabric filter device uses a felted fabric, the density in g/m^2 (oz/yd^2), the minimum thickness in millimeters (inches), and the airflow permeability in $m^3/min/m^2$ ($ft^3/min/ft^2$).

(3) If a HEPA filter is used to control emissions, the certified efficiency.

(4) For sources subject to §§ 61.149 and 61.150:

* * * * *

(ii) The average volume of asbestos-containing waste material disposed of, measured in m^3/day (yd^3/day); and

(iii) The emission control methods used in all stages of waste disposal; and

* * * * *

(5) For sources subject to §§ 61.151 and 61.154:

* * * * *

(b) The information required by paragraph (a) of this section must accompany the information required by § 61.10. Active waste disposal sites subject to § 61.154 shall also comply with this provision. Roadways, demolition and renovation, spraying, and insulating materials are exempted from the requirements of § 61.10(a). The information described in this section must be reported using the format of Appendix A of this part as a guide.

17. Section 61.156 is redesignated as § 61.154 and amended by revising the introductory text of § 61.154, paragraphs (c) and (d), and adding paragraphs (e) through (j) to read as follows:

§ 61.154 Standard for active waste disposal sites.

Each owner or operator of an active waste disposal site that receives asbestos-containing waste material from a source covered under §§ 61.149, 61.150, or 61.155 shall meet the requirements of this section:

* * * * *

(c) Rather than meet the no visible emission requirement of paragraph (a) of this section, at the end of each operating day, or at least once every 24-hour period while the site is in continuous operation, the asbestos-containing waste material that has been deposited at the site during the operating day or previous 24-hour period shall:

(1) Be covered with at least 15 centimeters (6 inches) of compacted nonasbestos-containing material, or

(2) Be covered with a resinous or petroleum-based dust suppression agent that effectively binds dust and controls wind erosion. Such an agent shall be used in the manner and frequency recommended for the particular dust by the dust suppression agent manufacturer to achieve and maintain dust control. Other equally effective dust suppression agents may be used upon prior approval by the Administrator. For purposes of this paragraph, any used, spent, or other waste oil is not considered a dust suppression agent.

(d) Rather than meet the no visible emission requirement of paragraph (a) of this section, use an alternative emissions control method that has received prior written approval by the Administrator according to the procedures described in § 61.149(c)(2).

(e) For all asbestos-containing waste material received, the owner or operator of the active waste disposal site shall:

(1) Maintain waste shipment records, using a form similar to that shown in Figure 4, and include the following information:

(i) The name, address, and telephone number of the waste generator.

(ii) The name, address, and telephone number of the transporter(s).

(iii) The quantity of the asbestos-containing waste material in cubic meters (cubic yards).

(iv) The presence of improperly enclosed or uncovered waste, or any asbestos-containing waste material not sealed in lead-tight containers. Report in writing to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator (identified in the waste shipment record), and, if different, the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the disposal site, by the following working day, the presence of a significant amount of improperly enclosed or uncovered waste. Submit a copy of the waste shipment record along with the report.

(v) The date of the receipt.

(2) As soon as possible and no longer than 30 days after receipt of the waste, send a copy of the signed waste shipment record to the waste generator.

(3) Upon discovering a discrepancy between the quantity of waste designated on the waste shipment records and the quantity actually received, attempt to reconcile the discrepancy with the waste generator. If the discrepancy is not resolved within 15 days after receiving the waste, immediately report in writing to the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the waste generator (identified in the waste shipment record), and, if different, the local, State, or EPA Regional office responsible for administering the asbestos NESHAP program for the disposal site. Describe the discrepancy and attempts to reconcile it, and submit a copy of the waste shipment record along with the report.

(4) Retain a copy of all records and reports required by this paragraph for at least 2 years.

(f) Maintain, until closure, records of the location, depth and area, and quantity in cubic meters (cubic yards) of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.

(g) Upon closure, comply with all the provisions of § 61.151.

(h) Submit to the Administrator, upon closure of the facility, a copy of records of asbestos waste disposal locations and quantities.

(i) Furnish upon request, and make available during normal business hours for inspection by the Administrator, all records required under this section.

(j) Notify the Administrator in writing at least 45 days prior to excavating or otherwise disturbing any asbestos-containing waste material that has been deposited at a waste disposal site and is covered. If the excavation will begin on a date other than the one contained in the original notice, notice of the new start date must be provided to the Administrator at least 10 working days before excavation begins and in no event shall excavation begin earlier than the date specified in the original notification. Include the following information in the notice:

(1) Scheduled starting and completion dates.

(2) Reason for disturbing the waste.

(3) Procedures to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the Administrator may require changes in the emission control procedures to be used.

(4) Location of any temporary storage site and the final disposal site.

18. Section 61.155 is added to subpart M to read as follows:

§ 61.155 Standard for operations that convert asbesto-containing waste material into nonasbestos (asbestos-free) material.

Each owner or operator of an operation that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material shall:

(a) Obtain the prior written approval of the Administrator to construct the facility. To obtain approval, the owner or operator shall provide the Administrator with the following information:

(1) Application to construct pursuant to § 61.07.

(2) In addition to the information requirements of § 61.07(b)(3), a

(i) Description of waste feed handling and temporary storage.

(ii) Description of process operating conditions.

(iii) Description of the handling and temporary storage of the end product.

(iv) Description of the protocol to be followed when analyzing output materials by transmission electron microscopy.

(3) Performance test protocol, including provisions for obtaining information required under paragraph (b) of this section.

(4) The Administrator may require that a demonstration of the process be performed prior to approval of the application to construct.

(b) Conduct a start-up performance test. Test results shall include:

(1) A detailed description of the types and quantities of nonasbestos material, RACM, and asbestos-containing waste material processed, *e.g.*, asbestos cement products, friable asbestos insulation, plaster, wood, plastic, wire, etc. Test feed is to include the full range of materials that will be encountered in actual operation of the process.

(2) Results of analyses, using polarized light microscopy, that document the asbestos content of the wastes processed.

(3) Results of analyses, using transmission electron microscopy, that document that the output materials are free of asbestos. Samples for analysis are to be collected as 8-hour composite samples (one 200-gram (7-ounce) sample per hour), beginning with the initial introduction of RACM or asbestos-containing waste material and continuing until the end of the performance test.

(4) A description of operating parameters, such as temperature and residence time, defining the full range over which the process is expected to operate to produce nonasbestos (asbestos-free) materials. Specify the limits for each operating parameter within which the process will produce nonasbestos (asbestos-free) materials.

(5) The length of the test.

(c) During the initial 90 days of operation,

(1) Continuously monitor and log the operating parameters identified during start-up performance tests that are intended to ensure the production of nonasbestos (asbestos-free) output material.

(2) Monitor input materials to ensure that they are consistent with the test feed materials described during start-up performance tests in paragraph (b)(1) of this section.

(3) Collect and analyze samples, taken as 10-day composite samples (one 200-gram (7-ounce) sample collected every 8 hours of operation) of all output material for the presence of asbestos. Composite samples may be for fewer than 10 days. Transmission electron microscopy (TEM) shall be used to analyze the output material for the presence of asbestos. During the initial 90-day period, all output materials must be stored on-site until analysis shows the material to be asbestos-free or disposed of as asbestos-containing waste material according to § 61.150.

(d) After the initial 90 days of operation,

(1) Continuously monitor and record the operating parameters identified during start-up performance testing and any subsequent performance testing. Any output produced during a period of deviation from the range of operating conditions established to ensure the production of nonasbestos (asbestos-free) output materials shall be:

(i) Disposed of as asbestos-containing waste material according to § 61.150, or

(ii) Recycled as waste feed during process operation within the established range of operating conditions, or

(iii) Stored temporarily on-site in a leak-tight container until analyzed for asbestos content. Any product material that is not asbestos-free shall be either disposed of as asbestos-containing waste material or recycled as waste feed to the process.

(2) Collect and analyze monthly composite samples (one 200-gram (7-ounce) sample collected every 8 hours of operation) of the output material. Transmission electron microscopy shall be used to analyze the output material for the presence of asbestos.

(e) Discharge no visible emissions to the outside air from any part of the operation, or use the methods specified by § 61.152 to clean emissions containing particulate asbestos material before they escape to, or are vented to, the outside air.

(f) Maintain records on-site and include the following information:

(1) Results of start-up performance testing and all subsequent performance testing, including operating parameters, feed characteristic, and analyses of output materials.

(2) Results of the composite analyses required during the initial 90 days of operation under § 61.155(c).

(3) Results of the monthly composite analyses required under § 61.155(d).

(4) Results of continuous monitoring and logs of process operating parameters required under § 61.155 (c) and (d).

(5) The information on waste shipments received as required in § 61.154(e).

(6) For output materials where no analyses were performed to determine the presence of asbestos, record the name and location of the purchaser or disposal site to which the output materials were sold or deposited, and the date of sale or disposal.

(7) Retain records required by paragraph (f) of this section for at least 2 years.

(g) Submit the following reports to the Administrator:

(1) A report for each analysis of product composite samples performed during the initial 90 days of operation.

(2) A quarterly report, including the following information concerning activities during each consecutive 3-month period:

(i) Results of analyses of monthly product composite samples.

(ii) A description of any deviation from the operating parameters established during performance testing the duration of the deviation, and steps taken to correct the deviation.

(iii) Disposition of any product produced during a period of deviation, including whether it was recycled, disposed of as asbestos-containing waste material, or stored temporarily on-site until analyzed for asbestos content.

(iv) The information on waste disposal activities as required in § 61.154(f).

(h) Nonasbestos (asbestos-free) output material is not subject to any of the provisions of this subpart. Output materials in which asbestos is detected, or output materials produced when the operating parameters deviated from those established during the start-up performance testing, unless shown by TEM analysis to be asbestos-free, shall be considered to be asbestos-containing waste and shall be handled and disposed of according to §§ 61.150 and 61.154 or reprocessed while all of the established operating parameters are being met.

19. Section 61.156 is added to subpart M to read as follows:

§ 61.156 Cross-reference to other asbestos regulations.

In addition to this subpart, the regulations referenced in Table 1 also apply to asbestos and may be applicable to those sources specified in §§ 61.142 through 61.151, 61.154, and 61.155 of this subpart. These cross-references are presented for the reader's information and to promote compliance with the cited regulations.

20. Section 61.157 is added to subpart M to read as follows:

§ 61.157 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that will not be delegated to States:

(1) Section 61.149(c)(2)
(2) Section 61.150(a)(4)
(3) Section 61.151(c)
(4) Section 61.152(b)(3)
(5) Section 61.154(d)
(6) Section 61.155(a).

[FR Doc. 90-26835 Filed 11-19-90; 8:45 am]
BILLING CODE 6560-50-M

TABLE 1.—CROSS-REFERENCE TO OTHER ASBESTOS REGULATIONS

Agency	CFR citation	Comment
EPA	40 CFR 763, Subpart E, F	Requires schools to inspect for asbestos and implement response actions and submit asbestos management plans to States. Specifies use of accredited inspectors, air sampling methods, and waste disposal procedures.
	40 CFR 427	Effluent standards for asbestos manufacturing source categories.
	40 CFR 763, Subpart G	Protects public employees performing asbestos abatement work in States not covered by OSHA asbestos standard.
OSHA	29 CFR 1910.1001	Worker protection measures—engineering controls, worker training, labeling, respiratory protection, bagging of waste, 0.2 f/cc permissible exposure level.
	29 CFR 1926.58	Worker protection measures for all construction work involving asbestos, including demolition and renovation—work practices, worker training, bagging of waste, 0.2 f/cc permissible exposure level.
MSHA	30 CFR 56, Subpart D	Specifies exposures limits, engineering controls, and respiratory protection measures for workers in surface mines.
	30 CFR 57, Subpart D	Specifies exposure limits, engineering controls, and respiratory protection measures for workers in underground mines.
DOT	49 CFR 171 and 172	Regulates the transportation of asbestos-containing waste material. Requires waste containment and shipping papers.

federal register

Tuesday
November 20, 1990

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 872 et al.
Medical Devices; Classification of 70 Electromedical Devices; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 872, 874, 878, 884, 886, 888, and 892

[Docket No. 78N-2847 et al.]

Medical Devices; Classification of 70 Electromedical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying 70 electromedical devices of a type on the market before enactment of the Medical Device Amendments (the amendments) of 1976. In the preamble, FDA is responding to comments on the proposed regulations classifying these devices.

EFFECTIVE DATE: December 20, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION:

I. Background

Classification of medical devices in commercial distribution is required by section 513 of the Medical Device Amendments of 1976 (Pub. L. 94–295) (the amendments) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c). The effect of classifying a device into class I is to require that the device continues to meet only the general controls applicable to all devices. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application that includes information concerning safety and effectiveness tests for the device.

Pursuant to section 513, FDA has published a series of proposed and final rules classifying devices of a type which were in commercial distribution when the amendments were enacted (i.e., classifying preamendments devices and devices determined by FDA to be substantially equivalent to such devices). For purposes of classification, FDA categorized such devices into 16 medical specialty groups. See 21 CFR parts 862 through 892.

On November 15, 1988 (53 FR 46040), FDA published a reproposed rule to classify 70 electromedical devices into class I. The devices subject to the reproposal represented 6 of the 16 medical specialty groups. When FDA published this reproposed rule, the agency believed that essentially the only risk to health presented by these devices was the risk from electrical leakage current that the agency believed could be controlled through the general controls of class I, without any exemptions authorized under section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)).

In the preamble to the reproposed rule, FDA provided a thorough discussion of the background of the action. Some of the regulations included both the AC-powered generic type of device and its already-classified non-AC-powered counterpart.

II. Comments

Letters of comment were received from two manufacturers, a trade association, and a professional society. All of the comments generally supported classifying the 70 devices into class I but the comments also submitted two requests. A summary of the requests and FDA's responses follow:

1. A comment requested that FDA exempt all of the dental devices subject to the proposed rule from the requirements of sections 510 (registration and premarket notification procedures), 519 (records and reports), and 520(f) (current good manufacturing practice (CGMP)) of the act (21 U.S.C. 360, 360i, and 360j(f)). The comment said that all of these dental devices had a long, established record of safe usage for specific purposes, that the characteristics necessary for safe and effective performance are well established, and that any changes whatsoever would undoubtedly have an insignificant effect on the safety and effectiveness of the devices.

FDA has determined that protection of the public health requires that all manufacturers of medical devices, other than those already exempt under 21 CFR 807.65, register and list their products with FDA to ensure that the agency can identify these manufacturers and their products to conduct necessary inspections. FDA has already described this policy in its classification regulations several times, as in the preamble to the proposed rule classifying general and plastic surgery devices (January 19, 1982; 47 FR 2810 at 2813).

The agency has determined, however, that it is not necessary for the protection of the public health that FDA receive premarket notification submissions for certain devices. The agency has published a series of proposed and final rules granting certain class I devices exemptions from the premarket notification procedures. The preambles to these regulations clearly describe the agency's exemption policy regarding premarket notification. For an example, see the Federal Register of April 5, 1989 (54 FR 13828), where FDA provided 22 class I dental devices exemptions from the premarket notification requirements and promulgated new section 21 CFR 872.9 regarding limitations on such exemptions.

Based on these established exemption criteria, FDA believes that manufacturers of all of the dental devices and all of the other devices subjects of this rulemaking should comply with the premarket notification procedures to protect the public health. Exemptions from premarket notification procedures granted to certain devices in earlier rulemakings continue in effect and are shown in the codified portion of this rule for the convenience of the reader.

Section 519 of the act authorizes FDA to issue regulations requiring device manufacturers, importers, and distributors to establish and maintain records that the agency may reasonably require to assure the safety and effectiveness of devices. Section 520(f) of the act authorizes FDA to issue CGMP regulations. As explained in the preambles to the series of proposed and final regulations classifying devices, the only type of exemption from records and reports requirements that the agency has granted is an exemption of certain manufacturers from most of the CGMP requirements at 21 CFR part 820, in accordance with specified criteria. See, for example, the proposed rule classifying general and plastic surgery devices, published in the Federal Register of January 19, 1982 (47 FR 2810, 2813).

As stated in the preamble to the proposed rule of November 15, 1988 (53 FR 46040), in accordance with the recommendations of the device Panels (the device advisory committees listed at 21 CFR 14.100(d)), FDA did not propose any exemptions from the CGMP requirements for any of these 70 electromedical devices. The agency continues to believe that all of the requirements of 21 CFR Part 820 are necessary to provide reasonable assurance of the safety and effectiveness of these AC-powered devices. Thus, no exemptions from CGMP requirements are provided in this final rule. However, CGMP exemptions

granted to certain devices in earlier rulemakings continue in effect and are shown in the codified portion of this rule for the convenience of the reader.

2. A comment requested that FDA exempt from the premarket notification procedures the manufacturers of the radiographic film marking system and the automatic radiographic film processor. The comment said that these devices and their manufacturers had no history of problems or noncompliance and that the operators of these devices would be able to detect and resolve any performance problems with the devices.

In accordance with the agency's criteria for granting exemptions from the premarket notification procedures (discussed above) and in partial agreement with the comment's suggestion, in the near future the agency will publish a proposed rule to grant an exemption from the premarket notification procedures for the radiographic film marking system (§ 892.1640).

Regarding the automatic radiographic film processor (§ 892.1900), FDA agrees that the device presents minimal electrical hazards. However, FDA studies indicate that poor radiograph processing can result in two adverse effects. First, if the radiograph image is sufficiently degraded, patients will need to repeat the radiographic examination, thereby increasing their radiation exposure and potential radiation risk. Second, a poor radiograph could result in a missed or incorrect diagnosis, with potential adverse results for the patient. The agency believes that this device should be subject to the premarket notification procedures to assure the safety and effectiveness of the device. Further, FDA now believes that the radiographic film processor should be classified into class II instead of class I as proposed, as explained below.

III. Classification of Eight Devices into Class II Instead of Class I as Proposed on November 15, 1988

When the agency proposed to classify the 70 electromedical devices into class I, FDA believed that essentially the only risk to health presented by these devices was the minimal risk from electrical leakage current that could be controlled by the general controls of class I. Now FDA has determined that six of the AC-powered ophthalmic devices intended to examine the eyes of patients emit a level of light intensity that could harm the patients' eyes if used for extended periods. Light sources currently available, such as incandescent tungsten filaments as used in conventional hand held ophthalmoscopes, as well as other light sources, such as halogen lamps, may expose patients to hazardous levels of optical radiation emission (Ref. 1). Thus for the following six devices FDA believes that performance standards are necessary to control the risk of damage to the eyes of patients from the intensity of the light source and that the general controls of class I alone are insufficient to provide reasonable assurance of their safety and effectiveness: ophthalmic camera (§ 886.1120), euthyscope (§ 886.1250), afterimage flasher (§ 886.1300), retinoscope (§ 886.1780), transilluminator (§ 886.1945), and the operating headlamp (§ 886.4335). Accordingly, in this final rule, FDA is classifying these six devices into class II.

FDA is also concerned that a lower than class II classification for ophthalmic electrolysis unit (§ 886.4250) will not be consistent with the electrolysis units (Epilators are currently classified in class III as well as class II.) classified for dermatologic use which have similar design in some respects, and which are identical in intended use. Thus, FDA believes that a performance standard is necessary for the ophthalmic electrolysis unit to assure regulatory consistency and to control performance characteristics to assure that it is safe and effective. FDA believes that the controls of class I alone are insufficient to provide reasonable assurance of the safety and effectiveness of this device.

FDA now believes that the automatic radiographic film processor (§ 892.1900) should be classified into class II instead of class I as proposed. Data from FDA's Nationwide Evaluation of X-Ray Trends (NEXT) program from 1984 to 1987 show that radiograph processing quality varies greatly and that significant numbers of users of the device are underprocessing film (Refs. 2 to 6). For example, for chest examinations, 20 percent of all hospitals underprocessed film in 1986. These data suggest that processor performance, operator performance, and/or processor design need to be improved to minimize radiation exposure of patients. Thus, FDA is classifying the automatic radiographic film processor into class II. FDA believes that a performance standard is necessary for this device to control its accuracy, reliability, and other performance characteristics. FDA also believes that the general controls of class I alone are insufficient to provide reasonable assurance of the safety and effectiveness of the device.

FDA believes that it is unnecessary to issue new proposed regulations concerning these decisions. The purpose of publishing a proposed regulation and soliciting comments is to enable the agency to determine whether its proposed classification of a device was correct. After reviewing the comments submitted on a proposal or upon reconsideration, the agency may determine that its proposed classification is incorrect. Persons interested in the classification process should anticipate that in a final regulation a device may be placed in a class different from the one originally proposed. Persons who disagree with a final classification for a device may petition for reclassification of the device under subpart C of 21 CFR part 860.

IV. List of Classifications

Section	Device	Docket No.	Class
	Part 872—Dental Devices		
872.3100	Dental amalgamator	78N-2847	I
872.3530	Mechanical denture cleaner	78N-2879	I
872.4200	Dental handpiece and accessories	78N-2915	I
872.4620	Fiber optic dental light	78N-2934	I
872.6250	Dental chair and accessories	78N-2980	I
872.6475	Heat source for bleaching teeth	78N-2994	I
872.6510	Oral irrigation unit	78N-2998	I
872.6640	Dental operative unit and accessories	78N-3002	I
872.6710	Boiling water sterilizer	78N-3009	I
872.6865	Powered toothbrush	78N-3020	I
	Part 874—Ear, Nose, and Throat Devices		
874.1070	Short increment sensitivity index (SISI) adapter	78N-1552	I

IV. LIST OF CLASSIFICATIONS—Continued

Section	Device	Docket No.	Class
874.1600	Air or water caloric stimulator	78N-1565	I
874.4750	Laryngostroboscope	78N-1622	I
874.4770	Otoscope	78N-1624	I
874.5300	Ear, nose, and throat examination and treatment unit	78N-1630	I
874.5580	Powered nasal irrigator	78N-1631	I
	Part 878—General and Plastic Surgery Devices		
878.4635	Ultraviolet lamp for tanning	78N-2687	I
878.4700	Surgical microscope and accessories	78N-2691	I
878.4820	Surgical instrument motors and accessories/attachments	78N-2698	I
878.4960	Operating tables and accessories and operating chairs and accessories	78N-2705	I
	Part 884—Obstetrical and Gynecological Devices		
884.2980	Telethermographic system	78N-2762	I
884.2982	Liquid crystal thermographic system	78N-2763	I
	Part 886—Ophthalmic Devices		
886.1050	Adaptometer (biophotometer)	78N-3130	I
886.1070	Anomaloscope	78N-3132	I
886.1080	Haidlinger brush	78N-3133	I
886.1120	Ophthalmic camera	78N-3135	II
886.1140	Ophthalmic chair	78N-3137	I
886.1160	Color vision plate illuminator	78N-3140	I
886.1250	Euthyscope	78N-3145	II
886.1290	Fixation device	78N-3148	I
886.1300	Afterimage flasher	78N-3149	II
886.1340	Haploscope	78N-3295	I
886.1350	Keratoscope	78N-3153	I
886.1425	Lens measuring instrument	78N-3166	I
886.1430	Ophthalmic contact lens radius measuring device	78N-3167	I
886.1435	Maxwell spot	78N-3168	I
886.1450	Corneal radius measuring device	78N-3169	I
886.1605	Perimeter	78N-3178	I
886.1660	Ophthalmic projector	78N-3189	I
886.1690	Pupillograph	78N-3190	I
886.1700	Pupillometer	78N-3191	I
886.1750	Retinoscope	78N-3196	II
886.1810	Tangent screen (campimeter)	78N-3200	I
886.1860	Ophthalmic instrument stand	78N-3208	I
886.1870	Stereoscope	78N-3210	I
886.1910	Spectacle dissociation test system	78N-3214	I
886.1940	Tonometer sterilizer	78N-3220	I
886.1945	Transilluminator	78N-3221	II
886.4070	Powered corneal burr	78N-3233	I
886.4250	Ophthalmic electrolysis unit	78N-3244	II
886.4335	Operating headlamp	78N-3252	II
886.4370	Keratome	78N-3255	I
886.4855	Ophthalmic instrument table	78N-3272	I
886.5820	Closed-circuit television reading system	78N-3285	I
886.5900	Electronic vision aid	78N-3290	I
886.5915	Optical vision aid	78N-3293	I
	Part 888—Orthopedic Devices		
888.1500	Goniometer	78N-3043	I
888.5980	Cast removal instrument	78N-3124	I
	Part 892—Radiology Devices		
892.1100	Scintillation (gamma) camera	78N-2743	I
892.1110	Positron camera	78N-2744	I
892.1130	Nuclear whole body counter	78N-2745	I
892.1300	Nuclear rectilinear scanner	78N-2750	I
892.1320	Nuclear uptake probe	78N-2752	I
892.1330	Nuclear whole body scanner	78N-2753	I
892.1350	Nuclear scanning bed	78N-2754	I
892.1410	Nuclear electrocardiograph synchronizer	78N-2760	I
892.1640	Radiographic film marking system	78N-2773	I
892.1890	Radiographic film illuminator	78N-2795	I
892.1900	Automatic radiographic film processor	78N-2796	II
892.1970	Radiographic ECG/respirator synchronizer	78N-2803	I

V. References

The following information has been placed on file in the Dockets Management Branch (HFA-305), Food and Drugs Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. James, R.H., Bostrom, R.G., Remark, D., and D.H. Sliney, "Handheld Ophthalmoscopes for Hazard Analysis: an Evaluation," *Applied Optics*, December 15, 1983, pp. 5072-5076.

2. FDA, "Sensitometric Technique for the Evaluation of Processing (STEP)."

3. Goldman, L., Vuchich, J.J., Beech, S., and W.L. Murphy, "Automatic Processing Quality Assurance Program: Impact on a Radiology Department," *Radiology*, December 1977, pp. 591-595.

4. FDA, "A Sensitometric Evaluation of Film Chemistry-Processor Systems in the State of New Jersey."

5. Hall, C.L., "Economic Analysis of a Quality Control Program," "SPIE, Application of Optical Instrumentation in Medicine VI," 1977.

6. FDA, "A Study of Retakes in Radiology Departments of Two Large Hospitals," July 1975.

VI. Environmental Impact

FDA has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Economic Impact

FDA has carefully analyzed the economic effects of this final rule and has determined that the rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this final rule has been carefully analyzed, and FDA has determined that the rule does not constitute a major rule as defined in section 1(b) of the Executive Order. Rules classifying devices into class I generally maintain the status quo. These devices are now subject only to the general control provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j). Devices classified into class II also remain subject only to the general control provisions unless and until an applicable performance standard is established. In sum, device classification rules do not have a significant impact on a substantial number of small entities and are not major rules.

List of Subjects 21 CFR

Part 872

Medical devices.

Part 874

Medical devices.

Part 878

Medical devices.

Part 884

Medical devices.

Part 886

Medical devices, Ophthalmic goods and services.

Part 888

Medical devices.

Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, chapter I of title 21 of the Code of Federal Regulations, 21 CFR parts 872, 874, 878, 884, 886, 888, and 892 are amended as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. New § 872.3100 is added to subpart D to read as follows:

§ 872.3100 Dental amalgamator.

(a) *Identification.* A dental amalgamator is a device, usually AC-powered, intended to mix, by shaking, amalgam capsules containing mercury and dental alloy particles, such as silver, tin, zinc, and copper. The mixed dental amalgam material is intended for filling dental caries.

(b) *Classification.* Class I.

3. New § 872.3530 is added to subpart D to read as follows:

§ 872.3530 Mechanical denture cleaner.

(a) *Identification.* A mechanical denture cleaner is a device, usually AC-powered, that consists of a container for mechanically agitating a denture cleansing solution. The device is intended to clean a denture by submersion in the agitating cleansing solution in the container.

(b) *Classification.* Class I.

4. New § 872.4200 is added to subpart E to read as follows:

§ 872.4200 Dental handpiece and accessories.

(a) *Identification.* A dental handpiece and accessories is an AC-powered, water-powered, air-powered, or belt-driven, hand-held device that may include a foot controller for regulation of speed and direction of rotation or a contra-angle attachment for difficult to reach areas intended to prepare dental cavities for restorations, such as fillings, and for cleaning teeth.

(b) *Classification.* Class I.

5. New § 872.4620 is added to subpart E to read as follows:

§ 872.4620 Fiber optic dental light.

(a) *Identification.* A fiber optic dental light is a device that is a light, usually AC-powered, that consists of glass or plastic fibers which have special optical properties. The device is usually attached to a dental handpiece and is intended to illuminate a patient's oral structures.

(b) *Classification.* Class I.

6. New § 872.6250 is added to subpart G to read as follows:

§ 872.6250 Dental chair and accessories.

(a) *Identification.* A dental chair and accessories is a device, usually AC-powered, in which a patient sits. The device is intended to properly position a patient to perform dental procedures. A dental operative unit may be attached.

(b) *Classification.* Class I.

7. New § 872.6475 is added to subpart G to read as follows:

§ 872.6475 Heat source for bleaching teeth.

(a) *Identification.* A heat source for bleaching teeth is an AC-powered device that consists of a light or an electric heater intended to apply heat to a tooth after it is treated with a bleaching agent.

(b) *Classification.* Class I.

8. New § 872.6510 is added to subpart G to read as follows:

§ 872.6510 Oral irrigation unit.

(a) *Identification.* An oral irrigation unit is an AC-powered device intended to provide a pressurized stream of water to remove food particles from between the teeth and promote good periodontal (gum) condition.

(b) *Classification.* Class I.

9. New § 872.6640 is added to subpart G to read as follows:

§ 872.6640 Dental operative unit and accessories.

(a) *Identification.* A dental operative unit and accessories is an AC-powered device that is intended to supply power to and serve as a base for other dental devices, such as a dental handpiece, a dental operating light, an air or water syringe unit, and oral cavity evacuator, a suction operative unit, and other dental devices and accessories. The device may be attached to a dental chair.

(b) *Classification.* Class I.

10. New § 872.6710 is added to subpart G to read as follows:

§ 872.6710 Boiling water sterilizer.

(a) *Identification.* A boiling water sterilizer is an AC-powered device that consists of a container for boiling water. The device is intended to sterilize dental and surgical instruments by submersion in the boiling water in the container.

(b) *Classification.* Class I.

11. New § 872.6885 is added to subpart G to read as follows:

§ 872.6865 Powered toothbrush.

(a) *Identification.* A powered toothbrush is an AC-powered or battery-powered device that consists of a handle containing a motor that provides mechanical movement to a brush intended to be applied to the teeth. The device is intended to remove adherent plaque and food debris from the teeth to reduce tooth decay.

(b) *Classification.* Class I.

PART 874—EAR, NOSE, AND THROAT DEVICES

12. The authority citation for 21 CFR part 874 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

13. Section 874.1070 is added to subpart B to read as follows:

§ 874.1070 Short increment sensitivity index (SISI) adapter.

(a) *Identification.* A short increment sensitivity index (SISI) adapter is a device used with an audiometer in diagnostic hearing evaluations. A SISI adapter provides short periodic sound pulses in specific small decibel increments that are intended to be superimposed on the audiometer's output tone frequency.

(b) *Classification.* Class I.

14. New § 874.1800 is added to subpart B to read as follows:

§ 874.1800 Air or water caloric stimulator.

(a) *Identification.* An air or water caloric stimulator is a device that delivers a stream of air or water to the ear canal at controlled rates of flow and temperature and that is intended for vestibular function testing of a patient's body balance system. The vestibular stimulation of the semicircular canals produce involuntary eye movements that are measured and recorded by a nystagmograph.

(b) *Classification.* Class I.

15. New § 874.4750 is added to subpart E to read as follows:

§ 874.4750 Laryngostroboscope.

(a) *Identification.* A laryngostroboscope is a device that is intended to allow observation of glottic action during phonation. The device operates by focusing a stroboscopic light through a lens for direct or mirror reflected viewing of glottic action. The light and microphone that amplifies acoustic signals from the glottic area may or may not contact the patient.

(b) *Classification.* Class I.

16. New § 874.4770 is added to subpart E to read as follows:

§ 874.4770 Otoscope.

(a) *Identification.* An otoscope is a device intended to allow inspection of the external ear canal and tympanic membrane under magnification. The device provides illumination of the ear canal for observation by using an AC- or battery-powered light source and an optical magnifying system.

(b) *Classification.* Class I.

17. New § 874.5300 is added to subpart F to read as follows:

§ 874.5300 Ear, nose, and throat examination and treatment unit.

(a) *Identification.* An ear, nose, and throat examination and treatment unit is an AC-powered device intended to support a patient during an otologic examination while providing specialized features for examination and treatment. The unit consists of a patient chair and table, drawers for equipment, suction and blowing apparatus, and receptacles for connection of specialized lights and examining instruments.

(b) *Classification.* Class I.

18. New § 874.5550 is added to subpart F to read as follows:

§ 874.5550 Powered nasal irrigator.

(a) *Identification.* A powered nasal irrigator is an AC-powered device intended to wash the nasal cavity by means of a pressure-controlled pulsating stream of water. The device consists of a control unit and pump connected to a spray tube and nozzle.

(b) *Classification.* Class I.

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

19. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

20. New § 878.4635 is added to subpart E to read as follows:

§ 878.4635 Ultraviolet lamp for tanning.

(a) *Identification.* An ultraviolet lamp for tanning is a device that is a lamp (including a fixture) intended to provide ultraviolet radiation to tan the skin. See § 1040.20 of this chapter.

(b) *Classification.* Class I.

21. New § 878.4700 is added to subpart E to read as follows:

§ 878.4700 Surgical microscope and accessories.

(a) *Identification.* A surgical microscope and accessories is an AC-powered device intended for use during surgery to provide a magnified view of the surgical field.

(b) *Classification.* Class I.

22. New § 878.4820 is added to subpart E to read as follows:

§ 878.4820 Surgical instrument motors and accessories/attachments.

(a) *Identification.* Surgical instrument motors and accessories are AC-powered, battery-powered, or air-powered devices intended for use during surgical procedures to provide power to operate various accessories or attachments to cut hard tissue or bone and soft tissue. Accessories or attachments may include a bur, chisel (osteotome), dermabrasion brush, dermatome, drill bit, hammerhead, pin driver, and saw blade.

(b) *Classification.* Class I.

23. New § 878.4960 is added to subpart E to read as follows:

§ 878.4960 Operating tables and accessories and operating chairs and accessories.

(a) *Identification.* Operating tables and accessories and operating chairs and accessories are AC-powered or air-powered devices, usually with movable components, intended for use during diagnostic examinations or surgical procedures to support and position a patient.

(b) *Classification.* Class I.

PART 884—OBSTETRICAL GYNECOLOGICAL DEVICES

24. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

25. Section 884.2980 is amended by adding new paragaph (a) to read as follows:

§ 884.2980 Telethermographic system.

(a) *Telethermographic system intended for adjunctive diagnostic screening for detection of breast cancer or other uses—*

(1) *Identification.* A telethermographic system for adjunctive diagnostic screening for detection of breast cancer or other uses is an electrically powered device with a detector that is intended to measure, without touching the patient's skin, the self-emanating infrared radiation that reveals the temperature variations of the surface of the body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(2) *Classification.* Class I.

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26. Section 884.2982 is amended by revising paragraph (a) to read as follows:

§ 884.2982 Liquid crystal thermographic system.

(a) *A nonelectrically powered or an AC-powered liquid crystal thermographic system intended for adjunctive use in diagnostic screening for detection of breast cancer or other uses*—(1) *Identification.* A nonelectrically powered or an AC-powered liquid crystal thermographic system intended for use as an adjunct to physical palpation or mammography in diagnostic screening for detection of breast cancer or other uses is a nonelectrically powered or an AC-powered device applied to the skin that displays the color patterns of heat sensitive cholesteric liquid crystals that respond to temperature variations of the surface of the body. This generic type of device may include patient and equipment supports, a means to ensure thermal contact between the patient's skin and the liquid crystals, component parts, and accessories.

(2) *Classification.* Class I.

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PART 886—OPHTHALMIC DEVICES

27. The authority citation for 21 CFR part 886 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

28. New § 886.1050 is added to subpart B to read as follows:

§ 886.1050 Adaptometer (biophotometer).

(a) *Identification.* An adaptometer (biophotometer) is an AC-powered device that provides a stimulating light source which has various controlled intensities intended to measure the time required for retinal adaptation (regeneration of the visual purple) and the minimum light threshold.

(b) *Classification.* Class I.

29. New § 886.1070 is added to subpart B to read as follows:

§ 886.1070 Anomaloscope.

(a) *Identification.* An anomaloscope is an AC-powered device intended to test for anomalies of color vision by displaying mixed spectral lines to be matched by the patient.

(b) *Classification.* Class I.

30. New § 886.1080 is added to subpart B to read as follows:

§ 886.1080 Haidlinger brush.

(a) *Identification.* A Haidlinger brush is an AC-powered device that provides two conical brushlike images with apexes touching which are viewed by the patient through a Nicol prism and intended to evaluate visual function. It may include a component for measuring macular integrity.

(b) *Classification.* Class I.

31. New § 886.1120 is added to subpart B to read as follows:

§ 886.1120 Opthalmic camera.

(a) *Identification.* An ophthalmic camera is an AC-powered device intended to take photographs of the eye and the surrounding area.

(b) *Classification.* Class II.

32. Section 886.1140 is revised to read as follows:

§ 886.1140 Ophthalmic chair.

(a) *Identification.* An ophthalmic chair is an AC-powered or manual device with adjustable positioning in which a patient is to sit or recline during ophthalmological examination or treatment.

(b) *Classification.* Class I. The manual device is exempt from the premarket notification procedures in part 807, subpart E of this chapter and it is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

33. New § 886.1160 is added to Subpart B to read as follows:

§ 886.1160 Color vision plate illuminator.

(a) *Identification.* A color vision plate illuminator is an AC-powered device that is a lamp intended to properly illuminate color vision testing plates. It may include a filter.

(b) *Classification.* Class I.

34. Section 86.1250 is revised to read as follows:

§ 886.1250 Euthyscope.

(a) *Identification.* A euthyscope is a device that is a modified AC-powered or battery-powered ophthalmoscope (a perforated mirror device intended to inspect the interior of the eye) that projects a bright light encompassing an arc of about 30 degrees onto the fundus of the eye. The center of the light bundle is blocked by a black disk covering the fovea (the central depression of the macular retinae where only cones are present and blood vessels are lacking). The device is intended for use in the treatment of amblyopia (dimness of vision without apparent disease of the eye).

(b) *Classification.* Class I for the battery-powered device. Class II for the AC-powered device.

35. New § 886.1290 is added to subpart B to read as follows:

§ 886.1290 Fixation device.

(a) *Identification.* A fixation device is an AC-powered device intended for use as a fixation target for the patient during ophthalmological examination. The patient directs his or her gaze so that the visual image of the object falls on the fovea centralis (the center of the macular retina of the eye.)

(b) *Classification.* Class I.

36. New § 886.1300 is added to subpart B to read as follows:

§ 886.1300 Afterimage flasher.

(a) *Identification.* An afterimage flasher is an AC-powered light that automatically switches on and off to allow performance of an afterimage test in which the patient indicates the positions of afterimages after the light is off. The device is intended to determine harmonious/anomalous retinal correspondence (the condition in which corresponding points on the retina have the same directional value).

(b) *Classification.* Class II.

37. New § 886.1340 is added to subpart B to read as follows:

§ 886.1340 Haploscope.

(a) *Identification.* A haploscope is an AC-powered device that consists of two movable viewing tubes, each containing a slide carrier, a low-intensity light source for the illumination of the slides, and a high-intensity light source for creating afterimages. The device is intended to measure strabismus (eye muscle imbalance), to assess binocular vision (use of both eyes to see), and to treat suppression and amblyopia (dimness of vision without any apparent disease of the eye).

(b) *Classification.* Class I.

38. Section 886.1350 is revised to read as follows:

§ 886.1350 Keratoscope.

(a) *Identification.* A keratoscope is an AC-powered or battery-powered device intended to measure and evaluate the corneal curvature of the eye. Lines and circles within the keratoscope are used to observe the corneal reflex. This generic type of device includes the photokeratoscope which records corneal curvature by taking photographs of the cornea.

(b) *Classification.* Class I. The battery-powered device is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements

concerning records, and § 820.198, with respect to complaint files.

39. New § 886.1425 is added to subpart B to read as follows:

§ 886.1425 Lens measuring instrument.

(a) *Identification.* A lens measuring instrument is an AC-powered device intended to measure the power of lenses, prisms, and their centers (e.g., lensometer).

(b) *Classification.* Class I.

40. New § 886.1430 is added to subpart B to read as follows:

§ 886.1430 Ophthalmic contact lens radius measuring device.

(a) *Identification.* An ophthalmic contact lens radius measuring device is an AC-powered device that is a microscope and dial gauge intended to measure the radius of a contact lens.

(b) *Classification.* Class I.

41. New § 886.1435 is added to subpart B to read as follows:

§ 886.1435 Maxwell spot.

(a) *Identification.* A Maxwell spot is an AC-powered device that is a light source with a red and blue filter intended to test macular function.

(b) *Classification.* Class I.

42. New § 886.1450 is added to subpart B to read as follows:

§ 886.1450 Corneal radius measuring device.

(a) *Identification.* A corneal radius measuring device is an AC-powered device intended to measure corneal size by superimposing the image of the cornea on a scale at the focal length of the lens of a small, hand held, single tube penscope or eye gauge magnifier.

(b) *Classification.* Class I.

43. Section 886.1605 is revised to read as follows:

§ 886.1605 Perimeter.

(a) *Identification.* A perimeter is an AC-powered or manual device intended to determine the extent of the peripheral visual field of a patient. The device projects light on various points of a curved surface, and the patient indicates whether he or she sees the light.

(b) *Classification.* Class I. The manual device is exempt from the premarket notification procedures in part 807, subpart E of this chapter, and it is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198 with respect to the complaint files.

44. New § 886.1660 is added to subpart B to read as follows:

§ 886.1660 Ophthalmic projector.

(a) *Identification.* An ophthalmic projector is an AC-powered device intended to project an image on a screen for vision testing.

(b) *Classification.* Class I.

45. New § 886.1690 is added to subpart B to read as follows:

§ 886.1690 Pupillograph.

(a) *Identification.* A pupillograph is an AC-powered device intended to measure the pupil of the eye by reflected light and record the responses of the pupil.

(b) *Classification.* Class I.

46. Section 886.1700 is revised to read as follows:

§ 886.1700 Pupillometer.

(a) *Identification.* A pupillometer is an AC-powered or manual device intended to measure by reflected light the width or diameter of the pupil of the eye.

(b) *Classification.* Class I. The manual device is exempt from the premarket notification procedures in part 807, subpart E of this chapter and it is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

47. Section 886.1780 is revised to read as follows:

§ 886.1780 Retinoscope.

(a) *Identification.* A retinoscope is an AC-powered or battery-powered device intended to measure the refraction of the eye by illuminating the retina and noting the direction of movement of the light on the retinal surface and of the refraction by the eye of the emergency rays.

(b) *Classification.* Class I for the battery-powered device. Class II for the AC-powered device. The battery-powered device is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

48. Section 886.1810 is revised to read as follows:

§ 886.1810 Tangent screen (campimeter).

(a) *Identification.* A tangent screen (campimeter) is an AC-powered or battery-powered device that is a large square cloth chart with a central mark of fixation intended to map on a flat surface the central 30 degrees of a patient's visual field. This generic type of device includes projection tangent screens, target tangent screens and targets, felt tangent screens, and stereo campimeters.

(b) *Classification.* Class I. The battery-powered device is exempt from the premarket notification procedures in part 807, subpart E of this chapter and it is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

49. Section 886.1860 is revised to read as follows:

§ 886.1860 Ophthalmic instrument stand.

(a) *Identification.* An ophthalmic instrument stand is an AC-powered or nonpowered device intended to store ophthalmic instruments in a readily accessible position.

(b) *Classification.* Class I. The nonpowered device is exempt from the premarket notification procedures in part 807, subpart E of this chapter and it is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

50. Section 886.1870 is revised to read as follows:

§ 886.1870 Stereoscope.

(a) *Identification.* A stereoscope is an AC-powered or battery-powered device that combines the images of two similar objects to produce a three-dimensional appearance of solidity and relief. It is intended to measure the angle of strabismus (eye muscle deviation), evaluate binocular vision (usage of both eyes to see), and guide a patient's corrective exercises of eye muscles.

(b) *Classification.* Class I. The battery-powered device is exempt from the premarket notification procedures in part 807, subpart E of this chapter and it is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

51. Section 886.1910 is revised to read as follows:

§ 886.1910 Spectacle dissociation test system.

(a) *Identification.* A spectable dissociation test system is an AC-powered or battery-powered device, such as a Lancaster test system, that consists of a light source and various filters, usually red or green filters, intended to subjectively measure imbalance of ocular muscles.

(b) *Classification.* Class I. The battery-powered device is exempt from the premarket notification procedures in part 807, subpart E of this chapter and it is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

52. New § 886.1940 is added to subpart B to read as follows:

§ 886.1940 Tonometer sterilizer.

(a) *Identification.* A tonometer sterilizer is an AC-powered device intended to heat sterilize a tonometer (a device used to measure intraocular pressure).

(b) *Classification.* Class I.

53. Section 886.1945 is revised to read as follows:

§ 886.1945 Transilluminator.

(a) *Identification.* A transilluminator is an AC-powered or battery-powered device that is a light source intended to transmit light through tissues to aid examination of patients.

(b) *Classification.* Class I for the battery-powered device. Class II for the AC-powered device.

54. Section 886.4070 is revised to read as follows:

§ 886.4070 Powered corneal burr.

(a) *Identification.* A powered corneal burr is an AC-powered or battery-powered device that is a motor drilling tool intended to remove rust rings from the cornea of the eye.

(b) *Classification.* Class I.

55. Section 886.4250 is revised to read as follows:

§ 886.4250 Ophthalmic electrolysis unit.

(a) *Identification.* An ophthalmic electrolysis unit is an AC-powered or battery-powered device intended to destroy ocular hair follicles by applying a galvanic electrical current.

(b) *Classification.* Class I for the battery-powered device. Class II for the AC-powered device.

56. Section 886.4335 is revised to read as follows:

§ 886.4335 Operating headlamp.

(a) *Identification.* An operating headlamp is an AC-powered or battery-powered device intended to be worn on the user's head to provide a light source to aid visualization during surgical, diagnostic, or therapeutic procedures.

(b) *Classification.* Class I for the battery-powered device. Class II for the AC-powered device. The battery powered-device is exempt from the premarket notification procedures in part 807, subpart E of this chapter.

57. Section 886.4370 is revised to read as follows:

§ 886.4370 Keratome.

(a) *Identification.* A keratome is an AC-powered or battery-powered device intended to shave tissue from sections of the cornea for a lamellar (partial thickness) transplant.

(b) *Classification.* Class I.

58. Section 886.4855 is revised to read as follows:

§ 886.4855 Ophthalmic instrument table.

(a) *Identification.* An ophthalmic instrument table is an AC-powered or manual device on which ophthalmic instruments are intended to be placed.

(b) *Classification.* Class I. The manual device is exempt from the premarket notification procedures in part 807, subpart E of this chapter and it is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

59. New § 886.5820 is added to subpart F to read as follows:

§ 886.5820 Closed-circuit television reading system.

(a) *Identification.* A closed-circuit television reading system is a device that consists of a lens, video camera, and video monitor that is intended for use by a patient who has subnormal vision to magnify reading material.

(b) *Classification.* Class I.

60. Section 886.5900 is revised to read as follows:

§ 886.5900 Electronic vision aid.

(a) *Identification.* An electronic vision aid is an AC-powered or battery-powered device that consists of an electronic sensor/transducer intended for use by a patient who has impaired vision or blindness to translate visual images of objects into tactile or auditory signals.

(b) *Classification.* Class I.

61. Section 886.5915 is revised to read as follows:

§ 886.5915 Optical vision aid.

(a) *Identification.* An optical vision aid is a device that consists of a magnifying lens with an accompanying AC-powered or battery-powered light source intended for use by a patient who has impaired vision to increase the apparent size of object detail.

(b) *Classification.* Class I. The battery-powered device is exempt from the premarket notification procedures in part 807, subpart E of this chapter and it is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

PART 886—OPTHOPEDIC DEVICES

62. The authority citation for 21 CFR part 888 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

63. New § 888.1500 is added to subpart B to read as follows:

§ 888.1500 Goniometer.

(a) *Identification.* A goniometer is an AC-powered device intended to evaluate joint function by measuring and recording ranges of motion, acceleration, or forces exerted by a joint.

(b) *Classification.* Class I.

64. New § 888.5960 is added to subpart E to read as follows:

§ 888.5960 Cast removal instrument.

(a) *Identification.* A cast removal instrument is an AC-powered, hand-held device intended to remove a cast from a patient. This generic type of device includes the electric cast cutter and cast vacuum.

(b) *Classification.* Class I.

PART 892 —RADIOLOGY DEVICES

65. The authority citation for 21 CFR part 892 continues to read as follows:

Authority: Sections 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

66. New § 892.1100 is added to subpart B to read as follows:

§ 892.1100 Scintillation (gamma) camera.

(a) *Identification.* A scintillation (gamma) camera is a device intended to image the distribution of radionuclides in the body by means of a photon radiation detector. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

(b) *Classification.* Class I.

67. New § 892.1110 is added to subpart B to read as follows:

§ 892.1130 Positron camera.

(a) *Identification.* A positron camera is a device intended to image the distribution of positron-emitting radionuclides in the body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

(b) *Classification.* Class I.

68. New § 892.1130 is added to subpart B to read as follows:

§ 892.1150 Nuclear whole body counter.

(a) *Identification.* A nuclear whole body counter is a device intended to measure the amount of radionuclides in the entire body. This generic type of device may include signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class I.

69. New § 892.1300 is added to subpart B to read as follows:

§ 892.1300 Nuclear rectilinear scanner.

(a) *Identification.* A nuclear rectilinear scanner is a device intended to image the distribution of radionuclides in the body by means of a detector (or detectors) whose position moves in two directions with respect to the patient. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

(b) *Classification.* Class I.

70. New § 892.1320 is added to subpart B to read as follows:

§ 892.1320 Nuclear uptake probe.

(a) *Identification.* A nuclear uptake probe is a device intended to measure the amount of radionuclide taken up by a particular organ or body region. This generic type of device may include a single or multiple detector probe, signal analysis and display equipment, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class I.

71. New § 892.1330 is added to subpart B to read as follows:

§ 892.1330 Nuclear whole body scanner.

(a) *Identification.* A nuclear whole body scanner is a device intended to measure and image the distribution of radionuclides in the body by means of a wide-aperture detector whose position moves in one direction with respect to the patient. This generic type of device may include signal analysis and display equipment, patient and equipment supports, radionuclide anatomical markers, component parts, and accessories.

(b) *Classification.* Class I.

72. New § 892.1350 is added to subpart B to read as follows:

§ 892.1350 Nuclear scanning bed.

(a) *Identification.* A nuclear scanning bed is an adjustable bed intended to support a patient during a nuclear medicine procedure.

(b) *Classification.* Class I.

73. New § 892.1410 is added to subpart B to read as follows:

§ 892.1410 Nuclear electrocardiograph synchronizer.

(a) *Identification.* A nuclear electrocardiograph synchronizer is a device intended for use in nuclear radiology to relate the time of image formation to the cardiac cycle during the production of dynamic cardiac images.

(b) *Classification.* Class I.

74. New § 892.1640 is added to subpart B to read as follows:

§ 892.1640 Radiographic film marking system.

(a) *Identification.* A radiographic film marking system is a device intended for medical purposes to add identification and other information onto radiographic film by means of exposure to visible light.

(b) *Classification.* Class I.

75. New § 892.1800 is added to subpart B to read as follows:

§ 892.1800 Radiographic film illuminator.

(a) *Identification.* A radiographic film illuminator is a device containing a visible light source covered with a translucent front that is intended to be used to view medical radiographs.

(b) *Classification.* Class I.

76. New § 892.1900 is added to subpart B to read as follows:

§ 892.1900 Automatic radiographic film processor.

(a) *Identification.* An automatic radiographic film processor is a device intended to be used to develop, fix, wash, and dry automatically and continuously film exposed for medical purposes.

(b) *Classification.* Class II.

77. New § 892.1970 is added to subpart B to read as follows:

§ 892.1970 Radiographic ECG/respirator synchronizer.

(a) *Identification.* A radiographic ECG/respirator synchronizer is a device intended to be used to coordinate an X-ray film exposure with the signal from an electrocardiograph (ECG) or respirator at a predetermined phase of the cardiac or respiratory cycle.

(b) *Classification.* Class I.

Dated: October 12, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

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November 20, 1990

Part V

Department of Commerce

Foreign-Trade Zones Board

15 CFR Part 400

Foreign-Trade Zones in the United States; Proposed Rule

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

15 CFR Part 400

[Docket No. 21222-0262]

RIN 0625-AA04

Foreign-Trade Zones in the United States

AGENCY: Foreign-Trade Zones Board, International Trade Administration, Commerce.

ACTION: Notice of proposed rulemaking; further amendments.

SUMMARY: The Foreign-Trade Zones Board (the Board) invites public comment on amending the notice of proposed rulemaking published in the Federal Register on January 26, 1990 (55 FR 2760–2770). It is proposed that 15 CFR part 400 be further amended by revising certain sections of the January 26 proposed rule and by adding certain new provisions, including a new section providing for the collection of user fees to cover the costs of processing zone applications. The Board is asking for additional public comments on these proposed amendments to the proposed rule because the changes cover the sections that received most of the comments or that are of primary interest to the public.

DATES: Comments must be received on or before January 9, 1991.

ADDRESSES: Comments (original and 6 copies) are to be addressed to John J. Da Ponte, Jr., Executive Secretary, Foreign-Trade Zones Board, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., room 4213, Washington, DC 20230. (202) 377–2862.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Chief Counsel for Import Administration, room 3622, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. (202) 377–8916.

SUPPLEMENTARY INFORMATION:

Background

The following discussion includes a brief summary of the comments received pursuant to the January 26, 1990, notice of proposed rulemaking and an explanatory note regarding the sections proposed to be added or further revised:

1. *Section 400.1(c).* Several comments were received. Commenters objected to the requirement that domestic goods would have to be placed in "zone restricted" status and be in a zone for *"bona fide"* Customs reasons in order to obtain the statutory exemption from state and local *ad valorem* taxes.

Revised § 400.1(c). It is proposed that reference to the foregoing requirements be eliminated. In the case of domestic merchandise, the statute authorizing the exemption (Pub. L. 98–573, 10/30/84) limits the *ad valorem* tax exemption to such items placed in zones for export. The requirement that "zone restricted" status be elected in such cases would have facilitated enforcement, but it is not necessary. The legislative history makes it clear that the use of zones must be for *bona fide* Customs reasons both with regard to foreign or domestic merchandise, so it is not necessary to restate this requirement in the regulations.

Also, it is proposed that the first two sentences of this paragraph be rewritten to further clarify the interrelationship of zone sites and Customs territory.

2. *Section 400.21(b).* Numerous comments were received in opposition to the proposed restriction that would limit subzones to 35 statute miles from the outer limits of a Customs port of entry or one hour's driving time from the nearest Customs office. The opposition was strongest from parties in states with many communities long distances from ports of entry.

Revised § 400.21(b). It is proposed that the subzone locational restriction be eliminated in terms of geographic distances from ports of entry. The revised provision takes into account the fact that subzones are single-user facilities for which Customs supervisory procedures can be tailored to provide reasonable Customs access (thus, "adjacency") irrespective of distance from ports of entry.

3. [New] *Section 400.26(d).* It is proposed that a new paragraph (d) be added to § 400.26 to extend its coverage of applications to formal requests made to the Board for revisions to grants of authority. Because many grants now contain special restrictions, the Board has been receiving more requests for revisions based on changed circumstances.

4. *Section 400.27.* A few comments were received calling for time tables for processing cases. Many additional comments generally expressed concern about the length of the processing time for applications.

Revised § 400.27. It is proposed that this section be revised extensively to provide a time schedule based on the time allocated to various stages of the application process. The objective is to complete all cases within one year of formal filing, and to reach decisions on those cases not involving manufacturing within 10 months. The guidelines are not based on statutory requirements and therefore are directive, not mandatory, insofar as they apply to the Board.

The revision also provides more detail as to procedures at the various stages of processing. The period for public comment will normally close followed by a 15-day period limited to rebuttal comments. Unfavorable examiners reports would be considered "preliminary" reports, and applicants would be given an opportunity to submit further evidence similar to practice under the current regulations. If new material is submitted, the record would be reopened for further public comment.

5. [New] *Section 400.30.* It is proposed to add a new section which adopts a uniform system of fees to cover the Department of Commerce's Foreign-Trade Zones staff costs for processing applications pursuant to 31 U.S.C. 9701, which provides that federal agencies should recover, to the extent possible, direct and indirect costs for activities which convey special benefits to recipients above and beyond those accruing to the public at large. Concurrence for such user fees was received by the Department of Commerce from OMB in connection with the FY 1991 budget package of the Department of Commerce.

The fees are based on the average staff cost attributable to the types of applications listed. Applications account for some 80 percent of FTZ staff time. It is anticipated that applicants will pass on the costs of these fees to the parties involved in using zones and subzones. The question of collecting user fees to cover expenses incurred in regard to ongoing zone activity remains under consideration.

Checks for payment of the fees must be included with applications. Refunds will be made on those applications which do not pass the prefiling review and are not formally filed. The outcome of the case does not affect the requirement for payment.

6. *Section 400.31.* Numerous comments were received expressing concern that this section creates stricter standards for approval of manufacturing activity than are statutorily required. Most commenters supported the delineation of criteria, but many considered the provision on policy too vague. The provision's threshold test was opposed by many, who contended that all manufacturing proposals should have the benefit of an economic evaluation, even where there are policy issues. Some commenters argued that the provisions referring to inverted tariff situations do not allow for consideration of the positive net economic effect that

stems from production moves from overseas to the United States and import shifts from finished products to components that are encouraged under zone procedures.

Concern was also expressed that provisions relating to transplant operations and inverted tariffs might be inconsistent with U.S. GATT obligations and with U.S. policy relating to foreign direct investment.

The provision on burden of proof was opposed by many as creating too great a burden by requiring applicants to establish both the positive side of their cases and the absence of negative factors.

Concern was expressed about the effect of monitoring existing operations without cause.

Revised § 400.31. It is proposed that the threshold provision (§ 400.31(b)) be revised to clarify the provisions on policy considerations, and to expand the scope of paragraph (iii) to include items subject to quantitative controls, and clarify the latter subsection to indicate that import displacement of components for finished products would be considered in evaluating whether the use of zone procedures will create imports, the purpose of paragraph (iii) as a threshold provision being to cover only situations where zone procedures are or would likely be the direct cause of new imports that would not otherwise occur.

Under § 400.31(c) on methodology and evidence, it is proposed that paragraph (c) be revised to delete the separate headings (c)(2) "inverted tariffs" and (c)(3) "transplant manufacturing" because the paragraphs are subject to a construction that conflicts with the section's substantive coverage of inverted tariff situations and activity involving foreign investment. The clarification of the substantive provisions makes the two paragraphs unnecessary.

The provision on burden of proof (§ 400.31(c)(5)) is proposed to be revised to acknowledge that an applicant's evidentiary burden of proof should be to prove its side of the case, *i.e.*, the public benefits that would result from approval. A distinction is made that reflects the current practice that subzone applicants must present evidence of a significant public benefit. All applicants are expected to submit evidence in response to evidence of possible adverse effects.

The provision on monitoring and post-approval reviews is proposed to be revised to eliminate the indication that the review would occur as a public interest determination under § 400.31. Reviews of ongoing operations are conducted under the Board's broad "public interest" mandate, though the factors enumerated in § 400.31 would still apply.

7. *Section 400.33.* Several commenters expressed opposition because the section precludes Board consideration of special circumstances where items subject to AD/CVD duties could otherwise escape such duties because they were transformed in third countries. There were also expressions of support for the provision, and a question was raised as to whether the provision covers items subject to affirmative preliminary determinations.

Revised § 400.33. Paragraphs (b)(2) and (b)(3) have been consolidated into a revised paragraph (b)(2) to clarify the fact that the new requirement applies to items that would be subject both to AD/CVD orders and affirmative preliminary determinations if entered for consumption.

8. *Section 400.51.* There were a few comments on this section on the need for more public hearings, particularly when U.S. industries might be affected by zone proposals.

Revised § 400.51. A new paragraph (b) has been proposed to provide for requests from interested parties for hearings.

Comments

The period for the submission of comments will close January 9, 1991. All comments received during this period will be considered by the Board together with the comments submitted in response to the January 26, 1990, notice in developing the final regulations. Submissions (original and six copies) shall be in writing and shall not contain information of a proprietary nature, as they will be made available for public inspection and copying, with the exception of those submitted by other Federal agencies.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, room 4104, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Written public comments on file at the facility may be inspected and copied in accordance with 15 CFR part 4.

Information about the inspection and copying of records at the facility may be obtained from Patricia L. Sears, International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that an initial regulatory flexibility analysis is not required and has not been prepared because these regulations will not have a significant economic impact on a substantial number of small entities pursuant to sections 603 and 604 of title 5, United States Code, added by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). There are some 160 zone grantees and some 60 firms operating all or parts of zone facilities for grantees. Of some 2,100 firms using zones, about 600 use them on a full time basis. It is estimated that fewer than 100 small entities are included among the total firms using zones. The overall impact of the proposed rules should, in any case, be favorable because they will reduce the present regulatory burden on these parties by clarifying and simplifying procedures.

Executive Order 12291

This proposed rulemaking is not a major rule as defined in section 1(b) of E.O. 12291, because it involves changes to existing regulations that are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or, (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Paperwork Reduction Act

This rule contains information collection activities subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). It will impose no additional reporting or recordkeeping burden on the public. Existing requirements for zone applicants, grantees, operators, and users are simplified and there is an overall reduction of the burden on these parties, which are the ones mainly affected (OMB Control Nos. 0625–0139 and 0625–0109).

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List of Subjects in 15 CFR Part 400

Administrative practice and procedure, Confidential business information, Customs duties and inspection, Foreign-trade zones, Harbors, Imports, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, it is proposed that the notice of proposed rulemaking revising 15 CFR part 400 that appeared on January 26, 1990 (55 FR 2760–2770) be amended as follows:

PART 400—REGULATIONS OF THE FOREIGN-TRADE ZONES BOARD

1. The authority citation continues to read as follows:

Authority: Foreign-Trade Zones Act of June 18, 1934, (Pub. L. 397, 73rd Congress; 48 Stat. 998–1003; 19 U.S.C. 81a–81u), as amended by Pub. L. 566, 81st Congress, approved June 17, 1950, (64 Stat. 246); Pub. L. 791, 85th Congress, approved August 28, 1958 (72 Stat. 945); Pub. L. 98–573, 98th Cong., Sec. 231, approved October 30, 1984 (98 Stat. 2991); and, Pub. L. 99–386, 99th Congress, approved August 22, 1986.

2. Section 400.1, as proposed January 26, 1990 (55 FR 2763) is further amended by revising paragraph (c) to read as follows:

§ 400.1 Scope.

* * * * *

(c) To the extent "activated" under Customs procedures in 19 CFR part 146, and only for the limited purposes specified in the Act (19 U.S.C. 81(c)), zones are treated for purposes of the tariff laws and Customs entry procedures as being outside the Customs territory of the United States. Articles admitted into zones for purposes not specified in the Act, including articles consumed within zones, shall be subject to the tariff laws and regular entry procedures, including the payment of applicable duties, taxes, and fees (see, *Nissan Motor Mfg. Corp. v. United States*, 884 F. 2d. 1375 (CAFC 1989). Under zone procedures, foreign and domestic merchandise may be admitted into zones for operations such as storage, exhibition, assembly, manufacture and processing, without being subject to formal Customs entry procedures and payment of duties, unless and until the foreign merchandise enters Customs territory for domestic consumption. At that time, the importer ordinarily has a choice of paying duties either at the rate applicable to the foreign material in its condition as admitted into a zone, or if used in manufacturing or processing, to the emerging product. Quota restrictions do not normally apply to foreign goods in zones, but the Board can limit or deny zone use in specific cases on public interest grounds. Merchandise moved into zones for export (zone-restricted status) may be considered exported for purposes such as federal excise tax rebates and Customs drawback. Foreign merchandise (tangible personal property) admitted to a zone and domestic merchandise held in a zone for exportation are exempt from state and local *ad valorem* taxes (19 U.S.C. 810(e).

3. Section 400.21, as proposed January 26, 1990 (55 FR 2764), is further amended by revising paragraphs (b) to read as follows:

§ 400.21 Number and location of zones and subzones.

* * * * *

(b) *Location of zones and subzones—port of entry adjacency requirements.* (1) The Act provides that the Board may approve "zones in or adjacent to ports of entry" (19 U.S.C. 81b).

(2) The "adjacency" requirement is satisfied if:

(i) A general-purpose zone is located within 35 statute miles from the outer limits of a port of entry.

(ii) A subzone meets the following requirements relating to Customs supervision:

(A) Proper Customs oversight can be accomplished with physical and electronic means; and,

(B) All electronically produced records are maintained in a machine-sensible format for the duration of the record period; and,

(C) The grantee/operator agrees to present merchandise for examination at a Customs site selected by Customs when requested, and further agrees to present all necessary documents directly to the Customs oversight office.

4. Section 400.26, as proposed January 26, 1990 (55 FR 2766), is further amended by adding a new paragraph (d) to read as follows:

§ 400.26 Application for expansion or other modification to zone project.

* * * * *

(d) *Applications for other revisions to grants of authority.* Applications or requests for revisions to grants of authority, such as restriction modifications, shall be submitted in letter form with information and documentation necessary for analysis, as determined by the Executive Secretary. If the change involves removal or significant modification of a restriction included by the Board in a grant of authority, the review procedures of § 400.32 shall apply. If not, the procedure set forth in § 400.27(f) shall apply.

5. Section 400.27, as proposed January 26, 1990 (55 FR 2766), is revised to read as follows:

§ 400.27 Procedure for reviewing and processing applications.

(a) *In general.* This section outlines the procedure followed in processing applications submitted under §§ 400.24–400.26. In addition, it sets forth the time schedules which will normally be applied in processing applications. The schedules will provide guidance to applicants with respect to the time frames for each of the procedural steps involved in the Board's review. Under these schedules, applications involving manufacturing would be processed within 1 year, and those not involving manufacturing, within 10 months. While the schedules will normally be adhered to, the Board may determine that special circumstances may warrant additional time, such as when the public comment period must be reopened pursuant to paragraphs (d)(2)(v)(B) and (d)(3)(vi)(B) of this section.

(b) *Prefiling review.* Applications shall be accompanied with a check in accordance with § 400.30, and will be dated upon receipt at the headquarters of the Board. The Executive Secretary will determine whether the application satisfies the requirements of §§ 400.24, 400.25, or 400.26 and other applicable provisions of this part.

(1) If the application is deficient, the Executive Secretary will notify the applicant within 20 days of receipt of the application, specifying the deficiencies. The applicant shall correct the deficiencies and submit the corrected application within 30 days of notification. Otherwise the application (original) will be returned.

(2) If the application is sufficient, the Executive Secretary will within 45 days of receipt of the application:

(i) Formally file the application, thereby initiating the proceeding or review;

(ii) Assign a case docket number in cases requiring a Board order; and

(iii) Notify the applicant.

(c) *Procedure—Executive Secretary responsibilities.* After initiating a proceeding based on an application under §§ 400.24, 400.25, or 400.26(b), the Executive Secretary within 15 days will:

(1) Designate an examiner to conduct a review and prepare a report with recommendations for the Board;

(2) Publish in the **Federal Register** a notice of the formal filing of the application and initiation of the review which includes the name of the applicant, a description of the zone project, information as to any hearing scheduled at the outset, and an invitation for public comment, including a time period during which the public may submit evidence, factual information, and written arguments. Normally, the comment period will close 60 days after the date the notice appears, except that if a hearing is held (*see*, § 400.51) the period shall not close prior to 15 days after the date of the hearing. The closing date for general comment will ordinarily be followed by an additional 15-day period for rebuttal comments;

(3) Send copies of the filing and initiation notice and the application to:

(i) The Commissioner of Customs and the Regional Commissioner, or a designee; and

(ii) The Resident Member, Board of Engineers for Rivers and Harbors, Department of the Army, and the District Engineer;

(4) Arrange for hearings, as appropriate;

(5) Transmit the reports and recommendations of the examiner and of the officials identified in paragraph (c)(3) of this section to the Board for appropriate action; and

(6) Notify the applicant in writing and publish notice in the **Federal Register** of the Board's determination.

(d) *Case reviews—procedure and time schedule*—(1) *Customs and army engineer review.* The Regional Commissioner (Customs), or a designee, and the District Engineer (Army), in accordance with the regulations and directives of their respective agencies, will submit their technical reports to the Executive Secretary within 45 days of the conclusion of the public comment period described in paragraph (c)(2) of this section.

(2) *Examiners reviews—non-manufacturing.* Examiners assigned to cases not involving manufacturing activity shall conduct a review taking into account the factors enumerated in § 400.23 and other appropriate sections of this part, which shall include:

(i) Conducting or participating in necessary hearings scheduled by the Executive Secretary;

(ii) Reviewing case records, including public comments;

(iii) Requesting information and evidence from parties of record;

(iv) Developing information and evidence necessary for evaluation and analysis of the application in accordance with the criteria of the Act and regulations;

(v) Preparing a report with recommendations to the Board and submitting it to the Executive Secretary within 120 days of the close of the period for public comment (see, paragraph (c)(2) of this section).

(A) If the report is unfavorable to the applicant, it shall be considered a preliminary report and the applicant shall be notified within 5 days (in writing or by phone) and given 30 days from the date of notification in which to respond to the report and submit additional evidence.

(B) If the response contains new evidence on which there has not been an opportunity for public comment, the Executive Secretary will publish notice in the **Federal Register** within 10 days after completion of the review of the response. The new material will be made available for public inspection and the **Federal Register** notice will invite further public comment for 30 days, with an additional 15-day period for rebuttal comments.

(C) The Customs and District Engineer (Army) advisers shall be notified when necessary for their further comments, which shall be submitted within 45 days after their notification.

(D) The examiners report in situations under paragraph (d)(2)(v)(A) of this section shall be completed and submitted to the Executive Secretary within 30 days after receipt of additional evidence or notice from the applicant that there will be none; except that, if paragraph (d)(2)(v)(B) of this section applies, the report will be submitted within 30 days of the close of the period for public comment.

(3) *Examiners reviews—cases involving manufacturing.* Examiners shall conduct a review taking into account the factors enumerated in § 400.23, § 400.31, and other appropriate sections of this part, which shall include:

(i) Conducting or participating in hearings scheduled by the Executive Secretary;

(ii) Reviewing case records, including public comments;

(iii) Requesting information and evidence from parties of record;

(iv) Developing information and evidence necessary for analysis of the threshold factors and the economic factors enumerated in § 400.31;

(v) Conducting an analysis to include:

(A) An evaluation of policy considerations pursuant to §§ 400.31(b)(1)(i) and 400.31(b)(1)(ii);

(B) An evaluation of the economic factors enumerated in §§ 400.31(b)(1)(iii) and 400.31(b)(2), which shall include: An evaluation of the economic impact on domestic industry, which includes both producers of like products and producers of components/materials used in the manufacture and assembly of the products. The evaluation will take into account such factors as market conditions, price sensitivity, degree and nature of foreign competition, effect on exports and imports, and the net effect on U.S. employment;

(vi) Conducting appropriate industry surveys, using questionnaires when necessary; and

(vii) Preparing a report with recommendations to the Board and submitting it to the Executive Secretary within 150 days of the close of the period for public comment:

(A) If the report is unfavorable to the applicant, it shall be considered a preliminary report and the applicant shall be notified within 5 days (in writing or by phone) and given 45 days from the date of notification in which to respond to the report and submit additional evidence.

(B) If the response contains new evidence on which there has not been an opportunity for public comment, the Executive Secretary will publish notice in the **Federal Register** within 10 days after completion of the review of the response. The new material will be made available for public inspection and the **Federal Register** notice will invite further public comment for 30 days, with an additional 15-day period for rebuttal comments.

(e) *Procedure—Completion of review.* (1) After the examiners report with recommendations is completed and submitted to the Executive Secretary, within 15 days, the latter will circulate the report to Board members for their review and votes (by resolution).

(2) The Treasury and Army Board members will return their votes to the Executive Secretary within 30 days, unless a formal meeting is requested (*see*, § 400.11(d)).

(3) The Commerce Department will complete the decision process within 15 days of receiving the votes of both other Board members, and the Executive Secretary will publish the Board decision.

(f) *Procedure—Application for minor modification of zone project.* (1) The Executive Secretary will make a determination in cases under § 400.26(c) involving minor changes to zone projects that do not require a Board order, such as boundary modifications, including certain relocations, and will notify the applicant in writing of the decision within 30 days of the determination that the application or request can be processed under § 400.26(c).

(2) The concurrence of the District Director is required for approvals under paragraph (d)(1) of this section, and the District Director shall provide his

decision within 20 days after being notified of the request or application.

6. Subpart C, as proposed January 26, 1990 (55 FR 2764), is further amended by adding a new § 400.30 to read as follows:

Subpart C—Establishment and Modification of Zone Projects

§ 400.30 Application fees.

(a) *In general.* This section sets forth a uniform system of charges in the form of fees to cover the direct and indirect costs incurred by the Foreign-Trade Zones staff of the Department of Commerce for processing applications under this part. The legal authority for the fees is 31 U.S.C. 9701, which provides for the collection of user fees by agencies of the Federal Government.

(b) *Uniform system of user fee charges.* The following graduated fee schedule establishes fees for various types of applications and requests for authority based on their average processing time. Applications combining requests for more than one type of approval are subject to the fee for each category.

(1) New general-purpose zones:	
(i) First zone in POE area (§ 400.24; § 400.21(a)(1)(i))	$2,850
(ii) Additional zones (§ 400.24; § 400.21(a)(2))	$3,240
(2) Special-purpose subzones (§ 400.25)	$6,510
(3) Expansions (§ 400.28(b))	$1,630
(4) Manufacturing reviews:	
(i) Formal (§ 400.32)	$4,670
(ii) Administrative (§ 400.32(b)(1))	$1,230
(5) Boundary modifications (§ 400.28(c))	$330

(c) Applications submitted to the Board shall include a check drawn on a national or state bank or trust company of the United States or Puerto Rico in the amount called for in paragraph (b) of this section. Uncertified checks must be acceptable for deposit by a Federal Reserve bank or branch.

(d) Applicants shall make their checks payable to the U.S. Department of Commerce ITA. The checks will be deposited by ITA into the Treasury receipts account. If applications are found deficient under § 400.27(b)(1), or withdrawn by applicants prior to formal filing, refunds will be made.

7. Section 400.31, as proposed January 26, 1990 (55 FR 2767), is revised to read as follows:

§ 400.31 Manufacturing operations; criteria.

(a) *In general.* Pursuant to section 15(c) of the Act (19 U.S.C. 81o(c)), the Board has authority to restrict or prohibit zone activity "that in its judgment is detrimental to the public interest." In evaluating zone and subzone manufacturing activity, either as proposed in an application or as part of a review of an ongoing operation, the Board shall determine whether the activity in question is in the public interest by reviewing the evaluation criteria contained in paragraph (b) of this section. Such a review involves consideration of whether the activity is consistent with trade policy and programs, and whether its net economic effect is positive.

(b) *Evaluation criteria*—(1) *Threshold factors.* It is the policy of the Board to authorize zone activity only when it is consistent with public policy and does not encourage net imports. Thus, before authorizing proposed manufacturing activity or in its review of ongoing manufacturing, the Board shall determine that:

(i) The activity is not inconsistent with U.S. trade and tariff law, or policy which has been formally adopted by the Executive branch;

(ii) The use of zone procedures would not likely diminish the effectiveness of a U.S. international trade policy initiative or program; and

(iii) If the activity involves items subject to quantitative import controls or inverted tariffs, that the use of zone procedures would not or has not directly resulted in imports that, but for the use of zone procedures, would not likely otherwise have occurred, taking into account imports both as individual items and as components of imported products.

(2) *Economic factors.* After its review of threshold factors, if there is a basis for further consideration, the Board shall consider the following factors in determining the net economic effect of the activity or proposed activity:

(i) Overall employment impact;

(ii) Exports and reexports;

(iii) Retention or creation of manufacturing activity;

(iv) Extent of value-added activity;

(v) Overall effect on import levels of relevant products;

(vi) Extent and nature of foreign competition in relevant products;

(vii) Impact on related domestic industry, taking into account market conditions; and

(viii) Other relevant information relating to net economic impact and public interest considerations.

(c) *Methodology and evidence*—(1) The first phase (§ 400.31(b)(1)) involves consideration of threshold factors. If an examiner makes a negative finding on any of the factors in § 400.31(b)(1) in the course of a review, the applicant shall be informed and have an opportunity to amend its application within 30 days. If the Board determines any of the § 400.31(b)(1) factors in the negative, it shall deny or restrict authority for the proposed or ongoing activity.

(2) *Contributory effect.* In assessing the significance of zone operations as part of the consideration of economic factors, the Board may consider the contributory effect zone savings have as an incremental part of cost effectiveness programs adopted by companies to improve their international competitiveness.

(3) *Burden of proof.* Applicants for subzones shall have the burden of proof of establishing that the activity does or would result in a significant public benefit. Applicants for approval of manufacturing in general-purpose zones shall submit evidence regarding the positive economic effects that would result from activity within the zone. Both types of applicants are expected to submit evidence in response to evidence of adverse economic effects during the public comment period.

(d) *Monitoring and post-approval reviews*—(1) Approved manufacturing activity remains subject to review under this section at any time.

(2) Reviews may be initiated by the Board, or they may be undertaken in response to requests from interested parties showing good cause.

(3) Upon review, if the Board finds that zone activity is no longer in the public interest, it may suspend subzone status or restrict the activity in question.

8. Section 400.33, as proposed January 26, 1990 (55 FR 2768), is further amended by revising paragraph (b) to read as follows:

§ 400.33 Restrictions on manufacturing activity.

(a) * * *

(b) *Restriction on items subject to antidumping and countervailing duty actions*—(1) *Board policy.* Zone procedures shall not be used to circumvent antidumping (AD) and countervailing duty (CVD) actions under 19 CFR parts 353 and 355.

(2) *Admission of items subject to AD/CVD actions.* Items subject to AD/CVD orders or items which would be subject to suspension of liquidation under AD/CVD procedures, if they entered U.S. Customs territory, shall be placed in privileged foreign status (19 CFR 146.41) upon admission to a zone or subzone. Upon entry for consumption, such items shall be subject to duties under AD/CVD orders or to suspension of liquidation, as appropriate, under 19 CFR parts 353 and 355.

9. Section 400.51, as proposed January 26, 1990 (55 FR 2770), is revised to read as follows:

§ 400.51 Hearings.

(a) *In general.* The Board, the Secretary, or the Executive Secretary, as appropriate, may schedule and/or hold hearings during any proceedings or reviews conducted under this part whenever necessary or appropriate.

(b) *Requests for hearings*—(1) An interested party may request a hearing during a proceeding or review.

(2) The request must be made within 30 days of the beginning of the period for public comment (*see* § 400.27) and must be accompanied by information establishing the need for the hearing and the basis for the requesting party's interest in the matter.

(3) A determination as to the need for the hearing will be made by the Assistant Secretary within 15 days after the receipt of such a request.

(c) *Procedure for public hearings.* The Board will publish notice in the **Federal Register** of the date, time and location of a hearing. All participants shall have the opportunity to make a presentation. Applicants and their witnesses shall ordinarily appear first. The presiding officer may adopt time limits for individual presentations.

Dated: October 9, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 90-27210 Filed 11-19-90; 8:45 am]

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Tuesday
November 20, 1990

Part VI

Department of Health and Human Services

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

The following request has been submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Expedited review by OMB has been requested as described below.

Alcohol, Drug Abuse, and Mental Health Services (ADMS) Block Grant Reporting Requirements—0930-0080—Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981, established the ADMS Block Grant funding mechanism and requires that the States make application for, and submit reports on the actual uses of, block grant funds. Previously no format was prescribed by the Department of Health and Human Services for these reporting requirements. However, the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988 (Pub. L. 100-690), as amended by the Drug Abuse Treatment Technical Corrections Act of 1989 (Pub. L. 101-93), extended and added new data collection requirements to be included in these reports. To respond to the higher degree of Federal and State accountability for the monies provided under the ADMS Block Grant being demanded by the Congress, additional information is needed from the application and annual report.

The ADMS Block Grant application is used by the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) to provide a standardized approach for States to use in applying for their Block Grant monies. For FY 1991 States have the option to submit an application in the format similar to previous years, providing baseline information as required within the legislation. Beginning with the FY 1992 application, States will be required to utilize the more extensive format. The more detailed information will be used to inform the Congress, the Department, the Office of National Drug Control Policy, the public health community, and the general public of the impact of the block grant on the Nation's treatment and prevention delivery system, in fulfillment of the legislative purposes for which the funds are provided.

In addition, these reporting mechanisms will be used by ADAMHA to assess the need for technical assistance to the States in the development of a comprehensive, national services delivery system. Without the requested information, the Department will not be able to respond to requests for information on how the States intend to expend these monies, how the funds were expended, types of services provided, demographics of those served, and assessments of the adequacy and effectiveness of these programs and services in meeting the needs of national and State-level priority populations.

Respondents: State and local governments; *Number of Respondents:* 57; *Average Burden per Response:* Application—400 hours per response (comprised in FY 1991 or 200 hours for minimum information required and an additional 200 hours for full complement of tables; effective FY 1992, all information is mandatory); *Annual Report*—350 hours per response. *Estimated total annual burden:* 39,900 hours.

Additional Information: ADAMHA has responded to critical information requirements levied by Congress, the Department, the General Accounting Office, and the Office of National Drug Control Policy in developing a compatible format for State use in applying for Federal ADMS Block Grant monies. This information will be used to report on State activities to enhance the management and accountability of these important funds in the delivery of alcohol, drug abuse, and mental health services. Congress has recently appropriated significant new monies for these purposes, with particular emphasis on drug abuse treatment services, especially directed to pregnant women, intravenous drug abusers, and other populations at high risk for drug use (e.g., cocaine and crack).

To ensure these funds are directed and expended throughout the Nation and for these nationally targeted subgroups, ADAMHA is seeking new information sources to meet these reporting requirements. The guidelines and formats have been developed in conjunction with the States, which are awaiting this guidance in order to apply for the funds which must be obligated within the year they are made available. It is urgent that approval for these reporting requirements be granted on an expedited basis to provide adequate time for the submission, processing, and granting of awards for these funds. Further, information from these documents will be used to support the reauthorization of the Block Grant for congressional hearings due to be held in March 1991.

OMB approval has been requested by not later than Thursday, November 29. In keeping with the requirements for expedited review, we are publishing the complete set of application and annual report instructions.

OMB Desk Officer: Allison Herron.

Because of the time frame in which OMB has been asked to act on this submission, any comments and recommendations for the proposed information collection should be provided directly to the OMB Desk Officer designated above by telephone at (202) 395-7316 or by express mail at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: November 15, 1990.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

BILLING CODE 4160-20-M

Dear State ADMS Block Grant Liaison:

My purpose in writing is to invite you to apply for your State's fiscal year (FY) 1991 allotment under the Alcohol, Drug Abuse, and Mental Health Services (ADMS) Block Grant program, as amended by P.L. 101-374. The specific information requested and procedures to be followed are specified in this letter and its attachments.

The application invitation for the FY 1991 ADMS Block Grant differs significantly from past requests. This year you are permitted the option of submitting the application using a new, alternative format (Attachment A) or essentially the same suggested format as for the FY 1990 ADMS Block Grant (Attachment B). Enclosed are a set of forms to be used to provide the requested information (Attachment C). An updated copy of the statutory provisions governing the ADMS Block Grant, including the recent amendments, are also enclosed (Attachments D and E).

If you choose to apply or have already applied following the old format (Attachment B), that submission will be the basis for your award; nevertheless, you should complete the forms accompanying the new format to provide information necessary to support the reauthorization of the ADMS Block Grant in the spring of 1991. These include, as described above, the face page, the table of contents/checklist, the standardized format of assurances and agreements, and data on expenditures, needs, and services. This material should be provided no later than January 18, 1990.

If you choose to use the new format, I am requesting that you submit the application no later than February 1, 1990. This time frame will allow us sufficient time to conduct the necessary reviews and develop the analyses to aid in the justification of the program as the reauthorization process goes forward next year. Awards will be made using the same review procedures and criteria as in previous years. This review will enable ADAMHA to begin its program of increased State accountability and Federal technical assistance.

The changes reflected in the new application format were made in order to adequately assess and improve the prevention and treatment services provided by ADMS Block Grant funds in response to changes in the authorizing legislation, notably sections 1916(c)(20) and 1916(c)(21) of the Public Health Service (PHS) Act, and to generate information requested by the Congress in Section 509D of the PHS Act, and by the Office of National Drug Control Policy in the National Drug Control Strategy. This first year that the additional information is requested will also serve

Page 2

as a transition period, enabling us to respond to Congressional inquiries at the ADMS Block Grant reauthorization hearings expected to take place in early 1991.

The new format provides greater guidance for the completion of the application, standardizes the order for reporting the information required, provides forms for reporting data on expenditures, needs, and services, and contains instructions for completing and submitting a State Drug Abuse Treatment Plan. Analyses of the information submitted in the combined application and plan, when coupled with the data to be submitted in the statutorily required annual report and data available through such surveys as the National Drug and Alcohol Treatment Unit Survey and the Client Minimum Data Set, will enhance our ability to conduct forward planning for improved treatment services.

The new application format for the substance abuse portion now incorporates a number of the items that were to have been part of the Substance Abuse Services Plan, which the Office for Treatment Improvement and the State alcohol and drug agencies have been developing. This plan is now being requested as a part of the application because it was suggested by a number of States, and it will avoid some duplication of data requests.

The new application format requests that you provide the same information that was provided in earlier years on the intended use of funds for the community mental health services portion of the ADMS Block Grant. As in previous years, States will be expected to submit separately to the National Institute of Mental Health their State Comprehensive Mental Health Services Plan, required under Section 1925 of the Public Health Services Act.

As a result of the review of the draft Substance Abuse Services Plan and discussions with the National Association of State Alcohol and Drug Abuse Directors and the National Association of State Mental Health Program Directors, we recognize that not all the information requested is readily available in each State.

The review of the new application submissions will include an assessment of the need for technical assistance as we work together to develop a national service delivery system that stresses locally determined priorities and services and the need for more centralized data collection and analysis. Whenever your State does not have the information necessary to respond to a specific item within the time frames given for submitting the application, we ask that you describe the process that you do use in carrying out the activity or the alternative method of data collection used.

Page 3

There is now a table of contents/checklist that, when completed, will serve to indicate where a given form or narrative response is to be found in the completed application. The table of contents/checklist will be used by the reviewers to check the completeness of the application. Applications should be submitted in the order indicated in the instructions and table of contents to avoid errors in the review process. Completed applications must contain a description of the intended use of funds as required by the statute. The new format also includes a face page, where you are asked to identify contact persons for the mental health and substance abuse functional areas as well as for overall block grant administration. The new instructions also contain a standardized format of assurances and agreements required by the authorizing legislation to be signed by the Governor, as the Chief Executive Officer of the State or Territory, or by an appropriately authorized designee (Attachment B, Form-01).

Please submit the application directly to:

Mr. Thomas M. Reynolds
Division of Grants and Contract Management
ADAMHA
Parklawn Building, Room 13C-20
5600 Fishers Lane
Rockville, Maryland 20857

If you have any questions regarding this request, you may contact Gary Palsgrove or Herman I. Diesenhaus, at 301/443-3820, on any matters of a programmatic nature, and Thomas M. Reynolds, at 301/443-3334, on any matters of a fiscal or grants management nature. States anticipating a problem in completing the application or submitting it by the suggested due dates should immediately contact Dr. Diesenhaus. States that have already submitted or are developing an application using last year's suggested format should also contact Dr. Diesenhaus to discuss how they may include additional information.

Sincerely yours,

Frederick K. Goodwin, M.D.
Administrator

Enclosures

cc: State Mental Health Contact
State Substance Abuse Contact

ATTACHMENT A

NEW FORMAT

Guidelines for Completing Applications for the Alcohol and Drug Abuse and Mental Health Services Block Grant Program

Fiscal Year 1991

NOTIFICATION TO RESPONDENT OF ESTIMATED BURDEN

Public respondent burden for this collection of information is estimated to average 400 hours per application, including time for reviewing instructions and completing the collection of information. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden to: Public Health Service Reports Clearance Officer, Attn: PRA, Hubert H. Humphrey Building, Room 721H, 200 Independence Avenue, S.W., Washington, D.C., 20201, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503.

Prepared by: State Plans and Financing Branch
Division for State Assistance
Office for Treatment Improvement
Alcohol, Drug Abuse, and Mental Health Administration

October, 1990

Guidelines for Completing Applications
for the
Alcohol and Drug Abuse and Mental Health Services
Block Grant Program - Fiscal Year 1991

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Instructions for the

ALCOHOL AND DRUG ABUSE AND MENTAL HEALTH SERVICES BLOCK GRANT APPLICATION FOR FY 1991

INTRODUCTION

As part of its mission to assist States[1] and communities to improve services provided with Alcohol and Drug Abuse and Mental Health Services (ADMS) Block Grant Program funds, the Office for Treatment Improvement (OTI) is promoting increased State accountability for the management of these funds. This revised format for applying for the ADMS Block Grant funds is one of the mechanisms by which this increased accountability and services improvement will be achieved. Another mechanism already under way is the enhanced program of technical assistance through conferences and workshops, development of training materials and knowledge transfer manuals, and on-site consultation.

The new format for the ADMS Block Grant Application for Federal Fiscal Year (FY) 1991 differs from past application requests in that it provides greater guidance for the completion of the application and standardizes the format for reporting the information required. The FY 1991 ADMS Block Grant application requests the same basic information as that provided by the States in earlier years and uses standard formats wherever possible to gather data now collected by the States in a nonstandardized manner because of the history of the program. The revised format recognizes these differences and allows for variations in reporting the requested data. The Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) and the States, working through the appropriate national associations, will consult on the standardized formats to be included in the FY 1992 Application following review of the information obtained through this initial effort.

The State is asked to provide detailed data on specific expenditures made from both the substance abuse and mental health portions of the ADMS Block Grant and State and local government funds to implement some of the requirements and certifications contained in the authorizing statute and related legislation in the manner that is required for providing the same information in the annual report. The State is not asked to describe its plan for carrying out all of the requirements to which it certifies (e.g., the requirement in Section 1916(c)(12) to protect the confidentiality of patient records). Compliance with these assurances and requirements will continue to be assessed through the on-site reviews. There is, however, an increase in the reporting requirements for the substance abuse portion of the block grant. There is no substantive change in the reporting requirements for the mental health portion.

[1] The term State will be used to refer to all the States and Territories that are eligible to receive ADMS Block Grant funds. Refer to the Glossary of Terms for the list of eligible States and Territories.

BACKGROUND/PURPOSE

As noted above, the FY 1991 ADMS Block Grant application requests that the States provide much of the same information as that provided in earlier years, using standard formats wherever possible. The application has been reformatted and reordered to provide for consistent presentation. These revisions will ensure more rapid comprehensive review, as well as improve the retrieval of information for forward planning, budgeting, reporting, monitoring, and technical assistance purposes. These changes were deemed necessary because of Congressional and Administration concerns regarding the quantity and quality of services being delivered with ADMS Block Grant funds.[2]

In this initial revised application, we are most concerned with obtaining improved information on how the State plans to expend funds for alcohol and drug abuse activities that meet the statutory requirements of the ADMS Block Grant Program and how it will conduct its oversight of these activities. Discussions have been initiated to ensure that the application requests only data that cannot be obtained through other existing data sources. The State Comprehensive Mental Health Services Plans, required under Sections 1925 and 1926 of the PHS Act, provide similar information regarding community mental health services funded through the block grant. These plans will continue to be submitted to the National Institute of Mental Health under guidelines, submission dates, and review processes determined by the Institute. The application changes for the mental health portion of the ADMS Block Grant primarily involve standardization of the format for describing the intended use of funds and the activities to be undertaken to meet statutory requirements (e.g., the children's services set-aside). Discussions have been initiated to determine what additional linkages are needed between the application and the mental health services plan and existing national data collection efforts. These issues will be addressed in the FY 1992 Application, after consultation with the State Mental Health Authorities by OTI and NIMH.

The increase in the reporting requirements for the substance abuse portion was deemed necessary in order to adequately assess and improve the services provided with ADMS Block Grant funds in response to changes in the authorizing statute, notably Sections 1916(c) (20) and (21), as well as to the spelling out by Congress of information desired about specific need indicators and treatment characteristics in Section 509D of the Public Health Service (PHS) Act.[3] Analysis of the information submitted in the application, when coupled with information from the legislatively required annual report and information available through other sources, will enhance the planning and resource allocation activities of ADAMHA and the States. The analyses will allow the Administration and Congress to assess the impact of ADMS Block Grant funds on

[2] The most recent expression of these concerns can be found in the Congressional Record for October 5, 1990 containing the House discussion of an amendment (Title XXII-Effective Rehabilitation) to H.R. 5269, Comprehensive Crime Control Act of 1990 (pp. H 9039-H 9042).

[3] The statutory authorities for the Alcohol and Drug Abuse and Mental Health Services Block Grant Program are contained in Part B of Title XIX, Sections 1911 through 1921, of the Public Health Service Act (42 U.S.C. 300x). The statutory authority for this application is Section 1916.

the delivery of substance abuse services in accord with the intent of the authorizing legislation as stated in Section 1915 (a)(1) of the PHS Act: *planning, establishing, maintaining, coordinating, and evaluating projects for the development of more effective prevention, treatment, and rehabilitation programs and activities to deal with alcohol and drug abuse.*

We recognize that not all the information requested is readily available in each State. We view this first effort to obtain the added information as a needs assessment that will enable OTI and the rest of ADAMHA to learn which States will require additional technical assistance in improving their data collection and analysis, quality assurance and evaluation, management, and planning capabilities as we work together to develop a national services system that recognized the need for locally derived priorities and services and centralized data collection and analysis. That is why we ask that you do not attempt to provide an estimate when your State does not have reliable data to permit a response to a specific item within the time frames given for submitting the application. Rather, we ask that you describe the process that you do use in carrying out the activity or the alternative method of data collection used or to indicate what the problem is in obtaining the necessary data. We also ask you to describe the type of assistance you would desire in order to be able to provide the specific data in future years.

Experience with the expanded application during the first year will be used to initiate technical assistance activities that are focused on resolving ADMS Block Grant management infrastructure problems identified by the States and to develop a revised application process and format for future submissions.

We believe that this enhanced application format and complementary data collection efforts will not only help States strengthen their management and evaluation of ADMS Block Grant activities and their planning and resource allocation activities, but also will enable ADAMHA/OTI to report accurately to the Congress on the services made possible through expenditure of these funds.

PREPARATION AND SUBMISSION OF THE APPLICATION

Completed applications should be submitted to the Alcohol, Drug Abuse and Mental Health Administration no later than February 1, 1990. Submit an original signed copy of the application and 2 copies to:

Thomas M. Reynolds
Grants Management Officer
Division of Grants and Contracts Management
Alcohol, Drug Abuse, and Mental Health Administration
Room 13C-20
5600 Fishers Lane
Rockville, MD 20857

Forwarding the application to any other addressee results in processing delays.

Please respond to all items in the application form. *Remember, wherever your State does not have reliable data to use in responding to a specific item within the time frames given for submitting the application, do not attempt to answer. Rather, we ask that you describe the process that you do use in carrying out the activity or the alternative method of data collection used if your State does not have the specific information requested or to indicate what the problem is in obtaining the necessary data and to describe the type of assistance you would desire in order to be able to provide a response in future years.*

The application format contains four sections. The first section requests information about the applicant agency and persons who will serve as contacts for specific questions about the implementation of the overall ADMS Block Grant and its substance abuse and mental health portions; it also contains the certifications that must be signed by the Chief Executive Officer of the State or Territory that is the recipient of the grant. There is a table of contents that also serves as a checklist to aid the applicant and reviewers in determining the completeness of the application.

The second section requests a description of the State's actual use of its FY 1990 ADMS Block Grant funds for both the mental health and substance abuse portions.

The third section requests a description of the State's intended use of its FY 1991 ADMS Block Grant funds. Part 1 of this section requests information on the State's intention to transfer funds among the mental health and substance abuse portions. Part 2 requests a description of the State's intended use of funds to be expended for substance abuse; this part incorporates elements of the Substance Abuse Services Plan, specifically dealing with the operational aspects of State planning and program management for the delivery of substance abuse services, including prevention and treatment services to targeted critical populations. Part 3 of this section requests a description of the State's intended use of the funds under the mental health portion of the grant. New forms are introduced to standardize the presentation of information previously submitted.

The fourth section is reserved for attachments, including four required appendices: group homes for recovering substance abusers, substance abuse prevention and early intervention, substance abuse services for women, substance abuse services for intravenous drug users and two optional appendices: substance abuse services for other critical populations and mental health services to other special populations. Numerous attachments should not be necessary, but if you wish to present additional material, each should be clearly marked with identifying information (i.e., the section of the application and the page number referenced) and paginated as a separate appendix (e.g., A-1, B-2).

The application must follow the standard format provided. The organization of the completed application must follow the order in the Table of Contents, which also serves as the checklist used by reviewers who are determining compliance with the statutorily required elements. Pages for the program narrative sections and additional copies of the forms required must be added in the order presented and the structure of the application should not be changed. Please keep your descriptions and responses brief, within the page limits indicated for narrative sections. Number the pages consecutively throughout the application at the center of the bottom of the page. Enter the page number for the beginning of a narrative section or a set of forms at the appropriate place in the Table of Contents. Please do not permanently bind the application. As in earlier years, States whose applications do not contain the required information will be asked to submit additional documentation.

Inquiries about programmatic issues that may arise in completing the application can be addressed to Gary Palsgrove, Senior Advisor for ADAMHA Block Grant Programs, or Herman I. Diesenhaus, Senior Advisor for State Plans Division for State Assistance, OTI, at 301/443-3820. Inquiries about fiscal or grants management issues can be directed to Thomas M. Reynolds, Grants Management Officer, Block Grant Programs, ADAMHA, at 301/443-3334.

Since this is the first year that this expanded, standardized application format is being used, we are interested in learning from the States which questions could be improved. We would also like suggestions that would make the application easier to complete. We would like to know whether responding to the questions in the application requires information which significantly exceeds your State's present capabilities. We would welcome any comments and recommendations that you may have for improving the application form and the instructions; any comments should be provided in a separate letter sent to:

Herman I. Diesenhaus, Ph.D.
Senior Advisor for State Plans
ADAMHA/OTI
Rockwall II Building -10th Floor
5600 Fisher Lane
Rockville, MD 20857

We are relying on the cooperation of State agencies to support this effort by describing their planning and management activities and programs in response to the questions in the instructions and in the forms as best they can in this first year. As noted above, when data is not available, explain the reasons for its unavailability (e.g., data not presently being collected in the form requested, staffing limitations, competing priorities such as preparation of State budget or legislatively required reports). Our mutual experience in completing and reviewing the expanded application during the first year will be used to initiate technical assistance activities that are focused on resolving any ADMS Block Grant management infrastructure problems identified by the States in the application and to develop a revised application process and format for future submissions.

Again, the original and two (2) copies of your State's completed application should be submitted to ADAMHA no later than February 1, 1990. If for any reason you anticipate not being able to meet this scheduled submission date, or if you have difficulties in providing the data requested, please contact Dr. Diesenhaus at 301/443-3820.

Specific Instructions for Completing the Program Narrative and Forms

SECTION I
Identifying Information and Assurances

A. **Face Page and Identifying Information (ADMS Form 01).** A form is provided for submitting information heretofore derived from the cover letter and other parts of the application. We are requesting that you clearly identify the individuals responsible for the overall grant administration as well as for the substance abuse and mental health portions so that communications can be directed appropriately.

> **NOTE:** In the future, as has been requested by the States, notifications of required actions, deficiencies, etc. will be made as appropriate to both the person responsible for overall administration and the person responsible for the affected functional area.

The name of the State should be entered at the top of the page in the space provided.

1. **Name and Address of the State Agency Grantee.** List the responsible State agency as designated by the Governor. Provide the name and address of the agency and identify the organization unit that is designated as the component to receive the grant. For example, if the Division of Alcohol, Drug Abuse, and Mental Health Services is responsible for the grant but the funds flow through the Department of Health and Human Resources, the Department should be named as grantee, not the Division. Record this information on the Face Page, which is to be the first page of the application form and is so designated.

2. **Name and Address of the State Contact Person.** List a single individual who has overview responsibility for the total grant, including both the mental health and substance abuse portions, and how he/she can be contacted.

3. **Name and Address of the State Contact Person for the Substance Abuse Portion.** List a single individual who has overview responsibility for the substance abuse portion of the block grant and how he/she can be contacted.

4. **Name and Address of the State Contact Person for the Mental Health Portion.** List a single individual who has overview responsibility for the mental health portion of the block grant and how he/she can be contacted.

5. **State Expenditure Period.** Fill in the dates of the period during which the FY 1991 ADMS Block Grant funds will be expended. In most cases, this will be the State's fiscal year. The State and Regional Spending Plans, discussed below, request that information be provided on

expenditures of ADMS Block Grant, other available Federal grants, and State and local funds anticipated to be made during this coming State Expenditure Period as well as the last State Expenditure Period.

6. **Date of Submission.** Enter the date on which the application is submitted to ADAMHA. Check whether this is the Original submission or a Revision.

7. **Name and Address of the State Contact Person Responsible for Completing the Application.** List a single individual who had overview responsibility for completing the block grant application and how he/she can be contacted.

> **NOTE:** Any change in the State Agency Grantee or a State Contact Person should be communicated immediately in writing through an original letter signed by an appropriate official (governor in the case of an agency change) to Thomas Reynolds, ADAMHA Division of Grants and Contracts Management at the address above (see page 6), with a copy sent to the OTI Division for State Assistance.

B. **Table of Contents/Review Checklist (ADMS Form 02).** A table of contents is provided in the application forms (see Attachment B-2). The Table of Contents will also serve as the Fiscal Year 1991 ADMS Block Grant Application Review Checklist. The organization of the completed application must follow the order in the Table of Contents. Pages for the program narrative sections and additional copies of the forms required must be added in the order presented and the structure of the application must not be changed. The page limits indicated for narrative sections must be followed.

1. The name of the State should be entered at the top of the page in the space provided.

2. Enter the page number of the start of a narrative section or a form or the beginning of a set of forms at the appropriate heading in the Table of Contents.

3. Number the pages consecutively throughout the application at the bottom of the page in the center.

> **NOTE:** The application will be initially reviewed to determine whether each item required by the authorizing statute is contained in the application. The table of contents/checklist will enable you, as the applicant, and the reviewers to ascertain whether each requirement has been included and where in the application it will be found. Omission of some items may render an application incomplete and therefore unfundable. Explain the reasons for any omissions at that place in the application where the narrative or data requested was to have appeared. The person identified as the State Contact for Completion of the Application will be initially contacted to obtain the missing data or an explanation. The State

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will be formally notified in writing of any deficiencies through an original letter addressed to the individual identified on the Face Page as the State Contact for the Grantee Agency with copies to those persons identified as the official State Contacts for the Mental Health and Substance Abuse functions.

C. Assurances. As requested by the States, standard forms are provided for the assurances required by the authorizing statute and PHS regulations.

1. Chief Executive Officer's (CEO's) Assurances (ADMS Form 03). The law requires that the CEO of the State or Territory personally sign many of the assurances required by statute. A form is included containing the assurances that must be signed by the CEO of the State or Territory or by an authorized designee. If the assurances form is signed by a designee, a copy of the designation must accompany the assurances form.

2. U.S. Department of Health and Human Services Certification Regarding Drug-Free Workplace Requirements. Grantees of the Office for Treatment Improvement are required to certify their compliance with certain Federal requirements regarding maintenance of a drug-free workplace. The form is self-explanatory. It need not be submitted if a Statewide or agency-wide assurance has already been submitted under governing regulations.

3. Certificates Regarding Lobbying and Disclosures. Complete and return with the application the form regarding lobbying and, if applicable, the disclosure forms. This certification must be signed and returned before any Federal grant or cooperative agreement exceeding $100,000 may be awarded. The forms are self-explanatory.

SECTION II

Description of Actual Use of Funds as Required By Section 1916(d) of the PHS Act in Accordance with Section 1742(a) of the Omnibus Reconciliation Act of 1981.

Section 1742(a) of the Omnibus Budget Reconciliation Act of 1981, requires that the State provide a description of how it has met the goals, objectives, and needs in the use of funds for the previous fiscal year (in this case, the previous year being FY 1990) as described in that previous year's application, and/or any subsequent revision of the original application.

This description should include information on the programs and activities supported and the services provided. The description of the actual use of funds should be completed in two parts. The first part should describe the actual use of the alcohol and drug abuse funds (the substance abuse portion), and the second part should similarly describe the actual use of mental health funds.

The description of the actual use of funds should address the requirements contained in the authorizing statute and listed below.

A. Goals and objectives carried out
B. Types of activities supported
C. Geographic planning areas served
D. Characteristics of individuals served
E. Criteria and methods for the distribution of allotments
F. Methodology used by State to purchase services and determine treatment capacity and quality.

As you have done in previous years, provide a brief narrative that spells out the actions taken to meet each of the requirements in accord with the goals and objectives spelled out in your FY 1990 application. A more detailed description of these actions and the activities funded is required in the Annual Report generally due no later than 6 months following completion of the last State Program Year. *Limit your discussion to 5 pages.*

SECTION III .

Description of Intended Use of Funds as Required By Section 1916(d) of the PHS Act in Accordance with Section 1742(a) of the Omnibus Reconciliation Act of 1981.

Background/Purpose

Section 1916(d) of the authorizing statute requires that the State submit a description of its intended use of the ADMS Block Grant funds. This description is to include information on the programs and activities to be supported and the services to be provided. The description of the intended use of funds should be completed in three parts. The first part should describe the State's use of its mental health and substance abuse allotments. The second part should describe the specific intended use of alcohol and drug abuse funds (the substance abuse portion), and the third part should similarly describe the specific intended use of mental health funds. The description of the intended use of funds should address the requirements listed below which are contained in the authorizing statute.

A. Goals and objectives of activities to be carried out
B. Types of activities to be supported
C. Needs/Demand Assessment: Geographic planning areas to be served and the characteristics of individuals to be served
D. Criteria and methods for the distribution of allotments
E. Methodology used by State to purchase services and determine treatment capacity and quality.

Greater detail and specification is required for the section on the intended use of alcohol and drug abuse funds than in the section on the intended use of mental health funds because of the separate submission required for the Comprehensive Mental Health Services Plan required by Sections 1925 and 1926 of the Public Health Service Act.

Wherever possible, forms are provided to simplify and standardize the reporting process for both the substance abuse and mental health portions. Selected key terms are defined in a glossary contained in the last section of these instructions.

Note again that we are relying on the cooperation of State agencies to support this effort by describing their planning and management activities and programs in response to the questions in the instructions and in the forms as best they can in this transitional year. When data is not available, explain the reasons for its unavailability, and describe the process that you use in carrying out the activity or the alternative method of data collection used.

SECTION III
PART 1

Intended Allocation of ADMS Block Grant

Section 1916(c)(6)(B) of the PHS Act allows the State to transfer up to 10 percent of its allotment for substance abuse activities to mental health activities or 10 percent of its allotment for mental health activities to substance abuse activities. In the narrative, indicate whether your State has made such a transfer for Federal Fiscal Year 1990 ADMS Block Grant funds or plans to make such a transfer for Federal Fiscal Year 1991 ADMS Block Grant funds. If yes, please indicate the amount of the funds that were and/or will be transferred and describe the nature of the transfer (mental health to substance abuse, or vice versa) and the reasons for the transfer. *Limit your discussion to 1 page.*

SECTION III
PART 2

Intended Use of Alcohol and Drug Abuse Block Grant Funds

BACKGROUND/PURPOSE

As noted above, the FY 1991 ADMS Block Grant application requests that the States provide much of the same information as that provided in earlier years, using standard formats wherever possible. The application has been reformatted and reordered to provide for consistent presentation. These revisions will ensure more rapid comprehensive review, as well as improve the retrieval of information for budgeting, reporting, technical assistance, and monitoring purposes. In this revised application, we are most concerned with obtaining improved information on how the State plans to expend funds for alcohol and drug abuse activities that meet the statutory requirements of the ADMS Block Grant Program and how it will conduct its oversight of these activities.

The revised application incorporates elements from the recently developed guide for a voluntary State Substance Abuse Services Plan and from the various legislative proposals for a State Drug Abuse Treatment Plan. The voluntary State Substance Abuse Services Plan, developed in consultation with the National Association of State Alcohol and Drug Abuse Directors (NASADAD) over the last year, is now being requested as part of the annual ADMS Block Grant application by the Department of Health and Human Services in part to satisfy the requirement found at Section 1916(c)(21) of the PHS Act. It has been determined that there is statutory authority under Section 1916(a) of the Public Health Service Act to require that a State Drug Abuse Treatment Plan be part of the annual application.

During the pilot test and State agency review of the planning guide, a number of States had suggested that the two information requests, the application and the plan, be combined because of overlap among key items. The application includes requests for only some of the information included in the plan; other information will now be obtained through the on-site compliance reviews and a revised annual report. The revised application incorporates most of the elements of the Substance Abuse Services Plan and links them to statutory requirements. Several items were dropped because of State concerns (e.g. the questions regarding individual licensure and certification actions) and others added because of statutory requirements (e.g. independent peer review, inventory of individual programs, activities, and projects receiving ADMS Block Grant funds).

This first year that the additional information is requested will serve as a transition, and will enable us to respond to Congressional inquiries at the ADMS Block Grant reauthorization hearings expected to take place in early 1991. The revised application should also be seen as part of the comprehensive State Systems Development Program that we are now initiating. The linkage among data bases, applications, reports, and organizational development reviews can serve a number of purposes. There are three major goals for this program:

I. to strengthen the planning, evaluation, and management capability of the individual State alcohol and drug agencies;

II. to assure a high level of State accountability for the management of ADMS Block Grant funds, with special emphasis on drug abuse treatment; and

III. to help build a Federal-State partnership that can lead to further improvements in substance abuse services and systems, while maintaining appropriate latitude within the States for management policies and procedures.

We believe that ADAMHA/OTI and the State alcohol and drug agencies working together as partners can achieve these goals through five major activities:

1. collecting and sharing information on the infrastructure that exists in the State agencies responsible for administering the ADMS Block Grant with special emphasis on the key administrative functions of planning and coordination, training, quality assurance, program development, research and evaluation, and overall administration;

2. gathering uniform data on the incidence and prevalence of alcohol and drug problems, on treatment capacity, and on funding practices within the States and their subdivisions;

3. identifying barriers to providing quality services to all those in need, with special emphasis on targeted critical populations;

4. identifying State agency and local provider technical assistance needs; and

5. using a variety of knowledge transfer activities to disseminate model standards and guidelines for use by States in administering ADMS Block Grant funds, after gathering information about guidelines and standards used by the various States and other oversight bodies and refining them through consensus development activities.

As a result of the pilot test and review process, we recognize that not all the information requested is readily available in each State. We view this first effort to obtain the added information as a needs assessment that will enable OTI and the rest of ADAMHA to learn which States will require additional technical assistance in improving their management, data collection and analysis, quality assurance and evaluation) and planning capabilities as we work together to develop a national substance abuse services system that recognizes the need for locally derived priorities and services and centralized data collection and analysis. *Wherever your State does not have reliable data to permit a response to a specific item within the time frames given for submitting the application, do not attempt to answer but indicate what the problem is in obtaining the necessary data and describe the type of assistance you would desire in order to be able to provide a valid response in future years.*

The needed information about alcohol and drug abuse programs and activities will be gathered through a variety of complementary mechanisms, of which the ADMS Block Grant Application is only one. We are trying to increase the information available without increasing the response burden unduly, so that existing data bases will be linked (e.g., NDATUS, SADAP, Annual Report, Minimum Data Set) and duplicative data gathering can be avoided, whenever possible. Other changes are being made in these data collection efforts to increase their compatibility and utility for managing the ADMS Block Grant. We believe that this enhanced application format and complementary data collection efforts will not only help States strengthen their management and evaluation of ADMS Block Grant activities and their planning and resource allocation activities, but also will enable ADAMHA/OTI to report accurately to the Congress on the improvements in substance abuse services made possible through expenditure of these funds.

A. Goals and Objectives of Alcohol and Drug Abuse Activities.

1. **Goals and Objectives.** In addition to the goals and objectives that the State has developed for the expenditure of ADMS Block Grant funds, the authorizing statute sets out national goals in its requirements and establishment of set-asides that should be addressed in this section. The State should describe the programs and activities that it will support with block grant and other funds to achieve each of these national goals. The State should also include a description of any State or local goals and objectives that are unique or differ from the national goals.

The overall goal for the expenditure of the substance abuse portion of the ADMS Block Grant, as stated in Section 1915 (a)(1) of the PHS Act, is: *planning, establishing, maintaining, coordinating, and evaluating projects for the development of more effective prevention, treatment, and rehabilitation programs and activities to deal with alcohol and drug abuse.* The broad national goals that funds from the alcohol and drug abuse portion of the block grant should address are:

A. identify those populations, areas, and localities in the State with greatest need for alcohol abuse and alcoholism, and drug abuse services and to target programs, services, and resources accordingly, with public input into the proposed use and distribution of block grant alcohol and drug abuse funds.

B. discourage the abuse of alcohol and drugs by providing funding for prevention and early intervention programs;

C. assess and improve the quality and appropriateness of treatment and prevention services delivered by providers that receive funds from the Alcohol and Drug Abuse component of the block grant.

D. provide treatment for persons using drugs intravenously, with priority for funding given to programs that treat individuals infected with the etiologic agent for acquired immune deficiency syndrome;

E. improve alcohol and drug abuse programs and services designed for women, especially pregnant women and women with dependent children;

F. continue to provide for and encourage the development of group homes for recovering substance abusers, through the operation of a revolving loan fund.

Provide a brief narrative that spells out the specific objectives and action steps designed to meet each of these goals (*using no more than 1 page per goal*). The narrative should describe the programs and activities directed at each of the above goals and objectives. Goals, objectives, and action steps should be clearly and succinctly stated. Where additional information pertaining to a specific goal (e.g., Goal *E: services for women*) is requested

and therefore discussed elsewhere in the application (i.e., Section II, Part 2, C.2.b. of the application), cross reference the appropriate pages in your completed narrative.

Goals are general statements of desired ends, and objectives are more specific subelements undertaken to reach a goal. Remember, that in the annual report, the State will be required to address its progress toward meeting each goal and whether or not it accomplished each objective; therefore, each objective should be realistic and measurable. Identify and number each objective.

Your discussion of Goal *F: support for group homes* should address how the State has initiated and will continue to implement the requirements spelled out in Section 1916A, Group Homes for Recovering Substance Abusers, to set up a revolving fund to make loans for the costs of establishing programs for the provision of housing for groups of not less than 4 recovering individuals. Please describe the source of funds (ADMS Block Grant, State funds, etc.), identify the non-profit entity selected to manage the fund, summarize any written agreement between the State and the non-profit entity, and describe your plan to monitor operation of the fund in the coming Expenditure Period.

In a separate attachment, Appendix A, list those entities that have received loan funds under this program, describe each project briefly, and describe how the project fits into your overall plan to provide supportive, transitional housing for substance abusers who require such assistance during recovery.

2. **Planning and Public Input.** Section 1916(c)(19) of the PHS Act requires that funding for substance abuse services will be targeted to communities with the highest prevalence of substance abuse or the greatest need for substance abuse treatment services, and Section 1916(b) of the PHS Act requires the State to hold public hearings on the intended use and distribution of funds for each fiscal year. Describe briefly how planning to meet these needs is carried out in your State and the process the State uses to obtain public and legislative participation in the development and review of the plan and the ADMS Block Grant application. Describe the composition and role in the planning process, if any, of State, regional, and local advisory council(s). *Limit the discussion to 2 pages.*

3. **Service Coordination.** Briefly respond to the following questions (*using no more than 1 page per question*) and complete the Services Coordination Matrix.

a. **Coordination Mechanisms.** What mechanisms does the State use to facilitate State-level and local interagency planning, service coordination, case management, and appropriate referral among local substance abuse prevention and treatment service providers with other services (e.g., social, health, correctional, vocational, and other services) to ensure that patients receive comprehensive services? We are particularly interested in coordination among the State agencies and local programs that receive funding through the various Federal block grant mechanisms that address the problems

of substance abuse (e.g., Preventive and Health Services, Social Services, Criminal Justice, Juvenile Justice and Delinquency Prevention, Drug-free Schools and Communities, Vocational Rehabilitation, Headstart, Maternal and Child Health Services, Child Abuse and Neglect, Medicaid).

b. Referral to Appropriate Treatment. What efforts is the State making to improve the referral of substance abusers to facilities that offer the most appropriate, cost-effective, and high quality treatment modalities?

c. Barriers to Coordination. Has the State alcohol and drug abuse agency identified and prioritized any significant factors (e. g., statutes, financing policies, administrative practices, etc.) that preclude or inhibit the effective coordination of State-level or local substance abuse prevention and treatment programs with other similar or related programs (e.g., criminal justice, vocational rehabilitation, health, mental health, social services, housing, and education programs)?

d. Complete the Services Coordination Matrix (ADMS Form 04) identifying which mechanisms the State alcohol and drug abuse agency uses in working with other agencies involved in substance abuse services to enhance State-level interagency planning and program implementation activities, legislation and policy development, service coordination, and activities involving joint financial participation. For each agency, place a mark (X) in the column for the mechanism which you use. Since States vary in the organization and names of Departments and agencies, you may wish to redo the matrix to tailor the listing of agencies to your structure and responsibilities (e.g., in some States, institutional corrections and parole are in a different agency than community corrections and probation; in some states, the Medicaid program is administered in the Public Health agency while in other States it is part of the Social Services agency; in some States, the Department of Education is involved in administering Headstart programs while in other States there is a statewide coordinating association of community-based providers).

e. Agency Relationships. Immediately following the completed matrix, provide a brief description of the relationship with each agency and discuss whether it involves activities such as interagency planning, program implementation, legislation and policy development, local agency service coordination, and joint participation in funding specific programs (*using no more than 1/4 page per agency*).

B. Types of Activities to be Supported and State Spending Plan.

1. Substate Planning. Section 1916(c)(19) of the PHS Act requires that funding for substance abuse services be targeted to communities with the highest prevalence of substance abuse or the greatest need for substance abuse treatment services. Given this requirement, we ask that you briefly describe the method used in your State to carry out substate planning and to establish priorities for funding in order to meet the requirement that the State determine which communities (substate planning areas) have the highest prevalence of substance abuse and the greatest need for treatment services, laying out the information used to help make these decisions and how it is gathered. *Limit the description to 2 pages.*

NOTE: We recognize that substate planning areas (or regions) are defined differently from State to State. Substate planning regions may be counties, regions, catchment areas, health services districts, etc. For purposes of this application, use the subareas that are defined and used for your own planning and budgeting purposes; these areas are called "regions" on the forms to provide a common label for the different geopolitical units that States plan for.

2. State and Substate Expenditures. We are asking you to provide the most current data available on the block grant expenditures that will be made during the project period to support the activities targeted at achieving the above goals and objectives. We are asking that you complete the State Spending Plan (ADMS Form 05) included in the application for the State as a whole and a Regional Spending Plan (ADMS Form 06) for each of the substate planning areas that are customarily used for planning and budgeting. We ask you to complete a Regional Activity Inventory (ADMS Form 07), for projects that provide services only within a single substate planning area (region), and a Statewide Project Inventory (ADMS Form 08), for projects or providers that are to serve the State as a whole.

a. Using the State Spending Plan (ADMS Form 05) and Regional Spending Plan (ADMS Form 06) forms provided in the application, provide expenditure data on programs and activities for both the last State Expenditure Period and the coming State Expenditure Period.

NOTE: These forms request information on ADMS Block Grant and associated Federal, State, and local expenditures for the types of activities identified in the first column. In completing the forms, we would have preferred that you address all alcohol and drug funds appropriated by the State legislature, as well as the ADMS Block Grant and other Federal grants and local and other funds, whether or not these funds are administered by the State alcohol and drug abuse agency. However, we realize, as a number of States indicated in their comments on the draft Substance Abuse Services Plan and the new application format, that in most States the agency that administers the Substance Abuse portion of the ADMS Block Grant does not have the legislative authority and responsibility to collect this data, which cannot be easily gathered, and that in some States the data is not available at all. Therefore we have agreed to limit the information requested on the State Spending

Plan (ADMS Form 05) to the State agency that does administer the substance abuse portion of the block grant. If possible, in the narrative following the forms, list the other agencies that provide funding for substance abuse prevention and treatment services, either with State funds or Federal funds. For State and other Federal funds not administered by the State alcohol and drug abuse agency (such as funds going directly to a Department of Corrections for treatment of incarcerated drug abusers or the block grant established by the Drug-Free Schools and Communities Act of 1986 and the Community Youth Assistance Program administered by OSAP), indicate which agency administers the funds and whether their planning and allocation processes are coordinated with those of the State alcohol and drug agency in the narrative immediately following the form.

If possible, for those States that do have data available on all the activities, we would ask you to also complete a second set of forms that include expenditures for the other agencies that provide funding for substance abuse prevention and treatment services, either with State funds or Federal funds. Place these forms in an additional, separate appendix appropriately titled and paginated.

You are to enter the total amount of dollars expended for each of the activities listed under each major funding source.

NOTE: Enter the amount of the expenditures in thousands of dollars in the appropriate cell; enter a zero [0] if there are no expenditures; and enter N/A if the data are not available.

The first set of columns should report the expenditures of programs and activities funded during the last Expenditure Period. Report only the amounts actually expended. Expenditures for the last completed State Expenditure Period should be the actual expenditures made during the period. Enter the dates of the last completed State Expenditure Period in the space provided at the top of the form.

The second set of columns should report the expenditures of programs and activities planned for the coming Expenditure Period. The projected expenditures and revenues required to carry out the action plans described in the Goals and Objectives section of your FY 1991 ADMS Block Grant application should be reported here. Report either the amounts actually obligated, if your State budgeting process has progressed that far, and/or the amounts projected in your budgeting process. Whenever possible, report obligations. Enter the dates of the coming Expenditure Period in the space provided at the top of the form; be sure that they are consistent with the dates entered on the Face Page (ADMS Form 01).

NOTE: The figures for the coming State Expenditure Period will need to be the projections that you have used to establish obligations in your State budgeting process. If the actual amounts cannot be calculated by the time of submission then the best available estimate should be submitted. Indicate the nature of the method used to generate the data (i.e., whether coming

Expenditure Period estimates are based on obligations, allocations, current estimates, or a combination) in a clearly marked footnote that immediately follows the form. All footnotes should be clearly marked and follow the State and Regional Spending Plan forms in the narrative.

The columns represent major funding sources:

The ADMS Funds column should be used to report only the amount of ADMS Block Grant funds. Place an asterisk [*] in column 1 to indicate whether ADMS Block Grant funds from more than one award are used to fund any one activity because of the overlap between the Federal Fiscal Year (FFY) and the State Expenditure Period. Enter the total amount of all ADMS funds during the State Expenditure period in the appropriate column for the Federal Fiscal Year in which they were awarded to the State.

For the last State Expenditure Period, in States whose fiscal years do not coincide with the Federal Fiscal Year, expenditures could have been made from both the FFY 1989 and FFY 1990 awards. A column is provided to report the expenditures for each year.

For the coming State Expenditure Period, in States whose fiscal years do not coincide with the Federal Fiscal Year, expenditures could be made from both the FFY 1990 and FFY 1991 awards. A column is provided to report the anticipated expenditures for each year.

For States whose Fiscal Year coincides with the Federal Fiscal Year, enter the expenditure in the appropriate column (i.e., FFY 1990 for the last and FFY 1991 for the coming State Expenditure Period.

NOTE: OTI will generate the total amount of all ADMS funds expended during each State Expenditure Period, regardless of the Federal Fiscal Year in which they were awarded. Section 1917(b)(1) requires States to maintain fiscal records that track the expenditures from each year's award. Any State that has difficulty in providing this information by Federal Fiscal Year should so indicate in a footnote immediately following the form and place all the entries in the FY 1990 column for the last State Expenditure Period and in the FY 1991 column for the last State Expenditure Period.

The Medicaid columns should be used to report all funds received from Medicaid, including the Federal and State shares.

The Federal Medicaid column should be used to report the total amount of the Federal share of benefits provided under Federal regulations.

The State Medicaid column should be used to report the total amount of State and local government matching (when appropriate) share of benefits provided under Federal regulations and the amount of State funds (and local government match when

appropriate) provided under a supplementary State program. [4]

The Other Federal Funds column should be used for reporting all other Federal funds (including ADAMHA program support funds, demonstration grants/contracts, Medicare, other public welfare funds such as food stamps, other public third party funds such as CHAMPUS, the Social Services Block Grant [Title XX], the Maternal and Child Health Block Grant, etc.) in each category. Examples of demonstration grants would be the OTI Waiting List Reduction grants and the Office for Substance Abuse Prevention grants for Services to High Risk Youth; OTI will provide the States with a list of grants, if needed.

NOTE: We have agreed to limit the information requested on the State Spending Plan (ADMS Form 05) to the State agency that administers the substance abuse portion of the block grant. Therefore, do not include other Federal grants that are not administered by the State alcohol and drug abuse agency. However, if you are able to provide this information, we would encourage you to do so since we will than be able to identify general trends and determine whether there are to be substantial decreases or increases in services available due to the completion or initiation of demonstration project grants (e.g., OTI Waiting List Reduction grants, OSAP High-Risk Youth demonstrations, NIDA HIV-AIDS outreach grants). Similarly, any changes in State requirements on the availability of Medicaid funds, whether they are increases or restrictions, should be identified, as should any changes in State or local government appropriations. This information will be helpful in assessing the impact of such increases and decreases on the overall system and in refining plans for future financing of the expansion and improvement of the system. Discuss briefly any such changes and any anticipated problems in the narrative immediately following the State Spending Plan form. *Limit the description to 1 page.*

We have learned that in some States, a portion of these funds may be administered by the State alcohol and drug abuse agency (e.g., the portion of the Drug-Free Schools and Communities Block Grant to be allocated to local agency's by the Governor but not that portion designated for local school districts) and would thus be reported. Additionally, some subarea umbrella agencies and local providers may receive funds from other State and Federal sources; these expenditures should be included on the appropriate form whether it is the Regional Spending Plan (ADMS Form 06), the Regional Activity Inventory (ADMS Form 07), or the Statewide Project Inventory (ADMS Form 08). We recognize that this may create some discrepancies among the totals on the four forms.

[4] OTI will calculate the State share (and local share, when appropriate) applied to the Federal program for those States that have a distinct, supplementary State Medicaid program. We will use the ratio of State to Federal Medicaid funding for the calculation of total State matching funds, allowing for a distinction between matching funds and funds provided under the supplementary State program.

The State Funds column should be used to report all State general fund or special appropriations (e.g., fines, fees, earmarked taxes) administered by the State alcohol and drug agency.

The Local Funds column should be used to report all funds derived from appropriations by any local government entity (e.g., city, other municipality, special tax district, county).

The Other Funds column should be used to report funds received from all other sources, including patient fees, private donations (e.g. United Way, Robert Wood Johnson Foundation), and private third party payers (e.g., Blue Cross/Blue Shield, HMOs, commercial insurers) for the specific activity.

Indicate level of funding for each activity listed. Record the amount of ADMS Block Grant, Medicaid, Other Federal grant, State and Local Government, and Other Funds for the last and coming Expenditure Periods in the appropriate column.

NOTE: We are not asking you to provide a column for total funding. The total across columns will be generated by OTI in our analysis. If you cannot provide the requested breakdown for a given category, use the Other Funds column. Be sure, however, that you have accounted for all sources of funds, either by distributing them among all 7 columns or in the Other Funds column. In a footnote immediately following the form, discuss the reason that the breakdown is not available.

Rows 1 through 4 of the forms concern expenditures for those direct service activities that have immediate impact on the persons experiencing or at risk of experiencing problems with alcohol and other drugs. Treatment and Rehabilitation includes all expenditures to provide and support direct services to patients while Prevention/Early Intervention includes all expenditures to provide and support direct service activities to persons at risk. Rows 5 and 6 (including subcategories 5A through 5F) concern the infrastructure expenditures related to services, program development, support, and monitoring.

NOTE: OTI is interested in determining the level of funding available to the State and regional alcohol and drug umbrella agencies for the management and support of ADMS Block Grant funds in the context of total funding available. We have identified seven major functional areas (or cost centers) that comprise the infrastructure needed to support prevention and treatment activities. These funds are most likely to be expended at the State agency level or at a substate administrative agency. We recognize that these categories may be different than the classification system or chart of accounts used by your State agency; we ask that you use the best information that you have available and attempt to recast your dollar expenditures using the activity definitions provided below. You should provide the data for Row 5; providing the information for rows 5A through 5F is optional.

For each activity listed in the first column, we want you to record the level of funds in the appropriate column, using the following definitions:

1. Substance Abuse Treatment and Rehabilitation includes all expenditures to provide and support direct services to patients (e.g., outreach, detoxification, outpatient counseling, therapeutic community stays, hospital care, vocational counseling, case management, central intake, program administration).

NOTE: Use the Substance Abuse Treatment category if your agency does not distinguish between services directed at alcohol problems and drug problems, has a distinct funding category for treating persons experiencing problems with both alcohol and other drugs regardless of which problem is primary, or funds some or only combined treatment programs. Make every effort to differentiate between expenditures for treatment directed to persons with drug problems as opposed to alcohol problems and report the data in one of the next two categories.

2. Alcohol Treatment and Rehabilitation includes all expenditures to provide and support direct services to patients experiencing primary problems with alcohol (e.g., outreach, detoxification, outpatient counseling, hospital care, antabuse monitoring, vocational counseling, case management, central intake, program administration). An example of such funding would be NIAAA demonstration grants for services to the homeless that should be included in the Other Federal Funds category.

3. Drug Treatment and Rehabilitation includes all expenditures to provide and support direct services to patients experiencing primary problems with drugs (e.g., outreach, detoxification, methadone detoxification and maintenance, outpatient counseling, therapeutic community stays, hospital care, vocational counseling, case management, central intake, program administration). Examples of such funding would be the OTI Waiting List Reduction grants and the Bureau of Justice Assistance Block grant used to support treatment within a correctional facility, both of which should be included in the Other Federal Funds category.

NOTE: Use the Alcohol Treatment or Drug Treatment categories when such a differentiation is made in funding treatment providers, either because of the ADMS Block Grant requirements, State budgeting and regulatory practices, agency practices, or local priorities.

NOTE: We are not asking you to distinguish among prevention activities in the same manner.

4. Prevention includes expenditures for all primary prevention and early intervention activities and services directed toward persons who are non-users or who are at risk of becoming

dependent, as your State defines these activities in accord with Section 1916(c)(8) of the PHS Act, which requires the State to define these terms. The glossary contains the NDATUS definitions, which are used in identifying prevention and early intervention units for that survey.

In Appendix B, present your State's definition of "prevention" and "early intervention" and briefly describe your activities that carry out this provision, including a brief description of each project listed in the Regional or Statewide Project Spending Plan, an estimate of numbers of to be individuals served or impacted, and identification of targeted populations (e.g., youth/adolescents, women, intravenous drug abusers, blacks, Native Americans, etc.). *Limit the description to 1/2 page per project.*

NOTE: Some States report including all Student Assistance Programs, Employee Assistance Program expenditures and other worksite activities such as drug testing in the prevention/early intervention category, while others differentiate the treatment and intervention costs associated with these activities. The situation is similar to that for outreach, with a lack of clearly agreed upon definitions as well as inconsistency in funding and reporting practices. Here also, future consultations with the States will be undertaken to define a uniform approach.

NOTE: Outreach is not included as a separate infrastructure cost center, despite its recognized importance, because of the lack of consistency in funding and reporting practices. Outreach includes all expenditures associated with getting persons at risk of problems or already experiencing problems to seek and utilize treatment services. An example of such funding would be NIDA's HIV-AIDS outreach grants, which would also be placed in the Other Federal Funds category. Also included in this category are educational or other services to persons with alcohol and other drug problems not in treatment (e.g., education about safe sexual practices such as condom use for IV Drug Abusers at risk for HIV infection). Some States fund outreach as a discrete activity; other States include outreach in their treatment costs, while still others include it in their prevention and early intervention category. Future consultations with the States will be undertaken to define a uniform approach. In the narrative following the form, briefly describe how your State funds outreach--as a separate cost center, as part of treatment, or as part of prevention. *Limit the description to 1/2 page.*

5. Infrastructure includes all expenditures associated with services program development, support, and monitoring. The infrastructure row should include the total costs for the 6 subcategories (A through F) listed below. These funds are most likely to be expended at the State agency level or at a substate

administrative agency. Where possible, expenditures for each of the subcategories should also be provided.

A. **Planning and Coordination** includes all expenditures related to State and substate planning activities such as State, regional and local personnel salaries pro-rated for time spent in planning meetings, data collection, analysis and writing, and traveling and in operating costs such as printing, advertising, and meeting expenses. Any contracts for planning and coordinating activities to community agencies or local governments should be entered here as should be the costs of any needs assessment projects using key informants or incidence and prevalence studies. Needs Assessment includes all expenditures relating to identifying the scope and magnitude of the problem, the resources available, the gaps in services, and the strategies to close those gaps. These funds are most likely to be expended at the State agency level or at a substate administrative agency.

B. **Quality Assurance** expenditures include all activities at the State agency level, at a substate administrative agency, or at the program-level (if identifiable) that are targeted at assuring conformity to accepted professional standards and to detect instances of deviations from acceptable practice for which corrective action need be taken. Include here the expenditures for carrying out the independent peer review activities required in Section 1916(c)(5). Any contracts with substate administrative agencies for monitoring local service providers should be included here.

C. **Training (Post-Employment)** includes all expenditures incurred for staff development and continuing education for personnel employed in local programs, coordinating agencies, and support agencies as long as the training is directed toward improving their competence and the effectiveness of services delivered. Post-employment training expenditures include any cost associated with inservice or off-site courses; tuition, expenses, and fees reimbursed to staff; operating costs, and salaries of trainers and support staff; and the cost of personnel involved in certification activities.

D. **Education (Pre-Employment)** includes all expenditures for support of students and fellows who are not yet regularly providing services but are in vocational, undergraduate, graduate or postgraduate programs designed to prepare them for the activity. This category includes scholarship and fellowship stipends as well as salaries of instructors and support personnel and operating costs.

E. **Program Development** includes all the expenditures for

salary and operating costs for State or substate agency support to local providers and planning groups through consultation, technical assistance and materials development. Examples of activities that would be included are; the design, development and implementation of a specific program rather than a plan; organizational development to improve practices (management, financial, or clinical) of a given provider; and support in getting a new service in operation in an already established provider.

F. **Research, Evaluation, and Information Systems** expenditures reflect formal scientific studies (e.g., clinical trials), demonstration projects testing the feasibility and effectiveness of a novel approach when there is an experimental design, evaluating the performance of service programs (whether directly by the State agency or by a contractor), and collecting and analyzing data used for monitoring performance and outcome.

6. **Administration** includes all expenditures associated with grants and contracts management, policy and auditing, personnel management, legislative liaison, and any residual costs associated with overhead in a large department or agency. This does not include monies expended for administration at the program level.

7. **Total** is the sum of all the expenditures reported above in rows 1 through 6.

8. **Total State Substance Abuse Budget** includes all expenditures for service and infrastructure activities, whether or not reported above. These totals should only be for the State alcohol and drug agency, responsible for administering the ADMS Block Grant, but may also include expenditures from other State agencies that are appropriated to or pass through this Agency.

b. **The Regional Activity Inventory** (ADMS Form 07) must be completed for each region or planning area in the State.[5] We are asking for information on each of the providers and other activities funded in each of the regions (i.e, subareas of your State that are defined and used for your own planning and budgeting purposes).

Duplicate as many of the Regional Activity Inventory forms (ADMS Form 07) as you need to list all the recipient provider agencies, projects, and activities in each region. On each page indicate the State and region in the spaces provided at the top of the form. Provide regional totals for each

[5] A given provider may receive only ADMS Block Grant funds, only State funds, or a mix of ADMS Block Grant and State funds. The data reported here are those supporting the block grant set-aside requirements and are not available through any other data collection method. Local providers must now be notified of the amount of the ADMS Block Grant funds that they receive, either directly from the State or through an umbrella agency.

column only on the last page; that is, complete the TOTAL row only for the last page of each region. Number the pages for the Regional Activity Inventory forms consecutively in the center at the bottom of each page.

On separate pages immediately following the Regional Activity Inventory forms, list the name of each provider or sub-recipient agency and the specific project for which funding is reported, if applicable, that is included in the Regional Activity Inventory. Provide both the name and address of those sub-recipients that do not have an NDATUS number. Number each entry consecutively by region, so that the number on the listing corresponds to the number entered in the first column of the Regional Activity Inventory form (ADMS Form 07). A recipient should be assigned only one number even if they will have multiple entries because they are funded to provide several different activities or projects.

Using the Regional Activity Inventory (ADMS Form 07) provided in the application, we ask you to enter the number that you have assigned to each project, provider, or recipient agency and activity in the list and then to enter the NDATUS or State identifier, activity code, and anticipated level of funding in thousands of dollars for the coming State Expenditure Period from each of the two major funding sources (the ADMS Block Grant and State Funds, here including any required local matching funds) and the major set-asides required by the ADMS Block Grant statute.

For each project, provider, and activity enter the following information in the appropriate cell:

1. Number assigned to a the provider, project, or activity. This number should correspond to the number assigned to the provider in the list described above.

2. NDATUS ID number (for treatment and prevention units). In order to avoid duplication of data collection efforts and to enable utilization of data obtained through the National Drug and Alcoholism Treatment Unit Survey (NDATUS) and the Minimum Data Set in responding to future Congressional reporting requirements, we are requesting that you provide in the second column the provider identification number from the NIDA master file (the SAFIS file) that has been or will be used on the NDATUS Survey form. For new providers, contact NIDA and assign a number in the customary manner.

3. Code for Type of Activity using the definitions of the activities given for the State Spending Plan (ADMS Form 05). If a given provider receives funding for more than one activity, there should be separate entries for each activity. Enter the two-digit code number for the type of activity funded.

01. Substance Abuse Treatment and Rehabilitation
02. Alcohol Treatment and Rehabilitation
03. Drug Treatment and Rehabilitation
04. Prevention and Early Intervention
05. Outreach
06. Planning and Coordination (including needs assessment)
07. Quality Assurance
08. Post-employment Training
09. Education
10. Program Development
11. Research, Evaluation, and Information Systems
12. Administration
13. Pass-through funds (Use for umbrella agencies only.)
14. Other (Indicate in a footnote the type of activity.)

NOTE: Outreach is included as a distinct activity for the Regional Activity Inventory as are all the other infrastructure sub-categories.

4. Level of ADMS Block Grant funding for this program or activity. Be sure to distinguish the specific activity in Column 3.

The ADMS Funds column should be used to report only the amount of ADMS Block Grant funds. Place an asterisk (*) alongside the number in column 1 to indicate whether ADMS Block Grant funds from more than one award are used to fund any one activity because of the overlap between Federal Fiscal Years and State Expenditure Periods. Enter the total amount of all ADMS funds during the State Expenditure period in the appropriate column for the Federal Fiscal Year in which they were awarded to the State.

For the last State Expenditure Period, in States whose fiscal years do not coincide with the Federal Fiscal Year, expenditures could have been made from both the FFY 1989 and FFY 1990 awards. A column is provided to report the expenditures for each year.

For the coming State Expenditure Period, in States whose fiscal years do not coincide with the Federal Fiscal Year, expenditures could be made from both the FFY 1990 and FFY 1991 awards. A column is provided to report the anticipated expenditures for each year.

For States whose Fiscal Year coincides with the Federal Fiscal Year, enter the expenditure in the appropriate column (i.e., FFY 1990 for the last and FFY 1991 for the coming State Expenditure Period.

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NOTE: OTI will generate the total amount of all ADMS Funds expended during each State Expenditure Period, regardless of the Federal Fiscal Year in which they were awarded. Section 1917(b)(1) requires States to maintain fiscal records that track the expenditures from each year's award. Any State that has difficulty in providing this information by Federal Fiscal Year should so indicate in a footnote immediately following the form and place all the entries in the *FFY* 1990 column for the last State Expenditure Period and in the *FFY* 1991 column for the last State Expenditure Period.

5. Level of State funding for this program or activity. Where local matching funds are required in order to receive State and/or ADMS Block Grant funding, these revenues, whether from local government sources, patient fees, or third party payers, should be included in the "State funds" category. (Report all matching funds even if they exceed the amount needed to meet program requirements; that is, overmatching should be reported.)

6. Level of funding for the direct provision of alcohol services (ADMS Block Grant funds only).

7. Level of funding for the direct provision of drug services (ADMS Block Grant funds only).

8. Level of funding for the direct provision of prevention services (ADMS Block Grant funds only).

9. Level of funding for the provision of services to IV drug users (ADMS Block Grant funds only).

10. Level of funding for the provision of substance abuse services to women (ADMS Block Grant funds only). Indicate the programs that treat pregnant women by placing an asterisk [*] in this column.

NOTE: For columns 4 through 10, all cells must be filled in with either (1) a dollar amount in thousands, denoting the anticipated level of funding for the project period; or (2) a zero [0], denoting that no funds are anticipated to be awarded to the provider from that funding source or for that activity, or (3) N/A, denoting that the information is not available.

Columns 4 through 10 are not to be summed. A given project may have entries in more than one column (e.g., a provider receiving only ADMS funds from the State for treatment services for women who are IV drug abusers would be coded 03 in column 3 and have the same level of funding recorded in columns 4, 7, 9, and 10); if some of the funds are specifically for outreach, an additional entry should be recorded in the next row, coded as 05 in column 3 with the same level of funding recorded in columns 4, 7, 9 and 10.

NOTE: We recognize that a number of States do not directly fund local treatment units or prevention providers but fund substate planning and administrative units (umbrella agencies) that may provide oversight, planning and coordination, priority development, training, and quality assurance. The form allows for these distinctions by requiring separate entries for specific activities funded for the same agency (i.e, direct services such as substance abuse treatment and prevention; infrastructure development activities such as planning and coordination and quality assurance.

Where the State, a local government unit, or a sub-recipient serves as an umbrella agency that passes through State and Federal funds to local providers to perform specific services (e.g., drug abuse treatment, outreach, waiting list reduction), the umbrella agency and these providers or projects must be listed and the pass-through funding data reported both for the local provider and for the umbrella agency, coding each activity appropriately. An additional activity code [13] is provided for funding from the State to the umbrella agency; this code should only be used for funds that are given for redistribution. An additional activity code [14] is provided for identifying activities or projects that are not classifiable into any of the other categories; provide an explanatory footnote, citing the region and number of the provider in the list.

For example, a clinic could receive funding directly from the State agency for both drug abuse treatment and rehabilitation and for prevention and early intervention activities; there should be two entries for this provider, with the same number in the first column, the same NDATUS number in the second column, and coded appropriately in the third column (03 and 04, respectively). Or a county health department, serving as a substate coordinating and umbrella agency, could receive funding from the State agency to directly carry out quality assurance (07), planning and coordination (06), and staff development (post-employment training, 09) activities; these three activities would each require a separate entry. The county health department may also receive direct services funds for service programs it directly administers with its own staff (e.g., a county-operated methadone outpatient clinic, 03) or that it contracts for from an independent agency (pass-through funds, 13); these two activities also would each require a separate entry, resulting in five rows or entries with the same provider number and NDATUS identifier, but each with a different activity code.

c. The **Statewide Project Inventory** (ADMS Form 08) must be completed for each project or provider that is designed to serve all areas of the State and <u>does not</u> serve a specific region or planning area. The instructions are the same as those for the **Regional Activity Inventory** (ADMS Form 07).

Duplicate as many of the **Statewide Project Inventory** forms as you need to provide for adequate space to list all the recipient agencies and individual projects conducted by the State agency. Provide a total for each column only on the last page, that is complete the **TOTAL** row only for the last page. Number the pages for the **Statewide Project Inventory** forms consecutively in the center at the bottom of each page.

On separate pages immediately following the Statewide Project Inventory forms, list the name of each provider or sub-recipient agency and the specific project for which funding is reported, if applicable, that is included in the Statewide Project Inventory. Provide both the name and address of those sub-recipients that do not have an NDATUS number. Number each entry consecutively, so that the number on the listing corresponds to the number entered in the first column of ADMS Form 08. A recipient should be assigned only one number even if they have multiple entries because they are funded to provide several activities or projects. Number the pages for the list consecutively in the center at the bottom of each page.

C. **Needs/Demand Assessment: Geographical Planning Areas and Characteristics of Individuals to be Served.** Section 1916(c)(10) requires that the State identify those populations, areas, and localities in the State with a need for mental health, alcohol abuse, and alcoholism and drug abuse services, and Section 1916(c)(19) requires that the State target ADMS Block Grant funds to those communities with the highest prevalence of substance abuse or the greatest need for treatment services as determined by the State after consideration of the demand for such services or the need for such services that exceeds the capacity to provide such services. The State is to take into account whether there is a high prevalence of drug-related criminal activity and a high incidence of communicable disease transmitted through intravenous drug abuse.

1. **Geographical Planning Areas to be Served.** For the State as a whole and the substate planning areas (regions) used in your budgeting and planning process, we ask that you provide the most current data available on several indices that are estimates of the number of persons in need of substance abuse services. We are asking you to provide the most current data available on the total number of persons, using whatever format and methodology that you customarily use for this purpose. If possible, provide a table to indicate the total number of persons in the State in need of services. If available, provide the same information for each of the State's substate planning areas, indicating the region for which data is presented. In the narrative, indicate the source of the data and briefly describe the methodology utilized by the State to generate this information. We recognize that there are many methods for doing needs/demand assessment and resource allocation, and that States and local communities use a variety of these methods out of preference and/or cost-considerations; therefore, we ask you to briefly describe the methodology used and the rationale for its use. If you cannot provide the data in this format, we ask you provide a brief narrative describing the methods that you do use for estimating the number of persons in need of substance abuse treatment. For States that use other methods (e.g., informed professional judgement, key informant survey, government share, utilization-based, problem-identification and analysis, social indicators), we ask you to briefly describe in the narrative immediately following the form the methodology used in developing the data reported and how it is used. *Limit the discussion to 2 pages.*

We also recognize that there are a number of different methods that can be used to operationalize the concepts contained in the statute of "the demand or the need for treatment services that exceeds the capacity to provide such

services," "a high prevalence of drug-related criminal activity," and " a high incidence of communicable disease transmitted through intravenous drug abuse." If you customarily use some other indices rather than those is asked for in the Needs Assessment Summary Matrix (ADMS Form 09), please provide an alternative table displaying these indices and briefly describe, in the narrative immediately following the form, the methodology utilized by the State to generate this information and the means by which this information is used to estimate treatment capacity needed and to prioritize resource allocation, if such estimates are done. *Limit the any additional discussion to 1 page.*

OPTIONAL: If possible, complete the Needs Assessment Summary Matrix (ADMS Form 09) for the State as a whole, duplicating as many copies of the form as needed to list all of the State's planning regions. The STATE TOTALS row should only be filled out on the last page and should indicate the totals for the State in each of the categories listed. Indicate the total number of persons or the appropriate prevalence or incidence estimate in each of the columns for each region. The indices are:

1. **Total Population.** Indicate the total population for the State or for each region.

2. **IVDU.** Indicate the number of intravenous drug users in need of treatment services. This entry should include the number of IVDUs who are currently receiving treatment as well as the estimated number who are in need of treatment but are currently not being served. In the narrative immediately following the form, describe the method used to generate this information. *Limit the description to 1 page.*

3. **IVDU/HIV+.** Indicate the number of intravenous drug users in the region who have tested positive for the etiologic agent for acquired immune deficiency syndrome who are in need of treatment services. This entry should include the number of individuals in this category who are currently receiving treatment as well as those in need of treatment who are currently not being served. In the narrative immediately following the form, describe the method used to generate this information. *Limit the description to 1/2 page.*

4. **Women in need of treatment services.** Indicate the number of women in the region who are in need of substance abuse services. This entry should include the number of individuals in this category who are currently receiving treatment as well as those in need of treatment who are currently not being served. In the narrative immediately following the form, describe the method used to generate this information. *Limit the description to 1/2 page.*

5. **Prevalence of drug-related criminal activity.** Indicate the estimated level of drug-related criminal activity. Insert additional column headings if more than one variable is used.

Describe the methodology for each of the indices used (e.g., number of drug-related arrests, rates of drug-related crimes/100,00 persons) that you choose to use to determine this prevalence in a footnote that immediately follows the Needs Assessment Summary Matrix. *Limit the description to 1 page.*

6. Incidence of communicable diseases transmitted through intravenous drug use. Indicate the estimated incidence of communicable diseases transmitted through IVDU in this region. Insert additional column headings if more than one variable is used. Describe the methodology for each of the indices used (e.g., rates or reported cases for HIV, ARC, hepatitis, syphilis) that you choose to use to determine incidence in a footnote that immediately follow the Needs Assessment Summary Matrix. *Limit the description to 1 page.*

NOTE: This is an optional form for FFY 1991. The narrative is not optional.

2. Characteristics of Individuals to be Served. While the State must address the needs of its total population, there are a number of subgroups that are especially vulnerable to substance abuse, have limited access to services for various reasons, and have special needs that require targeted attention, including additional financial resources, programs tailored to cultural values and unique characteristics, and specialized staff training. Some of these critical populations have been identified in the ADMS Block Grant set-asides (e.g., women in general, with special emphasis on pregnant and post-partum addicts and their substance-exposed infants; intravenous drug users) and the OTI grant program for Model Comprehensive Treatment Programs for Critical Populations (i.e., youth, racial/ethnic minority populations, arrestees, prisoners, and residents of public housing projects). Each State may have also identified and developed plans for serving other groups or subgroups with special needs or limited accessibility to existing resources (e.g., children of substance abusers and other high risk youth, inhalant abusers, Vietnam-era veterans, chemically dependent persons in the workplace, impaired drivers).

There are three Needs Assessment Worksheets that we would like completed. One is for the State as a whole (ADMS Form 10), indicating the number of individuals in the State in need of substance abuse services in each of the age and race/ethnicity categories. The other two are for the two critical populations that have identified set-asides: women (ADMS Form 11) and IV drug abusers (ADMS Form 12). Again, recognizing the variety of methods in estimating need and demand, we ask you to provide the data in whatever format that you routinely use in your planning methodology.

NOTE: These are optional forms for FFY 1991. The narrative is not optional.

We ask that you provide the same information for the other OTI critical populations or any other target populations that you identify, at your option, and we have provided a blank Statewide Target Population Needs Assessment Worksheet (ADMS Form 13) for your use. Duplicate as many copies of this form or an alternate as you need, identifying the population in the blank provided at the top of the form.

In all cases, please provide your definition of membership in the critical population and the criteria which you use to determine inclusion. This information should be included in the relevant appendix along with the most current information available on the efforts being made to address the special needs of each of the critical populations in response to the questions listed below. Whenever possible, reference the source of the data and describe the methodology utilized by the State to generate this information and to implement the described services.

a. Complete the Statewide Needs Assessment Worksheet (ADMS Form 10) for the State as a whole, indicating the number of individuals in the State in need of substance abuse treatment for each age and race/ethnicity grouping.

NOTE: The age and race/ethnicity categories used in the worksheet represent an attempt to be consistent with the groupings used in major Federal data collection activities (e.g., CADAP, NDATUS) but not with the categorical demonstration grant programs (e.g., OTI's Model Comprehensive Treatment Programs for Critical Populations, OSAP's Demonstration Grants for the Prevention, Treatment and Rehabilitation of Drug and Alcohol Abuse among High Risk Youth). Some States may use other groupings (e.g., Hawaii's unique need to distinguish among the Asian-American groups and to implement proportional funding for Native Hawaiians under Section 1912A[3][d] is recognized in the form) or may not break out their needs/demand estimates by any age or race/ethnicity groupings. In these cases, please provide us with a substitute form displaying whatever data you have currently available, arrayed by the groupings commonly used for your planning, budgeting, and resource allocation purposes.

OPTIONAL: For both critical populations, women and IV drug abusers, complete the appropriate Needs Assessment Worksheet (ADMS Form 11 or 12) for the State as a whole. The worksheet should indicate the number of all persons in the State who are in need of treatment for substance abuse and should indicate the number of persons in each age and race/ethnicity category.

b. *Women, including women of child-bearing age who are in need of prenatal and perinatal services, with attention paid to the service needs of their substance-exposed infants.* Section 1916(c)(14) requires that the State use not less than 10 percent of the funds expended in any fiscal year for alcohol and drug abuse programs and services designed for women, especially pregnant women and women with dependent children, including demonstration projects for the provision of residential services to pregnant women.

(1) Describe how the State has been funding and will continue to

fund activities to implement this provision in the last and coming State Expenditure Periods. This description *should not exceed 2 pages* and should be on a separate page that immediately follows the Statewide Women's Needs Assessment Worksheet (ADMS Form 11) in the application, if this optional form is completed.

(2) Describe how the State plans to monitor the adequacy of these efforts in meeting the needs of women in general, pregnant women, and women with substance-exposed infants and other dependent children in the State. Provide your best current information in responding to the following seven sets of questions:

(a) **Definition.** What is your definition of membership in the critical population and what are the criteria which you use to determine inclusion in the population?

(b) **Prevention Activities.** What efforts is the State making to target programs or activities that will prevent the increase of substance abuse among women and their dependent children? What role do Federally-funded demonstration grants and contracts play in your efforts?

(c) **Treatment Needs** - What is the State's most recent estimate of the number and location (i.e., rural, urban) of persons in need of treatment in this critical population? Provide documentation, including relevant data, to support these estimates. Reference the source of the estimate and the methodology used to determine treatment need. If possible, provide the data using a copy of the applicable Statewide Needs Assessment Worksheet or an alternate form. Duplicate as many copies as are needed and number the pages consecutively.

(d) **Treatment Capacity and Utilization** - What is the State's current capability (static capacity) to provide treatment for women in general, for pregnant women, and for women with dependent children that require child care services; that is, how many slots are available Statewide to provide treatment in public programs (and private, if this data is available)? What is the State's current capability (dynamic capacity) to provide treatment for members of this special population; that is, how episodes of treatment have been provided in the last Expenditure Period and how many episodes will be provided Statewide in the coming Expenditure Period. If possible, provide the data using the Treatment Capacity Matrix (ADMS Form 14) and the Treatment Utilization Matrix (ADMS Form 15), or an alternate form using your State's methodology for measuring capacity and utilization. Duplicate as many copies as are needed and number the pages consecutively.

(e) **Treatment Expansion/Improvement** - What has the State done or what is it planning to do to expand and/or improve outreach, treatment, child care services, prenatal and postnatal care, relapse prevention, follow-up care, and other services (e.g. supported housing, vocational training and job placement, detoxification, HIV testing and counseling, case management) for this critical population? What role do Federally-funded demonstration grants and contracts play in your efforts?

(f) **Major Problems** - What, if any, problems does the State face in trying to expand service capacity and/or improve the quality of services over the project period to this critical population?

(g) **Technical Assistance Needs** - What, if any, technical assistance or knowledge transfer activities are needed by the State and its local programs to improve or expand services for this critical population?

Please limit your discussion of these questions to no more than 4 pages.

In a separate appendix (Appendix C), briefly describe each of the projects identified in the Regional Activity Inventory that are offered to women of child-bearing age who are in need of prenatal and perinatal services, with attention paid to the service needs of their substance exposed infants, as well as to the child care needs of their older dependent children, and the intended objectives of each funded effort.[6]

c. *Persons whose substance(s) of abuse is/are intravenously administered (IVDUs) and their family members, collaterals, and sexual partners, who are HIV infected or at risk of HIV/AIDS.*

(1) Sections 1912A and 1915(c) of the PHS Act require that not less than 50 percent of the funds expended to combat drug problems in any fiscal year be used for specific activities targeted at these persons (whether it be treatment, prevention, outreach, or training). Describe how the State has been implementing and will continue to implement this requirement. *This description should not exceed 1 page.*

(2) Describe how the State plans to monitor the adequacy of these efforts in meeting the needs of IVDUs and their family members, collaterals, and sexual partners, who are HIV infected or at risk of HIV/AIDS in the State. Provide your best current information in responding to the following seven sets of questions:

(a) **Definition.** What is your definition of membership in the critical population and what are the criteria which you use to determine inclusion in the population?

(b) **Prevention Activities.** What efforts is the State making to target programs or activities that will prevent the increase of intravenous drug abuse and HIV/AIDS among this critical population? What role do Federally-funded demonstration grants and contracts play in your efforts?

(c) **Treatment Needs** - What is the State's most recent estimate of the number and location (i.e., rural, urban) of persons in need of treatment in this critical population? Provide documentation, including relevant data, to support these estimates. Reference the source of the estimate

[6] In the Regional Activity Inventory, be sure that you have provided specific information identifying which agencies receive funding under this provision and the amount of ADMS Block Grant funds used for each unit. Be sure that the code identifying the specific activities funded is accurately completed (e.g., treatment, prevention, outreach, training), with a separate entry for the amount of block grant funds utilized for each.

and the methodology used to determine treatment need. If possible, provide the data using a copy of the applicable Statewide Needs Assessment Worksheet or an alternate form. Duplicate as many copies as are needed and number the pages consecutively.

(d) **Treatment Capacity and Utilization** - What is the State's current capability (static capacity) to provide treatment for persons who are IVDUs; that is, how many slots are available Statewide to provide treatment in public and private programs? What is the State's current capability (dynamic capacity) to provide treatment for members of this special population; that is, how episodes of treatment have been provided in the last Expenditure Period and how many episodes will be provided Statewide in the coming Expenditure Period. If possible, provide the data using the Treatment Capacity Matrix (ADMS Form 14) and the Treatment Utilization Matrix (ADMS Form 15), or an alternate form using your State's methodology for measuring capacity and utilization. Duplicate as many copies as are needed and number the pages consecutively as part of the appendix.

(e) **Treatment Expansion/Improvement** - What has the State done or what is it planning to do to expand and/or improve outreach, treatment, relapse prevention, follow-up care, and other services (e.g. supported housing, vocational training and job placement, detoxification, HIV testing and counseling, acute and supportive medical and nursing care, case management) for this critical population? What role do Federally-funded demonstration grants and contracts play in your efforts?

(f) **Major Problems** - What, if any, problems does the State face in trying to expand service capacity and/or improve the quality of services over the project period to this critical population?

(g) **Technical Assistance Needs** - What, if any, technical assistance or knowledge transfer activities are needed by the State and its local programs to improve or expand services for this critical population?

Please limit your discussion of these questions to no more than 4 pages.

(3) Describe how the State has been and will continue to assure that funds described above will not be used: (1) to carry out any program of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of cleaning needles for such injections, or (2) to carry out any testing for the etiologic agent for acquired immunodeficiency syndrome unless such testing is accompanied by appropriate pre-test counseling and appropriate post-test counseling. ***This description should not exceed 1 page.***

(4) Section 1916(c)(16) of the PHS Act requires that the State will receive notification of when a program treating IV drug abusers has reached 90 percent capacity. Describe how the State has been implementing and will continue to assure the implementation of this

requirement. This description should be ***limited to 2 pages.***

(5) Section 1916(c)(17) of the PHS Act requires that IV drug abusers are accepted for treatment within 7 days. Describe how the State has been implementing and will continue to assure the implementation of this requirement. This description ***should not exceed 1 page.***

(6) Section 1916(c)(18) of the PHS Act requires that the State carry out outreach activities for IV Drug Abusers. Describe how the State has been and will continue to assure the implementation of this provision. This description should ***not exceed 1 page.***[7]

In a separate appendix (Appendix D), briefly describe the intended objectives of each funded project, the services to be offered, the number of at risk individuals or families or patients to be served or impacted, the amount of treatment capacity (slots or your own unit of service) to be added, if appropriate, and the demographic characteristics of persons you are expecting to serve.

d. **Other Critical Populations.** A response is optional for the other critical populations that OTI and DHHS have identified as needing special attention. For any of the critical populations listed below or a population that your State has identified as needing special attention, please provide your best current information and respond to the same seven sets of questions in Appendix E. Provide data on the number persons needing services in the manner that you customarily use for planning and budgeting purposes by completing one or more of the Statewide Target Population Needs Assessment Worksheet (ADMS Form 13) or an alternate form as appropriate for the State as a whole and its planning regions. If possible, provide the data on treatment using the Treatment Capacity Matrix (ADMS Form 14) and the Treatment Utilization Matrix (ADMS Form 15), or an alternate form using your State's methodology for measuring capacity and utilization. Duplicate as many copies as are needed and number the pages consecutively as part of the appendix.

* Racial and ethnic minorities;
* Persons who are homeless or at risk of being homeless;
* Adolescents and high risk youth;
* Persons currently incarcerated or otherwise involved with the criminal justice system;

[7] In the Regional Activity Inventory (ADMS Form 07), be sure that you have provided specific information identifying which agencies receive funding under this provision and how the funding that they receive under the drug abuse portion of the ADMS Block Grant funds is utilized. Be sure that the code for identifying the specific activities funded is accurately completed (e.g., treatment, prevention, outreach, training), with a separate entry for the amount of block grant funds utilized for each activity.

* Persons who live in rural areas;

* Indivhduals with a diagnosis of co-existing substance abuse and mental disorders ("dual diagnosis patients")

* Residents of public housing projects (individuals who are permanent legal residents of public housing projects (housing units or developments that are subsidized by local and/or Federal governments));

* Low income families with pre-school age children enrolled in Headstart;

* Families with children where the parents' addiction problems have resulted in charges of child abuse and neglect; and

* Low income individuals and their families, particularly those on and/or eligible for welfare and Medicaid.

We suggest that you provide the same information and complete the same forms for any other critical populations which your State has determined to have special needs and for which the State has developed or is planning to develop programs, whether you use ADMS Block Grant funds, State funds, other Federal grant funds, Medicaid, or all four.

D. Criteria and Methods for the Distribution of Allotments. Briefly describe the criteria and methods that the State currently uses to distribute the Alcohol and Drug Abuse portion of ADMS Block Grant funds to local entities and programs for the provision of prevention and treatment services in compliance with sections 1915(a)(1), 1915(b), and 1916(c)(1) of the Public Health Service Act.

For example, criteria used for distributing funds may include a statewide needs assessment to determine the prevalence of drug abuse problems with communities or planning areas ranked to determine priorities for expansion funding when treatment resources are insufficient to meet these needs and waiting lists exist. Other criteria and methods may involve seeking to equalize staff salaries across regions or to increase staff retention by providing for cost of living increases, or using communities' relative ranking on individual direct and indirect indices of drug problems (such as median family income, emergency room drug-related encounters, drug-related arrests, and incidence of hepatitis) or a combination of indices. Methods for distributing funds may include mailing announcements to community groups and local governments to solicit letters of intent to provide services within the specified geographical areas and service categories, formal contract bidding procedures to determine the service provider for a given geographical area or critical population, or purchase of services on an as needed basis from qualified providers.

Describe briefly how information about substate planning is used to impact the funding decisions necessary to meet the required targeting, both among and within substate planning areas. Describe the monitoring process

used to assure that the funded programs continue to serve the communities with the highest prevalence of substance abuse or the greatest need for treatment services. Describe how the information is used to assure targeting among and within each of the regions or other smaller subareas of your State that are defined and used for your own planning and budgeting purposes (e.g., cities within regions).

In your discussion, identify whatever financial conditions (e.g., matching requirements, maintenance of effort, licensure, performance contracting) that the State imposes on local entities or programs that receive State funds to provide substance abuse prevention and treatment services.

If the process for allocating ADMS Block Grant funds to local entities and programs differs substantially from the process for allocating State funds, please explain the rationale for these differences.

Limit your description to 3 pages.

E. Methodology used by State to Purchase Services and Determine Treatment Capacity and Quality.

1. Treatment Capacity and Utilization. We ask you to briefly describe the methods used by the State to purchase treatment capacity and services from local providers, to determine treatment capacity, and to determine the reasonable cost of capacity and services purchased (*using no more than 3 pages for all 3 questions*).

a. Mechanisms Used to Manage and Measure Treatment Capacity and Utilization. For both the last Expenditure Period and the coming Expenditure Period, complete a Treatment Capacity Matrix (ADMS Form 14) and a Treatment Utilization Matrix (ADMS Form 15) to provide information on the State's capability to provide treatment for persons with alcohol and drug problems; that is, report how many slots are available statewide to provide treatment in the public sector (static capacity) and how many episodes of treatment have and could be provided within the project period (dynamic capacity).

Enter the dates for the two Expenditure Periods at the top of the form in the space provided on both forms. If possible, also complete a separate form for each of your State's substate planning regions, noting the region at the top of the form in the space provided. Number the pages consecutively in the center of the bottom of the page.

The rows on both forms are the NDATUS type of care categories. Definitions are provided in the glossary. For each type of care listed, identify the State's capability to provide treatment for persons with alcohol and drug problems. In the first column, report only those individuals who are in treatment for an alcohol problem only. In the second column, report only those individuals who are in treatment for a drug problem only. In the third column, report only those individuals who are in treatment for both alcohol and drug problems. In the fourth column, report the total of the first three columns. If you cannot provide the data for the separate groups, explain why in the narrative immediately following the forms.

On the Treatment Capacity Matrix (ADMS Form 14) enter the static capacity for each type of care. Static capacity is defined as the maximum number of patients who can be treated at any one time in a distinct treatment unit under full operating conditions. A slot is a unit of measure of treatment capacity. In the appropriate column, enter the number of slots available for persons with either a drug or an alcohol problem during the applicable Expenditure Period. Provide the number of slots that are expected to be in operation during the entire expenditure period. Identify whether appreciable increases or decreases were experienced in the last State Expenditure Period or are expected during the coming State Expenditure Period, and explain in the narrative immediately following the forms.

On the Treatment Utilization Matrix (ADMS Form 15) enter the dynamic capacity for each type of care. Dynamic capacity is defined as the maximum number of episodes of care that can be provided by the treatment unit in a year assuming a specified length of stay. An episode is a single treatment experience with a given admission and discharge date. In the appropriate column, enter the number of episodes of treatment provided for persons with either a drug or a alcohol problem during the applicable Expenditure Period. Report all persons who have received or will receive any treatment in a type of care during the Expenditure Period. For purposes of completing this form, obtain the number of episodes by adding the number of persons who were on the rolls at the beginning of the Expenditure Period and all those who were admitted during the Expenditure Period. These could be duplicated admissions.

NOTE: Although the National Drug Control Strategy and Federal budgeting for treatment expansion have used the concepts of "slots" to describe the mechanism used to determine treatment capacity and "slot costs" to establish funding levels for services purchased through the ADMS Block Grant and the Waiting List Reduction Program, we recognize that there are a variety of methods for measuring treatment capacity and utilization and for purchasing services (e.g., episodes, units of service, personnel and operating budgets, capitation), and that States and local communities may use one or more of these methods. If your State, and/or its subdivisions, does not use slots, episodes, or the NDATUS type of care categories, please describe the mechanism by which you purchase and measure treatment capacity and utilization (e.g., units of service, episodes, personnel and operating line item budgets, deficit reduction, capitation) and provide the information in a similar matrix using your methodology.

b. Methods Used to Purchase Services. Briefly describe the methods used by the State to purchase treatment capacity and services from local providers. For example, services may be purchased by grant or contract, on a competitive basis or non-competitive basis. Contracts or grants may be for a specified time (e.g., a year) with renewal dependent on satisfactory performance or on a competitive procurement. Or the State may provide annual funding on a formula basis to a subarea administrative agency (e.g., a county health department); the formula may be similar to the formula used to establish ADMS Block Grant allotments to States. The county agency then awards part of its funds to purchase services from local providers using a grant mechanism to obtain a specified number of units of service (e.g., group

counseling hours; education sessions).

c. Methods Used to Determine Reasonable Cost. Describe the methodology that the State uses to determine the reasonable cost of services for whichever methodology is used. For example, describe how the State determines what the cost per slot or unit of service should be that it purchases from all providers or the formula used to distribute funds to regional administrative units. Describe variations, if any, that are used to fund projects serving specific geographic areas or critical populations (e.g, rural and urban areas, economically disadvantaged populations).

2. Quality Assurance, Performance Criteria, Program Standards, and Evaluation.

a. Program Performance Monitoring. For programs that receive State and/or ADMS Block Grant funds, describe briefly how the State agency awarding those funds monitors and evaluates the performance of substance abuse service providers during the funding period? Where appropriate, please include a discussion of monitoring mechanisms such as: management information and outcome monitoring systems, periodic program activity reports, periodic fiscal reports, grant/contract applications, program records, site visits, licensure/accreditation reports, performance contracting, and independent peer review. For each of the monitoring mechanisms used, please provide a brief description of the methods used (e.g., the application forms, licensure/accreditation standards, and/or monitoring checklists). You may wish to use the questions below for independent peer review as a guide. *Limit your discussion of these mechanisms to 3 single-spaced pages.*

b. Independent Peer Review. Section 1916(c)(5) requires that each State provide for periodic independent peer review to assess the quality and appropriateness of treatment services in programs funded by the ADMS Block Grant. Each State should have by now developed policies and procedures which cover the State Agencies' and local treatment service providers' responsibilities and authorities, as established by legislative, regulatory or executive authorities, for independent peer review. We are asking you to describe how you have been and will continue to implement this requirement. *Limit your discussion of the five sets of questopns on independent peer review to 3 single-spaced pages.*

(1) Describe your State's procedures for the implementation of this provision, including a definition of "peer review", identification of who (or what entity) will conduct these activities, and a schedule for how often such "periodic" reviews will be conducted.

(2) Describe the data collection requirements, including a description of peer review data elements and reports required from treatment programs and/or peer review agencies pertaining, generally, to the quality and appropriateness of care in those programs and, specifically, to patient-oriented adverse or sentinel health events occurring during treatment, the quality and appropriateness of care standards, criteria, indicators and other related information used to perform peer review, and the methodology for selecting cases for peer review including sampling techniques.

(3) Include a brief description of the relationship of the independent peer review program to the State's other quality assurance mechanisms, such as licensure and monitoring activities, and to accrediting programs such as the Joint Commission on Accreditation of Healthcare Organizations and the Commission on Accreditation of Rehabilitation Facilities.

(4) Identify the staff by organizational unit and position title (not name) assigned in the State or regional umbrella agencies to conduct or manage the independent peer review program.

(5) Provide a description of the kinds of findings and recommendations generated by the peer review program which identify quality and appropriateness of care problems, corrective actions or opportunities for improvement, and the known and perceived impacts on and improvements to the quality and appropriateness of care that can be attributed to the peer review program.

3. Treatment Improvement. Describe key elements in the State's strategy to augment existing programs and to establish new treatment programs, where needed. Describe briefly what, if any, plans the State has to help overcome obstacles that restrict the expansion of treatment capacity in local communities, such as zoning ordinances or community resistance to siting new treatment programs. Describe briefly the role that Federally-funded demonstration projects play in your efforts. Describe briefly what technical assistance you would wish to receive from OTI to implement this strategy. *Use no more than 3 pages.*

4. Human Resources. Briefly respond to the following questions. *Limit the total discussion to 4 pages, using no more than 1 page per set of questions.*

a. What, if any, efforts are being made by the State to address staffing shortages in substance abuse programs, especially in geographic areas of high demand for services and to critical populations?

b. If available, provide data on the current staff recruitment and retention patterns of substance abuse treatment programs funded by State or ADMS Block Grant funds? For those programs, geographic areas and professions that experience the most difficulty in recruitment and retention, what are the most significant factors that contribute to these problems and what, if any, actions has the State already taken or does the State intend to take to strengthen treatment program recruitment and retention of qualified staff?

c. Does the State perform or require licensure or certification of treatment program clinical staff? How does the State ensure that State and local substance abuse programs provide adequate and appropriate inservice training to help employees stay abreast of the latest and most effective treatment techniques? Does the State impose inservice education requirements on local service providers as a condition for financial assistance?

d. Does the State have drug-free patient and workplace programs, requirements, or initiatives (e.g., employee assistance programs) that include some form of drug testing and that apply to employees of State and local substance abuse services programs and facilities? If no such programs exist at the State or local level, does the State plan to establish such requirements, and, if so, how?

SECTION III
PART 3

Intended Use of Mental Health Block Grant Funds

BACKGROUND/PURPOSE

As noted above, the FY 1991 ADMS Block Grant application requests that the States provide much of the same information as that provided in earlier years, using standard formats wherever possible. The application has been reformatted and reordered to provide for consistent presentation. These revisions will ensure more rapid comprehensive review, as well as improve the retrieval of information for forward planning, budgeting, reporting, technical assistance, and monitoring purposes.

In this revised application, while we are most concerned with obtaining improved information on how the State plans to expend funds for alcohol and drug abuse activities that meet the statutory requirements of the ADMS Block Grant Program and how it will conduct its oversight of these activities, we are also beginning to address similar concerns for the community mental health services funded through the program. Discussions have been initiated on how some of the application data requirements can be obtained through other existing data sources. The State Comprehensive Mental Health Services Plans, required under Sections 1925 and 1926 of the PHS Act, provide much of the same information regarding community mental health services funded through the block grant. These plans will continue to be submitted to the National Institute of Mental Health under guidelines, submission dates, and review processes determined by the Institute and will be more closely coordinated with the ADMS Block Grant in the future.

The application changes for the mental health portion of the ADMS Block Grant primarily involve standardization of the format for describing the intended use of funds and the activities to be undertaken to meet statutory requirements (e.g., the children's services set-aside). Discussions have been initiated to determine what additional linkages are needed between the application and the mental health services plan and existing national data collection efforts. These issues will be addressed in the development of the FY 1992 Application, after consultation by OTI and NIMH with the State Mental Health Authorities.

Completion of the narrative and forms is optional for FY 1991. You may provide the data in the format used in previous years, completing the Table of Contents/Review Checklist (ADMS Form 02) to aid in the review.

During the latter stages of the review of the revised application, we have begun discussing with NIMH and NASMHPD how best to coordinate these different approaches and information requests. The application includes requests for only some of the information required; other information will now be obtained through the on-site compliance reviews and a revised annual report. This first year that the additional information is requested will serve as a transition, and will enable us to respond to Congressional inquiries at the ADMS Block Grant reauthorization hearings expected to take place in early 1991.

As a result of these discussions, we recognize that not all the information requested is readily available in each State in the format desired. We view this first effort to obtain the added information as a needs assessment that will enable OTI and the rest of ADAMHA to learn which States will require additional technical assistance in improving their management, data collection and analysis, quality assurance and evaluation, and planning capabilities. We ask again that wherever your State does not have reliable data to permit a response to a specific item within the time frames given for submitting the application, you do not attempt to answer but indicate what the problem is in obtaining the necessary data and describe the type of assistance you would desire in order to be able to provide a valid response in future years.

A. Goals and Objectives of Mental Health Services Activities. In addition to the goals and objectives that the State has developed for the expenditure of ADMS Block Grant funds, the authorizing statute sets out national goals, through its requirements and establishment of set-asides, that should be addressed in this section. The State should describe the programs and activities that it will support with ADMS Block Grant and other funds to achieve each of these national goals and to achieve State and local goals, if they differ. The State should also include a description of any State or local goals and objectives that are unique or differ from the national goals.

Drawing primarily from Sections 1915 (a)(2) and 1916(c)(3) of the PHS Act, the overall goal of the mental health portion of ADMS Block Grant can be summarized as: the provision of comprehensive community mental health services to individuals residing in a defined geographic area so that these services are available and accessible promptly, in a manner which preserves human dignity and assures continuity and high quality, cost-effective care. The broad national goals that funds from the mental health portion of the ADMS Block Grant should address are:

A. identify those populations, areas, and localities in the State with greatest need for mental health services and target programs, services, and resources accordingly, with public input into the proposed use and distribution of ADMS Block Grant mental health funds.

B. assess and improve the quality and appropriateness of treatment provided by community mental health centers that receive funds from the Mental Health component of the ADMS Block Grant.

C. provide comprehensive mental health services with special attention given to individuals who are seriously mentally ill and other identified currently underserved populations.[8]

D. improve and expand the services and programs designed for seriously emotionally disturbed children and adolescents.

E. improve and expand the services and programs designed for mentally ill elderly individuals.

F. continue to provide and develop new community mental health services and programs.

G. coordinate mental health and healthcare services provided within healthcare centers.

1. Goals and Objectives. Provide a brief narrative that spells out the specific objectives and action steps designed to meet each of these goals (*using no more than 1 page per goal*). The narrative should describe the programs and activities directed at each of the above goals and objectives. Goals, objectives, and action steps should be clearly and succinctly stated. Where additional information pertaining to a specific goal (e.g., Goal *D: services for children and adolescents*) is discussed elsewhere in the application (i.e., Section II, Part 3, C.2.a. of the application), cross reference the appropriate pages in your completed application.

Goals are general statements of desired ends, and objectives are more specific subelements undertaken to reach a goal. Remember, that in the annual report, the State will be required to address its progress toward meeting each goal and whether or not it accomplished each objective; therefore, each objective should be realistic and measurable. Identify and number each objective.

2. Planning and Public Input. Section 1916(e)(1) of the PHS Act establishes the requirements for the State Mental Health Services Planning Council and Section 1916(b) of the PHS Act requires the State to hold public hearings on the intended use and distribution of funds for each fiscal year. Describe briefly how planning to meet these needs is carried out in your State and the process the State follows to obtain public and legislative participation in the development and review of the plan and the ADMS Block Grant application. Describe the composition and role, if any, of the State Mental Health Services Planning Council and any other State, regional, and local advisory council(s). ***Limit the discussion to 2 pages.***

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[8] The application will follow the convention adopted by the National Institute of Mental Health and use the phrases "adults and children with severe and disabling mental illness" or "persons with severe and persistent disabling mental illness" or "seriously mentally ill" wherever feasible and not in conflict with the governing statute, rather than the phrase contained in the authorizing legislation "the chronically [mentally] ill," since the word "chronic" may be identified by consumers and family members as having a negative connotation. This concern has been addressed in the Drug Abuse Treatment Technical Corrections Act of 1988 (P.L. 101-93), which substitutes the phrase "seriously mentally ill" in Section 1916(e)(3)(iii) of the PHS Act but not elsewhere in the authorizing statute.

B. Types of Activities to be Supported and State Spending Plan.

1. Expenditures. We are asking you to provide the most current data available on the block grant expenditures that will be made to support the activities planned to achieve the above goals and objectives.

a. State Expenditures. Using the Mental Health State Spending Plan (ADMS Form 16), we ask you to provide expenditure data for both the last Expenditure Period and the anticipated or coming Expenditure Period. This information will be helpful in assessing the impact of changes in the availability of project grants and Medicaid on the overall system. Entries for the last Expenditure Period should be the actual expenditures while the entries for the coming Expenditure Period will need to be the projections used in your budgeting process.

This form requests information on ADMS Block Grant and associated Federal, State, and local expenditures and revenues on the types of activities identified in the first column. Expenditures for the last Expenditure Period should be the actual expenditures made during the period. Therefore, provide the information for that period which have actual expenditures. Enter the dates of the last Expenditure Period in the space provided at the top of the form.

The figures for the coming Expenditure Period will need to be the projections that you have used to establish obligations in your State budgeting process. Enter the dates of the coming Expenditure Period in the space provided at the top of the form; be sure that they are consistent with the dates entered on the Face Page (ADMS Form 01). If the actual amounts cannot be calculated by the time of submission then the best available estimate should be submitted, with a footnote describing the method of estimation. All footnotes should be clearly marked and follow ADMS Form 16 in the narrative.

Rows 1 and 2 of ADMS Form 16 concern expenditures for those direct services activities that have immediate impact on the persons diagnosed as mentally ill or at risk of mental illness. Treatment includes all expenditures to provide and support direct services to patients. Prevention/Education includes all expenditures to provide services to the general population and those at risk of specific mental illnesses. Row 3 (including subcategories 3A through 3F) concern the infrastructure expenditures related to services program development, support, and monitoring. OTI is interested in determining the level of funding available to the State and regional mental health umbrella agencies for the management and support of ADMS Block Grant funds in the context of total funding available.

NOTE: We have identified seven major functional areas (or cost centers) that comprise the infrastructure needed to support prevention and treatment activities. These funds are most likely to be expended at the State agency level or at a substate administrative agency. We recognize that these categories may be different than the classification system or chart of accounts used by your State agency; we ask that you use the best information that you have available and attempt to recast your dollar expenditures using the activity definitions provided below. Future consultations with the State Mental Health Authorities and NIMH

will be undertaken to determine the utility and validity of the approach, and if desired, define a uniform approach using procedures similar to those employed in the Mental Health Statistics Improvement Program.

You are to enter the total amount of dollars expended for each of the activities listed under each major funding source. The first set of columns should report the expenditures of programs and activities funded during the last Expenditure Period. Report only the amounts actually expended.

The second set of columns should report the expenditures of programs and activities planned for the coming Expenditure Period. The projected expenditures and revenues required to carry out the action plans described in the Goals and Objectives section of your FY 1991 ADMS Block Grant application should be reported here. Report either the amounts actually obligated, if your State budgeting process has progressed that far, and/or the amounts projected in your budgeting process. Whenever possible, report obligations. Indicate the nature of the method used to generate the data (i.e., whether coming Expenditure Period estimates are based on obligations, allocations, current estimates, or a combination) in a clearly marked footnote that immediately follows the form.

The columns represent major funding sources:

The ADMS Funds column should be used to report only the amount of ADMS Block Grant funds. Place an asterisk [*] in column 1 to indicate whether ADMS Block Grant funds from more than one award are used to fund any one activity because of the overlap between Federal Fiscal Years and State Expenditure Periods. Enter the total amount of all ADMS funds during the State Expenditure period in the appropriate column for the Federal Fiscal Year in which they were awarded to the State.

For the last State Expenditure Period, in States whose fiscal years do not coincide with the Federal Fiscal Year, expenditures could have been made from both the FFY 1989 and FFY 1990 awards. A column is provided to report the expenditures for each year.

For the coming State Expenditure Period, in States whose fiscal years do not coincide with the Federal Fiscal Year, expenditures could be made from both the FFY 1990 and FFY 1991 awards. A column is provided to report the anticipated expenditures for each year.

For States whose Fiscal Year coincides with the Federal Fiscal Year, enter the expenditure in the appropriate column (i.e., FFY 1990 for the last and FFY 1991 for the coming State Expenditure Period.

NOTE: OTI will generate the total amount of all ADMS Funds expended during each State Expenditure Period, regardless of the Federal Fiscal Year in which they were awarded. Section 1917(b)(1) requires States to maintain fiscal records that track the expenditures from each year's award. Any State that has difficulty in providing this information by Federal Fiscal Year

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should so indicate in a footnote immediately following the form and place all the entries in the FFY 1990 column for the last State Expenditure Period and in the FFY 1991 column for the last State Expenditure Period.

The Medicaid columns should be used to report all funds received from Medicaid, including the Federal and State shares.

The Federal Medicaid column should be used to report the total amount of the Federal share of benefits provided under Federal regulations.

The State Medicaid column should be used to report the total amount of State and local government matching (when appropriate) share of benefits provided under Federal regulations and the amount of State funds (and local government match when appropriate) provided under a supplementary State program.[9]

The Other Federal Funds column should be used for reporting all other Federal funds (including ADAMHA program support funds, demonstration grants/contracts, Medicare, other public welfare funds such as food stamps, other public third party funds such as CHAMPUS, the Federal portion of the Social Services Block Grant [Title XX], the Education for the Handicapped and Vocational Rehabilitation grant, etc.) in each category. Examples of demonstration grants would be the NIMH Community Support and Homeless demonstrations; OTI will provide the States with a list of grants, if needed.

The State Funds column should be used to report all State general fund appropriations or special appropriations (fines, fees, earmarked taxes) received from the State alcohol and drug agency and any other State agencies.

The Local Funds column should be used to report all funds derived from appropriations by any local government entity (e.g., municipality, city, county).

The Other Funds column should be used to report funds received from all other sources, including patient fees, private donations (e.g. United Way, Robert Wood Johnson Foundation), and private third party payers (e.g., Blue Cross/Blue Shield, HMOs, commercial insurers) for the specific activity.

NOTE: We are not asking you to report total funding. This information will be generated in our analysis. If you cannot provide the requested breakdown for a given category, use the Other Funds column. In a footnote immediately following the form,

[9] OTI will calculate the State share (and local share, when appropriate) applied to the Federal program for those States that have a distinct, supplementary State Medicaid program. We will use the ratio of State to Federal Medicaid funding for the calculation of total State matching funds, allowing for a distinction between matching funds and funds provided under the supplementary State program.

discuss the reason that the break down is not available.

For each of the activities listed in the first column, we want you to record the level of funds in the appropriate column:

1. Treatment includes all expenditures to provide and support direct services to patients (e.g., outreach, outpatient psychotherapy, psychoactive medication prescription and monitoring, community support, psychosocial rehabilitation, residential treatment center stays, hospital care, vocational counseling, case management, central intake, program administration).

2. Prevention includes expenditures for all primary prevention and early intervention activities and services (e.g., media campaigns, parenting skills training, screening programs) directed toward persons who are at risk, as your State defines these activities.

3. Infrastructure includes all expenditures associated with services program development, support, and monitoring. The infrastructure row should include the total costs for the 6 subcategories (A through F) listed below. These funds are most likely to be expended at the State agency level or at a substate administrative agency. Where possible, expenditure for each of the subcategories should also be provided.

A. Planning and Coordination includes all expenditures related to State and substate planning activities such as State, regional and local personnel salaries pro-rated for time spent in planning meetings, data collection, analysis and writing, and traveling and in operating costs such as printing, advertising, and meeting expenses. Any contracts for planning and coordinating activities to community agencies or local governments should be entered here as should be the costs of any needs assessment projects using key informants or incidence and prevalence studies. Needs Assessment includes all expenditures relating to identifying the scope and magnitude of the problem, the resources available, the gaps in services, and the strategies to close those gaps. These funds are most likely to be expended at the State agency level or at a substate administrative agency.

B. Quality Assurance expenditures include all activities at the State agency level, at a substate administrative agency, or at the program-level (if identifiable) that are targeted at assuring conformity to accepted professional standards and to detect instances of deviations for which corrective action need be taken. Include here the expenditures for carrying out the independent peer review activities required in Section 1916(c)(5). Any contracts with substate administrative agencies for monitoring local service providers should be included here.

C. Training (Post-Employment) includes all expenditures incurred for staff development and continuing education for personnel employed in local programs, coordinating agencies, and support agencies as long as the training is directed toward improving their competence and the effectiveness of services delivered. Post-employment training expenditures include any cost associated with inservice or off-site courses; tuition, expenses, and fees reimbursed to staff; operating costs, and salaries of trainers and support staff; and the cost of personnel involved in certification activities.

D. Education (Pre-Employment) includes all expenditures for support of students and fellows in vocational, undergraduate, graduate, and pot graduate programs who are not yet regularly providing services but are in programs designed to prepare them for the activity. This category includes scholarship and fellowship stipends as well as salaries of instructors and support personnel and operating costs.

E. Program Development includes all the expenditures for salary and operating costs for State or substate agency support to local providers and planning groups through consultation, technical assistance and materials development. Examples of activities that would be included are: the design, development and implementation of a specific program rather than a plan; organizational development to improve practices (management, financial, or clinical) of a given provider; and support in getting a new service in operation in an already established provider.

F. Research, Evaluation, and Information Systems expenditures reflect formal scientific studies (e.g., clinical trials), demonstration projects testing the feasibility and effectiveness of a novel approach when there is an experimental design, evaluating the performance of service programs (whether directly by the State agency or by a contractor), and collecting and analyzing data used for monitoring performance and outcome.

4. Administration includes all expenditures associated with grants and contracts management, policy and auditing, personnel management, legislative liaison, and any residual costs associated with overhead in a large department or agency. This does not include monies expended for administration at the program level.

5. Total is the sum of all the expenditures reported above in Rows 1 through 4.

NOTE: Enter the amount of the expenditures in thousands of dollars in the appropriate cell; enter a zero [0] if there are no expenditures; enter N/A when data are not available.

b. Substate Expenditures. Using as many copies needed of the Mental Health Service Area Activity (ADMS Form 17), we ask you to enter the name of each provider or recipient agency and activity, the anticipated level of funding in thousands of dollars for the coming State Expenditure Period from the ADMS Block Grant and State Funds for each of the populations described in the statute: children and adolescents, elderly, persons with severe and persistent mental illnesses, or for the general population (i.e., no specific subpopulation is targeted).

On the Mental Health Service Area Activity Inventory (ADMS Form 17), list the name of each community mental health services provider to be funded with from the ADMS Block Grant in the first column and than enter the anticipated level of funding to be obligated for the coming State Expenditure Period from ADMS Block Grant and State Funds in next three columns.

The ADMS Funds column should be used to report only the amount of ADMS Block Grant funds. Place an asterisk [*] next to the name in column 1 to indicate whether ADMS Block Grant funds from more than one award are used to fund any one activity because of the overlap between Federal Fiscal Years and State Expenditure Periods. Enter the total amount of all ADMS funds during the State Expenditure period in the appropriate column for the Federal Fiscal Year in which they were awarded to the State.

For the last State Expenditure Period, in States whose fiscal years do not coincide with the Federal Fiscal Year, expenditures could have been made from both the FFY 1989 and FFY 1990 awards. A column is provided to report the expenditures for each year.

For the coming State Expenditure Period, in States whose fiscal years do not coincide with the Federal Fiscal Year, expenditures could be made from both the FFY 1990 and FFY 1991 awards. A column is provided to report the anticipated expenditures for each year.

For States whose Fiscal Year coincides with the Federal Fiscal Year, enter the expenditure in the appropriate column (i.e., FFY 1990 for the last and FFY 1991 for the coming State Expenditure Period.

NOTE: OTI will generate the total amount of all ADMS Funds expended during each State Expenditure Period, regardless of the Federal Fiscal Year in which they were awarded. Section 1917(b)(1) requires States to maintain fiscal records that track the expenditures from each year's award. Any State that had difficulty in providing this information by Federal Fiscal Year should so indicate in a footnote immediately following the form and place all the entries in the FFY 1990 column for the last State Expenditure Period and in the FFY 1991 column for the last State Expenditure Period.

Enter the level of State Funds for this program or activity. Where local matching funds are required in order to receive State and/or ADMS Block Grant funding, these revenues, whether from local government sources, patient fees, or third party payers, should be included in the "State funds" category. (Report all matching funds even if they exceed the amount needed to meet program requirements; that is, overmatching should be reported.)

Enter the total funding available to the provider in the column for the special population targeted. If any other special population is targeted, enter the total funding in the last column (Other) and identify and describe the population briefly in a footnote in the narrative immediately following ADMS Form 17.

NOTE: A given provider may receive only ADMS Block Grant funds, only State funds or a mix of ADMS Block Grant and State funds. Where local matching funds are required in order to receive State and ADMS Block Grant funding, these revenues, whether from local government sources, patient fees, or third party payers, should be included in the "State funds" category. The types of major activities to be reported are those supporting the block grant set-aside requirements and are not available through any other data collection method.

The Mental Health Service Area Activity Inventory (ADMS Form 17) should be completed for each substate mental health service area used by your State for your own planning and budgeting purposes. We are asking for the same funding source information for each of the providers funded in each service area.

NOTE: Enter the amount of the expenditures in thousands of dollars in the appropriate cell; enter a zero [0] if there are no expenditures; and enter N/A if the data are not available.

Duplicate as many of the Mental Health Service Area Activity Inventory forms (ADMS Form 17) as you need to list all the recipient provider agencies, projects, and activities in each region. On each page indicate the State and region in the spaces provided at the top of the form. Provide regional totals for each column only on the last page, that is, complete the TOTAL row only for the last page of each service area. Number the pages for the forms consecutively in the center at the bottom of each page.

C. Needs/Demand Assessment: Geographical Planning Areas and Characteristics of Individuals to be Served. Section 1916(c)(10) requires that the State identify those populations, areas, and localities in the State with a need for mental health, alcohol abuse, and alcoholism and drug abuse services, and Section 1915(a)(2) requires that the State make grants from ADMS Block Grant funds to community mental health centers for services to severely mentally disturbed children and adolescents, persons with severe and persistent mental illness, mentally ill elderly individuals, and any other identifiable subpopulations that are currently underserved. Additional populations and services identified in the statute are outpatient services for residents of the area that have been discharged from an inpatient facility and screening

services for those at risk of hospitalization. We are asking you to briefly describe the mechanisms used in your State to meet these requirements for community mental health services to the populations so identified, *using no more than 1 page.*

1. Geographical Planning Areas to be Served. We are asking you to provide the most current data available on the total number of persons in need of treatment for mental illness, using whatever format and methodology that you use for this purpose. If possible, provide a table to indicate the total number of persons in the State in need of mental health services. If available, provide the same information for each of the mental health service areas, defined in accord with Section 1916(c)(3)(A), and indicating the Region (mental health service area) for which data is presented. In the narrative, indicate the source of the data and briefly describe the methodology utilized by the State to generate this information (*not to exceed 1 page*). We recognize that there are many methods for doing needs/demand assessment and resource allocation, and that States and local communities use a variety of these methods out of preference and/or cost-considerations; therefore, we ask you to briefly describe the methodology used and the rationale for its use.

NOTE: Do not duplicate any material covered in more detail in your Comprehensive Mental Health Services Plan. Provide a cross reference to the pages in that document where the material can be found.

2. Characteristics of Individuals to be Served. While the State must address the needs of its total population, there are a number a subgroups that are especially vulnerable and that have special needs that require targeted attention, including additional financial resources, programs tailored to cultural values and unique characteristics, and specialized staff training. Some of these special populations have been identified as deserving such special attention in the ADMS Block Grant statute: individuals with severe and persistent mental illness, seriously emotionally disturbed children and adolescents, the mentally ill elderly, residents of the area that have been discharged from an inpatient facility, and persons at risk of hospitalization. We ask that you focus on these populations in the application.

a. Children and Adolescents. Section 1916(c)(15) requires that 10 percent of the Mental Health portion of the ADMS Block Grant be used to fund services for severely emotionally disturbed children and adolescents and that not less than 50% of these funds will be used to provide new or expanded services that were not available prior to October 1, 1988.

(1) Describe briefly how the State has and will continue to fund activities to implement this provision. On the Mental Health Service Area Activity Inventory (ADMS Form 17), provide specific information identifying which units received funding under this provision and the amount of ADMS Block Grant and State funds for each unit.

(2) Describe the adequacy of these efforts in meeting the needs for mental health services to severely emotionally disturbed children and adolescents:

(a) **Definition.** What is your definition of membership in the special population and what is the criteria which you use to determine inclusion?

(b) **Prevention Activities.** What efforts is the State making to target programs or activities that will prevent the increase of mental illness in this special population?

(c) **Treatment Needs** - What is the State's most recent estimate of the number and location (i.e., rural, urban) of persons in need of treatment in this special population? Provide documentation, including relevant data, to support these estimates. Reference the source of the estimate and the methodology used to determine treatment need. If possible, provide the data in tabular form.

(d) **Treatment Capacity and Utilization** - What is the State's current capability to provide treatment for members of this special population. Provide the information using the standard methodology by which you purchase and measure treatment capacity and utilization. If possible, provide the data in tabular form.

(e) **Treatment Expansion/Improvement** - What has the State done or what is it planning to do to expand and/or improve outreach, treatment, follow-up care, and other services (e.g., special education, supported housing, vocational training and job placement, case management) for this special population? What, if any, role have Federally funded demonstration project played in your effort.

(f) **Major Problems** - What, if any, problems does the State face in trying to expand and/or improve services over the coming Expenditure Period to this special population?

(g) **Technical Assistance Needs** - What, if any, technical assistance and knowledge transfer activities are needed by the State and its local programs to improve services for this special population?

Limit the total discussion to 4 pages.

b. **Other Populations.** In addition, we are asking you to provide in **Appendix F** the most current information available on the efforts being made to address the special needs of two of the other special populations discussed in the statute with ADMS Block Grant funds (i.e., mentally ill elderly, persons with severe and persistent mental illness).

NOTE: Do not duplicate any material covered in more detail in your Comprehensive Mental Health Services Plan. Provide a cross reference to the pages in that document where the material can be found.

As noted above, additional populations and the specific services that can be funded are identified in the statute as outpatient services for residents of the area that have been discharged from an inpatient facility and screening services for those at risk of hospitalization. We ask you to

respond to the seven sets of questions listed above for each group that you select. A response is optional for these special populations and any other such target populations that your State has identified as needing special attention. For any of the special populations, please provide your best current information by providing needs assessment data and responding to the same seven questions. Whenever possible, reference the source of the data and describe the methodology utilized by the State to generate this information and to implement the described services. ***Please limit your discussion to no more than 4 pages of narrative for each population that you include.***

D. **Criteria and Methods for the Distribution of Allotments.** Briefly describe the criteria and methods that the State currently uses to distribute the mental health portion of the ADMS Block Grant to local entities and programs for the provision of community mental health services in compliance with sections 1915(a)(2), 1916(c)(3), 1916(c)(4), and 1916(e)(2)(B) (***using no more than 3 pages***). For example, criteria used for distributing funds may include a formula based on population size, a statewide community survey as a needs assessment to determine the prevalence of problems with catchment areas ranked to determine priorities for expansion funding when treatment resources are insufficient to meet these needs and waiting lists exist, or a formula for providing for cost of living and merit increases to retain experienced staff or for relative ranking on direct and indirect indices of problems such as school suspensions or median family income, or a combination. Methods for distribution of funds may include mailing announcements to community groups and local governments to solicit letters of intent to provide services within the specified mental health service areas and service categories, review of continuation applications from previously funded community mental health centers, formal contract bidding procedures to determine the service provider for a given service area or special population, or purchase of services on an as needed basis from a number of qualified providers.

Identify whatever financial conditions (e.g., matching requirements, maintenance of effort, licensure, performance contracting) that the State imposes on local entities or programs that receive State funds to provide community mental health treatment services.

If the process for allocating ADMS Block Grant funds to local entities and programs differs substantially from the process for allocating State funds, please explain the rationale for these differences.

E. Methodology used by State to Purchase Services and Determine Treatment Capacity and Quality.

1. **Treatment Capacity and Utilization.** We ask you to briefly describe the methods used by the State to purchase treatment capacity and services from local providers, to determine treatment capacity, and to determine the reasonable cost of capacity and services purchased (***using no more than 2 pages***).

a. **Mechanisms Used to Manage and Measure Treatment Capacity and Utilization.** We recognize that there are a variety of methods for measuring treatment capacity and utilization and for purchasing services (e.g.

episodes, units of service, personnel and operating budgets, DRGs, capitation), and that States and local communities may use one or more of these methods. Please describe the mechanism by which you purchase and measure treatment capacity and utilization, and provide data on the capacity and services provided using your methodology.

b. **Methods Used to Purchase Services.** Briefly describe the methods used by the State to purchase treatment capacity and services from local providers (*using no more than 1 page*). For example, services may be secured by grant or contract, on a competitive basis or non-competitive basis. Contracts or grants may be for a specified time (e.g., a year) with renewal dependent on satisfactory performance or renewal dependent on a competitive procurement. Or the State may provide contract funding on an annual basis to a subarea administrative agency (e.g., a county health department, comprehensive community mental health services board) using a population-based formula; the formula may be similar to that used to establish ADMS Block Grant allotments to States. The county umbrella agency then awards funds to local providers using a grant mechanism to obtain a specified number of units of service (e.g., group counseling hours; education sessions). Contracts or grants may be for a specified time (e.g., a year) with renewal dependent on satisfactory performance or renewal dependent on a competitive procurement.

c. **Methods Used to Determine Reasonable cost.** Describe the methodology that the State uses to determine the reasonable cost of services for whichever methodology is used. For example, describe how the State determines what the cost per unit of service should be that it purchases from all providers or the formula used to distribute funds to regional administrative units. Describe variations, if any, that are used to fund projects serving specific geographic areas or critical populations (e.g, rural and urban areas, economically disadvantaged populations).

2. **Quality Assurance, Performance Criteria, Program Standards, and Evaluation.**

a. **Program Performance Monitoring.** For programs that receive State and/or ADMS Block Grant funds, describe briefly how the State agency awarding those funds monitors and evaluates the performance of mental health service providers during the funding period. Where appropriate, please include a discussion of monitoring mechanisms such as: management information and outcome monitoring systems, periodic program activity reports, periodic reports, grant/contract applications, program records, site visits, performance contracting, licensure/accreditation reports, and independent peer review. For each of the monitoring mechanisms used, please provide a brief description of the methods used (e.g., application forms, licensure/accreditation standards, and/or monitoring checklists). *Limit your discussion of these mechanisms to 3 single-spaced pages.*

b. **Independent Peer Review.** Section 1916(c)(5) requires that each State provide for periodic independent peer review to assess the quality and appropriateness of treatment services in programs funded by the ADMS Block Grant. Each State should have by now developed policies and procedures which cover the State Agencies' and local treatment service providers'

responsibilities and authorities, as established by legislative, regulatory or executive authorities, for independent peer review. We are asking you to describe how you have been and will continue to implement this requirement. Address the following five items and *limit your discussion of independent peer review to 3 single-spaced pages.*

(1) Describe your State's procedures for the implementation of this provision, including a definition of "peer review", identification of who (or what entity) will conduct these activities, and a schedule for how often such "periodic" reviews will be conducted.

(2) Describe the data collection requirements, including a description of peer review data elements and reports required from treatment programs and/or peer review agencies pertaining, generally, to the quality and appropriateness of care in those programs and, specifically, to patient-oriented adverse or sentinel health events occurring during treatment, the quality and appropriateness of care standards, criteria, indicators and other related information used to perform peer review, and the methodology for selecting cases for peer review including sampling techniques.

(3) Include a brief description of the relationship of the independent peer review program to the State's other quality assurance mechanisms, such as licensure and monitoring activities, and to accrediting programs such as the Joint Commission on Accreditation of Healthcare Organizations and the Commission on Accreditation of Rehabilitation Facilities.

(4) Identify the staff by organizational unit and position title (not name) assigned in the State or regional umbrella agencies to conduct or manage the independent peer review program.

(5) Provide a description of the kinds of findings and recommendations generated by the peer review program which identify quality and appropriateness of care problems, corrective actions or opportunities for improvement, and the known and perceived impacts on and improvements to the quality and appropriateness of care that can be attributed to the peer review program.

3. **Treatment Improvement.** Describe key elements in the State's strategy to augment existing programs and to establish new treatment programs, where needed. Describe what role, if any, Federally funded demonstration projects play in your efforts. Describe briefly what, if any, plans the State has to help overcome obstacles that restrict the expansion of treatment capacity in local communities, such as zoning ordinances or community resistance to siting new treatment programs. Describe briefly what technical assistance you would wish to receive from OTI to implement this strategy.

Limit the total discussion to 4 pages.

SECTION IV
Appendices

There are six appendices to be included with the application:

A. Group Homes for Recovering Substance Abusers (see page 18).

B. Substance Abuse Prevention and Early Intervention: Definitions and Project Descriptions (see page 26).

C. Substance Abuse Services to Women: Project Descriptions and Responses (see page 38).

D. Treatment for Intravenous Drug Abusers: Project Descriptions and Responses (see page 40)

E. Substance Abuse Services to other Critical Populations: Responses (see page 40) (Optional).

F. Mental Health Services to other Special Populations: Responses (see page 57) (Optional).
   1. Mentally ill elderly
   2. Persons with severe and persistent mental illness
   3. Other

Additional attachments should not be necessary, but if you wish to present additional material, each should be clearly marked with identifying information (i.e., the section of the application and the page number referenced), included in the Table of Contents, and paginated as separate appendices.

In Appendices E and F, we are asking you to provide the most current information available on the efforts being made to address the special needs of the special populations discussed in the statute or identified by your State as requiring special attention by responding to seven sets of questions and providing data on either our forms or those customarily used for your own planning and budgeting, if possible. A response is optional for these special populations. Whenever possible, reference the source of the data and describe the methodology utilized by the State to generate this information and to implement the described services. ***Please limit your discussion to no more than 4 pages of narrative for each population in Appendix E.***

(a) **Definition.** What is your definition of membership in the special population and what is the criteria which you use to determine inclusion?

(b) **Prevention Activities.** What efforts is the State making to target programs or activities that will prevent the increase of substance abuse or mental illness in this special population?

(c) **Treatment Needs** - What is the State's most recent estimate of the number and location (i.e., rural, urban) of persons in need of treatment in this special population? Provide documentation, including relevant data, to support these estimates. Reference the source of the estimate and the methodology used to determine treatment need. If possible, provide the data using a copy of the **Statewide Target Population Needs Assessment Worksheet** (ADMS Form 13) included in the application. Duplicate as many copies as are needed and number the pages consecutively.

(d) **Treatment Capacity and Utilization** - What is the State's current capability to provide treatment for members of this special population. Provide the information using the standard methodology by which you purchase and measure treatment capacity and utilization.

(e) **Treatment Expansion/Improvement** - What has the State done or what is it planning to do to expand and/or improve outreach, treatment, follow-up care, and other services (e.g., supported housing, vocational training and job placement, case management) for this special population? What role do Federally funded demonstration projects play in your efforts?

(f) **Major Problems** - What, if any, problems does the State face in trying to expand and/or improve services over the project period to this special population?

(g) **Technical Assistance Needs** - What, if any, technical assistance or knowledge transfer activities are needed by the State and its local programs to improve services for this special population?

LIST OF REQUIRED AND OPTIONAL FORMS

Form 01	Face Page
Form 02	Table of Contents/Review Checklist
Form 03	CEO Assurances
Form 04	Service Coordination Matrix
Form 05	State Spending Plan
Form 06	Regional Spending Plan
Form 07	Regional Activity Inventory
Form 08	Statewide Project Inventory
Form 09	Needs Assessment Summary Matrix (Optional)
Form 10	Statewide Needs Assessment Worksheet (Optional)
Form 11	Statewide Women's Needs Assessment Worksheet (Optional)
Form 12	Statewide IVDU's Needs Assessment Worksheet (Optional)
Form 13	Statewide Target Population's Needs Assessment Worksheet (Optional)
Form 14	Treatment Capacity Matrix
Form 15	Treatment Utilization Matrix
Form 16	Mental Health State Spending Plan Form (Optional)
Form 17	Mental Health Service Area Activity Inventory Form (Optional)

REVIEW OF APPLICATIONS

Review Process

The Division of Grants and Contracts Management (DGCM), ADAMHA, serves as the point of contact for receipt and review of ADMS Block Grant applications. For FY 1991 applications will be initially reviewed by staff from DGCM and the other ADAMHA components involved in program administration for completeness and compliance with block grant statute and regulations concerning certifications and the description of the intended use of funds. As in previous years, the notification of award will be dependent on completeness of the application containing the required certifications and description of the intended use of funds. Failure to provide required certifications and descriptions will result in delays in making the award.

A second objective review that will involve ADAMHA staff and consultants, including representatives of other State ADM agencies, subarea administrative agencies and local provider staff, will follow. This peer review will focus on the technical merit of the activities and funding patterns described in the application and will be used in this transition year to identify national trends in service delivery, problems being encountered, and technical assistance needs, nationally and locally. The application and its review will serve as baseline data for the organizational development reviews and evaluations of the State's capacity to administer the ADMS Block Grant. Review of the revised application will enable OTI to initiate technical assistance activities focused on resolving ADMS Block Grant management infrastructure problems identified by the States.

Additional information will be sought from the State contacts listed on the Face Page if the material in the application is deemed insufficient to assess either compliance or technical merit. We are not seeking data for data's sake. As noted previously, we ask that wherever your State does not have reliable data to permit a response to a specific item within the time frames given for submitting the application, do not attempt to answer but to indicate what the problem is in obtaining the necessary data and to describe the type of assistance you would desire in order to be able to provide a reliable and valid response in future years. We are relying on the cooperation of State agencies to support this effort by describing their planning and management activities and programs in response to the questions in the instructions and in the forms as best they can. We need you to explain the reasons for the unavailability of any needed data so we can jointly develop the next steps.

Allotments and Awards

Sections 1912, 1912A and 1913 of the PHS Act set out the procedures to be followed in determining the allocation for each State and Territory. Award processes and decisions remain the same as in previous years. Appropriations and allocations for FY 1991 are not yet known, and awards will not be made until the final Federal budget is adopted.

Administrative Review of Waiver Requests.

The Anti-Drug Abuse Act of 1988 (Public Law 100-690) amended the Public Health Service Act by reauthorizing the Alcohol, Drug Abuse, and Mental Health Services (ADMS) Block Grant. The Act also authorized the Secretary of Health and Human Services, upon the request of a State, to waive certain requirements under the ADMS Block Grant program. The authority to grant such waivers has been delegated to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA). Waivers can be requested for the following requirements:

1. 50 Percent Set-Aside for Intravenous (IV) Drug Abuse, Section 1915(C);
2. Construction or Rehabilitation of Substance Abuse Facilities, Section 1912(A);
3. Maintenance of Effort, Section 1916(c)(11)(B); and
4. 55 Percent Set-Aside for new Community Mental Health Services and Programs, Section 1916(c)(2)(B).

Guidelines are available to help those States that may wish to apply for any of these waivers. The Guidelines provide direction on information that should be submitted to support the request for a waiver. However, the format and documentation of a waiver request are subject to some State discretion. ADAMHA will use the waiver framework described in the Guidelines to assess each request for completeness and comparability.

The granting of a waiver under any of these authorities is a discretionary matter subject to the decision of the Administrator, based on the individual merits of each case. The Administrator will not automatically grant each waiver.

The guidelines for requesting waivers for requirements 1, 2, and 3 listed above were published in the Federal Register on June 2, 1989 at 54 FR 23696 et seq. Copies of the Guidelines for requesting each waiver can be obtained from:

Mr. Gary Palsgrove
Senior Advisor for Block Grants
Division for State Assistance
ADAMHA/OTI
Rockwall Building - 10th floor
5600 Fishers Lane
Rockville, MD 20857

Telephone: (301) 443-3820

GLOSSARY OF KEY TERMS[10]

ADAMHA PROGRAM SUPPORT FUNDS - Include here all funds received for prevention, training, research, treatment, etc., from NIAAA, NIDA, OTI, OSAP, or NIMH through direct project grants/contracts (including services and services research). These are included in the Other Federal Funds column on the spending plan forms.

AMERICAN INDIAN/ALASKAN NATIVE - A person having origins in any of the original people of North America.

ASIAN-AMERICAN/PACIFIC NATIVE - A person having origins in any of the original people of the Far East, Indian subcontinent, Southeast Asia, or the Pacific Islands.

BLACK, NOT OF HISPANIC ORIGIN - A person having origins in any of the people of sub-Saharan Africa or Haiti who do not self-classify as Hispanics.

CAPACITY OF TREATMENT - The maximum number of individuals who could be enrolled as active clients given the unit's staffing, funding, and physical facility at that time. For residential and other 24-hour care units, treatment capacity is equal to the number of beds available at the unit. For outpatient units, treatment capacity reflects the maximum active client caseload a unit could carry. This maximum caseload would depend upon such factors as the percentage of total staff hours devoted to direct client care, the average length of counseling sessions, and the frequency of client visits to the unit.

CHILD CARE SERVICES - Services which provide care for minor children of active clients, including supervised activities.

COMMUNITY MENTAL HEALTH CENTER - Includes five types of services which are provided in a comprehensive manner in order to provide a community service. The five services provided by CMHC's are outpatient care, inpatient care, partial hospitalization, emergency care and consultation and education.

CUSTODIAL/DOMICILIARY - Provision of food, shelter, and assistance in routine daily living on a long-term basis for persons with alcohol or other drug-related problems. Classify any such services as long-term rehabilitation treatment units.

DETOXIFICATION (Drug or Drug-free) - The period of planned withdrawal from drug dependency, whether or not supported by use of a prescribed medication. If methadone is being used, detoxification cannot exceed 180 days. When

[10] The majority of key terms included in this glossary have been adapted from the National Drug and Alcohol Treatment Unit Survey (NDATUS). Questions about the accuracy or applicability of any definition to each State's methodology should be address to Herman Diesenhaus at (301) 443-3820. In all cases, the definition contained in the applicable statute would be controlling.

methadone detoxification exceeds 180 days, the treatment modality becomes maintenance. A treatment regimen that does not include any pharmacologic agent or medication as the primary part of the drug treatment including drug detoxification. Temporary medication may be prescribed in a drug free modality, e.g., short-term use of tranquilizers or clonidine for opiate withdrawal, but the primary treatment method is counseling (individual, group, family, etc.), and not pharmacotherapy.

DETOXIFICATION (Social or Medical) - The systematic reduction or elimination of the effects of alcohol in the body whether on a drug-free basis, in a specialized nonmedical facility by trained personnel with physician services available when required or through the use of medication under the supervision of medical personnel in a hospital or other 24-hour care facility.

DYNAMIC CAPACITY - the total number of patients that a [project] might treat over a stated period of time, a year being the common period of measurement. For example, over the course of a year, a static inpatient detoxification slot theoretically could yield a dynamic capacity of 52, because it is possible to detoxify a patient in one week.

EARLY INTERVENTION SERVICES - These services are intended to encourage persons to seek early help for their alcohol and drug problems, provide crisis services, educate the helping professions to recognize persons with substance abuse problems and to offer appropriate services, and the like.

EPISODE - a single treatment experience with a given admission and discharge date.

FAMILY COUNSELING/THERAPY SERVICES - Services which are provided during the same session to members of a family/collateral group.

FUNDING SOURCE - Includes all sources of operating funds for a treatment unit in effect during an Expenditure Period.

HISPANIC - A person of Cuban, Mexican, Puerto Rican, and all other Spanish cultures and origins, regardless of race (includes Central and South America and Spain).

HOSPITAL INPATIENT - An institution that provides 24-hour services for the diagnosis, detoxification and treatment (rehabilitation, recovery) of patients through an organized medical or professional staff and permanent licensed medical/psychiatric facilities that include inpatient beds, medical, and nursing services.

LOCAL GOVERNMENT FUNDS - Provided by local government (city, county, etc.) to provide treatment or prevention services on a program or unit level.

METHADONE MAINTENANCE - The continued administering of methadone and other approved pharmacological adjuncts at relatively stable dosage levels as an oral substitute for an individual dependent on opiates. This may be administered in conjunction with appropriate social and medical services. This category also includes those clients who are being withdrawn from

maintenance treatment.

METHADONE TREATMENT - Refers to methadone maintenance or detoxification. Methadone maintenance is the continued administering of methadone, in conjunction with provision of appropriate social and medical services, at relatively stable dosage levels for 180 days or more. Methadone is used as an oral substitute for opiates during the rehabilitative phase of treatment. This category also includes those clients who are being withdrawn from maintenance treatment.

OTHER FEDERAL FUNDS - Funds made available to the States or treatment units from any Federal agency, e.g., Federal Prison System, Veterans Administration, Bureau of Community Health Services, Indian Health Service, etc. This designation is to be used when ADAMHA Program Support funding categories are not appropriate. Medicaid funds should not be included in this category.

OUTPATIENT - Treatment/recovery/aftercare, or rehabilitation services provided by a unit where the client does not reside in a treatment facility. The client receives drug abuse or alcoholism treatment services with or without medication, including counseling and supportive services. Daycare is included in this category. This is also known as non-residential services in the alcoholism field.

OUTREACH SERVICES - Outreach activities involve efforts in the community for early case-finding and early intervention services to drug and alcohol abusers. These services would also include efforts to educate various groups about drug and alcohol abuse.

NATIVE HAWAIIAN - A person having origins in any of the original people of the Hawaiian Islands.

PATIENT (CLIENT) FEES - Direct payment to the treatment unit from consumers for services received. May be proportioned on a sliding-scale based on individual or family income.

PREVALENCE - the number (rate) of persons in the community who have been diagnosed as having an alcohol or drug related problem requiring treatment. May be established through direct measures or indicators such as counts of the number of patients in treatment and extrapolations from surveys or indirect measures or indicators such as extrapolations from the number of drug-related emergency room visits or of the number of hepatitis patients in treatment, or drug-related deaths reported by coroners, by counts of the numbers of persons arrested for drug-related crimes--possession, selling or number of arrestees testing positively for drugs.

PREVENTION/EDUCATION - Those activities that are intended to reduce or minimize the incidence of new drug abuse or alcoholism problems and the negative consequences of the use of alcohol and/or licit or illicit drugs. Available services may vary widely but are generally associated with information, education, alternatives, and primary and early intervention activities, and may also encompass services such as literature distribution, media campaigns, clearinghouse activities, speaker's bureau, and school or

peer group situations. These services may be directed at any segment of the population.

Activities, programs and projects can be differentiated by the primary group targeted: prevention and early intervention activities are targeted at non-users, experimenters, occasional users, and individuals just emerging as drug users who are at high risk of becoming dysfunctional users of any drug, including alcohol. Treatment and rehabilitation activities are targeted at those persons already experiencing problems related to the consistent use of alcohol and other drugs.

PRIVATE DONATION FUNDS - Contributions from foundation grants, cash donations, cash value of donated goods, and contributions from United Way and other charitable institutions. These are included in the Other Funds category.

PRIVATE THIRD PARTY FUNDS - This category includes payments from Blue Cross and Blue Shield Plans, other commercial insurance companies, and independent plans. Independent plans include employer- or employee-sponsored programs, health maintenance organizations, and private group clinics. These are included in the Other Funds category.

PUBLIC THIRD PARTY FUNDS - Benefits paid through Title XVIII (Medicare), XIX (Medicaid), or XVI (Supplemental Security Income, SSI. This category includes the Civilian Health Medical program of the Uniformed Services (CHAMPUS) and the Civilian Health and Medical Program of the Veterans' Administration (CHAMP-VA). These are included in the Other Federal Funds category.

PUBLIC WELFARE - Medical or social service benefits or payments made available through local general assistance or general assistance or general relief programs, including food stamps. These are included in the State or Local Government Funds categories as appropriate.

QUALITY ASSURANCE - Activities designed to evaluate, certify, or improve the quality of [treatment] care in order to enhance the health of consumers and the cost-effectiveness of care.

REHABILITATION/RESIDENTIAL - An approach which provides a planned program of professionally directed assessment, diagnosis, care, and treatment for the restoration of functioning for persons impaired by drugs or alcoholism. In some States, this type of care is referred to as treatment or recovery (excluding detoxification). Includes services provided in hospitals and nonmedical treatment facilities (including a prison or a jail) that provides residential support, ambulatory care during the treatment and rehabilitation process including individual and family counseling, group therapy and other health-related services. Residential facilities include quarterway house, halfway house/recovery homes, group homes and therapeutic communities.

RESEARCH SERVICES - Activities performed by unit staff to systematically collect and/or analyze empirical data based on the scientific model of developing knowledge.

SLOT - A unit of measure of treatment capacity. The maximum number of persons who can be treated or carried on a person's rolls at any one time, given the programs's physical characteristics, size and composition of staff, and financial and other resources. For example, if an outpatient program has set a policy that there must be one counselor for every 20 patients and it has five full-time counselors, then the program has a capacity of 100 slots. In other words, the program should not keep more than 100 persons on its active patient rolls given its current resources. Because patients are regularly being discharged and new patients admitted, a single slot, in the course of a year can be filled by more than one person. A 20-bed facility designed to provide inpatient detoxification in a standard course of treatment of one month can serve at least 240 persons a year (20 beds x 12 months), but it still has only 20 slots. Slots and persons served are not synonymous. Treatment costs may also be calculated using the concept of slots. The "annual average cost per treatment slot" is equal to a program's total cost of providing treatment over the year divided by the average treatment capacity, expressed as slots for that year. A slot may be conceptualized as the capacity to provide treatment for one patient for one year.

STATE - As used in this application, State refers to all the States and Territories eligible to receive ADMS Block Grant funds as described in Section 1912A(g)(1)(B) -the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of Northern Mariana Islands, and the successor States to the former Trust Territory of the Pacific Islands. Where a requirement does not apply to any State or Territory, the exception will be noted (e.g., revolving loan fund for group homes for recovering substance abusers).

STATE EXPENDITURE PERIOD - the period during which ADMS Block Grant funds will be expended by the State, which, in most cases, will be the State's fiscal year. Several forms request that information be provided on expenditures of major sources of funds (e.g., ADMS Block Grant, other available Federal grants, and State and local funds) anticipated to be made during this coming State Expenditure Period as well as made during the last State Expenditure Period.

STATE GOVERNMENT FUNDS - Funds provided by State legislation to provide prevention and treatment services on a program or unit level. These are included in the State or Local Government Funds categories as appropriate.

STATE/LOCAL GOVERNMENT FEES FOR SERVICE - State or local monies paid to programs or units as reimbursement for services provided to clients or patients. These are included in the State or Local Government Funds categories as appropriate.

STATIC CAPACITY (or Budgeted Capacity) - the number of patients that a treatment project is funded or budgeted to treat. A slot may be conceptualized as the capacity to provide treatment for one patient for one year.

TREATMENT (Not Methadone) - Formal organized services for persons who have abused alcohol and/or other drugs. These services are designed to alter

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specific physical, mental, or social functions of persons receiving care by reducing client disability or discomfort, and ameliorate the signs or symptoms caused by alcohol and/or drug abuse. For purposes of this survey, detoxification services are considered to be a treatment. This is also referred to as recovery services in some States.

TYPE OF CARE - The primary treatment approach or regimen assigned to the client by the treatment unit staff. Types of care as shown on the drug and alcohol matrices on pages 2 and 3 of the form are differentiated by the type and extent of therapy and services administered to the client.

UMBRELLA AGENCY - a substate or local organization [planning unit] that oversees prevention and treatment projects. Federal and State funds are sometimes channeled through such an area agency; thus, it should be doing planning as well as monitoring the use of funds and provision of services.

WHITE (Not Hispanic) - A Caucasian person having origins in any of the people of Europe (including Portugal), North Africa, or the Middle East.

DRAFT

NOTIFICATION OF RESPONDENT BURDEN--
SEE LAST PAGE

OMB No: 0930-0080

Expires:

ATTACHMENT B
(ADMS)

FISCAL YEAR (FY) 1991 ADMS BLOCK GRANT APPLICATION REQUIREMENTS

This format is modeled after the fiscal year (FY) 1990 requirements and may be used to meet the minimum requirements for (FY) 1991 applications. This format is based only on the present Federal statutory requirements. However, consistent with those statutory requirements the following items must be a part of the FY 1991 application:

A. An assurance that the legislature of the State[1] has conducted public hearings on the proposed use and distribution of the ADMS Block Grant funds, as required in Section 1916(a) and (b) of the PHS Act.

B. The Chief Executive Officer's certification that the State will comply with the requirements of Section 1916(c) (1) through (21) of the PHS Act, as amended by P.L. 101-374. (The certification must be made by the Chief Executive Officer personally or by an individual formally authorized to make such certifications on behalf of the Chief Executive Officer; a copy of any such authorization must be included.)

We suggest, and will accept, a Chief Executive Officer's certification as follows: "I hereby certify that the State/Territory will comply with Section 1916 (c) (1) through (21) of the PHS Act, as amended by P.L. 101-374."

C. The State's agreement that it will comply with Section 1915(c)(2) of the PHS Act, as amended by Section 2025 of P.L. 100-690. We suggest, and will accept, the following certification:

"The State agrees that payments received under the ADMS Block Grant and used pursuant to Section 1915(c) will not be expended --

1. to carry out any program of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of

[1] As used in this application State refers to all the States and Territories eligible to receive ADMS Block Grant Funds and to which these assurances apply by statute.

cleansing needles for such hypodermic injection; or

2. to carry out any testing for the etiologic agent for acquired immune deficiency syndrome unless such testing is accompanied by appropriate pre-test counseling and appropriate post-test counseling."

D. The Chief Executive Officer's certification that the State will comply with Section 1916(e) of the PHS Act, as amended by Section 2035 of P.L. 100-690.

We suggest, and will accept, the following certification:

"I hereby certify that the State agrees to establish and maintain a State mental health planning council in accordance with the provisions of Section 1916(e) of the PHS Act.

1. The duties of the Council will be --

a. to serve as an advocate for chronically mentally ill individuals, severely emotionally disturbed children and youth, and other individuals with mental illnesses or emotional problems; and

b. to monitor, review, and evaluate, not less than once each year, the allocation and adequacy of mental health services within the State.

2. The Council will be composed of residents of the State, including representatives of --

a. the principal State agencies with respect to -

(1) mental health, education, vocational rehabilitation, criminal justice, housing, and social services; and

(2) the development of the plan submitted pursuant to Title XIX of the Social Security Act;

b. public and private entities concerned with the need, planning, operation, funding, and use of mental health services and related support services;

c. seriously mentally ill individuals who are receiving (or have received) mental health

services; and

d. the families of such individuals.

3. Not less than 50 percent of the members of the Council will be individuals who are not State employees or providers of mental health services.

4. The Council may assist the State in the preparation of the description of intended expenditures required in Section 1916(d) of the PHS Act."

E. The State's assurance that the State has provided for the establishment and ongoing operation of a revolving fund in accordance with Section 1916A(a) of the PHS Act (Group Homes for Recovering Substance Abusers).

We suggest, and will accept, the following certification:

"I hereby certify that the State has provided for the establishment and ongoing operation of a revolving fund in accordance with Section 1916A(a) of the PHS Act."

F. A description of the intended use of the block grant funds as required by Section 1916(d) of the PHS Act and in accordance with the specifications of Section 1742(a) of the Omnibus Budget Reconciliation Act of 1981; i.e., (a) a statement of goals and objectives; (b) information on the types of activities to be supported, geographic areas to be served, and categories or characteristics of individuals to be served; and (c) the criteria and method established for the distribution of funds, including details on how the distribution of funds will be targeted on the basis of need to achieve the purposes of the block grant funds.

G A description, as required by Section 1742(a) of the Omnibus Budget Reconciliation Act of 1981, of how the State has met the goals, objectives, and needs in the use of funds for the previous fiscal year (in this case, the previous year being FY 1990) as described in that previous year's application, and/or any subsequent revision of the original application.

Finally, you should complete and forward the attached certification regarding Drug Free Workplace requirements (unless your State has a current Statewide or Agency-wide certification

for 1991 on file with the Department of Health and Human Services) and Certification Regarding Lobbying and (if appropriate) disclosure form consistent with instructions transmitted last year.

Please note that P.L. 101-374 has amended the formula for determining the intra-state distribution of the ADMS allotment between Mental Health and Substance Abuse by permanently incorporating the effect last year of the "DOT supplemental funds" on the actual distribution.

Unless the Chief Executive Officer indicates otherwise, we plan to award the FY 1991 ADMS Block Grant to the same State entity that was designated to receive and administer the FY 1990 grant.

DRAFT

ATTACHMENT B
(ADMS)

FISCAL YEAR (FY) 1991 ADMS BLOCK GRANT APPLICATION REQUIREMENTS

This format is modeled after the fiscal year (FY) 1990 requirements and may be used to meet the minimum requirements for (FY) 1991 applications. This format is based only on the present Federal statutory requirements. However, consistent with those statutory requirements the following items must be a part of the FY 1991 application:

A. An assurance that the legislature of the Territory has conducted public hearings on the proposed use and distribution of the ADMS Block Grant funds, as required in Section 1916(a) and (b) of the PHS Act.

B. The Chief Executive Officer's certification that the Territory will comply with the requirements of Section 1916(c) (1) through (21) of the PHS Act, as amended by P.L. 101-374. (The certification must be made by the Chief Executive Officer personally or by an individual formally authorized to make such certifications on behalf of the Chief Executive Officer; a copy of any such authorization should be included.)

We suggest, and will accept, a Chief Executive Officer's certification as follows: "I hereby certify that the Territory will comply with Section 1916(c)(1) through (21) of the PHS Act, as amended by P.L. 101-374."

C. The Territory's agreement that it will comply with Section 1915(c)(2) of the PHS Act, as amended by Section 2025 of P.L. 100-690. We suggest, and will accept, the following certification:

"The Territory agrees that payments received under the ADMS Block Grant and used pursuant to Section 1915(c) will not be expended --

1. to carry out any program of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of cleansing needles for such hypodermic injection; or

2. to carry out any testing for the etiologic agent for acquired immune deficiency syndrome unless such testing is accompanied by appropriate pre-test counseling and appropriate post-test counseling."

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We suggest, and will accept, the following certification:

"I hereby certify that the State agrees to establish and maintain a State mental health planning council in accordance with the provisions of Section 1916(e) of the PHS Act.

1. The duties of the Council will be --

a. to serve as an advocate for chronically ill individuals, severely emotionally disturbed children and youth, and other individuals with mental illnesses or emotional problems; and

b. to monitor, review, and evaluate, not less than once each year, the allocation and adequacy of mental health services within the State.

2. The Council will be composed of residents of the State, including representatives of --

a. the principal State agencies with respect to -

(1) mental health, education, vocational rehabilitation, criminal justice, housing, and social services; and

(2) the development of the plan submitted pursuant to Title XIX of the Social Security Act;

b. public and private entities concerned with the need, planning, operation, funding, and use of mental health services and related support services;

c. seriously mentally ill individuals who are receiving (or have received) mental health services; and

d. the families of such individuals.

3. Not less than 50 percent of the members of the Council will be individuals who are not state employees or providers of mental health services.

ADMS B-T

4. The Council may assist the State in the preparation of the description of intended expenditures required in Section 1916(d) of the PHS Act."

E. A description of the intended use of the block grant funds as required by Section 1916(d) of the PHS Act and in accordance with the specifications of Section 1742(a) of the Omnibus Budget Reconciliation Act of 1981; i.e., (a) a statement of goals and objectives; (b) information on the types of activities to be supported, geographic areas to be served, and categories or characteristics of individuals to be served; and (c) the criteria and method established for the distribution of funds, including details on how the distribution of funds will be targeted on the basis of need to achieve the purposes of the block grant funds.

F. A description, as required by Section 1742(a) of the Omnibus Budget Reconciliation Act of 1981, of how the Territory has met the goals, objectives, and needs in the use of funds for the previous fiscal year (in this case, the previous year being FY 1990) as described in that previous year's application, and/or any subsequent revision of the original application.

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Please note that P.L. 101-374 has amended the formula for determining the intra-state distribution of the ADMS allotment between Mental Health and Substance Abuse by permanently incorporating the effect last year of the "DOT supplemental funds" on the actual distribution.

Unless the Chief Executive Officer indicates otherwise, we plan to award the FY 1991 ADMS Block Grant to the same entity that was designated to receive and administer the FY 1990 grant.

NOTIFICATION TO RESPONDENT OF ESTIMATED BURDEN

Public respondent burden for this collection of information is estimated to average 200 hours per application, including time for reviewing instructions and completing the collection of information. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden to: Public Health Service Reports Clearance Officer, Attn: PRA, Hubert H. Humphrey Building, Room 721H, 200 Independence Avenue, S.W., Washington, D.C., 20201, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503.

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ATTACHMENT C

Forms for Completing Applications
for the
Alcohol and Drug Abuse and Mental Health Services
Block Grant Program - Fiscal Year 1991

LIST OF REQUIRED AND OPTIONAL FORMS

Form 01	Face Page
Form 02	Table of Contents/Review Checklist
Form 03	CEO Assurances Certification Regarding Drug-Free Workplace Requirements Certification Regarding Lobbying Disclosure of Lobbying Activities
Form 04	Service Coordination Matrix
Form 05	State Spending Plan
Form 06	Regional Spending Plan
Form 07	Regional Activity Inventory
Form 08	Statewide Project Inventory
Form 09	Needs Assessment Summary Matrix (Optional)
Form 10	Statewide Needs Assessment Worksheet (Optional)
Form 11	Statewide Women's Needs Assessment Worksheet (Optional)
Form 12	Statewide IVDU's Needs Assessment Worksheet (Optional)
Form 13	Statewide Target Population's Needs Assessment Worksheet (Optional)
Form 14	Treatment Capacity Matrix
Form 15	Treatment Utilization Matrix
Form 16	Mental Health State Spending Plan Form (Optional)
Form 17	Mental Health Service Area Activity Inventory Form (Optional)

Prepared by: State Plans and Financing Branch
Division for State Assistance
Office for Treatment Improvement
Alcohol, Drug Abuse, and Mental Health Administration

October, 1990

ALCOHOL AND DRUG ABUSE AND MENTAL HEALTH SERVICES
BLOCK GRANT APPLICATION FOR FY 1991

STATE NAME _____

1. STATE AGENCY TO BE THE GRANTEE FOR THE ADMS BLOCK GRANT

Agency Name: _____

Organization Unit: _____

Street Address: _____

City: _____ Zip Code _____

2. CONTACT PERSON FOR THE GRANTEE OF THE ADMS BLOCK GRANT

Name: _____

Agency Name: _____

Street Address: _____

City: _____ Zip Code _____

Telephone: _____ FAX Number _____

3. CONTACT PERSON FOR THE SUBSTANCE ABUSE PORTION

Name: _____

Agency Name: _____

Street Address: _____

City: _____ Zip Code _____

Telephone: _____ FAX Number _____

4. CONTACT PERSON FOR THE MENTAL HEALTH PORTION

Name: _____

Agency Name: _____

Street Address: _____

City: _____ Zip Code _____

Telephone: _____ FAX Number _____

5. STATE EXPENDITURE PERIOD: From: _____ to _____

6. DATE SUBMITTED: _____ ____ Original ____ Revision

7. CONTACT PERSON RESPONSIBLE FOR APPLICATION SUBMISSION

NAME: _____ TELEPHONE: _____

OMB No: 0930-0080

Expiration:

ALCOHOL AND DRUG ABUSE AND MENTAL HEALTH SERVICES
BLOCK GRANT APPLICATION FOR FY 1991

STATE NAME_____

This table of contents indicates the order in which the sections of the application must be submitted. Please indicate in the space provided the page number for the start of each section of narrative and forms in the application. This page will be the second page of completed application. The table of contents will serve as the ADMS Block Grant Application Checklist to be used by reviewers.

TABLE OF CONTENTS/REVIEW CHECKLIST

Page number

SECTION I. Identifying Information and Assurances

A. Face Page ..... _____

B. Table of Contents/Checklist..... _____

C. Assurances..... _____

1. Chief Executive Officer's Assurances..... _____

2. Certification Regarding Drug-Free Workplace..... _____

3. Certification Regarding Lobbying and Disclosures..... _____

SECTION II. Description of Actual Use of Funds

A. Goals and Objectives Carried Out..... _____

B. Types of Activities to be Supported..... _____

C. Geographic Planning Areas to be Served..... _____

D. Characteristics of Individuals Served..... _____

E. Criteria and Methods for the Distribution of Allotments..... _____

F. Methodology used by State to Purchase Services and Determine Treatment Capacity and Quality..... _____

SECTION III. Description of Intended Use of Funds

PART 1. Intended Use of ADMS Block Grant Funds..... _____

PART 2. Intended Use of Alcohol and Drug Abuse Block Grant Funds

A. Statement of Goals and Objectives for FY 1991..... _____

1. Goals and Objectives of Alcohol and Drug Abuse Activities..... _____

2. Planning and Public Input..... _____

3. Service Coordination..... _____

a. Coordination Mechanisms..... _____

b. Referral to Appropriate Treatment..... _____

c. Barriers to Coordination..... _____

d. Services Coordination Matrix..... _____

e. Agency Relationships..... _____

B. Types of Activities to be Supported..... _____

1. Substate Planning..... _____

2. State and Substate Expenditure..... _____

a. State and Regional Spending Plan Forms..... _____

b. Regional Activity Inventory Forms..... _____

c. Statewide Project Inventory Forms..... _____

C. Needs/Demand Assessment: Geographical Planning Areas and Characteristics of Individuals to be Served..... _____

1. Geographical Planning Areas to be Served..... _____

a. Needs Assessment Summary Matrix Forms..... _____

2. Characteristics of Individuals to be Served..... _____

a. State Needs Assessment Worksheets..... _____

b. Statewide Women's Needs Assessment Worksheet..... _____

1. Description of Implementation of Set-Aside for Substance Abuse Services Designed for Women..... _____

2. Description of Plans to Monitor Set-Aside for Women..... _____

c. Statewide IVDU's Needs Assessment Worksheet..... ____

1. Description of Implementation of Set-Aside for Intravenous Drug Users..... ____

2. Description of How State Will Monitor Adequacy of Efforts in Meeting Needs of IVDUs..... ____

3. Description of How State Will Assure That Funds Will Not be Used for Distributing Needles or Bleach..... ____

4. Description of How State Will Assure That It Is Notified When a Program Has Reached 90 Percent Capacity..... ____

5. Description of How State Will Assure Implementation of Requirement that IV Drug Users are Accepted for Treatment Within 7 Days..... ____

6. Description of Outreach Activities for IV Drug Users..... ____

d. Other Critical Populations..... ____

D. Criteria and Methods Established for Distribution of Allotments..... ____

E. Methodology used by State to Purchase Services..... ____

1. Treatment Capacity and Utilization..... ____

a. Mechanism Used to Manage and Measure Treatment Capacity..... ____

1. Treatment Capacity and Utilization Forms..... ____

b. Methods Used to Purchase Services..... ____

c. Description of Method Used to Determine Reasonable Cost..... ____

2. Quality Assurance, Performance Criteria, Program Standards, and Evaluation..... ____

a. Program Performance Monitoring..... ____

b. Independent Peer Review..... ____

3. Treatment Improvement..... ____

4. Human Resources..... ____

PART 3 Intended Use of Mental Health Block Grant Funds

A. Statement of Goals and Objectives for FY 1991..... ____

1. Goals and Objectives..... ____

2. Planning and Public Input..... ____

B. Types of Activities to be Supported..... ____

1. Expenditures..... ____

a. State Expenditures..... ____

b. Substate Expenditures/Mental Health Service Area Activity Inventory..... ____

C. Needs/Demand Assessment: Geographical Planning Areas and Characteristics of Individuals to be Served..... ____

1. Geographical Planning Areas to be Served..... ____

2. Characteristics of Individuals to be Served..... ____

a. Children and Adolescents..... ____

b. Other Populations..... ____

D. Criteria and Methods Established for Distribution of Allotments..... ____

E. Methodology Used by State to Purchase Services and Determine Treatment Capacity and Quality..... ____

1. Treatment Capacity and Utilization..... ____

a. Mechanisms Used to Manage and Measure Treatment Capacity and Utilization..... ____

b. Methods Used to Purchase Services..... ____

c. Methods Used to Determine Reasonable Costs..... ____

F. Quality Assurance, Performance Criteria, Program Standards, and Evaluation..... ____

1. Program Performance Monitoring..... _____
2. Independent Peer Review..... _____
3. Treatment Improvement..... _____
SECTION IV. Appendices..... _____
A. Group Homes for Recovering Substance Abusers..... _____
B. Substance Abuse Prevention and Early Intervention..... _____
C. Substance Abuse Services for Women..... _____
D. Treatment for Intravenous Drug Abusers..... _____
E. Substance Abuse Services for Other Critical Populations (Optional)..... _____
F. Mental Health Services for Other Special Populations (Optional)..... _____

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STATE

FISCAL YEAR 1991 ADMS BLOCK GRANT APPLICATION CERTIFICATIONS/AGREEMENTS/ASSURANCES AS REQUIRED BY PUBLIC HEALTH SERVICE ACT

As part of the annual application for ADMS Block Grant funds required by subsection 1916 (a) of the Public Health Services Act, the chief executive officer (or an authorized designee) of the applicant organization is required to certify that the State will comply with:

A. Sections 1916(c) (1) through (21) of the PHS Act.
B. Public Hearings conducted by Legislature, Section 1916(b).
C. Sterile Needles; AIDS Testing Requirement, Section 1915(c)(2).
D. State Mental Health Planning Council Requirement, Section 1916(e).
E. Revolving Fund and Group Homes for Recovering Substance Abusers, Sections 1916A(a).

We will accept signature of this form as certification of compliance. If signed by a designee, a copy of the designation must be attached.

A. Certification of State Compliance, Sections 1916(c) (1) through (21).

I hereby certify that, "the State will comply with Section 1916 (c) (1) through (21) of the PHS Act, as amended by P.L. 101-374."

B. Public Hearings conducted by Legislature, Section 1916(b).

I hereby certify that, "the legislature of the State has conducted public hearings on the proposed use and distribution of funds to be provided under section 1914."

C. Sterile Needles; AIDS Testing Requirement, Section 1915(c)(2).

I hereby certify that "the State agrees that payments received under the ADMS block grant and used pursuant to Section 1915(c) will not be expended--

A. to carry out any programs of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of cleansing needles for such hypodermic injection; or

B. to carry out any testing for the etiologic agent for acquired immune deficiency syndrome unless such testing is accompanied by appropriate pre-test counseling and appropriate post-test counseling."

D. State Mental Health Planning Council Requirement, Section 1916(e).

I hereby certify that the State "agrees to establish and maintain a State mental health planning council in accordance with the provisions of Section 1916e of the PHS Act.

(1) The duties of the Council will be --

a. to serve as an advocate for chronically mentally ill individuals, severely emotionally disturbed children and youth, and other individuals with mental illnesses or emotional problems; and

b. to monitor, review, and evaluate, not less than once each year, the allocation and adequacy of mental health services within the State.

(2) The Council will be composed of residents of the State, including representatives of --

a. the principle State agencies with respect to -

(1) mental health, education, vocational rehabilitation, criminal justice, housing, and social services; and

(2) the development of the plan submitted pursuant to Title XIX of the Social Security Act;

b. public and private entities concerned with the need, planning, operation, funding, and use of mental health services and related support services;

c. seriously mentally ill individuals who are receiving (or have received) mental health services; and

d. the families of such individuals.

(3) Not less than 50 percent of the members of the Council will be individuals who are not State employees or providers of mental health services.

(4) The Council may assist the State in the preparation of the description of intended expenditures required in subsection (d) of the PHS Act.

E. Revolving Fund and Group Homes for Recovering Substance Abusers, Section 1916A(b).

I hereby certify that, "the State has provided for the establishment and ongoing operation of a revolving fund in accordance with Section 1916A(b) of the PHS Act."

As part of the annual application for ADMS Block Grant funds required by subsection 1916 (a) of the Public Health Services Act, I, as the chief executive officer (or an authorized designee[1]) of the State of _____ do certify that the State will comply with the above sections of the PHS Act.

_____
Name of Chief Executive Officer or designee

_____
Signature of CEO or designee

_____
Title

_____
Date Signed

[1] If signed by a designee, a copy of the designation must be attached.

TERRITORIES

FISCAL YEAR 1991 ADMS BLOCK GRANT APPLICATION CERTIFICATIONS/AGREEMENTS/ASSURANCES AS REQUIRED BY PUBLIC HEALTH SERVICE ACT

As part of the annual application for ADMS Block Grant funds required by subsection 1916 (a) of the Public Health Services Act, the chief executive officer (or an authorized designee) of the applicant is required to certify that the Territory will comply with:

A. Sections 1916(c) (1) through (21) of the PHS Act.
B. Public Hearings conducted by Legislature, Section 1916(b).
C. Sterile Needles; AIDS Testing Requirement, Section 1915(c)(2).
D. Mental Health Planning Council Requirement, Section 1916(e).

We will accept signature of this form as certification of compliance. If signed by a designee, a copy of the designation must be attached.

A. Certification of Territory Compliance, Sections 1916(c)(1) through (21).

I hereby certify that, "the Territory will comply with Section 1916 (c) (1) through (21) of the PHS Act, as amended by P.L. 101-374."

B. Public Hearings conducted by Legislature, Section 1916(b).

I hereby certify that, "the legislature of the Territory has conducted public hearings on the proposed use and distribution of funds to be provided under section 1914."

C. Sterile Needles; AIDS Testing Requirement, Section 1915(c)(2).

I hereby certify that "the Territory agrees that payments received under the ADMS block grant and used pursuant to Section 1915(c) will not be expended--

A. to carry out any programs of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of cleansing needles for such hypodermic injection; or

B. to carry out any testing for the etiologic agent for acquired immune deficiency syndrome unless such testing is accompanied by appropriate pre-test counseling and appropriate post-test counseling."

D. Mental Health Planning Council Requirement, Section 1916(e).

I hereby certify that the Territory "agrees to establish and maintain a mental health planning council in accordance with the provisions of Section 1916e of the PHS Act.

(1) The duties of the Council will be --

a. to serve as an advocate for chronically mentally ill individuals, severely emotionally disturbed children and youth, and other individuals with mental illnesses or emotional problems; and

b. to monitor, review, and evaluate, not less than once each year, the allocation and adequacy of mental health services within the Territory.

(2) The Council will be composed of residents of the Territory, including representatives of --

a. the principle Territorial agencies with respect to -

(1) mental health, education, vocational rehabilitation, criminal justice, housing, and social services; and

(2) the development of the plan submitted pursuant to Title XIX of the Social Security Act;

b. public and private entities concerned with the need, planning, operation, funding, and use of mental health services and related support services;

c. seriously mentally ill individuals who are receiving (or have received) mental health services; and

d. the families of such individuals.

(3) Not less than 50 percent of the members of the Council will be individuals who are not Territorial employees or providers of mental health services.

(4) The Council may assist the Territory in the preparation of the description of intended expenditures required in subsection (d) of the PHS Act.

BEST COPY AVAILABLE

As part of the annual application for ADMS Block Grant funds required by subsection 1916 (a) of the Public Health Services Act, I, as the chief executive officer (or an authorized designee[1]) of the Territory of _____ do certify that the Territory will comply with the above sections of the PHS Act.

_____
Name of Chief Executive Officer or designee

_____
Signature of CEO or designee

_____
Title

_____
Date Signed

[1] If signed by a designee, a copy of the designation must be attached.

STATE NAME _____

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements
The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

By_____ Date:_____
(Signature of Governor or authorized designee)*

For:_____
Name of Grantee

_____
Title of Grant Program

Application Page _____

* If signed by other than the Governor, the designation must be in writing and should accompany this disclosure.

STATE NAME _____

U.S. Department of Health and Human Services

Certification Regarding

Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when HHS determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and,

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and,

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

By _____ Date: _____
(Signature of Official Authorized to Sign Application)

For: _____
Name of Grantee

_____
Title of Grant Program (i.e., ADMS, MHSH, or CYAP)

Application Page _____

SERVICES COORDINATION MATRIX

STATE _____

AGENCY	MECHANISM			
	NONE	WORKING AGREEMENT	MEMORANDUM OF AGREEMENT	FORMAL CONTRACT
Governor's Office				
Education				
Criminal Justice				
Adult Corrections				
Juvenile Corrections				
Vocational Rehabilitation				
Public Health				
Maternal and Child Health				
Primary Care Centers				
Mental Health				
Social Services				
Highway Safety				
Public Housing				
Medicaid				
Headstart				
Child Protective Services				
Other:				
Other:				
Other:				

ADMS FORM-04 9/90

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STATE _____

STATE SPENDING PLAN

ACTIVITY	LAST STATE EXPENDITURE PERIOD / DATES FROM _____ TO _____								CURRENT STATE EXPENDITURE PERIOD / DATES FROM _____ TO _____							
	ADAMS GRANT FFY89	ADAMS GRANT FFY90	MEDICAID FEDERAL	MEDICAID STATE	OTHER FEDERAL FUNDS	STATE FUNDS	LOCAL FUNDS	OTHER	ADAMS GRANT FFY90	ADAMS GRANT FFY91	MEDICAID FEDERAL	MEDICAID STATE	OTHER FEDERAL FUNDS	STATE FUNDS	LOCAL FUNDS	OTHER
1. SUBSTANCE ABUSE TREATMENT																
2. ALCOHOL TREATMENT																
3. DRUG TREATMENT																
4. PREVENTION																
5. INFRASTRUCTURE																
A. PLANNING AND COORDINATION																
B. QUALITY ASSURANCE																
C. TRAINING (pre-employment)																
D. EDUCATION																
E. PROGRAM DEVELOPMENT																
F. RESEARCH AND EVALUATION																
6. ADMINISTRATIVE																
7. TOTAL (1 thru 6)																
8. TOTAL STATE SUBSTANCE ABUSE BUDGET																

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NOTE: EXPRESS FIGURES IN THOUSANDS OF DOLLARS

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REGIONAL SPENDING PLAN

STATE _____

REGION _____

ACTIVITY	LAST STATE EXPENDITURE PERIOD / DATES FROM _____ TO _____								COMING STATE EXPENDITURE PERIOD / DATES FROM _____ TO _____							
	ADMS GRANT FFY90	ADMS GRANT FFY90	MEDICAID FEDERAL	MEDICAID STATE	OTHER FEDERAL FUNDS	STATE FUNDS	LOCAL FUNDS	OTHER	ADMS GRANT FFY90	ADMS GRANT FFY91	MEDICAID FEDERAL	MEDICAID STATE	OTHER FEDERAL FUNDS	STATE FUNDS	LOCAL FUNDS	OTHER
1. SUBSTANCE ABUSE TREATMENT																
2. ALCOHOL TREATMENT																
3. DRUG TREATMENT																
4. PREVENTION																
5. INFRASTRUCTURE																
A. PLANNING AND COORDINATION																
B. QUALITY ASSURANCE																
C. TRAINING (post-employment)																
D. EDUCATION																
E. PROGRAM DEVELOPMENT																
F. RESEARCH AND EVALUATION																
6. ADMINISTRATIVE																
7. TOTAL (1 thru 6)																
8. TOTAL REGIONAL SUBSTANCE ABUSE BUDGET																

NOTE: EXPRESS FIGURES IN THOUSANDS OF DOLLARS

ADMS FORM-06 9/90

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REGIONAL ACTIVITY INVENTORY

STATE _____

REGION _____

STATE EXPENDITURE PERIOD: FROM _____ TO _____

PROVIDER NUMBER	STATUS ID	ACTIVITY CODE	ADMS GRANT FFY90	ADMS GRANT FFY91	STATE FUNDS	ALCOHOL SERVICES	DRUG SERVICES	PREVENTION	YOUTH SERVICES	WOMEN SERVICES
TOTAL										

ADMS FORM-07 9/90

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NOTE: EXPRESS FIGURES IN THOUSANDS OF DOLLARS

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STATEWIDE PROJECT INVENTORY

STATE _____ STATE EXPENDITURE PERIOD: FROM _____ TO _____

PROVIDER NUMBER	STATUS ID	ACTIVITY CODE	ADMS GRANT FFY00	ADMS GRANT FFY01	STATE FUNDS	ALCOHOL SERVICES	DRUG SERVICES	PREVENTION	IVDU SERVICES	WOMEN SERVICES
TOTAL										

ADMS FORM-08 9/90

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NEEDS ASSESSMENT SUMMARY MATRIX

STATE _____

REGION	Total Population	Number of IVDUs needing Treatment Services	Number of IVDUs/HIV needing Treatment Services	Number of Women needing Treatment Services	Prevalence of Drug Related Criminal Activity			Incidence of Communicable Diseases Transmitted thru IVDU		
STATE TOTAL										

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STATEWIDE NEEDS ASSESSMENT WORKSHEET

STATE _____

AGE

RACE/ETHNICITY

	White, not of Hispanic Origin	Black, not of Hispanic Origin	Hispanic	American Indian or Alaskan Native	Asian or Pacific Islander	Native Hawaiians	Other or Unknown
<18							
18 - 20							
21 - 24							
25 - 34							
35 - 44							
45 - 54							
55 - 64							
65+							

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STATEWIDE WOMEN'S NEEDS ASSESSMENT WORKSHEET

STATE _____

AGE / RACE/ETHNICITY

	White, not of Hispanic Origin	Black, not of Hispanic Origin	Hispanic	American Indian or Alaskan Native	Asian or Pacific Islander	Native Hawaiians	Other or Unknown
<18							
18 - 20							
21 - 24							
25 - 34							
35 - 44							
45 - 54							
55 - 64							
65+							

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STATEWIDE IVDU'S NEEDS ASSESSMENT WORKSHEET

STATE _____

AGE

RACE/ETHNICITY

	White, not of Hispanic Origin	Black, not of Hispanic Origin	Hispanic	American Indian or Alaskan Native	Asian or Pacific Islander	Native Hawaiians	Other or Unknown
<18							
18 - 20							
21 - 24							
25 - 34							
35 - 44							
45 - 54							
55 - 64							
65+							

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STATEWIDE TARGET POPULATION'S NEEDS ASSESSMENT WORKSHEET

STATE _____

TARGET POPULATION _____

AGE

RACE/ETHNICITY

	White, not of Hispanic Origin	Black, not of Hispanic Origin	Hispanic	American Indian or Alaskan Native	Asian or Pacific Islander	Native Hawaiians	Other or Unknown
<18							
18 - 20							
21 - 24							
25 - 34							
35 - 44							
45 - 54							
55 - 64							
65+							

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STATE _____

REGION _____

TREATMENT CAPACITY MATRIX

OMB No: 0930-0080

Expiration:

	LAST STATE EXPENDITURE PERIOD/DATES: FROM _____ TO _____				COMING STATE EXPENDITURE PERIOD/DATES: FROM _____ TO _____			
TYPE OF CARE	ALCOHOL PROBLEMS	DRUG PROBLEMS	ALCOHOL AND DRUG	TOTAL	ALCOHOL PROBLEMS	DRUG PROBLEMS	ALCOHOL AND DRUG	TOTAL
DETOXIFICATION (24 hr care)								
HOSPITAL INPATIENT								
FREE - STANDING RESIDENTIAL								
REHABILITATION/RESIDENTIAL								
HOSPITAL INPATIENT								
SHORT-TERM (30 days or less)								
LONG-TERM (over 30 days)								
AMBULATORY (less than 24 hr care)								
DRUG-FREE/NON-METHADONE								
METHADONE-TREATMENT								
INTENSIVE OUTPATIENT								
DETOXIFICATION								

For each type of care listed, identify the State's capability to provide treatment for persons with alcohol and drug problems (static capacity). In the appropriate column, enter the number of slots available for persons with either a drug or an alcohol problem during the applicable Expenditure Period.

We recognize that there are a variety of methods for measuring treatment capacity and for purchasing services, and that States and local communities may use one or more of these methods. If the State and/or its subdivisions do not use slots or the NDATUS type of care categories, please describe the mechanism by which you purchase and measure treatment capacity (e.g., units of service, episodes, personnel and operating budgets, capitation) and provide the information in a matrix using your State's methodology.

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TREATMENT UTILISATION MATRIX

OMB No: 0930-0080

Expiration:

STATE _____

REGION _____

	LAST STATE EXPENDITURE PERIOD/DATES: FROM _____ TO _____				COMING STATE EXPENDITURE PERIOD/DATES: FROM _____ TO _____			
TYPE OF CARE	ALCOHOL PROBLEMS	DRUG PROBLEMS	ALCOHOL AND DRUG	TOTAL	ALCOHOL PROBLEMS	DRUG PROBLEMS	ALCOHOL AND DRUG	TOTAL
DETOXIFICATION (24 hr care)								
HOSPITAL INPATIENT								
FREE - STANDING RESIDENTIAL								
REHABILITATION/RESIDENTIAL								
HOSPITAL INPATIENT								
SHORT-TERM (30 days or less)								
LONG-TERM (over 30 days)								
AMBULATORY (less than 24 hr care)								
DRUG-FREE/NON-METHADONE								
METHADONE-TREATMENT								
INTENSIVE OUTPATIENT								
DETOXIFICATION								

For each type of care listed, identify the State's utilization of treatment resources for persons with alcohol and drug problems (dynamic capacity). In the appropriate column, enter the number of episodes of treatment provided for persons with either a drug or an alcohol problem during the applicable Expenditure Period.

We recognize that there are a variety of methods for measuring treatment capacity and for purchasing services, and that States and local communities may use one or more of these methods. If the State and/or its subdivisions do not use episodes or the NDATUS type of care categories, please describe the mechanism by which you purchase and measure treatment capacity (e.g., units of service, episodes, personnel and operating budgets, capitation) and provide the information in a matrix using your State's methodology.

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MENTAL HEALTH STATE SPENDING PLAN

STATE _____

ACTIVITY	LAST STATE EXPENDITURE PERIOD / DATES FROM _____ TO _____								CURRENT STATE EXPENDITURE PERIOD / DATES FROM _____ TO _____							
	ADMS BLOCK GRANT FFY89	ADMS BLOCK GRANT FFY90	MEDICAID FEDERAL	MEDICAID STATE	OTHER FEDERAL FUNDS	STATE FUNDS	LOCAL FUNDS	OTHER	ADMS BLOCK GRANT FFY90	ADMS BLOCK GRANT FFY91	MEDICAID FEDERAL	MEDICAID STATE	OTHER FEDERAL FUNDS	STATE FUNDS	LOCAL FUNDS	OTHER
1. TREATMENT																
2. PREVENTION/EDUCATION																
3. INFRASTRUCTURE																
A. PLANNING AND COORDINATION																
B. QUALITY ASSURANCE																
C. TRAINING (post-employment)																
D. EDUCATION																
E. PROGRAM DEVELOPMENT																
F. RESEARCH AND EVALUATION																
4. ADMINISTRATIVE																
5. TOTAL (1 thru 4)																

NOTE: EXPRESS FIGURES IN THOUSANDS OF DOLLARS

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ADMS Form-16 9/90

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MENTAL HEALTH SERVICE AREA ACTIVITY INVENTORY

STATE _____

REGION _____

STATE EXPENDITURE PERIOD: FROM _____ TO _____

NAME OF COMMUNITY SERVICE PROVIDER	ADMS BLOCK GRANT FFY90	ADMS BLOCK GRANT FFY91	STATE FUNDS	CHILDREN	ELDERLY	SEVERE & PERSISTENT	GENERAL POPULATION	OTHER

Dear State ADMS Block Grant Liaison:

This is a reminder that the State must submit an annual report for 1990 pertaining to the use of Alcohol and Drug Abuse and Mental Health Services (ADMS) Block Grant funds. This report is not the same as the description required to be submitted as part of the State's annual application. The requirement for an annual report is identified separately in the Public Health Service (PHS) Act at Section 1917(a), Part B, Title XIX. That Section states that "Each State shall prepare and submit to the Secretary annual reports on its activities...", and it then describes the information that the annual report must encompass.

DHHS Regulations governing block grant programs (45 CFR Part 96) were revised on October 23, 1987 in Vol. 52, No. 197 of the Federal Register. Among other things, the revision amended the provision at Section 96.17 to require the annual report to be made public and transmitted to the Secretary within six months of the end of the block grant reporting period. For the health block grants the reporting period has been defined to be the same as the program year determined by the State to be the basis for administering activities funded under the block grants.

The annual ADMS report will be reviewed by the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) to assure that it contains the information prescribed in Section 1917(a) -- i.e., it must include:

1. A discussion demonstrating that ADMS block grant funds were expended in accordance with block grant requirements and consistent with the needs the State identified pursuant to the Section 1916(c)(10);

2. A description of the activities of the State under the ADMS block grant;

3. A detailed description of the new or expanded alcohol and drug abuse and mental health programs and services initiated and provided in accordance with paragraphs (14) and (15) of Section 1916(c);

   NOTE: In order to assist ADAMHA in responding to Congressional reporting requirements in this area, States are encouraged (to the extent possible) to provide specific information on the number of programs funded and number of clients served (including demographic characteristics) in those programs which received set-aside monies. In addition, the State is asked to provide a description of any State assessments which address the adequacy of these efforts in meeting the needs of the

Page 2

targeted populations, especially in comparison with the level of services prior to the beginning of the set-asides in FY 1985.); and,

4. A record of the purposes for which ADMS block grant funds were spent, the recipients of ADMS block grant funds, and of the progress made toward achieving the purposes for which the ADMS block grant funds were provided.

As you are aware the Anti-Drug Abuse Act of 1988 (P.L. 100-690) added a number of new requirements which must be reported on by ADAMHA to Congress and the Administration. Accordingly, you are requested to specifically respond in the annual report to the items enclosed as Attachment A. This attachment has been designed to assist you in responding adequately to items 2 and 3 above.

The above items and Attachment A in effect are a checklist which will guide ADAMHA in its review of the annual report. I suggest the State will find it helpful to use this checklist approach in drafting the annual report. ADAMHA will use your annual report, in part, to comply with section 1916(f) which requires the Secretary to report annually to Congress concerning certain block grant activities. To help us prepare this annual report to Congress, it would be helpful if you would also enclose a copy of your report on either a 3 1/2 inch or 5 1/4 inch DOS formatted floppy diskette, either in WordPerfect or ASCII text format.

Should annual reports submitted for 1990 be determined to be incomplete or to contain certain information that could be construed as evidence of noncompliance with Federal statutory requirements, you will be requested to submit additional information that will complete the report or clarify compliance issues.

Please feel free to contact me if you have any questions about this request. You can reach me at (301) 443-3820.

Sincerely yours,

Thomas M. Reynolds
Grants Management Officer
Block Grant Programs

Enclosure

OMB No: 0930-0080

Expiration:

Attachment

ADMS BLOCK GRANT ANNUAL REPORT
FISCAL YEAR 1990

1. 50 Percent Intravenous (IV) Drug Abuse Set-Aside (1912A (i)(1), and 1915(c) and 1916(c)(16) and (17).

a. Describe how the State has been implementing this IV set-aside requirement: indicate the specific programs/activities funded (treatment, prevention, outreach, training), amount of Block Grant funds utilized, number of client/patients served or impacted, amount of treatment capacity (slots) added, if appropriate, and the demographic characteristics of clients served.

b. Describe how the State assures that funds described above are not used: 1) to carry out any program of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of cleansing needles for such injections, or 2) to carry out any testing for the etiologic agent for acquired immunodeficiency syndrome unless such testing is accompanied by appropriate pre-test counseling and appropriate post-test counseling.

c. Describe how the State requires any such IV program to notify the State upon reaching 90 percent of its capacity to admit individuals to the program.

d. Describe how the State assures, with respect to notifications under paragraph c. above, that to the minimum extent practicable, each individual who requests and is in need of treatment for IV drug abuse is admitted to a program described in such paragraph within 7 days after making the request.

2. Outreach Activities for IV Drug Abusers (1916(c)(18))

Describe how the State requires any program receiving ADMS Block Grant funds to carry out outreach activities to encourage individuals in need of treatment for IV drug abuse to undergo such treatment.

3. Alcohol and Drug Abuse Set-Aside for Women--10 Percent (1916(c)(14).

a. Describe State activities to implement this provision. Provide specific information identifying which units received funding under this provision, the amount of ADMS Block Grant funds used for each unit, and a brief description of the intended objectives of each funded effort.

BEST COPY AVAILABLE

b. Describe the adequacy of these efforts in meeting the needs of pregnant women and women with dependent children in the State.

4. Mental Health Set-Aside for Severely Emotionally Disturbed Children and Adolescents--10 Percent (1916(c)(15))

a. Describe State activities to implement this provision. Provide specific information identifying which units received funding under this provision, the amount of ADAMS Block Grant funds used for each unit, and a brief description of the intended objectives of each funded effort.

b. Describe the adequacy of these efforts in meeting the needs for mental health services for severely disturbed children and adolescents.

5. Group Home Revolving Fund (1916A)

a. How was the $100,000 revolving fund established in the State? Please discuss the source of funds (Block Grant, State funds, etc.), identify the non-profit entity selected to manage the fund, any written agreement between the State and the non-profit entity, etc.

b. Describe how the revolving fund is being operated including loan requirements, application procedures, eligibility requirements, interest rates charged etc.

c. How does the State plan to monitor the revolving account? If applicable, how many loans were actually make in FY 1989?

6. Prevention Activities--20 Percent (1916(c)(8))

a. Provide the State definition of "prevention" and "early intervention"?

b. Brielfly describe State activities to carry out this provision, including identification of which units received these prevention monies, the amount of ADMS Block Grant funds used for each, an estimate of numbers of individuals served or impacted, and identification of targeted populations (youth/adolescents, women, intravenous drug abusers, blacks, Native-Americans, etc), if applicable.

7. Target Highest Prevalence Populations (1916(c)(19))

a. How does the State determine which communities have the highest prevalence of substance abuse and the greatest need for treatment services?

b. What information is used to help make these decisions and how is it gathered?

c. How is this information used to impact the funding decisions necessary to meet the required targeting?

d. Describe the monitoring process used to assure that the funded programs continue to target the communities with the highest prevalence of substance abuse or the greatest need for treatment services.

8. Discretionary Authority--10 Percent (1916(c)(6)(B))

Did the State use this authority to transfer funds within the Block Grant and in which direction, i.e. whether from substance abuse to mental health, or vice-versa? What percentage of the total grant was shifted?

9. State Plan for Treatment of All in Need/Estimate of Needed Resources (1916(c)(21))

Describe how the State will assure the implementation of this provision.

10. Independent Peer Review (1916(c)(5))

Describe the State's procedures for the implementation of this provision, including the State's definition of "peer review", identification of who (or what entity(s)) will conduct these activities, and a schedule for how often such "periodic" reviews will be conducted.

NOTIFICATION TO RESPONDENT OF ESTIMATED BURDEN

Public respondent burden for this collection of information is estimated to average 300 hours per annual report, including time for reviewing instructions and completing the collection of information. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden to: Public Health Service Reports Clearance Officer, Attn: PRA, Hubert H. Humphrey Building, Room 721H, 200 Independence Avenue, S.W., Washington, D.C., 20201, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503.

[FR Doc. 90-27334 Filed 11-19-90; 8:45 am]
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federal register

Tuesday
November 20, 1990

Part VII

Department of Agriculture

Forest Service

36 CFR Part 223

Sale and Disposal of National Forest System Timber; Log Export and Substitution Restrictions; Interim Rule; Request for Public Comment

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Sale and Disposal of National Forest System Timber; Log Export and Substitution Restrictions

AGENCY: Forest Service, USDA.

ACTION: Interim rule; request for public comment.

SUMMARY: This interim rule is being issued to comply with those requirements of the Forest Resources Conservation and Shortage Relief Act of 1990 that take effect before final rules to fully implement the Act can be issued. The interim rule defines certain terms necessary to facilitate uniform compliance; prescribes procedures for making certifications required by statute to exempt a person from prohibitions against substitution if the person has exported unprocessed private timber in the previous 24 months; prescribes application procedures for sourcing areas; and continues previously established surplus species until the Secretary can proceed with public hearings on these and other candidate species. Public comment is invited and will be considered in adoption of a final rule.

DATES: *Effective Date:*

This interim rule is effective November 20, 1990. Comments must be received in writing by December 20, 1990.

ADDRESSES: Send written comments to F. Dale Robertson, Chief (2400), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this interim rule in the Office of the Director, Timber Management Staff, Forest Service, USDA, 201 14th Street, SW., Washington, DC 20250, between the hours of 8:30 a.m. and 4:30 p.m. Parties wishing to view comments are encouraged to call ahead (477–6893) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Ron Lewis, Timber Management Staff (202) 475–3755.

SUPPLEMENTARY INFORMATION:

Rationale for Interim Rule

This interim rule implements those provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) (hereafter referred to as the Act) that take effect before comprehensive rules can be proposed, analyzed, and finalized within the statutorily required 9 months. The provisions to be implemented by this interim rule are as follows:

1. The sourcing area application and approval procedures;
2. The procedures for certification that exempt a non-manufacturer, an applicant for a sourcing area, or a person with a historic export quota from prohibitions against exports within the preceding 24-month period;
3. The extension of the current surplus species until hearings can be held; and
4. The definitions necessary to implement these provisions.

Good cause exists to make the above-noted provisions immediately effective without prior notice and the opportunity to comment in an interim rule. The sourcing area boundary application and approval procedures are necessary because the Act specifically requires the procedures to be prescribed within 3 months from the date of enactment, the application to be submitted a month thereafter, and a determination from the Secretary to be made 4 months after the submission. Given the tight deadlines in the Act for the Secretary to structure workable procedures and for both the applicants and the Secretary to apply and respond, it would be impracticable to give prior notice and obtain comment prior to adoption of the rulemaking.

The Act also establishes a specific deadline of 3 months from the date of enactment for the submission of the certificates exempting persons from prohibitions against substitution if the person has exported in the preceding 24-month period. Not only is the Secretary required to prescribe the procedures for certification, but the Act provides potential applicants only a limited time to apply for them.

A certification procedure for non-manufacturers must also be included in the interim rule. Although the Act does not address non-manufacturers, it would be impracticable to administer this certificate under a different period of time for submission.

The continuation of the currently determined surplus species, Port Orford cedar and Alaska Yellow cedar is necessary to close a gap in the Act until hearings can be held to determine new surplus species. The Act states that the prohibition against export of unprocessed timber from Federal lands west of the 100th meridian in the 48 contiguous States will not apply to specific quantities of grades and species of such timber that the Secretary determines to be surplus. This determination must be made in regulations, pursuant to the Administrative Procedures Act (5 U.S.C. 553). The conference report states that Congress expects the Secretaries of Agriculture and Interior to hold hearings to determine whether species currently designated as surplus have no domestic markets. There would be significant disruption regarding timber sale contracts if currently designated species were suddenly considered not to be surplus. Accordingly, the Department is continuing those species already determined to be surplus under existing regulations until hearings can be held. Again, it would be impracticable to provide for notice and comment on this prior to adoption since the delay would be disruptive and create a hiatus that neither the Act nor the current regulations could fill.

Also included in this interim rule is a recitation of the provisions in the Act regarding direct and indirect substitution. The inclusion of these provisions provide the necessary context to explain and understand sourcing areas.

Current Rules

The current restrictions on exporting unprocessed timber harvested from Federal lands have been renewed annually by the Appropriations Act for Interior and Related Agencies, by which Forest Service programs are funded. The current restrictions are found in 36 CFR 223.48, 223.87, and 223.160–223.164. These rules will remain in effect on all contracts awarded prior to enactment of this Act. The Act also specifically provides that contracts for timber on Federal lands in the State of Washington administered by the Region 6 Office of the Forest Service awarded prior to the issuance of a final rule shall be governed by the current regulations. The current substitution rules shall remain in effect for all contracts awarded after the date of enactment until such time as final rules are issued to implement the Act.

Amendment to Part 223 Subpart B

Section 223.48 of subpart B of the current rules governing timber sale contracts must be revised to reflect passage of this Act. Accordingly, paragraph (a) makes clear that contracts awarded prior to August 20, 1990, the date of enactment, remain subject to the Timber Export and Substitution rules at subpart D of part 223. Paragraph (b) directs that all contracts awarded after August 20, 1990, shall include a clause making such contracts subject to the new Act.

Amendment to Part 223 Subpart D

Subpart D of part 223 governed timber export and substitution prior to enactment of the new Act. Because of

the Act and the adoption of new regulations, it is necessary to add a new § 223.159 to subpart D to make clear that the provisions of subpart D remain in effect for contracts awarded prior to August 20, 1990. Section 223.159 also provides that § 223.161 governing Alaska contracts will remain in effect. Section 223.159 further continues the existing surplus species determination contained in § 223.163 until hearings can be held and new regulations are issued. As previously noted, this is necessary to prevent disruption of sales and to close a gap created by the Act. Section 223.159 also provides that contracts awarded between August 20, 1990, and the date final rules are published implementing this Act will be governed by § 223.162. Section 223.159 further provides that the provisions of subpart F of part 223 will implement the following and shall apply to all contracts awarded after August 20, 1990:

(1) Sourcing area application and approval procedures;

(2) Certification procedures;

(3) Continues surplus species determinations;

(4) Sourcing area disapproval, review procedures; and

(5) Definitions.

The application of portions of the timber and substitution regulations in effect prior to enactment to contracts awarded after August 20, 1990, is required by section 490(a)(2)(A) of the Act (16 U.S.C. 620b).

New Subpart F, Section-by-Section Analysis

Section 223.186 Definitions

The complexity of this Act requires definitions in order to explain and understand critical terms. Section 493 of the Act (16 U.S.C. 620e) defines several terms that require refinement and new terms that must be defined in order to understand the provisions included in the interim rule. The following terms are defined in this rule: Act, Acquire, Cants or Flitches, Export, Federal lands, Fiscal year, Non-manufacturer, Person, Private lands, Purchase, Substitution, and Unprocessed timber. Each of these terms is used in at least one of the provisions in the interim rule.

The term "Act" refers to the Forest Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) that is being implemented by this interim rule. The term "Acquire" is defined to clarify that purchase and acquire have the same meaning and are used interchangably in the rule. Both terms are used in the Act, however, the Act is not clear about the usage of the terms.

The terms "Canta" or "Flitches" were added to provide a clear meaning for these often confusing terms. The definition of these terms is based on custom and practice. This interim rule treats "canta" and "flitches" as synonymous for purposes of this program. The definition in the interim rule is based on definitions in Recommended Lumber Terminology and Invoice Procedure, compiled and published by Western Wood Products Association, April, 1977 and Wood Handbook: Wood as an Engineering Material, U.S. Department of Agriculture, Forest Products Laboratory, Forest Service Handbook No. 72, August, 1974.

The term "Export" is patterned after an existing definition at 36 CFR 223.160. It is defined to clarify at what point export occurs so that it can be clearly determined if a violation of the Act and interim rule prohibiting export has occurred.

The term "Federal lands" has been included to clearly define the lands that are subject to the interim rule. For the purpose of this interim rule, the term "Federal lands" refers to those Federal lands west of the 100th meridian in the contiguous 48 States.

A definition of the term "Fiscal year" is necessary to specify the time period applicable in the event of disapproval of a sourcing area application or for other reporting or recordkeeping requirements.

The term "Non-manufacturer" is included to clearly identify the segment of the timber industry that is included under this interim rule and that does not own or operate a manufacturing facility.

The term "Person" is included in this interim rule to provide consistency of meaning and understanding. The Act includes "business affiliate" as a person. Persons are affiliates of each other when either directly or indirectly, one person controls or has the power to control the other or a third party or parties controls or has the power to control both. In determining whether or not affiliation exists, consideration shall be given to all appropriate factors, including but not limited to common ownership, common management, common facilities, and contractual relationships. Further guidelines on determining affiliation are found in the Small Business Administration regulation in 13 CFR 121.401.

The term "Private lands" has been included to provide a common understanding of the private lands included under this interim rule.

The term "Purchase" has been included to clarify that "purchase" and "acquire" are synonymous.

The term "Substitution" has been included to provide a clear understanding of the word in relation to its usage in the interim rule and to provide a clear understanding of when conduct violates the regulations.

The term "Unprocessed timber" has been included to clarify the distinction between unprocessed timber and processed timber. The Act uses both "suitable for end product use" and "intended for remanufacture" as criteria. In order to enforce the Act more effectively, the interim rule uses a definition that aims at the more precise concept of "intent." Intent will be demonstrated, in part, by the manufacturer's certificate, which requires a statement of intent. Unprocessed timber is timber not processed to the extent necessary to meet standards and specifications for end product use and is intended for remanufacture.

Section 223.187 Determination of Unprocessed Timber

Nearly every section of the Act (16 U.S.C. 620 *et seq.*) refers to unprocessed timber. Section 493 of the Act (16 U.S.C. 620e) includes a definition of what is not included in the term "unprocessed timber." Section 223.187 is established to clearly set forth what the minimum standards of processing are for timber to be considered not unprocessed. This section is needed to clearly understand the intent of the Act.

The definition in the Act includes references to standards and grades of lumber that must be met in order to comply with the law. In order to determine that these standards have been met, the Forest Service will require that the shipper of record have in its possession an original copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standards. This certificate must be prepared for each shipment and be available for inspection upon request of the Forest Service.

Western red cedar is excluded from sections 490(b) and 491 of the Act (16 U.S.C. 620b and 620c). The exclusions refer to western red cedar which are domestically processed into finished products to be sold into domestic or international markets. Because of the complexity of processed and unprocessed western red cedar, § 223.187 includes the definition taken from the current timber export and substitution regulations.

Section 223.188 Prohibitions Against Exporting Federal Timber

Section 489 of the Act (16 U.S.C. 620e) continues the prohibition against export of timber from Federal lands west of the 100th meridian in the contiguous 48 States that has been renewed annually through the Appropriations Act for Interior and Related Agencies. Section 223.188 merely repeats the language of the Act.

Section 223.189 Prohibitions Against Substitution

Section 490 of the Act (16 U.S.C. 620b) places limitations on the direct or indirect substitution of unprocessed Federal timber for unprocessed timber exported from private lands. Section 490(a) of the Act (16 U.S.C. 620b) entitled "Direct Substitution" states that no person may purchase directly from any department or agency of the United States unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States if—

(A) Such unprocessed timber is to be used in substitution for exported unprocessed timber originating from private lands; or

(B) Such person has exported unprocessed timber originating from private lands during the preceding 24-month period.

Section 490(b) of the Act (16 U.S.C. 620b) entitled "Indirect Substitution" states that no person may, beginning on September 10, 1990, purchase from any other person unprocessed timber originating from Federal lands, if such person would be prohibited from purchasing such timber directly from a department or agency of the United States. Acquisitions of western red cedar which are domestically processed into finished products to be sold into domestic or international markets are exempt from the prohibition contained in this paragraph. A limited amount of timber originating from Federal lands in the State of Washington administered by the Region 6 Office of the Forest Service is also exempt from the prohibition against indirect substitution.

Exemption from prohibition against the purchase of Federal timber. Section 490 of the Act (16 U.S.C. 620b), also states that the prohibition against the purchase of Federal timber for a person who has exported unprocessed timber originating from private lands in the 24 months prior to the enactment of this Act does not apply to any person who has a historic export quota approved by the Secretary, if the person certifies to the Secretary that he/she will cease exporting unprocessed timber originating from private lands by February 20, 1991, and ceases exporting in accordance with such certification. The certification is required by November 20, 1990.

In order to enforce the Act and the export program, applicants for the certification exempting a person from the prohibition against exporting during the preceding 24-month period are required to certify that they fully understand the requirements of this Act. Proper enforcement of the program is dependent upon complete and accurate certifications. In order to exempt a person from the 24-month requirement, the agency must rely on the information provided by applicants concerning the person's intent to cease exporting within 6 months of the certification. Applicants who have been under a historic export quota also must acknowledge in the certification an understanding that the information provided concerning the applicant's intent to cease exporting unprocessed timber originating from private lands within 6 months is related to the enforcement of the program. This certification will enable the agency to ensure that the purchaser is in complete compliance with the objectives of the Act.

Applicants must be fully aware of and understand that providing interest or incomplete information in the certifications will subject them to the penalties and remedies provided in section 492 of the Act (16 U.S.C. 620d), that is, civil penalties, cancellation of contracts, and/or debarment. Incomplete or inaccurate certifications also will subject purchasers to the penalties found in the False Statements Act (18 U.S.C. 1001).

Section 223.190 Sourcing Area Procedure

Section 490(c) of the Act (16 U.S.C. 620b) states that the prohibitions described for persons who exported unprocessed private timber in direct or indirect substitution of unprocessed Federal timber shall not apply with respect to the acquisition of unprocessed timber originating from Federal lands within a sourcing area west of the 100th meridian in the contiguous 48 States and approved by the Secretary. A sourcing area is the area of land from which a person expects to purchase timber originating from Federal lands as a source of raw materials for its manufacturing facility. This exception shall apply to a person who has not exported unprocessed timber originating from private lands within the sourcing area in the previous 24 months and does not export unprocessed timber originating from private lands within the approved sourcing area while the approval is in effect.

Waiver of the prohibition against exporting in the preceding 24-month period. Under the interim rule, the Secretary may waive the 24-month requirement for any person who certifies that the person will cease exporting unprocessed timber from private lands within the sourcing area by February 20, 1991, for a period of not less than 3 years. The certification must be received by the Regional Forester of the Forest Service Region in which the manufacturing facility being sourced is located by November 20, 1990.

In order to enforce the Act and the export program, applicants for the waiver of the prohibition against exporting in the preceding 24-month period are required to certify that they fully understand the requirements of the Act. Proper enforcement of the program is dependent upon complete and accurate certifications. In order to exempt a person from the 24-month requirement, the agency must rely on the information provided by applicants, concerning the person's intent to cease exporting within 6 months of the certification and to cease exporting for a period of 3 years from the date of the certification. The applicant also must acknowledge in the certification an understanding that the applicant's intent to cease exporting within 6 months relates to the enforcement of the Act. This certification will enable the agency to ensure that the purchaser is in complete compliance with the objectives of the Act.

The interim rule makes clear that applicants must be fully aware of and understand that providing incorrect or incomplete information in the certifications will subject them to the penalties and remedies provided in section 492 of the Act (U.S.C. 620d), that is, civil penalties, cancellation of contracts, and/or debarment. Incomplete or inaccurate certifications also will subject purchasers to the penalties found in the False Statements Act (18 U.S.C. 1001).

Sourcing area application procedures. Subsection 490(c) of the Act (16 U.S.C. 620b) states that the Secretary of Agriculture is to prescribe procedures to be used by a person applying for approval of a sourcing area. The procedures shall require, at a minimum, that the applicant provide information regarding the location of private lands from which the person has, within the previous year, harvested or otherwise acquired unprocessed timber that has been exported from the United States; and information regarding the location of each timber manufacturing facility-owned or operated by the applicant within the proposed sourcing area boundaries from which the applicant proposes to process timber originating from Federal lands.

The Act also provides that the direct substitution prohibitions shall not apply to a person before December 20, 1990, which is 1 month after the procedures referred to above are prescribed. "Person," in this case, refers to a person applying for a sourcing area since the exemption is listed under subsection 490(c)(2) of the Act (16 U.S.C. 620b). A person applying for a sourcing area by December 20, 1990, will also be exempt from the direct substitution prohibition until the Secretary approves or disapproves the application.

The Act further provides that the Secretary shall either approve or disapprove each application not later than four (4) months after receipt of the application. For the purposes of complying with this rule, applicants may submit their applications to the Regional Forester of the Region in which the processing facility is located.

Under the Act, the Secretary shall provide the opportunity for a hearing and the approval or disapproval shall be on the record. Any sourcing area approval must be based on a determination by the Secretary that the area subject to the application includes the manufacturing facilities at which the applicant expects to process the Federal timber and that the area is geographically and economically separate from any area from which that person harvests for export any unprocessed timber originating from private lands. The Secretary shall also consider equally the timber purchasing patterns of the applicant on private and Federal lands with those of other persons in the same local vicinity and the relative similarity of such purchasing patterns. To clarify the intent of the Act's use of the phrase "same local vicinity," the interim rule establishes the "same local vicinity" as normally being the manufacturing facilities located within 30 miles of the community where the applicant's manufacturing facility is located, but "same local vicinity" may include more distant communities, if manufacturing facilities in those communities are dependent on the same source of timber and have similar purchasing patterns. This interpretation is supported by the Conference Report accompanying the Act. The relative similarity of purchasing patterns will be determined by examining the location and similarity of timber being purchased and the similarity of products being produced.

The sourcing area boundaries must follow major natural and cultural features, including but not limited to prominent ridge systems, main roads or highways, rivers, political subdivisions, and not characterized by random lines. This is necessary to provide sourcing area boundaries that are readily identifiable on the ground and can be clearly displayed on map scales in general use.

Section 223.191 Sourcing Area Disapproval, Review Procedures

This section incorporates subsection 490(c)(4) of the Act (16 U.S.C. 620b) into the interim rule. The Act states that the approval or disapproval of a sourcing area application must be made by the approving official within 4 months of receipt of the application. Applications received on December 20, 1990, would require approval or disapproval by April 20, 1991, which would be at least 30 days prior to the publishing of a final rule. It would be impracticable to apply the sourcing area regulation without providing for the potential for disapproval. Section 223.191 repeats the language of the Act.

Section 223.192 Procedures for a Non-Manufacturer

Subsection 490(c)(2) of the Act (16 U.S.C. 620b) states that the procedures established by the Secretary shall, at a minimum, require that the applicant provide information regarding the location of private lands from which such person harvested or otherwise acquired unprocessed timber in the previous year which has been exported from the United States; and information regarding the location of each timber manufacturing facility-owned or operated by such person within the proposed sourcing area boundaries where the applicant proposes to process timber originating from Federal lands.

This subsection of the Act provides a process for the establishment of sourcing areas for a person who owns or operates a manufacturing facility. The subsection does not provide a means for a person who does not own or operate a manufacturing facility (a non-manufacturer) to obtain a sourcing area or to be exempt from the prohibition against purchasing Federal timber if the person has exported unprocessed timber originating from private lands within the previous 24-month period.

The stated purposes of the Act are to promote the conservation of forest resources, to take action essential for the acquisition and distribution of forest resources or products in short supply in the western United States, to ensure sufficient supplies of certain forest resources or products which are essential to the United States, and to continue to refine the existing Federal policy of restricting the export of unprocessed timber harvested from Federal lands in the western United States.

The failure to provide a non-manufacturer an opportunity to be exempt from the 24-month restriction or to obtain a sourcing area would in effect bar that person from competing for Federal timber until the 24-month period has passed. Such inability to purchase Federal timber would create a financial hardship for this segment of the timber industry and might cause some to go out of business with the resulting loss of employment and economic disruption. Further, if a non-manufacturer is unable to submit bids or to purchase Federal timber, there will be a reduction in the competition in some markets that would result in a reduction in receipts to the United States and State and County treasuries.

In order to close this gap, persons who do not own or operate a manufacturing facility may certify to the Regional Forester of the Region(s) in which they purchase National Forest System timber that they will cease exporting unprocessed timber originating from private lands west of the 100th meridian in the contiguous 48 States by February 20, 1991, and, in fact, have ceased the export of unprocessed private timber from such lands. The applicable Regional Forester must receive the certification by November 20, 1990. This will provide a non-manufacturer with the opportunity to make the same business decisions as those persons owning or operating a manufacturing facility, that is, whether or not to continue the export of unprocessed private timber or whether to continue purchasing Federal timber. Since the non-manufacturer does not have a manufacturing facility, the non-manufacturer will not be able to establish a sourcing area.

In order to enforce the Act and the export program, a non-manufacturer is required to certify that he or she fully understands the requirements of the Act. Proper enforcement of the program is dependent upon complete and accurate certifications. In order to exempt a non-manufacturer from the 24-month requirement, the agency must rely on the information provided by applicants regarding intent to cease exporting within 6 months of the certification. The applicant also must acknowledge in the certification an understanding that the

information provided is related to the enforcement of the program. This certification will enable the agency to ensure that the non-manufacturer is in complete compliance with the objectives of the Act.

Applicants must be fully aware of and understand that providing incorrect or incomplete information in the certifications will subject them to the penalties and remedies provided in section 492 of the Act (16 U.S.C. 620d), that is, civil penalties, cancellation of contracts, and/or debarment. Incomplete or inaccurate certifications also will subject purchasers to the penalties found in the False Statements Act (18 U.S.C. 1001).

Section 223.193 Determination of Surplus Species

This section implements section 489 of the Act (16 U.S.C. 620a) and continues the prohibition on export of unprocessed timber originating from Federal lands, except for timber that has been determined by the Secretary to be surplus to the needs of timber manufacturing facilities in the United States. Section 489 of the Act (16 U.S.C. 620a) states that any surplus determination shall be made in regulations issued in accordance with section 553 of title 5, United States Code. Any such determination shall be reviewed at least once in every 3-year period. The Secretary shall publish notice of such review in the **Federal Register** and shall give the public an opportunity to comment on such review. This interim rule will provide for continuity between previous rules and the final rule for this Act by continuing the determination of surplus species until a new determination can be made.

Because of the short deadline imposed by the Act, those persons who receive notice of National Forest timber sale advertisements and who will be directly affected by this interim rule have received direct notice of the certification procedures contained in this rule by separate mailing.

Environmental Impact

This interim rule only limits the persons qualified to purchase unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States. It will not affect the amount of timber to be sold, where the sales will be located, when they will be operated, the contract period, the contract size, resource protection requirements, or any aspect of on-the-ground contract performance. This rule does not alter the requirement that each timber sale be analyzed in compliance with the National Environmental Policy Act and its implementing regulations. As such, this rule will have no impact on the quality of the human environment, individually or cumulatively. Therefore, documentation of analysis of environmental effects of this rule in an environmental assessment or an environmental impact statement is not required.

Controlling Paperwork Burdens on the Public

The application procedures of §§ 223.187, 223.189, 223.190, and 223.192 of this interim rule contain new recordkeeping and reporting requirements as defined in 5 CFR part 1320 and, therefore, impose additional paperwork burdens on the affected public. The Office of Management and Budget assigned Control Number is 0596–0114. Reviewers who wish to comment on these information requirements should submit their views to the Chief of the Forest Service at the address listed earlier in this document as well as to the:

Forest Service Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Regulatory Impact

This interim rule has been reviewed under USDA procedures and Executive Order 12291. It has been determined that this is not a major rule. The interim rule will not have an annual effect of $100 million or more on the economy, or substantially increase prices or costs for consumers, individual industries, Federal, State, or local governments of geographic regions. Furthermore, the interim rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This interim rule will not limit the amount of National Forest System timber to be offered for sale, restrict competition, or reduce market demand for such timber.

This interim rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities. The interim rule imposes no additional requirements on small business timber sale purchasers or other small entities.

This interim rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 and it has been determined that the interim rule does not pose the risk of a taking of Constitutionally protected private property.

List of Subjects in 36 CFR Part 223

Exports, Government contracts, National Forests, Reporting requirements, Timber sales.

Therefore, for the reasons set foth in the preamble, part 223 of title 36 of the Code of Federal Regulations is amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation of part 223 is revised to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 616, 104 Stat. 714–726, 16 U.S.C. 620–620h, unless otherwise noted.

Subpart B—Timber Sale Contracts

2. Revise § 223.48 to read as follows:

§ 223.48 Restrictions on export and substitution of unprocessed timber.

(a) Contracts for the sale of unprocessed timber from National Forest System lands located west of the 100th meridian in the contiguous 48 States and Alaska, awarded before August 20, 1990, shall include provisions implementing the Secretary's timber export and substitution regulations at Subpart D of this part in effect prior to that date.

(b) Contracts for the sale of unprocessed timber from National Forest System lands located west of the 100th meridian in the contiguous 48 States, awarded on or after August 20, 1990, shall include provisions implementing the requirements of the Forest Resources Conservation and Shortage Relief Act of 1990, (16 U.S.C. 620 *et seq.*).

Subpart D—Timber Export and Substitution Restrictions

4. Add a new § 223.159 to subpart D to read as follows:

§ 223.159 Scope and applicability.

The rules of this subpart apply to all timber sale contracts awarded prior to August 20, 1990, the date of enactment of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*). In addition, the rules at § 223.161 shall remain in effect for all timber sale contracts in Alaska and the procedures for determining surplus species at § 223.163 shall remain in effect for all timber sales until superseded. The rules at § 223.162 shall remain in effect for all contracts awarded after the date of enactment and until such time as final rules are

issued to implement this Act. The provisions of Subpart F of this Part implementing the following shall apply to all new contracts awarded after August 20, 1990:

(a) Sourcing area application and approval procedures;

(b) Certification procedures;

(c) Continuation surplus species determinations;

(d) Sourcing area disapproval, review procedures; and

(e) Definitions.

5. Add a new subpart F (§§ 223.185 through 223.194) to read as follows:

Subpart F—Interim Rules to Implement the Forest Resources Conservation and Shortage Relief Act of 1990

Sec.

223.185 Scope and applicability.
223.186 Definitions.
223.187 Determination of unprocessed timber.
223.188 Prohibitions against exporting Federal timber.
223.189 Prohibitions against substitution.
223.190 Sourcing area procedures.
223.191 Sourcing area disapproval, review procedures.
223.192 Procedures for a non-manufacturer.
223.193 Determination of surplus species.
223.194 Information requirements.

Supart F—Interim Rules to Implement the Forest Resources Conservation and Shortage Act of 1990

§ 223.185 Scope and applicability.

The interim rules of this subpart apply to all timber sale contracts awarded on or after August 20, 1990, and implement provisions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) that became effective upon enactment or as otherwise specified in the Act.

§ 223.186 Definitions.

The following definitions apply to the provisions of this section:

Act means the Forest Resources Conservation and Shortage Relief Act of 1990 (Pub. L. No. 101–382, 104 Stat. 714–726; 16 U.S.C. 620 *et seq.*).

Acquire means to come into possession of, whether directly or indirectly, through a sale, trade, exchange, or other transaction. The term "acquisition" means the act of acquiring. The terms "acquire" and "purchase" are synonymous and are used interchangeably in this interim rule.

Cants or *Flitches* are synonymous, and mean trees or portions of trees, sawn on one or more sides, intended for remanufacture into other products elsewhere.

Export means transporting or causing to be transported, either directly or through another party, unprocessed timber to a foreign country. Export occurs on the date that a person enters into an agreement to sell, trade, exchange, or otherwise convey such timber to a person for delivery to a foreign country. If that date cannot be established, export occurs when unprocessed timber is placed in an export facility for preparation, including but not limited to, sorting, bundling, and container loading, for shipment outside the United States, or when unprocessed timber is placed on board an ocean-going vessel, rail car, or other conveyance destined for a foreign country.

Federal lands means lands that are owned by the United States west of the 100th meridian in the contiguous 48 States, but which does not include any land the title to which is:

(a) Held in trust by the United States for the benefit of any Indian tribe or individual;

(b) Held by any Indian tribe or individual subject to a restriction by the United States against alienation; or

(c) Held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

Fiscal Year means the Federal fiscal year beginning on October 1st and ending on the following September 30th.

Non-manufacturer means a person who does not own or operate a manufacturing facility.

Person means any individual, partnership, corporation, association, or other legal entity and includes any subsidiary, subcontractor, parent company, and business affiliates. Persons are affiliates of each other when either directly or indirectly, one person controls or has the power to control the other or a third party or parties controls or has the power to control both. In determining whether or not affiliation exists, consideration shall be given to all appropriate factors, including but not limited to common ownership, common management, common facilities, and contractual relationships. Further guidelines on finding affiliation are found in the Small Business Administration regulation in 13 CFR 121.401.

Private lands means lands, located west of the 100th meridian in the contiguous 48 States, held or owned by a person. Such term does not include Federal lands or public lands, or any land the title to which is:

(a) Held in trust by the United States for the benefit of any Indian tribe or individual;

(b) Held by any Indian tribe or individual subject to a restriction by the United States against alienation; or

(c) Held by any Native Corporation as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

Purchase means the same as acquire. The terms are used interchangeably.

Substitution means acquiring, either directly or indirectly, unprocessed timber from Federal lands and engaging in exporting, or selling for export, unprocessed timber originating from private lands within the same geographic or economic area.

Unprocessed timber means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use and intended for remanufacture.

§ 223.187 Determinations of unprocessed timber.

(a) Unprocessed timber, as defined in § 223.186 of this subpart, is intended for remanufacture and does not include timber processed into any one of the following:

(1) Lumber or construction timbers, except western red cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list grades, sawn on 4 sides, not intended for remanufacture. To determine whether such lumber or construction timbers meet this grade and intended use standard, the shipper of record must have in its possession for each shipment, and available for inspection upon the request of the Forest Service:

(i) An original copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard and,

(ii) An original certificate by the manufacturer that the material in the shipment has been manufactured for a specific order for end product use, not intended for remanufacture, with a copy of such order and specifications attached.

(2) Lumber, construction timbers, or cants for remanufacture, except western red cedar, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list clear grades, sawn on 4 sides, not to exceed 12 inches in thickness. To determine whether such lumber, timbers, or cants meet this grading standard, the shipper of record must have in its possession for each shipment and available for inspection upon the request of the Forest Service, an original copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard.

(3) Lumber, construction timbers, or cants for remanufacture, except Western Red Cedar, that do not meet the grades referred to in paragraph (a)(2) of this section and are sawn on 4 sides,

with wane less than ¼ of any face, not exceeding 8¾ inches in thickness.

(4) Chips, pulp, or pulp products.

(5) Veneer or plywood.

(6) Poles, posts, or piling cut or treated with preservatives for use as such.

(7) Shakes or shingles.

(8) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp.

(9) Pulp logs or cull logs to be processed at domestic pulp mills, domestic chip plants, or other domestic operations for the purpose of conversion of the log into chips.

(b) Unprocessed western red cedar timber does not include manufactured lumber authorized to be exported under license by the Department of Commerce and lumber from private lands processed to standards established in the lumber grading rules of the American Lumber Standards Association or the Pacific Lumber Inspection Bureau, or timber processed into any of the following:

(1) Lumber of American Lumber Standards Grades of Number 3 dimension or better and/or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 Common or better. To determine whether such lumber meets these established standards and grades, the shipper of record must have in its possession for each shipment, and available for inspection upon the request of the Forest Service, an original copy of a lumber inspection certificate certified by a lumber inspection/grading organization generally recognized by the industry as setting a selling standard. Export restrictions governing western red cedar products are in section 7(i) of the Export Administration Act of 1979 as amended (50 U.S.C. appendix 2406(i)) and implementing regulations at 15 CFR 777.7.

(2) Chips, pulp, and pulp products.

(3) Veneer and plywood;

(4) Poles, posts, piling cut or treated with preservatives for use as such and not intended to be further processed; or

(5) Shakes and shingles.

§ 223.188 Prohibitions against exporting Federal timber.

No person who aquires unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States may export such timber from the United States, or sell, trade, exchange, or otherwise convey such timber to any other person for the purpose of exporting such timber from the United States. This prohibition does not apply to specific quantities of grades and species of such unprocessed Federal timber as the Secretary of Agriculture may determine to be surplus to domestic manufacturing needs.

§ 223.189 Prohibitions against substitution.

(a) *Direct substitution prohibition.* Except as otherwise provided by this section:

(1) No person may purchase unprocessed timber originating from Federal lands directly from a department or agency of the United States if such unprocessed timber is to be used in substitution for exported unprocessed timber originating from private lands; or

(2) No person may purchase unprocessed timber originating from Federal lands if such person has, during the preceding 24-month period, exported unprocessed timber originating from private lands.

(b) *Exemptions.* (1) Pursuant to subsection 490(c) of the Act (16 U.S.C. 620b), all persons who apply for a sourcing area by December 20, 1990, in accordance with § 223.190 of this subpart, are exempt from the prohibition against substitution, in accordance with § 223.189(a) of this subpart, until such time that the approving official approves or disapproves the application.

(2) Pursuant to section 490(a) of the Act (16 U.S.C. 620b), an exemption to the prohibition in § 223.189(a)(2) of this subpart is provided to:

(i) A person with a historic export quota who submits a certification in accordance with § 223.189 (c) and (d) of this subpart; and

(ii) A non-manufacturer who submits a certification in accordance with § 223.192 of this subpart.

(3) Pursuant to subsection 490(c) of the Act (16 U.S.C. 620b), the prohibition against direct substitution does not apply to a person who acquires unprocessed timber originating from Federal lands within an approved sourcing area, does not export unprocessed timber originating from private lands within the approved sourcing area while the approval is in effect, and, if applicable, receives a waiver of the prohibition against exporting unprocessed timber originating from private lands within the sourcing area during the preceding 24 months, in accordance with § 223.189 (f) and (g) of this subpart.

(c) *Historic export quota exemption.* The prohibition against the purchase of Federal timber for a person who has exported unprocessed timber originating from private lands, within the preceding 24-month period, shall not apply to a person with a historic export quota approved by the Secretary and who has been exporting unprocessed private timber in accordance with the log export and substitution regulations of the Secretary of Agriculture at 36 CFR Part 233, subpart D, in effect before August 20, 1990, if:

(1) That person certifies in writing to the Regional Forester of the Region administering the historic export quota, on or before November 20, 1990, that the person will cease exporting unprocessed timber originating from private lands on or before February 20, 1991, and

(2) The exporting does cease in accordance with such certification.

(d) *Application for historic export quota exemption.* To obtain an exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber based on an approved historic export quota described in preceding paragraph (c), a person must apply in writing to the applicable Regional Forester on or before November 20, 1990. The certificate must be notarized. The application shall be on company letterhead and, in the case of a corporation, with its corporate seal affixed, and must include:

(1) An agreement to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area(s) involved in the certification, for a period of three (3) years beginning November 20, 1990, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated.

(2) A signed certification which reads as follows:

I have purchased, under an historic export quota approved by the Secretary of Agriculture, unprocessed timber originating from Federal lands located west of the 100th meridian in the contiguous 48 States during the preceding 24 months in direct substitution for exported unprocessed timber originating from private lands. I desire to purchase directly from a department or agency of the United States, unprocessed timber originating from Federal lands located in such area of the United States. I make this certification for the exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber required by the Forest Resources Conservation and Shortage Relief Act of 1990, (Pub. L. No. 101–382, August 20, 1990, 16 U.S.C. 620 *et seq.*) (Act). I hereby certify that I will cease all exporting of such unprocessed private timber from lands west of the 100th meridian in the 48 contiguous States of the United States by February 20, 1991. I make this certification with full knowledge and understanding of the requirements of this Act and do fully understand that failure to cease such exporting as certified will be a violation of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.

(3) The certification must be signed by the person making such certification or, in the case of a corporation, by its chief executive officer.

(e) *Indirect substitution prohibition.* No person may purchase from any other person unprocessed timber originating from Federal lands if such person would be prohibited by paragraph (a) of this section from purchasing such timber directly from a department or agency of the United States. The prohibition in this paragraph does not apply to the following:

(1) To a person who purchases unprocessed timber originating from National Forest System (NFS) lands located within the State of Washington, until such time that the proportionate shares of the exempt volume limit established by the Act are assigned by the Regional Forester of Region 6, at which time, the prohibitions shall apply to a person who acquires amounts of such unprocessed NFS timber exceeding its assigned share.

(2) To the acquisition of unprocessed western red cedar, which is domestically processed into finished products.

(3) To a person who acquires unprocessed timber originating from Federal lands within an approved sourcing area, does not export unprocessed timber originating from private lands within the approved sourcing area while the approval is in effect, and, if applicable, receives a waiver of the prohibition against exporting unprocessed timber originating from private lands within the sourcing area during the preceding 24 months in accordance with § 223.189 (f) and (g) of this subpart.

(f) *Waiver within a sourcing area.* The prohibitions against direct and indirect acquisition of unprocessed timber originating from Federal lands do not apply if a person acquires such timber from within an approved sourcing area located west of the 100th meridian in the 48 contiguous States, and has not exported unprocessed timber originating from private lands located within the approved sourcing area during the preceding 24 months and during the period the sourcing area is in effect, does not export such private timber from within the approved sourcing area. The applicable Regional Forester may waive, in writing, the prohibition against export within the preceding 24-month period for any person who certifies in writing, on or before November 20, 1990, that on or before February 20, 1991, that person will cease exporting unprocessed timber originating from private lands within the approved sourcing area for a period of not less than three (3) years.

(g) *Application for waiver within a sourcing area.* To obtain a waiver of the prohibition against export within the preceding 24-month period for purchasing Federal timber described in paragraph (f) of this section, a person must submit a request for waiver, in writing, to the Regional Forester of the region in which the manufacturing facility being sourced is located, which must be received by the Regional Forester on or before November 20, 1990; and which must be signed by the person making such request or, in the case of a corporation, by its chief executive officer. The request for waiver must be notarized. The request shall be on company letterhead and, in the case of a corporation, with its corporate seal affixed, and must include:

(1) An agreement to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area(s) involved in the waiver request, for a period of three (3) years beginning November 20, 1990, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated.

(2) A signed certification statement which reads as follows:

I have engaged in exporting of unprocessed timber originating from private land located within the sourcing area for which I am applying. I desire to purchase directly from a department or agency of the United States unprocessed timber originating from Federal lands located within the desired sourcing area. I hereby waiver of the prohibition against export within the preceding 24-month period for purchasing Federal timber required by the Forest Resources Conservation and Shortage Relief Act of 1990 (Pub. L. No. 101–382, August 20, 1990, 16 U.S.C. 620 *et seq.*) (Act). I hereby certify that I will cease all exporting of such unprocessed private timber from within the desired sourcing area by February 20, 1991, and will not resume such exporting for a period of not less than three (3) years. I make this certification with full knowledge and understanding of the requirements of this Act and do fully understand that failure to cease such exporting as certified will be a violation of section 492 of this Act (16 U.S.C. 620d) and the False Statements Act ((18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.

§ 223.190 Sourcing area procedures.

(a) Subject to the restrictions described in § 223.189 of this subpart and, except as provided in paragraph (b) of this section, any person who owns or operates a manufacturing facility, may apply for a sourcing area exception to the substitution prohibitions in accordance with the procedures of this section. The direct substitution prohibitions shall not apply as follows:

(1) To a person applying for a sourcing area before December 20, 1990; and until such sourcing area application is approved or disapproved by the Secretary.

(2) [Reserved]

(b) As provided in the Act, a person who has requested an exemption or waiver of the prohibition against export within the preceding 24-month period, pursuant to § 223.189 of this subpart, must apply for the desired sourcing area on or before December 20, 1990.

(c) Sourcing area applications shall include:

(1) A map of sufficient scale and detail to clearly show:

(i) The applicant's desired sourcing area boundary. This boundary will include both the private and Federal lands from which the applicant intends to acquire unprocessed timber for sourcing its manufacturing facilities.

(ii) The location of the timber manufacturing facilities owned or operated by the applicant within the proposed sourcing area where the person intends to process timber originating from Federal land;

(iii) The location of private lands within and outside the desired sourcing area where the person has, within the 12 months immediately preceding the date of the application, acquired unprocessed timber originating from private land which was exported, sold, traded, exchanged, or otherwise conveyed to another person for the purpose of exporting such timber;

(2) A list of other persons with timber manufacturing facilities located within the same general vicinity as the applicant's facilities;

(3) Any other information the applicant may believe is appropriate to support approval of the requested sourcing area; and

(4) A statement signed by the person certifying under the penalties provided in section 492 of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001) that the information provided in support of the application is true, complete, and accurate to the best of the applicant's knowledge. The statement shall read as follows:

I certify under penalties of 16 U.S.C. 620d and 18 U.S.C. 1001, that the information provided in support of this application, is true, complete, and accurate to the best of my knowledge concerning my timber purchasing and export patterns. I certify that the

information provided concerning my timber purchasing and export patterns fully and accurately reflects to the best of my knowledge, the boundaries of the sourcing area for which I am applying. I make this certification with full knowledge and understanding of the export and substitution restrictions of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) (Act) and fully understand, that, if this application is approved, exporting unprocessed private timber originating from within the approved sourcing area, or if this application is denied, failure to stop purchasing Federal timber, from within the proposed sourcing area, except as provided under the Act, within the time period and amounts provided by the Act, will be a violation of section 492 of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.SC. 1001), and may subject me to the penalties and remedies provided for such violation.

(d) Applications are not confidential information. However, if a person does submit confidential information, it should be marked as confidential and will be afforded the rights and protection provided under the Freedom of Information Act.

(e) Application for a sourcing area shall be made to the Forest Service Regional Forester of the region in which the manufacturing facility being sourced is located. Where the sourcing area application will cover purchases from more than one agency, application is to be made to the agency from which the applicant expects to purchase the preponderance of the Federal timber. The lead agency shall make the decision on consultation with, and upon co-signature of, the other agencies. Two complete copies of the application must be sent to each agency concerned.

(f) Sourcing area applications must be signed by the person making the request, or in the case of a corporation, by its chief executive officer, and must be notarized. The application shall be on company letterhead, and in the case of a corporation, with its corporate seal affixed.

(g) For each person submitting an application, the Regional Forester or other such approving official to whom such authority has been delegated, shall on the record and after an opportunity for a hearing, approve or disappove the proposed sourcing area.

(h) The application review process is as follows:

(1) Upon receipt of application, the approving official shall notify other parties of the application, and invite written comments, to be received no later than 30 days from date of notice. Notification will consist of publication of a notice in newspapers of general circulation in the area included in the sourcing area application. Additional notification will be made through agency mailing lists.

(2) After the comment period, the applicant and other parties who submitted written comments will be allowed 10 working days to review the written comments and request a hearing before the approving official.

(3) The approving official shall schedule a hearing, if one is requested, within 30 days after the period for reviewing written comments lapses, and shall notify all parties who submitted written comments of the date, place and time.

(4) The applicant will be notified of the approving official's decision on the application within four (4) months of receipt of the application.

(5) The following tests must be met for sourcing area approval:

(i) The approving official must find that the proposed sourcing area is geographically and economically separate from any area that the applicant harvests or expects to harvest for export any unprocessed timber originating from private lands. In making such finding, the approving official shall consider the timber purchasing patterns of the applicant on private and Federal lands equally with those of other persons in the same local vicinity and the relative similarity of such purchasing patterns.

(ii) The same local vicinity for consideration will normally be manufacturing facilities located within 30 miles of the community where the applicant's manufacturing facility is located, but may include more distant communities if manufacturing facilities in those communities are dependent on the same source of timber and have similar purchasing patterns.

(iii) The relative similarity of purchasing patterns of other mills shall be determined by considering the location and similarity of unprocessed timber being acquired and the similarity of products being produced by those facilities.

(iv) Lines defining the geographic area shall be based on major natural and cultural features, including, but not limited to prominent ridge systems, main roads or highways, rivers, political subdivisions, and not characterized by random lines.

§ 223.191 Sourcing area disapproval, review procedures.

(a) Notwithstanding any other provision of law, in the event the sourcing area application is disapproved, the applicant may purchase in the 9-month period after receiving the application disapproval, unprocessed timber originating from Federal lands in the area designated as a sourcing area in the applicant's application, in an amount not to exceed 75 percent of the annual average of such person's purchases of unprocessed Federal timber in such area during the five (5) full fiscal years immediately prior to the date of the submission of the application. In the 6-month period immediately following the 9-month period, such person may purchase not more than 25 percent of such annual average, after which time the prohibitions against direct substitution, described in § 223.189 of this Subpart shall apply. However, that person may continue to purchase unprocessed timber originating from Federal lands within the applied-for sourcing area without being subject to the phase-out of Federal timber purchasing procedures described in this section, if that person certifies to the Regional Forester or the approving official to whom such authority has been delegated, within 90 days after receiving the disapproval decision, that the applicant shall, within 15 months of such disapproval decision, cease the export of unprocessed timber originating from private lands from the geographic area determined by the approving official for which the application would have been approved. During the 15-month period described in this paragraph, however, such person's purchases may not:

(1) Exceed 125 percent of the person's annual average purchases of unprocessed timber originating from Federal lands within the area subject to the person's sourcing area application during the five (5) full fiscal years immediately prior to submission of the application; and,

(2) Export unprocessed timber originating from private lands in the geographic area determined by the approving official for which the application would have been approved, in amounts that exceed 125 percent of the annual average of that person's exports of unprocessed timber from such private land during the five (5) full years immediately prior to submission of the application.

(b) Sourcing area determinations will be reviewed not less than every five (5) years.

§ 223.192 Procedures for a non-manufacturer.

(a) Persons who do not own or operate a manufacturing facility (non-manufacturer) are not eligible to apply for or be granted a sourcing area.

(b) The prohibition against the purchase of Federal timber for a person who has exported unprocessed timber originating from private lands within the preceding 24-month period, if the person certifies in writing to the Regional Forester of the region(s) in which they purchase National Forest System timber by November 20, 1990, that the person will cease exporting unprocessed timber originating from private lands by February 20, 1991, for a period of 3 years and the exporting does cease in accordance with such certification.

(c) To obtain an exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber described in § 223.189 (a) and (b) of this subpart, a person must apply in writing to the applicable Regional Forester on or before November 20, 1990. The application shall be on company letterhead and, in the case of a corporation, with its corporate seal affixed, and must include:

(1) An agreement to retain records of all transactions involving acquisition and disposition of unprocessed timber from both private and Federal lands within the area(s) involved in the certification, for a period of three (3) years beginning November 20, 1990, and to make such records available for inspection upon the request of the Regional Forester, or other official to whom such authority has been delegated.

(2) A signed certification which reads as follows:

I have engaged in the exporting of unprocessed timber originating from private lands located west of the 100th meridian in the contiguous 48 States during the preceding 24 months. I desire to purchase directly from a department or agency of the United States, unprocessed timber originating from Federal lands located in such area of the United States. I make this certification for the exemption from the prohibition against export within the preceding 24-month period for purchasing Federal timber required by the Forest Resources Conservation and Shortage Relief Act of 1990, (Pub. L. No. 101-382, August 20, 1990, 16 U.S.C. 620 *et seq.*) (Act). I hereby certify that I will cease all exporting of such unprocessed private timber from west of the 100th meridian in the contiguous 48 States of the United States by February 20, 1991. I make this certification with full knowledge and understanding of the requirements of this Act and do fully understand that failure to cease such exporting as certified will be a violation of this Act (16 U.S.C. 620d) and the False Statements Act (18 U.S.C. 1001), and may subject me to the penalties and remedies provided for such violation.

(3) This certification must be signed by the person making such certification or, in the case of a corporation, by its chief executive officer. The certification must be notarized.

§ 233.193 Determination of surplus species.

Alaska yellow-cedar and Port Orford-cedar, those species currently found by the Secretary of Agriculture to be surplus to domestic processing needs pursuant to § 223.163 of this part, shall continue in that status, until such time as new procedures for determining surplus species under the Act are issued and determinations made.

§ 223.194 Information requirements.

(a) The application procedures in §§ 223.187, 223.189, 223.190, and 223.192 of this subpart constitute information collection requirements as defined in 5 CFR part 1320. These requirements have been approved by the Office of Management and Budget and assigned clearance number 056-0114.

(b) Public reporting burden for this collection of information is estimated to average 2.4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief (2400), Forest Service, USDA, P.O Box 96090, Washington, DC 20090-6090 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Dated: November 16, 1990.

Jack C. Parnell,

Acting Secretary.

[FR Doc. 90-27476 Filed 11-19-90; 8:45 am]

BILLING CODE 3410-11-M

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federal register

Tuesday
November 20, 1990

Part VIII

The President

Proclamation 6233—National Military Families Recognition Day, 1990

Executive Order 12735—Chemical and Biological Weapons Proliferation

Federal Register
Vol. 55, No. 224
Tuesday, November 20, 1990

Presidential Documents

Title 3—

The President

Proclamation 6233 of November 16, 1990

National Military Families Recognition Day, 1990

By the President of the United States of America

A Proclamation

A great portion of our Nation's military strength is derived from our proud and courageous military families. Each of us gains untold strength and inspiration through our loved ones; for the men and women who serve in the United States Armed Forces, however, the love and support of family are indispensable when striving to endure the risks and sacrifices that are a frequent part of military life.

Through the steadfast physical and emotional support of their loved ones, members of our Armed Forces find much of the personal strength and motivation needed to complete arduous and sometimes hazardous assignments. Service members on duty far from home are ever grateful for the thoughts, prayers, and letters of their loved ones. Like millions of their fellow Americans around the world, the members of the Armed Forces are also uplifted and inspired by the extraordinary patriotism and perseverance of their families.

Our Nation's military families not only provide invaluable support to their loved ones in the Armed Forces but also frequently share in the sacrifices they must make in the line of duty. Spouses, parents, children, and siblings must often cope with long hours of separation and worry. Frequent moves, which can be particularly hard on youngsters, are a fact of military life. Those moves can take a family across the country or even around the world, where parents and children must adjust to cultural differences as well as new jobs and new schools. Nevertheless, despite these and other challenges, America's military families have always displayed remarkable faith, resourcefulness, and determination. As representatives of the United States around the world, they have served our country well and with pride, and all of us can be grateful for their example.

The Nation's military services have long acknowledged the importance of families and have thus established special programs and support systems to assist the close relatives of military personnel. Recently the families of those service men and women taking part in Operation Desert Shield have also received generous support through individual volunteers, local community groups, and private industry. Patriotic Americans across the country and around the world have demonstrated their support and rendered assistance to military families through countless heartwarming gestures. This week we reaffirm the importance of such generous efforts and unite in offering a heartfelt salute to all of our Nation's military families.

The Congress, by House Joint Resolution 566, has designated November 19, 1990, as "National Military Families Recognition Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim November 19, 1990, as National Military Families Recognition Day. I urge all Americans to observe this day with appropriate programs, ceremonies, and activities in honor of U.S. military families throughout the world. I also urge the people of the United States to pause in their homes, churches, synagogues, and other suitable places on this day to

pray in a special manner for those military families whose loved ones are stationed in the Persian Gulf region.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of November, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-27530
Filed 11-19-90; 11:40 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12735 of November 16, 1990

Chemical and Biological Weapons Proliferation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) the National Emergencies Act (50 U.S.C. 1601 *et seq.*) and section 301 of title 3 of the United States Code,

I, GEORGE BUSH, President of the United States of America, find that proliferation of chemical and biological weapons constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States and hereby declare a national emergency to deal with that threat.

Accordingly, I hereby order:

Section 1. *International Negotiations.* It is the policy of the United States to lead and seek multilaterally coordinated efforts with other countries to control the proliferation of chemical and biological weapons. The Secretary of State shall accordingly ensure that the early achievement of a comprehensive global convention to prohibit the production and stockpiling of chemical weapons, with adequate provisions for verification, shall be a top priority of the foreign policy of the United States, and the Secretary of State shall cooperate in and lead multilateral efforts to stop the proliferation of chemical weapons.

Sec. 2. *Imposition of Controls.* As provided herein, the Secretary of State and the Secretary of Commerce shall use their authorities, including the Arms Export Control Act and Executive Order No. 12730, respectively, to control any exports that either Secretary determines would assist a country in acquiring the capability to develop, produce, stockpile, deliver, or use chemical or biological weapons. The Secretary of State shall pursue early negotiations with foreign governments to adopt effective measures comparable to those imposed under this order.

Sec. 3. *Department of Commerce Controls.* (a) The Secretary of Commerce shall prohibit the export of any goods, technology, or services subject to his export jurisdiction that the Secretary of Commerce and the Secretary of State determine, in accordance with regulations issued pursuant to this order, would assist a foreign country in acquiring the capability to develop, produce, stockpile, deliver, or use chemical or biological weapons. The Secretary of Commerce and the Secretary of State shall develop an initial list of such goods, technology, and services within 90 days of this order. The Secretary of State shall pursue early negotiations with foreign governments to adopt effective measures comparable to those imposed under this section.

(b) Subsection (a) will not apply to exports if their destination is a country with whose government the United States has entered into a bilateral or multilateral arrangement for the control of chemical or biological weapons-related goods (including delivery systems) and technology, or maintains domestic export controls comparable to controls that are imposed by the United States with respect to such goods and technology or that are otherwise deemed adequate by the Secretary of State.

(c) The Secretary of Commerce shall require validated licenses to implement this order and shall coordinate any license applications with the Secretary of State and the Secretary of Defense.

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Sec. 4. *Sanctions Against Foreign Persons.* (a) Sanctions shall be imposed on foreign persons with respect to chemical and biological weapons proliferation, as specified in subsections (b)(1) through (b)(5).

(b)(1) Sanctions shall be imposed on a foreign person if the Secretary of State determines that the foreign person on or after the effective date of this order knowingly and materially contributed to the efforts of a foreign country referred to in subsection (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(2) The countries referred to in subsection (1) are those that the Secretary of State determines have either used chemical or biological weapons in violation of international law or have made substantial preparations to do so on or after the effective date of this order.

(3) No department or agency of the United States Government may procure, or enter into any contract for the procurement of, any goods or services from any foreign person referred to in subsection (1). The Sectretary of the Treasury shall prohibit the importation into the United States of products produced by that foreign person.

(4) Sanctions imposed pursuant to this section may be terminated or not imposed against foreign persons if the Secretary of State determines that there is reliable evidence that the foreign person concerned has ceased all activities referred to in subsection (1).

(5) The Secretary of State and the Secretary of the Treasury may provide appropriate exemptions for procurement contracts necessary to meet U.S. operational military requirements or requirements under defense production agreements, sole source suppliers, spare parts, components, routine servicing and maintenance of products, and medical and humanitarian items. They may provide exemptions for contracts in existence on the date of this order under appropriate circumstances.

Sec. 5. *Sanctions Against Foreign Countries.* (a) Sanctions shall be imposed on foreign countries with respect to chemical and biological weapons proliferation, as specified in subsections (b) and (c).

(b) The Secretary of State shall determine whether any foreign country has, on or after the effective date of this order, (1) used chemical or biological weapons in violation of international law; or (2) made substantial preparations to use chemical or biological weapons in violation of international law; or (3) developed, produced, or stockpiled chemical or biological weapons in violation of international law.

(c) The following sanctions shall be imposed on any foreign country identified in subsection (b)(1) unless the Secretary of State determines that any individual sanction should not be applied due to significant foreign policy or national security reasons. The sanctions specified in this section may be made applicable to the countries identified in subections (b)(2) or (b)(3) when the Secretary of State determines that such action will further the objectives of this order pertaining to proliferation. The sanctions specified in subsection (c)(2) below shall be imposed with the concurrence of the Secretary of the Treasury.

(1) *Foreign Assistance.* No assistance shall be provided to that country under the Foreign Assistance Act of 1961 or the Arms Export Control Act other than assistance that is intended to benefit the people of that country directly and that is not channeled through governmental agencies or entities of that country.

(2) *Multilateral Development Bank Assistance.* The United States shall oppose any loan or financial or technical assistance to that country by international financial institutions in accordance with section 701 of the International Financial Institutions Act (22 U.S.C. 262d).

(3) *Denial of Credit or Other Financial Assistance.* The United States shall deny to that country any credit or financial assistance by any department, agency, or instrumentality of the United States Government.

(4) *Prohibition on Arms Sales.* The United States Government shall not, under the Arms Export Control Act, sell to that country any defense articles or defense services or issue any license for the export of items on the United States Munitions List.

(5) *Exports of National Security-Sensitive Goods and Technology.* No exports shall be permitted of any goods or technologies controlled for national security reasons under Export Administration Regulations.

(6) *Further Export Restrictions.* The Secretary of Commerce shall prohibit or otherwise substantially restrict exports to that country of goods, technology, and services (excluding agricultural commodities and products otherwise subject to control).

(7) *Import Restrictions.* Restrictions shall be imposed on the importation into the United States of articles (which may include petroleum or any petroleum product) that are the growth, product, or manufacture of that country.

(8) *Landing Rights.* At the earliest practicable date, the Secretary of State shall terminate, in a manner consistent with international law, the authority of any air carrier that is controlled in fact by the government of that country to engage in air transportation (as defined in section 101(10) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(10)).

Sec. 6. *Duration.* Any sanctions imposed pursuant to sections 4 or 5 shall remain in force until the Secretary of State determines that lifting any sanction is in the foreign policy or national security interests of the United States or, as to sanctions under section 4, until the Secretary has made the determination under section 4(b)(4).

Sec. 7. *Implementation.* The Secretary of State, the Secretary of the Treasury, and the Secretary of Commerce are hereby authorized and directed to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of this order. These actions, and in particular those in sections 4 and 5, shall be made in consultation with the Secretary of Defense and, as appropriate, other agency heads. The Secretary concerned may redelegate any of these functions to other officers in agencies of the Federal Government. All heads of departments and agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of this order, including the suspension or termination of licenses or other authorizations.

Sec. 8. *Judicial Review.* This order is not intended to create, nor does it create, any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or any other person.

Sec. 9. *Effective Date.* This order is effective immediately.

This order shall be transmitted to the Congress and published in the **Federal Register.**

George Bush

THE WHITE HOUSE,
November 16, 1990.

[FR Doc. 90-27495
Filed 11-19-90; 9:49 am]
Billing code: 3195-01-M

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Monday, January 23, 1990
Volume 25—Number 4

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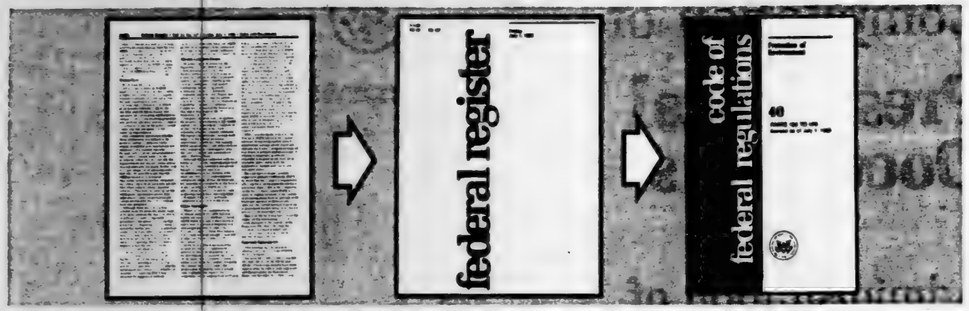

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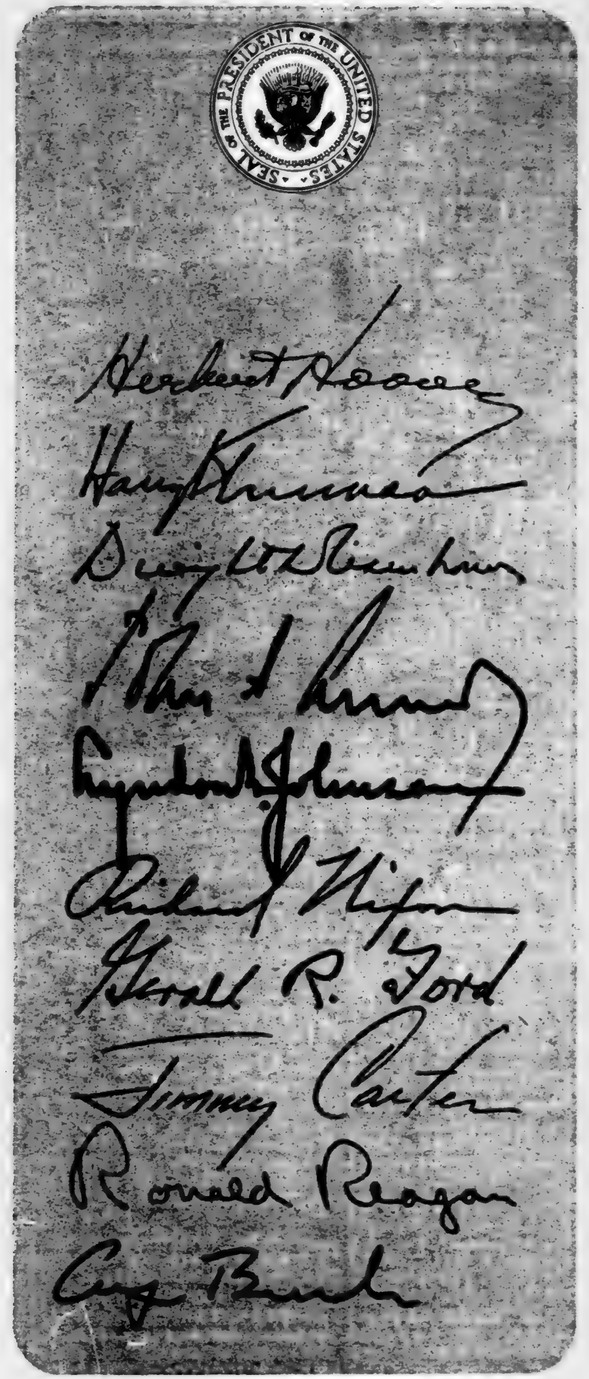

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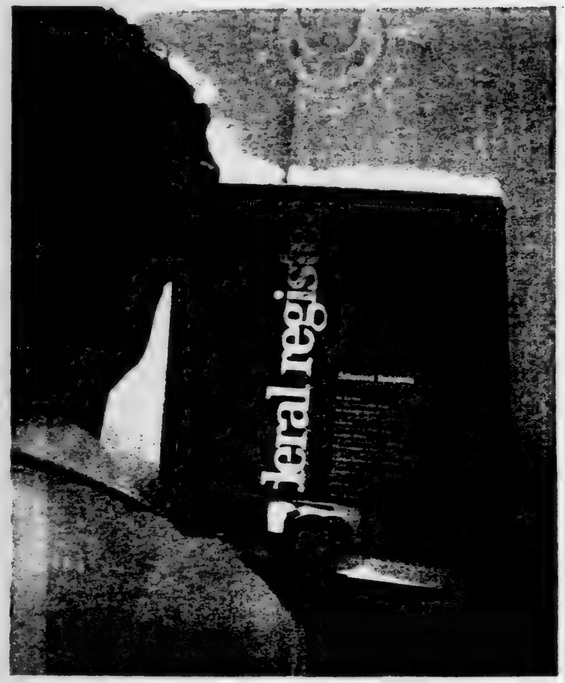

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-ANE-33; Amdt. 39-6806]

Airworthiness Directives; General Electric Co. (GE) CF6-6 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to GE CF6-6 turbofan engines, which requires initial and repetitive inspection of the compressor rear frame (CRF) manifold port plug weld for cracks, and removal from service of certain CRF casings which exceed crack length limits. This amendment is prompted by a CRF outer case failure event which resulted in an inflight shutdown, damage to the aircraft, and aborted takeoff. This condition, if not corrected, could result in rupture of the CRF outer case, which could lead to an inflight shutdown, an aborted takeoff, and/or damage to the aircraft.

DATES: Effective December 11, 1990.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of December 11, 1990.

ADDRESSES: The applicable service information may be obtained from General Electric Aircraft Engines, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7094.

SUPPLEMENTARY INFORMATION: There has been one CRF outer case rupture at the compressor discharge pressure (CDP) manifold port plug. The event resulted in an aborted takeoff and damage to the aircraft engine pylon and horizontal stabilizer. Subsequent metallurgical examination of the fracture surface revealed lack of fusion in the manifold port plug electron beam weld. A low cycle fatigue crack initiated and propagated to critical length resulting in an axial rupture of the CRF outer case at the 12:00 o'clock position. This condition, if not corrected, could result in rupture of the CRF casing which could result in an inflight shutdown, an aborted takeoff, and/or damage to the aircraft.

The FAA has reviewed and approved GE CF6-6 Service Bulletin (SB) 72-971, dated October 2, 1990, which describes an installed engine visual and spot fluorescent penetrant or contrast dye penetrant inspection of the CRF outer case CDP manifold port plug weld area for cracks.

Since this condition is likely to exist or develop on other engines of the same type design, this AD requires initial and repetitive inspection of the engine and removal of cracked parts in accordance with the SB previously described.

Since this condition could result in damage to the aircraft and an aborted takeoff, there is a need to reduce the exposure of revenue service aircraft to this condition. Therefore, safety in air transportation requires adoption of this regulation without prior notice and public comment. In addition, based on the above and the need to inspect the CRF as soon as practicable, a situation exists that requires immediate adoption of this regulation. Therefore, it is found that notice and public procedure are impracticable, and good cause exists for the adoption of the amendment without public comment, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

General Electric Company: Applies to General Electric Company (GE) CF6-6 turbofan engines, installed on, but not limited to, McDonnell-Douglas DC10 aircraft.

Compliance is required as indicated, unless previously accomplished.

To prevent rupture of the compressor rear frame (CFR) casing which could result in an inflight shutdown, an aborted takeoff, and/or aircraft damage, accomplish the following:

(a) Perform a visual and fluorescent penetrant inspection or visible dye penetrant inspection of the CRF outer case compressor discharge pressure (CDP) manifold port plug weld area for cracks in accordance with the Accomplishment Instructions of GE CF6-6 Service Bulletin (SB) 72-971, dated October 2, 1990, at the next scheduled open cowl check not to exceed 100 flight cycles after the effective date of this AD.

(b) Remove from service, prior to further flight, CRF casings which exceed the serviceable limits specified in Table 1 of GE SB 72-971, dated October 2, 1990.

(c) Thereafter, reinspect and remove from service CRF casings in accordance with the Accomplishment Instructions and the inspection intervals and crack limits specified in Table 1 of GE SB 72-971, dated October 2, 1990.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803.

The inspections and removals shall be done in accordance with the following General Electric Company document:

Document No.	Page No.	Issue/Rev	Date
GE CF6-6 SB 72-971.	All	Original	10/2/90.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, room 311, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street NW., room 8301, Washington, DC 20591.

This amendment becomes effective December 11, 1990.

Issued in Burlington, Massachusetts, on November 9, 1990.

Ronald A. Vavruska,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90-27428 Filed 11-20-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-ANE-24; Amendment 39-6811]

Airworthiness Directives; AVCO Lycoming ALF 502R Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Textron Lycoming ALF502R series turbofan engines, which requires the establishment of a new reduced stress rupture retirement life limit for certain third stage turbine disks. This amendment is prompted by three events of inflight shutdown resulting from third stage turbine blade release due to creep of the third stage turbine disk. This condition, if not corrected, could result in total loss of engine power, inflight shutdown, and possible damage to the aircraft.

DATES: *Effective date:* December 11, 1990.

Comments: Comments for inclusion in the docket must be received on or before December 13, 1990.

ADDRESSES: Submit comments in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-ANE-24, 12 New England Executive Park, Burlington, Massachusetts 01803, or deliver in duplicate to room 311 at the above address.

Comments may be inspected at the above location between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Textron Lycoming, 550 Main Street, Stratford, Connecticut 06497. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Karen M. Grant, Engine Certification Branch, ANE-142, Engine Certification Office, Engine & Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7087.

SUPPLEMENTARY INFORMATION: The FAA has determined that five cases of third stage turbine blade pullout have resulted from creep of the third stage turbine disk. Investigation into these occurrences has revealed third stage turbine disk rim operating temperatures to be higher than expected. New stress and temperature analyses indicate a lower material stress rupture life capability of the third stage turbine disk.

This condition, if not corrected, could result in total loss of engine power, inflight shutdown and possible damage to the aircraft.

The FAA has reviewed and approved Textron Lycoming Service Bulletin ALF 502R 72-0002, Revision 19, dated September 5, 1990, which contains the new reduced stress rupture hour limitation and the unchanged low cycle fatigue cyclic limitation for the third stage turbine disk.

Since this condition is likely to exist or develop in other engines of the same type design, this AD requires a reduced stress rupture life hour limitation that lowers the published third stage turbine disk hour life limit from 50,000 hours to 13,300 hours time-in-service, to prevent failure of the third stage turbine disk. This determination is based upon new stress and temperature analyses. The low cycle fatigue life limit of 25,000 cycles remains unchanged. This AD also requires affected parts to be removed from service at or prior to reaching this new life limit.

Since this condition could result in a total loss of engine power and inflight shutdown should third stage turbine blades pull out, there is a need to minimize the exposure of revenue service engines to operation with third stage turbine disks that have crept. Therefore, safety in air transportation requires adoption of this regulation without prior notice and public comment. In addition, there are a number of third stage turbine disks in service that are approaching this new life limit, thus requiring the immediate adoption of this regulation. Therefore, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-ANE-24, 12 New England Executive Park, Burlington, Massachusetts 01803. All communications received by the deadline date indicated above will be considered by the Administrator and the AD may be changed in light of comments received.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034 February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Avco Lycoming: Applies to Textron Lycoming Model ALF502R-3, -3A, -4, -5, and -6 turbofan engines, installed on, but not limited to, British Aerospace BAE146 type aircraft.

Compliance is required as indicated, unless previously accomplished.

To prevent third stage turbine blade release, total loss of engine power, inflight shutdown and possible aircraft damage, accomplish the following:

(a) Remove from service third stage turbine disk Part Numbers 2-143-030-05, 2-143-030-08 and 2-143-030-14, as follows:

(1) Disks which have accumulated 13,220 hours since new (HSN) or more on the effective date of this AD, within the next 60 hours in service, but not to exceed the existing cyclic life limit.

(2) Disks which have accumulated less than 13,220 HSN on the effective date of this AD, at or prior to accumulating 13,300 HSN, but not to exceed the existing cyclic life limit.

(b) Thereafter, remove disks at or prior to accumulating 13,300 HSN, but not to exceed the existing cyclic life limit.

Note: Textron Lycoming SB ALF502R 72-0002, Revision 19, dated September 5, 1990, contains information in reference to paragraphs (a)(1), (a)(2) and (b) above.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Textron Lycoming, 550 Main Street, Stratford, Connecticut 06497. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective December 11, 1990.

Issued in Burlington, Massachusetts, on November 6, 1990.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90-27425 Filed 11-20-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-ANM-4]

Amendment Durango Transition Area, Durango, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Durango, Colorado 1200 foot transition area. This action is necessary to provide sufficient airspace to encompass new instrument approaches at Durango-La Plata Airport and to provide an adequate holding pattern area which will accommodate the performance characteristics of modern aircraft. The area will be depicted on aeronautical charts for pilot reference, and is intended to segregate aircraft operating under Instrument Flight Rules from other aircraft which are operating under Visual Flight Rules.

EFFECTIVE DATE: 0901 u.t.c., December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 90-ANM-4, 1601 Lind Avenue SW., Renton, Washington 98055-4056, telephone: (206) 227-2536.

SUPPLEMENTARY INFORMATION:

History

On July 16, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by altering the Durango, Colorado transition area (55 FR 30238; July 25, 1990).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Accordingly, the final rule is adopted as proposed. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F, dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the description of the 1200 foot transition area at Durango, Colorado to provide sufficient airspace to encompass aircraft executing instrument approaches at Durango-La Plata Airport. The amended transition area will also provide sufficient airspace for holding patterns to accommodate the design characteristics of modern aircraft.

The FAA has determined that this regulation only involves an established

body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Durango, Colorado Transition Areas (Amended) 1200 Foot Transition Area

Starting at:

Latitude	*Longitude*
37°09'00"	107°26'15"
to 37°06'30"	107°18'15"
to 36°35'00"	107°53'30"
to 36°58'00"	108°25'00"
to 37°31'30"	107°47'00"
to 37°21'30"	107°34'00"

Thence clockwise via the 17.5 mile radius of the Durango VOR; to the point of beginning, excluding other airspace which overlaps.

Issued in Seattle, Washington, on October 30, 1990.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 90-27401 Filed 11-20-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-AWA-5]

Alteration of VOR Federal Airways; New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of VOR Federal airways located in the State of New York. This amendment will realign V-145 from Watertown, NY, to Ottawa, Ontario, Canada. Also, this action will establish a segment of V-423 between Syracuse, NY, and Uplands Nondirectional Radio Beacon (NDB), Ontario, Canada. This action is the result of airway structure modification by Transport Canada and will facilitate air traffic flow into Canada along these routes.

EFFECTIVE DATE: 0901 u.t.c., February 7, 1991.

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On May 9, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of VOR Federal airways located in the State of New York (55 FR 19275). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V-145 and V-423. This action will realign V-145 between Watertown, NY, and Ottawa, Ontario, Canada, and also will establish a segment of V-423 between Syracuse, NY, and Uplands NDB, Ontario, Canada. This action is the result of airway structure modification by Transport Canada. Air traffic flow along these routes into Canada will be facilitated by this action.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-145 [Amended]

By removing the words "INT Watertown 358° radial and the United States/Canadian border." and substituting the words "Ottawa, ON, Canada. The airspace within Canada is excluded."

V-423 [Amended]

By removing the words "to Syracuse, NY." and substituting the words "Syracuse, NY; Watertown, NY; to Uplands NDB, ON, Canada. The airspace within Canada is excluded."

Issue in Washington, DC, on November 9, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-27402 Filed 11-20-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 26379; Amdt. No. 1439]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1990, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Aviation safety, Standard instrument, Incorporation by reference.

Issued in Washington, DC on November 9, 1990.

Thomas C. Accardi,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . *Effective February 7, 1991*

Ocean City, NJ—Ocean City Muni, VOR RWY 6, Amdt. 1
Clinton, OK—Clinton Muni, NDB RWY 35, Amdt. 5
Bonham, TX—Jones Field, VOR/DME RWY 17, Amdt. 1
Bonham, TX—Jones Field, NDB RWY 17, Amdt. 1
Gillette, WY—Gillette-Campbell, LOC/DME BC RWY 16, Orig.

. . . *Effective January 10, 1991*

St. Clairsville, OH—Alderman, VOR–A Amdt. 2
East Liverpool, OH—Columbiana County, VOR RWY 25, Amdt. 2
East Liverpool, OH—Columbiana County, NDB RWY 25, Amdt. 6
Philip, SD—Philip, VOR–A, Amdt. 11

. . . *Effective December 13, 1990*

Pine Bluff, AR—Grider Field, VOR RWY 17, Amdt. 19
Pine Bluff, AR—Grider Field, VOR/DME RWY 35, Amdt. 10
Pine Bluff, AR—Grider Field, ILS RWY 17, Amdt. 2
Indianapolis, IN—Indianapolis Intl, NDB RWY 5R, Orig.
Indianapolis, IN—Indianapolis Intl, NDB RWY 23L, Orig.
Indianapolis, IN—Indianapolis Intl, ILS RWY 5R, Orig.
Indianapolis, IN—Indianapolis Intl, ILS RWY 23L, Orig.
Indianapolis, IN—Indianapolis Intl, ILS RWY 23R, Amdt. 7
Campbellsville, KY—Taylor County, LOC RWY 23, Amdt. 1, CANCELLED
Campbellsville, KY—Taylor County, SDF RWY 23, Orig.
Detroit, MI—Willow Run, NDB RWY 5R, Amdt. 10
Detroit, MI—Willow Run, ILS RWY 5R, Amdt. 13
Charlotte, NC—Charlotte/Douglas Intl, LOC RWY 18L, Orig., CANCELLED
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 18L, Orig.
North Wilkesboro, NC—Wilkes County, NDB RWY 1, Orig.

. . . *Effective November 5, 1990*

Chicago, IL—Chicago Midway, NDB RWY 31C, Amdt. 13
Chicago, IL—Chicago Midway, ILS RWY 13C, Amdt. 39
Chicago, IL—Chicago Midway, ILS RWY 31C, Amdt. 4

. . . *Effective June 28, 1990*

Reno, NV—Reno Cannon Intl, LOC/DME BC RWY 34L, Amdt. 1

[FR Doc. 90–27404 Filed 11–20–90; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS SCOUT (MCM–8) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a mine countermeasures ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 5, 1990.
FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall St., Alexandria, VA 22332–2400, telephone number: (703) 325–9744.
SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS SCOUT (MCM–8) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex 1, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a Navy ship. The Judge Adovate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it as been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform is military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (water), Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

Part 706—[AMENDED]

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained.
USS SCOUT	MCM 8			X	64

Dated: November 5, 1990.
Approved:
J.E. Gordon,
Rear Admiral, JAGC, U.S. Navy Judge Advocate General.

[FR Doc. 90–27380 Filed 11–20–90; 8:45 am]
BILLING CODE 3810–AE–M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

Seaway Regulations and Rules: Miscellaneous Amendments

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.
ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada publish joint Seaway Regulations and Rules. As a result of discussions with the Authority, it has been determined that a number of existing regulations need clarification. In addition, certain amendments are being made to meet existing conditions, such as permanent change in the tie-up side at Lock 2 of the Welland Canal, or to permit realistic flexibility in Seaway operations, such as allowing, with Authority or Corporation approval, the transit of vessels of greater dimensions than currently permitted. The Corporation and the Authority also are establishing a lower fee for tolls security deposits for vessels with a good payment record over a period of five years.

EFFECTIVE DATE: November 21, 1990.
FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–0091.
SUPPLEMENTARY INFORMATION: As a result of discussions with the Authority, the Saint Lawrence Seaway Development Corporation is amending the Seaway Regulations and Rules as described in the following summary.

The first paragraph in § 401.12(a), is amended to make it clear that mooring lines are to be available for securing on either side of a vessel.

Section 401.19 (a) and (b)(2) is amended to include the popular names of the applicable Canadian and United States laws.

In § 401.22(a), the word "weight" is being replaced by the word "displacement", which is the more appropriate term for reference to a vessel.

The references to Canadian financial entities in § 401.26 (a)(2) and (4) is amended to reflect changes to the Canadian Bank Act.

Present § 401.26(d) is redesignated as § 401.26(e) and a new § 401.26(d) is added to reduce the security for tolls required for a number of precleared vessels owned and controlled by the same individual or company and having the same representative if the individual, company, or representative has paid every toll account in the preceding five years in a timely fashion. The amount is reduced from $2.55 per ton of the aggregate maximum tonnage of vessels within the Seaway at any one time to $1.50 per ton for the aggregate gross registered tonnage of the precleared vessels.

Section 401.28(a) is amended to add a reference to § 401.27 to make it clear that the vessel traffic controller or any other officer will provide the instructions on what will be the appropriate speed in the conditions described in § 401.28(a). A new § 401.28(b) is added to clarify that when the Corporation or the Authority designates speeds less than the maximum set out in Schedule II, this will be transmitted as transit instructions under § 401.27. Current paragraphs 401.28 (b) and (c) are being redesignated (c) and (d) respectively.

Section 401.33 is amended to change the reference to § 401.3(d) to § 401.3 because vessels with dimensions other than any of those described in § 401.3 as a whole, not just other than those described in subsection (d), may be allowed transit with the Corporation's or the Authority's approval.

Section 401.31(a) is amended to change the reference to the applicable United States source of the rules for vessels meeting and passing to read "the Inland Rules of the United States. In § 401.33, the reference to paragraph (d) of § 401.3 is deleted. Since it is possible to allow transit of vessels of greater dimensions than those permitted under present paragraph (d), the amendment allows this with the approval of the Authority and the Corporation.

Section 401.42(a) is amended to add a new requirement for passing hand lines which now is necessary for upbound vessels at Locks 4 and 5 of the Welland Canal.

The Welland Canal Lock 2 table in § 401.43 is amended to reflect a permanent change to the tie-up side of Lock 2 to starboard for upbound vessels and to port for downbound vessels.

In § 401.61, the descriptions of the designated areas for assigned frequencies 156.7 MHz, 156.65 MHz, 156.6 MHz, and 156.55 MHz is amended to more accurately describe them.

A new § 401.65(c) is added to require specific information on destination, departure, and the nature of the cargo for departing a port, dock, or anchorage for the system if it is carrying manifested dangerous cargo.

Section 401.68(c) is amended to specifically cite the relevant Canadian and United States laws applicable to Seaway Explosives Permits.

Section 401.73 is amended to delete the word "cargo" before the word "tanks" in order to clarify that this rule concerning cleaning tanks is applicable to slop tanks, which are not cargo tanks.

Section 401.91 is amended for syntactic purposes, with no effect upon its substance.

Schedule III, Calling-In-Table, is amended to require additional message content information under items 19 and 29 for vessels proceeding through the Welland Canal and to eliminate redundant transit information under items 21 and 30. In addition, a new item 55 is added to require call-in information from vessels departing docks and harbors between mid-lake Ontario and Long Point to aid in transit planning and traffic information.

Two parties commented in response to the March 7, 1989, Notice of Proposed Rulemaking, The United States Coast Guard (USCG) and the Lake Carriers Association (LCA). Their comments were given full consideration in formulating this final rule. LCA also commented on that paragraph (a) and its reference to § 401.27 concerning compliance with instructions from Seaway vessel traffic controllers. The LCA posed that masters and pilots are best suited to determine what speed is necessary under existing conditions and, consequently, the vessel traffic controllers should only offer advise on appropriate speeds sparingly. The Authority and the Corporation want to assure the LCA that they do not intend that vessel traffic controllers direct what precise speed is necessary under all conditions; however, there will be circumstances when general speed directions from the controllers will be necessary, such as directions to the trailing vessel to slow when two vessels are approaching a lock within proximity to each other or when a vessel is exceeding the applicable speed limits. Both the United States Coast Guard and the Lake Carriers Association (LCA) commented that the proposal to amend paragraph (a) of § 401.31, which addresses vessels meeting and passing, to cite the International Regulations for Prevention of Collisions at Sea was

confusing and could be interpreted to be at variance with proper practice, which is to apply the inland rules. Part of the confusion arose from the inadvertent omission in the Notice of Proposed Rulemaking of the phrase "—Inland Rules" following the citation of the International Rules. Accordingly and at the advise of both commentors, the rule will now cite "the Collision Regulations of Canada and the Inland Rules of the United States." The second Privy Council recommendation is to change the beginning of § 401.33 to read, "The representative of a vessel shall apply for special instructions from the Corporation and the Authority." This will clearly state who is responsible for applying for special instructions.

In addition, certain changes were recommended by the Privy Council of Canada. A number of minor, non-substantive editorial changes have been made at the request of the Council. Also at the Council's suggestion, a new § 401.28(b) is added to clarify how Corporation or Authority designation of speeds less than the maximum under Schedule II will be transmitted and § 401.91 has been amended for purely syntactic purposes.

Because of an objection raised by the Privy Council, the proposed amendment to § 401.66 adding a paragraph (b) allowing the carriage of explosives quantities above the maximum now permitted is not being adopted at this time. Nevertheless, the Corporation and the Authority will reconsider it for possible future promulgation in the proposed form or otherwise. Based upon comments from the USCG, LCA, and the Privy Council, the C.I.P. and Check Point column of the Calling-In-Table under new Item 55 is being changed, for the sake of clarity, to read, "Vessels departing from ports between mid-Lake Ontario and Long Point, except vessels westbound from a Lake Erie Port and not transiting the Welland Canal." Finally, the requirement in that new Item 55 that destination be reported is required only for vessels proceeding through the Welland Canal and the table entry is corrected accordingly.

Regulatory Evaluation

This regulation involves a foreign affairs function of the United States, and therefore, Executive Order 12291 does not apply. This regulation has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Regulations relate to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne by foreign vessels.

Environmental Impact

This regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of human environment.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation amends Part 401—Seaway Regulations and Rules (33 CFR part 401) as follows:

PART 401—AMENDED

1. The authority citation for 33 CFR part 401 is revised to read as follows:

Authority: 68 Stat. 93, 33 U.S.C. 981–990, as amended; sec. 104, Pub. L. 92–340, 86 Stat. 424; 49 CFR 1.52.

2. In § 401.12, paragraph (a) introductory text is revised to read as follows:

§ 401.12 Minimum requirements—mooring lines and fairleads.

(a) Minimum requirements in respect of mooring lines, which shall be available for securing on either side of the vessel, winches, and the location of fairleads on vessels are as follows:

* * * * *

3. In § 401.19, paragraphs (a), (b)(1), and (b)(2) are revised to read as follows:

§ 401.19 Disposal and discharge systems.

(a) Every vessel not equipped with containers for ordure shall be equipped with a sewage disposal system enabling compliance with the Garbage Pollution Prevention Regulations of Canada, the Great Lakes Seaway Pollution Prevention Regulations of Canada, the Clean Water Act of 1977 of the United States, and the River and Harbor Act of the United States.

(b) Garbage on a vessel shall be:

(1) Destroyed by means of an incinerator or other garbage disposal device; or

(2) Retained on board in covered, leakproof containers, until such time as it can be disposed of in accordance with the provisions of the Garbage Pollution Prevention Regulations of Canada, the Great Lakes Sewage Pollution Prevention Regulations of Canada, the Clean Water Act of 1977 of the United States, and the River and Harbor Act of the United States.

* * * * *

4. In § 401.22, paragraph (a) is revised to read as follows:

§ 401.22 Preclearance of vessels.

(a) No vessel, other than a pleasure craft of 317.5 tonnes or less in displacement, shall transit until an application for preclearance has been made, pursuant to § 401.24 of this part, to the Corporation or the Authority by the vessel's representative and the application has been approved by the Corporation or the Authority pursuant to § 401.25 of this part.

* * * * *

5. In § 401.26, paragraphs (a)(2) and (a)(4) are revised to read as follows:

§ 401.26 Security for tolls.

(a) * * *

(2) A deposit of money to the credit of the Corporation or the Authority with a bank in the United States or a member of the Canadian Payments Association, a corporation established by section 3 of the Canadian Payments Association Act, or a local cooperative credit society that is a member of a central cooperative credit society having membership in the Canadian Payments Association;

* * * * *

(4) Furnishing to the Corporation or the Authority a letter of guarantee given by an institution referred to in paragraph (a)(2) of this section.

* * * * *

6. Section 401.26 is further amended by redesignating the current paragraph (d) as (e) and by adding a new paragraph (d) to read as follows:

§ 401.26 Security for tolls.

* * * * *

(d) Notwithstanding paragraphs (b), (c), and (e) of this section, where a number of vessels for each of which a preclearance application has been approved, are owned or controlled by the same individual or company and have the same representative, the security for tolls may be provided in an amount equal to $1.50 per tonne for the aggregate gross registered tonnage of the vessels if the individual, company or representative has paid every toll account received in the preceding five years within the time set out in § 401.75 of this part.

(e) * * *

7. In § 401.28, paragraph (a) is revised to read as follows:

§ 401.28 Speed limits.

(a) The maximum speed over the bottom for a vessel of more than 12 m in overall length shall be regulated so as not to adversely affect other vessels or shore property, and in no event shall such a vessel proceeding in any area between the place set out in column I of an item of Schedule II and a place set out in column II of that item exceed the speed set out in column III or column IV of that item, whichever is designated by the Corporation and the Authority from time to time pursuant to § 401.27 of this part as being appropriate to existing water levels.

* * * * *

8. Section 401.28 is further amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and by adding a new paragraph (b) to read as follows:

§ 401.28 Speed limits.

* * * * *

(b) Where the Corporation or the Authority designates any speed less than the maximum speeds set out in Schedule II of this part, that speed shall be transmitted as transit instructions referred to in § 401.27 of this part.

(c) * * *

(d) * * *

9. In § 401.31, paragraphs (a) and (b) are revised to read as follows:

§ 401.31 Meeting and passing.

(a) The meeting and passing of vessels shall be governed by the Collision Regulations of Canada and the Inland Rules of the United States.

(b) No vessel shall meet another vessel within the area between the caution signs at bridges or within any area that is designated as a "no meeting area" by signs erected by the Corporation or the Authority in that area.

* * * * *

10. Section 401.33 is revised to read as follows:

§ 401.33 Special instructions.

The representative of a vessel shall apply for special instructions from the Corporation or the Authority in connection with the intended transit of vessels of unusual design, hulks, sections of vessels, large dredges, vessels in tow and vessels whose limits exceed the requirements of § 401.3 of this part, and such vessels shall not transit except in compliance with such instructions.

11. Section 401.42 is amended by removing the word "and" at the end of paragraph (a)(2), by removing the period at the end of paragraph (a)(3) and replacing it with the words ";and", and by adding a new paragraph (a)(4) to read as follows:

§ 401.42 Passing hand lines.

(a) * * *

(4) Upbound vessels in Locks 4 and 5, Welland Canal, in excess of 218 m shall secure the hand line in the eye of No. 1 mooring wire by means of a bowline.

* * * * *

12. In § 401.43, the Welland Canal table is amended by revising column 2 to read as follows:

§ 401.43 Mooring table.

* * * * *

WELLAND CANAL

1	2	3	4	5	6	7	Guard Gate Cut	8
Locks:								
Upbound *****	Starboard		•	•	•	•	•	
Downbound *****	Port		•	•	•	•	•	
Tieup walls:								
Upbound *****	Starboard		•	•	•	•	•	
Downbound *****	Port		•	•	•	•	•	

13. Section 401.61 is revised to read as follows:

§ 401.61 Assigned frequencies.

The Seaway stations operate on the following assigned VHF frequencies:

156.8 MHz (channel 16) Distress and Calling.

156.7 MHz (channel 14) Working (Canadian Stations in Sector 1 and the Welland Canal).

156.65 MHz (channel 13) Working (U.S. Stations in Lake Ontario and Sector 4 of the River).

156.6 MHz (channel 12) Working (U.S. Stations in Sector 2 of the River).

156.55 Mhz (channel 11) Working (Canadian Stations in Sector 3, Lake Ontario and Lake Erie).

14. Section 401.65 is amended by adding a new paragraph (c) to read as follows:

§ 401.65 Communication—ports, docks and anchorages.

* * * * *

(c) Every vessel shall, upon departing from a port, dock or anchorage, report to the appropriate Seaway station its destination and the expected time of arrival at the next check point and, if carrying manifested dangerous cargo, report the nature, quantity, IMO classification, and stowage location of the manifested dangerous cargo.

15. In § 401.68, paragraph (c) is revised to read as follows:

§ 401.68 Explosives permit.

* * * * *

(c) A written application for a Seaway Explosives Permit certifying that the cargo is packed, marked, and stowed in accordance with the Canadian Regulations respecting the Carriage of Dangerous Goods, the United States Regulations under the Dangerous Cargo Act, and the International Maritime Dangerous Goods Code may be made to the Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662 or to the St. Lawrence Seaway Authority, 202 Pitt Street, Cornwall, Ontario, K6J 3P7.

* * * * *

16. Section 401.73 is revised to read as follows:

§ 401.73 Cleaning tanks—hazardous cargo vessels.

Cleaning and gas freeing of tanks shall not take place:

(a) In a canal or a lock;

(b) In an area that is not clear of other vessels or structures; and

(c) Before gas freeing and tank cleaning has been reported to the nearest Seaway station.

17. Section 401.91 is revised to read as follows:

§ 401.91 Removal of obstructions.

The Corporation or the Authority may take such action at the owner's expense as the Corporation or the Authority deems necessary to move any vessel, cargo or thing that, in its opinion, obstructs or hinders transit on any part of the Seaway.

Schedule III [Amended]

18. In part 401, subpart A, items 19, 21, 29, and 30 of Schedule III, Calling-in Table, are amended by revising column three, Message content, to read as follow:

SCHEDULE III—CALLING-IN TABLE

C.I.P. and checkpoint	Station to call	Message content
9. . . .	. . .	1. Name of Vessel. 2. Location. 3. Manifested dangerous cargo, including: —nature and quantity. —IMO classification. —location where dangerous cargo is stowed. and, if proceeding to Welland Canal, 4. Destination. 5. Drafts, fore and aft. 6. Cargo. 7. Pilot requirement—Lake Erie.
21. . . .	. . .	1. Name of Vessel. 2. Location.
29. . . .	. . .	1. Name of Vessel. 2. Location. 3. ETA C.I.P. 16 or Port. 4. Manifested dangerous cargo, including: —nature and quantity. —IMO classification. —location where dangerous cargo is stowed. and, if proceeding to Welland Canal, 5. Destination. 6. Drafts, fore and aft. 7. Cargo. 8. Pilot requirement—Lake Ontario.
30 . . .	. . .	1. Name of Vessel. 2. Location.

Schedule III [Amended]

19. In part 401, subpart A, Schedule III, Calling-in Table, is amended by adding the following new item 55:

SCHEDULE III—CALLING-IN TABLE

C.I.P. and checkpoint	Station to call	Message content
Upbound and Downbound Vessels		
55. Vessels departing from ports between mid-lake Ontario and Long Point, except vessels westbound from a Lake Erie port and not transiting the Welland Canal.	Appropriate Seaway station for sector.	1. Name of Vessel. 2. Location. 3. Manifested dangerous cargo: —nature and quantity —IMO classification —location where dangerous cargo is stowed. and if proceeding to Welland Canal, 4. Destination. 5. Drafts, fore and aft. 6. Cargo. 7. Pilot requirement: —Lake Erie if upbound or Lake Ontario if downbound.

Issued at Washington, DC on November 16, 1990.

Saint Lawrence Seaway Development Corporation.

James L. Emery,

Administrator.

[FR Doc. 90-2736 Filed 11-20-90; 8:45 am]

BILLING CODE 4910-61-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 308

[CRT Docket No. 89-5-CRA]

Adjustment of the Syndicated Exclusivity Surcharge

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule; correction.

SUMMARY: The Tribunal is correcting an error in the wording of the final rule which appeared in the **Federal Register** of August 16, 1990 (55 FR 33604, 33613). Those rules concerned the syndicated exclusivity surcharge which some cable systems have paid since 1983.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., suite 450, Washington, DC 20036 (202-653-5175).

SUPPLEMENTARY INFORMATION: On August 16, 1990, the Tribunal issued its final rule adjusting the syndicated exclusivity surcharge. 55 FR 33604, 33613. In the text of the determination and in the final rule, the description of the measurement of the distance between the cable system and the broadcast station was described as the broadcast station being 35 miles from the cable system.

In order to avoid any potential ambiguity in interpreting this distance, the Tribunal is transposing the reference points in the sentence to coordinate with the FCC definition, which refers to the cable system being 35 miles from the broadcast system. This amendment thus clarifies that the FCC definition of actual location point of a broadcast station is incorporated by the Tribunal. This was the original intention of the Tribunal.

Consequently, the Tribunal is correcting the final rule which described the commercial VHF station as being more than 35 miles from the cable system. It is being changed to read "a cable system which is located more than 35 miles from a commercial VHF station."

List of Subjects in 37 CFR Part 308

Cable television, Copyright.

For the reasons set forth in the preamble, the Tribunal amends 37 CFR part 308 as follows:

PART 308—ADJUSTMENT OF ROYALTY FEE FOR COMPULSORY LICENSE FOR SECONDARY TRANSMISSION BY CABLE SYSTEM

1. The authority citation for part 308 continues to read as follows:

Authority: 17 U.S.C. 801(b)(2) (A), (C) and (D).

2. Section 308.2(d) introductory text is revised to read as follows:

§ 308.2 Royalty fee for compulsory license for secondary transmission by cable systems.

* * * * *

(d) Commencing with the first semiannual accounting period of 1990 and for each semiannual accounting period thereafter, in the case of a cable system which is located more than 35 miles from a commercial VHF station, but that station places a predicted Grade B contour, in whole or in part, over the cable system, and is not "significantly viewed" or otherwise exempt from the FCC's syndicated exclusivity rules in effect on June 24, 1981, for each distant signal equivalent or fraction thereof represented by the carriage of such commercial VHF station, the royalty rate shall be, in addition to the amount specified in paragraph (a) of this section,

(1) * * *

* * * * *

Dated: November 15, 1990.

J.C. Argetsinger,

Chairman.

[FR Doc. 90-27367 Filed 11-20-90; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 433, 435, 436, 440, and 447

[MB-014-F]

RIN 0938-AD16

Medicaid Program; Eligibility Groups, Coverage, and Conditions of Eligibility; Legislative Changes under OBRA '87, COBRA, and TEFRA

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule amends the Medicaid regulations to incorporate or revise the following mandatory and optional eligibility groups of individuals for Medicaid coverage: (1) Pregnant women; (2) qualified children under a specified age; (3) children in adoptions and foster care; (4) certain disabled widows and widowers; and (5) certain disabled children being cared for at home. The rule also adds a condition of eligibility relating to third party liability for medical assistance expenditures. The amendments conform the regulations to certain statutory provisions of the Omnibus Budget Reconciliation Act of 1987, the Consolidated Omnibus Budget Reconciliation Act of 1985, and the Tax Equity and Fiscal Responsibility Act of 1982.

EFFECTIVE DATE: These regulations are effective on December 21, 1990. State agencies have until 90 days after receipt of a revised State plan preprint to submit their plan amendments and required attachments. We will not hold a State to be out of compliance with the requirements of these final regulations if the State submits the necessary preprint plan material by that date.

FOR FURTHER INFORMATION, CONTACT: Marinos Svolos, (301) 966-4452.

SUPPLEMENTARY INFORMATION:

I. Background

Title XIX of the Social Security Act (the Act) provides authority for States to establish Medicaid programs to provide medical assistance to needy individuals. Section 1902(a)(10) of the Act describes most of the groups of individuals to whom medical assistance may be provided under two broad classifications: The categorically needy (section 1902(a)(10)(A)) and the medically needy (section 1902(a)(10)(C)). The categorically needy classification is further divided into two subgroups: The mandatory categorically needy which, generally, States with Medicaid programs must cover (section 1902(a)(10)(A)(i)); and the optional categorically needy which States, at their option, may cover (section 1902(a)(10)(A)(ii)). Coverage of the medically needy group is also at States' option. In addition, sections 1902(a)(47) and 1902(e) describe special coverage groups dealt with in this rule—newborn children of Medicaid-eligible women, pregnant women eligible during a presumptive period and for an extended postpartum period, certain disabled children being cared for at home, and certain ventilator dependent individuals.

Section 1905 of the Act defines medical assistance and specifies the services that constitute medical assistance. Section 1902(a)(10) (A) and

(C) specify the groups for which certain services are mandatory and certain conditions under which they must be provided. The remaining services are optional. Section 1902(a)(10)(B) contains requirements governing the amount, duration, and scope of services that must be furnished and section 1902(a)(10) (in the material at the end of the section) provides certain exceptions to the requirements that comparable services be provided to certain groups.

Section 1912 of the Act specifies certain conditions of eligibility relating to third party liability that applicants and recipients of Medicaid must meet.

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99–272, enacted on April 7, 1986, amended certain provisions of the Social Security Act relating to eligibility and coverage of certain categorically and medically needy groups of individuals. Final regulations that incorporate these two COBRA provisions into the Code of Federal Regulations were published in the **Federal Register** on November 9, 1987 (52 FR 43083). COBRA provided for extended Medicaid coverage of pregnancy-related and postpartum care for women who had been pregnant (section 9501 (b) and (c)); changed the eligibility criteria for, and State of residence of, children receiving adoption assistance or foster care maintenance payments (sections 9529 and 12305); provided for Medicaid eligibility for children with special medical or rehabilitative needs who are under State adoption assistance agreements (section 9529) and certain disabled widows and widowers (section 12202); and established a new condition of eligibility for Medicaid applicants and recipients relating to cooperation in identifying and providing information to assist the States in pursuing third parties that may be liable for payments for medical assistance (section 9503).

The Omnibus Budget Reconciliation Act of 1987 (OBRA '87), enacted on December 22, 1987 (Pub. L. 100–203), amended two provisions of the Act that had been included in or amended by COBRA;

- Section 4101(c) of OBRA '87 amended section 1905(n) of the Act, effective October 1, 1988, to expand the definition of qualified children to cover children who have not attained the age of 6 (or any age designated by the State that exceeds 6 but does not exceed 8). Effective October 1, 1989, States must cover qualified children who do not exceed age 7 (or any age designated by the State that exceeds 7 but does not exceed 8).
- Section 4101(e) of OBRA '87 amended section 1902(e)(5) of the Act to provide for extended Medicaid coverage of pregnancy-related and postpartum services for pregnant women through the end of the month in which a 60-day period following termination of pregnancy ends. The 60-day period begins on the last day of pregnancy. Under COBRA, this postpartum period extended only for the 60 days after termination of pregnancy, beginning on the last day of pregnancy. The OBRA '87 provision is effective as if it had been included in the enactment of COBRA—that is, it applies to Medicaid furnished on or after April 7, 1986. (Related amendments made by OBRA '87 concerning coverage of and services to pregnant women, infants, and children with incomes under specified poverty levels are being incorporated into a separate document.)

II. Proposed Regulations

On February 23, 1989, we published in the **Federal Register**, at 54 FR 7798, a Notice of Proposed Rulemaking to solicit comments on proposed changes to existing Medicaid regulations to incorporate certain statutory provisions of OBRA '87, COBRA, and the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) Pub. L. 97–248. COBRA and OBRA '87 added or amended several eligibility groups of individuals for Medicaid coverage, extended coverage of services to women who had been pregnant, and added a new condition of eligibility relating to third party liability for Medicaid applicants and recipients. TEFRA made amendments (further amended by OBRA '87) regarding Medicaid eligibility of disabled children being cared for at home.

Specifically, COBRA an OBRA '87 amended the various sections of the Social Security Act previously described to—

- Provide for extended eligibility and mandatory Medicaid coverage of pregnancy-related and postpartum services for 60 days after termination of pregnancy for Medicaid-eligible women who had been pregnant (section 9501(c) of COBRA). Section 4101(e) of OBRA '87 extended eligibility for postpartum services to the end of the month in which the 60th day falls.
- Allow States to provide more extensive prenatal care and postpartum services to pregnant women then the covered services that they now provide to other Medicaid-eligible individuals, by providing an exception to the comparability of services requirement contained in section 1902(a)(10) of the Act (section 9501(b) of COBRA).
- Specify that, for purposes of Medicaid eligibility, children who are receiving adoption assistance or foster care maintenance payments under title IV–E of the Act (Federal Payments for Foster Care and Adoption Assistance) are deemed to be AFDC recipients in the State in which they actually reside, rather than the State making the title IV–E payment (sections 9529(a) and 12305 of COBRA).
- Redefine the mandatory qualified children eligibility group to expand the age level from under age 5 to up to age 7 (or up to age 8 at State option) (section 4101(c) of OBRA '87).
- Allow States the option of covering as an optional categorically needy group certain children under age 21 (or at State option, age 30, 19, or 18) with special medical or rehabilitative needs who are adopted under a publicly funded adoption program (other than a program funded under title IV–E) if certain conditions are met (section 9529(b) of COBRA).
- Allow eligible widows and widowers between ages 50 and 59 who were receiving social security disability benefits and who lost SSI eligibility (and consequently Medicaid) because of the January 1984 disability benefit increase under Pub. L. 98–21 to file an application for Medicaid protection with the State Medicaid agency and to be deemed to be receiving SSI benefits for the purpose of Medicaid eligibility (section 12202 of COBRA). OBRA '87 added another provision to allow widows and widowers between ages 60 and 64 who lose SSI eligibility (and consequently Medicaid) because they become entitled to and receive social security disability benefits to be deemed SSI beneficiaries for purposes of Medicaid eligibility (section 9116).
- Add (and further amend) a new section that identifies provisions of the Social Security Act other than title XIX and other laws that make additional individuals eligible for Medicaid and that establish additional requirement for State plans to be approved under Medicaid (section 9526 of COBRA, as redesignated by section 9407(b) of the Omnibus Budget Reconciliation Act of 1986 (OBRA '87), and sections 4118(p)(9), 4211(a)(1), and 9116(d) of OBRA '87). Section 1985(c)(5) of Public Law 99–514, section 6(c) of Public Law 99–643, and section 5(b) of Public Law 100–93 also made changes to this section. Later section 411(k)(6) of the Medicare Catastrophic Coverage Act of 1988 (MCCA) (Pub. L. 100–360) amended section 4112 of OBRA '87 to redesignate this section, and this section was again redesignated by section 303(a)(1) of MCCA. Then this section was amended by section 608(d)(28) and section 202(c)(5) of the Family Support Act of 1988 (FSA) (Pub. L. 100–485). Most recently, this section was redesignated as section 1927 of the Act by section 6402(b) of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) (Pub. L. 101–239).
- Add a third condition of eligibility for Medicaid applicants and recipients relating to the collection of medical support and other payments from liable third parties (section 9503 of COBRA).

Section 134 of TEFRA amended section 1902(e) of the Act to give States the option of treating certain children under age 19 who are living at home and who qualify as disabled under section 1614(a) of the Act as SSI recipients or State supplement payment recipients for purposes of Medicaid eligibility. This provision has been in effect since October 1, 1982. Section 1902(e) of the Act was further amended by section 4118(c) of OBRA '87 to replace the condition of the disabled child being eligible for SSI or a State supplement with the condition of the child being eligible for Medicaid.

We proposed to amend the Medicaid regulations under 42 CFR parts 431, 433, 435, 436, 440, and 447 to incorporate the provisions of COBRA, OBRA '87, and TEFRA that are summarized above. The preamble to the Notice of Proposed Rulemaking published on February 23, 1989 provided a detailed discussion of the statutory provisions and the specific amendments to the regulations.

III. Discussion of Comments

In response to the proposed rule, we received eighteen comments from State and private welfare agencies and professional organizations representing patient and provider interests. Following are specific comments received and our responses.

A. Pregnant Women

Comment—One commenter requested clarification of the extent of retroactive coverage available to women for whom an application or final determination of eligibility has not been made prior to delivery and whether they qualify for extended eligibility during the 60-day postpartum period.

Response—Pregnant women are entitled to the same retroactivity that applies to all other coverage groups. The rules pertaining to retroactive coverage are found in § 435.914, Effective date, and provide for retroactive coverage for up to three months prior to the month of application if certain conditions are met. The rules apply regardless of whether a woman applies before or after delivery. Consequently, a woman who applies for Medicaid shortly after the delivery could be found eligible retroactively into the prenatal period.

However, to qualify for extended eligibility for the 60–90 day postpartum period addressed in these regulations, a woman must have applied for, been eligible for, and received Medicaid services while pregnant. Thus, if she did not apply for Medicaid until after giving birth, she would not qualify under section 1902(e)(5) for the postpartum coverage. The fact that a State has not made a final determination of eligibility prior to delivery is immaterial as long as the woman applied for and was eligible for Medicaid while pregnant, and received services during her pregnancy for which Medicaid ultimately paid. If she meets these three criteria, she will qualify for the postpartum coverage under section 1902(e)(5), even if Medicaid does not pay for these services until after she has given birth. For the sake of clarity, we note that an application for presumptive eligibility does not meet the criterion of having applied for Medicaid for purposes of the 60-day postpartum period coverage. The woman must file a regular Medicaid application while pregnant to meet this criterion.

Comment—One commenter noted that the definition for pregnancy-related services contained in the regulation text of the proposed rule was limited and inconsistent with the definition contained in the preamble. Also, concern was expressed that the definition in the regulation text of the proposed rule appears to only be framed in terms of the threat to the pregnant woman's condition of the carrying of the fetus to full term or safe delivery, at the exclusion of those services necessary to assure the health of the pregnant woman. Also, the commenter suggested that family planning services be included as a pregnancy-related service.

Response—We accepted these comments. In the interest of uniformity and clarity, the definition for pregnancy-related services that appeared in the preamble of the proposed rule has been modified to include family planning services and has been included in the regulation text of the final rule. This definition clarifies that pregnancy-related services include those services necessary to assure the health of both the pregnant woman and the fetus.

Comment—One commenter expressed the opinion that every service which is provided to a pregnant woman is related to the pregnancy and as such is a "pregnancy-related service."

Response—Pregnancy-related services are intended to include not only services that are needed as a direct result of pregnancy, but problems that if not monitored and/or treated could produce a poor pregnancy outcome. Determinations as to whether services provided during the pregnancy are appropriate; whether postpartum conditions or complications are pregnancy-related; and whether services provided for the treatment of postpartum conditions or complications are appropriate should be based on what is generally accepted by the medical profession. While we believe the coverage provided to pregnant women is intended to be broad and incorporate what is generally accepted by the medical profession, we cannot endorse a policy which suggests that every medical service provided to a pregnant woman is necessarily a "pregnancy-related" service.

B. Adoption Assistance

Comment—Two commenters had questions regarding adoption assistance agreements established under title IV–E of the Act (Federal Payments for Foster Care and Adoption Assistance), and the Medicaid benefits available to children adopted under such an agreement (title IV–E children). The commenters questioned whether Medicaid eligibility terminates at the age recognized in the State that established the adoption assistance agreement or the State in which the child resides. Also, they were concerned that § 435.403, State residence, indicated that title IV–E children could receive only the Medicaid benefits covered in the State of residence. They questioned the impact of § 435.403(k) which indicates that under an interstate agreement a child can receive the Medicaid benefits of the State of the adoption assistance agreement. They asked whether FFP would still be available to the adoption assistance State for reimbursement made to the State of residence under such an agreement.

Response—Under section 9529 of COBRA, title IV–E children are eligible for Medicaid in the State in which they reside. They are eligible only for the benefits available under the State plan of the State in which they reside, and are subject to any age limit applied in the State plan of the State in which they reside.

In the case of a child who is under an adoption assistance agreement in one State and moves to another State, the adoption assistance agreement State remains responsible for providing certain medical services which it specifically agreed to provide in the child's adoption assistance agreement

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and which are not available under the State plan in the State of residence. Normally there will be no FFP available for these extra services since they would be outside the scope of coverage provided under the State plan of the State of residence (the State in which the child is currently Medicaid eligible).

There are instances, however, where the adoption assistance State may obtain FFP for the additional services if the services are provided under its State plan, and that State enters into an agreement with the child's State of residence, as described in § 435.403(k). Under this section, States may use interstate agreements "to facilitate the placement and adoption of title IV–E individuals when the child and his or her parent(s) move into another State." Under such an agreement, the State of residence could agree to provide the child's Medicaid services, including the additional services, without claiming FFP. The adoption assistance State could then agree to reimburse the State of residence and claim FFP for all of the services.

We must note, however, that if the services the adoption assistance State agrees to provide are not covered under the State plan in either State, the adoption assistance State would remain contractually obligated to provide them. In this case, neither State could claim FFP.

C. Disabled Widows and Widowers

Comment—One commenter said that our explanations in the preamble and body of the regulation regarding the treatment of income conflict with instructional material sent to States. The commenter also said that our treatment of income is not in keeping with the *Darling* v. *Bowen* court decisions because that decision required section 1902(f) States to consider the individual to have no greater income than the amount which would qualify him or her for SSI benefits. The commenter said that our regulations and instructional material do not provide that income from a source other than monthly Social Security benefits (title II income) be totally disregarded, as the decision seems to require.

Response—After the publication of the proposed rule, the United States Court of Appeals for the Eighth Circuit issued two decisions arising from the *Darling* v. *Bowen* litigation. In the first, *Darling I*, the appeals court upheld the District Court's order that required section 1902(f) States to treat disabled widows and widowers who are protected by section 1634(b) of the Act and who would have been eligible for SSI except for certain adjustments in their title II benefits, as if they had no more income than the SSI Federal benefit rate. In the second decision, *Darling II*, the appeals court reversed the District Court decision. The lower court had held that all disabled widows and widowers in section 1902(f) States who are protected by section 1634(b) of the Act must be deemed to have no more than the SSI Federal benefit rate, even if they only qualified under section 1634(b) of the Act because the adjustments in their widow's or widower's benefits caused them to be ineligible for a State supplementary payment (SSP). The appeals court held that these individuals are only deemed to have income at the SSP eligibility level.

In light of these decisions, we have changed the regulation from that published in the proposed rule to conform with the court's orders, as modified by *Darling II*. With the exception of the change made to conform with the recent decision in *Darling II*, the revised regulation is consistent with the instructional material that was sent to the States because of the court's order. We will be sending the States revised instructions to reflect the result in *Darling II*.

We disagree, however, with the commenter's claim that the proposed 42 CFR 435.137(b)(5) is inconsistent with the court's order because it only disregards the amount of the title II increase in widow's or widower's benefits made by Public Law 98–21 and subsequent cost-of-living adjustments. The commenter's claim that not only title II benefits are to be disregarded is not a correct reading of *Darling I* or of section 1634(b) of the Act. The commenter apparently confuses the threshold test for qualifying under section 1634(b) with the treatment section 1902(f) States must accord to individuals who qualify under section 1634(b) (as interpreted by the court). This portion of the regulations addresses only the threshold test.

In determining whether an individual qualifies under section 1634(b), the State must determine whether, if the increase in widow's or widower's benefits and subsequent cost-of-living adjustments were disregarded, the individual would be eligible for SSI or SSP. If the individual meets this test (and the other criteria for section 1634(b) status), the individual is to be deemed to have no more income than an SSI recipient if, except for the increase and subsequent adjustments, he or she would have received SSI. If the individual meets this test (and the other criteria for section 1634(b) status), the individual would be deemed to have no more income than an SSI recipient if, except for the increase and subsequent adjustments, he or she would have also received SSI.

Comment—One commenter said that the regulations are inconsistent with the legislation in that they permit section 1902(f) States to not provide benefits under section 12202 of COBRA, which is contrary to the requirements of the statute as interpreted by two courts. The commenter also said that the regulations ignore the finding of the court. The commenter asked that benefits be provided to the individuals who were the subjects of the *Darling* court case, and that the regulations be changed to reflect the court decision. Finally, the commenter said that by publishing a regulation that was inconsistent with the law, we are abridging the opportunity for proper notice and comment.

Response—As stated in the response to the preceding comment, we have changed the final regulation to conform with both the court's order (as modified by *Darling II*) and the statute as interpreted by the courts. With regard to abridgment of proper notice and comment, we do not believe that we have done so. The Administrative Procedure Act does not preclude us from proposing a rule which, at the time of its publication, we could not enact because of a court order. Since the court order was on appeal, the proposed rule represented the views the agency wished to adopt as final regulations if we had secured relief from the court order.

The preamble to the proposed rule identified the issue of the treatment of individuals covered under section 1634(b) of the Act in section 1902(f) States and explained how we proposed to respond to that issue. This discussion was sufficiently clear to give the public a meaningful opportunity for public comment on that proposal. The preamble also advised the public that if we did not achieve reversal of the District Court's decision, we would publish a final rule that conforms to the court's decisions. Our final rule is a result of these court decisions, of which the public was notified through the proposed rule.

D. Conditions of Eligibility

Comment—One commenter questioned the degree of cooperation required of an unmarried pregnant woman in establishing paternity and securing support. The commenter also noted that the proposed rules do not address whether a custodial parent is required to assign his or her child support payment for collection through the agency authorized to collect such payment under title IV–D of the Act (Child Support and Establishment of Paternity).

Response—Section 1912 of the Act requires a pregnant woman, as a condition of eligibility, to cooperate with the State in establishing paternity and securing support on her own behalf and on behalf of any of her children born out of wedlock who are eligible for Medicaid. In the case of the unborn, since an unborn is not considered Medicaid eligible in its own right, a pregnant woman is not required to assign the rights or cooperate in establishing the paternity of the unborn. She is also not required to assign the rights or cooperate in establishing the paternity of the newborn during the 60–90 day postpartum period of extended eligibility. Both the newborn and the mother's eligibility during this period are based on the mother's eligibility as a pregnant woman prior to delivery. As noted above, prior to delivery the woman was not required to assign the rights nor cooperate in establishing the paternity of the unborn.

While we note the commenter's concern that these rules do not specifically address assignment by a pregnant woman of a support payment, rules found elsewhere apply to all Medicaid recipients equally. Therefore, no special rules pertaining to support enforcement for pregnant women are necessary. However, we note that title XIX of the Act and the related regulations address only enforcement of medical support rights and do not address enforcement of other support rights.

IV. Final Rule

After consideration of the public comments, and for the reasons stated in our responses to those comments, we have decided to finalize the regulations as proposed, with the following exceptions:

- We are not making the proposed revisions to § 431.52, Payments for services furnished out of State, concerning State plan requirements for individuals receiving assistance under title IV–E. These revisions were made in another document that incorporated several conforming revisions to OBRA '87 (date and FR cite for BPD–484–FC).
- In §§ 435.116(c)(1) and 436.120(c)(1), we are deleting the provision that gives States the option of designating a Medicaid eligibility date earlier than September 30, 1983, for qualified children. Since §§ 435.116(c)(2) and 436.120(c)(2) specify that a State may designate an age for Medicaid eligibility up to age 8, the option in §§ 435.116(c)(1) and 436.120(c)(1) is no longer applicable.
- We are revising § 435.137(c) to conform its provisions more closely to the Court of Appeals' decisions arising from the *Darling* v. *Bowen* litigation.
- We are revising § 435.137(e) to specify that individuals in States that use more restrictive eligibility criteria under section 1902(f) of the Act have up to six months after the State sends notice pursuant to the District Court's order in *Darling* v. *Bowen* to file a written application to obtain protected Medicaid coverage under section 1634(b) of the Act. This revision is being made pursuant to the court's order.
- For editorial clarity and to maintain consistency in the organization of the regulations, we have added a new undesignated center heading after § 435.138 entitled Mandatory Coverage of Special Groups, and have redesignated proposed § 435.118, Pregnant women eligible for extended coverage, as § 435.170.
- We are modifying the definition of pregnancy-related services that appeared in the preamble of the proposed rule to include family planning services and are including the definition in § 440.210(c) of the regulation text of the final rule. We are moving the definition of pregnancy-related services and services for other conditions that might complicate the pregnancy from § 440.250(p)(2), where it appeared in the proposed rule, to § 440.210(c) for consistency in the organization of the regulations. We are also making conforming revisions in §§ 435.170(a), 435.301(b)(iv), 436.122(a), 436.301(b)(iv), and 440.220(e) to reflect these changes.
- We are not making final proposed § 436.225. Our proposal was based on section 1902(e)(3) of the Act and, to the extent that it applies, simply deems the covered individuals to be SSI recipients. This designation is not applicable in Guam, Puerto Rico, and the Virgin Islands, which do not have SSI programs.

V. Paperwork Reduction Act of 1980

These regulations do not impose information collection requirements. Consequently, they do not need to be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VI. Impact Analyses

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulation that is likely to meet criteria for a "major rule". A major rule is one that would result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we prepare and publish a regulatory flexibility analysis, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) for any regulation that will have a significant impact on a substantial number of small entities. A small entity is a small business, a nonprofit enterprise, or a government jurisdiction (such as a county or township) with a population of less than 50,000.

These regulatory amendments conform the regulations to legislative provisions. The promulgation of these regulations will not result in any increase in expenditures beyond those that have already occurred since these provisions have been implemented.

These regulations, in themselves, do not meet any of the criteria for a major rule. In addition, they primarily affect States and individuals, which are not considered small entities for purposes of the RFA. Therefore, we have determined, and the Secretary certifies, that a regulatory impact analysis and a regulatory flexibility analysis are not required.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 605 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a Metropolitan Statistical Area. We have determined, and the Secretary certifies, that this regulation does not have a significant impact on the operations of a substantial number of small rural hospitals.

VII. List of Subjects

42 CFR Part 433

Administrative practice and procedure, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health,

Medicaid, Supplemental Security Income (SSI).

42 CFR Part 436

Aid to Families with Dependent Children, Grant programs—health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

42 CFR Part 400

Grant programs—health, Medicaid.

42 CFR Part 447

Accounting, Administrative practice and procedure, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR chapter IV is amended as set forth below:

PART 433—STATE FISCAL ADMINISTRATION

A. Part 433 is amended as follows:

1. The authority citation for part 433 continues to read as follows:

Authority: Secs. 1102, 1902(a)(4), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), and 1912 of the Social Security Act; 42 U.S.C. 1302, 1396a(a)(4), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r), and 1396k, unless otherwise noted.

2. The table of contents for part 433 is amended by revising the section title of § 433.147 to read as follows:

* * * * *

Sec.

* * * * *

433.147 Cooperation in establishing paternity, obtaining support, and identifying and providing information to assist in pursuing liable third parties.

* * * * *

3. Section 433.137 is amended by revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 433.137 State plan requirements.

* * * * *

(b) A State plan must provide that—

(1) The requirements of §§ 433.145 through 433.148 are met for assignment of rights to benefits, cooperation with the agency in obtaining medical support of payments, and cooperation in identifying and providing information to assist the State in pursuing any liable third parties; and

(2) The requirements of §§ 433.151 through 433.154 are met for cooperative agreements and incentive payments for third party collections.

(c) The requirements of paragraph (b)(1) of this section relating to assignment of rights to benefits and cooperation in obtaining medical support or payments and paragraph (b)(2) of this section are effective for medical assistance furnished on or after October 1, 1984. The requirements of paragraph (b)(1) of this section relating to cooperation in identifying and providing information to assist the State in pursuing liable third parties are effective for medical assistance furnished on or after July 1, 1986.

4. Section 433.145 is revised to read as follows:

§ 433.145 Assignment of rights to benefits—State plan requirements.

(a) A State plan must provide that, as a condition of eligibility, each legally able applicant and recipient must assign his or her rights, or the rights of any other individual eligible under the plan for whom he or she can legally make an assignment, to medical support or other third party payments for medical care to the Medicaid agency, cooperate with the agency in obtaining medical support or payments, and cooperate in identifying and providing information to assist the State in pursuing third parties who may be liable to pay for care and services under the plan.

(b) A State plan must provide that the requirements for assignments, cooperation in establishing paternity and obtaining support, and cooperation in identifying and providing information to assist the State in pursuing any liable third party under §§ 433.146 through 433.148 are met.

(c) A State plan must provide that the assignment of rights to benefits obtained from an applicant or recipient is effective only for services that are reimbursed by Medicaid.

5. Section 433.147 is amended by revising the section title and paragraphs (a), (b)(5), (c), and (d) to read as follows ((b) introducing text is republished):

§ 433.147 Cooperation in establishing paternity, obtaining support, and identifying and providing information to assist in pursuing liable third parties.

(a) *Scope of requirement.* The agency must require the individual who assigns his rights to cooperate in—

(1) Establishing paternity of a child born out of wedlock for whom the individual can legally assign rights;

(2) Obtaining medical care support and payments for himself or herself and any other person for whom the individual can legally assign rights; and

(3) Identifying and providing information to assist the State in pursuing any liable third party.

(b) *Essentials of cooperation.* As part of a cooperation, the agency may require an individual to—

* * * * *

(5) Take any other reasonable steps to assist in establishing paternity and securing medical support and payments, and in identifying and providing information to assist the State in pursuing any liable third party.

(c) *Waiver of cooperation for good cause.* The agency must waive the requirements in paragraphs (a) and (b) of this section if it determines that the individual has good cause for refusing to cooperate.

(1) With respect to establishing paternity of a child born out of wedlock or obtaining medical care support and payments, or identifying or providing information to assist the State in pursuing any liable third party for a child for whom the individual can legally assign rights, the agency must find the cooperation is against the best interests of the child, in accordance with factors specified for the Child Support Enforcement Program at 45 CFR part 232. If the State title IV–A agency has made a finding that good cause for refusal to cooperate does or does not exist, the Medicaid agency must adopt that finding as its own for this purpose.

(2) With respect to obtaining medical care support and payments for an individual and identifying and providing information to assist in pursuing liable third parties in any case not covered by paragraph (c)(1) of this section, the agency must find that cooperation is against the best interests of the individual or the person to whom Medicaid is being furnished because it is anticipated that cooperation will result in reprisal against, and cause physical or emotional harm to, the individual or other person.

(d) *Procedures for waiving cooperation.* With respect to establishing paternity, obtaining medical care support and payments, or identifying and providing information to assist the State in pursuing liable third parties for a child for whom the individual can legally assign rights, the agency must use the procedures specified for the Child Support Enforcement Program at 45 CFR part 232. With respect to obtaining medical care support and payments or to identifying and providing information to assist the State in pursuing liable third parties for any other individual, the agency must adopt procedures similar to those specified in 45 CFR part 232, excluding those procedures applicable only to children.

PART 435—ELIGIBILITY IN THE STATES, THE DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

B. Part 435 is amended as follows:

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The table of contents is amended by revising the undesignated heading appearing before § 435.116, redesignating § 435.118, as § 435.119 and adding new §§ 435.137 and 435.138, a new undesignated center heading and § 435.170, and §§ 435.225 and 435.227 to read as follows:

Sec.

* * * * *

Mandatory Coverage of Pregnant Women, Children under 8, and Newborn Children

* * * * *

Mandatory Coverage of Adoption Assistance and Foster Care Children

435.119 Children for whom adoption assistance or foster care maintenance payments are made.

* * * * *

Mandatory Coverage of the Aged, Blind, and Disabled

* * * * *

435.137 Disabled widows and widowers who would be eligible for SSI except for the increase in disability benefits resulting from elimination of the reduction under Pub. L. 98–21.

435.138 Disabled widows and widowers aged 60 through 64 who would be eligible for SSI benefits except for receipt of early social security benefits.

* * * * *

Mandatory Coverage of Special Groups

435.170 Pregnant Women eligible for extended coverage.

* * * * *

Options for Coverage of Families and Children

* * * * *

435.225 Individuals under age 19 who would be eligible for Medicaid if they were in a medical institution.

435.227 Individuals under age 19 who are under State adoption assistance agreements.

* * * * *

3. In § 435.3, paragraph (a) is republished and several entries are added in numerical order to read as follows:

§ 435.3 Basis.

(a) This part implements the following sections of the Act and public laws which state eligibility requirements and standards:

* * * * *

473(b) Eligibility of children in foster care and adopted children who are deemed AFDC recipients.

* * * * *

1634(b) Preservation of benefit status for disabled widows and widowers who lost SSI benefits because of 1983 changes in actuarial reduction formula.

1634(d) Individuals who lose eligibility for SSI benefits due to entitlement to early widow's or widower's social security disability benefits under section 202(e) or (f) of the Act.

* * * * *

1902(e)(3) Optional coverage of certain disabled children being cared for at home.

* * * * *

1902(e)(5) Eligibility of pregnant woman for extended coverage for specified postpartum period after pregnancy ends.

* * * * *

1912(a) Conditions of eligibility.

* * * * *

4. Section 435.115 is amended by adding a new paragraph (e) to read as follows:

§ 435.115 Individuals deemed to be receiving AFDC.

* * * * *

(e) The State must deem to be receiving AFDC individuals described in section 473(a)(1) of the Act—

(1) For whom an adoption assistance agreement is in effect under title IV–E of the Act, whether or not adoption assistance is being provided or an interlocutory or other judicial decree of adoption has been issued; or

(2) For whom foster care maintenance payments are made under title IV–E of the Act.

5. The undesignated heading preceding § 435.116 is revised to read as follows:

Mandatory Coverage of Pregnant Women, Children under 8, and Newborn Children

6. Section 435.116 is amended by revising paragraph (c) to read as follows:

§ 435.116 Qualified pregnant women and children.

* * * * *

(c) The agency must provide Medicaid to children who meet all of the following criteria:

(1) They are born after September 30, 1983;

(2) Effective October 1, 1988, they are under age 6 (or if designated by the State, any age that exceeds age 6 but does not exceed age 8), and effective October 1, 1989, they are under age 7 (or if designated by the State, any age that exceeds age 7 but does not exceed age 8); and

(3) They meet the income and resource requirements of the State's approved AFDC plan.

§ 435.119 [Redesignated from 435.118]

7. Section 435.118 is redesignated as § 435.119.

8. A new § 435.137 is added to read as follows:

§ 435.137 Disabled widows and widowers who would be eligible for SSI except for the increase in disability benefits resulting from elimination of the reduction factor under Pub. L. 98–21.

(a) If the agency provides Medicaid to aged, blind, or disabled individuals receiving SSI or State supplements, the agency much provide Medicaid to disabled widows and widowers who—

(1) Became ineligible for SSI or a mandatory or optional State supplement as a result of the elimination of the additional reduction factor for disabled widows and widowers under age 60 required by section 134 of Pub. L. 98–21, and for purposes of title XIX, are deemed to be title XVI payment recipients under section 1634(b) of the Social Security Act; and

(2) Meet the conditions of paragraphs (b) and (e) of this section.

(b) The individuals must meet the following conditions:

(1) They were entitled to monthly OASDI benefits under title II of the Act for December 1983;

(2) They were entitled to and received widow's or widower's disability benefits under section 202(e) or (f) of the Act for January 1984;

(3) They became ineligible for SSI or a mandatory or optional State supplement in the first month in which the increase under Pub. L. 98–21 was paid (and in which a retroactive payment for that increase for prior months was not made);

(4) They have been continously entitled to widow's or widower's disability benefits under section 202(e) or (f) from the first month that the increase under Pub. L. 98–21 was received; and

(5) They would be eligible for SSI benefits or a mandatory or optional State supplement if the amount of the increase under Pub. L. 98–21 and subsequent cost-of-living adjustments in widow's or widower's benefits under section 215(i) of the Act were deducted from their income.

(c) If the agency adopts more restrictive requirements than those under SSI, it must provide Medicaid to individuals specified in paragraph (a) of

this section on the same basis as Medicaid is provided to individuals continuing to receive SSI or a mandatory or optional State supplement. The State must consider the individuals specified in paragraph (a) of this section to have no more income than the SSI Federal benefit rate if the individual was eligible for SSI in the month prior to the first month in which the increase under Public Law 98–21 was paid (and in which retroactive payments for that increase for prior months was not being made), and the individual would be eligible for SSI except for the amount of the increase under Public Law 98–21 and subsequent cost-of-living adjustments in his or her widow's or widower's benefits under section 215(i) of the Act. The State must consider individuals who qualify under paragraph (a) of this section on the basis of loss of a mandatory or optional State supplementary payment, rather than the loss of SSI, to have no more income than the relevant SSP rate. If the State's income eligibility level is lower than the SSP or SSI Federal benefit rates, individuals qualifying under paragraph (a) of this section who are deemed to have income at either the SSP rate or the SSI Federal benefit rate may further reduce their countable income by incurring medical expenses in the amount by which their income exceeds the State's income eligibility standard. When the individual has reduced his or her income by this amount, he or she will be eligible for Medicaid as categorically needy.

(d) The agency must notify each individual who may be eligible for Medicaid under this section of his or her potential eligibility, in accordance with instructions issued by the Secretary.

(e)(1) Except as provided in paragraph (e)(2) of this section, the provisions of this section apply only to those individuals who filed a written application for Medicaid on or before June 30, 1988, to obtain protected Medicaid coverage.

(2) Individuals who may be eligible under this section residing in States that use a more restrictive income standard than that of the SSI program, under section 1902(f) of the Act, have up to six months after the State sends notice pursuant to the District Court's order in *Darling* v. *Bowen* (685 F. Supp. 1125 (W.D.Mo. 1988) to file a written application to obtain protected Medicaid coverage.

9. A new § 435.138 is added to read as follows:

§ 435.138 Disabled widows and widowers aged 60 through 64 who would be eligible for SSI except for early receipt of social security benefits.

(a) If the agency provides Medicaid to aged, blind, or disabled individuals receiving SSI or State supplements, the agency must provide Medicaid to disabled widows and widowers who—

(1) Are at least age 60;

(2) Are not entitled to hospital insurance benefits under Medicare Part A; and

(3) Become ineligible for SSI or a State supplement because of mandatory application (under section 1611(e)(2)) for and receipt of widow's or widower's social security disability benefits under section 202(e) or (f) (or any other provision of section 202 if they are also eligible for benefits under subsections (e) or (f)) of the Act.

For purposes of title XIX, individuals who meet these requirements are deemed to be title XVI payment recipients under section 1634(d) of the Act.

(b) If the agency adopts more restrictive eligibility requirements than those under SSI, it must provide Medicaid to individuals specified in paragraph (a) of this section on the same basis as Medicaid is provided to individuals continuing to receive SSI or a mandatory or optional State supplement. If the individual incurs enough medical expenses to reduce his or her income to the financial eligibility standard for the categorically needy under the State's more restrictive eligibility criteria, the agency must cover the individual as categorically needy. In determining the amount of his or her income, the agency may deduct all, part, or none of the amount of the social security disability benefits that made him or her ineligible for SSI or a State supplement, up to the amount that made him or her ineligible for SSI.

(c) Individuals who may be eligible under this section must file a written application for Medicaid. Medicaid coverage may begin no earlier than July 1, 1988.

(d) The agency must determine whether individuals may be eligible for Medicaid under this section.

10. A new undesignated heading and a new § 435.170 are added after § 435.138 to read as follows:

Mandatory Coverage of Special Groups

§ 435.170 Pregnant women eligible for extended coverage.

(a) The agency must provide categorically needy Medicaid eligibility for an extended period following termination of pregnancy to women who, while pregnant, applied for, were eligible for, and received Medicaid services on the day that their pregnancy ends. This period extends from the last day of pregnancy through the end of the month in which a 60-day period, beginning on the last day of the pregnancy, ends. Eligibility must be provided regardless of changes in the woman's financial circumstances that may occur within this extended period. These women are eligible for the extended period for all services under the plan that are pregnancy-related (as defined in § 440.210(c)(1) of this subchapter).

(b) The provisions of paragraph (a) of this section apply to Medicaid furnished on or after April 7, 1986.

11. A new § 435.225 is added to subpart C to read as follows:

§ 435.225 Individuals under age 19 who would be eligible for Medicaid if they were in a medical institution.

(a) The agency may provide Medicaid to children 18 years of age or younger who qualify under section 1614(a) of the Act, who would be eligible for Medicaid if they were in a medical institution, and who are receiving, while living at home, medical care that would be provided in a medical institution.

(b) If the agency elects the option provided by paragraph (a) of this section, it must determine, in each case, that the following conditions are met:

(1) The child requires the level of care provided in a hospital, SNF, or ICF.

(2) It is appropriate to provide that level of care outside such an institution.

(3) The estimated Medicaid cost of care outside an institution is no higher than the estimated Medicaid cost of appropriate institutional care.

(c) The agency must specify in its State plan the method by which it determines the cost-effectiveness of caring for disabled children at home.

12. A new § 435.227 is added to Subpart C to read as follows:

§ 435.227 Individuals under age 21 who are under State adoption assistance agreements.

(a) The agency may provide Medicaid to individuals under the age of 21 (or, at State option, age 20, 19, or 18)—

(1) For whom an adoption agreement (other than an agreement under title IV–E) between the State and the adoptive parent(s) is in effect;

(2) Who, the State agency responsible for adoption assistance, has determined cannot be placed with adoptive parents without Medicaid because the child has special needs for medical or rehabilitative care; and

(3) Who meet either of the following:

(i) Were eligible for Medicaid under the State plan before the adoption agreement was entered into; or

(ii) Would have been eligible for Medicaid before the adoption agreement was entered into, if the eligibility standards and methodologies of the title IV–E foster care program were used without employing the threshold title IV–A eligibility determination.

(b) For adoption assistance agreements entered into before April 7, 1986—

(1) The agency must deem the requirements of paragraphs (a)(1) and (2) of this section to be met if the State adoption assistance agency determines that—

(i) At the time of the adoption placement, the child had special needs for medical or rehabilitative care that made the child difficult to place; and

(ii) There is in effect an adoption assistance agreement between the State and the adoptive parent(s).

(2) The agency must deem the requirements of paragraph (a)(3) of this section to be met if the child was found by the State to be eligible for Medicaid before the adoption assistance agreement was entered into.

13. In § 435.301, the introductory texts of paragraphs (b) and (b)(1) are republished and a new paragraph (b)(1)(iv) is added to read as follows:

§ 435.301 General rules.

* * * * *

(b) If the agency chooses this option, the following provisions apply:

(1) The agency must provide Medicaid to the following individuals who meet the requirements of paragraph (a) of this section:

* * * * *

(iv) Women who, while pregnant, applied for, were eligible for, and received Medicaid services as medically needy on the day that their pregnancy ends. The agency must provide medically needy eligibility to these women for an extended period following termination of pregnancy. This period extends from the last day of the pregnancy through the end of the month in which a 60-day period, beginning on the last day of pregnancy, ends. Eligibility must be provided, regardless of changes in the woman's financial circumstances that may occur within this extended period. These women are eligible for the extended period for all services under the plan that are pregnancy-related (as defined in § 440.210(c)(1) of this subchapter).

* * * * *

14. Section 435.403 is amended by revising paragraph (g) to read as follows:

§ 435.403 State residence.

* * * * *

(g) *Individuals receiving Title IV–E payments.* For individuals of any age who are receiving Federal payments for foster care and adoption assistance under title IV–E of the Social Security Act, the State of residence is the State where the child lives.

* * * * *

15. Section 435.604 is revised to read as follows:

§ 435.604 Assignment of rights to benefits.

(a) As a condition of eligibility, the agency must require legally able applicants and recipients to assign rights to medical support or other third party payments to the Medicaid agency, to cooperate with the agency in obtaining medical support or payments, and to cooperate with the agency in identifying and providing information to assist the State in pursuing any third party who may be liable to pay for care and services under the plan. (Part 433, subpart D, contains specific requirements for these assignments.)

(b) The requirements for assignment of rights must be applied uniformly for all groups covered under the plan.

(c) The requirements of paragraph (a) of this section for the assignment of rights to medical support and other payments and cooperation in obtaining medical support and payments are effective for medical assistance furnished on or after October 1, 1984. The requirement for cooperation in identifying and providing information for pursuing liable third parties is effective for medical assistance furnished on or after July 1, 1988.

16. In subpart H, § 435.724 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 435.724 Financial responsibility of parents for blind or disabled children.

(a) If the agency provides Medicaid to SSI recipients, it must meet the requirements of this section in determining eligibility of blind and disabled children under the optional coverage of §§ 435.210, 435.211, 435.225, and 435.231.

* * * * *

(d) Under the option provided by § 435.225, the income and resources of the parent or the parent's spouse are not considered available to the disabled child receiving care at home.

17. Section 435.1011 is amended by revising the section title and paragraph (b) to read as follows:

§ 435.1011 Requirement for maintenance of optional State supplement expenditures.

* * * * *

(b) FFP in Medicaid expenditures is not available during any period in which the State does not have in effect an agreement with the Secretary under section 1618 of the Act to maintain its supplementary payments.

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

C. Part 436 is amended as follows:

1. The authority citation for part 436 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. The table of contents is amended by adding a new § 436.122 under subpart B and adding new § 436.224 under subpart C to read as follows:

* * * * *

Subpart B—Mandatory Coverage of the Categorically Needy

* * * * *

Sec.

436.122 Pregnant women eligible for extended coverage.

* * * * *

Subpart C—Options for Coverage as Categorically Needy

* * * * *

Options for Coverage of Families and Children

* * * * *

436.224 Individuals under age 21 who are under State adoption assistance agreements.

* * * * *

3. In § 436.2, paragraph (a) introductory text is republished and new entries are added in numerical order to read as follows:

§ 436.2 Basis.

(a) This part implements the following sections of the Act and public laws which state requirements and standards for eligibility:

* * * * *

473(b) Eligibility of children in foster care and adopted children who are deemed AFDC recipients.

* * * * *

1902(e)(3) Optional coverage of certain disabled children at home.

* * * * *

1902(e)(5) Eligibility of pregnant women for extended coverage for a specified period after pregnancy ends.

* * * * *

1912(a) Conditions of eligibility.

* * * * *

4. Section 436.114 is amended by adding a new paragraph (e) to read as follows:

§ 436.114 Individuals deemed to be receiving AFDC.

* * * * *

(e) The State must deem to be receiving AFDC individuals described in section 473(a)(1) of the Act—

(1) For whom an adoption assistance agreement is in effect under title IV–E of the Act, whether or not adoption assistance is being provided or an interlocutory or other judicial decree of adoption has been issued; or

(2) For whom foster care maintenance payments are made under title IV–E of the Act.

5. Section 436.120 is amended by revising paragraph (c) to read as follows:

§ 436.120 Qualified pregnant women and children.

* * * * *

(c) The agency must provide Medicaid to children who meet all of the following criteria:

(1) They are born after September 30, 1983;

(2) Effective October 1, 1988, they are under age 6 (or if designated by the State, any age that exceeds age 6 but does not exceed age 8), and effective October 1, 1989 they are under age 7 (or if designated by the State, any age that exceeds age 7 but does not exceed age 8); and

(3) They meet the income and resource requirements of the State's approved AFDC plan.

6. A new § 436.122 is added to subpart B to read as follows:

§ 436.122 Pregnant women eligible for extended coverage.

(a) The Medicaid agency must provide categorically needy Medicaid eligibility for an extended period following termination of pregnancy to women who, while pregnant, applied for, were eligible for, and received Medicaid services on the day that their pregnancy ends. This period extends from the last day of pregnancy through the end of the month in which a 60-day period, beginning on the last day of the pregnancy, ends. Eligibility must be provided, regardless of changes in the woman's financial circumstances that may occur within this extended period. These pregnant women are eligible for the extended period for all services under the plan that are pregnancy-related (as defined in § 440.210(c)(1) of this subchapter).

(b) The provisions of paragraph (a) of this section apply to Medicaid furnished on or after April 7, 1986.

7. New § 436.224 is added to subpart C to read as follows:

§ 436.224 Individuals under age 21 who are under State adoption assistance agreements.

(a) The agency may provide Medicaid to individuals under the age of 21 (or, at State option, age 20, 19, or 18)—

(1) For whom an adoption agreement (other than an agreement under title IV–E) between the State and adoptive parent(s) is in effect;

(2) Who, the State agency responsible for adoption assistance has determined, cannot be placed with adoptive parents without Medicaid because the child has special needs for medical or rehabilitative care; and

(3) Who meet either of the following:

(i) Were eligible for Medicaid under the State plan before the adoption agreement was entered into; or

(ii) Would have been eligible for Medicaid before the adoption agreement was entered into, if the eligibility standards and methodologies of the foster care program were used without employing the threshold title IV–A eligibility determination.

(b) For adoption assistance agreements entered into before April 7, 1986—

(1) The agency must deem the requirements of paragraph (a)(1) and (2) of this section to be met if the State adoption assistance agency determines that—

(i) At the time of the adoption placement, the child had special needs for medical or rehabilitative care that made the child difficult to place; and

(ii) There is in effect an adoption assistance agreement between the State and the adoptive parent(s).

(2) The agency must deem the requirements of paragraph (a)(3) of this section to be met if the child was found by the State to be eligible for Medicaid before the adoption assistance agreement was entered into.

8. In § 436.301, the introductory texts of paragraphs (b) and (b)(1) are republished and a new paragraph (b)(1)(iv) is added to read as follows:

§ 436.301 General rules.

* * * * *

(b) If the agency chooses this option, the following provisions apply:

(1) The agency must provide Medicaid to the following individuals who meet the requirements of paragraph (a) of this section:

* * * * *

(iv) Women who, while pregnant, applied for, were eligible for, and received Medicaid services as medically needed on the day that their pregnancy ends. The agency must provide medically needy eligibility to these women for an extended period following termination of pregnancy. This period begins on the last day of the pregnancy and extends through the end of the month in which a 60-day period following termination of pregnancy ends. Eligibility must be provided, regardless of changes in the women's financial circumstances that may occur within this extended period. These women are eligible for the extended period for all services under the plan that are pregnancy-related (as defined in § 440.210(c)(1) of this subchapter).

* * * * *

9. Section 436.403 is amended by revising paragraph (f) to read as follows:

§ 436.403 State residence.

(f) Individuals receiving title IV–E payments. For individuals of any age who are receiving Federal payment for foster care and adoption assistance under title IV–E of the Social Security Act, the State of residence is the State where the child lives.

* * * * *

10. Section 436.604 is revised to read as follows:

§ 436.604 Assignment of rights to benefits.

(a) As a condition of eligibility, the agency must require legally able applicants and recipients to assign rights to medical support and other third party payments to the Medicaid agency, to cooperate with the agency in obtaining medical support or payments, and to cooperate with the agency in identifying and providing information to assist the State in pursuing any liable third party. (Part 433, subpart D), contains specific requirements for these assignments.)

(b) The requirements for assignment of rights must be applied uniformly for all groups covered under the plan.

(c) The requirements of paragraph (a) of this section for assignment of rights to medical support and other payments and cooperation in obtaining medical support and payments are effective for medical assistance furnished on or after October 1, 1984. The requirement for cooperation in identifying and providing information for pursuing liable third parties are effective for medical assistance furnished on or after July 1, 1986.

PART 440—SERVICES; GENERAL PROVISIONS

D. Part 440 is amended as follows:

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 440.165 is amended by revising paragraph (c) to read as follows:

§ 440.165 Nurse-midwife services.

* * * * *

(c) "Maternity cycle" means a period limited to—

(1) Pregnancy;

(2) Labor;

(3) Birth; and

(4) The immediate postpartum period which begins on the last day of pregnancy and extends through the end of the month in which the 60-day period following termination of pregnancy ends.

3. Section 440.210 is revised to read as follows:

§ 440.210 Required services for the categorically needy.

A State plan must specify that, as a minimum, categorically needy recipients are provided—

(a) The services as specified in §§ 440.10 through 440.50 and § 440.70;

(b) To the extent nurse-midwives are authorized to practice under State law or regulations, services specified in § 440.165;

(c) Pregnancy-related services and services for other conditions that might complicate the pregnancy.

(1) Pregnancy-related services are those services that are necessary for the health of the pregnant woman and fetus, or that have become necessary as a result of the woman having been pregnant. These include, but are not limited to, prenatal care, delivery, postpartum care, and family planning services.

(2) Services for other conditions that might complicate the pregnancy include those for diagnoses, illnesses, or medical conditions which might threaten the carrying of the fetus to full term or the safe delivery of the fetus; and

(d) For women who, while pregnant, applied for, were eligible for, and received Medicaid services under the plan, all services under the plan that are pregnancy-related for an extended postpartum period. The postpartum period begins on the last day of pregnancy and extends through the end of the month in which the 60-day period following termination of pregnancy ends.

4. In § 440.220, the introductory paragraph is republished and a new paragraph (e) is added to read as follows:

§ 440.220 Required services for the medically needy.

A State plan that includes the medically needy must specify that the medically needy are provided, as a minimum, the following services:

* * * * *

(e) For women who, while pregnant, applied for, were eligible as medically needy for, and received Medicaid services under the plan, services under the plan that are pregnancy-related (as defined in § 440.210(c)(1) of this subpart) for an extended postpartum period. The postpartum period begins on the last day of pregnancy and extends through the end of the month in which the 60-day period following termination of pregnancy ends.

5. Section 440.250 is amended by adding a new paragraph (p) to read as follows:

§ 440.250 Limits on comparability of services.

* * * * *

(p) A State may provide a greater amount, duration, or scope of services to pregnant women than it provides under its plan to other individuals who are eligible for Medicaid, under the following conditions:

(1) These services must be pregnancy related or related to any other condition which may complicate pregnancy, as defined in § 440.210(c) of this subpart; and

(2) These services must be provided in equal amount, duration, and scope to all pregnant women covered under the State plan.

PART 447—PAYMENTS FOR SERVICES

E. Part 447 is amended as follows:

1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. Section 447.53 is amended by revising paragraphs (b) introductory text and (b)(2) to read as follows:

§ 447.53 Applicability; specifications; multiple charges.

* * * * *

(b) *Exclusions from cost sharing.* The plan may not provide for impositions of a deductible, coinsurance, copayment, or similar charge upon categorically or medically needy individuals (except as specified in paragraph (b)(6) of this section) for the following:

* * * * *

(2) *Pregnant women.* Services furnished to pregnant women if such services related to the pregnancy, or to any other medical condition which may complicate the pregnancy are excluded from cost sharing obligations. These services include routine prenatal care, labor and delivery, routine post-partum care family planning services, complications of pregnancy or delivery likely to affect the pregnancy, such as hypertension, diabetes, urinary tract infection, and services furnished during the postpartum period for conditions or complications related to the pregnancy. The postpartum period is the immediate postpartum period which begins on the last day of pregnancy and extends through the end of the month in which the 60-day period following termination of pregnancy ends. States may further exclude from cost sharing all services furnished to pregnant women if they desire.

(Catalog of Federal Domestic Assistance Program No. 13.714—Medical Assistance Program)

Dated: June 29, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: September 13, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90–27393 Filed 11–20–90; 8:45 am]

BILLING CODE 4120–03–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM)

showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the Federal Register for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
ARKANSAS	
Jefferson County (unincorporated areas) (FEMA Docket No. 6991)	
Arkansas River:	
Approximately 0.25 river mile downstream of confluence of Big Bayou Meto	*181
Downstream side of Lock and Dam No. 4	*205
Approximately 7.9 river miles upstream of Lock and Dam No. 5	*231
Caney Bayou:	
At confluence with Lake Langhofer (Arkansas River)	*210
Approximately .58 river miles upstream of State Route 104	*274
Hamelas Creek:	
At confluence with Caney Bayou	*217
Approximately 80 feet upstream of May Avenue	*264
Gamble Creek:	
At confluence with Caney Bayou	*241
Approximately 70 feet upstream of Stokes Road	*320
Arnold Creek:	
At confluence with Caney Bayou	*251
Approximately 80 feet upstream of Gerren Springs Road	*321
Arnold Creek Tributary:	
At confluence with Arnold Creek	*260
Approximately 0.9 river mile upstream of confluence with Arnold Creek	*302
Bayou Bartholomew:	
At confluence of Outlet Canal	*204
At confluence of Bayou Bartholomew Tributary No. 2	*295
Boggy Bayou:	
At confluence with Sandy Bayou	*203
Approximately 0.45 river mile upstream of Brinkley Road	*247
Boggy Bayou Tributary 1:	
At confluence with Boggy Bayou	*204
Approximately 475 upstream of Middle Warren Road	*227
Boggy Bayou Tributary No. 2:	
At confluence with Boggy Bayou	*213
Approximately 230 feet upstream of the upstream crossing of Divolty Road	*264
Outlet Canal:	
At confluence with Bayou Bartholomew	*204
At upstream corporate limits	*208
Dancing Rabbit Creek:	
At confluence with Bayou Bartholomew	*207
Approximately 0.17 river mile upstream of Ridgeway Road	*211
Spring Hill Creek:	
Approximately 160 feet upstream of the confluence with Bayou Bartholomew	*209
Approximately 125 feet upstream of Brinkley Road	*254
Nevins Creek:	
At confluence with Bayou Bartholomew	*211
Approximately 0.21 river mile upstream of Shannon Petty Road	*269
Piney Creek:	
At confluence with Nevins Creek	*221
Approximately 0.14 river mile upstream of U.S. Route 79 Bypass (Sulphur Springs Road)	*303
Nevins Tributary:	
At confluence with Nevins Creek	*231
Approximately 0.44 river mile upstream of Ramick Road	*273
Sulphur Springs Creek:	
At confluence with Nevins Creek	*248
Approximately 0.42 river mile upstream of Lowman Road	*273
Sulphur Springs Tributary:	
At confluence with Sulphur Springs Creek	*266
Approximately 0.21 river mile upstream of Sulphur Spring Road	*279
Industrial Creek:	
At confluence with Bayou Bartholomew	*225
Approximately 0.28 river mile upstream of Claude Road	*278
Industrial Creek Tributary:	
At confluence with Industrial Creek	*266
Approximately 0.18 river mile upstream of Double "LL" Road	*285
Bayou Bartholomew Tributary No. 1:	
At confluence with Bayou Bartholomew	*269
Approximately 0.44 river mile upstream of Garmen Road	*329
Bayou Bartholomew Tributary No. 2:	
At confluence with Bayou Bartholomew	*295
Approximately 90 feet upstream of County Route	*315
Wattoosaka Bayou:	
Approximately 1,580 feet downstream of Pawpaw Street	*197
Approximately 600 feet upstream of U.S. Route 79	*200
Caney Tributary No. 1:	
Approximately .19 river mile upstream of confluence with Caney Bayou	*226
Approximately 1 river mile upstream of confluence with Caney Bayou	*229
Caney Tributary No. 2:	
At confluence with Caney Bayou	*235
Approximately 0.52 river mile upstream of confluence with Caney Bayou	*247
Caney Bayou Fork:	
At confluence with Caney Bayou	*238
At upstream corporate limits	*238
Maps available for inspection at the Jefferson County Courthouse, Barraque and Main Streets, Pine Bluff, Arkansas.	
Logan County (unincorporated areas) (FEMA Docket No. 6991)	
Arkansas River:	
Approximately 0.28 mile upstream of downstream County boundary	*341
At upstream County boundary	*366
Delaware Creek:	
Approximately 660 feet downstream of downstream County boundary	*340
Approximately 400 feet upstream of downstream County boundary	*340
Shoal Creek:	
At confluence with Arkansas River	*343
Approximately 1,050 feet downstream of State Route 22	*348
Little Shoal Creek:	
At confluence with Shoal Creek	*344
Approximately 175 feet upstream of State Route 22	*350
Cane Creek:	
Approximately 0.32 mile downstream of State Route 197	*352
Approximately 0.53 mile downstream of State Highway 109	*354
Maps available for inspection at the Logan County Courthouse, Room #22, Paris, Arkansas.	
CALIFORNIA	
Merced County (unincorporated areas) (FEMA Docket No. 6991)	
Miles Creek:	
At Santa Fe Avenue	*229
Just upstream of Childs Avenue	*232
At Planada Canal	*234
At Le Grand Canal	*254
Maps are available for review at the Merced County Planning Department, 2222 M Street, Merced, California.	
Sonoma County (unincorporated areas) (FEMA Docket No. 6979)	
Airport Creek:	
At confluence with Windsor Creek	* 75
Just upstream of Windsor Road crossing	* 85
At confluence of Redwood Creek	* 95
1,800 feet upstream of confluence with Redwood Creek	* 100
Bloomfield Creek:	
At Valley Ford Road	* 50
Just upstream from Bloomfield Road	* 51
Just upstream of Atchison Road	* 61
Approximately 725 feet upstream of Atchison Road	*62
Cameron Creek:	
At confluence with Fulton Creek	* 88
Just downstream of Woodway Bridge	* 96
Just upstream of Woodlane Bridge	*103
At Wookley Road Bridge	*110
Capri Creek:	
At City of Petaluma corporate limits	* 53
Approximately 2,400 feet upstream of City of Petaluma corporate limits	* 80
Corona Creek:	
At McDowell Road	* 26
Just above Ely Road	* 46
At Adobe Road Bridge	*125
Dry Creek:	
At confluence with Russian River	* 84
500 feet upstream from West Side Road Bridge	* 96
At confluence of Crane Creek	*126
200 feet upstream of Yos Kim Bridge Road	*172
At Bord Bridge	*199
Fife Creek:	
At confluence with Russian River	* 56
At Laughlin Road	* 59
Fulton Creek:	
At confluence with Mark West Creek	*76
At confluence of Cameron Creek	*88
Just upstream of Laughlin Road	*107
Just upstream of Biscoti Lane	*119
Just upstream of Southern Pacific Railroad	*131
Gibson Creek:	
At confluence with Marin Creek	*74
Just above Eastman Lane	*84
Aproximately 1,980 feet upstream of Eastman Lane	*107
Hulbert Creek:	
At confluence with Russian River	*54
Just upstream of Old Cazadero Road	*76
Just upstream of Fern Way	*94
Approximately 1,950 feet upstream of confluence with Hulbert Creek Tributary	*109
Hulbert Creek Tributary:	
At confluence with Hulbert Creek	*95
Approximately 650 feet upstream of confluence with Hulbert Creek	*108
Kizer Creek:	
At confluence with Wiggins Creek	*51
Just upstream of Skillman Lane	*53
Just upstream of Bodega Avenue	*61
Just downstream of Eucalyptus Avenue	*124
Laguna De Santa Rosa:	
At confluence with Mark West Creek	*75
At State Route 12	*75
At confluence of Hessel Creek	*80
Just upstream of Llano Road	*54
At confluence of Bellevue-Wilfred flood control channel	*69
Liberty Creek:	
At confluence with Marin Creek	*37
Just downstream of Pepper Road	*50
Approximately 100 feet downstream of White Leghorn Farm Road	*75
Just upstream of Jewett Road	*128
Just downstream of Stoney Point Road	*150
Lichau Creek:	
At confluence with Willow Brook	*47
300 feet upstream from Adobe Road	*75
200 feet upstream from Southern Pacific Railroad Bridge	*95
Lynch Creek:	
Just above Ely Road	*61
Approximately 3,600 feet upstream of Ely Road	*95
Approximately 1,000 feet downstream of Adobe Road	*119
Marin Creek:	
At confluence with Petaluma River	*37
At Skillman Lane	*44
At Bodega Avenue Bridge	*83
Just above Eastman Lane	*90
Mark West Creek:	
From Russian River to Stuesser Road	*75
Just upstream of Laughlin Road	*110
Just upstream of Southern Pacific Railroad	*131
Just upstream of Wikiup Bridgeway	*164
Approximately 550 feet upstream from Mark West Springs	*440
McBrown Creek:	
At confluence with Wiggins Creek	*58
Just upstream of McBrown Road	*80
Just upstream of Sprauer Road	*83
Pocket Canyon:	
At confluence with Russian River	*57
At Odd Fellows Park Road	*79
Just upstream of Mays Canyon Road	*111
At confluence of Oregon Canyon	*154
Approximately 4,700 feet upstream of the upstream State Highway 116 crossing	*241
Pool Creek:	
At confluence with Windsor Creek	*76
Just upstream of Windsor Road	*85
At confluence of Pruitt Creek	*101
Just upstream of Old Redwood Highway	*127
2,400 feet upstream from Pleasant Avenue	*168
Pruitt Creek:	
At confluence with Pool Creek	*101
Just upstream of U.S. Highway 101	*116
Just downstream of Old Redwood Highway	*132
Just upstream of East Shiloh Road	*149
Just downstream of Faught Road	*186
Redwood Creek:	
At confluence with Airport Creek	*95
Just upstream of sewage treatment pond	*109
Just upstream of Skylane Road	*107
Just upstream of Jenny's Lane	*113
1,750 feet upstream of Jenny's Lane	*116
Russian River:	
At confluence with Pacific Ocean	*8
Approximately 100 feet downstream of State Highway #1	*16
Approximately 1,000 feet downstream from Hulbert Creek	*54
Approximately 1,200 feet upstream of Odd Fellows Park Road	*84
Approximately 700 feet downstream of Wohler Road	*75
Downstream side of State Highway 101	*86
At confluence of Miller Creek	*202
Approximately 100 feet upstream from Geyserville Road	*210
At confluence with Gill Creek	*226
Santa Rosa Flood Control Channel:	
At confluence with Laguna de Santa Rosa	*75
Approximately 8,450 feet upstream of Willowside Road	*86
Sonoma Creek:	
Approximately 2,050 feet downstream from Kenilworth Avenue	*390
400 feet upstream of confluence of North Kenwood Creek	*402
At confluence of Mount Hood Creek	*425
Approximately 1,250 feet upstream of confluence with Mount Hood Creek	*428
Just upstream of State Route 12	*444
Starr Creek:	
At confluence with Windsor Creek	*78
Just upstream of Kiser Road	*86
Just upstream of Windsor River Road	*106
Just upstream of U.S. Highway 101	*131
300 feet upstream of Arata Lane	*145
Washington Creek:	
At Petaluma corporate limits	*78
Just upstream of Adobe Road	*122
East Washington Creek:	
100 feet upstream of Petaluma corporate limits	*82
Approximately 800 feet downstream of Adobe Road Bridge	*88
300 feet upstream of Adobe Road	*96
Wiggins Creek:	
At confluence with Marin Creek	*37
Upstream side of Liberty Road	*54
1,800 feet upstream from King Road	*85
Willow Brook:	
625 feet downstream from Old Redwood Highway	*26
Just upstream from Southern Pacific Railroad	*49
Just upstream of Adobe Road Bridge	*86
Wilson Creek:	
At confluence with Marin Creek	*37
Upstream side of Skillman Lane	*52
Just upstream of Bodega Avenue	*74
Approximately 1,000 feet above confluence of Stark Creek	*119
Windsor Creek:	
At confluence with Mark West Creek	*75
Just upstream of Windsor Road	*86
Just upstream of U.S. Highway 101	*111
Just downstream of Arata Lane	*151
Just upstream of Brooks Road	*180
East Windsor Creek:	
At confluence with Windsor Creek	*92
Just downstream from Southern Pacific Railroad	*96
Just upstream of Old Redwood Highway	*110
1,900 feet upstream of Jensen Lane	*124
4,000 feet upstream of Jensen Lane	*142
Wohlsey Creek:	
500 feet upstream of Stuesser Road	*76
Just upstream of Willowside Ranch Road	*100
Just upstream of Saddle Dam	*111
Approximately 1,800 feet upstream of Saddle Dam at limit of detailed study	*112
Maps are available for review at the Sonoma County Building Department, 575 Administration Drive, Santa Rosa, California.	
CONNECTICUT	
Canton (town), Hartford County—(FEMA Docket No. 6991)	
Cherry Brook:	
Approximately 80 feet upstream of U.S. Route 44	*313
Approximately 1,800 feet upstream of State Route 179	*701
Farmington River:	
Approximately 0.42 mile upstream of State Route 179	*297
Approximately 0.83 mile upstream of U.S. Route 202	*316
Nepaug River:	
At confluence with Farmington River	*305
At upstream corporate limits	*373
Rattlesnake Brook:	
Approximately 270 feet downstream of Dyer Avenue	*298
Approximately 10 feet upstream of East Hill Road	*469
East Branch Rattlesnake Brook:	
At confluence with Rattlesnake Brook just upstream of Mills Lane	*333
Approximately 1,050 feet upstream of Dowd Avenue	*340
Jim Brook:	
At downstream corporate limits	*285
Approximately 100 feet upstream of Lawton Road	*340
Barbour Brook:	
At confluence with Cherry Brook	*403
Approximately 40 feet upstream of Barbourtown Road	*506
Maps available for inspection at the Town Clerk's Safe, 4 Market Street, Collinsville, Connecticut.	
Hebron (town), Tolland County (FEMA Docket No. 6991)	
Amston Lake Brook:	
At State Route 85	*398
At Amston Lake Dam	*520
Raymond Brook:	
At State Route 85	*381
Approximately 80 feet upstream of Robinson Road	*582
West Branch Fawn Brook:	
At Slocum Road	*430
Approximately 100 feet upstream of State Route 85	*542
Fawn Brook:	
At State Route 66	*436
At Meetinghouse Road	*467
Judd Brook:	
Approximately 20 feet upstream of Old Colchester Road	*344
Approximately 640 feet upstream of Old Colchester Road	*347
Maps available for inspection at the Town Clerk's Vault, Town Office, 15 Gilead Street, Hebron, Connecticut.	

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Monroe (town), Fairfield County (FEMA Docket No. 6990)	
Housatonic River:	
At downstream corporate limits	*49
At Stevenson Dam	*58
Lake Zoar: Entire shoreline within community	*109
Maps available for inspection at the Town Clerk's Vault, Town Hall, 30 Fan Hill Road, Monroe, Connecticut.	
Oxford (town), New Haven County (FEMA Docket No. 6991)	
Housatonic River:	
At the downstream corporate limits	*48
At downstream side of Stevenson Dam	*58
Lake Zoar: Entire shoreline within community	*109
Riverside Brook:	
At confluence with Housatonic River	*53
Approximately 140 feet upstream on confluence with Housatonic River	*53
Maps available for inspection at the Town Clerk's Vault, Town Hall, Oxford, Connecticut.	
Seymour (town), New Haven County (FEMA Docket No. 6990)	
Housatonic River:	
Approximately 200 feet upstream of the downstream corporate limits	*41
At the upstream corporate limits	*48
Maps available for inspection at the Planning and Zoning Office, Town Hall, Seymour, Connecticut.	
Woodbridge (town), New Haven County (FEMA Docket No. 6990)	
West River:	
At downstream corporate limits	*81
Approximately 1.7 miles upstream of Bradley Road	*112
Maps available for inspection at the Town Clerk's Sale, Town Office, 11 Meeting House Lane, New Haven, Connecticut.	
FLORIDA	
Fort Pierce (city), St. Lucie County (FEMA Docket No. 6991)	
Atlantic Ocean:	
About 100 feet east of intersection of Indian-ac Drive and South Ocean Drive	#1
Atlantic Ocean/Indian River:	
At intersection of Sunset Isles Road and Eucalyptus Avenue	*5
About 300 feet east of intersection of Indian-ac Drive and South Ocean Drive	*14
Moores Creek:	
At mouth	*5
Just upstream of South 29th Street	*22
Riverside Creek: Within community	*17
Maps available for inspection at the Building Department, City Hall Annex, 315 Avenue A, Fort Pierce, Florida.	
Port St. Lucie (city), St. Lucie County (FEMA Docket No. 6991)	
Blakeslee Creek Tributary:	
At mouth	*7
About 0.97 miles upstream of mouth	*10
Winters Creek:	
About 1300 feet upstream of mouth	*7
About 1.6 miles upstream of mouth	*9
North Fork St. Lucie River:	
About 1.15 miles downstream of Port St. Lucie Boulevard	*7
About 2.6 miles upstream of Prima Vista Boulevard	*8
Indian River:	
About 50 feet east of Walton Road and State Road 707	*7
Along Shoreline	*11
Blakeslee Creek:	
About 500 feet upstream of mouth	*7
About 1.37 miles upstream of mouth	*7
Maps available for inspection at the Building Department, City Hall, 121 SW., Port St. Lucie Boulevard, Port St. Lucie, Florida.	
St. Lucie County (unincorporated areas) (FEMA Docket No. 6991)	
Tarmile Creek Tributary:	
At mouth	*26
Just downstream of McCarty Road	*20
Tarmile Creek:	
At confluence with North Fork St. Lucie River	*10
Just downstream of Sunshine State Parkway	*16
Just downstream of Okeechobee Road	*21
Taylor Creek:	
About 500 feet upstream of mouth	*11
About 1.76 miles upstream of St. Lucie Boulevard	*19
Riverside Creek:	
At mouth	*10
Just downstream of Whiteway Dairy Road	*17
Just downstream of Peterson Road	*17
Platts Branch:	
At mouth	*10
Just upstream of U.S. Route 1	*12
Winters Creek:	
At mouth	*7
About 1300 feet upstream of mouth	*7
Blakeslee Creek:	
At mouth	*7
About 500 feet upstream of mouth	*7
North Fork St. Lucie River:	
About 2.3 miles downstream of Port St. Lucie Boulevard	*7
At confluence of Tarmile Creek	*10
Atlantic Ocean/Indian River:	
About 750 feet west of Mimosa Avenue and Coconut Drive	*5
Along shoreline, about 1.2 miles east of Blue Hole Point	*15
Atlantic Ocean:	
About 150 feet east of Banyan Road and Tamarino Drive intersection	# 1
About 250 feet east of Banyan Road and Tamarino Drive intersection	# 2
Maps available for inspection at the Community Development Department, Administration Complex, 2300 Virginia Avenue, Fort Pierce, Florida.	
St. Lucie Village (town), St. Lucie County (FEMA Docket No. 6991)	
Indian River:	
About 700 feet east of intersection of Milton Road and Old Dixie Highway	*5
Just east of intersection of Chamberlain Boulevard and Indian River Drive	*9
Maps available for inspection at the St. Lucie Village Town Hall, St. Lucie Boulevard, St. Lucie Village, Florida.	
GEORGIA	
Habersham County (unincorporated areas) (FEMA Docket No. 6994)	
Mud Creek:	
Just upstream of Crane Mill Road	*1214
Just downstream of Garrison Road	*1243
Just upstream of Garrison Road	*1249
Just downstream of Duncan Bridge Road	*1273
Just upstream of Duncan Bridge Road	*1279
Just downstream of Old Clarkesville-Athens Road	*1333
Just upstream of Old Clarkesville-Athens Road	*1340
Just downstream of J. Warren Road	*1352
Just upstream of J. Warren Road	*1358
Just downstream of U.S. Route 23	*1378
South Fork Mud Creek:	
At confluence with Mud Creek	*1301
Just downstream of J. Warren Road	*1359
Little Mud Creek:	
Just upstream of Crane Mill Road	*1167
Just downstream of Alto-Mud Creek Road	*1217
Just upstream of Alto-Mud Creek Road	*1232
Just downstream of Duncan Bridge Road	*1266
Just upstream of Duncan Bridge Road	*1272
Just downstream of A. Wilbanks Road	*1305
Just upstream of A. Wilbanks Road	*1318
Just downstream of U.S. Route 23	*1318
Just upstream of U.S. Route 23	*1333
About 4000 feet upstream of Alto Road	*1383
South Fork Little Mud Creek:	
At mouth	*1280
Just downstream of U.S. Route 23	*1294
Just upstream of U.S. Route 23	*1304
At Town of Baldwin corporate limits	*1356
Alto Creek:	
At confluence with Little Mud Creek	*1233
Just downstream of U.S. Route 23	*1238
Just upstream of U.S. Route 23	*1249
About 2100 feet upstream of C. Grant Road	*1267
Hazel Creek:	
About 3400 feet downstream of confluence of Lick Log Creek	*1298
Just downstream of Cody Road	*1350
Just downstream of Dam No. 12	*1355
Camp Creek:	
About 3600 feet downstream of Mize Road	*1316
Just downstream of Dam No. 7	*1358
Lick Log Creek:	
At mouth	*1302
Just downstream of Camp Creek Road	*1352
Law Creek:	
At mouth	*1313
Just downstream of State Route 197	*1327
Little Hazel Creek:	
At mouth	*1323
Just downstream of Dam No. 21	*1366
Cocklebur Creek:	
At mouth	*1329
Just downstream of Dam No. 19	*1347
Soquee River:	
About 1250 feet downstream of Monroe Street	*1300
About 4200 feet upstream of Bridge Street	*1310
Maps available for inspection at the Planning Office, 8 Courthouse Square, Clarkesville, Georgia.	
Lumpkin County (unincorporated areas) (FEMA Docket No. 6994).	
Yahoola Creek:	
Just upstream of State Route 52	*1217
Just downstream of Remer Gooch Road	*1551
Cane Creek:	
Just downstream of confluence of Crooked Creek	*1179
Just downstream of Oak Grove Road	*1200
Just upstream of Oak Grove Road	*1214
At confluence of Little Cane Creek	*1265
Little Cane Creek:	
At mouth	*1265
Just downstream of Wash Rider Road	*1309
Clay Creek:	
At mouth	*1192
Just downstream of Oak Grove Road	*1308
Ward Creek:	
At mouth	*1218
Just downstream of Cavender Creek Road	*1296
Just upstream of Cavendar Creek Road	*1304
About 2000 feet upstream of Cavender Creek Road	*1309
Left Fork Cavenders Creek:	
About 1100 feet upstream of mouth	*1296
About 2450 feet upstream of Cavender Creek Road	*1379
Dowdy Branch:	
At mouth	*1287
Just downstream of Oak Grove Road	*1324
Tributary B:	
At mouth	*1279
Just downstream of Duffie Grizzle Road	*1430
Tributary C:	
At mouth	*1182
About 1600 feet upstream of Radio Road	*1240
Tributary D:	
At mouth	*1229
Just downstream of Camp Wahsega Road	*1302
Happy Hollow Creek:	
At mouth	*1190
About 500 feet upstream of mouth	*1191
Tributary E:	
At mouth	*1281
Just downstream of Siloam Church Road	*1291

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Maps available for inspection at the Planning Office, 290 Courthouse Hill, Dahlonega, Georgia.	
IDAHO	
Fremont County (unincorporated areas) (FEMA Docket No. 6991)	
North Fork Teton River:	
At Madison County Line	*4,926
Just upstream of Teton Road Bridge	*4,938
About 500 feet downstream of divergence from Teton River	*4,940
South Fork Teton River:	
At Madison County Line	*4,929
Just upstream of Teton Road Bridge	*4,938
About 2,800 feet upstream of Teton Road Bridge	*4,940
Teton River:	
At divergence of North and South Forks Teton River	*4,940
At the east side of Section 30 in Township 7N and Range 41E	*4,949
1,000 feet west of Section line 28/29 in Township 7N, Range 41E	*4,956
Henry's Fork:	
Just above Farmer's Friend Canal Diversion Dam	*5,001
About 400 feet downstream of Chester Dam	*5,035
Above Chester Dam	*5,046
About 4,500 feet upstream of Chester Dam	*5,047
Falls River:	
At confluence with Henry's Fork	*5,046
About 400 feet upstream of County Road Bridge	*5,056
About 200 feet downstream of U.S. Highway 20 Bridge	*5,086
Maps are available for review at the Fremont County Courthouse, 151 West First North, St. Anthony, Idaho.	
MAINE	
Wiscasset (town), Lincoln County (FEMA Docket No. 6991)	
Atlantic Ocean:	
Back River:	
At Foxbird Island	*11
At State Route 144	*11
Sheepscott River: At U.S. Route 1	*11
Montsweag Brook: At U.S. Route 1	*11
Maps available for inspection at the Town Office, Wiscasset, Maine.	
MICHIGAN	
Frankfort (city), Benzie County (FEMA Docket No. 6991)	
Lake Michigan: Along shoreline	*585
Betsie Lake: Along shoreline	*585
Maps available for inspection at the City Hall, 412 Main Street, Frankfort, Michigan.	
Iron River (city), Iron County (FEMA Docket No. 6991)	
Iron River:	
About 1800 feet downstream of East Genesee Street	*1466
About 1900 feet upstream of 16th Avenue	*1486
Maps available for inspection at the City Hall, 106 West Genesee Street, Iron River, Michigan.	
MISSISSIPPI	
Lincoln County, (unincorporated areas) (FEMA Docket No. 6994)	
Hebert Branch:	
Just upstream of U.S. Route 51	*412
About 1.35 miles upstream of U.S. Route 84	*430
Maps available for inspection at the Chancery Clerk's Office, County Courthouse, Brookhaven, Mississippi.	
NEW JERSEY	
Andover (township), Sussex County (FEMA Docket No. 6987)	
Paulins Kill:	
Downstream corporate limits	*562
Upstream corporate limits	*562
Pequest River:	
Downstream corporate limits	*988
Approximately 120' upstream of U.S. Route 206	*989
Kymers Brook:	
Downstream corporate limits	*571
Upstream corporate limits	*575
Maps available for inspection at the Municipal Building, 134 Newton-Sparta Road, Newton, New Jersey.	
Liberty (township), Warren County (FEMA Docket No. 6991)	
Pequest River:	
Approximately 650 feet north of the intersection of Hope Road and the eastern corporate limits	*817
Approximately 850 feet south of the intersection of Shades of Death Road and the corporate limits	*519
Maps available for inspection at the Town Clerk's Office, Municipal Building, Great Meadows, New Jersey.	
NEW YORK	
Newport (village), Herkimer County (FEMA Docket No. 6987)	
West Canada Creek:	
At Newport Hydroelectric Dam	*840
At upstream corporate limits	*842
Maps available for inspection at the Village Library, South Main Street, Newport, New York.	
NORTH CAROLINA	
Bald Head Island (village), Brunswick County (FEMA Docket No. 6994)	
Atlantic Ocean:	
About 1300 feet north of the intersection of Federal Road and Unnamed Road	*9
Along southern shoreline	*19
Maps available for inspection at the Village Hall, P.O. Drawer 10065, Bald Head Island, North Carolina.	
Brunswick County (unincorporated areas) (FEMA Docket No. 6994)	
Atlantic Ocean/Intracoastal Waterway:	
About 2400 feet west of Snows Point	*10
Within Tubbs Inlet	*23
Maps available for inspection at the County Planning Office, County Complex, Bolivia, North Carolina.	
Caswell Beach (town), Brunswick County (FEMA Docket No. 6994)	
Atlantic Ocean/Intracoastal Waterway:	
Just west of the southern end of the CP&L Discharge Canal	*12
About 400 feet south of the southeastern end of the CP&L Discharge Canal	*22
Maps available for inspection at the Town Hall, Caswell Beach, North Carolina.	
Holden Beach (town), Brunswick County (FEMA Docket No. 6994)	
Atlantic Ocean/Intracoastal Waterway:	
About 1000 feet north of the intersection of Ocean Boulevard and Ferry Road	*13
About 450 feet south of the intersection of Ocean Boulevard and Ferry Road	*23
Maps available for inspection at the Town Hall, 110 Rothschild Street, Holden Beach, North Carolina.	
Long Beach (town), Brunswick County (FEMA Docket No. 6994)	
Atlantic Ocean:	
About 150 feet south of the intersection of East Ocean Highway and 25th Street East	*12
About 250 feet south of the intersection of 25th Place East and East Beach Drive	*23
Maps available for inspection at the Town Hall, Long Beach, North Carolina.	
Ocean Isle Beach (town), Brunswick County (FEMA Docket No. 6994)	
Atlantic Ocean:	
About 2900 feet north of the intersection of Third Street and State Road 904	*19
About 300 feet south of the intersection of Isle Plaza and 1st Street	*23
Maps available for inspection at the Town Hall, Route 2, Ocean Isle Beach, North Carolina.	
Sunset Beach (town) Brunswick County (FEMA Docket No. 6994)	
Atlantic Ocean/Intracoastal Waterway:	
At the intersection of 6th Street and South Shore Drive	*13
About 900 feet south of the intersection of 6th Street and Main Street	*23
Maps available for inspection at the Town Hall, 220 Shoreline Drive, Sunset Beach, North Carolina.	
Yaupon Beach (town), Brunswick County (FEMA Docket No. 6994)	
Atlantic Ocean:	
About 200 feet south of the intersection of Ocean Drive and Trott Street	*22
Intracoastal Waterway/Elizabeth River:	
About 1100 feet north of the intersection of Yaupon Drive and Womble Street	*12
Maps available for inspection at the Town Hall, 518 Yaupon Road, Yaupon Beach, North Carolina.	
OHIO	
Richland County (unincorporated areas) (FEMA Docket No. 6994)	
Rocky Fork:	
Just downstream of Interstate 71	*1120
About 0.8 mile upstream of South Illinois Avenue	*1136
Clear Fork Mohican River:	
About 0.8 mile downstream of Bixler Road	*1130
Just downstream of Clear Fork Dam	*1163
Black Fork Mohican River:	
Just upstream of Plymouth-Springmill Road	*1067
About 1850 feet upstream of Myers Road	*1127
Bear Run:	
At mouth	*1089
Just downstream of Myers Road	*1162
West Branch Bear Run:	
At mouth	*1089
Just downstream of Smiley Road East	*1106
East Branch Bear Run:	
At mouth	*1104
About 300 feet upstream of Plymouth-Springmill Road	*1126
Tuby Run:	
Just upstream of Vernon Road	*1104
About 2450 feet upstream of Abandoned Railroad	*1121
Upper Tuby Tributary:	
At mouth	*1105
About 4350 feet upstream of mouth	*1113
Lower Tuby Tributary:	
At mouth	*1107
About 4450 feet upstream of mouth	*1115
Hartman Bargaheiser Ditch:	
Just upstream of School Lane	*1088
About 600 feet upstream of School's Lane	*1089
West Branch:	
About 300 feet downstream of South Gamble Street	*1086

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
About 900 feet upstream of State Route 61	*1113
West Branch Tributary:	
At mouth	*1105
Almost 3420 feet upstream of Vernon Road	*1120
Seltzer Park Creek:	
About 1850 feet downstream of CSX railroad	*1124
About 1.5 miles upstream of CSX railroad	*1139
Seltzer Park Tributary:	
At mouth	*1129
About 1000 feet downstream of Myers Road	*1154
Maps available for inspection at the County Emergency Management Agency, County Courthouse, 90 Park Avenue, East, Mansfield, Ohio.	
Ross County (unincorporated areas) (FEMA Docket No. 6904)	
Paint Creek:	
At mouth	*611
About 2.0 miles upstream of confluence of Rattlesnake Run	*655
North Fork Paint Creek:	
At mouth	*632
Just downstream of Maple Grove Road	*683
Scioto River:	
About 0.80 mile downstream of confluence of Paint Creek	*610
About 3.3 miles upstream of upstream U.S. Route 35	*632
Salt Creek:	
Just upstream of U.S. Route 35	*593
Just downstream of CSX railroad	*598
Little Salt Creek:	
About 1100 feet upstream of mouth	*587
About 400 feet upstream of southeast county boundary	*602
Maps available for inspection at the Planning Commission, County Courthouse, Chillicothe, Ohio.	
OKLAHOMA	
Cherokee County (unincorporated areas) (FEMA Docket No. 6901)	
Illinois River:	
Approximately 1.2 miles downstream of Combs Road	*767
Approximately .8 mile upstream of confluence of Peavine Hollow Creek	*795
Spring Creek:	
Approximately 1,600 feet downstream of Tenaha Road	*833
Approximately 7.0 miles upstream of Tenaha Road	*940
Double Spring Creek:	
Approximately 100 feet downstream of confluence of Stream A	*583
Approximately 1.9 miles upstream of Birch Street	*638
East Branch:	
Downstream side of Cedar Avenue	*813
Approximately 1,200 feet upstream of Crafton Street	*866
Stream A:	
At the confluence with Double Spring Creek	*583
Approximately 631 feet upstream of Main Street	*603
Stream B:	
At the confluence with Double Spring Creek	*590
Approximately 1,300 feet upstream of State Route 80	*801
Maps available for inspection at the County Courthouse, 213 W. Delaware, Tahlequah, Oklahoma.	
Del City (city), Oklahoma County (FEMA Docket No. 6901)	
Crutcho Creek:	
Upstream side of Sooner Road	*1,170
Downstream side of Sooner Road	*1,197
Crutcho Creek Tributary A:	
At confluence with Crutcho Creek	*1,194
Approximately 400 feet upstream of S.E. 20th Street	*1,194
Crutcho Creek Tributary B:	
At confluence with Crutcho Creek	*1,196
Approximately 750 feet upstream of confluence with Crutcho Creek	*1,196
Maps available for inspection at 4517 SE. 29th Street, Del City, Oklahoma.	
Muskogee County (unincorporated areas) (FEMA Docket No. 6901)	
Arkansas River Lower Reach:	
Approximately 0.78 mile downstream of U.S. Route 100 and U.S. Route 64	*481
Approximately 0.36 mile upstream of U.S. Route 100 and U.S. Route 64	*482
Arkansas River Middle Reach:	
Approximately 2.4 miles downstream of confluence of Coody Creek	*512
At Missouri-Kansas-Texas Railroad	*516
Arkansas River Upper Reach:	
Approximately 1.22 miles downstream of U.S. Route 69	*515
Approximately 2.86 miles upstream of Old U.S. Route 64	*523
Coody Creek:	
At the confluence with Arkansas River	*513
Approximately 1.6 miles upstream of South 40th Street	*600
Coody Creek Tributary A:	
At confluence with Coody Creek	*574
Approximately 1 mile upstream of Hancock Street	*623
Corta Creek:	
At confluence with Coody Creek	*526
Approximately 0.75 mile upstream of Union Pacific Railroad	*564
Sam Creek:	
At confluence with Coody Creek	*519
Approximately 1.59 miles upstream of Gulick Avenue	*559
Sam Creek Tributary A:	
At confluence with Sam Creek	*522
Approximately 100 feet upstream of Carol Lee Road	*546
Sam Creek Tributary B: Approximately 0.56 mile upstream of confluence with Sam Creek	*549
Virgie Creek:	
Approximately 0.86 mile downstream of 24th Street	*515
Approximately 0.8 mile upstream of 54th Street	*600
Pecan Creek:	
At confluence with Arkansas River	*520
Approximately 2.33 miles upstream of NW. 78th Street	*537
Dirty Creek:	
Approximately 0.67 mile downstream of U.S. Route 64	*500
Approximately 0.86 mile upstream of confluence of Georges Fork Creek	*501
Georges Fork Creek:	
At confluence with Dirty Creek	*501
Approximately 0.81 mile upstream of Interstate Route 40	*505
Porum Creek Tributary A:	
Approximately 100 feet downstream of State Route 2	*563
Approximately 1,000 feet upstream of Cherokee Avenue	*599
Stream E:	
At confluence with Coody Creek	*517
At Hancock Street	*533
Stream G:	
Approximately 0.34 mile downstream of Hancock Street	*534
Approximately 200 feet upstream of Hancock Street	*537
Stream I:	
Approximately 119 feet upstream of Burlington Northern Railroad	*572
Grand River:	
Approximately 1.8 miles downstream of Union Pacific Railroad	*516
At the County boundary	*517
Haskell Creek:	
Approximately 0.13 mile downstream of State Route 104 (Center Street)	*561
Approximately 325 feet upstream of State Route 104	*563
Maps available for inspection at the Muskogee County Courthouse, Muskogee, Oklahoma.	
PENNSYLVANIA	
Brokenstraw (township), Warren County (FEMA Docket No. 6900)	
Allegheny River:	
At downstream corporate limits	*1,144
At upstream corporate limits	*1,159
Brokenstraw Creek:	
Confluence with Allegheny River	*1,157
Approximately 400 feet upstream of upstream corporate limits	*1,236
Irvine Run:	
At confluence with Brokenstraw Creek	*1,157
Approximately 2.3 miles upstream of upstream crossing of Old State Route 62	*1,440
Matthews Run:	
At downstream corporate limits	*1,225
At upstream corporate limits	*1,403
Maps available for inspection at the Township Building, Pittsfield, Pennsylvania.	
Bullskin (township), Fayette County (FEMA Docket No. 6907)	
Jacobs Creek:	
At the downstream corporate limits	*1,039
At the upstream corporate limits	*1,142
Mounts Creek:	
Approximately 265 feet downstream of downstream corporate limits	*925
Approximately 55 feet upstream of Township Route 819	*1,214
Irish Run:	
At the confluence with Mounts Creek	*950
Approximately 1,650 feet upstream of Old U.S. Route 119	*1,022
Breakneck Run:	
At the confluence with Whites Run	*996
Approximately 1,500 feet upstream of State Route 1019	*1,152
Maps available for inspection at the Township Building, Shenandoah Road, Bullskin, Pennsylvania.	
Cromwell (township), Huntingdon County (FEMA Docket No. 6904)	
Jordan Run:	
At the confluence with Blacklog Creek	*619
Approximately 100 feet upstream of confluence	*620
Blacklog Creek:	
Approximately 100 feet downstream of confluence of Jordan Run	619
Approximately .4 mile upstream of State Route 994 (Meadow Street)	*642
Maps available for inspection at the Township Building, Valley Street, Rockhill, Pennsylvania.	
Dunbar (borough), Fayette County (FEMA Docket No. 6901)	
Dunbar Creek:	
At downstream corporate limits	*934
At upstream corporate limits	*967
Maps available for inspection at the Borough Building, Dunbar, Pennsylvania.	
East Butler (borough), Butler County (FEMA Docket No. 6901)	
Bonnie Brook:	
At downstream corporate limits	*1,018
Approximately 225 feet upstream of upstream corporate limits	*1,028
Maps available for inspection at the Borough Building, Madison Avenue, East Butler, Pennsylvania.	
Fairchance (borough), Fayette County (FEMA Docket No. 6907)	
Georges Creek:	
At downstream corporate limits	*1,016
At L.R. 26197 (North Main Street)	*1,113
Muddy Run:	
Approximately 150 feet downstream of the downstream corporate limits	*1,102
At upstream corporate limits	*1,033
Maps available for inspection at the Borough Building, 125 West Church Street, Fairchance, Pennsylvania.	
Franklin (township), Fayette County (FEMA Docket No. 6901)	
Redstone Creek:	
Approximately 225 feet downstream of State Route 4026	*866
At upstream corporate limits	*921
Bute Run:	
At downstream corporate limits	*927
Approximately 350 feet upstream of State Route 4010	*989
Youghiogheny River:	
At downstream corporate limits	*833
At upstream corporate limits	*848
Maps available for inspection at the Township Building, R.D. 1, Box 122, Vanderbilt, Pennsylvania.	
Georges (township), Fayette County (FEMA Docket No. 6907)	
Georges Creek:	
Downstream corporate limits	*944
Upstream corporate limits at Borough of Fairchance	*1,016
Mountain Creek:	
Confluence with Georges Creek	*949
Approximately 825 feet upstream of State Route 3007	*1,000
Muddy Run:	
Confluence with Georges Creek	*1,010
Approximately 1,340 feet upstream of confluence with Georges Creek	*1,014
Maps available for inspection at the Georges Township Building, Uniontown, Pennsylvania.	
German (township), Fayette County (FEMA Docket No. 6907)	
Monongahela River:	
At downstream corporate limits	*790
Approximately 1.8 miles upstream of confluence of Browns Run	*795
Dunlap Creek:	
At downstream corporate limits	*958
Approximately 1.7 miles upstream of L.R. 26203	*1,016
Browns Run:	
At confluence with Monongahela River	*782
At confluence of N. Branch Browns Run and South Branch Browns Run	*951
North Branch Browns Run:	
At confluence with Browns Run and South Branch Browns Run	*951
At upstream corporate limits	*1,077
South Branch Browns Run:	
At confluence with Browns Run and North Branch Browns Run	*951
Approximately 1,670 feet upstream of L.R. 26008	*1,001
Maps available for inspection at the Municipal Building, R.D. 1, Box 287, McClellandtown, Pennsylvania.	
Menallen (township), Fayette County (FEMA Docket No. 6907)	
Redstone Creek:	
At downstream corporate limits	*672
At upstream corporate limits	*916
Dunlap Creek:	
At confluence with Saltlick Run	*967
Approximately 1.7 miles upstream of L.R. 26203	*1,017
Jennings Run:	
Approximately 1,450 feet downstream of U.S. Route 40	*1,002
At State Route 21	*1,112
Saltlick Run:	
At confluence with Dunlap Creek	*967
Approximately 0.9 mile upstream of confluence with Dunlap Creek	*982
Maps available for inspection at the Menallen Township Building, Uniontown, Pennsylvania.	

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
North Union (township), Fayette County (FEMA Docket No. 6907)	
Redstone Creek:	
At downstream corporate limits	*916
Approximately 900 feet upstream of upstream corporate limits	*952
Dove Run:	
At confluence with Redstone Creek	*957
Approximately 650 feet upstream of State Route 1055	*1,042
Jennings Run:	
Approximately 1,450 feet downstream of U.S. Route 40	*1,002
At U.S. Route 40	*1,011
Bute Run:	
At confluence with Redstone Creek	*925
At corporate limits	*927
Maps available for inspection at the Township Building, 229 Brown Boulevard, Uniontown, Pennsylvania.	
Orbisonia (borough), Huntingdon County (FEMA Docket No. 6904)	
Blacklog Creek:	
Approximately 50 feet west of a point on Abandoned Railroad located approximately 100 feet north of its crossing over Blacklog Creek	*624
Approximately 150 feet south of the intersection of Water and Winchester Streets	*625
Maps available for inspection at the Borough Hall, Elliot Street, Orbisonia, Pennsylvania.	
Saltlick (township), Fayette County (FEMA Docket No. 6901)	
Indian Creek:	
At the downstream corporate limits	*1,374
At the upstream corporate limits	*1,482
Back Creek:	
At the confluence with Indian Creek	*1,391
Approximately 700 feet upstream of T-727	*1,570
Maps available for inspection at the Township Building, Saltlick, Pennsylvania.	
Sandy Lake (borough), Mercer County (FEMA Docket No. 6907)	
Sandy Creek:	
At downstream corporate limits	*1,157
At upstream corporate limits	*1,166
Outlet to Sandy Lake:	
At the confluence with Sandy Creek	*1,158
At corporate limits	*1,163
Maps available for inspection at the Borough Building, 261 Main Street, Sandy Lake, Pennsylvania.	
South Pymatuning (township), Mercer County (FEMA Docket No. 6901)	
McCullough Run:	
At the downstream corporate limits	*882
Approximately .45 mile upstream of State Route 718	*1,008
Maps available for inspection at the Township Building, Tamarack Drive, Sharpeville, Pennsylvania.	
South Union (township), Fayette County (FEMA Docket No. 6907)	
Redstone Creek:	
Approximately 920 feet downstream of Grant Street	*966
Approximately .6 mile upstream of T.R. 620	*1,075
Lick Run:	
At confluence with Redstone Creek	*1,024
At Buttermilk Lane	*1,190
Bennington Spring Run:	
At confluence with Lick Run	*1,041
At U.S. Route 40	*1,101
Coal Lick Run:	
Approximately .4 mile downstream of L.R. 26185	*986
At upstream corporate limits	*1,049
Jennings Run:	
At U.S. Route 40	*1,011
At State Route 21	*1,112
Maps available for inspection at the Township Building, Township Drive, Uniontown, Pennsylvania.	
Springfield (township), Fayette County (FEMA Docket No. 6907)	
Youghiogheny River:	
At the downstream corporate limits	*944
At the upstream corporate limits	*1,029
Mill Run:	
At the confluence with Mill Run Reservoir	*1,255
Approximately 1,500 feet upstream of T-525	*1,807
Poplar Run:	
At the confluence with Indian Creek	*1,367
Approximately 1,000 feet upstream of T-944	*1,524
Maps available for inspection at the Township Building, Route 711, Mill Run, Pennsylvania.	
Springhill (township), Fayette County (FEMA Docket No. 6901)	
Monongahela River:	
At downstream corporate limits	*809
At upstream corporate limits	*809
Chest River:	
At confluence with Monongahela River	*808
At upstream corporate limits	*817
Maps available for inspection at the Township Building, Smithfield, Pennsylvania.	
Stoneboro (borough), Mercer County (FEMA Docket No. 6901)	
Sawmill Run:	
Approximately 660 feet downstream of downstream corporate limits	*1,164
Approximately 700 feet upstream of U.S. Route 62	*1,232
Maps available for inspection at the Borough Building, 2655 Lake Street, Stoneboro, Pennsylvania.	
Utica (borough), Venango County (FEMA Docket No. 6901)	
French Creek:	
At downstream corporate limits	*1,032
Approximately 140 feet upstream corporate limits	*1,040
Maps available for inspection at the Borough Building, R.D. 1, Box 169, Utica, Pennsylvania.	
RHODE ISLAND	
Smithfield (town), Providence County (FEMA Docket No. 6901)	
Woonasquatucket River:	
Approximately 1,000 feet downstream of Esmond Miller Road	*116
At upstream corporate limits	*256
Stillwater River:	
Approximately 200 feet downstream of Mountandale Avenue	*211
Approximately 1,125 feet upstream of Greenville Road	*322
Unnamed Tributary:	
Approximately 850 feet downstream of South Glen Drive	*241
At Slack Reservoir Dam	*364
Maps available for inspection at the Town Engineer's Office, 64 Farnum Pike, Esmond, Rhode Island 02917.	
Warwick (city), Kent County (FEMA Docket No. 6907)	
Narragansett Bay:	
Pawtuxet Cove	*20
Occupessatuxet Cove	*20
Confluence with Old Mill Creek	*19
Warwick Cove	*20
West Side of Warwick Point	*27
Apponaug Cove	*20
Greenwich Cove	*20
Potowomut River	*21
Meshanticutt Brook:	

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
At downstream corporate limits	*76
Approximately 100 feet upstream of Interstate Route 95	*114
Hardig Brook:	
Approximately 500 feet downstream of Orchard Road	*48
At upstream corporate limits	*120
Pawtuxet River:	
Approximately .7 mile downstream of Pontiac Dam	*25
Upstream corporate limits	*55
Maps available for inspection at the City Hall, Planning Department, Warwick, Rhode Island.	
SOUTH CAROLINA	
Bamberg County (unincorporated areas) (FEMA Docket No. 6994)	
Lemon Creek:	
About 1200 feet downstream of State Highway 77	*127
Just downstream of confluence of Grapevine Creek	*139
Grapevine Branch:	
At mouth	*139
Just downstream of Oak Road	*146
Halfmoon Branch:	
At mouth	*133
Just downstream of confluence of Halfmoon Branch	*149
Halfmoon Tributary:	
At mouth	*149
About 1.27 mile upstream of Barnwell Road	*172
Savannah Creek:	
At county boundary	*96
Just downstream of dam	*125
About 3250 feet upstream of State Highway 426	*132
Maps available for inspection at the County Office Building, Bamberg, South Carolina.	
Charleston County (unincorporated areas) (FEMA Docket No. 6994)	
Atlantic Ocean/Folly River:	
About 2100 feet south of the intersection of Folly Beach Road and Oak Island Road	*14
Just west of the intersection of Folly Beach Road and Oak Island Road	*15
Maps available for inspection at the County Planning Department, County Courthouse, Charleston, South Carolina.	
Folly Beach (township), Charleston County (FEMA Docket No. 6994)	
Atlantic Ocean:	
About 2,000 feet north of intersection of Center Street and Indian Avenue	*14
Along shoreline	*23
Maps available for inspection at the City Hall, Folly Beach, South Caroline.	
Horry County (unincorporated areas) (FEMA Docket No. 6994)	
Atlantic Ocean:	
At intersection of Veteen Road and Stanley Drive	*12
About 275 feet southeast of Atlantic Avenue and Ocean Boulevard	*23
Maps available for inspection at the County Planning Department, County Courthouse, 911 Main Street, Conway, South Caroline.	
Isle of Palms (city), Charleston County (FEMA Docket No. 6994)	
Atlantic Ocean:	
At intersection of Forest Trail and 41st Avenue	*13
Along shoreline	*23
Maps available for inspection at the City Hall, Isle of Palms, South Caroline.	
Sullivans Island (city), Charleston County (FEMA Docket No. 6994)	
Atlantic Ocean:	
At intersection of Station 26½ Street and Goldbug Avenue	*13
Along shoreline, about 400 feet southeast of intersection of Station 26 Street and Bayonne Street	*23
Maps available for inspection at the Town Hall, Sullivans Island, South Carolina.	
Union County (unincorporated areas) (FEMA Docket No. 6994)	
Broad River:	
About 1.25 miles downstream of confluence of Cox Creeks	*315
About 1.48 miles upstream of Lockhart Dam	*417
Cox Creeks:	
At mouth	*319
Just downstream of CSX railroad	*365
Just upstream of CSX railroad	*371
Tributary B:	
At mouth	*323
Just upstream of CSX railroad	*334
Carse:	
At confluence with Broad River	*366
Just downstream of Power Dam	*367
Just upstream of Power Dam	*393
Just downstream of State Route 49	*394
Maps available for inspection at the County Office Building, Union, South Carolina.	
TENNESSEE	
Brighton (town), Tipton County (FEMA Docket No. 6994)	
Hatchel Creek:	
Just downstream of McClure Street	*301
Just downstream of Kenwood Street	*309
Maps available for inspection at the City Hall, Brighton, Tennessee.	
Covington (city), Tipton County (FEMA Docket No. 6994)	
Town Creek:	
About 800 feet downstream of Flat Iron Road	*279
About 750 feet upstream of Liberty Avenue	*296
Maps are available for inspection at the City Hall, Covington, Tennessee.	
Greene County (unincorporated areas) (FEMA Docket No. 6991)	
Pond Creek:	
About 600 feet downstream of Brown Springs Road	*1062
About 0.56 mile upstream of Jim Kirk Road	*1098
Lick Creek:	
Just upstream of Green Road	*1074
Just downstream of Andrew Johnson Highway	*1091
Maps are available for inspection at the County Courthouse, Greenville, Tennessee.	
Hamblen County (unincorporated areas) (FEMA Docket No. 6991)	
Nolichucky River:	
About 1.19 miles downstream of Enka Dam	*1022
About 800 feet upstream of confluence of Bent Creek	*1044
Bent Creek:	
At confluence with Nolichucky River	*1043
About 1900 feet upstream of Interstate 81	*1049
Cherokee Lake: Along shoreline	*1075
Sinking Creek:	
At county boundary	*1173
Just downstream of Norfolk Southern Railway (about 0.46 mile upstream of Wallace Farm Road)	*1195
Just upstream of Norfolk Southern Railway (about 0.46 mile upstream of Wallace Farm Road)	*1201
At confluence of Tributary to Sinking Creek	*1256
Panther Creek:	
At mouth	*1075
Just downstream of Panther Lake Dam	*1169
Just upstream of Panther Lake Dam	*1179
Just downstream of Mountain Laurel Road	*1179
Just upstream of Mountain Laurel Road	*1187
About 2200 feet upstream of Mountain Laurel Road	*1194
Tributary to Sinking Creek:	
At mouth	*1268
Just downstream of Norfolk Southern Railway	*1272
Just upstream of Norfolk Southern Railway	*1277
About 300 feet upstream of Sulphur Springs Road	*1293
Maps are available for inspection at the County Courthouse, Morristown, Tennessee.	
Hardeman County (unincorporated areas) (FEMA Docket No. 6994)	
Spring Creek:	
Just upstream of U.S. Route 64	*352
Just downstream of Sain Road	*373
Maps are available for inspection at the County Courthouse, Bolivar, Tennessee.	
Hardin County (unincorporated areas) (FEMA Docket No. 6994)	
Tennessee River:	
At northern county boundary	*391
Just downstream of Pickwick Dam	*404
Just upstream of Pickwick Dam	*420
At state boundary	*420
Horse Creek:	
At mouth	*398
About 3.98 miles upstream of Sylvan Heights Road	*456
Maps are available for inspection at the County Courthouse, Savannah, Tennessee.	
Hawkins County (unincorporated areas) (FEMA Docket No. 6991)	
Holston River:	
At Cherokee Lake	*1075
About 1400 feet downstream of Goshen Valley Road	*1142
About 2700 feet upstream of U.S. Government Railroad	*1176
North Fork Holston River:	
About 1700 feet downstream of CSX Railroad	*1179
About 1950 feet upstream of Carter Valley Road	*1205
Crockett Creek:	
At mouth	*1075
About 1.84 miles upstream of Arrowhead Drive	*1222
Maps available for inspection at the County Courthouse, 150 Washington Street, Rogersville, Tennessee.	
McNairy County (unincorporated areas) (FEMA Docket No. 6994)	
Snake Creek:	
At county boundary	*402
Just downstream of Old Stage Road	*415
Cypress Creek:	
Just upstream of Falcon Road	*429
At confluence of Turkey Creek	*442
Maps available for inspection at the County Courthouse, Selmer, Tennessee.	
Tipton County (unincorporated areas) (FEMA Docket No. 6994)	
Hatchal Creek:	
Just upstream of Indian Creek Road	*298
Just downstream of Kenwood Street	*309
Town Creek:	
Just upstream of Laighs Chapel Road	*273
Just downstream of George Gracey Highway	*305
Mississippi River:	
At downstream county boundary	*237
About 3.85 miles upstream of confluence of Hatchie River	*251

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Maps available for inspection at the County Courthouse, Covington, Tennessee.	
TEXAS	
Allen (city), Collin County (FEMA Docket No. 6992)	
Cottonwood Creek No. 1:	
Approximately 900 feet upstream of confluence with Mustang Creek	*586
At upstream side of State Route 121	*675
Mustang Creek:	
Approximately 300' upstream of confluence with Cottonwood Creek No. 1	*583
Approximately 1,375 feet upstream of FM 2170	*652
Stream 2F1:	
At confluence with Watters Branch	*604
Approximately 770 feet upstream of the confluence with Watters Branch	*604
Stream 2G2:	
At confluence with Cottonwood Creek No. 1	*604
Approximately 570 feet upstream of Keith Drive	*630
Stream 2G3:	
At confluence with Cottonwood Creek No. 1	*616
At upstream side of Allen Drive	*651
Stream 2G5:	
At confluence with Cottonwood Creek No. 1	*620
Approximately 0.9 mile upstream of confluence with Cottonwood Creek No. 1	*656
Watters Branch:	
At confluence with Rowlett Creek	*585
At upstream side of State Route 121	*696
West Rowlett Creek:	
At confluence with Rowlett Creek	*611
At upstream side of State Route 121	*642
Rowlett Creek:	
Approximately 800 feet upstream of State Route 5	*577
At State Route 121	*638
Maps available for inspection at the City Engineer's Office, One Butler	
Brewster County (unincorporated areas) (FEMA Docket No. 6990)	
Alpine Creek:	
Approximately 360 feet downstream of Hendrix Street	*4,413
Approximately 100 feet downstream of the upstream City of Alpine corporate limits	*4,527
West Moss Creek:	
At the City of Alpine corporate limits	*4,512
At the divergence from Moss Creek	*4,536
Tributary 1:	
At the City of Alpine corporate limits	*4,548
Approximately 50 feet downstream of the divergence of Tributary 3	*4,550
Toronto Creek:	
Approximately 1,600 feet downstream of State Route 118	*4,430
Approximately .65 mile upstream of Atchison Topeka & Santa Fe Railroad	*4,511
Tributary 3:	
At the confluence with Toronto Creek	*4,459
At Southern Pacific Railroad Bridge	*4,542
Moss Creek:	
Approximately 1,300 feet downstream of U.S. Route 67 and 90	*4,429
Approximately 2,200 feet upstream of divergence of West Moss Creek	*4,558
East Moss Creek:	
At the confluence with Moss Creek	*4,450
Approximately 500 feet upstream of Southern Pacific Railroad	*4,466
Maps available for inspection at the County Courthouse, Alpine, Texas.	
Cameron County (unincorporated areas) (FEMA Docket No. 6991)	
Gulf of Mexico:	
Approximately 800 feet south of southwestern tip of South Padre Island corporate limits	*7
Eastern edge of Padre Island at northern corporate limits	*13
Laguna Madre: Western edge of Padre Island of northern corporate limits	*10
Clay County (unincorporated areas) (FEMA Docket No. 6991)	
Dry Fork Little Wichita River:	
Approximately 1.4 miles downstream of U.S. Route 82	*853
Approximately 3.6 miles upstream of County Route 2847	*902
Lake Arrow Head: Entire shoreline within community	*832
Maps available for inspection at the County Courthouse, Henrietta, Texas.	
Ector County (unincorporated areas) (FEMA Docket No. 6975)	
Monahans Draw:	
Approximately 1.2 miles downstream of Grandview Road	*2,835
Upstream side of Dixie Boulevard	*2,862
Upstream side of Avenue L	*2,906
Upstream side of Clendenen Drive	*2,936
Upstream side of Knox Drive	*2,971
Upstream side of State Route 886	*3,042
Monahans Draw Tributary 1:	
At confluence with Monahans Draw	*2,931
At Cypress Road	*2,964
Monahans Draw Tributary 2:	
At the confluence with Monahans Draw	*2,978
Approximately 0.7 mile upstream of Westcliff Drive	*3,015
Far East Channel:	
Approximately 90 feet downstream of confluence of East Side Channel	*2,856
Southeast City of Odessa corporate limits	*2,861
East Side Channel:	
Approximately 0.5 mile downstream of Odessa coporate limits	*2,856
Southeast City of Odessa corporate limits	*2,861
Muskingum Draw:	
At confluence with Monahans Draw	*2,870
Approximately 500 feet upstream of Kentucky Avenue	*2,950
Playa No. 1	*2,990
Playa No. 2	*3,002
Playa No. 3	*2,977
Playa No. 4	*2,980
Playa No. 5	*2,984
Playa No. 6	*2,988
Playa No. 7	*2,980
Playa No. 8	*2,975
Playa No. 10	*2,956
Playa No. 11 B	*2,945
Playa No. 13	*2,982
Playa No. 17	*2,907
Playa No. 21	*2,912
Playa No. 25	*2,933
Playa No. 26	*2,932
Playa No. 27	*2,936
Playa Nos. 28 & 29	*2,937
Playa No. 30	*2,950
Playa No. 31	*2,992
Maps available for inspection at the Ector County Courthouse, 3rd and Grant, Odessa, Texas 79760.	
Lucas (city), Collin County (FEMA Docket No. 6991)	
Muddy Creek (Upper Reach):	
Approximately 150 feet downstream of FM 2514	*544
Approximately 130 feet upstream of County Road	*573
White Rock Creek (East):	
Approximately 850 feet downstream of Blondy Jhune Road	*524
Approximately 60 feet upstream of FM 1378	*583
Reid Branch:	
At confluence with White Rock Creek (East)	*524
Approximately 350 feet downstream of Blondy Jhune Road	*550
Maps available for inspection at the City Hall, 325 West Lucas Road, Lucas, Texas.	
Odessa (city), Ector County (FEMA Docket No. 6975)	
Monahans Draw:	
Approximately 1,770 feet downstream of southern corporate limits	*2,850
Immediately upstream of Interstate Route 20	*2,878
Immediately upstream of U.S. Route 80	*2,896
Immediately upstream of F.M. 1936 and western most corporate limits	*2,920
Far East Channel:	
Southeast corporate limits	*2,861
Confluence of Stream FEC–1	*2,888
Immediately upstream of West Entrance Road to U.T.P.B. (Maple Avenue)	*2,906
Stream FEC–1:	
At confluence with Far East Channel	*2,888
Approximately 700 feet upstream of Unnamed Caliche Road	*2,900
Stream FEC–1A:	
Confluence with FEC–1	*2,893
Approximately 0.21 mile upstream of Campus Road (Ground Level)	*2,906
East Side Channel:	
Southeast corporate limits	*2,861
At confluence of East Side Channel Split Flow	*2,888
Immediately downstream of Custer Street	*2,910
East Side Channel Split Flow:	
At confluence with East Side Channel	*2,888
At divergence from East Side Channel	*2,908
Muskingum Draw:	
At confluence with Monahans Draw	*2,870
At intersection of Adams Avenue and University Boulevard	*2,911
At intersection of 52nd Street and Dixie Boulevard	*2,939
Approximately 300 feet upstream of Yukon Road	*2,947
West Side Drainage Channel:	
At confluence with Moehens Draw	*2,896
Approximately 800 feet upstream of W. 18th Street	*2,913
Playa No. 11B	*2,946
Playa No. 12	*2,942
Playa No. 14	*2,911
Playa No. 15	*2,905
Playa No. 16	*2,905
Playa No. 17	*2,907
Playa No. 19	*2,903
Playa No. 20	*2,894
Playa No. 24	*2,913
Playa No. 25	*2,933
Playa Nos. 28 & 29	*2,937
Maps available for inspection at the City Hall, 411 West Eighth Street, Odessa, Texas 79760.	
Plano (city), Collin County (FEMA Docket No. 6992)	
Bowman Branch:	
At confluence with Brown Branch	*569
Approximately 1,100 feet downstream of Thunderbird Lane	*645
Brown Branch:	
Approximately 1,900 feet upstream of confluence with Rowlett Creek	*548
Approximately 80 feet upstream of Alma Drive	*659
Indian Creek:	
At Burlington Northern Railroad	*567
Approximately .5 mile upstream of Burlington Northern Railroad	*579
Rowlett Creek:	
Approximately 850 feet downstream of the St. Louis Southwestern Railway	*516
At New Alma Road	*594
Russell Creek:	
At the confluence with Rowlett Creek	*565
At Independence Parkway	*693
Cottonwood Creek No. 1:	
Approximately 500 feet upstream of confluence of Mustang Creek	*565
Approximately 150 feet downstream of the most upstream City of Plano corporate limits	*587
Stream 2H2:	
At the confluence with Spring Creek	*604
Approximately 840 feet upstream of the confluence with Spring Creek	*604

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Stream IC-1:	
At Burlington Northern Railroad	*569
Approximately 100 feet upstream of Midway Road	*543
Stream IC-1A:	
At the confluence with Stream IC-1	*575
Approximately 125 feet upstream of Midway Road	*549
Spring Creek:	
Approximately 400 feet downstream of the confluence with Pittman Creek	*590
Approximately 700 feet upstream of Quincy Road	*743
Stream 5818:	
At confluence with White Rock Creek	*612
Approximately .52 mile upstream of Village Creek Drive	*645
Stream 5819:	
Approximately 100 feet upstream of confluence with White Rock Creek	*612
Approximately .86 mile upstream of confluence with White Rock Creek	*631
Stream 5820:	
At confluence with White Rock Creek	*614
Approximately 1,700 feet upstream of Baltonsea Drive	*650
Stream 5821:	
Approximately 875 feet upstream of confluence with White Rock Creek	*618
Approximately 1,780 feet upstream of FM 544 (Park Boulevard)	*655
Stream 5822:	
Approximately 350 feet upstream of confluence with Stream 5821	*640
Approximately .95 mile upstream of this confluence	*667
Stream 5823:	
Approximately 1,025 feet upstream of confluence with White Rock Creek	*622
Approximately 800 feet upstream of Winding Hollow Lane	*649
Stream 5824:	
At confluence with White Rock Creek	*629
Approximately 925 feet upstream of State Route 289 (Preston Road)	*666
Stream 5825:	
At confluence with White Rock Creek	*631
At State Route 289 (Preston Road)	*674
Stream 5826:	
At confluence with White Rock Creek	*634
Approximately .54 mile upstream of confluence with White Rock Creek	*664
Stream 5827:	
At the confluence of White Rock Creek	*636
Approximately .49 mile upstream of the confluence of Stream 5828	*711
Stream 5828:	
Approximately 145 feet upstream of confluence with Stream 5827	*694
Approximately .33 mile upstream of confluence with Stream 5827	*700
Stream 5829:	
At confluence with White Rock Creek	*639
At Thompson Road	*691
Stream 5830:	
Approximately 1,360 feet upstream of confluence with White Rock Creek	*651
Approximately .49 mile upstream of Preston Meadow Drive	*715
Stream 5831:	
At confluence with White Rock Creek	*656
Approximately 450 feet upstream of Preston Meadow Drive	*712
Stream 5832:	
At confluence with White Rock Creek	*659
Approximately .36 mile upstream of confluence with White Rock Creek	*674
Stream 5833:	
At confluence with White Rock Creek	*665
Approximately 980 feet upstream of Ohio Drive	*697
Stream 5834:	
At confluence with White Rock Creek	*665
Approximately .88 mile upstream of the confluence with White Rock Creek	*689
Stream 5835:	
At confluence with White Rock Creek	*673
Approximately 1,440 feet upstream of Reeder Road	*709

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Stream 5836:	
Approximately 1,100 feet upstream of confluence with White Rock Creek	*675
Approximately 80 feet upstream of State Route 289	*695
Stream 5837:	
At confluence with White Rock Creek	*688
Approximately .80 mile upstream of confluence with White Rock Creek	*727
White Rock Creek:	
Approximately 90 feet downstream of Atchison, Topeka, & Santa Fe Railway	*697
Approximately 1,300 feet downstream of Reeder Road	*691
Pittman Creek:	
At the confluence with Spring Creek	*594
Approximately 480 feet upstream of Willebrae Drive	*739
Stream 2D11:	
At the confluence with Brown Branch	*556
Approximately 1,225 feet downstream of P Avenue	*613
Maps available for inspection at the City Hall, 1520 Avenue K, Plano, Texas	
WEST VIRGINIA	
Boone County (unincorporated areas) (FEMA Docket No. 6991)	
Big Coal River:	
Approximately .3 mile downstream of confluence of Slack Hollow	*544
Approximately .3 mile downstream of confluence of Toms Branch	*631
Little Coal River:	
Approximately 1.4 miles downstream of Big Pinnacle Branch	*660
At the State Route 17 (approximately 2.4 miles upstream of U.S. Route 119 Town of Danville corporate limits)	*702
Spruce Fork:	
At the confluence with Little Coal River	*702
At the County boundary	*805
Pond Fork:	
At the confluence with Little Coal River (City of Madison corporate limits)	*702
Approximately 300 feet upstream of confluence of Reddish Branch	*1,160
Spruce Laurel Fork:	
At the confluence with Spruce Fork	*804
Approximately .3 mile upstream of CSX Transportation	*817
West Fork:	
Approximately .3 mile downstream of confluence of Brandy Branch	*974
Approximately 875 feet upstream of confluence of Little Ugly Branch	*1,078
Maps available for inspection at the Office of Emergency Services, Boone County, 200 State Street, Madison, West Virginia.	
Braxton County (unincorporated areas) (FEMA Docket No. 6991)	
Little Kanawha River:	
At the confluence of Buffalo Creek	*756
At approximately .5 mile upstream of the upstream Town of Burnsville corporate limits	*759
Oil Creek:	
At Interstate Route 79	*759
At the confluence of Clover Fork	*782
Sattick Creek:	
Approximately .3 mile downstream of Interstate Route 79	*761
At the CSX Transportation	*769
Elk River:	
At the County boundary	*786
At approximately 600 feet upstream of Town of Sutton Corporate limits	*828
Maps available for inspection at the County Clerk's Office, Braxton County Courthouse, Sutton, West Virginia.	
Burnsville (town), Braxton County (FEMA Docket No. 6991)	
Little Kanawha River:	

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
At approximately .3 mile downstream of State Route 5	*757
At approximately 200 feet upstream of upstream corporate limits	*759
Oil Creek:	
At the confluence with the Little Kanawha River	*759
At approximately .2 mile upstream of County Route 1-7	*761
Sattick Creek:	
At the confluence with the Little Kanawha River	*759
At approximately .4 mile upstream of County Highway 5-11	*762
Maps available for inspection at the Town Hall, Municipal Street, Burnsville, West Virginia.	
Cairo (town) Ritchie County (FEMA Docket No. 6994)	
North Fork Hughes River:	
At downstream corporate limits	*672
Approximately 60 feet upstream of upstream corporate limits	*676
Maps available for inspection at the Town Hall (Old Bank Building), Cairo, West Virginia.	
Calhoun County (unincorporated areas) (FEMA Docket No. 6991)	
Little Kanawha River:	
At the confluence of Lemuels Run	*677
At approximately .9 mile upstream of confluence of Yellow Creek	*680
At approximately .54 mile downstream of the confluence of Deadening	*693
At the upstream corporate limits of the Town of Grantsville	*696
West Fork Little Kanawha River:	
At approximately .38 mile downstream of U.S. Routes 33 and 119	*728
At approximately 0.2 mile upstream of County Route 15	*793
Millstone Creek:	
At confluence with West Fork Little Kanawha River	*736
At approximately 280 feet upstream of the confluence of Big Fork	*812
Big White Oak Run:	
At confluence with West Fork Little Kanawha River	*793
At approximately .4 mile upstream of County Route 15-2	*808
Maps available for inspection at the County Clerk's Office, Calhoun County Courthouse, Grantsville, West Virgina.	
Clay County (unincorporated areas) (FEMA Docket No. 6994)	
Elk River:	
Approximately 400 feet downstream of New Queen Shoals Bridge	*634
Approximately 360 feet upstream of County Route 13-7	*786
Big Otter Creek:	
At confluence with Elk River	*751
Confluence of Stinsonlick Fork	*867
Reed Fork:	
At confluence with Horner Fork	*787
3,000 feet (approximately .6 mile) upstream of confluence with Horner Fork	*823
Summers Fork:	
At confluence with Laurel Creek	*777
Approximately 2 miles upstream of confluence with Laurel Creek	*868
Laurel Creek:	
Approximately 700 feet downstream of confluence of Laurel Fork	*752
At confluence of Valley Fork and Hansford Fork	*836
Valley Fork:	
At confluence with Laurel Creek	*838
Approximately 0.8 mile upstream of confluence with Laurel Creek	*882
Horner Fork:	
At confluence with Laurel Creek	*764
At confluence of Reed Fork	*787
Middle Creek:	
At confluence with Elk River	*692

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Approximately 1,350 feet upstream of County Route 24-1	*991
Lick Branch:	
At confluence with Middle Creek	*842
At confluence of Osborne Fork	^1,038
Maps available for inspection at the County Clerk's Office, County Courthouse, Clay, West Virginia.	
Clay (town), Clay County (FEMA Docket No. 6994)	
Elk River:	
At approximately 1,000 feet downstream of County Route 28	*701
At approximately 800 feet downstream of Bens Run	*711
Maps available for inspection at the Mayor's Office, Town Hall, Main Street, Clay, West Virginia.	
Danville (town), Boone County (FEMA Docket No. 6991)	
Little Coal River:	
At the downstream corporate limits (downstream side of U.S. Route 119)	*694
At the upstream corporate limits	*697
Maps available for inspection at the Town Hall, Danville, West Virginia.	
Doddridge County (unincorporated areas) (FEMA Docket No. 6994)	
Middle Island Creek:	
At County boundary	*740
At the confluence of Meathouse Fork and Buckeye Creek	*793
Buckeye Creek:	
At the confluence with Middle Island Creek	*793
At approximately 240 feet upstream of the confluence of Long Run	*846
At the confluence of Greenbrier Creek	*860
At the confluence of Traugh Fork	*950
Meathouse Fork:	
At the confluence with Middle Island Creek	*793
At County Highway 56	*845
At approximately 1,650 feet downstream of County Highway 25-13	*929
At the confluence of Laurel Run and Big Isaac Creek	*942
McElroy Creek:	
At the confluence of Flint Run	*741
At the confluence of Big Battle Run and Robinson Fork	*793
Wilhelm Run:	
At the confluence with Arnold Creek	*794
At approximately 1.2 miles upstream of the confluence with Arnold Creek	*839
Long Run:	
At the confluence with Buckeye Creek	*848
At approximately 1.5 miles upstream of CSX Transportation	*916
Toms Fork:	
At the confluence with Meathouse Fork	*829
At the confluence of Little Toms Fork	*844
Greenbrier Creek:	
At the confluence with Buckeye Creek	*860
Approximately 1.9 miles upstream of confluence with Buckeye Creek	*929
Big Isaac Creek:	
At the confluence with Meathouse Fork	*842
At the confluence of Little Isaac Creek	*846
Laurel Run:	
At the confluence with Meathouse Fork	*842
At approximately 0.9 mile upstream from the confluence with Meathouse Fork	*966
Maps available for inspection at the County Clerk's office, County Courthouse, 118 East 4th Street, West Union, West Virginia.	
Gassaway (town), Braxton County (FEMA Docket No. 6991)	
Elk River:	
At State Route 4 approximately .3 mile downstream of downstream corporate limits	*817
At the upstream corporate limits	*820

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Maps available for inspection at the Mayor's Office, Town Hall, Gassaway, West Virginia 26624.	
Gilmer County (unincorporated areas) (FEMA Docket No. 6994)	
Little Kanawha River:	
At the downstream county boundary	^716
At the upstream county boundary	^750
Leading Creek:	
Approximately .49 mile downstream of the confluence of Mudlick Run	^755
At the county boundary	^780
Stewart Creek:	
At the confluence with Little Kanawha River	^731
Approximately 1,100 feet upstream of the confluence of Grassy Run	^750
Sand Fork:	
At the confluence with Little Kanawha River	^729
At the confluence of Indian Fork	^754
Indian Fork:	
At the confluence with Sand Fork	^754
At approximately 1,600 feet upstream of the confluence with Sand Fork	^754
Steer Creek:	
At confluence of Bear Fork	^715
At the confluence of Left Fork Steer Creek and Right Fork Steer Creek	^717
Left Fork Steer Creek:	
At the confluence with Steer Creek	^717
At approximately 1,980 feet upstream of the confluence of Eliza Run	^753
Right Fork Steer Creek:	
Approximately 100 feet downstream of County Route 23-7	^767
At the county boundary	^773
Cedar Creek:	
Approximately .54 mile downstream of the confluence of Lower Level Run	^785
Approximately 150 feet upstream of the confluence of Rockcamp Run	^794
Maps available for inspection at the County Clerk's Office, Gilmer County Courthouse, Glenville, West Virginia.	
Glenville (city), Gilmer County (FEMA Docket No. 6994)	
Little Kanawha River:	
At downstream corporate limits of the City of Glenville	^728
At the confluence of Stewart Creek	^731
Stewart Creek:	
At the confluence with Little Kanawha River	^731
At approximately 0.21 mile upstream of State Highway 5	^731
Maps available for inspection at the City Hall, 20 North Court Street, Glenville, West Virginia.	
Grantsville (town), Calhoun County (FEMA Docket No. 6991)	
Little Kanawha River:	
At the downstream corporate limits	^696
At the upstream corporate limits	^696
Maps available for inspection at the Mayor's Office, High Street, Grantsville, West Virginia.	
Madison (city), Boone County (FEMA Docket No. 6991)	
Little Coal River:	
At the downstream corporate limits	^697
At the upstream corporate limits	^702
Pond Fork:	
At the confluence with Little Coal River	^702
Approximately 900 feet upstream of confluence	^703
Spruce Fork:	
At the confluence with Little Coal River	^702
At the upstream corporate limits	^704
Maps available for inspection at the City Hall, 261 Washington Avenue, Madison, West Virginia.	
Ravenswood (city), Jackson County (FEMA Docket No. 6987)	
Ohio River:	

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
At the confluence of Sandy Creek	^582
Approximately 0.4 mile upstream of the confluence of Turkey Run	^583
Maps available for inspection at the City Hall, Ravenswood, West Virginia.	
Sand Fork (town), Gilmer County (FEMA Docket No. 6994)	
Little Kanawha River:	
Approximately 800 feet downstream of the confluence of Sand Fork	^736
Approximately 375 feet downstream of confluence of Lick Run	^743
Sand Fork:	
At the confluence with the Little Kanawha River	^729
Approximately .63 mile upstream of State Highway 5	^739
Maps available for inspection at the Town of Sand Fork Firehouse, Route 13, Sand Fork, West Virginia.	
Sophia (town), Raleigh County (FEMA Docket No. 6994)	
Soak Creek:	
At downstream corporate limits	^2,312
Approximately 350 feet upstream of White Oak Street	^2,331
Soak Creek Tributary No. 1:	
At confluence with Soak Creek	^2,318
Approximately 400 feet upstream of Daniels Street	^2,324
Maps available for inspection at the Town Hall, Sophia, West Virginia.	
Sutton (town), Braxton County (FEMA Docket No. 6991)	
Elk River:	
Approximately .4 mile upstream of County Highway 28-5	*825
At approximately 600 feet upstream of the confluence of Old Woman Run	*828
Maps available for inspection at the Mayor's Office, Sutton Community Building, Sutton, West Virginia.	
Sylvester (town), Boone County (FEMA Docket No. 6991)	
Big Coal River:	
At the downstream corporate limits	*767
Approximately 300 feet upstream of upstream corporate limits	*793
Maps available for inspection at the Community Building, Sylvester, West Virginia, by appointment with Mayor Anderson.	
West Union (town), Doddridge County (FEMA Docket No. 6994)	
Middle Island Creek:	
Approximately 2,000 feet downstream for Sistersville Avenue	*774
At State Route 18	*777
Maps available for inspection at the Town Hall, Columbia Street, West Union, West Virginia.	
Whitesville (town), Boone County (FEMA Docket No. 6991)	
Big Coal River:	
Approximately 300 feet downstream of downstream corporate limits	*818
Approximately 200 feet upstream of upstream corporate limits	*833
Maps available for inspection at the Town Hall, Boone Street, Whitesville, West Virginia.	
WISCONSIN	
Cedarburg (city), Ozaukee County (FEMA Docket No. 6991)	
Cedar Creek:	
At corporate limits	^711
Just downstream of Ruck Dam	^782

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Just upstream of Peak Dam	*788
At corporate limits	*985
Maps available for inspection at the Engineering Office, City Hall, W999 N945 Washington Avenue, Cedarburg, Wisconsin.	
Fredonia (village), Ozaukee County (FEMA Docket No. 6991)	
Milwaukee River:	
About 950 feet downstream of confluence of Unnamed Tributary No. 2	*750
Just downstream of State Highway 84	*754
Unnamed Tributary No. 2:	
At mouth	*760
Just downstream of dam	*787
Unnamed Tributary No. 3:	
At mouth	*791
About 550 feet upstream of Meadowbrook Lane	*799
Maps available for inspection at the Public Works Department, Village Hall, 416 Fredonia, Fredonia, Wisconsin.	
Grafton (village), Ozaukee County (FEMA Docket No. 6991)	
Milwaukee River:	
About 2100 feet downstream of Lime Kiln Dam	*704
Just downstream of Chair Factory Dam	*722
Just upstream of Chair Factory Dam	*729
About 2850 feet upstream of Washington Street	*743
Mole Creek:	
At mouth	*746
Just upstream of North Green Bay Road	*756
Just downstream of 9th Avenue	*758
Just upstream of 9th Avenue	*761
About 600 feet upstream of Cedar Creek Road	*788
Maps available for inspection at the Building Inspection Department, Village Hall, 1102 Bridge Street, Grafton, Wisconsin.	
Kohler (village), Sheboygan County (FEMA Docket No. 6994)	
Sheboygan River:	
Just upstream of U.S. Highway 141	*596
About 1050 feet upstream of upstream corporate limits	*630
Maps available for inspection at the Village Hall, 119 Highland Drive, Kohler, Wisconsin.	
Marinette County (unincorporated areas) (FEMA Docket No. 6994)	
Peshtigo River:	
About 2.95 miles upstream of Peshtigo Dam	*604
Just downstream of State Highway 64	*606
Menominee River:	
About 300 feet upstream of Upper Dam Scott Paper Company	*610
About 3.51 miles upstream of Upper Dam Scott Paper Company	*618
Green Bay: Within community	*584
Maps available for inspection at the County Courthouse, 1926 Hall Avenue, Marinette, Wisconsin	
Mequon (city), Ozaukee County (FEMA Docket No. 6991)	
Milwaukee River:	
Just upstream of county boundary	*668
Just downstream of Pioneer Road	*670
Little Menomonee River:	
At county boundary	*720
Just upstream of Freistadt Road	*731
Little Menomonee Creek:	
At mouth	*725
Just downstream of Freistadt Road	*796
Pigeon Creek:	
At mouth	*662
Just upstream of Williamsburg Drive	*686
Lake Michigan: Along shoreline	*580
Maps available for inspection at the City Hall, 11333 North Cedarburg Road 69 West, Mequon, Wisconsin.	
Ozaukee County (unincorporated areas) (FEMA Docket No. 6991)	
North Branch Milwaukee River:	
At confluence with Milwaukee River	*797
At western county boundary	*798
About 3.0 miles downstream of Jay Road	*809
At western county boundary	*806
Milwaukee River:	
At City of Mequon corporate limits	*671
At western county boundary	*835
Cedar Creek:	
At mouth	*680
About 400 feet downstream of Wire and Nail Factory Dam	*743
Just upstream of Wire and Nail Factory Dam	*762
At county boundary	*836
Lake Michigan: Along shoreline	*580
Mole Creek:	
At mouth	*745
Just upstream of Maple Road	*780
Sauk Creek:	
At mouth	*590
Just upstream of Interstate 43	*694
Maps available for inspection at the Zoning Office, County Courthouse, 121 West Main, Port Washington, Wisconsin.	
Peshtigo (city), Marinette County (FEMA Docket No. 6991)	
Peshtigo River:	
About 0.6 mile downstream of Peshtigo Dam	*586
Just downstream of Peshtigo Dam	*597
Just upstream of Peshtigo Dam	*604
About 1.0 mile upstream of Peshtigo Dam	*604
Trout Brook:	
At mouth	*604
About 0.5 mile upstream of Emery Avenue	*605
Maps available for inspection at the City Hall, 331 French Street, Peshtigo, Wisconsin.	
Port Washington (city), Ozaukee County (FEMA Docket No. 6991)	
Sucker Brook:	
At mouth	*590
Just downstream of Hales Trail	*844
Just upstream of Hales Trail	*851
Just downstream of Norport Drive	*872
Just upstream of Norport Drive	*878
About 0.54 mile upstream of Norport Drive	*889
Sauk Creek Tributary:	
At mouth	*590
Just downstream of West Oakland Avenue	*814
Just upstream of West Oakland Avenue	*818
Just downstream of Abandoned dam	*636
Just upstream of abandoned dam	*643
Just downstream of South Park Street	*657
Just upstream of South Park Street	*664
Just downstream of Sunset Road	*686
Lake Michigan: Along shoreline	*590
Sauk Creek:	
At mouth	*590
Just downstream of County Highway LL	*692
About 160 feet upstream of Interstate 43	*692
Maps available for inspection at the City Hall, Port Washington, Wisconsin.	
Saukville (village), Ozaukee County (FEMA Docket No. 6994)	
Milwaukee River:	
At corporate limits	*753
At corporate limits	*758
Unnamed Tributary No. 1:	
At mouth	*757
At corporate limits	*768
Maps available for inspection at the Village Hall, 639 East Green Bay Avenue, Saukville, Wisconsin.	
Sheboygan (city), Sheboygan County (FEMA Docket No. 6994)	
Sheboygan River:	
About 0.48 mile downstream of Lake Shore Drive	*585
About 3800 feet upstream of Lower Falls Road	*597
Lake Michigan: Along shoreline	*584
Pigeon River:	
About 2650 feet upstream of mouth	*585
About 0.86 mile upstream of Calumet Drive	*610
Maps available for inspection at the City Hall, 828 Center Avenue, Sheboygan, Wisconsin.	
Sheboygan Falls (city), Sheboygan County (FEMA Docket No. 6994)	
Sheboygan River:	
About 0.86 mile downstream of Monroe Street	*629
Just downstream of Chicago and North Western railroad	*639
Just upstream of Monroe Street	*656
Just downstream of Dam	*662
Just upstream of Dam	*671
About 2.54 mile upstream of Leavens Street	*679
Mullet River:	
Just downstream of County Highway PP	*677
About 2.0 miles upstream of Chicago and North Western railroad	*690
Onion River:	
At mouth	*631
About 2900 feet upstream of Buffalo Street	*633
Maps available for inspection at the City Hall, 375 Buffalo Street, Sheboygan Falls, Wisconsin.	
Thiensville (village), Ozaukee County (FEMA Docket No. 6991)	
Milwaukee River:	
Just downstream of Division Street	*659
At corporate limits	*662
Maps available for inspection at the Village Hall, 250 Elm Street, Thiensville, Wisconsin.	

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
ILLINOIS	
Wilmington (City), Will County (FEMA Docket No. 6990)	
Kankakee River:	
About 0.8 mile downstream of confluence of unnamed tributary	*584
About 0.8 mile upstream of Wilmington Dam	*544
Kankakee River East Channel:	
Just upstream of confluence with Kankakee River	*536
Just upstream of West Street	*541
Kahler Road Drainage Ditch:	
At mouth	*540
About 0.3 mile upstream of Kahler Road	*555
Forked Creek:	
At mouth	*536
Just downstream of McIntyre Court	*538
Just upstream of McIntyre Court	*543
About 0.5 mile upstream of Kahler Road	*549
Maps available for inspection at the Clerk's desk, City Hall, 114 North Main Street, Wilmington, Illinois.	
NEW YORK	
Walton (village), Delaware County (FEMA Docket No. 6978)	
West Branch Delaware River:	
Approximately 1 mile downstream of State Route 206 bridge (Bridge Street)	*1,201
Approximately 0.9 mile upstream of State Route 206 bridge	*1,217
West Brook:	
At the confluence with the West Branch Delaware River	*1,207
Approximately 1,560 feet upstream of Austin Lincoln Park Road Bridge	*1,244
East Brook:	
At the confluence with the West Branch Delaware River	*1,213
Approximately 660 feet upstream of East Street Bridge	*1,237
Third Brook:	
At the confluence with the West Brook	*1,207
Approximately 1,250 feet upstream of Ogden Street Bridge	*1,273
Maps available for inspection at the Village Hall, 21 North Street, Walton, New York.	
PENNSYLVANIA	
Brookville (borough), Jefferson County (FEMA Docket No. 6990)	
Redbank Creek:	
Downstream corporate limits	*1,210
Confluence with North Fork and Sandy Lick Creek	*1,215
Sandy Lick Creek:	
Confluence with Redbank Creek	*1,215
Upstream corporate limits	*1,229
North Fork:	
Confluence with Redbank Creek	*1,215
Upstream corporate limits	*1,234
Maps available for inspection at the Municipal Building, 2 Jefferson Court, Brookville, Pennsylvania.	

Issued: November 13, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-27283 Filed 11-20-90; 8:45 a.m.]

BILLING CODE 6718-03-M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1513, 1527, and 1552

[FRL-3744-4]

Acquisition Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This final rule revises the Environmental Protection Agency Acquisition Regulation (EPAAR) with respect to imprest fund transaction levels and data rights coverage.

EFFECTIVE DATES: November 21, 1990.

FOR FURTHER INFORMATION CONTACT: Environmental Protection Agency, Procurement and Contracts Management Division (PM-214F), 401 M Street, SW. Washington, DC 20460, Attn: Marilyn Torpey, Telephone (202) 245-3941.

SUPPLEMENTARY INFORMATION:

A. Determination to Issue a Final Rule

The EPA has made a determination to publish changes to the Agency's imprest transaction levels as a final rule without prior comment in accordance with the Federal Acquisition Regulation (FAR) 1.301(b). FAR 1.301(b) states rules which do not have a significant effect beyond the internal operating procedures of the agency or have a significant cost or administrative impact on contractors or offerors need not be published for comment. Imprest fund transaction levels concern EPA internal operating procedures only.

B. Background

The EPA Financial Management Division, which determines the authorized levels for imprest fund purchases, has increased these levels to $500 for routine purchases and $750 for emergency purchases. This rule incorporates the increase in these levels.

This rule also removes EPAAR coverage in parts 1527 and 1552 that essentially duplicates existing coverage in FAR part 27. This rule retains a portion of existing EPAAR 1552.227-71 on the purposes for which limited rights data, as defined in FAR 27.401 may be disclosed outside of EPA. The existing portion of EPAAR is authorized by FAR 27.404(d)(1). The retained portion is redesignated under this rule as EPAAR 1527.404.

C. Executive Order 12291

The Office of Management and Budget (OMB) Bulletin No. 85-7, dated December 14, 1984, establishes the requirements for OMB review of agency acquisition regulations. These regulations do not fall within any of the categories cited in the Bulletin requiring OMB review.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements requiring the approval of OMB under 44 U.S.C. 3501, et seq.

E. Regulatory Flexibility Act

The EPA certifies this rule does not exert a significant economic impact on a substantial number of small entities because the changes do not impose any new requirements on contractors, large or small.

F. Public Comments

The EPA published a notice of proposed rulemaking on the amendments to 48 CFR parts 1527 and 1552 in the Federal Register on May 21, 1990. No comments were received.

List of Subjects in 48 CFR Parts 1513, 1527 and 1552

Government procurement, Small purchase, Data, Provisions and clauses.

For reasons set forth in the preamble, 48 CFR parts 1513, 1527 and 1552 are amended as follows:

PART 1513—[AMENDED]

1. The authority citation for parts 1513, 1527 and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1513.404 is revised to read as follows:

1513.404 Conditions for use.

Imprest funds may be used for small purchases when the transaction does not exceed $500 ($750 under emergency conditions).

PART 1527—[AMENDED]

3. Part 1527 is amended by adding subpart 1527.4 consisting of section 1527.404 to read as follows:

Subpart 1527.4—Rights in Data and Copyrights

1527.404 Basic rights in data clause.

The Contracting Officer shall insert in the *Limited Rights Notice* when using Alternate II of FAR 52.227-14 the following purposes for disclosure of limited data outside the Government.

(a) Use (except for manufacture) by support service contractors;

(b) Evaluation by nongovernment evaluators;

(c) Use (except for manufacture) by other contractors participating in the Government's program of which the specific contract is a part, for information and use in connection with the work performed under each contract;

(d) Emergency repairs or overhaul work;

(e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

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Sections 1527.7000 through 1527.7005 [Removed]

PART 1552—[AMENDED]

4. *Subpart* 1527.70 is removed.

Sections 1552.227–70 through 1552.227–75 [Removed]

5. Part 1552 is amended by removing sections 1552.227–70 through 1552.227–75.

Dated: September 27, 1990.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 90–27399 Filed 11–20–90; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 91045–0006]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the domestic annual processing (DAP) flatfish fisheries have attained their secondary prohibited species catch allowance of Pacific halibut of 567 metric tons (mt) in the Bering Sea and Aleutian Islands (BSAI) area. Therefore, the Secretary of Commerce (Secretary) is prohibiting any further DAP directed fishing for yellowfin sole, rock sole, and "other flatfish" in the aggregate in the entire BSAI area. This action is taken pursuant to regulations implementing the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands area to prevent excessive bycatch of Pacific halibut in the groundfish fishery in an area of particular importance to the Pacific halibut stock. The intent of this action is to assure optimum use of groundfish while conserving Pacific halibut stocks.

EFFECTIVE DATES: Noon, Alaska local time (ALT), November 16, 1990, through midnight, ALT, December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden (Resource Management Specialist), NMFS, Alaska Region, 907–586–7229.

SUPPLEMENTARY INFORMATION: The Secretary approved, on July 7, 1989, Amendment 12a to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands area (FMP) under authority of the Magnuson Fishery Conservation and Management Act. Amendment 12a was implemented by the Secretary with a final rule promulgated August 9, 1989, (54 FR 32642) and effective September 3, 1989, through December 31, 1990.

The purpose of Amendment 12a is to limit incidental catches of the prohibited species *C. bairdi* Tanner crab, red king crab, and Pacific halibut, by the groundfish fisheries in the BSAI area. Such incidental catches are referred to as bycatches in fisheries targeting groundfish. The amendment established 20 prohibited species catch (PSC) limits in four fisheries: DAP fisheries for flatfish, "DAP other fisheries", joint venture processing (JVP) fisheries for flatfish, and "JVP other fisheries." Each of the 20 PSC allowances prescribed for the 1990 groundfish fisheries was published in the initial specifications notice for 1990 for the BSAI area (55 FR 1434, January 16, 1990).

Under authority of § 675.21(a)(5), the secondary PSC limit of Pacific halibut caught while conducting any domestic fishery for groundfish in the BSAI during any fishing year is an amount of Pacific halibut equivalent to 5,333 mt. The secondary PSC allowance for Pacific halibut in the BSAI area for the DAP flatfish fisheries is 567 mt. The PSC limits were apportioned by the Secretary, after consultation with the North Pacific Fishery Management Council (Council) and under the authority of § 675.21(b)(1), into PSC allowances that are assigned to specified fisheries according to anticipated incidental catches of prohibited species during the fishing year. PSC limits are determined through the use of a mathematical prediction procedure based on statistical information derived from fishery performance in previous years and expectations of projected performance of the fisheries.

The directed DAP flatfish fishery in the entire BSAI area was closed on March 19, 1990, (55 FR 10779, March 23, 1990), when the secondary halibut PSC limit of 567 mt was projected to have been reached. Further analysis of the data indicated that approximately 46 mt of halibut PSC remained for bycatch purposes. The directed DAP flatfish fishery was reopened in the BSAI outside of Zones 1 and 2H on August 4, 1990 (55 FR 31392, August 2, 1990).

Closure

The Regional Director has determined that the secondary DAP flatfish fisheries PSC allowance of Pacific halibut in the BSAI area will be reached by November 16, 1990. Under regulations implementing Amendment 12a, when the secondary PSC allowance for Pacific halibut for the DAP flatfish fisheries is reached, the entire BSAI area is closed to further directed fishing for flatfish by DAP vessels. Therefore, the Secretary, by this notice and under authority of § 675.21(c)(1)(iv), prohibits for the remainder of the fishing year, directed fishing for yellowfin sole, rock sole, and "other flatfish" in the aggregate in the entire BSAI area by U.S. fishing vessels that process the catch on board or deliver it to U.S. fish processors. A vessel is engaged in directed fishing for yellowfin sole, rock sole, and "other flatfish" in the aggregate if it retains at any particular time during a trip an amount of these species caught using trawl gear that is equal to or greater than 20 percent of the aggregate catch of the other fish or fish products retained at the same time on the vessel during the same trip.

Classification

The total annual PSC allowance of Pacific halibut established for vessels involved in the directed DAP flatfish fishery in the BSAI has been reached. Unless this notice takes effect promptly, bycatch and wastage of the halibut resource will occur in excess of specified PSC allocations.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest, and its effective date should not be delayed.

This action is taken under § 675.21 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: November 15, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–27343 Filed 11–15–90; 4:04 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 55, No. 225
Wednesday, November 21, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 733

Political Activity of Federal Employees

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to grant Federal Government employees in Frederick County, Maryland, a partial exemption from the political activity restrictions of 5 U.S.C. 7324. This proposal reflects OPM's determination that Federick County meets the criteria described in 5 U.S.C. 7327 and 5 CFR 733.124(b) for a partial exemption to issue.

DATES: Written comments must be received on or before January 22, 1991.

ADDRESSES: Comments my be mailed to Jaime Ramon, General Counsel, room 7355, United States Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Chabot, (202) 606–1920.

SUPPLEMENTARY INFORMATION: The Hatch Act, at 5 U.S.C. 7324 *et seq.*, controls the political activity of Federal employees and individuals employed by the District of Columbia. Section 7324 of 5 U.S.C. generally prohibits Federal employees from taking an active part in political campaigns. Section 7327 of 5 U.S.C., however, authorizes OPM to prescribe regulations permitting certain Federal employees to be politically active to the extent OPM considers it to be in their domestic interest.

Under the authority of 5 U.S.C. 7327, OPM may allow Federal employees to participate in political campaigns involving the municipality or political subdivision in which they reside when two conditions relevant to the current request for exemption exist. One condition is met if the municipality is in Maryland or Virginia and is in the immediate vicinity of the District of Columbia. The second condition is met if OPM determines that, because of special or unusual circumstances, the domestic interest of the employees is served by permitting their political participation in accordance with regulations prescribed by OPM.

In regulations at 5 CFR 733.124(b), OPM has designated municipalities and political subdivisions in which Federal employees may participate in local elections. At 5 CFR 733.124(c), OPM has established the following limitations on political participation by employees residing in these designated municipalities and subdivisions:

(1) Participation in politics shall be as an independent candidate or on behalf of, or in opposition to, and independent candidate.

(2) Candidacy for, and service in, an elective office shall not result in neglect of, or interference with, the performance of the duties of the employees or create a conflict or apparent conflict of interest.

In response to a request from two Federally employed residents of Frederick County, Maryland, OPM proposes to designate that county as one in which Federal employees may participate in local elections subject to the limitations established by OPM. This proposal reflects OPM's determination that special or unusual circumstances exist so that it is in the domestic interest of Federal employees residing in Frederick County to permit their local political participation in connection with independent candidacies. This determination is based on documentary material provided by the applicants as well as interviews of the applicants and some county officials. Principal factors leading to OPM's determination are the proximity of Federick County to the District of Columbia, the substantial portion of County residents who are Federal Government employees, and the rapid growth and increasing sub-urbanization of the County within the past few years.

A copy of this notice will be published in a local newspaper serving Frederick County.

If this proposed rule is adopted, OPM will amend 5 CFR 733.124(b) by adding Frederick County to the list of designated Maryland municipalities and political subdivisions in which Federal Government employees may participate in connection with independent candidates in local elections. The addition of Frederick County will be listed after Forest Heights and before Garrett Park, Maryland.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities, because the changes will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 733

Political activities (Government employees).

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 733 as follows:

PART 733—POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

1. The authority citation for part 733 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, 7301, 7321, 7322, 7323, 7324, 7325, and 7327; Reorganization Plan No. 2 of 1978, 3 CFR 1978 Comp. p. 323; and E.O. 12107, 3 CFR 1978 Comp. p. 264, unless otherwise noted.

2. Section 733.124(b) is amended by adding Frederick County, Maryland, alphabetically to the list of designated Maryland municipalities and political subdivisions as set forth below.

§ 733.124 Political management and political campaigning; exception of certain elections

* * * * *

(b) * * *

In Maryland

* * * * *

Frederick County

* * * * *

[FR Doc. 90–27437 Filed 11–20–90; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-196-AD]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes Equipped With CFM International CFM56-3 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 737-300 Series airplanes, which currently requires deletion of the paragraph from the FAA-Approved Airplane Flight Manual (AFM) which permits operation over a route that contains a point farther than one hour flying time at normal one-engine inoperative cruise speed (in still air) from an adequate airport in deviation from Section 121.161 of the Federal Aviation Regulations (FAR), referred to as Extended Range Operation with Twin Engine Airplanes or "ETOPS" operation. This action would provide optional airplane/engine modifications which, if accomplished, would allow reinstatement of certain Model 737-300 series airplanes for ETOPS operation.

DATES: Comments must be received no later than December 26, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-196-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (202) 227-2681. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-196-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On June 12, 1989, the FAA issued AD 89-13-06, Amendment 39-6247 (54 FR 26019, June 21, 1989), to require deletion of the AFM paragraph that permits operation over a route that contains a point farther than one hour flying time at the normal one-engine inoperative cruise speed (in still air) from an adequate airport in deviation from § 121.161 of the Federal Aviation Regulations (FAR), referred to as "ETOPS" operation. That action was prompted by the second of four engine flameout incidents involving Model 737-300 series airplanes equipped with CFM56-3 series engines, while descending through adverse weather. Two of these four incidents involved both engines failing, with one of these dual engine events (the reference incident) resulting in an off-field "dead stick" landing. This condition, if not corrected, could result in loss of engine thrust, and prevent the continued safe flight and landing of the airplane.

Since issuance of that AD, the FAA has issued several AD's applicable to these Model 737-300 airplanes which require the following actions:

1. Activation of dual continuous ignition—Both engines' ignition systems in the "flight" position in adverse weather;

2. The installation of a flight compartment instrument panel placard requiring flightcrews to operationally maintain a minimum engine power setting of 45% N.

3. Incorporation of a 45% N, reminder circuit—airframe electrical modification which activates a master caution light when item 1. is initiated and item 2. is violated.

4. Elimination of the low approach idle in-flight-airframe/engine electrical modification that inhibits low idle capability for all phases of flight.

5. Incorporation of the cutback splitter and 12 door VBV engine hardware modification.

6. For operation in known or forecasted rain, hail, or sleet, notwithstanding the Master Minimum Equipment List (MMEL), a requirement that the following items must be operable for dispatch:

a. Weather radar.

b. Engine ignition systems—both left and right engines.

Additionally, Boeing Commercial Airplane Group (Boeing) and CFM International (CFMI) have completed an airplane inclement weather study, together with the Alberta Research Council and the Groupement National d'Etudes des Fleaux Atmosphèriques. The results of a study of storm intensity in more than 700 rain and hail storms that occurred throughout North America and Europe, was submitted to an Aerospace Industries Association (AIA) review committee. This data was used by the AIA to establish an industry-wide natural weather threat definition. In conjunction with the study above, Boeing and CFMI tested the modified CFM56-3 series engine (with the modifications listed above), both in flight and on the ground, to the natural weather threat levels defined by the AIA committee.

The ETOPS configuration is identified in Boeing Document D6-38123, "Configuration, Maintenance, and Procedures for Extended Range (ER) Operation," Revision A, dated September 14, 1990, by reference documentation and revision level, which establishes a minimum standard for ER operation. The reference documentation is identified for each extended range related item, usually in terms of Boeing or supplier service bulletins or service letters.

Based on a service history of over 5.5 million engine flight hours since the modifications and operational procedures previously mentioned were implemented, and the successful completion of flight and ground engine testing to the AIA natural weather threat definition, the FAA has determined that a sufficient increase in the level of safety has been achieved to warrant reinstatement of ETOPS type design approval for the Model 737-300.

Since other airplanes of the same type design may be operated safely in ETOPS once the specific modifications are incorporated, an AD is proposed which would supersede AD 89-13-06 with a new airworthiness directive that would provide optional airplane/engine modifications, which, if installed, would allow reinstatement of ETOPS operation for Model 737 series airplanes equipped with CFM56-3 series engines.

There are approximately 625 Model 737-300 series airplanes of the affected design in the worldwide fleet. It is estimated that 370 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $14,800.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6247 (54 FR 26019, June 21, 1989), AD 89-13-06, with the following new airworthiness directive:

Boeing: Applies to Model 737-300 series airplanes, equipped with CFM56-3 series engines, certificated in any category. Compliance required as indicated, unless previously accomplished.

To reduce the risk of total engine thrust loss due to unavoidable severe weather penetration during an ETOPS single engine diversion, accomplish the following:

A. Within the next 30 days after June 12, 1989 (the effective date of Amendment 39-6247), delete, from the FAA-approved Airplane Flight Manual (AFM), any reference to approval, or suitability of the Model 737-300 airplane for use in extended range operation. This may be accomplished by replacing the existing AFM page(s) containing the Extended Range Operations suitability statement with a page(s) which has this statement deleted. If the existing AFM does not contain such a statement, then no action is necessary.

B. A new AFM ETOPS suitability statement, outlined below, may be inserted into the FAA-approved AFM, when the airplane has been configured in accordance with the, Boeing Document D6-38123, Revision A., dated September 14, 1990, "Configuration, Maintenance and Procedures for Extended Range Operation" (CMP):

Extended Range Operations

The type design reliability and performance of this airplane/engine combination has been evaluated in accordance with FAA Advisory Circular 120-42A and found suitable for extended range operations when configured in accordance with FAA-approved Boeing Document D6-38123, Revision A., dated September 14, 1990, "Configuration, Maintenance and Procedures for Extended Range (ER) Operation." This finding does not constitute approval to conduct extended range operations.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Note: All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commerical Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 8, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27405 Filed 11-20-90; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1502

Procedures for Formal Evidentiary Public Hearing

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: In certain circumstances, when the Commission is promulgating a rule under the Federal Hazardous Substances Act ("FHSA") or the Poison Prevention Packaging Act ("PPPA"), a further step in addition to the Commission's usual rulemaking procedure may be necessary. In these situations, the proceeding will be governed by the provisions of section 701 (e) through (g) of the Federal Food, Drug and Cosmetic Act ("FDCA"). Section 701(e) of the FDCA provides that, once a final rule is issued, interested persons have a period of 30 days in which to file objections to the final rule and to request a public hearing upon these objections.

Because the FHSA and the PPPA were previously administered by the Food and Drug Administration ("FDA"), the FDA's procedural rules for the conduct of a 701(e) hearing apply to such a hearing conducted by the Commission under the FHSA and the PPPA. The Commission is today initiating rulemaking to establish its own procedural rules, based on those currently in use by the FDA, for conducting a formal evidentiary public hearing when such a hearing is provided for under the FHSA or the PPPA or when the Commission determines that such a hearing is in the public interest. The Commission is also proposing to withdraw 16 CFR 1500.201, which restated the statutory requirements for such hearings.

DATES: Comments on the proposed rule should be received by the Commission no later than December 21, 1990.

ADDRESSES: Comments should be mailed, preferably in five (5) copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, room 528, 5401 Westbard Avenue, Bethesda, Maryland 20816; telephone (301) 492–6800.

FOR FURTHER INFORMATION CONTACT: Patricia M. Pollitzer, Office of General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6980.

SUPPLEMENTARY INFORMATION:

A. Background and Introduction

(1) The FHSA and the PPPA

When Congress created the Commission in 1973, the Consumer Product Safety Act ("CPSA") transferred authority to the Commission to administer four other statutes previously administered by other agencies. 15 U.S.C. 2079(a). Among those transferred statutes were the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261 *et seq.*, and the Poison Prevention Packaging Act ("PPPA"), 15 U.S.C. 1471n *et seq.* The FHSA and the PPPA had been administered by the Food and Drug Administration ("FDA") of the then-Department of Health, Education, and Welfare prior to the transfer.

The FHSA provides for a formal public evidentiary hearing pursuant to section 701(e) of the Federal Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. 371, in three instances:

(1) When the Commission issues, amends, or repeals regulations to classify a hazardous substance intended for household use as a "banned hazardous substance" in accordance with section 2(q)(1)(B) of the FHSA, 15 U.S.C. 1261(q)(2);

(2) When the Commission decides, pursuant to section 3(a) of the FHSA, to issue, amend, or repeal a regulation that declares that a substance or mixture is a hazardous substance as defined by section 2(f)(1)(A) of the FHSA, 15 U.S.C. 1262(a)(2); and

(3) When the Commission elects to follow the procedures prescribed by section 701(e) of the FDCA in determining that a toy or other article intended for children presents an electrical, mechanical, or thermal hazard, 15 U.S.C. 1262(e)(1).

The PPPA provides, in section 5, that the Commission may elect to follow FDCA's section 701(e)-procedures when the Commission issues, amends, or repeals a regulation that prescribes a standard under section 3 of the PPPA. 15 U.S.C. 1474(a).

The first situation encountered under the FHSA in which 701(e) procedures may apply, that of the classification of a hazardous substance intended for household use as a banned hazardous substance under section 2(q)(1)(B) of the FHSA, occurs when the Commission proceeds on the basis that, notwithstanding the precautionary labeling required by the FHSA, the substance presents such a hazard that keeping the substance out of interstate commerce is the only adequate means of protecting the public. 15 U.S.C. 1261(q)(1)(B).

The second situation in which 701(e) procedures may apply under the FHSA occurs when the Commission determines, in its discretion, to declare by regulation that a substance or mixture that the Commission finds meets the requirements of section 2(f)(1)(A) of the FHSA is a "hazardous substance." 15 U.S.C. 1262(a)(1). Section 2(f)(1)(A) defines a hazardous substance as "[a]ny substance or mixture of substances which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children." 15 U.S.C. 1261(f)(1)(A). For a substance to be considered a hazardous substance under this provision it is not necessary for the Commission to act by regulation to declare it a hazardous substance. However, if the Commission determines that issuing such a regulation "will promote the objectives of (the FHSA) by avoiding or resolving uncertainty as to its application," the Commission may issue a regulation declaring such a substance to be a hazardous substance. 15 U.S.C. 1262(a)(1).

The third situation which may involve use of 701(e) procedures under the FHSA arises if the Commission chooses to follow the procedures described in section 701(e) of the FDCA to make a determination that a toy or other article intended for children presents an electrical, mechanical, or thermal hazard. 15 U.S.C. 1262(e)(1). The FHSA provides that, ordinarily, such a determination is to be made according to notice and comment rulemaking procedures described in section 4 of the Administrative Procedure Act ("APA"), 5 U.S.C. 553 (as modified by the procedures described in section 3(f)–(i) of the FHSA, 15 U.S.C. 1262(f)–(i)). However, the Commission may elect to follow the 701(e) hearing procedures. 15 U.S.C. 1262(e)(1).

With respect to the PPPA, section 5 of that act permits the Commisison to elect to follow 701(e) procedures to issue, amend, or repeal a regulation prescribing a standard under section 3 of the PPPA, instead of following the notice and comment rulemaking procedures of the APA, 5 U.S.C. 553. 15 U.S.C. 1474(a). Section 3 authorizes the Commission to establish standards for the special packaging of household substances if certain findings are made. 15 U.S.C. 1472(a).

(2) The Provisions of Section 701(e)–(g) of the FDCA

Once the Commission finalizes a rule under any of these provisions of the FHSA or the PPPA, the procedures of section 701(e) of the FDCA may apply. These procedures provide that when the Commission issues a final rule (called a "final order" in the FDCA), interested persons have a period of thirty (30) days in which to file objections stating reasonable grounds therefor, and to request a public hearing on those objections. The filing of objections stays the implementation of those provisions to which objections are directed. 21 U.S.C. 371(e)(2). After the hearing, the presiding officer issues an order, based upon substantial evidence. 21 U.S.C. 371(e)(3). A person who is adversely affected by a final order on the objections may file a petition for review with the appropriate United States court of appeals. 21 U.S.C. 371(f). Section 701(g) provides for supplying the transcript of the hearing to interested parties upon request. 21 U.S.C. 371(g).

(3) Existing Rules Governing 701(e) Proceedings

At the time the FHSA and the PPPA were transferred to the Commission, FDA had issued rules governing the procedure for 701(e) hearings. 21 CFR 2.51–2.104(1973). Congress provided that regulations in effect at the time the FHSA and the PPPA were transferred continue in effect until they are modified, superseded, set aside, or repealed by the Commission, a court, or operation of law. 15 U.S.C. 2079(e)(2). Currently, any 701(e) type of proceeding that the Commission would conduct would be governed by the FDA's procedural rules as they existed at the time of transfer. The procedural rules proposed today would supersede the FDA regulations (21 CFR 2.51–2.104 (1973)) that were in existence at the time the FHSA was transferred to the Commission, insofar as those rules still apply to the Commission by virtue of 15 U.S.C. 2079(e)(2).

Section 1500.201 of the Commission's existing regulations essentially restates the FHSA's statutory provisions concerning 701(e) proceedings. The regulations proposed today will go beyond these existing regulations, and expand on the procedures for such hearings. The existing regulations also restate the statutory language in section 2(q)(2) of the FHSA concerning hazardous substances that present an imminent hazard. The Commission is proposing to withdraw 16 CFR 1500.201 because these regulations will be repetitious and unnecessary with promulgation of new regulations at part 1502.

(4) The Proposed Procedures for 701(e) Hearings

The Commission is proposing to issue regulations that would specify the procedures for formal evidentiary public hearings, such as hearings required under section 701(e) of the FDCA. These proposed regulations are drawn substantially from the procedures FDA now follows in a 701(e) procedure, codified at 21 CFR part 12.

In 1986, the Commission proposed substantially the same procedures as are being proposed today. The procedures were proposed in connection with a proposed rule to declare household products containing methylene chloride "hazardous substances." 51 FR 29778 (August 20, 1986). Appendix 2 of that proposed rule contained proposed procedures for a public hearing on objections. These procedures were proposed for use only if a public hearing were held on objections to the proposed rule to declare household products containing methylene chloride to be hazardous substances. The proposed rule on methylene chloride was never issued, and the procedural regulation concerning a hearing on objections to such a rule was never issued or used. The Commission received no comments concerning the proposed procedural rules for the rulemaking on methylene chloride.

Today, the Commission is proposing procedural rules that would govern all formal evidentiary public hearings when 701(e) type proceedings are followed. These procedures would be used in connection with formal rulemaking. The Commission's rules for adjudicative proceedings set forth at 16 CFR part 1025 would not be affected by these proposed procedures and would still apply to any adjudicative proceedings.

B. Summary of Proposed Rule

Subpart A of the proposed rule contains general provisions describing the scope of the procedures, the method for computation of time, the procedures for treatment of confidential information, and the address of the Commission's Office of the Secretary. The scope section provides that the procedures apply when a person has a right to an opportunity for a hearing under sections 2(q)(1)(B) or 3(a) of the FHSA and section 701(e) of the FDCA, or when the Commission elects to hold a hearing under section 3(e) of the FHSA or section 5(a) of the PPPA and section 701(e) of the FDCA. The procedures may also apply when the Commission concludes that a formal evidentiary public hearing on a matter before it is in the public interest.

Subpart B describes details concerning the initiation of proceedings to which these rules apply. Section 1502.5 explains that a person may file written objections to a final regulation to which this procedure applies on or before the 30th day of publication of the final rule. Section 1502.6 describes the form which objections and requests for a hearing must take when filed with the Office of the Secretary. Section 1502.7 provides that the Commission will publish a notice in the **Federal Register** after the time for filing objections has expired, which notice will state either that no objections have been filed, or will specify the parts of the regulation that have been stayed by the filing of proper objections. Section 1502.8 describes the situations in which the Commission will grant a request for a hearing.

Section 1502.9 provides that the Commission will promptly publish a notice in the **Federal Register** if it determines that the regulation at issue should be modified or revoked. Section 1502.10 provides that if the Commission determines to deny a request for a hearing, in whole or in part, it will publish a notice in the **Federal Register**. Section 1502.10 further specifies the required contents of such a notice, describes what constitutes the record of the Commission's denial of a hearing, and explains that denial of a request for a hearing is reviewable in the courts. Section 1502.11 explains that a person may submit objections and waive the right to a hearing. Section 1502.12 describes the procedure by which a person with a right to request a formal hearing may waive that right and request an alternative form of hearing under 16 CFR part 1052. Section 1502.13 specifies the contents of a notice declaring that a hearing is justified, and explains that a hearing is deemed to begin on the date of publication of the notice of hearing. Section 1502.14 explains that if no objections are filed and no hearing is requested, the regulation is effective on the date specified in the regulation as promulgated, and that the Commission will publish a notice confirming that date.

Subpart C provides that a person who wishes to appear in any hearing should file a notice of participation. This subpart also describes the contents of a notice of appearance, and explains the parameters for Commission advice and communication on public participation in hearings (including *ex parte* communicaitons).

Subpart D explains that the presiding officer will be an administrative law judge, describes the powers of the presiding officer, and explains the circumstances in which the presiding officer may withdraw from the proceeding.

Subpart E describes the hearing procedures. Section 1502.23 specifies the procedures for the filing and service of submissions. Section 1502.24 describes the procedure for submitting a petition to participate *in forma pauperis*. Section 1502.25 describes the data and information to be relied upon by the participants in the hearing. Section 1502.26 describes the procedure for direct testimony, explains when oral cross-examination will be permitted, and provides that the proponent of a substitute provision has the burden of proof in relation to the new provision. Section 1502.27 describes the activities permitted and prohibited for nonparty participants. Section 1502.28 describes acceptable conduct for participants in oral hearings and conferences. Section 1502.29 provides for notice of the time and place of a prehearing conference. Section 1502.30 describes the procedure for a prehearing conference. Section 1502.31 provides that after a hearing has commenced, a participant may move for a summary decision on any issue in the hearing, describes the circumstances in which the presiding officer will grant such a motion, and specifies the papers which should be submitted in support of, or in opposition to, such a motion. Section 1502.32 describes the contents of the administrative record of the hearing, and describes the evidence and testimony that are admissible. Section 1502.33 explains when official notice may be taken. Section 1502.34 explains the procedure for filing briefs, and the contents of briefs and arguments. Section 1502.35 describes the circumstances in which an interlocutory

appeal from a ruling of the presiding officer may be made to the Commission, and the procedure for filing such an appeal. Section 1502.36 provides for the compilation of an official transcript of the hearing. Section 1502.37 describes the procedure for filing motions.

Subpart F describes the contents of the administrative record of a hearing, and provides for public availability of documents.

Subpart G provides for an initial and final decision in a hearing. Section 1502.40 requires the presiding officer to file an initial decision, describes the contents of the initial decision, and provides that the initial decision becomes the final decision of the Commission unless a participant files exceptions, or the Commission files a notice of review. Section 1502.41 provides for a participant to appeal an initial decision to the Commission by filing exceptions (within 30 days) that specifically identify alleged errors in the initial decision, and provides for the Commission to file a notice to review an initial decision. Section 1502.42 explains the powers of the Commission on appeal or review of an initial decision. Section 1502.43 provides for a participant to petition the Commission for reconsideration of part or all of its decision, or for a stay of its decision.

Subpart H provides for judicial review of the Commission's final decision, and requires a participant to first submit a petition for stay of action before requesting a court to stay the Commission's action pending judicial review.

C. Effects on Small Businesses and Other Small Entities

The Regulatory Flexibility Act requires the Commission to consider the effect the proposed rule would have on small entities. The proposed rule specifies detailed procedures for formal evidentiary public hearings when such hearings are required under the FHSA or the PPPA and the FDCA, or when the Commission concludes that such a hearing is in the public interest. It is possible that a small entity may be involved in such a public hearing and would be required to follow the procedures proposed. Participation in such a hearing under the proposed procedures may require the preparation of a substantial number of documents, and may require the expenditure of time and money in this preparation. The proposed rules do provide for proceeding *in forma pauperis*. This may alleviate the burden of preparation in some instances.

The Commission is not proposing new instances in which a formal evidentiary hearing would be held, but is simply specifying in greater detail the procedures that would be required when such a hearing is provided for in the FHSA or the PPPA. Thus, this proposal would not place an additional burden on small entities, but explains in greater detail the procedures that would be required when such a hearing is held.

D. Environmental Considerations

The proposed regulation concerns only procedural rules for the conduct of a formal evidentiary public hearing. The Commission finds that the proposed rule has no potential for affecting the human environment. Thus, the Commission finds that no environmental assessment or environmental impact statement would be required.

List of Subjects in 16 CFR Part 1502

Administrative practice and procedure; Consumer protection.

For the reasons set forth in the preamble, the Consumer Product Safety Commission is proposing to amend title 16, chapter II, as follows:

PART 1500—[AMENDED]

1. The authority citation for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278.

§ 1500.201 [Removed]

1a. Section 1500.201 is removed.

2. Part 1502 is added to read as follows:

PART 1502—PROPOSED PROCEDURES FOR FORMAL EVIDENTIARY PUBLIC HEARING

Subpart A—General Provisions

Sec.
1502.1 Scope.
1502.2 Computation of time periods.
1502.3 Confidential information.
1502.4 Office of the Secretary.

Subpart B—Initiation of Proceedings

1502.5 Initiation of a hearing involving the issuance, amendment, or revocation of a regulation.
1502.6 Filing objections and requests for a hearing on a regulation.
1502.7 Notice of filing of objections.
1502.8 Ruling on objections and requests for hearing.
1502.9 Modification or revocation of regulation or order.
1502.10 Denial of hearing in whole or in part.
1502.11 Judicial review after waiver of hearing on a regulation.
1502.12 Request for alternative form of hearing.
1502.13 Notice of hearing; stay of action.
1502.14 Effective date of regulation when no objections are filed.

Subpart C—Appearance and Participation

1502.15 Appearance.
1502.16 Notice of participation.
1502.17 Advice on public participation in hearings.

Subpart D—Presiding Officer

1502.18 Presiding Officer.
1502.19 Commencement of functions.
1502.20 Authority of presiding officer.
1502.21 Disqualification of presiding officer.
1502.22 Unavailability of presiding officer.

Subpart E—Hearing Procedures

1502.23 Filing and service of submissions.
1502.24 Petition to participate *in forma pauperis*..
1502.25 Disclosure of data and information to be relied on by the participants.
1502.26 Purpose; oral and written testimony; burden of proof.
1502.27 Participation of nonparties.
1502.28 Conduct at oral hearings or conferences.
1502.29 Time and place of prehearing conferences.
1502.30 Prehearing conference procedure.
1502.31 Summary decisions.
1502.32 Receipt of evidence.
1502.33 Official notice.
1502.34 Briefs and arguments.
1502.35 Interlocutory appeal from ruling of presiding officer.
1502.36 Official transcript.
1502.37 Motions.

Subpart F—Administrative Record

1502.38 Administrative record of a hearing.
1502.39 Examination of record.

Subpart G—Initial and Final Decision

1502.40 Initial decision.
1502.41 Appeal from or review of initial decision.
1502.42 Decision by Commission on appeal or review of initial decision.
1502.43 Recosideration and stay of Commission's action.

Subpart H—Judicial Review

1502.44 Review by the courts.
1502.45 Copies of petitions for judicial review.

Authority: 15 U.S.C. 1261(q)(1)(B), 1262(a), 1262(e), 1269(a); 15 U.S.C. 1474(a); 21 U.S.C. 371(e)–(g).

Subpart A—General Provisions

§ 1502.1 Scope.

The procedures in this part apply when—

(a) A person has a right to an opportunity for a hearing under section 2(q)(1)(B) or 3(a) of the Federal Hazardous Substances Act ("FHSA") and 701(e) of the Federal Food, Drug, and Cosmetic Act ("FDCA") (15 U.S.C. 1261 (q)(1)(B) and 1261(a), and 21 U.S.C. 371(e));

(b) The Commission elects to hold a hearing under 3(e)(1) of the FHSA or 5 of the Poison Prevention Packaging Act ("PPPA") and 701(e) of the FDCA (15

U.S.C. 1262(e)(1) and 1474(a), and 21 U.S.C. 371(e)); or

(c) The Commission concludes that it is in the public interest to hold a formal evidentiary public hearing on any matter before it in such a proceeding.

§ 1502.2 Computation of time periods.

Whenever a time period for taking action is specified by these procedures, by the presiding officer, or by the Commission, Saturdays, Sundays, and Federal holidays are included in computing time. However, if the last day for taking such action falls on a Saturday, Sunday, or Federal holiday, the action shall be timely if taken on or before the next Federal Government business day.

§ 1502.3 Confidential information.

Whenever any participant desires or is required to submit information in any proceeding under this part 1502, and the participant believes that such information consists of trade secrets or other confidential business or financial information that should not be disclosed publicly, the participant may, instead of submitting such information, file a motion for a protective order containing a general description of the information desired to be withheld, together with a detailed argument supporting the claim that the information should be held in confidence.

§ 1502.4 Office of the Secretary.

(a) The mailing address of the Commission's Office of the Secretary is: Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

(b) The address for delivery to the Office of the Secretary is: Office of the Secretary, room 510, 5401 Westbard Avenue, Bethesda, Maryland 20816.

(c) The telephone number of the Office of the Secretary is (301) 492–6800.

Subpart B—Initiation of Proceedings

§ 1502.5 Initiation of a hearing involving the issuance, amendment, or revocation of a regulation.

(a) The **Federal Register** notice promulgating the final regulation will describe how to submit objections and requests for hearings.

(b) On or before the 30th day after the date of publication of a final regulation in the **Federal Register**, a person may file written objections, with or without a request for a hearing, with the Commission. The 30-day period may not be exended, except that additional information supporting an objection may be received after 30 days upon a showing of inadvertent omission or for other good cause shown, if consideration of the additional information will not delay review of the objection and request for hearing.

§ 1502.6 Filing objections and requests for a hearing on a regulation.

(a) Objections and requests for a hearing under § 1502.5(a) must be filed with the Office of the Secretary and will be accepted for filing if they meet the following conditions:

(1) They are submitted within the time specified in § 1502.5(b).

(2) Each objection is separately numbered.

(3) Each objection specified with particularity the provision(s) of the regulation to which the objection is directed.

(4) Each objection on which a hearing is requested specifically requests a hearing. Failure to request a hearing on an objection constitutes a waiver of the right to a hearing on that objection.

(5) Each objection for which a hearing is requested includes a detailed description of the basis for the objection and the factual information or analysis in support therof. Failure to include a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection. The description and analysis may be used only for the purpose of determining whether a hearing has been justified under § 1502.8, and do not limit the evidence that may be presented if a hearing is granted.

(i) A copy of any report, article, survey, or other written document relied upon must be submitted, unless the document is—

(A) A CPSC document that is routinely publicly available; or

(B) A recognized medical or scientific textbook or journal in the public domain.

(ii) A summary of the non-documentary testimony to be presented by any witnesses relied upon must be submitted.

(b) If an objection or request for a public hearing fails to meet the requirements of this section the Office of the General Counsel shall notify the Office of the Secretary of the deficiency. The Office of the Secretary shall return it with a copy of the applicable regulations, indicating those provisions not complied with. A deficient objection or request for a hearing may be supplemented and subsequently filed if submitted within the 30-day time period specified in § 1502.5(b).

(c) If another person objects to a regulation issued in response to a petition, the petitioner may submit a written reply to the Office of the Secretary on or before the 15th day after the last day for filing objections.

§ 1502.7 Notice of filing of objections.

As soon as practicable after the expiration of the time for filing objections to and requests for hearing on agency action involving the issuance, amendment, or revocation or a regulation under the FHSA or the PPPA and 701(e) of the Federal Food, Drug, and Cosmetic Act, the Commission shall publish a notice in the **Federal Register** specifying those parts of the regulation that have been stayed by the filing of proper objections and, if no objections have been filed, stating that fact. The notice does not constitute a determination that a hearing is justified on any objections or requests for hearing that have been filed. When to do so will cause no undue delay, the notice required by this section may be combined with the notices described in §§ 1502.10 and 1502.13.

§ 1502.8 Ruling on objections and requests for hearing.

(a) As soon as practicable, the Commission will review all objections and requests for hearing filed under §1502.6 and determine—

(1) Whether the regulation should be modified or revoked under §1502.9; and

(2) Whether a hearing has been justified.

(b) A request for a hearing will be granted if the material submitted shows the following:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. A hearing will not be granted on issues of policy or law.

(2) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions.

(3) The data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the person. A hearing will be denied if the Commission concludes that the data and information submitted, even though accurate, are insufficient to justify the factual determination urged.

(4) Resolution of the factual issue in the way sought by the person is adequate to justify the action requested. A hearing will not be granted on factual issues that are not determinative with respect to the action requested, *e.g.*, if the Commission concludes that the Commission's action would be the same even if the factual issue were resolved in the way sought, or if a request is

made that a final regulation include a provision not reasonably encompassed by the proposal.

(5) The action requested is not inconsistent with any provision in the FHSA or any regulation in 16 CFR subchapter C explaining or particularizing the requirements of the FHSA.

(6) The requirements in other applicable regulations, and in the notice promulgating the final regulation or the notice of opportunity for hearing are met.

(c) In making the determinations specified in paragraph (a) of this section, the Commission may issue an appropriate order on the determinations without further notice or opportunity for comment from interested parties. However, the Commission, at its option, may use the procedure specified in 16 CFR part 1052 or any other applicable public procedure available to it.

(d) If it is uncertain whether a hearing has been justified under the principles in paragraph (b) of this section, and the Commission concludes that summary decision against the person requesting a hearing should be considered, the Commission may serve upon the person by registered mail a proposed order denying a hearing. The person has 30 days after receipt of the proposed order to demonstrate that the submission justifies a hearing.

§ 1502.9 Modification or revocation of regulation or order.

If, upon review of an objection or request for hearing, the Commission determines that the regulation should be modified or revoked, the Commission will promptly take such action by notice in the **Federal Register**. Further objections to or requests for hearing on the modification or revocation may be submitted under §§ 1502.5 and 1502.6, but no further issue may be taken with other provisions in the regulation. Objections and requests for hearing that are not affected by the modification or revocation will remain on file and be acted upon in due course.

§ 1502.10 Denial of hearing in whole or in part.

(a) If the Commission determines upon review of the objections or requests for hearing that a hearing is not justified, in whole or in part, a notice of the determination will be published in the **Federal Register**.

(b) The notice will state whether the hearing is denied in whole or in part. If the hearing is denied in part, the notice will be combined with the notice of hearing required by § 1502.13, and will specify the objections and requests for hearing that have been granted and denied.

(c) Any denial will be explained. A denial based on an analysis of the information submitted to justify a hearing will explain the inadequacy of the information.

(d) The notice will confirm, modify, or stay the effective date of the regulation involved.

(e) The record of the administrative proceeding relating to denial in whole or in part of a public hearing on an objection or request for hearing consists of the following:

(1) The entire rulemaking record;

(2) The objections and requests for hearing filed by the Office of the Secretary; and

(3) The notice denying a formal evidentiary public hearing.

(f) The record specified in paragraph (e) of this section is the exclusive record for the Commission's decision on the complete or partial denial of a hearing. The record of the proceeding will be closed as of the date of the Commission's decision denying a hearing, unless another date is specified. A person who requested and was denied a hearing may submit a petition for reconsideration or a petition for stay of the Commission's action. A person who wishes to rely upon information or views not included in the administrative record shall submit them to the Commission with a petition to modify the final regulation.

(g) Denial of a request for a hearing in whole or in part is final agency action reviewable in the courts, under the statutory provisions governing the matter involved, as of the date of publication of the denial in the **Federal Register**.

(1) Before requesting a court for a stay of the Commission's action pending judicial review, a person shall first submit a petition to the Commission for a stay of action.

(2) The time for filing a petition for judicial review of a denial of a hearing on an objection or issue begins on the date the denial is published in the **Federal Register**. The failure to file a petition for judicial review within the period established in the statutory provision governing the matter involved constitutes a waiver of the right to judicial review of the objection or issue, regardless whether a hearing has been granted on other objections and issues.

§ 1502.11 Judicial review after waiver of hearing on a regulation.

(a) A person with a right to submit objections and a request for hearing under § 1502.5(a) may submit objections and waive the right to a hearing. The waiver may be either an explicit statement, or a failure to request a hearing, as provided in § 1502.6(a)(4).

(b) If a person wives the right to a hearing, the Commission will rule upon the person's objections under §§ 1502.8 through 1502.10. As a matter of discretion, the Commission may also order a hearing on the matter.

(c) If the Commission rules adversely on a person's objection, the person may petition for judicial review in a U.S. court of appeals under the appropriate statute.

(1) The record for judicial review is the record designated in § 1502.10(e).

(2) The time for filing a petition for judicial review begins on the date of publication of the Commission's ruling on the objections in the **Federal Register**.

§ 1502.12 Request for alternative form of hearing.

(a) A person with a right to request a formal hearing may waive that right and request a hearing before the Commission under 16 CFR part 1052.

(b) The request—

(1) May be on the person's own initiative or at the suggestion of the Commission;

(2) Must be submitted by the person in the form of a petition before publication of a notice of hearing under § 1502.13 or a denial of hearing under § 1502.10; and

(3) Must be—

(i) In lieu of a request for a formal hearing under § 1502.5; or,

(ii) If submitted with or after a request for formal hearing, accompanied by a waiver of the right to a formal hearing, conditioned on the request for the alternative form of hearing. Upon acceptance by the Commission, the waiver becomes binding and may be withdrawn only by waiving any right to any form of hearing, unless the Commission determines otherwise.

(c) When more than one person requests and justifies a formal hearing under these procedures, an alternative form of hearing may be used only if all the persons concur and waive their right to request a formal hearing.

(d) The Commission will determine whether an alternative form of hearing should be used after considering the requests submitted and the appropriateness of the alternative hearing for the issues raised in the objections. The Commission's determination is binding unless, for good cause, the Commission subsequently determines otherwise.

(e) If the Commission determines that an alternative form of hearing will be used, the Commission will publish a notice in the **Federal Register** setting forth the following information:

(1) A description of the regulation that is the subject of the hearing.

(2) A statement specifying any part of the regulation that has been stayed by operation of law or in the Commission's discretion.

(3) The time, date, and place of the hearing, or a statement that such information will be contained in a later notice.

(4) The parties to the hearing.

(5) The issues at the hearing. The statement of issues determines the scope of the hearing.

§ 1502.13 Notice of hearing; stay of action.

(a) If the Commission determines upon review of the objections and requests for hearing that a hearing is justified on any issue, the Commission will publish a notice setting forth the following:

(1) A description of the regulation that is the subject of the hearing.

(2) A statement specifying any part of the regulation or order that has been stayed by operation of law or in the Commission's discretion.

(3) The parties to the hearing.

(4) The issues of fact on which a hearing has been justified.

(5) A statement of any objections or requests for hearing for which a hearing has not been justified, which are subject to § 1502.10.

(6) The presiding officer, or a statement that the presiding officer will be designated in a later notice.

(7) The time within which notices of participation should be filed under § 1502.16.

(8) The date, time, and place of the prehearing conference, or a statement that the date, time, and place will be announced in a later notice. The prehearing conference may not commence until after the time expires for filing the notice of participation required by § 1502.16(a).

(9) The time within which participants should submit written information and views under § 1502.25(b). Additional copies of material already submitted under § 1502.25 need not be included with any later submissions.

(10) The contents of the portions of the administrative record relevant to the issues at the hearing. Except for trade secret or other confidential information, the disclosure of which is prohibited by statute, the portions listed will be placed on public display in the Office of the Secretary before the notice is published.

(b) The statement of the issues determines the scope of the hearing and the matters on which evidence may be introduced. The issues may be revised by the presiding officer. A participant may obtain interlocutory review by the Commission of a decision by the presiding officer to revise the issues to include an issue on which the Commmission has not granted a hearing or to eliminate an issue on which a hearing has been granted.

(c) A hearing is deemed to begin on the date of publication of the notice of hearing.

§ 1502.14 Effective date of regulation when no objections are filed.

(a) If no objections are filed and no hearing is requested on a regulation under § 1502.5, the regulation is effective on the date specified in the regulation as promulgated.

(b) The Commission shall publish a confirmation of the effective date of the regulation. The **Federal Register** document confirming the effective date of the regulation may extend the time for compliance with the regulation.

Subpart C—Appearance and Participation

§ 1502.15 Appearance.

(a) A person who has filed a notice of participation under § 1502.16 may appear in person or by counsel or other representative in any hearing and, subject to § 1502.27, may be heard concerning all relevant issues.

(b) The presiding officer may strike a person's appearance for violation of the reguirements regarding conduct in § 1502.28.

§ 1502.16 Notice of participation.

(a) Within 30 days after publication of the notice of hearing under § 1502.13, a person desiring to participate in a hearing is to file with the Office of the Secretary a notice of participation in the following form:

(Date)

Office of the Secretary, Consumer Product Safety Commission, room 520, 5401 Westbard Ave, Bethesda, MD 20207

Notice of Participation

(Title of Regulation)

Docket No. _____

Please enter the participation of:

(Name) _____

(Street address) _____

(City, State, and Zip Code) _____

(Telephone number) _____

Service on the above will be accepted by:

(Name) _____

(City, State, and Zip Code) _____

(Telephone number) _____

The following statements are made as part of this notice of participation:

A. *Specific interests.* (A statement of the specific interest of the person in the proceeding, including the specific issues of fact concerning which the person desires to be heard. This part need not be completed by a party to the proceeding.)

B. *Commitment to participate.* (A statement that the person will present documentary evidence or testimony at the hearing and will comply with the reqirements of §1502.25 of these procedures.)

(Signed) _____

(b) Any amendment to a notice of participation should be filed with the Office of the Secretary and served on all participants.

(c) No person may participate in a hearing who has not filed a written notice of participation or whose participation has been stricken under paragraph (e) of this section.

(d) The presiding officer may permit the late filing of a notice of participation upon a showing of good cause.

(e) The presiding officer may strike the participation of a person for nonparticipation in the hearing or for failure to comply with any requirement of this subpart, *e.g.*, disclosure of information as required by § 1502.25 or the prehearing order issued under § 1502.30. Any person whose participation is stricken may petition the Commission for interlocutory review of that decision.

§ 1502.17 Advice on public participation in hearings.

(a) All inquiries from the public about scheduling, location, and general procedures should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or telephone 301–492–6800.

(b) Requests by hearing participants for changes in the schedule of a hearing or for filing documents, briefs, or other pleadings should be made in writing directly to the presiding officer.

(c) Under no circumstances will the Office of the General Counsel of CPSC directly provide advice about a hearing to any person who is participating or may participate in the hearing. In every hearing, certain attorneys in the office are designated to represent the staff. Other members of the office, ordinarily including the General Counsel, are designated to advise the Commission on a final decision in the matter. It is not compatible with these functions, nor would it be professionally responsible, for the attorneys in the Office of the General Counsel also to advise other participants in a hearing, or for any attorney who may be called on to advise the Commission to respond to inquiries from other participants in the hearing; such participants may be urging views contrary to those of the staff involved or

to what may ultimately be the final conclusions of the Commission. Accordingly, members of the Office of the General Counsel, other than the attorneys responsible for representing the staff, will not answer questions about the hearing from any participant or potential participant.

(d) Participants in a hearing may communicate with the attorneys responsible for representing the staff, in the same way that they may communicate with counsel for any other party in interest about the presentation of matters at the hearing. It would be inappropriate to bar discussion of such matters as stipulations of fact, joint presentation of witnesses, or possible settlement of hearing issues. Members of the public, including participants at hearings, are advised, however, that all such communications, including those by telephone, will be recorded in memoranda that can be filed with the Office of the Secretary.

(e) Separation of functions and *ex parte* communications will be handled as follows.

(1) An interested person may meet or correspond with any CPSC representative concerning a matter prior to publication of a notice announcing a formal evidentiary public hearing on the matter. The provisions of 16 CFR part 1012 apply to such meetings.

(2) Upon publication of a notice announcing a formal evidentiary public hearing, the following rules concerning separation of functions apply:

(i) The CPSC staff members responsible for preparing evidence and participating in the hearing in the matter are, as a party to the hearing, responsible for all investigative functions and for presentation of the position of the staff at the hearing and in any pleading or oral argument before the Commission. These representatives of the staff may not participate or advise in any decision except as witnesses or counsel in public proceedings. Except as provided herein, there shall be no other communication between representatives of the staff and representatives of the various Commissioners' offices concerning the matter prior to the decision of the Commission. The Commission may, however, designate other representatives of the staff to advise the Commission. The designation will be in writing and filed with the Office of the Secretary no later than the time specified in paragraph (f)(2) of this section for the application of separation of functions. All employees of the CPSC other than representatives of the involved staff (except for those specifically designated otherwise) may be called upon to advise and participate with the offices of the Commissioners in their functions relating to the hearing and the final decision.

(ii) The General Counsel of CPSC shall designate members of the Office of the General Counsel to advise and participate with the staff in its functions in the hearing and shall designate other members of the Office of the General Counsel to advise the offices of the Commissioners in their functions related to the hearing and the final decision. The members of the Office of the General Counsel designated to advise the staff may not participate or advise in any decision of the Commission except as counsel in public proceedings. The designation shall be in the form of a memorandum filed with the Office of the Secretary and made a part of the administrative record in the proceeding. There may be no other communication between those members of the Office of the General Counsel designated to advise the offices of the Commissioners and any other person in the Office of the General Counsel or in the involved staff with respect to the matter prior to the decision of the Commission. The General Counsel may assign different attorneys to advise either the staff or the offices of the Commissioners at any stage of the proceedings. The General Counsel will ordinarily advise and participate with the offices of the Commissioners in their functions relating to the hearing and the final decision.

(iii) The Commissioners are responsible for the agency review and final decision of the matter, with the advice and participation of anyone in CPSC other than representatives of the responsible staff and those members of the Office of the General Counsel designated to assist in the staff functions in the hearing.

(iv) Between the date that separation of functions applies and the date of the Commission's decision on the matter, communication concerning the matter involved in the hearing will be restricted as follows:

(A) No person outside CPSC may have an *ex parte* communication with the presiding officer or any person representing the offices of the Commissioners concerning the matter in the hearing. Neither the presiding officer nor any person representing the offices of the Commissioners may have any *ex parte* communications with a person outside CPSC concerning the matter in the hearing. All communications are to be public communications, as witness or counsel under the applicable procedures.

(B) A participant in the hearing may submit a written communication concerning a proposal for settlement to the presiding officer with a request that it be transmitted to the Commission. These communications are to be in the form of pleadings, served on all other participants, and filed with the Office of the Secretary like any other pleading.

(C) A written communication contrary to this section must be immediately served on all other participants and filed with the Office of the Secretary by the presiding officer at the hearing, or by the Commissioner, depending on who received the communication. An oral communication contrary to this section must be immediately recorded in a written memorandum and similarly served on all other participants and filed with the Office of the Secretary. A person, including a representative of a participant in the hearing, who is involved in an oral communication contrary to this section, must, if possible, be made available for cross-examination during the hearing with respect to the substance of that conversation. Rebuttal testimony pertinent to a written or oral communication contrary to this section will be permitted. Cross-examination and rebuttal testimony will be transcribed and filed with the Office of the Secretary.

(D) The making of a communication contrary to this section may, consistent with the interests of justice and the policy of the underlying statute, result in a decision adverse to the person knowingly making or causing the making of such a communication.

Subpart D—Presiding Officer

§ 1502.18 Presiding officer.

The presiding officer in a hearing will be an administrative law judge qualified under 5 U.S.C. 3105.

§ 1502.19 Commencement of functions.

The functions of the presiding officer begin upon designation and end upon the filing of the initial decision.

§ 1502.20 Authority of presiding officer.

The presiding officer has all powers necessary to conduct a fair, expeditious, and orderly hearing, including the power to—

(a) Specify and change the date, time, and place of oral hearings and conferences;

(b) Establish the procedures for use in developing evidentiary facts, including the procedures in § 1502.30(b) and to rule on the need for oral testimony and cross-examination under § 1502.26(b);

(c) Prepare statements of the areas of factual disagreement among the participants;

(d) Hold conference to settle, simplify, or determine the issues in a hearing or to consider other matters that may expedite the hearing;

(e) Administer oaths and affirmations;

(f) Control the course of the hearing and the conduct of the participants;

(g) Examine witnesses and strike or limit their testimony if they fail to respond fully to proper questions;

(h) Admit, exclude, or limit evidence;

(i) Set the time for filing pleadings;

(j) Rule on motions and other procedural matters;

(k) Rule on motions for summary decision under § 1502.31;

(l) Conduct the hearing in stages if the number of parties is large or the issues are numerous and complex;

(m) Waive, suspend, or modify any procedure in this subpart if the presiding officer determines that no party will be prejudiced, the ends of justice will be served, and the action is in accordance with law;

(n) Strike the participation of any person under § 1502.16(e) or exclude any person from the hearing under § 1502.28, or take other reasonable disciplinary action; and

(o) Take any other action required for the fair, expeditious, and orderly conduct of the hearing.

§ 1502.21 Disqualification of presiding officer.

(a) A participant may request the presiding officer to disqualify himself/herself and withdraw from the proceeding. The ruling on any such request may be appealed in accordance with § 1502.35(b).

(b) A presiding officer who is aware of grounds for disqualification, whether or not raised by a participant, shall withdraw from the proceeding.

§ 1502.22 Unavailability of presiding officer.

(a) If the presiding officer is unable to act for any reason, the Commission will assign the powers and duties to another presiding officer. The substitution will not affect the hearing, except as the new presiding officer may order.

(b) Any motion based on the substitution must be made within 10 days.

Subpart E—Hearing Procedures

§ 1502.23 Filing and service of submissions.

(a) Submissions, including pleadings in a hearing, are to be filed with the Office of the Secretary. Two copies shall be filed. To determine compliance with filing deadlines in a hearing, a submission is considered filed on the day of filing with or mailing to the Office of the Secretary. When this part allows a response to a submission and prescribes a period of time for the filing of the response, an additional 3 days are allowed for the filing of the response if the submission is served by mail.

(b) The person making a submission shall serve copies of it on the other participants.

(c) Service is accomplished by mailing a submission to the address shown in the notice of participation or by personal delivery.

(d) All submissions are to be accompanied by a certificate of service or by a statement that service is not required, stating the reason therefor.

(e) No written submission or other portion of the administrative record may be held in confidence, except as provided in § 1502.3.

§ 1502.24 Petition to participate in forma pauperis

(a) A participant who believes that compliance with the filing and service requirements of this section constitutes an unreasonable financial burden may submit to the Commission a petition to participate *in forma pauperis*.

(b) The petition will be captioned: "Request to Participate *In Forma Pauperis*, Docket No. _____." Filing and service requirements for the petition are described in paragraph (c) of this section, whether or not the petition is granted. The petition must demonstrate that either:

(1) The participant is indigent and a strong public interest justifies participation; or

(2) The participant's participation is in the public interest because it can be considered of primary benefit to the general public.

(c) The Commission may grant or deny the petition. If the petition is granted, the participant need file only one copy of each submission with the Office of the Secretary. The Office of the Secretary will make sufficient additional copies for the administrative record, and serve a copy on each other participant.

§ 1502.25 Disclosure of data and information to be relied on by the participants.

(a) Before the notice of hearing is published under § 1502.13, the Assistant General Counsel for Regulatory Affairs shall submit the following to the Office of the Secretary:

(1) The relevant portions of the administrative record of the proceeding. Portions of the administrative record not relevant to the issues in the hearing are not required to be submitted.

(2) All other documentary data and information relied upon.

(3) A narrative position statement on the factual issues in the notice of hearing and the type of supporting evidence the Assistant General Counsel intends to introduce.

(b) Within 60 days of the publication of the notice of hearing or, if no participant will be prejudiced, within another period of time set by the presiding officer, each participant shall submit to the Office of the Secretary all data and information specified in paragraphs (a)(2) and (3) of this section and any objections that the administrative record filed under paragraph (a)(1) of this section is incomplete, and any documents in the participants' files containing factual information, whether favorable or unfavorable to the regulation issued by the Commission, which relates to the issues involved in the hearing.

(c) Submissions required by paragraphs (a) and (b) of this section may be supplemented later in the proceeding, with the approval of the presiding officer, upon a showing that the material in the supplement was not reasonably known or available when the submission was made, that the relevance of the material contained in the supplement could not reasonably have been foreseen, or that admission of the material in the supplement is necessary for a fair determination of the issues involved in the hearing.

(d) A participant's failure to comply substantially and in good faith with this section constitutes a waiver of the right to participate further in the hearing; failure of a party to comply constitutes a waiver of the right to a hearing.

(e) Participants may reference each other's submissions. To reduce duplicative submissions, participants are encouraged to exchange and consolidate lists of documentary evidence. If a particular document is bulky or in limited supply and cannot reasonably be reproduced, and it constitutes relevant evidence, the presiding officer may authorize submission of a reduced number of copies.

(f) The presiding officer will rule on questions relating to this section.

§ 1502.26 Purpose; oral and written testimony; burden of proof.

(a) The objective of a formal evidentiary hearing is the fair determination of relevant facts consistent with the right of all interested persons to participate and the public interest in promptly settling controversial matters affecting the public health and welfare.

(b) Accordingly, the evidence at a hearing is to be developed to the maximum extent through written submissions, including written direct testimony, which may be in narrative or in question-and-answer form.

(1) Direct testimony will be submitted in writing, except on a showing that written direct testimony is insufficient for a full and true disclosure of relevant facts and that the participant will be prejudiced if unable to present oral direct testimony. If the proceeding involves particular issues, each party may determine whether, and the extent to which, each wishes to present direct testimony orally or in writing.

(2) Oral cross-examination of witnesses will be permitted if it appears that alternative means of developing the evidence are insufficient for a full and true disclosure of the facts and that the party requesting oral cross-examination will be prejudiced by denial of the request or that oral cross-examination is the most effective and efficient means to clarify the matters at issue.

(3) Witnesses shall give testimony under oath.

(c) A participant who proposes to substitute a new provision for a provision objected to has the burden of proof in relation to the new provision.

§ 1502.27 Participation of nonparties.

(a) A nonparty participant may—

(1) Attend all conferences (including the prehearing conference), oral proceedings, and arguments;

(2) Submit written testimony and documentary evidence for inclusion in the record;

(3) File written objections, briefs, and other pleadings; and

(4) Present oral argument.

(b) A nonparty participant may not—

(1) Submit written interrogatories; or

(2) Conduct cross-examination.

(c) A person whose petition is the subject of the hearing has the same right as a party.

(d) A nonparty participant will be permitted additional rights if the presiding officer concludes that the participant's interests would not be adequately protected otherwise or that broader participation is required for a full and true disclosure of the facts, but the rights of a nonparty participant may not exceed the rights of a party.

§ 1502.28 Conduct at oral hearings or conferences.

All participants in a hearing will conduct themselves with dignity and observe judicial standards of practice and ethics. They may not indulge in personal attacks, unseemly wrangling, or intemperate accusations or characterizations. Representatives of parties shall, to the extent possible, restrain clients from improprieties in connection with any proceeding. Disrespectful, disorderly, or contumacious language or conduct, refusal to comply with directions, use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct during any hearing shall constitute grounds for immediate exclusion from the proceeding by the presiding officer.

§ 1502.29 Time and place of prehearing conferences.

A prehearing conference will commence at the date, time, and place announced in the notice of hearing, or in a later notice, or as specified by the presiding officer in a notice modifying a prior notice. At the prehearing conference, insofar as practicable at that time, the presiding officer will establish the methods and procedures to be used in developing the evidence, determine reasonable time periods for the conduct of the hearing, and designate the times and places for the production of witnesses for direct and cross-examination, if leave to conduct oral examination is granted on any issue.

§ 1502.30 Prehearing conference procedure.

(a) Participants in a hearing are to appear at the prehearing conference prepared to discuss and resolve all matters specified in paragraphs (b) of this section.

(1) To expedite the hearing, participants are encouraged to prepare in advance for the prehearing conference. Participants should cooperate with each other, and should request information and begin preparation of testimony at the earliest possible time. Failure of a participant to appear at the prehearing conference or to raise matters that reasonably could be anticipated and resolved at that time will not delay the progress of the hearing and constitutes a waiver of the rights of the participant regarding such matters as objections to the agreements reached, actions taken, or rulings issued by the presiding officer at or as a result of the prehearing conference and may be grounds for striking the participation under § 1502.16.

(2) Participants shall bring to the prehearing conference the following specific information, which will be filed with the Office of the Secretary under § 1502.23:

(i) Any additional information desired to supplement the submission filed under § 1502.25; the supplement may be filed if approved under § 1502.25.

(ii) A list of all witnesses whose testimony will be offered, orally or in writing, at the hearing, with a full curriculum vitae for each. Additional witnesses may be identified later, with the approval of the presiding officer, on a showing that the witness was not reasonably available at the time of the prehearing conference, that the relevance of the witness's views could not reasonably have been foreseen at that time, or for other good cause shown, as where a previously identified witness is unforeseeably unable to testify.

(iii) All prior written statements, including articles and any written statement signed or adopted, or a recording or transcription of an oral statement made, by persons identified as witnesses if—

(A) The statement is available without making a request to the witnesses;

(B) The statement relates to the subject matter of the witness's testimony; and

(C) The statement either was made before the time the person agreed to become a witness or has been made publicly available by the person.

(b) The presiding officer will conduct a prehearing conference for the following purposes:

(1) To determine the areas of factual disagreement to be considered at the hearing. The presiding officer may hold conferences off the record in an effort to reach agreement on disputed factual questions, subject to the *ex parte* limitations in § 1502.17(f).

(2) To identify the most appropriate techniques for developing evidence on issues in controversy and the manner and sequence in which they will be used, including, where oral examination is to be conducted, the sequence in which witnesses will be produced for, and the time and place of, oral examination. The presiding officer may consider, but is not limited to, the following techniques.

(i) Submission of narrative statements of position on factual issues in controversy.

(ii) Submission of evidence or identification of previously submitted evidence to support such statements, such as affidavits, verified statements of fact, data, studies, and reports.

(iii) Exchange of written interrogatories directed to particular witnesses.

(iv) Written requests for the production of additional documentation, data, or other relevant information.

(v) Submission of written questions to be asked by the presiding officer of a specific witness.

(vi) Identification of facts for which oral examination and/or cross-examination is appropriate.

(3) To group participants with substantially like interests for presenting evidence, making motions and objections, including motions for summary decision, filing briefs, and presenting oral argument.

(4) To hear and rule on objections to admitting information submitted under § 1502.25 into evidence.

(5) To obtain stipulations and admissions of facts.

(6) To take other action that may expedite the hearing.

(c) The presiding officer shall issue, orally or in writing, a prehearing order reciting the actions taken at the prehearing conference and setting forth the schedule for the hearing. The order will control the subsequent course of the hearing unless modified by the presiding officer for good cause.

§ 1502.31 Summary decisions.

(a) After the hearing commences, a participant may move, with or without supporting affidavits, for a summary decision on any issue in the hearing. Any other participant may, within 10 days after service of the motion, which time may be extended for an additional 10 days for good cause, serve opposing affidavits or countermove for summary decision. The presiding officer may set the matter for argument and call for the submission of briefs.

(b) The presiding officer will grant the motion if the objections, requests for hearing, other pleadings, affidavits, and other material filed in connection with the hearing, or matters officially noticed, show that there is no genuine issue as to any material fact and that a participant is entitled to summary decision.

(c) Affidavits should set forth facts that would be admissible in evidence and show affirmatively that the affiant is competent to testify to the matters stated. When a properly supported motion for summary decision is made, a participant opposing the motion may not rest upon mere allegations or denials or general descriptions of positions and contentions; affidavits or other responses must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(d) Should it appear from the affidavits of a participant opposing the motion that for sound reasons stated, facts essential to justify the opposition cannot be presented by affidavit, the presiding officer may deny the motion for summary decision, allow additional time to permit affidavits or additional evidence to be obtained, or issue other just order.

(e) If on motion under this section a summary decision is not rendered upon the whole case or for all the relief asked, and evidentiary facts need to be developed, the presiding officer will issue an order specifying the facts that appear without substantial controversy and directing further evidentiary proceedings. The facts so specified will be deemed established.

(f) A participant submitting or opposing a motion for summary decision may obtain interlocutory review by the Commission of a summary decision of the presiding officer.

§ 1502.32 Receipt of evidence.

(a) A hearing consists of the development of evidence and the resolution of factual issues as set forth in this subpart and in the prehearing order.

(b) All orders, transcripts, written statements of position, written direct testimony, written interrogatories and responses, and any other written material submitted in the proceeding comprise the administrative record of the hearing, and will be promptly placed on public display in the Office of the Secretary, except as ordered by the presiding officer.

(c) Written evidence, identified as such, is admissible unless a participant objects and the presiding officer excludes it on objection of a participant or on the presiding officer's own initiative.

(1) The presiding officer may exclude written evidence as inadmissible only if—

(i) The evidence is irrelevant, immaterial, unreliable, or repetitive;

(ii) Exclusion of part or all of the written evidence of a participant is necessary to enforce the requirements of this subpart; or

(iii) The evidence was not submitted as required by § 1502.25.

(2) Items of written evidence are to be submitted as separate documents, sequentially numbered, except that a voluminous document may be submitted in the form of a cross-reference to the documents filed under § 1502.25.

(3) Written evidence excluded by the presiding officer as inadmissible remains a part of the administrative record, as an offer of proof, for judicial review.

(d) Testimony, whether on direct or on cross-examination, is admissible as evidence unless a participant objects and the presiding officer excludes it.

(1) The presiding officer may exclude oral evidence as inadmissible only if—

(i) The evidence is irrelevant, immaterial, unreliable, or repetitive; or

(ii) Exclusion of part or all of the evidence is necessary to enforce the requirements of these procedures.

(2) If oral evidence is excluded as inadmissible, the participant may take written exception to the ruling in a brief to the Commission, without taking oral exception at the hearing. Upon review, the Commission may reopen the hearing to permit the evidence to be admitted if the Commission determines that its exclusion was erroneous and prejudicial.

(e) The presiding officer may schedule conferences as needed to monitor the progress of the hearing, narrow and simplify the issues, and consider and rule on motions, requests, and other matters concerning the development of the evidence.

(f) The presiding officer will conduct such proceedings as are necessary for the taking or oral testimony, for the oral examination of witnesses by the presiding officer on the basis of written questions previously submitted by the parties, and for the conduct of cross-examination of witnesses by the parties. The presiding officer shall exclude irrelevant or repetitious written questions and limit oral cross-examination to prevent irrelevant or repetitious examination.

(g) The presiding officer shall order the proceedings closed for the taking of oral testimony relating only to trade secrets and privileged or confidential commercial or financial information. Participation in closed proceedings will be limited to the witness, the witness's counsel, and Federal Government employees.

§ 1502.33 Official notice.

(a) Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of any other matter peculiarly within the general knowledge of CPSC as an expert agency.

(b) If official notice is taken of a material fact not appearing in the evidence of record, a participant, on timely request, will be afforded an opportunity to show the contrary.

§ 1502.34 Briefs and arguments.

(a) Promptly after the taking of evidence is completed, the presiding officer will announce a schedule for the filing of briefs. Briefs must include a statment of position on each issue, with specific and complete citations to the evidence and points of law relied on. Briefs must contain proposed findings of fact and conclusions of law.

(b) The presiding officer may, as a matter of discretion, permit oral argument after the briefs are filed.

(c) Briefs and oral argument shall refrain from disclosing specific details of written and oral testimony and documents relating to trade secrets and privileged or confidential commercial or financial information, except as specifically authorized in a protective order issued by the presiding officer.

§ 1502.35 Interlocutory appeal from ruling of presiding officer.

(a) Except as provided in paragraph (b) of this section and in §§ 1502.13(b), 1502.16(e), 1502.31(f), and 1502.37(d) authorizing interlocutory appeals, rulings of the presiding officer may not be appealed to the Commission before the Commission's consideration of the entire record of the hearing.

(b) A ruling of the presiding officer is subject to interlocutory appeal to the Commission if the presiding officer certifies on the record or in writing that immediate review is necessary to prevent exceptional delay, expense, or prejudice to any participant or substantial harm to the public interest.

(c) When an interlocutory appeal is made to the Commission, a participant may file a brief with the Commission only if such is specifically authorized by the presiding officer or the Commission, and, if such authorization is granted, within the period the Commission directs. If a participant is authorized to file a brief, any other participant may file a brief in opposition, within the period the Commission directs. If no briefs are authorized, the appeal will be presented as an oral argument to the Commission. The oral argument will be transcribed. If briefs are authorized, oral argument will be heard only at the discretion of the Commission.

§ 1502.36 Official transcript.

(a) The presiding officer will arrange for a verbatim stenographic transcript of oral testimony and for necessary copies of the transcript.

(b) One copy of the transcript will be placed on public display in the Office of the Secretary upon receipt.

(c) Copies of the transcript may be obtained by application to the official reporter and payment of costs thereof.

(d) Witnesses, participants, and counsel have 30 days from the time the transcript becomes available to propose corrections in the transcript of oral testimony. Corrections are permitted only for transcription errors. The presiding officer shall promptly order justified corrections.

§ 1502.37 Motions.

(a) Except for a motion made in the course of an oral hearing before the presiding officer, a motion on any matter relating to the proceeding shall be filed under § 1502.23 and must include a draft order.

(b) A response may be filed within 10 days of service of a motion. The time may be shortened or extended by the presiding officer for good cause shown.

(c) The moving party has no right to reply, except as permitted by the presiding officer.

(d) The presiding officer shall rule upon the motion and may certify that ruling to the Commission for interlocutory review.

Subpart F—Administrative Record

§ 1502.38 Administrative record of a hearing.

(a) The record of a hearing consists of—

(1) The regulation or notice of opportunity for hearing that gave rise to the hearing;

(2) All objections and requests for hearing filed with the Office of the Secretary under §§ 1502.5 and 1502.6;

(3) The notice of hearing published under § 1502.13;

(4) All notices of participation filed under § 1502.16;

(5) All Federal Register notices pertinent to the proceeding;

(6) All submissions filed under § 1502.24, *e.g.*, the submissions required by § 1502.25, all other documentary evidence and written testimony, pleadings, statements of position, briefs, and other similar documents;

(7) The transcript, written order, and all other documents relating to the prehearing conference, prepared under § 1502.30;

(8) All documents relating to any motion for summary decision under § 1502.31;

(9) All documents of which official notice is taken under § 1502.33;

(10) All pleadings filed under § 1502.34;

(11) All documents relating to any interlocutory appeal under § 1502.35;

(12) All transcripts prepared under § 1502.36; and

(13) Any other document relating to the hearing and filed with the Office of the Secretary by the presiding officer or any participant.

(b) The record of the administrative proceeding is closed—

(1) With respect to the taking of evidence, when specified by the presiding officer; and

(2) With respect to pleadings, at the time specified in § 1502.34(a) for the filing of briefs.

(c) The presiding officer may reopen the record to receive further evidence at any time before the filing of the initial decision.

§ 1502.39 Examination of record.

Except as provided in § 1502.3, documents in the record will be publicly available. Documents available for examination or copying will be placed on public display in the Office of the Secretary promptly upon receipt in that office.

Subpart G—Initial and Final Decision

§ 1502.40 Initial decision.

(a) The presiding officer shall prepare and file an initial decision as soon as practicable after the filing of briefs and oral argument.

(b) The initial decision shall contain—

(1) Findings of fact based upon relevant material, and reliable evidence of record;

(2) Conclusions of law;

(3) A discussion of the reasons for the findings and conclusions, including a discussion of the significant contentions made by any participant;

(4) Citations to the record supporting the findings and conclusions;

(5) An appropriate regulation supported by substantial evidence of record and based upon the findings of fact and conclusions of law (unless the initial decision is to not issue a regulation);

(6) An effective date for the regulation (if any), together with an explanation of why the effective date is appropriate; and

(7) The periods of time for filing exceptions to the initial decision with the Office of the Secretary and for filing replies to such exceptions, in accordance with § 1502.41(a)–(c).

(c) The initial decision must refrain from disclosing specific details of trade secrets and privileged or confidential commercial or financial information, except as specifically authorized in a protective order issued by the presiding officer.

(d) The initial decision is to be filed with the Office of the Secretary and served upon all participants. Once the initial decision is filed with the Office of the Secretary, the presiding officer has no further jurisdiction over the matter, and any motions or requests filed with the Office of the Secretary will be decided by the Commission.

(e) The initial decision becomes the final decision of the Commission by operation of law unless a participant files exceptions with the Office of the Secretary under § 1502.41(a) or the Commission files a notice of review under § 1502.41(f).

(f) Notice that an initial decision that has become the decision of the Commission without appeal to or review by the Commission will be published in the Federal Register. The Commission also may publish the decision when it is of widespread interest.

§ 1502.41 Appeal from or review of initial decision.

(a) A participant may appeal an initial decision to the Commission by filing exceptions with the Office of the Secretary, and serving them on the other participants within the period specified in the initial decision. The period for appeal to the Commission may not exceed 30 days, unless extended by the Commission under paragraph (d) of this section.

(b) Exceptions must specifically identify alleged errors in the findings of fact or conclusions of law in the initial decision, and provide supporting citations to the record. Oral argument before the Commission may be requested in the exceptions.

(c) Any reply to the exceptions shall be filed and served within the period specified in the initial decision. The period may not exceed 30 days after the end of the period (including any extensions) for filing exceptions, unless extended by the Commission under paragraph (d) of this section.

(d) The Commission may extend the time for filing exceptions or replies to exceptions for good cause shown.

(e) If the Commission decides to hear oral argument, the participants will be informed of the date, time, and place of the argument, the amount of time allotted to each participant, and the issues to be addressed.

(f) Within 10 days following the expiration of the time for filing exceptions (including any extensions), the Commission may file with the Office of the Secretary, and serve on the participants, a notice of the Commission's determination to review the initial decision. The Commission may invite the participants to file briefs or present oral argument on the matter. The time for filing briefs or presenting oral argument will be specified in that or a later notice.

§ 1502.42 Decision by Commission on appeal or review of initial decision.

(a) On appeal from or review of the initial decision, the Commission has all the powers given to the presiding officer with respect to the initial decision. On the Commission's own initiative or on motion, the Commission may remand the matter to the presiding officer for any further action necessary for a proper decision.

(b) The scope of the issues at the public hearing is the same as the scope of the issues on appeal at the public hearing unless the Commission specifies otherwise.

(c) As soon as possible after the filing of briefs and the presentation of any oral argument, the Commission will issue a final decision in the proceeding, which meets the requirements established in § 1502.40(b) and (c).

(d) The Commission may adopt the initial decision as the final decision.

(e) Notice of the Commission's decision will be published in the Federal Register. The Commission may also publish the decision when it is of widespread interest.

§ 1502.43 Reconsideration and stay of Commission's action.

Following notice or publication of the final decision, a participant may petition the Commission for reconsideration of any part or all of the decision or may petition for a stay of the decision.

Subpart H—Judicial Review

§ 1502.44 Review by the courts.

(a) The Commission's final decision constitutes final agency action from which a participant may petition for judicial review under the statutes governing the matter involved. Before requesting an order from a court for a stay of the Commission's action pending judicial review, a participant shall first submit a petition for a stay of action under § 1502.43.

(b) Under 28 U.S.C. 2112(a), CPSC will request consolidation of all petitions related to a particular matter.

§ 1502.45 Copies of petitions for judicial review.

The General Counsel of CPSC has been designated by the Commission as the officer on whom copies of petitions for judicial review are to be served. This officer is responsible for filing the record on which the final decision is based. The record of the proceeding is certified by the Secretary of the Commission.

Dated: November 15, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 90-27348 Filed 11-20-90; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO-81-90]

RIN 1545-AP18

Limitations on Corporate Net Operating Loss Carryforwards

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to § 1.382-2T of the temporary Income Tax Regulations under section 382 of the Internal Revenue Code of 1986 ("the Code"). The proposed amendments provide for the aggregation of stock ownership in certain cases. Section 382 was amended by section 621 of the Tax Reform Act of 1986. Section 382 was further amended by section 10225 of the Revenue Act of 1987 (the "1987 Act"), sections 1006, 4012 and 5027 of the Technical and Miscellaneous Revenue Act of 1988 (the "1988 Act"), and sections 7205, 7304, 7811, 7815, and 7841 of the Revenue Reconciliation Act of 1989 (the "1989 Act").

DATES: Written comments and requests for a public hearing must be received by January 22, 1991. The proposed amendments to the temporary regulations are generally applicable to testing dates (as determined by applying the amendments) occurring on or after November 20, 1990.

A special effective date is provided for groups that act pursuant to a plan prior to November 20, 1990. No inference should be drawn as to the effect of present law on the treatment of such entities.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, CC:CORP:T:R [CO-81-90], room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Contact Lori J. Jones of the Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or telephone (202) 566-3422 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to part 1 of title 26 of the Code of Federal Regulations ("CFR") under section 382 of the Code. The

amendments relate to the aggregation and segregation of certain ownership interests. Section 382 was amended by section 621 of the Tax Reform Act of 1986 (Pub. L. No. 99-514, 100 Stat. 2085 (1986)). Section 382 was further amended by section 10225 of the 1987 Act (Pub. L. 100-203, 101 Stat. 1330), sections 1006, 4012 and 5077 of the 1988 Act (Pub. L. No. 100-647, 102 Stat. 3342), and sections 7205, 7304, 7811, 7815, and 7841 of the 1989 Act (Pub. L. No. 101-239, 103 Stat. 2106).

Explanation of Provisions

Overview of Relevant Provisions of the Code and Regulations

Under section 382(a) of the Code, as amended, if an ownership change occurs with respect to a loss corporation (as defined in section 382(k)(1) and § 1.382T(f)(1) of the Income Tax Regulations), the amount of the loss corporation's taxable income for a post-change year that may be offset by the pre-change losses (and certain built-in losses) of the loss corporation cannot exceed the section 382 limitation. The section 382 limitation for a post-change year is generally equal to the fair market value of the loss corporation's stock immediately before the ownership change multiplied by the applicable long-term tax-exempt rate as published in the Internal Revenue Bulletin.

In general, an ownership change involves an increase of more than 50 percentage points in stock ownership by 5-percent shareholders during the testing period (usually the three-year period ending on the date on which a transaction is tested for an ownership change). A 5-percent shareholder generally is an individual who owns, directly or pursuant to certain attribution rules, five percent or more of the stock of a loss corporation or individuals and entities separately owning less than five percent of the loss corporation that are aggregated into a group (referred to as a "public group") pursuant to certain aggregation rules under the temporary regulations.

As previously indicated, stock ownership is determined pursuant to certain attribution rules. These attribution rules are used to determine the ultimate beneficial owners of the loss corporation. For example, entity attribution roles require that stock be attributed from an entity owning (directly or indirectly by attribution) five percent or more of the loss corporation to the owners of the entity in proportion to their respective ownership interests.

To apply the aggregation rules, the loss corporation must identify each entity that owns (directly or indirectly by attribution) five percent or more of its stock. With respect to each such entity, the loss corporation must aggregate all owners of the entity that individually are attributed less than five percent of the loss corporation's stock. If these shareholders who, by attribution, each own less than five percent of the loss corporation (the "less-than-5-percent shareholders") own as a group five percent or more of the loss corporation, they are treated as a separate public group which is itself a 5-percent shareholder. A group of less-than-5-percent shareholders with direct ownership of the loss corporation is aggregated into a public group that is treated as a 5-percent shareholder regardless of whether it owns five percent or more of the loss corporation. Transfers of loss corporation stock among members of public groups generally are not taken into account in determining whether an ownership change has occurred.

The rule disregarding transfers of a loss corporation's stock among members of public groups is a rule of convenience designed to alleviate the burden of tracking trades among less-than-5-percent shareholders. Congress, however, recognized that there are situations in connection with transfers of stock involving less-than-5-percent-shareholders in which it is feasible to identify changes in ownership by these shareholders because, unlike in public trading, the changes occur as part of a single, integrated transaction. With respect to these transactions, Congress intended that, where identification of changes in ownership is reasonably feasible or a reasonable presumption can be applied, regulations should provide that the changes should be taken into account in determining whether an ownership change has occurred. Conf. Rep. No. 841, 99th Congress, 2d Sess., Part II at 176 (1986).

Proposed Amendments to § 1.382-2T

For purposes of section 382 and the regulations thereunder, the temporary regulations defined the term "entity" as "any corporation, estate, trust, association, company, partnership, or similar organization." Consequently, where an entity is or becomes a 5-percent shareholder, a loss corporation is required to identify changes in ownership by that entity that occur during the testing period.

An identifiable shift in the ownership of a loss corporation also occurs when a group of persons acting pursuant to a plan acquires five percent or more of the stock of the loss corporation. The temporary regulations are amended to make clear that the definition of the term "entity" includes a group of persons acting pursuant to a plan. Under the amendment, a group of persons must be aggregated into a separate public group where, pursuant to a plan, the group owns five percent or more of the loss corporation's stock in the aggregate, even though each member of the group individually owns less than five percent of such stock. Any shift in ownership by the group must be taken into account for purposes of determining whether an ownership change has occurred.

Pursuant to § 1.382-2T(k)(1) of the regulations, with respect to stock that is subject to regulations of the Securities and Exchange Commission ("SEC"), the loss corporation may rely on the existence and absence of filings with the SEC to identify a group that, acting pursuant to a plan, acquires or owns five percent or more of the stock. However, where the loss corporation has actual knowledge that such a group exists, the presumption in § 1.382-2T(k)(1) is inapplicable and the loss corporation must determine the amount of the loss corporation stock owned by the group for purposes of identifying its 5-percent shareholders.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these proposed regulations, and therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and seven copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Lori J. Jones, Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Service and the Treasury Department participated in developing the regulations, in matters of both substance and style.

List of Subjects in 26 CFR Sections 1.301-1—1.383-3

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

Proposed Amendments to the Regulations

The notice of proposed rulemaking (to amend 26 CFR part 1) that was published on August 11, 1987, (52 FR 29704) is amended and additional amendments to 26 CFR part 1 are proposed as follows:

PART 1—AMENDED

Paragraph 1. The authority for part 1 is amended by adding the following citations to read in part:

Authority: 26 U.S.C. Section 7805, * * * § 1.382-2T issued under 26 U.S.C. 382(g)(4)(C), 26 U.S.C. 382(i), 26 U.S.C. 382(k)(1), 26 U.S.C. 382(k)(6), 26 U.S.C. 382(1)(3), and 26 U.S.C. 382(m).

Par. 2. Section 1.382-2T is amended as follows:

1. Paragraph (f)(7) is amended by adding new sentence as set forth below.
2. Examples (5) and (6) are added to paragraph (g)(4) as set forth below.
3. Paragraph (m) is added as set forth below.

§ 1.382-2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary).

* * * * *

(f) *Definitions.* * * *

(7) *Entity.* * * * An entity includes a group of persons acting pursuant to a plan.

* * * * * *

(g) *5-percent shareholders.* * * *

(4) *Examples.* * * *

Example (5).—(i) L corporation has 1,000 shares of common stock outstanding. For the three-year period ending on October 1, 1991, L's stock was owned by unrelated individuals, none of whom owned five percent or more of L. A group of 20 individuals ("Group") agree among themselves to acquire more than five percent of L's stock. Group is not a corporation, trust, association, partnership, or company. On October 1, 1991, pursuant to their plan, the members of Group purchase 600 shares of L common stock from the old shareholders of L (a total of 60 percent of L stock), with each member purchasing 30 shares.

(ii) Before the members of Group acquired L's stock on October 1, 1991, no individual or entity owned, directly or indirectly, five percent or more of the stock of L. As a result, all shareholders were aggregated into a public group and L was considered to be owned by a single 5-percent shareholder ("Public L") in accordance with paragraphs (g)(1) and (j)(1) of this section.

(iii) Under paragraph (f)(7) of this section, the agreement among members of Group constitutes a plan and Group is, therefore, an entity. Thus, the acquisition of more than five percent of the stock of L on October 1, 1991 by members of Group is not disregarded under paragraph (e)(1)(ii) of this section. Because no member of Group owns, directly or indirectly, five percent or more of the stock of L, paragraphs (g)(1) and (j)(1) require that the members of Group be aggregated into a separate public group, which will be presumed to consist of persons unrelated to the members of Public L. Because there is a shift of more than fifty percentage points in the ownership of L stock, an ownership change occurs on October 1, 1991, as a result of Group's purchase of the 600 shares.

Example (6).—(i) Prior to October 1, 1991, L's 1,000 shares of outstanding stock were owned by unrelated individuals, none of whom own five percent or more of the stock of L. L's management is concerned that L may become subject to a takeover bid. In separate meetings, L's management convinces 15 investors friendly to management to each acquire 4 percent of L's outstanding stock. Each investor is aware that L's management is meeting with other friendly investors. There is no formal or informal agreement between the 15 investors. On October 1, 1991, each investor purchases 4 percent of L's stock.

(ii) Under paragraph (f)(7) of this section, the group of investors ("Group") are treated as an entity because they are acting pursuant to a plan devised by L. Paragraphs (g)(1) and (j)(1) of this section require that on October 1, 1991, the Group be aggregated into a separate public group, which has increased its ownership of L stock by 60 percentage points over its lowest level of ownership in the three-year period ending on October 1, 1991. Accordingly, an ownership change occurs on that date.

* * * * * *

(m) *Effective date.* * * *

(10)(i) *In general.* The second sentence of paragraph (f)(7) of this section and examples (5) and (6) of paragraph (g)(4) of this section apply for testing dates (determined by applying such sentence and examples) on or after November 20, 1990, but with respect to any group of persons that acts pursuant to a plan before November 20, 1990, only if the group increases or reduces pursuant to the plan its ownership of stock of the loss corporation relative to its percentage ownership interest at the close of the day preceding November 20, 1990, by five percentage points or more on or after November 20, 1990.

(ii) *Example.*—Prior to December 1, 1989, L, a loss corporation, is owned entirely by 1,000 unrelated individuals, none of whom owns as much as five percent of the stock of L ("Public L"). On December 1, 1989, 15 individuals ("Group") each acquired 3 percent, or 45 percent, in total, of L stock pursuant to a plan. Group is not a corporation, trust, association, partnership or company. On November 1, 1991, six members of Group each purchased an additional one percent of L stock, or 6 percent, in total, pursuant to the plan. Accordingly, Group increased its ownership in L by 51 percentage points over the testing period. No other 5-percent shareholder has increased his percentage interst of L stock during the testing period. As a result, an ownership change of L occurs on November 1, 1991.

Fred T. Goldberg,

Commissioner of Internal Revenue.

[FR Doc. 90-27223 Filed 11-20-90; 8:45 am]

BILLING CODE 4830-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA-7006]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency

Management Agency, Washington, DC 20472 (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
ALABAMA	
Guntersville (city), Marshall County	
Tennessee River: Within community	*596
Big Spring Creek:	
At mouth	*596
About 3.76 miles upstream of U.S. Highway 431	*604
Maps available for inspection at the City Hall, 341 Gunter Avenue, Guntersville, Alabama.	
Send comments to The Honorable Robert Hembree, Mayor, City of Guntersville, 341 Gunter Avenue, Guntersville, Alabama 35960.	
ARKANSAS	
Ashdown (city), Little River County	
Hurricane Creek:	
At confluence of East Tributary	*306
Approximately 0.13 river mile upstream of State Route 32	*328
East Tributary:	
At its confluence with Hurricane Creek	*306
At the downstream side of State Route 32	*330
South Tributary:	
At its confluence with East Tributary	*313
Approximately 0.01 river mile upstream of State Route 32 (Rankin Street)	*325
Maps available for inspection at the City Hall, 250 N. 2nd Street, Ashdown, Arkansas.	
Send comments to The Honorable C.T. Patterson, III, Mayor of the City of Ashdown, Little River County, P.O. Box 135, Ashdown, Arkansas 71822.	
Chester (town), Crawford County	
Clear Creek (Upper Reach):	
At downstream corporate limits	*836
Approximately 900 feet upstream of Brown Street	*862
Maps available for inspection at the Town Hall, Chester, Arkansas.	
Send comments to The Honorable Mary Ramey, Mayor of the Town of Chester, Crawford County, P.O. Box 122, Chester, Arkansas 72934.	
Crawford County (unincorporated areas)	
Arkansas River:	
Approximately 6.5 navigation miles downstream of Interstate Route 540	*405
At upstream County boundary	*418
Lee Creek: Approximately .2 river mile upstream of County Route 64 (Rena Road)	*415
Town Branch:	
Approximately 0.4 river mile upstream of the confluence with Ned Lake	*364
Approximately 0.61 river mile upstream of State Route 59	*398
Flat Rock Creek:	
Approximately 0.82 river mile downstream of the confluence of Town Branch overflow	*395
Approximately 0.06 river mile upstream of Rudy Road	*472
Clear Creek (Upper Reach):	
Approximately .27 river mile downstream of Burlington Northern Railroad	*805
Approximately .25 river mile upstream of Brown Street	*864
Frog Bayou:	
Approximately 0.95 river mile downstream of Union Pacific Railroad	*422
At the confluence of Clear Creek (Lower Reach)	*751
Warloop Creek:	
Approximately 400 feet upstream of U.S. Route 71 and State Route 282	*752
Approximately 950 feet upstream of U.S. Route 71 and State Route 282	*755
Frog Bayou Tributary:	
At confluence with Frog Bayou	*436
Approximately 400 feet upstream of County Route 19 (Collum Lane)	*441
Clear Creek (Lower Reach):	
At the confluence with Frog Bayou	*751
At the Burlington Northern Railroad	*766
Pigeon Creek:	
At confluence with Frog Bayou	*690
Approximately 550 feet upstream of Wall Street	*746
Mulberry River:	
Approximately 530 feet downstream of confluence of Little Mulberry Creek	*392
At Interstate Route 40	*411
Miller Branch:	
Approximately 1,150 feet downstream of State Route 215	*405
Approximately 0.48 mile upstream of State Route 215	*441
Little Mulberry Creek:	
At confluence with Mulberry River	*392
Approximately .92 mile upstream of U.S. Route 64	*410
Morris Branch Tributary: Approximately 0.6 mile upstream of Interstate Route 40 on-ramp (westbound lane)	*515
Maps available for inspection at Crawford County Courthouse, Van Buren, Arkansas	
Send comments to The Honorable Harold Loyd, Crawford County Judge, Crawford County Courthouse, 4th Street, Van Buren, Arkansas 72956.	
Greenland (city), Washington County	
West Fork White River:	
Approximately 1.2 miles downstream of U.S. Route 71	*1,240
Approximately 0.2 mile upstream of old U.S. Route 71	*1,254
Maps available for inspection at the City Hall, 1 Ross Street, Greenland, Arkansas.	
Send comments to The Honorable Mary Harris, Mayor of the City of Greenland, Washington County, P.O. Box 67, Greenland, Arkansas 72737.	
Kibler (city), Crawford County	
Curry Branch:	
Approximately 0.69 river mile from confluence with Frog Bayou	*400
Approximately 0.46 river mile upstream of South Cedar Road	*439
Maps available for inspection at the City Hall, Alma, Arkansas.	
Send comments to The Honorable Randy Aldridge, Mayor of the City of Kibler, Crawford County, Route 1, Alma, Arkansas 72921.	
Lincoln (city), Washington County	
Moores Tributary:	
Lincoln corporate limits	*1,425
Approximately 0.1 mile upstream of Lincoln corporate limits	*1,429
Maps available for inspection at the City Hall, 106 Arthur, Lincoln, Arkansas.	
Send comments to The Honorable Clarence Reed, Mayor of the City of Lincoln, Washington County, P.O. Box 967, Lincoln, Arkansas 72744.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Tontitown (city), Washington County	
Main Ditch:	
Approximately 0.9 river mile above confluence with Brush Creek	*1,273
Approximately 1.095 river miles above confluence with Brush Creek	*1,282
Maps available for inspection at the City Hall, Tontitown, Arkansas.	
Send comments to The Honorable Fredie Taldo, Mayor of the City of Tontitown, Washington County, P.O. Box 305, Tontitown, Arkansas 72770.	
Washington County (unincorporated areas)	
West Fork White River:	
Approximately 0.9 miles downstream of Harvey Owl Road	*1,168
Approximately 2.3 miles upstream of West Fork corporate limits	*1,360
Clabber Creek:	
Confluence with Harnestring Creek	*1,141
Fayetteville corporate limits	*1,193
Harnestring Creek:	
Confluence of Clabber Creek	*1,141
Fayetteville corporate limits	*1,194
Owl Creek:	
Approximately 240 feet downstream of County Route 27	*1,176
Approximately 0.3 mile upstream of County Route 650	*1,203
Clear Creek:	
Approximately 210 feet downstream of State Route 112	*1,144
Approximately 250 feet upstream of City of Johnson corporate limits	*1,171
Moores Creek:	
Approximately 475 feet downstream of State Route 620	*1,407
Approximately 0.29 mile upstream of U.S. Route 62	*1,417
Moores Tributary:	
Confluence with Moores Creek	*1,411
City of Lincoln corporate limits	*1,425
Muddy Fork:	
Approximately 285 feet downstream of County Route 98	*1,111
Approximately 0.32 mile upstream of U.S. Route 62	*1,135
Brush Creek:	
Approximately 0.5 mile downstream of Emma Road	*1,243
Approximately 0.3 mile downstream of Emma Roads	*1,250
Airport Branch:	
At confluence with West Fork White River	*1,219
At the City of Fayetteville downstream corporate limits	*1,230
Mud Creek:	
At a point approximately 550 feet downstream of Johnson Road	*1,180
At a point approximately 800 feet downstream of Johnson Road	*1,180
Tributary 4:	
Approximately 100 feet downstream of Johnson Road	*1,207
Approximately 100 feet upstream of Johnson Road	*1,209
Maps available for inspection at the County Courthouse, 2 South College, Fayetteville, Arkansas.	
Send comments to The Honorable Charles Johnson, Washington County Judge, 2 South College, Fayetteville, Arkansas 72701.	
CALIFORNIA	
San Benito County (unincorporated areas)	
Pajaro River:	
At confluence of San Benito River	*139
Just upstream of State Highway 101	*144
San Benito River:	
Approximately 2,300 feet downstream of State Highway 156	*252
Just upstream of State Highway 156	*256
Just upstream of Cienega Road	*296
Just upstream of Hospital Road	*316
Approximately 1,300 feet upstream of Hospital Road	*318
Santa Ana Creek:	
Just downstream of State Highway 156	*196
Just downstream of Fallon Road	*223
Approximately 400 feet upstream of McCloskey Road	*267
Just upstream of Fairview Road	*309
Santa Ana Creek Tributary:	
At the confluence with Santa Ana Creek	*268
Approximately 100 feet upstream of Santa Ana Road	*290
Just upstream of Sunnyslope Road	*379
Approximately 240 feet upstream of Fairview Road	*471
San Juan Creek:	
At confluence of San Juan Creek Tributary	*189
Approximately 60 feet upstream of State Highway 156	*196
Just downstream of Mission Vineyard Road	*226
Approximately 2,700 feet upstream of San Juan Canyon Road	*287
San Juan Creek Tributary:	
Approximately 600 feet upstream of the confluence with San Juan Creek	*190
Just downstream of San Juan Grade Road	*270
Approximately 600 feet upstream of San Juan Grade Road	*293
Maps are available for review at the San Benito County Planning Department, 3220 Southside Road, Hollister, California.	
Send comments to The Honorable Curtis Graves, Chairman, San Benito County Board of Supervisors, 440 Fifth Street, Hollister, California 95023.	
ILLINOIS	
Huntley (Village), McHenry and Kane Counties	
South Branch Kishwaukee Branch:	
About 950 feet upstream of mouth	*872
About 2100 feet upstream of Chicago and North Western railroad	*982
Maps available for inspection at the Village Administrator's Office, Village Hall, 11704 Coral Street, Huntley, Illinois.	
Send comments to The Honorable James Dharner, Village President, Village of Huntley, 11704 Coral Street, Huntley, Illinois 60142.	
KANSAS	
Cherokee County (Unincorporated Areas)	
Spring Lake: Within community	*819
Spring River:	
Just upstream of U.S. Highway 66	*819
Just downstream of Columbus Street	*827
Shoal Creek:	
At mouth	*819
Just downstream of State Highway 26	*833
Maps available for inspection at the County Courthouse, Columbus, Kansas.	
Send comments to The Honorable Jack Boyes, Chairman, County Commission, Cherokee County, P.O. Box 14, Columbus, Kansas 66725.	
Cowley County (unincorporated areas)	
Polecat Creek:	
About 1.9 miles upstream of mouth	*1,169
At northern county boundary	*1,207
Stewart Creek:	
About 2.1 miles upstream of mouth	*1,155
About 1.0 mile upstream of State Highway 15	*1,198
Rock Creek:	
About 1.3 miles upstream of mouth	*1,188
At northern county boundary	*1,213
Richland Creek:	
At mouth	*1,248
About 4500 feet upstream of County Highway 1	*1,272
Lower Dutch Creek:	
At mouth	*1,343
About 1.25 miles upstream of County Highway	*1,360
Dutch Creek:	
At mouth	*1,187
At confluence of Lower Dutch Creek	*1,343
Timber Creek Tributary 1:	
At mouth	*1,335
About 1.17 miles upstream of County Highway	*1364
Timber Creek:	
At mouth	*1,132
At northern county boundary	*1,474
Walnut River:	
Just upstream of Union Pacific Railroad	*1,089
About 1.60 miles upstream of confluence of Timber Creek	*1,132
Cedar Creek:	
At mouth	*1,155
About 1400 feet downstream of Timber Lake No. 35 Dam	*1,275
Rock Creek Tributary:	
At Eastern County Boundary	*926
About 2.93 miles upstream of confluence of Whartenby Creek	*1,005
Asher Creek:	
At mouth	*935
At county boundary	*1,039
Bear Creek:	
At mouth	*947
About 300 feet upstream of Private Road	*1,027
Otter Creek:	
At eastern county boundary	*958
About 3700 feet upstream of State Highway 38	*1,086
Cedar Creek Tributary:	
At mouth	*936
About 2350 feet upstream of U.S. Highway 166	*1,043
North Cedar Creek:	
At eastern county boundary	*930
About 4.1 miles upstream of U.S. Highway 166	*1,072
Arkansas River:	
Just upstream of Atchison, Topeka and Santa Fe Railway	*1,072
Just downstream of Atchison, Topeka and Santa Fe Railway	*1,146
Just upstream of Atchison, Topeka and Santa Fe Railway	*1,151
About 1650 feet upstream of county boundary	*1,157
C Street Canal:	
Just downstream of Hickory Avenue	*1,103
About 0.36 mile upstream of 8th Street	*1116
Black Crook Creek:	
At mouth	*1,121
Just downstream of Union Pacific Railroad	*1,131
Timber Creek Lake: Entire shoreline	*1,263
Timber Lake No. 2: Entire shoreline	*1,467
Timber Lake No. 3: Entire shoreline	*1,459
Timber Lake No. 4: Entire shoreline	*1,445
Timber Lake No. 5: Entire shoreline	*1,428
Timber Lake No. 6: Entire shoreline	*1,413
Timber Lake No. 7: Entire shoreline	*1,418
Timber Lake No. 8: Entire shoreline	*1,392
Timber Lake No. 9: Entire shoreline	*1,372
Timber Lake No. 10: Entire shoreline	*1,399
Timber Lake No. 11: Entire shoreline	*1,408
Timber Lake No. 12: Entire shoreline	*1,369
Timber Lake No. 13: Entire shoreline	*1,348
Timber Lake No. 14: Entire shoreline	*1,363
Timber Lake No. 15: Entire shoreline	*1,329
Timber Lake No. 17: Entire shoreline	*1,327
Timber Lake No. 18: Entire shoreline	*1,315
Timber Lake No. 20: Entire shoreline	*1,392
Timber Lake No. 21: Entire shoreline	*1,321
Timber Lake No. 22: Entire shoreline	*1,301
Timber Lake No. 23: Entire shoreline	*1,306
Timber Lake No. 24: Entire shoreline	*1,289
Timber Lake No. 25: Entire shoreline	*1,277
Timber Lake No. 26: Entire shoreline	*1,248
Timber Lake No. 27: Entire shoreline	*1,236
Timber Lake No. 28: Entire shoreline	*1,225
Timber Lake No. 30: Entire shoreline	*1,199
Timber Lake No. 31: Entire shoreline	*1,219
Timber Lake No. 32: Entire shoreline	*1,282
Timber Lake No. 33: Entire shoreline	*1,290

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Timber Lake No. 34: Entire shoreline	*1,286
Timber Lake No. 35: Entire shoreline	*1,301
Rock Lake No. 4: Entire shoreline	*1,281
Rock Lake No. 5: Entire shoreline	*1,295
Maps available for inspection at the County Courthouse, Winfield, Kansas.	
Send comments to The Honorable Dick Bonty, Chairman, Board of County Commission, Cowley County, County Courthouse, Winfield, Kansas 67156.	
Jefferson County (unincorporated areas)	
Kansas River:	
About 0.6 mile downstream of confluence of Buck Creek	*837
At confluence of Little Muddy Creek	*875
Stone House Creek:	
At mouth	*841
Just downstream of U.S. Highway 59	*877
Big Muddy Creek:	
At mouth	*887
Just downstream of State Highway 4	*895
Little Muddy Creek:	
At mouth	*875
Just upstream of State Highway 4	*894
Maps available for inspection at the County Courthouse, Oskaloosa, Kansas.	
Send comments to The Honorable Robin A. Clark, Chairman, Board of Commissioners, Jefferson County, P.O. Box 321, Oskaloosa, Kansas 66066.	
Mission Woods (city), Johnson County	
Brush Creek: Within community	*853
Maps available for inspection at the City Hall, 5822 Mission Woods Road, Mission Woods, Kansas.	
Send comments to The Honorable William H. Sanders, Jr., Mayor, City of Mission Woods, 5822 Mission Woods Road, Mission Woods, Kansas 66205.	
KENTUCKY	
Marshall County (unincorporated areas)	
Little Cypress Creek:	
At mouth	*342
Just downstream of State Route 795	*362
Barrett Branch:	
At mouth	*343
About 2,800 feet upstream of Barrett Road	*346
East Fork Clarks River:	
About 500 feet downstream of Purchase Parkway	*356
About 3,000 feet upstream of confluence of Walch Creek	*374
Walch Creek:	
Just upstream of Walnut Grove-Olive Johnson Road	*356
About 1,790 feet upstream of U.S. Route 641	*442
Cypress Creek:	
At mouth	*342
Just downstream of Lakeview Church Road	*348
Little John Creek:	
At mouth	*348
About 400 feet downstream of State Route 95	*356
Tennessee River:	
At downstream county bondary	*342
About 2,100 feet downstream of Kentucky Dam	*345
Just upstream of Kentucky Dam	*375
About 1.8 miles upstream of U.S. Route 68	*375
Maps available for inspection at the County Courthouse, Vinton, Kentucky.	
Send comments to The Honorable Mike Miller, Judge/Executive, Marshall county, County Courthouse, Vinton, Kentucky 42026.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
LOUISIANA	
Sabine Parish (unincorporated areas)	
Bayou La Nana:	
Approximately .7 mile downstream of Kansas City Southern Railway	*200
At confluence of San Jose Creek	*203
Harpoon Bayou:	
At confluence of San Jose Creek	*203
Approximately 1.2 miles upstream of State Route 1217	241
Phillips Creek:	
Approximately .7 mile downstream of State Route 1217	*225
Approximately .5 mile upstream of State Route 6	*247
Satchwell Creek:	
At the confluence with Phillips Creek	*229
Approximately .7 mile upstream of State Route 6	*255
San Jose Creek:	
At confluence with Harpoon Bayou	*203
Approximately 200 feet upstream of Kansas City Southern Railway	*232
San Jose Creek Tributary:	
At Kansas City Southern Railway	*232
Approximately 750 feet upstream of Kansas City Southern Railway	*234
Bayou See:	
Approximately 200 feet downstream of State Route 475	*182
Approximately .8 mile upstream of State Route 1216	*218
Midkiff Creek:	
Approximately .5 mile downstream of State Route 474	*239
Approximately 1,900 feet downstream of Mill Road	*256
Maps available for inspection at the Courthouse, Police Jury Office, Many, Louisiana.	
Send comments to The Honorable Ronald Busby, Secretary/Treasurer of the Sabine Parish Police Jury, 400 Courthouse, Many, Louisiana 71449.	
Zwolle (town), Sabine Parish	
Bayou Sae:	
Approximately 200 feet downstream of State Route 475	*182
Approximately 100 feet downstream of State Route 1216	*195
Maps available for inspection at the Town Hall, Zwolle, Louisiana.	
Send comments to The Honorable Lynn Fleming, Mayor of the Town of Zwolle, Sabine Parish, P.O. Box 546, Zwolle, Louisiana 71486.	
MAINE	
Addison (town), Washington County	
Atlantic Ocean *Pleasant Bay:*	
Shoreline at Seal Cove	*12
Shoreline at the Ladle (Island)	*22
Pleasant River: Entire shoreline within community	*12
West River:	
Shoreline at Grays Cove	*12
Shoreline at Lane Road extended	*13
Indian River:	
Shoreline at Crowley Island Road	*12
Shoreline at north side of Doyle Island	*13
Hichos Bay:	
Shoreline at Cape Split Road extended	*22
Shoreline at Kent Cove	*22
Western Bay:	
Shoreline at Seadock Rock	*13
Shoreline at west side of Outer Sand Island	*22
Maps available for inspection at the Town Hall, Addison, maine.	
Send comments to The Honorable Lawrence Crowley, First Selectman of the Town of Addison, Washington County, Town Hall, P.O. Box 142, Addison, Maine 04606.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Berwick (town), York County	
Salmon Falls River:	
Approximately 6 mile downstream of New Dam Road	*70
Upstream corporate limits	*190
Maps available for inspection at the Town Hall, Berwick, Maine.	
Send comments to Mr. Richard Stillings, Berwick Town Planner, York County, P.O. Box 596, Berwick, Maine 03901.	
Franklin (town), Hancock County	
Card Mill Stream:	
At confluence with Hog Bay	*11
At Donnell Pond Dam	*117
Mill Brook:	
At confluence with Taunton Bay	*11
At Great Pond Dam	*55
Egypt Bay: Entire shoreline within the community	*11
Taunton Bay: Entire shoreline within the community	*11
Hog Bay: Entire shoreline within the community	*11
Georges Pond: Entire shoreline within the community	*184
Great Pond: Entire shoreline within the community	*55
Donnell Pond: Entire shoreline within the community	*119
Maps available for inspection at the Town Office, Franklin, Maine	
Send comments to The Honorable Joseph Havey, First Selectmen of the Town of Franklin, Hancock County, Town Office, Box 275A, Franklin, Maine 04634.	
Glenburn (town), Penobscot County	
Floshaw Lake: Entire shoreline within community	*121
Maps available for inspection at the Town Office, Bangor, Maine.	
Send comments to The Honorable Peter Chase, Glenburn Town Manager, Penobscot County, R.F.D. 1, Box 1375, Bangor, Maine 04401.	
Houlton (town), Aroostook County	
Meduxnekeag River:	
Approximately 1,875 feet downstream of Lowery Road	*299
Approximately 330 feet upstream of upstream corporate limits	*379
B Stream:	
At confluence with Meduxnekeag River	*332
Approximately 110 feet upstream of "B" Road	*390
Pearce Brook:	
At confluence with Meduxnekeag River	*300
Approximately 0.7 mile upstream of Hollywood Road	*407
Brown Brook:	
At confluence with Pearce Brook	*363
Approximately 35 feet upstream of upstream crossing of U.S. Route 1	*403
Maps available for inspection at the Town Office, 21 Water Street, Houlton, Maine.	
Send comments to The Honorable Dale Lowe, Chairman of the Houlton Town Council, Aroostook County, Town Office, 21 Water Street, Houlton, Maine 04730.	
Livermore Falls (town), Androscoggin County	
Androscoggin River:	
Downstream corporate limits (County boundary)	*291
Upstream corporate limits	*332
Maps available for inspection at the Town Office, Livermore Falls, Maine.	
Send comments to The Honorable Maxine L. Bailey, Livermore Falls Town Manager, Androscoggin County, 2 Main Street, Livermore Falls, Maine 04254.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Lubec (town), Washington County	
Atlantic Ocean *Grand Manan Channel:*	
Along southwest shoreline of Baileys Mistake	*15
Along east shoreline of Jims Head	*44
Cobscook Bay:	
Entire shoreline of Dudley Island	*15
Along shoreline at Youngs Point	*20
Maps available for inspection at the Town Office, 40 School Street, Lubec, Maine.	
Send comments to The Honorable John Hampton, Chairman of the Town of Lubec Board of Selectmen, Washington, County, Town Office, 40 School Street, Lubec, Maine 04652.	
Machiasport (town), Washington County	
Atlantic Ocean *Machias Bay:*	
Along shoreline of Pettagrow Cove	*12
Along east shoreline of Howard Point	*20
Little Kennebec Bay:	
Along shoreline at Spruce Cove	*12
Along west shoreline of Point of Main	*17
Maps available for inspection at the town Offices, Machiasport, Maine	
Send comments to The Honorable William Holms, Jr., First Selectman of the Town of Machiasport, Washington, County, P.O. Box 295, Machiasport, Maine 04655.	
North Haven (town), Knox County	
Atlantic Ocean *West Penobscot Bay:*	
Along shoreline at Wooster Cove	*23
Along shoreline of Mill Stream	*10
East Penobscot Bay:	
Along shoreline at Marsh Cove	*13
At Mullen Head	*15
Fox Islands Thorofare:	
Along shoreline at Cubby Hole	*11
At Crabtree Point	*16
Maps available for inspection at the town Office, North Haven, Maine.	
Send comments to The Honorable James Davison, Chairman of the Town of North Haven Board of Selectmen, Knox County, Town Office, North Haven, Maine 04853.	
Penobscot (town), Hancock County	
Clements Stream:	
Confluence with Penobscot River	*10
Approximately 420 feet upstream of State Route 166	*26
Mill Brook:	
Confluence with Northern Bay	*11
Approximately 0.5 mile upstream of State Routes 175 and 199	*67
Unnamed Stream:	
Approximately 80 feet upstream of confluence with Penobscot River	*10
Approximately 550 feet upstream of State Route 166	*36
Atlantic Ocean Penobscot River:	
At confluence with Clements Stream	*10
Approximately 1,000 feet west of intersection of State Routes 166 and 175	*16
Northern Bay: Entire shoreline within community	*11
Bagaduce River: Entire shoreline within community	*11
Toddy Pond: Entire shoreline within community	*185
Maps available for inspection at the Penobscot Town Hall, Penobscot, Maine	
Send comments to The Honorable James Henry, First Selectman of the Town of Penobscot, Hancock County, Town Hall, Box 4, Penobscot, Maine 04476.	
Somerville (town), Lincoln County	
James Pond: Entire shoreline within community	*200
Long Pond: Entire shoreline within community	*187

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Sheepscot River:	
At confluence with Long Pond	*187
Approximately 1 mile upstream of State Route 105	*200
Maps available for inspection at the Town Clerk's Office, Jefferson, Maine.	
Send comments to The Honorable Paul Mateosian, Chairman of the Town of Somerville board of Selectmen, Lincoln, County, R.F.D., Jefferson, Maine 04348.	
Stetson (town), Penobscot County	
Pleasant Lake: Entire shoreline within community	*240
Maps available for inspection at the Town Offices, Stetson, Maine.	
Send comments to The Honorable A. Clayton Brown, Chairmen of the Town of Stetson Board of Selectmen, Penobscot County, P.O. Box 85, Stetson, Maine 04488.	
MASSACHUSETTS	
Becket (town), Berkshire County	
Yokum Brook:	
At Maple Street	*1,199
Approximately 20 feet upstream of upstream crossing of State Route 8	*1,450
Walker Brook:	
Approximately 15 feet downstream of U.S. Route 20	*1,279
At downstream side of State Route 8	*1,287
Robinhood Lake: Entire shoreline within community	*1,533
Maps available for inspection at the Town Clerk's Vault, Town Hall, Becket, Massachusetts.	
Send comments to The Honorable Robert Friberg, Chairman of the Town of Becket Board of Selectmen, Berkshire County, Washington Street, Becket, Massachusetts 01223.	
Savoy (town), Berkshire County	
Westfield River-Savoy Hollow Brook:	
Approximately 50 feet downstream of Griffin Hill Road	*1,692
Approximately 75 feet upstream of State Route 8A	*1,824
Maps available for inspection at the Town Clerk's Vault, Main Road, Savoy, Massachusetts.	
Send comments to The Honorable Mark T. Bugby, Chairman of the Town of Savoy Board of Selectmen, Berkshire County, Town Hall, Main Road, Savoy, Massachusetts 01256.	
NEW HAMPSHIRE	
Bath (town), Grafton County	
Ammonoosuc River:	
At confluence with Connecticut River	*428
Approximately 2.1 miles upstream of confluence of Pettyboro Brook	*566
Maps available for inspection at the Town Office, Bath, New Hampshire.	
Send comments to The Honorable Linda Wright, Chairperson of the Town of Bath Board of Selectmen, Grafton County, P.O. Box 85, Bath, New Hampshire 03740.	
Bradford (town), Merrimack County	
Warner River:	
At downstream corporate limits	*642
Approximately 175 feet upstream of State Route 114	*645
Lake Massasecum: Entire shoreline within community	*644
Todd Lake: Entire shoreline within community	*675
Maps available for inspection at the Town Office, Bradford, New Hampshire.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Joseph Bailes, Chairman of the Town of Bradford Board of Selectmen, Merrimack County, Town Office, Bradford, New Hampshire 03221.	
Lyme (town), Grafton County	
Connecticut River:	
At the downstream corporate limits	*397
At the upstream corporate limits	*408
Hewes Brook:	
At the downstream side of State Route 10	*583
Approximately 275 feet upstream of Bliss Road	*647
Grant Brook:	
At State Route 10	*484
Approximately 50 feet upstream of Dorchester Road	*794
Clay Brook:	
At North Thetford Road	*426
Approximately .6 mile upstream of North Thetford Road	*436
Trout Brook:	
Approximately .3 mile downstream of State Route 10	*436
Approximately 125 feet upstream of Pinnacle Road	*580
Maps available for inspection at the Town Clerk's Vault, Town Office, Lyme, New Hampshire.	
Send comments to Mr. Donald Cutter, First Selectmen of the Town of Lyme, Grafton County, Town Office, Lyme, New Hampshire 03768.	
New London (town), Merrimack County	
Sunapee Lake: Entire shoreline within the community	*1,096
Otter Pond: Entire shoreline within the community	*1,129
Maps available for inspection at the Selectmen's Office, New London, New Hampshire.	
Send comments to The Honorable James Moreland, Chairman of the Town of New London Board of Selectmen, Merrimack County, P.O. Box 240, New London, New Hampshire 03257.	
NEW YORK	
Freedom (town), Cattaraugus County	
Clear Creek:	
At Bray Road	*1,532
At upstream crossing of State Route 98	*1,759
Maps available for inspection at the Town Clerk's Office, 1170 Eagle Street, Sandusky, New York.	
Send comments to The Honorable Ronald Ashworth, Supervisor of the Town of Freedom, Cattaraugus County, P.O. Box 88, 1170 Eagle Street, Sandusky, New York, 14133.	
Manlius (town), Onondaga County	
Pools Brook:	
At County boundary	*406
At downstream side of Erie Canal	*425
At upstream side of Erie Canal	*426
Approximately 1,600 feet upstream of State Route 5	*532
Bishop Brook:	
At Salt Springs Road	*605
At confluence of North Branch and South Branch of Bishop Brook	*839
North Branch Bishop Brook:	
At confluence with Bishop Brook	*839
Approximately 350 feet upstream of Palmer Road	*1,239
South Branch Bishop Brook:	
At confluence with Bishop Brook	*839
Approximately .6 mile upstream of South Eagle Village Road	*1,072
Crane Brook:	
At confluence with South Branch Bishop Brook	*881
Approximately 1.05 miles upstream of confluence with South Branch Bishop Brook	*1,007

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Eagle Brook:	
At confluence with North Branch Bishop Brook	^1,093
Approximately .8 mile upstream of confluence with North Branch Bishop Brook	^1,171
Round Lake: For its entire shoreline within the community	^423
Green Lake: For its entire shoreline within the community	^420
Maps available for inspection at the Manlius Town Hall, Fayetteville, New York.	
Send comments to The Honorable Richard L. Lowenberg, Supervisor of the Town of Manlius, Onondaga County, 301 Brooklea Drive, Box 8, Fayetteville, New York 13066.	
Southport (town), Chemung County	
South Creek Tributary:	
At confluence with South Creek	^916
Approximately 0.7 mile upstream of Miller Hill Road	^1,080
Maps available for inspection at the Town Hall, 1139 Pennsylvania Avenue, Elmira, New York.	
Send comments to The Honorable Robert Mapes, Supervisor of the Town of Southport, Chemung County, 1139 Pennsylvania Avenue, Elmira, New York 14904.	
OHIO	
Blanchester (village), Clinton County	
Stonelick Creek:	
About 1700 feet downstream of Wright Street	^956
About 1.2 miles upstream of Wright Street	^978
Maps available for inspection at the Village Hall, 101 East Main Street, Blanchester, Ohio.	
Send comments to The Honorable Lee Miller, Mayor, Village of Blanchester, 101 East Main Street, Blanchester, Ohio 45107.	
Delphos (city), Allen and Van Wert Counties	
Jennings Creek:	
Just upstream of Pohlman Road	^761
About 2650 feet upstream of Norfolk Southern Railway	^773
Flat Fork Creek:	
About 2100 feet downstream of Seventh Street	^763
About 2000 feet upstream of Spencerville Avenue	^776
Maps available for inspection at the City Hall, 608 North Canal, Delphos, Ohio.	
Send comments to The Honorable Harold Weiging, Mayor, City of Delphos, 608 North Canal, Delphos, Ohio 45833.	
Hancock County (unincorporated areas)	
Blanchard River:	
Just upstream of County Route 16	^749
Just downstream of County Route 2	^873
Eagle Creek:	
Just upstream of Sixth Street	^734
Just upstream of Township Road 92	^861
Lye Creek:	
Just upstream of Williams Street	^780
About 0.9 mile upstream of County Route 205	^797
Howard Run:	
About 800 feet downstream of County Route 95	^794
About 1150 feet upstream of County Route 95	^795
Maps available for inspection at the County Courthouse, 300 South Main Street, Findlay, Ohio.	
Send comments to The Honorable William Recker, President, Board of Commissioners, Hancock County, 300 South Main Street, Findlay, Ohio 45840.	
Monroe (village), Butler and Warren Counties	
Shaker Creek:	
Just upstream of Conrail	^653
About 1.4 miles upstream of Union Road	^668
Millers Creek:	
About 1400 feet downstream of Cincinnati Dayton Road	^653
About 0.5 mile upstream of State Route 68	^675
Maps available for inspection at the Village Hall, 233 South Main Street, Monroe, Ohio.	
Send comments to The Honorable Elbert Tannreathur, Mayor, Village of Monroe, 233 South Main Street, Monroe, Ohio.	
Pickerington (village), Fairfield and Franklin Counties	
Georges Creek:	
About 550 feet downstream of Long Road	^793
About 2900 feet upstream of Long Road	^807
Blacklick Creek:	
About 1.32 miles downstream of Tussing Road	^804
About 1500 feet upstream of Tussing Road	^829
Sycamore Creek:	
About 2350 feet downstream of NB Road South	^813
About 750 feet upstream of Conrail	^843
Sycamore Creek Overflow:	
Just downstream of Conrail	^895
About 2550 feet upstream of Conrail	^842
Maps available for inspection at the Village Hall, 500 Hereford Drive, Pickerington, Ohio.	
Send comments to The Honorable Rita Ricketts, Mayor, Village of Pickerington, 500 Hereford Drive, Pickerington, Ohio 43147.	
Salineville (village), Columbiana and Jefferson Counties	
Riley Run:	
Just upstream of Haiti Road	^865
About 4150 feet upstream of Salineville Road	^950
Nancy Run:	
At mouth	^876
Just downstream of upstream Conrail railroad	^889
Maps available for inspection at the Village Hall, 38 Washington Street, Salineville, Ohio.	
Send comments to The Honorable Stanley Fitch, Mayor, Village of Salineville, 38 Washington Street, Salineville, Ohio 43945.	
OKLAHOMA	
Kingfisher County (unincorporated areas)	
Kingfisher Creek (Lower Reach):	
Approximately 0.9 mile downstream of U.S. Route 81 (Main Street)	^1,040
Approximately 1.55 miles upstream of State Routes 8 and 36	^1,073
Kingfisher Creek (Upper Reach):	
Approximately 1.4 miles downstream of Unnamed Road	^1,148
Approximately 0.8 mile upstream of Unnamed Road	^1,163
Kingfisher Creek Tributary A:	
At confluence with Kingfisher Creek	^1,054
At Will Rogers Drive	^1,073
Dead Indian Creek:	
At confluence with Kingfisher Creek	^1,057
At Will Rogers Drive	^1,063
Kingfisher Creek Tributary B:	
At confluence with Kingfisher Creek	^1,056
Approximately 1.3 miles upstream of confluence with Kingfisher Creek	^1,075
Cooper Creek:	
Approximately 1.16 miles downstream of 1st Street	^1,107
Approximately 1.22 miles upstream of 1st Street	^1,122
Cimarron River:	
Approximately 1.7 miles upstream of confluence of Turkey Creek at low flow	^1,037
Approximately 1,750 feet downstream of U.S. Route 81	^1,124
Turkey Creek (Main Channel):	
At confluence with Cimarron River at high flow (approximately 1.8 miles downstream of Boundary Street)	^1,034
Approximately 0.7 mile upstream of Boundary Street	^1,041
Turkey Creek-West Overflow (west of railroad tracks):	
Approximately 1.3 miles downstream of U.S. Route 81	^1,024
Approximately .5 mile upstream of Red Fork Drive	^1,041
Turkey Creek-East Overflow (east of railroad tracks):	
Approximately 1.7 miles downstream of corporate limits	^1,024
At corporate limits	^1,032
Uncle John's Creek:	
At confluence with Kingfisher Creek	^1,042
Approximately 0.3 mile upstream of Oklahoma Avenue	^1,049
Maps available for inspection at the Kingfisher County Courthouse, Kingfisher, Oklahoma.	
Send comments to The Honorable Robert Lovell, Kingfisher County Judge, 101 S. Main, Room 3, Kingfisher, Oklahoma 73750.	
PENNSYLVANIA	
Austin (borough), Potter County	
Freeman Run:	
Approximately 400 feet downstream of downstream corporate limits	^1,311
Approximately 1.5 miles upstream of State Route 607	^1,441
West Branch of Freeman Run:	
At confluence with Freeman Run	^1,937
At upstream corporate limits	^1,446
Maps available for inspection at the Borough Office, Austin, Pennsylvania, call secretary for appointment (814) 647-8666.	
Send comments to The Honorable Aaron Haskin, President of the Austin Borough Council, Potter County, Turner Street, Austin, Pennsylvania 16720.	
Brown (township), Mifflin County	
Kishacoquillas Creek:	
At downstream corporate limits	^570
Approximately 0.9 mile upstream of West Railroad Street	^611
Tea Creek:	
At confluence with Kishacoquillas Creek	^593
Approximately 800 feet upstream of State Route 1005 (Readsville Road)	^643
Honey Creek:	
At confluence with Kishacoquillas Creek	^593
At upstream corporate limits	^632
Maps available for inspection at the Township Building, Brown, Pennsylvania.	
Send comments to The Honorable Ray C. Fultz, Sr., Chairman of the Township of Brown Board of Supervisors, Mifflin County, R.D. 2, Box 75, Reedsville, Pennsylvania 17084-9699.	
Connellsville (township), Fayette County	
Youghiogheny River:	
At the downstream corporate limits	^843
At the upstream corporate limits	^844
Galley Run:	
At the downstream corporate limits	^864
Approximately 250 feet upstream of CSX Transportation Bridge	^872
Mounts Creek:	
At the downstream corporate limits	^836
At the confluence of Whites Run	^867
Maps available for inspection at the Secretary's Office, 604 Rodgers Avenue, Connellsville, Pennsylvania.	
Send comments to The Honorable Janice Fosbrink, Chairperson for the Township of Connellsville Board of Supervisors, Fayette County, P.O. Box 845, Connellsville, Pennsylvania 15425.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Eulalia (township), Potter County	
Mill Creek:	
At downstream corporate limits	^1,716
Approximately .3 mile upstream of State Route 3006	^1,753
Maps available for inspection at the Township Secretary's Residence, call for an appointment (814) 274-8102.	
Send comments to The Honorable James Lane, Chairman of the Township of Eulalia, Potter County, R.D. 1, Coudersport, Pennsylvania 16915.	
Osceola (township), Tioga County	
Cowanesque River:	
At downstream corporate limits	^1,147
Approximately 750 feet upstream of upstream corporate limits	^1,165
Maps available for inspection at the Township Office, Main Street, Osceola, Pennsylvania.	
Send comments to The Honorable Thomas E. Brian, Jr., Chairman of the Township of Osceola Board of Supervisors, Tioga County, P.O. Box 197, Osceola, Pennsylvania 16942.	
Pike (township), Potter County	
Pine Creek:	
At downstream corporate limits	^1,341
At upstream corporate limits	^1,482
Maps available for inspection at the Secretary's Residence, 72 Clinton Street, Galeton, Pennsylvania. Call for appointment at (814) 548-7575.	
Send comments to The Honorable David G. Shoonover, Chairman of the Township of Pike Board of Supervisors, Potter County, R.D. 1, Box 39B, Ulysses, Pennsylvania 16948.	
Roulette (township), Potter County	
Allegheny River:	
Approximately 1,000 feet downstream of confluence of Burt Hollow	^1,510
Approximately 180 feet upstream of confluence of Trout Brook	^1,549
Maps available for inspection at the Township Office, Railroad Avenue and Ought Street, Roulette, Pennsylvania.	
Send comments to The Honorable William H. Grandin, Chairman of the Township of Roulette Board of Supervisors, Potter County, P.O. Box 231, R.D. 1, Roulette, Pennsylvania 16746.	
Scrubgrass (township), Venango County	
Allegheny River:	
At downstream corporate limits	^930
Approximately 500 feet upstream of upstream corporate limits	^931
Maps available for inspection at the Secretary's Home, R.D. #3, Emlenton, Pennsylvania.	
Send comments to The Honorable William Bell, Chairman of the Township of Scrubgrass Board of Supervisors, Venango County, R.D. #2, Emlenton, Pennsylvania 16373.	
Sheron (township), Potter County	
Oswayo Creek:	
Approximately 1,260 feet downstream of T-386	^1,482
Approximately 1,480 feet upstream of the upstream corporate limits	^1,572
Honeoye Creek:	
At downstream corporate limits	^1,479
Approximately 0.6 mile upstream of State Route 4014	^1,486
Maps available for inspection at the Township Hall, Millport, Pennsylvania.	
Send comments to The Honorable John Sillson, Chairman of the Township of Sheron Board of Supervisors, Potter County, P.O. Box 86 R.D. 1, Shinglehouse, Pennsylvania 16748.	
Shinglehouse (borough), Potter County	
Oswayo Creek:	
At the downstream corporate limits	^1,471
Approximately 1,100 feet upstream of the upstream corporate limits	^1,484
Honeoye Creek:	
At the confluence with Oswayo Creek	^1,475
At the upstream corporate limits	^1,478
Maps available for inspection at the Borough Office, 40 Honeoye Street, Shinglehouse, Pennsylvania. Call secretary for appointment at (814) 697-6711.	
Send comments to The Honorable James Marzo, President of the Borough of Shinglehouse Council, Potter County, 40 Honeoye Street, Shinglehouse, Pennsylvania 16748.	
Sweden (township), Potter County	
Mill Creek:	
Approximately 350 feet downstream of downstream corporate limits	^1,750
Approximately 1,850 feet upstream of State Route 44	^1,802
Maps available for inspection at the Township Secretary's Residence, call for an appointment (814) 274-8629.	
Send comments to The Honorable Wayne Irish, Chairman of the Township of Sweden Board of Supervisors, Potter County, R.D. 1, Coudersport, Pennsylvania 16915.	
Valley (township), Montour County	
Indian Creek:	
At confluence with Mauses Creek	^505
At Township Route 371	^509
Mauses Creek:	
Approximately 1,200 feet downstream of State Routes 642 and 46	^498
Approximately 300 feet upstream of confluence with Indian Creek	^506
Maps available for inspection at the Township Building, Indian Run Road, Valley, Pennsylvania.	
Send comments to The Honorable Calvin Megargel, Chairman of the Township of Valley Board of Supervisors, Montour County, 1305 Continental Boulevard, Danville, Pennsylvania 17821.	
SOUTH CAROLINA	
Dillon County (unincorporated areas)	
Maple Swamp:	
About 500 feet downstream of 1st Avenue	^105
About 325 feet upstream of CSX railroad	^138
Catfish Canal:	
About 350 feet downstream of U.S. Route 301	^87
Just upstream of State Highway 151	^97
Rogers Mill Branch:	
At mouth	^102
Just downstream of CSC railroad	^119
Just upstream of CSX railroad	^126
Just upstream of State Highway 195	^125
Little Pee Dee River:	
About 2000 feet downstream of State Route 9	^98
About 1.4 miles upstream of Interstate 95	^103
Maps available for inspection at the County Courthouse, Dillon, South Carolina.	
Send comments to the Honorable Claude W. Graham, County Administrator, Dillon County, P.O. Box 449, Dillon, South Carolina 29536.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
TEXAS	
Bastrop (city), Bastrop County	
Colorado River:	
Approximately .5 mile downstream of State Route 71	^352
At confluence of Piney Creek	^364
Gills Branch:	
Approximately 700 feet upstream of the confluence with the Colorado River	^353
Approximately 1,600 feet upstream of Farm Street	^397
Shallow Flooding: East of Missouri-Kansas Railroad from Gills Branch to Cedar Street	#2
Maps available for inspection at the Bastrop City Hall, Bastrop, Texas.	
Send comments to the Honorable David Lock, Mayor of the City of Bastrop, Bastrop County, P.O. Box 427, Bastrop, Texas 78602.	
Bastrop County (unincorporated areas)	
Colorado River:	
Approximately 4.2 miles downstream of Missouri-Kansas-Texas Railroad	^326
Approximately 9.6 miles upstream of Loop 150	^369
Cedar Creek:	
Approximately 1.1 miles downstream of FM 535	^410
Approximately 3.7 miles upstream of FM 535	^432
Gills Branch:	
At the confluence with Colorado River	^353
Approximately 1,300 feet upstream of confluence with Colorado River	^353
Maps available for inspection at the County Courthouse, 804 Pecan, Bastrop, Texas.	
Send comments to the Honorable Jimmy Copeland, Bastrop County Judge, 804 Pecan, Bastrop, Texas 78602.	
Brazos County (unincorporated areas)	
Navasota River:	
At confluence with the Brazos River	^189
At State Route OSR	^271
Wickson Creek:	
Approximately 2.8 miles downstream of Elmo Wheeden Road	^220
Approximately 800 feet upstream of Dilly Shaw Road	^296
Little Wickson Creek:	
At confluence with Wickson Creek	^264
Approximately 0.7 mile upstream of Dilly Shaw Road	^316
Marks Creek:	
At confluence with Wickson Creek	^261
Approximately 0.78 mile upstream of State Route 190	^293
Carters Creek:	
At confluence with Navasota River	^208
Approximately 1.1 mile upstream of Old Reliance Road	^322
Maps available for inspection at the County Courthouse, 300 East 26th Street, Bryan, Texas.	
Send comments to the Honorable R. J. Holmgreen, Brazos County Judge, Brazos County Courthouse, 300 East 26th Street, Bryan, Texas 77803.	
Kaufman County (unincorporated areas)	
Buffalo Creek (North):	
At FM 740	^406
Approximately 2.5 miles upstream of FM 740	^429
Buffalo Creek (South):	
Approximately 2,000 feet downstream of FM 2932	^426
Approximately .5 mile upstream of Interstate 20	^443
Big Brushy Creek:	
At FM 148 and FM 1641	^423
Approximately 200 feet upstream of FM 548	^476
Kings Creek (Upper Reach):	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1,200 feet downstream of the confluence with Hardin Branch	*450
Approximately 100 feet downstream of College Mound Road	*456
Hardin Branch:	
At confluence with Kings Creek (Upper Reach)	*452
At upstream side of State Route 429	*466
Grassy Creek:	
Approximately 1,050 feet downstream of County boundary	*472
At FM 986	*536
Duck Creek:	
Approximately 2,000 feet downstream of County boundary	*454
Approximately 1,800 feet upstream of FM 3728	*485
Kings Creek (Lower Reach):	
Approximately ¼ mile upstream of confluence with Big Cottonwood	*353
Approximately 2.6 miles upstream of FM 1388	*375
Prairie Branch:	
Approximately 2,000 feet upstream of confluence with Big Cottonwood Creek	*367
Upstream side of U.S. Route 175	*407
Walnut Creek:	
At the confluence with Cedar Creek	*349
Approximately 2.2 miles upstream of confluence with Cedar Creek	*370
Cedar Creek:	
Approximately 1.7 mile downstream of confluence of Walnut Creek	*341
At the confluence of Walnut Creek	*349
Lacy Fork:	
Approximately 650 feet upstream of U.S. Route 175	*323
Approximately 1.9 mile upstream of U.S. Route 175	*333

Maps available for inspection at the County Courthouse, Kaufman, Texas.

Send comments to The Honorable Maxine Darst, Kaufman County Judge, County Courthouse, Kaufman, Texas 75142.

VERMONT

Bethel (town), Windsor County

White River:	
At downstream corporate limits	*533
At upstream corporate limits	*580
Second Branch White River:	
Approximately 850 feet downstream of downstream corporate limits	*526
At upstream corporate limits	*548
Third Branch White River:	
At confluence with White River	*541
Approximately 1,200 feet upstream of upstream corporate limits	*607

Maps available for inspection at the Town Clerk's Office, Town Hall, Bethel, Vermont.

Send comments to The Honorable Delbert Cloud, Manager of the Town of Bethel, Windsor County, R.R. 1, Box 335, Bethel, Vermont 05032.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Glover (Town), Orleans County	
Barton River:	
At the downstream corporate limits	*889
Approximately 150 feet upstream of Sleep Hill Road	*1,168

Maps available for inspection at the Town Clerk's Office, Glover, Vermont.

Send comments to The Honorable Lawrence White, Chairman of the Town of Glover Board of Selectmen, Orleans County, Town Office, P.O. Box 226, Glover, Vermont 05839.

Randolph (town), Orange County

Third Branch White River:	
Approximately 2.0 miles downstream of confluence of Trout Brook	*606
Approximately 300 feet upstream of Central Vermont Railroad	*675
Second Branch White River:	
Approximately 0.4 mile downstream of confluence of Kingsbury Brook	*547
Approximately 0.5 mile upstream of confluence of Shows Brook	*664
Ayers Brook:	
At confluence with Third Branch White River	*632
Approximately 2.0 miles upstream of Peth Road Bridge	*699

Maps available for inspection at the Town Clerk's Vault, Randolph, Vermont.

Send comments to The Honorable Ken Minier, Randolph Town Manager, Orange County, Town Office, Randolph, Vermont 03060.

Rochester (town), Windsor County

White River:	
At downstream corporate limits	*754
At upstream corporate limits	*873
West Branch White River:	
At confluence with White River	*821
Approximately 2 miles upstream of State Route 73	*987

Maps available for inspection at the Town Office, Rochester, Vermont.

Send comments to The Honorable Pierre Donnet, Chairman of the Town of Rochester Board of Selectmen, Windsor County, Town Office, P.O Box 238, Rochester, Vermont 05767.

VIRGINIA

Clintwood (town), Dickenson County

Holly Creek:	
Approximately 550 feet downstream of Long Street	*1,742
Just downstream of State Route 631 (British Creek Road)	*1,772

Maps available for inspection at the Town Hall, Main Street, Clintwood, Virginia

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Don Baker, Mayor of the Town of Clintwood, Dickenson County, P.O. Box 456, Clintwood, Virginia 24228.	
WISCONSIN	
Oneida County (unincorporated areas)	
Wisconsin River:	
About 5,000 feet downstream of confluence of Pelican River	*1,526
Just downstream of County Highway D	*1,578
Pelican River:	
About 600 feet upstream of mouth	*1,527
About 1.5 miles upstream of Germond Road	*1,531
Tomahawk River:	
About 4,000 feet downstream of confluence of Rocky Run	*1,487
About 1.3 miles upstream of confluence of Rocky Run	*1,494

Maps available for inspection at the County Courthouse, Rhinelander, Wisconsin.

Send comments to The Honorable Tony Lorbetske, Chariman, County Board, Oneida County, P.O. Box 400, Rhinelander, Wisconsin 54501.

Rhinelander (city), Oneida County

Wisconsin River:	
About 3,850 feet downstream of confluence of Pelican River	*1,526
Just downstream of Rhinelander Dam	*1,546
Just downstream of Rhinelander Dam	*1,556
Pelican River:	
At mouth	*1,527
About 2,100 feet upstream of Oneida Avenue	*1,527

Maps available for inspection at the City Hall, 135 S. Stevens Street, Rhinelander, Wisconsin.

Send comments to The Honorable Joseph E. Bloom, Mayor, City of Rhinelander, P.O. Box 658, 135 S. Stevens Street, Rhinelander, Wisconsin 54501.

Sturgeon Bay (city), Door County

Little Creek:	
At mouth	*585
Just upstream of Michigan Street	*605
Sturgeon Bay:	
Within community	*585

Maps available for inspection at the City Hall, 36 S. Third Avenue, Sturgeon Bay, Wisconsin.

Send comments to The Honorable Norbert D. Schachtner, Mayor, City of Sturgeon Bay, 36 S. Third Avenue, Sturgeon Bay, Wisconsin 54235.

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arizona	Town of Buckeye, Maricopa County.	Gila River	At Palo Verde Road	*811	*808
			Immediately upstream of State Highway 85-U.S. Highway 80.	*827	*830
			At Miller Road	*838	*840
			At Rainbow Road	*857	*858
			At Airport Road	*869	*871
			Approximately 2,000 feet downstream of 195th Avenue.	*879	*880

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			At 195th Avenue	*880	*882
			Approximately 3,750 feet upstream of 195th Avenue.	*884	*886
			Approximately 550 feet upstream of Perryville Road (extended).	*866	*868
		Hassayampa River	At intersection of Bruner Road and Narramore Road.	None	*813
			Just upstream of Old U.S. Highway 80	None	*843
			Just upstream of Southern Pacific Railroad	None	*873
			At Base Line Road	None	*890
			Approximately 2.9 miles downstream of Interstate Highway 10.	None	*950

Maps are available for review at the Town Hall, 100 North Apache Road, Buckeye, Arizona.

Send comments to The Honorable Joseph Schettino, Mayor, Town of Buckeye, Town Hall, 100 North Apache Road, Buckeye, Arizona 85326.

Arizona	Town of Carefree, Maricopa County.	Galloway Wash	Approximately 140 feet downstream of Scopa Trail.	*2,310	*2,311
			At Tranquil Trail	*2,373	*2,374
		Galloway Wash Middle Branch.	At confluence with Galloway Wash	None	*2,395
			At Mule Train Road	None	*2,437
			Approximately 100 feet upstream of intersection of Pima Road and Cow Tract Drive.	None	*2,596
		Galloway Wash Lower Branch	Approximately 60 feet upstream of confluence with Galloway Wash.	None	*2,396
			Just upstream of Carefree Drive	None	*2,438
			At Pima Road	None	*2,583

Maps are available for review at the Town Hall, 11 Sundial Circle, Carefree, Arizona.

Send comments to The Honorable David Dennison, Mayor, Town of Carefree, Town Hall, P.O. Box 740, Carefree, Arizona 85377.

Arizona	Town of Cave Creek, Maricopa County.	Galloway Wash	Approximately 440 feet downstream of Scopa Trail.	*2,304	*2,304
			Approximately 180 feet downstream of Scopa Trail.	*2,309	*2,310

Maps are available for review at the Town Hall, 37622 North Cave Creek Road, Cave Creek, Arizona.

Send comments to The Honorable Jacqueline Davis, Mayor, Town of Cave Creek, Town Hall, P.O. Box 330, Cave Creek, Arizona 85331.

Arizona	City of Goodyear, Maricopa County.	Gila River	At 195th Avenue	*880	*882
			Approximately 550 feet upstream of Perryville Road (extended).	*886	*888
			Approximately 5,600 feet upstream of Perryville Road (extended).	*891	*892
			Approximately 300 feet upstream of Sarival Lane.	*904	*904
			Approximately 300 feet downstream of Reema Road.	*910	*910
			Approximately 200 feet upstream of Bullard Avenue.	*916	*916
		Agua Fria River	At confluence with the Gila River	*924	*923
			Approximately 350 feet downstream of Litchfield Road.	*924	*924
		Waterman Wash	Approximately 2,000 feet north of intersection of 187th Avenue and Germann Road.	None	*959
			Approximately 200 feet downstream of Chandler Height Road.	None	*1,058
			At Riggs Road	None	*1,063
			Approximately 300 feet downstream of 147th Avenue.	None	*1,122

Maps are available for review at the City Hall, 119 North Litchfield Road, Goodyear, Arizona.

Send comments to The Honorable Carl Gow, Mayor, City of Goodyear, 119 North Litchfield, Goodyear, Arizona 85338.

Arizona	Maricopa County, Areas Unincorporated.	Agua Fria River	At confluence with the Gila River	*924	*923
			Approximately 350 feet downstream of Litchfield Road.	*924	*924
			At Broadway Road	*934	*935
			At Lower Buckeye Road	*950	*950
			Approximately 150 feet downstream of Buckeye Road.	*962	*962
			At Van Buren Street	*973	*971
			Approximately 875 feet upstream of Interstate 10 westbound.	*984	*981
			At McDowell Road	*995	*995
			At Thomas Road	*1,000	*999

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 530 feet upstream of Indian School Road.	*1,012	*1,010
			At Camelback Road	*1,024	*1,024
			Approximately 200 feet upstream of the confluence with the New River.	*1,030	*1,033
			Approximately 1,320 feet downstream of Glendale Avenue.	*1,049	*1,050
			At Northern Avenue	*1,065	*1,062
			Approximately 1,700 feet upstream of Olive Road.	*1,082	*1,085
			Approximately 1,500 feet downstream of Grand Avenue.	*1,117	*1,119
			Approximately 1,200 feet upstream of Grand Avenue.	*1,133	*1,131
			At 115th Avenue	*1,138	*1,137
			Approximately 2,100 feet upstream of Bell Road.	*1,169	*1,166
			Approximately 1 mile downstream of West Rose Garden Avenue.	*1,191	*1,186
			Approximately 1 mile upstream of West Rose Garden Avenue.	*1,217	*1,214
			Approximately 2 miles upstream of West Rose Garden Avenue.	*1,234	*1,229
			Approximately 3 miles upstream of West Rose Garden Avenue.	*1,253	*1,247
			Approximately 1.5 miles downstream of Beardsley Canal.	None	*1,315
			Approximately 2 miles upstream of Granite Reef Aqueduct.	None	*1,378
			Approximately 0.8 mile upstream of Morristown-New River Highway.	None	*1,425
			Shallow flooding at approximately 250 feet upstream of Buckeye Road along west bank of Agua Fria River.	*965	*963
			Shallow flooding at approximately 200 feet upstream of Buckeye Road along east bank of Agua Fria River.	*965	*964
			Shallow flooding at approximately 1,100 feet downstream of McDowell Road along east bank of Agua Fria River.	*985	*982
			Shallow flooding along west bank of Agua Fria River at McDowell Road.	*985	*983
			Shallow flooding along east bank of Agua Fria River at McDowell Road.	*985	*984
			Shallow flooding along west bank of Agua Fria River immediately upstream of Indian School Road.	*1,012	*1,008
		Agua Fria River West Split Flow.	Approximately 0.9 mile downstream of Grand Avenue.	*1,110	*1,111
			Approximately 0.5 mile downstream of Grand Avenue.	*1,115	*1,118
			Approximately 0.3 mile upstream of Grand Avenue.	*1,133	*1,131
		Gila River	At Crest of Gillespie Dam	None	*762
			Approximately 550 feet upstream of Agua Caliente Road.	None	*775
			Immediately upstream of Rose Road (extended).	*790	*782
			Approximately 200 feet downstream of Johnson Road.	*801	*801
			At Palo Verde Road	*811	*808
			Immediately upstream of State Highway 85-U.S. Highway 80.	*827	*830
			At Miller Road	*838	*840
			At Rainbow Road	*857	*856
			At Airport Road	*869	*871
			Approximately 2,000 feet downstream of 195th Avenue.	*879	*880
			Approximately 2,000 feet upstream of 195th Avenue.	*882	*884
			Approximately 550 feet upstream of Perryville Road (extended).	*886	*888
			Approximately 5,600 feet upstream of Perryville Road (extended).	*891	*892
			Approximately 300 feet upstream of Sarival Lane.	*904	*904

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Salt River	At State Highway 87	*1,217	*1,217
			Approximately 2 miles upstream of State Highway 87.	None	*1,233
			At North Gilbert Road	None	*1,254
			Approximately 2 miles upstream of North Gilbert Road.	None	*1,272
			Approximately 4 miles upstream of North Gilbert Road.	None	*1,286
			Approximately 6.5 miles upstream of North Gilbert Road.	None	*1,309
			At Scottsdale Road	*1,163	*1,163
			Approximately 740 feet upstream of Hayden Road.	*1,173	*1,174
			Approximately 1,700 feet upstream of Hayden Road.	*1,174	*1,174
		Circle City Area Wash 1	Approximately 700 feet upstream of Black Mountain Road.	None	*1,853
			Approximately 1,100 feet downstream of Atchison, Topeka and Santa Fe Railway.	None	*1,883
			Approximately 200 feet upstream of Atchison, Topeka and Santa Fe Railway.	None	*1,879
		Circle City Area Wash 2	Approximately 550 feet upstream of confluence with Circle City Area Wash 1.	None	*1,881
			Approximately 0.5 mile upstream of confluence with Circle City Area Wash 1.	None	*1,906
			Approximately 0.6 mile upstream of confluence with Circle City Area Wash 1.	None	*1,913
		Circle City Area Wash 2 along Atchison, Topeka and Santa Fe Railway.	Approximately 350 feet upstream of confluence with Wash 2.	None	*1,884
			Approximately 1,000 feet upstream of confluence with Wash 2.	None	*1,889
		Circle City Area Wash 3	Approximately 220 feet upstream of Black Mountain Road.	None	*1,838
			Approximately 1,500 feet upstream of Black Mountain Road.	None	*1,849
			Approximately 350 feet upstream of confluence with Circle City Area Wash 6.	None	*1,858
			At confluence with Circle City Area Wash 4	None	*1,670
			Approximately 280 feet downstream of Atchison, Topeka and Santa Fe Railway.	None	*1,882
			Approximately 900 feet upstream of Atchison, Topeka and Santa Fe Railway.	None	*1,895
			Approximately 2,200 feet upstream of Atchison, Topeka and Santa Fe Railway.	None	*1,906
		Circle City Area Wash 4	Approximately 250 feet upstream of confluence with Circle City Area Wash 3.	None	*1,872
			Approximately 280 feet downstream of Atchison, Topeka and Santa Fe Railway.	None	*1,882
			Approximately 600 feet upstream of Atchison, Topeka and Santa Fe Railway.	None	*1,895
			Approximately 1,750 feet upstream of Atchison, Topeka and Santa Fe Railway.	None	*1,907
		Circle City Area Wash 4 along Atchison, Topeka, and Santa Fe Railway.	Approximately 320 feet upstream of confluence with Circle City Area Wash 4.	None	*1,891
			Approximately 600 feet upstream of confluence with Circle City Area Wash 4.	None	*1,895
			Approximately 900 feet upstream of confluence with Circle City Area Wash 4.	None	*1,896
		Circle City Area Wash 5	Approximately 200 feet upstream of confluence with Circle City Area Wash 6.	None	*1,881
			Approximately 100 feet upstream of Atchison, Topeka, and Santa Fe Railway.	None	*1,902
			Approximately 850 feet upstream of Atchison, Topeka, and Santa Fe Railway.	None	*1,908
		Circle City Area Wash 6	Approximately 150 feet upstream of confluence with Circle City Area Wash 3.	None	*1,855
			Approximately 1,500 feet upstream of confluence with Circle City Area Wash 3.	None	*1,867
			Approximately 110 feet upstream of confluence with Circle City Area Wash 5.	None	*1,880
			Approximately 400 feet upstream of Atchison, Topeka, and Santa Fe Railway.	None	*1,904
		Circle City Area Wash 7	At Limit of Detailed Study	None	*1,847

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 500 feet upstream of Limit of Detailed Study.	None	*1,851
			Approximately 2,500 feet upstream of Limit of Detailed Study.	None	*1,873
			Approximately 4,750 feet upstream of Limit of Detailed Study.	None	*1,894
		Trilby Wash near Circle City	Approximately 300 feet downstream of Black Mountain Road.	None	*1,845
			Approximately 75 feet downstream of Atchison, Topeka, and Santa Fe Railway.	None	*1,855
			Approximately 2,250 feet upstream of Atchison, Topeka, and Santa Fe Railway.	None	*1,882
			Approximately 1 mile upstream of Atchison, Topeka, and Santa Fe Railway.	None	*1,923
		Trilby Wash	Approximately 3.0 miles above McMicken Dam Outlet Works.	None	*1,350
			Approximately 600 feet downstream of 203rd Avenue.	None	*1,407
			Approximately 0.5 mile upstream of 203rd Avenue.	None	*1,424
			Approximately 300 feet downstream of 211th Avenue.	None	*1,441
			Approximately 500 feet upstream of Deer Valley Road.	None	*1,467
			Approximately 0.5 mile downstream of Pinnacle Peak Road (extended).	None	*1,483
			Approximately 2,300 feet upstream of 219th Avenue.	None	*1,512
			Approximately 900 feet upstream of Happy Valley Road.	None	*1,531
			Approximately 4,150 feet upstream of Happy Valley Road.	None	*1,546
		Wittmann Wash-West Split	Approximately 1,350 feet downstream of Patton Road.	None	*1,550
			Approximately 1,000 feet upstream of Patton Road.	None	*1,559
			Approximately 4,100 feet upstream of Patton Road.	None	*1,586
		McMicken Dam Outlet Wash	Approximately 600 feet upstream of confluence with the Agua Fria River.	None	*1,181
			Approximately 1,000 feet downstream of Beardsley Road.	None	*1,204
			Approximately 1,100 feet upstream of Beardsley Road.	None	*1,213
			Approximately 0.5 mile upstream of Beardsley Road.	None	*1,239
			Approximately 1 mile upstream of Beardsley Road.	None	*1,250
			Approximately 1.5 miles upstream of Beardsley Road.	None	*1,268
			Approximately 500 feet downstream of Pinnacle Peak Road.	None	*1,283
			Approximately 1,000 feet upstream of Pinnacle Peak Road.	None	*1,289
			Approximately 0.5 mile upstream of Pinnacle Peak Road.	None	*1,298
			Approximately 1 mile upstream of Pinnacle Peak Road.	None	*1,311
			Approximately 1.5 miles upstream of Pinnacle Peak Road.	None	*1,314
		Wittmann Wash-Upper Reach	Approximately 2,860 feet downstream of Crozier Street.	*1,694	*1,697
			Approximately 1,925 feet downstream of Crozier Street.	*1,703	*1,706
			Approximately 1,000 feet downstream of Crozier Street.	None	*1,717
			Approximately 265 feet upstream of Crozier Street.	None	*1,727
		Wittmann Wash-South Split	Approximately 1,100 feet downstream of Center Street.	*1,682	*1,681
			Approximately 330 feet downstream of Center Street.	*1,687	*1,688
			Approximately 645 feet upstream of Center Street.	*1,694	*1,696
		Wittmann Wash-North Split	Approximately 1,100 feet downstream of Center Street.	*1,682	*1,681

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 450 feet downstream of Center Street.	*1,686	*1,686
			Approximately 600 feet upstream of Center Street.	*1,694	*1,695
		Wittmann Wash along Atchison, Topeka, and Santa Fe Railway.	Approximately 845 feet downstream of Center Street.	*1,683	*1,683
			Approximately 1,570 feet upstream of Center Street.	*1,703	*1,706
			Approximately 2,300 feet upstream of Center Street.	None	*1,708
		Wittmann Wash Grand Avenue to CAP 1 West Overchute.	Approximately 250 feet upstream of overchute at CAP 1 West.	None	*1,552
			Approximately 300 feet upstream of 203rd Avenue.	None	*1,555
			Approximately 0.5 mile upstream of 203rd Avenue.	None	*1,571
			Approximately 1 mile upstream of 203rd Avenue.	None	*1,593
			Approximately 350 feet upstream of Dixileta Drive.	None	*1,597
			Approximately 3,200 feet upstream of Dixileta Drive.	None	*1,619
			Approximately 700 feet upstream of Lone Mountain Road.	None	*1,650
			Approximately 500 feet downstream of Grand Avenue.	None	*1,671
			Approximately 680 feet upstream of Grand Avenue.	*1,681	*1,680
		Cave Creek Wash	At confluence with Salt River	None	*1,011
			At 51st Avenue	None	*1,015
		Cemetery Wash	At confluence with Hassayampa River	None	*2,021
			At unnamed dirt road (ford) downstream crossing.	None	*2,111
			Approximately 528 feet upstream of unnamed dirt road (ford) downstream crossing.	None	*2,116
		Centennial Wash	Approximately 350 feet downstream of Old U.S. Highway 80.	None	*776
			At Southern Pacific Railroad Bridge	None	*856
			At Ward Road	None	*952
			At Baseline Road	None	*1,056
			Approximately 1,000 feet downstream of Gin Road.	None	*1,111
			At Courthouse Road	None	*1,169
			Approximately 200 feet upstream of Eagle Eye Road.	None	*1,262
			At Maricopa/La Paz County Line	None	*1,318
		Centennial Wash (Left Overbank).	Just upstream of confluence with Centennial Wash.	None	*1,067
			At intersection of Courthouse and Gin Roads	None	*1,138
			Approximately 300 feet downstream of divergence from Centennial Wash.	None	*1,202
		Hassayampa River	At confluence with Gila River	None	*805
			Just above Old U.S. Highway 80	None	*855
			Just upstream of Southern Pacific Railroad	None	*873
			At Interstate Highway 10	None	*1,027
			Just upstream of Tonopah Salome Highway	None	*1,074
			Just upstream of CAP Siphon	None	*1,335
			Approximately 200 feet upstream of Atchison, Topeka and Santa Fe Railroad.	*1,854	*1,859
			Approximately 600 feet upstream of confluence of Monarch Wash.	*1,923	*1,926
			Approximately 1,600 feet upstream of Highways 60 and 89.	*2,051	*2,052
			At Maricopa/Yavapai county line	*2,103	*2,103
		Waterman Wash	Approximately 2,000 feet downstream of Elliot Road.	None	*856
			Just downstream of Tuthill Road	None	*959
			Approximately 660 feet upstream of Riggs Road.	None	*1,085
			Approximately 200 feet upsteam of 147th Avenue.	None	*1,123
			At confluence with West Prong Waterman Wash.	None	*1,139

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at the Flood Control District of Maricopa County, 3335 West Durango Street, Phoenix, Arizona.					
Send comments to the Honorable James Bruner, Chairman, Maricopa County Board of Supervisors, 111 South Third Avenue, Phoenix, Arizona 85003.					
Arizona	City of Phoenix, Maricopa County.	Agua Fria River	Shallow flooding along west bank of Agua Fria River immediately upstream of Indian School Road.	*1,012	*1,008
			At Thomas Road	*1,000	*999
			Approximately 530 feet upstream of Indian School Road.	*1,012	*1,010
			At Camelback Road	*1,024	*1,024
			Approximately 200 feet upstream of the confluence with the New River.	*1,030	*1,033
			Approximately 0.5 mile upstreat of confluence with the New River.	*1,036	*1,039
		Cave Creek Wash	Just upstream of 51st Avenue	None	*1,014
			Just downstream of 35th Avenue	None	*1,041
			At Van Buren Street	*1,077	*1,073
			Just upstream of Thomas Road	*1,097	*1,095
			Just downstream of Grand Canal	*1,121	*1,120
			At intersection of 19th Street and Osborn Road.	None	#
			At intersection of 15th Avenue and Campbell Avenue.	None	#
			At intersection of Camel Back Road and 21st Avenue.	None	#
			At intersection of Missouri Avenue and 11th Avenue.	None	#
			At intersection of Missouri Avenue and 15th Avenue.	None	#
			At intersection of Bethany Home Road and Seventh Avenue.	None	#
			At intersection of Rose Lane and 17th Avenue	None	#
			At intersection of Glendale Avenue and 19th Avenue.	None	#
Maps available for review at the City Hall, 251 West Washington Street, Phoenix, Arizona.					
Send comments to The Honorable Paul Johnson, Mayor, City of Phoenix, City Hall, 251 West Washington Street, Phoenix, Arizona. 85003.					
Arizona	City of Scottsdale, Maricopa County.	Galloway Wash Middle Branch.	Approximately 50 feet upstream of Pima Road	None	*2,596
			At Cow Tract Drive	None	*2,619
		Galloway Wash Lower Branch	Just upstream of Pima Road	None	*2,585
			Approximately 500 feet upstream of Pima Road.	None	*2,598
Maps are available for review at the City Hall, 3939 Civic Center Plaza, Scottsdale, Arizona.					
Send comments to The Honorable Herbert Drinkwater, Mayor, City of Scottsdale, 3939 Civic Center Plaza, Scottsdale, Arizona 85251.					
Arizona	Town of Wickenburg, Maricopa County.	Hassayampa River	Approximately 500 feet upstream of Cemetery Wash.	*2,022	*2,022
			Just downstream of U.S. Highway 60-89 Bridge.	*2,047	*2,045
			At confluence of Sols Wash	*2,050	*2,051
			Approximately 2,400 feet down stream of confluence of Blue Tank Wash.	*2,061	*2,060
			Approximately 4,400 feet upstream of confluence of Blue Tank Wash.	*2,092	*2,093
		Cemetery Wash	Approximately 520 feet upstream of unnamed dirt road (ford) downstream crossing.	None	*2,118
			Approximately 1,750 feet upstream of unnamed dirt road (ford) upstream crossing.	None	2,163
Maps are available for review at the Town Hall, 120 East Apache Road, Wickenburg, Arizona.					
Send comments to The Honorable Jim Mason, Mayor, Town of Wickenburg, Town Hall, P.O. Box 1269, Wickenburg, Arizona 85358.					
Arkansas	Pulaski County, Unincorporated Areas.	Arkansas River	At downstream County boundary	*232	*230
			At upstream County boundary	*274	*275
		White Oak Bayou	Confluence with Arkansas River	*260	*258
			Approximately 350 feet upstream of the confluence of Newton Creek.	*261	*260
		Little Maumelle River	Confluence with Arkansas River	*265	*262
			Approximately 400 feet upstream of Missouri Kansas Texas Railroad.	*266	*265
		Taylor Loop Creek	Confluence with Little Maumelle River	*266	*264
			City of Little Rock corporate limits	*266	*264
		Fourche Creek	Confluence with Arkansas River	*247	*249

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			At the downstream corporate limits for the City of Little Rock.	*248	*249
		Ison Creek	Confluence with Taylor Loop Creek	*266	*264
			Little Rock corporate limits	*266	*264
Maps available for inspection at 105 Main Street, Wallace Building, room 902, Little Rock, Arkansas.					
Send comments to The Honorable Rita Gruber, Pulaski County Judge, Pulaski County Courthouse, 401 W. Markham Street, Little Rock, Arkansas 72201.					
California	City of Hollister, San Benito County.	San Benito River	Approximately 200 feet downstream of State Highway 156.	None	*255
			Just upstream of State Highway 156	None	*256
			Just upstream of Nash Road	None	*281
			Approximately 4,100 feet upstream of Nash Road.	None	*290
		Santa Anna Creek	Approximately 3,700 feet downstream of Fallon Road.	None	*210
			Just downstream of Fallon Road	None	*223
			Approximately 3,300 feet upstream of Fallon Road.	None	*234
Maps are available for review at the City Planning Department, 420 Hill Street, Building A, Hollister, California.					
Send comments to the Honorable Gregory Light, Mayor, City of Hollister, City Hall, 375 Fifth Street, Hollister, California 95023.					
Kansas	City of Edgerton, Johnson County.	Martin Creek	Just upstream of Atchison, Topeka and Santa Fe Railway.	*964	*964
			just downstream of U.S. Highway 56	*965	*966
		Santa Fe Lake Tributary	At mouth	None	*960
			About 1600 feet upstream of Santa Fe Lake Dam.	*969	*969
Maps available for inspection at the City Hall, 404 East Nelson, Edgerton, Kansas.					
Send comments to The Honorable Maurice L. Taylor, Mayor, City of Edgerton, P.O. Box 255, Edgerton, Kansas 66021.					
Kansas	City of Fairway Johnson County.	Rock Creek	About 750 feet downstream of Mission Road	*881	*884
			Just downstream of U.S. Highway 56	*910	*913
Maps available for inspection at the City Hall, 5252 Belinder Road, Fairway, Kansas.					
Send comments to The Honorable Neale Peterson, Mayor, City of Fairway, 5252 Belinder Road, Fairway, Kansas 66205.					
Kansas	Unincorporated Areas of Johnson County.	Negro Creek	About 300 feet upstream of Union Pacific Railroad.	None	*871
			About 0.9 mile downstream of Nall Avenue	None	*884
		Negro Creek Tributary	Within community	None	*872
		Blue River	About 2300 feet downstream of 151st Street	*867	869
			About 2500 feet upstream of U.S. Highway 69	None	*909
		Wolf Creek	At mouth	None	*909
			About 3.0 miles upstream of Antioch Road	None	*953
		Camp Branch	At mouth	None	*894
			Just downstream of Union Pacific Railroad southernmost crossing.	None	*978
			Just upstream of Union Pacific Railroad southernmost crossing.	None	*1,006
			About 3650 feet upstream of 199th Street	None	*1,050
		Coffe Creek	At mouth	None	*909
			About 1.5 miles upstream of Switzer Road	None	*959
		Mill Creek	Just upstream of Holliday Drive	*767	*767
			About 1050 feet downstream of confluence of Mill Creek Tributary No. 1.	None	*949
		Mill Creek Tributary No. 1	About 3500 feet upstream of State Highway 10	None	*926
			Just downstream of Renner Road	None	*951
		Camp Creek	At mouth	None	*789
			Just downstream of 127th Street	None	*955
		Little Cedar Creek Tributary	At mouth	None	*879
			About 1950 feet downstream of State Highway 7.	None	*908
		Little Cedar Creek	Just upstream of 119th Street westernmost crossing.	None	*854
			About 1.0 mile upstream of 119th Street easternmost crossing.	None	*905
		West Branch Cedar Creek	At mouth	None	*868
			About 1.0 mile upstream of 143rd Street	None	*1,003
		Cedar Creek	At mouth	*784	*784
			About 1750 feet upstream of 135th Street	None	*885
		Santa Fe Lake Tributary	At mouth	None	*950
			About 1600 feet upstream of Santa Fe Lake Dam.	None	*969
		Martin Creek	About confluence of Santa Fe Lake Tributary	None	*960
			About 1100 feet upstream of Edgerton Road	None	*987
		Kill Creek	Within community	None	*792

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
		Kansas River	About 1300 feet downstream of confluence of Cedar Creek.	None	*784
		About 1.1 miles upstream of confluence of Captain Creek.	None	None	*798

Maps available for inspection at the County Courthouse, 100 East Park, Olathe, Kansas.
Send comments to The Honorable Murray L. Nolte, Chairman Board of Commissioners, Johnson, County Courthouse, 100 East Park, Room 801, Olathe, Kansas 66061.

Kansas	City of Leawood, Johnson County.	James Branch	At mouth	*832	*832
			Just downstream of Sagamore Drive	*837	*837
			Just upstream of Sagamore Drive	*837	*842
			Just downstream of Ensley Lane	*878	*879
			Just upstream of Ensley Lane	*880	*885
			Just downstream of 97th Place	*884	*887
			Just upstream of 97th Place	None	*893
			Just upstream of 97th Place	None	*895
		Dyke Branch	Just upstream of State Line Road	*865	*880
			Just downstream of Lee Boulevard	*878	*878
			Just upstream of Lee Boulevard	*883	*884
			About 1050 feet upstream of Wenonga Road	None	*916
		Indian Creek	About 1200 feet downstream of State Line Road.	*831	*829
			Just downstream of 109th Terrace	None	*849
		Tomahawk Creek	At mouth	*841	*844
			Just downstream of Nall Avenue	*876	*875
		Blue River	Within community	None	*867
		Negro Creek	Just upstream of Kenneth Road	None	*871
			About 1050 feet downstream of Nall Avenue	None	*911
		Negro Creek Tributary	About 1.3 miles downstream of Mission Road	None	*872
			About 3000 feet upstream of Mission Road	None	*916

Maps available for inspection at the City Hall, 9617 Lee Boulevard, Leawood, Kansas.
Send comments to The Honorable Marcia Rinehart, Mayor, City of Leawood, 9617 Lee Boulevard, Leawood, Kansas 66206.

Kansas	City of Lenexa, Johnson County.	Little Mill Creek	About 3150 feet downstream of 79th Street	*890	*889
			Just downstream of 87th Street	*933	*937
			Just downstream of 87th Street	*935	*948
			About 800 feet upstream of 91st Terrace	*979	*977
		Mill Creek	About 1.1 miles downstream of Old 87th Street	None	*806
			Just downstream of Old 87th Street	None	*821
			Just upstream of 87th Street Viaduct	None	*826
			Just downstream of State Highway 10	None	*895
		Mill Creek Tributary No. 1	At mouth	None	*868
			About 600 feet upstream of Ridgeview Road	None	*899
		Turkey Creek	About 700 feet upstream of Marshall Drive	*977	*980
			About 1350 feet upstream of a service road	*999	*999

Maps available for inspection at the City Hall, 12350 W. 87th Street Parkway, Lenexa, Kansas.
Send comments to The Honorable Rich Becker, Mayor, City of Lenexa, 12350 W. 87th Street Parkway, Lenexa, Kansas 66215.

Kansas	City of Merriam, Johnson County.	Turkey Creek	Just upstream of Antioch Road	*885	*886
			Just downstream of 63rd Street	*934	*932
			Just upstream of 62rd Street	*938	*937
			Just downstream of 75th Street	*962	*960
		Turkey Creek Tributary	At mouth	None	*931
			About 450 feet upstream of 63rd Street	None	*936

Maps available for inspection at the City Hall, 9000 West 62nd Terrace, Merriam, Kansas.
Send comments to The Honorable Irene B. French, Mayor, City of Merriam, 9000 West 62nd Terrace, Merriam, Kansas 66202.

Kansas	City of Mission, Johnson County.	Rock Creek	Just downstream of U.S. Highway 56	*913	*913
			Just downstream of Woodson Avenue	*953	*953
			Just upstream of Woodson Avenue	*954	*959
			Just downstream of Lamar Avenue	None	*965

Maps available for inspection at the City Hall, 6090 Woodson, Mission, Kansas.
Send comments to The Honorable Sylvester Powell, Jr., Mayor, City of Mission, 6090 Woodson, Mission, Kansas 66202.

Kansas	City of Mission Hills, Johnson County.	Rock Creek	At mouth	*863	*863
			About 750 feet downstream of Mission Road	*881	*884

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified

Maps available for inspection at the Mission Hills City Hall, 6300 State Line Road, Shawnee Mission, Kansas.
Send comments to The Honorable Betty Lu Duncan, Mayor, City of Mission Hills, 6300 State Line Road, Shawnee Mission, Kansas 66208.

Kansas	City of Olathe, Johnson County.	Little Cedar Creek Tributary	About 3580 feet above mouth	None	*908
			About 1300 feet upstream of State Highway 7	None	*944
		Little Cedar Creek	At mouth	None	*839
			Just downstream of State Highway 7	None	*982
			Just upstream of State Highway 7	None	*1,001
			About 800 feet upstream of Dennis Avenue	None	*1,025
		Cedar Creek	About 3200 feet upstream of 95th Street	None	*795
			Just downstream of Olathe Lake Dam	*925	*896
		Indian Creek	Just upstream of Pflumm Road	*946	*947
			About 0.9 mile upstream of 151st Street	*1,043	*1,043
		Mill Creek Tributary No. 1	About 600 feet downstream of State Highway 10.	None	*899
			Just downstream of State Highway 10	None	*905
			Just upstream of State Highway 10	None	*916
			About 3500 feet upstream of State Highway 10	None	*928
		Mill Creek	Just upstream of State Highway 10	None	*895
			Just downstream of Mulberry Street	None	*966
			Just upstream of Mulberry Street	None	*993
			Just upstream of Keeler Street	None	*1,032
		Mill Creek Tributary No. 2	At mouth	*958	*952
			Just downstream of Nelson Street	None	*1,002
		Cedar Creek Tributary	At mouth	None	*807
			Just downstream of 103rd Street westernmost crossing.	None	*872
			Just upstream of 103rd Street westernmost crossing.	None	*878
			About 2800 feet upstream of easternmost 103rd Street.	None	*918
		Indian Creek Tributary No. 6	At mouth	None	*996
			Just upstream of 143rd Street	None	*1,017

Maps available for inspection at the Engineering Department, City Hall, 217 West Park, Olathe, Kansas.
Send comments to The Honorable James Green, Mayor, City of Olathe, P.O. Box 768, Olathe, Kansas 66061.

Kansas	City of Overland Park, Johnson County.	Turkey Creek	Just downstream of Southbound U.S. Highway 69.	*865	*864
			Just upstream of Burlington Northern Railroad	*969	*964
			Just downstream of Marshall Drive	*974	*976
		James Branch	Just upstream of 97th Place	None	*895
			About 350 feet upstream of 97th Place	None	*898
		Indian Creek Tributary No. 1	At mouth	None	*858
			Just downstream of 103rd Street	None	*858
			Just upstream of 103rd Street	None	*864
			Just downstream of 99th Street	None	*890
		Indian Creek Tributary No. 2	At mouth	None	*866
			Just downstream of 107th Street	None	*880
			Just upstream of 107th Street	None	*885
			Just downstream of Interstate 435	None	*893
			Just upstream of Interstate 435	None	*912
			About 750 feet upstream of 110th Street	None	*913
		North Branch Indian Creek	At mouth	*902	*905
			Just downstream of Quivira Road	*926	*931
			Just upstream of Quivira Road	*930	*935
			Just downstream of 103rd Street	*954	*957
		Tributary A	At mouth	None	*925
			Just downstream of Interstate 435	None	*931
			Just upstream of Interstate 435	None	*936
			Just downstream of 103rd Street	None	*947
		Tributary B	At mouth	None	*935
			Just downstream of Westgate Road	None	*952
			Just upstream of Westgate Road	None	*958
			About 900 feet upstream of 110th Street	None	*974
		Indian Creek Tributary No. 3	At mouth	None	*870
			Just downstream of 97th Street	None	*904
			Just upstream of 97th Street	None	*911
			About 1900 feet upstream of 95th Street	None	*929
		Indian Creek Tributary No. 4	At mouth	None	*874
			About 350 feet upstream of Hadley Drive	None	*920
		Indian Creek Tributary No. 5	At mouth	None	*887
			About 1250 feet upstream of 99th Street	None	*944
		Tomahawk Creek	About 1850 feet upstream of 119th Street	*865	*865
			Just downstream of Pflumm Road	*1,004	*1,005
		Negro Creek	At mouth	None	*869

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
			Just downstream of Nall Avenue	None	*914
			Just upstream of Nall Avenue	None	*920
			Just downstream of U.S. Highway 69	None	*966
		Indian Creek	Just upstream of 109th Terrace	None	*849
			Just downstream of Pflumm Road	*945	*947
		Camp Branch	Within community	None	*894
		Blue River	About 3500 feet downstream of confluence of Negro Creek.	None	*867
			About 4300 feet upstream of confluence of Camp Branch.	None	*898

Maps available for inspection at the City Hall, 8500 Sante Fe Drive, Overland Park, Kansas.
Send comments to The Honorable Ed Eilert, Mayor, City of Overland Park, 8500 Sante Fe Drive, Overland Park, Kansas 66212.

Kansas	City of Prairie Village, Johnson County.	Dyke Branch	About 1050 feet upstream of Wenonga Road	None	*917
			About 1400 feet upstream of Wenonga Road	None	*922

Maps available for inspection at the City Hall, 7700 Mission Road, Prairie Village, Kansas.
Send comments to The Honorable Monroe Taliaferro, Mayor, City of Prairie Village, 7700 Mission Road, Prairie Village, Kansas 66208.

Kansas	City of Shawnee, Johnson County.	Mill Creek	At mouth	None	*767
			About 1.0 mile downstream of Old 87th Street	None	*806
		Little Mill Creek	At mouth	*789	*794
			Just downstream of Lackman Road	*874	*875
			Just upstream of Lackman Road	*877	*882
			About 3150 feet downstream of 79th Street	*889	*889
		Turkey Creek Tributary	About 400 feet upstream of 63rd Street	None	*937
			Just downstream of Flint Avenue	None	*967
		Kansas River	About 3200 feet downstream of confluence of Mill Creek.	None	*766
			About 1300 feet downstream of confluence of Cedar Creek.	None	*784
		Turkey Creek	Just downstream of Marshall Drive	None	*976
			About 700 feet upstream of Marshall Drive	None	*980

Maps available for inspection at the City Hall, 1111 Johnson Drive, Shawnee, Kansas.
Send comments to The Honorable Bob Best, Mayor, City of Shawnee, 1111 Johnson Drive, Shawnee, Kansas 66203.

Louisiana	Iberville Parish, Unincorporated Areas.	Lower Grand River	Approximately 0.8 mile upstream of downstream Parish Boundary.	*8	*7
			At confluence of Bayou Plaquemine	None	*9
		Bayou Plaquemine	At confluence with Lower Grand River	None	*9
			Approximately 2.3 miles upstream of confluence with Lower Grand River.	None	*10
		Mound Ditch	Approximately 0.8 mile upstream with Lower Grand River.	*8	*9
			Approximately 1.5 miles upstream of confluence with Lower Grand River.	*8	*9
		Spanish Lake	Entire shoreline within community	None	*11
		Bayou Manchac	At Bayou Paul Road	None	*15

Maps available for inspection at the Courthouse, 600 Meriam Street, Plaquemine, Louisiana.
Send comments to The Honorable Aldevich Dupree, President of the Iberville Parish Police Jury, P.O. Box 389, Plaquemine, Louisiana 70764.

Massachusetts	Sandwich, Town, Barnstable County.	Atlantic Ocean	On Cape Cod Canal approximately 1,500 feet inland of mouth.	*14	*10
			Upstream end of Mill Creek	*12	*11
			Areas along entire shoreline adjacent to coastal frontal sand dunes and northeast of Saltmarsh and Foster Roads and North Shore Boulevard.	None	*13
			At Scusset Beach	*17	*15
			Northeast of Carleton Drive East	*25	*16

Maps available for inspection at the Building Inspector's Office, 270 Quaker Meetinghouse Road, Sandwich, Massachusetts.
Send comments to The Honorable Edward Condon, Chairman of the Town of Sandwich Board of Selectmen, Barnstable County, P.O. Box 660, Sandwich, Massachusetts 02563.

New Jersey	Fair Lawn, Borough Bergen County.	Saddle River	Downstream corporate limits	*43	*46
			Upstream corporate limits	*55	*57
		Beaver Dam Brook	Confluence with Saddle River	*49	*51
			Approximately 150 feet downstream of Paterson Street.	*50	*51
		Jordan Brook	Confluence with Saddle River	*53	*55
			Approximately 400 feet upstream of Prospect Avenue.	*54	*55

Maps available for inspection at the Engineer's Office, 8-01 Fair Lawn Avenue, Fair Lawn, New Jersey.
Send comments to The Honorable Joseph Garger, Fair Lawn Borough Manager, Bergen County, 8-01 Fair Lawn Avenue, P.O. Box 376, Fair Lawn, New Jersey 07410.

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
New York	Harrison (Town) Westchester County.	Brentwood Brook	Just upstream of Harrison Avenue	*45	*44
			At Ramapo Terrace Road	None	*73
		Nelson Creek	At confluence with Brentwood Brook	*65	*62
			Approximately 1,780 feet upstream of Iroquois Trail	None	*104
		Lecount Creek	Approximately 848 feet upstream of confluence with Mamaroneck River.	None	*36
			Approximately 1,280 feet upstream of West Street.	None	*46
		West Branch Blind Brook	Approximately 240 feet upstream of confluence with Blind Brook.	None	*128
			At Beverly Road	None	*216

Maps available for inspection at Harrison Municipal Building, 1 Heinemann Place, Harrison, New York.
Send comments to The Honorable Charles Balencia, Supervisor of the Town of Harrison, Westchester County, 1 Heinemann Place, Harrison, New York 10528.

Issued: November 9, 1990.

C.M. "Bud" Schauerte,
Administrator, Federal Insurance Administration.

[FR Doc. 90-27291 Filed 11-20-90; 8:45 am]
BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21, 74, 78, and 94

[Gen. Docket No. 90-54, DA 90-1682]

Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, Private Operational-Microwave Fixed Service, and Cable Television Relay Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment periods.

SUMMARY: The Commission extends the time for filing comments in its proceeding concerning wireless cable, including Multipoint Distribution Service, Instructional Television Fixed Service, and Operational Fixed-Microwave Service, from November 26, 1990, to December 19, 1990, and the time for filing reply comments from December 19, 1990, to January 28, 1991. The Further Notice of Proposed Rule Making in this proceeding (FR Doc. 90-25774) may be found at 55 FR 46017 (October 31, 1990). The action is taken because of the complex technical matters at issue in this Docket.

DATES: Comments are now due on December 19, 1990, reply comments are due on January 28, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley, Mass Media Bureau, (202) 632-7792; Lynne Milne, Common Carrier Bureau, (202) 634-1772; or Michael Lewis, Private Radio Bureau (202) 632-6940.

SUPPLEMENTARY INFORMATION:

Order Granting Extension of Time

In the Matter of Amendments of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing the Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Microwave Service Multipoint Distribution Service, Multichannel Multipoint Distribution Service Instructional Television Fixed Service, and Cable Television Relay Service

Adopted: November 15, 1990.

Released: November 15, 1990.

By the Mass Media Bureau:

1. The Association for Higher Education of North Texas, the Indiana Higher Education Telecommunication System, Illinois Institute of Technology, Lousiana State University, Region IV Education Services, the State University of New Jersey (Rutgers), the Trustees of Leland Stanford Junior University, Transvideo, Inc., and the University of Texas Health Science Center, all licensees or permittees of stations in the Instructional Television Fixed Service, have requested an extension of time for comments and reply comments in the above-referenced rulemaking proceeding. Comments are currently due on November 26, 1990, and reply comments on December 19, 1990.

2. The parties claim that the number and complexity of the proposals in the Further Notice of Proposed Rulemaking in Gen. Docket No. 90-54, as well as the length and complexity of the Commission's related Report and Order in Gen. Dockets Nos. 90-54 and 80-113, considered in light of impending school holidays of extended periods, make an extension necessary in order for educational institutions to participate effectively.

3. As also pointed out by the requesters here, the Commission has recognized the particular difficulties educational institutions face in responding speedily to issues of concern to them. Educational institutions will have their rights affected by the pending rulemaking, and their full participation is both important and desired. The extension of time requested should not prejudice other parties, and will be granted as requested. Accordingly, pursuant to authority in sections 4(i), 302, and 303 of the Communications Act of 1934, as amended, *it is ordered*, That the comment period in this proceeding is extended to December 19, 1990, and the reply comment period is extended to January 28, 1991.

Federal Communications Commission.

Roy J. Stewart,
Chief.

[FR Doc. 90-27370 Filed 11-20-90; 8:45 am]
BILLING CODE 6712-01-M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1537

[FRL 3812-7]

Acquisition Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule revises the Environmental Protection Agency Acquisition Regulation (EPAAR) to make coverage on the use of advisory and assistance services consistent with the Federal Acquisition Regulation (FAR) and applicable Office of Management and Budget (OMB) guidance. Proposed revisions indicate the EPA office responsible for making the initial determination of whether requested services are advisory and assistance, required documentation to support the determination, and necessary approvals. Previous references in the EPAAR to "consulting services" and examples of consulting services are deleted since they are inconsistent with current FAR and OMB guidance.

DATES: Written comments must be received by December 21, 1990.

ADDRESSES: Comments should be addressed to: Environmental Protection Agency, Procurement and Contracts Management Division (PM-214F), 401 M Street, SW., Washington, DC 20460, Attn: Marilyn Torpey.

FOR FURTHER INFORMATION CONTACT: Marilyn Torpey (202) 245-3041) (FTS) 245-3941.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed revision will modify the

EPAAR to be consistent with the terminology and guidance in FAR subpart 37.2 and OMB Circular A-120. As specified in FAR 37.206, the proposed revision indicates the office initiating the request for services will make the initial determination of whether services are advisory and assistance, and provide a justification as required by FAR 37.206. Types of advisory and assistance services are listed in FAR 37.203. EPAAR section 1537.203, which listed examples of consulting services based on the 1980 version of OMB Circular A-120, will be removed. The proposed revision adds coverage indicating that the Assistant Administrator for Administration and Resources Management has been designated the official who will ensure the acquisition of advisory and assistance services meets the provisions of OMB Circular A-120.

B. Executive Order 12291

The Office of Management and Budget (OMB) Bulletin No. 85-7, dated December 14, 1984, established requirements for OMB review of agency acquisition regulations. This regulation does not fall within any of the categories cited in the bulletin requiring OMB review.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not contain information collection requirements requiring the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Regulatory Flexibility Act

The EPA certifies this proposed rule does not exert a significant economic impact on a substantial number of small entities because the proposed change does not impose any new requirements on contractors, large or small. An initial regulatory flexibility analysis has therefore not been performed.

List of Subjects in 48 CFR Part 1537

Government procurement, Service contracting.

For reasons set forth in the preamble, 48 CFR part 1537 is proposed to be amended as follows:

1. The authority citation for part 1537 continues to read as follows:

Authority: Section 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Subpart 1537.2 is revised to read as follows:

Subpart 1537.2—Advisory and Assistance Services.

1537.200 Scope of subpart.

This subpart applies only to the types of services described in FAR 37.203. It does not apply to services which the Contracting Officer has determined are not advisory and assistance.

1537.205 Management controls.

(a) The requesting office shall make the initial determination of whether the requirement is for advisory and assistance services as defined in FAR 37.203. If services are determined to be advisory and assistance, the requesting office shall prepare a procurement request addressing the items shown in FAR 37.206.

(b) The Contracting Officer shall review the initiating office's determination. In the event that the Contracting Officer disagrees with the initiating office's determination, he/she will discuss his/her findings with the initiating office before making a final determination. The Contracting Officer's determination on whether services are advisory and assistance is final.

(c) The Assistant Administrator for Administration and Resources Management has been designated as the official responsible for ensuring that the acquisition of advisory and assistance services meets the provisions in Office of Management and Budget (OMB) Circular A-120.

Dated: September 21, 1990.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 90-27400 Filed 11-20-90; 8:45 am]

BILLING CODE 1340-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

RIN 0648-AC83

Atlantic Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 1 to the Fishery Management Plan for the Atlantic Summer Flounder Fishery (FMP) for review by the Secretary of Commerce (Secretary) and is requesting comments from the public. The FMP proposes a minimum net mesh for the summer flounder trawl fishery.

DATES: Comments will be accepted until January 10, 1991.

ADDRESSES: Send comments to the Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930-3799. Mark the outside of the envelope "Comments on Summer Flounder Plan". Copies of Amendment 1 are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, Delaware 19901-6790.

FOR FURTHER INFORMATION CONTACT: Kathi Rodrigues, Resource Policy Analyst, 508-281-9300, ext. 324.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.* requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining approvability of the document.

The proposed amendment provides that (1) only otter trawl vessels with 5.5 inch minimum mesh (diamond mesh) or 6 inch minimum mesh (square mesh), applied throughout the cod end for at least 75 continuous meshes forward of the terminus of the net may retain more than 500 pounds of summer flounder (vessels fishing with a fly net and vessels with special permits are exempt from this requirement); (2) vessels in this fishery may not have "available for immediate use" any net that does not meet the minimum mesh requirement; (3) nets that cannot be shown to have been in recent use and are stowed, secured or covered with the cod end removed, or secured in a manner approved by the Regional Director are considered to be "not available for immediate use"; (4) obstruction of the regulated portion of the net is prohibited; and (5) states with minimum mesh regulations larger than those proposed by this amendment are encouraged to maintain them.

The amendment also provides an overfishing definition, as required by the 50 CFR part 602 guidelines for fishery management plans.

The provisions of the existing FMP (for example, 13 inch minimum size limit as well as annual permits for commercial vessels and vessels for hire in the recreational fishery (party and charter boats) continue in effect unchanged.

The receipt date for Amendment 1 was November 12, 1990. Proposed regulations for this Amendment will be filed with the Office of the Federal Register within 15 days of the receipt date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 15, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-27344 Filed 11-15-90; 4:04 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 225
Wednesday, November 21, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Availability of an Environmental Assessment and Finding of No Significant Impact Relative to USDA Funding of Research on Transgenic Carp

AGENCY: Cooperative State Research Service, USDA.

ACTION: Notice.

SUMMARY: The Cooperative State Research Service (CSRS) advises the public through this notice that an environmental assessment and finding of no significant impact have been prepared relative to USDA funding of a proposal submitted by the Alabama Agricultural Experiment Station (AAES) to conduct research on mirror carp that have been genetically modified using recombinant deoxyribonucleic acid (DNA) technology and contain a rainbow trout growth hormone gene. The research will be carried out in a new fish hatchery facility and new outdoor research ponds located in Lee County, Auburn, Alabama. Funding for the research is provided from CSRS through the Hatch Act.

The environmental assessment provides a basis for the conclusion that this research will not significantly impact the quality of the human environment. Based on this finding of no significant impact, the CSRS has determined that an environmental impact statement is not required.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available from the Office of Agricultural Biotechnology, U.S. Department of Agriculture, room 321-A, Administration Building, 14th and Independence Avenue SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Maryln K. Cordle at the above address, or telephone (703) 235-4414.

SUPPLEMENTARY INFORMATION: The AAES has requested USDA funding of an experiment with transgenic mirror carp containing a rainbow trout growth hormone gene. The research will be carried out in a new fish hatchery facility and in new outdoor research ponds located in Lee County, Auburn, Alabama.

The purpose of the research is to (1) evaluate the effects of the trout growth hormone gene on the reproductive capacity of blood carp, (2) determine whether offspring of these carp inherit the trout growth hormone gene, and (3) determine what are the effects of the inherited gene on the survival, growth rate, and behavior of the offspring. The research will develop basic information that may in the future be useful in developing improved fish species for commercial aquaculture through the use of recombinant DNA technology.

In accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of the NEPA (40 CFR parts 1500-1506), and (3) USDA regulations implementing NEPA (7 CFR part 1b), the CSRS assessed the environmental impacts of conducting this research.

The CSRS published and invited public comment on an environmental assesment and preliminary finding of no significant impact in the Federal Register of February 16, 1990 (55 FR 5752). Comments were received from four parties: The Environmental Defense Fund, the National Wildlife Federation, an Assistant Professor and Curator of Fishes at Auburn University, and a District Fisheries Biologist, Alabama Department of Conservation and Natural Resources. These comments raised concerns about the defined scope of the proposed action, and raised questions about the need for the research and whether sufficient laboratory information had been developed before expanding the testing to outdoor ponds. The comments identified environmental issues that respondents believed had not been adequately addressed. Concerns were raised about management of the proposed research and confinement conditions, and it was pointed out that past research at Auburn University most likely has been a source of introduction of new carp species in natural waters in Alabama. New information was provided on the local aquatic environment. As a result of these comments the environmental assessment was revised and two additional alternatives for the research (Alternatives 4 and 5 described below) were considered. USDA's consideration of the comments received and its response to the issues raised is presented in the revised environmental assessment.

The five alternatives considered in the revised environmental assessment are:

Alternative 1 (The Original AAES Proposal)—Rearing 50,000 offspring/fry (at least 0.5 centimeters long) in older, outdoor research ponds and reducing the number to 3,000 when the fry reach fingerling size (30 grams);

Alternative 2 (Preferred USDA action in the initial EA)—Rearing 50,000 offspring/fry in older, outdoor research ponds under modified conditions of confinement and mitigation, primarily in the water drainage system and pond leeves, and reducing the number of fish to 3,000 at the fingerling stage;

Alternative 3 (No Action)—In a new hatchery facility (indoors), rearing 10,000 offspring/fry with the number reduced to 3,000 at the fingerling stage;

Alternative 4 (USDA Preferred Action)—Rearing 50,000 offspring/fry in new research ponds of superior design and constructed at a higher elevation than the older ponds, and reducing the number of fish to 3,000 at the fingerling stage;

Alternative 5—Rearing 10,000 offspring/fry indoors until they are fingerling size, and then rearing 3,000 fingerlings in the new outdoor research ponds.

CSRS concluded from the revised environmental assessment that the research, if conducted under the conditions specified in the preferred USDA action (Alternative 4), will not significantly impact the quality of the human environment.

The environmental assessment and finding of no significant impact are based on data submitted by AAES, information submitted in public comments, as well as a review of other relevant literature. This environmental assessment provides the public with

documentation of CSRS' review and analysis of the environmental impacts associated with conducting the research.

The finding of no significant impact is based on the factors set forth below. Further details are contained in the environmental assessment.

This finding of no significant impact is based on the following factors:

1. Stringent safeguards, including physical, biological and chemical barriers, are in place to prevent the escape of transgenic mirror carp from the experimental facility at AAES. These safeguards make an escape of transgenic fish extremely remote.

2. The mitigation procedures proposed in alternative 4 are adequate to eliminate all fish from the research ponds in the event that such steps become necessary, e.g., forecast of unusually severe weather conditions. By treating the research ponds with rotenone, all transgenic fish can be eliminated from the ponds with reasonable assurance.

3. The weather monitoring procedures proposed in alternative 4 are adequate to apprise AAES of the possibility of a catastrophic event, such as a hurricane or flood, so that emergency termination procedures can be taken to prevent the escape of the transgenic mirror carp.

4. The measures proposed in alternative 4 are adequate to prevent removal of carp from the experimental ponds by birds and other terrestrial predators. The double fencing, netting, and pond management procedures will restrict access by terrestrial birds, waterfowl, and other predators, including snakes, rodents and other animals.

5. The monitoring and inspection procedures proposed are adequate to ensure that the physical barriers are maintained properly and access to the research area is limited to authorized personnel associated with the project.

6. Even if some transgenic mirror carp were to circumvent the confinement safeguards and escape the AAES, few, if any, of the carp would survive, grow, and reach sexual maturity in the receiving bodies of water that include Sougahatchee Creek and Yates Reservoir. Factors acting against the establishment of transgenic carp in those waters include: The relatively small number of fish that might escape, the naturally high mortality rate for early life history stages of the fish, the lack of suitable habitat, the large number of predatory fish in those waters, and because the experiment uses a highly domesticated fish genotype that is not likely to be well suited for survival in a natural environment where those fish must forage for food. Also, the experimental fish have been derived from mirror carp which have traits that, in general, are competitively inferior to scaled common carp.

7. The presence of the rtGH gene, while it may increase growth rate of the transgenic mirror carp, would not significantly increase the survival rate compared to scaled common carp. Factors such as the limited amount of suitable habitat in Yates Reservoir are independent of fish size and would serve to control the distribution and numbers of carp whether or not those fish possess the rtGH gene.

8. In the event that a few transgenic mirror carp survive to adulthood, spatial and temporal factors, and spawning preferences are likely to reduce the opportunity for successful spawning.

9. Even if some transgenic carp were able to spawn successfully, the size of the population would be severely limited by the lack of suitable habitats and the abundance of predators in the receiving bodies of water.

10. In the absence of natural selection pressure for the rtGH gene, it is likely that the rtGH gene would disappear from the gene pool altogether by random genetic drift. Disappearance from the gene pool also may occur from the negative selection pressure.

11. Even if there were natural selection pressure for the rtGH gene, and the transgenic mirror carp were eventually to displace the small population of scaled common carp in Yates Reservoir, no significant destabilizing effects on the food web or other fish species would occur. Any theoretical increase in disruptive activities of the transgenic carp compared to the existing common carp would occur only within the relatively small areas where common carp are most abundant, and their effect would not be different from any disruptions already caused by the existing common carp.

12. The procedures proposed for the use of rotenone to eliminate the transgenic fish and the detoxification of rotenone-treated water with potassium permanganate are adequate to mitigate any adverse effects of these chemicals on the environment.

13. No adverse effects are expected from the use of the viral DNA sequence in the genetic modification of the carp. The viral sequence represents less than 10 percent of the viral genome, it does not code for or express any protein, and it cannot replicate and initiate an infection independently.

14. The size of the experiment and limited area of the experimental site make it feasible to supervise the research, limit access to the experimental ponds, and to implement the mitigation procedures, if necessary.

Inasmuch as the available evidence indicates that conducting the proposed research as specified in alternative 4 would have no significant impact on the quality of the human environment, I announce this finding of no significant impact.

Done at Washington, DC, this 15th day of November.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 90-27297 Filed 11-20-90; 8:45 am]

BILLING CODE 3410-22-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation—1991 Panel Wave 2.

Form number(s): SIPP-11200, SIPP-11205.

Agency approval number: 0607-0702.

Type of request: Revision of a currently approved collection.

Burden: 14,700 hours.

Number of respondents: 29,400.

Avg Hours per response: 30 minutes.

Needs and uses: The Bureau of the Census uses the Survey of Income and Program Participation (SIPP) to gather data concerning the distribution of income received directly as money or indirectly as in-kind benefits. The SIPP is designed as a continuing series of national panels of households which are interviewed about every four months. A new panel is introduced annually with each panel having a duration of about 2½ years in the survey. The survey is molded around a central "core" of labor force and income questions. The core is periodically supplemented with additional questions referred to as "topical modules." Wave 2 contains the "Personal History" topical module which will be used to gather pertinent information about the past experiences of SIPP sample persons.

Affected public: Individuals or households.

Frequency: Once during the life of the panel.

Responder t's obligation: Voluntary.

OMB desk officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 15, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-27441 Filed 11-20-90; 8:45 am]

BILLING CODE 3510-07-M

Bureau of the Census

Meeting; Homeless Persons; Enumeration Methods and Data Needs

AGENCY: Bureau of the Census, Commerce.

TIME AND DATE: 8:45 a.m.-4:45 p.m., Thursday, November 29, 1990.

PLACE: Quality Hotel at Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: Enumerating Homeless Persons: Methods and Data Needs.

1. Researchers/methodologists and federal government officials will discuss the data needs and technical methods for counting homeless persons, including uses of the 1990 census counts.

2. The effect of definition and commonly-used methods to count homeless persons on the outcome of the data including street counts, point-of-service counts, and special issues related to the 1990 census counts; and,

3. Biases from the selection of informant and location, and measurement problems for special groups such as the mentally ill and drug and alcohol abusers.

CONTACT PERSONS FOR MORE INFORMATION:

Amina Elmi, The Urban Institute, 2100 M Street, NW., Washington, DC 20037, 202-833-7200, Fax: 202-223-3043.

Charles Moore, Decennial Planning Division, Bureau of the Census, Washington, DC 20233, 301-763-4985.

Dated: November 15, 1990.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 90-27494 Filed 11-20-90; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-533-501]

Certain Iron Construction Castings From India; Court Decision and Suspension of Liquidation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On October 11, 1990, the United States Court of International Trade ("CIT") affirmed the Department's amended determination upon remand that Kejriwal, an Indian manufacturer of iron construction castings, had a *de minimis* dumping margin. *Kejriwal Iron and Steel Works, Ltd.* v. *United States*, No. 89-04-00172, Slip Op. 90-104 (CIT October 11, 1990). If the CIT's opinion in this case is not appealed, or not overturned on appeal, then the antidumping duty order on certain iron construction castings from India will be revoked.

In accordance with the decision of the Court of Appeals for the Federal Circuit ("CAFC") in *The Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), Commerce will not order the liquidation of the subject merchandise prior to a conclusive decision of *Kejriwal Iron and Steel Works, Ltd.* v. *United States*, Ct. No. 89-04-00172.

EFFECTIVE DATE: October 28, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or James Terpstra, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230, telephone: (202) 355-8371 or 377-1756, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 19, 1986, Commerce published its final antidumping duty determination on certain iron construction castings from India. Certain Iron Construction Castings from India; Final Determination of Sales at Less Than Fair Value, 51 FR 9486 (Mar. 19, 1986). On May 9, 1986, Commerce published an antidumping duty order on entries of light and heavy castings. As to light castings, the order applied to those castings entered, or withdrawn from warehouse, for consumption on or after May 7, 1986, the date of publication in the **Federal Register** of an affirmative determination of threat of material injury by the International Trade Commission ("ITC"). As to heavy castings, the order applied to all unliquidated entries, or warehouse withdrawals, for consumption of heavy castings from India made on or after October 28, 1985, the date on which the Department published its preliminary determination.

On April 3, 1989, Kejriwal, a respondent in the antidumping duty investigation, instituted an action challenging Commerce's final determination, as amended upon remand in *Alhambra Foundry Co.* v. *United States*, 12 CIT _____, 685 F. Supp. 1252 (1988) and *Alhambra Foundry Co.* v. *United States*, 12 CIT _____, 701 F. Supp. 221 (1988). *Kejriwal Iron and Steel Works, Ltd.* v. *United States*, Ct. No. 89-04-00172. Specifically, respondent Kejriwal challenged the results of the *Alhambra* litigation to the extent that Commerce determined on remand that Kejriwal's margin, which had been *de minimis*, should be 2.93 percent. As a result of the *Kejriwal* litigation, Commerce made, on remand, additional calculation corrections and determined that Kejriwal's margin should be *de minimis*. On October 11, 1990, the CIT upheld Commerce's amended remand determination that Kejriwal had a *de minimis* margin.

By way of background, at the time of the *Alhambra* lawsuit was filed by petitioners, Commerce's final determination had been concurrently challenged by respondent Serampore, the only company with an affirmative margin at the conclusion of Commerce's investigation. *Serampore Industries Pvt. Ltd.* v. *United States Department of Commerce*, Ct. No. 86-06-00743. As a result of the *Serampore* lawsuit, Serampore's margin was found to be below *de minimis* on remand. Accordingly, at the time of the *Kejriwal* lawsuit, Kejriwal was the only company with an above *de minimis* margin, and was the only company that provided a basis for the antidumping duty order on iron construction castings from India.

The Department's affirmed amended remand determination in *Kejriwal* states that because the results indicate that no investigated company had sales at less than fair value, the Department intends to revoke the order as to all unliquidated entries of the subject merchandise.

Accordingly, absent an appeal, or, if appealed, upon a "conclusive" decision by the CAFC which is consistent with the CIT's decision, the antidumping duty

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order on iron construction castings will be revoked, effective October 28, 1985, as to heavy castings and effective May 7, 1986, as to light castings.

Suspension of Liquidation

In its decision in *The Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), the CAFC held that Commerce must publish notice of a decision of the CIT or the CAFC which is not in harmony with Commerce's determination. Publication of this notice fulfills that obligation. The CAFC also held that in such a case, Commerce must suspend liquidation until there is a "conclusive" decision in the action. Therefore, Commerce must suspend liquidation pending the expiration of the period to appeal the CIT's October 11, 1990 decision affirming Commerce's *de minimis* remand results, or pending a final decision of the CAFC if that decision is appealed.

Because entries of iron construction castings from India are currently being suspended pursuant to the antidumping duty order in effect, Commerce need not order Customs to suspend liquidation. Commerce will not order the lifting of the suspension of liquidation, on entries of heavy castings made on or after October 28, 1985, and on entries of light castings made on or after May 7, 1986, before there is a conclusive court decision in this lawsuit.

Dated: November 15, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-27385 Filed 11-20-90; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 85-3A018.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the U.S. Shippers Association ("USSA") on June 3, 1986. Notice of issuance of the original Certificate was published in the Federal Register on June 9, 1986 (51 FR 20873). The Certificate was previously amended on January 16, 1990 (55 FR 2543, January 25, 1990).

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4011-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of a Certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 85-00018 was issued to USSA on June 3, 1986. Notice of issuance of the Certificate was published in the Federal Register on June 9, 1986 (51 FR 20873). The Certificate was previously amended on January 16, 1990 (55 FR 2543, January 25, 1990).

In this amendment, USSA has amended the listing of "Members" named in it's Export Trade Certificate of Review to replace "Rhone-Poulenc Basic Chemicals Co." with its parent company, "Rhone-Poulenc Inc.," Princeton, New Jersey.

EFFECTIVE DATE: August 17, 1990.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

November 15, 1990.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 27442 Filed 11-20-90; 8:45 am]

BILLING CODE 3510-DR-M

Short Supply Review; Certain Continuous Cast Steel Slabs

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments; certain continuous cast steel slabs.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 55,000 net tons per quarter of certain continuous cast steel slabs for each quarter of 1991 under article 8 of the U.S.-Brizil steel arrangement and Paragraph 8 of the U.S.-Mexico steel arrangement.

SHORT-SUPPLY REVIEW NUMBER: 32.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 1357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain continuous cast steel slabs for use in the manufacture of API X-70 line pipe. On November 9, 1990, the Secretary received an adequate petition from Oregon Steel Mills ("Oregon Steel") requesting a short-supply allowance for 55,000 net tons per quarter for each quarter of 1991 under article 8 of the Arrangement Between the Government of Brizil and the Government of the United States Concerning Trade in Certain Steel Products (the "U.S.-Brazil arrangement") and Paragraph 8 of the Arrangement Between the Government of Mexico and the Government of the United States of America Concerning Trade in Certain Steel Products (the "U.S.-Mexico arrangement").

Oregon Steel alleges that it will experience short supply for this product in 1991 because it has recently obtained several 1991 contracts for large pipeline projects, which will more than double its slab requirements from 1990. Oregon Steel states that it has limitations on the quantity of this material it can supply from its Portland, Oregon facility, and that domestic producers either have no available capacity or are unable to meet Oregon Steel's specifications. Oregon Steel also states that it will be able to purchase some quantity of slabs under regular export licenses, but must obtain this tonnage under a short-supply allowance.

The requested material should meet the following specifications:

Dimensions

Gauge: 200 mm-230 mm
Width: 1700 mm-1800 mm
Length: 7300 mm-7620 mm

Tolerances

Gauge: ± 4 mm
Width: ± 10 mm
Length: ± 50 mm
Camber: 0.67% max.
Crossbow: 10 mm max.
Squareness: 90 ± 3

Chemical Composition

C—0.07% to 0.11%
MN—1.35% to 1.58%
P—0.015% max.
S—0.007% max.*N
Si—0.15% to 0.30%
Cb—0.025% to 0.050%
V—0.020% max.
Ti—0.005% max.
Al—0.020% to 0.050%
Cu—0.25% max.
Ni—0.15% max.
Cr—0.15% max.
Mo—0.05% max.
Sn—0.006% max.
Ca—**
N—0.006% max.
Al/N ratio—>4.0

Section 4(b)(3)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than December 7, 1990.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than November 28, 1990, to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after November 28, 1990. All comments submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Kathy McNamara or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377-1390 or (202) 377-0159.

Dated: November 15, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-27394 Filed 11-20-90; 8:45 am]

BILLING CODE 3510-DS-M

* Prefer 0.002% maximum sulfur.

** Liquid steel to be calcium treated for inclusion shape control.

National Institute of Standards and Technology

[Docket No. 900845-0215]

Precision Measurement Grants

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Announcing continuation of the NIST precision measurement grants program.

Catalog of Federal Domestic Assistance Name and Number: Measurement and Engineering Research and Services; 11.609.

SUMMARY: The purpose of this notice is to inform potential applicants that the National Institute of Standards and Technology (NIST) is continuing $180,000 per year program of research grants, formally titled Precision Measurement Grants, to scientists in U.S. academic institutions for significant, primarily experimental research, in the field of precision measurement and fundamental constants. Applications are now being accepted for two new NIST Precision Measurement Grants to be awarded beginning October 1, 1991 (fiscal year 1992). Each grant is in the amount of $30,000 per year, renewable at NIST's option for up to two additional years, for a total of $90,000.

CLOSING DATE FOR APPLICATIONS: February 1, 1991, is the deadline for applying for the FY 92 awards.

FOR FURTHER INFORMATION CONTACT: Dr. Barry N. Taylor, Chairman, NIST Precision Measurement Grants Committee, Building 221, room B168, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975-4220.

SUPPLEMENTARY INFORMATION: As authorized by section 2 of the Act of March 3, 1901 as amended (15 U.S.C. 272), the National Institute of Standards and Technology (NIST) conducts directly, and through grants and contracts, a basic and applied research program in the general area of precision measurement and the determination of fundamental constants of nature. As part of this research program, NIST has since 1970 awarded Precision Measurement Grants to scientists in U.S. academic institutions for significant, primarily experimental research in the field of precision measurement and fundamental constants.

NIST is now accepting applications for two new $30,000 grants to be awarded for the period October 1, 1991, through September 30, 1992 (fiscal year 1992). Each grant may be renewed for up to two additional years for a total of $90,000; however, future or continued funding will be at the discretion of NIST based on such factors as satisfactory performance and the availability of funds.

NIST sponsors these grants to encourage basic, measurement-related reseach in U.S. colleges and universities and to foster contacts between NIST scientists and those researchers in the U.S. academic community who are actively engaged in such work. The Precision Measurement Grants are also intended to make it possible for workers in U.S. academic institutions to pursue new measurement ideas for which other sources of support may be difficult to find. The Precision Measurement Grants Program does not involve the payment of any matching funds from a state or local government and does not directly affect any state or local government. Accordingly, NIST has determined that Executive Order 12372 is not applicable to the Precision Measurement Grants Program. This notice does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Research Topics/Who May Apply

There is considerable latitude in the kind of research projects which will be considered for support under the Precision Measurement Grants Program. The key requirement is that they generally support NIST work in the field of basic measurement science, for example:

Experimental and theoretical studies of fundamental physical phenomena to

test the basic laws of physics or which may lead to improved or new fundamental measurement methods and standards.

The determination of important fundamental physical constants.

The development of new standards for physical measurement of the highest possible precision and accuracy.

In general, proposals for experimental research will be preference over proposals for theoretical research because of the greater expense or experimental work. Proposals from workers at the assistant and associate professor level who have some record of accomplishment are especially encouraged in view of the comparative difficultly aspiring researchers have in obtaining funds.

Typical projects which have been funded through the NIST Precision Measurement Grants Program include:

"Measurement of fundamental constants using three-level resonances in hydrogen," Carl E. Wieman, University of Michigan.

"Quantum limited measurement of a harmonic oscillator," William C. Olefke, University of Central Florida.

"Fine-Structure constant determination using precision Stark spectroscopy," Michael G. Littman, Princeton University.

"Eötvös experiment-cryogenic version," D.F. Bartlett, University of Colorado.

"A test of local Lorentz invariance using polarized ^{21}Ne nuclei," T.E. Chupp, Harvard University.

"A new method to search for an electric dipole moment of the electron," L.R. Hunter, Amherst College.

"High precision timing of millisecond pulsars," D.R. Stinebring, Princeton University.

"Precision optical spectroscopy of postironium," S. Chu, Stanford University.

Procedures

To simplify the proposal writing and evaluation process, the following selection procedure will be used:

Candidates are requested to submit a preapplication proposal to NIST by February 1, 1991 using standard form 424 with a description of their proposed work of no more than five double spaced pages.

Three copies should be sent to Dr. Barry N. Taylor at the address shown above.

On the basis of this material, four to eight semi-finalist candidates will be selected by the NIST Precision Measurement Grants Committee and the Outside Advisory Committee to submit more detailed proposals. The same committees will evaluate the detailed proposals, and on the basis of their evaluation, the two grantees for fiscal year 1992 will be selected. The semi-finalists will be notified of their status by March 20, 1991, and will be requested to submit their full proposals to NIST by May 6, 1991. The successful grantees will be notified of their selection by August 15, 1991.

The criteria to be used in evaluating the preapplication proposals and full proposals include:

1. Importance of the proposed research to science—does it have the potential of answering some currently pressing question or of opening up a whole new area of activity?

2. The relationship of the proposal research to measurement science—is there a possibility that it will lead to a new or improved fundamental measurement methods, basic measurement unit, or physical standard? (Or to a better understanding of important, but already existing, measurement methods, measurement units, or physical standards?)

3. The feasibility to the research—is it likely that significant progress can be made in a three-year time period with the funds and personnel available?

4. The past accomplishments of the applicant—is the quality of the research previously carried out by the prospective grantee such that there is a high probability that the proposed research will be successfully carried out?

Each of these factors are given weight in the selection process.

Technical Questions concerning the NIST Precision Measurement Grants Program may be directed to the above address or call Dr. Taylor on (301) 975–4220.

Paperwork Reduction Act

The standard form 424 referenced in this notice is subject to the Paperwork Reduction Act and has been cleared under Office of Management and Budget (OMB) control number 0348–0006.

Additional Requirements

All applicants must submit a certificate ensuring the employees of the applicant are prohibited from engaging in the unlawful manufacturing, distribution, dispensing, possession or use of a controlled substance at the work site, as required by the regulations implementing the Drug-Free Workplace of 1988, 15 CFR part 26, subpart F.

Applicants are subject to the Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment. Any recipients/applicants who have an outstanding indebtedness to the Department of Commerce will not receive a new award until the debt is paid or arrangements satisfactory to the Department are made to pay debt.

Applicants should be aware that all awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

Administrative Information

Contact: Grants Office, Office of Acquisition and Assistance Division, building 301/room B143, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975–6328.

Dated: November 15, 1990.

John W. Lyons,

Director.

[FR Doc. 90–27436 Filed 11–20–90; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, announces that on November 14, 1990, the United States Court of Appeals for the Ninth Circuit granted the Secretary of Commerce's motion to stay the October 19, 1990, preliminary injunction of the United States District Court for the Northern District of California ordering a prohibition on the importation of all yellowfin tuna and yellowfin tuna products from Mexico. Therefore, the prohibition on the importation of yellowfin tuna and yellowfin tuna products from Mexico announced in the **Federal Register** Notice of October 18, 1990, is no longer in effect.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Regional Director, of J. Gary Smith, Deputy Regional Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731, phone: (213) 514–6196.

Dated: November 16, 1990.

Michael F. Tillman,

Deputy Assistant Administrotor for Fisheries, National Marine Fisheries Service.

[FR Doc. 90–27371 Filed 11–20–90; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Application for public display permit, The Science Museum of Minnesota (P#69).

SUMMARY: Notice is hereby given that an applicant has applied in due form for a Public Display Permit to collect and import the remains of one crabeater seal as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Ms. Mary A. Olson, Project Leader and Exhibit Developer, The Science Museum of Minnesota, Exhibit Division, 30 East Tenth Street, St. Paul, Minnesota 55101.

2. *Type of Permit: Public Display.*

3. *Name and Number of Animals:* Remains of one (1) crabeater seal (*Lobodon carcinophagus*).

4. *Type of Take:* The applicant requests authorization to collect and import a mummified salvaged specimen of one crabeater seal to be collected near McMurdo Station, Antarctica, packaged and shipped to St. Paul, Minnesota, to be prepared for public display in a national traveling museum exhibition. In addition to a NMFS permit that may be issued, the application states that the seal specimen will be lawfully removed from Antarctica under the terms of an Antarctic Conservation Act Permit issued by the National Science Foundation.

5. *Location and Duration of Activity:* Specimen to be collected near McMurdo Station, Antarctica, October 1, 1990 through October 1, 1991.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, room 7330, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7330, Silver Spring, Maryland 20910;

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702;

Director, Alaska Region, National Marine Fisheries Service, NOAA, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802; and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930.

SUPPLEMENTARY INFORMATION: The application states that the salvaged seal specimen will be collected by J. Ward Testa of the Institute of Marine Science, University of Alaska, Fairbanks, Alaska, who currently holds a NMFS permit. This permit, No. 680, authorizes the permit holder to take and import crabeater seals, in addition to other marine mammals, for scientific research purposes. The permit holder is also permitted to salvage and import any parts of natural fatalities of the authorized species. A permit may be issued to the applicant on the conditions that:

(1) NMFS is notified of the exact location the salvaged specimen will be collected from;

(2) The name of the collector of the salvaged specimen be provided to NMFS; and

(3) If the remains of one other such crabeater seal to be imported is collected from any Antarctic dry valley in which it may be found, the location should be provided NMFS.

Dated: November 9, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90–27341 Filed 11–20–90; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States and certain foreign countries to practice the invention embodied in U.S. Patent Application Serial Number 7–277,694 to BioCarb, Inc., having a place of business at Gaithersburg, MD. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this publication Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention is a carbohydrate receptor for *Mycoplasma pneumoniae* and *Mycoplasma hominus* and its use detect mycoplasma in biological fluids and diseased tissue and cells. The receptor can be included in a composition having a pharmaceutically acceptable carrier. Methods are provided for purifying, detecting, or removing mycoplasma from diseased tissue or fluids. The receptor includes sulfatides, dextran sulfate, sialyloligosaccharides, and mixtures thereof.

The availability of the invention for licensing was published in the **Federal Register** Vol. 54, No. 2, p. 173 (January 4, 1989) as E–127–88. A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 703/487–4650 or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Patent Licensing Specialist, Center for the Utilization of Federal Technology.

[FR Doc. 90–27361 Filed 11–20–90; 8:45 am]

BILLING CODE 3510-04-M

Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (Pap. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on December 14, 1990 at 9 a.m. at Caesar's Palace, 3570

Las Vegas Boulevard South, Las Vegas, Nevada 89109. Meeting room will be announced on hotel directory.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent of the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Public Law 97–63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans.

Agenda items are as follows:

I. Call to Order
II. Approval of Minutes
III. USTTA Investment Missions
IV. USTTA Budget Update
V. USTTA Program Initiatives
VI. Energy and Tourism
VII. Review of Pre-clearance Program
VIII. Miscellaneous
IX. Adjournment

A very limited number of seats will be available to observers from the public and the press. To assure adequate seating, individuals intending to attend should notify the Committee Control Officer in advance. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, room 1865, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202–377–0140) will respond to public requests for information about the meeting.

Rockwell A. Schnabel,

Under Secretary of Commerce for Travel and Tourism.

[FR Doc. 90–27443 Filed 11–20–90; 8:45 am]

BILLING CODE 3510–11–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the Republic of El Salvador

November 16, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit for the new agreement year.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton Textile Agreement, effected by exchange of notes dated March 2, 1987 and April 30, 1987, as amended, between the Governments of the United States and the Republic of El Salvador establishes a limit for Categories 300/301 for the period January 1, 1991 through December 31, 1991.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 54 FR 50797, published on December 11, 1989). Information regarding the 1991 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Dated: November 6, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 16, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton Textile Agreement, effected by exchange of notes dated March 2, 1987 and April 30, 1987; between the Governments of the United States and the Republic of El Salvador; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 300/301, produced or manufactured in El Salvador and exported during the twelve-month period which begins on January 1, 1991 and extends through December 31, 1991, in excess of 4,086,867 kilograms.

Imports charged to this category limit for the period January 1, 1990 through December 31, 1990 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The level set forth above is subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and the Republic of El Salvador.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–27438 Filed 11–20–90; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

November 16, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 26, 1990.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 347/348/647/648 is being increased for swing and carryover. The limit for Categories 341/641 is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 51218, published on December 13, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Dated: November 16, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 16, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 6, 1989. That directive concerns imports into the United States of certain cotton, wool, man-made fiber and other vegetable fiber textiles and textile products, produced or manufactured in Jamaica and exported during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

Effective on November 26, 1990, the directive of December 6, 1989 is being amended to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Jamaica:

Category	Adjusted 12-month limit[1]
341/641	385,868 dozen.
347/348/647/648	994,804 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–27439 Filed 11–20–90; 8:45 am]

BILLING CODE 3510–DR–M

Amendment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States

November 16, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 26, 1990.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–9481. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the Untied States and the United Mexican States have agreed to amend the current designated consultation levels for Categories 347/348/647/648 (Normal Regime) and Categories 359–C/659–C (Special Regime).

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 51446, published on December 15, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Dated: November 16, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 16, 1990

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of December 11, 1989 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in the United Mexican States and exported during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

Effective on November 26, 1990, the directive of December 11, 1989 is amended further to increase the special regime limit for Categories 359–C/659–C and the normal regime limit for Categories 347/348/647/648:

	Amended 12-month limit[1]
Special Regime Category:	
347/348/647/648	4,500,000 dozen.
359–C/659–C[2]	2,000,000 kilograms.
Normal Regime Category (Not subject to the Special Regime):	
347/348/647/648	700,000 dozen.
359–C/659–C (sublimit)	250,000 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

[2] Category 359–C: only HTS numbers 6103.42.2010, 6103.42.2025, 6103.49.3034, 6104.62.1010, 6104.62.1020, 6104.69.3010, 6114.20.0042, 6114.20.0048, 6114.20.0052, 6203.42.2005, 6203.42.2010, 6203.42.2090, 6204.62.2005, 6204.62.2010, 6211.32.0007, 6211.32.0010, 6211.32.0025, 6211.42.0007 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2015, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1010, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2005, 6203.43.2010, 6203.43.2090, 6203.49.1005, 6203.49.1010, 6203.49.1090, 6204.63.1505, 6204.63.1510, 6204.69.1005, 6204.69.1010, 6210.10.4015, 6211.33.0007, 6211.33.0010, 6211.33.0017, 6211.43.0007 and 6211.43.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald L. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–27440 Filed 11–20–90; 8:45 am]

BILLING CODE 3510–DR–M

COMMODITY FUTURES TRADING COMMISSION

Policy Statement Concerning the Oversight of Screen-Based Trading Systems

AGENCY: Commodity Futures Trading Commission.

ACTION: Statement of policy.

SUMMARY: The Commodity Futures Trading Commission ("Commission"), a member of the International Organization of Securities Commissions ("IOSCO") and of IOSCO's Technical Committee, is hereby adopting a statement of regulatory policy for the oversight of screen-based trading systems for derivative products recommended by IOSCO on this day to all member jurisdictions during its annual meeting in Santiago, Chile. The "Principles for the Oversight of Screen-Based Trading Systems for Derivative Products" were formulated by eight jurisdictions which comprised Working Party 7 of the Technical Committee of IOSCO under the chairmanship of the Commission. These Principles were previously approved by IOSCO's Technical Committee on June 26, 1990 for recommendation to the member countries of IOSCO generally. The Principles are the first expression of international consensus with respect to the regulation of automated trading systems.

EFFECTIVE DATE: November 21, 1990.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Special Counsel, John C. Lawton, Associate Director or Robert H. Rosenfeld, Assistant Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Background

IOSCO is a private international organization which provides a forum for representatives of securities regulatory organizations to discuss issues of common interest and to facilitate the development of cooperative relationships between and among regulators. The Technical Committee of IOSCO was created in May 1987 to review major problems related to international securities transactions and to propose practical solutions to these problems. The following jurisdictions currently are represented on the Technical Committee: Australia, France, Germany, Hong Kong, Italy, Japan, Ontario, Quebec, Spain, Sweden, Switzerland, The Netherlands, the United Kingdom and the United States.

The substantive issues addressed by the Technical Committee have been delegated to working parties of which there are currently eight.

In view of the increasing significance of derivatives as an aspect of financial services, Working Party 7 on Futures of the Technical Committee of IOSCO was formed in October 1988. Its membership included representatives from Australia, France, Germany, Italy, Japan, Switzerland, the United Kingdom, and the United States with Ontario, Quebec and Hong Kong participating as corresponding members. Its mandate included:

(1) Consideration of existing criteria for the recognition of derivative markets, products and financial intermediaries;
(2) Identification of issues related to screen-based trading systems for derivative products; and
(3) The establishment of a mechanism to assure coordinated communications between and among derivative markets and their regulators.

The Commodity Futures Trading Commission has acted as chairman of this Working Party since its creation.

In considering the special concerns relative to screen-based trading systems, the Working Party identified and addressed the following issues: transparency; order execution algorithms; operational issues; security and system vulnerability; access; financial integrity; surveillance; disclosure; and the role of system providers. The Working Party considered these issues and articulated for each a broad principle which can assist regulatory authorities in overseeing screen-based trading systems.[1] The Working Party also developed a report which more fully articulates the types of regulatory considerations which each Principle entails.[2]

On November 15, 1990, IOSCO during its annual meeting in Santiago, Chile adopted ten Principles for the oversight of screen-based trading systems and also encouraged its members with derivative markets to refer to these Principles in considering regulatory approaches to screen-based trading systems.

IOSCO intends the Principles to provide guidance to any regulatory authority responsible for the oversight of screen-based trading systems for derivative products, whether governmental, quasi-governmental, or private ("relevant regulatory authorities"). The basis for adoption of the Principles by IOSCO was the consensus that such authorities should articulate the jurisdictional interest and supervisory principles applicable to the organizations responsible for the screen-based trading systems such as an exchange ("system sponsor"), the organization or organizations which provides or provide the hardware, software, and/or the communications network and related services ("system providers"), the persons authorized to execute transactions on the system such as a broker-dealer ("system users"), and persons with financial exposure to the system ("system customers").

The Principles set out in broad terms the international consensus as to the regulatory considerations to be addressed in reviewing mechanisms for cross-border screen-based trading. As such they establish general policy goals that will guide the Commission in resolving issues arising from screen-based trading systems, but do not mandate a particular substantive response. Indeed, the Principles as adopted by IOSCO contemplate that individual jurisdictions will take account of differences in national legal standards, regulatory policies, and market custom or practice in addressing the concerns thereby identified.

The Commission believes that the Principles adopted by IOSCO to address the unique regulatory concerns raised by screen-based trading systems are consistent with the CFTC's broad regulatory objectives of market integrity and customer protection. For example, the Commission believes that the Principles reflect the policy considerations underlying the Commission's recent evaluation and approval of the Chicago Mercantile Exchange's Globex trading system and the Amex Commodities Corporation's Amex Access system.

The Commission further believes that the statement as articulated by IOSCO that the Principles "reflect the shared objectives of ensuring that, among jurisdictions, the levels of investor protection and regulation [of screen-based systems] are adequate" endorse a laudable endeavor in the increasing international and technologically innovative financial markets. Therefore, by this action, the Commission wishes to add its support toward achieving the goal of effective regulation of cross border systems which facilitates international cooperation but does not impair the ability of system providers and sponsors to develop and implement innovative technologies.

Accordingly, the Commission is adopting the ten Principles as set forth below.[3]

II. Principles for the Oversight of Screen-Based Trading Systems for Derivative Products

1. The system sponsor should be able to demonstrate to the relevant regulatory authorities that the system meets and continues to meet applicable legal standards, regulatory policies, and/or market custom or practice where relevant.

2. The system should be designed to ensure the equitable availability of accurate and timely trade and quotation information to all system participants and the system sponsor should be able to describe to the relevant regulatory authorities the processing, prioritization, and display of quotations within the system.

3. The system sponsor should be able to describe to the relevant regulatory authorities the order execution algorithm used by the system, *i.e.*, the set of rules governing the processing, including prioritization, and execution of orders.

4. From a technical perspective, the system should be designed to operate in a manner which is equitable to all market participants and any differences in treatment among classes of participants should be identified.

5. Before implementation, and on a periodic basis thereafter, the system and system interfaces should be subject to an objective risk assessment to identify vulnerabilities (*e.g.*, the risk of unauthorized access, internal failures, human errors, attacks, and natural catastrophes) which may exist in the system design, development, or implementation.

6. Procedures should be established to ensure the competence, integrity, and authority of system users, to ensure that system users are adequately supervised, and that access to the system is not arbitrarily or discriminatorily denied.

7. The relevant regulatory authorities and the system sponsor should consider any additional risk management exposures pertinent to the system, including those arising from interaction with related financial systems.

8. Mechanisms should be in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory and enforcement purposes is available to the system sponsor and the relevant regulatory authorities on a timely basis.

9. The relevant regulatory authorities and/or the system sponsor should ensure that system users and system customers are adequately informed of the significant risks particular to trading through the system. The liability of the system sponsor, and/or the system providers to system users and system customers should be described, especially any agreements that seek to vary the allocation of losses that otherwise would result by operation of law.

10. Procedures should be developed to ensure that the system sponsor, system providers, and system users are aware of and will be responsive to the directives and concerns of relevant regulatory authorities.

Copies of the report of the Technical Committee supporting the Principles as well as other Technical Committee reports developed by Working Party 7 are available from the Secretariat.

Issued in Washington, DC on November 15, 1990 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-27342 Filed 11-20-90; 8:45 am]

BILLING CODE 6351-01-M

[1] For purposes of these Principles, the term "derivative products" refers to those products in which the exchange or market ("market") itself is the issuer, which are subject to the rules of the issuing market, and for which a clearing organization is used to settle profits and losses, make deliveries, and guarantee cleared trades.

[2] The Working Party has assembled the Principles and their supporting background papers in a report entitled "Screen-Based Trading Systems for Derivative Products." In addition to its work on screen-based trading systems, Working Party 7 has produced two other reports for the Technical Committee: "Collated Summary of Responses to Common Framework of Analysis and Cross Regulatory Summary Chart" which summarizes the various approaches to the regulation of derivative markets, products and financial intermediaries, and "Compliance Information Collection and Data Reporting Compendium and Chart" which identifies the types of information generated, collected or reported within the various reporting jurisdictions and which would be available to be shared for regulatory purposes.

[3] The Principles set out in broad terms regulatory considerations arising from cross-border screen-based trading, and not the specific concerns of some members in respect of the particular laws applying to their jurisdiction (*e.g.*, those dealing with anticompetitive rules and practices, margin levels, or capital requirements.)

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; Amend Record Systems

AGENCY: Department of the Army, DOD.

ACTION: Amend identification numbers and titles.

SUMMARY: The Department of the Army proposes to amend the record system identification numbers of its records systems notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a). The Department of the Army is now using the Modern Army Recordkeeping System (MARKS) and this amendment reflects these changes to the record system identification numbers contained in this amendment.

EFFECTIVE DATE: The proposed action will be effective without further notice on November 21, 1990.

ADDRESSES: Contact Ms. Alma Lopez, Office of Systems Management Branch (ASOP-MP) Ft. Huachuca, AZ 85613-5000.

FOR FURTHER INFORMATION CONTACT: The Department of the Army record system notices subject to the Privacy Act of 1974, as amended, have been published in the Federal Register as follows:.

50 FR 22090, May 29, 1985 (DoD Compilation, changes follow)
51 FR 23576, Jun. 30, 1986
51 FR 30900, Aug. 29, 1986
51 FR 40479, Nov. 7, 1986
51 FR 44361, Dec. 9, 1986
52 FR 11647, Apr. 13, 1987
52 FR 18798, May 19, 1987
52 FR 25905, Jul. 9, 1987
52 FR 32329, Aug. 27, 1987
52 FR 43932, Nov. 17, 1987
53 FR 12971, Apr. 20, 1988
53 FR 18575, May 10, 1988
53 FR 21509, Jun. 8, 1988
53 FR 28247, Jul. 27, 1988
53 FR 28249, Jul. 27, 1988
53 FR 28430, Jul. 28, 1988
53 FR 34576, Sep. 7, 1988
53 FR 49586, Dec. 8, 1988
53 FR 51580, Dec. 22, 1988
54 FR 10034, Mar. 9, 1989
54 FR 11790, Mar. 22, 1989
54 FR 14835, Apr. 13, 1989
54 FR 40985, Nov. 8, 1989
54 FR 50268, Dec. 5, 1989
55 FR 13935, Apr. 13, 1990
55 FR 21887, May 30, 1990 (Army Address Directory)
55 FR 41743, Oct. 15, 1990

The amendments are not within the purview of subsection (r) of the Privacy Act, as amended, (5 U.S.C. 552a) which requires the submission of an altered system report. The specific changes to the record systems are set forth below.

Dated: November 16, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Amendments

SYSTEM IDENTIFICATION AND NAME:

A0101.02DAAG, Carpool Information/Registration System, to: A0001SAIS, Carpool Information/Registeration System.

SYSTEM IDENTIFICATION AND NAME:

A0101.20DAMI, Controlled Acountable Document Inventory System, to: A0001DAMI, Controlled

Accountable Document Inventory System.

SYSTEM IDENTIFICATION AND NAME:

A0102.02DAAG, Office Visitor/Commercial Solicitor Files, to: A0001aTAPC, Office Visitor/Commercial Solicitor Files.

SYSTEM IDENTIFICATION AND NAME:

A0102.03DAPE, Professional Staff Information Files, to: A001DAPE–ARI, Professional Staff Information File.

SYSTEM IDENTIFICATION AND NAME:

A0102.03DAIM, Personnel Locator/Organizational Roster/Telephone Directory, to: A0001DAPE, Personnel Locator/Organizational Roster/Telephone Directory.

SYSTEM IDENTIFICATION AND NAME:

A0102.13DAPC, Administrative Military Personnel Records, to: A0001bTAPC, Administrative Military Personnel Records.

SYSTEM IDENTIFICATION AND NAME:

A0224.04DAIG, Inspector General Investigative Files, to: A0020–1aSAIG, Inspector General Investigative Files.

SYSTEM IDENTIFICATION AND NAME:

A0224.05DAIG, Inspector General Action Request/Complaint Files, to: A0020–1bSAIG, Inspector General Action Request/Assistance Files.

SYSTEM IDENTIFICATION AND NAME:

A0225.12DAIM, Access to Computer Areas, Systems Electronically and/or Data Control Records, to: A0380–380SAIS, Access to Computer Areas, Systems Electronically and/or Data Control Records.

SYSTEM IDENTIFICATION AND NAME:

A0228.01DAMH, Army History Files, to: A0870–5DAMH, Army History Files.

SYSTEM IDENTIFICATION AND NAME:

A0239.01DAAG, Request for Information Files, to: A0025–55SAIS, Request for Information Files.

SYSTEM IDENTIFICATION AND NAME:

A0240.01DAAG, Privacy Case Files, to A0340–21SAIS, Privacy Case Files.

SYSTEM IDENTIFICATION AND NAME:

A0241.01HQDA, HQDA Correspondence and Control/Central Files System, to: A0340JDMSS, HQDA Correspondence and Control/Central Files System.

SYSTEM IDENTIFICATION AND NAME:

A0301.07DAAG, Army Club Membership Files, to: A0215–2aCFSC, Army Club Membership Files.

SYSTEM IDENTIFICATION AND NAME:

A0301.08bDACA, Contractor Indebtedness Files, to: 0037–103aSAFM Contractor Indebtedness Files.

SYSTEM IDENTIFICATION AND NAME:

A0302.03DACA, Subsidiary Ledger Files (Accounts Receivable), to: A0037–103bSAFM, Subsidiary Ledger Files (Accounts Receivable).

SYSTEM IDENTIFICATION AND NAME:

A0302.06DACA, Absentee Apprehension/Reward/Expenses Payment System, to: A0037–107bSAFM, Absentee Apprehension/Reward/Expenses Payment System.

SYSTEM IDENTIFICATION AND NAME:

A0305.04aDACA, Travel Payment System, to: A0037–107bSAFM, Travel Payment System.

SYSTEM IDENTIFICATION AND NAME:

A0305.08DACA, Military Pay System—Active Army (Manual), to: A0037–104–3aSAFM, Military Pay System—Active Army (Manual).

SYSTEM IDENTIFICATION AND NAME:

A0305.10aDACA, Joint Uniform Military Pay System—Active Army (JUMPS–AA), to: A0037–104–3bSAFM, Joint Uniform Military Pay System—Active Army (JUMPS–AA).

SYSTEM IDENTIFICATION AND NAME:

A0305.10bDACA, Joint Uniform Military Pay System—Reserve Components—Army, to: A0037–104–3cSAFM, Joint Uniform Military Pay System—Reserve Components—Army.

SYSTEM IDENTIFICATION AND NAME:

A0305.10cDACA, Joint Uniform Military Pay System—Army—Retired Pay, to: A0037–104–1aSAFM, Joint Uniform Military Pay System—Army—Retired Pay.

SYSTEM IDENTIFICATION AND NAME:

A0305.10dDACA, Health Professions Scholarship Program, to: A0037–104–3DASG, Health Professions Scholarship Program.

SYSTEM IDENTIFICATION AND NAME:

A0305.11DAPA, USMA Cadet Account System, to: A0037–104–13TAPC, USMA Cadet Account System.

SYSTEM IDENTIFICATION AND NAME:

A0306.01DACA, Civilian Employee Pay System, to: A0037–105aSAFM, Civilian Employee Pay System.

SYSTEM IDENTIFICATION AND NAME:

A0306.02DACA, Nonappropriated Funds Central Payroll System (NAFCPS), to: A0215–1aSAFM, Nonappropriated Funds Central Payroll System (NAFCPS).

SYSTEM IDENTIFICATION AND NAME:

A0306.20DACA, Military and Civilian Waiver Files, to: A0037–105bSAFM, Military and Civilian Waiver Files.

SYSTEM IDENTIFICATION AND NAME:

A0309.05DAAG, Resource Management and Cost Accounting Files, to: A0037–1DAPE, Resource Management and Cost Accounting Files.

SYSTEM IDENTIFICATION AND NAME:

A0314.08DACA, Check Cashing Privilege Files, to: A0210–60SAFM, Check Cashing Privilege Files.

SYSTEM IDENTIFICATION AND NAME:

A0314.09DACA, Nonappropriated Fund Accounts Receivable System, to: A0215–1bSAFM, Nonappropriated Fund Accounts Receivable System.

SYSTEM IDENTIFICATION AND NAME:

A0314.24DAAG, Nonappropriated Fund Employee Insurance and Retirement Files, to: A0215–1CFSC, Nonappropriated Fund Employee Insurance and Retirement Files.

SYSTEM IDENTIFICATION AND NAME:

A0319.01DACA, Debt Collection System, to: A0037–104–1bSAFM, Debt Management System.

SYSTEM IDENTIFICATION AND NAME:

A019.01bDAEN, Corps of Engineers Debt Collection System, to: A0037–108CE, Corps of Engineers Debt Collection System.

SYSTEM IDENTIFICATION AND NAME:

A0319.04DACA, Validation Files, to: A0037–103cSAFM, Validation Files.

SYSTEM IDENTIFICATION AND NAME:

A0319.06DACA, Household Goods Shipment Excess Cost Collection Files, to: A0055–71SAFM, Household Goods Shipment Excess Cost Collection Files.

SYSTEM IDENTIFICATION AND NAME:

A0319.07DACA, FHA Mortgage Payment Insurance Files, to: A0037–202SAFM, FHA Mortgage Payment Insurance Files.

SYSTEM IDENTIFICATION AND NAME:

A0319.10DACA, Conversion Files, to: A0037–103dSAFM, Conversion Files.

SYSTEM IDENTIFICATION AND NAME:

A0319.11DACA, Disbursing Office Establishment and Appointment Files, to: A0037–103eSAFM, Disbursing Office Establishment and Appointment Files.

SYSTEM IDENTIFICATION AND NAME:

A0319.13DACA, Bankruptcy Processing Files, to: A0037–105cSAFM, Bankruptcy Processing Files.

SYSTEM IDENTIFICATION AND NAME:

A0319.14DACA, Pecuniary Charge Appeal Files, to: A0027–20SAFM, Pecuniary Charge Appeal Files.

SYSTEM IDENTIFICATION AND NAME:

A0320.01DAEN, Corps of Engineers Management Information System Files, to: A0037–2–1CE, Corps of Engineers Management Information System Files.

SYSTEM IDENTIFICATION AND NAME:

A0401.02DAAG, Mailing List for Army Newspapers/Periodicals/Catalogs, to: A0360SAIS, Mailing List for Army Newspapers/Periodicals/Catalogs.

SYSTEM IDENTIFICATION AND NAME:

A0401.07aOSA, Media Contact Files, to: A0360SAPA, Media Contact Files.

SYSTEM IDENTIFICATION AND NAME:

A0401.08DAJA, Prosecutorial Files, to: A0027–10aDAJA, Prosecutorial Files.

SYSTEM IDENTIFICATION AND NAME:

A0402.01DAJA, General Legal Files, to: A0027–1DAJA, General Legal Files.

SYSTEM IDENTIFICATION AND NAME:

A0402.06DAJA, Legal Assistant Files, to: A0027–3DAJA, Legal Assistance Files.

SYSTEM IDENTIFICATION AND NAME:

A0403.01DAJA, U.S. Army Claims, Service Management Information Systems, to: A0027–20aDAJA, U.S. Army Claims Service management Information Systems.

SYSTEM IDENTIFICATION AND NAME:

A0403.06DAJA, Tort Claim Files, to: A0027–20bDAJA, Tort Claim Files.

SYSTEM IDENTIFICATION AND NAME:

A0403.16DAJA, Army Property Claim Files, to: A0027–20cDAJA, Army Property Claim Files.

SYSTEM IDENTIFICATION AND NAME:

A0403.17DAJA, Medical Expense Claim Files, to: A0027–20dDAJA, Medical Expense Claim Files.

SYSTEM IDENTIFICATION AND NAME:

A0404.02DAJA, Courts-Martial Files, to: A0027–10bDAJA, Courts-Martial Files.

SYSTEM IDENTIFICATION AND NAME:

A0405.02DAJA, Foreign Jurisdiction Case Files, to: A0027–50DAJA, Foreign Jurisdiction Case Files.

SYSTEM IDENTIFICATION AND NAME:

A0406.01USAREUR, Civil Process Case Files, to: A0027DAJA, Civil Process Case Files.

SYSTEM IDENTIFICATION AND NAME:

A0406.08DAJA, Patent, Copyright, Trademark, and Proprietary Data Files, to: A0027–60aDAJA, Patent, Copyright, Trademark, and Proprietary Data Files .

SYSTEM IDENTIFICATION AND NAME:

A0408.01DAJA, Patent, Copyright, and Data license Proffers, Infringement Claims and Litigation Files, to: A0027–60bDAJA Patent, Copyright, and Data License Proffers, Infringement Claims and Litigation Files.

SYSTEM IDENTIFICATION AND NAME:

A0410.01DAJA Litigation Case Files, to: A0027–40dDAJA, Litigation Case Files.

SYSTEM IDENTIFICATION AND NAME:

A0411.03OSA, Congressional Inquiry File, to: A0001–20SALL, Congressional Inquiry File.

SYSTEM IDENTIFICATION AND NAME:

A0411.05OSA, Biographical Files of Members of Congress, to: A0360–5SALL, Biographies: Members of Congress.

SYSTEM IDENTIFICATION AND NAME:

A0412.01MDW, State, Official, and Special Military Funeral Plans, to: A0600–25MDW, State, Official, and Special Military Funeral Plans .

SYSTEM IDENTIFICATION AND NAME:

A0412.07DAJA, Witness Appearance Files, to: A0027–10cDAJA, Witness Appearance Files.

SYSTEM IDENTIFICATION AND NAME:

A0412.14OSA, Biography Files, to: A0360–5SAPA, Biography Files.

SYSTEM IDENTIFICATION AND NAME:

A0501.02bDACF, Vendor Misconduct/Fraud/Mismanagement Information System, to: A0210–7ACFSC, Vendor Misconduct/Fraud/Mismanagement Information Exchange Program.

SYSTEM IDENTIFICATION AND NAME:

A0501.08eUSACIDC, Informant Register, to: A0195–2aUSACIDC, Source Register.

SYSTEM IDENTIFICATION AND NAME:

A0502.03aDAMI, Intelligence Collection Files, to: A0381–100aDMAI, Intelligence Collection Files.

SYSTEM IDENTIFICATION AND NAME:

A0502.03bDAMI, Technical Surveillance Index, to: A0381–100bDAMI, Technical Surveillance Index.

SYSTEM IDENTIFICATION AND NAME:

A0502.08DAMI, Badge and Credential Files, to: A0381–30DAMI, Badge and Credential Files.

SYSTEM IDENTIFICATION AND NAME:

A0502.10aDAMI, USAINSCOM Investigative Files System, to: A0381–45aDAMI, USAINSCOM Investigative Files System.

SYSTEM IDENTIFICATION AND NAME:

A0503.03aDAMI, Department of Army Operational Support Activities, to: A0381–45bDAMI, Department of Army Operational Support Activities.

SYSTEM IDENTIFICATION AND NAME:

A0503.06aDAMI, Counterintelligence Operations Files, to: A0381–45cDAMI, Counterintelligence Operations Files.

SYSTEM IDENTIFICATION AND NAME:

A0506.01fDAMI, Personnel Security Clearance Information Files, to: A0380–67DAMI, Personnel Security Clearance Information Files.

SYSTEM IDENTIFICATION AND NAME:

A0506.01jUSAREUR, Employee Screening Program/Installation Access Files, to: A0380–67USAREUR, Employee Screening Program/Installation Access Files.

SYSTEM IDENTIFICATION AND NAME:

A0508.04USACIDC, U.S. Army Criminal Investigation Fund Vouchers, to: A0195–4USACIDC, U.S. Army Criminal Investigation Fund Vouchers.

SYSTEM IDENTIFICATION AND NAME:

A0508.07USACIDC, Criminal Investigation Accreditation and Polygraph Examiner Evaluation Files, to: A0195–6USACIDC, Criminal Investigation Accreditation and Polygraph Examiner Evaluation Files.

SYSTEM IDENTIFICATION AND NAME:

A0508.11USACIDC, Criminal Investigation and Crime Laboratory Files, to: A0195–2bUSACIDC, Criminal Investigation and Crime Laboratory Files.

SYSTEM IDENTIFICATION AND NAME:

A0508.16aDAPE, Absentee Case Files, to: A0190–9DAMO, Absentee Case Files.

SYSTEM IDENTIFICATION AND NAME:

A0508.17bDAPE, Ration Control/Blackmarket Monitoring Files, to: A0060–20DAMO, Ration Control/Blackmarket Monitoring Files.

SYSTEM IDENTIFICATION AND NAME:

A0508.24aDAPE, Serious Incident Reporting Files, to: A0190–40DAMO, Serious Incident Reporting Files.

SYSTEM IDENTIFICATION AND NAME:

A0509.02DACF, Security Badge/Identification Card Files, to: A0190-13CFSC, Security Badge/Identification Card Files

SYSTEM IDENTIFICATION AND NAME:

A0509.03DAPE, Trophy Firearm Registration, to: A0608-4DAMO, Trophy Firearm Registration.

SYSTEM IDENTIFICATION AND NAME:

A0509.08aDAPE, Registration and Permit Files, to: A0190-14DAMO, Registration and Permit Files.

SYSTEM IDENTIFICATION AND NAME:

A0509.10DAPE, Law Enforcement: Offense Reporting System (MPMIS), to: A0190-45DAMO, Law Enforcement: Offense Reporting System (MPMIS).

SYSTEM IDENTIFICATION AND NAME:

A0509.18aDACF, Commercial Solicitation Ban List, to: A0210-7bCFSC, Commercial Solicitation Ban List.

SYSTEM IDENTIFICATION AND NAME:

A0509.18bDAPE, Expelled or Barred Person Files, to: A0210-7DAMO, Expelled or Barred Person Files.

SYSTEM IDENTIFICATION AND NAME:

A0509.19aDAPE, Military Police Investigator Certification Files, to: A0190-30DAMO, Military Police Investigator Certification Files.

SYSTEM IDENTIFICATION AND NAME:

A0509.21aDAPE, Local Criminal Information Files, to: A0380-13DAMO, Local Criminal Intelligence Files.

SYSTEM IDENTIFICATION AND NAME:

A0511.05DAPE, Traffic Law Enforcement/Vehicle Registration System: MPMIS, to: A0190-5DAMO, Traffic Law Enforcement/Vehicle Registration System: MPMIS.

SYSTEM IDENTIFICATION AND NAME:

A0603.05DARP, Human Resources Information System (HRIS), to: A0570-4DARP, Human Resources Information System (HRIS).

SYSTEM IDENTIFICATION AND NAME:

A0607.01DAPE, Accident/Incident Case Files: Army Safety Management Information System, to: A0385-10/40ASO, Army Safety Management Information System (ASMIS).

SYSTEM IDENTIFICATION AND NAME:

A0609.01DASG, Radiation Exposure Records, to: A0040-14DASG, Radiation Exposure Records.

SYSTEM IDENTIFICATION AND NAME:

A0611.05DAPC, Individual Gravesite Reservation Files, to: A0210-190TAPC, Individual Gravesite Reservation Files.

SYSTEM IDENTIFICATION AND NAME:

A0614.01NGB, Equal Opportunity Investigative Files, to: A0600-20NGB, Equal Opportunity Investigative Files.

SYSTEM IDENTIFICATION AND NAME:

A0614.03aDAPE, Equal Opportunity and Equal Employment Opportunity Complaint Files, to: A0690-600SAMR, Equal Opportunity and Equal Employment Opportunity Complaint Files.

SYSTEM IDENTIFICATION AND NAME:

A0701.01DAPC, Classification, Reclassification, Utilization of Soldiers, to: A0600-200TAPC, Classification, Reclassification, Utilization of Soldiers.

SYSTEM IDENTIFICATION AND NAME:

A0701.02aDAPC, Qualitative Management Program Appeal File, to: A0601-280aTAPC, Qualitative Management Program Appeal File.

SYSTEM IDENTIFICATION AND NAME:

A0701.02cDAPC, Separation Transaction Control/Records Transfer System, to: A0635-5TAPC, Separation Transaction Control/Records Transfer System.

SYSTEM IDENTIFICATION AND NAME:

A0701.02eDAPC, Major Command Military Personnel Management Reporting System, to: A0600-8TAPC, Major Command Military Personnel Management Reporting System.

SYSTEM IDENTIFICATION AND NAME:

A0701.02fDAPC, Selective/Variable Reenlistment Bonuses, to: A0601-280bTAPC, Selective/Variable Reenlistment Bonuses.

SYSTEM IDENTIFICATION AND NAME:

A0702.03aUSAREC, Enlisted Eligibility Files, to: A0601-210aUSAREC, Enlisted Eligibility Files.

SYSTEM IDENTIFICATION AND NAME:

A0702.04bDAPC, Eligibility Determination Files, to: A0601-210TAPC, Eligibility Determination Files.

SYSTEM IDENTIFICATION AND NAME:

A0702.08aDASG, Army Medical Procurement Applicant Files, to: A0601-141DASG, Army Medical Procurement Applicant Files.

SYSTEM IDENTIFICATION AND NAME:

A0703.04DAPC, ROTC Applicant/Member Records, to: A0145-1aTRADOC-ROTC, ROTC Applicant/Member Records.

SYSTEM IDENTIFICATION AND NAME:

A0704.04bUSMEPCOM, US Military Entrance Processing Reporting System, to: A0601-270USMEPCOM, US Military Entrance Processing Reporting System.

SYSTEM IDENTIFICATION AND NAME:

A0704.06DAPE, Army Recruiting Prospect System, to: A0601-210DAPE, Army Recruiting Prospect System.

SYSTEM IDENTIFICATION AND NAME:

A0704.06bDAPE, Army Reserve Officers Training Corps LEADS Referral Card System, to: A0145-1TRADOC, Army Reserve Officers' Training Corps Gold QUEST Referral System.

SYSTEM IDENTIFICATION AND NAME:

A0704.10bUSMEPCOM, ASVAB Student Test Scoring and Reporting System, to: A0601-222USMEPCOM, ASVAB Student Test Scoring and Reporting System.

SYSTEM IDENTIFICATION AND NAME:

A0704.10aUSAREC, Recruiter Impropriety Case Files, to: A0601-210bUSAREC, Recruiter Impropriety Case Files.

SYSTEM IDENTIFICATION AND NAME:

A0704.11DAPC, Recruiter Identification/Assignment Records, to: A0614-100/200USAREC, Recruiter Identification/Assignment Records.

SYSTEM IDENTIFICATION AND NAME:

A0705.01DAPC, Officer Appointment Files, to: A0601-100TAPC, Officer Appointment Files.

SYSTEM IDENTIFICATION AND NAME:

A0706.02DACF, Departure Clearance Files, to: A0210-10TAPC, Departure Clearance Files.

SYSTEM IDENTIFICATION AND NAME:

A0707.05DACF, Privilege Card Application Files, to: A0640-3CFSC, Privilege Card Application Files.

SYSTEM IDENTIFICATION AND NAME:

A0708.01aDAPC, Military Personnel Records Jacket Files, to: A0640-10aTAPC, Military Personnel Records Jacket Files.

SYSTEM IDENTIFICATION AND NAME:

A0708.01bNGB, Army National Guard Automated Personnel Reporting System, to: A0640-10aNGB, Standard Installation/Division Personnel System—Army National Guard.

SYSTEM IDENTIFICATION AND NAME:

A0708.01cNGB, Military Personnel Records Jacket (NGB), to: A0640-10bNGB, Military Personnel Records Jacket (NGB).

SYSTEM IDENTIFICATION AND NAME:

A0708.02aDAPC, Official Military Personnel File, to: A0640-10bTAPC, Official Military Personnel File.

SYSTEM IDENTIFICATION AND NAME:

A0708.02bNGB, Official Military Personnel File (Army National Guard), to: A0640-10cNGB, Official Military Personnel File (Army National Guard).

SYSTEM IDENTIFICATION AND NAME:

A0708.02cDAPC, Officer Personnel Management Information System (OPMIS), to: A0680-31aTAPC, Officer Personnel Management Information System (OPMIS).

SYSTEM IDENTIFICATION AND NAME:

A0708.02dDAPC, Enlisted Personnel Management Information System (EPMIS), to: A0680-31bTAPC, Enlisted Personnel Management Information System (EPMIS).

SYSTEM IDENTIFICATION AND NAME:

A0708.03aDAPE, Special Review Board Appeal Case Summary File, to: A0600-37aDAPE, Special Review Board Appeal Case Summary File.

SYSTEM IDENTIFICATION AND NAME:

A0708.05DAPC, Emergency Data Files, to: A0600-8-1aTAPC, Emergency Data Files.

SYSTEM IDENTIFICATION AND NAME:

A0708.07DAPE, Unfavorable Information Files, to: A0600-37bDAPE, Unfavorable Information Files.

SYSTEM IDENTIFICATION AND NAME:

A0708.08DAPC, Career Management Individual Files, to: A0640-10cTAPC, Career Management Individual Files.

SYSTEM IDENTIFICATION AND NAME:

A0708.13DAIG, Inspector General Personnel System, to: A0614-100/200SAIG, Inspector General Personnel System.

SYSTEM IDENTIFICATION AND NAME:

A0708.13DAMI, INSCOM, Personal Qualification and Training Profile, to: A0350-1DAMI, INSCOM, Personal Qualification and Training Profile.

SYSTEM IDENTIFICATION AND NAME:

A0708.16USREDCOM, Military Personnel Data File, USREDCOM, to: A0220-1USSOCOM, Military Personnel Data File, USSOCOM.

SYSTEM IDENTIFICATION AND NAME:

A0708.18DAPC, Line of Duty Investigations, to: A0600-8-1bTAPC, Line of Duty Investigations.

SYSTEM IDENTIFICATION AND NAME:

A0708.19OSA, Correction of Military Records Cases, to: A0015-185SFMR, Correction of Military Records Cases.

SYSTEM IDENTIFICATION AND NAME:

A0708.20DARC, Philippine Army Files, to: A0640-10DARP, Philippine Army Files.

SYSTEM IDENTIFICATION AND NAME:

A0708.24DAPE, DA Conscientious Objector Review Board, to: A0614-30DAPE, DA Conscientious Objector Review Board.

SYSTEM IDENTIFICATION AND NAME:

A0709.01aDAPE US Military Academy Candidate Files, to: A0351-17aTAPC-USMA, U.S. Military Academy Candidate Files.

SYSTEM IDENTIFICATION AND NAME:

A0709.03DAPE, U.S. Military Academy Personnel Cadet Records, to: A0351-17bTAPC-USMA, U.S. Military Academy Personnel Cadet Records.

SYSTEM IDENTIFICATION AND NAME:

A0710.02DAJA, JAGC Reserve Components Officer Personnel Records, to: A014DAJA, JAGC Reserve Components Officer Personnel Records.

SYSTEM IDENTIFICATION AND NAME:

A0710.08DAAR, Career Management Files of Dual Component Personnel, to: A0600DARP, Career Management Files of Dual Component Personnel.

SYSTEM IDENTIFICATION AND NAME:

A0710.09DAAG, Personnel Management/Action Officer Files, to: A0640DARP, Personnel Management/Action Officer Files.

SYSTEM IDENTIFICATION AND NAME:

A0713.09aTRADOC, Skill Qualification Test (SQT), to: A0350-37TRADOC, Skill Qualification Test (SQT).

SYSTEM IDENTIFICATION AND NAME:

A0714.03DAPE, Evaluation/Assignment of Academic Instructors, to: A0614-100/200TAPC-USMA—Evaluation/Assignment of Academic Instructors.

SYSTEM IDENTIFICATION AND NAME:

A0715.06aDAPC, Standards Installation/Division Personnel System (SIDPERS), to: A0600-8bTAPC, Standard Installation/Division Personnel System (SIDPERS).

SYSTEM IDENTIFICATION AND NAME:

A0715.07bDAPE, Standard Installation/Division Personnel System—USAR.

SYSTEM IDENTIFICATION AND NAME:

A0715.07cUSFK, Command Unique Personnel Information Data System (CUPIDS), to: A0600-8USFK, Command Unique Personnel Information Data System (CUPIDS).

SYSTEM IDENTIFICATION AND NAME:

A0715.07dDARC, Individual Ready, Standby, and Retired Reserve Personnel Information System, to: A0600-8DARP, Individual Ready, Standby, and Retired Reserve Personnel Information System.

SYSTEM IDENTIFICATION AND NAME:

A0718.01DAPC, Military Awards Case File, to: A0672-5-1TAPC, Military Awards Case File.

SYSTEM IDENTIFICATION AND NAME:

A0720.04DAPE, Army Correctional System: Correctional Treatment Records, to: A0190-47DAMO, Correctional Reporting System (CRS).

SYSTEM IDENTIFICATION AND NAME:

A0722.02DACH, Baptism, Marriage, and Funeral Files, to: A0165-1aDACH, Baptism, Marriage, and Funeral Files.

SYSTEM IDENTIFICATION AND NAME:

A0722.05DACH, Chaplain Counseling/Interview Files, to: A0165-1bDACH, Chaplain Privileged Counseling/Interview Communication Cases.

SYSTEM IDENTIFICATION AND NAME:

A0722.06DACH, Religious Census, Education, and Registration Files, to: A0165-1cDACH, Religious Census, Education, and Registration Files.

SYSTEM IDENTIFICATION AND NAME:

A0723.01DAAG, Morale, Welfare, Recreational and Entertainment Records, to: A0215CFSC, Morale, Welfare, Recreational and Entertainment Records.

SYSTEM IDENTIFICATION AND NAME:

A0725.01aDACF, Child Care Centers Registration Files, to: A0608-10CFSC, Child Development Services (CDS).

SYSTEM IDENTIFICATION AND NAME:

A0725.01bDACF, Family Life Communications Information and Referral Service, to: A0608aCFSC, Family Life Communications Information and Referral Service.

SYSTEM IDENTIFICATION AND NAME:

A0725.01cDAPC, Personal Affairs Files, to: A0608TAPC, Personal Affairs Files.

SYSTEM IDENTIFICATION AND NAME:
A0725.01dDACF, Personnel Affairs: Army Community Service Assistance Files, to: A0606bCFSC, Personnel Affairs: Army Community Service Assistance Files.

SYSTEM IDENTIFICATION AND NAME:
A0725.06aDACF, Army Emergency Relief Transaction File, to: A0930-4CFSC, Army Emergency Relief Transaction File.

SYSTEM IDENTIFICATION AND NAME:
A0728.06DAPC, Casualty Information System (CIS), to: A0600-8-1dTAPC, Casualty Information System (CIS).

SYSTEM IDENTIFICATION AND NAME:
A0727.01DAPC, Separations: Administrative Board Proceedings, to: A0635-200TAPC, Separations: Administrative Board Proceedings.

SYSTEM IDENTIFICATION AND NAME:
A0727.050SA, Army Council of Review Boards, to: A0015-180SFMR, Army Council of Review Boards.

SYSTEM IDENTIFICATION AND NAME:
A0727.08DAPC, Temporary Disability Retirement Master List (TDRL), to: A0635-40TAPC, Temporary Disability Retirement Master List (TDRL).

SYSTEM IDENTIFICATION AND NAME:
A0727.09DAAG, Army Civilian/Military Service Review Board, to: A0015-34DARP, Army Civilian/Military Service Review Board.

SYSTEM IDENTIFICATION AND NAME:
A0728.01DAAG, Army Retirement Services Program Files, to: A0608-25CFSC, Army Retirement Services Program Files.

SYSTEM IDENTIFICATION AND NAME:
A0807.01DAPE, School Employee Files, to: A0690-200DAPE, School Employee Files.

SYSTEM IDENTIFICATION AND NAME:
A0807.05DAPE, NAF Personnel Records, to: A0215-3DAPE, NAF Personnel Records.

SYSTEM IDENTIFICATION AND NAME:
A0807.14DAPE, Department of the Army Civilian Personnel Systems, to: A0690-200TAPC, Department of the Army Civilian Personnel Systems.

SYSTEM IDENTIFICATION AND NAME:
A0812.03DAPE, Grievance Records, to: A0690-700DAPE, Grievance Records.

SYSTEM IDENTIFICATION AND NAME:
A0901.02DASG, Medical Facility Administration Records, to: A0040DASG, Medical Facility Administration Records.

SYSTEM IDENTIFICATION AND NAME:
A0903.07DASG, Entrance Medical Examination Files, to: A0040-490DASG, Entrance Medical Examination Files.

SYSTEM IDENTIFICATION AND NAME:
A0908.01DASG, Medical Review Files, to: A0040-3aDASG, Medical Review Files.

SYSTEM IDENTIFICATION AND NAME:
A0908.04DASG, Medical Evaluation Files, to: A0040-3bDASG, Medical Evaluation Files.

SYSTEM IDENTIFICATION AND NAME:
A0909.04DASG, Medical Regulating Files, to: A0040-3cDASG, Medical Regulating Files.

SYSTEM IDENTIFICATION AND NAME:
A0912.01bDASG, Professional Consultant Control Files, to: A0040-1DASG, Professional Consultant Control Files.

SYSTEM IDENTIFICATION AND NAME:
A0912.01cDASG, Professional Personnel Information File, to: A0040-1HSC, Professional Personnel Information File.

SYSTEM IDENTIFICATION AND NAME:
A0912.04DASG, Medical Staff Credentials Files, to: A0040-66aDASG, Medical Staff Credentials Files.

SYSTEM IDENTIFICATION AND NAME:
A0914.02DASG, Pathology Consultant Record Files, to: A0040-31aDASG, Pathology Consultant Record Files.

SYSTEM IDENTIFICATION AND NAME:
A0914.04DASG, Research and Experimental Case Files, to: A0040-31bDASG, Research and Experimental Case Files.

SYSTEM IDENTIFICATION AND NAME:
A0917.01DASG, Health Care and Medical Treatment Record System, to: A0040-66bDASG, Health Care and Medical Treatment Record Files.

SYSTEM IDENTIFICATION AND NAME:
A0917.09aDAPE, Alcohol and Drug Abuse Rehabilitation Files, to: A0600-85DAPE, Alcohol and Drug Abuse Rehabilitation Files.

SYSTEM IDENTIFICATION AND NAME:
A0917.10DASG, Family Advocacy Case Management, to: A0608-18DASG, Family Advocacy Case Management.

SYSTEM IDENTIFICATION AND NAME:
A0922.01DASG, Occupational Health Records, to: A0040-5DASG, Occupational Health Records.

SYSTEM IDENTIFICATION AND NAME:
A0924.01DASG, Army Community Health Nursing Records—Family Records, to: A0040-407DASG, Army Community Health Nursing Records—Family Records.

SYSTEM IDENTIFICATION AND NAME:
A0929.02DASG, Privately Owned Animal Record Files, to: A0040-905DASG, Privately Owned Animal Record Files.

SYSTEM IDENTIFICATION AND NAME:
A1004.06TRADOC, ROTC Financial Assistance (Scholarship) Application File, to: A0145-1bTRADOC-ROTC, ROTC Financial Assistance (Scholarship) Application File.

SYSTEM IDENTIFICATION AND NAME:
A1005.01DAPE, Junior ROTC/NDCC Instructor Files, to: A0145-2TRADOC, Junior ROTC/NDCC Instructor Files.

SYSTEM IDENTIFICATION AND NAME:
A1012.01DAPE, Applicants/Students, USMA Prep School, to: A0351-12DAPE Applicants/Students, USMA Prep School.

SYSTEM IDENTIFICATION AND NAME:
A1012.03aTRADOC, Army School Student Files, to: A0351aTRADOC, Army School Student Files.

SYSTEM IDENTIFICATION AND NAME:
A1012.03bAMC, Student/Faculty Records: AMC Schools System, to: A0351AMC, Student/Faculty Records: AMC Schools Systems.

SYSTEM IDENTIFICATION AND NAME:
A1012.03dTRADOC, TRADOC Educational Data System, to: A0351bTRADOC, Army Correspondence Course Program (ACCP).

SYSTEM IDENTIFICATION AND NAME:
A1012.03fDASG, Army School Student Files: Physical Therapy Program, to: A0351DASG, Army School Student Files: Physical Therapy Program.

SYSTEM IDENTIFICATION AND NAME:
A1012.03gHSC, Academy of Health Sciences: Academic and Supporting Records, to: A0351HSC-AHS, Academy of Health Sciences: Academic and Supporting Records.

SYSTEM IDENTIFICATION AND NAME:
A1012.03iDLI, Standardized Student Records System, to: A0351cTRADOC, Standardized Student Records System.

SYSTEM IDENTIFICATION AND NAME:
A1012.03jHSC, Practical Nurse Course Files, to: A0351HSC, Practical Nurse Course Files.

SYSTEM IDENTIFICATION AND NAME:
A1012.03kUSAREUR, Individual Academic Record Files, to: A0351USAREUR, Individual Academic Record Files.

SYSTEM IDENTIFICATION AND NAME:
A1012.03oDAMO, USAWC Cooperative Degree Program Files, to: A0351DAMO, USAWC Cooperative Degree Program Files.

SYSTEM IDENTIFICATION AND NAME:
A1012.03pDAPE, Army Training Requirements and Resources System (ATRRS), to: A0351DAPE, Army Training Requirements and Resources System (ATRRS).

SYSTEM IDENTIFICATION AND NAME:
A1012.04hDAMO, NDU National Defense University Student Data Files, to: A0351NDU, NDU National Defense University Student Data Files.

SYSTEM IDENTIFICATION AND NAME:
A1013.01DAPC, Civilian Schooling for Military Personnel, to: A0621-1TAPC—Civilian Schooling for Military Personnel.

SYSTEM IDENTIFICATION AND NAME:
A1013.02DASG, Long-Term Civilian Training Student Contract Files, to: A0621-1DASG, Long-Term Civilian Training Student Control Files.

SYSTEM IDENTIFICATION AND NAME:
A1014.01DAPE, Army Continuing Education System, to: A0621-1DAPE, Army Continuing Education System.

SYSTEM IDENTIFICATION AND NAME:
A1015.01DAAG, Dependent Children School Program Files, to: A0352-3CFSC, Dependent Children School Program Files.

SYSTEM IDENTIFICATION AND NAME:
A1019.01OSA, Civilian Marksmanship Program, to: A0920-15SFDM, Civilian Marksmanship Program.

SYSTEM IDENTIFICATION AND NAME:
A1019.03FORSCOM, US Army Marksmanship Unit DATA System (AMUDS), to: A0350-6FORSCOM, US Army Marksmanship Unit Data System (AMUDS).

SYSTEM IDENTIFICATION AND NAME:
A1021.01NDU, DODCI Student Record System, to: A0351aNDU-CI, DODCI Student Record System.

SYSTEM IDENTIFICATION AND NAME:
A1021.02NDU, DODCI Student/Faculty-Senior Staff Biography System, to: A0351bNDU-CI, DODCI Student/Faculty/Senior Staff Biography System.

SYSTEM IDENTIFICATION AND NAME:
A1021.03NDU, DODCI Course Evaluation System, to: A0351cNDU-CI, DODCI Course Evaluation System.

SYSTEM IDENTIFICATION AND NAME:
A1106.04USAISC, Military Affiliate Radio System, to: A0025-6USAISC, Military Affiliate Radio System.

SYSTEM IDENTIFICATION AND NAME:
A1108.16DAIM, Postal and Mail Service System, to: A065TAPC, Postal and Mail Service System.

SYSTEM IDENTIFICATION AND NAME:
A1111.01TRADOC, Individual Flight Records Folder, to: A0095-1TRADOC, Individual Flight Records Folder.

SYSTEM IDENTIFICATION AND NAME:
A1111.16USAISC, Air Traffic Controller Records, to: A0095-37TRADOC-ATC, Air Traffic Controller Records.

SYSTEM IDENTIFICATION AND NAME:
A1201.02MTMC, Personal Property Movement and Storage Records, to: A0055-355MTMC, Personal Property Movement and Storage Records.

SYSTEM IDENTIFICATION AND NAME:
A1201.08TRADOC, Marine Qualification Board Records, to: A0056-9TRADOC, Marine Qualification Board Records.

SYSTEM IDENTIFICATION AND NAME:
A1205.26DALO, Local Transportation Authorization and Use Files, to: A0055-355aDALO, Local Transportation Authorization and Use Files.

SYSTEM IDENTIFICATION AND NAME:
A1205.30DAAG, Individual Travel Files, to: A0055-355bDALO, Individual Travel Files.

SYSTEM IDENTIFICATION AND NAME:
A1301.07AMC, Food Taste Test Panel Files, to: A0030-1AMC, Food Taste Test Panel Files.

SYSTEM IDENTIFICATION AND NAME:
A1304.05DASG, Immunity Booster Files, to: A0070-16DASG, Immunity Booster Files.

SYSTEM IDENTIFICATION AND NAME:
A1304.21DASG, Sandfly Fever Files, to: A0070-45DASG, Sandfly Fever Files.

SYSTEM IDENTIFICATION AND NAME:
A1304.22aDASG, Medical Research Volunteer Registry, to: A0070-25DASG, Research Volunteer Registry.

SYSTEM IDENTIFICATION AND NAME:
A1306.01DAPE, Behavioral and Social Sciences Research Project Files, to: A0602DAPE-ARI, Behavioral and Social Sciences Research Project Files.

SYSTEM IDENTIFICATION AND NAME:
A1401.07aAMC, Resumes for Non-Government Technical Personnel, to: A0070AMC, Resumes for Non-Government Technical Personnel.

SYSTEM IDENTIFICATION AND NAME:
A1401.07bDAIM, Library Borrowers'/Users' Profile Files, to: A0735SAIS-SF, Library Borrowers'/Users' Profile Files.

SYSTEM IDENTIFICATION AND NAME:
A1402.18DAJA, Procurement Misconduct Files, to: A0715DAJA, Procurement Misconduct Files.

SYSTEM IDENTIFICATION AND NAME:
A1403.30DACF, Commercial Entertainment Transaction Records, to: A0215-2bCFSC, Commercial Entertainment Transaction Records.

SYSTEM IDENTIFICATION AND NAME:
A1416.05DALO, Property Officer Designation Files, to: A0710-2aDALO, Property Officer Designation Files.

SYSTEM IDENTIFICATION AND NAME:
A1416.16DALO, Hand Receipt Files, to: A0710-2bDALO, Hand Receipt Files.

SYSTEM IDENTIFICATION AND NAME:
A1416.20DALO, Personal Property Accounting Files, to: A0710-2cDALO, Personal Property Accounting Files.

SYSTEM IDENTIFICATION AND NAME:
A1416.34DALO, Personal Clothing Record Files, to: A0710-2dDALO, Personal Clothing Record Files.

SYSTEM IDENTIFICATION AND NAME:
A1420.08DAPE, Motor Vehicle/Equipment Operator Permit Files, to: A0600-55DAMO, Motor Vehicle/Equipment Operator Permit Files.

SYSTEM IDENTIFICATION AND NAME:
A1427.01DALO, Laundry and Dry Cleaning Accounting Files, to: A0210-130DALO, Laundry and Dry Cleaning Accounting Files.

SYSTEM IDENTIFICATION AND NAME:
A1434.10AMC, Small Arms Sales Record Files, to: A0755-1AMC, Small Arms Sales Record Files.

SYSTEM IDENTIFICATION AND NAME:
A1504.08DAEN, Real Estate Outgrants, to: A0405-80CE, Real Estate Outgrants.

SYSTEM IDENTIFICATION AND NAME:
A1506.03aDAEN, Relocation Assistance Files, to: A0405-10aCE, Relocation Assistance Files.

SYSTEM IDENTIFICATION AND NAME:

A1506.03bDAEN, Homeowners Assistance Case Files, to: A0405-10bCE, Homeowners Assistance Case Files.

SYSTEM IDENTIFICATION AND NAME:

A1511.02DAEN, Army Housing Operations Management System, to: A0210-50CE, Army Housing Operations Management System.

SYSTEM IDENTIFICATION AND NAME:

A1522.10DAEN, Reservoir Permit Files, to: A1145aCE, Reservoir Permit Files.

SYSTEM IDENTIFICATION AND NAME:

A1522.15DAEN, General Permit Files, to: A1145bCE, General Permit Files.

SYSTEM IDENTIFICATION AND NAME:

A1524.11DAEN, Violation Warning Files, to: A0015-2-2CE, Violation Warning Files.

[FR Doc. 90-27417 Filed 11-20-90; 8:45 am]

BILLING CODE 3810-01-M

Privacy Act of 1974; Delete Record Systems

AGENCY: Department of the Army, DoD.

ACTION: Delete record systems.

SUMMARY: The Department of the Army proposes to delete six record systems in its inventory of record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

EFFECTIVE DATE: The proposed actions will be effective without further notice on November 21, 1990.

ADDRESSES: Comments may be sent to Ms. Alma Lopez, Office of Systems Management Branch (ASOP-MP) Ft. Huachuca, AZ 85613-5000.

SUPPLEMENTARY INFORMATION: The Department of the Army record system notices subject to the Privacy Act of 1974, as amended, have been published in the Federal Register as follows:

50 FR 22200, May 29, 1985 (DoD Compilation, changes follow)
51 FR 23576, Jun. 30, 1986
51 FR 30800, Aug. 29, 1986
51 FR 40479, Nov. 7, 1986
51 FR 44361, Dec. 9, 1986
52 FR 11847, Apr. 13, 1987
52 FR 18798, May 19, 1987
52 FR 25905, Jul. 9, 1987
52 FR 32329, Aug. 27, 1987
52 FR 43932, Nov. 17, 1987
53 FR 12971, Apr. 20, 1988
53 FR 16675, May 10, 1988
53 FR 21509, Jun. 8, 1988
53 FR 28247, Jul. 27, 1988
53 FR 28248, Jul. 27, 1988
53 FR 28430, Jul. 28, 1988
53 FR 34576, Sep. 7, 1988
53 FR 49586, Dec. 8, 1988
53 FR 51580, Dec. 22, 1988
54 FR 10034, Mar. 9, 1989
54 FR 11799, Mar. 22, 1989
54 FR 14835, Apr. 13, 1989
54 FR 46985, Nov. 8, 1989
54 FR 50268, Dec. 5, 1989
55 FR 13935, Apr. 13, 1990
55 FR 21897, May 30, 1990 (Army Address Directory)
55 FR 41743, Oct. 15, 1990

The amendments are not within the purview of subsection (r) of the Privacy Act, as amended, (5 U.S.C. 552a) which requires the submission of an altered system report.

Dated: November 16, 1990.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions

AO9501.10DAMI

System name:

Counterintelligence Research File System (CIRFS), (52 FR 18800, May 19, 1987).

Reason:

Purpose for which system was created is no longer valid.

AO714.02DAPC

System name:

Military Personnel Assignment Files, (50 FR 22196, May 29, 1985).

Reason:

System is no longer needed. Information is now maintained in AO640-10cTAPC, Career Management Individual Files and AO640-10aTAPC, Military Personnel Records Jacket Files (MPRJ).

AO715.81DAPC

System name:

SIDPERS Personnel Data Card, (50 FR 22197, May 29, 1985).

Reason:

System is no longer needed. The use of SIDPERS Personnel Data Cards has been discontinued.

AO715.07aDASG

System name:

AMEDD Personnel Management System, (50 FR 22199, May 29, 1985).

Reason:

System is no longer needed. Information is now covered by AO600-8bTAPC, Major Command Military Personnel Management Reporting System and AO680-31aTAPC, Officer Personnel Management Information System (OPMIS).

A1001.02 TRADOC

System name:

Individual Basic Training Survey, (50 FR 22225, May 29, 1985).

Reason:

Purpose for which the system was created is no longer valid.

A1001.08aDAPE

System name:

Office Personnel Training Files, (50 FR 22226, May 29, 1985).

Reason:

System is covered by OPM/GOVT 1 record systems notice.

[FR Doc. 90-27416 Filed 11-20-90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Privacy Act of 1974; Amend Record System

AGENCY: Department of the Navy, DoD.

ACTION: Amend record systems.

SUMMARY: The Department of the Navy proposes to amend an existing record system in its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The proposed action will be effective December 21, 1990, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Mrs. Gwendolyn Aitken, Head, PA-FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-200. Telephone (703) 614-1459).

SUPPLEMENTARY INFORMATION: The Department of the Navy record system notices for records systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) were published in the Federal Register as follows:.

51 FR 12906 Apr. 16, 1986
51 FR 18086 May 16, 1986 (DON Compilation changes follow)
51 FR 19884 Jun. 3, 1986
51 FR 30377 Aug. 26, 1986
51 FR 30393 Aug. 26, 1986
51 FR 45931 Dec. 23, 1986
52 FR 2147 Jan. 20, 1987
52 FR 2149 Jan 20, 1987
52 FR 8500 Mar. 18, 1987
52 FR 15530 Apr. 29, 1987
52 FR 22871 Jun. 16, 1987
52 FR 45848 Dec. 2, 1987
53 FR 17240 May 16, 1988
53 FR 21512 Jun. 8, 1988
53 FR 25363 Jul. 6, 1988
53 FR 39499 Oct. 7, 1988

53 FR 41224 Oct. 20, 1988
54 FR 8322 Feb. 28, 1989
54 FR 14378 Apr. 11, 1989
54 FR 32662 Aug. 9, 1989
54 FR 40180 Sep. 29, 1989
54 FR 41495 Oct. 10, 1989
54 FR 43453 Oct. 25, 1989
54 FR 45761 Oct 31, 1989
54 FR 48131 Nov. 21, 1989
54 FR 51784 Dec. 18, 1989
54 FR 52976 Dec. 26, 1989
55 FR 21910 May 30, 1990 (Navy Mailing Addresses)
55 FR 37930 Sep. 14, 1990
55 FR 42752 Oct. 23, 1990

Dated: November 16, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N07436-1

System name:

Accounts Receivable System, (51 FR 18204, May 16, 1986).

Changes:

System name:

Delete entire entry and substitute with "Navy Debt Management and Collection System (NMCS)".

* * * * *

Categories of Records in the system:

At beginning of entry, add "Individuals' name, Social Security Number, and the debt amount."

* * * * *

Authority for the maintenance of the system:

Add "Executive Order 9397." to the end of the entry.

Purpose(s):

At end of entry, add "Records in this system are subject to use in approved computer matching programs authorized under the Privacy Act of 1974, as amended, for debt collection purposes."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the entire entry and substitute with "To the General Accounting Office and the Department of Justice for collection action for any delinquent account when circumstances warrant.

To a commercial credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file for use in the administration of debt collection.

To a debt collection agency for the purpose of collection services to recover indebtedness owed to the Department of the Navy.

To any other Federal agency for the purpose of effecting administrative or salary offset procedures against a person employed by that agency when the Department of the Navy, as a creditor agency, has a claim against that person.

To any other Federal agency including, but not limited to, the Internal Revenue Service and Office of Personnel management for the purpose of effecting an administrative offset of a debt.

To the Internal Revenue Service (IRS) to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim against the taxpayer. (Note: Redisclosure of a mailing address from the IRS may be made only for the purpose of debt collection, including to a debt collection agency in order to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982, except that a mailing address to a consumer reporting agency is for the limited purpose of obtaining a commercial credit report on the particular taxpayer. Any such address information obtained from the IRS will not be used or shared for any other DOD purpose or disclosed to another Federal, state, or local agency which seeks to locate the same individual for its own debt collection purpose.)

To any other Federal, state, or local agency for the purpose of conducting an authorized computer matching program to identify and locate delinquent debtors for recoupment of debts owed the Department of the Navy.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices also apply to this system."

Add a new element to the notice:

"Disclosure to consumer reporting agencies:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act of 1966 (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (SSN); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Delete the entire entry and substitute with "File folders, floppy disks, microfiche, magnetic tape, and hard disks."

* * * * *

Safeguards:

Delete the entire entry and substitute with "Facilities are locked and accessed by coded entry door lock system. Access to the date is controlled by a user identification and password system. Personnel having access are limited to those having an official need-to-know and who have been trained in handling personnel information subject to the Privacy Act."

* * * * *

Notification procedure:

Delete the entire entry and substitute with "Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199-2055. The request must contain individual's full name and should include the Social Security Number.

Record access procedures:

Delete the entire entry and substitute with "Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199-2055. The request must contain individual's full name and should include the Social Security Number."

Contesting record procedures:

Delete the entire entry and substitute with "The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager."

Record source categories:

At end of entry, add "and the Defense Manpower Data Center."

* * * * *

N07430-1

SYSTEM NAME:

Navy Debt Management and Collection System (MNCS).

SYSTEM LOCATION:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199–2055.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been paid more funds by the Department of the Navy than to which they were legally entitled.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, and debt amount. Documentation which established overpayment status, financial status affidavit, payment record, credit reference, and miscellaneous correspondence to and from the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

80 Stat. 308 and 88 Stat. 393, Federal Claims Collection Act of 1966 (Pub. L. 89–508) and Debt Collection Act of 1982 (Pub. L. 97–365), and Executive Order 9397.

PURPOSE(S):

To maintain an automated tracking and accounting system for individuals indebted to the Department of the Navy. Records in this system are subject to use in approved computer matching programs authorized under the Privacy Act of 1974, as amended, for debt collection purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the General Accounting Office and the Department of Justice for collection action for any delinquent account when circumstances warrant.

To a commercial credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file for use in the administration of debt collection.

To a debt collection agency for the purpose of collection services to recover indebtedness owed to the Department of the Navy.

To any other Federal agency for the purpose of effecting administrative or salary offset procedures against a person employed by that agency when the Department of the Navy, as a creditor agency, has a claim against that person.

To any other Federal agency including, but not limited to, the Internal Revenue Service and Office of Personnel Management for the purpose of effecting an administrative offset of a debt.

To the Internal Revenue Service (IRS) to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim against the taxpayer.

Note: Redisclosure of a mailing address from the IRS may be made only for the purpose of debt collection, including to a debt collection agency in order to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982, except that a mailing address to a consumer reporting agency is for the limited purpose of obtaining a commercial credit report on the particular taxpayer. Any such address information obtained from the IRS will not be used or shared for any other DOD purpose or disclosed to another Federal, state, or local agency which seeks to locate the same individual for its own debt collection purpose.

To any other Federal, state, or local agency for the purpose of conducting an authorized computer matching program to identify and locate delinquent debtors for recoupment of debts owed the Department of the Navy.

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act of 1966 (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (SSN); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, floppy disks, microfiche, magnetic tape, and hard disks.

RETRIEVABILITY:

Social Security Number and individual's name.

SAFEGUARDS:

Facilities are locked and accessed by coded entry door lock system. Access to the data is controlled by a user identification and password system. Personnel having access are limited to those having an official need-to-know and who have been trained in handling personnel information subject to the Privacy Act.

RETENTION AND DISPOSAL:

Files of accounts which are paid in full will be maintained for three years after final payment. Other files will be maintained for six years after termination of collection action.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199–2055.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199–2055.

The request must contain individual's full name and should include the Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commanding Officer, Navy Finance Center, Anthony J. Celebrezze Federal Building, Cleveland, OH 44199–2055.

The request must contain individual's full name and should include the Social Security Number.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Disbursing officers, credit bureaus, the individual, Internal Revenue Service, Postmasters, Veterans Administration, Bureau of Motor Vehicles, and the Defense Manpower Data Center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 90-27414 Filed 11-20-90; 8:45 am]
BILLING CODE 3810-01-M

Office of the Inspector General

Privacy Act of 1974; Amend a Record System

AGENCY: Inspector General, DoD.

ACTION: Amend a record system.

SUMMARY: The Office of the Inspector General proposes to amend a record system to its inventory of record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a)..

DATE: This proposed action will be effective without further notice on December 21, 1990, unless comments are received which result in a contrary determination.

ADDRESSES: Send any comments to David C. Stewart, Assistant Director, FOIA/PA Division, Assistant Inspector General for Investigations, Room 1016, 400 Army Navy Drive, Arlington, VA 22202–2884. Telephone (202) 697–6035 or Autovon 227–6035.

SUPPLEMENTARY INFORMATION: The complete inventory of record system notices subject to the Privacy Act for the Office of the Inspector General, DoD, has been published in the Federal Register to this date as follows:

50 FR 22279, May 29, 1985 (DoD Compilation, changes follows)
52 FR 26547, Jul. 15, 1987
52 FR 35754, Sep. 23, 1987
54 FR 24377, Jun. 7, 1984
54 FR 33956 Aug. 17, 1989
54 FR 18152, May 1, 1990

The amended record system notice is not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) which requires the submission of an altered system report. The specific changes to the records systems being amended are set forth below, followed by the systems notices, as amended, published in its entirety.

Dated: November 16, 1990.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG–12

System name:

DoD Inspector General Drug Free Workplace Records (55 FR 18152, May 1, 1990).

Changes:

* * * * *

Add the following category after Categories of individuals covered by the system:

Categories of records in the system:

Records relating to program implementation; administration (selection, notification, testing of employees and applicants, for illegal drug use and employee assistance); interservice/agency support agreements/designated contractors for specimen collection, laboratory testing and medical review services; training requirements; urine specimens, drug test results; policy guidance; self-identification records; requests for testing submitted by employees or supervisors; testing notification; documentary evidence in support of testing decision; chain of custody records regarding testing samples, reports of testing performed; documentary evidence submitted by employee or applicant in rebuttal test results; reports of medical finding test results; disciplinary/adverse action records to include notification of proposed action and documentary evidence submitted in support thereof and management's action; referrals to counseling/rehabilitation services; records regarding employees; consent for release of information concerning counseling/rehabilitation progress. Records relating to the illegal possession or distribution of controlled substances (as specified in Schedules I through V, as defined in 21 U.S.C. 802(6) and listed in Part B, Subchapter 13 of that Title), by the employees of the OIG will also be maintained in this system of records.

* * * * *

CIG–12

SYSTEM NAME:

DoD Inspector General Drug Free Workplace Records.

SYSTEM LOCATION:

DoD Inspector General, Office of the Assistant Inspector General for Administration and Information Management, Personnel and Security Directorate, 400 Army Navy Drive, Room 434, Arlington, VA 22202–2884, and offices of designated contractors.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of, and applicants for positions in, the Office of the DoD Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to program implementation; administration (selection, notification, testing of employees and applicants, for illegal drug use and employee assistance); interservice/agency support agreements/designated contractors for specimen collection, laboratory testing and medical review services; training requirements; urine specimens, drug test results; policy guidance; self-identification records; requests for testing submitted by employees or supervisors; testing notification; documentary evidence in support of testing decision; chain of custody records regarding testing samples, reports of testing performed; documentary evidence submitted by employee or applicant in rebuttal test results; reports of medical finding test results; disciplinary/adverse action records to include notification of proposed action and documentary evidence submitted in support thereof and management's action; referrals to counseling/rehabilitation services; records regarding employees; consent for release of information concerning counseling/rehabilitation progress. Records relating to the illegal possession or distribution of controlled substances (as specified in Schedules I through V, as defined in 21 U.S.C. 802(6) and listed in Part B, Subchapter 13 of that Title), by the employees of the OIG will also be maintained in this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7301 and 7361; 21 U.S.C. 812; Pub. L. 100–71; Executive Orders 12564 and 9397; and DoD Directive 1010.9, "DoD Civilian Employee Drug Abuse Testing Program".

PURPOSE:

The system is established to maintain records relating to the implementation of the program, administration, selection, notification and testing (of DoD Inspector General employees, and applicants for employment, for the use of illegal drugs and drugs identified in Schedule I and II of 21 U.S.C. 812. Records relating to the illegal possession or distribution of controlled subsances, (as specified in Schedules I through V, as defined in 21 U.S.C. 802(6) and listed in Part B, Subchapter 13 of that Title) by the employees of the Inspector General will also be maintained in this system of records. Records will consist of, but not be limited to, interservice/agency support agreement/designated contractors for specimen collection, laboratory testing and medical review services; training requirements; urine specimens, reports of drug test results; policy guidance; self-identification records; requests for testing submitted by employees or supervisors; testing notification; documentary evidence in support of testing decision; chain of custody records regarding testing samples; records relating to the type and quality of testing performed; documentary evidence submitted by employee or applicant in rebuttal of test results; reports of medical findings

regarding test results; disciplinary/adverse action records to include notification of proposed action and documentary evidence submitted in support thereof and management's action; referrals to counseling/rehabilitation services; records regarding employee's consent for release of information concerning counseling/rehabilitation progress; and records relating to the illegal possession or distribution of controlled substances by the employees of the Inspector General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In order to comply with the provision of U.S.C. 7301, the DoD Inspector General "Blanket Routine Uses" do not apply to this system of records.

To a court of competent jurisidiction where required by the United States Government to defend against any challenge against any adverse personnel action.

POLICIES, AND PRACTICES FOR STORING, RETRIEVING, ACCESSING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders. Electronic records exist on magnetic tape, diskette, or other machine-readable media. Records are also maintained in an automated data system and electronically secured files.

RETRIEVABILITY:

Records are retrieved by employee or applicant name, Social Security Number, date of birth, specimen identification number, locally assigned indentifying number, agency name, collection site or date of testing. A specified data element or a combination thereof contained in this system of records can be used for accessing information.

SAFEGUARDS:

Paper records are stored in secure containers (e.g., safes, locked filing cabinets, etc.) that are locked when not being used. Electronic records are accessed on computer terminals in supervised areas using a system with password access safeguards and is protected/restricted through the use of assigned user identification/passwords for entry into system modules. All employee and applicant records are maintained and used with the highest regard for employee and applicant privacy. Only persons on a need-to-know basis and trained in the handling of information protected by the Privacy Act have access to the systems.

Urine specimens will be stored in appropriate locked storage facilities. Access to such records and specimens is restricted.

Chain of custody and other procedural and documentary requirements of Pub. L. 100-71 and the Department of Health and Human Services Guidelines will be followed in collection or urine samples, conducting drug tests and processing test results.

RETENTION AND DISPOSAL:

Records are retained for up to three years for any employee who has separated, retired or died; or for up to five years after any and all final appeals have been adjudicated.

Destruction of records is accomplished by tearing, shredding, or burning of paper records. Electronic records are erased or overwritten.

SYSTEM MANAGER(S) AND ADDRESS:

OIG Drug Program Coordinator, Office of the Inspector General, Assistant Inspector General for Administration and Information Management, Personnel and Security Directorate, 400 Army Navy Drive, Room 434, Arlington, VA 22202-2884.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Director, FOIA/PA Division, Office of the Assistant Inspector General for Investigations, 400 Army Navy Drive, Arlington, VA 22202-2884.

Individuals must furnish their full name, Social Security Number, the title, series and grade of the position they occupied or applied for when the drug test was conducted and the month and year of the test. Written requests should include the notarized signature of the subject individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Assistant Director, FOIA/PA Division, Office of the Assistant Inspector General for Investigations, 400 Army Navy Drive, Arlington, VA 22202-2884.

CONTESTING RECORD PROCEDURE:

Agency rules for access to records and for contesting contents and appealing initial agency determination by the individual concerned are contained in OSD Administrative Instruction No. 81; 32 CFR part 286b; IG DoD Policies and Procedures Manual, chapter 33 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Data maintained in this system is obtained from the indivdual to whom the record pertains; DoD Inspector General and contractor employees involved in the selection, notification, and collection of individuals to be tested; contractor laboratories that test urine specimens for the presence of illegal drugs; contractor medical review officials; supervisors and managers and other officials engaged in administering the Drug-Free Workplace Program and processing adverse actions based on drug test results and others on a case by case basis.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 90-27415 Filed 11-20-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Administrative Law Judges Hearings; Intent To Compromise a Claim, Iowa Department of Education

AGENCY: Department of Education.

ACTION: Notice of intent to compromise a claim.

SUMMARY: The Department intends to compromise a claim against the Iowa Department of Education now pending before the Office of Administrative Law Judges (OALJ), Docket No. 89-53-R. (30 U.S.C. 1234a(j) (1988)).

DATES: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before January 7, 1991.

ADDRESSES: All comments concerning this notice should be addressed to Jeffrey C. Morhardt, Esq., Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue SW., (Room 4091, FOB-6), Washington, DC 20202.

SUPPLEMENTARY INFORMATION: The claim in question arose from an audit of the financial affairs and operations of the Iowa Department of Education (State) for the fiscal year ended June 30, 1987. The audit was performed by the Office of the Auditor of State, State of Iowa, to fulfill the requirements of Office of Management and Budget Circular A-128. The audit included the evaluation of the internal control systems, including applicable internal administrative controls, used in administering Federal financial assistance programs. Among the systems examined was the State's system of maintaining time distribution records for employees who have multi-program responsibilities. Time distribution records show how an employee's time has been divided among his or her different program responsibilities. During the course of the audit, the auditors discovered that the State maintained no system of time distribution records.

Based on this finding, the Assistant Secretaries for Elementary and Secondary Education, Special Education and Rehabilitative Services, and Vocational and Adult Education, the Directors of the Financial Management Service and the Grants and Contracts Service, and the Chief of the Cost Determination Branch (Department) notified the State in a Program Determination Letter (PDL), dated September 29, 1989, that it had to repay a total of $338,128 of Federal grant funds. In failing to maintain time distribution records, the State violated sections 437 and 435(b)(5) of the General Education Provisions Act (GEPA). Section 435(b)(5) of GEPA (20 U.S.C. 1223d(b)(5)) states in relevant part that "the State will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each program." In addition, the State violated the provisions of 34 CFR 74.61 and, further 34 CFR part 74, appendix C (OMB Circular A-87), attachment II, B. 10. b., which states in relevant part that "[s]alaries and wages of individual employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records." The State appealed the Department's determination to the OALJ.

Based on documentation submitted by the State after issuance of the PDL, the Department's original claim of $338,128 was reduced to $158,507 by stipulation. This stipulation was based on the fact that some of the funds questioned by the State auditor and subsequently claimed by the Department were actually State funds from a State account that contained both Federal and State funds. Thus, the Department's outstanding claim is $158,507.

The Department proposes to compromise the full amount of the $158,507 claim for $127,600. In its response to the PDL, the State gave assurances that it had installed a system of time distribution records. With its assurances, the State also provided the Department with models of the system's documentation. The Department is satisfied that the systemic deficiencies that resulted in the claim have been corrected and will not recur. Future audits will determine whether this system is being utilized in accordance with Federal requirements. Given these factors, the percentage of the claim to be repaid, and the risk and cost of litigating the claim through the appeal process, the Department has determined that it would not be practical or in the public interest to continue this proceeding.

The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by writing to Jeffrey C. Morhardt, Esq. at the address given at the beginning of this notice.

Authority: (20 U.S.C. 1234a(f).

Dated: November 15, 1990.

Thomas E. Anfinson,

Deputy Under Secretary for Management.

[FR Doc. 90-27364 Filed 11-20-90; 8:45 am]

BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 21, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT: James O'Donnell (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from James O'Donnell at the address specified above.

Dated: November 15, 1990.

James O'Donnell,

Acting Director for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Resolution of Applicant/Client Appeals.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 84.
Burden Hours: 84.
Recordkeeping Burden:
Recordkeepers: 84.
Burden Hours: 84.
Abstract: This report is used by State Vocational Rehabilitative agencies to provide caseload data. The Department uses this information to monitor whether appeals processes in the State agencies appear to be operating in accordance with the individual State Plans.

Office of Special Education and Rehabilitative Services

Type of Review: New.
Title: Evaluation of Vocational Assessment Procedures and the IWRP Process Used by State Vocational Rehabilitation VR Agencies.
Frequency: One-time.
Affected Public: Individuals households; State or local governments.
Reporting Burden:
Responses: 2257.
Burden Hours: 1759.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This report is used by State Vocational Rehabilitative agencies to

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provide caseload data. The Department uses the information collected to assess the accomplishments and for program management.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: Extension.
Title: Application for Grant under Bilingual Education Programs (New and Continuation Applications—Multiple Programs).
Frequency: Annually.
Affected Public: State or local governments; Businesses or other for-profit; Non-profit institutions.
Reporting Burden:
Responses: 750.
Burden Hours: 61,275.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by state educational agencies to apply for funding under the Bilingual Education Program. The Department will use this information to make grant awards.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.
Title: Observational Study of Early Education Programs.
Frequency: One-time.
Affected Public: Individual or households; State or local governments; Small businesses or organizations.
Reporting Burden:
Responses: 1800.
Burden Hours: 550.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The purpose of this study is to investigate variations in early childhood education programs' structural and environmental characteristics, interactions between caregivers and children, and the nature of the children's activities. The study will examine relationships between preschool environments and children's cognitive and social-emotional development.

Office of Management

Type of Review: New.
Title: Application for the Disposal and Utilization of Surplus Federal Real Property for Educational Purposes.
Frequency: On Occasion.
Affected Public: State or local governments; Non-profit institutions.
Reporting Burden:
Responses: 12.
Burden Hours: 264.
Recordkeeping Burden:
Recordkeepers: 12.
Burden Hours: 48.
Abstract: The Department uses the information collected to determine if an applicant is eligible and able to purchase property for educational purposes and to determine compliance with the terms and conditions of the transfer after the sale.

[FR Doc. 90-27303 Filed 11-20-90; 8:45 am]
BILLING CODE 4000-1-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF87-93-002]

Cambria CoGen Co.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 15, 1990.

On November 13, 1990, Cambria CoGen Company (Applicant), c/o Cambria Cogen (I), Inc., of 7201 Hamilton Boulevard, Allentown, Pennsylvania 18195, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Cambria Township, Pennsylvania. The facility will consist of two fluidized bed combustion boilers, a steam turbine generator, and approximately 1.3 miles of 115 kV transmission line. The net electric power production capacity of the facility will be 85 MW on an average annual basis. The primary energy source of the facility will be bituminous coal refuse.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed on or before November 30, 1990, and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 90-27357 Filed 11-20-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP91-22-000]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

November 14, 1990.

Take notice that on November 9, 1990, Natural Gas Pipeline Company of America (Natural) filed the tariff sheets listed in Appendix B to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective December 9, 1990.

Natural states that the tariff revisions were submitted in response to Order No. 525. The revised tariff sheets establish a new section 34 of the General Terms and Conditions of Natural's FERC Gas Tariff, Third Revised Volume No. 1, to replace the existing section 33. Section 34 sets out a new mechanism for recovery by Natural of take-or-pay settlement costs and other transition costs. Under section 34, a new methodology for allocating such costs, based on specified test period throughput data, is substituted for the purchase deficiency method of allocation in section 33. Section 34 also sets out a plan for adjusting current billings by applying the revised allocation methodology to prior collections, so total transition costs are allocated on the revised methodology.

Natural requested any waiver of the Commission's Regulations which may be necessary to permit the proposed tariff sheets to become effective December 9, 1990.

Natural states that a copy of this filing was mailed to Natural's jurisdictional customers allocated costs under section 34, interested state regulatory agencies and all parties set out on the official service list in the dockets listed in Appendix A attached to the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 21, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 90-27358 Filed 11-20-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP90-70-000]

Equitrans, Inc.; Informal Settlement Conference

November 14, 1990.

Take notice that a conference will be convened in the above-captioned proceeding on November 20, 1990 at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Arnold H. Meltz (202) 208-0737 or Jennifer B. Corwin (202) 208-0740.

Lois D. Cashell,
Secretary.

[FR Doc. 90-27359 Filed 11-20-90; 8:45 am]
BILLING CODE 6717-01-M

Office of Fossil Energy

[ERA Docket Nos. 86-44-NG, et al.]

Brooklyn Union Gas Co., et al.; Orders Granting Authorizations Canadian Natural Gas and Record of Decision

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders granting authorizations to import To Import Canadian natural gas and record of decision.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued orders on November 15, 1990, granting authorizations to import Canadian natural gas to Brooklyn Union Gas Company, *et al.* (ERA Docket Nos. 86-44-NG, *et al.*), Orchard Gas Corporation (FE Docket No. 89-54-NG), JMC Selkirk, Inc. (FE Docket No. 89-55-NG), Pawtucket Power Associates (FE Docket No. 89-76-NG) and Granite State Gas Transmission, Inc. (FE Docket No. 90-23-NG). All of the imports authorized are part of the proposed Iroquois/Tennessee Phase I Pipeline Project (Iroquois Phase I) to import natural gas to the U.S. Northeast. The natural gas would be imported into the region at the proposed Iroquois Gas Transportation System (IGTS) import point on the Canadian border near Waddington, New York.

In conjunction with these orders, FE is hereby issuing a Record of Decision (ROD) pursuant to the regulations of the Council on Environmental Quality (40 CFR part 1505) and the DOE's guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA).

Copies of the orders are available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lot Cooke, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6116.

FOR FURTHER INFORMATION ON THE DOE NEPA PROCESS CONTACT: Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, Forrestal Building, Room 3E-080, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600.

I. Introduction

Pursuant to the Council on Environmental Quality (CEQ) regulations implementing the procedural provisions of NEPA [1] and the DOE's guidelines for the compliance with NEPA,[2] FE is issuing this ROD on those applications that propose to use the Iroquois/Tennessee Phase I Pipeline Project facilities. Generally, the Iroquois/Tennessee Pipeline Project involves proposals to construct and operate pipeline facilities, including a major new pipeline system, IGTS, extending from the U.S./Canadian border through the States of New York and Connecticut and terminating on Long Island, New York. Overall, the Iroquois/Tennessee Project is designed to transport up to 575,900 Mcf per day of Canadian natural gas (as well as 70,000 Mcf per day of domestic gas) to various U.S. customers. For purposes of NEPA consideration the project has been divided into two phases, Iroquois Phase I and Iroquois Phase II. Iroquois Phase I contemplates delivery of 422,900 Mcf per day of Canadian gas through the IGTS pipeline and through the expanded facilities of Tennessee Gas Pipeline Company (Tennessee). The remaining 153,000 Mcf per day of Canadian gas (and the 70,000 Mcf per day of domestic gas) would be part of Iroquois Phase II, which includes facilities and services by IGTS, Tennessee, and Algonquin Gas Transmission Company (Algonquin).

The following applications are for Canadian imports that the applicants propose to transport on the Iroquois Phase I facilities: Brooklyn Union Gas Company, *et al.* (Brooklyn Union) (ERA Docket No. 86-44-NG, *et al.*), is a consolidated application from a total of 18 local distribution companies (LDC) to import up to 397,100 Mcf per day of Canadian natural gas over terms of 15 years. On September 29, 1990, 10,000 Mcf per day of Brooklyn Union volumes that would be imported at Tennessee's Niagara import point were authorized in DOE/FE Opinion and Order No. 425.[3] The remainder of the Brooklyn Union gas would be imported at IGTS' proposed import point near Waddington, New York: 352,100 Mcf per day through Iroquois Phase I facilities, and 35,000 Mcf per day through Iroquois Phase II facilities.

Orchard Gas Corporation (Orchard) (FE Docket No. 89-54-NG), proposes to import up to 25,000 Mcf per day of Canadian natural gas over a term of 15 years for use in a new cogeneration plant. The gas would be imported at the proposed IGTS import point near Waddington, New York, or at Tennessee's existing import points near Niagara, Ontario, and Highwater, Quebec.

JMC Selkirk, Inc. (JMC Selkirk) (FE Docket No. 89-55-NG) proposes to import up to 23,000 Mcf per day of Canadian natural gas over a term of 15 years for use in a new cogeneration plant. The gas would be imported at the proposed IGTS import point near Waddington, New York.

Pawtucket Power Associates (Pawtucket) (FE Docket No. 89-76-NG) proposes to import up to 14,500 Mcf per day of Canadian natural gas over a term of 20 years for use in a new cogeneration plant. The gas would be imported at the proposed IGTS import point near Waddington, New York.

Granite State Gas Transmission, Inc. (Granite State) (FE Docket No. 90-23-NG), proposes to import up to 34,826 Mcf a day of Canadian natural gas on a firm

[1] 42 U.S.C. 4321, *et seq.*
[2] 52 FR 47662, December 15, 1987.
[3] 1 FE 70,353.

basis, and up to an additional 13,920 Mcf a day on an interruptible basis, over a term of 15 years for sale to affiliated LDC's. The gas would be imported at the proposed IGTS import point near Waddington, New York. 12,000 Mcf per day of the Granite State volumes would use Iroquois Phase I facilities, while the remaining 22,826 Mcf per day would use Iroquois Phase II facilities.

In addition to the Iroquois Phase I related applications discussed above, the DOE has received the following applications for import authorizations which plan to utilize the proposed Iroquois/Tennessee Pipeline Project facilities:

Boston Gas Company (FE Docket No. 88-38-NG), a Massachusetts LDC, proposes to import up to 35,000 Mcf per day of Canadian natural gas over a term of 15 years for system use. The gas would be imported at the proposed IGTS import point near Waddington, New York, as part of the Iroquois Phase II Project.

New England Power Company (FE Docket No. 90-09-NG), a New England electric power company, proposes to import up to 80,000 Mcf per day of Canadian natural gas over a term of 15 years for use in two of its electrical generating facilities. The gas would be imported at the proposed IGTS import point near Waddington, New York, as part of the Iroquois Phase II Project.

L&J Energy Systems, Inc. (FE Docket No. 90-63-NG) proposes to import up to 11,700 Mcf per day of Canadian natural gas over an initial term of 15 years for use in a new cogeneration plant. The gas would be imported at the proposed IGTS import point near Waddington, New York.

Dartmouth Power Associates Limited Partnership (FE Docket No. 90-80-NG) proposes to import up to 16,000 Mcf per day of Canadian natural gas over a term of 20 years for use in an independent electrical power generating facility. The gas would be imported at the proposed IGTS import point near Waddington, New York.

Although this ROD is being issued in conjunction with the Iroquois Phase I import application requests only, to the extent that the environmental determinations made herein are applicable to facilities in any other applications filed, or to-be-filed, with the DOE, this ROD and the related environmental material may be incorporated and used in making determinations on those applications.

II. Decision

On November 13, 1990, FE issued orders, under section 3 of the Natural Gas Act (NGA),[4] granting all of the Iroquois Phase I related application described above. To transport and deliver the proposed imports would require construction of the pipeline facilities comprising the Iroquois Phase I Project.

The DOE participated as a cooperating agency during the preparation of, and has adopted as DOE/EIS-0152, the *Iroquois/Tennessee Phase I Pipeline Project Final Environmental Impact Statement* (FEIS), issued by the Federal Energy Regulatory Commission (FERC) on June 1, 1990.[5] The U.S. Army Corps of Engineers (COE), the U.S. Environmental Protection Agency (EPA), and the U.S. Department of Interior's Fish and Wildlife Service and National Park Service were also cooperating Federal agencies on the Iroquois Phase I FEIS. FE relied on the FEIS and conducted an independent review to assess the environmental effects of granting related import authorizations.

III. Project Description

Overall, the Iroquois/Tennessee Pipeline Project proposes to construct and operate pipeline facilities for the transportation of up to 575,900 Mcf per day of Canadian natural gas. The gas would be delivered to end use customers by IGTS, or by Tennessee or Algonquin after those pipelines have received the gas from IGTS. The FERC determined that the full project to deliver up to 575,900 Mcf per day is not complete because Algonquin's application for expanded facilities was not sufficiently detailed. Therefore, the FEIS only analyzed the delivery of 422,900 Mcf per day of natural gas that would be delivered to customers directly by IGTS or by Tennessee, the Iroquois Phase I Project.

The Iroquois Phase I Project involves the construction by IGTS of a new, 369.4-mile, 30- and 24-inch diameter pipeline beginning at the U.S./Canadian border near Waddington, New York, extending through New York and Connecticut, crossing Long Island Sound, and terminating near South Commack, New York. The facilities proposed by Tennessee in Iroquois Phase I would involve the construction of 46.4 miles of mainline loop, 13.9 miles of lateral loops and replacement pipe, 2.3 miles of new pipeline extension, and an additional 8,650-hp of compression on Tennessee's existing mainline system in the States of New Hampshire, New York, Rhode Island, Connecticut and Massachusetts.

[4] 15 U.S.C. 717b.

[5] FERC/EIS-0084.

The purpose of the project would be to transport natural gas from Canada to markets in the Northeast. IGTS would deliver directly to LDC customers in New York and Connecticut. IGTS would also deliver additional natural gas at South Commack, New York, for exchange and redelivery to three LDC's in New Jersey. IGTS' deliveries to Tennessee would occur in Wright, New York, and Stratford, Connecticut, for redelivery to certain LDC's cogeneration, and electric generation customers in Connecticut, Massachusetts, New Hampshire, and Rhode Island.

IV. Governmental Responsibilities

The shippers that would use the proposed pipeline facilities require authorization from FE under section 3 of the NGA for their proposed imports. Other Federal, state, and local agencies also have permit or approval authority over portions of the proposed Iroquois Phase I Project. In particular, the FERC has the responsibility under sections 3 and 7 of the NGA, respectively, to approve the place of entry for imports when, as here, the import involves the construction of new domestic facilities, and to certificate construction and operation of the pipeline facilities transporting the gas. Also, EPA, COE and the States exercise jurisdiction under regulations of the Clean Water Act (CWA) and the Rivers and Harbors Act. Water quality certification (CWA section 401) has been delegated to the jurisdiction of individual state agencies or would be reviewed by the EPA. The EPA and/or the states would determine if any National Pollution Discharge Elimination System permits (CWA section 402) would be required for discharge of hydrostatic test waters. Under CWA section 404, a permit is required from the COE for all stream and wetland crossings. Section 10 of the Rivers and Harbors Act is also administered by the COE; individual section 10 permits are required for all construction activities that occur in navigable waterways.

Each state in which construction would take place requires additional state level permits. These would include pipeline right-of-way and individual state wetland permits. Environmental regulatory agencies from the States of New York, New Hampshire, Massachusetts, Rhode Island and Connecticut would review components of the Iroquois/Tennessee Projects.

New York and Connecticut have established coastal zone management policies regarding the use of land and water within their designated coastal zones. Since IGTS proposed crossings of the St. Lawrence River, the Hudson River, and Long Island Sound would be within New York's coastal zone, IGTS has filed an application with New York for a determination that the proposed project is consistent with State management objectives.

IGTS would cross Connecticut's coastal zone in the towns of Milford and Stratford. IGTS has submitted a coastal zone consistency certificate to Connecticut.

V. Description of Alternatives

FE had two alternative courses of action in processing the individual applications to import or export natural gas. It could grant an application (with or without conditions) or deny an application (no-action). If FE granted all, or the majority, of the applications, the Iroquois/Tennessee Project sponsors could proceed, subject to the necessary approvals, with construction of facilities to transport natural gas for use in the Northeast. If FE denied all of the applications, the Iroquois/Tennessee Project pipeline facilities would not be constructed and the impacts to the existing environment associated with the project would not occur. Absent the Iroquois/Tennessee Project facilities, potential users would need to find natural gas from other pipelines or increase usage of fuel oil, coal, and other alternative fuels which are more polluting than natural gas.

VI. Basis for Decision

The principle criterion in choosing whether to approve or disapprove natural gas import arrangements is the requirement under section 3 of the NGA that an application must be approved unless, after opportunity for hearing, it is determined that the import is not consistent with the public interest. DOE's section 3 determinations are made consistent with DOE's gas import policy guidelines, under which the competitiveness of an arrangement in the markets served is the primary factor in determining whether it is in the public interest.[6] In the case of long-term imports such as these, need for the gas and security of the supply are also important considerations. Additionally, the environmental implications of granting or denying an import or export application must be evaluated pursuant to NEPA.

A. General Conclusions

FE concluded that the proposed imports associated with the Iroquois Phase I Project meet the DOE guidelines concerning competitiveness, need for the gas, and security of supply, and that they are not inconsistent with the public interest. All of the import arrangements were freely negotiated between the buyers and sellers and contain market-responsive, flexible, pricing provisions. The terms and conditions of the import arrangements, taken together, will provide competitively priced, needed, and secure supplies of natural gas over the terms of the proposed contracts.

[6] 49 FR 6684, February 22, 1984.

B. Environmental Determination

The FERC was the lead agency in conducting an examination of the environmental effects of constructing new pipeline, pipeline loops, laterals and extensions, new and modified metering facilities, and new compressor stations as well as the addition of horsepower at existing compressor stations. The FERC FEIS also examined the environmental effects of constructing proposed nonjurisdictional pipeline and cogeneration facilities. The FEIS examined the environmental impact that the Iroquois Phase I Project would have on: geology; soils; water resources; fish and wildlife; endangered and threatened species; vegetation; wetlands; air quality and noise; land use, recreation, and visual resources; recreation and public interest areas; and cultural resources.

The FEIS considered alternatives to the Iroquois Phase I Project including: various alternative energy sources and energy conservation; single pipeline alternatives to the proposed Iroquois/Tennessee Pipeline and Champlain Pipeline Company (Champlain) projects; project system alternatives; major route alternatives; pipeline route and compressor station variations; and a no-action alternative. As stated above, the DOE participated as a cooperating agency during the preparation of the FEIS, and the DOE utilized the FEIS, as well as conducting an independent analysis, to assess the environmental effects of granting or denying the import authorization requests.

1. Alternative Energy Sources and Conservation

Presently, natural gas reaches the Northeast from domestic and Canadian sources. Several major gas pipelines flow to or near underground storage fields in western Pennsylvania, New York, and Maryland. However, there are various pipeline system constraints between the storage reservoirs and proposed delivery points of the Iroquois/Tennessee Project during periods of peak demand. The FEIS considered expanding existing Gulf Coast systems to deliver gas to the Northeast but concluded that this alternative was unreasonable due largely to cost considerations. Also, while existing system expansion could eliminate the potential supply constraints to specific locations, others would still be subject to supply constraints which potentially could force curtailments, as occurred in the Northeast in December 1989.

The FEIS considered whether oil, coal, electricity, peak shaving supplies, and other conventional energy sources could be used to offset the Iroquois Project energy supply. A substantial amount of the natural gas from the Iroquois Project would be used for generating electricity. Expansion of existing, or construction of major new, oil-fired and coal-fired electric plants would require a long lead-time because of the number of issues that must be resolved before approval; therefore they may not be a realistic alternative to the gas-fired facilities proposed by the Iroquois shippers.

To the extent gas is not available to generate increased electricity, the substitute fuels are coal or one of the fuel oils. Although coal is abundant and available domestically in sufficient quantities to supply the projected energy needs, transportation from the coal fields would be difficult and costly if a plant is not adjacent to an existing rail corridor. As for fuel oils, much of the residual and No. 2 fuel oil used in the Northeast is imported. The increased fuel demand would require a greater dependence on foreign crude petroleum and petroleum products from unstable oil producing regions and the additional shiploads of oil would increase the risk of spills. Finally, both oil and coal are not as clean as natural gas when combusted.

In considering electricity as an alternative to the Iroquois Project, the FEIS concluded that natural gas competes with various other fuels in the electric utility market. Therefore, electric utilities are users of natural gas and not competitors. The FEIS also concluded that peak shaving supplies such as liquefied natural gas, propane, and synthetic gases are only available on a limited basis because of storage capacity restraints. Therefore, peak shaving cannot be considered a reasonable alternative to the increased deliverability and annual supplies of the proposed Iroquois Project.

Other conventional energy sources (e.g., propane, wood, and synthetic fuels) are not viable alternatives to the proposed Iroquois Project for a reliable, long-term energy supply to the Northeast.

Although conservation programs are a significant component in efforts to address existing and future energy supply constraints in the Northeast, regional growth is still expected to outstrip supply and require the continued upgrading and expansion of fuel delivery systems.

2. Single Pipeline Alternative

Concurrently with the Iroquois environmental evaluation, the FERC considered the Champlain Project to supply Canadian natural gas to Vermont, New Hampshire, Massachusetts and Rhode Island. The Champlain proposal involved a pipeline running south from the U.S./Canadian border through the States of Vermont, New Hampshire and Massachusetts. The proposed Iroquois/Tennessee and Champlain Projects were not in competition with each other but were intended to meet discrete incremental gas requirements in the Northeast.

In November of 1989 the FERC issued Draft Environmental Impact Statements (DEIS's) for both the Iroquois/Tennessee and the Champlain Projects. In a consolidated volume II for both DEIS's, the FERC examined single pipeline alternative systems that could accomplish the objectives of both the proposed projects, while potentially reducing the environmental impact.

Because of difficulties in procuring firm supplies of gas, the Champlain Project has been indefinitely deferred. Consequently, the Iroquois/Tennessee Project was expanded to supply service to some of Champlain's customers (basically the Iroquois Phase II volumes). As a result, Iroquois/Tennessee is the only new pipeline project currently proposed to run from the Canadian border south into the Northeast. Since there are no longer two major pipeline projects proposed, the reason for considering single project alternatives no longer exists, and, in fact, the Iroquois/Tennessee Project, as proposed in Phases I and II, closely resembles one of the single pipeline alternatives considered by the FERC in the DEIS.

3. Project System Alternatives

Project system alternatives are those alternatives that meet the stated objective of the project, but utilize a different gas import point or delivery system. The FEIS examined two project system alternatives: (1) The Niagara Import Alternative, and (2) the Highgate Import Alternative. In addition, in lieu of the proposed Long Island Sound crossing, the FEIS examined a New Jersey-Long Island Alternative.

The Niagara Import Alternative examined the feasibility of an alternative to the Iroquois Phase I Project that would import the gas at Niagara Falls, New York, and maximize the use of existing pipeline corridors through a mix of pipeline looping and added compression. The FEIS concluded that the Niagara Import Alternative has no significant environmental advantage over the proposed Iroquois/Tennessee route.

The Highgate Import Alternative examined the feasibility of an alternative new pipeline that would originate at the U.S./Canadian border near Highgate, Vermont. Two alternative pipelines extending from Highgate were examined. One alternative would connect with the existing Algonquin mainline system in eastern Massachusetts, and the other would connect with the existing Tennessee 300 mainline system in Connecticut. The FEIS found that the Highgate Import Alternative may be environmentally preferable to the Iroquois/Tennessee Project, but noted that the route (which follows that proposed by Champlain) was controversial and that the environmental and other issues regarding the Highgate Import Alternative would take a significant amount of time to resolve. Therefore, the FEIS concluded that the timing differential may make the alternative unreasonable with regard to providing needed service to the Northeast.

The New Jersey-Long Island Alternative would cross the Raritan and Lower Bays from New Jersey to the south shore of Long Island. In this alternative, gas destined for Long Island would be delivered by Tennessee or Algonquin to Transcontinental Gas Pipe Line Company (Transco) by backhaul and exchange agreements. Transco would then deliver the gas to Long Island on the proposed alternative. The FEIS concluded that the New Jersey-Long Island Alternative would have a potentially greater environmental impact than the proposed facilities and, therefore, was eliminated from further consideration.

4. Major Route Alternatives

Major route alternatives are those that have the same impact and delivery points as the proposed project, but follow routes significantly different from those proposed by the applicant. Generally, the major route alternatives considered in the FEIS take advantage of existing pipeline, electric transmission line, or highway right-of-ways to reduce the need for construction of new pipeline on new right-of-ways. The FEIS found that none of the major route alternatives it examined were environmentally superior to the currently proposed route.

5. Route Variations

Although the FEIS determined that the Iroquois Phase I Project should be constructed substantially as proposed, route variations were identified and assessed to avoid or reduce impacts associated with pipeline construction and operation on various resources, including residential areas, sensitive or significant habitats or water crossings, recreational areas, and wetlands. A total of 133 variations were considered. Of those considered, 95 were recommended for adoption.

6. Compressor Station Alternatives

Compression facilities are proposed at one new site in Mendon, Worcester County, Massachusetts. In assessing whether an alternative site should be considered, factors that were considered included proximity to noise-sensitive areas, loss of primary farmland, land use compatibility, wetland disturbance, and presence of endangered or threatened species. One alternative site was considered but was found to be technically and environmentally comparable to the proposed site. The FEIS found that the proposed site would not have a significant effect on noise-sensitive areas, land use, wetlands, or wildlife resources.

7. No-Action Alternative

The no-action alternative would consist of the denial of any of the permits required for construction and operation of the Iroquois Phase I facilities or denial of the DOE import authorizations. Under this alternative no construction would take place and the impacts to the natural environment associated with the project would not occur. If the Iroquois Phase I pipeline facilities are not constructed, potential users will need to seek natural gas from other systems or increase usage of fuel oil, coal, and other alternative fuels that would increase emissions of air pollutants.

VII. Considerations in Implementing the Decision

FE has determined that the no-action alternative is the environmentally preferred alternative, because none of the physical impacts to the natural environment identified in the FEIS associated with the Iroquois Phase I Project would occur. However, FE has concluded that these impacts would be minimal and are acceptable when compared to the substantial benefits to be derived from the project in meeting current and future energy demand in the Northeast.

In weighing the no-action alternative against the benefits associated with the Iroquois Phase I Project, FE determined that the project would (1) provide additional pipeline capacity to transport natural gas to a rapidly expanding market region, (2) introduce a new price-competitive source of natural gas from western Canada, and (3) enhance air quality in the region by allowing increased use of clean burning natural gas rather than coal or oil in electric generation plants. The FE also took into consideration the extent to which mitigative construction techniques could be recommended. Numerous alternative routes for the proposed project were recommended to avoid impact on wetlands, residential areas, and other areas of concern. FE believes that the mitigative construction procedures developed by the FERC, in conjunction with other Federal cooperating agencies, would significantly reduce the impact of pipeline construction on stream and wetland crossings. Finally, specific erosion control, revegetation, and right-of-way maintenance procedures recommended by the FEIS would further mitigate the negative environmental impacts.

On November 14, 1990, the FERC issued an order on the Iroquois Phase I Project.[1] The FERC order concluded that if its required mitigation measures are followed, the construction and operation of the Iroquois Phase I facilities would have a limited, adverse environmental impact.

FE notes that the FERC, COE, EPA, and the environmental regulatory agencies of the States of New York, New Jersey, Massachusetts, Connecticut, Rhode Island, and New Hampshire, have principal authority and direct responsibility to impose and monitor mitigation measures and conditions relative to the construction and operation of the proposed Iroquois Phase I facilities through their various authorizations and permits. In its order, the FERC require the Iroquois Project sponsors to adhere to the construction procedures and mitigation measures described in their respective applications. The order also stipulated the implementation of, for all disturbed areas, an "Erosion Control, Revegetation, and Maintenance Plan" (ECR&MP) contained in appendix C of the FEIS. By implementing the ECR&MP, impacts on soil resources, including agricultural lands, from erosion, soil structure damage, compaction and drainage alternations would be minimized. The FERC determination on the Iroquois Phase I Project included route variations recommended in the FEIS. The FERC also required that the sponsors incorporate the "Stream and Wetland Construction and Mitigation Procedures" (Procedures) contained in Appendix D of the FEIS when constructing across flowing streams, rivers, and wetlands. By implementing the Procedures, impact on aquatic resources should be reduced to acceptable levels. Many additional mitigation conditions were required in the preliminary order to further reduce the anticipated environmental impacts. Finally, to insure compliance with all mitigation measures imposed, the FERC's November 14 order imposed a requirement that the sponsors provide one environmental inspector per construction spread.

[1] 52 FERC Para 61,091.

VIII. Conclusion

The decision whether to authorize each natural gas import application has been evaluated against the potential environmental impacts. Implementing the specific mitigation measures identified in the FEIS, together with the stipulations required by the FERC, would minimize the negative environmental effects and promote the positive effects of the proposed Iroquois Phase I Project. Accordingly, and to the extent they will use Iroquois Phase I facilities, DOE has decided to grant the applications of Brooklyn Union, *et al.*, Orchard, JMC Selkirk, Pawtucket, and Granite State and has determined that this decision is not inconsistent with the public interest under section 3 of the NGA.

Issued in Washington, DC, November 15, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-27432 Filed 11-20-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-69-NG]

JMC Fuel Services, Inc.; Order Granting Blanket Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas to Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting JMC Fuel Services, Inc. (JMC Fuel) blanket authorization to export from the United States to Canada up to 12 Bcf of natural gas on an interruptible basis over a two-year period commencing with the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 15, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-27433 Filed 11-20-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-72-NG]

Santanna Natural Gas Corp.; Order Granting Blanket Authorization to Import and/or Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import and/or export natural gas, including liquefied natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Santanna Natural Gas Corporation (Santanna) blanket authorization to import and/or export up to a combined total of 73 Bcf of natural gas, including liquefied natural gas, over a two-year period beginning on the date of the first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 14, 1990.

Clifford P. Tomassewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-27434 Filed 11-20-90; 8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3862-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 21, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Section 12(b) Notification of Chemical Exports. (ICR #0795.05; OMB #2070-0030). This ICR requests renewal of the existing clearance.

Abstract: Under section 12(b)(2) of the Toxic Substances Control Act (TSCA), those who export or intend to export federally regulated chemical substances (or mixtures) must notify the EPA Administrator annually of the export or intent to export. EPA will then notify the government of the importing country of the Agency's action concerning the regulated chemical. Respondents submit to EPA one annual notice per chemical for each country to which they are intending to export. A notice consists of: the name and address of the exporter, the name (or list) of the chemical(s) to be exported, the country of import, the date of export, and a citation of the TSCA section (4, 5, 6 or 7) requiring the chemicals to be reviewed for export.

Burden Statement: The estimated public reporting burden for this collection of information is 34.3 hours per respondent. This estimate includes time to read the instructions, gather existing information, prepare the chemical lists and submit the annual notice. On average a respondent will prepare 66.6 export notices, each requiring .5 hours. An additional hour per respondent is required to prepare the 12(b) list.

Respondents: Exporters of TSCA section 12(b)(2) chemicals (primarily in SICs 28 and 29).

Estimated No. of Respondents: 150.

Estimated Total Annual Burden on Respondents: 5150 hours.

Frequency of Colleciton: Once annually for each exported 12(b) chemical.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: November 15, 1990.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 90-27398 Filed 11-20-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3862-6]

Science Advisory Board, Drinking Water Committee; Open Meeting

Under Public Law 92-463, notice is hereby given that a meeting of the Drinking Water Committee of the Science Advisory Board will be held December 6-7, 1990 at the Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC 20037. This meeting will start at 8:30 a.m. on December 6 and will adjourn no later than 1 p.m. December 7.

The main purpose of this meeting will be to review a numerical model for estimating virus levels in drinking water called VIRALT and the research plan for investigating the health effects of ingested arsenic. Briefings at this meeting will cover monitoring, analytical methods, risk assessment and chloramines. The Committee plans to finalize its report concerning the criteria document for trihalomethanes at the meeting.

The VIRALT documents are available from Mr. Stig Regli, Office of Drinking Water (202-382-7379) and the arsenic document is available from Dr. Jack Fowle, Office of Research and Development (919-541-2479).

Any member of the public wishing to make a presentation at the meeting should forward a written statement to Dr. C. R. Cothern, Executive Secretary, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, Washington, DC 20460 by November 28, 1990, FAX 202-475-9693. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total of ten minutes.

Dated: November 15, 1990.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 90-27397 Filed 11-20-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3862-5]

Science Advisory Board, Environmental Engineering Committee, Oswer Modeling Project Subcommittee, Teleconference Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Science Advisory Board's (SAB's) Environmental Engineering Committee (EEC), OSWER (Office of Solid Waste and Emergency Response) Modeling Project Subcommittee will conduct a Teleconference Meeting on Friday, December 7, 1990. The meeting will be held in the Environmental Protection Agency's Headquarters Video Room 6, south, 401 M Street, SW., Washington, DC 20460. The teleconference will begin at 1 p.m. and adjourn no later than 4 p.m. on Friday, December 7, 1990.

The purpose of the teleconference is to conduct a consultative review focused around a draft report entitled "Report on the Usage of Computer Models in Hazardous Waste/Superfund Program—OSWER Models Management Initiative, Phase II," and to provide advice related to this activity directly to the Information Management Staff (IMS) of OSWER on this topic. For receiving the draft report related to this teleconference, please call Ms Mary Lou Melley, IMS/OSWER at 202/382-5760.

The teleconference is open to the public. Any member of the public wishing further information on the teleconference or those who wish to submit written comments or who wish to attend should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Marcy Jolly, Secretary

Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460, at 202/382-2552 by December 5, 1990. Seating space is limited.

Dated: November 15, 1990.

Donald G. Barnes,

Director, Science Advisory Board (A101F).

[FR Doc. 90-27396 Filed 11-20-90; 8:45 am]

BILLING CODE 6560-50-M

FARM CREDIT ADMINISTRATION

Determination of Insufficiency of Assets of Federal Land Bank of Jackson in Receivership and Federal Land Bank Association of Jackson in Receivership

ACTION: Notice.

SUMMARY: On May 20, 1988, the Farm Credit Administration (FCA), in accordance with § 4.12 of the Farm Credit Act of 1971 (Act) placed the Federal Land Bank of Jackson (FLBJR) and Federal Land Bank Association of Jackson (FLBAJR) in Receivership and appointed REW Enterprises, Inc., to serve as the receiver thereof. 53 FR 18812.

In accordance with FCA regulations governing receiverships, the receiver took possession of the FLBJR and FLBAJR in order to wind up their business operations, collect the debts owed to the institutions, liquidate their assets, pay their creditors, and distribute the remaining proceeds to stockholders. 12 CFR part 611, subparts K-M. During the course of the receiverships, the receiver has been primarily engaged in the collection of loans made by FLBJ and other debts owed to FLBJR and FLBAJR through payoff, settlement, offset, foreclosure and other collection actions and litigations, the defense of claims asserted against the receiverships and their assets and the liquidation of the assets of the receiverships through auction, agreement and bulk sale of loans and other property.

Pursuant to an agreement dated April 27, 1990, the receiver sold almost all of the previously unsold assets of the FLBJR and FLBAJR in consideration for the assumption by the purchasers of an equal amount of liabilities. In connection with that sale and pursuant to §§ 64, 6.5 and 6.27 of the Act the Farm Credit System Assistance Board (Assistance Board) certified the FLBJR as eligible to issue and sell to the Farm Credit System Financial Assistance Corporation (Assistance Corporation) preferred stock in the amounts that were necessary to enable the receiver to retire the eligible borrower stock of the institutions as required under § 4.9A of the Act and to provide for the assumption of the remaining bond obligations of the FLBJR.

Under the regulations regarding the priority of claims in connection with the distribution of the assets of Federal land bank associations and Federal land banks (12 CFR 611.1167 and § 611.1174, respectively), the assets of associations and land banks are distributed in descending order to claimant for the following items: *first*, administrative expenses of the receivership, *second*, claims for taxes, *third*, claims of secured creditors, *fourth*, claims of the supervising bank (for the FLBAJR) or collateralized individual banks bonds and consolidated and Systemwide bond liabilities (for the FLBJR), and *fifth*, claims of general creditors. Each class of claims must be paid in full, or provision made for payment, before claims of a subordinate class may be paid.

In accordance with the preferred stock purchase agreement and consistent with provisions of 12 CFR 611.1167 and 611.1174, following the payment of all claims against the FLBJR and FLBAJR that have a higher priority than the claims of holders of consolidated and Systemwide bonds, any remaining funds of the institutions shall, immediatley prior to the final discharge of the receiver, be refunded to the Assistance Corporation in connection with the simultaneous retirement of an equal amount of preferred stock.

The books and records of the receiverships have been audited by an independent public accountant. The FCA, based on examinations of the records and operations of the FLBJR and FLBAJR and the result of the independent audits, has determined that all assets of the FLBJR and FLBAJR have been disbursed, or provision has been made for their disbursement, in accordance with the provisions of 12 CFR 611.1167 and 611.1174. In the case of the FLBAJR, the undisbursed assets of the FLBAJR are insufficient to pay any claims that are junior to the claims of the FLBJR as provided for in 12 CFR 611.1167(a)(4). In the case of the FLBJR, the undisbursed assets of the FLBJR are insufficient to pay any claims that are junior to the claims of holders of consolidated and Systemwide bonds are provided for in 12 CFR 611.1174(c)(5).

Accordingly, the FCA has determined that the assets of the FLBJR and FLBAJR are insufficient to pay any asserted or unasserted claims of general creditors.

Signed by Harold B. Steele, Chief Executive Officer, Farm Credit Administration, on November 14, 1990.

Dated: November 15, 1990.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 90-27430 Filed 11-20-90; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; City of Los Angeles Harbor Department/ Containerfreight Transportation Co.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224-200441.

Title: City of Los Angeles Harbor Department/Containerfreight Transportation Co. Terminal Agreement.

Parties: City of Los Angeles Harbor Department (City), Containerfreight Transportation Co. (CFT).

Synopsis: The Agreement provides that the City will grant CFT permission to occupy and use certain lands, water and facilities within the Harbor District. CFT shall use the premises solely for warehousing, storing, handling and distribution of goods and commodities, including the storage of containers, chassis and trucks, and for purposes incidental thereto. CFT agrees to pay City a monthly rental of $57,088.00 for use of the premises, and all utility charges for services furnished to the premises or used in connection with its occupancy.

Dated: November 15, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-27350 Filed 11-20-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; Jacksonville Port Authority/Macmillan Bloedel Building Materials Terminal Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement no: 224–200442.

Title: Jacksonville Port Authority/Macmillan Bloedel Building Materials Terminal Agreement.

Parties: Jacksonville Port Authority (Port) Macmillan Bloedel Building Materials (MBBM).

Synopsis: The Agreement provides the warfage terms and the charges MBBM will pay the Port on forest products moving through certain facilities at the Port's Talleyrand Docks and Terminal.

By Order of the Federal Maritime Commission.

Dated: November 16, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–27367 Filed 11–20–90; 8:45 am]

BILLING CODE 6730–01–M

Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice that on November 13, 1990, the following agreement was filed with the Commission pursuant to section 5 of the Shipping Act of 1984 and was considered effective that date to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No: 224–000084–002.

Title: Pacific Maritime Association Assessment Agreement.

Parties: Members of the Pacific Maritime Association.

Synopsis: The Agreement amends and restates the basic agreement concerning assessments paid to the International Longshoremen's and Warehousemen's Union and Pacific Maritime Association employee benefit costs. The Agreement clarifies the basic agreement's terms and conditions, leaving the basic assessment formula in place.

Dated: November 15, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–27352 Filed 11–20–90; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; State of Hawaii/Puget Sound Tug & Barge Co.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–011004–001

Title: State of Hawaii/Puget Sound Tug & Barge Company, dba Hawaiian Marine Lines Terminal Agreement.

Parties:

State of Hawaii
Puget Sound Tug & Barge Company, dba Hawaiian Marine Lines.

Synopsis: The Agreement reflects the deletion of an area of 578 square feet from leased premises at Honolulu Harbor, Oahu, Hawaii and a reduction in annual rent from $22,164.00 to $19,390.00.

Dated: November 15, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–27351 Filed 11–20–90; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; Vessel Operators Hazardous Materials Association, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011290–003.

Title: Vessel Operators Hazardous Materials Association Agreement.

Parties:

America-Africa-Europe Line GMBH
Atlantic Container Line B.V.
Evergreen Marine Corporation (Taiwan), Ltd.
Farrell Lines, Inc.
Hamburg-Sudamerikanische Dampfshifffahrts Gesellschaft Eggert & Amsinck (Columbus Line)
Hapag-Lloyd AG
Independent Container Line Ltd.
Kawasaki Kisen Kaisha Ltd.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Line
Neddloyd Lijnen B.V.
Nippon Yusen Kaisha Line
P&O Containers, Ltd.
Sea-Land Service, Inc.
Wilh. Wilhelmsen Ltd. AS
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would add Crowley Maritime Corporation as a party to the Agreement. The parties have requested a shortened review period.

Dated: November 15, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–27349 Filed 11–20–90; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

Advisory Committee on the Food and Drug Administration; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the Advisory Committee on the Food and Drug Administration (FDA) will hold a meeting on Monday, December 17, 1990 from 8:30 a.m. to 5 p.m. and Tuesday, December 18, 1990 from 8:30 a.m. to 1 p.m. The meeting is open to the public and will be held in the Clark Room of the Holiday Inn Capitol Hill located at 550 C Street, SW., Washington, DC 20005. Public registration will begin one half hour prior to the beginning of the meeting on each day.

The purpose of this meeting is to discuss the results of the Subcommittee meetings which took place this Fall. The Committee will identify crosscutting issues, that have an impact on the mission, structure, and responsibilities of FDA, including resource questions such as facilities, personnel, and field and enforcement issues, for further discussion.

FOR FURTHER INFORMATION CONTACT: Sheryl Rosenthal, Advisory Committee on the Food and Drug Administration, Department of Health and Human Services, room 740–G Humphrey Building, 200 Independence Avenue, SW., Washington DC 20201. Telephone number (202) 245–7305.

Dated: November 14, 1990.

Eric M. Katz,

Executive Secretary, Advisory Committee on the FDA.

[FR Doc. 90–27345 Filed 11–20–90; 8:45 am]

BILLING CODE 4160–01–M

Food and Drug Administration

[Docket No. 90F–0363]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe and expanded use of calcium bis[monoethyl(3,5-di-*tert*-butyl-4-hydroxybenzyl) phosphonate] as a stabilizer for low density polyethylene and olefin copolymers.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP OB4229) has been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposes to amend the food additive regulations in

§178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe and expanded use of calcium bis[monoethyl(3,5-di-*tert*-butyl-4-hydroxybenzyl)phosphonate) as a stabilizer for low density polyethylene and olefin copolymers complying with 21 CFR 177.1520.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated November 14, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90–27374 Filed 11–20–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90F–0364]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *N,N*-bis(2-ethylhexyl)-*ar*-methyl-1*H*-benzotriazole-1-methanamine as a copper deactivator for lubricants.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4233) has been filed by Ciba-Geigy Corp., Seven Skyline Drive, Hawthorne, NY 10532–2188. The petition proposes to amend the food additive regulations in § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) to provide for the safe use of *N,N*-bis(2-ethylhexyl)-*ar*-methyl-1*H*-benzotriazole-1-methanamine as a copper deactivator for lubricants complying with 21 CFR 178.3570.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 14, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90–27372 Filed 11–20–90; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 90F–0350]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the additional safe uses of hexamethylene bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate) as a stabilizer in various polymers intended for food-contact use.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP OB4227) has been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the additional use of hexamethylene bis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate) as a stabilizer in ploymers complying with 21 CFR 175.105, 175.125, 175.300, 175.320, 176.170, 176.180, 177.1210, 177.2600, 178.3800, and 178.3850, respectively.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 14, 1990.
Fred R. Shank,
Director, Center for Food Safety and Applied Nutrition.
[FR Doc. 90-27373 Filed 11-20-90; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 90N-0384]

Drug Export; Minitran® (Nitroglycerin) Transdermal System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that 3M Pharmaceuticals has filed an application requesting approval for the export of the human drug Minitran® (nitroglycerin) Transdermal System to France, Italy, and New Zealand.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frank R. Fazzari, Division Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that 3M Pharmaceuticals, 3M Center Bldg. 270-3A-01, St. Paul, MN 55144-1000, has filed an application requesting approval for the export of the drug Minitran® (nitroglycerin) Transdermal System, to France, Italy, and New Zealand. This product is used for the prevention of angina pectoris due to coronary artery disease. The application was received and filed in the Center for Drug Evaluation and Research on September 17, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 3, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: November 6, 1990.
Daniel L. Michels,
Director, Office of Compliance, Center for Drug Evaluation and Research.
[FR Doc. 90-27375 Filed 11-20-90; 8:45 am]
BILLING CODE 4160-01-M

Health Care Financing Administration

[BPO-081-N]

Medicare Program; Establishing Procedures for Transmitting Information Between Medicare Carriers and Medicare Supplemental Insurers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice announces and describes the procedure for the automatic transfer of claims information from Medicare carriers to Medicare supplemental (Medigap) insurers when a beneficiary has assigned his or her right of payment to a participating physician or supplier. It delineates the roles of the Medicare carriers, Medigap insurers, State insurance departments, beneficiaries, physicians and suppliers, and HCFA.

The procedure for the automatic transfer of claims is required by section 1842(h)(3)(B) of the Social Security Act, as added by section 4081(a) of the Omnibus Budget Reconciliation Act of 1987 and is intended to speed payment of Medicare supplemental insurance benefits to participating physicians and suppliers.

EFFECTIVE DATE: This procedure is effective for dates of service on or after January 1, 1989, as set by statute (Pub. L. 100-203).

FOR FURTHER INFORMATION CONTACT:

Telephone inquiries: Joan Kral, (301) 966-7160.
Written inquiries: Marc Thomas, Health Care Financing Administration, Bureau of Program Operations, 367 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

SUPPLEMENTARY INFORMATION:

I. Background

A. Medicare Supplemental Policies

The Medicare program consists of two separate but complementary insurance programs, a Hospital Insurance Benefits program, known as part A, and a Supplementary Medical Insurance program, known as part B. The Medicare program was not designed to cover the total cost of providing medical care for its beneficiaries. Both parts A and B have deductible and coinsurance cost sharing provisions. Also, there are a number of items not covered under either of Medicare's two insurance programs such as custodial nursing home care, dental care, and eyeglasses. Beneficiaries may either pay the full cost of these services out-of-pocket or may choose to purchase additional private insurance to help pay the costs.

Nearly two-thirds of all Medicare beneficiaries have some type of private health insurance coverage in addition to Medicare. This coverage includes Medicare supplemental policies, employer sponsored health plans, as well as limited benefit plans such as indemnity policies, specified disease coverage and long-term care policies.

Medicare supplemental policies are designed to fill specific gaps in the Medicare benefit structure. These policies typically offer coverage of some or all of Medicare's deductible and coinsurance amounts and sometimes include coverage of services not covered under Medicare. There are many varieties of supplemental policies with premiums and benefit structures designed to meet the needs of people with a variety of incomes. A characteristic of most of these policies, however, is that they base their payments on Medicare's coverage and reimbursement structures. They seldom pay more than the 20 percent coinsurance amount of the "reasonable charge" recognized by Medicare. They rarely pay any of the difference between the "reasonable charge" and the actual amount that physician or supplier of the services might charge. Furthermore, they frequently do not cover a broader range of services than are covered by Medicare. The premiums for these policies are usually adjusted annually to compensate for increases in Medicare's deductible and coinsurance amounts.

In an effort to address certain abuses associated with the sale of health insurance to the elderly, the Congress enacted legislation, known as the Baucus Amendment. Effective June 8, 1980, section 507(a) of the Social Security Disability Amendments of 1980 (Pub. L. 96-265) added section 1882 to title XVIII of the Social Security Act (the Act) concerning minimum standards for Medicare supplemental health insurance policies. Medicare regulations at 42 CFR part 403, subpart B, implement section 1882 of the Act.

Section 1882 of the Act and its implementing regulations address only Medicare supplemental policies and do not include policies offered by an employer or sold to Medicare beneficiaries as limited health benefit insurance plans. For the purposes of this notice, the term "Medigap" is used to mean a Medicare supplement insurance policy as defined in section 1882(g)(1) of the Act. This section defines a Medicare supplemental policy as a health insurance policy or other health benefit plan, offered by a private company to those entitled to Medicare benefits, that provides reimbursement for Medicare approved charges not reimbursable because of the applicability of deductibles, co-insurance amounts, or other Medicare imposed limitations. It explicitly excludes a policy or plan offered by an employer to employees or former employees, as well as a policy or plan offered by a labor organization to members or former members.

B. The Participating Physician/Supplier Program

Under part B of Medicare, which covers physicians' services and other medical and health services, the beneficiary is free to select any physician or supplier he or she chooses. Physicians and suppliers are also free to accept or not accept assignment of the beneficiary's claim. Assignment is an agreement between the physician or supplier and the Medicare beneficiary by which the beneficiary transfers to the physician or supplier his or her right to benefits based on covered services specified on the assigned claim. If a physician accepts assignment of a case, he or she, in turn, agrees to accept the Medicare approved charge as payment in full for the service or services furnished. If the physician or supplier does not accept assignment, he or she reserves the right to bill the beneficiary for more than the Medicare approved amount and must bill the beneficiary directly. The beneficiary must then pay the physician or supplier and file a claim for reimbursement with the Medicare carrier and Medigap insurer, if the beneficiary has such a policy. The beneficiary is generally paid 80 percent of the Medicare approved charge by the Medicare carrier and 20 percent of the Medicare approved amount by the Medigap insurer. On non-assigned claims, the beneficiary must pay the difference between the doctor's actual bill and the Medicare approved amount.

Section 2306 of the Deficit Reduction Act of 1984 (Pub. L. 98-369) established a voluntary participation system for physicians and suppliers similar to the participating physician agreements successfully used by some Blue Shield plans in their private businesses. Under the participating physician and supplier program, physicians and suppliers are encouraged to sign "participation" agreements with Medicare, requiring them to accept assignment for all services provided to all Medicare beneficiaries during a specified time period. By selecting a participating physician or supplier, the beneficiary has the assurance that he or she will not be billed more than the Medicare approved charge for covered services.

Under current law, physicians and suppliers who accept assignment (either as a participating physician or supplier or on a case-by-case basis) must submit a claim to Medicare for payment of covered services. With limited exceptions, the Medicare payment amount is normally 80 percent of the Medicare approved charge for a covered service. To receive payment for the standard 20 percent coinsurance, physicians and suppliers must currently bill either the beneficiary or the beneficiary's Medigap insurer (if the beneficiary has assigned to the doctor or supplier the right to be paid directly by the private insurer). Thus, physicians or suppliers must send two bills, one to the Medicare carrier and a second one to the beneficiary or Medigap insurer.

Some Medicare carriers currently exchange claims information with Medigap insurers on a voluntary basis. However, there is no required procedure for so streamlining the claim-filing process. Moreover, under most of these "complimentary" arrangements, the Medigap insurer reimburses the beneficiary and does not provide for the assignment to the physician or supplier of the beneficiary's right to payment.

C. Requirements of the Omnibus Budget Reconciliation Act of 1987

Section 4108(a) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203, enacted December 22, 1987) adds section 1842(h)(3)(B) to the Act and requires the Secretary to establish a procedure whereby a Medicare beneficiary may assign his or her right to payment for an item or service provided by a participating physician or supplier under a Medicare supplemental policy (as described in section 1882(g)(1) of the Act) in which he or she is enrolled. As required by section 4081(a), when the Medicare carrier receives such a properly executed dual assignment of a claim, the carrier must transmit to the Medigap insurer a notice and any additional information that the Secretary determines to be appropriate in order to enable the Medigap insurer to determine the existence and amount of any payment due under the Medigap policy. The Secretary may enter into agreements for the electronic transmittal of such claim information. The Secretary is required to impose user fees for all transmittals of information to Medigap insurers, whether provided electronically or otherwise.

Section 4081(b) of Public Law 100-203 amends section 1882 of the Act to complement section 4081(a) by establishing standards for direct transmittal by Medicare carriers to Medigap insurers of Part B claims submitted for services to beneficiaries by participating physicians and suppliers.

Section 4081(b)(1)(A) amends section 1882 of the Act to require States to adopt the requirements added by section 4081(b)(2) as part of their regulatory programs for Medicare supplemental policies in order to have the regulatory programs approved by the Supplemental Health Insurance Panel. As a further condition for approval, section 4081(b)(1)(C) amends section 1882 of the Act to require States to periodically (at least annually) provide the Secretary with a list containing the name and address of the issuer of each Medigap policy issued in the State and the name and number of each policy—including an indication of policies that have been previously approved, newly approved, or withdrawn from approval since the previous list was provided.

Section 4081(b)(2)(C) amends section 1882 to the Act to add claim processing requirements for Part B bills submitted by participating physicians and suppliers to the minimum Federal standards required for certification of Medicare supplemental policies by requiring that an issuer of a Medicare supplemental policy—

• Accept a notice from a Medicare carrier as a claim for benefits in place of any other claim form otherwise required and make a payment determination on the basis of the information contained in that notice;

• When a notice is received from a Medicare carrier—

—Notify the participating physician or supplier and the beneficiary of the payment determination, and

—Pay the participating physician or supplier directly;

• At the time of enrollment, provide each enrollee with a card listing the policy name, number, and a central mailing address to which notices from a Medicare carrier concerning the policy may be sent;

• Agree to pay any user fees for claim notices that are transmitted electronically or otherwise; and

• At least annually, provide the Secretary of Health and Human Services, with a central mailing address to which all claims may be sent by carriers.

Section 4081(c)(2) of Public Law 100–203 requires that the provisions of section 4081(b)—

• Apply to Medigap policies for services furnished on or after January 1, 1989; or

• Are effective the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1989, if the Secretary identifies a State in which legislation is required to amend the State's regulatory program for Medicare supplemental policies, and if the legislature was not scheduled to meet in 1988 or had not enacted such legislation before July 1, 1988.

We are developing a separate regulation that will implement section 4081(b) and (c) of Public Law 100–203. This regulation will also implement section 221 of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) and portions of the Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101–234) by adding requirements for certification of Medicare supplemental policies under the Federal Voluntary Certification Program or for approval under State regulatory programs, that are deemed to have standards that are equal to or more stringent than those of the Federal program.

II. Roles and Responsibilities of Involved Parties

A. Medicare Carriers

Medicare carriers will be provided with Medicare Carriers Manual (MCM) instructions detailing their role in implementing the operating procedures for the automatic transfer of claims information to Medigap insurers. Carriers have already implemented interim procedures to transmit this information to Medigap insurers. It will not be necessary for carriers to retransmit claims information previously generated under interim procedures. The carriers must make all systems modifications necessary to produce and transmit claims information to Medigap insurers. Medicare carriers will forward information for those processed claims that include approved charges for which payment is made at 80 percent or for which no payment is made but for which the approved charge was applied to the Medicare deductible. Claims that are denied (that is, no approved charges are included on the claim) will not be transferred to Medigap insurers unless they specifically negotiate agreements with carriers to receive and pay for those claims transmissions. Neither the original claim nor supporting documentation will be transmitted with the notice. The notice transmitted to the Medigap insurer by the carrier will include the physician's or supplier's name, address and tax identification number, as well as the procedure codes for the services furnished.

Carriers will provide instructions to participating physicians and suppliers regarding correct completion of claim forms for transfer of information. Physicians and suppliers should be advised that a failure to supply all the additional information needed (the supplemental insurer's name and complete mailing address, enrollee's identifying number and address, and evidence of a properly executed assignment) will preclude the transmittal of the claim to the Medigap insurer.

If all required information is correctly and completely recorded on the claim and assignment properly executed, the Medicare carrier will transmit the claims information to the named Medigap insurer.

If the claim form is properly completed, the carrier will presume that the name of the insurer entered on the form is a Medicare supplemental insurer within the meaning of section 1882(g)(1) of the Act. We will be receiving, both from States and insurers, names and addresses of insurers selling policies that meet that definition. We expect to complete a unified listing of those insurers (a comprehensive national list of Medigap insurers compiled by combining information from the State insurance departments and the Medigap insurers) and provide it to our carriers for their guidance and as a reference to check the correctness of addresses. However, the carriers will have no monitoring or enforcement role with regard to determining whether the supplemental policies under which claims are submitted have been State approved or Federally certified.

Minimally, transmissions of claims information are required at least monthly. When the Medicare claim is processed, the carrier will issue notices to both the beneficiary and the physician or supplier regarding the future transmission of Medigap claims information.

In those instances when Medigap information will be transmitted, the physician's or supplier's remittance notice must state that information concerning the Medicare approved charges will be sent to the named insurer within 30 days for payment under the insured's Medicare supplemental policy. It must further state that questions regarding payment of Medicare supplemental benefits should be directed to that insurer. The beneficiary will receive the same message on his or her Explanation of Medicare Benefits (EOMB). (The EOMB is the notice sent to beneficiaries to explain payment and coverage determinations.)

Hardcopy notices transmitted to Medigap insurers may be returned to carriers by the post office as undeliverable. Carriers will retransmit notices that are returned due to carrier error. They will develop procedures to advise beneficiaries, physicians, and suppliers of their responsibility for filing Medigap claims when notices are returned but not retransmitted.

The carrier must charge each Medigap insurer for the cost of preparing and sending them claims information (whether by paper or electronically) for participating physicians and suppliers. Fees will be established in accordance with the procedures used by Medicare carriers for transmitting Medicare claims information to complementary insurers. Complementary insurers are supplemental insurers that currently have written agreements with Medicare contractors for the routine transfer of Medicare claims information. The agreement includes the method of transfer (electronic or paper), the amount to be charged to the complementary insurer based on the Medicare contractor's cost to process the claim, and the cost to transfer the information to the complementary insurer. The agreement also must provide for review by the Office of Inspector General, and any necessary adjustments are based on that review. The procedures for transmitting to Medigap insurers are being developed and will be contained in section 4600ff of the MCM, part 1.

User fees charged Medigap insurers for claims information will be capped in fiscal year 1990 at $1.00 per claim, regardless of the means or frequency of transmission. This $1.00 cap for fiscal year 1990 is an interim rate subject to audit review and possible revision, if deemed appropriate by HCFA. Medicare carriers and Medigap insurers may enter into formal agreements for the exchange of this information by paper or electronic transfer. Medigap insurers are not required to furnish eligibility files to Medicare carriers as a precondition to entering into agreements for transmittal of claims information by electronic means. For agreements involving electronic transfer, Medigap insurers will be charged the same rate that the Medicare contractor charges for complementary insurance plus any additional costs incurred specifically for the Medigap claim. Additional Medigap costs will include direct data entry of the insurer's name and address and the insured's policy identification number and address as well as billing and mailing. For fiscal year 1990, all these charges are subject to the $1.00 per claim cap unless the insurer requests additional information or a special format. All agreements for the exchange of claims information are subject to review (and adjustment if necessary) by the Department of Health and Human Services' Office of the Inspector General.

Existing complementary agreements need not be disturbed, except that they must be modified to recognize the beneficiary's right to assign Medigap payment to participating physicians and suppliers on a claim by claim basis. These agreements must also be modified to state that it is the beneficiary's right to designate a particular insurer to receive a notice for payment to the participating physician or supplier. In cases involving multiple Medigap policies, other insurers may receive notices of claim information under complementary arrangements with payment made to the beneficiary.

Carriers will be required to report to HCFA the credit for Medigap claims information transferred. This credit must be identified on the appropriate line on HCFA Form-1524. Carriers are also required to submit a supplemental schedule with the fiscal year budget request and the final administrative cost proposal, identifying the gross volume of claims transferred, the number of claims returned, the net volume of claims transferred, the amount of costs incurred, the gross user fee assessed, the amounts credited for returned claims, the net user fee assessed, and the user fees collected. The originals of these forms are be sent to the appropriate HCFA regional office and a copy to: Health Care Financing Administration, Division of Contractor Financial Management, Bureau of Program Operations, P.O. Box 26577, Baltimore, MD 21207.

Carriers should determine the frequency of billings by the volume of claims transferred. If the volume increases, so should the frequency of billing. Medicare carriers should not bill Medigap insurers for claims transferred erroneously when the information furnished on the claim form is incorrect. Examples of these errors could include: A beneficiary no longer insured by the insurer, a claim paid 100 percent by Medicare, a claim denied by Medicare, an incorrect beneficiary or provider number, an incorrect address, the named policy is not a Medicare supplemental policy, or the claim is a duplicate of the claim already filed by the beneficiary.

If a Medigap insurer fails to pay the user fees, the carrier is to inform the insurance department of the State in which the policyholder resides. If that State insurance department does not accept jurisdiction, the carrier will inform the appropriate HCFA Regional Office (RO). The RO will contact the Division of Operational Initiatives, HCFA Central Office (CO), for assistance in determining the department having jurisdiction. If the carrier contacts the recommended insurance department and the problem remains unresolved, the claim for the unpaid user fees (plus any interest accrued) will be treated as a HCFA debt and will be handled according to the procedures for claims collection and compromise set forth at 42 CFR 401.601 through 401.625.

B. Medicare Beneficiaries

Beneficiaries initiate the automatic transmittal of claims information by exercising their right to assign payment of Medigap as well as Medicare benefits for the services of participating physicians or suppliers. In practice, the beneficiary will present a Medigap enrollment card (supplied by the insurer) to the participating physician or supplier. The card lists the policy name, number (or enrollee identifier), and central mailing address to which carrier notices should be mailed. It is recommended but not required that the card clearly indicate that the policy is designated as Medicare supplemental coverage. If not stated on the card (or if the beneficiary is unable to produce the card for examination), the beneficiary is to provide the physician or supplier with the name of his or her Medigap insurer. On the present standard claim form, HCFA 1500, the beneficiary executes assignment of Medigap benefits by signing in block 13. (Physicians and suppliers that submit claims via electronic media must meet additional requirements for retention of properly executed assignments. Carriers will inform those physicians and suppliers of those requirements.)

Should the Medicare carrier be unable to transmit claims information to the Medigap insurer due to insufficient information, the Medigap transmission message is omitted from the beneficiary's EOMB. It is then the beneficiary's responsibility to file a separate Medigap claim with his or her insurer. Should the Medigap claim transmittal be completed and the Medicare beneficiary is dissatisfied with the Medigap insurer's decision or handling of the claim, the beneficiary would pursue the matter directly with the Medigap insurer.

C. Physician or Supplier

The participating physician or supplier is required to accept assignment of Medigap as well as Medicare benefits if the beneficiary chooses to assign his or her rights to these benefits to the physician or supplier. In cases of electronic transfers, the physician or supplier keeps evidence on file at his or her office that the beneficiary has properly executed an assignment.

After notification by the carrier that a claim has been transmitted to the Medigap insurer, all questions regarding payment under the Medigap policy are to be directed or referred to the private insurer. If the identifying information is incomplete or if more than one Medigap insurer was entered on the claim form, the Medigap transmission message is omitted from the remittance notice. Since failure to transmit the claims information to the Medigap insurer makes the Medigap assignment invalid, care should be taken by the physician's

staff to supply complete and correct information on the original claim in accordance with carrier billing instructions. In any case, the physician or supplier's office may, at its discretion, assist the beneficiary in filing a separate Medigap claim. When Medicare is secondary payer, the physician or supplier files for the primary benefits first.

D. Medigap Insurers

Medigap insurers must—

• Provide the Secretary of Health and Human Services, at least once a year, with an address to which claims should be sent for all policies meeting the definition of "Medicare supplemental" contained in section 1882(g)(1) of the Act. The initial report should be sent to the individual at the address specified for written inquiries in the section entitled **FOR FURTHER INFORMATION** of this preamble. Subsequently, insurers will be contacted by the Department of Health and Human Services regarding the due dates of these reports, their format, and where and to whom they must be sent.

• Issue cards to enrollees at the time of enrollment. The cards must contain the policy name and number and a central mailing address for claims processing. It is suggested (but not required) that these cards designate the policy as Medicare supplemental coverage to reduce the possibility of its being confused with other types of policies that do not meet the definition of Medicare supplemental insurance contained in section 1882(g)(1) of the Act. It is further suggested (but not required) that insurers issue cards to current enrollees to facilitate the identification of their policies.

• Accept the information transmitted by Medicare carriers in the format provided by the carrier, or bear the cost of developing and maintaining any system which uses a different format as negotiated with the carrier.

• Make a payment determination based on the information transmitted by the Medicare carrier.

• Notify the participating physician or supplier of the payment determination within 30 days of receipt of information (or within the specific "prompt payment") guidelines required under individual State law). Insurers must also notify the beneficiary of the payment determination. One possible means of notifications is sending the beneficiary a copy of the notice sent to the participating physician or supplier.

• Make "user fee" payments directly to Medicare carriers within 30 days of receiving appropriate billing notices for the transmittal of claims.

E. State Insurance Departments

A State must incorporate the provisions of section 4081 of Public Law 100–203 into its regulatory program for Medigap policies in order for the program to be approved by the Supplemental Health Insurance Panel established under section 1882 of the Act. The function of the Panel is to review the States' legislative and regulatory requirements for Medicare supplemental policies to determine whether the individual State standards are equal to or more stringent than those set forth in section 1882(b)(1) of the Act. States with Panel-approved programs are not subject to the Federal Voluntary Certification Program (VCP) for Medigap policies also established under section 1882 of the Act.

Additionally, at least once a year, the States are required under section 1882(b)(1)(E) of the Act to report to the Secretary of the Department of Health and Human Services the names and addresses of all Medigap insurers having policies in force within the State and the name and number of each policy. After the first list is submitted, subsequent lists should indicate whether policies were previously approved, newly approved, or withdrawn from approval since the previous list was submitted. The Department of Health and Human Services will be corresponding with State insurance departments regarding reporting dates, and where and to whom the information is to be sent.

F. HCFA

HCFA will fund the necessary modifications to the carriers' systems to enable them to transmit the claims information to Medigap insurers and will fund costs related to these procedures, not billed to the Medigap insurers, as carrier administrative costs in accordance with section 1842(c)(1) of the Act. HCFA will also furnish carriers with instructions for educating participating physicians and suppliers' offices in the proper completion of claims. Minimum requirements for executing transfer agreements between carriers and Medigap insurers and setting the user fees charged for routine transmittal will also be manualized. Lastly, through the Office of Inspector General, HCFA will authorize audits to ensure that user fees are reasonable and reflect actual costs of keying and transmitting notices.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any notice that has the effect of a rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

• Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We have determined that this general notice does not meet the criteria for a major rule under E.O. 12291. Therefore, we have not prepared a regulatory impact analysis.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 through 612) unless the Secretary certifies that a rule or notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, only rules that meet the definition of a rule specified at 5 U.S.C. 553 are subject to the provisions of the RFA.

We have determined that this general notice will not have a significant impact on a substantial number of small entities. For this reason, we have not prepared a regulatory flexibility analysis.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice of proposed rulemaking may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For the purposes of section 1102(b) of the Act, we define a small rural hosptial as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area. We are not preparing a rural impact statement since we have determined that this general notice will not ahve a significant economic impact on the operations of a substantial number of small rural hospitals.

IV. Information Collection Requirements

The following information collection requirements are contained in this general notice and are subject to Office of Management and Budget (OMB) review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*):

• The requirements in parts II.A and II.C that the physician or supplier provide additional information to the carrier, that is, the supplemental insurer's name and mailing address, the enrollee's identifying number, and evidence of a properly exercised assignment;

• The required content of the Medigap insurance cards specified in parts II.B and II.D;

• The requirement in part II.D that the Medigap insurer notify the physician or supplier and the beneficiary of the payment determination.

These paperwork collection requirements have been cleared along with those for HCFA Pub. 14–3, section 4700–4706. The clearance number is 0938–____.

Authority:
Sec. 1842(h)(3) of the Social Security Act (42 U.S.C. 1395u(h)(3).

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: April 30, 1990.

Note: This document was received by the Office of the Federal Register November 16, 1990.

Gail R. Wilensky,
Administrator, Health Care Financing Administration.

[FR Doc. 90–27392 Filed 11–20–90; 8:45 am]
BILLING CODE 4120–01–M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of Heart, Lung, and Blood Research Review Committee A

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on November 29–30, 1990 in building 31, Conference room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on November 29, 1990 from 9 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on November 29, 1990, from approximately 10 a.m. until adjournment on November 30 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236 will provide a summary of the meeting and a roster of the committee members.

Dr. Alfred Small, Executive Secretary, Heart, Lung, and Blood Research Review Committee A Westwood Building, room 552, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7917, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; National Institutes of Health)

Dated: November 7, 1990.

Betty J. Beveridge,
Committee Management Officer, NIH.

[FR Doc. 90–27401 Filed 11–20–90; 8:45 am]
BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of Environmental Health Sciences Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on November 27–28, in building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina. The meeting will be open to the public on November 27 from 9 a.m. to approximately 2 p.m. for general discussion. Attendance by the public is limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on November 27, from 2 p.m. to adjournment on November 28, for the review, discussion and evaluation of individual grant applications and contract proposals. These applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Drs. John Braun, Carol Shreffler or Donald McRee, Executive Secretaries, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (telephone 919–541), will provide summaries of meeting and rosters of committee members.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated November 7, 1990.

Betty J. Beveridge,
Committee Management Officer, NIH

[FR Doc. 90–27492 Filed 11–20–90; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Alaska Outer Continental Shelf; Notice of Availability and Proposed Notice of Sale

Alaska Outer Continental Shelf (OCS); Notice of Availability of Proposed Notice of Sale, Beaufort Sea Planning Area, Oil and Gas Lease Sale 124.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale.

The proposed Notice of Sale for Sale 124, Beaufort Sea Planning Area, may be obtained by written request to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, room 544, Anchorage, Alaska 99508–4302, telephone (907) 261–4691.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of the bid opening. The bid opening is scheduled for April 1991; however, due to the requirements of the recently enacted Coastal Zone Act Reauthorization Amendments, bid opening may be delayed.

This Notice of Availability is hereby published, pursuant to 30 CFR 256.29(c), as a matter of information to the public.

Dated: November 15, 1990.
Barry Williamson,
Director, Minerals Management Service.
[FR Doc. 90-27366 Filed 11-20-90; 8:45 am]
BILLING CODE 4310-MR-M

National Park Service

Urban Park and Recreation Recovery Program

AGENCY: National Park Service, U.S. Dept. of the Interior.

ACTION: Notice of FY-1991 Grant Round—UPARR Rehabilitation grants.

SUMMARY: This notice announces the availability of grant funds under the Rehabilitation phase of the Urban Park and Recreation Recovery Program (UPARR) and provides information on the application process including eligible recipients and deadlines for submission of proposals.

FOR FURTHER INFORMATION CONTACT: Mr. Sam L. Hall, Chief, Recreation Grants Division, National Park Service, Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127; (202) 343-3700.

SUPPLEMENTARY INFORMATION: For Fiscal Year 1991, Congress has appropriated $19,895,000 for the funding of Rehabilitation projects under the Urban Park and Recreation Recovery Act of 1978 (Pub. L. 95-625). Grants will be limited to $250,000 per recipient. The tentative cut-off date for the submission of preapplications to NPS Regional Offices is February 8, 1991.

Rehabilitation grants will be targeted to rehabilitate existing neighborhood areas and facilities which have deteriorated to the point where health and safety are endangered or the community's range of quality recreation service is impaired. Proposals must be designed to provide recreation services for residents within a specified area identified by the applicant. Proposals may identify improvements at multiple sites or facilities, each of which must be individually addressed. Grants may be used to remodel, rebuild, expand, or develop existing outdoor or indoor recreation areas and facilities.

Eligible Jurisdictions: Eligible urban jurisdictions as listed in 36 CFR part 72, appendix B and which have an approved Recovery Action Program (RAP) on file with NPS will be eligible to compete for Rehabilitation grant funds. Additional urban jurisdictions having an approved RAP and meeting the criteria for eligibility described in 36 CFR part 72, appendix A may also compete. All projects must be in accord with the priorities outlined in the Approved RAPs.

Grant Implementation and Timing: Grantees must comply with all applicable Federal laws and regulations for the UPARR program, which includes completion of a final grant agreement within 120 days of the grant offer.

Preapplication Requirements: Local Chief Executives applying for UPARR grants will be required to certify, in the preapplication, that the grantee has matching funds available and that it will comply with all requirements of the UPARR program. Applicants must certify that they have adequate control and tenure over properties to be assisted through UPARR and must identify in their applications the type of control they have over those properties. Additional requirements are outlined in the UPARR Preapplication Handbook available from the Regional Offices of NPS.

Matching Requirements: UPARR Rehabilitation grants are awarded on a 70/30 (Federal/local) matching basis. As an incentive for State involvement in the program, the Federal government will match, dollar for dollar, State contributions to the local share of the total project cost, up to 15 percent of the approved grant. The Federal share is limited to 85 percent of the approved grant cost.

Pass-Through Funding: At the discretion of the applicant jurisdiction, Rehabilitation grants may be transferred, in whole or in part, to independent general or special purpose local governments, private nonprofit agencies or community groups, and county or regional park authorities that provide recreation opportunities to the general population within the jurisdictional boundaries of the applicant jurisdiction. In such situations, the applicant jurisdiction will bear full legal responsibility and liability for passed-through funds.

Post-Completion Requirements: In accordance with Section 1010 of the UPARR Act of 1978, assisted properties may not be converted to other than public recreation use without the approval of NPS and the replacement of the converted site or facility with one of reasonably equivalent usefulness and location.

FOR FURTHER INFORMATION: Interested jurisdictions should consult their NPS Regional Office for further information including grant round schedule dates and for technical assistance in applying for funding. The NPS Regional Offices are listed below:

Mid-Atlantic: Regional Director, NPS, 143 S. 3rd Street, Philadelphia, PA 19106, 215-597-7995.	CT, DC, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, VT, WV.
Mid-West: Regional Director, NPS, 210 S. 16th Street, Omaha, NE 68102, 402-221-3202.	IA, IL, IN, KS, MI, NM, MO, NE, OH, WI.
Pacific Northwest: Regional Director, NPS, 83 S. King Street, Suite 212, Seattle, WA 98104, 206-442-4720.	AK, ID, OR, WA.
Rocky Mountain: Regional Director, NPS, P.O. Box 25287, Denver, CO 80225, 303-969-2850.	CO, MT, ND, SD, UT, WY.
Southeast: Regional Director, NPS, 75 Spring Street, 10th Fl., Atlanta, GA 30303, 404-331-2810.	AL, FL, GA, KY, MS, NC, PR, SC, TN, VI.
Southwest: Regional Director, NPS, P.O. Box 728, Sante Fe, NM 87501, 505-988-6705.	AR, LA, NM, OK, TX.
Western: Regional Director, NPS, 450 Golden Gate Avenue, Box 36063, San Francisco, CA 94102, 415-556-8360.	AS, AZ, CA, GU, HI, NV, CM.

(Catalog of Federal Domestic Assistance #15.919)

Authority: Title X, National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 2501-2514.

Dated: November 14, 1990.
Herbert S. Cables, Jr.,
Acting Director, National Park Service.
[FR Doc. 90-27435 Filed 11-20-90; 8:45 am]
BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-318]

Initial Determination Terminating Respondents on the Basis of Settlement Agreement

In the matter of Certain Anti-Knock Ignition Systems and Automobiles or Automobiles Components Parts Containing Same.

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: AB Volvo/Volvo Car Corporation and Volvo North America Corporation.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 13, 1990.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436 no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-252-1805.

Issued: November 13, 1990.

By order of the Commission.
Kenneth R. Mason,
Secretary.
[FR Doc. 90-27421 Filed 11-20-90; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-293]

Determination Granting In Part Petition for Return of Bonds Posted Pursuant to Temporary Cease and Desist Order

In the Matter of Certain Crystalline Cefadroxil Monohydrate.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to grant in part a petition for return of bonds that were posted pursuant to a temporary cease and desist order issued in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1087.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), as amended by the Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418 (Aug. 23, 1988), and § 210.58 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.58).

On January 10, 1990, the Commission issued a temporary cease and desist order against respondent Biocraft Laboratories, Inc. ("Biocraft") in this investigation. That order required, *inter alia*, that Biocraft post a bond with the Commission in order to sell during its effective period crystalline cefadroxil monohydrate that it imported prior to January 10, 1990. Biocraft submitted two bonds to the Commission pursuant to that order.

On March 15, 1990, the Commission concluded this investigation by determining that a violation of section 337 existed and by issuing a limited exclusion order and permanent cease and desist orders, including a cease and desist order against Biocraft. The Commission determined that U.S. Letters Patent 4,504,657 ("the '657 patent"), owned by complainant Bristol-Myers Squibb Co. ("Bristol") was valid, enforceable, and had been infringed by Biocraft. Because the President did not disapprove the Commission's orders on permanent relief within the 60-day period specified in section 337(j), they became final on May 14, 1990. Biocraft did not appeal these orders.

On March 29, 1990, Bristol and Biocraft entered an agreement settling ongoing patent infringement litigation before a United States District Court concerning the '657 patent. The agreement purports to settle all disputes between Bristol and Biocraft concerning the validity and enforceability of the '657 patent.

On April 23, 1990, Biocraft filed a petition requesting that the Commission return the bonds it posted pursuant to the temporary cease and desist order in light of its settlement agreement with Bristol. Bristol, satisfying a requirement imposed upon it by the settlement agreement, filed a separate submission indicating that it joined Biocraft's request. The Commission investigative attorney opposed the request.

The Commission has determined to grant Biocraft's petition in part. It will return or cancel that portion of Biocraft's bonds reflecting (1) excess bond that Biocraft has posted and (2) product for which Biocraft posted bond that was subsequently repurchased by Biocraft and transferred to complainant Bristol. The Commission has determined, however, not to modify the temporary cease and desist order to authorize return of all bonds that Biocraft posted. It will therefore demand performance of that portion of Biocraft's bond that is not being returned or cancelled.

Copies of the petition, the Commission order and opinion issued in connection therewith, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Issued: November 14, 1990.

By order of the Commission.
Kenneth R. Mason,
Secretary.
[FR Doc. 90-27419 Filed 11-20-90; 8:45 am]
BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-302 (Final) and 731-TA-454 (Final)]

Fresh and Chilled Atlantic Salmon From Norway

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: October 29, 1990.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-252-1192), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION: Effective June 28, 1990 and October 1, 1990, respectively, the Commission instituted the subject investigations and, effective October 1, 1990, the Commission established a schedule for their conduct (55 FR 31246, August 1, 1990 and 55 FR 45867, October 31, 1990 respectively). Subsequently, the Department of Commerce revised the date for its final determinations in the investigations from February 8, 1991 to February 15, 1991. The Commission, therefore, is revising its schedule in the investigations to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than February 8, 1991; the prehearing conference will be held at the U.S. International Trade Commission Building on February 13, 1991; the prehearing staff report will be placed in the nonpublic record on January 31, 1991; the deadline for filing prehearing briefs is February 12, 1991 (nonbusiness proprietary version due February 13, 1991); the hearing will be held at the U.S. International Trade Commission Building on February 19, 1991; the deadline for filing posthearing briefs is February 25, 1991 (nonbusiness proprietary version due February 26, 1991), and the deadline for Parties to file additional written comments on business proprietary information is March 4, 1991 (nonbusiness proprietary version due March 5, 1991).

For further information concerning these investigations see the Commission's notices of investigation cited above and the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: November 13, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-27422 Filed 11-20-90; 8:45 am]

BILLING CODE 7020-02-M

Industrial Phosphoric Acid From Israel; Request for Comments Concerning the Institution of a Section 751(b) Review Investigation

AGENCY: United States International Trade Commission.

ACTION: Request for comments regarding the institution of a review investigation concerning the Commission's affirmative determinations in investigations Nos. 701-TA-286 (Final) and 731-TA-366 (Final), industrial phosphoric acid from Israel.

SUMMARY: The Commission hereby invites comments from the public on whether changed circumstances exist sufficient to warrant the institution of an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) (the act) to review its determinations in investigations Nos. 701-TA-286 (Final) and 731-TA-366 (Final), industrial phosphoric acid from Israel. The purpose of the review investigation would be to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of industrial phosphoric acid from Israel if the countervailing and antidumping duty orders regarding such merchandise were to be modified or revoked. Industrial phosphoric acid is provided for in subheading 2809.20.00 of the Harmonized Tariff Schedule of the United States. As provided in § 207.45(b) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(b)), the 30-day period for comment on the question of whether the Commission should institute a review investigation begins on the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202-252-1181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 1987, the Department of Commerce determined that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) were being provided to manufacturers, producers, or exporters in Israel of industrial phosphoric acid (52 FR 25447); and July 7, 1987, the Department of Commerce determined that imports of industrial phosphoric acid from Israel are being sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the act (19 U.S.C. 1673) (52 FR 25440); and on August 12, 1987, the Commission determined,[1] pursuant to sections 705(b) and 735(b) of the act (19 U.S.C. 1671d(b) and 1673d(b)), that an industry in the United States was materially injured by reason of imports of such subsidized and dumped merchandise (52 FR 31095, August 19, 1987). Accordingly, Commerce ordered that countervailing and antidumping duties be imposed on such imports (52 FR 31057, August 19, 1987).

On November 1, 1990, the Commission received a request to review its affirmative determinations in investigations Nos. 701-TA-286 (Final) and 731-TA-366 (Final) pursuant to section 751(b) of the act (19 U.S.C. 1675(b)). The request was filed by counsel on behalf of Negev Phosphates Ltd., Yeruham, Israel, a producer of industrial phosphoric acid in Israel.

Written Comments Requested

Pursuant to § 207.45(b)(2) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(b)(2)), the Commission requests comments concerning whether the following alleged changed circumstances are sufficient to warrent institution of a review investigation:

(1) A new 120,000 metric-ton-per-year capacity (100% P_2O_5 basis) industrial phosphoric acid (IPA) plant was opened in March 1990, at Aurora, NC. The plant incorporates novel technology never before used in the United States; that is, the purified wet-process method. This methodology has been utilized for several years by Israeli and other exporters of IPA but was not previously used by U.S. producers. The development and start-up of the plant are significant not only because of the significant increased capacity but also because, at the time of the Commission investigations, all domestic IPA was produced using the "thermal" method, rather than the purified wet process.

The project also represents a significant changed circumstance in that, for the first time, agricultural phosphoric acid (agacid) producers have entered into a venture with IPA producers. At the time of the original investigation, the Commission found no relationship between agacid producers and IPA producers. In addition, witnesses for the domestic industry testified that it was impractical and cost inefficient to synthesize IPA from agacid, which is produced by the wet process method. With the technology newly introduced into the domestic industry, the venture is capable of producing IPA at lower costs than those incurred by some who still produce using the traditional thermal method.

(2) An 80,000 metric-ton-per-year capacity (100% P_2O_5 basis) plant, also using the more cost-efficient purified wet process method, is being built at Geismar, LA, by Rhone-Poulenc, a diversified French company, which produces IPA and which invested in the United States subsequent to the antidumping and countervailing duty investigations by acquiring the Stuffer Chemical Company, a member of the domestic industry.

(3) The U.S. industry has been restructured since the investigations, in part, due to the new production mentioned above as well as a tightening in supply of elemental phosphorus, the basic raw material used in the production of IPA by the thermal method. These factors have resulted in a more cost efficient industry.

(4) Societe Chimique Prayon-Rupel (Prayon), the Belgian exporter of IPA which was also subject to the original IPA investigations by the Commission, ceased its exports to the United States in 1988. The decision by Prayon to abandon the U.S. market was primarily the result of failed negotiations between Prayon and a domestic company to establish an IPA plant in the United States.

(5) In the Omnibus Trade and Competitiveness Act of 1988 (1988 Act), Congress passed certain provisions to permit the Commission not to cumulate imports from Israel in countervailing and antidumping duty investigations and to allow the exclusion of negligible imports from cumulation. Since Prayon has withdrawn from the U.S. market, Israel, which has never reached even a one percent share of the IPA market, is the sole supplying country subject to countervailing and dumping duties for imported IPA.

Written Submissions

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules [19 CFR 201.6 and 207.7)

Authority: This notice is published pursuant to § 207.45 of the Commission's rules (19 CFR 207.45).

By order of the Commission.

Issued: November 15, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-27423 Filed 11-20-90; 8:45 am]

BILLING CODE 7020-02-M

[1] Former Chairman Liebeler and Vice Chairman Brunsdale dissenting.

[Investigation No. 337-TA-313]

Commission Determination not to Review Initial Determination Terminating Investigation on the Basis of a Consent Order

In the Matter of Certain Process, Apparatus, and Components thereof, for the Production of Spunbond Nonwoven Fabric, and Fabric Made Therefrom.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation terminating the investigation on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1102.

SUPPLEMENTARY INFORMATION: On September 5, 1990, all of the private parties in the investigation filed a joint motion to terminate the investigation on the basis of a proposed consent order. On October 17, 1990, the presiding ALJ issued an ID (Order No. 9) terminating the investigation on the basis of the proposed consent order. No petitions for review of the ID or agency or public comments were filed. This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h), 19 CFR 210.53(h).

Copies of the consent order, the nonconfidential version of the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Issued: November 14, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-27420 Filed 11-20-90; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF LABOR

Employment Standards Administration

Patient Advocate Pilot Questionnaire—Physician Interview

AGENCY: Employment Standards Administration, Labor.

ACTION: Notice of expedited information collection clearance under the Paperwork Reduction Act.

SUMMARY: The Employment Standards Administration (ESA), U.S. Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. chapter 35, 5 CFR part 1320 (53 FR 16618, May 19, 1988)), is submitting a request for approval to the Office of Management and Budget for a pilot project for a claimant advocate program involving data gathering from physicians treating claimants who have filed injury claims under the Federal Employees' Compensation Act. The data is to be gathered via telephone survey of the physician or his/her representative.

BEST COPY AVAILABLE

Clearance is requested on a one-time basis.

DATES: ESA has requested an expedited review of this submission under the Paperwork Reduction Act; this OMB review has been requested to be completed by December 14, 1990.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the survey or reporting burden should be directed to Paul E. Larson, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., room N1301, Washington, DC 20210 ((202) 523-6331). Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395-6880). Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Average Burden Hours/Minutes per Response: .33 hours.
Frequency of Response: (one time only).
Number of Respondents: 800.
Annual Burden Hours: 528.
Affected Public: Businesses or other for profit; small businesses or organization.
Respondents Obligation to Reply: (voluntary).

Signed at Washington, DC, this 14th of November 1990.

Paul E. Larson,
Departmental Clearance Officer.

Supporting Statement

1. The Office of Workers' Compensation Programs is piloting a patient advocate program which was developed by a task force that examined the characteristics of back injury claims filed under the Federal Employee's Compensation Act and made recommendations for improving injury outcome. Included in their recommendations was the use of a claimant advocate program that (1) assists the claimant and the claimant's physician to understand the claims process, (2) that encourages appropriate medical care through monitoring of professional services, and (3) that encourages the claimant to return to work when fit, including light duty or part time if appropriate during the recovery process. This activity is authorized under 5 USC 8103 and 8123, and under 20 CFR 10.410 and 10.104.

The physician questionnaire provides specific knowledge about individual claimants that is vital to the advocate to achieve program goals. Included are factors for the predictor model developed by the task force to forecast claim outcome. When medically appropriate, claims forecast to become long-term disability cases are placed in specific claim management procedures that strive to alter the predicted unfavorable injury outcome.

2. The information collected is that required by the advocate to achieve program goals through specific knowledge about the claimant's medical treatment history, and it is also information that is required in whole or in part by the claims examiner to adjudicate and manage the claim. If the information is not collected, (1) the advocate has insufficient information to monitor the medical care of the injured employee, (2) the advocate cannot predict injury outcome and, therefore, cannot select the claimant for specialized management procedures, and (3) the claims examiner cannot plan adequately for special events in the claimant's treatment regiment such as surgery. In short, neither the pilot program nor the prediction model can be tested in the absence of this information.

3. Telephone interview was chosen as the collection method for this information because it is the most rapid response form for the treating physician (or his/her representative). The interview requests information that is recorded in the claimant's treatment chart, and can be readily extracted.

OWCP will use computer programs to analyze and evaluate pilot outcome measures.

4. The information requested during the telephone interview is that which the physician will have in the claimant's treatment records. Medical information already submitted by the treating physician will be reviewed prior to the telephone interview. If answers to any interview questions have already been submitted to the claims processing office by the physician, those questions will be completed prior to the interview and eliminated from the interview. This information is not available from another source.

5. Both the claimant advocate pilot and the prospective testing of the claim outcome predictor model have previously not been tested and for that reason there is no other source for this information. The predictor model has been examined retrospectively (overall correct classification rate is 90.0 percent), but its worth is dependent upon prospective use.

6. This telephone interview will affect physicians in clinical practice regardless of business arrangements. That is, physicians in single practice arrangements or those in large associations will be treated the same. There are two telephone calls to each physician (or his/her representative) that request information from the claimant's treatment chart.

7. The claimant advocate pilot is based upon contact with the injured employee throughout a 12-week period that is critical to the recovery of many patients with orthopaedic back injuries. This 12-week period is timed to conincide with the usual transition from a normal recovery to one that may require extended medical care and result in prolonged disability. For those reasons, the time of the interviews with the treating physician is not very flexible. The advantage to the timing of the interviews is that they occur during a period when the claimant is under active care and the physician's treatment records are readily available for reference.

8. All of the information requested is that usually kept by the treating physician in the claimant's treatment records. No written reports are required. The majority of inquiries are dichotomous and do not require special search or record keeping efforts. The two phone calls to the physician occur during week one and week six of the 12-week advocate monitoring period. Although those two inquiries are only five weeks apart, they are spaced to match customary treatment periods and for that reason make response easier rather than more difficult for the physician (or his/her representative.)

9. The contents of this form and the data collection format was discussed in 1990 with experts in survey techniques, data collection, and statistics:

Francis J. Keefe, Ph.D., Associate Professor in Medical Psychology, Director, Pain Management Program, Department of Psychiatry, Behavioral Physiology Lab. Duke University Medical Center, Box 3926, Durham, North Carolina 27710, (919) 684-6212.

William Clarke, Ph.D., Department of Preventive Medicine, The University of Iowa, SB 2800, Iowa City, Iowa 52242, (319) 335-9619.

Michael J. Colligan, Ph.D., Dept of Health and Human Services, Public Health Services, CDC, National Institute of Occupational Safety and Health Chief, Direct Training Branch, Division of Training and Manpower Development, 4676 Columbia Parkway, Cincinnati, Ohio 45226, (513) 533-8225, FTS 8-684-8225.

Others consulted included physicians and allied health professionals. The data collected in these interviews is not available from another source at the time it is required for the patient advocate and the claims examiner to meet program goals. (Program goals are set to improve injury outcome; especially the outcome of orthopaedic back injuries. Such injuries are among the most costly in the American work force as well as in other industrial nations.)

10. The information collected is placed in case files. All information in case files is protected under existing US DOL Privacy Provisions (29 CFR 70a).

11. There are no questions of a sensitive nature contained in the questionnaire.

12. The form was developed primarily by a GS-13 with review by the Medical Director (GS-15) and a program specialist (GS-13). Consultants were reimbursed under a contract for general services related to the project as a whole.

To develop the form with discussion and revisions required approximately 16 hours of labor by a GS-13 at $24.48 hour; review and discussion: 4 hours by a GS-13 at 23.85 hour, 2.5 hours by a GS-15 at $38.89 per hour (science pay rate), 2.5 hours by a GS-14 at approximately $26.00. There are two consultant costs at approximately $90.00 per hour for a total of four hours.

$24.48 × 16 = $391.68
$23.85 × 4 = $ 95.40
$38.89 × 2.5 = $ 97.23
$26.00 × 2.5 = $ 65.00
$90.00 × 4 = $360.00

Total Developmental Costs = $1009.31.

The phone calls will be made by contract medical staff charged to case management. Contract medical staff averages about $32.50 per hour. Approximately 528 hours will be required for the pilot.

$32.50 × 528 = $17,760.

13. Since this is a pilot, it is not known what percentage of telephone inquiries will have a physical responding to the questionnaire, and what percentage will have a representative (such as a nurse or office staff) for the physician answer the questionnaire. If OWCP experience in obtaining medical treatment information from a physician for claims management is relevant, it is expected that a physician representative will supply the questionnaire information in most instances.

It is estimated that about 20 minutes will be required for the first interview. This includes a brief introduction and verification that the treating physician has received a one-page letter which explained the claimant advocate program, which stated the goals of the program, and which provided the physician with information that could be useful to him/her in processing claim information or billing. The second interview may be shorter than 20 minutes but it is expected that some time will be devoted to answering inquiries from the physician regarding his/her concerns about the claimant, about the claims process, about return to work issues, or about billing for services.

It is estimated that about 800 claimants will be required in the study group for a statistically valid sample set. This figure is based on studies completed to develop the disability predictor model. No phone calls will be made to physicians treating the control group. The primary treating physician of each claimant in the study group (or the physician's representative) will receive two telephone interviews totalling about 40 minutes. This 40 minutes includes time for problem solving related to the physician's questions about disability claims processing, requirements for verification of the claimant's impairment, billing procedures and other claims related issues. All of the information requested from the physician is that which the claims examiner could require from the physician to verify the nature of the claimant's injury, to substantiate the degree of recovery, and/or to support reimbursement of services.

14. Since this is a new pilot study, there are no previous burden hours. It is expected, however, that the total burden hours experienced by the treating physician to report the claimant's condition and recovery status, may be reduced from that now required because of an anticipated better understanding of OWCP's needs to adjudicate appropriate compensation to the claimant. (Physicians' reports on CA-1303 and OWCP-5, approved through 9/30/91 under 1215-0103, may be prepared with greater attention to program requirements and, therefore, fewer additional inquiries by claims staff may be needed for clarification of issues). it is also expected that providers who understand OWCP's billing requirements will submit invoices that meet those needs and result in timely reimbursements.

15. This information will not be published for statistical use.

BILLING CODE 4510-27-M

++++++++++++++++QUESTIONNAIRE FOR CLAIMANT ADVOCATE PILOT - NIOSH/DOL BACK PROJECT++++++++++++++++++

PHYSICIAN INTERVIEW

(MISSING VALUES ARE NOT ACCEPTABLE - ALL SOLID LINES MUST BE COMPLETED

:: To Complete Form Use: "Y" = yes, "N" = no, "X" = unknown/unstated:
:: "R" = refused, "N/A" Not applicable, "P" = physician,
:: "O" = other, "C" = continuous service

1 ADVOCATE NAME _____
2 DISTRICT OFFICE _____
3 Claimant's name: _____
4 Case No. _____
5 Physician's Name _____
6 Specialty _____
7 Telehpone No. _____
8 Have you treated this patient prior to this injury? _____
9 If this is a new patient, was it a referral? _____

Physician's Street Address: _____

10 Diagnosis of Claimant's Injury:

ICD-9 CODE	NOMENCLATURE
_____	_____
_____	_____
_____	_____
_____	_____

	CALL NO. 1 Date:_____ (Since Day of Injury)	CALL NO. 2 Date:_____ (Since Last Call to Physician)		SOURCE OF DATA CALL 1	SOURCE OF DATA CALL 2
====MEDICAL SERVICES PROVIDED:					
11 OFFICE VISIT - Within past 14 days	_____	_____			
12 - Within next 14 days	_____	_____			
13 RADIOLOGY - X-Ray; Back	_____	_____	Repeat?_____	_____	_____
14 - CAT; Back	_____	_____	Repeat?_____	_____	_____
15 - MRI; Back	_____	_____	Repeat?_____	_____	_____
16 - Myelogram	_____	_____	Repeat?_____	_____	_____
17 - Discogram	_____	_____	Repeat?_____	_____	_____
18 - Electromyography	_____	_____	Repeat?_____	_____	_____
19 - NOT Back; any Rad.	_____	_____	Repeat?_____	_____	_____
20 PATHOLOGY - Hematology (Rheum etc.)	_____	_____	Repeat?_____	_____	_____
21 - Other Path. Service	_____	_____	Repeat?_____	_____	_____
22 HOSPITAL SERVICES - ANY IP/OP	_____	_____			
23 BED REST - Has been prescribed	_____	_____	Repeat?_____	_____	_____
24 - Initial Rx - more than 3 days	_____	_____	Repeat?_____	_____	_____
25 - Current Rx for bed rest	_____	_____	Repeat?_____	_____	_____
26 PHYSICAL THERAPY - Prescribed	_____	_____	Repeat?_____	_____	_____
27 - PT within 7 Days of injury	_____			_____	_____
28 - Patient is on PT now	_____	_____	Repeat?_____	_____	_____
29 RX MED. - Ordered for back	_____	_____		_____	_____
30 - Contains Narcotic	_____	_____		_____	_____
31 - Pat. remains on Rx w/Narcotic	_____	_____		_____	_____
32 - Pat. on Rx w/o Narcotic	_____	_____		_____	_____
33 CONSULTANT SERVICES RECEIVED - ANY	_____	_____		_____	_____
34 SURGERY FOR INJURY - Planned	_____	_____		_____	_____

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35	- Back Surgery Completed	_____	_____	_____	_____
36	- Other Surgery Planned	_____	_____	_____	_____
37	- Other Surgery Completed	_____	_____	_____	_____
===WHAT ELSE HAVE YOU PRESCRIBED OR SUGGESTED AS TREATMENT FOR THIS BACK INJURY? (RECORD BUT DO NOT SUGGEST)					
38	BACK SUPPORT - Was Using	_____	_____	_____	_____
39	- Using Now	_____	_____	_____	_____
40	- Plan to Use	_____	_____	_____	_____
41	TENS UNIT - Was Using	_____	_____	_____	_____
42	- Using Now	_____	_____	_____	_____
43	- Plan to Use	_____	_____	_____	_____
44	PSYCHI/PSYCHO THERAPY - Was Receiving	_____	_____		
45	- Receiving Now	_____	_____	_____	_____
46	- Planned	_____	_____	_____	_____
47	BACK SCHOOL - Attended	_____	_____	_____	_____
48	- Attending	_____	_____	_____	_____
49	- Sched./Suggested	_____	_____	_____	_____
50	WORK HARDENING - Attended	_____	_____	_____	_____
51	- Attending	_____	_____	_____	_____
52	- Sched./Suggested	_____	_____	_____	_____
53	PAIN CLINIC - Attended	_____	_____	_____	_____
54	- Attending	_____	_____	_____	_____
55	- Sched./Suggested	_____	_____	_____	_____
56	OTHER _____	_____	_____	_____	_____
===RETURN TO WORK (THIS SECTION MUST BE COMPLETED)					
57	Expect patient to return to work?	_____	_____	_____	_____
58	Patient ready for Regular Duty?	_____	_____	_____	_____
59	Patient ready for Light Duty?	_____	_____	_____	_____
60	Patient ready for Other Duty?	_____	_____	_____	_____
61	Can the patient do any work now?	_____	_____	_____	_____
62	Expected "Return to Work" date	_____	_____	_____	_____
63	Other _____	_____	_____	_____	_____

PHYSICIAN CALLS PHYSICIAN'S NAME:_____ CLAIMANT'S NAME:_____

ADDITIONAL COMMENTS:

CALL NO. ONE: DATE:_____ LENGTH OF CALL: _____ NO. OF CONTACTS TO COMPLETE:_____
(Week No. 1)

_____

_____

_____

CALL NO. TWO: (Week No. 6) DATE:_____ LENGTH OF CALL: _____ NO. OF CONTACTS TO COMPLETE:_____

[FR Doc. 90-27379 Filed 11-20-90; 8:45 am]

BILLING CODE 4910-07-C

ISS 225 NO 21 1990 UMI

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (90-99)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Astrophysics Subcommittee.

DATES: December 13, 1990, 9 a.m. to 4:15 p.m.

ADDRESSES: The Capitol Hill Hotel, 200 C St. SE., Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Ms. Lia LaPiana, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1544).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee (SSAAC) consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Astrophysics Subcommittee provides advice to the Astrophysics Division and to the SSAAC on operation of the Astrophysics Program and on the formulation and implementation of the Astrophysics research strategy. The Subcommittee will meet to discuss the Astrophysics program, current status for fiscal year 1991 and new initiatives. The Subcommittee is chaired by Dr. Irwin Shapiro and is composed of 29 members. The meeting will be open to the public up to the capacity of the room (approximately 50 people including Subcommittee members). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda:

Thursday, December 13

9 a.m.—Introduction, Current Status of Astrophysics Program, and Fiscal Year 1991 Budget.
10:15 a.m.—Hubble Servicing Mission.
11:15 a.m.—Explorers Program.
1 p.m.—New Initiatives.
3 p.m.—Discussion of Future Meeting Planning.
4:15 p.m.—Adjourn.

Dated: November 14, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90-27376 Filed 11-20-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commerical or financial information obtained from a person and privileged or confidential or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of title 5, United States Code.

1. *Date:* December 14, 1990.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Reference.
Materials: Tools and Access applications in American Studies, submitted to the Division of Research Programs, for projects beginning after July 1, 1991.

2. *Date:* December 17, 1990.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Reference.
Materials: Tools and Access applications in Linguistics, submitted to the Division of Research Programs, for projects beginning after July 1, 1991.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 90-27413 Filed 11-20-90; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of each permit application received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of a permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 21, 1990. The permit application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as

requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

Applicant 90–35

J. Ward Testa, Institute of Marine Science, University of Alaska, Fairbanks, Alaska 99775.

Activity for which permit requested

Taking. Import into USA. Enter Site of Special Scientific Interest. The applicant is participating in a study of Weddell Seal populations and proposes to collect blood samples for genetic analysis. The seal population at White Island is of special interest because of its geographic isolation and purported genetic isolation. Blood samples would be returned to the University of Alaska for archive storage.

Location

Site of Special Scientific Interest No. 18, White Island, McMurdo Sound.

Dates

January 1991–December 1991.

Charles Myers,
Permit Office.

[FR Doc. 90–27347 Filed 11–20–90; 8:45 am]
BILLING CODE 7555–01–M

Advisory Panel of Applications for Advanced Technologies; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for the Applications of Advanced Technologies, Science and Engineering Education.

Date and Time: Saturday, December 8, 1990 from 8 a.m. to 5 p.m.

Place: Boston University, 881 Commonwealth Avenue, Boston, MA 02215.

Type of Meeting: Closed.

Contact Person: Dr. Andrew R. Molnar, Applications for Advanced Technologies, room 635A, Washington, DC 20550, Phone: (202) 357–7084.

Purpose of Meeting: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 90–27431 Filed 11–20–90; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–277 and 50–278]

Philadelphia Electric Co., et al.; Environmental Assessment and Finding of No Significant Impact

In the Matter of Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, Atlantic City Electric Company

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, appendix J, to the Philadelphia Electric Company, et. al. (the licensee) for the Peach Bottom Atomic Power Station, Units 2 and 3 located at the licensee's site in York County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant relief from sections II.H.4 and III.C.2 of appendix J which require leak rate testing of the main steam isolation valves (MSIVs) at the peak calculated containment pressure related to the design basis accident and sections II.H.1 and III.C of appendix J which require Type C local leak rate testing on the Traversing In-Core Probe (TIP) system shear valves.

The Need for the Proposed Action

Each main steam line is provided with two globe type MSIVs that are angled in order to afford better sealing in the direction of the post-accident pressure. The orientation of the inboard MSIV is such that testing the valve in the reverse direction tends to unseat the valve disc. Testing of the inboard and outboard MSIVs by pressurizing the volume between the valves at the full test pressure of Pa, the calculated peak containment internal pressure related to the design basis accident, would lift the disc of the inboard valve, resulting in excessive leakage to the reactor vessel and in a meaningless test. The licensee proposed to test the MSIVs at a reduced test pressure of 25 psig, about one-half of the peak post-accident pressure, to avoid lifting the disc of the inboard valve.

Each of the five TIP guide tubes is equipped with two isolation valves, a ball valve that provides the primary means of containment isolation, and a shear valve that cuts the cable and isolates the guide tube in the event that isolation is required and the drive cable can not be withdrawn. The shear valve is an explosive-type valve, direct current-operated, with monitoring of each actuating circuit provided. The ball valve is Type C tested in accordance with appendix J. It is impractical to test the shear valves since they require testing to destruction. In lieu of leak testing and ultimate destruction of the shear valves, the licensee proposed to perform periodic checks of the functional capability of the TIP shear valves.

Environmental Impacts of the Proposed Action

The man steam system design in most operating boiling water power reactor plants, including Peach Bottom, necessitates leak testing of the MSIVs by pressurizing the pipes between the inboard and outboard valves resulting in test pressure acting on the inboard valve in the direction opposite to accident pressure. The MSIVs are angled in the main steam lines in the direction of flow to afford better sealing upon closure. Consideration of this feature was included at the design stage of the facility when the original test pressure of 25 psig was established. The licensee proposed to test the MSIVs at a test pressure of 25 psig to avoid listing the inboard valve disc. The total observed leakage through both the inboard and outboard valves is then conservatively assigned to the penetration. Testing of the MSIVs at a reduced pressure of 25 psig will result in a conservative determination of the leakage rate through the MSIVs. Testing at the proposed reduced pressure will provide an equivalent level of protection as that provided by the testing requirements of section III.C.2. The underlying purpose of the requirements of sections II.H.4 and III.C.2 is to ensure the integrity of the primary containment and its penetrations and to assure that primary containment leakage is within acceptable limits during plant operation. Since that purpose will be served by the testing of the MSIVs at a reduced pressure of 25 psig, testing of the MSIVs at the full test pressure of Pa is unnecessary.

The measured leakage rate for any one main steam line through the MSIVs is limited to a maximum pathway leakage of 11.5 SCFH as specified in the facility TS. As stated above, the MSIVs in some boiling water reactor (BWR) plants are angled in the main steam lines in order to afford better sealing in the direction of accident pressure. This condition was considered when the test pressure of 25 psig was initially established for the MSIVs of many BWRs. Subsequently, industry experience in testing these valves at a pressure of 25 psig and with an acceptance criterion of 11.5 SCFH has been shown to be effective in determining the condition of these valves.

In lieu of leak testing and ultimate destruction of the TIP shear valves, the licensee committed to the following actions to ensure the shear valves will perform their intended function: (1) Verification of the continuity of the explosive charge circuit which is monitored by an alarm in the control room; (2) Initiation of one explosive squib charge at least once per operating cycle with the replacement charge for the explosive valve to be taken from the same manufactured batch as the one fired or from another batch that has been certified by having one of that batch successfully fired; and (3) Replacement of all explosive charges in accordance with the manufacturer's recommended lifetime. The periodic checks of the functional capability of the TIP shear valves provide an equivalent level of protection as that provided by the actual local leak rate testing and consequent destruction of the TIP shear valves, given the fact that the shear valves will be used only when the TIP cable fails to withdraw or the ball valve fails to close. The underlying purpose of the requirements of sections II.H.1 and III.C is to demonstrate by periodic testing that the primary reactor containment will be able to perform its function of providing a leak tight barrier against the uncontrolled release of radioactivity to the environment. Since that purpose will be served by the periodic checks of the functional capability of the TIP shear valves, leak testing and ultimate destruction of the shear valves is unnecessary.

As discussed above, the underlying purpose of the requirements of appendix J will be served with the proposed exemption. Consequently, the proposed exemption will not increase the probability or consequences of any reactor accidents. In addition, the proposed exemption will not result in increased occupational exposures. The proposed exemption does not affect plant nonradiological effluents and will have no other environmental impact. Therefore, the Commission concludes that this proposed action would result in no significant radiological or nonradiological environmental impact.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the requirements of appendix J discussed above. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternative Use of Resources

This proposed action does not involve the use of resources not considered previously in the Final Environmental Statement related to the operation of Peach Bottom Atomic Power Station, Units 2 and 3.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letters dated April 21 and June 23, 1988. These letters are available for public inspection at the Commission's Public Document room, Gelman Building, Lower Level, 2120 L Street NW., Washington, DC and at the State Library of Pennsylvania, Government Publications section, Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 13th day of November 1990.

For the Nuclear Regulatory Commission.

Walter R. Butler,
Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–27365 Filed 11–20–90; 8:45 am]
BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published October 17, 1990 (55 FR 42088). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACRS meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the December 1990 ACRS and ACNW full Committee meetings can be obtained by a prepared telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Improved Light Water Reactors, December 4, 1990, Bethesda, MD. The Subcommittee will review SECY–90–377 regarding the level of design detail.

Joint Containment Systems and Structural Engineering, December 5, 1990, Bethesda, MD. The Subcommittees will discuss containment design criteria for future plants.

FTOL Conversions, December 5, 1990, Bethesda, MD. The Subcommittee will discuss the FTOL conversion for the Palisades nuclear plant.

Thermal Hydraulic Phenomena, December 12, 1990, Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD. The Subcommittee will discuss the status of the NRC staff's program on interfacing

systems loss-of-coolant accident (ISLOCA).

Auxiliary and Secondary Systems, January 17, 1991, Bethesda, MD. The Subcommittee will discuss matters concerning fire protection and mitigation in nuclear power plants.

Joint Computers in Nuclear Power Plant Operations and Instrumentation and Control Systems, February 6, 1991. Bethesda, MD. The Subcommittee will discuss the use of computers and solid-state control logic in nuclear power plant operations.

Improved Light Water Reactors, Date to be determined (January), Bethesda, MD. The Subcommittee will review the EPRI ALWR Requirements Document (Roll-up) for the Evolutionary Designs.

TVA Plant Licensing and Restart, Date to be determined (mid-late January 1991), Huntsville, AL. The Subcommittee will review the planned restart of Browns Ferry Unit 2.

Joint Plant Operations and Probabilistic Risk Assessment, Date to be determined Bethesda, MD. The Subcommittees will begin review of the NRC staff's Action Plan to evaluate the risk from nuclear power plant shutdown operations.

Defueling/Fuel Pool Storage, Date to be determined, Bethesda, MD. The Subcommittee will discuss the proposed standard review plan for reviewing safety analysis reports for dry metallic spent fuel storage casks.

Materials and Metallurgy, Date to be determined, Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 29, "Bolting Degradation or Failure in Nuclear Power Plants."

Joint Thermal Hydraulic Phenomena and Core Performance, Date to be determined, Bethesda, MD. The Subcommittees will continue their review of the issues pertaining to BWR core power stability.

Joint Regulatory Activities and Containment Systems, Date to be determined, Bethesda, MD. The Subcommittees will review the proposed final revision to appendix J to 10 CFR part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," and an associated Regulatory Guide.

Severe Accidents, Date to be determined, Bethesda, MD. The Subcommittee will discuss elements of the Severe Accident Research Program (SARP).

Joint Advanced Boiling Water Reactors and Advanced Pressurized Water Reactors, Date to be determined, Bethesda, MD. The Subcommittee will perform a comparison between the Licensing Review Basis documents for the GE/ABWR and CE/Systems 80+ designs.

ACRS Full Committee Meetings

388th ACRS Meeting, December 6–8, 1990, Bethesda, MD. Items are tentatively scheduled.

*A. *Reactor Operating Experience (Open)*—Briefing by representatives of the NRC staff regarding experience gained from reactor operations including problems with the operability of safety systems resulting from egress of noncondensible gas, a loss of AC power event at the Brunswick plant, and a malfunction of the feedwater regulatory system and subsequent failure of the RCIC at the Pilgrim plant.

*B. *Containment Design Criteria (Open)*—Discussion of proposed ACRS report to the NRC on containment design criteria for future nuclear plants.

*C. *High-Level Radioactive Waste Disposal (Open)*—Briefing by a representative of the Board on Radioactive Waste Management of the National Research Council regarding the National Academy of Sciences/National Research Council report on "Rethinking High-Level Waste Disposal."

*D. *Safety Research (Open)*—Briefing by and discussion with representatives of the NRC staff regarding the research program on direct containment heating.

*E. *Certification of Standard Designs—Level of Design Detail (Open)*—Discussion with NRC staff representatives regarding proposed requirements for the level of design detail required for certification of standardized plant designs. Representatives of the nuclear industry will participate, as appropriate.

*F. *Full Term Operating Licenses for the Palisades Nuclear Plant and the Dresden Unit 2 Nuclear Station (Open/Closed)*—Review of proposed conversion of provisional operational licenses to full term operating licenses for these plants. Representatives of the NRC staff and the licenses will participate, as appropriate. Portions of this session will be closed as necessary to discuss Proprietary and Safeguards information applicable to these plants.

*G. *Standard Technical Specifications (Open)*—Briefing by representatives of the NRC staff regarding the status of the program to develop standardized technical specifications for nuclear power plants.

*H. *Certification Requirements for APWRs (Open)*—Discuss proposed ACRS report on certification requirements for evolutionary light-water reactors and their relationship to current regulatory requirements.

*I. *Westinghouse Standard Plant SP/90 (Open)*—Discuss a proposed report on the proposed preliminary design approval for the Westinghouse standard plant SP/90. Representatives of the NRC staff and the Westinghouse Electric Corporation will participate, as appropriate.

*J. *ACRS Subcommittee Activities (Open)*—Hear and discuss reports of assigned ACRS subcommittee activities, as appropriate.

*K. *ACRS Management/ Administration (Open/Closed)*—Members will discuss anticipated subcommittee activities and items proposed for consideration by the full Committee, qualifications of candidates proposed for appointment to the Committee, election of officers for CY 1991, and administrative matters as appropriate.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

*L. *Miscellaneous (Open)*—The Committee will discuss matters which were not completed at previous meetings as time and availability of information permit.

*M. *Reactor Safety Research (Open)*—Discuss the scope of the ACRS annual report to the Congress on the NRC Safety Research Program and budget.

369th ACRS Meeting, January 10–12, 1991—Agenda to be announced.

370th ACRS Meeting, February 7–9, 1991—Agenda to be announced.

ACNW Full Committee and Working Group Meetings

ACNW Meeting scheduled for November 26–27, 1990 has been cancelled.

ACNW Working Group Meeting on Mixed Wastes, December 11, 1990, Bethesda, MD. The Working Group will discuss the technical and regulatory considerations for disposal of dually regulated wastes.

ACNW Working Group Meeting on Expert Judgment, December 11, 1990, postponed to January, 1991 (tentative), Bethesda, MD. The Working Group will review and discuss the use of expert judgment in conducting performance assessments of HLW repositories and LLW sites and potential problems that could arise with the use of expert judgment.

26th ACNW Meeting, December 12–14, 1990, Bethesda, MD. Items are tentatively scheduled:

*A. The Committee will meet with the Commissioners to discuss items of mutual interest (tentative).

*B. The Committee will be briefed by representatives of the Division of High-Level Waste Management (DHLWM) on the results of their reviews of the Study Plans for characterization of volcanic features and mineralogy, petrology, and chemistry of transport pathways (tentative).

*C. The Committee will discuss the NRC staff's Study Plan, review plan, and staff plan for reviewing the Site Characterization progress reports.

*D. The Committee will begin to consider 10 CFR part 60, high-level waste repository subsystem performance requirements regarding their conformance with the EPA high-level waste standards.

*E. The Committee will hear reports from its working groups on mixed wastes and Carbon-14.

*F. Discuss and begin preparation for ACNW presentation at Waste Management 1991 Symposium, Tucson, AZ, February 26, 1991.

*G. The Committee will discuss anticipated and proposed Committee activities, meeting agenda, administrative, and organizational matters, as appropriate. The members will also discuss matters and specific issues which were not completed during previous meetings as time and availability of information permit.

27th ACNW Meeting, January 23–25, 1991—Agenda to be announced.

28th ACNW Meeting, February 20–22, 1991—Agenda to be announced.

Dated: November 16, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90-27382 Filed 11-20-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-272/311]

Public Service Electric and Gas Co. (Salem Generating Station, Units 1 and 2); Exemption Amendment

I.

The Public Service Electric & Gas Company (the licensee) is the holder of Facility Operating License Nos. DPR-70 and DPR-75 which authorizes operation of the Salem Generating Station, Units 1 and 2, at a power level not in excess of 3411 megawatts thermal each. The facilities are pressurized water reactors located at the licensee's site in Salem County, New Jersey. The license provides, among other things, that the facilities are subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II.

On November 19, 1980, the Commission published a revised section 10 CFR 50.48 and a new appendix R to 10 CFR part 50 regarding fire protection features of nuclear power plants (45 FR 76602). In response to a fire protection exemption request by the licensee for Salem Units 1 and 2, dated July 15, 1988, the NRC granted, on July 20, 1989, an exemption from the requirements of Item III.G.2 of appendix R to 10 CFR part 50 for the Salem Units 1 and 2 containments (Exemption Request No. 12, Fire Areas 1-FA-RC-7B and 2-FA-RC-7B). The containment subareas (within the above fire areas) housing the pressurizer and Panel 335, at elevation 100 feet, were exempted from the requirement that redundant cables and equipment, within the above subareas, be separated either at least 20 feet of horizontal distance that is free of intervening combustibles or by a radiant energy shield. The exemption further stated that no additional fire protection modifications at the pressurizer were needed to enhance the currently existing level of fire safety in the containment and that the licensee would install, at Panel 335 for each unit, an automatic fire suppression system to enhance the fire protection for the panels which contain redundant channels of pressurizer pressure and level instrumentation. By submittal dated March 23, 1990, the licensee requested a correction to the totally automatic feature of the fire suppression system identified for Panel 335 in the NRC's approval letter. The licensee pointed out that their intent as identified in the exemption request of July 15, 1988 was to provide for a localized automatically actuated fire suppression system only if a gaseous type suppression system would be used. If, however, a localized water-based fire suppression system were to be used, it would require a remote manual action to open the normally closed containment fire suppression header isolation valve to actuate the system. In the March 23, 1990 letter, the licensee further stated that on review of the various fire suppression agents available, they had determined that a water-based fire suppression system would be the best choice for the Salem units and that they had consequently chosen a dry pipe sprinkler system. The licensee outlined the procedures for activating such a system. Additionally, the licensee provided justification for eliminating the originally identified need (licensee's submittal dated July 15, 1988) for using fire detectors for the suppression system actuation. In a letter dated September 13, 1990, the licensee provided additional details concerning the alarms and air preasurization associated with the dry pipe sprinkler system. The Commission's staff evaluated the information provided by the licensee to support the exemption amendment. The Commission's Safety Evaluation relating to the use of a remote, manually actuated water fire suppression system and the elimination of fire detectors for fire suppression system actuation is being issued concurrently with this exemption amendment. The Safety Evaluation concludes that the use of a manually actuated, water based fire suppression system and smoke detectors is acceptable and does not invalidate NRC's earlier exemption approval.

III.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption amendment as described above is authorized by law and will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances,

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[Docket No. 030-12145-CivP, E.A. 89-079; ASLBP No. 91-622-01-CivP; Materials License No. 29-14150-01]

Certified Testing Laboratories, Inc.; Prehearing Conference

November 15, 1990.

Before Administrative Judges: Charles Bechhoefer, Chairman, Dr. Cadet H. Hand, Jr., Elizabeth B. Johnson.

Notice is hereby given that the Atomic Safety and Licensing Board in this civil penalty proceeding will hold a prehearing conference on Monday, December 10, 1990, beginning at 9:30 a.m., in the Township of Bordentown Courtroom, Municipal Drive, Bordentown, New Jersey 08505. As set forth in the Licensing Board's Memorandum and Order (Schedules for Proceeding), dated November 5, 1990 (unpublished), the purpose of the conference is to define further the issues to be litigated, establish schedules for discovery and additional filings and deal with other matters bearing upon the evidentiary hearing. Parties may file proposed agenda, to be received by each of the Board members no later than Friday, December 7, 1990.

Members of the public are invited to attend the conference.

Bethesda, Maryland, November 15, 1990.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 90-27383 Filed 11-20-90; 8:45 am]

BILLING CODE 7590-01-M

as provided in 50.12(a)(2)(ii), are present for the exemption amendment in that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of appendix R to 10 CFR part 50 because the licensee's alternate fire protection configuration, including the modifications that were proposed, provide a level of safety equivalent to that provided by compliance with appendix R.

Therefore, the Commission hereby grants the exemption amendment from the requirements of 10 CFR part 50, appendix R, section III.G.2.

Pursuant to 10 CFR 51.32 the Commission has determined that the granting of this exemption amendment will have no significant impact on the environment (55 FR 46877).

This exemption amendment is effective upon issuance.

Dated at Rockville, Maryland this 14th day of November, 1990.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-27386 Filed 11-20-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Cost Accounting Standards Board; Establishment of Agenda

AGENCY: Cost of Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Notice.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), invites public comments on the establishment of its agenda. The CASB is today soliciting from the public, items for consideration by the Board in carrying out its statutory functions under Public Law 100-679.

DATES: Comments must be in writing and must be received by January 22, 1991.

ADDRESSES: Comments should be addressed to Mr. Richard C. Loeb, Acting Executive Secretary and Counsel, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW., room 9001, Washington, DC 20503. ATTN: CASB Docket No. 90-93.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Acting Executive Secretary and Counsel, Cost Accounting Standards Board (telephone: 202-395-3300).

SUPPLEMENTARY INFORMATION: Established pursuant to section 5 of Public Law 100-679, the Office of Federal Procurement Policy Act Amendments of 1988, 41 U.S.C. 422, the Cost Accounting Standards Board (CASB) has the exclusive authority to make, promulgate, amend, and rescind cost accounting standards and interpretations thereof designed to achieve uniformity and consistency in the cost accounting practices governing measurement, assignment and allocation of costs to contracts with the United States. To provide for maximum public participation in the work of the CASB, the board is today requesting the submission of agenda items from the public for its consideration. Agenda items recommended by the public will be used in assessing issues requiring consideration by the Board.

The public is advised of the following basic principles that guide the Board in the consideration of items for inclusion on its agenda. First, Cost Accounting Standards that are the subject of the Board's jurisdiction are those regulations (and interpretations thereof) that relate to the measurement, assignment and allocation of costs to contracts and subcontracts with United States Government agencies. Cost Accounting Standards promulgated by the Board do not affect non-U.S. Government contractual relationships, except to the extent that such instruments are identified as covered subcontracts under U.S. Government prime contracts.

Secondly, the Board does not determine the allowability of categories or individual items of cost. Allowability is a procurement concept affecting contract price and in most cases is established in regulatory or contractual provisions (see Federal Acquisition Regulation part 31 for commercial contract cost principles). However, the definition of a cost and the measurement, assignment and allocation of such cost are accounting concepts that are within the jurisdiction of the Board.

Cost Accounting Standards currently applicable to negotiated national defense contracts are codified in two sections of the Code of Federal Regulations. These regulations appear at 4 CFR, part 331, *et seq.*, and 48 CFR, part 30 (Federal Acquisition Regulation, part 30). The Board has underway a project that will recodify the two existing sets of Cost Accounting Standards into one set of Standards. Upon completion of this project, the recodified Cost Accounting Standards will appear at 48 CFR, chap. 99.

Individuals and organizations desiring to submit agenda items for consideration by the Board are requested to provide such items in the following format:

- Name of Cost Accounting Standard or administrative issue in question;
- Reasons for concern;
- Possible burdens and benefits from any proposed approaches; and
- Priority of issues (if more than one item is proposed).

Agenda items submitted by the public, as well as those submitted by Federal agencies, will be used in conjunction with the recommendations of the Board's own staff, to develop a listing of the Board's agenda and research priorities.

Dated: November 9, 1990.

Allan V. Burman,

Administrator for Federal Procurement Policy and Chairman, Cost Accounting Standards Board.

[FR Doc. 90-27340 Filed 11-20-90; 8:45 am]

BILLING CODE 3110-01-M

OVERSIGHT BOARD

National Advisory Board Meeting

AGENCY: Oversight Board.

ACTION: Meeting notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act 5 U.S.C. (A), announcement is hereby published for a meeting of the National Advisory Board. The meeting is open to the public.

DATES: The meeting is scheduled for Wednesday, December 5, 1990, from 1 to 4 p.m.

ADDRESSES: The meeting will be held in the Government Services Administration Building, Auditorium, 18th & F Streets NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Oversight Board of the RTC, 1777 F Street NW., Washington, DC 20232, 202/786-9675.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (the Act), Public Law No. 101-73, 103 Stat. 183, 382-383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

Purpose: The purpose of the national advisory board is to provide information and advice to the Oversight Board.

Agenda: A detailed agenda will be available at the meeting. There will be briefings from the chairman of each of the six regional advisory board meetings held throughout the country between October 4 and November 8. Discussion will focus on the key issues which emerged from the regional meetings. They include seller financing, affordable housing, the RTC's marketing strategies and the RTC's use of the private sector. The RTC will demonstrate how to use its computerized real estate inventory program.

Statements: Interested persons may submit, in writing, data, information, or views on the issues pending before the national advisory board prior to or at the meeting. The meeting is open to the public. Seating is available on a first come first served basis.

Dated: November 16, 1990.

Jill Nevius,

Committee Management Officer, Oversight Board, Advisory Board Affairs.

[FR Doc. 90-27444 Filed 11-20-90; 8:45 am]

BILLING CODE 2222-01-M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549-1002.

Extension, Rule 17f-(e), File No. 270-37

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17f-2(e) (17 CFR 240.17f-2(e)) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*), which generally requires members of national securities exchanges, brokers, dealers, registered transfer agents, and registered clearing agencies claiming exemptions from the fingerprint requirement to prepare and maintain a statement supporting their claims for exemption. A total of seventy-five respondents incur a cumulative total of thirty-seven and one-half annual burden hours to comply with the rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549-6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235-0031), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 9, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-27353 Filed 11-20-90; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street NW., Washington, DC 20549.

Extension, Form N-8A, File No. 270-135

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission has submitted for extension of OMB approval Form N-8A under the Investment Company Act of 1940.

Form N-8A (17 CFR 274.10) is used by companies to notify the Commission of their registration under the Investment Company Act of 1940. The form takes about 1 hour to fill out.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-6004, and Gary Waxman, Clearance Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (Paperwork Reduction Project) 3235-0175 (Form N-8A), room 3208 NEOB, Washington, DC 20503.

Dated: November 9, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-27354 Filed 11-20-90; 8:45 am]

BILLING CODE 8010-01-M

Requests Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549-1002.

Extension, Rule 15Bc3-1 and Form MSDW, File No. 270-93

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 15Bc3-1 and Form MSDW under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et. seq.*), which is used to provide notice of withdrawal of registration as a bank municipal securities dealer. A total of 20 respondents incur a cumulative total of ten annual burden hours to comply with the rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-6004 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235-0087), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 9, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-27355 Filed 11-20-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28617; File No. SR-MSE-90-17]

Self-Regulatory Organizations, Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change of the Midwest Stock Exchange, Inc. Relating to Orders Received Over the MAX System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 23, 1990, the Midwest Stock Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons, and simultaneously publishing an order granting partial accelerated approval of the proposed rule change.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The Midwest Stock Exchange, Incorporated ("MSE") proposes to extend its pilot program whereby the guaranteed execution price of small agency market orders received over the Midwest Automated Execution System (MAX) will be automatically improved from the consolidated best bid or offer according to certain pre-defined criteria (SuperMAX) until May 14, 1991. The MSE also requests permanent approval for SuperMAX. The Commission approved SuperMAX on a six month pilot basis on May 14, 1990 (see Securities Exchange Act Release No. 28014, May 14, 1990, order approving SR–MSE–90–5). The initial six-month approval expires on November 14, 1990. In addition, the MSE proposes to change the time during the day that SuperMAX becomes operational from 9 a.m. (ct) to 8:45 a.m. (ct).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to extend its SuperMAX pilot program for a period of six months, and seeks approval of the SuperMAX system on a permanent basis. In addition, the MSE proposes to change the time during the day that SuperMAX becomes operational from 9 a.m. (ct) to 8:45 a.m. (ct). The six-month extension of the pilot period will allow the Exchange to better analyze the effectiveness of SuperMAX and provide the SEC with requested trading data.

The proposed rule is consistent with section 6 of the Act in that it is designed to promote just an equitable principles of trade and will help to perfect the mechanism of a free and open market and a national market system and will foster competition among markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Midwest Stock Exhchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on SuperMAX were informally received from Members and were unanimously favorable.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The MSE requests that the Commission find good cause for approving those parts of the proposed rule change extendig its pilot program until May 14, 1991, and changing the time during the day that SuperMAX becomes operational prior to the thirtieth day after publication of the notice in the **Federal Register**. The proposed rule change implementing the pilot program has been published for comment in the **Federal Register** [1] previously, and there have been no adverse comments on it. The MSE believes it appropriate to approve the extension of the pilot program so that the Exchange can better analyze the effectiveness of SuperMAX and provide the SEC with requested trading data. The MSE requests accelerated approval for changing the time during the day that SuperMAX becomes operational to be effective for the six month extension of the pilot program because that change is merely an operational change that raises no substantive issues. As noted above, the substance of the pilot program was noticed previously and the Commission received no comments on that aspect of the proposal.

The Commission finds that those parts of the proposed rule change extending the pilot program and changing the time during the day that SuperMAX becomes operational is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSE and, in particular, the requirements of section 6, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof, in that accelerated approval is appropriate to extend the pilot program until May 14, 1991 without interruption and to change the time during the day that SuperMAX becomes operational.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 12, 1990.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change extending the pilot program until May 14, 1991, and changing the time during the day that SuperMAX becomes operational as described above be and hereby is approved.

For the Commission, by the Division of Market Regulaton, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: November 14, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–27356 Filed 11–20–90; 8:45 am]

BILLING CODE 8010–01–M

[1] See Securities Exchange Act Release No. 28014 (May 14, 1990), 55 FR 20880.

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended November 9, 1990

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47243.
Date filed: November 5, 1990.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 434 (Fares Between Japan & Korea).
Proposed Effective Date: December 1, 1990.

Docket Number: 47244.
Date filed: November 8, 1990.
Parties: Members of the International Air Transport Association.
Subject: Expedited Resolutions/Recommended Practices R–1 To R–9.
Proposed Effective Date: December 1, 1990.
Docket Number: 47245.
Date filed: November 8, 1990.
Parties: Members of the International Air Transport Association.
Subject: Europe-Africa Expedited Resos R–1 To R–22.
Proposed Effective Date: December 1, 1990.
Docket Number: 47246.
Date filed: November 8, 1990.
Parties: Members of the International Air Transport Association.
Subject: Within Middle East Resolutions R–2 To R–8.
Proposed Effective Date: April 1, 1990.
Docket Number: 47247.
Date filed: November 8, 1990.
Parties: Members of the International Air Transport Association.
Subject: TC3 Areawide Resolutions R–1 To R–7.
Proposed Effective Date: April 1, 1991.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90–27362 Filed 11–20–90; 8:45 am]

BILLING CODE 4910–62–M

Office of the Secretary

[Order 90–11–24; Docket 46766]

Application of Loken Aviation for a Certificate of Public Convenience and Necessity

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Craig Loken d/b/a Loken Aviation fit, willing, and able to provide certificated operations under section 401(d)(1) of the Federal Aviation Act.

DATES: Persons wishing to file objections should do so no later than November 30, 1990.

ADDRESSES: Objections and answers to objections should be filed in Docket 46766 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara P. Dunnigan, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2342.

Dated: November 15, 1990.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 90–27361 Filed 11–20–90; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Aviation Security Advisory Subcommittee Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Aviation Security Advisory Subcommittee Meeting.

SUMMARY: Notice is hereby given of a meeting of the Security Operations Subcommittee of the Aviation Security Advisory Committee.

DATES: The meeting will be held December 4, 1990, from 9 a.m. to 12 p.m..

ADDRESSES: The meeting will be held in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of the Assistant Administrator for Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–7416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Security Operations Subcommittee of the Aviation Security Advisory Committee to be held December 4, 1990, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The Security Operations Subcommittee is chaired by the FAA. The agenda for the meeting is to discuss the crewmember training recommendations prepared by the crewmember training task force.

Attendance at the December 4 meeting is open to the public, but limited to space available. Oral statements are not anticipated, but written statements may be submitted anytime. Persons wishing to present statements or information should contact the Office of the Assistant Admnistrator for Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–7416.

Issued in Washington, DC on November 14, 1990.

Monte R. Belger,

Acting Assistant Administrator for Civil Aviation Security.

[FR Doc. 90–27407 Filed 11–20–90; 8:45 am]

BILLING CODE 4910–13–M

Aviation Security Advisory Committee Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Aviation Security Advisory Committee Meeting.

SUMMARY: Notice is hereby given of a meeting of the Aviation Security Advisory Committee.

DATES: The meeting will be held December 10, 1990, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of the Assistant Administrator for Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–3133.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held December 10, 1990, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The agenda for the meeting is to continue the review of several recommendations from the Report of the President's Commission on Aviation Security and Terrorism. Subcommittee chairs will provide updates on their subcommittee actions since the October 18, 1990, committee meeting. Attendance at the December 10, 1990, meeting is open to the public, but limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comments if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the committee at any time.

Persons wishing to present statements or obtain information should contract the Office of the Assistant

Administrator for Civil Aviation Security, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202-267-3133.

Issued in Washington, DC on November 14, 1990.

Monte R. Belger,

Acting Assistant Administrator for Civil Aviation Security.

[FR Doc. 90-27406 Filed 11-20-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

November 15, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0971.

Form Number: IRS Form 1041-ES.

Type of Review: Revision

Title: Estimated Income Tax for Fiduciaries.

Description: Form 1041-ES is used by fiduciaries of estates and trusts to make estimated tax payments if their estimated tax is $500 or more. IRS uses the data to credit taxpayers' accounts and to determine if the estimated tax has been properly computed and timely paid.

Respondents: Businesses or other for-profit, Small business or organizations.

Estimated Number of Respondents: 1,212,000.

Estimated Burden Hours Per Respondent:

Recordkeeping: 20 minutes.

Learning about the law or the form: 10 minutes.

Preparing the form: 1 hour, 23 minutes.

Copying, assembling, and sending the form to IRS: 20 minutes.

Frequency of Response: Quarterly and Annually.

Estimated Total Reporting Burden: 2,664,000 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90-27346 Filed 11-20-90; 8:45 am]

BILLING CODE 4830-01-M

[Department Circular—Public Debt Series—No. 32-90]

8-¾% Treasury Bonds of August 2020

November 1, 1990.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $10,750,000,000 of United States securities, designated 8-¾% Treasury Bonds of August 2020 (CUSIP No. 912810 EG 9), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payments will be required at the price equivalent of the yield of each accepted bid. Additional amounts of the Bonds may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities.

2. Description of Securities

2.1. The Bonds will be issued November 15, 1990, and are offered as an additional amount of 8-¾% Treasury Bonds of August 2020 (CUSIP No. 912810 EG 9) dated August 15, 1990. Payment for the Bonds will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from August 15, 1990, to November 15, 1990. Interest on the Bonds offered as an additional issue is payable on a semiannual basis on February 15, 1991, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 2020, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other non-business day, the amount due will be payable (without additional interest) on the next business day.

2.2 The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest Components is set forth in section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series No. 2-86, (31 CFR part 357), apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Thursday, November 8, 1990, prior to 12 noon, Eastern Standard time, for noncompetitive tenders and prior to 1 p.m., Eastern Standard time, for competitive tenders. Non-competitive tenders as defined below will be considered timely if postmarked no later than Wednesday, November 7, 1990, and received no later than Thursday, November 15, 1990.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specific yield.

3.3 A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customers are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan association; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Competitive tenders at yields higher than 9.47% will not be accepted, because the equivalent prices would fall below the original issue discount limit of 92.750. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted, and must include accrued interest from August 15, 1990, to November 15, 1990, in the amount of $21.875 per $1,000 of Bonds allotted. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Thursday, November 15, 1990. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, November 13, 1990. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, the tender form used to place the Bonds allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Bond to be separated into the components described in section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum par amount required to obtain the separate components for this offering is $160,000. Par amounts greater than the minimum amount must be in multiples of that amount.

6.4. A Bond may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal

Reserve Bank maintaining the amount for the Bonds. Once a Bond has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such change will be promptly provided.

7.3. The bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachment A is incorporated as part of this offering circular.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Bonds of August 15, 2020, CUSIP No. 912810 EG 9

The Principal Component is designated 8¾% Treasury Principal (TPRN) 2020 due August 15, 2020, CUSIP No. 912803 AU 7.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury Interest (TINT) due:	
February 15, 1991	BH 2
August 15, 1991	BJ 8
February 15, 1992	BK 5
August 15, 1992	BL 3
February 15, 1993	BM 1
August 15, 1993	BN 9
February 15, 1994	BP 4
August 15, 1994	BQ 2
February 15, 1995	BR 0
August 15, 1995	BS 6
February 15, 1996	BT 6
August 15, 1996	BU 3
February 15, 1997	BV 1
August 15, 1997	BW 9
February 15, 1998	BX 7
August 15, 1998	BY 5
February 15, 1999	BZ 2
August 15, 1999	CA 6
February 15, 2000	CB 4
August 15, 2000	CC 2
February 15, 2001	CD 0
August 15, 2001	CE 8
February 15, 2002	CF 5
August 15, 2002	CG 3
February 15, 2003	CH 1
August 15, 2003	CJ 7
February 15, 2004	CK 4
August 15, 2004	CL 2
February 15, 2005	CM 0
August 15, 2005	CN 8
February 15, 2006	CP 3
August 15, 2006	CQ 1
February 15, 2007	CR 9
August 15, 2007	CS 7
February 15, 2008	CT 5
August 15, 2008	CU 2
February 15, 2009	CV 0
August 15, 2009	CW 8
February 15, 2010	CX 6
August 15, 2010	CY 4
February 15, 2011	CZ 1
August 15, 2011	DA 5
February 15, 2012	DB 3
August 15, 2012	DC 1
February 15, 2013	DD 9
August 15, 2013	DE 7
February 15, 2014	DF 4
August 15, 2014	DG 2
February 15, 2015	DH 0
August 15, 2015	JT 8
February 15, 2016	KG 4
August 15, 2016	KJ 8
February 15, 2017	KL 3
August 15, 2017	KN 9
February 15, 2018	KQ 2
August 15, 2018	KS 8
February 15, 2019	KU 3
August 15, 2019	KW 9
February 15, 2020	KY 5

INTEREST COMPONENTS—Continued

Designation	CUSIP No. 912833
August 15, 2020	LA 6

[FR Doc. 90-27498 Filed 11-19-90; 10:08 am]

BILLING CODE 8810-40-M

[Department Circular—Public Debt Series—No. 30-90]

Treasury Notes of November 15, 1993, Series V-1993

November 1, 1990.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $12,500,000,000 of the United States securities, designated Treasury Notes of November 15, 1993, Series V-1993 (CUSIP No. 912827 ZM 7), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own accounts in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated November 15, 1990, and will accrue interest from that date, payable on a semiannual basis on May 15, 1991, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature November 15, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Tuesday, November 6, 1990, prior to 12 noon, Eastern Standard time, for noncompetitive tenders and prior to 1 p.m., Eastern Standard time, for competitive tenders. Non-competitive tenders as defined below will be considered timely if postmarked no later than Monday, November 5, 1990, and received no later than Thursday, November 15, 1990.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discounted limit of 99.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Thursday, November 15, 1990. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, November 13, 1990. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the

registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 90-27496 Filed 11-19-90; 8:45 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 31-90]

Treasury Notes of November 15, 2000, Series D-2000

November 1, 1990.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $11,000,000,000 of United States securities, designated Treasury Notes of November 15, 2000, Series D-2000 (CUSIP No. 912827 ZN 5), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated November 15, 1990, and will accrue interest from that date, payable on a semiannual basis on May 15, 1991, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature November 15, 2000, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. A Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Wednesday, November 7, 1990, prior to 12 noon, Eastern Standard time, for noncompetitive tenders and prior to 1 p.m., Eastern Standard time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, November 6, 1990, and received no later than Thursday, November 15, 1990.

3.2. The par amount of Notes paid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetiive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealders published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Thursday, November 15, 1990. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing the United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, November 13, 1990. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Note to be separated into the components described in section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payment corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A note may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Notes. Once a Note has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constitued form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Programs, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitutional request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution

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transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7 General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secreary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

7.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A and B are incorporated as part of this circular.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

CUSIP NUMBERS AND DESIGNATIONS FOR THE PRINCIPAL COMPONENT AND INTEREST COMPONENTS OF TREASURY NOTES OF NOVEMBER 15, 2000, SERIES D-2000, CUSIP NO. 912827 ZN 5.

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series D-2000 due November 15, 2000, CUSIP No. 912820 AY 3.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury Interest (TINT) due:	
May 15, 1991	ES 5
November 15, 1991	ET 3
May 15, 1992	EU 0
November 15, 1992	EV 8
May 15, 1993	EW 6
November 15, 1993	EX 4
May 15, 1994	EY 2
November 15, 1994	EZ 9
May 15, 1995	FA 3

INTEREST COMPONENTS—Continued

Designation	CUSIP No. 912833
November 15, 1995	FB 1
May 15, 1996	FC 9
November 15, 1996	FD 7
May 15, 1997	FE 5
November 15, 1997	FF 2
May 15, 1998	FG 0
November 15, 1998	FH 8
May 15, 1999	FJ 4
November 15, 1999	FK 1
May 15, 2000	FL 9
November 15, 2000	FM 7

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

Coupon (percent)	Minimum face ($)	Interest payment ($)
5.000	40,000.00	1,000.00
5.125	1,600,000.00	41,000.00
5.250	800,000.00	21,000.00
5.375	1,600,000.00	43,000.00
5.500	400,000.00	11,000.00
5.625	320,000.00	9,000.00
5.750	800,000.00	23,000.00
5.875	1,600,000.00	47,000.00
6.000	100,000.00	3,000.00
6.125	1,600,000.00	49,000.00
6.250	32,000.00	1,000.00
6.375	1,600,000.00	51,000.00
6.500	400,000.00	13,000.00
6.625	1600,000.00	53,000.00
6.750	800,000.00	27,000.00
6.875	320,000.00	11,000.00
7.000	200,000.00	7,000.00
7.125	1600,000.00	57,000.00
7.250	800,000.00	29,000.00
7.375	1600,000.00	59,000.00
7.500	80,000.00	3,000.00
7.625	1,600,000.00	61,000.00
7.750	800,000.00	31,000.00
7.875	1,600,000.00	63,000.00
8.000	25,000.00	1,000.00
8.125	320,000.00	13,000.00
8.250	800,000.00	33,000.00
8.375	1,600,000.00	67,000.00
8.500	400,000.00	17,000.00
8.625	1,600,000.00	69,000.00
8.750	160,000.00	7,000.00
8.875	1,600,000.00	71,000.00
9.000	200,000.00	9,000.00
9.125	1,600,000.00	73,000.00
9.250	800,000.00	37,000.00
9.375	64,000.00	3,000.00
9.500	400,000.00	19,000.00
9.625	1,600,000.00	77,000.00
9.750	800,000.00	39,000.00
9.875	1,600,000.00	79,000.00
10.000	20,000.00	1,000.00
10.125	1,600,000.00	81,000.00
10.250	800,000.00	41,000.00
10.375	1,600,000.00	83,000.00
10.500	400,000.00	21,000.00
10.625	320,000.00	17,000.00
10.750	800,000.00	43,000.00
10.875	1,600,000.00	87,000.00
11.000	200,000.00	11,000.00
11.125	1,600,000.00	89,000.00
11.250	160,000.00	9,000.00
11.375	1,600,000.00	91,000.00
11.500	400,000.00	23,000.00
11.625	1,600,000.00	93,000.00
11.750	800,000.00	47,000.00
11.875	320,000.00	19,000.00

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.—Continued

Coupon (percent)	Minimum face ($)	Interest payment ($)
12.000	50,000.00	3,000.00
12.125	1,600,000.00	97,000.00
12.250	800,000.00	49,000.00
12.375	1,600,000.00	99,000.00
12.500	16,000.00	1,000.00
12.625	1,600,000.00	101,000.00
12.750	800,000.00	51,000.00
12.875	1,600,000.00	103,000.00
13.000	200,000.00	13,000.00
13.125	320,000.00	21,000.00
13.250	800,000.00	53,000.00
12.375	1,600,000.00	107,000.00
13.500	400,000.00	27,000.00
13.625	1,600,000.00	109,000.00
13.750	160,000.00	11,000.00
13.875	1,600,000.00	111,000.00
14.000	100,000.00	7,000.00
14.125	1,600,000.00	113,000.00
14.250	800,000.00	57,000.00
14.375	320,000.00	23,000.00
14.500	400,000.00	29,000.00
14.625	1,600,000.00	117,000.00
14.750	800,000.00	59,000.00
14.875	1,600,000.00	119,000.00
15.000	40,000.00	3,000.00
15.125	1,600,000.00	121,000.00
15.250	800,000.00	61,000.00
15.375	1,600,000.00	123,000.00
15.500	400,000.00	31,000.00
15.625	64,000.00	5,000.00
15.750	800,000.00	63,000.00
15.875	1,600,000.00	127,000.00
16.000	25,000.00	2,000.00
16.125	1,600,000.00	129,000.00
16.250	160,000.00	13,000.00
16.375	1,600,000.00	131,000.00
16.500	400,000.00	33,000.00
16.625	1,600,000.00	133,000.00
16.750	800,000.00	67,000.00
16.875	320,000.00	27,000.00
17.000	200,000.00	17,000.00
17.125	1,600,000.00	137,000.00
17.250	800,000.00	69,000.00
17.375	1,600,000.00	139,000.00
17.500	80,000.00	7,000.00
17.625	1,600,000.00	141,000.00
17.750	800,000.00	71,000.00
17.875	1,600,000.00	143,000.00
18.000	100,000.00	9,000.00
18.125	320,000.00	29,000.00
18.250	800,000.00	73,000.00
18.375	1,600,000.00	147,000.00
18.500	400,000.00	37,000.00
18.625	1,600,000.00	149,000.00
18.750	32,000.00	3,000.00
17.875	1,600,000.00	151,000.00
19.000	200,000.00	19,000.00
19.125	1,600,000.00	153,000.00
19.250	800,000.00	77,000.00
19.375	320,000.00	31,000.00
19.500	400,000.00	39,000.00
19.625	1,600,000.00	157,000.00
19.750	800,000.00	79,000.00
19.875	1,600,000.00	159,000.00
20.000	10,000.00	1,000.00
20.125	1,600,000.00	161,000.00
20.250	800,000.00	81,000.00

[FR Doc. 90-27497 Filed 11-19-90; 10:07 am]

BILLING CODE 4810-40-M

DEPARTMENT OF VETERANS AFFAIRS

Scientific Review and Evaluation Board for Rehabilitation Research and Development; Meeting

In accordance with Public Law 92-463, the Department of Veterans Affairs gives notice of a meeting of the Scientific Review and Evaluation Board for Rehabilitation Research and Development. This meeting will convene at the Vista International Hotel, 1400 M Street NW., Washington, DC January 15 through January 18, 1991. The session on Janauary 15, 1991, is scheduled to begin at 6:30 p.m. and end at 10:30 p.m. The sessions on January 16, 17, and 18, 1991, are scheduled to begin at 8 a.m. and end at 5 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public (to the seating capacity of the room) for the January 15, session for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On January 16-18, 1991, the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discusion of site visits, staff and consultant critiques of proposed research protocols, and similar analytical documents that necessitate the consideraton of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and hereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(b) and the determination of the Secretary of the Department of Veterans Affairs under sections 10(d) of Public Law 92-463 as amended by section 5(c) of Public Law 94-409.

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service, Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420 (phone: 202-233-5177) at least five days before the meeting.

Dated: November 12, 1990.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 90-27389 Filed 11-20-90; 8:45 am]

BILLING CODE 8320-01-M

Special Medical Advisory Group; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 that a meeting of the Special Medical Advisory Group will be held on December 6-7, 1990. The session on December 6 will be held at the Capital Hilton Hotel, 16th and K Streets, NW., Washington, DC, and the session on December 7 will be held in room 119 at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC. The purpose of the Special Medical Advisory Group is to advise the Secretary and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Services and Research Administration. The session on December 6 (held at the Capital Hilton Hotel) will convene at 6 p.m. and the session on December 7 will convene at 8:30 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contract Lorri Fertal, Office of the Chief Medical Director, Department of Veterans Affairs (phone 202/233-3985) prior to December 3, 1990.

Dated: November 13, 1990.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 90-27388 Filed 11-20-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 225
Wednesday, November 21, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 55 FR 47830, Thursday, November 15, 1990.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 11:00 a.m., Monday, November 19, 1990.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

International banking matter.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 19, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27601 Filed 11-19-90; 3:51 pm]

BILLING CODE 6210-01-M

STATE JUSTICE INSTITUTE

TIME AND DATE:

9:00 a.m. to 5:00 p.m., November 30, 1990
9:00 a.m. to 5:00 p.m., December 1, 1990
9:00 a.m. to to 12 noon, December 2, 1990

PLACE: State Justice Institute, 120 South Fairfax Street, Alexandria, VA 22314.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

Discussion of FY 92 budget, information dissemination plans, and options to provide assistance to help State courts cope with their drug caseloads; and consideration of concept papers and applications.

Portions Closed to the Public

Discussion of internal personnel issues.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 120 South Fairfax Street, Alexandria, Virginia 22314.

David I. Tevelin,

Executive Director.

[FR Doc. 90-27589 Filed 11-19-90; 2:42 pm]

BILLING CODE 6820-SC-M

NEIGHBORHOOD REINVESTMENT CORPORATION

Personnel Committee Meeting

TIME AND DATE: 10:00 a.m., Tuesday, November 20, 1990.

PLACE: U.S. Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 7100, Washington, D.C. 20410.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Martha A. Diaz-Ortiz, Acting Secretary, (202) 376-2400.

Agenda

I. Officers' Compensation; and
II. Report from Korn/Ferry on Search for Executive

Martha A. Diaz-Ortiz,

Acting Secretary

[FR Doc. 90-27540 Filed 11-19-90; 2:06 pm]

BILLING CODE 7570-01-M

Corrections

Federal Register
Vol. 55, No. 225
Wednesday, November 21, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 489]

Termination of Foreign-Trade Subzones 84A and 84B, Harris County, TX

Correction

In notice document 90-26809 appearing on page 47502, in the issue of Wednesday, November 14, 1990, in the second column, in the last line, "Subzone Nos. 82A" should read "Subzone Nos. 84A".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM91-2-26-000]

Natural Gas Pipeline Co. of America; Change in FERC Gas Tariff

Correction

In notice document 90-26777 appearing on page 47521, in the issue of Wednesday, November 14, 1990, in the second column, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26380; Special Federal Aviation Regulation (SFAR) No. 61]

Restriction on Certain Flights from the United States to Iraq or Kuwait

Correction

In rule document 90-26570 beginning on page 47298, in the issue of Friday, November 9, 1990, make the following corrections:

1. On page 47299, in the second column, in the ninth line of the first paragraph, "and" should read "or".

SFAR No. 61 [Corrected]

2. On page 47300, in the first column, in paragraph (c), in the next to last line, "Resolution 661 (1960)" should read "Resolution 661 (1990)".

BILLING CODE 1505-01-D

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federal register

Wednesday
November 21, 1990

Part II

Department of Defense

48 CFR Part 204, et al.
Department of Defense Acquisition Regulations; Miscellaneous Amendments

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 205, 206, 209, 214, 215, 216, 219, 225, 226, 231, 232, 235, 242, 245, 246, 252, and Appendix N

[Defense Acquisition Circular (DAC) 88-16]

Department of Defense Acquisition Regulations; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments; and final rules.

SUMMARY: Defense Acquisition Circular (DAC) 88-16 amends the DoD FAR Supplement (DFARS) coverage on price competition in dual source programs, field pricing support, quarterly limitation on payments under incentive contracts, subcontracting with Indians, foreign acquisition, polyacrylonitrile carbon fiber, welded shipboard anchor and mooring chain, noncommercial cost principles, flexible progress payments, fixed price type development contracts, contract administration services on military installations, authority to issue orders under basic ordering agreements, special test equipment, DD form 1057, Appendix N (activity address numbers), and miscellaneous editorial items.

DATES: *Effective Date:* November 16, 1990 except for §§ 219.001, 219.301-70(b)(2) and (3), 219.302 (S-70), and 252.219-7005 (Item IV, Finalizing Interim Small Business Rules,) which were effective April 16, 1990, and §§ 226.71 and 252.226-7002 (Item V, Indian Incentive Program,) which were effective September 28, 1990.

Comment Date: Comments on the interim rule, §§ 226.71 and 252.226-7002 (Item V), should be submitted to the address below by December 21, 1990, to be considered in formulating the final rule. Please cite DAR Case 88-342 in all correspondence concerning this rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mrs. Alyce Sullivan, DAR Council, ODASD(P)/DARS, c/o OASD(P&L)(M&RS), Room 3D139, Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Ms. Lucile Hughes, telephone (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Determination to Issue Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue the regulations in Item V of DAC #88-16 as an interim rule. Compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

B. Background

The DoD FAR Supplement is codified in chapter 2 title 48 of the Code of Federal Regulations.

The October 1, 1989 revision of the CFR is the most recent edition of that title. It includes amendments to the 1988 edition of the DoD Far Supplement made by Defense Acquisition Circulars 88-1 through 88-12.

DAC 88-16, Item IV. This document finalizes interim regulations which were published in the May 8, 1990, **Federal Register** (55 FR 19070).

DAC 88-16, Item V. This interim rule is issued as implementation of Section 7 of Pub. L. 100-442.

C. Public Comments

DAC 88-16, Item V

This item is published as an Interim rule. Public comment is invited.

DAC 88-16 Items, I, II, III, XI, XII, XIII, XIV, XV, XVI, and XVII

Public comments were not solicited for these revisions because the revisions do not alter the substantive meaning of any coverage in the DFARS having a significant impact on contractors or offerors, or do not have a significant effect beyond agency internal operating procedures.

DAC 88-16, Item VI

These rules were published for public comment. The comments that were received were considered in development of the final rule:

Item IV. Interim rules were published in the **Federal Register** May 8, 1990 (55 FR 19070). No comments were received.

Item VII. A proposed rule was published in the **Federal Register** January 17, 1990 (55 FR 1593).

Item VIII. A proposed rule was published in the **Federal Register** on July 2, 1990 (55 FR 27269).

Item IX. A proposed rule was published in the **Federal Register** on July 28, 1989 (54 FR 31480).

Item X. A proposed rule was published in the **Federal Register** on May 29, 1990 (55 FR 21758).

D. Regulatory Flexibility Act

DAC 88-16, Items, I, II, III, XII, XIII, XIV, XV, XVI, and XVII

The Regulatory Flexibility Act does not apply because these rules are not significant revisions within the meaning of Public Law 98-577. However, comments from small entities concerning the affected DoD FAR Supplement Subparts will be considered in accordance with section 610 of the Act. Such comments must be submitted separately. Please cite DAR Case 90-610 in correspondence.

DAC 88-16, Item IV

These rules were published in the **Federal Register** May 8, 1990 as interim rules (55 FR 19070). The requirements of the Regulatory Flexibility Act were addressed by the Small Business Administration (SBA) in development of its regulations implementing the Business Opportunity Development Reform Act of 1988, Pub. L. 100656. The SBA's regulations were published in the **Federal Register** March 13, 1989 (54 FR 10271).

DAC 88-16, Item V

This interim rule is not expected to have a significant economic impact on a substantial number of small entities because it has limited application. A Regulatory Flexibility analysis has not been prepared. However, comments received from small entities will be considered in developing the final rule.

DAC 88-16, Item VI

DoD certifies that this final rule will not have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act because the only revision impacting small business is the evaluation procedure at 225.105, or application of a single 50% factor to nonqualifying country offers instead of the existing multi-step procedure. We cannot quantify the impact, however, it will result in a greater preference for small business offers over nonqualifying country offers.

DAC 88-16, Item VII

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. Comments received in response to a notice of proposed rule published January 17, 1990 (55 FR 1593) were considered in developing the final rule.

DAC 88-16, Item VIII

This final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601 et. seq. No comments were received in response to publication of the proposed rules which addressed the Regulatory Flexibility statement.

DAC 88-16, Item IX

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it does not apply to small entities.

E. Paperwork Reduction Act

DAC 88-16, Items I, II, III, IV, V, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, and XVII

The Paperwork Reduction Act does not apply because these rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

DAC 88-16, Item VI

The Paperwork Reduction Act applies. This rule is based on the OMB terms of clearance under OMB Control Number 0704-7266.

List of Subjects in 48 CFR Parts 204, 205, 206, 209, 214, 215, 216, 219, 225, 226, 231, 232, 235, 242, 245, 246 and 252

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulatory System.

[Defense Acquisition Circular No. 88-16, dated November 16, 1990]

All DoD FAR Supplement and other directive material contained in this circular is effective November 16, 1990, unless otherwise specified in the Item summary. Material effective November 16, 1990, is to be used upon receipt. Solicitations issued before receipt of the circular do not have to be amended to include the new or revised clauses or forms. See the guidance in DoD FAR Supplement 201.301(S-70)(4).

Defense Acquisition Circular (DAC) 16 amends the Defense Federal Acquisition Regulation Supplement (DFARS) 1988 edition, prescribes procedures to be followed, and provides informational interest items. The amendments, procedures, and information are summarized as follows:

Item I—Adequate Price Competition in Dual Source Programs

DFARS 215.804-3 is revised to emphasize the need for contracting officers to make determinations of adequate price competition on dual source acquisitions on a case-by-case basis.

Item II—Field Pricing Support

DFARS 215.805-5(e)(6) is revised to relieve the auditor in a field pricing effort of the responsibility for quantifying technical findings, unless the auditor had specifically requested a technical analysis.

Item III—Quarterly Limitation on Payments Under Incentive Contracts

DFARS 216.403 is revised by deleting the Quarterly Limitation on Payments coverage, including the formula for computing overpayments or underpayments. The information the contractor is required to provide, by the clauses in FAR 52.216-16 and 52.216-17, adequately identifies overpayments and underpayments. Consequently, there is no need to use a formula to compute overpayments and underpayments.

Item IV—Finalizing Interim Small Business Rules

The interim rules in DAC #88-14, (Items IX, X, and XI), on Presumptive Eligibility of Native Hawaiian Organizations, Disadvantaged Business Status Protests, and Misrepresentation of Small Business Status, are converted to final rules with no changes. These rules were effective April 16, 1990.

DFARS 219.001, 219.301-70(b)(2) and 252.219-7005 were revised to add Hawaiian Organizations and Indian Tribes to the list of groups presumed to be socially disadvantaged. (Item IX in DAC #88-14).

DFARS 219.301-70(b)(3), 219.302-(S-70) and 252.219-7005 were revised to reflect the establishment within the Small Business Administration (SBA) of a Division of Program Certification and Eligibility and assignment of the responsibility for deciding protests regarding the status of a concern as a disadvantaged concern for purposes of any program conducted under the authority of Section 8(d) of the Small Business Act. (Item X in DAC #88-14).

DFARS 252.219-7005 was revised to include the notice of penalty for misrepresentation of status as a small business or small disadvantaged business for the purpose of obtaining a contract or subcontract under one of the small or small disadvantaged business preference programs authorized by Section 8(a), 8(d), 9 or 15 of the Small Business Act. (Item XI in DAC #88-14).

Item V—Indian Incentive Program

Section 7 of Pub. L. 100-442 amends the Indian Financing Act of 1974 (25 U.S.C. 1544) by adding a new section 504 to encourage the use of Indian organizations and Indian-owned economic enterprises in subcontracting. Section 9103 of the FY 1990 DoD Appropriations Act described how to compute the 5% incentive. DFARS subpart 226.71 and a clause at 252.226-7002 are added to implement the law and permit prime contractors to claim reimbursement of those costs of subcontracting with an Indian organization or enterprise which exceed the cost of acquiring the supplies or services from another source. Reimbursement of up to 5% of the subcontract price/cost is permitted.

This item is issued as an interim rule which was effective September 28, 1990. It confirms a departmental letter issued that date.

Item VI—Foreign Acquisition

Multiple revisions have been made in DFARS part 225, Foreign Acquisition to simplify and clarify the coverage. DFARS coverage which was redundant with FAR coverage has been deleted and references have been updated. Revisions primarily pertain to the Buy American Act, Trade Agreements Act, Customs and Duties and purchases from qualifying countries.

The evaluation procedures for the Buy American Act-Supplies were revised to incorporate a single 50% evaluation factor (inclusive of duty), instead of the 6/12% exclusive of duty or 50% inclusive of duty. The Buy American Act evaluation factor was also revised so that it is applied only when an offer of a domestic end product is eligible for award.

Customs and Duties, subpart 225.6, is simplified and revised to waive duty for all designated country end products, not just those that are also qualifying countries. A new clause, 252.225-7029, Information for Duty-Free Entry Evaluation, has been added to provide the contracting officer the information needed to evaluate and award offers with and without duty. Offerors should already have this information available when they price their offer in the normal course of business for companies offering foreign products.

Corresponding revisions have been made to subparts 205.2, 208.4, 209.1, 214.2, and 246.4.

Item VII—Polyacrylonitrile Carbon Fiber

DFARS 225.7011 is revised and a clause at 252.225-7030 is added to implement Section 8088 of Pub. L. 100-202, which directs the Secretary of Defense to take action necessary to ensure that a minimum of 50 percent of the DoD Polyacrylonitrile (PAN) carbon fiber requirement is acquired from domestic sources by 1992.

Item VIII—Welded Shipboard Anchor and Mooring Chain

DFARS subparts 208.78, 225.70, and 252.2 are revised to implement statutory restrictions on the acquisition of welded shipboard anchor and mooring chain four inches in diameter and under. The Clause at 252.208–7005 is revised and two new clauses are added as 252.225–7025 and 252.225–7026 to distinguish between the differing restrictions in the FY 88 and FY 89 and later laws.

Item IX—Noncommercial Cost Principles

Section 2324(e) of Title 10 U.S.C., "Allowable costs under defense contracts," makes certain costs unallowable and requires the Secretary of Defense to prescribe implementing regulations. FAR subpart 31.2, has been revised to incorporate the statutory prohibitions as they apply to contracts with commercial organizations. This DFARS rule implements the statutory prohibitions for contracts with educational institutions; state, local and Federally recognized Indian tribal governments; and nonprofit organizations.

Item X—Flexible Progress Payments

DFARS 232.502–1(S–71) and the clause at 252.232–7004 are revised to provide for the payment of interest as a remedy when contractors are overpaid because data they submitted for use in determining the flexible progress payment rate turns out to be inaccurate, incomplete, or noncurrent. (These changes result from recommendations made by the DoD Inspector General.) In addition, the policy with regard to small business eligibility for flexible progress payments is clarified; procedures with regard to the Cash Flow Computer Model are revised to reflect elimination of the COPPER IMPACT time sharing computer network; and, the text and clause are rewritten and reformatted to improve readability.

Item XI—Fixed-Price Type Development Contracts

DFARS 235.008 is revised to implement Section 9048 of the DoD Fiscal Year 1990 Authorization Act and DoD policy covering restrictions on the use of fixed-price type contracts for development program efforts.

Item XII—Contract Administration Services on Military Installations

DFARS 242.270 is revised to clarify the circumstances under which the Defense Contract Management Command will perform contract administration services for work performed under contract on a military installation.

Item XIII—Delegation of Authority to Issue Orders Under Basic Ordering Agreements

DFARS 242.302 is revised to add to the list of functions which can be delegated to the contract administration office, the issuance, negotiation, and execution of work orders under basic ordering agreements for overall, maintenance, and repair.

Item XIV—Special Test Equipment

Coverage is added at DFARS 245.608–5 to incorporate special DoD screening procedures for standard components of special test equipment that qualify as industrial plant equipment, other plant equipment, and automated data processing equipment.

Item XV—DD Form 1057

The October 1989 version of DD Form 1057, Monthly Contracting Summary of Contract Actions $25,000 or Less, is included at 253.303–70–D–1057. Lines 2a and 2b in Section B—Contracting Actions, are new. Forms are not printed in the CFR.

Item XVI—Revision of DFARS Appendix N, Activity Address Numbers

Appendix N is updated.

Item XVII—Editorial Revisions

(a) DFARS 225–7012–3 is amended by removing in the first sentence of paragraph (a) the punctuation and words ", except for those asterisked,".

(b) DFARS 204.7108–3(b) is revised to update the reference "Appendix K" to read "Appendix G".

Interim Rule Adopted as Final Without Change

PARTS 219 AND 252—[AMENDED]

1. Accordingly, the interim rules amending 48 CFR parts 219 and 252 which were published at 55 FR 19070 on May 8, 1990, are adopted as final rules without change.

Amendments to DOD FAR Supplement (DAC #88–16)

Therefore, the DoD FAR Supplement is amended as set forth below.

2. The authority for 48 CFR parts 204, 205, 208, 209, 214, 215, 216, 219, 225, 226, 231, 232, 235, 242, 245, 246, and 252, continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and FAR subpart 1.3.

PART 204—ADMINISTRATIVE MATTERS

204.7108–3 [Amended]

3. Section 204.7108–3(b) is amended by revising the reference "Section K" to read "Appendix G".

PART 205—PUBLICIZING CONTRACT ACTIONS

4. Section 205.203 is revised to read as follows:

205.203 Publicizing and response time.

(b)(S–70) When requested by a source located in a qualifying country or a designated country as defined in part 225, the contracting officer shall allow at least 45 days response time for receipt of bids or proposals from the date of issuance of the solicitation if this is consistent with Government requirements.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

208.405–1 [Amended]

5. Section 208.405–1 is amended by adding paragraph (c) "[See 225.107]." at the end of the sentence.

6. Subpart 208.78 is revised to read as follows:

Subpart 208.78—Forging Items Used for Military Application for Combat and Direct Combat Support Items

Sec.
208.7801 Definitions.
208.7802 Policy.
208.7802–1 DoD forging items that must be acquired from United States and Canadian sources.
208.7803 Procedures.

Subpart 208.78—Forging Items Used for Military Application for Combat and Direct Combat Support Items

208.7801 Definitions.

Domestic manufacture means forging items manufactured in the United States or Canada.

End item means a final combination of end products, component parts, and/or materials which is ready for its intended use.

208.7802 Policy.

Except as provided in 208.7803, contracting officers shall require that forging items listed at 208.7802–1 acquired directly or incorporated into end items are of domestic manufacture. This restriction does not include forgings used for commercial vehicles or for noncombat support military vehicles.

208.7802–1 DoD forging items that must be acquired from United States or Canadian sources.

Items	Categories
Shipboard Forged Anchor Chain.	All.
Ship Propulsion Shafts	Excludes service and landing craft shafts.
Periscope Tubes	All.
Ring Forgings for Bull Gears.	All greater than 120 inches in diameter.
Large Caliber, Thick-Walled Cannon (105mm through 8-inch forgings).	Preform, gun tube, muzzle brake, and breach ring forgings.
60mm and 81mm Mortar Forgings.	Bipod, base plate, and body yoke forgings.
Small Caliber Weapons Forgings.	Barrel extensions, bolts, receivers, sights/handles, etc.
Tank and Automotive Forgings.	Turret rings, road arms, final drive gears, shafts, track shoes, axle shafts, flywheels, connecting rods, crankshafts, roadwheels, spindles, torsion bars.

208.7803 Procedures.

(a) Insert the clause at 252.208–7005, Required Sources for Forging Items, in all contracts except—

(1) When the contracting officer knows the item being acquired does not contain forging items listed in 208.7802–1;

(2) when purchases are made overseas for overseas use;

(3) If the quantity being acquired is greater than that required to maintain the U.S. defense mobilization base (provided the quantity above mobilization base needs constitutes an economical buy quantity), the quantity of items above the mobilization base requirement will not be subject to domestic manufacturing restrictions and shall be awarded competitively. NATO and other qualifying countries may compete for excess quantities consistent with part 225.

(b) The contracting officer may waive the requirements of 252.208–7005 after contract award on a case-by-case basis. Waivers may be granted when adequate domestic supplies of listed forging items are not available to meet DoD needs on a timely basis. Such waivers shall only apply for the time necessary for the contractor to acquire domestic forging items.

(c) A Canadian firm may supply restricted items in accordance with paragraph (c) of the clause at 252.208–7005.

PART 209—CONTRACTOR QUALIFICATIONS

7. Section 209.103 is amended by revising the title of paragraph (S–70) and by revising paragraph (S–70)(1) to read as follows:

209.103 Policy.

(S–70) *Acquisition from Foreign Concerns.* (1) Awards to concerns in qualifying countries are subject to this subpart 209.1.

* * * * *

PART 214—SEALED BIDDING

214.202 [Amended]

8. Section 214.202 is amended by adding the following paragraph: "See 225.7403 for procedures for purchasing from qualifying countries."

9. Section 214.202–1 is revised to read as follows:

214.202–1 Bidding time.

(a) *Policy.* When requested by a source located in a qualifying country or a designated country as defined in part 225, the contracting officer shall provide for a 45-day bidding period if this is consistent with the Government's requirements.

214.207 [Amended]

10. Section 214.207 is amended by placing a period after the reference "225.7403(a)" and removing the remainder of the phrase within the parentheses at the end of the section.

PART 215—CONTRACTING BY NEGOTIATION

11. A new section 215.401 is added to read as follows:

215.401 Applicability.

See 225.7403 for additional guidance on procedures for purchasing from qualifying countries.

12. Section 215.804–3 is amended by revising paragraph (b)(S–70) to read as follows:

215.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

* * * * *

(b)(S–70) Adequate Price Competition in Dual Source Programs. (i) In the case of dual source programs, the determination of adequate price competition must be made on a case-by-case basis and contracting officers must exercise deliberation and thorough review in making such determination. Even in those cases where adequate price competition exists, it may still be appropriate, in certain cases, to obtain some data in support of the price analysis performed.

(ii) Adequate price competition normally exists when prices are solicited across a full range of step quantities, normally including a 0–100 per cent split, from at least two offerors who are individually capable of producing the full quantity, and

(A) The award is made to the offeror with the lowest evaluated price;

(B) When the award is split, if the combined price of both awards is the lowest evaluated price in the range of offers submitted; or

(C) When the combined price of both awards is not the lowest evaluated price in the range of offers submitted, the price reasonableness of all prices awarded is clearly established on the basis of price analysis.

(iii) The procedures in paragraphs (b)(S–70)(i) and (ii) of this subsection may also be used in multiple source acquisitions, including those for the mobilization base.

* * * * *

13. Section 215.805–5 is amended by revising paragraph (e)(6) to read as follows:

215.805–5 Field pricing support.

* * * * *

(e)(6) The CAO price/cost analyst is responsible for providing a complete and accurate field pricing report. This includes the quantification of technical findings; however, if the auditor requests technical information in accordance with paragraph (a)(2)(iv) of this subsection, the auditor will incorporate the financial effect of such technical findings in the audit report.

* * * * *

PART 216—TYPES OF CONTRACTS

216.403 [Amended]

14. Section 216.403 is amended by removing paragraph (c)(S–70).

PART 225—FOREIGN ACQUISITION

15. Section 225.000 is revised to read as follows:

225.000 Scope of part.

This part supplements FAR part 25 and provides special guidance for purchasing foreign defense supplies, services, and construction materials. This part also provides guidance for foreign military sales and research and development cooperative programs.

16. Section 225.101 is redesignated as 225.000–70 and is revised to read as follows:

225.000–70 Definitions.

As used through this part, the words and terms defined in this paragraph

shall have the meanings set forth below, unless a different definition is prescribed for a specific subpart.

(a) *Defense equipment* means any equipment, item of supply, component, or end product purchased by the Department of Defense.

(b) *Domestic end product*, instead of the definition at FAR 25.101, means an unmanufactured end product which has been mined or produced in the United States; or an end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act (FAR 25.102(a)(3)).

(c) A *nonqualifying country* means any country other than the United States that is not listed in 225.7403.

(d) A *nonqualifying country component* means an item mined, produced, or manufactured in a nonqualifying country.

(e) A *nonqualifying country end product* means an end product which is not a domestic or qualifying country end product.

(f) *Nonqualifying country offer* means an offer of a nonqualifying country end product, including transportation to destination.

(g) *Qualifying country* means any country set forth at 225.7403.

(h) *Qualifying country component* means an item mined, produced, or manufactured in a qualifying country.

(i) *Qualifying country end product* means:

(1) An unmanufactured end product mined or produced in a qualifying country; or

(2) An end product manufactured in a qualifying country if the cost of its qualifying country components and its components mined, produced or manufactured in the United States exceeds 50% of the cost of all of its components. The cost of components shall include transportation to the place of incorporation into the end product and any duty, whether or not duty is in fact paid.

(j) *Qualifying country offer* means an offer of a qualifying country end product, including transportation to destination.

(k) *Source* (when restricted by such words as foreign, domestic, qualifying country, etc.) refers to the actual manufacturer or producer of the end product or component (product may encompass a report).

17. A new section 225.000–71 is added to read as follows:

225.000–71 Policy.

(a) When issuing a solicitation for defense supplies, services, and construction materials where foreign participation is expected, and in evaluating offers where there is foreign participation, contracting officers must ensure that the solicitation and evaluation procedures comply with applicable statutes, regulations, and policies (for example, the Defense Appropriations Act, Trade Agreements Act, International Agreements and Memoranda, Buy American Act, and support a favorable international balance of payments).

(b) The following matrix provides a guide for the analysis to be performed on each offer of a foreign end product in response to a solicitation for supplies.

Step	If yes	If no
1. Is the acquisition of the product restricted by the Department of Defense (See part 206) or by the Defense Appropriations or Authorization Acts (See subpart 225.70).	The specific restrictions of the Acts must be followed	Go to Step 2.
2. Is the product being offered a qualifying country end product?	Evaluate the offer as set forth in 225.74 (but see Step 4).	Go to Step 3.
3. Is the product being purchased covered by the Trade Agreements Act? (See subpart 225.4).	Determine whether the product being offered is an eligible product. If it is, then evaluate offer IAW 25.402. If it is not, then purchase of the item may be prohibited (See 225.402).	Go to Step 4.
4. Will the contract (if for more than $100,000) be awarded to a firm controlled by a terrorist nation?.	Follow the guidance in 209.170	Go to Step 5.
5. Apply the Buy American Act as set forth in subpart 225.1		

18. Section 225.102 is revised and section 225.102–70 is added to read as follows:

225.102 Policy.

(a) There are two tests that must be met to determine whether a manufactured item is a domestic end product. The end product must have been manufactured in the United States and the cost of its U.S. and/or qualifying country components must exceed 50% of the cost of all of its components (this test is applied to the prime contract only, and not to individual subcontracts). The evaluation factor for the Buy American Act is specified in 225.105–70.

(2) *Unreasonable cost.* The Secretary of Defense has determined that the cost of a domestic end product is unreasonable if it is not the low evaluated offer when evaluated in accordance with 225.105–70.

(3) *Inconsistency with the public interest.* (i) Specific public interest exceptions for the Department of Defense are discussed at 225.103 and 225.105–70.

(ii) Although the evaluation procedures in 225.105–70 reduce overseas dollar expenditures resulting from defense acquisition at an acceptable increase in budget costs, this is an average and overall result rather than one precisely obtained in each case. This is so because, both under the Buy American Act and as a matter of administrative practicability, items are classified either as "foreign" or "domestic" and varying degrees within each class are not recognized. However, the contracting officer should consider recommending a public interest exception where the low domestic offer will involve substantial foreign expenditures and/or the low foreign offer will involve substantial domestic expenditures. A determination to grant a public interest exception on this basis shall be made by:

(A) The Head of the Contracting Activity for purchases under $100,000.

(B) The Agency Head for purchases $100,000 and over.

(4) *Nonavailability in the United States.* (i) In addition to the policy in FAR 25.102(a)(4) the Buy American Act does not apply to Department of Defense purchases involving components of end products manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Certain items have been determined to be exempt under these exceptions in accordance with 225.108.

(ii) A nonavailability determination is not required for end products or components listed in paragraph (a)(4)(iii) of this section, in 225.108(d)(1), or in FAR 25.108(d)(1). Otherwise, acquisitions of foreign end products or components on the basis of nonavailability shall be made only after a determination of nonavailability has been made and the acquisition is approved:

(A) At a level above the contracting officer, if the amount involved is estimated not to exceed $25,000;

(B) By the chief of the contracting office concerned, if the acquisition is estimated not to exceed $250,000;

(C) By the head of the contracting activity (HCA) or immediate deputy, or in the case of the Defense Advanced Reseach Projects Agency (DARPA), the Director, DARPA, if the acquisition is estimated not to exceed $2 million; or

(D) By the Secretary of the Department concerned, or designee at a level no lower than an HCA, if the acquisition is estimated to exceed $2 million. In making such determination, and granting such approval, the feasibility of foregoing the requirement or providing a U.S. substitute shall be considered.

(iii) Acquisitions in the following categories may be made without determinations or approvals otherwise required by this subsection.

(A) Spare and replacement parts, if the acquisition must be restricted to the original manufacturer or supplier.

(B) Foreign drugs by the Defense Personnel Support Center when the Chief of the Division of Technical Operations, Directorate of Medical Material, has determined that only the requested foreign drug will fulfill the requirements.

225.102–70 Preference for U.S. products.

It is DoD acquisition policy to implement the Buy American Act in a manner that will encourage a favorable international balance of payments. Therefore, the evaluation factor established in 225.105–70 shall be applied to offers of foreign end products from nonqualifying countries as prescribed in 225.7403 except for those purchases subject to the Trade Agreements Act (See FAR subpart 25.4).

19. Section 225.103 is revised to read as follows:

225.103 Agreements with certain foreign governments. (See subpart 225.74).

(a) Based on the agreements set forth in Appendix T of this chapter, the Secretary of Defense has determined that applicaton of the Buy American Act to the end products of the following countries would be inconsistent with the public interest.

Belgium
Canada
Denmark
Egypt
Federal Republic of Germany
France
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Portugal
Spain
Turkey
United Kingdom of Great Britain and Northern Ireland

(b) Additionally, based on the agreements set forth in Appendix T of this chapter, application of the Buy American Act may be exempted on a purchase-by-purchase basis as being inconsistent with the public interest pursuant to 225.7403(a)(3)(ii)(A) for the end products of the countries listed below. This determination is delegated at the levels set forth under 225.102(a)(4)(ii):

Australia
Sweden
Switzerland

20. Section 225.105 is revised and section 225.105–70 is added to read as follows:

225.105 Evaluating offers.

225.105–70 Evaluation procedures.

In lieu of the procedures set forth in FAR 25.105, the following procedures are applicable to the Department of Defense:

(a) Except as provided in 225.103(b) and in paragraph (c)(1) of this section, a case-by-case determination is not required where the procedures of this section result in the acquisition of foreign end products.

(b) Evaluation factor. When evaluating offers of domestic end products against offers of qualifying or nonqualifying country end products:

(1) Each nonqualifying country offer shall be adjusted for the purpose of evaluation by adding a factor of 50% to the offered price (inclusive of duty) (se Example 1 in paragraph (f) of this subsection). Nonqualifying country offers will include duty in the offered price. If award is made on the nonqualifying country offer and duty is to be exempted through the inclusion of the clause at FAR 52.225–10, the award price shall be the offered price minus the amount of duty identified by the offeror in the clause 252.225–7029.

(2) Offers of domestic and qualifying country end products shall be evaluated without the factor.

(3) When more than one line item is offered in response to a solicitation, the factor shall be applied on an item-by-item basis, except that the factor may be applied to any group of items if the solicitation specifically provides that award be made on a particular group of items.

(c) If the application of the factor in paragraph (b) of this subsection would not result in the award of a domestic offer, e.g., the domestic offer is higher than a qualifying country offer (see Example 2 in paragraph (f) of this subsection), or when no domestic offers are received (see Example 3 in paragraph (f) of this subsection), all offers shall be evaluated without the factor.

(1) Where no domestic offer is received and award is made on a nonqualifying country offer, a nonavailability determination must be processed in accordance with 225.102(a)(4)(ii).

(2) Where duty is to be exempted through the inclusion of the clause at FAR 252.225–10, the nonqualifying country offer shall be evaluated exclusive of duty by reducing the offered price by the amount of duty identified in the clause 252.225–7029. If award is made on the nonqualifying country offer, the award price shall be the price as reduced by duty and used for evaluation.

(3) Where the clause at FAR 252.225–10 is not included and duty is to be paid by the Government, the nonqualifying country offer shall be evaluated (and, if low, awarded) as submitted, i.e., inclusive of duty.

(d) If these procedures result in a tie between a nonqualifying country offer, as evaluated, and a domestic offer, award shall be made on the latter.

Otherwise, use the tie breaking procedures in FAR 14.407–6.

(e) Offers of eligible products under acquisitions subject to the Trade Agreements Act shall be treated as if they were qualifying country offers under the evaluation procedures above.

(f) *Examples.*

Example 1

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:
Nonqualifying Country Offer (including $100 duty)....$6,000
Domestic Offer....8,900
Qualifying Country Offer....9,100

Award on Domestic Offer. The 50% evaluation factor is added to the nonqualifying country offer, inclusive of duty, yielding an evaluated price of $9,000.

Alternate II: Duty Exempted:
Nonqualifying Country Offer (including $1,000 duty)....$800,000
Domestic Offer....910,000
Qualifying Country Offer....920,000

Award on Nonqualifying Country Offer. The addition of the evaluation factor would not result in the award of a domestic offer, therefore, all offers are evaluated without the factor. Since duty is being exempted for nonqualifying country offers, the duty is subtracted from the offered price which is evaluated and awarded at $599,000.

Example 2

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:
Nonqualifying Country Office (including $100 duty)....$6,000
Domestic Offer....8,500
Qualifying Country Offer....7,800

Award on Nonqualifying Country Offer. In this case, the application of the evaluation factor to the nonqualifying country offer results in a price ($9,000) that is higher than the other two offers, but would not result in the award of a domestic offer, since the qualifying country offer is low. Therefore, all offers are evaluated without the factor. Since duty is not being exempted for nonqualifying country offers, the offer is evaluated and award is made at the price inclusive of duty ($6,000).

Alternate II: Duty Exempted:
Nonqualifying Country Offer (including $1,000 duty)....$880,500
Domestic Offer....950,000
Qualifying Country Offer....860,000

Award on Nonqualifying Country Offer. Again, the addition of the evaluation factor would not result in the award of a domestic offer and all offers are evaluated without the factor. Since duty is being exempted for nonqualifying country offers, the duty identified by the offeror is subtracted from the offered price, which is evaluated and awarded at $879,500.

Example 3

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:
Nonqualifying Country Offer (including $1,000 duty)....$10,000
Qualifying Country Offer....9,500

Award on Qualifying Country Offer. Since no domestic offers are received, the foreign offers are evaluated without the evaluation factor. Since duty is not being exempted and would be paid by the Government, the nonqualifying country offer is evaluated inclusive of duty.

Alternate II: Duty Exempted:
Nonqualifying Country Offer (including $1,000 duty)....880,500
Qualifying Country Offer....880,000

Award on Nonqualifying Country Offer. Since duty is being exempted, duty is subtracted from the nonqualifying country offer, which is evaluated and awarded at $879,500.

(g) Notwithstanding the above procedures, there is no restriction on the authority or responsibility of the cognizant Secretary to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a qualifying country source in those instances where such restriction or rejection is considered necessary for reasons of the national defense.

(h) Purchases made pursuant to FAR 6.302–3(a)(2)(i) or in accordance with part 208, will be restricted to domestic sources for those items. In those instances when it has been determined prior to solicitation that the item is to be restricted to domestic sources, offerors shall be so notified in the solicitation. Note that in most cases, Canada is considered part of the domestic mobilization base. Consequently, Canadian offers would not be subject to the restriction applicable to foreign sources.

21. Section 225.107 is revised and sections 225.107–70 and 225.107–71 are added to read as follows:

225.107 Acquisition from or through other government agencies.

The evaluation procedures of 225.105–70 are not applicable to transactions described in FAR 25.107 (a), (b) and (c).

225.107–70 Evaluation when using Federal Supply Schedules.

Defense activities must comply with the evaluation procedures required by 225.105–70 when using Federal Supply Schedules.

225.107–71 Evaluation under coordinated acquisition.

In the case of coordinated acquisition under part 208, compliance with the evaluation procedures required by 225.105–70 is the responsibility of the contracting department, except when the requiring department specifies a foreign end product; in which case, the determination that a domestic end product is not available, including consideration of foregoing the acquisition or providing a U.S. substitute, shall be the responsibility of the requiring department.

22. Section 225.109 is revised and section 225.109–70 is added to read as follows:

225.109 Solicitation provisions and contract clauses.

(a)(S–70) The provision at 252.225–7000, Buy American Act-Balance of Payments Program Certificate, shall be used in lieu of the provisions at FAR 52.225–1, Buy American Certificate, and FAR 52.225–6, Balance of Payments Program Certificate, and shall be inserted in any solicitation which includes the clause at 252.225–7001, unless the solicitation is solely for machine tools (see 225.7012).

(b) When quotations are obtained orally, vendors shall be informed that only domestic and qualifying country end products shall be acceptable, other than those items which have been excepted either on a blanket or an individual basis, or the price of the offered foreign end product meets the evaluation criteria in 225.105–70.

(d)(S–70) The clause at 252.225–7001, Buy American Act and Balance of Payments Program, shall be used in lieu of the clauses at FAR 52.225–3, Buy American Act-Supplies, and FAR 52.225–7, Balance of Payments Program, unless the solicitation is solely for machine tools (see 225.7012). The contracting officer shall insert the clause at 252.225–7001 in all solicitations and contracts:

(i) Not utilizing small purchase procedures,

(ii) Which do not contain the clause at 252.225–7006, and

(iii) For supplies and for services, which services require the furnishing of supplies (e.g. the leasing of equipment), except as cited in 225.302(S–72)(1).

(S–71) The contracting officer shall insert the clause at 252.225–7002, Qualifying Country Sources at Subcontractors, whenever the clause at 252.225–7001 or the clause 252.225–7006 is used in the solicitation or contract.

(S–72) The clause at 252.225–7029 shall be used in all solicitations where the clause at 252.225–7001 is used.

225.109–70 Solicitation of offers.

Solicitations shall state that the specific information as to articles, materials, and supplies excepted from these procedures (see 225.108(d)(1)) is available to prospective contractors upon request. When only domestic end products are acceptable, the solicitation shall so state.

225.302 [Amended]

23. Section 225.302(a)(S–72)(1)(viii) is removed and reserved.

225.304 [Removed]

24. Section 225.304 is removed.

25. Section 225.401 is revised to read as follows:

225.401 Definitions.

Eligible product, instead of the definition at FAR 25.401, means a designated or Caribbean Basin country end product listed at 225.403–70.

26. Section 225.402 is revised to read as follows:

225.402 Policy.

(a)(1)(i) For the application of duty for bid evaluation purposes see 225.105–70 and subpart 225.6.

(ii) *Estimated Acquisition Value for Multiple Line Item Solicitations.* In estimating the value of an acquisition for the purpose of determining whether the acquisition meets the dollar threshold of the Trade Agreements solicitations containing multiple line items shall be treated in the following manner:

(A) Estimates for line items of eligible products which represent the same item and differ only as to delivery period or location shall be totaled.

(B) Estimates for line items of eligible products which represent essentially different items being combined under a single solicitation shall be considered individually.

(C) There shall be no purchase of a foreign end product listed in 225.403–70 with an estimated value at or above the dollar threshold determined by the U.S. Trade Representative (see FAR 25.402(a)(1)) which is not an eligible product except as follows:

(1) National interest waivers under section 302(b)(2) of the Act must be approved on a case-by-case basis. Except as delegated in paragraphs (c)(1)(i) through (iii) of this section, a waiver request with supporting rationale shall be submitted in accordance with Departmental procedures to DASD(P).

(i) *Nonavailability.* Authority for national interest waivers on the basis of nonavailability is delegated to the chief of the contracting office concerned where the solicitation is synopsized in accordance with FAR 5.203 and the acquisition is made under full and open competition, and no offers of domestic or eligible products are received, or offers of eligible products or domestic end products from responsive, responsible offerors are insufficient to fill the Government's requirements. In such cases, all responsive, responsible offers of domestic and eligible products must be accepted prior to acceptance of any other offers. Determinations must be made on a case-by-case basis and shall be in the form of a written D&F.

(ii) *Purchase by overseas purchasing activities of products critical for support of U.S. forces stationed abroad.* Authority for national interest waivers for purchases by overseas purchasing activities of products critical for support of U.S. forces stationed abroad is delegated to the head of the contracting activity. Such determinations must be made on a case-by-case basis, shall be in the form of a written D&F and shall be supported by a written statement from the commander of the requiring activity that the requirement is critical for the support of U.S. forces stationed abroad.

(iii) *Purchases of fuel for use by U.S. forces overseas.* Authority for national interest waivers for purchases of fuel for use by U.S. forces overseas is delegated to the Commander, Defense Fuel Supply Center.

(2) End products from qualifying countries listed at 25.7403.

(e) Where competition from foreign sources is restricted under the authority of FAR 6.302–7, a copy of the justification for restricting competition must also be provided in accordance with FAR 25.402(e) and FAR 6.303–1(d).

27. Section 225.403(d) is revised and section 225.403(S–70) is redesignated as 225.403–70 and the introductory text is revised to read as follows:

225.403 Exceptions.

* * * * *

(d)(1) In the event a Department considers an individual acquisition of such a listed product listed at 225.403–70 to be a purchase "indispensable for national security or national defense purposes," and is, therefore, appropriate for exclusion from the provisions of this subpart, a request with supporting rationale shall be submitted in accordance with Departmental procedures for approval by DASD(P) or designee. The following are national security/national defense exceptions which do not require approval by DASD(P) or designee:

(i) Where purchase from foreign sources has been restricted by the Department of Defense Annual Appropriations or Authorization Acts (see subpart 225.70) or by the establishment of required sources of supplies and services under FAR part 8 or 208.

(ii) Where competition from foreign sources is restricted using the authority of FAR 6.302–3(a)(2)(i). A copy of the justification for restricting competition must be provided to DASD(P) in accordance with FAR 25.402(e) and FAR 6.303–1(d).

225.403–70 List of products.

The following list is arranged according to Federal Supply Classifications (FSC). If an item is not within an FSC listed below, the Trade Agreements Act does not apply. As noted in FAR 25.401, Caribbean Basin country end products are limited to those which are eligible for duty-free treatment under 19 U.S.C. 2703(b). The list of products has been annotated to indicate those products which are eligible for designated countries, but are not presently eligible for Caribbean Basin countries due to this limitation. Note: Most of the excluded product categories for Caribbean Basin countries mentioned in FAR 25.401 are not mentioned in the following list, such as textiles, apparel articles, flat goods, footwear, handbags, work gloves, leather wearing apparel, and tuna, because these products do not fall into any of the product categories due to other restrictions on foreign purchases.

* * * * *

28. Section 225.405 is revised to read as follows:

225.405 Procedures.

(d) The requirements of FAR 25.405(d) do not apply to offshore procurements or to Defense Fuel Supply Center post, camp, or station overseas requirements. (See 225.501.)

29. Section 225.407 is revised and sections 225.407–70 and 225.407–71 are added to read as follows:

225.407 Solicitation provision and contract clause.

(a)(1) The provision, Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate at 252.225–7006, shall be used in lieu of the provision at FAR 52.225–6 in all solicitations in which the Buy American Act, Trade Agreements Act, and the Balance of Payments Program clause at 252.225–7006 is used.

(2) The clause at 252.225–7006, Buy American Act, Trade Agreements Act, and the Balance of Payments Program, shall be used in lieu of the clause at FAR 52.225–9 and shall be inserted along with the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, in all solicitations and contracts subject to the Trade Agreements Act. The clause at 252.225–7001 shall not be used where the clause at 252.225–7006 is used.

225.407-70 Identification of covered item under multiple line item solicitation.

The clause prescriptions at 225.407(a)(1) and (2) shall apply where any item under a multiple item solicitation is determined to be subject to the Act. The application of the procedures in 225.402(a)(1)(ii) and/or the acquisition of noneligible and eligible products under the same solicitation may result in the application of the Trade Agreements Act to only some of the items being solicited. In such a circumstance, the contracting officer will indicate, in the schedule, those items covered by the Act and provide reference to clauses 252.225-7005 and 252.225-7006.

225.407-71 Information for duty free entry evaluation.

The clause at 252.225-7029, Information for Duty Free Entry Evaluation, shall be inserted in all solicitations whenever the clause at 252.225-7006 is used.

30. Subpart 225.6 is revised to read as follows:

Subpart 225.6—Customs and Duties

Sec.
225.600 Scope of subpart.
225.602 Policy.
225.603-70 Procedures.
225.604-70 Exempted supplies.
225.605 Solicitation provision and contract clause.
225.605-70 Duty-free entry—Qualifying country end products and supplies.

Subpart 225.6—Customs and Duties

225.600 Scope of subpart.

This subpart sets forth policies and procedures for exempting from import duty certain supplies that are imported into the United States in connection with Defense contracts and for the treatment of duty in the evaluation of offers of foreign supplies. Further guidance on the treatment of duty in the evaluation of foreign supplies to the Buy American Act is in subpart 225.1

225.602 Policy.

(a) Defense supplies may be imported duty-free pursuant to section XXII, chapter 98, subchapter VIII, item 9808.00.30 of the Harmonized Tariff Schedule of the United States; and certain supplies (not including equipment) for vessels or aircraft operated by the United States may be imported duty-free pursuant to 19 U.S.C. 1309. It is DoD policy that duty-free entry certificates will be issued for qualifying country supplies, including end products and components, on all defense contracts, and for eligible products on defense contracts subject to the Trade Agreements Act. (The policy for duty-free entry for eligible products applies only to end products, not to components.)

(b) For defense contracts involving importation of other foreign supplies, duty-free entry certificates will be issued wherever there is reasonable assurance that the administrative and other costs of processing and controlling the certificates will not exceed the amount of duty that would be paid.

(c) Duty shall not be included in the contract price for supplies which are to be accorded duty-free entry and, except as required under the evaluation procedures for the Buy American Act (see 225.105-70), duty for such items shall not be evaluated in the offered price. The evaluation of duty under subpart 225.1 does not preclude duty-free entry if it is consistent with the policies set forth in paragraphs (a) and (b) of this section. Wherever duty is to be paid by the Government, the duty shall be included in the contract price and evaluated as part of the offer.

(d) The use of duty-free entry certificates for nonqualifying items should not result in unanticipated profits to contractors. As a rule, a contractor which has been awarded a fixed-price contract based on providing a domestic or qualifying country end product, component or supplies cannot subsequently furnish a nonqualifying country end product, component or supplies without an appropriate reduction in contract price.

225.603-70 Procedures.

(a) The following procedures shall be used in lieu of those in FAR 25.603.

(b) *General.* (1) To ensure that the policy of 225.602 is carried out, the clauses at FAR 52.225-10 and 252.225-7014 of this supplement shall be included in each solicitation and in resulting contracts where the contract value is estimated to be over $100,000 and in all acquisitions subject to the Trade Agreements Act. Notwithstanding this dollar limit, the clauses may be inserted in any other solicitation or negotiated contract when the contracting officer determines that to do so would further the policy in 225.602.

(2) The policy to afford duty-free entry to qualifying country end products and supplies is implemented by the inclusion of the clause at 252.225-7008 in most solicitations and contracts (See 225.605-70).

(3) When the contracting officer has determined, in accordance with the policy of 225.602(a), that duty-free entry will be granted to items imported under a resulting contract, and includes the clauses at FAR 52.225-10 and 252.225-7014 of this supplement and/or at 252.225-7008, the provision at 252.225-7007 shall be included in the solicitation and contract to identify the specific supplies which are entitled to duty-free entry.

(4) The clauses at 252.225-7001 and 252.225-7006 require offerors to include duty in the offered price for nonqualifying country end products, components and supplies. The inclusion of duty in the offered price is necessary for the evaluation of nonqualifying country offers under the Buy American Act (see subpart 225.1). Since it is also necessary to exclude from the contract price all duties to be exempted through the issuance of duty-free entry certificates, the contracting officer must reduce the offered price by the amount of duty identified in clause 252.225-7029.

(5) Duty shall not be exempted and duty-free entry certificates shall not be issued for end products, components or supplies already entered into the customs territory of the United States for which duty has already been paid.

(6) Duty-free entry certificates shall be issued as required for contracts containing the clauses prescribed by 225.605. Consistent with 225.602, duty-free entry certificates may also be issued in connection with any other contract (i.e. one not containing an appropriate clause) that falls within one of the following categories:

(i) Direct purchases of foreign supplies under a DoD prime contract, whether title passes at point of origin or at destination in the United States; *provided,* the contract states that the final price is exclusive of duty;

(ii) Purchases of foreign supplies by a domestic prime contractor under a cost-reimbursement type contract or by a cost-reimbursement type subcontractor (where no fixed-price prime of fixed-price subcontract intervenes between the purchaser and the Government), whether title passes at point of origin or at destination to the United States. If a fixed-price prime or fixed-price subcontract intervenes, the criteria stated in paragraph (b)(6)(iii) of this section should be followed; and

(iii) Purchases of foreign supplies by a fixed-price domestic prime contractor, a fixed-price subcontractor, or a cost-type subcontractor where a fixed-price prime contract, or fixed-price subcontract intervenes; *provided:*

(A) The fixed-price prime contract and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty;

(B) The prime contractor and, where applicable, the subcontractors concerned certify that the supplies so purchased are to be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government, and that the duty will be paid if such supplies or any portion thereof are utilized for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and

(C) Such acquisition abroad is authorized by the terms of the contract, the applicable subcontract, or by the contracting officer.

In any case, the procedures required by the clauses prescribed in 225.605 shall be followed to the extent practicable.

(7) When the clauses cited at 225.605 are used, the contracting officer shall list in the contract the name and address of the CAO administering the contract and its activity address number (Appendix N of this chapter) in paragraph (d) of the clause at 252.225-7014 or paragraph (k) of the clause at 252.225-7008.

(c) *Formal entry and release.*—(1) *CAO responsibilities.* The contracting officer assigned to administer the contract must ensure that prime contractors are aware of and understand any Duty-Free Entry clause requirements. Contractors should understand that failure by them or their subcontractors to include the data required by the clause will result in the shipment being treated as a shipment without benefit of free entry under section XXII, chapter 98, subchapter VIII, item 9808.00.30 of the Harmonized Tariff Schedule of the United States.

(2) *Duty-free entry entitlements.* Upon receipt of the required notice of purchase of foreign supplies from the prime contractor or any tier subcontractor, the contracting officer administering the prime contract will verify the duty-free entitlement of goods to be entered under the contract. A review of the prime contract should ensure foreign supplies (quantity and price) identified in the notice are required for the performance of the contract.

(3) *Adjustment to prime contract price.* When notification is received from the contractor by the administrative contracting officer indicating that a foreign purchase is being placed that was not identified at the time of the prime contract award, a reduction to the prime contract price may be required in accordance with the Duty-Free Entry clause at FAR 52.224-10 pursuant to 225.603-70(a)(6) of this supplement. After determining the amount of duty that would be payable if duty-free entry certificates were not issued, an equitable adjustment to the prime contract price shall be made unless otherwise approved by the procuring contracting officer. Unless retained in accordance with 242.203, the authority to negotiate and issue such modifications reducing the contract price has been delegated to the ACO in accordance with 242.302(a)(S-73). After determining the price of foreign supplies exclusive of duty, the contracting officer administering the contract shall advise the contractor that that amount will be the maximum dollar value of supplies for which duty-free entry certificates will be issued.

(4) *Data required by DCMR New York.* (i) Within 20 days of receipt of the notification of purchase of foreign supplies, ACOs will forward the following information to DCMR New York in the format shown below:

To: Commander, DCMR New York, ATTN: Chief, Customs Division, International Logistics Office, 201 Varick Street, New York, NY 10014.

A contractor notification of the purchase of foreign supplies has been received in accordance with FAR 52.225-10 and 252.225-7014 or 252.225-7008. Verification has been made that foreign supplies are required for the performance of the contract. If required, the prime contract price has been or will be adjusted in accordance with 225.603-70(c)(3).

In accordance with 225.603-70(c)(4), the following information is provided:
Prime Contractor Name:
Prime Contractor Number plus Delivery Order Number, if applicable:
Total Dollar Value of the Prime Contract or Delivery Order:
Expiration Date of the Prime Contract or Delivery Order:
Foreign Supplier Name:
Number of the Subcontractor/Purchase Order for Foreign Supplies:
Total Dollar Value of the Subcontract for Foreign Supplies:
Expiration Date of the Subcontract for Foreign Supplies:
CAO Activity Address number (Appendix N of the DoD FAR Supplement):
Signature:
Title:

(ii) If a contract modification results in a change to any data previously furnished to DCMR New York to verify duty-free entitlement, a revised notification of the changed data shall be forwarded to DCMR New York.

(5) *Customs forms and duty-free entry certificates*—(i) *Execution of duty-free entry certificates.* The responsibility for issuing duty-free entry certificates for foreign supplies purchased under a DoD contract or subcontract rests with the Chief, Customs Division, International Logistics Office, DCMAO New York. Upon receipt of import documentation for incoming shipments from the contractor, its agent, or the U.S. Customs Service, the Chief, Customs Division, International Logistics Office, DCMAO New York will verify the duty-free entitlement and execute the duty-free entry certificate.

(ii) *Customs import documentation.* Upon arrival of foreign supplies at ports of entry, the consignee, generally the contractor or its agent (import broker) for shipments to other than a military installation, will file U.S. Customs Forms 7501, 7501A, or 7506 and U.S. Customs Form 3461, with the District Director of Customs.

(d) Importations made in the name of a military facility within the Department of Defense or being shipped directly to a military facility shall be entitled to release under the immediate delivery procedure. A DoD Immediate Delivery Application has been approved and is on file at Customs Headquarters. The Application is for an indefinite period and is good for all Customs districts, areas, and ports.

225.604 Exempted supplies.

(b) *Supplies for vessels or aircraft operated by the United States.* (1) The term "certain supplies (not including equipment)" includes articles known as "stores", such as food, medicines and toiletries, and, in addition, all consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags, and polishes. It does not include portable articles necessary and appropriate for the navigation, operation or maintenance of vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term "equipment." The procedures to be followed in the issuance of such certificates shall be prescribed by the respective departments.

(2) The duty-free entry certificate referred to in this paragraph shall be printed, stamped, or typed on the face of Customs Form 7501, or attached thereto, and shall be executed by a duly designated officer or civilian official of the appropriate Department in the following form:

(Date)_____
I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.
(Name)_____
(Title)_____
(Organization)_____

225.605 Solicitation provision and contract clauses.

(a) When the contract is required to contain the clause at FAR 52.225–10, the contracting officer shall include the clause at 252.225–7014. These clauses may be inserted in any other negotiated contract when the contracting officer determines that to do so would further the policy in 225.602 and in any such case, the dollar figure in paragraphs (b)(1) and (i)(2) of the clause in FAR 52.225–10 may be reduced appropriately.

(c) The provision at 252.225–7007 will be used to list specific supplies that the contracting officer knows will be accorded duty-free entry in accordance with 225.603.

225.605–70 Duty-free entry—Qualifying country end products and supplies.

The clause at 252.225–7008 shall be inserted in all contracts for supplies and in all contracts for services involving the furnishing of supplies, except when simplified small purchase procedures are used or in contracts for supplies exclusively for use outside the United States.

31. Section 225.7000 is revised to read as follows:

225.7000 Scope of subpart.

This subpart implements restrictions applicable to only the Department of Defense. However, reference should be made to the current Department of Defense Appropriations and Authorization Acts as a check on the current applicability of these restrictions.

32. Sections 225.7011 and 225.7011–1 are added to read as follows:

225.7011 Restriction on acquisition of polyacrylonitrile (PAN) based carbon fiber.

DoD has determined that all new major systems must use domestic or Canadian sources for all PAN carbon fiber requirements to meet the goals of Section 8088, Public Law 100–202. Section 8088, Public Law 100–202 and subsequent appropriations acts require the Secretary of Defense to take such action as necessary to ensure by fiscal year 1992 that a minimum of 50 percent of the annual DoD requirements for PAN carbon fibers are acquired from domestic sources.

225.7011–1 Procedures.

(a) Insert the clause at 252.225–7030 in all major system acquisition programs (as defined in FAR part 34) not yet in production (Milestone III as defined in DoD Instruction 5000.2).

(b) Contracting officers may waive the requirement in the clause in whole or in part with the approval of the Head of the Contracting Activity. For example, a waiver is justified where a qualified domestic or Canadian source cannot meet scheduling requirements.

225.7012–3 [Amended]

33. Section 225.7012–3 is amended by removing in the first sentence of paragraph (a) the punctuation and words ", except for those asterisked,".

34. Section 225.7014 is added to read as follows:

225.7014 Restriction on acquisition of anchor and mooring chain.

(a) Under Public Law 100–463, Section 8089, and subsequent laws, no Fiscal Year 1989 or later funds shall be used to procure welded shipboard anchor and mooring chain (four inches in diameter and under) manufactured outside the United States. The contracting officer shall insert the clause at 252.225–7025, Restriction on Acquisition of Foreign Anchor and Mooring Chain, in all contracts using Fiscal Year 1989 or later funds requiring anchor or mooring chain.

(b) Under Public Law 100–202, Section 8125, no Fiscal Year 1988 funds shall be used to procure welded shipboard anchor and mooring chain (four inches in diameter and under) manufactured outside the United States, its territories or possessions, or Canada. When adequate domestic supplies of chain are not available to meet contract requirements on a timely basis, the chain may be procured from other countries on a case-by-case basis as determined by the Head of the Agency concerned. The contracting officer shall insert the clause at 252.225–7026, Restriction on Acquisition of Foreign Anchor and Mooring Chain (Fiscal Year 1988), in all contracts using Fiscal Year 1988 funds requiring anchor or mooring chain.

35. Section 225.7310 is amended by revising paragraph (a); by revising the first sentence of paragraph (b)(2) to read: "When authorized, offset provisions typically require the Military Departments or U.S. prime contractors, or both, to identify items for foreign sources to obtain contracts in accordance with the terms and conditions of the particular DoD offset agreement."; by revising the first sentence of paragraph (b)(3) to read: "If an exception is granted pursuant to paragraph (b)(1) of this section, the policy of the Department of Defense is that the domestic concerns involved in the FMS and the foreign customer will make suitable arrangements to fulfill an FMS/offset arrangement."; by revising in the last sentence of paragraph (b)(4) the acronym "OASD(P&L)(P)" to read "DASD(P)PC"; by revising paragraph (c); and by removing paragraph (d) to read as follows:

225.7310 Implementation of offset arrangements negotiated pursuant to foreign military sales arrangements.

(a) *Scope.* This section sets forth policies and procedures concerned with the fulfillment of Department of Defense offset arrangements negotiated pursuant to an FMS agreement (commonly referred to as an "FMS/offset arrangement"). The purpose of an FMS/offset arrangement is to fulfill commitments negotiated pursuant to an FMS agreement. The general policy with regard to the fulfillment of these commitments is to exempt the FMS country's products from the requirements of the Buy American Act on a case-by-case consistent with the guidance in 225.7310(b)(2). In general, it is not appropriate to establish an offset goal or objective. If, however, in special circumstances it is deemed to be in the national interest to establish an offset goal or objective, the offset goal or objective may be stated as either a certain percentage of the FMS agreement dollar value, or a specific dollar amount, or a combination thereof.

* * * * *

(c) *Procedures.* Whenever an FMS agreement involves a single major weapon system, the department responsible for acquisition of the weapon system will be responsible for managing any resulting FMS/offset arrangement. If an FMS agreement involves the sale of items from two or more departments, OASD(P&L) may either direct that one department be responsible for coordinating the implementation of the FMS/offset arrangement, or apportion responsibility for managing the offset program among two or more departments.

225.7314 [Removed]

36. Section 225.7314 is removed.

Subpart 225.74—[Amended]

37. Subpart 225.74 is amended by substituting in the title the word "Qualifying" in lieu of the words "NATO Participating".

38. Sections 225.7400 through 225.7404 are revised to read as follows:

225.7400 Scope of subpart.

This subpart implements the Memoranda of Understanding (MOU) and other international agreements between the United States and qualifying countries set forth in Appendix T of this chapter.

225.7401 Policy.

DoD policy with regard to the application of domestic preference laws and programs to offers of products from countries listed at 225.7403 is based on the agreements set forth in Appendix T of this chapter. Accordingly, offers of defense equipment from qualifying countries may be exempt from domestic preference laws and programs. (See 225.7402 and 225.7403).

225.7402 Exceptions.

(a) This subpart applies except where restricted by:

(1) Provisions of U.S. National Diclosure Policy (NDP), DoD Directive 5230.11;

(2) U.S. defense mobilization base requirements which are purchased under the authority of FAR 6.302–3(a)(2)(i) (See 225.7406 for a representative list of excluded items and application to Canadian Planned Producers.);

(3) U.S. laws or regulations (e.g., the annual DoD Appropriations Act—(225.70)); and

(4) U.S. Industrial Security Requirements.

(b) This subpart does not apply to construction contracts.

225.7403 Procedures for purchases from qualifying countries.

(a) *Solicitation procedures*—(1) *Solicitation of sources in qualifying countries.* (i) Qualifying country sources shall be included on bidders mailing lists and comparable source lists upon request by such sources in accordance with the procedures in FAR 14.205. Requests of this nature should be forwarded by a qualifying country sources to the activity having acquisition responsibility for the supplies involved.

(ii) The normal criteria for soliciting and making awards under FAR part 19 for small business concerns and FAR part 20 for labor surplus area firms shall be utilized without regard to the fact that there are potential qualifying country sources for the end product, except items developed under the U.S./Canadian Development Sharing Progam (See Appendix T of this chapter.) Offers of qualifying country end products, shall not be considered on any acquisition, or part thereof, identified for the exclusive participation for such firms.

(iii) Solicitations shall be sent directly to qualifying country sources except when restricted by 225.105–70, 225.7402, 225.7405 and paragraph (a)(1)(ii) of this section. In addition, Canadian sources shall also be solicited through the Canadian Commercial Corporation in accordance with 225.7104.

(iv) When solicitation destinations are outside the United States, international air mail shall be utilized where security classification permits (see FAR 14.202 and FAR 14.203).

(v) If unusual technical or security requirements would preclude the acquisition of otherwise acceptable defense equipment from qualifying country sources, the need for such requirements should be specifically reviewed. Under no circumstances will unusual technical or security requirements be imposed solely for the purpose of precluding the acquisition of defense equipment from qualifying countries.

(vi) Qualifying country sources shall not be automatically excluded from submitting offers because their supplies have not been tested and evaluated by a department. Departments which find it necessary to limit solicitations to sources whose items have been service tested and evaluated by the department shall make provision for considering supplies from qualifying country sources which have been tested and accepted by the qualifying country for service use, subject to U.S confirmatory test, if necessary. Where it appears that these provisions might adversely delay service programs, the concurence of the Department of Defense Acquisition Executive, USDA, shall be obtained prior to exclusion of the qualifying country item from consideration. Sufficiency of qualifying country service testing should be considered on a case-by-case basis. When confirmatory tests of qualifying country end products are deemed necessary by the department, U.S. test and evaluation standards, policies, and procedures shall apply.

(vii) Subject to 225.7402, industry representives from a qualifying country shall be permitted to attend symposia, program briefings, prebid conferences (FAR 14.207 and FAR 15.409), and like meetings which address U.S. defense equipment needs and requirements. When practical, these meetings should be structured so as to allow attendance by representatives of qualifying country concerns.

(2) *Submission of offers.* Qualifying country sources competing for DoD requirements must be responsive to the terms and conditions of DoD solicitations.

(3) *Evaluation of offers from qualifying country sources.* (i) It is inconsistent with the public interest to apply the restrictions of the Buy American Act, and the Balance of Payments program with respect to acquisition of defense equipment (but, see 225.7402(b) for construction contracts) which is mined, produced, or manufactured in any of the following qualifying countries:

Belgium
Canada
Denmark
Egypt
Federal Republic of Germany
France
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Portugal
Spain
Turkey
United Kingdom of Great Britain and Northern Ireland

Therefore, offers of end products from these listed qualifying countries shall be evaluated in accordance with 225.105–70 and subpart 225.3.

(ii) Individual acquisitions for products of the following qualifying countries may be exempted from application of the Buy American Act and Balance of Payments Program:

Australia
Sweden
Switzerland

(A) Offers of end products from the countries listed in paragraph (a)(3)(ii) of this section shall be evaluated as required by 225.7403(a)(3)(i). If after such evaluation the offer from the above listed country is low or otherwise eligible for award, the contracting officer shall request exemption of the Buy American Act as inconsistent with the public interest.

(B) To obtain an exemption of the Buy American Act under FAR 25.102(a)(3) the contracting officer shall process a Determination and Findings for signature at the appropriate level as set forth at 225.102(a)(4)(ii). The Determination and Findings shall be substantially as follows for end items, or modified as necessary for components:

Service or Agency

Exemption of the Buy American Act (41 U.S.C. 10a-d)

Determination and Findings

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of FAR 25.102, acquisition of *(qualifying country—identify country) (describe item)* may be made as provided below.

Findings

1. The (Contracting Activity) proposes to purchase _____, under contract number, _____, mined, produced or manufactured in *(country of origin)*. The total estimated cost of this acquisition is _____.

2. The United States Government (USG) and the Government of _____ have agreed

to remove barriers to acquisition at the prime and subcontract level for defense equipment produced in each other's countries insofar as laws and regulations permit.

3. The Agreement provides that competitive offers of *(qualifying country)* end products will be evaluated by the Department of Defense without imposing any price differential under the Buy American Act and without taking applicable U.S. customs and duties into consideration so that *(qualifying country)* items may better compete, for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of *(qualifying country)* items must fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4. In order to achieve these objectives, the solicitation contained the Buy American Act and Balance of Payments Program clause, 252.225–7001, or the Buy American Act, Trade Agreements Act, and the Balance of Payments Program clause, 252.225–7006. Offers were solicited from other sources and the offer received for *(qualifying country end item)* is found to be otherwise eligible for award.

Determination

Pursuant to the Buy American Act (41 U.S.C. 10a-d), I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to the proposed offer.

(Date)

(b) *Subcontracting with qualifying country sources.* In reviewing prime contractor subcontracting procedures, the contracting officer shall ensure that the prime contract does not preclude qualifying country sources from competing for subcontracts, except when restricted by national security interest reasons, mobilization base considerations, or applicable U.S. laws or regulations.

(c) *Industrial security for qualifying countries.* Required procedures designed to safeguard classified defense information which may be necessary for the performance of contracts awarded to qualifying country sources are set forth in the DoD Industrial Security Regulation DoD 5220.22–R (implemented for the Army by AR 380–49; for the Navy by OPNAV Instruction 5540–8L; for the Air Force by AFR 205–4; for the Defense Communications Agency by DCA Inst. 240–110–8; and for the Defense Mapping Agency by DMA Inst. 5520–22).

225.7404 Contract administration.

(a) Arrangements have been made with some qualifying countries to provide reciprocal contract administration service; some arrangements are at no cost to either government. See the appropriate country's MOU (at Appendix T of this chapter) to determine whether such an annex has been negotiated and what contract administration functions are covered.

(b) When contract administration services are requested on contracts to be performed in qualifying countries, the request should be directed to the cognizant activity in accordance with DoD 4105.59–H, section II, part 2 (DoD Directory of Contract Administration Services Components). Contract administration services required with respect to DoD subcontracts placed by qualifying country sources in the United States will be arranged by the cognizant activity in accordance with DoD 4105.59–H, section II, part 2 (DoD Directory of Contract Administration Services Components).

(c) The Contract Administration Activity receiving a delegation or secondary delegation shall review the delegation to determine whether any portions of the delegation are covered by MOU annexes, and delegate those functions to the appropriate organization in the qualifying country's government.

(d) Information on quality assurance delegations to foreign governments is contained in subpart 246.6, Government Contract Quality Assurance.

225.7406 [Removed]

39. Section 225.7406 is removed; section 225.7405 is redesignated as section 225.7406; and a new section 225.7405 is added to read as follows:

225.7405 Audit.

MOUs with some qualifying countries contain annexes which provide for reciprocal, "no-cost" audits of contracts or subcontracts (pre- and post-award). See Appendix T of this chapter to determine if such an annex is applicable to a particular qualifying country. Requests for audits in qualifying countries should be handled in accordance with 215.805–5(c)(1)(S–70)(A) with the request being sent to the administrative contracting officer (ACO) at the cognizant CAS activity listed in DoD 4105.59–H section II, part 2 (DoD Directory of Contract Administration Services Components). An advance copy of the request is sent to the focal point identified in the audit annex.

Subpart 225.75—[Removed]

40. Subpart 225.75 is removed.

Subpart 225.76—[Removed]

41. Subpart 225.76 is removed.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

42. A new subpart 226.71 is added to read as follows:

Subpart 226.71—Indian Incentive Program

Sec.
226.7100 Scope of subpart.
226.7101 Definitions.
226.7102 Procedures.
226.7103 Clause.

Subpart 226.71—Indian Incentive Program

226.7100 Scope of subpart.

This subpart implements 25 U.S.C. 1544, which provides an incentive to prime contractors that use Indian organizations and Indian-owned economic enterprises as subcontractors.

226.7101 Definitions.

As used in this subpart, *Indian organization* means the governing body of any Indian tribe (as defined by 25 U.S.C. 1452(c)) or entity established or recognized by the governing body of an Indian tribe for the purposes of chapter 17, title 25, U.S.C.

Indian-owned economic enterprise means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership shall constitute not less than 51 percent of the enterprise.

Interested party means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

226.7102 Procedures.

(a) Contracting officers and prime contractors, acting in good faith, may rely on the self-certification of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the contracting officer has independent reason to question that status.

(b) In the event of a challenge of the self-certification of a subcontractor, the contracting officer shall refer the matter to the Bureau of Indian Affairs (BIA), U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20245. The BIA will determine eligibility and notify the contracting officer.

(c) The BIA will acknowledge receipt of the request from the contracting officer within 5 working days. Within 15 additional working days, BIA will advise the contracting officer, in writing, of its determination.

(d) The contracting officer will notify the prime contractor upon receipt of a challenge.

(1) To be considered timely, a challenge must—

(i) Be in writing;

(ii) Identify the basis for the challenge;

(iii) Provide detailed evidence supporting the claim; and

(iv) Be filed with and received by the contracting officer prior to award to the subcontract in question.

(2) If notification of a challenge is received by the prime contractor prior to award, it shall withhold award of the subcontract pending the determination by BIA, unless the prime contractor determines, and the contracting officer agrees, that award must be made in order to permit timely performance of the prime contract.

(3) Challenges received after award of the subcontract shall be referred to BIA, but the BIA determination shall have prospective application only.

(e) If the BIA determination is not received within the prescribed time period, the contracting officer and the prime contractor may rely on the self-certification of the subcontractor.

226.7103 Clause.

Contracting officers shall insert the clause at 252.226–7002, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, in solicitations and resultant contracts that contain the clause at FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

43. A new subpart 231.3 is added to read as follows:

Subpart 231.3—Contracts with Educational Institutions

Sec.
231.303 Requirements.

Subpart 231.3—Contracts with Educational Institutions

231.303 Requirements.

(S–70) Under 10 U.S.C. 2324(e), the following costs are unallowable:

(1) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress or a State legislature.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations of the Secretary of Defense.

(5) Costs of any membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

(11) Costs incurred in making any payment (commonly known as a "golden parachute payment") which is—

(i) In an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and

(ii) Is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

(12) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.

(13) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of the severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined by regulations prescribed by the Secretary of Defense.

(14) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or curtailment of activities at a United States military facility in that country at the request of the government of that country.

(15) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceedings commenced by the United States or a State, to the extent provided in 10 U.S.C. 2324(k).

44. A new subpart 231.6 is added to read as follows:

Subpart 231.6—Contracts with State, Local, and Federally Recognized Indian Tribal Governments

Sec.
231.603 Requirements.

Subpart 231.6—Contracts with State, Local, and Federally Recognized Indian Tribal Governments

231.603 Requirements.

Under 10 U.S.C. 2324(e), the costs cited in 231.303(S–70) are unallowable.

45. A new subpart 231.7 is added to read as follows:

Subpart 231.7—Contracts with Nonprofit Organizations

Sec.
231.703 Requirements.

Subpart 231.7—Contracts with NonProfit Organizations

231.703 Requirements.

Under 10 U.S.C. 2324(e), the costs cited in 231.303(S–70) are unallowable.

PART 232—CONTRACT FINANCING

46. Section 232.502–1(S–71) is revised to read as follows:

232.502–1 Use of customary progress payments.

* * * * *

(S–71) *Customary flexible progress payments.*—(1) *General.* (i) Progress payments reduce contractor investment in work in process inventory. In addition to progress payments, other factors influence a contractor's actual investment in work in process inventory, e.g., delivery schedules, cash management practices, and Government payment practices.

(ii) Progress payment amounts that are determined by using uniform, customary progress payment rates are insensitive to the other factors which influence contractor investment. Consequently, contractor investments in

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work in process inventories vary among contractors and across contracts.

(iii) Flexible progress payment rates are designed to tailor the progress payment rate to more closely match the contractor's cash needs for financing contract performance. The flexible rate is expressed as a percentage applied to costs to determine the amount of a progress payment in the same manner as uniform, customary progress payment rates.

(iv) For flexible progress payments, cash needs are measured and projected based on the investment required for work in process inventory over the life of the contract. Total investment is measured by a weighted average of total costs paid by the contractor. The contractor's investment is the weighted average of the amount not paid by the Government.

(v) DoD, as a matter of policy, requires contractors to retain a minimum investment level in work in process inventory over the life of the contract. This minimum investment level is based on the uniform, customary progress payment rate and its related investment percentage. Accordingly, DoD will make progress payments at a rate (expressed as a whole number) that is the highest rate which yields a corresponding investment by the contractor in work in process inventory of not less than the minimum investment percentage.

(vi) The flexible progress payment rate—

(A) Shall be determined by the DoD Cash Flow Computer Model; and

(B) Shall not be—

(*1*) Greater than 100%; or

(*2*) Less than the uniform, customary progress payment rate that would have been applied to the contract absent flexible progress payments.

(vii) The following chart shows uniform, customary progress payment rates, minimum contractor investment (except for contracts funded with FY 87 appropriations), and the applicable DoD Cash Flow Computer Model. For contracts funded with FY 87 appropriations, a contractor must retain at least a 25 percent investment in work in process inventory over the life of the contract.

Date of contract award	Uniform rate (percent)	Investment percentage	Cash flow model
Prior to May 1, 1985.	90	5	CASH-II
May 1, 1985 to October 16, 1986.	80	15	CASH-III
October 19, 1986 to October 1, 1988.	75	25	CASH-IV
After October 1, 1988.	80	20	CASH-V

(2) *Using flexible progress payments.* (i) Contractors who submit certified cost or pricing data, as defined in FAR 15.804–2, for negotiated fixed price contracts in excess of $1 million may request flexible progress payments.

(ii) Use a flexible progress payment rate instead of the uniform customary rate if:

(A) The contractor requests the use of flexible progress payment rates prior to definitization or contract award. (If the contractor requests flexible progress payments after definitization or contract award, the contracting officer may, if warranted, grant their use. However, the contractor must provide adequate new consideration (see FAR 32.501–4).)

(B) The contractor agrees to the requirements of paragraph (S–71) of this subsection.

(C) The contract will be awarded and performed entirely inside the United States and its possessions or territories.

(D) The contract contains the clause at FAR 52.232–16, "Progress Payments." However, small business contractors may get flexible progress payments if they agree to use the clause at FAR 52.232–16 without its Alternate I.

(iii) Do not use flexible progress payments for undefinitized contract actions or on contracts awarded through sealed bidding.

(iv) Subcontractors who request a flexible progress payment rate, meet the criteria in paragraph (S–71) (2)(i) of this subsection, and agree to the requirements of paragraph (S–71) of this subsection are to receive a flexible progress payment rate. The prime contractor determines the subcontractor flexible progress payment rate without regard to the rate in the prime contract. In determining the rate, the prime contractor will use the DoD Cash Flow Computer Model and review the cash flow data provided by the subcontractor.

(v) Prior to contract award, the contracting officer shall determine the flexible progress payment rate by applying the appropriate version of the DoD Cash Flow Computer Model. For contracts funded with FY 87 appropriations, Cash Flow Model "CASH–IV" shall be used. The model takes into account key cash flow factors such as contract cost profile, delivery schedules, subcontractor progress payments, liquidation rates, and payment/reimbursement cycles.

(3) *Contractor cash flow and cost information.* (i) Contractors shall furnish to the contracting officer cash flow data in the form and context specified for use in the DoD Cash Flow Computer Model. This data includes:

(A) Actual and projected incurred cost-broken down by element of cost and by month—for the duration of the contract;

(B) Float times for each element of cost;

(C) Dates and lag times of actual and projected progress payment and delivery payment receipts; and

(D) Associated contract price and profit percentage.

(ii) Contracting officers shall verify the cash flow data using the procedures normally used to verify contractor cost or pricing data, and establish the flexible progress payment rate during the negotiation of the contract price.

(iii) If any flexible progress payment rate is later determined to be overstated because factual data submitted in support of the rate computation was not current, accurate, and complete at the time the flexible progress payment rate was established, the flexible progress payment clause provides for—

(A) Reduction of the flexible progress payment rate; and

(B) Payment of interest.

(iv) The contracting officer will assess the interest charge on the amount of overpayment resulting from facts that were not current, accurate, or complete—whether or not the overpayment has been liquidated. Calculate the interest from the date of overpayment to the date of liquidation of the overpayment. In determining the amount of interest the contracting officer may determine an average overpayment amount and duration as the basis for the interest computation. Interest rates change periodically; therefore, calculate average amounts and durations separately for each interest period that has a different interest rate.

(v) Administrative contracting officers (ACO's) are encouraged to establish advance agreements at contractor locations for float and payment lag times which are common to several contracts. Float and lag times may vary significantly from one contract to another due to variances in efficiency at different payment offices or due to differing procedures for high dollar-value contracts versus low dollar-value contracts. Therefore, it may be appropriate to establish advance agreements on several different float and lag profiles to suit different contract situations.

(4) *Rate review.* (i) The flexible progress payments clause provides for redetermination of the flexible progress payment rate whenever the computed investment percentage is more than two points above or below the specified minimum investment. When such a redetermination is made—

(A) Apply the new flexible progress payment rate to the next contractor progress payment request; and

(B) Adjust the unliquidated progress payment balance.

(ii) Either the Government or the contractor may request a rate review at any time to determine if the computed investment percentage is outside the investment tolerance in paragraph (S–71)(4)(i) of this subsection.

(iii) The ACO shall assess changes in the following factors during each periodic review required by FAR 32.503–5 and shall review the flexible rate whenever there has been—

(A) A significant change in the float or lag factors;

(B) A significant change in the delivery schedule; or

(C) Substantial work added to or deleted from the contract.

(5) *Letter contracts and undefinitized orders.* When flexible progress payments are contemplated for use on a definitive contract superseding a letter contract or an unprice BOA order, the applicable uniform customary progress payment rate shall be used until definitization. The flexible progress payment rate shall be determined by the contracting officer before definitization of the contract or order.

(6) *Availability CASH program and User's Guide.* The Flexible progress payment program CASH and the User's Guide are available to offerors and contractors from the contracting officer. Contracting officers shall obtain copies from agency managements.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

47. Section 235.006 is revised to read as follows:

235.006 Contracting methods and contract type.

(S–70) *Fixed-price type development contracts.*

(1) A fixed-price type contract shall not be awarded for a development program effort unless:

(i) The level of program risk permits realistic pricing;

(ii) The use of a fixed-price type contract permits an equitable and sensible allocation of program risk between the Government and the contractor; and

(iii) A written determination that the criteria of paragraphs (S–70) (1) and (2) of this section have been met is properly executed—

(A) By the Under Secretary of Defense for Acquisition (USD(A)), for—

(*1*) Research and development, if the contract is a fixed-price type contract over $25,000,000;

(*2*) The lead ship of a class;

(*3*) The development of a major system (as defined in FAR 34.001) or subsystem thereof, if the contract is over $10,000,000 and is a fixed-price type contract funded with FY 90 funds (Public Law 101–165, Section 9048)).

(B) By the contracting officer for all fixed-price type contracts for all development not covered by paragraph (S–70)(1)(iii)(A) of this section.

(2) Before award, submit the Government's prenegotiation position, and the proposed (and unexecuted) agreement with the contractor to the USD(A) for any action which is—

(i) An increase of more than $250,000,000 in the price of a fixed-price type development contract, or a fixed-price type contract for the lead ship of a class;

(ii) A reduction in the amount of work under a fixed-price type development contract or a fixed-price type contract for the lead ship of a class, when the contract action is valued at more than $100,000,000;

(iii) A repricing of fixed-price type production options to a development contract, or a contract for the lead ship of a class, which increases the price by more than $250,000,000 for equivalent quantities.

(3) Notify the USD(A) of an intent not to exercise a fixed-price production option on a development contract for a major weapon system reasonably in advance of the expiration of the option exercise period.

PART 242—CONTRACT ADMINISTRATION

48. Section 242.270 is revised to read as follows:

242.270 Performance of Contract Administration Services (CAS) on military installations.

(a) Contract administration functions on a military installation are normally the responsibility of the installation commander. This includes contract administration responsibility for—

(1) Base, post, camp, or station contracts, including A–76 type contracts;

(2) Contracts awarded by, or on behalf of, on-base activities (e.g., laboratories) and research and test facilities;

(3) Contracts for the operation and maintenance of simulators; and

(4) Contracts for contractor field teams.

(b) The Defense Contract Management Command (DCMC) shall, upon request of the installation commander, perform CAS on a military installation provided that the following two conditions are met:

(1) The contract statement of work is unrelated to the mission of the installation or on base activity. Examples are—

(i) Activation of a new weapon system;

(ii) Major modification of an existing weapon system;

(iii) When a contractor's normal place of industrial operation is located on a military base because of the availability of real estate or the existence of an industrial facility on that base.

(2) Full contract administration responsibility is delegated to DCMC, so as to prevent mixed CAS (i.e., more than one CAS organization performing contract administration functions at the contractor's place of performance).

(c) DCMC shall provide preaward survey assistance for post, camp, and station work preformed on a military installation. The contracting office and the DCMC preaward survey monitor shall jointly determine the scope of the survey and individual responsibilities.

49. Section 242.302 is amended by adding paragraph (b)(S–70) to read as follows:

242.302 Contract administration functions.

* * * * *

(b)(S–70) Issue, negotiate and execute orders under basic ordering agreements for overhaul, maintenance, and repair.

PART 245—GOVERNMENT PROPERTY

50. Section 245.608–5 is amended by revising the title and by adding paragraphs (a) (1), (2), (3), and (b) to read as follows:

245.608–5 Special Items screening.

(a)(1) Excess special test equipment (STE) with standard equipment will be reported on Standard Form 1432, Inventory Schedule D (Special Tooling and Special Test Equipment) with all economically removable general purpose components that qualify as industrial plant equipment (IPE), other plan equipment (OPE), or automatic data processing equipment (ADPE)

listed and described on the inventory schedule.

(2) Initial screening of the composite STE unit shall be in accordance with 245.606–2. After completion of initial screening, the STE unit and any reportable standard components not selected for retention by the acquiring or requiring department or approved for transfer to another contract shall be screened separately as follows:

(i) STE unit less any standard components with GSA;

(ii) IPE components with DIPEC (see 245.606–71);

(iii) OPE components with CIRS (see 245.606–70);

(iv) ADPE components with DARIC (see 245.606–5(d)(1)).

(3) Nonreportable standard components shall be screened only with GSA in accordance with FAR 45.606–4. Plant clearance officers will make necessary adjustments to the inventory schedules to ensure completion of the above screening requirements.

(b) For screening of excess STE without standard equipment, see paragraph (a)(2) of this subsection.

* * * * *

PART 246—QUALITY ASSURANCE

51. Section 246.406 is amended by redesignating the existing paragraphs (S–71)(1) and (2) as (S–71)(1) (i) and (ii) respectively; by redesignating the existing paragraph (S–71) introductory text as paragraph (S–71)(1); by adding paragraph (S-71) introductory text; by redesignating the existing paragraph (S–72) introductory text as (S–71)(2) introductory text; by redesignating the existing paragraphs (S–72)(1) through (4) as (S–71)(2)(i) through (iv) respectively; and by removing paragraph (S–73); to read as follows:

246.406 Foreign governments.

* * * * *

(S–71) *Reciprocal quality assurance agreements.* A Memorandum of Understanding (MOU) with a foreign country may contain an annex that provides for the reciprocal performance of quality assurances services. MOU's are published in DFARS Appendix "I" and should be checked to determine whether such an annex exists for the country where a defense contract will be performed. See subpart 225.74, Purchases from qualifying Country Sources, for more information about MOUs.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52. Section 252.208–7005 is revised to read as follows:

252.208–7005 Required sources for forging items.

As prescribed at 208.7803, insert the following clause:

Required Sources for Forging Items (Nov 1990)

(a) For the purpose of this clause:

Domestic manufacture means forging items manufactured in the United States or Canada.

End item means a final combination of end products, component parts, and/or materials which is ready for its intended use, per JCS Publication #1 (DOD Dictionary of Military and Associated Terms).

(b) The Contractor agrees that end items, components, and processed materials thereof delivered under this contract shall contain domestic forging items of United States and Canadian manufacturers only as listed in section 208.7802–1 of the DoD FAR Supplement. This restriction does not include forgings for commercial vehicles (such as commercial cars and trucks) or to noncombat support military vehicles.

(c) A Canadian firm may bid on and supply any of the restricted items if: (1) It normally produces similar items or it is currently producing the item in support of DoD contracts (as prime or subcontractor); and (2) it agrees to become (upon receiving a contract/order) a planned producer under DoD's Industrial Preparedness Program (IPP), if it is not already a planned producer for the item.

(d) The Contractor agrees to insert this clause, including this paragraph (d), in every subcontract and purchase order issued in performance of this contract, unless the Contractor knows that the item being purchased contains none of the restricted forging items.

(e) The Contractor agrees to retain until the expiration of three (3) years from the date of final payment under this contract and to make available during such period, upon request of the Contracting Officer, records showing compliance with this clause.

(f) The requirement for delivery in paragraph (b) of this clause may be waived in whole or in part on a case-by-case basis by the Contracting Officer when such a waiver is determined to be in the Government's interest, and it meets the provisions of subpart 208.78 of the DoD FAR Supplement.

(End of clause)

53. Section 252.225–7000 is revised to read as follows:

252.225–7000 Buy American Act—Balance of Payments Program Certificate.

As prescribed at 225.109(a)(S–70), insert the following provision:

Buy American Act—Balance of Payments Program Certificate (Nov 1990)

(a) The offeror hereby certifies that each end product, except the end products listed below, is a domestic end product (as defined in the clause entitled "Buy American Act and Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

Foreign End Products

Line Item No.

_____

_____

Country of Origin

_____

_____

(List all qualifying country end products and all nonqualifying country end products)

(b) Offers will be evaluated by giving preferences to domestic end products and foreign qualifying country end products over foreign nonqualifying country end products. In order to obtain such preference in the evaluation of each foreign end product listed in paragraph (a), it is necessary that offerors identify and certify those foreign end products identified in paragraph (a) that are qualifying country end products or they will be deemed nonqualifying country end products. Offerors must certify by stating the applicable line item numbers below.

The offeror certifies that the following supplies are "qualifying country end products" as defined in the clause entitled "Buy American Act and Balance of Payments Program."

(_____)

(Insert line item no.)

(End of provision)

54. Section 252.225–7001 is revised to read as follows:

252.225–700 Buy American Act and Balance of Payments Program.

As prescribed at 225.109(d)(S–70), insert the following clause:

Buy American Act and Balance of Payments Program (Nov 1990)

(a) This clause implements the Buy American Act (41 U.S.C. Section 10a–d) in a manner that will encourage a favorable international balance of payments by providing a preference to domestic end products over foreign end products, except for end products which are qualifying country end products. For the purpose of this clause—

(1) *Components* means those articles, materials, and supplies directly incorporated into end products.

(2) *Qualifying country* means any country set forth in DFARS 225.7403.

(3) *Nonqualifying country* means any country, other than the United States, that is not a qualifying country listed in DFARS 225.7403.

(4) *Qualifying country components* means an item mined, produced, or manufactured in a qualifying country.

(5) *End products* means those articles, materials, and supplies to be acquired for public use under the contract. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts but excluding installation and other services to be performed after delivery.

(6) *Domestic end product* means an unmanufactured end product which has been mined or produced in the United States, or an end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(7) *Foreign end product* means an end product other than a domestic end product.

(8) *Qualifying country end product* means an unmanufactured end product mined or produced in a qualifying country, or an end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(b) The Contractor agrees that there will be delivered under this contract only domestic end products unless, in its offer, it specified delivery of foreign end products in the provision entitled "Buy American Act and Balance of Payments Program Certificate." An offer certifying that a qualifying country end product will be supplied requires the Contractor to supply a qualifying country end product or, at the Contractor's option, a domestic end product. An offer based on supplying a nonqualifying country end product, if accepted, will permit the Contractor to supply a product without regard to the requirements of this clause.

(c) Offers will be evaluated in accordance with the policies and procedures of FAR part 25 and DFARS part 225.

(d) The offered price of nonqualifying country end products must include all applicable duty. Generally, when the Buy American Act is applicable, each nonqualifying country offer of defense equipment shall be adjusted for the purpose of evaluation by adding 50 percent of the offer, inclusive of duty.

(End of clause)

252.225–7003 [Amended]

55. Section 252.225–7003 is amended by revising in the introductory language the reference "225.205(S–70)" to read "225.205–70".

56. Section 252.225–7005 is revised to read as follows:

252.225–7005 Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate.

As prescribed at 225.407(a)(1), insert the following provision:

Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate (Nov 1990)

(a) The Offeror hereby certifies that each end product, except the end products listed below, is a domestic end product (as defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program"), and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

Foreign End Products

Line Item No.

_____

_____

_____

Country of Origin

_____

_____

_____

(List as necessary)

(b) Offers will be evaluated by giving preference to domestic end products, qualifying country end products, designated country end products and Caribbean Basin country end products over foreign nonqualifying country end products. In order to obtain such preference in the evaluation of each foreign end product listed in paragraph (a) of this clause, it is necessary that offerors identify and certify, below, those foreign end products identified in paragraph (a) of this clause that are qualifying country end products, designated country end products, or Caribbean Basin country end products. Products which are not identified and certified will not be deemed qualifying country end products, designated country end products, or Caribbean Basin country end products. Offerors must certify by inserting the applicable line item numbers in the appropriate brackets.

(1) The Offeror certifies that the following supplies are "qualifying country end products" as defined in the clause entitled "Buy American Act, Trade Agreements Act, and the Balance of Payments Program."

_____

(Insert line item no.)

(2) The Offeror certifies that the following supplies qualify as "designated country end products" as that term is defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program."

_____

(Insert line item no.)

(3) The Offeror certifies that the following supplies qualify as "Caribbean Basin Country end products" as that term is defined in the clause entitled "Buy American Act, Trade Agreements Act, and Balance of Payments Program."

_____

(Insert line item no.)

(End of provision)

57. Section 252.225–7006 is revised to read as follows:

252.225–7006 Buy American Act, Trade Agreements Act, and The Balance of Payments Program.

As prescribed at 225.407(a)(2), insert the following clause:

Buy American Act, Trade Agreements Act, and the Balance of Payments Program (Nov 1990)

(a) This clause implements the Buy American Act (41 U.S.C. Section 10a–d), the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.), and the Caribbean Basin Initiative as provided for in Executive Order 12260 in a manner that will encourage a favorable international balance of payments by providing a preference to domestic end products over foreign end products, except for end products which are qualifying country end products, designed country end products or Caribbean Basin end products. For the purpose of this clause—

(1) *Components* means those articles, materials, and supplies directly incorporated into end products.

(2) *Qualifying country* means any country set forth at DFARS 225.7403.

(3) *Nonqualifying country* means any country, other than the United States, that is not a qualifying country listed in DFARS 225.7403.

(4) *Qualifying country component* means an item mined, produced, or manufactured in a qualifying country.

(5) *End product* means those articles, materials, and supplies to be acquired for public use under the contract. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts but excluding installation and other services to be performed after delivery.

(6) *Domestic end product* means an unmanufactured end product which has been mined or produced in the United States, or an end product manufactured in the United States if the cost of its qualifying country components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free certificate may be issued). A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities

and of a satisfactory quality, or as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(7) *Foreign end product* means an end product other than a domestic end product.

(8) *Qualifying country end product* means an unmanufactured end product mined or produced in a qualifying country or an end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(9) *Designated country end product* means an article that is wholly the growth, product, or manufacture of the designated country, or in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

(10) *Caribbean Basin country end product* means an article that is wholly the growth, product, or manufacture of a Caribbean Basin country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR), or in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; *Provided*, That the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such. The term excludes products which are excluded from duty-free treatment for Caribbean countries under the Caribbean Basin Economic Recovery Act under 19 U.S.C. 2703(b). These exclusions presently consist of textiles and apparel articles which are subject to textile agreements; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under title V of the Trade Act of 1974; tuna, prepared or preserved in any manner in airtight containers; petroleum, or any product derived from petroleum; and watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country to which Harmonized Tariff Schedule column 2 rates of duty apply.

(b) The Contractor agrees that there will be delivered under this contract only domestic end products unless, in its offer, it specified delivery of foreign end products in the provision entitled Buy American Act, trade Agreements Act, and Balance of Payments Program Certificate. An offer certifying that a qualifying country end product, a designated country end product, or a Caribbean Basin country end product will be supplied requires the Contractor to supply a qualifying country end product, a designated country end product, or a Caribbean Basin country end product, whichever is certified, or, at the Contractor's option, a domestic end product. An offer based on supplying a nonqualifying country end product, if accepted, will permit the Contractor to supply a product without regard to the requirements of this clause; however, Contractors may not supply an end product listed in DFARS 225.403–70 with a total value at or above _____ dollars ($_____) (Contracting Officers shall insert the dollar threshold amount referenced in FAR 25.402(a) from a country not listed at FAR 25.401, except as provided in DFARS 225.402(c)).

(c) Offers will be evaluated in accordance with the policies and procedures of FAR part 25 and DFARS part 225.

(d) The offered price nonqualifying country end products must include all applicable duty. The offered price of designated country end products, for line items subject to the Trade Agreements Act, should not include custom fees or duty. Generally, when the Buy American Act is applicable, each nonqualifying country offer of defense equipment shall be adjusted for the purpose of evaluation by adding 50 percent of the offer inclusive of duty.

(e) The Trade Agreements Act applies to this acquisition. Offers of designated and Caribbean Basin country end products will be evaluated without the Buy American Act and Balance of Payments Programs price adjustment discussed in paragraph (d) of this clause. See FAR subpart 25.4 and DFARS subpart 225.4 for procedures and exceptions.

(End of clause)

58. Section 252.225–7008 is revised to read as follows:

252.225–7008 Duty-free entry—qualifying country end products and supplies.

As prescribed at 225.605–70, insert the following clause:

Duty-Free Entry—Qualifying Country End Products and Supplies (Nov 1990)

(a) The requirements of this clause apply to this contract and subcontracts, which term includes purchase orders, that involve supplies to be accorded duty-free entry, whether—

(1) placed directly with a foreign concern as a prime contract; or

(2) as a subcontract or purchase order under a contract placed with a domestic concern.

(b) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price on account of duty with respect to—

(1) all end items which constitute "qualifying country end products" (as defined in DoD FAR Supplement 225.001) to be delivered under this contract; and

(2) all supplies (incuding, without limitation, raw materials, components, and intermediate assemblies) produced or made in qualifying countries, which are to be incorporated in the end items to be delivered under this contract; *Provided*, That such end items are manufactured in the United States or in a qualifying country, except supplies imported into the United States prior to the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor hereunder, prior to the date of the subcontract.

(c) The Contractor warrants that all such qualifying country supplies, for which duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(d) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate in order to obtain the duty-free entry of qualifying country supplies as to which the shipping documents bear the notation specified in paragraph (e) of this clause, except as the Contractor may otherwise agree.

(e) All shipping documents submitted to Customs, covering foreign end products or supplies for which duty-free entry certificates are to be issued in accordance with this clause, shall consign the shipments to the appropriate Military Department in care of the particular Contractor, including the Contractor's delivery address, or the appropriate military installation; and bear the following information:

(1) prime contract number plus delivery order, if applicable;

(2) number of the subcontract/purchase order for foreign supplies, if applicable;

(3) identification of carrier;

(4) the notation: "United States Government, Department of Defense" Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item No. 9808.00.30, of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify Commander, Defense Contract Management Region (DCMR) New York, ATTN: Chief, Customs Division, International Logistics Office, 201 Varick Street, New York, New York 10014, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates." (Note: The above notation shall be used only for direct shipments to a U.S. military installation. In cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to insert the name and address of the contractor agent or broker who will notify Commander, Defense Contract management Region (DCMR) New York, for execution of the duty-free entry certificates.)

(v) gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight);

(vi) estimated value in U.S. dollars; and

(vii) Activity Address Number of the Contract Administration Office (CAO) actually administering the prime contract, e.g., for DCMAO Dayton, DLA8DP.

(f) Preparation of Customs Forms.

(1) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of foreign supplies in connection with DoD contracts into the United States, its possessions, or Puerto Rico. The completed customs forms shall be submitted to the District Director of Customs with a copy of DCMR NY for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with §§ 10.101 and 10.102 of the U.S. Customs Regulations.

(2) For shipments containing both supplies which are to be accorded duty-free entry and supplies which are not, the Contractor shall identify on the customs forms those items which are eligible for duty-free entry.

(g) The Contractor agrees to prepare (if this contract is placed direct with a foreign supplier) or to instruct the foreign supplier to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry and to consign the shipment as specified in (e) of this calluse, and to mark the exterior of all packages as follows:

(1) "United States Government, Department of Defense" and

(2) The Activity Address Number applicable to the contract administration office actually administering the prime contract.

(h) The Contractor agrees to ensure that the Contracting Officer administering the prime contract is notified in writing of any purchase under the contract of qualifying country supplies to be accorded duty-free entry that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. Such notice shall be furnished to the contract administration office immediately upon the award to the qualifying country supplier. The notice shall identify:

(1) Prime contract number plus delivery order number if applicable;

(2) Total dollar value of the prime contract or delivery order;

(3) Expiration date of the prime contract or delivery order;

(4) Foreign supplier name;

(5) Number of the subcontract/purchase order for foreign supplies;

(6) Total dollar value of the subcontract for foreign supplies;

(7) Expiration date of the subcontract for foreign supplies;

(8) List of items purchased; and

(9) Certification by the purchaser of foreign supplies: I certify that all such supplies for which duty-free entry is to be claimed are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer;

(10) The qualifying country; and

(11) The scheduled delivery date(s).

(i) This clause shall not apply to purchases of qualifying country supplies in connection with this contract if (1) such qualifying country supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with its commercial business; and (2) it is not economical or feasible to account for such supplies so as to ensure that the amount of such supplies for which duty-free entry is claimed pursuant to this clause does not exceed the amount thereof purchased in connection with this contract.

(j) The Contractor agrees to insert the substance of this clause, including this paragraph (j) in all subcontracts for supplies hereunder. Each such subcontract shall require the subcontractor to identify this contract by its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause. The Contractor also agrees to ensure that the name and address of the Contracting Officer administering the prime contract (name and address of the CAO cognizant of the prime contract), and its Activity Address Number (Appendix N of this chapter), and the information required by (h) (1), (2) and (3) of this clause is included in applicable subcontracts.

(End of clause)

252.225–7018 [Removed and Reserved]

59. Section 252.225–7018 is removed and reserved.

252.225–7020 [Removed and Reserved]

60. Section 252.225–7020 is removed and reserved.

252.225–7021 [Removed and Reserved]

61. Section 252.225–7021 is removed and reserved.

62. Section 252.225–7025 is added to read as follows:

252.225–7025 Restriction on acquisition of foreign anchor and mooring chain.

As prescribed at 225.7014(a), insert the following clause:

Restriction on Acquisition of Foreign Anchor and Mooring Chain (Nov 1990)

(a) Welded shipboard anchor and mooring chain (four inches in diameter and under) contained in items delivered under this contract shall be manufactured in the United States.

(b) This clause, including this paragraph (b), must be included in all subcontracts hereunder, unless items acquired contain none of the restricted welded and shipboard anchor and mooring chain.

(End of clause)

63. Section 252.225–7026 is added to read as follows:

252.225–7026 Restriction on acquisition of foreign anchor and mooring chain.

As prescribed at 225.7014(b), insert the following clause:

Restriction on Acquisition of Foreign Anchor and Mooring Chain—Fiscal Year 1988 (Nov 1990)

(a) Welded anchor and mooring chain (four inches in diameter and under) contained in items delivered under this contract shall be manufactured in the United States, its territories or possessions, or Canada except as provided in paragraph (b) of this clause.

(b) The Contractor may request a waiver in accordance with DFARS 225.7014(b) if adequate domestic supplies of welded anchor and mooring chain are unavailable to meet the contract delivery schedule.

(c) This clause, including this paragraph (c), must be included in all subcontracts hereunder, unless items acquired contain none of the restricted welded and shipboard anchor and mooring chain.

(End of clause)

64. Section 252.225–7029 is added to read as follows:

252.225–7029 Information for duty-free entry evaluation.

As prescribed at 225.109(d)(S–72), insert the following provision:

Information for Duty-Free Entry Evaluation (Nov 1990)

(a) Is your bid/offer based upon furnishing any supplies (i.e., end items, components, or material) of foreign origin other than those for which duty-free entry is to be accorded pursuant to the clause entitled "Duty-Free Entry—Qualifying Country End Products and Supplies" herein?

Yes ( ) No ( )

(b) If the answer to (a) of this clause is yes, the following questions must be answered:

1. Are such foreign supplies now in the United States?

Yes ( ) No ( )

2. Has the duty on such foreign supplies been paid?

Yes ( ) No ( )

3. If the answer to 2 of this clause is no, what amount is included in your bid/offer to cover such duty? $_____.

(c) If the duty has not been paid, the Government may elect to make award on a "duty-free" basis. In this event, the contract award will contain the clause entitled "Duty-Free Entry" and the clause entitled "Supplies To Be Accorded Duty-Free Entry", and the bid/offer price will, in the award, be reduced by the amount specified in (b)3 of this clause. The bidder/offeror agrees to identify the foreign supplies which are subject to such duty-free entry at the request of the Contracting Officer.

(d) Bids/Offers will be evaluated on a "duty included" basis except to the extent that the supplies are "qualifying country end products" as defined in part 225 or to the

extent the "duty-free" price is specified for use in the evaluation procedure.

(End of provision)

65. Section 252.225–7030 is added to read as follows:

252.225–7030 Restriction on acquisition of polyacrylonitrile (PAN) based carbon fiber.

As prescribed in 225.7011–1(a), insert the following clause:

Restriction on Acquisition of Polyacrylonitrile (PAN) Based Carbon Fiber (Nov 1990)

(a) This clause applies only if the end product furnished under this contract contains polyacrylonitrile carbon fibers (alternatively referred to as PAN-based fibers or PAN-based graphite fibers).

(b) PAN carbon fibers contained in the end product shall be manufactured in the United States or Canada using PAN precursor produced in the U.S. or Canada.

(c) The Contracting Officer, with the approval of the Head of the Contracting Activity, may waive the requirement in paragraph (b) of this clause in whole or in part. A waiver request shall identify the circumstances and include a plan to qualify domestic or Canadian sources expeditiously.

(End of clause)

66. Section 252.226–7002 is added to read as follows:

252.226–7002 Utilization of Indian organizations and Indian-owned economic enterprises.

As prescribed at 226.7103, insert the following clause:

Utilization of Indian Organizations and Indian-Owned Economic Enterprises (Nov 1990)

(a) This clause applies only if the contract includes a subcontracting plan incorporated under the terms of the clause entitled, Small Business and Small Disadvantaged Business Subcontracting Plan. It does not apply to contracts awarded based on a subcontracting plan submitted and approved under FAR 52.219–9, paragraph (g).

(b) *Definitions.* As used in this clause:

Indian organization means the governing body of any Indian tribe (as defined by 25 U.S.C. 1452(c)) or entity established or recognized by the governing body for the purposes of Chapter 17, Title 25, U.S.C.

Indian-owned economic enterprise means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership shall constitute not less than 51 percent of the enterprise.

Interested party means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(c) It is the policy of the United States that Indian organizations and Indian-owned economic enterprises shall have the maximum practicable opportunity to participate in performing contracts awarded by Federal agencies.

(d) The Contractor agrees to use its best efforts to give Indian organizations and Indian-owned economic enterprises the maximum practicable opportunity to participate in the subcontracts it awards in the performance of this contract.

(1) The Contractor may rely on the written representation of the Indian organization or Indian-owned economic enterprise that it meet the eligibility requirements of this clause.

(2) If the cost of subcontracting with an Indian organization or Indian-owned economic enterprise exceeds the cost of acquiring the supplies or services from a non-Indian source, the Contractor may request an equitable adjustment to:

(i) The estimated cost of a cost-type prime contract,

(ii) The target cost of a cost-plus-incentive-fee prime contract,

(iii) The target cost and ceiling price of a fixed-price incentive prime contract, or

(iv) The price of a firm-fixed-price prime contract.

(3) The amount of the equitable adjustment to the prime contract shall be the lesser of:

(i) the difference between the estimated cost, target cost or firm-fixed-price included in the subcontract initially awarded to the Indian organization or enterprise and the corresponding estimated cost, target cost or firm-fixed-price which would have been included in a subcontract with the otherwise low, non-Indian offeror; or

(ii) Five percent of the estimated cost, target cost or firm-fixed-price included in the subcontract initially awarded to the Indian organization or enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(e) The Contracting Officer shall decide the amount of the adjustment and modify the contract accordingly. The Contracting Officer's decision is final and not subject to the Disputes clause of this contract.

(End of clause)

67. Section 252.232–7004 is revised to read as follows:

252.232–7004 Flexible progress payments.

As prescribed at 232.502–1(S–71), insert the following clause:

Flexible Progress Payments (Nov 1990)

(a) This contract is subject to flexible progress payment procedures as set forth in this clause and the Defense Federal Acquisition Regulation Supplement (DFAkS) 232.502–1(S–71). The progress payment rate of this contract is _____ percent (____%). This percentage applies in lieu of the uniform, customary progress payment rate and liquidation rate of the "Progress Payments" clause. The progress payment rate of this contract was determined by the DoD Cash Flow Computer Model, *(name)* (dated) _____), using _____ percent (____%) as the minimum rate for the Contractor's investment (as a weighted average of costs) in its work in process inventory over the life of the contract and _____ percent (____%) as the standard customary progress payment rate.

(b) If actual and projected cash flow data generated during performance of this contract reveal that the progress payment rate will result in an investment in work in process inventory by the Contractor in excess of two percentage points higher or lower than the minimum rate of Contractor investment percentage identified in paragraph (a) of this clause, the progress payment rate shall be redetermined by using the DoD Cash Flow Computer Model. Unless it contained an error, the version of the DoD Cash Flow Computer Model specified in paragraph (a) of this clause shall be used for any redetermination. The progress payment rate shall not be less than the uniform, customary progress payment rate that would have applied to this contract absent flexible progress payment procedures and the progress payment rate shall not be greater than one hundred percent (100%).

(c) Notwithstanding paragraph (b) of this clause, if at any time the flexible progress payment rate is determined to be overstated because any factual data submitted by the contractor in support of the rate computation were not current, accurate, and complete at the time the flexible progress payment rate was established, the progress payment rate shall be reduced to the rate that should have been calculated using the model specified in paragraph (a) of this clause. The contractor shall pay interest in accordance with paragraph (d) of this clause, on resulting overpayments, computed from the date of payment by the Government, to the date of liquidation of the overpayment. Payment of any unliquidated overpayment and interest shall be due 30 days after the date of the first written demand for payment.

(d) Interest shall be simple interest at the rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95–563), which is applicable at the time the Government made the overpayment, and then at the rate applicable for each six-month period as fixed by the Secretary, until the overpayment is liquidated.

(e) Flexible progress payment terms will be accorded to subcontractors in accordance with paragraph (j) (Progress Payments to Subcontractors) of the "Progress Payments" clause of this contract and DFARS 232.502–1(S–71).

(End of clause)

Alternate I (Oct 1988). If this contract is funded with FY 87 appropriations, change twenty percent (20%) to twenty-five percent (25%), change twenty-two percent (22%) to twenty-seven (27%), and change eighteen percent (18%) to twenty-three percent (23%).

68. Appendix N to chapter 2 is revised to read as follows:

Appendix N to Chapter 2—Activity Address Numbers

Activity Address Numbers are for use in conjunction with the Uniform Procurement Instrument Identification Numbering System as prescribed in subpart 204.70 of the DoD FAR Supplement. The six-character code is used in the first six positions of the Procurement Instrument Identification Number (PIIN). The two-character code is used in the first two positions of the Call/Order Serial Number.

For further information, see subpart 204.70 of the DoD FAR Supplement.

Activities coding procurement instruments shall use only those unique and significant codes assigned by their respective Department/Agency Activity Address Monitor(s). When required, activities shall also be assigned a two position code. (Newly assigned numbers will be listed in future revisions to Appendix N.) Activity Address Monitors are as follows:

Army

US Army Contracting Support Agency, Attn: Contract Support Office (SFRD–KS), 5109 Leesburg Pike, Suite 302, Falls Church, VA 22041–3201

Navy

Navy Accounting and Finance Center, (NAFC–5511), Washington, DC 20376–5001

*(Six-Character Unit Identification Number only)

Air Force

SAF/AQCX, Directorate of Contracting and Manufacturing Policy, Washington, DC 20330–5040

Defense Logistics Agency

Defense Logistics Agency, Contracting Systems Support Office (DLA–DCSSO), Cameron Station, Alexandria, VA 22304–6100

*The Navy and Marine Corps Activity Address Monitor for assignment of two-character call/serial numbers is:

Office of the Assistant Secretary of the Navy (RD&A), Room 536, Crystal Plaza 5, Washington, DC 20350–1000

Requests for changes in either the six character or the two character Appendix N codes will be submitted to the appropriate Activity Address Monitor in accordance with local procedures. Activity Address Monitors shall approve requests for additions, deletions, or changes and submit them to Managing Editor, DAR Council, ODASD(P)/DARS, Washington, DC 20301–3062, with a copy to Executive Agent, Defense Logistics Agency, DLA–DCSSO, Cameron Station, Alexandria, VA 22304–6100. The Executive Agent is responsible for maintaining the Appendix N data base of six and two character code assignment and distributing the blocks of two character codes to the Monitors for further assignment. A copy of the current Appendix N data base is available on tape or MS–DOS compatible floppy diskettes from the Executive Agent. Requests for changes to the DoD Activity Address Codes shall be forwarded to the Department focal point specified in DoD 4000.25–D in accordance with Department instructions. Copies of the DoD Activity Address Directory, DoD 4000.25–D, are available in microfiche from the focal points specified in DoD 4000.25–D.

Marine Corps

Headquarters, US Marine Corps, (Code LBP), Washington, DC 20380–0001

*(Six-Character Unit Identification Number only)

Other Defense Agencies

The following agencies will forward requests for Appendix N maintenance to US Army Contracting Support Agency, (SFRD–KS), to the address listed above.

Defense Mapping Agency

Director of Acquisition, Defense Mapping Agency, Washington, DC 20305–3000

Defense Nuclear Agency

Chief, Contract Division, Defense Nuclear Agency, Washington, DC 20305–1000

Defense Communications Agency

Chief, Logistics Management Office, Code 202, Defense Communications Agency, Washington, DC 20305–2000

Department of the Army

DAAA03, B1—Pine Bluff Arsenal, Attn: SMCPB–PO, Pine Bluff, AR 71602–9500

DAAA05, B2—Directorate of Contracting, Rocky Mountain Arsenal, Attn: XRMAC–DOC, Commerce City, CO 80022–2180

DAAA08, B7—Rock Island Arsenal, Attn: SMCRI–CT, Rock Island, IL 61299–5000

DAAA09, BA—HQ, AMCCOM, Attn: AMSMC–PC (R), Rock Island, IL 61299–6000

DAAA15, ZU—HQ, AMCCOM, Attn: AMSMC–PC (A), Aberdeen Proving Ground, MD 21010–5423

DAAA21, 2T—HQ, AMCCOM, Attn: AMSMC–PC (D), Picatinny Arsenal, NJ 07806–5000

DAAA22, BV—Watervliet Arsenal, Attn: SMCWV–PP, Watervliet, NY 12189–4050

DAAA31, CJ—McAlester Army Ammunition Plant, Attn: SMCMC–PC, McAlester, OK 74501–5000

DAAB07, BG—USA Communications-Electronics Command, Attn: AMSEL–PC, Ft. Monmouth, NJ 07703–5000

DAAB08, 2V—USA Communications-Electronics Command, Attn: Procurement Directorate, Base Ops, Ft. Monmouth, NJ 07703–5008

DAAB10, ZP— Headquarters, U.S. Army Garrison, Vint Hill Farms Station, Attn: SELVH–PC–OP, Warrenton, VA 22186–5172

DAAC01, BH—Anniston Army Depot, Attn: SDSAN–DOC, Anniston, AL 36201–5003

DAAC09, ZR—Sacramento Army Depot, Attn: SDSSA–K, Sacramento, CA 95813–5021

DAAC67, ZN—Letterkenny Army Depot, Attn: SDSLE–P, Chambersburg, PA 17201–4152

DAAC69, D2—New Cumberland Army Depot, Attn: SDSNC–P, New Cumberland, PA 17070–5001

DAAC71, ZS—Tobyhanna Army Depot, Attn: SDSTO–K, Tobyhanna, PA 18466–5100

DAAC79, D7—Red River Army Depot, Attn: SDSRR–P, Texarkana, TX 75507–5000

DAAC83, BJ—Corpus Christi Army Depot, Attn: SDSCC–C, Corpus Christi, TX 78419–6170

DAAC89, BK—Tooele Army Depot, Attn: SDSTE–CD, Tooele, UT 84074–0839

DAAD01, B5—USA Yuma Proving Ground, Procurement Directorate, Attn: STEYP–CR, Yuma, AZ 85365–9103

DAAD03, B6—USA Jefferson Proving Ground, Attn: STEJP–LC–C, Madison, IN 47250–5100

DAAD05, BM—USA Aberdeen Proving Ground Support Activity, Attn: STEAP–PR(Bldg No. 314), Aberdeen Proving Ground, MD 21005–5001

DAAD07, BN—USA White Sands Missile Range, Directorate of Contracting, Attn: STEWS–PR, White Sands Missile Range, NM 88002–5201

DAAD09, BP—USA Dugway Proving Ground, Procurement Directorate, Attn: STEDP–DOC, Dugway, UT 84022–0538

DAAD10, ZX—USA Test & Evaluation Command, Attn: AMSTE–PR, Aberdeen Proving Ground, MD 21005–5055

DAAE07, BR—USA Tank-Automotive Command, Warren, MI 48397–5000

DAAG60, G8—USA Military Academy, Purchasing & Contracting Division, Bldg 667A, Attn: MAPC, West Point, NY 10996–1594

DAAG99, ZY—USA Program Manager-SANG, Attn: AMCPM–NGA–A, APO New York, NY 09038–5005

DAAH01, CC—USA Missile Command, Attn: AMSMI–PC, Redstone Arsenal, AL 35898–5280

DAAH03, D6—USA Missile Command, Attn: AMSMI–PC–FC (Lab/Base Ops), Redstone Arsenal, AL 35898–5280
DAAJ02, D9—Aviation Applied Technology Directorate, Attn: SAVRT–T4–CD, Ft Eustis, VA 23604–5577
DAAJ04—USA Charles Melvin Price Support Center, Attn: AMSAV–PHI, Granite City, IL 62040–1801
DAAJ05, ZF—USA Aviation Systems Command, Building 404, Attn: I.A.S.–21–Working Group, Ft Eustis, VA 23604–5577
DAAJ09, BS—USA Aviation Systems Command, 4300 Goodfellow Blvd., Attn: AMSAV–PR, St Louis, MO 63120–1798
DAAK01, BB—USA Troop Support Command (TROSCOM), 4300 Goodfellow Blvd., Attn: AMSTR–PYMB, St. Louis, MO 63120–1798
DAAK60, C5—USA Natick Research, Development and Engineering Center, Directorate of Procurement, Attn: AMSTR–PN, Natick, MA 01760–5011
DAAK70, E1—USA Belvoir Research, Development and Engineering Center, Procurement & Production Directorate, Attn: AMSTR–PBP, Ft. Belvoir, VA 22060–5606
DAAL01, 1Y—Electronics Technology & Devices Laboratory, Attn: SLCET–DP, Ft. Monmouth, NJ 07703–5302
DAAL02, D3—USA Laboratory Command Installation Support Activity, 2800 Powder Mill Road, Attn: SLCIS–C, Adelphia, MD 20783–1145
DAAL03—U.S. Army Research Laboratory, P.O. Box 12211, Attn: SLCRO–PR, Research Triangle Park, NC 27709–2211
DAAL04, D8—USA Materials Technology Laboratory, Arsenal Street, Attn: SLCMT–PR, Watertown, MA 02172–0001
DABT01, F6—Commander, U.S. Army Aviation Center, Contracting Office, Building T–00116, Attn: ATZQ–C, Ft Rucker, AL 36362–5000
DABT02, 2A—Commander, U.S. Army Chemical and Military Police Centers and Fort McClellan, Attn: ATZN–DOC, Ft McClellan, AL 36205–5000
DABT10, 2B—Commander, U.S. Army Infantry Center and Fort Benning, Bldg. 35, Attn: ATZB–KTC, Fort Benning, GA 31905–5000
DABT11, 2C—Commander, U.S. Army Signal Center and Fort Gordon, Building 2050, Attn: ATZI–CT, Fort Gordon, GA 30905–5041
DABT15, F9—Commander, U.S. Army Soldier Support Center and Fort Benjamin Harrison, Attn: ATZI–CT, Fort Benjamin Harrison, IN 46216–5230
DABT19, 2D—Commander, U.S. Army Combined Arms Center and Fort Leavenworth, Attn: ATZL–GDC, Fort Leavenworth, KS 66027–5000
DABT23, 2E—Commander, U.S. Army Armor Center and Fort Knox, Bldg. 4022, Attn: ATZK–DC, Fort Knox, KY 40121–5000
DABT31, 2F—Commander, U.S. Army Engineer Center and Fort Leonard Wood, Attn: ATZT–DOC, Fort Leonard Wood, MO 65473–5000
DABT35, 2G—Commander, U.S. Army Training Center and Fort Dix, Bldg. 5418, Attn: ATZD–CO, Fort Dix, NJ 08640–6150
DABT39, 2H—Commander, U.S. Army Field Artillery Center and Fort Sill, Attn: ATZR–Q, Fort Sill, OK 73503–0501
DABT43, 2J—Commander, Carlisle Barracks, Bldg. 46, Attn: ATZE–DOC, Carlisle Barracks, PA 17013–5002
DABT47, 2K—Commander, U.S. Army Training Center and Fort Jackson, Bldg. 4350, Attn: ATZJ–DOC, Fort Jackson, SC 29207–5490
DABT51, 2L—Commander, U.S. Army Air Defense Artillery Center & Fort Bliss, P.O. Box 6078, Attn: ATZC–DOC, Fort Bliss, TX 79906–0078
DABT57, 2N—Commander, U.S. Army Transportation Center and Fort Eustis, Bldg. 2746, Attn: ATZF–CO, Fort Eustis, VA 23604–5000
DABT58, 2P—Commander, Fort Monroe, Bldg. T–195, Attn: ATZG–C #62, Fort Monroe, VA 23651–6000
DABT59, 2Q—Commander, U.S. Army Quartermaster Center and Fort Lee, Bldg. T–7124, Attn: ATZM–DC, Fort Lee, VA 23801–5000
DABT60, 1L—Director, TRADOC Contracting Activity, Attn: ATCA, Fort Eustis, VA 23604–5538
DABT61, BF—Commandant, The Judge Advocate General's School, USA, Attn: JAGS–SSL, Charlottesville, VA 22904–1781
DABT63, BL—Commander, U.S. Army Information Systems Command, Attn: ASQH–DOC, Fort Huachuca, AZ 85613–5000
DABT64, YV—Chief, Purchasing and Contracting Office, Bldg. 440, Attn: ATZR–ZQ, Ft. Chaffee, AR 72905–5000
DABT65—Mission Contracting Activity at Fort Leavenworth, Attn: MCAL, Fort Leavenworth, KS 66027–5000
DACA01, DACW01, CK—USA Engineer District, Mobile, P.O. Box 2288, Mobile, AL 36628–0001
DACA03, DACW03, CL—USA Engineer District, Little Rock, P.O. Box 867, Little Rock, AR 72203–0867
DACA05, DACW05, CM—USA Engineer District, Sacramento, 650 Capital Mall, Sacramento, CA 95814–4794
DACA06, DACW06, CN—USA Engineer Division, South Pacific, 630 Sansone Street, Room 1216, San Francisco, CA 94111–2206
DACA07, DACW07, CP—USA Engineer District, San Francisco, 211 Main Street, San Francisco, CA 94105–1905
DACA09, DACW09, CQ—USA Engineer District, Los Angeles, P.O. Box 2711, Los Angeles, CA 90053–2325
DACA17, DACW17, CS—USA Engineer District, Jacksonville, P.O. Box 4970, Jacksonville, FL 32232–0019
DACA19, DACW19, CU—USA Engineer Division, South Atlantic, 77 Forsyth Street, S.W., Room 313, Atlanta, GA 30335–6801
DACA21, DACW21, CV—USA Engineer District, Savannah, P.O. Box 889, Savannah, GA 31402–0889
DACA22, DACW22, CW—USA Engineer Division, North Central, 536 South Clark Street, Chicago, IL 60605–1592
DACA23, DACW23, CX—USA Engineer District, Chicago, 219 South Dearborn Street, Chicago, IL 60604–1797
DACA25, DACW25, CD—USA Engineer District, Rock Island, P.O. Box 2004, Rock Island, IL 61204–2004
DACA27, DACW27, CY—USA Engineer District, Louisville, P.O. Box 59, Louisville, KY 40201–0059
DACA29, DACW29, CZ—USA Engineer District, New Orleans, P.O. Box 60267, New Orleans, LA 70160–0267
DACA31, DACW31, DA—USA Engineer District, Baltimore, P.O. Box 1715, Baltimore, MD 21203–1715
DACA33, DACW33, DB—USA Engineer District, New England, 424 Trapelo Road, Waltham, MA 02254–9149
DACA35, DACW35, DC—USA Engineer District, Detroit, P.O. Box 1027, Detroit, MI 48231–1027
DACA37, DACW37, DD—USA Engineer District, St. Paul, 1421 USPO a Custom House, 180 East Kellogg Boulevard, St Paul, MN 55101–1427
DACA38, DACW38, DE—USA Engineer District, Vicksburg, P.O. Box 60, Vicksburg, MS 39180–0060
DACA39, DACW39, DF—USA Engineer Water-Ways, Experiment Station, P.O. Box 631, Vicksburg, MS 39181–0631
DACA40, DACW40, DG—USA Engineer Division, Lower Mississippi Valley, P.O. Box 80, Vicksburg, MS 39181–0060
DACA41, DACW41, DH—USA Engineer District, Kansas City, 700 Federal Bldg., 601 East 12th Street, Kansas City, MO 64106–2896
DACA43, DACW43, DJ—USA Engineer District, St. Louis, 210 Tucker Boulevard North, St. Louis, MO 63101–1986
DACA45, DACW45, DK—USA Engineer District, Omaha, 215 North 17th Street, Omaha, NE 68102–4978
DACA46, DACW46, DL—USA Engineer Division, Missouri River, P.O. Box 103, Downtown Station, Omaha, NE 68101–0103
DACA47, DACW47, DM—USA Engineer District, Albuquerque, P.O. Box 1580, Albuquerque, NM 87103–1580
DACA49, DACW49, DN—USA Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207–3199
DACA51, DACW51, CE—USA Engineer District, New York, 26 Federal Plaza, New York, NY 10278–0090
DACA52, DACW52, DP—USA Engineer Division, North Atlantic, 90 Church Street, New York, NY 10007–2979
DACA54, DACW54, DQ—USA Engineer District, Wilmington, P.O. Box 1890, Wilmington, NC 28402–1890
DACA55, DACW55, DR—USA Engineer Division, Ohio River, P.O. Box 1159, Cincinnati, OH 45201–1159
DACA56, DACW56, DS—USA Engineer District, Tulsa, P.O. Box 61, Tulsa, OK 74121–0061
DACA57, DACW57, DT—USA Engineer District, Portland, P.O. Box 2496, Portland, OR 97229–2946
DACA58, DACW58, DU—USA Engineer Division, North Pacific, P.O. Box 2870, Portland, OR 97208–2870
DACA59, DACW59, DV—USA Engineer District, Pittsburgh, William S. Moorehead Federal Bldg., 1000 Liberty Avenue, Pittsburgh, PA 15222–4186
DACA60, DACW60, DW—USA Engineer District, Charleston, P.O. Box 919, Charleston, SC 29402–0919
DACA61, DACW61, CF—USA Engineer District, Philadelphia, Custom House, 2nd & Chestnut Streets, Philadelphia, PA 19106–2991
DACA62, DACW62, DX—USA Engineer District, Nashville, P.O. Box 1070, Nashville, TN 37202–1070
DACA63, DACW63, DY—USA Engineer District, Fort Worth, P.O. Box 17300, Fort Worth, TX 76102–0300
DACA64, DACW64, DZ—USA Engineer District, Galveston, P.O. Box 1229, Galveston, TX 77553
DACA65, DACW65, EA—USA Engineer District, Norfolk, 803 Front Street, Norfolk, VA 23510–1096
DACA66, DACW66, EB—USA Engineer District, Memphis, 167 N. Mid-America Mall, B–202, Clifford Davis Federal Bldg., Memphis, TN 38103–1894
DACA67, DACW67, EC—USA Engineer District, Seattle, P.O. Box C–3755, Seattle, WA 98124–2255
DACA68, DACW68, YW—USA Engineer District, Walla Walla, Building 602, City-County Airport, Walla Walla, WA 99362–9265
DACA69, DACW69, CG—USA Engineer District, Huntington, 502 8th Street, Huntington, WV 25701–2070
DACA70, DACW70, YX—USA Engineer Division, Southwestern, 1114 Commerce Street, Dallas, TX 74242–0216
DACA72, DACW72, ZA—USA Humphreys Engineer Center, Support Activity, Kingman Building, Ft Belvoir, VA 22060
DACA73, DACW73, CH—Headquarters, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, N.W., Attn: CEPR Washington, DC 20314–1000
DACA75, DACW75, ZC—USA Engineer Division, Middle East, APO New York, NY 09038
DACA76, DACW76, ZD—USA Engineer Topographic Laboratories, Cude Bldg., #2592, Ft Belvoir, VA 22060–5546
DACA78, DACW78, 9V—USA Engineer Middle East/Africa, Projects Office, P.O. Box 2250, Winchester, VA 22601–1450
DACA79, DACW79, 2R—USA Engineer District, Japan, APO San Francisco, CA 96343–0061
DACA81, DACW81—USA Engineer District, Far East, APO San Francisco, CA 96301–0427
DACA84, DACW84, ZH—USA Engineer Division, Pacific Ocean, Building 230, Fort Shafer, HI 96858–5440
DACA85, DACW85, ZJ—USA Engineer District, Alaska, P.O. Box 898, Anchorage, AK 99506–0898
DACA86, DACW86—USA Engineer District, Riyadh, APO New York, NY 09038
DACA87, DACW87, ZW—USA Engineer Division, Huntsville, P.O. Box 1600, Huntsville AL 35807–4301
DACA88, DACW88, OS—USA Construction Engineering, Research Laboratory, P.O. Box 4005, Champaign, IL 61824–4005
DACA89, DACW89, Z—USA Cold Regions Research and Engineering Laboratory, 72 Lyme Road, Hanover, NH 03755–1290
DACA90, DACW90—USA Engineers Division, Europe, Attn: CEEUD–, CT APO New York, NY 09757–5301
DADA01, 2S—Letterman Army Medical Center, Bldg 1060 Attn: HSHH–LCP, Presido of San Francisco, CA 94129–6700
DADA03, 8W—Fitzsimons Army Medical Center, Directorate of Contracting, Bldg 205, Attn: HSHC–LOC, Aurora, CO 80045–5001
DADA09, YY—William Beaumont Army Medical Center, P.O. Box 70003, Attn: HSAA–W, El Paso, TX 79920–5001
DADA10, ZQ—USA Health Services Command, Bldg 129, Central Contracting Activity, Attn: HSAA–C, Ft Sam Houston, TX 78234–6000
DADA11, OV—Brooke Army Medical Center, Contracting Branch, Log Div, Attn: HSHE–LOC, Ft Sam Houston, TX 78234–6200
DADA13, OW—Madigan Army Medical Center, Purchasing and Contracting Office, Attn: HSSA–M, Tacoma, WA 98431–5100
DADA15, OX—Walter Reed Army Medical Center, Directorate of Industrial Operations, Bldg T–20, 1st Floor, Attn: HSHL–ZF(SD), Washington, DC 20307–5001
DADA16, OY—Tripler Army Medical Center, Contracting Office, Bldg 160, Attn: HSHK–LD–PC, Tripler AMC, HI 96859–5000
DAEA08, E4—Headquarters, 7th Signal Command & Ft Ritchie, Office of Acquisition, Bldg 148, Attn: ASN–OA–PC Fort Ritchie, MD 21719–5010
DAEA16, E7—Headquarters, 5th Signal Command, DCSLOG, Attn: ASE–LG–CT, APO New York, NY 09056–3104
DAEA20, E8—Commander, HQ, 1st Signal Brigade, Attn: ASQK–AM, APO San Francisco, CA 96301–0044
DAEA31, 1K—USAISC, Directorate of Contracting, Fort Devens, Attn: ASPC–D, Ayers, MA 01433–5340
DAEA32, Y6—HQ, USAISC, Office of Acquisition Management, Attn: ASPC–T, Fort Huachuca, AZ 85613–5000
DAHA01, 9B—USPFO for Alabama, P.O. Box 3715, Montgomery, AL 36193–4801
DAHA02, 0G—USPFO for Arizona, 5636 E. McDowell Road, Phoenix, AZ 85008–3495
DAHA03, 9D—USPFO for Arkansas, Camp Robinson, North Little Rock, AR 72118–2200
DAHA04, 9N—USPFO for California, P.O. Box 8104, San Luis Obispo, CA 93403–8104
DAHA05, Z0—USPFO for Colorado, Camp George West, Golden, CO 80401–3997
DAHA06, 1S—USPFO for Connecticut, State Armory, 360 Broad Street, Attn: Contracting Officer, Hartford, CT 06105–3795
DAHA07, 9A—USPFO for Delaware, Grier Bldg., 1161 River Road, New Castle, DE 19720–5199
DAHA08, 2W—USPFO for Florida, P.O. Box 1008, St. Augustine, FL 32085–1008
DAHA09—USPFO for Georgia, P.O. Box 17882, Atlanta, GA 30316–0882
DAHA10, 2Y—USPFO for Idaho, P.O. Box 45, Boise, ID 83707–4501
DAHA11, 9E—USPFO for Illinois, 1301 North McArthur Blvd., Springfield, IL 62702–2399
DAHA12, 4E—USPFO for Indiana, P.O. Box 41346, Indianapolis, IN 46241–0346
DAHA13, 9L–USPFO for Iowa, Camp Dodge, 7700 NW Beaver Drive, Johnston, IA 50131–1902
DAHA14, 4Z—USPFO for Kansas, P.O. Box 2099, Topeka, KS 66601–2099
DAHA15, 6P—USPFO for Kentucky, Boone National Guard Center, Frankfort, KY 40601–6192

DAHA16, 0A—USPFO for Louisiana, Jackson Barracks, New Orleans, LA 70146-0330
DAHA17, 0B—USPFO for Maine, Camp Keys, Augusta, ME 04333-0032
DAHA18, 0C—USPFO for Maryland, State Mil Reservation, 301 Old Bay Lane, Havre de Grace, MD 21078-4094
DAHA19, 0D—USPFO for Massachusetts, 143 Speen Street, Attn: Contracting Officer, Natick, MA 01760-2599
DAHA20, 9F—USPFO for Michigan, 3111 W. St. Joseph Street, Lansing, MI 48913-5102
DAHA21, 9K—USPFO for Minnesota, P.O. Box 288, Camp Riley, Little Falls, MN 56345-0288
DAHA22—USPFO for Mississippi, 144 Military Drive, Jackson, MS 39208-8850
DAHA23, 9H—USPFO for Missouri, 1715 Industrial Avenue, Jefferson City, MO 65101-1168
DAHA24, 9P—USPFO for Montana, P.O. Box 1157, Helena MT 59624-1157
DAHA25—USPFO for Nebraska, 1234 Military Road, Lincoln, NE 68508-1092
DAHA26—USPFO for Nevada, 2601 South Carson Street, Carson City, NV 89701-5596
DAHA27—USPFO for New Hampshire, P.O. Box 2003, Concord, NH 03301-2003
DAHA28, ZK—USPFO for New Jersey, 131 Eggert Crossing Road, Lawrenceville, NJ 08648-2805
DAHA29—USPFO for New Mexico, P.O. Box 4277, Attn: Contracting Officer, Santa Fe, NM 87502-4277
DAHA30—USPFO for New York, 330 Old Niskayuna Road, Latham, NY 12110-2224
DAHA31—USPFO for North Carolina, 4201 Reedy Creek Road, Raleigh, NC 27607-6412
DAHA32—USPFO for North Dakota, P.O. Box 5511, Bismarck, ND 58502-5511
DAHA33, 9M—USPFO for Ohio, 2811 W. Granville Road, Columbus, OH 43235-2712
DAHA34, 9J—USPFO for Oklahoma, 3501 Military Circle, N.E., Oklahoma City, OK 73111-4398
DAHA35—USPFO for Oregon, P.O. Box 14840, Attn: USPFO-P, Salem, OR 97309-5008
DAHA36—USPFO for Pennsylvania, Dept. of Military Affairs, Attn: Contracting Officer, Annville, PA 17003-5003
DAHA37—USPFO for Rhode Island, 330 Camp Street, Providence, RI 02906-1954
DAHA38—USPFO for South Carolina, 9 National Guard Road, Columbia, SC 29201-4766
DAHA39—USPFO for South Dakota, Camp Rapid, Rapid City, SD 57702-8186
DAHA40—USPFO for Tennessee, Powell Avenue, P.O. Box 40746, Nashville, TN 37204-0748
DAHA41, 9C—USPFO for Texas, P.O. Box 5218, Attn: Contracting Officer, Austin, TX 78763-5218
DAHA42, ZE—USPFO for Utah, P.O. Box 2000, Draper, UT 84020-2000
DAHA43—USPFO for Vermont, Camp Johnson, Bldg. #3, Colchester, VT 05446-3004
DAHA44—USPFO for Virginia, 501 East Franklin Street, Richmond, VA 23219-2317
DAHA45—USPFO for Washington, Camp Murray, Tacoma, WA 98430-5000
DAHA46—USPFO for West Virginia, 50 Armory Road, Buckhannon, WV 26201-2396
DAHA47, 9G—USPFO for Wisconsin, Camp Douglas, WI 54618-9002
DAHA48—USPFO for Wyoming, P.O. Box 1709, Cheyenne, WY 82003-1709
DAHA49—USPFO for District of Columbia, Bldg. 350, Anacostia Naval Air Station, Washington, DC 20315-0001
DAHA50—USPFO for Hawaii, 3949 Diamond Head Road, Honolulu, HI 96816-4495
DAHA51—USPFO for Alaska, 800 E. Diamond Blvd. #3-580, Anchorage, AK 99515-2097
DAHA70—USPFO for Puerto Rico, P.O. Box 3786, San Juan, PR 00904-3786
DAHA72—USPFO for Virgin Islands, #11-12 Golden Rock, Christiansted, St. Croix, VI 00820-1050
DAHA74—USPFO for Guam, P.O. Box 56, NAS, FPO San Francisco, CA 96637-1256
DAHA90—National Guard Bureau, Contracting Support, 5109 Leesburg Pike, Suite 401-B, Falls Church, VA 22041-3201
DAHC21, G3—MTMC Eastern Area, Acquisition Division, Bldg 42, Military Ocean Terminal, Attn: MTEA-LOA, Bayonne, NJ 07002-5302
DAHC22—HQ MTMC, Directorate of Passenger Traffic, 5611 Columbia Pike, Attn: MTPT, Falls Church, VA 22041-5050
DAHC23, G4—MTMC, Western Area, Oakland Army Base, Attn: MTWA-LOA, Oakland, CA 94626-5000
DAHC24, 1B—HQ MTMC Acquisition Division, 5611 Columbia Pike, Attn: MT-LOA, Falls Church, VA 22041-5050
DAHC26, 0E—HQ MTMC, TOPS Project Management Office, Attn: MT-TP, Ft. Belvoir, VA 22060-5898
DAHC30, 0F—MDW, DCS for Acquisition, Bldg. 15, Cameron Station, Alexandria, VA 22304-5050
DAHC32, 0M—National Defense University, Bldg. 59/Contracting Office Rm 113, Fort Lesie J. McNair, Washington, DC 20319
DAHC35, 2M—Ft. Belvoir Directorate of Contracting, Bldg T742, Ft Belvoir, VA 22060-5075
DAHC40, 9T—USA TSA Southeast Commissary Region, Contracting Division, Attn: LOTA-SE-C, Fort Lee, VA 23801-6025
DAHC41, 0H—USA TSA Northeast Commissary Region, Contracting Division, Attn: LOTA-NE-C, Fort George G. Meade, MD 20755-5220
DAHC42, 0J—USA TSA Midwest Commissary Region, Contracting Division, Attn: LOTA-MW-C, Fort Sam Houston, TX 78234-5000
DAHC43, 0K—USA TSA Western Commissary Region, Contracting Division, Attn: LOTA-WE-C, Fort Lewis, WA 98433-7300
DAHC44, ZG—US TSA Contracting Group, Bldg. P-12400, P.O. Box 5310, Attn: LOTA-AM-C, Fort Lee, VA 23801-6020
DAHC76, 8U—HQS, 6th Inf Div (L) & USA Garrison, AK, Directorate of Contracting, P.O. Box 5-525, Attn: APVR-DOC, Ft Richardson, AK 99505-0525
DAHC77, CJ—US Army Support Command, Hawaii, Attn: APZV-KO, Ft Shafter, HI 96858-5025
DAHC90, YJ—U.S. Army Intelligence and, Security Command (INSCOM), Contract Support Activity, Attn: IAPARC-CSA, Ft Belvoir, VA 22060-5368
DAHC92, 1V, ZT—U.S. Army South, U.S. Army Garrison-Panama, Directorate of Contracting, Attn: SOCO-CO, APO Miami, FL 34002-5000
DAHC94, BD—U.S. Army, Information Systems Selection and Acquisition Agency (ISSAA), 2461 Eisenhower Avenue, Alexandria, VA 22331-0700
DAJA01, 9Q—Regional Contracting Office, Vicenza, Attn: AEUCC-I, APO New York, NY 09221-5122
DAJA02, G5—Regional Contracting Office, Seckenheim, Attn: AEUCC-S, APO New York, NY 09333-5000
DAJA04, 9R—Regional Contracting Office, Fuerth, Attn: AEUCC-FU, APO New York, NY 09696-5345
DAJA06, 9S—Regional Contracting Office, Stuttgart, Attn: AEUCC-ST, APO New York, NY 09154-0503
DAJA09, BT—Giessen Suboffice, RCO Frankfurt, Attn: AEUCC-F-G, APO New York, NY 09169
DAJA10, 9U—Regional Contracting Office, Augsburg, Attn: AEUCC-A, APO New York, NY 09178-0505
DAJA16, 8X—Regional Contracting Office, Grafenwoehr, Attn: AEUCC-G, APO New York, NY 09114-5413

DAJA23, 9W—Directorate of Contracting, USA Berlin, Attn: AEBA-C, APO New York, NY 09742-5003
DAJA25, 9X—Regional Contracting Office, Bremerhaven, Attn: AEUCC-BR, APO New York, NY 09069-5505
DAJA37, G6—USAREUR Contracting Center, Attn: AEUCC-C, APO New York, NY 09710-5345
DAJA45, 9Y—Regional Contracting Office, Burtonwood, Attn: AEUCC-BW, APO New York, NY 09075-3738
DAJA61, 9Z—HQ USAREUR & 7th Army, Attn: Regional Contracting Office Benelux, APO New York, NY 09667-5005
DAJA76, 8V—Regional Contracting Office, Frankfurt, Box 73, Attn: AEUCC-F, APO New York, NY 09710-5345
DAJA83, 2Z—Rheinberg Suboffice, RCO Bremerhaven, Attn: AEUCC-BR-R, APO New York, NY 09712-5511
DAJA84, B0—Fulda Suboffice, RCO Frankfurt, Attn: AEUCC-F-FD, APO New York, NY 09146
DAJA85, B8—Hanau Suboffice, RCO Frankfurt, Attn: AEUCC-F-H, APO New York, NY 09165-5345
DAJA86, C0—Mainz-Kastel Suboffice, RCO Frankfurt, Attn: AEUCC-F-MK, APO New York, NY 09457
DAJA87, D0—Mid-East CAS Branch, USAREUR Contract Center, Attn: AEUCC-C-CI, APO New York, NY 09672-0008
DAJA88, E0—United Kingdom CAS Branch, USAREUR Contract Center, Attn: AEUCC-C-CU, APO New York, NY 09063-5000
DAJA89, F0—Wuerzburg Suboffice, RCO Fuerth, Attn: AEUCC-FU-W, APO New York, NY 09600-2013
DAJA90, 0T—Bad Kreuznach Suboffice, RCO Frankfurt, Attn: AEUCC-F-BK, APO New York, NY 09252-0029
DAJB03, F4—U.S. Army Korea Contracting Agency, Attn: EAKC-CO, APO San Francisco, CA 96301-0062
DAKF01, 1A—Directorate of Contracting, Attn: AFKC-ZM-DOC, Presidio of San Francisco, CA 94129-5000
DAKF03, 0Q—Directorate of Contracting, P.O. Box 27, Attn: AFZW-DOC, Ft Ord, CA 93941-0027
DAKF04, ZE—Directorate of Contracting, P.O. Box 10039, Attn: AFZJ-DC, Ft Irwin, CA 92310-5000
DAKF06, 1C—Directorate of Contracting, Building 6222, Attn: AFZC-DOC, Ft Carson, CO 80913-5022
DAKF10, 1D—Directorate of Contracting, Attn: AFZP-DC, Ft Stewart, GA 31314-5189
DAKF11, 1E—Directorate of Contracting, Attn: AFZK-DOC, Fort McPherson, GA 30330-5000
DAKF12, BC—FORSCOM Central Contracting Office, Attn: FCJ4-PRC, Fort McPherson, GA 30330-6000
DAKF15, 1F—Directorate of Contracting, Attn: AFKE-ZO-DOC, Fort Sheridan, IL 60037-5000
DAKF19, 1G—Directorate of Contracting, Attn: AFZN-DOC, Fort Riley, KS 66442-0248
DAKF23, 1H—Directorate of Contracting, Attn: AFZB-DOC, Fort Campbell, KY 42223-1100
DAKF24, G1—Directorate of Contracting, Attn: AFZX-DOC, Fort Polk, LA 71459-5000
DAKF27, 1J—Directorate of Contracting, Attn: AFKA-ZI-DOC, Fort George G. Meade, MD 20755-5081
DAKF36, 1M—Directorate of Contracting, Attn: AFZS-DOC, Fort Drum, NY 13602-5220
DAKF40, 1N—Directorate of Contracting, Drawer 70120, Attn: AFZA-DC, Fort Bragg, NC 28307-0120
DAKF48, 1Q—Directorate of Contracting, Attn: AFZF-DOC, Fort Hood, TX 76544-5059
DAKF49, 1R—Directorate of Contracting, Attn: AFZG-DOC, Fort Sam Houston, TX 78234-5000
DAKF57, 1T—Directorate of Contracting, Attn: AFZH-DOC, Fort Lewis, WA 98433-5000
DAKF61, 1U—Directorate of Contracting, Attn: AFZR-DOC, Fort McCoy, WI 54656-5000
DAMD17, B3—US Army Medical Research, Acquisition Activity, Fort Detrick, Attn: SGRD-RMA, Frederick, MD 21702-5014
DASG60, CB—USA Strategic Defense Command, Deputy Commander, P.O. Box 1500, Attn: CSSD-CM-AC, Huntsville, AL 35807-3801

Department of the Navy

N00011, LB*, LBZ—Chief of Naval Operations, Washington, DC 20350-2000
N00013, MR—Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332
N00014, EE—Office of Naval Research, Arlington, VA 22217
N00015, L0*, LOZ—Naval Intelligence Command HQ, (Suitland, MD), 4600 Silver Hill Road, Washington, DC 20389
N00018, MC*, MD*, J5*, QA*, MCZ—Naval Medical Command, Washington, DC 20372-5120
N00019, EF*, GU*, EF0-9—Naval Air Systems Command, Washington, DC 20361
N00023, 4J*, 4J0-9—Commander, Naval Supply Systems Command, Washington, DC 20376
N00024, EH*, EH0-9—Naval Sea Systems Command, Washington, DC 20360
N00025, EJ*, FZ*, EJ0-9—Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332
N00030, EK*, EK0-9—Strategic Systems Programs, Department of the Navy, Washington, DC 20376-5002
N00033, EL*, EL0-9—Commander, Military Sealift Command, Washington, DC 20390
N00034, EM—Navy Finance Center, Navy Military Pay System, Cleveland, OH 44114
N00039, NS*, NS0-9—Space and Naval Warfare Systems Command, Washington, DC 20360
N00060, LH*, J0*, LHZ—Commander-in-Chief, Atlantic Fleet, Norfolk, VA 23511
N00062, 8A*, L9*, R0*, 8A0-9—Chief of Naval Education and Training, Code 013, NAS, Pensacola, FL 32508-5100
N00063, NT*, NTZ—Naval Telecommunications Command, 4401 Massachusetts Avenue, NW, Washington, DC 20394-5290
N00065, S0*, S0Z—Naval Oceanography Command, NSTL, MS 39529-5000
N00069, 8Q*, 8QZ—Naval Security Group HQ, 3801 Nebraska Avenue, NW, Washington, DC 20390-0008
N00070, LP*, V5*, 4L*, LPZ—Commander in Chief Pacific Fleet, Pearl Harbor, HI 96860-7000
N00072, 9T*,LC*, 9TZ—Commander, Naval Reserve Force, Code 17, New Orleans, LA 70146
N00074, QH*, QHZ—Naval Special Warfare Command, NAVPHIBASE Coronado, San Diego, CA 92155
N00101, 3R—Naval Air Station, South Weymouth, MA 02190
N00102, EN—Portsmouth Naval Shipyard, Portsmouth, NH 03801
N00104, EP, EQ—Navy Ships Parts Control Center, Mechanicsburg, PA 17055
N00105, JT—Naval Medical Clinic, NAVSHIPYD, Portsmouth, NH 03801
N00109, F1—Naval Weapons Station, Yorktown, VA 23491
N00123, ES—Commanding Officer, Naval Regional Contracting Center, 937 N. Harbor Drive, San Diego, CA 92132-5106
N00124, M5—Naval War College, Newport, RI 02840
N00127, H1—Naval Air Station, Quonset Point, RI 02819
N00128, EU—Supply Department, Naval Administrative Command, Naval Training Station, Great Lakes, IL 60088

* An asterisk indicates a two-digit code of a major command, which is shared with subordinate activities. Such subordinate activities will indicate the Unit Identification Code of the major command in parentheses, e.g. (MAJ00011).

N00129, EV—Submarine Base, New London, Groton, CT 06340
N00140, EX, LA—Commanding Officer, Naval Regional Contracting Center, Naval Base Bldg. No. 600, Philadelphia, PA 19112
N00146, QK—Marine Corps Air Station, Cherry Point, NC 28533
N00151, EY—Philadelphia Naval Shipyard, Philadelphia, PA 19112
N00153, N0—Governor, Naval Home, 01800 East Beach Blvd , Gulfport, MS 39501
N00158, 3V—Naval Air Station, Willow Grove, PA 19090
N00161, FA—Naval Academy, Annapolis, MD 21402
N00163, FB—Naval Avionics Center, 21st and Arlington Avenue, Indianapolis, IN 46218
N00164, FC—Naval Weapons Support Center, Crane, IN 47522
N00166, (MAJ00072), LC0–1—Naval Air Facility, Bldg 3086, Andrews AFB, Washington, DC 20396–5130
N00167, FD—David W. Taylor Naval Ship, Research & Development Center, Carderock Laboratory, Bethesda, MD 20084–5000
N00168, FE—Naval Medical Command, National Capital Region, Bethesda, MD 20014
N0017A—Atlantic Fleet Weapons Training, Facility (Code 51) (Roosevelt Roads, PR), Naval Station, Box 3023, FPO Miami 34051
N00171, N5—HQ, Naval District Washington, Washington Navy Yard, Washington, DC 20374
N00173, FF—Naval Research Laboratory, Washington, DC 20390
N00174, FG—Naval Ordnance Station, Indian Head, MD 20640
N00181, FJ—Norfolk Naval Shipyard, Portsmouth, VA 23709
N00187, 3J—Navy Public Works Center, Norfolk, VA 23511
N00188, H2—Naval Air Station, Norfolk, VA 23511
N00189, FK, H3—Naval Supply Center, Norfolk, VA 23512
N00191, FL—Charleston Naval Shipyard, Naval Base, Charleston, SC 29408
N00193, (MAJ00024), EHD–G—Commanding Officer (Code 11), Naval Weapons Station, Charleston, SC 29408–7000
N00196, 3K—Commanding Officer (Code 60), Naval Air Station, Atlanta, Marietta, GA 30060
N00197, FM—Naval Ordnance Station, Louisville, KY 40214
N00203, (MAJ00018), MCL—Commanding Officer, Naval Hospital, Pensacola, FL 32512
N00204, FN—Naval Air Station (Code 19P10), Pensacola, FL 32508
N00205, FP—Naval Support Activity (Code N443), New Orleans, LA 70146
N00206—Naval Air Station, New Orleans, LA 70146
N00207, FQ—Naval Air Station, Jacksonville, FL 32212
N00211, (MAJ00016), MCQ–S—Naval Hospital, Great Lakes, IL 60088–5230
N00213, H4—Naval Air Station, Key West, FL 33040
N00215, 3W—Naval Air Station (Code 60), Dallas, TX 75211
N00216, FR—Commanding Officer (Code 194), Naval Air Station, Bldg 10, Corpus Christi, TX 78419
N00221, K5—Mare Island Naval Shipyard, Vallejo, CA 94592
N00228, FU—Naval Supply Center, Oakland, CA 94625
N00231—Commanding Officer, Naval Medical Clinic, Quantico, VA 22134
N00232, (MAJ00018), MCC–E—Naval Hospital, Jacksonville, FL 32214–5222
N00236, NX—Naval Air Station, Alameda, CA 94501
N00244, NW—Naval Supply Center, Naval Base, 937 North Harbor Drive, San Diego, CA 92132
N000245, (MAJ00070), LPN—Naval Station, San Diego, CA 92136–5000
N00246, H5—Naval Air Station, North Island, San Diego, CA 92135
N00247, HC—Naval Training Center, San Diego, CA 92133
N00249—Commanding Officer, Civil Engineer Support Office, Naval Construction Battalion Center, Port Hueneme, CA 93043
N00250, FW—Commander, Navy Resale and Services Support Office, Fort Wadsworth, Staten Island, NY 10305
N00251, FX—Puget Sound Naval Shipyard, Bremerton, WA 98314
N00253, FY—Commanding Officer, Naval Undersea Warfare Engineering Station, Keyport, WA 98345
N00255, (MAJ00070), LPS–T, LPW–X—Naval Station Puget Sound, Seattle, WA 98115–5000
N00287, (MAJ00018), MC0–1—Commanding Officer, Navy Medical Clinic, Key West, FL 33040
N00274, (MAJ00072), LCA–B—Naval Air Facility, Detroit, Selfridge Air Force Base, Supply Department, Mt. Clemens, MI 48045
N00275, 3M—Naval Air Station, Glenview, IL 60026
N00276—Naval Air Station, Twin Cities, Minneapolis, MN 55450
N00281, (MAJ00062), L90–1—Commanding Officer, Fleet Combat Training Center, Atlantic, Dam Neck, Virginia Beach, VA 23461
N00285, (MAJ00018), MDR—Commanding Officer, Naval Hospital, Corpus Christi, TX 78419
N00288—Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120
N00290, NY—Naval Air Station, Moffett Field, CA 94035
N00311, GA—Pearl Harbor Naval Shipyard, Box 400, Pearl Harbor, HI 96860
N00314, M7—Submarine Base, Pearl Harbor, HI 96860
N00334, N6—Naval Air Station, Barbers Point, HI 96862
N00383, GB, GC—Navy Aviation Supply Office, 700 Robbins Avenue, Philadelphia, PA 19111
N00389, KL, MM—Contracting Officer (Code 192), U.S. Naval Station (Roosevelt Roads, PR), Box 3002, FPO Miami 34051
N00406, GE—Naval Supply Center, Puget Sound, Bremerton, WA 98314
N00421, M6—Naval Air Test Center, Patuxent River, MD 20670
N00600, GG—Naval Regional Contracting Center, Washington Navy Yard, Washington, DC 20374
N00604, NQ—Naval Supply Center, Pearl Harbor, Pearl Harbor, HI 96860
N00612, GH—Commanding Officer, Naval Supply Center, RCD, Code 200M, Charleston, SC 29408
N00619, (MAJ00016), QA0–9—Naval Hospital, Oakland, CA 94627–5000
N00620, H6—Naval Air Station, Whidbey Island, Oak Harbor, WA 98277
N00639, H7—Commanding Officer, Naval Air Station, Memphis (84), Millington, TN 38054
N00651, H8—Naval Supply Depot, Subic Bay (Philippines), Box 33, FPO San Francisco, CA 96651
N00702, (MAJ00069), 8QM–N—Naval Security Group Activity, Winter Harbor, ME 04693
N00743, 8N—Commanding Officer, Naval Communication Station (Roosevelt Roads, PR), Box 3022, FPO Miami 34051
N00788—Commanding Officer, Naval Communication Unit, Washington, (Cheltenham, MD), Washington, DC 20390
N00849, (MAJ00069), 8QC—Naval Security Group Activity, Skaggs Island, Sonoma, CA 95476–5000
N00686, QB—Naval Communication Station, San Francisco, Rough and Ready Island, Stockton, CA 95203
N00927, (MAJ00083), NTA—U.S. Naval Communication Station (San Miguel), FPO San Francisco 96656–1603
N00950, 8R—Naval Communication Area, Master Station, EASTPAC, Wahiawa, HI 96786
N0417A, (MAJ00025) EJA—Naval Support Facility, P.O. Box 1000, Thurmont, MD 21788
N0428A, 3Q—Naval Air Station, Patuxent River, MD 20670
N0429A, 3A—Naval Air Station, Point Mugu, CA 93042

N0463A, (MAJ00024), EHC—Commanding Officer, Navy Experimental Diving Unit, NAVCOASTSYSCEN, Bldg. 321, Panama City, FL 32401
V04697, (MAJ00060), LHA—USS Simon Lake, FPO Miami, FL 34085–2590
N0488A, HS—Navy Manpower Engineering Center Detachment, San Diego, CA 92147
N0597A, (MAJ31699), HXP–W—Director, Office of Civilian Personnel Management, Southeast Region, Bldg A–67, Naval Base, Norfolk, VA 23511–6098
N0598A, (MAJ31699), HXN—Director, Office of Civilian Personnel Management, Pacific Division, Box 119, Pearl Harbor, HI 96860–5060
N0604A, (MAJ31699) HXJ–L—Director, Office of Civilian Personnel Management, Northwest Region, 2880 North Main Street, Suite 301, Walnut Creek, CA 94596–2739
N0605A, (MAJ31699), HXG–H—Director, Office of Civilian Personnel Management, Northeast Region, Bldg. 75–3 Naval Base, Philadelphia, PA 19112–5006
N0618A, (MAJ00062), 8AE—School of Music, Naval Amphibious Base, Little Creek, Norfolk, VA 23521–5240
N0619A, 8E—Naval Health Sciences Education & Training Command, NAVMEDCOM NATCAPREG, Bethesda, MD 20814
N08939—Navy Section, US Military Group (Caracas, Venezuela), Department of State, Washington, DC 20521
N09534—Navy Section, US Military Group (Lima, Peru), APO Miami 34031
N09550, 4G—Commander Fleet Air Mediterranean (Naples, Italy), FPO New York, NY 09521
N30492, (MAJ00039), NSC—David W. Taylor Naval Ship Research and Development Center Detachment Puget Sound, Bremerton, WA 98324–5215
N30776, 4N—Naval Air Station, Kingsville Auxiliary Landing Field Detachment, Orange Grove, TX 77630
N30779, 3Z—Naval Auxiliary Landing Field, Goliad, TX 77963
N30829—Officer in Charge, Naval Support Activity, Naples Detachment (Gaeta, Italy), FPO New York 09522
N30929—Commanding Officer, Navy Flight Demonstration Squadron (Blue Angels), Naval Air Station, (Attn: Supply Officer), Pensacola, FL 32508
N31149, (MAJ00024), EHA–B—Naval Sea Logistics Center Det, Philadelphia Naval Base, Philadelphia, PA
N31699, V8*, HX*, V8Z—Office of Under Secretary of the Navy, Washington, DC 20350–1000
N31701, (MAJ31699), V80–1—Assistant Secretary of the Navy, (Shipbuilding & Logistics), Washington, DC 20360–5000
N31863—Director, Naval Audit Service, Capital Region, P.O. Box 1206, Falls Church, VA 22041
N31954, (MAJ00062), R0X—Submarine Training Facility, San Diego, CA 92106
N32525, 8S—U.S. Naval Communication Detachment, Naples Detachment (Sigonella, Italy), FPO New York 09523
N32778, (MAJ00070), 4LE—Fleet Activities, Chinhae (Korea), FPO San Francisco 98769–1100
N32832, 7K—Naval Aviation Logistics Center, European Repair and Rework Activity Representative (Alverca, Portugal), APO New York, NY 09285
N32960, K2—Navy Support Office, La Maddelena (Sardinia Italy), FPO New York 09533
N33137—Naval Intelligence Operations Group Det CTG 168.4, (Munich, Germany), APO New York 09108
N35316, (MAJ00060), J0G—Patrol Combatant Mission Squadron Two, Mobile Logistics Support Group, Trumbo Point Annex, NAS Key West, FL 33040
N39167—Commanding Officer, Naval Branch Medical Clinic, Naval Air Station, Meridian, MS 39309
N39353, GV—Commanding Officer, Integrated Combat Systems Test Facility, San Diego, CA 92152
N41756, LE—Navy Engineering Logistics Office, Washington, DC 20000
N42237, 7A—Commanding Officer, Naval Submarine Base, Code N411, Kings Bay, GA 31547
N44405, (MAJ00062), 8AA—Antilles Consolidated School System, Box 3200 (Roosevelt Roads, PR) FPO Miami 34051
N44416, (MAJ00023), 4JL—Navy Publishing and Printing Service, Northern Area, 700 Robbins Avenue, Philadelphia, PA 19111–5093
N44930, KN—Intra-Fleet Supply Support Operations Program, Norfolk, VA 23512
N44967, KP—Naval Sea Systems Command Detachment (PERA CSS), San Francisco, CA 94124–2995
N45045, (MAJ31699), V8A—Navy Comproller Standard Systems Activity Det., Raleigh Oaks Plaza Office Bldg., 3606 Austin Peay Highway, Memphis, TN 38128–3757
N45406, LD—Officer in Charge, Naval Sea Systems Command Detachment (PERA CV), Bremerton, WA 98310–0206
N45411, (MAJ00070), LPE—Assault Craft #5, MCB Camp Pendleton, CA 92055–5003
N45854, (MAJ00011), LBE—Fleet Surveillance Support Command, Chesapeake, Chesapeake, VA 23322–5010
N46079—Military Sealift Command Office, Northern Europe, (Bremerhaven, Germany), APO New York 09069–0008
N46450, L5—Naval Supply Center, Charleston Detachment, Naval Submarine Base, Kings Bay, GA 31547
N46531 (N31699), HX0–E—Office of Civilian Personnel Management, National Capital Region, 801 N. Randolph Street, Arlington, VA 22203
N46656, NP—Telecommunication Management Detachment West, 937 North Harbor Drive, San Diego, CA 92132–5104
N46657 (MAJ00063), NT0–NT1—Telecommunications Management Detachment Pacific, Wahiawa, HI 96786–3050
N46658, LQ—Telephone Management Detachment East, Wards Corner Executive Center, Suite 222, 136 E. Little Creek Road, Norfolk, VA 23505
N46659, KJ—Telephone Management Detachment Europe, (Naples, Italy), FPO New York 09524
N46904 (MAJ00060), J00–1—Commanding Officer, Precommissioned Unit, Antisubmarine Warfare Training Group Atlantic, Bldg CEP 104, Naval Station, Norfolk, VA 23511–6495
N47408 (MAJ00025), EJP–EJW—Naval Construction Battalion Center, Naval Facilities Engineering Command Contracts Office, Port Hueneme, CA 93043–5000
N47875 (MAJ00019), GUP–S—Naval Technical Representative Detachment Bethpage, Grumman Aerospace Corporation, Bethpage, NY 11714–3593
N47876 (MAJ00019), GUJ–L—Naval Technical Representative Detachment Burbank, Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, CA 91503
N47877, GD—Naval Technical Representative Detachment St. Louis, McDonnell Douglas Corporation, P.O. Box 516, St. Louis, MO 63166–0516
N47878 (MAJ00019), GUV—Naval Technical Representative Detachment Lynn, General Electric Company, Aircraft Engine Business Group, 1000 Western Avenue, Lynn, MA 01910–0445
N47879 (MAJ00019), GU0–B—Naval Technical Representative Detachment Stratford, United Technologies Corporation, Sikorsky Aircraft Division, Stratford, CT 06497
N48521 (MAJ00019), GUX—Naval Technical Representative Detachment Bell, Bell Helicopter Textron, P.O. Box 482, Bldg. 2, Fort Worth, TX 76101
N52846 (MAJ00019), EFA–B—Naval Aviation Depot Operations Center Detachment, European Repair and Rework Activity (NERRA), (Naples,

Italy), Box 50, FPO New York 09520–5000
N52855, LZ—Special Boat Unit 11, FPO San Francisco 96601–4517
N53210 (MAJ00060), LHJ–K—Assault Craft Unit 2, Naval Amphibious Base, Little Creek, Norfolk, VA 23520
N53825, GY—Naval Surface Force, US LANTFLT, Norfolk, VA 23511–6002
N53999 (MAJ00060), J0Q–R—Seal Team Six, Naval Amphibious Company, Norfolk, VA 23521
N55131 (MAJ00060), J0A–B—Cargo Handling and Port Group, Williamsburg, VA 23187–5792
N55322 (MAJ00060), LHN—Explosive Ordnance Disposal Group Two, Fort Story, VA 23459–5024
N55418, (MAJ00070), V50—Naval Support Force, Antarctica, Detachment Christchurch, (Christchurch, New Zealand), FPO San Francisco 96690
N57007, V0—Commander, Middle East Force, (Jufair, Bahrain), FPO New York 09501–6008
N57012, GQ—Commander Naval Air Force, U.S. Atlantic Fleet, Naval Air Station, Norfolk, VA 23511
N57016 (MAJ00060), J0N—Commander Submarine Force, U.S. Atlantic Fleet, Norfolk, VA 23511–6296
N57023, GT—Commander, Operational Test and Evaluation Force, Naval Base, Norfolk, VA 23511
N57032—Naval Air Facility, (Mildenhall, UK), FPO New York 09127
N57049, (MAJ00060), J0E–F, V–X—Naval Support Facility (Antiqua, West Indies), FPO Miami 34054
N57053 (MAJ00070), LPQ—Naval Facility, Centreville Beach, Ferndale, CA 95536–9766
N57075 (MAJ00060), LH9—Commanding Officer, Naval Facility Argentia (Canada), FPO New York 09597–1051
N57095 (MAJ00060), LH0–1—Atlantic Fleet Headquarters Support Activity, CINLANTFLEET, Norfolk, VA 23511
N57100, (MAJ00070) LP0–1—Naval Special Warfare Group One, NAVPHIBASE Coronado, San Diego, CA 92155
N60002—Commanding Officer, Naval Hospital, Millington, TN 38054
N60028, QC—Naval Station, Treasure Island, San Francisco, CA 94130
N60036, QD—Naval Weapons Station, Concord, CA 94520
N60042, (MAJ00070) LPU—Naval Air Facility, El Centro, CA 92243
N60050, HD—Marine Corps Air Station, El Toro, Santa Ana, CA 92709
N60087, 3P—Naval Air Station, Brunswick, ME 04011
N60169, W0—Commanding Officer, Marine Corps Air Station, Beaufort, SC 29904
N60191, 4A—Naval Air Station, Oceana, Virginia Beach, VA 23460
N60200, 3G—Commanding Officer, Naval Air Station, Cecil Field, FL 32215
N60201, L7—Commanding Officer, Naval Station, P.O. Box M, Mayport, FL 32228
N60211, 3D—Naval Auxiliary Landing Field, Crows Landing, CA 95313
N60234, 4R—Naval Air Station, Whiting Field, OLF Saufley Field, Pensacola, FL 32508
N60241, 3X—Commanding Officer, Naval Air Station, Bldg. 2701, Kingsville, TX 78363
N60258, GK—Long Beach Naval Shipyard, Long Beach, CA 90801
N60259, H9—Naval Air Station, Miramar, San Diego, CA 92145–5000
N60268, (MAJ62980 MQ0–1—Navy Recruting District Chicago, Glenview, IL 60026–5200
N60376, 3Y—Commanding Officer, Naval Air Station, Chase Field, Beeville, TX 78103
N60462, WE—Naval Air Station, Adak (Alaska), FPO Seattle, WA 98791–1200
N60478, 3C—U.S. Naval Weapons Station, Earle Colts Neck, NJ 07722
N60495, 3T—Naval Air Station, Fallon, NV 89406
N60508, 4Q—Commanding Officer, Naval Air Station, Whiting Field, Milton, FL 32570
N60514, GL—Commanding Officer, Naval Station (Guantanamo Bay, Cuba), Box 33, FPO New York 09593
N60530, GM—Naval Weapons Center, China Lake, CA 93555
N60656, GN—Navy Resale Activity, Naval Station, Annapolis, MD 21402
N60663, GR—Officer in Charge, Naval Resale Activity, Commissary Support Office, Naval Base, Bldg 2600, Great Lakes, IL 60088
N60666, GS—Navy Resale Activity, Naval Air Station, Key West, FL 33040
N60676, GX—Navy Resale and Services Support Office, Field Support Office Commissary Div., Naval Air Station, Mechanicsburg, PA 17055
N60681, HA—Commissary Store Division, NAVRESSOFSO, Naval Station, San Diego, CA 92136
N60693, HB—Navy Resale Activity, Commissary Support Office, Naval Base Pearl Harbor, Box 110, Pearl Harbor, HI 96860
N60701, 4M—Naval Weapons Station, Seal Beach, CA 90740
N60865, (MAJ00070), V5X—Naval Forces, Marianas (Guam), FPO San Francisco 96630
N60872, (MAJ00070), V5T—Naval Magazine (Guam), FPO San Francisco 96630–1300
N60895, HF—Commissary Store Division, NAVRESSOFSO, Naval Air Station, Alameda, CA 94501
N60921, HG, FH—Commander, Naval Surface Weapons Center, Headquarters, Dahlgren, VA 22448
N60935, HH—Commissary Store Div, NAVRESSOFSO, Naval Air Station, Jacksonville, FL 32212
N60936, HJ—Navy Resale Activity Commissary Region Support Office, Naval Air Station, Pensacola, FL 32508
N60937, HK—Navy Resale Activity Det Commissary Store, Naval Support Activity, New Orleans, LA 70140
N60938, HL—Navy Resale Activity, Commissary Support Office, Naval Air Station, Corpus Christi, TX 78419
N60939, HM—Navy Resale Activity Commissary Store, Naval Air Station, Memphis 32, Millington, TN 38054
N60951, (MAJ00060) LHU—Fleet Accounting and Disbursing Center, U.S. Atlantic Fleet, Norfolk, VA 23511–6096
N60956, (MAJ31699) V8J–N—Navy Regional Finance Center, Great Lakes, IL 60088–5797
N6115, HN—Navy Resale Activity, Submarine Base, New London, Groton, CT 06340
N61119, HP—Naval Supply Depot, Guam, FPO San Francisco, CA 96630
N61165, NN—Supply Officer, Bldg NS46, Naval Station, Charleston, SC 29406–5000
N61174, 7B—Naval Station, New York, Brooklyn, NY 11251
N61189 (MAJ00060) J0T—Naval Station, Philadelphia, PA 19112
N61217, HQ—Navy Resale Activity, Naval Air Station, Bermuda, FPO New York 09560
N61331, HR—Commanding Officer, Naval Coastal Systems Center, Panama City, FL 32407
N61337, H0—Commanding Officer, Naval Hospital, Beaufort, SC 29904
N61339, HT—Commanding Officer, Naval Training Systems Center (N–601), 12350 Research Parkway, Orlando, FL 32826–3275
N61414, 4B—Naval Amphibious Base, Little Creek, Norfolk, VA 23521
N61463 (MAJ00060) LHC—Naval Base, Norfolk, VA 23511–6002
N61468—Commander, Naval Base, Bldg. NH48, Charleston, SC 29408
N61510, HU—Navy Resale Activity, Naval Station, Guam, Box 179, FPO San Francisco, CA 96630
N61533, HW—David W. Taylor Naval Ship Research and Development Laboratory, Annapolis, MD 21402
N61564, FS—Naval Hospital, NAVBASE (Guantanamo Bay, Cuba), FPO New York 09593
N61577 (MAJ00070) V5P—Naval Air Station, Agana (Guam), Box 60, FPO San Francisco 96630–1200

N61581 (MAJ00070) 4LT—Fleet Activities, (Yokosuka, Japan), FPO Seattle, 98762–1100
N61685 (MAJ00085) SOA—Naval Oceanography Command Center (Guam), Box 12, FPO San Francisco 96630–2925
N61726, QL—Naval Hospital, Naval Submarine Base New London, Groton, CT 06349
N61751 (MAJ00018) MCN—Naval Medical Research Unit No. 3, Cairo (Egypt), FPO New York 09527–1600
N61755 (MAJ00070) V5E—Naval Station (Guam), FPO San Francisco 96630–1000
N61762, HY—Naval Ordnance Missile Test Facility, White Sands Missile Range, NM 88002
N62021, 7V—Naval Amphibious Base, Coronado, San Diego, CA 92155
N62161, HZ—Navy Resale Activity Det, Rough and Ready Island, Stockton, CA 95203
N62190—Commanding Officer, Naval Research Laboratory, Underwater Sound Reference Detachment, P.O. Box 8337, Orlando, FL 32856
N62191, (MAJ00062), L97—Commanding Officer, Naval Research Officers Training Corps and Naval Administrative Unit, Room 20E–125, Massachusetts Institute of Technology, Cambridge, MA 02139
N62254, (MAJ00070), 4LX—Commander Fleet Activities, Okinawa Naval Air Facility, Kadena (Ryukyu Islands Southern), Box SU/CR, FPO Seattle, WA 98770–1100
N62269, JC—Commander, Naval Air Development Center, Johnsville, Warminster, PA 18974
N62271, QE—Naval Postgraduate School, Monterey, CA 93940
N62285, (MAJ00065), S00–1—Naval Observatory, Washington, DC, 34th and Massachusetts Avenue, NW., Washington, DC 20390–5100
N62306, 7C—Commanding Officer (Code 4410), Naval Oceanographic Office, National Space Technology Laboratory, Bay St. Louis, MS 39552
N62367, (MAJ00023), 4JC—Navy Clothing and Textile Research Facility, 21 Strathmore Road, Natick, MA 01760–2490
N62376, 4K—Commanding Officer, Naval Air Propulsion Center, P.O. Box 7176, Trenton, NJ 08628
N62381, JG—Military Sealift Command, Atlantic Military Ocean Terminal, Building 42, Bayonne, NJ 07002
N62382—Military Sealift Command Ofice, Gulf Subarea, 4400 Dauphin Street, New Orleans, LA 70146
N62383, JH—Military Sealift Command, Pacific, Naval Supply Center, Oakland, CA 94625
N62387—Commander, Military Sealift Command (Code M10–3), 4228 Wisconsin Avenue, NW., Washington, DC 20016
N62395, JK—Navy Public Works Center, Mariana Island Guam (U.S.), FPO San Francisco, CA 96630–2937
N62401, 3F—Navy Publication and Printing Service Office, Defense Printing Service, The Pentagon, Washington, DC 20350–3000
N62404, JJ—Military Sealift Command, Far East, (Yokahama, Japan), FPO Seattle, WA 98760
N62410, (MAJ62980), MQ6—Navy Recruiting District, P.O. Box 8667, Albuquerque, NM 87198–8667
N62412, (MAJ62980), MLR—Commanding Officer, Navy Recruiting District, Perry Hill Office Park, 3815 Interstate Court, Montgomery, AL 36109–5294
N62415, (MAJ62980), MLX—Commanding Officer, Navy Recruiting District, Strom Thurmond Federal Bldg., Suite 771, 1835 Assembly Street, Columbia, SC 29201–2430
N62416, NV—Navy Recruiting District Columbus, Room 609 Federal Bldg., 200 North High Street, Columbus, OH 44142–2474
N62419—Commanding Officer, Navy Recruiting District, Melrose Bldg., 1121 Walker Street, Houston, TX 77002
N62422—Commanding Officer, Navy Recruiting District, 2974 Woodcock Drive, Jacksonville, FL 32207
N62423—Commanding Officer, Navy Recruiting District, 301 Center Street, Little Rock, AR 72201
N62425—Commanding Officer, Navy Recruiting District, 1808 West End Ave., Suite 1312, Nashville, TN 37203
N62427, (MAJ62980), MLP—Navy Recruiting District Omaha, Overland-Wolf Bldg, 6910 Pacific, Omaha, NE 68106
N62429, (MAJ62980), MLE—Navy Recruiting District Portland, 1220 SW Third Avenue, Suite 576, Portland, OR 97204
N62430—Commanding Officer, Navy Recruiting District, 1001 Navaho Drive, Raleigh, NC 27609
N62435, (MAJ62980), MQE—Navy Recruiting District Boston, 495 Summer Street, Boston, MA 02210–2103
N62437, (MAJ62980), MQ4—Commanding Officer, Navy Recruiting District, 918 So. Ervay Street, Dallas, TX 75201
N62438, (MAJ62980), MLQ—Navy Recruiting District Denver, Capital Life Center, 3rd Floor, 1600 Sherman Street, Denver, CO 80203–1668
N62440, (MAJ62980), MLT—Navy Recruiting District, 2420 Broadway, Kansas City, MO 64108
N62441, (MAJ62980), MLG—Navy Recruiting District Los Angeles, 5051 Rodeo Road, Los Angeles, CA 90016
N62442—Commanding Officer, Navy Recruiting District Atlanta, 612 Tinker Street, Suite C, Marietta, GA 30060
N62443, (MAJ62980) MLV—Navy Recruiting District, Federal Office Bldg., 2nd & Washington Avenues, S., Minneapolis, MN 55401
N62444—Commanding Officer (Code 602–2C), Navy Recruiting District, 4400 Dauphine Street, New Orleans Street, New Orleans, LA 70146
N62448, (MAJ62980) MLN—Navy Recruiting District San Francisco, 1500 Broadway, Room 210, Oakland, CA 94612–1430
N62449, (MAJ62980) MLC—Navy Recruiting District Seattle, Naval Station, Bldg 30, Seattle, WA 98115–5105
N62467, JM—Commanding Officer, Naval Facilities Engineering Command, Southern Division, (SOUTHNAVFACENGCOM), 2155 Eagle Drive, P.O. Box 10068, Charleston, SC 29411–0068
N62470, JN—Naval Facilities Engineering Command, Atlantic Division, Norfolk, VA 23511
N62471, N7—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Mid-Pacific, Pearl Harbor, HI 96860
N62472, JP—Naval Facilities Engineering Command, Northern Division, U.S. Naval Base, Philadelphia, PA 19112
N62474, JR—Naval Facilities Engineering Command, Western Division, San Bruno, CA 94066
N62477, JU—Naval Facilities Engineering Command, Chesapeake Division, Washington Navy Yard, Washington, DC 20374
N62481, N8—Naval Air Station, Bermuda, FPO New York 09560
N62507 (MAJ00070) 4LJ—Commanding Officer, Naval Air Facility, Atsugi, Japan, Box 3, FPO Seattle 98767–1200
N62522, JV—Military Sealift Command, Europe, (London, UK), Box 3, FPO New York 09510–3700
N62535, HE—Marine Corps Air Station (HELO), Tustin, CA 92710
N62537—Military Sealift Command, Mediterranean Sub-Area (Naples, Italy), Box 23, FPO New York 09521–0000
N62538, K1—Military Sealift Command Office, NSC, Bldg Y100A, Norfolk, VA 23512
N62539—Military Sealift Command Office, United Kingdom (London, UK), Box 29, FPO New York 09510–3700
N62573, K8—Marine Corps Air Station, New River Plaza, Jacksonville, NC 28540
N62576 (MAJ00023) 4JG—Navy Publishing and Printing Service, 700

Robbins Avenue, Philadelphia, PA 19111-5094
N62578, J2—Naval Construction Battalion Center, Davisville, RI 02854
N62583, J3—Naval Construction Battalion Center, Port Heuneme, CA 93041
N62585, K3—Commander, Naval Activities, United Kingdom (London, UK), FPO New York 09510
N62586 (MAJ00070) V5A–B—Naval Ship Repair Facility (Guam), FPO San Francisco 96630-1400
N62588, NR—Naval Support Activity, Naples (Italy), FPO New York 09521
N62593—Director, Navy Publications & Printing Service Det Office, Southeast Div., 4400 Dauphine St., Unit 601–3–B, New Orleans, LA 70146
N62603—Commanding Officer, Fleet & Mine Warfare Training Center, Naval Base, Bldg 647, Charleston, SC 29408
N62604, J4—Commanding Officer, Naval Construction Battalion Center, Gulfport, MS 3950.1
N62613, (MAJ00027) MUE—Commanding Officer, Marine Corps Air Station, (Iwakuni, Japan), FPO Seattle 98764–5001
N62645, EG—Naval Medical Materiel Support Command, Fort Detrick, Frederick, MD 21701–5015
N62649, JY—Naval Supply Depot, Yokosuka (Japan), FPO Seattle 98762
N62651—Director, Navy Publications & Printing Service Detachment Office, Southeast Division, Pensacola, FL 32508
N62653, (MAJ00023) 4JW–X—Director, Navy Publications & Printing Service Office, Southeast Division, Bldg. 1628, Naval Base, Charleston, SC 29408
N62654, (MAJ00019) EFE—Naval Weapons Evaluation Facility, Kirtland AFB, Albuquerque, NM 87117
N62665, JQ—Supervisor of Shipbuilding, Conversion and Repair, USN, Barnes Building—6th Floor, 495 Summer Street, Boston, MA 02210
N62670, 8B—Supervisor of Shipbuilding, Conversion and Repair, USN, Drawer T, Mayport Naval Station, Jacksonville, FL 32228
N62673, 8P—Supervisor of Shipbuilding, Conversion and Repair, USN, Naval Base, Charleston, SC 29408
N62678, 8C—Supervisor of Shipbuilding, Conversion and Repair, USN, P.O. Box 215, Portsmouth, VA 23705
N62686, T0—Navy Publishing and Printing Service Office, Naval District Washington, Building 157–2, Washington Naval Yard, Washington, DC 20374–1572
N62688, GW—Naval Station, Naval Base, Norfolk, VA 23511–6002
N62695—Auditor General of the Navy, Naval Audit Services Headquarters, P.O. Box 1206, Falls Church, VA 22041
N62700 (MAJ00023), 4JJ—Navy Publications and Printing Service Detachment Office, Northern Division, Bldg 2A, Great Lakes, IL 60088–5708
N62703 (MAJ00023), 4JA—Navy Publications and Printing Service, Detachment Office, Bldg 530, Puget Sound Naval Shipyard, Bremerton, WA 98314
N62705 (MAJ00023), 4JN—Navy Publications and Printing Service Detachment Office, Naval Supply Center, Oakland, CA 94625–5045
N62706, JS—Navy Publications and Printing Service Office, Western Division, Bldg. 154, San Diego, CA 92138–5148
N62707 (MAJ00023), 4JS–U—Navy Publishing & Printing Service Detachment Office, Western Area, Pearl Harbor, Box 126, Pearl Harbor, HI 96860–5120
N62735 (MAJ00070), 4LP—Commander, Fleet Activities, (Sasebo, Japan), FPO Seattle 98766–1100
N62741, MB—Commanding Officer, Navy Supply Corps School, Code 60, Athens, GA 30606
N62742, KB—Naval Facilities Engineering Command, Pacific Division, Pearl Harbor, HI 96860
N62745—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Mediterranean (Madrid, Spain), APO New York 09285
N62755, J7—Commanding Officer, Navy Public Works Center, Pearl Harbor, HI 96860–5470
N62757 (MAJ00072), 9TW–X—Naval Reserve Center, 7410 West Roosevelt Road, Forest Park, IL 60130–2590
N62766, L1—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts (Guam), FPO San Francisco, CA 96630
N62770 (MAJ00070), LPJ–L—Naval Ship Repair Facility, (Subic Bay, Philippines), Box 34, FPO San Francisco 96651–1400
N62786, ER—Supervisor of Shipbuilding, Conversion and Repair, USN, 574 Washington Street, Bath, ME 04530–0998
N62789, L8—Supervisor of Shipbuilding, Conversion and Repair, USN, Groton, CT 06340
N62791, NU—Supervisor of Shipbuilding, Conversion and Repair, USN, Naval Station, Box 119, San Diego, CA 92136–5119
N62793, 4T—Supervisor of Shipbuilding, Conversion and Repair, USN, Newport News, VA 23607–2785
N62794, 7D—Supervisor of Shipbuilding, Conversion and Repair, USN, Flushing & Washington Avenues, Brooklyn, NY 11251–9000
N62795, 7F—Supervisor of Shipbuilding, Conversion and Repair, USN, Pascagoula, MS 39568–2210
N62798, 4X—Supervisor of Shipbuilding, Conversion and Repair, USN, San Francisco, CA 94124–2996
N62799, 7M—Supervisor of Shipbuilding, Conversion and Repair, USN, Seattle, WA 98115–5001
N62808 (MAJ00025), FZ0—Public Works Center, Subic Bay, (Luzon, Republic of the Philippines), FPO San Francisco 96651–2900
N62832—Naval Activities, Rota, Spain, FPO New York 09540
N62836, L4—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Far East, Yokosuka, Box 61, FPO Seattle, WA 98762
N62841 (MAJ00030), EKA—Commanding Officer, Naval Ordnance Test Unit, Cape Canaveral, FL 32920–1623
N62844, K0—Naval Imaging Command, Washington Navy Yard, Washington, DC 20350–2000
N62849 (MAJ00019), EFC—Naval Aviation Engineering Service Unit, Philadelphia, PA 19112–5088
N62852—Naval Electronic System Security Engineering Center, Naval Security Station, 3801 Nebraska Avenue NW, Washington, DC 20390
N62856 (MAJ00060), LHW–X—Naval Air Facility (Lajes, Azores), APO New York 09406–5000
N62863, K4—Naval Station, Rota, Spain, FPO New York 09540
N62864, L2—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Southwest Pacific (Manilla, Philippines), APO San Francisco, CA 96528
N62892 (MAJ00069), 8QA—Commanding Officer, Naval Security Group Activity, Site "B", Card Sound Road, Homestead, FL 33039–6428,
R62894 (MAJ00070), 4LA—Commander, U.S. Naval Forces Korea, (Yongsan, South Korea), APO San Francisco, CA 96301–0023
N62907, KG—Naval Plant Representative Office, Applied Physics Laboratory, Johns Hopkins Road, Laurel, MD 20810
N62908, 8D—Naval Weapons Engineering Support Activity, Washington Navy Yard, Washington, DC 20374
N62911 (MAJ62980), MQC—Navy Recruiting Area One, Scotia, NY 12302–9462
N62913 (MAJ62980), MLL—Commander, Naval Recruiting Area Three, 451 College Street, P.O. Box 4887, Macon, GA 31208–4887

N62917 (MAJ62980), ML0–1—Commander, Navy Recruiting Area Seven, 1499 Regal Row, Suite 501 Dallas, TX 75247
N62918 (MAJ62980), MLA—Navy Recruiting Area Eight, 7677 Oakport Street, Suite 650, Oakland, CA 94621–1929
N62922, 7W—Resident Officer in Charge of Construction, Pacific, Department of the Navy, P.O. Box 418, San Bruno, CA 94067
N62974, JB—Marine Corps Air Station, Yuma, AZ 85364
N62980, ML*, MQ*, MQR–Z—Naval Military Personnel Command, Washington, DC 20370
N62990, L3—Supervisor of Shipbuilding, Conversion and Repair, USN, P.O. Box 26, Sturgeon Bay, WI 54235
N62995, 4H—Naval Air Station, Sigonella (Italy), FPO New York 09523
N63005—Commanding Officer, Administrative Support Unit, Bahrain, FPO New York 09526
N63007 (MAJ00060), LHS—Nuclear Weapons Training Group, Atlantic, Norfolk, VA 23511
N63015, 7Y—Naval Education and Training Support Center, Pacific, Fleet Station PO Bldg, San Diego, CA 92132
N63026 (MAJ00027), MUJ—Marine Corps Air Station, (Futenma, Japan), FPO Seattle 98772–5001
N63028, U2—Polaris Missile Facility Atlantic, Charleston, SC 29408
N63032, KS—U.S. Naval Station, Keflavik (Iceland), FPO New York 09571
N63038, 8M—U.S. Naval Communication Unit, Cutler East Machias, ME 04630,
N63042, NZ—Naval Air Station, Lemoore, CA 93245
N63043, 3S—Commanding Officer, Naval Air Station, Meridian, MS 39301
N63051—Commanding Officer, Naval Investigative Service, Southeast Region, Naval Base, Bldg NH 53, Charleston, SC 29408
N63053—Commanding Officer, Naval Investigative Service Office, P.O. Box 6438, New Orleans, LA 70174
N63055, (MAJ00011), LBJ—Naval Investigative Service, Mid-Atlantic Region Norfolk, 293 Independence Blvd, Suite 525, Pembroke 5, Virginia Beach, VA 23462
N63058, (MAJ00011), LBC—Naval Investigative Service, Northwest Region, Bldg 7, NAVSTA Treasure Island, San Francisco, CA 94130
N63073—U.S. Naval Security Group Activity RAF, (Edzell UK), FPO New York, NY 09518
N63080, KT—Navy Resale Activity, Chinhae (South Korea), FPO Seattle, WA 98769
N63082—Commanding Officer, Naval Technical Training Center, Corry Station (Code 4460), Pensacola, FL 32511
N63110—Commanding Officer, Chief of Naval Air Training (Code N–73), Naval Air Station, Corpus Christi, TX 78419
N63111—Commanding Officer, Chief of Naval Technical Training, Naval Air Station, Memphis, Millington, TN 38054
N63124—Supervisor of Shipbuilding, Conversion and Repair, USN, New Orleans, LA 70146
N63134, 7R—Fleet Numerical Oceanography Center, Monterey, CA 93940
N63135, (MAJ00023), 4JD–E—Navy Publishing & Printing Service Management Office, Washington, DC 20374–1762
N63136—Navy Section, U.S. Military Group, Argentina (Buenos Aires), Department of State, Washington, DC 20521
N63143, 8K—Naval Communication Station, (Keflavik, Iceland), Box 22, FPO New York, NY 09571
N63152, GZ—Fleet Combat Direction Systems Support Activity, San Diego, CA 92147–5061
N63165, 7U—Navy Regional Data Automation Center, Washington, Washington Navy Yard, Washington, DC 20374
N63182, 8T—Naval Communication Station, (Rota, Spain), FPO New York, NY 09539
N63204, KV—Naval Plant Representative Office, Goodyear Aerospace Corp., Akron, OH 44305
N63209, (MAJ00062), L9A—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of New Mexico, Albuquerque, NM 87106
N63210, (MAJ00062), L9B—Commanding Officer, Naval Reserve Officers Training Corps Unit, Iowa State University of Science and Technology, Ames, IA 50011–3010
N63211, (MAJ00062), L9C—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Michigan, Ann Arbor, MI 48109–1085
N63212, (MAJ00062), L9G—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Texas at Austin, Austin, TX 78712
N63213, (MAJ00062), L9J—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of California, Berkeley, CA 94720–0001
N63214, (MAJ00062), L9M—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Colorado, Box 374, Boulder, CO 80309–0374
N63215, (MAJ00062), L9U—Commanding Officer, Naval Reserve Officers Training Corps Unit, Illinois Institute of Technology, 3300 S. Federal Street, Chicago, IL 60616–3793
N63216, (MAJ00062), L9W—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Missouri, Columbia, MO 65201
N63217, (MAJ00062), L9Z—Commanding Officer, Naval Reserve Officers Training Corps Unit, Oregon State University, Corvallis, OR 97331
N63218, (MAJ00062), R0B—Commanding Officer, Naval Reserve Officers Training Corps Unit, Northwestern University, Evanston, IL 60201
N63219, (MAJ00062), R0E, L99—Commanding Officer, Naval Reserve Officers Training Corps Unit, Rice University, P.O. Box 1982, Houston, TX 77001
N63220, (MAJ00062), R0L—Commanding Officer, Naval Reserve Officers Training Corps Unit, UCLA, Mens Gym Room 123, 405 Milgard Avenue, Los Angeles, CA 90024–1399
N63221, (MAJ00062), 8AB—Commanding Officer, Naval Reserve Officers Training Corps Unit, PED 101, University Park MC 0654, University of Southern California, Los Angeles, CA 90089–0654
N63222, (MAJ00062), R0H—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Kansas, Lawrence, KS 66044
N63223, (MAJ00062), R0K—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Nebraska, Lincoln, NE 68508
N63224, (MAJ00062), 84D—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Wisconsin, 1610 University Avenue, Madison, WI 53705
N63225, (MAJ00062), 8AH—Commanding Officer, Naval Reserve Officers Training Corps Unit, Marquette University, Milwaukee, WI 53233
N63226, (MAJ00062), 8AJ—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Minnesota, Minneapolis, MN 55455–0108
N63227, (MAJ00062), 8AK—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Idaho, Moscow, ID 83843–3244
N63228 (MAJ00062), 8AM—Commanding Officer, Naval Reserve Officers Training Corps Unit, Tulane University, New Orleans, LA 70118
N63229, (MAJ00062), 8AN—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Oklahoma, Norman, Oklahoma 73019

N63230, (MAJ00062), 8AR—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Notre Dame, Notre Dame, IN 46556–5601

N63231, (MAJ00062), 8AW—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Utah, Salt Lake City, UT 84112–1107

N63232, (MAJ00062), 8AY—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Washington, Seattle, WA 98195

N63234, (MAJ00062), L9Q—Commanding Officer, Naval Reserve Officers Training Corps Unit, 505 East Armory Street, University of Illinois, Champaign, IL 61820–6288

N63235, (MAJ00062), R05—Commanding Officer, Naval Reserve Officers Training Corps Unit, Purdue University, West Lafayette, IN 47907–0001

N63273, 4S—Fleet Combat Direction Systems Support Activity, Dam Neck, Virginia Beach, VA 23461

N63274, 4F, 4W—Naval Electronic Systems Engineering Center, Vallejo, CA 94592

N63285, (MAJ00011), LB0—Naval Security and Investigative Command, Washington, DC 20388

N63290 (MAJ00062), R00–1—Commanding Officer, Combat Systems Technical Schools Command, Mare Island, Vallejo, CA 94592

N63291 (MAJ00062), R0F—Commanding Officer, Naval Reserve Officers Training Corps Unit, Barton Hall, Cornell University, Ithaca, NY 14853

N63294 (MAJ00062), 8AV—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Rochester, Rochester, NY 14627

N63295 (MAJ00062), R0M—Commanding Officer, Naval Reserve Officers Training Corps Unit, Rensselaer Polytechnic Institute, Troy, NY 12180–3590

N63296 (MAJ00062), L9F—Commanding Officer, Naval Reserve Officers Training Corps Unit, Auburn University, Auburn, AL 36830

N63299 (MAJ00062), R0A—Commanding Officer, Naval Reserve Officers Training Corps Unit, Duke University, Durham, NC 27706

N63301 (MAJ00062), L9D—Commanding Officer, Naval Reserve Officers Training Corps Unit, Georgia Tech, Atlanta, GA 30313

N63303 (MAJ00062), R0U—Commanding Officer, Naval Reserve Officers Training Corps Unit, College of the Holy Cross, Worcester, MA 01610–2389

N63306 (MAJ00062), 8AS—Commanding Officer, Naval Reserve Officers Training Corps Unit, Miami University, Oxford, OH 45056–1698

N63307 (MAJ00062), R0N—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Mississippi, Box 69, University, MS 38677

N63308 (MAJ00062), L9R—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of North Carolina, Chapel Hill, NC 27515

N63309 (MAJ00062), L9Y—Commanding Officer, Naval Reserve Officers Training Corps Unit, The Ohio State University, Columbus, OH 43210–1169

N63310 (MAJ00062), R0P—Commanding Officer, Naval Reserve Officers Training Corps Unit, Wagner Bldg., The Pennsylvania State University, University Park, PA 16802

N63311 (MAJ00062), 8AT—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Pennsylvania, Philadelphia, PA 19104

N63313 (MAJ00062), L9X—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of South Carolina, Columbia, SC 29208

N63315 (MAJ00062), 8AL—Commanding Officer, Naval Reserve Officers Training Corps Unit, Vanderbilt University (Westside Hall), Nashville, TN 37240

N63316 (MAJ00062), R0R—Commanding Officer, Naval Reserve Officers Training Corps Unit, Villanova University, Villanova, PA 19085–1699

N63317 (MAJ00062), L9T—Commanding Officer, Naval Reserve Officers Training Corps Unit, Maury Hall, University of Virginia, Charlottesville, VA 22903–3194

N63325, 7X—Naval Education & Training Support Center, Atlantic, Bldg. Z–86, Naval Station, Norfolk, VA 23511

N63339, LL— Navy Resale Activity, Naval Station, Adak (Alaska), FPO Seattle, WA 98791

N63340, LM—Navy Resale Activity, Naval Station, Argentia (Canada), FPO New York 09597

N63341, LN—Navy Resale Activity Det. Commissary Store, Naval Air Station, Chase Field, Beeville, TX 78102

N63344, LR—Navy Commissary Store Region, Naval Station, Charleston, SC 29408

N63345, LS—Navy Resale Activity, Naval Station, Guantanamo Bay (Cuba), FPO New York 09598

N63346, LT—Navy Resale Activity, Naval Station, Keflavik (Iceland), FPO New York 09571

N63348, LV—Navy Resale Activity Det Commissary Store, Naval Air Sation, Kingsville, TX 78364

N63349, LW—Navy Resale Activity, Naval Air Station, Lemoore, CA 93246

N63350, 3L—Navy Resale Activity, COMNAVACT, Dunstable, UK, FPO New York 09510

N63351, LY—Navy Commissary Store Region, Naval Station, Long Beach, CA 90802

N63352, KE—Navy Resale Activity Det Commissary Store, Naval Air Station, Meridian, MS 39301

N63353, MA—Officer in Charge, Navy Resale Activity, Commissary Support Office, Naval Support Activity, Napels (Italy), FPO New York 09521

N63357, ME—Navy Resale Activity, Naval Station, Rota (Spain), FPO New York 09540

N63362, MK—Officer in Charge, Navy Resale Activity, Commissary Support Office, (Subic Bay, Philippines), P.O. Box 28, FPO San Francisco 96651

N63365, MN—Navy Resale Activity, Commissary Support Office, (Yokosuka, Japan) Box 33, FPO Seattle 98762

N63367, MP—Officer in Charge, Commissary Di., Navy Resale and Services Support Office, Field Support Office, Norfolk, VA 23511

N63369—Military Sealift Command Office, Benelux (Rotterdam, Netherlands), APO New York 09159

N63381, (MAJ00011), LBA—Joint U.S. Military Advisory Group, Thailand, APO San Francisco 96346

N63387, JD—Navy Public Works Center, Naval Base, San Diego, CA 92136

N63394, L6—Naval Ship Weapon Systems Engineering Station, Port Hueneme, CA 93043

N63395, 8L—U.S. Naval Communication Station Thurso, (Caithness, UK), FPO New York 09516

N63402, K7—Commanding Officer, Strategic Weapons Facility, Pacific, Bremerton, WA 98383

N63406, (MAJ00070), V5C—Naval Submarine Base San Diego, 140 Sylvester Road, San Diego, CA 92106–3521

N63408, HV—Navy Material Transportation Office, Norfolk, VA 23511–6691

N63410, KA—Navy Manpower and Material Analysis Center, Atlantic, Norfolk, VA 23511

N63427, 8F—U.S. Naval Communication Station, Harold E. Holt, Exmouth, Western Australia, FPO San Francisco 96680

N63429, MH—Naval Communication Unit London (UK), FPO New York 10000

N63439, K9—Naval Ophthalmic Support and Training Activity, Yorktown, VA 23690

N63543, (MAJ00072), 9TC—Naval Reserve Center, 3070 Ross Lane, Central Point, OR 97502–1399

N63821, (MAJ00039), NSA–B—Officer in Charge, Naval Underwater Systems Center, AUTEC Andros Range Detachment, Andros Island, Bahama Island, FPO New York 09559

N63886, (MAJ00069), 8Q0–1—Naval Security Group Activity, (Adak, AK), FPO Seattle 98777

N63891, (MAJ00069), 8QG—Naval Security Group, Northwest, Chesapeake, VA 23322

N64165, (MAJ00062), ROZ—Naval Unit, Lowry Air Force Base, CO 80230

N64181, (MAJ00062), ROW—Department of Naval Science, Texas Maritime Academy, Galveston, TX 77553–1675

N64267, M9—Naval Weapons Station, Seal Beach Detachment, Fleet Analysis Center, Corona Annex, Corona, CA 91720

N64281, 3U, KX—Commanding Office, Naval Sea Combat Systems Engineering Station, Naval Station, Norfolk, VA 23511

N64356, KF—Commanding Officer, Naval Administrative Command, Armed Forces Staff College, Norfolk, VA 23511–6097

N64980—Officer in Charge, Naval Weapons Facility, Detachment Machrinhanish, UK, FPO New York 09515

N64981—Commanding Officer, Naval Weapons Facility, St. Mawgan UK, FPO New York 09511

N65113, EZ—Navy Public Works Center, Bldg 1A, Great Lakes, IL 60088–5600

N65114, (MAJ00025), EJC—Commanding Officer, Navy Public Works Center, Naval Air Station, Pensacola, FL 32508–6500

N65115, (MAJ00025), FZA—Navy Public Works Center, Box 13 (Yokosuka, Japan), FPO Seattle 98762–3100

N65116, MZ—Officer in Charge, Navy-Marine Corps Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, Washington, DC 20374–2001

N65146, 7E—Procurement Branch, OP–09B31, Office of the Chief of Naval Operations, Support Activity, Washington, DC 20350

N65198, 3H—Naval Administrative Unit, 550 First Street, Idaho Falls, ID 83401

N65202—Supervisor of Shipbuilding, Conversion and Repair, USN, Box 400, Pearl Harbor, HI 96860

N65236, V7—Naval Electronic Systems Engineering Center, 4600 Goer Road, North Charleston, SC 29406

N65256, (MAJ31699), V8C—Navy Office of Information, East, 133 East 58th Street, 1st Floor, New York, NY 10022

N65428, (MAJ00018), MDP—Commanding Officer, Naval Hospital (Roosevelt Roads, PR), FPO Miami 34051–8100

N65440, 4V—Officer in Charge, Navy Resale Activity, Exmouth, Western Australia, FPO San Francisco 96680

N65491, (MAJ00018), J5P—Naval Hospital, (Subic Bay, Philippines), FPO San Francisco 96652–1600

N65492, (MAJ00018), MCA—Commanding Officer, Naval Hospital, Fiscal & Supply Service, Code 32C, Orlando, FL 32813–5200

N65497, 4U—Commissary Store Division, NAVRESSO, Field Support Office, 2801 "C" Street, SW, Auburn, WA 98001

N65540, (MAJ00024), EHP–S—Naval Ship Systems Engineering Station, Philadelphia, PA 19112–5083

N65575, (MAJ00018), MCY—Naval Medical Clinic, Seattle, WA 98115

N65576—Navy Space Systems Activity, P.O. Box 92960, Worldway Postal Center, Los Angeles, CA 90009

N65580, M2—Naval Electronic Systems Engineering Center, P.O. Box 55, Portsmouth, VA 23705

N65584, EW, 3E—Naval Electronic Systems Engineering Center, P.O. Box 80337–Building #4, Code 104, San Diego, CA 92138

N65849, (MAJ31699), HXY–Z—Office of Civilian Personnel Management, Southwest Region, San Diego, CA 92188

N65870, M4—Supervisor of Shipbuilding, Conversion and Repair, USN, Long Beach Naval Shipyard, Long Beach, CA 90822

N65886—Commanding Officer, Aviation Depot, Naval Air Station, Jacksonville, FL 32212

N65888, ED—Aviation Depot, North Island, San Diego, CA 92135

N65889—Commanding Officer, Aviation Depot, Naval Air Station, Code 56000, Pensacola, FL 32508

N65912, GP—Commanding Officer, Naval Sea Support Center, Atlantic, St. Juliens Creek Annex, Portsmouth, VA 23702

N65913, 7L—Naval Sea Support Center, Pacific, San Diego, CA 92138

N65918, FT—Shore Intermediate Maintenance Activity, Naval Station, San Diego, CA 92136–5000

N65926, (MAJ00039), NSA–B—Officer in Charge, Naval Underwater Systems Center Detachment, AUTEC, West Palm Beach Detachment, West Palm Beach, FL 33402

N65928, N3—Naval Training Systems Center, Orlando, FL 32813

N65980, (MAJ00039), NSL–NSN—Naval Electronic Systems Engineering Activity, St. Inigoes, MD 20684

N65985, KM—Officer in Charge, Naval Support Activity, (Holy Loch, UK), FPO New York 09514

N66001, 7N—Naval Ocean Systems Center, San Diego, CA 92152

N66021, 7G—Commander Fleet Air, Western Pacific, (Atsugi, Japan), FPO Seattle, WA 98767

N66022, (MAJ00018), MDW—Naval Dental Clinic, San Diego, CA

N66032, LK—Navy Automatic Data Processing Selection Office, Building 216, Washington Navy Yard, Washington, DC 20374

N66074, (MAJ00062), 8AU—Commanding Officer, Naval Reserve Officers Training Corps Unit, Prairie View A&M University Prairie View, TX 77445

N66094, (MAJ00018), QAA–B—Naval Hospital, Cherry Point, NC 28533–5008

N66095, (MAJ00018), J5E—Naval Hospital, NAS, Lemoore, CA 93246

N66097, (MAJ00018) MDE—Naval Hospital, Oak Harbor, WA 98278–8800

N66125, (MAJ00070), V5J—Naval Facility (Guam), FPO San Francisco 96630–2903

N66231, (MAJ00072), 9TS—Naval Reserve Readiness Center, Bldg 2711, Naval Training Center, Great Lakes, IL 60088–5707

N66398, (MAJ62980), ML6–7—Navy Motion Picture Service, Flushing & Washington Avenues, Brooklyn, NY 11251–5400

N66458, (MAJ00065), S0C—Naval Oceanography Command, NAS, Brunswick, ME 04011–5000

N66604, N4—Naval Underwater Systems Center, Newport, RI 02840

N66612, (MAJ00062), L95—Commanding Officer, Naval Reserve Officers Training Corps Unit, The Citadel, Charleston, SC 29409–0770

N66691, 4P—Commanding Officer, Naval Support Activity, Souda Bay, Crete, Greece, FPO New York 09528

N66715, VJ—Commander, Navy Recruiting Command, Washingotn, DC 22203–1191

N66753, (MAJ00062), R0G—Commanding Officer, Naval Reserve Officers Training Corps Unit, Jacksonville University, Jacksonville, FL 32211

N66754, (MAJ00069), 8QL—Commanding Officer, Naval Security Group Activity, (Sabana Seca, PR), FPO Miami 34053

N66809, (MAJ00062), R0V—Commanding Officer, Naval Reserve Officers Training Corps Unit, Savannah State College, Savannah, GA 31404

N66810, (MAJ00062), L9H—Commanding Officer, Naval Reserve Officers Training Corps Unit, Southern University and A&M College, Baton Rouge, LA 70813

N66818, JX—Commanding Officer, Naval Medical Command Mid-

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Atlantic Region, Norfolk, VA 23508–1297
N66833, (MAJ00060), LHL—Commanding Officer, U.S. Naval Station Panama (Rodman, Canal Zone), FPO Miami 34061–1000
N66863, (MAJ00018), MCU–X—Commanding Officer, Naval Biodynamics Laboratory, 13600 Old Gentilly Road, Michout Assembly Facility, New Orleans, LA 70189
N66890, LJ—Naval Station, Mare Island, Supply and Fiscal Code 90, Bldg 851, Vallejo, CA 94592
N66898—Commanding Officer, Naval Medical Clinic, New Orleans, LA 70142
N66957—Director, Navy Publications and Printing Service Det Branch Southeast Division, Bldg. 2049, NTC, Orlando, FL 32813
N66959—Director, Navy Publications and Printing Service Det. Office Southeast Division, P.O. Box 3, NAS, Jacksonville, FL 32212
N66965 (MAJ00023) 4JQ—Navy Publishing and Printing Service Det. Office, Western Area, Point Mugu, CA 93042–5027
N66972—Commanding Officer, Navy Recruiting District, 5801 S.W. 74th Street, Miami, FL 33143
N67506—Commanding Officer, Navy Recruiting District, 102 W Rector Street, San Antonio, TX 78216
N68011—Commanding Officer, Navy Recruiting District, 8 North Third Street, Sterick Bldg., Memphis, TN 38103
N68047 (MAJ00070), 4LO—Navy Office, Singapore, FPO San Francisco, CA 96699–2100
N68056, JE—Naval Medical Command, Southwest Region, San Diego, CA 92134
N68057, VZ—Commanding Officer, Naval Regional Data Automation Center Norfolk, Code 212, Norfolk, VA 23511
N68064 (MAJ00062), R0D—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Florida, Van Fleet Hall, Room 28, Gainesville, FL 32601
N68072 (MAJ00062), L9V—Commanding Officer, Naval Reserve Officers Training Corps Unit, Texas A&M University, College Station, TX 77843
N68084 (MAJ00016), MDJ–M—Commanding Officer (Code 206), Naval Hospital, Charleston, SC 29408–5900
N68088, 7S—Naval Hospital, Newport, RI 02841
N68090 (MAJ00018) MDO–6—Naval Hospital Long Beach, CA 90822–5199
N68092—Naval Medical Command, Northeast Region, Great Lakes, IL 60088
N68093 (MAJ00018), MCC–H—Naval Hospital, Camp Lejeune, NC 28542–5008
N68094, V9—Naval Hospital, Camp Pendleton, CA 92055–5008
N68095, JF—Naval Hospital, Boone Road, Bremerton, WA 98312–1898
N68096 (MAJ00018), J50—Commanding Officer, Naval Hospital (Guam), FPO San Francisco 96630–1600
N68097—Naval Medical Command, Northwest Region, Oakland, CA 94627
N68101 (MAJ00018), MDT–V—Naval Hospital, 17th Street and Pattison Avenue, Philadelphia, PA 19145–5199
N68139 (MAJ00062), 8AZ—Commanding Officer, Naval Reserve Officers Training Corps Unit, Florida A&M University, Tallahassee, FL 32307
N68141 (MAJ00062), L9P—Commanding Officer, Naval Reserve Officers Training Corps Unit, Maine Maritime Academy, Castine, ME 04421–0902
N68166 (MAJ00015), LO1–2—Naval Technical Intelligence Support Center, 4301 Suitland Road, Washington, DC 20390
N68171, M3—Commanding Officer, Naval Regional Contracting Center, (Naples, Italy), FPO New York 09521
N68175 (MAJ62980), MQA—Navy Recruiting District New Jersey, Parkway Towers, Bldg A, 485 US Route 1, So., Iselin, NJ 08830–3012
N68190—Commanding Officer, Navy Office of Information, Southeast, 1459 Peachtree Street, NE–Suite 300, Atlanta, GA 30309
N68200, VM—Director, Navy Office of Information, Southwest, 1114 Commerce Street, Suite 811, Dallas, TX 75242
N68221, 7J—Commanding Officer, Naval Personnel Research and Development Center, San Diego, CA 92152
N68248, V6—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Naval Submarine Base, Kings Bay, GA 31547
R68251, (MAJ00070), LPC—Shore Intermediate Maintenance Activity, Pearl Harbor, Box 141, Pearl Harbor, HI 96860
N68292, (MAJ00018), J5A—Naval Hospital (Yokosuka, Japan), FPO Seattle 98765–1615
N68297, ET—Naval Magazine, Lualualei, Oahu HI 96792–4301
N68303, (MAJ00062), R0C—Commanding Officer, Naval Reserve Officers Training Corps Unit, State University of New York, Maritime College, Fort Schuyler, Bronx, NY 10465–4198
N68306, (MAJ00072), 9TF—Commander, Naval Reserve Readiness Command, Region Six, WNY Bldg 200, Washington, DC 20374–2003
N68307—Commander, Code 431, Naval Reserve Readiness Command Region Ten, New Orleans, LA 70142
N68308, (MAJ00072), 9TQ—Naval Reserve Readiness Command, Region 20, Bldg 1, NAVSTA Treasure Island, San Francisco, CA 94130–5032
N68311, JL—Naval Station, Long Beach, CA 90822
N68322, 7Z—Naval Education & Training Program Management Support Activity, Code SU1, Saufley Field, Pensacola, FL 32509
N68323, (MAJ00011), LBC—Naval Legal Service Office, 200 Stovall Street, Alexandria, VA 22332–2400
N68328, (MAJ00072), 9TJ—Naval Reserve Readiness Command, Region 22, Bldg 9, Naval Station, Seattle, WA 98115–5009
N68330, (MAJ00072), 9TN—Naval Reserve Readiness Command, Region 13, Bldg 1, Code 712, NTC, Great Lakes, IL 60088–5028
N68331, (MAJ00072), LCE–F—Naval Reserve Readiness Command Region, Bldg. 662 Naval Base, Philadelphia, PA 19112
N68332, (MAJ00072), 9TO–1—Commander, Naval Reserve Readiness Command, Region 18, 301 Navy Drive, Industrial Airport, KS 66031–0031
N68335, 4Y—Commanding Officer, Naval Air Engineering Center, Supply Dept., Purchase Division, Lakehurst, NJ 08733
N68349, (MAJ00072), 9TG—Commander, Naval Reserve Readiness Command, Region Nine, NAS Memphis (76), Bldg E–35, Millington, TN 38054
N68349—Commander, Naval Reserve Readiness Command, Region 16, Bldg. 715, Minneapolis-St. Paul IAP, Minneapolis, MN 55450–2986
N68355, (MAJ00062), R0J—Commanding Officer, Naval Reserve Officers Training Corps Unit, Virginia Military Institute, Lexington, VA 24450–2697
N68356, (MAJ00072), 9TD—Commander, Naval Reserve Readiness Command, Region Seven, Naval Base, Charleston, SC 29408
N68357, (MAJ00072), 9TL—Commander, Naval Reserve Readiness Command, Region Two, Scotia, NY 12302–9465
N68358, (MAJ00072), 9TA—Commander, Naval Reserve Readiness Command, Region Eight, Naval Air Station, Jacksonville, FL 32212
N68359—Commander, Naval Reserve Readiness Command, Region Eleven, Bldg 11, Naval Air Station, Dallas, TX 75211
N68378, KQ—Navy Public Works Center, San Francisco Bay, Oakland, CA 94623

N68391, (MAJ62980), MLB—Navy Recruiting District, Harrisburg, 310 North Second Street, Harrisburg, PA 17101–1304
N68401, (MAJ62980), MLJ—Navy Recruiting District, San Diego, Naval Training Center, Bldg 335, San Diego, CA 92133–6800
N68402, (MAJ31699), V8E—Navy Office of Information, New England Branch, 408 Atlantic Avenue, Boston, MA 02210–2203
N68409 (MAJ00018), MDC—Naval Dental Clinic, San Francisco, CA 94130–5030
N68436, KC, J6—Naval Submarine Base, Bangor, Code 863, Bremerton, WA 98315
N68441—Commanding Officer, Naval Dental Clinic, Naval Air Station, Pensacola, FL 32508
N68443, 7T—Commanding Officer, Naval Dental Clinic, Bremerton, WA 98314
N68451, MF—Navy Regional Data Automation Center San Francisco, Naval Air Station, Alameda, CA 94501
N68470, (MAJ00018), J5J–M—Naval Hospital, (Okinawa, Japan), FPO Seattle 98778–1610
N68497—Commanding Officer, Code 40, Naval Administrative Command, Naval Training Center, Orlando, FL 32813
N68499, LX—Director, Naval Council of Personnel Boards, Ballston Center Tower #2, 801 North Randolph Street, Arlington, VA 22203–1989
N68518—Commanding Officer, Naval Reserve Support Office, Internal Supply, Code S43, 4400 Dauphine Street, New Orleans, LA 70146
N68520, 7P—Aviation Depot Operations Center, Naval Air Station, Patuxent River, MD 20670
N68527 (MAJ00072), 9TT—Naval & MC Reserve Readiness Center, Armed Forces Reserve Center, Floyd Bennett Field, Brooklyn, NY 11234–7097
N68546, QG—Navy Environmental Health Center, Naval Station, Norfolk, VA 23511
N68547 (MAJ00060), LHQ—Personnel Support Activity, Norfolk, VA 23511–5115
N68561 (MAJ00039), NSE—Navy Management Systems Support Office, Norfolk, VA 23511–6694
N68593 (MAJ00060), LHE—Naval Ocean Processing Facility, Dam Neck, VA 23461–5450
N68608 (MAJ00011), LBP–Y—Navy Regional Data Automation Center, 4400 Dauphine Street, New Orleans, LA 70145–7700
N68610, GF—Officer in Charge, Fleet Hospital Support Office, 620 Central Ave., Bldg #5, Alameda, CA 94501–3874
N68646 (MAJ00024), EHJ–K—Naval Sea Systems Command, Automated Data Systems Activity, P.O. Box 100, Indian Head, MD 20640–0100
N68691, JW—Naval Plant Representative Office, (Melbourne, Australia), APO San Francisco 96405
N68692 (MAJ00062), 8AX—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of San Diego/San Diego State University, Alcala Park, San Diego, CA 92110–2496
N68695 (MAJ00060), LHG—Shore Intermediate Maintenance Activity, Naval Reserve Maintenance Facility, Bldg 133, Naval Base, Philadelphia, PA 19112–5066
N68699 (MAJ00062), 8AP—Commanding Officer, Naval Reserve Officers Training Corps Unit, Hampton Roads, 5215 Hampton Blvd., Norfolk, VA 23508–8556
N68707 (MAJ00072), 9TU—Naval Reserve Maintenance Training Facility, Puget Sound, Tacoma, WA
N68709 (MAJ00060), J0C—Naval Air Station Mayport, Mayport, FL 32228
N68710, (MAJ00062), L9K—Commanding Officer, Naval Reserve Officers Training Corps Unit, Virginia Polytechnic Institute and State University, Blacksburg, VA 24061–2306
N68717 (MAJ00062), L9L—Commanding Officer, Naval Reserve Officers Training Corps Unit, Boston University, 116 Bay State Road, Boston, MA 02215
N68725 (MAJ00062), R0Q—Commanding Officer, Naval Reserve Officers Training Corps Unit, University of Arizona, Tucson, AZ 85721
N68726 (MAJ00062), R0T—Commanding Officer, Naval Reserve Officers Training Corps Unit, The George Washington University, Washington, DC 20052
N68727 (MAJ00062), 8AF—Commanding Officer, Naval Reserve Officers Training Corps Unit, Memphis State University, Memphis, TN 38152–0001
N68728 (MAJ00062), 8AQ—Commanding Officer, Naval Reserve Officers Training Corps Unit, Norwich University, Northfield, VT 05663–1097
N68733 (MAJ00030), EKC—Strategic Weapons Facility, Atlantic, Kings Bay, GA 31547–6600
N68742 (MAJ00070), LPA—Naval Base, Seattle, WA 98115–5012
N68790—Officer in Charge of Construction, Naval Facilities Engineering Command Contracts, Diego Garcia, FPO San Francisco 96685
N68829 (MAJ00060), J0J—Shore Intermediate Maintenance Activity (NRMF), Pier 2, Bldg. 68 NETC, Newport, RI 02841–5001
N68831 (MAJ00070), LPG—Shore Intermediate Maintenance Activity, San Francisco, Bldg. 162, NAS, Alameda, CA 94501–5065
N68838, J9—Commanding Officer, Naval Supply Center, Jacksonville, FL 32212
N68857 (MAJ00062), 8AC—Commanding Officer, Naval Reserve Officers Training Corps Unit, Texas Tech University, Lubbock, TX 79409–4559
N68860, KR—Naval Supply Center—Pensacola, Pensacola, FL 32508–6200
N68863, LU—Naval Commercial Communications Office, 4401 Massachusetts Avenue NW., Washington, DC 20390–5290
N68877 (MAJ00062), R0Y—Commanding Officer, Naval Reserve Officers Training Corps Unit, Carnegie Mellon University, Pittsburgh, PA 15213
N68881 (MAJ00062), L9E—Commanding Officer, Naval Reserve Officers Training Corps Unit, Morehouse College, Atlanta, GA 30314
N70092 (MAJ00069), 8QJ–K—Naval Security Station, 3801 Nebraska Avenue NW., Washington, DC 20390–8230
N70240, M6—Commanding Officer, Naval Communication Station, San Diego, 937 N. Harbor Drive, San Diego, CA 92132
N70272, 8G, ND—Naval Communication Area, Master Station Atlantic, Norfolk, VA 23511–6898
N70273, V3—Naval Radio Station, Jim Creek, Oso, WA 98223
N70276, V4—Naval Communication Station (Yokosuka, Japan), Box 3, FPO Seattle 98762
N70283 (MAJ00069), 8QE—Commanding Officer, Code 30, Naval Security Group Activity (Galeta Island, Canal Zone), FPO Miami 34060–9998
N70294, 8H—U.S. Naval Communication Area, Master Station MED (Naples, Italy), FPO New York 09524
N70295, 8J—U.S. Naval Communication Station (Nea Makri, Greece), FPO New York 09525
N70310, N2—Naval Radio Station R, Sugar Grove, WV 26815
M00027, MS*, MSO–9—Headquarters, U.S. Marine Corps, Washington, DC 20380
M00146, MT—Marine Corps Air Station, Cherry Point, NC 28533
M00243, NE—Marine Corps Recruit Depot, San Diego, CA 92140
M00263, MX—Marine Corps Recruit Depot, Parris Island, SC 29905
M00264, MY—Marine Corps Development and Education Command, Quantico, VA 22134
M00318—Marine Corps Air Station, (Kaneohe Bay, Oahu, HI), FPO San Francisco, CA 96628

M00681, NG—Marine Corps Base, Camp Pendleton, Oceanside, CA 92054
M60050, MV—Marine Corps Air Station, El Toro (Santa Ana), CA 92709
M62204, MW—Marine Corps Logistics Base, Barstow, CA 92311
M62974, NA—Marine Corps Air Station, Yuma, AZ 85364
M67001, NB—Marine Corps Base, Camp Lejeune, NC 28542
M67004, NC—Marine Corps Logistics Base, Albany, GA 31704
M67011, (MAJ00027)—Director, 1st Marine Corps District, Garden City, Long Island, NY 11530, MSA
M67013, (MAJ00027), MSC—Director, 4th Marine Corps District, Philadelphia, PA 19112–5072
M67015, (MAJ00027), MSE—Director, 6th Marine Corps District, Atlanta, GA 30303
M67016, (MAJ00027), MSG—Director, 8th Marine Corps District, New Orleans, LA 70113
M67017, (MAJ00027), MSJ—Director, 9th Marine Corps District, Shawnee Mission, KA 66204
M67019, (MAJ00027), MSL—Director, 12th Marine Corps District, San Franscisco, CA 94130
M67021, (MAJ00027), MUC—Marine Aircraft Wing 4, New Orleans, 4400 Dauphine Street, New Orleans, LA 70146–9125
M67025—Headquarters, Fleet Marine Force, Pacific, Oahu, FPO San Francisco 96610
M67029, (MAJ00027), MSN—Marine Barracks, Washington, DC 20003
M67030, (MAJ00027), MUP—Marine Corps Security Force Battalion Pacific, NAVSTA Mare Island, Vallejo, CA 94592–5022
M67290, (MAJ00027), MSY—Marine Aviation Training Support Group-90, NATTC, NAS Memphis, Millington, TN 38054–5123
M67351—Marine Detachment, London, APO New York 09510
M67353, (MAJ00027), MSQ—Headquarters Battalion, Marine Corps, Henderson Hall, Arlington, VA 22214
M67354—Post Supply Officer, Headquarters Marine Corps, Navy Annex, Arlington, VA 20380
M67385, (MAJ00027), MU0–1—Camp H. M. Smith, U.S. Marine Corps, Halawa Heights, Oahu, Hawaii 96861
M67391, KY—Marine Corps Camp Det., (Camp Elmore), Norfolk, VA 23511
M67398, NF—Marine Corps Air-Ground Combat Center, Twentynine Palms, CA 92278
M67400, (MAJ00027), QJ, MUA—Marine Corps Procurement Office, Okinawa, Marine Corps Base, Camp Smedley D. Butler, (Ryuku Island, Southern), FPO Seattle, WA 98773
M67428, JA—Marine Corps Air Bases Western Area, MCAS El Toro, Santa Ana, CA 92709
M67443, LG—Marine Corps Finance Center, Kansas City, MO 64197
M67842, K6—East Coast Commissary Complex, Marine Corps Base, Camp Lejeune, NC 28542
M67853, (MAJ00027), MUR—Marine Corps Security Force Battalion Atlantic, Naval Base, Norfolk, VA 23511–5697
M67854, (MAJ00027), MU6–9—Marine Corps Research, Development and Acquisition Command, Washington, DC
M68479, (MAJ00027), MSU—4th Marine Division (Rein), FMF, USMCR, 4400 Dauphine Street, New Orleans, LA 70146–5400
M68522, (MAJ00027), MSW—Marine Corps Reserve Support Center, Purchasing Department, 16950 El Monte, Overland Park, KS 66211–1408

Department of the Air Force

(C) Denotes a Central Contracting Activity.

F01600, 5A, F01620, 6K—3800 ABW/LGC, Maxwell AFB, AL 36112–5320, HQ SSC/PK, Gunter AFS, AL 36114–5343
F02600, 5B—82 FTW/LGC, Williams AFB, AZ 85240–5004
F02601, 5C—836 AD/LGC, Davis-Monthan AFB, AZ 85707–5320
F02604, 5D—832 AD/LGC, Luke AFB, AZ 85309–5320
F02610, SR—AFPRO, Hughes Missile Systems Group, P.O. Box 11337, Emery Park Station, Tucson, AZ 85734–1337
F03601, 5E—97 BMW/LGC, Eaker AFB, AR 72317–5320
F03602, 5F—314 TAW/LGC, Little Rock AFB, AR 72076–5320
F04604, 5G—93 BMW/LGC, Castle AFB, CA 95342–5320
F04605, 5H—22 AREFW/LGC, March AFB, CA 92518–5320
F04606, SM—SM–ALC/PM, Sacramento Air Logistics Center, McClellan AFB, CA 95652–5320
F04607, 5J—63 MAW/LGC, Norton AFB, CA 92409–5320
F04609, 5K—831 AD/LGC, George AFB, CA 92394–5320
F04611, QQ—AFFTC/PK (C), Edwards AFB, CA 93523–5320
F04612, 5L—323 FTW/LGC, Mather AFB, CA 95655–5320
F04620, S6—AFPRO, TRW Electronics & Defense Sector, One Space Park, Redondo Beach, CA 90278–1078
F04626, 5M—60 MAW/LGC, Travis AFB, CA 94535–5320
F04630, RY—AFPRO, RI Rocketdyne Division, 6633 Canoga Avenue, Canoga Park, CA 91303–2790
F04666, 5N—9 SRW/LGC, Beale AFB, CA 95903–5320
F04679, QR—AFPRO, Northrop Corp, One Northrup Avenue, Hawthorne, CA 90250–3296
F04681, QS—AFPRO, RI Corp, Los Angeles Division, P.O. Box 92098, Los Angeles, CA 90009–2098
F04682, QT—AFPRO, Hughes Aircraft Company, P.O. Box 92463, Los Angeles, CA 90009–2463
F04684, QW—4392 AEROSW/LGC, Vandenberg AFB, CA 93437–5320
F04688, QV—AFPRO, Aerojet-General Corp, P.O. Box 15846, Sacramento, CA 95852–1846
F04689, RN—2nd Satellite Tracking Group/LKD, Onizuka Air Force Base, P.O. Box 3430, Sunnyvale, CA 94088–3430
F04690—CSTC/PM, P.O. Box 3430, Sunnyvale, CA 94088–3430
F04691, QX—AFPRO, Lockheed Missile & Space Corp., 1111 Lockheed Way, P.O. Box 3504, Sunnyvale, CA 94088–3504
F04693, MG—SSD/PMB, Base Contracts, P.O. Box 92960, Worldway Postal Center, Los Angeles, CA 90009–9260
F04696, RB—AFPRO, RI Anaheim, 3370 Miraloma Ave., Anaheim, CA 92803–3110
F04699, Q5—SM–ALC/PMK, Base Contracts, McClellan AFB, CA 95652–5320
F04700, Q2—AFFTC/PKB, Base Contracts, Edwards AFB, CA 93523–5000
F04701, TB—SSD/PM (C), Space Systems Division, P.O. Box 92960, Worldway Postal Center, Los Angeles, CA 90009–9260
F04702—HQ AAVS/LGC, Norton AFB, CA 92409–5439
F04703, R8—WSMC/PM (C), Western Space and Missile Center, Vandenberg AFB, CA 93437–6021
F04704, R9—BSD/PK (C), Ballistic Systems Division, Norton AFB, CA 92409–6463
F04705, RT—Det 6, 2762 Logistics Sq. (AFLC), Norton AFB, CA 92409
F04709, S5—Det 42, SM–ALC, Norton AFB, CA 92409–6447
F04710, TC—AFPRO, Douglas Aircraft Company, 3855 Lakewood Boulevard, Long Beach, CA 90846–0001
F04720, RD—AFPRO RI NAAO, OL–AA, 2825 East Avenue P, Palmdale, CA 93550–0319
F05600, 5P—LTTC/LGC, Lowry AFB, CO 80230–5320
F05603—HQ Air Force Space Command/PKD, Director of Systems Contracting, Stop 7, Peterson AFB, CO 80914–5001

F05604, SX—3d Space Support Wing/PKB, Stop 20, Peterson AFB, CO 80914–5000
F05611, 5Q—USAFA/LGC, USAF Academy, CO 80840–0189
F05617, RE—AFPRO, Martin Marietta Denver Aerospace, P.O. Box 179, Denver, CO 80201–0179
F06700, T5—AFPRO, Pratt & Whitney, 400 Main Street, East Hartford, CT 06108–0969
F07603, 5R—436 MAW/LGC, Dover AFB, DE 19902–5320
F08602, 5S—56 TTW/LGC, MacDill AFB, FL 33608–5320
F08606, RG—ESMC/PM (C), Eastern Space & Missile Center, Patrick AFB, FL 32925–5472
F08620, 5T—1 SOW/LGC, Hurlburt Field, FL 32544–5320
F08621, 5U—31 TFW/LGC, Homestead AFB, FL 33039–5320
F08626, QU—ASD/PK–1, Aeronautical Systems Division Eglin AFB, FL 32542–5000
F08630, S1—ASD/PKRL, Eglin AFB, FL 32542–5000
F08635, RH—AFDTC/PK (C), Air Force Development Test Center, Eglin AFB, FL 32542–5000
F08637, 5V—HQ USAF ADWC/LGC, Tyndall AFB, FL 32403–5320
F08650, TJ—ESMC/PMK, Base Contracts, Patrick AFB, FL 32925–5472
F08651, Q3—AFDTC/PKO, Operational Contracting, Eglin AFB, FL 32542–5320
F08675, T2—AFPRO, Pratt & Whitney Aircraft, P.O. Box 109600, West Palm Beach, FL 33412–9600
F09603, RJ—WR–ALC/PM, Warner Robins Air Logistics Center Robins AFB, GA 31098–5320
F09604, RU—Det 8, 2762 Logistics Sq (AFLC), Robins AFB, GA 31098
F09607, 5W—347 TFW/LGC, Moody AFB, GA 31699–5320
F09609, 5X—94 CSG/LGC, Dobbins AFB, GA 30069–5320
F09632, RK—AFPRO, Lockheed-GA Co., Marietta, GA 30063–0001
F09634, 5Y—HQ AFRES/LGC, Robins AFB, GA 31098–6001
F09650, Q6—WR–ALC/PMK, Base Contracts, Robins AFB, GA 31098–5320
F10603, 5Z—366 TFW/LGC, Mountain Home AFB, ID 83648–5320
F11602, 6A—CTTC/LGC, Chanute AFB, IL 61868–5320
F11603, 6B—928 TAG/LGC, Chicago O'Hare ARFF IL 60666–5000
F11623, 6C—375 AAW/LGC, Scott AFB, IL 62225–5320
F11624, X4—2026 CS/PGZ, Scott AFB, IL 62225–6001
F11626, RL—HQ MAC/TRC, Scott AFB, IL 62225–5001
F12617, 6D—05 AREFW/LGC, Grissom AFB, IN 46971–5320
F14614, 6E—384 BMW/LGC, McConnell AFB, KS 67221–5320
F14615, RP—AFPRO, Boeing Military Airplane Company, 3801 South Oliver Street, Wichita, KS 67277–7730
F16600, 6F—23 TFW/LGC, England AFB, LA 71311–5320
F16602, 6G—2 BMW/LGC, Barksdale AFB, LA 71110–5320
F17600, 6H—42 BMW/LGC, Loring AFB, ME 04475–5320
F17608—101 AREFW/LGC, Bangor International Airport, ME 04401–5320
F18400, S2—AFPRO, Westinghouse Defense and Electronics Systems Center, P.O. Box 1693, Baltimore, MD 21203–1693
F18600, RQ—HQ AFSC/PK (C), Andrews, AFB, DC 20334–5000
F19617, X0—439 CSG/LGC, Westover AFB, MA 01022–5320
F19620, SQ—AFPRO, Textron Defense Systems, 201 Lowell Street, Wilmington, MA 01887–2941
F19628, RS—ESD/PK (C), Electronic Systems Division, Hanscom AFB, MA 01731–5000
F19630, RV—AFCAC/PK (C), Hanscom AFB, MA 01731–6340
F19650, SH—ESD/PKU, Base Contracts, Hanscom AFB, MA 01731–5320
F20603, 6J—379 BMW/LGC, Wurtsmith AFB, MI 48753–5320
F20613, 6L—410 BMW/LGC, K.I. Sawyer AFB, MI 49843–5320
F21611, 6N—934 TAG/LGC, Minneapolis-St. Paul IAP, MN 55450–5000
F22600, RC—KTTC/LGC, Keesler AFB, MS 39534–5000
F22608, 6Q—4 FTW/LGC, Columbus AFB, MS 39701–5000
F23606, 6R—351 SMW/LGC, Whiteman AFB, MO 65305–5320
F23608, 6S—442 CSG/LGC, Richards-Gebaur AFB, MO 64030–5000
F24604, 6T—341 SMW/LGC, Malmstrom AFB, MT 59402–5320
F25600, 6U—55 SRW/LGC, Offutt AFB, NE 68113–5320
F25606, TD—3908 CONS/LGC, Offutt AFB, NE 68113–5000
F26600, S4—554 OSW/LGC, Nellis AFB, NV 89191–5320
F26606, 6M—37 Tactical Fighter Wing/LGC, Nellis AFB, NV 89191–5320
F27604, R5—509 BMW/LGC, Pease AFB, NH 03803–5320
F28609, 6V—438 MAW/LGC, McGuire AFB, NJ 08641–5320
F28620, S8—OL–A, 1605 MASW/LGC, McGuire AFB, NJ 08641–5000
F29601, RW—Air Force Space Technology Center (AFSC)/PKR, Kirtland AFB, NM 87117–5320
F29605, 6W—27 TFW/LGC, Cannon AFB, NM 88103–5320
F29650, R3—Air Force Space Technology Center (AFSC)/PKB, Kirtland AFB, NM 87117–5320
F29651, 6X—833 AD/LDC, Holloman AFB, NM 88330–5320
F30602, RX—RADC/PK (C), Rome Air Development Center, Griffiss AFB, NY 13441–5700
F30617, 6Y—914 TAG/LGC, Niagara Falls IAP, NY 14304–5320
F30625, ST—AFPRO, Eaton AIL, Eaton Corporation, AIL Div., Commack Road, Deer Park, Long Island, NY 11729–9998
F30635, S3—416 BMW/LGC, Griffiss AFB, NY 13441–5320
F30636, 6Z—380 BMW/LGC, Plattsburgh AFB, NY 12903–5320
F31601, BU—317 TAW/LGC, Pope AFB, NC 28308–5320
F31610, BW—4 TFW/LGC, Seymour Johnson AFB, NC 27531–5320
F32604, BX—57 AD/LDG, Minot AFB, ND 58705–5320
F32605, BY—321 SMW/LGC, Grand Forks AFB, ND 58205–5320
F33600, RZ—WPCC/PMR, PMS, PMT & PPMY, Wright-Patterson AFB, OH 45433–5320
F33601, Q7—WPCC/PMK, Base Contracts, Wright-Patterson AFB, OH 45433–5320
F33615, SG—ASD/PMR, Directorate of R&D Contracting, Wright Patterson AFB, OH 454233–6503
F33620, SN—AFPRO RI NAAO, OL–AB, Rockwell International, P.O. Box 1259, Columbus, OH 43216–1259
F33630, C1—910 TAG/LGC, Youngstown MAP, OH 44473–0910
F33654, SB—AFPRO, General Electric Company, Cincinnati, OH 45215–6303
F33657, SC—ASD/PM (C), Aeronautical Systems Division, Wright-Patterson AFB, OH 45433–6503
F33659, Q8—2803 ABG/PM, Newark AFS, OH 43055–5320
F33660, TA—2083, ABG/PM6, Newark AFB, OH 43057–5320
F33661—Air force Contract Maintenance Center (AFCMC), Wright-Patterson AFB, OH 45433–5000
F33661, S1—AFCMC/CM, Wright-Patterson AFB, OH 45433–5000
F33661, MJ—Det 33, AF Contr. Maint. Center, APO New York 09667–6207
F33661, SS—Det 16 AFCMC, APO New York 09633–5000
F33661, S8—AFLC Logistics Support Group—Saudi Arabia, AFCMC Contract Management Division, APO New York 09238–5002
F33661, SV—Det 17 AFCMC, APO New York 09378–5000
F33661, R1—Det 28 AFCMC, APO SF 96214–0006
F33661, SU—Det 19 AFCMC, APO New York 09285–0001
F33661, YE—Det 32 AFCMC, APO New York 09672–0008

F33661, TQ—Det 34 AFCMC, APO New York 09254–5365
F33661, VF—Det 36 AFCMC, APO New York 09240–5000
F33733, J8—HQ AFSC/PLMM, Wright-Patterson AFB, OH 45433–6503
F34600, C2—71 FTW/LGC, Vance AFB, OK 73705–5000
F34601, SD, TA, TG—OC–ALC/PM, Oklahoma City Air Logistics Center, Tinker AFB, OK 73145–5320
F34608, TF—HQ EID/PK, Tinker AFB, OK 73145–6343
F34612, C3—443 MAW/LGC, Altus AFB, OK 73523–5320
F34650, Q9—OC–ALC–PMK, Base Contracts, Tinker AFB, OK 73145–5320
F35610, C4—114 TFTS/LGC, Kingsley Field, Klamath Falls, OR 97601
F36829, C7—911, TAG/LGC, Greater Pittsburgh IAP, PA 15231–5320
F36700, C8—913 TAG/LGC, Willow Grove ARF, PA 19090–5130
F36701, SF—AFPRO, GE Re-Entry Div, P.O. Box 8555, Philadelphia, PA 19101–8555
F38601, C9—363 TFW/LGC, Shaw AFB, SC 29152–5320
F38604, T3—HQ USCENTAF/LGC, Shaw AFB, SC 29152–5002
F38608, CA—354 TFW/LGC, Myrtle Beach AFB, SC 29579–5320
F38610, CR—437 MAW/LGC, Charleston AFB, SC 29404–5320
F39601, CT—44 SMW/LGC, Ellsworth AFB, SD 57706–5320
F40600, Q4—AEDC/PK (C), Arnold Engineering Development Center, Arnold AFB, TN 37389–5000
F40650, D1—AEDC/PKP, Base Contracts, Arnold AFB, TN 37389–5000
F41608, SA, QU—SA–ALC/PM, San Antonio Air Logistics Center, Kelly AFB, TX 78241–5320
F41612, D4—STTC/LGC, Sheppard AFB TX 76311–5000
F41613, D5—7 BMW/LGC, Carswell AFB, TX 76127–5320
F41614, E2—GTTC/LGC, Goodfellow AFB TX 76908–5000
F41620 E3—64 FTW/LGC, Reese AFB TX 79489–5000
F41621, SJ—HQ ESC/LEC, San Antonio, TX 78243–5000
F41622, QY—HSDPKO, Brooks AFB, TX 78235–5320
F41624—HSD/PK(C), Brooks AFB, TX 78235–5320
F41636,ZV—3700 Contracting Squadron, Lackland AFB, TX 78236–5000
F41640—HQ AFCOMS/DOC, Kelly AFB, TX 78241–6290
F41650, YA—SA–ALC/PMK, Base Contracts, Kelly AFB, TX 78241–5320
F41652, E5—96 BMW/LGC, Dyess AFB, TX 79607–5320
F41685, E6—47 FTW/LGC, Laughlin AFB TX 78840–5000
F41667, E9—67 TRW/LGC, Bergstrom AFB, TX 78743–5320
F41689, SK—3303 CS, Randolph AFB, TX 78150–5001
F41691, YO—12 CONS/LGC, Randolph AFB, TX 78150–5000
F41695, SL, TH—AFPRO, General Dynamics, P.O. Box 371, Fort Worth, TX 76101–0371
F41800, T9—San Antonio Contracting Center, Ft. Sam Houston AIN, P.O. Box 8218, San Antonio, TX 78208–8218
F41853, WP—AFPROLTV, LTV Aerospace and Defense Co, P.O. Box 655907, Dallas, TX 75265–5907
F41999—AFNAF Purchasing Office, HQ AFMPC/DPMSK, 9504 IH 35 North, Rm 330, San Antonio, TX 78233
F42600, QP, SY—OO–ALC/PM, Ogden Air Logistics Center, Hill AFB, UT 84056–5320
F42610, TE—OO–ALC/PM, ICBM Directorate Contracting, Ogden Air Logistics Center, Hill AFB, UT 84056–5320
F42620, TG—OO–ALC/PM, Aircraft Directorate Contracting, Ogden Air Logistics Center, Hill AFB, UT 84056–5320
F42630, XP—OO–ALC/PM, Commodities Directorate Contracting, Ogden Air Logistics Center, Hill AFB, UT 84056–5320
F42650, R2—OO–ALC/PMK, Base Contracts, Hill AFB, UT 84056–5320
F42651, R6—AFPRO, Morton Thiokol Corp, P.O. Box 524/MS Z–10, Brigham City, UT 84302–0524
F44600, F3—1 TFW/LGC, Langley AFB, VA 23665–5320
F44650, Q1—4400 CONS/LGCN (C), Langley AFB, VA 23665–5000
F45603, F5—62 MAW/LGC, McChord AFB, WA 98438–5320
F45613, F8—92 BMW/LGC, Fairchild AFB, WA 99011–5320
F45632, SP—AFPRO, The Boeing Company, P.O. Box 3707, Seattle, WA 98124–3707
F47606, G7—440 TAW/LGC, Gen. Billy Mitchell Field, 00 College Ave., Milwaukee, WI 53207–5000
F48608, G9—90 SMW/LGC, F.E. Warren AFB, WY 82001–5320
F49620—AFOSR/PK (C), Bolling AFB, DC 20332–6448
F49642, J1—1100 CNS/CN (AFDW), Operational Contracting, Andrews AFB, DC 20331–5320
F49650, X0—1100 CNS/SP (AFDW), Specialized Contracting, Andrews AFB, DC 20331–5320
F61040, M1—1605 MASW/LGC, APO New York 09406–5320
F61051—USDAO, American Embassy—Brussels, APO New York 09667
F61060—USDAO, American Embassy—Sofia, APO New York 09757
F61080—USDAO, American Consulate General—Prague, APO New York 09757
F61100—USDAO, American Embassy—Copenhagen, APO New York 09170
F61101, T1—Det 1, Space Combat Operations Staff/LGC, APO New York 09170–5000
F61121, RF—USAFE Contracting Office, OL A DET 4, 7000 CONS/LGC, APO New York 09193–5320
F61130—USDAO, American Embassy—Helsinki, APO New York 09664
F61171—USDAO, American Embassy—Athens, APO New York 09223
F61173, N1—USAFE Contracting Region—Greece, Det 7, 7000 CONS/LGC, APO New York 09223–5320
F61180—USDAO, American Consulate General—Budapest, APO New York 09757
F61210—USDAO, American Embassy—Rome, APO New York 09794
F61211, N9—USAFE Contracting Region—Italy, Det 6, 7000 CONS/LGC, APO New York 09293–5320
F61214, U9—USAFE Contracting Office, OL–A Det 6, 7000 CONS/LGC, APO New York 09240–5320
F61220, BZ—AFLC/SCE–PM, Support Center Europe, APO New York 09240–5320
F61230, XV—AFLC SGE/RMP, APO New York 09243–5000
F61250, TP—USAFE Contracting Office, OL–B DET 6, 7000 CONS/LGC, APO New York 09694–5320
F61256—USAFE Contracting Office, OL–C DET 6, 7000 CONS/LGC, APO New York 09161–5320
F61260—USDAO, American Embassy—The Hague, APO New York 09159
F61284—USAFE Contracting Office, OL–B DET 10, 7000 CONS/LGC, APO New York 09669–5320
F61270—USDAO, American Embassy—Oslo, APO New York 09085
F61271, T8—USAFE Contracting Office, OL–A Det 2, 7000 CONS/LGC, APO New York 09085–5320
F61280—USDAO, American Consulate General—Belgrade, APO New York 09757
F61290—USDAO, American Embassy—Lisbon, APO New York 09678
F61301—USDAO, American Embassy—Bucharest, APO New York 09757
F61308, W3—USAFE Contracting Region—Spain, Det 5, 7000 CONS/LGC, APO New York 09283–5320
F61310—USDAO, American Embassy—Madrid, APO New York, NY 09285
F61354, W8—7241 ABG/LGC, APO New York 09224–5320
F61355, T4—HQ TUSLOG/LGC, APO New York 09254–5320
F61358, W9—39 TACG/LGC, APO New York 09289–5320

F61503, UC—435 TAW/LGC, APO New York 09057–5320
F61504, T6—7350 ABG/LGC, APO New York 09611–5320
F61517, UF—USAFE Contracting Region—Eifel, Det 3, 7000 CONS/LGC, APO New York 09132–5320
F61519, R4—USAFE Contracting Region—Mosel, Det 10, 7000 CONS/LGC, APO New York 09109–5320
F61521, UH—USAFE Contracting Office—Rhineland Pfalz, Det 2, 7000 CONS/LGC, APO New York 09012–5320
F61527—USAFE Contracting Office, OL–C Det 10, 7000 CONS/LGC, APO New York 09027–5320
F61546, UJ—USAFE Contracting Center, Det 1, 7000 CONS/LGC, APO New York 09633–5320
F61560, 4C—AFLC Logistics Support Group—Europe, APO New York 09012
F61700, TM—USAFE Contracting Office, OL–A Det 9, 7000 CONS/LGC, APO New York 09150–5320
F61708, UK—USAFE Contracting Region—Thames Valley, Det 9, 7000 CONS/LGC, APO New York 09194–5320
F61712, UM—USAFE Contracting Office, OL–B Det 4, 7000 CONS/LGC, APO New York 09755–5320
F61730, UQ—USAFE Contracting Office, OL–C Det 4, 7000 CONS/LGC, APO New York 09236–5320
F61775, UV—USAFE Contracting Region—UK North, Det 4, 7000 CONS/LGC, APO New York 09179–5320
F61815, T7—USAFE Contracting Office, OL–A Det 10, 7000 CONS/LGC, APO New York 09292–5320
F61817, UW—USAFE Contracting Office, OL–A Det 5, 7000 CONS/LGC, APO New York 09286–5320
F61910, WJ—USAFE Contracting Office, OL–A Det 3, 7000 CONS/LGC, APO New York 09168–5320
F62032, 4D—HQ USMTM/SAS–LGC, APO New York 09616–5320
F62321, RA—313 AD Contracting Center/LGC, APO SF 96239–5320
F62500, QZ—432 TFW Base Contracting Division/LGC, APO SF 96519–5000
F62562, SW—475 ABW Contracting Center/LGC, APO SF 96328–5320
F62600—5 DSCS/LGC, APO SF 96287–5000
F63197, UX—USAFE Contracting Office OL–A Det 7, 7000 CONS/LGC, APO New York 09291–5320
F64133, S9—633ABW/LGC, APO SF 96334–5320
F64605, TN—15 ABW Contracting Center/LGC, Hickam AFB, HI 96853–5320
F64606—Communications/ADPE Branch, 15 ABW Contracting Center, Hickam AFB, HI 96853–5320
F64620, SZ—HQ PACAF/LGC, Hickam AFB, HI 96853–5001
F64719, TK—13 AF Contracting Center/LGC, APO SF 96274–5320
F65501, WF—Det 2, 5000 CONS/LGC, Elmendorf AFB, AK 99506–5001
F65503, WH—Det 1, 5000 CONS/LGC, Eielson AFB, AK 99702–5320
F65517, QN—HQ AAC/LGC, Elmendorf AFB, AK 99506–5001
F66501, R7—USAFSO/LGC, APO Miami 34001–5320

Defense Logistics Agency

DLAH00, YK—Defense Logistics Agency, ADP/Telecommunications Contracting Office, Cameron Station, Alexandria, VA 22304–6100
DLA002, TS—Defense Industrial Plant Equipment Center, Defense Depot Memphis, Memphis, TN 38114–5297
DLA003, TT—Defense Depot Ogden, Ogden, UT 84407–5000
DLA005, TV—Defense Depot Tracy, South Chrisman Road, Tracy, CA 95376–5000
DLA100, TW—Defense Personnel Support Center, Directorate of Clothing & Textiles, 2800 South 20th Street, Philadelphia, PA 19101–8419
DLA120, TX—Defense Personnel Support Center, Directorate of Medical Materiel, 2800 South 20th Street, Philadelphia, PA 19101–8419
DLA13H, UE—Defense Personnel Support Center, Directorate of Subsistence, 2800 South 20th Street, Philadelphia, PA 19101–8419
DLA132, U8—Defense Subsistence Office, Kansas City, 601 E. 12th Street, Room 1768, Kansas City, MO 64106–2895
DLA135, W4—Defense Subsistence Office, New Orleans, 4400 Dauphine Street, New Orleans, LA 70146–5210
DLA136, W5—Defense Subsistence Office, Cheatham, Cheatham Annex, Bldg 113, Williamsburg, VA 23185–0001
DLA137, W6—Defense Subsistence Region, Pacific, 2155 Mariner Square Loop, Alameda, CA 94501–1022
DL139, U6—Defense Subsistence Region, Europe, APO New York, NY 09052
DLA140, W7—Defense Personnel Support Center, (Installation Support), 2800 South 20th Street, Philadelphia, PA 19101–8419
DLA200, X1—Defense Reutilization and Marketing Service, Federal Center, Battle Creek, MI 49017–3092
DLA300, VS—Defense National Stockpile Center, 1745 Jefferson Davis Hwy, Suite 100, Arlington, VA 22202–5000
DLA301, VT—Defense National Stockpile Center, Zone 1 Management Office, Room 19–116, 26 Federal Plaza, New York, NY 10078–5000
DLA302, VU—Defense National Stockpile Center, Zone 2 Management Office, 3200 Sheffield Avenue, Hammond, IN 46327–5000
DLA303, VY—Defense National Stockpile Center, Zone 3 Management Office, 819 Taylor Street, Fort Worth, TX 76102–5000
DLA400, TY—Defense General Supply Center, Richmond, VA 23297–5000
DLA410, XH—Defense General Supply Center, Base Support Branch, Richmond, VA 23297–5000
DLA420, XK—Defense General Supply Center, Educational Supplies Branch Richmond, VA 23297–5000
DLA430—Defense General Supply Center, COPS, Richmond, VA 23297–5000
DLA500, TZ—Defense Industrial Supply Center, 700 Robbins Avenue, Philadelphia, PA 19111–5096
DLA510, W2—Defense Industrial Supply Center, Base Operating Support System (BOSS), 700 Robbins Avenue, Philadelphia, PA 19111–5096
DLA520—Defense Industrial Supply Center, Product Verification Testing (PVT) Acquisitions, 700 Robbins Avenue, Philadelphia, PA 19111–5096
DLA600, UA—Defense Fuel Supply Center, Cameron Station, Alexandria, VA 22304–6160
DLA700, UB—Defense Construction Supply Center, P.O. Box 3990, Columbus, OH 43216–5000
DLA710, YL—Defense Construction Supply Center, Commercial Activities & Services Branch, P.O. Box 16704, Columbus, OH 43216–5010
DLA720, YM—Defense Construction Supply Center, Wood Products Branch, P.O. Box 16704, Columbus, OH 43216–5010
DLA730, WZ—Defense Construction Supply Center, Military Interdepartmental Purchase Request, MIRP Division, P.O. Box 3990, Columbus, OH 43216–5000
DLA740, XJ—Defense Construction Supply Center, High Demand Group (MINI–ICP), P.O. Box 3990, Columbus, OH 43216–5000
DLA750, UB—Defense Construction Supply Center, Contracts Division I, P.O. Box 16704, Columbus, OH 43216–5010
DLA760, UB—Defense Construction Supply Center, Contracts Division II, P.O. Box 16704, Columbus, OH 43216–5010
DLA770, UB—Defense Construction Supply Center, Contracts Division III, P.O. Box 16704, Columbus, OH 43216–5010
DLA8AC, UG—DCMAO, Santa Ana, 34 Civic Center Plaza, P.O. Box C 12700, Santa Ana, CA 92712–2700

DLA8AL, Y1—DCMAO, Atlanta, 805 Walker Street, Marietta, GA 30060–2789
DLA8AM, YQ—DPRO McDonnell Douglas, P.O. Box 5669, Titusville, FL 32783–5669
DLA8AN, Z4—DCMAO Clearwater, 1100 Cleveland Street, Suite 200, Clearwater, FL 34615–4822
DLA8AP, Z5—DPRO Grumman St. Augustine, 5000 US HWY 1, North, P.O. Drawer 3447 St. Augustine, FL 32085–3447
DLA8AQ—DCMC Aircraft Program Management Office, 805 Walker Street, Marietta, GA 30060–2789
DLA8AR—DPRO Michoud, 13800 Old Gentilly Highway, Bldg. 360, P.O. Box 29503, New Orleans LA 70189–0503
DLA8AS—DCMR Atlanta, Termination Settlement Division, 805 Walker Street, Marietta, GA 30060–2789
DLA8AT, UL—DCMR, Atlanta 805 Walker Street Marietta, GA 30060–2789
DLA8AU, QV—DPRO Aerojet, Sacramento, P.O. Box 15846, Sacramento, CA 95852–1846
DLA8BA, UN—DCMAO Birmingham, 2121 8th Avenue North, Room 104, Birmingham, AL 35208–2376
DLA8BC, UP—DCMAO Bridgeport, 555 Lordship Blvd, Stratford, CT 06497–5000
DLA8BF, W1—DPRO Bell Helicopter Textron, P.O. Box 1605, Fort Worth, TX 76101–1605
DLA8BK, Z3—DPRO Boeing Louisiana, Inc., 4300 Legion Street, Lake Charles, LA 70601–5166
DLA8BL, Y4—DPRO Textron Lycoming Division 550 South Main Street, Stratford, CT 06497–7593
DLA8BM, UR—DCMAO Baltimore, 200 Towsontown Blvd., West, Towson, MD 21204–5299
DLA8BN, US—DPRO AT&T Technologies, Inc., 204 Graham Hopedale Road, Burlington, NC 27217–2941
DLA8BP, UT—DCMR Boston, 495 Summer Street, Boston, MA 02210–2184
DLA8BQ, TU—DPRO Boeing Helicopter P.O. Box 16859, Philadelphia, PA 19142–0859
DLA8BR, SP—DPRO Boeing, Seattle, P.O. Box 3707, Seattle, WA 98124–3707
DLA8BS, Y3—DCMAO Boston, 495 Summer Street, Boston, MA 02210–2184
DLA8BT, UU—DPRO Allied Signal, Route 46, Teterboro, NJ 07068–1173
DLA8BU, XC—DCMAO Buffalo, 1103 Federal Building, 111 W. Huron Street, Buffalo, NY 14202–2392
DLA8BV, YT—DPRO General Electric, Lakeside Avenue, Burlington, VT 05401–4984
DLA8BW, RP—DPRO Boeing, Military Airplanes, P.O Box 7730, Wichita, KS 62777–7730
DLA8CD, UZ—DCMAO Cedar Rapids, 1231 Park Place NE, Cedar Rapids, IA 52402–2023
DLA8CH, UY—DCMR Chicago, O'Hare International Airport, P.O. Box 66475, Chicago, IL 60666–0475
DLA8CL, VB—DCMR Cleveland, J. Celebrezze Federal Building, 1240 East Ninth Street, Cleveland, OH 44199–2063
DLA8CM, U5—DPRO BMY Marysville, 13311 Industrial Parkway, Marysville, OH 43040–9599
DLA8CN, Y5—DCMAO Cleveland, J. Celebrezze Federal Building, 1240 East Ninth Street, Cleveland, OH 44199–2064
DLA8CO, X6—DPRO Loral, 1432 Exeter Road, Akron, OH 44306–3893
DLA8CS, VE—DPRO General Dynamics, 5001 Kearny Villa Road, P.O. Box 85375, San Diego, CA 92138–5357
DLA8DA, VG—DCMR Dallas, 1200 Main Street, Dallas, TX 75202–4399
DLA8DB, Z7—DCMAO Dallas, P.O. Box 50500, Dallas, TX 75250–5050
DLA8DC, VH—DCMAO San Diego, 7675 Dagget Street, Suite 200, San Diego, CA 92111–2241
DLA8DD, U4—DPRO Rockwell International, 3200 E Renner Road, MS 462–115, Richardson, TX 75082–2402
DLA8DL, TC—DPRO Douglas, Long Beach, 3855 Lakewood Boulevard, Long Beach, CA 90846–0001
DLA8DM, Y7—DCMAO Detroit, McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2506
DLA8DN, VK—DCMAO, Denver 750 W Hampden Avenue, Suite 250, Englewood, CO 80110–2199
DLA8DP, VL—DCAMO, Dayton, c/o Defense Electronics Supply Center, Building 1, Dayton, OH 45444–5300
DLA8EC, YP—DCMAO, Chicago, O'Hare International Airport, P.O. Box 66911, Chicago, IL 60666–0911
DLA8EG, ST—DPRO, Eaton, AIL DIV, Commack Road, Deer Park, NY 11729–9998
DLA8FL, VN—DPRO, ITT, Defense Group, 500 Washington Ave., Nutley, NJ 07110–3698
DLA8FM, 3N—DPRO, FMC, Minneapolis, 4800 East River Road, Minneapolis, MN 55421–1402
DLA8FS, VR—DPRO, FMC, 1125 Coleman Avenue, P.O. Box 367, San Jose, CA 95103–0367
DLA8FT, Y2—DPRO, Ford Newport Beach, Administration Building, Room 313, Ford Road, Newport Beach, CA 92658–8900
DLA8GB, KK—DPRO, Grumman Aerospace, Bethpage, Bethpage, NY 11714–3531
DLA8GC, SB—DPRO, GE Aircraft Engines, Cincinnati, Mail Drop N–1, Cincinnati, OH 45215–6303
DLA8GD, YB—DPRO, Westinghouse, 18901 Euclid Avenue, Cleveland, OH 44117–1388
DLA8GE, 7Q—DPRO, General Electric, Aircraft Engines, Lynn, 1000 Western Avenue, Lynn, MA 0910–0445
DLA8GF, SL—TH—DPRO, General Dynamics, Fort Worth, P.O. Box 371, Fort Worth, TX 76101–0371
DLA8GG, KD—DPRO, General Dynamics, Pomona, P.O. Box 2505, Pomona, CA 91769–2505
DLA8GL, VV—DPRO, General Electric Company, M/S 9–2 Automated Systems Department, Bedford Street, P.O. Box 588, Burlington, MA 01803–0949
DLA8GM, VW—DCMAO, Grand Rapids, Riverview Center Building, 678 Front Street, NW, Grand Rapids, MI 49504–5352
DLA8GN, VX—DCMAO, Garden City, 605 Stewart Avenue, Garden City, NY 11530–4761
DLA8GP, YF—DPRO, General Dynamics, Lima, 1155 Buckeye Road, Lima, OH 45804–1898
DLA8GQ, SF—DPRO, General Electric, Philadelphia, 230 Goddard Boulevard, King of Prussia, PA 19406–2902
DLA8GR, MO—DPRO, General Electric, Pittsfield, 100 Plastics Avenue, Pittsfield, MA 01201–3696
DLA8GW, Z2—DPRO, General Dynamics, Warren, 28251 Van Dyke Street, Warren, MI 48090–5000
DLA8HB, WA—DPRO, PEMCO Aeroplex, Inc., P.O. Box 12447, Birmingham, AL 35202–2447
DLA8HC, WB—DCMAO, Hartford, 130 Darlin Street, East Hartford, CT 06108–3234
DLA8HD, WC—DPRO, Kearfott/Plessey, 164 Totowa Road, M/S 11A30, Wayne, NJ 07474–0975
DLA8HL, QT—DPRO, Hughes, Los Angeles, P.O. Box 92463, Los Angeles, CA 90009–2463
DLA8HM, WD—DPRO, Honeywell, Honeywell Plaza, 2701 Fourth Avenue, South, Minneapolis, MN 54408–1792
DLA8HN, DPRO, Hercules, Magna, P.O. Box 157, Magna, UT 84044–0157
DLA8HR, Z9—DCMC Residence Hawaii, Federal Building, Room 4115, 300 Ala Moana Boulevard, Honolulu, HI 96813–4908
DLA8HS, XT—DPRO, Hamilton Standard, 1 Hamilton Road, Windsor Locks, CT 06096–0463
DLA8HT, SR—DPRO, Hughes Missile Systems Group, P.O. Box 11337, M/S E–4, Tucson, AZ 85734–1337

DLA8HU, XG—DPRO, Hughes, Building 600, Mail Station C107, P.O. Box 3310, Fullerton, CA 92634–3310
DLA8JJ, WG—DCMAO, Indianapolis, Building 1, Fort Benjamin Harrison, IN 46249–5701
DLA8JK, Z6—DPRO, GMC Allison, 2001 South Tibbs Avenue, Indianapolis, IN 46241–4812
DLA8JL, X2—DPRO, Magnavox, 1616 Directors Row, Fort Wayne, IN 46808–1236
DLA8KA, XY—DPRO, Kaman Aerospace, Old Windsor Road, P.O. Box 2, Bloomfield, CT 06002–0002
DLA8LA, WL—DCMR, Los Angeles, 222 N Sepulveda Boulevard, El Segundo, CA 90245–4320
DLA8LB, WM—DPRO, Litton, 5490A Canoga Ave., Woodland Hills, CA 91367–6619
DLA8LC, Y8—DCMAO, El Segundo, 222 North Sepulveda Boulevard, El Segundo, CA 90245–4320
DLA8LD, WP—DPRO, LTV Aerospace and Defense, P.O. Box 655907, M/S 4915, Dallas, TX 75265–5907
DLA8LE, KZ—DPRO, Lockheed, Burbank, P.O. Box 551, Burbank, CA 91520–1070
DLA8LF, QX—DPRO, Lockheed, Sunnyvale, P.O. Box 3504, Sunnyvale, CA 94088–3504
DLA8LG, RK—DPRO, Lockheed Aeronautical Systems Company—Georgia, 885 Cobb Drive, Marietta, GA 30063–0260
DLA8LS, KH—DPRO, Lockheed Missiles, Sunnyvale, P.O. Box 3504, Sunnyvale, CA 94088–3504
DLA8LT, WN—DPRO, E-Systems, Inc., P.O. Box 379, Greenville, TX 75401–0379
DLA8MB, V1—DPRO, Harris, Melbourne, 1425 Troutman Boulevard, N.E., Palm Bay, FL 32905–4102
DLA8MC, V2—DPRO, Rockwell International-MSD, P.O. Box 1357, Duluth, GA 30136–4099
DLA8MD, RE—DPRO, Martin Marietta, Denver, P.O. Box 179, Denver, CO 80201–0179
DLA8MF, QF—DCMAO, Puerto Rico, Box DLA N S G A, FPO Miami, FL 34053–0007
DLA8MH, X9—DPRO, McDonnell Douglas, Space Systems Company, 5301 Bolsa Avenue, Huntington Beach, CA 92647–2048
DLA8ML, TR—DPRO, McDonnell Douglas Helicopter, 5000 East McDowell Road, Mesa, AZ 85025–9797
DLA8MM, XL—DPRO, Martin Marietta, Orlando, P.O. Box 55837, Mail Point 49, Orlando, FL 32855–5837
DLA8MN, WQ—DCMAO, Twin Cities, 2305 Ford Parkway, St. Paul, MN 55116–1893
DLA8MS, JZ—DPRO, McDonnell Douglas, St. Louis, P.O. Box 516, St. Louis, MO 63166–0516
DLA8MW, WR—DCMAO, Milwaukee, H.S. Reuss Federal Building, Suite 340, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2282
DLA8NC, WV—DCMAO, Ottawa, P.O. Box 3416, Station D, Ottawa, On Canada K1P 6L4
DLA8NF, WW—DCMAO, Orlando, 3555 Maguire Boulevard, Orlando, FL 32803–3726
DLA8NH, YS—DPRO; :Lockheed Sanders, Inc. Daniel Webster Highway, South, P.O. Box 868, Nashua, NH 03061–0868
DLA8NJ, WT—DCMAO, Springfield, 240 Route 22, Springfield, NJ 07081–3170
DLA8NK, QR—DPRO, Northrop, Hawthorne, One Northrop Avenue, Hawthorne, CA 90250–3296
DLA8NL, Z1—DCMAO, New Orleans, P.O. Box 29283, New Orleans, LA 70189–0283
DLA8NM, YR—DCASPRO, IBM, Route 17C, Owego, NY 13827–1298
DLA8NN, YN—DPRO, Harris, 6801 Jericho Turnpike, Syosset, NY 11791–4465
DLA8NY, WU—DCMR, New York, 201 Varick Street, New York, NY 10014–4811
DLA8NZ, Y9—DCMAO, New York, 201 Varick Street, New York, NY 10014–4811
DLA8PA, WY—DCMAO, Phoenix, The Monroe School, 215 N 7th Street, Phoenix, AZ 85034–1012
DLA8PE, T5—DPRO, Pratt & Whitney, East Hartford, 400 Main Street, East Hartford, CT 06108–0969
DLA8PH, XA—DCMR, Philadelphia, P.O. Box 7478, Philadelphia, PA 19101–7478
DLA8PL, X3—DCMAO, Philadelphia, P.O. Box 7699, Philadelphia, PA 19101–7699
DLA8PM, XB—DPRO, IBM Manassas, 9500 Godwin Drive, Manassas, VA 22110–4198
DLA8PP, XD—DCMAO, Pittsburgh, 1612 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222–4190
DLA8PR, X7—DRPO, GE Aerospace, Marne Highway and Burton Landing Road, Moorestown, NJ 08057–3095
DLA8PW, T2—DPRO, Pratt & Whitney, West Palm Beach, P.O. Box 109600, West Palm Beach, FL 33410–9600
DLA8RA, 7H—DCMC Residency, Annapolis, P.O. Box 1488, Annapolis, MD 21404–1488
DLA8RB, XF—DPRO, Raytheon, Spencer Laboratory, Wayside Ave, Burlington, MA 01803–0901
DLA8RC, RY—DPRO, Rockwell, Canoga Park, 6633 Canoga Avenue, Canoga Park, CA 91303–2790
DLA8RD, RB—DPRO, Rockwell, Anaheim, 3370 Miraloma Avenue M/SAB02A, Anaheim, CA 92803–3110
DLA8RL, QS—DPRO, Rockwell, Los Angeles, P.O. Box 92098, Los Angeles, CA 0009–2095
DLA8RP, XM—DCMAO, Reading, 45 South Front Street, Reading, PA 19602–1094
DLA8SA, XN—DCMAO, San Antonio, 615 East Houston, P.O. Box 1040, San Antonio, TX 78294–1040
DLA8SD, X8—DPRO, Sundstrand, P.O. Box 5066, Rockford, IL 61125–0066
DLA8SF, XR—DCMAO, San Francisco, 1250 Bayhill Drive, San Bruno, CA 94066–3070
DLA8SK, XQ—DPRO, Link Flight Simulation, Kirkwood Plant, Binghamton, NY 13902–1237
DLA8SL, XS—DCMR, St. Louis, 1222 Spruce Street, St. Louis, MO 63103–2811
DLA8SN, XU—DCMAO, Syracuse, 615 Erie Boulevard, West, Syracuse, NY 13204–2408
DLA8SS, LF—DPRO, UTC Sikorsky Aircraft Division, Stratford, CT 06497–7553
DLA8ST, X5—DCMAO, St. Louis, 1222 Spruce Street, St. Louis, MO 63103–2812
DLA8SW, XW—DCMAO, Seattle, Building 5D, Naval Station Puget Sound, Seattle, WA 98115–5010
DLA8SY, XX—DPRO, GTE Government Systems Corporation, 200 First Ave, Needham, MA 02194–9123
DLA8TB, R6—DPRO, Thiokol, P.O. Box 524, Mail Stop X–10, Brigham City, UT 84302–0524
DLA8TE, XZ—DPRO, Texas Instruments, Inc. P.O. Box 660246, M/S 256, Dallas, TX 75266–0246
DLA8TO, U3—DPRO, McDonnell Douglas/Rockwell, 2000 North Memorial Drive, Tulsa, OK 74115–3833
DLA8TR, S6—DPRO, TRW, Redondo Beach, One Space Park, Redondo Beach, CA 90278–1078
DLA8TW, SQ—DPRO, Textron Defense Systems, 201 Lowell Street, Wilmington, MA 01887–2941
DLA8UG, NH—DPRO, Unisys, Great Neck, Long Island, Great Neck, NY 11020–7001
DLA8VC, YC—DCMAO, Van Nuys, 6230 Van Nuys Boulevard, Van Vuys, CA 91401–2713
DLA8WB, S2—DPRO, Westinghouse Electric, Baltimore, P.O. Box 1693, M/S 1265, Baltimore, MD 21203–1693
DLA8WK, YD—DCMAO, Wichita U.S. Courthouse, Suite B–34, 401 North Market, Wichita, KS 67202–2095
DLA8WR, YH—DPRO, Williams International, c/o Williams International Corporation, 2280 West Maple Road, Walled Lake, MI 48088–0200

DLA8WS, YG—DPRO, Westinghouse, 401 East Hendy Avenue, P.O. Box 3499, M/S 11-7, Sunnyvale, CA 94088-3499
DLA8WT, Z8—DPRO, Grumman Aerospace Corporation, P.O. Box 9015, Stuart, FL 33495-9015
DLA8WU, VA—DPRO, Northrop, 600 Hicks Rd, Rolling Meadows, IL 60008-1098
DLA900, UD—Defense Electronics Supply Center, 1507 Wilmington Pike, Dayton, OH 45444-5000
DLA910, U7—Defense Electronics Supply Center, Base Contracting Section, 1507 Wilmington Pike, Dayton, OH 45444-5000

Defense Communications Agency

DCA100, VC—Defense Communications Agency (ZD10), Contract Management Division, Attn: PL, Washington, DC 20305-2000
DCA200, VP—DECCO (ZD11), Attn: RGC, Scott AFB, IL 62225-8300
DCA400—DECCO-Europe (ZD13), Attn: RS, APO New York, NY 09136-5000

Defense Mapping Agency

DMA600, BQ—Defense Mapping Agency System Center (ZD40), 12100 Sunset Hills Road, Suite 200, Reston, VA 22090-3207
DMA650—Defense Mapping Agency (ZD43), Hydrographic/Topographic Center "SXO", Building 4011, Ft. Sam Houston, TX 78234-5000
DMA700, 8Y—Defense Mapping Agency (ZD41), Aerospace Center, 3200 South Second Street, Attn: AQI, St. Louis, MO 63118-3399
DMA800, YZ—Defense Mapping Agency (ZD42), Hydrographic/Topographic Center AQ, 6500 Brookes Lane, Washington, DC 20315-0030

Defense Nuclear Agency

DNA001, 8Z—Defense Nuclear Agency (ZD30), Headquarters, 6801 Telegraph Road, Attn: AM, Washington, DC 22310
DNA002, 0N—Defense Nuclear Agency (ZD31), Field Command, Attn: Office of Procurement, Kirtland AFB, NM 87115-5000
DNA004—DNA Armed Forces Radiobiology (ZD32), Research Institute, Attn: Building 42, Bethesda, MD 20814-5145

Miscellaneous Defense Activities

MDA902—Armed Forces Radio and Television Service (ZD02), 10888 La Tuna Canyon Road, Sun Valley, CA 91352-2058
MDA903, F7—Defense Supply Service-Washington (ZD03), Room ID245, The Pentagon, Washington, DC 20310-5200
MDA904, BE—Maryland Procurement Office (ZD04), 9800 Savage Road, Attn: L411, Ft. George G. Meade, MD 20755-6000
MDA905, B4—Uniformed Services University of the (ZD05), Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814-4799
MDA906—Office for the Civilian Health & Medical (ZD06), Program of the Uniformed Services (CHAMPUS) Attn: Contract Management, Aurora, CO 80045-6900
MDA907—Purchasing and Contracting Office (ZD07), Menwith Hill Station, APO New York 09210
MDA908, 2X—Virginia Contracting Activity (ZD50), P.O. Box 46563, Attn: RSQ, Washington, DC 20050-6563
MDA946—WHS Contracting Office (ZD46), Real Estate/Facilities Directorate, The Pentagon, Room 2E174, Washington, DC 20301-1155
MDA970, ZL—Defense Evaluation Support Activity (ZD70), Building 20451, Attn: DESA-PD, Kirtland AFB, NM 87117-5000
MDA972, WS—DARPA Contract Management Office (ZD72), 1400 Wilson Blvd., Arlington, VA 22209-2309

On-Site Inspection Agency

0S1A01—On-Site Inspection Agency (ZD74), Washington/Dulles International Airport, Washington, DC 20041-0498

Strategic Defense Initiative Organization

SDIO84—Strategic Defense Initiative Organization (ZD60), The Pentagon, Room 1E1019, Attn: SDIO/CT (Mrs. Wilhelm), Washington, DC 20301-7100

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federal register

Wednesday,
November 21, 1990

Part III

Department of Labor

Employment and Training Administration

Revised Interim Operating Instructions for Implementing the 1988 Amendments to Trade Adjustment Assistance for Workers Program; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Revised Interim Operating Instructions for Implementing the 1988 Amendments to Trade Adjustment Assistance for Workers Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of general administration letter No. 15–90 and training and employment information notice No. 13–90.

SUMMARY: The Department of Labor (Department) publishes this notice and General Administration Letter (GAL) No. 15–90 and Training and Employment Information Notice (TEIN) No. 13–90 to inform the States and cooperating State agencies of the 1988 Amendments to the Trade Act of 1974 which affect the program of trade adjustment assistance for workers, and which affect the administration of the program by the States pursuant to their agreements with the Secretary of Labor. In GAL 15–90 and TEIN 13–90, the Department announces significant changes to the previously issued operating instructions for implementing the 1988 Amendments. With the issuance of GAL 15–90, the Department rescinds GAL 7–88 and Changes 1 and 2 to GAL 7–88, TEIN 6–88 and Change 1 to TEIN 6–88, and reissues all operating instructions stemming from the Omnibus Trade and Competitiveness Act of 1988 (OTCA) amendments to the Trade Adjustment Assistance (TAA) for Workers Program.

The operating instructions in GAL 15–90 constitute the controlling guidance for the States and cooperating State agencies on the 1988 Amendments, and are effective with respect to all determinations, redeterminations, and decisions made by the States and the cooperating State agencies after August 21, 1990.

GAL 15–90 (dated August 21, 1990) and TEIN 13–90 (dated September 13, 1990) inform the States and cooperating State agencies of the new interpretations of the amendments to the TAA Program in the OTCA and furnish operating instructions which supersede the operating instructions previously furnished to the States and the cooperating State agencies. GAL 15–90 and TEIN 13–90 focus primarily on the application of the new eligibility period for basic Trade Readjustment Allowances (TRA) and center on the effective date provisions of the OCTA Section 1430, subsections (a) and (g). GAL 15–90 also provides revised instructions for application of the 210-day requirement relating to additional TRA benefits, a revised interpretation on counting days of a break in training, and instructions for the 1986 and 1990 Gramm-Rudman-Hollings sequester reductions to TRA payments.

FOR FURTHER INFORMATION CONTACT: Marvin M. Fooks, Director, Office of Trade Adjustment Assistance. Telephone: (202) 523–0756; this is not a toll free telephone number.

SUPPLEMENTARY INFORMATION: On August 23, 1988, the President signed into law the "Omnibus Trade and Competitiveness Act of 1988", (Pub. L. 100–418). Part 3—Trade Adjustment Assistance, of subtitle D of title I of the Act concerns trade adjustment assistance for workers and firms, and GAL 15–90 published with this notice concerns only the provisions affecting adjustment assistance for workers. Most of the provisions of part 3 affecting the program of trade adjustment assistance for workers are in the form of amendments to chapter 2 of title II of the Trade Act of 1974. Most of these provisions were effective on the date of enactment, that is, on August 23, 1988. Several provisions were effective 30 or 90 days after date of enactment. This delayed effectiveness was to allow time for planning and preparation so that the provisions could be implemented on their effective dates.

There are also other provisions of the OTCA affecting workers which do not amend existing statutory law, including the provisions on oil and gas workers separated after September 30, 1985, and the provisions on eligibility for TRA of workers totally separated from adversely affected employment during the period which began on August 13, 1981, and ended on April 7, 1986.

The 1988 Amendments must be given effect as of the respective effective dates set out in the OTCA and contained in GAL 15–90 published with this notice.

The 1988 Amendments supersede the statute in effect prior to these amendments and affect the regulations at 20 CFR part 617 and 29 CFR part 90 currently in effect, to the extent that such prior law and regulations are inconsistent with the 1988 Amendments. Pending the issuance of final regulations implementing the provisions of the 1988 Amendments, GAL 15–90, published with this notice, expresses the Department's position on the terms of the amendments and their respective meanings, and constitutes controlling operating instructions to the States and cooperating State agencies.

The Department published for comment proposed regulations on November 30, 1988, at 53 FR 48474 (affecting 20 CFR part 617) that would implement the provisions of part 3 relating to worker adjustment assistance. The final regulations will be issued soon. In the meantime, it is essential to inform the States and the cooperating State agencies of the terms of the provisions and of the Department's instructions concerning the proper implementation of these provisions.

GAL 15–90, TEIN 13–90, and this notice notify the States and cooperating State agencies that the provisions of part 3 on worker adjustment assistance supersede the prior provisions of chapter 2 of title II of the Trade Act of 1974 to the extent that they are inconsistent with or amend or replace the provisions of the Trade Act. Notice is also given that the provisions of part 3 also affect the provisions of the current regulations implementing chapter 2 of title II of the Trade Act of 1974, to the extent that the provisions of such regulations are inconsistent with the provisions of part 3.

GAL 15–90 and TEIN 13–90 supersede all TAA program operating instructions previously issued as GAL 7–88 and Changes 1 and 2 to GAL 7–88, and TEIN 6–88 and Change 1 to TEIN 6–88. The operating instructions in GAL 15–90 (including Attachments A and B) and TEIN 13–90 are issued to the States and the cooperating State agencies as guidance provided by the Department of Labor in its role as the principal in the TAA Program. As agents of the United States, the States and the cooperating State agencies may not vary from the operating instructions in this document (or any subsequent or supplemental operating instructions) without the prior approval of the Department of Labor. Pending the issuance of final regulations implementing the provisions of part 3, therefore, after the date of GAL 15–90 the operating instructions (and any subsequent and supplemental operating instructions) shall constitute the controlling guidance for the States and the cooperating State agencies in implementing and administering the provisions of part 3 pursuant to the agreements between the States and the Secretary of Labor under section 239 of the Trade Act of 1974. The provisions of 20 CFR 617.52(c) shall apply regarding the carrying out of the operating instructions in this document and any subsequent or supplemental operating instructions, including GAL 6–88 and the prior operating instructions for the periods they were in effect.

For the reasons set out above, GAL No. 15–90 is published below, together with TEIN No. 13–90.

Signed at Washington, DC, on November 13, 1990.

Roberts T. Jones,

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL TWT
	DATE September 13, 1990

TRAINING AND EMPLOYMENT INFORMATION NOTICE NO. 13-90

TO : ALL STATE JTPA LIAISONS, STATE WORKER ADJUSTMENT LIAISONS, AND STATE WAGNER-PEYSER ADMINISTERING AGENCIES

FROM : ROBERTS T. JONES
Assistant Secretary of Labor

SUBJECT : Operating Instructions for Implementing the Omnibus Trade and Competitiveness Act of 1988 Amendments to the Trade Adjustment Assistance Program, Including Significant Changes Affecting Basic and Additional TRA Entitlement.

1. Purpose:

A. To inform the State JTPA Liaisons, State Worker Adjustment Liaisons, and State Wagner-Peyser Administering Agencies of significant changes to the operating instructions for implementing the 1988 amendments affecting the Trade Adjustment Assistance for Workers (TAA) program.

B. To inform States of the rescission of GAL 7-88 and Changes 1 and 2 to GAL 7-88 and announce the reissuance, as a single superseding document (GAL 15-90), of all operating instructions stemming from the Omnibus Trade and Competitiveness Act of 1988 (OTCA) amendments to the Trade Adjustment Assistance (TAA) for Workers Program.

2. References. The Trade Act of 1974; Part 3 of Subtitle D of Title I of the OTCA of 1988 (Pub. L. 100-418); Section 13009(d) of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (Pub L. 99-272); regulations at 20 CFR Part 617; the proposed rule published on November 30, 1988, at 53 Fed. Reg. 48474; GAL 7-88, and GAL 7-88, Changes 1 and 2; TEIN 6-88, and TEIN 6-88, Change 1; and GAL 6-88.

3. Background. General Administration Letter (GAL) No. 7-88 was issued to all State employment security agencies on September 12, 1988, and published in the Federal Register on September 16, 1988 (53 FR 36180); TEIN 6-88 which transmitted the GAL to other State officials on September 12, 1988, also was published in the

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Federal Register on September 16, 1988 (53 FR 36213). Change 1 to GAL 7-88 was issued on December 9, 1988, and published in the Federal Register on December 21, 1988 (53 FR 51522; corrected at 54 FR 502). Change 1 to TEIN 6-88 was issued on December 9, 1988, and also published in the Federal Register on December 21, 1988 (53 FR 51523; corrected at 54 FR 502). GAL 7-88, Change 2 (not published in the Federal Register), was issued on May 22, 1989.

GAL 7-88 and Changes 1 and 2 thereto, were rescinded by GAL 15-90, which was issued on August 21, 1990. GAL 15-90, and the preamble accompanying the publication of the GAL and this TEIN in the Federal Register furnish information concerning the provisions of part 3 of subtitle D of title I of the "Omnibus Trade and Competitiveness Act of 1988" which affect the trade adjustment assistance program for workers (TAA Program) established under chapter 2 of title II of the Trade Act of 1974. With regard to each of those provisions of part 3 (affecting workers) of the 1988 Amendments, the GAL and preamble set forth revised operating instructions of the Department of Labor to guide the States in implementing those provisions, and include the Department's interpretation of the 1988 Amendments which affect the TAA Program.

In GAL 15-90, the Department announces material changes in the interpretations of the 1988 Amendments, primarily as the amendments relate to the application of the new eligibility period for basic TRA, but also as related to other provisions of the OTCA and the Trade Act of 1974. The revised operating instructions in GAL 15-90 thus supersede the operating instructions in GAL 7-88 and GAL 7-88, Changes 1 and 2. GAL 7-88 and Changes 1 and 2 to GAL 7-88, are rescinded, as are TEIN 6-88 and Change 1 to TEIN 6-88.

As the operating instructions are also important in furnishing guidance to the State JTPA and Worker Adjustment Agencies and Wagner-Peyser Administering Agencies, GAL 15-90 is forwarded as an attachment to this Information Notice and shall constitute binding operating instructions for such administering and other cooperating State agencies.

4. *Attachment.* General Administration Letter No. 15-90.

BILLING CODE 4510-30-M

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL TWT
	DATE August 21, 1990

DIRECTIVE : GENERAL ADMINISTRATION LETTER NO. 15-90

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD [illegible]
Administrator
for Regional Management

SUBJECT : Operating Instructions for Implementing the Omnibus Trade and Competitiveness Act of 1988 Amendments to the Trade Adjustment Assistance Program, Including Significant Changes Affecting Basic and Additional TRA Entitlement

1. Purpose:

A. To rescind GAL 7-88 and Changes 1 and 2 to GAL 7-88 and reissue as a single document all operating instructions stemming from the Omnibus Trade and Competitiveness Act of 1988 (OTCA) amendments to the Trade Adjustment Assistance (TAA) for Workers Program.

B. To inform the States and cooperating State agencies of new interpretations of the amendments to the TAA Program in the OTCA, and to furnish significantly revised (in parts) operating instructions that supersede the operating instructions previously furnished to the States and State agencies.

2. References. The "Omnibus Trade and Competitiveness Act of 1988" (Pub. L. 100-418), approved on August 23, 1988. The program of trade adjustment assistance for workers established by Chapter 2 of Title II of the Trade Act of 1974 is referred to as the "TAA Program". Chapter 2 of Title II of the Trade Act of 1974 may be referred to as the Trade Act of 1974 or as simply the Trade Act. The Omnibus Trade and Competitiveness Act of 1988 is referred to as the "OTCA". Part 3 of Subtitle D of Title I of the OTCA is referred to as "Part 3". The provisions of Part 3 affecting the TAA Program are referred to as the "1988 Amendments". Trade readjustment allowances are referred to as "TRA". All

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GAL 7-88, and Changes 1 and 2 to GAL 7-88	December 31, 1991

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references to 20 CFR part 617 refer to the regulations in the Code of Federal Regulations, as amended by the regulations published on August 24, 1988, at 53 FR 32344. Also, section 13009(d) of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (Pub. L. 99-272); regulations at 20 CFR part 617; the proposed rule published on November 30, 1988, at 53 FR 48474; GAL 7-88, and GAL 7-88, Changes 1 and 2; TEIN 6-88, and TEIN 6-88, Change 1; GAL 6-88 (53 FR 35390); and UIPL 19-90. These references are used throughout this document.

General Administration Letter (GAL) No. 7-88 was issued to all State employment security agencies on September 12, 1988, and published in the **Federal Register** on September 16, 1988 (53 FR 36180); TEIN 6-88 which transmitted the GAL to other State officials on September 12, 1988, also was published in the **Federal Register** on September 16, 1988 (53 FR 36213). Change 1 to GAL 7-88 was issued on December 9, 1988, and published in the **Federal Register** on December 21, 1988 (53 FR 51522; corrected at 54 FR 502). Change 1 to TEIN 6-88 was issued on December 9, 1988, and also published in the **Federal Register** on December 21, 1988 (53 FR 51523; corrected at 54 FR 502). GAL 7-88, Change 2, was issued on May 22, 1989.

3. *Background.* This document furnishes information concerning the provisions of part 3 of subtitle D of title I of the "Omnibus Trade and Competitiveness Act of 1988" which affects the trade adjustment assistance (TAA) program for workers established under chapter 2 of title II of the Trade Act of 1974. With regard to each of those provisions of the 1988 Amendments, this document also sets forth operating instructions of the Department of Labor to guide the States in implementing those provisions, and which include the Department's interpretation of the 1988 Amendments which affect the TAA Program.

The provisions of part 3 supersede the prior provisions of the Trade Act, and the regulations implementing the TAA Program, to the extent that the provisions of part 3 are inconsistent with the Trade Act and the implementing regulations. Therefore, the provisions of part 3 must be given effect as of their respective effective dates as set forth in this document. In no case may any determinations of entitlement to TAA Program benefits that are affected by the 1988 Amendments be based upon the prior law or the regulations implementing the prior law. Note, however, that job search and relocation allowances are not affected by the 1988 Amendments.

The operating instructions in this document (including attachments A and B) are issued to the States and the cooperating State agencies as guidance provided by the Department of Labor in its role as the principal in the TAA Program. As agents of the United States, the States and the cooperating State agencies may not vary from the operating instructions in this document (or any subsequent or supplemental operating instructions) without the prior approval of the Department of Labor. Pending the issuance of final regulations implementing the provisions of part 3, therefore, after the date of this GAL, the operating instructions in this document (and any subsequent and supplemental operating instructions) shall constitute the controlling guidance for the States and the cooperating State agencies in implementing and administering the provisions of part 3 pursuant to the agreements between the States and the Secretary of Labor under section 239 of the Trade Act of 1974. The provisions of 20 CFR 617.52(c) shall apply regarding the carrying out of the operating instructions in this document and any subsequent or supplemental operating instructions, including GAL 6-88 and the prior operating instructions for the periods they were in effect.

Section 1430(a) of the OTCA provides that the 1988 Amendments in sections 1421 through 1429 of the OTCA shall take effect on the date of enactment of the OTCA (August 23, 1988), except as otherwise provided by section 1430. In conjunction with the development of final regulations implementing the 1988 Amendments, the Department has determined that the previously published interpretations of the effective date provisions in the proposed rule published on November 30, 1988, are in error. These erroneous interpretations are also contained in the operating instructions in GAL 7-88, and thus necessitates the issuance of revised operating instructions in this GAL (attachment A, sections A.2., E.4., F.1., and F.2.), which will also be published in the **Federal Register**.

The Department has also reconsidered its interpretation of section 233(f) of the Trade Act on counting days of breaks in training for the purpose of determining eligibility for trade readjustment allowances (TRA) during such breaks and is hereby issuing revised instructions for making such calculations. (Attachment A, section E.3.).

Except for the application of the Gramm-Rudman-Hollings 1986 sequester reductions to retroactive TRA payments under section A.2. of attachment A (Oil and Gas Workers—Retroactive), the remaining subsections of section 4 of GAL 7-88 are reprinted in attachment A to this GAL without substantive change. However, errors in the operating instructions previously issued as GAL 7-88 and Changes 1 and 2 to GAL 7-88 have been corrected and other minor changes have been made for clarification.

Special note should be taken of the Gramm-Rudman-Hollings (G-R-H) sequester reductions applicable to TRA payments from Fiscal Year (FY) 1990 funds, as explained in guidance previously furnished to the States including UIPL 19-90. For weeks of unemployment beginning on or after October 1, 1989 and for the remainder of FY 1990, the weekly benefit amount of TRA payable to each worker is to be reduced for both current and new claimsby the 1.4 percent G-R-H sequester reduction. After computing the reduction, the resulting weekly payment, if not a whole dollar amount, is to be rounded as provided in the applicable State law for rounding weekly payments of regular unemployment insurance (UI). Note, also, that the 1990 sequester reduction, as distinguished from the 1986 sequester reduction, also applies to worker's TRA maximum benefit amount (MBA).

In addition, GAL 7-88 made no mention of the 1986 G-R-H sequester reduction of 4.3 percent applicable to retroactive TRA payments to oil and gas workers under section 1421(a)(1)(B) of the OTCA. In this GAL, this omission is corrected and, further, it is made clear that the 1986 sequester reduction is applicable as well to any other workers who may in the future become entitled to retroactive TRA payments as a result of the new interpretations announced in this GAL.

a. *New interpretations of sections 1430 (a) and (g) of the OTCA.* In this GAL, the Department announces material changes in the interpretations of the 1988 Amendments, primarily as the amendments relate to the application of the new eligibility period for basic TRA but also as related to other provisions of the OTCA and the Trade Act of 1974.

The Department's new interpretations center on the effective date provisions of subsections (a) and (g) of section 1430 of the OTCA. Section 1430(a) provides that the amendments in sections 1421 through 1429 of the OTCA shall take effect on the date of enactment of the OTCA, except as otherwise provided by section 1430. In the case of the new

eligibility period for basic TRA in section 233(a)(2) of the Trade Act (as amended by section 1425(a) of the OTCA). Section 1430(a) is hereby interpreted to apply to all decisions (i.e., all determinations, redeterminations, and decisions on appeals) made on or after August 23, 1988.

Section 1430(g) provides that the amendment made by section 1425(a) of the OTCA (to section 233(a)(2) of the Act) shall not apply with respect to any total separation that occurred before August 23, 1988, if the application of the amendment with respect to such separation would reduce the eligibility period the worker to such separation would reduce the eligibility period the worker would have but for such amendment. Section 1430(g) is hereby interpreted literally as applying only to total separations that occurred before August 23, 1988, and the limitation in section 1430(g) thus applies only to such prior separations. It also means, therefore, that if the application of amended section 233(a)(2) to a total separation prior to August 23, 1988, would result in extending the worker's eligibility period, the amended section 233(a)(2) shall be applied.

This new interpretation of subsection (a) of section 1430 of the OTCA is supported by the analysis and construction placed on section 1430(g). Moreover, this interpretation is consistent with the general principle of law enunciated in the decision of the United States Supreme Court in the case of *Bradley* v. *School Board of the City of Richmond*, 416 U.S. 696 (1974). In that case the U.S.S.C. observed that—

> * * * A court is to apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary.

This rule is hereafter referred to as the law-in-effect rule.

The Department accordingly has concluded that amended section 233(a)(2) should be applied to all decisions rendered on or after August 23, 1988, regardless of whether they involve initial determinations of TRA eligibility, redeterminations, or decisions on appeal. The Department has determined that, for purposes of the law-in-effect rule, the application of amended section 233(a)(2) to redeterminations or decisions on appeal will not result in "manifest injustice," because such application does not "infringe upon or deprive a person of a right that had [previously] matured or become unconditional." *Bradley*, at 720. See, also, *Bennett* v. *New Jersey*, 470 U.S. 632, 638–41 (1985) (explaining *Bradley*).

These new interpretations of sections 1430 (a) and (g), and the law-in-effect rule, shall be given effect as sets forth below in section 4 and in attachments A and B of this GAL. As set forth below and in attachments A and B, the new interpretation of section 1430(a) and the law-in-effect rule also have application in cases in addition to the eligibility period for basic TRA.

b. *Revised interpretation on counting days of a break in training (section 233(f) of the Trade Act).* In GAL 7–88, and Change 1 to GAL 7–88, the Department interpreted section 233(f) to exclude certain holidays in counting the days of a break in training. It was unclear, however whether this count was intended to apply to both State and National holidays, and as a result many questions arose as to whether the announced interpretation was too narrowly focused. The Department has reconsidered and sets forth in section E.3 of attachment A and section 3 of attachment B of this GAL a change in regard to counting holidays for the purpose of determining whether a break in training exceeds 14 days within the meaning of section 233(f) of the Trade Act. In addition, as a condition of TRA eligibility during the break, the worker shall be required to participate in the training after the break ends. This will assure that the purpose of section 233(f) is carried out. Consequently, after the date of this GAL State agencies will apply the revised section E.3. of attachment A in all decisions under the provisions of section 233(f) of the Trade Act.

c. *New interpretation of the 210-day requirement published in GAL 7–88 and change 2 to GAL 7–88 (Section 233(b) of the Trade Act.)* The Department's new interpretation of section 1430(a) and the law-in-effect rule have an effect on the 210-day requirement in section 233(b) of the Trade Act. There is a direct relationship between the basic TRA eligibility period and the time limitation in section 233(b) in order to qualify for additional TRA. Therefore, it is consistent to apply the new interpretation of sections 1430(a) and the law-in-effect rule as affecting the provisions of section 233(b) of the Trade Act. Consequently, after the date of this GAL State agencies will apply the revised section E.4. of attachment A in all decisions under provisions of section 233(b) of the Trade Act.

d. *Application of new interpretations.* A full explanation of the effects of the new interpretations in a., b., and c. above, and their application to individual cases, is set forth in the following section 4. and attachments A and B of this GAL. Although the new interpretations relate back to the effective dates of the 1988 Amendments in the OTCA, the revised operating instructions in this GAL shall be applied in individual cases solely in decisions made after the date of this GAL. The term "decision" as used herein is defined in section 4., below. State authority and responsibility to make redeterminations, or seek remedial action in cases of appeal, is addressed in section 4. of this GAL.

The revised operating instructions in this GAL (including attachments A and B) supersede the operating instructions in GAL 7–88 and GAL 7–88, Changes 1 and 2.

4. *Determinations, redeterminations, and decisions on appeals.* Under the revised operating instructions in attachment A, all decisions on claims for TRA and other TAA program benefits are required to be based upon the law in effect at the time any such decision is made. For this purpose, the term "decision" means any determination or redetermination of a prior determination, as referred to in 20 CFR 617.50, or any decision by a referee, appeal board, or a State court on the appeal of a determination or redetermination, as referred to in 20 CFR 617.51.

Determinations shall be made in accordance with the applicable State law, the amended Trade Act of 1974 and the operating instructions and effective regulations issued by the Department, including 20 CFR 617.50 (a), (b), and (d), except that, as noted in Subsection d., below, determinations with respect to overpayments shall be made strictly in accordance with section 243 of the Trade Act and 20 CFR 617.55, rather than State law.

Redeterminations shall be made in accordance with the applicable State law, the amended Trade Act of 1974, and the operating instructions and effective regulations issued by the Department, including 20 CFR 617.50 (c) and (d). Paragraphs (e), (f), and (g) of 20 CFR 617.50 also apply to determinations and redeterminations of claims for TRA and other TAA program benefits, and all overpayment determinations. Decisions by referees, appeal boards, and State courts, on appeals of any such determination or redetermination, also are required to be in accord with the amended Trade Act of 1974 and the operating instructions and effective regulations issued by the Department, 20 CFR 617.51.

Also applicable is the "Lopez Rule" in 20 CFR 617.52(c).

All decisions (as defined above) on claims for TRA or other TAA program benefits, which are made by the State agencies and the State appellate authorities after the date of this GAL, shall conform to the operating instructions in this GAL, including attachments A and B. See section 5., below.

These rules on decisions made after the date of this GAL shall be applied as follows.

a. *Determinations.* Determinations of claims for TRA and other TAA program benefits shall continue to be made in the established manner, applying the applicable State law, where applicable, on procedural matters, and on substantive matters applying the amended Trade Act of 1974 and the controlling operating instructions and effective regulations issued by the Department, including paragraphs (a), (b), (d), (e), (f), and (g) of 20 CFR 617.50. However, determinations with respect to overpayments shall be made in accordance with section 243 of the Trade Act, 20 CFR 617.55, and subsection d. below, rather than State law.

b. *Redeterminations.* Redeterminations of claims for TRA and other TAA program benefits also shall continue to be made in the established manner, applying the applicable State law, where applicable, on procedural matters, and on substantive matters applying the amended Trade Act of 1974 and the controlling operating instructions and effective regulations issued by the Department, including paragraphs (c), (d), (e), (f), and (g) of 20 CFR 617.50. Any redetermination of a prior determination shall be undertaken by a State or State agency solely pursuant to the authority in 20 CFR 617.50(c) and the applicable State UI law as it is applied in the case of regular State UI. Such provisions of the State UI law shall be the sole criterion in determining whether the State or the State agency has the authority to make a redetermination in any case. For this purpose, the State UI law includes judicial decisions of the courts of the State in comparable UI cases as well as State statutory provisions, and thus is the same as the "State law" which is relevant for conformity and compliance purposes under title III of the Social Security Act and the Federal Unemployment Tax Act. In other words, the authority a State agency has under State law to make redeterminations of a State UI claim under similar circumstances (*i.e.*, upon issuance of a self-initiated reinterpretation of a State law), and the time limits on such authority, is the authority a State agency has to make redeterminations of TAA claims due to the new interpretations contained in this GAL. No departure from these rules shall be undertaken in any circumstances without the prior approval of the Department of Labor.

In the case of any determination made on or after August 23, 1988, and on or before the date of this GAL, which was incorrectly decided under the operating instructions in GAL 7–88, or in Change 1 or 2 to GAL 7–88, or which was correctly decided under such operating instructions but a different result would have been required had the revised operating instructions in this GAL been in effect at the time, the State or State agency shall exercise such authority as it has under the applicable State UI law to undertake a redetermination of the claim. No redetermination shall be made on the agency's own motion if the determination that was made is correct under the revised operating instructions in this GAL.

The procedural requisites of the applicable State law and 20 CFR 617.50 shall be observed in undertaking and making any redetermination, including notice to the claimant that reconsideration is being undertaken and the issue(s) involved, and affording the claimant an opportunity to present evidence and be represented before the claims examiner. If, upon redetermination, it is decided that the worker was underpaid any TAA program benefit to which the claimant was entitled, appropriate corrective action shall be taken. Any overpayment shall be handled in the same manner as other overpayments are handled, as discussed below.

c. *Decisions on appeals.* In all cases pending on appeal before a referee, appeal board, or State court, after the date of this GAL, in which any issue is involved that is affected by the revised operating instructions in this GAL, action is required to be taken to conform to these revised operating instructions. Depending upon the appropriate processes of the State forum, such action may be to seek remand, rehearing, reargument, or other appropriate action. In any event, such action must be taken even though all hearings may have been held and the case submitted for a decision. If a decision is issued before the State is able to take action as required herein, the State shall seek a rehearing, or appeal further, or take other appropriate action, to assure adherence to the revised operating instructions in this GAL. Similarly, in cases in which decisions on appeal were issued on or after August 23, 1988, and on or before the date of this GAL, action shall be taken which is appropriate under the State's processes, which may include further appeal, setting the decision aside and rearguing the case, or other action appropriate under the State's law and legal processes.

d. *Overpayments.* Determinations regarding overpayments, and the recovery thereof, shall continue to be handled strictly in accordance with section 243 of the Trade Act and 20 CFR 617.55. No provision of the State law shall apply to any aspect of overpayments of TAA, except as specifically provided in 20 CFR 617.55. Each State agency that makes redeterminations after the date of this GAL, with respect to which the 1988 Amendments are relevant, shall make all such determinations as are relevant, and take other appropriate action, consistent with procedural safeguards for claimants, to establish and recover any overpayments under section 243 of the Trade Act and 20 CFR 617.55.

Independent of any authority under the State law to undertake redeterminations of prior determinations, each State shall exercise the authority under section 243 and 20 CFR 617.55 to make overpayment determinations. At a minimum, such authority shall be exercised.

(1) In all cases in which the 1986 sequester reduction was not applied and in all cases decided incorrectly under the prior law and/or the operating instructions in GAL 7–88; and

(2) In all cases in which a redetermination made as a result of the revised operating instructions in this GAL also results in an overpayment.

5. *Action required.* States are required to implement the provisions of the 1988 Amendments as set forth in this document and its attachments and in any other guidance issued by the Department, as of the effective date of each such amendment as set forth in this document. States are advised to inform all appropriate staff:

a. Of the changes in this GAL, which replace the operating instructions published in GAL 7–88 and GAL 7–88, Changes 1 and 2.

b. That the State should review the authority it has under State law to redetermine or reconsider State UI claims and apply that authority to TRA/TAA claims under the same conditions that are applied to State UI claims, as set out in section 4.b. of this GAL.

c. That a State that determines it has the authority under State law to redetermine or reconsider any erroneous TRA/TAA decision, shall submit a

certification signed by the State's Attorney General or other authorized official (including the time period covered) to the Department, via the appropriate Regional Office.

d. That a State that determines it has the authority under State law to redetermine or reconsider any erroneous TRA/TAA decision, shall issue a notice in a newspaper of general circulation announcing the new interpretations in this GAL and the State's authority to issue redeterminations of TRA/TAA claims.

e. That appropriate action shall be taken, in accordance with the applicable State law, to re-examine all TAA program benefit decisions made on and after August 23, 1988, and to the extent authorized by the applicable State law redetermine all TAA claims with respect to which the decisions on the workers' eligibility are inconsistent with the revised operating instructions in this GAL, and take appropriate action to correct any real or potential underpayments and overpayments of TRA or other TAA program benefits.

f. That appropriate action shall be taken, in accordance with section 4.d. of this GAL, to establish and recover overpayments of TRA and other TAA program benefits. Determinations with respect to overpayments shall be made on the basis of section 243 and 20 CFR 617.55, and shall not be dependent on authority under State law to make redeterminations or subject to any time limits in State laws on making determinations or redeterminations.

g. That States re-examine all TRA decisions made on and after August 23, 1988, to determine if TRA payments made for weeks beginning on and after March 1, 1986 and before October 1, 1988 reflected the 4.3 percent G–R–H sequester. If the State finds that the 4.3 percent G–R–H sequester was not applied for the period of the 1988 sequester, the State must establish TRA overpayments for the weeks involved in accord with this GAL.

h. That appropriate action shall be taken, in accordance with the applicable State law and legal process, with respect to cases pending on appeal at any level, as set out in Section 4.c. of this GAL.

i. That the operating instructions in this GAL shall remain in effect after the date of this GAL and until the amended regulations are published in final or until superseded by further operating instructions, and shall constitute controlling guidance for the States and the cooperating State agencies as set out in section 3. of this GAL.

6. *Inquiries.* States are to direct all inquiries to the appropriate ETA Regional Office.

7. *Attachments.*

Attachment A: Trade Adjustment Assistance Interim Operating Instructions

Attachment B. Examples of Applying Operating Instructions Under Differing Scenarios

(1) Section 1: Application of Revised Operating Instructions in Section F.1. of Attachment A

(2) Section 2: Application of Revised Operating Instructions in Section F.2. of Attachment A

(3) Section 3: Application of Revised Operating Instructions in Section E.3. of Attachment A

(Previously forwarded under separate cover.) *

Attachment C: Part 3—*Trade Adjustment Assistance*, of subtitle D of title I of the "Omnibus Trade and Competitiveness Act of 1988" (Pub. L. 100–418).

Attachment D: Chapter 2—*Adjustment Assistance for Workers*, in the Trade Act of 1974, Pub. L. 93–618, as amended, incorporating part 3 of subtitle D of title I of the Omnibus Trade and Competitiveness Act of 1988.

Attachment A to Gal 15–90: Trade Adjustment Assistance Interim Operating Instructions

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The 1988 Amendments to the Trade Act of 1974

On August 23, 1988, the President signed into law the "Omnibus Trade and Competitiveness Act of 1988". Part 3 of subtitle D of title I of the Act concerns trade adjustment assistance for workers and firms. This document relates only to those provisions of part 3 affecting the TAA Program for workers. Most of the provisions of part 3 affecting the TAA Program for workers are in the form of amendments to chapter 2 of title II of the Trade Act of 1974, and while some of the provisions of part 3 are not in the form of amendments to the Trade Act of 1974, they nonetheless must be given effect according to their intent as affecting the TAA Program.

The 1988 amendments—operating instructions. The 1988 Amendments are set out in this attachment A in the order of the section number of the Trade Act of 1974 affected by each of the amendments, together with an explanation of each amendment, the effective date of each amendment, the regulations principally affected by each amendment, and additional instructions on the administration of each amendment. Examples of applying the operating instructions in sections E.3., F.1., and F.2. under differing scenarios are set out in attachment B.

New Interpretations and Operating Instructions for Implementing the 1988 Amendments. Section 1430(a) of the OTCA is interpreted as applying, where applicable, in regard to all decisions (as defined below) which are made on or after August 23, 1988. The revised operating instructions in this GAL shall be applied in any such decision which is made after the date of this GAL, as described in section 3. of this GAL.

Section 1430(g) of the OTCA is interpreted as applying to total separations that occurred before August 23, 1988, and as not applying to any total separation that occurred on or after August 23, 1988, as described in section 3. of this GAL. This is a statutory direction to not apply the amended section 233(a)(2), in regard to a total separation which occurred before August 23, 1988, if doing so would result in shortening a worker's basic TRA eligibility period. There are two corollaries to this clear statutory direction. First, amended section 233(a)(2) shall apply to a separation which occurred before August 23, 1988, if the application of the amendment would result in lengthening the worker's eligibility period for basic TRA. Second, amended section 233(a)(2) shall apply to a separation which occurred or occurs on or after August 23, 1988, and section 1430(g) shall not apply, by its terms, in such a case even if the application of the amended section 233(a)(2) results in shortening the eligibility period of a worker that was based on a first qualifying separation which occurred before August 23, 1988.

In giving effect to these new interpretations, under the law-in-effect rule described in section 3. of this GAL, the law to be applied in making any decision is the law as in effect on the date any such decision is made. The law to be applied in regard to the 1988 Amendments is the law as set forth in this GAL.

The new interpretations stated above (and in subsections a., b., and c. of section 3. of this GAL) supersede the interpretations on this subject which are contained in the operating instructions in GAL 7–88 and GAL 7–88, Changes 1 and 2.

The revised operating instructions in this GAL shall apply with respect to any decision on a claim that is made after the date of this GAL, as set forth in this attachment A, in attachment B, and in section 4. of this GAL. As used in this paragraph and in the preceding paragraphs of this attachment A the term "decision" means any determination or redetermination of a prior determination (as referred to in 20 CFR 617.50), and any decision on the appeal of any such determination or redetermination (as referred to in 20 CFR 617.51), and which are collectively referred to throughout this GAL (and attachments A and B) as decisions or as determinations, redeterminations, and decisions on appeals.

To implement these new interpretations and another change of interpretation regarding section 233(f) of the Trade Act, revised operating instructions are issued in the following Sections of this attachment A:

A.2.—Section 1421(a)(1)(B) of the OTCA.
E.3.—Section 233(f) of the Trade Act.
E.4.—Section 233(b) of the Trade Act.
F.1.—Section 233(a)(2) of the Trade Act, and
F.2.—Section 1425(b) of the OTCA.

All operating instructions in other sections of this attachment A are the same as those previously issued in GAL 7–88, as changed in Changes 1 and 2 to GAL 7–88. However, without making any substantive change in such Sections, other changes are made to correct errors and for clarification.

It has been decided that sections C., D., E.2., and G.5. properly implemented the 1988 Amendments and are not changed in this GAL. All of these subsections of section 4. of GAL 7–88 or GAL 7–88, Change 1 relate to the amendments to sections 231(a)(5), 231(b), and 231(c) of the Trade Act (except for an unrelated technical amendment to section 232 of the Trade Act which is mentioned in subsection D), and under section 1430(f) of the OTCA, the amendments relating to these sections shall take effect 90 days after enactment, *i.e.*, on November 21, 1988. Although the effective date of these amendments is delayed, the effective date language of section 1430(f) is the same as the effective date language of section 1430(a). In view of this similarity of language, the new interpretations apply only to decisions made on and after November 21, 1988, under the law-in-effect rule at the time the decisions are made.

Effective November 21, 1988, workers must, as a condition of TRA eligibility, be enrolled in or have completed approved training (or have the requirement waived). However, training properly approved prior to August 23, 1988 under the law in effect at that time need not be "re-approved" under the law as amended on August 23, 1988. What this means is that workers in training approved before August 23, 1988, would not be required to have the training re-approved under amended section 236(a)(1) in order to continue to qualify for TRA (and training benefits) after November 21, 1988. For this reason, no change is made in sections C., D., E.2., or G.5. in this GAL.

Accordingly, sections A.2., E.3., E.4., F.1., and F.2. previously issued with the same designations as subsections of section 4. of GAL 7–88 and GAL 7–88, Change 2 are revised substantively as set forth in the operating instructions below. There are no substantive changes in other Sections.

A. Section 222—Group Eligibility Requirements

A.1. Oil and Gas Workers—Prospective

Amended Law: Section 1421(a)(1)(A) of the OTCA amends section 222 of the Trade Act to add certain oil and gas workers to the groups of workers potentially eligible for program benefits under the TAA Program. This is accomplished by adding new subsection (b) to section 222, which provides that any firm or subdivision of a firm that "engages in exploration or drilling for oil or natural gas" shall be considered to be a firm producing oil or natural gas, and shall be considered to be producing articles "directly competitive with imports of oil and with imports of natural gas." The definition of the term "contributed importantly" is not changed in this amendment.

This amendment became effective on August 23, 1988. It is a permanent change in the Trade Act having prospective effect, and it affects the regulations at 29 CFR part 90.

Administration: As this amendment pertains to the certification process, rather than program benefits, the principal impact will be on the Department of Labor rather than the States. The incidental impact on the States will be in carrying out the information, assistance, and notification requirements of section 225 of the Trade Act, as amended in 1981 and as further amended by section 1422 of the OTCA, and the provisions of amended setion 239(f) of the Trade Act.

Interpretation of the amendment to section 222 will be addressed in the amendments to the regulations at 29 CFR part 90 and in other operating instructions issued by the Department of Labor.

A.2. Oil and Gas Workers—Retroactive

Amended Law: Section 1421(a)(1)(B) of the OTCA provides, without amending the Trade Act, that the amendment with respect to oil and gas workers made by section 1421(a)(1)(A) shall apply to oil and gas workers separated after September 30, 1985, if such workers are covered by a certification issued under section 223 that would not have been issued but for the amendment in section 1421(a)(1)(A), and if such certification was issued with respect to a petition which was filed with the Department of Labor and received in the Office of Trade Adjustment Assistance, Employment and Training Administration, 601 "D" Street NW., room 6434, Washington, DC 20213, by COB on November 18, 1988.

The retroactive feature of section 1421(a)(1)(B) relates to payment of basic TRA for the retroactive period, and it is expressly provided that payments shall be made "Notwithstanding section 223(b) of the Trade Act of 1974, or any other provision of law." Section 223(b) refers to the impact date, which is set aside by this provision. The reference to "any other provision of law" clearly

* Not published in the **Federal Register**.

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includes the 60-days preclusion in section 231(a), because otherwise the workers could not qualify for retroactive payments. However, it does not include the application of section 13009(d) of the COBRA to reduce retroactive TRA payments by the 4.3 percent G–R–H sequester for weeks beginning on and after March 1, 1986 and before the October 1, 1986, and the 4.3 percent reduction shall be made with respect to any TRA payment for any such week.

Note: Any retroactive TRA payment made at any time for any such week shall be reduced by the 1986 G–R–H sequester as provided in guidance previously furnished to the States. While the sequester reduction shall be made to any weekly payment, the claimant's TRA/MBA shall not be reduced because of such sequester reduction. For any week beginning in FY 1990, the 1.4 percent sequester reduction shall be applied to both the claimant's WBA and MBA.

Other provisions of the Trade Act will continue to apply, such as the certification period of section 231(a)(1), as modified by section 1421(a)(1)(B); the qualifying employment and wage requirements of section 231(a)(2); the unemployment insurance eligibility and exhaustion requirements of section 231(a)(3); the weekly benefit amount and disqualifying income provisions of section 232; the computation of the maximum payable as provided in section 233(a)(1); and the eligibility period for payment of basic TRA as provided in amended section 233(a)(2); as such provisions are in effect on the date any decision is made on a claim filed under section 1421(a)(1)(B).

On the other hand, the extended benefit (EB) work test in section 231(a)(4) and the job search program (or new training) requirement in section 231(a)(5) may not be applied retroactively, and therefore may be applied to a worker only with respect to weeks which begin after the individual files an initial application for TAA program benefits, and the individual is informed that he/she is covered by a certification, and is fully informed of the requirements of such sections.

Furthermore, the basic TRA eligibility period for any worker filing a valid claim under section 1421(a)(1)(B) shall be based upon amended section 233(a)(2), except that with respect to a "first qualifying separation" before August 23, 1988, the worker's eligibility period shall be based upon the prior law for the reasons explained below in revised section F.1. Also, for this purpose, the worker's "first qualifying separation" shall be the first such separation after September 30, 1985 which is covered by the applicable certification, without regard to whether the worker has experienced any prior separation. Section 1430(g) shall be applicable to any subsequent total qualifying separation of workers filing claims under section 1421(a)(1)(B), on the same terms and conditions as set out below in revised section F.1.

The foregoing changes became effective for the purposes of section 1421(a)(1)(B) with regard to all decisions (*i.e.*, determinations, redeterminations, and decisions on appeals) which are made on or after August 23, 1988, except in regard to a "first qualifying separation" as set out above.

Effect shall be given to the operating instructions in this revised section A.2. in regard to any decision (as defined above) which is made after the date of this GAL. In regard to the exercise of a State's or a State agency's authority under the State's UI law to redetermine TAA cases, or seek remedial action in appealed cases, see section 4 of this GAL, on Determinations, Redeterminations, and Decisions on Appeals.

Section 1421(a)(1)(B), interpreted as set forth above, affects the regulations at 29 CFR part 90 and 20 CFR part 617.

Administration: Section 1421(a)(1)(B) became effective on August 23, 1988, and petitions thereunder must have been received by the Office of Trade Adjustment Assistance by COB on November 18, 1988. It is retroactive in effect, applying to workers separated after September 30, 1985, and will have prospective effect for any worker whose eligibility period for basic TRA extends past August 23, 1988 (the date of enactment of the OTCA).

GAL NO. 6–88, entitled: "Trade Adjustment Assistance—Workers of Firms in the Oil and Gas Industry Engaged in Exploration and Drilling, Separated From Employment After September 30, 1985, May File Petitions Under New Eligibility Rules", issued on August 23, 1988, provides instructions on filing petitions under section 1421(a)(1)(B), and is not affected by the operating instructions in Section 4.A.2. of GAL 7–88 or this revised section A.2. GAL 6–88 was published in the **Federal Register** on September 13, 1988, at 53 FR 35390.

The States will be directly involved in administering section 1421(a)(1)(B) as it effects TAA program benefits, and in carrying out the information, assistance and notification requirements of section 225, as amended in 1981 and as further amended by section 1422 of the OTCA, and the advice and assistance provisions of amended section 239(f) of the Trade Act. All decisions which are made by the State agencies under section 1421(a)(1)(B) after the date of this GAL shall conform to the operating instructions in this revised section A.2.

Payments of retroactive TRA for weeks beginning on and after March 1, 1986 and before October 1, 1986 are to be reduced by the G–R–H sequester of 4.3 percent. State agencies shall reduce the worker's weekly TRA amount by 4.3 percent for weeks beginning during the 6-month sequester period. Operating instructions provided to the States for implementing the 1986 G–R–H sequester provided that during the period of this sequester the worker's TRA maximum amount will not be reduced except on a week-by-week basis and then only by the actual amount of the weekly TRA payment after the 4.3 percent reduction (and any other reductions). When the balance remaining in the worker's TRA maximum amount is less than the full weekly TRA amount payable, the 4.3 percent reduction will be applied to the remaining balance.

The G–R–H sequester for weeks of unemployment beginning on or after October 1, 1989, and for the remainder of FY 1990 is 1.4 percent. During this period, the weekly benefit amount of TRA payable to each worker shall be reduced by the 1.4 percent G–R–H sequester reduction. The worker's TRA maximum benefit amount during the FY 1990 G–R–H sequester period is reduced by the total TRA weekly benefit amount without regard to the 1.4 percent G–R–H sequestration. An example of the G–R–H sequestration applicable to weeks beginning in FY 1990 is:

Worker's TRA weekly benefit amount	$100.00
1.4% G–R–H reduction	1.40
Reduced weekly amount	*98.60
Weekly reduction to maximum benefit amount	100.00

*Rounded to a whole dollar amount as provided by the applicable State law.

Note: Retroactive TRA payments which have been paid to oil and gas workers by the State agencies for weeks beginning on and after March 1, 1986 and before October 1, 1986, and which were not reduced by the G–R–H 4.3 percent sequester, are TRA overpayments. State agencies must issue overpayment determinations under section 243 of the Trade Act and 20 CFR 617.55 with respect to these TRA overpayments.

A.3. Application to All Industries

Amended Law: Section 1421(b) of the OTCA amends section 222 of the Trade Act to extend eligibility for TAA to workers with independent firms that provide "essential goods or essential services" to firms adversely affected by imports. Under section 1430(d) of the OTCA this amendment does not take effect until one year after the import fee takes effect.

Administration: Administration of this amendment is not addressed in this document, and will be addressed in separate guidance or in the amendments to the regulations at 29 CFR part 90, should the import fee take effect.

B. Section 225—Benefit Information to Workers

B. Benefit Information

Amended Law: Section 1422 of the OTCA amends section 225 of the Trade Act to add a new subsection (b). Under new subsection (b), written notice by mail is required to be given to each worker there is reason to believe is covered by a certification, and notice is required to be published in newspapers of general circulation in the areas in which workers covered by a certification reside. Such notices are required to inform workers of the TAA Program benefits available to them.

This amendment became effective as a requirement on September 22, 1988, and is applicable in the case of all certifications issued on and after that date. A State may apply this amendment to certifications issued prior to the effective date of the amendment. This notification and publication requirement is in addition to the assistance and information requirements under section 225, as set forth in the present regulations at 20 CFR part 617, and therefore affects the regulations to this extent.

While this amendment to section 225 is effective on September 22, 1988, and will be implemented by the States, notice also that the amendment to subsection (f) of section 239 is effective on August 23, 1988, and requires the States to furnish much more detailed information to workers.

Administration: Upon receipt of an official notice from the Regional Office of a certification of eligibility for TAA issued by the Department for a worker group in the State, the State agency will satisfy these notification requirements by:

Individual notice: Obtaining from the firm, or other reliable source, the names and addresses of all workers who were partially or totally separated from adversely affected employment before the certification, and workers who are thereafter partially or totally separated within the certification period. The State agency shall mail a written notice to each such worker of the benefits available under the TAA Program. A preprinted leaflet containing the information described below in d. and e. may be enclosed with the notice to the worker. The notice must include the following kinds of information:

a. Article(s) produced and worker group covered by the certification.

b. Name and the address or location of workers' firm.

c. Impact, certification, and expiration dates in the certification document.

d. Benefits and reemployment services available to eligible workers.

e. Explanation of how workers apply for TAA benefits and services.

f. Whom to call to get additional information on the certification.

g. When and where the worker should come to the local office to apply for benefits and services.

Newspaper notice: Publishing a notice of the certification in a newspaper of general circulation in the area where workers covered under the certification reside. The published notice must include the following kinds of information:

a. Article(s) produced and worker group covered by the certification.

b. Name and the address or location of workers' firm.

c. Impact, certification, and expiration dates in the certification document.

d. Benefits and reemployment services available to eligible workers.

e. Explanation of how and where workers apply for TAA benefits and services.

States are also encouraged to issue press releases to the print and broadcast media on certifications issued by the Department which include the above kinds of information.

C. Section 231—Qualifying Requirements for Workers

C.1. Participation in Training Program Required

Amended Law: Section 1423(a)(1) of the OTCA amends paragraph (5) of section 231(a) of the Trade Act to require, as a new eligibility requirement for receipt of basic TRA, that a worker be enrolled in a training program approved under section 236(a), or have completed a training program approved under section 236(a), after a separation qualifying under section 231(a)(1), or have received a written certification of a finding that it is not "feasible or appropriate" to approve training under section 236(a) for that worker.

This amendment is effective on November 21, 1988, under section 1430(f) of the OTCA, and will apply to workers in TRA eligibility periods at that time and thereafter. The 90-day delay in effective date gives the States and workers time to prepare to meet this new requirement. Thereafter, under subsection (b)(2) (as amended by section 1423(a)(2) of the OTCA), the training requirement of new section 231(a)(5) shall not apply with respect to any week of unemployment that begins more than 60 days after the filing date of the petition which resulted in the certification, and before the first week following the week in which the certification is issued.

This amendment substitutes for the job search program requirement contained in section 231(a)(5), but the job search program requirement remains in effect as the section 231(a)(5) requirement until the day before the new training requirement takes effect on November 21, 1988.

This amendment affects the regulations at 20 CFR part 617.

Administration: Workers are required to be enrolled in a training program, have completed a training program approved or approvable under section 236(a), or have received a written certification waiving the training requirement in order to receive TRA payments. The training requirement may be waived under amended section 231(c)(1) by certification in writing on an individual basis if the State agency determines that training is not feasible or appropriate for the worker.

This requirement is applicable to individuals who are otherwise eligible for basic TRA on or after November 21, 1988. State agencies shall take actions necessary to insure that all individuals who are in TRA eligibility periods that will extend past November 21, 1988 are notified in writing of the new qualifying requirement immediately so they will have a reasonable opportunity to satisfy the requirement.

Workers in approved training on November 21, 1988, will not be affected by this amendment, whether the training was approved before or after August 23, 1988. However the workers will have to meet the participation requirement of section 231(b) on and after November 21, 1988.

For purposes of this section, the following definitions shall apply:

Enrolled in training. A worker shall be considered to be enrolled in training when the worker's application for training is approved by the State agency and the training institution has furnished written notice to the State agency that the worker has been accepted in the approved training program beginning within 30 calendar days. (A waiver under amended section 231(c) is not required for an individual who is enrolled in training as defined herein.)

Completed training. A worker shall be considered to have completed a training program if the training program was approved, or was approvable and is approved under section 236(a) of the Trade Act, the training occurred subsequent to the individual's total or partial separation (as defined in the Trade Act and 20 CFR part 617), and the training provider has certified that all the conditions for satisfactory completion of the training program have been satisfied.

Job search program. Amended section 231(a)(5) deletes the requirement that workers participate in a job search program, where reasonably available, as a condition for receiving TRA. This provision remains in effect through November 20, 1988. However, because of the demonstrated value of job search workshops and job finding clubs in helping dislocated workers return to suitable employment, States are encouraged to continue to refer trade impacted workers, who do not participate in an approved training program, or who have completed a training program, to such activities.

C.2. Participation in Training Program

Amended Law: Section 1423(a)(2) of the OTCA amends subsection (b) of section 231 of the Trade Act, relating to participation in training as required by section 231(a)(5) (discussed in the preceding item). Under new subsection (b)(1), if it is determined that a worker has, without justifiable cause, failed to begin participation in a training program, the enrollment in which meets the requirement of new section 231(a)(5), or that the worker has ceased to participate in such training program before completing it, or if it is determined that a written certification given to the worker under new subsection (c) (as amended by section 1423(a)(3) of the OTCA and discussed below) is revoked, then, in any one of these cases, no TRA may be paid to the worker beginning with the week in which such failure, cessation, or revocation occurred and continuing until the worker "begins or resumes participation in a training program approved under section 236(a)."

Under new subsection (b)(2), the provisions of subsection (b)(1) shall not apply with respect to any week of unemployment that begins more than 60 days after the filing date of the petition which resulted in the certification, and before the first week following the week in which the certification is issued.

This amendment is effective on November 21, 1988, as is the amendment to section 231(a)(5) discussed in the preceding item and the amendment to section 231(c) discussed in the immediately following item. This amendment also will apply to workers in TRA eligibility periods on its effective date, and to workers in approved training on such effective date. The 90-day delay in effective date gives the States and workers time to prepare to meet this new requirement. Because subsection (b), as in effect prior to this amendment, was not given effect in the regulations, in this respect the amendment has no effect on the regulations. However, as this amendment relates to the new training requirement in section 231(a)(5), it does affect the regulations as stated in the preceding item, although the regulations on the job search program requirement will remain effective until the day before this amendment and the new training requirement of section 231(a)(5) take effect on November 21, 1988.

Administration: Notice that under subsection (b)(2) the provisions of subsection (b)(1) shall not be applied to an individual worker with respect to any unemployment that begins more than 60 days after the filing date of the petition which resulted in the certification covering the worker, and before the first week following the week in which such certification is issued. Because of this very short period between issuance of a certification and giving effect to subsection (b)(1) and section 231(a)(5), it is highly unlikely that the States will be able make timely determinations of coverage and approval of training, or that workers will be able to enroll in training in such a short time. In view of this, the States may be required to issue subsection (c) certifications pending the making of arrangements for the provision of training, and enrolling the workers in the training. Refer to the discussion of certifications in the following item.

In making determinations under subsection (b), the following definitions shall be used:

Failed to begin participation. A worker shall be determined to have failed to begin participation in a training program when the worker fails to attend all scheduled training classes and other training activities in the first week of the training program, without justifiable cause.

Ceased participation. A worker shall be determined to have ceased participation in a training program when the worker fails to attend all scheduled training classes and other training activities scheduled by the training institution in any week of the training program, without justifiable cause.

Justifiable cause. Justifiable cause means such reasons as would justify an individual's conduct when measured by conduct expected of a reasonable individual in like circumstances, including but not limited to reasons beyond the individual's control and reasons related to the individual's capability to participate in or complete an approved training program.

C. 3. Certifications Waiving Workers' Participation in Training

Amended Law: Section 1423(a)(3) of the OTCA amends subsection (c) of section 231 of the Trade Act, relating to participation in training as required by sections 231(a)(5) and 231(b) (as discussed in the preceding two items). Under new subsection (c), upon a finding being made that "it is not feasible or appropriate" to approve a training program for a worker under section 236(a), the worker must be furnished "a written statement certifying such finding." Under subsection (c)(1)(B), when a State issued such a written statement to a worker, it is required to "submit to the Secretary a written statement certifying such finding and the reasons for such finding." Subsection (c)(2) provides for revoking a certification is a written statement submitted to the worker and the Secretary. Subsection (c)(3) requires annual reports to Congress on numbers of certifications issued and revocations of certifications.

This amendment is effective on November 21, 1988, as are the amendments discussed in the two preceding items, and affects the regulations at 20 CFR part 617. This amendment also will apply to workers in TRA eligibility periods on its effective date and thereafter. The 90-day delay in effective date gives the States and workers time to implement subsection (c) in connection with the new requirements of section 231(a)(5) and 231(b).

Administration: On November 21, 1988, all individuals in TRA eligibility status must either be enrolled in a training program or have completed a training program approved under section 236(a) in order to continue to receive TRA payments. The new requirement may be waived under amended section 231(c)(1) by certification in writing on an individual basis, if the State agency determines that training is not feasible or appropriate.

The Department's policy is to issue waivers of the training requirement on a limited basis when training is not feasible or appropriate under the following conditions:

When a State agency makes a determination that the training requirement will be waived for an individual then the State agency must issue a written certification to the individual of such a finding.

a. A formal written certification must be provided to each affected worker. At a minimum, the certification shall contain the following information:

(1) Name and social security number of the worker.

(2) Petition number under which the worker was certified.

(3) Effective date of the certification, and the impact and termination dates, where appropriate.

(4) Statement that training is not feasible or appropriate and the reason for the Finding.

Any other conditions the State agency deems appropriate in informing the worker.

(5) Signature block for appropriate State official.

(6) Signature block for worker's acknowledgement of receipt.

b. State agencies must develop a procedure for reviewing regularly a certification of waiver of training issued to a worker to ascertain that the conditions upon which the waiver was granted continue to exist or have been changed in which case the certification may be revoked.

State agencies may incorporate a revocation section in the certification of waiver form or a separate written statement. Similar information as listed in the certification should be provided to the worker when revoking the certification.

c. State agencies must develop procedures for compiling the number of certifications issued and revoked, by reason. (The Department is required to report annually to the Congress on the number of certifications issued and revoked. The Department will develop reporting requirements and issue instructions to State agencies.)

d. State agencies are not required to forward copies of individual waivers to the Department. The Department will review a random sample of waivers issued by the State agencies during regular ETA reviews of TAA program administration.

With regard to certifications under subsection (c)(1), the key words are whether it is "feasible or appropriate" to approve training for a worker. The word "feasible" refers to whether the object is capable of being done or carried out.

As used in section 231 for purposes of training approval under the criteria of section 236(a), "feasible" means simply whether there is any training available at that time which meets all the criteria of section 236(a)(1), whether the worker is so situated as to be able to take full advantage of the training opportunity and complete the training, and whether funding is available to pay the full costs of the training, including any transportation and subsistence expenses which are compensable. Funding includes not only TAA program funds but also funds under JTPA, JTPA title III (worker adjustment program) and other Federal, State and private sources.

The word "appropriate" carries the more expensive meaning of being especially suitable or compatible, fitting, or proper. Therefore, "appropriate" refers to suitability of the training for the worker (including whether there is a reasonable prospect which is reasonably foreseeable that the worker will be reemployed by the firm from which separated) and compatibility of the training for the purposes of the TAA Program. In these respects, suitability of training for the worker is encompassed within the several criteria in section 236(a)(1), and compatibility with the program is settled by the various provisions of section 236 which describe the various types of training approvable under section 236 and the limitations thereon.

Accordingly, whether training is "feasible or appropriate" at any given time is determined by finding whether, at that time, training suitable for the worker is available, the training is training which is approvable under section 236 including the criteria in section 236(a)(1), the worker is so situated as to be able to take full advantage of the training and complete the training, full funding for the training is available, and the training will commence within 30 days of approval.

Following is a list of reasons why training may be considered not feasible or appropriate.

Not feasible because—

(A) The beginning date of approved training is beyond 30 days, as required in the definition for "Enrolled in training".

(B) Training is not reasonably available to the individual.

(C) Training is not available at a reasonable cost.

(D) Funds are not available to pay the total costs of training.

(E) Other (explain).

Not appropriate because—

(A) The firm from which the individual was separated plans to recall the individual within the reasonably foreseeable future (State agencies must verify planned recalls with the employer).

(B) The duration of training suitable for the individual exceeds the individual's maximum entitlement to basic and additional TRA payments.

(C) The individual possesses skills for "suitable employment" and there is reasonable expectation of employment in the foreseeable future.

(D) Other (explain).

This amendment substitutes for a similar provision relating to the job search program requirement and the provisions of subsection (c) remain in effect until the amendment discussed in this item and the two preceding items take effect on November 21, 1988. This amendment affects the regualtions at 20 CFR part 617, although the regulations on the job search program requirement which implement section 231 (a)(5) and (c) will remain in effect until the day before the amendments to section 231 (a)(5), (b), and (c) take effect on November 21, 1988.

D. Section 232—Weekly Amounts of TRA

D. Weekly Amounts of TRA

Amended Law: Section 1423(b) of the OTCA amends subsections (b) and (c) of section 232 of the Trade Act, but no change is made in the computation of the weekly amount of TRA payable. The weekly amount will continue to be based upon the first exhaustion of UI as it was set in the 1981 Amendments and is reflected in the regulations at 20 CFR part 617.

Subsection (b) of section 232 is amended by striking out, "including on-the-job training." (OJT). This is a technical change, to conform to section 233(e) which prohibits payment of TRA to workers in OJT. This technical change is effective on August 23, 1988.

Subsection (c) of section 232 is amended by striking out references to sections 231(c) and 236(c), and substituting a reference to section 231(b). This is a conforming change related to other amendments to the Trade Act in the OTCA. This amendment is effective on November 21, 1988, as are the amendments to section 231 to which is relates and which are discussed above. As in the case of the amendments to section 231, this amendment also will affect the regulations at 20 CFR part 617.

Administration: State agencies should examine TRA payment procedures to ensure that such procedures conform to the requirement prohibiting TRA payments when the worker is participating in OJT.

Section 232(c) of the Trade Act is amended by deleting references to sections 231(c) and 236(c), and substituting references to the amended training requirements imposed under amended section 231(b) of the Trade Act for TRA eligibility. The amendment to subsection (c) of section 232 is effective on November 21, 1988, as are the amended training requirements under section 231 to which it relates and, as indicated, are discussed above.

E. Section 233—Limitations on Trade Readjustment Allowances

Section 1423(c) of the OTCA includes three amendments to section 233 of the Trade Act, and adds a new section 246 on the subject of "Supplemental Wage Allowance Demonstration Projects." Section 246 does not affect the regulations at 20 CFR part 617 or 29 CFR part 90, and will be addressed in other guidance issued by the Department.

E.1. Eligibility Period for Additional TRA

Amended Law: Section 1423(c)(1) of the OTCA amends subsection (a)(3)(B) of section 233 by striking out "is approved" and inserting the word "begins" in place thereof. This is essentially a technical change, but it corrects a problem in the prior law which, read and construed literally, required training to be approved after

exhaustion of basic TRA. This amendment became effective on August 23, 1988, and affects the regulations at 20 CFR part 617.

Administration: The change in section 233(a)(3)(B) corrects a technical error which required the worker's application for training to be approved before the worker exhausted eligibility for basic TRA. This presented an interpretation problem that is now resolved by this amendment. Therefore, with this amendment the 26-week eligibility period for additional TRA begins with the first week of training, if the training begins after exhaustion of basic TRA. No change in practice is required, however, as the same result had been achieved through interpretation.

E.2. Conforming Amendment

Amended Law: Section 1423(c)(2) of the OTCA amends the last sentence of subsection (a)(3) of section 233 by striking a reference to section 236(c) (relating to the satisfactory progress provision now contained in amended section 231(b) which is discussed above), and by striking "engaged in such training" and inserting "participating in such training" in place thereof. The latter change is not essentially substantive, but conforms usage to the words used in amended section 231(b) which is discussed above. This amendment is effective on November 21, 1988, as are the amendments to section 231 to which it relates and which are discussed above. This amendment, in and of itself, has little effect on the regulations at 20 CFR part 617.

Administration: The requirements for participation in training are covered in the discussions above of the amendments to section 231.

E.3. Payment of TRA During Breaks in Training

Amended Law: Section 1423(c)(3) of the OTCA adds a new subsection (f) to section 233. New subsection (f) provides for the payment of basic and additional TRA "during any week which is part of a break in training" provided three conditions are met: (a) The break in training does not exceed 14 days; (b) the worker was participating in the training before the beginning of the break; and (c) the break is provided for in the published schedule of the training program. In addition, as a condition of TRA eligibility during the break, the worker shall be required to participate in the training after the break ends. This will assure that the purpose of section 233(f) is carried out.

This is a significant change in the law. Previously, under section 233(a)(3), the worker had to actually be "engaged in" training in a week to be entitled to a payment of additional TRA for the week. Under new subsection (f), a worker will continue to receive basic and additional TRA during breaks in training (up to the maximum entitlement of each worker), but only if the scheduled break is not longer than 14 days, and the other conditions stated above are met. In addition, the wording of subsection (f) makes it clearly applicable to basic TRA as well as additional TRA.

In GAL 7–88 and Change 1 to GAL 7–88, the Department interpreted section 233(f) as excluding certain weekend days and holidays in counting the days of a break in training. However, upon reconsideration it has been decided that section 233(f) was interpreted too narrowly and that all officially recognized National and State holidays should be excluded in counting the days of a break in training, to the extent that training in the training program would not normally be scheduled on such days if they did not occur during the break. The critical point in counting the days of a break in training is whether the day on which the weekend day or holiday falls would ordinarily be a scheduled training day in the training program. Official National and State holidays are to be treated the same. Therefore, weekend days and National or State recognized holidays shall be excluded in counting the days of a break, if training would not normally be scheduled on any such day.

Section 233(f) is effective with regard to all decisions (*i.e.*, all determinations, redeterminations, and decisions on appeals) made on or after August 23, 1988, regardless of when the training was approved under section 236 of the Trade Act, or whether the training was approved or is approvable under section 236 as amended by the 1988 Amendments, or when the break in training began or ended. In making any such decisions, the law to be applied is the law as in effect on the date the decision is made.

Effect shall be given to the operating instructions in this revised section E.3. in regard to any decision (as defined above) which is made after the date of this GAL. In regard to the exercise of a State's or a State agency's authority under the State's UI law to redetermine TAA cases, or seek remedial action in appealed cases, see section 4 of this GAL, on *Determinations, Redeterminations, and Decisions on Appeals.*

Section 233(f), interpreted as set forth above, affects the regulations at 20 CFR part 617 in regard to both basic and additional TRA.

Administration: The State agency, in administering section 233(f), must obtain from an official of the training institution information on any scheduled break in training and the beginning and ending dates of the scheduled break.

a. A worker participating in training shall be paid TRA for any week beginning during a scheduled break in training that does not exceed 14 days, provided the stated conditions are met and the worker is otherwise eligible.

b. A worker participating in training shall not be paid TRA for any week that begins and ends during a scheduled break that is 15 days or more in duration.

However, when the break occurs during the period the worker is receiving the 26 weeks of additional TRA, such weeks shall be counted against the 26 weeks of eligibility for additional TRA, as such weeks have been counted before the amendment, and as such weeks are counted against the 104-week eligibility period for basic TRA.

In establishing the number of days in a break in training, all calendar days shall be included in the calculation, beginning with the first day following the last day of class preceding the training break, and ending with the last day preceding the first class day after the end of the training break. However, any Saturday or Sunday, or any National or State holiday (officially observed in the State in which the training is conducted) occurring during the scheduled break in training, on which training would not normally be scheduled in the training program if there were no break in training, shall not be counted in determining the number of days of the break.

For any week a worker is not entitled to basic or additional TRA because the week occurs during a break of more than 14 days, such a week will nonetheless count against the 26 weeks for which additional TRA is payable if the worker was being paid additional TRA. The situation is different if the worker is still drawing against basic TRA entitlement; in this case any week during a break that is not payable will not count against the worker's maximum entitlement, but the worker's eligibility period for basic TRA will continue to run.

Examples of counting the days of breaks in training under differing scheduling scenarios are presented in attachment B of this GAL.

E.4. 210-Day Requirement in Section 233(b)

Amended Law. Subsection (b) of section 233 was not amended by the OTCA, but it is affected indirectly by

the substantive change in the eligibility period for basic TRA in section 233(a)(2) (which is discussed in revised section F.1., below). Section 233(b) continues to provide that, to qualify for additional TRA, the worker must file an application for a training program approved under section 236 within 210 days after the later of the date of the certification covering the worker, or "the worker's total or partial separation referred to in section 231(a)(1)."

There is a direct relationship between the eligibility period for basic TRA and the time limitation in section 233(b) to qualify for additional TRA, because additional TRA is payable only after exhaustion of basic TRA. There is sound reason therefore to link as nearly as possible both time periods to the same separation. This, in fact, is the position that has been taken in the past. Thus, under the 1974 Amendments, when the eligibility period for basic TRA was movable, the time limit (then 180 days) to qualify for additional TRA likewise was tied to the worker's most recent separation. See the definition of the term "appropriate week" in the 1975 regulations at 29 CFR 91.3(a)(5), and 29 CFR 91.12(b)(1). When the eligibility period for basic TRA became a fixed period under the 1981 Amendments, the 210-day limit in section 233(b) also was linked to the first qualifying separation. (*See* 20 CFR 617.15(b(2)).

Therefore, with the OTCA amendment to section 233(a)(2) restoring the movable eligibility period effective on August 23, 1988, there is sound reason to make the 210-day limit in section 233(b) applicable to the most recent separation. Unlike amended Section 233(a)(2), however, which requires that the separation be a total separation (as defined in section 247 and the regulations), for the purposes of section 233(b) the separation that must be taken into account includes partial as well as total separations (as defined in section 247 and the regulations).

This revised interpretation of section 233(b) is effective with regard to all decisions (*i.e.*, all determinations, redeterminations, and decisions on appeals) made on or after August 23, 1988.

The operating instructions in this revised section E.4, shall be given effect in regard to any decision (as defined above) which is made after the date of this GAL. In regard to the exercise of a State's or a State agency's authority under the State's UI law to redetermine TAA cases, or seek remedial action in appealed cases, see section 4 of this GAL, on Determinations, Redeterminations, and Decisions on Appeals.

This change affects the regulations at 20 CFR part 617, and, further, will require a modification in the amendment to 20 CFR 617.15 as proposed in the document published on November 30, 1988, at 53 FR 48474, 48483.

Administration. This change in the interpretation of section 233(b) is to be given effect as of August 23, 1988. Any separation with respect to which section 233(b) applies may be a total or partial separation, as defined in the Trade Act and the regulations, and must occur within the certification period of the applicable certification.

Further, while the total or partial separation must be within the certification period specified in section 231(a)(1), for the purposes of section 233(b) it is not relevant whether that separation is a qualifying separation as required for the purposes of section 231(a)(2). However, a worker whose only separation from adversely affected employment under a certification was a partial (non-qualifying) separation that occurred before, on, or after August 23, 1988, is eligible to enroll in training under section 236 of the Trade Act, but is not eligible to receive additional (or basic) TRA payments. In order to qualify for any TRA under section 231(a)(2), the worker must have had a "first qualifying separation" (before August 23, 1988) or a "total qualifying separation" (on or after August 23, 1988).

If any determination has been issued after August 23, 1988, which resulted in a denial of additional TRA because of failure to meet the previous 210-day rule, then to the extent authorized by the State unemployment compensation law such determination should be set aside or reopened and a redetermination made on the basis of the most recent total or partial separation under the same certification, if the worker had a more recent total or partial separation on or after August 23, 1988, or if the certification was issued on or after August 23, 1988. In cases where the worker had only one separation under the same certification, redetermination is not necesary and should not be undertaken (on the agency's own motion) except in those cases where it is necessary in order to determine whether the worker has had a subsequent separation.

F. Section 233—Limitation on Period in Which Trade Readjustment Allowances May Be Paid

F.1. Revised Eligibility Period for Basic TRA

Amended Law: Section 1425(a) of the OTCA amended section 233(a)(2) of the Trade Act to return essentially to the movable 2-year eligibility period as in effect prior to the 1981 Amendments. Under amended section 233(a)(2), the eligibility period for basic TRA is the 104-week period that begins with the first week following the week in which the worker's most recent, total qualifying separation occurred. For this purpose, a "qualifying" separation is a total separation which occurs within the certification period described in section 231(a)(1) for the certification under which the worker is covered, and with respect to which the worker meets the employment and wage qualifying requirements of section 231(a)(2).

For an individual worker to establish an eligibility period for basic TRA, therefore, five conditions must be found to exist:

a. A certification of eligibility to apply for adjustment assistance must have been issued under section 223 of the Trade Act.

b. The worker must be covered by such certification.

c. The worker must have been separated from adversely affected employment, and such separation must be a "total separation" as defined in section 247(11) of the Trade Act and in the regulations at 20 CFR 617.3(11).

d. Such total separation must be within the certification period of such certification as specified in section 231(a)(1) of the Trade Act.

e. The worker must meet the employment and wage qualifying requirements of section 231(a)(2) of the Trade Act with respect to such separation.

If all of the five conditions stated in the preceding paragraph are found to exist in the case of any individual worker, the worker has had a "qualifying separation" for the purposes of eligibility for basic TRA, and such worker's eligibility period during which the worker may claim basic TRA is the 104 consecutive calendar weeks beginning with the week which immediately follows the week in which such qualifying separation occurred. The 104–week eligibility period will run its course in 104 consecutive weeks, regardless of the worker's experience in that 104-week period with employment, unemployment, eligibility for UI or waiting week, or any other circumstances except a subsequent qualifying separation as defined herein.

Under OTCA section 1430(a), this amendment to section 233(a)(2) took effect on August 23, 1988. GAL 7–88 implemented this effective date by applying the amended section 233(a)(2) to all total separations which occur on or after that date, except in the case of workers who have previously exhausted all of their rights to basic TRA.

Section 1430(g) of the OTCA also affects the amendment to section 233(a)(2). Section 1430(g) provides that—

The amendment made by section 1425(a) shall not apply with respect to any total separation of a worker from adversely affected employment (within the meaning of section 247 of such Act) that occurs before the date of enactment of this Act if the application of such amendment with respect to such total separation would reduce the period for which such worker would (but for such amendment) be allowed to receive trade readjustment allowances under part I of subchapter B of chapter 2 of title II of the Trade Act of 1974.

In GAL 7–88, section 1430(g) was construed as applying to total separations which occurred on or after August 23, 1988, so as to preclude the application of amended section 233(a)(2) if it would result in shortening an individual's basic TRA eligibility period with respect to a "first qualifying separation" which occurred prior to August 23, 1988.

As noted in this GAL, the new interpretations of subsections (a) and (g) of section 1430 require a different implementation of these provisions, as follows:

(1) *Section 1430(a).* As noted above, pursuant to OTCA section 1430(a), the amendment to section 233(a)(2) took effect on August 23, 1988. This effective date is implemented under the new interpretations by applying the amended section 233(a)(2) to all decisions made on or after August 23, 1988. The term "decisions" as used herein means all determinations and redeterminations or prior determinations (as referred to in 20 CFR 617.50), and all decisions on the appeals of such determinations and redeterminations (as referred to in 20 CFR 617.51). Effect shall be given to this new interpretation of section 1430(a) by applying the operating instructions in this revised section F.1. in all such decisions which are made by the State agencies and the State appellate authorities after the date of this GAL.

Accordingly, after the date of this GAL, the operating instructions in this revised section F.1. shall be applied in all decisions on basic TRA eligibility periods for affected workers. This means that amended section 233(a)(2) of the Trade Act shall be applied in all such decisions with regard to all total qualifying separations, whether such a separation occurred before, on, or after August 23, 1988, rather than being limited, as under the prior operating instructions, to such a separation which occurred or occurs on or after August 23, 1988. However, the application of the amended section 233(a)(2) is limited under OTCA section 1430(g) as explained below.

(2) *Section 1430(g).* This subsection (g) is interpreted, according to its literal terms, as applying solely with respect to total qualifying separations which occurred before August 23, 1988. The limitation under section 1430(g) shall not be applied with regard to any total qualifying separation which occurred or occurs on or after August 23, 1988, nor with regard to any "first qualifying separation" which occurred before August 23, 1988, nor to a partial separation at any time or to any total separation which is not a qualifying separation under amended section 233(a)(2).

Effect shall be given to this new interpretation of section 1430(g) by applying the operating instructions in this revised section F.1. in all decisions (as defined above) which are made by the State agencies and the State appellate authorities after the date of this GAL. This means that, after the date of this GAL Section 1430(g) of the OTCA shall be applied in all such decisions with regard to only those total qualifying separations which occurred before August 23, 1988, rather than being applied, as under the prior operating instructions, to total qualifying separations which occurred or occur on or after August 23, 1988.

(3) *Law to be applied.* The law to be applied in making any decision (as defined above) on a worker's basic TRA eligibility period is amended by section 233(a)(2) of the Trade Act of 1974, and section 1403(g) of the OTCA, if applicable, as such law is interpreted in the Department's operating instructions (or controlling regulations) and in effect on the date any such decision is made. This rule shall apply irrespective of whether the occurrence(s) to which the decision relates occurred before, on, or after August 23, 1988.

Accordingly, under these new interpretations of sections 1430(a) and 1430(g) of the OTCA, together with the law-in-effect rule stated above, amended section 233(a)(2) is to be applied according to this revised section F.1. in making any decision concerning a worker's basic TRA eligibility period which is made after the date of this GAL. The sole exception to this rule, required by section 1430(g), is that amended section 233(a)(2) shall not be applied with regard to a total separation which occurred before August 23, 1988, if doing so would result in shortening the individual's eligibility period based on the prior law and a "first qualifying separation".

What this means is that the new interpretations will have different applications to a "first qualifying separation" that occurred before August 23, 1988, subsequent "total qualifying separation" of a worker under the same certification that occurred before August 23, 1988, and a subsequent "total qualifying separation" of a worker under the same certification that occurred or occurs on or after August 23, 1988. Under no circumstances may amended section 233(a)(2) be applied to a "first qualifying separation" which occurred before August 23, 1988, because to do so would shorten the eligibility period of the worker that would exist in the absence of the amendment to section 233 (a)(2), and there would be no occasion for the application of section 1430(g) with respect to any subsequent "total qualifying separation" of the worker under the same certification. The application of amended section 233(a)(2) and section 1430(g) to such subsequent total qualifying separations is outlined in the following two paragraphs.

With respect to a total qualifying separation of a worker covered by a certification, which is subsequent to the worker's "first qualifying separation" under the same certification, and which occurred before August 23, 1988, amended section 233(a)(2) must be applied unless the application thereof is precluded by section 1430(g) and this revised section F.1. Section 1430(g) precludes application of the new eligibility period to the worker if such eligibility period would end on a date earlier than the ending date of the eligibility period established for the worker on the basis of prior law and the worker's "first qualifying separation" under the same certification; but if the new eligibility period would end on the same date or a later date then amended section 233(a)(2) must be applied.

However, if the subsequent total qualifying separation occurred on or after August 23, 1988, amended section 233(a)(2) must be applied with respect to that subsequent separation, and section 1430(g) may not be taken into consideration because it may not operate to limit the application of amended section 233(a)(2). Consequently, the ending date of the new eligibility period may be earlier than, the same as, or later than the eligibility period established for the worker on the basis of the prior law and a "first qualifying separation" which occurred before August 23, 1988. To the extent that the application of amended section 233(a)(2) may result in "shortening" individual eligibility periods, that is precisely what amended section 233(a)(2) requires, but a worker so affected still obtains the advantage of the movable eligibility period which will accrue to the worker's further benefit in the case of a subsequent total qualifying separation. In limiting the effect of section 1430(g), Congress drew the line at total separations occurring before August 23, 1988. As this line was so clearly drawn in section 1430(g), there is no flexibility for an interpretation which would broaden the application of section 1430(g).

In applying these new interpretations with respect to total separations which occurred before August 23, 1988, workers whose eligibility periods are extended will become entitled in such extended eligibility periods to payment of any remaining balance in their TRA accounts to which it can be determined that they are otherwise entitled. To establish entitlement to a payment for any week, however, the individual must be determined to have been unemployed in that week, able to work and available for work, and meet all other requirements of the current law on eligibility for basic TRA (with the exception that an individual may not be required, as a condition of entitlement to retroactive payments, to satisfy the requirements of sections 231(a) (4) or (5) of the Trade Act).

This rule against the retroactive application of the requirements of section 231(a) (4) and (5) also applies to all TRA claimants. Thus, section 231(a) (4) and (5) of the Trade Act shall not apply or be applied to a worker with respect to a claim for basic TRA for a week of unemployment which begins prior to the filing of an initial claim for TRA, if such week begins before the worker is notified that the worker is covered by a certification issued under the Trade Act (or an amendment in the OTCA), and the worker is fully informed of the requirements of such sections.

Note: In making any decision in accordance with this revised section F.1., any TRA payable for a week beginning on and after March 1, 1986 and before October 1, 1986 is subject to the G–R–H 4.3 percent sequester reduction. This application is required by section 13009(d) of the COBRA, and its application affects all TRA payments for weeks beginning during the above 6-month period regardless of when these payments are actually made. In addition, TRA payments for weeks of unemployment beginning in FY 1990 (on or after October 1, 1989 through September 30, 1990) are required to be reduced by the 1.4 percent G–R–H sequester reduction. (See further guidance on the 1986 and 1990 sequester reductions below and in section 3 of this GAL and in section A.2. of this attachment A.)

The new interpretations of sections 1430(a) and 1430(g) of the OTCA, as set forth above, are effective for the purposes of amended section 233(a)(2) of the Trade Act with regard to all decisions (*i.e.*, all determinations, redeterminations, and decisions on appeals) which are made on or after August 23, 1988. Further, the law to be applied in making any such decision is the law as in effect on the date any such decision is made, as set forth in this revised section F.1.

Effect shall be given to the operating instructions in this revised section F.1. in regard to any decision (as defined above) which is made after the date of this GAL. In regard to the exercise of a State's or a State agency's authority under the State's UI law to redetermine TAA cases or seek remedial action in appealed cases, see section 4 of this GAL, on Determinations, Redeterminations, and Decisions on Appeals.

This change affects the regulations at 20 CFR part 617, and, will also require modifications of the proposed rule published in the **Federal Register** on November 30, 1988, at 53 FR 48474.

Administration: Since amended section 233(a)(2) links the TRA eligibility period to the most recent total qualifying separation (as determined under amended section 233(a)(2)), the eligibility period established with respect to a worker's first qualifying separation changes if the worker has another "total qualifying separation" under the same certification. Therefore, when a worker has a second "qualifying separation" under the same certification (as determined under amended section 233(a)(2)), the worker's eligibility period for basic TRA moves from the prior established eligibility period to 104 weeks after the week in which the second "qualifying separation" occurred. The process will be repeated for any subsequent "qualifying separation" of the worker occurring within the certification period of the same certification.

In applying amended section 233(a)(2), account must be taken of its applicability, in conjunction with the applicability of section 1430(g) of the OTCA, to the total separation of a worker which occurs before August 23, 1988 and subsequent to the worker's prior "first qualifying separation" under the same certification and within the same certification period. For this purpose, the "first qualifying separation" must continue to have essentially the same meaning as under the prior law, and thus means the worker's first partial or total separation—as determined under the law in effect at the time such separation occurred—under a single certification, and which is within the certification period of the certification. Also with respect to such separation, the worker must meet the qualifying employment and wage requirements of section 231(a)(2) of the Trade Act—as determined under the law in effect at the time the decision is made in accordance with this revised section F.1.

Conversely, the subsequent total separation must be a total qualifying separation under amended section 233(a)(2) in order to justify the application of amended section 233(a)(2) and section 1430(g) of the OTCA. Only under these explicit conditions may amended section 233(a)(2) and the limitation in section 1430(g) be applied to a total separation which occurred before August 23, 1988, and then only in regard to a decision on a claim which is made on or after August 23, 1988. Neither amended section 233(a)(2) nor section 1430(g) may under any circumstances be applied with regard to a partial separation, or a total separation which is not a qualifying separation, nor may section 1430(g) be applied to a total separation (whether qualifying or not) which occurred or occurs on or after August 23, 1988.

Although a worker's TRA eligibility period will, as stated above, be established or reestablished with respect to each "total qualifying separation" under the same certification, nothing else changes in regard to the worker's basic TRA entitlement. Thus, the worker's weekly amount of basic TRA, as computed under section 232, and the worker's maximum amount of basic TRA, as computed under section 233(a)(1), are established and remain fixed at the amounts computed with respect to the worker's first partial or total separation which is within the certification period of the certification covering the worker, and with respect to which section 231(a)(3) applies to the worker, regardless of whether such first separation occurred before, on, or after August 23, 1988.

Therefore, whenever a worker files a new TRA claim it will be necessary to determine whether the worker's most recent separation was a "total qualifying separation", as defined above, and, if so, whether such separation occurred before, on, or after August 23, 1988, and whether the worker had a prior partial or total separation within the certification period of the same certification with respect to which section 231(a)(3) applies to the worker.

If such most recent separation occurred prior to August 23, 1988, and was not the individual's first partial or total separation as defined above, then—

• The eligibility period will be 104 weeks beginning with the week following the week in which the total separation occurred or 104 weeks after the exhaustion of regular UI in the first benefit period, whichever is longer, and

• The worker's weekly amount of basic TRA, as computed under section 232, and the worker's maximum amount of basic TRA, as computed under section 233(a)(1), are established or remain fixed at the amounts computed with respect to the worker's first partial or total separation which is within the certification period of the certification covering the worker and with respect to which section 231(a)(3) applies to the worker.

However, any TRA payment for weeks beginning on and after March 1, 1986 and before October 1, 1986, shall take into account the G–R–H 4.3 percent sequester reduction. Operating instructions provided to the States implementing the 1986 G–R–H sequester provided that during the period of this sequester the worker's TRA maximum amount will not be reduced except on a week-by-week basis and then only by the actual amount of the weekly TRA payment after the 4.3 percent reduction (and any other reductions). When the balance remaining in the worker's TRA maximum amount is less than the full weekly TRA amount payable, the 4.3 percent reduction will be applied to the remaining balance.

The G–R–H sequester for weeks of unemployment beginning on or after October 1, 1989, and for the remainder of FY 1990 will be 1.4 percent. During this period, the weekly benefit amount of TRA payable to each worker shall be reduced by the 1.4 percent G–R–H sequester reduction. The worker's TRA maximum benefit amount during the FY 1990 G–R–H sequester period is reduced by the total TRA weekly benefit amount without regard to the 1.4 percent G–R–H sequestration. An example of the G–R–H sequestration applicable to weeks beginning in FY 1990 is:

Worker's TRA weekly benefit amount	$100.00
1.4% G–R–H reduction	1.40
Reduced weekly amount	*98.60
Weekly reduction to max. ben. amt.	100.00

*Rounded to a whole dollar amount as provided by the applicable State law.

If such most recent separation occurred or occurs on or after August 23, 1988, and was not the individual's first partial or total separation as defined above, then—

• The eligibility period will be 104 weeks beginning with the week following the week in which the total separation occurred, and

• The worker's weekly amount of basic TRA, as computed under sections 232, and the worker's maximum amount of basic TRA, as computed under section 233(a)(1), are established or remain fixed at the amounts computed with respect to the worker's first partial or total separation which is within the certification period of the certification covering the worker and with respect to which section 231(a)(3) applies to the worker.

The worker's weekly and maximum amounts of basic TRA will be determined, under section 232 and 233(a)(1), respectively, on the basis of such a first partial or total separation, as set out above, regardless of whether such first separation occurred before, on, or after August 23, 1988. On the other hand, the worker's eligibility period under amended section 233(a)(2) will be "movable," and section 1430(g) will not apply.

Note: If a SESA, following instructions contained in subsection F.1. of GAL 7–88, erroneously applied the provisions of section 1430(g) of the OTCA to a worker's total qualifying separation occurring on or after August 23, 1988, a TRA overpayment may have resulted. If an overpayment resulted, the SESA must issue an overpayment determination under section 243 of the Trade Act and 20 CFR 617.55 with respect to any such TRA overpayment in every case.

Examples of application of the revised eligibility period for basic TRA are contained in attachment B of this GAL.

F. 2. Retroactive Waiver of Time Limitations

Amended Law: Section 1425(b) of the OTCA, without specifically amending any provision of the Trade Act, waives the time limit on the TRA eligibility period in section 233(a)(2), and the 210-day time limit in section 233(b) on filing a bona fide application for training in order to qualify for additional TRA, but only for workers who experienced a qualifying, total separation from adversely affected employment in the period which began on August 13, 1981 (the date of enactment of the 1981 Amendments), and ended on April 7, 1986 (the date of enactment of the 1986 Amendments).

Other specified conditions must be met for a worker to become eligible under this retroactive provision for basic and additional TRA. This provision became effective on August 23, 1988, and affects the regulations at 20 CFR part 617.

Nine conditions must be found to exist for a worker to establish potential eligibility under section 1425(b) for basic and additional TRA:

a. A certification of eligibility to apply for adjustment assistance must have been issued under section 223 of the Trade Act;

b. The worker must be covered by such certification;

c. The worker must have been separated from adversely affected employment, and such separation must be a "total separation" as defined in section 247(11) of the Trade Act and in the regulations at 20 CFR 617.3(11);

d. Such total separation must be within the certification period of such certification as specified in the certification and in section 231(a)(1) of the Trade Act;

e. The worker must meet the employment and wage qualifying requirements of section 231(a)(2) of the Trade Act (as in effect on the date any decision (as defined above) is made) with respect to such separation;

and, further, for the purposes of section 1425(b)—

f. Such total separation must have occurred on or after August 13, 1981, and on or before April 7, 1986;

g. The worker must be currently "enrolled in a training program" approved under section 236(a) of the Trade Act;

h. The worker must have been "unemployed continuously since the date" of such total separation, not taking into account "seasonal employment, odd jobs, or part-time, temporary employment"; and

i. With respect to any week, the worker has not been determined to have, without justifiable cause, either failed to begin participation in the training program in which enrolled as stated in condition (g), or has ceased to participate in such training program before completing the training program.

All nine of these conditions must be determined to be met in order to establish a worker's eligibility for TRA under section 1425(b) and this revised section F.2. The meaning of conditions (a) through (f) is self-evident from the terms as stated in each of these conditions. The terms of conditions (g) and (i) are expressed in section 1425(b) in the same terms as the OTCA amendments to sections 231(a)(5)(A) and 231(b)(1) of the Trade Act, and, therefore, the same terms in both provisions (enrolled in training, failed to begin participation, ceased participation, and "justifiable cause") shall have the same meanings for the purposes of section 1425(b) as are stated above in sections C.1. and C.2.

Condition (h) is a special condition applicable solely as a condition of eligibility for TRA under section 1425(b). The worker must have been "unemployed continuously" since the date of the total separation which is referred to in conditions (c) through (f). In a prior version of section 1425(b) this condition was stated as being continuously unemployed since the "original" separation. Therefore, since the enacted version in effect refers to any total separation meeting conditions (c) through (f), only the last such separation shall be taken into account for the purposes of section 1425(b). Further, in determining whether unemployment has been continuous (up to the time of enrollment and participation in training for the purposes of section 1425(b)), all employment of the worker in work that is seasonal or in odd jobs, or part-time, temporary work, is to be disregarded. However, any job not meeting one of these exclusions will break the chain, and the worker may not be determining to have been continuously unemployed.

Section 1425(b) became effective on August 23, 1988, and affects the regulations at 20 CFR part 617. Therefore, while the waiver of the time limits in section 233 (a)(2) and (b) are retroactive in a sense, it is only for the purpose of effectuating the intent of section 1425(b) that workers separated in the period which began on August 13, 1981 and ended on April 7, 1986, shall not be denied basic and additional TRA prospectively, beginning on August 23, 1988, because of such time limitations. Therefore, section 1425(b) is to operate prospectively for the purposes of payment of basic and additional TRA, and all of the terms and conditions of the Trade Act as amended by the OTCA (except the time elements specifically waived), and the further conditions stated in conditions (f) through (i) above, shall be applied in determining whether a particular worker is entitled to such payments.

As interpreted in this revised section F.2., section 1425(b) of the OTCA is effective with regard to all decisions (*i.e.*, all determinations, redeterminations, and decisions on appeals) which are made on or after August 23, 1988. Further, the law to be applied in making any such decision is the law as in effect on the date any such decision is made, as set forth in this revised section F.2., except that, in the case of section 1425(b), there is no limitation on the eligibility period for basic TRA, and the 210-day limitation in section 233(b) of the Trade Act shall not apply. For additional TRA, on the other hand, the eligibility period as provided in amended section 233(a)(3) of the Trade Act shall be applicable. Furthermore, section 1430(g) of the OTCA is not applicable to claims filed under section 1425(b).

Effect shall be given to the operating instructions in this revised section F.2. in regard to any decision (as defined above) which is made after the date of this GAL. In regard to the exercise of a State's or a State agency's authority under the State's UI law to redetermine TAA cases, or seek remedial action in appealed cases, see section 4 of this GAL, on Determinations, Redeterminations, and Decisions on Appeals.

Administration: No payment of basic or additional TRA may be made under section 1425(b) for any week which begins before August 23, 1988, but for any week which begins after August 23, 1988, a worker who is found to meet conditions (a) through (f) and condition (h), and who is also found to be "enrolled in" (condition (g)) or participating in a required training program, and is not failing to meet condition (i), shall be paid TRA (if otherwise eligible) beginning with the first week of such eligibility which begins after August 23, 1988.

The reference to otherwise eligible in the preceding sentence assumes the worker is found to meet all of the nine conditions stated above, and also that the cumulative payments made under section 1425(b), together with any payments previously made to the worker, do not exceed the worker's maximum entitlement to TRA as determined under sections 233(a)(1) and 233(a)(3). For example, if a worker qualifies as eligible under section 1425(b) and has received all of the basic TRA to which the worker was entitled, but no additional TRA, the worker would be entitled to up to 26 weeks of additional TRA, but no further basic TRA. Similarly, if the worker had received 20 weeks of basic TRA and was determined under section 233(a)(1) to be entitled to 26 weeks, the worker is entitled to the remaining six weeks of basic TRA, and up to 26 weeks of additional TRA. Under section 1425(b), however, no payment of basic TRA may be made for any week the worker is not actually enrolled in or participating in approved training, nor may additional TRA be paid for any week the worker is not actually participating in approved training, as is required by section 1425(b). Payments may be made for breaks in training, as is permitted in limited cases to other workers in training under new subsection (f) of section 233, as discussed above in section E.3.

All of the provisions of amended sections 233(a)(3) and 236 will apply to section 1425(b) workers. Even though the last "qualifying separation" will be used as the starting point for applying the "continuously unemployed" condition, the first "qualifying separation" must be used to determine weekly and maximum amounts payable, in accordance with sections 232 and 233(a)(1). However, for 1425(b) worker's, there is no limited eligibility period for basic TRA, although the 26-week eligibility period for additional TRA is applicable as stated in section 233(a)(3) as amended by the OTCA.

State agencies must make new determinations for all workers who apply for benefits under section 1425(b), and provide payments only when all eligibility conditions are properly determined to be met. Also, States must make good faith efforts to inform workers of their rights under this provision through notices in newspapers of general circulation in areas of the State where workers covered by past certifications reside, and, where the certification periods under such certifications include any portion of the period which began on August 13, 1981, and ended on April 7, 1986. The efforts by the States should also include, where appropriate, news releases, notification to unions, and posting of notices in UI, Job Service and other appropriate offices. State agencies are also encouraged to use available and accessible administrative records to help identify those workers previously denied TAA benefits and services who might now be eligible for TRA payments under section 1425(b) or training.

State agencies will consider local labor market characteristics in applying the terms seasonable, odd jobs, or part-time, temporary work.

Note: Because of the new interpretation of section 1430(a) of the OTCA, it is theoretically possible that a worker may be covered under section 1425(b) of the OTCA and also covered under another provision of the amended Trade Act, with regard to the worker's entitlement to basic TRA under a single certification. In any case in which this happens, the worker must be fully informed of the worker's rights under both provisions, and be given the choice of receiving TRA under either or both provisions. The only restrictions that may be placed upon the worker's choice, is that the aggregate payments of TRA may not exceed the worker's maximum entitlement as determined under section 233(a)(1) and the regulations in effect, only one TRA payment in the established weekly benefit amount may be paid for any single week of unemployment, and, of course, with respect to each week paid the worker must be otherwise eligible for the TRA payment under the applicable provisions of the amended Trade Act or section 1425(b), as the case may be, and the controlling operating instructions in this attachment A of this GAL (or the final regulations when they take effect). In such case, the worker shall be fully informed of the effect of the 4.3 percent G–R–H sequester reduction on any TRA payable for a week beginning on and after March 1, 1986 and before October 1, 1986.

An example of application of the retroactive waiver of time limitations is

contained in ATTACHMENT B of this CAL.

G. Section 236—Training for Adversely Affected Workers

Section 1424 of the OTCA makes a number of changes in section 236 of the Trade Act, and related changes in section 239. The changes in subsections (a) and (c) of section 1424, to section 236, are discussed in this section. All of the changes to section 236 affect the regulations at 20 CFR part 617. Subsection (b) of section 1424, which relates to a possible, future increase in the $90 million ceiling is not addressed in this document.

G.1. Criteria for Approval of Training

Amended Law: In paragraphs (1) through (4) of section 1424(a) of the OTCA, the criteria for approval of training in section 236(a)(1) of the Trade Act are amended by changing "is available" to "is reasonably available" in subparagraph (D), and by adding new criterion (F) that "such training is suitable for the worker and available at a reasonable cost."

New paragraph (9) of section 236(a), as added by section 1424(a)(13) of the OTCA, directs the Secretary of Labor to prescribe regulations which set forth the criteria for each of the subparagraphs of section 236(a)(1) "that will be used as the basis for making determinations under paragraph (1)."

These amendments became effective on August 23, 1988.

Administration: For purposes of implementing section 236(a)(9), the following criteria are set forth for subparagraphs (A) through (F) of section 236(a)(1) for making determinations under paragraph (1):

(A) There is no suitable employment (which may include technical and professional employment) available for an adversely affected worker.

This means that for the worker for whom approval of training is being considered under section 236(a)(1), there is at that time no suitable employment available for that worker, either in the commuting area, as defined in 20 CFR 617.3(k), or outside the commuting area in an area in which the worker desires to relocate with the assistance of a relocation allowance under section 238, and there is no reasonable prospect of such suitable employment becoming available for the worker in the foreseeable future. For the purposes of subparagraph (A), the term "suitable employment" is defined in section 236(f) (redesignated (e) by section 1424(c)(3), effective on November 21, 1988).

(B) The worker would benefit from appropriate training.

This means that there is a direct correlation between the needs of the worker for skills training or remedial education and what would be provided by the training program under consideration for the worker, and that the worker has the mental and physical capabilities to undertake, make satisfactory progress and complete the training. Further, this implies the individual will be job ready on completion of training.

(C) There is a reasonable expectation of employment following completion of such training.

This means that, for that worker, given the job market conditions expected to exist at the time of the completion of the training program, there is, fairly and objectively considered, a reasonable expectation that the worker will find a job, using the skills acquired while in training, after completion of the training. Any determination under subparagraph (C) must take into account section 236(a)(2) (redesignated (3) by section 1424(a)(11)), which provides that "a reasonable expectation of employment" does not require that employment opportunities for the worker be available, or offered, immediatley upon the completion of the approved training. This emphasizes, rather than negates, the point that there must be a fair and objective projection of job market conditions expected to exist at the time of completion of the training.

(D) Training approved by the Secretary is reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 195(2) of the Vocational Education Act of 1963, and employers).

This means that training is reasonably accessible to the worker within the worker's commuting area at any governmental or private institution or facility, particularly including on-the-job training with an employer, and it means training that is suitable for the worker and meets the other criteria of subsection (a)(1). It also means that emphasis must be given to finding accessible training for the worker, although not precluding training outside the commuting area if none is available at the time within the worker's commuting area. If outside the commuting area then the training must be available at a reasonable cost as prescribed in (F) below.

In determining whether or not training is reasonably available, first consideration shall be given to training opportunities available within the worker's normal commuting area. Training at facilities outside the worker's normal commuting area should be approved only if such training is not available in the area or the training to be provided outside the normal commuting area is provided at a more reasonable cost.

(E) The worker is qualified to undertake and complete such training.

This emphasizes the worker's personal qualifications; that is, the worker's own physical and mental capabilities and background and experience. In relation to these personal characteristics, the worker must be evaluated as qualified to undertake the specific training program being considered and to complete the training successfully.

(F) Such training is suitable for the worker and available at a reasonable cost.

Such training means the training being considered for the worker. Suitable for the worker means that subparagraph (E) is met and that the training is appropriate for the worker given the worker's capabilities, background and experience.

Available at a reasonable cost means that training is not approved at one institution when, all costs being considered, the same training can be obtained at another institution at a lower total cost. It also means that training is not approved when the costs of the training are unreasonably high in comparison with the average costs of training other workers in similar occupations at other institutions or facilities. This new criterion also requires taking into consideration the funding of training costs from sources other than TAA funds, and the least cost to TAA funding of providing suitable training opportunities to workers. New provisions (added by OTCA) as well as section 236(a)(3) (redesignated (4) by section 1424(a)(11)) mandate a more controlled and sophisticated management of TAA funds and funding from other sources in the provision of training opportunities to the maximum number of adversely affected workers. Greater emphasis will need to be given to these elements in determining the reasonable costs of training, particularly in view of the new requirements that TRA claimants be enrolled in and participate in training.

The meanings ascribed above to the six criteria of section 236(a)(1) shall be given effect in determinations approving or disapproving training for workers on and after August 23, 1988.

Determining Reasonable Costs of Training. For the purpose of subparagraph (F) the following actions shall be taken by the State agency:

a. Reasonable cost of training shall take into consideration tuition and related expenses (books, tools, and fees), travel or transportation expenses, and subsistence expenses.

b. In determining whether costs of training are reasonable, consideration should first be given to the lowest cost training which is available within the commuting area. When like training for suitable employment is offered at more than one training facility, the lowest cost training shall be approved.

c. Training outside the worker's normal commuting area should be approved only in situations where appropriate training is not otherwise available. Training that involves transportation or subsistence costs which add substantially to the total costs provide a basis for disapproving the training, if other appropriate training is available.

d. States shall establish, annually, a maximum amount allowable for the total costs of training per worker taking into consideration the type of occupational training, the usual and customary costs of such training in the State and the duration of the training.

G.2. Training as an Entitlement

Amended Law: Paragraphs (5) and (6) of section 1424(a) of the OTCA make changes in the first and second sentences of section 236(a)(1) that convert training from an entitlement to the extent appropriated funds are available, to an entitlement without regard to the availability of funding to pay the costs of the training. Thus, in the first sentence, the phrase "shall (to the extent appropriated funds are available) approve", which was added by the 1986 Amendments, is amended by deleting the parenthetical clause so that the phrase reads, simply, "shall approve". This clearly makes training an entitlement and in any case where the six criteria are reasonably met, the worker is entitled to have the training approved and it may not be unreasonably denied.

The second sentence provides that the worker shall be entitled to "have payment of the costs of such training paid on his behalf," and this is changed by inserting the parenthetical "(subject to the limitations imposed by this section)" after the words costs of such training. The reference to "limitations" includes all of the limitations and restrictions on types of training and the training criteria, as well as the new $80 million limit on annual training costs payable from TAA funds.

These amendments became effective on August 23, 1988.

Administration: The amended Act provides up to $80 million ($120 million one year after an import fee takes effect) to cover training costs under the Act. Up to this limit workers are entitled under the amended second sentence of section 236(a)(1) to have the costs of approved training paid on their behalf.

All certified eligible workers must be informed in writing of their entitlement to training immediately and of the qualifying requirement of being enrolled in or having completed training as a condition for receiving any TRA for weeks beginning after November 19, 1988. States must establish procedures for documenting such action, and records documented that the worker has been so informed and has attested to the fact.

G.3. Funding Training

Amended Law: The OTCA makes four primary changes in section 236(a) relating to funding the costs of training approved under section 236(a)(1), other than on-the-job training.

Section 1424(a)(12) of the OTCA adds a new paragraph (2) to section 236(a), which limits annual training costs under section 236(a)(1) to $80 million. Paragraph (2) further provides that if the Secretary foresees in any fiscal year that the $80 million limit will be exceeded, the Secretary will decide how the remaining funds shall be apportioned among the States for the balance of such fiscal year. Related to this is a one-time appropriation in section 1426(c) of the OTCA of such amounts as may be necessary for payments under Sections 236, 237, and 238 after August 23, 1988, and before October 1, 1988: The sum appropriated is charged to the Fiscal Year 1989 appropriation for these purposes.

Section 1424(a)(13) adds new paragraph (6) to section 236(a). New paragraph (6) provides that the costs of training approved under section 236(a)(1) are "not required" to be paid from TAA funds "to the extent that such costs are paid" under any State program or any other Federal program or from any other source than section 236. The "not required" language means that this is neither a requirement nor a prohibition on the use of TAA funds.

Also, in this connection, subparagraph (B) of new paragraph (6) provides that the worker may be required to enter into an agreement under which the training costs will not be required to be paid from TAA funds to the extent of "the portion of the costs of such training that the worker has reason to believe will be paid under the program, or by the source, described in subparagraph (A) or (B) of paragraph (1) (sic)." First of all, the reference to paragraph (1) is presumed to mean paragraph (4) (redesignated (5) by section 1424(a)(11)), because in the context this is the only meaningful reference for these purposes. Thus, paragraph (6)(B) is construed as referring to costs payable by the employer for OJT training and costs payable under Title III of the Job Training Partnership Act.

In another change related to funding, section 1424(a)(13) of the OTCA also adds a new paragraph (7) to section 236(a), which prohibits the approval of a training program under section 236(a) if: (a) All "or a portion" of the training costs are paid under any "nongovernmental plan or program"; (b) the worker has a right to obtain training or funds for training under the nongovernmental plan or program; and (c) the worker would be required to reimburse the nongovernmental plan and program from TAA funds provided under section 236(a), or from wages paid under such training program, "for any portion" of the costs of the training program. This is a flat prohibition, not only on funding but on the approval under section 236(a) of a training program, if the worker might be required to reimburse the nongovernmental plan or program for "any portion", however small, of the costs of such training.

A further related change is made in section 1424(a)(10) of the OTCA to paragraph (4) (redesignated (5) by section 1424(a)(11)) of section 236(a). In describing the types of training programs that are approvable under section 236(a)(1), a new subparagraph (E) is added to paragraph (5) to provide that such approvable training shall include—

(E) Any training program (other than a program described in paragraph (7)) for which all, or any portion, of the costs of training the worker are paid—

(i) Under any Federal or State program other than this chapter, or

(ii) From any source other than this section.

All of the amendments discussed in this item became effective on August 23, 1988.

Administration: As pointed out in the preceding item, since August 23, 1988, training is an entitlement which may not unreasonably be denied, without regard to whether there are any TAA funds to pay the costs of the training. New paragraph (2) of section 236(a) places a ceiling on annual training costs payable from TAA funds, and authorizes the Secretary to apportion funds among the States in any year when the Secretary estimates that the ceiling might be exceeded. The second sentence of section 236(a)(1) provides, however, that workers shall be entitled to have the costs of approved training paid by the Secretary, subject to the limitations imposed by other provisions of section

236. While these provisions, read together, might appear to authorize approval of training for which the worker agrees to pay part or all of the costs, no change is contemplated in 20 CFR 617.22(b), which precludes approval of training for which the individual would be required to pay a fee or tuition.

Retention of the requirement that precludes approval of training under section 236(a)(1) if the worker would be required to pay any of the costs of the training emphasizes the necessity for close cooperation between public authorities and providers in fully funding training costs. New paragraphs (5)(E), (6), and (7) of section 236 open the door to approval of training under section 236(a)(1) even though the costs of the training are partially or fully paid under any other Federal program, any State program, or for any other source than section 236 which includes private sources. The one prohibition in paragraph (7) is that the training under a nongovernmental plan or program may not be approved under section 236(a)(1) if the worker might be required under the plan or program to pay any part of the costs of the training, under any circumstances, or if the worker might be required under the plan or program to turn over to the plan or program any TAA funds paid to the worker or any sum equal to a portion or all of such TAA funds. Although paragraph (7) makes this prohibition specific for nongovernmental plans or programs, the same prohibition applies by implication to all Federal and State programs as well, for the purposes of section 236. As provided in 20 CFR 617.22(b), a worker may not be required to pay any of the costs of training approvable under section 236(a)(1). To give full effect to these provisions of section 236 and the regulations, it must follow that a worker also may not be asked to make a voluntary contribution to offset the costs of the training.

Notwithstanding the opening of funding doors in new paragraphs (5)(E), (6), and (7), paragraph (3) of section 236(a) was redesignated as paragraph (4) but was not otherwise amended by the OTCA. Section 236(a)(4) continues to preclude some mixing of funds, and must now be construed in conjunction with new paragraphs (5)(E), (6), and (7). Subparagraph (A) of section 236(a)(4) continues to prohibit payment of training costs under any other Federal law if they are paid from TAA funds. While this preclusion is specific in this single instance, it is implicit in section 236, and particularly new paragraphs (5)(E), (6), and (7) that any duplication of payment of any training costs, if such duplication would in any way involve the use to TAA funds, is clearly prohibited by section 236.

Subparagraph (B) of section 236(a)(4) prohibits the use of TAA funds to pay any training costs that: (i) Have already been paid under any other Federal law; or (ii) are reimbursable under any other Federal law and a portion of such costs have already been paid under such other Federal law. In part, subparagraph (B) simply prescribes another prohibition on duplication that is the reverse of the prohibition in subparagraph (A). As stated in the preceding paragraph, however, section 236 precludes all duplication which may in any way involve the use of TAA funds.

The second part of subparagraph (B) has in the past presented some difficulty in application, but with the addition of new paragraphs (5)(E), (6), and (7), and the new emphasis upon close cooperation, advance planning and preparation with respect to mixed-funding training programs, the former difficulty should diminish remarkably. The second part of subparagraph (B) must be given effect, however, and may not be overcome of disregarded because of second thought or afterthought based upon new paragraph (5)(E), (6), or (7). Further, the Department is given the authority under new paragraph (6)(B) to require a release from the worker of the "entitlement of training costs" when the costs of approved training are being paid from a source other than TAA.

Implementation of these changes as outlined above will provide the States greater flexibility in sourcing funds for TAA approved training. Specifically, cooperating State agencies are to take the following actions to implement amended section 236:

a. Inform other training providers and cooperating State agencies of the provisions of amended section 236, and establish procedures and plans for utilizing TAA funds, funds under other Federal and State programs, and funds from other sources, either in a mix or one source alone, in providing training to workers which is approvable under section 236(a)(1).

b. Establish procedures for executing agreements with workers as required by subparagraph (B) of section 236(a)(6).

c. Establish procedures to assure that all of the requirements of Section 236 are met in the provision of any training to be approved under section 236(a)(1).

d. Establish procedures and prepare plans to assure that the maximum training opportunities are available and timely for adversely affected workers, and that they are placed in training at the earliest possible time.

e. Obtain written assurance from each worker that no request for reimbursement from TAA funds will be made when training costs are paid for from non-TAA sources.

G.4. Types of Training Approvable

Amended Law: Section 1424(a)(10) of the OTCA amends paragraph (4) (redesignated (5) by section 1424(a)(11)) of section 236(a), to add remedial education and mixed-funding training as specified in new paragraph (5)(E). The addition of remedial education as a separate and distinct approvable training program is a significant change. Previously, remedial education was approvable only as part of a broader training program that also included skills training. With this change remedial education is approvable as a distinct training program, without the need to include skills training. Nevertheless, in order to meet all of the criteria of section 236(a)(1), remedial education may be approved as a separate and complete training program only where no skills training is necessary to make the worker job ready upon completion of the training.

This amendment became effective on August 23, 1988.

Administration: Remedial education may be approved as a training program for a worker when the six (6) criteria of section 236(a)(1) are met.

Remedial education may continue to be offered when included as an integral part of an overall training program for a worker. However, this amendment recognizes that for some workers, the use of remedial education to improve certain basic skills may be the only assistance an individual worker requires to return to suitable work.

State agencies should develop procedures for approving training in the form of remedial education when it is an appropriate adjustment service to help the worker return to suitable employment or as a part of an approved training program.

G.5. On-the-Job Training

Amended Law: Section 1424(c) of the OTCA makes one significant change concerning on-the-job training, and two technical and conforming changes in section 236. These changes are in addition to the technical and conforming change in Section 232(b) (discussed above) made by section 1423(b)(1) of the OTCA.

Section 1424(c)(1) of the OTCA amends subsection (d) of section 236, which was added by the 1986 Amendments. As added in 1986, section 236(d) provided that, notwithstanding subsection (a)(1), the costs of on-the-job training "may" be paid only if ten specified conditions were met. Without disturbing the ten conditions, the introductory part of section 236(d) is amended by section 1424(c)(1) to provide that:

(d) The Secretary shall pay the costs of any on-the-job training of an adversely affected worker that is approved under subsection (a)(1) in equal monthly installments, but the Secretary may pay such costs, notwithstanding any other provision of this section, only if—

This puts the costs of OJT training on the same entitlement track as other training costs under the second sentence of section 236(a)(1), and therefore subject to the provisions on the $80 million limition in new section 236(a)(2). The only difference specified in section 236(d) is that the costs shall be paid in "equal monthly installments." This amendment became effective on August 23, 1988, and applies to determinations made on and after that date and to payments of costs beginning with payments made in September 1988.

Sections 1424(c) (2) and (3) make technical and conforming changes in section 236, by repealing subsection (c) and by redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively. Thus, subsection (d) becomes subsection (c). Old subsection (c) is replaced by section 231(b), as amended by section 1423(a)(2) of the OTCA.

These technical and conforming changes are effective on November 21, 1988.

Administration: State agencies are to take the following actions with respect to providing OJT payments in equally monthly installments if the conditions stated in section 236(d) are found to be met.

The amount of the monthly installment shall be equivalent to the contracted cost of the training divided by the duration of the training program in months. State agencies are to modify OJT contracting procedures and forms to incorporate this requirement in new OJT contracts approved after August 23, 1988. Contracts existing on August 23, 1988 are to be modified, if necessary, to convert to monthly payments beginning in September.

G.6. Miscellany

Amended Law: Two other significant changes in section 236 are made by section 1424 of the OTCA.

Section 1424(a)(7) of the OTCA amends the second sentence of section 236(a)(1) to insert the phrase "directly or through a voucher system" after the words "by the Secretary." This amendment became effective on August 23, 1988.

Section 1424(a)(13) of the OTCA also added a new paragraph (8) to section 236(a). New paragraph (8) simply authorizes approval of training for a worker at any time after the certification is issued which covers the worker, "without regard to whether such worker has exhausted all rights to any unemployment insurance to which the worker is entitled." This merely makes explicit what was apparent all along, and is the practice that has been followed. It is an important reminder, however, because under section 231(b)(2) (as amended by section 1423(a)(2) of the OTCA) the training requirements of section 231(a)(5) and (b) are effective for individual workers the first week after the certification is issued. See the discussion above of section 231(b)(2). New paragraph (8) also became effective on August 23, 1988.

Administration: No action is being taken at this time relating to the use of a voucher system. An assessment will be made of the feasibility of using a voucher system and its applicability to administration of the TAA program. In the meantime no change in operations or procedures shall be effected at the State level.

New paragraph (8) authorizes the approval of training for an adversely affected worker at any time after the group is certified. The intent of this amendment is to get workers into training as early as possible, including the period during which the worker is still receiving unemployment compensation. Except for the necessity for earlier advice to workers, and arrangements for training, this implicates no change in current operations, as 20 CFR 617.10(a) has always authorized early applications for TAA, while providing that determinations of entitlement to TAA may not be made until a certification is issued and it is determined on an individual basis that the workers are covered by the certification.

State agencies, when informing workers of their benefits under the Trade Act, should encourage workers to enroll in training at the earliest possible date. In this way, workers will be able to receive unemployment compensation and TRA for more weeks while in approved training.

H. Section 239—Agreements With States

H. TAA Agreements with States

Amended Law: Several changes are made in section 239 for the purpose of assuring that the amendments in the OTCA are carried out through the agreements with the States. These changes will require that new agreements be executed between the States and the Secretary of Labor, and affect the regulations at 20 CFR part 617.

Section 1423(a)(4) of the OTCA amends section 239(a)(3) of the Trade Act to require that the States "will make any certifications required under section 231(c)(2)." This amendment became effective on August 23, 1988.

Section 1424(d)(1)(B) of the OTCA amends subsection (e) of section 239 to read as follows:

(e) Any agreement entered into under this section shall provide for the coordination of the administration of the provisions for employment services, training, and supplemental assistance under sections 235 and 236 of this Act and under title III of the Job Training Partnership Act upon such terms and conditions as are established by the Secretary in consultation with the States and set forth in such agreement. Any agency of the State jointly administering such provisions under such agreement shall be considered to be a cooperating State agency for purposes of this chapter.

As amended, subsection (e) requires the coordinated delivery of services and benefits under sections 235 and 236 of the Trade Act and title III of the Job Training Partnership Act "upon such terms and conditions as are established by the Secretary in consultation with the States and set forth in such agreement."

This amendment became effective on August 23, 1988, and is another reason why new agreements will be required with the States.

Section 1424(d)(2) of the OTCA amends subsection (f) of section 239 to read as follows:

(f) Each cooperating State agency shall, in carrying out subsection (a)(2)—

(1) Advise each worker who applies for unemployment insurance of the benefits under this chapter and the procedures and deadlines for applying for such benefits.

(2) Facilitate the early filing of petitions under section 221 for any workers that the agency considers are likely to be eligible for benefits under this chapter.

(3) Advise each adversely affected worker to apply for training under section 236(a) before, or at the same time, the worker applies for trade readjustment allowances under part I of subchapter B, and

(4) As soon as practicable, interview the adversely affected worker regarding suitable training opportunities available to the worker under section 236 and review such opportunities with the worker.

As amended, subsection (f) requires the States to furnish a great deal more information and advice to workers, and, more importantly, at a much earlier time than was required under former subsection (f). The information and advice required by amended subsection

(f) must be coordinated with the notice, information and assistance provisions of amended section 225. This amended subsection (f) of section 239 became effective on August 23, 1988.

In another amendment of a technical nature, related to the agreements with the States, section 1424(d)(1)(A) of the OTCA amends section 235 of the Trade Act by striking out "cooperating State agencies" and inserting "the States" in lieu thereof. This amendment became effective on August 23, 1988, and affects the regulations at 20 CFR part 617.

Administration: New State agreements have been developed, signed by the Secretary and sent to the Governor of each State for execution. Governors have been requested to return signed agreements to the Department of Labor by September 20, 1988. Those agreements were designed explicitly to bind the States to follow the operating instructions in GAL 7–88 and in other guidance issued by the Department of Labor. Such guidance now includes this GAL.

Immediately upon the signing of the Agreement in each State, the cooperating State agencies shall commence giving effect to the 1988 Amendments. Among the things to be done immediately is to furnish to all current UI claimants and TRA applicants the advice, information, and assistance required by sections 239(f) and 225 of the amended Trade Act.

I. Other

Sections 1426 through 1429 of the OTCA contain other amendments to the Trade Act of 1974 and other provisions that do not directly impact on the administration of the TAA Program by the States under their agreements with the Secretary of Labor. These provisions, therefore, are not discussed in this document.

Section 1430 of the OTCA prescribes the effective dates of the various provisions of the OTCA. The effective date of each provision discussed in this document is set forth in such discussion.

[End]

Attachment B to GAL 15–88: Examples of Applying Operating Instructions Under Differing Scenarios

Section 1: Application of Revised Operating Instructions in Section F.1. of Attachment A

F.1.—Revised Eligibility Period for Basic TRA—Examples

The examples which follow are general, but represent some of the different categories of TRA claimants affected by the operating instructions in revised section F.1. In regard to the exercise of a State's or a State agency's authority under the State's UI law to redetermine TRA claims, or seek remedial action in appealed cases, as discussed in the following examples, see section 4 of this GAL, on Determinations, Redeterminations, and Decisions on Appeals.

Reminder: G–R–H sequester reductions, as described in the body of this GAL and in attachment A to the GAL, must be applied to TRA payments for certain weeks in FY 1988 and all weeks beginning in FY 1990. Thus, the G–R–H reductions apply to some TRA payments described in the examples below.

Example 1. A worker was totally separated from adversely affected employment in July 1986, which was the "first qualifying separation" for the worker under the applicable certification. A 104-week TRA eligibility period was established following the worker's first exhaustion of 26 weeks of regular UI in January 1987. The worker did not exhaust TRA monetary entitlement before returning to work with the same employer. The worker had a subsequent total qualifying separation covered under the same certification in early August 1988 (before August 23), but the SESA's TRA entitlement determination with respect to the subsequent separation was issued after the worker had exhausted UI entitlement in February 1989. Following the operating instructions in GAL 7–88, the worker was determined not entitled to TRA after exhaustion of all UI in February 1988, because the worker's eligibility period for TRA ended in January 1988.

Application: The determination made in February 1989 was correct under the regulations and operating instructions in effect at the time the determination was made. However, the determination would have been different had the interpretations contained in revised section F.1. been in place in February 1989. The SESA should redetermine the worker's entitlement, upon the request of the worker or upon its own motion, only if authorized under the applicable State law for UI purposes. If the case is redetermined, the worker would be entitled to a new eligibility period of 104 weeks beginning with the week following the week in which the total qualifying separation occurred in August 1988, in accordance with the provisions of amended section 233(a)(2) of the Trade Act and the operating instructions in revised section F.1., since:

(a) The redetermination is being made on or after August 23, 1988;

(b) The eligibility period for decisions made on or after August 23, 1988 is 104 weeks after the most recent total qualifying separation; and

(c) The eligibility period based on the early August 1988 total separation is longer than the eligibility period based on the first qualifying separation in July 1986 (e.g., the limitation of section 1430(g) of the OTCA does not apply).

Example 2. A worker established TRA entitlement based on a first qualifying separation from adversely affected employment in October 1982. The worker exhausted UI entitlement, but did not exhaust TRA entitlement before returning to work with the same employer. The worker had a subsequent total qualifying separation from adversely affected employment covered under the same certification in November 1984. A SESA determination, issued after exhaustion of UI following the subsequent separation, denied the worker TRA entitlement because the worker's 52-week TRA eligibility period had expired (pursuant to section 233(a)(2) of the Act, as in effect at the time).

Application: The determination issued after the worker's exhaustion of UI following the subsequent separation was correct under the law in effect at the time the determination was made. However, if pursuant to authority in the applicable State UI law a redetermination or an appeal decision is made after the issuance of revised section F.1., the law to be applied is the law in effect on the date any such decision is made. In any such decision, the worker would be entitled to a new eligibility period of 104 weeks beginning with the week following the week in which the total qualifying separation occurred in November 1984, in accordance with the provisions of amended section 233(a)(2) of the Trade Act and the operating instructions in revised section F.1. The worker's weekly and maximum TRA amounts would remain fixed at the amounts established with respect to the worker's first qualifying separation, because current law on these points is unchanged from the law in effect when the original TRA monetary determination was issued in 1983. However, if any errors were made in the original monetary determination, such errors should be corrected in the redetermination, on the basis of the current law.

Example 3. A worker was totally separated from adversely affected employment in July 1986, which was the "first qualifying separation" for the worker under the applicable certification. The UI benefit period in which such "first qualifying separation" occurred ended in August 1986, after the worker had returned to work with the same employer. Thereafter, the worker was periodically laid off and returned to work, and finally was laid off permanently in July 1988, which was a total qualifying separation under the same certification. The worker exhausted UI in November 1988, and filed an initial claim for TRA. The determination on this initial claim held that the worker is not entitled to TRA after exhaustion of UI in November 1988, because the worker's eligibility period ended in August 1988, 104 weeks after the end of the worker's UI benefit period during which the "first qualifying separation" occurred.

Application: The determination issued on the initial claim for TRA filed in November 1988 was correct under the regulations and operating instructions in effect at the time the determination was made. However, the determination would have been different had the interpretations contained in revised section F.1. been in place. The SESA should redetermine the worker's entitlement, upon the request of the worker or upon its own motions, only if authorized under the applicable State law for UI purposes. If the case is redetermined, the worker is entitled to a new eligibility period of 104 weeks, beginning with the week following the week in which the total qualifying separation occurred in July 1988, on the basis of amended section 233(a)(2) and the operating instructions in revised section F.1. (*See* Example 1).

Example 4. The facts are the same as in Example 3, but the determination on the initial claim for TRA (or on appeal a referee, appeal board, or court decision) holds that the worker's eligibility period for basic TRA is 104 weeks following exhaustion of UI in November 1988.

Application: The determination (or decision) was erroneous under the law, regulations and operating instructions in effect at the time the determination (or decision) was made, and is also inconsistent with the operating instructions in revised section F.1. Therefore, if it is within the State's or State agency's authority under the State's UI law, it must take action to redetermine the claim, or take action to appeal any such decision of a referee, appeal board, or court. Under revised section F.1., the worker is entitled to a new eligibility period of 104 weeks, which begins with the week following the week in which the total qualifying separation occurred in July 1988, rather than 104 weeks beginning after exhaustion of UI in November 1988. Further, the case must be reviewed to ascertain whether any overpayment was made under the incorrect determination (or decision), that would not have been paid under a correct determination (or decision), and an appealable determination must be made under section 243 and 20 CFR 617.55 with the respect to any such overpayment.

Example 5. A worker was totally separated from adversely affected employment in January 1988, which was the "first qualifying separation" for the worker under the applicable certification. Four weeks after the first layoff, the worker returned to work with the same employer and was permanently laid off in October 1988, which was a total qualifying separation under the same certification. The worker exhausted regular UI with the end of the benefit year in January 1989, and filed an initial claim for TRA. The determination on this initial claim held that the worker's eligibility period, based on the first qualifying separation, was 104 weeks after the end of the benefit year in January 1989, and that section 1430(g) of the OTCA and the operating instructions in GAL 7–88 precluded the "moving" of the eligibility period to 104 weeks after the second separation in October 1988. The worker did not appeal from the determination, and it became final.

Application: The determination in this case was correct under the regulations and operating instructions in effect at the time the determination was made. However, the determination would have been different had the interpretations contained in revised section F.1. been in place in January 1989. Under revised section F.1., the worker in this case is not entitled to the application of the section 1430(g) limitation because the second qualifying separation occurred on or after August 23, 1988, and the worker's 104-week eligibility period begins with the week following the week which the total qualifying separation occurred in October 1988. Therefore, if it is within the State's or State agency's authority under the State's UI law, it must take action to redetermine the claim and correct the eligibility period. Further, the case must be reviewed to ascertain whether any overpayment was made under the incorrect determination, that would not have been paid under a correct determination, and an appealable determination must be made under section 243 and 20 CFR 617.55 with respect to any such overpayment.

Example 6. A worker, covered under a retroactive oil and gas certification of group eligibility issued under section 1421(a)(1)(B) of the OTCA, with an impact date of October 1, 1985, had a total qualifying separation on October 4, 1985. The worker exhausted UI benefits on October 19, 1985. The worker returned to work until a subsequent total qualifying separation from the same certified employment occurred in November 1987. The worker established a new claim for UI benefits which he/she exhausted in May 1988. The worker applied for retroactive TRA benefits in January 1989 but the determination issued by the State agency denied TRA because during the 104-week basic TRA eligibility period (October 20, 1985 through October 17, 1987), the worker was employed and, therefore, not eligible. Furthermore, the worker was not eligible for TRA after exhaustion of UI in May of 1988 because his/her 104-week basic TRA eligibility period had expired.

Application: The determination in this case was correct under the regulations and operating instructions in effect at the time the determination was made. However, the determination would have been different had the interpretations contained in revised section F.1 been in place. The SESA should redetermine the worker's entitlement, upon the request of the worker or upon its own motion, only if authorized under the applicable State law for UI purposes. If the case is redetermined, the worker is entitled to a new 104-week TRA eligibility period beginning with the week following the week in which the total qualifying separation occurred in November 1987. Retroactive TRA payments should be made for those weeks where the worker was unemployed and otherwise eligible, up to the maximum entitlement as determined under section 233(a)(1) of the Trade Act and 20 CFR 617.15(a).

Section 2: Application of Revised Operating Instructions in Section F.2. of Attachment A

F.2—Retroactive Waiver of Time Limitations—Example

Example. A worker covered under a certification with an impact date of October 1, 1985, had a total qualifying separation on October 10, 1985. The worker exhausted UI on November 2, 1985, and the basic TRA eligibility period therefore began on November 3, 1985, and ran initially for 52 weeks which changed to 104 weeks under the 1986 Amendments (*e.g.*, 11/03/85 through 10/31/87). The worker was employed intermittently over the next two years in jobs that were "seasonal employment, odd jobs, or part-time, temporary employment" within the meaning of section 1425(b)(2)(A)(ii) of the OTCA, but in that time did not

exhaust all of the worker's entitlement to basic TRA. In December 1987 the worker filed a new claim for UI, and exhausted all UI in May 1988. Following the exhaustion of UI the worker again claimed TRA; this claim was denied because the worker's basic TRA eligibility period ended in October 1987.

Application: The determination denying TRA to this worker in 1988 was correct under the law and regulations in effect at the time the determination was made. Under section 1425(b) of the OTCA, however, the time limitation of section 233(a)(2) on the basic TRA eligibility period is inapplicable to a worker who is totally separated from adversely affected employment during the period from 8/13/81 to 4/07/86, as was the worker in this Example. If the worker is determined to meet the eligibility conditions of section 1425(b), therefore, the worker would be entitled to payment of the balance of basic TRA benefits, and also additional TRA, for weeks which begin after August 23, 1988. The facts in the Example indicate that the worker may meet the continuously unemployed requirement, of section 1425(b)(2)(A)(ii). If the worker applies for payment of TRA, and is determined to meet the continuously unemployed requirement, as well as the enrolled in and participation in training requirements of section 1424(b)(2) (A) and (B), the worker would be entitled to the payment of the balance of the basic TRA and any additional TRA with respect to which he is determined to be otherwise entitled under section 1425(b) and the amended Trade Act.

Section 3: Application of Revised Operating Instructions in Section E.3. of Attachment A

E.3.—Payment of TRA During Breaks in Training—Examples

Example 1. Under the published schedule for the training program, there is a two-week break in the training program, the last scheduled day of training is a Friday, and training is not regularly scheduled on Saturdays, Sundays, or National and State holidays officially observed in the State. Classes resume as scheduled on the third Monday following the last scheduled day of class. There are 16 calendar days in such a two-week break, but excluding the three Saturdays and three Sundays in the period, the number of break days in this example are 10. Since the counted days of the break do not exceed 14 days, the worker would be entitled to payment of basic or additional TRA for both weeks the worker is on the training break, if the worker is otherwise eligible for such basic or additional TRA, and participated in all scheduled training during the week in which the break in training began and the week in which scheduled training resumed.

Example 2. Under the published schedule for the training program, a holiday season break is scheduled to begin after classes on Tuesday, December 20, 1988, and continue until classes resume on Wednesday, January 4, 1989. The break begins on Wednesday, December 21, and ends on Tuesday, January 3, a period of 14 calendar days. In this example, therefore, the break does not exceed 14 calendar days, and excluding Saturdays and Sundays only 10 days are counted for the break. If Monday, December 26, and Monday, January 2, are officially observed as holidays, because Christmas and New Year's days fell on Sundays, then only 8 days are counted for the break. The worker therefore is entitled to payment of basic or additional TRA (if otherwise eligible) for the week ending on December 31, 1988, if the worker participated in all scheduled training in the week ending on December 24, 1988, and January 7, 1989.

Example 3. Change the facts of the above example slightly, so that the break begins after classes on Friday, December 9, 1988, and the countable days of the break will exceed 14 days (25 calendar days minus four Saturdays, four Sundays, and two recognized holidays equals 15 days). In this situation, the worker is not entitled to basic or additional TRA for the weeks ending on December 17, 24, and 31. The worker is entitled to basic or additional TRA (if otherwise eligible) for the weeks ending on December 10, 1988 and January 7, 1989, if the worker participated in all training scheduled in those weeks. The weeks not paid will, however, count against the 104-week eligibility period for basic TRA, as well as against the 26 weeks of entitlement to additional TRA.

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November 21, 1990

Part IV

Department of Justice

Bureau of Prisons

Modification to List of Bureau of Prisons Institutions; Notice

DEPARTMENT OF JUSTICE

Bureau of Prisons

Modification to List of Bureau of Prisons Institutions

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: Attorney General Order No. 646–76 (41 FR 14805), as amended, classifies and lists the various Bureau of Prisons institutions. Attorney General Order No. 960–81, Reorganization Regulations, published in the **Federal Register** October 27, 1981 (at 46 FR 52339 *et seq.*) delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(r), the authority to establish and designate Bureau of Prisons institutions. The last listing of the Bureau's institutions was published in the **Federal Register** on June 13, 1990 (55 FR 24064 *et seq.*). In this present document, the Bureau is publishing a consolidated listing of its institutions, and is designating the Federal Detention Center at Oakdale, Louisiana (Oakdale I) as a Federal Correctional Institution and the Federal Deportation Center at Oakdale, Louisiana (Oakdale II) as a Federal Detention Center. In addition, as noted in the **Federal Register** of July 23, 1990 (55 FR 29990), the Bureau is correctly designating the facility at Boron, California as a Federal Prison Camp and the former Federal Prison Camp at Lompoc, California as a Federal Correctional Institution.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, 320 First Street NW., HOLC room 741, Washington, DC 20534 (202–724–3062).

SUPPLEMENTARY INFORMATION: This notice is not a rule within the meaning of the Administrative Procedure Act, 5 U.S.C. 551(4), the Regulatory Flexibility Act, 5 U.S.C. 601(2), or Executive Order No. 12291, section 1(a).

By virtue of the authority vested in the Attorney General in 18 U.S.C. 3621, 4001, 4003, 4042, 4081, and 4082 (repealed in part October 12, 1984) and delegated to the Director, Bureau of Prisons by 28 CFR 0.96(r), it is hereby ordered as follows:

The following institutions are established and designated as places of confinement for the detention of persons held under authority of any Act of Congress, and for persons charged with or convicted of offenses against the United States or otherwise placed in the custody of the Attorney General of the United States.

A. The Bureau of Prisons institutions at the following locations are designated as U.S. Penitentiaries:

(1) Atlanta, Georgia;
(2) Leavenworth, Kansas;
(3) Lewisburg, Pennsylvania;
(4) Lompoc, California;
(5) Marion, Illinois; and
(6) Terre Haute, Indiana.

B. The Bureau of Prisons institutions at the following locations are designated as Federal Correctional Institutions:

(1) Ashland, Kentucky;
(2) Bastrop, Texas;
(3) Big Spring, Texas;
(4) Butner, North Carolina;
(5) Danbury, Connecticut;
(6) El Reno, Oklahoma;
(7) Englewood, Colorado;
(8) Fairton, New Jersey;
(9) Fort Worth, Texas;
(10) Jesup, Georgia;
(11) La Tuna, Texas;
(12) Lexington, Kentucky;
(13) Loretto, Pennsylvania;
(14) Lompoc, California;
(15) Marianna, Florida;
(16) McKean, Pennsylvania;
(17) Memphis, Tennessee;
(18) Milan, Michigan;
(19) Morgantown, West Virginia;
(20) Oakdale, Louisiana (formerly Oakdale I);
(21) Otisville, New York;
(22) Oxford, Wisconsin;
(23) Petersburg, Virginia;
(24) Phoenix, Arizona;
(25) Pleasanton, California;
(26) Ray Brook, New York;
(27) Safford, Arizona;
(28) Sandstone, Minnesota;
(29) Seagoville, Texas;
(30) Sheridan, Oregon;
(31) Talladega, Alabama;
(32) Tallahassee, Florida;
(33) Terminal Island, California;
(34) Texarkana, Texas;
(35) Three Rivers, Texas; and
(36) Tucson, Arizona.

C. The Bureau of Prisons institutions at the following locations are designated as Federal Prison Camps:

(1) Alderson, West Virginia;
(2) Allenwood, Pennsylvania;
(3) Boron, California;
(4) Bryan, Texas;
(5) Duluth, Minnesota;
(6) Eglin Air Force Base, Florida;
(7) Ft. Bliss, El Paso, Texas;
(8) Homestead Air Force Base, Homestead, Florida;
(9) Maxwell Air Force Base/Gunter Air Force Station, Montgomery, Alabama;
(10) Millington, Tennessee;
(11) Nellis Air Force Base, Las Vegas, Nevada;
(12) Saufley Field, Pensacola, Florida;
(13) Seymour-Johnson Air Force Base, North Carolina;
(14) Tyndall Air Force Base, Panama City, Florida; and
(15) Yankton, South Dakota.

D. The Bureau of Prisons institutions at the following locations are designated as Metropolitan Correctional Centers:

(1) Chicago, Illinois;
(2) Miami, Florida;
(3) New York, New York; and
(4) San Diego, California.

E. The Bureau of Prisons institution at Springfield, Missouri is designated as the U.S. Medical Center for Federal Prisoners.

F. The Bureau of Prisons institution at Rochester, Minnesota is designated as the Federal Medical Center.

G. The Bureau of Prisons institutions at the following locations are designated as Federal Detention Centers:

(1) Fort Gordon, Georgia;
(2) Oakdale, Louisiana (formerly Oakdale II).

H. The Bureau of Prisons institution at Los Angeles, California is designated as the Metropolitan Detention Center.

Dated: November 14, 1990.

J. Michael Quinlan,

Director, Federal Bureau of Prisons.

[FR Doc. 90–27403 Filed 11–20–90; 8:45 am]

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Wednesday
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Part V

Department of Labor

Mine Safety and Health Administration

30 CFR Part 77

Refuse Piles and Waste Impoundment Dams at Coal Mines; Public Hearing

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 77

RIN 1219–AA49

Refuse Piles and Waste Impoundment Dams at Coal Mines

AGENCY: Mine Saftey and Health Administration, Labor.

ACTION: Notice of public hearing.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold a public hearing to receive comments on its proposal to revise existing safety standards that address refuse piles and impoundment structures used at coal mines to dispose of refuse or contain water, sediment or slurry (55 FR 24526) June 15, 1990. The hearing will be held in Pittsburgh, Pennsylvania and will cover the major issues raised by commenters on the proposed rule.

DATES: All requests to make oral presentations for the record should be submitted at least five days prior to the hearing date. Immediately before the hearing, any unallotted time will be made available to persons making requests. The public hearing will be held December 13, 1990, beginning at 9 a.m.

ADDRESSES: The hearing will be held in Pittsburgh, Pennsylvania, in the Conference Center Room of the Best Western-Parkway Center Inn, 875 Greentree Road, Pittsburgh, Pennsylvania 15220.

Send written comments to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA (703) 235–1910.

SUPPLEMENTARY INFORMATION: On June 15, 1990, MSHA published a proposed rule (55 FR 24526) to revise safety standards that address refuse piles and impoundment structures used at coal mines. Proposed revisions would address certifications of examinations for hazardous refuse piles, the frequency of inspections and the method of abandonment for impoundments and impounding structures. The comment period for the proposed rule was scheduled to close on September 21, 1990, but in response to a request from the mining community, MSHA extended the comment period to October 19, 1990 (55 FR 39300). The purpose of the public hearing is to receive relevant comments and respond to questions about the proposed rule. The hearing will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence will not apply, the presiding official may exercise discretion excluding irrelevant or unduly repetitious material and questions.

The session will begin with an opening statement from MSHA. The public will then be given an opportunity to make oral presentations. During these presentations, the hearing panel will be available to answer relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. Time will be made available at the end of the hearing for rebuttal statements. A verbatim transcript of the proceedings will be taken and made part of the rulemaking record. Copies of the hearing transcript will be available for review by the public.

MSHA will also accept additional written comments and other appropriate data from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until January 18, 1991.

Issues

Of particular concern to commenters are the issues discussed below. MSHA requests comments on these issues during the hearing in addition to any other aspects of the provisions addressed in the proposed rule.

A. Refuse Piles; Reporting Requirements

The proposal would revise § 77.215–2(c) to eliminate an annual reporting requirement for those refuse piles that are no longer considered hazardous. The proposal would permit the District Manager to make the determination when the site is no longer considered hazardous. The existing standard does not provide a procedure to terminate the annual reporting requirement after the hazard has been eliminated unless the site is abandoned according to an approved plan. Some commenters were opposed to the changes. One commenter stated that if a site had been considered hazardous and is still active, it is susceptible to change and could easily become hazardous and that the reporting requirement should remain in effect until the refuse site is abandoned.

B. Impoundments and Impounding Structures; Inspection Requirements; Correction of Hazards

The proposal would revise § 77.216–3 to allow for inspection frequencies other than every 7 days as is currently required. This revision would allow flexibility to reduce the frequency of inspections and minimize recordkeeping requirements for impoundments that have a demonstrated record of safety or are not hazardous. Unless an alternative inspection frequency is approved by the District Manager, the required inspection period for impounding structures would remain every 7 days. MSHA anticipates that the reasons for extending the time between inspections would include a low hazard potential for the structure, as well as a demonstrated history of performance. One commenter stated that the condition of some impoundments can change rapidly with adverse weather conditions. In such situations, a 7-day inspection would be too infrequent. The commenter recommended that more frequent inspections be required in time of adverse conditions such as rainy weather. Several commenters agreed with the proposed language stating that it provides a needed flexibility in determining the appropriate inspection intervals and recordkeeping requirements for impoundments. Another commenter stated that the regulations recognize that each impoundment has a different level of safety that is based on its design, construction and location.

C. Impoundments and Impounding Structures; Reporting Requirements; Certification

The proposal would revise § 77.216–4 to clarify the reporting requirements for operators whose impoundments and impounding structures have changed during the past 12 months. Records would be required where the examination has revealed indications of structural weakness, hazardous conditions, or other changes to the structure. An annual certification, and not a record, would be required where the structure has not undergone any changes during the previous year. This would reduce the reporting requirements for operators who have not encountered changes in the impoundment during the reporting period. One commenter opposed the proposed revision, stating that water impoundments pose a great risk to the communities in many areas. Another commenter requested clarification of the statement, "changes in the impoundment during the reporting period." This commenter questioned whether the term "changes" refers to normal sediment deposition or modification of the structure. One commenter also expressed concern that MSHA's burden hour estimate regarding the time required to prepare an average report is too low.

D. Impoundments and Impounding Structures; Abandonment

The proposal would revise § 77.216–5 to allow an operator to obtain MSHA's approval of an abandonment plan for an impoundment that does not contain a provision to preclude the future impoundment of water. Under the existing rule, in order to abandon an impoundment the operator is required to completely eliminate the possibility of future impoundment of water. This standard prevents several functional future uses for impoundment structures. Such uses could include flood control, farming, or recreational uses such as fishing, boating, or swimming. One commenter was opposed to the proposed revision stating that most water impoundments retain the water that has been used in the coal cleaning process and such water or slurry is laden with coal refuse and toxic chemicals used in coal cleaning, and would pose a hazard to people and could not possibly sustain any form of life. This commenter was also of the opinion that the only impoundments that could possibly be used for recreational purposes would be those that impounded clean water for use at the mine, and that such impoundments are generally in isolated areas or at mine sites that would not be in a location attractive for public use.

Another commenter stated that the proposed changes would benefit recreation by preserving the wetland ecosystem without causing downstream hazards.

Dated: November 14, 1990.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 90–27366 Filed 11–20–90; 8:45 am]

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Part VI

Department of the Interior

Bureau of Land Management

43 CFR Parts 2920 and 9230

Permits, Leases and Trespass on Land Use Authorizations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2920 and 9230

[AA-320-00-4212-02]

RIN 1004-AB51

Permits, Leases and Trespass on Land Use Authorizations

In the matter of Procedures for Action on Use, Occupancy, and Development, Unauthorized Use, and Cost Reimbursement for Processing and Monitoring Land Use Authorizations Allowable on Public Lands under a Permit or Lease.

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend and update existing regulations to facilitate responses to requests for use, occupancy, or development of public land by eliminating the current "easement" category as redundant, updating and improving the recovery of processing and monitoring costs for applications, and revising the procedures for handling unauthorized use pursuant to Title III of the Federal Land Policy and Management Act (43 U.S.C. 1732, 1733, 1734 and 1740) and for the administration, assignment, monitoring, and termination of land use authorizations pursuant to existing statutory authority. Under the proposed rules, two types of land use/occupational development authorization would be available: (1) A permit for short term generally nondisturbing use, occupancy, or development, and (2) a lease for longer term use, occupancy or development or one requiring substantial surface resource disturbance. The proposed rules would improve protection for public lands and resources from unauthorized use, assure a proper monetary return for use, occupancy, or development of public lands and resources, and establish a penalty for violation.

DATES: Comments should be submitted by January 22, 1991. Comments not received or postmarked by the above date may not be considered in the decisionmaking process on the issuance of a final rule.

ADDRESSES: Comments should be sent to: Director (140) Bureau of Land Management, Room 5555, Main Interior Bldg., 1849 C Street, NW., Washington, DC 20240. Comments will be available in room 5555 of the above address for public review during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ed Puchalla, (202) 208-5441.

SUPPLEMENTARY INFORMATION: The existing regulations in 43 CFR part 2920 comprise the procedures for obtaining land use authorizations in the form of permits, leases and easements to use the public lands and their resources for use, occupancy, and development in a manner that will protect their resources and those natural resources associated with adjacent public lands and other private and governmentally administered lands.

This proposed rule would remove "easements" as a category of land use authorization because it is redundant and not in current use in any State. Removal of "easements" as a subcategory from the existing regulations will eliminate some confusion and redundancy associated with the existing regulations. Experience has shown that two major land use authorization categories are sufficient.

The authorizations are issued only for those uses that conform to statute, regulations, Bureau of Land Management plans, policies, objectives, and resource management programs. The authorized utilization of public lands without properly applying cost reimbursement for such use results in significant financial losses to the United States because of non-payment of processing costs, monitoring costs, rental fees, road use, amortization, and maintenance, in addition to monetary losses from land resources that have been misused, abused, or neglected. During the fiscal years of 1987 and 1988, the Bureau of Land Management processed 1,267 permits and leases at a total cost of $461,605 for an average cost of $385 per lease or permit. Recovery of these processing costs as proposed would be in accord with the requirements of Section 304 of FLPMA, which states, "Notwithstanding any other provision of law, the Secretary may establish reasonable filing and service fees and reasonable charges, and commissions with respect to applications and other documents relating to public lands and may change and abolish such fees, charges, and commissions". In addition, the Bureau of Land Management has tried to resolve cases involving unauthorized use of public lands. Even when unintentional, such use may constitute a trespass against the United States and a procedure is needed to allow the United States to obtain payment for use of the land and, where appropriate, to impose civil and/or criminal penalties for such unauthorized use of public lands. The provisions of this proposed rule are applicable only to activities that are required to be authorized under 43 CFR part 2920 and do not apply to other types of unauthorized use, such as grazing trespass, mineral trespass, or timber trespass.

The principal author of this proposed rulemaking is Ed Puchalla, Division of Lands and Realty, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) Additionally, as required by Executive Order 12630, the Department has determined that the rulemaking would not cause a taking of private property.

The information collection requirement(s) contained in part 2920 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1004-0009. The information will be used to adjudicate applications for land use. Response is required to obtain a benefit in accordance with section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732).

Public reporting burden for this information is estimated to average 7.43 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Chief, Division of Information Resources Management (770), Bureau of Land Management, room 208 Premier Building, U.S. Department of the Interior, Washington, DC 20240, and to the Office of Management and Budget, Paperwork Reduction Project, 1004-0009, Washington, DC 20503.

List of Subjects

43 CFR Part 2920

Public lands, Reporting and recordkeeping requirements.

43 CFR Part 9230

Penalties, Public lands.

Under the authority of sections 302, 303, 304 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, 1734 and 1740) it is proposed to revise part 2920, Group 2920, subchapter B, and amend part 9230.

Subchapter I, all of chapter II of the Code of Federal Regulations, as set forth below:

1. Part 2920 is revised to read as follows:

PART 2920 PERMITS AND LEASES—PRINCIPLES AND PROCEDURES

Subpart 2920—Permits and Leases; General

Sec.

2920.0-1 Purpose.
2920.0-2 Objectives.
2920.0-3 Authority.
2920.0-5 Definitions.
2920.0-7 Scope.

Subpart 2921—Terms and Conditions of Permits and Leases

2921.1 Nature of interest.
2921.2 Terms and conditions.
2921.3 Unauthorized activities.
2921.4 Land use authorizations issued pursuant to existing statutory authority.

Subpart 2922—Applications

2922.1 Preapplication activity.
2922.2 Application.
2922.2-1 Application filing.
2922.2-2 Application content.
2922.3 Application processing.

Subpart 2923—Administration of Permits and Leases

2923.1 General requirements.
2923.1-1 Rental.
2923.1-2 Bidding procedures.
2923.1-3 Bureau of Land Management-initiated land use proposals.
2923.1-4 Bonding.
2923.1-5 Liability.
2923.2 Holder activity.
2923.3 Immediate temporary suspension of activities.
2923.4 Suspension and termination of land use authorizations.
2923.4-1 Disposition of improvements upon termination.
2923.5 Change in Federal jurisdiction or disposal of lands.
2923.6 Amendments, assignments and renewals.
2923.6-1 Amendments.
2923.6-2 Assignments.
2923.6-3 Renewals of leases.

Subpart 2924—Appeals

2924.1-1 Appeals procedure for permits.
2924.1-2 Appeals procedure for leases.

Subpart 2928—Reimbursement of Costs

2928.1 General.
2928.2 Cost recovery categories.
2928.2-1 Application categories.
2928.2-2 Category determination.
2928.3 Fees and payments.
2928.3-1 Application fees.
2928.3-2 Periodic advance payments.
2928.3-3 Costs incurred for a withdrawn or denied application.
2928.3-4 Joint liability for payments.
2928.4 Reimbursement of costs for monitoring.
2923.5 Other cost considerations.
2923.6 Action pending decision on appeal.

Authority: 43 U.S.C. 1732, 1733, 1734, and 1740.

Subpart 2920—Permits and Leases; General

§ 2920.0-1 Purpose.

The purpose of the regulations in this part is to establish procedures for the orderly and timely processing of proposals, applications, amendments, assignments, and terminations for land use authorizations for the use, occupancy and development of public lands pursuant to section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732) and for the administration, assignment, monitoring, and termination of land use authorizations issued pursuant to existing statutory authority.

§ 2920.0-2 Objectives.

It is the objective of the Secretary of the Interior to promote compatible use and development of public lands and resources through the granting of permits and leases to qualified individuals, business entities, or local governmental entities while at the same time:

(a) Protecting other natural resources associated with the public lands under permit or lease, adjacent private lands, and other lands administered by a government agency.

(b) Coordinating, to the fullest extent possible, all actions taken pursuant to this part with State and local governments, interested individuals, and other appropriate entities.

(c) Promoting the utilization of permits and leases in accord with engineering and technological standards, national security needs, and land use plans.

(d) Preventing unnecessary or undue degradation of the lands and resources.

§ 2920.0-3 Authority.

Sections 302, 303, and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, and 1740) authorize the Secretary of the Interior to issue regulations providing for the management, use, occupancy, protection, and development of the public lands. This authority extends to the issuance of regulations relating to leases and permits on public lands, including, among others, those in existence under prior existing authority.

§ 2920.0-5 Definitions.

As used in this part, the term:

Act means the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701 et seq.).

Actual costs means the financial measure of resources expended or used by the Bureau of Land Management in processing a land use authorization or monitoring the construction, operation, and termination of a facility authorized by a permit or lease, including both direct and indirect costs, but excluding management overhead.

Applicant means any qualified individual, partnership, corporation, association, or other business entity, who is a citizen of the United States, or that, in the case of a corporation, is subject to the laws of any State or of the United States, or local governmental entity, wherein the lands or interests are located, that applied for a permit or lease.

Authorized officer means any employee of the Bureau of Land Management to whom authority has been delegated to perform the duties described in this part.

Casual use means activities that ordinarily result in only negligible disturbance of the public lands, resources, or improvements and, therefore, do not require a land use authorization under this title.

Continuous monitoring means monitoring that is required on a periodic time schedule, such as daily, weekly, or monthly monitoring of a recreation site or ski lift area.

Cost incurred for the benefit of the general public interest means funds expended by the United States in connection with the processing of an application for studies and data collection determined to have value or utility to the United States or the general public separate and apart from application processing.

Efficiency to the Government processing means the ability of the United States to process an application with a minimum of waste expense and effort.

Holder means the party who has received a permit or lease under this part.

Land use authorization means either a lease or a permit issued under this part.

Land use plan means an approved resource management plan or

management framework plan prepared by the Bureau of Land Management pursuant to its land use planning system.

Lease means a long-term authorization to possess and use public land.

Management overhead costs means costs associated with the Bureau directorate, including all State Directors and the entire Washington office staff, except where work is required on a specific land use authorization.

Monetary value of the rights and privileges sought means the objective value of the land use authorization or what the land use authorization is worth in financial terms to the applicant.

Nonwillful trespass means a trespass committed by mistake or inadvertence.

Permit means a revocable authorization to utilize public lands for short term, low capital investment uses not to exceed 3 years that normally involves either little or no land disturbance or construction. A permit conveys no interest in the land, and expires at the end of its term.

Public lands means any lands or interests in lands owned by the United States and administered by the Secretary through the Bureau of Land Management, without regard to how the United States acquired ownership, except: (1) Lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts, and Eskimos.

Public service provided means tangible improvements, such as roads, trails, recreation facilities, etc., with significant public value, that are required in connection with the construction and operation of the project for which a land use authorization is sought.

Secretary means the Secretary of the Interior.

Trespass means any use, occupancy, or development of the public lands or their resources without authorization from the United States where authorization is required, in excess of such authorization, or causing unnecessary or undue degradation of the land or resources.

Unnecessary or undue degradation means surface disturbance greater than that which would normally result when the same or a similar activity is being accomplished by a prudent person in a usual, customary, and proficient manner. This disturbance may be either nonwillful or willful as defined in this section, depending upon the circumstances.

Willful trespass means voluntary or conscious trespass. The term does not include an act made by mistake or inadvertence. The term includes actions taken with criminal or malicious intent. A consistent pattern of trespass may be sufficient to establish the knowing or willful nature of the conduct. Conduct which is otherwise regarded as being knowing or willful does not become innocent through the belief that the conduct is reasonable or legal.

Written demand means a request in writing for payment and/or rehabilitation in the form of billing delivered by certified mail-return receipt requested, or by personal service.

§ 2920.0–7 Scope.

When consistent with land use plans, and in the public interest, the authorized officer may notify the public of the availability of certain public lands for lease or permit under section 302 of the Federal Land Policy and Management Act. When reasonable use of the public lands is proposed by a State or local government or by an individual applicant, the authorized officer may issue a lease or permit to increase the public utility of and economic benefit from public lands. Federal departments and agencies are not qualified to hold permits or leases under this authority. This part sets forth regulations governing:

(a) Issuing permits for short term low capital investment when use involves negligible land improvement or construction, or where investment can be amortized within a short term, including but not limited to: Stockpile sites for dirt, cinders, sand, salt, and gravel; irrigation pipe storage; filming; native hay or seed harvest; and bee colonies.

(b) Issuing leases when substantial construction, development, land improvement, or capital investment is involved, or where buffer zones are required to assure that uses of public lands are compatible with non-Federal uses occurring on adjacent or nearby land, including but not limited to:

(1) Manufacturing and trade facilities, schools, restaurants, and commercial filmmaking sites;

(2) Construction equipment storage sites, assembly yards, and oil rig stacking sites;

(3) Ski resorts, recreation, and concession sites;

(4) Apiaries, croplands, and livestock holding or feeding facilities not related to grazing permits or leases.

Subpart 2921—Terms and Conditions of Permits and Leases

§ 2921.1 Nature of interest.

Any land use not specifically authorized under other laws or regulations and not specifically forbidden by law may be authorized under this part. Uses which may be authorized include residential, agricultural, industrial, and commercial uses; short-term events, public assemblies, demonstrations, and parades that support public expressions of views; and uses that cannot be authorized under title V of the Federal Land Policy and Management Act or section 28 of the Mineral Leasing Act. Land use authorizations shall be granted under the following conditions:

(a) No land use authorization is required under the regulations in this part for casual use of the public lands.

(b) Permits shall authorize short term low capital investment uses not to exceed 3 years that involve either little or no land disturbance or construction, or only improvements which can be amortized within 3 years or less. A permit conveys no interest in land, and will expire at the end of its term.

(c) Leases will be used to authorize long term use or uses of public lands involving substantial construction, development, land improvement, or the investment of large amounts of capital. A lease conveys a possessory interest and is terminable only in accordance with its terms and the provisions of §§ 2923.3 and 2923.4 of this part. Leases will be issued for a term determined by the authorized officer, which, among other factors, is no shorter than the time required to amortize the capital investment of the lessee. A lease may include buffer zones required to assure compatibility of uses of public lands.

(d) All rights in public lands subject to a permit or lease not expressly granted are retained and may be exercised by the United States. These rights include, but are not limited to:

(1) A continuing right of access onto the public lands covered by the permit or lease and, upon reasonable notice to the holder, access and entry to any facility constructed on the permit area;

(2) The right to require common use of the permit area, and the right to authorize other use of the permit area for compatible uses (including the subsurface and air space).

(e) A permit or lease may be used only for the purposes specified in the authorization.

(f) All land use authorizations shall be issued subject to valid existing rights. These rights include, but are not limited to, mining claims, rights-of-way grants, land use permits, and grazing leases or licenses.

(g) A permit or lease shall not give or authorize the holder to take from the public lands any mineral or vegetative material, including timber, without securing authorization under the Materials Act (30 U.S.C. 601 et seq.), or other appropriate authorization, and paying in advance the fair market value of the material cut, removed, used, or destroyed. However, common varieties of stone and soil necessarily removed during the construction and development of a project may be used elsewhere within the same lease or permit area, in the construction of the project without additional authorization and payment. The holder shall be allowed in the performance of normal maintenance to do minor trimming, pruning and clearing of vegetative material within the permit or lease area without additional authorization and payment.

(h) A holder of a lease may assign it to another in accordance with § 2923.6–2, provided the holder obtains the written approval of the authorized officer.

(i) Unless specifically authorized by the terms of the permit or lease, the holder shall not use the permit or lease area for other uses without the prior written consent of the authorized officer. In any such arrangement, the holder shall continue to be responsible for compliance with all conditions of the land use authorization.

(j) Each permit or lease shall describe the public lands to be used or occupied and the land use authorization shall be limited to those lands which the authorized officer determines:

(1) To be necessary for the use authorized;

(2) To be necessary for the construction, operation, maintenance, and termination of the authorized facilities;

(3) Will not adversely affect Federal property, or public health and safety.

(k) Each permit or lease will specify its term. In determining the period for any specific permit or lease, the authorized officer will provide for a term sufficient to accomplish the purpose of the use. Factors to be considered by the authorized officer for the purpose of establishing the term of the lease or permit include, but are not limited to:

(1) Public purpose served, if any;

(2) Cost and useful life of the facility; and

(3) Time limitations imposed by licenses or permits that the holder has secured from other Federal or State agencies.

(l) Each lease issued for a term of 20 years or more will contain a provision for review of the adequacy and appropriate adjustment in the terms and conditions at the end of the twentieth year and at regular intervals thereafter not to exceed 10 years.

(m) Each lease will have a provision stating whether it is renewable or not, and, if renewable, the terms and conditions applicable to the renewal.

(n) If an applicant for a lease requests that the lease include a buffer zone to assure that use of public lands is compatible with non-Federal uses occurring on adjacent or nearby land owned or controlled by the applicant, the request may be granted if it is in accordance with plans made under the land use planning system of the Bureau of Land Management.

§ 2921.2 Terms and conditions.

(a) An applicant, by accepting a permit or lease, agrees and consents to comply with and be bound by the following:

(1) To comply with all State and Federal laws applicable to the authorized use, and such additional State and Federal laws, along with regulations implementing them, that may be enacted or promulgated during the term of the permit or lease.

(2) Not to discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin, and all contracts and subcontracts shall include a provision to this effect.

(3) To rebuild and repair roads, fences, and established trails that may be destroyed or damaged by construction, operation, or maintenance of the project, and to build and maintain suitable crossings for existing roads and trails that are currently in use and intersect the project.

(4) To do everything reasonably within his or her power, both independently and upon request of the authorized officer, to prevent and suppress fires on or in the immediate vicinity of the land use authorization. This includes making available such construction and maintenance forces as may be reasonably required for the suppression of fires.

(b) All permits and leases issued under these regulations will contain such other terms, conditions, and stipulations as may be required by the authorized officer regarding extent, duration, survey, location, construction, operation, maintenance, use, and termination. The authorized officer will impose stipulations including, but not limited to:

(1) Requirements for restoration, revegetation, and curtailment of erosion of the surface of the land, or any other reclamation measure determined necessary;

(2) Requirements to ensure that activities in connection with the permit or lease shall not violate applicable air and water quality standards or related facility siting or local zoning standards established by or pursuant to Federal or State law;

(3) Requirements designed to control or prevent damage to scenic, aesthetic, cultural, and environmental values, damage to Federal property, and hazards to public health and safety;

(4) Requirements to ensure that the facilities to be constructed, used, and operated on the prescribed location are maintained and operated in a manner consistent with the permit or lease; and

(5) Requirements for compliance with State or local standards for public health and safety, environmental protection, and for siting, construction, operation, and maintenance when those standards are more stringent than Federal standards.

§ 2921.3 Unauthorized activities.

(a) Any use, occupancy, or development of the public lands that requires a permit or lease pursuant to this part, and that has not been so authorized, or that is beyond the scope and specific limitations of such an authorization, or that causes unnecessary or undue degradation, is prohibited, and shall constitute a trespass as defined in § 2920.0–5 of this part.

(b) Anyone detemined by the authorized officer to be in violation of paragraph (a) of this section shall be notified in writing of such trespass and shall be liable to the Unitd States for:

(1) Reimbursement of all costs incurred by the United States in the investigation and termination of such trespass;

(2) The rental value of the lands, as provided for in § 2923.1–1, for the current year and past years of trespass; and

(3) Rehabilitating and stabilizing any lands that were unduly degraded by such trespass. If the trespasser does not rehabilitate and stabilize the lands within the time set by the authorized officer in the notice, he/she shall be liable for the costs incurred by the United States in rehabilitating and stabilizing such lands.

(c) In addition to the provisions for reimbursement in paragraph (b) of this section, the following penalties shall be assessed by the authorized officer:

(1) For a nonwillful trespass that is not resolved within 30 days of receipt of a written demand under paragraph (b) of this section, an amount equal to the rental value since the inception of the trespass;

(2) For repeated nonwillful or for willful trespass, an amount that is double the rental value.

(d) In no event shall settlement for trespass computed pursuant to paragraphs (b) and (c) of this section be less than the processing fee for a Category 1 application as provided for in § 2928.3–1 for nonwillful trespass or less than 3 times this value for repeated nonwillful or knowing and willful trespass. In all cases the trespasser shall pay whichever is the higher of the computed penalty or minimum penalty amount.

(e) Failure to satisfy the requirements of § 2921.3 shall result in the denial of any permit, lease, or other land use authorization until there has been compliance with the provisions of § 9239.7–1 of this chapter.

(f) In addition to the civil penalties provided for in this part, any person who knowingly and willfully violates the provisions of § 2921.3(a) may be tried before a United States magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both, as provided by section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and § 9262.1 of this chapter.

§ 2921.4 Land use authorizations issued pursuant to existing statutory authority.

Land use authorizations issued pursuant to existing statutory authority are covered by the provisions of this part unless administration under this part diminishes or reduces any rights conferred by the land use authorization or the statute under which it was issued, in which event the provisions of the land use authorization or the then existing statute and regulations will apply.

Subpart 2922—Applications

§ 2922.1 Preapplication activity.

(a) Anyone interested in obtaining a permit or lease for public lands is encouraged to establish early contact with the Bureau of Land Management office responsible for management of the affected public lands so that potential constraints may be identified. The preapplication proposal may be considered in the appropriate land use plans, and the processing of an application may be tentatively scheduled. The appropriate officer shall furnish the proponent with guidance and information about:

(1) Possible land use conflicts as identified by review of land use plans, land ownership records and other available information sources;

(2) Application procedures and probable time requirements;

(3) Applicant qualifications;

(4) Cost reimbursement requirements;

(5) Associated clearances, permits and licenses which may be required in addition to the permits or leases required under these regulations;

(6) Environmental and management considerations including, but not limited to, any hazardous materials or hazardous waste (permanent storage of hazardous materials or hazardous waste shall not be permitted);

(7) On-the-ground investigations which may be required in order to complete the application; and

(8) Coordination with Federal, State, and local government agencies.

(b) Any information furnished by the proponent in connection with a pre-application activity or use which he or she requests not be disclosed shall be protected to the extent consistent with the Freedom of Information Act (5 U.S.C. 552).

(c) No lease application processing work, other than pre-application guidance under paragraph (a) of this section, will be undertaken by the authorized officer prior to the filing of an application together with advance payment as required by subpart 2928 of this part. Such processing work includes, but is not limited to, special studies, environmental assessments, environmental statements, engineering surveys, resource inventories and detailed land use or record analyses.

(d) The prospective applicant is authorized to go upon the public lands to perform casual acts related to data collection necessary for the filing of an acceptable application. If, however, the authorized officer determines that appreciable surface or vegetative disturbance will occur or is a real possibility, he shall issue a permit with appropriate terms, conditions, and special stipulations pursuant to § 2921.2 of this part.

§ 2922.2 Application.

§ 2922.2–1 Application filing.

Applications for a permit or lease shall be filed with any Bureau of Land Management District or Area office having jurisdiction over part or all of the affected public lands, and the applicant will be notified by that area or district manager as to where subsequent communications shall be directed.

§ 2922.2–2 Application content.

(a) Applications for land use authorizations shall include sufficient detail to enable the authorized officer to evaluate the feasibility of the proposed land use, and whether the proposed use is accordance with the Bureau of Land Management plans, programs, and policies for public lands covered by the proposed use.

(b) Applications for permit(s) shall be filed on a form approved by the Director of the Bureau of Land Management in accordance with the instructions printed on the application form.

(c) Applications for lease(s) do not require an approved form but the applicant shall submit as a minimum the following information:

(1) The name and address of the applicant and the applicant's authorized agent, if appropriate;

(2) A detailed description of the applicant's proposal;

(2) A map, USGS quadrangle, aerial photo, or equivalent, showing the approximate location of the proposed land use authorization and facilities on public lands and existing improvements adjacent to the proposal, shall be attached to the application. Only the existing adjacent improvements that the proposal may directly affect need be shown on the map;

(4) A statement of the applicant's technical and financial capability to construct, operate, maintain, and terminate the proposal;

(5) Certification by the applicant that he/she is of legal age, a citizen of the United States, or in the case of a corporation, is authorized to do business in the State, and that the information submitted is correct to the best of the applicant's knowledge.

(6) Submission of the initial cost reimbursement payment provided for in § 2928.4.

(7) A statement describing any benefits the public may derive from the proposed land use.

(d) Where a Notice of Availability as provided for in § 2920.0–7 of this part has been published by the Bureau, the applicant shall also include all information required by that notice. Failure to include such information will result in the return of the application without action.

(e) The applicant may submit additional information, including the required Federal and State approvals, a description of alternatives considered, copies of similar applications that were submitted, and separate statements on the economic feasibility, environmental, social, and economic effects of the proposal.

§ 2922.3 Application processing.

(a) The authorized officer will acknowledge, in writing, receipt of the application and inform the applicant of any initial cost reimbursement payment required by subpart 2928. An application may be denied if the authorized officer determines that:

(1) The proposed permit or lease would be inconsistent with the purpose for which the public lands are managed;

(2) The proposed permit or lease would not be in the public interest;

(3) The applicant is not qualified;

(4) The permit or lease would be inconsistent with the Act or other applicable laws;

(5) The applicant does not or cannot demonstrate that he or she has the technical or financial capacity to complete and maintain the proposed project; or

(6) The applicant fails to submit the information required by a notice of availability.

(b) The authorized officer may require the applicant for a permit or lease to submit such additional information as deemed necessary for review of the application. All requests for additional information shall be in writing. Where the authorized officer determines that the information supplied by the applicant is incomplete or otherwise does not conform to the Act or these regulations, the authorized officer will notify the applicant of any deficiencies and afford the applicant an opportunity to file a correction. Where the deficiency notice has not been adequately complied with, the authorized officer may reject the application or notify the applicant of the continuing deficiency and afford the applicant an opportunity to file a correction.

(c) Prior to issuing a permit or lease, the authorized officer will:

(1) Complete an environmental assessment in accordance with the National Environmental Policy Act of 1969;

(2) Determine the consistency of the applicant's proposed plans with other applicable Federal and State laws;

(3) Consult with all other Federal, State, and local agencies having an interest in the land or the activity, as appropriate; and

(4) Take any other action necessary to evaluate the application fully, and prescribe suitable terms and conditions for the permit or lease if one is granted.

(d) The authorized officer may hold public meetings on an application for a lease if he determines that such meetings are appropriate and that sufficient public interest exists to warrant the time and expense of such meetings. Notice of public meetings shall be published in the **Federal Register** and a local newspaper.

(e) A permit or lease need not conform to the applicant's proposal, but may contain such modifications, terms, stipulations, or conditions, including changes in site location, as the authorized officer determines to be appropriate.

(f) No lease shall become effective until the applicant has accepted, in writing, the terms and conditions of the lease and paid in full all required cost reimbursement and the first year's rental. Written acceptance shall be evidence of an agreement between the applicant and the United States that, in consideration of the right to use public lands, the applicant shall comply with all terms and conditions contained in the lease and the provisions of applicable laws and regulations.

(g) The authorized officer may include a provision in the lease requiring that no construction on or use of the land to which the lease pertains shall occur until a detailed construction, operation, rehabilitation, and environmental protection plan has been submitted to and approved by the authorized officer, and a notice to proceed has been issued by the authorized officer. This requirement may be imposed for all or any part of the leased land.

Subpart 2923—Administration of Permits and Leases

§ 2923.1 General requirements.

§ 2923.1–1 Rental.

(a) An applicant for a permit shall, prior to issuance, pay the fair market rental value for the permit term as determined by the authorized officer based on sound business management principles and, so far as practicable and feasible, using standard commercial practices.

(b) The holder of a lease shall pay annually, in advance, the fair market rental value as determined by the authorized officer or as scheduled in the individual lease documents, based on sound business management principles and, so far as practicable and feasible, using standard commercial practices. All such rental determinations will be prepared to the standards and format described in the Uniform Appraisal Standards for Federal Land Acquisition (Department of Justice publication) or as required by the Bureau's Appraisal Manual (9310), or in certain cases as required by both, as determined by the authorized officer.

(1) In those instances where the lease term is 5 years or more, and the annual payment is $100 or less, the authorized officer may require an advance lump sum payment covering 5 years or use.

(2) A late charge of 1 percent per month of the unpaid amount or $15.00 per month, whichever is greater, shall be assessed if subsequent billings are required.

(c) Where the authorized officer determines that competitive interest exists for a lease agreement such as for a restaurant, concessionaire site, etc., rental may be determined through competitive bidding procedures set out in § 2923.1–2(c) of this part.

(d) To expedite the processing of any non-competitive lease, the authorized officer may estimate rental and collect a deposit in advance with the agreement that upon completion of the actual appraisal, the advance deposit shall be adjusted according to the final fair market rental value determination retroactive to the date of the lease issuance.

(e) Decisions on lease rental determinations are subject to appeal under subpart 2924 of this part.

(g) If the rental required by this section is not paid when due, and such default for nonpayment continues for 30 days after notice, action may be taken to terminate the land use authorization. After default has occurred, no structures, buildings or other equipment may be removed from the lease area without written permission from the authorized officer.

§ 2923.1–2 Bidding procedures.

(a) The authorized officer may identify and offer public lands for competitive lease either on his/her own motion or as a result of nomination by the public. The authorized officer will give public notice of such decision through publication of a Notice of Realty Action as provided in paragraph (c)(1) of this section. The decision to offer public lands for competitive lease shall conform to the requirements of the Bureau's land use planning process. The authorized officer shall not offer public lands for competitive land use authorization where equities such as prior or related use of said lands warrant issuance of a non-competitive lease.

(b) A lease issued pursuant to a competitive offer shall be awarded on the basis of the public benefit to be provided, if any, the financial and technical capability of the bidder to undertake the project, and the bid offer. Each bid shall be accompanied by the information required by the notice of realty action and a statement over the signature of the bidder, or anyone authorized to sign for the bidder, that the bidder is in compliance with the requirements of the law and these regulations. A bid of less than the fair market rental value of the lands offered shall not be considered.

(c) The offering of public lands for a lease under competitive bidding procedures shall be conducted in accordance with the following:

(1)(i) A Notice of Realty Action indicating the availability of public lands for competitive lease shall be published in the **Federal Register**, and at least for 3 consecutive weeks in a newspaper of general circulation in the area where the public lands are situated or in such other publication as the authorized offer may designate.

(ii) The Notice of Realty Action shall include the use(s) proposed for the public lands and the time, date and place of the offering, including a description of the lands being offered, terms and conditions of the lease(s), rates, bidding requirements, payment required, where bid forms may be obtained, the form in which the bids shall be submitted, and any other information or requirements determined appropriate by the authorized officer.

(2) Bids may be made either by a principal or a duly qualified agent.

(3) All sealed bids shall be opened at the time and date specified in the Notice of Realty Action, but no bids shall be accepted or rejected at that time. The authorized officer may reject any and all sealed bids. Oral bidding is prohibited. Only those bids received by the close of business on the day prior to the bid opening or at such other time stated in the Notice of Realty Action and made for at least the minimum acceptable bid shall be considered. Each bid shall be accompanied by U.S. currency or certified check, postal money order, bank draft, or cashier's check payable in U.S. currency and made payable to the Department of the Interior-Bureau of Land Management for not less than one-fifth (⅕) of the amount of the bid, and shall be enclosed in a sealed envelope which shall be marked as prescribed in the Notice of Realty Action. If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing unless another method is specified in the Notice of Realty Action. The drawing shall be held by the authorized officer immediately following the opening of the sealed bids.

(4) In the event the authorized officer rejects the highest qualified bid or releases the bidder from such bid, the authorized officer shall determine whether the public lands involved in the offering shall be offered to the next highest bidder, withdrawn from the market, or reoffered.

(5) If the highest qualified bid is accepted by the authorized officer, the lease form(s) will be forwarded to the qualifying bidder for signing. The signed form(s) with the payment of the balance of the first year's rental, if appropriate for that particular offering, shall be returned within 30 days of its receipt by the highest qualified bidder and shall qualify as acceptance of the lease(s).

(6) If the successful qualified bidder fails to execute the lease and pay the balance of the rental payment within the allowed time, or otherwise fails to comply with the regulations of this subpart, the one-fifth remittance accompanying the bid shall be forfeited.

§ 2923.1-3 Bureau of Land Management-initiated land use proposals.

(a) Where, as a result of the land use planning process, the authorized officer determines that public benefits may be provided and public land management may be enhanced through the development or management of specific tracts of public lands by other entities for a special purpose, the authorized officer may encourage the leasing of public land by any qualified and interested party. A notice requesting submission of proposals from all interested parties shall be published in local newspapers of general circulation for 3 consecutive weeks. If the authorized officer expects more than local interests the notice will also be published in the **Federal Register.**

(b) The most economically feasible proposal for residential, agricultural, industrial, or commercial use that is determined by the authorized officer to conform to an approved land use plan will be accepted by the authorized officer so long as it is compatible with other environmental values. The approved proposal shall constitute an application for lease. However, under no circumstances will the authorized officer accept a proposal for which the rental amount is determined to be below fair market value.

(c) The application (proposal) will be processed as if filed under § 2922.2 of this part.

(d) An applicant for lease under this subpart shall reimburse the United States as required in § 2928.2 of this part.

§ 2923.1-4 Bonding.

The authorized officer may require the holder of a permit or lease to furnish a bond or other security satisfactory to secure the obligations imposed by the land use authorization and applicable laws and regulations.

§ 2923.1-5 Liability.

(a) Except as provided in paragraph (c) of this section, each holder shall be fully liable to the United States for any damage or injury incurred by the United States in connection with the use and occupancy of the land under permit or lease by the holder.

(b) Except as provided in paragraph (c) of this section, holders shall fully indemnify or hold harmless the United States from liability, damage, or claims arising in connection with the holder's use and occupancy of public lands under a permit or lease.

(c) If a holder is a State or local government, or agency or instrumentality thereof, it shall be liable to the fullest extent its laws allow at the time it is granted a permit or lease. To the extent such a holder does not have the power to assume liability, it shall be required to repair damages or make restitution to the fullest extent of its powers at the time of any damage or injury.

(d) All owners of any interest in, and all affiliates or subsidiaries of any holder of a permit or lease, except for holders of publicly issued corporate stock, shall be jointly and severally liable to the United States in the event that a claim for damage or injury cannot be satisfied by the holder.

(e) If the permit or lease is issued to more than one holder, each shall be jointly and severally liable under this section.

§ 2923.2 Holder activity.

(a) Any substantial deviation in location or authorized use by the holder during construction, operation, or maintenance shall be made only with prior written approval of the authorized officer under § 2921.2 of this part. For the purposes of this paragraph, substantial deviation means:

(1) Construction of the authorized facility outside the prescribed boundaries of the permit or lease.

(2) Substantial change or modification of the authorized use by adding equipment, overhead or underground lines, pipelines, structures, or other facilities not authorized in the permit or lease.

(b) The holder shall notify the authorized officer of any change in status subsequent to the application or issuance of the lease. Such changes include, but are not limited to, legal mailing address and business or corporate status. When requested by the authorized officer, the holder shall update and/or attest to the accuracy of any information previously submitted.

(c) If required by the terms of the lease, the holder shall, subsequent to construction and prior to commencing operations, submit to the authorized officer a certification of construction, verifying that the facility has been constructed and tested in accordance with terms of the permit or lease, and in compliance with any required plans and specifications, and applicable Federal and State laws and regulations.

§ 2923.3 Immediate temporary suspension of activities.

(a) If the authorized officer determines that an immediate temporary suspension of activities within a permit or lease area for violation of the terms and conditions of the permit or lease is necessary to protect public health or safety or the environment, he or she may promptly suspend such activities prior to an administrative proceeding. The authorized officer may give an immediate temporary suspension order orally or in writing at the site of the activity to the holder or a contractor or subcontractor of the holder, or to any representative, agent, employee, or contractor of the holder, and the suspended activity shall cease at that time.

(b) As soon as practicable, the authorized officer will confirm an oral order by a written notice sent by certified mail to the holder or the holder's designated agent.

(c) An order of immediate temporary suspension of activities shall remain effective until the authorized officer issues an order permitting resumption of activities.

(d) Any time after an order of immediate temporary suspension has been issued, the holder may file with the authorized officer a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request.

(e) The authorized officer will render an order either to grant or to deny the request to resume within 5 working days of the date the request is filed. If the authorized officer does not render an order on the request within 5 working days, the request shall be considered denied, and the holder shall have the same right to appeal the denial to the State Director as if a final order denying the request had been issued by the authorized officer.

§ 2923.4 Suspension and termination of land use authorizations.

(a) If the lease or permit provides by its terms that it shall terminate on the occurrence of a fixed or agreed-upon condition, event, or time, the lease or permit shall thereupon automatically terminate by operation of law, unless some other procedure is specified in the lease or permit. The authorized officer may terminate a lease when the holder requests or consents to its termination in writing.

(b) The authorized officer may suspend or terminate a permit or lease if he/she determines that the holder has failed to comply with applicable laws or regulations, or any terms, conditions, or stipulations of the permit or lease or has abandoned the permit or lease.

(c) Before suspending or terminating a permit or lease pursuant to paragraph (b) of this section, the authorized officer will give the holder written notice that such action is contemplated and the grounds therefor and shall allow the holder a reasonable opportunity to cure such noncompliance. In the case of a lease, the authorized officer will refer the matter to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge pursuant to 43 CFR part 4. If the Administrative Law Judge determines that grounds for suspension or termination exist and such action is justified, the authorized officer will suspend or terminate the lease.

§ 2923.4-1 Disposition of improvements upon termination.

Within a reasonable time, as set forth in the lease or permit, after termination of a lease or permit, the holder shall, unless directed otherwise in writing by the authorized officer, remove all structures or improvements installed or erected by the holder, and shall restore the site to the condition specified in the lease or permit to the satisfaction of the authorized officer. If the holder fails to remove all such structures or improvements within a reasonable period, as determined by the authorized officer, they shall become the property of the United States, but the holder shall remain liable for the cost of removal of the structures and improvements and for restoration of the site.

§ 2923.5 Change in Federal jurisdiction or disposal of lands.

(a) Where a permit or lease administered under these regulations involves public lands that are transferred to another Federal agency, administration of the permit or lease shall, at the discretion of the authorized officer, be assigned to the acquiring agency unless such assignment would diminish the rights of the holder.

(b) Where a lease administered under these regulations involves public lands that are transferred out of Federal ownership, the United States will reserve unto itself the continued administration of the lease pursuant to this subpart.

§ 2923.6 Amendments, assignments, and renewals.

§ 2923.6-1 Amendments.

(a) Any substantial deviation in location or use as set forth in § 2923.2 of this part shall require the holder of a permit or lease to file an amended application. The requirements for the amended application and the filing are the same as those set forth in subpart 2922 of this part.

(b) Holders of leases issued before October 21, 1976, may not modify their leases. The lessee may choose:

(1) to file an application for a new, additional lease to cover use of additional lands, or

(2) to relinquish the existing lease, and file an application for a new lease to cover existing and proposed uses of additional lands pursuant to the regulations of this part.

§ 2923.6-2 Assignments.

(a) Permits shall not be assigned.

(b) Any proposed record assignment in whole or in part of any right or interest in a lease or sublease acquired pursuant to the regulations of this part or of a land use authorization issued prior to October 21, 1976, shall be filed in accordance with §§ 2922.1 and 2922.3 of this part. The application for assignment shall be accompanied by the same showing of qualifications of the assignee as if the assignee were filing an application for the lease or sublease. No assignment shall be recognized unless and until it is approved in writing by the authorized officer. The authorized officer may, at the time of approval of the assignment, modify bonding requirements and other conditions of the lease that changed circumstances may reasonably warrant.

(c) All filings for assignments of leases shall be accompanied by a nonrefundable payment of $50.

§ 2923.6-3 Renewals of leases.

(a) When a lease issued prior to October 21, 1976, provides that it may be renewed, the authorized officer will renew the lease so long as the development or land improvement is still being used for purposes authorized in the original lease and is being operated and maintained in accordance with all the provisions of the lease pursuant to the regulations of this title.

(b) When a lease does not contain provision for renewal, the authorized officer, upon request from the holder and prior to the expiration of the lease, may renew the lease at his discretion.

(c) Renewals of leases pursuant to paragraph (a) of this section are not subject to cost reimbursement.

Subpart 2924—Appeals

§ 2924.1-1 Appeals procedure for permits.

(a) Parties adversely affected by a decision of the authorized officer on a permit may request an administrative review by the authorized officer's immediate supervisor. The immediate supervisor upon review of the authorized officer's decision will either vacate, modify, or affirm that decision.

(b) There shall be no further administrative review.

§ 2924.1-2 Appeals procedure for leases.

(a) All appeals from final lease decisions of the authorized officer under this part (except § 2923.6-3(d)) shall be taken under 43 CFR part 4 to the Interior Board of Land Appeals, Office of Hearings and Appeals.

(b) All decisions of the authorized officer under this part shall remain effective pending appeal unless the Secretary rules otherwise, and the provisions of 43 CFR 4.21(a) shall not apply to such decisions.

Subpart 2928—Reimbursement of Costs

§ 2928.1 General.

(a) An applicant for a lease under this part shall reimburse the United States in advance for the expected reasonable administrative and other costs incurred by the United States in processing the application and monitoring the authorization, including the preparation of any reports or statements pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), prior to the United States having incurred such costs. Reimbursement is not required for permits.

(b) The regulations in this subpart do not apply to State and local governments or agencies or instrumentalities thereof when a lease is granted for governmental purposes benefiting the general public. However, if the principal source of revenue results from charges being levied on customers for services similar to those rendered by a profit making corporation or business, the lessee shall not be exempt from reimbursement of costs.

§ 2928.2 Cost recovery categories.

§ 2928.2-1 Application categories.

(a) A nonrefundable fee shall be submitted with each lease application in accordance with the fee schedule in § 2928.3-1 of this title. The categories of lease applications used in the fee schedule are described as follows:

(1) *Category I.* An application for a lease to authorize a use of public lands for which the data necessary to comply with the National Environmental Policy Act and other statutes are available in the office of the authorized officer or from data furnished by the applicant, and no field examination is required.

(2) *Category II.* An application for a lease to authorize a use of public lands for which the data necessary to comply with the National Environmental Policy Act and other statutes are available in the office of the authorized officer or from data furnished by the applicant, and 1 field examination to verify existing data is required.

(3) *Category III.* An application for a lease to authorize a use of public lands for which the data necessary to comply with the National Environmental Policy Act and other statutes are available in the office of the authorized officer or from data furnished by the applicant, and 2 field examinations to verify existing data are required.

(4) *Category IV.* An application for a lease to authorize a use of public lands for which some original data are required to be gathered to comply with National Environmental Policy Act and other statutes, and 2 or 3 field examinations are required.

(5) *Category V.* An application for a lease to authorize a use of public lands for which the gathering of original data are required to comply with the National Environmental Policy Act and other statutes, and/or where substantial multi-year monitoring costs could be incurred; and 3 or more field examinations are required.

§ 2928.2-2 Category determination.

(a) The authorized officer shall determine the appropriate processing and monitoring category and collect the required application processing fee pursuant to §§ 2928.3-1 and 2928.5 of this part before processing an application. A record of the authorized officer's category determination shall be made and given to the applicant. This determination is a final decision for purposes of appeal under § 2924.1 of this part. Where an appeal is filed, actions pending decision on appeal shall be in accordance with § 2928.6 of this part.

(b) During the processing of an application, the authorized officer may change a category determination to place an application in Category V at any time it is determined that the application requires the preparation of an enviromental impact statement. A record of change in category determination under this paragraph shall be made and furnished to the applicant. The revised determination is appealable in the same manner as an original category determination under paragraph (a) of this section. No other changes of category determination shall be permitted.

§ 2928.3 Fees and payments.

§ 2928.3-1 Application fees.

(a) The nonrefundable fee by category for processing an application for a lease is:

Category	Fee
I	$200.
II	350.
III	550.
IV	950.
V	As Required.

On January first of each year the fee schedule shall be ajusted to reflect the change in the Implicit Price Deflator for the Gross National Product of the prior second quarter to second quarter period. Adjustments shall be made to the nearest $25 increment and shall be available from any Bureau of Land Management State or District Office or may be obtained by writing: Director (320), Bureau of Land Management, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

(b) Where the amount submitted by the applicant under paragraph (a) of this section exceeds the amount of the required fee determined by the authorized officer, the excess shall be refunded. If requested in writing by the applicant, the authorized officer may apply all or part of any such refund to the lease monitoring fee required under § 2928.4 of this part or to the rental payment required by § 2923.1-1 of this part.

(c) Upon a determination that a lease application falls under Category V;

(1) The authorized officer will:

(i) Complete a preliminary scoping of the issues involved;

(ii) Prepare a preliminary work plan;

(iii) Develop a preliminary financial plan, estimating the actual costs to be incurred by the United States in the processing of the application; and

(iv) Discuss funding availability, options for cost reimbursement (i.e., a determination of reasonable costs under section 304(b) of the Act, paying all actual costs, or selecting the 1 percent ceiling under paragraph (f)(2) of this section), and information to be submitted by the applicant including costs and other financial information.

(2) An applicant/holder may submit a written analysis of the estimated actual cost showing specific monetary value considerations, public benefits, public services, or other data or information supporting a finding that an application for a lease is qualified for a reduction or waiver of cost reimbursement under section 304(b) of the Act or § 2928.5 of this part. If the applicant elects a cost analysis under this paragraph, the provisions of paragraph (f) of this section shall not apply.

(d) The authorized officer will disucss the preliminary plans and data and verify the information that may be submitted by the applicant under paragraph (c) of this section. The applicant is encouraged to do all or part of any special study or analysis required in connection with the processing of the application to standards established by the authorized officer.

(e) After coordination with the applicant as required by paragraph (d) of this section, the authorized officer will develop final plans for scoping, work, and financing that reflect any work the applicant agreed to do, and complete a final estimate of the amount of the actual costs to be reimbursed by the applicant, giving consideration to the factors set forth in section 304(b) of the Act.

(f) An applicant may elect to waive consideration of reasonable costs under paragraph (e) of this section and either:

(1) Agree to pay all actual costs incurred by the United States in processing the application and monitoring the lease; or

(2) Pay the actual costs of processing the application and monitoring the lease up to the amount estimated by the authorized officer to equal 1 percent of the applicant's planned costs of construction or development on the public lands for which a lease is sought. Under this alternative, the applicant shall not be responsible for actual costs exceeding 1 percent of the estimated cost of constructing or developing the proposed facilities on public lands. The request for a waiver of these costs shall be in writing and filed with the authorized officer.

(g) The applicant shall reimburse the United States for the applicant's share of costs, as determined under paragraphs (e) and (f) of this section, before the lease shall be issued.

(h) Where a State Director grants a reduction or waiver of cost reimbursement under the provisions of paragraph (e) of this section and/or § 2928.5 of this part or where the reimbursable costs of processing an application are determined to exceed 1 percent of the cost of construction or development of the facilities under paragraph (f) of this section, the necessary funding will be made available either through the Bureau's appropriation process, or otherwise made available for the processing of the application, or such processing shall not proceed.

(i) The authorized officer shall provide the applicant with a written determination of reasonable costs to be reimbursed by the applicant or holder and those that will be funded by the United States under paragraphs (e) and (f) of this section and § 2928.5 of this part. This determination is a final decision for purposes of appeal under § 2924.1 of this part. Where an appeal is filed, actions pending decision on appeal shall be in accordance with § 2928.6 of this part.

§ 2928.3-2 Periodic advance payments.

(a) The authorized officer may periodically estimate the reasonable costs expected to be incurred by the United States for specific work periods in processing an application for lease determined to be in Category V or monitoring the lease under the provisions of § 2928.3-1 of this part, and notify the applicant of the estimated amount to be reimbursed for the period and the applicant shall make payment of such estimated reimbursable costs prior to the incurring of such costs by the United States.

(b) If the payments required by paragraph (a) of this section exceed the actual costs incurred by the United States, the authorized officer will adjust the next billing to reflect the overpayment or make a refund from applicable funds under the authority of 43 U.S.C. 1734. An applicant shall not set off or otherwise deduct any debt due it or any sum claimed to be owed it by the United States without the prior written approval of the authorized officer.

(c) The authorized officer may re-estimate the actual costs determined under § 2928.3-1(e) through (g) of this part at any time it is determined that a change warranting a re-estimate occurs. An appeal of a re-estimate shall be treated in the same manner as an appeal of an original estimate made under § 2928.3-1(e) of this part.

(d) Before issuance of a lease, an applicant shall pay such additional amounts as are necessary to reimburse the United States in full for any costs incurred but not yet paid under § 2928.3-1.

§ 2928.3-3 Costs incurred for a withdrawn or denied application.

(a) An applicant whose application is denied is liable for any costs incurred by the United States in processing the application. Those amounts that have not been paid are due within 30 days of the receipt of a bill from the authorized officer stating the amount due.

(b) An applicant who withdraws an application before a lease is issued is liable for all costs incurred by the United States in processing the application up to the date the authorized officer receives the written notice of withdrawal, and for costs subsequently incurred in terminating the processing of said application. Those amounts that have not been paid are due within 30 days of receipt of a bill from the authorized officer identifying the amount due.

§ 2928.3-4 Joint liability for payments.

(a) When 2 or more applications for a lease are filed which the authorized officer determines to be in competition with each other, each applicant shall reimburse the United States as required by § 2928.3 of this part, subject however, to the provisions of § 2928.1(b) of this part. Each applicant shall be responsible for the reimbursement of the reasonable costs identified with his/her application. Costs that are not readily identifiable with either of the applications, such as costs for portions of an environmental impact statement that relate to all of the applications, generally shall be paid by each applicant in equal shares or such other proportion as may be agreed to in writing by the applicants and the authorized officer prior to the United States incurring such costs.

(b) When, through partnership, joint venture or other business arrangements, more than 1 person, partnership, corporation, association or other entity apply together for a lease, each such applicant shall be jointly and severally liable for costs under § 2928.3 of this part for the entire system, subject, however, to the provisions of § 2928.1(b) of this part.

§ 2928.4 Reimbursement of costs for monitoring.

(a) A holder of a lease for which a fee was assessed under § 2928.3 of this part shall, prior to the United States incurring such costs, reimburse the United States for costs to be incurred by the United States in monitoring the construction, operation, maintenance, and termination of authorized facilities on the lease area, and for protection and rehabilitation of the lands involved, under the following schedule:

(1) The same category as determined under § 2928.2-2 of this part for processing of an application for a lease shall be used for monitoring except for authorizations requiring continuous monitoring. Where the monitoring category is different from the application category, an appealable decision will be issued in order to

establish the monitoring category. The one-time fees for non-continuous monitoring of a lease determined to be in Categories I through IV are as follows:

Category	Fee
I	$75
II	125
III	275
IV	400

On January first of each year the fee schedule shall be adjusted to reflect the change in the Implicit Price Deflator for the Gross National Product for the prior fiscal year. Adjustments shall be made to the nearest $25 increment and shall be available from any Bureau of Land Management State or District Office or may be obtained by writing: Director (320), Bureau of Land Management, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

(2) The monitoring fee for a lease determined to be a Category V or a lease requiring continuous monitoring shall be included with the cost determined under §§ 2928.3–1 through 2928.3–4 of this part.

(b) The holder shall submit the payment for the cost of monitoring required by paragraph (a)(1) of this section or the first periodic advance payment required under § 2928.3–2 of this part, as appropriate, along with the written acceptance of the terms and conditions of the lease. No lease shall be issued until the required payment is made.

§ 2928.5 Other cost considerations.

(a) The State Director, after consultation with an applicant or holder making a request for a reduction or waiver of reimbursable costs under this title, may reduce or waive reimbursement required under § 2928.1(b) or §§ 2928.3–1 through 2928.3–4 of this part. In reaching a decision, the State Director may require the applicant/holder to submit in writing any information or data in addition to that required by § 2928.3–1(c) of this part that he/she determines to be needed to support a proposed finding that an application for a lease qualifies for a reduction or waiver of cost reimbursement. Action on a Category V application shall be suspended pending the State Director's decision.

(b) The State Director may base the decision to reduce or waive reimbursable costs on any of the following factors:

(1) The applicant's/holder's financial condition is such that payment of the fee would result in undue financial hardship;

(2) The application processing or lease monitoring costs are determined to be grossly excessive in relation to the costs of constructing the facilities or project requiring the lease on the public lands;

(3) A major portion of the application processing or lease monitoring costs are the result of factors not related to the actual permit or lease;

(4) The applicant/holder is a nonprofit organization, corporation, or association which is not controlled by or a subsidiary of a profitmaking enterprise;

(5) The studies undertaken in connection with the processing of the application have a public benefit;

(6) The development or land improvement requiring the lease will provide a special service to the public or to a program of the Secretary;

(7) The lease is needed to build structures or facilities upon or otherwise develop the public land, to prevent or mitigate damages to any lands or improvements, or mitigate hazards or danger to public health and safety not caused by the lessee;

(8) The lessee is required to secure a new lease in order to relocate developments or facilities which are required to be moved because the lands are needed for a Federal or federally funded project, if such relocation is not funded by the United States;

(9) Relocation of a development or facility on a lease requires a new or amended lease in order to comply with the law, regulations or standards of public health and safety and environmental protection which were not in effect at the time the original lease was issued.

(c) A determination by the State Director is a final decision for purposes of appeal under § 2924.1 of this part. Where an appeal is filed, actions pending decision on appeal shall be in accordance with § 2928.6 of this part.

(d) Notwithstanding a finding by the State Director that there is a basis for reduction of the costs required to be reimbursed under this subpart, the State Director may not reduce such costs if funds to process the application(s) or to monitor the lease(s) are not otherwise available, or may delay such decision pending the availability of funds.

§ 2928.6 Action pending decision on appeal.

(a) Where an appeal is filed on an application determined under § 2928.2–2(a) of this part to be in Categories I through IV, the application shall not be accepted for processing without payment of the fee for such application according to the category determined by the authorized officer. However, when payment is made, the application shall be processed and, if proper, the lease shall be issued and any refund or other adjustment made that is directed as a result of the appeal.

(b) Where an appeal is filed for an application determined under § 2928.2–2(a) of this part to be in Category V or for a related cost reimbursment determination under § 2928.3–1 (e) through (g) or § 2928.5(c) of this part, processing of the application shall be suspended pending the outcome of the appeal.

PART 9230—TRESPASS

2. The authority citation for part 9230 is revised to read:

Authority: 42 U.S.C. 1732, 1733, 1740, and 1761–1771.

3. Section 9239.7 is revised to read:

§ 9239.7 Realty.

4. Section 9239.7–1 is revised to read:

§ 9239.7–1 Public lands.

The filing of an application under part 2800, 2810, 2880, or part 2920 of this chapter does not authorize the applicant to use or occupy the public lands for realty purposes except as provided at § 2800.0–5(m), § 2802.1(d), § 2882.1, and § 2920.0–2(k), until written authorization has been issued by the authorized officer and received by the applicant. Any unauthorized occupancy or use of public lands or improvements constitutes a trespass against the United States for which the trespasser is liable for costs, damages, and penalties as provided in § 2801.3, § 2812.1–3, § 2881.3, and § 2921.3 of this title. No new permit, license, authorization, or grant of any kind shall be issued to a trespasser until:

(a) The trespass claim is fully satisfied; or

(b) The trespasser files a bond conditioned upon payment of the amount of damages determined to be due the United States; or

(c) The authorized officer determines in writing that there is a legitimate dispute as to the fact of the trespasser liability or as to the extent of his liability, and the trespasser files a bond in an amount determined by the authorized officer to be sufficient to cover payment of a future court judgment in favor of the United States.

Dated: August 27, 1990.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 90–27427 Filed 11–20–90; 8:45 am]

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Wednesday
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Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 61, et al.

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities; Disposition of Comments

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, 65, and 121

[Docket No. 25148; Amdts 61-83, 63-26, 63-33, 121-203]

RIN 2120-AC33

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Disposition of comments.

SUMMARY: This document summarizes and responds to comments received by the FAA concerning the amendment to the final rule on the anti-drug program that was issued April 11, 1989. That amendment extended certain compliance dates and revised the method by which certain entities may be covered by anti-drug programs approved by the FAA. The amendment also made minor editorial changes and clarifications to the final anti-drug rule to aid an employer's development and implementation of an approved anti-drug program. In order to provide the public timely clarification on and assistance in implementing the anti-drug program, the FAA did not issue a notice of proposed rulemaking. However, the FAA provided a 30-day period after publication of the amendment to the final rule, during which interested persons could comment on the amendment. Although the closing date for comments was May 15, 1989, the FAA considered all comments submitted to the docket including those received after May 15.

ADDRESSES: The Anti-Drug Program for Personnel Engaged in Specified Aviation Activities final rule and all comments may be examined in Docket No. 25148 at the Federal Aviation Administration, Office of the Chief Counsel, Rules Docket, room 915-G, 800 Independence Avenue SW., Washington, DC 20591. The Rules Docket is open weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen M. Latika, Office of Aviation Medicine, Drug Abatement Branch (AAM-220), Federal Aviation Administration, room 2336, 800 Seventh Street SW., Washington, DC 20591; telephone (202) 366-6710.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued the final anti-drug rule on November 14, 1988 (53 FR 47024; November 21, 1988), requiring certain commercial aviation employers and operators to develop and to implement an anti-drug program for employees performing specified aviation activities. After the final rule was issued, the FAA identified various practical implementation questions and issues. Representatives of aviation organizations and employers subject to the final rule expressed concern about certain procedural aspects and timeframes required by the rule. These entities maintained that the timeframes in the final rule for program submission were not realistic in terms of the complexity of the rule and that, in addition, several sections of the rule needed clarification.

The FAA also received a formal petition from the Air Transport Association of America (ATA) and the Regional Airline Association (RAA). The petitioners jointly requested that the FAA extend the effective date as it applies to the testing of contract employees. The petitioners suggested that this additional time could be used to fully explore the most effective methods for including contract employees in the testing program. The petitioners raised additional issues: Whether contractors may file their own drug testing plans directly with the FAA; and whether the FAA should defer the testing of employees located outside of the United States indefinitely. The petitioners suggested that the FAA should suspend the requirement for testing outside the United States until the Department of Transportation, Department of State, and foreign governments fully explore the implications of the final rule.

Before the petition of ATA and RAA was received, the FAA had been considering the effect of the final rule on the industry. Because of the complexities and the significant amount of work involved in setting up a program, the FAA determined that some extension of timeframes for submission of programs was warranted. Hense, the FAA issued an amendment to the final rule on April 11, 1989 (54 FR 15148; April 14, 1989).

The Amendment

The first change included in the amendment was an extension of the timeframes by which an employer must submit an anti-drug program to the FAA. The FAA added 120 days to the time period in which employers and operators must submit an anti-drug plan to the FAA for approval. However, the date in which employers would begin testing employees for drug use was not changed; rather the time period to implement a program after the employer's plan is approved was reduced. For example, in the final rule, part 121 and large part 135 certificate holders were allowed a 120-day period for plan submission and a 180-day time period for implementation of that plan, or a total of 300 days. In the amendment to the final rule, a certificate holder was allowed 240 days to submit a plan and a 60-day period to implement that plan, or an identical 300-day total period. Other appropriate sections of the final rule were changed in the amendment to extend the dates by which other employers and operators must submit anti-drug programs to the FAA for approval.

Further, the amendment clarified the distinction between individuals who are directly employed by an affected employer and those employees who provide sensitive safety- or security-related functions for an employer, pursuant to contract, usually described as "contract employees." As a result of this amendment, testing of contract employees is not required until 360 days after testing is initiated for direct employees of a certificate holder. Also, because of the complexities of testing contractor employees, the FAA amended the anti-drug final rule to permit contractors and consortia to submit plans directly to the FAA for approval rather than be included in a certificate holder's approved plan.

The amendment also addressed the impact of the final rule on persons located outside of the United States. Because of the added complexity of the final rule in the international arena, the FAA deleted the affirmative obligation for a diplomatic response from a foreign government and extended the effective date of the final rule as it may apply to employees located outside of the United States until January 1, 1991. By subsequent rule amendment, the date has been extended until January 2, 1992 (54 FR 53282; December 27, 1989).

Finally, other minor, editorial changes were made to clarify the intent of the final rule.

Discussion of the Comments

The amendment to the anti-drug rule was effective upon issuance on April 11, 1989. Comments were invited until May 15, 1989. The FAA reviewed all comments submitted to the docket that addressed the final rule amendment. Those nine comments and the FAA's response are discussed below.

Contractor Employees

Dalfort Aviation Services (Dalfort) comments that the FAA may not have accomplished one of the stated purposes of the amendment by providing the means by which a contractor, such as a repair station, could submit and obtain approval of its own anti-drug plan. Specifically, Dalfort states that the wording of paragraph (A)(2) of section IX of appendix I, that "Each employer shall implement the employer's approved anti-drug program for its contractor employees * * *", could be interpreted to require implementation of the certificate holder's program by the contractor rather than implementation of the contractor's own program. Dalfort comments that this would pose a particular problem for its operation as a certified repair station because it would mean implementing the anti-drug programs of many part 121 certificate holders. Dalfort suggests changing the wording of that paragraph to read, "Each employer shall implement an approved program * * *."

The FAA Response

The FAA assures Dalfort and other similar operators that paragraph (A)(2) of section IX does not preclude a contractor from submitting its own anti-drug plan to the FAA for approval. Paragraph (A)(6) was specifically developed to enable any repair station certificated by the FAA to submit its own anti-drug plan to the FAA for approval. Similarly, paragraph (A)(7) permits an entity or individual whose employees perform covered functions for a certificate holder by contract to submit an anti-drug plan directly to the FAA for approval. Although the employer may not use a contractor to perform covered functions unless the contractor's employees are drug tested in accordance with appendix I, the employer is responsible for actually implementing only its own approved program under section IX of appendix I.

The FAA does not agree that the wording of paragraph (A)(2) should be changed. That wording was carefully developed to apply to those part 121 or part 135 certificate holders who want to include contractor employees under their own anti-drug program. The purpose of that paragraph is to ensure that, if a certificate holder chooses to include its contractor employees in its approved anti-drug program, those employees would be covered under the certificate holder's approved program.

Small Businesses and Single Operators

Four comments were received from small businesses or independently employed operators who are engaged in aerial, agricultural application operations. Operators engaged in aerial, agricultural application operations are not required to have an operating certificate under either part 121 or part 135, but nevertheless are included in the anti-drug program rule under § 135.1(c). These § 135.1(c) operators oppose the requirement to develop and submit an anti-drug program to the FAA for approval because of the cost involved, because they believe that there have been no accidents caused by drugs in this type of business, and because they fear that a false reading of a specimen could cause a loss of job or could ruin their business. Several other small operators, not § 135.1(c) operators, comment that measures should be taken to ensure the validity of tests such as certification of laboratories, periodic testing of laboratory employees, and the splitting of specimens to double check the specimen in case of a false reading.

The FAA's Response

In general, the issues raised by these commenters are beyond the scope of the final rule amendment. However, the FAA is responding to them to foster understanding about the purpose and content of the rule requirements. For example, certain aspects of the anti-drug, such as post-accident and random testing, are acknowledged by the FAA as particularly problematic for single-person operators. In its efforts to assist these single-person aviation entities in their compliance with the anti-drug rule, the FAA has issued guidance materials tailored to the unique needs of this aviation category.

Guidelines For Single-Person Aviation Businesses: Implementing the FAA Anti-Drug Program, a booklet issued by the FAA in February 1990 and available from the FAA regional Drug Abatement Branch offices, is a "plain language" summary of the rule requirements as they pertain to this category. In addition to containing a model anti-drug plan, the booklet provides advice and direction that should greatly assist single-person aviation entities in complying with particular aspects of the anti-drug rule. The FAA is continually reviewing rule requirements as they apply to this category and will develop suitable educational materials as deemed necessary or helpful.

The four commenters who are aerial, agricultural application operators express concern regarding the costs, presumably exacerbated by time constraints, of development of an anti-drug program. In addition to the eventual mitigation of costs that will be realized by both the availability of consortia services and education through FAA advisory and guidance materials, these § 135.1(c) operators have received relief in a recent rule amendment published March 22, 1990 (55 FR 10756). This rule amendment allows § 135.1(c) operators a 1-year extension for submitting their anti-drug plans for FAA approval. Not only will this additional time be beneficial to these § 135.1(c) operators in their plan development, it will also be useful to the FAA, allowing the agency time to review the scope of the rule as to inclusion of such operations and to develop and disseminate appropriate guidance materials.

In reference to the fears of commenters as to the accuracy of drug testing, the final rule requires that industry drug testing programs comply with the Department of Transportation's Procedures for Transportation Workplace Drug Testing Programs (49 CFR part 40). The 49 CFR part 40 procedures were published on November 21, 1988 (53 FR 47002). A revised version was published on December 1, 1989 (54 FR 49854). These procedures are based on the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" developed by the Department of Health and Human Services (53 FR 11970; April 11, 1988).

Like the DHHS guidelines, the DOT procedures require certification of laboratories performing urinalysis for drugs and also require a two-step specimen analysis system. The initial test or screening is used to determine the possible presence of drugs or drug metabolites. A specimen testing positive on the initial test is subject to a confirmation test using gas chromatography/mass spectrometry. The GC/MS method is the most technologically advanced test available. It is extremely accurate and virtually error-free when used in compliance with the procedures. If the GC/MS test shows no evidence of drugs, the test is reported as negative. In the case of a positive result, the results of the test are referred to a medical review officer (MRO) who reviews the employee's medical history or other biomedical factors to determine if there is a legitimate explanation for the positive test result. A confirmed positive result is verified and reported by the MRO only if he or she determines after the review that there is no legitimate medical explanation for a confirmed positive result that is consistent with legal drug use. In addition, the revised 49 CFR part 40 procedures permit an employer's plan to include a split sample provision.

Preemptive Effect of the Final Rule

Aviall, Inc., a part 145 certificate holder operating as a U.S. powerplant

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repair station, comments that the FAA should clarify the preemptive effect of the final rule. Aviall recognizes the FAA's statutory authority to preempt State and local laws that would interfere with the anti-drug rule. However, Aviall seeks assurance that the preemptive effect attaches as soon as the testing procedures have begun in the case of an employer who implements its FAA-approved anti-drug program at an earlier date than is required by the final rule. Aviall believes that it the FAA chooses not to have preemption attach at the time of predeadline implementation, employers will delay submission and implementation of an anti-drug program until the absolute deadline. Aviall encourages the FAA to clarify that preemption attaches upon implementation, whatever that date.

The FAA's Response

Although this comment was received after the closing date for comments, the FAA takes this opportunity to clarify the preemptive nature of the final rule. As Aviall correctly states, the FAA included a provision in the final rule stating that the rule "preempts any State or local law, rule, regulation, order, or standard that covers testing of commercial aviation employees for the presence of drugs or drug metabolites that would prohibit or limit drug testing required under the rule." The language of the final rule requires compliance "not later than" a specified date, depending on the size of the aviation entity and the type of operation

The final rule clearly permits an employer or operator to implement an approved anti-drug program in advance of the deadlines in the regulation. The FAA noted in the preamble that the rule "does not prohibit an employer from implementing its anti-drug program sooner than required by the FAA's schedule if the employer is able to comply with the rule requirements and the provisions of its anti-drug program at an earlier date." Moreover, the preemption provision in appendix I states that "issuance" of the FAA's regulation preempts any State or local law covering the same subject matter. It is the FAA's opinion that the preemptive effect attaches to all drug testing conducted by an employer pursuant to its approved anti-drug program in compliance with the requirements of the final rule. This includes drug testing conducted by an employer pursuant to an approved anti-drug program that occurs prior to the date by which the rule absolutely requires an employer to implement its approved program and to commence drug testing.

Need for Clarification, Extension of the Final Rule

The Soaring Society of America (SSA) comments that the extension granted by the FAA in amending the final anti-drug rule is inadequate for compliance by employers and operators who have not yet determined the applicability of the anti-drug requirements to their activities. Therefore, SSA believes that operators who do not hold either a part 121 or a part 135 certificate should be allowed an additional 360 days (until April 1991) to submit an anti-drug program to the FAA for approval. SSA suggests that testing of direct and contract employees could be implemented at the same time in light of the recommended 360-day extension. In addition, SSA recommends that the FAA disseminate Advisory Circular (AC) 121–30 more widely by sending a copy to all national organizations who commented on the anti-drug amendment, by including an AC 121-30 order form in national organizations' publications, and by sending all Part 135 certificate holders and non-FAA/non-military ATC facilities copies of AC 121–30.

The FAA's Response

The FAA agrees generally with SSA. As previously noted, the FAA has amended the rule to extend the date of plan submission for operators who are not part 121 or part 135 certificate holders, and has developed and disseminated new compliance guidance materials. The amendment grants § 135.1(c) operators a 1-year extension for submitting their anti-drug plans for FAA approval. This 1-year extension will enable the FAA to review further the scope of the rule and to determine whether changes are warranted.

Moreover, in accordance with SSA's recommendation as to guidance the FAA has developed and issued two publications to assist covered employers and operators in complying with FAA program requirements. The *Implementation Guidelines For The FAA Anti-Drug Program* contains "plain language" guidance for the majority of those covered by the rule, and also includes the texts of the FAA final rule and DOT's interim final rule (on drug testing procedures) (superseded); the April 11, 1989, amendment to the final rule regarding which these comments were submitted; and Advisory Circular 121–30. As previously discussed, *Guidelines For Single-Person Aviation Businesses* was developed to assist this particular aviation group. This publication encompasses advice on compliance for single-person operators, assistance in addressing the thorny implementation issues, and a sample model plan for submission to the FAA. The FAA also has disseminated copies of the DOT final rule on drug testing procedures, which was issued on November 27, 1989 (54 FR 49854; December 1, 1989).

Employee Assistance Programs

The Employee Assistance Professionals Association, Inc., (EAPA) essentially agrees with the purpose and content of the anti-drug final rule; however, EAPA also comments that "the execution of a comprehensive drug-testing program is not the most effective way to deter substance abuse in the workplace." EAPA states that the final rule does not go far enough in providing a formal definition and structure for a comprehensive employee assistance program that would provide policies and resources for dealing with on-the-job drug problems. EAPA provides a definition of such a program and its core activities: consultation and training, appropriate diagnosis, confidential problem-assessment services, treatment and assistance, and follow-up services. EAPA does not recommend that the FAA mandate the elements of an EAP; rather, EAPA urges the FAA to clarify the final rule to indicate that employee assistance programs are not limited to "education and training programs."

The FAA's Response

This issue was not raised in the amendment to the anti-drug program final rule; however, many comments on both EAPs and issues of rehabilitation were received and reviewed by the FAA in the course of this rulemaking. The FAA determined in formulating the final rule that the employer or operator should have the maximum flexibility and discretion to develop an EAP appropriate for its employees. The final rule does require a minimum amount of training for supervisors who will make determinations to test an employee based on reasonable cause. The final rule, however, sets forth only the minimum requirements for an EAP and does not preclude an employer from providing additional training and assistance to its employees. Based on existing EAPs discussed in comments submitted over the course of the rulemaking process, the FAA believes that many employers will exceed the minimum requirement.

The FAA does not agree, however, that EAPs can or should be substituted for drug testing programs. Even the most comprehensive EAP will not have the same degree of effectiveness. The FAA

believes that a strong message must be sent to commercial aviation employers and operators that the use of drugs will not be tolerated in the aviation industry and that drug testing remains a vital part of the effort to ensure a drug-free aviation workplace.

Issued in Washington, DC on November 16, 1990.

Robert R. McMeekin,

Federal Air Surgeon, Aviation Medicine

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H.R. 5007/Pub. L. 101–545

To designate the facility of the United States Postal Service located at 100 South John F. Kennedy Drive, Carpentersville, Illinois, as the "Robert McClory Post Office Building". (Nov. 14, 1990; 104 Stat.2394; 1 page) Price: $1.00

H.R. 5409/Pub. L. 101–546

To designate the Post Office building at 222 West Center Street in Orem, Utah, as the "Arthur V. Watkins Post Office Building". (Nov. 14, 1990; 104 Stat. 2395; 1 page) Price: $1.00

H.J. Res. 673/Pub. L. 101–547

To designate November 2, 1990, as a national day of prayer for members of American military forces and American citizens stationed or held hostage in the Middle East, and for their families. (Nov. 14, 1990; 104 Stat. 2396; 2 pages) Price: $1.00

S. 3156/Pub. L. 101–548

To correct a clerical error in Public Law 101-383. (Nov. 14, 1990; 104 Stat. 2398; 1 page) Price: $1.00

S. 1630/Pub. L. 101–549

To amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes. (Nov. 15, 1990; 104 Stat. 2399; 314 pages) Price: $9.50

H.R. 1396/Pub. L. 101–550

Securities Acts Amendments of 1990. (Nov. 15, 1990; 104 Stat. 2713; 20 pages) Price: $1.00

H.R. 1463/Pub. L. 101–551

National Capital Transportation Amendments of 1990. (Nov. 15, 1990; 104 Stat. 2733; 3 pages) Price: $1.00

H.R. 2497/Pub. L. 101–552

Administrative Dispute Resolution Act. (Nov. 15, 1990; 104 Stat. 2736; 13 pages) Price: $1.00

H.R. 3045/Pub. L. 101–553

Copyright Remedy Clarification Act. (Nov. 15, 1990; 104 Stat. 2749; 2 pages) Price: $1.00

H.R. 3069/Pub. L. 101–554

Displaced Homemakers Self-Sufficiency Assistance Act. (Nov. 15, 1990; 104 Stat. 2751; 7 pages) Price: $1.00

H.R. 3310/Pub. L. 101–555

To authorize appropriations for activities of the National Telecommunications and Information Administration for fiscal years 1990 and 1991. (Nov. 15, 1990; 104 Stat. 2758; 4 pages) Price: $1.00

H.R. 4630/Pub. L. 101–556

Baca Location No. 1 Land Acquisition and Study Act of 1990. (Nov. 15, 1990; 104 Stat. 2762; 4 pages) Price: $1.00

H.R. 5112/Pub. L. 101–557

Home Health Care and Alzheimer's Disease Amendments of 1990. (Nov. 15, 1990; 104 Stat. 2766; 6 pages) Price: $1.00

H.R. 5113/Pub. L. 101–558

Injury Control Act of 1990. (Nov. 15, 1990; 104 Stat. 2772; 2 pages) Price: $1.00

H.R. 5419/Pub. L. 101–559

To designate the Federal Building at 88 West 100 North in Provo, Utah, as the "J. Will Robinson Federal Building". (Nov. 15, 1990; 104 Stat. 2774; 1 page) Price: $1.00

H.R. 5507/Pub. L. 101–560

Regarding the Early Winters Resorts. (Nov. 15, 1990; 104 Stat. 2775; 3 pages) Price: $1.00

H.R. 5567/Pub. L. 101–561

To amend the Water Resources Development Act of 1974 to transfer jurisdiction

of the Big South Fork National River and Recreation Area from the Secretary of the Army to the Secretary of the Interior, and for other purposes. (Nov. 15, 1990; 104 Stat. 2778; 2 pages) Price: $1.00

H.R. 5706/Pub. L. 101-562
To authorize acquisition of certain real property for the Library of Congress, and for other purposes. (Nov. 15, 1990; 104 Stat. 2780; 2 pages) Price: $1.00

H.J. Res. 582/Pub. L. 101-563
Designating October 21 through 27, 1990 as "National Humanities Week". (Nov. 15, 1990; 104 Stat. 2782; 1 page) Price: $1.00

H.J. Res. 652/Pub. L. 101-564
To designate March 25, 1991, as "National Medal of Honor Day".(Nov. 15, 1990; 104 Stat. 2783; 1 page) Price: $1.00

H.J. Res. 657/Pub. L. 101-565
Granting the consent of the Congress to amendments to the Delaware-New Jersey Compact, and for other purposes. (Nov. 15, 1990; 104 Stat. 2784; 13 pages) Price: $1.00

S. 639/Pub. L. 101-566
Spark M. Matsunaga Hydrogen Research, Development, and Demonstration Act of 1990. (Nov. 15, 1990; 104 Stat. 2797; 5 pages) Price: $1.00

S. 1605/Pub. L. 101-567
To authorize the Secretary of the Interior to reinstate oil and gas lease LA 033164. (Nov. 15, 1990; 104 Stat. 2802; 2 pages) Price: $1.00

S. 3215/Pub. L. 101-568
To authorize the transfer by lease of a specified naval landing ship dock to the Government of Brazil. (Nov. 15, 1990; 104 Stat. 2804; 2 pages) Price: $1.00

S.J. Res. 318/Pub. L. 101-569
Providing for the appointment of Ira Michael Heyman as a citizen regent of the Smithsonian Institution. (Nov. 15, 1990; 104 Stat. 2806; 1 page) Price: $1.00

S.J. Res. 369/Pub. L. 101-570
Designating 1991 as the "Year of Thanksgiving for the Blessings of Liberty". (Nov. 15, 1990; 104 Stat. 2807; 1 page) Price: $1.00

H.R. 2419/Pub. L. 101-571
To authorize the Secretary of Agriculture to exchange certain property in the Chattahoochee National Forest for the construction of facilities in the National Forest. (Nov. 15, 1990; 104 Stat. 2808; 2 pages) Price: $1.00

H.R. 3656/Pub. L. 101-572
Gas Related Activities Act of 1990. (Nov. 15, 1990; 104 Stat. 2810; 2 pages) Price: $1.00

H.R. 4107/Pub. L. 101-573
To authorize the Secretary of the Interior to permit certain uses of lands within the Colonial National Historical Park in the Commonwealth of Virginia. (Nov. 15, 1990; 104 Stat. 2812; 2 pages) Price: $1.00

H.R. 4793/Pub. L. 101-574
Small Business Administration Reauthorization and Amendments Act of 1990. (Nov. 15, 1990; 104 Stat. 2814; 20 pages) Price: $1.00

H.R. 4808/Pub. L. 101-575
Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990. (Nov. 15, 1990; 104 Stat. 2834; 4 pages) Price: $1.00

H.R. 5687/Pub. L. 101-576
Chief Financial Officers Act of 1990. (Nov. 15, 1990; 104 Stat. 2838; 18 pages) Price: $1.00

H.R. 5871/Pub. L. 101-577
Farm Poundage Quota Revisions Act of 1990. (Nov. 15, 1990; 104 Stat. 2856; 2 pages) Price: $1.00

H.R. 5796/Pub. L. 101-578
To conduct certain studies in the State of New Mexico. (Nov. 15, 1990; 104 Stat. 2858; 4 pages) Price: $1.00

H.J. Res. 606/Pub. L. 101-579
Designating February 16, 1991, as "Lithuanian Independence Day".(Nov. 15, 1990; 104 Stat. 2862; 1 page) Price: $1.00

S. 459/Pub. L. 101-580
To amend title 35, United States Code, with respect to the use of inventions in outer space. (Nov. 15, 1990; 104 Stat. 2863; 2 pages) Price: $1.00

S. 1931/Pub. L. 101-581
Criminal Victims Protection Act of 1990. (Nov. 15, 1990; 104 Stat. 2865; 2 pages) Price: $1.00

S. 2056/Pub. L. 101-582
Year 2000 Health Objectives Planning Act. (Nov. 15, 1990; 104 Stat. 2867; 4 pages) Price: $1.00

S. 2930/Pub. L. 101-583
To eliminate "substantial documentary evidence" requirement for minimum wage determination for American Samoa, and for other purposes. (Nov. 15, 1990; 104 Stat. 2971; 1 page) Price: $1.00

S. 3187/Pub. L. 101-584
To address immediate problems affecting environmental cleanup activities. (Nov. 15, 1990; 104 Stat. 2872; 2 pages) Price: $1.00

S. 3237/Pub. L. 101-585
Silver Coin Proof Sets Act. (Nov. 15, 1990; 104 Stat. 2874; 2 pages) Price: $1.00

S.J. Res. 302/Pub. L. 101-586
Providing for reappointment of Anne Legendre Armstrong as a citizen regent of the Smithsonian Institution. (Nov. 15, 1990; 104 Stat. 2876; 1 page) Price: $1.00

S.J. Res. 357/Pub. L. 101-587
To designate October 1-31, 1991, as "Community Center Month". (Nov. 15, 1990; 104 Stat. 2877; 2 pages) Price: $1.00

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Friday
November 23, 1990

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WHEN: November 27, at 9:00 a.m.
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WHEN: December 12, at 9:00 a.m.
WHERE: Summit Building, 401 W. Peachtree Street, 19th Floor Conference Room, Atlanta, GA.
RESERVATIONS: 1-800-347-1997.

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Title 3—

The President

Proclamation 6234 of November 20, 1990

National Adoption Week, 1990

By the President of the United States of America

A Proclamation

During the holiday season that begins on Thanksgiving, our thoughts turn toward home and family. At this special time of year, most of us can recall warm memories of past family gatherings as we look forward to being reunited once again with our dearest relatives and other loved ones. Tragically, however, thousands of American youngsters will not be able to enjoy this festive and holy season with a family of their own—these are children waiting to be adopted.

Each year, some 60,000 waiting children do find permanent, loving homes in the United States. Each year, many infants are given the chance for full and happy lives when their biological mothers choose adoption over abortion. Nevertheless, an estimated 30,000 children who are legally available for adoption still wait in foster care for permanent families. Many of these children have special needs—they are children with physical, mental, or emotional disabilities; they are older or minority children; and they are children with siblings who need to be adopted by the same family. Regardless of the individual needs they may have, all of these waiting children are eager to love and to be loved by a family of their own.

An act of faith, courage, and generosity, adoption benefits everyone it touches: the youngster who needs and desires a lasting home and loving family; the expectant mother who, for whatever reason, cannot keep her child; and the prospective parents who long to open their hearts and their homes to adoptive children. However, despite the many benefits of adoption, thousands of children continue to wait.

In both the public and private sectors, we must continue working to eliminate daunting legal, financial, and attitudinal barriers to adoption. Toward that end, my Administration has developed proposals to help individuals meet the financial commitment involved in adopting children with special needs. We are also taking steps to encourage interested Federal employees to adopt.

During National Adoption Week, we gratefully recognize all those Americans who have joined in the effort to find permanent homes for waiting children—the counselors, social workers, attorneys, legislators, volunteers, employers, media professionals, and members of the clergy who devote their time, skills, and resources to encouraging adoption. This week let us also express our admiration and pledge our support for those courageous and selfless women who choose life for their unborn children. Finally, let us also remember those precious youngsters who, on this very day, wait to be adopted—let us renew our determination to help them gain the sense of security and belonging that they so desperately need and deserve.

To promote public awareness of adoption, the Congress, by Senate Joint Resolution 362, has designated the period commencing on November 18, 1990, and ending on November 24, 1990, as "National Adoption Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of November 18 through November 24, 1990, as National Adoption Week. I urge all Americans to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of November, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-27748
Filed 11-20-90; 4:43 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6235 of November 20, 1990

National Family Caregivers Week, 1990

By the President of the United States of America

A Proclamation

Traditionally, the American family has both symbolized and fostered the values that are at the heart of any truly strong and caring society—values such as faithfulness, commitment, and respect and concern for others. During National Family Caregivers Week, as we celebrate the American family and its ability to care for its members, we also reaffirm the importance of those values to us as individuals and as a Nation.

Each day millions of Americans provide various forms of assistance to relatives incapacitated by age, illness, or disability. In addition to home nursing care and companionship, these family caregivers may provide physically impaired loved ones with financial support, transportation, and help with shopping, cooking, and daily household maintenance. Their generous and devoted labors are invaluable to the relative who might otherwise be forced to live in an institutional setting.

Through their dedicated efforts, family caregivers not only help ill and elderly loved ones to maintain their dignity and independence but also provide wonderful examples of the love and commitment that are the essence of family life. This week we proudly salute these hardworking men and women.

The Congress, by House Joint Resolution 525, has designated the week of November 18 through November 24, 1990, as "National Family Caregivers Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of November 18 through November 24, 1990, as National Family Caregivers Week. I encourage the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of November, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-27749
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1d

Rural Labor; Immigration Reform and Control Act

AGENCY: Office of the Secretary, Department of Agriculture.

ACTION: Final rule.

SUMMARY: This final rule amends 7 CFR part 1d, which defines fruits, vegetables, and other perishable commodities, as prescribed by section 302(a) of the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (IRCA). This rule will assist the Immigration and Naturalization Service in determining the special agricultural workers to be admitted into the United States or to have their status adjusted to that of temporary legal residents.

EFFECTIVE DATE: November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Al French, Coordinator of Agricultural Labor Affairs, Economic Analysis Staff, Room 227-E, Administration Building, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 447-4737.

SUPPLEMENTARY INFORMATION: Section 302(a) of the IRCA added section 210 to the Immigration and Nationality Act (INA), 8 U.S.C. 1160. Section 210(h) of the INA, 8 U.S.C. 1160(h), directed the Secretary of Agriculture to publish regulations defining the fruits, vegetables, and other perishable commodities in which field work related to planting, cultural practices, cultivating, growing, and harvesting will be considered "seasonal agricultural services." On June 1, 1987, at 52 FR 20372-76 (codified at 7 CFR part 1d), the United States Department of Agriculture (USDA) published its final rule, including the determination that sod was not a fruit, vegetable, or other perishable commodity within the meaning of the INA. This final rule redefines the commodity sod as a result of the decision by the United States District Court for the Northern District of Illinois in *Heriberto Morales, et al.* v. *Clayton K. Yeutter, et al.*, No. 87-C-20522 (N.D. Ill. June 11, 1990), which ordered that the commodity sod be included in the definition "other perishable commodities" at 7 CFR 1d.7. The Government has filed an appeal of this decision to the United States Court of Appeals for the Seventh Circuit, *Heriberto Morales, et al.* v. *Clayton K. Yeutter, et al.*, No. 90-2787 (7th Cir.).

In compliance with the judgment of the court, USDA is rescinding that portion of 7 CFR 1d.7, which lists sod as an example of a commodity which is not a perishable commodity.

The judgment of the court that concludes that the commodity sod should be included in the definition of an "other perishable commodity" leaves no discretion on the part of the Secretary to heed any comments that might be forthcoming if opportunity for public comment on this rule was afforded. Hence, pursuant to 5 U.S.C. 553, good cause is found that notice and opportunity for public comment is unnecessary, and good cause is found to make this rule effective less than 30 days after publication in the **Federal Register**.

The Assistant Secretary for Economics has reviewed this rule in accordance with Executive Order 12291 and has determined that it is not a major rule.

List of Subjects in 7 CFR Part 1d

Immigration and Rural labor.

Accordingly, part 1d., title 7, Code of Federal Regulations is amended as follows:

PART 1d—RURAL LABOR—IMMIGRATION REFORM AND CONTROL ACT OF 1986—DEFINITIONS

1. The authority citation for part 1d continues to read as follows:

Authority: 8 U.S.C. 1160.

2. Section 1d.7 is revised to read as follows:

§ 1d.7 Other perishable commodities.

Other perishable commodities mean those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of field work, and have critical and unpredictable labor demands. This is limited to Christmas trees, cut flowers, herbs, hops, horticultural specialities, lettuce seed, sod, spanish reeds (arundo donax), spices, sugar beets, and tobacco. This is an exclusive list, and anything not listed is excluded. Examples of commodities that are not included as perishable commodities are animal aquacultural products, birds, dairy products, earthworms, fish including oysters and shellfish, forest products, fur bearing animals and rabbits, hay and other forage and silage, honey, horses and other equines, livestock of all kinds including animal specialities, poultry and poultry products, sugar cane, wildlife, and wool.

Done at Washington, DC, this 15th day of November, 1990.

Bruce L. Gardner,

Assistant Secretary for Economics.

[FR Doc. 90-27412 Filed 11-21-90; 8:45 am]
BILLING CODE 3410-01-M

Food and Nutrition Service

7 CFR Parts 272 and 275

[Amdt. No. 324]

Food Stamp Program; Quality Control Variance Exclusions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rulemaking puts in final form Food Stamp Program interim regulations, published November 2, 1988 (53 FR 44171), to exclude certain variances from State welfare agencies' payment error rates. Section 604 of the Hunger Prevention Act of 1988 requires this change in the regulations. Three additional types of errors that shall be excluded from the payment error rate determination are: (1) Variances resulting from the application of new food stamp regulations; (2) variances resulting from a State agency's use of correctly processed information which was received from Federal agencies; and (3) variances resulting from a State

agency's use of incorrect, written policy which was received from the Secretary or the Secretary's designee.

DATES: The provisions of this action which adopt without change interim provisions published November 2, 1988 were effective October 1, 1988 for all quality control case reviews beginning with the October 1988 sample. The new provisions contained in this final action at §275.12(d)(2) (v), (vii), and (viii) are effective January 1, 1991 and affect all quality control case reviews beginning with the January 1991 sample.

FOR FURTHER INFORMATION CONTACT: David Young, Acting Supervisor, Quality Control Policy Section, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302, (703) 756-3472.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291. This action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Department has classified this rule as non-major. The rule's effect on the economy will be less than $100 million. The rule will have no effect on costs or prices. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign based-enterprises.

Regulatory Flexibility Act. This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 96 Stat. 1164, September 19, 1980). Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act. This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12372. The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice(s) to 7 CFR Part 3015, subpart V (48 FR 29115, June 24, 1983) this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

Pursuant to section 604 of the Hunger Prevention Act of 1988, Public Law 100-435, September 19, 1988, which amended section 16(c) of the Food Stamp Act of 1977 (7 U.S.C. 2025(c)), the Department published interim regulations on November 2, 1988, that provided three additional types of variances that must be excluded from the payment error rate determination: (1) Any variances resulting from the application of a new regulation promulgated pursuant to the provisions of the Food Stamp Act of 1977, as amended, during the first 60 days (or 90 days at the discretion of the Secretary) from the required implementation date of the regulation; (2) any variances resulting from the use by a State agency of correctly processed incorrect information concerning households or individuals received from Federal agencies; and (3) any variances resulting from the use by the State agency of incorrect policy information approved or disseminated, in writing, by the Secretary or the Secretary's designee.

A total of 12 comment letters were received. Eleven of the commenters were State welfare agencies. One commenter was a public interest group. Five commenters supported the regulations, although these five commenters made qualifying statements about what should be included. The remaining seven commenters suggested specific changes without expressing a general opinion about the interim regulations.

A full explanation of the rationale of the rule is contained in the preamble of the interim rule. It is suggested that persons also refer to that rule for additional background information.

Variances as a Result of New Regulations—§ 275.12(d)(2)(vii)

The interim regulations at 7 CFR 275.12(d)(2)(vii) exclude variances that result from the implementation of new regulations for 60 (90) days (the exclusionary time period) from the date of required implementation of a final regulation. Five of the commenters wanted the exclusionary time period to be extended to 90-120 days. However, Section 604 of the Hunger Prevention Act of 1988 authorized only 60 and 90 day periods. Therefore we have not adopted these suggestions.

One commenter suggested that the Department provide State agencies with 90 days to implement all regulations. Although the Department considers that a standard implementation period has merit, it is not possible in all cases. The need to implement regulations in a timely manner must be balanced against State agencies' needs for workload management. Regulations vary in their complexity and in the amount of advance notice that is possible. In addition, the Department has no authority to change implementation dates that are established by law.

Implementation by State agency. One commenter states that there was no basis for allowing the variance exclusion only in the event that the State agency has implemented. However, the House Committee Report (Report 100-828) states that

" * * * errors due solely to the application of new regulations will not be added to a State's official error rate. This is not intended to relieve States of the requirement to meet implementation time frames, only to provide for the period of transition that follows." (H.R. Rep. No. 100-828), Part 1, 100th Cong., 2nd Sess. 35). Based on this expression of Congressional intent, the Department is retaining the requirement that State agencies must implement new regulations in order to be entitled to the variance exclusion.

Definition of implementation. Five commenters wanted clarification of when implementation should begin and when the variance exclusion begins. The variance exclusion period begins with the required implementation date in the specific rulemaking. A variance exclusion period would also begin on the effective date of an implementing memorandum, if one is sent to advise State agencies of a change in Federal law, in lieu of regulations. If a regulation provides for staggered implementation, i.e. application of the new rule to new applicants as of the required implementation date and application to the ongoing case load at the time of recertification, the variance exclusion covers the first 60 (90) days from the required implementation date; it is not extended to cover the entire implementation period. The statutory intent is to provide relief for State agencies for the initial 60 (90) days of transition following implementation of a new regulation. By providing for staggered implementation, the Department relieves the State agency of the burden of applying a new regulation over the entire caseload as of a particular date. On the other hand, as is current policy, if a State agency is not required to implement a new regulation for a particular case, that regulation will not be used in the review of the case. Thus, if a case becomes subject to QC reviews after the expiration of the exclusionary period but before the new rule is required to be applied to the new case (i.e. the case has not come up for recertification and the household has not requested review under the new rule) there would be no variance based on non-application of the new rule.

As the variance exclusion only applies if a State agency has implemented, the Department is establishing guidelines to be used in determining implementation. For purposes of this provision, implementation means that a State agency has issued some type of written statewide notification to its eligibility workers with a clearly indicated effective date. The implementation date will be the effective date of the state agency's notification. The Department believes that this method will be less burdensome to the State agencies than requiring them to prove that a provision has actually been adopted statewide.

Early implementation. In the past, some regulations have allowed State agencies the option of implementing prior to the required implementation date. Since the 60 or 90 day variance exclusion, provided in the statute, ordinarily would begin with the required implementation date, States who choose to implement early would not be protected from variances occurring prior to the required implementation date. The Department, however, does not wish to penalize State agencies which choose to implement early. Therefore, the Department is adopting a policy to accommodate this situation. In this situation, at the option of the State agencies, the required implementation date will be considered to be the date that the State agency implements. For example, a regulation with a 60 day variance exclusion is published on October 15, to be implemented no later than December 1. The State agency chooses to implement on November 1. The State agency would exclude variances in cases with review dates between November 1 and December 30, inclusive. States which choose to implement early and wish 60 or 90 day variance exclusion to begin with the early implementation date, must notify the appropriate FNS Regional Office, in writing, prior to the early implementation date. A letter accompanied by the regulation to be implemented will meet this notice requirement. The variance exclusion will otherwise commence with the required implementation date.

Final regulations which follow interim regulations. In response to concerns about how the variance exclusion rule applies to provisions that appeared in both interim and final regulations, the Department has developed the following policy. A State agency shall exclude variances which result from the implementation of the interim rule and implementation of significant changes from the interim rule which appear in the final regulation. "Significant changes" will be those that have a new implementation date specified in the final regulation. The purpose of this exclusion is to help the State agency through the implementation of new regulations. In some cases there are significant changes that occur in the final regulation that, while within the scope of the interim rule, were not specifically covered by the interim's exclusion. We feel that the intent of the exclusion provision is to cover such changes. The exclusion would not, however, cover simple clarifications or further explanations of regulations previously published and implemented.

Variances as a Result of Information from a Federal Source—§ 275.12(d)(2)(v)

The interim regulation provided for an exclusion for variances resulting from use of incorrect information provided by a Federal source, provided that the information is correctly processed by the State agency. One commenter stated that this provision would help allay State agencies' concerns about the accuracy of automated and other types of data exchange programs with a variety of Federal sources.

Definition of "correctly processed". Two commenters requested guidance on the phrase "correctly processed", as used in this provision of the regulation. To meet the provision for correct processing, the eligibility worker must have appropriately acted on timely information. In order to be timely, information must have been the most current that was available to the State agency for the sample month.

Appropriate federal source. The Department has decided that the regulation needed to be modified to indicate that only information obtained from the appropriate Federal source would be subject to these provisions. An appropriate Federal source is one which verifies: (1) Income that it provides directly to the household, (2) deductible expenses for which it directly bills the household, or (3) other household circumstances which it is responsible for defining or establishing, such as disability or program participation. Thus, the Social Security Administration is an appropriate source for verifying a Social Security Number, the Department of Agriculture is an appropriate source for verifying a Departmental employee's income, and any department would be an appropriate source for verifying a child care expense that it billed directly to a household. This change will preclude a variance exclusion based on a State agency's use of information from a Federal source that is not considered to be an appropriate source for the information. For example, a State agency would not be permitted to request information from the Social Security Administration on interest income from a bank account held by a household, and then exclude a variance if the amount of income were incorrect.

Reporting Federal Information Exchange (FIX) errors. State agencies often use automated FIX systems such as the Social Security Administration's Beneficiary and Earnings Data Exchange (BENDEX) and the Supplemental Security Income State Data Exchange (SDX) systems for verification purposes and to make mass changes in such benefits. Section 1537 of Public Law 99-198, December 23, 1985, amended section 16(d) (7 U.S.C. 2025(d)) of the Food Stamp Act to provide that State agencies shall not be liable for errors that result from use by the State agency of information received from an automated information exchange system made available by any Federal department or agency, provided that the information was correctly processed by the State agency.

H.R. Rep. No. 99-271, Part 1, 99th Cong., 1st Sess. 161, indicated that this type of variance should be reported for program management purposes but it should be excluded from error rate determinations. The Preamble to the interim regulation stated that "[T]he Secretary has the authority to require that these three types of errors be reported for management purposes." (53 FR 44172). The Department has decided to retain the current provision that FIX variances be reported but not included in the error determination. The Department agrees with the commenter who stated that this will be helpful in assessing the impact of erroneous Federal data on Food Stamp benefits. The Department has decided that it will require the other exclusions be coded and reported under a future regulation. One commenter stated that there were no directions given on how to code but not count FIX errors. Modifications have been made to the Integrated Quality Control System to allow for the reporting of FIX variances.

Incorrect Written Federal Policy—§ 275.12(d)(2)(viii)

Two commenters stated that they supported this provision. One commenter stated that Congress did not

say that the policy had to be "correctly applied" by the State agency in order for the exclusion to apply. It wanted this qualifier to be deleted. However, the intent of the Congress in this regard is specific and quite clear. The House Agriculture Committee report, which accompanied the Hunger Prevention Act, states "[A]ny State requesting the errors not be counted for purposes of error rate performance standards would need to show that the *errors occurred because the State had received specific written erroneous policy guidance* from an appropriate FNS official. The Committee expects that there will be few errors of this nature to be eliminated from the error count. The Committee intends that the Food Stamp Program be a Federal program with national standards *that all States are to follow*." (H.R. Rep. No. 100–828, Part 1; 100th Cong., 2d Sess. 36) (emphasis supplied).

This legislative intent supports our policy that State agencies must follow and adhere to national standards. The statute is specific that the variances are "resulting from" specific written policy information received from the Secretary or his designee. In cases where a State correctly followed policy which later turned out to be incorrect, the State will not be held responsible for the variance. At the same time, in those instances where a State applies a policy other than that set out in the advice provided by the Secretary or his designee, it cannot be said that the variance resulted from the advice given.

Definition of written federal policy. Written Federal policy is that which is issued in regulations, notices, handbooks, and category three and four Policy Memoranda under the Policy Interpretation Response System, and regional policy memoranda issued pursuant to these. For a further description of the Policy Interpretation Response System, please see the Department's Notice, published in the **Federal Register** on January 27, 1984, at 49 FR 3494. Under no circumstances is official policy issued by the decision of a Federal QC reviewer or QC arbitrator with respect to a specific case.

One commenter felt that the regulatory language could be interpreted to apply only to cases where FNS disseminates incorrect policy information and not to cases where FNS approves, in writing, incorrect policy information provided to it by a State agency. The commenter felt that the exclusion should cover variances resulting from correct application of faulty State agency manual provision or other State agency policy materials that had previously been approved in writing by FNS. State agencies are no longer required to submit manuals and other policy materials to FNS for prior approval. Therefore, in most instances, the exclusions would not be applicable. If, however, a State agency requested that a specific section of its manual be reviewed and written approval was sent to the State agency, the variance exclusion would apply.

Implementation

This final action provides that the provisions of this action which adopt, as final without change, a provision of the interim rule are effective with the October 1988 sample. This action further provides that the provisions of this final action which, as the result of changes resulting from the Department's response to comments on the interim rule, require the alteration of State procedure, are to be effective with the January 1991 sample.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 272 and 275 are amended as follows:

1. The authority citation for parts 272 and 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. The amendment to add a new paragraph (g)(103) to 7 CFR 272.1, as published at 53 FR 44171, November 2, 1988, is adopted as final without change.

3. In § 272.1, a new paragraph (g)(115) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(115) *Amendment No. 324.* The quality control changes to § 275.12 that are made by Amendment No. 324 shall be implemented for the quality control review period beginning January 1, 1991.

PART 275—PERFORMANCE REPORTING SYSTEM

4. Paragraphs 275.12(d)(2) (v) and (vii) are revised.

5. The amendment to § 275.12, as published at 53 FR 44172, November 2, 1988, to add new paragraph (d)(2)(viii) is adopted as final with the following change: In paragraph (d)(2)(viii) two new sentences are added after the first sentence.

The addition and revisions read as follows:

§ 275.12 Review of active cases.

* * * * *

(d) *Variance identification.* * * *

(2) *Variances excluded from error analysis.* * * *

(v) Any variance resulting from use by the State agency of information concerning households or individuals from an appropriate Federal source, provided that such information is correctly processed by the State agency. An appropriate Federal source is one which verifies: Income that it provides directly to the household; deductible expenses for which it directly bills the household; or other household circumstances which it is responsible for defining or establishing. To meet the provisions for correct processing, the eligibility worker must have appropriately acted on timely information. In order to be timely, information must be the most current that was available to the State agency at the time of the eligibility worker's action.

* * * * *

(vii) Subject to the limitations provided in subparagraphs (A) through (F) any variance resulting from application of a new Program regulation or implementing memorandum (if one is sent to advise State agencies of a change in Federal law, in lieu of regulations) during the first 60 days from the required implementation date, or during the first 90 days from the required implementation date if the regulation specifies 90 days.

(A) When a regulation allows a State agency an option to implement prior to the required implementation date, the date on which the State agency chooses to implement may, at the option of the State, be considered to be the required implementation date for purposes of this provision. The exclusion period would be adjusted to begin with this date and end on the 60th day that follows (or the 90th day if specified in the regulation). States choosing to implement prior to the required implementation date must notify the appropriate FNS Regional Office, in writing, prior to implementation that they wish the 60 or 90 day variance exclusion to commence with actual implementation. Absent such notification, the exclusionary period will commence with the required implementation date.

(B) A State agency shall not exclude variances which occur prior to the States implementation.

(C) A State agency which did not implement until after the exclusion period shall not exclude variances under this provision.

(D) Regardless of when the State agency actually implemented the regulation, the variance exclusion period shall end on the 60th day (or 90th day if specified in the regulation) following the required implementation date, including the required implementation date defined in (A).

(E) For purposes of this provision, implementation occurs on the effective date of State agency's written statewide notification to its eligibility workers.

(F) This variance exclusion applies to changes occasioned by final regulations or interim regulations. In the case of a final regulation issued following an interim regulation, the exclusion applies only to significant changes made to the earlier interim regulation. A significant change is one which the final regulation requires the State agency to implement on or after publication of a final rule.

(viii) * * * For purposes of this provision, written Federal policy is that which is issued in regulations, notices, handbooks, category three and four Policy Memoranda under the Policy Interpretation Response System, and regional policy memoranda issued pursuant to these. Written Federal policy is also a letter from the Food and Nutrition Service to a State agency which contains comments on the State agency's food stamp manual or instructions.

* * * * *

Dated: November 13, 1990.

Betty Jo Nelsen,

Administrator, Food and Nutrition Service.

[FR Doc. 90–27411 Filed 11–21–90; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Arkansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of an amendment to the Arkansas permanent regulatory program (Arkansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to Arkansas' rules pertaining to the definition of ownership and control of surface coal mining and reclamation operations; requirements for the reporting of violations and ownership and control data, and the effect of that information on various permitting decisions; and criteria and procedures for the identification and rescission of improvidently issued permits. The amendment is intended to revise the State program to be consistent with the corresponding Federal Standards.

EFFECTIVE DATE: November 23, 1990.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1980, the Secretary of the Interior approved the Arkansas program. The November 21, 1980, **Federal Register** (45 FR 77003) gives general background information regarding the Arkansas program, including information on the Secretary's findings and the disposition of comments on the program, as well as a detailed explanation of the conditions of its approval. Subsequent actions concerning the Arkansas program are identified at 30 CFR 904.12 and 904.15.

II. Submission of Proposed Amendment

By letter dated December 18, 1989 (administrative record No. AR–386), Arkansas submitted a proposed amendment to its program pursuant to SMCRA. The amendment concerned the following sections and topics of the Arkansas Surface Coal Mining and Reclamation Code (ASCMRC): 778.13 and 778.14, respectively, the identification of interests and compliance information for surface mining permit applications; 786.5, 786.17, and 786.19, respectively, the definition of "owned or controlled and owns and controls," review of permit applications, and criteria of permit review or denial, all as they relate to the review, public participation, and approval or disapproval of permit applications and permit terms and conditions; 786.27, general and right-of-entry conditions of permits; 786.30 and 786.31, respectively, general procedures and rescission procedures for improvidently issued permits; and 843.11, cessation orders.

Arkansas submitted the proposed amendment in response to a May 11, 1989, letter that OSM sent to it in accordance with 30 CFR 732.17(c) (administrative record No. AR–360).

On January 23, 1990, OSM published a notice in the **Federal Register** announcing its receipt of the proposed amendment to the Arkansas program and inviting public comment on the adequacy of the amendment (55 FR 2239). The comment period closed on February 22, 1990. After reviewing the proposed amendment and all comments it had received during the comment period, OSM notified Arkansas by letter dated February 28, 1990 (administrative record No. AR–393), of three provisions in the amendment that appeared to be inconsistent with the Federal regulations. These provisions were ASCMRC 778.12(a)(7) and (h), identification of interests in permit applications, and ASCMRC 786.30(b), improvidently issued permits. By letter dated March 28, 1990 (administrative record No. AR–394), Arkansas submitted to OSM revisions to the proposed amendment that resolved OSM's concerns.

To allow the public an opportunity to comment on this response, OSM published a notice in the **Federal Register** on April 23, 1990 (55 FR 15245), reopening and extending the comment period. The reopened comment period closed on May 8, 1990.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment submitted by Arkansas on December 8, 1989, as subsequently revised on March 28, 1990. The Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and OSM's continuing oversight of the Arkansas program.

1. Substantive Revisions to Arkansas' Rules That Are Substantially Identical to the Corresponding Federal Regulations

Arkansas proposes revisions to the following rules that are substantive in nature and contain language substantially identical to the corresponding Federal regulations:

ASCMRC 778.13 (a), (a)(5), (a)(6), (a)(7), (b), (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (c), (g) and (h) (corresponding Federal regulations 30 CFR 778.13 (b), (c), (d), (f) and (j)), the identification of

interests for surface mining permit applications;

ASCMRC 778.14 (c) and (d) (corresponding Federal regulation 778.14(c)), compliance information for surface mining permit applications;

ASCMRC 786.5(c) (corresponding Federal regulation 30 CFR 773.5), the definition of "owned or controlled and owns and controls," as it relates to the review, public participation, and approval or disapproval of permit applications and permit terms and conditions;

ASCMRC 786.17 (c) and (d) (corresponding Federal regulations 30 CFR 773.15 (b)(1) and (b)(2)), review of permit applications as it relates to the review, public participation, and approval or disapproval of permit applications and permit terms and conditions;

ASCMRC 786.19(i) (corresponding Federal regulation 30 CFR 773.15(b)(3)), criteria for permit review or denial, as they relate to the review, public participation, and approval or disapproval of permit applications and permit terms and conditions;

ASCMRC 786.27(d) (corresponding Federal regulation 30 CFR 773.17(i)), general and right-of-entry conditions of permits;

ASCMRC 786.30 (a) and (c) (corresponding Federal regulation 30 CFR 773.20), general procedures for improvidently issued permits;

ASCMRC 786.31 (a), (b), and (c) (corresponding Federal regulation 30 CFR 773.21), rescission procedures for improvidently issued permits; and

ASCMRC 843.11(g) (corresponding Federal regulation 30 CFR 843.11(g)), cessation orders.

Because these proposed revisions to Arkansas' rules are substantively identical to the corresponding Federal regulations, the Director finds that Arkansas' proposed rules are no less effective than the corresponding Federal regulations. Therefore, the Director is approving the proposed rules.

2. ASCMRC 786.30(b), General Procedures for Improvidently Issued Permits

Arkansas proposes at ASCMRC 786.30(b) a rule that prescribes the violations review criteria to be used in determining when a permit has been improvidently issued. The proposed rule is substantively identical to the Federal regulation at 30 CFR 773.20(b). However, the proposed Arkansas rule, like the Federal regulation, contains only the general procedures the regulatory authority must employ to determine whether a surface coal mining and reclamation permit was improvidently issued. The preamble to the Federal regulation notes that the regulation is written in general terms, but that the regulatory authority (which in this situation is the State of Arkansas) must set out the violations, and the penalties and fees that apply. It further specifies the minimum types of unabated violations and delinquent penalties and fees *(i.e.,* the violations review criteria) that each regulatory program should cover (54 FR 18438, 18440, April 28, 1989).

By letter dated March 28, 1990, Arkansas submitted a policy memorandum, stating that it will apply the violation review criteria specified in the preamble to the Federal regulation. Because Arkansas proposed a rule at ASCMRC 786.30(b) that is substantively identical to the Federal regulation at 30 CFR 773.20(b) and Arkansas has committed through its policy memorandum to apply the violations review criteria set forth in the preamble to the Federal regulation, the Director finds that Arkansas' proposed rule at ASCMRC 786.30(b) is no less effective than the Federal regulation at 30 CFR 773.20(b). Therefore, the Director is approving both the proposed rule and the March 28, 1990, policy memorandum as part of the Arkansas permanent program.

3. 30 CFR 904.10(b) (19), (21)–(24), (26), (31), (32), (34), and (35), Arkansas Rules Affirmatively Disapproved in Accordance With Court Order

In the **Federal Register** notice announcing the Department's approval of Arkansas' original program, the Secretary at 30 CFR 904.10(b) affirmatively disapproved several provisions of Arkansas' program that incorporated suspended or remanded Federal regulations (45 FR 77015, Nov. 21, 1980). The affirmative disapprovals were based upon an order of the U.S. District Court for the District of Columbia that the Secretary "affirmatively disapproved * * * those segments of a State program that incorporate a suspended or remanded regulation" (*In re: Permanent Surface Mining Regulation Litigation,* Civil Action 79–1144, May 16, 1980, Mem. Op. at 49).

On August 15, 1980, however, the court partly stayed its May 16, 1980, order and allowed the Secretary to approve State program provisions similar to remanded or suspended Federal regulations when the State adopted such provisions in a rulemaking or legislative proceeding which occurred before the enactment of SMCRA or after the date of the District Court decision (May 16, 1980), since such State rules clearly were not based solely upon the suspended or remanded Federal regulations. In addition, the court stated that the Secretary need not affirmatively disapprove provisions based upon suspended or remanded Federal regulations if a responsible State official requested the Secretary to approve them.

As discussed below, the Director finds, consistent with the court decisions, that the affirmative disapprovals at 30 CFR 904.10(b) (19), (21), (22), (23), (24), (26), (31), (32), and (35) are no longer necessary. The Director is taking this opportunity to remove them.

By letter dated May 1, 1987 (administrative record No. AR–318), Arkansas submitted to OSM a proposed amendment revising its rules at ASCMRC 816.42(a)(7), effluent standards; 816.46, sediment ponds; 816.83(a), coal processing waste banks; 816.116(b), revegetation success standards; 816.133(b)(1), postmining land use; and 816.150 and 816.151, roads. The Director approved these proposed rules in the March 28, 1988, **Federal Register** (53 FR 9881) and codified his approval of these rules at 30 CFR 904.15(d). At that time, the Director inadvertently did not remove the associated affirmative disapprovals for these approved rules at 30 CFR 904.10(b) (19), (21), (22), (23), (24), (26), (31), (32), and (35).

The Director's decision to remove these affirmative disapprovals at this time is consistent with the court's August 15, 1980, ruling in that (1) Arkansas' approved rules at ASCMRC 816.42(a)(7); 816.46; 816.83(a); 816.116(b); 816.133(b)(1); and 816.150 and 816.151 are based on revised Federal regulations, not on the remanded 1979 language, and (2) in submitting the amendment, the head of the Arkansas regulatory authority specifically requested approval of the proposed rules.

IV. Summary and Disposition of Comments

Public Comments

The Director both solicited public comment and provided opportunity for a public hearing on the proposed amendment. No comments were received. Because no one requested an opportunity to testify at a public hearing, no hearing was held.

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), the Director also solicited comments from various State and Federal agencies with an actual or a potential interest in the Arkansas program. The Arkansas Department of Pollution Control and Ecology, U.S. Forest Service, Soil Conservation Service, National Park Service, and Army Corps of Engineers, responded but had no objections to or comments on the proposed amendment (administrative record Nos. AR–395–AR–399). No other responses were received.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment submitted to OSM by Arkansas on December 18, 1989, and revised on March 28, 1990. Arkansas must promulgate the rules the amendment addresses in a form identical to the form in which they were submitted and revised. However, the Director reserves the right to require further changes to these rules in the future as a result of Federal regulatory revisions, court decisions, and OSM's continuing oversight of the Arkansas program.

The Director is, as explained in finding Nos. 1 and 2, approving Arkansas' proposed rule revisions at ASCMRC 778.13 (a), (a)(5), (a)(6), (a)(7), (b), (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (c), (g) and (h), the identification of interests for surface mining permit applications; 778.14 (c) and (d), compliance information for surface mining permit applications; 786.5(c), the definition of "owned or controlled and owns and controls," as it relates to the review, public participation, and approval or disapproval of permit applications and permit terms and conditions; 786.17 (c) and (d), review of permit applications as it relates to the review, public participation, and approval or disapproval of permit applications and permit terms and conditions; 786.19(i), criteria of permit review or denial, as it relates to the review, public participation, and approval or disapproval of permit applications and permit terms and conditions; 786.27(d), general and right-of-entry conditions of permits; 786.30 (a), (b), and (c), general procedures for improvidently issued permits; 786.31 (a), (b), and (c), rescission procedures for improvidently issued permits; and 843.11(g), cessation orders.

The Director is, as explained in finding No. 3, removing the affirmative disapprovals at 30 CFR 904.10(b) (19), (21), (22), (23), (24), (26), (31), (32), and (35).

To implement this decision, the Director is amending the Federal regulations at 30 CFR part 904 which codify all decisions concerning the Arkansas program. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency between State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Accordingly, the action this notice describes is exempt both from regulatory review by OMB and from the requirement to prepare a regulatory impact analysis.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities, nor will it impose any new requirements; rather, the rule will ensure that existing requirements established by SMCRA and its implementing Federal regulations will be met by the State of Arkansas.

3. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 13, 1990.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, part 904 of the Code of Federal Regulations, is amended as set forth below:

PART 904—ARKANSAS

1. The authority citation for part 904 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 904.10 [Amended]

2. Section 904.10 is amended by removing and reserving paragraphs (b)(19), (21), (22), (23), (24), (26), (31), (32), and (35).

3. Section 904.15 is amended by adding a new paragraph (g) as follows:

§ 904.15 Approval of amendments to State regulatory program.

* * * * *

(g) The amendment to the following sections of the Arkansas Surface Mining and Reclamation Code, as submitted to OSM on December 18, 1989, and revised on March 28, 1990, is approved effective November 23, 1990: 778.13(a), (a)(5), (a)(6), (a)(7), (b), (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (c), (g) and (h); 778.14 (c) and (d); 786.5(c); 786.17 (c) and (d); 786.19(i); 786.27(d); 786.30 (a), (b), and (c); 786.31, (a), (b), and (c); and 843.11(g).

These sections pertain to the identification of interests and compliance information for surface mining permit applications; the definition of "owned or controlled and owns and controls," review of permit applications, and criteria of permit review or denial, all as they relate to the review, public participation, and approval or disapproval of permit application and permit terms and conditions; general and right-of-entry conditions of permits; general procedures and rescission procedures for improvidently issued permits; and cessation orders. In addition, the policy memorandum submitted by Arkansas on March 28, 1990, establishing violations review criteria, is approved as part of the Arkansas permanent program.

[FR Doc. 90–27500 Filed 11–21–90; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 931

New Mexico Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of proposed amendment.

SUMMARY: OSM is announcing its decision to approve a proposed amendment to the New Mexico permanent regulatory program (New Mexico program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to the definitions of "affected area" and "self-bond," fish and wildlife, performance bonds, and individual civil penalties. The amendment revises the

New Mexico program to be consistent with the corresponding Federal standards.

EFFECTIVE DATE: November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., suite 310, Albuquerque, New Mexico 87102, Telephone (505) 776-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.15 and 931.30.

II. Proposed Amendment

By letter dated May 25, 1989 (Administrative Record No. NM-499), New Mexico submitted a proposed amendment to its permanent regulatory program pursuant to SMCRA. New Mexico submitted the proposed amendment in response to a November 3, 1988, letter that OSM sent to New Mexico in accordance with 30 CFR 732.17(c) (Administrative Record No. NM-457).

The rules that New Mexico proposed to revise pertained to the definitions of "previously mined area" and "self-bond" at Coal Surface Mining Commission (CSMC) Rule 80-1-1-5; a policy statement for the definition of "affected area" at CSMC Rule 80-1-1-5; criteria for permit approval or denial at CSMC Rule 80-1-11-19(q); fish and wildlife at CSMC Rules 80-1-8-20(a) and (b), 80-1-9-16(a), and 80-1-20-97(b); a policy statement for the fish and wildlife rules at CSMC Rules 80-1-8-20 and 80-1-9-16; self-bonding at CSMC Rule 80-1-14-23(d)(2); performance bonds at CSMC Rule 80-1-14-40(a)(2); and individual civil penalties at CSMC Rules 80-1-31-21 through 80-1-31-24.

OSM published a notice in the June 16, 1989, **Federal Register** (54 FR 25592) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. NM-512). The public comment period closed July 17, 1989.

During its review of the amendment, OSM identified concerns relating to the policy statement for the definition of "affected area" at CSMC Rule 80-1-1-5, criteria for permit approval or denial at CSMC Rule 80-1-11-19(q), fish and wildlife at CSMC Rule 80-1-20-97(b), procedure for assessment of individual civil penalty at CSMC Rules 80-1-31-23, and payment of penalty at CSMC Rules 80-1-31-24. OSM notified New Mexico of the concerns by letter dated August 4, 1989 (Administrative Record No. NM-527). New Mexico responded on February 19, 1990, by submitting a revised amendment (Administrative Record No. NM-561). The rules that New Mexico proposed to revise pertained to the definitions of "previously mined area," and "self-bond" at CSMC Rule 80-1-1-5; a policy statement for the definition of "affected area" at CSMC Rule 80-1-1-5; criteria for permit approval or denial at CSMC Rule 80-1-11-19(q); fish and wildlife at CSMC Rules 80-1-8-20(a) and (b), 80-1-9-16(a), and 80-1-20-97(b) and (c); self-bonding at CSMC Rule 80-1-14-23(d)(2); performance bonds at CSMC Rule 80-1-14-40(a)(2); and individual civil penalties at CSMC Rules 80-1-31-21 through 80-1-31-24.

OSM published a notice in the **Federal Register** on March 6, 1990 (55 FR 7920, Administrative Record No. NM-565), reopening the comment period on the proposed amendment. OSM did so to provide the public the opportunity to reconsider the adequacy of the proposed amendment. The reopened comment period closed March 21, 1990.

By letter dated May 29, 1990 (Administrative Record No. MN-587), New Mexico withdrew from the revised amendment the proposed revisions to the definition of "previously mined area" at CSMC Rule 80-1-1-5, and the criteria for permit approval or denial at CSMC Rule 80-1-11-19(q). Also, by letter dated July 12, 1990 (Administrative Record No. NM-599), New Mexico proposed a further revision to the policy on the definition of "affected area" at CSMC Rule 80-1-1-5. OSM published a notice in the **Federal Register** on August 6, 1990 (55 FR 31844), reopening the comment period on the proposed amendment. OSM did so to provide the public the opportunity to reconsider the adequacy of the proposed amendment. The reopened comment period closed on August 21, 1990.

III. Director's Findings

After a thorough review, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds that the proposed amendment as submitted by New Mexico on May 25, 1989, and subsequently revised on February 19, May 29, and July 12, 1990, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations. However, the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and OSM's oversight of the New Mexico program.

1. Substantive Revisions to New Mexico's Rules That Are Substantially Similar to the Corresponding Federal Regulations

New Mexico proposed revisions to the following rules that are substantive in nature and contain language that is substantially similar to the corresponding Federal regulations (listed in parentheses): CSMC Rule 80-1-1-5 (30 CFR 800.5(c)), definition of "self-bond;" CSMC Rule 80-1-14-23(d)(2) (30 CFR 800.23(e)(2)), self-bonding; CSMC Rule 80-1-14-40(a)(2) (30 CFR 800.40(a)(2)), requirements to release performance bonds; CSMC Rule 80-1-31-21 (30 CFR 846.5 and 846.12), individual civil penalties; CSMC Rule 80-1-31-22 (30 CFR 846.14), amount of individual civil penalty; CSMC Rule 80-1-31-23 (30 CFR 846.17), procedure for assessment of individual civil penalty; and CSMC Rule 80-1-31-24 (30 CFR 846.18), payment of penalty.

Because the proposed revisions to these New Mexico rules are substantially identical to the corresponding Federal regulations, the Director finds that these New Mexico rules are no less effective than the corresponding Federal regulations. Therefore, the Director is approving these rules.

2. CSMC Rule 80-1-1-5, Definition of "affected area"

The U.S. District Court for the District of Columbia remanded the Federal definition of "affected area" (*In re: Permanent Surface Mining Regulation Litigation (II), Round III*, No. 79-1144 (D.D.C. Oct. 1, 1984), 21 Env't Rep. Cas. 1724 and 620 F. Supp. 1519 (D.D.C. 1985)) because the definition excluded all roads with more than incidental public use, an exclusion which the court found to be inconsistent with the definition of "surface coal mining operations" at section 701(28) of SMCRA. In compliance with the court's decision, OSM suspended the definition of "affected area" to the extent that it excluded public roads which are included in the statutory definition of "surface coal mining operations" (51 FR 41960 at 41953, November 20, 1986).

Unlike the Federal definition, New Mexico's existing definition of "affected area" at CSMC Rule 80-1-1-5 does not specifically address the relationship of roads to the "affected area." By a 30 CFR part 732 letter dated November 3, 1988, OSM advised New Mexico that, for its program to be consistent with the court's decision, the program must be revised to clarify that public roads are not necessarily excluded from the "affected area" (Administrative Record No. NM-457).

In response to this letter, New Mexico submitted a policy statement by letter dated May 25, 1990, addressing this issue (Administrative Record No. NM-499). This policy statement was revised on February 19, 1990 and July 12, 1990 (Administrative Record Nos. NM-561 and NM-599). The policy statement concerns the definitions of "affected area" and "surface coal mining and reclamation operations" as these definitions relate to roads. New Mexico's definition of "surface coal mining and reclamation operations" includes "surface coal mining operations." The policy statement indicates that the definitions of "affected area" and "surface coal mining and reclamation operations" shall include "all lands affected by the construction or use of new roads or the improvement or use of existing roads to gain access to the site of regulated activities or for haulage."

The policy statement further indicates that the Director of the New Mexico Mining and Minerals Division (MMD) will determine on a case-by-case basis, depending upon the degree of road use by the permittee, which roads must be included in the "affected area." The Director of MMD would exclude from the "affected area" those roads that are incidentally used by the permittee.

The Director finds that New Mexico's July 12, 1990, policy statement conforms to the court's decision in that it would require that all roads receiving more than incidental use by the permittee to be included in the "affected area" and to be regulated under the New Mexico program. Therefore, the Director finds that New Mexico's definition of "affected area," as augmented by the policy statement, is consistent with the definition of "surface coal mining operations" at section 701(28) of SMCRA, and the Director is approving it.

3. CSMC Rules 80-1-8-20 and 80-2-9-16, U.S. Fish and Wildlife Service (USFWS) Review of Permit Applications

The proposed New Mexico rules at CSMC Rules 80-1-8-20 and 80-1-9-16 are no less effective than the corresponding Federal regulations at 30 CFR 780.16 and 784.21, except that they do not require the regulatory authority to provide to the USFWS, upon request, the fish and wildlife resource information and the proposed wildlife protection and enhancement plan submitted by a permit applicant. However, New Mexico has submitted, for incorporation into its program, a policy statement dated December 22, 1988, indicating that it routinely provides to the USFWS and the State Department of Game and Fish, the required information and plans at the time the information and plans are received (Administrative Record No. NM-499).

Because it is New Mexico's policy to routinely provide this information to USFWS regardless of whether USFWS requests it or not, the Director finds that New Mexico's rules at CSMC Rules 80-1-8-20 and 80-1-9-16, as augmented by the December 22, 1988, policy statement, are no less effective than the corresponding Federal regulations at 30 CFR 780.16(c) and 784.21(c). Therefore, the Director is approving these rules.

4. CSMC Rules 80-1-20-97 (b) and (c), Protection of Fish, Wildlife and Related Environmental Values

New Mexico proposes rules at CSMC Rules 80-1-20-97 (b) and (c) to prohibit operators from conducting surface mining activities that are likely to jeopardize the continued existence of endangered or threatened species and their habitats, including bald and golden eagles, their nests, and eggs. New Mexico's proposed rules are substantively identical to the corresponding Federal regulations at 30 CFR 816.97 (b) and (c). However, New Mexico's program does not provide threatened or endangered species with similar protection from underground mining activities as required by the Federal regulations at 30 CFR 817.97 (b) and (c).

Because New Mexico's proposed rules are substantively identical to the Federal regulations, the Director finds that New Mexico's proposed CSMC Rules 80-1-20-97 (b) and (c) are no less effective than the Federal regulations at 30 CFR 816.97 (b) and (c) and the Director is approving them. However, because New Mexico's program does not protect threatened or endangered species from underground mining activities, the Director is requiring New Mexico to amend its program to be no less effective than the Federal regulations at 30 CFR 817.97 (b) and (c).

5. 30 CFR 931.12 (e) and (p), New Mexico Regulations Affirmatively Disapproved in Accordance With Court Order

In the **Federal Register** notice announcing the Department's approval of New Mexico's original program, the Secretary, at 30 CFR 931.12, affirmatively disapproved several provisions of New Mexico's program that incorporated suspended or remanded Federal regulations (45 FR 86459, 86461; December 31, 1980). The affirmative disapprovals were based upon an order of the U.S. District Court for the District of Columbia that the Secretary "affirmatively disapprove * * * those segments of a State program that incorporate a suspended or remanded regulation" (*In re: Permanent Surface Mining Regulation Litigation*, Civil Action 79-1144, May 16, 1980, Mem. Op. at 49).

On August 15, 1980, however, the court partly stayed its May 16, 1980, order and allowed the Secretary to approve State program provisions similar to remanded or suspended Federal regulations when the State adopted such provisions in a rulemaking or legislative proceeding which occurred before the enactment of SMCRA or after the date of the District Court decision (May 16, 1980), since such State rules clearly were not based solely upon the suspended or remanded Federal regulations. In addition, the court stated that the Secretary need not affirmatively disapprove provisions based upon suspended or remanded Federal regulations if a responsible State official requested the Secretary to approve them.

In this amendment, New Mexico proposes revisions to the rules at CSMC Rule 80-1-8-20, which addresses fish and wildlife resource information, CSMC Rule 80-1-9-16, which addresses the fish and wildlife plan, and CSMC Rule 80-1-14-23, which addresses self-bonding. As discussed in findings Nos. 1 and 3, the Director finds these proposed rules to be no less effective than the corresponding Federal regulations. The Director further finds, consistent with the court decisions, that the affirmative disapprovals at 30 CFR 931.12 (e) and (p), which apply to these rules, are no longer necessary because (1) New Mexico's proposed rules at CSMC Rules 80-1-8-20, 80-1-9-16, and 80-1-14-23 are based on the Federal rules as revised in response to the 1980 remands, not on the remanded 1979 language; (2) since the proposed regulations were drafted well after the 1980 Federal court decisions resulting in the affirmative

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disapprovals, New Mexico had adequate opportunity to revise its rules to reflect the judicial remands; and (3) in submitting this amendment, the head of the New Mexico regulatory authority specifically requested approval of the proposed rules. Because the affirmative disapprovals at 30 CFR 931.12 (e) and (p) are no longer necessary, the Director is removing them.

IV. Public and Agency Comments

Public Comments

The Director solicited public comments and provided opportunity for a public hearing on the proposed amendment. No comments were received. Because no one requested an opportunity to testify at a public hearing, no hearing was held.

Agency Comments

Pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(11)(i), the Director solicited comments from the Administrator of the Environmental Protection Agency (EPA), the Secretary of Agriculture, and various other Federal agencies with an actual or potential interest in the New Mexico program.

The Bureau of Land Management responded that it had no questions or recommended revisions (Administrative Record Nos. NM–514 and NM–567). EPA, Region 6, responded that it had no objections to the proposed amendment (Administrative Records Nos. NM–524 and NM–573). The Army Corps of Engineers, Forest Service, and Soil Conservation Service responded that they had no comments on the proposed amendment (Administrative Records Nos. NM–517; NM–508, NM–564; and NM–571 and NM–602). The National Park Service (NPS) responded that the proposed amendment adequately addresses NPS's concerns (Administrative Record Nos. NM–523 and NM–577). The Mine Safety and Health Administration (MSHA) responded that New Mexico's proposed rules are acceptable and do not appear to conflict with current MSHA regulations (Administrative Record Nos. NM–516 and NM–603).

EPA Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of EPA with the respect to provisions of the State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*) EPA gave its written concurrence on July 21, 1989, and June 22, and August 30, 1990 (Administrative Record Nos. NM–520, NM–595, and NM–611).

State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP) Comments

Pursuant to 30 CFR 732.17(h)(4), the Director is required to solicit comments from the SHPO and ACHP for all amendments that may have an effect on historic properties. The Director solicited comments from these offices. The SHPO responded to this request for comments, but ACHP did not.

On July 6, 1989, the SHPO responded that he had no comment on the originally proposed amendment (Administrative Record No. NM–519). On August 6, 1990, the SHPO did comment on New Mexico's revised amendment. He commented that New Mexico's revised policy on the definition of "affected area" was appropriate and would strengthen the protection of historic properties that may be affected by regulated activities (Administrative Record No. NM–604). However, he also raised a concern that road construction in conjunction with coal exploration of less than 250 tons may represent a potential impact to historic properties. He suggested that provisions should be made to evaluate the effects that new road construction, conducted in conjunction with this type of exploration, may have on historic properties.

The Director acknowledges SHPO's concern. However, the concern lies outside the scope of this rulemaking because the proposed amendment does not address New Mexico's coal exploration rules. In addition, the Federal regulations at 30 CFR 772.11 and at 30 CFR part 815 do not require a person conducting coal exploration operations outside a permit area during which 250 tons or less of coal will be removed to provide any information or description of cultural or historical or archeological resources that would be affected by such exploration activities. The Federal regulations also do not require the regulatory authority to find, prior to allowing such exploration, that the exploration activities will not adversely affect any cultural, historical or archeological resources. Therefore, the Director is not requiring New Mexico to include such provisions in its program.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment as submitted by New Mexcio on May 25, 1989, and as revised by it on February 19, May 29, and July 12, 1990. The Director's approval of the proposed amendment is contingent upon New Mexico's promulgation of the proposed revisions in the identical form as submitted for OSM's review.

To implement this decision, the Director is amending the Federal regulations at 30 CFR part 931 that codify all decisions concerning the New Mexico program. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Accordingly, for this action OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 13, 1990.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, part 931 of the Code of Federal Regulations is amended as set forth below:

PART 931—NEW MEXICO

1. The authority citation for part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 931.12 [Amended]

2. Section 931.12 is amended by removing and reserving paragraphs (e) and (p).

3. Section 931.15 is amended by adding a new paragraph (l) to read as follows:

§ 931.15 Approval of amendments to State regulatory program.

* * * * *

(l) The following amendment, as submitted on May 25, 1989 and as revised on February 19, May 29, and July 12, 1990, is approved effective November 23, 1990: Revisions to the New Mexico Coal Surface Mining Commission (CSMC) rules pertaining to the definition of "affected area" at CSMC Rule 80–1–1–5 as augmented by a July 12, 1990, policy statement; the definition of "self-bond" at CSMC Rule 80–1–1–5; fish and wildlife at CSMC Rules 80–1–8–20 and 80–1–9–16 as augmented by a December 22, 1988, policy statement; self-bonding at CSMC Rule 80–1–14–23(d)(2); release of performance bonds at CSMC Rule 80–1–14–40(a)(2); fish and wildlife at CSMC Rules 80–1–20–97 (b) and (c); and individual civil penalties at CSMC Rules 80–1–31–21 through 80–1–31–24.

4. Section 931.16 is added to read as follows:

§ 931.16 Required program amendments.

Pursuant to 30 CFR 732.17, New Mexico is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a) By December 24, 1990, in the **Federal Register**, New Mexico shall submit for OSM approval a program amendment to require protection of threatened or endangered species from underground mining activities.

(b) [Reserved]

FR Doc. 90–27501 Filed 11–21–90; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 2, 14

RIN 2900–AE75

Delegation to Settle and Pay Claims for Not More Than $40,000, Made by an Employee of the Department of Veterans Affairs for Damage or Loss of Personal Property Incident to Service

AGENCY: Department of Veterans Affairs.

ACTION: Final rules.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations to implement legislation which increased from $25,000 to $40,000 the maximum amount that the United States may pay to settle a claim against the Government made by a civilian officer or employee of the VA for damage to, or loss of, personal property incident to his or her service.

EFFECTIVE DATE: November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Audley Hendricks, Assistant General Counsel (023), Office of the General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3671.

SUPPLEMENTARY INFORMATION: VA for good cause finds that prior publication for public notice and comment in this case is unnecessary because this change in VA regulations simply incorporates a statutory provision contained in 31 U.S.C. 3721(b).

Since a notice of proposed rule making is unnecessary and will not be published, these amendments do not come within the term "rule" as defined in, and are not made subject to the requirements of the Regulatory Flexibility Act. 5 U.S.C. 601(2). Nevertheless, the Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. These regulations simply implement the statutory change in 31 U.S.C. 3721(b) which increased from $25,000 to $40,000 the maximum amount that the Government may pay in settlement of a claim against the Government made by an officer or employee of the Government. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analysis requirements of 603 and 604.

There is no Catalog of Federal Domestic Assistance Program number.

List of Subjects in 38 CFR Part 2

Authority delegations (Government agencies).

List of Subjects in 38 CFR Part 14

Claims, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and record keeping requirements, Surety bonds, Trusts and trustees, Veterans.

Approved: November 8, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 2, Delegations of Authority, and Part 14, Legal Services, General Counsel, are amended as follows:

PART 2—[AMENDED]

§ 2.6 [Amended]

1. The authority citation for § 2.6 continues to read as follows:

(Authority: 38 U.S.C. 210, 212)

2. In § 2.6 in paragraph (e)(5) remove the dollar amount $25,000 and add in its place the dollar amount $40,000.

§ 2.75 [Amended]

3. In the section heading of § 2.75 remove the dollar amount $15,000 and add in its place the dollar amount $40,000.

PART 14—[AMENDED]

4. The authority citation for § 14.664 continues to read as follows:

(Authority: 31 U.S.C. 3721(b))

§ 14.664 [Amended]

5. In § 14.664 remove the dollar amount $25,000 and add in its place the dollar amount $40,000.

[FR Doc. 90–27139 Filed 11–21–90; 8:45 am]

BILLING CODE 8320–01–M

38 CFR Part 21

RIN 2900–AE54

Permanent Program of Independent Living Services and Assistance

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Veterans' Benefits Amendments of 1989 eliminated the termination date of provisions under which VA furnished programs of independent living services and assistance to veterans for whom a program of vocational rehabilitation services is not currently reasonably

feasible. As a result, the program of independent living services and assistance is a permanent part of the vocational rehabilitation program. The regulatory amendment implements this legislative change.

DATES: This amendment is effective December 18, 1989, the date on which the law was enacted.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-6498.

SUPPLEMENTARY INFORMATION: The termination date for authorization of a program of independent living services has been deleted by a provision of Public Law 101-237, Veterans' Benefits Amendments of 1989. As a result, provision of programs of independent living services is a continuing part of the assistance which may be furnished to eligible service-disabled veterans under the vocational rehabilitation program. Interested persons were given 30 days in which to submit written comments, suggestions or objections to the proposed amendment. Since no comments, suggestions or objections were received, this amendment is adopted as a final rule.

VA has determined that this regulatory amendment is not a major rule as that term is defined in Executive Order 12291, Federal Regulations. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs of prices, and will not have any other significant adverse effects on the economy.

This regulatory amendment is retroactively effective to December 18, 1989, the date of enactment. This is an interpretive rule which implements a statutory provision. Moreover, VA finds that good cause exists for making this rule, like the section of the law which it implements, retroactively effective to the date of enactment. A delayed effective date would be contrary to statutory design; would complicate implementation of this provision of law; and might result in a denial of a benefit to a veteran who is entitled by law to that benefit.

The Secretary certifies that this amendment will not, if promulgated have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA) 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this rule is therefore exempt from the initial and final flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the amendment only affects the rights of individual beneficiaries. No new regulatory burdens are imposed on small entities by this amendment.

The Catalog of Federal Domestic Assistance Number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 18, 1990.

Dated: October 18, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 21, Vocational Rehabilitation and Education, is amended as follows:

PART 21—[AMENDED]

§ 21.162 [Amended]

In § 21.162, paragraph (c) and its authority citation are removed.

[FR Doc. 90-27136 11-21-90; 8:45 am]

BILLING CODE 8320-01-M

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38 CFR Part 21

RIN 2900-AE26

Mitigating Circumstances

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its rules to update and codify the conditions under which a finding that mitigating circumstances exist permits the payment of subsistence allowance to a veteran in the vocational rehabilitaton program. These amendments implement recent statutory changes and recommendations stemming from a study of VA education programs. Under these changes mitigating circumstances would be held to exist the first time a veteran withdraws from courses totaling not more than six semester hours or the equivalent or when the veteran has difficulties in obtaining child care arrangements. In addition, existing reasons for holding that mitigating circumstances exist are codified. The effect of these changes is to codify major representative reasons under which mitigating circumstances may exist.

EFFECTIVE DATES: The provision § 21.324(i)(2)(vii) under which the first six semester hours from which a veteran withdraws are subject to mitigating circumstances is effective retroactive to June 1, 1989. All other provisions, are effective December 24, 1990.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-6496.

SUPPLEMENTARY INFORMATION: On pages 18641 and 18642 of the **Federal Register** dated May 3, 1990, VA published proposed regulations which codify existing conditions under which mitigating circumstances may be found and proposed two new conditions under which a finding of mitigating circumstances could be made. (These proposed regulations were erroneously published under RIN 2900-AE46. The correct RIN is 2900-AE26.) Interested persons were given 30 days in which to submit their comments, suggestions or objections to the proposed regulatory amendments. Since no comments, suggestions or objections were received, these rules are adopted as final.

Public Law 100-689 provides that mitigating circumstances exist when an eligible veteran withdraws from courses totaling not more than six semester hours or the equivalent. This provision is retroactively effective to June 1, 1989. This is an interpretive rule which implements a statutory provision. Moreover, VA finds that good cause exists for making this rule, like the section of the law which it implements, retroactively effective. A delayed effective date would be contrary to statutory design; would complicate implementation of this provision of law; and might result in a denial of a benefit to a veteran who is entitled by law to that benefit. Other changes codifying major representative reasons for finding that mitigating circumstances exist are effective December 24, 1990.

VA has determined that these regulatory amendments do not contain a major rule as that term is defined in Executive Order 12291, Federal Regulations. These rules will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Secretary certifies that these amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA) 5 U.S.C. 601-612.

Pursuant to 5 U.S.C. 605(b), these rules are therefore exempt from the initial and final flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the amendments only affect the rights of individual beneficiaries. No new regulatory burdens are imposed on small entities by these amendments.

The Catalog of Federal Domestic Assistance number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 15, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 2—[AMENDED]

In § 21.324, paragraph (i)(1)(i) is amended to remove the words "or December 1, 1976, whichever is the later" and paragraph (i)(2) is revised to read as follows:

§ 21.324 Reduction or termination dates of subsistence allowance.

* * * * *

(i) * * *

(2) If it is determined there are no mitigating circumstances VA will reduce the veteran's subsistence allowance effective the first day of the term in which the veteran withdraws or which the veteran completes with nonpunitive grades. The term "mitigating circumstances" means circumstances beyond the veteran's or serviceperson's control which prevent him or her from continuously pursuing a rehabilitation program. The following circumstances are representative of those which are considered mitigating.

(i) An illness of the program participant;

(ii) An illness or death in the program participant's family;

(iii) An unavoidable change in the veteran's conditions of employment;

(iv) An unavoidable geographical transfer resulting from the veteran's employment;

(v) Immediate family or financial obligations beyond the control of the veteran which are found by VA to require the veteran to suspend pursuit of the rehabilitation program;

(vi) Discontinuance of the course by the educational institution;

(vii) In the first instance of withdrawal on or after June 1, 1989 by a program participant from a course or courses with respect to which such veteran has been paid subsistence allowance under the provisions of § 21.280(b), mitigating circumstances shall be considered to exist with respect to courses totaling not more than six semester hours or the equivalent thereof;

(viii) Difficulties in obtaining child care or changes in such arrangements which are beyond the control of the program participant and which require interruption of the rehabilitation program is order for the participant to provide or arrange for such care.

(Authority: 38 U.S.C. 1780(a), Pub. L. 100-689)

* * * * * *

[FR Doc. 90-27137 Filed 11-21-90; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AD61

Reservists Education; State Approving Agencies and the Montgomery GI Bill—Selected Reserve

AGENCY: Department of Veterans Affairs, Department of Defense and Department of Transportation.

ACTION: Proposed final regulations.

SUMMARY: The Veterans' Employment, Training and Counseling Amendments of 1988 contain several provisions which affect VA's (Department of Veterans Affairs') relationships with the SAA's (State approving agencies). In order to implement the new provisions of law VA amends § 21.7700 in 38 CFR part 21, subpart D. In administering chapter 106, title 10, U.S. Code, VA will apply the provisions of the amendment in the same manner that they are applied in the administration of chapters 34 and 36, title 38, U.S. Code.

EFFECTIVE DATE: VA, the Department of Defense and the Department of Transportation are making the amendment to § 21.7700, like the provision of law it implements, retroactively effective on May 20, 1988.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 39207 and 39208 of the **Federal Register** of September 25, 1989, VA, the Department of Defense and the Department of Transportation proposed a revision to part 21, 38 CFR in order to implement provisions of the Veterans' Employment, Training and Counseling Amendments of 1988 (Pub. L. 100-323). Interested people were given 30 days to submit comments, objections or suggestions. VA, the Department of Defense and the Department of Transportation received no comments, objections or suggestions. Accordingly, the Departments are making the regulation final.

VA, the Department of Defense and the Department of Transportation find that good cause exists for making the amendment to § 21.7700, like the provision of law it implements, retroactively effective on May 20, 1988. To achieve the maximum benefit of this legislation for the State approving agencies it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; and would complicate administration of these provisions of law.

The Department of Veterans Affairs, the Department of Defense and the Department of Transportation have determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs, the Secretary of Defense and the Secretary of Transportation have certified that this amended regulation will not have a significant economic impact on a substantial number of small entites as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only State approving agencies. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 12.609.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 26, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: May 9, 1990.

Albert V. Conte,

Deputy Assistant Secretary of Reserve Affairs (Manpower and Personnel).

Approved: October 3, 1990.

John N. Faigle,

RADM, U.S. Coast Guard, Chief, Office of Readiness and Reserve.

PART 21—[AMENDED]

In 38 CFR part 21 Vocational Rehabilitation and Education, § 21.7700 is amended by revising paragraphs (e) and (f) and the authority citation at the end of the section, and by adding paragraph (g), so the revised and added text read as follows:

§ 21.7700 State approving agencies.

* * * * *

(e) Section 21.4154—Report of activities,

(f) Section 21.4155—Evaluations of State approving agency performance, and

(g) Section 21.4280(h) (except in those instances described in § 21.7720).

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1770, 1771, 1772, 1774, 1774A; Pub. L. 96-525, Pub. L. 100-323)

[FR Doc. 90-27138 Filed 11-21-90; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6815

[CA-940-4214-10; CARI 3493]

Withdrawal of National Forest System Land for Protection of the Bodfish Piute Cypress Botanical Area; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 560.95 acres of National Forest System land from location and entry under the United States mining laws for a period of 20 years for the Forest Service to protect the Bodfish Piute Cypress Botanical Area. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, 916-978-4820.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land, located in the Sequoia National Forest, is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2), but not from leasing under the mineral leasing laws, to protect the Bodfish Piute Cypress Botanical Area:

Mount Diablo Meridian

T. 27 S., R. 33 E.,
Sec. 30, lots 1 to 16, inclusive.

The area described contains 560.95 acres in Kern County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: November 14, 1990.

Dave O'Neal,

Assistance Secretary of the Interior.

[FR Doc. 90-27532 Filed 11-21-90; 8:45 am]

BILLING CODE 4310-40-M

43 CFR Public Land Order 6816

[WY-930-4214-10; WYW 83356-01]

Partial Revocation of Secretarial Order Dated January 31, 1920, Stock Drive Withdrawal No. 44; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 160 acres of public land withdrawn for use as a stock driveway. The land is no longer needed for this purpose, and the revocation is needed to permit disposal of the land through land exchange under section 206 of the Federal Land Policy and Management Act of 1976. This action will open the land to surface entry unless closed by overlapping withdrawals or temporary segregations of record. The land has been and will remain open to location under the mining laws and to mineral leasing unless closed by temporary segregations of record.

EFFECTIVE DATE: December 24, 1990.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307-775-6115.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order of January 31, 1920, which withdrew public land for use as a stock driveway is hereby revoked insofar as it affects the following described land:

Sixth Principal Meridian

T. 50 N., R. 101 W.,
Sec. 29, Tracts 38-A, 38-B, 38-G, and 38-H.

The area described contains 160 acres in Park County.

2. At 9:30 a.m. on December 24, 1990, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9:30 a.m. shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: November 14, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-27531 Filed 11-21-90; 8:45 am]

BILLING CODE 4310-22-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-335; RM-7056]

Radio Broadcasting Services; De Witt and England, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a joint petition for rule making filed on behalf of Diamond State Broadcasting, Inc., licensee of Station KLRA-FM, Channel 243A, England, Arkansas, and Quadras, Inc., licensee of Station KDEW-FM, Channel 244A, De Witt, Arkansas, this document substitutes FM Channel 243C3 for Channel 243A at England and FM Channel 247C2 for Channel 244A at De Witt, and modifies the licenses for Stations KLRA-FM and KDEW-FM accordingly. See 55 FR 29862, July 23, 1990. Coordinates for Channel 243C3 at England are 34-30-58 and 92-07-45. Coordinates for Channel 247C2 at De Witt are 34-12-20 and 91-25-18. With this action, the proceeding is terminated.

EFFECTIVE DATE: December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-335, adopted October 30, 1990, and released November 16, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Arkansas, is amended by removing Channel 244A and adding Channel 247C2 at De Witt, and by removing Channel 243A and adding Channel 243C3 at England.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27449 Filed 11-21-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-581; RM-7067]

Radio Broadcasting Services; Zanesville and South Zanesville, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Christian Voice of Central Ohio, substitutes Channel 224B1 for Channel 224A, reallots Channel 224B1 from Zanesville to South Zanesville, Ohio, and modifies petitioner's license for Station WCVZ(FM) accordingly. See 54 FR 53657, December 12, 1989. The allotment of Channel 224B1 at South Zanesville would provide the community with its first local FM service and enable Station WCVZ(FM) to expand its coverage area, without depriving Zanesville of its only local aural service. Channel 224B1 can be allotted to South Zanesville in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.1 kilometers (13.1 miles) south of the community to avoid a short-spacing to Stations WDJQ, Channel 223B, Alliance, Ohio, and WQEL, Channel 224A, Bucyrus, Ohio. The coordinates for Channel 224B1 at South Zanesville are North Latitude 39-42-53 and West Longitude 82-04-02. Canadian concurrence has been received since South Zanesville is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-581, adopted October 31, 1990, and released November 16, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by removing Channel 224A at Zanesville and adding Channel 224B1 at South Zanesville.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27450 Filed 11-21-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-345; RM-6849]

Radio Broadcasting Services; Barstow, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 240B1 for Channel 240A at Barstow, California, and modifies the construction permit of Hub Broadcasting, Inc. for Station KXXZ(FM), as requested, to specify operation on the higher powered channel, thereby providing that community with an expanded coverage area FM service. See 54 FR 33719, August 16, 1989. Coordinates used for Channel 240B1 at Barstow are 34-58-15 and 117-02-21. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 3, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-345, adopted October 31, 1990, and released November 19, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 240A and adding Channel 240B1 at Barstow.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27575 Filed 11-21-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-467; RM-7029]

Radio Broadcasting Services; Fairfield, ME

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 228C3 for Channel 227A at Fairfield, Maine, in response to a petition filed by Fairfield Broadcast Partners. See 54 FR 46634, November 6, 1989. We shall also modify petitioner's construction permit for Channel 227A to specify operation on Channel 228C3. Canadian concurrence has been obtained for the Fairfield allotment. The coordinates for Channel 228C3 are 44-45-00 and 69-41-15.

EFFECTIVE DATE: January 3, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-467, adopted October 29, 1990, and released November 19, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Maine, is amended by removing Channel 227A and adding Channel 228C3 at Fairfield.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27576 Filed 11-21-90; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 502, 506, 513 and 515

[APD 2800.12A, CHGE 15]

General Services Administration Acquisition Regulation; Miscellaneous Amendments

AGENCY: Office of GSA Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: General Services Administration Acquisition Regulation (GSAR) (APD 2800.12A), Chapter 5, is amended to revise section 501.105 to delete references to 515.406-2, 528.202-71(a) and 552.215-75 and corresponding OMB control numbers and to correct the references to 552.210-74 and 552.246-72; to amend section 502.101 to update the title of the "Agency competition advocate" and to add a definition of "Chief of the contracting office;" to amend section 506.304 by deleting paragraph (a) and redesignating subsequent paragraphs accordingly; to amend section 513.106 by revising paragraph (a) to reflect the change in the FAR competition threshold; to remove section 513.107 because the Federal Supply Service has abolished GSA Form 3188, Request for Quotation; to amend section 513.505-70 by revising paragraph (b) to add a reference to the SF-1447, and to add paragraph (c) to authorize the use of GSA Form 3504 on an optional basis when a two-party contract form is used to make a small purchase; to amend section 513.7001 by revising paragraph (g) to delete the reference to "5 workdays" in the third sentence and substitute "7 calendar days" in order to conform to FAR 32.905(a)(1)(ii); to amend section 515.414 by deleting material that is repetitive of FAR 13.1002; to amend section 515.414-70 by revising paragraph (d) to authorize the use of GSA Form 3504 on an optional basis for small purchases; to revise section 515.501 by updating the title of the Office of GSA Acquisition Policy; to amend section 515.803 by designating the existing text as paragraph (a) and adding paragraph (b) to provide a definition of "higher authority" as used in FAR 15.803(d); to amend section 515.905 by adding paragraph (c) and amend Section 515.901-5 by revising paragraph (a) to clarify the procedure for treatment of facilities capital cost of money in establishing profit objectives; to delete section 553.370-3188; and to revise section 553.370-3519 to illustrate the latest edition of GSA Form 3519, Representations and Certifications (Small Purchase). GSA Forms are not published in this document and do not appear in the Code of Federal Regulations. Copies may be obtained from the Director of the Office of GSA Acquisition Policy (VP), 18th and F Streets NW., Washington, DC 20405. This action implements Federal Acquisition Circulars 84-56 and 84-58 as well as making other miscellaneous changes. The intended effect is to improve the regulatory coverage and provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: November 19, 1990.

FOR FURTHER INFORMATION CONTACT: Betty Moran, Office of GSA Acquisition Policy, (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

This rule was not published in the **Federal Register** for public comment prior to issuance because it merely revises the GSAR to make miscellaneous revisions and to conform with the Federal Acquisition Regulation as amended by FACs 84-56 and 84-58 which had already undergone the public comment process.

B. Background

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The rule amends the GSAR as necessary to conform with FAR FACs (84-56 and 84-58) by providing internal operating procedures to GSA contracting activities. The rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Parts 501, 506, 513 and 515

Government procurement.

1. The authority citation for 48 CFR parts 501, 506, 513 and 515 continues to reads as follows:

Authority: 40 U.S.C. 486(c).

PART 501—[AMENDED]

2. Section 501.105 is amended by removing the entries as indicated below; by revising the entry for 552.210-74; and by adding an entry for 552.246-72 to read as follows:

501.105 OMB Approval under the Paperwork Reduction Act.

The following OMB Control Numbers apply:

GSAR reference	OMB Control No.
• • • • •	
515.406-2 [Removed]	3090-0199
• • • • •	
528.202-71 [Removed]	3090-0189
• • • • •	
552.210-74	3090-0203
• • • • •	
552.215-75 [Removed]	3090-0199
• • • • •	
552.246-72	3090-0027
• • • • •	

PART 502—[AMENDED]

3. Section 502.101 is amended by revising the definition of "Agency competition advocate" and adding a definition for "Chief of the contracting office" to read as follows:

502.101 Definitions.

Agency competition advocate means the Director of Contract Review.

Chief of the contracting office means branch chiefs of Central Office or regional office branches within divisions that are responsible for performing contracting and/or contract administration functions except for FSS. In FSS Commodity Centers, "chief of contracting office" means division directors within the Commodity Centers. In Federal Supply Service Bureaus, "Chief of Contracting Office" means branch chiefs or supervisory equivalents. In PBS, the Director of a Facility Support Center is considered to be the chief of the contracting office."

* * * * *

PART 506—[AMENDED]

4. Section 506.302-1 is revised to read as follows:

506.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

A class justification has been established for the acquisition of utility services (except electric utility services) that are available from only one source. A copy of the class justification may be obtained from the Office of GSA Acquisition Policy (VP). The contract file for each action taken under the justification must contain a signed statement by the contracting officer that the action taken is within the scope of the class justification and approval.

5. Section 506.304 is amended by removing paragraph (a) and redesignating paragraphs (b), (c), and (d) as (a), (b), and (c) to read as follows:

506.304 Approval of the justification.

The justification (except for contracts awarded under FAR 6.302-7) must be concurred in by assigned legal counsel and approved by:

(a) The contracting activity competition advocate for contracts exceeding $100,000 but equal to or less than $1,000,000. The contracting director must concur in all justifications for contracts expected to exceed $100,000.

(b) The HCA for contracts exceeding $1,000,000 but equal to or less than $10,000,000. The contracting activity competition advocate must concur in all justifications for contracts expected to exceed $1,000,000.

(c) The senior procurement executive for contracts exceeding $10,000,000. The HCA and agency competition advocate must concur in all justifications before submitting them to the senior procurement executive for approval.

PART 513—[AMENDED]

6. Section 513.106 is amended by revising paragraph (a) to read as follows:

513.106 Competition and price reasonableness.

(a) *Purchase over 10% of the small purchase threshold.* Solicitation of at least three sources in accordance with FAR 13.106(b)(5) may be considered to promote maximum competition if there is a reasonable expectation of obtaining two or more quotations that will be competitive in terms of market price. If there is no expectation of obtaining two or more competitive quotations, more than three sources should be solicited. If only one response is received, the purchase may be made if the price is reasonable and the contractor is responsible.

* * * * *

513.107 [Removed]

7. Section 513.107 is removed.

8. Section 513.505-70 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

513.505-70 Two-party contract forms.

* * * * *

(b) The GSA Form 3519, Representations and Certifications, may also be used with other two-party contract forms (e.g., SF-33, SF-1442 or SF-1447) when a determination is made that is in the Government's interest to use a two-party contract form.

(c) The GSA Form 3504, Service Contract Clauses, may be used on an optional basis when a two-party contract form is used to make a small purchase.

9. Section 513.7001 is amended by revising the third sentence in paragraph (g) to read as follows:

513.7001 Certified invoice procedure for procurements not requiring a written purchase order.

* * * * *

(g) * * * Supplies and/or services should be inspected and accepted or rejected within 7 calendar days of delivery/completion. * * *

* * * * *

PART 515—[AMENDED]

10. Section 515.414 is revised to read as follows:

515.414 Forms.

If partial award is made to an offeror and additional items are being withheld for possible subsequent award to the same offeror, any subsequent award must be made using SF-30, Amendment of Solicitation/Modification of Contract (except see FAR 15.1002 regarding notification to the successful offeror and GSAR 519.502-3(b) regarding partial set-asides). The authority cited in paragraph 13D of SF-30 for subsequent awards will be GSAR 515.414.

11. Section 515.414-70 is amended by revising paragraph (d) to read as follows:

515.414-70 GSA Forms.

* * * * *

(d) The GSA Form 3504, Service Contract Clauses, the GSA Form 3506, Construction Contract Clauses, or the GSA Form 3507, Supply Contract Clauses, may be used in solicitations and contracts that exceed the small purchase threshold. The GSA Form 3504 may also be used for small purchases when a two-party contract form is used to make a small purchase.

12. Section 515.501 is revised to read as follows:

515.501 Definitions.

Coordinating office, as used in this subpart, means the:

(1) Director of the Office of GSA Acquisition Policy,

(2) Assistant Commissioner, Office of Commodity Management, FSS,

(3) Assistant Commissioner, Office of Information Resources Procurement, IRMS,

(4) Assistant Commissioner, Office of Procurement, PBS, or

(5) Director, Regional Acquisition Management Staff.

The Director of the Office of GSA Acquisition Policy serves as the coordinating office for Central Office activities outside of FSS, IRMS, and PBS.

13. Section 515.803 is revised to read as follows:

515.803 General.

(a) Access to Government cost estimates is limited to Government personnel whose official duties require knowledge of the estimate. An exception to this rule may be made during contract negotiations to allow the contracting officer to identify a specialized task and disclose the associated cost breakdown figures in the Government estimate, but only to the extent necessary to arrive at a fair and reasonable price. After award, the total amount of the independent Government estimate may be revealed, upon written request, to those firms or individuals who submitted proposals.

(b) Whenever a contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable as outlined in FAR 15.803(d) the contracting officer shall refer the matter to the contracting director for resolution.

14. Section 515.905 is amended by adding paragraph (c) to read as follows:

515.905 Profit-analysis factors.

* * * * *

(c) If the facilities capital cost of money is allowed as an item of cost, either as a part of the contracting officer's price/cost objective in a firm fixed price type contract or as an allowable cost in a flexibly priced type contract, e.g., cost reimbursement or fixed price incentive type contract, the contracting officer shall reduce the profit/fee objective as follows. After the contracting officer has developed a dollar profit/fee amount for the requirement (e.g., the sum of the "contract effort" and "other factors" dollar profit/fee amounts on the GSA Form 1766, Structured Approach Profit/Fee Objective), the contracting officer shall subtract from that aggregate dollar profit/fee amount any dollar amount allowed for facilities capital cost of money. The remainder, after subtraction of the facilities capital cost of money amount, is the profit/fee objective.

15. Section 515.905-1 is amended by revising paragraph (a) to read as follows:

515.905-1 Common factors.

(a) *Contractor Effort* encompasses broad and basic categories but shall not include facilities capital cost of money. Individual proposals may be in a different format.

* * * * *

Dated: November 7, 1990.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 90-27513 Filed 11-21-90; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89-23, No. 2]

RIN 2127-AC-81

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: Federal Motor Vehicle Safety Standard No. 121, Air Brake Systems, specifies braking requirements for trucks, buses and trailers equipped with air brake systems. Some trucks and trailers are excluded from all or portions of the standard because their attributes, typically those relating to configuration, speed or weight, result in restricted highway operation, or sharply increased compliance costs. Among the partially excluded trailers are extendable and drop frame container chassis trailers.

In response to a petition from the Truck Trailer Manufacturers Association (TTMA), and following the issuance of a notice of proposed rulemaking on December 1, 1989 (54 FR 49781), NHTSA is today issuing a final rule to amend Standard 121 to require extendable and drop frame container chassis trailers to comply with all requirements of Standard 121. Until now, the Standard has excluded extendable and drop frame container chassis trailers from certain actuation timing, emergency and parking brake requirements otherwise applicable to trailers. Under this rule, extendable and drop frame container chassis trailers will no longer be excluded from the requirements in S5.3, S5.6, and S5.8 of FMVSS No. 121.

DATES: This amendment is effective May 23, 1991.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590 (202) 366-5274.

SUPPLEMENTARY INFORMATION: Standard No. 121, Air Brake Systems, specifies requirements and test procedures for trucks, buses and trailers equipped with air brakes. The requirements for trailers include provisions governing service brake reservoirs (S5.2.1.2), brake actuation time (S5.3.3), brake release time (S5.3.4), parking brake performance (S5.6) and emergency brake performance (S5.8).

Since 1974, an exclusion has been provided from these requirements for a category of trailers known as "heavy hauler trailers." These trailers are defined in S4 as trailers with one or more of the following characteristics: Brake lines designed to adapt to separation or extension of the frame, or a body consisting only of a platform whose primary cargo-carrying surface is not more than 40 inches above the ground (unloaded), except that it may include sides designed to be easily removable and a permanent front end structure. The intent of this exclusion is to accommodate the specialized use of trailers designed to haul very heavy loads such as heavy industrial equipment, construction equipment, and other items that often require the vehicles to be used off-road at construction sites. This off-road use was a principal reason why the added braking requirements were viewed as impractical for heavy hauler trailers at the time Standard 121 was promulgated. Because of their heavy loads, these types of trailers usually have beds as low to the ground as possible in order to facilitate loading and unloading, as well as to increase stability. They use special axles and suspensions with smaller diameter wheels and tires in order to achieve as low a cargo deck height as possible. These factors restrict the space available on the trailer chassis for installation of brake components. Additionally, heavy hauler trailers are not often driven at high speeds for long periods of time.

The lack of space for larger dual chamber spring brakes used for parking brakes on other types of trailers, along with the need for quick release valves in remote locations to meet actuation timing requirements, and the complex routine of air lines would have made compliance with Standard 121 extremely difficult for manufacturers of true heavy hauler trailers. It is for these reasons that heavy haulers have been excluded from certain requirements of Standard 121 since 1974. See 39 FR 28161 (August 5, 1974).

When the exclusion for heavy trailers was promulgated, there were few trailers with any of the features listed in the definition of heavy hauler trailer which were not, in fact, designed to carry very heavy loads. However, in recent years, increasing numbers of container chassis trailers have been built with extendable or separable features, or with drop frame construction, but which share very little in the limiting features of heavy hauler trailers; i.e., severely restricted space around the axles. Further, these trailers are intended to carry lighter loads and to operate in more conventional commercial service at highway speeds. The sales and use of these trailers are increasing dramatically. Since these trailers technically fall under the existing definition of heavy hauler trailer, the current language of the Standard can be used to claim an exclusion of these new types of trailers from the requirements of S5.3, S5.6 and S5.8, even though there is no legitimate need to do so.

In response to a petition from TTMA, NHTSA published a notice of proposed rulemaking (NPRM) on December 1, 1989 (54 FR 49781) to adopt some corrective amendments. That notice proposed to revise Standard No. 121 by adding definitions of "container chassis trailer" and "intermodal shipping container," and revising the definition of "heavy hauler trailer" to exclude container chassis trailers. This would effectively require extendable and drop frame container chassis trailers to comply with those requirements of the Standard from which true heavy hauler trailers are exempt, in addition to the requirements already imposed upon all trailers by Standard 121. The NPRM also proposed to delete the exclusion from dynamometer testing for heavy haulers manufactured prior to July 1, 1979 contained in S5.4 of the Standard.

NHTSA received five comments on the NPRM. The commenters were the Steamship Operators Intermodal Committee (SOIC), TTMA, International Transquip Industries (ITI), the Washington State Patrol (WSP) and the Federal Highway Administration (FHWA). None of the commenters were opposed to the proposed decision to require drop frame and container chassis trailers to comply with the requirements of Standard No. 121. SOIC and TTMA supported the proposed rules, although TTMA believed that the proposed leadtime of one year following publication of the final rule was too long, and that three months would be adequate. Two commenters, ITI and WSP, believed that the proposal did not go far enough. They recommended that Standard No. 121 be revised to also eliminate the exclusion for true heavy hauler trailers.

ITI and WSP based their position on the claimed availability of technology that would enable even heavy hauler trailers to comply with the requirements of Standard No. 121. However, a decision by NHTSA to extend Standard No. 121 to encompass heavy hauler would be beyond the scope of this rulemaking. In addition, the agency has not evaluated whether the technology discussed by these commenters would, in fact, comply with the requirements of Standard No. 121. NHTSA concludes that it would be inappropriate at this time to require that true heavy haulers comply with the Standard.

FHWA supported the proposed rulemaking, but commented that the proposed definition of "container chassis trailer" was not in agreement with the definition of that term contained in the Federal Motor Carrier Safety Regulations (FMCSRs) at 49 CFR 393.5. That agency also noted that NHTSA's proposed definition of "intermodal shipping container" did not include integral securement devices as part of the definition. NHTSA agrees that the proposed definitions should be revised to conform with the FHWA's, rather than proliferate similar, but not identical definitions. The final rule has been revised accordingly.

NHTSA disagrees with TTMA's comment that three months is a sufficient leadtime for this rule. The agency believes that such a deadline is unreasonable because it is unlikely that all manufacturers could make the necessary changes, such as revised purchase agreements and specifications, fast enough to meet a three month deadline. On the other hand, since the vast majority of container chassis trailers already meet all the requirements of Standard No. 121, the proposed one year leadtime is most likely not necessary. NHTSA has concluded that an effective date of six months following publication of this rule is an adequate leadtime which will not delay implementation of the rule.

With the exception of these changes made in response to comments, this final rule is promulgated as proposed. No comments were received on the proposal discussed above to delete the exclusion from dynamometer testing for heavy haulers manufactured prior to July 1, 1979. The exclusion has been deleted in the final rule because it is now superfluous, rather than for the reasons stated in the NPRM.

As discussed in the NPRM, manufacturers of trailers which do not comply with the requirements of Standard No. 121 will need to add additional spring brake chambers or other mechanical parking brake devices to meet the Standard's parking brake requirements. In some cases, manufacturers will need to make changes to meet brake reservoir requirements. Additionally, some changes to brake plumbing may be needed to meet the new requirements.

The NPRM discussed the agency's assessment of the costs to manufacturers of complying with these changes. According to a survey conducted by TTMA, only about 10 percent of container chassis trailers currently being manufactured do not comply with Standard No. 121. The agency has concluded that spring brakes could be expected to cost $50 additional per axle, although some two axle trailers could meet the parking brake requirements with spring brakes on only one axle.

Larger air reservoirs are estimated to cost approximately $25 additional per vehicle. With an additional $50 to cover items such as anti-compounding valves and miscellaneous air hose and plumbing fittings, NHTSA concludes that the average cost to a manufacturer who needed to add the maximum amount of equipment to bring a noncomplying trailer into compliance would be about $125. These increased costs are not significant, as they represent less than two percent of the cost of a typical trailer of this type (approximately $7,000). NHTSA also does not believe the additional weight resulting from compliance with these requirements (approximately 25 pounds) is significant, as it amounts to less than a 0.5 percent increase on a typical heavy hauler trailer weighing 7,000 pounds.

The agency believes that it is important to extend the remaining requirements of Standard 121 to container chassis trailers because of the increasing numbers of these vehicles on public roads, and the differences in construction and use that separate them from the traditional heavy hauler trailer. The container chassis trailer is likley to become increasingly common in the future as containerized transport becomes more prevalent in the U.S. and throughout the world. Therefore, it should be subject to the braking requirements applicable to other over-the-road trailers.

The agency has considered the costs and other impacts of this rule and determined that the rule is neither major within the meaning of Executive Order 12291 nor signficiant within the meaning of the Department of Transportation's regulatory procedures. As discussed above, this final rule will have little effect on the cost or design of the vehicles to which it is applicable. Since the effects of this final rule are minimal, a full regulatory evaluation has not been prepared.

NHTSA has analyzed the effects of this final rule on small entities in accordance with the Regulatory Flexibility Act. Based on that analysis, I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Most extendable and drop frame container chassis trailers (reportedly about 90 percent) are already being ordered and built without the use of any exemption from the Standard. As mentioned above, the estimated cost of any additional equipment to those now using the exemption would be about $125, which is insignificant when compared to the cost of a complete trailer. Because space for that equipment is already available, installation would not require additional significant engineering and design changes nor expensive modifications of the trailer chassis. Therefore, removing the exemption should not be burdensome on any manufacturer, large or small. Since the effects of this rule are not complex and would be minimal on small entities, a full regulatory flexibility analysis has not been prepared.

This rule has been analyzed in accordance with the principles and requirements contained in Executive Order 12612, and the agency has determined that it does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Finally, the agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that it will not significantly affect the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR 571.121 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.121 Standard No. 121; Air brake systems.

2. S4 of Standard No. 121 is amended by adding the definitions "Container chassis trailer" and "Intermodal shipping container" and revising the definition "Heavy hauler trailer" to read as follows:

S4 Definitions

* * * * *

Container chassis trailer means a semitrailer of skeleton construction limited to a bottom frame, one or more axles, specially built and fitted with locking devices for the transport of intermodal shipping containers, so that when the chassis and container are assembled, the units serve the same function as an over the road trailer.

Heavy hauler trailer means a trailer which has one or more of the following characteristics, but which is not a container chassis trailer:

(1) Its brake lines are designed to adapt to separation or extension of the vehicle frame; or

(2) Its body consists only of a platform whose primary cargo-carrying surface is not more than 40 inches above the ground in an unloaded condition, except that it may include sides that are designed to be easily removable and a permanent "front end structure" as that term is used in § 393.106 of this title.

* * * * *

Intermodal shipping container means a reusable, transportable enclosure that is especially designed with integral locking devices for securing the container to the trailer to facilitate the efficient and bulk shipping and transfer of goods by, or between various modes of transport, such as highway, rail, sea and air.

3. S5.4 of Standard 121 is revised to read as follows:

S5.4 *Service brake system-dynamometer tests.* When tested without prior road testing, under the conditions of S6.2, each brake assembly shall meet the requirements of S5.4.1, S5.4.2, and S5.4.3 when tested in sequence and without adjustments other than those specified in the standard. For purposes of the requirements of S5.4.2 and S5.4.3, an average deceleration rate is the change in velocity divided by the deceleration time measured from the onset of deceleration.

S5.4.1 * * *

Issued on November 16, 1990.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 90-27479 Filed 11-21-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 10

RIN 1018-AB53

Law Enforcement; Addresses of District Offices

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

The Service amends 50 CFR Part 10 to update the list of addresses of its law enforcement offices. The Washington, DC, office has a new mailing address and telephone number. The Portland, OR, office has a new address. The Twin Cities, MN, office has a new address. Also, the Wildlife Permit Office has been renamed the Office of Management Authority and has a new mailing address and telephone number. This rule updates 50 CFR part 10, subpart C, to reflect these changes.

EFFECTIVE DATE: This rule is effective on November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas L. Striegler, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, P.O. Box 3247, Arlington, VA 22203-3247, (703) 358-1949.

SUPPLEMENTARY INFORMATION: This amendment's effect is purely an administrative management practice, by nature, and does not change agency procedure; therefore, the "notice" requirements of 5 U.S.C. 553(b) are not applicable. This document merely changes addresses of agency offices. A comment period could not lead to a change and delay may mislead the public. For this reason there is good cause under 5 U.S.C. 553(d) to give this rule immediate effect. For the same reasons Executive Order 12291 (section 1(a)(3)) and the Regulatory Flexibility Act (5 U.S.C. 601(2)) do not apply to this action. This document contains no information collection requiring Office of Management and Budget approval under 44 U.S.C. 3501, nor are there any impacts subject to Executive Order 12630.

This amendment was prepared by G. Adams O'Hara, Senior Special Agent, Division of Law Enforcement.

List of Subjects in 50 CFR Part 10

Exports, Fish, Imports, Law enforcement, Plants, Transportation, Wildlife.

Accordingly, part 10 of subchapter B, chapter I of title 50, Code of Federal Regulations, is amended as follows:

PART 10—[AMENDED]

1. The authority citation for part 10 continues to read as follows:

Authority: 16 U.S.C. 42; 16 U.S.C. 703-712; 16 U.S.C. 668a-d; 19 U.S.C. 1201, 16 U.S.C. 1531-1543; 16 U.S.C. 1361-1384, 1401-1407; 16 U.S.C. 742a-742j-1; 16 U.S.C. 3371-3378.

2. Section 10.21 is revised to read as follows:

§ 10.21 Director.

(a) Mail forwarded to the Director for law enforcement purposes should be addressed: Chief, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 3247, Arlington, VA 22203-3247.

(b) Mail forwarded to the Director with reference to permits should be addressed: Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 432, Arlington, VA 22203.

§ 10.22 [Amended]

3. Section 10.22 is amended as follows:

a. The mailing address for the Portland, OR, district office is revised to read "Eastside Federal Complex, 911 N.E. 11th. Avenue, Portland, OR 97232-4181, Telephone: 503-231-6125."

b. The mailing address for the Twin Cities, MN, district office is revised to read "P.O. Box 45—Federal Building, Ft. Snelling, Twin Cities, MN 55111, Telephone: 612-725-3530."

c. The mailing address for the entry "Any foreign country (Washington, DC, office)" is revised to read "P.O. Box 3247, Arlington, VA 22203-3247, Telephone: 703-358-1949."

Dated: October 26, 1990.

Bruce Blanchard,

Acting Director.

[FR Doc. 90-27473 Filed 11-21-90; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 55, No. 226
Friday, November 23, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

DA-90-033

Milk in the Chicago Regional Marketing Area; Proposed Revision of Supply Plant Shipping Percentages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed revision of rules.

SUMMARY: This notice invites written comments on a proposal to revise certain provisions of the Chicago Regional milk order for the months of November 1990 through January 1991. The proposal would reduce the shipping percentages for pooling individual supply plants by 3 percentage points (from 5 to 2 percent of receipts) and units of supply plants by 5 percentage points (from 10 to 5 percent of receipts) for the months of November and December 1990, and reduce the shipping percentage for individual supply plants by 2 percentage points (from 3 to 1 percent) and for units of supply plants by 3 percentage points (from 6 to 3 percent) for January 1991. The reductions were requested by Central Milk Producers Cooperative, a federation of cooperatives that represents producers who supply the market. The organization contends that the action is necessary to prevent uneconomic shipments of milk from supply plants to distributing plants. The organization has requested that the shipping standard be reduced for November and December 1990, and has indicated that a similar reduction may be necessary for January 1991. Thus, comments are being requested on a reduction of the shipping standards for the three months.

DATES: Comments are due no later than November 30, 1990.

ADDRESSES: Comments (two copies) should be sent to: USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. box 96456, Washington, DC 20090-6456 (202) 447-2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The action would reduce the regulatory impact on milk handlers and tend to insure that the market would be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from pool supply plants.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of § 1030.7(b)(5) of the order, the revision of certain provisions of the order regulating the handling of milk in the Chicago Regional marketing area is being considered for the months of November and December 1990 and January 1991.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include November in the revision period, if changes are adopted.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the supply plant shipping percentages for the months of November and December 1990, and January 1991. The proposed action would reduce the shipping percentage for individual supply plants by 3 percentage points (from 5 to 2 percent of receipt) and for supply plant units by 5 percentage points (from 10 to 5 percent of receipts) during November and December 1990, and would reduce the shipping percentage for individual supply plants by 2 percentage points (from 3 to 1 percent of receipts) and for supply plant units by 3 percentage points (from 6 to 3 percent of receipts) during January 1991.

Currently, the order provides that individual supply plants must ship at least 5 percent of milk receipts to other plants to qualify as pool plants while a unit of supply plants must ship at least 10 percent of total receipts for pooling purposes during the months of September through December. During other months the shipping standards are 3 percent for individual plants and 6 percent for a unit of plants.

The Chicago order provides that the market administrator may adjust the shipping standards for individual plants and units of plants by up to 2 percentage points for up to 3 months. The order also provides that the Director of the Diary Division may increase the shipping standards by up to 5 percentage points or decrease the shipping standards by up to 10 percentage points. The adjustments can be made to encourage additional milk shipments or to prevent uneconomic shipments.

The revision was requested by Central Milk Producers Cooperative (CMPC), a federation of cooperative associations that represent a substantial number of the producers who supply the market. CMPC contends that a reduction of the shipping percentages is necessary to prevent uneconomic shipments of milk from distant supply plants solely for pooling purposes.

Based on supply and sales estimates, CMPC requested and was granted a reduction of the supply plant shipping percentages for the months of August through October. CMPC indicates that these reductions permitted the use of nearby milk to satisfy fluid milk needs and saved substantial transportation

costs because milk did not have to be shipped from distant supply plants.

Based on the most recent supply and demand estimates, CMPC contends that a further reduction of the shipping percentages for November 1990 through January 1991 is necessary. CMPC contends that in order to make the most efficient use of available milk supplies, as much as possible of nearby milk supplies will have to be utilized with reliance on distant supplies only on days when nearer milk supplies have been exhausted. For the months of November and December, CMPC contends that such efficiencies can only be realized if the shipping standards for individual plants and units of supply plants are reduced to 2 and 5 percent of receipts, respectively. In addition, CMPC indicates that it may be necessary for the January 1991 shipping standards to be reduced to 1 and 3 percent of receipts for individual plants and units of supply plants respectively on the basis of supply and demand projections.

In view of the supply/demand relationship, it may be necessary to reduce the supply plant shipping percentages as proposed to provide for the efficient and economic marketing of milk during the months of November 1990 through January 1991.

List of Subjects in 7 CFR Part 1030

Milk marketing orders.

The authority citation for 7 CFR part 1030 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on November 16, 1990.

W. H. Blanchard,
Director, Dairy Division.

[FR Doc. 90-27527 Filed 11-21-90; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 1036

[DA-90-022]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Proposed Recision of Temporary Revision of Supply Plant Shipping Precentages and Cooperative Association Delivery Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; recision of temporary revision of rules.

SUMMARY: This notice invites written comments on the merits of rescinding a temporary increase of the percentage of producer milk receipts that must be shipped by pool supply plants operated by both proprietary and cooperative association handlers under the Eastern Ohio-Western Pennsylvania Federal Milk Order. The required shipping percentages were increased for the months of September 1990 through February 1991. The percentage of milk that must be shipped by pool supply plants to fluid milk processing plants was increased from 40 to 45 precent for the months of September through November 1990, and from 30 to 35 percent for the months of December 1990 through February 1991. The monthly percentage of producer milk handled by a cooperative association that must be delivered to distributing plants in order to qualify plants operated by the cooperative association for pooling was also increased for the same period by 5 percentage points, from 35 percent to 40 percent.

Although milk production in the Eastern Ohio-Western Pennsylvania marketing area in the earlier part of 1990 was lower than the levels of previous years, the volume of production has increased over 1989 levels since late summer. Given the current level of milk production, the increased percentage or required shipments may be greater than the level necessary to assure an adequate supply of milk for fluid uses. If so, it is possible that the temporary revision should be rescinded for the remaining months of its duration.

DATES: Comments are due no later than November 30, 1990.

ADDRESSES: Comments (two copies) should be sent to: USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. box 96456, Washington, DC 20090-6456, (202) 447-7183.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Proposed Temporary Revision of Shipping Precentages and Cooperative Association Delivery Requirements: Issued June 19, 1990; published June 22, 1990 (55 FR 25617).

Temporary Revision of Supply Plant Shipping Percentages and Cooperative Association Delivery Requirements: Issued August 22, 1990; published August 28, 1990 (55 FR 35137).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would provide greater assurance that an adequate supply of fresh fluid milk will be available to consumers.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and paragraph (f) of § 1036.7 of the order, recision of the temporary revision of certain provisions of the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is being considered, beginning with the month of December 1990.

All persons who desire to submit written data, views or arguments about the proposed recision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building P.O.Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and implement any changes, if adopted.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The temporary revision proposed to be rescinded is an increase of the pool supply plant shipping percentages set forth in § 1036.7(b) and the delivery percentage required of cooperative associations operating pool manufacturing plants, pursuant to § 1036.7(d). The recision would be effective beginning with the month of December 1990. The specific effect of the recision would be to reduce the supply plant shipping percentages by 5 percentage points, from 35 back to 30 percent, for the months of December 1990 through February 1991. The percentage of a cooperative association's producer milk that must be shipped to pool distributing plants or to nonpool plants for Class I purposes of

the plants of the cooperative are to be considered pool plants would also be reduced, from 40 percent back to the original level of 35 percent, for the same months.

Section 1036.7(f) of the Eastern Ohio-Western Pennsylvania milk order allows the Director of the Dairy Division to increase or decrease the order's minimum pooling requirements by up to 10 percentage points during any month to obtain needed shipments or to prevent uneconomic shipments. At the request of United Dairy, Inc., a proprietary handler who operates a pool distributing plant, and with the support of several other of the market's distributing plant operators and a major cooperative association, the Director temporarily increased the order's supply plant and cooperative association shipping precentages for the months of September 1990 through February 1991. The basis of the temporary revision was that the market's shortage of milk supplies during the effective period was projected to be as severe as that of the fall and winter of 1989–90.

Two proprietary pool supply plant operators have noted that while milk production in the Eastern Ohio-Western Pennsylvania marketing area fell short of the previous year's volume during the first half of 1990, there were indications in mid-August that milk production levels might be rising. The handlers concluded that the temporary revision should therefore be reconsidered. The market's pool statistics for September 1990 would seem to confirm that there is an increasing volume of production relative to the market's Class I needs.

In view of the foregoing, it may be appropriate to rescind the temporary increase of the shipping percentages for pool supply plants and delivery requirements for plants operated by cooperative associations. The recision would be effective for the months of December 1990 through February 1991. Interested parties are invited to comment on the advisability of leaving the temporary revision in effect or of rescinding it.

List of Subjects 7 CFR Part 1036

Milk marketing orders.

The authority citation for 7 CFR part 1036 continues to read as follows:

Authority: Secs. 1–19, Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC on November 16, 1990.

W.H. Blanchard,

Director, Dairy Division.

[FR Doc. 90–27528 Filed 11–21–90; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 98

[Docket No. 88–046]

RIN 0579–AA35

Importation of Cattle Embryos From Countries Where Rinderpest or Foot-and-Mouth Disease Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and notice of public hearings.

SUMMARY: We are proposing to allow cattle embryos to be imported into the United States from countries where rinderpest or foot-and-mouth disease exists, subject to various restrictions to ensure the embryos' freedom from communicate diseases. These importations have been prohibited. Research with animal embryos now indicates, however, that cattle embryos produced, collected, and handled under certain conditions may be imported from countries where rinderpest or foot-and-mouth disease exists without significant risk of introducing these or other communicable diseases of cattle into the United States. This action would make additional sources of genetic material available to domestic cattle breeders.

DATES: Consideration will be given only to comments received on or before January 22, 1991. Public hearings will be held on Tuesday, December 11, 1990, in Denver, Colorado, and on Friday, December 14, 1990, in Washington, DC.

ADDRESSES: To help ensure that your comments are considered, send an origional and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket 88–046. Comments we receive may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Public hearings will be held at the Radisson Hotel Denver, Gold Room, 1550 Court Place, Denver, Colorado, and at the U.S. Department of Agriculture, room 107A of the Administration Building, 12th Street and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Mark Teachman, Staff Veterianarian, Import-Export Animals Staff, VS, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. (301) 436–8590.

SUPPLEMENTARY INFORMATION:

Public Hearings

Public hearings on this proposed rule will be held on Tuesday, December 11, 1990, in Denver, Colorado, and on Friday, December 14, 1990, in Washington, DC. A representative of the Animal and Plant Health Inspection Service (APHIS) will preside at the hearing. Any interested person may appear and be heard in person, by attorney, or by other representative.

The public hearings will begin at 9 a.m. and are scheduled to end at 5 p.m., local time. However, a hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. We request that all persons attending a public hearing register with the presiding officer, and fill out a speakers' registration card on the morning of the hearing between 8 a.m. and 9 a.m., at the hearing room, if they wish to speak. Registered speakers will be heard in the order of their registration. Anyone else who wishes to speak at the hearing will be heard after the registered speakers. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing.

If the number of registered speakers and other participants at the hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

The purpose of the hearing is to give interested persons an opportunity for oral presentation of data, views, and arguments.

Background

Traditionally, genetic improvements in populations of domestic cattle have been made through the importation of postnatal animals and, more recently, through the importation of animal semen. Embryo transfer technology now offers an efficient and cost-effective alternative. With this technology, embryos can be collected from one cow, frozen, and later thawed and transferred to the reproductive tracts of other cows, to complete gestation.

Regulations governing the importation of cattle embryos and certain other animal embryos are contained in 9 CFR part 98. APHIS currently prohibits or restricts the importation of animal embryos to prevent the introduction of exotic animal diseases into the United States. The importation of cattle embryos from countries where rinderpest or foot-and-mouth disease exists is prohibited.

However, several breeds of cattle in countries of the world where rinderpest or foot-and-mouth disease exists possess genetic traits that cattlemen in the United States would like to introduce into their herds. Under the current regulations in 9 CFR parts 92 and 98, this introduction may be accomplished only by importing cattle through the Animal and Plant Health Inspection Service's Harry S. Truman Animal Import Center, a maximum security animal quarantine facility, or by importing cattle semen.

We are proposing to establish regulations which, under certain circumstances, will allow the importation of cattle embryos from countries where rinderpest or foot-and-mouth disease exists. This proposal is based on research indicating that these importations can be allowed under certain conditions without significant risk of introducing foot-and-mouth disease, rinderpest, or other communicable diseases of cattle into the United States.[1] The conditions under which we propose to allow these importations are discussed below.

The proposed regulations would be added to the current animal embryos regulations (9 CFR part 98) as a new subpart, "Subpart B—Importation of Cattle Embryos from Countries Where Rinderpest or Foot-and-Mouth Disease Exists."

Species Covered

This proposal applies only to cattle embryos. "Cattle" is defined in the proposal as "Members of the species *Bos indicus* or *Bos taurus*" (true cattle). This limitation appears necessary based on the scope of the research performed to date, which has focused on embryos of true cattle.

Country of Origin

The proposal prohibits cattle embryos from being imported from any country other than the country in which they are conceived and collected. This prohibition is intended to prevent cattle embryos that are conceived and collected in a country where foot-and-mouth disease or rinderpest exists from being shipped to a country free of those diseases for subsequent importation into the United State under less stringent conditions.

Import Permit

The proposal requires that importers obtain an import permit from the Import-Export Animals Staff, Animal and Plant Health Inspection Service (APHIS), before importing any cattle embryos. The application for the permit would tell APHIS who would be involved in the importation, how many and what type of embryos would be imported, where the embryos would be collected, when they would be imported, and the method and route of shipment to the United States. This information, and the actual permit issued, would enable the Agency to track and monitor the importation to determine whether it was made in accordance with the regulations.

Health Certificate

The proposal requires that the cattle embryos be accompanied to the United States by a health certificate. The health certificate must tell APHIS where the embryos were collected; who collected them; the date of collection; the indentification and breed of the donor dam and sire; the dates and results of all examinations and tests required by the regulations; the number of ampules or straws and the identification number or code used on each; and the names and addresses of the consignor and consignee. The health certificate also would have to state that the embryos were being imported in accordance with the regulations in 9 CFR part 98, subpart B.

This information would help APHIS determine whether the embryos were imported in accordance with the regulations, and would facilitate traceback if necessary.

The proposal requires that the health certificate be signed by certain individuals, depending upon who supervised embryo collection and related activities in the country of origin. As agreed to by APHIS and the national government of the country of origin, this person, called the "official veterinarian," could be either a full-time salaried veterinarian of the national government of the country of origin or a veterinarian employed by APHIS. If the official veterinarian were a full-time salaried veterinarian of the national government of the country of origin, the health certificate could be signed by the official veterinarian, or it could be signed by another veterinarian authorized by the national government of the country of origin and endorsed by the official veterinarian. If the official veterinarian were an APHIS employee, the health certificate would have to be signed by both the official veterinarian and a full-time salaried veterinarian of the national government of the country of origin. We believe that these individuals are best qualified to certify to the accuracy of the information provided on the health certificate.

The proposal requires that deciphering information be attached to the health certificate if any of the information on the health certificate is provided in code. Some countries use a code developed by the International Embryo Transfer Society, others use their own codes. APHIS must have the decoding information immediately available so that information on the health certificate can be checked at the port of entry.

The proposal requires a separate health certificate for each collection of embryos. "Collection of embryos" is defined in the proposal as "Embryos removed from a single donor in one operation." Since different circumstances would attend each collection of embryos, information on more than one collection would be difficult to present clearly on a single health certificate.

Health Requirements for the Donor Dam

At present, we cannot test embryos themselves for the presence of microorganisms without killing the embryos. Thus, the health status of the embryos must be concluded from the health status of the donor animals and by tests of organic samples from the collection of embryos. Our proposal contains requirements intended to limit the donor dam's exposure to infectious agents and to provide for testing and examination of the donor dam for communicable diseases before the embryos may be imported into the United States. Requirements for testing organic samples from embryo collections are included in our proposal and are discussed in this "**SUPPLEMENTARY INFORMATION**" under "Preparation of Test Samples, Tests."

[1] For more information on the research referred to in this document, see:

1. Singh, E.L. The Disease Control Potential of Embryos. Theriogenology. *27*:9–20 (1987).
2. Singh, E.L., McVicar, J.W., Hare, W.C.D. Embryo transfer as a means of controlling the transmission of viral infections. VII. The in-vitro exposure of bovine and porcine embryos to foot-and-mouth disease virus. Theriogenology. *27*:587–593 (1986).
3. McVicar, J.W., Singh, E.L., Mebus, C.A., and Hare, W.C.D. Embryo transfer as a means of controlling the transmission of viral infections VIII. Failure to detect foot-and-mouth disease viral infectivity associated with embryos collected from infected donor cattle. Theriogenology. *28*:595–602 (1986).

Copies may be obtained from the source listed under "FOR FURTHER INFORMATION CONTACT." Further scientific studies, co-funded by the United States Department of Agriculture, Animal and Plant Health Inspection Service; Agriculture Canada, Animal Diseases Research Institute; and Secretary of Agriculture, Argentine, have been done by C.A. Mebus, E.L. Singh, J.A. Villar, O. LaPorte, C. Munar, R. Vautier, D. Salamon, N. Caamano, A. Sadir, B. Carrillo, and J. Callis. These studies support the conclusions made in the above listed articles.

The specific health requirements we are proposing for the donor dam are as follows:

(1) During the year before embryo collection, no case of rinderpest, foot-and-mouth disease, contagious bovine pleuropneumonia, Rift Valley fever, vesicular stomatitis, bovine spongiform encephalopathy, or any previously unrecognized communicable disease of ruminants can have occurred in the embryo collection unit or in any herd in which the donor dam was present.

The absence of any of these diseases in any group of animals in which the donor dam was kept during the year before embryo collection would ensure that the donor dam was at low risk of being infected with that disease and transmitting it through her embryos.

(2) During the year before embryo collection, no case of rinderpest, foot-and-mouth disease, contagious bovine pleuropneumonia, Rift Valley fever, vesicular stomatitis, bovine spongiform encephalopathy, or any previously unrecognized communicable disease of ruminants can have occurred within 5 kilometers of the embryo collection unit or any herd in which the donor dam was present.

The absence of any of these diseases within 5 kilometers of any group of animals in which the donor dam was kept during the year before embryo collection would provide assurance that the donor dam had not been exposed to these diseases by nearby livestock. This precaution appears necessary to reduce the risk of the donor dam beinginfected with these diseases and transmitting them through her embryos.

(3) During the 60 days before embryo collection, the donor dam must not have received a vaccination for either rinderpest or foot-and-mouth disease.

Vaccination during this time frame could mask infection in the donor dam.

(4) During the 60 days before the donor dam was required to be in the embryo collection unit, the donor dam must have remained in the same herd and no cattle can have been added to that herd.

This provision is intended to prevent the donor dam from becoming exposed to a communicable disease within 60 days of embryo collection, and passing undetected infection to her embryos. Most communicable diseases to which she is exposed more than 60 days before embryo collection will become evident during testing or examinations required before embryos may be released for importation to the United States. Exposure to communicable diseases within 60 days of embryo collection could result in low levels of infection that might be missed by the tests and examinations.

(5) On the day of embryo collection, and again not less than 30 days nor more than 120 days afterward, one smaple of serum must be collected from the donor dam, frozen, and sent to the Foreign Animal Disease Diagnostic Laboratory (FADDL) for testing. Each sample must consist of at least 10 ml of serum. The donor dam must be determined to be free of foot-and-mouth disease based on tests of the pair of serum samples. If contagious bovine pleuropneumonia, Rift Valley fever, vesicular stomatitis, or rinderpest exists in the country of origin, the donor dam must be determined to be free of these diseases based on tests of the serum samples. If the donor dam was in any herd during the year before embryo collection that was not certified free of brucellosis by the national government of the country of origin, the donor dam must be determined to be free of brucellosis based on tests of the serum samples. The only official test results will be those provided by the FADDL.

Testing for foot-and-mouth disease appears necessary in all cases to ensure that the donor dam is not infected with this disease. Testing for other listed diseases appears necessary if the disease exists in the donor dam's country of origin, or, in the case of brucellosis, if the donor dam has been in any herd not certified free of brucellosis. Under these conditions, the donor dam could have been exposed to infection. A donor dam that is determined to be free of these diseases upon testing would present little, if any, risk of passing the diseases to her embryos.

We are proposing that samples be collected both on the day of embryo collection and 30 to 120 days after embryo collection to ensure that test results reflect the health of the donor dam at the time of embryo collection. Exposure of the donor as late as the time of embryo collection could result in contamination of the embryo. Tests of serum samples taken at the time of collection and again 30 to 120 days after would provide a reliable indication of whether exposure occurred. The second sample must be taken 30 to 120 days after embryo collection because serological signs of exposure may not become evident before 30 days and may wane after 120 days.

Our proposal would make test results from FADDL the only official results for these tests. FADDL is the United States' official laboratory for diagnosing foot-and-mouth disease and other exotic diseases in animals.

(6) If the donor dam was in any herd during the year before embryo collection that was not certified free of tuberculosis by the national government of the country of origin, the donor dam must be determined to be free of tuberculosis by the official veterinarian based on an intradermal tuberculin test. The test must be administered to the donor dam by the official veterinarian not less than 30 days nor more than 120 days after embryo collection, and not less than 60 days after any previously administered intradermal test for tuberculosis.

A donor dam that has not been kept in herds certified free of tuberculosis could have been exposed to the disease. Intradermal tuberculin tests are the internationally-accepted standard tests for diagnosis of this disease. Waiting until after the embryos are collected to give the test appears necessary to detect infection that may be present at the time of collection. We are proposing that the test be administered not less than 30 days nor more than 120 days after embryo collection because this would be the optimum time for expression of intradermal signs of exposure at the time of collection. We are also proposing that the test be administered not less than 60 days after any previously administered intradermal test for tuberculosis. If a donor tested for tuberculosis before embryo collection (some importers may wish to pre-test for tuberculosis), a second test within 60 days could yield a false negative result. A donor dam that is determined to be free of tuberculosis based on this test would present little, if any, risk of passing the disease to her embryos.

(7) Not less than 30 days nor more than 120 days after embryo collection, the donor dam must be examined by the official veterinarian and found free of clinical evidence of foot-and-mouth disease, rinderpest, contagious bovine pleuropneumonia, Rift Valley fever, vesicular stomatitis, bovine spongiform encephalopathy, brucellosis, tuberculosis, or any previously unrecognized communicable disease of ruminants. All signs of any other communicable disease must be listed on the health certificate that accompanies the embryos to the United States.

Post-collection examination of the donor dam appears necessary to help ensure that any diseases which were incubating are detected before the embryos are released for importation into the United States. Clinical evidence of communicable diseases in the donor dam would suggest the presence of disease agents in her embryos. We are proposing that the donor be examined not less than 30 days nor more than 120 days after embryo collection because this would be the optimum time for expression of clinical signs of disease if exposure occurred at the time of collection.

(8) Embryos produced by any donor dam that dies before being examined and tested as required by the proposed regulations will not be eligible for importation into the United States.

We believe that the examination and tests would provide information needed to determine whether the embryos are at risk of being infected with communicable diseases. If the donor dam dies before the examination and tests are conducted, there would not be sufficient information on the donor dam to make this determination.

(9) Between the time the embryos were collected and all examinations and tests were completed, in accordance with this subpart, no animals in the embryo collection unit with the donor dam, or in the donor dam's herd of origin, can have exhibited any clinical evidence of foot-and-mouth disease, rinderpest, contagious bovine pleuropneumonia, Rift Valley fever, vesicular stomatitis, bovine spongiform encephalopathy, brucellosis, tuberculosis, or any previously unrecognized communicable disease of ruminants. All signs of any other communicable disease in the herd must be listed on the health certificate that accompanies the embryos to the United States.

Communicable disease in animals present in the embryo collection unit with the donor dam, or in the donor dam's herd of origin during this time period would suggest that the donor dam had been exposed to the disease, and may have passed it to her embryos.

The Embryo Collection Unit

We propose to require that embryos be conceived, collected, processed, and stored at an embryo collection unit prior to importation into the United States. "Embryo collection unit" is defined as "An area or areas where the donor dam will be bred and where the embryos will be collected, processed, and stored pending shipment to the United States."

As a practical matter, the embryo collection unit would have to contain facilities or areas for holding and for breeding the donor dam (either natural breeding or artificial insemination), and for collecting, processing, and storing the embryos.

Because we believe that collecting, processing, and storing of embryos must be carried out in a sanitary environment to prevent contamination of the embryos with disease agents, we propose to require that the areas or facilities used for these activities meet certain requirements, as follows:

(1) The area for collecting embryos. This area could be either a room or an outdoor area that contains a device or devices for restraining the donor dam for the purpose of embryo collection.

If a room, the floor, walls, and ceiling would have to be impervious to moisture and constructed of materials that could withstand repeated cleaning and disinfection. If an outdoor area, the area would have to have a floor that was impervious to moisture and constructed of materials that could withstand repeated cleaning and disinfection. If the outdoor area also had walls or roof, the walls or roof also would have to be impervious to moisture and constructed of materials that could withstand repeated cleaning and disinfection. The floor, ceiling, and walls of any room or outdoor area used for embryo collection, and the restraining device(s) used for this procedure, would have to be cleaned with soap and water and disinfected before each use. These requirements appear necessary to ensure that the room or area and the restraining devices used for collecting embryos do not serve as a source of contamination of the embryos.

(2) The area for processing embryos. We would require the area used for examination and washing of embryos to be an enclosed room, which could be mobile. The walls, floors, and ceiling of the room would have to be impervious to moisture and constructed of materials that could withstand repeated cleaning and disinfection. Also, the room would have to contain a work surface for manipulating the embryos, such as a table or countertop, that was impervious to moisture. The room and work surface used for processing embryos would have to be kept free of insects, rodents, trash, manure, and other animal matter and would have to be cleaned with soap and water and disinfected before each use. These requirements appear necessary to ensure that the room and work surface used for processing embryos do not serve as a source of contamination of the embryos.

We propose that the room be used only for processing embryos. This restriction is intended to further reduce the risk of the embryos being contaminated during processing, when they are most vulnerable to contamination. We propose to require that the room contain a microscope with a minimum of 50x magnification, for examining the embryos, and equipment for freezing the embryos, so that all processing can be accomplished in the one room designated for this purpose. Moving the embryos to another area for examination or freezing could subject the embryos to contamination.

(3) The area for storing the embryos. This area would have to be lockable and used only for storing frozen embryos intended for importation into the United States. This requirement appears necessary to prevent tampering with or accidental contamination of the embryos during storage. The walls, floors, and ceiling of the room would have to be impervious to moisture and constructed of materials that could withstand repeated cleaning and disinfection. The area would have to be kept free of insects, rodents, trash, manure, and other animal matter and would have to be cleaned with soap and water and disinfected before being used to store embryos. These requirements appear necessary to ensure that the storage area does not serve as a source of contamination of the embryos.

We also propose to require that the embryo collection unit have an enclosed room for cleaning and disinfecting or sterilizing equipment used for artificial insemination, or for collection, processing, and storing of embryos.

The walls, floors, and ceiling of the room would have to be impervious to moisture and constructed of materials that could withstand repeated cleaning and disinfection. The room would have to be kept free of insects, rodents, trash, manure, and other animal matter and would have to be cleaned with soap and water and disinfected before each use. These requirements appear necessary to minimize the risk of the equipment being recontaminated.

Housing of the Donor Dam

We propose to require that the donor dam be housed at an embryo collection unit beginning not less than 24 hours before she is bred to produce embryos for importation into the United States. We propose to require that the donor dam remain at the embryo collection unit until the embryos have been collected. We believe the donor dam must be in a controlled environment during this time period to ensure that the embryos are not exposed to communicable diseases.

After collection, our proposal would allow the donor dam to be housed in one of two places: She could either remain at the embryo collection unit until all required examinations and tests were completed or be returned to the herd of origin and remain there until all required examinations and tests were completed. We believe that the donor dam's movements must be restricted after embryo collection so that the animal is available for the required tests and

examinations. This time period could be as short as 30 days.

Further, we propose to prohibit any animal from being in the embryo collection unit during the time the donor dam is required to be there, unless:

(1) They meet the health requirements applicable to the donor dam at that time;

(2) They are part of the donor dam's herd of origin; or

(3) They are serving as donor sires for the production of embryos to be imported into the United States.

These restrictions appear necessary to prevent the donor dam from being exposed to communicable diseases while in the embryo collection unit, and passing undetected infection to her embryos. These restrictions also would reduce the chances of the embryos becoming infected through contact with contaminated material or personnel.

Supervision

We propose to require that all procedures associated with production of embryos for importation to the United States, including artificial insemination; natural breeding; collection of test samples; collection, processing, and storing of embryos; and cleaning and disinfection of equipment, be performed under the supervision of the official veterinarian. We believe that these procedures must be supervised by a knowledgeable individual to ensure compliance with the regulations. We believe that this individual should be the official veterinarian, since he or she would be responsible for issuing or endorsing the health certificate for the embryos.

We propose to require that officials from the Animal and Plant Health Inspection Service be given access to all areas of the embryo collection unit and the donor dam's herd of origin during the time the donor dam is required to be housed in these locations. This requirement appears necessary to allow officials of the Animal and Plant Health Inspection Service to determine whether the regulations are being followed.

Personnel

We propose to require that all personnel put on clean outer garments, including disinfected boots, and scrub their hands with soap and water, each time they enter the embryo collection unit and before entering any room or area used for holding the donors; breeding, collecting, processing, or storing embryos; or cleaning and disinfecting or sterilizing equipment.

This requirement appears necessary to prevent contamination of the embryos with disease agents from sources outside the embryo collection unit.

Cleaning, Disinfection, and Sterilization of Equipment

We propose to require that all equipment that comes in contact with embryos or with media used for their collection or processing be sterile. Also, equipment used for embryos from one donor dam, or with associated media, could not be used for embryos or associated media from any other donor dam until it had been resterilized.

We further propose to require that all equipment that comes in contact with a donor dam's secretions or excretions be sterile. This equipment could not be used with any other donor dam until it has been resterilized.

In addition, we propose to require that containers used for storing embryos or for shipping embryos to the United States be examined and found free of any organic matter and then disinfected before the ampules or straws are placed inside.

All of these requirements appear necessary to prevent contamination of the embryos. In addition, cleaning and disinfection of the shipping containers appears necessary to prevent the spread of disease agents into the United States by contaminated containers or the liquid nitrogen used in them.

Products of Animal Origin; Cryogenic Agent

We propose to require that all media used for embryo collection and processing be from sources in the United States or Canada. This requirement appears necessary to ensure that the media does not contain exotic disease agents.

We also propose to prohibit the use of any liquid nitrogen for freezing embryos that has been used previously for any other products of animal origin. This requirement appears necessary to prevent contamination of the embryos.

Processing of Embryos

Our proposal requires that embryos be processed in a certain manner, as follows. These requirements are intended to reduce the risk of contamination and ensure that the embryos selected for importation are those at least risk for being or becoming infected.

(1) We propose to prohibit embryos that are not eligible for importation into the United States, based on the pre-collection health status of the donor dam, from being in the processing room at the same time as embryos intended for importation into the United States.

This requirement would prevent potentially diseased embryos from serving as sources of contamination.

(2) We propose to require that each embryo be washed at least 10 times, with each wash accomplished by transferring the embryo into an aliquot of fresh medium that is 100 times the volume of the embryo plus any fluid transferred from the previous wash. No more than 10 embryos from the same flush could be washed together. A sterile micropipette would have to be used for each transfer, and the embryos would have to be gently agitated throughout the entire volume of the wash before the next transfer. Embryos from different donors could not be washed together.

Proper washing has been found to be effective in removing very high levels of most pathogens from embryos. The washing procedures we are proposing are recommended by the International Embryo Transfer Society.

(3) We propose to require that each embryo be microscopically examined over its entire surface at not less than 50x magnification after the last wash. An embryo could not be imported into the United States unless its zona pellucida were found to be intact and free from any adherent material.

The zona pellucida is an effective barrier to microorganisms. Research has shown that through washing of embryos enclosed in intact zona pellucidae will remove most pathogenic agents responsible for the majority of bovine diseases. In some cases, however, viruses will stick to the zona pellucida. Examination of the embryo at not less than 50x magnification is recommended by the International Embryo Transfer Society to ensure detection of breaks in the zona pellucida, as well as the presence of any debris on the zona pellucida.

(4) We propose to require that the embryos be individually packaged in sterile ampules or straws and frozen in liquid nitrogen after they have been washed and examined. The donor dam's and sire's identifications and breed, the date of embryo collection, the name and address of the place where the embryos were collected, and an identification number for the straw or ampule would have to be recorded with indelible markings or each ampule or straw. If any of this information were provided in code, deciphering information would have to be attached to the health certificate for the embryos.

These requirements are intended to provide continued protection against subsequent contamination or misidentification of the embryos.

Preparation of Test Samples: Tests

As noted earlier, tests of organic samples from the collection of embryos are used, along with information on the health of the donor dam, to determine the health status of the embryos. Our proposal requires testing of all nontransferrable embryos and unfertilized eggs from the same donor, as well as testing of the collection fluid and embryo washes, as follows. These tests follow recommendations by the International Embryo Transfer Society.

We propose to require that all nontransferrable embryos and unfertilized eggs from each collection of embryos intended for importation into the United States be pooled, frozen in liquid nitrogen, and sent to the Foreign Animal Disease Diagnostic Laboratory for testing. The collection and last two wash fluids from each collection of embryos also would have to be frozen and sent to the Foreign Animal Disease Diagnostic Laboratory for testing. Samples from different collections could not be mixed. All the samples would have to be tested and found negative for viral contamination. The absence of viral contamination would indicate that the donor dam, and, therefore, the embryos, were free of viral infection. In addition, the wash fluids would have to be tested and found negative for bacterial contamination. Bacteria in the last two wash fluids would suggest that the embryos may have been contaminated during collection or processing.

Only results of tests performed at the Foreign Animal Disease Diagnostic Laboratory would be accepted as official. As explained earlier, FADDL is the United States' official laboratory for diagnostic work related to foot-and-mouth disease and other exotic diseases in animals.

Storage of Embryos

Our proposal would require that frozen embryos to be imported into the United States be stored in a locked area or remain in the custody of the official veterinarian until they are sealed and released for shipment to the United States. The containers in which the embryos are shipped would have to be sealed by the official veterinarian with an official seal of the country of origin or, if the official veterinarian were an employee of the Animal and Plant Health Inspection Service, with an official seal of the United States Department of Agriculture. The seal number would have to be recorded on the health certificate that accompanies the embryos to the United States. These requirements are intended to prevent tampering and to protect against accidental contamination of the embryos.

Shipment of Embryos to the United States

We propose to prohibit movement of the embryos from the embryo collection unit until all tests and examinations required by this subpart have been completed and the official veterinarian has received written notification of all test results from the Foreign Animal Disease Diagnostic Laboratory.

The requirement is intended to ensure that embryos remain at the embryo collection unit until all information for the health certificate has been collected.

We propose to require that the embryos be routed directly to the U.S. port of entry designated on the import permit. This requirement would reduce the chances for tampering or contamination.

We propose to allow the embryos to be imported into the United States only through a port of entry listed in 9 CFR 92.3(a). These ports are Los Angeles, California; Miami, Florida; Honolulu, Hawaii; and New York, New York. These are the only ports where the Animal and Plant Health Inspection Service has full-time veterinarians available to inpsect the shipments of embryos.

Under our proposal, embryos that arrive at the port of entry more than 14 days after the proposed date of arrival stated in the import permit would not be eligible for importation into the United States. This time period would permit inspectors' workloads to be managed while providing importers with some scheduling flexibility.

Arrival and Inspection at the Port of Entry

We propose to require that the importer or the importer's agent present the original health certificate and the original import permit for the embryos to an inspector upon arrival at the port of entry. The shipping container and all straws or ampules containing embryos would have to be made available to an inspector at the port of entry for inspection, and could not be removed from the port of entry until the inspector determined that the embryos were eligible for importation in accordance with the regulations.

These requirements would allow the Animal and Plant Health Inspection Service to check the shipment to see whether all requirements for importation have been met.

Under our proposal, any embryos determined to be ineligible for importation into the United States upon arrival at the port of entry will be destroyed if the importer does not remove the embryos from the United States within 30 days. This provision is intended to prevent the introduction of communicable diseases into the United States by cattle embryos that may be infected.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would allow the importation of cattle embryos from countries where rinderpest or foot-and-mouth disease exists. Importation of cattle embryos from these countries is currently prohibited. Post-natal cattle may be imported from these countries only through the Animal and Plant Health Inspection Service's Harry S Truman Animal Import Center (HSTAIC).

The proposed rule would benefit the cattle industry in the United States by providing a cost-effective alternative to importing post-natal cattle from countries where rinderpest or foot-and-mouth disease exists.

During 1980 through 1985, 633 cattle were imported through the HSTAIC, an average of 105 cattle a year over the six years. No cattle have been imported from countries where rinderpest or foot-and-mouth disease exists since 1985. The cost of these importations would vary, depending upon a number of factors, including the purchase price of the cattle, the number of animals imported, and transportation costs. We estimate that importing 105 cattle through the HSTAIC would cost approximately $7,604 per head, based on a per head purchase price of $2,500, quarantine fee of $4,074, and transportation cost of $1,030.

Frozen embryos could be imported and used to produce the same number of cattle at a much lower cost. We estimate that 105 cattle could be produced from

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frozen embryos imported in accordance with our proposal at a cost of approximately $2,520 per animal. This figure is based on a purchase price of $350 for each of 210 embryos (we assumed a 50 percent chance of successful pregnancy in the recipient cow), fees of $1,750 for embryo collection and associated activities, and transportation costs of $70.

In fiscal year 1989, 22 importers received permits to import cattle embryos from countries free of rinderpest and foot-and-mouth disease. If our proposal is adopted, we expect that the number of importers applying for permits to import cattle embryos would increase, but not significantly. The increase would be made up of importers specializing in importing embryos containing previously unavailable genetics. Most, if not all, importers of cattle embryos would be classified as small entities.

We expect that adoption of this proposed rule also would result in an increase in the number of cattle embryos imported into the United States, resulting in a larger supply. We estimate that allowing cattle embryos to be imported from countries where rinderpest or foot-and-mouth disease exists could cause the average price of a frozen cattle embryo in the United States to decrease from $400 to $350. This decrease would be offset by the growing demand for embryo imports, however, as evidenced by a five-fold increase in the number of permits issued from 1987 through 1989 for cattle embryos from countries free of rinderpest and foot-and-mouth disease.

The greatest impact of the proposed rule would be the long-term benefits of making bovine germplasm from countries where rinderpest or foot-and-mouth disease exists available to the domestic cattle industry: production of higher quality beef and dairy cattle at lower cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection provisions included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 868, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 98

Animal disease, Animal embryos, Animal semen, Imports, Livestock and Livestock products, Poultry semen, Transportation.

Accordingly, we propose to amend 9 CFR part 98 as follows:

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

1. The authority citation would continue to read as follows:

Authority: 7 U.S.C. 1622; 21 U.S.C. 103, 104, 105, 111, 134a, 134b, 134c, 134d, 134f; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§§ 98.1 and 98.2 [Redesignated as §§ 98.2 and 98.1 respectively]

2. In part 98, §§ 98.1 and 98.2 would be redesignated as § 98.2 and § 98.1, respectively; the heading for subpart A would be removed; and a new subpart heading would be added before §§ 98.2 through 98.10 to read as follows:

Subpart A—Ruminant and Swine Embryos from Countries Free of Rinderpest and Foot-and-Mouth Disease; and Embryos of Horses and Asses

§§ 98.2, 98.4, and 98.9 [Amended]

3. In part 98, the word "part" would be removed and the word "subpart" would be added in its place in the following sections:

(a) In § 98.2, the introductory text (2 places);

(b) In § 98.4, paragraph (d) (2 places);

(c) In § 98.9, the first sentence.

4. In § 98.3 the introductory text would be revised to read as follows:

§ 98.3 General conditions.

Except as provided in subpart B of this part, an animal embryo shall not be imported into the United States unless it is from a country listed in § 94.1(a)(2) of this chapter as being free of rinderpest and foot-and-mouth disease, and:

* * * * *

§§ 98.4, 98.5 [Amended]

5. In part 98, the phrase "An embryo shall not be imported" would be removed and the phrase "Except as provided in subpart B of this part, an animal embryo shall not be imported" would be added in its place in the following sections:

(a) In § 98.4, paragraph (a); and

(b) In § 98.5, the introductory text.

§ 98.8 [Amended]

6. In § 98.8, the phrase "in accordance with this subpart" would be added after "United States".

7. In part 98, subpart B, §§ 98.20 through 98.29 would be redesignated as subpart C, §§ 98.30 through 98.39, and a new subpart B would be added to read as follows:

Subpart B—Cattle Embryos from Countries Where Rinderpest or Foot-and-Mouth Disease Exists

Sec.

98.11 Definitions.
98.12 General prohibitions.
98.13 Import permit.
98.14 Health certificate.
98.15 The donor dam.
98.16 The embryo collection unit.
98.17 Procedures.
98.18 Shipment of embryos to the United States.
98.19 Arrival and inspection at the port of entry.
98.20 Embryos refused entry.

§ 98.11 Definitions.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Cattle. Members of the species *Bos indicus* or *Bos taurus*.

Collection of embryos. Embryos removed from a single donor dam in one operation.

Country of origin. The country in which the embryo is conceived and collected and from which the embryo is imported into the United States.

Embryo. The initial stages of development of an animal, after collection from the natural mother and while it is capable of being transferred to a recipient dam, but not after it has been transferred to a recipient dam.

Embryo collection unit. Area or areas where the donor dam will be bred to produce embryos for importation into the United States, and where the embryos will be collected, processed, and stored pending shipment to the United States.

Foreign Animal Disease Diagnostic Laboratory. The Foreign Animal Disease Diagnostic Laboratory of the Animal and Plant Health Inspection Service.

Herd of origin. The herd in which the donor dam is kept during the 60 days before the donor dam is required to be housed in an embryo collection unit, in accordance with § 98.17(a) of this subpart.

Import. To bring into the territorial limits of the United States.

Inspector. An employee of the Animal and Plant Health Inspection Service who is authorized to perform the function involved.

Official veterinarian. As agreed to by APHIS and the national government of the country of origin, either a full-time salaried veterinarian of the national government of the country of origin or a veterinarian employed by the Animal and Plant Health Inspection Service (APHIS).

Person. Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

United States. All of the States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

§ 98.12 General prohibitions.

(a) Cattle embryos may not be imported from countries where rinderpest or foot-and-mouth disease exists except in accordance with this subpart.

(b) Cattle embryos may not be imported into the United States from any country other than the country in which they were conceived and collected.

§ 98.13 Import permit.

(a) Cattle embryos may be imported into the United States from countries where foot-and-mouth disease or rinderpest exists only if accompanied by an import permit issued by the Animal and Plant Health Inspection Service (APHIS).

(b) An application for the import permit must be submitted to the Import-Export Animals Staff, Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Application forms also may be obtained at this same address. The application must include the following information:

(1) The name and address of the exporter;

(2) The name and address of the importer;

(3) The name and address of the place where the donor dam will be bred and where the embryo(s) will be collected;

(4) The species, breed, and number of embryos to be imported;

(5) The purpose of the importation;

(6) The port of embarkation;

(7) The mode of transportation;

(8) The route of travel;

(9) The port of entry in the United States;

(10) The proposed date of arrival in the United States; and

(11) The name and address of the person to whom the embryos will be delivered in the United States.

§ 98.14 Health certificate.

(a) Cattle embryos may be imported into the United States from a country where foot-and-mouth disease or rinderpest exists only if accompanied by a health certificate signed as follows:

(1) If the official veterinarian is a full-time salaried veterinarian of the national government of the country of origin, the official veterinarian may sign the health certificate or the health certificate may be signed by a veterinarian authorized by the national government of the country of origin, provided that the health certificate is then endorsed and issued by the official veterinarian.

(2) If the official veterinarian is employed by the Animal and Plant Health Inspection Service, the health certificate must be signed by both the official veterinarian and a full-time salaried veterinarian of the national government of the country of origin.

(b) The health certificate must state:

(1) The name and address of the place where the embryos were collected;

(2) The name and address of the veterinarian who collected the embryos;

(3) The date of embryo collection;

(4) The identification and breed of the donor dam and donor sire;

(5) The number of ampules or straws covered by the health certificate and the identification number or code on each ampule or straw;

(6) The dates, types, and results of all examinations and tests performed on the donor dam as a condition for importing the embryos;

(7) The dates and results of all tests performed on unfertilized eggs, nontransferrable embryos, and embryo collection and wash fluids;

(8) The names and addresses of the consignor and consignee;

(9) That the embryos are being imported into the United States in accordance with subpart B of 9 CFR part 98.

(c) If any of the information required by paragraph (b) of this section is provided in code, deciphering information must be attached to the health certificate.

(d) There must be a separate health certificate for each collection of embryos.

§ 98.15 The donor dam.

Cattle embryos may be imported from a country where rinderpest or foot-and-mouth disease exists only if all of the following requirements pertaining to the health of the donor dam are met:

(a) *Health requirements.* (1) During the year before embryo collection, no case of rinderpest, foot-and-mouth disease, contagious bovine pleuropneumonia, Rift Valley fever, vesicular stomatitis, bovine spongiform encephalopathy, or any previously unrecognized communicable disease of ruminants occurred in the embryo collection unit or any herd in which the donor dam was present.

(2) During the year before embryo collection, no case of rinderpest, foot-and-mouth disease, contagious bovine pleuropneumonia, Rift Valley fever, vesicular stomatitis, bovine spongiform encephalopathy, or any previously unrecognized communicable disease of ruminants occurred within 5 kilometers of the embryo collection unit or any herd in which the donor dam was present.

(3) During the 60 days before embryo collection, the donor dam did not receive a vaccination for either rinderpest or foot-and-mouth disease.

(4) During the 60 days before the donor dam was required to be in the embryo collection unit, in accordance with § 98.17(a) of this subpart, the donor dam remained in the same herd, and no cattle were added to that herd.

(5) On the day of embryo collection, and againt not less than 30 days nor more than 120 days afterward, one sample of serum was collected from the donor dam and donor sire; and sent to the Foreign Animal Disease Diagnostic Laboratory for testing. Each sample must consist of at least 10 ml of serum. The donor dam has been determined to be free of foot-and-mouth disease based on tests of the pair of serum samples. In contagious bovine pleuropneumonia, Rift Valley fever, vesicular stomatitis, or rinderpest exist in the country of origin, the donor dam has been determined to be free of these diseases based on tests of the serum samples. If the donor dam was in any herd during the year before embryo collection that was not certified free of brucellosis by the national government of the country of origin, the donor dam has been determined to be free of brucellosis based on tests of the serum samples. The only official test results will be those provided by the Foreign Animal Disease Diagnostic Laboratory.

(6) If the donor dam was in any herd during the year before embryo collection that was not certified free of tuberculosis by the national government

of the country of origin, the donor dam has been determined to be free of tuberculosis by the official veterinarian based on an intradermal tuberculin test. The test must have been administered to the donor dam by the official veterinarian not less than 30 days nor more than 120 days after embryo collection, and not less than 60 days after any previously administered intradermal test for tuberculosis.

(7) Not less than 30 days nor more than 120 days after embryo collection, the donor dam was examined by the official veterinarian and found free of clinical evidence of foot-and-mouth disease, rinderpest, contagious bovine pleuropneumonia, Rift Valley fever, vesicular stomatitis, bovine spongiform encephalopathy, brucellosis, tuberculosis, or any previously unrecognized communicable disease of ruminants. All signs of any other communicable disease must be listed on the health certificate that accompanies the embryos to the United States.

(8) Embryos produced by any donor dam that dies before being examined and tested as required by this subpart will not be eligible for importation into the United States.

(9) Between the time the embryos were collected and all examinations and tests required by this subpart were completed, no animals in the embryo collection unit with the donor dam, or in the donor dam's herd of origin, exhibited any clinical evidence of foot-and-mouth disease, rinderpest, contagious bovine pleuropneumonia, Rift Valley fever, vesicular stomatitis, bovine spongiform encephalopathy, brucellosis, tuberculosis, or any previously unrecognized communicable disease of ruminants. All signs of any other communicable disease in the herd must be listed on the health certificate that accompanies the embryos to the United States.

§ 98.16 The embryo collection unit.

Cattle embryos may be imported into the United States from a country where rinderpest or foot-and-mouth disease exists only if they were conceived, collected, processed, and stored prior to importation at an embryo collection unit. The embryo collection unit must meet the following requirements concerning facilities and their cleaning and disinfection:

(a) *Animal holding and breeding area(s).* The embryo collection unit must have an area or areas for holding the donor dam and for breeding them (either natural breeding or artificial insemination).

(b) *Embryo collection area.* (1) The embryo collection unit must have a room or outdoor area for collection of embryos that contains a device or devices for restraining cattle during embryo collection. If a room, the floor, walls, and ceiling must be impervious to moisture and constructed of materials that can withstand repeated cleaning and disinfection. If an outdoor area, the area must have a floor that is impervious to moisture and is constructed of materials that can withstand repeated cleaning and disinfection. If the outdoor area also has walls or a roof, the walls or roof also must be impervious to moisture and be constructed of materials that can withstand repeated cleaning and disinfection.

(2) The floor, ceiling, and walls of any room or outdoor area used for embryo collection, and the restraining device(s) used for this procedure, must be cleaned with soap and water and disinfected before each use.

(c) *Embryo processing area.* (1) The embryo collection unit must have an enclosed room, which may be mobile, that is used only for processing embryos. The walls, floor, and ceiling of the room must be impervious to moisture and constructed of materials that can withstand repeated cleaning and disinfection. The room must contain a work surface for manipulating the embryos, such as a table or countertop, that is impervious to moisture. The room also must contain a microscope with a minimum of 50x magnification, and equipment for freezing the embryos.

(2) The room and work surface used for processing embryos must be kept free of insects, rodents, trash, manure, and other animal matter and must be cleaned with soap and water and disinfected before each use.

(d) *Embryo storage area.* (1) The embryo collection unit must have one lockable area that is used only for storing frozen embryos intended for importation into the United States.

(2) The walls, floor, and ceiling of the area must be impervious to moisture and constructed of materials that can withstand repeated cleaning and disinfection. The area must be kept free of insects, rodents, trash, manure, and other animal matter and must be cleaned with soap and water and disinfected before being used to store embryos.

(e) *Area for cleaning and disinfecting or sterilizing equipment.* (1) The embryo collection unit must have an enclosed room used for cleaning and disinfecting or sterilizing equipment used for artificial insemination or for collection, processing, or storage of embryos. The walls, floor, and ceiling of the room must be impervious to moisture and constructed of materials that can withstand repeated cleaning and disinfection.

(2) The room used for cleaning and disinfecting or sterilizing equipment used for artificial insemination or for collection, processing, or storage of embryos must be kept free of insects, rodents, trash, manure, and other animal matter and must be cleaned with soap and water and disinfected before each use.

§ 98.17 Procedures.

(a) *Housing of the donor dam.* (1) Beginning at least 24 hours before a donor dam is bred to produce embryos for importation to the United States, the donor dam must be housed at an embryos collection unit.

(2) The donor dam must remain at the embryo collection unit until the embryos for importation into the United States have been collected.

(3) After collection of embryos, the donor dam must either remain at the embryo collection unit or be returned to the herd of origin and remain there until all examinations and tests required by this subpart have been completed.

(4) During the time the donor dam is in the embryo collection unit, in accordance with paragraphs (a)(1) through (a)(3) of this section, no animals may be in the embryo collection unit with the donor dam unless:

(i) They meet the requirements of § 98.15 of this subpart that are applicable to the donor dam at that time;

(ii) They are part of the donor dam's herd of origin; or

(iii) They are serving as donor sires for the production of embryos to be imported into the United States.

(b) *Supervision.* (1) All procedures associated with production of embryos for importation to the United States, including artificial insemination; natural breeding; collection of test samples; collecting, processing, and storing the embryos; and cleaning and disinfection of equipment, must be performed under the supervision of the official veterinarian.

(2) Officials from the Animal and Plant Health Inspection Service must be given access of all areas of the embryo collection unit and the donor dam's herd of origin during the time the donor dam is housed there, in accordance with paragraphs (a)(1) through (a)(3) of this section.

(c) *Personnel.* All personnel must put on clean outer garments, including disinfected boots, and must scrub their hands with soap and water each time they enter the embryo collection unit and before entering any room or area listed in § 98.16 of this subpart.

(d) *Cleaning, disinfection, and sterilization of equipment.* (1) All equipment that comes in contact with embryos or with media used for their collection or processing must be sterile. Equipment used for embryos from one donor dam, or with associated media, may not be used for embryos or associated media from any other donor dam until it has been resterilized.

(2) All equipment that comes in contact with a donor dam's secretions or excretions must be sterile and may not be used with any other donor dam until it has been resterilized.

(3) Containers used for storing embryos or for shipping embryos to the United States must be examined and found free of any organic matter and then disinfected before the ampules or straws are placed inside.

(e) *Products of animal origin: cryogenic agent.* (1) All media used for embryo collection and processing must be from sources in the United States or Canada.

(2) The liquid nitrogen used to freeze embryos may not have been used previously for any other products of animals origin.

(f) *Processing of embryos.* (1) Embryos from donors that do not meet the requirements of § 98.15 of this subpart that are applicable to donor dams at the time of embryo collection may not be in the processing room at the same time as embryos intended for importation into the United States.

(2) Each embryo must be washed at least 10 times. Each wash must be accomplished by transferring the embryo into an aliquot of fresh medium that is 100 times the volume of the embryo plus any fluid transferred from the previous wash. No more than 10 embryos from the same flush may be washed together. A sterile micropipette must be used for each transfer, and the embryos must be well agitated throughout the entire volume of the wash before the next transfer. Embryos from different donors may not be washed together.

(3) After the last wash, each embryo must be microscopically examined over its entire surface at not less than 50x magnification. An embryo may not be imported into the United States unless its zona pellucida is found to be intact and free from any adherent material.

(4) After washing and examination of the zona pellucida, embryos must be individually packaged in sterile ampules or straws and frozen in liquid nitrogen. The donor dam's and sire's identifications and breed, the date of embryo collection, the name and address of the place where the embryos were collected, and an identification number for the straw or ampule must be recorded with indelible markings on each ampule or straw. If any of this information is provided in code, deciphering information must be attached to the health certificate for the embryos.

(g) *Preparation of test samples: tests.* (1) All nontransferrable embryos and unfertilized eggs from each collection of embryos intended for importation into the United States must be pooled, frozen in liquid nitrogen, and sent to the Foreign Animal Disease Diagnostic Laboratory for testing. The collection and last two wash fluids from the collection of embryos must be frozen and sent to the Foreign Animal disease Diagnostic Laboratory for testing. Samples from different collections may not be mixed.

(2) All samples collected in accordance with paragraph (g)(1) of this section must be tested and found negative for viral contamination. The wash fluids also must be found negative for bacterial contamination. The only official results for these tests will be those provided by the Foreign Animal Disease Diagnostic Laboratory.

(h) *Storage of embryos.* (1) Frozen embryos to be imported into the United States must be stored in a locked area or must remain in the custody of the official veterinarian until they are sealed in accordance with paragraph (h)(2) of this section and released for shipment to the United States in accordance with § 98.18(a) of this subpart.

(2) Containers in which embryos will be imported into the United States must be sealed by the official veterinarian with the official seal of the country of origin or, if the official veterinarian is an employee of the Animal and Plant Health Inspection Service, with an official seal of the United States Department of Agriculture. The seal number must be recorded on the health certificate that accompanies the embryos to the United States.

§ 98.18 Shipment of embryos to the United States.

(a) *Release from the embryo collection unit.* The embryos may not be moved from the embryo collection unit until all tests and examinations required by this subpart have been completed and the official veterinarian has received written notification of all test results from the Foreign Animal Disease Diagnostic Laboratory.

(b) *Route.* The sealed shipping containers must be routed directly to the U.S. port of entry designated on the import permit.

(c) *Ports of entry.* The embryos may be imported into the United States only through a port of entry listed in § 92.3(a) of this chapter.

(d) *Date of arrival in the United States.* Embryos that arrive at the port of entry more than 14 days after the proposed date of arrival stated in the import permit will not be eligible for importation into the United States.

§ 98.19 Arrival and inspection at the port of entry.

(a) Upon arrival at the port of entry, the importer or the importer's agent must present an inspector at the port with the original health certificate and the original import permit for the embryos.

(b) The shipping container and all straws or ampules containing embryos must be made available to an inspector at the port of entry for inspection, and may not be removed from the port of entry until an inspector determines that the embryos are eligible for importation in accordance with this subpart and releases them.

§ 98.20 Embryos refused entry.

If any embryos are determined to be ineligible for importation into the United States upon arrival at the port of entry, the importer must remove the embryos from the United States within 30 days, or the embryos will be destroyed.

Done in Washington, DC, this 16th day of November 1990.

James W. Glosser,

Administrator, Animal and Plant health Inspection Service.

[FR Doc. 90-27410 Filed 11-21-90; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 207, 221, and 231

[Docket No. R-90-1494; FR-2857-P-01]

RIN 2502-AF05

Termination of the Retirement Service Center Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of proposed rule making.

SUMMARY: This rule proposes to terminate the Retirement Service Center Program (ReSC) currently authorized by administrative procedures of the section

221(d)(4) program. The ReSC program provides FHA insurance of loans made for the construction, rehabilitation, purchase or refinancing of Retirement Service Centers. This action is necessary to protect the FHA insurance fund. The ReSC program is suffering an unacceptable default rate brought about by limited market demand and the high operating costs of projects.

In addition, the rule proposes to set forth the extent to which non-shelter services may be provided in insured elderly housing programs, and the conditions under which elderly projects covered by HUD-held or HUD-insured mortgages may be refinanced.

DATES: *Comment due date:* January 22, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying from 7:30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX is (202) 708–4337. (This is not a toll-free number). Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure access to the equipment. FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708–2084).

FOR FURTHER INFORMATION CONTACT: Linda Cheatham, Acting Director, Office of Insured Multifamily Development, room 6146, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, (202) 708–3000. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Retirement Service Center (ReSC) Program was developed administratively in 1983. It is an adaptation of the section 221(d) Multifamily Moderate Income Projects Program. It was developed in response to requests of developers and lenders who expressed their opinions that there was a need for a mortgage insurance program for the development of market-rate rental congregate housing for the elderly with a significant level of services and amenities over and above those found in the typical HUD-insured elderly project.

Initial processing instruction for ReSC were issued in Notice H 83–58, dated December 23, 1983. These instructions were later consolidated in the section 221(d)(4) Full Insurance handbook and in the section 221(d) Coinsurance handbook. (See Handbook 4560.2, chapter 4, January 1987 and Handbook 4561.1, chapter 17, June 1985).

At the time the retirement service center concept was being considered, the Department insured housing for the elderly under two programs. These were carried out under 24 CFR part 231—Housing Mortgage Insurance for the Elderly, and 24 CFR part 221—Low Cost and Moderate Income Mortgage Insurance (sections 221 (d)(3) and (d)(4) Market Rate).

The decision was made to have an expanded program under part 221 (under section 221(d)(4) of the national housing Act) to authorize the development of ReSC projects. Section 221(d)(4) was chosen because HUD believed, because of the potentially higher risk associated with unsubsidized (market rate) congregate rental projects, that all mortgages should be limited to a 90 percent ratio for both profit and nonprofit mortgagors, while under section 231 and 221(d)(3), nonprofit sponsors are eligible for 100 percent loans. In making this choice, HUD also had to take into account the fact that the purpose of the section 221 program is to provide mortgage insurance for low- and moderate-income housing.

ReSCs are market rate congregate rental housing for the elderly. They were intended to fill a perceived gap in housing options between totally independent living in the community and the personal care, or health and medical care, environments provided in residential care facilities, such as nursing homes and board and care facilities.

ReSC housing involves a residential living environment that includes both housing and support services (principally meals and home management tasks) for those elderly who can live relatively independently. The congregate housing arrangement typically consists of individual living units, with complete kitchen and bath facilities for the exclusive use of the tenant, and shared dining, recreational and community spaces.

Under the ReSC program, congregate rental projects receive no subsidy and are prohibited from charging endowments or entrance fees. However, mandatory payment for meals and services may be made a condition of occupancy. Health care services are prohibited without the prior approval of HUD. No contractual arrangement with a residential care facility providing personal care or health services is required, and if such a connection exists, a mandatory fee to the tenant for access to personal care or health services is prohibited.

In response to growing losses in the Retirement Service Center Program, the Secretary, on July 6, 1989, placed a moratorium on mortgage insurance for ReSC projects. As a result of the high rate of loss and a concern that ReSCs were serving primarily the upper-income elderly, the FHA Commissioner asked the HUD Office of Policy Development and Research (PD&R) to conduct an evaluation of the ReSC program. At the same time, the HUD Office of the Inspector General (OIG) was conducting an audit of ReSCs in several HUD Regions.

The OIG audit (April 1990) and the PD&R study (June 1990) confirmed the earlier findings upon which the Secretary's moratorium had been based. On the basis of the OIG findings, the PD&R study, and continued problems in the program since the moratorium, HUD has determined that termination of the program is necessary to protect the insurance fund.

The primary market for ReSCs originally was considered to be one- and two-person "frail" elderly households in which the age of the head of household 70 or older, as well as the "young" and "middle-aged" elderly seeking the "lifestyle" of age-segregated housing projects offering a variety of on-site services and amenities.

Experience has shown that there is a very limited demand for market rate congregate rental projects because of the high costs of rent and services and the high incomes necessary to afford the shelter and services. Program experience has shown that these projects serve almost exclusively the upper-income elderly. The average total monthly charge for rent and services in a one-bedroom ReSC unit was $1200, and tenants typically paid between 50 and 60 percent of their incomes for rent and services. For one to afford a ReSC unit generally required an annual income of $20,000 or more. Also, the market is composed of persons much older than was originally anticipated. Approximately 90 percent of the tenants are one-person households age 75 or older, and some 40 percent of the tenants are age 85 or older. The number of elderly households with age and household size characteristics of the tenants in ReSCs and incomes sufficient to afford this type of housing comprises only about 5 percent of the total elderly households, age of head of household 62 or older, in the United States.

Accordingly, a mortgage insurance program structured under legislation designed to assist low and moderate income persons has evolved into a housing program affordable only to a small, relatively high-income population. As a consequence of the very limited market, a large and progressively increasing number of projects has been unable to sustain financial viability.

That the ReSC program is not financially viable is clearly reflected in the mortgage default rates. Of the 186 projects insured or coinsured under the program (accounting for $1.53 billion in mortgage volume), some 53 percent are either in default or are experiencing financial or operational difficulties. The default rates have been high both for full insurance and coinsurance projects. The PD&R study found that a total of $443.1 million was in default or assigned to HUD, and another $363.7 million was classified by the Department as troubled. HUD estimates that the net loss to the insurance fund could total about $300 million.

Because the ReSC program consists of market rate projects with no direct Federal rental subsidy or subsidies for the support services, terminating the program will not result in a gap in the types of housing and support service arrangements currently available to serve the lower income elderly. ReSC projects are quite similar to section 202, Housing for the Elderly or Handicapped projects providing congregate services. Other alternatives, such as the use of section 8 certificates or Housing Vouchers combining housing assistance with support services, as in the Administration's proposed program of HOPE for Elderly Independence, or community based in-home services, can be more cost effective.

Further, the private sector has been actively developing a wide variety of congregate housing products to meet the needs of the upper-income elderly who are interested in facilities of this kind.

The Proposed Rule

Notwithstanding the proposed termination of the ReSC program in this rule, the statutory authority remains for the construction or substantial rehabilitation of housing for the elderly under sections 221 (d)(3) and (d)(4) and 231 of the National Housing Act (NHA), and for the purchase or refinancing of such housing under section 223(f) of the NHA. The Department will continue to make mortgage insurance available under these sections of the NHA for the development or preservation of housing for the elderly. However, HUD has determined that it is necessary expressly to prohibit insurance on ReSC's and to impose certain program specifications on other elderly housing programs. Accordingly, this rule proposes to amend 24 CFR parts 207, 221, and 231 to make clear that if elderly projects are to be insured under these programs, they must meet the following requirements:

New Construction or Substantial Rehabilitation.

(a) With respect to the insurance of mortgages to finance the new construction or substantial rehabilitation of projects designed for the elderly, revisions are proposed to be made to 24 CFR parts 221 and 231 (each of which authorizes such insurance). The revisions would apply the following limitations on nonshelter spaces, nonshelter services, and mortgage amount.

(1) For projects involving new construction, nonshelter spaces and accommodations may not exceed 10 percent of the gross square footage of the project. These areas include, but are not limited to, multipurpose rooms, lounges, arts and crafts rooms, libraries, and meeting rooms.

(2) For projects involving substantial rehabilitation, the Commissioner may approve a modest increase above 10 percent of gross square footage, where the increase in space is both justifiable and unavoidable because of the existing configuration of the project.

(3) Nonshelter services may not be made a mandatory condition of occupancy, and charges for any optional services offered will be periodically reviewed for reasonableness by the Commissioner.

(4) Nonshelter spaces may not include formal dining areas, nor may meal services be provided, either on a mandatory or an optional basis. This prohibition does not preclude the installation of modest dining equipment (e.g., a microwave or refrigerator) in a multipurpose room that would be suitable for parties or meetings. However, formal dining areas and scheduled meals are prohibited.

(5) There would be a prohibition on the inclusion of furniture and equipment costs in the mortgage amount. The cost of items capable of being moved, but having a relatively fixed location in the common area of building (e.g., sofas and chairs in a lounge, or reading tables in a library), may not be included in replacement cost for purposes of calculating the insurable mortgage amount.

Special spaces, services and amenities were encouraged in the ReSC program and mandatory nonshelter services and meals were permitted. HUD's instructions specifically allowed services and amenities, including nonshelter spaces, to exceed those typically found in noncongregate elderly projects and allowed major movable equipment such as lobby furniture to be included in replacement cost, which is not permitted in other rental housing programs. However, excessive features and amenities have resulted in costly projects requiring high rent levels for which there has been demonstrated a limited demand. For these reasons, the Department believes the proposed limitations set out in this rule are necessary and appropriate.

Purchase or Refinancing of Existing Projects.

(b) With respect to the insurance of mortgages to finance the purchase or refinancing of an existing project for the elderly, the rule proposes a revision to 24 CFR 207.32a (which authorizes such insurance) limiting the FHA Commissioner's insuring authority to cases where the project is already covered by a HUD-insured or Secretary-held mortgage.

The Department believes that purchase or refinance, without substantial rehabilitation, of ReSCs or similar facilities should be limited to those currently insured by HUD (or which are Secretary-held mortgages). This will, in some measure, protect the Insurance Fund by limiting the Department's risk to projects for which HUD is already at risk. In addition, we believe that there is a need for more restrictive mortgage limitations on existing project refinancings to eliminate equity take-outs for this category of projects. HUD's experience has been that, where equity take-out is allowed, HUD's risk is greater as equity take-out creates a major upward force on mortgage amounts. This rule also proposes to eliminate the 70-percent-of-value mortgage criterion that allows equity take-out with respect to the refinancing of existing elderly projects (see current § 207.32a(d)(1)(i)). HUD will thus lower financing costs in such refinancings, while supporting needed repairs and rehabilitation.

Further, it is proposed with respect to these existing projects:

(1) *Nonshelter services.* No nonshelter services may be made a mandatory condition of occupancy, and charges for any optional services offered will be

reviewed for reasonableness by the Commissioner.

(2) *Meal services and dining space.* Nonshelter spaces already constructed may include formal dining areas with meal services to be provided on an optional basis. The installation of modest dining equipment (e.g., a microwave or refrigerator) in a multipurpose room that would be suitable for parties or meetings is also allowable.

(3) *Prohibition on inclusion of furniture and equipment in mortgage amount.* The cost of items capable of being moved, but having a relatively fixed location in the common area of the building (e.g., sofas and chairs in a lounge, or reading tables in a library), may not be taken into account for purposes of calculating the insurable mortgage amount.

Finally, the rule would provide for the termination of the Retirement Service Center mortgage insurance program. HUD Notice H 83-58, dated December 28, 1983, governing the mortgage insurance program for retirement service centers, would be canceled, and the Commissioner would not accept any further applications for insurance on mortgages covering a retirement service center. The Commissioner would however, honor any conditional or firm commitments relating to ReSC's issued before the effective date of this rule. The scope of services allowable in other projects designed for the elderly would henceforth be limited in accordance with the criteria described earlier in this preamble and set forth in the text of the rule.

The effect of this proposed rule would be to end HUD's authority to insure mortgages covering ReSC's, in favor of providing elderly housing programs which are more economically feasible. This should result in elderly projects which, though they may still retain congregate features, have a much better prospect for financial viability.

Findings and Other Procedural Matters

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. ReSC has proved to be a small, narrowly based program which is financially unworkable. Better and more workable programs exist in which small entities can engage, both in the public and private sector.

This rule was listed as item 1187 on the Department's most recent Semiannual Agenda of rules, published on October 29, 1990 (55 FR 44530, 44546) under Executive Order 12291 and the Regulatory Flexibility Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(c) of the National Environment Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket clerk at the above address.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 67(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule do not have Federalism implications and, thus, are not subject to review under the Order. The rule will not affect the basic availability of FHA insured multifamily mortgage insurance. No programmatic or policy changes would result from this rule's promulgation which would affect existing relationships between the Federal Government and State and local governments.

Executive Order 12606, The Family. The General Counsel, as Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant changes in existing HUD policies and programs relating to family concerns will result from promulgation of this rule.

The catalog of Federal Domestic Assistance program numbers are 14.135 and 14.155.

List of subjects

24 CFR part 207

Mortgage insurance, Reporting and Recordkeeping requirements.

24 CFR part 221

Low and moderate income housing, Mortgage insurance.

24 CFR part 231

Aged, Mortgage insurance.

Accordingly, 24 CFR parts 207, 221 and 231 are proposed to be amended as follows:

PART 207—MULTIFAMILY HOUSING—MORTGAGE INSURANCE

1. The authority citation for part 207 would continue to read as follows:

Authority: Secs. 207, 211, National Housing Act (12 U.S.C. 1713, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Sections 207.258 and 207.259b are also issued under section 203(e), Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11(e)).

2. Paragraph (g) of § 207.32a would be revised to read as follows:

§ 207.32a Eligibility of mortgages on existing projects.

* * * * *

(g) *Additional requirements for certain properties.*—(1) *Eligible property in older declining urban areas and cooperative projects.* In addition to meeting the requirement in paragraph (f)(5) of this section and other applicable requirements of this section, the maximum mortgage amount for an existing project to be purchased or refinanced in an older, declining urban area, or for a cooperative project, shall be limited by the lowest of paragraph (b)(1), (b)(2), (c) or (d)(2) of this section.

(2) *Projects for the elderly.* The Commissioner may insure a mortgage executed in connection with the purchase or refinancing of an existing Project for the elderly only in cases where the Project is currently covered by a mortgage insured by the Commissioner or held by the Secretary. With respect to such projects for the elderly, the following additional requirements must be met:

(i) *Mortgage amount.* The principal amount of the new mortgage shall be limited by the lowest of the amounts set out in paragraphs (b)(1), (b)(2), (c) or (d)(1)(ii) of this section.

(ii) *Nonshelter services.* No nonshelter services may be made a mandatory condition of occupancy and charges for any optional services offered will be reviewed for reasonableness by the Commmissioner.

(iii) *Meal services and dining space.* Nonshelter spaces already constructed may include formal dining areas with meal services to be provided on an optional basis. Projects may also provide modest dining equipment (e.g., a microwave or refrigerator) in a multipurpose room that would be suitable for parties or meetings, rather than as a formal dining area.

(iv) *Prohibition on inclusion of furniture and equipment in mortgage amount.* The cost of items capable of being moved, but having a relatively fixed location in the common area of the building (e.g., sofas and chairs in a lounge, or reading tables in a library), may not be taken into account for purposes of calculating the insurable mortgage amount.

* * * * *

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

3. The authority citation for part 221 would continue to read as follows:

Authority: Secs. 211, 221, National Housing Act, 12 U.S.C. 1715b, 1715*l*, sec. 7(d), Department of Housing and Urban Development Act (14 U.S.C. 3535(d)); section 221.544(a)(3) is also issued under sec. 201(a), National Housing Act, 12 U.S.C. 1707(a).

4. Part 221 would be amended by adding a new § 221.546b, to read as follows:

§ 221.546b Projects designed for elderly.

With respect to projects for the elderly, the following additional requirements must be met:

(a) *Termination of Retirement Service Center mortgage insurance program.* HUD Notice H 83-58, dated December 28, 1983 governing the mortgage insurance program for retirement service centers, is canceled. The Commissioner will not accept applications for insurance on mortgages covering a retirement service center. The Commissioner will however, honor any conditional or firm commitments issued before [*effective date of this rule*]. The scope of services allowable in projects designed for the elderly, with mortgages insured under this part, shall be limited in accordance with the criteria set forth in this section.

(b) *Nonshelter spaces and accommodations.* (1) For projects involving new construction, nonshelter spaces and accommodations may not exceed 10 percent of the gross square foot area of the project. These areas include, but are not limited to, multipurpose rooms, lounges, arts and crafts rooms, libraries, and meeting rooms.

(2) For projects involving substantial rehabilitation, the commissioner may approve modest increases above 10 percent of gross square footage, where an increase in space is both justifiable and unavoidable because of the existing configuration of the project.

(3) *Nonshelter services.* No nonshelter services may be made a mandatory condition of occupancy. Charges for any optional services offered will be reviewed by the Commissioner for reasonableness.

(c) *Prohibition on meal services and dining space.* Nonshelter spaces cannot include formal dining areas, nor may meal services be provided on either a mandatory or an optional basis. This prohibition does not preclude the installation of modest dining equipment (e.g., a microwave or refrigerator) in a multipurpose room that would be suitable for parties or meetings. However, formal dining areas and scheduled meals are prohibited.

(d) *Prohibition on inclusion of furniture and equipment in mortgage amount.* The cost of items capable of being moved, but having a relatively fixed location in the common area of a building (e.g., sofas and chairs in a lounge, or reading tables in a library), may not be included in replacement cost for purposes of calculating the insurable mortgage amount.

PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

5. The authority citation for part 231 would continue to read as follows:

Authority: Secs. 221, 231, National Housing Act (12 U.S.C. 1715b, 1715v); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. Paragraph (a) of § 231.10 would be revised to read as follows:

§ 231.10 Development of property.

(a) *Commercial and special facilities.* The project may include such commercial and special facilities as the Commissioner determines to be adequate to serve the occupants of the project provided the following special requirements are met:

(1) For projects involving new construction, nonshelter spaces and accommodations may not exceed 10 percent of the gross square foot area of the project. These areas include, but are not limited to, multipurpose rooms, lounges, arts and crafts rooms, libraries, and meeting rooms.

(2) For projects involving substantial rehabilitation, the commissioner may approve modest increases above 10 percent of gross square footage, where an increase in space is both justifiable and unavoidable because of the existing configuration of the project.

(3) *Nonshelter services.* No nonshelter services may be made a mandatory condition of occupancy. Charges for any optional services offered will be reviewed by the commissioner for reasonableness.

(4) *Prohibition on meal services and dining space.* Nonshelter spaces cannot include formal dining areas, nor may meal services be provided on either a mandatory or an optional basis. This prohibition does not preclude the installation of modest dining equipment (e.g., a microwave or refrigerator) in a multipurpose room that would be suitable for parties or meetings. However, formal dining areas and scheduled meals are prohibited.

(5) *Prohibition on inclusion of furniture and equipment in mortgage amount.* The cost of items capable of being moved, but having a relatively fixed location in the common area of a building (e.g., sofas and chairs in a lounge, or reading tables in a library), may not be included in replacement cost for purposes of calculating the insurable mortgage amount.

* * * * *

Dated: November 6, 1990.

Arthur J. Hill,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90-27510 Filed 11-21-90; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 301 and 602

[IA-224-82]

RIN 1545-AE20

Backup Withholding and Due Diligence; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to backup withholding when a payee fails to provide a taxpayer identification number (TIN) in the manner required to a person required to make an information return, when the Internal Revenue Service or a broker notifies a payor or broker that a payee has furnished an incorrect TIN, when a payee is subject to notified payee underreporting or when a payee fails to certify, under penalties of perjury, that the payee is not subject to backup

withholding due to notified payee underreporting.

DATES: The public hearing will be held on Monday, March 4, 1991, and if necessary, Tuesday, March 5, 1991, beginning at 10 a.m. Outlines of oral comments must be received by Friday, February 15, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Building Auditorium, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (IA–224–82), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), room 4429, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202–566–3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 3406(a)(1)(A), (B), (C), and (D) of the Internal Revenue Code of 1986. The proposed regulations appeared in the **Federal Register** for Thursday, September 27, 1990, at page 39427 (55 FR 39427).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, February 15, 1991, an outline of oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90–27448 Filed 11–21–90; 8:45 am]

BILLING CODE 4830–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–549, RM–7464]

Radio Broadcasting Services; Joshua Tree, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Mel Yarmat, seeking the allotment of FM Channel 221A to Joshua Tree, California, as that community's first local broadcast service. Joshua Tree is located within 320 kilometers of the Mexican border, and, therefore, international coordination of this proposal with Mexico is required, pursuant to the terms of the *United States-Mexican FM Broadcasting Agreement of 1972*, 24 UST 1815, TIAS No. 7697. Coordinates for this proposal are 34–08–45 and 116–16–04.

DATES: Comments must be filed on or before January 7, 1991, and reply comments on or before January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Mel Yarmat, 19519 Shasta Road, Apple Valley, CA 92307.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–549, adopted October 30, 1990, and released November 16, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–27452 Filed 11–21–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–546, RM–7526]

Radio Broadcasting Services; Live Oak, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Day Communications, Inc., licensee of Station WQHL(FM), to substitute Channel 251C1 for Channel 251C2 at Live Oak, Florida, and to modify its license for Station WQHL(FM) to specify the higher powered channel. Channel 251C1 can be alloted to Live Oak in compliance with the Commission's minimum distance separation requirements with a site restriction of 23.5 Kilometers (14.6 miles) southwest, in order to avoid a short-spacing to a construction permit for Station WUVU(FM), Channel 250C2, St. Augustine, Florida, and a pending proposal to allot Channel 254A to Statenville, Georgia. The coordinates are North Latitude 30–07–02 and West Longitude 83–07–29. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in the higher powered channel at Live Oak, or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before January 7, 1991, and reply comments on or before January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Howard J. Barr, Pepper & Corazzini, 200 Montgomery Building, 1776 K Street, NW., Washington, DC 20006 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–546, adopted October 31, 1990, and released November 16, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–27451 Filed 11–21–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–547, RM–7477]

Radio Broadcasting Services; Claude, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Lucille Ann Lacy, permittee of Channel 239A, Claude, Texas, requesting the substitution of Channel 239C3 for Channel 239A at Claude and the modification of her construction permit to specify the higher class channel. The coordinates of Channel 239C3 at Claude are 35–06–34 and 101–21–23.

DATES: Comments must be filed on or before January 7, 1991, and reply comments on or before January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve petitioner's counsel as follows: James K. Edmunson, Gardner, Carton and Douglas, suite 750N, 1001 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–547, adopted October 31, 1990, and released November 16, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–27454 Filed 11–21–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–548, RM–7458]

Radio Broadcasting Services; Centerville, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Radio Property Ventures, permittee of Station KBCK(FM), Channel 289C1, Centerville, Utah, seeking the substitution of Channel 289C for Channel 289C1 at Centerville, Utah, and modification of its construction permit for Station KBCK(FM) to specify the higher powered channel. The coordinates for Channel 289C at Centerville are North Latitude 40–42–28 and West Longitude 112–07–56.

DATES: Comments must be filed on or before January 7, 1991, and reply comments on or before January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Howard J. Braun and Shelley Sadowsky, Rosenman & Colin, 1300 19th Street, NW., suite 200, Washington, DC 20036 (Counsel for Radio Property Ventures).

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–548, adopted October 31, 1990, and released November 16, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments.

See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27453 Filed 11-21-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-550, RM-7345]

Radio Broadcasting Services; Lafayette, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Lafayette FM Joint Venture, permittee of Station KRRQ(FM) Channel 238A, Lafayette, Louisiana, requesting the substitution of Channel 238C2 for Channel 238A at Lafayette and modification of its construction permit to specify operation on the higher class channel. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest or require that the petitioner demonstrate the availability of an additional equivalent channel at Lafayette. The coordinates for Channel 238C2 are 30-21-44 and 92-12-53. Use of this restricted site will prevent a short-spacing to Channel 237C3, Bayou Vista, Louisiana.

DATES: Comments must be filed on or before January 10, 1991, and reply comments on or before January 25, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Charles L. Spencer, Herbert & Spencer, 701 Laurel Street, Baton Rouge, Louisiana 70802 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-550, adopted October 31, 1990, and released November 19, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27578 Filed 11-21-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-552, RM-7331]

Radio Broadcasting Services; Monterey, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Manna Broadcasting Company, Inc., proposing the allotment of Channel 284A to Monterey, Tennessee, as its second local FM service. The coordinates for Channel 284A are North Latitude 36-15-29 and West Longitude 85-10-48.

DATES: Comments must be filed on or before January 10, 1991, and reply comments on or before January 25, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Kevin Paul, Manna Broadcasting, WATX Radio Station, P.O. Box 49665, Algood, Tennessee 38501.

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-552, adopted October 31, 1990, and released November 19, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27579 Filed 11-21-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-553, RM-7431]

Radio Broadcasting Services; Lynchburg, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Douglas Broadcasting, Inc., licensee of Station WGOL(FM), Channel 252A, Lynchburg, Virginia, asking the Commission to substitute Channel 250C3 for Channel 252A at Lynchburg and to modify its license to specify operation on the higher power channel. The coordinates for Channel 250C3, are North Latitude 37-24-54 and West Longitude 79-08-36.

DATES: Comments must be filed on or before January 10, 1991, and reply comments on or before January 25, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve petitioner's counsel as follows: John T. Scott, III, Esq., Crowell & Moring, 1001 Pennsylvania Avenue, NW., Washington, DC 20004-2505.

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-553, adopted October 31, 1990, and released November 19, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27580 Filed 11-21-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-551, RM-7385]

Radio Broadcasting Services; South Bend, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Blue Denim Music, Inc., proposing the allotment of Channel 289C3 to South Bend, Washington, as the community's first local FM service. The proposed coordinates for Channel 289C3 are North Latitude 46-39-48 and West Longitude 123-48-12. Canadian concurrence will be requested for this allotment.

DATES: Comments must be filed on or before January 10, 1991 and reply comments on or before January 25, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Dorothy B. Brazeau, President, Blue Denim Music, Inc., 2065 Ocean Avenue, Raymond, WA 98577.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-551, adopted October 31, 1990, and released November 19, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27581 Filed 11-21-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 74

[MM Docket No. 90-499; FCC 90-348]

Broadcast Service, Use of F3Y Emission for Encrypting Communications of Remote Pickup Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission adopts a Notice of Proposed Rule Making (*Notice*) inviting comment on several proposals to amend part 74 of its Rules to provide for the use of digital voice emission for encrypting aural communications of remote pickup stations. This action is taken to give licensees in the Broadcast Remote Pickup Service more flexibility and choice in how they transmit confidential information and other material that they do not wish disseminated without their control and/or approval.

DATES: Comments are due by January 4, 1991, and reply comments are due by January 22, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joseph M. Johnson, Mass Media Bureau, Policy and Rules Division, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

1. This is a synopsis of the Commission's Notice of Proposed Rule Making in MM Docket No. 90-499, FCC 90-348, adopted October 16, 1990, and released.

2. The complete text of this Notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of Notice of Proposed Rule Making

3. The Commission, through this Notice proposes changes to part 74 of its Rules to provide for the use of digital voice (F3Y) [1] emission for encrypting

[1] Strictly speaking, the designator F3Y has been supplanted by the more recently developed ITU designators F1E and G1E, representing, respectively, frequency modulated and phase modulated single-channel digital telephony. For the sake of convenience, F3Y will be used in this proceeding to refer to the F1E and G1E emissions.

aural communications of remote pickup broadcast stations. Stations that digitally encrypt communications relating to fast-breaking news events could prevent such information from being intercepted by unauthorized third parties able to monitor the stations' frequencies. This proceeding is prompted by the Commission's receipt of several applications to use F3Y emission in the Remote Pickup Broadcast Service. Because the use of F3Y emissions has been authorized in the private land mobile services for many years without technical or operational problems, and because spectrum usage patterns in the private land mobile services and the remote pickup broadcast service are similar, its authorization under part 74 is not expected to have any adverse impact.

4. Specifically, the Commission proposes to amend §§ 74.62 and 74.482 of its Rules to permit the use of digitized voice modulation. This would be done by adding the F3Y emission designator to the list of permissible emissions and adopting a requirement that identification of such stations be made using non-digital emissions. (We further propose to use the designator F3Y in part 74 until part 74 is revised to make all part 74 emission designators conform with current ITU specifications.)

5. Digital modulation allows licensees to scramble their communications in such a fashion that they are totally unintelligible to anyone listening on the channel. Once a signal is digitized and the separate bits of data are scrambled, it cannot be "reassembled" at the receiver unless the exact digitizing scheme used at the transmitter is also used at the receiver. For this reason, it is impossible for a non-compatible digital receiver, or an analog receiver, to demodulate an encrypted digital signal successfully. To an analog receiver listening on a digital channel, the digital transmission can sound like an increase in normal channel background noise. This makes it essential that all users on a channel, including digital users, identify their transmissions in such a way that everyone is made aware of their presence. Our proposal to require non-scrambled analog station identification is designed to satisfy this need. We wish in no way to penalize those licensees who choose to use analog modulation by subjecting them to harmful interference from digital users, but we do not believe that analog users should operate without regard for the presence of digital signals because those signals may seem to be mere noise.

6. With respect to technical compatibility, we note that the F3Y emission produces a signal waveform which differs considerably from its analog counterpart. The Commission's Rules (47 CFR 90.209(f)–(i)) contain emission limitations for the land mobile service. These limitations are applied to the shape of the digital waveform to minimize adjacent channel interference without unnecessarily restricting the design flexibility and usefulness of the digital transmitter. Because these limitations have worked well for several years, we propose to incorporate them in § 74.462 of the Rules.

7. Finally, we invite comment on our proposal to permit licensees in the Broadcast Remote Pickup Service to use F3Y emissions, subject to the conditions and limitations now imposed on the use of such emissions in the land mobile services. In particular, we seek comment and suggestions on limitations that might be needed to reduce adjacent channel interference.

Paperwork Reduction Act Statement

8. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and have been found to contain no new or modified recordkeeping requirements.

Ex Parte Consideration

9. This is a non-restricted proceeding. See § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Comment Information

10. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 4, 1991, and reply comments on or before January 22, 1991. No extension of these comment periods is anticipated. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Initial Regulatory Flexibility Act Analysis

11. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, this proceeding should have a beneficial impact on the Remote Pickup licensees under part 74 who choose to use the F3Y emission, because licensees would be permitted more latitude in the operation of their stations. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

12. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Inquiry, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.*, (1981)).

13. Authority for this action may be found at sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303.

List of Subjects in 47 CFR Part 74

Radio broadcasting; Television broadcasting.

Federal Communications Commission.

Willian F. Caton,

Acting Secretary.

[FR Doc. 90–27455 Filed 11–21–90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 90–561; FCC 90–370]

Miscellaneous Amendments to the Rules Governing the Amateur Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes a series of unrelated amendments in the rules for the Amateur Radio Services. These amendments include changes in terminology, technical standards, and operating requirements. The proposal is necessary in order to make generally minor rule changes which the petitioners believe would make the rules more useful. The effect of the proposal is to reflect preferred terminology, clarify the application of a rule, or assist in understanding a rule.

DATES: Comments are due on or before January 31, 1991. Reply comments are due on or before March 4, 1991.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted November 5, 1990, and released November 16, 1990. The complete text of this Notice of Proposed Rule Making, including the proposed rule amendments, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239) 1919 M Street, NW., Washington, DC. The complete text of this Notice of Proposed Rule Making, including the proposed rule amendments, may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. The Commission's proposal would make minor rule changes to make the rules more useful. Specifically, the Commission proposes to change terminology, clarify the application of some rules, and make changes that assist in understanding a rule.

2. The proposed rules are set forth at the end of this document.

3. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1206(a) of the Commission's Rules, 47 CFR 1.1206(a), for provisions governing permissible *ex parte* contacts.

4. In accordance with section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, the Commission certifies that these rule changes would not, if promulgated, have a significant economic impact on a substantial number of small entities. The Amateur Radio Service may not be used to transmit any communication to facilitate the business or commercial affairs of any party. See 47 CFR 97.113(a).

5. This Notice of Proposed Rule Making and the proposed rule amendments are issued under the authority of section 4(i) and (303)(l)(1) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(l)(1) and (r).

6. A copy of this *Notice of Proposed Rule Making* will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Proposed Rule Changes

Part 97 of chapter I of title 47 of the Code of Federal Regulation is proposed to be amended as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 301–609, unless otherwise noted.

2. Section 97.3 is amended by revising paragraph (a)(8), by redesignating paragraphs (a)(36), (a)(37), (a)(38), (a)(39), and (a)(40) as paragraphs (a)(37), (a)(39), (a)(41), (a)(42) and (a)(43) respectively, and by adding new paragraphs (a)(36), (a)(38), and (a)(40) to read as follows:

§ 97.3 Definitions

(a) * * *

(8) *Bandwidth.* The width of a frequency band outside of which the mean power of the transmitted signal is attenuated at least 26 dB below the mean power of the transmitted signal within the band.

* * * * *

(36) *Space telemetry.* Telemetry for the transmission from a space station of results of measurements made in a spacecraft, including those relating to the functioning of the spacecraft.

* * * * *

(38) *Telecommand.* A one-way transmission to initiate, modify, or terminate functions of a device at a distance.

* * * * *

(40) *Telemetry.* A one-way transmission of measurements at a distance from the measuring instrument.

* * * * *

3. Section 97.111 is amended by revising paragraph (b)(3) and by adding new paragraph (b)(7) to read as follows:

§ 97.111 Authorized transmissions.

* * * * *

(b) * * *

(3) Transmissions necessary to telecommand a device from a distant location.

* * * * *

(7) Transmissions of telemetry.

4. Section 97.113(b)(2) is revised to read as follows:

§ 97.113 Prohibited transmissions.

* * * * *

(b) * * *

(2) The station schedules operations on at least six amateur service MF and HF bands using reasonable measures to maximize coverage;

* * * * *

5. Section 97.201(d) is revised to read as follows:

§ 97.201 Auxiliary station.

* * * * *

(d) An auxiliary station may be automatically controlled.

* * * * *

6. Section 97.207(f) is revised to read as follows:

§ 97.207 Space station.

* * * * *

(f) Space telemetry transmissions may consist of specially coded messages intended to facilitate communications or related to the function of the spacecraft.

* * * * *

7. The heading of § 97.211 is revised to read as follows:

§ 97.211 Space telecommand station.

8. Section 97.213 is amended by revising the heading and the introductory text to read as follows:

§ 97.213 Telecommand of an amateur station.

An amateur station on or within 50 km of the Earth's surface may be under telecommand where:

* * * * *

9. Section 97.215 is amended by revising the heading to read as follows:

§ 97.215 Telecommand of model craft.

10. New § 97.217 is added to read as follows:

§ 97.217 Telemetry.

Telemetry transmitted by an amateur station on or within 50 km of the Earth's surface is not considered to be codes or ciphers intended to obscure the meaning of communications.

11. Section 97.309(a) is revised to read as follows:

§ 97.309 RTTY and data emission codes.

(a) Where authorized by §§ 97.305(c) and 97.307(f) of this Part, an amateur station may transmit a RTTY or data emission using the following specified digital codes:

(1) The 5-unit, start-stop, International Telegraph Alphabet No. 2, code defined in International Telegraph and Telephone Consultative Committee Recommendations F.1, Division C (commonly known as Baudot).

(2) The 7-unit code specified in International Radio Consultative Committee Recommendation CCIR 476–

2 (1978), 476-3 (1982), 476-4 (1986) or 625 (1986) (commonly known as AMTOR).

(3) The 7-unit code defined in American National Standards Institute X3.4-1977 or International Alphabet No. 5 defined in International Telegraph and Telephone Consultative Committee Recommendation T.50 or in International Organization for Standardization, International Standard ISO 646 (1983), and extensions as provided for in CCITT Recommendation T.61 (Malaga-Torremolinos, 1984) (commonly known as ASCII).

* * * * *

[FR Doc. 90-2[illegible] 77 Filed 11-21-90; 8:45 am]
BILLING CODE [illegible]-01-M

Notices

Federal Register
Vol. 55, No. 226
Friday, November 23, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Agency Information Collection Activities Under OMB Review

AGENCY: Action.

ACTION: Information Collection submitted to the Office of Management and Budget for Review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the federal domestic volunteer agency.

Background

Under the Paperwork Reduction Act (44 U.S.C., chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted three copies of the attached information collection proposal to OMB, with a request for an expedited review by December 17, 1990. Comments may be directed to:

Janet A. Smith, Clearance Officer, ACTION, 1100 Vermont Ave., NW., Washington, DC 20525, Tel: (202) 634-9245.

Title of Form: ACTION Training Conference Needs Assessment.

Action Form No: OPRE 91-2.

Need and Use: The form is needed to inform the Office of Domestic Operations on the perceived training needs of ACTION grantees. The information will be used to plan the agenda for ACTION's annual training conferences for project directors.

Type of Request: New.

Respondent's Obligation to Reply: Voluntary.

Frequency of Collection: Before each training conference, but no more than once a year.

Estimated Number of Annual Responses: 1,957.

Average Burden Hours per Response: .25.

Estimated Annual Reporting or Disclosure Burden: .25.

Janet A. Smith,
Clearance Officer, ACTION.

Action Training Conference Needs Assessment

1. Please identify the ACTION programs you are currently funded by. Check all that apply.

- ☐ VISTA
- ☐ VISTA LITERACY CORPS
- ☐ STUDENT COMMUNITY SERVICE
- ☐ DRUG ALLIANCE
- ☐ RSVP
- ☐ SENIOR COMPANIONS
- ☐ FOSTER GRANDPARENTS

2. Select the workshops you want offered at the next Training Conference you attend. We need to make the best use of our time while we are together. To do this, we want you to tell us in what areas you most want training. In the section below, we have listed several potential workshop ideas grouped according to a few broad categories. Read through the list and select ten (10) that would be of most use to you.

Category One: Volunteer Recruitment

- ☐ Hard-to-reach volunteers
- ☐ Targeting segments in the community
- ☐ Public awareness campaigns
- ☐ How to use the media
- ☐ Word-of-mouth strategies
- ☐ Other marketing strategies

Category Two: Training and Development

- ☐ Orientation for new volunteers
- ☐ Training programs for volunteers
- ☐ Interviewing and screening volunteers
- ☐ Designing project training plans
- ☐ Accessing resources in your community
- ☐ Understanding adult training theory
- ☐ Difficult volunteer placements

Category Three: Resource Mobilization

- ☐ Dealing with United Way restrictions
- ☐ Motivating others to help out
- ☐ Developing a fund raising plan
- ☐ Raising money in a poor community
- ☐ First steps for beginners
- ☐ Building organization support
- ☐ Recuiting work stations

Category Four: Evaluation

- ☐ Evaluating volunteer performance
- ☐ Evaluating client needs
- ☐ Designing evaluations for advisory councils
- ☐ Evaluating project performance
- ☐ Evaluating station performance

Category Five: Liability

- ☐ Liability and volunteers
- ☐ Liability and in-home services
- ☐ Guardianship and similar issues

Category Six: Volunteer Recognition

- ☐ Designing creative recognition activities
- ☐ Creating a positive setting for volunteers
- ☐ Using community resources for recognition
- ☐ Using the media

Category Seven: Program Management

- ☐ Building a program from scratch
- ☐ Basics (plan, organize, staff, direct, control)
- ☐ Conflict resolution
- ☐ Delegation of authority
- ☐ Using volunteer to help in administration
- ☐ Basic record keeping systems
- ☐ Use of computers
- ☐ Monitoring and reporting

Category Eight: Public Relations

- ☐ Designing a public relations plan
- ☐ Public speaking techniques
- ☐ How to design and use newsletters
- ☐ Using personal networks in public relations

Category Nine: Organization and Planning

- ☐ How to do current year planning
- ☐ How to do long range planning
- ☐ How to form an Advisory Council
- ☐ Maximizing Advisory Council resources
- ☐ Working with grass roots organizations
- ☐ Working with health and social service providers
- ☐ Using corporate volunteers

Category Ten: Special Programming Needs

- ☐ Approaches to rural programming
- ☐ Drug abuse prevention among the elderly
- ☐ Non-Federally funded volunteers
- ☐ Handling the aging, older volunteer
- ☐ Meeting transportation needs

3. What additional topics should be included in the conference agenda?

4. Do you have specific expertise that you have that you would be willing to share?
1 YES
2 NO

5. Please specify the content area (knowledge, technique, skill), how you propose to present it (workshop, panel discussion, lecture, etc.), and your name and phone number so that we may contact you.
NAME:
ADDRESS:
PHONE:

6. Are there any other suggestions you have for the upcoming Project Directors Training Conference?

[FR Doc. 90-27539 Filed 11-21-90; 8:45 am]
BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 16, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 400–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

New Collection

- Food Safety and Inspection Service

Net Weight Labeling of Meat and Poultry Products
Annually
State or local governments; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 35,000 responses; 2,916 hours; not applicable under 3504(h)
Roy Purdie (202) 447–5372

Reinstatement

- Soil Conservation Service

Agriculture and Urban Damage Surveys SCS ENC 1 through 6
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Small businesses or organizations; 1,750 responses; 2,850 hours; not applicable under 3504(h)
Gail Updegraff, (202) 447–2307

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 90–27475 Filed 11–21–90; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

The Development of Gypsum Mineral Resources in the Nebo Wilderness Area, Uinta National Forest, UT

AGENCY: Uinta National Forest, Juab County, Utah, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, announces the intent to prepare an Environmental Impact Statement for a proposal to develop a gypsum mining operation within the Uinta National Forest. The initial phase of the proposed action is a new operation on the McFarlane 1 Claim, located in sections 22 and 27, T. 12 S., R. 1 E., SLM. This is one of three claims proposed for ultimate development, described in patents dated July 22, 1926, as recorded in Book 103, page 99, of Juab County, Utah, Land Status Records. These claims have reserved mineral rights. Surface rights of the land were conveyed to the United States in October 1965. The proposed operation is located within the bounds of the Mount Nebo Wilderness, in Gardner Canyon, about three air miles northeast of Nephi, Utah.

DATES: Forest Service officials will hold a public meeting at 7 p.m. on December 19, 1990, at the Supervisor's Office, 88 West 100 North, Provo, Utah.

ADDRESSES: Don T. Nebeker, Forest Supervisor, Uinta National Forest, Provo, Utah, is the responsible official.

FOR FURTHER INFORMATION CONTACT: Questions concerning the project analysis or preparation of the Environmental Impact Statement should be directed to Thomas L. Tidwell, District Ranger, Spanish Fork Ranger District, 44 West 400 North, Spanish Fork, Utah 84660, phone (801) 798–3571.

SUPPLEMENTARY INFORMATION: The Uinta National Forest Land and Resource Management Plan was approved in 1984. Standards and guidelines of the Plan direct the use and development of the area being considered in this project proposal. The area is also subject to management guidelines regulating uses and activities outlined in the Congressional Bill that established the Mount Nebo Wilderness Area.

The proposal involves upgrading 2¼ miles of existing jeep road in Gardner Canyon and creating an open pit mine by removing an initial 30,000 tons of ore. An estimated 100,000 tons of ore would be removed annually during the operational life of the proposed mine. The total quantity of ore is not known, but it is calculated that at least 1,000,000 tons of gypsum are present within the bounds of the three claims. Approximately sixty acres within the wilderness would be disturbed as a result of mining this ore body.

Road improvements would include the placement of drainage improvements and a gravel surface adequate to accommodate truck traffic. The road would remain single lane and in its present location. About 1¼ miles of this road are located within wilderness on National Forest System Land; the remainder of the road is on private land.

An Environmental Assessment was written for this project in August of 1990. It was determined that the environmental effects of the proposed project are significant, and that an Environmental Impact Statement is required.

A range of alternatives for this proposal, including "no action", will be considered. One alternative will be to approve and authorize the proposal as described in the Code of Federal Regulations, Title 36, § 251.15 and in the Forest Service Manual, section 2832. Other alternatives will include opportunities for various levels of mineral development and rights acquisition. An alternative for removing wilderness designation from the lands covered by the reserved mineral rights will be considered.

Federal, State and local agencies, potential developers, and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues
2. Identification of issues to be analyzed in depth
3. Elimination of insignificant issues or those which have been covered by previous environmental reviews
4. Determination of potential cooperating agencies and assignments of responsibilities.

The Fish and Wildlife Service and the Utah State Department of Environmental Health, Oil, Gas and Mining Division, will be invited to participate as cooperating agencies in evaluating potential impacts on the various resources involved. The resources to be analyzed include, but are not limited to, air and water quality, and threatened and endangered species habitats, if any such species are found to exist in the potential development area.

Analysis of the proposal is expected to take about eight months. The Draft Environmental Impact Statement is projected to be available for public review by late spring in 1991.

The comment period on the Draft Environmental Impact Statement will be 45 days from the date the notice of its availability appears in newspapers designated for legal notices for the Uinta National Forest (Deseret News, Daily Herald, Wasatch Wave, and Payson Cronicle). It is very important that those interested in the management of the area affected by the proposed project participate at that time. To be the most helpful, comments on the Draft Environmental Impact Statement should be as specific as possible, and may address the adequacy of the statement or the merits of the alternatives discussed (*see* the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal Court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' positions and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections which could have been raised at the draft stage may be waived if not raised until after completion of the Final Environmental Impact Statement. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). This is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement.

The Final Environmental Impact Statement for this project proposal is tentatively planned to be completed by late summer 1991.

Don T. Nebeker,

Forest Supervisor.

[FR Doc. 90–27462 Filed 11–21–90; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Tucannon River Watershed Project; Columbia and Garfield Counties, WA

AGENCY: Soil Conservation Service; USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended; the Council on Environmental Quality NEPA Regulations (40 CFR parts 1500–1508); and the Soil Conservation Service NEPA Procedures (7 CFR part 650); the Soil Conservation Service, US Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tucannon River Watershed Project, Columbia and Garfield Counties, Washington.

FOR FURTHER INFORMATION CONTACT: Lynn A. Brown, State Conservationist, Soil Conservation Service, Rock Pointe Tower II, suite 450, W. 316 Boone Avenue, Spokane, Washington 99201–2348, telephone (509) 353–2337.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Lynn A. Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns providing technical and financial assistance to stabilize and maintain the productive capacity of soil in the watershed. Improved management practices will reduce runoff and increase water available in the crop root zone. Sheet and rill erosion will be reduced by 171,470 tons per year. Sediment will be reduced by 103,420 tons per year. Fish production will be restored by an estimated 2,000 salmon and steelhead per year. Rangeland values will be restored by an estimated 5,100 animal unit months. Wildlife habitat values will be improved by an estimated 1 to 14 percent. Estimated cost of the project is $3.9 million.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Basic data developed during the environmental assessment are on file and may be reviewed by contacting Lynn A. Brown.

No administrative action implementation of the proposal will be taken until thirty (30) days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: November 13, 1990.

Lynn A. Brown,

State Conservationist.

[FR Doc. 90–27461 Filed 11–21–90; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent to Solicit Comments on Matters Relating to Subsistence Take of Fish and Wildlife on Public Lands in Alaska: Rural and Non-Rural Determinations

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Request for public comments.

SUMMARY: This notice clarifies and expands a similarly titled notice published on October 5, 1990, (55 FR 40897). The Federal Subsistence Board (Board), on behalf of the Department of Agriculture and Department of Interior land managing agencies in Alaska, announces that it will be conducting meetings and is soliciting comments on the preliminary determinations of "rural" and "nonrural" under the process described in "Temporary Subsistence Management Regulations For Public Lands in Alaska" published in the **Federal Register** (55 FR 26114) on June 29, 1990.

DATES: Written comments should be received by December 10, 1990. Public meetings to receive comments will be held throughout Alaska during October and November. Widespread local announcement of these meetings will be provided as soon as possible.

ADDRESSES: Comments should be addressed to the Regional Director, U.S. Fish and Wildlife Service, ATTN: Richard Pospahala, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Richard Pospahala, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447.

SUPPLEMENTARY INFORMATION: Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires the Secretaries of Agriculture and Interior to implement a program to grant preference in favor of subsistence uses of fish and wildlife on public lands unless the State of Alaska implements a susbsistence program

consistent with ANILCA's requirements. The State of Alaska had such a program that was found by the Department of the Interior to be consistent with ANILCA. In December 1989, however, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural limitation in the State subsistence definition, which is required by ANILCA, violates the Alaska Constitution. The Court stayed the effect of the decision until July 1, 1990.

As a result of the decision, the Departments of Agriculture and Interior were required to take over implementation of Title VIII of ANILCA on public lands on July 1, 1990. The Federal Subsistence Board, as the managing entity, is starting the process of collecting public comments relating to a number of issues on subsistence management on public lands. Federal subsistence management would impact the subsistence use of fish and wildlife resources on public lands in Alaska managed by the Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Indian Affairs, Forest Service, Air Force, Army and various other Federal land managing agencies. Coupled with the rural determinations process, special efforts will be made to collect comments on environmental effects, effects on subsistence users and resources, proposed "customary and traditional" determinations and comments on the adequacy of the present local advisory committee/regional council system as it relates to subsistence users. Comments will also be accepted on the existing Temporary Subsistence Management Regulations in order that the Board may begin drafting a set of proposed regulations to be published for public review at a later date.

Rural and Non-Rural Determinations—The definition of rural is, perhaps, the key element in the regulations. ANILCA did not define rural. The State has been struggling with the rural definition since passage of ANILCA. The Ninth Circuit Court of Appeals ruled in 1988 that the rural definition in the State's 1986 subsistence law is not consistent with ANILCA and the common meaning of the term rural. The legislative history of ANILCA provides some insight. Senate Report 96-413 identified Anchorage, Juneau, Fairbanks and Ketchikan as examples of non-rural communities in 1980 and Barrow, Kotzebue, Nome, Bethel and Dillingham as examples of rural communities. It further states that the rural nature of such communities is not a static condition and can change.

The Federal government recognizes that communities of the same size may vary greatly in character for a variety of reasons. Therefore, no single population number adequately serves as a dividing line between rural and non-rural communities. Before examining community characteristics, the aggregation of communities that are socially and economically integrated took place. The criteria used to determine if communities were socially and economically integrated included: (1) Do 15% or more of the working people commute from one community to another; (2) do they share a common school district; (3) are daily or semi-daily shopping trips made. The aggregation criteria were developed by working with the Institute of Social & Economic Research, the Alaska Department of Labor and the Municipality of Anchorage.

Communities were aggregated according to these criteria; the population for the community or area was determined; and preliminary rural/non-rural screening of communities began. The process to determine rural is designed to incorporate the common meaning of rural and is based on two rebuttable presumptions.

A community of area of less than 2,500 population is deemed rural unless it exhibits characteristics of a non-rural nature or area or is part of an urbanized area. The number 2,500 was selected because it is the figure used by the U.S. Census Bureau to divide rural from non-rural. A community between 2,500 and 7,000 bears no presumption as to its rural or non-rural status. Some communities that fall in this population range may have rural characteristics.

Communities 7,000 or greater in population are presumed to be non-rural. The 7,000 population level was chosen because Ketchikan, the smallest of the non-rural communities mentioned in the Senate report, was approximately that size when ANILCA was passed and consequently is an indicator of Congressional intent. Communities in Alaska can approach and may rarely exceed a population level of 7,000 and still be rural in character.

This definition and process recognizes that population alone is not the sole indicator of a rural or non-rural community. This flexibility is consistent with approaches other Federal agencies have used to determine if communities are rurual. Indicators which the Federal Subsistence Board will evaluate to decide if a community is rural or non-rural in character are: fish and game use; development and diversity of the economy, community infrastructure, transportation, and educational institutions.

Fish and game use is the variety of species used per household, the participation of households using subsistence resources (percent of households in community), and the level of harvest based on the average pounds per-capita used. The economy of an area was considered to include whether employment was considered high, moderate, low, seasonal or year-round; the unemployment rate; the 1985 average taxable income level, the diversity of services within the community or area, and the cost of food index.

Community Infrastructure as a measure of urban development (based on the fact that electricity costs are normally lower in urban areas verses rural areas) included in the 1988 average cost of electricity per kilowatt hour. Transportation included the variety and means, the predominate methods and the number of miles of road system. Education included the level of education provided in a community.

The community characteristics were developed through coordination with the Alaska Department of Labor, Alaska Department of Revenue, the Institute of Social and Economic Research, the Alaska Department of Commerce and Economic Development, the Alaska Department of Fish & Game and the Alaska Energy Authority.

Three samples are explained below:

(A) *Ketchikan Area*—This area has a population of 12,296 and thus is presumed to be non-rural. During the development of ANILCA, Congress identified Ketchikan as a non-rural community and the State subsistence management program also listed Ketchikan as non-rural. The Federal Subsistence Board recognized that Ketchikan has grown considerably since 1980 and that social and economic boundaries have changed. The economy of the area is well developed exhibiting non-rural characteristics even though fish and game use data are not available. Since the area is presumed to be non-rural because of its population, and there is no community characteristic data that indicates a rural character, the Board voted to propose the Ketchikan area for non-rural status.

(B) *Saxman*—Was determined to be socially and economically integrated with Ketchikan. In making this determination, the Federal Subsistence Board recognized that Ketchikan was identified as non-rural by Congress; thus Saxman would lose it's current subsistence status once integrated with Ketchikan. Because of Saxman's close proximity to Ketchikan; because

Saxman shares a common school district and Saxman residents make daily or semi-daily shopping trips to Ketchikan; and greater than 15% of the working population of Saxman commutes to Ketchikan to work; the Federal Subsistence Board integrated the community with Ketchikan recognizing it's subsistence status would be relinquished.

(C) *Sitka and Kodiak*—Both of these areas have a population of greater than 7,000, thus they are presumed to be non-rural. When the community characteristics are evaluated, the economies of the areas tend to be more developed like those of Juneau or Fairbanks than the more rural areas like Nome or Kotzebue. In addition, the fish and game use in Sitka and Kodiak is generally lower than the rural communities. Since both of these areas had populations greater than 7,000 and were consequently presumed non-rural and their community characteristics do not indicate they are rural, the Board voted to propose them for non-rural status.

The following communities/areas are tentatively proposed as nonrural. Communities which are grouped (below) are considered to be socially and economically integrated. All communities or areas not listed are tentatively proposed as rural. Individuals, communities or organizations desiring to comment on the status of any community or area should provide data related to the indicators cited above. The Federal Subsistence Board will make their final determination on rural/nonrural status of communities and areas by December 31, 1990 after evaluating all public comments.

Tentatively Proposed

Nonrural Communities/Areas in Alaska for the Determination of Subsistence Priorities

Municipality of Anchorage

Kenai Area—(including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifonsky, Kasilof and Clam Gulch)
Wasilla Area—(including Palmer, Wasilla, Sutton, Big Lake, Houston and Bodenberg Butte)

Fairbanks North Star Borough

Juneau Area—(including Juneau, West Juneau and Douglas)
Ketchikan Area—(including Clover Pass, North Tongass Highway, Ketchikan East, Mountain Pass, Herring Cove, Saxman, Saxman East, and parts of Pennock Island)
Kodiak Area—(including Kodiak city, the Coast Guard Base and Chiniak)
City of Sitka—(including the contiguous developed area, the maintained road system and the inhabited islands in Sitka Sound.)
Homer area—(including Homer, Anchor Point, Kachemak City and Fritz Creek)
Seward Area—(including Seward and Moose Pass)
Valdez Area—(Valdez)
Adak

This Notice solicits comments specifically on the proposed "rural/nonrural" determination. Comments should delineate where problems exist, provide data to support any comment and suggest proposed changes.

It remains the Federal government's intention to work in close cooperation with the State. Title VIII allows reasonable regulations to provide access and to protect the viability of all wild renewable resources. The protection of wild renewable resources and the opportunity to utilize those resources on public lands by rural Alaskan residents for subsistence purposes are of paramount importance to the Federal government and to the public as a whole.

Extensive public involvement will also be included in the development of the permanent regulations and annual setting of seasons and bag limits. The regulation writing effort will include a Notice of Intent, a public comment period and the acceptance of written and verbal comments throughout the process.

Walter O. Stieglitz,

Chairman, Federal Subsistence Board, Regional Director, U.S. Fish and Wildlife Service.

Michael A. Barton,

Regional Forrester, USDA—Forest Service.

[FR Doc. 90-27463 Filed 11-21-90; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Institute of Standards and Technology

Title: Power and Energy Measurements Impact Study

Form Number: N/A

Type of Request: New collection

Burden: 100 respondents; 200 reporting hours

Needs and Uses: The Center for Electronics and Electrical Engineering of the National Institute of Standards and Technology (NIST) provides power and energy measurement calibrations to U.S. electric utilities. For this calibration progam to have maximum economic impact, it must concentrate on the calibration problems that are most important to U.S. electric utilities.

The purpose of this survey is to obtain data and information with which to evaluate and improve the NIST power and energy calibration services. The survey is designed to collect information on the economic impact of the services provided and the effects of these services in minimizing duplication of facilities by the U.S. electric utilities. Information is also sought on unsolved calibration problems that should receive future NIST priority.

Affected Public: Business, federal agencies

Frequency: One-time response

Respondent's Obligation: Voluntary

OMB Desk Officer: Robert Veeder, (202) 395-3785

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Robert Veeder, OMB Desk Officer, room 3235, New Executive Office Building, Washington, Dc 20503.

Dated: November 16, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-27493 Filed 11-21-90; 8:45 am]

BILLING CODE 3510-13-M

International Trade Administration

[A-588-816]

Final Determination of Sales at Less Than Fair Value: Benzyl P-Hydroxybenzoate from Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that imports of Benzyl p-hydroxybenzoate (benzyl paraben) from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs

BEST COPY AVAILABLE

Service to continue to suspend liquidation of all entries of benzyl paraben from Japan. The ITC will determine by February 5, 1991, whether these imports injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Ross Cotjanle, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2815 or (202) 377-3534, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that imports of benzyl paraben from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended, 19 U.S.C. 1673d (the Act). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

The Department published its preliminary determination in the **Federal Register** on October 10, 1990 (55 FR 41258). We received neither written comments nor a request for a hearing from either petitioner or the Japanese producer.

Scope of Investigation

The product covered by this investigation is benzyl paraben. Benzyl paraben is currently classified under HTS item number 2918.29.50 (previously classified under item number 404.47 of the Tariff Schedules of the United States). The HTS item number is provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of the investigation.

Period of Investigation

The period of investigation is January 1, 1990, through June 30, 1990.

Fair Value Comparisons

To determine whether sales of benzyl paraben from Japan for export to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We used best information available as required by section 776(c) of the Act because the respondent, Ueno Fine Chemicals Industry, Ltd. (Ueno), refused to respond to the Department's request for information. We determined that the best information available was information submitted by the petitioner as detailed below.

United States Price

United States price is based on the price at which Ueno was allegedly selling benzyl paraben to a U.S. customer, as reported in the petition. We adjusted this price for credit costs, indirect selling expenses, U.S. inland freight, U.S. import duty, handling charges, ocean freight and insurance based on information contained in the petition.

Foreign Market Value

We based foreign market value on the price at which Ueno was allegedly selling benzyl paraben in Japan, as reported in the petition. We adjusted the home market price for credit costs, indirect selling expenses up to the amount of the selling expenses incurred on U.S. sales, and Japanese inland freight based on information contained in the petition.

Interested Party Comments

We received no comments, either written or oral, from either the petitioner, the Japanese producer, or any other party.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation, under section 733(d) of the Act, of all entries of benzyl paraben from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after October 10, 1990, the date of publication of the preliminary determination in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the foreign market value of the subject merchandise from Japan exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

The dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Ueno Fine Chemicals Industry, Ltd.	126.00
All others	126.00

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we will make available to the ITC on request all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury to, or the material retardation of the establishment of, an industry in the United States does not exist with respect to benzyl paraben, the proceeding will be terminated and all securities posted as a result of the suspension will be refunded or cancelled.

However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all entries of benzyl paraben from Japan, entered on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: November 15, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-27564 Filed 11-21-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-602]

Preliminary Results of Antidumping Duty Administrative Review: Certain Forged Steel Crankshafts from the United Kingdom

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In response to a request by United Engineering & Forging (UEF), the Department of Commerce is conducting an administrative review of the antidumping duty order on certain forged steel crankshafts (CFSCs) from the United Kingdom. The review covers UEF, a manufacturer and exporter of CFSCs to the United States, and the period September 1, 1988, through August 31, 1989. We preliminarily determine the dumping margin to be 28.14 percent. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: November 23, 1990.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Brad Hess, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington; DC 20230, telephone: (202) 377-8830 or (202) 377-3773, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 2, 1990, the Department published in the **Federal Register** (55 FR 45) its final results of the administrative review on CFSCs from the United Kingdom covering the period September 1, 1987, through August 31, 1988. On October 2, 1989, UEF requested, in accordance with 19 CFR 353.22(a), that we conduct this administrative review. We published a notice of initiation on October 25, 1989 (54 FR 43438). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of forged carbon or alloy steel crankshafts with a shipments weight between 40 and 750 pounds whether machined or unmachined. Such merchandise is classifiable under *Harmonized Tariff Schedule* (HTS) item numbers 8483.10.10 and 8483.10.30. Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or greater than 750 pounds are subject to this review. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers UEF, the only known manufacturer and/or exporter of CFSCs from the United Kingdom to the United States, and the period September 1, 1988, through August, 31, 1989.

Such or Similar Merchandise

In determining similar merchandise comparisons, we considered the following physical characteristics, which appear in order of importance: (1) configuration (*i.e.*, twisting, number of throws, number of bearings, number of flanges, and number of counterweights), (2) weight, (3) forging method, and when necessary, engine type.

United States Price

We based United States price on purchase price in accordance with section 772(b) of the Act, because all sales to the first unrelated purchaser took place prior to importation into the United States.

We calculated purchase price based on packed, c.i.f. or delivered prices to customers in the United States. We made deductions for foreign inland freight, U.S. brokerage and handling charges, ocean freight, marine insurance, U.S. import duties, and U.S. inland freight, in accordance with section 772(d)(2) of the Act. For certain c.i.f. sales, however, foreign inland freight, U.S. inland freight, U.S. import duties, and brokerage and handling charges were not reported. Therefore, in accordance with section 776(c) of the Act, we have relied upon the best information available in these preliminary results for those sales. As best information, we have applied the average rate charged on similar c.i.f. sales for foreign inland freight, U.S. inland freight, U.S. import duties, and brokerage and handling charges.

Where home market sales were used for comparisons, we added to the U.S. selling price the amount of value-added taxes (VAT) that would have been collected if the merchandise had not been exported.

For one crankshaft model, we increased U.S. price to account for tooling and manufacturing costs that were not included in the U.S. sales invoice, but were billed separately to the U.S. customer. Such costs are normally considered a component of the U.S. price for this merchandise. UEF had allocated a portion of the tooling charges over expected crankshaft production and a portion over only some of the expected crankshaft production. For these preliminary results, we have allocated these costs over all expected crankshaft production.

We also made adjustments to U.S. sales price, as appropriate, for supplemental invoices which corrected price and quantity terms on the original sale invoices.

Foreign Market Value

In order to determine whether there were sufficient sales of CFSCs in the home market to serve as the basis for calculating foreign market value (FMV), we compared the volume of home market sales of the such or similar category (*i.e.*, all CFSCs) to the volume of third country sales, in accordance with section 773(a)(1) of the Act. We determined that sales in the home market are the most appropriate basis for calculating FMV. For sales of two U.S. products, we used constructed value (CV) as the basis for FMV because we could not adjust for the differences between twisted and untwisted crankshafts. We also used CV as the basis for FMV were we identified comparable home market products but were unable to find contemporaneous sales.

Were home market sales were used for comparisons, we calculated FMV based on packed, ex-factory or delivered prices to customers in the United Kingdom. We made deductions, where appropriate, for home market freight and rebates. We also made adjustments to FMV, where appropriate, for supplemental invoices which corrected price and quantity terms on the original sale invoice.

For all home market models, UEF indicated that packing costs were included in the reported price but failed to separately identify those costs. Consistent with our treatment of packing in both the administrative review covering the period September 1, 1987, through August 31, 1988, and in the original investigation of sales at less than fair value, we only deducted home market packing costs when such costs were separately reported. In accordance with section 773(a)(1) of the Act, we then added U.S. packing costs to all home market prices.

Because all price-to-price comparisons involved purchase price sales, we made circumstances of sale adjustments, where appropriate, for differences in credit expenses, warranties, taxation (VAT), and after-sale warehousing, in accordance with 19 CFR 353.56(a). Because UEF reported adjustments to the original invoice price for some home market and U.S. sales, we recalculated credit expenses for both home market and U.S. sales to account for these adjustments. UEF calculated U.S. credit expenses using a U.S. interest rate. However, it did not receive any dollar-denominated financing during the period of review. Therefore, we recalculated U.S. credit expenses based on the interest rate reported for calculating home market credit expenses.

Where appropriate, we made adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57. For certain U.S. products, we found no home market products sold in contemporaneous periods which had an adjustment for differences in physical characteristics of merchandise that was less than 20 percent of the cost of manufacture of the U.S. product. For these products, we based FMV and CV because we determined that comparisons involving adjustment for physical differences greater than 20 percent were unreasonable in this case.

Based on cost data submitted by UEF, we calculated CV as the sum of the cost of the materials, fabrication, general expenses and packing, plus profit. The amount added for general expenses was ten percent of materials and fabrication costs, because this amount was greater than actual general expenses. The amount added for profit was eight percent of the sum of the costs of materials, fabrication and general expenses, because this amount was greater than actual profit.

We made adjustments to CV, in accordance with 19 CFR 353.56, for differences in circumstances of sale. These adjustments were made for differences in credit expenses, warranties, and after-sale warehousing. In adjusting CV, we calculated the adjustment for differences in credit expenses using the same methodology as described above for home market sales.

Currency Conversion

We made currency conversions in accordance with 19 CFR 353.60(a). All currency conversions were made at the rates certified by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of our comparison of United States price with foreign market value, we preliminarily determine the margin listed below:

Manufacturer/exporter	Review period	Margin (percent)
UEF	9/10/88—8/31/89	28.14

Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions concerning UEF directly to the Customs Service upon completion of this administrative review.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of CFSCs from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipments of this merchandise manufactured or exported by manufacturers/producers/exporters not covered in this review will continue to be at the rate published in the final results of the administrative review covering the period September 1, 1987, through August 31, 1988 (55 FR 45, January 2, 1990); (2) the cash deposit rate for UEF will be that established in the final results of this administrative review; and (3) the cash deposit rate for any future entries of this merchandise from a new producer and/or exporter, not covered in this review, the prior administrative review, or in the investigation, whose first shipments occurred after August 31, 1989, and who is unrelated to the reviewed firm or any firm which was subject to the prior review or the investigation, will be the same as the rate established for UEF. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

In accordance with 19 CFR 353.38, case briefs or any other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than December 3, 1990, and rebuttal briefs not later than December 10, 1990. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held at 2 p.m. on December 17, 1990, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), an interested party may make an affirmative oral presentation only on arguments included in its briefs.

This administrative review and notice are in accordance with sections 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: November 15, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-27565 Filed 11-21-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-050]

Racing Plates (Aluminum Horseshoes) from Canada; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from an interested party, the Department of Commerce has conducted an administrative review of the antidumping finding on racing plates (aluminum horseshoes) from Canada. The review covers one manufacturer/exporter of this merchandise to the United States, Equine Forgings Limited, and the period February 1, 1989 through January 31, 1990. The review indicates the existence of a dumping margin during the period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-4366/5255.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1990, the Department of Commerce ("the Department") published a notice of "Opportunity to Request an Administrative Review" (55 FR 4946) of the antidumping finding on racing plates (aluminum horseshoes) from Canada (39 FR 7579, February 27, 1974). On February 22, 1990, The Victory Racing Plate Company, a U.S. producer, requested an administrative review of the antidumping finding with respect to Equine Forgings Limited. We initiated the review, covering the period February 1, 1989 through January 31, 1990, on March 22, 1990 (55 FR 10842). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act"). The final results of the last administrative review in this case were published in the Federal Register on August 15, 1984 (49 FR 32637).

Scope of the Review

Imports covered by the review are shipments of racing plates (aluminum horseshoes) that are used on race horses, polo, jumping, hunting and other performing horses, as differentiated from pleasure, and work horses, are made of aluminum, may have cleats or caulks, and come in a variety of sizes. During the review period such merchandise was classifiable under item 652.4200 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under HTS item 7616.90.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter, Equine Forgings Ltd., of Canadian racing plates (aluminum horseshoes) and the period February 1, 1989 through January 31, 1990.

United States Price

In calculating United States prices, the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed f.o.b. price to unrelated purchasers in the United States. We made deductions for inland freight, U.S. duty and brokerage/handling charges. We also made a deduction, where appropriate, for sales discounts. We made an adjustment to U.S. price for Canadian Federal Sales Tax which was rebated or not collected by reason of exportation to the United States by adding it to the U.S. price. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, we used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison.

Home market price was based upon the packed f.o.b. price to unrelated purchasers in Canada, with appropriate deductions for inland freight, discounts, rebates, and an adjustment for the differences in packing between the home market and U.S. merchandise. We also made a circumstance-of-sale adjustment for differences in credit and Canadian Federal Sales Tax.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margin exists:

Manufacturer/exporter	Period	Margin (percent)
Equine Forgings Ltd.	02/01/89—01/31/90.	3.97

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any written or oral comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required on shipments of racing plates (aluminum horseshoes) from Canada by the company under review. For any future entries of this merchandise from a new producer and/or exporter, not covered in these reviews, whose first shipment occurred after January 31, 1990, and who is unrelated to any firm reviewed in this or any prior review, a cash deposit of 3.97 percent shall be required.

These deposit requirements are effective for all shipments of Canadian racing plates (aluminum horseshoes) entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice is in accordance with 19 U.S.C. 1675(a)(1), (c) and 19 CFR 353.22.

Dated: November 15, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-27566 Filed 11-21-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-001]

Leather Wearing Apparel From Argentina; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on leather wearing apparel from Argentina. We preliminarily determine the total bounty or grant for the period January 1, 1987 through December 31, 1987 to be zero. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 1988, the Department of Commerce (the Department) published in the Federal Register a notice of "Opportunity to Request Administrative Review" (53 FR 7383) of the countervailing duty order on leather wearing apparel from Argentina (48 FR 11480; March 18, 1983). On March 17, 1988, the Amalgamated Clothing and Textile Workers Union, AFL-CIO, requested an administrative review of the order. We initiated the review, covering the period January 1, 1987 through December 31, 1987, on April 27, 1988 (53 FR 15084). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The final results of the last administrative review were published on June 1, 1987 (52 FR 20446).

Scope of Review

Imports covered by the review are shipments of Argentine leather coats, jackets, and other apparel including leather vests, pants, and shorts for men, boys, women, girls and infants. Also included are outer shells and parts and pieces of leather wearing apparel. During the review period, such merchandise was classifiable under item numbers 791.7620, 791.7640 and 791.7660 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under item number 4203.10.40 of the *Harmonized Tariff Schedule* (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1987 through December 31, 1987 and four programs.

Analysis of Programs

(1) Rebate Upon Export of Indirect Taxes Paid (Reembolso)

The reembolso is a tax rebate paid upon export and is calculated as a percentage of the f.o.b. invoice price of the exported merchandise. In prior administrative reviews, we determined that: (1) The reembolso is intended to operate as a rebate of both indirect taxes and import duties; (2) the government conducted a study of indirect tax incidence on inputs that are physically incorporated into the exported product; and (3) the rebate schedules are periodically revised to reflect the amount of actual duties and indirect taxes paid.

On October 16, 1986, Decree 1555/86 modified the reembolso program "to make the tax regime permanent and independent for other macroeconomic variables, responding exclusively to the concept of the refund of indirect taxes." The new decree set more precise and transparent guidelines to implement the refund of indirect taxes within the context of the new law. Rather than different rebate rates for each product or industry sector, there are now only three broad rebate levels. The rate for level I is 10 percent, level II is 12.5 percent, and level III is 15 percent. Based on the Government's 1986 calculation of the tax incidence in the leather wearing apparel industry, leather wearing apparel is classified in level II and receives a 12.5 percent rebate.

The Department will determine that the reembolso does not confer a bounty or grant if the tax rebate does not exceed the total amount of allowable indirect taxes and import duties borne by inputs that are physically incorporated in the exported product, and indirect taxes levied at the final stage.

We calculated the allowable tax incidence based on the 1986 study. We find that indirect taxes on physically-incorporated inputs and final stage indirect taxes on leather wearing apparel amounted to 13.55 percent during the review period. Because the rebate of indirect taxes did not exceed the total amount of indirect taxes paid, we preliminarily determine that there was no overrebate of indirect taxes for the review period and, therefore, no benefit from this program during the review period.

(2) Export Financing

a. OPRAC 1, Chapter I, Section 2.3 (Ex. RF–21, Circular 693)

Under these regulations, export financing is provided by authorized commercial banks to exporters of promoted goods. Upon receipt of foreign bills of exchange, the commercial banks provide exporters with short-term loans for up to 80 percent of the invoiced value of the exports covered by the bill. The loans are denominated in U.S. dollars but are provided in australs at the exchange rate prevailing on the date of the loan and are repayable in australs at the exchange rate prevailing on the date of repayment. The interest rates for these loans are set by the Central Bank. Because only exporters are eligible to receive these loans, we preliminarily determine that these loans are countervailable to the extent that they are provided to exporters at preferential rates.

To calculate the benefit, we compared the amount of interest due on each loan during the review period with the amount that would have been paid on comparable short-term commercial loans available in Argentina during the review period. Using our benchmark, the average of the monthly regulated and non-regulated 1987 interest rates as compiled by the Argentine Department of Statistics and published in the Argentine Economic Memorandum, and adjusting for exchange rate differentials, we preliminarily determine that there was no benefit from this program during the review period.

b. COPEX 1, Chapter I, Section 1.5 (Ex. Circular 727)

Under Circular 727, Argentine commercial banks, through their offshore branches, are permitted to make loans in foreign currency for the prefinancing of exports. The principal and interest are collected offshore. Funds obtained in the United States under this program are not required to be repatriated to Argentina. The interest rates are consistent with the independent commercial lending practices of the offshore country. Because there is no Central Bank involvement in this program and because the interest rates are not preferential, we preliminarily determine that this program is not countervailable.

(3) Other Programs

We examined the following programs and preliminarily determine that exporters of leather wearing apparel did not use them during the review period:

a. Income tax exemption under Decree 173/85

b. Reembolso for exports from southern ports.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be zero for the period January 1, 1987 through December 31, 1987.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1987 and on or before December 31, 1987.

Further, the Department intends to instruct the Customs Service not to collect cash deposits of estimated countervailing duties on any shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e). Any request for disclosure under administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: November 15, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–27567 Filed 11–21–90; 8:45 am]

BILLING CODE 3510–DS–M

[C-201-402]

Lime From Mexico; Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of termination of countervailing duty administrative review.

SUMMARY: The Department of Commerce has terminated the administrative review of the countervailing duty order on lime from Mexico for the period January 1, 1988 through August 23, 1988, initiated on October 20, 1987.

EFFECTIVE DATE: November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1987, the Government of Mexico requested a section 751(a) administrative review of the countervailing duty order on lime from Mexico for the period January 1, 1988 through December 31, 1988. The request was made as a result of our conclusion that Bomintzha, S.L.C. (which had purchased Sonocal, S.A., and had not previously exported lime to the United States) should be subject to the same 55.89 percent cash deposit rate applicable to Sonocal, rather than the 1.21 percent "all other" cash deposit rate. We had issued these instructions to the Customs Service on April 14, 1987. No other interested parties requested the review. On October 20, 1987, the Department initiated that review (52 FR 38952).

In its response to the Department's questionnaire, the Government of Mexico indicated that Bomintzha had not exported lime to the United States during the review period. Consequently, we were unable to address in that section 751(a) review the issue of the potential pass through of benefits from Sonocal to Bomintzha as a result of the September 1988 sale. On August 2, 1988, the Department initiated a section 751(b) changed circumstances administrative review of this order (53 FR 29076) with the express purpose of examining the sale of Sonocal to Bomintzha to determine whether Bomintzha should be subject to the 1.21 percent "all other" rate.

On November 30, 1989, the Department revoked the countervailing duty order on lime from Mexico effective August 24, 1986, the date of Mexico's accession to the General Agreement on Tariffs and Trade (GATT) (54 FR 49324). In that notice, we terminated the section 751(b) changed circumstances review initiated on August 2, 1988 and stated that the section 751(a) administrative review initiated on October 20, 1987 would proceed with respect to entries of lime from Mexico exported on or after January 1, 1988 and entered, or withdrawn from warehouse, for consumption on or before August 23, 1988.

On March 12, 1990, the Government of Mexico withdrew its September 29, 1987 request for the 1988 administrative review under section 751(a). In withdrawing its request, the Government of Mexico reiterated that the purpose of the request had been to address the high cash deposit rate applicable to Bomintzha at the time of the request. Given that Bomintzha had not exported lime to the United States during 1988 and the order was now revoked, the Government of Mexico stated that completion of the review had no purpose.

Termination of Review

The relevant provision of the Department's regulations provides:

> The Secretary of Commerce may permit a party that requests an administrative review [during the anniversary month of the publication of an order] to withdraw the request not later than 90 days after the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is *reasonable* to do so. 19 CFR 355.22(a)(3) (emphasis added)

The Government of Mexico requested the section 751(a) administrative review on behalf of Bomintzha as a result of Bomintzha's purchase of Sonocal in September 1988. Bomintzha did not export any lime to the United States during the period January 1, 1988–August 23, 1988, and revocation of the order, effective August 24, 1988, eliminated any need to revise the rate of cash deposit of estimated countervailing duties. As a result, there are no entries of the subject merchandise from Bomintzha that could be affected by the section 751(a) review initiated on October 20, 1987.

In light of these unique circumstances, we conclude that it is reasonable to accept the Government of Mexico's withdrawal of its request for an administrative review and are terminating that review. In accordance with 19 CFR 355.22(g), all entries exported on or after January 1, 1988 and entered, or withdrawn from warehouse, for consumption on or before August 23, 1988, from firms subject to the order on lime from Mexico will be liquidated at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption.

This notice is published in accordance with 19 CFR 355.22.

Dated: November 15, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90–27568 Filed 11–21–90; 8:45 am]

BILLING CODE 3510–DS–M

[C-549-401]

Certain Textile Mill Products From Thailand; Termination of Suspended Countervailing Duty Investigation (in Part)

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of termination of suspended countervailing duty investigation in part.

SUMMARY: The Department of Commerce is terminating in part the suspended countervailing duty investigation on certain textile mill products from Thailand because certain products are no longer of interest to interested parties. The Department has determined to terminate the suspended countervailing duty investigation with respect to fabrics, special construction fabrics, textile furnishings, and miscellaneous textile mill products from Thailand. However, the Department will retain the suspended investigation with regard to yarn.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 6669) its intent to terminate the suspended countervailing duty investigation on certain textile mill products from Thailand (50 FR 9862; March 12, 1985). Interested parties who objected to the proposed termination were provided the opportunity to submit

their comments on or before March 31, 1990. On March 28, 1990, the Department published a notice of opportunity to request an administrative review of the suspended investigation (55 FR 11417) for the period January 1, 1989 through December 31, 1989.

On March 26, 1990, the American Yarn Spinners Association (AYSA), a trade association, objected to our intent to terminate the suspended investigation and requested an administrative review. In addition, on March 30, 1990, the American Textile Manufacturers Institute, Inc. (ATMI), a trade association, objected to our intent to terminate the suspended investigation.

Since the Department had determined in the final determination of the initial investigation the ATMI lacked standing as an interested party, we sent a letter on May 29, 1990 requesting that ATMI provide information demonstrating its current status as an interested party under § 355.2(i) of the Commerce regulations. In addition, on June 7, 1990, the Department sent a letter to AYSA requesting information demonstrating its current status as an interested party. Section 355.2(i) of the Commerce regulations defines, in relevant part, an interested party as "[a] trade or business association a majority of the members of which are producers in the United States of the like product or sellers (other than retailers) in the United States of the like product produced in the United States; * * *"

On June 14, 1990, ATMI provided the Department with a list of certain member companies that produce each of the like products covered by the suspended investigation, stating that in filing its March 30, 1990 letter of opposition to the proposed termination, it was acting on behalf of these individual producers. ATMI further argued that each of these companies is a manufacturer of like products and thus an interested party with the right to oppose the termination.

On June 15, 1990, AYSA provided the Department with a list of member companies and a list of those member companies that produce each of the yarn products covered by the suspended investigation. Further, AYSA withdrew its objection to termination and request for an administrative review with respect to all non-yarn products, stating that its interest is only with respect to yarn. On June 25, 1990, AYSA resubmitted a list of its member companies and requested that the Department treat its June 15, 1990 submission as business proprietary pursuant to 355.32 of the Commerce regulations. In a letter of July 17, 1990, the Department rejected AYSA's request because it did not explain fully why its submission should be given proprietary treatment. In addition, AYSA failed to serve copies of the submission on all interested parties. The Department allotted AYSA additional time to resubmit the information. On July 26, 1990, AYSA withdrew its request for proprietary treatment and resubmitted the list of member companies contained in its June 15, 1990 submission that demonstrated that a majority of those member companies produce each of the yarn products covered by the suspended investigation.

Determination to Terminate in Part

Section 355.25(d)(4) of the Department's regulations set out two conditions that must be met to maintain a suspension agreement:

1. The objecting party must be an interested party as defined in section 355.2(i); and

2. The interested party must object within thirty days of the Department's notice of intent to terminate.

The regulations provide that any interested party may object to the Department's notice of intent to terminate by submitting a letter to the Department stating they request the suspension agreement to be maintained.

ATMI failed to meet the first requirement under § 355.25(d)(4). In its March 30, 1990 letter, ATMI objected to termination on behalf of itself and its members without establishing its standing as an interested party in the proceedings. In its June 14, 1990 response to our May 29, 1990 letter, ATMI did not provide information demonstrating that the majority of its members were producers or sellers of each of the like products covered by the suspended investigation, information that the Department had specifically requested. Therefore, we determine that ATMI, as a trade association, is not an interested party in these preceedings in accordance with § 355.2(i)(5) of the Commerce regulations and lacks standing to object to the Department's intent to terminate.

ATMI claimed in its June 14, 1990 letter that its March 30, 1990 letter objecting to termination was filed on behalf of the individual procedures provided on the list accompanying the June 14 letter However, because such procedures were not specifically identified as objecting interested parties in the March 30 letter, the Department determines that ATMI objected to the termination only as a trade association. ATMI's June 14, 1990 substitution of individual procedures of the like products as interested parties objecting to the termination was untimely, pursuant to § 355.25(d)(4) of the Commerce regulations.

It is clear from the regulations that only interested parties may object to the termination of a suspended investigation. ATMI was on notice that the Department did not consider it an interested party during the initial investigation. The only way the domestic industry was able to satisfy the Department's standing requirements during the course of the investigation was by amending the petition to add eight individual producer firms as interested parties. Thus, ATMI's March 30, 1990 letter, should have clearly identified the individual firms that objected to the termination of the suspended investigation.

In AYSA's letter of June 15, 1990, AYSA formally acknowledged its lack of standing with respect to non-yarn products. The Department therefore determines that AYSA, as a trade association, lacks standing to object to the Department's intent to terminate with respect to non-yarn products (fabrics, special construction fabrics, textile furnishings, and miscellaneous textile mill products). However, the Department determines that AYSA is an interested party in these proceedings in accordance with § 355.2(i)(5) of the Commerce regulations and therefore does have standing to object to the Department's intent to terminate with respect to yarn products, a separate like product from non-yarn. In accordance with § 355.25(d)(4) of the Commerce regulations, the Department is terminating in part the countervailing duty suspension agreement with respect to all non-yarn products from Thailand.

We received no other objections to our intent to terminate the suspended countervailing duty investigation on certain textile mill products from Thailand. We have not received a request to conduct an administrative review for non-yarn products for the past five consecutive annual anniversary months. However, we did receive a request to conduct an administrative review for yarn products.

According to 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that a suspended investigation is no longer of interest to interested parties and terminate the suspended investigation if no interested party objects to termination or requests an administrative review by the last day of the fifth anniversary month. Because no interested party has objected to termination or requested a review within the deadlines, the Department is terminating the suspended investigation with respect to all non-yarn products covered by the suspension agreement on certain textile mill products from Thailand. The effective date of termination is January 1, 1990.

This notice is in accordance with 19 CFR 355.25(d)(3)(vii) and 355.25(d)(5).

Dated: November 15, 1990.

Marjorie Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-27569 Filed 11-21-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[Docket No. 901198-0298]

Taking and Importing of Marine Mammals; Importation of Yellowfin Tuna and Tuna Products From Panama

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of determination.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, announces that the Government of Panama has submitted documentary evidence that it complies with the criteria established for the importation of yellowfin tuna and yellowfin tuna products from countries that have enacted legislation to prohibit international purse seine sets on marine mammals. Therefore, yellowfin tuna and tuna products can be imported from Panama into the United States until December 31, 1991.

EFFECTIVE DATE: November 16, 1990.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Regional Director, Southwest Region, National Marine Fisheries Service, NOAA, 330 South Ferry Street, Terminal Island, CA 90731 (213/514-6196).

SUPPLEMENTARY INFORMATION: On November 16, 1990, NMFS published an interim final rule (55 FR 47880) that establishes a provision for timely consideration and granting of an affirmative finding under the yellowfin importation regulations to a nation which prohibits its vessels from intentionally setting on marine mammals in the course of harvesting yellowfin tuna by purse seine in the eastern tropical Pacific Ocean (ETP). With an affirmative finding, yellowfin tuna and tuna products from the harvesting nation can be imported into the United States.

The regulation provides, consistent with the purposes and policies of the MMPA, specific criteria for issuing initial and subsequent affirmative findings to a harvesting nation which implements a prohibition against the intentional setting on marine mammals by its purse seine vessels. The nation must also have an acceptable compliance program which uses observers approved by the Assistant Administrator or which are under the direction of the Inter-American Tropical Tuna Commission (IATTC) to monitor every fishing trip of vessels of greater than 400 tons carrying capacity. Furthermore, the nation must submit statements by the observers, within 30 days of the completion of each trip, certifying that no intentional purse seine sets were made on marine mammals during the trip. It must also submit a list of purse seine vessels greater than 400 tons when initially seeking a finding under this provision, and within 30 days of when a change occurs to that list.

On October 15, 1990, the Government of Panama enacted Presidential Decree No. 111, which prohibits all Panamanian-flag vessels from making purse seine sets on marine mammals in the ETP and the territorial waters of Panama. The vessels are required to carry IATTC observers on board each fishing trip. Furthermore, a list of eight purse seine vessels of 400 tons or greater carrying capacity has been submitted. This fulfills the requirements to obtain an initial affirmative finding under this provision of the rule.

Therefore, all yellowfin tuna and tuna products harvested by Panama or Panamanian-flag vessels may be imported into the United States until December 31, 1991, or until the Assistant Administrator determines otherwise.

Dated: November 15, 1990.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 90-27477 Filed 11-16-90; 5:07 pm]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council and its Committees will hold a public meeting on November 28-29, 1990, at the King's Grant Inn (telephone: 508-774-6800), Route 128 at Trask Lane, Danvers, MA. The Council will begin its meeting at 10 a.m., on November 28, and will reconvene on November 29 at 9 a.m.

On the first day, there will be a briefing on reauthorization of the Magnuson Fishery Conservation and Management Act, and reports by the Groundfish and the Large Pelagics Committees. The Pelagics Committee also will discuss the most recent meeting of the International Commission for the Conservation of Atlantic Tunas and the Secretarial Shark Fishery Management Plan. On the second day, the Scallop Committee will report. There also will be an update on the status of the lobster fishery.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231-0422.

Dated: November 16, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-27470 Filed 11-21-90; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Pelagic Plan Monitoring Team (PMT) will hold a public meeting on November 27, 1990, at 9 a.m., at the Honolulu Laboratory, 2570 Dole Street, Conference Room, Honolulu, HI.

The Committee will continue discussions from the October 30-31, 1990, PMT meeting regarding determination of data needs for monitoring the performance of fisheries for pelagic species; make recommendations for revisions to the Western Pacific Regional Fishery Management Council (WPRFMC) Research and Data Needs for Bottomfish and Pelagics FMP Monitoring document based on the conclusions of the prior agenda item; and discuss other business.

For more information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368; fax: (808) 526-0824.

Dated: November 15, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-27471 Filed 11-21-90; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Bottomfish and Seamount Groundfish Plan Monitoring

Team will hold a public meeting on November 28, 1990, at 9 a.m., at the Honolulu Laboratory, 2570 Dole Street, Conference Room, Honolulu, HI.

The Committee will discuss: Biological analysis of the impacts of a closed season for bottomfish fishing in the Main Hawaiian Islands, revisions to its Research and Data Needs for Bottomfish and Pelagics Fishery Management Plan Monitoring document, work assignments and timetable for completing 1990 Annual Report on the Fisheries, and other business.

For more information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368; fax: (808) 526-0824.

Dated: November 15, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-27472 Filed 11-21-90; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next meeting is scheduled for Thursday, 13 December, 1990 at 10 a.m. in the Commission's offices in the Pension building, suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the Commission offices (202-504-2200) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 13 November 1990.

Charles H. Atherton,

Secretary.

[FR Doc. 90-27512 Filed 11-12-90; 8:45 am]

BILLING CODE 6330-01-M

COMMISSION ON INTERSTATE CHILD SUPPORT

Commission Meeting

The Commission on Interstate Child Support will meet on Thursday, November 29, 1990, from 9 a.m. until 5 p.m. and on Friday, November 30, 1990, from 9 a.m. until 5 p.m. The agenda of the meeting will include discussion of issues related to legislation and legal practice (including jurisdiction, full faith and credit, state standards, notice and choice of law); parent location (including present state networks, the Federal Parent Locate System and the proposed Child Support Enforcement Network); issues related to parents' access to their children and child support; and the agenda for the Commission's national conference.

For more information, contact Vernon Drew at 202-254-8093.

Margaret Campbell Haynes,

Chair.

[FR Doc. 90-27583 Filed 11-21-90; 8:45 am]

BILLING CODE 6820-64-M

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Improving Navy Laboratory/Industry Relationships will meet on December 6-7, 1990. The meeting will be held at the Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 8:30 a.m. and terminate at 5 p.m. on December 6 and 7, 1990. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members on the relationships between Navy laboratories and industry. The agenda will include briefings and discussions related to 6.1, 6.2 and 6.3A investment strategies and processes. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander John Hrenko, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000 Telephone: (703) 696-4870

Dated: November 19, 1990

G.B. Roberts,

Lieutenant Colonel, USMC Federal Register Liaison Officer.

[FR Doc. 90-27610 Filed 11-20-90; 8:45 am]

BILLING CODE 3810-AE-M

Navy Resale System Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is given that the Navy Resale System Advisory Committee will meet December 8, 1990 in Washington, DC. Sessions of the meeting will commence at 7:45 a.m. and 8:30 a.m. The 8:30 a.m. to 4 p.m. session will be closed to the public because it is likely to relate solely to internal agency personnel rules and practices; may disclose trade secrets and commercial or financial information; and, may involve information which, if disclosed prematurely, would be likely to significantly frustrate implementation of a proposed agency action. The Secretary of the Navy has therefore determined that the 8:30 a.m. to 4 p.m. session of the meeting will be closed to the public because it will be concerned with matters listed in sections 552b(c) (2), (4), and (9)(B) of title 5, United States Code.

For further information concerning this meeting contact:

Commander W.T. Kaloupek, SC, USN, Naval Supply Systems Command, NAVSUP No. 09B, Room 606, Crystal Mall, Building No. 3, Arlington, VA 22202, Telephone Number: (703) 695-5457.

Dated: November 19, 1990.

G.B. Roberts,

Lieutenant Colonel, USMC, Federal Register Liaison Officer.

[FR Doc. 90-27609 Filed 11-20-90; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Cancellation of Meetings

AGENCY: National Assessment Governing Board; Education.

ACTION: Cancellation of meetings.

SUMMARY: The National Assessment Governing Board has cancelled the meeting of the Executive and Achievement Levels Committees originally scheduled on November 28, 1990. The Board has also cancelled the meeting of the full Board on November 29, 1990. Both of these meetings were previously announced in the **Federal Register** on November 5, 1990 on page 46560, Vol. 55, No. 214.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, Suite 7322, 1100 L Street, NW., Washington, DC 20005-4013, Telephone: (202) 357-6938.

Dated: November 20, 1990.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90-27705 Filed 11-21-90; 8:45 am]

BILLING CODE 4000-01-M

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Achievement Levels and Executive Committees of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: Friday, December 7, 1990.

TIME: 11:00 a.m. (e.s.t.).

PLACE: National Assessment Governing Board, Suite 7322, 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, Suite 7322, 1100 L Street, NW., Washington, DC, 20005-4013, Telephone: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (CEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III-C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297), (20 U.S.C. 1221e-1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis, and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. The Achievement Levels Committee and the Executive Committee of the National Assessment Governing Board will meet via teleconference on December 7, 1990. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committees' deliberations. The purpose of the meeting is to act on the Board's behalf to develop a course of action and timeline for a new schedule for releasing achievement levels data. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 7322, 1100 L Street, NW., Washington, DC, from 8:30 a.m. to 5:00 p.m.

Dated: November 20, 1990.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90-27706 Filed 11-21-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center, Financial Assistance Solicitation Availability, (Cooperative Agreement)

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of the availability of a financial assistance solicitation.

SUMMARY: On or about December 17, 1990, the DOE, Morgantown Energy Technology Center, plans to issue a Program Research and Development Announcement (PRDA) No. DE-RA21-90MC27391 for the solicitation of applications in support of research and development entitled "Scaleup of Mild Gasification to a Process Development Unit." Authority for the PRDA is the DOE Organization Act (Pub. L. 95-91 (42 U.S.C. 7101)) and the DOE Financial Assistance Regulations, 10 CFR part 600, subparts A and C. DOE anticipates award of a Cooperative Agreement with a project duration of approximately 36 months.

FOR FURTHER INFORMATION CONTACT: D. Denise Riggi, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26505, Telephone: (304) 291-4241, PRDA No. DE-RA21-90MC27391.

SUPPLEMENTARY INFORMATION: The primary objective of this effort is to address mild gasification process development and relevant market issues leading to commercialization of coal mild gasification co-products. METC plans to continue toward successful commercialization of mild gasification of coal by scaling up a process research unit to a development unit of approximately 1 ton/hour coal feed rate. Among key elements to be evaluated are: technical maturity, economic viability, and the offeror's understanding of market issues and commitment to commercialization. Since the Government desires to maximize the research efforts and fulfill Congressional language, a minimum 20% cost-sharing arrangement is required. Copies of the PRDA may be obtained by submitting a request to the address provided above. Telephone requests will not be honored.

Dated: July 14, 1990.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 90-27552 Filed 11-21-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 9401-000]

Halecrest Co.; Intent to Prepare a Supplemental Draft Environmental Impact Statement (SDEIS) and to Hold a Subsequent Public Hearing in Rockaway Township, NJ, Regarding the Proposed Mt. Hope Pumped Storage Hydroelectric Project

November 15, 1990.

The Commission staff has determined that project design changes proposed since the November 1989, issuance of the Commission's draft environmental impact statement for the Mt. Hope Pumped Storage Hydroelectric Project require the preparation of an SDEIS.

The alternative project design being considered would include an excavated upper reservoir at an upland location adjacent to and west of the Mt. Hope Mine Complex. This site currently is an actively mined rock quarry owned by Mt. Hope Products, Incorporated.

The upland reservoir would be filled by dewatering the New Leonard Mine and by withdrawing 1,500 acre-feet of water per year for 2 years from the

surface waters of the Mt. Hope Lake drainage system.

The SDEIS, in addition to the upland reservoir, will consider an alternative transmission line routing, the Snake Hill Road-Anomoly Road site access alternative, and newly proposed recreational amenities.

The staff expects to mail copies of the SDEIS to all interested parties in early February, 1991. Approximately 3 weeks after the SDEIS is issued, the Commission staff will hold a public hearing on the SDEIS findings, conclusions, and recommendations in Rockaway Township, New Jersey. At this meeting, interested parties will have the opportunity to provide oral and written comments and recommendations for the public record. The date, time, and place of this meeting will be the subject of a separate public notice.

Anyone who wishes to submit comments to the Commission regarding the proposed project changes should send a letter addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, Northeast, Washington, DC 20426. All correspondence should clearly show the following caption on the first page: Mt. Hope Pumped Storage Hydroelectric Project, New Jersey, Docket No. 9401-000.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27487 Filed 11-21-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER91-90-000, et al.]

Central Vermont Public Service Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Central Vermont Public Service Co.

[Docket No. ER91-90-000]

November 13, 1990.

Take notice that on November 1, 1990, Central Vermont Public Service Corporation ("Central Vermont") tendered for filing its Preliminary Forecast 1991 Cost Report for FERC Electric Tariff Original Volume No. 4 under which Central Vermont provides Unreserved System Power Service to Lyndonville Electric Department, Village of Ludlow Electric Light Department, Village of Johnson Water and Light Department and Village of Hyde Park Water and Light Department.

Comment date: November 28, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Central Vermont Public Service Corp.

[Docket No. ER91-88-000]

November 13, 1990.

Take notice that on November 1, 1990, Central Vermont Public Service Corporation ("Central Vermont") tendered for filing its Preliminary Forecast 1991 Cost Report for FERC Electric Tariff Original Volume No. 3 under which Central Vermont provides Transmission and Distribution Service to Vermont Electric Cooperative, Inc., Lyndonville Electric Department, Village of Ludlow Electric Light Department, Village of Johnson Water and Light Department, Village of Hyde Park Water and Light Department, Allied Power and Light Company, and Rochester Electric Light and Power Company.

Comment date: November 28, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Co.

[Docket No. ER91-108-000]

November 13, 1990.

Take notice that on November 8, 1990, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Fifteen to Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Lake Worth Utilities Authority (Rate Schedule FERC No. 56).

FPL states that under Amendment Number Fifteen, FPL will transmit power and energy for Jacksonville Electric Authority is required in the implementation of its interchange agreement with the Reedy Creek Improvement District, Fort Pierce Utilities Authority, City of New Smyrna Beach, City of Vero Beach and City of Homestead.

FPL requests that waiver of § 35.3 to the Commission's Regulations be granted and that the proposed Amendment be made effective November 12, 1990. FPL states that a copy of the filing was served on City of Lake Worth Utilities.

Comment date: November 28, 1990, in accordance with Standard Paragraph E end of this notice.

4. Central Vermont Public Service Corp.

[Docket No. ER91-89-000]

November 13, 1990.

Take notice that on November 1, 1990, Central Vermont Public Service Corporation ("Central Vermont") tendered for filing its Preliminary Forecast 1991 Cost Report for the RS-2 rate schedule under which Central Vermont sells electric power to Connecticut Valley Electric Company Inc.

Comment date: November 28, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Hampshire v. New Hampshire Electric Cooperative, Inc.

[Docket No. EL91-6-000]

November 13, 1990.

Take notice that on November 7, 1990, the Public Service Company of New Hampshire (PSNH) tendered for filing a complaint against the New Hampshire Electric Cooperative, Inc. (NHEC) alleging that NHEC has violated section 205 of the Federal Power Act by refusing to pay the monthly charges for requirements resale service and transmission service furnished to it by PSNH pursuant to its contract with PSNH.

PSNH requests that the Commission order NHEC to adhere to the terms of its rate schedule contracts and to make payments required by those rate schedule contracts.

Comment date: December 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Boston Edison Co.

[Docket No. ES91-5-000]

November 14, 1990.

Take notice that on November 8, 1990, Boston Edison Company (Applicant) filed an application pursuant to Section 204 of the Federal Power Act seeking authority to issue not more than $350 million of short-term debt securities on or before December 21, 1992, with a final maturity date no later than December 31, 1993.

Comment date: December 6, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27480 Filed 11-21-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-316-000, et al.]

Transwestern Pipeline Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Transwestern Pipeline Co., U-T Offshore System

[Docket Nos. CP91-316-000, CP91-317-000, and CP91-318-000]

November 8, 1990.

Take notice that on November 5, 1990, the above referenced companies (Applicants) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction including the identity of the shipper, the type of transportation

[1] These prior notice requests are not consolidated.

Docket number	Applicant	Shipper name	Peak day [1] avg. annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-316-000	Transwestern PipeLine Co., P.O. Box 1188, Houston, Texas 77251	Mitchell Marketing Co	20,000 15,000 7,300,000	NN	NN	10-1-90 ITS-1	CP86-133-000 ST91-1201-000
CP91-317-000	U-T Offshore System, P.O. Box 1396, Houston, Texas 77251.	Elf Exploration Inc	[3] 75,000 75,000 27,375,000	Off LA	LA	9-14-90 IT	RP85-99-000 ST90-5283-000
CP91-318-000	U-T Offshore System, P.O. Box 1396, Houston, Texas 77251	Enmark Gas Corp	[3] 103,800 300,800 37,867,000	Off LA	LA	9-15-90 IT	RP85-99-000 ST90-5334-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.
[3] Volumes in Mcf.

2. Texas Gas Transmission Corp.

[Docket No. CP91-364-000]

November 13, 1990.

Take notice that on November 8, 1990, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed a request with the Commission in Docket No. CP91-364-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to add a new delivery point for service to Western Kentucky Gas Company (WKG) in Simpson County, Kentucky, under Texas Gas' blanket certificate issued in Docket No. CP82-407-000, all as more fully set forth in the request which is open to public inspection.

Texas Gas proposes to add a new delivery point at an existing farm tap on its Franlin six-inch line in Simpson County, Kentucky. The new delivery point would enable WKG to render natural gas service to Alliance Rubber Company, as well as continue to serve the existing farm tap customer. Texas Gas proposes natural gas deliveries of 80 MMBtu on peak days and 7,200 MMBtu annually at this new delivery point. The addition of this delivery point would not result in an increase in WKG's current daily contract demand. Texas Gas could also provide the proposed deliveries to WKG without detriment to its other customers.

Comment date: December 28, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corp.

[Docket No. CP91-324-000]

November 13, 1990.

Take notice that on November 5, 1990, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP91-324-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Poco Petroleums Ltd., a marketer, under the blanket certificte issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that, pursuant to an agreement dated July 17, 1989, under its Rate Schedule TI-1, it proposes to transport up to 155,000 MMBtu per day equivalent of natural gas. Northwest indicates that the gas would be transported from all its mainline receipt points, and would be redelivered to all its mainline delivery points. Northwest further indicates that it would transport 7,000 MMBtu on an average day and 2,555,000 MMBtu annually.

Northwest advises that service under § 284.223(a) commenced October 10, 1990, as reported in Docket No. ST91-1753.

Comment date: December 28, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Viking Gas Transmission Co.

[Docket Nos. CP91-339-000, and CP91-340-000]

November 13, 1990.

Take notice that on November 6, 1990, Viking Gas Transmission Company (Viking), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-339-000 and CP91-340-000 [2], request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to provide transportation service for PROGAS USA, Inc. (PROGAS), a producer, and Western Gas Marketing USA, Ltd., a marketer, respectively, under its blanket certificate issued in Docket No. CP90-273-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Viking states that the gas transported would be 225,000 Dekatherms (dt) on a peak day and average day and 82,125,000 dt on an annual basis for PROGAS from receipt points and delivery points located in the states of Wisconsin, Minnesota, and North Dakota. Viking estimates the volumes transported for Western Gas to be 473,280 dt on a peak day and average day and 172,747,200 dt on an annual basis from the same receipt and delivery points stated above. Service for PROGAS and Western Gas commenced October 1, 1990, as reported in Docket No. ST91-2354 and ST91-2353, respectively. Viking also indicates that no new facilities are required to implement the proposed services.

Comment date: December 28, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Co.

[Docket No. CP91-308-000]

November 13, 1990.

Take notice that on November 2, 1990, United Gas Pipe Line Company (United), P.O. box 1478, Houston, Texas 77251-1478, filed an application in Docket No. CP91-308-000, pursuant to section 7 of the Natural Gas Act, requesting authority to make a firm direct sale of natural gas to Mississippi Power and Light Company (MP&L), and requesting a waiver of § 12.3(b)(2) of its General Terms and Conditions (GTC) of its currently effective FERC Gas Tariff, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that in order for it to make a firm direct sale to MP&L at the Rex Brown Power Plant in Hinds County, Mississippi and the Baxter Wilson Power Plant in Warren County, Mississippi, United requires a waiver of section 12 because such section is inconsistent with the contractual provisions of a settlement between United and MP&L approved by the United States District Court for the Southern District of Mississippi (Settlement). United states that the Settlement provides that MP&L would nominate its purchase requirements for the first contract year and each subsequent contract year (defined in the sales contract as commencing January 1, of each year) on or before November 1 of the preceding year. United states that its current tariff provisions require that purchasers nominate volumes by July 1 for the period commencing the following November 1. Because the contract nomination procedure under the Settlement is inconsistent with the existing tariff, United states it needs a waiver of such tariff provision.

Comment date: December 4, 1990, in accordance with Standard Paragraph F at the end of this notice.

6. UCG Energy Corp.

[Docket No. CI91-7-000]

November 13, 1990.

Take notice that on November 9, 1990, UCG Energy Corporation (UCG Energy), c/o United Cities Gas Company, 5300 Maryland Way, Brentwood, Tennessee 37027, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commisson's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale in interstate commerce of natural gas subject to the Commission's NGA jurisdiction, including imported natural gas or liquefied natural gas and natural gas sold under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales of surplus system supply, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: November 28, 1990, in accordance with Standard Paragraph J at the end of this notice.

7. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP91-361-000]

November 14, 1990

Take notice that on November 8, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-361-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for EnTrade Corporation, a marketer, under the blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that, pursuant to an agreement dated September 6, 1990, under its Rate Schedule IT, it proposes to transport up to 50,000 MMBtu per day equivalent of natural gas. Northern indicates that the gas would be transported from various receipt points, and would be redelivered in Kansas, Oklahoma, Texas, New Mexico, and Iowa. Northern further indicates that it would transport 37,500 MMBtu on an average day and 18,250,000 MMBtu annually.

Northern advises that service under § 284.223(a) commenced September 6, 1990, as reported in Docket No. ST90-4812-000.

Comment date: January 2, 1991, in accordance with Standard Paragraph G at the end of the notice.

8. Texas Gas Transmission Corp.

[Docket Nos. CP91-353-000, CP91-354-000, CP91-355-000, CP91-356-000, and CP91-357-000]

November 14, 1990.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: January 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket number (date filed)	Applicant	Shipper name	Peak day [1] avg, annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-353-000 11/7/90.	Texas Gas Transmission Corp., 3800 Frederica Street, Owensboro, Kentucky 42301.	ARCO Oil and Gas Co.	20,000 20,000 7,300,000	LA IN KY TN TX IL AR OH	LA	Interruptible 10/12/90	CP88-686-000 ST91-871-000
CP91-354-000 11/7/90.	Texas Gas Transmission Corp., 3800 Frederica Street, Owensboro, Kentucky 42301.	Louis Dreyfus Energy Corp.	100,000 50,000 19,250,000	LA AR KY TX TN Offshore IL OH	AR MS LA TN LA	Interruptible 10/16/90	CP88-686-000 ST91-1420-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Docket number (date filed)	Applicant	Shipper name	Peak day [3] avg, annual	Points of		Start up date rate schedule	Related [4] dockets
				Receipt	Delivery		
CP91-355-000 11/7/90	Texas Gas Transmission Corp., 3800 Frederica Street, Owensboro, Kentucky 42301.	The Polaris Pipeline Corp	56,000 30,000 10,950,000	Offshore LA	Offshore LA	Interruptible 10/12/90	CP88-686-000 ST91-870-000
CP91-356-000 11/7/90	Texas Gas Transmission Corp., 3800 Frederica Street, Owensboro, Kentucky 42301.	Louis Dreyfus Energy Corp.	100,000 50,000 18,250,000	LA AR KY IN TN Offshore TX IL	IN KY IL	Interruptible 10/16/90	CP88-686-000 ST91-1419-000
CP91-357-000 11/7/90	Texas Gas Transmission Corp., 3800 Frederica Street, Owensboro, Kentucky 42301.	Board Street Oil & Gas Co.	40,000 10,000 6,000,000	LA TX TN Offshore KY IL	OH	Interruptible 10/10/90	CP88-686-000 ST91-1421-000

[3] Quantities are shown in MMBtu unless otherwise indicated.
[4] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

9. Colorado Interstate Gas Co., Texas Eastern Transmission Corp.

[Docket No. CP91-370-000, and CP91-377-000]

November 14, 1990

Take notice that on November 9, 1990, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, and Texas Eastern Transmission Corporation (TETCO), 5400 Westheimer Court, Houston, Texas, filed in Docket Nos. CP91-370-000 and CP91-377-000, respectively, requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis on behalf of various shippers under CIG's blanket certificate issued in Docket No. CP86-589-000, and TETCO's blanket certificate issued in Docket No. CP88-136-000, as amended in Docket No. CP88-136-007, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the relative rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.233 of the Commission's Regulations, has been provided by CIG and TETCO and is summarized in the attached appendix. CIG states that it would receive the gas from various existing points on its system in Colorado, Wyoming, Kansas, and Oklahoma, and would redeliver the gas, less fuel and lost and unaccounted-for gas, in EL Paso County, Colorado. TETCO explains that it would receive gas from existing points in offshore and onshore Louisiana, Alabama, Arkansas, Illinois, Indiana, Kentucky, Missouri, Mississippi, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas and West Virginia, and would deliver the gas to existing points on its system.

Comment date: January 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These dockets are not consolidated.

[3] These prior notice requests are not consolidated.

[4] These prior notice requests are not consolidated.

Docket number	Shipper	Volumes peak, avg. annual	Related docket [1]	Commencement date	Rate schedule
CP91-370-000	Consolidated Fuel Co	300 Mcf 300 Mcf 110,000 Mcf	ST91-23	9/1/90	TI-1
CP91-377-000	Wintershall Energy, A Business Group of BASF Corp.	40,000 MMBtu 40,000 MMBtu 14,600,000 MMBtu	ST91-88	9/8/90	IT-1

[1] TETCO and El Paso reported the 120-day transportation service in the referenced ST dockets.

10. Colorado Interstate Gas Co.

[Docket Nos. CP91-393-000, CP91-394-000, AND CP91-395-000]

November 14, 1990.

Take notice that on November 13, 1990, Colorado Interstate Gas Company (CIG), P.O. box 1087, Colorado Springs, Colorado 80944, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-589, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by CIG and is summarized in the attached appendix.

Docket number (date filed)	Shipper name (type)	Peak day, average day annual Mcf	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-393-000 (11-13-90)	Amoco Energy Trading Corp (Producer)	50,000 50,000 18,250,000	WY, OK, KS, CO	KS	8-1-90 TI-1 Interruptible	ST90-4294-000 8-2-90
CP91-394-000 (11-13-90)	PSI Gas Marketing, Inc. (Producer)	10,000 3,000 1,000,000	WY	KS	8-1-90 TI-1 Interruptible	ST90-4292-000 8-1-90
CP91-395-000 (11-13-90)	PSI, Inc. (Marketer)	25,000 7,000 2,555,000	WY	TX	10-1-88 TI-1 Interruptible	ST91-2920-000 10-1-90

11. Southern Natural Gas Co., Columbia Gulf Transmission Co., Southern Natural Gas Co.

[Docket Nos. CP91-416-000, CP91-417-000, CP91-418-000, CP91-419-000, CP91-420-000, CP91-426-000, and CP91-427-000]

November 15, 1990.

Take notice that Southern Natural Gas Company, P.O. box 2563, Birmingham, Alabama 35202-2563, and Columbia Gulf Transmission Company, 3805 West Alabama, Houston, Texas 77027, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP88-316-000 and Docket No. CP86-239-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[6]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: January 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-416-000 (11-13-90)	SIGCO Marketing, Inc. (Marketer)	2,500 2,500 912,500	OTX, OLA, TX, LA, MS, AL	LA	8-15-90 IT Interruptible	ST91-2329-000 9-11-90
CP91-417-000 (11-13-90)	Enermax Corp. (Marketer)	100,000 70,000 25,550,000	OTX, OLA, TX, LA, MS, AL	GA, SC	8-29-90 IT Interruptible	ST91-2337-000 9-13-90
CP91-418-000 (11-13-90)	Associated Natural Gas, Inc. (Marketer)	50,000 2,739 1,000,000	OTX, OLA, TX, LA, MS, AL	LA, TX	8-16-90 IT Interruptible	ST91-2334-000 9-12-90

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-419-000 (11-13-90)	Amerada Hess Corp. (Producer)	100,000 30,000 10,950,000	LA	LA	10-1-90 ITS-2 Interruptible	ST91-2366-000 10-1-90
CP91-420-000 (11-13-90)	O & R Energy, Inc. (Marketer)	80,000 40,000 14,600,000	OLA, LA	LA	10-1-90 ITS-2 Interruptible	ST91-2367-000 10-1-90
CP91-426-000 (11-14-90)	MidCon Marketing Corp (Marketer)	300,000 10,000 3,650,000	OTX, OLA, TX, LA, MS, AL	MS, LA	8-15-90 IT Interruptible	ST91-2331-000 9-13-90
CP91-427-000 (11-14-90)	Enermax Corp. (Marketer)	100,000 70,000 25,550,000	OTX, OLA, TX, LA, MS, AL	AL	8-29-90 IT Interruptible	ST91-2333-000 9-13-90

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

12. Panhandle Eastern Pipe Line Co.

[Docket Nos. CP91-378-000,[7] CP91-379-000, CP91-380-000, CP91-381-000, CP91-382-000]

November 15, 1990.

Take notice that on November 9, 1990, Panhandle Eastern Pipe Line Company (Panhandle), P.O. box 1642, Houston, Texas 77251-1642, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the date of the transportation agreement between Panhandle and the respective shipper, the contract number of the transportation agreement, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Panhandle and is included in the attached appendix.

Panhandle alleges that it would provide the proposed service for each shipper under an executed interruptible transportation service agreement and would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: January 2, 1991, in accordance with Standard Paragraph G at the end of the notice.

[7] These prior notice requests are not consolidated.

Docket number trans. agree. (contract No.)	Applicant	Shipper name	Peak day [1] avg. annual	Points of Receipt	Points of Delivery	Start up date rate schedule service type	Related [2] dockets
CP91-378-000 7-19-90 (P-PLT-3333).	Panhandle	Midland Cogeneration Venture, Limited Partnership.	15,000 15,000 5,475,000	OK & various existing points	KS	10-1-90 PT, Interruptible	ST91-2744-000.
CP91-379-000 9-26-90 (P-PLT-3400).	Panhandle	Chippewa Gas Corporation	100,000 50,000 18,250,000	OK, KS, & various existing points	KS	10-1-90 PT, Interruptible	ST91-2745-000.
CP91-380-000 9-18-90 (P-PLT-3388).	Panhandle	Amgas, Inc	60 30 10,950	KS & various existing points	IL	10-1-90 PT, Interruptible	ST91-1760-000.
CP91-381-000 9-13-90 (P-PLT-3387).	Panhandle	Amgas Inc	75 30 13,505	KS & various existing points	IL	10-1-90 PT, Interruptible	ST91-1758-000.
CP91-382-000 9-26-90 (P-PLT-3399).	Panhandle	Mobil Natural Gas Inc	100,000 50,000 18,250,000	IL & various existing points	MI	10-1-90 PT, Interruptible	ST91-2747-000.

[1] Quantities are shown in Dt.
[2] The ST docket indicates that 120-day transportation service was initiated under Section 284.223(a) of the Commission's Regulations.

13. Arkla Energy Resources a division of Arkla, Inc.

[Docket No. CP91-383-000]

November 15, 1990.

Take notice that on November 9, 1990, Arkla Energy Resources, a division of Arkla, Inc. (AER), 525 Milam Street, Shreveport, Louisiana 71151, filed an application with the Commission in Docket No. CP91-383-000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate certain facilities in Arkansas and Louisiana under its blanket certificate issued in Docket No. CP82-384-000 pursuant to section 7 of the NGA, all as more fully set forth in the application which is open to public inspection.

AER proposes to construct and operate five new sales taps and related facilities, and to operate four existing taps for resale to domestic consumers other than the right-of-way grantors for whom the taps were installed, all for the delivery of natural gas to Arkansas Louisiana Gas Company (ALG) for resale to domestic, commercial, and industrial consumers in Arkansas and Louisiana. AER also states that it could provide the proposed natural gas deliveries from its general system supply.

Comment date: January 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

PROPOSED FACILITIES

Customer	Location	Volumes (Mcf) annual peak day	Estimated construction cost
1. Ricky Sherrill.	Lincoln Parish, Louisiana.	85 1	Facilities Exist
2. Harvey P. Smith.	Union Parish, Louisiana.	85 1	$1,900
3. Lee Freeman.	Clark County, Arkansas.	85 1	Facilities Exist
4. Tim Reams.	Union County, Arkansas.	85 1	Facilities Exist
5. Jeff Diehl...	Ouachita County, Arkansas.	85 1	Facilities Exist
6. Various Commercial, Domestic, & Industrial.	Lafeyette County, Arkansas.	5,900 80	$13,395
7. Various Commercial, Domestic, & Industrial.	Claiborne Parish, Louisiana.	2,025 20	$2,300
8. Various Commercial, Domestic, & Industrial.	Union County, Arkansas.	2,903 795	$20,180
9. Various Commercial, Domestic, & Industrial.	Little River County, Arkansas.	2,903 795	$15,130

4. Questar Pipeline Co.

[Docket Nos. CP91-387-000 and CP91-388-000]

November 15, 1990.

Take notice that Questar Pipeline Company, 79 South State Street, Salt Lake City, Utah 84111, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-650-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[8]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: January 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

[8] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-387-000 (11-13-90).	Celsius Energy Company.	2,900 1,000 365,000	Sweetwater County, Wyoming.	Daggett County, Utah	10-05-90, T-2, Interruptible.	ST91-1752-000, 9-28-90.
CP91-388-000 (11-13-90).	Questar Energy Company.	30,000 10,000 3,650,000	Various.....	Wyoming, Utah, Colorado.	6-21-90, T-2, Interruptible.	ST91-1751-000, 9-27-90.

15. High Island Offshore System

[Docket Nos. CP91-326-000, CP91-327-000, CP91-328-000, CP91-329-000, CP91-330-000, and CP91-331-000]

November 15, 1990.

Take notice that High Island Offshore System, C/O ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. RM88-14-001 and RM88-15-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[9]

Information applicable to each transaction, including the identify of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: January 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

[9] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day average day annual Mcf	Receipt points [1]	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-326-000 (11-5-90)	Kaztex Engery Management, Inc. (Broker).	25,000 25,000 9,125,000	OTX, OLA.....	OTX, LA.....	11-2-90, IT, Interruptible.	ST91-61-000, 9-12-90.
CP91-327-000 (11-5-90)	Anadarko Trading Company (Marketer).	120,000 120,000 43,800,000	OTX, OLA.....	OTX, LA.....	11-2-90, IT, Interruptible.	ST90-4788-000, 9-1-90.
CP91-328-000 (11-5-90)	Conoco, Inc. (Producer)..	205,000 205,000 74,825,000	OTX, OLA.....	OTX, LA.....	11-2-90, IT, Interruptible.	ST90-4785-000, 9-1-90.
CP91-329-000 (11-5-90)	OXY USA, Inc. (Producer).	30,000 30,000 10,950,000	OTX, OLA.....	OTX, LA.....	11-2-90, IT, Interruptible.	ST90-4793-000, 9-4-90.
CP91-330-000 (11-5-90)	Polaris Pipeline Corporation (Marketer).	38,600 38,600 14,089,000	OTX, OLA.....	OTX, LA.....	11-2-90, IT, Interruptible.	ST91-63-000, 9-13-90.
CP91-331-000 (11-5-90)	Enron Gas Marketing, Inc. (Marketer).	1,530,000 1,530,000 558,450,000	OTX, OLA.....	OTX, LA.....	11-2-90, IT, Interruptible.	ST90-4792-000, 9-1-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

16. Tennessee Gas Pipeline Co., Texas Gas Transmission Corp., and Texas Gas Transmission Corp.

[Docket Nos. CP91-389-000, CP91-390-000, and CP91-391-000]

November 15, 1990.

Take notice that Tennessee Gas Pipeline Company, P.O. box 2511, Houston, Texas 77252, and Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, Kentucky 42301, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP87-115-000 and Docket No. CP88-686-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[10]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120 day-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: January 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

[10] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, startup date
CP91-389-000 (11-13-90)	Industrial Energy Services Company (Marketer).	15,000 15,000 5,475,000	Various	Various	9-25-90, IT, Interruptible.	ST91-2904-000, 10-8-90.
CP91-390-000 (11-13-90)	Meth Corporation	80,000 MMBtu 3,000 MMBtu 1,200,000 MMBtu	Various	LA, AR, MS, TN	9-17-90, IT, Interruptible.	ST91-2714-000, 10-19-90.
CP91-391-000 (11-13-90)	Kogas, Inc.....	100,000 MMBtu 5,000 MMBtu 1,825,000 MMBtu	Various	LA.....	6-19-90, IT, Interruptible.	ST91-2715-000, 10-18-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

17. Transwestern Pipeline Co., Transwestern Pipeline Co., Transwestern Pipeline Co., Transcontinental Gas Pipe Line Corp.

[Docket Nos. CP91-313-000, CP91-314-000, CP91-315-000, and CP91-319-000]

November 15, 1990.

Take notice that on November 5, 1990, the above listed companies filed in the respective dockets prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[11]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: January 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

[11] These prior notice requests are not consolidated.

Docket number [2] (date filed)	Applicant	Shipper name	Peak day [1] average annual	Points of		Start up date rate schedule	Related dockets
				Receipt	Delivery		
CP91-313-000 (11-5-90)	Transwestern Pipeline Company.	Enron Gas Marketing, Inc.	50,000 37,500 18,250,000	AZ, NM, OK, TX	NM	10-01-90, ITS-1	ST91-1200-000, CP88-133-000.
CP91-314-000 (11-5-90)	Transwestern Pipeline Company.	Continental Natural Gas, Inc.	50,000 37,500 18,250,000	AZ, NM, OK, TX	OK	10-01-90, ITS-1	ST91-856-000, CP88-133-000.
CP91-315-000 (11-5-90)	Transwestern Pipeline Company.	NGC Transportation Inc.	25,000 18,750 9,125,000	AZ, NM, OK, TX	OK	10-02-90, ITS-1	ST91-855-000, CP88-133-000
CP91-319-000 (11-5-90)	Transcontinental Gas Pipe Line Corporation.	Union Pacific Fuels, Inc..	300,000Dt 50,000Dt 109,500,000Dt	Offshore LA	LA	9-01-90, It	ST91-32-000, CP88-328-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

18. Northern Natural Gas Co., Division of Enron Corp.

[Docket Nos. CP91-371-000, CP91-372-000, CP91-373-000, CP91-374-000, CP91-375-000, and CP91-376-000]

November 15, 1990.

Take notice that on November 9, 1990, Northern Natural Gas Company, Division of Enron Corp. (Applicant), P.O. box 1188, Houston, Texas 77251-1188, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[12]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: January 2, 1991, in accordance with Standard Paragraph G at the end of this notice.

[12] These prior notice requests are not consolidated.

Docket No.[1] docket (date filed)	Shipper name	Peak day[2] average annual average	Points of[3]		Start up date rate schedule service type	Related contract date
			Receipt	Delivery		
CP91-371-000 (11-9-90)	Enron Gas Processing Company.	150,000	KS	KS	9-13-90, IT-1, Interruptible.	ST91-427-000, 9-13-90.
CP91-372-000 (11-9-90)	Brooklyn Interstate Natural Gas.	50,000 37,500 18,250,000	TX, OLA, OTX	TX, OLA, OTX	10-1-90, IT-1, Interruptible.	ST91-601-000, 10-1-90.
CP91-373-000 (11-9-90)	Access Energy Corporation.	80,000 60,000 29,200,000	IA, KS, MN, NE, NM, OK, TX, WI.	IA, IL, KS, MI, MN, NE, SD, TX, WI.	10-1-90, IT-1, Interruptible.	ST91-429-000, 10-1-90.
CP91-374-000 (11-9-90)	Coastal Gas Marketing Company.	100,000 75,000 36,500,000	IA, KS, MN, NM, OK, SD, TX, WI.	KS	9-28-90, IT-1, Interruptible.	ST91-428-000, 9-28-90.

[1] If an ST docket is shown, 120-day transportation service was reported in it.
[2] Quantities are shown in MMBtu.
[3] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.

Docket No.[4] docket (date filed)	Shipper name	Peak day[5] average annual	Points of[6]		Start up date rate schedule service type	Related contract date
			Receipt	Delivery		
CP91-375-000 (11-9-90)	Entrade Corporation	20,000 15,000 7,300,000	IA, KS, MN, NE, NM, OK, SD, TX, WI.	KS, TX	10-10-90, IT-1, Interruptible.	ST91-1717-000, 10-10-90.
CP91-376-000 (11-9-90)	Enron Gas Marketing, Inc.	15,000 11,250 5,475,000	KS, OK	KS	10-1-90, IT-1, Interruptible.	ST91-133-000, 10-1-90.

[4] If an ST docket is shown, 120-day transportation service was reported in it.
[5] Quantities are shown in MMBtu.
[6] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion on intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding herein must filed a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27481 Filed 11-21-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP91-2-000]

Natural Gas Pipeline Co. of America; Petition for Declaratory Order

November 15, 1990.

Take notice that on October 12, 1990, Natural Gas Pipeline Company of America (Natural) filed a petition pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure for an order declaring: (1) That the claims made and the relief sought in a lawsuit brought by Dorchester Hugoton, Ltd., (Dorchester) against Natural in state court, *Dorchester Hugoton, Ltd.* v. *Natural Gas Pipeline Co. of America*, No. 29,482-S 329th Jud. Dist. Ct. Wharton Cty., Texas), filed May 1, 1990, are within the exclusive jurisdiction of the Commission or, in the alternative, that the Commission will assert its primary jurisdiction over Dorchester's claims; (2) that the claims made and the relief sought by Dorchester must comply with the provisions of the Natural Gas Act; and/or (3) that the Commission has jurisdiction and will exercise such jurisdiction to review any relief that may be awarded by the court in Dorchester's lawsuit to determine whether such award would be consistent with the pertinent provisions of the Natural Gas Act, the Natural Gas Policy Act of 1978, (NGPA) and the orders and regulations of the Commission.

Natural states that Dorchester sells natural gas to Natural in a sale that is subject to the jurisdiction of the Commission under the Natural Gas Act. Natural states that Dorchester's various claims in its lawsuit, although all purportedly based upon alleged state law rights, in fact constitute challenges to the justness and reasonableness of a rate that is within the Commission's exclusive jurisdiction under the Natural Gas Act, and all are based upon the claim that the rate Natural has been paying for the gas is unlawfully low.

Natural also states that to be entitled to the relief Dorchester claims, it must make a showing that meets the requirements of section 5 of the Natural Gas Act, that the relief of damages that Dorchester seeks is not available because section 5 of the Natural Gas Act authorizes prospective relief only, and that the relief of rescission that Dorchester seeks is not available because it would constitute unlawful retroactive abandonment. Finally, Natural states that if for any reason the Commission does not grant any of the above declarations, Natural is entitled to a declaration by the Commission that Dorchester would be required to seek specific authorization from the Commission before collecting any damages or other relief that a court might award on Dorchester's claims.

Any person desiring to be heard or make any protest to said filing should file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 30, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27482 Filed 11-21-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-59-000]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

November 15, 1990.

Take notice that Northern Natural Gas Company, Division of Enron Corp. (Northern), on November 9, 1990

BEST COPY AVAILABLE

tendered for filing changes in its FERC Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 483-A. The instant filing reflects a Base Average Gas Purchase Cost of $2.6851 per MMBtu to be effective December 1 through December 31, 1990. Northern further intends to use its flexible PGA, as necessary, to reflect actual market conditions throughout this time period.

Northern states that copies of the filing were served upon the company's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 23, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27483 Filed 11-12-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-18-000]

Seagull Interstate Corp.; Rate Application

November 15, 1990.

Take notice that Seagull Interstate Corporation ("Seagull") has on November 5, 1990 filed a rate application for approval of initial rates for firm and interruptible transportation service on a new pipeline system (the 376 System) that has been acquired and will be operated solely under section 311 of the NGPA and part 284 of the Commission's regulations. In connection with this rate application, Seagull has also tendered for filing tariff sheets attached as appendix A to the filing. These sheets are proposed to be effective November 5, 1990.

Although Seagull does not believe that the 30-day notice requirement for NGA rate filings under part 154 applies to this NGPA rate filing, Seagull requests that if the Commission holds otherwise, Seagull be granted a waiver of the 30-day notice requirement pursuant to § 154.51 of the regulations, since the 376 System is currently operational and an agreement has been executed with a shipper for service to commence November 5, 1990.

Seagull states that copies of this filing are being mailed to all of its shippers, a list of which is attached to the filing.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 23, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27486 Filed 11-21-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-43-001]

Williams Natural Gas Co. Proposed Changes in FERC Gas Tariff

November 15, 1990.

Take notice that Williams Natural Gas Company (WNG) on November 9, 1990 tendered for filing Second Substitute Twenty Second Revised Sheet No. 6 and Second Substitute Eighth Revised Sheet No. 6A to its FERC Gas Tariff, Original Volume No. 1. The proposed effective date of these tariff sheets in November 1, 1990.

This filing is being made in compliance with Commission order issued October 31, 1990 in Docket No. TQ91-1-43-000, et al., to reflect revisions to WNG's quarterly PGA filing.

WNG states that public copies of its filing were served on all jurisdictional purchasers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before November 23, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27485 Filed 1-21-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-148-006]

Williston Basin, Interstate Pipeline Co.; Change in FERC Gas Tariffs

November 15, 1990.

Take notice that on November 9, 1990, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing Third Substitute Original Sheet No. 136A to Original Volume No. 1-B of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheet is being submitted in compliance with the Commission's November 2, 1990 Order regarding the Company's priority of service list for sales and transportation service, and is to be effective August 20, 1990.

Williston Basin states that copies of this filing were served on Williston Basin's jurisdictional customers and interested state regulatory agencies.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, (1990). All such protests should be filed on or before November 23, 1990. Protests will be considered by the Commission in determining the appropriate action to the taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter, Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27484 Filed 1-21-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3862-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 5, 1990 through November 9, 1990 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 13949).

Draft EISs

ERP No. D-AFS-K03019-CA Rating EC2, M-70 Pipeline Replacement and System Optimization Project, Construction, Operation and Abandonment, Right-of-Way Grant, Special Use Permit and COE Permits, Angeles and Los Padres National Forests, Los Angeles and Kern Counties, CA.

Summary: EPA expressed environmental concerns due to the projects potential for adverse impacts to air quality, water quality, riparian habitat and biodiversity. EPA requested mitigation for adverse impacts to wetlands from construction activities and further development of oil spill contingency measures.

ERP No. D-AFS-K61112-CA Rating EC2, Sugar Bowl Ski Resort Master Plan, Development and Expansion, Tahoe National Forest, Special Use Permit and Section 404 Permit, Placer and Nevada Counties, CA.

Summary: EPA expressed environmental concerns about potential violations of air quality standards from vehicular emissions and whether the air quality mitigation in the draft EIS will prevent standards violations. EPA also requested that the final EIS contain more information regarding potential impacts to ground water resources, wetlands, and water of the United States.

ERP No. D-AFS-L65138-OR Rating EC2, Shasta Costa Timber Sale and Integrated Resource Projects, Implementation, Siskiyou National Forest, Gold Beach and Galice Ranger Districts, Curry County, OR.

Summary: EPA has environmental concerns based on potential adverse effects on the water quality and fish in Siskiyou National Forest. The range of alternatives needs to be expanded and additional information on monitoring and cumulative effects modeling is needed to fully disclose environmental effects.

ERP No. D-BIA-K85062-00 Rating EO2, Fort Mojave Indian Reservation Planned Community Development, Lease Approval, Section 404 Permit, Spirit Mountain, Clark County, NV, San Bernardino County, CA, and Mojave County, AZ.

Summary: EPA expressed environmental objections due to the limited range of alternatives evaluated, as well as potential impacts to water quality and wildlife and the irretrievable loss of riparian habitat. EPA requested additional information regarding indirect and cumulative project impacts, existing and projected air quality and impacts surface water quality, ground water quality, wetlands, wildlife and solid waste disposal capacity.

ERP No. DS-AFS-G65041-AR Rating LO, Ozark-St. Francis National Forest, Land and Resource Management Plan, Additional Information, Implementation, Several Counties, AR.

Summary: EPA has no objections to the proposal to amend the Land and Resource Management Plan.

Final EISs

ERP No. F-AFS-K61094-CA Sherwin Bowl Ski Area Development, Alpine Skiing, Special Use Permit, Inyo National Forest, Mammoth Ranger District, Mono County, CA.

Summary: EPA expressed continuing concerns with potential adverse impacts to air quality and groundwater resources and requested that Forest Service work closely with responsible state and local agencies to identify adverse impacts through monitoring and reduce adverse impacts through effective mitigation.

ERP No. F-DOE-C03012-00 ADOPTING—Iroquois and Tennessee Gas Transmission Pipelines Project, Construction and Operation, MA, CT, NH, NY, RI and TN.

Summary: EPA does not have any concerns regarding the DOE aspects of the project.

ERP No. F-UAF-B24004-MA OTIS Air National Guard Base Wastewater Treatment Facility, Continuing Operation, Barnstable County, MA.

Summary: EPA believes that the implementation of alternative 4B (pumping tertiary-treated effluent to new effluent infiltration basins next to the Cape Cod Canal for disposal) will not cause significant impacts to the environment and will not affect the groundwater quality of the Cape Cod sole source aquifer so as to create significant hazard to public health.

Dated: November 19, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90-27574 Filed 11-21-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3863-9]

Environmental Impact Statements; Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed November 12, 1990 Through November 16, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900419, Draft EIS, FHW, IL, FAP-407/IL-336 Construction, US-24 at the Northern Terminus of IL-336 to Southeast of Carthage near US-136, Funding, Section 404 Permit, Adams and Hancock Counties, IL, Due: January 7, 1991, Contact: Jay W. Miller (217) 492-4600.

EIS No 900420, Final EIS, HUD, TX Stonebridge Ranch Development Project, Mortgage Insurance, Section 404 Permit, City of McKinney, Collin County, TX, Due: December 24, 1990, Contact: LJ. Ramsbottom (817) 885-3488.

EIS No. 900421, Final EIS, BLM, CO, UT Craig District Wilderness Study Areas (WSAs) Wilderness Recommendations, Designation or Nondesignation, Oil Spring Mtn, Windy Gulch, Black Mtn, Willow Creek, Skull Creek, Bull Canyon, Troublesome/Platte River Contiguous WSAs, White River/Kremmling Resource Areas, Jackson, Moffat, and Rio Blanco Counties, CO and Uintah County, UT, Due: December 24, 1990, Contact: Greg Goodenow (303) 824-8261.

EIS No. 900422, Final Supplement, NOA, WA, OR Ca, Pacific Coast Groundfish Fishery Management Plan (FMP), Approval and Implementation of FMP Amendment No. 4, CA, OR and WA, Due: December 24, 1990, Contact: William W. Fox, Jr. (301) 427-2239.

EIS No. 900423, Draft EIS, SCS, CA, McCoy WA Watershed Flood Prevention Plan, Implementation, Section 404 Permit, Riverside County, CA, Due: January 22, 1991, Contact: Pearlie S. Reed (916) 449-2861.

EIS No. 900424, Final EIS, AFS, CO Lake Catamount Resort Construction, Special Use Permit, Section 404 Permit, Routt National Forest, Routt County, CO, Due: December 24, 1990, Contact: Larry Keown (303) 879-1722.

Dated: November 19, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90-27573 Filed 11-21-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications, Hearings, Determinations, etc.; KRTZ Broadcasting, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

I.

Applicant	File no.	MM docket no.
A. KRIZ Broadcasting, Inc.; Vancouver, Wa.	BPH-890410MB	90-418
B. Q Prime, Inc.; Vancouver, Wa.	BPH-890411MA	
C. Fort Vancouver Broadcasting, Inc.; Vancouver, Wa.	BPH-890412MB	
D. Smith Broadcasting, Inc.; Vancouver, Wa.	BPH-890412MC	
E. Atwater Kent Communications, Inc.; Vancouver, Wa.	BPH-890412MD	
F. Columbia River Wireless, Inc.; Vancouver, Wa.	BPH-890412ME	
G. Florinda J. Weagant; Vancouver, Wa.	BPH-890412MI	
H. McCoy Communications Limited Partnership, Inc.; Vancouver, Wa.	BPH-890413MA	
I. KLRK, Inc.; Vancouver, Wa.	BPH-890413MC	
J. Vancouver Communications Co.; Vancouver, Wa.	BPH-890413ME	
K. Gregory Winston; Vancouver, Wa.	BPH-890413MF	
L. Tumbeaugh Communications, L.P.; Vancouver, Wa.	BPH-890413MG	
M. Thomas M. Eells; Vancouver, Wa.	BPH-890413MH	
N. Clark Broadcasting Limited Partnership; Vancouver, Wa.	BPH-890413MJ	
O. Bernard V. Foster; Vancouver, Wa.	BPH-890413MK	
P. Vancouver FM Broadcasters Limited Partnership; Vancouver, Wa.	BPH-890413ML	
Q. Linda and Jack Sexton; Vancouver, Wa.	BPH-890413MN	
R. The Vancouver Radio Group, Inc.; Vancouver, Wa.	BPH-890413MV	
S. Columbia-Willamette Limited Partnership; Vancouver, Wa.	BPH-890413MW	
T. Vancouver-Portland Broadcasting Corporation; Vancouver, Wa.	BPH-890413MX	
U. (James A. Gammon d/b/a) Reunion Broadcasting Service; Vancouver, Wa.	BPH-890413MY	
V. (John Q. Hearne d/b/a) Point Broadcasting Company; Vancouver, Wa.	BPH-890413MZ	
W. Cascade Broadcasting of Vancouver Limited Partnership; Vancouver, Wa.	BPH-890413NB	
X. Shabaz Communications, Inc.; Vancouver, Wa.	BPH-890413NC	
Y. Vancouver USA Broadcasters, Inc.; Vancouver, Wa.	BPH-890413ND	
Z. Columbia FM Limited Partnership; Vancouver, Wa.	BPH-890413NH	
AA. (Andrew L. Brown & Lester M. Friedman d/b/a) Trans-Columbia Communications; Vancouver, Wa.	BPH-890413NL	
AB. Columbia River Broadcasting Company; Vancouver, Wa.	BPH-890413NN	

Issue Heading and Applicants

1. Site Availability, Q
2. Environmental, A, C, E, F, I, R, AB
3. Air Hazard, A, E, F, G, I, Y, AA
4. Financial, N, X
5. Comparative, All Applicants
6. Ultimate, All Applicants

2. Pursuant to section 309(e) of the Communication Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 90-27582 Filed 11-21-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Mountaineer Bankshares of W. Va., Inc., et al.; Formations of, Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 11, 1990.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Mountaineer Bankshares of W. Va., Inc.*, Martinsburg, West Virginia; to acquire 100 percent of the voting shares of The First National Bank of Cameron, Cameron, West Virginia.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Covington Capital Corporation*, Collins, Mississippi; to become a bank holding company by acquiring 80 percent of the voting shares of Covington County Bank, Collins, Mississippi.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Clear Lake Investors, Inc.*, Clear Lake, Iowa; to become a bank holding company by acquiring 34.2 percent of the voting shares of Clear Lake Bank and Trust Company, Clear Lake, Iowa.

2. *Community Bancshares, Inc.*, Noblesville, Indiana; to become a bank holding company by acquiring 80 percent of the voting shares of Summitville Bank and Trust Co., Summitville, Indiana.

3. *Mid America Banks, Inc.*, Collins, Iowa; to acquire 24.98 percent of the voting shares of Schroeder Goodenow Management Company, Atlantic, Iowa, and thereby indirectly acquire Exchange State Bank, Exira, Iowa.

4. *INB Financial Corporation*, Indianapolis, Indiana; to acquire 100 percent of the voting shares of Homestate Bancorp, Inc., Salem, Indiana, and Salem Bancorp, Inc., Salem, Indiana, and thereby indirectly acquire State Bank of Salem, Salem, Indiana.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Shipman Bancorp, Inc.*, Shipman, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank of Shipman, Shipman, Illinois.

Board of Governors of the Federal Reserve System, November 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27466 Filed 11-21-90; 8:45 am]

BILLING CODE 6210-01-M

Northern Trust Corp.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 11, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northern Trust Corporation*, Chicago, Illinois; to engage *de novo* through its subsidiary, Northern Trust Brokerage, Inc., Chicago, Illinois, in underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, including bankers acceptances and certificates of deposit under the same limitations as would be application if the activity were performed by the bank holding company's subsidiary member banks or its subsidiary nonmember banks as if they were nonmember banks pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27467 Filed 11-21-90; 8:45 am]

BILLING CODE 6210-01-M

Star Financial Group, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 11, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Star Financial Group, Inc.*, Marion, Indiana; to acquire 100 percent of the voting shares of Trustcorp Bank, Indianapolis, Indianapolis, Indiana.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *BankAmerica Corporation*, San Francisco, California; to acquire at least 99 percent of the voting shares of Bank of America Idaho, Coeur d'Alene, Idaho.

Board of Governors of the Federal Reserve System, November 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27468 Filed 11-21-90; 8:45 am]

BILLING CODE 6210-01-M

State Financial Services Corp. ESOP, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and

§ 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 5, 1990.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *State Financial Services Corporation Employee Stock Ownership Plan*, Hales Corners, Wisconsin; to acquire an additional 7.12 percent of the voting shares of State Service Financial Service Corp., Hales Corners, Wisconsin, and thereby indirectly acquire Edgewood Bank, Greenfield, Wisconsin, State Bank of Hales Corners, Hales Corners, Wisconsin, and University National Bank, Milwaukee, Wisconsin.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Billy Hull Barbee*, Kilgore, Texas; to acquire an additional 1.01 percent (totalling 1.17 percent); Francis Elmo Brown, Jr., Kilgore, Texas; to acquire an additional 12.25 percent (totalling 12.89 percent); William Robert Crim, Kilgore, Texas; to acquire an additional 4.08 percent (totalling 5.12 percent); Gibson Management Group, Inc., Longview, Texas; to acquire 1.63 percent; Sanny Sue Holland, Kilgore, Texas; to acquire 2.04 percent; Thomas Mancel Hopkins, Kilgore, Texas; to acquire 0.82 percent; Hydro-Seal Valve Company, Inc., Kilgore, Texas; to acquire 4.08 percent; Don Milton Kerr, Kilgore, Texas; to acquire an additional 8.16 percent (totalling 8.36 percent); Jimmy Dolan Kirkland, White Oak, Texas; to acquire 4.08 percent; Janet Stanley Miller, Dallas, Texas; to acquire 4.08 percent; David Mobley Grantor Trust, Kilgore, Texas, to acquire 8.16 percent; Tom Marion Mobley, II, Kilgore, Texas, to acquire 4.08 percent; Claude Wilford Rhodes, Jr., Kilgore, Texas; to acquire 4.08 percent; Robert Wayne Sigmon, White Oak, Texas; to acquire 4.08 percent; Constance Smith, Kilgore, Texas; to acquire 2.04 percent; Ronald E. Spradlin, III, Kilgore, Texas; to acquire an additional 4.08 percent (totalling 4.20 percent); Paul Henry Story, Kilgore, Texas; to acquire 0.66 percent; and Larry von Tate, Kilgore, Texas; to acquire 4.08 percent of the voting shares of Kilgore First Bancorp, Inc., Kilgore, Texas, and thereby indirectly acquire Kilgore First National Bank, Kilgore, Texas.

Board of Governors of the Federal Reserve System, November 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27469 Filed 11-21-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Public Meeting on Clinical Practice Guidelines for Risk Assessment, Prevention, and Early Intervention in Management of Pressure Sores

A public meeting will be held on clinical practice guidelines for Risk Assessment, Prevention, and Early Intervention in Management of Pressure Sores. The guidelines are under development by a panel of experts and health care consumers, arranged for by the Agency for Health Care Policy and Research. A Notice announcing the development of seven sets of clinical practice guidelines and inviting written comments was published in the **Federal Register** on August 28, 1990 (55 FR 35185).

In addition to the solicitation of written material in the August 28 **Federal Register**, a series of public meetings is being held to provide an opportunity for interested parties to contribute relevant information and comments concerning the particular guidelines under development.

The public meeting to address guidelines for Risk Assessment, Prevention, and Early Intervention in Management of Pressure Sores will be held on December 6, as follows: December 6, 1990, 8 a.m. to Noon, Ramada Renaissance Techworld, 999 9th Street, NW., Washington, DC.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), enacted on December 19, 1989, added a new Title IX to the Public Health Service Act (the Act) which established the Agency for Health Care Policy and Research (the Agency) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services.

Section 911 of the Act established, within the Agency, the Office of the Forum for Quality and Effectiveness in Health Care (the Forum). Section 912 of the Act directs the Forum to arrange for the development and periodic review and updating of:

Clinically relevant guidelines that may be used by physicians, educators and health care practitioners to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically.

Section 912 of the Act also provides that by not later than January 1, 1991, the Administrator of the Agency shall assure the development of an initial set of guidelines, standards, performance measures, and review criteria that includes not less than 3 clinical treatments or conditions that:

1. Account for a significant portion of expenditures under the Medicare program, and have a significant variation in the frequency or the type of treatment provided; or
2. Otherwise meet the needs and priorities of the Medicare program.

Section 914 of the Act lists factors to be considered in establishing priorities for guidelines, including the extent to which the proposed guidelines would:

1. Improve methods of prevention, diagnosis, treatment and clinical management, and thereby benefit a significant number of individuals;
2. Reduce clinically significant variations among providers in making diagnoses and providing treatments, or reduce significant variations in the outcomes of health care services or procedures; and
3. Reduce variations in the services and procedures utilized for diagnosis and treatment (and potentially produce savings in health care expenditures)

Based on these statutory criteria, consultation with the Health Care Financing Administration (in accordance with 42 U.S.C. 1320b-12(a)), studies conducted by the Institute of Medicine, availability of reliable research data, and a high degree of professional consensus, the following topics have been selected for initial guideline development:

1. Visual Impairment due to Cataract in the Aging Eye
2. Diagnosis and Treatment of Benign Prostatic Hyperplasia
3. Urinary Incontinence in the Adult
4. Risk Assessment, Prevention, and Early Intervention in Management of Pressure Sores
5. Delivery of Comprehensive Care in Sickle Cell Disease
6. Management of Acute Post-Operative Pain
7. Diagnosis and Treatment of Depressed Outpatients in the Primary Care Setting

To meet the requirement to assure the development of initial guidelines by January 1991, the Forum has arranged for panels of experts in the above-listed topics and consumers who will develop the specific guidelines. Panel responsibilities include assessment of the available scientific evidence and clinical consensus and determination of the scope of the guideline.

Arrangements for December 6 Public Meeting on Risk Assessment, Prevention, and Early Intervention in Management of Pressure Sores

Representatives of organizations and other individuals are invited to provide relevant written comments and information and make a brief (5 minutes or less) oral statement to the panel. The Office of the Forum for Quality and Effectiveness in Health Care is making the administrative arrangements for this public meeting on behalf of the panel. Individuals and representatives who would like to attend must register with the forum at the address set out below by November 30 and indicate whether they plan to make an oral statement. Those wishing to make oral statements and provide written comments and information should also submit copies of these to the Forum by November 30. If more requests to make oral statements are received than can be accommodated between 8 am and Noon on December 6, the chair person will allocate speaking time in a manner which ensures, to the extent possible, that a range of views of health care professionals and providers, health care consumers, and product and pharmaceutical manufacturers is presented. Those who cannot be allocated their requested speaking time because of time constraints may be assured that their written comments will be considered by the panel in developing the guidelines.

Gloria A. Hernandez, M.S.N., R.N., Acting Director, Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Parklawn Building, room 18A46, 5600 Fishers Lane, Rockville, MD 20857, Phone 301-443-8754, Fax 301-443-0007.

Meetings on additional topics will also be announced in the **Federal Register**.

Dated: November 16, 1990.

J. Jarrett Clinton,

Assistant Surgeon General, Acting Administrator.

[FR Doc. 90-27508 Filed 11-21-90; 8:45 am]

BILLING CODE 4160-90-M

Food and Drug Administration

[Docket No. 90P-0339]

Cottage Cheese Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Bancroft Dairy, Inc., to market test a product designated "nonfat cottage cheese" that deviates from the U.S. standard of identity for lowfat cottage cheese (21 CFR 133.131). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 21, 1991.

FOR FURTHER INFORMATION CONTACT: Joanne Travers, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0106.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Bancroft Dairy, Inc., 1010 South Park St., Madison, WI 53715.

The permit covers limited interstate marketing tests of a product that deviates for the U.S. standard of identity for lowfat cottage cheese (21 CFR 133.131) in that the test product contains less than 0.4 percent milkfat compared to 0.5 to 2.0 percent milkfat in lowfat cottage cheese. The product meets all requirements of the standard with the exception of this deviation. The purpose of this variation is to offer the consumer a product that is nutritionally equivalent to lowfat cottage cheese but contains less fat.

For the purpose of this permit, the name of the product is "nonfat cottage cheese." In accordance with FDA's current views, "fat free" food labeling is acceptable because the product contains less than 0.4 grams of fat per serving. The information panel of the label must bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of a total of 3,250,000 pounds (1,474,200 kilograms) of the test product to be packaged in 16-ounce (454 grams) containers. The test product will be produced and packaged at Bancroft Dairy, Inc., 1010 South Park St., Madison, WI 53715, and sold in Alabama, Florida, Georgia, Illinois, Louisiana, Michigan, Minnesota, Mississippi, Missouri, North Dakota, Ohio, South Carolina, South Dakota, Texas, Utah, and Wisconsin.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced into interstate commerce, but no later than February 21, 1991.

Dated: November 14, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-27507 Filed 11-21-90; 8:45 am]

BILLING CODE 4160-01-M

Food and Drug Administration

[Docket No. 90M-0327]

ACTech®, Advanced Clinical Technologies, Inc.; Premarket Approval of Periocheck® Enzyme Activity Test Kit

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by ACTech®, Advanced Clinical Technologies, Inc., Westwood, MA, for premarket approval, under the Medical Device Amendments of 1976, of the Periocheck® Enzyme Activity Test Kit. After reviewing the recommendation of the Dental Products Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 14, 1990, of the approval of the application.

DATES: Petitions for administrative review by December 24, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Gregory Singleton, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390

Piccard Dr., Rockville, MD 20850, 301–427–1180.

SUPPLEMENTARY INFORMATION: On October 2, 1987, ACTech®, Advanced Clinical Technologies, Inc., Westwood, MA 02090, submitted to CDRH an application for premarket approval of the Periocheck® Enzyme Activity Test Kit. The device is indicated for the semiquantitative measurement of neutral proteolytic enzyme activity in gingival crevicular fluid, to be used as an adjunct to conventional clinical methods of monitoring patients during the course of periodontal disease treatment.

On February 26, 1988, the Dental Products Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 14, 1990, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Gregory Singleton (HFZ–470), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 24, 1990 file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sections 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 14, 1990.

Elizabeth D. Jacobson,

Acting Deputy Director, Center for Drugs and Radiological Health.

[FR Doc. 90–27505 Filed 11–21–90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90M-0442]

Zeus Scientific, Inc.; Premarket Approval of Fluoro-CEP® Progesterone

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Zeus Scientific, Inc., Raritan, NJ, for premarket approval, under the Medical Device Amendments of 1976, of Fluoro-Cep® Progesterone. After reviewing the recommendation of the Clinical Chemistry and Clinical Toxicology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 28, 1990, of the approval of the application.

DATES: Petitions for administrative review by December 24, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kaiser Aziz, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1243.

SUPPLEMENTARY INFORMATION: On April 11, 1990, Zeus Scientific, Inc., Raritan, NJ 08869, submitted to CDRH an application for premarket approval of Fluoro-Cep® Progesterone. Fluoro-Cep® Progesterone is indicated to assist the pathologist in determining the proportion of breast cancer cells within a tumor which contains high levels of progesterone binding proteins. Based upon assay results, clinicians are provided with additional data which may assist in the choice of individualized therapy. It is recommended that the Fluoro-Cep® Progesterone assay results be determined by a pathologist experienced in fluorescence microscopy and breast cancer morphology.

On September 6, 1990, the Clinical Chemistry and Clinical Toxicology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 28, 1990, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Kaiser Aziz (HFZ–440), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 24, 1990, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sections 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 14, 1990.

Elizabeth D. Jacobson,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 90–27506 Filed 11–21–90; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meeting is announced.

Arthritis Drugs Advisory Committee

Date, time, and place. December 6 and 7, 1990, 8:30 a.m., Versailles Ballrooms I and II, Holiday Inn-Bethesda, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, December 6, 1990, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; closed committee deliberations, December 7, 1990, 8:30 a.m. to 5 p.m.; Isaac F. Roubein, Ph.D., Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of arthritis.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committe. Those desiring to make formal presentations should notify the contact person before December 3, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) Analgesic guidelines, (2) clinical requirements for over-the-counter topical nonsteroidal anti-inflammatory drug products, and (3) new drug application (NDA) 9046/SO31-oxsoralen (ICN Pharmaceuticals) and photopherisis (Therakos-Johnson and Johnson Co.) for scleroderma.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information relevant to investigational new drug (IND) 9042, NDA's 11–011/SO51 and 12–281/SO34, and a pre-IND submission. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be as least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, Room 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, room 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves

a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: November 19, 1990.

Joseph A. Levitt,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-27587 Filed 11-21-90; 8:45 am]

BILLING CODE 4160-0-M

Health Resources and Services Administration

Final Funding Priority for Cooperative Agreements for Area Health Education Center Programs

The Health Resources and Services Administration (HRSA) announces the final funding priority for fiscal year 1991 Cooperative Agreements for the Area Health Education Centers (AHEC) Program under the authority of section 781(a)(1) of the Public Health Service Act, as amended by Public Law 100-607.

Section 781(a)(1) authorizes Federal assistance to schools of medicine and osteopathic medicine which have cooperative arrangements with one or more public or nonprofit private area health education centers for the planning, development and operation of area health education center programs. Except as modified by the following paragraph, to be eligible to receive support for an Area Health Education Center cooperative agreement, the applicant must be a public or nonprofit private accredited school of medicine or osteopathic medicine or consortium of such schools, or the parent institution on behalf of such school(s). New applications submitted under this authority will be accepted from medicine or osteopathic schools for the purpose of planning, developing and operating new area health education center programs. Applicants may request up to three years of support with the expectation that AHEC's planned and developed in years one and two would be operational no later than the third year.

The Health Professions Reauthorization Act of 1988 (title VI of Public Law 100-607) amended the authority for the Area Health Education Centers program by:

1. Providing for a waiver, under specified circumstances, of the provision now contained in section 781(a)(2)(C) prohibiting an AHEC from being a school of medicine or osteopathic medicine, the parent institution of such a school, or a branch campus or other subunit of a school of medicine or osteopathic medicine or its parent institution, or a consortium of such entities. The waiver of this provision applies to an AHEC having, at the time of initial application for support, an operating program supported by appropriations of a State legislature as well as local resources;

2. Reducing the minimum number of individuals enrolled in first-year positions in a rotating osteopathic internship or a medical residency training program in family medicine, general internal medicine, or general pediatrics from six individuals to four; and

3. Revising the requirement that each AHEC shall "conduct interdisciplinary training and practice involving physicians and other health personnel including, where practicable, physician assistants and nurse practitioners" to add "and nurse midwives."

To receive support, programs must meet the requirements of the regulations as set forth in 42 CFR part 57, subpart MM.

The Bureau of Health Professions, within the Health Resources and Services Administration has substantial programmatic involvement in the planning, development, and administration of the AHEC projects by:

1. Reviewing and approving plans upon which continuation of the cooperative agreement is contingent in order to permit appropriate direction and redirection of activities;

2. Reviewing and approving all contracts and agreements among recipient medical or osteopathic schools, other health professions schools and community-based centers;

3. Participating with project staff in the development of funding projections;

4. Developing, with project staff, individual project data collection systems and procedures; and

5. Participating with project staff in the design of project evaluation protocols and methodologies.

Section 781(e)(2) of the Act requires that not more than 75 percent of total operating funds of a program in any year shall be provided by the Secretary.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project adequately provides for the program requirements set forth in 42 CFR 57.3804;

2. The capability of the applicant to carry out the proposed project; and

3. The extent of the need of the area to be served by the AHEC's.

The following funding preference, funding priorities and special consideration were established in FY 1989 after public comment and are being extended by the Administration in FY 1991.

Funding Preference for Fiscal Year 1991

In making awards for Fiscal Year 1991, a funding preference will be given to competing continuation applications.

Funding Priorities for Fiscal Year 1991

Additionally, funding priorities will be given to the following:

1. Applications proposing centers in which substantial training experience is in a PHS Act, section 332 Health Manpower Shortage Area and/or a PHS Act, section 329 Migrant Health Center, PHS Act, section 330 Community Health Center or State designated clinic/center serving an underserved population.

2. Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of those with HIV infection-related diseases.

3. Applications demonstrating a commitment to geriatrics through development of innovative educational ways to provide improved and more effective care for the elderly.

4. Applications which are innovative in their educational approaches to quality assurance/risk management activities: Monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

Special Consideration for Fiscal Year 1991

A special consideration will be given to applications proposing centers that will serve Health Manpower Shortage Areas with a greater proportion of American Indian/Alaskan Natives, Asian/Pacific Islanders, Blacks, and/or Hispanics than exists in the general population in the United States.

A proposed additional funding priority was published in the **Federal Register** on September 12, 1990, (55 FR 37562) for public comment. No comments were received during the 30 day comment period. Therefore, the proposed additional funding priority will be retained as follows:

Final Additional Funding Priority for Fiscal Year 1991

A funding priority will be given to applications demonstrating a commitment to reducing infant mortality through the development of innovative educational ways to provide improved and more effective maternal and child health care: For example, the development and implementation of undergraduate, graduate and/or continuing education curricula/courses to enhance the delivery of maternal and child health care to low-income populations; or the provision of clinical training experiences to undergraduate students, graduate students or residents in areas where the infant mortality rate is higher than the State or national average.

Questions regarding programmatic information should be directed to: Division of Medicine, Multidisciplinary Centers and Programs Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C-05, Rockville, Maryland 20857, Telephone: (301) 443-6617.

The *Catalog of Federal Domestic Assistance* number assigned to this program has been changed from 13.824 to 93.824. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: November 16, 1990.

John Kelso,

Acting Administrator.

[FR Doc. 90-27504 Filed 11-21-90; 8:45 am]

BILLING CODE 4160-15-M

Health Resources and Services Administration

Program Announcement and Proposed Special Consideration for Special Project Grants to Schools of Public Health

The Health Resources and Services Administration (HRSA) announces acceptance of applications for fiscal year (FR) 1991 Special Project Grants to Schools of Public Health. This grant program is authorized under section 790A, title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Reauthorization Act of 1988, Public law 100-607. comments are invited on the proposed special consideration listed below.

Approximately $3.7 million is available for this program for fiscal year 1991. Of this amount, $848,243 is projected to fund projects which have been previously recommended for funding in fiscal year 1991. Approximately $2.8 million will be available for 18 competing projects averaging $150,000 each.

Section 790A of the Public Health Service Act, as amended, authorizes the Secretary to award grants to schools of public health for the costs of planning, developing, demonstrating, operating, and evaluating projects:

(1) For preventive medicine;

(2) For health promotion and disease prevention;

(3) For increasing the enrollment in such schools of public health of individuals from disadvantaged backgrounds; and

(4) To improve access and quality in health care.

"A school of public health" means a school located in the United States which has been accredited by the Council on Education for Public Health Pursuant to sections 701 (4) and (5) of the PHS Act.

Grants will be awarded on a competitive basis. Schools of public health are encouraged to focus on projects that address national or regional issues and problems described in: The *Future of Public Health* (Institute of Medicine Study); *Health People 2000: National Health Promotion and Disease Prevention Objectives* (HHS Report); and the *Seventh Report to the President and Congress on the Status of Health Professions in the United States.* PHS has sent the accredited schools of public health copies of these documents. Key public health education and training issues are identified in these reports.

Review Criteria

The HRSA will review applications taking into consideration the following factors:

- The degree to which the proposed project adequately meets legislative intent;
- The background and rationale for the proposed project;
- Whether the project contains clearly stated realistic and achievable national or regional objectives which are described in: The Institute of medicine study titled *The Future of Public Health; Healthy People 2000: National Health Promotion and Disease Prevention Objectives;* and the *Seventh Report to the President and Congress on the Status of Health Professions in the United States;*
- The extent to which the project contains a methodology which is integrated and compatible with project objectives, including collaborative arrangements and feasible workplans;
- Evaluation plans and procedures for program and trainees, if applicable;
- The administrative and management capability of the applicant to carry out the proposed project, including institutional infrastructure and resources;
- The extent to which the budget justification is complete, cost-effective and includes cost-sharing, when applicable; and
- Where there is an institutional plan and commitment for self-sufficiency when Federal support ends.

These review criteria were established in FY 1990 after public comment and the Administration is extending these criteria in fiscal year 1991.

In addition, the following mechanism may be applied in determining the funding of approved applications:

Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

Proposed Special Considerations for FY 1991

It is proposed to give special consideration to applications which address the following national health objectives:

- Training students for practice in public health agencies and community-based organizations such as community health centers (section 330 of the PHS Act), migrant health centers (section 329 of the PHS Act), and other entities that address the needs of underserved populations; or
- Addressing identified personnel shortages by: (1) Increasing enrollment of minorities and individuals from disadvantaged backgrounds; (2) recruiting physicians, scientists, and engineers into careers in public health; and (3) increasing the number of students specializing in environmental health and other personnel shortage categories; or
- Providing education/training programs to personnel working in public health agencies to increase their knowledge, skills, and abilities; or
- Providing education and training focused on substance abuse, HIV/AIDS, and geriatrics.

These areas of emphasis and issues are discussed in *The Future of Public Health; Healthy People 2000: National Health Promotion and Disease Prevention Objectives*; and the Public Health chapter of the *Seventh Report to the President and Congress on the Status of health Personnel in the United States.*

Definitions

The following definitions apply to training sites/facilities included in the first special consideration listed above:

Community Health Center means an entity as defined in section 330(a) of the Public Health Service Act and in regulations at 42 CFR 57.102(c).

Migrant Health Center means an entity as defined in section 329(a) of the Public Health Service Act and in regulations at 42 CFR 56.102(g)(1).

The national health objectives identified above address current problems facing public health professionals in governmental, private and voluntary health agencies and organizations. Accredited schools of public health are in a unique position to develop and expand education and training programs for resources development to address these national and/or regional issues.

Interested persons are invited to comment on the proposed special considerations. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the FY 1991 grant cycle, this comment period has been reduced to 30 days. All comments received on or before December 24, 1990, will be considered before the final special considerations will be applied. No funds will be allocated or final selections made until a final notice is published stating whether the special considerations will be applied.

Written comments should be addressed to:

Director, Division of Associated and Dental Health Professions, Bureau of Health Professions, Parklawn Building, room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated and Dental Health Professions, at the above address, weekdays (Federal holidays excepted), between the hours of 8:30 a.m. and 5 p.m.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

Application materials and questions regarding grants policy should be directed to:

Grants Management Officer, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Completed applications should be returned to the Grants Management Officer at the above address.

Questions concerning the programmatic aspects of Special Project Grants to Schools of Public Health should be directed to:

Public Health Professions Branch, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C–09, Rockville, Maryland 20857, Telephone: (301) 443–6816.

The application deadline date is January 11, 1991.

Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before deadline date, or

(2) Postmarked on or before deadline and received in time for submission to an independent review group.

A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications received after the deadline will be returned to the applicant.

The *Catalog of Federal Demostic Assistance* number for this program is 93.188. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: October 19, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90–27503 Filed 11–12–90; 8:45 am]

BILLING CODE 4160–15–M

Office of Human Development Services

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) for approval a new information collection for the Protection of the Federal Reversionary Interest in Multipurpose Senior Centers (MSCs).

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245–6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Angela Antonelli, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Protection of the Federal Reversionary Interest in Multipurpose Senior Centers (MSCs)

OMB No.: N/A

Description: Under title III, part B ot the Older Americans Act, the Administration on Aging (AoA) awards grants to State Agencies on Aging for the acquisition, construction or renovation of Multipurpose Senior Centers (MSCs). The federal government retains a reversionary interest in MSCs which have been acquired or constructed with these funds. The duration of this reversionary interest is 10 years for acquired facilities and 20 years for constructed facilities (Older Americans Act, Section 312).

The information collected will be used by State Agencies on Aging to develop and maintain inventories of MSCs for which the federal government retains a reversionary interest and to advise AoA when there is a change in status which could result in a recovery of funds. If this information is not collected, State agencies may not be able to effectively identify and track the federal reversionary interest in MSCs or to assure a recovery of funds.

Annual Number of Respondents: 57
Annual Frequency: 1
Average Burden Hours Per Response: 11
Total Burden Hours: 627

Dated: November 9, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 90–27457 Filed 11–21–90; 8:45 am]

BILLING CODE 4130–01–M

National Institutes of Health

National Eye Institute; Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute, December 3 and 4, 1990, Building 31, NEI Conference Room 6A35, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on December 3 from 9 a.m. until approximately 4 p.m. for general remarks by the Institute's Acting Director, Intramural Research Programs, on matters concerning the intramural programs of the National Eye Institute. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on December 3 from approximately 4 p.m. until recess and on December 4 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual projects conducted by the Laboratory of Mechanisms of Ocular Diseases. These evaluations and discussions could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Consequently, this meeting is concerned with matters exempt from mandatory disclosure.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, Room 6A08, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–9110 will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: November 7, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–27490 Filed 11–21–90; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting, National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases on November 28 and 29, 1990. The meeting will be held at the Ritz Carlton Hotel, Pentagon City, 1250 South Hayes Street, Arlington, Virginia 22202. The subcommittee will meet November 28, 7 p.m. to approximately 10 p.m. and the full board will meet November 29, 8:30 a.m. to approximately 5 p.m. The meetings, which will be open to the public, are being held to discuss the Board's activities and to continue evaluation of the National effort to combat arthritis and musculoskeletal and skin diseases. Attendance by the public will be limited to space available.

Ms. Suzanne A. Sangalan, Committee Management Office, National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–0803, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting her office.

Dated: November 19, 1990.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 90–27557 Filed 11–21–90; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting, National Diabetes Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the National Diabetes Advisory Board's meeting date which will be December 10–11, 1990. The meeting will begin at 8:30 a.m. on December 10, 1990, and recess at 4:30 p.m. The meeting will reconvene at 8:30 a.m. on December 11, 1990, and adjourn approximately 3:30 p.m. The Board will meet at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. The purpose of the meeting is to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat diabetes mellitus. Although the entire meeting will be open to the public, attendance will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

For any further information, please contact Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045. His office will provide, for example, a membership roster of the Board and an agenda and summaries of the actual meetings.

Dated: November 19, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–27556 Filed 11–21–90; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health; National Cancer Institute; Meeting of President's Cancer Panel

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, December 7, 1990, at Cole Hall, Medical Sciences Building, University of California, San Francisco, 513 Parnassus Avenue, San Francisco, California 94143.

This meeting will be open to the public on December 7 from 8:30 a.m. to 12:30 noon. Attendance will be limited to space available. Agenda items will include reports by the Chairman, President's Cancer Panel, the Director, NCI, and scientific presentations by the staff of the University of California, San Francisco Cancer Center.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, room 4A32, National Institutes of Health, Bethesda, Maryland 20892 (301/496–1148) will provide a roster of the

Panel members and substantive program information upon request.

Dated: November 19, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-27550 Filed 11-21-90; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, November 16.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package).

1. Alcohol, Drug Abuse, and Mental Health Services (ADMS) Block Grant Reporting Requirements—0903-0080—Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981, established the ADMS Block Grant funding mechanism and requires that the States make application for, and submit reports on the actual uses of, block grant funds. Previously no format was prescribed by the Department of Health and Human Services for these reporting requirements. However, the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988 (Public Law 100-690), as amended by the Drug Abuse Treatment Technical Corrections Act of 1989 (Public Law 101-93), extended and added new data collection requirements to be included in these reports. To respond to the higher degree of Federal and State accountability for the monies provided under the ADMS Block Grant being demanded by the Congress, additional information is needed from the application and annual report.

The ADMS Block Grant application is used by the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) to provide a standardized approach for States to use in applying for their Block Grant monies. For FY 1991 States have the option to submit an application in the format similar to previous years, providing baseline information as required within the legislation. Beginning with the FY 1992 application, States will be required to utilize the more extensive format. The more detailed information will be used to inform the Congress, the Department, the Office of National Drug Control Policy, the public health community, and the general public of the impact of the block grant on the Nation's treatment and prevention delivery system, in fulfillment of the legislative purposes for which the funds are provided.

In addition, these reporting mechanisms will be used by ADAMHA to assess the need for technical assistance to the States in the development of a comprehensive, national services delivery system. Without the requested information, the Department will not be able to respond to requests for information on how the States intend to expend these monies, how the funds were expended, types of services provided, demographics of those served, and assessments of the adequacy and effectiveness of these programs and services in meeting the needs of national and State-level priority populations.

Respondents: State and local governments; *Number of Respondents:* 57; *Average Burden per Response:* Application—400 hours per response (comprised in FY 1991 of 200 hours for minimum information required and an additional 200 hours for full complement of tables; effective FY 1992, all information is mandatory); Annual Report—350 hours per response. *Estimated total annual burden:* 39,900 hours.

Additional Information: ADAMHA has responded to critical information requirements levied by Congress, the Department, the General Accounting Office, and the Office of National Drug Control Policy in developing a compatible format for State use in applying for Federal ADMS Block Grant monies. This information will be used to report on State activities to enhance the management and accountability of these important funds in the delivery of alcohol, drug abuse, and mental health services. Congress has recently appropriated significant new monies for these purposes, with particular emphasis on drug abuse treatment services, especially directed to pregnant women, intravenous drug abusers, and other populations at high risk for drug use (e.g., cocaine and crack).

To ensure these funds are directed and expended throughout the Nation and for these nationally targeted subgroups, ADAMHA is seeking new information sources to meet these reporting requirements. The guidelines and formats have been developed in conjunction with the States, which are awaiting this guidance in order to apply for the funds which must be obligated within the year they are made available. It is urgent that approval for these reporting requirements be granted on an expedited basis to provide adequate time for the submission, processing, and granting of awards for these funds. Further, information from these documents will be used to support the reauthorization of the Block Grant for congressional hearings due to be held in March 1991.

OMB approval has been requested by not later than Thursday, November 29. In keeping with the requirements for expedited review, we have published the complete set of application and annual report instructions in the Federal Register of Tuesday, November 20, 1990.

OMB Desk Officer: Allison Herron.

Because of the time frame in which OMB has been asked to act on this submission, any comments and recommendations for the proposed information collection should be provided directly to the OMB Desk Officer designated above by telephone at (202) 395-7316 or by express mail at the following address:

Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503

Dated: November 16, 1990.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 90-27456 Filed 11-21-90; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-1917; FR-2606-N-99]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: November 23, 1990.

ADDRESSES: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the Federal Register identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's Federal Register Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: HQ-DA, Attn: DAEN-ZCI-P-Robert Conte; room 1E671 Pentagon, Washington, DC 20360-2600; (202) 693-4583; Corps of Engineers: Bob Swieconek, HQ-US Army Corps of Engineers, Attn: CERE-MN, 20 Massachusetts Avenue, NW., Washington, DC 20415-1000; (202) 272-1750; GSA: Ronald Rice, Federal Property Resources Service, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501-0067. (These are not toll-free numbers.)

Dated: November 15, 1990.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Suitable Land (by State)

Pennsylvania

Portion of Tract 1037
Blue Marsh Lake
Bernville, PA, *Co:* Berks
Location: West of Bernville on PA Route 183.
Landholding agency: Army
Property number: 219040411
Status: Excess
Comment: Approximately 31.27 acres; most recent use—agriculture; right of way and easement restrictions.

Suitable Buildings (by State)

Georgia

Bldg. 19120
Fort Gordon
Augusta, GA, *Co:* Richmond
Location: Located on 19th Street between Barnes and Brainard
Landholding agency: Army
Property number: 219040404
Status: Underutilized
Comment: 17,572 sq. ft.; two story; electrical/heating/air conditioning systems need repair; off-site use only.

Bldg. 19110
Fort Gordon
Augusta, GA, *Co:* Richmond
Location: Located on 19th Street between Barnes and Brainard
Landholding agency: Army
Property number: 219040405
Status: Underutilized
Comment: 7,252 sq. ft.; two story wood frame needs major-rehab; off-site use only.

Bldg. 44503
Fort Gordon
Augusta, GA, *Co:* Richmond
Location: Located on Brainard Avenue at 45th Street
Landholding agency: Army
Property number: 219040406
Status: Underutilized
Comment: 2,888 sq. ft.; one story wood frame; structurally unsound; off-site use only.

Bldg. 46419
Fort Gordon
Augusta, GA, *Co:* Richmond
Location: Located on 46th Street between Brainard and Lane
Landholding agency: Army
Property number: 219040407
Status: Underutilized
Comment: 2,632 sq. ft.; one story wood frame; need rehab; off-site use only.

Bldg. 51402
Fort Gordon
Augusta, GA, *Co:* Richmond
Location: Located on 15th Street near 3rd Avenue
Landholding agency: Army
Property number: 219040408
Status: Underutilized
Comment: 6,000 sq. ft.; two story wood frame; need major rehab; off-site use only.

Bldg. 33501
Fort Gordon
Augusta, GA, *Co:* Richmond
Location: Located on Kilbourne Street at South Rice Road
Landholding agency: Army
Property number: 219040409
Status: Underutilized
Comment: 6,048 sq. ft.; two story wood frame; needs major rehab; off-site use only.

Bldg. 30503
Fort Gordon
Augusta, GA, *Co:* Richmond
Location: Located on Brainard Avenue at 31st Street
Landholding agency: Army
Property number: 219040410
Status: Underutilized
Comment: 3,428 sq. ft.; one story wood frame; needs rehab; off-site use only.

Lock Operator Dwelling—FC13
George W. Andrews Lock and Dam
Blakely, GA, *Co:* Early
Location: Highway 52 through Columbia, AL across the river into GA—first paved road to the right
Landholding agency: COE
Property number: 319040013
Status: Excess
Comment: 1,815 sq. ft.; one story frame dwelling; possible asbestos; remote location.

Louisiana

Federal Building
Mississippi and Vienna Streets
Ruston, LA, *Co:* Lincoln Parish
Landholding agency: GSA
Property number: 549040005
Status: Excess
Comment: 3,492 sq. ft.; two story; most recent use—office; listed on National Register of Historic Places.

Maryland

Chesapeake Bay Hydraulic Model
Matapeake, MD, *Co:* Queen Annes
Landholding agency: GSA
Property number: 549040007
Status: Excess
Comment: 617,280 sq. ft.; one story metal building; ceiling height over 40 ft.; lease restriction; Corps will maintain an antenna on property.

Virginia

Bldg. T–1322
U.S. Army Logistics Center and Fort Lee
3rd Street
Fort Lee, VA
Landholding agency: Army
Property number: 219040421
Status: Unutilized
Comment: 4,720 sq. ft.; 2 story; structurally deteriorated; off-site use only.

Bldg. T–1325
U.S. Army Logistics Center and Fort Lee
3rd Street
Fort Lee, VA
Landholding agency: Army
Property number: 219040422
Status: Unutilized
Comment: 4,720 sq. ft.; two story; structurally deteriorated; off-site use only.

Bldg. T–2022
U.S. Army Logistics Center and Fort Lee
"B" Avenue
Fort Lee, VA
Landholding agency: Army
Property number: 219040423
Status: Unutilized
Comment: 1,275 sq. ft.; one story; structurally deteriorated; off-site use only.

Bldg. T–3600
U.S. Army Logistics Center and Fort Lee
"C" Avenue
Fort Lee, VA
Landholding agency: Army
Property number: 219040424
Status: Unutilized
Comment: 3,230 sq. ft.; two story; structurally deteriorated; off-site use only.

Bldg. T–3603
U.S. Army Logistics Center and Fort Lee
"C" Avenue
Fort Lee, VA
Landholding agency: Army
Property number: 219040425
Status: Unutilized
Comment: 3,500 sq. ft.; two story; structurally deteriorated; off-site use only.

Bldg. T–3604
U.S. Army Logistics Center and Fort Lee
"C" Avenue
Fort Lee, VA
Landholding agency: Army
Property number: 219040426
Status: Unutilized
Comment: 3,500 sq. ft.; two story; structurally deteriorated; off-site use only.

Bldg. T–11529
U.S. Army Logistics Center
40th Street
Fort Lee, VA
Landholding agency: Army
Property number: 219040427
Status: Unutilized
Comment: 10,680 sq. ft.; two story; structurally deteriorated; off-site use only.

Bldg. T–11723
U.S. Army Logistics Center and Fort Lee
41st Street
Fort Lee, VA
Landholding agency: Army
Property number: 219040428
Status: Unutilized
Comment: 3,500 sq. ft.; two story; structurally deteriorated; off-site use only.

Universe of Properties

Total=29
Suitable=19
Suitable Buildings=18
Suitable Land=1
Unsuitable=10
Unsuitable Buildings=6
Unsuitable Land=4
Number of Resubmissions=0

[FR Doc. 90–27474 Filed 11–21–90; 8:45 am]
BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–967–4230–15, AA–6997–A & C]

Alaska Native Claims Selection

November 9, 1990.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(b), will be issued to Yak-Tat Kwaan, Incorporated, for 1,576 acres. The lands involved are in the vicinity of Yakutat, Alaska.

Copper River Meridian, AK

T. 27 S., 33 E.,
Sec. 25, lot 1.
T. 27 S., R. 35 E.,
Sec. 5, SW¼;
Sec. 6, S½NE¼, S½;
Sec. 7;
Sec. 8, W½, W½SE¼.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Juneau Empire. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal Government or regional corporation, shall have until December 24, 1990, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,
Chief, Branch of KCS Adjudication.
[FR Doc. 90–27550 Filed 11–21–90; 8:45 am]
BILLING CODE 4310–JA–M

[AK–964–4230–15; F–22714]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Doyon, Limited for approximately 8.01 acres. The lands involved are in the vicinity of Galena, Alaska.

Lots 1 and 2, U.S. Survey No. 9593, Alaska, located on the right bank of the Yukon River approximately 21 miles easterly of Galena, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 (907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until December 24, 1990, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Mary M. Bone,
Supervisor, Fairbanks Section, Branch of Doyon/Northwest Adjudication.
[FR Doc. 90–27551 Filed 11–21–90; 8:45 am]
BILLING CODE 4310–JA–M

[CO–010–01–4332–09; FES 90–33]

Availability of Final Wilderness Environmental Impact Statement; White River Resource Area; CO et al.

In the matter of Bull Canyon, Willow Creek, Skull Creek, Black Mountain, Windy Gulch, Oil Spring Mountain, Platte River Contiguous, Troublesome, West Cold Spring, Diamond Breaks, Cross Mountain, Ant Hills, Chew Winter Camp, Peterson Draw, and Vale of Tears Wilderness Study Areas (WSAs) of the White River, Kremmling, and Little Snake Resource Areas, Colorado and the Bookcliffs and Diamond Mountain Resource Areas, Utah.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Craig District (White River, Kremmling, and Little Snake Resource Areas) Final Wilderness Environmental Impact Statement, Colorado and Utah.

SUMMARY: The Craig District (White River, Kremmling, and Little Snake Resource Areas) Wilderness Environmental Impact Statement assesses the environmental consequences of managing 15 wilderness study areas as wilderness or nonwilderness. The alternatives assessed include: (1) A "No Wilderness Alternative" for each wilderness study area; (2) an "All Wilderness Alternative" for each wilderness study area; (3) a "Partial Wilderness Alternative" for one wilderness study area; (4) a "Combined Alternative" for five wilderness study areas; (5) a "Conflict Reduction Alternative" for two wilderness study areas; and (6) a "Boundary Adjustment Alternative" for seven wilderness study areas.

The names of the wilderness study areas, their total acreage and the acreage recommended suitable and nonsuitable under the Proposed Action are:

Bull Canyon—12,297 acres, 13,700 [1] acres suitable, 220 acres nonsuitable;
Willow Creek—13,360 acres, 13,503 [1] acres suitable;
Skull Creek—13,740 acres, 14,050 [1] acres suitable;
Black Mountain—9,932 acres, 9,932 acres nonsuitable;
Windy Gulch—12,274 acres, 12,274 acres nonsuitable;
Oil Spring Mountain—17,740 acres, 17,740 acres nonsuitable;
Platte River Contiguous—30 acres, 30 acres suitable;
Troublesome—8,250 acres, 8,250 acres nonsuitable;
West Cold Spring—17,682 acres, 17,682 acres nonsuitable;
Diamond Breaks—35,360 acres, 36,240 [1] acres suitable, 340 acres nonsuitable;
Cross Mountain—14,061 acres, 14,061 acres suitable;
Ant Hills—4,354 acres, 4,354 acres nonsuitable;
Chew Winter Camp—1,320 acres, 1,320 acres nonsuitable;
Peterson Draw—5,160 acres, 5,160 acres nonsuitable; and
Vale of Tears—7,420 acres, 7,420 acres nonsuitable

FOR FURTHER INFORMATION CONTACT: Greg Goodenow, Project Manager, Bureau of Land Management, Craig District Office, 455 Emerson Street, Craig Colorado 81625–1129; Telephone (303) 824–8261.

Dated: November 14, 1990.

John H. Farrell
Acting Director, Office of Environmental Affairs.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and by the President to Congress. The final decision on wilderness designation rests with Congress.

In any case, no action on these proposals can be taken by the Secretary of the Interior during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: Copies of the environmental impact statement may be obtained from the Wilderness EIS Project Manager, Bureau of Land Management, Craig District, 455 Emerson Street, Craig, Colorado 81625–1129.

Copies are also available for inspection at the following locations: Department of the Interior, Bureau of Land Management, Office of Public Affairs, 1849 C Street, NW., Washington, DC 20240.

[1] Includes suitable acreage outside the WSA.

Department of the Interior, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

[FR Doc. 90–2737 Filed 11–21–90; 8:45 am]
BILLING CODE 4310–JB–M

[Alaska AA–48787–G, AA–48787–M, AA–48787–X]

Proposed Reinstatement of Terminated Oil and Gas Leases

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas leases AA–48787–G, AA–48787–M, and AA–48787–X has been received covering the following lands:

T. 19 S., R. 11 E., Fairbanks Meridian, Alaska

Sec. 12, NE¼NW¼, (40 acres)
Sec. 23, SW¼SE¼, (40 acres)
Sec. 35, NW¼NE¼, (40 acres)

The proposed reinstatement of the leases would be under the same terms and conditions of the original leases, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $1,500 in administrative fees and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from September 1, 1990, the date of termination, have been paid.

Having met all the requirements for reinstatement of leases AA–48787–G, AA–48787–M, and AA–48787–X as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the leases, effective September 1, 1990, subject to the terms and condition cited above.

Dated: November 8, 1990.

Ruth Stockie,
Chief, Branch of Mineral Adjudication.
[FR Doc. 90–27548 Filed 11–21–90; 8:45 am]
BILLING CODE 4310–JA–M

[CA–940–01–5410–10–B001; CACA 26774; CA–940–01–5410–10–B003; CACA 27453]

California, Conveyance of Mineral Interests

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The private lands described in this notice, aggregating 168.08± acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the

Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, room E-2845, Sacramento, California 95825, (916) 978-4820. Serial Nos. CACA 26774, CACA 27453.

T. 11 S., R. 2 W., San Bernardino Meridian
Sec. 31, fractional lots 2, 6, 7, lot 8, fractional SW1/4SE1/4.
County—San Diego
Minerals Reservation—All coal and other minerals

Upon publication of this notice of segregation in the **Federal Register** as provided in 43 CFR 2720.1-1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the applications shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of publication of this notice, whichever occurs first.

Dated: November 14, 1990.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 90-27547 Filed 11-21-90; 8:45 a.m.]

BILLING CODE 4310-40-M

[CA-050-09-4212-11; CA 26594]

Realty Action; Shasta County, CA

SUMMARY: The following public lands in Shasta County, California have been examined and found suitable for classification for lease and/or conveyance to the County of Shasta, Office of Education, under provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*). The County of Shasta, Office of Education proposes to use the land for a school.

Mount Diablo Meridian

T. 32 N., R. 5 W.,
Sec. 14, lot 16; portion of lots 17, 20, 21, 23-25, SW¼NE¼SW¼NE¼, W½SE¼S W¼NE¼, NE¼NW¼SE¼, W½SW¼NE¼SE¼, S½S½SE¼NW¼SE¼, S½N½S½SE¼NW¼SE¼.

Containing 40.69 acres, more or less

The lands are not needed for Federal purposes. Lease and/or conveyance is consistent with current Bureau of Land Management land-use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. A right-of-way granted to the City of Redding for a water pipeline and access road.

DATES: On or before January 7, 1991, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the Area Manager, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease and conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

ADDRESSES: Detailed information concerning this action is available for review at the Office of Bureau of Land Management, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002.

FOR FURTHER INFORMATION CONTACT: Mark Morse, Area Manager, at the address listed above.

Mark Morse,

Area Manager.

[FR Doc. 90-27535 Filed 11-21-90; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-01-4212-24; CACA 24449]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregative effect—conveyance of the reserved mineral interests.

SUMMARY: This notice will correct an error in the land description in an application for the conveyance of mineral interest.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, BLM California State Office, 2800 Cottage Way, room E-2841, Federal Office Building, Sacramento, California 95825, (916) 978-4820.

The land description for serial no. CACA 24449, 54 FR 158, August 17, 1989, as corrected by 54 FR 179, September 18, 1989, is hereby corrected as follows:

The township and range as listed in the legal description as "T. 13 N., R. 5 E., San Bernardino Meridian" is hereby corrected to read "T. 13 N., R. 15 E., San Bernardino Meridian."

Dated: November 13, 1990.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 90-27534 Filed 11-21-90; 8:45 am]

BILLING CODE 4310-40-M

[ID-030-00-4212-13, I-25446]

Realty Action; Private Exchange Involving Public Land in Jefferson County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Private exchange involving public lands in Jefferson County, Idaho.

The following described public land has been found suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716):

Boise Meridian, Idaho

T. 8 N., R. 36 E.,
Sec. 21, W½W¼.
The area described contains 80 acres, more or less.

The above described public lands will be segregated from entry appropriation under public land laws and the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register**. The segregation effect will terminate upon issuance of patent to the exchange proponent or upon expiration of two years from the effective date, or by publication of a Notice of Termination by the Authorized Officer, whichever comes first.

In exchange for these lands the United States will acquire the following described lands in Jefferson County, Idaho from Dan Murdoch:

Boise Meridian, Idaho

T. 5 N., R. 37 E.,
Sec. 12, lot 5 (portion).
T. 5 N., R. 38 E.,
Sec. 7, lots 7 & 8 (portions), S½NE¼.
The area described above contains 73.5 acres, more or less.

BLM proposes to exchange public land in Jefferson County, Idaho for private land in Jefferson County, Idaho located adjacent to the Sands Habitat Management Plan area. This exchange is consistent with BLM and local planning for the lands involved. The public interest will be well served by completing the exchange.

The appraised fair market value of the lands is approximately equal.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. A right-of-way for highway purposes under Serial Number IDA-010162 for the Idaho Department of Transportation as to the W½SW¼, sec. 21, T. 8 N., R. 36 E., Act of August 27, 1958, as amended (23 U.S.C. 107(d) and 317).

The patent will also be issued subject to:

1. A right-of-way for road purposes under Serial Number I-23120 for Jefferson County under the authority of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

Detailed information concerning the exchange, including the environmental assessment, is available for review at the Idaho Falls District, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Idaho Falls District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of Interior.

Dated: November 13, 1990.

Gary L. Bliss,

Acting District Manager.

[FR Doc. 90-27537 Filed 11-21-90; 8:45 am]

BILLING CODE 4310-GG-M

[ID-030-00-4212-13, I-22673]

Realty Action Private Exchange Involving Public Land in Clark County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Private exchange involving public lands in Clark County, Idaho.

The following described public land has been found suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716):

Boise Meridian, Idaho

T. 10 N., R. 34 E.
Sec. 29, SE¼SW¼, SW¼SE;
Sec. 32, NE¼, NE¼NW¼, S½NW¼, NE¼SW¼, N½SE¼, SE¼SE¼;
Sec. 33, W½SW¼.
The area described contains 600 acres, more or less.

The above described public lands will be segregated from entry appropriation under public land laws and the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register**. The segregative effect will terminate upon issuance of patent to the exchange proponent or upon expiration of two years from the effective date, or by publication of a Notice of Termination by the Authorized Officer, whichever comes first.

In exchange for these lands the United States will acquire the following described lands in Clark County, Idaho from Thomas Eden:

Boise Meridian, Idaho

T.10 N., R. 34 E.
Sec. 1, lot 4;
Sec. 2, lots 1-4, incl., SW¼NE¼;
Sec. 3, lot 1;
Sec. 9, SE¼SE¼;
Sec. 10, SW¼SW¼;
Sec. 15, W½W½;
Sec. 22, N½NW¼.
The area described above contains 607.29 acres, more or less.

BLM proposes to exchange public land in Clark County, Idaho for private land in Clark County, Idaho. This exchange is consistent with BLM and local planning for the lands involved. The public interest will be well served by completing the exchange.

The appraised fair market value of the offered private lands is slightly higher than that of the selected public lands. Mr. Eden has signed a statement disclaiming his right to the difference in the appraised values of the two parcels.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. A right-of-way for highway purposes under Serial Number I-04173 for the Idaho Department of Transportation as to the W½SW¼, Sec. 33, T. 10 N., R. 34 E., issued under the authority of the Federal Highway Act of November 9, 1921 (42 Stat. 216; 23 U.S.C. 18).

3. A right-of-way for roadway purposes under Serial Number I-27771 for the BLM as to the S½NE¼, NE¼NW¼, NE¼NW¼, NE¼SE¼, Sec. 32, T. 10 N., R. 34 E. issued under the authority of the Act of October 21, 1976 (90 Stat. 2781; 43 U.S.C. 1767).

The patent will also be issued subject to:

1. A right-of-way for electric powerline purposes under Serial Number I-12828 for the Utah Power & Light Company issued under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) in the E½NE¼, NW¼SW¼, N½SE¼, Sec. 34, T. 10 N., R. 34 E.

2. A right-of-way for roadway purposes under Serial Number I-20110 for Clark County issued under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) in the E½SE¼, sec. 32, and the W½SW¼, sec. 33, T. 10 N., R. 34 E.

Mr. Eden will also transfer to the BLM the water right to a spring located in the SW¼SW¼SE¼NE¼, Sec. 9, T. 10 N., R. 34 E.

Detailed information concerning the exchange, including the environmental assessment, is available for review at the Idaho Falls District, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Idaho Falls District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of Interior.

Dated: November 13, 1990.

Gary L. Bliss,

Acting District Manager.

[FR Doc. 90-27538 Filed 11-21-90; 8:45 am]

BILLING CODE 4310-GG-M

[ID-060-91-4212-14]

Coeur d'Alene District, ID; Noncompetitive Sale of Public Lands

AGENCY: Bureau of Land Management, Idaho, Interior.

ACTION: Notice of realty action, direct sale of public lands in Shoshone County, Idaho.

SUMMARY: The following public lands have been examined and found suitable for disposal by direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) at not less than the appraised fair market value:

Parcel No.	Legal description	Acres	Proponent
I-25761 B	Boise Meridian, T. 48 N., R. 5 E., sec. 9, Tract 47	0.50	Affected homeowners.

Publication of this notice in the Federal Register segregates the above lands from the operation of the public land laws and the mining laws except for a direct sale pursuant to section 203 of FLPMA. The segregative effect will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

Sale Procedures: The land is proposed to be offered for sale to the affected homeowners referenced above who have occupied the area inadvertently in trespass for serveral years. Direct sale procedures are being used since competitive sales would not be appropriate and the public interest would best be served by direct sale to the parties involved. Benefits of a direct sale will be to resolve potential claims to title and to give consideration to the parties involved who have significant interests in the subject property.

The sale proposal is consistent with the Bureau of Land Management's planning system. The land is not needed for any resource program, is difficult and uneconomical to manage, and is not suitable for management by another Federal department or agency.

Conveyance of the available mineral interests under Section 209 of FLPMA will occur simultaneously with the sale of the parcel. Acceptance of the direct sale offer and payment of a $50.00 filing fee will constitute an application for conveyance of those mineral interests.

The patent, when issued, will contain a reservation to the United States for ditches and canals and will be subject to any other existing rights of record.

SUPPLEMENTARY INFORMATION: Detailed information concerning the conditions of the sale can be obtained by contacting Scott Forssell, Realty Specialist, at (208) 765-1511. For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management, 1808 North Third Street, Coeur d'Alene, Idaho 83814. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: November 14, 1990.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 90-27484 Filed 11-21-90; 8:45 am]

BILLING CODE 4310-GG-M

[ID-943-01-4214-11; IDI-09506]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that the withdrawal of 120.00 acres for the Magruder Ranger Station Administrative Site in the Bitterroot National Forest be continued for an additional 50 years. The land is still being used for an administrative site. The land would remain closed to surface entry and mining, but has been and would remain open to mineral leasing.

DATES: Comments should be received on or before February 21, 1991.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1720.

The U.S. Forest Service proposes that the existing land withdrawal made by Public Land Order No. 1714 be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The land is described as follows:

Boise Meridian

T. 27 N., R. 14 E., unsurveyed,
sec. 3, E½SW¼NW¼, W½SE¼NW¼, W½E½SW¼, and E½W½SW¼.

The area described contains 120.00 acres in Idaho County.

The withdrawal is essential for protection of substantial capital improvements on the site. The withdrawal closed the land to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: November 13, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90-27533 Filed 11-21-90; 8:45 am]

BILLING CODE 4310-GG-M

Minerals Management Service

[OMB No. 1010-0068]

Information Collection Requirements for Subpart M—Unitization

AGENCY: Minerals Management Service, Interior.

ACTION: Request for comments on the information collection requirements for subpart M—Unitization, 30 CFR part 250.

SUMMARY: The Minerals Management Service (MMS), as part of its continuing effort to reduce the paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*), provides the general public, industry, and State and other Federal agencies an opportunity to comment on current and proposed information collection requirements. The MMS will evaluate all comments and will revise reporting and recordkeeping requirements, as appropriate, to minimize respondent burdens. This notice specifically requests comments regarding the information collection burdens imposed by MMS regulations on lessees that seek to enter into an agreement to unitize operations under two or more leases, in the Outer Continental Shelf (OCS). Comments will be used in the preparation of an information collection request to be submitted to the Office of Management and Budget (OMB) for the renewal of MMS's authority for the collection of this information.

DATES: Comments may be submitted on or before December 24, 1990.

ADDRESSES: Comments and suggestions on these collection requirements should be submitted to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operation; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070-4817, with copies to the Bureau Clearance Officer; Mail Stop 2300; 381 Elden Street; Herndon, Virginia 22070-4817 and to the Office of Management and Budget; Paperwork Reduction Project (1010-0068); Washington, DC 20503, telephone (202) 395-7340.

FOR FURTHER INFORMATION CONTACT: Copies of the current information collection requirements and supporting material may be obtained by contacting Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; telephone (703) 787-1600 or (FTS) 393-1600.

SUPPLEMENTARY INFORMATION:

I. Background

The Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 *et seq.*, gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environmental; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition. Section 5(a)(4) of the OCSLA specifies that rules and regulations prescribed by the Secretary "* * * to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein * * *" shall include provisions "* * * for unitization, pooling, and drilling agreements * * *". To carry out these responsibilities, the Secretary has authorized the Director of MMS to approve unitization agreements to unitize lease operations where unitization promotes exploration and development of the area, prevents waste, conserves aural resources, and protects correlative rights. The information collection requirements for execution of unit agreements are contained in 30 CFR part 250, Subpart M—Unitization.

The Paperwork Reduction Act of 1980 requires MMS to obtain approval for the information collection requirements for subpart M from OMB. The MMS obtained approval for the information collection requirements for subpart M on January 22, 1988. This information collection was approved by OMB through January 31, 1991.

II. Current Actions

The MMS is preparing an information collection request that will be submitted to OMB in order to obtain renewal of the authorization for the information collections contained in subpart M. A request for authorization for information collection must contain a description of the information collections, justification for their collection, and responses to comments from individuals affected by the information collection requirements. This notice provides a brief description of the information collection requirements for subpart M and the estimated burden for respondents to prepare the information.

III. Request for Comments

The sections of subpart M that contain information collection requirements are listed below, along with MMS's estimates of the number of proposed unitization plans or annual reports submitted, preparation time per response or plan, and total burden hours for each requirement. The total burden hours have been calculated by multiplying the estimated number of initial and revised unitization plans that will be submitted in a year by the estimated time to prepare each initial and revised plan. The MMS requests the oil and gas and sulphur industries and other interested parties to comment on these information collection requirements, including comments regarding the clarity of the information requirements, availability of required information, estimated burden hours, and frequency of collection.

The information collections associated with unit agreements fall into two categories. The first is new proposed unit agreements with requests for approval. The second is existing unit agreements that are continued in effect through drilling and production operations. The continuance of a unit agreement in effect involves reporting progress in the implementation of approved Development and Production Plans, including obtaining approvals for adjustments which become necessary due to changes in conditions from those envisioned at the time of approval for the current approved plans. Most unit agreements are accomplished through voluntary unitization; however, there are provisions for compulsory unitization, when necessary, for the prevention of waste and the conservation of the natural resources of the OCS.

In § 250.192 Voluntary unitization. It is estimated that lessees will request approval for 12 new unit agreements every year and that each unit plan would require 390 hours to prepare for a total of 4,680 hours. It is estimated that the number of active unit agreements maintained in forces and effect through drilling and production questions will continue to be approximately 180 and that the preparation of updated plans for these units would require 16 hours during the year, for a total of 2,880 hours.

The total annual information collection burden on lessees for subpart M is 7,560 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for information collection authorization submitted to OMB. These comments will also become a matter of public record.

Authority: Section 204, Public Law 95-372, 92 Stat. 629 (43 U.S.C. 1334).

Dated: November 8, 1990.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 90-27521 Filed 11-21-90 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Requirements for Subpart C—Pollution Prevention and Control

AGENCY: Minerals Management Service, Interior.

ACTION: Request for comments on the information collection requirements for Subpart C—Pollution Prevention and Control, 30 CFR part 250 (OMB No. 1010-0057).

SUMMARY: The Minerals Management Service (MMS), as part of its continuing effort to reduce the paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. 3501 *et seq.*), provides the general public, industry, and State and other Federal agencies an opportunity to comment on current and proposed information collection requirements. The MMS will evaluate all comments and will revise reporting and recordkeeping requirements, as appropriate, to minimize respondent burdens. This notice specifically requests comments regarding the information collection burdens imposed by MMS regulations on lessees who operate drilling and production facilities, in the Outer Continental Shelf (OCS), to ensure pollution prevention and control. Comments will be used in the preparation of an information

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collection request to be submitted to the Office of Management and Budget (OMB) for the renewal of MMS's information collection authorization.

DATES: Comments may be submitted on or before December 24, 1990.

ADDRESSES: Comments and suggestions on these collection requirements should be submitted to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817, with copies to the Bureau Clearance Officer; Mail Stop 2300; 381 Elden Street; Herndon, Virginia 22070–4817 and to the Office of Management and Budget; Paperwork Reduction Project (1010–0057); Washington, DC 20503, telephone (202) 395–7340.

FOR FURTHER INFORMATION CONTACT: Copies of the current information collection requirements and supporting material may be obtained by contacting Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; telephone (703) 787–1600 or (FTS) 393–1600.

SUPPLEMENTARY INFORMATION:

I. Background

The OCS Lands Act, 43 U.S.C. 1331 *et seq.*, gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition. The OCS Lands Act Amendments of 1978 also give the Secretary the responsibility to minimize or eliminate conflicts between the exploration, development, and production of oil and natural gas and the recovery of other resources such as fish and shellfish. To carry out these responsibilities, it is necessary that the Secretary collect information from OCS lessees. To carry out these responsibilities, the Secretary has authorized the Director of MMS to collect information related to new facilities and make modifications to existing facilities. These information collection requirements are contained in 30 CFR part 250, Subpart C—Pollution Prevention and Control.

The Paperwork Reduction Act of 1980 requires MMS to obtain approval for the information collection requirements from OMB. The MMS obtained approval for the information collection requirements for subpart C on January 22, 1988. This information collection was approved by OMB through January 31, 1991.

II. Current Actions

The MMS is preparing an information collection request that will be submitted to OMB in order to obtain renewal of the authorization for information collections in subpart C. An information collection request must contain a description of the information collection requirements, justification for their collection, and responses to comments from individuals affected by the information collection. This notice provides a brief description of the information collection requirements for subpart C and the estimated burden for respondents to prepare the information.

III. Request for Comments

The sections of subpart C that contain information collection requirements are listed below, along with MMS's estimates of the number of proposed annual responses, plans, or annual reports submitted; the preparation time per response, plan, or report; and the total burden hours for each requirement. The total burden hours have been calculated by multiplying the estimated number of responses, plans, or reports that will be submitted in a year by the estimated time to prepare each one. The MMS requests the oil and gas and sulphur industries and other interested parties to comment on these information collection requirements, including comments regarding the clarity of the information requirements, availability of required information, estimated burden hours, and frequency of collection.

There are 175 lessees who will submit the following information:

(a) *Section 250.40 Pollution prevention.* One annual response each, 3 hours per response, 525 total burden hours (175 lessees × 1 response per lessee × approximately 3 hours per response). In addition, lessees are required to inform the District Supervisor of all materials, equipment, tools, containers, and other items used on the OCS that is lost overboard. One annual report (of items lost overboard) submitted by each lessee, .6 hour per report, 44 total burden hours. Lessees are also required to record the loss overboard of certain items used on the OCS, one record each (of certain items used on the OCS lost overboard), .3 hour per recordkeeper, 22 total burden hours.

(b) *Section 250.41 Inspections and reports.* Oil spill records, 3 times per year (estimated average frequency), 1.6 hours per report, 355 total burden hours. In addition, 1 annual record of daily inspections per lessee, 10 hours per recordkeeper 840 total burden hours.

(c) *Section 250.42 Oil spill contingency plans.* Three plans a year, 102 hours for preparation of each plan, 53,550 total burden hours (175 lessees × 3 responses per lessee × approximately 102 hours per response).

(d) *Section 250.43 Training and drills.* Each of the lessees is required to submit a time schedule for drills. Two drill schedules are submitted annually, 10 hours per schedule, 3,500 total burden hours (175 lessees × 2 responses per lessee × approximately 10 hours per response). In addition, each lessee is required to maintain personnel training records for their exploration, development, or production operations, one annual record of personnel training, 7.8 hours per recordkeeper, 1,365 total burden hours (175 recordkeepers × approximately 7.8 average hours per recorkeeper for its various operations).

(e) *Section 250.45 Facility described in a new or revised Exploration Plan or Development and Production Plan.* Two reports a year (submitted on meteorological data and emission data from the new facility reports), 61 hours per report, 21,350 total burden hours (175 lessees × 2 responses per lessee × approximately 61 hours per response).

(f) *Section 250.46 Existing facilities.* Two reports a year (submitted on meteorological data and emission data from the existing facility reports), 60 hours per report, 21,000 total burden hours (175 lessees × 2 responses per lessee × aproximately 60 hours per response).

The total annual information collection burden on lessees for subpart C is 104,037.5 hours. There is an increase of 60,039.5 hours from the hours presently approved for the collection of information for subpart C due to an increase in the number of lessees.

Comments submitted in response to this notice will be summarized and/or included in the request for renewal of the information authorizations submitted to OMB.

These comments will also become a matter of public record.

Authority: Section 204, Public Law 945–372, 92 Stat. 629 (43 U.S.C. 1334).

Dated: November 8, 1990.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 90–27533 Filed 11–21–90; 8:45 am]

BILLING CODE 4310–MR–M

Information Collection Requirements for Subpart I—Platforms and Structures

AGENCY: Minerals Management Service, Interior.

ACTION: Request for comments on the information collection requirements for Subpart I—Platforms and Structures, 30 CFR part 250 (OMB No. 1010–0058).

SUMMARY: The Minerals Management Service (MMS), as part of its continuing effort to reduce the paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. 3501 *et seq.*), provides the general public, industry, and State and other Federal agencies an opportunity to comment on current and proposed information collection requirements. The MMS will evaluate all comments and will revise reporting and recordkeeping requirements, as appropriate, to minimize respondent burdens. This notice specifically requests comments regarding the information collection burdens imposed by MMS regulations on lessees that plan to erect oil and gas production platforms and structures in the Outer Continental Shelf (OCS). Comments will be used in the preparation of an information collection request to be submitted to the Office of Management and Budget (OMB) for the renewal of the information collection authorizations.

DATES: Comments may be submitted on or before December 24, 1990.

ADDRESSES: Comments and suggestions on these collection requirements should be submitted to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817, with copies to the Bureau Clearance Officer; Mail Stop 2300; 381 Elden Street; Herndon, Virginia 22070–4817 and to the Office of Management and Budget; Paperwork Reduction Project (1010–0058); Washington, DC 20503, telephone (202) 395–7340.

FOR FURTHER INFORMATION CONTACT: Copies of the current information collection requirements and supporting material may be obtained by contacting Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; telephone (703) 787–1600 or (FTS) 393–1600.

SUPPLEMENTARY INFORMATION:

I. Background

The OCS Lands Act, 43 U.S.C. 1331 *et seq.*, requires the holders of OCS oil and gas and sulphur leases to submit Exploration or Development and Production Plans to the Secretary of the Interior (Secretary) prior to commencing exploration, development, or production activities, including the construction of platforms and structures. To carry out these responsibilities, the Secretary has authorized the Director of MMS to issue regulations governing OCS oil and gas and sulphur lease operations. The rules implementing the requirements and associated information collections for construction of OCS production platforms and structures are contained in 30 CFR part 250, Subpart I—Platforms and Structures. The information collected under Subpart I is analyzed and evaluated by MMS engineers, geologists, geophysicists, and environmental scientists to ensure that planned operations will not adversely affect the marine, coastal, or human environment. The information collected is also reviewed by affected States for consistency with approved Coastal Zone Management Plans.

The Paperwork Reduction Act of 1980 requires MMS to obtain approval of the information collection requirements for subpart I from OMB. The MMS obtained approval for the information collection requirements for subpart I in January 1988 during the restructuring and consolidation of the offshore operating regulations under 30 CFR part 250. This information collection was approved by OMB through January 31, 1991.

II. Current Actions

The MMS is preparing an information collection request that will be submitted to OMB in order to obtain renewal of the authorization for information collections for subpart I. An information collection authorization request must contain a description of the information collection requirements, statements justifying their collection and responses to comments from individuals affected by the information collection. This notice provides a brief description of the information collection requirements for subpart I and the estimated burden for industry to prepare the information.

III. Request for Comments

The sections of subpart I that contain information collection requirements are listed below, along with MMS's estimates of the number of requests or annual plans submitted, preparation time per response or plan, and total burden hours for each requirement. The total burden for submitting plans has been calculated by multiplying the estimated number of initial and revised applications for approval of construction of platforms or structures—or modifications to these platforms and structures—that will be submitted in a year by the estimated time to prepare each initial and revised application. The MMS requests the oil and gas and sulphur industries and other interested parties to comment on these information collection requirements, including comments regarding the clarity of information requirements, availability of required information, estimated burden hours, and frequency of collection.

(a) *Section 250.130 General requirements.* Paragraph (e)(2) requires reports of damage and requests for approval to repair damage to major structural elements, and paragraph (f) requires requests for approval of applications to convert use of an existing fixed or mobile platform. Based on Fiscal Year (FY) 1990 data, it is assumed that about 100 requests for approval will be submitted annually to fulfill the requirements of paragraph (e)(2) and (f). At an estimated time of 3 hours to prepare each request, a total of 300 hours annually would be required to fulfill the information requirements of § 250.130 (100 requests × 3 hours per request = 300 hours).

(b) *Section 250.131 Application for approval.* Paragraph (b) requires applications for approval of all new platforms and major modifications to existing platforms. Based on FY 1990 data, it is assumed that about 250 such applications for approval will be submitted annually pursuant to paragraph (b). At an estimated time of 23 hours for preparation of each application, a total of 5,750 hours would be required annually to fulfill the information requirements of § 250.131 (250 applications × 23 hours per application = 5,750 hours).

(c) *Section 250.132 Platform Verification Program requirements.* Paragraph (b) establishes requirements for Platforms Verification Plans. Based on FY 1990 data, it is assumed that about 12 such plans will be submitted annually. Using an estimated time of 130 hours to complete each plan, it is concluded that about 1,560 hours will be required annually to fulfill the information requirements of § 250.132 (12 plans × 130 hours per plan = 1,560 hours).

(d) *Section 250.133 Certified Verification Agent (CVA) duties and nomination.* Paragraphs (a)(1)(iv) and (a)(1)(v) establish requirements for interim and final reports to be submitted by CVA's. Based on FY 1990 data, it is assumed that about six interim reports and three final reports will be submitted by CVA's annually. Using an estimated time of 40 hours to complete an interim report, about 240 hours annually will be required to comply with the information

provisions of paragraph (a)(1)(iv) on interim reports (6 interim reports × 40 hours per report = 240 hours). Using an estimated time of 80 hours to complete a final report, about 240 hours annually will be required to comply with the information provisions of paragraph (a)(1)(v) on final reports (3 final reports × 80 hours per report = 240 hours). Paragraph 250.133(b) states the requirements for nomination of CVA's. The qualifications for CVA's are required to be submitted in Platform Verification Plans provided to MMS by lessees pursuant to § 250.132. Thus, for purposes of this analysis, the information collection burden for CVA nominations is alread included in the burden estimated above for the Platform Verification Program. In summary, the total information burden requirement for § 250.133, CVA duties and nomination, is estimated at 480 hours (240 hours for interim reports + 240 hours for final reports.

(e) *Section 250.141 Inspection during construction.* Paragraphs (a)(4), (b)(8), and (c)(9) require the maintenance of about six different types of records for each offshore platform or structure during and following construction. The records have to be maintained for MMS inspection. For purposes of estimating this burden, it is assumed that the new information burden for any given year is only imposed on new platforms or structures under construction during that year. (Construction records for completed structures would have been compiled and completed in previous years.) Based on FY 1990 data, there would only be about nine new platforms or structures either under construction or completed during any given year. Asssuming about 100 hours of recordkeeping for each individual structure, the total information burden for § 250.141 is estimated at 900 hours (9 platforms × 100 hours per platform = 900 hours).

(f) *Section 250.142 Periodic inspection and maintenance.* Paragraph (b) requires the submission of an annual report stating which platforms have been inspected in the preceding 12 months, type of inspection, results, repairs, and condition of the platform. Based on FY 1990 data, there are currently 116 lessees who have platforms or structures in the Gulf of Mexico and Pacific OCS. Assuming that it takes about 20 hours for the completion of each report, the total information burden for § 250.142 is estimated at 2,320 hours (116 lessees × 20 hours per lessee = 2,320 hours).

(g) *Section 250.144 Records.* This section requires lessees to maintain for MMS inspection the records required by earlier sections to subpart I. Therefore, no additional information burden is estimated for this section.

The total annual information collection burden on lessees for subpart I is 11,310 hours.

Comments submitted in response to this notice will be summarized and/or included in the information collection request submitted ot OMB for approval of this information collection. These comments will also become a matter of public record.

Authority: Section 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

Dated: November 8, 1990.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 90–27524 Filed 11–21–90; 8:45 am]

BILLING CODE 4310–MR–M

Information Collection Requirements for Subpart N—Remedies and Penalties

AGENCY: Minerals Management Service, Interior.

ACTION: Request for comments on the information collection requirements for Subpart N—Remedies and Penalties, 30 CFR part 250 (OMB No. 1010–0038).

SUMMARY: The Minerals Management Service (MMS), as part of its continuing effort to reduce the paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*), provides the general public, industry, and State and other Federal agencies an opportunity to comment on current and proposed information collection requirements. The MMS will evaluate all comments and will revise reporting and recordkeeping requirements, as appropriate, to minimize respondent burdens. This notice specifically requests comments regarding the information collection burdens imposed by MMS regulations on persons seeking administrative review of charges to comply with provisions of the Outer Continental Shelf Lands Act (OCSLA) or provisions of a lease, license, or permit issued under the OCSLA, or any regulation or order issued under the OCSLA. Comments will be used in the preparation of an information collection to be submitted to the Office of Management and Budget (OMB) for the renewal of information collection authorizations.

DATES: Comments may be submitted on or before December 24, 1990.

ADDRESSES: Comments and suggestions on these collection requirements should be submitted to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817, with copies to the Bureau Clearance Officer; Mail Stop 2300; 381 Elden Street; Herndon, Virginia 22070–4817 and to the Office of Management and Budget; Paperwork Reduction Project (1010–0038); Washington, DC 20503, telephone (202) 395–7340.

FOR FURTHER INFORMATION CONTACT: Copies of the current information collection requirements and supporting material may be obtained by contacting Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; telephone (703) 787–1600 or (FTS) 393–1600.

SUPPLEMENTARY INFORMATION:

I. Background

The OCSLA, 43 U.S.C. 1331 *et seq.*, gives the Secretary of the Interior the responsibility to preserve, protect, and develop oil and gas resources in the OCS in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on OCS resources; and preserve and maintain free enterprise competition. To carry out these responsibilities, the Director of MMS has issued rules governing offshore oil and gas and sulphur lease operations. These rules are prescribed in 30 CFR part 250, Subpart N—Remedies and Penalties.

The Paperwork Reduction Act of 1980 requires MMS to obtain approval of the information collection requirements for subpart N from OMB. The MMS obtained approval for the information collection requirements for subpart N in January 1988 during the restructuring and consolidation of the offshore operating regulations under 30 CFR part 250. This information collection was approved by OMB through January 31, 1991.

II. Current Actions

The MMS is preparing an information collection request that will be submitted to OMB in order to obtain renewal of the authorization for information collections under subpart N. An information collection authorization request must contain a description of the information collection requirements, statements justifying their collection, and responses to comments from individuals affected by the information collection. This notice provides a brief description of the information collection requirements for subpart N and the estimated burden for industry to prepare the information.

III. Request for Comments

The sections of subpart N that contain information collection requirements are listed below, along with MMS's estimates of the number of requests or annual plans submitted, preparation time per response or plan, and total burden hours for each requirement. The MMS requests the oil and gas industries and other interested parties to comment on these information collection requirements, including comments regarding the clarity of the information requirements, availability of required information, estimated burden hours, and the frequency of collections.

1. Section 250.201 Hearings

(a) Within 30 days after receipt of a notice pursuant in § 250.200(b) of this part, the party may accomplish one of the following:

(1) Request a hearing before the Reviewing Officer,

(2) Provide any written evidence and arguments in lieu of a hearing, or * * *

(d)(2) The person desiring confidential treatment of information shall submit a written request to the Reviewing Officer stating the reasons justifying nondisclosure.

(e) The Regional Director may, upon request of a party, transfer the case to another Reviewing Officer or direct that the hearing be held at a location other than that specified by the Reviewing Officer.

2. Section 250.202 Hearing Procedures

(a) Material in the case file which is pertinent to the issues shall be presented to the party who may respond to or rebut this material. The party may offer any facts, statements, explanations, documents, sworn or unsworn testimony, or other items which bear on the issues or which may be relevant to the amount of the penalty to be assessed if the party is found to be guilty of the alleged violation. The Reviewing Officer may require the authentication of any written exhibit or statement.

(b) The party may request an opportunity to submit additional written testimony for consideration by the Reviewing Officer. The Reviewing Officer shall allow a reasonable time for submission of additional written testimony and shall specify the date by which it must be received.

(e)(2) A party may, at its own expense, cause a verbatim transcript to be made. If a verbatim transcript is made and the Reviewing Officer's decision is appealed, the party shall submit a copy of the verbatim transcript with the appeal to the Director and to the Reviewing Officer for inclusion in the case file.

3. Section 250.204 Appeals from Reviewing Officer's Decision

(a)(1) Any appeal from a decision of the Reviewing Officer, together with any supporting argument, shall be submitted by a party to the Director within 30 days after the date of receipt of the decision. The appellant shall provide a copy of the notice of appeal and supporting brief to the Reviewing Officer. Except as provided in § 250.205 of this part, the only issues which will be considered on appeal are jurisdictional questions and those issues specified in the notice of appeal which were properly raised before the Reviewing Officer.

4. Section 250.205 Reopening a Case

(a)(2) Petitions to reopen a case must be in writing. Petitions shall describe the newly found evidence and state why the evidence would probably produce a different result favorable to the petitioner. The petitioner shall state whether the evidence was known to the petitioner at the time of the proceedings and, if not, why the newly found evidence could not have been discovered during the previous proceedings. The party shall submit the petition to the Reviewing Officer and provide a copy to the Regional Director.

It is estimated that an average of 15.5 cases will be submitted annually. Public reporting burden for this collection is estimated to average 80 hours per response. The estimated number of responses per respondent is one. There are no recording hours.

Therefore, the estimated total annual information collection burden on lessees is 1,240 hours. (15.5 respondents × 1 respondent × 80 hours per response = 1,240 hours total burden hours.)

Comments submitted in response to this notice will be summarized and/or included in the information collection authorization request submitted to OMB for approval of this information collection. These comments will also become a matter of public record.

Authority: Section 204, Public Law 95–372. 92 Stat. 629 (43 U.S.C. 1334)

Dated: November 8, 1990.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 90–27525 Filed 11–21–90; 8:45 am]

BILLING CODE 4310–MR–M

Fish and Wildlife Service

Meeting, Klamath River Basin Fisheries Task Force

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 40ss et seq.). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force will meet from 9 a.m. to 5 p.m. on Tuesday, December 4, 1990; from 8 a.m. to 5 p.m. on Wednesday, December 5, 1990; and from 8 a.m. to 3:30 p.m. on Thursday, December 6, 1990. PLACE: The meetings will be held at the Yreka Community Center, 810 North Oregon Street, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. box 1006 (1030 South Main), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

The Task Force will review public and agency comments on the review draft of a long-range plan for the Klamath Fishery Restoration Program. The Task Force will advise the planning consultant on responses to these comments, and will provide other guidance for preparation of a final draft of the long-range plan. The Task Force will hear reports of results of projects funded in prior years, and will begin planning for projects to be funded in Fiscal Year 1992. Public comment will be invited at approximately 9 a.m. on December 5, and again at approximately 2:30 p.m. on December 6, 1990.

Dated: November 14, 1990.

William E. Martin,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 90–27514 Filed 11–21–90; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

[OMB No. 1010–0053]

Information Collection Requirements for Subpart D—Drilling Operations

AGENCY: Minerals Management Service, Interior.

ACTION: Request for comments on the information collection requirements for subpart D—Drilling Operations, 30 CFR part 250.

SUMMARY: The Minerals Management Service (MMS), as part of its continuing effort to reduce the paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*),

provides the general public, industry, and State and other Federal agencies an opportunity to comment on current and proposed information collection requirements. The MMS will evaluate all comments and will revise reporting and recordkeeping requirements, as appropriate, to minimize respondent burdens. This notice specifically requests comments regarding the information collection and recordkeeping burdens imposed by MMS regulations on lessees who conduct drilling operations in the Outer Continental Shelf (OCS). Comments will be used in the preparation of an information collection request to be submitted to the Office of Management and Budget (OMB) for the renewal of information collection authorizations.

DATES: Comments may be submitted on or before December 24, 1990.

ADDRESSES: Comments and suggestions on these collection and recordkeeping requirements should be submitted to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817, with copies to the Bureau Clearance Officer; Mail Stop 2300; 381 Elden Street; Herndon, Virginia 22070–4817 and to the Office of Management and Budget; Paperwork Reduction Project (1010–0058); Washington, DC 20503, telephone (202) 395–7340.

FOR FURTHER INFORMATION CONTACT: Copies of the current information collection requirements and supporting material may be obtained by contacting Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; telephone (703) 787–1600 or (FTS) 393–1600.

SUPPLEMENTARY INFORMATION:

I. Background

The OCS Lands Act (OCSLA) 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on the resources offshore; and preserve and maintain free enterprise competition. Section 3(6) of the OCSLA requires that "operations in the outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the water of subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." To perform these duties, it is necessary to collect information from lessees in the OCS. This information is in the form of descriptions of drilling site, procedures, and equipment as described in 30 CFR part 250, subpart D—Drilling Operations.

The Paperwork Reduction Act of 1980 requires MMS to obtain approval of the information collection requirements for subpart D from OMB. The MMS obtained approval for the information collection authorization request for Subpart D in January 1988 during the restructuring and consolidation of the offshore operating regulations under 30 CFR part 250. This information collection was approved by OMB through January 31, 1991.

II. Current Actions

The MMS is preparing an information collection request that will be submitted to OMB in order to obtain renewal of the authorization for information collection under subpart D. An information collection authorization request must contain a description of the information collection requirements, statements justifying their collection, and responses to comments from individuals affected by the information collection. This notice provides a brief description of the information collection requirements for subpart D and the estimated burden for industry to prepare the information.

III. Request for Comments

The sections of subpart D that contain information collection requirements are listed below, along with MMS's estimates of the number of requests or annual plans submitted, preparation time per response or plan, and total burden hours for each requirement. The MMS requests the oil and gas industry and other interested parties to comment on these information collection requirements, including comments regarding the clarity of the information requirements, availability of required information, estimated burden hours, and frequency of collection.

(a) Section 250.51 General Requirements

It is estimated that each year lessees will submit 200 new fitness of drilling reports and that each report will require 5 hours to prepare for a total of 1,000 hours of reporting 200 reports × 5 hours per report).

(b) Section 250.52 Welding and Burning Practices and Procedures

It is estimated that lessees will submit 100 new plans annually and each plan will require 2 hours to prepare for a total of 200 hours of reporting (100 plans × 2 hours per plan). In addition, on the average there are 90 drilling operations each year, and each operation will require .6 hour for recordkeeping related to welding and burning for a total of 540 hours of recordkeeping (900 operations × .6 hour per operation).

(c) Section 250.54 Well Casing and Cementing

It is estimated that each year an average of 20 percent of the 900 drilling operations will submit a revised casing program and that each revision will require an average of 1 hour to prepare for a total of 180 hours of reporting (.20 × 900 operations × 1 hour per revision). In addition, it is estimated that each of the 900 drilling operations will require 1 hour of recordkeeping to record reports of test and hole behavior for a total of 900 hours of recordkeeping (900 operations × 1 hour per operation).

(d) Section 250.55 Pressure Testing of Casing

It is estimated that 20 percent of the 900 wells will require that a special pressure test be conducted and submitted to MMS and that each report will require an average of 1 hour to prepare for a total of 180 hours of reporting (.20×900×1). In addition, it is estimated that there are an average of 115 drilling rigs in operation at any given time and that these drilling rigs will, on the average, require 50 casing tests per year with each test requiring an average of .4 hour to document in the drillers log for a total of 2,300 hours of recordkeeping (115 rigs × 50 tests per rig × .4 hour per test).

(e) Section 250.57 Blowout Preventer System Tests, Actuations, Inspections, and Maintenance

It is estimated that the average of 115 drilling rigs in operation will conduct BOP tests 50 times each year and that documentation of each test will require an average of .4 hour for a total of 2,300 hours recordkeeping (115×50×.4); the average of 115 drilling rigs will not conduct BOP tests 2 times each year with an average of .2 hour to document reasons for not conducting the test as required in § 250.57(e) for a total of 46 hours of recordkeeping (115×2×.2). The total recordkeeping burden for § 250.57 is 2,346 (2,300+46).

(f) Section 250.58 Well-Control Drills

It is estimated that the average of 115 drilling rigs will be conducting well-control drills 100 times each year (approximately once per week for each of two crews) and that each drill will require .2 hour to record the results for a total of 2,300 hours of recordkeeping (115 rigs × 100 drills × .2 hour per drill).

(g) Section 250.59 Diverter Systems

Each of the 900 drilling operations is estimated to require 2 diverters and each test is estimated to require .4 hour for documentation for a total of 720 hours of recordkeeping (900 drilling operations × 2 tests per operation × .4 hour per test).

(h) Section 250.60 Mud Program

It is estimated that the average of 115 drilling rigs operating at any given time will require an average of .5 hour each week to document various mud control and test data for a total of 2,990 hours of recordkeeping (115 drilling rigs × 52 weeks × .5 hour per week).

(i) Section 250.62 Field Drilling Rules

It is estimated that each year 50 requests will be received for establishment of field drilling rules and that each request will require 8 hours to prepare for a total of 400 hours of reporting (50 requests × 8 hours per request).

(j) Section 250.66 Well Records

It is estimated that the 900 wells each year will require 1.5 hours to collect and submit well records for a total of 1,350 hours of reporting (900 wells × 1.5 hours per well). In addition, each of the 900 wells will require 1.5 hours to maintain the well records for a total of 1,350 hours of recordkeeping (900 well × 1.5 hours per well).

(k) Section 250.67 Hydrogen Sulfide

It is estimated that lessees will submit 300 plans for operations in a hydrogen sulfide area and that each plan will require an average of 2 hours to prepare.

Note: The first plan in an area takes significantly longer but after that subsequent plans take far less time. The 2-hour estimate is an average of all plans.)

The total annual information collection burden on lessees for subpart D is 17,596 (13,446 for recordkeeping and 4,150 for reporting).

Comments submitted in response to this notice will be summarized and/or included in the information collection authorization request submitted to OMB for approval of this information collection. These comments will also become a matter of public record.

Authority: Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

Dated: November 8, 1990.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 90–27517 Filed 11–21–90; 8:45 am]

BILLING CODE 4310-MR-M

[OMB No. 1010–0050]

Information Collection Requirements for Subpart J—Pipelines and Pipeline Rights-of-Way

AGENCY: Minerals Management Service, Interior.

ACTION: Request for comments on the information collection requirements for subpart J—Pipelines and Pipeline Rights-of-Way, 30 CFR part 250.

SUMMARY: The Minerals Management Service (MMS), as part of its continuing effort to reduce the paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*), provides the general public, industry, and State and other Federal agencies an opportunity to comment on current and proposed information collection requirements. The MMS will evaluate all comments and will revise reporting and recordkeeping requirements, as appropriate, to minimize respondent burdens. This notice specifically requests comments regarding the information collection burdens imposed by MMS regulations on persons that plan to install, modify, or abandon a pipeline in the Outer Continental Shelf (OCS), plan to apply for a right-of-way grant for the installation of a pipeline, or the modification or relinquishment of a pipeline in the OCS. Comments will be used in the preparation of an information collection request to be submitted to the Office of Management and Budget (OMB) for the renewal of information collection authorizations.

DATES: Comments may be submitted on or before December 24, 1990.

ADDRESSES: Comments and suggestions on these collection requirements should be submitted to Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards, Offshore Rules and Operations Division, Mail Stop 4700, Minerals Management Service; 381 Elden Street, Herndon, Virginia 22070–4817, with copies to the Bureau Clearance Officer, Mail Stop 2300, 381 Elden Street, Herndon, Virginia 22070–4817 and to the Office of Management and Budget, Paperwork Reduction Project (1010–0050); Washington, DC 20503, telephone (202) 395–7340.

FOR FURTHER INFORMATION CONTACT: Copies of the current information collection requirements and supporting material may be obtained by contacting Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards, telephone (703) 787–1600 or (FTS) 393–1600.

SUPPLEMENTARY INFORMATION:

I. Background

The OCS Lands Act, 43 U.S.C. 1331 *et seq.*, requires the holders of OCS oil and gas and sulphur leases to submit Exploration or Development and Production Plans to the Secretary of the Interior (Secretary) prior to commencing exploration, development, or production activities, including the construction of natural gas and crude oil transmission pipelines. To carry out these responsibilities, the Secretary has authorized the Director of MMS to issue regulations governing OCS oil and gas and sulphur lease operations. The rules implementing the requirements and associated information collections for construction of OCS pipelines are contained in 30 CFR part 250 subpart J—Pipelines and Pipeline Rights-of-Way. The information collected under subpart J is analyzed and evaluated by MMS engineers, geologists, geophysicists, and environmental scientists to ensure that planned operations will not adversely affect the marine, coastal, or human environment. The information collected is also reviewed by affected States for consistency with approved Coastal Zone Management Plans.

The Paperwork Reduction Act of 1980 requires MMS to obtain approval of the information collection requirements for subpart J from OMB. The MMS obtained approval for the information collection requirements for subpart J in January 1988 during the restructuring and consolidation of the offshore operating regulations under 30 CFR part 250. This information collection was approved by OMB through January 31, 1991.

II. Current Actions

The MMS is preparing an information collection request that will be submitted to OMB in order to obtain renewal of the information collection authorization for subpart J. An information collection request must contain a description of the information collection requirements, statements justifying their collection, and responses to comments from individuals affected by the information collection. This notice provides a brief description of the information collection requirements for subpart J and the estimated burden for industry to prepare the information.

III. Request for Comments

The sections of subpart J that contain information collection requirements are listed below, along with MMS's estimates of the number of requests or annual plans submitted, preparation time per response or plan, and total burden hours for each requirement. The total burden for submitting plans has been calculated by multiplying the estimated number of applications (for approval to install, modify, or abandon a pipeline or to relinquish a pipeline right-of-way) that will be submitted in a year by the estimated time to prepare each application. The MMS requests that the oil and gas and sulphur industries and other interested parties comment on these information collection requirements, including comments regarding the clarity of information requirements, availability of required information, estimated burden hours, and frequency of collection.

1. Section 250.150 General Requirements

Paragraph (b) requires that an application be submitted to the Regional Supervisor and approval obtained prior to the installation, modification, or abandonment of a lease-term pipeline and prior to the installation of a right-of-way pipeline or the modification or relinquishment of a pipeline right-of-way. Based on Fiscal Year (FY) 1990 data, it is assumed that about 308 requests for approval of installments will be submitted annually to fulfill the requirements of paragraph (b). Assuming it takes an average time of 140 hours to prepare each application, a total of 43,120 hours annually would be required to fulfill the information requirements for pipeline installation requirements under § 250.150 (308 applications × 140 hours per application = 43,120 hours). Also based on FY 1990 data, about 285 applications for modifications to existing pipelines or pipeline applications would be submitted in any subsequent year. (Applications for modifications need only address those items in the original application affected by the proposed modification.) Assuming it takes an average time of 40 hours to prepare each application for a modification, about 11,400 hours annually would be required to fulfill requirements for modifications under § 250.150 (285 applications × 40 hours per modification = 11,400 hours). Thus, the total paperwork burden for § 250.150, including both applications for installations and applications for modifications, is estimated at 54,520 hours (43,120 hours for installation application + 11,400 hours for modification applications = 54,520 total hours).

2. Section 250.155 Inspection requirements for DOI pipelines

Paragraph (a) requires that inspection results records for pipeline routes be retained for 2 years and be made available to the Regional Supervisor upon request. There are an estimated 116 lessees that operate lease-term pipelines. Assuming that each lessee requires an average of 20 hours annually to maintain pipeline inspection records, the estimated annual paperwork burden for § 250.155, paragraph (a), is 2,320 hours (116 lessees × 20 hours per lessee = 2,320 hours).

3. Section 250.157 Applications

Paragraph (a) requires that applications for the approval of the installation of a lease-term pipeline or for the granting of a right-of-way be submitted to the Regional Supervisor. (Succeeding paragraphs under (a) describe application requirements.) Paragraph (b) requires that applications to modify an approved lease-term pipeline or right-of-way grant be submitted to the Regional Supervisor. The information requirements for paragraphs (a) and (b) are already considered under the foregoing discussion of applications under § 250.150. Section 250.157 merely restates these requirements with more specificity; consequently, no additional paperwork burden is imposed by paragraphs (a) and (b). Paragraph (c) requires that applications to abandon a lease-term pipeline or relinquish a right-of-way grant be submitted to the Regional Supervisor. Based on FY 1990 data, it is estimated that about 185 applications to abandon a pipeline or to relinquish a right-of-way grant would be received in any given year. Assuming that each abandonment or relinquishment application takes an average of 2 hours to complete, a total of 370 hours annually would be required to fulfill the paperwork requirements imposed by § 250.157 paragraph (c) (185 applications × 2 hours per application = 370 hours).

4. Section 250.158 Reports

Paragraphs (a), (c), and (d) require the lessee or right-of-way holder to notify the Regional Supervisor whenever (1) installation or relocation of a pipeline commences, (2) a pressure test is conducted, (3) a pipeline is taken out of service, or (4) required pipeline safety equipment is taken out of service for more than 12 hours or is returned to service. These reports are not normally required to be written and therefore do not necessarily impose a paperwork burden on the lessee or right-of-way holder. Paragraphs (b), (e), (f), (g), and (h) require that a written report be submitted to the Regional Supervisor (1) after completion of any pipeline construction; (2) after pipeline repairs; (3) after pipeline failures; (4) after the effects of scouring, soft bottoms, or other environmental factors are observed to be detrimentally affecting a pipeline (remedial action report); or (5) for pipelines requiring submission of an annual report describing the results and conclusions of pipe-to-electrolyte potential measurements pursuant to § 250.155 paragraph (b). Based on FY 1990 data, it is assumed that about 195 pipeline construction reports will be submitted annually. Assuming it takes an average of 16 hours to complete each pipeline construction report, it is estimated that a total of 3,120 hours annually will be required to meet the paperwork burden imposed by the construction report requirement (195 reports × 16 hours per report = 3,120 hours). Also, based on FY 1990 data, it is assumed that about 530 pipeline repair, departure, or potential reading reports will be submitted annually. Assuming an average of 8 hours are required to complete each repair, departure, or potential reading report, it is estimated that a total of 4,240 hours will be required annually to comply with the information collection provisions concerning repair/departure/potential reading reports (530 reports × 8 hours per report = 4,240 hours). Thus, the total information collection burden for all paragraphs under § 250.158 is estimated at 7,360 hours (3,120 hours for construction reports + 43,240 hours for other reports = 7,360 total hours).

5. Section 250.159 General requirements for a pipeline right-of-way grant

Paragraph (c)(4) requires the lessee or right-of-way holder to notify the Regional Supervisor of any historical or cultural resource discovered along a pipeline right-of-way. It is estimated that about 70 such notifications will occur in any given year. Assuming it takes 4 hours to complete each notification, the information collection burden associated with paragraph (c)(4) is 280 hours (70 notifications × hours per notification = 280 hours). Paragraph (c)(5) requires lessees and pipeline right-of-way holders to notify the Regional Supervisor at all times concerning the lessee or right-of-way holder's address and the address of the officer or agent authorized to be served with due process. It is estimated that there are about 10 such notifications per year and that the time necessary to complete each notification is about 1 hour. Therefore, the information collection requirement associated with paragraph (c)(5) is estimated at 10 hours annually (10 notifications × 1 hour per notification = 10 hours.) The total information collection burden associated with § 250.159 is estimated at 290 hours (280 hours for cultural resource notifications + 10 hours for change-of-address notifications = 290 hours.)

6. Section 250.160 Application for a pipeline right-of-way grant

Paragraph (a) requires that an application for a new or modified pipeline right-of-way be submitted to the Regional Supervisor. Paragraphs (b), (c), and (d) specify requirements to be met in the application. The information collection requirements for § 250.160 can be satisfied by compliance with information collection requirements for § 250.150, General Requirements; therefore, no additional information collection burden is imposed by § 250.160.

7. Section 250.161 Granting a pipeline right-of-way

Paragraphs (b), (c)(1), and (d) require pipeline right-of-way applicants to submit proof that any affected State, lessee, right-of-way holder, or Federal agency with jurisdiction over a restricted area has reviewed the application and has no objection to the granting of the requested right-of-way. The information collection requirements for § 250.161 are already covered under information collection requirements for § 250.150, General Requirements; therefore, no additional information collection burden is imposed by § 250.161.

8. Section 250.162 Requirements for construction under a right-of-way grant

Paragraph (a)(2)(i) requires the right-of-way holder to notify the operators of all leases and holders of all right-of-way grants if a deviation occurs during construction and to provide proof of such notification to the Regional Supervisor. The information collection requirements for § 250.162 are already covered under information collections requirements for § 250.150, General Requirements; therefore, no additional information collection burden is imposed by § 250.162.

9. Section 250.163 Assignment of a right-of-way grant

Paragraphs (a) and (b) require that applications for approval of an assignment of a right-of-way or of a lineal segment thereof be filed with the Regional Supervisor. All such applications are to include a showing of qualifications of all assignees and a statement that the assignee(s) agrees to comply with and be bound by the terms and conditions of the right-of-way grant. It is estimated that there are about five such applications for approval of assignment in any given year, and the time to complete each application is estimated at 8 hours. Thus, the paperwork burden associated with assignment applications is estimated at 40 hours (5 applications × 8 hours per application = 40 hours).

10. Section 250.164 Relinquishment of a right-of-way grant

This section requires written notification to the Regional Supervisor of all pipeline right-of-way relinquishments. This paperwork burden has already been estimated above with the burden estimated for relinquishments under § 250.157.

The total annual information collection burden on lessees for subpart J is estimated at 64,900 hours (54,520 + 2,320 + 370 + 7,360 + 290 + 0 + 0 + 0 + 40 + 0 = 64,900).

Comments submitted in response to this notice will be summarized and/or included in the information collection request submitted to OMB for approval of the authorization for this information collection. These comments will also become a matter of public record.

Authority: Sec. 294, Public Law 95-372, 92 Stat. 629 (43 U.S.C. 1334).

Dated: November 6, 1990.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 90-27516 Filed 11-21-90; 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Requirements for Subpart K—Production Rates

AGENCY: Minerals Management Service, Interior.

ACTION: Request for comments on the information collection requirements for Subpart K—Production Rates, 30 CFR part 250 (OMB No. 1010-0041).

SUMMARY: The Minerals Management Service (MMS), as part of its continuing effort to reduce the paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*), provides the general public, industry, and State and other Federal agencies an opportunity to comment on current and proposed information collection requirements. The MMS will evaluate all comments and will revise reporting and recordkeeping requirements, as appropriate, to minimize respondent burdens. This notice specifically requests comments regarding the information collection burdens imposed by MMS regulations on lessees that plan to conduct exploration, development, and production activities in the Outer Continental Shelf (OCS). Comments will be used in preparation of an information collection request to be submitted to the Office of Management and Budget (OMB) for the renewal of information collection authorizations.

DATES: Comments may be submitted on or before December 24, 1990.

ADDRESSES: Comments and suggestions on these collection requirements should be submitted to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070-4817, with copies to the Bureau Clearance Officer; Mail Stop 2300; 381 Elden Street; Herndon, Virginia 22070-4817, and to the Office of Management and Budget; Paperwork Reduction Project (1010-0041); Washington, DC 20503, telephone (202) 395-7340.

FOR FURTHER INFORMATION CONTACT: Copies of the current information collection requirements and supporting material may be obtained by contacting Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; telephone (703) 787-1600 or (FTS) 393-1600.

SUPPLEMENTARY INFORMATION:

I. Background

The OCS Lands Act, 43 U.S.C. 1331 *et seq.*, gives the Secretary of the Interior the responsibility to preserve, protect, and develop oil and gas resources in the OCS in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on OCS resources; and preserve and maintain free enterprise competition. To carry out these responsibilities, the Director of MMS has issued rules governing oil and gas production rates in the OCS. These rules are prescribed in 30 CFR part 250, Subpart K—Production Rates.

The Paperwork Reduction Act of 1980 requires MMS to obtain approval of the information collection requirements for subpart K from OMB. The MMS obtained approval for the information collection requirements for subpart K in

January 1988 during the restructuring and consolidation of the offshore operating regulations under 30 CFR part 250. This information collection was approved by OMB through January 31, 1991.

II. Current Actions

The MMS is preparing an information collection request that will be submitted to OMB in order to obtain renewal of the authorization for information collections under subpart K. An information collection authorization request must contain a description of the information collection requirements, statements justifying their collection, and responses to comments from individuals affected by the information collection. This notice provides a brief description of the information collection requirements for subpart K and the estimated burden for industry to prepare the information.

III. Request for Comments

The sections of subpart K that contain information collection requirements are listed below, along with MS's estimates of the number of requests or annual plans submitted, preparation time per response or plan, and total burden hours for each requirement. The MMS requests the oil and gas industry and other interested parties to comment on these information collection requirements, including comments regarding the clarity of the information requirements, availability of required information, estimated burden hours, and frequency of collection.

(a) *Section 250.171 general requirements and classifications of reservoirs.* Operator shall furnish the Regional Supervisor with letters from operators of offset properties when a completion interval is closer than 500 feet from a unit or lease line, 50 submittals of letters per year, 8 hours per submittal, 0 hours of recordkeeping, 400 burden hours.

(b) *Section 250.172 oil and gas production rates.* Lessee must submit request to the Regional Supervisor for an extension of time to submit well test results, 75 requests submitted per year, .5 hour per request, 0 hours of recordkeeping, 37.5 burden hours.

(c) *Section 250.173 Well production testing.* Lessee shall provide advance notice to the Regional Supervisor of date and time of well tests upon request, 10 notices submitted per year, .5 hour per notice, 0 hours recordkeeping, 5 burden hours.

(d) *Section 250.174 bottomhole pressure survey.* Results of all static bottomhole pressure surveys shall be filed with the Regional Supervisor, 1,200 static bottomhole pressure surveys filed per year, 1 hour per survey, 0 hours recondkeeping, 1,200 burden hours.

(e) *Section 250.175 flaring and venting of gas.* Lessee shall submit gas flaring evaluation with engineering, geologic, and economic data to the Regional Supervisor in support of decision to not save, sell, or market gas and maintain records detailing gas flaring or venting occurrence, 15 evaluations submitted per year, 8 hours per evaluation, 300 hours recordkeeping, 420 burden hours.

(f) *Section 250.176 downhole commingling.* Application to commingle hydrocarbons produced from multiple reservoirs within a common wellbore shall be submitted to the Regional Supervisor, 90 applications per year, 8 hours per application, 0 hours recordkeeping, 720 burden hours.

(g) *Section 250.177 enhanced oil and gas recovery operations.* A plan for pressure maintenance, secondary and tertiary recovery, cycling, and similar recovery operations to increase ultimate hydrocarbon recovery shall be submitted to the Regional Supervisor; periodic reports of volumes of oil, gas, or other substances injected, produced, or reproduced shall be submitted to the Regional Supervisor as required, 20 enhanced recovery plans submitted per year, 12 hours per plan, 35 volume reports submitted per year, .5 hour per volume report, 0 hours of recordkeeping, 257.5 burden hours.

The total annual information collection burden on lessees for subpart K is 3,040 hours.

Comments submitted in response to this notice will be summarized and/or included in the information collection authorization request submitted to OMB for approval of this information collection. These comments will also become a matter of public record.

Authority: Sec. 204, Pub. L. 95-372, 92 Stat. 629 (43 U.S.C. 1334).

Dated: November 8, 1990.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 90-27519 Filed 11-21-90; 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Requirements for Subpart L—Production Measurement, Surface Commingling, and Security

AGENCY: Minerals Management Service, Interior.

ACTION: Request for comments on the information collection requirements for subpart L—Production Measurement, Surface Commingling, and Security, 30 CFR part 250 (OMB No. 1010-0051).

SUMMARY: The Minerals Management Service (MMS), as part of its continuing effort to reduce the paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*), provides the general public, industry, and State and other Federal agencies an opportunity to comment on current and proposed information collection requirements. The MMS will evaluate all comments and will revise reporting and recordkeeping requirements, as appropriate, to minimize respondent burdens. This notice specifically requests comments regarding the information collection burdens imposed by MMS regulations on lessees for the purposes of royalty determination and for ensuring against the loss or theft of production from the Outer Continental Shelf (OCS). Comments will be used in the preparation of an information collection request to be submitted to the Office of Management and Budget (OMB) for the renewal of the information collection authorizations.

DATES: Comments may be submitted on or before December 24, 1990.

ADDRESSES: Comments and suggestions on these collection requirements should be submitted to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070-4817, with copies to the Bureau Clearance Officer; Mail Stop 2300; 381 Elden Street; Herndon, Virginia 22070-4817 and to the Office of Management and Budget; Paperwork Reduction Project (1010-0051); Washington, DC 20503, telephone (202) 395-7340.

FOR FURTHER INFORMATION CONTACT: Copies of the current information collection requirements and supporting material may be obtained by contacting Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; telephone (703) 787-1600 or (FTS) 393-1600.

SUPPLEMENTARY INFORMATION:

I. Background

The Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior (Secretary) to preserve, protect and develop oil and gas resources in the OCS in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible. The Secretary is also directed to balance orderly energy resources development with the protection of the human, marine, and coastal environment; to ensure the public a fair

and equitable return on OCS resources produced; and to preserve and maintain free enterprise competition in the OCS. The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*) at section 1717(b)(2) prescribes that an operator shall "develop and comply with such minimum site security measures as the Secretary deems appropriate, to protect oil or gas produced or stored on a lease site or on the Outer Continental Shelf from theft." To carry out these responsibilities, the Secretary has authorized the Director of MMS to issue regulations governing, among other things, OCS oil and gas production measurement, surface commingling, and site security. These regulations and associated information collections are contained in 30 CFR part 250, subpart L—Production Measurement, Surface Commingling, and Security. The information collected under subpart L is used by MMS to ensure that volumes of hydrocarbons produced are measured accurately, and royalties are paid on the proper volumes.

The Paperwork Reduction Act of 1980 requires MMS to obtain approval of the information collection requirements for subpart L from OMB. The MMS obtained approval for the information collection requirements for subpart L in January 1988 during the restructuring and consolidation of the offshore operating regulations contained in 30 CFR part 250. This information collection was approved by OMB through January 31, 1991.

II. Current Actions

The MMS is currently preparing an information collection request that will be submitted to OMB for reapproval of the collection of information required by subpart L. The information collection request contains a description of the information collection requirements, statements justifying their collection, and responses to comments from individuals affected by the information collection. This notice provides a brief description of the information collection requirements for subpart L and the estimated paperwork burden incurred by industry in preparing the requested information.

III. Request for Comments

The information collection requirements contained in subpart L are listed below together with an estimate of the total burden hours for each requirement. The methodology used to derive the estimates used in this notice is detailed in a following section of this notice. The estimates compiled for this notice are intended to reflect the burden directly attributable to requirements of subpart L. Many of the activities regulated under subpart L are conducted for separate purposes of the lessees and operators, and only a portion of the burden of those activities can reasonably be attributed to subpart L. This notice specifically requests comments on the information collection requirements of subpart L, including comments regarding the clarity of the information requirements, availability of required information, estimated burden hours, and frequency of collection.

(a) *Section 250.180(b) Measurement of liquid hydrocarbons, § 250.181(b) Measurement of gas, § 250.182(b) Surface commingling of production.* Two hundred and forty applications are prepared by industry and submitted to MMS annually under the requirements of these three subsections for approval of liquid or gaseous hydrocarbon production and for commingling: 8 hours per application, 1,920 total burden hours.

(b) *Section 250.180(c)(7) monthly run tickets, § 250.180(d)(7) proving run tickets, § 250.180(f)(3) tank gauging run tickets.* One thousand three hundred and sixty run tickets from meters and 305 run tickets from tank gaugings are copied and submitted to MMS monthly under the requirements of these three subsections: 1 minute per report, 333 total annual burden hours.

(c) *Section 250.180(d)(3)(iv) mechanical displacement provers and prover tanks.* Three hundred and sixty proving reports are copied and submitted to MMS every 5 years under the requirements of this subsection: 5 minutes per report, 6 total annual burden hours.

(d) *Section 250.180(d)(5) meter proving reports.* Six hundred and eighty-two meter proving reports for sales and master meters are copied and submitted to MMS monthly under the requirements of this subsection: 1 minute per report, 136 total burden hours.

(e) *Section 250.180(e)(3) allocation meter recordkeeping.* Nine hundred allocation meter proving reports per month must be filed and kept at the field location for a period of 2 years under the requirements of this subsection: 1 minute per report, 180 total burden hours.

(f) *Section 250.180(f)(2) sales tank calibration charts.* Twelve reports are copied and submitted to the MMS annually for each new sales tank under the requirements of this subsection: 1 minute per report, 0 total annual burden hours.

(g) *Section 250.181(c)(3)(iii) gas meter calibration recordkeeping.* Two thousand and twenty-five gas meters are calibrated monthly; 24,300 calibration records are filed and kept at the field location for a period of 2 years under the requirements of this subsection: 1 minute per record, 405 total annual burden hours.

(h) *Section 250.182(c) surface commingling of production.* Files from 41,400 well tests conducted for allocation purposes are kept at the field location for a period of 2 years under the requirements of this subsection: 2 minutes per record, 1,380 total burden hours.

(i) *Section 250.183(a) meter seal list and location recordkeeping.* Lessees are required to keep a list of seal numbers and their installed locations at the field location for inspection by MMS representatives under the requirements of this subsection; there are a total of 724 sales measuring devices: 2 minutes per record, 290 total burden hours.

(j) *Section 250.183(d) site security violation reporting.* Two reports covering evidence of site security violations are telephoned to MMS annually under the requirements of this subsection: 10 minutes per report, 0 total burden hours.

The total annual information collection burden on lessees for subpart L is 4,650 hours; 2,395 of these hours are attributable to reporting requirements and 2,255 hours are attributable to recordkeeping requirements.

Comments submitted in response to this notice will be summarized and/or included in the information collection package submitted to OMB for approval of this information collection. These comments will also become a matter of public record.

Authority: Sec. 204, Pub. L. 95-372, 92 Stat. 629 (43 U.S.C. 1334).

Dated: November 8, 1990.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 90-27520 Filed 11-21-90; 8:45 am]

BILLING CODE 4310-MR-M

North American Datum 1983; Proposed Implementation Plan; Request for Comments

Outer Continental Shelf (OCS); Request for Public Comment on the Minerals Management Service (MMS) North American Datum of 1983 (NAD 83) Proposed Implementation Plan.

Within the continental United States, horizontal positioning data (latitude, longitude, and plane coordinate

systems) have been successively based on a series of datums. On December 6, 1988, the Federal Geodetic Control Committee (FGCC) adopted a policy mandating that Federal civilian agencies engaged in surveying and mapping activities convert from the existing NAD 27 to the new NAD 83. The FGCC provided for an orderly transition by stating that the conversion effort is to be implemented to the extent practicable, legally allowable, and feasible.

This document is a request for public comment on the MMS NAD 83 Proposed Implementation Plan. Written comments should be mailed or delivered within 45 days of the date of this notice to the Department of the Interior, Minerals Management Service, Offshore Leasing Management Division, 18th and C Streets NW., MS 4230, Washington, DC 20240. ATTN: David Bornholdt, (202) 208-5121.

Minerals Management Service, North American Datum of 1983, Proposed Implementation Plan—November 7, 1990

The MMS will begin a three-phased conversion to the new official United States horizontal control datum, NAD 83 in Fiscal Year 1991. This approach, which should minimize transition difficulties, may require more than 10 years to complete. The ultimate goals of this implementation is for the MMS to remain conversant with its constituencies and to develop a uniform cadastre throughout the OCS. Implementation timeframes will be developed on a Region-specific basis.

Implementation Phase I

The initial implementation phase will require approximately 3 years. It is intended to identify the survey datum of existing data held by the MMS in each OCS Region (Alaska, Atlantic, Gulf of Mexico, and Pacific), and to ensure that new information submitted to the MMS is compatible with preexisting data.

Phase I will establish control over the flow of information used within the agency. In addition, the federally-endorsed (55 FR 155, August 10, 1990) datum conversion method known as NADCON will be used to convert existing NAD 27-based cadastre coordinates into NAD 83 equivalents. The resulting NAD 83 coordinate equivalents will be made available to the public for orientation and convenience when appropriate. However, the NAD 83 cadastre equivalents (e.g., block corners and boundary intersections) will not be considered official for legal purposes. An NAD 27 leasehold will continue to reference that datum until the lease is terminated, relinquished, or expires. Further, depending upon the implementation phase of the OCS Region at the time the leasehold is terminated, relinquished, or expires, the block may be redefined on the NAD 83 cadastre.

All leasing will be performed on NAD 27 until a Region implements Phase III of this plan or implements it for a standard subdivision of the Region (e.g., a planning area).

During Phase I, NAD 83 will become the datum of preference; however, NAD 27-based information will be permitted provided that the datum (e.g., NAD 27) is explicitly identified. Whenever the datum is unknown, that data will be unacceptable. The MMS will notify their constituencies within the oil and gas industries through notices in the **Federal Register** and Notices to Lessees, as well as other mailing lists, in an attempt to inform the public of this requirement. Furthermore, all permits to perform geophysical surveys will require that the permittee specify the geodetic datum when data are submitted to the MMS.

The end of Phase I in approximately 1993, coincides with the establishment of a full constellation of Global Positioning System satellites. At that time, it is expected that NAD 83 will be the dominant navigation and positioning system on the OCS.

Implementation Phase II

Phase II will solidify the usage of NAD 83 as the primary survey datum for the agency. The MMS's automated systems such as the Outer Continental Shelf Information System and the Offshore Block, Boundary, and MAP Information System should be nearing completion. These MMS computer-based systems are the foundation which will facilitate the development of the NAD 83-based cadastre.

Phase II will require that all data submitted to the agency must be referenced to NAD 83. Data based on NAD 27 will be unacceptable without the explicit written permission of the appropriate Regional Director or Program Officer on a case-by-case basis. In Phase II, the offshore cadastre will continue to be defined on NAD 27, with NAD 83 equivalents being made available when appropriate.

Implementation Phase III

Phase III will bring the MMS into full compliance with NAD 83 usage and includes the establishment of a new NAD 83-based OCS cadastre (regridding). The new cadastre offshore of the continental United States will strictly adhere to the definitive parameters of the Universal Transverse Mercator (UTM) Projection, using the Geodetic Reference System of 1980 (GRS 80) as the reference ellipsoid. Official Protraction Diagrams (OPD's) will depict a metric grid, with full grid blocks being 4800-by-4800 meters throughout the OCS.

The OPD's for Hawaii and the United States Dependencies will also portray a metric cadastre based upon strict adherence to the definitive paramters of the UTM. However, due to the physical separation of these areas from the continental United States, the World Geodetic System of 1984 may be used as the reference ellipsoid instead of GRS 80. Since the offshore program in these areas may not be the same as for offshore of the continental United States, a different sized grid (block size) may be used.

Timeframes

The Regional Directors will determine the timing of Regional implementation based on experience gained as regridding proceeds and the current lease and sales activity. Regridding will proceed on a planning area basis. The timeframes listed in the table below are the OCS regional recommendations for the implementation of NAD 83 within their Regions.

OCS region	Phase I	Phase II	Phase III
Alaska	Present to 1992.	1992–1993	1993–1996.
Atlantic	Present to 1992.	1992	1992–1997.
Gulf of Mexico.	Present to 1993.	1993–1995	1955—until completed.
Pacific	Present to 1993.	1993–1995	1995—until completed.

Dated: November 14, 1990.

Barry Williamson,

Director, Minerals Management Service.

[FR Doc. 90-27488 Filed 11-21-90; 8:45 am]

BILLING CODE 4310-MR-M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Meeting; Research Advisory Committee

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on December 13–14, 1990 in Conference Room 'C' of the Pan American Health Organization Building, 525 Twenty-Third Street, NW., Washington, DC. The Committee will continue its discussion on (1) Forestry Research; (2) Biodiversity; (3) A.I.D.'s Agriculture Strategic Plan for the 1990s; and (4) will report on Future RAC Topics.

The meeting will begin at 8:30 a.m. on both days and adjourn at 5 p.m. on December 13 and 12 noon on December 14. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent time for the meeting permits. Minutes of the meeting will be available upon request. Dr. Curtis R. Jackson, Director, Office of Research and University Relations, Bureau for Science and Technology is designated as the A.I.D. Representative at the meeting. Persons desiring more specific information should contact Dr. Jackson at (703) 875-4005 of AID/S&T/RUR, room 309, SA-18, Washington, DC 20523-1807.

Dated: November 13, 1990.

Curtis R. Jackson,

A.I.D. Representative, Research Advisory Committee.

[FR Doc. 90-27545 Filed 11-21-90; 8:45 am]

BILLING CODE 8116-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Senior Executive Service; Performance Review Board; Membership

November 6, 1990.

On or about November 6, 1990, the following persons will be added as members of the Performance Review Board:

Michael G. Usnick,
Nancy Frame,
Corbett M. Flannery,
Peter Davis.

Dated: November 13, 1990.

Jan Barrow,

Executive Secretary, Performance Review Board.

[FR Doc. 90-27460 Filed 11-21-90; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub-No. 23)]

Intrastate Rail Rate Authority—New York

AGENCY: Interstate Commerce Commission.

ACTION: Notice of recertification.

SUMMARY: Pursuant to 49 U.S.C. 11501(b), the Interstate Commerce Commission recertifies the State of New York to regulate intrastate rail rates, classifications, rules, and practices for a 5-year period.

DATES: Recertification will be effective December 23, 1990 and will expire December 22, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359.

Decided: November 13, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-27555 Filed 11-21-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31762]

Maryland & Pennsylvania Railroad Co. and Yorkrail, Inc.—Joint Project for Relocation of a Line of Railroad; Exemption

On October 26, 1990, Maryland & Pennsylvania Railroad Company (M&P) and Yorkrail, Inc. (Yorkrail), filed a notice of exemption under 49 CFR 1180.2(d)(5) for their joint project to relocate a line of railroad. The joint project consists of: (1) A grant by M&P to Yorkrail of trackage rights over M&P's line between mileposts 13.5 and 15.3, in York, PA; (2) an incidental abandonment of several segments of Yorkrail's line between mileposts 13.9 and 15.6, in York; [1] and (3) the construction of a new crossover (at M&P milepost 13.5) and a new turnout (at M&P milepost 14.5). The purpose of the relocation project is to eliminate duplicative service currently being provided and thereby decrease maintenance and operating expenses and increase efficiency.

The joint project involves the relocation of a line of railroad that does not disrupt service to shippers. The only difference in operations will be that Yorkrail's service will be provided over M&P track instead of over Yorkrail track. There will be no expansion into new territory for Yorkrail because it already serves the shippers, and there will be no change in the existing competitive situations between Yorkrail and M&P because both railroads will continue serving shippers in York.

The Commission will assume jurisdiction over the abandonment and construction components of a relocation project only in cases where the proposal involves, for example, a change in existing competitive situations. *See, generally, Denver & R.G.W.R. Co.—Ft. Proj.—Relocation Over BN*, 4 I.C.C.2d 95 (1987). Under these standards, the proposed abandonment and construction of track are not subject to the Commission's jurisdiction. The remainder of the joint relocation project qualifies under the class exemption procedures at 49 CFR 1180.2(d)(5).

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on Stephen W. McVearry, Weiner, McCaffrey, Brodsky, Kaplan & Levin, P.C., 1350 New York Avenue, NW., Suite 800, Washington, DC 20005.

Dated: November 14, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-27292 Filed 11-21-90; 8:45 am]

BILLING CODE 7035-01-M

[1] Three segments will be abandoned: (1) From a point near the highway grade crossing at West Market Street (Yorkrail milepost 14.2) to a point near the highway crossing at Carlisle Avenue (Yorkrail milepost 14.6); (2) from North West Street to a point west of Park Street, a distance of approximately 250 feet; and (3) from the highway crossing at North Hartley Street (Yorkrail milepost 15.1) to a point near the highway crossing at North Newberry Street (Yorkrail milepost 15.6).

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by

the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rages and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minmum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers(s).

Volume I

Florida, FL90-46 ..... p. 212a, p. 212d.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Florida, FL90-3(Jan. 5, 1990). p. 107, p. 107.
Index ..... pp. xxi-xxii.

Volume II

Louisiana, LA90-5(Jan. 5, 1990). p. 389, pp. 390-399, pp. 401, 408.

Volume III

Washington:
WA90-1(Jan. 5, 1990)..... p. 369, p. 372
WA90-2(Jan. 5, 1990)..... p. 395, pp. 397-398.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC., this 16th Day of November 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90-27478 Filed 11-21-90; 8:45 am]

BILLING CODE 4510-27-M

Pension and Welfare Benefits Administration

[Application No. D-8492]

Proposed Exemption for Certain Transactions Involving Delta Government Options Corporation

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1986 (the Code). The proposed exemption would permit transactions relating to the participation of employee benefit plans in a U.S. Treasury security options trading system, and the attendant purchases or sales of options and extensions of credit between such employee benefit plans and parties in interest. The exemption if granted would affect participants and beneficiaries of plans participating in the system, the fiduciaries of such plans, the persons who maintain, service and insure the system, and other participants in the system.

EFFECTIVE DATE: This proposed exemption will be effective on the date of the publication in the Federal Register of the notice granting this exemption.

WRITTEN COMMENTS: All interested persons are invited to submit written comments on the pending exemption, to the address set forth below and within the time period described below. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the pending exemption.

DATES: Written comments must be received by the Department on or before January 7, 1991.

ADDRESSES: All written comments (at least three copies) should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N-5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D-8492. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a) of the Act and from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code. The proposed exemption was requested in an application filed by Delta Government Options Trading Corporation (Delta), pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Notice To Interested Persons: Those persons who may be interested in the pendency of the requested exemption include fiduciaries and participants of plans which may invest in the System. Because no plans currently participate in the System, the Department has determined that the only practical form of providing notice to interested persons is the distribution, by Delta, of the notice of proposed exemption as published in the Federal Register to fiduciaries of all plans which in Delta's opinion are likely candidates for participation in the System. Such distribution will occur within 30 days of the publication of the proposed exemption in the Federal Register.

Summary of Facts and Representations

Parties

1. Delta is a Delaware corporation which has an initial capitalization of $9 million and is owned by Dots Inc. and SMG (a New York Stock Exchange member and a broker-dealer registered under the Securities Exchange Act of 1934 (the 34 Act) and an investment adviser registered under the Investment Advisors Act of 1940. As of January 12, 1990, Delta has been granted temporary registration (36 months) as a clearing agency under the provisions of section 17A of the 34 Act,[1] and has registered 250,000 option contracts on U.S. Treasury securities with the Securities Exchange Commission (SEC) under the Securities Exchange Act of 1933. As a clearing agency, Delta will issue put and call options, acquire Matching Puts and Calls from Participants and perform its obligations under the Operating Agreements which govern the Over-the-Counter Options Trading System (System).

2. RMJ Options Trading Corporation (RMJ) is a Delaware corporation which is an indirect wholly-owned subsidiary of RMJ Holdings, Inc., RMJ Holdings, Inc. and its subsidiaries comprise a worldwide group of financial services companies which are among the largest inter-dealers of U.S. government and agency securities with offices in New York, London, and Tokyo.

3. Security Pacific National Trust Company (SPNTC) and Security Pacific National Bank (SPNB) are national banking associations which are wholly-owned by Security Pacific Corporation. Security Pacific Corporation is a Delaware corporation which is registered as a bank holding company under the Bank Holding Company Act of 1956.

4. Capital Assurance Association ("CapMAC") is a New York domiciled stock insurance company. CapMAC is a subsidiary of CapMAC Holdings, Inc., a wholly-owned subsidiary of Citibank, which, in turn, is wholly-owned by Citicorp. Citicorp is a holding company incorporated in Delaware. CapMAC insures corporate and other financial obligations in the domestic and foreign capital markets. CapMAC also provides financial guarantee reinsurance for both corporate and municipal obligations written by other major insurance companies.

Responsibilities of the Parties

5. Delta, RMJ and SPNTC operate the System. The System is designed to provide brokerage services and a central clearing facility for over-the-counter (OTC) trading of options on U.S. Treasury securities (Options). The System as established by Delta operates through a book-entry system. The book-entry system credits and debits accounts maintained for entities participating in the System. These accounts represent the assets and the obligations of the Participants in the System. All trades in the System are effected by Participants as principals for their own accounts, and not on behalf of customers or any other persons.

6. Delta's responsibilities include both transactional and oversight functions. In its transactional role, Delta interposes itself in each transaction. Delta becomes the writer of an Option to the party which purchases the Option, and the holder of an Option from the party which writes the Option for each transaction accepted in the System. Thus, the writing and purchasing parties are in contractual privity only with Delta.

In its oversight role, Delta admits Participants into the System, sets participant admission criteria and determines whether applicants meet these criteria. Delta also drafts, amends and enforces the rules and procedures of the System. In this regard, Delta sets participant margin requirements, trading limits, and position limits, and makes determinations concerning the suspension of Participants and directs the liquidation of a suspended Participant's positions in accordance with the System's procedures. Additionally, Delta is required to obtain and maintain the Credit Enhancement Facility (CEF).

The CEF consists of a letter of Credit (LOC) and a surety bond. Each Participant must be covered under an irrevocable LOC issued for the benefit of Delta. In the event of a default by a Participant in excess of what can be obtained by liquidating its account, Delta can draw on the LOC for up to $100 million to cover the default, and the issuer of the LOC becomes a creditor of the defaulting Participant. Additionally, each Participant must be an insured party under a surety bond issued for the benefit of Delta. In the event of default which is not covered by the LOC, Delta would draw on the surety bond for up to $100 million, and the surety would

[1] Securities Exchange Act Release No. 27611 (January 12, 1990).

become a creditor of the defaulting Participant.

7. RMJ is required to maintain sufficient computer facilities and personnel to support the System. RMJ disseminates Option bid and ask quotations to Participants through the automated communications network which it provides to the Participants.[2] Participants who wish to accept a bid or ask quotation that appears on the video display terminal do so on an anonymous basis through RMJ who acts as a "blind broker". RMJ is required to support the processing of all transactions entered into the System regardless of whether the trade was blind-brokered by RMJ or was negotiated and entered into between two Participants independently on RMJ. In connection with its supporting the processing of all transactions entered into on the System, RMJ is required to maintain a record of all trades, to reflect accurately a Participant's margin requirement, and to process notices regarding the exercise of an Option contract (i.e. the purchase of U.S. Treasury securities in accordance with the terms of the Option) and assignment of an Option contract (i.e. the obligation to deliver the U.S. Treasury securities in accordance with the terms of the Option).

8. SPNTC acts as the clearing bank for the System. All trades effected between Participants are submitted to SPNTC for acceptance. SPNTC will accept the Option transaction for clearance if: the trade reports (describing the terms and conditions of the Option contracts) for a Writing Participant and a Purchasing Participant match; each Participant is in good standing to engage in Options transactions in the System; and the trade would not breach the trading limit or any other limit imposed by Delta on either Participant.

Delta has established a separate account for each Participant at SPNTC which tracks, by bookkeeping entries, each Participant's transactions. This account evidences each Participant's net position in the System.

Delta has also established a separate account for each Participant's margin deposits at SPNTC. This account contains the deposits required by the System's margin procedures. Margin is a deposit against any obligation a Participant may incur by reason of the Options it writes. The amount of margin required is adjusted to reflect the economic risk of a Participant's net positions to Delta. Margin for each Option is calculated by a computerized Options pricing model, which takes into account any adverse movement in the market price of the underlying U.S. Treasury securities and historic market data. This model takes into account the reduction in Delta's risk posed by a Participant who has written both calls and puts with similar terms (as it is unlikely that both positions will generate losses). The amount of margin required is further offset by the value of Options held by a Participant. As a result of these calculations, Delta determines the net margin required to be deposited in the margin account.

Each Participant is also required to establish an account at a correspondent bank. This correspondent bank must be capable of sending and receiving funds on the Fedwire System, and is used to make payments to or receive payments from the System.

Each account established at SPNTC will be held in Delta's name and for Delta's benefit. SPNTC accepts and assigns exercise notices and receives and delivers funds and securities necessary for exercise settlement. SPNTC prepares and distributes the Daily Margin, Position, and Exercise Reports to Participants. SPNTC has a security interest in the assets of the System held by, deposited with, or otherwise in SPNTC's control, except for Participants' Option contracts.

Participant Eligibility

9. Participation in the System is generally limited to sophisticated investors that have the ability to assess the legal complexities and risks of the System. Specifically, the System is open to primary dealers of U.S. government securities, as designated by the Federal Reserve Bank of New York, and any other person, other than natural persons, meeting the financial and other requirements established by Delta. Delta expects a majority of the Participants to be brokers and dealers, such as government securities brokers and dealers, commercial banks, insurance companies, and other institutional investors, such as investment companies and employee benefit plans.

Employee benefit plans must meet the financial criteria established by Delta to be considered for admission to the System. Delta has represented that each plan which participates in the System, when combined with other plans maintained by the same control group, will have total plan assets with a value in excess of $300 million. Moreover, to be eligible for participation, each employee benefit plan, as well as other applicants, must intend to engage in significant trading of Options and must maintain facilities and personnel adequate for the expeditious and orderly transaction of business within the System.

In addition, Participants must apply for and be accepted as account parties to the LOC and the surety bond, since admission to the System is limited to those applicants that receive the approval of both Delta and the issuers of the CEF. Finally, to become a Participant in the System, each applicant must execute and become a party to the Operating Agreements.[3]

Trading in the System

10. Trading in the System does not employ any form of risk mutualization. Thus, no Participant contributes to a fund to cover a default of another Participant of the System, and, in general, a default by one party will not effect the rights or obligations of any other Participant. If a Participant defaults, Delta remains obligated with respect to any transactions which correspond to those of the defaulting party. Rather than relying on the financial security of its member Participants, the System gains its financial stability through the CEF. The CEF is comprised of a $100 million LOC issued by SPNB for the benefit of Delta and a $100 million surety bond issued by CapMAC for the benefit of Delta.

11. Trading in the System is initiated by the Participants. Participants may initiate a trade in one of two ways:

(a) Participants may accept a bid or ask quotation that is on the video display terminal and thereby employ RMJ as a broker in a blind transacton, or

(b) Participants may communicate bid and ask quotations directly to each other.[4]

After a trade has been negotiated, trade reports describing the terms of the trade, parties, price, and the underlying security are prepared and forwarded to SPNTC for acceptance. The reports are prepared and forwarded by RMJ if it acted as broker to the transaction or by the parties to the trade if they negotiated the trade themselves. SPNTC will accept the Option transaction for clearance if: the trade reports for a Writing Participant and a Purchasing Participant match; each Participant is in good standing to engage in Options transactions in the System; and the trade would not breach the trading limit or any other limit imposed by Delta on either Participant. SPNTC is required to reject the trade if the trade reports indicate the trade is in violation of the System's procedures.

12. If a trade is accepted by SPNTC, Delta issues a put or call Option to the Purchasing Participant in book-entry form and simultaneously purchases a Matching Put or Call Option from the Writing Participant. A purchasing Participant becomes the holder of an Option at the time such transaction is accepted by SPNTC and the Option is issued. In this manner, Delta serves as an intermediary in a riskless principal transaction (Delta is only exposed to risk in the event a Participant in a transaction defaults). Delta guarantees the performance of all obligations such as the settlement of Premium (i.e. the purchase price of an option contract), the obligation to sell underlying Treasury securities at the strike price to the buyer of a call Option upon the exercise of that Option, and the obligation to purchase underlying Treasury securities at the strike price from the buyer of a put Option upon the exercise of that Option.

13. At or before the Settlement Time on each Business Day, each Participant who has purchased one or more Options is obligated to pay the Net Daily Premium (i.e. a net amount payable to Delta at any settlement time or by Delta within six hours after the settlement time in respect of the Options purchased and written by a Participant on the prior Business Day), if any, shown to be due to Delta on the Daily Position Report for such day. Participants are required to instruct their correspondent bank to wire to SPNTC in Federal Reserve Funds an amount equal to the Net Daily Premium due to Delta. Within six hours after the Settlement Time, SPNTC will wire each Participant, assuming the Participant has paid all its obligations related to the System, the amount of any Net Daily Premium shown to be due to the Participant on the Daily Position Report for such day. A Participant's failure to timely pay Net Daily Premium when due will result in suspension of the Participant from the System.[5]

14. Writing Participants are required to deposit margin daily with SPNTC to secure the obligations incurred as a result of the Options they have written. Daily margin for each Option is calculated by a computerized options pricing model, which takes into account any adverse movement in the market price of the underlying U.S. Treasury securities and historic market data.

Delta calculates the net margin owed to or due from a Participant. The netting process compares the margin required for all Options written by a Participant against: (i) Its margin on account; (ii) the value of the Options it holds; (iii) the reduced risk posed to Delta when a Participant has written puts and calls with similar terms, and (iv) any net premium owed to that Participant for Options it has written. Delta may also require additional margin from a Participant if Delta deems it advisable to reflect to size or market value of a Participant's positions, or the financial or operating condition of a Participant. Furthermore, Delta may require additional margin to protect the System, Delta, or the public. In this regard, Delta may require additional margin of any Participant to ensure Delta's compliance with the Maximum Potential System Exposure (MPSE)[6]. All Participants which are subject to the Act will deposit margin in the form of Treasury Securities.[7]

15. SPNTC will release margin payments made in respect of an Option or apply such margin payments against margin deficits and other obligations of the Participant relating to the System on the first Business Day following the expiration of the Option or timely settlement by the Participant of the exercised Option. Excess margin will likewise be returned to the Participant on the first Business Day following a market fluctuation creating such excess, assuming the Participant has paid all amounts of Net Daily Premium and discharged all its other obligations relating to the System.

16. Participants may close out their positions in one of three ways:

(a) A Participant may simply allow his Option to lapse. By their terms Options run for a stated period of time after which the rights of the parties to the contract expire; or

(b) Participants may exercise their Options by timely submission of an exercise notice to SPNTC.

(1) The holder of a call Option contract has the right to purchase from Delta at the Adjusted Exercise Price[8] a principal amount of underlying U.S. Treasury securities equal to the unit of trading for such Option contract. The holder of a put Option contract has the right to sell to Delta at the Adjusted Exercise Price a principal amount of underlying U.S. Treasury securities equal to the unit of trading for such Option contract. Participants may make either an early exercise or an expiration date exercise of their Options.

(2) The writer of a Matching Call is obligated, upon assignment of an exercise notice by Delta in respect of such Option contract, to deliver to Delta at SPNTC a principal amount of underlying U.S. Treasury securities equal to the unit of trading of such contract against payment by Delta of the Adjusted Exercise Price. Similarly, the writer of a Matching Put is obligated to pay at SPNTC the Adjusted Exercise Price against delivery of a principal amount of underlying U.S. Treasury

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[2] Participants have video display terminals in their offices. The automated communications network is used to disseminate bid and ask quotations for Options that participants have communicated to RMJ.

[3] We note that the Act's general standards of fiduciary conduct would apply to a plan's participation in the System. Section 404 requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, a plan fiduciary must act prudently with respect to the decision to engage in option trading in the System. The Department further emphasizes that it expects a plan fiduciary prior to entering into the System to fully understand the risks associated with this type of investment, following disclosure by Delta of all relevant information pertaining to the System.

[4] The Department is not proposing any relief herein for transactions negotiated directly between a plan and a party in interest with respect to that plan.

[5] See *Default Procedures* paragraph 18.

[6] The MPSE is the net liability of Delta on all Options, reflecting a hypothetical adverse market movement calculated using a mathematical formula.

[7] The applicant has represented that both initial and maintenance margin are in the nature of performance bonds or good faith deposits and indicate a Participant's commitment to abide by the Operating Agreements. In this regard, the Department notes that in Advisory Opinions 82-40A (September 21, 1982) and 83-02A (December 13, 1983), the Department addressed the classification of margin in the contexts of futures contracts and "when-issued securities". In both opinions, the Department's position was based upon the representation that so long as a plan-investor has not closed out his position in such securities, the plan has no right to any assets deposited to satisfy the margin or deposited requirements, (except for amounts which become available for withdrawal by reason of price movements favorable to the plan). Therefore, the assets used to fund the margin or deposit requirements would not be plan assets for the purposes of Part 4 of Title I of the Act. The Department is of the view that margin deposited into the System serves essentially the same function as in the futures and "when-issued securities" contexts, that is, margin is necessary for the protection of all Participants and all parties that participate in the System. Moreover, as in the advisory opinions referenced above, a Participant in the System has no right to any assets in the margin account except for those which become available for withdrawal by reason of price movements favorable to the plan. Accordingly, it is the opinion of the Department that assets held in the form and manner prescribed by the System to fund a Participant's margin account are not plan assets. In this regard, the Department notes, that in SEC Release No. 34-27861 (January 12, 1990), the SEC determined that Delta is organized and has the capacity to safeguard securities and funds in its custody and control or for which it is responsible, and to carry out the purposes of section 17A of the 1934 Act. Furthermore, the SEC determined that the System Procedures are designed to assure the safeguarding of securities and funds that are in the custody or control of Delta or for which it is responsible, and in general to protect investors and the general public.

[8] The Adjusted Exercise Price with respect to U.S. Treasury Bond and U.S. Treasury Note options is the exercise price adjusted for interest accrued from the last preceding interest payment date to the settlement date. With respect to U.S. Treasury Bill options, the Adjusted Exercise Price is the Exercise Price.

securities equal to the unit of trading for such contract. Delta assigns such exercise notices randomly among all Participants with matching Options held by Delta; or

(c) Participants may liquidate their positions in offsetting closing transactions. These transactions are executed in the same manner described in representation 11 (a) or (b) above. Closing transactions involve the placement of new Option contracts which, in effect, cancel the obligations embodied in the original contracts (e.g. the writer of a put option contract purchases a corresponding put option contract). This generally enables a Participant to enter into a closing trade if any other Participant in the System agrees to purchase or sell the corresponding position. If otherwise meeting the criteria for acceptance, a closing purchase transaction becomes effective upon the timely receipt of matching trade reports by SPNTC. Until SPNTC accepts the transaction, the writer's preexisting obligations will not be liquidated and it will continue to be obligated on its preexisting Option.

Fees

17. Participants make payments with respect to transactions in the System to Delta. This payment includes a clearing agency fee, which is retained by Delta, and a transaction fee, which is paid over by Delta to RMJ. RMJ then pays out of its funds a contractually established fee to SPNTC with respect to each transaction engaged in through the System.

The clearing agency fee retained by Delta is a fixed dollar amount per contract with respect to each Participant involved in a particular transaction. That fixed dollar amount is specified in Delta's application for registration as a clearing agency, which registration was granted by order of the SEC dated January 12, 1989; that amount is currently $10.50 per Participant per Option contract. For example, if Participant A and Participant B engage in transaction through the System for ten Option contracts, Delta will retain $105.00 with respect to Participant A ($10.50 times 10 option contracts) and $105.00 with respect to Participant B, or a total of $210.00 with respect to the entire transaction.

The amount each Participant pays to Delta in excess of the clearing agency fee which is retained by Delta is paid by Delta to RMJ, and constitutes the transactional fee. The transactional fee is an amount determined according to a fee schedule in effect at the time of the transaction. This transactional fee is charged per Participant and per contract. The amount of this fee, according to the schedule currently in effect, will vary depending on whether the Participant is the aggressor or the passive party, if RMJ acts as "blind broker" or the transaction is directly negotiated by the Participants. Under the current fee schedule, when RMJ acts as a "blind broker," the aggressor (i.e., the Participant who takes action on a bid or quote shown on the screen) will be charged a higher fee than the passive Participant (i.e., the Participant who puts a bid or quote on the screen); when RMJ does not act as "blind broker" in a transaction, both Participants will be charged the same transactional fee.[9] Although there will be a standard fee amount payable by a Participant per contract, the amount of the fee charged to any particular Participant may be different than the fee charged to another Participant, depending on various discounts that may be offered to a particular Participant based on a number of factors. Notice of any such discounts will be given to all Participants in the System, and such discounts apply equally to the fees paid by all Participants once they have met the pre-established, objective discount criteria (e.g., a discount of $10 per transaction may be given to each Participant which employs RMJ as a blind-broker after such Participant has employed RMJ as such in 100 transactions during the calendar year).

Regardless of the amount RMJ receives as a transactional fee with respect to any particular transaction, RMJ must pay SPNTC a fixed dollar amount that is established by contract between RMJ and SPNTC, which dollar amount may be varied by further agreement between RMJ and SPNTC from time to time without SEC approval, but will not vary from transaction to transaction (i.e., it is not subject to discounts in particular circumstances as is the transactional fee received by RMJ). This specified dollar amount is determined per transaction, not per Participant; the amount of this fee does not vary regardless of the number of contracts involved in a particular transaction. For example, assume that on March 1, 1990, when the per transaction fee payable by RMJ to the SPNTC is $100, Participant A sells one Option contract to Participant B, and Participant C sells ten option contracts to Participant D. RMJ would pay $100 to the SPNTC with respect to the transaction between A and B, and would also pay the SPNTC $100 with respect to the transaction between C and D.[10]

Default Procedures

18. If a Participant commits a premium, margin, payment or delivery default, the Participant is summarily suspended from the System. Such suspension may be deferred by Delta not more than two hours in the event of a premium default or a margin default and not more than twenty-four hours in the event of a delivery default (after the delivery was first due). Upon suspension, all margin and other property in the Participant's Account is treated as constituting a liquidation settlement account, established for the purpose of the orderly liquidation of the suspended Participant's positions. In the event of a liquidation, Delta closes out all of the Participant's open positions in the system. Delta nets the proceeds from the margin account and the sale of the Participant's Options against the cost all of the Options written by the Participant, transaction costs and fees. Delta sends a notice of the debt balance, or Fedwires the surplus to the suspended Participant.[11]

[9] Where RMJ does not act as blind broker, the transactional fee is a payment for access to the information presented on the screen, processing trades and maintaining records and Particiant information, and for maintaining the hardware and software used in operating the System.

[10] The applicant represents that the receipt of fees as provided for in the Operating Agreements is exempt from the prohibitions of section 406(a) of the Act by reason of section 408(b)(2). The Department expresses no opinion as to whether the relevant conditions of section 408(b)(2) will be complied with in the above described arrangement.

[11] Section 3(21)(A)(i) of the Act states that a person will be a plan fiduciary to the extent such person exercises discretionary authority or control over the assets of the plan. In Advisory Opinion 82-49A (September 21, 1982), the Department addressed the issue of account liquidation in the context of futures contracts. The Department based its conclusions of the following factors and representations of the applicant: (i) a plan's assets in a futures transaction are those rights embodied in the futures contracts and granted pursuant to applicable law and the plan's contractual agreements, (ii) such laws and agreements place certain obligations on the plan and give certain rights to the futures commission merchant (FCM) vis-a-vis the plan customer, and (iii) such legally granted or contractual rights do not appear to necessarily amount to the type of discretionary authority or control over plan assets contemplated in section 3(21)(A)(i) of the Act. Thus, the Department opined that a FCM acting in accordance with applicable law and pursuant to the agreement negotiated with the plan customer would not be a plan fiduciary within the meaning of section 3(21)(A)(i) solely by reason of liquidating the futures contracts in a plan's account and selling any securities posted as margin in order to pay off losses suffered by such account, since the liquidating party would not be exercising any discretionary authority or control with regard to the plan assets. To the extent that the rights of Delta are similarly circumscribed pursuant to the agreement entered into with each Participant in the System, it is the view of the Department that Delta,

Continued

19. Upon receipt of a debit balance, a Participant has one hour to Fedwire the required funds to Delta. If such funds are not received, Delta will draw on the LOC or the surety bond to cover its obligations to the contra-party.[12] The LOC bank and/or surety would then become a creditor of the defaulting Participant. The amount available to Delta under the CEF must at all times, during the operation of the System, be at least equal to three times the MPSE. Therefore, provided the System is working as designed, a default by a Participant will not have any effect on Delta, the contra-party or any other Participant in the System.

20. In summary, the applicant represents that the transactions meet the statutory criteria of section 408(a) of the Act because, among other things: (a) the decision to participate in the System and to execute Option transactions therein will be made by a plan fiduciary independent of Delta, RMJ, or SPNTC; (b) Options on U.S. Treasury securities provide a useful investment tool that, when employed prudently, can enhance investment performance and help plan fiduciaries to manage market risks; (c) the System provides a new and innovative means of trading Options and has been designed to provide advantages over the existing methods by in which Options are currently traded; and, (d) the System has been designed to minimize the risks to its Participants; and (e) the System is subject to extensive review and scrutiny by the SEC, particularly with respect to the protections it affords Participants and its ability to operate and enforce its own rules and procedures.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respect to the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogration of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of the exemption.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

I. Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions in connection with the operation of the Over-the-Counter Options Trading System ("System"):

(1) The issuance of put or call Options by Delta to an employee benefit plan;

(2) The acquisition of Matching Put or Matching Call Options by Delta from an employee benefit plan;

(3) The issuance of an irrevocable letter of credit by Security Pacific National Bank ("SPNB") to Delta on behalf of an employee benefit plan and the honoring of drafts drawn by Delta on such letter of credit in the event of a default by an employee benefit plan, and the recovery of such amounts by SPNB from any such plan.

(4) The issuance of a surety bond by Capital Market Assurance Corporation ("CapMAC") to Delta on behalf of an employee benefit plan and the honoring of drafts drawn by Delta on such surety bond in the event of a default by an employee benefit plan, and the recovery of such amounts by CapMAC from any such plan.

II. General Conditions

The relief provided under part I is available only if the following conditions are met:

(a) The decision to participate in the System and to execute Option transactions therein will be made by a plan fiduciary independent of Delta, RMJ Options Trading Corp. (RMJ), Security Pacific National Trust Company (SPNTC), SPNB; or any affiliate of such entities;

(b) Prior to a plan's participation in the System, a fiduciary for such plan receives offering materials which disclose all material facts concerning the purpose, structure and operation of the System, and also receives copies of the proposed and final exemption as published in the **Federal Register**;

(c) Each plan which participates in the System, when combined with other plans maintained by the same control group (as defined in section 1563(a) of the Code) has total plan assets with a value in excess of $300 million;

acting in accordance with such contractual rights upon a default, would not be exercising discretionary authority within the meaning of section 3(21)(A)(i). In this regard the Department notes, that in SEC Release No. 34-27611 (January 12, 1990) the SEC determined that Delta has the ability to comply with section 17(b)(3)(A) of the 1934 Act which requires Delta to have the capacity to enforce participant compliance with System Procedures and that the System Procedures contain appropriate sanctions and provide Delta with the authority to impose such sanctions in an equitable manner.

[12] The Credit Enhancement Facility, consisting of the Letter of Credit Agreement and the Insurance Agreement between each Participant, Delta, SPNB and CapMAC, provides that Delta has the right to draw from the LOC up to $100 million from SPNB if (i) a Participant fails to pay its net daily premium when due, or (ii) a Participant fails to pay the amount due in connection with the liquidation of a Participant's positions following the suspension or withdrawal of such Participant from the System. If a draw on the LOC is made by Delta, the defaulting Participant agrees to pay SPNB the amount of the draw, plus interest calculated at prime plus 5%, and all expenses incurred by SPNB in enforcing its rights. The Insurance Agreement includes a surety bond which provides Delta with the right to draw up to $100 million from CapMAC if there is over $100 million in outstanding obligations owed to Delta, and (i) a Participant fails to pay its net daily premium when due, or (ii) Participant fails to pay the amount due in connection with the liquidation of a Participant's positions following the suspension or withdrawal of such Participant in the System. If a draw on the Surety Bond is made by Delta, the defaulting Participant agrees to pay CapMAC the amount of the draw, plus interest calculated at prime plus 5%, and all expenses incurred by CapMAC in enforcing its rights.

(d) The employee benefit plan engaging in an Option transaction under the System does not negotiate such Option transaction directly with another Participant in the System who is a party in interest with respect to such plan.

(e) Delta is not a fiduciary with respect to any plan which participates in the System and is a party in interest solely by reason of section 3(14)(B) of ERISA or section 4975(e)(2)(B) of the Code.

(f) All fees paid to Delta, (RMJ) and (SPNTC) are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(g) Neither Delta, RMJ, SPNTC, SPNB nor any affiliate of such entities is or will be a participant in the System.

(h) Each participating plan shall receive the following:

(1) Audited financial statements of Delta, RMJ, SPNTC, and SPNB prepared by independent public accountants, not later than 90 days after the end of their respective fiscal years.

(2) Quarterly reports prepared by Delta relating to the overall operating results of the System, not later than 30 days after the end of each quarter.

(3) Copies of all reports which Delta is required to file with the Securities and Exchange Commission, not later than 30 days after such report has been so filed.

(i) Delta maintains or causes to be maintained for a period of six years from the date of such transaction:

(1) Such records as are necessary to enable the Department, the Internal Revenue Service, plan participants and beneficiaries, any employer of plan participants and beneficiaries, and any employee organization any of whose members are covered by such plans to determine whether the conditions of this exemption have been met;

(2) With respect to Participant to Participant trades which include at least one Participant which is a plan, Delta records: the option's strike price, expiration date, number of contracts and premium, and the price of the U.S. Treasury security underlying an option at the time a trade report is submitted for clearance, and in addition, calculates and maintains a record of the Implied Volatility of each such trade in conjunction with maintaining a record, on a daily basis, of the general market's Implied Volatility, except that;

(3) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of Delta or its agents, such records are lost or destroyed prior to the end of such six-year period and no fiduciary of a plan which is a Participant in the System shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if such records are not maintained, or are not available for examination as required by paragraph (j) below.

(j) Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (i) are unconditionally available for examination during normal business hours by duly authorized employees of (1) the Department, (2) the Internal Revenue Service, (3) a fiduciary of a plan, (4) plan participants and beneficiaries, (5) any employer of plan participants and beneficiaries, and (6) any employee organization any of whose members are covered by such plan.

III. Definitions

For purposes of this exemption:

A. *Account* means an account established for a Participant for the trading and clearance of Options.

B. *Adjusted exercise price* means, with respect to a U.S. Treasury Bond Option or a U.S. Treasury Note Option, the exercise price increased by an amount equal to the interest accrued from, but not including, the day as of which the underlying U.S. Treasury securities were issued or on which the last preceding interest payment became due (whichever was later) through and including the exercise settlement date (regardless of the date on which settlement was made). In respect to a U.S. Treasury Bill option, the term Adjusted Exercise Price shall have the same meaning as the exercise price.

C. *Affiliate* of another person includes:

(a) Any person directly or indirectly through one or more intermediaries, controlling, controlled by or under common control with the person;

(b) Any officer, director, employee, relative of, or partner in any such person; and

(c) Any corporation or partnership of which such person is an officer, director, partner or employee.

(d) The term control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

D. *Book-entry system* refers to an arrangement whereby the issuance of Options and other Participant transactions in the System are evidenced by entries in a computerized record-keeping system maintained by Delta at SPNTC.

E. *Business day* means any day other than a Saturday, Sunday or a day on which banking institutions in either the City of New York or the City of Los Angeles are authorized by law to close.

F. *Correspondent bank* means a bank which has been designated by a Participant in the System to transfer and receive funds and/or U.S. Treasury securities on behalf of the Participant in connection with the settlement and exercise of Options.

G. *Credit enhancement facility* (CEF) refers to the combination of the protection provided by the letter of credit which is issued by SPNB and payable to Delta in the event of a Participant default, and the surety bond issued by CapMAC which is payable to Delta in the event of a Participant default.

H. *Daily margin report* means a report issued on each Business Day to each Participant which reflects the margin required or owed on the Participant's Option positions.

I. *Daily position report* means a report issued on each Business Day to each Participant, which reflects the status of the Participant's Account.

J. *Federal Reserve funds* are non-interest bearing deposits held by member banks at the Federal Reserve that are immediately available funds.

K. *Implied volatility* means the marketplace's expectation of the potential change in price, stated in percentage terms, for the security underlying an Option. The number is quoted on an annualized basis. For example, the Implied Volatility of 10 year Treasury Notes may be 8%. The market expects the 10 year Treasury Notes to be either 92 or 108 based on a starting price of 100 in one year.

L. *Matching call* refers to an Option purchased by Delta from a writing or a selling Participant contemporaneously with and as a condition to the issuance by Delta of a call to a Participant with identical terms.

M. *Matching put* refers to an Option purchased by Delta from a writing or selling Participant contemporaneously with and as a condition to the issuance by Delta of a put to a Participant with identical terms.

N. *Maximum potential system exposure* (MPSE) is the net liability of Delta on all Options, reflecting a hypothetical adverse market movement calculated using a mathematical formula.

O. *Operating agreements* are, collectively, the Participation Agreement, the System Procedures, the Letter of Credit Agreement, and the Insurance Agreement, which collectively govern the operation of the System.

P. *Participant* means a person admitted to trade and settle Options on any U.S. Treasury security through the System.

Q. *Premium* means the price of an Option agreed upon between the purchasing Participant and the writing or selling Participant; "Net Daily Premium" means the net amount payable to the Delta at any settlement time or by the Delta within six hours after the settlement time in respect of the Options purchased and written by a Participant on the prior Business Day.

R. *Purchasing participant* means a Participant who is a purchaser of an option issued by Delta.

S. *Settlement time* means a 11 a.m. Eastern Standard Time (et) or, in the event the Federal Reserve wire has not opened by 11 a.m. e.t., the earliest time practicable following the opening of the Federal Reserve wire on the first Business Day immediately following the day on which the clearing bank receives matching trade reports.

T. *System* means the Over-The-Counter Options Trading System. It is a proprietary automated communications network which is used to facilitate trading, clearance and settlement by Participants in the over-the-counter market for Options on U.S. Treasury securities.

U. *U.S. Treasury security* means a Treasury Bill, Note or Bond issued by the United States Department of the Treasury.

V. *Writing participant* means a Participant who has written an Option and thereby undertaken to either sell the underlying U.S. Treasury securities to Delta or purchase the underlying U.S. Treasury securities from Delta.

FOR FURTHER INFORMATION CONTACT: S. John Ryan, Office of Regulations and Interpretations, or Lyssa Hall, Office of Exemption Determinations, U.S. Department of Labor (202) 523-7901 or (202) 523-8671, respectively. (These are not toll free numbers.)

Signed at Washington, DC, this 19th day of November, 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90-27543 Filed 11-21-90; 8:45 am]

BILLING CODE 4510-29-M

[Application Numbers D-8340, D-8341 and D-8342]

Amendments to Prohibited Transaction Exemptions (PTEs) 89-88, 89-89 and 89-90 Involving Goldman, Sachs & Co. (Goldman Sachs), Salomon Brothers Inc. (Salomon) and First Boston Corporation (First Boston)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Adoption of amendments to PTEs 89-88, 89-89 and 89-90.

SUMMARY: This document amends PTEs 89-88, 89-89 and 89-90. These individual exemptions permit certain transactions relating to the origination and operation of asset pool investment trusts and to the acquisition and holding by employee benefit plans of asset backed pass-through certificates representing interests in those investment trusts. The amendments affect, among others, participants and beneficiaries of plans investing in such certificates, the sponsors, servicers, insurers of the trusts and underwriters of the certificates.

EFFECTIVE DATE: The amendments are effective as of January 1, 1987, for the Goldman Sachs (PTE 89-88) exemption and November 1, 1985, for the Salomon (PTE 89-89) and First Boston (PTE 89-90) exemptions.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 523-8194 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On June 25, 1990, notice was published in the **Federal Register** (55 FR 25914) of the pendency before the Department of proposed amendments to PTEs 89-88, 89-89 and 89-90 (54 FR 42582, 54 FR 42589 and 54 FR 42597, respectively, October 17, 1989). These exemptions provide relief from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of certain provisions of section 4975(c)(1) of the Code.

The amendments to PTEs 89-88, 89-89 and 89-90 adopted by this notice were requested by letters dated January 5, 1990, on behalf of First Boston, January 8, 1990, on behalf of Salomon, and January 12, 1990, on behalf of Goldman Sachs. The Department proposed the amendments to these individual exemptions pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code [1] and in accordance with ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

The notice of pendency gave interested persons an opportunity to comment on the proposal. However, no letters of comment were received by the Department in regard to the proposed amendments to the three individual exemptions.

1. Description of the Exemptions

The individual exemptions cited above involve the origination and operation of certain asset pool investment trusts and the acquisition and holding by employee benefit plans of asset backed pass-through certificates representing interests in those investment trusts. In the instant cases, Goldman Sachs, Salomon or First Boston acts as underwriter or placement agent in regard to the sale of the certificates. Additionally, affiliates of these firms may at times originate or service receivables included in a trust or may sponsor a trust. In the absence of an exemption, various transactions relating to such activities might be prohibited under sections 406 and 407(a) of ERISA and section 4975(c)(1) of the Code. The transactions covered by PTEs 89-88, 89-89 and 89-90 are specified in section I of the exemptions.

Section II sets forth the general conditions which must be met in order for an investing plan to avail itself of the relief provided by one of the exemptions. One such condition, under section II.A.(3), is that any certficate acquired by a plan in reliance on the exemption must have received a rating at the time of acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation, Moody's Investors Service, Inc. or Duff & Phelps.

2. Amendments to the Exemptions

Representatives of Goldman Sachs, Salomon and First Boston have requested that PTEs 89-88, 89-89 and 89-90 be amended to add Fitch Investors Service, Inc. (Fitch) to the rating agencies named in section II.A.(3) of the exemptions.[2]

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor.

[2] Since the granting of these three exemptions on October 17, 1989, the Department has granted several other similar individual exemptions that include Fitch as an acceptable rating agency. These exemptions include Bear Stearns & Co., Inc. (PTE 90-30, 55 FR 21461) and Merrill Lynch, Pierce, Fenner & Smith, Inc. (PTE 90-29, 55 FR 21459), both published on May 24, 1990.

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As indicated in the notice of proposed amendments, Fitch submitted letters to the Department dated October 12, October 26 and November 1, 1989, in which it discussed its rating programs in general and its experience in rating asset backed securities in particular. Fitch states that since April 1989 the firm has increased its staff from 43 to over 100 employees and that a primary focus of Fitch has been in the area of asset backed securities. Fitch has employed persons with extensive experience in regard to asset backed securities and has hired experienced bank and insurance company specialists who have the ability to analyze the credit enhancements associated with asset backed securities.

Fitch has rated more than $30 billion of collateralized mortgage obligations and mortgage backed pass-through certificates and has rated over $8 billion of other kinds of asset backed securities. The criteria examined by Fitch in rating asset backed securities include: the legal structure of the financing arrangement; the ability of the cash flow of a pool to meet the contractual payment requirements of the asset backed securities; the financial condition of the originators and servicer; and the collection procedures of the servicer.

The Department has reviewed the entire record, including the information provided by Fitch in regard to its experience in rating asset backed securities and the previous consideration of Fitch in relation to several other similar individual exemptions. Accordingly, in response to the requests submitted on behalf of Goldman Sachs, Salomon and First Boston, the Department has decided to amend PTEs 89–88, 89–89 and 89–90 to include Fitch as an acceptable rating agency for the rating of certificates described in the exemptions.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA, the Department makes the following determinations:

(i) The amendments set forth herein are administratively feasible,

(ii) They are in the interests of plans and of their participants and beneficiaries, and

(iii) They are protective of the rights of the participants and beneficiaries of plans;

(3) The exemptions are applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemptions; and

(4) The amendments are supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Amendments

Accordingly, the following amendments to PTEs 89–88, 89–89 and 89–90 are hereby granted under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

1. Subsection II.A.(3) of the exemptions is amended to read:

The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

2. The final paragraph of section III.B. of the exemptions is amended to read:

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) the investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

Signed at Washington, DC, this 19th day of November, 1990.

Ivan L. Strasfeld,

Director of Exemption Determinations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90–27542 Filed 11–21–90; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (90–100)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Space Physics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1544).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Space Physics Subcommittee.

DATES: December 11, 1990, 8:30 a.m. to 5:30 p.m.; December 12, 1990, 8:30 a.m. to 5:30 p.m.; and December 13, 1990, 8:30 a.m. to 3 p.m.

ADDRESSES: The Holiday Inn Governor's House, 1615 Rhode Island Avenue, NW., Cabinet Room, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Mr. Tom W. Perry, Code SS, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1544).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Space Physics Subcommittee provides advice to the Space Physics Division and to the SSAAC on operation of the Space Physics Program and on formulation and implementation of the Space Physics research strategy. The Subcommittee will meet to discuss the OSSA and Divisional Overviews, Flight Status and Future Missions Study along with reports from the Management Operations Working Groups. The Subcommittee is chaired by Dr. George Siscoe and is composed of 29 members. The meeting will be open to the public up to the capacity of the room (approximately 50 including Subcommittee members). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda:

Tuesday, December 11

8:30 a.m.—Opening Remarks, Review of Agenda, and Chairman's Report.
8:45 a.m.—Office of Space Science and Applications (OSSA) Overview.
9:30 a.m.—Space Physics Division Overview.
11 a.m.—Supporting Research and Technology Program Review.
1 p.m.—First Results from Combined Release and Radiation Effects Satellites (CRRES).
1:45 p.m.—Pegsat Results.
2:30 p.m.—Update on Mission to Data Bases and Archival Science.
3:45 p.m.—International Solar Terrestrial Program (ISTP) Data System Plans.
4:15 p.m.—Subcommittee Discussion.
5:30 p.m.—Adjourn.

Wednesday, December 12

8:30 a.m.—Subcommittee Business.
8:45 a.m.—Reports from Space Physics Management Operations Working Groups (MOWGs).
11 a.m.—Subcommittee Discussion.
1 p.m.—Status of Flight Missions.
1:45 p.m.—Report on the Future Missions Study.
3:30 p.m.—Discussion and Writing Assignments.
5:30 p.m.—Adjourn.

Thursday, December 13

8:30 a.m.—Writing Groups.
1 p.m.—Critique of Reports from Writing Groups.
3 p.m.—Adjourn.

Dated: November 16, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90–27516 Filed 11–21–90; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreement for the Administration of Site Visits

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement to assist its Theater Program in the administration and coordination of artistic and administration evaluations of grant applicants. Responsibilities include coordinating schedules and assignments, making travel arrangements, disbursing funds to reporters who perform the reviews, maintaining records, and submitting reports. Those interested in receiving the Solicitation package should reference Program Solicitation PS 91–02 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 91–02 is scheduled for release approximately December 14, 1990 with proposals due on January 14, 1991.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW., Washington, DC 20506

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 90–27522 Filed 11–21–90; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Meeting of Special Emphasis Panel in Cellular Biosciences

NAME: Special Emphasis Panel in Cellular Biosciences.

DATE & TIME: December 17–18, 1990.

PLACE: National Science Foundation, 1800 G Street NW., Washington, DC 20550, Conference room 1242.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. Eve Ida Barak, Associate Program Director, Cell Biology, Room 321, National Science Foundation, Washington, DC 20550.

PURPOSE OF MEETING: To provide advice and recommendations concerning nominations submitted to the Division of Cellular Biosciences for NSF Faculty Awards for Women, FY 1991 Competition.

AGENDA: Closed—To review and evaluate nominations as part of the selection process for awards.

REASON FOR CLOSING: The nominations being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries; and personal information concerning individuals associated with the proposals.

These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–27560 Filed 11–21–90; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panels; Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the national Science Foundation announces the following meeting(s) to be held at 1800 G. Street, NW., Washington, DC 20550 (except where otherwise indicated).

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to provide advice and recommendations to the National Science Foundation concerning the support of research, engineering, and science education. The agenda is to review and evaluate proposals as part of the selection process for awards. The entire meeting is closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), the Government in the Sunshine Act.

CONTACT PERSON: M. Rebecca Winkler, Committee Management Officer, Room 208, 357–7363.

Dated: November 19, 1990.

M. Rebecca Winkler,

Committee Management Officer.

Committee name	Agenda	Date(s)	Times	Room*
Special Emphasis Panel in Electrical and Communications Systems.	Pres. Young. Invss. Nomin.	12/14/90	8 am-6 pm	1151
Special Emphasis Panel in Astronomical Sciences	Res. Exper. Under. Sites	12/11/90	8:30 am-5 pm	523

Committee name	Agenda	Date(s)	Times	Room*
Special Emphasis Panel in Mathematical Sciences	Fac. Award for Women Sci.	12/17/90 12/18/90	8:30 am-5 pm 8:30 am-5 pm	540
Advisory Panel for Ocean Sciences Research	Faculty Awards for Women	12/16/90	8:30 am-5 pm	540B

*At 1800 G Street NW., Washington, DC.

Committee name	Date(s)	Time	Location
Special Emphasis Panel in Cross-Disciplinary Activities Agenda: Site Visit	12/10/90	8:30 am-5 pm	University of Utah, Logan, UT
Special Emphasis Panel in Cross-Disciplinary Activities Agenda: Site Visit	12/12/90	8:30 am-5 pm	University of Flordia, Gainesville, FL
Special Emphasis Panel in Mechanical and Structural Systems Agenda: Pres. Young Inves. Awards	12/10/90 12/11/90	8:30 am-5 pm 9 am-1 pm	Confer. Room State Plaza Hotel, 2116 F Street, NW., Washington, DC

[FR Doc. 90-27561 Filed 11-21-90; 8:45 am]
BILLING CODE 7555-01-M

Special Emphasis Panels, Molecular Biosciences Division; Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting(s) to be held at 1800 G Street, NW., Washington, DC 20550 (except where otherwise indicated).

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to provide advice and recommendations to the National Science Foundation concerning the support of research, in the Molecular Biosciences Division. The agenda is to review and evaluate proposals as part of the selection process of awards. The entire meeting is closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Dated: November 19, 1990.

M. Rebecca Winkler,

Committee Management Officer.

SPECIAL EMPHASIS PANELS; NOTICE OF MEETINGS

Committee name	Review agenda	Date(s)	Times	Room [1]
Special Emphasis Panel for Molecular Biosciences	FAW Proposals. Contact: Ms. Brenda Flam (202) 357-9400.	12/10-11/90	8:30-5:00	536
Special Emphasis Panel for Molecular Biosciences	PYI Proposals. Contact: Ms. Brenda Flam (202) 357-9400.	01/17-18/91	8:30-5:00	1242
Special Emphasis Panel for Molecular Biosciences	PPD Proposals. Contacts: Ms. Brenda Flam (202) 357-9400; Dr. Machi Dilworth (202) 357-7652.	02/7-9/91	8:30-5:00	1242

[1] At 1800 G Street, NW., Washington, DC.

All sessions will be closed and will be held from 8:30 a.m. to 5 p.m. unless otherwise indicated.

[FR Doc. 90-27562 Filed 11-21-90; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Working Group on Mixed Wastes; Meeting

The Working Group on Mixed Wastes will hold a meeting on December 11, 1990, room P-110 7920 Norfolk Avenue, Bethesda, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, December 11, 1990-8:30 a.m. until the conclusion of business.

The working Group will hold an information gathering session on the technical and regulatory considerations for the disposal of mixed wastes, ie., waste that has both a radioactive and hazardous component and is dually regulated by both the NRC and the EPA. The Committee intends to consider the similarities and differences between these two sets of regulations, their application in practice and other related topics. Following the presentations, the Working Group intends to determine its follow-on strategy.

Oral statements may be presented by members of the public with the concurrence of the Working Group Chairman; written statements will be accepted and made available to the Group. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Working Group, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Working Group, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Working Group will then hear presentations by and hold discussions with representatives of the EPA staff, the NRC staff, industry and user groups, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Howard J. Larson, (telephone 301/492-7707) between 7:30 a.m. and 5 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 15, 1990.

R.K. Major,

Chief, Nuclear Waste Branch.

[FR Doc. 90-27447 Filed 11-21-90; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-150]

Issuance of Amendment to Facility Operating License No. R-75; Ohio State University

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 13 to Facility Operating License No. R-75 to the Ohio State University (the licensee), which amends the license to increase power level for operation of the reactor located on the Columbus campus in Columbus, Ohio.

The facility is a non-power reactor that has been operating at a power level not in excess of 10 kilowatts (thermal) (kW(t)). The amended Facility Operating License No. R-75 authorizes a power level not in excess of 500 kW(t).

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR chapter I. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notice of the proposed issuance of this amendment in the **Federal Register** on March 30, 1990 at 55 FR 12074. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared an Environmental Assessment which was published in the **Federal Register** on November 13, 1990 (55 FR47407) for this amendment of Facility Operating License No. R-75 and has concluded that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see: (1) The application for amendment dated October 7, 1987, as supplemented on May 26, 1989, February 28 and June 12, 1990; (2) Amendment No. 13 to Facility Operating License No. R-75 and (3) the Environmental Assessment. These items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 14th day of November 1990.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactor, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-27553 Filed 11-21-90; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-387 and 50-388]

Pennsylvania Power and Light Co.

Partial Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a portion of a request by Pennsylvania Power and Light Company (the licensee) for an amendment to Facility Operating License Nos. NPF-14 and NPF-22 issued to the licensee for operation of the Susquehanna Steam Electric Station, Units 1 and 2 (the facility), located in Luzerne County, Pennsylvania.

The denied portion of the proposed amendment would have revised sections 3.8.1.1.b.2, 4.8.1.1.2.a.5, 4.8.1.1.2.d.7, 4.8.1.1.3.a.5, 4.8.1.1.3.d.4, and 4.8.1.1.3.d.3 in the Technical Specifications. Notice of Consideration of Issuance of the amendments was published in the **Federal Register** on April 16, 1990 (55 FR 14150). The licensee's application for amendments was dated March 16, 1990, as supplemented April 2, 1990.

By December 24, 1990, the licensee may demand a hearing with respect to the denial described above, and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street NW., Washington, DC, 20037, attorney for the licensee.

For further details with respect to this action, see (1) The application for amendments dated March 16, 1990, as amended April 2, 1990, and (2) the Commission's letter to Pennsylvania Power & Light Company dated November 15, 1990, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 15th day of November 1990.

For the Nuclear Regulatory Commission.

Mohan C. Thadani,

Project Manager, Project Directorate I-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-27554 Filed 11-21-90; 8:45 am]
BILLING CODE 7590-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of public meeting.

SUMMARY: The Physician Payment Review Commission will hold a hearing on Wednesday, December 5, 1990 from 10 a.m. to 5:30 p.m. at the Grand Hotel, 2350 M Street, NW., in the Mayfair Court (lobby level). The public meeting will follow on Thursday, December 6, 1990, from 9:30 a.m. to 5:30 p.m., and on Friday, December 7, 1990, beginning at 8:30 a.m. in the Ballroom of the Grand Hotel (lower level).

Information about the agenda can be obtained on Friday, November 30, 1990. Copies of the agenda can be mailed upon request at that time.

ADDRESSES: The Commission office is located in Suite 510, 2120 L Street, NW., Washington, DC. The telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Lauren Leroy, Deputy Director, 202/653-7220.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 90-27502 Filed 11-21-90; 8:45 am]

BILLING CODE 6820-BE-M

THE PRESIDENT'S EDUCATION POLICY ADVISORY COMMITTEE

Meeting

AGENCY: The President's Education Policy Advisory Committee.

ACTION: Notice of meeting.

SUMMARY: The President's Education Policy Advisory Committee was formed under Executive Order 12887and signed by the President of the United States on August 15, 1989. This will be the fifth meeting.

TENTATIVE AGENDA ITEMS: The agenda for the meeting includes discussion of issues related to measuring the national education goals.

DATES: The meeting will be held on November 28, 1990.

ADDRESSES: The meeting is currently scheduled from 1-4:30 in room 180 of the Old Executive Office Building.

FOR FURTHER INFORMATION CONTACT: Rae Nelson at the White House Office of Policy Development. The phone number is (202) 456-7777. For clearance purposes, please notify Rae Nelson no less than twenty-four hours before the meeting. Please provide over the phone your social security number, date of birth, and name as read on your driver's license. When entering the building, you will be required to show picture identification.

Dated: November 19, 1990.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 90-27626 Filed 11-21-90; 8:45 am]

BILLING CODE 3127-01-M

RAILROAD RETIREMENT BOARD

1991 Railroad Experience Rating Proclamations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: Pursuant to section 8(c) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 368(c)), the Board gives notice of the following system-wide factors used in the computation of individual employer contribution rates for 1991:

1. The balance of the credit of the Railroad Unemployment Insurance (RUI) Account, as of June 30, 1990, is $235,213,094.40;

2. The balance of any loans to the account under section 10(d) of the Act after September 30, 1985, that has not been repaid with interest as provided in such section as of September 30, 1990, is zero;

3. The system compensation base as of June 30, 1990, as computed in accordance with paragraph (11) of section 8(a) of the Act, is $2,530,170,815.74;

4. The system unallocated charge balance as of June 30, 1990, as computed in accordance with paragraph (10) of section 8(a) of the Act, is −$21,804,160.77;

5. The pooled credit ratio, as determined under paragraph (12) of section 8(a) of the Act, applicable in calendar year 1991 is zero;

6. The pooled charge ratio, as determined under paragraph (13) of section 8(a) of the Act, applicable in calendar year 1991 is zero;

7. The surcharge rate, as determined under paragraph (14) of section 8(a) of the Act, applicable in calendar year 1991 is zero.

DATES: The balance in notice (1) and the determinations made in notices (3) through (7) are based on data as of June 30, 1990. The balance in notice (2) is based on data as of September 30, 1990. The determinations made in notices (5) through (7) apply to the calculation, under section 8(a)(1)(C) of the Act, of employer contribution rates for 1991.

ADDRESSES: Secretary of the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Gerald E. Helmling, Chief of Experience Rating, Bureau of Unemployment and Sickness Insurance, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, telephone (312) 751-4567, (FTS) 386-4567.

SUPPLEMENTARY INFORMATION: The Board is required by paragraph (1) of section 8(c) of the Railroad Unemployment Insurance Act (Act)(45 U.S.C. 358(c)(1)) as amended by Public Law 100-467, to proclaim by October 15, 1990, and October 15 of each year thereafter, the balance to the credit of the Railroad Unemployment Insurance (RUI) Account as of the preceding June 30, the balance of any advances to the account under section 10(d) after September 30, 1985, that has not been repaid with interest as of September 30 of that year, the system compensation base and the system unallocated charge balance, both computed as of the preceding June 30, and the pooled credit ratio, pooled charged ratio and the surcharge rate, if any, which are applicable in the following calendar year. Paragraph (2) of section 8(c) requires the Board to publish, as soon as is practicable after such proclamation, notice in the **Federal Register** of the amounts so determined and proclaimed. The amounts proclaimed and contained in this notice are the system-wide factors used in the computation of individual employer contribution rates for 1991.

Balance to the Credit of RUI Account

The balance to credit of the RUI Account as of a given June 30, is used to determine, under paragraph (12) of section 8(a) of the Act, the pooled credit ratio, if any, for the following calendar year and, under paragraph (14) of section 8(a), the surcharge rate, if any, for the following calendar year. The balance to the credit of the RUI Account as of the close of business on a given June 30, is computed including any amounts in the account attributable to loans made under section 10(d) before October 1, 1985, but disregarding the obligation to repay such loans and the interest thereon. In determining the balance to the credit of the RUI Account as of June 30 of any year, so much of the balance to the credit of the railroad unemployment insurance administration fund as of the close of business on that date which is in excess of $6,000,000 is deemed to be part of the balance to the credit of the RUI Account. The balance to the credit of the RUI Account, as of June 30, 1990, $235,213,094.40, excludes the obligation to pay to the railroad retirement account $376,428,311.70 in outstanding loans made under section 10(d) before October 1, 1985, with accrued interest, and includes $2,015,835.27 deemed to the credit of the account, that amount to the credit of the railroad unemployment insurance administration fund which was in excess of $6,000,000, as of June 30, 1990.

Balance of Any Advances to the RUI Account Under Section 10(d) After September 30, 1985

The balance of any advances to the RUI Account under section 10(d) of the Act after September 30, 1985, as of a given September 30, is used to determine whether a contingency surtax rate is added to the basic railroad unemployment repayment tax rate of 4 percent to be used in the following calendar year. No advances have been made to the RUI Account under section 10(d) after September 30, 1985. The surtax provision in section 3322(b) of chapter 23A of the Internal Revenue Code of 1986 expires December 31, 1990. The railroad unemployment repayment tax rate of 4 percent, imposed under section 3321(a) of chapter 23A continues until there is no balance of transfers to the Railroad Unemployment Insurance Account made before October 1, 1985.

System Compensation Base

The system compensation base as of any given June 30, is determined by adding the 1-year compensation bases of all employers as computed in accordance with paragraph (5) of section 8(a) as of such June 30. The system compensation base in used in determining the proration of system unallocated charges and in calculating the pooled credit ratio, if any, and the pooled charge ratio, if any, for a calendar year. The system compensation base, as of June 30, 1990, is $2,530,170,815.74.

System Unallocated Charge Balance

The system unallocated charge balance as of any given June 30, is computed in accordance with paragraph (10) of section 8(a). The system unallocated charge balance is the net amount of costs to the Railroad Unemployment Insurance Account, from January 1, 1990, through such June 30, which cannot be allocated to a particular employer. Net benefits paid due to a strike or work stoppage as the result of a labor dispute, net benefits not allocated due to maximum limitations in cases of multiple base your employers, net benefits paid to employees of all employers determined to be defunct after December 31, 1989, all cash repayments of pre-October 1985 loans under section 10(d), and all interest paid on new loans made after September 30, 1985, under section 10(d) are added to the system unallocated charge balance. The system unallocated charge balance is reduced by the amount of contributions paid by the employers determined to be defunct after December 31, 1989, and other defined income, including interest, fines, penalties and unassigned receipts to the credit of the Railroad Unemployment Insurance Account. As of June 30, 1990, the system unallocated charge balance is −$21,804,160.77. The unassigned receipts to the account, which include amounts received in repayment of benefits paid prior to January 1, 1990, exceed the unallocated charges to the account, producing the negative balance.

Pooled Credit Ratio

The pooled credit ratio is computed under paragraph (12) of section 8(a) of the Act if the balance to the credit of the Railroad Unemployment Insurance Account exceeds the greater of $250 million or the amount that bears the same ratio to $250 million as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, as computed in accordance with paragraph (11) of section 8(a). The pooled credit ratio applicable for 1991 is zero because the balance to the credit of the Railroad Unemployment Insurance Account as of June 30, 1990, $235,213,094.40, is less than $250,000,000.00.

Pooled Charge Ratio

The pooled charge ratio, computed in accordance with paragraph (13) of section 8(a) of the Act, is the factor used to recoup income lost to the RUI Account because some employer contributions are calculated at the maximum contribution rate rather at an experience-based rate. First, the amount of income lost to the account is determined. For each employer whose contributions are paid at the maximum rate, the income lost is the amount of contributions which would have been collected using the experience-based rate minus the amount collected based on the maximum contribution rate. In step 2, the aggregate amount of income lost is determined by adding the amounts computed for each employer in step 1. In step 3, for each employer whose experience-based contribution rate is less than zero, the percentage rate by which the employer's rate was raised in order to bring that rate to the minimum rate of zero is multiplied by the employer's 1-year compensation base. The total of the amounts computed in this manner is subtracted from the aggregate amount of income lost to the account, as determined in step 2. In step 4, the pooled charge ratio is determined by dividing the aggregate amount from step 3 by the system compensation base, excluding the 1-year compensation base of those employers whose experience-based contribution rates exceeded the maximum contribution rate. For 1991, the pooled charge ratio is zero.

Surcharge Rate

The surcharge rate for a calendar year is determined in accordance with paragraph (14) of section 8(a) of the Act, based on the balance to the credit of the RUI Account as of the preceding June 30. If the balance to the credit of the account is less than the greater of $100 million or the amount that bears the same ratio to $100 million as the system compensation base as of that June 30 bears to the system compensation base as of June 30, 1991, as computed in accordance with paragraph (11) of section 8(a), a surcharge rate is added to each employer's contribution rate. The surcharge is not applicable for 1991 because the balance to the credit of the Railroad Unemployment Insurance Account as of June 30, 1990, $235,213,094.40, is not less than $100,000,000.00.

By Authority of the Board.

Dated: November 15, 1990.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 90-27515 Filed 11-21-90; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-25190]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 16, 1990.

Notice is hereby given that the following filings(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 10, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc. (70-6128)

American Electric Power Company, Inc. ("AEP"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, has filed a post-

effective amendment to its declaration under sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

By orders dated April 25, 1978, April 27, 1979, June 24, 1980, June 30, 1981, June 28, 1982, and March 8, 1988 (HCAR Nos. 20516, 21022, 21639, 22312, 22549, and 24594, respectively), AEP was authorized to issue and sell, from time-to-time through December 31, 1990, up to 3,800,000 shares of its authorized but unissued common stock, $6.50 par value, pursuant to the American Electric Power System Employees Savings Plan ("Savings Plan"). AEP now proposes to extend until December 31, 1993 the time in which it may issue and sell the 3,800,000 shares of its common stock under the Savings Plan.

Allegheny Power System, Inc., et al. (70–7588)

Allegheny Power System, Inc. ("APS"), a registered holding company, and its subsidiary, Allegheny Power Service Corporation ("APSC"), both at 320 Park Avenue, New York, New York 10022, have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a), and 10 of the Act and Rule 43 thereunder.

By order dated February 14, 1989, (HCAR No. 24820), APSC was authorized to issue short-term notes ("Notes") to APS in the aggregate principal amount outstanding at any one time of $7.5 million through December 31, 1990. The Notes may bear interest at a rate equal to the average interest rate on short-term borrowings by APS during each calendar quarter, as previously authorized by the Commission (HCAR No. 24467, September 29, 1987) ("Order"). In any quarter in which APS has no short-term borrowings outstanding, the Order provides that the Notes may bear interest at the prime rate in effect from time-to-time. APS has made one open account advance to APSC in the amount of $2.5 million, maturing on December 21, 1990. APS and APSC now propose to extend the time in which APSC may issue Notes to APS up to the aggregate principal amount of $7.5 million through December 31, 1992, under the same terms and conditions as previously authorized by the Commission in the Order.

Energy Initiatives, Incorporated (70–7605)

Energy Initiatives, Incorporated ("EII"), One Gatehall Drive, Parsippany, New Jersey 07054, a wholly owned subsidiary company of General Public Utilities Corporation, a registered holding company, has filed a post-effective amendment to its declaration under Section 6(b) of the Act.

By order dated March 22, 1989 (HCAR No. 24832), the Commission, among other things, authorized EII to issue, sell and renew its unsecured promissory notes ("Notes") to commercial banks pursuant to informal lines of credit from time-to-time until December 31, 1990, in an aggregate principal amount not to exceed $5 million outstanding at any one time. As of October 9, 1990, EII has no Notes outstanding.

EII now proposes to extend the time period during which it may issue, sell and renew the Notes to December 31, 1992.

The Notes will: (1) Mature not more than 9 months after their date of issuance; (2) bear interest at a rate (after giving effect to any fees or compensating balance requirements) not exceeding 125% of the lending bank's prime rate for commercial borrowing at the date of issuance of such Note; (3) be prepayable only to the extent provided therein; and (4) not be issued as part of a public offering.

Eastern Utilities Associates, et al. (70–7770)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company and its subsidiary companies, EUA Ocean State Corporation ("EUA–OS"), Washington Highway, Lincoln, Rhode Island 02865, Newport Electric Corporation ("Newport") and Newport Electric Power Corporation ("Newport Power"), both located at 12 Turner Road, Middletown, Rhode Island 02865, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 42, 43(a) and 45(a) thereunder.

By orders dated October 13, 1988 (HCAR No. 24727), December 23, 1988 (HCAR No. 24790) and September 28, 1989 (HCAR No. 24960), the Commission authorized, among other things, certain transactions with respect to Unit I and Unit II of the Ocean State Power Project ("Project"), a combined cycle electric generating facility located in Rhode Island, which included: (1) The formation by EUA of a new subsidiary company EUA–OS; (2) the acquisition by EUA–OS of 25% equity interests in two partnerships ("OSP I" and "OSP II") formed to own and operate Unit I and Unit II of the Project; (3) the funding by EUA of EUA–OS to enable EUA–OS to meet its obligation to make capital contributions to OSP I and OSP II; and (4) the financing of 100% of the construction costs of each of the Units through non-recourse loans under separate general construction loan credit facilities ("Unit I and Unit II Credit Facilities") in connection with which: (i) EUA–OS and the other partners in OSP I and OSP II entered into Equity Contribution Agreements ("Equity Agreements") whereby they agreed upon commercial operation of each of Unit I and Unit II to make equity contributions aggregating no more than approximately 50% of the total commitments under the respective credit facilities; (ii) EUA–OS and the other partners secured their obligations under the Equity Agreement by their respective equity interests in OSP I and OSP II; and (iii) EUA and other parent corporations of partners in OSP I and OSP II agreed to provide proportional guarantees of their respective subsidiaries' obligations under the Equity Agreements.

In connection with the Unit I and Unit II Credit Facilities, Newport Power entered into the Equity Agreements and secured its obligations thereunder by its equity partnership interests in OSP I and OSP II and Newport entered into equity contribution support agreements ("Support Agreements") with respect to the obligations of Newport Power under the Equity Agreements.

EUA has determined that it would be in the best interests of Newport for EUA–OS to acquire Newport Power's partnership interests in OSP I and OSP II and assume all of Newport Power's rights and obligations under the Equity Agreements.

EUA now proposes to effect such transaction by merging Newport Power with and into EUA–OS in accordance with the terms and conditions of a merger agreement between EUA–OS and Newport Power ("Merger"). Upon consummation of the Merger, EUA–OS will be the surviving corporation and the common stock of EUA–OS outstanding immediately prior to the consummation of the Merger will constitute all of the issued and outstanding common stock of the surviving corporation. EUA–OS will thereby assume all of Newport Power's rights and obligations under Newport Power's Equity Agreements, and EUA will thereupon assume all of Newport's obligations under Newport's equity contribution support agreements, consisting principally of Newport's obligation to guaranty the making of capital contributions by Newport Power of up to an aggregate of $11.27 million for OSP I and OSP II.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–27540 Filed 11–21–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–28624; File No. SR–PSE–90–37]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Initial Listing and Maintenance Requirements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 26, 1990, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Exchange rules 3.2 and 3.5 as indicated below. (Additions italicized; deletions bracketed)

Listing

Rule 3.2. All applications for admitting securities to the list shall be in the form prescribed by the Board. In order for the securities of any class to be considered for listing, the issuer shall have equal voting rights per share for shareholders in each class of Common Stock, and:

Common Stock

1. In the case of Common Stock, at least [250,000] *750,000* shares issued and outstanding and a minimum market value of issued and outstanding shares of [1,000,000] *$2,250,000* exclusive of concentrated or family holding [; and a price per share of not less than 2.00 for at least six months prior to the date of application;]. *Initial public offerings are exempt from the 750,000-share requirement upon listing, but must comply within one year from the date of listing.*

2. At least 750 *beneficial shareholders* of the security. *Initial public offerings are exempt from this requirement upon listing, but must comply within one year from the date of listing;*

3. *Total net tangible assets of $1,500,000;*

[3] *4.* Demonstrated earnings of $200,000 annually before taxes for two prior years excluding non-recurring income, *or total net tangible assets of $2,000,000;*

[4. Total net tangible assets of $1,000,000;]

5. Stockholder approval be obtained for:

(a) Options or remuneration plans substantially affecting rights of shareholders;

(b) A transaction to which the company is a party which results in change in control of company; and

(c) Acquisitions:

(1) Direct or indirect, from a director, officer, or substantial security holder;

(2) Potential issuance of a security resulting in a 20% increase of the outstanding Common Stock; or

(3) Consideration paid has fair value of 20% market value of outstanding Common Stock.

Warrants

No Change.

Preferred Stock and Similar Issues

No Change.

Bonds

No Change.

[The above standards are general guidelines for eligibility. However, the Exchange may give more weight to certain of these standards than others and judge the qualification on the merits of each applicant.]

[Delisting] Maintenance Standards

Rule 3.5. The Exchange does not rate or evaluate any security dealt in on the Exchange. In making a determination concerning listing and delisting it acts normally upon information furnished it by the issuer, and it does not verify this information from independent sources or gather independent information about the issuers whose securities are dealt in on the Exchange. As a matter of policy, the securities of a company will be subject to suspension and/or withdrawal from registration as a listed issue if [any or all of the following conditions are found by the Exchange to exist] *it is found by the Exchange that a listed company fails to maintain the following standards:*

No Further Changes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to section 6(b)(5) of the Act, all exchanges are charged with the responsibility of protecting investors and the public interest, while simultaneously preventing unfair discrimination between issuers. In furtherance of these interests, the PSE proposes to amend its listing standards for common stock which are set forth in Exchange Rule 3.2 and its maintenance standards for all securities in Exchange Rule 3.5.

At present, and since their adoption and subsequent amendments, the PSE, like all regional exchanges, has regarded its listing standards as guidelines which may be balanced and/or waived in the determination of a corporate listing.[1] As amended, however, the proposed rule provides concrete standards to which the Exchange must adhere in the listing of a security for trading. The Exchange believes that the employment of mandatory standards, as opposed to mere guidelines, will help prevent any appearance of unfair discrimination between issuers, and will protect the public by facilitating reliance on the integrity of the standards and preventing the listing of unqualified and potentially non-bona fide companies.

The Exchange's amendments to its listing criteria are substantial. The Exchange proposes to: Increase the number of required public shares from 250,000 to 750,000; increase the market value of public shares from $1,000,000 to $2,250,000; and increase the value of net tangible assets from $1,000,000 to $1,500,000. In the terms of the requisite 750 beneficial shareholders and demonstrated earnings of $200,000 for two prior years, the Exchange proposes to maintain these high standards, with the exception of waiving the earnings requirements when net tangible assets

[1] The Commission notes that the listing standards of the Cincinnati Stock Exchange ("CSE") are mandatory requirements and not guidelines. *See* CSE Article IV, § 1.3. Also, the Boston Stock Exchange ("BSE") recently filed a proposed rule change with the Commission to make its listing criteria mandatory requirements. *See* Securities Exchange Act Release No. 28357 (August 21, 1990), 55 FR 35228 (August 28, 1990).

exceed $2,000,000, and applying the shareholder requirement to beneficial shareholders rather than holders of record. The Exchange believes that beneficial ownership provides a more precise reading of shareholder diversity than does ownership of record. In terms of the guidelines of a minimum $2.00 price per share, the Exchange has determined to delete this standard due the Exchange's belief that it lacks probative value in the determination of the well being of a company.[2]

The Exchange believes that the heightened listing standards will serve to enhance the integrity of the marketplace and protect the public interest. As recognized by the Commission in Release No. 34–28293,[3] adequate listing criteria are necessary to screen out companies that lack substantial float, assets and shareholders, thereby assuring sufficient liquidity for fair and orderly markets. In particular, the Commission noted in the above referenced Release that a wide distribution of shares, created by an increased number of required shareholders, decreases the opportunities for manipulation that are present with fewer shareholders, and assists in building a more liquid market for trading.

In Release No. 34–28293, the Commission also stated that the maintenance of a substantial earnings requirement over a two-year period helps to assure that the listing company is able to meet its financial obligations and still generate income for its operations and public shareholders. While agreeing with the Commission, the Exchange believes it is necessary and appropriate to waive an earnings requirement in certain instances, such as in the interest of listing a growing company that has yet to generate a substantial net income but has proven its strength in other categories. Accordingly, the proposed rule amendment provides that the earnings requirement may be waived when the net value of tangible assets exceeds $2,000,000. The Exchange believes that with such substantial assets and satisfaction of the other mandatory standards of rule 3.2, a company's well being and viability are apparent, regardless of its earnings.

Also provided in the proposed rule filing is the specific exclusion of initial public offerings ("IPOs") from the outstanding shares and beneficial shareholder requirements. In the past, these standards have typically been waived by the Exchange in the listing of IPOs, in that IPOs could not be expected to satisfy the requirements, even with the prior lower standards. Accordingly, the Exchange believes it is appropriate to extend requisite compliance with the outstanding shares and shareholder requirements to any time within one year from the date of listing.

The Exchange also believes that the proposed rule change is in furtherance of the interests of rule 15c2–6 under the Act. Rule 15c2–6, referred to as the "Penny Stock Rule," was recently enacted by the Commission in response to concerns of widespread misconduct by broker-dealers in low-priced securities. Generally, rule 15c2–6 regulates and restricts the trading practices of broker-dealers in the recommendation, to persons who are not established customers, of low-priced securities that are not registered on an exchange nor authorized for quotation on the National Association of Securities Dealer's Automated Quotation ("NASDAQ") System. In Release No. 27160,[4] the Commission noted that, due to the effect rule 15c2–6 may have on small business capital formation, many such businesses may seek listing on an exchange in order to avoid the restrictions of the Rule. As such, and since broker-dealer abuses may extend to exchange-traded low-priced securities, the Commission stated its expectation that self-regulatory organizations develop new regulatory initiatives designed to address fraud and manipulation in low-priced securities. The Exchange believes that the heightening of its listing standards, thereby precluding the listing of many low-priced securities, addresses the Commission's concerns.

Another justification for the proposed rule change is the uniformity of enhanced listing standards among the various exchanges. With the enactment of rule 15c2–6, the regional exchanges have been made aware of the necessity for higher listing standards, and have announced their intentions to comply. Although the Exchange believes that total uniformity in listing standards will not be established, it believes that general uniformity in raising the standards will benefit the marketplace as a whole, thereby further serving the public's interest.

The last alteration proposed by the rule filing is to characterize the Exchange's "delisting standards" of rule 3.5 as "maintenance standards." The purpose for the change in characterization is to promote a more positive stance by defining that which the Exchange expects listed companies to maintain, rather than defining that which may result in a delisting. In addition, the Exchange has chosen at this time not to alter its maintenance standards. The Exchange believes that the existing, flexible approach is required in analyzing a possible delisting because a marketplace on the Exchange is already in place and is serving the interest of the investing public. If that regulated marketplace is to be taken away, it must be done so as a last resort.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–90–37 and should be submitted by December 14, 1990.

Dated: November 16, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–27541 Filed 11–21–90; 8:45 am]

BILLING CODE 8010–01–M

[2] Although the Exchange has not, at this time, proposed to increase its listing standards for warrants, preferred stock and similar issues, and bonds, it has proposed to upgrade its present listing standards for such issues to mandatory requirements, as opposed to general guidelines. This change is evident by the deletion of the last paragraph of rule 3.2, which previously characterized all equity listing standards as general guidelines.

[3] *See* Securities Exchange Act Rel. No. 28293 (August 1, 1990), 55 FR 32518 (order approving initial and continued listing standards on the CSE).

[4] *See* Securities Exchange Act Rel. No. 27160 (August 22, 1989), 54 FR 35468 (order approving Rule 15c2–6).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Washington County, RI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplement to a final environmental impact statement will be prepared for the proposed URI Connector in Washington County, Rhode Island.

FOR FURTHER INFORMATION CONTACT: Gordon G. Hoxie, Division Administration, Federal Highway Administrator, 380 Westminster Mall, 5th floor, Providence, RI 02903, Telephone: (401) 528–4541.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Rhode Island Department of Transportation, will prepare a supplement to the final environmental impact statement (EIS) on the proposed URI Connector between Relocated Route 138 in Exeter and the University of Rhode Island (URI) Kingston campus in South Kingstown, Washington County, Rhode Island. The proposed roadway was initially proposed as part of the Interstate Route 895 project. The original EIS for the I–895 project (FHWA–RI/MA–EIS–79–01–F) was approved on September 27, 1984. As approved under the I–895 project, the URI Connector consists of a four-lane, divided, limited access highway on new location between Relocated Route 138 and the URI Kingston campus for a distance of approximately two miles. This facility is considered necessary to serve the projected traffic demand.

The location of the URI Connector was approved as part of the I–895 FEIS. However, since the FEIS was approved, additional wetland areas have been discovered and wetland boundaries have been delineated and surveyed within the corridor. This newly revealed information results in an increase in wetland impacts from the URI Connector. The URI Connector is now to be restudied to determine if an alternate location would be appropriate.

Alternatives will be developed as part of the SEIS. Since the need for the URI Connector was established in the I–895 DEIS/FEIS, a no-build alternative will be considered. The multitude of preliminary alignments will be reduced to three (3) "selected" alignments and analyzed in greater detail. Ultimately, the least environmentally damaging practicable alternative will be choosen.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public workshop/hearing will be held. Public notice will be given of the time and place of the workshop/hearing. The draft supplemental EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting will be held.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Gordon G. Hoxie,

Division Administrator, Rhode Island.

[FR Doc. 90–27458 Filed 11–21–90; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; Alameda County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will not be prepared for the proposed I–580/I–680 reconstruction project in the Cities of Dublin and Pleasanton, Alameda County, California.

FOR FURTHER INFORMATION, CONTACT: Mr. C. Glenn Clinton, District Engineer, Federal Highway Administration, P.O. 1915, Sacramento, California 95812–1915, Telephone: (916) 551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, California Division, issued a Notice of Intent to prepare an EIS for the proposed I–580/I–680 interchange reconstruction project on September 8, 1988 (Vol. 53, No. 174, pg. 34865). The FHWA is withdrawing that Notice at this time.

The project has been downscoped. Traffic projections indicate that the southbound I–680 to eastbound I–580 movement is the heaviest and that the existing interchange is adequate to provide acceptable levels of service for all other movements for the next twenty years (the period for which traffic projections were conducted). The new, proposed project provides a direct freeway-to-freeway connection in the southbound to eastbound direction, and modifications to Hopyard Road/Dougherty Road interchange and, possibly, Foothill Road/San Ramon Road interchange. Design variations with and without hook ramps to the City of Dublin in the northwest quadrant will be studied.

Due to the smaller scope of the proposed project, right-of-way acquisitions will be considerably reduced, impacts to city parks will be eliminated, visual impacts to a State scenic highway will be lessened, traffic impacts to local streets will be slightly reduced, and impacts to wetlands and flood control channels will be lessened. At that time, the significance of the environmental impacts of the downscoped project is not clearly established. An environmental assessment (EA) will be prepared for the downscoped project to determine the appropriate environmental document required. Should the EA show that the downscoped project will result in significant impacts, and EIS will be prepared, preceded by publication of a new NOI.

Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided previously in this Notice.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal Programs and activities apply to this program.)

Issued on: November 14, 1990.

C. Glenn Clinton,

District Engineer, Sacramento, CA.

[FR Doc. 90-27526 Filed 11-21-90; 8:45 am]

BILLING CODE 4910-22-M

Final Orders in Motor Carrier Safety Enforcement Cases

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of final orders.

SUMMARY: This document gives notice of the Final Orders served from April 14, 1989, through October 5, 1990, concerning motor carrier and hazardous materials proceedings conducted pursuant to 49 CFR part 386. The Orders include both those issued by the Associate Administrator and those issued by Administrative Law Judges and adopted by the Associate Administrator for Motor Carriers.

FOR FURTHER INFORMATION CONTACT: Mr. David C. Oliver, Motor Carrier and Highway Safety Law Division (202) 366-1356; or Mr. Michael J. Laska, Legislation and Regulations Division (202) 366-1383, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15. p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The following Final Orders are being published:

Name	Docket No.
Texas Highway Transport, Inc.	R6-90-37
Princeton Homes Corp.	R3-89-105
Continental Tank Lines, Ltd.	R3-89-059

Authority: 23 U.S.C. 315; 49 CFR 1.48

Issued On: November 15, 1990.

T. D. Larson,

Administrator.

[Docket No. R6-90-37]

Final Order; Texas Highway Transport Inc.

This matter comes before me upon request of the Regional Director, Region 3, for a Final Order finding the facts to be as alleged in a Notice of Claim dated March 23, 1990.

Having reviewed the Motion and supporting documents appended thereto, I find that no valid request for a hearing has been made. I find that the evidence supports the charges and specifications in the Notice of Claim relating to violations of the Federal Motor Carrier Safety Regulations (FMCSRs).

Therefore, it is ordered, that Respondent is directed to satisfy the penalty assessment by paying to the Regional Director the full amount of $5,000 within 30 days of the date of this Order.

Dated: October 5, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; Princeton Homes Corp.

[Docket No. R3-89-105]

This matter comes before me upon request of the Regional Director, Region 3, for a Final Order finding the facts to be as alleged in a Notice of Claim dated June 1, 1989.

Having reviewed the Motion and supporting documents appended thereto, I find that no valid request for a hearing has been made. I find that the evidence supports the charges and specifications in the Notice of Claim relating to violations of the Federal Motor Carrier Safety Regulations (FMCSRs). Although the imposition of this penalty will obviously have an impact on a business of this size, it must be underscored that the FMCSRs are to be taken seriously.

Therefore, it is ordered, that Respondent is directed to satisfy the penalty assessment by paying to the Regional Director the full amount of $6,000 within 30 days of the date of this Order.

Dated: October 24, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Final Order; Continental Tank Lines, Ltd.

[Docket No. R3-89-059]

This matter comes before me upon request of the Respondent for a hearing. The Director, Office of Motor Carrier Safety, Region 3, through Counsel, opposes the request for a hearing and has in turn requested the issuance of a Final Order finding the facts to be as alleged and imposing the full amount of the penalty.

The Respondent is a small, three-driver carrier operating in the suburban Washington, DC, area (Virginia to Maryland). Although acknowledging the need for improvements in two areas, it is unclear whether the request for a hearing sets forth any material factual issues necessitating a hearing. Respondent, in its letter of March 23, 1989, refers to the violations as involving 1 of its 3 drivers. The record before me appears to indicate allegations of violations in the case of all three drivers. If, in fact, Respondent is contending that only one of the drivers' files present a deficiency, I will consider an amended request for a hearing with specific information supporting such request. However, based on the information before me at this time, I find no issues compelling a hearing.

Respondent seeks reduction or elimination of the penalty. On many occasions I have expressed the view that penalty determinations are normally left to the discretion of the Regional Director. In this case, the Respondent operates a small, localized business. With respect to the violations of 49 CFR 391.51(a) failing to properly maintain driver qualification files, the record indicates that eight trips were made by three drivers. In view of the fact that this is the first instance of violation by this carrier and only three drivers are employed, I find that there are in fact violations but only one for each driver. Respondent claims that these deficiencies have been corrected. I find that a penalty for $300 for each of the three violations is sufficient.

With respect to the violations of 49 CFR 395.8(a) failing to require drivers to prepare daily duty status records, eight violations have been documented. The Director seeks a penalty of $300 for each. I find this to be reasonable under the circumstances.

Therefore, it is ordered, that Respondent's request for a hearing is hereby denied and the Director's motion for a Final Order is granted except as modified above. Respondent is directed to pay a penalty of $3,300 for the 11 violations as discussed heretofor within 30 days of the date of this Order.

Dated: April 14, 1989.

Richard P. Landis,

Associate Administrator for Motor Carriers.

[FR Doc. 90-27546 Filed 11-21-90; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

Change of Name of Approved Trustee

Notice is hereby given pursuant to 46 CFR part 221 that effective March 8, 1990, Key Bank of Southeastern New York National Association was merged with and into Key Bank N.A., pursuant to an Agreement and Plan of Merger to which Key Bancshares of New York Inc., and Keycorp also were parties. The continuing bank was Key Bank N.A., which changed its name to Key Bank of Eastern New York N.A.

Therefore, the name of Key Bank N.A., is changed to Key Bank of Eastern New York N.A., and continues on the Roster of Approved Trustees under the new name.

Dated: November 15, 1990.

By Order of the Maritime Administrator.

James B. Saari,

Secretary.

[FR Doc. 90-27556 Filed 11-21-90; 8:45 a.m.]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Amendment to Department Circular—Public Debt Series—No. 29-90]

7¾% Treasury Notes, Series AF-1992

Washington, October 31, 1990.

Department of the Treasury Circular, Public Debt Series No. 29-90, dated October 18, 1990, as supplemented, descriptive of 7¾% Treasury Notes of Series AF-1992, is hereby amended effective October 26, 1990.

The same-numbered paragraph of Department of the Treasury Circular, Public Debt Series—No. 29-90, is hereby amended and replaced with the following paragraph. The other terms and conditions remain unchanged.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, prior to 1 p.m., Eastern Standard time, Tuesday, October 30, 1990. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, October 29, 1990, and received no later than Wednesday, October 31, 1990.

The foregoing Amendment was effected under authority of chapter 31 of title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 90-27499 Filed 11-21-90; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 29-90]

Treasury Notes, Series AF-1992

Washington, October 31, 1990.

The Secretary announced on October 30, 1990, that the interest rate on the notes designated Series AF-1992, described in Department Circular—Public Debt Series—No. 29-90 dated October 18, 1990, will be 7¾ percent. Interest on the notes will be payable at the rate of 7¾ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 90-27588 Filed 11-21-90; 8:45 am]

BILLING CODE 4810-40-M

Bureau of Alcohol, Tobacco and Firearms

Granting of Relief, Federal Firearms Privileges

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Notice of granting of restoration of Federal firearms privileges.

SUMMARY: The persons named in this notice have been granted restoration of their Federal firearms privileges by the Director, Bureau of Alcohol, Tobacco and Firearms.

As a result, these persons may lawfully acquire, transfer, receive, ship, and possess firearms if they are in compliance with applicable laws of the jurisdiction in which they live.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge, Charles R. Demski, Firearms Enforcement Branch, Firearms Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, (202-566-7258).

SUPPLEMENTARY INFORMATION: In accordance with 18 U.S.C. 925(c), the persons named in this notice have been granted restoration of Federal firearms privileges with respect to the acquisition, transfer, receipt, shipment, or possession of firearms. These privileges were lost by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year or because they otherwise fell within a category of persons prohibited by Federal law from acquiring, transferring, receiving, shipping or possessing firearms.

It has been established to the Director's satisfaction that the circumstances regarding the applicants' disabilities and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the restoration will not be contrary to the public interest.

The following persons have been granted restoration:

Allen, Terri Lynn, 4901 North 56th Street, Omaha, Nebraska, convicted on July 16, 1981, in the United States District Court, Omaha, Nebraska.

Barker, Billy Clark, 145 Scenic View Circle, Wytheville, Virginia, convicted on December 11, 1985, in the United States District Court, Western District of Virginia.

Boggess, Ben Wayne, 4721 Southeast Ada Lane, Oregon City, Oregon, convicted on April 7, 1988, in the United States District Court, District of Oregon, Portland, Oregon.

Borci, Mario Joseph, 30 Adams Street, Worcester, Massachusetts, convicted on May 5, 1980, in the Superior Court, Worcester, Massachusetts.

Bradford, John Clarence, 2250 Oxley, Waterford, Michigan, convicted on June 1, 1966, in the Oakland County Circuit Court, Pontiac, Michigan.

Bush, Paul Richard, H.C. 66, Box 2305, Wurtland, Kentucky, convicted on December 27, 1967, in the Greenup Circuit Court, Greenup, Kentucky.

Coffey, Timothy Jay, 7099 Redmond, Union Lake, Michigan, convicted on March 8, 1980, in the Lenawee County Circuit Court, Michigan.

Coffman, John Logan Junior, Route 1, Box 120-A, Goshen, Virginia, convicted on March 2, 1976, in the Circuit Court, Augusta County, Virginia.

Cokain, Jeffrey Michael, 9029 Mount Shasta South, Indianapolis, Indiana, convicted on December 4, 1984, in the Municipal Court, Marion County, Indianapolis, Indiana.

Crum, Ray Lee, Post Office Box 1182, Inez, Kentucky, convicted on June 27, 1972, in the Martin County Court, Inez, Kentucky.

Edens, Robert Edward, 2529 Edgefield Highway, Aiken, South Carolina, convicted on May 27, 1947, in the Sullivan County Circuit Court, Tennessee.

Fareri, Carl V., 2258 Lynn Brook Avenue, Pittsburgh, Pennsylvania, convicted on August 16, 1984, in the Court of Common Pleas, Allegheny County, Pennsylvania; and on January 31, 1985, in the Court of Common Pleas, Allegheny County, Pennsylvania.

Fay, William Barr 5789 South Geneva, Englewood, Colorado, convicted on December 15, 1980, in the Jefferson County District Court, Golden, Colorado.

Ferrell, John Vernon Junior 1598 Old Gallatin Road, Portland, Tennessee, convicted on August 31, 1972, in the United States District Court, Middle District of Tennessee, Nashville, Tennessee.

Fuentes, Orlando 633 East 20th Street, Hialeah, Florida, convicted on May 29, 1962, in the Federal District Court, Southern District of Florida.

Goodwin, Bob Bailey Route 1, Box 186, Marks, Mississippi, convicted on August 15, 1984, in the United States District Court, Northern District of Mississippi, Oxford, Mississippi.

Gravelle, William Harold 1607 West Fourth Avenue, Sault Ste. Marie, Michigan, convicted on August 2, 1974, and on January 2, 1976, in the Chippewa County Circuit Court, Michigan.

Griffith, Wendell Lee 4615 Towne Square Court, Apartment 5, Owensboro, Kentucky, convicted on August 8, 1982, and on October 16, 1984, in the Daviess County Circuit Court, Owensboro, Kentucky.

Groves, Robert Warren Lot 18, Fox Run Estate, Salisbury, North Carolina, convicted in November 1985, in the Circuit Court of Kanawha County, Charleston, West Virginia.

Heck, Phillip John 2310 Eastern Avenue, Gallipolis, Ohio, convicted on December 22, 1971, in the United States District Court, Eastern Judicial District of Columbus, Ohio.

Hetze, James William 8979 Co. Trk., Milladore, Wisconsin, convicted on October 20, 1984, in the Circuit Court, Branch II, Wisconsin Rapids, Wisconsin.

Higgins, James Earl Junior 420 Panama Street, Birmingham, Alabama, convicted on July 1, 1983, in the United States District Court, Southern District of Alabama.

Himrod, John Andrew Route 3, 127 Dansby Road, Wauchula, Florida, convicted on September 9, 1975, in the United States District Court, Middle District of Florida, Tampa, Florida.

Hodge, Jerry Mack Route 1, Box 650, Churchville, Virginia, convicted on June 1, 1976, in the Circuit Court of Augusta County, Virginia.

Hoke, Christopher Lee 9 Minnich Terrace, Lykens, Pennsylvania, convicted on May 14, 1981, in the Court of Common Pleas, Dauphin County, Harrisburg, Pennsylvania.

Iodice, Robert Salvatore 8775 Twenty-Third Avenue, Brooklyn, New York, convicted on October 10, 1980, in the United States District Court, Eastern District of New York, Brooklyn, New York.

Kolin, Michael Allan 1 Fox Fire Road, Lewistown, Pennsylvania, convicted on June 18, 1985, in the United States District Court, Middle District of Pennsylvania, Reading, Pennsylvania.

Kerns, Marvin R. 2340 King Street, Northeast, Roanoke, Virginia, convicted on March 18, 1959, in the Circuit Court, Roanoke County, Virginia.

Kieler, Robert Joseph 3182 County Highway O, Platteville, Wisconsin, convicted on April 29, 1981, in the Grant County Circuit Court, Branch I, Lancaster, Wisconsin.

Koslin, Martin 5619 Jackwood, Houston, Texas, convicted on November 5, 1984, in the United States District Court, Southern District of Texas, Houston, Texas.

Kratzenberg, Marvin Dale 6248 Route 96, Farmington, New York, convicted on September 2, 1987, in the Ontario County Court, Canandaigua, New York.

Landreth, Johnny Farrell 803 North 12th Street, Lanett, Alabama, convicted on June 10, 1981, in the United States District Court, Middle District of Alabama, Montgomery, Alabama.

Lewis, Andrew Russell Route 1, Box 134, Moundville, Alabama, convicted on September 8, 1979, in the United States District Court, Birmingham, Alabama; and also in 1981, in the Circuit Court of Tuscaloosa, Birmingham, Alabama.

Lucas, Jan Alan 222 Jenny Street, Campbellsport, Wisconsin, convicted on June 18, 1980, in the Washington County Circuit Court, West Bend, Wisconsin.

Maddox, James Arthur 4205 Maple Hill Drive, Greenwood, Indiana, convicted on July 15, 1983, in the United States District Court, Southern District of Indiana.

Madison, Patricia Merritt Post Office Box 428, LuVerne, Alabama, convicted on August 1, 1984, in the United States District Court, Middle District of Alabama, Montgomery, Alabama.

Mason, William Andrew First Godowa Springs Road, Post Office Box 105, Beatty, Oregon, convicted on January 30, 1980, in the Los Angeles Superior Court, Los Angeles, California.

Mastracchio, John Salvatore Rural Route 4, Box 38, Stagecoach Road, Patterson, New York, convicted on June 11, 1976, in the United States District Court, Manhattan, New York.

McConnell, Robert John Junior 12481 Johns Road, Anchorage, Alaska, convicted on October 1, 1982, in the Superior Court, Saguache County, Colorado.

Papandrea, Giovanni 122A Murray Drive, Chester, New York, convicted on July 23, 1982, in the United States District Court, Eastern District of New York, Brooklyn, New York.

Patterson, Edwin Steven 1700 Riverside Drive, Beaufort, South Carolina, convicted on January 24, 1985, in the United States District Court, Charleston, South Carolina.

Peck, Robert David 9079 Parkland Drive, Wexford, Pennsylvania, convicted on July 11, 1984, in the Criminal Court of Allegheny County, Pittsburgh, Pennsylvania.

Prescott, Richard Hobson 925 Joaneen Drive, Saraland, Alabama, convicted on September 3, 1980, in the United States District Court, Southern District of Alabama.

Ricketts, Billy Joseph Senior Post Office Box 738, Jackson, Alabama, convicted on March 4, 1983, in the United States District Court, Southern District of Alabama, Mobile, Alabama.

Royce, Michael James Senior 38 Hall Road, Woodstock Valley, Connecticut, convicted on April 22, 1981, in the Tolland County Court, Rockville, Connecticut.

Schnaufer, Charles W. 1300 Shoreview Drive, Englewood, Florida, convicted on January 5, 1987, in the United States District Court, Middle District of Pennsylvania, Scranton, Pennsylvania.

Slone, Carlos Junior Post Office Box 182, Cromona, Kentucky, convicted on February 5, 1981, in the Letcher County Circuit Court, Whitesburg, Kentucky.

Smith, Richard Allen 406 Chaseville, Pensacola, Florida, convicted on January 11, 1984, in a United States Army General Court Marshal, Fort Bragg, North Carolina.

Spencer, David Wayne 520 Dover Road, West Memphis, Arkansas, convicted on March 23, 1982, in the Twenty-Sixth Judicial District Court, Bossier Parish, Louisiana.

Speth, William Allen 27290 Jericho Road, Mineral Point, Wisconsin, convicted on April 11, 1983, in the Circuit Court I, Grant County, Wisconsin.

Stanley, Charles Brenton 1200 West Dimond Boulevard, Space 417, Anchorage, Alaska, convicted on July 26, 1982, in the Superior Court, Judicial District of Anchorage, Alaska.

Stonerock, Michael Lee 1127 Maywood, Kalamazoo, Michigan, convicted on May 10, 1977, in the Kalamazoo County Circuit Court, Kalamazoo, Michigan.

Swanson, Bruce Raymond 1023 Central Avenue, Superior Wisconsin, convicted on April 10, 1980, in the Douglas County Court, State of Wisconsin.

Sweatt, Ronald Gene 224 Frost Street, Jackson, Michigan, convicted on May 6, 1976, in the Circuit Court, Jackson, County, Michigan.

Ward, Joe Ed Post Office Box 102, Telogia, Florida, convicted on June 11, 1983, in the United States District Court, Western District of Louisville, Kentucky.

Wilder, Ike Senior 4100 Twenty-Ninth Street, Tuscaloosa, Alabama, convicted on September 2, 1957, in the Circuit Court, Pickens County, Alabama.

Wilson, Michael Edward 1870 Jennings Drive, Madisonville, Kentucky, convicted on March 4, 1975, in the Hopkins County Circuit Court, Kentucky.

Wojciechowski, Stephen Michael 4014 Talley Ho Court, Louisville, Kentucky, convicted on February 25, 1983, in the Jefferson County Circuit Court, Louisville, Kentucky.

Wood, Mary Frances Post Office Box 1491, Cleveland, Mississippi, convicted on December 7, 1982 and December 9, 1985, in the Circuit Court, Bolivar County, Cleveland, Mississippi.

Woods, Edmond D. 1453 South Lincoln Road, Mount Pleasant, Michigan, convicted on May 19, 1967, in the United States District Court, Eastern District of Michigan.

Compliance with Executive Order 12291

It has been determined that this notice is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to complete with foreign-based enterprises in domestic or export markets.

Signed: October 29, 1990.

Stephen E. Higgins,

Director.

[FR Doc. 90-27530 Filed 11-21-90; 8:45 am]

BILLING CODE 4810-31-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 228
Friday, November 23, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 55 FR 46616.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Tuesday, November 27, 1990.

CHANGE IN THE MEETING: The Commission has added a closed meeting to discuss enforcement matters for 10:20 a.m.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-27637 Filed 11-20-90; 1:33 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 55 FR 46616

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 11:30 a.m., Friday, November 30, 1990.

CHANGE IN THE MEETING: The Commission has cancelled the closed meeting to discuss enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-27638 Filed 11-20-90; 1:33 pm]

BILLING CODE 6351-01-M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: November 13, 1990, 55 FR 47425.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: November 14, 1990, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Number has been added to Item PR-2 on the Agenda scheduled for November 14, 1990:

Item No., Docket No., and Company

PR-2—TA90-1-26-0000, Natural Gas Pipeline Company of America

Lois D. Cashell,

Secretary.

[FR Doc. 90-27614 Filed 11-19-90; 4:31 pm]

BILLING CODE 6712-02-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, November 27, 1990, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, November 29, 1990, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Future Meeting Dates
Correction and Approval of Minutes
Status of Presidential Audits
FY 91 Management Plan
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Hilda Arnold,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 90-27709 Filed 11-20-90; 2:50 pm]

BILLING CODE 6715-01-M

NATIONAL WOMEN'S BUSINESS COUNCIL

TIME AND DATE:
9:00 am—5:00 pm, December 4, 1990
9:00 am—12:00 pm, December 5, 1990

PLACE: Federal Reserve System, Board Room, 20th & C Streets, NW., Washington, DC 20551.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: In accordance with the Women's Business Ownership Act, Public Law 100-533 as amended, the National Women's Business Council announces a forthcoming meeting. Council members will be briefed by various government officials at their closed meeting on December 4, 1990 and will present their subcommittee plans for ratification at the open meeting on December 5, 1990.

PORTIONS OPEN TO THE PUBLIC: 9:00 am—12 pm, December 5, 1990; Presentation of subcommittee plans.

PORTIONS CLOSED TO THE PUBLIC: 9:00 am—5 pm, December 4, 1990; Briefing by various government officials.

CONTACT PERSON FOR MORE INFORMATION: Helen W. Robbins, Executive Director, National Women's Business Council, 1441 L Street, NW., Room 414, Washington, DC, 20416 (202) 653-8080.

Helen W. Robbins,

Executive Director, National Women's Business Council.

[FR Doc. 90-27719 Filed 11-20-90; 3:46 pm]

BILLING CODE 6820-AB-M

POSTAL SERVICE

Board of Governors' Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, December 3, 1990, and at 8:30 a.m. on Tuesday, December 4, 1990, in New Orleans, Louisiana. The December 3 meeting, at which the Board will discuss possible strategies in collective bargaining negotiations, is closed to the public (See 55 FR 47602, November 14, 1990). The December 4 meeting is open to the public and will be held in the Tower Conference Room on the 11th floor of the U.S. Postal Service Field Division Office, 701 Loyola Avenue, New Orleans. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

AGENDA

Monday Session

December 3—1:00 p.m. (Closed)

1. Status Report on Collective Bargaining Negotiations. (David H. Charters, Senior Assistant Postmaster General, Human Resources Group, and Joseph J. Mahon, Jr., Assistant Postmaster General, Labor Relations Department)

Tuesday Session

December 4—8:30 p.m. (Open)

1. Minutes of the Previous Meeting, November 5–6, 1990.
2. Remarks of the Postmaster General. (Anthony M. Frank)
3. Officer Compensation. (Mr. Frank)
4. FY 1992 Budget Request. (Conner S. Coppie, Senior Assistant Postmaster General, Finance Group)
5. FY 1990 Financial Statements. (Mr. Coppie)
6. Comprehensive Statement to Congress. (William T. Johnstone, Assistant Postmaster General, Government Relations Department)
7. Consumer Protection Statistics. (Harold J. Hughes, General Counsel)
8. Capital Investment. (Stanley W. Smith, Assistant Postmaster General, Facilities Department)
   a. Irvine, California, Main Post Office.
9. Report on Human Resources Group. (David H. Charters, Senior Assistant Postmaster General, Human Resources Group)
10. Report on the Southern Region. (William A. Campbell, Regional Postmaster General)
11. Report on the New Orleans Division. (Charles K. Kernan, Field Division General Manager/Postmaster)
12. Tentative Agenda for January 7–8, 1991, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 90-27722 Filed 11-20-90; 3:46 pm]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 26, 1990.

Open meetings will be held on Tuesday, November 27, 1990, at 9:00 a.m. and on Wednesday, November 28, 1990, at 10:00, in Room 1C30. A closed meeting will be held on Thursday, November 29, 1990, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit considerations of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, November 27, 1990, at 9:00 a.m., will be:

Roundtable discussion to provide financial industry representatives, interested parties, and the general public with an opportunity to discuss recommendations made by the Consultative group on International Economic and Monetary Affairs, Inc. (commonly referred to as the "Group of Thirty") to improve efficiency and increase safety in the system for clearance and settlement of securities transactions. For further information, please contact Antony Ain at (202) 272-2905.

The subject matter of the open meeting scheduled for Wednesday, November 28, 1990, at 10:00 a.m., will be:

Consideration of whether to publish a release adopting amendments to Rule 10b-4. The amendments would clarify the determination of a person's "net long position," deregulate multiple tendering, and redesignate the rule as Rule 14e-4. For further information, please contact M. Blair Corkran or Jodie J. Kelley at (202) 272-2848.

The subject matter of the closed meeting scheduled for Thursday, November 29, 1990, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Ed Pittman at (202) 272-2400.

Dated: November 19, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-27625 Filed 11-20-90; 10:47 am]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 55, No. 226
Friday, November 23, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91-15-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

Correction

In notice document 90-26756 beginning in the third column of page 47525, in the issue of Wednesday, November 14, 1990, the docket number should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 808

[Docket No. 89P-0314]

Exemption From Preemption of State and Local Hearing Aid Requirements; Vermont

Correction

In proposed rule document 90-25603 beginning on page 45615 in the issue of Tuesday, October 30, 1990, make the following correction:

On page 45615, in the first column, on the fifth line from the bottom, "patent's" should read "patients".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90F-0321]

Ciba-Geigy Corp.; Filing of Food Additive Petition

Correction

In notice document 90-25600 appearing on page 45656 in the issue of Tuesday, October 30, 1990, make the following correction:

On page 45656, in the second column, in the last line, "butyl" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90F-0310]

The Goodyear Tire and Rubber Co.; Filing of Food Additive Petition

Correction

In notice document 90-25602 beginning on page 45656 in the issue of Tuesday, October 30, 1990, make the following corrections:

1. On page 45656, in the third column, under "SUMMARY", in the ninth line "and" should read "end".
2. On page 45657, in the first column, in the eighth line, the Federal Register document number should read as set forth above.

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1145

Technical Amendments

Correction

In rule document 90-26687 beginning on page 47337 in the issue of Tuesday, November 13, 1990, make the following correction:

PART 1145—[CORRECTED]

The authority to part 1145 appearing in the second column on page 47338, is corrected to read as follows:

Authority: 49 U.S.C. 10321 and 10731, and 10707a; 5 U.S.C. 553.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-215-AD; Amdt. 39-6798]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 Series Airplanes and Model MD-88 Airplanes

Correction

In rule document 90-26088 beginning on page 46501, in the issue of Monday, November 5, 1990, make the following correction:

§ 39.13 [Corrected]

On page 46502, in the second column, under paragraph B of § 39.13, in the seventh line, "P/N 2406795-1" should read "P/N 240695-1".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 52

[T.D. 8311]

RIN 1545-AO07

Excise Tax on Chemicals That Deplete the Ozone Layer and on Products Containing Such Chemicals

Correction

In rule document 90-20976 beginning on page 36812 in the issue of Thursday, September 6, 1990, make the following correction:

On page 36830, in the second column, under amendatory instruction labeled Par. 8, the following should appear preceding § 52.6109(a)-1T.

§ 52.6101-1T Period covered by returns (temporary).

See § 52.6011(a)-1T for the rules relating to the period covered by the return.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-4-73]

RIN 1545-AC37

One Class of Stock Requirement

Correction

In proposed rule document 90-23533 beginning on page 40870 in the issue of Friday, October 5, 1990, make the following corrections:

1. On page 40872, in the first column, in the first complete paragraph, in the 11th and 12th, 21st, and 27th lines, "January 3, 1991" should read "[Insert the date that is 90 days after publication of the final regulations in the **Federal Register**]".

2. On the same page, in the second column, under amendatory instruction "Par. 2." the section heading should appear as follows:

§ 1.1361-1 S corporation defined.

§ 1.1361-1 [Corrected]

3. On the same page, in the third column, the fourth complete paragraph should be designated "(l)" instead of "(1)".

§ 1.1361-1 [Corrected]

4. On page 40874, in the first column, the third complete paragraph should be designated by a capital "C".

§ 1.1361-1 [Corrected]

5. On page 40875, in the first column, in § 1.1361-1(l)(7), in the 12th, 21st, and 27th lines, "January 3, 1991" should read "[Insert the date that is 90 days after publication of the final regulations in the **Federal Register**]".

BILLING CODE 1505-01-C

federal register

Friday
November 23. 1990

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 3160

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[AA-610-00-4111-02; Circular No. 2630]

RIN 1004-AA57

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule provides for the issuance of Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations, which implements and supplements the provisions of 43 CFR 3162.1, 3162.5–1, 3162.5–2, and 3162.5–3. The purpose of this order is to protect public health and safety and those personnel essential to maintaining control of the well. This Order addresses the requirements for conducting operations in a hydrogen sulfide environment. Specifically, it identifies the necessary applications, approvals, and reports required to conduct hydrogen sulfide operations and where necessary, the components required for a Public Protection Plan. It also identifies the specific operating requirements for conducting drilling, completion, workover, and production operations in a hydrogen sulfide environment. In addition, this Order details enforcement actions and allows for variances from the specific standards. This final rule also amends 43 CFR 3164.1, Onshore Oil and Gas Orders, paragraph (b).

EFFECTIVE DATE: January 22, 1991.

ADDRESSES: Inquiries or suggestions should be sent to: Director (610), Bureau of Land Management, Premier Building, Room 601, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sie Ling Chiang, (202) 653–2133, or Chris Hanson, (414) 297–4421.

SUPPLEMENTARY INFORMATION: A proposed rule for issuing Onshore Oil and Gas Order No. 6, Hydrogen Sulfide Operations, was published in the Federal Register on May 16, 1989 (54 FR 21075), with a 60-day comment period. An extension for submission of comments until July 31, 1989, was granted and published July 24, 1989 (54 FR 30766). Comments were received from 12 sources, including 2 industry associations, 5 industrial entities, and 5 Government entities.

Several changes and additions were made in the definitions section for clarification in response to the comments. Changes were also made in the requirements section in response to comments.

Those comments relating directly to the proposed rule have been grouped by subject matter and will be discussed as a group rather than individually.

General Comments

One commenter suggested that drilling operations be discussed separately in the Order and that completions and workovers be discussed with production operations. This Order has delineated those provisions in the drilling section which have specific applicability to completions and workovers. In addition, the minimum standards identified for all operations will remain the same regardless of organizational format. Therefore, this suggestion was not adopted.

It was recommended that a discussion of the Forest Service's (FS) role in the Public Protection Plan should be presented in this Order. The Mineral Leasing Reform Act of 1987 did not grant any specific authority in this regard to the FS. The regulations that pertain to the FS under that Act were published on March 21, 1990 (55 FR 10423). These regulations acknowledge that compliance is required with applicable Onshore Oil and Gas Orders issued by the Department of the Interior, Bureau of Land Management (BLM) as specified under 36 CFR 228.112(c)(7). The requirement for a Public Protection Plan to be included in this Order is pursuant to BLM's regulatory authority set forth in 43 CFR 3161.2. The BLM assumes the primary role and responsibility for Public Protection Plans. In the development of a Public Protection Plan, however, the operator should consider the role of the FS where the agency is the primary Federal land manager. For operations where the FS is the surface managing agency, all plans required by this Order will be forwarded to the FS along with the applicable parts of the submitted Application for Permit to Drill in accordance with existing regulations, policy and procedures.

One commenter stated that the threshold criteria throughout the Order of 100 ppm of H_2S in the gas stream and 10 ppm of H_2S in the ambient air is confusing. The following is an explanation of the provision. In addition, the wording has been changed in Sections III.A.1. and III.C.1.c. for further clarification. The 100 ppm H_2S in the gas stream is used solely as a threshold criterion to identify those wells and facilities which are subject to the requirements of this Order. The criterion of 10 ppm of H_2S in the ambient air applies to situations where protection of essential personnel and/or the public health and safety is an issue. The Drilling Operations Plan is implemented at 500 feet above the first potential H_2S zone or 3 days prior to penetrating the first identified H_2S formation (whichever comes first) for all wells subject to this Order. In addition, if 10 ppm of H_2S in the ambient air is indicated at any of the sensing points, additional measures will be taken. It should be noted that the 10 ppm of H_2S in the ambient air is not used as a factor in determining which wells and/or facilities are subject to this Order.

One commenter stated that the BLM does not have any means of routinely verifying the threshold criterion of 100 ppm H_2S in the gas stream to ensure that all wells which meet the criterion are properly subjected to the requirements of this Order. The BLM conditionally accepts many types of data from oil and gas operators with respect to wells on Federal and Indian oil and gas leases. However, the BLM reserves the right to conduct or require an independent analysis of the gas.

Two comments were received regarding the limits of the authorized officer's discretionary authority with respect to enforcement where major isolations exist. This Order supplements the existing oil and gas operating regulations (43 CFR 3160), and the discretionary authority is defined throughout 43 CFR 3163. Further, the introductory paragraph in section III of this Order has been rewritten to clarify this authority and additional guidance will be provided to the BLM's authorized officers via internal manuals.

It was suggested that all specific references to Onshore Order No. 1 be removed. The BLM agrees with this recommendation since Order No. 1 is currently being revised. However, general references to Onshore Order No. 1 have been retained in this rulemaking because various provisions are applicable to Order No. 6.

One commenter suggested that the status of H_2S and SO_2 under the Comprehensive Environmental Resource Compensation and Liability Act (CERCLA) should be discussed. CERCLA specifically exempts natural gas. The Environmental Protection Agency has considered all constituents of natural gas, such as H_2S and SO_2 as meeting this exemption. Therefore, the comment was not adopted.

One commenter felt that it is undesirable for the BLM to classify the severity of each violation, state the corrective action, and specify the normal abatement period in the Order. The oil and gas industry and its associations have indicated in numerous meetings with BLM representatives that they would like to know how the BLM will generally view non-compliances and the normal enforcement actions. Therefore, based on this consideration, the BLM has decided to incorporate these provisions in all its Onshore Oil and Gas Orders.

It was recommended that this rule be made effective at least 60 days after the date of publication to provide operators adequate notice. This suggestion has been adopted.

Specific Comments

I.A. Authority

One commenter contended that the terms of this Order should be promulgated either as an amendment to 43 CFR part 3162 or as an appendix to 43 CFR part 3160 so that it would be included in the Code of Federal Regulations. The commenter stated that publication of an Order results in redundancy and inconsistency, but did not identify any inconsistency. No redundancy or inconsistency has been found. As authorized by 43 CFR 3164.1, this Order implements and supplements the requirements of 43 CFR part 3162. It is being properly promulgated through the notice and comment procedures of the Administrative Procedures Act. The Code of Federal Regulations makes reference to the Order's existence and location in the **Federal Register**. Technical requirements of this type are more appropriately addressed in an Onshore Oil and Gas Order than in general regulations.

One commenter stated that to track the enabling statutes, this Order should take the form of operating guidelines with suggested violation levels, rather than strictly enforceable minimum standards. The commenter did not cite any provisions in the enabling statutes that prohibit the Secretary of the Interior from promulgating strictly enforceable minimum standards. The statutes cited in the authority section of this Order give broad rulemaking authority to the Secretary (See especially 30 U.S.C. 187 and 189). Numerous Orders imposing such minimum standards have been promulgated. Onshore Oil and Gas Orders No. 2 through 5 also contain strictly enforceable minimum standards with specified violation levels.

One commenter contended that the BLM lacks statutory authority to assess strict liability type penalties under 43 CFR 3163.1. The BLM did not propose any revision of 43 CFR 3163.1 in the current rulemaking; so no response is required. The commenter is referred to the preamble in the final rule promulgating 43 CFR 3163.1 published February 20, 1987 (52 FR 5384).

I.B. Purpose

Two commenters suggested that the BLM should enter into a Memorandum of Understanding (MOU) with the Federal Occupational Safety and Health Administration (OSHA) regarding protection of "essential personnel" to avoid confusion. The BLM has coordinated with OSHA in the development of this Order and both agencies agree that no conflict or overlap exists. The references to "essential personnel" in the Order are for control of the well (43 CFR 3162.5–2) and for protection of public health and safety (43 CFR 3162.5–3). An MOU is not necessary for either agency to implement regulations pertaining to their respective authorities, and therefore, this suggestion was not adopted.

The phrase referring to enforcement actions was removed and the wording changed to be consistent with the provisions contained in the Order. It is not the intent of this Order to specify enforcement actions, but rather the gravity of violations, probable corrective actions, and the normal abatement period for each requirement.

I.C. Scope

Two commenters recommended that the Order provide for a specific exclusion from the minimum standards for "remote facilities" where human life or property would not be in jeopardy. They further indicated that if an exclusion is not provided, operators would routinely request variances from minimum standards for such wells which would create unnecessary paperwork for the operator and the BLM. The purpose of the Order is to ensure control of the well and hence a conservation of the hydrocarbon resource as well as to protect public health and safety. The Order requires only a drilling operations plan for such "remote" wells and, in general, a variance from those minimum standards would not be granted.

One commenter stated that the Order should apply to Indian Mineral Development Agreements. The BLM provides technical assistance to the Bureau of Indian Affairs in the review and enforcement of these agreements. The BLM is presently developing a policy to address its operational responsibilities concerning such documents and the applicability of this Order.

It was also suggested that the Order should not apply to wells in unit agreements including American Petroleum Institute (API) unit agreements, except for those drilled on Federal or Indian lands. The applicability of this Order will be consistent with the provisions contained in individual agreements and the agency's current policy regarding the jurisdiction and enforcement of all oil and gas operating regulations for non-Federal wells committed to such agreements.

For consistency with the changes made in response to the comments on Section III.B.2.b.ii.(e), the words "or property" have been removed from the first sentence.

II. Definitions

Several comments indicated that confusion existed in use of the terms "release * * * that may endanger the public" and "potentially hazardous volume". For clarification, the term "release . . . that may endanger the public" has been removed and references are now made to the term "potentially hazardous volume" which has been defined in Section II. of the Order. The ambient air concentrations identified in this definition are derived through radius of exposure calculations and are used to determine if a potentially hazardous volume of H_2S exists.

It was recommended that a definition be included for the term "remote facilities" based on a suggested language change in the Requirements section of the Order. It is not prudent to classify wells subject to the Order by virtue of their distance from public facilities. Therefore, the suggestion was not adopted.

Authorized Representative. This term was not necessary for this Order and was removed. As a result, several definitions have been redesignated in the final rule.

Escape Rate. One commenter suggested a language change for item 1. of this definition. Such language was redundant to the criteria used in the definition of "Radius of exposure" and, therefore, was not adopted.

Two commenters felt that the use of "absolute open flow rate" (AOF) for an entire production facility was unreasonable while five commenters felt that it was unreasonable to use this standard in calculating the escape rate for a gas well. For drilling wells, the five commenters suggested alternative language of "maximum wellhead deliverability against zero back pressure." One commenter suggested

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that the operator should be allowed a choice of methods to calculate the escape rate for wells. It was also suggested that a new subcategory be developed for exploratory wells. The BLM recognizes the commenters' desire for flexibility, but believes that its obligation for the protection of public health and safety is an overriding concern. Therefore, the agency used a more conservative approach in calculating the escape rate by using an AOF determination for individual wells and the maximum daily gas handling volumes for production facilities. One commenter suggested that the operator should be given a choice of methods to calculate the "escape rate" in developed areas. The commenter is referred to the definition which allows the operator to use data from offset wells in lieu of calculations, if satisfactory to the authorized officer.

Essential Personnel. It was suggested that the term "essential personnel" be removed since non-essential personnel may be required to stay at their station when H_2S is present. The definition of "essential personnel" indicates that persons who have a necessary function when H_2S is present, would be classified as "essential personnel." Further, the Order states that all personnel shall be trained and that non-essential personnel shall be moved to a safe area once 10 ppm of H_2S in the ambient air is reached at any detection point. Therefore, this suggestion was not adopted.

Two commenters indicated that OSHA rules adequately cover essential personnel. This Order augments OSHA requirements in that it provides for the protection of essential personnel from the standpoint of maintaining control of the well for the purposes of public health and safety and conservation of the hydrocarbon resources.

Three commenters recommended that all Government personnel, including the BLM's inspectors, be subject to the same training and provisions of this Order as apply to "essential personnel." Inspectors are considered non-essential personnel for purposes of this Order. However it is BLM policy that they be properly trained and equipped prior to inspecting H_2S operations.

Gas Well. It was suggested that this definition be consistent with other BLM policy. This suggestion was adopted and the definition changed accordingly.

H_2S Drilling Operations Plan. Three commenters suggested that this term be changed to "H_2S Contingency Plan" to be consistent with other BLM regulations and Orders. The citation in the regulations at 43 CFR 3163.5–1(d) is general in nature and is supplemented by this Order. Therefore, no change is necessary. The references to H_2S Contingency Plan in Order No. 1 have been removed and replaced by H_2S Drilling Operations Plan and Public Protection Plan, as applicable. Requiring only a Drilling Operations Plan and, when necessary, a Public Protection Plan will save submission of unnecessary paperwork and is more definitive in nature.

Major Violation and *Minor Violation.* It was suggested that the violations be incorporated as guidelines only. The commenter is referred to the BLM's previous response under Section I.A. of this preamble. Two commenters recommended that a "moderate" violation level be incorporated to better utilize the authorized officer's discretionary authority and to avoid upgrading minor violations to major ones. It is the intent of the BLM to upgrade minor violations to major where warranted. The BLM has determined that it will classify violations as either major or minor as defined in 43 CFR 3160.0–5. For further justification regarding violation levels, the commenter is referred to the preamble of the final rule implementing the Federal Oil and Gas Royalty Management Act published on February 20, 1987 (52 FR 5364).

Oil Well. It was suggested that this definition be consistent with other BLM policy. This suggestion was adopted and the definition changed accordingly.

Production Facilities. For consistency with BLM policy, the words "for royalty purposes" have been removed and replaced with "approved measurement point."

Prompt Correction. It was suggested that immediate correction of all alleged noncompliances should not be required, but that many "discrepancies could be safely delayed." The inclusion of this standard is necessary to resolve those noncompliance actions which cause or threaten immediate, substantial and adverse impacts on public health and safety. Therefore, this comment was not adopted.

Radius of Exposure. One commenter pointed out that use of different methods and calculations using the Pasquill-Gifford equation for the 100 and 500 ppm radii of exposure results in different radii of exposures. The BLM recognizes this and provides for use of other models if approved by the authorized officer. The operator would be required to demonstrate the applicability and acceptability of the model to the situation. Three commenters indicated that there is a high degree of variability in air quality models recommended for use when the H_2S concentration exceeds 10 percent. One of the commenters suggested that the Pasquill-Gifford equation coupled with the other assumptions is so conservative that it could not be applied to concentrations in excess of 10 percent, and that section II.S.3. should be removed. Another commenter questioned how one of a series of models is to be selected. The BLM agrees that there is a high degree of variability between models, and therefore the operator has the option to utilize the model most applicable to the specific situation. The EPA's "Guidelines on Air Quality Models—(EPA–450/2–78–027R)" is intended to assist operators in this selection. The BLM does not agree that the Pasquill-Gifford equation is extremely conservative, but rather that its assumptions become less valid at concentrations in excess of 10 percent in stable atmospheres. Therefore, the suggestion to remove section II.S.3. was not adopted. Alternative wording was also suggested for section II.S.3. so that the operator would not be limited to those models contained in the EPA publication previously referenced. This suggestion was adopted and the language incorporated into the Order.

III. Requirements

In reference to the opening paragraph, two commenters suggested that the discretionary authority of the authorized officer be limited. One of the commenters suggested that the authorized officer's authority to require measures that vary from the minimum standards in the Order be amended to require the mutual consent of the operator. The BLM assumes a regulatory role in setting the minimum standards and this rulemaking process provides for operator input. These are minimum standards that would apply on a national basis. The authorized officer will rely on staff for any additional requirements deemed necessary on a local or geographic basis and if warranted, issue a Notice to Lessees (NTL) pursuant to 43 CFR 3164.2. All additional requirements would be subject to review pursuant to 43 CFR 3165.3. Therefore, the suggestion was not adopted. However, for purposes of clarity, the introductory paragraph in section III. was rewritten.

A.1. Several commenters suggested that when there are multiple filings for wells in a single field, the operator should be allowed to submit one Drilling Operations Plan, supplemented by the well site diagram for each well as required in Onshore Oil and Gas Order No. 1. The BLM agrees that this would save paperwork for both the operator and the authorized officer. This suggestion was adopted and expanded to include Public Protection Plans.

One commenter suggested that except where a general populace alert program is being used, the BLM should not require a Public Protection Plan for approval, but rather have the operator certify that one will be prepared and in place prior to the provisions of III.C.1.b. going into effect. The BLM has a regulatory responsibility to ensure that reasonable and prudent measures to protect public health and safety are in place before approving any action within its authority. Implementation of the suggested procedure would not fulfill that responsibility.

It was suggested that the following be required in the Drilling Operations Plan: duties, responsibilities, and procedures to be initiated at various H_2S concentrations; procedures for evacuation of personnel; agencies to be notified; and a list of medical personnel and facilities. The duties, responsibilities, and procedures for H_2S concentrations are required in section III.C.; the procedures for personnel evacuation in section III.C.3.e.; and the agencies to be notified in section III.A.3.b. of the Order. The requirements for medical personnel and facilities are covered by OSHA regulations and are not within the BLM's authority.

The scope of this section was expanded to include the BLM's intent that a single Public Protection Plan may also be submitted for a lease, communitization agreement, unit or field where applicable. To eliminate redundancy, the phrase "and the APD shall not be approved by the authorized officer" was removed from the last sentence of the first paragraph.

A.1.a. Several commenters stated that the requirement to include a statement of certification unnecessarily extends the normal contractor/operator working relationships and suggested alternative wording. The BLM agrees that certification is unnecessary since the contractor is obligated to provide such training and the operator is responsible for securing a written statement in accordance with the requirements of this Order. The phrase "of certification" has been removed from the provision.

A.1.b. Four commenters questioned the requirement of a map showing the terrain of the area surrounding the well site. It was suggested that the requirement be removed or that reference be made to Onshore Oil and Gas Order No. 1 which requires submission of a topographic map. Knowledge of the surrounding terrain is critical to evaluation of the H_2S Drilling Operations Plan. However, if the topographic map submitted in accordance with Order No. 1 is of sufficient clarity, scale and coverage, it would suffice in meeting this requirement. One commenter suggested that due to the long lead time between approval and actual drilling, the operator be allowed to submit two diagrams. The BLM agrees in part with this recommendation. If conditions change from the time an APD containing the initial diagram is approved to the time of actual drilling, a Sundry Notice with a revised diagram reflecting the necessary changes can be submitted for approval.

One commenter suggested that weather/seasonal changes be listed in this requirement. The dispersion models are conservative and deal with most temperature and weather conditions. In addition, the authorized officer may request additional information, when necessary. Therefore, this suggestion was not adopted. The same commenter suggested that "essential personnel" be specifically identified here and that all rig personnel be treated equally in the Order. The BLM is responsible only for those personnel necessary for well control (i.e., essential personnel) and OSHA is responsible for general worker safety. Therefore, the operator should have the latitude to determine which category of personnel are necessary to meet the minimum safety standards. It was also suggested that a requirement to include the location of permanent sensors and audible/visual alarms be identified here. The commenter is referred to section III.C.3.c. which specifically requires the location for such equipment.

A.1.c. Four commenters questioned the need for a complete description of the H_2S equipment/systems. They felt that it would be a burdensome submission of information. The BLM partially addressed this concern by removing the words "and their use." It is the BLM's intent for the operator to provide a complete description of specific equipment/systems required in the Order because such a description is necessary for the authorized officer to properly evaluate the acceptability of the H_2S Drilling Operations Plan to fulfill the BLM's public health and safety responsibilities.

Two commenters questioned the requirement for remote controlled chokes on all drilling wells. The BLM considers this equipment necessary for timely and efficient well control so as to minimize the release of H_2S. In areas where there are known low volume/low pressure reservoirs, variances should be requested by the operator.

Three commenters suggested that the word "permanent" in section III.A.1.c.iii. be changed. The BLM agrees that this word is not appropriate since the duration of drilling operations is short term.

It was recommended that the heading "Mud program" be changed to "Mud program and scavengers". Scavengers are a type of additive which is included in the subsection. Such a change would be repetitive and therefore, was not adopted.

A.2.a. Two commenters suggested that the operator simply calculate the radii of exposure and advise the authorized officer when the criteria in Section III.B.1. have been exceeded rather than submit the calculations. The BLM considers this information necessary to identify all facilities subject to this Order and ensure compliance with the required radius of exposure calculation methods. It is the BLM's intent to review the submission on a timely basis. Therefore, this suggestion was not adopted.

It was suggested that the respective time periods of 180 days and one year for submission of radii exposure calculations and a Pacific Protection Plan for each existing production facility be significantly shortened. The BLM considers these time periods as being reasonable and consistent with the operational equipment requirements specified in section III.D. of the Order. The commenter also suggested that the time period of 60 days for submission of a Public Protection Plan for a new production facility, where applicable, should be increased. The BLM considers 60 days to be adequate time for the preparation and submission of this plan. The 60-day requirement is also commensurate with timeframes required by the BLM for other plans (e.g. site security plans).

Two commenters suggested that water flowlines be excluded from the calculations required in this paragraph. The BLM agrees and this change has been made in the final rule.

A.2.b. Two commenters suggested various timeframes for the operator to submit an H_2S component gas analysis for each well to the authorized officer. The authorized officer has the authority under 43 CFR 3162.4–2 to require tests when necessary.

A.2.c. Several commenters stated that the notification requirement for unspecified changes in H_2S concentration or the radius of exposure was not reasonable and suggested various limitations and timeframes. The BLM agrees in part and the requirement has been changed to apply only when increases of 5 percent or more of the H_2S concentration or radius of exposure

occurs over that initially required under sections III.A.2.a. and III.A.2.b. of the Order. The 60-day requirement for notification is considered reasonable and has been retained.

A.3.b. Three commenters questioned the meaning of the phrase "that may endanger the public" and suggested alternate wording. The BLM agrees in part and replaced it with "a potentially hazardous volume" which has been defined in the Order. In addition, for purposes of clarity, the phrase "accidental release" has been changed to "any release". One commenter stated that the notification requirement is redundant with the requirements of the Superfund Amendments and Reauthorization Act (SARA), Title III. SARA, Title III does not ensure that the authorized officer will be notified and, therefore, this requirement has been retained. Two commenters questioned the need to elaborate on subsequent violations. The BLM agrees and such wording has been removed. One commenter suggested that the violation be major. The BLM is primarily concerned with adequate operator implementation of the Public Protection Plan and control of the H_2S upon detection of a release that may affect public health and safety rather than a notification requirement that does not directly affect public health and safety. Therefore, this suggestion was not adopted. It was also recommended that the criteria for reporting and the category of violation be tied to the severity of the release similar to the criteria in the current Notice to Lessees—3A. Since public endangerment is the primary criteria and not necessarily the volume of release, this suggestion was not adopted.

For purposes of consistency with the definition of "potentially hazardous volume", the term "SO_2" has been removed from this requirement. Requirements regarding SO_2 are addressed in other sections of this Order. SO_2 is not associated with ordinary release of H_2S unless H_2S is ignited. However, the BLM does not intend by deleting this reference to imply that SO_2 is not potentially hazardous.

B.1. One reviewer felt that the phrase "and special precautions taken" in the introductory paragraph is superfluous. The BLM agrees and the phrase has been removed.

It was recommended that a single Public Protection Plan be required where wells and facilities exceeded an unspecified minimum level or are located within ¼ mile of a public place. The Order provides for a single plan in section III.B.2. The recommended criteria would be more stringent than the proposed minimum standard and radii of exposure is a more reasonable criterion for public safety than distance alone. Therefore, this suggestion was not adopted.

One commenter suggested that an exception to public notification be written into Public Protection Plans and accepted where releases of H_2S are common (e.g., plant upsets). Any releases resulting in H_2S levels as defined under "potentially hazardous volume" constitute a public hazard and warrant public notification. Therefore, this suggestion was not adopted.

It was recommended that the phrase "or other areas where the public could reasonably be expected to frequent" as used in this section and other sections of the Order be changed to "or other public areas that can expect to be populated". No reason was provided and the phrase did not appear to improve clarity. Therefore it was not adopted.

B.2.a.i. Several commenters were received suggesting that the phrase "potentially hazardous release" be changed or defined. The BLM agrees and the phrase has been changed to "potentially hazardous volume". In addition, the term "SO_2" has been removed for consistency with the definition of "potentially hazardous volume".

For purposes of consistency with section III.A.1. and to clarify the BLM's intent, the phrase "For production" has been removed from the beginning of the second sentence.

B.2.a.ii. One commenter felt that release of a potentially hazardous volume of H_2S should not be classified as a violation. The Order does not provide for a violation for the incidental release of H_2S because it could occur at anytime beyond the operator's control. However, the Order does provide that, upon detection of such a release, the operator is responsible for implementing the Public Protection Plan in order to protect public health and safety. Failure to implement this plan in the event of a release constitutes a violation. The same commenter suggested that the operator should have strong input in the Public Protection Plan. Since the operator is responsible for preparing the plan, he/she is the primary contributor to the document.

The term "SO_2" has been removed for consistency with the definition of "potentially hazardous volume".

B.2.a.iii. One commenter suggested that the abatement period for workover operations be changed to 24 hours. The BLM agrees and has adopted this recommendation.

B.2.b.i. One commenter suggested that the second sentence of this paragraph be removed and wording added in the following section to allow the use of general populace alert plan as is used in Texas. Another commenter felt that the wording was ambiguous. It is the BLM's intent that alternate plans may be used and latitude for alternatives is provided in the existing wording. However, if the operator proposes to use a populace alert plan only, a variance should be requested. Further, the language provides latitude to the operator to submit an adequate plan in areas of high population density, given the variety of conditions that may occur nationwide.

B.2.b.ii.(b) Four commenters suggested the use of "exposed to H_2S concentrations of 100 ppm" in this provision since the term "area of exposure" is not defined. The suggestion was adopted in part and the wording changed to "the 100 ppm radius of exposure". For clarity, the phrases "those responsible for safety of public roadways" and " as defined by the applicability criteria in section III.B.1." were incorporated into the first sentence. Two commenters suggested removing the last sentence, since the operating provisions of the Order provide adequate protection for nearby residents, while another commenter felt that the requirement was not stringent enough to provide adequate public protection. The BLM agrees that adequate public protection measures are provided in other sections of the Order, and therefore the sentence has been removed.

B.2.b.ii.(e) One reviewer recommended that the words "by visit or letter" be added after the words "Advance briefing". This suggestion was adopted and modified to read "Advance briefings, by visit, meeting, or letter . . ." Several commenters suggested that the phrase "or things that may be endangered" be removed from the end of the section since one of the primary purposes of the Order is to protect the public. The BLM agrees and it has been removed.

B.2.b.ii.(g) In order to clarify the BLM's intent to provide protection from the hazards of SO_2 and for consistency with section III.C.4.a.iv., a reference to SO_2 monitoring has been added for inclusion in the Public Protection Plan.

C.1. One commenter expressed confusion over the applicability of the 100 ppm in the gas stream criterion and the 20 ppm ambient concentration and stated that the Order appears to differ from the criteria specified in Onshore Oil and Gas Order No. 2. The reviewer is directed to the General Comments section of this preamble for clarification on the applicability criteria. The 10 ppm ambient concentration for taking measures to protect personnel is based on the revised OSHA criteria published in the Federal Register on January 19, 1989 (54 FR 2490). For consistency, the BLM will make appropriate changes to Order No. 2.

It was suggested that the Drilling Operations Plan be available at the well site only when operations are actually being conducted. The BLM agrees and the words "during operations" have been added to this section. The section has been further expanded to make clear when the operator is subject to this requirement.

C.1.b. One commenter disagreed that H_2S training should be completed and equipment be made operational at 500 feet above or 3 days prior to the first potential H_2S zone while another commenter endorsed the requirement, but suggested that the violation be classified as minor. It is critical that operating personnel be adequately trained a reasonable amount of time prior to the date it is expected that H_2S will be encountered so that they can respond competently and quickly to protect public health and safety. The BLM considers the requirement reasonable and that the violation classification for failure to take these measures is consistent with the definition of "major".

It was recommended that the caveat of "or the atmospheric concentration of H_2S reaches 10 ppm" be added to the criteria in this section. The 100 ppm criterion is used solely for determining which wells are subject to the provisions of this Order, and should not be confused with the ambient standards to which the operator is subject once the Order is in effect. Since this section deals with the basic applicability of the Order rather than ambient concentration, this suggestion was not adopted.

It was recommended that the phrase "unless detrimental to well control" be removed from subsection i. The BLM believes that situations do exist where shutting the well in may be detrimental to well control, which is one of the primary lines of defense to prevent a release of a hazardous volume of H_2S gas. Therefore, the suggestion was not adopted.

One reviewer suggested that for consistency, the time periods for notifying the authorized officer as used in this section should be stated in terms of business days. The BLM agrees and the wording has been changed in subsection iii. Time periods for corrective actions are properly stated as hours or calendar days.

Two commenters suggested that the authorized officer be authorized to approve interim resumption of operations prior to the requirements being met in this section where the operator can show that adequate safeguards are being employed to protect the public. It was recommended that the words "general populace alert plan" also be inserted here. The BLM considers the minimum standards to be reasonable. In addition, the authorized officer may approve resumption of drilling operations in emergency situations, or a variance could be requested by the operator. Therefore, these suggestions were not adopted.

C.2.a. Two commenters disagreed that two means of egress should be required at all well sites. The BLM considers this requirement important to maximize safe egress from drilling and completion sites. The Order provides for only one road and a foot path when a secondary road is not practical. Three commenters suggested that the violation should be changed from major to minor. The Bureau agrees with this recommendation since failure to meet this requirement does not meet the criteria for a major violation as defined in this Order.

C.2.b. Two reviewers suggested that the violation be changed from major to minor. The BLM agrees with this recommendation since failure to meet this requirement does not meet the criteria for a major violation as defined in this Order.

Two commenters stated that secondary escape routes are just as important in workover operations as they are for drilling and completion operations. The BLM believes that more unknown factors such as H_2S concentration, pressures, and flow rates exist in drilling and completion operations and therefore, require more safety contingencies.

C.3.a. One commenter reiterated earlier concerns that the BLM is establishing recommended practices as enforceable regulations here. The commenter is referred to the discussion in this preamble on section 1.A.

Three commenters suggested that the requirement to "certify" training of all personnel be removed for various reasons related to contract relationships and numerous suggestions for alternate wording were made. The BLM recognizes the potential contractual problems associated with the word "certify" and has replaced it with the word "ensure".

Two commenters suggested that the training requirements should apply only to essential personnel. The BLM believes that all personnel working around H_2S should be trained although additional provisions are made for "essential" personnel. Therefore, this suggestion was not adopted.

One commenter questioned the jurisdiction of this Order since specific operations were not listed. This Order extends to the same operations that are subject to the oil and gas regulations contained in 43 CFR part 3160.

It was suggested that the phrase "or its equivalent" in subsection i. be removed. No rationale was provided and since the driller's log recommended by the International Association of Drilling Contractors is not used in all geographic areas, this suggestion was not adopted.

It was recommended that the violation in subsection iii. be changed from major to minor. The BLM agrees with this recommendation since failure to meet this requirement does not meet the criteria for a major violation as defined in this Order.

C.3.b.i. Several commenters suggested that the word "ensure" be changed to "require" for various reasons relating to the operator's ability to oversee subcontractors. It is the BLM's intent that the word "ensure" as used in this Order means that an operator will mointor contractor/subcontractor operations on site such that they meet the minimum standards as set forth in this Order. Therefore, this suggestion was not adopted.

It was recommended that the word "shall" be changed to "must" with respect to providing a breathing apparatus for the derrickman. The word "shall" means that it is required, and therefore this suggestion was not adopted. It was also suggested that provisions for a line from a cascade system be added here. The Order does not preclude the use of this system. However, the BLM considers this proposal to be unreasonable as a minimum standard. Therefore, this suggestion was not adopted.

One commenter suggested that the Order specifically require the use of "pressure-demand type" breathing apparatus. The cited standard (ANSI) Z88.2–1980) includes this requirement as well as other standards for this equipment. This standard sufficiently describes the requirements; however, this section of the Order was modified to clarify that all working equipment must be a pressure-demand type.

The first sentence of this requirement was modified to clarify that the curent edition of the ANSI standard is applicable.

C.3.b.ii. It was recommended that breathing apparatus be required for all personnel. The BLM believes that a prudent operator will provide equipment for all personnel, but as a minimum standard, given the BLM's limited authority, it will be required for essential personnel only.

C.3.b.iii. Two commenters suggested that the violation for a lack of communication devices should be changed from major to minor. The BLM considers communication essential to the proper implementation of a Drilling Operations and/or Public Protection Plan. Since communication has a direct bearing on public health and safety, the violation of major was retained.

C.3.c. Three commenters suggested that the threshold limits for the visual and audible alarms of 10 and 15 ppm, respectively, were not appropriate, especially the 15 ppm level. The BLM recognizes the standard of 20 ppm as used in industry and advocated by the American Petroleum Institute. However, to be consistent with the Federal OSHA requirements, the BLM adopted the limits of 10 ppm time-weighted average and 15 ppm short-term exposure for H_2S.

It was recommended that a sensor be required in the cellar in lieu of the bell nipple, and that a sensor be placed in the mud house. It is logical that H_2S would break out at the bell nipple and be sensed earlier than in the cellar itself. A sensor at the bell nipple should sense any H_2S breaking out of the mud before it reaches the shale shaker. Therefore, this suggestion was not adopted.

One commenter suggested that a requirement for a public address system be added. This requirement may be appropriate for confined operations but not in unconfined areas such as the majority of onshore locations. The majority of onshore locations do not have camp facilities associated with the drilling operation, and for those that do, the authorized officer may require such a provision on a site-specific basis. Further, the briefing areas provide a place for communication with workers. Therefore, this suggestion was not adopted. The same commenter also stated that testing of the monitoring equipment to manufacturer's standards was not appropriate since it would allow the manufacturer to determine testing and calibration standards. The BLM currently considers the manufacturer's recommended standards to be reasonable as minimum standards for testing. Another commenter suggested that the Order incorporate calibration standards. BLM agrees and modified the text to include the calibration of H_2S detection and monitoring equipment in accordance with the manufacturer's recommendation. Also, the Minerals Management Service of the Department of the Interior is conducting an evaluation of calibration frequencies. BLM will consider the results of this evaluation and possibly develop calibration frequency standards. Any alternative methods of calibration or suggestions regarding calibration frequency requirements may be sent to the Director of BLM at the address specified in the beginning of this preamble.

C.3.d. One commenter suggested that the wind direction indicators be placed at the briefing areas since they may not be visible if the light plant fails. This possibility was considered, and the present wording "shall be visible at all times" provides the operator with latitude to meet this requirement on a site-specific basis. Therefore, this suggestion was not adopted.

Two commenters suggested that it may be necessary to have two signs posted on the access routes leading to a drilling site to allow large vehicles or those with trailers adequate time and space to turn around safely. This suggestion was adopted in part and the provision has been amended to allow vehicles adequate opportunity to turn around prior to reaching the well site.

Two commenters expressed concern as to the requirement for bilingual or multilingual signs. One commenter questioned the authorized officer's knowledge to determine where such a requirement is appropriate and the other requested that the current, in-place signs be accepted or grandfathered to minimize economic impacts to industry. The authorized officer is aware of those areas where bilingual or multilingual signing would be appropriate and the number of areas is considered to be minimal. Therefore, the economic impact would be minimal.

Several commenters stated that the requirement to have essential personnel put on their masks, move non-essential personnel, and display red flags when 10 ppm of H_2S is detected at any sensing point was unnecessarily restrictive. The commenters further suggested alternative wording. The BLM believes that such measures are essential to ensure adequate well control and public health and safety. The BLM agrees with one reviewer that operations should be allowed to proceed once these measures are implemented. This recommendation was incorporated by separating part of the language from section 3.C.d.vii and placing it into the new section 3.C.e. which provides for securing the area and allowing operations to proceed once non-essential personnel have been removed and essential personnel have donned protective breathing apparatus. One commenter suggested that this requirement only be applicable to detection points as required by the Order. The BLM believes that any prudent operator will not ignore readings from any detection point which indicates a problem. These requirements are minimum standards, and inspection and enforcement will be in accordance with the approved Application for Permit to Drill. Therefore, this suggestion was not adopted.

C.3.e. For purposes of clarity, the phrase "an area secured and conditions are below 10 ppm" has been removed and replaced with the word "accomplished".

C.4.a. It was suggested that well testing and swabbing during completion and workover operations should be specifically discussed and the operator should be granted more flexibility. The BLM believes there is little basic difference in operating procedures here and that the minimum standards are applicable to workovers and completions. Furthermore, where differences do exist, they have been stated. Therefore, this suggestion was not adopted.

C.4.a.i. Several commenters disagreed that the use of a mud system should be the minimum standard for drilling, completions, and workovers. All commenters contended that aerated mud and non-mud systems can be used in some situations, primarily in low-pressure H_2S zones. The BLM recognizes that these situations exist. However, in the interest of public health and safety, the use of mud systems as the minimum standard is considered appropriate. The operator may request a variance in those cases cited by the commenters.

C.4.a.ii. Two commenters suggested that this provision be amended to read "where operating pressures are sufficient". Neither commenter provided any rationale for their suggestion and the term "sufficient" is ambiguous. The existing wording as a minimum standard meets the intent of protecting public health and safety.

C.4.a.iii. Three commenters suggested that the flare line lengths should be changed to 100 feet to be consistent with Order No. 2. Flare lines of 150 feet are considered reasonable for H_2S locations due to the additional risk involved and that larger locations may be necessary. The BLM does not agree that this provision needs to be consistent with Order No. 2 since the two Orders deal with different conditions. Therefore, this suggestion was not adopted.

C.4.a.v. Two commenters felt that this requirement was unnecessary and that the violation should not be major. The BLM considers that this measure is reasonable for the protection of public health and safety and that the potential hazard to the public if it is violated is significant. Therefore, the violation gravity of major is appropriate.

C.4.a.vi. It was suggested that the wording be changed to require SO_2 monitoring equipment only when there is a reasonable expectation that the public may be exposed to 2 ppm or greater of SO_2. It is the BLM's intent that this provision include "essential personnel" who are necessary for well control as well as the public. Therefore, this suggestion was not adopted.

One commenter stated that the 2 ppm SO_2 level should not be a threshold, but a continuous level. It is the BLM's intent that the minimum standards used in this Order are for sustained levels. In addition, the reference to 2 ppm or greater of SO_2 in parentheses was removed since it was unnecessary.

C.4.a.vii. One commenter pointed out that the BLM did not use any SO_2 applicability criteria in determining when a public protection plan is to be submitted. The BLM used only H_2S concentration in developing the applicability criteria, but recognizes that SO_2 results from flaring the H_2S and is hazardous. Therefore, keying solely on H_2S also includes safety measures for SO_2 as a burned by-product of H_2S.

C.4.a.viii. Three commenters suggested that the requirement for a remote controlled choke for all operations was unnecessary and made various suggestions as to the conditions in which it should be required, including specific pressures, abnormal pressures, or proximity to public areas. In addition, it was suggested that the violation gravity be changed from major to minor. The remote controlled choke is considered necessary for well control not only for purposes of public health and safety, but also for conservation of the resources. For these reasons, the violation gravity has been retained as major.

C.4.a.ix. Several commenters suggested that requiring rotating heads for all exploratory wells is overly restrictive and that they should only be required when drilling in an underbalanced condition or where formation pressure cannot be reliably estimated. Exploratory drilling necessarily involves a high degree of uncertainty as to the pressures, conditions, or formations that may be encountered during drilling operations. Therefore, in the interest of public health and safety this requirement is considered necessary.

C.4.b.i. Two commenters urged that the requirement for maintaining a pH of 10 or greater in mud systems containing polymers be eliminated or an exception be granted for polymer muds. The commenters failed to be specific about the type of polymer system and polymer use. The term "polymer mud" includes many different types and chemically different polymer compounds. Since most polymers are mainly used for viscosity development, versus fluid loss control or shale stabilization, higher pH in many polymer systems yields maximum viscosity development. Individual mud system proposals contained in an Application for Permit to Drill (APD) are required to consider the necessity of higher mud pH when inhibiting H_2S returns to the surface and to weigh the expense of eliminating some mud additives not conducive in high pH mud environments to those that are. This minimum standard also contains a provision for the use of lesser pH muds if formation conditions or mud types justify it. The commenters also stated that corrosion control can be achieved by means other than increased pH. Another purpose of increasing pH is to prevent H_2S from reaching the surface by formation of sulfide radicals and increased scavenger efficiency. Therefore, the minimum standard for maintaining a mud pH of at least 10 is retained unless specifically approved in the APD or through a variance request.

It was suggested that the Order state that clear fluids may be used for workover and completion activities when such fluids are adequate for well control. The Order is silent on this point, and therefore such fluids may be used during those activities.

The first sentence has been reworded to clarify the BLM's intent to require a pH of 10 as a minimum standard, unless formation conditions dictate otherwise. In addition, the word "prevent" has been changed to "minimize" to more accurately describe the effects of pH with respect to H_2S.

C.4.b.iii. One commenter was confused by this requirement since it appeared to duplicate C.4.b.i. There is a significant differences between controlling the pH of the mud and the addition of scavengers and additives to the mud to control surface observed H_2S. It is because additional measures may be necessary when drilling unknown formations to control H_2S reaching the surface even if the 10 ph standard is met. The commenter also suggested that the violation gravity be changed from major to minor but provided no rationale. This suggestion was not adopted.

C.4.c. It was suggested that the word "suitable" in the first sentence be replaced with "designed per the requirements of API Recommended Practice—49 (RP–49)". This Order and RP–49 both utilize NACE standards. However, RP–49 utilizes additional standards not applicable to this requirement, therefore the more specific NACE standards have been referenced.

Several commenters suggested that the word "prevent" in the first sentence of the second paragraph be changed to "minimize" since these measures do not assure the prevention of stress corrosion cracking or embrittlement. The BLM agrees and the wording was changed.

Two commenters pointed out that NACE Standard MR–01–75 is not applicable in concentrations of less than 100 ppm of H_2S. The BLM recognizes this and it should be understood that the requirements of this Order do not apply unless 100 ppm or greater of H_2S is anticipated in the gas stream. However, this standard is deemed appropriate when the applicability criteria for this Order have been met.

It was suggested that the last sentence of the second paragraph be removed since obtaining the manufacturer's verification for H_2S service may be difficult for some existing equipment. The BLM does not see a reasonable alternative approach to determining suitability for H_2S service and considers it necessary for protecting public health and safety. Further, such verification would be difficult only in a very few cases, resulting in a negligible impact to industry overall. Therefore, the BLM considers this requirement to be reasonable and the suggestion was not adopted.

The fourth sentence of this requirement was modified to clarify that the current edition of the NACE standard is applicable.

C.4.d. Two commenters suggested that the paragraph be changed to allow for drill stem tests under certain conditions other than closed-chamber tests during daylight hours. The BLM recognizes that with proper planning and use of appropriate facilities, these tests can be conducted under other conditions. The existing language in the Order provides this latitude, and therefore no changes are necessary.

It was suggested that this paragraph be more specific to ensure that all gas is run through a separator and flared. The requirements of section III.C.4. are applicable to all operations, including testing, completions, and workovers. Therefore, no changes are necessary.

D.1.a. One commenter suggested that the words "that meet the criteria for requirement of H_2S controls but" be inserted between the words "facilities" and "which" to clarify what facilities are meant by the word "all". The initial criterion of 100 ppm H_2S in the gas stream for the applicability of this Order is sufficiently clear to determine the facilities included in this paragraph. Therefore, this suggestion was not adopted.

It was suggested that the timeframe for conformance be changed from 1 year to 6 months. Information submitted to the BLM indicates that it may take as long as 6 months to acquire some of the necessary equipment and since the commenter offered no rationale for the suggestion, the 1-year requirement is considered reasonable.

One commenter suggested that this paragraph make it clear to which equipment this requirement applies. The commenter is referred to the response provided under D.1.a. above.

D.2. It was recommended that the criteria for applicability be changed from 500 to 100 ppm H_2S for storage tank vapors. The commenter did not provide any rationale and the data submitted in response to proposed Order No. 2 in 1984 indicates that with the volumes of gas involved and using standard operating procedures, less than 500 ppm in this situation does not constitute a hazard to public health and safety.

D.2.d. Two commenters suggested that signs with colors of yellow and black should also be allowed under this requirement to be consistent with III.C.3.d.iii. The BLM believes that during production, H_2S hazards are known to be present. Therefore, danger signs (red, white and black) are appropriate rather than using caution signs (yellow and black) which are required during the drilling stage when H_2S may be, but is not necessarily known to be, present. Therefore, this suggestion was not adopted. One commenter suggested that it should be left to the operator's discretion as to the appropriate use of bilingual or multilingual signs. The authorized officers of the Bureau are very cognizant of those areas where such signs are appropriate, and therefore this suggestion was not adopted.

D.2.f. One commenter expressed that flexibility should be provided for those areas where the population adjacent to the H_2S operations is sparse and primarily consists of businesses associated with the oil and gas industry. This provision is intended to protect the general public, and if a situation as described occurs, a variance with appropriate alternate measures could be approved by the authorized officer.

Two commenters suggested that the words "other equivalent means" be added to this paragraph and section III.D.3.c. to provide more flexibility to the operator. This minimum requirement is considered reasonable when the specified criteria are met. The BLM recognizes that special cases will arise where alternative measures may be acceptable but has determined that a variance should be requested in such cases.

In reference to this paragraph and section III.D.3.c., one commenter expressed the view that the criteria of being within ¼ mile of an incorporated area may not be reasonable since some municipalities have incorporated large amounts of undeveloped land. The BLM recognizes this concern, but this would not be true for the majority of field situations. In situations where it does occur, the operator should request a variance.

Two commenters stated that the requirement to keep gates locked could endanger authorized personnel working at the site. The BLM agrees and has added Section III.D.2.g. to make it clear that the gates are to be locked when unattended by the operator. This section also specifies the degree of violation, corrective action, and the normal abatement period.

D.3.b. Several commenters questioned the reasonableness of requiring danger signs at all points where the well flowlines and lease gathering lines cross public or lease roads. They expressed concern that this requirement would cause an unnecessary cost and create potential visual degradation. They also stated that the placement of a sign at the entrance to each field or lease area would be adequate. It is the BLM's intent to identify sources where 100 ppm or more of H_2S in the gas stream may constitute a potential hazard. Therefore, the signing requirement is considered a reasonable measure to protect public health and safety. One of the same commenters also questioned the scope of this requirement. This requirement is applicable to all flowlines up to the approved measurement point.

D.3.d. For consistency with section III.D.2.g., the same requirement concerning locked gates has been established for production facilities under section III.D.3.d. Subsequent sections were redesignated accordingly.

D.3.e. (Redesignated D.3.f.) One commenter questioned what is meant by a "secondary means of immediate well control". The BLM intends this to mean that it is required to be on the stem of the christmas tree and that a wing valve would not meet this requirement. The same commenter recommended that this provision should only be applied to high volume/high pressure wells. All wells subject to the terms of this Order have the potential to create a hazardous environment, not just high volume/high pressure wells. Therefore, this suggestion was not adopted.

Two commenters also suggested that the requirement should be more flexible by specifically allowing the use of remotely operated valves triggered by a fixed ambient monitor. The existing wording provides the flexibility requested, and therefore this suggestion was not adopted.

It was recommended that the requirement for automatic shut-in equipment should be at the discretion of the authorized officer. However, the commenter did not offer any rationale for this suggestion. The BLM considers this requirement to be the appropriate minimum standard in order to promote conservation of the oil and gas resource, protect public health and safety, and prevent environment degradation. Therefore, this suggestion was not adopted.

One commenter suggested that existing wells be "grandfathered" and reviewed on a case-by-case basis with respect to the secondary means of well control specified in this section and the automatic safety valves or shutdowns specified in D.3.g. (Redesignated D.3.h.). Existing wells potentially constitute the majority of the hazards and to "grandfather" them does not meet one of the primary purposes of this Order, which is to protect public health and safety. Therefore, this suggestion was not adopted.

D.3.f. (Redesignated D.3.g.) It was recommended that all existing equipment that is in a safe working condition be specifically accepted as meeting the metallurgy standards, and that equipment which is not in a safe working condition be replaced. By safe the BLM means the equipment is operating as intended. The BLM agrees with this recommendation and has incorporated wording under section D.1.a. to exempt certain production equipment from metallurgical requirements. This exemption would not apply to new operational equipment, equipment that is unsafe, or repair and/or replacement parts.

D.3.g. (Redesignated D.3.h.) One commenter expressed that this requirement was ambiguously worded and suggested alternate wording. The BLM adopted the suggestion in part by adding "or other appropriate shut-in controls for wells equipped with artificial lifts" at the end of the sentence.

It was noted that no requirement existed for utilizing the safety valves or shutdowns as required by this section. Therefore, a section requiring these controls to be activated upon a release of a potentially hazardous volume of H_2S was created and numbered as section III.D.3.i. in the final rule. All subsequent sections were redesignated accordingly.

D.3.h. (Redesignated as III.D.1.c.) The provisions of this section were intended to apply to both production facilities and storage tanks. Therefore, this section was moved and redesignated as section III.D.1.c. in the final rule. In addition, the wording was slightly modified to clarify the intent of this requirement.

Several commenters stated that the requirement for vapor recovery when the H_2S concentration reached 10 ppm or more at 50 feet from the facility was overly restrictive primarily because it does not constitute a hazard at that level, and the applicability criteria for the Order of 100 ppm in the gas stream was sufficiently restrictive. The 100 ppm concentration in the gas stream cannot be equated to the 10 ppm radius of exposure. A 10 ppm ambient concentration of H_2S implies a flow that could subject the public to a sustained level of H_2S. The 10 ppm level is the maximum acceptable for 8-hour working conditions, but is not acceptable for general public exposure. Further, such facilities are not fenced unless the criteria in D.2.f. or D.3.c. are met. Therefore, the requirement is considered reasonable in view of the concern for public health and safety.

It was suggested that the word "boundary" be added here to clarify the external limit of the facility. The term "production facility" has been adequately defined in the Order, and therefore the suggestion was not adopted.

D.3.i. (Redesignated (D.3.j.) Two commenters stated that although they supported the intent of this section, they felt the wording was awkward and questioned the authorized officer's qualifications to specify the design for modifying the facility. The BLM agrees that the wording is awkward. Further the intent was not to have the authorized officer specify the facility design. Therefore, the wording was changed for clarity and to indicate that the authorized officer will retain approval authority over, but not specify the design for modifying, the facility.

One commenter suggested that the phrase "or other areas where the public could reasonably be expected to frequent" needed to have limits placed on it. The BLM disagrees and this suggestion was not adopted.

It was suggested that this requirement be amended to make it clear that the limits do not apply in emergency or upset conditions. The BLM has partially adopted this suggestion by adding wording to show that it applies to sustained concentrations, but that modifications are subject to review by the authorized officer.

D.4. It was noted that no Violation, Corrective Action, or Normal Abatement Period existed for this requirement. These provisions were added in the final rule.

IV. Variances from Requirements

For consistency with Order No. 2, two commenters suggested that this Order specifically provide for verbal variances to be followed up by written requests. This Order, where appropriate, makes provisions for verbal variances, so that a general provision to that effect is not necessary here. It was also suggested that the Order require that variances be documented for the protection of the operator. This is provided for in the section which requires that variances "shall be submitted in writing" to the authorized officer.

Editorial and grammatical corrections and changes have been made as necessary.

The principal authors of this final rule are Chris Hanson of the Milwaukee District Office, Wisconsin; Hank Szymanski of the Washington, DC, Office; Bill Douglas of the Wyoming State Office, Ken Baker of the Great Falls Resource Area Office, Montana and Jim Rasmussen, formerly of the Elko District Office, Nevada, assisted by Al Riebau of the Wyoming State Office and the Orders Task Group, Mike Pool of the Division of Legislation and Regulatory Management, and the Office of the Solicitor, Department of the Interior.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The information collection requirements contained in this rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and are included in one of the following approvals: 1004-0134, 1004-0135 or 1004-0136.

List of Subjects in 43 CFR Part 3160

Government contracts, Mineral Royalties, Oil and gas exploration, Oil and gas production, Public lands-mineral resources, Indian lands-mineral resources, Reporting requirements.

Under the authorities stated below, part 3160, Group 3100, subchapter C, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

Dated: October 12, 1990.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

PART 3160—[AMENDED]

1. The authority citation for 43 CFR part 3160 continues to read:

§ 3164.1 [Amended]

2. Section 3164.1(b) is amended by revising the table which is part of § 3164.1(b):

* * * * *

(b) * * *

Order No.	Subject	Effective date	Federal Register reference	Supersedes
1.	Approval of operations	Nov. 21, 1983	48 FR 48916, and 48 FR 56226.	NTL-6.
2.	Drilling operations	Dec. 19, 1988	53 FR 46796.	None.
3.	Site security	Mar. 27, 1989	54 FR 8060.	NTL-7.

Order No.	Subject	Effective date	FEDERAL REGISTER reference	Supersedes
4.	Measurement of oil	Aug. 23, 1989	54 FR 8086.	None.
5.	Measurement of Gas	March 27, 1989 for new facilities; August 23, 1989 for existing facilities measuring 200 MCF or more per day of gas; February 26, 1990 for existing facilities producing less than 200 MCF per day of gas.	54 FR 6100.	None.
6.	Hydrogen sulfide operations	January 22, 1991	56 FR	None.

Note: Numbers will be assigned by the Washington Office, Bureau of Land Management, to additional Orders as they are prepared for publication and added to this table.

Authority: The Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 et seq.); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Act of May 31, 1930 (30 U.S.C. 301–306); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396g); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457); Attorney General's Opinion of April 2, 1941 (40 Op.Atty.Gen. 41); the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 et seq.); the Act of December 12, 1980 (42 U.S.C. 6508); the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 et seq.).

Appendix—Text of Oil and Gas Order No. 6

Note: This appendix is published for information only and will not appear in the Code of Federal Regulations.

I. Introduction.
A. Authority.
B. Purpose.
C. Scope.
II. Definitions.
III. Requirements.
A. Applications, Approvals, and Reports.
B. Public Protection.
C. Drilling/Completion/Workover Requirements.
D. Production Requirements.
IV. Variances from Requirements.
Attachments

I. Introduction

A. Authority

This Order is established pursuant to the authority granted to the Secretary of the Interior through various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR part 3160. More specifically, this Order implements and supplements the provisions of § 3162.1—General Requirements; § 3162.5–1(a)(c)(d)—Environmental Obligations; § 3162.5–2(a)—Control of Wells; and § 3162.5–3—Safety Precautions.

43 CFR 3164.1 specifically authorizes the Director, Bureau of Land Management, to issue Onshore Oil and Gas Orders, when necessary, to implement or supplement the operating regulations and provides that all such Orders shall be binding on the operator(s) of all Federal and Indian (except Osage Tribe) oil and gas leases which have been, or may hereafter be, issued. The authorized officer has the authority pursuant to 43 CFR 3161.2 to implement the provisions of this Order, require additional information, and approve any plans, applications, or variances required or allowed by the Order.

The authorized officer may, pursuant to 43 CFR 3164.2, issue Notices to Lessees and Operators (NTL's), after notice and comment, to supplement or provide variances of this Order as necessary to accommodate special conditions on a State or area-wide basis. Further information concerning variances may be found in section IV. of this Order.

B. Purpose

The purpose of this Order is to protect public health and safety and those personnel essential to maintaining control of the well. This Order identifies the Bureau of Land Management's uniform national requirements and minimum standards of performance expected from operators when conducting operations involving oil or gas that is known or could reasonably be expected to contain hydrogen sulfide (H_2S) or which results in the emission of sulfur dioxide (SO_2) as a result of flaring H_2S. This Order also identifies the gravity of violations, probable corrective action(s), and normal abatement periods.

C. Scope

This Order is applicable to all onshore Federal and Indian (except Osage Tribe) oil and gas leases when drilling, completing, testing, reworking, producing, injecting, gathering, storing, or treating operations are being conducted in zones which are known or could reasonably be expected to contain H_2S or which, when flared, could produce SO_2, in such concentrations that upon release they could constitute a hazard to human life. The requirements and minimum standards of this Order do not apply when operating in zones where H_2S is presently known not to be present or cannot reasonably be expected to be present in concentrations of 100 parts per million (ppm) or more in the gas stream.

The requirements and minimum standards in this Order do not relieve an operator from compliance with any applicable Federal, State, or local requirement(s) regarding H_2S or SO_2 which are more stringent.

II. Definitions

A. "Authorized officer" means any employee of the Bureau of Land Management authorized to perform the duties described in 43 CFR Groups 3000 and 3100 (3000.0–5).

B. *Christmas tree* means an assembly of valves and fittings used to control production and provide access to the producing tubing string. The assembly includes all equipment above the tubing-head top flange.

C. *Dispersion technique* means a mathematical representation of the physical and chemical transportation, dilution, and transformation of H_2S gas emitted into the atmosphere.

D. *Escape rate* means that the maximum volume (Q) used as the escape rate in determining the radius of exposure shall be that specified below, as applicable:

1. For a production facility, the escape rate shall be calculated using the maximum daily rate of gas produced through that facility or the best estimate thereof;

2. For gas wells, the escape rate shall be calculated by using the current daily absolute open-flow rate against atmospheric pressure;

3. For oil wells, the escape rate shall be calculated by multiplying the producing gas/oil ratio by the maximum daily production rate or best estimate thereof;

4. For a well being drilled in a developed area, the escape rate may be determined by using the offset wells completed in the interval(s) in question.

E. *Essential personnel* means those on-site personnel directly associated with the operation being conducted and necessary to maintain control of the well.

F. *Exploratory well* means any well drilled beyond the known producing limits of a pool.

G. *Gas well* means a well for which the energy equivalent of the gas produced, including the entrained liquid hydrocarbons, exceeds the energy equivalent of the oil produced.

H. *H_2S Drilling Operations Plan* means a written plan which provides for safety of essential personnel and for maintaining control of the well with regard to H_2S and SO_2.

I. *Lessee* means a person or entity holding record title in a lease issued by the United States (3160.0–5).

J. *Major violation* means noncompliance which causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income (3160.0–5).

K. *Minor violation* means noncompliance which does not rise to the level of a major violation (3160.0–5).

L. *Oil well* means a well for which the energy equivalent of the oil produced exceeds the energy equivalent of the gas produced, including the entrained liquid hydrocarbons.

M. *Operating rights owner* means a person or entity holding operating rights in a lease issued by the United States. A lessee may also be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title (3160.0–5).

N. *Operator* means any person or entity including but not limited to the lessee or operating rights owner who has stated in writing to the authorized officer that he/she is responsible under the terms of the lease for the operations conducted on the leased lands or a portion thereof (3160.0–5).

O. *Potentially hazardous volume* means a volume of gas of such H_2S concentration and flow rate that it may result in radius of exposure-calculated ambient concentrations of 100 ppm H_2S at any occupied residence, school, church, park, school bus stop, place of business or other area where the public could reasonably to expected to frequent, or 500 ppm H_2S at any Federal, State, County or municipal road or highway.

P. *Production facilities* means any wellhead, flowline, piping, treating, or separating equipment, water disposal pits, processing plant or combination thereof prior to the approved measurement point for any lease, communitization agreement, or unit participating area.

Q. *Prompt correction* means immediate correction of violations, with operation suspended if required at the discretion of the authorized officer.

R. *Public Protection Plan* means a written plan which provides for the safety of the potentially affected public with regard to H_2S and SO_2.

S. *Radius of exposure* means the calculation resulting from using the following Pasquill-Gifford derived equation, or by such other method(s) as may be approved by the authorized officer:

1. For determining the 100 ppm radius of exposure where the H_2S concentration in the gas stream is less than 10 percent:

$$X = [1.589)(H_2S \text{ concentration})(Q)]^{(0.6223)}$$

or

2. For determining the 500 ppm radius of exposure where the H_2S concentration in the gas stream is less than 10 percent:

$$X = [(0.4546)(H_2S \text{ concentration})(Q)]^{(0.6223)}$$

where:

X = radius of exposure in feet;
H_2S Concentration = decimal equivalent of the mole or volume fractions (percent) of H_2S in the gaseous mixture;
Q = maximum volume of gas determined to be available for escape in cubic feet per day (at standard conditions of 14.73 psia and 60°F).

3. For determining the 100 ppm or the 500 ppm radius of exposure in gas streams containing H_2S concentrations of 10 percent or greater, a dispersion technique that takes into account representative wind speed, direction, atmospheric stability, complex terrain, other dispersion features shall be utilized. Such techniques may include, but shall not be limited to one of a series of computer models outlined in The Environmental Protection Agency's "Guidelines on Air Quality Models—(EPA–450/2–78–027R)."

4. Where multiple H_2S sources (i.e., wells, treatment equipment, flowlines, etc.) are present, the operator may elect to utilize a radius of exposure which covers a larger area than would be calculated using radius of exposure formula for each component part of the drilling/completion/workover/production system.

5. For a well being drilled in an area where insufficient data exists to calculate a radius of exposure, but where H_2S could reasonably be expected to be present in concentrations in excess of 100 ppm in the gas stream, a 100 ppm radius of exposure equal to 3,000 feet shall be assumed.

T. *Zones known to contain H2S* means geological formations in a field where prior drilling, logging, coring, testing, or producing operations have confirmed that H_2S-bearing zones will be encountered that contain 100 ppm or more of H_2S in the gas stream.

U. *Zones known not to contain H2S* means geological formations in a field where prior drilling, logging, coring, testing, or producing operations have confirmed the absence of H_2S-bearing zones that contain 100 ppm or more of H_2S in the gas stream.

V. *Zones which can reasonably be expected to contain H2S* means geological formations in the area which have not had prior drilling, but prior drilling to the same formations in similar field(s) within the same geologic basin indicates there is a potential for 100 ppm or more of H_2S in the gas stream.

W. *Zones which cannot reasonably be expected to contain H2S* means geological formations in the area which have not had prior drilling, but prior drilling to the same formations in similar field(s) within the same geologic basin indicates there is not a potential for 100 ppm or more of H_2S in the gas stream.

III. Requirements

The requirements of this Order are the minimum acceptable standards with regard to H_2S operations. This Order also classifies violations as major or minor for purposes of the assessment and penalty provisions of 43 CFR part 3163, specifies the corrective action which will probably be required, and establishes the normal abatement period following detection of a major or minor violation in which the violator may take such corrective action without incurring an assessment. However, the authorized officer may, after consideration of all appropriate factors, require reasonable and necessary standards, corrective actions and abatement periods that may in some cases, vary from those specified in this Order that he/she determines to be necessary to protect public health and safety, the environment, or to maintain control of a well to prevent waste of Federal mineral resources. To the extent such standards, actions or abatement periods differ from those set forth in this Order, they may be subject to review pursuant to 43 CFR 3165.3.

A. Applications, Approvals, and Reports

1. Drilling

For proposed drilling operations where formations will be penetrated which have zones known to contain or which could reasonably be expected to contain concentrations of H_2S of 100 ppm or more in the gas stream, H_2S Drilling Operation Plan and if the applicability criteria in section III.B.1 are met, a Public Protection Plan as outlined in section III.B.2.b, shall be submitted as part of the Application for Permit to Drill (APD) (refer to Oil and Gas Order No. 1). In cases where multiple filings are being made with a single drilling plan, a single H_2S Drilling Operations Plan and, if applicable, a single Public Protection Plan may be submitted for the lease, communitization agreement, unit or field in accordance with Order No. 1. Failure to submit either the H_2S Drilling Operations Plan or the Public Protection Plan when required by this Order shall result in an incomplete APD pursuant to 43 CFR 3162.3–1.

The H_2S Drilling Operations Plan shall fully describe the manner in which the requirements and minimum standards in section III.C, shall be met and implemented. As required by this Order (section III.C.), the following must be submitted in the H_2S Drilling Operations Plan:

a. Statement that all personnel shall receive proper H_2S training in accordance with section III.C.3.a.

b. A legible well site diagram of accurate scale (may be included as part of the Well Site Layout as required by Onshore Order No. 1) showing the following:

i. Drill rig orientation
ii. Prevailing wind direction
iii. Terrain of surrounding area
iv. Location of all briefing areas (designate primary briefing area)
v. Location of access road(s) (including secondary egress)
vi. Location of flare line(s) and pit(s)
vii. Location of caution and/or danger signs
viii. Location of wind direction indicators

c. As required by this Order, a complete description of the following H_2S safety equipment/systems:

i. Well control equipment.
—Flare line(s) and means of ignition
—Remote controlled choke
—Flare gun/flares
—Mud-gas separator and rotating head (if exploratory well)

ii. Protective equipment for essential personnel.
—Location, type, storage and maintenance of all working and escape breathing apparatus
—Means of communication when using protective breathing apparatus

iii. H_2S detection and monitoring equipment.
—H_2S sensors and associated audible/visual alarm(s)
—Portable H_2S and SO_2 monitor(s)

iv. Visual warning systems.
—Wind direction indicators
—Caution/danger sign(s) and flag(s)

v. Mud program.
—Mud system and additives
—Mud degassing system

vi. Metallurgy.
—Metallurgical properties of all tubular goods and well control equipment which could be exposed to H_2S (section III.C.4.c.)

vii. Means of communication from wellsite.

d. Plans for well testing.

2. Production

a. For each existing production facility having an H_2S concentration of 100 ppm or more in the gas stream, the operator shall calculate and submit the calculations to the authorized officer within 180 days of the effective date of this Order, the 100 and, if applicable, the 500 ppm radii of exposure for all facilities to determine if the applicability criteria section III.B.1. of this order are met. Radii of exposure calculations shall not be required for oil or water flowlines. Further, if any of the applicability criteria (section III.B.1.) are met, the operator shall submit a complete Public Protection Plan which meets the requirements of section III.B.2.b. to the authorized officer within 1 year of the effective date of this Order. For production facilities constructed after the effective date of this Order and meeting the above minimum concentration (100 ppm in gas stream), the operator shall report the radii of exposure calculations, and if the applicability criteria (section III.B.1) are met, submit a complete Public Protection Plan (section III.B.2.b.) to the authorized officer within 60 days after completion of production facilities.

Violation: Minor for failure to submit required information.

Corrective Action: Submit required information (radii of exposure and/or complete Public Protection Plan).

Normal Abatement Period: 20 to 40 days.

b. The operator shall initially test the H_2S concentration of the gas stream for each well or production facility and shall make the results available to the authorized officer, upon request.

Violation: Minor.

Corrective Action: Test gas from well or production facility.

Normal Abatement Period: 20 to 40 days.

c. If operational or production alterations result in a 5% or more increase in the H_2S concentration (i.e., well recompletion, increased GOR's) or the radius of exposure as calculated under sections III.A.2.a. and III.A.2.b., notification of such changes shall be submitted to the authorized officer within 60 days after identification of the change.

Violation: Minor.

Corrective Action: Submit information to authorized officer.

Normal Abatement Period: 20 to 40 days.

3. Plans and Reports

a. H_2S Drilling Operations Plan(s) or Public Protection Plan(s) shall be reviewed by the operator on an annual basis and a copy of any necessary revisions shall be submitted to the authorized officer upon request.

Violation: Minor.

Corrective Action: Submit information to authorized officer.

Normal Abatement Period: 20 to 40 days.

b. Any release of a potentially hazardous volume of H_2S shall be reported to the authorized officer as soon as practicable, but no later than 24 hours following identification of the release.

Violation: Minor.

Corrective Action: Report undesirable event to the authorized officer.

Normal Abatement Period: 24 hours.

B. Public Protection

1. Applicability Criteria

For both drilling/completion/workover and production operations, the H_2S radius of exposure shall be determined on all wells and production facilities subject to this Order. A Public Protection Plan (Section III.B.2) shall be required when any of the following conditions apply:

a. The 100 ppm radius of exposure is greater than 50 feet and includes any occupied residence, school, church, park, school bus stop, place of business, or other areas where the public could reasonably be expected to frequent;

b. The 500 ppm radius of exposure is greater than 50 feet and includes any part of a Federal, State, County, or municipal road or highway owned and principally maintained for public use; or

c. The 100 ppm radius of exposure is equal to or greater than 3,000 feet where facilities or roads are maintained for direct public access.

Additional specific requirements for drilling/completion/workover or producing operations are described in sections III.C. and III.D. of this Order, respectively.

2. Public Protection Plan

a. Plan Submission/Implementation/Availability—i. A Public Protection Plan providing details of actions to alert and protect the public in the event of a release of a potentially hazardous volume of H_2S shall be submitted to the authorized officer as required by Section III.A.1. for drilling or by section III.A.2.a. for producing operations when the applicability criteria established in section III.B.1. of this Order are met. One plan may be submitted for each well, lease, communitization agreement, unit, or field, at the operator's discretion. The Public Protection Plan shall be maintained and updated, in accordance with section III.A.3.a.

ii. The Public Protection Plan shall be activated immediately upon detection of release of a potentially hazardous volume of H_2S.

Violation: Major.

Corrective Action: Immediate implementation of the public protection plan.

Normal Abatement Period: Prompt correction required.

iii. A copy of the Public Protection Plan shall be available at the drilling/completion site for such wells and at the facility, field office, or with the pumper, as appropriate, for producing wells, facilities, and during workover operations.

Violation: Minor.

Corrective Action: Make copy of Plan available.

Normal Abatement Period: 24 hours (drilling/completion/workover), 5 to 7 days (production).

b. Plan Content. i. The details of the Public Protection Plan may vary according to the site specific characteristics (concentration, volume, terrain, etc.) expected to be encountered and the number and proximity of the population potentially at risk. In the areas of high population density or in other special cases, the authorized officer may require more stringent plans to be developed. These may include public education seminars, mass alert systems, and use of sirens, telephone, radio, and television depending on the number of people at risk and their location with respect to the well site.

ii. The Public Protection Plan shall include:

(a) The responsibilities and duties of key personnel, and instructions for alerting the public and requesting assistance;

(b) A list of names and telephone numbers of residents, those responsible for safety of public roadways, and individuals responsible for the safety of occupants of buildings within the 100 ppm radius of exposure (e.g. school principals, building managers, etc.) as defined by the applicability criteria in section III.B.1. The operator shall ensure that those who are at the greatest risk are notified first. The plan shall define when and how people are to be notified in case of an H_2S emergency.

(c) A telephone call list (including telephone numbers) for requesting assistance from law enforcement, fire department, and medical personnel and Federal and State regulatory agencies, as required. Necessary information to be communicated and the emergency responses that may be required shall be listed. This information shall be based on previous contacts with these organizations;

(d) A legible 100 ppm (or 3,000 feet, if conditions unknown) radius plat of all private and public dwellings, schools, roads, recreational areas, and other areas where the public might reasonably be expected to frequent;

(e) Advance briefings, by visit, meeting or letter to the people identified in section III.B.2.b.ii(b), including:
—Hazards of H_2S and SO_2;
—Necessity for an emergency action plan;
—Possible sources of H_2S and SO_2;
—Instructions for reporting a leak to the operator;
—The manner in which the public shall be notified of an emergency; and
—Steps to be taken in case of an emergency, including evacuation of any people;

(f) Guidelines for the ignition of the H_2S-bearing gas. The Plan shall designate the title or position of the person(s) who has the authority to ignite the escaping gas and define when, how, and by whom the gas is to be ignited;

(g) Additional measures necessary following the release of H_2S and SO_2 until the release is contained are as follows:
—Monitoring of H_2S and SO_2 levels and wind direction in the affected area;
—Maintenance of site security and access control;
—Communication of status of well control; and
—Other necessary measures as required by the authorized officer; and

(h) For production facilities, a description of the detection system(s) utilized to determine the concentration of H_2S released.

C. Drilling/Completion/Workover Requirements

1. General

a. A copy of the H_2S Drilling Operations Plan shall be available during operations at the well site beginning when the operation is subject to the terms of this Order (i.e., 3 days or 500 feet of known or probable H_2S zone).

Violation: Minor.

Corrective Action: Make copy of Plan available.

Normal Abatement Period: 24 hours.

b. Initial H_2S training shall be completed and all H_2S related safety equipment shall be installed, tested, and operational when drilling reaches a depth of 500 feet above, or 3 days prior to penetrating (whichever comes first) the first zone containing or reasonably expected to contain H_2S. A specific H_2S operations plan for completion and workover operations will not be required for approval. For completion and workover operations, all required equipment and warning systems shall be operational and training completed prior to commencing operations.

Violation: Major.

Corrective Action: Implement H_2S operational requirements, such as completion of training and/or installation, repair, or replacement of equipment, as necessary.

Normal Abatement Period: Prompt correction required.

c. If H_2S was not anticipated at the time the APD was approved, but is encountered in excess of 100 ppm in the gas stream, the following measures shall be taken:

(i) the operator shall immediately ensure control of the well, suspend drilling ahead operations (unless detrimental to well control), and obtain materials and safety equipment to bring the operations into compliance with the applicable provisions of this Order.

Violation: Major.

Corrective Action: Implement H_2S operational requirements, as applicable.

Normal Abatement Period: Prompt correction required.

ii. The operator shall notify the authorized officer of the event and the mitigating steps that have or are being taken as soon as possible, but no later than the next business day. If said notification is subsequent to actual resumption of drilling operations, the operator shall notify the authorized officer of the date that drilling was

resumed no later than the next business day.

Violation: Minor.

Corrective Action: Notify authorized officer.

Normal Abatement Period: 24 hours.

iii. It is the operator's responsibility to ensure that the applicable requirements of this Order have been met prior to the resumption of drilling ahead operations. Drilling ahead operations will not be suspended pending receipt of a written H_2S Drilling Operations Plan(s) and, if necessary, Public Protection Plan(s) provided that complete copies of the applicable Plan(s) are filed with the authorized officer for approval within 5 business days following resumption of drilling ahead operations.

Violation: Minor.

Corrective Action: Submit plans to authorization officer.

Normal Abatement Period: 5 days.

2. Locations.

a. Where practical, 2 roads shall be established, 1 at each end of the location, or as dictated by prevailing winds and terrain. If an alternate road is not practical, a clearly marked footpath shall be provided to a safe area. The purpose of such an alternate escape route is only to provide a means of egress to a safe area.

Violation: Minor.

Corrective Action: Designate or establish an alternate escape route.

Normal Abatement Period: 24 hours.

b. The alternate escape route shall be kept passable at all times.

Violation: Minor.

Corrective Action: Make alternate escape route passable.

Normal Abatement Period: 24 hours.

c. For workovers, a secondary means of egress shall be designated.

Violation: Minor.

Corrective Action: Designate secondary means of egress.

Normal Abatement Period: 24 hours.

3. Personnel Protection

a. Training Program. The operator shall ensure that all personnel who will be working at the wellsite will be properly trained in H_2S drilling and contingency procedures in accordance with the general training requirements outlined in the American Petroleum Institute's (API) *Recommended Practice (RP) 49 (April 15, 1987 or subsequent editions) for Safe Drilling of Wells Containing Hydrogen Sulfide, Section 2.* The operator also shall ensure that the training will be accomplished prior to a well coming under the terms of this Order (i.e., 3 days or 500 feet of known or probable H_2S zone). In addition to the requirements of API–RP49, a minimum of an initial training session and weekly H_2S and well control drills for all personnel in each working crew shall be conducted. The initial training session for each well shall include a review of the site specific Drilling Operations Plan and, if applicable, the Public Protection Plan.

Violation: Major.

Corrective Action: Train all personnel and conduct drills.

Normal Abatement Period: Prompt correction required.

i. All training sessions and drills shall be recorded on the driller's log or its equivalent.

Violation: Minor.

Corrective Action: Record on driller's log or equivalent.

Normal Abatement Period: 24 hours.

ii. For drilling/completion/workover wells, at least 2 briefing areas shall be designated for assembly of personnel during emergency conditions, located a minimum of 150 feet from the well bore and 1 of the briefing areas shall be upwind of the well at all times. The briefing area located most normally upwind shall be designated as the "Primary Briefing Area."

Violation: Major.

Corrective Action: Designate briefing areas.

Normal Abatement Period: 24 hours.

iii. One person (by job title) shall be designated and identified to all on-site personnel as the person primarily responsible for the overall operation of the on-site safety and training programs.

Violation: Minor.

Corrective Action: Designate safety responsibilities.

Normal Abatement Period: 24 hours.

b. Protective Equipment: i. The operator shall ensure that proper respirator protection equipment program is implemented, in accordance with the current American National Standards Institute (ANSI) Standard Z.88.2–1980 *"Practices for Respiratory Protection."* Proper protective breathing apparatus shall be readily accessible to all essential personnel on a drilling/completion/workover site. Escape and pressure-demand type working equipment shall be provided for essential personnel in the H_2S environment to maintain or regain control of the well. For pressure-demand type working equipment those essential personnel shall be able to obtain a continuous seal to the face with the equipment. The operator shall ensure that service companies have the proper respiratory protection equipment when called to the location. Lightweight, escape-type, self-contained breathing apparatus with a minimum of 5-minute rated supply shall be readily accessible at a location for the derrickman and at any other location(s) where escape from an H_2S contaminated atmosphere would be difficult.

Violation: Major.

Corrective Action: Acquire, repair, or replace equipment, as necessary.

Normal Abatement Period: Prompt correction required.

ii. Storage and maintenance of protective breathing apparatus shall be planned to ensure that at least 1 working apparatus per person is readily available for all essential personnel.

Violation: Major.

Corrective Action: Acquire or rearrange equipment, as necessary.

Normal Abatement Period: Prompt correction required.

iii. The following additional safety equipment shall be available for use:

(a) Effective means of communication when using protective breathing apparatus;

(b) Flare gun and flares to ignite the well;

(c) Telephone, radio, mobile phone, or any other device that provides communication from a safe area at the rig location, where practical.

Violation: Major.

Corrective Action: Acquire, repair, or replace equipment.

Normal Abatement Period: 24 hours.

c. H_2S Detection and Monitoring Equipment. i. Each drilling/completion site shall have an H_2S detection and monitoring system that automatically activates visible and audible alarms when the ambient air concentration H_2S reaches the threshold limits of 10 and 15 ppm in air, respectively. The sensors shall have a rapid response time and be capable of sensing a minimum of 10 ppm of H_2S in ambient air, with at least 3 sensing points located at the shale shaker, rig floor, and bell nipple for a drilling site and the cellar, rig floor, and circulating tanks or shale shaker for a completion site. The detection system shall be installed, calibrated, tested, and maintained in accordance with the manufacturer's recommendations.

Violation: Major.

Corrective Action: Install, repair, calibrate, or replace equipment, as necessary.

Normal Abatement Period: Prompt correction required.

ii. All tests of the H_2S monitoring system shall be recorded on the driller's log or its equivalent.

Violation: Minor.

Corrective Action: Record on driller's log or equivalent.

Normal Abatement Period: 24 hours.

iii. For workover operations, 1 operational sensing point shall be located as close to the wellbore as practical. Additional sensing points may be necessary for large and/or long-term operations.

Violation: Major.

Corrective Action: Install, repair, calibrate, or replace equipment, as necessary.

Normal Abatement Period: Prompt correction required.

d. Visible Warning System. i. Equipment to indicate wind direction at all times shall be installed at prominent locations and shall be visible at all times during drilling operations. At least 2 such wind direction indicators (i.e., windsocks, windvanes, pennants with tailstreamers, etc.) shall be located at separate elevations (i.e., near ground level, rig floor, and/or treetop height). At least 1 wind direction indicator shall be clearly visible from all principal working areas at all times so that wind direction can be easily determined. For completion/workover operations, 1 wind direction indicator shall suffice, provided it is visible from all principal working areas on the location. In addition, a wind direction indicator at each of the 2 briefing areas shall be provided if the wind direction indicator(s) previously required in this paragraph are not visible from the briefing areas.

Violation: Minor.

Corrective Action: Install, repair, move, or replace wind direction indicator(s), as necessary.

Normal Abatement Period: 24 hours.

ii. At any time when the terms of this Order are in effect, operational danger or caution sign(s) shall be displayed along all controlled accesses to the site.

Violation: Minor.

Corrective Action: Erect appropriate signs.

Normal Abatement Period: 24 hours.

iii. Each sign shall be painted a high-visibility red, black and white, or yellow with black lettering.

Violation: Minor.

Corrective Action: Replace or alter sign, as necessary.

Normal Abatement Period: 5 to 20 days.

iv. The sign(s) shall be legible and large enough to be read by all persons entering the well site and be placed a minimum of 200 feet but no more than 500 feet from the well site which allows vehicles to turn around at a safe distance prior to reaching the site.

Violation: Major.

Corrective Action: Replace, alter, or move sign, as necessary.

Normal Abatement Period: 24 hours.

v. The sign(s) shall read:

DANGER—POISON GAS—
HYDROGEN SULFIDE

and in smaller lettering:

Do Not Approach If Red Flag is Flying

or equivalent language if approved by the authorized officer.

Where appropriate, bilingual or multilingual danger sign(s) shall be used.

Violation: Minor.

Corrective Action: Alter sign(s) as necessary.

Normal Abatement Period: 5 to 20 days.

vi. All sign(s) and, when appropriate, flag(s) shall be visible to all personnel approaching the location under normal lighting and weather conditions.

Violation: Major.

Corrective Action: Erect or move sign(s) and/or flag(s), as necessary.

Normal Abatement Period: 24 hours.

vii. When H_2S is detected in excess of 10 ppm at any detection point, red flag(s) shall be displayed.

Violation: Major.

Corrective Action: Display red flag.

Normal Abatement Period: Prompt correction required.

e. *Warning System Response.* When H_2S is detected in excess of 10 ppm at any detection point, all non-essential personnel shall be moved to a safe area and essential personnel (i.e., those necessary to maintain control of the well) shall wear pressure-demand type protective breathing apparatus. Once accomplished, operations may proceed.

Violation: Major.

Corrective Action: Move non-essential personnel to safe area and mask-up essential personnel.

Normal Abatement Period: Prompt correction required.

4. Operating Procedures and Equipment

a. *General/Operations.* Drilling/completion/workover operations in H_2S areas shall be subject to the following requirements:

i. If zones containing in excess of 100 ppm of H_2S gas are encountered while drilling with air, gas, mist, other non-mud circulating mediums or aerated mud, the well shall be killed with a water or oil-based mud and mud shall be used thereafter as the circulating medium for continued drilling.

Violation: Major.

Corrective Action: Convert to appropriate fluid medium.

Normal Abatement Period: Prompt correction required.

ii. A flare system shall be designed and installed to safely gather and burn H_2S-bearing gas.

Violation: Major.

Corrective Action: Install flare system.

Normal Abatement Period: Prompt correction required.

iii. Flare lines shall be located as far from the operating site as feasible and in a manner to compensate for wind changes. The flare line(s) mouth(s) shall be located not less than 150 feet from the wellbore unless otherwise approved by the authorized officer. Flare lines shall be straight unless targeted with running tees.

Violation: Minor.

Corrective Action: Adjust flare line(s) as necessary.

Normal Abatement Period: 24 hours.

iv. The flare system shall be equipped with a suitable and safe means of ignition.

Violation: Major.

Corrective Action: Install, repair, or replace equipment, as necessary.

Normal Abatement Period: 24 hours.

v. Where noncombustible gas is to be flared, the system shall be provided supplemental fuel to maintain ignition.

Violation: Major.

Corrective Action: Acquire supplemental fuel.

Normal Abatement Period: 24 hours.

vi. At any wellsite where SO_2 may be released as a result of flaring of H_2S during drilling, completion, or workover operations, the operator shall make SO_2 portable detection equipment available for checking the SO_2 level in the flare impact area.

Violation: Minor.

Corrective Action: Acquire, repair, or replace equipment as necessary.

Normal Abatement Period: 24 hours to 3 days.

vii. If the flare impact area reaches a sustained ambient threshold level of 2 ppm or greater of SO_2 in air and includes any occupied residence, school, church, park, or place of business, or other area where the public could reasonably be expected to frequent, the Public Protection Plan shall be implemented.

Violation: Major.

Corrective Action: Contain SO_2 release and/or implement Public Protection Plan.

Normal Abatement Period: Prompt correction required.

viii. A remote controlled choke shall be installed for all H_2S drilling and, where feasible, for completion operations. A remote controlled valve may be used in lieu of this requirement for completion operations.

Violation: Major.

Corrective Action: Install, repair, or replace equipment, as necessary.

Normal Abatement Period: Prompt correction required.

ix. Mud-gas separators and rotating heads shall be installed and operable for all exploratory wells.

Violation: Major.

Corrective Action: Install, repair, or replace equipment, as necessary.

Normal Abatement Period: Prompt correction required.

b. Mud Program. i. A pH of 10 or above in a fresh water-base mud system shall be maintained to control corrosion, H_2S gas returns to surface, and minimize sulfide stress cracking and embrittlement unless other formation conditions or mud types justify a lesser pH level.

Violation: Major.

Corrective Action: Adjust pH.

Normal Abatement Period: Prompt correction required.

ii. Drilling mud containing H_2S gas shall be degassed in accordance with API's RP-49, § 5.14, at an optimum location for the rig configuration. These gases shall be piped into the flare system.

Violation: Major.

Corrective Action: Install, repair, or replace equipment, as necessary.

Normal Abatement Period: 24 hours.

iii. Sufficient quantities of mud additives shall be maintained on location to scavenge and/or neutralize H_2S where formation pressures are unknown.

Violation: Major.

Corrective Action: Obtain proper mud additives.

Normal Abatement Period: 24 hours.

c. Metallurgical Equipment. All equipment that has the potential to be exposed to H_2S shall be suitable for H_2S service. Equipment which shall meet these metallurgical standards include the drill string, casing, wellhead, blowout preventer assembly, casing head and spool, rotating head, kill lines, choke, choke manifold and lines, valves, mud-gas separators, drill-stem test tools, test units, tubing, flanges, and other related equipment.

To minimize stress corrosion cracking and/or H_2S embrittlement, the equipment shall be constructed of material whose metallurgical properties are chosen with consideration for both an H_2S working environment and the anticipated stress. The metallurgical properties of the materials used shall conform to the current National Association of Corrosion Engineers (NACE) Standard MR-01-75, *Material Requirement, Sulfide Stress Cracking Resistant Metallic Material for Oil Field Equipment.* These metallurgical properties include the grade of steel, the processing method (rolled, normalized, tempered, and/or quenched), and the resulting strength properties. The working environment considerations include the H_2S concentration, the well fluid pH, and the wellbore pressures and temperatures. Elastomers, packing, and similar inner parts exposed to H_2S shall be resistant at the maximum anticipated temperature of exposure. The manufacturer's verification of design for use in an H_2S environment shall be sufficient verification of suitable service in accordance with this Order.

Violation: Major.

Corrective Action: Install, repair, or replace appropriate equipment, as necessary.

Normal Abatement Period: Prompt correction required.

d. Well Testing in an H_2S Environment. Testing shall be performed with a minimum number of personnel in the immediate vicinity which are necessary to safely and adequately operate the test equipment. Except with prior approval by the authorized officer, the drill-stem testing of H_2S zones shall be conducted only during daylight hours and formation fluids shall not be flowed to the surface (closed chamber only).

Violation: Major

Corrective Action: Terminate the well test.

Normal Abatement Period: Prompt correction required.

D. Production Requirements

1. General

a. All existing production facilities which do not currently meet the requirements and minimum standards set forth in this section shall be brought into conformance within 1 year after the effective date of this Order. All existing equipment that is in a safe working condition as of the effective date of this Order is specifically exempt from the metallurgical requirements prescribed in section III D.3.g.

Violation: Minor.

Corrective Action: Bring facility into compliance.

Normal Abatement Period: 60 days.

b. Production facilities constructed after the effective date of this Order shall be designed, constructed, and operated to meet the requirements and minimum standards set forth in this section. Any variations from the standards or established time frames shall be approved by the authorized officer in accordance with the provisions of section IV, of this Order. Except for storage tanks, a determination of the radius of exposure for all production facilities shall be made in the manner prescribed in section II. S. of this Order.

Violation: Minor.

Corrective Action: Bring facility into compliance.

Normal Abatement Period: 60 days.

c. At any production facility or storage tank(s) where the sustained ambient H_2S concentration is in excess of 10 ppm at 50 feet from the production facility or storage tank(s) as measured at ground level under calm (1 mph) conditions, the operator shall collect or reduce vapors from the system and they shall be sold, beneficially used, reinjected, or flared provided terrain and conditions permit.

Violation: Major, if a health or safety problem to the public is imminent, otherwise minor.

Corrective Action: Bring facility into compliance.

Normal Abatement Period: 3 days for major, 30 days for minor.

2. Storage Tanks.

Storage tanks containing produced fluids and utilized as part of a production operation and operated at or near atmospheric pressure, where the vapor accumulation has an H_2S concentration in excess of 500 ppm in the tank, shall be subject to the following:

a. No determination of a radius of exposure need be made for storage tanks.

b. All stairs/ladders leading to the top of storage tanks shall be chained and/or marked to restrict entry. For any storage tank(s) which require fencing (Section III.D.2.f), a danger sign posted at the gate(s) shall suffice in lieu of this requirement.

Violation: Minor.

Corrective Action: Chain or mark stair(s)/ladder(s) or post sign, as necessary.

Normal Abatement Period: 5 to 20 days.

c. A danger sign shall be posted on or within 50 feet of the storage tank(s) to alert the public of the potential H_2S danger. For any storage tank(s) which require fencing (section III.D.2.f.), a danger sign posted at the locked gate(s) shall suffice in lieu of this requirement.

Violation: Minor.

Corrective Action: Post or move sign(s), as necessary.

Normal Abatement Period: 5 to 20 days.

d. The sign(s) shall be painted in high-visibility red, black, and white. The sign(s) shall read:

DANGER—POISON GAS-HYDROGEN SULFIDE

or equivalent language if approved by the authorized officer. Where

appropriate, bilingual or multilingual warning signs shall be used.

Violation: Minor.

Corrective Action: Post, move, replace, or alter sign(s), as necessary.

Normal Abatement Period: 20 to 40 days.

e. At least 1 permanent wind direction indicator shall be installed so that wind direction can be easily determined at or approaching the storage tank(s).

Violation: Minor.

Corrective Action: Install, repair, or replace wind direction indicator, as necessary.

Normal Abatement Period: 20 to 40 days.

f. A minimum 5-foot chain-link, 5-strand barbed wire, or comparable type fence and gate(s) that restrict(s) public access shall be required when storage tanks are located within ¼ mile of or contained inside a city or incorporated limits of a town or within ¼ mile of an occupied residence, school, church, park, playground, school bus stop, place of business, or where the public could reasonably he expected to frequent.

Violation: Minor.

Corrective Action: Install, repair, or replace fence and/or gate(s), as necessary.

Normal Abatement Period: 20 to 40 days.

g. Gate(s), as required by section III.D.2.f. shall be locked when unattended by the operator.

Violation: Minor.

Corrective Action: Lock gate.

Normal Abatement Period: 24 hours.

3. Production Facilities

Production facilities containing 100 ppm or more of H_2S in the gas stream shall be subject to the following:

a. Danger signs as specified in section III.D.2.d. of this Order shall be posted on or within 50 feet of each production facility to alert the public of the potential H_2S danger. In the event the storage tanks and production facilities are located at the same site. 1 such danger sign shall suffice. Further, for any facilities which require fencing (section III.D.2.f.), 1 such danger sign at the gate(s) shall suffice in lieu of this requirement.

Violation: Minor.

Corrective Action: Post, move, or alter sign(s), as necessary.

Normal Abatement Period: 5 to 20 days.

b. Danger signs, as specified in section III.D.2.d. of this Order, shall be required for well flowlines and lease gathering lines that carry H_2S gas. Placement shall be where said lines cross public or lease roads. The signs shall be legible and shall contain sufficient additional information to permit a determination of the owner of the line.

Violation: Minor.

Corrective Action: Post, move, or alter sign(s), as necessary.

Normal Abatement Period: 5 to 20 days.

c. Fencing, as specified in section III.D.2.f., shall be required when production facilities are located within ¼ mile of or contained inside a city or incorporated limits of a town or within ¼ mile of an occupied residence, school, church, park, playground, school bus stop, place of business, or any other area where the public could reasonably be expected to frequent. Flowlines are exempted from this additional fencing requirement.

Violation: Minor.

Corrective Action: Install, repair, or replace fence, and/or gate(s), as necessary.

Normal Abatement Period: 20 to 40 days.

d. Gate(s), as required by section III.D.3.c. shall be locked when unattended by the operator.

Violation: Minor.

Corrective Action: Lock gate.

Normal Abatement Period: 24 hours.

e. Wind direction indicator(s) as specified in section III.D.2.e. of this Order shall be required. In the event the storage tanks and production facilities are located at the same site, 1 such indicator shall suffice. Flowlines are exempt from this requirement.

Violation: Minor.

Corrective Action: Install, repair, or replace wind direction indicator(s), as necessary.

Normal Abatement Period: 20 to 40 days.

f. All wells, unless produced by artificial lift, shall possess a secondary means of immediate well control through the use of appropriate christmas tree and/or downhole completion equipment. Such equipment shall allow downhole accessibility (reentry) under pressure for permanent well control operations. If the applicability criteria stated in Section III.B.1. of this Order are met, a minimum of 2 master valves shall be installed.

Violation: Minor.

Corrective Action: Install, repair, or replace equipment, as necessary.

Normal Abatement Period: 20 to 40 days.

g. All equipment shall be chosen with consideration for both a H_2S working environment and anticipated stresses. NACE Standard MR-01-75 shall be used for metallic equipment selection and, if applicable, adequate protection by chemical inhibition or other such method that controls or limits the corrosive effects of H_2S shall be used.

Violation: Minor.

Corrective Action: Install, repair, or replace equipment, as necessary.

Normal Abatement Period: 20 to 40 days.

h. Where the 100 ppm radius of exposure for H_2S includes any occupied residence, place of business, school, or other inhabited structure or any area where the public may reasonably be expected to frequent, the operator shall install automatic safety valves or shutdowns at the wellhead, or other appropriate shut-in controls for wells equipped with artificial lift.

Violation: Minor.

Corrective Action: Install, repair, or replace equipment, as necessary.

Normal Abatement Period: 20 to 40 days.

i. The automatic safety valves or shutdowns, as required by section III.D.3.h. shall be set to activate upon a release of a potentially hazardous volume of H_2S.

Violation: Major.

Corrective Action: Repair, replace or adjust equipment, as necessary.

Normal Abatement Period: Prompt correction required.

j. If the sustained ambient concentration of H_2S or SO_2 from a production facility which is venting or flaring reaches a concentration of H_2S (10ppm) or SO_2 (2ppm), respectively, at any of the following locations, the operator shall modify the production facility as approved by the authorized officer. The locations include any occupied residence, school, church, park, playground, school bus stop, place of business, or other areas where the public could reasonably be expected to frequent.

Violation: Major.

Corrective Action: Repair facility to bring into compliance.

Normal Abatement Period: Prompt correction required.

4. Public Protection.

When conditions as defined in section III.B.1. of this Order exist, a Public Protection Plan for producing operations shall be submitted to the authorized officer in accordance with section III.B.2.a. of this Order which includes the provisions of section III.B.2.b.

Violation: Minor.

Corrective Action: Submit Public Protection Plan.

Normal Abatement Period: 20 to 40 days.

IV. Variances from Requirements

An operator may request the authorized officer to approve a variance from any of the requirements prescribed in section III hereof. All such requests shall be submitted in writing to the appropriate authorized officer and provide information as to the circumstances which warrant approval of the variance(s) requested and the proposed alternative methods by which the related requirement(s) of minimum standard(s) are to be satisfied. The authorized officer, after considering all relevant factors, may approve the requested variance(s) if it is determined that the proposed alternative(s) meets or exceeds the objectives of the applicable requirement(s) or minimum standard(s).

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Friday
November 23, 1990

Part III

Department of Transportation

Urban Mass Transportation Administration

UMTA Fiscal Year 1991 Formula Grant Apportionments; Notice

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

UMTA Fiscal Year 1991 Formula Grant Apportionments

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation (DOT) and Related Agencies Appropriations Act, 1991, signed into law by President Bush on November 5, 1990, provides Fiscal Year 1991 appropriations for the formula grant programs under sections 9 and 18 and for the 16(b)(2) elderly and handicapped program of the Urban Mass Transportation Act of 1964, as amended (the UMT Act). This Notice includes the distribution of these funds. Limitations on the use of operating assistance also are included in this Notice, as well as other pertinent information.

FOR FURTHER INFORMATION CONTACT: Lynn Sahaj, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Capital and Formula Assistance, 400 Seventh Street, SW., room 9301, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: Funds appropriated to the section 9 program are apportioned on a formula basis to provide capital and operating assistance in urbanized areas. Funds appropriated to the section 18 program are apportioned on a formula basis to provide capital and operating assistance in nonurbanized areas. Funds appropriated to the section 16(b)(2) program are allocated to the States to provide capital assistance for transportation for elderly and disabled persons.

Formula Program Appropriations

This Notice provides the Fiscal Year 1991 apportionment of sections 9 and 18 funds for urbanized and nonurbanized areas and provides Fiscal Year 1991 allocations for the section 16(b)(2) program based on U.S. Census data. Section 9 apportionments for urbanized areas over 200,000 in population also are based on operating and financial data submitted as part of the section 15 Reporting System.

Under title I of the Department of Transportation (DOT) and Related Agencies Appropriations Act, 1991, a total of $1,605,000,000 has been appropriated for Fiscal Year 1991 for the sections 9 and 18 programs. Of this amount, $5,000,000 is available for the Rural Transportation Assistance Program (RTAP). The Fiscal Year 1991 Appropriations Act directs that, before apportionment of formula funds, $13,000,000 shall be made available to the section 18 program. Of the remaining amount, 97.07 percent is being made available to the section 9 program and 2.93 percent is being made available to the section 18 program.

An additional $200,000,000 has been made available under section 9B (the capital only formula program funded from the Mass Transit Account). A total of $35,000,000 was appropriated for Fiscal Year 1991 for the section 16(b)(2) program. These funds are allocated by an administrative formula.

Additional Section 9 Formula Funding

In addition to the new appropriated Fiscal Year 1991 formula funds of $1,534,640,900, the section 9 apportionment also includes $9,194,320, in deobligated sections 5 and 9 funds and section 9 funds that were never obligated in Fiscal Year 1987 and have become available for reapportionment under the section 9 Program as provided for under section 9(o). Included also is $6,479 in Fiscal Year 1987 section 9 one-half percent funds that were deobligated in Fiscal Year 1990 and also have become available for reapportionment. Thus, the total additional funding amount being apportioned under section 9 is $9,200,799.

Section 9B Formula Program—Distribution of Mass Transit Account (Trust Fund)

The Surface Transportation and Uniform Relocation Assistance Act of 1987 (the STURA Act) established the section 9B Program. The Act states that beginning in Fiscal Year 1988, in any year in which the obligation limitation for the Discretionary Grants Program exceeds $1 billion, the funds in excess of that amount are to be allocated half on a discretionary basis and half under a new section 9B formula program—essentially a capital-only section 9 program. The obligation limitation for Fiscal Year 1991 is $1,400,000,000. Thus, $200,000,000 has been allocated for section 9B. These section 9B funds cannot be used for operating assistance, but are otherwise treated as section 9 funds. In grant applications, amounts applied for under each Section should be clearly shown.

One-Half Percent Set Aside Program

Section 23 of the UMT Act allows the Secretary of Transportation to use not more than one-half of one percent of the funds made available for Fiscal Year 1991 under sections 3, 9, 9B, 18, the National Capital Transportation Act of 1969 (Stark Harris), and section 103(e)(4) of title 23, United States Code, (Interstate Transfer) to contract with any person to oversee the construction of any major project under such programs and to conduct safety, procurement, management and financial reviews and audits. Therefore, one-half of one percent of the funds appropriated for Fiscal Year 1991 under section 9 (including section 9B), or $8,673,205, has been reserved for this purpose. The remaining amount of Fiscal Year 1991 funds is apportioned in this Notice. Funds appropriated under Section 18 have not been reserved for these purposes since adequate funds are available from prior year reservations.

Total Section 9 Fiscal Year 1991 Apportionments

This Notice provides tables which reflect both the amounts apportioned under the section 9 program (General Fund) and the section 9B program (Trust Fund). The amounts appropriated under section 9 ($1,534,640,900) and section 9B ($200,000,000) together total $1,734,640,900. The one-half percent reservation of $8,673,205 has been subtracted from this total. Reapportioned funds in the amount of $9,200,799 were then added to the remainder. Thus, the total amount being apportioned for section 9 (including section 9B) is $1,735,168,494.

Section 9 Fiscal Year 1990 Apportionment Adjustments

An adjustment has been made to the apportionment for one urbanized area because of corrections to data that were used to compute the Fiscal Year 1990 formula grant apportionments published in the **Federal Register** of December 19, 1989 (54 FR 51974). The difference between the corrected apportionment and the previously published apportionment has been resolved and the necessary adjustment has been made by adding to the apportionment for Fiscal Year 1991. The dollar amounts published in this Notice contain this adjustment, and the affected urbanized area has been so advised.

Section 15 Data Used for Section 9 Apportionments

Data submitted for the section 15 Annual Report for 1988 has been used to calculate the section 9 apportionments for urbanized areas over 200,000 in population. This is the most current available validated section 15 data.

Section 9 Fiscal Year 1991 Apportionments to the Governors

For all urbanized areas under 200,000 in population within each State, one figure is provided for the Governor's apportionment. In accordance with section 9 of the UMT Act, these apportionments are not made to individual urbanized areas but are made to the Governors for use within all urbanized areas between 50,000 and 200,000 in population, as needed. UMTA has administered the section 9 program in this fashion from its inception, and it parallels UMTA's procedures under the section 5 program. For technical assistance purposes, and in compliance with the STURA Act, this Notice also contains the amount attributable to each urbanized area above 50,000 in population within the State.

Section 9 Operating Assistance Limitations

In addition to the Fiscal Year 1991 apportionments, included in this Notice is a listing of the Fiscal Year 1991 limitations on the amount of section 9 funds that may be used for operating assistance.

The STURA Act made a number of changes in the section 9 operating assistance limitations. Among other changes which were cited in the Act, and made previously in the limitations, the Act added section 9(k)(2)(B). This section states that on each October 1 after October 1, 1987, the operating assistance limitations for all urbanized areas under 200,000 in population shall be increased to reflect the increase in the Consumer Price Index (CPI) for all urban consumers during the most recent calendar year. The CPI Detailed Report, December 1989, published by the Department of Labor, indicates the calendar year 1989 CPI increase for all urban consumers is 4.6 percent.

This 4.6 percent increase was applied against the base operating assistance limitation calculated under section 9(k)(2)(A). This base was the Fiscal Year 1987 authorized operating assistance limitation for urbanized areas under 200,000 in population.

Section 329 of the STURA Act stated that, upon request of the State of Florida and the designated recipients under section 9 of the UMT Act for the urbanized areas of Fort Lauderdale and Miami, Florida, the amount of funds apportioned after September 30, 1987, under such section with respect to such urbanized areas which may otherwise be used for operating assistance under such section shall be increased by $4,400,000 for each fiscal year in which major onsite construction on Interstate Route I-95 is being carried out. We have received a request from the State of Florida and affected designated recipients to increase the Fort Lauderdale operating assistance limitation by $4,400,000 based upon this provision. Such increased operating assistance may only be used for commuter rail service provided as a maintenance-of-traffic measure during the period in which the construction is being carried out.

These increases result in an overall national Fiscal Year 1991 authorized operating assistance limitation level of $934,035,714. However, the Fiscal Year 1991 Appropriations Act limits the nationwide availability for operating assistance to a maximum of $802,278,000 (for funds under the Fiscal Year 1991 Appropriations Act). Accordingly, the operating assistance limitation published in this Notice takes into account both the UMT Act and the Fiscal Year 1991 Appropriations Act. That is, the higher operating assistance limitation of the UMT Act, $934,035,714, has been reduced to the $802,278,000 required by the Fiscal Year 1991 Appropriations Act by taking a pro rata reduction across all categories of grantees.

Statewide Operating Assistance Limitations

The Fiscal Year 1990 Appropriations Act added a new provision regarding operating assistance limitations. The Act states that in any case in which a statewide agency or instrumentality is responsible under State laws for the financing, construction and operation, directly by lease, contract or otherwise, of public transportation services, and when such statewide agency or instrumentality is the designated recipient of UMTA funds, and when the statewide agency or instrumentality provides service among two or more urbanized areas, the statewide agency or instrumentality shall be allowed to apply for operating assistance up to the combined total permissible amount of all urbanized areas in which it provides service, regardless of whether the amount for any particular urbanized area is exceeded. In doing so, UMTA will not reduce the amount of operating assistance allowed for any other state, or local transit agency or instrumentality within the urbanized areas affected. In short, this permits the statewide agency to combine all of the operating assistance limitations within the State. This provision became effective with the Fiscal Year 1990 section 9 apportionments. Thus, the operating assistance limitations tables showing the full operating assistance limitations for each urbanized area are not constrained by the availability of general funds for any one particular urbanized area.

Section 18 Program

The Fiscal Year 1991 section 18 apportionment totals $68,452,848. This Notice provides a table which contains the State apportionments.

In addition to the appropriated Fiscal Year 1991 formula funds of $65,359,100, the section 18 Fiscal Year 1991 apportionment also includes $3,093,848 in prior year deobligated funds and funds which were never obligated and therefore have lapsed to the States to which they were originally apportioned. $323,194 in Fiscal Year 1988 section 18 funds which had been set aside under section 23 and have not been used are remaining in reserve for possible use in Fiscal Year 1991. No additional Fiscal Year 1991 section 18 funds are being set aside for this purpose.

The Fiscal Year 1991 Rural Transit Assistance Program (RTAP) allocations to the States totalling $4,260,468 are also included in this Notice. Of the $5,000,000 appropriated for the RTAP program in Fiscal Year 1991, eighty-five percent, or $4,250,000, is allocated to the States to undertake research, training, technical assistance, and other support services to meet the needs of transit operators in nonurbanized areas. In addition, $10,468 in unobligated Fiscal Year 1987 and Fiscal Year 1988 RTAP funds is being reallocated with the Fiscal Year 1991 RTAP funds. These funds are to be used in conjunction with the States' administration of the section 18 formula assistance program. The remainder of the RTAP funds are made available by UMTA in direct contracts to carry out the RTAP National Program.

Section 16(b)(2) Elderly and Handicapped Program

A total of $35,050,521 is allocated to the States for Fiscal Year 1991 under the section 16(b)(2) program. This capital assistance program provides funds to nonprofit organizations to provide specialized transportation for elderly and handicapped persons. This Notice includes a table which shows these state allocations. The allocations include $35,000,000 of the Fiscal Year 1991 appropriation, and $50,521 in funds not obligated in Fiscal Year 1990.

Period of Availability of Funds

The funds apportioned to urbanized areas under section 9 in this Notice will remain available to be obligated by UMTA to recipients for three (3) fiscal years following Fiscal Year 1991. Any of

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these apportioned funds unobligated at the close of business on September 30, 1994, will revert to UMTA for reapportionment under section 9. Funds apportioned to nonurbanized areas under section 18, including RTAP funds, will remain available for two (2) fiscal years following Fiscal Year 1991. Any such funds remaining unobligated at the close of business on September 30, 1993, will revert to UMTA for reapportionment among the States. Funds allocated to States under section 16(b)(2) in this Notice must be obligated by September 30, 1991. Any such funds remaining unobligated as of this date will revert to UMTA for reallocation among the States.

Approval of Grants

The Urban Mass Transportation Administration has established a quarterly and bimonthly cycle for processing formula grants. Section 9, Interstate Transfer, and Federal-Aid Urban Systems (FAUS) grants are processed on a quarterly basis and sections 8, 16(b)(2), and 18 grants will be processed on a bimonthly basis. Applicants should submit completed applications to the appropriate UMTA Regional Office by the first business day of each review cycle. If the application is complete, UMTA will approve and release the grant by the end of the cycle. The only factor which would delay UMTA's approval of the project would be a failure by the Department of Labor (DOL) to issue a 13(c) certification where such certification is a prerequisite to grant approval. Incompleted applications will not be processed, but if the missing components are supplied, will be reconsidered in the next review cycle.

For an application to be considered complete, all appropriate ancillary activities such as inclusion of the project in a locally approved Transportation Improvement Program (TIP), intergovernmental reviews, environmental reviews, all applicable civil rights, anti-drug, and 504 program requirements, and submission of all requisite certifications and documentation must be completed. The application must be in approvable form with all required documentation and submissions on hand, except for the 13(c) certification which is issued by DOL.

It is the policy of UMTA to expedite grant application reviews and maximize program delivery by reducing the number of grant applications. To this end, UMTA strongly encourages grant applicants to submit only one application per fiscal year per formula program (i.e., section 9, section 18, etc.). The single application should contain the fiscal year's capital, planning and operating elements. During recent years, most grantees have adopted the one grant per fiscal year approach; however, there are a number of grantees who still submit more than one application per fiscal year. While UMTA recognizes that there may be extenuating circumstances which would necessitate an applicant to submit more than one application per year and will process these applications on a case-by-case basis, applicants are encouraged to comply with the one grant per fiscal year approach.

The application submission and approval dates for Fiscal Year 1991 for section 9, Interstate, and FAUS projects are for completed applications submitted to UMTA no later than the first business day of the fiscal year quarter, UMTA will award grants by the last business day of the fiscal year quarter. For sections 8, 16(b)(2), and 18 projects, if completed applications are submitted to UMTA no later than the first business day of the bimonthly periods beginning November, January, March, May and July, UMTA will award grants by the last business day of the bimonthly period.

State Governors Apportionments Grants

UMTA encourages State agencies to be the applicant for section 9 funds on behalf of urbanized areas under 200,000 in population. With the State acting as applicant, funding for several urbanized areas could be combined in a single grant.

Formula Grant Procedures

Applications for section 9 funds should be submitted to the appropriate UMTA Regional Office in conformance with UMTA Circular 9030.1A, published September 18, 1987. Applications for section 18 funds should be submitted to the appropriate UMTA Regional Office in conformance with UMTA Circular 9040.1B, published July 1, 1988. Applications for section 16(b)(2) funds should be submitted to the appropriate UMTA Regional Office in conformance with Circular 9070.1B, published July 1, 1988. Copies of the circulars are available from each UMTA Regional Office.

Discretionary Section 3 Capital Grants

Formula funding is the primary Federal resource for transit capital assistance needs. However, critical capital projects that cannot be accommodated under the formula grant program will be considered for funding under the section 3 discretionary program. Applications for these discretionary capital projects should be submitted to the appropriate UMTA Regional Office by February 15, 1991, for consideration in early 1991.

Construction Contract Condition Effective After May 1, 1991

The Fiscal Year 1991 DOT Appropriations Act includes a provision providing that none of the funds under the Act may be obligated or expended to enter into any contract for the construction, alteration, or repair or any public building or public work in the United States or possession of the United States with any contractor or subcontractor of a foreign country, or any supplier of products of a foreign country, during any period in which such foreign country is listed by the United States Trade Representative (USTR). The USTR is to maintain a list of each foreign country which denies fair and equitable market opportunities for products and services of the United States in procurement or in bidding for construction projects that cost more than $500,000 and are funded by the government of such foreign country.

Initially, the USTR was to make its determination in this regard within thirty days of enactment of the Fiscal Year 1991 DOT Act. Subsequently, however, there was agreement to postpone the USTR determination date until May 1, 1991. Accordingly, this construction condition does not come into effect until the USTR makes its determination (if any) after May 1, 1991. The Department will provide further information on this provision.

Issued on: November 16, 1990.

Brian W. Clymer,

Administrator.

BILLING CODE 4910-57-M

FISCAL YEAR 1991 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO URBANIZED AREAS OVER 1,000,000 IN POPULATION

URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
Atlanta, Georgia	$19,765,967	$2,577,367	$22,343,334
Baltimore, Maryland	18,260,217	2,382,144	20,642,361
Boston, Massachusetts	44,906,230	5,851,373	50,757,603
Buffalo, New York	7,424,756	967,805	8,392,561
Chicago, Illinois-Northwestern Indiana	121,560,126	15,846,165	137,406,291
Cincinnati, Ohio-Kentucky	8,047,183	1,049,880	9,097,063
Cleveland, Ohio	15,612,245	2,035,771	17,648,016
Dallas-Fort Worth, Texas	16,636,504	2,168,724	18,805,228
Denver, Colorado	11,744,094	1,531,372	13,275,466
Detroit, Michigan	24,123,228	3,144,783	27,268,011
Fort Lauderdale-Hollywood, Florida	9,931,052	1,294,402	11,225,454
Houston, Texas	19,987,624	2,607,680	22,595,304
Kansas City, Missouri-Kansas	5,516,677	719,001	6,235,678
Los Angeles-Long Beach, California	94,309,108	12,306,097	106,615,205
Miami, Florida	17,219,432	2,244,652	19,464,084
Milwaukee, Wisconsin	10,737,930	1,400,600	12,138,530
Minneapolis-St. Paul, Minnesota	12,438,869	1,622,348	14,061,217
New Orleans, Louisiana	10,374,070	1,353,382	11,727,452
New York, N.Y.-Northeastern New Jersey	376,572,618	48,949,027	425,521,645
Philadelphia, Pennsylvania-New Jersey	70,810,853	9,232,342	80,043,195
Phoenix, Arizona	8,201,878	1,069,107	9,270,985
Pittsburgh, Pennsylvania	21,411,000	2,791,492	24,202,492
Portland, Oregon-Washington	11,548,775	1,505,884	13,054,659
St. Louis, Missouri-Illinois	12,742,365	1,661,202	14,403,567
San Diego, California	16,862,585	2,198,798	19,061,383
San Francisco-Oakland, California	59,289,634	7,729,768	67,019,402
San Jose, California	13,828,729	1,802,227	15,630,956
San Juan, Puerto Rico	9,053,648	1,180,506	10,234,154
Seattle-Everett, Washington	23,149,354	3,019,731	26,169,085
Washington, D.C.-Maryland-Virginia	47,136,125	6,144,737	53,280,862
TOTAL	$1,139,202,876	$148,388,367	$1,287,591,243

FISCAL YEAR 1991 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION

URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
Akron, Ohio	$3,106,353	$404,805	$3,511,158
Albany-Schenectady-Troy, New York	4,252,285	554,372	4,806,657
Albuquerque, New Mexico	2,606,543	339,669	2,946,212
Allentown-Bethlehem-Easton, Pa.-N.J.	2,122,048	276,597	2,398,645
Ann Arbor, Michigan	1,992,134	259,602	2,251,736
Augusta, Georgia-South Carolina	993,554	129,503	1,123,057
Austin, Texas	5,089,910	663,833	5,753,743
Bakersfield, California	1,695,239	220,933	1,916,172
Baton Rouge, Louisiana	1,885,905	245,941	2,131,846
Birmingham, Alabama	3,011,552	392,580	3,404,132
Bridgeport, Connecticut	3,388,763	441,567	3,830,330
Canton, Ohio	1,147,281	149,504	1,296,785
Charleston, South Carolina	1,543,831	201,318	1,745,149
Charlotte, North Carolina	2,819,849	367,873	3,187,722
Chattanooga, Tennessee-Georgia	1,465,062	190,925	1,655,987
Colorado Springs, Colorado	1,732,542	225,859	1,958,401
Columbia, South Carolina	1,578,570	205,757	1,784,327
Columbus, Georgia-Alabama	1,050,011	136,843	1,186,854
Columbus, Ohio	6,444,869	840,360	7,285,229
Corpus Christi, Texas	1,619,649	211,089	1,830,738
Davenport-Rock Island-Moline, Iowa-Illinois	1,686,791	219,835	1,906,626
Dayton, Ohio	6,884,068	897,028	7,781,096
Des Moines, Iowa	1,681,088	219,130	1,900,218
El Paso, Texas	3,305,995	431,682	3,737,677
Fayetteville, North Carolina	777,920	101,363	879,283
Flint, Michigan	1,978,770	257,859	2,236,629
Fort Wayne, Indiana	1,558,519	203,114	1,761,633
Fresno, California	2,522,431	328,842	2,851,273
Grand Rapids, Michigan	2,285,544	297,868	2,583,412
Greenville, South Carolina	1,112,769	145,003	1,257,772
Harrisburg, Pennsylvania	1,458,693	190,117	1,648,810
Hartford, Connecticut	4,359,506	568,466	4,927,972
Honolulu, Hawaii	11,420,762	1,492,558	12,913,320
Indianapolis, Indiana	4,703,296	613,176	5,316,472
Jackson, Mississippi	1,155,077	150,529	1,305,606
Jacksonville, Florida	3,670,735	478,595	4,149,330
Knoxville, Tennessee	1,329,441	173,256	1,502,697
Lansing, Michigan	1,701,565	221,730	1,923,295
Las Vegas, Nevada	2,304,021	300,557	2,604,578
Lawrence-Haverhill, Mass.-New Hampshire	1,951,879	254,356	2,206,235
Little Rock-North Little Rock, Arkansas	1,645,191	214,491	1,859,682
Lorain-Elyria, Ohio	724,327	94,365	818,692
Louisville, Kentucky-Indiana	6,143,402	801,299	6,944,701
Madison, Wisconsin	2,537,935	330,840	2,868,775
Melbourne-Cocoa, Florida	1,334,004	173,953	1,507,957

FISCAL YEAR 1991 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION

URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
Memphis, Tennessee-Arkansas-Mississippi	$5,164,044	$673,402	$5,837,446
Mobile, Alabama	1,400,631	182,587	1,583,218
Nashville-Davidson, Tennessee	2,891,707	377,147	3,268,854
New Haven, Connecticut	3,654,295	476,283	4,130,578
Newport News-Hampton, Virginia	1,770,519	230,892	2,001,411
Norfolk-Portsmouth, Virginia	4,690,775	611,345	5,302,120
Ogden, Utah	1,485,028	193,651	1,678,679
Oklahoma City, Oklahoma	2,875,267	374,660	3,249,927
Omaha, Nebraska-Iowa	3,544,445	461,975	4,006,420
Orlando, Florida	4,560,478	594,537	5,155,015
Oxnard-Ventura-Thousand Oaks, California	1,733,585	225,934	1,959,519
Pensacola, Florida	1,039,503	135,464	1,174,967
Peoria, Illinois	1,426,405	185,861	1,612,266
Providence-Pawtucket-Warwick, R.I.-Mass.	9,220,302	1,201,818	10,422,120
Raleigh, North Carolina	1,172,020	152,749	1,324,769
Richmond, Virginia	3,711,408	484,083	4,195,491
Rochester, New York	4,762,911	620,829	5,383,740
Rockford, Illinois	1,093,278	142,470	1,235,748
Sacramento, California	6,396,614	833,770	7,230,384
St. Petersburg, Florida	5,014,407	653,687	5,668,094
Salt Lake City, Utah	6,137,932	800,930	6,938,862
San Antonio, Texas	10,122,836	1,320,312	11,443,148
San Bernardino-Riverside, California	4,318,779	562,950	4,881,729
Sarasota-Bradenton, Florida	1,500,769	195,554	1,696,323
Scranton-Wilkes-Barre, Pennsylvania	2,181,369	284,303	2,465,672
Shreveport, Louisiana	1,474,863	192,241	1,667,104
South Bend, Indiana-Michigan	1,373,634	179,042	1,552,676
Spokane, Washington	2,698,926	351,838	3,050,764
Springfield-Chicopee-Holyoke, Mass.-Conn.	3,942,119	513,901	4,456,020
Syracuse, New York	3,459,017	450,932	3,909,949
Tacoma, Washington	3,990,196	520,150	4,510,346
Tampa, Florida	4,126,496	537,889	4,664,385
Toledo, Ohio-Michigan	3,101,896	404,345	3,506,241
Trenton, New Jersey-Pennsylvania	2,378,586	310,030	2,688,616
Tucson, Arizona	3,731,274	486,447	4,217,721
Tulsa, Oklahoma	2,391,098	311,638	2,702,736
West Palm Beach, Florida	2,462,426	320,906	2,783,332
Wichita, Kansas	1,759,051	229,273	1,988,324
Wilmington, Delaware-New Jersey-Maryland	2,410,938	314,240	2,725,178
Worcester, Massachusetts	1,798,933	234,434	2,033,367
Youngstown-Warren, Ohio	1,668,520	217,390	1,885,910
TOTAL	$254,416,939	$33,170,831	$287,587,770

FISCAL YEAR 1991 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
ALABAMA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$3,709,899	$483,321	$4,193,220
Anniston	322,140	41,968	364,108
Auburn-Opelika	200,326	26,099	226,425
Decatur	234,599	30,563	265,162
Dothan	205,652	26,792	232,444
Florence	315,062	41,046	356,108
Gadsden	296,965	38,689	335,654
Huntsville	662,523	86,311	748,834
Montgomery	988,042	128,721	1,116,763
Tuscaloosa	484,590	63,132	547,722
ALASKA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$752,278	$98,006	$850,284
Anchorage	752,278	98,006	850,284
ARIZONA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$323,785	$42,182	$365,967
Yuma, Ariz.-Calif	323,785	42,182	365,967
ARKANSAS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,093,036	$142,400	$1,235,436
Fayetteville-Springdale	260,099	33,885	293,984
Fort Smith, Ark.-Okla	388,847	50,659	439,506
Pine Bluff	356,356	46,426	402,782
Texarkana, Tex.-Ark	87,734	11,430	99,164
CALIFORNIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$11,945,197	$1,556,207	$13,501,404
Antioch-Pittsburg	622,479	81,096	703,575
Chico	288,404	37,573	325,977
Davis	508,914	66,301	575,215
Fairfield	392,695	51,160	443,855
Hemet	300,405	39,137	339,542

FISCAL YEAR 1991 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
CALIFORNIA--Continued:			
Lancaster	251,576	32,775	284,351
Merced	347,152	45,226	392,378
Modesto	1,179,274	153,634	1,332,908
Napa	410,930	53,536	464,466
Palm Springs	279,335	36,391	315,726
Redding	230,744	30,061	260,805
Salinas	762,248	99,305	861,553
Santa Barbara	1,084,079	141,232	1,225,311
Santa Cruz	617,548	80,454	698,002
Santa Maria	349,109	45,481	394,590
Santa Rosa	862,136	112,318	974,454
Seaside-Monterey	799,969	104,219	904,188
Simi Valley	537,161	69,981	607,142
Stockton	1,408,704	183,524	1,592,228
Visalia	349,403	45,520	394,923
Yube City	361,499	47,096	408,595
Yuma, Ariz.-Calif	1,433	187	1,620
COLORADO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,450,855	$319,295	$2,770,150
Boulder	607,367	79,127	686,494
Fort Collins	451,454	58,815	510,269
Grand Junction	293,331	38,215	331,546
Greeley	431,455	56,210	487,665
Pueblo	667,248	86,928	754,176
CONNECTICUT:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$10,308,064	$1,342,924	$11,650,988
Bristol	427,466	55,690	483,156
*Danbury, Conn.-N.Y	1,649,341	214,875	1,864,216
Meriden	347,930	45,328	393,258
New Britain	859,593	111,987	971,580
New London-Norwich	705,383	91,896	797,279
*Norwalk	1,846,202	240,521	2,086,723
*Stamford	2,309,275	300,850	2,610,125
*Waterbury	2,162,874	281,777	2,444,651

*An appropriate amount for commuter rail from UZA's above 200,000 has been included.

FISCAL YEAR 1991 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
DELAWARE:			
FLORIDA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$5,126,488	$667,873	$5,794,361
Daytona Beach	846,919	110,336	957,255
Fort Myers	672,730	87,643	760,373
Fort Pierce	317,347	41,343	358,690
Fort Walton Beach	397,611	51,800	449,411
Gainesville	565,379	73,657	639,036
Lakeland	545,940	71,125	617,065
Naples	227,114	29,588	256,702
Ocala	226,349	29,488	255,837
Panama City	363,574	47,366	410,940
Tallahassee	608,320	79,251	687,571
Winter Haven	355,205	46,276	401,481
GEORGIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,855,118	$371,961	$3,227,079
Albany	411,924	53,665	465,589
Athens	304,326	39,647	343,974
Macon	732,919	95,484	828,402
Rome	232,058	30,232	262,290
Savannah	886,607	115,506	1,002,113
Warner Robins	287,284	37,427	324,711
HAWAII:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$731,301	$95,273	$826,574
Kailua-Kaneohe	731,301	95,273	826,574
IDAHO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,061,629	$138,308	$1,199,937
Boise City	766,585	99,870	866,455
Pocatello	295,044	38,438	333,482

FISCAL YEAR 1991 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
ILLINOIS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$7,040,627	$917,245	$7,957,872
Alton	463,735	60,415	524,150
Aurora	930,232	121,190	1,051,422
Beloit, Wis.-Ill	33,215	4,327	37,542
Bloomington-Normal	605,255	78,852	684,107
Champaign-Urbana	870,518	113,410	983,928
Danville	303,612	39,555	343,167
Decatur	623,439	81,221	704,660
Dubuque, Iowa-Ill	12,666	1,651	14,317
Elgin	694,616	90,493	785,109
Joliet	1,000,262	130,313	1,130,575
Kankakee	410,263	53,449	463,712
Round Lake Beach	323,674	42,167	365,841
Springfield	769,140	100,202	869,342
INDIANA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,336,820	$564,996	$4,901,816
Anderson	394,535	51,400	445,935
Bloomington	444,992	57,973	502,965
Elkhart-Goshen	447,377	58,284	505,661
Evansville, Ind.-Ky	1,004,649	130,885	1,135,534
Kokomo	407,859	53,135	460,994
Lafayette-West Lafayette	637,221	83,016	720,237
Muncie	573,058	74,657	647,715
Terre Haute	427,129	55,646	482,775
IOWA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,419,789	$315,247	$2,735,036
Cedar Rapids	756,567	98,565	855,132
Dubuque, Iowa-Ill	406,146	52,912	459,058
Iowa City	321,581	41,895	363,476
Sioux City, Iowa-Nebr.-S. Dak	402,217	52,400	454,617
Waterloo	533,278	69,475	602,753

FISCAL YEAR 1991 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
KANSAS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,039,972	$135,486	$1,175,458
Lawrence	342,325	44,598	386,923
St. Joseph, Mo.-Kans.	5,667	738	6,405
Topeka	691,980	90,150	782,130
KENTUCKY:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,199,861	$286,595	$2,486,456
Clarksville, Tenn.-Ky.	122,103	15,907	138,010
Evansville, Ind.-Ky.	131,579	17,142	148,721
Huntington-Ashland, W.Va.-Ky.-Ohio	310,491	40,451	350,942
Lexington-Fayette	1,200,496	156,399	1,356,895
Owensboro	435,192	56,696	491,888
LOUISIANA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,570,570	$334,891	$2,905,461
Alexandria	456,698	59,498	516,196
Houma	297,091	38,705	335,796
Lafayette	678,162	88,350	766,512
Lake Charles	586,524	76,412	662,936
Monroe	552,095	71,926	624,021
MAINE:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,110,021	$144,612	$1,254,633
Bangor	235,749	30,713	266,462
Lewiston-Auburn	279,339	36,392	315,731
Portland	541,676	70,569	612,245
Portsmouth-Dover-Rochester,N.H.-Me.	53,257	6,938	60,195
MARYLAND:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$974,057	$126,899	$1,100,956
Annapolis	352,670	45,946	398,616
Cumberland, Md.-W. Va.	282,567	36,812	319,379
Hagerstown, Md.-Pa.	338,820	44,141	382,961

FISCAL YEAR 1991 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
MASSACHUSETTS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,852,890	$632,229	$5,485,119
Brockton	1,152,198	150,107	1,302,305
Fall River, Mass.-R.I.	916,489	119,399	1,035,888
Fitchburg-Leominster	338,807	44,139	382,946
Lowell, Mass.-N.H.	984,740	128,291	1,113,031
New Bedford	991,997	129,236	1,121,233
Pittsfield	259,103	33,756	292,859
Taunton	209,556	27,301	236,857
MICHIGAN:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,319,096	$562,687	$4,881,783
Battle Creek	388,815	50,653	439,468
Bay City	446,096	58,117	504,213
Benton Harbor	327,189	42,626	369,815
Jackson	463,517	60,387	523,904
Kalamazoo	842,620	109,776	952,396
Muskegon-Muskegon Heights	555,604	72,383	627,987
Port Huron	335,538	43,714	379,252
Saginaw	959,717	125,031	1,084,748
MINNESOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,467,316	$191,160	$1,658,476
Duluth-Superior, Minn.-Wis.	437,964	57,057	495,021
Fargo-Moorhead, N. Dak.-Minn.	207,402	27,020	234,422
Grand Forks, N. Dak.-Minn.	49,196	6,409	55,605
La Crosse, Wis.-Minn.	21,036	2,741	23,777
Rochester	400,061	52,120	452,181
St. Cloud	351,657	45,813	397,470
MISSISSIPPI:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,392,196	$181,374	$1,573,570
Biloxi-Gulfport	843,790	109,928	953,718
Hattiesburg	257,235	33,512	290,747
Pascagoula-Moss Point	291,171	37,934	329,105

FISCAL YEAR 1991 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
MISSOURI:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,715,541	$223,499	$1,939,040
Columbia	312,203	40,673	352,876
Joplin	245,033	31,923	276,956
St. Joseph, Mo.-Kans	402,637	52,455	455,092
Springfield	755,668	98,448	854,116
MONTANA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,240,979	$161,673	$1,402,652
Billings	490,966	63,962	554,928
Great Falls	427,910	55,748	483,658
Missoula	322,103	41,963	364,066
NEBRASKA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,167,878	$152,150	$1,320,028
Lincoln	1,109,635	144,562	1,254,197
Sioux City, Iowa-Nebr.-S. Dak	58,243	7,588	65,831
NEVADA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$939,490	$122,396	$1,061,886
Reno	939,490	122,396	1,061,886
NEW HAMPSHIRE:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,404,938	$183,034	$1,587,972
Lowell, Mass.-N.H.	3,425	446	3,871
Manchester	621,850	81,014	702,864
Nashua	425,674	55,457	481,131
Portsmouth-Dover-Rochester, N.H.-Me.	353,989	46,117	400,106

FISCAL YEAR 1991 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
NEW JERSEY:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,101,740	$143,533	$1,245,273
Atlantic City	771,759	100,544	872,303
Vineland-Millville	329,981	42,989	372,970
NEW MEXICO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$532,716	$69,402	$602,118
Las Cruces	284,137	37,017	321,154
Santa Fe	248,579	32,385	280,964
NEW YORK:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$3,511,451	$457,468	$3,968,919
Binghamton	982,406	127,987	1,110,393
Danbury, Conn.-N.Y	11,233	1,464	12,697
Elmira	428,300	55,798	484,098
Glens Falls	253,499	33,026	286,525
Newburgh	314,391	40,958	355,349
Poughkeepsie	691,999	90,153	782,152
Utica-Rome	829,623	108,082	937,705
NORTH CAROLINA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$6,019,293	$784,187	$6,803,480
Asheville	454,913	59,266	514,179
Burlington	323,382	42,130	365,512
Concord	322,590	42,027	364,617
Durham	889,993	115,947	1,005,940
Gastonia	496,563	64,692	561,255
Goldsboro	251,860	32,812	284,672
Greensboro	997,819	129,995	1,127,814
Hickory	268,586	34,991	303,577
High Point	473,320	61,664	534,984
Jacksonville	316,410	41,221	357,631
Wilmington	384,839	50,136	434,975
Winston-Salem	839,018	109,306	948,324

FISCAL YEAR 1991 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
NORTH DAKOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,054,900	$137,431	$1,192,331
Bismarck-Mandan	336,237	43,805	380,042
Fargo-Moorhead, N. Dak.-Minn.	408,195	53,179	461,374
Grand Forks, N. Dak.-Minn.	310,468	40,447	350,915
OHIO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$3,417,314	$445,204	$3,862,518
Hamilton	619,098	80,656	699,754
Huntington-Ashland, W.Va.-Ky.-Ohio	179,454	23,379	202,833
Lima	393,808	51,305	445,113
Mansfield	390,021	50,811	440,832
Middletown	440,209	57,350	497,559
Newark	264,915	34,513	299,428
Parkersburg, W.Va.-Ohio	43,726	5,697	49,423
Sharon, Pa.-Ohio	26,259	3,421	29,680
Springfield	611,978	79,728	691,706
Steubenville-Weirton, Ohio-W.Va.-Pa.	241,446	31,455	272,901
Wheeling, W. Va.-Ohio	206,400	26,889	233,289
OKLAHOMA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$744,380	$96,977	$841,357
Enid	238,958	31,131	270,089
Fort Smith, Ark.-Okla.	9,051	1,179	10,230
Lawton	496,371	64,667	561,038
OREGON:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,377,613	$309,753	$2,687,366
Eugene	1,222,481	159,264	1,381,745
Longview, Wash.-Oreg.	6,263	816	7,079
Medford	299,038	38,958	337,996
Salem	849,831	110,715	960,546

FISCAL YEAR 1991 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
PENNSYLVANIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$6,807,710	$886,901	$7,694,611
Altoona	525,375	68,445	593,820
Erie	1,341,548	174,775	1,516,323
Hagerstown, Md.-Pa.	4,353	567	4,920
Johnstown	552,635	71,997	624,632
Lancaster	938,337	122,245	1,060,582
Monessen	325,134	42,358	367,492
Reading	1,251,882	163,094	1,414,976
Sharon, Pa.-Ohio	288,298	37,559	325,857
State College	392,459	51,129	443,588
Steubenville-Weirton, Ohio-W.Va.-Pa.	1,201	157	1,358
Williamsport	362,449	47,220	409,669
York	824,039	107,355	931,394
PUERTO RICO:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$4,755,603	$619,555	$5,375,158
Aguadilla	380,587	49,582	430,169
Arecibo	435,993	56,801	492,794
Caguas	1,020,879	132,999	1,153,878
Mayaguez	714,787	93,122	807,909
Ponce	1,679,249	218,771	1,898,020
Vega Baja-Manati	524,108	68,280	592,388
RHODE ISLAND:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$378,539	$49,316	$427,855
Fall River, Mass.-R.I.	82,447	10,741	93,188
Newport	296,092	38,575	334,667
SOUTH CAROLINA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,189,996	$155,031	$1,345,027
Anderson	244,545	31,859	276,404
Florence	257,643	33,565	291,208
Rock Hill	230,583	30,040	260,623
Spartanburg	457,225	59,567	516,792

FISCAL YEAR 1991 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
SOUTH DAKOTA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$755,623	$98,442	$854,065
Rapid City	274,610	35,776	310,386
Sioux City, Iowa-Nebr.-S.Dak.	7,908	1,030	8,938
Sioux Falls	473,105	61,636	534,741
TENNESSEE:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$1,295,094	$168,723	$1,463,817
Bristol, Tenn.-Bristol, Va.	125,634	16,367	142,001
Clarksville, Tenn.-Ky.	237,803	30,981	268,784
Jackson	229,674	29,922	259,596
Johnson City	354,005	46,119	400,124
Kingsport, Tenn.-Va.	347,978	45,334	393,312
TEXAS:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$11,907,429	$1,551,287	$13,458,716
Abilene	442,935	57,705	500,640
Amarillo	787,270	102,565	889,835
Beaumont	597,691	77,866	675,557
Brownsville	615,127	80,138	695,265
Bryan-College Station	423,261	55,142	478,403
Galveston	344,245	44,848	389,093
Harlingen-San Benito	330,932	43,113	374,045
Killeen	504,462	65,721	570,183
Laredo	808,244	105,297	913,541
Longview	317,447	41,357	358,804
Lubbock	926,211	120,666	1,046,877
McAllen-Pharr-Edinburg	962,252	125,362	1,087,614
Midland	389,483	50,741	440,224
Odessa	587,965	76,600	664,565
Port Arthur	530,939	69,170	600,109
San Angelo	398,369	51,899	450,268
Sherman-Denison	246,418	32,103	278,521
Temple	227,454	29,632	257,086
Texarkana, Tex.-Ark.	217,462	28,331	245,793
Texas City-La Marque	438,385	57,112	495,497
Tyler	400,230	52,142	452,372
Victoria	312,537	40,717	353,254

FISCAL YEAR 1991 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
TEXAS--Continued:			
Waco	599,431	78,093	677,524
Wichita Falls	498,679	64,967	563,646
UTAH:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$964,930	$125,710	$1,090,640
Provo-Orem	964,930	125,710	1,090,640
VERMONT:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$376,348	$49,030	$425,378
Burlington	376,348	49,030	425,378
VIRGINIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,697,233	$351,392	$3,048,625
Bristol, Tenn.-Bristol, Va.	97,787	12,740	110,527
Charlottesville	400,247	52,144	452,391
Danville	282,160	36,759	318,919
Kingsport, Tenn.-Va.	18,905	2,463	21,368
Lynchburg	395,050	51,467	446,517
Petersburg-Colonial Heights	541,735	70,577	612,312
Roanoke	961,349	125,242	1,086,591
WASHINGTON:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,273,074	$296,133	$2,569,207
Bellingham	275,786	35,929	311,715
Bremerton	338,674	44,122	382,796
Longview, Wash.-Oreg.	270,042	35,181	305,223
Olympia	341,062	44,433	385,495
Richland-Kennewick	556,378	72,483	628,853
Yakima	491,140	63,985	555,125
WEST VIRGINIA:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$2,483,093	$323,494	$2,806,587
Charleston	904,319	117,812	1,022,131

FISCAL YEAR 1991 UMTA SECTION 9 FORMULA APPORTIONMENTS

AMOUNTS APPORTIONED TO STATE GOVERNORS FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE/URBANIZED AREA	GENERAL FUND	TRUST FUND	TOTAL APPORTIONMENT
WEST VIRGINIA--Continued:			
Cumberland, Md.-W. Va.	13,440	1,751	15,191
Huntington-Ashland, W.Va.-Ky.-Ohio	585,354	76,259	661,613
Parkersburg, W. Va.-Ohio	385,009	50,159	435,168
Steubenville-Weirton,Ohio-W.Va.-Pa	152,754	19,901	172,655
Wheeling, W. Va.-Ohio	442,217	57,612	499,829
WISCONSIN:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$5,645,865	$735,537	$6,381,402
Appleton	944,346	123,028	1,067,374
Beloit, Wis.-Ill.	246,237	32,079	278,316
Duluth-Superior, Minn.-Wis.	110,788	14,433	125,221
Eau Claire	367,859	47,925	415,784
Green Bay	714,436	93,076	807,512
Janesville	298,353	38,869	337,222
Kenosha	682,349	88,896	771,245
La Crosse, Wis.-Minn.	396,024	51,594	447,618
Oshkosh	354,680	46,208	400,888
Racine	868,847	113,192	982,039
Sheboygan	370,292	48,241	418,533
Wausau	291,654	37,996	329,650
WYOMING:			
Governor's apportionment for areas 50,000 to 200,000 in population:	$709,044	$92,373	$801,417
Casper	377,735	49,210	426,945
Cheyenne	331,309	43,163	374,472
TOTAL	$141,548,679	$18,440,802	$159,989,481
OVER 1,000,000 IN POPULATION	$1,139,202,876	$148,388,367	$1,287,591,243
200,000-1,000,000 IN POPULATION	254,416,939	33,170,831	287,587,770
50,000-200,000 IN POPULATION	141,548,679	18,440,802	159,989,481
NATIONAL TOTALS	$1,535,168,494	$200,000,000	$1,735,168,494

FISCAL YEAR 1991 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

LIMITATION FOR URBANIZED AREAS OVER 1,000,000 IN POPULATION

URBANIZED AREA	LIMITATION
Atlanta, Georgia	$6,111,921
Baltimore, Maryland	9,782,625
Boston, Massachusetts	18,366,827
Buffalo, New York	6,028,684
Chicago, Illinois-Northwestern Indiana	50,868,200
Cincinnati, Ohio-Kentucky	5,298,996
Cleveland, Ohio	9,695,405
Dallas-Fort Worth, Texas	8,694,304
Denver, Colorado	5,935,536
Detroit, Michigan	21,524,373
Fort Lauderdale-Hollywood, Florida	7,591,767
Houston, Texas	9,135,885
Kansas City, Missouri-Kansas	4,489,956
Los Angeles-Long Beach, California	57,409,549
Miami, Florida	8,432,737
Milwaukee, Wisconsin	5,494,331
Minneapolis-St. Paul, Minnesota	7,325,860
New Orleans, Louisiana	6,645,608
New York, N.Y.-Northeastern New Jersey	132,956,493
Philadelphia, Pennsylvania-New Jersey	32,006,164
Phoenix, Arizona	4,733,354
Pittsburgh, Pennsylvania	9,553,797
Portland, Oregon-Washington	4,426,775
St. Louis, Missouri-Illinois	9,644,787
San Diego, California	7,346,704
San Francisco-Oakland, California	19,561,461
San Jose, California	6,646,076
San Juan, Puerto Rico	7,553,774
Seattle-Everett, Washington	6,207,339
Washington, D.C.-Maryland-Virginia	16,981,240
TOTAL	$506,450,528

LIMITATION FOR URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION

URBANIZED AREA	LIMITATION
Akron, Ohio	$2,312,265
Albany-Schenectady-Troy, New York	2,242,644
Albuquerque, New Mexico	1,550,555
Allentown-Bethlehem-Easton, Pa.-N.J.	2,344,758
Ann Arbor, Michigan	983,167
Augusta, Georgia-South Carolina	783,195
Austin, Texas	1,474,896
Bakersfield, California	961,683
Baton Rouge, Louisiana	1,285,100
Birmingham, Alabama	2,360,634
Bridgeport, Connecticut	2,049,465
Canton, Ohio	1,132,339
Charleston, South Carolina	1,073,572
Charlotte, North Carolina	1,294,211
Chattanooga, Tennessee-Georgia	975,656
Colorado Springs, Colorado	968,543
Columbia, South Carolina	1,104,432
Columbus, Georgia-Alabama	821,200
Columbus, Ohio	4,363,157
Corpus Christi, Texas	861,805
Davenport-Rock Island-Moline, Iowa-Ill.	1,121,342
Dayton, Ohio	2,903,339
Des Moines, Iowa	1,092,126
El Paso, Texas	1,786,274
Fayetteville, North Carolina	738,606
Flint, Michigan	1,519,192
Fort Wayne, Indiana	1,083,262
Fresno, California	1,457,786
Grand Rapids, Michigan	1,540,822
Greenville, South Carolina	744,756

FISCAL YEAR 1991 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

LIMITATION FOR URBANIZED AREAS 200,000 TO 1,000,000 IN POPULATION--(CONTINUED)

URBANIZED AREA	LIMITATION	URBANIZED AREA	LIMITATION
Harrisburg, Pennsylvania	$1,124,775	Providence-Pawtucket-Warwick, R.I.-Mass.	$4,726,197
Hartford, Connecticut	2,282,551	Raleigh, North Carolina	727,090
Honolulu, Hawaii	2,826,889	Richmond, Virginia	1,925,849
Indianapolis, Indiana	3,798,293	Rochester, New York	3,087,184
Jackson, Mississippi	897,906	Rockford, Illinois	967,473
Jacksonville, Florida	2,012,503	Sacramento, California	3,491,692
Knoxville, Tennessee	895,102	St. Petersburg, Florida	3,320,808
Lansing, Michigan	1,155,466	Salt Lake City, Utah	2,441,725
Las Vegas, Nevada	1,371,613	San Antonio, Texas	4,594,445
Lawrence-Haverhill, Mass.-New Hampshire	849,082	San Bernardino-Riverside, California	2,524,739
Little Rock-North Little Rock, Arkansas	1,029,908	Sarasota-Bradenton, Florida	1,260,444
Lorain-Elyria, Ohio	779,969	Scranton-Wilkes-Barre, Pennsylvania	1,732,184
Louisville, Kentucky-Indiana	3,879,221	Shreveport, Louisiana	1,049,794
Madison, Wisconsin	990,936	South Bend, Indiana-Michigan	1,146,804
Melbourne-Cocoa, Florida	699,943	Spokane, Washington	1,112,811
Memphis, Tennessee-Arkansas-Mississippi	3,595,220	Springfield-Chicopee-Holyoke, Mass.-Conn	2,021,782
Mobile, Alabama	1,001,858	Syracuse, New York	1,895,440
Nashville-Davidson, Tennessee	1,666,887	Tacoma, Washington	1,549,320
New Haven, Connecticut	1,849,046	Tampa, Florida	1,919,226
Newport News-Hampton, Virginia	1,133,100	Toledo, Ohio-Michigan	2,238,413
Norfolk-Portsmouth, Virginia	3,079,215	Trenton, New Jersey-Pennsylvania	1,976,346
Ogden, Utah	696,060	Tucson, Arizona	1,655,879
Oklahoma City, Oklahoma	2,307,051	Tulsa, Oklahoma	1,567,811
Omaha, Nebraska-Iowa	2,366,036	West Palm Beach, Florida	1,650,143
Orlando, Florida	1,740,981	Wichita, Kansas	1,356,341
Oxnard-Ventura-Thousand Oaks, California	1,350,199	Wilmington, Delaware-New Jersey-Maryland	2,006,018
Pensacola, Florida	754,556	Worcester, Massachusetts	1,157,915
Peoria, Illinois	1,051,328	Youngstown-Warren, Ohio	1,783,823

		TOTAL	$149,004,172

FISCAL YEAR 1991 UMTA SECTION 9 OPERATING ASSISTANCE LIMITATIONS

STATE LIMITATION FOR URBANIZED AREAS 50,000 TO 200,000 IN POPULATION

STATE	LIMITATION	STATE	LIMITATION
ALABAMA	$4,065,199	NEVADA	$853,569
ALASKA	779,243	NEW HAMPSHIRE	1,429,337
ARIZONA	315,091	NEW JERSEY	1,789,495
ARKANSAS	1,226,881	NEW MEXICO	527,324
CALIFORNIA	10,958,512	NEW YORK	4,266,962
COLORADO	2,555,593	NORTH CAROLINA	6,303,009
CONNECTICUT	7,458,315	NORTH DAKOTA	1,062,959
DELAWARE	0	OHIO	3,771,848
FLORIDA	4,912,453	OKLAHOMA	831,898
GEORGIA	3,197,763	OREGON	2,190,921
HAWAII	724,451	PENNSYLVANIA	7,705,926
IDAHO	1,017,272	PUERTO RICO	4,600,720
ILLINOIS	8,326,529	RHODE ISLAND	375,898
INDIANA	4,702,956	SOUTH CAROLINA	1,215,155
IOWA	2,733,897	SOUTH DAKOTA	802,762
KANSAS	1,166,427	TENNESSEE	1,359,015
KENTUCKY	2,290,279	TEXAS	12,262,101
LOUISIANA	2,698,919	UTAH	825,124
MAINE	1,241,697	VERMONT	372,059
MARYLAND	956,120	VIRGINIA	2,911,621
MASSACHUSETTS	6,005,827	WASHINGTON	2,206,543
MICHIGAN	4,838,296	WEST VIRGINIA	2,785,280
MINNESOTA	1,679,177	WISCONSIN	6,041,511
MISSISSIPPI	1,389,954	WYOMING	702,143
MISSOURI	1,853,085		
MONTANA	1,329,576		----------
NEBRASKA	1,206,608	TOTAL	$146,823,300

OVER 1,000,000 IN POPULATION	$506,450,528
200,00-1,000,000 IN POPULATION	149,004,172
50,000-200,000 IN POPULATION	146,823,300

NATIONAL TOTALS	$802,278,000

BEST COPY AVAILABLE

FISCAL YEAR 1991

UMTA SECTION 18 FORMULA APPORTIONMENTS AND

RURAL TRANSIT ASSISTANCE PROGRAM (RTAP) ALLOCATIONS

TO THE STATES FOR NONURBANIZED AREAS

STATE	SECTION 18 APPORTIONMENT	RTAP ALLOCATION	STATE	SECTION 18 APPORTIONMENT	RTAP ALLOCATION
ALABAMA	$1,636,680	$89,940	NEBRASKA	719,499	67,558
ALASKA	178,095	54,346	NEVADA	157,893	53,853
AMERICAN SAMOA	24,835	10,606	NEW HAMPSHIRE	482,556	61,776
ARIZONA	618,730	65,099	NEW JERSEY	825,268	70,139
ARKANSAS	1,324,988	82,334	NEW MEXICO	597,925	64,591
CALIFORNIA	2,931,416	121,536	NEW YORK	2,895,678	120,664
COLORADO	671,228	66,380	NORTH CAROLINA	2,983,374	122,804
CONNECTICUT	609,599	64,876	NORTH DAKOTA	365,928	58,930
DELAWARE	174,382	54,255	NORTHERN MARIANAS	12,903	10,315
FLORIDA	1,782,322	93,494	OHIO	3,275,335	129,929
GEORGIA	2,199,123	103,666	OKLAHOMA	1,352,166	82,997
GUAM	81,494	11,989	OREGON	1,049,540	75,612
HAWAII	212,630	55,189	PENNSYLVANIA	3,610,773	138,114
IDAHO	561,094	64,181	PUERTO RICO	1,135,766	77,716
ILLINOIS	2,408,881	108,784	RHODE ISLAND	120,223	52,934
INDIANA	2,221,579	104,214	SOUTH CAROLINA	1,485,746	86,257
IOWA	1,524,046	87,192	SOUTH DAKOTA	424,513	60,359
KANSAS	1,160,461	78,319	TENNESSEE	1,925,962	97,000
KENTUCKY	1,867,113	95,563	TEXAS	3,922,347	145,716
LOUISIANA	1,541,184	87,610	UTAH	316,346	57,720
MAINE	673,219	66,429	VERMONT	334,443	58,161
MARYLAND	827,099	70,184	VIRGIN ISLANDS	74,258	11,812
MASSACHUSETTS	993,762	74,251	VIRGINIA	1,770,421	93,204
MICHIGAN	2,676,233	115,309	WASHINGTON	1,161,669	78,348
MINNESOTA	1,554,865	87,944	WEST VIRGINIA	1,189,020	79,016
MISSISSIPPI	1,485,549	86,252	WISCONSIN	1,821,749	94,456
MISSOURI	1,765,973	93,095	WYOMING	270,552	56,602
MONTANA	444,515	60,848			
TOTAL				$68,452,948	$4,260,468

FISCAL YEAR 1991 UMTA SECTION 16(b)(2) ALLOCATIONS

AMOUNTS ALLOCATED TO STATES

STATE	ALLOCATION	STATE	ALLOCATION
ALABAMA	$626,385	NEBRASKA	340,114
ALASKA	139,113	NEVADA	196,816
AMERICAN SAMOA	50,936	NEW HAMPSHIRE	233,538
ARIZONA	460,731	NEW JERSEY	1,062,920
ARKANSAS	477,015	NEW MEXICO	253,468
CALIFORNIA	2,781,426	NEW YORK	2,492,117
COLORADO	392,813	NORTH CAROLINA	806,054
CONNECTICUT	512,098	NORTH DAKOTA	207,660
DELAWARE	189,557	NORTHERN MARIANAS	50,490
DISTRICT OF COLUMBIA	208,282	OHIO	1,407,745
FLORIDA	1,922,626	OKLAHOMA	533,085
GEORGIA	716,060	OREGON	446,004
GUAM	127,955	PENNSYLVANIA	1,769,284
HAWAII	208,361	PUERTO RICO	431,141
IDAHO	224,647	RHODE ISLAND	262,498
ILLINOIS	1,502,412	SOUTH CAROLINA	453,815
INDIANA	749,509	SOUTH DAKOTA	219,524
IOWA	530,545	TENNESSEE	713,492
KANSAS	445,091	TEXAS	1,635,192
KENTUCKY	596,607	UTAH	242,076
LOUISIANA	583,486	VERMONT	187,271
MAINE	275,502	VIRGIN ISLANDS	129,429
MARYLAND	565,291	VIRGINIA	680,754
MASSACHUSETTS	911,892	WASHINGTON	586,799
MICHIGAN	1,136,563	WEST VIRGINIA	387,171
MINNESOTA	626,869	WISCONSIN	713,279
MISSISSIPPI	453,095	WYOMING	163,798
MISSOURI	818,218		
MONTANA	213,902		
TOTAL			$35,050,521

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federal register

Friday,
November 23, 1990

Part IV

Department of Health and Human Services

Office of Human Development Services

Administration for Native Americans; Availability of Financial Assistance; Announcement

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13612-912]

Administration for Native Americans; Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA), Office of Human Development Services (OHDS), HHS.

ACTION: Announcement of availability of competitive financial assistance for Alaskan Native social and economic development projects.

SUMMARY: The Administration for Native Americans (ANA) announces the anticipated availability of fiscal year 1991 funds for social and economic development projects. Financial assistance provided by ANA is designed to strengthen the self-sufficiency of Alaskan Natives through support of social and economic development strategies (SEDS) and the strengthening of local governance capabilities.

DATES: The closing dates for submission of applications are February 15, 1991, and May 24, 1991.

FOR FURTHER INFORMATION CONTACT: Ted George, (206) 442-0992 or Robert Kreidler, (206) 442-6113, Administration for Native Americans, Office of Human Development Services, Department of Health and Human Services, 2201 6th Avenue, Mail Stop RX-34, Seattle, Washington 98121.

SUPPLEMENTARY INFORMATION:

A. Introduction and Purpose

The purpose of this program announcement is to announce the anticipated availability of fiscal year 1991 financial assistance to promote social and economic self-sufficiency for Alaskan Natives through support of local governance, and social and economic development projects. Funds will be awarded under section 803(a) of the Native American Programs Act of 1974, as amended, Public Law 93-644, 88 Stat. 2324, 42 U.S.C. 2991b.

Proposed projects will be reviewed on a competitive basis against the evaluation criteria in this announcement.

The Administration for Native Americans believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian Tribes, Alaskan Native villages, and in the leadership of Native American groups. The development of self-sufficiency requires the strengthening of governmental responsibilities, economic progress, and improvement of social systems which protect and enhance the health and well-being of individuals, families and communities. Achievement of self-sufficiency is based on the community's ability to develop a strategy and to plan, organize, and direct resources in a comprehensive manner to achieve the community's long-range goals.

The Administration for Native Americans bases its program and policy on three goals:

(1) *Governance:* To assist Tribal and village governments, Native American institutions, and local leadership to exercise local control and decisionmaking over their resources.

(2) *Economic development:* To foster the development of stable, diversified local economies and economic activities which will provide jobs, promote economic well-being, and reduce dependency on public funds and social services.

(3) *Social development:* To support local access to, control of, and coordination of services and programs which safeguard the health and well-being of people, and which are essential to a thriving and self-sufficient community.

To achieve these goals, ANA supports Tribal and village governments, and other Native American organizations, to develop and implement community-based, long-term governance, and social and economic development strategies (SEDS). These strategies promote the self-sufficiency of local communities. The ANA approach is based on two fundamental principles:

(1) The local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs aimed at achieving those goals. The unique mix of socio-economic political, and cultural factors in each community makes such self-determination necessary. The local community is in the best position to apply its own cultural, political, and socio-economic values for its long-term strategies and programs.

(2) Economic and social development are interrelated, and development in one area should be balanced with development in the other in order to move toward self-sufficiency. Consequently, comprehensive development strategies for a community should address all aspects of the infrastructures which a community needs to become self-sufficient.

• *Governmental infrastructure* includes the constitutional, legal, and administrative development requisite for independent governance.

• *Economic infrastructure* includes the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.

• *Social infrastructure* includes those components through which health and well-being are established and maintained within the community.

Without a careful balance of all of these, a community's development efforts could be jeopardized. For example, expansion of social services, without providing opportunities for employment and economic development, could lead to greater dependency on social services. Conversely, inadequate social services could seriously impede productivity and local economic development.

B. Proposed Projects to be Funded

The fundamental task which Native American communities face is to develop enduring social and economic strategies in keeping with their local goals, resources, and cultural values. The Administration for Native Americans assists local communities to undertake projects that are a part of long-range strategies to achieve social and economic self-sufficiency. The Administration for Native Americans expects its applicants to have undertaken a long-range planning process to address the community's development. Such long-range planning must consider the maximum use of all available resources, directing those resources to opportunities, and addressing local issues that will promote social and economic growth in the community.

The Administration for Native Americans encourages applicants to design projects to achieve their specific governance, and social and economic goals, that use available human, natural, financial, and physical resources to which the applicant has access. Non-ANA resources should be marshalled to strengthen and broaden the proposed project impact in the community. Project designs should explain the means through which those parts of projects which ANA does not fund, such as construction, will be financed through other sources.

All projects funded by ANA must be completed or self-sustaining or supported with other than ANA funds at the end of the project period. "Completed" means that the project ANA funded is finished, and the desired result(s) have been attained.

Self-sustaining means that a project will continue without outside resources. "Supported by other than ANA funds" means that the project will continue beyond the ANA project period, but will be supported by funds other than ANA's. The Administration for Native Americans does not fund programs which operate indefinitely or would have a need for ANA funding on a recurring basis.

The Administration for Native Americans does not normally fund objectives or activities for the core administration of an organization. However, ANA will consider funding core administrative capacity-building projects at the village government level if the villages do not have governing systems in place.

Core administration is defined as those functions which provide the ongoing management and administrative support to an organization. The management and administrative functions needed to carry out an ANA approved project are not considered core administration. ANA does fund the salaries of approved staff for the time to implement a funded ANA project. The Administration for Native Americans does not provide funds for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.

Goal 1: governance. Effective governance is a necessary foundation and condition for social and economic development of Indian Tribes, Alaskan Native villages, and Native American groups. Efforts to achieve effective governance include: (1) Strengthening the infrastructures of Tribal and village governments; (2) increasing the ability of Tribes, villages, and Native American groups and organizations to plan, develop, and administer a comprehensive program to support community social and economic self-sufficiency; and (3) increasing awareness of the legal rights and benefits to which Native Americans are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, or as citizens of a particular state or of the United States.

Under its governance goal, ANA strongly encourages Tribal and village councils, and other governing bodies, to strengthen and streamline their institutional management. The purpose is to develop and implement effective social and economic development strategies, and to improve their day-to-day governmental management. By improving such capabilities, Indian Tribes, Alaskan Native villages, and Native American groups can better define and achieve their goals, promote greater efficiency, and the effective use of all available resources.

Goal 2: economic development is the long-term mobilization and management of economic resources to achieve a diversified economy. It is characterized by the effective and planned distribution of economic resources, services, and benefits. It also includes the participation of community members in the productive activities and economic investments of the community, and the pursuit of economic interests through methods that balance economic gain with social development, supported by an adequate governmental infrastructure.

Goal 3: social development is the mobilization and management of resources for the social benefit of community members. It involves the establishment of institutions, systems, and practices that contribute to the social environment desired by the community. This includes the development of, access to, and local control over, the projects and institutions that protect the health and welfare of individuals and families, and preserve the values, language, and culture of the community.

Building on the foundation of strong local governance, ANA supports Tribal and village governments' and other Native American organizations' plans to achieve coordinated and balanced development through the implementation of social and economic development strategies (SEDS). These interrelated strategies should describe how the community coordinates and directs all resources (Federal and non-Federal) toward locally determined priorities, and how the community and its members are assisted in ways that promote greater economic and social self-sufficiency. In addition, strategies that combine balanced social and economic and governance goals should target independent sources of revenue for the community over the long term.

Alaska Initiative

Based on the three ANA goals, in fiscal year 1984, ANA implemented a special Alaska social and economic development initiative. The purpose of this special effort was to provide financial assistance at the village level, or for village-specific projects aimed at improving a village's social and economic development. This program announcement continues to implement this initiative. ANA sees both the nonprofit and for-profit corporations in Alaska as being able to play an important supportive role in assisting individual villages to develop and implement their own locally determined strategies which take advantage of the opportunities afforded to Alaskan Natives under the Alaska Native Claims Settlement Act (ANCSA), Public Law 92-202.

Examples of the types of projects that ANA is seeking to fund include, but are not limited to, projects that will:

Governance

• Initiate a demonstration program at a regional level to allow Native people to become involved in developing strategies to maintain and develop their economic subsistence base.

• Assist villages in developing land use capabilities and skills in the areas of land and natural resource management, resource assessment and development, and studies of the potential impact of land use upon the environment and the subsistence ecology.

• Assist village consortia in the development of Tribal constitutions, ordinances, codes, and court systems.

• Develop agreements between the State and villages that transfer programs, jurisdictions, and/or control to Native entities.

• Strengthen village government control of land management, including land protection.

• Develop Tribal courts, adoption codes, and/or related comprehensive children's codes.

• Assist in status clarification.

• Initiate village level mergers between village councils, village corporations, and others.

• Develop Regional IRAs (Indian Reorganization Act of 1934) and village consortia, in order to maximize Tribal government resources, i.e., to develop model codes, Tribal court systems, governance structures, and organic documents.

• Assist villages in developing and coordinating plans for the development of water and sewer systems for use within the village boundaries.

• Assist villages in establishing structures through which youth would participate in the governance of the community and be trained to assume leadership roles in village governments.

Economic Development

• Assist villages to develop businesses and industries which (1) Use local materials, (2) create jobs for Alaskan Natives, (3) are capable of high productivity at a small scale of operation, and (4) complement traditional and necessary seasonal activities.

- Substantially increase and strengthen efforts to establish and improve the village and regional infrastructure and the capabilities to develop and manage resources in a highly competitive cash-economy system.
- Assist villages or consortia of villages in developing subsistence compatible industries that will retain local dollars in villages.
- Assist in new or expanded Native businesses.
- Assist villages in labor export, i.e., people leaving the local communities for seasonal work and returning to their communities.
- Consider strategies and plans to protect against, monitor, and assist when catastrophic events occur, such as oil spills, earthquakes, etc.

Social Development

- Assist villages in developing programs to deliver needed social services.
- Assist in developing training and education programs for those jobs in education, government, and health usually found in local communities; and to work with the various agencies to encourage job replacement of non-Natives by Natives.
- Coordinate land use planning with village corporations and city government.
- Develop local models related to comprehensive planning and delivery of social services.
- Develop new service programs established with ANA funds and funded for continued operation by local communities or the private sector.
- Develop or coordinate activities with State-funded projects, in decreasing the incidences of child abuse and neglect, fetal alcohol syndrome, or Native suicides.
- Assist in obtaining licenses to provide housing or related services for State or local governments.
- Develop businesses to provide relief for caretakers needing respite from demanding care work, child care, chore service, etc.

C. Eligible Applicants

The following are eligible to apply for a grant award under this program announcement:

- Current ANA grantees in Alaska funded under section 803(a) of the Native American Programs Act with a project period ending in Fiscal Year 1991 (October 1, 1990–September 30, 1991);
- Alaskan Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Nonprofit Alaskan Native Regional Associations in Alaska with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects; and
- Nonprofit Alaskan Native community entities or Tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs.

Although for-profit Regional Corporations established under ANCSA are not eligible applicants, individual villages and Indian communities are encouraged to use the for-profit corporations as subcontractors and to collaborate with them in joint-venture projects for promoting social and economic self-sufficiency. ANA encourages the for-profit corporations to assist the villages in developing applications and to participate as subcontractors in a project.

This program announcement does not apply to current grantees with multi-year projects that apply for continuation funding for their second or third budget periods.

Note: In fiscal year 1991, Alaskan Native entities are eligible to submit an application under either Program Announcement 13612–911, published August 29, 1990, or this announcement, 13612–912, but are limited to a single application for each closing date.

An Alaskan Native applicant may apply for the:

(1) November 2, 1990 closing date of Program Announcement 13612–911; and the

(2) February 15, 1991 closing date for Program Announcement 13612–911 *OR* the February 15, 1991 closing date for Program Announcement 13612–912; and the

(3) May 24, 1991 closing date for Program Announcement 13612–911 *OR* the May 24, 1991 closing date for Program Announcement 13612–912.

The following chart may be of assistance in understanding under what dates an Alaskan Native applicant is eligible to apply.

	Program announcement	
	13612–911	13612–912
Submit application to	Washington, DC	Seattle, Washington.
Closing dates	November 2, 1990 February 15, 1991 May 24, 1991	February 15, 1991. May 24, 1991.

Thus, Alaskan Native groups now have the same three closing date opportunities as the rest of ANA's constituency.

D. Available Funds

Approximately $1.5 million of Federal financial assistance is available under this program announcement for Alaskan Native projects. This program announcement is being issued in anticipation of appropriation of funds, and is contingent upon that appropriation.

Funding Guidance: ANA plans to award approximately 15–18 grants under this announcement. For individual village projects, the funding level for a budget period of 12 months will be up to $100,000; for regional nonprofit and village consortia, the funding level for a budget period is up to $150,000, commensurate with approved multi-village objectives.

Each eligible applicant can receive only *one* grant award under this announcement.

E. Multi-Year Projects

Applicants may apply for projects not to exceed 36 months duration.

A multi-year project is a project on a single theme requiring more than 12 months to complete and affords applicants the opportunity to develop more complex, and in-depth, projects than can be completed in one year. Applicants are encouraged to develop multi-year projects. The project cannot be a series of unrelated projects or activities presented in chronological order over a two or three year period. Funding after the first 12 month budget period of an approved multi-year project is non-competitive.

The budget period for each multi-year project grant is 12 months. The non-competitive funding for the second and third years is contingent upon the grantee's satisfactory progress in achieving the objectives of the project, according to the approved work plan; the availability of Federal funds; and compliance with the applicable statutory, regulatory and grant requirements.

F. Grantee Share of Project

Grantees must provide at least 20 percent of the total approved cost of the project, which may be cash or in-kind contributions.

The total approved cost of the project is the sum of the Federal share and the non-Federal share. The method to compute the non-Federal share is shown in the ANA Application Kit. An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

G. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

H. The Application Process

Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplies and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from: Department of Health and Human Services, Office of Human Development Services, Administration for Native Americans, 2201 6th Avenue, Mail Stop RX–34, Seattle, WA 98121, Attention: No. 13612–912, (206) 442–8113 or (206) 442–0992.

Application Submission

One signed original, and two copies, of the grant application, including all attachments, must be hand delivered or mailed by the closing date to: Department of Health and Human Services, Office of Human Development Services, Discretionary Grants Management Branch, 2201 6th Avenue, Mail Stop RX–31, Seattle, WA 98121, ATTENTION: ANA 13612–912

Note: Do not submit an application for this program announcement to Washington, DC.

The application must be signed by an individual authorized (1) To act for the applicant Tribe or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. An independent review panel evaluates each application against the published criteria in this announcement. The results of this review assist the Commissioner to make final funding decisions.
- The Commissioner's decision also takes into account the comments of ANA staff, State and Federal agencies having performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.
- After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within approximately 120 days of the closing date. Successful applicants are notified through an official Financial Assistance Award (FAA) document. The Administration for Native Americans staff cannot respond to requests for funding decisions prior to the official notification to the applicants. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-Federal matching share requirement.

I. Review Process and Criteria

Applications submitted by the post-marked date under this program announcement will undergo a pre-review to determine:

- That the applicant is eligible in accordance with the Eligible Applicants Section of this announcement.
- That the application materials submitted are sufficient to allow the panel to undertake an in-depth evaluation. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit.)

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of five evaluation criteria. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success. A proposed project should reflect the purposes of ANA's SEDS policy and program goals (described in Introduction and Program Purpose of this announcement) and the probability of self-sufficiency for a specific Tribe or Native American community. The five programmatic and management criteria are closely related to each other. They are considered jointly in judging the overall quality of an application. Points will be given only to applications which are responsive to this announcement and these criteria. The five evaluation criteria are:

(1) Long-Range Goals and Available Resources (15 points)

(a) The application presents specific long-range community goals related to the proposed project. It explains how the community's intent to achieve these goals has been identified and clearly documents the involvement and support of the community in the planning process and implementation of the proposed project. The goals are presented within the context of a comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary.)

(b) Available resources (other than ANA) which will assist and be coordinated with the project are described. These resources may be human, natural or financial, and may include other Federal and non-Federal resources.

(2) Organizational Capabilities and Qualifications (10 points)

a. The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well defined. The application clearly shows the successful management of prior or current projects of similar scope by the organization, and/or by the individuals designated to manage the project.

b. Position descriptions or resumes of key personnel, including those of consultants, are presented. The position descriptions and resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe the position and its duties and clearly relate to the personnel staffing required for implementation of the project. Resumes indicate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes set forth the qualifications that the applicant believes are necessary for overall quality management of the project.

(3) Project Objectives, Approach and Activities (45 points)

The application proposes specific project objectives and activities related to the overall long-term goals. The Objective Work Plan in the application includes project objectives and activities for each budget period

proposed, and demonstrates that these objectives and activities:

• Are measurable and/or quantifiable;

• Are based on a fully described and locally determined balanced strategy for governance or social and economic development;

• Clearly relate to the community's long-range goals which the project addresses;

• Can be accomplished with available or expected resources during the proposed project period;

• Indicate when the objective, and major activities under each objective, will be accomplished;

• Specify who will conduct the activities under each objective; and

• Support a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected (20 points)

The proposed project will result in specific, measurable outcomes for each objective that will clearly contribute to the completion of the project, and will help the community meet its goals. The specific information provided in the application on expected results or benefits for each objective is the basis upon which the outcomes can be evaluated at the end of each budget year.

(5) Budget (10 points)

There is a detailed budget provided for each budget period requested. (This is especially necessary for multi-year applications.) The budget is fully explained. It justifies each line item in the budget categories in section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Sufficient cost and other detail is included and explained to facilitate the determination of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project. For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable profit within a future specified time frame.

J. Guidance to Applicants

The following is provided to assist applicants to develop a competitive application.

(1) Program Guidance

• The Administration for Native Americans funds projects that present the strongest prospects for fulfilling a community's governance, social or economic development. The Administration for Native Americans does not fund on the basis of need alone.

• In discussing the problems being addressed in the application, sufficient background and/or history of the community concerning these problems, and progress to date, as well as the size of the population to be served, should be included so that the appropriateness and potential of the proposed project in strengthening the self-sufficiency of a community will be better understood by reviewers.

• Community Coordination: ANA supports the concept that the key to balanced socio-economic development is the local village. ANA encourages native village governments to coordinate their local plans with other village entities, if any, and especially the city government and the village corporation. In addition, villages are encouraged to make maximum use of regional nonprofit resources, including village-to-regional corporation subcontracts.

• An application should demonstrate a clear linkage between the proposed project and the community's long-range goals or plan.

• The project application must clearly identify in measurable terms the expected results, benefits or outcomes of the project, and the positive and continuing impact on the community the project will have.

• Supporting documentation, or other testimonies from concerned parties other than the applicant, should be included to provide support for the feasibility and commitments of resources to the implementation or conduct of the project.

• In the ANA Program Narrative, section A of the application package, Resources Available to the Proposed Project, the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.

• Reviewers of applications for ANA indicate they are better able to evaluate the feasibility and practicality of a proposed economic development project if the applicant includes a business plan to support the feasibility of the project. (ANA has included sample business plans in the application kit.) It is strongly recommended that an applicant use these as a guide in the development of an application. The more information provided a review panel, the better able the panel is to evaluate the potential for the success of the proposed project.

• A "multi-purpose community-based Native American organization" is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure, and that the organization functions in several differing areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, the delivery of human services such as health, child care, counseling, education, and training.

(2) Technical Guidance

• It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications for social and economic development projects.

• Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and to score the applicant prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.

• For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.

• The Administration for Native Americans will not fund essentially identical projects serving the same constituency.

• The Administration for Native Americans will accept only one application from any one applicant. If an eligible applicant sends in two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

• An application from an Indian Tribe or other applicant must be from the governing body of the applicant.

• The application's Standard Form (SF 424) must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

• The Administration for Native Americans suggests that the pages of the application be numbered sequentially from the first page, and that a table of contents be provided. This allows for easy reference during the review process. Simply tabbing of the sections of the application is also helpful to the reviewers.

• Two copies of the application plus the original are required.

• The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.

• The Approach page (section B of the ANA Program Narrative) for each objective proposed should be of sufficient detail to become a monthly staff guide of responsibilities if the project is approved.

• The applicant should specify the entire project period length on the first page of SF 424, Block 13, not the length of the first budget period. Should the application's contents propose one length of project period and the SF 424 specify a conflicting length of project period, ANA will consider the project period specified on the SF 424 as governing.

• Line 15a of the 424 should specify the Federal funds requested for the first Budget Period, not the entire project period.

• If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award regarding appropriate use of program income. (*See* 45 CFR part 74 and part 92.)

• Applicants proposing multi-year projects must fully describe project objectives and activities by year. Separate Objective Work Plans (OWP) must be presented for each project year. A separate itemized budget for the Federal and non-Federal costs of the project for each budget period must be included.

• Applicants for multi-year projects must justify the entire time-frame of the project (*i.e.*, why the project needs funding for more than one year) and describe the results to be achieved by the end of each budget period of the total project period.

• Village governments or other applicants without established accounting systems must arrange for qualified, acceptable accounting services prior to release of grant funds.

Note: Subpart H, 45 CFR part 74 and subpart C, 45 CFR part 92 address those elements of a generally acceptable accounting system for Federal grantees. The financial management standards in subparts H and C, for example, include:

(1) Accurate, current and complete disclosure;

(2) Records which show source and application of funds;

(3) Effective control and accountability of funds and property;

(4) Comparison of actual and budgeted amounts;

(5) Procedures to minimize time lapsing between transfer and disbursement of funds;

(6) Procedures to determine allowability and allocation of funds;

(7) Accounting records with source documentation;

(8) Periodic audits; and

(9) A follow-up system.

(3) Projects or Activities That Generally Will Not Meet the Purposes of This Announcement

• Projects in which a grantee would provide training and/or technical assistance (T/TA) to other Tribes or Native American organizations ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.

• Projects that include feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's long-range development plan. The Administration for Native Americans is not interested in funding 'wish lists' of business possibilities.

The Administration for Native Americans expects evidence of solid investment of time and thought on the part of the applicant to any development of business plans, etc., prior to the submission of the application.

• The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.

• Core administration or other activities that essentially support only the applicant's on-going operating and administrative functions.

• Project goals which are not responsive to one or more of the three ANA goals (Governance, Economic Development, Social Development).

• Proposals from consortia of Tribes and villages that are not specific with regard to support from, and roles of, member Tribes and villages. The Administration for Native Americans expects an application from a consortium to have goals and objectives that will create a positive impact in the communities of its members.

• Projects which should be supported by other Federal funding sources that are appropriate, and available, for the proposed activity.

• Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period.

• The purchase of real estate (*see* 45 CFR 1336.50(e)) or construction (see HDS Grants Administration Manual Ch. 3, section E.).

• Projects originated and designed by consultants who are not members of the applicant organization, Tribe or village who prepared the application and provide a major role for themselves in the proposed project.

The Administration for Native Americans will critically evaluate applications with which the acquisition of major capital equipment (whether oil rigs or computers/word processing equipment) is a major component of the Federal share of the budget. During negotiation, such expenditures may be deleted from the budget of an otherwise approved application, if not fully justified by the applicant and not deemed appropriate to the needs of the project by ANA.

K. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB.

L. Due Date for Receipt of Applications

The closing dates for applications submitted in response to this program announcement are February 15, 1991 and May 24, 1991.

M. Receipt of Applications

Applications must either be hand delivered or mailed to the address in section H, The Application Process: Application Submission.

The Office of Human Development Services will not accept applications submitted via facsimile (FAX) equipment.

Deadlines. Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting an announced closing date if they are either:

(1) Received on or before the deadline date at the address specified in section H, Application Submission, or

(2) Sent on, or before, the deadline date and received in time for the ANA independent review. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications. Applications which do not meet the criteria in the above paragraph of this section are considered late applications and will be returned to the applicant. The Administration for Native Americans shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines. The Administration for Native Americans may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ANA does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Dated: October 18, 1990.

S. Timothy Wapato,

Commissioner, Administration for Native Americans.

Approved: November 5, 1990.

Mary Stella Gell,

Assistant Secretary for Human Development Services.

[FR Doc. 90-27529 Filed 11-21-90; 8:45 am]

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federal register

Friday
November 23, 1990

Part V

Department of Housing and Urban Development

24 CFR Part 4

Prohibition of Advance Disclosure of Funding Decisions; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 4

[Docket No. R-90-1491; FR-2905-P-01]

RIN 2501-AB02

Prohibition of Advance Disclosure of Funding Decisions

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to implement section 103 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989) (Reform Act). Section 103 prescribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for awarding assistance from the Department. Section 103 also authorizes the Department to impose civil money penalties on employees who knowingly violate the prohibitions in the section and to impose other sanctions upon applicants for assistance who may benefit from the proscribed communications. The purpose of section 103 is to strengthen HUD's controls over the conduct of participants in its programs by controlling the flow and timing of information from the Department to the participants.

DATES: *Comment due date:* January 22, 1991.

FOR FURTHER INFORMATION CONTACT: Arnold J. Haiman, Acting Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, Telephone number (202) 708-3815. (This is not a toll-free number.).

SUPPLEMENTARY INFORMATION:

Introduction

This proposed rule would implement the Department of Housing and Urban Development Reform Act of 1989 by specifying what types of information employees may not disclose in connection with the Department's selection of applicants for assistance. The rule would specify which employees may or may not be subject to civil money penalties for improper disclosure of that information. Also, it would provide that applicants for and recipients of assistance may be subject to sanctions other than civil money penalties if the department believes that an employee has breached the disclosure proscriptions under this rule.

The objective of this rule is to preclude an applicant from receiving or obtaining information from the Department that would give that applicant an unfair advantage over other applicants who are competing for the assistance. A detailed discussion follows.

The Selection Process and Covered Selection Information

The type of activity to which this rule would apply is described generally as follows: The Department makes available funds for certain purposes either on an annual or special basis. Those funds are the "assistance" with which this rule is concerned. The Department announces the availability of funding through a publication in the **Federal Register**, usually in the form of a Notice of Fund Availability (NOFA). Through publication of the NOFA, eligible persons are invited to apply for the assistance. After evaluating the applications, the Department selects one or more applicants to receive assistance. It is the improper disclosure of information regarding the selection that this rule is designed to proscribe and sanction.

The critical time period for the rule's objective is the "selection process" discussed above. The statute defines the "selection process" as

> the period with respect to a selection for assistance that begins with the development, preparation, and issuance of a solicitation or a request for applications for the assistance and concludes with the selection of recipients of assistance, and includes the evaluation of applications.

However, the Department believes that the concepts of "development" and "issuance" are nearly at opposite ends of a spectrum. Common sense, therefore, dictates a realistic definition to identify an objective starting point in the process. Consequently, the rule defines "development, preparation, and issuance of a solicitation" to be the time in the selection process when the Assistant Secretary who is responsible for a given assistance program forwards a written request to the relevant office within the Office of General Counsel for preparation of a solicitation (in whatever format) for publication in the **Federal Register**. This decision point is strictly an internal function and will occur prior to publication of the solicitation in the **Federal Register**. The Assistant Secretary will, simultaneously with his or her request to the Office of General Counsel, send a copy of the request to the Office of Ethics. The Office of Ethics, in turn, will notify the employees who reasonably would be affected by the particular request, alerting them that the selection process has begun and providing other necessary guidance regarding the application of this part.

The types of assistance that are covered by this rule are extensive and are subject to change with the enactment of legislation that might amend current programs. Thus, the Department identifies several programs to which the rule applies but cautions that the list is not exclusive. This assistance is also of the type that entails a competition for its distribution. Thus, the Department's mortgage insurance programs and any contracts that are subject to the Federal Acquisition Regulation are excluded.

The information that is prohibited from being disclosed during the selection process is limited to "covered selection information." However, by its nature "covered selection information" is a comprehensive statement of coverage, as can be seen from its definition in § 4.5. "Covered selection information" includes any information contained in an application and any information regarding the decision to select an applicant. It does not include information about program requirements or the timing of the decision points in the selection process.

The prohibition against disclosure applies to any HUD "employee," a term that is broadly defined and includes consultants or others who are retained on a contractual basis (§ 4.10). However, "employee" does not include an independent contractor who is working under a procurement contract. In addition to the information denoted above that is not considered "covered selection information," the rule specifies certain other permissible disclosures. For example, an applicant may be informed of its failure to qualify after a preliminary review for eligibility and completeness of its application, and the reasons for the failure to qualify, but only by an employee who is authorized to have that information in the first instance (§ 4.105(b)). An authorized employee is one who is officially involved in the selection process. The rule also would permit an authorized employee to contact an applicant to obtain clarification of the application (§ 4.105(c)). Clarification would include a request by an employee for information, for example, to assure that the employee understood the terms of the application or that all applications were complete.

The rule attempts to clarify that part of the statutory definition that arguably is ambiguous. Thus, the rule defines "covered selection information" in part to mean any information "regarding the Secretary's decision to make assistance available," or any information "that is not generally available to the public." The statute defines "covered selection information" in part to the mean "any information regarding the decision of the Secretary to make available assistance or other information that is determined by the Secretary to be information that is not generally available to the public * * *."

Prohibitions, Penalties and Procedures

This rule would subject a HUD employee to civil money penalties for knowingly and materially violating any prohibition against disclosing covered selection information during the selection process. It would also subject an employee to other available sanctions regardless of materiality. To constitute a violation, the disclosure must have been made to a person not authorized to have the information, and any person who is not officially involved in the selection process is an unauthorized person. Thus, the unauthorized person may be someone within or without the Department.

In the normal course of events the employee who make a disclosure would be an authorized employee because an authorized employee is the person most likely to have covered selection information in the first place. However, it is not the intention of this rule to impose absolute liability on employees, whether or not they are authorized employees. There will be situations in which disclosures to employees who are not involved in the selection process are necessary, or even routine. For example, to the extent that clerical staff might not be considered officially involved in the selection process, disclosures of covered selection information to them to accomplish clerical work would not subject the disclosing employee to a sanction of this rule. (Of course, a supervisor assigning such work will be expected to alert the clerical employee to its confidential nature). It is reasonable to expect that a HUD attorney, other than one who advises authorized employees, might have need of covered selection information. A similar need might be warranted for an auditor or investigator of the Inspector General who is conducting an audit or investigation. These are situations in which disclosure is proper, and the rule would so provide (§ 4.105).

Since it is the Department's policy to address conferences and meetings of potential applicants as part of its educational mission to inform them of new programs, disclosures regarding program requirements that might not have been made public because they are recently formulated policy positions will be made. For the purpose of this rule those types of disclosures at such conferences would be considered to be public statements.

Before the Department may refer an employee's case to the Departmental Civil Penalties Panel (a panel described in proposed 24 CFR part 30) with a request to propose a civil money penalty, the Department must have made an initial determination through its Office of Ethics that the disclosure was made knowingly and materially. (The Office of Ethics was recently created by Secretary Kemp and charged with oversight responsibility for employee conduct. The Department believes that the Office of Ethics is the appropriate office to administer this rule.) "Knowingly" is a term used and defined throughout the Reform Act; it will be satisfied if the employee has actual knowledge of the violation. Also, it will be satisfied if the employee either acts with deliberate ignorance of, or with reckless disregard for, a prohibited disclosure. Further, a civil money penalty may be imposed only after an opportunity for a hearing before an administrative law judge pursuant to the provisions of 24 CFR part 30.

Sections 102 and 112 of the Reform Act (to be implemented at proposed parts 12 and 86 of title 24 of the Code of Federal Regulations) contain definitions of "person" that include the phrase, "including a consultant, lobbyist, or lawyer." Other sections of the Reform Act that deal with civil money penalties, such as section 103, do not contain that phrase. This rule would not contain that phrase because "person" is not statutorily defined and because a consultant, lobbyist or lawyer is subsumed in this rule's definition of "person."

Because of the variety of programs affected by this rule it is not possible to identify specific bits of information that would be prohibited from being disclosed. However, the Department believes that this rule provides sufficient notice to employees of what conduct is unlawful through the definition of covered selection information and the examples of prohibited disclosures. Nevertheless, the Office of Ethics will publicize the requirements of this rule within the Department and conduct training for those employees who are likely to be directly affected by it.

This rule would establish a procedure to assure that an employee charged with a violation would receive fair treatment and procedural protection during the investigatory phase. The procedures prescribed by this rule call for a review of any alleged violation by the Office of Inspector General, which would conduct the appropriate investigations and provide the Office of Ethics with a report of the investigations. The Office of Ethics would then perform its own review and, among other options, would have the authority to discuss the violation with the employee alleged to have committed it. After concluding its review, the Office of Ethics could close the matter or refer it to the Departmental Civil Penalties Panel (DCPP) to consider the case for a civil money penalty. Before referring the matter to the DCPP, however, the Office of Ethics must have found that the violation was material. The rule includes guidelines which the Office of Ethics must consider in determining whether a violation is material (§ 4.130(d)). The Office of Ethics, in any event, may refer the case to an appropriate HUD official for additional or alternative sanctions whether or not the violation is material (§ 4.130(e)).

Applicant Sanctions

Although this rule does not provide for civil money penalties with respect to applicants for assistance (none having been authorized by section 103 of the Reform Act), it does provide for other sanctions, such as debarment, in the event of an employee's unlawful disclosure of information. Section 103 of the Reform Act was drafted in broadly discretionary terms, and the rule in large part mirrors that language. For example, section 103 states that if the Secretary has information providing a reasonable basis to believe that an employee has violated the section,

> the Secretary shall (1) in the case of a selection that has not been made, determine whether to terminate the selection process or take other appropriate action; and (2) in the case of a selection that has been made, determine whether to impose certain sanctions or take any other actions that the Secretary considers appropriate.

That language is so flexible that the Department has decided to treat these matters on a case-by-case basis. However, the rule would provide guidance to the officials who would consider whether to impose other sanctions. That guidance would be provided in the form of factors required to be considered in making the sanction decision [§ 4.200(c)].

The Reform Act provides no "linkage" between a sanction against an applicant and a referral for consideration of a civil money penalty against an employee. Accordingly, the rule provides that an action to sanction an applicant is independent of a decision by the DCPP

to seek a civil money penalty against an employee. However, since the authorization to sanction an applicant is triggered by the Secretary's conclusion that there is a "reasonable basis" to believe that an employee has violated this rule (§ 4.200), and the same "reasonable basis" test exists under which the Office of Ethics is authorized to refer an employee case for a sanction (§ 4.130(c) and (e)), a referral by the Office of Ethics for any type of authorized sanction would be a predicate for action to sanction an applicant.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

This rule would not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would impose sanctions on persons determined to have engaged in prohibited conduct, but these sanctions are not directed at small entities *per se*.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule would not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule would regulate or prohibit certain kinds of conduct by employees of the Department and by persons who are made privy to information from these employees.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government, or on the distribution of power and responsibilities between them and other levels of government. The rule primarily would effect HUD employees and have negligible effect on States or their political subdivisions.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 27, 1990 (55 FR 44530) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

Accordingly, the Department would amend title 24 of the Code of Federal Regulations by adding a new part 4, to read as follows:

PART 4—PROHIBITION OF ADVANCE DISCLOSURE OF FUNDING DECISIONS

Subpart A—General Provisions

Sec.
4.1 Purpose.
4.5 Definitions.
4.10 Scope.

Subpart B—Prohibitions and Procedures

4.100 Prohibition of advance disclosure of funding decisions.
4.105 Permissible disclosures.
4.110 Civil penalties.
4.115 Procedure upon discovery of a violation.
4.120 Investigation by Office of Inspector General.
4.125 Review of Inspector General's Report by Office of Ethic.
4.130 Action by the Office of Ethics.

Subpart C—Applicant Sanctions

4.200 Administrative remedies.

Authority: Section 103, Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 4.1 Purpose.

This part proscribes direct or indirect communication of certain information during the selection process by HUD employees to persons within or outside of the Department who are not authorized to receive such information. The purpose of the proscription is to preclude giving an unfair advantage to applicants who would receive information not available to other applicants or to the public. This part also authorizes the Department to impose a civil money penalty on an employee who knowingly discloses such information, if it is material, and authorizes the Department to sanction the person who received information improperly by, among other things, denying assistance to that person.

§ 4.5 Definitions.

Applicant means any person that is being considered for or receiving assistance.

Application means a written request for assistance regardless of whether the request is in proper form or format.

Assistance means any grant, loan, subsidy, guarantee, or other financial assistance under the program administered by the Secretary that provides by statute, regulation, or otherwise for the competitive distribution of such assistance. The term does not include any mortgage insurance provided under a program administered by the Secretary or any contract, such as a procurement contract, that is subject to the Federal Acquisition Regulation (FAR) (48 CFR chapter 1). The term includes those elements of the programs listed below that provide for the competitive distribution of assistance. (Because a competitive assistance program might be established after the effective date of this rule, the list cannot be an exclusive one.)

(1) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under subpart B and Capital Improvement Loans under subpart C.

(2) Supplemental Assistance to Facilities to Assist the Homeless (SAFAH) under the McKinney Homeless Assistance Act of 1987, as amended, 42 U.S.C. 11391–11394; 54 FR 214 (Nov. 7, 1989).

(3) Rental Rehabilitation Grants under 24 CFR part 511 (only HUD-administered grants under subpart F and technical assistance under subpart A).

(4) Community Development Block Grants under 24 CFR part 570 (only the HUD-administered Small Cities program under subpart I), Special Purpose Grants (only Insular Areas, technical assistance, and Historically Black Colleges) under 24 CFR part 570, subpart E, and CDBG Grants to Indian Tribes under 24 CFR part 571.

(5) Emergency Shelter Grants under 24 CFR part 576 (only HUD reallocations under §§ 576.63 through 576.67).

(6) Transitional Housing under 24 CFR part 577.

(7) Permanent Housing for Handicapped Homeless Persons under 24 CFR part 578.

(8) Section 8 Housing Assistance Payments—Existing Housing and Moderate Rehabilitation under 24 CFR part 882 (including the Moderate Rehabilitation program for Single Room Occupancy Dwellings for the Homeless under subpart H).

(9) Loans for Housing for the Elderly or Handicapped under section 202 of the Housing Act of 1959 (including operating assistance for Housing for the Handicapped under section 202(h)(4)) and Seed Money Loans under section 106(b) of the Housing and Urban Development Act of 1968.

(10) Section 8 Housing Assistance Payments—Special Allocations—under 24 CFR part 886, except subpart C.

(11) Housing Vouchers under 24 CFR part 887.

(12) Low-Rent Housing Homeownership Opportunities under 24 CFR part 904.

(13) Indian Housing under 24 CFR part 905.

(14) Public Housing Development under 24 CFR part 941.

(15) Comprehensive Improvement Assistance under 24 CFR part 968.

(16) Resident Management under 24 CFR part 964, subpart C.

(17) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(18) Nehemiah Grants under 24 CFR part 280.

(19) Research and Technology Grants under title V of the Housing and Urban Development Act of 1970.

(20) Congregate Services under the Congregate Housing Services Act of 1978.

(21) Counseling under section 106 of the Housing and Urban Development Act of 1968.

(22) Fair Housing Initiatives under 24 CFR part 125.

(23) Public Housing Drug Elimination Grants under 24 CFR part 961.

(24) Fair Housing Assistance under the Community Housing Resource Board Program, 24 CFR part 120.

(25) Public Housing Child Care under section 117 of the Housing and Community Development Act of 1987.

Authorized employee means an employee whose responsibilities in connection with the selection process require that the employee have covered selection information to perform his or her official duties.

Covered selection information means any information:

(a) That is required by statute, regulation, or order to be confidential;

(b) That is contained in an application or request for assistance;

(c) That is not generally available to the public; or

(d) That is otherwise used in arriving at the Secretary's decision to make assistance available.

Department or HUD means the Department of Housing and Urban Development.

Disclose means providing information directly or indirectly to a person through any means of communication.

Knowing or knowingly means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the requirements of § 4.100.

Material or materially means in some influential or substantial respect or having to do more with substance than form.

NOFA means Notice of Fund Availability, a notice published in the **Federal Register** which announces the availability of the assistance program or discretionary fund; describes the form, procedures, and deadlines for receipt of applications; and provides the evaluation criteria to be used in the selection of applicants.

Person means an individual, corporation, company, association, authority, firm, partnership, society, State, local government, or any other organization or group of people.

Secretary means the Secretary of Housing and Urban Development.

Selection means the determination of which applicant or applicants for assistance are to receive assistance under the program for which assistance is sought.

Selection Official means the person within the Department who makes the final decision to provide assistance in response to an application or applications for assistance. The Selection Official may be denominated as Assistant Secretary, a Grant Officer or any other HUD employee authorized to make such a decision.

Selection process means the period with respect to a selection for assistance that begins with the development, preparation, and issuance of a NOFA, solicitation, or request for applications for assistance (*i.e.*, the "document"), includes the evaluation of applications and concludes with the selection of recipients of assistance. "Development, preparation, and issuance of a solicitation or request for applications for assistance" means the time in the selection process when the responsible Assistant Secretary or his or her designee makes a written request, including the selection criteria for a solicitation for competitive awards, to the Office of General Counsel (OGC) for preparation of the "document" for publication in the **Federal Register**.

§ 4.10 Scope.

(a) *Coverage.* The prohibitions against improper disclosure of covered selection information apply to any person who is employed by the Department. Coverage applies to employees on a full-time, part-time, or temporary basis, and to special government employees as defined in 18 U.S.C. 202, and applies whether or not the employee is denoted as an officer of the Department. "Employee" is to be construed broadly to include persons who are retained on a contractual or consultative basis under an Office of Personnel and Training appointment. However, "employee" does not include an independent contractor such as a firm or individual working under the authority of a procurement contract.

(b) *Exclusion.* The prohibitions in this part do not apply to the process for obtaining mortgage insurance from the Department or to a contract, such as a procurement contract, that is subject to the Federal Acquisition Regulation (FAR) (48 CFR chapter 1).

Subpart B—Prohibitions and Procedures

§ 4.100 Prohibition of advance disclosure of funding decisions.

(a) *In general.* During the selection process an employee shall not knowingly disclose, directly or indirectly, any covered selection information regarding the selection process to any person not authorized to receive such information.

(b) *Notice to employees.* Whenever the responsible Assistant Secretary initiates the selection process by sending a written request to the Office of General Counsel (OGC) to prepare a "document" (i.e., a NOFA, solicitation, or request for applications for assistance) for publication in the **Federal Register**, that Assistant Secretary will send a copy of the request to the Office of Ethics. The Office of Ethics will then notify all employees who reasonably would be expected to be subject to the prohibitions of this part with respect to the particular request. The notice will alert those employees that the selection process has begun and will provide them with other necessary guidance regarding the application of this part.

(c) *Examples of prohibited disclosures.* There are many disclosures that will be prohibited by this section but since they will be fact-specific to a

particular program, they cannot be specified here. However, the following are examples which include but are not limited to the types of information, disclosure of which shall be a violation of this section:

(1) Information regarding any applicant's relative standing;

(2) The amount of assistance requested by any other applicant;

(3) The identity of any other applicant;

(4) The number of applicants;

(5) Any information contained in another application.

§ 4.105 Permissible disclosures.

(a) Notwithstanding the provisions of § 4.100, an employee is permitted to disclose information during the selection process with respect to:

(1) The requirements of a HUD program or programs, including unpublished policy statements, provided such statements are disclosed on a uniform basis to any applicant;

(2) The dates by which particular decisions in the selection process will be made;

(3) Any information which has been published in the Federal Register in a NOFA or otherwise;

(4) Any information which has been made public through means other than the Federal Register;

(5) An official audit or investigation, if the disclosure is made to an auditor or investigator authorized by the Inspector General to conduct the audit or investigation;

(6) Legal activities, including litigation, if the disclosure is made to an attorney who is representing or is otherwise responsible for the Department in connection with such activities; or

(7) Procedures that are required to be performed to process an application, e.g., environmental or budget reviews.

(b) Only an authorized employee may disclose the following information during the selection process:

(1) The failure of an applicant to qualify after a preliminary review for eligibility and completeness with respect to his or her application and the reasons for the failure to qualify;

(2) The failure of the applicant to be determined to be technically acceptable after a full review;

(3) Announcement of the selection of an applicant or applicants for receipt of assistance. However, the Secretary or Selection Official are the only authorized employees who may announce a selection.

(c) An authorized employee may, during the selection process, contact an applicant for the purpose of seeking a clarification of the terms of that applicant's application. A clarification for the purpose of this paragraph may include a request for additional information consistent with regulatory requirements.

§ 4.110 Civil penalties.

(a) *In general.* Whenever any employee knowingly and materially violates the prohibition in § 4.100, the Secretary may propose a civil money penalty on the employee through the Departmental Civil Penalties Panel in accordance with the provisions of 24 CFR part 30.

(b) *Amount.* The amount of the penalty, as determined by the Secretary, may not exceed $10,000 for each violation.

(c) *Cumulative remedy.* A civil money penalty may be sought in addition to any other available civil remedy or any available criminal penalty and may be imposed whether or not the Secretary imposes other administrative sanctions.

§ 4.115 Procedure upon discovery of a violation.

(a) *In general.* When an alleged violation of § 4.100 comes to the attention of any person, including an employee, he or she may either

(1) Contact the HUD Office of Ethics to provide information about the alleged violation; or

(2) Contact the Office of Inspector General to request an inquiry or investigation into the matter.

(b) *Office of Ethics.* When the Office of Ethics receives information concerning an alleged violation of § 4.100, it shall refer the matter to the Office of Inspector General stating the facts of the alleged violation and requesting that the Office of Inspector General make an inquiry or investigation into the matter.

(c) *Office of Inspector General.* When the Office of Inspector General receives information concerning an alleged violation of § 4.100, it shall notify the Office of Ethics when it begins an inquiry or investigation into the matter.

(d) *Protection of employee complainants.* The Office of Ethics adopts the provisions of chapter 3, section 2 of Handbook 2000.3 REV–3 with respect to the protection of employee complainants.

§ 4.120 Investigation by Office of Inspector General.

The Office of Inspector General shall undertake a review of every matter or complaint alleging a violation of § 4.100. If after a review the Office of Inspector General determines that further investigation is not warranted, it shall notify the Office of Ethics of that determination. If after a review the Office of Inspector General determines that additional investigation is warranted, it shall conduct such investigation and upon completion issue a report of the investigation to the Office of Ethics as to each alleged violation.

§ 4.125 Review of Inspector General's report by Office of Ethics.

After receipt of the Inspector General's report, the Office of Ethics shall review the facts and circumstances of the alleged violations. In addition, the Office of Ethics may

(a) Return the report to the Inspector General with a request for further investigation;

(b) Discuss the violation with the employee alleged to have committed the violation;

(c) Interview any other person, including employees who it believes will be helpful in furnishing information relevant to the inquiry.

§ 4.130 Action by the Office of Ethics.

(a) After review of the Inspector General's report, the Office of Ethics shall determine whether or not there is sufficient information providing a reasonable basis to believe that a violation of § 4.100 has occurred.

(b) If the Office of Ethics determines that there is no reasonable basis to believe that a violation of § 4.100 has occurred, it shall close the matter and send its determination to the Office of Inspector General.

(c) If the Office of Ethics determines that there is sufficient information to provide a reasonable basis to believe that a violation of § 4.100 has occurred, it shall:

(1) Send its determination to the Office of Inspector General; and

(2) Refer the matter to the Departmental Civil Penalties Panel (DCPP) for review as to whether to impose a civil money penalty pursuant to 24 CFR part 30; provided, however, that the Office of Ethics shall not make such a recommendation unless it finds the violation to have been knowing and material. The DCPP may consider whether to impose a civil money penalty in a particular matter only upon referral from the Office of Ethics.

(d) In determining whether a violation is material the Office of Ethics shall consider the following factors as applicable:

(1) The content of the disclosure and its significance to the person to whom the disclosure was made;

(2) The time during the selection process when the disclosure was made;

(3) The person to whom the disclosure was made;

(4) The dollar amount of assistance requested by the person to whom the disclosure was made;

(5) The dollar amount of assistance available for a given competition or program;

(6) The benefit, if any, received or expected by the employee, the employee's relatives or friends, or any other person with whom the employee is affiliated;

(7) The potential injury to the Department; for example, the opportunity for litigation or administrative contest against the Department or the likelihood of the violation's bringing the Department into disrepute.

(e) If the Office of Ethics determines that there is sufficient information to provide a reasonable basis to believe that a violation of § 4.100 has occurred, it may, in addition to or in lieu of referring the matter to the DCPP, refer the matter to an appropriate HUD official for consideration of any other available disciplinary action. Any referral authorized by this paragraph shall be reported to the Inspector General and may be reported to the employee's supervisor.

Subpart C—Applicant Sanctions

§ 4.200 Administrative remedies.

If the Secretary receives or obtains information providing a reasonable basis to believe that a violation of § 4.100 has occurred, the Secretary may impose a sanction as determined to be appropriate upon an applicant for or a recipient of assistance who has received covered selection information.

(a) In the case of a selection that has not been made, the Secretary shall determine whether to terminate the selection process or take other appropriate actions.

(b) In the case of a selection that has been made, the Secretary shall determine whether to:

(1) Void or rescind the selection, subject to review and determination on the record after opportunity for a hearing;

(2) Impose sanctions upon the violating applicant selected, subject to review and determination on the record after opportunity for a hearing; for example, the Secretary may seek to debar the applicant after an opportunity for a hearing before an administrative law judge pursuant to 5 U.S.C. section 554, et seq. and 24 CFR part 28;

(3) Permit the violating applicant selected to continue to participate in the program; or

(4) Take any other actions that the Secretary considers appropriate.

(c) In determining whether a sanction is appropriate and if so which sanction or sanctions should be sought, the Secretary shall give consideration to the applicant's conduct with respect to the violation. In so doing the Secretary shall consider the factors listed at § 4.130(d), as well as any history of prior violations in any HUD program, the benefits received or expected, deterrence of future violations and the extent of any complicity in the violation.

(d) The Secretary may impose a sanction authorized by this section whether or not the Office of Ethics refers a case to the DCPP, or the DCPP proposes a civil money penalty against an employee.

Dated: October 31, 1990.

Jack Kemp,

Secretary.

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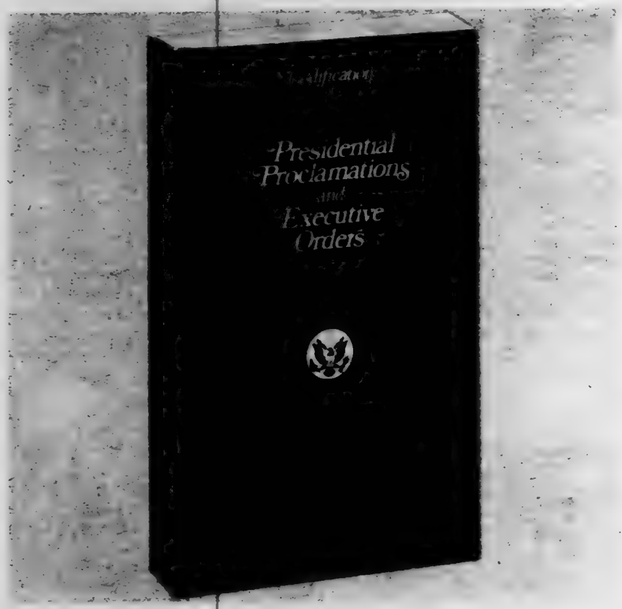

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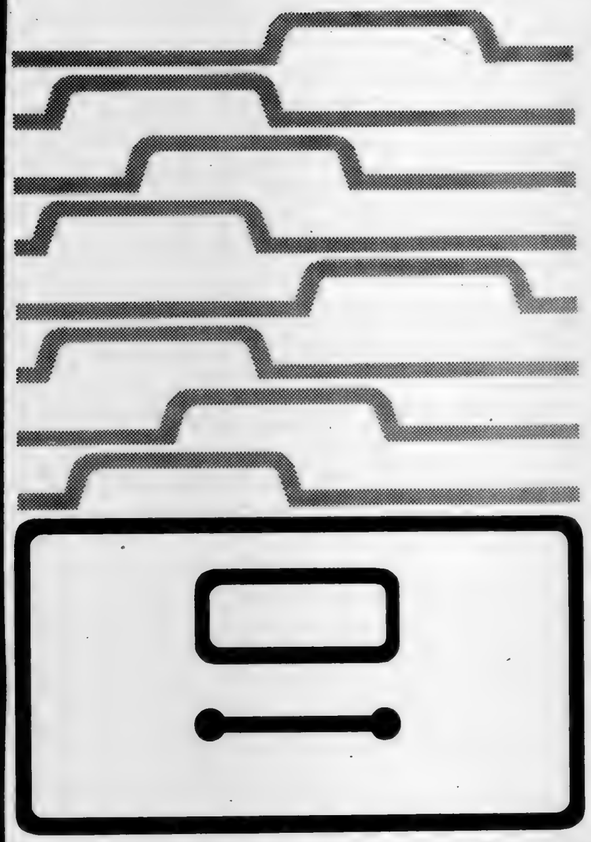

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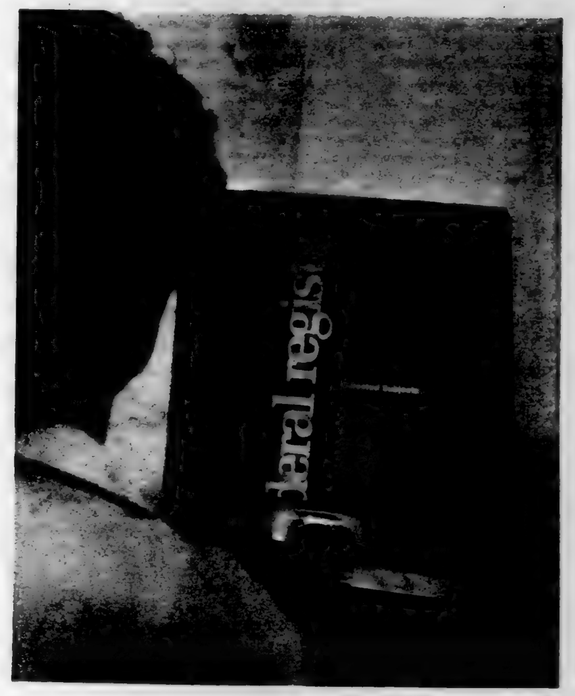

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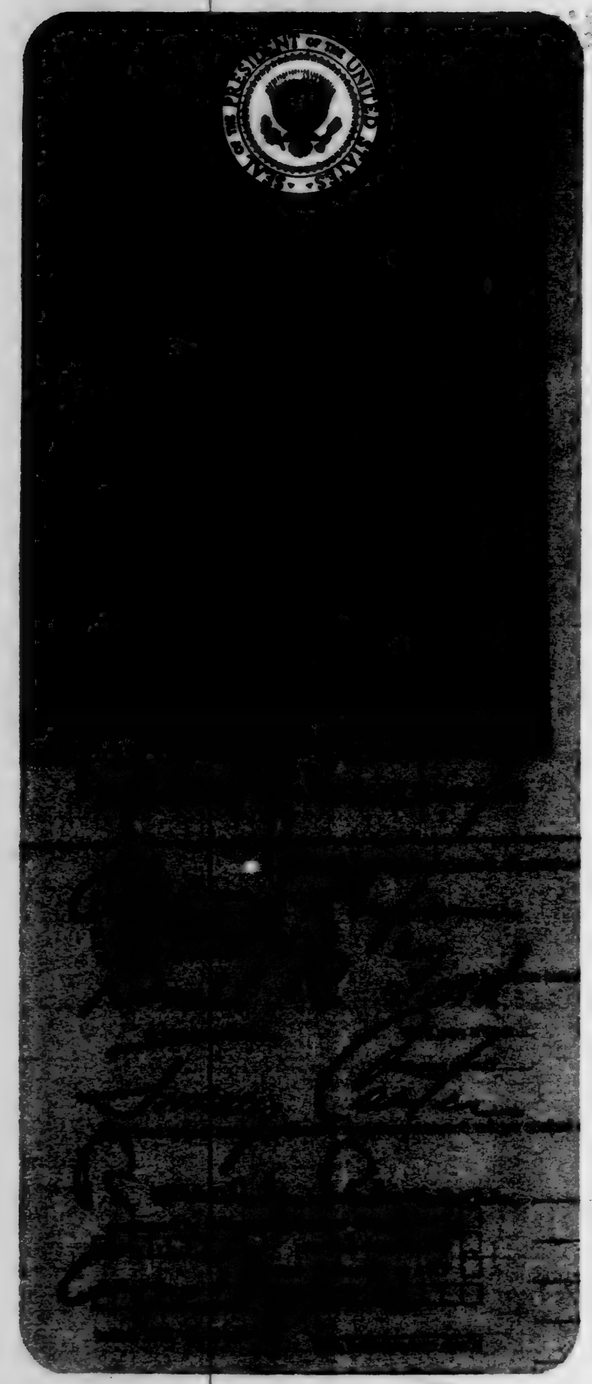

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Rules and Regulations

Federal Register
Vol. 55, No. 227
Monday, November 26, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-107-AD; Amdt. 39-6816]

Airworthiness Directives; Boeing Model 747 and 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 and 767 series airplanes, which requires additional fire resistant cargo compartment liner panels to be installed on airplanes that do not have complete cargo compartment floors. This amendment is prompted by an investigation into the service history of cargo compartment fires and full-scale fire testing, which revealed that, without such additional panels, fire could migrate up behind the cargo liner and cause major structural damage.

EFFECTIVE DATE: January 2, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Jayson B. Claar, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2784. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 747 and 767 series airplanes, which requires additional fire resistant cargo compartment liner panels to be installed on airplanes that do not have complete cargo compartment floors, was published in the **Federal Register** on July 6, 1990 (55 FR 27828).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter expressed no objection to the proposed rule.

Several commenters expressed the opinion that the proposed rule is unnecessary because new titanium shields installed to protect the drain mast heater, and the existing insulation blanket seal provide an adequate level of safety. The existing insulation blankets in some frame bays are installed on top of aluminum intercostals. The commenters stated that the only source of ignition in the lower lobe cargo compartment is the drain mast heater, and that the proposed design change reduces the possibility that it could start a fire. The commenters indicated that the existing insulation blanket seal or the insulation blanket seal on top of aluminum intercostals, located at the intersection of the sloping sidewall and the vertical sidewall, provides an adequate fire stop. The FAA does not concur. While the installation of the titanium shields do protect the drain mast heater on new production airplanes and may reduce the possibility of a fire igniting from that source, this installation has not been accomplished on in-service airplanes. Further, the drain mast is not the only source of ignition. The source of ignition of the in-flight fire, referenced in the NPRM, has not been conclusively determined to be the drain mast; it could have been the gray water drain line heater tape. There are other potential sources of fire, such as, if a fire starts on a pallet and part of the burning cargo falls off the pallet into the bilge. Another potential source of fire is debris that collects in the bilge; this debris could range from material falling off the cargo to lubricating oil or grease from the cargo handling system. The FAA conducted full-scale fire testing at the FAA Technical Center of several cargo compartment liners. This testing included insulation blankets and aluminum liners. The testing demonstrated that these installations do not provide an adequate level of safety. Additionally, the frames that have aluminum intercostals comprise only one-third of the affected bays and some of the intercostals are not complete.

Several commenters were concerned that the proposed compliance time is too short and requested additional time. Their rationale for extending the compliance time is the lack of an approved design and service information from the airplane manufacturer. These commenters implied that a possible design would require modification of primary structure that the airlines would not be able to structurally substantiate without assistance from the airplane manufacturer. The FAA concurs in part with the commenters' requests. The FAA will work closely with the manufacturer to ensure that generic service information is provided in a timely fashion. The FAA does not consider that delaying this action for any lengthy amount of time while awaiting the release of the service information is warranted, since sufficient technology currently exists to devise and install the required liners. However, the FAA has reevaluated the material availability and time necessary to accomplish the required installation, and has determined that the compliance time may be extended from the proposed 24 months to 30 months without adversely affecting safety. Further, paragraph B. of the final rule provides for the use of alternate means of compliance or adjustment of the compliance time if substantiating data is provided to the FAA.

One commenter expressed concern that the cost analysis for the proposal was too low. The commenter stated that there are 76 frame bays on the Model 767 and 84 frame bays on the Model 747 within the affected cargo compartments, and that the required actions would entail 1 manhour per frame bay to accomplish. Based on this analysis, the commenter stated that the number of manhours required per airplane would be between 76 and 84, rather than 50, as was indicated in the notice. The commenter also stated that the additional cost impact of increased fuel burn, due to the additional weight of the airplane, should be considered. The FAA concurs in part. After re-evaluation of the time necessary to accomplish the required installation, the FAA has determined that the number of required manhours should be increased somewhat. The cost impact analysis paragraph, below, has been revised to indicate that approximately 100

manhours per airplane would be required. The economic analysis of AD rulemaking actions, however, is limited only to the cost of actions actually required by the rule; in this case, those actions entail the direct costs for labor and parts.

The airplane manufacturer suggested that the fire stop be installed at the intersection of the sloping sidewall and the vertical sidewall, rather than at the bottom of the sloping sidewall. Although such a design may be acceptable, the FAA cannot concur with this suggestion at this time. Under the provisions of paragraph B. of the final rule, the FAA will review a design, when it is submitted, to determine if the fire stop at this location provides an adequate level of safety.

One commenter expressed the opinion that the proposed rule overlooked the real problem of debris collecting in the bilge, and suggested that the rule be revised to require debris removal periodically as a possible solution. The FAA does not concur. The FAA does not consider that this is a practical alternative to the problem, since such an inspection would be required before the first flight of the day and would not be limited to debris. It would necessarily include an inspection for installation blankets that have become contaminated and an inspection for proper retention of insulation blankets. Contaminated blankets or dislodged blankets would be required to be repaired or replaced prior to further flight.

One commenter requested that the rule be revised to permit the continued use of aluminum liners, if such liners were previously installed prior to the effective date of the rule. The FAA does not concur. Installation of aluminum as the fire stop material could effectively tie all of the frames together and may change the load carrying capability of the airplane. Moreover, the full-scale fire testing conducted by the FAA demonstrated that aluminum does not provide an adequate level of safety.

One commenter requested a definition of a "complete cargo floor," as used in the applicability statement of the proposed rule. The FAA considers that, for a Model 767 airplane, a cargo compartment that is equipped with the airplane manufacturer's standard option for carriage of bulk cargo is considered to have a "complete cargo floor." No such design is available for the Model 747 airplane.

One commenter expressed the opinion that when the cargo compartment is fully loaded with cargo pallets/containers, the cargo makes a complete floor and therefore the fire stop is unnecessary. The FAA does not concur. The cargo pallets/containers are restrained by locks that are installed on the floor. In order to lock the pallets/containers in place, there is a gap between each pallet/container; this gap would permit debris to fall into the bilge. Also, there are gaps on the outboard side of the cargo.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 1,300 Model 747 and Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 300 airplanes of U.S. registry would be affected by this AD, that it would take approximately 100 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Material cost per airplanes is approximately $1,500. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,650,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 and 767 series airplanes, equipped with Class "C" lower lobe cargo compartment that do not have complete cargo compartment floors, certificated in any category. Compliance is required within 30 months after the effective date of this AD, unless previously accomplished; except that, for airplanes that are subject to the requirements of Federal Aviation Regulation (FAR) 121.314, the modifications required by this AD shall not be accomplished prior to the accomplishment of the modifications required by FAR 121.314.

To prevent a cargo compartment fire from migrating up behind the cargo liner, accomplish the following:

A. Install a fire stop near the bottom of the sloping sidewall cargo compartment liner, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate. Fire stop material must meet the requirements of FAR part 25, appendix F, part III.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on November 15, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27674 Filed 11-21-90; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-253-AD; Amdt. 39-6818]

Airworthiness Directives; Cessna Aircraft Company Model 650 Series Airplanes, Equipped With Honeywell SPZ-8000 Digital Automatic Flight Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Cessna Model 650 series airplanes, which requires replacement of the crimp-style coax connectors on the distance measurement equipment (DME) antenna cables with threaded connectors; and verification of proper DME antenna bonding to the airplane structure, and repair, if necessary. This amendment is prompted by a report of complete loss of all three Attitude Heading Reference Systems (AHRS), and the loss of air data information on the pilot's side. This condition, if not corrected, could result in loss of the pilot's primary flight instrument displays.

EFFECTIVE DATE: December 11, 1990.

ADDRESSES: The applicable service information may be obtained from Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, Central Region, 1801 Airport Road, room 100, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Timberlake, Systems and Equipment Branch, ACE-130W; telephone (316) 946-4419. Mailing Address: FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Wichita, Kansas 67209.

SUPPLEMENTARY INFORMATION: There has been a recent report of a Cessna Model 650 (Citation III) series airplane, equipped with the Honeywell SPZ-8000 Digital Automatic Flight Control System, that lost all attitude and heading information. In addition, the pilot's side airspeed, altitude, and vertical speed instruments became very erratic and unreliable. The attitude and heading information was provided by a triple Attitude Heading Reference System (AHRS), and the air data information was provided by the No. 1 Digital Air Data Computer (DADC). Both the AHRS and No. 1 DADC are located in the left side of the nose avionics compartment. The cable from the No. 1 Distance Measuring Equipment (DME) transmitter to the DME antenna is also routed through the left side nose avionics compartment. Investigation revealed that a crimped connector on the antenna cable was loose and it allowed radio frequency (RF) energy to leak into the compartment, resulting in the previously described malfunctions. This condition, if not corrected, could result in loss of the pilots' primary flight instrument displays.

The FAA has reviewed and approved Cessna Citation Alert Service Bulletin A650-34-68, dated November 2, 1990, which describes procedures for replacement of the crimp style coax connectors on the DME antenna cables with threaded connectors; and verification of proper DME antenna bonding to the airplane skin, and repair, if necessary.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires replacement of the crimp style coax connectors on the DME antenna cables with threaded connectors; and verification of proper DME antenna bonding to the airplane skin, and repair, if necessary; in accordance with the service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If if is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Cessna Aircraft Company: Applies to Model 650 Series airplanes; Serial Nos. 650-0094 through -0096, -0098, -0136 through -0139, -0149, -0161, -0167, -0170, -0172 -0173, -0176, through -0182, -0184 through -0189, and -0192; equipped with Honeywell SPZ-8000 Digital Automatic Flight Control System; certificated in any category. Compliance is required within 25 hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent complete loss of the pilots' primary flight instrument displays, accomplish the following:

A. Replace the distance measuring equipment (DME) antenna cable connectors in accordance with Steps 1 through 3 of the Accomplishment Instructions of Cessna Citation Alert Service Bulletin A650-34-68, dated November 2, 1990.

B. Accomplish either subparagraph B.1. or B.2., below:

1. Check the electrical bonding of the DME antennas to airplane structure in accordance with Step 4 of the Accomplishment Instructions of Cessna Citation Alert Service Bulletin A650-34-68, dated November 2, 1990.

a. If the resistance is greater than 0.010 Ohms, prior to further flight, rework the antennas installation in accordance with Step 4 of the service bulletin.

b. If the resistance is equal to or less than 0.010 Ohms, restore the system for use in accordance with Steps 5 through 7 of the Accomplishment Instructions of the service bulletin.

2. Rework the antenna installation in accordance with Step 4 of Cessna Citation Alert Service Bulletin A650-34-68, dated November 2, 1990; and restore the system for use in accordance with Steps 5 through 7 of the Accomplishment Instructions of the service bulletin.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Wichita Aircraft Certification Office (ACO), ACE-130W, FAA, Central Region.

Note: The request should be submitted directly to the Manager, Wichita ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Wichita ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Wichita, Kansas.

This amendment becomes effective December 11, 1990.

Issued in Renton, Washington, on November 15, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27673 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-71-AD; Amdt. 39-6817]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 Series Airplanes and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Model DC-9-80 series airplanes and Model MD-88 airplanes, which requires a one-time visual or ultrasonic inspection of the engine forward mount cone bolts for the correct part number, and replacement, if necessary; and a revision to the maintenance program which provides for a visual or ultrasonic inspection for and replacement of incorrect bolts at each engine change. This amendment is prompted by reports of the installation of incorrect engine forward mount cone bolts. This condition, if not corrected, could result in failure of the cone bolt, which could cause the engine to depart the aircraft during a hard landing, in the event of a sudden engine seizure, or during flight when high velocity vertical gust is encountered.

EFFECTIVE DATE: January 2, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California, 90846, Attention: Business Unit Manager of Publications, C2-HCW (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Lee, Aerospace Engineer, ANM-120L, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; telephone (213) 988-5325.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas DC-9-80 series and MD-88 airplanes, which requires a one-time visual inspection of the engine forward mount cone bolts for the correct part number, and replacement, if necessary; and a revision to the maintenance program which provides for a visual inspection for and replacement of incorrect bolts at each engine change, was published in the **Federal Register** on June 13, 1990 (55 FR 23947).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Several commenters remarked that visual inspection of the engine forward mount cone bolts, in some cases, was virtually impossible due to insufficient etching. These commenters requested that the proposed rule be revised to provide for another means for inspecting the bolt, specifically an ultrasonic inspection procedure. The FAA agrees. The FAA has approved an ultrasonic inspection method described in the McDonnell Douglas MD-80 Alert Service Bulletin A71-49, Revision 2, dated November 4, 1990, and has included this method as an alternative inspection procedure in paragraph A. of the final rule.

Two operators requested that the proposed compliance time of 30 days be extended so that the cone bolt inspection could be incorporated at scheduled engine removals. These commenters suggested that such an extension is justified due to the reliability of in-service cone bolts to date and the low probability that a discrepant bolt is installed. The FAA disagrees. Due to severe consequences of the bolt failure, the FAA has determined that the 30-day compliance time is appropriate.

One operator questioned the 0.8 manhour per airplane estimate to accomplish the visual inspection and stated that the visual inspection takes 2 to 4 manhours per airplane. This commenter provided no further details, however. The FAA disagrees. The inspection time estimate of 0.8 manhour is correct for the visual or ultrasonic inspection only; it does not include the time spent on preparation for the inspection.

One commenter requested that the proposed rule be revised to allow for verification of the bolt by either the Barry Part Number K2219-9SA3, or by the McDonnell Douglas Specification Number 7938004-503. The commenter indicated that this may reduce the burden on the operators and eliminate the need for an ultrasonic inspection. The FAA concurs and has revised the final rule to include the alternate McDonnell Douglas part-numbered cone bolt.

The compliance time has been changed to give credit to those operators that had previously complied with MD-80 Alert Service Bulletin A71-49, dated December 21, 1989, which identified the incorrect part numbered cone bolts that were installed on MD-80 airplane engine forward mounts.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above. These changes will neither increase the economic burden on any operator, nor increase the scope of the rule.

There are approximately 831 Model DC-9-81, -82, -83, and -87 series airplanes and Model MD-88 airplanes of the affected design in the worldwide fleet. It is estimated that 397 airplanes of U.S. registry will be affected by this AD. It will take approximately 0.8 manhours per airplane to accomplish the visual or the ultrasonic inspection. The average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,704.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Models DC-9-81, -82, -83 and -87 (MD-81, -82, -83, and -87) series airplanes, and Model MD-88 series airplanes, certificated in any category. Compliance required as indicated, unless accomplished since December 21, 1989.

To prevent the engine from departing the aircraft during a hard landing, in the event of a sudden engine seizure, or during flight when high velocity vertical gust is encountered, accomplish the following:

A. Within 30 days after the effective date of this AD, accomplish the following:

1. Perform one of the following inspections:

a. Perform a one-time visual inspection of both the left and right engine forward mount cone bolts for the correct part number, in accordance with McDonnell Douglas MD-80 Alert Service Bulletin A71-49, Revision 2, dated November 4, 1990 (from hereon referred to as the Service Bulletin). If the part number of the cone bolt is other than "Barry" part number K2219-9SA3 or McDonnell Douglas part number 7938004-503, prior to further flight, remove and replace the bolt with a "Barry" part number K2219-9SA3 or McDonnell Douglas part number 7938004-503 cone bolt; or

b. Perform a one-time ultrasonic inspection of both the left and right engine forward mount cone bolts in accordance with the Service Bulletin. If the part shows an indication of shear section cut-out, remove and replace the bolt with a "Barry" part number K2219-9SA3 or McDonnell Douglas part number 7938004-503 cone bolt.

2. Incorporate a revision into the FAA-approved maintenance inspection program which provides for a visual or ultrasonic inspection of the engine forward mount cone bolts for "Barry" part number K2219-9SA3, or McDonnell Douglas part number 7938004-503, at each engine change and, if incorrect bolts are found, replace with "Barry" part number K2219-9SA3 or Mcdonnell Douglas part number 7938004-503 bolts before each engine installation.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note. The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager of Publications, C1-HCW (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective January 2, 1991.

Issued in Renton, Washington, on November 15, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27676 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 95

[Docket No. 28391; Amdt. No. 360]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create the need for these amendments involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making these amendments effective before the next scheduled charting and publication date of the flights information to assure their timely availability to the user. The effective date of these amendments reflect those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air

commerce, I find that notice and public procedure before adopting these amendments are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making these amendments effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that these amendments will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on November 15, 1990.

Daniel C. Beaudette,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended, effective at 0901 gmt, as follows:

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 360 EFFECTIVE DATE, DECEMBER 13, 1990

FROM	TO	MEA
§95.6013 VOR FEDERAL AIRWAY 13 IS AMENDED TO READ IN PART		
LUFKIN, TX VORTAC *2400 - MOCA	CARTH, TX FIX	*3800
SIREN, WI VOR/DME *4000 - MRA	*BARUM, MN FIX	3000
BARUM, MN FIX	DULUTH, MN VORTAC	3000
§95.6025 VOR FEDERAL AIRWAY 25 IS AMENDED TO READ IN PART		
KLAMATH FALLS, OR VORTAC	SPRAG, OR FIX	14000
SPRAG, OR FIX *9300 - MOCA	OCTAD, OR FIX	*14000
OCTAD, OR FIX	REDMOND, OR VORTAC S BND N BND	14000 7000
§95.6071 VOR FEDERAL AIRWAY 71 IS AMENDED TO READ IN PART		
OLLAS, AR FIX *3700 - MOCA	HARRISON, AR VOR/DME	*4500
§95.6113 VOR FEDERAL AIRWAY 113 IS AMENDED TO READ IN PART		
BOISE, ID VORTAC	PLUTO, ID FIX SW BND NE BND	9700 13000
PLUTO, ID FIX *12300 - MOCA	SALMON, ID VOR/DME	*13000
§95.6128 VOR FEDERAL AIRWAY 128 IS AMENDED TO DELETE		
DUBUQUE, IA VORTAC	JANESVILLE, WI VORTAC	3000
§95.6158 VOR FEDERAL AIRWAY 158 IS AMENDED BY ADDING		
POLO, IL VORTAC	SHOOF, IL FIX	2700
§95.6161 VOR FEDERAL AIRWAY 161 IS AMENDED TO READ IN PART		
GRAND RAPIDS, MN VOR/DME *3100 - MOCA	SQEAK, MN FIX	*5000
SQEAK, MN FIX *4000 - MRA **3100 - MOCA	*BEBEL, MN FIX	**5000
§95.6231 VOR FEDERAL AIRWAY 231 IS AMENDED TO READ IN PART		
CHARL, MT FIX *9500 - MOCA	SKOTT, MT FIX	*16000
§95.6246 VOR FEDERAL AIRWAY 246 IS AMENDED BY ADDING		
JANESVILLE, WI VORTAC	DUBUQUE, IA VORTAC	3000
§95.6257 VOR FEDERAL AIRWAY 257 IS AMENDED TO READ IN PART		
VERNE, UT FIX	STACO, UT FIX	12300
STACO, UT FIX *9100 - MOCA	MOINT, UT FIX	*11000
MOINT, UT FIX *9900 - MOCA	MALAD CITY, ID VOR/DME	*11000
§95.6278 VOR FEDERAL AIRWAY 278 IS AMENDED TO READ IN PART		
HAMPT, AR FIX *1600 - MOCA	MONTICELLO, AR VORTAC	*2500
§95.6280 VOR FEDERAL AIRWAY 280 IS AMENDED TO READ IN PART		
WIPET, KS FIX *3000 - MOCA	HUTCHINSON, KS VORTAC	*3300
§95.6298 VOR FEDERAL AIRWAY 298 IS AMENDED TO READ IN PART		
DONNELLY, ID VORTAC *9800 - MCA DUBOIS VORTAC, W BND **13600 - MOCA	*DUBOIS, ID VORTAC	**16000
QUIRT, WY FIX *10800 - MOCA	DUNOIR, WY VOR/DME	*12000
§95.6420 VOR FEDERAL AIRWAY 420 IS AMENDED TO DELETE		
BRADFORD, IL VORTAC *2500 - MOCA	MALTA, IL FIX	*3500
MALTA, IL FIX	ELGIN, IL FIX	2700

FROM	TO	MEA
§95.6452 VOR FEDERAL AIRWAY 452 IS AMENDED TO READ IN PART		
CHEEZ, OR FIX	MIXUP, OR FIX	#*11000
*9700 - MOCA		
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.		
MIXUP, OR FIX	KLAMATH FALLS, OR VORTAC	
	SE BND	9000
	NW BND	11000
§95.6505 VOR FEDERAL AIRWAY 505 IS AMENDED TO READ IN PART		
SIREN, WI VOR/DME	*BARUM, MN FIX	3000
*4000 - MRA		
BARUM, MN FIX	DULUTH, MN VORTAC	3000
HIBBING, MN VOR/DME	SQEAK, MN FIX	*5000
*3100 - MOCA		
SQEAK, MN FIX	*BEBEL, MN FIX	**5000
*4000 - MRA		
**3100 - MOCA		
BEBEL, MN FIX	INTERNATIONAL FALLS, MN VORTAC	3000

FROM	TO	MEA
§95.6520 VOR FEDERAL AIRWAY 520 IS AMENDED TO READ IN PART		
*BATTLE GROUND, WA VORTAC	THE DALLES, OR VORTAC	7000
*4700 - MCA BATTLE GROUND VORTAC, E BND		
PASCO, WA VOR/DME	*WALLA WALLA, WA VOR/DME	3200
*5500 - MCA WALLA WALLA VOR/DME, NE BND		
WALLA WALLA, WA VOR/DME	CLOVA, WA FIX	8000
CLOVA, WA FIX	LEWISTON, ID VOR/DME	
	NE BND	5500
	SW BND	8000
§95.6527 VOR FEDERAL AIRWAY 527 IS AMENDED TO READ IN PART		
GAMPS, AR FIX	BILIE, MO FIX	3300
§95.6548 VOR FEDERAL AIRWAY 548 IS AMENDED TO READ IN PART		
SEALY, TX FIX	PRARI, TX FIX	3500

FROM	TO	MEA	MAA
§95.7213 JET ROUTE NO. 213			
IS AMENDED TO DELETE			
BECKLEY, WV VORTAC	LOUISVILLE, KY VORTAC	18000	45000
§95.7522 JET ROUTE NO. 522			
IS AMENDED TO READ IN PART			
U.S. CANADIAN BORDER	HANKK, NY FIX	#19000	45000
#FOR THAT AIRSPACE OVER U S. TERRITORY.			
HANKK, NY FIX	HANCOCK, NY VORTAC	18000	45000
§95.7526 JET ROUTE NO. 526			
IS ADDED TO READ			
BECKLEY, WV VORTAC	LOUISVILLE, KY VORTAC	18000	45000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	V-15		
	IS AMENDED BY ADDING		
HOBBY, TX VOR/DME	NAVASOTA, TX VORTAC	38	HOBBY
	V-25		
	IS AMENDED TO READ IN PART		
KLAMATH FALLS, OR VORTAC	REDMOND, OR VORTAC	23	KLAMATH FALLS
	V-71		
	IS AMENDED BY ADDING		
OLLAS, AR FIX #COP MEASURED FROM HOT VOR/DME.	HARRISON, AR VOR/DME	#47	OLLAS
	V-298		
	IS AMENDED BY ADDING		
DONNELLY, ID VORTAC	DUBOIS, ID VORTAC	109	DONNELLY
	V-452		
	IS AMENDED BY ADDING		
EUGENE, OR VORTAC	KLAMATH FALLS, OR VORTAC	69	EUGENE

[FR Doc. 90-27677 Filed 11-23-90; 8:45 am]
BILLING CODE 4910-13-C

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 3 and 171

Commission Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration and Membership Responsibility Actions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules; correction.

SUMMARY: The Commodity Futures Trading Commission is correcting an error in the rules relating to Commission review of National Futures Association decisions in disciplinary, membership denial, registration and membership responsibility actions which appeared in the **Federal Register** on October 9, 1990 (55 FR 41061).

EFFECTIVE DATE: October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Susan Nathan, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254-9880.

PART 3—[AMENDED]

In document 90-23750 on page 41067 in the issue of Tuesday, October 9, 1990, in the third column, amendatory instruction paragraph 1 which reads:

"1. 17 CFR part 3 subpart E (§ 3.75) and subpart F (§§ 3.80 to 3.91 inclusive) are removed."

is corrected to read:

"1. 17 CFR part 3 subpart F (§§ 3.80 to 3.91 inclusive) is removed."

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-27639 Filed 11-23-90; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8319]

RIN 1545-AK94

Corporations; Consolidated Returns—Special Rules Relating to Dispositions and Deconsolidations of Subsidiary Stock

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations; temporary regulations; removal of temporary regulations.

SUMMARY: This document contains final § 1.337(d)-1 and temporary § 1.337(d)-2T. These regulations implement aspects of the repeal of the *General Utilities* doctrine by limiting losses of consolidated groups with respect to the stock of subsidiaries for certain transitional periods. This document also withdraws temporary § 1.1502-20T. New proposed § 1.1502-20 appears in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective December 26, 1990 except § 1.337(d)-1 which is effective November 19, 1990. Section 1.337(d)-1 generally applies to dispositions after January 6, 1987, and before the effective date of § 1.337(d)-2T, of stock of a subsidiary that became a member of an affiliated group after January 6, 1987. Section 1.337(d)-2T generally applies to dispositions and deconsolidations of stock of a subsidiary occurring after November 18, 1990, and before the effective date of § 1.1502-20.

FOR FURTHER INFORMATION CONTACT: Mark S. Jennings, 202-566-2455 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

The collection of information contained in final § 1.337(d)-1 has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under the previous control number 1545-1160. The estimated annual burden per respondent to comply with § 1.337(d)-1 is 2 hours.

This estimate is an approximation of the average time expected to be necessary for a collection of information. It is based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Temporary § 1.337(d)-2T is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been submitted to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Notice of OMB action will be published in a subsequent issue of the **Federal Register**.

The estimated average annual burden per respondent is 2 hours. This estimate is an approximation of the average time expected to be necessary for a collection of information. It is based on such information as is available to the Internal Revenue Service. Individual repondents may require greater or less time, depending on their particular circumstances.

For further information concerning these collections of information, and where to submit comments on these collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

B. Introduction

T.D. 8294, filed with the Federal Register on March, 1990 and published in the **Federal Register** on March 14, 1990, added temporary §§ 1.1502-20T and 1.337(d)-1T to part 1 of title 26 of the Code of Federal Regulations.

Section 1.1502-20T added to the consolidated return regulations a general rule that disallowed all consolidated group losses on the disposition of a subsidiary's stock (the "loss disallowance rule"). The regulations also provided a number of related rules, including a basis reduction rule applicable on deconsolidation of a subsidiary's stock and an anti-stuffing rule applicable to transfers of property between members in connection with the disposition or deconsolidation of a subsidiary's stock. Also provided was a rule that permitted reattribution of a subsidiary's losses to the common parent to the extent loss would otherwise be disallowed to the consolidated group on the disposition of a subsidiary's stock. The rules added by § 1.1502-20T generally applied to any disposition or deconsolidation of a subsidiary's stock on or after March 9, 1990.

Section 1.337(d)-1T added a transitional rule that generally limited loss on the disposition of a subsidiary's stock after January 6, 1987, if the subsidiary became a member of the group after that date (a "transitional subsidiary") and the disposition was not subject to § 1.1502-20T. Unlike § 1.1502-20T, these regulations permitted the loss

to the extent the group established that the loss was not attributable to the recognition of "built-in gain" on the disposition of assets owned by the subsidiary (or any lower tier subsidiary). Moreover, although § 1.1502–20T reduced the basis of subsidiary stock on its deconsolidation, § 1.337(d)–1T continued to treat the stock as subject to loss disallowance on later disposition.

Sections 1.1502–20T and 1.337(d)–1T implemented Notice 87–14, 1987–1 C.B. 445, in which the Internal Revenue Service announced its intention to publish regulations that would prevent utilization of §§ 1.1502–32 and 1.1502–33(c) (the "investment adjustment rules") to circumvent the repeal of the *General Utilities* doctrine by the Tax Reform Act of 1986. The loss disallowance rule of § 1.1502–20T addressed another problem relating to the investment adjustment rules by preventing a subsidiary's losses from being duplicated as investment losses of the parent when the parent disposes of the subsidiary's stock.

Also filed with the Federal Register on March 9, 1990 and published on March 14, 1990, was a notice of proposed rulemaking (CO–78–87) that incorporated by cross reference the text of §§ 1.1502–20T and 1.337(d)–1T. Many written comments were received, and a public hearing was held on June 26, 1990.

After full consideration of the written comments and the testimony at the public hearing, the following actions are being taken:

1. Proposed § 1.337(d)–1 is amended and promulgated as a final regulation by this document as § 1.337(d)–1, replacing temporary § 1.337(d)–1T.

2. New § 1.337(d)–2T is promulgated by this document as a temporary regulation. Commentators characterized § 1.1502–20T as far broader than required by Notice 87–14 and requested that taxpayers retain the ability to dispose of subsidiary stock under the more limited approach of § 1.337(d)–1T until the rules of § 1.1502–20T are revised. Section 1.337(d)–2T continues the principles of § 1.337(d)–1 by adding another transitional rule applicable to all subsidiary stock (not just stock of transitional subsidiaries and transitional parents). The new rule allows groups to establish that loss is not attributable to the recognition of built-in gain, but only if the group's entire equity interest in the subsidiary is disposed of in one or more transactions to unrelated persons before the effective date of new § 1.1502–20. Section 1.337(d)–2T also provides basis reduction rules for subsidiary stock that is deconsolidated and anti-stuffing rules. The text of § 1.337(d)–2T set forth in this document also serves as the text of proposed § 1.337(d)–2, cross-referenced in a notice of proposed rulemaking (CO–93–90), published in the Proposed Rules section of this issue of the **Federal Register**.

3. Section 1.1502–20T is withdrawn by this document.

4. The notice of proposed rulemaking (CO–93–90) published in the Proposed Rules section of this issue of the **Federal Register** withdraws proposed § 1.1502–20 as added by (CO–78–87) and adds new proposed § 1.1502–20. For a discussion of new proposed § 1.1502–20, see the preamble in the notice of proposed rulemaking.

5. A Revenue Procedure will be issued as a consequence of these rules setting forth procedures under which the Internal Revenue Service will grant permission for all of the members of a group to discontinue filing consolidated returns. Conditions will be included to restrict reconsolidation of any member (or successor) for at least 5 years.

C. Amendments to Proposed § 1.337(d)–1

Proposed § 1.337(d)–1 is amended and adopted as a final regulation. For a description of the original provisions of proposed § 1.337(d)–1, see T.D. 8294, published on March 14, 1990. Following is a description of the principal amendments.

1. Coordination with loss deferral rules

Sections 1.337(d)–1(a)(3) and 1.337(d)–1(b)(3) provide that, if a loss is deferred, any disallowance of the loss is also deferred until the loss is taken into account under the consolidated return regulations. The loss disallowance rule takes precedence over other loss disallowance and deferral rules of the Code and regulations, however, and these other rules apply only to the extent that loss is not disallowed under § 1.337(d)–1.

2. Stacking Rules

Section 1.337(d)–1(a)(1) disallows loss recognized by a member of a consolidated group on the disposition of stock of a transitional subsidiary. However, § 1.337(d)–1(a)(2) provides an exception under which loss is not disallowed to the extent the taxpayer establishes that the loss is not attributable to the recognition of built-in gain on the disposition of an asset after January 6, 1987. The burden is on taxpayers to establish that loss is not attributable to built-in gain.

Example (3) in proposed § 1.337(d)–1(a)(5) treated any loss on the sale of stock as first attributable to recognized built-in gain. Example (3) is clarified and a new Example (4) is added to clarify that, for purposes of determining whether stock loss is attributable to built-in gain, recognized built-in gain may be offset by recognized built-in loss. If built-in gains and losses are both reflected in the basis of purchased subsidiary stock (or, in the case of subsidiary stock acquired in a carryover basis transaction, neither is reflected in the basis of subsidiary stock), the netting is appropriate. The built-in gain does not create or enhance stock loss when offset by built-in loss.

3. Statements

The requirement that a separate statement be filed with respect to deduction of loss on the disposition of stock of transitional subsidiaries is extended to the deduction of transitional subsidiaries is extended to the deduction of loss on the disposition of stock of transitional parents.

4. Other Clarifying Changes

Section 1.337(d)–1 is revised to clarify several provisions. The revisions include—(a) simplifying the definition of built-in gain, (b) correcting technical defects in the definition of transitional parent and in the successor rule, and (c) additional examples to illustrate such rules as the application of the section to subsidiary stock no longer held by a member and to post-acquisition appreciation. In addition, because § 1.1502–20T has been replaced by a proposed regulation, several rules and examples previously incorporated by cross reference have been restated in full.

D. Transitional Issues

Proposed § 1.337(d)–1 applied to all the stock of a subsidiary that became a member of a group after January 6, 1987, regardless of whether the stock of the subsidiary was acquired by purchase. Commentators have argued that § 1.337(d)–1 should apply only to subsidiary stock that was acquired by purchase after January 6, 1987. They contend that Notice 87–14 did not provide adequate notice that § 1.337(d)–1 would reach all cases in which stock losses with respect to transitional subsidiaries are attributable to the recognition of built-in gain. Commentators also contend that, although a particular target within a group may be subject to § 1.337(d)–1, no notice was given that § 1.337(d)–1 would continue to apply if the target is transferred by merger or otherwise to other members who were members before January 7, 1987.

Notice 87–14 states that "in cases where a target's stock is sold, the regulations will prevent recognition of losses that are attributable to the subsidiary's recognition of built-in gains. The regulations will be effective with respect to stock in a target that was acquired after January 6, 1987." The notice did not define the terms "target" or "acquired," or make clear whether it was the stock or the target that had to be acquired after January 6, 1987.

Notice 87–14 provides a general statement of the policy concerns of the Service by stating simply that regulations would "affect the adjustment to stock basis in certain cases where one or more members have acquired stock of a target with a built-in gain asset. * * * In general, the adjustment to stock basis [would] not reflect built-in gains that are recognized by target on sales of, or by reason of distributions of, its assets." Because the notice stated simply that these concerns would be addressed with respect to acquisition after January 6, 1987, taxpayers should reasonably have expected that the policies expressed in the Notice would be implemented so as to treat taxpayers presenting similar policy concerns similarly, despite different forms of acquisition or location within a group. Section 1.337(d)–1 prohibits the deduction of loss only in limited circumstances. A taxpayer must have acquired a subsidiary's stock after January 6, 1987, and thereafter disposed of a built-in gain asset. Applying this rule to a target acquired after January 6, 1987, regardless of whether its stock was acquired by purchase, is consistent with both the language and the policy of Notice 87–14.

E. Explanation of New Temporary § 1.337(d)–2T

In response to comments that a transitional period should have been provided before § 1.1502–20T became effective, the effective date of new § 1.1502–20 has been deferred. New § 1.337(d)–2T provides a transitional rule, carrying forward the rules of § 1.337(d)–1, that allows loss to the extent the group establishes that the loss is not attributable to the recognition of built-in gain. For this purpose, gain recognized by a consolidated group (or a prior consolidated group) on the disposition of an asset is built-in gain to the extent the asset has an excess of value over basis attributable to a separate return year (as defined in § 1.1502–1(e)) with respect to the consolidated group (or prior consolidated group).

Unlike § 1.337(d)–1, § 1.337(d)–2T is a prospective rule which taxpayers may take into account when planning transactions. Accordingly, § 1.337(d)–2T contains a deconsolidation rule and an anti-stuffing rule similar to those contained in new § 1.1502–20, in order to limit circumvention of the basic loss limitation rule. The deconsolidation and anti-stuffing rules are explained in the preamble to new § 1.1502–20, published to the Proposed Rules section of this issue of the **Federal Register**.

Section 1.337(d)–2T generally applies with respect to dispositions and deconsolidations after November 18, 1990. The rule permitting a group to establish that loss is not attributable to recognition of built-in gain applies, however, only if the group's entire equity interest in a subsidiary is disposed of in one or more transactions to unrelated persons before the application of new § 1.1502–20. Thus, it does not apply (and the loss disallowance rule of § 1.337(d)–2T(a) does apply) if only a portion of the stock held by the group is disposed of, or if the stock is sold to a related party. (See new § 1.1502–20(h), set forth in the Proposed Rules section of this issue of the **Federal Register**, which permits taxpayers to elect to apply the rules of new § 1.1502–20 instead of § 1.337(d)–2T.) The ability to establish that loss is not attributable to built-in gain is limited under § 1.337(d)–2T in order to avoid the need for continued application of these rules to deconsolidated subsidiaries for a substantial period. Like new § 1.1502–20, § 1.337(d)–2T applies to all subsidiary stock, whether or not the subsidiary is a transitional subsidiary or transitional parent, and even if the disposition of the built-in gain asset occurred before January 7, 1987.

F. Section 1.1502–20T

Section 1.1502–20T is removed by this document and a new proposed § 1.1502–20 appears in the Proposed Rules section of this issue of the **Federal Register**. An explanation of the withdrawal of § 1.1502–20T and of the new provisions is set forth in the preamble to new proposed § 1.1502–20.

Special Analysis

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

It is hereby certified that these rules do not have a significant impact on a substantial number of small entities. The rules will primarily affect affiliated groups of corporations filing (or required to file) consolidated returns, which tend to be larger businesses. It will not significantly alter the reporting or recordkeeping duties of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

The project attorney is Mark S. Jennings of the Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. Various other personnel of the Internal Revenue Service and the Treasury Department also participated in the development of these regulations.

List of Subjects

26 CFR 1.301–1 through 1.383–3

Corporate adjustments, Corporate distributions, Corporations, Income taxes, Reorganizations.

26 CFR 1.501–1 through 1.1564–1

Income taxes, Controlled group of corporations, Consolidated returns.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR chapter I is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986

Paragraph 1. The authority citation for part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805; * * * § 1.337(d)–1 also issued under 26 U.S.C. 337(d); * * * § 1.337(d)–2T also issued under 26 U.S.C. 337(d); * * * § 1.1502–1 also issued under 26 U.S.C. 1502.

Par. 2. The authority citation for part 1 continues to include the following citation:

Authority: 26 U.S.C. 7805; * * * § 1.469–1T also issued under 26 U.S.C. 469(l).

Par. 3. The authority citation for part 1 is further amended by removing the citations for §§ 1.337(d)–1T, and 1.1502–20T.

§ 1.337 [Removed]

Par. 3A. Section 1.337(d)–1T is removed.

Par. 4. New § 1.337(d)–1 is added to read as follows:

§ 1.337(d)–1 Transitional loss limitation rule.

(a) *Loss limitation rule for transitional subsidiary*—(1) *General rule.* No deduction is allowed for any loss recognized by a member of a

consolidated group with respect to the disposition of stock of a transitional subsidiary.

(2) *Allowable loss*—(i) *In general.* Paragraph (a)(1) of this section does not apply to the extent the taxpayer establishes that the loss is not attributable to the recognition of built-in gain by any transitional subsidiary on the disposition of an asset (including stock and securities) after January 6, 1987.

(ii) *Statement of allowable loss.* Paragraph (a)(2)(i) of this section applies only if a separate statement entitled "Allowable Loss Under § 1.337(d)–1(a)" is filed with the taxpayer's return for the year of the stock disposition. If the separate statement is required to be filed with a return the due date (including extensions) of which is before January 16, 1991, or with a return due (including extensions) after January 15, 1991 but filed before that date, the statement may be filed with an amended return for the year of the disposition or with the taxpayer's first subsequent return the due date (including extensions) of which is after January 15, 1991.

(iii) *Contents of statement.* The statement required under paragraph (a)(2)(ii) of this section must contain—

(A) The name and employer identification number (E.I.N.) of the transitional subsidiary.

(B) The basis of the stock of the transitional subsidiary immediately before the disposition.

(C) The amount realized on the disposition.

(D) The amount of the deduction not disallowed under paragraph (a)(1) of this section by reason of this paragraph (a)(2).

(E) The amount of loss disallowed under paragraph (a)(1) of this section.

(3) *Coordination with loss deferral rules*—(i) *Single entity treatment of deferred intercompany loss.* If loss with respect to the disposition of a transitional subsidiary's stock is deferred, paragraph (a)(1) of this section does not apply until the loss is taken into account. For this purpose, the amount of the loss deferred and when the loss is taken into account are determined under §§ 1.1501–13, 1.1502–13T, 1.1502–14, and 1.1502–14T, without the application of any other provision of the Code or regulations, such as section 267(f), that provides for disallowance or deferral of the loss.

(ii) *Other loss deferral rules.* If paragraph (a)(1) of this section applies to a loss subject to deferral or disallowance under any other provision of the Code or the regulations, the other provision applies to the loss only to the extent it is not disallowed under paragraph (a)(1).

(4) *Definitions.* For purposes of this section—

(i) The definitions in § 1.1502–1 apply.

(ii) *Transitional subsidiary* means any corporation that became a subsidiary of the group (whether or not the group was a consolidated group) after January 6, 1987. Notwithstanding the preceding sentence, a subsidiary is not a transitional subsidiary if the subsidiary (and each predecessor) was a member of the group at all times after the subsidiary's (and each predecessor's) organization.

(iii) *Built-in gain* of a transitional subsidiary means gain attributable, directly or indirectly, in whole or in part, to any excess of value over basis, determined immediately before the transitional subsidiary became a subsidiary, with respect to any asset owned directly or indirectly by the transitional subsidiary at that time.

(iv) *Disposition* means any event in which gain or loss is recognized, in whole or in part.

(v) *Value* means fair market value.

(5) *Examples.* For purposes of the examples in this section, unless otherwise stated, the group files consolidated returns on a calendar year basis, the facts set forth the only corporate activity, and all sales and purchases are with unrelated buyers or sellers. The basis of each asset is the same determining earnings and profits adjustments and taxable income. Tax liability and its effect on basis, value, and earnings and profits are disregarded. "Investment adjustment system" means the rules of §§ 1.1502–32 and 1.1502–33(c). The principles of this paragraph (a) are illustrated by the following examples:

Example (1). Loss attributable to recognized built-in gain. (i) P buys all the stock of T for $100 on February 1, 1987, and T becomes a member of the P group. T has an asset with a value of $100 and basis of $0. T sells the asset in 1989 and recognizes $100 of built-in gain on the sale (*i.e.*, the asset's value exceeded its basis by $100 at the time T became a member of the P group). Under the investment adjustment system, P's basis in the T stock increases to $200. P sells all the stock of T on December 31, 1989, and recognizes a loss of $100. Under paragraph (a)(1) of this section, no deduction is allowed to P for the $100 loss.

(ii) Assume that, after T sells its asset but before P sells the T stock, T issues additional stock to unrelated persons and ceases to be a member of the P group. P then sells all its stock of T in 1997. Although T ceases to be a subsidiary within the meaning of § 1.1502–1, T continues to be a transitional subsidiary within the meaning of this section. Consequently, under paragraph (a)(1) of this section, no deduction is allowed to P for its $100 loss.

Example (2). Loss attributable to post-acquisition loss. P buys all the stock of T for $100 on February 1, 1987, and T becomes a member of the P group. T has $50 cash and an asset with $50 of built-in gain. During 1988, T retains the asset but loses $40 of the cash. The P group is unable to use the loss, and the loss becomes a net operating loss carryover attributable to T. Under the investment adjustment system, P's basis in the stock of T remains $100. P sells all the stock of T on December 31, 1988, for $60 and recognizes a $40 loss. Under paragraph (a)(2)(i) of this section, P establishes that it did not dispose of the built-in gain asset. None of P's loss is disallowed under paragraph (a)(1) if P satisfies the requirements of paragraph (a)(2)(ii) of this section.

Example (3). Stacking rules—postacquisition loss offsets postacquisition gain. (i) P. buys all the stock of T for $100 on February 1, 1987, and T becomes a member of the P group. T has 2 assets. Asset 1 has a basis and value of $50, and asset 2 has a basis of $0 and a value of $50. During 1989, asset 1 declines in value to $0, and T sells asset 2 for $50, and reinvests the proceeds in asset 3. The value of asset 3 appreciates to $90. Under the investment adjustment system, P's basis in the stock of T increases from $100 to $150 as a result of the gain recognized on the sale of asset 2 but is unaffected by the unrealized post-acquisition decline in the value of asset 1. On December 31, 1989, P sells all the stock of T for $90 and recognizes a $60 loss.

(ii) Although T incurred a $50 post-acquisition loss of built-in gain because of the decline in the value of asset 1, T also recognized $50 of built-in gain. Under paragraph (a)(2) of this section, any loss on the sale of stock is treated first as attributable to recognized built-in gain. Thus, for purposes of determining under paragraph (a)(2) of this section whether P's $60 loss on the disposition of the T stock is attributable to the recognition of built-in gain on the disposition of an asset, T's unrealized post-acquisition gain of $40 offsets $40 of the $50 of unrealized post-acquisition loss. Therefore, $50 of the $60 loss is attributable to the recognition of built-in gain on the disposition of an asset and is disallowed under paragraph (a)(1) of this section.

Example (4). Stacking rules—built-in loss offsets built-in gain. (i) P buys all the stock of T for $50 on February 1, 1987, and T becomes a member of the P group. T has 2 assets. Asset 1 has a basis of $50 and a value of $0, and asset 2 has a basis of $0 and a value of $50. During 1989, T sells asset 1 for $0 and asset 2 for $50, and reinvests the $50 proceeds in asset 3. The value of asset 3 declines to $40. Under the investment adjustment system, P's basis in the stock of T remains $50 as a result of the offsetting gain and loss recognized on the sale of assets 1 and 2 and is unaffected by the unrealized post-acquisition decline in the value of asset 3. On December 31, 1989, P sells all the stock of T for $40 and recognizes a $10 loss.

(ii) Although T recognized a $50 built-in gain on the sale of asset 2, T also recognized a $90 built-in loss on the sale of asset 1. For purposes of determining under paragraph (a)(2) of this section whether P's $10 loss on the disposition of the T stock is attributable to the recognition of built-in gain on the disposition of an asset, T's recognized built-in gain is offset by its recognized built-in loss. Thus none of P's $10 loss is attributable to the recognition of built-in gain on the disposition of an asset.

(iii) The result would be the same if, instead of a $50 built-in loss in asset 2, T has a $50 net operating loss carryover when P buys the T stock, and the net operating loss carryover is used to offset the built-in gain.

Example (5). Outside basis partially corresponds to inside basis. (i) Individual A owns all the stock of T, for which A has a basis of $60. On February 1, 1987, T owns 1 asset with a basis of $0 and a value of $100, P acquires all the stock of T from A in an exchange to which section 351(a) applies, and T becomes a member of the P group. P has a carryover basis of $60 in the T stock. During 1988, T sells the asset and recognizes $100 of gain. Under the investment adjustment system, P's basis in the T stock increases from $60 to $160. T reinvests the $100 proceeds in another asset, which declines in value to $90. On January 1, 1989, P sells all the stock of T for $90 and recognizes a loss of $70.

(ii) Although P's basis in the T stock was increased by $100 as a result of the recognition of built-in gain on the disposition of T's asset, only $60 of the $70 loss on the sale of the stock is attributable under paragraph (a)(2) of this section to the recognition of built-in gain from the disposition of the asset. (Had T's asset not declined in value to $90, the T stock would have been sold for $100, and a $60 loss would have been attributable to the recognition of the built-in gain.) Therefore, $60 of the $70 loss is disallowed under paragraph (a)(2), and $10 is not disallowed if P satisfies the requirements of paragraph (a)(2). If P had sold the stock of T for $95 because T's other assets had unrealized appreciation of $5, $60 of the $65 loss would still be attributable to T's recognition of built-in gain on the disposition of assets.

Example (6). Creeping acquisition. P owns 60 percent of the stock of S on January 6, 1987. On February 1, 1987, P buys an additional 20 percent of the stock of S, and S becomes a member of the P group. P sells all the S stock on March 1, 1989 and recognizes a loss of $100. All 80 percent of the stock of S owned by P is subject to the rules of this section and, under paragraph (a) (1) and (2) of this section, P is not allowed to deduct the $100 loss, except to the extent P establishes the loss is not attributable to the recognition by S of built-in gain on the disposition of assets.

Example (7). Effect of post-acquisition appreciation. P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases to $200. T reinvests the proceeds of the sale in an asset that appreciates in value to $180. Five years after the sale, P sells all the stock of T for $180 and recognizes a $20 loss. Under paragraph (a)(1) of this section, no deduction is allowed to P for the $20 loss.

Example (8). Deferred loss and recognized gain. (i) P, the common parent of a group, owns 50 shares of the stock of T with an aggregate basis of $10, and S, a wholly owned subsidiary of P, recently purchased the remaining 50 shares of T stock in which it has an aggregate basis of $50. T has an asset with a basis of $40 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases from $10 to $40, and S's basis in the T stock increases from $50 to $90. S sells its block of T stock to P for $50 in a deferred intercompany transaction, and S liquidates 2 years later. P subsequently sells all the stock of T for $100 to X, a member of the same controlled group (as defined in section 267(f)) as P but not a member of the P consolidated group.

(ii) Under paragraph (a)(3)(i) of this section, the application of paragraph (a)(1) of this section to S's $30 loss is deferred, because S's loss is deferred under § 1.1502–13(c) (determined without the application of any other provision of the Code or regulations that provides for disallowance or deferral of the loss).

(iii) S's deferred $30 loss is inherited by P under § 1.1502–13(c)(6) following the liquidation of S. When the T stock is sold to X (a member of the same controlled group but not a member of the P consolidated group), the inherited deferred $30 loss is taken into account under § 1.1502–13(f) and paragraph (a)(3) of this section. Under paragraph (a)(1) of this section, no deduction is allowed to P for the $30 loss.

(b) *Indirect disposition of transitional subsidiary*—(1) *Loss limitation rule for transitional parent.* No deduction is allowed for any loss recognized by a member of a consolidated group with respect to the disposition of stock of a transitional parent.

(2) *Allowable loss*—(i) *In general.* Paragraph (b)(1) of this section does not apply to the extent the taxpayer establishes that the loss exceeds the amount that would be disallowed under paragraph (a) of this section if each highest tier transitional subsidiary's stock in which the transitional parent has a direct or indirect interest had been sold immediately before the disposition of the transitional parent's stock. In applying the preceding sentence, appropriate adjustments shall be made to take into account circumstances where less than all the stock of a transitional parent owned by members of a consolidated group is disposed of in the same transaction, or the stock of a transitional subsidiary or a transitional parent is directly owned by more than 1 member.

(ii) *Statement of allowable loss.* Paragraph (b)(2)(i) of this section applies only if a separate statement entitled "Allowable Loss Under Section 1.337(d)–1(b)" is filed with the taxpayer's return for the year of the stock disposition. If the separate statement is required to be filed with a return the due date (including extensions) of which is before January 16, 1991, or with a return due (including extensions) after January 15, 1991 but filed before that date, the statement may be filed with an amended return for the year of the disposition or with the taxpayer's first subsequent return the due date (including extensions) of which is after January 15, 1991.

(iii) *Contents of statement.* The statement required under paragraph (b)(2)(ii) of this section must contain—

(A) The name and employer identification number (E.I.N.) of the transitional parent.

(B) The basis of the stock of the transitional parent immediately before the disposition.

(C) The amount realized on the disposition.

(D) The amount of the deduction not disallowed under paragraph (b)(1) of this section by reason of this paragraph (b)(2).

(E) The amount of loss disallowed under paragraph (b)(1) of this section.

(3) *Coordination with loss deferral rules*—(i) *Single entity treatment of deferred intercompany loss.* If loss with respect to the disposition of a transitional parent's stock is deferred, paragraph (b)(1) of this section does not apply until the loss is taken into account. For this purpose, the amount of the loss deferred and when the loss is taken into account are determined under §§ 1.1502–13, 1.1502–13T, 1.1502–14, and 1.1502–14T, without the application of any other provision of the Code or regulations, such as section 267 (f), that provides for disallowance or deferral of the loss.

(ii) *Other loss deferral rules.* If paragraph (b)(1) of this section applies to a loss subject to deferral or disallowance under any other provision of the Code or the regulations, the other provision applies to the loss only to the extent it is not disallowed under paragraph (b)(1).

(4) *Definitions.* For purposes of this section—

(i) *Transitional parent* means any subsidiary, other than a transitional subsidiary, that owned at any time after January 6, 1987, a direct or indirect interest in the stock of a corporation that is a transitional subsidiary.

(ii) *Highest tier transitional subsidiary* means the transitional subsidiary (or subsidiaries) in which the transitional parent has a direct or indirect interest and that is the highest

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transitional subsidiary (or subsidiaries) in a chain of members.

(5) *Examples.* The principles of this paragraph (b) are illustrated by the following examples:

Example (1). Ownership of chain of transitional subsidiaries. (i) P forms S with $200 on January 1, 1985, and S becomes a member of the P group. On February 1, 1987, S buys all the stock of T, and T buys all the stock of T1, and both T and T1 become members of the P group. On January 1, 1988, P sells all the stock of S and recognizes a $90 loss on the sale.

(ii) Under paragraph (a)(4)(ii) of this section, both T and T1 are transitional subsidiaries, because they became members of the P group after January 6, 1987. Under paragraph (b)(4)(i) of this section, S is a transitional parent, because it owns a direct interest in stock of transitional subsidiaries and is not itself a transitional subsidiary.

(iii) Under paragraph (b) (1) and (2) of this section, because S is a transitional parent, no deduction is allowed to P for its $90 loss except to the extent the loss exceeds the amount of S's loss that would have been disallowed if S had sold all the stock of T, S's highest tier transitional subsidiary, immediately before P's sale of all the S stock. Assume all the T stock would have been sold for a $90 loss and that all the loss would be attributable to the recognition of built-in gain from the disposition of assets. Because in that case $90 of loss would be disallowed, all of P's loss on the sale of the S stock is disallowed under paragraph (b).

Example (2). Ownership of brother-sister transitional subsidiaries. (i) P forms S with $200 on January 1, 1985, and S becomes a member of the P group. On February 1, 1987, S buys all the stock of both T and T1, and T and T1 become members of the P group. On January 1, 1988, P sells all the stock of S and recognizes a $90 loss on the sale.

(ii) Under paragraph (b) (1) and (2) of this section, no deduction is allowed to P for its $90 loss except to the extent P establishes that the loss exceeds the amount of S's stock losses that would be disallowed if S sold all the stock of T and T1. S's highest tier transitional subsidiaries, immediately before P's sale of all the S stock. Assume that all the T stock would have been sold for a $50 loss, all the T1 stock of a $40 loss, and that the entire amount of each loss would be attributable to the recognition of built-in gain on the disposition of assets. Because $90 of loss would be disallowed with respect to the sale of S's T and T1 stock, P's $90 loss on the sale of all the S stock is disallowed under paragraph (b).

(c) *Successors*—(1) *General rule.* This section applies, to the extent necessary to effectuate the purposes of this section, to—

(i) Any property owned by a member or former member, the basis of which is determined, directly or indirectly, in whole or in part, by reference to the basis in a subsidiary's stock, and

(ii) Any property owned by any other person whose basis in the property is determined, directly or indirectly, in whole or in part, by reference to a member's (or former member's) basis in a subsidiary's stock.

(2) *Examples.* The principles of this paragraph (c) are illustrated by the following examples:

Example (1). Merger into grandfathered subsidiary. P, the common parent of a group, owns all the stock of T, a transitional subsidiary. On January 1, 1989, T merges into S, a wholly owned subsidiary of P that is not a transitional subsidiary. Under paragraph (c)(1) of this section, all the stock of S is treated as stock of a transitional subsidiary. As a result, no deduction is allowed for any loss recognized by P on the disposition of any S stock, except to the extent the P group establishes under paragraph (a)(2) that the loss is not attributable to the recognition of built-in gain on the disposition of assets of T.

Example (2). Nonrecognition exchange of transitional stock. (i) P, the common parent of a group, owns all the stock of T, a transitional subsidiary. On January 1, 1989, P transfers the stock of T to X, a corporation that is not a member of the P group, in exchange for 20 percent of its stock in a transaction to which section 351(a) applies. T and X file separate returns.

(ii) Under paragraph (c)(1) of this section, all the stock of X owned by P is treated as stock of a transitional subsidiary because P's basis for the X stock is determined by reference to its basis for the T stock. As a result, no deduction is allowed to P for any loss recognized on the disposition of the X stock, except to the extent permitted under paragraph (a) of this section.

(iii) Under paragraph (c)(1), X is treated as a member subject to paragraph (a) of this section with respect to the T stock because X's basis for the stock is determined by reference to P's basis for the stock. Moreover, all of the T stock owned by X continues to be stock of a transitional subsidiary. As a result, no deduction is allowed to X for any loss recognized on the disposition of any T stock, except to the extent permitted under paragraph (a) of this section.

(d) *Investment adjustments and earnings and profits*—(1) *In general.* For purposes of determining investment adjustments under § 1.1502–32 and earnings and profits under § 1.1502–33 (c) with respect to a member of a consolidated group that owns stock in a subsidiary, any deduction that is disallowed under this section is treated as a loss absorbed by the member in the tax year in which the disallowance occurs.

(2) *Example.* (i) In 1988, P forms S with a contribution of $100, and S becomes a member of the P group. On February 1, 1987, S buys all the stock of T for $100. T has an asset with a basis of $0 and a value of $100. In 1988, T sells the asset for $100. Under the investment adjustment system, S's basis in the T stock increases to adjustment system, S's basis in the T stock increases to $200, P's basis in the S stock increases to $200, and P's earnings and profits and S's earnings and profits increase by $100. In 1989, S sells all of the T stock for $100, and S's recognized loss of $100 is disallowed under paragraph (a)(1) of this section.

(ii) Under paragraph (d)(1) of this section, S's earnings and profits for 1989 are reduced by $100, the amount of the loss disallowed under paragraph (a)(1). As a result, P's basis in the S stock is reduced from $200 to $100 under the investment adjustment system. P's earnings and profits for 1989 are correspondingly reduced by $100.

(e) *Effective dates*—(1) *General rule.* This section is effective November 19, 1990, and applies with respect to dispositions after January 6, 1987. After November 18, 1990, however, this section applies only if the stock was deconsolidated (as that term is defined in § 1.337(d)–2T(b)(2)) before November 19, 1990, and only to the extent the disposition is not subject to § 1.337(d)–2T.

(2) *Binding contract rule.* For purposes of this paragraph (e), if a corporation became a subsidiary pursuant to a binding written contract entered into before January 6, 1987, and in continuous effect until the corporation became a subsidiary, or a disposition was pursuant to a binding written contract entered into before March 9, 1990, and in continuous effect until the disposition, the date the contract became binding shall be treated as the date the corporation became a subsidiary or as the date of disposition.

Par. 5. New § 1.337(d)–2T is added to read as follows:

§ 1.337(d)–2T Loss limitation window period (temporary).

(a) *Loss disallowance*—(1) *General rule.* No deduction is allowed for any loss recognized by a member of a consolidated group with respect to the disposition of stock of a subsidiary.

(2) *Definitions.* For purposes of this section—

(i) The definitions in § 1.1502–1 apply.

(ii) *Disposition* means any event in which gain or loss is recognized, in whole or in part.

(3) *Coordination with loss deferral rules*—(i) *Single entity treatment of deferred intercompany loss.* If loss with respect to the disposition of a subsidiary's stock is deferred, paragraph (a)(1) of this section does not apply until the loss is taken into account. For this purpose, the amount of the loss deferred and when the loss is taken into account are determined under §§ 1.1502–13, 1.1502–13T, 1.1502–14, and 1.1502–14T, without the application of any other provision of the Code or regulations, such as section 267(f), that provides for disallowance or deferral of the loss.

(ii) *Other loss deferral rules.* If paragraph (a)(1) of this section applies to a loss subject to deferral or disallowance under any other provision of the Code or the regulations, the other provision applies to the loss only to the extent it is not disallowed under paragraph (a)(1).

(b) *Basis reduction on deconsolidation*—(1) *General rule.* If the basis of a member of a consolidated group in a share of stock of a subsidiary exceeds its value immediately before a deconsolidation of the share, the basis of the share is reduced at that time to an amount equal to its value. If both a disposition and a deconsolidation occur with respect to a share in the same transaction, paragraph (a) of this section applies and, to the extent necessary to effectuate the purposes of this section, this paragraph (b) applies following the application of paragraph (a).

(2) *Deconsolidation.* "Deconsolidation" means any event that causes a share of stock of a subsidiary that remains outstanding to be no longer owned by a member of any consolidated group of which the subsidiary is also a member.

(3) *Value.* "Value" means fair market value.

(4) *Loss within 2 years after basis reduction*—(i) *In general.* If the basis of a share of stock is reduced under this paragraph (b) and a direct or indirect disposition of the stock occurs within 2 years after the date of the basis reduction, a separate statement entitled "Statement Pursuant to § 1.337(d)–2T(b)(4)" must be filed with the taxpayer's return for the year of disposition. If the taxpayer fails to file the statement as required, no deduction is allowed for any loss recognized on the disposition. If the separate statement is required to be filed with a return the due date (including extensions) of which is before January 16, 1991, or with a return due (including extensions) after January 15, 1991 but filed before that date, the statement may be filed with an amended return for the year of the disposition or with the taxpayer's first subsequent return the due date (including extensions) of which is after January 15, 1991. A disposition after the 2-year period described in this paragraph (b)(4) that is pursuant to an agreement, option, or other arrangement entered into within the 2-year period is treated as a disposition within the 2-year period for purposes of this section.

(ii) *Contents of statement.* The statement required under paragraph (b)(4)(i) of this section must contain—

(A) The name and employer identification number (E.I.N.) of the subsidiary.

(B) The amount of prior basis reduction with respect to the stock of the subsidiary under paragraph (b)(1) of this section.

(C) The basis of the stock of the subsidiary immediately before the disposition.

(D) The amount realized on the disposition.

(E) The amount of the deduction not disallowed under paragraph (b)(4)(i) of this section.

(F) The amount of loss disallowed under paragraph (b)(4)(i) of this section.

(c) *Allowable loss*—(1) *Application.* This paragraph (c) applies with respect to stock of a subsidiary only if—

(i) The consolidated group disposes (in one or more transactions), before the effective date of § 1.1502–20, of its entire equity interest in the subsidiary to persons not related to any member of the consolidated group within the meaning of sections 267(b) and 707(b)(1) (substituting "10 percent" for "50 percent" each place that it appears), and

(ii) A separate statement entitled "Allowed Loss Under § 1.337(d)–2T (c)" is filed in accordance with paragraph (c)(3) of this section.

(2) *General rule.* Loss is not disallowed under paragraph (a)(1) of this section and basis is not reduced under paragraph (b)(1) of this section to the extent the taxpayer establishes that the loss or basis is not attributable to the recognition of built-in gain on the disposition of an asset (including stock and securities). Loss or basis may be attributable to the recognition of built-in gain on the disposition of an asset by a prior consolidated group. For purposes of this section, gain recognized by the consolidated group (or prior consolidated group) on the disposition of an asset is built-in gain to the extent attributable, directly or indirectly, in whole or in part, to any excess of value over basis attributable to a separate return year (as defined in § 1.1502–1(e)) with respect to the consolidated group (or prior consolidated group).

(3) *Contents of statement and time of filing.* The statement required under paragraph (c)(1)(ii) of this section must be filed with the taxpayer's return for the year of the disposition or deconsolidation, and must contain—

(i) The name and employer identification number (E.I.N.) of the subsidiary.

(ii) The basis of the stock of the subsidiary immediately before the disposition or deconsolidation.

(iii) The amount realized on the disposition and the amount of fair market value on the deconsolidation.

(iv) The amount of the deduction not disallowed under paragraph (a)(1) of this section by reason of this paragraph (c) and the amount of basis not reduced under paragraph (b)(1) of this section by reason of this paragraph (c).

(v) The amount of loss disallowed under paragraph (a)(1) of this section and the amount of basis reduced under paragraph (b)(1) of this section. If the separate statement is required to be filed with a return the due date (including extensions) of which is before January 16, 1991, or with a return due (including extensions) after January 15, 1991 but filed before that date, the statement may be filed with an amended return for the year of the disposition or deconsolidation or with the taxpayer's first subsequent return the due date (including extensions) of which is after January 15, 1991.

(4) *Examples.* For purposes of the examples in this section, unless otherwise stated, the group files consolidated returns on a calendar year basis, the facts set forth the only corporate activity, and all sales and purchases are with unrelated buyers or sellers. The basis of each asset is the same for determining earnings and profits adjustments and taxable income. Tax liability and its effect on basis, value, and earnings and profits are disregarded. "Investment adjustment system" means the rules of §§ 1.1502–32 and 1.1502–33(c). The principles of paragraphs (a), (b), and (c) of this section, such as the attribution of recognized gain to built-in gain, are illustrated by the examples in § 1.337(d)–1(a)(5) and by the examples in this paragraph (c)(4). For an example that treats a disposition after the 2-year period as being within the period, see paragraph (e)(3) of this section.

Example (1). Simultaneous application of loss disallowance rule and basis reduction rule to stock of the same subsidiary. (i) P buys all the stock of T for $100 in 1985, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100 and recognizes built-in gain (*i.e.*, gain that is attributable to a separate return year with respect to the group recognizing the gain). Under the investment adjustment system, P's basis in the T stock increases to $200. Five years later, P sells 60 shares of T stock for $60 and recognizes a $60 loss on the sale.

(ii) P's $60 loss on the sale of T stock is disallowed under paragraph (a)(1) of this section.

(iii) P's sale of 60 shares of T stock causes a deconsolidation of the remaining 40 shares held by P. Under paragraph (b)(1) of this section, P must reduce the basis of the 40 shares of T stock it continues to own from $60 to $40, the value of the shares immediately before the deconsolidation. Although P's disposition of the 60 shares also causes a deconsolidation of these shares, paragraph (b)(1) of this section provides that, if both paragraph (a) and paragraph (b) of

this section apply to a share in the same transaction, paragraph (e) applies first and paragraph (b) applies only to the extent necessary to effectuate the purposes of this section. Under paragraph (e)(1), P's $60 losses on the sale of the 60 shares is disallowed. Under the facts of this example, it is not necessary to also apply paragraph (b) of this section to the 60 shares in order to effectuate the purpose of this section.

Example (2). Deconsolidation of subsidiary stock on contribution to a partnership. (i) P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases to $200. Five years later, P transfers all the stock of T to partnership M in exchange for a partnership interest in M, in a transaction to which section 721 applies.

(ii) At the time of the exchange, P's basis in the T stock is $200 and the T stock's value is $100. Under paragraph (b)(1) of this section, the transfer to M causes a deconsolidation of the T stock, and P must reduce its basis in the T stock, immediately before the transfer to M, from $200 to the stock's $100 value at that time. As a result, P has a basis of $100 in its interest in M, and M has a basis of $100 in the stock of T.

Example (3). Simultaneous application of loss disallowance rule and basis reduction rule to stock of different subsidiaries. (i) P owns all the stock of S, which in turn owns all the stock of S1, and S and S1 are members of the P group. P's basis in the S stock is $100 and S's basis in the S1 stock is $100. S1 buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $160. T sells the asset for $160. Under the investment adjustment system, S1's basis in the T stock, S's basis in the S1 stock, and P's basis in the S stock each increase from $100 to $260. S then sells all the S1 stock for $160 and recognizes a loss of $180.

(ii) Under paragraph (a)(1) of this section, S's $100 loss on the sale of the S1 stock is disallowed.

(iii) If S1 and T are not members of a consolidated group immediately after the sale of the stock of S1, the T stock is deconsolidated, and under paragraph (b)(1) of this section, S1 must reduce the basis of the T stock to $100, its value immediately before the sale.

(iv) If S1 and T are members of a consolidated group immediately after the sale of the S1 stock, the T stock is not deconsolidated, and no reduction is required under paragraph (b)(1). However, if the new group sells the T stock and recognizes a $160 loss, the loss is disallowed, because under paragraph (c)(2) of this section the loss is attributable to T's recognition of built-in gain (*i.e.*, gain attributable to a separate return year with respect to the group recognizing the gain).

Example (4). Loss offsetting built-in gain in a prior group. (i) P buys all the stock of T for $50 in Year 1, and T becomes a member of the P group. T has 2 assets. Asset 1 has a basis of $50 and a value of $0, and asset 2 has a basis of $0 and a value of $50. T sells asset 2 during Year 3 for $50, and recognizes a $50 gain. Under the investment adjustment system, P's basis in the T stock increases to $100 as a result of the recognition of gain. In Year 5, all of the stock of P is acquired by the P1 group, and the former members of the P group become members of the P1 group. T then sells asset 1 for $0, and recognizes a $50 loss. Under the investment adjustment system, P's basis in the T stock decreases to $50 as a result of the loss. T's assets decline in value from $50 to $40. P then sells all the stock of T for $40 and recognizes a $10 loss.

(ii) P's cost basis on acquisition of the T stock reflects both T's unrecognized gain and unrecognized loss. The gain T recognizes on the disposition of asset 2 is attributable to the recognition of built-in gain with respect to both the P and the P1 groups for purposes of paragraph (c)(2) of this section. As with the recognized built-in gain, the built-in loss that was recognized in the P1 group before P's disposition of the T stock was attributable to a separate return year with respect to the P and P1 groups. T's recognition of the built-in loss while a member of the P1 group offset the effect of the recognition of the built-in gain on T's stock basis, even though the gain was recognized in the P group. Thus, under paragraph (c)(2), P's $10 loss on the sale of the T stock is not attributable to the recognition of built-in gain, and the loss is therefore not disallowed under paragraph (c)(2).

(iii) The result would be the same if when P buys the T stock, T has a $50 net operating loss carryover instead of a $50 built-in loss in asset 2, and the net operating loss carryover is used to offset the built-in gain.

(d) *Successors*—(1) *General rule.* This section applies, to the extent necessary to effectuate the purposes of this section, to any property the basis of which is determined, directly or indirectly, in whole or in part, by reference to the basis of a subsidiary's stock.

(2) *Example.* The principles of this paragraph (d) are illustrated by Example 1 in § 1.337(d)-1(c).

(e) *Anti-stuffing rule*—(1) *Application.* This paragraph (e) applies if—

(i) A transfer of any asset (including stock and securities) after March 8, 1990 is followed within 2 years by a direct or indirect disposition or a deconsolidation of stock, and

(ii) The transfer is with a view to avoiding, directly or indirectly, in whole or in part—

(A) The disallowance of loss on the disposition or the basis reduction on the deconsolidation of stock of a subsidiary, or

(B) The recognition of the unrealized gain on the transferred asset.

A disposition after the 2-year period described in this paragraph (e)(1) that is pursuant to an agreement, option, or other arrangement entered into within the 2-year period is treated as a disposition within the 2-year period for purposes of this section.

(2) *Basis reduction.* If this paragraph (e) applies, the basis of the stock is reduced, immediately before the disposition or deconsolidation, to cause recognition of gain in an amount equal to the loss disallowance or basis reduction, or the gain recognition, otherwise avoided by reason of the transfer.

(3) *Examples.* The principles of this paragraph (e) are illustrated by the following examples:

Example (1). Basic stuffing case. (i) In Year 1, P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases from $200 to $200. In Year 5, P transfers to T an asset with a basis of $0 and a value of $100 in a transaction to which section 351 applies, with the view described in paragraph (e)(1) of this section. In Year 6, P sells all the stock of T for $200.

(ii) Under paragraph (e)(2) of this section, P must reduce the basis in its T stock by $100 immediately before the sale. This basis reduction causes a $100 gain to be recognized on the sale.

(iii) The $100 basis reduction also would be required if the T stock is deconsolidated in Year 6 instead of being sold. P must reduce the basis in its T stock by $100 immediately before the deconsolidation.

(iv) The $100 basis reduction also would be required if the P stock were acquired at the beginning of Year 6 by the M group, even though the asset transfer took place outside the M group. Paragraph (e)(1) requires only that the transferor have the view at the time of the transfer.

Example (2). Stacking rules. (i) In Year 1, P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases from $100 to $200. In Year 5, when the value of the T stock remains $100, P transfers to T an asset with a basis of $0 and a value of $100 in a transaction to which section 351 applies, with the view described in paragraph (e)(1) of this section. Thereafter, the value of the contributed asset declines to $10. In Year 6, P sells all the T stock for $110.

(ii) Because the transferred asset declined in value by $90, the transfer enabled P to avoid the disallowance of loss on the sale of T only to the extent of $10. Under paragraph (e)(2) of this section, P must reduce the basis in its T stock immediately before the sale to cause recognition of gain in an amount equal to the loss disallowance otherwise avoided by reason of the transfer. The amount of this basis reduction is $100, causing a $10 gain to be recognized on the sale.

(iii) Assume, instead, that the transferred asset does not decline in value and that T reinvests the $100 in proceeds from the asset sale in another asset that appreciates in value to $180. In Year 6, P sells T for $290. Because the new asset appreciated in value by $90, the transfer enabled P to avoid the disallowance of loss on the sale of T only to the extent of $10. Under paragraph (e)(2) of this section, P must reduce the basis in its T stock immediately before the sale to cause recognition of gain in an amount equal to the loss disallowance otherwise avoided by reason of the transfer. The amount of this basis reduction is $10, causing a $100 gain to be recognized on the sale.

Example (3). Contribution of built-in loss asset. (i) In Year 1, P forms S with a contribution of $100 in exchange for all of S's stock, and S becomes a member of the P group. S buys an asset for $100, and the asset appreciates in value to $200. P then buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100, and under the investment adjustment system P's basis in the T stock increases from $100 to $200. In Year 5, when the value of the T stock remains $100, P transfers the T stock to S in a transaction to which section 351 applies, with the view described in paragraph (e)(1) of this section. The transfer causes P's basis in the S stock to increase from $100 to $300 and the value of S to increase from $200 to $300. In Year 6, P sells the S stock for $300.

(ii) Under paragraph (e)(2) of this section, P must reduce the basis in its S stock immediately before the sale to cause recognition of gain in an amount equal to the gain recognition otherwise avoided by reason of the transfer. The amount of this basis reduction is $100, causing a $100 gain to be recognized on the sale.

Example (4). Absence of view. (i) In Year 1, P buys all the stock of T for $100, and T becomes a member of the P group. T has 2 assets, asset 1 with a basis of $50 and value of $100, and asset 2 with a basis of $50 and value of $0. T sells asset 1 for $100. Under the investment adjustment system, P's basis in the T stock increases from $100 to $150. In Year 5, T transfers asset 2 to P in a transaction to which § 1.1502-14(a) applies, with a view to having the group retain the loss inherent in the asset. This transfer reduces P's basis in the T stock from $150 to $100. In Year 6, P sells all the stock of T for $100.

(ii) The transfer from T to P achieves a result that could have been obtained by other methods that would not have been prevented by this section. The transfer therefore is not with the view described in paragraph (e)(1) of this section, P is not required to reduce the basis of its T stock under paragraph (e)(2) of this section. P is in substantially the same position holding asset 2 as it would be if T sold the asset and the resulting loss was available to the P group through T.

Example (5). Extending the time period for dispositions. (i) In Year 1, P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases from $100 to $200. At the beginning of Year 5, P transfers to T an asset with a basis of $0 and a value of $100 in a transaction to which section 351 applies, with the view described in paragraph (e)(1) of this section. Within 2 years, P agrees to sell all the stock of T for $200 at the end of Year 7.

(ii) Under paragraph (e)(1) of this section, P's disposition of the T stock at the end of Year 7 is treated as occurring within the 2-year period following P's transfer of the asset to T, because the disposition is pursuant to an agreement reached within 2 years after the transfer. Accordingly, under paragraph (e)(2) of this section, P must reduce the basis in its T stock by $100 immediately before the sale. This result is reached whether or not the agreement is in writing. P's disposition would also have been treated as occurring within the 2-year period if the disposition were pursuant to an option issued within the period.

(f) *Investment adjustments and earnings and profits*—(1) *Effect on investment adjustments and earnings and profits*—(i) *General rule.* For purposes of determining investment adjustments under § 1.1502-32 and earnings and profits under § 1.1502-33(c) with respect to a member of a consolidated group that owns stock in a subsidiary, any deduction that is disallowed, or any amount by which basis is reduced, under this section is treated as a loss absorbed by the member in the tax year in which the disallowance or basis reduction occurs.

(ii) *Example.* (A) In Year 1, P forms S with a contribution of $100, and S becomes a member of the P group. S buys all the stock of T for $100. T has an asset with a basis of $0 and a value of $100. In Year 2, T sells the asset for $100. Under the investment adjustment system, S's basis in the T stock increases to $200, and P's basis in the S stock increases to $200. In Year 6, S sells all the stock of T for $100, and S's recognized loss of $100 is disallowed under paragraph (a)(1) of this section.

(B) Under paragraph (f)(1) of this section, the earnings and profits of S for Year 6 are reduced by $100, the amount of the loss disallowed under paragraph (a)(1). P's basis in the S stock is reduced from $200 to $100 under the investment adjustment system. Correspondingly, P's earnings and profits for Year 6 are reduced by $100, the amount of the loss disallowed under paragraph (a)(1) of this section.

(2) *Coordination rules*—(i) *Order of adjustments.* Deconsolidation of a share is treated as a disposition of the share of purposes of determining when investment adjustments are made to the share.

(ii) *No tiering up of certain adjustments.* If the basis of stock of a subsidiary owned by a member (the "owning member") is reduced under this section on the deconsolidation of the stock, no corresponding adjustment is made under § 1.1502-32 to the basis of the stock of the owning member (or any higher tier member) if a disposition or deconsolidation occurs in the same transaction with respect to all the stock of the owning member. In the case of a disposition or deconsolidation in the same transaction of less than all the stock of the owning member, appropriate adjustments shall be made under § 1.1502-32 with respect to the stock of the owning member (or any higher tier member).

(iii) *Example.* (A) P, the common parent of a group, owns all the stock of S. S owns all the stock of S1, and S1 owns all the stock of S2. P's basis in the S stock is $100, S's basis in the S1 stock is $100, and S1's basis in the S2 stock is $100. In Year 1, S2 buys T for $100. T has an asset with a basis of $0 and a value of $100. In Year 2, T sells the asset for $100. Under the investment adjustment system, the basis of each subsidiary's stock increases from $100 to $200. In Year 6, S sells all the stock of S1 for $100 to A, an individual, and recognizes a loss of $100. S1, S2, and T are not members of a consolidated group immediately after the sale because the new S1 group does not file a consolidated return for its first taxable year.

(B) Under paragraph (a)(1) of this section, no deduction is allowed to S for its loss on the sale of the S1 stock. Under paragraph (f)(1) of this section, S's earnings and profits for Year 6 are reduced by the $100 loss that is disallowed. Correspondingly, under the investment adjustment system, S's reduction in earnings and profits causes a reduction in P's basis in the S stock, and a reduction in P's earnings and profits for Year 6.

(C) Under paragraph (b)(1) of this section, because the stock T and S2 is deconsolidated, S2 must reduce the basis of the T stock from $200 to $100 (its value immediately before the deconsolidation), and S1 must reduce the basis of the S2 stock from $200 to $100 (its value immediately before the deconsolidation). Under paragraph (f)(1), S2's earnings and profits for Year 6 are reduced by the $100 reduction to the basis of the T stock, and S1's earnings and profits are reduced by the $100 reduction to the basis of the S2 stock. Under paragraph (f)(2)(ii) of this section, because the stock of S2 is deconsolidated in the same transaction, the basis reduction to the T stock does not cause any corresponding investment adjustment to the stock of S2, or to the stock of any higher tier subsidiary. Similarly, because the stock of S1 is disposed of in the same transaction, the reduction to the basis of the S2 stock does not cause an investment adjustment to the stock of S1, or the stock of any higher tier subsidiary.

(iv) *Basis reduction treated as investment adjustment.* For purposes of the consolidated return regulations, the amount of any basis reduction to stock under this section is generally treated as a net negative adjustment under § 1.1502-32(e) (in addition to the adjustment otherwise required under § 1.1502-32(e)) with respect to the stock. The amount of the basis reduction is not treated as a net negative adjustment for purposes of § 1.1502-32T (a), however.

(g) *Effective dates*—(1) *General rule.* This section is effective December 28, 1990. Except as otherwise provided in

this paragraph (g), this section applies with respect to dispositions and deconsolidations after November 18, 1990, but only to the extent the disposition or deconsolidation is not subject to § 1.1502–20. For this purpose, dispositions deferred under § § 1.1502–13, 1.1502–13T, 1.1502–14, and 1.1502–14T are deemed to occur at the time the deferred gain or loss is taken into account unless the stock was deconsolidated before November 19, 1990. If stock of a subsidiary became worthless during a taxable year including November 19, 1990, the disposition with respect to the stock is treated as occurring on the date the stock became worthless.

(2) *Binding contract rule.* For purposes of this paragraph (g), if a disposition or deconsolidation is pursuant to a binding written contract entered into before March 9, 1990, and in continuous effect until the disposition or deconsolidation, the date the contract became binding is treated as the date of the disposition or deconsolidation.

Par. 6. New temporary § 1.267(f)–3T is added to read as follows:

§ 1.267(f)–3T Disposition or deconsolidation of subsidiary stock (temporary).

For purposes of applying section 267(f)(2) to the sale or exchange of the stock of one member of a consolidated group by another member, see §§ 1.337(d)–1(a) and 1.337(d)–2T(a). For purposes of this section, the definitions in § 1.1502–1 apply.

Par. 7. Paragraph (h)(2) of § 1.469–1T is revised to read as follows:

§ 1.469–1T General rules (temporary).

* * * * *

(h) * * *

(2) *Definitions.* For purposes of this paragraph (h)—

(i) The terms "group," "consolidated group," "member," "subsidiary," and "consolidated return year" have the meanings set forth in § 1.1502–1; and

(ii) The term "consolidated taxable income" has the meaning set forth in § 1.1502–11.

* * * * *

Par. 8. The text of § 1.1502–1T is redesignated as § 1.1502–1(h) and the section heading is removed.

Par. 9. Paragraph (r) of § 1.1502–12 is revised to read as follows:

§ 1.1502–12 Separate taxable income.

* * * * *

(r) For rules relating to loss disallowance or basis reduction on the disposition or deconsolidation of stock of a subsidiary, see §§ 1.337(d)–1 and 1.337(d)–2T.

* * * * *

Par. 9A. Section 1.1502–20T is removed.

Par. 10. The last sentence of § 1.1502–32(a) is revised to read as follows:

§ 1.1502–32 Investment adjustment.

* * * * *

(a) * * * For rules relating to loss disallowance or basis reduction on the disposition or deconsolidation of stock of a subsidiary, see §§ 1.337(d)–1 and 1.337(d)–2T.

* * * * *

Par. 11. The last sentence of § 1.1502–33(c)(6) is revised to read as follows:

§ 1.1502–33 Earnings and profits.

* * * * *

(c) * * *

(6) * * * For rules relating to the effect on earnings and profits of loss disallowance or basis reduction on the disposition or deconsolidation of stock of a subsidiary, see §§ 1.337(d)–1 and 1.337(d)–2T.

* * * * *

§ 1.1502–79 [Amended]

Par. 12. Section 1.1502–79 is amended by removing paragraph (a)(1)(iii).

PART 602—[AMENDED]

Par. 13. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 14. Section 602.101(c) is amended by inserting in the appropriate place in the table "Section 1.337(d)–1 * * * 1545–1180".

Need for Temporary Regulations

Because of the need to prevent circumvention of the repeal of the *General Utilities* doctrine, it is impracticable and contrary to the public interest to issue temporary regulation § 1.337(d)–2T with notice and public procedure under section 553(b) of title 5 of the United States Code, or subject to the effective date limitation of section 553(d) of title 5.

Dated: November 8, 1990.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90–27571 Filed 11–19–90; 3:43 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD–05–90–81]

COTP Hampton Roads, Regulation 90–RFR–81; Safety Zone Regulations: North Carolina Pamlico Sound, Oregon Inlet, and Vicinity

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a safety zone from North Point to South Point extending 100 yards on both sides of the collapsed section of the Herbert C. Bonner Bridge at Oregon Inlet, North Carolina. This zone is needed to ensure the safety of mariners in the vicinity of Oregon Inlet, North Carolina from the hazards resulting from the collapse of the Herbert C. Bonner Bridge. The Captain of the Port, Hampton Roads, VA will enforce a safety zone extending northwestwardly from position 35–46.28N latitude, 75–32.22W longitude to a point at 35–46.35N latitude, 75–32.37W longitude, thence easterly to a point at 35–46.48N latitude, 75–32.28W longitude, and thence southeasterly to position 35–46.38N latitude, 75–32.09W longitude. Vessels or individuals will not be permitted to enter the safety zone, except as permitted by the Captain of the Port or his designated representative.

EFFECTIVE DATE: This regulation is effective at 9 p.m., October 27, 1990 and terminates on June 27, 1991 unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia.

FOR FURTHER INFORMATION CONTACT: LTJG W.J.P. Westphal II, Project Officer, USCG Marine Safety Officer, Hampton Roads, Norfolk Federal Building, 200 Granby Street, Norfolk, Virginia 23510. TEL: (804) 441–3294. (FTS) 827–3294. LTJG Westphal may be reached 7:30 a.m. until 4 p.m., Monday through Friday, except during Federal Holidays.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is required to ensure the safety of mariners operating in the vicinity of Oregon Inlet.

Drafting Information

The drafter of this regulation is LTJG W.J.P. Westphal II Project Officer for the Captain of the Port, Hampton Roads.

Discussion of Regulation

A safety zone is being established 100 yards on both sides of the collapsed section of the Herbert C. Bonner Bridge extending from North Point to South Point of Oregon Inlet, North Carolina from 9 p.m., October 27, 1990 until repairs to the Herbert C. Bonner Bridge are completed. This zone is needed to ensure the safety of persons and vessels from the hazards resulting from the collapse of the Herbert C. Bonner Bridge. This safety zone will encompass the waters of Oregon Inlet within 100 yards on both sides of the Herbert C. Bonner Bridge, Oregon Inlet, North Carolina. The safety zone will extend northwestwardly from position 35–46.28N latitude, 75–32.22W longitude to a point at 35–46.35N latitude, 75–32.37W longitude, thence easterly to a point at 35–46.48N latitude, 75–32.28W longitude, and thence southeasterly to position 35–46.38N latitude, 75–32.09W longitude. The safety zone will be enforced from 9 p.m., October 27, 1990 until the completion of repair operations, unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia. Coast Guard vessels will enforce the safety zone at all times while the zone is in effect. Commercial and recreational vessels will not be permitted to enter the safety zone.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the following, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 reads as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.01–30, 165.5, 165.20 and 165.23.

2. In part 165, a new § 165.T0561 is added, to read as follows:

§ 165.T0561 Safety Zone: Herbert C. Bonner Bridge, Oregon Inlet, North Carolina.

(a) *Location.* The following area is a safety zone: The waters of Oregon Inlet within 100 yards on both sides of the Herbert C. Bonner Bridge, Oregon Inlet, North Carolina, encompassed by a line drawn northwestwardly from position 35–46.28N latitude, 75–32.22W longitude to a point at 35–46.35N latitude, 75–32.37W longitude, thence easterly to a point at 35–46.48N latitude, 75–32.28W longitude, and thence southeasterly to position 35–46.38N latitude, 75–32.09W longitude.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf. The following officers have or will be designated by the Captain of the Port: The senior Coast Guard boarding officer on each vessel enforcing the safety zone, and the Duty Officer at the Marine Safety Office, Norfolk, VA.

(1) The Captain of the Port, Hampton Roads and the Duty Officer at Marine Safety Office, Norfolk, Virginia can be contacted at telephone (804) 441–3307.

(2) The senior boarding officer on each vessel enforcing the safety zone can be contracted on VHF–FM channel 13 and 16.

(c) *Regulation.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads, Virginia.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant of petty officer on board a vessel displaying a Coast Guard Ensign.

(d) *Effective date.* This regulation is effective from 9 p.m., on October 27, 1990 and terminates on June 27, 1991 unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia.

Dated: November 9, 1990.

G. J. E. Thorsten,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 90–27630 Filed 11–23–90; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD–05–90–82]

COTP Hampton Roads, Regulation 90–RFR–82; Safety Zone Regulations: Atlantic Ocean, Virginia Beach, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a safety zone 1.5 nautical miles north of Rudee Inlet, Virginia approximately 500 yards east of Virginia Beach, Virginia. This zone is needed to ensure the safety of mariners in the vicinity of Virginia Beach, Virginia, from the hazards present during salvage operations of a crashed U.S. Navy A–6E aircraft. The Captain of the Port, Hampton Roads, VA will enforce a safety zone consisting of a circle having a radius of 500 yards with the center at position 36–51.14N latitude, 75–58.21W longitude. Vessels or individuals will not be permitted to enter the safety zone, except as permitted by the Captain of the Port or his designated representative.

EFFECTIVE DATE: This regulation is effective at 12:40 p.m., November 7, 1990 and terminates on December 7, 1990 unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia.

FOR FURTHER INFORMATION CONTACT: LTJG W.J.P. Westphal II, Project Officer, USCG Marine Safety Office, Hampton Roads, Norfolk Federal Building, 200 Granby Street, Norfolk, Virginia 23510. TEL: (804) 441–3294. (FTS) 827–3294. LTJG Westphal may be reached 7:30 a.m. until 4 p.m., Monday through Friday, except during Federal Holidays.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is required to ensure the safety of mariners operating in the vicinity of Virginia Beach, Virginia.

Drafting Information

The drafter of this regulation is LTJG W.J.P. Westphal II, Project Officer for the Captain of the Port, Hampton Roads.

Discussion of Regulation

A safety zone is being established approximately 500 yards east of Virginia Beach, Virginia consisting of a circle having a radius of 500 yards with the center at position 36–51.14N latitude, 75–58.21W longitude from 12:40 p.m., November 7, 1990 until aircraft salvage operations are completed. This zone is needed to ensure the safety of persons and vessels in the vicinity of Virginia Beach, Virginia, from the hazards present during salvage operations of a crashed U.S. Navy A–6E aircraft. This safety zone will encompass the waters of the Atlantic Ocean approximately 500

yards east of Virginia Beach, Virginia, 1.5 nautical miles north of Rudee Inlet, Virginia. The safety zone will consist of a circle having a radius of 500 yards with the center at position 36–51.14N latitude, 75–58.21W longitude. The safety zone will be enforced from 12:40 p.m., November 7, 1990 until the completion of aircraft salvage operations, unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia. Coast Guard vessels will enforce the safety zone at all times while the zone is in effect. Commercial and recreational vessels will not be permitted to enter the safety zone.

List of Subjects in 33 CFR 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the following, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 reads as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.01–30, 165.5, 165.20, and 165.23.

2. In part 165, a new § 165.T0582 is added, to read as follows:

§ 165.T0582 Safety Zone: Atlantic Ocean, Virginia Beach, Virginia.

(a) *Location.* The following area is a safety zone: The waters of the Atlantic Ocean approximately 500 yards east of Virginia Beach, Virginia, 1.5 nautical miles north of Rudee Inlet, Virginia. The safety zone will consist of a circle having a radius of 500 yards with the center at position 36–51.14N latitude, 75–58.21W longitude.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf. The following officers have or will be designated by the Captain of the Port: The senior Coast Guard boarding officer on each vessel enforcing the safety zone, and the Duty Officer at the Marine Safety Office, Norfolk, VA.

(1) The Captain of the Port, Hampton Roads and the Duty Officer at Marine Safety Office, Norfolk, Virginia can be contacted at telephone (804) 441–3307.

(2) The senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF–FM channel 13 and 16.

(c) *Regulation.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads, Virginia.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(d) *Effective date.* This regulation is effective from 12:40 p.m., on November 7, 1990 and terminates on December 7, 1990 unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia.

Dated: November 9, 1990.

G.J.E. Thornton,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. 90–27629 Filed 11–23–90; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 901080–0285]

Patent Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Interim rule.

SUMMARY: The Omnibus Budget Reconciliation Act of 1990 imposes a 69% surcharge on fees charged under 35 U.S.C. 41 (a) and (b). The surcharge took effect on November 5, 1990. By this notice, the Patent and Trademark Office (Office) is informing the public of the patent fees affected and the new amounts including the surcharge.

EFFECTIVE DATE: As required by the Omnibus Budget Reconciliation Act, the fees in this interim rule are effective November 5, 1990. Consideration will be given to comments received on or before January 25, 1991.

ADDRESSES: Address written comments to the Commissioner of Patents and Trademarks, Washington, DC 20231, Attention: Frances Michalkewicz, suite 904, Building 2, Crystal Park. Written comments will be available for public inspection in suite 904 of Building 2, Crystal Park, at 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Frances Michalkewicz by telephone at (703) 557–1610 or by mail to her attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The Patent and Trademark Office is required by the Omnibus Budget Reconciliation Act of 1990 to apply a 69% surcharge to patent fees charged under 35 U.S.C. 41 (a) and (b). By this Act, the 69% surcharge is rounded by standard arithmetic rules. The Office has applied standard arithmetic rules so that the amounts rounded would be *de minimis* and convenient to the user. For entities other than small entities, amounts of $100 or more were rounded to the nearest $10. Amounts between $10 and $99 were rounded to the nearest even number so that the comparable small entity fee would be a whole number. For small entities, the Office then reduced the fee by 50% as required by 35 U.S.C. 41(h).

Any fee under 35 U.S.C. 41 (a) and (b) which is paid on or after November 5, 1990, is subject to the surcharge. For purposes of determining the amount of the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing under 37 CFR 1.8 or a proper Certificate of Express mail under 37 CFR 1.10 will be considered to be the date of receipt in the Office.

Since, by law, this surcharge became effective on November 5, 1990, and the law provided no discretion to the Office, this rule is effective as of that date.

Other Considerations

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* There are no information collection requirements related to patent fee rules.

The Office has determined that this notice has no Federalism implications affecting relations between the National Government and the States as outlined in Executive Order 12612.

The Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million because the additional revenue that the surcharge collects will be offset by a reduction in the Office's appropriation from the general revenues of the United States. While there will be an increase in patent fees, they are required by law, and the Office is without discretion to reduce them.

The Office has determined that good cause exists for dispensing with the requirements under 5 U.S.C. 553 of notice and comment and delayed effective date. These procedures are impracticable because the Omnibus Budget Reconciliation Act of 1990 imposed a surcharge on fees set under 35 U.S.C. 41 (a) and (b) effective November 5, 1990. Therefore, this rule is being issued as an interim final rule effective November 5, 1990. Comments received by January 25, 1991, will be considered in drafting the final rule.

Because a notice of proposed rulemaking is not required by 5 U.S.C. 553(b)(B) or any other law, a Regulatory Flexibility Analysis is not required and has not been prepared for purposes of the Regulatory Flexibility Act.

Lists of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set out in the preamble, 37 CFR is amended as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 6 unless otherwise noted.

2. Section 1.16 is amended by revising the section heading and paragraphs (a)–(d) and (f)–(j) and adding the authority citation to read as follows.

§ 1.16 National application filing fees and surcharge.

(a) Basic fee for filing each application for an original patent, except design or plant cases:	
By a small entity (§ 1.9(f))	$315.00
By other than a small entity	630.00
(b) In addition to the basic filing fee in an original application, for filing or later presentation of each independent claim in excess of 3:	
By a small entity (§ 1.9(f))	30.00
By other than a small entity	60.00
(c) In addition to the basic filing fee in an original application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20. (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):	
By a small entity (§ 1.9(f))	10.00
By other than a small entity	20.00
(d) In addition to the basic filing fee in an original application, if the application contains, or is amended to contain, a multiple dependent claim(s) per application:	
By a small entity (§ 1.9(f))	100.00
By other than a small entity	200.00

(If the additional fees required by paragraphs (b), (c), and (d) are not paid on filing or on later presentation of the claims for which the additional fees are due, they must be paid or the claims canceled by amendment, prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

* * * * *

(f) For filing each design application:	
By a small entity (§ 1.9(f))	125.00
By other than a small entity	250.00
(g) Basic fee for filing each plant application:	
By a small entity (§ 1.9(f))	210.00
By other than a small entity	420.00
(h) Basic fee for filing each reissue application:	
By a small entity (§ 1.9(f))	315.00
By other than a small entity	630.00
(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:	
By a small entity (§ 1.9(f))	30.00
By other than a small entity	60.00
(j) In addition to the basic filing fee in a reissue application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 and also in excess of the number of claims in the original patent. (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee purposes):	
By a small entity (§ 1.9(f))	10.00
By other than a small entity	20.00

(Note: See § 1.445 for international application filing and processing fees.)

(Omnibus Budget Reconciliation Act of 1990, sec. 10101; 35 U.S.C. 6, 41)

3. Section 1.17 is amended by revising the section heading, paragraphs (a)–(g), (l), and (m), and the authority citation to read as follows:

§ 1.17 Patent application processing fees and surcharge.

(a) Extension fee for response within first month pursuant to § 1.136(a):	
By a small entity (§ 1.9(f))	$50.00
By other than a small entity	100.00
(b) Extension fee for response within second month pursuant to § 1.136(a):	
By a small entity (§ 1.9(f))	150.00
By other than a small entity	300.00
(c) Extension fee for response within third month pursuant to § 1.136(a):	
By a small entity (§ 1.9(f))	365.00
By other than a small entity	730.00
(d) Extension fee for response within fourth month pursuant to § 1.136(a):	
By a small entity (§ 1.9(f))	575.00
By other than a small entity	1,150.00
(e) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:	
By a small entity (§ 1.9(f))	120.00
By other than a small entity	240.00
(f) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:	
By a small entity (§ 1.9(f))	120.00
By other than a small entity	240.00
(g) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in an appeal under 35 U.S.C. 134:	
By a small entity (§ 1.9(f))	100.00
By other than a small entity	200.00

* * * * *

(l) For filing a petition

(1) For the revival of an unavoidably abandoned application under 35 U.S.C. sections 133 or 371, or

(2) For delayed payment of the issue fee under 35 U.S.C. § 151:

By a small entity (§ 1.9(f))	50.00
By other than a small entity	100.00

(m) For filing a petition

(1) For revival of an unintentionally abandoned application, or

(2) For the unintentionally delayed payment of the fee for issuing a patent:

By a small entity (§ 1.9(f))	525.00
By other than a small entity	1,050.00

(Omnibus Budget Reconciliation Act of 1990, sec. 10101; Pub. L. 97–247; 15 U.S.C. 1113, 1123; 35 U.S.C. 6, 41, 181–188; Export Administration Act of 1979, as amended; Arms Export Control Act, as amended; Atomic Energy Act of 1954, as amended; Nuclear Non-Proliferation Act of 1978, and the delegations in the regulations under these acts to the Commissioner by regulations (15 CFR 370.10(j); 22 CFR 125.04, and 10 CFR 810.7))

4. Section 1.18 is revised to read as follows:

§ 1.18 Patent issue fees and surcharge.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:	
By a small entity (§ 1.9(f))	$525.00
By other than a small entity	1,050.00
(b) Issue fee for issuing a design patent:	
By a small entity (§ 1.9(f))	165.00
By other than a small entity	370.00

(c) Issue fee for issuing a plant patent:

By a small entity (§ 1.9(f))	260.00
By other than a small entity	520.00

(Omnibus Budget Reconciliation Act of 1990, sec. 10101; 35 U.S.C. 6, 41)

5. Section 1.20 is amended by revising the section heading, paragraphs (d) and (h)–(j), and the authority citation to read as follows:

§ 1.20 Post issuance fees and surcharge.

* * * * *

(d) For filing each statutory disclaimer (§ 1.321):

By a small entity (§ 1.9(f))	$50.00
By other than a small entity	100.00

* * * * *

(h) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after August 27, 1982, in force beyond four years; the fee is due by three years and six months after the original grant:

By a small entity (§ 1.9(f))	415.00
By other than a small entity	830.00

(i) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after August 27, 1982, in force beyond eight years; the fee is due by seven years and six months after the original grant:

By a small entity (§ 1.9(f))	835.00
By other than a small entity	1,670.00

(j) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after August 27, 1982, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:

By a small entity (§ 1.9(f))	1,250.00
By other than a small entity	2,500.00

(Omnibus Budget Reconciliation Act of 1990, sec. 10101; 35 U.S.C. 6, 41; 15 U.S.C. 1113, 1123)

Dated: November 20, 1990.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 90-27655 Filed 11-23-90; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: November 19, 1990.

FOR FURTHER INFORMATION CONTACT: Mrs. Judy Caden, Loan Guaranty Service (264), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202–233–3042).

SUPPLEMENTARY INFORMATION: The Secretary is required by section 1812(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Secretary is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the monthly loan payments for principal and interest.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register**, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Order of the President, OMB, VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Secretary by sections 210(c), 1803(c)(1), 1811(d)(1) and 1812 (f) and (g) of title 38, United States Code.

These decreases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c) and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loans programs—housing and community development, Manufactured homes, Veterans.

Approved: November 16, 1990.

Anthony J. Principi,

Deputy Secretary of Veterans Affairs.

PART 36—[AMENDED]

38 CFR part 36, Loan Guaranty, is amended as follows:

§ 36.4212 [Amended]

1. In § 36.4212 remove the date "February 23, 1990", wherever it appears, and add, in its place, the date "November 19, 1990".

2. In § 36.4212(a)(1), remove the number "12½" and add, in its place, the number "12"; in (a)(2) and (a)(3) remove the number "12", wherever it appears, and add, in its place, the number "11½".

§ 36.4311 [Amended]

3. In § 36.4311 remove the date "February 23, 1990", wherever it appears, and add, in its place, the date "November 19, 1990".

4. In § 36.4311, in paragraph (a) remove the number "10", wherever it appears, and add, in its place, the number "9½"; in paragraph (b) remove the number "10¼", wherever it appears, and add, in its place, the number "9¾"; in paragraph (c) remove the number "11½" and add, in its place, the number "11".

§ 36.4503 [Amended]

5. In § 36.4503(a) remove the numbers "10" and "11½", and add in their place the numbers "9½" and "11".

[FR Doc. 90–27584 Filed 11–23–90; 8:45 am]

BILLING CODE 8320-01

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS–62035I; FRL–3766–3]

Polychlorinated Biphenyls in Electrical Transformers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice amends EPA's regulations under section 6(e) of the Toxic Substances Control Act (TSCA) concerning enhanced electrical protection requirements for low voltage radial transformers containing polychlorinated biphenyls (PCBs) and extends the deadline for compliance for these types of transformers. It provides that partial deenergization, i.e., deenergizing only the faulted phase(s) in a low voltage radial transformer, may, in some circumstances, be equivalent to total deenergization of such transformers in the event of a high current fault. This rule states that partial deenergization will be equivalent to total deenergization only if the transformer configuration and associated safety factors demonstrate that partial deenergization is consistent with EPA's goals of avoiding fault related failures, tank rupture, and fires in PCB Transformers. Owners and operators of low voltage radial transformers in or near commercial buildings who wish to utilize partial deenergization will be required to install this type of electrical protection using good engineering practices. This rule does not alter any other current enhanced electrical protection requirements.

DATES: This amendment shall be in effect February 25, 1991. In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Daylight on December 10, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Rm. EB–44, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202)–554–1404, TDD: (202)–554–0557.

SUPPLEMENTARY INFORMATION:

I. Background

EPA issued a final rule in the **Federal Register** of July 17, 1985 (50 FR 29170), which amended the August 25, 1982 PCB Electrical Use Rule (47 FR 37342). The July 17, 1985 rule (hereafter the PCB Transformer Fires Rule) placed additional conditions and restrictions on the use of PCB Transformers, particularly PCB Transformers located in or near commercial buildings.

The preamble to the 1985 PCB Fires Rule (50 FR 29177) discusses in general terms the relationship between electrical failures in transformers and the type of transformer used. The first type of transformer includes all arrangements in which the PCB Transformer can be energized only from the primary winding. These transformers are termed radial PCB Transformers. The second type includes those arrangements in which the PCB Transformer can be energized from either the primary winding or the secondary winding. These transformers are termed network PCB Transformers.

This preamble language defines the PCB Transformer based upon the system or circuit that the Transformer is in as opposed to the type of equipment itself. Thus, the Transformer is said to be in a radial system or a network system. The preamble goes on to state that unlike radial transformers, network transformers are equipped with network protectors, which are circuit breakers located on the secondary side of network transformers. This language characterizes the transformer as either network or radial on the basis of the equipment itself rather than the system or circuit in which the equipment is located.

For purposes of compliance with PCB regulations under the Toxic Substances Control Act (40 CFR part 761), PCB Transformers are distinguished in terms of the voltage level on the secondary side of the transformer. High voltage PCB Transformers are those transformers with secondary voltages equal to or greater than 480 volts, including 480/277 volt systems. Low voltage PCB Transformers are those transformers with secondary voltages less than 480 volts, including 280/120 and 208/120 volt systems. The voltage level of PCB Transformers is one factor directly related to the safety of the transformer and the probability of tank rupture or fire.

After promulgation of the PCB Transformer Fires Rule, and in response to a petition for judicial review under section 19 of the Toxic Substances Control Act (TSCA), EPA agreed to issue a clarification notice and to propose amendments to portions of the PCB Transformer Fires Rule. A Notice of Interpretation was published in the **Federal Register** of December 31, 1986 (51 FR 47241), that clarified several provisions of EPA's regulations governing the use of electrical transformers containing PCBs. Further, on August 21, 1987 (52 FR 31738), EPA issued proposed amendments to the PCB Transformer Fires Rule which, among other changes, prohibited the use of low voltage network transformers in sidewalk vaults which were not equipped with enhanced electrical protection by October 1, 1993.

Following publication of the proposed rule amendment, EPA received comments from the Utility Solid Waste Activities Group (USWAG) and from the Unison Corporation (Unison) regarding enhanced electrical protection requirements for PCB Transformers. These comments stated that the complete deenergization of a three-phase PCB Transformer with a high current fault is unnecessary to prevent

PCB Transformer fault related failures, tank rupture, and/or fires. The information received by EPA indicated that such a transformer could remain safely energized if only the faulted phase of the transformer were isolated and deenergized. This partial deenergization could be achieved with the use of current-limiting fuses or other equivalent technology.

On July 19, 1988 (53 FR 27322), EPA issued the final amendment to the PCB Transformer Fires Rule. At that time, EPA did not have enough information to determine whether or not partial deenergization would be sufficient to meet EPA's goals. As a result, the final rule amendment did not modify the enhanced electrical protection requirements to state that deenergization of the faulted phase is equivalent (in terms of protection against rupture) to total deenergization of the transformer. Instead, the preamble to the final rule amendment solicited public comments in the form of supplementary information to allow EPA to resolve the issue, and stated that EPA would subsequently publish an interpretative notice. EPA has received correspondence from Unison and gathered additional information regarding electrical protection devices, such as current-limiting fuses and circuit breakers, and their function in electrical distribution systems. EPA believes that these comments and this information, as well as supporting statements in the rulemaking record, warrant amending the rule to allow deenergization of the transformer's faulted phase under certain circumstances. EPA is issuing this amendment as a final rule due to the fact that it effects a change in the requirements of § 761.30(a)(1)(iv) following the solicitation of public comments. This rule applies only to low voltage radial transformers. EPA has not received information sufficient to allow the partial deenergization of the faulted phase of low voltage network transformers.

II. Findings

Upon reviewing the rulemaking record for the PCB Transformer Fires Rule, the amendment to that rule, the Regulatory Impact Analysis of the PCB Fires Rule (dated June 19, 1985), and supplemental information listed in Unit III of this document, EPA has become convinced by its own analysis and the new information received that partial deenergization, i.e., deenergization of only the faulted phase(s), is an acceptable form of enhanced electrical protection for the class of low voltage radial three-phase transformers, for purposes of compliance with 40 CFR 761.30(a)(1)(iv), provided certain conditions are met. Specifically, if partial deenergization is selected, the current-limiting fuses or other enhanced electrical protection selected must be able to clear the fault before the magnitude and duration of the overcurrent exceed the short-time loading limits (withstand capacity) of the transformer.

To assure that the enhanced electrical protection equipment selected is capable of meeting this standard, the owner/operator of the commercial building which a PCB Transformer is "in or near" must have the protective device (e.g., circuit breaker or current-limiting fuse), installed in accordance with good engineering practices.

The owner/operator must use a current-limiting fuse or equivalent technology that is capable of clearing all overcurrent faults which may occur prior to exceeding the short-time loading limits (withstand capacity) of the transformer. In considering the type of fuse to be installed, the owner/operator must consider the following: (1) The short-time loading limit recommended by the transformer manufacturer or, if no such recommended limit is available, the recognized guidelines for the maximum permissible transformer through-fault-current duration limits as reported in the Institute of Electrical and Electronics Engineers, Inc. (IEEE) publication ANSI/IEEE C57.109–1985, IEEE Guide for Transformer Through-Fault-Current Duration, and (2) such factors which have or will affect the condition and performance of the individual transformer, such as the age, physical environment, degree of preventative maintenance performed, other electrical protection equipment present, and associated safety factors. EPA believes that these conditions must be considered to assure the proper operation of the protective device to avoid tank rupture or fire in the PCB Transformer. Documentation (i.e., electrical drawings) shall be kept capable of demonstrating that the current-limiting fuse or other equivalent technology was installed in accordance with good engineering practices. In addition, a regular maintenance schedule must be established for the transformer, if one does not already exist.

Current-limiting fuses are the usual form of protective device selected to achieve partial deenergization of a faulted phase of a low voltage radial PCB Transformer. This type of fuse is typically equipped with a silver element which is designed to melt quickly under overcurrent conditions. Upon melting, the fuse creates an arc in the circuit which creates considerable heat. The heat is usually absorbed by sand in the fuse cartridge. This absorption, in conjunction with the melting of the fuse element, creates high resistance in the circuit which gives the fuse its current-limiting action.

After October 1, 1990, high voltage radial transformers must be equipped with enhanced electrical protection which can completely deenergize the transformer to comply with requirements for low current protection (40 CFR 761.30(a)(1)(v)). Since complete deenergization must be provided for under the low current provision, circuit breakers or equivalent electrical protection must be used. Current-limiting fuses are not capable of providing low current protection due to the nature of their design. Therefore, low voltage network transformers and high voltage radial transformers are required to be equipped with electrical protection sufficient to completely deenergize the transformer (within several hundredths of a second in the case of high voltage radial PCB Transformers and within tenths of a second in the case of low voltage network transformers) before transformer rupture occurs. Current-limiting fuses by themselves are not sufficient for this purpose.

III. Official Rulemaking Record

EPA has established a public record for this rulemaking (docket control number OPTS–62035J). A public version of this record containing nonconfidential materials is available in the TSCA Public Docket Office for reviewing and copying from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office in located in Rm. NE–G004, 401 M St., SW., Washington, DC. The following documents for this final rule are in the public record:

A. Previous Rulemaking Record

1. Official rulemaking record from "Polychlorinated Biphenyls in Electrical Transformers" Final Rule, published in the **Federal Register** of July 17, 1985 (50 FR 29170). Docket number OPTS–62035D.

2. Official rulemaking record from "Notice of Interpretation of Transformer Fires Regulations", published in the **Federal Register** of December 31, 1986 (51 FR 47241). Docket number 62035E.

3. Official rulemaking record from "Polychlorinated Biphenyls in Electrical Transformers" Final Rule, published in the **Federal Register** of July 19, 1988 (53 FR 27322). Docket number OPTS–62035F–G.

B. Support Documents

1. IEEE, ANSI/IEEE C37.108–1989, IEEE Guide for the Protection of Network Transformers, Institute of Electrical and Electronic Engineers, New York, December 18, 1989.

2. IEEE, ANSI/IEEE C57.109–1985, Guide for Transformer Through-Fault-Current Duration, Institute of Electrical and Electronic Engineers, New York, December 2, 1985.

3. IEEE, ANSI/IEEE C57.12.00–1987, General Requirements for Liquid-Immersed Distribution, Power and Regulating Transformers, Institute of Electrical and Electronic Engineers, New York, April 1, 1988.

4. Dr. Steven C. Vick, Transformer Life Expectancy, Union Carbide Corporation, New York, 1987.

5. Letters received from:

a. D.F. Tulloh, UNISON Transformer Services Inc., Union Carbide Corp., dated March 24, 1988, to L.V. Moos, EED, OPTS, USEPA.

b. Timothy S. Hardy, Kirkland & Ellis, Counsel for Unison Transformer Services, Inc., dated October 27, 1988, to D.M. Keehner, EED, OPTS, USEPA.

6. Telephone communication between H. Carl Manger of Baltimore Gas and Electric and Paul Borst, EED, OPTS, USEPA, on October 27, 1989, on the safety factors associated with enhanced electrical protection for PCB Transformers.

IV. Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a regulatory impact analysis be prepared. EPA has determined that this amendment to the PCB rule is not a "major rule" as that term is defined in section 1(b) of the Executive Order and therefore not subject to the requirement that a regulatory impact analysis be prepared.

The rule provides for a less costly compliance option for certain PCB Transformers so those PCBs in electrical transformers which would otherwise be prohibited by section 6(e) of TSCA may continue to be used. This rule avoids the severe disruption of electric service to the public and industry that would occur if the use of this equipment were immediately prohibited. It also avoids the economic impact that would result from a requirement to replace the equipment as soon as possible. This rule was submitted to OMB as required by Executive Order 12291. There were no comments from OMB on this rule.

B. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator may certify that a rule will not, if promulgated, have a significant impact on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis.

In general, this rule reduces the burden on small businesses that would otherwise be encountered if an immediate ban on PCB-containing transformers were to take effect. If an immediate ban on the use of PCBs in transformers were imposed, large costs would be incurred by all producers and users of electricity, including small businesses.

EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

There are no recordkeeping or reporting requirements in this final rule.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: November 16, 1990.

William K. Reilly,

Administrator.

Therefore 40 CFR part 761 is amended as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611; subpart G also issued under 15 U.S.C. 2614 and 2616.

2. In § 761.30 by revising the introductory text of paragraph (a)(1)(iv), (a)(1)(iv)(A), and by adding paragraph (a)(1)(iv)(E) to read as follows:

§ 761.30 Authorizations.

* * * * *

(a) * * *

(1) * * *

(iv) As of October 1, 1990, all higher secondary voltage radial PCB Transformers, in use in or near commercial buildings, and lower secondary voltage network PCB Transformers not located in sidewalk vaults in or near commercial buildings (network transformers with secondary voltages below 480 volts) that have not been removed from service as provided in paragraph (a)(1)(iv)(B) of this section, must be equipped with electrical protection to avoid transformer ruptures caused by high current faults. As of February 25, 1991, all lower secondary voltage radial PCB Transformers, in use in or near commercial buildings, must be equipped with electrical protection to avoid transformer ruptures caused by high current faults.

(A) Current-limiting fuses or other equivalent technology must be used to detect sustained high current faults and provide for the complete deenergization of the transformer (within several hundredths of a second in the case of higher secondary voltage radial PCB Transformers and within tenths of a second in the case of lower secondary voltage network PCB Transformers), before transformer rupture occurs. Lower secondary voltage radial PCB Transformers must be equipped with electrical protection as provided in paragraph (a)(1)(iv)(E) of this section. The installation, setting, and maintenance of current-limiting fuses or other equivalent technology to avoid PCB Transformer ruptures from sustained high current faults must be completed in accordance with good engineering practices.

* * * * *

(E) As of February 25, 1991, all lower secondary voltage radial PCB Transformers must be equipped with electrical protection, such as current-limiting fuses or other equivalent technology, to detect sustained high current faults and provide for the complete deenergization of the transformer or complete deenergization of the faulted phase of the transformer within several hundredths of a second. The installation, setting, and maintenance of current-limiting fuses or other equivalent technology to avoid PCB Transformer ruptures from sustained high current faults must be completed in accordance with good engineering practices.

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[FR Doc. 90–27685 Filed 11–23–90; 8:45 a.m.]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–316; RM–6709]

Radio Broadcasting Services; Morristown, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Four Seasons Communications, Inc., the Commission allots Channel 275A to Morristown, New York, as the community's first local FM service. Channel 275A can be allotted to Morristown in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 44–35–18 and West Longitude 75–39–00. Canadian concurrence has been received since Morristown is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective January 4, 1991; the window period for filing applications will open on January 7, 1991, and close on February 6, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–316, adopted November 5, 1990, and released November 20, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under New York is amended by adding Morristown, Channel 275A.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–27645 Filed 11–23–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–86; RM–7156]

Radio Broadcasting Services; Portage, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 240A to Portage, Wisconsin, in response to a petition filed by WIBU, Inc. There is a site restriction 13.9 kilometers (8.6 miles) northwest. The coordinates for Channel 240A are 43–38–15 and 89–34–25. See 55 FR 9150, March 12, 1990.

DATES: Effective January 4, 1991; the window period for filing applications for Channel 240A at Portage, Wisconsin, will open on January 7, 1991, and close on February 6, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–86, adopted November 5, 1990, and released November 20, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Wisconsin by adding Channel 240A at Portage.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–27644 Filed 11–23–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB38

Endangered and Threatened Wildlife and Plants; The Plant "Spigelia gentianoides" (Gentian Pinkroot) Determined To Be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Spigelia gentianoides* (gentian pinkroot), a plant belonging to the loganía family, to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. Three populations of this plant are currently known from Jackson and Calhoun Counties in northwestern Florida. Historically, it was found in adjacent counties. Proximity to recreational activities threatens one population and habitat alteration by forestry practices threatens the others. This final rule implements the protection and recovery provisions afforded by the Act for gentian pinkroot.

EFFECTIVE DATE: December 26, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone: 904/791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

Spigelia gentianoides (gentian pinkroot) is a perennial herb belonging to the plant family Loganiaceae (logania or strychnine family). Dr. Alvan Wentworth Chapman of Apalachicola, Florida discovered the plant in May 1837 during a trip to perform an amputation. He distributed herbarium specimens of the plant under the name *Spigelia floridana*, but later settled on *Spigelia gentianoides*, the name that Alphonse de Candolle (1845) published for Chapman. The holotype specimen (which passed from Chapman to Asa Gray to Edmond Boissier to de Candolle) is in the herbarium at Geneva, Switzerland (K. Wurdack, Beltsville, MD, *in litt.* 1988).

Spigelia gentianoides has a single, erect, sharply ridged stem 10–30 centimeters (4–12 inches) tall. The leaves are opposite and sessile, largest at the top of the stem, 3–5 centimeters (1–2 inches) long. Flowers are borne in a short, few-flowered, terminal, spikelike raceme. The flowers, mounted on very short stalks, point upward. Sepals are 4–6 millimeters long. The corolla is 2.5–3.0 centimeters long, consisting of a narrow tube about 1 centimeter long, broadening to a wider tube with five lobes, each 5–6 millimeters long. The corolla is pale pink, slightly darker at the margins of the lobes. The stamens stay inserted within the flower (Kral 1983). The corolla lobes tend to stay nearly closed, with five slits opening between the lobes. Rogers (1988b) suspected that "a moth effects pollination when it inserts its proboscis into the slits probing for nectar." He has since observed flowers that were completely open (George Rogers, Missouri Botanical Garden, pers. comm. 1989). The flower resembles those of gentians, which is the reason for the plant's name. Flowering is in May and June.

The closest relative of *Spigelia gentianoides* is pinkroot, *Spigelia marilandica*, a widespread species that grows in clumps rather than as single stems and has brilliant red flowers (Kral 1983). In the nineteenth century, pinkroot was a popular folk cure for intestinal worms in the southern states, although it has been blamed for killing patients (Rogers 1966, p. 161). *Spigelia gentianoides* has not been tested for potential drug uses.

Wurdack has seen nine of Chapman's collections of *Spigelia gentianoides*. The type collection is from the west side of the Apalachicola River, probably in Jackson County. One specimen is labelled "Mariana. Common." (Jackson County). Another is labelled "Quincy. 1836, not seen since.", but the date is incorrect, so the locality is unreliable. Ferdinand Rugel collected the plant near Mount Vernon (now Chattahoochee, Gadsden County) in 1843 (K. Wurdack, *in litt.* 1988).

Kral (1983) stated that *Spigelia gentianoides* had been observed only twice since Chapman, in Jackson County. He was apparently unaware of three specimens at the University of Florida, verified by Rogers (pers. comm. 1989), two from Chipley, Washington County (collected by C.E. Pleas, 1940 and 1941), and one from 8 miles north of Wewahitchka, Calhoun County (collected by E.S. Ford, 1954). Harry Ahles and David Boufford found one locality in Jackson County in 1973 (Wunderlin et al. 1980). A specimen from Gulf Hammock (Levy County), labelled by its collectors as *Spigelia gentianoides*, has been determined to be *S. loganioides* (R. Wunderlin, University of South Florida, pers. comm. 1988). Godfrey (1979) included Liberty County, Florida in the distribution of this plant.

Recently, Gary Knight, Robert Kral, Angus Gholson, Jr., Wilson Baker, and Kenneth Wurdack relocated one population and found two more (Rogers 1988a, 1988b; Gholson, pers. comm. 1989). Rogers, Robert Bowden (Director of Horticulture, Missouri Botanical Garden) and others revisited the populations in 1989. One population, in Jackson County, had about 30 plants in 1988, one fifth as many as it had 12 years earlier. The second, near the Jackson-Bay County line, has no more than 10 plants (Rogers, pers. comm. 1988). The third population, somewhat larger than the others, is in Calhoun County south of Blountstown, in a pineland with wiregrass, somewhat drier than flatwoods. The site's trees were cut in 1988 and the landowner planted pines in 1989. The plants had sturdy stems and flowered in 1989, while plants at a shaded site appeared spindly, indicating that this species may actually prefer sun (Rogers, pers. comm. 1988; Bowden, *in litt.* 1990).

The two sites where Kral (1983) found *Spigelia gentianoides* were in light to heavy shade of oak-pine woods containing mixed loblolly and longleaf pines, water oaks, laurel oaks, and southern red oaks, blackgum, and an understory that included flowering dogwood and blueberries. Neither site showed any sign of having been cultivated, and Kral could not find the plant in clearcut areas adjacent to the populations. Angus Gholson now suspects that one currently known site may have been cultivated. Thorough searches would probably find additional populations of *Spigelia gentianoides* in the five counties with records of the species, but the paucity of specimens collected since 1937 and the few sites found recently by experienced field botanists strongly indicate that the plant was never widespread and that it is extremely rare today.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to the Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition in the context of section 4(c)(2) (now section 4(b)(3)) of the Act, as amended, and of its intention to review the status of the plant taxa contained within. On June 16, 1976, the Service published a proposed rule (41 FR 24524) to determine some 1,700 U.S. vascular plant species recommended by the Smithsonian report to be endangered species pursuant to section 4 of the Act. This proposal was withdrawn in 1979 (44 FR 12382). *Spigelia gentianoides* was included in the Smithsonian Report: the July 1, 1975 notice; the June 16, 1976 proposal; and the 1979 withdrawal.

On December 15, 1980, the Service published a notice of review for plants (45 FR 82480), which included *Spigelia gentianoides* as a category 1 candidate (a taxon for which data in the Service's possession indicates listing is warranted). A supplement to the notice of review published on November 18, 1983 (48 FR 53640) changed *Spigelia gentianoides* to a category 2 candidate (a taxon for which data in the Service's possession indicate listing is possibly appropriate). No one had seen this species in the field since 1973, and confirmation was needed that it was extant. An updated notice of review published September 27, 1985 (50 FR 39526) retained *Spigelia gentianoides* as a category 2 candidate. In 1985, Gary Knight (then a graduate student at Forida State Univ.) discovered a population of the plant. Subsequent field work by several botanists confirms that the plant persists in the wild (Rogers 1988a, 1988b; Rogers *in litt.* 1988; A. Gholson, Chattahoochee, FL, pers. comm. 1989). A proposal to list *Spigelia gentianoides* as an endangered species was published in the **Federal Register** on March 14, 1990 (55 FR 9472).

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Spigelia gentianoides* because the Service had accepted the 1975 Smithsonian report as a petition. In each October from 1983 through 1986, the Service found that the petitioned listing of this species was warranted but precluded by other listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. Publication of the proposal constituted the final petition finding required for *Spigelia gentianoides*.

Summary of Comments and Recommendations

In the March 14 proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in *The News Herald*, Panama City, April 5; the *Calhoun County Record*, Blountstown, April 5; and *The Monitor*, Marianna (April 20). Five comments were received. The Florida Department of Agriculture's Division of Plant Industry

and Division of Forestry supported the proposal, as did two botanists. The Army Corps of Engineers, Mobile District, acknowledged the need to conserve the plant on its land.

The Florida Farm Bureau Federation opposed listing the plant for the reasons listed below, with the Service's response to each.

Issue 1. Spigelia gentianoides is not threatened by habitat destruction or modification. The proposal assumed a great deal about the habitat requirements of this species; it may seem rare because no one was looking for it, and it appears to be thriving in a pine plantation in the normal course of growth, harvest, and replanting.

Service response: More data on the distribution and habitat preferences of this plant would have been very desirable, but the available information is sufficient to demonstrate the present-day rarity of this plant. The number of specimens collected by Chapman, and his notation that it was "common" contrasts sharply to the plant's present status. Searches by current-day botanists of many sites, including some areas in southeastern Alabama (Robert Kral, Vanderbilt Univ., pers. comm. 1989), have revealed only three sites occupied by the plant. The available information on *Spigelia gentianoides* as explained in the "Background" section is obviously incomplete, but listing is warranted without delay based on the plant's rarity, combined with reasonable concern that the largest known population of the plant could be adversely affected by cutting the native stand of pines and replanting. This site has apparently not previously been managed by produce wood products.

Issue 2. The plant is not threatened by overutilization, disease or predation, or inadequate existing regulatory mechanisms. Existing protection of *Spigelia gentianoides* under Florida law is effective as shown by the willingness of the landowner, when personally contacted, to go to additional expense to hand plant pine seedlings.

Service response: State listing alone, combined with landowner cooperation, might encourage habitat conservation on private land as effectively as Federal listing, but Federal listing provides additional protection to the population on Federal property and the Endangered Species Act's trade restrictions are warranted in view of the plant's rarity and interest in the genus *Spigelia* for pharmaceuticals.

Issue 3. Listing of this species could result in land use restrictions (particularly herbicide use restrictions) being imposed on landowners that have habitat within their property boundaries and possibly on landowners who do not have the species on their property. Designation of critical habitat to identify only the known population sites was suggested to avoid such overregulation.

Service response: Environmental Protection Agency (EPA) pesticide registrations, including formulations and use patterns, are reviewed by the Service as part of the formal consultation requirements imposed on Federal agencies by section 7 of the Act. If, as part of that process, the Service determines that a particular use or formulation of a pesticide is likely to jeopardize the continued existence of a threatened or endangered species or adversely modify its critical habitat, then the Service must work with the EPA to devise reasonable and prudent alternatives to preclude jeopardy or adverse modification of the critical habitat. In past consultations with the EPA on the registration of pesticides, reasonable and prudent alternatives have generally involved prohibitions or restrictions on use patterns, formulation, method or time of year of application at the sites of known populations of listed species.

Critical Habitat is defined by section 3 of the Act as "the areas on which are found those physical or biological features essential to the conservation of the species and which may require special management consideration or protection." However, it does not follow that restrictions on pesticide use would necessarily be limited to designated critical habitat, since activities that adversely modify critical habitat are prohibited by section 7, even if they actually take place outside the critical habitat. With or without designated critical habitat, reasonable and prudent alternatives are devised to assure that the areas where a given pesticide is restricted are only large enough to protect listed species. The Service notes that the only known pesticide use that might pose a threat to *Spigelia gentianoides* would be from herbicide use to release young pines from competition by herbs and grasses. This potential threat can be handled through direct contact with the landowner.

Designation of critical habitat restricted to known sites for *Spigelia gentianoides* could seriously threaten the species by publicizing their locations, and is thus not prudent.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Spigelia gentianoides* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Spigelia gentianoides* (Chapm. ex A. DC.) (gentian pinkroot) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. The currently known populations of *Spigelia gentianoides* occur in mixed upland pine-oak forest, and in an upland pineland where the species is part of a fire-maintained understory dominated by wiregrass (*Aristida stricta* and other grasses). Kral's (1983) appraisal that "certainly the *Spigelia* would not survive mechanical site preparation * * * involved with pine monoculture" was based on his inability to find *Spigelia* in clearcut areas adjacent to a population on an area with no history of cultivation. Kral's views may need modification because the largest known *Spigelia gentianoides* population appears to be surviving cutting and planting, perhaps because the landowner was aware of the presence of the rare plant, had the cutting done with relatively little site disturbance, and had planting done by hand (Gholson, pers. comm. 1989). Gholson suspects that the site of one population may have been cultivated at one time, although the site is adjacent to land that would never have been cultivated. *Spigelia gentianoides* was probably extirpated from some areas by cultivation in the nineteenth and early twentieth centuries; conversion of much of the upland forest land in these countries to pulpwood plantations possibly extirpated other populations.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Other species of the genus have been in demand for their medicinal and/or poisonous properties. "Collecting for medicines has reduced *Spigelia* populations substantially, particularly the striking *S. marilandica*, or pinkroot" (Rogers 1988a). Collecting by botanists or those interested in medicinal plants could easily destroy the very small known populations (Robert Kral, Vanderbilt University, pers. comm. 1989).

C. Disease or predation. None apparent.

D. The inadequacy of existing regulatory mechanisms. Spigelia gentianoides is listed as endangered by the Preservation of Native Flora of Florida Act (Section 581.185–187, Florida Statutes), which regulates taking, transport, and sale of plants but does not provide habitat protection. The Endangered Species Act will add Federal penalties to violations of Florida law, will add additional sanctions against taking of plants from Federal land, and will offer additional protection against taking through sections 7 and 9, and through recovery planning.

E. Other natural or manmade factors affecting its continued existence. The one population on publicly owned land is easily accessible and is vulnerable to inadvertent or deliberate damage by human activities. Another population declined from about 150 plants to 30 in 12 years for unknown reasons (Rogers 1988a, 1988b). The rarity of *Spigelia gentianoides*, its limited geographic range, and extensive alteration of its habitat exacerbate the risks posed by the preceding factors, making it likely that the species could become extinct throughout its entire range in the absence of adequate conservation efforts.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Spigelia gentianoides* in determining to make this rule final. Based on this evaluation, the preferred action is to list *Spigelia gentianoides* as endangered. Its limited geographic range, alteration of its known and potential habitat, the small sizes of the three known populations, and the possibility that the largest known population will be adversely affected by forestry practices indicate that the species is in danger of extinction throughout its range, and therefore fits the Act's definition of endangered.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Spigelia gentianoides* at this time. Federal agencies, particularly the agency that owns the site of one population, as well as the two private landowners, can be alerted to the presence of this species without the publication of critical habitat descriptions and maps. Because of the small sizes of the known populations and the potential for collectors to exterminate this plant, publication of critical habitat maps would increase the threat from taking or vandalism.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Environmental Protection Agency (EPA) is establishing a national system to prevent the use of herbicides (including herbicides used in forestry) from jeopardizing endangered and threatened species; the State of Florida's Department of Agriculture and Consumer Services is establishing its own system of herbicide regulation in cooperation with the EPA. If herbicide restrictions are adopted to protect gentian pinkroot, they may affect private landowners in this area. The population of gentian pinkroot on land owned by the U.S. Army Corps of Engineers and managed by the Florida Department of Natural Resources requires attention from those agencies to ensure that management and use of the site does not jeopardize the continued existence of the species. These agencies are aware of the plant's presence.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer to sell it in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments to the Act (Pub. L. 100–478) prohibit their malicious damage or destruction on Federal lands, and their removal, cutting, digging up, or damaging or destroying in knowing violation any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. The Service anticipates few requests for permits because there is currently no commercial trade in *Spigelia gentianoides*. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 432, Arlington, Virginia 22203 (703/358–2104 or FTS 921–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

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Godfrey, R.K. 1979. Pink-root, *Spigelia loganioides*, *in* Ward, D.B., ed., Rare and endangered biota of Florida. Vol. 5. Plants. Univ. Presses of Fla., Gainesville. xxix + 175 pp.

Kral, R. 1983. A report on some rare, threatened, or endangered forest-related vascular plants of the South. USDA Forest Service, Technical Publication R6–TP 2. x + 1305 pp.

Rogers, G.K. 1986. The genera of Loganiaceae in the Southeastern United States. Jour. Arnold Arboretum 67:143–185.

Rogers, G.K. 1988a. *Spigelia gentianoides*—a species on the brink of extinction. Plant Conservation 3(3):1,8.
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Wunderlin, R.P., D. Richardson, and B. Hansen. 1980. Status report on *Spigelia gentianoides*. Unpublished report submitted to U.S. Fish and Wildlife Service, Jacksonville, Florida. 13 pp.

Author

The primary author of this final rule is David Martin (see **"ADDRESSES"** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Loganiaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species							
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
*	*	*	*	*	*	*	*
Loganiaceae—Logania family:							
Spigelia gentianoides	Gentian pinkroot	U.S.A. (FL)	E	406	NA	NA
*	*	*	*	*	*	*	*

Dated: November 8, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–27631 Filed 11–23–90; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 683

[Docket No. 900945–0245]

Western Pacific Bottomfish and Seamount Groundfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this emergency interim rule changing current regulations promulgated under the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP). This action requires a vessel operator to notify NMFS when intending to fish in the Exclusive Economic Zone (EEZ) within a 50 nautical mile study zone around the Northwestern Hawaiian Islands (NWHI), so an observer may be placed aboard the vessel. The purpose of these regulations is to gather information on possible interactions of the bottomfish fleet with the endangered Hawaiian monk seal (*Monachus schauinslandi*) and threatened or endangered turtles.

EFFECTIVE DATE: The emergency rule is effective from 0001 hours local time November 27, 1990, through 2400 hours local time February 24, 1991.

ADDRESSES: Copies of the environmental assessment may be obtained from, and comments should be addressed to, E.C. Fullerton, Regional Director, NMFS, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731–7415.

Comments on the information collection requirements should be sent to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB), Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, Terminal Island, California (213) 514–6660, or Alvin Katekaru, Pacific Area Office, Honolulu, Hawaii (808) 955–8831.

SUPPLEMENTARY INFORMATION: Prior to implementation of the FMP, NMFS issued a biological opinion pursuant to section 7(b) of the Endangered Species Act (ESA) concerning the potential impacts on threatened and endangered species associated with the bottomfish fishery. The opinion states that the proposed FMP would not likely jeopardize any threatened or endangered species, and it made conservation recommendations to provide NMFS with documentation of marine mammal and sea turtle interactions with the fishery. Criteria also were established for reinitiating consultation under the ESA.

The main concern with regard to the bottomfish fishery has been entanglement of monk seals and turtles with fishing gear; therefore, the FMP prohibits the use of gill nets and trawl nets in the NWHI. Reports have been received of monk seals taking bait from fishing hooks, although specific information does not exist.

Critical habitat was implemented in 1986 for monk seals in the NWHI out to 10 fathoms (18.3 m) (51 FR 16047, April 30, 1986), and the area was extended to 20 fathoms (36.6 m) in 1988 (53 FR 18988, May 26, 1988). The intent was to protect the areas used for foraging, breeding, pupping, and haul-out sites.

Reports were received in April, 1990 that monk seals have been hooked by longline fishermen in the NWHI. The NMFS Honolulu Laboratory sent a field party to French Frigate Shoals in May to conduct a survey of the monk seals and turtles on the beaches for evidence of interaction with the longline fishery. The nine dead monk seals found were well within the range of animals normally reported each year; however, injuries were observed on several animals ranging from gaping wounds to abrasions that could not be attributed to shark attack or to male monk seal harassment.

NMFS Special Agents have interviewed captains and crews of 28 vessels returning from the NWHI. Insufficient information was received for agents to take enforcement action; however, there is a consistency in reports that has raised enough concern to initiate an effort to obtain definitive information on possible impacts from the fishery.

At a meeting on June 20, 1990, the Western Pacific Fishery Management Council (Council) heard reports from its Pelagic Plan Monitoring Team and its Scientific and Statistical Committee on the dramatic increase in the longline fishery and the possible effects this increase might have on the harvest of pelagic resources. The Council also heard progress reports on the investigations into interactions between the longline and bottomfish fisheries and protected species, primarily the Hawaiian monk seal.

The Council voted to take the following emergency actions: (1) Implement a permit and logbook reporting system for the longline fishery, and (2) implement an observer program to place observers on longline and bottomfish vessels operating in a 50 nautical mile study zone around certain islands in the NWHI. Permit requirements are already in effect for the bottomfish fishery.

The Honolulu Laboratory's annual scientific field party went to the NWHI on June 8, where it is surveying monk seal populations throughout the islands. This survey and the information gathered by observers are expected to provide the data needed to determine whether additional management measures are required to protect endangered species in the area.

The Council intends to develop an amendment to the FMP that will make permanent the observer requirement for bottomfish vessels. Implementation of the amendment depends on the information obtained in the study zone.

Permit requirements for owners of vessels being used to fish for bottomfish in the Ho'omalu Zone and the Mau Zone are clarified to indicate that the permits are area specific and that a vessel owner cannot hold a permit for each zone at the same time.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation, and is consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law. This rule is implemented for 90 days under section 305(e) of the Magnuson Act and may be extended for an additional 90 days with the agreement of the Council. He also has determined that continuing the regulations now in force may result in unintended harm to endangered species in the NWHI.

NOAA prepared an environmental assessment for this rule and concluded that this emergency action will not have a significant impact on the quality of the human environment. You may obtain a copy of the environmental assessment (*see* **ADDRESSES**).

The Assistant Administrator finds that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment, or to delay for 30 days the effective date of these emergency regulations under the provisions of section 553 (b) and (d) of the Administrative Procedure Act. The rule is intended to be in place as soon as possible so that information on endangered species can be collected.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that Order. This rule is being reported to the Director of OMB with an explanation of why it is not possible to follow the regular procedures of that Order.

The Assistant Administrator has requested concurrence by the State of Hawaii and the territories of Guam and American Samoa that this rule does not directly affect the coastal zone of their respective state or territory.

This rule contains a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act. A request for approval to collect this information has been approved by OMB, OMB Control Number 0648–0214.

This action would require a vessel operator to notify NMFS when intending to fish in the EEZ within a 50 nautical mile study zone around the NWHI. Public reporting burden for this collection is estimated to average 2 minutes per response including gathering the data needed and completing and reviewing the collection of information. Send comments on the reporting burden estimate or any other aspect of the collection-of-information, including suggestions for reducing the burden, to OMB (*see* **ADDRESSES**).

This emergency action is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

This rule does not contain policies with known federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 683

Fisheries.

Dated: November 30, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 683 is amended as follows:

PART 683—WESTERN PACIFIC BOTTOMFISH AND SEAMOUNT GROUNDFISH FISHERIES

1. The authority citation for part 683 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 683.2, the following definition is added in alphabetical order, effective from 0001 hours local time November 27, 1990, through 2400 hours local time February 24, 1991, to read as follows:

§ 683.2 Definitions.

* * * * *

Sexual harassment means any unwelcome sexual advance, request for sexual favors, or other verbal and physical conduct of a sexual nature which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

3. In § 683.6, new paragraphs (i), (j), and (k) are added to be effective from 0001 hours local time November 27, 1990, through 2400 hours local time February 24, 1991, to read as follows:

§ 683.6 Prohibitions.

* * * * *

(i) Fail to notify the Regional Director of intent to fish within 50 nautical miles off certain Northwestern Hawaiian Islands as required under § 683.29.

(j) Refuse to carry an observer when requested to do so by the Regional Director or any employee of NMFS designated by the Regional Director to make such a request as required under § 683.29.

(k) Forcibly assault, impede, intimidate, interfere with, influence, attempt to influence, or harass (including sexual harassment) an observer by conduct which has the purpose or effect of unreasonably interfering with the observer's work performance, or which creates an intimidating, hostile or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the

legality of a particular action will be made from the facts on a case-by-case basis.

4. In subpart B, § 683.21, existing paragraph (a)(4) is suspended effective from 0001 hours local time November 27, 1990, through 2400 hours local time February 24, 1991, and a new paragraph (a)(5) is added effective from 0001 hours local time November 27, 1990, through 2400 hours local time February 24, 1991, to read as follows:

§ 683.21 Permit requirements for the Northwestern Hawaiian Islands.

(a) * * *

(5) No vessel may be covered by a permit to harvest bottomfish in the Ho'omalu Zone and the Mau Zone at the same time.

* * * * *

5. In subpart B, a new § 683.29 is added to be effective from 0001 hours local time November 27, 1990, through 2400 hours local time February 24, 1991, to read as follows:

§ 683.29 Observers.

(a) The operator of a fishing vessel subject to this part shall inform the Regional Director at least 72 hours (not including weekends and holidays) before leaving port of his or her intent to fish within 50 nautical miles of French Frigate Shoals, Gardner Pinnacles, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands and Kure Island of the NWHI. The operator shall provide this notice by contacting NMFS, Pacific Area Office, telephone (808) 955-8831, 2570 Dole Street, Honolulu, Hawaii. The notice must include the name of the vessel, the name of the operator, the intended departure date and location, and a telephone number at which the operator or his agent may be contacted during the business day (8 a.m. to 5 p.m.) to indicate whether an observer will be required on the subject fishing trip.

(b) All fishing vessels subject to this part must carry an observer when directed to do so by the Regional Director or a designee of the Regional Director.

(c) NMFS will advise the vessel operator of any observer requirement within 72 hours of receipt of the notice, and if an observer is required, will establish with the operator the time and place of embarkation of the observer.

(d) All observers must be provided with sleeping, toilet and eating accommodations at least equal to that provided to a full crew member. A mattress or futon on the floor or a cot is not acceptable in place of a regular bank. Meal and other galley privileges must be the same for the observer as for other crew members.

(e) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing common facilities must be established and approved by NMFS prior to the vessel's departure from port.

[FR Doc. 90-27701 Filed 11-23-90; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 227
Monday, November 26, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 90-197]

Importation of Apples, Peaches, and Citrus from Sonora

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Fruits and Vegetables regulations by adding Empalme and Guaymas to the list of definite areas in Sonora, Mexico, determined to be free from certain injurious insect pests and from which apples, grapefruit, oranges, peaches and tangerines may be imported without treatment for these pests. We believe that these municipalities are free from certain injurious insect pests known to attack apples, grapefruit, oranges, peaches and tangerines, and that are known to occur in Mexico. This action would allow the importation of this fruit into the United States from Empalme and Guaymas, in accordance with the regulations.

DATES: Consideration will be given only to comments received on or before January 25, 1990.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-197. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Frank E. Cooper, Senior Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8645.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* (referred to below as the regulations) impose restrictions on the importation of fruits and vegetables in order to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed within and throughout the United States. Paragraphs (e) and (f) of § 319.56-2 contain requirements for the importation of certain fruits and vegetables based on their origin in a definite area or district. The definite area or district must meet certain criteria, including criteria designed to ensure that the area or district is free from all or certain injurious insects. Paragraph (h) of § 319.56-2 lists certain municipalities in Sonora, Mexico, that meet the criteria with regard to five listed insect pests: *Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua,* and *A. fraterculus.* Apples, grapefruit, oranges, peaches, and tangerines from municipalities listed in paragraph (h) may be imported into the United States without treatment for the five listed insect pests.

Prior to the effective date of this document, Empalme and Guaymas were not included in the list of municipalities in paragraph (h) of § 319.56-2. Empalme and Guaymas were removed from the list after the Animal and Plant Health Inspection Service (APHIS) confirmed the existence of infestations of the Mexican fruit fly, *Anastrepha ludens* (Loew). Guaymas was removed from the list in an interim rule effective July 20, 1988, and published in the Federal Register on July 28, 1988 (53 FR 27955-27956, Docket Number 88-102). Empalme was removed from the list in an interim rule effective March 24, 1989, and published in the Federal Register on March 29, 1989 (54 FR 12872-12873, Docket Number 89-026).

We are proposing to add Empalme and Guaymas to the list of municipalities in Sonora, Mexico, determined to be free from the five listed fruit flies and from which apples, grapefruit, oranges, peaches and tangerines may be imported into the United States without treatment of these pests. We believe that Empalme and Guaymas meet all the criteria contained in § 319.56-2(e)(4) and (f). Specifically, we have determined that:

(1) Within the past 12 months, the Mexican Ministry of Agriculture and Water Resources has performed trapping surveys that show Empalme and Guaymas to be free of the five listed fruit flies—including the Mexican fruit fly—and that the methods employed in these surveys met the requirements approved by the Administrator as adequate to detect these infestations.

(2) The Mexican government has adopted and is enforcing requirements to prevent the introduction, into Empalme and Guaymas, of injurious insects known to attack fruits and vegetables, and these requirements have been deemed by the Administrator to be at least equivalent to those requirements imposed under chapter III, title 7 of the Code of Federal Regulations to prevent the introduction of injurious insects into the United States and the interstate spread of injurious insects, and

(3) The Mexican Ministry of Agriculture and Water Resource has submitted to the Administrator written detailed procedures for the conduct of surveys and the enforcement of requirements under paragraph (f) of § 319.56-2 to prevent the introduction of injurious insects into Empalme and Guaymas.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million, would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The action would allow the importation of apples, grapefruit, oranges, peaches, and tangerines from Empalme and Guaymas into the United

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States, without treatment for the five listed fruit flies. This could increase imports of these articles into the United States, since import costs will be lowered through the elimination of treatment costs. The small entities that could be affected by this action include fumigators at the Mexican border, importers of apples, grapefruit, oranges, peaches, and tangerines, and domestic growers, distributors, and retailers of these fruits.

The economic impact on these entities should be insignificant, since the amount of fruit imported into the United States from these municipalities is expected to be extremely small.

No fruit was imported into the United States from Guaymas before July 1988 (the effective date of the prohibitions on the importation of fruit from that municipality), and we are aware of no planned fruit shipments from that municipality.

Oranges and grapefruit appear to be the only fruit likely to be imported into the United States from Empalme. Oranges and grapefruit were the only fruit imported from Empalme in 1988, the last full calendar year before we placed prohibitions on the importation of fruit from Empalme (the prohibitions became effective in March 1989). During 1988, the amount of oranges and grapefruit imported into the United States from Empalme amounted to less than 1 percent of the total United States production of these fruits, and less than 1 percent of total United States imports of these fruits. Empalme is not a major production area for citrus. We therefore believe that orange and grapefruit imports into the United States from Empalme will resume at 1988 levels.

Under these circumstances, the Administrator of the Animal and Plan Health Inspection Service has determined that this action will not have a significant economic impact on substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.56–2 [Amended]

2. In § 319.56–2, paragraph (h) is amended by adding "Empalme; Guaymas;" immediately after "Carbo;".

Done in Washington, DC, this 20 day of November 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–27699 Filed 11–23–90; 8:45 am]

BILLING CODE 3410–34–M

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7 CFR Part 354

9 CFR Part 97

[Docket No. 90–198]

Fee Increase for Overtime Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations that establish charges for Sunday, holiday, or overtime work performed by inspectors of the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture, at laboratories, border ports, seaports, and airports. The regulations would be amended by: (1) Increasing the hourly rate charged a person, firm or corporation having ownership, custody, or control of plants, plant products, animals and animal byproducts, or other commodities or articles subject to certain inspection, laboratory testing, certification, or quarantine and who requires the services of an APHIS employee on a Sunday or holiday or at any other time outside the employee's regular tour of duty; and (2) increasing the hourly rates charged an owner or operator of an aircraft requesting inspection or quarantine services at an airport outside of the regularly established hours of service. This action is necessary in order to reflect salary increases for Federal employees in accordance with the Federal Pay Comparability Act of 1970 (Pub. L. 91–656), as implemented by Executive Orders of the President, and to reflect allowable costs associated with the implementation of the Debt Collection Act of 1982.

DATES: Consideration will be given only to comments received on or before December 11, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90–198. Comments may be inspected at room 1141 of the South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Paul R. Eggert, Director, Resource Management Support, PPQ, APHIS, USDA, room 458, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7764, or Louise Rakestraw Lothery, Director, Resource Management Support Staff, VS, APHIS, USDA, room 740, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7517.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR, chapter I, subchapter D, and 7 CFR, chapter III (referred to below as the "regulations"), require inspection, laboratory testing, certification, or quarantine of certain animals, animal byproducts, plants, plant products, or other commodities or articles intended for importation into, or exportation from, the United States. When these services must be provided by an APHIS employee on a Sunday or holiday, or at any other time outside the APHIS employee's regular duty hours, the Government charges a fee for the services in accordance with 9 CFR part 97 and 7 CFR part 354.

Each year the fees for these services provided by APHIS employees are reviewed and a cost analysis is performed to determine if such fees are adequate to recover the cost of providing these services. The fees to be charged for these services have been determined by an analysis of data on the current cost of these services; anticipated costs associated with changes in operations of the program; and increases in those costs due to an increase in salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970 and other increases affecting Federal employees, such as costs for travel and benefits.

Based on the Agency's analysis of the increased costs in providing these services, to be incurred as a result of a January 1991 pay for Federal employees, increased costs of the retirement system in 1991, and increased health insurance and travel costs, APHIS proposes to increase the fees in relation to such services.

With certain exceptions explained below, the rates would be increased by $3.52 per hour for services performed outside the regular tour of duty on a Sunday and by $2.76 per hour for services performed outside the regular tour of duty on a holiday or any other period. The new rates would be $43.68 and $33.96, respectively.

The hourly rates charged an owner or operator of an aircraft requesting inspection or quarantine services at an airport outside of the regularly established hours of service would be increased as follows: For services performed outside of the regularly established hours of service on a Sunday, the rate would be increased by $2.92 per hour, to $35.52. For services performed outside of the regularly established hours of service on a holiday or any other period, the rate would be increased by $2.28 per hour, to $27.16.

Owners and operators of aircraft will continue to be provided inspection services without reimbursement during regularly established hours of service on a Sunday or holiday. Further, no change is proposed in the $25.00 limit for all private aircraft or private vessel inspection services performed on a Sunday, holiday, or at any time after 5 p.m. or before 8 a.m. on a weekday by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture.

Public Comment Period

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by allowing a 15-day comment period on this proposal. This is a full cost recovery program. To allow for orderly implementation and maximum recovery of costs, the final rule based on this proposal needs to become effective the beginning of the first full Federal pay period of the 1991 calendar year. A shorten comment period is necessary to allow for orderly implementation and maximum recovery of costs.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Based on information compiled by the Department, we estimate that for calendar year 1990 APHIS will have provided an average of 13,065 hours per week of services for which charges are assessed. These services were requested by thousands of entities. We do not expect that the number of hours of service for which charges will be imposed will increase significantly in 1991.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects

7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

Accordingly, 7 CFR part 354 and 9 CFR part 97 would be amended as follows:

Title 7—[Amended]

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for 7 CFR part 354 would continue to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51 and 371.2(c).

§ 354.1 [Amended]

2. In paragraph (a)(1) introductory text of § 354.1, "$40.16" would be removed and "$43.68" added in its place, and "$31.20" would be removed and "$33.96" added in its place.

§ 354.1 [Amended]

3. In paragraph (a)(1)(iii) of § 354.1, "$32.60" would be removed and "$35.52" added in its place, and "$24.88" would be removed and "$27.16" added in its place.

Title 9—[Amended]

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

4. The authority citation for 9 CFR part 97 would continue to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51 and 371.2(d).

§ 97.1 [Amended]

5. In paragraph (a) introductory text of § 97.1, "$40.16" would be removed and "$43.68" added in its place, and "$31.20" would be removed and "$33.96" added in its place.

§ 97.1 [Amended]

6. In paragraph (a)(3) of § 97.1, "$32.60" would be removed and "$35.52" added in its place, and "$24.88" would be removed and "$27.16" added in its place.

Done in Washington, DC, this 20 day of November 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–27698 Filed 11–23–90; 8:45 am]

BILLING CODE 3410–34–M

Commodity Credit Corporation

7 CFR Part 1427

Standards for Approval of Warehouses for Cotton or Cotton Linters

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations at 7 CFR 1421.1061 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Cotton or Cotton Linters. The proposed rule would delete the exception to the bond, financial, warehouse receipt and bale tag requirements granted to warehouses operated by the State of South Carolina Department of Agriculture and approved under the Cotton Storage Agreement. Changes in the State of South Carolina warehouse law enacted during the past year necessitate that CCC amend the Standards for Approval of Warehouses for Cotton or Cotton Linters. State-licensed warehouses in South Carolina are now required to meet the conditions for approval contained in the Standards to obtain a Cotton Storage Agreement.

DATES: Comments must be received on or before January 25, 1991, in order to be assured of consideration.

ADDRESSES: Interested persons are invited to send written comments to Jerry Goodall, Director, Storage Contract Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 447-4018.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major" since implementation of the provisions of this proposed rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, State, or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act is not applicable to this proposed rule. In addition, CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The CCC Charter Act (15 U.S.C. 714 *et seq.*) authorizes CCC to conduct various activities to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act (15 U.S.C. 714b(h)) provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage for such commodities are inadequate. Further, section 5 of the CCC Charter Act (15 U.S.C. 714c) provides that, in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has published Standards for Approval of Warehouses for Cotton or Cotton Linters that must be met by warehousemen before CCC will enter into storage agreements with them for the storage of grain and other commodities which are owned by CCC or which are serving as collateral for CCC price support loans.

Changes in the State of South Carolina warehouse law enacted during the past year necessitate that CCC amend the Standards for Approval of Warehouses for Cotton or Cotton Linters.

Presently, under CFR 1427.1085(c), a warehouse operated by the State of South Carolina Department of Agriculture is granted an exception to the bond requirements contained in the Standards and may at the discretion of the Kansas City Commodity Office be granted additional exceptions to the financial, warehouse receipt and bale requirements.

State-licensed warehouses in South Carolina are now required to meet the conditions for approval contained in the Standards to obtain a Cotton Storage Agreement. The State of South Carolina has amended the warehouse laws of the State. The effect of these amendments is that the State of South Carolina will no longer operate cotton warehouses in the State Warehouse System. The South Carolina Department of Agriculture will now license the operators of those warehouses. Because the warehouses will no longer be operated by the State, the exception contained in the Standards for Approval of Warehouses for Cotton or Cotton Linters pertaining to those warehouses operated by the State is now obsolete.

Therefore, we propose to remove the exception granted to warehouses operated by the State of South Carolina from the Standards for Approval of Warehouses for Cotton or Cotton Linters.

List of Subjects in 7 CFR Part 1427

Agriculture, Cotton, Loan program, Seed cotton, Surety bonds, Warehouses.

Proposed Rule

PART 1427—[AMENDED]

Accordingly, it is proposed that 7 CFR part 1427 be amended as follows:

1. The authority citation for part 1427 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c; (7 U.S.C. 1441, 1446, 1447, 1421, 1423, and 1425).

2. Paragraph (c) of § 1427.1085 is removed.

Signed at Washington, DC on November 19, 1990.

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 90-27841 Filed 11-23-90; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulation H, Regulation Y; Docket No. R-0711]

Revised Appraisal Standards for Federally Related Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), the Board promulgated amendments to its Regulations H (12 CFR part 208) and Y (12 CFR part 225) to implement provisions regarding real estate appraisal standards. The Board's rules currently require State certified and licensed appraisers to be utilized in conducting appraisals in real estate-related financial transactions having a transaction value of more than $100,000. The Board now seeks comment on whether that $100,000 level should be changed. In addition, the Board proposes to add to the section-by-section analysis in section C of the Supplementary Information to the rule a statement which clarifies the Board's intentions regarding the qualifications of State licensed appraisers.

DATES: Comments must be submitted on or before Friday, January 25, 1991.

ADDRESSES: Comments, which should refer to Docket No. R-0711, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary; or delivered to room B-2223, Eccles Building, between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122, Eccles Building, between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Roger T. Cole, Assistant Director (202/452-2618), Stanley B. Rediger, Senior Financial Analyst (202/452-2629), or Virginia M. Gibbs, Senior Financial Analyst (202/452-2521), Division of Banking Supervision and Regulation; or Michael J. O'Rourke, Senior Attorney (202/452-3288) or Mark J. Tenhundfeld, Attorney (202/452-3612), Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: On June 28, 1990 (55 FR 27,762 (July 5, 1990)), the Board adopted its rule regarding appraisal standards for federally related transactions as directed by Title XI of FIRREA. At the time the Board adopted the rule, staff of the banking agencies had agreed that real estate-related financial transactions valued at more than $100,000 would require the services of a licensed or certified appraiser. The banking agencies felt that a $100,000 level would comport with the letter and spirit of Title XI, while at the same time responding to concerns about increased costs and burdens imposed on small financial institutions and consumers seeking small real estate loans. This consensus was reached after careful consideration of all comments received in response to the Board's proposed rule and after extensive discussions among representatives from the federal financial institutions regulatory agencies. However, since the Board published its rule, concerns have been raised about whether $100,000 is an appropriate level.

In light of these concerns, the other banking agencies have reconsidered their positions. The Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation have reached a consensus with the Office of Thrift Supervision and the National Credit Union Administration that favors a threshold level of $50,000 above which real estate-related financial transactions would require the services of a licensed or certified appraiser. The federal financial institutions regulatory agencies other than the Board have incorporated this $50,000 level into their appraisal regulations.

The Board now seeks comment on whether it should conform the threshold level established in its regulation to the level adopted by the other agencies.[1] In addition to the general question regarding the propriety of changing this threshold level to $50,000, the Board also specifically requests comment on: (1) The incremental increase in the cost of obtaining appraisals for transactions having a transaction value between $50,000 and $100,000 if the proposal is adopted; (2) the availability of licensed or certified appraisers to perform appraisals for such transactions; and (3) the history of losses resulting from inadequate appraisals rendered in connection with transactions having a transaction value of between $50,000 and $100,000.

Concern also was expressed by some commenters to the Board's rule regarding the ability of State licensed appraisals to perform appraisers of non-residential properties and complex residential properties rendered in connection with federally related transactions having a transaction value of $250,000 or less. In adopting its rule, the Board stressed that an appraiser must be competent to perform the appraisal in question, regardless of the individual's title or designation. Since the Board adopted its rule, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council has issued a statement [2] informing the States that the qualification criteria for the "Residential Real Property Appraiser" classification developed by the Appraisal Qualifications Board of the Appraisal Foundation reflect meaningful standards for licensed appraisers. These criteria include, among others, experience and education standards determined by the Appraisal Qualifications Board as suitable for the performance of competent appraisals. The Board concurs with the Appraisal Subcommittee that such criteria reflect meaningful standards for licensed appraisers.

In establishing a "safe harbor" for States in adopting meaningful licensing standards consistent with Title XI, the Appraisal Subcommittee did not preclude the States from adopting other licensing criteria, so long as such criteria are consistent with Title XI. Indeed, as the Appraisal Subcommittee itself has noted on a number of occasions, Title XI has left the development of licensing criteria to the States, subject only to oversight by the Subcommittee for consistency with Title XI in federally related transactions. In that regard, the Board notes that States could adopt licensing criteria other than that specifically suggested by the Appraisal Subcommittee, and that adoption of such criteria would not necessarily be inconsistent with the Subcommittee's published advisories, the Board's regulation, or Title XI.

The Board also is cognizant of the impending statutory deadline imposed on the States by Title XI for the establishment and operation of State appraisal regulatory programs. The Board recognizes that there may be initial start-up problems and certain inefficiencies in the *de novo* establishment of such programs, particularly with regard to the timing of and procedures involved in both processing and qualifying appraisers for licenses. In that light, the Board believes

[1] If the proposal is adopted, appropriate changes also will be made to the rule's Preamble to reflect the lower threshold amount.

[2] *See* Appraisal Subcommittee Advisory 90-1 (Press Release dated August 9, 1990).

the possibility exists that States, on occasion, may feel it necessary to provide transitional arrangements of a short-term nature with respect to their licensing criteria, particularly in order to ensure the availability of appraisers to conduct federally related transactions as of the statutory deadline imposed in Title XI. The Board believes that limited, short-term transitional arrangements (such as with regard to the education and experience criteria) would not necessarily be inconsistent with the provisions of this regulation and the spirit of Title XI.

The Board again stresses that a title or designation alone does not ensure that an appraiser is competent to perform a given appraisal. Any determination of competency must be based on the appraiser's experience and training as they relate to a particular appraisal assignment.

In light of the above, the Board proposes to replace the language appearing in the preamble to the Board's rule,[5] regarding the appropriate minimum standards for State licensed appraisers conducting appraisals in connection with federally related transactions, with the following:

—" 'State licensed appraiser.' Each State may elect to adopt licensing criteria that are less rigorous than certification criteria. However, licensing criteria must be adequate to protect federal financial and public policy interests. For example, simply 'grandfathering' all existing appraisers generally would not be acceptable. Rather, the States and territories are to design criteria that will ensure that licensed appraisers will have the experience and training sufficient to perform appraisals that comply with this regulation.

The Appraisal Subcommittee of the Federal Financial Institutions Examination Council has issued a statement [6] informing the States that the qualification criteria for the 'Residential Real Property Appraiser' classification developed by the Appraisal Qualifications Board of the Appraisal Foundation reflect meaningful standards for licensed appraisers. These criteria include, among others, experience and education standards determined by the Appraisal Qualifications Board as suitable for the performance of competent appraisals. The Board concurs with the Appraisal Subcommittee that such criteria reflect meaningful standards for licensed appraisers.

In establishing a 'safe harbor' for States in adopting meaningful licensing standards consistent with Title XI, the Appraisal Subcommittee did not preclude the States from adopting other licensing criteria, so long as such criteria are consistent with Title XI. Indeed, as the Appraisal Subcommittee itself has noted on a number of occasions, Title XI has left the development of licensing criteria to the States, subject only to oversight by the Subcommittee for consistency with Title XI in federally related transactions. In that regard, the Board notes that States could adopt licensing criteria other than those specifically suggested by the Appraisal Subcommittee, and that adoption of such criteria would not necessarily be inconsistent with the Appraisal Subcommittee's published advisories, the Board's regulation, or Title XI of FIRREA.

The Board also is cognizant of the statutory deadline imposed on the States by Title XI for the establishment and operation of State appraisal regulatory programs. The Board recognizes that there may be initial start-up problems and certain inefficiencies in the *de novo* establishment of such programs, particularly with regard to the timing of and procedures involved in both processing and qualifying appraisers for their licenses. In that light, the Board believes the possibility exists that States, on occasion, may feel it necessary to provide transitional arrangements of a short-term nature with respect to their licensing criteria, particularly in order to ensure the availability of appraisers to conduct federally related transactions as of the statutory deadline imposed in Title XI. The Board believes that limited, short-term transitional arrangements (such as with regard to the education and experience criteria) would not necessarily be inconsistent with the provisions of this regulation and the spirit of Title XI.

Additional assurance that licensed appraisers will have the qualifications necessary to perform the appraisals authorized under this rule is provided by the requirement that all appraisers comply with the USPAP Competency Provision. Under the Competency Provision, an appraiser must notify the client if the appraiser discovers that an assignment raises problems that are beyond his or her knowledge or experience. Moreover, the appraiser must take the necessary steps to have the assignment completed competently through personal study, affiliation with an appraiser that possesses the necessary knowledge and experience, or retention of the services of an individual with the required knowledge and experience."

Regulatory Flexibility Act Analysis

Title XI of FIRREA requires the Board to establish standards for performing appraisals in connection with "federally related transactions," which are defined to include those real estate related transactions that, among other things, require the services of an appraiser. In considering whether to change the existing level above which the services of an appraiser would be required, the Board has taken into account the legislative history of Title XI, which encourages federal financial institutions regulatory agencies to adopt identical or substantially similar regulations.

The Board anticipates that the proposed regulatory change would increase the cost of federally related transactions having a transaction value between $50,000 and $100,000. These costs will either have to be absorbed by the regulated institutions or be passed on to their customers. The Board specifically seeks comment on the incremental increase in the cost of obtaining appraisals for transactions that would be affected by this proposal.

Paperwork Reduction Analysis

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35; 5 CFR 1320.14), the proposed revisions to Regulations H and Y that relate to recordkeeping requirements have been promulgated under authority delegated to the Board by the Office of Management and Budget.

These proposed amendments would affect bank holding companies, state member banks ("SMBs"), and nonbank subsidiaries of bank holding companies ("BHC subs") that will engage in federally related transactions having a transaction value between $50,000 and $100,000. In developing these proposed amendments, the Board has consulted with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Resolution Trust Corporation. The Legislative history of Title XI encourages those institutions to adopt substantially similar regulations.

The Federal Reserve System estimates that 1,183 institutions would be affected by these recordkeeping requirements if the proposal were adopted. Each federally related transaction would be expected to require, on average, 15 minutes for review and recordkeeping. The Board now estimates that the total reporting burden for complying with the regulation as proposed to be revised is 54,716 burden hours. This reflects an increase in burden hours of 22,791, as calculated below. The total reporting burden, even if the proposal is adopted, would remain less than one percent of the total annual System reporting burden.

	Number of respondents	X	Annual frequency	X	Estimated average number of hours per response	=	Estimated total annual burden hours
Current:							
SMBs	1,073		86		.25		23,070
BHC subs	110		322		.25		8,855
Total	1,183						31,925
Proposed:							
SMBs	1,073		148		.25		39,701
BHC subs	110		546		.25		15,015
Total	1,183						54,716
Net Change:							
SMBs			+62				+16,631
BHC subs			+224				+6,160
Total							+22,791

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Appraisals, Banks, Banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, State member banks.

For the reasons set forth in its document, the Board proposes to amend 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909, 3310, and 3331–3351.

2. In § 225.63, paragraph (a)(1) is revised to read as follows:

§ 225.63 Appraisals not required; transactions requiring a State certified or licensed appraiser.

(a) * * *

(1) The transaction value is $50,000 or less;

* * * * *

Board of Governors of the Federal Reserve System, November 19, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90–27636 Filed 11–23–90; 8:45 am]

BILLING CODE 6210–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Requirements for Insurance and Eligible Obligations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed regulation would require that any credit union whose accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF) apply for and receive permission from the NCUA Board before either purchasing or acquiring loans or other investment assets or assuming or receiving an assignment of any deposits, shares or liabilities of any credit union not insured by the NCUSIF, of any other depository institution, of any successor in interest to either such institution, or of any NCUSIF-insured credit union not in liquidation. Federal credit union purchases of real estate loans and student loans to facilitate packaging of a pool for the secondary market are not subject to the approval process. The regulation on purchase of eligible obligations would be amended to refer to the new approval process.

DATES: Comments must be received on or before January 25, 1991.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Associate General Counsel, Office of General Counsel, or Martin E. Conrey, Staff Attorney, Office of General Counsel, at the above address or telephone: (202)682–9630.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA has become aware of several actual and several attempted transactions involving the purchase or acquisition of loans and other investment assets and the assumption or acquisition of deposits and liabilities of various depository institutions by NCUSIF-insured credit unions. As some of these transactions involve assets and liabilities of failed institutions, the NCUA is concerned that NCUSIF-insured credit unions act prudently and in a safe and sound manner. NCUA is cognizant of the fact that many institutions fail because of weaknesses in their loan and investment portfolios or a reliance on noncore deposits. In order to ensure protection of the NCUSIF through safe and sound practices, some method of review and approval by the NCUA of such transactions before their consummation is being considered. For example, the NCUA might review any such dealings for thorough due diligence investigation, fair negotiation (absence of conflicts of interest and evidence of arm's length dealing), proper contract subject matter, reasonable pricing (to protect against waste of corporate assets), and adequate and prudent documentation and closing methods of the transaction

[5] The language to be replaced currently appears in the section-by-section analysis of the Preamble at Part C of the Supplementary Information.

[6] *See* Appraisal Subcommittee Advisory 90-1 (Press Release dated August 9, 1990).

by the purchasing or assuming NCUSIF-insured credit union before consummation. Furthermore, the NCUA might review such a transaction for any potential effects upon the credit union's membership, liquidity, profitability, management and support capabilities, quality controls, concentrations of credit, diversity of portfolio investments, risk weighted assets, and capital ratio.

Concern that some regulatory controls might be appropriate began in response to increased NCUSIF-insured credit union interest in purchasing assets and assuming liabilities of liquidating credit unions and other depository institutions. On four occasions since 1988, one private credit union share insurance corporation assisted in the transfer of assets from liquidating state-chartered credit unions that it insures to federally insured state-chartered credit unions (FISCUs), without seeking NCUA review or approval. FISCUs derive such authority from their state enabling acts; the FCU Act does not confer such authority on FISCUs. It is the opinion of that share insurance corporation that NCUA approval for these transfers is not required. Furthermore, while not directly transferring member accounts from liquidating credit unions to FISCUs, the private insurer is transferring such accounts to other institutions at the member's direction instead of providing a direct cash payout of such accounts. In this method there may lie a potential ability to subvert the FCU Act by indirectly transferring member accounts to NCUSIF-insured credit unions without seeking NCUA review and approval for direct member account assumptions.

NCUA has also noticed an increased interest on the part of NCUSIF-insured credit unions to purchase loans or other assets or assume deposits or liabilities from non-NCUSIF-insured credit unions, other depository institutions, and their successors in interest, especially the Federal Deposit Insurance Corporation ("FDIC") and the Resolution Trust Corporation ("RTC"). One federal credit union ("FCU") expressed interest in making a purchase and assumption bid for certain assets and liabilities of a failed savings and loan association before being notified by the RTC that it was not an eligible bidder. It is NCUA's understanding that RTC's opinion in this matter was limited to assumptions of deposits insured by the FDIC to non-FDIC-insured depository institutions. NCUA has been notified by the RTC that no objection would be raised by the sale of assets of a failed FDIC-insured institution to an NCUSIF-insured credit union.

B. Discussion and Authority

The proposed regulation (revised § 741.4) would require that an NCUSIC-insured credit union apply for and receive approval from the NCUA Board before either purchasing or acquiring loans or other investment assets or assuming or receiving an assignment of any deposits, shares or liabilities of any credit union not insured by NCUA or of any other depository institution, of any successor in interest to such institutions, or of any NCUSIF-insured credit union not in liquidation. The "successors in interest" provision is designed to cover transactions with receivers and conservators of failed financial institutions, notably the RTC, FDIC and state financial institution regulators. The requirement for approval of assignment of deposits, shares and liabilities is intended to prevent assignments by the credit union members themselves. The NCUA solicits comments on whether "investment assets" in the proposed § 741.4 should be defined, and if so, how it should be defined. NCUA's intent, by using the term "investment assets," is to strike a balance between sufficiently reviewing the purchase of assets that present risk to the NCUSIF and reviewing purchases of a routine nature (*e.g.*, purchases of fixed assets) that might administratively burden the NCUA, or be adequately handled under other provisions of the FCU Act or NCUA Rules and Regulations.

The NCUA also proposes to except out from coverage of the proposed regulation transactions involving student loans and real estate secured loans by a FCU pursuant to § 701.23(b) of the NCUA Rules and Regulations. Initial review indicates that these transactions are routine, such assets are subject to industry standards protecting safety and soundness and, often, the window of opportunity to consummate such transactions is limited and FCUs would be hampered competitively by agency review. The NCUA solicits comments on whether this exception should also be extended to FISCUs, and, if so, how it should apply. Any information regarding specific powers of FISCUs that FCUs do not have, that might be affected by the proposed regulation, is also solicited. The NCUA also solicits comments on other methods of tailoring the proposed regulation to achieve its purposes without overly burdening the credit union industry. In addition, NCUA solicits comments on whether the rule should be extended to cover purchases from entities other than credit unions or depository institutions.

In order to avoid a renumbering of the sections in part 741 of the NCUA Rules and Regulations, it is proposed that existing § 741.3, Minimum Loan Policy Requirements, and § 741.4, Appraisal Requirements, be combined into a new § 741.3, Minimum Loan Policy and Appraisal Requirements. The substantive wording of §§ 741.3 and 741.4 is unchanged in the proposed rule, and the NCUA intends no change in the meaning of these sections by this combination. The new requirements regarding purchases of assets and assumptions of liabilities appear as proposed § 741.4.

Generally, other than the purchase of investment securities and deposits permissible under the FCU Act, "eligible obligations," and the purchase of assets and assumption of liabilities of other credit unions, FCUs have no investment authority to purchase assets of failed thrifts, banks and credit unions. See sections 107 (7), (8), (13), (14), and (15) of the FCU Act (12 U.S.C. 1757 (7), (8), (13), (14), and (15)). NCUA Rules and Regulations interpret "eligible obligations" to include member loans from any source, loans of a liquidating credit union, "student loans, from any source" and "real estate-secured loans, from any source" (if the student and real estate loans are to be packaged for sale on the secondary market). 12 CFR 701.23(b)(1)(i-iv). If a purchase of assets from a failed thrift, bank or credit union meets these criteria on an "eligible obligation," and other criteria set forth in § 701.23, an FCU would be able to purchase the asset. NCUA is proposed that § 701.23(b)(2) be supplemented to include a cross-reference to the approval process in revised § 741.4. As stated previously, the NCUA proposed to exclude these student loans and real estate secured loans from the coverage of the regulation and solicits comments on whether this exclusion should be extended to FISCUs.

Furthermore, except with the prior written approval of the Board, an NCUSIF-insured credit union (FCU or FISCU) is not permitted to:

(A) Merge or consolidate with any noninsured credit union or institution;

(B) Assume liability to pay any member accounts in, or similar liabilities of, any noninsured credit union or institution;

(C) Transfer assets to any noninsured credit union or institution in consideration of the assumption of liabilities for any portion of the member accounts in such insured credit union; or

(D) Convert into a noninsured credit union or institution. 12 U.S.C. 1785(b)(1)(A–D).

Thus, section 205 of the FCU Act generally requires NCUA Board approval of transactions to be covered by the proposed rule, which clarifies the

position of the NCUA and provides an administrative framework to implement the statute. The proposed rule also precludes any potential misinterpretations of the FCU Act by other parties, such as the private share insurer mentioned earlier. The proposed rule also covers transactions with NCUSIF-insured credit unions not in liquidation. This provision implements section 205(b)(2) of the FCU Act (12 U.S.C. 1785(b)(2)) and makes the rule more comprehensive. NCUA has the general authority to prescribe rules and regulations necessary or appropriate to carry out its insurance responsibilities. 12 U.S.C. 1789(a)(11). Authority of the NCUA to regulate in this area further derives from section 206 of the FCU Act. 12 U.S.C. 1786. That section provides a mechanism for the NCUA to initiate administrative actions to assure safety and soundness in both FCU and FISCU operations. All proposed changes apply equally to FCUs and FISCUs, primarily to provide protection to the NCUSIF and to avoid discriminatory activity against FISCUs in violation of the nondiscrimination provision of the FCU Act. 12 U.S.C. 1790.

As a final note, by this proposed regulation, NCUA does not intend to change the field of membership requirements.

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The proposed rule is grounded in NCUA concerns about the safety and soundness of the transactions and their potential effects on NCUSIF-insured credit unions and the NCUSIF. Based on information received by the NCUA, few credit unions of any size will be affected by the proposed rule. In the most active state NCUA has knowledge of, only four transactions that would be covered by the proposed rule have occurred in two years. Various Regional Offices of the NCUA have reported interest, but no activity, on the part of NCUSIF-insured credit unions for transactions that would be subject to the proposed rule. The RTC has informed the NCUA that it is unaware of any transactions involving NCUSIF-insured credit unions. Accordingly, the Board determines and certifies that this proposed rule does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The Paperwork Reduction Act requirements do not apply to information collection requests submitted to nine or fewer persons. Although proposed § 741.4 does require an application to the Board, the information we have at present indicates that very few applications will be received by the Board. NCUA, at this time, expects no more than nine applications per year. Therefore, the Board has determined that the requirements of the Paperwork Reduction Act do not apply to the proposed rule. NCUA does solicit comment on estimates by NCUSIF-insured credit unions on the number of applications they might expect to file in a year. This information will aid the NCUA in determining whether a Paperwork Reduction Act analysis is necessary.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. It states that: "Federal action limiting the policymaking discretion of the States should be taken only where constitutional authority for the action is clear and certain and the national activity is necessitated by the presence of a problem of national scope." The authority of the NCUA to regulate NCUSIF-insured credit unions under the above referenced sections of the Federal Credit Union Act is clear. Furthermore, the problems of failing financial institutions and the protection of NCUSIF-insured institutions and the NCUSIF itself are concerns of national scope. Very few sections of the country have been left untouched in the last few years by failing financial institutions and resultant problems. In order to enable the NCUA and NCUSIF to have an operable mechanism in place to ensure the safety and soundness of transactions between NCUSIF-insured credit unions and failed and healthy non-NCUSIF-insured financial institutions and their successors in interest, and NCUSIF-insured credit unions not in liquidation, this regulation is proposed. The NCUA Board, pursuant to Executive Order 12612, has determined that this rule may have an occasional direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Further, the proposed rule may supersede provisions of state law, regulation or approvals. Since the proposed rule might lead to conflicts between the NCAA and state financial institution regulators on occasion, comments are requested on means and methods to eliminate, or at least limit, potential conflicts in this area. Commenters may wish to provide recommendations on the potential use of delegated authority, cooperative decisionmaking responsibilities, certification processes of federal standards, adoption of comparable programs by states requesting an exemption for their regulated institutions, or other ways of meeting the intent of the Executive Order. NCUA also desires comment from the state financial institution regulators in developing the proposed rule.

List of Subjects

12 CFR Part 701

Credit, Credit unions, Insurance, Reporting and recordkeeping requirements.

12 CFR Part 741

Bank deposit insurance, Credit unions, and Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 15, 1990.

Becky Baker,

Secretary to the Board.

For the reasons set forth in the preamble, 12 CFR parts 701 and 741 are amended as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789 and Pub. L. 101–73. Sec. 701.6 is also authorized by 31 U.S.C. 3717. Sec. 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610.

2. In § 701.23, paragraph (b)(2) is revised to read as follows:

§ 701.23 Purchase, sale, and pledge of eligible obligations

* * * * *

(b) * * *

(2) A Federal credit union may make purchases in accordance with this paragraph (b), provided:

(i) The board of directors or investment committee approves the purchase;

(ii) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the purchasers office; and

(iii) For purchases under paragraphs (b)(1) (i) and (ii) of this section, any advance written approval required by § 741.4 of this chapter is obtained before consummation of such purchase.

* * * * *

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 is revised to read as follows:

Authority: 12 U.S.C. 1757, 1766, and 1781–1790. Sec. 741.11 is also authorized by 31 U.S.C. 3717.

2. Section 741.3 is revised to read as follows:

§ 741.3 Minimum loan policy and appraisal requirements.

Any credit union which is insured pursuant to title II of the Act must:

(a) Adhere to the requirements stated in § 701.21(h) of this chapter concerning member business loans, § 701.21(c)(8) of this chapter concerning prohibited fees, and § 701.21(d)(5) of this chapter concerning nonpreferential loans. State-chartered, NCUSIF-insured credit unions in a given state are exempt from these requirements if the state regulatory authority for that state adopts substantially equivalent regulations as determined by the NCUA Board. In nonexempt states, all required NCUA reviews and approvals will be handled in coordination with the state credit union supervisory authority; and

(b) Adhere to the requirements stated in part 722 of this chapter concerning appraisals.

3. Section 741.4 is revised to read as follows:

§ 741.4 Purchase of assets and assumption of liabilities.

Any credit union insured pursuant to title II of the Act must apply for and receive approval from the NCUA Board before either purchasing or acquiring loans or other investment assets or assuming or receiving an assignment of deposits, shares or liabilities from:

(a) Any credit union that is not insured pursuant to title II of the Act,

(b) Any depository institution other than a credit union,

(c) Any successor in interest to any institution identified in paragraph (a) or (b) of this section, or

(d) Any credit union insured pursuant to title II of the Act that is not in liquidation.

Approval is not required for purchases of student loans or real estate secured loans by a federal credit union pursuant to § 701.23(b)(1) (iii) or (iv) of this chapter.

[FR Doc. 90-27692 Filed 11-23-90; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-223-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which would require the installation of a new magnetic standby compass liner to prevent flight deck personnel from coming into contact with exposed wiring. This proposal is prompted by one report of a pilot receiving an electrical shock while attempting to turn on the magnetic standby compass light. This condition, if not corrected, could result in a high voltage electrical shock hazard to flight deck personnel.

DATES: Comments must be received no later than January 15, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-223-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Reigon, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Slotte, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2797. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the subtance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledged receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-223-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

This notice proposed to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which would require the installation of a new magnetic standby compass liner to prevent flight deck personnel from coming into contact with exposed wiring. This proposal is promoted by one report of a pilot receiving an electrical shock while attempting to turn on the standby magnetic compass light. The overhead P5 panel is located just aft of the magnetic standby compass and magnetic standby compass light switch, and without the new liner installed, the opening to the panel is large enough to allow a person's hand to pass through and contact exposed wiring. The exposed wires are connected to the two engine start switches and the engine ignition switch. These three switches are located approximatley one half to one inch aft of the forward edge of the P5 panel and are connected directly to 115VAC power sources. Therefore, the probability of coming into contact with the exposed wiring should a person's hand move in the aft direction after engaging the light switch is quite high. This condition, if not corrected, could result in a high voltage electrical shock hazard to flight deck personnel.

The FAA has reviewed and approved Boeing Service Bulletin 737-25-1266, dated July 26, 1990, which describes the installation of a new magnetic standby compass liner.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require the installation of a new magnetic standby compass liner in accordance with the service bulletin previously described.

There are approximately 74 Boeing Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 30 airplanes of U.S. registry would be affected by this AD, that it would take approximatley one manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of the necessary parts is estimated to be $74 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,420.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have the sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amedment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, as listed in Boeing Service Bulletin 737-25-1266, dated July 26, 1990, certificated in any category. Compliance required within 90 days after the effective date of this AD, unless previously accomplished.

To prevent a high voltage electrical shock hazard to flight deck personnel, accomplish the following:

A. Install a new magnetic standby compass liner in accordance with Boeing Service Bulletin 737-25-1266, dated July 26, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropirate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Seattle, Washington, on November 13, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27665 Filed 11-23-90; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-245-AD]

Airworthiness Directives; Boeing Model 737-300, 737-400, and 737-500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Boeing Model 737-300, 737-400, and 737-500 series airplanes, which would require modification of the engine fire extinguishing wiring and plumbing to preclude improper connection during maintenance. This condition, if not corrected, could result in severe damage to an airplane in the event of an engine fire. This action would also allow for termination of the inspections and functional tests of the engine fire extinguishing system following system maintenance, required by an existing AD. This proposal is prompted by development by the manufacturer of modifications that, when accomplished, would prevent crossed wiring and plumbing in the engine fire extinguishing system.

DATES: Comments must be received no later than January 16, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-245-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2681. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments,

in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-245-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On May 1, 1989, the FAA issued AD 89-03-51, Amendment 39-6213 (54 FR 20118, May 10, 1989), to require inspections and/or functional checks for improperly installed wiring and plumbing in the engine and cargo compartment fire protection systems on various Boeing airplane models. The checks and inspections are also required to be performed following any maintenance action which could cause mis-wiring or mis-plumbing. That action was prompted by numerous reports of improperly installed plumbing or wiring on several different Boeing airplane models. (The Model 737 engine fire extinguishing system was included in the applicability of AD 89-03-51). This condition, if not corrected, could have resulted in severe damage to an airplane in the event of an engine or cargo compartment fire. In the preamble to the existing AD, the FAA advised that the procedures required by the AD are considered interim action until final action is developed and incorporated.

Since the issuance of AD 89-03-51, the FAA has determined that the crossed wiring and plumbing connections were caused by the close physical location of similar connections. Review of the Model 737-300, -400, and -500 engine fire extinguishing system designs indicates that the potential exists for such cross connection of plumbing and wiring to occur during maintenance.

The FAA has reviewed and approved Boeing Service Bulletin 737-26-1067, dated June 28, 1990, which describes modifications of the engine fire extinguishing system wiring and plumbing. These modifications require physical isolation of hardware to ensure that plumbing and wiring connections will be reinstalled correctly after system maintenance.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modification of the engine fire extinguishing system plumbing and wiring in accordance with the service bulletin previously described. This modification would constitute terminating action for the repetitive inspections required by AD 89-03-51.

Note: AD 89-03-51 is currently applicable to Boeing Models 737, 747, 757, and 767 series airplanes, and requires repetitive inspections and/or functional checks of each model for improperly installed wiring and plumbing in the engine and cargo compartment fire protection systems. As modifications are designed which constitute terminating action for the required inspections, the FAA intends to issue separate rulemaking, such as this action, to mandate each airplane model's terminating action. Once all affected models have been addressed, the FAA will consider rescinding or superseding AD 89-03-51.

There are approximately 889 Model 737-300, 737-400 and 737-500 series airplanes of the affected design in the worldwide fleet. It is estimated that 400 airplanes of U.S. registry would be affected by this AD, that it would take approximately 42 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification parts are estimated to cost $3,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,872,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 737-300, 737-400, and 737-500 series airplanes, certificated in any category. Compliance required within the next 36 months after the effective date of this AD, unless previously accomplished.

To preclude cross connection of engine fire extinguishing wiring and plumbing during maintenance, accomplish the following:

A. For airplanes listed in Boeing Service Bulletin 737-26-1067, dated June 28, 1990: Modify the engine fire extinguishing system wiring and plumbing in accordance with the service bulletin. Accomplishment of this modification constitutes terminating action for the repetitive inspections and functional tests required by Airworthiness Directive 89-03-51, Amendment 39-6213, on Boeing Model 737-300, 737-400, and 737-500 airplanes following maintenance on the engine fire extinguishing wiring and plumbing.

B. For airplanes line position 1890 and subsequent on which PRR 34774 or an equivalent modification was incorporated during production: The repetitive inspections and functional tests required by Airworthiness Directive 89-03-51, Amendment 39-6213, are terminated.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 14, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27672 Filed 11-23-90; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-36-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which would require a modification to the center hydraulic system to prevent the loss of fluid from all hydraulic systems as a result of structural failure. This proposal is prompted by review and analysis of the Model 757 flight control system functional redundancy as it relates to the ability of the airplane to continue safe flight and landing after structural failure. This condition, if not corrected, could result in loss of controllability of the airplane if, following a single event of structural failure, damage occurs to all three hydraulic systems.

DATES: Comments must be received no later than January 15, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-36-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. G. M. Dail, Seattle, Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2799. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-36-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Based on a review of the Model 757 flight control system's functional redundancy, the FAA has determined that certain structural damage to the vertical and/or horizontal stabilizers of the airplane could result in loss of fluid from all three hydraulic systems. This would result in the loss of all functions of the hydraulic systems and the reduction of airplane controllability. There have been no reports of a single event which has resulted in the loss of all hydraulic systems on the Model 757 airplane; however, this has occurred on other airplane models. The likelihood of such an event is considered remote; however, since the possibility exists, the FAA has determined that the addition of hydraulic devices in the center system to prevent the total loss of fluid in that system is necessary to provide sufficient flight control to allow continued safe flight and landing of the airplane.

The FAA has reviewed and approved Boeing Alert Service Bulletin 757-29A0030, Revision 1, dated August 3, 1989, which describes procedures for installation of hydraulic devices in the center hydraulic system to prevent total loss of fluid from that system.

Since this condition is likely to develop on airplanes of this type design, an AD is proposed that would require the addition of specific devices in accordance with the service bulletin previously described, to prevent the loss of fluid in the unlikely event of structural failure or other damage.

There are approximately 199 Boeing Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 100 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Required parts would cost $7,599 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $807,900.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737 airplanes, line numbers 001 through 199, on which Production Revision Release (PRR) 53736 has not been incorporated, certificated in any category. Compliance required within the next 3,600 hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent loss of fluid in the center hydraulic system, accomplish the following:

A. Modify the center hydraulic system in accordance with the instructions contained in Boeing Alert Service Bulletin 737–29A0030, Revision 1, dated August 3, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (AC), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 13, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–27664 Filed 11–23–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–NM–37–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would require a modification to the left hydraulic system to prevent the loss of fluid from the left hydraulic system as a result of structural damage to the horizontal or vertical stabilizers. This proposal is prompted by review and analysis of the Model 767 flight control system functional redundancy as it relates to the ability of the airplane to continue safe flight and landing after structural damage to the empennage or stabilizers. This condition, if not corrected, could result in loss of controllability of the airplane if, following a single event of structural failure, damage occurs to all three hydraulic systems.

DATES: Comments must be received no later than January 15, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–36–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. G.M. Dail, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S; telephone (206) 227–2799. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90–NM–37–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Based on a review of the Model 767 flight control system functional redundancy, the FAA has determined that certain structural damage to the vertical and/or horizontal stabilizers of the airplanes could result in loss of fluid from all three hydraulic systems. This would result in the loss of airplane controllability. There have been no reports of a single event which has resulted in the loss of all hydraulic systems on the Model 767 airplane; however, this has occurred on other airplane models. The likelihood of such an event is considered remote; however, since the possibility exists, the FAA has determined that the addition of hydraulic devices in the left system to prevent the total loss of fluid in that system is necessary to provide sufficient flight control to allow continued safe flight and landing of the airplane.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–29A0038, Revision 1, dated August 3, 1989, which describes procedures for installation of hydraulic devices in the left hydraulic system to prevent total loss of fluid from that system.

Since this condition is likely to develop on airplanes of this type design, an AD is proposed which would require the addition of specific hydraulic devices, in accordance with the service bulletin previously described, to prevent this loss of fluid in the event of structural failure or other damage to the empennage of the airplane and its components.

There are approximately 255 Boeing Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 114 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Required parts would cost approximately $7,442 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $939,588.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, line numbers 001 through 255, on which Production Revision Release (PRR) 11546–2 has not been incorporated, certificated in any category. Compliance required within the next 3,600 hours time in-service after the effective date of this AD, unless previously accomplished.

To prevent loss of fluid in the left hydraulic system, accomplish the following:

A. Modify the left hydraulic system in accordance with the instructions contained in Boeing Alert Service Bulletin 767–29A0038, Revision 1, dated August 3, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 13, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–27666 Filed 11–23–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–NM–243–AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–series airplanes, which would require replacement of the outboard and inboard, right and left wing flight spoiler spigot fittings. This proposal is prompted by reports of recent incidents involving fatigue cracking in transport category airplanes that are approaching or have exceeded their economic design goal. This conditions, if not corrected, could result in degradation of the roll control during flight maneuvers. This action also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than by repetitive inspections.

DATES: Comments must be received no later than January 16, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–243–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. John Maher, Airframe Branch, ANE–172; telephone (516) 791–6220. Mailing address: FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received..

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: >>Comments to Docket Number 90–NM–243–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

In April 1988, a high-cycle Boeing Model 737 suffered major structural damage in flight. Investigation revealed that the airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on the high-cycle airplanes in its fleet revealed that two other airplanes had extensive fatigue cracking and corrosion. These airplanes were taken out of service.

In June 1988, the FAA sponsored a conference on aging airplanes. It became

obvious that, because of the increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes, older airplanes will continue to be operated rather than be retired. Because of the problems revealed by the accident described above, it was generally agreed that increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America are committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force (AATF), with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to (1) select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes, (2) develop corrosion-directed inspections and prevention programs, (3) review the adequacy of each operator's structural maintenance program, (4) review and update the Supplemental Structural Inspection Documents (SSID), and (5) assess repair quality.

The working group assigned to review the de Havilland Model DHC-7 series airplanes made a recommendation to replace the outboard and inboard wing flight spoilers. The manufacturer was made aware of the problem when a wing outboard spoiler bellcrank spigot fitting failed in service. Failure of the fitting could result in improper deployment of the fight spoiler and degradation of roll control during flight maneuvers. Completing these modifications will reduce the possibility for major structural failure of the wing spoiler spigot fittings.

Boeing of Canada, Ltd., de Havilland Division, has issued Service Bulletin Nos. 7-27-25, Revision B, and 7-27-26, Revision B, both dated January 28, 1983, which describe procedures for replacing the outboard and inboard wing flight spoiler spigot fittings (Modification Nos. 7/1927, 7/1928, 7/1951, and 7/1952). Transport Canada has classified these service bulletins as mandatory and has issued Airworthiness Directive CF-91-10 addressing this subject.

Since fatigue cracking and corrosion are likely to exist or develop on other airplanes of the same type design registered in the United States, and AD is proposed which would require modification of the wing spoiler spigot fittings in accordance with the service bulletins previously described.

The proposed compliance time for accomplishing the structural modifications is based on the recommendation of the de Havilland Model DHC-7 working group from the Airworthiness Assurance Task Force. Its recommendation is based on a review of fatigue inspections, the ability of the manufacturer to provide parts, and the time necessary to incorporate the modifications.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require replacement of the outboard and inboard wing flight spoiler spigot fittings, in accordance with the service bulletins previously described.

It is estimated that 14 airplanes of U.S. registry would be affected by this AD, that it would take approximately 150 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required parts will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $84,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing of Canada, Ltd., De Havilland Division: Applies to de Havilland Model DHC-7 series airplanes, Serial Numbers 3 through 30, inclusive, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent possible malfunction of the wing flight spoilers, accomplish the following:

A. Within 180 days after the effective date of this AD, replace the outboard (Modification Nos. 7/1927 and 7/1951) and inboard (Modification Nos. 7/1928 and 7/1952), right and left wing flight spoilers spigot fittings, in accordance with the Accomplishment Instructions in de Havilland Service Bulletins 7-27-25, Revision B, and 7-27-26, Revision B, both dated January 28, 1983.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, New England Region.

Note: The request should be submitted directly to the Manager, New York ACO, ANE-170, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, New York ACO, ANE-170.

C. Special flight permits may be issued in accordance with FARs 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1YK, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

Issued in Renton, Washington, on November 14, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27670 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-241-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which would require visual inspections to detect overheat damage in the electrical cable ring tongue terminal tags, and replacement of terminal tags, if necessary. This proposal is prompted by a report of incorrectly crimped connections during production. This condition, if not corrected, could result in the malfunction of electrical equipment, overheat damage or fire, and the loss of electrical power.

DATES: Comments must be received no later than January 16, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-241-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0100. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-241-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model ATP series airplanes. There has been a report of overheat damage to a ring tongue terminal connected to the No. 1 Inverter on an in-service airplane. Further investigation revealed that a crimping tool used during assembly may have produced out-of-tolerance crimps, resulting in improper attachment of the terminal tags to the wires. This condition, if not corrected, could result in the malfunction of electrical equipment, overheat damage or fire, and the loss of electrical power.

British Aerospace has issued Service Bulletin ATP-24-21, Revision 2, dated April 24, 1990, which describes procedures for visual inspections to detect overheat damage in the electrical cable ring tongue terminal tags, and replacement of terminal tags, if necessary. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require visual inspections to detect heat damage in the electrical cable ring torque terminal tags, and replacement of terminal tags, if necessary, in accordance with the service bulletin previously described.

It is estimated that one airplane of U.S. registry would be affected by this AD, that it would take approximately 44 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,760.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness diective:

British Aerospace: Applies to Model ATP series airplanes; Serial Numbers 2001 through 2020, inclusive; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent the malfunction of electrical equipment, overheat damage or fire, and the loss of electrical power, accomplish the following:

A. With 90 days after the effective date of this AD, inspect the electrical cable ring tougue terminal tags listed in Tables 1 to 21 of British Aerospace Service Bulletin ATP-24-21, Revision 2, dated April 24, 1990, for security and discoloration, in accordance with the service bulletin.

Note: The service bulletin and this AD refer to "ring tongue terminal tags." That terminology is used to describe crimp-on wire terminals that have a loop on one end to fit over a terminal stud.

B. If any terminal tags show signs of being insecurely crimped or are discolored, replace them prior to further flight, in accordance with British Aeospace Service Bulletin ATP-24-21, Revision 2, dated April 24, 1990.

C. Within 2,500 hours time-in-service following the inspection required by paragraph A. of this AD, perform a one-time repeat visual inspection on all listed terminal tags that have not been replaced or recrimped, in accordance with British Aerospace Service Bulletin ATP-24-21, Revision 2, dated April 24, 1990.

1. If any terminal tags show signs of being insecurely crimped or are found discolored, replace them prior to further flight, in accordance with the service bulletin.

2. For those terminal tags which do not show signs of being insecurely crimped or discolored, no further action is required.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 14, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27663 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-173-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice proposes to amend an earlier proposed airworthiness directive (AD), applicable to all British Aerospace Model ATP series airplanes, which would have required repetitive visual inspections to detect cracks in the engine jet-pipe assembly, and repair or replacement with a serviceable unit, if necessary. This action would revise the proposal to cite the latest revision to the service bulletin as the appropriate service information, and would require the eventual replacement of the aft jet pipes with improved parts.

DATES: Comments must be received no later than December 26, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-173-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-173-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations, which would have required repetitive visual inspections to detect cracks in the engine jet-pipe assembly, and repair or replacement with a serviceable unit, if necessary, on all British Aerospace Model ATP series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on September 20, 1990 (55 FR 38697). That action was prompted by reports of cracks in the engine jet pipes on in-service airplanes. This condition, if not corrected, could result in loss of required engine power and/or overheating of structural components.

One commenter supported the rule, but noted inconsistencies between the proposed rule and the service bulletin. Specifically, the commenter noted that, according to the service bulletin, these airplanes should be allowed to continue to fly with cracks up to 1.75 inches in the aft jet pipe assembly, in which case repetitive inspections would be conducted every 30 hours time-in-service (if cracks measure less than 1 inch) or daily (if cracks measure between 1 inch and 1.75 inches). The FAA does not concur. The FAA has determined that airworthiness cannot be ensured if airplanes are permitted further flight with cracks. Cracks in the engine jet pipes could result in catastrophic consequences such as (1) overheat of surrounding primary structures and the subsequent creation of potential hazards, or (2) an adverse effect on the engine or engine performance. Therefore, the proposed rule continues to require repair of all jet pipe cracks prior to further flight.

Since the issuance of the Notice, British Aerospace has also issued Revision 3 to Service Bulletin ATP 78-1, dated August 1, 1990, which adds a repetitive inspection interval for post-modification 3510A airplanes. The United Kingdom Civil Aviation Authority (CAA) has classified this service bulletin as mandatory.

Additionally, British Aerospace has issued Service Bulletin ATP-78-2 (Modification 3510A), dated April 10, 1990, which describes procedures for the installation of improved aft jet pipes. The improved pipes eliminate the stress concentrations which have led to the subject cracking in some areas of the aft pipe. The United Kingdom CAA has not classified this service bulletin as mandatory.

The FAA has determined that installation of the improved aft jet pipes, as described in Service Bulletin ATP-78-2, coupled with repetitive inspections for cracking, will better ensure safety. Accordingly, the FAA has revised the proposal to require this eventual installation on all airplanes, and follow-on repetitive inspections thereafter at intervals of 1,500 hours time-in-service.

The FAA has also revised the proposal to specify the latest revision (Revision 3) to Service Bulletin ATP 78-1 as the appropriate source of service information for the inspections and certain repair procedures.

Since these changes expand the scope of the proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional time for public comment.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

It is estimated that 15 airplanes of U.S. registry would be affected by the AD, that it would take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The required parts will be supplied to the operator at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $15,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to all Model ATP series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect cracks in the engine jet pipes, accomplish the following:

A. For airplanes in Pre-Modification 35140A configuration: Prior to the accumulation of 500 hours time-in-service since new, or within 50 hours time-in-service after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 250 hours time-in-service, perform a detailed visual inspection of the engine jet pipe on the right and left engine, in accordance with the Accomplishment Instructions in British Aerospace Service Bulletin ATP-78-1, Revision 3, dated August 1, 1990.

B. For airplanes in Post-Modification 35140A configuration: Prior to the accumulation of 3,000 hours time-in-service since new, or within 50 hours time-in-service after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,500 hours time-in-service, perform a detailed visual inspection of the engine jet pipe on the right and left engine, in accordance with the Accomplishment Instructions in British Aerospace Service Bulletin ATP-78-1, Revision 3, dated August 1, 1990.

C. If cracks are found in the *aft jet pipe assembly*, prior to further flight:

1. Replace the assembly with a serviceable unit; or

2. If cracks measuring less than 1.75 inches are found at the ends of the spacer channels, repair in accordance with British Aerospace Service Bulletin ATP-78-1, Revision 3, dated August 1, 1990; or

3. If cracks are found at any other location, repair in a manner approved by the Manager, Standardization Branch, ANM-113, Transport Airplane Directorate. Following repair or replacement, the inspections specified in paragraphs A. and B. of this AD are still required.

D. If cracks are found in the *forward jet pipe assembly*, prior to further flight, replace the assembly with a serviceable unit, or repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Following repair, the inspections specified in paragraph A. and B. of this AD are still required.

E. Within 12 months after the effective date of this AD, replace aft jet pipe Part No. JD 780J0009-000 with an improved aft jet pipe having Part No. JD780J0009-002 or -004, in accordance with British Aerospace Service Bulletin ATP-78-2, dated April 10, 1990.

1. Following replacement, perform repetitive detailed visual inspections at intervals not to exceed 1,500 hours time-in-service, in accordance with the service bulletin.

2. If cracks are found, prior to further flight replace the aft jet pipe with a serviceable part in accordance with the service bulletin, or repair in a manner approved by the Manager, Standardization Branch, ANM-113, Transport Airplane Directorate.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the

manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

Issued in Renton, Washington, on November 14, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27668 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-233-AD]

Airworthiness Directives; Fokker Model F-28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Fokker Model F-28 Mark 1000, 2000, 3000, and 4000 series airplanes, which would require incorporation of certain structural modifications. This proposal is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. These conditions, if not corrected, could result in degradation in the structural capabilities of the affected airplanes. This action also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspections.

DATES: Comments must be received no later than January 14, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-233-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-233-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

In April 1988, a high-cycle Boeing Model 737 suffered major structural damage in flight. Investigation revealed that the airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on the high-cycle airplanes in its fleet revealed that two other airplanes had extensive fatigue cracking and corrosion. These airplanes were taken out of service.

In June 1988, the FAA sponsored a conference on aging airplanes. It became obvious that, because of the increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes, older airplanes will continue to be operated rather than be retired. Because of the problems revealed by the accident described above, it was generally agreed that increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America are committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force, with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to (1) select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes, (2) develop corrosion-directed inspections and prevention programs, (3) review the adequacy of each operator's structural maintenance program, (4) review and update the Supplemental Structural Inspection Documents (SSID), and (5) assess repair quality.

The working group assigned to review the Fokker Model F-28 series airplanes made a number of recommendations which are contained in Fokker Report No. SE-243, Issue No. 1, dated June 1, 1990. Included in this report is the recommendation to make mandatory certain inspections, structural modifications, and structural life limits. The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, has issued an Airworthiness Directive (AD) BLA No. 90-063, which duplicated Part II of the Fokker Report SE-243, Issue No. 1, as part of the AD.

The Fokker Report No. SE-243 references 20 service bulletins that specify inspections, structural modifications, and structural life limits applicable to the Fokker Model F-28 series airplanes by serial number. The modifications are applicable to the fuselage, wings, flaps, elevator, horizontal stabilizer, rudder, passenger/crew door, and the main landing gear. Accomplishment of these modifications will reduce the possibility for major structural failures.

This airplane model was manufactured in the Netherlands and is type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since fatigue cracking and corrosion is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require modifications in accordance with the report previously described.

The proposed compliance time for implementation of the mandatory structural modifications is upon reaching a certain "incorporation threshold" specified in Part II of Fokker Report No. SE-243. The proposed compliance times for accomplishing the structural modifications are based on the recommendation of the F-28 airworthiness Assurance Task Force. Their recommendations were based on a review of fatigue and stress corrosion inspections, the ability of the manufacturer to provide parts, and the time necessary to incorporate the modifications.

This is considered to be interim action. The manufacturer is currently developing additional modifications. The F-28 Aging Aircraft Program will be finalized in the winter of 1990, and may result in the implementation of a "Corrosion Prevention Program" into the maintenance schedule. Once these items are developed, the FAA may consider further rulemaking to revise this AD to require additional necessary action.

It is estimated that 48 airplanes of U.S. registry would be affected by this AD, that it would take approximately 471 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for required parts is $16,541 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,698,288.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Applies to Model F-28 Mark 1000, 2000, 3000, and 4000 series airplanes, as listed in Part II of Fokker Report No. SE-243, Issue No. 1, dated June 1, 1990, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the airplane, accomplish the following:

A. Accomplish the structural modifications according to the service bulletins and the "incorporation threshold" listed in Part II of Fokker Report No. SE-243, Issue No. 1, dated June 1, 1990 as follows:

1. For airplanes that have accumulated time-in-service exceeding the specified "incorporation threshold" as of the effective date of this AD, the structural modifications must be accomplished by the following dates:

a. July 1, 1996, for those service bulletins to which [Note 1] applies.

b. July 1, 1993, for those service bulletins to which [Note 2] applies.

c. July 1, 1993, or 14 years after the airplane's manufacturing date, which ever occurs later, for service bulletins to which [Note 4] applies.

2. For airplanes that have accumulated time-in-service less than the specified "incorporation threshold" as of the effective date of this AD, the structural modifications must be accomplished before the applicable "incorporation threshold" or by the following dates, whichever occurs later:

a. July 1, 1996, for service bulletins to which [Note 1] applies.

b. July 1, 1993, for service bulletins to which [Note 2] applies.

c. July 1, 1993, or 14 years after the airplane's manufacturing date, whichever comes later, for service bulletins to which [Note 4] applies.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on November 9, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27667 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-ASO-23]

Proposed Establishment of Transition Area, Zephyrhills, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Zephyrhills, FL, Transition Area. A standard instrument approach procedure (SIAP) has been developed to serve Runway 04 at the Zephyrhills Municipal Airport predicated on the Zephyrhills nondirectional radio beacon (NDB). This proposed action would lower the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of the airport. The additional controlled airspace would provide airspace protection for instrument flight rules (IFR) aeronautical operations. If approved, the operating status of the airport will change from visual flight rules (VFR) to IFR concurrent with publication of the SIAP.

DATES: Comments must be received on or before: January 7, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, manager, System Management Branch, Docket No. 90-ASO-23, P.O. Box 20636, Atlanta, Georgia 30320

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652,

BEST COPY AVAILABLE

3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90–ASO–23." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considered an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Zephyrhills, FL, transition area. This action would lower the base of controlled airspace from 1200 to 700 feet above the surface in vicinity to Zephyrhills Municipal Airport. The transition area would provide additional airspace protection for IFR aircraft executing an NDB standard instrument approach procedure planned for Runway 04. If approved, the operating status of the airport would change from VFR to IFR concurrent with publication of the instrument approach procedure. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Zephyrhills, FL [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Zephyrhills Municipal Airport (Lat. 28°13'35"N., Long. 82°09'30"W.); within three miles each side of the 235° bearing from the Zephyrhills NDB (Lat. 28°13'24"N., Long. 82°09'42"W.), extending from the 6.5-mile radius area to 8.5 miles southwest of the NDB.

Issued in East Point, Georgia, on November 14, 1990.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 90–27669 Filed 11–23–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 90–ASW–43]

Proposed Revision of Transition Area: Farmington, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Farmington, NM. The development of larger holding patterns at arrival feeder fixes to accommodate larger and faster aircraft types at the Farmington Four Corners Regional Airport has made this proposal necessary. In addition, this proposal would include minor revisions to the coordinates used to describe the airport and revise the airport name to the Farmington Four Corners Regional Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft holding at the arrival feeder fixes and revise the coordinates used to describe the airport location.

DATES: Comments must be received on or before December 31, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 90–ASW–43, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Mark F. Kennedy, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90–ASW–43." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR part 71) to revise the transition area located at Farmington, NM. The holding patterns at the arrival feeder fixes to the Farmington Four Corners Regional Airport have been expanded to accommodate larger and faster aircraft, which has made this action necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft holding at the arrival feeder fixes. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Farmington, NM (Revised)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of the Farmington Four Corners Regional Airport (latitude 36°44'31"N., longitude 108°13'45"W.) within 3.5 miles each side of the Farmington VORTAC 088° radial extending from the 11-mile radius area to 12 miles east of the VORTAC and within 4.5 miles each side of the Farmington VORTAC 265° radial extending from the 11-mile radius area to 23 miles west of the VORTAC; and, that airspace extending upward from 1,200 feet above the surface bounded by a line extending from latitude 37°04'00"N., longitude 108°58'00"W.; to latitude 37°04'00"N., longitude 108°26'00"W.; thence clockwise within a 30-mile radius of the Farmington VORTAC to latitude 37°00'00"N., longitude 107°39'30"W.; to latitude 37°00'00"N., longitude 107°11'30"W.; thence clockwise within a 53-mile radius of the Farmington VORTAC to point of beginning; excluding that airspace within the Durango, CO, transition area, that airspace within and underlying the Crownpoint, NM, transition area, and that airspace within the State of Arizona.

Issued in Fort Worth, TX on November 7, 1990.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 90–27671 Filed 11–23–90; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–83–90]

RIN 1545–AP20

Corporations; Consolidated Returns—Special Rules Relating to Dispositions and Deconsolidations of Subsidiary Stock

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed §§ 1.337(d)–2 and 1.1502–20. These regulations implement aspects of the repeal of the *General Utilities* doctrine by limiting losses of consolidated groups with respect to the stock of subsidiaries. Proposed § 1.1502–20 also eliminates the duplication of loss with respect to consolidated groups. Final § 1.337(d)–1 and temporary § 1.337(d)–2T appear in the Rules and Regulations section of this issue of the Federal Register.

DATES: These regulations are proposed to be effective December 28, 1990. Section 1.337(d)–2 is proposed to generally apply to dispositions and deconsolidations of a subsidiary's stock after November 16, 1990 and before the effective date of § 1.1502–20. Section 1.1502–20 is proposed to generally apply to dispositions and deconsolidations of a subsidiary's stock after January 31, 1991.

Written comments must be delivered by January 15, 1991.

A public hearing on these proposed regulations will be held Friday, January 25, 1991, beginning at 10 a.m. See the notice of public hearing on these proposed regulations elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments to: Internal Revenue Service, Attention: CC:CORP:T:R (CC:CO–93–90), room 4429, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mark S. Jennings, 202–566–2455 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collection of information in this regulation is in §§ 1.337(d)–2(b)(4), 1.337(d)–2(c)(1), 1.1502–20(b)(4), 1.1502–20(c)(3), 1.1502–20(g)(5), and 1.1502–20(h)(2). This information is required by the International Revenue Service to comply with sections 337(d) and 1502 and the regulations thereunder. This information will be used to determine that the proper amount of tax was reported by the taxpayer and whether, and to what extent, the taxpayer's return should be audited. The likely respondents are affiliated groups of corporations filing (or required to file) consolidated returns.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 6000 hours. The estimated average annual reporting burden per respondent is 2 hours.

Estimated number of respondents: 3000.

Estimated annual frequency of responses: 1.

B. Introduction

T.D. 8294, filed with the Federal Register on March 9, 1990 and published in the **Federal Register** on March 14, 1990, added temporary §§ 1.1502–20T and 1.337(d)–1T to part 1 of title 26 of the Code of Federal Regulations.

Section 1.1502–20T added to the consolidated return regulations a general rule that disallowed all consolidated group losses on the disposition of a subsidiary's stock (the "loss disallowance rule"). The regulations also provided a number of related rules, including a basis reduction rule applicable on deconsolidation of a subsidiary's stock and an anti-stuffing rule applicable to transfers of property between members in connection with the disposition or deconsolidation of a subsidiary's stock. Also provided was a rule that permitted reattribution of a subsidiary's losses to the common parent to the extent loss would otherwise be disallowed to the consolidated group on the disposition of a subsidiary's stock. The rules added by § 1.1502–20T generally applied to any disposition or deconsolidation of a subsidiary's stock on or after March 9, 1990.

Section 1.337(d)–1T added a transitional rule that generally limited loss on the disposition of a subsidiary's stock after January 6, 1987, if the subsidiary became a member of the group after that date (a "transitional subsidiary") and the disposition was not subject to § 1.1502–20T. Unlike § 1.1502–20T, these regulations permitted the loss to the extent the group established that the loss was not attributable to the recognition of "built-in gain" on the disposition of assets owned by the subsidiary (or any lower tier subsidiary). Moreover, although § 1.1502–20T reduced the basis of subsidiary stock on its deconsolidation, § 1.337(d)–1T continued to treat the stock as subject to loss disallowance on later disposition.

Sections 1.1502–20T and 1.337(d)–1T implemented Notice 87–14, 1987–1 C.B. 445, in which the Internal Revenue Service announced its intention to publish regulations that would prevent utilization of §§ 1.1502–32 and 1.1502–33(c) (the "investment adjustment rules") to circumvent the repeal of the *General Utilities* doctrine by the Tax Reform Act of 1986. The loss disallowance rule of § 1.1502–20T addressed another problem relating to the investment adjustment rules by preventing a subsidiary's losses from being duplicated as investment losses of the parent when the parent disposes of the subsidiary's stock.

Also filed with the Federal Register on March 9, 1990 and published on March 14, 1990, was a notice of proposed rulemaking (CO–78–87) that incorporated by cross reference the text of §§ 1.1502–20T and 1.337(d)–1T. Many written comments were received, and a public hearing was held on June 26, 1990.

After full consideration of the written comments and the testimony at the public hearing, the following actions are being taken:

1. Proposed § 1.337(d)–1 is amended and promulgated as a final regulation, replacing temporary § 1.337(d)–1T. See T.D. 8319, published in the Rules and Regulations section of this issue of the **Federal Register**, adding § 1.337(d)–1.

2. New § 1.337(d)–2T is promulgated as a temporary regulation. See T.D. 8319. Commentators characterized § 1.1502–20T as far broader than required by Notice 87–14 and requested that taxpayers retain the ability to dispose of subsidiary stock under the more limited approach of § 1.337(d)–1T until the rules of § 1.1502–20T are revised. Section 1.337(d)–2T continues the principles of § 1.337(d)–1 by adding another transitional rule applicable to all subsidiary stock (not just stock of transitional subsidiaries and transitional parents). The new rule allows groups to establish that loss is not attributable to the recognition of built-in gain, but only if the group's entire equity interest in the subsidiary is disposed of in one or more transactions to unrelated persons before the effective date of new § 1.1502–20. Section 1.337(d)–2T also provides basis reduction rules for subsidiary stock that is deconsolidated and anti-stuffing rules. The text of § 1.337(d)–2T set forth in T.D. 8319 also serves as the text of proposed § 1.337(d)–2, cross referenced in this document.

3. Section 1.1502–20T is withdrawn by T.D. 8319.

4. This document withdraws proposed § 1.1502–20 as added by (CO–78–87) and adds new proposed § 1.1502–20.

5. A Revenue Procedure will be issued as a consequence of these rules setting forth procedures under which the Internal Revenue Service will grant permission for all of the members of a group to discontinue filing consolidated returns. Conditions will be included to restrict reconsolidation of any member (or successor) for at least 5 years.

C. Revision of Loss Disallowance Rule

The preamble to §§ 1.337(d)–1T and 1.1502–20T, published on March 14, 1990, sets forth the rationale for adopting the loss disallowance rule. The rule was adopted in response to the direction in section 337(d) that regulations be

prescribed to ensure that the purposes of the repeal of the *General Utilities* doctrine "may not be circumvented through the use of any provision of law or regulations (including the consolidated return regulations * * *)."

That preamble describes the various approaches considered and the reasons for rejecting approaches other than the loss disallowance rule. The preamble identified the principal purpose of the repeal of the *General Utilities* doctrine as being to require payment of a corporate-level tax in a transaction that results in stepping up the basis of corporate assets. The preamble notes that the most accurate method of achieving this goal would have been to require appraisals of assets (including assets of any lower tier subsidiary) at the time a subsidiary's stock is acquired, in order to determine the amount of built-in gain and loss attributable to each asset and liability, and to eliminate positive investment adjustments attributable to recognized built-in gain. This method, referred to as "tracing," was rejected because of the compliance and administrative burdens it would impose on taxpayers and the Internal Revenue Service and because it would rely heavily on appraisals. Other approaches were also rejected because they entailed either tracing or permitting the basis of corporate assets to be stepped up without payment of corporate-level tax.

By disallowing the stock loss, the loss disallowance rule also prevented the duplication of losses. Loss duplication occurs when the stock loss is also reflected in the basis of the subsidiary's assets or its loss carryovers.

After consideration of taxpayer comments, the Treasury Department and the Internal Revenue Service continue to believe that the loss disallowance rule is an appropriate means of implementing *General Utilities* repeal by preventing the elimination of corporate-level tax; that alternative methods of implementing *General Utilities* repeal are not acceptable, either because of the compliance and administrative burdens they would impose on taxpayers and the Internal Revenue Service or because they would not effectively prevent elimination of corporate-level tax; and that eliminating duplication of loss is an appropriate exercise of consolidated return regulation authority.

The Treasury Department and the Internal Revenue Service have determined, however, that the loss disallowance rule can be modified, consistent with implementation of *General Utilities* repeal, to permit loss to a limited extent. The modifications to the rule are intended to distinguish loss of unrealized build-in gain from both loss attributable to recognized built-in gain and loss duplication. In order to avoid tracing, the modified rule necessarily operates by the use of presumptions. Consistent with the single entity principles reflected in the investment adjustment rules and other consolidated return regulations, the effect of the presumptions in the modified rule will generally be to phase in the loss disallowance rule based on the benefits of consolidation enjoyed by the group and the subsidiary. Thus, the modified rule provides a transition from separate return to consolidated status, phasing in loss disallowance as the group and the subsidiary operate in consolidated form and it becomes more appropriate to view the group's investment in the subsidiary as an investment in its assets and operations rather than in its stock.

D. Principal Comments on Original Proposed § 1.1502–20

Many comments on original § 1502–20 suggested alternative approaches to the loss disallowance rule.

1. Economic Loss

Virtually all commentators criticized § 1.1502–20 for disallowing loss on the sale of subsidiary stock when the loss results from the subsidiary's decline in value rather than from investment adjustments attributable to recognition of built-in gain. The commentary centered on Example (6) in the preamble, which provided the following illustration:

> Corporation S has one asset with a basis of $0 and a value of $100. Corporation P buys all the stock of S for $100 and P and S elect to file consolidated returns. S's asset declines in value and is sold for $0. Because S's sale of its asset results in no gain or loss, P's basis in S remains $100. P then sells S for $0 and recognizes a loss of $100. The loss is disallowed by the loss disallowance rule.

The preamble states that, while it may be argued that loss should be allowed under these facts, an exception would require appraisals of assets (including assets of any lower tier subsidiary) and tracing of built-in gains and losses, thus imposing the very compliance and administrative burdens on taxpayers and the Internal Revenue Service that the loss disallowance rule was designed to avoid. The commentators maintained that disallowance of loss in this situation is unwarranted because the parent corporation has realized an economic loss, no self-help is available to recoginize the loss, and the parent corporation has derived no benefit—through investment adjustments or otherwise—from filing consolidated returns with the subsidiary.

a. Tracing

To allow the deduction of economic loss, many commentators proposed abandoning the loss disallowance rule in favor of some form of tracing. Most of the commentators recognized that pure tracing would introduce many complexities and therefore suggested various ameliorative presumptions and limitations. However, these commentators generally would permit taxpayers to avoid use of presumptions and limitations that produce a detrimental result of electing back into tracing.

The Treasury Department and the Internal Revenue Service have re-examined the feasibility of tracing and confirmed their earlier determinations that a tracing system would be too burdensome for taxpayers and the Internal Revenue Service. The following are among the problems that would be presented by a tracing system:

(1) At the time a subsidiary was acquired, the assets of the subsidiary (and any lower tier subsidiary) would have to be valued on an asset-by-asset basis in order to prevent the netting of built-in gain and built-in loss and to trace economic loss with respect to each asset.

(2) To properly administer the system, it would be necessary to assign an earnings and profits basis of each asset based on its value at the time of acquisition and to adjust that basis (with corresponding adjustments to stock basis) to reflect earnings and profits depreciation and amortization. This would require establishing an additional set of earnings and profits books.

(3) If an acquired subsidiary owned the stock of any lower tier subsidiary, duplicate earnings and profits records would have to be maintained for each lower tier subsidiary's assets—one based on the value of the assets at the time of the acquisition and one based on the basis of the lower tier subsidiary's stock at the time of acquisition. Earnings and profits adjustments based on the value of the assets at the time of the acquisition would be used to determine gain or loss on the sale of the subsidiary stock that was acquired by purchase, and earnings and profits adjustments based on the basis of the lower tier subsidiary's stock at the time of the acquisition would be used to determine gain or loss on the disposition of that stock.

(4) Despite its complexity, a tracing system would not accurately measure

economic loss to the extent a subsidiary's assets declined in value at a faster or slower rate than reflected by the earnings and profits depreciation and amortization. To achieve reasonable accuracy, assets would have to be revalued and assigned a new earnings and profits basis whenever values declined below the initial earnings and profits basis, as adjusted, but this would substantially increase compliance and administrative burdens.

The various presumptions and limitations proposed by commentators to mitigate these problems are less accurate than tracing and do not significantly ameliorate the compliance and administrative burdens of tracing. If a taxpayer is permitted to elect tracing when advantageous, the taxpayer will have to maintain the necessary books and records to evaluate the tracing alternative. Thus, even taxpayers generally relying on presumptions to determine loss would be subject to the burdens of tracing. Similarly, the Internal Revenue Service would be required to audit valuations and earnings and profits adjustments when tracing is used. Moreover, while an elective tracing system would entail most of the burdens of a pure tracing system, it would invariably operate to the detriment of the government because presumptions would be used only when favorable to taxpayers.

b. Loss Limitation

Many commentators proposed modifying the loss disallowance rule to allow loss based on objective factors reflecting the extent to which the group has benefited from filing consolidated returns with the subsidiary. Although the modifications necessarily increase the compliance and administrative burdens for taxpayers and the Internal Revenue Service, the Treasury Department and the Internal Revenue Service have determined that relief is appropriate to the extent the factors establish that loss cannot be attributable to recognized build-in-gain. Following is a summary of the principal proposals and the extent to which they have been adopted.

Positive Basis Adjustments. A number of commentators proposed that loss be disallowed only to the extent of positive investment adjustments, because loss attributable to recognized built-in gain cannot exceed the amount of positive adjustments. This proposal has been taken into account in modifying the loss disallowance rule. Subject to the loss duplication limitation described below, the modified rule allows loss on the disposition of subsidiary stock to the extent the loss exceeds the sum of:

(1) The aggregate gain attributable to the subsidiary's "extraordinary gain dispositions" after November 16, 1990 for all consolidated return years of the group (and any prior group from which the stock was acquired other than by purchase), and

(2) The aggregate positive investment adjustments and distributions from current earnings and profits (determined without regard to extraordinary gain dispositions) for all consolidated return years of the group (and any other group from which the stock was acquired other than by purchase).

The revised rules take into account extraordinary gain dispositions in addition to positive investment adjustments because not all recognized built-in gain results in positive investment adjustments. For example, a recognized built-in gain may be offset by an equal amount of recognized post-acquisition loss. Although the gain does not increase the basis of the stock, it prevents the post-acquisition loss from reducing the basis of the stock. Consquently, a stock loss exists because of the built-in gain, and it is comparable to stock loss resulting from positive adjustments attributable to built-in gain.

The modified rule permits netting of profits and losses arising in the same taxable year in determining investment adjustments, but does not permit netting of a positive and negative investment adjustment from different taxable years. In addition, losses from extraordinary dispositions may be netted with other sources of income in determining investment adjustments for a taxable year, but may not be taken into account in determining gain from extraordinary gain dispositions. These rules are based on the presumption that the positive adjustments, distributions from current earnings and profits, and gain from extraordinary gain dispositions may be attributable to built-in gain, but losses and deductions may be attributable to post-acquisition loss.

The netting of profits and losses within the same year for determining investment adjustments represents a compromise. Consistent with the desire to limit the compliance and administration burdens associated with tracing (*e.g.*, differentiating built-in deductions and losses from post-acquisition deductions and loss), taxpayers are permitted to offset built-in gain with post-acquisition loss within the same year for purposes of determining positive adjustments.

Dispositions before November 19, 1990 are disregarded in determining gain from extraordinary gain dispositions.

Wasting Assets. A number of commentators proposed that the loss disallowance rule be revised to disregard investment adjustments attributable to the consumption of built-in gain assets through operations ("wasting assets") because such adjustments are outside the scope of preventing circumvention of *General Utilities* repeal. This problem was illustrated by Example (3) in the March 14, 1990 preamble. The revised rules do not adopt this proposal, and all positive investment adjustments are taken into account (whether from dispositions or consumption of wasting assets). Consumption of wasting assets is not outside the scope of *General Utilities* repeal because dispositions and consumption may produce identical investment adjustments, as illustrated by Examples (2) and (3) in that preamble. Failing to take wasting assets into account would treat taxpayers in similar economic circumstances differently.

Rates of Return. Because some of a subsidiary's earnings may be attributable to post-acquisition income rather than built-in gain, other commentators proposed that loss be disallowed only to the extent positive investment adjustments (and distributions from current earnings and profits) exceed a specified rate of return. Commentators argued that an artificial rate of return could be used to identify earnings not properly attributable to built-in gain.

This proposal has not been adopted in the revised rules. A rate of return approach requires selecting an appropriate rate despite the wide variances in rates of return in different industries, and determining the appropriate base against which the rate of return is applied. Appraisals may be required if a subsidiary is acquired in a carryover basis transaction, is a lower tier subsidiary of the acquired subsidiary, or is engaged in more than one industry, and may be required again if there are subsequent corporate contributions or contractions. A variety of special rules also would be required to address the treatment of tax-free business combinations.

Moreover, permitting any rate of return effectively presumes that subsidiaries whose stock has declined in value nevertheless have positive rates of return, and that, contrary to the tax laws generally (such as depreciation and amortization rules), the returns from an investment are first attributable to earnings on, rather than recovery of, the investment.

Caps on Disallowed Loss. A number of commentators also proposed an overall limitation on the disallowance of loss. Many of the commentators proposed an overall limitation based on net built-in gain in the subsidiary's assets at the time its stock is acquired. Net built-in gain would equal the excess of (1) the sum of stock purchase price and liabilities of the subsidiary (and any lower tier subsidiary) over (2) the sum of the aggregate tax basis and loss carryovers of the subsidiary (and any lower tier subsidiary).

This proposal has not been adopted in the revised rules because it would permit groups acquiring subsidiaries with both built-in gains and built-in losses to circumvent *General Utilities* repeal by selectively recognizing gross built-in gain in excess of the net built-in gain. The recognized built-in gain would produce positive investment adjustments without corresponding increases in the subsidiary's value, and would therefore permit the group to offset the gain with loss on disposition of the subsidiary's stock.

Other commentators proposed an overall limitation on the disallowance of loss based on actual gross built-in gain. This proposal was not adopted in the revised rules because it would require each of the subsidiary's assets (including assets of any lower tier subsidiary) to be appraised at the time the subsidiary's stock is acquired. For reasons discussed under "Tracing" above, an appraisal-based system would be too burdensome for both taxpayers and the Internal Revenue Service.

The appraisal problem was avoided in other proposals by limiting loss disallowance based on the maximum potential built-in gain—the aggregate purchase price of the subsidiary's stock plus the aggregate amount of the liabilities of the subsidiary (and any lower tier subsidiary). This approach would generally provide relief only if the subsidiary is owned for a substantial period and would be inconsistent with the general approach of the revised rules, which is to phase out separate return treatment as the group and the subsidiary enjoy the benefits of consolidation.

2. Duplication of Loss

By denying all loss on the disposition of subsidiary stock, the loss disallowance rule eliminates the ability of consolidated groups to duplicate any loss reflected in a subsidiary's assets and loss carryovers. Commentators generally opposed the elimination of loss duplication. They argued that (1) loss duplication is available in the separate return context and should therefore be eliminated only by Congress, (2) loss duplication is beyond the scope of *General Utilities* repeal, and (3) new restrictions on loss duplication are unnecessary because an acquirer's use of the subsidiary's loss may be limited by sections 269, 382, 383(b) and 384, and §§ 1502–21 (c) and 1.1502–22 (c). Commentators who conceded that eliminating loss duplication is within the scope of authority under section 1502 nonetheless argued that it was inappropriate for the Service to eliminate it in connection with *General Utilities* repeal. For the reasons discussed below, the revised rules retain the elimination of loss duplication.

a. Gain and Loss Duplication in Consolidated Returns

In the separate return context, a subsidiary's earnings and profits (or deficits in earnings and profits) do not cause adjustments to its parent's basis in the subsidiary's stock. Consequently, the subsidiary's gains and losses may be recognized a second time (in effect, duplicated) when the parent sells the subsidiary's stock.

By contrast, the consolidated return regulations have, over the years, developed an extensive system of rules for adjusting the basis of subsidiary stock to reflect the subsidiary's earnings and profits. The primary effect of these rules is to reduce duplication of gain and loss.

Reduction of loss duplication in the consolidated return context began with *Charles Ilfeld Co.* versus *Hernandez*, 292 U.S. 62 (1934). In that case, the parent corporation deducted its subsidiaries' losses on the group's consolidated return and claimed a second loss on the dissolution of the subsidiaries. The Supreme Court rejected the parent's claimed loss on its investment in the subsidiaries, stating that it "would be the practical equivalent of double deduction." The principle of the *Ilfeld* decision was incorporated in the consolidated return regulations, but the regulations did not otherwise permit positive and negative adjustments to the basis of subsidiary stock.

In 1966, the consolidated return regulations were revised to incorporate an extensive system of positive and negative adjustments measured by earnings and profits of the subsidiary. These investment adjustment rules shifted the taxation of investment in a subsidiary significantly toward single entity treatment. A primary objective of the 1966 regulations was to eliminate the duplication of gain and loss at the parent and subsidiary levels. The regulations generally eliminated gain and loss duplication only if a subsidiary's assets are disposed of before its stock.

Changes in the tax law since 1966 have called into question the remaining loss duplication permitted under the current investment adjustment rules. There has been a general statutory shift in favor of single entity treatment of consolidated groups. See, *e.g.*, section 267(f). In addition, section 338 (h)(10) has increased the ability of taxpayers to avoid gain duplication. Recent changes to the consolidated return regulations have consistently reflected this policy shift in favor of single entity treatment.

The repeal of the *General Utilities* doctrine compelled a major change in the investment adjustment rules. New proposed § 1.1502–20 retains the elimination of loss duplication as an appropriate exercise of authority that simplifies the rules necessary for preventing circumvention of *General Utilities* repeal. It is not possible to differentiate between loss attributable to built-in gain and duplicated loss without resorting to tracing.

Commentators arguing for a tracing rule instead of loss disallowance argued that tracing could be used to eliminate investment adjustments attributable to built-in gain that cause loss but not those that reduce gain. This position is based on the proposition that gain duplication is inconsistent with the principles of consolidated returns. Loss duplication is equally inconsistent with these principles.

Although eliminating loss duplication deprives consolidated groups of a benefit they would enjoy had they filed separate returns, filing consolidated returns provides many benefits that are not available to corporations filing separate returns. Corporations electing to file consolidated returns are not entitled to retain all of the benefits of separate returns while availing themselves of the benefits of consolidated returns. Electing corporations, in fact, have historically suffered detriments unrelated to the benefits of consolidation. For example, a subsidiary's losses incurred while a member of a consolidated group cause negative investment adjustments, eliminating loss duplication, even if the loss is used against income arising before the subsidiary became a member. Similarly, dividend distributions cause negative investment adjustments even if the distributions are out of earnings and profits accumulated before the subsidiary became a member.

Eliminating loss duplication is consistent with the historic concerns

under the consolidated return regulations and is an appropriate exercise of authority under section 1502.

b. Overlap of Loss Duplication with Other Loss Restrictions

The Code and regulations provide several limitations on the transfer of tax benefits, including sections 269, 382, 383(b), and 384, and the separate return limitation year rules under the consolidated return regulations. These provisions may limit a transferee's deductions following the disposition of stock at a loss for which the loss disallowance rule denies a deduction. Commentators argued that because of these limitations, the ability to duplicate loss should not be a significant concern. However, these limitations focus on trafficking in tax benefits rather than duplication of loss at the corporate level. The limitations may apply in circumstances where there is no duplication and may not apply where there is duplication. Moreover, even if the limitations apply in a loss duplication case, they may not significantly limit the duplicated loss. Accordingly, these limitations do not solve the problem presented by loss duplication.

3. Scope of General Utilities Repeal

a. Time Limitation for Application of Rules

Commentators argued that loss (or positive investment adjustments) should be limited only for a specified period of time following a corporate acquisition. This argument assumes that Notice 87–14, which was issued soon after the effective date of the repeal of the *General Utilities* doctrine, was directed at so-called son-of-mirror transactions occurring in connection with acquisitions. Time periods suggested by commentators ranged from 2 years (by analogy to section 1059) to 10 years (by analogy to section 1374).

The repeal of the *General Utilities* doctrine applies to all corporations, not just those that have been held for less than a specified period, and is directed at elimination of corporate-level tax, not simply at son-of-mirror transactions. Where, as in section 1374, Congress intended to limit the period in which a corporate-level tax is imposed, it specifically did so by statute. It provided no such statutory limit in section 337(d), which directed the issuance of regulations to prevent circumvention of *General Utilities* repeal in the consolidated return context. It would thus be inconsistent with Congressional intent to limit the time period for disallowance of loss (or positive investment adjustments) on disposition of subsidiary stock.

b. Post-1986 Investment Adjustments

Commentators also argued that pre-1987 basis should be grandfathered because adjustments reflected in that basis are attributable to income and gain recognized before the effective date of *General Utilities* repeal. Under this theory, even though a post-1986 loss attributable to such basis may result in elimination of corporate-level gain, the events that gave rise to the loss occurred before 1987 when such elimination was permissible and should therefore be allowed. The legislative history of the Tax Reform Act of 1986 does not provide any evidence that Congress intended to allow elimination of corporate-level tax attributable to pre-1987 investment adjustments. The focus of the repeal was on preserving the corprorate income tax and the legislation generally applies after December 31, 1986.

It is also questionable whether use of loss attributable to built-in gain was consistent with the corporate tax provisions as they existed prior to *General Utilities* repeal. Positive investment adjustments were generally intended to prevent duplication, not to permit elimination, of corporate-level gain. Since 1969, corporations have been increasingly required to recognize corporate-level gain with respect to non-liquidating distributions of appreciated property to shareholders. Because most dispositions of built-in gain assets that produce investment adjustments are non-liquidating distributions, it has long been questionable whether it was appropriate to permit all adjustments attributable to such dispositions to eliminate corporate-level gain. Accordingly, it would be inconsistent with Congressional intent to grandfather pre-1987 investment adjustments.

E. Explanation of New Proposed § 1.1502–20.

New proposed § 1.1502–20 retains most of the provisions of former proposed § 1.1502–20. Although loss on the sale by a member of stock of a subsidiary is generally disallowed, a new paragraph (c) has been added to permit the member to claim loss in certain circumstances.

1. Loss Disallowance Rule

No deduction is allowed under paragraph (a) for any loss recognized by a member with respect to the disposition of stock of a subsidiary. The rule does not affect the use by the group of "inside" losses of the subsidiary, such as operating losses. Disallowance is deferred with respect to deferred transactions under the consolidated return regulations. The loss disallowance rule takes precedence over other loss disallowance and deferral rules of the Code and regulations, however, and these other rules apply only to the extent loss is not disallowed under the loss disallowance rule. An exception is provided to the loss disallowance rule to the extent gain is taken into account by the group with respect to common stock of the same subsidiary that is sold to the same purchaser pursuant to a single plan.

2. Basis Reduction on Deconsolidation

The basis of a subsidiary's stock is reduced under paragraph (b) to its fair market value immediately before the subsidiary's stock is deconsolidated. Stock that remains outstanding is treated as consolidated when it is no longer owned by a a member of any consolidated group of which the subsidiary is also a member.

The basis reduction rule complements the loss disallowance rule by eliminating loss that is built into the basis of the subsidiary's stock immediately before the stock ceases to be subject to the loss disallowance rule. For example, assume that a group sells 25 percent of a subsidiary's stock to a nonmember, thus disaffiliating the subsidiary. The group has a built-in loss in the subsidiary's stock that it continues to own, but because the stock is no longer subject to the loss disallowance rule, the basis of the stock is reduced to its fair market value to eliminate the loss. Because stock must remain outstanding to be subject to the basis reduction rule, transactions such as section 332 liquidations are not deconsolidation events.

A special rule applies to cases in which the basis of subsidiary stock is reduced, and the group realizes a loss on the disposition of the stock within 2 years after the basis reduction. The taxpayer must attach a statement to the return for the year of the disposition, disclosing information with respect to the disposition and prior basis reduction. If the statement is not attached to the return, no deduction is allowed for any loss claimed on the disposition. Dispositions after the 2-year period that are pursuant to an agreement, option, or other arrangement entered into within the period are treated as though they occurred within the 2-year period for purposes of the information statement requirement.

3. Allowed loss

In order to allow only economic loss, paragraph (c) identifies those factors that contribute to avoidance of corporate-level tax. Loss disallowance and basis reduction do not apply to stock of a subsidiary to the extent the loss or reduction exceeds a share's allocable part of the sum of the following factors:

(i) Earnings and profits, net of directly related expenses, from extraordinary gain dispositions.

(ii) The aggregate amount of positive adjustments for earnings and profits for all consolidated return years to the extent not included in the extraordinary gain disposition factor.

(iii) The amoung of any duplicated loss. These factors are explained more fully below.

a. Extraordinary Gain Dispositions

Extraordinary gain dispositions are dispositions after November 16, 1990, resulting in gain for purposes of computing earnings and profits, of capital assets, property used in a trade or business, and specified bulk asset dispositions. Discharge of indebtedness is also treated as an extraordinary gain disposition.

All applicable dispositions producing gain are presumed to be attributable to built-in gain. Dispositions producing gains are not offset by dispositions producing losses. These rules are necessary to avoid tracing. The amount included under this factor may be derived from tax return entries and associated work papers.

b. Positive Investment Adjustments

All positive adjustments are presumed to be attributable to built-in gain, including built-in gain recognized through the wasting of built-in gain assets. Netting is not permitted between the positive adjustments for years with earnings and the negative adjustments for years with deficits, but is permitted with respect to positive and negative adjustments within the same year.

Because the distribution of current earnings and profits does not eliminate the effect of recognized built-in gain, even though the distribution may eliminate a positive adjustment, such distributions are also included under this factor. Assume, for example, that a subsidiary recognizes $100 of built-in gain. If no distribution is made in the year the gain is recognized, the subsidiary's stock basis increases by $100 without a corresponding increase in value. By contrast, if $100 is distributed, the basis remains unchanged but the subsidiary's value declines by $100.

c. Duplicated loss

Duplicated loss is the excess of (A) the sum of the aggregate asset basis and the aggregate loss carryovers of the subsidiary (and any lower tier subsidiary), over (B) the value of the subsidiary's assets. For this purpose, aggregate asset basis does not include any stock and securities in another subsidiary, and loss carryovers include deferred deductions. The value of the subsidiary's assets is measured by the value of the subsidiary's stock, any liabilities of the subsidiary (and any lower tier subsidiary), and other relevant items. If 60 percent or more of the subsidiary's stock is purchased in a single transaction, the stock's value is no greater than its grossed-up purchase price.

d. Disposition and Adjustments in Prior Consolidated Groups

The extraordinary dispositions and positive investment adjustment factors include amounts attributable to prior consolidated groups, but only if these amounts continue to be reflected in the basis of the subsidiary's stock.

This factor would apply, for example, if a target is acquired from another consolidated group, and the target has a lower tier subsidiary that also becomes a member of the acquiring group, because the basis of the lower tier subsidiary continues to reflect any such amounts from the prior group.

4. Anti-Stuffing Rule

Paragraph (e) provides an anti-stuffing rule, in order to prevent a group from transferring assets after March 8, 1990 so as to avoid the recognition of gain or impact of the loss disallowance rule. The rule applies if the transfer occurs within 2 years of a direct or indirect disposition or deconsolidation of subsidiary stock. The proposed regulations clarify that, if an asset is transferred with the requisite view to avoid the recognition of gain or impact of the loss disallowance rule, it is not necessary for the atransfer to be related to a subsequent disposition or diconsolidation of stock provided the disposition or deconsolidation occurs within the 2-year period.

Increases to the basis of subsidiary stock resulting from the recognition of built-in gain can have the effect of deferring tax on unrealized post-acquisition appreciation of a subsidiary's assets when its stock is sold. A comparable benefit can be achieved without post-acquisition appreciation if, for example, appreciated assets are transferred to the subsidiary or one subsidiary's appreciated stock is transferred to another subsidiary. To prevent this benefit, the rule requires reduction of the basis of the subsidiary's stock to the extent necessary to cause recognition of the amount of gain that would have been recognized if the stuffing transaction had not occurred.

5. Investment Adjustments and Earnings and Profits

The proposed regulations clarify that the earnings and profits of a member are reduced by the amount of a loss recognized on the sale of a subsidiary's stock, even though the loss is disallowed.

The proposed regulations also provide that a member's earnings and profits are reduced by the amount of any basis reduction required on the deconsolidation of a subsidiary's stock. This rule is needed because the basis reduction eliminates a future recognition of the loss (and the associated future reduction in earnings and profits).

Under the investment adjustment system, these reductions in earnings and profits tier up and cause disallowed losses and basis productions on deconsolidation to be reflected as reductions in the basis of higher tier members. Coordination rules are provided to prevent overlapping investment adjustments.

The proposed regulations also make clear that, for purposes of the consolidated return regulations, a basis reduction under this section is generally treated as a negative investment adjustment under § 1.1502–32 (e)(1). Thus, for example, the consolidated return rules applying to investment adjustments generally apply to basis reductions under § 1.1502–20 (b). However, any basis reduction under this section is not treated as a § 1.1502–32 (e)(1) adjustment for purposes of determining the amount of any basis reduction account with respect to the stock under § 1.1502–32T (a).

6. Election to Retain Losses of Subsidiary

A common parent may elect to reattribute to itself a portion of the net operating loss carryovers and net capital loss carryovers attributable to a subsidiary (or to any lower tier subsidiary) that is leaving the group. If the election is made, the reattributed losses are not apportioned to the subsidiary under § 1.1502–79. Instead, they remain part of the loss carryovers of the group. Reattribution is available only to the extent that a member is otherwise subject to loss disallowance with respect to the subsidiary's stock. This reattribution is not permitted with

respect to the basis reduction of stock of a subsidiary that is deconsolidated.

The common parent may elect to retain particular losses of a subsidiary (or any lower tier subsidiary), without regard to their charactor or the year in which they arose and whether or not they arose within the consolidated group. Retained losses may not be carried back to any prior taxable year of the common parent. If a disallowed loss arises from a worthless stock deduction and the subsidiary whose losses are reattributed remains a member of the group, the subsidiary need not join in the common parent's election.

Reattribution is not permitted to the extent that a subsidiary and all higher tier subsidiaries are insolvent within the meaning of section 108(d)(3) at the time of the disposition. To the extent of its insolvency, the subsidiary's losses are not reattributable becuuse they are deemed to be borne by creditors. For purposes of determining insolvency, preferred stock of the subsidiary not owned by members is treated as a liability to the extent of the preferred stock's liquidation preference.

Solely for the purpose of the investment adjustment and earnings and profits rules, a loss that is reattributed to the common parent is treated as absorbed by the subsidiary (or lower tier subsidiary), thereby causing a reduction in the stock basis and earnings and profits of the subsidiary whose losses are reattributed. These adjustments reduce the subsidiary's stock basis and earnings and profits to reflect the loss. The adjustments reduce or eliminate the member's loss on the dispositon of the subsidiary's stock, thus reducing or eliminating the effect of the loss disallowance rule on the disposition.

7. Effective Dates

The loss disallowance and the basis reduction rules generally apply with respect to dispositions and deconsolidations after January 31, 1991. However, taxpayers may irrevocably elect to accelerate the application of these rules, in lieu of § 1.337(d)–2, to all dispositions and deconsolidations after November 18, 1990. Any such election will not accelerate the date that the extraordinary gain disposition rule described in § 1.1502–20(c)(2)(i) applies. applies.

F. Explanation of Transitional Rules

1. General Rules

In response to comments, the effective date of § 1.1502–20 has been deferred and new § 1.337(d)–2 provides a transitional rule carrying forward the rules of § 1.337(d)–1 that allow loss to the extent the group establishes the loss is not attributable to the recognition of built-in gain. For a description of the provisions of § 1.337(d)–1, see T.D. 8294, published on March 14, 1990, and T.D. 8319, published on November 26, 1990.

For purposes of § 1.337(d)–2, gain recognized by a consolidated group (or a prior consolidated group) on the disposition of an asset is built-in gain to the extent the asset has an excess of value over basis attributable to a separate return year (as defined in § 1.1502–1 (e)) with respect to the consolidated group (or prior consolidated group).

Unlike § 1.337(d)–1, § 1.337(d)–2 is a prospective rule which taxpayers may take into account when planning transactions. Accordingly, § 1.337(d)–2 contains a deconsolidation rule and an anti-stuffing rule similar to those contained in proposed § 1.1502–20, in order to limit circumvention of the basic loss limitation rule. The deconsolidation and anti-stuffing rules are described in part E, above.

2. Effective Dates

Section § 1.337(d)–2 generally applies with respect to dispositions and deconsolidations after November 18, 1990. However, a group may establish that loss is not attributable to the recognition of built-in gain only if the group's entire equity interest in a subsidiary is disposed of in one or more transactions to unrelated persons before February 1, 1991 (the effective date of § 1.1502–20). Thus, it does not apply if only a portion of the stock held by the group is disposed of, or if the stock is sold to a related party. The ability to establish that loss is not attributable to built-in gain is limited under § 1.337(d)–2 in order to avoid the need for continued appliction of these rules to deconsolidated subsidiaries for a substantial period.

Special Analysis

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

It is hereby certified that these rules do not have a significant impact on a substantial number of small entities. The rules will primary affect affiliated groups of corproations filing (or required to file) consolidated returns, which tend to be larger businesses. It will not significantly alter the reporting or recordkeeping duties of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805 (f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety.

A public hearing will be held on Friday, January 25, 1991, beginning at 10 a.m., in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. For further information, see the notice of public hearing on these proposed regulations in the Proposed Rules section of this issue of the **Federal Register**.

Drafting Information

The project attorney is Mark S. Jennings of the Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. Various other personnel of the Internal Revenue Service and the Treasury Department also participated in the development of these regulations.

List of Subjects

26 CFR 1.301–1 through 1.383–3

Corporate adjustments, Corporate distributions, Corporations, Income taxes, Reorganizations.

26 CFR 1.1501–1 through 1.1564–1

Income taxes, Controlled group of corporations, Consolidated returns.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR chapter I are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986

Paragraph 1. The authority citation for part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805; * * * § 1.337(d)–2 also issued under 26 U.S.C. 337 (d); * * * § 1.1502–20 also issued under 26 U.S.C. 337 (d) and 1502.

Par. 2. The temporary regulation § 1.337(d)–2T, published in the Rules and Regulations section of this issue of the **Federal Register**, is hereby also

proposed as a final regulation under section 337(d) of the Internal Revenue Code of 1986, except that paragraph (c)(1)(i) is revised to read as follows:

§ 1.337(d)–2T Loss limitation window period (temporary).

* * * * *

(c) * * *

(1) * * *

(i) The consolidated group disposes (in one or more transactions), before February 1, 1991, of its entire equity interest in the subsidiary to persons not related to any member of the consolidated group within the meaning of sections 267 (b) and 707 (b)(1) (substituting "10 percent" for "50 percent" each place that it appears), and

* * * * *

Par. 3. The notice of proposed rulemaking published March 14, 1990 [55 FR 9463] by cross reference to T.D. 8294 is withdrawn.

Par. 4. New § 1.1502–20 is added to read as follows:

§ 1.1502–20 Disposition or deconsolidation of subsidiary stock.

(a) *Loss disallowance*—(1) *General rule.* No deduction is allowed for any loss recognized by a member with respect to the disposition of stock of a subsidiary.

(2) *Disposition.* "Disposition" means any event in which gain or loss is recognized, in whole or in part.

(3) *Single entity treatment of gain and loss*—(i) *Timing.* If loss with respect to the disposition of a subsidiary's stock is deferred, paragraph (a)(1) of this section does not apply until the loss is taken into account. For this purpose, the amount of the loss deferred and when the loss is taken into account are determined under §§ 1.1502–13, 1.1502–13T, 1.1502–14 and 1.1502–14T, without the application of any other provisions of the Code or regulations, such as section 267 (f), that provides for disallowance or deferral of the loss.

(ii) *Netting.* Paragraph (a)(1) of this section does not apply to the extent gain is taken into account by members with respect to common stock of the same subsidiary that is sold to the same purchaser pursuant to a single plan. Gain to which this paragraph (a)(3)(ii) applies is taken into account with respect to shares on which loss is recognized under the plan in proportion to the amount of the loss deduction that would have been disallowed under paragraph (a)(1) with respect to each share if this paragraph did not apply.

(4) *Coordination with loss deferral rules.* If paragraph (a)(1) of this section applies to a loss subject to deferral or disallowance under any other provision of the Code or the regulations, the other provision applies to the loss only to the extent it is not disallowed under paragraph (a)(1).

(5) *Examples.* For purposes of the examples in this section unless otherwise stated, the group files consolidated returns on a calendar year basis, the facts set forth the only corporate activity, and all sales and purchases are with unrelated buyers or sellers. The basis of each asset is the same for determining earnings and profits adjustments and taxable income. Tax liability and its effect on basis, value, and earnings and profits are disregarded. "Investment adjustment system" means the rules of §§ 1.1502–32 and 1.1502–33(c). The principles of this paragraph (a) are illustrated by the following examples:

Example (1). Loss attributable to recognized built-in gain. P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases to $200. Five years later, P sells all the stock of T for $100 and recognizes a loss of $100. Under paragraph (a)(1) of this section, no deduction is allowed to P for the $100 loss.

Example (2). Effect of post-acquisition appreciation. P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases to $200. T reinvests the proceeds of the sale in an asset that appreciates in value to $160. Five years after the sale, P sells all the stock of T for $160 and recognizes a $20 loss. Under paragraph (a)(1) of this section, no deduction is allowed to P for the $20 loss.

Example (3). Disallowance of duplicated loss. P forms S with a contribution of $100 in exchange for all the shares of S stock, and S becomes a member of the P group. S has an operating loss of $60. The group is unable to use the loss, and the loss becomes a net operating loss carryover attributable to S. Five years later, P sells the stock of S for $40, recognizing a $60 loss. Under paragraph (a)(1) of this section, P's $60 loss on the sale of the S stock is disallowed. (See paragraph (g) of this section for the elective reattribution of S's $60 net operating loss to P in connection with the sale.)

Example (4). Deemed asset sale election. (i) P forms S with a contribution of $100 in exchange for all the S stock, and S becomes a member of the P group. S buys an asset for $100, and the value of the asset declines to $40. P sells all the stock of S to P1 for $40. Under paragraphs (a)(1) of this section, P's $60 loss on the sale of the S stock is disallowed.

(ii) If P and P1 instead elect deemed asset sale treatment under section 338(h)(10), T is treated as selling all of its assets, and no loss is recognized by P on its sale of the T stock. As a result of the recharacterization of the stock sale as an asset sale, the $60 loss in the asset is recognized. Under the section 338(h)(10) regulations, T is treated as liquidating into P following the deemed asset sale, and the $60 loss is inherited by P.

Example (5). Gain and loss recognized with respect to stock sold pursuant to a single plan. P, the common parent of a group, owns 50 shares of the stock of T with an aggregate basis of $50, and S, a wholly owned subsidiary of P, owns the remaining 50 shares of T with an aggregate basis of $100. All of the stock of T has the same terms. P and S sell all the stock of T to the public for $140. P therefore recognizes a gain of $90 and S recognizes a loss of $50. For purposes of paragraph (a)(3)(ii) of this section, the public is considered to be 1 purchaser and the sale of the T stock by P and S is considered to be pursuant to a single plan. Accordingly, the amount of S's $50 loss disallowed under paragraph (a)(1) of this section is limited to $10 ($50 reduced by P's $20 gain on T stock taken into account in a sale to the same purchaser pursuant to a single plan).

Example (6). Deferred loss and recognized gain. (i) P, the common parent of a group, owns 50 shares of the stock of T with an aggregate basis of $10, and S, a wholly owned subsidiary of P, recently purchased the remaining 50 shares of T stock in which it has an aggregate basis of $50. T has an asset with a basis of $40 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases from $10 to $40, and S's basis in the T stock increases from $50 to $80. S sells its block of T stock to P for $50 in a deferred intercompany transaction, and S liquidates 2 years later. P subsequently sells all the stock of T for $100 to X, a member of the same controlled group (as defined in section 267(f)) as P but not a member of the P consolidated group.

(ii) Under paragraph (a)(3)(i) of this section, the application of paragraph (a)(1) of this section to S's $30 loss is deferred, because S's loss is deferred under § 1.1502–13(c) (determined without the application of any other provision of the Code or regulations that provides for disallowance or deferral of the loss).

(iii) S's deferred $30 loss is inherited by P under § 1.502–13(c)(6) following the liquidation of S. When the T stock is sold to X (a member of the same controlled group but not a member of the P consolidated group), the inherited deferred $30 loss is taken into account under § 1.1502–13(f) and paragraph (a)(3) of this section.

(iv) In the same transaction that S's $30 deferred intercompany loss is taken into account, P recognizes a $10 gain with respect to its block of historic T stock. Under paragraph (a)(3)(ii) of this section, the gain reduces by $10 the application of paragraph (a)(1) of this section to the $30 loss. Consequently, only $20 of the $30 loss is disallowed. The remaining $10 loss to which paragraph (a)(1) does not apply is subject to section 267(f).

(b) *Basis reduction deconsolidation*—(1) *General rule.* If a member's basis in a share of stock of a subsidiary exceeds its value immediately before a deconsolidation of the share, the basis of the share is reduced at that time to an amount equal to its value. If both a disposition and a deconsolidation occur with respect to a share in the same transaction, paragraph (a) of this section

applies and, to the extent necessary to effectuate the purposes of this section, this paragraph (b) applies following the application of paragraph (a).

(2) *Deconsolidation.* "Deconsolidation" means any event that causes a share of stock of a subsidiary that remains outstanding to be no longer owned by a member of any consolidated group of which the subsidiary is also a member.

(3) *Value.* "Value" means fair market value.

(4) *Loss within 2 years after basis reduction*—(i) *In general.* If the basis of a share of stock is reduced under this paragraph (b) and a direct or indirect disposition of the stock occurs within 2 years after the date of the basis reduction, a separate statement entitled "STATEMENT PURSUANT TO SECTION 1.1502–20(b)(4)" must be filed with the taxpayer's return for the year of disposition. If the taxpayer fails to file the statement as required, no deduction is allowed for any loss recognized on the disposition. A disposition after the 2-year period described in this paragraph (b)(4) that is pursuant to an agreement, option, or other arrangement entered into within the 2-year period is treated as a disposition within the 2-year period for purposes of this section.

(ii) *Contents of statement.* The separate statement required under paragraph (b)(4)(i) of this section must contain—

(A) The name and employer identification number (E.I.N.) of the subsidiary.

(B) The amount of prior basis reduction with respect to the stock of the subsidiary under paragraph (b)(1) of this section.

(C) The basis of the stock of the subsidiary immediately before the disposition.

(D) The amount realized on the disposition.

(E) The amount of the deduction not disallowed under paragraph (b)(4)(i) of this section.

(F) The amount of loss disallowed under paragraph (b)(4)(i) of this section.

(5) *Examples.* The principles of this paragraph (b) are illustrated by the following examples:

Example (1). Simultaneous application of loss disallowance rule and basis reduction rule to stock of the same subsidiary. (i) P forms S with $100 in exchange for all 100 shares of S stock, and S becomes a member of the P group. The value of S declines from $100 to $50, and P sells 60 shares of S stock for $30. The sale causes a deconsolidation of the remaining 40 shares held by P.

(ii) Under paragraph (b)(1) of this section, P must reduce the basis of the 40 shares of S stock it continues to own from $40 to $20, the value of the shares immediately before the deconsolidation.

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(iii) Although P's disposition of the 60 shares also causes a deconsolidation of these shares, paragraph (b)(1) of this section provides that, if both paragraph (a) and paragraph (b) of this section apply to a share in the same transaction, paragraph (a) applies first and paragraph (b) applies only to the extent necessary to effectuate the purposes of this section. Under paragraph (a)(1), P's $30 loss on the sale of the 60 shares is disallowed. Under the facts of this example, it is not necessary to also apply paragraph (b) of this section to the 60 shares in order to effectuate the purposes of this section.

Example (2). Deconsolidation of subsidiary stock on contribution to a partnership. P buys all the stock of T for $100, and T becomes a member of the P group. P later transfers all the stock of T to partnership M in exchange for a partnership interest in M, in a transaction to which section 721 applies. At the time of the exchange, P's basis in the T stock is $100 and the T stock's value is $75. Under paragraph (b)(1) of this section, the transfer to M causes a deconsolidation of the T stock, and P must reduce its basis in the T stock, immediately before the transfer to M, from $100 to the stock's $75 value at that time. As a result, P has a basis of $75 in its interest in M, and M has a basis of $75 in the stock of T.

Example (3). Simultaneous application of loss disallowance rule and basis reduction rule to stock of different subsidiaries. (i) P owns all the stock of S, which in turn owns all the stock of S1, and S and S1 are members of the P group. P's basis in the S stock is $100 and S's basis in the S1 stock is $100. S1 buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, S1's basis in the T stock, S's basis in the S1 stock, and P's basis in the S stock each increase from $100 to $200. S then sells all the S1 stock for $100 and recognizes a loss of $100.

(ii) Under paragraph (a)(1) of this section, S's $100 loss on the sale of the S1 stock is disallowed.

(iii) If S1 and T are not members of a consolidated group immediately after the sale of the stock of S1, the T stock is deconsolidated, and under paragraph (b)(1) of this section, S1 must reduce the basis of the T stock to $100, its value immediately before the sale.

(iv) If S1 and T are members of a consolidated group immediately after the sale of the S1 stock, the T stock is not deconsolidated, and no reduction is required under paragraph (b)(1).

Example (4). Extending the time period for dispositions. (i) In Year 1, P, the common parent of a group, buys all 100 shares of the stock of T for $100. T's only asset has a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases from $100 to $200. At the beginning of Year 5, P causes T to issue 30 additional shares of stock to the public for $30. This issuance causes a deconsolidation of the T stock owned by P, and paragraph (b)(1) of this section requires P to reduce its basis in the T stock from $200 to $100.

(ii) Within 2 years, P agrees to sell all of its T stock for $90 at the end of Year 7. Under paragraph (b)(1), P's disposition of the T stock at the end of Year 7 is treated as occurring within the 2-year period following the deconsolidation of the T stock, because the disposition is pursuant to an agreement reached within 2 years after the deconsolidation. Accordingly, P's $10 loss may not be deducted unless P files the statement required under paragraph (b)(4) of this section. This result is reached whether or not the agreement is in writing. P's disposition would also have been treated as occurring within the 2-year period if the disposition were pursuant to an option issued within the period.

(c) *Allowable loss*—(1) *General rule.* The amount of loss disallowed under paragraph (a)(1) of this section and the amount of basis reduction under paragraph (b)(1) of this section with respect to a share of stock shall not exceed the sum of the following amounts—

(i) *Extraordinary gain dispositions.* The share's allocable part of any member's earnings and profits, net of directly related expenses, from extraordinary gain dispositions.

(ii) *Positive investment adjustments.* Earnings and profits, other than those included in paragraph (c)(1)(i) of this section, which result in adjustments with respect to the share under § 1.150?–32 (b)(1)(i) and (c)(1).

(iii) *Duplicated loss.* The amount of duplicated loss with respect to the share.

(2) *Operating rules.* For purposes of applying paragraph (c)(1)—

(i) *Extraordinary gain dispositions defined.* An "extraordinary gain disposition" is an actual or deemed disposition after November 18, 1990, resulting (net of directly related expenses) in a gain for purposes of computing earnings and profits, of—

(A) A capital asset as defined in section 1221 (determined without the application of any other provision of the Code or regulations),

(B) Property used in a trade or business as defined in section 1231(b) (determined without the application of any holding period requirement),

(C) An asset described in section 1221 (1), (3), (4), or (5), if substantially all the assets in such category from the same trade or business are disposed of in 1 transaction (or series of related transactions),

(D) Assets disposed of in an applicable asset acquisition under section 1060(c). A discharge of indebtedness is also treated as an extraordinary gain disposition. Federal income taxes are not directly related expenses unless reflected as negative investment adjustments with respect to

the share under § 1.1502–32 and not reimbursed.

(ii) *Investment adjustments.* Earnings and profits are treated as resulting in adjustments with respect to a share if they would have resulted in such adjustments but for distributions with respect to the share. If the adjustments with respect to a share are modified pursuant to § 1.1502–32 (c)(3), the adjustments taken into account under paragraph (c)(1)(ii) of this section shall be appropriately modified.

(iii) *Duplicated loss.* "Duplicated loss" equals the excess (if any) of—

(A) The sum of—

(*1*) The aggregate adjusted basis of the assets of the subsidiary (and any other subsidiary in which the subsidiary owns stock) other than any stock and securities that the subsidiary owns in another subsidiary, and

(*2*) Any losses attributable to the subsidiary (and any lower tier subsidiary) and carried to the subsidiary's first taxable year following the disposition or deconsolidation, and

(*3*) Any deferred deductions (such as deductions deferred under section 469) of the subsidiary (and any lower tier subsidiary), over

(B) The sum of—

(*1*) The value of the subsidiary's stock, and

(*2*) Any liabilities of the subsidiary (and any lower tier subsidiary), and

(*3*) Any other relevant items.

If 80 percent or more in value of the stock of a subsidiary is acquired by purchase (as defined in paragraph (c)(2)(iv)(B) of this section) in a single transaction (or in a series of related transactions during any 12-month period), the value of the subsidiary's stock is no greater than the purchase price of the stock divided by the percentage of the stock (by value) so purchased.

(iv) *Applicable periods*—(A) *Consolidated return years of the group.* Amounts described in paragraph (c)(1) of this section include all consolidated return years of the group and are determined as of the date of the disposition or deconsolidation in accordance with the group's application of the principles of § 1.1502–32.

(B) *Prior consolidated groups.* Amounts described in paragraph (c)(1)(i) and (ii) of this section include any such amounts with respect to the share that are attributable to any separate return year following the most recent purchase of the share or deconsolidation of the share subject to § 1.337(d)–2 (b) or paragraph (b) of this section. Stock is acquired by "purchase" if the transferee is not related to the transferor within the meaning of sections 267(b) and 707(b)(1), substituting "10 percent" for "50 percent" each place that it appears, and the transferee's basis in the stock is determined wholly by reference to the consideration paid for such stock.

(3) *Statement of allowed loss.* Paragraph (c)(1) of this section applies only if the separate statement required under this paragraph (c)(3) is filed with the taxpayer's return for the year of the disposition or deconsolidation. The statement must be entitled "Allowed Loss Under Section 1.1502–20 (c)," and contain—

(i) The name and employer identification number (E.I.N.) of the subsidiary.

(ii) The basis of the stock of the subsidiary immediately before the disposition or deconsolidation.

(iii) The amount realized on the disposition and the amount of fair market value on the deconsolidation.

(iv) The amount of the deduction not disallowed under paragraph (a)(1) of this section by reason of this paragraph (c) and the amount of basis not reduced under paragraph (b)(1) of this section by reason of this paragraph (c).

(v) The amount of loss disallowed under paragraph (a)(1) of this section and the amount of basis reduced under paragraph (b)(1) of this section.

(4) *Examples.* For purposes of the examples in this paragraph, unless otherwise stated, the group files the statement required under paragraph (c)(3) of this section. The principles of this paragraph (c) are illustrated by the following examples:

Example (1). Allowed loss attributable to lost built-in gain. (i) Individual A forms T. P buys all the stock of T from A for $100, and T becomes a member of the P group. T has a capital asset with a basis of $0 and a value of $100. The value of the asset declines, and T sells the asset for $40. Under the investment adjustment system, P's basis in the T stock increases to $140. P then sells all the stock of T for $40 and recognizes a loss of $100.

(ii) The amount of the $100 loss disallowed under paragraph (a)(1) may not exceed the amount determined under paragraph (c)(1) of this section. The $40 of T's earnings and profits is from an extraordinary gain disposition, as defined in paragraph (c)(2)(i), and therefore is described in paragraph (c)(1)(i). (No amount is described under paragraph (c)(1)(ii) because T has no earnings and profits resulting in positive investment adjustments with respect to the share when the earnings and profits are determined without regard to extraordinary gain dispositions.) Because this amount is the only amount described in paragraph (c)(1), the amount of P's $100 loss that is disallowed under paragraph (a)(1) is limited to $40.

Example (2). Extraordinary gain dispositions. (i) Individual A forms T. P buys all the stock of T from A for $100 in Year 1, and T becomes a member of the P group. T owns a capital asset, asset 1, with a basis of $0 and a value of $100. T sells asset 1 for $100 in Year 1 and invests the proceeds in a trade or business asset, asset 2. During Year 2, asset 2 produces $30 of gross operating income and $20 of cost recovery deductions. At the end of Year 2, asset 2 has an $80 adjusted basis and T disposes of asset 2 for $85; however, because T incurs $20 of expenses directly related to the sale of asset 2, the disposition produces a $15 loss for computing earnings and profits. Under the investment adjustment system, P's basis in the T stock increases by $85, to $185, because T has $110 of earnings and a $15 loss. P sells the T stock for $85 in Year 5 and recognizes a $100 loss.

(ii) The amount of loss disallowed under paragraph (a)(1) may not exceed the amount determined under paragraph (c)(1) of this section. The $100 of earnings and profits from the disposition of asset 1 is from an extraordinary gain disposition, as defined in paragraph (c)(2)(i), and therefore is described in paragraph (c)(1)(i). This amount is not reduced by the $15 loss on the sale of asset 2 because that sale is not an extraordinary gain disposition when determined net of directly related expenses. (No amount is described under paragraph (c)(1)(ii) because T would have no earnings and profits which result in positive investment adjustments with respect to the share when the earnings and profits are determined without regard to extraordinary gain dispositions.) Because the $100 amount described under paragraph (c)(1)(i) equals P's $100 loss from the disposition of T stock, all of the loss is disallowed.

Example (3). Positive investment adjustments. (i) Individual A forms T. S, a member of the P group, buys all the stock of T from A for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. The asset earns $100 of operating income in Year 1 and declines in value to $0. T invests the operating income in another asset which produces a $25 operating deficit during Year 2. Under the investment adjustment system, S's basis in the T stock increases to $175. S sells all the stock of T for $75 in Year 5 and recognizes a loss of $100.

(ii) The amount of loss disallowed under paragraph (a)(1) may not exceed the amount determined under paragraph (c)(1) of this section. No amount is described under paragraph (c)(1)(i) because T had no extraordinary gain dispositions. The $100 of earnings and profits from operations in Year 1 is earnings and profits which are described in paragraph (c)(1)(ii). This amount is not reduced by the $25 deficit from operations in Year 2. Because the $100 amount described under paragraph (c)(1)(ii) equals S's $100 loss from the disposition of T stock, all of the loss is disallowed.

(iii) The result would have been the same if, prior to the decline in the value of the first asset (the value of the T stock was $200, $100 cash and a $100 asset), S had sold the T stock to P for $200 at no gain or loss, and P then sold the T stock to the unrelated buyer for $75 (after the asset declined in value by $100) and recognized a $100 loss. The stock had $100 of positive investment adjustments during the P group's consolidated return

years, and, as a result, the investment adjustments are considered to be described in paragraph (c)(1)(ii) even if the adjustments are not reflected in the basis of the T stock at the time of the disposition to the unrelated buyer.

Example (4). Treatment of net operating income as attributable to built-in gain. (i) Individual A forms T. P buys all the stock of T from A for $100, and T becomes a member of the P group. T has a capital asset with a basis of $0 and a value of $100. The asset declines in value to $40. The asset earns $100 of operating income unrelated to its $60 decline in value. Under the investment adjustment system, P's basis in the T stock increases to $200. P then sells all the stock of T for $140 (land worth $40 and $100 cash) and recognizes a loss of $60.

(ii) The amount of loss disallowed under paragraph (a)(1) may not exceed the amount determined under paragraph (c)(1) of this section. The $100 adjustment to the basis of the T stock is an amount described in paragraph (c)(1)(ii). Because this amount exceeds the amount of loss otherwise disallowed under paragraph (a)(1), P's entire $60 loss from the disposition of T stock is disallowed.

Example (5). Carryover basis transactions—amounts attributable to separate return years. (i) Individual A forms T. S purchases all the stock of T from A for $100, and T becomes a member of the S group. T has a capital asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, S's basis in the T stock increases to $200. P buys all of the stock of S for $100, and both S and T become members of the P group. S then sells the T stock for $100 and recognizes a loss of $100.

(ii) The amount of loss disallowed under paragraph (a)(1) may not exceed the amount determined under paragraph (c)(1) of this section. Under paragraph (c)(2)(iv)(B) of this section, the $100 adjustment to S's basis in the T stock while a member of the S group is an amount described in paragraph (c)(1)(ii) with respect to the P group. Because this amount equals the loss otherwise disallowed under paragraph (a)(1), S's $100 loss from the disposition of T stock is disallowed.

Example (6). Duplicated loss. (i) Individual A forms T with a contribution of $100 in exchange for all of the T stock. Individual B forms T1 with a contribution of land that has a $60 basis and $100 value. T buys all the stock of T1 from B for $100. P buys all the stock of T from A for $100, and both T and T1 become members of the P group. The value of T1's land declines to $40. P sells all of the T stock for $40 and recognizes a loss of $60.

(ii) The amount of loss disallowed under paragraph (a) (1) may not exceed the amount determined under paragraph (c) (1) of this section. Under paragraph (c)(1)(iii) of this section, the amount of duplicated loss is $50. This is computed under paragraph (c)(2) (iii) as the excess of (A) the $90 aggregate adjusted basis of the assets of T and T1 (other than stock and securities of T1 owned by T), over (B) $40 fair market value of the T stock (determined under paragraph (c)(2)(iv)). Because this amount is the only amount described in paragraph (c)(1), the amount of P's $60 loss disallowed under paragraph (a)(1) is limited to $50.

(iii) The result would be the same if the value of T1's property did not decline and T1 instead had an operating loss of $60 (attributable to borrowed funds) which the P group was unable to use. In that case, the $50 excess of the sum of (A) the $60 aggregate adjusted basis of the assets of T and T1 (other than stock and securities of members of the P group), plus the $60 net operating loss attributable to T1 and carried to its first taxable year following the disposition, over (B) the sum of the $40 fair market value of the T stock, plus the $60 of T1 liabilities, is an amount described in paragraph (c)(1)(iii). (See paragraph (g) of this section for the elective reattribution of T1's $60 net operating loss to P in connection with the sale.)

(d) *Successors*—(1) *General rule.* This section applies, to the extent necessary to effectuate the purposes of this section, to any property the basis of which is determined, directly or indirectly, in whole or in part, by reference to the basis of a subsidiary's stock.

(2) *Examples.* The principles of this paragraph (d) are illustrated by the following examples:

Example (1). Status of successor as member. (i) P, the common parent of a group, buys all the stock of T for $100. T's only asset has a basis of $0 and a value of $100. T sells the asset for $100, and buys another asset for $100. Under the investment adjustment system, P's basis in the T stock increases to $200, and the earnings and profits of P increase by $100. P later transfers all the stock of T to an unrelated consolidated group in exchange for 10 percent of the stock of X, the common parent of that group, in a transaction described in section 368 (a)(1)(B). At the time of the exchange, the value of the X stock recieved by P is $80.

(ii) Under section 358, P has a basis of $200 in the X stock it receives in exchange for T. Under section 362, X has a $200 basis in the T stock.

(iii) Neither paragraph (a)(1) nor (b)(1) of this section applies to the stock of T and P's transfer of the stock to the X group, because no gain or loss is recognized on the transfer, and the transfer is not a deconsolidation of the stock of T under paragraph (b)(2) of this section.

(iv) The X stock owned by P after the reorganization is a successor interest to the T stock because P's basis in the X stock is determined by reference to P's basis in the T stock. The purposes of this section require that, notwithstanding T's status as a member of the X group, the reorganization exchange be treated as a deconsolidation event. Because X is not a member of the P group, a failure to reduce the basis of the X stock owned by P to its fair market value would permit the P group to recognize and deduct the loss attributable to the T stock. The transfer of T stock to X therefore constitutes a deconsolidation of the T stock and P must reduce its basis in the T stock immediately before the transfer from $200 to its $60 value at that time.

Example (2). Continued application after deconsolidation. (i) P, the common parent of a group, buys all the stock of T for $100. T's only asset has a basis of $0 and a value of $100. T sells the asset for $100, and buys another asset for $100. Under the investment adjustment system, P's basis in the T stock increases to $200. P later transfers all the stock of T to partnership M in exchange for a partnership interest in M, in a transaction to which section 721 applies. The value of the T stock immediately before the transfer to M is $100. Less than 2 years later, P sells its interest in M for $60.

(ii) Under paragraph (b)(1) of this section, because the stock of T is deconsolidated on the transfer to M, immediately before the transfer to M, P reduces its basis in the T stock to the stock's $100 value immediately before the transfer. As a result, P has a basis of $100 in its interest in M, and M has a basis of $100 in the T stock.

(iii) When P sells its interest in M for $60, it recognizes a $20 loss. Because the basis of P's interest in M is determined by reference to P's basis in the T stock, and the reporting requirements could otherwise be circumvented, P's partnership interest in M is a successor interest to the T stock. Under paragraph (b)(4) of this section, P is required to file a statement with its return for the year of its disposition of its interest in M in order to deduct its loss. If P does not file the required statement described in paragraph (b)(4) of this section, P's loss on the disposition of its interest in M is disallowed.

(e) *Anti-stuffing rule*—(1) *Application.* This paragraph (e) if—

(i) A transfer of any asset (including stock and securities) after March 8, 1990 is followed within 2 years by a direct or indirect disposition or a deconsolidation of stock, and

(ii) The transfer is with a view to avoiding, directly or indirectly, in whole or in part—

(A) The disallowance of loss on the disposition or the basis reduction on the deconsolidation of stock of a subsidiary, or

(B) The recognition of the unrealized gain on the transferred asset.

A disposition after the 2-year period described in this paragraph (e)(1) that is pursuant to an agreement, option, or other arrangement entered into within the 2-year period is treated as a disposition within the 2-year period for purposes of this section.

(2) *Basis reduction.* If this paragraph (e) applies, the basis of the stock is reduced, immediately before the disposition or deconsolidation, to cause recognition of gain in an amount equal to the loss disallowance or basis reduction, or the gain recognition, otherwise avoided by reason of the transfer.

(3) *Examples.* The principles of this paragraph (e) are illustrated by the following examples:

Example (1). Basic stuffing case. (i) In Year 1, P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases from $100 to $200. In Year 5, P transfers to T an asset with a basis of $0 and a value of $100 in a transaction to which section 351 applies, with the view described in paragraph (e)(1) of this section. In Year 6, P sells all the stock of T for $200.

(ii) Under paragraph (e)(2) of this section, P must reduce the basis in its T stock by $100 immediately before the sale. This basis reduction causes a $100 gain to be recognized on the sale.

(iii) The $100 basis reduction also would be required if the T stock is deconsolidated in Year 6 instead of being sold. P must reduce the basis in its T stock by $100 immediately before the deconsolidation.

(iv) The $100 basis reduction also would be required if the P stock were acquired at the beginning of Year 6 by the M group, even though the asset transfer took place outside the M group. Paragraph (e)(1) requires only that the transferor have the view at the time of the transfer.

Example (2). Stacking rules. (i) In Year 1, P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases from $100 to $200. In Year 5, when the value of the T stock remains $100, P transfers to T an asset with a basis of $0 and a value of $100 in a transaction to which section 351 applies, with the view described in paragraph (e)(1) of this section. Thereafter, the value of the contributed asset declines to $10. In Year 6, P sells all the T stock for $110.

(ii) Because the transferred asset declined in value by $90, the transfer enabled P to avoid the disallowance of loss on the sale of T only to the extent of $10. Under paragraph (e)(2) of this section, P must reduce the basis in its T stock immediately before the sale to cause recognition of gain in an amount equal to the loss disallowance otherwise avoided by reason of the transfer. The amount of this basis reduction is $100, causing of $10 gain to be recognized on the sale.

(iii) Assume, instead, that the transferred asset does not decline in value and that T reinvests the $100 in proceeds from the asset sale in another asset that appreciates in value to $190. In Year 6, P sells T for $290. Because the new asset appreciated in value by $90, the transfer enabled P to avoid the disallowance of loss on the sale of T only to the extent of $10. Under paragraph (e)(2) of this section, P must reduce the basis in its T stock immediately before the sale to cause recognition of gain in an amount equal to the loss disallowance otherwise avoided by reason of the transfer. The amount of this basis reduction is $10, causing a $100 gain to be recognized on the sale.

Example (3). Contribution of built-in loss asset. (i) In Year 1, P forms S with a contribution of $100 in exchange for all of S's stock, and S becomes a member of the P group. S buys an asset for $100, and the asset appreciates in value to $200. P then buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100, and under the investment adjustment system P's basis in the T stock increases from $100 to $200. In Year 5, when the value of the T stock remains $100, P transfers the T stock to S in a transaction to which section 351 applies, with the view described in paragraph (e)(1) of this section. The transfer causes P's basis in the S stock to increase from $100 to $300 and the value of S to increase from $200 to $300. In Year 6, P sells the S stock for $300.

(ii) Under paragraph (e)(2) of this section, P must reduce the basis in its S stock immediately before the sale to cause recognition of gain in an amount equal to the gain recognition otherwise avoided by reason of the transfer. The amount of this basis reduction is $100, causing a $100 gain to be recognized on the sale.

Example (4). Absence of view. (i) In year 1, P forms S with a contribution of $100, and S becomes a member of the P group. S buys 2 assets, asset 1 with a basis of $50, which appreciates to $100, and asset 2 with a basis of $50 which declines in value to $0. S sells asset 1 for $100. Under the investment adjustment system, P's basis in the S stock increases from $100 to $150. In Year 5, S transfers asset 2 to P in a transaction to which § 1.1502–14(a) applies, with a view to having the group retain the loss inherent in the asset. This transfer reduces P's basis in the S stock from $150 to $100. In Year 6, P sells all the stock of S for $100.

(ii) The transfer from S to P achieves a result that could have been obtained by other methods that would not have been prevented by this section. The transfer therefore is not with the view described in paragraph (e)(1) of this section, P is not required to reduce the basis of its S stock under paragraph (e)(2) of this section. P is in substantially the same position holding asset 2 as it would be if S sold the asset and the resulting loss was available to the P group (either through S or by reattribution under paragraph (g) of this section).

Example (5). Extending the time period for dispositions. (i) In Year 1, P buys all the stock of T for $100, and T becomes a member of the P group. T has an asset with a basis of $0 and a value of $100. T sells the asset for $100. Under the investment adjustment system, P's basis in the T stock increases from $100 to $200. At the beginning of Year 5, P transfers to T an asset with a basis of $0 and a value of $100 in a transaction to which section 351 applies, with the view described in paragraph (e)(1) of this section. Within 2 years, P agrees to sell all the stock of T for $200 at the end of Year 7.

(ii) Under paragraph (e)(1) of this section, P's disposition of the T stock at the end of Year 7 is treated as occurring within the 2-year period following P's transfer of the asset to T, because the disposition is pursuant to an agreement reached within 2 years after the transfer. Accordingly, paragraph (e)(2) of this section, P must reduce the basis in its T stock by $100 immediately before the sale. This result is reached whether or not the agreement is in writing. P's disposition would also have been treated as occurring within the 2-year period if the disposition were pursuant to an option issued within the period.

(f) *Investment adjustments and earnings and profits—(1) Effect on investment adjustments and earnings and profits*—(i) *General rule.* For purposes of determining investment adjustments under § 1.1502–32 and earnings and profits under § 1.1502–33(c) with respect to a member that owns stock in a subsidiary, any deduction that is disallowed, or any amount by which basis is reduced, under this section is treated as a loss absorbed by the member in the tax year in which the disallowance or basis reduction occurs.

(ii) *Example.* (A) In Year, P forms S with a contribution of $100, and S becomes a member of the P group. S buys all the stock of T for $100. T has an asset with a basis of $0 and a value of $100. In Year 2, T sells the asset for $100. Under the investment adjustment system, S's basis in the T stock increases to $200, and P's basis in the S stock increases to $200. In Year 6, S sells all the stock of T for $100, and S's recognized loss of $100 is disallowed under paragraph (a)(1) of this section.

(B) Under paragraph (f)(1) of this section, the earnings and profits of S for Year 6 are reduced by $100, the amount of the loss disallowed under paragraph (a)(1). P's basis in the S stock is reduced from $200 to $100 under the investment adjustment system. Correspondingly, P's earnings and profits for Year 6 are reduced by $100, the amount of the loss disallowed under paragraph (a)(1) of this section.

(2) *Coordination rules*—(i) *Order of adjustments.* Deconsolidation of a share is treated as a disposition of the share for purposes of determining when investment adjustments are made to the share.

(ii) *No tiering up of certain adjustments.* If the basis of stock of a subsidiary owned by a member (the "owning member") is reduced under this section on the deconsolidation of the stock, no corresponding adjustment is made under § 1.1502–32 to the basis of the stock of the owning member (or any higher tier member) if a disposition or deconsolidation occurs in the same transaction with resect to all the stock of the owning member. In the case of a disposition or deconsolidation in the same transaction of less than all the stock of the owning member, appropriate adjustments shall be made under § 1.1502–32 with respect to the stock of the owning member (or any higher tier member).

(iii) *Example.* (A) P, the common parent of a group, owns all the stock of S, S owns all the stock of S1, and S1 owns all the stock of S2. P's basis in the S stock is $100, S's basis in the S1 stock is $100, and S1's basis in the S2 stock is $100. In Year 1, S2 buys T for $100.

T has an asset with a basis of $0 and a value of $100. In Year 2, T sells the asset for $100. Under the investment adjustment system, the basis of each subsidiary's stock increases from $100 to $200. In Year 6, S sells all the stock of S1 for $100 to A, an individual, and recognizes a loss of $100. S1, S2, and T are not members of a consolidated group immediately after the sale because the new S1 group does not file a consolidated return for its first taxable year.

(B) Under paragraph (a)(1) of this section, no deduction is allowed to S for its loss on the sale of the S1 stock. Under paragraph (f)(1) of this section, S's earnings and profits for Year 6 are reduced by the $100 loss that is disallowed. Correspondingly, under the investment adjustment system, S's reduction in earnings and profits causes a reduction in P's basis in the S stock, and a reduction in P's earnings and profits for Year 6.

(B) Under paragraph (b)(1) of this section, because the stock of T and S2 is deconsolidated, S2 must reduce the basis of the T stock from $200 to $100 (its value immediately before the deconsolidation), and S1 must reduce the basis of the S2 stock from $200 to $100 (its value immediately before the deconsolidation). Under paragraph (f)(1), S2's earnings and profits for Year 6 are reduced by the $100 reduction to the basis of the T stock, and S1's earnings and profits are reduced by the $100 reduction to the basis of the S2 stock. Under paragraph (f)(2)(ii) of this section, because the stock of S2 is reconsolidated in the same transaction, the basis reduction to the T stock does not cause any corresponding investment adjustment to the stock of S2, or to the stock of any higher tier subsidiary. Similarly, because the stock of S1 is disposed of in the same transaction, the reduction to the basis of the S2 stock does not cause an investment adjustment to the stock of S1, or the stock of any higher tier subsidiary.

(iv) *Basis reduction treated as investment adjustment.* For purposes of the consolidated return regulations, the amount of any basis reduction to stock under this section is generally treated as a net negative adjustment under § 1.1502–32(e) (in addition to the adjustment otherwise required under § 1.1502–32(e)) with respect to the stock. The amount of the basis reduction is not treated as a net negative adjustment for purposes of § 1.1502–32T(a), however.

(g) *Reattribution of subsidiary's losses to common parent*—(1) *Reattribution rule.* If a member disposes of stock of a subsidiary and the member's loss would be disallowed under paragraph (a)(1) of this section, the common parent may make an irrevocable election to reattribute to itself any portion of the net operating loss carryovers and net capital loss carryovers attributable to the subsidiary (and any lower tier subsidiary) without regard to the order in which they were incurred, provided the amount reattributed does not exceed the amount that would be disallowed if an election under this paragraph (g) were not made. The common parent succeeds to the reattributed losses as if the losses were succeeded to on the day of the disposition in a transaction to which section 381 applies. Any owner shift of the subsidiary (including any deemed owner shift resulting from section 382(g)(4)(D) or 382(1)(3)) in connection with the disposition will not be taken into account under section 382 with respect to the reattributed losses.

(2) *Insolvency limitation.* Losses of a subsidiary may not be reattributed under this paragraph (g) to the extent that the subsidiary and all higher tier subsidiaries are insolvent within the meaning of section 108(d)(3) at the time of the disposition. For purposes of determining insolvency, preferred stock of a subsidiary that is not owned by members is treated as a liability to the extent of the amount of preferred distributions to which the stock would be entitled if the subsidiary were liquidated on the date of the disposition.

(3) *Investment adjustments.* Any losses reattributed under this paragraph (g) are treated for purposes of determining investment adjustments under § 1.1502–32 and earnings and profits under § 1.1502–33(c) as absorbed by the subsidiary (or lower tier subsidiary) immediately before the disposition. The losses, however, are not treated as absorbed for other tax purposes, such as section 172 or section 1212.

(4) *Examples.* The principles of this paragraph (g) are illustrated by the following examples:

Example (1). Basis reattribution case. (i) P, the common parent of a group, forms S with a contribution of $100. S has an operating loss of $60, which produces a deficit in earnings and profits that reduces P's basis in the S stock by $60 under the investment adjustment system. The group is unable to use the loss, and the loss becomes a net operating loss carryover attributable to S. Under the investment adjustment system, P's basis in the S stock is increased by $60, the amount of the unused loss, thus preserving P's $100 basis in the S stock. The remaining assets of S appreciate in value, and P sells all the stock of S for $55. But for an election to reattribute losses under this paragraph (g), P would have a $45 loss on the sale of S that would be disallowed.

(ii) P elects under paragraph (g)(1) of this section to reattribute to itself $45 of S's losses (the maximum amount permitted). As a result, $45 of the $60 net operating loss carryover attributable to S is reattributed to P. This reattributed loss may be included in the net operating loss carryover to subsequent consolidated return years of the P group. The remaining $15 of net operating loss carryover attributable to S is carried over to the first separate return year of S.

(iii) The $45 reattributed loss is treated, solely for purposes of the investment adjustment system, as absorbed by S immediately before the disposition. This reduces P's basis in the S stock to $55 immediately before the disposition. As a result, P does not recognize any gain or loss on the disposition. However, this deemed absorption for purposes of determining investment adjustments does not affect the use of the loss by the P group.

(iv) Assume that $20 of S's losses arose in Year 1 and $40 in Year 2, and that P elects to reattribute all $40 from Year 2 and $5 from Year 1. These losses retain their character as ordinary losses arising in Years 1 and 2. The losses continue to be subject to any limitations originally applicable to S, but P succeeds to them and may absorb the losses independently of S. (For example, P's use of the Year 2 losses does not depend on S's use of the Year 1 losses that were not reattributed to P.)

Example (2). Lower tier subsidiary. (i) P, the common parent of a group, forms S with a contribution of $100. S then forms T with a contribution of $40, and T borrows $60 from an unrelated lender. S has a net operating loss of $30. T has a net operating loss of $55 and is insolvent by $15. The group is unable to use these losses and the losses become net operating loss carryovers attributable to T and S. Under the investment adjustment system, S's basis in the T stock remains $40 and P's basis in the S stock remains $100. P sells all of the S stock for $30 ($100 invested, less S's $30 net operating loss and S's $40 unrealized loss on its investment in T stock). But for an election to reatttribute losses under this paragraph (g), P would have a $70 loss on the sale of the S stock that would be disallowed.

(ii) S's $30 portion of the net operating loss carryover may be reattributed to P under paragraph (g)(1) of this section. Because T is insolvent by $15, paragraph (g)(2) of this section provides that only $40 of its $55 portion of the net operating loss carryover may be reattributed to P under paragraph (g)(1). There is no limitation, however, on which $40 of T's $55 loss may be reattributed.

(iii) P elects under paragraph (g)(1) of this section to reattribute to itself $40 of T's losses (the maximum amount permitted). P does not elect, however, to reattribute to itself any of S's losses. As a result, $40 of the $85 net operating loss carryover is reattributed to P. This reattributed loss may be included in the net operating loss carryover to subsequent consolidated return years of the P group. Of the $45 remaining net operating loss carryover, the $15 attributable to T and $30 attributable to S are carried over to their first separate return years.

(iv) The loss reattributed from T is treated, solely for purposes of the investment adjustment system, as absorbed by T immediately before the disposition. This reduces P's basis in the S stock to $60 immediately before the disposition. As a result, P recognizes only a $30 loss on the disposition of its S stock ($30 sale proceeds and $60 basis). However, this deemed absorption for purposes of determining investment adjustments does not affect the use of the loss by the P group.

Example (3). Separate return limitation year losses. (i) P, the common parent of a group, buys the stock of S for $100. S has a net operating loss carryover of $40 from a separate return limitation year, and assets with a value and basis of $100. The assets of S decline in value by $40, and P sells all the stock of S for $60. But for an election to reattribute losses under this paragraph (g), P would have a $40 loss on the sale of S that would be disallowed.

(ii) S's $40 loss carryover from a separate return limitation year is included in the P group's net operating loss carryovers and may be reattributed to P under paragraph (g)(1) of this section.

(iii) P elects under paragraph (g)(1) of this section to reattribute to itself S's $40 loss (the maximum amount permitted). Following the reattribution, the loss is included in the net operating loss carryover to subsequent consolidated return years of the P group.

(iv) The loss reattributed from S is treated, solely for purposes of the investment adjustment system, as absorbed by S immediately before the disposition. This reduces P's basis in the S stock to $100 immediately before the disposition. As a result, P recognizes no gain or loss on the disposition of its S stock. However, this deemed absorption for purposes of determining investment adjustments does not affect the use of the loss by the P group.

(5) *Time and manner of making the election*—(i) *In general.* The election described in paragraph (g)(1) of this section must be made in a separate statement entitled "This is an Election Under Section 1.1502–20(g)(1) to Reattribute Losses of [insert names and employer identification numbers (E.I.N.) of each subsidiary whose losses are reattributed] to [insert name and employer identification number of common parent]." The statement must include the following information—

(A) For each subsidiary, the amount of each net operating loss and net capital loss, and the year in which each arose, that is reattributed to the common parent, and

(B) If a subsidiary ceases to be a member, the name and employer identification number of the person acquiring the subsidiary's stock.

The statement must be signed by the common parent, and by each subsidiary with respect to which loss is reattributed under this paragraph (g) that does not remain a member of the common parent's group immediately following the disposition. The statement must be filed with the group's income tax return for the tax year of the disposition and, if the subsidiary (or lower tier subsidiary) ceases to be a member, a copy delivered on or before the time that return is required to be filed with the acquirer. If the acquirer is a subsidiary in a consolidated group, the name and employer identification number of the common parent of the group must be included in the statement, and a copy of the statement must also be delivered to the common parent.

(ii) *Filing of subsidiary's copy of statement.* The subsidiary whose losses are reattributed (or the common parent of any consolidated group that acquires the subsidiary or lower tier subsidiary) must attach its copy of the statement described in paragraph (g)(5)(i) of this section to its return for the first year ending after the due date, including extensions, of the return in which the election required by paragraph (g)(5)(i) is to be filed.

(h) *Effective dates*—(1) *General rule.* This section is effective December 26, 1990. Except as otherwise provided in this paragraph (h), this section applies with respect to dispositions and deconsolidations after January 31, 1991. For this purpose, dispositions deferred under §§ 1.1502–13, 1.1502–13T, 1.1502–14, and 1.1502–14T are deemed to occur at the time the deferred gain or loss is taken into account unless the stock was deconsolidated before February 1, 1991. If stock of a subsidiary became worthless during a taxable year including Febraury 1, 1991, the disposition with respect to the stock is treated as occurring on the date the stock became worthless.

(2) *Election to accelerate effective date*—(i) *In general.* A group may make an irrevocable election to apply this section to all its members, in lieu of § 1.337(d)–2, with respect to all dispositions and deconsolidations after November 18, 1990.

(ii) *Time and manner of making the election—in general.* The election described in paragraph (h)(2) of this section must be made in a separate statement entitled "This is an Election Under Section 1.1502–20(h)(2) to Accelerate the Application of § 1.1502–20 to the Consolidated Group of Which [insert name and employer identification number of common parent] is the Common Parent." The statement must be signed by the common parent and filed with the group's income tax return for the tax year of the first disposition or deconsolidation to which the election applies. If the separate statement required under this paragraph (h)(2)(ii) is to be filed with a return the due date (including extensions) of which is before April 16, 1991, the statement may be filed with an amended return for the year of the disposition or deconsolidation. Any other filings required under this § 1.1502–20, such as the statement required under § 1.1502–20(c)(3), which ordinarily cannot be made with an amended return, must be made at such time and in such manner as permitted by the Commissioner.

(3) *Binding contract rule.* For purposes of this paragraph (h), if a disposition or deconsolidation is pursuant to a binding written contract entered into before March 9, 1990, and in continuous effect until the disposition or deconsolidation, the date the contract became binding is treated as the date of the disposition or deconsolidation.

(4) *Cross reference.* For transitional loss limitation rules, see §§ 1.337(d)–1 and 1.337(d)–2.

Par. 5. Section 1.267(f)–3T is redesignated as § 1.267(f)–3, and is revised to read as follows:

§ 1.267(f)–3 Disposition or deconsolidation of subsidiary stock.

For purposes of applying section 267(f)(2) to the sale or exchange of the stock of one member of a consolidated group by another member, see §§ 1.337(d)–1(a), 1.337(d)–2(a), and 1.1502–20(a). For purposes of this section, the definitions in § 1.1502–1 apply.

Par. 6. Paragraph (e)(1) of § 1.337(d)–1 is revised to read as follows:

§ 1.337(d)–1 Transitional loss limitation rule.

* * * * *

(e) *Effective dates*—(1) *General rule.* This section is effective November 19, 1990, and applies with respect to dispositions after January 6, 1987. After November 18, 1990, however, this section applies only if the stock was deconsolidated (as that term is defined in § 1.337(d)–2 (b)(2)) before November 19, 1990, and only to the extent the disposition is not subject to § 1.337(d)–2 or § 1502–20.

* * * * *

Par. 7. Paragraph (r) of § 1.1502–12 is revised to read as follows:

§ 1.1502–12 Separate taxable income.

* * * * *

(r) For rules relating to loss disallowance or basis reduction on the disposition or deconsolidation of stock of a subsidiary, see §§ 1.337(d)–1, 1.337(d).2 and 1.1502–20.

* * * * *

Par. 8. The last sentence of § 1.1502-32 (a) is revised to read as follows:

§ 1.1502-32 Investment adjustment.

(a) * * * For rules relating to loss disallowance or basis reduction on the disposition or deconsolidation of stock of a subsidiary, see §§ 1.337(d)-1, 1.337(d)-2 and 1.1502-20.

* * * * *

Par. 9. The last sentence of § 1.1502-33 (c)(6) is revised to read as follows:

§ 1.1502-33 Earnings and profits.

* * * * *

(c) * * *

(6) * * * For rules relating to the effect on earnings and profits of loss disallowance or basis reduction on the disposition or deconsolidation of stock of a subsidiary, see §§ 1.337(d)-1, 1.337(d)-2 and 1.1502-20.

* * * * *

Par. 10. Section 1.1502-79 is amended by adding paragraph (a)(1)(iii) to read as follows:

§ 1.1502-79 Separate return years.

(a) * * *

(1) * * *

(iii) For rules permitting the reattribution of losses of a subsidiary to the common parent in the case of loss disallowance or basis reduction on the disposition or deconsolidation of stock of the subsidiary, see §1.1502-20.

* * * * *

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 90-27572 Filed 11-19-90; 3:43 pm]

BILLING CODE 4830-01-M

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26 CFR Part 1

[CO-93-90]

RIN 1545-AP20

Corporations; Consolidated Returns—Special Rules Relating to Dispositions and Deconsolidations of Subsidiary Stock

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations implementing the repeal on the general utilities doctrine and eliminating duplication of loss with respect to members of affiliated groups filing consolidated returns. The regulations apply to a disposition or deconsolidation of stock of a subsidiary of the group.

DATES: The public hearing will be held on Friday, January 25, 1991, beginning at 10 a.m. Request to speak and outlines of oral comments must be received by Friday, January 11, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (CO-93-90), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-343-0232 or 202-566-3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 337(d) and 1502 of the Internal Revenue Code of 1986. The proposed regulations appear in the proposed rules section of this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, January 11, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Cynthia E. Grigsby,

Alternate Federal Register, Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90-27570 Filed 11-19-90; 3:43 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 570

RIN 1215-AA09

Subpart E—Occupations Particularly Hazardous for the Employment of Minors Between 16 and 18 Years of Age, or Detrimental to Their Health or Well-Being

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: This document reopens and extends the period for filing written comments on proposed changes to three existing Hazardous Occupation Orders (HOs) issued pursuant to section 3(1) of the Fair Labor Standards Act, which prohibit the employment of minors under 18 years of age in occupations declared by the Secretary of Labor to be particularly hazardous for such minors, or detrimental to their health or well-being. The affected HOs are those related to the operation of a motor vehicle (HO 2), the use of power-driven meat processing equipment (HO 10), and the operation of paper-products machines (HO 12). This action is taken in order to provide interested parties with additional time to submit their comments.

DATES: Comments must be received on or before December 24, 1990.

ADDRESSES: Address written comments (preferably in triplicate) to Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S-3502, 200 Constitution Avenue NW., Washington, DC 20210. Commenters who would like notification of receipt of their comments should include a self-addressed, stamped post card.

FOR FURTHER INFORMATION CONTACT: Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S-3502, 200 Constitution Avenue NW., Washington, DC 20210, Telephone: 202-523-8305 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 23, 1990 (55 FR 42812), the Department of Labor published a notice of proposed rulemaking concerning HOs 2, 10, and 12. Interested parties were requested to submit comments on or before November 23, 1990.

Because of the interest in this matter, the Department believes it is desirable to grant an extension of the comment period for interested parties. Therefore, the comment period for submitting information concerning these HOs is reopened and extended to December 24, 1990.

Signed at Washington, DC, on this 20th day of November 1990.

Samuel D. Walker,

Acting Administrator, Wage and Hour Division.

[FR Doc. 90-27681 Filed 11-23-90; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Medical Documentation

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed amendment of rule.

SUMMARY: This proposed rule amends DoD 6010.8-R (32 CFR part 199) which implements the Civilian Health and Medical Program of the Uniformed Services. The proposed rule clarifies and strengthens medical documentation requirements under the CHAMPUS. This will assist in the maintenance of an adequate level of quality care and help ensure that payment is made only for services rendered.

DATES: Written public comments must be received on or before December 26, 1990.

ADDRESSES: Comments should be sent to the Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

FOR FURTHER INFORMATION CONTACT: David E. Bennett, Office of Program Development, OCHAMPUS, telephone (303) 361-3537.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as part 199 of title 32 CFR. DoD 6010.8-R was reissued in the **Federal Register** on July 1, 1988 (51 FR 24008).

The need for thorough medical documentation for verification of services has been dramatically demonstrated through the utilization review of services provided to CHAMPUS beneficiaries, particularly within various mental health settings. The lack of pertinent information has often made it impossible to determine the patient's clinical condition, actual treatment rendered, the quality and effectiveness of the care provided, or the identity and qualifications of the staff providing treatment services.

As a result, appropriate medical documentation has become increasingly important to CHAMPUS in the verification of mental health services, since there are few objectives indicators to validate professional opinions about diagnoses, response to treatment, and severity of illness. This has placed more emphasis on the need for complete and timely treatment plans, progress notes, and treatment summaries prepared in accordance with Joint Commission on Accreditation of Healthcare Organizations (JCAHO) Consolidated Standard Manual for Child, Adolescent, and Adult Psychiatric, Alcoholism, and Drug Abuse Facilities and Facilities Serving the Mentally Retarded.

In the case of inpatient acute medical care, progress notes are usually written on at least a daily basis, with the attending physician documenting all identifiable physician services. However, this is often not the case with mental health care where providers may see patients 4 to 5 times a week and make weekly summary notes in the patients' clinical records. Since progress notes provide a vehicle for ongoing and periodic recording of information about the patient's status, behavior and response to treatment, it is important that each clinical event be documented as soon as possible after its occurrence. This is especially relevant with the multiplicity and overlapping of care inherent in the treatment team approach. Also, the use of a generalized statement, such as "the patient is still depressed about the divorce and does not feel ready to face the outside world" is of little value. The documentation should reveal the issues and pathology addressed in the therapy session, the therapeutic intervention attempted during the session, and the degree of progress toward established treatment goals.

The importance of progress notes is further emphasized in the way CHAMPUS views the reimbursement of inpatient and outpatient psychotherapy sessions. Under current policy, CHAMPUS allows payment for 60 minute psychotherapy sessions consisting of 50 minutes of actual therapy and 10 minutes of recording the session in the patient's chart.

Due to the importance of documentation in assuring quality of care and verification of services, minimal requirements are being proposed, along with specific time frames for their incorporation into the medical records. These medical documentation requirements have been in effect under the Contracted Provider Arrangement (CPA) Norfolk Mental Health Services demonstration project since April 1, 1989, and were published in a **Federal Register** notice (54 FR 13935) on April 6, 1989. The effectiveness of the requirements has been established since that date with minimal administrative burden to providers. These documentation requirements are similar to those currently being used by the CHAMPUS mental health review contractor (CHAMP-MH Approved Mental Health Care) responsible for managing mental health utilization for CHAMPUS beneficiaries nationwide.

Based on existing Regulation interpretation, the medical records for Residential Treatment Centers (RTCs), acute psychiatric hospitals, psychiatric units within acute care institutions, alcohol rehabilitation facilities, partial hospitalization programs, and outpatient psychotherapy must, at a minimum, be maintained in accordance with the JCAHO Consolidated Standard Manual for Child, Adolescent, and Adult Psychiatric, Alcoholism, and Drug Abuse Facilities and Facilities Serving the Mentally Retarded. The new requirements will complement the JCAHO consolidated standards, ensuring that specific care was actually and appropriately furnished, was medically or psychologically necessary, and will identify the individuals providing the care.

The proposed regulation changes will clarify and strengthen CHAMPUS' requirements for accurate, legible and timely medical documentation of services provided to its beneficiaries. This will require that contemporaneous medical records are maintained in accordance with generally accepted medical practice and that services are actually being rendered. Maintenance of appropriate medical documentation is an essential ingredient in the overall care of the patient assuring medical necessity and appropriateness of care. It serves as a basis for planning a patient's care and for the ongoing evaluation of the patient's condition and treatment. A provider's failure to comply with these new documentation requirements can result in sanctions being imposed by the

Director, OCHAMPUS, or a designee, under § 199.9 of this Regulation.

Regulatory Procedures

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would result in an annual effect on the national economy of $100 million or more or have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a signficant impact on a substantial number of small entities.

This proposed rule is not a major rule under Order 12291. The changes set forth in this proposed rule are minor revisions to existing regulation. In addition, this proposed rule will have very minor impact and not significantly affect a substantial number of small entities. In light of the above, no regulatory impact analysis is required.

This proposed rule does not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel.

Accordingly, 32 CFR, part 199, is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301, Pub. L. 101–165, sec. 9100.

2. Section 199.2(b) is amended by adding the definition for "Progress notes" in alphabetical order as follows:

§ 199.2 Definitions.

* * * * *

(b) *Specific definitions.*

* * * * *

Progress notes. Progress notes are an essential component of the medical record wherein health care personnel provide written evidence of ordered and supervised diagnostic tests, treatments, medical procedures, therapeutic behavior and outcomes. In the case of mental health, progress notes must include: the date of the therapy session; length of the therapy session; a notation of the patient's signs and symptoms; the issues, pathology and specific behaviors addressed in the therapy session; a statement summarizing the therapeutic interventions attemped during the therapy session; descriptions of the response to treatment, the outcome of the treatment, and the response to significant others; and a statement summarizing the patient's degree of progress toward the treatment goals. Progress notes do not need to repeat all that was said during a therapy session but must document a patient contact and be sufficiently detailed to allow for both peer review and audits to substantiate the quality and quantity of care rendered.

* * * * *

3. Section 199.6 is amended by adding new paragraph (b)(1)(iii), by adding new paragraphs (b)(4)(iv)(D), (b)(4)(vii)(E), (b)(4)(x)(B)(*3*)(*vii*), and (c)(1)(v).

§ 199.6 Authorized providers.

* * * * *

(b) * * *

(1) * * *

(iii) *Medical records.* Institutional providers must provide adequate contemporaneous clinical records to substantiate that specific care was actually furnished, was medically necessary, and appropriate, and to identify the individual(s) who provided the care. The minimum requirements for medical record documentation are requirements set forth by either:

(A) The congnizant state licensing authority;

(B) The Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or other health care accreditation organizations as may be appropriate;

(C) Standards of practice established by national medical organizations; or

(D) This Regulation.

Note: If more than one of these four standards is applicable, then the strictest standard is mandatory.

* * * * *

(4) * * *

(iv) * * *

(D) At a minimum, medical records will be maintained in accordance with the JCAHO Consolidated Standard Manual for Child, Adolescent, and Adult Psychiatric, Alcoholism, and Drug Abuse Facilities and Facilities Serving the Mentally Retarded, along with the requirements set forth in § 199.7(b)(3). The hospital is responsible for assuring that patient services and all treatment are accurately documented and completed in a timely manner.

* * * * *

(vii) * * *

(E) At a minimum, medical records will be maintained in accordance with the JCAHO Consolidated Standard Manual for Child, Adolescent, and Adult Psychiatric, Alcoholism, and Drug Abuse Facilities and Facilities Serving the Mentally Retarded, along with the requirements set forth in § 199.7(b)(3). The residential treatment center is responsible for assuring that patient services and all treatment are accurately documented and completed in a timely manner.

* * * * *

(x) * * *

(B) * * *

(*3*) * * *

(*vii*) At a minimum, medical records will be maintained in accordance with the JCAHO Consolidated Standard Manual for Child, Adolescent, and Adult Psychiatric, Alcoholism, and Drug Abuse Facilities and Facilities Serving the Mentally Retarded, along with the requirements set forth in § 199.7(b)(3). The alcohol rehabilitation facility is responsible for assuring that patient services and all treatment are accurately documented and completed in a timely manner.

* * * * *

(c) * * *

(1) * * *

(v) *Medical records:* Individual professional providers must maintain adequate clinical records to substantiate that specific care was actually furnished, was medically necessary, and appropriate, and identify(ies) the individual(s) who provided the care. This applies whether the care is inpatient or outpatient. The minimum requirements for medical record documentation are requirements set forth by either:

(A) The cognizant state licensing authority;

(B) The Joint Commission on Accreditation of Healthcare Organizations, or other health care accreditation organizations as may be appropriate;

(C) Standards of practice established by national medical organizations; or

(D) This Regulation.

Note: If more than one of these four standards is applicable, then the strictest standard is mandatory.

* * * * *

4. Section 199.7 is amended by revising paragraph (a) introductory text, by revising paragraphs (b)(2)(ix) introductory text and (b)(2)(ix)(A), by adding new paragraph (b)(2)(x)(D), by redesignating paragraphs (b)(3) and (b)(4) as paragraphs (b)(4) and (b)(5), by adding new paragraph (b)(3), by revising newly designated paragraphs (b)(5)(i) introductory text and (b)(5)(ii), by adding new paragraph (b)(5)(iii), by adding a note immediately following paragraph (c)(1)(iii), by revising paragraph (c)(2)(i)(A), and by adding new paragraph (i)(3).

§ 199.7 Claims submission, review, and payment.

* * * * *

(a) *General.* The Director, OCHAMPUS, or a designee, is responsible for ensuring that benefits under CHAMPUS are paid only to the extent described in this Regulation. Before benefits can be paid, an appropriate claim must be submitted that includes sufficient information as to beneficiary identification, the medical services and supplies provided, and double coverage information, to permit proper, accurate, and timely adjudication of the claim by the CHAMPUS contractor or OCHAMPUS. Providers must be able to document that the care or service shown on the claim was rendered. This section sets forth minimum medical record requirements for verification of services. Subject to such definitions, conditions, limitations, exclusions, and requirements as may be set forth in this Regulation, the following are the CHAMPUS claim filing requirements:

* * * * *

(b) * * *

(2) * * *

(ix) *Physicians or other authorized individual professional providers.* The claims must give the name of the individual actually rendering the care, along with the individual's professional status (e.g., M.D., Ph.D., R.N., etc.) and provider number, if the individual signing the claim is not the provider who actually rendered the service. The following information must also be included:

(A) Date each service was rendered.

* * * * *

(x) * * *

(D) *Professional services.* The claims must give the name of the individual actually rendering the care, along with the individual's professional status (e.g., M.D., Ph.D., R.N., etc.).

* * * * *

(3) *Medical records/medical documentation.* Medical records are of vital importance in the care and treatment of the patient. Medical records serve as a basis for planning of patient care and for the ongoing evaluation of the patient's treatment and progress. Accurate and timely completion of orders, notes, etc., enable different members of a health care team and subsequent health care providers to have access to relevant data concerning the patient. Appropriate medical records must be maintained in order to accommodate utilization review and to substantiate that billed services were actually rendered.

(i) All care rendered and billed must be appropriately documented in writing. Failure to document the care billed will result in the claim or specific services on the claim being denied CHAMPUS cost-sharing.

(ii) A pattern of failure to adequately document medical care will result in episodes of care being denied CHAMPUS cost-sharing.

(iii) Cursory notes of a generalized nature that do not identify the specific treatment and the patient's response to the treatment are not acceptable.

(iv) The documentation of medical records must be legible and prepared as soon as possible after the care is rendered. Entries should be made when the treatment described is given or the observations to be documented are made. The following are documentation requirements and specific time frames for entry into the medical records:

(A) Admission evaluation within 24 hours of admission.

(B) Completed history and physical examination report within 72 hours of admission.

(C) Nursing notes at the end of each shift.

(D) Daily physician notes.

(E) Requirements specific to mental health services:

(*1*) Individual and family therapy within 24 hours of procedure for acute, detoxification and Residential Treatment Center (RTC) programs and within 48 hours for partial programs.

(*2*) Preliminary treatment plan within 24 hours of admission.

(*3*) Master treatment plan within 72 hours of admission for acute care, 7 days for RTC and full-day partial programs and within 5 days for half-day partial programs.

(*4*) Family assessment within 72 hours of admission for acute care and 7 days for RTC and partial programs.

(*5*) Nursing assessment within 24 hours of admission.

(*6*) Daily physician notes for intensive treatment, detoxification, and rapid stabilization programs; twice per week for acute programs; and once per week for RTC and partial programs.

(*7*) Group therapy once per week.

(*8*) Ancillary services once per week.

(*9*) Daily therapeutic milieu notes which are formally evaluated and incorporated into the treatment plan by a CHAMPUS authorized mental health professional on a weekly basis.

Note: A pattern of failure to meet the above criteria may result in provider sanctions prescribed under § 199.9 of the regulation.

* * * * *

(5) * * *

(i) As a condition precedent to the cost-sharing of benefits under this Regulation or pursuant to a review or audit, whether the review or audit is prospective, concurrent, or retroactive, OCHAMPUS or CHAMPUS contractor may request, and shall be entitled to receive, information from a physician or hospital or other person, institution, or organization (including a local, state, or Federal Government agency) providing services or supplies to the beneficiary for whom claims or requests for approval for benefits are submitted. Such information and records may relate to the attendance testing, monitoring, examination, diagnosis, treatment, or services and supplies furnished to a beneficiary and, as such, shall be necessary for the accurate and efficient administration of CHAMPUS benefits. This may include requests for copies of all medical records or documentation related to the episode of care. In addition, before a determination on a request for preauthorization or claim of benefits is made, a beneficiary, or sponsor, shall provide additional information relevant to the requested determination, when necessary. The recipient of such information shall hold such records confidential except when:

* * * * *

(ii) For the purposes of determining the applicability of and implementing the provisions of §§ 199.8 and 199.9, or any provision of similar purpose of any other medical benefits coverage or entitlement, OCHAMPUS or CHAMPUS fiscal intermediaries, without consent or notice to any beneficiary or sponsor, may release to or obtain from any insurance company or other organization, governmental agency, provider, or person, any information with respect to any beneficiary when such release constitutes a routine use duly published in the Federal Register in accordance with the Privacy Act.

(iii) Before a beneficiary's claim of benefits is adjudicated, the beneficiary or the provider(s) must furnish to CHAMPUS that information which is necessary to make the benefit determination. Failure to provide the requested information will result in denial of the claim. A beneficiary, by submitting a CHAMPUS claim(s) (either a participating or nonparticipating claim), is deemed to have given consent to the release of any and all medical records or documentation pertaining to the claims and the episode of care.

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(c) * * *
(1) * * *
(iii) * * *

Note: If the care was rendered to a minor and a custodial parent or legal guardian requests information prior to the minor turning 18 years of age, medical records may still be released pursuant to the signature of the parent or guardian, and claims information may still be released to the parent or guardian in response to the request, even though the beneficiary has turned 18 between the time of the request and the response. However, any follow-up request or subsequent request from the parent or guardian, after the beneficiary turns 18 years of age, will necessitate the authorization of the beneficiary (or the beneficiary's legal guardian as appointed by a cognizant court), before records and information can be released to the parent or guardian.

* * * * *

(2) * * *
(i) * * *

(A) Certifies that the specific medical care listed on the claim form was, in fact, rendered to the specific beneficiary for which benefits are being claimed, on the specific date or dates indicated, at the level indicated and by the provider signing the claim unless the claim otherwise indicates another individual provided the care. For example, if the claim is signed by a psychiatrist and the care billed was rendered by a psychologist or licensed social worker, the claim must indicate both the name and profession of the individual who rendered the care.

* * * * *

(I) * * *

(3) *Fraudulent billing.* Claims that are submitted to CHAMPUS that include a billing for services, supplies, or equipment not furnished, or used by, CHAMPUS beneficiaries will be denied in their entirety, regardless of the relative amount of the fraudulent billing compared to the total billings. Claims that have been CHAMPUS cost-shared that are retroactively audited or reviewed and are found to include fraudulent billings may be denied in part or in total based on the discretion of the Director, OCHAMPUS, or a designee.

* * * * *

5. Section 199.10 is amended by adding a note after paragraph (a)(2)(ii)(B).

* * * * *

§ 199.10 Appeal and hearing procedures.

(a) * * *
(2) * * *
(ii) * * *
(B) * * *

Note: The custodial parent or legal guardian (appointed by a cognizant court) of a minor beneficiary may initiate an appeal based on the above presumption. However, should a minor beneficiary turn 18 years of age during the course of an appeal, then any further requests to appeal on behalf of the beneficiary must be from the beneficiary or pursuant to the written authorization of the beneficiary appointing a representative. For example, if the beneficiary is 17 years of age and the sponsor (who is a custodial parent) requests a formal review, absent written objection by the minor beneficiary, the sponsor is presumed to be acting on behalf of the minor beneficiary. Following the issuance of the formal review, the sponsor requests a hearing; however if, at the time of the request for a hearing, the beneficiary is 18 years of age or older, the request must either be by the beneficiary or the beneficiary must appoint a representative. The sponsor, in this example, could not pursue the request for hearing without being appointed by the beneficiary as the beneficiary's representative.

* * * * *

Dated: November 9, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-28939 Filed 11-23-90; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 435

[FRL 3863-1]

Oil and Gas Extraction Point Source Category, Offshore Subcategory; Effluent Limitations Guidelines and New Source Performance Standards; Proposal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal and reproposal.

SUMMARY: EPA is developing regulations under the Clean Water Act to establish effluent limitations guidelines based on the best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) and new source performance standards (NSPS) limiting discharges to waters of the United States from facilities in the oil and gas extraction point source category, offshore subcategory. This notice is an initial proposal and reproposal that presents the major regulatory options that the Agency is currently considering for control of drilling fluids, drill cuttings, produced water, deck drainage, produced sand, well treatment/workover fluids and domestic and sanitary wastes. EPA intends to issue a more detailed notice regarding this proposal by February 28, 1991.

DATES: The comment period for this notice will end on December 26, 1990. Commenters may submit comments on this proposal either during the comment period for this notice or during the comment period for the more detailed notice. Commenters also may submit comments on both notices. A 30 day comment period will follow the publication of the more detailed notice referred to above.

FOR FURTHER INFORMATION CONTACT: Further information regarding this notice may be obtained from Marvin Rubin, Chief, Energy Branch, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; (202) 382-7124.

SUPPLEMENTARY INFORMATION:

Legal Authority

The regulations described in this notice are proposed under the authority of sections 301, 304, 306, 307 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended, 33 U.S.C. 1251, et seq.)

Proposal

EPA is developing effluent limitations guidelines and standards under the Clean Water Act for control of drilling fluids, drill cuttings, produced water, deck drainage, produced sand, well treatment/workover fluids and domestic and sanitary wastes based on the best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) and new source performance standards (NSPS). The Agency is issuing this notice in response to a Settlement Agreement approved on April 5, 1990 in *NRDC* v. *Reilly*, D.D.C. No. 79-3443 (JHP). Under the terms of that agreement, EPA is to propose or repropose BAT and BCT effluent limitations guidelines and new source performance standards for produced water, drilling fluids and drill cuttings, well treatment fluids and produced sand, as described at 50 FR 34595 (August 26, 1985), by November 16, 1990. EPA is to promulgate final guidelines and standards covering those wastestreams by June 19, 1992. In addition, EPA is to determine by November 16, 1990 whether to propose effluent limitations guidelines and new source performance standards covering domestic and sanitary wastes and, if it determines to do so, to promulgate final guidelines and standards covering those wastestreams by June 30, 1993.

EPA has determined that it is appropriate to propose effluent limitations guidelines and new source performance standards covering domestic and sanitary wastes and has included such proposals in this notice. The Agency is using its best efforts to comply with the promulgation dates established in the Settlement Agreement and currently expects to meet them.

In 1979, EPA issued effluent limitations guidelines based on the best practicable control technology currently available (BPT) covering the offshore subcategory of the oil and gas extraction point source category. (40 CFR part 435, subpart A.) In addition, EPA has issued a series of general permits that set BAT and BCT limitations applicable to sources in the offshore subcategory on a Best Professional Judgment (BPJ) basis under 402(a)(1) of the Clean Water Act. *See e.g.*, 51 FR 24897 (July 9, 1986) (Gulf of Mexico General Permit); 49 FR 23734 (June 7, 1984), modified 52 FR 36461 (September 29, 1987) (Bering and Beaufort Seas General Permit); 50 FR 23578 (June 4, 1985) (Norton Sound General Permit); 51 FR 35460 (October 3, 1986) (Cook Inlet/Gulf of Alaska General Permit); 53 FR 37846 (September 28, 1988), modified 54 FR 39574 (September 27, 1989) (Beaufort Sea II/ Chuckchi Sea General Permit).

For a general account of prior notices issued in these rulemaking proceedings, a summary of the legal background relevant to this rulemaking and an overview of the industry see 50 FR 34592-5. EPA proposed BAT, BCT and NSPS for the offshore subcategory of the oil and gas extraction point source category in the **Federal Register** on August 26, 1985 (50 FR 34592) and published a development document for the proposal. Subsequently, EPA published a Notice of Data Availability and Request for Comments in the **Federal Register** on October 21, 1988 (53 FR 41356). The October 21, 1988 notice presented additional data related to the development of discharge limitations for drilling fluids and drill cuttings that the Agency received following the 1985 proposal.

Since 1988, the Agency has completed several studies and acquired new information pertaining to drilling fluids and drill cuttings, produced water and other wastestreams associated with offshore oil and gas extraction activities. These latest efforts have been directed toward examination of some of the BAT, BCT and NSPS options proposed in 1985 and also toward proposal of new options or variations of the previously proposed options that EPA has developed as a result of recent data review and analysis. The data gathering conducted since 1985 has focused on four areas: (1) Evaluation of variability in the results of the test method used to measure the toxicity of drilling fluids; (2) the prohibition on diesel oil discharges for drilling fluids and drill cuttings; (3) the characteristics and treatment of produced waters; and (4) the characteristics and treatment of deck drainage, produced sand, well treatment/workover fluids and domestic and sanitary wastes.

The results of these and other studies have led the Agency to develop some regulatory options that are different from those proposed in 1985. The major additional options that EPA has developed, along with previously proposed options that are still being considered, are set forth below by wastestream.

I. Drilling Fluids and Drill Cuttings

Drilling fluids, or muds, are suspensions of solids and dissolved materials in a base of water or oil that are used in rotary drilling operations to lubricate and cool the drill bit, carry cuttings from the hole to the surface and maintain hydrostatic pressure down hole. Drill cuttings are particles cut from the formation in the well bore by the drill bit. See 50 FR 34588-34600. EPA is considering the following options for drilling fluids and cuttings at the BAT, BCT and NSPS levels of control:

5/3 All Structures

This option includes four provisions: a toxicity limitation set at 30,000 ppm in the suspended particulate phase; a prohibition on the discharge of diesel oil; a prohibition on the discharge of "free oil;" and limitations for cadmium and mercury in the stock barite (not in discharged drilling fluids) set at 5 mg/kg and 3 mg/kg, respectively. These discharge limitations would be applicable to all offshore structures regardless of their distance from shore. In the event that the mud system does not meet these discharge limitations, the requirements could be met through recycling/reuse of the mud system on the platform and/or transport to shore for land disposal of the spent mud system and associated cuttings.

1/1 All Structures

This option also includes four provisions. Like the preceding option, it would set a toxicity limitation at 30,000 ppm in the suspended particulate phase, would prohibit the discharge of diesel oil and would include a prohibition on the discharge "free oil." The fourth provision would set limitations for cadmium and mercury in the mud system (either drilling fluid or drill cuttings) at 1 mg/kg each for cadmium and mercury at the point of discharge. These discharge limitations would be applicable to all offshore structures regardless of their distance from shore. In the event that the mud system does not meet these discharge limitations, the requirements could be met through recycling/reuse of the mud system on the platform and/or transport to shore for land disposal of the spent mud system and associated cuttings.

Zero Discharge Within Four Miles; 5/3 Beyond

This option differentiates between those structures located four miles or less from shore and those structures located more than four miles from shore. For structures located four miles or less from shore, there would be a zero discharge requirement for all drilling fluids and drill cuttings, which requirement could be met through recycle/reuse of the mud system on the platform and/or transport to shore for land disposal of the spent mud system and associated cuttings. For offshore structures located more than four miles from shore, there would be a toxicity limitation based on 30,000 ppm in the suspended particulate phase; a prohibition on the discharge of diesel oil; a prohibition on the discharge of "free oil" and a limitation on cadmium and mercury in the stock barite set at 5 mg/kg of cadmium and 3 mg/kg of mercury. These requirements could be met as described above.

Zero Discharge Within Four Miles; 1/1 Beyond

This option also differentiates between those structures located four miles or less from shore and those structures located more than four miles from shore. For structures located four miles or less from shore, there would be a zero discharge requirement that could be met either through recycle/reuse of the mud system and/or through transport to shore of the spent mud system and associated cuttings for land disposal. For structures located more than four miles from shore, there would be a toxicity limitation set at 30,000 ppm in the suspended particulate phase; a prohibition on the discharge of diesel oil; a prohibition on the discharge of "free oil" and a limitation on cadmium and mercury at the point of discharge set at 1 mg/kg of cadmium and 1 mg/kg of mercury that could be met as described above.

Zero Discharge All Structures

The requirements of this option could be met either through the recycle/reuse of drilling fluid from the mud system and/or through transport to shore for land disposal of the spent mud system

and associated cuttings. The zero discharge requirement would apply to all offshore structures regardless of their distance from shore.

The Agency is also considering variations on the options for control of drilling fluids and drill cuttings that would differentiate between structures on the basis of distances from shore other than four miles.

The Agency's preferred option for control of drilling fluids and drill cuttings is "Zero Discharge Within Four Miles; 1/1 Beyond" as described above. In addition, the Agency's preferred option for new wells offshore of Alaska is to require the "1/1 All" conditions described above for all wells (including wells within four miles of shore) because of special climate and safety conditions in Alaska that make the transport of drilling fluids and drill cuttings to shore by barging especially difficult and hazardous.

II. Produced Water

Produced water is water, brought up from the hydrocarbon-bearing strata with petroleum liquids and natural gas, that includes brine trapped with the oil and gas in the formation and water injected into the reservoir to increase productivity. See 50 FR 34598. EPA is considering the following options for produced water at the BAT, BCT and NSPS levels of control:

BPT All Structures

This option would require that all structures (regardless of their location) would be subject to the BPT limitations governing produced water that are currently in place. (40 CFR 435.12(b)).

Filter and Discharge Within Four Miles; BPT Beyond

This option differentiates between those structures that are located four miles or less from shore and those structures that are located more than four miles from shore. The limitations for structures located four miles or less from shore would be based on the use of filtration (granular media or membrane separation) technology as an add-on to the existing BPT technology. Those structures located more than four miles from shore would be subject only to the BPT limitations governing produced water that are currently in place. (40 CFR 435.12(b)).

Filter and Discharge All Structures

Under this option, the limitations for all offshore structures, regardless of their distance from shore, would be based on granular media or membrane separation filtration of the produced water prior to discharge.

Zero Discharge All Structures

This option would require that all structures regardless of their distance from shore meet the zero discharge requirement based on reinjection of produced water.

The Agency is also considering variations on the options for control of produced water that would differentiate between stuctures on the basis of (1) distances from shore other than four miles and (2) water depth rather than distance from shore. See 50 F.R. 34592, ff. (20 meter depth distinction).

The Agency's preferred option for control of produced water is "Filter and Discharge Within Four Miles; BPT Beyond" as described above.

III. Other Wastestreams

EPA is considering setting requirements for other wastestreams as follows:

(A) Deck drainage consists of platform and equipment runoff due to strom events and wastewater from platform and equipment washdown and cleaning. (See 50 FR 34600.) The options being considered for this wastestream would (1) establish requirements equal to the current BPT limits of no discharge of free oil (40 CFR 435.12(b)) where produced water filtration technology has not been installed (e.g., facilities where drilling only is occurring) or (2) would establish requirements equal to any of the options identified above for the produced water wastestream for facilities that have produced water filtration technology installed.

(B) Produced sand consists of particulate material (sand) from the producing formation that comes to the surface along with the crude oil and/or gas and produced water and is separated by the produced water desander (settling/screening device) and treatment system. (See 50 FR 34600.) This wastestream would also include sludges generated by any chemical polymers used in the filtration portion of the produced water treatment system. The two options being considered for this wastestream would (1) establish requirements equal to no discharge of free oil or (2) would require zero discharge.

(C) Well treatment/workover fluids consist of fluids used down hole in drilling operations or during production. These wastes either stay in the hole or come up with drilling fluids and drill cuttings or with produced water. See 50 FR 34600. The three options being considered for these wastes would (1) establish requirements equal to the current BPT limit of no discharge of free oil (40 CFR 435.12(b)); (2) require zero discharge of a 100-barrel buffer on both sides of the well treatment/workover fluids; or (3) would establish requirements equal to any of the options identified above for the produced water wastestream for well treatment and workover fluids generated during production operations.

(D) Domestic and sanitary wastes consist of kitchen, laundry and human wastes. (See 50 FR 34600.) The options being considered for these wastes are (1) maintaining the BPT level of control of "no discharge of floating solids" that is currently applicable to domestic wastes (40 CFR § 435.12(b)) and residual chlorine requirements; or (2) incorporating additional requirements based on current permit conditions that control foam.

The Agency's preferred options for control of these wastestreams are (1) that deck drainage be subject to the same limitations as produced water during production operations and to requirements equal to the current BPT limits where filtration technology for produced water has not been installed; (2) that zero discharge be required for produced sand; (3) that zero discharge be required for well treatment/workover fluids and a 100 barrel buffer on both sides of the well treatment/workover fluids, and for those fluids that can not be segregated from the produced water, the produced water limitations would apply; and (4) that BPT, plus conditions that would control foam, be required for domestic and sanitary wastes.

On or before February 28, 1991, EPA intends to issue another, more detailed notice. That notice will further explain the options that are under consideration and will present technical, economic, environmental and other data relating to those options. That notice also may present further regulatory options. A 30 day public comment period will follow that notice.

Dated: November 16, 1990.

William K. Reilly,

Administrator.

[FR Doc. 90-27594 Filed 11-23-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-568, RM-7476]

Radio Broadcasting Services; Barbourville, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Barbourville Community Broadcasting Company proposing the substitution of Channel 241C3 for Channel 241A at Barbourville, Kentucky, and modification of its license for Station WYWY(FM) to specify the higher class channel. Channel 241C3 can be allotted to Barbourville in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.8 kilometers (1.7 miles) west of the community, in order to avoid a short-spacing to Station WMXK-FM, Channel 240A, Morristown, Tennessee. The coordinates are North Latitude 36-52-32 and West Longitude 83-55-09. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before January 11, 1991, and reply comments on or before January 28, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John B. Kenkel, Kenkel & Associates, 1220 19th Street, NW., suite 202, Washington, DC 20036 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-568, adopted November 5, 1990, and released November 20, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27647 Filed 11-23-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-569, RM-7510]

Radio Broadcasting Services; Gluckstadt and Collins, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Exchequer Communications, Inc., proposing the substitution of Channel 269C3 for Channel 269A at Gluckstadt, Mississippi, and modification of the license for Station WLIN to specify operation on the higher class channel. The coordinates for Channel 269C3 at Gluckstadt are 32-25-36 and 90-12-19. To accommodate Channel 269C3 at Gluckstadt, it is necessary to substitute Channel 296A for 269A at Collins, Mississippi, which is licensed to Station WKNZ. The coordinates for Channel 296A at Collins, are 31-31-49 and 89-30-29.

DATES: Comments must be filed on or before January 11, 1991, and reply comments on or before January 28, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dennis J. Kelly, Cordon and Kelly, Second Floor, 1920 N Street, NW., Washington, DC 20036, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-569, adopted October 31, 1990, and released November 20, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27646 Filed 11-23-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-554, RM-7442]

Radio Broadcasting Services; Littlefield, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Stebbins Broadcasting Company ("petitioner"), permittee of Station KXDM, Channel 238A, Littlefield, Texas, requesting the substitution of Channel 238C3 for Channel 238A at Littlefield. The coordinates of Channel 238C3 at Littlefield are 33-56-17 and 102-20-38.

DATES: Comments must be filed on or before January 11, 1991 and reply comments on or before January 28, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Janet L. Stebbins and Dave C. Stebbins, Stebbins Broadcasting Company, Box 192, Littlefield, Texas 79339 (Petitioners).

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-554 adopted October 31, 1990, and released November 20, 1990.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27649 Filed 11-23-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-555, RM-7453]

Radio Broadcasting Services; Mineral Wells and Winters, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Jerry Snyder and Associates, Inc., licensee of Station KYXS(FM), Channel 240A, Mineral Wells, Texas, requesting that the Commission substitute Channel 240C1 for 240A at Mineral Wells and modify its license to specify operation on the higher class channel. Petitioner also requests that the Commission substitute Channel 241A for Channel 240A at Winters, Texas to accommodate its proposal. The coordinates for Channel 240C1 at Mineral Wells are 32-41-06 and 98-09-32. The coordinates for Channel 241A at Winters are 31-57-36 and 99-57-54. Mexican concurrence will be requested for the Winters substitution.

DATES: Comments must be filed on or before January 11, 1991, and reply comments on or before January 28, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert W. Healy, Esq., Reddy, Begley & Martin, 2033 M Street, NW., suite 500, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-555, adopted November 1, 1990, and released November 20, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27648 Filed 11-23-90; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 55, No. 227
Monday, November 26, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

Exporters' Textile Advisory Committee; Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on December 13, 1990. The meeting will be at 2 p.m. in room 3407 at the Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Committee advises Department of Commerce officials on textile and apparel export issues.

AGENDA:

1. Intellectual Property Rights.
2. Update on the Uruguay Round trade negotiations.
3. Market Data on Asia Rim markets.
4. Report on Office of Textiles and Apparel, Market Expansion Division, FY91 events scheduling.
5. Report on recently concluded event—World Fashion Trade Fair, Osaka, Japan.
6. Other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact William Dawson (202/377-4324).

Dated: November 19, 1990.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-27615 Filed 11-23-90; 8:45 am]

BILLING CODE 3510-DR-M

Minority Business Development Agency

Business Development Center Applications

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under statutory authority (15 U.S.C. 1512) and Executive Order 11625 its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a three-year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period May 1, 1991 to April 30, 1991. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Salt Lake City Standard Metropolitan Statistical Area (SMSA).

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes, and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms, offer a full range of management and technical assistance, and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive.

MBDC's shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate after the initial competitive year for up to two additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is December 14, 1990. Applicants should mail the completed applications to the office specified in the project announcement. MBDA will accept only those applications (1) which are received by the closing date *or* (2) which show acceptable evidence of mailing on or before the closing date. Acceptable evidence consists of (1) a legible U.S. Postal Service postmark or (2) a legible mail or courier service receipt dated on or before the closing date. Applications must be post marked on or before December 14, 1990. Anticipated processing time of this award is 120 days.

ADDRESSES: Dallas Regional Office, 1100 Commerce Street, suite 7B23, Dallas, Texas 75242-0790, (214) 767-8001.

FOR FURTHER INFORMATION CONTACT: Yvonne Guevara, Dallas Regional Office.

SUPPLEMENTARY INFORMATION: Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address. A pre-bid conference will be held. Please call Ms. Guevara to be advised of date, time and place.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Notice: Applicants who have an outstanding account receivable with the Federal Government may not be

considered for funding until these debts have been paid or arrangements satisfactory to the Department of are made to pay the debt.

Notice: Section 319 of Public Law 101–121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Notice: Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Notice: Awards under this program shall be subject to all Federal and Departmental regulations, policies, and, procedures applicable to Federal assistance awards.

Notice: A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Dated: November 19, 1990.

Melda Cabrera,

Regional Director, Dallas Regional Office.

Section B—Project Specifications

(To Be Completed by the Regional Offices)

Project Identification

1. Program Number and Title: 11.800 Minority Business Development.
2. Project Name: Salt Lake City (Geographic Area of SMSA) MBDC.
3. Project Identification Number: 06–10–91008–01.

Budget Period Duration

1. Budget Period (Check One): First X, Second —, Third —.
2. Start Date: May 1, 1991
3. End Date: April 30, 1992
4. Budget Period Duration (Months): Twelve

Project Cost

1. Required Federal Funding Level: $165,000
2. Minimum Non-Federal Contribution: $29,118
3. Total Project Cost: $194,118

Project Minimum Performance Goal Levels

1. Combined Financial Package and Procurement Minimum Goal Level: $11,148,000
2. Billable SM&TA Minimum Goal Level: $112,000
3. Number of Clients Minimum Goal Level: 112

Other Project Specifications

1. Closing Date for Submission of this Application: December 31, 1990
2. Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: Salt Lake City
3. *Eligibility Criteria:* There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.
4. *Budget Periods:* The competitive award period will be for approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance and Agency priorities.

[FR Doc. 90–27658 Filed 11–23–90; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Intent To Conduct a Public Meeting on the Preparation of a Draft Environmental Impact Statement for the Proposed North Inlet-Winyah Bay National Estuarine Research Reserve, South Carolina

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of intent to conduct public meeting and prepare a Draft Environmental Impact Statement.

SUMMARY: In accordance with section 315 of the Coastal Zone Management Act of 1972, as amended, the State of South Carolina and the National Oceanic and Atmospheric Administration (NOAA) intend to conduct a public meeting to present a draft management plan for the proposed North Inlet-Winyah Bay National Estuarine Research Reserve and to discuss significant issues related to the preparation of a Draft Environmental Impact Statement (DEIS). The DEIS and draft management plan address research, monitoring, education and resource protection needs for the reserve.

DISCUSSION: In February 1990, NOAA approved the nomination of North Inlet-Winyah Bay in South Carolina as a proposed research reserve. Research reserves provide natural coastal habitats as field laboratories for baseline ecological studies and education programs. Research and monitoring programs are designed to enhance basic scientific understanding of coastal environments and aid in resource management decisionmaking.

The South Carolina Coastal Council (SCCC) and the Belle W. Baruch Institute/University of South Carolina have developed a draft management plan for the proposed reserve system. The draft plan identifies specific needs and priorities related to research, monitoring, education, and resource protection at the approved site. It also contains a five-year administration plan and budget as well as a discussion of volunteer programs, public access, visitor use policies, and facilities development needs. The draft plan will be available for review at the public meeting.

At the public meeting, the SCCC, Belle W. Baruch Institute and NOAA will provide a synopsis of the draft management plan and will solicit comments on significant environmental issues which will be incorporated into a Draft Environmental Impact Statement.

The public meeting will be held at 7 p.m. on Thursday, December 6, 1990, in the Meeting room of the Georgetown Public Library, located at 405 Cleland Street in Georgetown, South Carolina 29440.

Interested parties who wish to submit suggestions, comments or substantive information regarding the scope or content of this Draft Environmental Impact Statement are invited to attend. Parties who wish to respond in writing should do so by December 20, 1990.

Comments may be submitted in writing to Ms. Cheryl A. Graham, Program Specialist, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOAA, 1825 Connecticut Avenue NW., suite 714, Washington, DC 20235 (telephone 202/673–5122).

(Federal Domestic Assistance Catalog Number 11.420).

(Coastal Zone Management) Estuarine Sanctuaries)

Dated: November 20, 1990.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 90–27585 Filed 11–23–90; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List, Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 24, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to the Procurement List:

Commodity

Clamp, Panel, 5450–00–297–5271.

Services

Commissary Shelf Stocking & Custodial, Fort Carson, Colorado.

Commissary Shelf Stocking, Custodial & Warehousing, Vandenberg Air Force Base, California.

Food Service Attendant, Naval Training Station, Orlando, Florida.

Janitorial/Custodial, Federal Building, 110 Michigan Street, NW., Grand Rpaids, Michigan.

H.G. Fischer,

Associate Director of Facility Operations.

[FR Doc. 90–27703 Filed 11–23–90; 8:45 am]

BILLING CODE 6820–33–M

Procurement List, Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: December 24, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On September 14, 28 and October 5, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 37929, 39685 and 40905) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Curtain Assembly, 2540–00–741–6339.

Services

Janitorial/Custodial.

Navy Commissary Stores

Naval Amphibious Base, Little Creek, Naval Air Station Oceana, Virginia Beach, Virginia.

Norfolk Naval Shipyard, Portsmouth, Virginia.

Supply Room/Motor Vehicle Services, Federal Aviation Administration, Great Lakes Region, Des Plaines, Illinois.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

H.G. Fischer,

Associate Director of Facility Operations.

[FR Doc. 90–27704 Filed 11–26–90; 8:45 am]

BILLING CODE 6820–33–M

CONSUMER PRODUCT SAFETY COMMISSION

Request for Extension of Approval of Information Collection Requirements—Sound Levels of Toy Caps

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through December 31, 1993, of information collection requirements in a regulation exempting certain toy caps from a banning rule.

A regulation codified at 16 CFR 1500.18(a)(5) bans toy caps producing peak sound levels at or above 138 decibels (dB). Another regulation codified at 16 CFR 1500.86(a)(6) exempts toy caps producing sound levels between 138 and 158 dB from the banning rule if they bear a specified warning label and if firms intending to distribute such caps: (1) Notify the Commission of their intent to distribute such caps; (2) participate in a program to develop toy caps producing sound levels below 138 dB; and (3) report quarterly to the Commission concerning the status of their programs to develop caps with reduced sound levels.

The Commission requests extension of the information collection requirements in the rule codified at 16 CFR 1500.86(a)(6) through December 31, 1993, to obtain current and periodically updated information from all

manufacturers concerning the status of program to reduce sound levels of toy caps. The Commission will use this information to monitor industry efforts to reduce the sound levels of toy caps, and to ascertain which firms are currently manufacturing or importing toy caps with peak sound levels between 138 and 156 db.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Distribution of toy caps producing peak sound pressure levels greater than 138 decibels but less than 153 decibels; 16 CFR 1500.86(a) (ii) and (iii).

Type of request: Extension of approval.

Frequency of collection: One-time notification before beginning distribution; status report four times each year.

General description of respondents: Manufacturers and importers of toy caps.

Estimated number of respondents: 45.

Estimated average number of hours per respondent: 4 per year.

Estimated number of hours for all respondents: 180 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Elizabeth Harker, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: November 20, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 90–27693 Filed 11–23–90; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement, part 216, Types of Contracts, and Related Clause at 252.216–7001; OMB Control Number 0704–0250.

Type of Request: Extension.

Average Burden Hours/Minutes per Response: 2.5 Hours.

Responses per Respondent: 1.

Number of Respondents: 200.

Annual Burden Hours: 500.

Annual Responses: 200.

Needs and Uses: DoD FAR Supplement, part 216, and related clause at 252.216–7001, require contractors to notify contracting officers of any increase or decrease in the contractors' price for an item. This information is used to evaluate (a) contractors' capability to perform, (b) offers for award purposes, and (c) requests for price adjustments.

Affected Public: Businesses or other for-profit, Non-profit institutions, and Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: November 19, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–27604 Filed 11–23–90; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Science Board Task Force on Desert Shield Technology; Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Desert Shield Technology will meet in closed session on 12–13 December 1990 and 10–11 January 1991 at Rosslyn, VA.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will receive classified briefings on Operation Desert Shield which will include: Intelligence situation and threat, operations status, and technology options to improve operational capability.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. app. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Dated: November 19, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–27602 Filed 11–23–90; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow on Forces Attack (FOFA); Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Follow on Forces Attack (FOFA) will meet in closed session on December 11–12, 1990 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue to review, in detail, classified material associated with conventional military capabilities in NATO to include special targeting requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. app. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: November 19, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–27605 Filed 11–23–90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board, Meeting

November 20, 1990.

The USAF Scientific Advisory Board Ad Hoc Committee on Modeling and Simulation will meet on 11–12 Dec 90 from 8 a.m. to 5 p.m. at the Pentagon, Washington, DC 20330.

The purpose of this meeting will be to review the Task Statement and develop a plan for conducting the study. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 90–27700 Filed 11–23–90; 8:45am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

Promulgation of Federal Shares

Sections 7(b)(1) and 7(b)(2) of the Library Services and Construction Act, Public Law 84–597, as amended (20 U.S.C. 351 *et seq.*), require the Secretary of Education to promulgate the Federal share for each State and Territory every second fiscal year beginning with fiscal year 1971. Per capita income data from the Department of Commerce for the years 1987, 1988, and 1989 have been used to establish the Federal shares applicable to titles I and II of the Act. The Federal shares published in the table below are effective for the fiscal year ending September 30, 1992 and September 30, 1993.

(Catalog of Federal Domestic Assistance Program Number 84.034, Public Library Services, and 84.154, Public Library Construction and Technology Enhancement)

Dated: November 19, 1990.

State	Federal share (percent)
Alabama	61.22
Alaska	40.27
Arizona	54.42
Arkansas	63.23
California	42.67
Colorado	46.66
Connecticut	39.89
Delaware	47.36
District of Columbia	34.25
Florida	49.89
Georgia	59.92
Hawaii	49.97
Idaho	61.44
Illinois	46.74
Indiana	55.19
Iowa	55.89
Kansas	52.41
Kentucky	61.14
Louisiana	63.06
Maine	54.29
Maryland	46.56
Massachusetts	37.20
Michigan	50.23
Minnesota	49.68
Mississippi	66.09
Missouri	59.36
Montana	60.36
Nebraska	55.59
Nevada	46.06
New Hampshire	41.75
New Jersey	33.03
New Mexico	62.23
New York	46.80
North Carolina	58.87
North Dakota	61.09
Ohio	50.23
Oklahoma	59.68
Oregon	55.00
Pennsylvania	51.03
Rhode Island	46.06
South Carolina	61.02
South Dakota	60.98
Tennessee	58.11
Texas	55.30
Utah	62.82
Vermont	53.67
Virginia	46.33
Washington	49.99
West Virginia	64.78
Wisconsin	53.98
Wyoming	58.57
American Samoa	66.00
Guam	66.00
Northern Marianas	66.00
Palau	100.00
Puerto Rico	66.00
Virgin Islands	66.00

[FR Doc. 90–27598 Filed 11–23–90; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education, National Defense and Perkins (National Direct) Student Loan Program

AGENCY: Department of Education.

ACTION: Notice of availability of the 1990–91 National Defense and Perkins (National Direct) Student Loan Program Directory of Designated Low-Income Schools.

SUMMARY: The Secretary announces that the 1990–91 National Defense and Perkins (National Direct) Student Loan Program Directory of Designated Low-Income Schools (Directory) is now available at institutions of higher education participating in the Perkins Loan Program, State and Territory Departments of Education and the United States Department of Education. Under the National Defense, National Direct and Perkins Loan programs, a borrower may have a portion of his or her loan cancelled if the borrower teaches full-time for a complete academic year in a selected elementary or secondary school having a high concentration of students from low-income families. In the 1990–91 Directory, the Secretary lists, on a State-by-State and Territory-by-Territory basis, the schools in which a borrower may teach during the 1990–91 school year to qualify for cancellation benefits.

DATES: The Directory is available.

ADDRESSES: Information concerning specific schools listed in the Directory may be obtained from Ronald W. Allen, Campus-Based Programs Branch, Division of Program Operations and Systems, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (room 4651, ROB–3), Washington, DC 20202–5453, Telephone (202) 708–8730.

FOR FURTHER INFORMATION CONTACT: Directories are available at (1) each institution of higher education participating in the Perkins Loan Program; (2) each of the fifty-seven (57) State and Territory Departments of Education; and (3) the U.S. Department of Education.

SUPPLEMENTARY INFORMATION: The Secretary selects the schools that qualify the borrower for cancellation under the procedures set forth in 34 CFR 674.53 and 674.54 of the National Defense, National Direct and Perkins Loan Program regulations.

The Secretary has determined that for the 1990–91 academic year, full-time teaching in the schools set forth in the 1990–91 Directory qualifies a borrower for cancellation.

The Secretary is providing the Directory to each institution participating in the Perkins Loan Program. Borrowers and other interested parties may check with their lending institution, the appropriate State Department of Education, or the Office of Postsecondary Education of the Department of Education concerning the identity of qualifying schools for the 1990–91 academic year.

The Office of Postsecondary Education retains, on a permanent basis, copies of all past and current Directories.

(Catalog of Federal Domestic Assistance Number 84.037; National Defense, National Direct and Perkins Loan Cancellations)

Dated: November 15, 1990.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90-27565 Filed 11-23-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order with Mt. Airy Refining Co., et al.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Mt. Airy Refining Company (Mt. Airy) and its former shareholders William P. Boswell, W. Luke Boswell, Lindsay B. McLean, David P. Boswell, P. Wilson Boswell II, and Ellen W. Boswell (collectively, Respondents). The agreement proposes to resolve matters relating to Mt. Airy's compliance with the federal petroleum price and allocation regulations for the period January 1, 1977, through January 27, 1981. If this Consent Order is approved, the Respondents shall pay to the DOE the principal sum of $2,000,000, plus interest from the effective date of the Consent Order, over three years. The DOE's Office of Hearings and Appeals will be petitioned to implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in which proceedings any persons who claim to have suffered injury from the alleged overcharges would have the opportunity to submit claims for payment.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this Notice. ERA will consider all comments received from the public in determining whether to accept the settlement and issue a final Order, renegotiate the agreement and issue a modified agreement as a final Order, or reject the settlement. DOE's final decision will be published in the **Federal Register**, along with an analysis of the response to the significant written comments, as well as any other considerations that were relevant to the final decision.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1699.

SUPPLEMENTARY INFORMATION: During the period covered by the proposed Consent Order, January 1, 1977 through January 27, 1981, when petroleum price and allocation controls were ended by the President (January 28, 1981, Executive Order 12287), Mt. Airy was a corporation engaged in, among other things, the refining of crude oil and the sale of refined petroleum products. Accordingly, Mt. Airy was a petroleum refiner subject to the audit jurisdiction of ERA to determine compliance with the federal petroleum price and allocation regulations. Subsequent to decontrol, in 1983, Mt. Airy was dissolved and its assets were distributed to its shareholders.

ERA conducted an audit to determine Mt. Airy's compliance with the federal petroleum price and allocation regulations during the period covered by the proposed Consent Order. As a result of this audit, disputes arose between ERA and Mt. Airy concerning Mt. Airy's compliance with applicable federal petroleum price and allocation regulations. The major regulatory area of dispute concerns Mt. Airy's reporting to the Entitlements Program.

On July 25, 1986, ERA issued a Proposed Remedial Order (PRO) which, as amended, alleges that, during the period covered by the proposed Consent Order, Mt. Airy violated 10 CFR 211.66(b) and (h) and 211.67(j) by failing to report 327,603 barrels of price-controlled crude oil received by the firm as "crude oil receipts" (10 CFR 211.62) on its Refiners Monthly Reports. Most of the crude oil volumes at issue in the PRO were acquired around the time Mt. Airy started up its newly built refinery in Mt. Airy, Louisiana in mid-1977. As a result of the erroneous reporting, the PRO alleges that Mt. Airy unlawfully avoided entitlements purchase obligations for the crude oil. In addition to naming Mt. Airy as a respondent to the PRO, the ERA alleges that the former shareholders of Mt. Airy are also jointly and severally liable for the violations under a constructive trust theory to the extent that each received distribution of Mt. Airy's assets upon dissolution of the corporation.

As revised in the course of litigation, the PRO alleges entitlements violations of $2,059,649.94. With interest, the Respondents' maximum potential liability for refunds is approximately $7.6 million.

The validity of the allegations in the PRO is presently the subject of litigation before DOE's Office of Hearings and Appeals (OHA). The Respondents have raised a number of objections to the manner in which ERA applied the entitlements reporting regulations in determining that a violation occurred, as well as other defenses to the charges and to the liability of the individual Respondents for any violation which may be found. The principal matters in dispute are the character of the transaction in which Mt. Airy acquired the unreported crude oil, the accounting method Mt. Airy used to prepare its entitlements reports, and ERA's practices in 1977 with respect to the entitlements treatment of start-up inventories for newly built refineries. By interlocutory orders issued July 25 and 31, 1990, OHA ordered the conduct of discovery by both parties, and granted Mt. Airy an evidentiary hearing concerning ERA's practice in 1977 regarding starting inventory adjustments. *Mt. Airy Refining Co.*, 20 DOE ¶¶ 84,005 and 84,006 (1990).

ERA has preliminarily agreed to the proposed settlement amount after assessing the litigation risks associated with the asserted legal and factual issues underlying the PRO's allegations and the Respondents' defenses, and appropriate settlement compromises related to those issues. In addition, ERA took into account such factors as the number and complexity of the legal and factual issues, the time and expense required to litigate fully every issue in order to obtain any recovery, and the benefit to the public from a significant settlement of the issues which would take years of continued litigation to resolve. Based on all of these considerations, ERA has tentatively concluded that the resolution of these matters for the principal sum of $2,000,000 plus interest is an appropriate settlement and in the public interest.

Under the terms of the proposed settlement, the Respondents will pay DOE the principal sum of $2,000,000, plus interest from the effective date of the Consent Order, over a period of three years. An initial payment of $800,000 will be made within thirty (30) days of the effective date of the Consent Order. The remainder would be paid in annual installments, plus interest on the outstanding principal balance, as specified in the proposed Consent Order, the text of which is published herewith.

To distribute the monies received by DOE under the settlement with the Respondents, ERA will petition OHA to implement Special Refund Procedures under the provisions of subpart V. To ensure that OHA has sufficient information to evaluate refund claims, the proposed Consent Order requires that the Respondents provide customer identification and purchase volume information to OHA upon request.

The Respondents and DOE mutually release each other from the claims arising under the subject matter covered by the proposed Consent Order. The proposed Order does not affect the rights of any other party to take action against the Respondents, or the Respondents or the DOE to take action against any other party.

If the settlement is not made final by the one hundred fiftieth (150th) day following execution, Mt. Airy may withdraw from the proposed agreement.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: Mt. Airy Consent Order Comments, RG-30, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

All comments received by the thirtieth day following publication of this notice in the **Federal Register** will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comments. If, after considering the comments it has received, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a notice in the **Federal Register**.

Issued in Washington, DC, on November 19, 1990.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

Consent Order With Mt. Airy Refining Co.; William P. Boswell; W. Luke Boswell; Lindsay B. McLean; David P. Boswell; P. Wilson Boswell II; and Ellen W. Boswell.

I. Introduction

101. This Consent Order is entered into between Mt. Airy Refining Company and its former shareholders William P. Boswell; W. Luke Boswell; Lindsay B. McLean; David P. Boswell; P. Wilson Boswell II; and Ellen W. Boswell (collectively "Mt. Airy") and the Department of Energy ("DOE"). Except as otherwise provided herein, this Consent Order settles and finally resolves all civil and administrative disputes, claims and causes of action, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Mt. Airy, as hereinafter defined, relating to Mt. Airy's compliance with the federal petroleum price and allocation regulations (as defined herein) during the period January 1, 1977, through January 27, 1981 ("the period covered by this Consent Order"). (All the matters settled and resolved by this Consent Order are referred to as "the matters covered by this Consent Order.")

II. Jurisdiction and Regulatory Authority

201. This Consent Order is entered into by DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act (DOE Act), 42 U.S.C. 7151 and 7193; Executive Order 12009, 42 FR 46267 (1977); and Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. Reference herein to "DOE" includes, besides the Department of Energy, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Economic Regulatory Administration and all agencies succeeding to the DOE's authority to enforce the federal petroleum price and allocation regulations. Reference herein to "Mt. Airy" refers to and includes Mt. Airy Refining Company, a corporation organized under the laws of the state of Ohio in 1977 and dissolved on August 11, 1983, and its former shareholders William P. Boswell; W. Luke Boswell; Lindsay B. McLean; David P. Boswell; P. Wilson Boswell II; and Ellen W. Boswell. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all pricing, allocation, reporting and recordkeeping requirements imposed by or under the Economic Stabilization Act (ESA) of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, the DOE Act, any and all amendments to said Acts, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR parts 130 and 150, and 10 CFR parts 205, 210, 211, 212 and 213 including all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, forms, and reporting and certification requirements regarding such regulations. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order except to the extent inconsistent herewith.

III. Facts and Determinations

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by this Consent Order, Mt. Airy owned a refinery and engaged in the refining of crude oil and the sale of refined petroleum products. Accordingly, Mt. Airy was a "refiner" as defined in the federal petroleum price and allocation regulations and was subject to the jurisdiction of DOE.

302. DOE conducted an audit to determine Mt. Airy's compliance during the period covered by this Consent Order with the federal petroleum price and allocation statutes, regulations and requirements referred to in paragraph 203, *supra*. DOE and Mt. Airy disagree in several respects concerning the proper application of such federal petroleum price and allocation regulations to Mt. Airy's activities during the period covered by this Consent Order. ERA issued a Proposed Remedial Order on July 25, 1986, which Mt. Airy vigorously contested in proceedings before the Office of Hearings and Appeals in Case No. KRO-0320. Mt. Airy and DOE each believe that their respective positions on the matters resolved by this Consent Order are meritorious. Neither DOE nor Mt. Airy disavows any position taken with respect to such matters.

303. Notwithstanding DOE's view as to the proper application of the federal petroleum price and allocation regulations to Mt. Airy's activities during the period covered by this Consent Order, Mt. Airy maintains that it has calculated all costs, determined all prices, and operated in all other respects in accordance with the federal petroleum price and allocation regulations. However, and without admitting any violation whatsoever, in order to avoid the expense of protracted litigation, Mt. Airy has agreed to enter into this Consent Order. The DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which have been or might be sought by the DOE against Mt. Airy for such matters under 10 CFR 205.199I or otherwise, Mt. Airy shall pay to DOE the principal sum

of two million dollars ($2,000,000), plus interest calculated as provided in paragraph 402. Payment shall be in four installments as follows: (a) The principal sum of six hundred thousand dollars ($600,000) on or before thirty (30) days after the effective date of this Consent Order; (b) the principal sum of four hundred sixty-six thousand seven hundred dollars ($466,700), plus interest on the principal outstanding after the preceding payment, on or before December 31, 1991; (c) the principal sum of four hundred sixty-six thousand seven hundred dollars ($466,700), plus interest on the principal outstanding after the preceding payment, on or before December 31, 1992; and (d) the principal sum of four hundred sixty-six thousand six hundred dollars ($466,600), plus interest on the principal outstanding after the preceding payment, on or before December 31, 1993. In the event that any such payment date is not a business day, payment shall be due on the first business day following such date. Mt. Airy has the option to prepay all or any part of the outstanding unpaid balance at any time without penalty. Any payment that is less than the amount determined above, and any prepayment, shall be applied first to pay any interest that has accrued pursuant to paragraph 402, and any remaining portion of the payment shall be applied to reduce the outstanding principal balance.

402. Interest shall be computed from the date this Consent Order becomes effective at the rate of 10% per annum, compounded on the unpaid balance as of each scheduled payment interval.

403. The payments pursuant to paragraph 401 of this Consent Order shall be made by wire transfer in accordance with instructions furnished to Mt. Airy by the Department of Energy in a timely manner. The payments made pursuant to this Consent Order shall be distributed by the DOE pursuant to the special refund procedures prescribed by 10 CFR part 205, subpart V.

404. If any payment provided for above becomes more than thirty days overdue, then the entire principal amount with interest to the date of payment, shall become immediately due and payable at DOE's option. Between the time that any payment or portion thereof is required to be paid under this Consent Order and the time the full payment is completed, interest shall accrue on the overdue amount at the rate of 20% per annum, compounded as of each scheduled payment interval. Such interest shall be paid to DOE with such overdue payment(s). Any late payment that is less than the amount overdue shall be applied first to pay any interest that has accrued to this paragraph, and any remaining portion of the payment shall be applied to reduce the overdue balance.

V. Issues Resolved

501. All pending and potential civil and administrative claims, demands, liabilities, causes of action or other proceedings by DOE against Mt. Airy regarding Mt. Airy's compliance with and obligations under the federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Proposed Remedial Order, Remedial Order, actions in court or otherwise, are resolved, extinguished and released as to Mt. Airy, including for the purposes these paragraphs 501 through 506 the former officers, directors and employees of the corporation Mt. Airy Refining Co., by this Consent Order.

502. Mt. Airy warrants that there is no litigation pending against the DOE initiated or participated in by Mt. Airy which in any way relates to or arises out of the matters covered by this Consent Order, or related claims arising under the Freedom of Information Act (5 U.S.C. 552). Mt. Airy hereby agrees to release any and all claims, demands, liabilities, or causes of action that Mt. Airy has asserted or might be able to assert against DOE, and any employee of DOE, in any matter related to the matters covered by this Consent Order.

503. (a) Compliance by Mt. Airy with this Consent Order shall be deemed by DOE to constitute full compliance for civil purposes with regard to the matters covered by this Consent Order. Except as explicitly excluded herein, in consideration for performance as required under this Consent Order by Mt. Airy, DOE hereby releases Mt. Airy completely and for all purposes from all administrative and civil judicial claims, demands, liabilities, or causes of action, including, without limitation, claims for civil penalties that the DOE has asserted or might otherwise be able to assert against Mt. Airy before or after the date of this Consent Order for alleged violations of the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. DOE will not initiate or prosecute any such administrative or civil judicial matter against Mt. Airy or cause or refer any such matter to be initiated or prosecuted, nor will DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil judicial matter against Mt. Airy or participate voluntarily in the prosecution of such actions. DOE will not assert voluntarily in any administrative or civil judicial proceeding that Mt. Airy has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order, or otherwise take action with respect to Mt. Airy in derogation of this Consent Order. However, nothing contained herein shall preclude DOE from defending the validity of the federal petroleum price and allocation regulations.

(b) The DOE will not seek or recommend any criminal fines or penalties based on information or evidence presently in its possession for the matters covered by this Consent Order; provided, however, that nothing in this Consent Order precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence presently known to DOE, that a criminal violation may have occurred, or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations to appropriate authorities. Nothing contained herein may be construed as a bar, an estoppel, or a defense: Against any criminal action or against any civil action brought by an instrumentality or agency of the United States other than DOE under (i) Section 210 of the ESA or (ii) any statute or regulation other than the federal petroleum price and allocation regulations. Finally, this Consent Order does not prejudice the rights of any third party or Mt. Airy in any private action, including an action for contribution by or against Mt. Airy.

(c) Mt. Airy releases the DOE completely and for all purposes from all administrative and civil judicial claims, or causes of action that Mt. Airy has asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order. This release, however, does not preclude Mt. Airy from asserting any factual or legal position or argument as a defense to any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States. Nor does it preclude Mt. Airy from asserting a defense, counterclaim or offset to any action, claim or proceeding brought by any other person.

504. Execution of this Consent Order constitutes neither an admission by Mt. Airy nor a finding by DOE of any violation by Mt. Airy of any statute or of any regulation. DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and DOE will not seek any such civil penalties. The payment by Mt. Airy pursuant to this Consent Order is not to be considered for any purpose as a penalty, fine, forfeiture, or as settlement of any potential liability for penalties, fines or forfeitures.

505. Notwithstanding any other provision herein, and in addition to the matters excluded herein, DOE reserves the right to initiate an enforcement proceeding, including, without limitation, an action for penalties, for any newly discovered regulatory violations committed by Mt. Airy during the period covered by this Consent Order, but only if Mt. Airy concealed facts relating to such violations. DOE also reserves the right to seek appropriate judicial remedies other than full rescission of this Consent Order, or to rescind this Consent Order, for any misrepresentation of fact material to this Consent Order made by Mt. Airy during the course of the audit, during the litigation relating to Mt. Airy's alleged liability for the violations asserted in OHA Case No. KRO–0320, or during the course of the negotiations that preceded this Consent Order.

VI. Reporting and Recordkeeping Requirements

601. Mt. Airy shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in the distribution of the monies paid pursuant to paragraph 401, Mt. Airy shall also maintain any records in its possession for the time period covered by this Consent Order evidencing sales volume data for each product subject to controls and customers' names and addresses, until thirty (30) days after final distribution by DOE of the funds paid pursuant to paragraph 401, *supra*, or January 1, 2000, whichever occurs earlier. If requested, Mt. Airy shall make such information available to DOE. Except as otherwise provided in this paragraph, upon timely payment to DOE of the amount required to be paid under Paragraph 401 of this Consent Order, Mt. Airy is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

602. Except for formal requests for information regarding compliance by other firms with the federal petroleum price and allocation regulations, Mt. Airy will not be subject hereafter to any audit requests, report orders, subpoenas, or other administrative discovery by DOE relating to Mt. Airy's activities subject to such regulations regarding the matters covered by this Consent Order.

603. This Consent Order is subject to disclosure by the DOE pursuant to the requirements of the Freedom of Information Act, as amended, 5 U.S.C. 552 (FOIA). Mt. Airy waives all claims it may have that some or all of the information contained in this Consent Order is exempt from the mandatory public disclosure requirements of the FOIA, as amended, is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure.

VII. Contractual Undertaking

701. It is the understanding and express intention of Mt. Airy and DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Mt. Airy and DOE each reserves the right to institute a civil action in an appropriate United States District Court, if necessary, to secure enforcement of the terms of this Consent Order, and DOE also reserves the right to seek appropriate penalties for any failure to comply with the terms of this Consent Order. Consistent with Departmental policy, DOE will undertake the defense of the Consent Order in response to any litigation challenging the Consent Order's validity in which the DOE is named as a party. Mt. Airy agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Subject to article IX, this Consent Order is a final order of DOE having the same force and effect as a Remedial Order issued pursuant to Section 503 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. Mt. Airy hereby waives its right to administrative or judicial appeal from this Order, but Mt. Airy reserves the right to participate in any such review initiated by a third party.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect being published in the **Federal Register**. Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments. The DOE will consider all written comments to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Mt. Airy, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred fiftieth (150) day following execution by Mt. Airy, Mt. Airy may, at any time thereafter until the effective date, withdraw its agreement to this Consent Order by written notice to the DOE, in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Mt. Airy Refining Co., hereby agree to and accept on behalf of Mt. Airy Refining Co. the foregoing Consent Order.

Dated: November 8, 1990.

William P. Boswell,

Title: Director.

I, the undersigned, a duly authorized representative of the Department of Energy, Economic Regulatory Administration, hereby agree to and accept on behalf of said Administration, the foregoing Consent Order.

Dated: November 14, 1990.

M. C. Lorenz,

Title: Chief Counsel, ERA.

Dated: November 8, 1990.

I, William P. Boswell, hereby agree to and accept the foregoing Consent Order.

William P. Boswell

Dated: November 1, 1990.

I, W. Luke Boswell, hereby agree to and accept the foregoing Consent Order.

W. Luke Boswell

Dated: November 2, 1990.

I, Lindsay B. McLean, hereby agree to and accept the foregoing Consent Order.

Lindsay B. McLean

Dated: October 21, 1990.

I, David P. Boswell, hereby agree to and accept the foregoing Consent Order.

David P. Boswell

Dated: November 25, 1990.

I, P. Wilson Boswell II, hereby agree to and accept the foregoing Consent Order.

P. Wilson Boswell

Dated: November 6, 1990.

I, Ellen W. Boswell, hereby agree to and accept the foregoing Consent Order.

Ellen W. Boswell

[FR Doc. 90–27695 Filed 11–23–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP90-854-001, et al.]

National Fuel Gas Supply Corp., et al.; Natural gas certificate filings

November 16, 1990.

Take notice that the following filings have been made with the Commission:

1. National Fuel Gas Supply Corp.

[Docket No. CP90-854-001]

Take notice that on November 6, 1990, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York, 14203, filed amendment to an application pursuant to section 7(c) of the Natrural Gas Act and part 157 of the Regulations under the Natural Gas Act (18 CFR part 157), for a certificate of public convenience and necessity authorizing the construction of approximately 3.24 miles of 24-inch diameter natural gas pipeline connecting National's Line X at Nash Road in Wheatfield, New York, with the proposed pipeline of Empire State Pipeline (Empire) (see Docket Nos. CP90-316-000 an CP90-317-000); and another 2.22 miles of 16-inch diameter natural gas pipeline of Empire on Grand Island, New York under the Niagara River ot Line UM-2 in Tonawanda, New York. National also requests authority to purchase from National Fuel Gas Distribution Corporation (Distribution) its Line UM-2, a 4.4 mile 20-inch pipeline, and associated facilities. National requests authorization for a delivery point to Distribution at the Fire Tower Lane regulatory station which is where Line XM-S-2 and Line UM-2 will interconnect. This station already exists, but will be modified as part of this project.

National also requests authority to provide firm transportation of up 38.8 MMcf-d for three of its congeneration customers, Encogen Four Partners, L.P, Indeck Energy Services of Corinth, Inc. and Indeck Energy Services of Ilion, Inc. for consumption at their respective gas-fire electric cogeneration facilities within the State of New York. The details of National's proposal are more full set forth in the amended application which is on file with the Commission and open to public inspection.

In this amendment application, National is proposing to charge the Co-gen customers as intial rates a reservation charge of $1.6402 per Mcf and a commodity charge of $0.0255 per Mcf, which is equal to the 100% load factor equivalent of the Zone 1 rates approved by the Commission in the Niagara Import Order.

The estimated cost of the proposed facilities will be $5,176,520.00, not including National's cost of purchasing Line UM-2 from Distribution at book value of approximately $840,000.00. National will finance the cost of the proposed construction from funds on hand or to be obtained from its parent company National Fuel Gas Company.

Comment date: Decmeber 7, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Northwest Pipeline Corp. Panhandle Eastern Pipe Line Co.

Docket Nos. CP91-398-000, CP91-402-000]

Take notice that the above reference companies (Applicants) filed in respective dockets prior notice requests purstant to sections 157.205 and 284.233 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 31, 1991, in accordance with Standard Paragrah G at the end of the notice.

[1] These prior notice requests are not consolidated.

Docket number (date filed)	Applicant	Shipper name	Peak day[1] avg, annual	Points of— Receipt	Points of— Delivery	Start up date, rate schedule	Related [2] dockets
CP91-398-000 11-13-90	Northwest Pipeline Corp	Washington Natural Gas Co.	32,800 25,000 9,040,000	WA	WA	10-19-90 TF-1	ST91-2695-000
CP91-402-000 11-13-90	Panhandle Eastern Pipe Line Co.	Amgas, Inc	30 15 5,475	CO, IL KS, MI OK, TX, WY	IL	101-1-90 PT	ST91-1761-000

[1] Quantities are shown in MMBtu unless Otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

3. Trunkline Gas Co.

[Docket Nos. CP91-403-000,[3] CP91-404-000, CP91-405-000, CP91-406-000]

Take notice that on November 13, 1990, Trunkline Gas Company (Trunkline) P.O. Box 1642, Houston, Texas 7725-1642 filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Trunkline and is included in the attached appendix.

Trunkline also states that each would provide the service for each shipper under an executed transportation agreement, and that Trunkline would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 31, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name	Peak day[1] avg, annual	Points of— Receipt	Points of— Delivery	Start update rate schedule	Related [2] dockets
CP91-403-000	Enron Gas Marketing, Inc	50,000 50,000 18,250,000	IL, TX, LA, TN, Off TX, Off LA	IN	9-26-90 PT	ST91-1755-000
CP91-404-000	Eastex Hydro Carbons, Inc	50,000 50,000 18,250,000	IL, TX, LA, TN, Off TX, Off LA	IN	9-11-90 PT	ST91-1754-000
CP91-405-000	Transco Energy Marketing, Co	30,000 30,000 10,950,000	Off TX, Off LA	Off TX	10-1-90 PT	ST91-2362-000
CP91-406-000	Entrade Corp	100,000 50,000 21,640,000	IL, TX, LA, TN, Off TX, Off LA	IL	9-21-90 PT	ST91-1757-000

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

4. Viking Gas Transmission Company

[Docket Nos. CP91-384-000, CP91-385-000, CP91-386-000]

Take notice that Viking Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP90-273-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: December 31, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket number— (date filed)	Shipper name—(Type)	Peak day, average day, annual dt	Receipt points	Delivery points	Contract date rate schedule service type	Related docket start up date
CP91-384-000 (11-9-90)	ANR Gathering Co. (Marketer)	385,000 385,000 140,525,000	Various	Various	10-1-90 Interruptible	ST91-2352 10-31-90
CP91-385-000 (11-9-90)	Proctor & Gamble Paper Products (End-user)	50,350 50,350 18,377,750	Various	Various	10-1-90 Interruptible	ST91-2357 10-31-90
CP91-386-000 (11-9-90)	Wisconsin Public Service Corp. (LDC)	7,660 7,660 2,676,200	TransCanada Emerson, Canada	WI	8-21-90 FT-2	ST91-2350 10-31-90

5. National Fuel Gas Supply Corp.

[Docket No. CP91-415-000]

Take notice that on November 13, 1990, National Fuel Gas Supply Corporation (National), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP91-415-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of compression facilities in Potter County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National requests authorization to construct and operate a new compressor station, to be designated as National's Costello Compressor Station, in Potter County, Pennsylvania. National states that the station will consist of a 1,700 horsepower prefabricated, skid-mounted compressor unit, building, yard piping and related facilities, to be installed at the junction of National's Lines FM-100 and YM-7. National further states that the compressor will create additional suction on Line FM-100, compress gas from 250 psig to 950 psig, and discharge gas into Line YM-7. It is stated that the installation of the new station would enable local gas producers to deliver gas to National at additional points which would flow into Line FM-100. It is also stated that the unit would afford National the opportunity to increase its purchases off of the systems of

Tennessee Gas Pipeline Company and Texas Eastern Transmission Corporation at delivery points in the western portion of National's system, and move those volumes to the eastern portion.

National states that the proposed facilities would cost approximately $1,945,520 and would be financed with internally generated funds and/or interim short-term bank loans.

Comment date: December 7, 1990, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27612 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-225-002]

Chicago Energy Exchange of Chicago, Inc.; Filing

November 13, 1990.

Take notice that on October 30, 1990, Chicago Energy Exchange of Chicago, Inc. (Energy Exchange), filed certain information as required by Ordering Paragraph (L) of the Commission's April 19, 1990 order in this proceeding. 51 FERC ¶ 61,054 (1990). Copies of Energy Exchange's informational filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27616 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-401-001-005]

Citizens Power & Light Corp.; Filing

November 13, 1990.

Take notice that on November 1, 1990, Citizens Power & Light Corporation (Citizens) filed certain information as required by Ordering Paragraph (M) of the Commission's August 8, 1989 order in this proceeding. 48 FERC ¶ 61,210 (1989). Copies of Citizens' informational filing are on file with the Commission are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 90-27617 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-24-000]

Colorado Interstate Gas Co.; Tariff Filing

November 16, 1990.

Take note that on November 13, 1990, Colorado Interstate Gas Company ("CIG") tendered for filing the following tariff sheets in its Original Volume Nos. 1 and 3:

Original Volume No. 1

Original Sheet No. 45.1

Original Volume No. 3—Base Tariff Sheets

First Revised Sheet No. 97
Original Sheet No. 97A
First Revised Sheet No. 98

Original Volume No. 3—"Alternate" Sheets [1]

First Revised Sheet No. 97B
Original Sheet No. 97C
First Revised Sheet No. 98

CIG states that the purpose of this filing is to establish temporary interruption procedures CIG will follow in the event sales or transportation service interruption results from failure to tender nominated quantities of natural gas by customers of CIG or unauthorized overruns of delivery from CIG's system. In addition, CIG states that the present filing imposes liability on shippers and purchasers who fail to tender nominated transportation volumes or take unauthorized overrun volumes, respectively, and whose actions result in service interruptions.

CIG states that copies of its filing were served on all holders of Volume Nos. 1 and 3 of CIG's FERC Gas Tariff and appropriate state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.311 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-27618 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

[1] The "Alternate" sheets listed are built upon sheets currently pending Commission approval in Docket Nos. RP90-12-005 and CP89-1554-004. First Revised Sheet No. 98 is required regardless of which set of Volume No. 3 sheets are finally accepted and made effective.

[Docket No. RP91-22-000 and CP89-1768-006]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

November 16, 1990.

Take notice that on November 14, 1990, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following:

Primary Proposal

(DS-1 Settlement Approved, Rehearing Granted)

Second Revised Volume No. 1

First Revised Sheet No. 20

Alternate I Proposal

(DS-1 Settlement Approved, Rehearing Denied)

Second Revised Volume No. 1

First Alternate First Revised Sheet No. 10
First Revised Sheet No. 11

Alternate II Proposal

(DS-1 Settlement not Approved, Rehearing Granted)

Second Revised Volume No. 1

Second Alternate First Revised Sheet No. 10

Alternate III Proposal

(DS-1 Settlement not Approved, Rehearing Denied)

Second Revised Volume No. 1

Third Alternate First Revised Sheet No. 10
Alternate First Revised Sheet No. 11

Northwest states that the purpose of this filing is to implement a rate for a Gas Inventory Charge ("GIC") consistent with § 21.2 of the General Terms and Conditions of Northwest's FERC Gas Tariff, Second Revised Volume No. 1.

Northwest states that under any of the four proposals listed above, the GIC rate is 14.82¢ per MMBtu effective for the twelve-month period commencing January 1, 1991 for ODL-1 and DS-1 customers, if applicable. The proposed rate is significantly lower than earlier projections of Northwest's GIC rate because it is based upon a current Weighted Deficiency Recovery Period of three years.

Northwest's Primary Proposal reflects approval of the pending DS-1 Settlement and the granting of Northwest's Request for Rehearing (filed on August 30, 1990 in Docket No. CP88-578 *et al.*). Northwest's Alternate I Proposal reflects approval of the DS-1 Settlement and a denial of (or inaction on) Northwest's Request for Rehearing. Northwest's Alternate II Proposal reflects no approval of (or inaction on) the DS-1 Settlement and the granting of Northwest's Request for Rehearing. Northwest's Alternate II Proposal reflects no approval of (or inaction on) the DS-1 Settlement and a denial (or inaction on) Northwest's Request for Rehearing but is consistent with all Commission orders current as of the date of this filing.

Northwest states that a copy of this filing is being served upon Northwest's affected jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-27619 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-560-000]

Public Service Company of Oklahoma; Filing

November 16, 1990.

Take notice that on November 16, 1990, Public Service Company of Oklahoma ("PSO") tendered for filing additional data in support of a proposed decrease in rates to its full-requirements wholesale customers. PSO renewed its request for an effective date of September 1, 1990 and a waiver of the Commission's notice requirements. PSO stated that copies of the filing have been sent to the affected customers and the Oklahoma Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27613 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-40-002]

Raton Gas Transmission Co.; Compliance Filing

November 16, 1990.

Take notice that on November 7, 1990, Raton Gas Transmission Company (Raton) in compliance with the Commission's Order issued October 12, 1990 in the above referenced docket filed with the Federal Energy Regulatory Commission the following tariff sheets:

Substitute 16th Revised Sheet No. 4
Revised Schedule A-1, Page 2
Revised Schedule B-2, Pages 2 thru 13
Revised Schedule C-1, Pages 1 thru 3
Revised Schedule C-2
Revised Schedule D-2
Revised Schedule G-1

Raton states that revised Tariff Sheet No. 4 provides for an increase in commodity charge of 25.22¢ due to an increase in costs by suppliers Colorado Interstate Gas Co. (CIG) and Mega Natural Gas Co. (Mega) which occurred after the initial filing. Schedule B-2 has been revised to show the projected cost of gas in detail for each month utilizing actual sales volumes and projected unit costs. Raton also states that it has deleted paid Order No. 500 costs from CIG.

Raton further states that it has correctly calculated the surcharge rate based on the balance which Raton's customers owned to Raton as of end of May 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before November 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this

filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-27624 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-115-000, RP90-104-000, and RP90-192-000]

Texas Gas Transmission Corp.; Informal Settlement Conference

November 16, 1990.

Take notice that an informal settlement conference will be convened in these proceedings on December 5, 1990, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will continue on December 6, if necessary.

The conference will consider settlement proposals in the captioned consolidated proceedings. In addition, the conference will address a new mechanism for passthrough of take-or-pay buyout and buydown costs proposed by Texas Gas Transmission Corporation pursuant to Commission Order No. 528, 53 FERC ¶ 61,183 (Nov. 1, 1990).

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulation (18 CFR 385.214).

For additional information, contact Donald A. Heydt (202) 208-0248 or Joanne Leveque (202) 208-5705.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-27622 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-62-002]

Viking Gas Transmission Co.; Filing

November 16, 1990.

Take notice that on November 14, 1990, Viking Gas Transmission Company (Viking), pursuant to the Commission's October 31, 1990 letter order in the referenced docket, refiled its corrected Schedule C1 in both hard copy and magnetic tape versions, its Schedule C2 to conform the electronic PGA with the hard copy PGA, and its Schedule G1 to assist in the processing of the electronic medium.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before November 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-27623 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-183-020]

Williams Natural Gas Co., Proposed Changes in FERC Gas Tariff

November 16, 1990.

Take notice that on November 13, 1990, Williams Natural Gas Company (WNG) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Twenty Third Revised Sheet No. 6
Ninth Revised Sheet No. 6A
Twenty Second Revised Sheet No. 7

WNG states that this filing was made for the purpose of implementing an interim rate reduction prior to the commencement of the 1990-91 heating season. WNG is implementing this reduction in order to give its customers a substantial portion of the benefits of the negotiated Settlement in this proceeding while the Settlement is pending before the Administrative Law Judge and the Commission.

WNG has requested waiver to permit the tendered tariff sheets to be made effective November 1, 1990. WNG states that copies have been served on all parites in Docket Nos. RP89-183. *et al.*

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before November 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-27620 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ91-1-49-002 TM91-1-49-002]

Williston Basin Interstate Pipeline Co.; Change in FERC Gas Tariffs

November 16, 1990.

Take notice that on November 13, 1990, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing tariff sheets to First Revised Volume No. 1, Original Volume No. 1-A, Original Volume No. 1-B and Original Volume No. 2 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets are being submitted in compliance with the Commission's October 31, 1990 Order regarding Williston Basin's Purchased Gas Cost Adjustment filing in Docket No. TQ91-1-49-000 and Annual Charge Adjustment filing in Docket No. TM91-1-49-000.

Williston Basin states that copies of the filing were served on Williston Basin's jurisdictional customers and interested state regulatory agencies.

Any peson desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before November 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A Watson, Jr.,

Action Secretary.

[FR Doc. 90-27621 Filed 11-23-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Friday, January 4, 1991, 8:30 a.m.-5 p.m., Saturday, January 5, 1991, 8:30 a.m.-3 p.m.

Place: Superconducting Super Collider Laboratory, 2550 Beckleymeade Avenue, Dallas, Texas 75237.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER-221, GTN, Washington, DC 20585, Telephone: (301) 353-4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Friday, January 4, 1991 and Saturday, January 5, 1991

—Discussion of National Science Foundation Elementary Particle Physics Programs
—Discussion of Department of Energy High Energy Physics Programs
—Discussion of Department of Energy Superconducting Super Collider (SSC) Programs
—Presentation and Discussion of SSC Laboratory progress and plans
—Reports on and Discussions of Topics of General Interest in High Energy Physics
—Public Comment

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on November 20, 1990.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 90-27696 Filed 11-23-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the proposed procedures to be followed in refunding to adversely affected parties $305,000, plus accrued interest, that Reinauer Petroleum Co. is required to remit to the DOE pursuant to a Consent Order executed on April 26, 1988. The funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATES AND ADDRESSES: Comments must be filed in duplicate December 26, 1990, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a conspicuous reference to Case Number KEF-0110.

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, Soong-Chan Rah, Staff Analyst, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8018 (Tedrow), (202) 586-6602 (Rah).

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute monies that have been remitted by Reinauer Petroleum Co. to the DOE to setttle alleged pricing and allocation violations with respect to the firm's sales of motor gasoline. The DOE is currently holding Reinauer's full payment of $305,000 in an interest-bearing escrow account pending distribution.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: November 19, 1990

George B. Breznay,

Director, Office of Hearings and Appeals.

Name of Firm: Reinauer Petroleum Co.

Date of Filing: June 20, 1988

Case Number: KEF-0110

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the Mandatory Petroleum Price and Allocation Regulations. *See* 10 CFR part 205, subpart V. On June 20, 1988, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order entered into with Reinauer Petroleum Co. (Reinauer).

I. Background

Reinauer was a "reseller" of motor gasoline as that term was defined in 10 CFR 212.31, located in Hackensack, New Jersey. A DOE audit of Reinauer's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR part 212, subpart F. Specifically, the audit revealed that between April 1, 1979 and September 30, 1979, Reinauer may have violated the DOE's pricing regulations with respect to its sales of motor gasoline.

In order to resolve its potential civil liabilities arising from the ERA's audit, Reinauer entered into a Consent Order with the DOE on April 26, 1988. The Consent Order refers to ERA's allegations of overcharges, but does not find that any violations occurred. In addition, the Consent Order states that Reinauer does not admit any such violations. Under the terms of the Consent Order, Reinauer was required to deposit $305,000 into an escrow account for ultimate distribution by the DOE. On May 4, 1988, Reinauer made a full payment of $305,000 into the account. This Proposed Decision and Order sets forth the OHA's tentative plan for the distribution of the funds in the Reinauer escrow account. Comments are solicited.

BEST COPY AVAILABLE

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR part 205 subpart V. The subpart V process may be used in situations where the DOE is unable to identify readily those persons who may have been injured by alleged regulatory violations or to determine the amount of such injuries. A more detailed discussion of subpart V and the authority of OHA to fashion procedures to distribute refunds is set forth in the cases of *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

In keeping with the goals of the subpart V regulations, we will attempt to provide refunds to claimants who demonstrate that they were injured by Reinauer's alleged overcharges in its sales of motor gasoline during the April 1, 1979 through September 30, 1979 consent order period. Residual funds in the Reinauer escrow account will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Public Law No. 99-509, title III. See 51 FR 43964 (December 5, 1986).

A. Calculation of Refund Amounts

The first step in the refund process is the calcualtion of an applicant's potential refund. In order to determine the potential refunds for these purchasers, we propose to adopt a presumption that the alleged overcharges were dispersed equally in all of Reinauer's sales of refined petroleum products during the consent order period. In accordance with this presumption, refunds are made on a pro-rata or volumetric basis. In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

The volumetric refund presumption is rebuttable. The impact on an individual claimant may have been greater than its potential refund calculated using the volumetric methodology. Accordingly, a claimant may submit evidence detailing the specific alleged overcharge that it incurred in order to be eligible for a larger refund. *See Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

Under the volumetric approach, an eligible claimant will receive a refund equal to the number of gallons of motor gasoline that it purchased from Reinauer during the period April 1, 1979 through September 30, 1979, multiplied by a volumetric factor of $0.03584 per gallon.[1] In addition, each successful claimant will receive a pro-rata portion of the interest that has accrued on the Reinauer funds since the date of remittance.

As in previous cases, only claims for at least $15 in principal will be processed. This minimum has been adopted in refined product refund proceedings because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those instances. *See, e.g., Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985); *see also* 10 CFR 205.286(b). If an applicant's potential refund is calculated using the volumetric methodology, it must have purchased at least 405 gallons of Reinauer motor gasoline in order for its claim to be considered.

B. Determination of Injury

Once a claimant's potential refund has been calculated, we must determine whether it was injured by its purchases from Reinauer, *ie.*, whether it was forced to absorb the alleged overcharges. Based on our experience in numerous subpart V proceedings, we propose to adopt certain presumptions concerning injury in this case. An applicant that is not covered by one of these presumptions must demonstrate injury in accordance with the non-presumption procedures outlined in the latter part of this Decision.

1. *Presumptions Concerning Injury.* The presumptions we plan to adopt in this case are designed to allow claimants to participate in the refund process without incurring inordinate expenses, and to enable OHA to consider the refund applications in the most efficient way possible. We will presume that end users of Reinauer motor gasoline, certain types of regulated firms, and cooperatives were injured by their purchases from Reinauer. In addition, we will presume that resellers and retailers of Reinauer gasoline submitting small claims were injured by their purchases. On the other hand, we will presume that resellers and retailers that made spot purchases of Reinauer motor gasoline and those who sold it on consignment were not injured by their purchases. Each of these presumptions is listed below, along with the rationale underlying its use.

[1] We computed the volumetric factor by dividing the $305,600 received from Reinauer by the total volume of covered products sold by the firm during the consent order period (8,528,529 gallons).

a. End Users

First, in accordance with prior subpart V proceedings, we will presume that end users, *i.e.*, ultimate consumers of Reinauer motor gasoline whose businesses are unrelated to the petroleum industry, were injured by the firm's alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. *See Marion Corp.*, 12 DOE ¶ 85,014 (1984) and cases cited therein. Therefore, end users need only document their purchase volumes of Reinauer motor gasoline to demonstrate that they were injured by the alleged overcharges.

b. Regulated Firms and Cooperatives

Second, public utilities, agricultural cooperatives, and other firms whose prices are regulated by government agencies or cooperative agreements do not have to submit detailed proof of injury. Such firms routinely would have passed through price increases to their customers. Likewise, their customers would share the benefits of cost decreases resulting from refunds. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982); *Office of Special Council*, 9 DOE ¶ 82,545 at 85,244 (1982). Such firms applying for refunds should certify that they will pass through any refund received to their customers and should explain how they will alert the appropriate regulatory body or membership group to monies received. Purchases by cooperatives that were subsequently resold to nonmembers will not be covered by this presumption.

c. Reseller and Retailer Small Claims

Third, we will presume that a reseller or a retailer seeking a refund of $10,000 or less, excluding accrued interest, was injured by Reinauer's pricing practices. In many prior cases we have established a small claims threshold of $5,000. In the present case, however, in order to minimize the burden upon individual applicants and this Office, we have tentatively decided to establish the small claims threshold at $10,000. This determination is based on a number of considerations. In this proceeding, the volumetric factor is significantly higher than the amount in most other proceedings. As a result, the allocable share of many small retailers and resellers who would typically qualify for a refund at or below the small claims threshold will be well above $5,000. If we were to keep the small claims threshold at $5,000 in this case, it would significantly increase the number of firms, especially very small firms, that would be faced with the burden of making a detailed showing of injury in order to receive their allocable share. It would also very significantly increase the burden on this Office because of the need to analyze many more detailed injury showings and would thus slow down the evaluation of claims. Therefore, in order to minimize those burdens we are proposing a larger small claims threshold of $10,000. See *Texaco Inc.*, 20 DOE ¶ 85,147 (1990). Retailer and reseller claimants whose allocable share is $10,000 or less will be presumed injured and therefore need not provide a further demonstration of injury in order to receive their full allocable share. Therefore, a small claimant must only document the volumes of motor gasoline it purchased from Reinauer in order to demonstrate injury. See *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984).

d. Spot Purchasers

Fourth, resellers and retailers that were spot purchasers of Reinauer motor gasoline, *i.e.*, firms that made only sporadic, discretionary purchases, are presumed not to have been injured, and consequently, generally will be ineligible for refunds. The basis for this presumption is that a spot purchaser tended to have considerable discretion as to where and when to make a purchase, and therefore, would not have made a purchase unless it was able to recover the full amount of its purchase price from its customers, including any alleged overcharges included in its costs. See *Vickers* at 85,396-7. A spot purchaser can rebut this presumption by demonstrating that its base period supply obligation limited its discretion in making the purchases and that it resold the product at a loss that was not subsequently recouped. See *e.g., Saber Energy, Inc./Mobil Oil Corp.*, 14 DOE ¶ 85,170 (1986).

e. Consignees

Finally, we will presume that consignees of Reinauer motor gasoline were not injured by the firm's alleged pricing violations. *See, e.g., Jay Oil Co.*, 16 DOE ¶ 85,147 (1987). A consignee agent is an entity that sold products pursuant to an agreement whereby its supplier established the prices to be charged by the consignee and compensated the consignee with a fixed commission based upon the volume of products that it sold. A consignee may rebut the presumption of non-injury by demonstrating that its sales volumes and corresponding commission revenues declined due to the alleged uncompetitiveness of Reinauer's pricing practices. *See Gulf Oil Corp./C.F. Canter Oil Co.*, 13 DOE ¶ 85,388 at 88,982 (1986).

2. *Allocation Claims.* We may also receive claims based upon Reinauer's alleged failure to furnish petroleum products that it was obliged to supply under the DOE allocation regulations. See 10 CFR part 211. Any such applications will be evaluated with reference to the standards set forth in cases such as *Standard Oil Company (Indiana)*, 10 DOE ¶ 85,048, and *OKC Corp./Town & Country Markets, Inc.*, 12 DOE ¶ 85,094 (1984). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

3. *Non-Presumption Demonstration of Injury.* A reseller or retailer that claims a refund in excess of $10,000 will be required to demonstrate its injury. There are two aspects to such a demonstration. First, a firm is required to provide a monthly schedule of its banks of unrecouped increased products costs for each grade of motor gasoline that it purchased from Reinauer. Cost banks should cover the period April 1, 1979 through September 30, 1979. If a firm no longer has records of contemporaneously calculated cost banks for a particular grade of motor gasoline, it may approximate those banks by submitting the following information regarding its purchases of that product from all of its suppliers.

(1) The weighted average gross profit margin that the firm received for the product on May 15, 1973;

(2) A monthly schedule of the weighted average gross profit margins that it received for the product during the period, April 1, 1979 through September 30, 1979; and

(3) A monthly schedule of the firm's purchase or sales volumes of the products during the period, April 1, 1979 through September 30, 1979.

The existence of banks of unrecovered increased product costs that exceed an applicant's potential refund is only the first part of an injury demonstration. A firm must also show that market conditions forced to absorb the alleged overcharges. Generally, we will infer this to be true if the prices the applicant paid Reinauer were higher than average market prices for the same level of distribution. Accordingly, a claimant attempting to demonstrate injury should submit a monthly schedule of the weighted average prices that it paid Reinauer for each grade of motor gasoline during the period April 1, 1979 through September 30, 1979.

If a reseller or retailer that is eligible for a refund in excess of $10,000 does not submit cost bank and purchase price information described above, it can still apply for a refund of $10,000 plus accrued interest, using the small claims presumption. If, however, a firm provides the above-mentioned data and we subsequently conclude that the firm should receive a refund of less than the $10,000 small claims threshold, the firm cannot opt for a full $10,000 refund.

III. Distribution of Remaining Funds

In the event that money remains after all meritorious refund applications have been processed, the funds in the Reinauer escrow account will be disbursed in accordance with the provisions of the Petroleum Overchage and Distribution Act of 1986 (PODRA). 15 U.S.C.A. 4501-4507 (West Supp. 1989).

It is therefore ordered that the refund amount remitted to the Department of Energy by Reinauer Petroleum Co. pursuant to the Consent Order executed on April 28, 1988, will be distributed in accordance with the foregoing Decision.

[FR Doc. 90-27697 Filed 11-23-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3864-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forward to the Office of Management and Budget (OMB) for review and comment. The

ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 26, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NSPS for Secondary Lead Smelters (Subpart L)—Information Requirements. (EPA ICR #1128.03; OMB #2060-0060). This is an extension of the expiration date of a currently approved collection.

Abstract: Owners or operators of secondary lead smelters must notify EPA of construction, reconstructions, modifications, startups, shutdowns, and malfunctions. Owners or operators must keep these records for 2 years. States and/or EPA use the information to determine compliance with the standards, to target inspections, and, when necessary, to use as evidence in court.

Burden Statement: The public reporting burden for this collection of information is estimated to average 43 hours each for the 25 sources required to keep records. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners and operators of secondary lead smelters.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 81 hours.

Frequency of Collection: Once and on occasion.

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, 401 M Street, SW., Washington, DC 20460
and
Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: November 19, 1990.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 90-27987 Filed 11-23-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3884-8]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Section 114 information request.

SUMMARY: By this notice, EPA is requiring that individuals or legal entities that produced, transformed (i.e., used and consumed in the manufacture of another substance), imported or export specified ozone-depleting chemicals in 1989 provide information regarding these activities to EPA by December 17, 1990. The chemicals are: 1,1,1-trichloroethane (methyl chloroform); carbon tetrachloride; and chlorofluorocarbons (CFCs) −13, −111, −112, −211, −212, −213, −214, −215, −216 and −217.

EPA needs this information to promulgate production and consumption restrictions under section 604 of the Clean Air Act Amendments of 1990 (the Amendments), Public Law 101-549. Section 604 calls for phased reductions in both the production and consumption of several sets of chemcals (chlorofluorocarbons, halons, methyl chloroform, carbon tetrachloride and other fully halogenated chlorofluorocarbons) beginning January 1, 1991.

In addition, the Agency needs this information to fulfill the United States' obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer, an international treaty recently amended that requires a complete phase-out of these chemicals listed above. EPA is authorized to obtain this information under section 114 of the Clean Air Act.

FOR FURTHER INFORMATION CONTACT: Daniel Blank, Global Change Division; Office of Atmospheric and Indoor Air Programs (ANR-445); Office of Air and Radiation; 401 M Street SW., Washington, DC 20460, (202) 475-8894.

SUPPLEMENTARY INFORMATION:

I. Background

On September 16, 1987, the United States and 23 other nations signed the Montreal Protocol. The original agreement set forth a timetable for reducing the production and consumption (defined as production plus imports minus exports) of specified ozone-depleting chemicals, including CFC-11, CFC-12, CFC-113, CFC-114, and CFC-115, and Halon-1211, Halon-1301, and Halon-2402.

EPA implemented the original Protocol through regulations allocating production and consumption allowances equal to the total amount of production and consumption the United States was allowed under the Protocol. (*See* final rule promulgated on August 12, 1988 (53 FR 30566) and subsequent minor revisions and amendments promulgated on February 9 (54 FR 6376), April 3 (54 FR 13502), July 5 (54 FR 28082) and July 12 (54 FR 29337) of 1989, and February 13 (55 FR 5007), June 15 (55 FR 24490) and June 22 (55 FR 25812) of 1990.) Companies were allocated allowances according to the amount of controlled substances each company had produced or imported in 1986, the baseline year specified by the Protocol. The allocations have since been reduced according to the timeable for reductions set forth in the Protocol.

The Parties to the Montreal Protocol met in London on June 27-29, 1990 to consider revisions to the Protocol. In response to scientific evidence indicating greater than expected stratospheric ozone depletion, the Parties agreed to accelerate the phase-out schedules for the substances already controlled by the Protocol, and to add restrictions on other ozone-depleting chemicals, including methyl chloroform, carbon tetrachloride and other fully-halogenated CFCs. Specifically, the Parties voted to phase-out the already controlled CFCs and halons by 2000, carbon tetrachloride and all other fully halogenated CFCs by 2000, and methyl chloroform by 2005. The Parties also chose 1989 as the baseline year against which reductions of carbon tetracholoride, methyl chloroform and the other CFCs are to be measured.

In title VI of the recently enacted Clean Air Act Amendments of 1990, Congress included controls on ozone-depleting chemicals at least as stringent as those adopted by the Protocol Parties at their London meeting. Section 604 of the Act as amended requires a complete phaseout of Halons, carbon tetrachloride and the fully halogenated CFCs by 2000 and methyl chloroform by 2002. In the interim, section 604 provides a schedule of annual reductions in production and consumption from specified baseline levels. The first of these reductions takes effect beginning January 1, 1991.

Title VI also specifies a manner for implementing the reductions similar to that adopted by EPA in implementing the original Protocol's control requirements. Section 604 provides that every person or company that produced a controlled substance in the baseline year (1989 for methyl chloroform and carbon tetrachloride, 1986 for all other substances) reduce its production of that substance according to the reduction schedule. That setion also provides that

EPA promulgate regulations that reduce United States consumption of the controlled substances according to the same schedule. Section 607 requires that EPA issue persons who produced or imported controlled substances in the baseline years production and consumption allowances in the amount of each person's allowable production and "consumption" (defined as production plus imports minus exports) under the reduction schedule.

As noted above, the first year of the reduction schedule is 1991. While sections 604 and 607 allow EPA 10 months to, among others things, establish baselines against which reductions are to be measured, the Agency believes that baselines for at least 1991 should be promulgated by January 1, 1991, or as soon thereafter as possible. Otherwise, companies may not know exactly how much they must reduce in the first year of the reduction schedule until much of the year has passed. In their statement as Senate managers for the Amendments, Senators Max Baucus and John Chafee urged EPA to "quickly obtain the data needed to verify baselines against which to measure the required reductions" (Congressional Record, Oct. 27, 1990, p. 16947).

The Agency has baseline data for the five CFCs and three halons controlled by the original Protocol; the allowances issued under the current regulations are based on that data. EPA, however, does not have baseline data for carbon tetrachloride, methyl chloroform and the other fully halogenated CFCs. Given the importance of establishing baselines for 1991 as soon as possible, EPA by this notice is requesting baseline data for those chemicals under section 114 of the Act.

Section 114 authorizes EPA to require any person who operates any emission source or who is subject to any requirement of this Act to provide information that the Agency needs to carry out any provision of the Act, including sections 604 and 607. Section 604 requires reductions in all the controlled substances in 1991; section 607 requires issuance of allowances in accordance with the required reductions. If the requirements of these sections are to be workable, baselines for the 1991 reductions should be promulgated quickly. EPA thus believes it is appropriate to obtain baseline data under section 114.*

* EPA notes that section 603 provides for submission of baseline data about halfway through 1991. That provision, however, does not preclude EPA form obtaining baseline data under section 114, and for the reasons discussed above, EPA believes that earlier submission of baseline data is needed.

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that a section 114 letter was forwarded to the Office of Management and Budget (OMB) for review. It also announces our request for emergency processing under 5 CFR 1320.18. OMB has approved the section 114 letter and the Information Collection Request (ICR # 1432.05) associated with it. Clearance for the collection of information was approved on 11/19/90, and will expire on 2/28/91.

Send comments regarding the burden estimates or any other aspect of this collection to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, 401 M Street, SW., Washington, DC 20460
and
Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530.

II. Statutory Authority

The Agency requests this information under section 114 of the Clean Air Act, which authorizes EPA to obtain information, even confidential business information, needed to carry out the provisions of the Act.

III. Information Requested

A. Affected Entities

Only entities that in 1989 produced, transformed through use as a feedstock, imported or exported the controlled substances specified in the following section are required to submit the information specified in section D.

B. Controlled Substances Covered by Request

The request covers the following chemicals:

(1) CF3C1-Chlorotrifluoromethane (CFC-13)
(2) C2FC15-Pentachlorofluoroethane (CFC-111)
(3) C2F2C14-Tetrachlorodifluoroethane (CFC-112)
(4) C3FC17-(CFC-211)
(5) C3F2C16-(CFC-212)
(6) C3F3C15-(CFC-213)
(7) C3F4C14-(CFC-214)
(8) C3F5C13-(CFC-215)
(9) C3F6C12-(CFC-216)
(10) C3F7C1-(CFC-217)
(11) CC14-Carbon Tetrachloride
(12) C2H3C13-1,1,1 Trichloroethane (Methyl Chloroform)
(13) isomers of any of the above chemicals, except 1,1,2-Trichloroethane

C. Definitions

1. *Controlled substance* means any bulk quantity of a chemical listed in section B, whether existing alone or in mixtures including azeotropes. The definition of "bulk" excludes any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. (*See* 53 FR 30561.)

In effect, EPA has defined bulk in terms of the chemical's container. A bulk container serves to transport the substance and is not used directly in the application of the chemical or as part of a "use system."

Isotanks used for transporting large volumes of these chemicals are clearly bulk containers, as are 50-gallon drums and pressurized cylinders. Conversely, an aerosol that contains methyl chloroform as its solvent is not a bulk container; instead it is considered a product.

Although the distinction between a bulk container like an isotank and a use system such as an aerosol is generally clear, some containers are not obviously either bulk containers holding controlled substances or parts of use systems that are considered products. For example, a small container of methyl chloroform to be used in a paint sprayer is considered bulk because the methyl chloroform while in the container is not acting and will not act as a paint thinner. Once the methyl chloroform is emptied into the paint sprayer, the container serves no purpose in the operation of the sprayer and is discarded.

Conversely, it is possible that a reservoir or container housing a controlled substance could be designed to be inserted into a product for the substance to be used and the product to work. This reservoir might be transported independently of the product in which it is to be used, but if it is considered a necessary part of the use system, it would not be considered bulk. For example, a small reservoir of CFC-113 that serves as a fusing agent for a laser printer would be considered a product if the printer cannot operate without the reservoir attached.

In situations where it is not clear whether the container is intended to be used directly in the application of the chemical (and is therefore a product) or serves only to store and transport the controlled substance (and is thus a bulk container), the following rule of thumb should be used: when, and only when, an importer or exporter cannot determine how a container is used in applying the chemical, chemical containers of one gallon (or its metric

equivalent of four liters) or less are considered products. Chemicals in containers larger than one gallon are considered bulk and thus controlled substances. This "rule of thumb" only applies when the eventual use of the container is not known and cannot be determined with reasonable efforts.

2. *Production* means the manufacture of a controlled substance from any raw material or feedstock chemical (*i.e.*, virgin production). The term includes any spills or ventings of controlled substances equal to or in excess of one hundred pounds per event. However, production does not include the manufacture of controlled substance that are used and entirely consumed except for trace quantities in the manufacture of other chemicals, nor does production include the recyling of used controlled substances. (*See* 53 FR 30583–4 and 55 FR 24495.)

3. *Import* means the transport of virgin, used and recycled controlled substances from outside the United States or its territories to persons within the United States or its territories, including imports to bonded warehouses. The amount imported is considered to be the total net volume as recorded on the Entry Summary Form to the U.S. Customs Service. Thus, import amounts should not net out any returned "heels." (*See* 53 FR 30581–3 and 54 FR 28064.)

For the purpose of assigning company baselines, EPA defines "importer" as the first United States owner of the imported controlled substances who is a supplier to or a member of the domestic industry that uses the controlled substances. Generally the "importer of record" on the U.S. Customs document is in fact an importer under this definition. However, there are cases where the importer of record is a transfer or shipping agent acting on behalf of the first U.S. owner. EPA does not intend to allocate baseline allowances to such agents.

4. *Export* means the transport of virgin, used and recycled controlled substances from within the United States or its territories to persons or countries outside the United States or its territories, including transfers to affiliates. However, exports exclude shipments to United States military bases or to ships for on-board use. (*See* 53 FR 30581–2.)

5. *Transform* means the use and entire consumption (except for trace quantities) of virgin, used or recycled controlled substances as a feedstock in the manufacture of another substance. Companies that produce and then transform a substance listed in section B are required to report the consumed substance as transformation, separately from production as noted in section C(2). Companies that purchased substances listed in section B and then used some or all of the substances as a feedstock must also report this as transformation.

D. Data Required

EPA is requiring that each affected entity provide data on the quantity of each of the controlled substances that it produced, transformed, imported or exported in 1989 as defined under section B and C.

Producers who manufactured one or more of the substances listed in section B from raw materials or feedstock chemicals are required to submit: (1) Name, address and telephone number of company contact; and (2) the amount (in kilograms) of each listed substances it produced in 1989 in the United States or its territories and the location of its production, as well as documentation of its production such as plant records.

Companies that produced and then transformed one or more of the substances listed in section B as feedstock chemicals are required to submit, in addition to their production report, the amount (in kilograms) of each listed substances used and entirely consumed except for trace quantities as a chemical intermediary in the production of another chemical in 1989. Documentation supporting the submission of 1989 production and transformation levels could include production statements used for other reporting purposes or similar information.

Companies that purchased and then transformed one or more of the substances listed in section B as feedstock chemicals are required to submit: (1) Name, address and telephone number of company contact; (2) the amount (in kilograms) of each listed substance it entirely consumed (except for trace quantities) as a chemical intermediary in the production of another chemical in 1989; (3) copies of invoices or receipts documenting the purchase of the listed substance by the reporting company; and (4) description of the commercial use of the resulting chemical.

Importers who transported the controlled substances listed in section B from outside the United States or its territories to persons within the United States or its territories are required to submit: (1) Name, address and telephone number of company contact; (2) the amount (in kilograms) of each of the listed substances which it imported into the United States or its territories in 1989, and for each shipment, the Entry Number, Customs District and Port Code, Employer Identification Number (EIN) or importer number, the designated "importer of record" on the U.S. Customs Entry Summary Form, commodity code, the date and port of entry and the country in which it was produced; and (3) copies of the Entry Summary Form for each shipment (if these are unavailable, other official papers documenting the import may be substituted).

Exporters who transported the controlled substances listed in section B from within the United States or its territories to outside the United States or its territories are required to submit: (1) Name, address and telephone number of contact; (2) the amount (in kilograms) of each of the listed substances which in 1989 it exported from the United States or its territories, and for each shipment, the producer of the chemical, the date and port of exit, the EIN, Customs District and Port Code, the commodity code, and the country of final destination; and (3) copies of the invoices documenting the purchase of the chemical from the producer, and of the shipper's export declaration, invoices or bills of lading for each shipment documenting the exported volume and date of the listed substances.

E. Confidential Business Information

Anyone submitting information must assert a claim of confidentiality for any data it wishes to have treated as confidential business information (CBI) under 40 CFR, part 2, Subpart B. Failure to assert a claim of confidentiality at the time of submission may result in disclosure of the information by the Agency without further notice.

The Bruce Company and ICF, Incorporated are hereby designated as Authorized Representatives of the Administrator of the United States Environmental Protection Agency (EPA) for the purpose of assisting EPA in the development and the implementation of national regulations for the protection of stratospheric ozone, including the development of the 1989 baseline, under section 157(b) of the Clean Air Act.

The Authorized Representatives, under EPA contract 68–D9–0068 may have access to any information received by the Global Change Division within the Office of Atmospheric and Indoor Air Programs for use in reviewing the need for possible control of any substance, practice, process or activity which may reasonably be anticipated to affect stratospheric ozone. In general, this information will pertain to the feasibility and costs of achieving controls and baseline data for production, imports and exports. Some of this information may be claimed as confidential business information. Access to such information is necessary in order that the Bruce Company and ICF, Incorporated may carry out work required by the contract.

Authorized Representatives of the Administrator are subject to the provisions of 42 U.S.C. 7414(c) respecting confidential business information as implemented by 40 CFR 2.301(h).

F. Submission of Data

The data required under this request must be submitted to EPA by December 17, 1990. It should be sent to: Daniel Blank (Baseline); Global Change Division; Office of Atmospheric and Indoor Air Programs (ANR–445); Office of Air and Radiation; 401 M Street SW., Washington, DC 20460.

IV. Additional Information

Paperwork Reduction Act

The information collection requirements in this request have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has been assigned OMB control number 2060–0170.

The public reporting burden for this one-time collection of information is estimated to average 8 hours per response. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information. The estimated number of respondents is 49, and the estimated total annual burden on respondents is 392 hours.

Dated: November 11, 1990.

Eileen Claussen,

Office Director.

[FR Doc. 90–27807 Filed 11–23–90; 8:45 am]

BILLING CODE 6560–50–M

Office of Research and Development

[FRL–3863–5]

Ambient Air Monitoring Reference and Equivalent Methods

Notice is hereby given that EPA, in accordance with 40 CFR part 53 has designated another equivalent method for the determination of lead in suspended particulate matter collected from ambient air. The new designated method is identified as follows:

EQL–1290–060, "Determination of Lead Concentration in Ambient Particulate Matter by Inductively Coupled Argon Plasma Optical Emission Spectrometry (State of New Hampshire)."

The applicant's request for an equivalent method determination for the above method was received on June 22, 1990. Additional requested information pertinent to the original submittal was received on September 28, 1990.

This method has been tested by the applicant, the State of New Hampshire, Department of Environmental Services, in accordance with the test procedures prescribed in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

This method uses the sampling procedure specified in the reference method for the determination of lead in suspended particulate matter collected from ambient air (43 FR 46258). Lead in the particulate matter is solubilized by extraction with nitric acid facilitated by ultrasonication. The lead content of the sample is analyzed by a Spectro inductively coupled argon plasma optical emission spectrometer using the 220.35 nm lead emission line and instrument conditions optimized by the user laboratory. Technical questions concerning the method should be directed to the State of New Hampshire, Department of Environmental Services, Laboratory Service Unit, 6 Hazen Drive, P.O. Box 95, Concord, New Hampshire 03302–0095.

As a designated equivalent method, this method is acceptable for use by states and other control agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes the method must be used in strict accordance with the procedures and specifications provided in the method description. States or other agencies using inductively coupled argon plasma optical emission spectrometric methods that employ procedures and specifications significantly different from those in this method must seek approval for their particular method under the provisions of § 2.8 of appendix C to 40 CFR part 58 (Modification of Methods by Users) or may seek designation of such methods as equivalent methods under the provisions of 40 CFR part 53.

Additional information concerning this action may be obtained from Frank F. McElroy, Quality Assurance Division (MD–77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Telephone (919) 541–2622.

Erich Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 90–27868 Filed 11–23–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3863–7]

Protest Appeals of Recipients' Procurement Actions Under Federal Assistance Agreements; Subject Index List of EPA Regional Administrator Protest Appeal Determinations Issued During 1987–1988

This notice publishes the consolidated subject index list of bid protest appeal decisions issued by EPA Regional Administrators during 1987 and 1988. These determinations were made pursuant to the EPA protests procedures set forth at 40 CFR 35.939 (assistance awarded prior to May 12, 1982), 40 CFR part 33, May 12, 1982 Interim Final Rules (assistance awarded between May 12, 1982 and March 28, 1983) and 40 CFR part 33, March 28, 1983 Final Rules (assistance awarded after March 28, 1983).

This is the ninth EPA subject index which lists only the decisions issued in the years stated. This first index, listing Regional Administrator protest appeal determinations issued during 1974 through 1977, was published at 43 FR 29086–95 (July 4, 1978). This was supplemented by the index of 1978 determinations published at 44 FR 25812–18 (May 2, 1979), the index of 1979 determinations published at 45 FR 58770–74 (September 4, 1980), the index of 1980 determinations published at 46 FR 30476–80 (June 8, 1981), the index of 1981 and 1982 determinations published at 49 FR 38004–15 (September 13, 1984), the index of 1983 decisions published at 50 FR 4148–54 (January 29, 1985), the index of 1984 decisions published at 50 FR 23061–66 (May 30, 1985), the index of 1985 decisions published at 51 FR 32038–46 (September 8, 1986), and the index of 1986 decisions published at 52 FR 13052–59 (April 20, 1987).

The index lists 80 appeal determinations and 4 reconsideration request determinations issued by the EPA Regional Administrators in 1987 and 1988.

The determinations are cited informally with the names of the

assistance recipients and protesters shortened and abbreviated for administrative convenience. Each entry begins by identifying the year the appeal was decided and the sequential determination number for that year. This number is not part of the preferred citation, which should state the following: Grantee, State, (EPA Region ___, date of determination) (Protest of _____). Beginning with the 1988 determinations, a concise statement of the type of procurement involved is included in brackets at the end of each digest note. Except where otherwise noted, the bid protest appeals in this index arise under the Clean Water Act wastewater treatment construction grant program. For administrative convenience, the term "wastewater treatment" is abbreviated in the index as "WWT."

The issues have been divided into two major subject headings and then alphabetized. Procedural protest issues are listed under the heading "Protest Appeals:" two new subject headings—"Harmless Error" and "Remand"—are included under this heading. Substantive procurement issues are listed under the heading "Procurement."

Copies of specific protest appeal determinations may be examined at or obtained from the EPA Offices of Regional Counsel or from the Office of General Counsel in EPA Headquarters.

FOR FURTHER INFORMATION CONTACT: Jonathan S. Cole: Grants, Contracts, General Law and Administration Division (LE-132G), Office of General Counsel, United States Environmental Protection Agency, Washington, DC 20460: (202) 382-5313.

Dated: October 26, 1990.

E. Donald Elliott,

Assistant Administrator and General Counsel (LE-130).

Consolidated Index To 1978-1988 EPA Bid Protest Appeal Determinations

Bid Protest Appeals—Procedural Matters

A/E Judgment

87:17 Detroit, MI (V, 6-26-87) (*Ashbrook-Simon-Hartley, Inc.*) (EPA defers to technical decisions of grantee which are rationally based).

87:22 Lancaster, OH (V, 7-23-87) (*Floater Vehicle, Inc.*) (rational basis for engineering judgment that equipment previously manufactured by bidder did not satisfy experience requirements in the IFB).

87:35 Moundsville, WV (III, 11-6-87) (*Phoenix Process Equipment Co.*) (EPA will not substitute its judgment for a grantee's rationally-based engineering decision).

87:38 Bonner Springs, KS (VII, 11-16-87) (*Floater Vehicle, Inc.*) (grantee had performance-based reasons for specifications which protester did not meet).

88:07 Milwaukee, WI (V, 3-25-88) (*ELMCO Equipment Co.*) (EPA defers to rationally based engineering for experience requirement) [WWT plant recessed plate filter press system supply contract].

88:20 Des Moines, IA (VII, 6-16-88) (*Foxboro Co.*) (EPA defers to grantee's professional engineering opinion that specification for fiber optic cable is performance-based and reflects project's minimum needs as having a rational basis) [WWT plant distributed control system supply].

88:32 Des Moines, IA (VII, 8-18-88) (*AEROCOR & National Hydro Systems, Inc.*) (rational basis for engineering judgment that equipment manufactured by bidder did not satisfy experience requirements and therefore required extended warranty and surety bond) [secondary and nitrification facilities—clarifiers/air diffusers].

Burden of Proof

87:17 Detroit, MI (V, 6-26-87) (*Ashbrook-Simon-Hartley, Inc.*) (protester alleging specifications are unduly restrictive as applied must first show that it was excluded from the competition).

87:32 Vassar, MI (V, 10-2-87) (*R.C. Hendrick & Son, Inc.*) (grantee has initial burden where it proposes to award contract to other than apparent low bidder).

87:35 Moundsville, WV (III, 11-6-87) (*Phoenix Process Equipment, Co.*) (protester alleging unduly restrictive specifications has initial burden to show it was excluded from the competition—burden then shifts to grantee to show that the specifications are based on minimum project needs and a rational basis exists to exclude protester's equipment).

88:06 East Bay MUD, CA (3-31-88) (*Dan Caputo Co.*) (protester challenging proposed award to low bidder bears burden of proving that grantee action is not in accordance with EPA requirements) [construction of WWT plant].

88:10 Lower Fountain Creek, CO (VIII, 4-18-88) (*Wiesemann Engineering, Inc.*) (grantee bears burden of proof of delivery of protest decision in manner which establishes date of receipt, preferable certified mail, where it seeks to dismiss appeal as untimely) [self-cleaning screening equipment].

88:12 Klamath Falls, OR (X, 5-6-88) (*C.M. General Contracting, Inc.*) (protester challenging recommendation of award to low bidder must prove grantee's actions are fraudulent, clearly in error, or without rational basis) [interceptor sewer construction].

88:20 Des Moines, IA (VII, 6-16-88) (*Foxboro Co.*) (protester alleging unduly restrictive specifications must first prove exclusion by specifications, then grantee must demonstrate that specifications are performance-based and reflect minimum performance needs of project) [WWT plant distributed control system supply].

88:21 Washington Suburban Sanitary Commission, MD (III, 6-17-88) (*Chemcon, Inc.*) (protester bears burden of affirmatively proving claim concerning applicability of Small Business Enterprise regulations) [sewage treatment system nutrient removal upgrade].

88:24 Coos Bay, OR (X, 7-11-88) (*Tri-State Construction, Inc.*) (bidder seeking to withdraw bid must prove alleged mistake by clear and convincing evidence) [wastewater conveyance system improvements].

88:26 Tacoma, WA (X, 7-25-88) (*Fluid Engineering Associates*) (protester challenging recommendation of award to low bidder must prove grantee's actions are fraudulent, clearly in error, or without rational basis) (protester alleging unduly restrictive specifications could not refute grantee's showing of rational basis for its protest determination) [digester gas and clean gas compressor systems].

88:31 Tacoma, WA (X, 8-15-88) (*Fluid Engineering Associates*) (*Reconsideration*) (EPA has inherent authority to reconsider its protest appeal decisions) (reconsideration denied where protester failed to meet burden of showing a material factual mistake or clear legal error in EPA's decision) [digester gas and clean gas compressor systems].

88:33 Buckeye, AZ (IX, 8-25-88) (*National Projects, Inc.*) (protester challenging recommendation of award to low bidder must prove grantee's action violates EPA requirements) [WWT plant construction].

Exhaustion of Administrative Remedies

87:15 Sparta, MO (VII, 6-3-87) (*Environmental Elements Corp.*) (appeal is premature where it was filed with EPA before grantee issued a protest determination).

87:21 Fayetteville, AR (VI, 7-22-87) (*Rainbow Irrigation Systems, Inc.*) (EPA regulations provide for issuance of a written protest determination before appeal to EPA).

87:40 Berkeley, CA (IX, 12-31-87) (*ABC Service*) (EPA will not accept a protest appeal until the protester has exhausted all administrative remedies at the grantee level and has received a final protest determination).

88:23 American Samoa (IX, 7-1-88) (*Mad-TIFF Development Corp.* and *Cyclops Pipeline Services, Inc.*) (appeal dismissed without prejudice as premature where it was filed with EPA before grantee issued a final protest determination) [sewer system rehabilitation].

Harmless Error [New Subject Heading]

88:05 Largo, FL (IV 3-11-88) (*Hycon Constr. Systems Corp.*) (Defective IFB resulting in no bidder prejudice is considered harmless error, for which EPA will grant no relief) (Deficiencies in IFB due to failure to disclose all of grantee's evaluation criteria harmless error, where grantee found protester nonresponsible based upon evidence concerning protester's financial responsibility and work history, which were clearly referenced in bid documents as evaluation criteria, and where the criteria were applied to all bidders) [consideration of interceptor sewers].

88:11 Brownsville, TX (VI, 5-3-88) (*Jalco, Inc.*) (flawed and ambiguous evaluation criteria harmless error where grantee evaluated bids in good faith to select combination of items closest to what it expected to build and protester not prejudiced by deficiencies in IFB) [sewer rehabilitation].

Jurisdiction

87:06 Owatonna, MN (V, 3-30-87) (*Bailey Controls Div. of Babcock & Wilcox Co.*) (post-contract award matters are not protestable).

87:09 Port Arthur, TX (VI, 4-10-87) (*Baytown Construction Co.*) (local labor ordinance not applied to EPA-funded project raises no protestable issues).

87:15 Sparta, MO (VII, 6-3-87) (*Environmental Elements Corp.*) (subcontractor substitution ordinarily is a matter of contract administration and not protestable).

87:16 Warminster, PA (III, 6-4-87) (*Chemcon, Inc.*) (independent decision by prime contractor to substitute a subcontractor is a contract administration matter which is not protestable).

87:39 Bristol, TN & VA (IV, 11-30-87) (*American Bio Tech*) (protest appeal became moot when grantee gave protester the relief it sought from EPA).

88:09 Hudson County, NJ (II, 4-11-88) (*Mayo, Lynch and Associates, Inc.*) (bid protest appeal dismissed where issue raised is currently before State court of competent jurisdiction) [engineering services—prequalification].

88:11 Brownsville, TX (VI, 5-3-88) (*Jalco, Inc.*) (EPA procurement regulations are not applicable to contract work outside scope of grant agreement, hence not funded by EPA) [sewer rehabilitation].

88:23 American Samoa (IX, 7-1-88) (*Mad-TIFF Development Corp.* and *Cyclops Pipeline Services, Inc.*) (appeal dismissed without prejudice as premature where it was filed with EPA before grantee issued a final protest determination) [sewer system rehabilitation].

88:32 Des Moines, IA (VII, 8-18-88) (*AEROCOR* and *National Hydro Systems, Inc.*) (subcontractor substitution ordinarily is a matter of contract administration and not protestable) [secondary and nitrification facilities—clarifiers/air diffusers].

88:37 Reading, PA (III, 10-18-88) (*American Surfpac Corp.*) (subcontractor substitution ordinarily is a matter of contract administration and not protestable) [PVC media supply].

Procedures

87:03 Orange, TX (VI, 3-17-87) (*Cajun Contractors & Engineers, Inc.*) (a hand-delivered written notice is a sufficient means of "telegraphing" the Regional Counsel's office with notice of intent to file a protest appeal within 7 calendar days of the grantee's determination).

87:05 Lackawanna County, PA (III, 3-26-87) (*Mele Construction Co., Inc.*) (summary dismissal of a bid protest appeal is discretionary with EPA).

87:08 Anchorage, AK (X, 4-9-87) (*Frank Coluccio Construction Co.*) (EPA regulations contemplate that grantees provide bidders with a meaningful opportunity for review of protests).

87:09 Port Arthur, TX (VI, 4-10-87) (*Baytown Construction Co.*) (issue not raised during initial protest to grantee will not be considered by EPA on appeal).

87:15 Sparta, MO (VII, 6-3-87) (*Environmental Elements Corp.*) (protest filed with general contractor instead of grantee was untimely) (telegraphic notice of protest appeal must be followed by submittal of a complete protest appeal within 7 calendar days of the notice).

87:24 Norwich, NY (II, 7-31-87) (*Statiflo Int'l, Inc.*) (protester has only 7 calendar days from telegraphic appeal notice to submit complete protest appeal).

87:35 Strongsville, OH (V, 11-6-87) (*Field Gymmy, Inc.*) (EPA regulations do not specify how a recipient is to review a protest but do not require an opportunity for prompt meaningful review).

87:37 East Tawas, MI (V, 11-12-87) (*Devere Construction Co., Inc.*) (failure to furnish interested parties with documents filed with EPA is not a basis for dismissal where no prejudice results) (EPA resolves issues not explicitly addressed by its regulations by looking to Comptroller General decisions and other comparable federal procurement law).

88:14 Bellingham, MA (I, 5-18-88) (*P. Gioioso & Sons, Inc.*) (appeal dismissed because protester's filing or protest with state, not grant recipient, precludes exhaustion of administrative remedies at recipient level) (protest filed with another entity does not relieve protester of duty to protest directly to grant recipient) [construction of interceptor sewer].

88:17 Atlanta, GA (IV, 6-2-88) (*Parkson Corp.*) (rejection of all bids for good cause renders bid protest moot) [diffuser system replacement].

88:20 Des Moines, IA (VII, 6-16-88) (*Foxboro Co.*) (proper parties in protest appeal of grantee's prequalification determination alleging unduly restrictive prequalification specifications are protester and grantee) [WWT plant distributed control system supply].

88:21 Washington Suburban Sanitary Commission, MD (III, 6-17-88) (*Chemcon, Inc.*) (EPA remands protest to grantee to consider additional information where protester not notified of experience requirement and unclear whether doubts about equipment performance related to same model pump) [installation of diaphragm metering pumps].

88:23 American Samoa (IX, 7-1-88) (*Madd-TIFF Development Corp.* and *Cyclops Pipeline Services, Inc.*) (appeal dismissed without prejudice as premature where it was filed with EPA before grantee issued a final protest determination) [sewer system rehabilitation].

88:30 South Adams County, CO (VIII, 8-10-88) (*Reid Burton Construction Co., Inc.*) (EPA upholds recipient's protest determination denying protester a hearing) [Superfund cooperative agreement—permanent water treatment facility].

88:33 Buckeye, AZ (IX, 8-25-88) (*National Projects, Inc.*) (issue not raised during initial protest to grantee will not be considered by EPA on appeal) [WWT plant construction].

Rational Basis Test

87:08 Anchorage, AK (X, 4-9-87) (*Frank Coluccio Construction Co.*) (EPA will reverse a grantee procurement decision if it fails to comply with federal procurement requirements or lacks a rational basis).

87:09 Port Arthur, TX (VI, 4-10-87) (*Baytown Construction Co.*) (grantee had a rational basis for denying a protest about a local labor ordinance which was not applied to the EPA-funded project).

87:12 La Porte, TX (VI, 4-28-87) (*Baytown Construction Co., Inc.*) (EPA found no rational basis in summary grantee decision not addressing substantive issues raised by the protest).

87:22 Lancaster, OH (V, 7-23-87) (*Floater Vehicle, Inc.*) (EPA will affirm a grantee protest decision if it has a rational basis and the grantee complied with EPA procurement requirements).

87:28 Jefferson Parish, LA (VI, 9-1-87) (*PALA-Interstate, Inc.*) (EPA regulations limit EPA review of protest appeals).

87:29 Tacoma, WA (X, 9-4-87) (*Frank Coluccio Construction Co.*) (EPA defers to a grantee protest determination unless it has no rational basis).

87:32 Vassar, MI (V, 10-2-87) (*R.C. Hendrick & Son. Inc.*) (EPA will defer to a grantee procurement decision if it meets minimum federal requirements).

87:33 Clackamas County, OR (X, 10-23-87) (*Environmental Pollution Control, Inc.*) (EPA review is limited to a determination of whether the grantee's decision is consistent with federal requirements and has a rational basis).

88:03 Ashland, OH (V, 1-29-88) (*Statiflo International, Inc.*) (Responsibility determinations by grantee are discretionary decisions and will be upheld unless without any rational basis or clearly erroneous) (Grantee's request for manufacturing history and guaranteed delivery date was rational and failure to provide requested history and guaranteed delivery date could support determination of nonresponsibility) [trickling filter media].

88:05 Largo, FL (IV, 3-11-88) (*Hycon Constr. Systems Corp.*) (Grantee's determination will not be overturned by EPA unless shown to be clearly in error or lacking a rational basis) (bidder's failure to satisfy required demonstration of financial responsibility and work history was rational basis for nonresponsibility determination) [construction of interceptor sewers].

88:07 Milwaukee, WI (V, 3-25-88) (*EIMCO Equipment Co.*) (EPA defers to rationally based engineering decision for experience requirement) [WWT plant recessed plate filter press system supply contract].

88:08 East Bay MUD, CA (3-31-88) (*Dan Caputo Co.*) (purpose of EPA review of bid protest is to determine if rational basis exists for grantee's protest determination; EPA need not determine whether it would have reached the same result as grantee) [construction of WWT plant].

88:10 Lower Fountain Creek, CO (VIII, 4-18-88) (*Wiesemann Engineering, Inc.*) (grantee cannot attempt to provide rational basis justifying restrictive specifications for first time on appeal, where sole source procurement attempted under guise of formally advertised, competitive bid) (appeal subject to dismissal as untimely may be revised under sua sponte review authority) [self-cleaning screening equipment].

88:11 Brownsville, TX (VI, 5-3-88) (*Jalco, Inc.*) (purpose of EPA bid protest appeal is to determine whether grantee has met EPA procurement requirements and has rational basis for protest determination) [sewer rehabilitation].

88:12 Klamath Falls, OR (X, 5-6-88) (*C.M. General Contracting, Inc.*) (EPA defers to a grantee protest determination unless it has no rational basis) [interceptor sewer construction].

88:18 Westchester County, NY (II, 6-3-88) (*Gates Construction Corp.*) (grantee's responsibility determination upheld as having had a rational basis) [outfall pipeline construction].

88:19 Puerto Rico Aqueduct & Sewer Authority (III, 6-13-88) (*Environmental Control Dynamics, Inc.*) (grantee's procurement determination based on restrictive specification reversed as lacking a rational basis) [tertiary filter installation].

88:20 Des Moines, IA (VII, 6-16-88) (*Foxboro Co.*) (EPA defers to grantee's professional engineering opinion that specification for fiber optic cable is performance-based and reflects project's minimum needs as having a rational basis) [WWT plant distributed control system supply].

88:24 Coos Bay, OR (X, 7-11-88) (*Tri-State Construction, Inc.*) (grantee's determination not to allow bid withdrawal due to mistake in judgment by bidder upheld as rationally based) [wastewater conveyance system improvements].

88:26 Tacoma, WA (X, 7-25-88) (*Fluid Engineering Associates*) (EPA upholds grantee's rationally based determination that alleged unduly restrictive specification is performance related and represents minimum performance need) [digester gas and clean gas compressor systems].

88:27 Atlanta, GA (IV, 7-27-88) (*SIHI Pumps, Inc.*) (grantee had rational basis for upholding engineer's determination that protestor's equipment did not meet required minimum performance specifications) [gas compressor supply contract].

88:29 Chickamauga, GA (IV, 8-10-88) (*Aquasystems International, N.V.*) (grantee's denial of protest lacks rational basis for failure to justify each detailed specification relied upon in rejecting protester's equipment as "equal" to brand name) [WWT plant upgrade].

88:30 South Adams County, CO (VIII, 8-10-88) (*Reid Burton Construction Co., Inc.*) (recipient's protest determination concerning MBE compliance has rational basis and complies with part 33 procurement requirements) [Superfund cooperative agreement—permanent water treatment facility].

88:32 Des Moines, IA (VII, 8-16-88) (*AEROCOR & National Hydro Systems, Inc.*) (rational basis for engineering judgment requiring new manufacturer of equipment to provide extended warranty and surety bond) [secondary and nitrification facilities-clarifiers/air diffusers].

88:33 Buckeye, AZ (IX, 8-25-88) (*National Projects, Inc.*) (grantee's protest determination concerning MBE compliance has rational basis and complies with part 33 procurement requirements) [WWT plant construction].

88:35 South Tahoe, CA (IX, 9-21-88) (*Ford Construction Co.*) (EPA will reverse a grantee procurement decision if it fails to comply with federal procurement requirements or lacks a rational basis) [retention basin sealing project].

88:38 Orosi, CA (IX, 10-24-88) (*Daniel Ontiveros Construction Co.*) (EPA will reverse a grantee procurement decision if it fails to comply with federal procurement requirements or lacks a rational basis) [sewer collection system construction].

88:40 Edmonds, WA (X, 11-23-88) (*Wright Schuchart Harbor Co.*) (EPA reverses grantee's protest determination that failure to submit MBE/WBE documentation prior to bid opening renders bid nonresponsive, where grantee erroneously applies state law and admits that under federal requirements EPA would likely reverse grantee's decision) [WWT plant construction].

Recipient Determination

87:12 La Porte, TX (VI, 4-28-87) (*Baytown Construction Co., Inc.*) (no rational basis found where grantee decision is summary and fails to address substantive issues raised by the protest).

88:10 Lower Fountain Creek, CO (VIII, 4-18-88) *Wiesemann Engineering, Inc.*) (grantee cannot attempt to provide rational basis justifying restrictive specifications for first time on appeal, where sole source procurement attempted under guise of formally advertised, competitive bid) [self-cleaning screening equipment].

88:13 North Augusta, SC (IV, 5-13-88) (*Sheriff Constr. Co. & Rockdale Pipe Line, Inc.*) (grantee's rejection of all bids in lieu of issuing written protest determination reversed by EPA where alleged grounds for rejection lacked merit) (low bid determination must be based on "bottom line total" unless bid documents clearly explain methods for evaluating and determining low bid price) [improvement of interceptor sewer]. Note: See EPA's Reconsideration Decision 88:22 (6-29-88).

88:14 Bellingham, MA (I, 5-18-88) (*P. Gioioso & Sons, Inc.*) (because bidder filed protest with state, not grant recipient, recipient never issued determination that EPA can review) [construction of interceptor sewer].

88:23 American Samoa (IX, 7-1-88) (*Mad-TIFF Development Corp. & Cyclops Pipeline Services, Inc.*) (appeal dismissed without prejudice as premature where it was filed with EPA before grantee issued a final protest determination) [sewer system rehabilitation].

Reconsideration

87:22 Lancaster, OH (V, 8-28-87) (*Floater Vehicle, Inc.*) (*Reconsideration*) (EPA has inherent authority to reconsider its protest appeal decisions) (reconsideration denied where protester failed to meet burden of showing a material factual mistake or clear legal error in EPA's decision).

87:29 Tacoma, WA (X, 9-19-87) (*Frank Coluccio Construction Co.*) (*Reconsideration*) (denied where no clear showing of material factual mistake, newly discovered evidence or substantial legal error.

88:22 North Augusta, SC (IV, 6-29-88) (*Sheriff Construction Co. & Rockdale Pipe Line, Inc.*) (*Reconsideration*) (denied where no clear showing of material factual mistake, newly discovered evidence or substantial legal error) [improvement of interceptor sewer].

88:31 Tacoma, WA (X, 8-15-88) (*Fluid Engineering Associates*) (*Reconsideration*) (EPA has inherent authority to reconsider its protest appeal decisions) (reconsideration denied where protester failed to meet burden of showing a material factual mistake or clear legal error in EPA's decision) [digester gas and clean gas compressor systems].

Remand

88:21 Washington Suburban Sanitary Commission, MD (III, 6-17-88) (*Chemcon, Inc.*) (EPA remands protest to grantee to consider additional information where protester not notified of experience requirement and unclear whether doubts about equipment performance relate to same model pump) [installation of diaphragm metering pumps].

Remedy

88:45 Key West, FL (IV, 12-29-88) (*Zimpro, Inc.*) (*Supplemental Determination*) (no remedy from EPA available to protester where contract awarded and construction completed with other supplier's equipment) [fluid bed sludge incineration system].

Review

Authority and Scope of Review

87:21 Fayetteville, AR (VI, 7-22-87) (*Rainbow Irrigation Systems, Inc.*) (EPA may review a grantee procurement action independent of a protest or appeal).

88:14 Bellingham, MA (I, 5-18-88) (*P. Gioioso & Sons, Inc.*) (because bidder filed protest with state, not grant recipient, recipient never issued determination that EPA can review) [construction of interceptor sewer].

88:18 Westchester County, NY (II, 6-3-88) (*Gates Construction Corp.*) (Federal Acquisition Regulation applies only to procurement by Federal executive agencies, not to recipients of Federal assistance) [outfall pipeline construction].

88:31 Tacoma, WA (X, 8-15-88) (*Fluid Engineering Associates*) (*Reconsideration*) (EPA has inherent authority to reconsider its protest appeal decisions) (reconsideration denied where protester failed to meet burden of showing a material factual mistake or clear legal error in EPA's decision) [digester gas and clean gas compressor systems].

Sua Sponte Review

87:12 La Porte, TX (VI, 4-28-87) (*Baytown Construction Co., Inc.* (EPA has authority to independently review grantee procurement actions if a protest is procedurally defective but raises issues central to the integrity of the comptetive procurement process).

87:18 Ames, IA (VII, 6-29-87) (*Twill Steel, Ltd.*) (timeliness of protest not addressed where sua sponte review is appropriate to provide guidance on EPA's MBE/WBE policy).

87:19 Key West, FL (IV, 7-13-87) (*Zimpro, Inc.*) (sua sponte review of grantee approval of alternate equipment under a "brand name or equal" specification) Note: See EPA's Supplemental Determination, 88:45 (12-29-88).

87:21 Fayetteville, AR (VI, 7-22-87) (*Rainbow Irrigation Systems, Inc.*) (EPA will review and reverse a grantee procurement action to preserve the integrity of formal advertising).

88:10 Lower Fountain Creek, CO (VIII, 4-18-88) (*Wiesemann Engineering, Inc.*) (EPA may review otherwise untimely appeal under sua sponte review authority, especially where statutory mandate of Clean Water Act encourages maximum free and open competition and unauthorized sole source procurement is alleged) [self-cleaning screening equipment].

88:16 Gresham, OR (X, 5-25-88) (*Humphrey Construction Co.*) (EPA sua sponte reviews improperly filed protest, where Clean Water Act's mandate of maximum competition is involved) [WWT plant construction].

88:19 Puerto Rico Aqueduct & Sewer Authority (III, 6-13-88) (*Environmental Control Dynamics, Inc.*) (sua sponte review power exercised by EPA where restrictive specifications are alleged) [tertiary filter installation].

88:41 Moundsville-Glendale, WV (III, 11-30-88) (*Komline-Sanderson*) (EPA may review otherwise untimely appeal under sua sponte review authority especially where issues of importance to basic integrity of competitive procurement system are involved) [belt filter press & captivated sludge process].

88:45 Key West, FL (IV, 12-29-88) (*Zimpro, Inc.*) (*Supplemental Determination*) (EPA's sua sponte review authority, though the exception, is of long standing and appropriate where grantee procurement violates Clean Water Act mandate for free and open competition) [fluid bed sludge incineration system].

Standing

87:16 Warminster, PA (III, 6-4-87) (*Chemcom, Inc.*) (protester lacks standing to challenge an independent decision by prime contractor to substitute a subcontractor).

87:27 Toledo, OH (V, 8-11-87) (*Chemcon, Inc.*) (supplier/subcontractor may protest restrictiveness of specifications).

88:19 Puerto Rico Aqueduct & Sewer Authority (III, 6-13-88) (*Environmental Control Dynamics, Inc.*) (supplier has standing to protest grantee's action

resulting in cancellation of prime contractor's purchase order and instruction to contractor to substitute another supplier's product) [tertiary filter installation].

88:32 Des Moines, IA (VII, 6-16-88) (*AEROCOR and National Hydro Systems, Inc.*) (protester lacks standing to challenge an independent decision by prime contractor to substitute a subcontractor) [secondary and nitrification facilities—clarifiers/air diffusers].

88:34 Florham Park, NJ (II, 9-6-88) (*Lakeside Equipment Corp.*) (protester lacks standing to challenge an independent decision by prime contractor to substitute a subcontractor) [WWT plant equipment supply].

88:37 Reading, PA (III, 10-18-88) (*American Surfpoc Corp.*) (subcontractor substitution ordinarily is a matter of contract administration and not protestable) [PVC media supply].

88:42 Crisfield, MD (III, 12-2-88) (*L.A. Merrell Construction Co.*) (bidder who withdraws bid prior to bid opening has no direct financial interest and therefore lacks standing to protest award) [WWT plant construction].

88:43 Salisbury, MD (III, 12-8-88) (*Beiler Equipment Co., Inc.*) (party who did not submit a bid has no direct financial interest and therefore lacks standing) [liquid sludge application equipment].

Summary Disposition

87:05 Lackawanna County, PA (III, 3-26-87) (*Mele Construction Co., Inc.*) (EPA denies grantee's request to summarily dismiss appeal due to complexity of issues) (summary dismissal of a bid protest appeal is discretionary with EPA).

87:24 Norwich, NY (II, 7-31-87) (*Statiflo Int'l, Inc.*) (late telegraphic appeal notice and no complete protest appeal).

87:38 Bristol, TN & VA (IV, 11-30-87) (*American Bio Tech*) (appeal is moot where grantee gives protester the relief it seeks from EPA).

88:15 East Bay MUD (IX, 5-24-88) (*Dan Caputo Co.*) (appeal dismissed as moot where grantee provides protester with relief sought in its protest) [WWT plant construction].

Time Limitations

87:01 Plymouth, IN (V, 1-20-87) (*Winzeler Excavation Co.*) (a nonresponsive bidder lacks standing to protest grantee's rejection of all bids).

87:02 Grand Forks, ND (VIII, 3-5-87) (*Autocon Industries, Inc.*) (supplier rejected in prequalification process has standing to protest).

87:11 York, PA (III, 4-23-87) (*Philips Brothers Electrical Contractors, Inc.*) (appeal received by EPA 11 days after protester receives grantee determination is untimely) (EPA strictly construes the requirement that protest appeals be filed within 7 calendar days from receipt of adverse grantee protest determination).

87:12 La Porte, TX (VI, 4-28-87) (*Baytown Construction Co., Inc.*) (EPA declines to dismiss appeal on procedural ground where grantee fails to establish initial protest was untimely and protest raises issues fundamental to the competitive procurement process which EPA may review sua sponte).

87:15 Sparta, MO (VII, 6-3-87) (*Environmental Elements Corp.*) (protest filed with general contractor instead of grantee was untimely and dismissed by EPA on appeal).

87:17 Detroit, MI (V, 6-26-87) (*Ashbrook-Simon-Hartley, Inc.*) (protest alleging unduly restrictive specifications must be filed before bid opening).

87:20 St. Ignace, MI (V, 7-14-87) (*Proksch Construction Co.*) (appeal was untimely where bidder filed initial protest more than 2 weeks after contract award).

87:21 Fayetteville, AR (VI, 7-22-87) (*Rainbow Irrigation Systems, Inc.*) (initial protest is untimely where bidder fails to file within 7 days after it learns of bid rejection) (filing period for initial protest of bid rejection runs from bidder's knowledge of rejection, not from receipt of grantee's underlying rationale).

87:24 Norwich, NY (II, 7-31-87) (*Statiflo Int'l, Inc.*) (telegraphic appeal notice received 8 days after protester received grantee determination is late) (protester runs the risk of late delivery).

87:25 Gadsden, AL (IV, 8-3-87) (*Haren Construction Co., Inc.*) (protest appeal challenging specifications as unduly restrictive as written is untimely if initial protest is not filed prior to bid opening).

87:27 Toledo, OH (V, 8-11-87) (*Chemcon, Inc.*) (untimely protest and protest appeal) (communications between grantee and protester cannot enlarge the time for appeal).

87:28 Jefferson Parish, LA (VI, 9-1-87) (*PALA-Interstate, Inc.*) (appeal filed on 7th day after verbal notice of adverse grantee decision was timely) (counter-protest filed with grantee on 45th day after bid opening was clearly untimely).

87:34 Strongsville, OH (V, 11-6-87) (*Field Gymmy, Inc.*) (protest challenging specifications as unduly restrictive must be filed before bid opening to preserve integrity of competitive bidding process and to avoid undue project delay).

87:35 Chalfont, VA (III, 11-9-87) (*M. Matthews Sheet Metal Co., Inc.*) (late protest challenging grantee's compliance with EPA's MBE policy).

87:36 East Tawas, MI (V, 11-12-87) (*Devere Construction Co., Inc.*) (telegraphic notice of appeal extends the time for appeal 7 days).

87:38 Bristol, TN & VA (IV, 11-30-87) (*American Bio Tech*) (protests which challenge prequalification procedures as written are to be filed before the prequalification submittal deadline).

87:39 Salem, UT (VIII, 12-16-87) (*Richtech, Inc.*) (protest filed after bid opening alleging that experience clause unduly restricted competition was untimely).

88:04 Delmar, MD (III, 2-2-88) (*M. Nelson Barnes and Sons, Inc.*) (procedural time requirements will be strictly construed) (protest appeal dismissed as untimely where the adversely affected party did not file initial protest within seven calendar days of date the basis for protest was known or should have been known) [tertiary WWT system construction].

88:07 Milwaukee, WI (V, 3-25-88) (*EIMCO Equipment Co.*) (protest based upon experience requirement is untimely and is waived unless raised before bid opening) [WWT plant recessed plate filter press system supply contract].

88:10 Lower Fountain Creek, CO (VIII, 4-18-88) (*Wiesemann Engineering, Inc.*) (EPA declines to dismiss appeal on procedural ground where grantee fails to establish initial appeal was untimely and protest raises issues fundamental to competitive procurement process and subject to sua sponte review) [self-cleaning screening equipment].

88:13 North Augusta, SC (IV, 5-13-88) (*Sheriff Constr. Co.* and *Rockdale Pipe Line, Inc.*) (alleged ambiguity appearing on face of bid documents should be protested prior to bid opening) [improvement of interceptor sewer].

88:14 Bellingham, MA (I, 5-18-88) (*P. Gioioso & Sons, Inc.*) (protest of grantee's refusal to permit withdrawal of bid filed nearly one month after request dismissed as untimely) [construction of interceptor sewer].

88:16 Gresham, OR (X, 5-25-88) (*Humphrey Construction Co.*) (EPA reviews improperly filed protest under sua sponte review authority) [WWT plant construction].

88:19 Puerto Rico Aqueduct & Sewer Authority (III, 6-13-88) (*Environmental Control Dynamics, Inc.*) (grantee's equivocal oral statements that protester's equipment is unacceptable, but still being considered, do not constitute recipient's final determination triggering protest time limits) [tertiary filter installation].

88:20 Des Moines, IA (VII, 6-16-88) (*Foxboro Co.*) (protest challenging alleged unduly restrictive specification permitting only fiber optic cable concerns impropriety in solicitation, clearly apparent before bid opening or deadline for receipt of initial proposals, and is dismissed as untimely because filed after deadline for prequalification submittals) [WWT plant distributed control system supply].

88:21 Washington Suburban Sanitary Commission, MD (III, 6-17-88) (*Chemcon, Inc.*) (protest appeal filed within seven calendar days after adversely affected party receives recipient determination is timely) [sewage treatment system nutrient removal upgrade].

88:27 Atlanta, GA (IV, 7-27-88) (*SIHI Pumps, Inc.*) (protest alleging unduly restrictive specifications must be filed before bid opening) [gas compressor supply contract].

88:32 Des Moines, IA (VII, 6-16-88) (*AEROCOR and National Hydro Systems, Inc.*) (protest filed more than one month after bid opening alleging restrictive sole source specification dismissed as untimely) [secondary and nitrification facilities—clarifiers/air diffusers].

88:43 Salisbury, MD (III, 12-8-88) (*Beiler Equipment Co., Inc.*) (protest alleging unduly restrictive specifications should be filed before bid opening) [liquid sludge application equipment].

Bid Protest Appeals—Procurement

A/E Services

No entries.

Bid Shopping

87:11 York, PA (III, 4-23-87) (*Philips Brothers Electrical Contractors, Inc.*) (EPA does not prohibit bid shopping).

87:28 Jefferson Parish, LA (VI, 9-1-87) (*PALA-Interstate, Inc.*) (EPA neither prohibits nor condones bid shopping).

Bidders & Offerors

No entries.

Bids

Acceptance Period

No entries.

Addendum

87:03 Orange, TX (VI, 3-17-87) (*Cajun Contractors & Engineers, Inc.*) (grantee had rational basis for finding bid to be responsive where bidder gave constructive acknowledgement of material addenda).

87:33 Clackamas County, OR (X, 10-23-87) (*Environmental Pollution Control, Inc.*) (issuance of addenda to accommodate one bidder compromised the integrity of the competitive bidding process).

Alternates

87:10 Reading, PA (III, 4-23-87) (*Superior Construction, Inc.*) (failure to bid on alternate items not selected by the grantee did not render the bid nonresponsive).

Ambiguity

88:13 North Augusta, SC (IV, 5-13-88) (*Sheriff Constr. Co.* and *Rockdale Pipe Line, Inc.*) (protest based on alleged ambiguity on face of bid documents should be filed before bid opening) [improvement of interceptor sewer].

Base Bids

88:10 Lower Fountain Creek, CO (VIII, 4-18-88) (*Wiesemann Engineering, Inc.*) (single base bidding is prohibited under EPA regulations) [self-cleaning screening equipment].

88:16 Gresham, OR (X, 5-25-88) (*Humphrey Construction Co.*) (single base bid solicitation method, in which all bidders base prices on same named brand of equipment whether or not other equipment will ultimately be used, prevents substitute manufacturers from effectively competing with specified name brand, and is prohibited as unduly restrictive) [WWT plant construction].

Cancellation of Solicitation (See also Rejection of All Bids)

88:17 Atlanta, GA (IV, 6-2-88) (*Parkson Corp.*) (rejection of all bids and cancellation of solicitation justified based on need to timely comply with consent order and desire to use more readily implementable alternate system with proven long-term performance record) [diffuser system replacement].

Evaluation

87:07 Bonner Springs, KS (VII, 4-7-87) (*IME, Inc.*) (a grantee may not give bidders unequal treatment or rely on undisclosed bid evaluation criteria) (all bids must be evaluated uniformly under the criteria specified in the bidding documents).

87:06 Anchorage, AK (X, 4-9-87) (*Frank Coluccio Construction Co.*) (undisclosed bid evaluation criteria cannot form the basis for finding a bid nonresponsive).

87:29 Tacoma, WA (X, 9-4-87) (*Frank Coluccio Construction Co.*) (grantees must evaluate bids in accordance with the methods and criteria in the bidding documents).

88:11 Brownsville, TX (VI, 5-3-88) (*Jalco, Inc.*) (bid evaluation method flawed where privilege not specifically reserved to award contract with optional, but not alternate items) [sewer rehabilitation].

88:12 Klamath Falls, OR (X, 5-6-88) (*C.M. General Contracting, Inc.*) (grantees must evaluate bids in accordance with the methods and criteria in the bidding documents) [interceptor sewer construction].

88:13 North Augusta, SC (IV, 5-13-88) (*Sheriff Constr. Co.* & *Rockdale Pipe Line, Inc.*) (all bids must be evaluated uniformly under the criteria specified in the bidding documents, and grantee could not subsequently attempt to negotiate by eliminating sub-items from bid) [improvement of interceptor sewer].

88:32 Des Moines, IA (VII, 6-16-88) (*AEROCOR & National Hydro Systems, Inc.*) (rational basis for engineering judgment that equipment manufactured by bidder did not satisfy experience requirements and therefore required extended warranty and surety bond) [secondary and nitrification facilities—clarifiers/air diffusers].

Late

87:20 St. Ignace, MI (V, 7-14-87) (*Proksch Construction Co.*) (dismissal of untimely protest appeal challenging a late bid).

88:02 Mount Airy, MD WWTP (III, 1-14-88) (*M.A. Bongiovanni, Inc.*) (timeliness of bid submission is a fundamental federal procurement principle and may be determined by reference to Federal law) (Hand delivered bid submitted approximately 30 minutes after advertised time for bid submission, and after the only bid which was timely received had already been opened, is nonresponsive and cannot be basis of a contract award. Late bid submission cannot be waived as a minor informality) [modifications to WWT facility].

Mistake

87:14 San Francisco, CA (IX, 5-21-87) (*Homer J. Olsen, Inc.*) (discrepancy in amounts on bid schedule and MBE subcontractor list did not constitute a mistake).

87:29 Tacoma, WA (X, 9-4-87) (*Frank Coluccio Construction Co.*) (inadvertent omission of line item price included in total bid price and easily discernible from face of bid did not render the bid nonresponsive).

88:24 Coos Bay, OR (X, 7-11-88) (*Tri-State Construction, Inc.*) (EPA upholds grantee's denial of bid withdrawal where judgmental mistake was not apparent on face of bid, and not claimed for eight days after bid opening) [wastewater conveyance system improvements].

Preparation Costs

No entries.

Qualified

88:10 Lower Fountain Creek, CO (VIII, 4–18–88) (*Wiesemann Engineering, Inc.*) (bid containing numerous material exceptions which could affect price, quantity, quality or delivery, is unresponsive) [self-cleaning screening equipment].

Rejection of All Bids

87:01 Plymouth, IN (V, 1–20–87) (*Winzeler Excavating Co.*) (EPA grantees may reject all bids only for sound, documented business reasons in the best interest of the EPA program) (possibility of a protest is an insufficient basis for rejecting all bids).

87:04 Dennison, OH (V, 3–25–87) (*B & B Construction Co., Inc.*) (rejection of all bids was appropriate where total bids on multiple contracts for a single project far exceeded the engineer's estimate).

87:08 Anchorage, AK (X, 4–9–87) (*Frank Coluccio Construction Co.*) (possibility of litigation is an inadequate basis for rejecting all bids).

87:32 Clackamas County, OR (X, 10–23–87) (*Environmental Pollution Control, Inc.*) (grantee must reject all bids and rebid where equipment offered fails to meet the project specifications).

88:13 North Augusta, SC (IV, 5–13–88) (*Sheriff Constr. Co.* and *Rockdale Pipe Line, Inc.*) (EPA overturns grantee's rejection of all bids absent sound, documented business reasons in the best interest of the EPA program) [improvement of interceptor sewer].

88:15 East Bay MUD (IX, 5–24–88) (*Dan Caputo Co.*) (rejection of all bids appropriate where MBE specifications were ambiguous and inadequate, three low bids were unacceptable, and all otherwise acceptable bids were unreasonably high and award would not be in the public interest) (WWT plant construction].

88:17 Atlanta, GA (IV, 6–2–88) (*Parkson Corp.*) (recipient's discretionary determination to reject all bids and cancel solicitation prior to bid opening was justified based on need to timely comply with consent order and desire to use more readily implementable alternate system with proven long-term performance record) [diffuser system replacement].

Signature

No entries.

Time to Prepare

No entries.

Unbalanced

87:05 Lackawanna County, PA (III, 3–26–87) (*Mele Construction Co., Inc.*) (whether an unbalanced bid is acceptable depends on whether it is reasonably certain to result in the lowest price).

87:26 Greene County, PA (III, 8–11–87) (*Independent Enterprises, Inc.*) (an unbalanced bid is not regarded as a nonresponsive bidding technique and should not be automatically rejected).

88:44 Manchester, NH (I, 12–16–88) (*P. Gioioso & Sons, Inc.*) (unbalanced bid not automatically nonresponsive—acceptability depends on whether bid is reasonably certain to result in lowest cost to the government) [interceptor sewer construction].

Unit Pricing

No entries.

Bonds

87:36 East Tawas, MI (V, 11–12–87) (*Devere Construction Co., Inc.*) (omission of amount in bid bond rendered bid nonresponsive and could not properly be waived after bid opening).

88:32 Des Moines, IA (VII, 8–18–88) (*AEROCOR* and *National Hydro Systems, Inc.*) (bidder did not satisfy experience requirements where grantee required extended warranty and surety bond) [secondary and nitrification facilities—clarifiers/air diffusers].

Buy American

88:07 Milwaukee, WI (V, 3–25–88) (*EIMCO Equipment Co.*) (Buy American clause in contract requires preference for American materials, not exclusion of foreign companies) [WWT plant recessed plate filter press system supply contract].

88:15 East Bay MUD (IX, 5–24–88) (*Dan Caputo Co.*) (denial of protest involving Brooks-Murkowski Act restrictions) [WWT plant construction].

Competition

Free and Open

87:09 Port Arthur, TX (VI, 4–10–87) (*Baytown Construction Co.*) (local labor ordinance could not be applied to EPA-funded project).

88:12 Klamath Falls, OR (X, 5–6–88) (*C.M. General Contracting, Inc.*) (allowing grantee to prequalify bidder after bid opening violates concept of prequalification and affords prospective bidder unfair competitive advantage) [interceptor sewer construction].

88:13 North Augusta, SC (IV, 5–13–88) (*Sheriff Constr. Co. & Rockdale Pipe Line, Inc.*) (in sealed bid procurement, award is to be made principally on basis of price, to apparent lowest, responsive, responsible bidder) (EPA overturns grantee's rejection of all bids based upon filing of bid protest, absent sound, documented business reasons in the best interest of the EPA program) [improvement of interceptor sewer].

88:16 Gresham, OR (X, 5–25–88) (*Humphrey Construction Co.*) (single base bid specifications prevent free and open competition by preventing substitute equipment manufacturers from effectively competing with specified name brand) [WWT plant construction].

88:20 Des Moines, IA (VII, 6–16–88) (*Foxboro Co.*) (specification requiring fiber optic cable not unduly restrictive of competition where three prospective suppliers met requirement) [WWT plant distributed control system supply].

88:26 Tacoma, WA (X, 7–25–88) (*Fluid Engineering Associates*) (type of specification used must inhibit competition only to minimum degree necessary in context of particular procurement, based on case-by-case evaluation) [digester gas and clean gas compressor systems].

88:39 S. Pittsburgh, TN (IV, 11–10–88) (*Henderson Excavating Co., Inc.*) (state licensing requirement may restrict free and open competition).

88:41 Moundsville-Glendale, WV (III, 11–30–88) (*Komline-Sanderson*) (Equipment available from a single source must be procured through non-competitive negotiation pursuant to sole source requirements, not as a subcontract item under a formally advertised prime contract) [belt filter press & captivated sludge process].

Competitive Negotiation

88:01 Berkeley County, WV (III, 1–20–88) (*P.C. DiMagno Engineers and Surveyors*) (in negotiated procurement, determination of acceptable proposals is primarily a matter of procurement discretion, not to be disturbed absent clear showing that determination violated statute or regulation, or lacked reasonable basis) [engineering services].

Conflict of Interest

No entries.

Engineering Judgment

87:17 Detroit, MI (V, 6–26–87) (*Ashbrook-Simon-Hartley, Inc.*) (EPA deferred to grantee's methods and procedures for testing equipment which involved technical engineering decisions) (EPA gives grantees wide discretion in this area so long as a rational basis exists for those decisions).

88:07 Milwaukee, WI (V, 3–25–88) (*EIMCO Equipment Co.*) (EPA defers to rationally based engineering decision for experience requirement) [WWT plant recessed plate filter press system supply contract].

88:20 Des Moines, IA (VII, 6–16–88) (*Foxboro Co.*) (EPA defers to grantee's professional engineering opinion that specification for fiber optic cable is performance-based and reflects project's minimum needs as having a rational basis) [WWT plant distributed control system supply].

88:32 Des Moines, IA (VII, 8–18–88) (*AEROCOR* and *National Hydro Systems, Inc.*) (rational basis for engineering judgment that equipment manufactured by bidder did not satisfy experience requirements and therefore required extended warranty and surety bond) [secondary and nitrification facilities—clarifiers/air diffusers].

Experience Requirements

87:39 Salem City, UT (VIII, 12–16–87) (*Richtech, Inc.*) (untimely protest of experience requirements in IFB).

88:07 Milwaukee, WI (V, 3–25–88) (*EIMCO Equipment Co.*) (EPA defers to rationally based engineering decision for experience requirement) [WWT plant recessed plate filter press system supply contract].

88:21 Washington Suburban Sanitary Commission, MD (III, 6–17–88) (*Chemcon, Inc.*) (EPA regulations permit experience requirements in specifications if justified, based on rational basis, and do not unduly restrict competition) (EPA remands protest to grantee to consider protester's additional information due to grantee's failure to notify protester of experience requirement) [sewage treatment system nutrient removal upgrade].

88:32 Des Moines, IA (VII, 8–18–88) (*AEROCOR* and *National Hydro Systems, Inc.*) (rational basis for engineering judgment that equipment manufactured by bidder did not satisfy experience requirements) [secondary and nitrification facilities—clarifiers/air diffusers].

87:22 Lancaster, OH (V, 7–23–87) (*Floater Vehicle, Inc.*) (failure to demonstrate experience or alternatively post bond made bidder nonresponsible).

Invitation for Bids

Alternate

No entries.

Defective

88:05 Largo, FL (IV, 3–11–88) *Hycon Constr. Systems Corp.*) (bid documents must set forth methods and criteria to be used in evaluating bids, to provide equal opportunity to all prospective bidders and foster free and open competition, by giving notice of what is expected in meeting contract requirements) (failure to include all of grantee's responsibility criteria in bid documents and to make protester aware of grantee's evaluation process was harmless error absent prejudice to protester) [construction of interceptor sewers].

88:06 Buffalo Sewer Authority, NY (II, 3–22–88) (*Manhattan Gunite, Inc.*) (where both IFB and bid bond unambiguously state that penal sum of bid was five percent of bid, other language in IFB and bond referring to penal sum of the bond "in the amount of five percent thereof" does not render ambiguous the amount of penal sum and require a rebid) [sewer construction].

Jurisdiction

87:29 Jefferson Parish, LA (VI, 9–1–87) (*PALA-Interstate, Inc.*) (EPA reviews State law issues only to determine possible conflict with overriding federal requirements).

88:11 Brownsville, TX (VI, 5–3–88) (*Jalco, Inc.*) (EPA procurement regulations not applicable to contract work outside scope of grant agreement, hence not funded by EPA) [sewer rehabilitation].

License Requirement

88:39 S. Pittsburgh, TN (VI, 11–10–88) (*Henderson Excavating Co., Inc.*) (licensing requirement normally matter of bidder responsibility).

Listing

87:01 Plymouth, IN (V, 1–20–87) (*Winzeler Excavating Co.*) (where IFB did not expressly make listing of subcontractors a matter of bid responsiveness, bidder's failure to include such a list did not make its bid nonresponsive).

87:28 Jefferson Parish, LA (VI, 9–1–87) (*PALA-Interstate, Inc.*) (IFB made manufacturer listing a bid responsiveness matter causing rejection of a bid with a blank list).

Minority Business and Women's Business Enterprise (MBE/WBE)

87:05 Lackawanna County, PA (III, 3–26–87) (*Mele Construction Co.*) (bid may not be rejected for failure to submit MBE compliance form where IFB did not make it a responsiveness matter).

87:14 San Francisco, CA (IX, 5–21–87) (*Homer J. Olsen, Inc.*) (discrepancy in amount on bid schedule and MBE subcontractor list did not constitute a bid mistake).

87:18 Ames, IA (VII, 6–29–87) (*Twin Steel, Ltd.*) (compliance with EPA's MBE/WBE policy is a matter of bidder responsibility unless the IFB clearly makes it a matter of bid responsiveness).

87:22 Lancaster, OH (V, 7–23–87) (*Floater Vehicle, Inc.*) (MBE/WBE documentation is ordinarily a matter of bidder responsibility, not bid responsiveness).

87:30 Elyria, OH (V, 9–17–87) (*Underground Utilities, Inc.*) (ambiguity in IFB about whether MBE/WBE documentation was a bid responsiveness matter made it a bidder responsibility matter).

87:35 Chalfont, VA (III, 11–9–87) (*M. Matthews Sheet Metal Co., Inc.*) (untimely protest challenging grantee's compliance with EPA's MBE policy).

88:07 Milwaukee, WI (V, 3–25–88) (*EIMCO Equipment Co.*) (compliance with MBE clause is a matter of responsibility, rather than responsiveness, unless grantee clearly specifies otherwise, and may be determined at any time up to the award of the contract) [WWT plant recessed plate filter press system supply contract].

88:08 East Bay MUD, CA (3–31–88) (*Dan Caputo Co.*) (EPA strictly construes requirement of unambiguous language making MBE/WBE compliance a matter of responsiveness and examines IFB as well as bid documents in their entirety to determine overall clarity of bidding requirements) (provision that affirmative steps for MBE participation are a matter of responsiveness does not necessarily make other MBE requirements, such as submission of completed MBE form, a matter of responsiveness) [construction of WWT plant].

88:30 South Adams County, CO (VIII, 8–10–88) (*Reid Burton Construction Co., Inc.*) (MBE compliance is a matter of responsibility unless the recipient clearly specifies otherwise, and compliance determination can be made at any time up to the award of the contract) [Superfund Cooperative Agreement—permanent water treatment facility].

88:33 Buckeye, AZ (IX, 8–25–88) (*National Projects, Inc.*) (compliance with MBE clause is a matter of responsibility, rather than responsiveness, unless grant recipient clearly specifies otherwise, and may be determined at any time up to the award of the contract) [WWT plant construction].

88:35 South Tahoe, CA (IX, 9–21–88) (*Ford Construction Co.*) (bid may not be rejected as nonresponsive for failure to include completed MBE documentation, unless bid documents clearly and unambiguously state that such failure will cause bid rejection as

nonresponsive) [retention basin sealing project].

88:38 Orosi, CA (IX, 10–24–88) (*Daniel Ontiveros Construction Co.*) (minority business contractor must comply with MBE/WBE requirements to same extent as any other contractor) [sewer collection system construction].

Prequalification

87:02 Grand Forks, ND (VIII, 3–5–87) (*Autocon Industries, Inc.*) (suppliers must be given equal treatment under a prequalification process) (it is improper to reject a prequalification submittal as nonresponsive based on nonmaterial terms).

87:12 La Porte, TX (VI, 4–28–87) (*Baytown Construction Co., Inc.*) (grantee unnecessarily restricted competition by failing to provide submitter an opportunity to rebut information behind finding on nonresponsibility).

87:32 Clackamas County, OR (X, 10–23–87) (*Environmental Pollution Control, Inc.*) (grantee's lack of adherence to its prequalification procedures compromised integrity of the competitive bidding process by giving an unfair advantage to one bidder).

87:34 Moundsville, WV (III, 11–6–87)(*Phoenix Process Equipment Co.*) (grantee had a rational basis for its decision not to prequalify protester's equipment based on minimum project needs).

88:09 Hudson County, NJ (II, 4–11–88) (*Mayo, Lynch and Associates, Inc.*) (appeal by one of two joint applicants for inclusion on prequalified list dismissed because EPA cannot force other joint applicant, whose individual application for inclusion was accepted, to support other applicant's unilateral appeal of denial of joint application) [engineering services—prequalification].

88:12 Klamath Falls, OR (X, 5–6–88) (*C.M. General Contracting, Inc.*) (when specifications require all bidders to prequalify before bid opening, prequalification process as to all bidders must be completed prior to bid opening) (bidder may not be considered unless prequalified in accordance with criteria in bid documents) [interceptor sewer construction].

88:20 Des Moines, IA (VII, 6–16–88) (*Foxboro Co.*) (grantee had a rational basis for its decision not to prequalify protester's equipment based on minimum project needs) [WWT plant distributed control system supply].

Responsibility

87:10 Reading, PA (III, 4–23–87) (*Superior Construction, Inc.*) (EPA will not reserve a rationally based grantee determination of responsibility absent evidence of fraud or bad faith).

87:12 La Porte, TX (VI, 4–28–87) (*Baytown Construction Co., Inc.*) (grantee must give submitter an opportunity to rebut information behind a nonresponsibility finding under a prequalification process) (past performance on similar projects may be a factor for determining responsibility but requires a full review of the available information).

87:13 Greene County, OH (V, 5–5–87) (*Complete General Construction Co.*) (where IFB did not clearly make submittal of EEO and experience statements a matter of bid responsiveness, grantee improperly treated issue as a bid responsiveness matter rather than one of bidder responsibility).

87:16 Ames, IA (VII, 6–29–87) (*Twin Steel, Ltd.*) (grantee's affirmative finding of responsibility had a rational basis where bidder proposed no MBE participation but took affirmative steps to use MBEs).

87:22 Lancaster, OH (V, 7–23–87) (*Floater Vehicle, Inc.*) (grantee properly rejected bidder as nonresponsible due to failure to demonstrate experience or post performance bond).

87:23 Altoona, IA (VII, 7–29–87) (*Floater Vehicle, Inc.*) (failure to submit a suspension/debarment certificate was a matter of bidder responsibility curable after bid opening).

87:31 Vassar, MI (V, 10–2–87) (*R.C. Hendrick & Son, Inc.*) (submittal of a FmHA compliance statement was a bidder responsibility matter which could be met after bid opening but prior to contract award).

88:03 Ashland, OH (V, 1–29–88) (*Statiflo International, Inc.*) (Responsibility determinations by grantee are discretionary decisions and will be upheld unless without any rational basis or clearly erroneous) (Grantee's request for manufacturing history and guaranteed delivery date was rational and failure to provide requested history and guaranteed delivery date could support determination of nonresponsibility) [trickling filter media].

88:05 Largo, FL (IV, 3–11–88) (*Hycon Constr. Systems Corp.*) (grantee must take into consideration all available information in determining a bidder's responsibility) (concept of responsibility encompasses financial resources, capability to meet schedules, necessary experience, organization and skills, and overall satisfactory performance record on similar contracts) (nonresponsibility determination impacts only on a particular procurement action and should not be used to find protester nonresponsible in another case) [construction of interceptor sewers].

88:07 Milwaukee, WI (V, 3–25–88) (*EIMCO Equipment Co.*) (EPA will not reverse a rationally based grantee determination of nonresponsibility based on failure to meet experience requirement absent evidence of fraud or bad faith) [WWT plant recessed plate filter press system supply contract].

88:08 East Bay MUD, CA (3–31–88) (*Dan Caputo Co.*) (responsibility defined as apparent ability of bidder to successfully perform) (matters of responsibility generally may be cured after bid opening) [construction of WWT plant].

88:16 Westchester County, NY (II, 6–3–88) (*Gates Construction Corp.*) (grantee has wide discretion in determining bidder responsibility) (consideration after bid opening and before contract award of relevant and material information relating to bidder responsibility is proper) [outfall pipeline construction].

88:25 West Conshohocken, PA (III, 7–19–88) (*Kohler Brothers, Inc.*) (where IFB did not clearly make submittal of supporting documents a matter of bid responsiveness, grantee improperly treated issue as one of bid responsiveness rather than bidder responsibility) [wastewater pumping station].

88:30 South Adams County, CO (VIII, 8–10–88) (*Reid Burton Construction Co., Inc.*) (MBE compliance is a matter of responsibility unless the recipient clearly specifies otherwise, and compliance determination can be made at any time up to the award of the contract) [Superfund Cooperative Agreement—Permanent Water Treatment Facility].

88:33 Buckeye, AZ (IX, 8–25–88) (*National Projects, Inc.*) (MBE compliance is a matter of bidder responsibility) [WWT plant construction].

88:35 South Tahoe, CA (IX, 9–21–88) (*Ford Construction Co.*) (MBE/WBE compliance is a matter of responsibility unless grant recipient clearly specifies otherwise) [retention basin sealing project].

88:38 Orosi, CA (IX, 10–24–88) (*Daniel Ontiveros Construction Co.*) (EPA reverses grantee determination that inadvertent omission of MBE/WBE compliance form renders bid nonresponsive) [sewer collection system construction].

88:40 Edmonds, WA (X, 11–23–88) (*Wright Schuchart Harbor Co.*) (EPA reverses grantee determination that inadvertent omission of MBE/WBE compliance form renders bid

nonresponsive) [WWT plant construction].

Responsiveness

87:01 Plymouth, IN (V, 1–20–87) (*Winzeler Excavating Co.*) (where IFB did not expressly make listing of subcontractors a matter of responsiveness, bidder's failure to include such a list in its bid did not render the bid nonresponsive).

87:03 Orange, TX (VI, 3–17–87) (*Cajun Contractors & Engineers, Inc.*) (grantee had rational basis for finding bid to be responsive where bidder gave constructive acknowledgment of material addenda).

87:05 Lackawanna County, PA (III, 3–26–87) (*Mole Construction Co., Inc.*) (bid may not be rejected for failure to submit BME compliance form where IFB did not expressly make it a matter of responsiveness).

87:07 Bonner Springs, KS (VII, 4–7–87) (*IME, Inc.*) (a bid must be rejected as nonresponsive if it fails to meet a material term of the IFB) (grantee properly rejected a bid without a delivery date, but improperly accepted a bid which deviated from a different material term).

87:08 Anchorage, AK (X, 4–9–87) (*Frank Coluccio Construction Co.*) (grantee's nonresponsiveness finding was improperly based on a nonmaterial term of the IFB and undisclosed bid evaluation criteria).

87:11 York, PA (III, 4–23–87) (*Philips Brothers Electrical Contractors, Inc.*) (grantee's rejection of manufacturer/supplier a bidder listed under a "brand name or equal" specification does not render the bid nonresponsive).

87:13 Greene County, OH (V, 5–5–87) (*Complete General Construction Co.*) (bid was improperly rejected for failure to include EEO compliance and experience statements where IFB did not clearly make their submittal matters of responsiveness).

87:16 Ames, IA (VII, 6–29–87) (*Twin Steel, Ltd.*) (grantee properly treated MBE documentation as bidder responsibility matter) (MBE requirements were met even if regarded as a matter of bid responsiveness where bidder proposes no MBE participation and thus submits no MBE capability statements).

87:21 Fayetteville, AR (VI, 7–22–87) (*Rainbow Irrigation Systems, Inc.*) (grantee may not award a formally advertised contract in the absence of a responsive bid).

87:22 Lancaster, OH (V, 7–23–87) (*Floater Vehicle, Inc.*) (MBE/WBE documentation, EEO certification and DOT conformance certification are ordinarily matters of bidder responsibility, not bid responsiveness).

87:23 Altoona, IA (VII, 7–29–87) (*Floater Vehicle, Inc.*) (bid may not be rejected for failure to submit suspension/debarment certificate where IFB did not expressly make it a responsiveness matter).

87:28 Jefferson Parish, LA (VI, 9–1–87) (*PALA-Interstate, Inc.*) (grantee properly rejected bid due to omission of equipment list where IFB made it a responsiveness matter which is not waiveable).

87:29 Tacoma, WA (X, 9–4–87) (*Frank Coluccio Construction Co.*) (inadvertent omission of line item price included in the total bid price and easily discernible from face of the bid did not render the bid nonresponsive).

87:30 Elyria, OH (V, 9–17–87) (*Underground Utilities, Inc.*) (ambiguity in IFB about whether MBE/WBE documentation was a bid responsiveness matter).

87:31 Vassar, MI (V, 10–2–87) (*R.C. Hendrick & Son, Inc.*) (IFB did not make submittal of FmHA compliance statement a matter of bid responsiveness).

87:36 East Tawas, MI (V, 11–12–87 (*Devere Construction Co., Inc.*) (defective bid bond rendered bid nonresponsive) (responsiveness is determined at bid opening and grantee could not waive the defect after).

88:02 Mount Airy, MD (III, 1–14–88) (*M.A. Bongiovanni, Inc.*) (hand delivered bid submitted approximately 30 minutes after advertised time for bid submission, and after the only bid which was timely received had already been opened, is nonresponsive and cannot be basis of a contract award) [modifications to WWT plant].

88:03 Ashland, OH (V, 1–29–88) (*Statiflo International, Inc.*) (grantee's assertion, for the first time after bid protest was filed, that bid was nonresponsive because bid package was incomplete, is rejected, where grantee treated bid as responsive at bid opening) (grantee must use unequivocal language in bid documents informing all parties that failure to submit reference documents will render bid nonresponsive) (incomplete bid package which is deemed nonresponsive should be rejected at time of bid opening) [trickling filter media].

88:07 Milwaukee, WI (V, 3–25–88) (*EIMCO Equipment Co.*) (responsiveness does not depend upon bidder's intention, but rather, upon whether bid represents a definite and unqualified offer to meet the material terms of the IFB) (statements in bid transmittal letter are considered part of bid in determining responsiveness) (material qualifying statements in bid transmittal letter which can reasonably be read to suggest offer is subject to unspecified oral agreements renders bid nonresponsive) (bidder's insertion of language in bid documents limiting liability for damages is material and renders bid nonresponsive) [WWT plant recessed plate filter press system supply contract].

88:08 East Bay MUD, CA (3–31–88) (*Dan Caputo Co.*) (responsiveness requires bid to be in exact accord with material conditions of IFB) (material terms include price, quantity, quality or deliver, or any other term clearly identified by IFB as a requirement that must be complied with at risk of bid rejection) (material requirements in IFB cannot be waived or corrected after bid opening) (grantee's bid documents should be examined in entirety to determine if they contain clear and unambiguous language making compliance with particular IFB requirement a matter of responsiveness) [construction of WWT plant].

88:10 Lower Fountain Creek, CO (VIII, 4–18–88) (*Wiesemann Engineering, Inc.*) (bid containing numerous material exceptions which could affect price, quantity, quality or delivery, is nonresponsive) [self-cleaning screening equipment].

88:12 Klamath Falls, OR (X, 5–6–88) (*C.M. General Contracting, Inc.*) (noncompliance with prequalification procedures rendered bid nonresponsive) [interceptor sewer construction].

88:28 Dawson Springs, KY (IV, 8–4–88) (*3–D Enterprises, Inc.*) (bid not in accord with IFB is nonresponsive).

88:33 Buckeye, AZ (IX, 8–25–88) (*National Projects, Inc.*) (MBE documentation was a bidder responsibility matter) [WWT plant construction].

88:35 South Tahoe, CA (IX, 9–21–88) (*Ford Construction Co.*) (responsive bid must accord exactly with material conditions of IFB) (grantee properly treated MBE/WBE documentation as bidder responsibility matter) [retention basin sealing project].

88:36 Washington County, MD (III, 9–26–88) (*Peabody Barnes, Inc.*) (bid offering equipment meeting expressly applicable performance, name brand and design specifications is not nonresponsive because it fails to meet detailed design specifications applicable to a parallel, but different, technology) [grinder pump stations].

88:38 Orosi, CA (IX, 10–24–88) (*Daniel Ontiveros Construction Co.*) (bid may not be rejected as nonresponsive for noncompliance with MBE requirements unless bid documents

clearly and unambiguously state that such failure will cause bid rejection as nonresponsive) [responsive bid must accord exactly with material conditions of IFB and defects generally cannot be cured after bid opening) [sewer collection system construction].

88:40 Edmonds, WA [X, 11–23–88) (*Wright Schuchart Harbor Co.*) (EPA reverses grantee determination that inadvertent omission of MBE/WBE compliance form renders bid nonresponsive, where bid documents do not clearly and unambiguously state that such failure will cause bid rejection as nonresponsive) [WWT plant construction].

88:44 Manchester, NH [I, 12–16–88) (*P. Gioioso & Sons, Inc.*) (unbalanced bid not automatically nonresponsive—acceptability depends on whether bid is reasonably certain to result in lowest cost to government) [interceptor sewer construction].

Specifications

Brand Name or Equal

87:11 York, PA [III, 4–23–87) (*Philips Brothers Electrical Contractors, Inc.*) [grantee's rejection of bidder's proposed "or equal" item does not render the bid nonresponsive).

87:19 Key West, FL [IV, 7–13–87) (*Zimpro, Inc.*) [grantee may not approve proposed "or equal" item which fails to meet the salient performance characteristics listed in the bidding documents) *Note:* See EPA's Supplemental Determination, 88:45 [12–29–88).

88:10 Lower Fountain Creek, CO [VIII, 4–18–88) [*Wiesemann Engineering, Inc.*) [permitted only where impractical or uneconomical to make clear and accurate description of technical requirements of item, in order to define performance or other salient characteristics) [self-cleaning screening equipment].

88:19 Puerto Rico Aqueduct & Sewer Authority [III, 6–13–88) (*Environmental Control Dynamics, Inc.*) [where brand name specification used, grantee must list salient characteristics relating to minimum need which any offeror is required to meet) [tertiary filter installation].

88:29 Chickamauga, GA [IV, 8–10–88) (*Aquasystems International, N.V.*) [EPA reverses grantee's determination that protester's equipment not qualified as "equal" to brand name) [WWT plant upgrade].

88:45 Key West, FL [IV, 12–29–88) (*Zimpro, Inc.*) (*Supplemental Determination*) [EPA disfavors brand name or equal specifications) [equipment offered as "equal" to brand name cannot be accepted unless it meets all salient characteristics listed in bid documents) [if nonconforming equipment is adequate for project, proper course is to amend specifications) [if specifications found after bid opening to overstate minimum project needs, recipient should consider deleting equipment from contract award and competitively procuring alternate equipment under revised specifications) [fluid bed sludge incineration system].

Design (See also Unduly Restrictive Specifications)

No entries.

Local Preference

87:09 Port Arthur, TX [VI, 4–10–87) (*Baytown Construction Co.*) [local preference labor ordinance cannot be applied to EPA-funded project due to anti-competitive effects).

Minimum Need (See also Unduly Restrictive Specifications)

87:07 Bonner Springs, KS [VII, 4–7–87) (*IME, Inc.*) [a bid which deviates from a material term of the IFB is nonresponsive even though it may satisfy the grantee's minimum project needs) [specifications must incorporate a clear and accurate description of the technical requirements for the material to be procured).

88:29 Chickamauga, GA [IV, 8–10–88) (*Aquasystems International, N.V.*) [EPA reverses grantee's denial of protest where only one of many required technical specifications relate to minimum need) [WWT plant upgrade].

Oral Statements

No entries.

Performance

87:17 Detroit, MI [V, 6–26–87) (*Ashbrook-Simon-Hartley, Inc.*) [grantee had a rational basis for rejecting equipment after post-bid performance testing to determine lowest cost).

87:25 Gadsden, AL [IV, 8–3–87) (*Horen Construction Co., Inc.*) [rationally-based performance reason for rejecting equipment).

87:37 Bonner Springs, KS [VII, 11–16–87) (*Floater Vehicle, Inc.*) [grantee demonstrated performance-based reasons for specifications bidder failed to meet which were not unduly restrictive).

87:34 Moundsville, WV [III, 11–6–87) (*Phoenix Process Equipment Co.*) [rational basis for grantee's decision not to prequalify equipment which failed to meet performance-based specifications).

88:29 Chickamauga, GA [IV, 8–10–88) (*Aquasystems International, N.V.*) [EPA reversed grantee's denial of protest where only one of many required specifications relate to minimum performance needs) [WWT plant upgrade].

Salient Requirements

87:32 Clackamas County, OR [X, 10–23–87) (*Environmental Pollution Control, Inc.*) [a grantee may not accept equipment which fails to meet the salient performance characteristics listed in the bidding documents).

88:19 Puerto Rico Aqueduct & Sewer Authority [III, 6–13–88) (*Environmental Control Dynamics, Inc.*) [brand name specification also should contain salient requirements relating to minimum needs of project which any offeror must meet) [tertiary filter installation].

88:29 Chickamauga, GA [IV, 8–10–88) (*Aquasystems International, N.V.*) [requirement of listing salient characteristics of brand name in bid documents) [floating aerators and mixing equipment].

88:45 Key West, FL [IV, 12–29–88) (*Zimpro, Inc.*) (*Supplemental Determination*) [equipment offered as "equal" to brand name cannot be accepted unless it meets all salient characteristics listed in bid documents) salient characteristics are material, must be strictly met, and cannot be waived) [fluid bed sludge incineration system].

Sole Source

88:10 Lower Fountain Creek, CO [VIII, 4–18–88) (*Wiesemann Engineering, Inc.*) [sole source procurement authorized only if item available from only one source or if, after solicitation from several sources, competition is inadequate) [requires written justification for specifications not providing maximum free and open competition) [EPA closely scrutinizes sole source justifications) [specifications based on named product requiring manufacturer who does not regularly produce specified product to compete with one manufacturer who does, by duplicating its design, is unduly restrictive and constitutes unauthorized sole source procurement) [self-cleaning screening equipment].

88:19 Puerto Rico Aqueduct & Sewer Authority [III, 6–13–88) (*Environmental Control Dynamics, Inc.*) [detailed design specifications met by only one brand constitute disguised sole source procurement) [tertiary filter installation].

88:32 Des Moines, IA [VII, 8–18–88) (*AEROCOR* and *National Hydro Systems, Inc.*) [specifications cannot be deemed restrictive sole source when protester itself asserts its product could meet the specification) [secondary and nitrification facilities—clarifiers/air diffusers].

88:41 Moundsville-Glendale, WV [III, 11–30–88) (*Komline-Sanderson*) [de facto sole source procurement must be subject of competitive negotiation and cannot be procured as subcontract item under formally advertised prime contract) [belt filter press & captivated sludge process].

Unduly Restrictive

88:17 Detroit, MI [V, 6–26–87) (*Ashbrook-Simon-Hartley, Inc.*) [where bidder failed to show its equipment was excluded from the competition it could not challenge the specifications as unduly restrictive).

88:07 Milwaukee, WI [V, 3–25–88) (*EIMCO Equipment Co.*) [protester may not avoid waiver of protest based on experience requirement which is allegedly unduly restrictive as applied, rather than on its face, when protester had no reasonable basis to believe it could qualify under the experience requirement [WWT plant recessed plate filter press system supply contract].

88:10 Lower Fountain Creek, CO [VIII, 4–18–88) (*Wiesemann Engineering, Inc.*) [specifications calling for equipment which only one company can meet are unduly restrictive) [self-cleaning screening equipment].

88:16 Gresham, OR [X, 5–25–88) (*Humphrey Construction Co.*) [single base bid solicitation method, in which all bidders base prices on same named brand of equipment whether or not other equipment will ultimately be used, prevents substitute manufacturers from effectively completing, and is prohibited as unduly restrictive) [WWT plant construction].

88:19 Puerto Rico Aqueduct & Sewer Authority [III, 6–13–88) (*Environmental Control Dynamics, Inc.*) [grantee's procurement determination based on restrictive specification overturned as lacking rational basis) [tertiary filter installation].

88:20 Des Moines, IA [VII, 6–16–88) (*Foxboro Co.*) [performance-based specification for fiber optic cable which reflects project's minimum needs is not unduly restrictive [WWT] plant distributed control system supply].

88:26 Tacoma, WA [X, 7–25–88) (*Fluid Engineering Associates*) [recipient demonstrated that alleged unduly restrictive specification is performance related and rational basis supports determination that the specification reflects its minimum performance needs) [digester gas and clean gas compressor systems].

88:29 Chickamauga, GA [IV, 8–10–88) (*Aquasystems International, N.V.*) [EPA reverses grantee's denial of protest where only one of many required specifications relates to minimum performance needs) [WWT plant upgrade].

State and Local Law

87:04 Dennision, OH [V, 3–25–87) (*B & B Construction Co.*) [EPA will not consider issues of State law unless there is an overriding federal requirement).

87:26 Jefferson Parish, LA [VII, 9–1–87) (*PALA-Interstate, Inc.*) [EPA normally will not consider State or local law issues absent an overriding federal concern and gives considerable deference to grantee legal opinions on such matters).

88:02 Mount Airy, MD [III, 1–14–88) (*M.A. Bongiovanni, Inc.*) [State and local law generally apply unless grantee's determination involves a matter of primarily federal concern) [Timeliness of bid submission is a fundamental federal procurement principle and may be determined by reference to Federal law) [modifications to WWT facility].

88:09 Hudson County, NJ [II, 4–11–88) (*Mayo, Lynch and Associates, Inc.*) [protest appeal involving alleged violation of State law dismissed where issue currently before State court of competent jurisdiction, absent overriding, Federal requirement) [engineering services—prequalification].

88:11 Brownsville, TX [VI, 5–3–88) (*Jalco, Inc.*) [municipal and state procurement requirements, not EPA procurement regulations, apply to contract work outside scope of grant agreement, hence not funded by EPA) [sewer rehabilitation].

88:12 Klamath Falls, OR [X, 5–6–88) (*C.M. General Contracting, Inc.*) [state statutory authority cannot relieve prospective bidder of duty to comply with prequalification criteria contained in bid documents in federally funded project) [interceptor sewer construction].

88:40 Edmonds, WA [X, 11–23–88) (*Wright Schuchart Harbor Co.*) [EPA reverses grantee's determination that state law controls question of whether compliance with MBE/WBE/SBE requirements is a matter of responsiveness) [WWT plant construction].

Subcontract Award

87:15 Sparta, MO [VII, 6–3–87) (*Environmental Elements Corp.*) [subcontractor substitution is a matter of contract administration and not protestable).

87:16 Warminster, PA [III, 6–4–87) (*Chemcon, Inc.*) [an independent decision by a prime contractor to substitute a subcontractor is a contract administration matter which is not protestable].

88:32 Des Moines, IA [VII, 8–18–88) (*AEROCOR* and *National Hydro Systems, Inc.*) [protestor lacks standing to challenge an independent decision by prime contractor to substitute a subcontractor) [secondary and nitrification facilities—clarifiers/air diffusers].

88:34 Florham Park, NJ [II, 9–6–88) (*Lakeside Equipment Corp.*) [protester lacks standing to challenge an independent decision by prime contractor to substitute a subcontractor) [WWT plant equipment supply].

88:37 Reading, PA [III, 10–18–88) (*American Surfpac Corp.*) [subcontractor substitution ordinarily is a matter of contract administration and not protestable) [PVC media supply].

Subcontractor Listing (See Listing Requirements)

Waiver

88:02 Mount Airy, MD [III, 1–14–88) (*M.A. Bongiovanni, Inc.*) [hand delivered bid submitted approximately 30 minutes after advertised time for bid submission, and after the only bid which was timely received had already been opened, is nonresponsive and cannot be basis of a contract award. The late bid submission cannot be waived as a minor informality) [modifications to WWT facility].

88:07 Milwaukee, WI [V, 3–25–88) (*EIMCO Equipment Co.*) [protest based upon allegedly unduly restrictive specifications, e.g., experience requirement, is untimely and is waived unless raised before bid opening) [WWT plant recessed plate filter press system supply contract].

[FR Doc. 90–27091 Filed 11–23–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3864–2]

Acid Rain Advisory Committee; Open Meeting

SUMMARY: On August 7, 1990, the U.S. Environmental Protection Agency (EPA) gave notice of the establishment of an Acid Rain Advisory Committee (ARAC) (55 FR 32134). This Committee was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app. I) to provide advice to the Agency on policy and technical issues related to the development and implementation of the requirements of the Acid Deposition Control title of the Clean Air Act Amendments of 1990. In the August 7, 1990 notice, EPA also sought nomination for candidates for membership on the ARAC.

OPEN MEETING DATES: Notice is hereby given that the Acid Rain Advisory Committee will hold an open meeting on December 13 from 9 a.m. to 5 p.m., and on December 14 from 9 a.m. to 3 p.m. at the Omni Shoreham Hotel, 2500 Calvert Street NW., Washington DC. Due to the size of the meeting room, seating is limited to approximately 175 individuals, and will be made available on a first come, first served basis.

The meeting will include a discussion of the goals and program principles which EPA is considering using in the development of the acid rain program, the role of the advisory committee and its relationship to the EPA rulemaking process, a discussion of the content of the acid rain legislation, a discussion of the major issue areas, and a discussion of the Agency's emerging Acid Rain Program Vision Statement. At this time, EPA also anticipates that the plenary meeting will break up into subcommittees (pursuant to 41 CFR 101–6.1604(k)) "to analyze relevant issues and facts, or to draft proposed position papers for deliberation by the advisory committee."

INSPECTION OF COMMITTEE DOCUMENTS: Documents relating to the above noted topics will be publicly available at the meeting. Thereafter, these documents, together with the ARAC meeting minutes will be available for public inspection in EPA Air Docket No. A–90–39 in room 1500 of EPA Headquarters, 401 M Street SW., Washington DC. Hours of inspection are 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m. Monday through Friday.

COMMITTEE MEMBERSHIP: At this time EPA is in the process of contacting selected Advisory Committee nominees. The Committee will consist of approximately 40 individuals.

FOR FURTHER INFORMATION: Concerning the ARAC or its activities, please contact Mr. Paul Horwitz, Designated Federal Official to the Committee at (202) 475–9400, Fax (202) 252–0092, or by mail at US EPA, Acid Rain Division (ANR 445) Office of Air and Radiation, Washington DC 20460.

Dated: November 20, 1990.

William G. Rosenberg,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 90–27688 Filed 11–23–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3863–2]

Workshop on Toxicity Equivalency Factors for PCB Congeners

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: This notice announces a workshop sponsored by the Environmental Protection Agency (EPA) Risk Assessment Forum to examine the existing toxicity and exposure data base on the polychlorinated biphenyls (PCBs) to ascertain the feasibility of developing Toxicity Equivalency Factors for various PCB congeners. The meeting will be held at the Holiday Inn, 550 C Street, SW., Washington, DC.

DATES: The workshop will begin on Tuesday, December 11, 1990 at 9 a.m. and end on Wednesday, December 12 at 12 p.m. Members of the public may attend as observers.

ADDRESSES: Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the workshop. To attend the workshop as an observer, call Eastern Research Group's hotline number, (617) 648–7811 or call Mr. Chris Murray, Eastern Research Group, Inc., 6 Whittemore Street, Arlington, Massachusetts, 02174, Telephone (617) 641–5318 by Wednesday, December 5, 1990. Space is limited.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Thomas, U.S. Environmental Protection Agency, (RD–689), 401 M Street, SW., Washington, DC, 20460, Telephone (202) 475–6743 (FTS: 475–6743).

SUPPLEMENTARY INFORMATION: Given the widespread acceptance and acknowledged utility of the Toxicity Equivalency Factor (TEF) method for assessing the risks associated with exposures to complex mixtures of chlorinated dibenzo-p-dioxins and dibenzofurans, some have urged the development of comparable TEF schemes for other structurally related chemicals, such as polychlorinated biphenyls (PCBs).

EPA's Risk Assessment Forum has assembled approximately 20 experts in the fields of PCB toxicity and mechanisms of action, environmental exposure, and analytical methods for measuring PCBs in human and environmental samples. These experts will discuss topics related to the following issues:

- Is the existing database on toxicity and mechanisms of action sufficient to support a TEF-like scheme for the PCBs?
- What is known about environmental exposures to specific PCB congeners?
- What analytical methods are available to quantify individual congeners in environmental matrices?
- What are the important data gaps and what research is needed to fill them?

Information from the workshop will contribute to Risk Assessment Forum recommendations on whether to pursue development of a TEF-like scheme for the PCBs.

Erich Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 90–27690 Filed 11–23–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3864–8]

Open Meeting of the International Environmental Technology Transfer Advisory Board

Under Public Law 92–463, notice is hereby give that a meeting of the International Environmental Technology Transfer Advisory Board (IETTAB) will be held on December 6, 1990 in the Main Lounge of the National Press Club located at 14th and F Streets, NW., Washington, DC. The meeting is open to the public and will run from 9 a.m. until approximately 12 p.m. It is expected that this will be the last full IETTAB meeting. The purpose of this meeting is to approve a final report.

Public comments can be made through written statements which will be distributed to Board Members. Written statements must be sent in care of the Executive Secretary listed below no later than November 30, 1990, in order to distribute to Board members before the meeting time. Seating for interested members of the public is limited to seventy seats. Seats will be filled on a first-come basis. To confirm your interest in attending, contact the Executive Secretary by November 30, 1990.

FOR FURTHER INFORMATION CONTACT: Mark Kasman, Executive, Secretary, Office of International Activities (A–106), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475–7424.

Dated: November 14, 1990.

Terry Davies,

Assistant Administrator for Policy Planning and Evaluation.

[FR Doc. 90–27689 Filed 11–23–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA-REP-1-NH-2]

The New Hampshire Radiological Emergency Response Plan Site-Specific for the Seabrook Nuclear Power Station

ACTION: Certification of FEMA findings and determination.

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR Part 350, the State of New Hampshire formally submitted the New Hampshire Radiological Emergency Response Plan for Seabrook Station for radiological emergencies site-specific to the Seabrook Nuclear Power Station. The plan was submitted to the Regional Director of FEMA Region I for FEMA review on December 9, 1985, and a revision was again submitted on August 30, 1988, with updates and a reiteration of the Governor's prior formal request for FEMA's review, evaluation and approval. The State plan specifies the New Hampshire radiological emergency response in support of offsite planning and preparedness for the Seabrook Nuclear Power Station. New Hampshire is partially within the established plume and ingestion pathway emergency planning zones of the Seabrook Station.

On December 4, 1989, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 if the FEMA rule. The December 4, 1989, evaluation was based on a review of the New Hampshire plans; an evaluation of the joint exercise conducted on June 28–29, 1988, in accordance with § 350.9 of the FEMA rule; and, a report of the public meeting held on July 2, 1988, to discuss the site-specific aspects of the State of New Hampshire's Radiological Emergency Response Plan, the State of Maine's plan, and New Hampshire Yankee's Seabrook Plan for Massachusetts Communities in accordance with § 350.10 of the FEMA rule.

On February 9, 1990, the Regional Director provided the Associate Director of State and Local Programs and Support with an updated interim evaluation and recommendations regarding the status of offsite radiological emergency planning and preparedness for the New Hampshire portion of the Seabrook emergency planning zone. This evaluation continued to support FEMA's prior finding that New Hampshire's Radiological Emergency Response Plan and preparedness were adequate to protect the health and safety of the public in the New Hampshire portion of the plume and ingestion pathway emergency planning zones of Seabrook by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency and are capable of being implemented. An updated interim finding was transmitted to the Nuclear Regulator Commission on February 9, 1990.

On September 7, 1990, FEMA provided the Nuclear Regulatory Commission with a finding that the alert and notification system for Seabrook was adequate to promptly alert and notify the public in the event of a radiological emergency at the site. This finding was based on an engineering design review; the above-mentioned February 9, 1990, interim finding, and the June 15, 1990, interim finding of adequacy for the Seabrook Plan for Massachusetts Communities; and the results of the May 16, 1990, public telephone survey.

Based on the abovementioned evaluations and recommendations for approval by the Regional Director and the review by the FEMA Headquarters staff, I reiterate my findings and determination of February 9, 1990, that the New Hampshire Radiological Emergency Response Plan and preparedness for the Seabrook Nuclear Power Station are adequate to protect the health and safety of the public in the New Hampshire portion of the plume and ingestion pathway emergency planning zones of Seabrook Station.

The offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. Therefore, I approve the New Hampshire Radiological Emergency Response Plan for Seabrook Station in accordance with 44 CFR 350.12 of the FEMA rule.

FEMA will continue to review the status of offsite plans and preparedness associated with the Seabrook Nuclear Power Station in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA–REP–1–NH–2 maintained by the Regional Director, FEMA Region I, J.W. McCormack Post Office and Courthouse, Boston, Massachusetts 02109.

Dated: November 9, 1990.

For the Federal Emergency Management Agency.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 90–27686 Filed 11–23–90; 8:45 am]

BILLING CODE 6718–20–M

FEDERAL RESERVE SYSTEM

Banco De Venezuela, S.A.I.C.A., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 13, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. Banco De. Venezuela, S.A.I.C.A., Caracas, Venezuela; The International Group Trust, St. Helier, Jersey, Channel Islands; The Protector of the International Group Trust, St. Helier, Jersey, Channel Islands; Bavenez Finance (Jersey) Limited, St. Helier, Jersey, Channel Islands; Bavenez Finance, N.V., Curacao, Netherlands Antilles; Banco De Venezuela N.V., Curacao, Netherlands Antilles; and Bavenez Finance (USA), Inc., New York, New York; to acquire 100 percent of the voting shares of Centennial National Bank, New York, New York, a *de novo* bank.

BEST COPY AVAILABLE

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Adairsville Bancshares, Inc., Adairsville, Georgia; to acquire 100 percent of the voting shares of The Peoples Bank, Crawfordville, Georgia.

Board of Governors of the Federal Reserve System, November 16, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27607 Filed 11-23-90; 8:45 am]

BILLING CODE 6210-01-M

Banks of Iowa, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflict of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 13, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. Banks of Iowa, Inc., Des Moines, Iowa; to engage *de novo* through its subsidiary, Banks of Iowa Credit Corporation, Des Moines, Iowa, in lending activities pursuant to § 225.25(b)(4) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. United Bancshares, Inc., Lincoln, Nebraska; to engage *de novo* through its subsidiary, Vistar Financial Services, Inc., Lincoln, Nebraska, in making consumer finance loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 16, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27606 Filed 11-23-90; 8:45 am]

BILLING CODE 6210-01-M

Carolina First Corporation, et al; Applications To Engage de Novo in Permissible Nonbanking Activities, Correction

This notice corrects a previous **Federal Register** Notice (FR Doc. 90-26398) published at page 46995 of the issue for Thursday, November 8, 1990.

The end of comment period for the following notices is amended to end on November 30, 1990.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostain, Jr., Senior Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

1. Carolina First Corporation, Greenville, South Carolina; to engage *de novo* through its subsidiary, Carolina Interim Savings Bank, F.S.B., Greenville, South Carolina, in owning and operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Michigan Bank Corporation, Holland, Michigan; to engage *de novo* through FMB-Trust and Financial Services, National Association, Holland, Michigan, in trust company functions pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 16, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27611 Filed 11-23-90; 8:45 am]

BILLING CODE 6210-01-M

James Cleo Thompson, Jr.; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than December 7, 1990.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. James Cleo Thompson, Jr., Dallas, Texas; to acquire an additional 10.9 percent of the voting shares of Crockett County National Bancshares, Inc., Ozona, Texas, for a total of 32.27 percent and thereby indirectly acquire Crockett County National Bank, Ozona, Texas.

Board of Governors of the Federal Reserve System, November 16, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27605 Filed 11-23-90; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Eligibility To Use GSA Sources of Supply and Services

AGENCY: Federal Supply Service, GSA.

ACTION: Notice.

SUMMARY: This notice provides information on the eligibility to use GSA sources of supply and services. This action is necessary to provide guidance concerning eligibility requirements to the U.S. Government and other organizations which need to know what activities may be eligible to use GSA sources of supply and services.

FOR FURTHER INFORMATION CONTACT: Raywood Holmes, Marketing and Regulations Management Branch (703-557-7525).

SUPPLEMENTARY INFORMATION: This notice contains text that was extracted from GSA Order ADM 4800.2C, dated October 9, 1990, Subject: Eligibility to use GSA sources of supply and services. The text reads as follows:

Eligibility To Use GSA Sources of Supply and Services

1. *Purpose.* This order provides definitions and listings of those agencies and other activities authorized to use GSA sources of supply and services. It also provides definitive guidelines concerning eligibility requirements.

2. *Background.* The Federal Property and Administrative Services Act of 1949, as amended, authorizes the Administrator to procure and supply personal property and nonpersonal services for the use of executive agencies, mixed-ownership Government corporations, as identified in the Government Corporation Control Act, and the District of Columbia. Other organizations may be eligible by reason of enabling statutory authority.

3. *Definition.* GSA sources of supply and services are defined as those support programs administered by GSA and prescribed in the Federal Property Management Regulations (FPMR) Parts 101-26—Procurement Sources and Programs, 101-39—Interagency Fleet Management Systems, 101-40—Transportation and Traffic Management, 101-43 thru 101-46, 101-48 and 101-49, Utilization and Disposal Programs; in the Federal Information Resources Management Regulation (FIRMR), 41 CFR ch. 201-32 for ADP and 41 CFR ch. 201-40 for telecommunications; and in the Federal Travel Regulation, 41 CFR 301-15, Travel Management Programs.

4. *Authority to use GSA sources of supply and services.* The authority to use GSA sources of supply and services is established by statute (*see* par. 7), regulation, and the specific terms of certain contracts.

5. *Eligible activities.* Organizations eligible to use GSA sources of supply and services are covered by the provisions of the Federal Property and Administrative Services Act of 1949, as amended, hereafter referred to as the Property Act. Definitions of the organizations follow. It is noted, however, that although an organization may be eligible to use these sources, it does not necessarily mean that resources or assets are available, especially in the case of the Interagency Fleet Management System, or that it would always be practical for GSA to make such sources available, or further still, that all contracts allow participation by non-Federal organizations.

a. *Executive agencies.* Subsections 201(a) and 211(b) of the Property Act provide for executive agencies' use of GSA sources of supply and services. Executive agencies, as defined in subsection 3(a) of the Property Act, include:

(1) *Executive departments.* These are the cabinet departments defined in 5 U.S.C. 101 and are listed in app. A.

(2) *Wholly owned Government corporations.* These are defined in 31 U.S.C. 9101 and are listed in app. A.

(3) *Independent establishments in the executive branch of the Government.* These are generally defined by 5 U.S.C. 104. However, it is often necessary to consult specific statutes, legislative histories, and other references to determine whether a particular establishment is within the executive branch. To the extent that GSA has made such determinations, the organizations qualifying under this authority are listed in app. A.

b. *Other Federal agencies, mixed-ownership Government corporations, and the District of Columbia.* Sections 201(b) and 211(b) of the Property Act authorize the Administrator of General Services to provide GSA sources of supply and services to these organizations upon request.

(1) *Other Federal agencies.* These are Federal agencies defined in subsection 3(b) of the Property Act that are not in the executive branch; i.e., any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction). To the extent that GSA has made such determinations, the organizations qualifying under this authority are listed in app. B.

(2) *Mixed-ownership Government corporations.* These are included in subsections 201(b) and 211(b) of the Property Act and defined in 31 U.S.C. 9101. They are listed in app. B.

(3) *District of Columbia.* The Government of the District of Columbia is eligible to use GSA sources of supply and services. The Government of the District of Columbia, and those parts thereof that have been determined by GSA to be eligible to use its sources of supply and services, are listed in app. B.

c. *The Senate, House of Representatives, and activities under the direction of the Architect of the Capitol.* These organizations are eligible to use GSA sources of supply and services, under subsection 602(c) of the Property Act, upon request. To the extent that GSA has determined that various activities qualify under this authority, they are listed in app. B.

d. *Other organizations authorized under the authority of the Property Act.* GSA has further determined, under the Property Act, that certain other types of organizations are eligible to use its sources of supply and services.

(1) *Cost-reimbursement contractors (and subcontractors) as property authorized.* Part 51 of the Federal Acquisition Regulation (FAR) provides that agencies may authorize certain contractors (generally cost-reimbursement contractors) to use GSA schedules, GSA stock, and GSA contract travel and transportation services. In each case, the written authorization must conform to the requirements of FAR part 51, Use of Government Sources by Contractors. Subpart 51.2 prescribes policies and procedures governing Federal agencies in authorizing cost-reimbursement contractors to obtain interagency fleet management system vehicles and related services. The eligibility of agency authorized cost-reimbursement contractors to obtain Government contract air/rail fares is limited to the city-pair routes of contract carriers which have agreed to furnish the GSA contract fare to such contractors. Regulations governing the use of contract air/rail passenger service by cost-reimbursement contractors are found at 41 CFR part 301-15, subpart B, specifically, § 301-15.24(h). GSA contracts for other travel related services; e.g., travel management services or contractor-issued charge cards, generally do not include cost-reimbursement contractors.

(2) *Fixed-price contractors (and subcontractors) purchasing security equipment.* Under subsection 201 of the Property Act, the Administrator has determined that fixed-price contractors and lower tier subcontractors who are required to maintain custody of security classified records and information may purchase security equipment from GSA. Procedures regarding these organizations are set forth in FPMR 101-26.507 and 101-26.407.

(3) *Non-Federal firefighting organizations cooperating with the Forest Service.* Under section 201 of the Property Act, it has been determined that certain non-Federal firefighting

organizations may purchase wildfire suppression equipment and supplies from the Federal Supply Service (FSS) (Article V, Agreement No. FSS 83–1, January 24, 1984).

(4) *Department of the Interior, Bureau of Indian Affairs.* Under a Memorandum of Understanding between the Department of the Interior and the General Services Administration (FSS–83–3) and Pub. L. 93–638, tribal Government grantees of the Bureau of Indian Affairs may use GSA sources of supply and services.

e. *Other statutes.* Other statutes authorize specific organizations to use GSA sources of supply and services. These organizations are listed in app. B, with appropriate annotations. The major categories of such organizations include:

(1) *Certain charitable institutions.* Pursuant to Pub. L. 95–355, the following activities are eligible to use GSA supply sources and are also listed in app. B:

(a) Howard University;
(b) Gallaudet University;
(c) National Technical Institute for the Deaf; and
(d) American Printing House for the Blind.

(2) *Certain territories.* Certain territories of the United States, as indicated in app. B, are eligible to use GSA sources of supply and services. (Note: This authority historically has depended on the authorizing provisions being reenacted in the annual appropriations act for the Department of the Interior.)

(3) *Foreign entities.* Section 607 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2357, provides that the President may authorize certain countries and organizations to use GSA sources of supply and services as part of the foreign policy of the United States. To the extent that the Department of State has made determinations on behalf of the President, they are included in app. C. Purchases made by international organizations through GSA sources of supply and services must be for civilian use only.

(4) *Nonappropriated fund activities.* FPMR 101–26.000 provides that military commissaries and nonappropriated fund activities may use GSA sources of supply and services for their own use, not for resale, unless otherwise authorized by the individual Federal agency and concurred in by GSA.

6. *Ineligible activities.* Except for the acquisiton of excess personal property through sponsoring agencies, Federal grantees are ineligible to use GSA sources of supply and services. In addition, a cost-reimbursement contractor cannot transfer procurement authorization to a third party leasing company to use GSA sources of supply and services, unless the leasing company has an independent authorization to use GSA contracts.

7. *Travel.* Organizations seeking to use GSA sources of supply and services for travel/transportation must obtain a separate determination. This is necessary to determine whether or not the requesting entity is eligible under the language of the specific contract for the servicing being requested; *i.e.,* travel management services, travel and transportation payment and expense control system (including contractor-issued charge cards for official travel), and/or air/rail passenger transportation.

8. *Excess, surplus, and forfeited property.* The eligibility of activities and organizations to obtain supplies and services from GSA's personal property utilization and disposal programs is governed by FPMR parts 101–43 thru 101–46 101–46, and 101–49, and not by this order.

9. *Determination of eligibility.* Activities or organizations other than those covered in the appendixes to this order may be eligible to use GSA sources of supply and services. Requests to use these services received from activities or organizations whose eligibility is in question must be forwarded to the Office of Customer Service and Marketing, Attention: Regulations Management Branch (FFPR), for determination.

Appendix A. Executive Agencies

The following have been determined to be "executive agencies," or parts thereof, for the purpose of using GSA sources of supply and services. This list is not all-inclusive; other activities also may be eligible to use GSA on a case-by-case basis (see par. 11). Listed here are major Federal activities and their subordinate entities about which inquiries have been received.

ACTION
Agency for International Development
Agriculture, Department of
Air Force, Department of
Alaska Natural Gas Transportation System
American Battle Monuments Commission
Army Corps of Engineers
Army, Department of the
Board for International Broadcasting
Bonneville Power Administration (administrative and housekeeping items)
Bureau of Land Management
Central Intelligence Agency
Commerce, Department of
Commission on Civil Rights
Commission on Fine Arts
Commodity Credit Corporation
Commodity Futures Trading Commission
Consumer Products Safety Commission
Defense, Department of
Defense agencies and Joint Service Schools
Education, Department of
Energy, Department of
Environmental Protection Agency
Equal Employment Opportunity Commission
Executive Office of the President
Export-Import Bank of U.S.
Farm Credit Administration
Federal Communications Commission
Federal Election Commission
Federal Trade Commission
Forest Service, U.S.
General Services Administration
Government National Mortgage Association
Health and Human Services, Department of
Housing and Urban Development, Department of
Inter-American Foundation
Interior, Department of the
Interstate Commerce Commission
Justice, Department of
Kennedy Center
Labor, Department of
Legal Services Corporation (not its grantees)
Merit Systems Protection Board
National Aeronautics and Space Administration
National Archives and Records Administration
National Credit Union Administration (not individual credit unions)
National Council on the Handicapped
National Endowment of the Arts
National Endowment for the Humanities
National Labor Relations Board
National Science Foundation
National Transportation Safety Board
Navy, Department of the
Nuclear Regulatory Commission
Occupational Safety and Health Review Commission
Office of Personnel Management
Overseas Private Investment Corporation
Panama Canal Commission
Peace Corps
Pennsylvania Avenue Development Corporation
Pension Benefit Guaranty Corporation
Postal Rate Commission
Railroad Retirement Board
St. Elizabeths Hospital
St. Lawrence Seaway Development Corporation
Securities and Exchange Commission
Selective Service System
Small Business Administration
Smithsonian Institution
State, Department of
Tennessee Valley Authority
Transportation, Department of
Treasury, Department of the
U.S. Arms Control and Disarmament Agency
U.S. Information Agency
U.S. International Development Agency
U.S. International Trade Commission
U.S. Postal Service
Veterans Affairs, Department of

Appendix B. Other Eligible Users

The following have been determined to be eligible to use GSA sources of supply and services, in addition to the organizations listed in appendixes A and C. An asterisk indicates that special limitations may apply (see subpar. 7e(2)s. This list is not all-inclusive; other activities also may be eligible to use GSA sources. The eligibility of those will be ruled upon by GSA on a case-by-case basis (see par. 11).

Administrative Conference of the U.S.
Administrative Office of the U.S. Courts
Advisory Commission on Intergovernmental Relations
Advisory Committee on Federal Pay
American Printing House for the Blind
American Samoa, territorial and local governments of **
Architect of the Capitol
Architectural and Transportation Barriers Compliance Board
Banks for Cooperatives
Certain nonappropriated fund activities (generally, not for resale)
Coast Guard Auxiliary (through the U.S. Coast Guard)
Committee for Purchase from the Blind and Other Severely Handicapped
Contractors and subcontractors—cost-reimbursement (as authorized by the applicable agency's contracting official)
Contractors and subcontractors—fixed-price (security equipment only when so authorized by the applicable agency's contracting official)
Courts, Federal (not court reporters)
Delaware River Basin Commission
District of Columbia, Government of the Farm Credit Banks
Federal Deposit Insurance Corporation
Federal Emergency Management Agency
Federal Home Loan Banks
Federal Intermediate Credit Bank
Federal Land Bank
Federal Reserve Board of Governors
Firefighters, Non-Federal (as authorized by the Forest Service, U.S. Department of Agriculture)
Gallaudet University
General Accounting Office
Government Printing Office
Guam, territorial and local governments of **
Harry S. Truman Scholarship Foundation
House of Representatives, U.S.
Howard University (including hospital)
Institute of Museum Services ***
Japan-United States Friendship Commission
Library of Congress
Marine Mammal Commission
National Bank for Cooperation (CoBank)
National Buildings Museum
National Capital Planning Commission ***
National Gallery of Art
National Guard Activities (only through U.S. Property and Fiscal Officers)
National Railroad Passenger Corporation (i.e., AMTRAK)
National Technical Institute for the Deaf
Navajo and Hopi Indian Relocation Commission
Neighborhood Reinvestment Corporation
Northern Mariana Islands, Commonwealth of the territorial and local governments *
Office of the Federal Inspector for the Alaska Natural Gas Transportation System
Prospective Payment Assessment Commission
Senate, U.S.
Susquehanna River Basin Commission
Trust Territory of the Pacific Islands, Government of ****
U.S. Railway Association
U.S. Representative, Office of Joint Economic Commission
CENPRO Project Saudi Arabia (when Saudi government cannot supply)
U.S. Soldiers' and Airmen's Home
U.S. Synthetic Fuels Corporation
Virgin Islands, territorial and local governments of (including Virgin Islands Port Authority) **
Washington Metropolitan Area Transit Authority
Water Resources Council

* Financial service—accounting and payroll only
** Financial service—accounting and payroll only
*** Financial service—payroll only
**** Palau only

Appendix C. International Organizations

The following have been determined to be eligible to use GSA sources of supply and services, in addition to the organizations listed in appendixes A and B. This list is not all-inclusive; other activities also may be eligible to use GSA sources. The eligibility of activities not listed will be ruled upon by GSA on a case-by-case basis (see par. 11).

African Development Fund
Asian Development Bank
Caribbean Organization
Customs Cooperation Council
European Space Research Organization
Food and Agriculture Organization of the United Nations
Great Lakes Fishery Commission
Inter-American Defense Board
Inter-American Development Bank
Inter-American Institute of Agriculture Sciences
Inter-American Investment Corporation
Inter-American Statistical Institute
Inter-American Tropical Tuna Commission
Intergovernmental Maritime Consultive Organization
Intergovernmental Committee for European Migration
International Atomic Energy Agency
International Bank of Reconstruction and Development (World Bank)
International Boundary Commission-United States and Canada
International Boundary and Water Commission-United States and Mexico
International Center for Settlement of Investment Disputes
International Civil Aviation Organization
International Coffee Organization
International Cotton Advisory Committee
International Development Association
International Fertilizer Development Center
International Finance Corporation
International Hydrographic Bureau
International Institute for Cotton (formerly International Cotton Institute)
International Joint Commission-United States and Canada
International Labor Organization
International Maritime Satellite Organization
International Monetary Fund
International Pacific Halibut Commission
International Pacific Salmon Fisheries Commission-Canada
International Secretariat for Volunteer Services
International Telecommunications Satellite Organization
International Telecommunications Union
International Wheat Council
Lake Ontario Claims Tribunal
Multinational Force and Observers
Multinational Investment Guarantee Agency (M.I.G.A.)
NATO Communications and Information Systems Agency (NACISA)
Organization of African Unity
Organization of American States
Organization for Economic Cooperation and Development
Pan American Health Organization
Radio Technical Commission for Aeronautics
South Pacific Commission
United International Bureau for the Protection of Intellectual Property
United Nations
United Nations Educational, Scientific, and Cultural Organization
Universal Postal Union
World Health Organization
World Intellectual Property Organization
World Meteorological Organization
World Tourism Organization

Dated: November 13, 1990.

William B. Foote,

Assistance Commission for Customer Service and Marketing.

[FR Doc. 90–27710 Filed 11–23–90; 8:45 am]

BILLING CODE 6820–24–M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Scholarships: Closing Date for Nominations from Eligible Institutions of Higher Education

Notice is hereby given that, pursuant to the authority contained in the Harry S. Truman Memorial Scholarship Act, Public Law 93–642 (20 U.S.C. 2001), nominations are being accepted from eligible institutions of higher education for Truman Scholarships. Procedures are prescribed at 45 CFR part 1801, and were published in the **Federal Register** on June 19, 1978 (43 FR 26366).

In order to be assured of consideration, all documentation in support of nominations must be received by the Truman Scholarship Review Committee, CN 6302, Princeton, N.J. 08541–6302 postmarked no later than Friday, December 1, 1990.

Louis H. Blair,

Executive Secretary.

[FR Doc. 90–27778 Filed 11–23–90; 8:45 am]

BILLING CODE 6820–AB–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Request for Comments and Secondary Data Relevant to Occupational Exposure to Inorganic Lead

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice of request for comments and secondary data.

SUMMARY: NIOSH is requesting comments and secondary data from all interested parties concerning the health hazards of occupational exposure to inorganic lead. Interested parties may submit information on the health and safety aspects related to occupational exposure to inorganic lead, including but not limited to: (1) Exposure data, (2) biological monitoring data, (3) health effects related to occupational exposure to lead, (4) description of work practices, protective equipment, and control technology in use today, (5) methods of environmental and biological monitoring, and (6) results of epidemiological and laboratory animal studies.

This information will be used by NIOSH to determine the extent of potential health effects associated with occupational exposures to inorganic lead and to develop strategies for preventing and controlling these effects among workers.

DATES: Comments concerning this notice should be submitted by February 25, 1991.

ADDRESSES: Please submit four (4) copies of any information, comments, suggestions, or recommendations in writing to Dr. Richard W. Niemeier, Director, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C–14, Cincinnati, Ohio 45226.

FOR FURTHER INFORMATION CONTACT: Dr. Henryka Nagy, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C–32, Cincinnati, Ohio 45226, 513/533–8369 or FTS 684–8369.

SUPPLEMENTARY INFORMATION: Pursuant to sections 20 and 22 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669 and 671) and sections 103 and 501 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 813 and 951), NIOSH is authorized to gather information in order to develop recommendations for improving occupational safety and health. NIOSH has been concerned with the health and safety consequences associated with occupational exposure to inorganic lead (lead oxides, metallic lead, and lead salts). Industrial processes and operations that result in exposure to inorganic lead include smelting and refining, steel and iron production, steel welding, construction, cutting operations, manufacturing of lead-based paints, applying and removing lead-containing surface coatings, battery production, printing, plumbing, manufacturing and firing of firearms ammunition. In addition to exposures at the workplace, non occupational exposures can occur when pursuing hobbies such as ceramics, stained glass, and pewter crafts that involve lead compounds. Uptake of lead in the workplace occurs mainly through inhalation, although ingestion of lead can contribute to the total lead body burden. Exposure to lead can result in the inhibition of heme synthesis, brain damage, renal diseases, and reproductive system effects (germ cells). Occupational exposures to lead are also associated with hypertension and may be associated with an increased risk of cancer. Exposures to lead are particularly dangerous for pregnant women and their fetuses and children. High prenatal exposure may result in mental retardation, seizures, and sensory-motor deficits in children. Chronic, low level, prenatal exposures may cause preterm births, reduced birth weight, and abnormalities in the mental and motor development of infants.

NIOSH is interested in obtaining existing and available materials, including reports and research findings, to evaluate the extent of the existing problem and to develop strategies to prevent and control exposure to inorganic lead.

Examples of requested information include but are not limited to:

1. Occupational, biological, and environmental exposure data, including number, age, and sex of workers at risk, and duration of their exposure.

2. Results of epidemiological and clinical studies or other health effects data reported since 1978 on lead-exposed workers (*e.g.*, anemia, neurological and behavioral changes, infertility, neurobehavioral effects of fetal lead exposures, miscarriages, hypertension, increased incidence of cancer, and any other symptoms which may be suspected of being related to occupational lead exposure).

3. Laboratory animal studies reported since 1978.

4. Descriptions of industrial processes and operations that generate airborne lead (*e.g.*, manufacture of lead-containing products, bridge and building demolition, applying and removing lead-containing surface coatings).

5. Measurements of airborne concentrations of specific lead compounds found in the workplace, including particle sizes.

6. Information on lead exposures among children and other family members of lead-exposed workers.

7. Methods of environmental and biological monitoring used to evaluate lead exposure.

8. Data on the correlation between environmental and biological monitoring.

9. Information on the effectiveness of personal protective equipment, engineering controls (particularly new or innovative control technologies), work practices, and training that have been used to limit workers' exposure to lead.

10. Information on nonoccupational exposures occurring during hobby activities or other activities away from the workplace.

All information received in response to this notice (except that designated as trade secret and protected by section 15 of the Occupational Safety and Health Act, or that exempt from disclosure under the Freedom of Information Act) will be available for public examination and copying at the above address.

Dated: November 19, 1990.

Melvin J. Myers,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control.

[FR Doc. 90–27657 Filed 11–23–90; 8:45 am]

BILLING CODE 4160–19–M

Advisory Committee for Elimination of Tuberculosis; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: Advisory Committee for Elimination of Tuberculosis (ACET).

Time and Date: 2 p.m.–5 p.m., December 10, 1990, 8 a.m.–5 p.m., December 11, 1990.

Place: Room 503, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This committee advises and makes recommendations to the Secretary, Department of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for eliminating tuberculosis. Specifically, the Committee makes recommendations regarding policies, strategies, objectives, and priorities, addresses the development of new technologies and their subsequent application, and reviews progress toward elimination.

Matters to the Discussed: Prevention and control of tuberculosis in minority populations and recommendations for tuberculosis prevention and control in migrant farm workers. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dixie E. Snider, Jr., M.D., Director, Division of Tuberculosis Control, and Executive Secretary, ACET, Center for Prevention Services, CDS, 1600 Clifton Road NE., Mailstop E–10, Atlanta, Georgia 30333, telephone 404/639–2501 or FTS 236–2501.

Dated: November 20, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90–27627 Filed 11–21–90; 1:08 pm]

BILLING CODE 4160–18–M

Food and Drug Administration

Advisory Committee; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Biological Response Modifiers Advisory Committee

Date, time, and place. December 13 and 14, 1990, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, December 13, 1990, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5:30 p.m.; open committee discussion, December 14, 1990, 8:30 a.m. to 12:30 p.m.; closed committee deliberations, 12:30 p.m. to 4 p.m.; Gretchen Hascall, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695. A meeting agenda and list of committee members will be available upon request.

General function of the committee. The committee reviews and evaluates data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 3, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On December 13, 1990, from 9:30 a.m. to 12 m., the committee will discuss an update on gene therapy, and from 1 p.m. to 5:30 p.m., they will discuss granulocyte macrophage colony stimulating factor (Immunex Corp.) used for (1) promotion of autologous bone marrow transplantation engraftment, and (2) the treatment of autologous or allogeneic bone marrow transplant failure or delay in engraftment. On December 14, 1990, the committee will discuss granulocyte colony stimulating factor (Amgen, Inc.) for the prevention of infections associated with certain chemotherapeutic regimens of nonmyeloid malignancies.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to an investigational new drug application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before an after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has

determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: November 19, 1990.

Joseph A. Levitt,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-27633 Filed 11-23-90; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Department of Health and Human Services. This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before this advisory committee. For this meeting the Department is following the procedures in 21 CFR part 14 that apply to meetings of advisory committees to the Food and Drug Administration.

MEETING: The following advisory committee meeting is announced:

Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee)

Date, time, and place. December 11, 12, and 13, 1990, 8:30 a.m. St. Anthony Hotel, Conference rm., 300 East Travis St., San Antonio, TX.

Type of meeting and contact person. Open committee discussion, December 11, 1990, 8:30 a.m. to 5 p.m.; open committee discussion, December 12, 1990, 8:30 a.m. to 5 p.m.; open committee discussion, December 13, 1990, 8:30 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; Ronald F. Coene, National Center for Toxicological Research (HFT-10) Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3155.

General function of the committee. The committee shall advise the Secretary and the Assistant Secretary for Health concerning its oversight of the conduct of the Ranch Hand Study by the Air Force and other studies in which the Secretary or the Assistant Secretary for Health believes involvement by the advisory committee is desirable.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make a formal presentaton should notify the contact person before November 30, 1990, and submit a brief statement of the general nature of the evidence or argument they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their comments.

Agenda—Open committee discussion. The committee will conduct a review of a draft document of a reanalysis of the 1987 Air Force Health Study: An Epidemiologic Investigation of Health Effects in Air Force Personnel Following Exposure to Herbicides. A final agenda will be available on December 4, 1990 by contacting the committee contact person.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Each advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in the Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

The Commissioner approves the scheduling of meetings at locations outside of the Washington, DC, area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

Dated: November 16, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-27634 Filed 11-23-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90N-0379]

Evaluation of the Safety of Amino Acids and Related Products; Announcement of Study; Request for Scientific Data and Information; Announcement of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB) is about to begin a study of the safety of amino acids and related products. Current regulated uses of these products are identified and described in 21 CFR 172.320. However, these substances are also being used as food components for purposes that have not been approved by FDA. The agency has requested that LSRO/FASEB review scientific information and data related to the safety of the use of free amino acids and provide an up-to-date report on its findings.

To assist in the preparation of its scientific report, LSRO/FASEB is inviting the submission of scientific data and information bearing on this topic. LSRO/FASEB will provide an opportunity for oral presentations at an open meeting.

DATES: The LSRO/FASEB open meeting will be held at 9 a.m. on Monday, February 4, 1991. Requests to make oral presentations at the open meeting must be submitted in writing and received by December 31, 1990. Written presentations of scientific data and information should be submitted by January 25, 1991.

ADDRESSES: Written requests to make oral presentations of scientific data and information at the open meeting must be submitted to the Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, and to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Two copies of the scientific data and information must be submitted to each office. The meeting will be held in the Chen Auditorium, Lee Bldg., FASEB (address above).

FOR FURTHER INFORMATION CONTACT:

Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301-530-7030, or Elizabeth A. Yetley, Center for Food Safety and Applied Nutrition (HFF-265), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0067.

SUPPLEMENTARY INFORMATION: FDA has a contract (223-88-2124) with FASEB concerning the analysis of scientific issues that bear on the safety of foods and cosmetics. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with the safety of foods and cosmetics.

Free amino acids have been used to improve the protein quality of foods for many years. There is also a history of use of free amino acids in foods designed to meet the nutritional requirements of individuals who have impaired digestion and absorption capacity and for individuals who have severe hypersensitivity to intact proteins. These uses are covered under food additive regulation 21 CFR 172.320.

Free amino acids have also been used as food supplements as dietary supplements, but FDA has not approved these uses nor found them to be generally recognized as safe. Recently, attention has been drawn to these uses of free amino acids because of the health problems associated with the use of L-tryptophan supplements.

FDA is announcing that it has asked FASEB, as a task under this contract, to provide FDA's Center for Food Safety and Applied Nutrition with an up-to-date scientific review of the safety of use of free amino acids. In response to this request, FASEB had directed its LSRO to obtain state-of-the-art scientific information about the safety of amino acids and related products as currently used. LSRO/FASEB will undertake a study and prepare a documented scientific report that summarizes information on free amino acids and related amino acid-type products currently available on the market or under development.

The study will: (a) Identify current products in the marketplace and describe their active principal ingredients and total nutrient composition; (b) describe current label and labeling information on products identified in (a) above, including descriptions of recommended intake levels; (c) review dietary exposure data to subject substances by the U.S. population and subgroups; (d) identify animal or clinical studies and case reports that bear on the safety of these products as currently used; and (e) identify safety end points and provide guidelines for interpretation of data for evaluating safety issues.

In addition, the study report will address: (a) The safe range of intake, if any, for each amino acid and related compounds from special dietary foods; (b) the criteria utilized in evaluating safety of each amino acid; and (c) a critique of strengths and weaknesses of available scientific evidence.

Pursuant to its contact with FDA, FASEB will provide the agency with a scientific report on these issues by September 30, 1991.

Dated: November 15, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-27586 Filed 11-23-90; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

National Vaccine Injury Compensation Program List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place, NW., Washington, DC 20005, (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, 6001 Montrose Road, Room #702, Rockville, MD 20852, (301) 443-6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statue to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by PHS from April 24, 1990, through July 16, 1990. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contract"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8-05, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Sheila Pedicini on behalf of Enrico Pedicini, New Haven, Connecticut, Claims Court Number 90-0347 V
2. Gary and Naomi Ziesemer on behalf of Theodore Ziesemer, Deceased, Olympia, Washington, Claims Court Number 90-0348 V
3. Virginia DiLeo on behalf of Jeffrey DiLeo, Bridgewater, New Jersey, Claims Court Number 90-0363 V
4. Clara Shackil on behalf of Deanna Marrero, Passaic, New Jersey, Claims Court Number 90-0371 V
5. David and Jean Hellebrand on behalf of Lacy Hellebrand, Deceased, Dallas, Texas, Claims Court Number 90-0372 V
6. Melvin and Doreen Palmer on behalf of Matthew Palmer, Denison, Iowa, Claims Court Number 90-0374 V
7. Morris Duane Moore on behalf of Michael Duane Moore, Deceased, Denton, Texas, Claims Court Number 90-0376 V
8. Vincent and Peggy Hill on behalf of Michael Dennis, Los Angeles, California, Claims Court Number 90-0387 V
9. Kendee Connor on behalf of Kenneth Connor, Butler, Pennsylvania, Claims Court Number 90-0388 V
10. Virginia and Robert Shea on behalf of Ryan Shea, Deceased, Tilton, New Hampshire, Claims Court Number 90-0394 V
11. Gary Koston on behalf of Jenna Koston, Oceanside, California, Claims Court Number 90-0395 V
12. Pat and Kathryn Maley on behalf of Bryan Maley, Irvine, California, Claims Court Number 90-0398 V
13. Roger and Heidi Misasi on behalf of Maggie Jo Misasi, Wichita, Kansas, Claims Court Number 90-0400 V
14. Kathy Brown on behalf of Nicole Brown, Chico, California, Claims Court Number 90-0402 V
15. David and Janet Allen on behalf of Wanda Leann Allen, Deceased, Lincoln County, Michigan, Claims Court Number 90-0409 V
16. Steven Loy, Burlington, North Carolina, Claims Court Number 90-0412 V
17. Darrell and Theresa Hine on behalf of Brandy Hine, Martinsville, Tennessee, Claims Court Number 90-0413 V

18. Lee and Sue Summar on behalf of Kevin Summar, Memphis, Tennessee, Claims Court Number 90-0415 V
19. Ruth Fisher, Voorhees, New Jersey, Claims Court Number 90-0421 V
20. Roman and Lorraine Dolney on behalf of Debra Dolney, Tampa, Florida, Claims Court Number 90-0422 V
21. Laura Mackler on behalf of Elizabeth Mackler, Newport, Rhode Island, Claims Court Number 90-0425 V
22. Douglas and Jean Neher on behalf of Janine Neher, Hanford, California, Claims Court Number 90-0431 V
23. Keith Wadding on behalf of Brian Wadding, Trenton, Tennessee, Claims Court Number 90-0432 V
24. Michael Whatley, Longview, Texas, Claims Court Number 90-0438 V
25. George and Gwen Santos on behalf of Donn Santos, Hilo, Hawaii, Claims Court Number 90-0449 V
26. Nancy Melvin on behalf of Shalana Melvin, Bloomington, Indiana, Claims Court Number 90-0450 V
27. Steven and Tonya Mayton on behalf of Steven Mayton, Owensville, Kentucky, Claims Court Number 90-0451 V
28. Diane Clark on behalf of Denise Bailey, Deceased, Richmond, Virginia, Claims Court Number 90-0454 V
29. Mary Ann and Larry Mills on behalf of Kelly Ann Mills, Deceased, Beaumont, Texas, Claims Court Number 90-0460 V
30. Benjamin and Janet Riley on behalf of Keith Riley, Orinda, California, Claims Court Number 90-0466 V
31. Joseph and Gloria Spagiare on behalf of Lynn Ann Spagiare, Pittsburgh, Pennsylvania, Claims Court Number 90-0468 V
32. Elizabeth Miller, Spokene, Washington, Claims Court Number 90-0474 V
33. Viren and Jennifer Franks on behalf of Nichole Lemmer, Deceased, Bexar County, Texas, Claims Court Number 90-0483 V
34. Aldine Dockery on behalf of Rexford Dockery, Indianapolis, Indiana, Claims Court Number 90-0484 V
35. Edward and Joyce Gleason on behalf of Shane Gleason, Brooklyn, New York, Claims Court Number 90-0485 V
36. Dawn Widdoes on behalf of Crystal Miller, Deceased, Stroudsburg, Pennsylvania, Claims Court Number 90-0486 V
37. Nancy Follweiler on behalf of Paula Follweiler, Allentown, Pennsylvania, Claims Court Number 90-0487 V
38. Patricia Lamb on behalf of Alicia Lamb, Philadelphia, Pennsylvania, Claims Court Number 90-0493 V
39. Susan LeTeure on behalf of Kimberly LeTeure, Bangor, Maine, Claims Court Number 90-0503 V
40. Ellen Donnelly on behalf of Sean Donnelly, Queens, New York, Claims Court Number 90-0504 V
41. Drew and Donna Bachman on behalf of Stephen Bachman, Metairie, Louisiana, Claims Court Number 90-0509 V
42. Donna Black on behalf of Duane Black, Covington, Kentucky, Claims Court Number 90-0511 V
43. Samuel and Kim Martin on behalf of Ryan Martin, Ponca City, Oklahoma, Claims Court Number 90-0515 V
44. Laura Epstein on behalf of Mischa Epstein, Springfield, Massachusetts, Claims Court Number 90-0516 V
45. Theresa Heisler on behalf of Jeremy Heisler, Plymouth, Massachusetts, Claims Court Number 90-0529 V
46. James and Cynthia Thompson on behalf of Erick Thompson, Ithsca, New York, Claims Court Number 90-0530 V
47. Ronald Posey, Rusten, Louisiana, Claims Court Number 90-0531 V
48. Michael and Mary Ann Jay on behalf of Matthew Jay, Deceased, Whittier, California, Claims Court Number 90-0534 V
49. Dawn R. Stahl on behalf of Preston John Stahl, Salt Lake City, Utah, Claims Court Number 90-0536 V
50. Kathryn Clark, Little Rock, Arkansas, Claims Court Number 90-0537 V
51. Walter J. Street, Jr. on behalf of Walter Street, III, Deceased, Richmond, Virginia, Claims Court Number 90-0542 V
52. Gina Coufal on behalf of Joshua Coufal, Westminster, Colorado, Claims Court Number 90-0543 V
53. DeeAnn Renae Hackett, Brookings, South Dakota, Claims Court Number 90-0546 V
54. Craig and Catherine Tweten on behalf of Christopher Tweten, Minot, North Dakota, Claims Court Number 90-0549 V
55. Mary Zang on behalf of Shaina McDermott, Kansas City, Kansas, Claims Court Number 90-0550 V
56. Edwin and Susan Hodges on behalf of Kara Hodges, Deceased, Pittsburg, California, Claims Court Number 90-0551 V
57. Scott and Rhonda Messner on behalf of Jennifer Messner, Lakenheath, England, Claims Court Number 90-0552 V
58. Julie Prince on behalf of Lindsey Prince, Woodland Hills, California, Claims Court Number 90-0558 V
59. Thomas and Brenda Behnke on behalf of Jessica Behnke, Wauseon, Ohio, Claims Court Number 90-0562 V
60. Steven and Cindy Oxley on behalf of Richelle Oxley, Binghamton, New York, Claims Court Number 90-0565/0566 V
61. Richmond and Theresa Aea on behalf of Stephen Aea, Honolulu, Hawaii, Claims Court Number 90-0568 V
62. Roger and Barbara Boychek on behalf of Serina Boychek, Erie, Pennsylvania, Claims Court Number 90-0574 V
63. Lynn Bruess on behalf of Matthew Bruess, Deceased, LeSuerur, Minnesota, Claims Court Number 90-0576 V
64. Mark and Amanda Davis on behalf of Tiffany Davis, Deceased, Waynesburg, Pennsylvania, Claims Court Number 90-0577 V
65. James and Elizabeth McClendon on behalf of Kristen McClendon, Richland, Mississippi, Claims Court Number 90-0579 V
66. Kristen Adam, New Orleans, Louisiana, Claims Court Number 90-0583 V
67. Jeffrey Kundicz, Brockton, Massachusetts, Claims Court Number 90-0584 V
68. Brenda Perkins on behalf of Melanie Perkins, Montgomery, Alabama, Claims Court Number 90-0589 V
69. Sharon Long on behalf of Michael Aubrey Long, Deceased, Hoffman Estates, Illinois, Claims Court Number 90-0590 V
70. Cheryl Coffelt on behalf on Julie Janell Coffelt, Branson, Missouri, Claims Court Number 90-0591 V
71. Joseph and Cynthia Matteo on behalf of Jason Matteo, Philadelphia, Pennsylvania, Claims Court Number 90-0594 V
72. Judy Estes on behalf on Eric Estes, Deceased, Evansville, Indiana, Claim Court Number 90-0595 V
73. Eugene and Barbara Hickok on behalf of Mary Catherine Hickok, Wayzata, Minnesota, Claims Court Number 90-0596 V
74. Shaun Bell on behalf of Raychael Bell, Harrisonville, Missouri, Claims Court Number 90-0597 V
75. Kenneth and Monica O'Connor on behalf of Daniel O'Connor, Edison, New Jersey, Claims Court Number 09-0600 V
76. Betty Truscz on behalf of Richard Truscz, Deceased, Bangor, Maine, Claims Court Number 90-0601 V
77. Mary McGaughey on behalf of Holley McGaughey, Clackamas, Oregon, Claims Court Number 90-0602 V
78. Donna Mohoney (Nagle), Tucson, Arizona, Claims Court Number 90-0603 V
79. Larry and Sylvia Shelley on behalf of Michael Shelley, Manheim, Pennsylvania, Claims Court Number 90-0604 V
80. Delia Tennyson on behalf of Ansley Tennyson, Deceased, Quitman, Georgia, Claims Court Number 90-0605 V
81. Vazma Tomac on behalf of Timothy Tomac, Sunnyvale, California, Claims Court Number 90-0606 V
82. Donald Knoblauch on behalf of Ruth Knoblauch, Lowpoint, Illinois, Claims Court Number 90-0607 V
83. Robin and Ruth Cooper on behalf of Jason Cooper, Wichita, Kansas, Claims Court Number 90-0608 V
84. Gary and Donna Brittingham on behalf of Ashley Brittingham, Salisbury, Maryland, Claims Court Number 90-0612 V
85. Dale and Karen Cain on behalf of Alexander Cain, Anchorage, Alaska, Claims Court Number 90-0618 V
86. Michael and Wendy Resnick on behalf of Robert Resnick, Sarasota, Florida, Claims Court Number 90-0619 V
87. Denise Matranga, Sacramento, California, Claims Court Number 90-0622 V
88. Joyce Lind on behalf of Jason Lind, Modesto, California, Claims Court Number 90-0623 V
89. James R. Leva on behalf of James M. Leva, Bloomfield, Connecticut, Claims Court Number 90-0624 V
90. Matthew and Leah Goodrich on behalf of Mitchell Goodrich, Baton Rouge, Louisiana, Claims Court Number 90-0637 V
91. Eugene Moteles on behalf of Shannon Moteles, Clifton Heights, Pennsylvania, Claims Court Number 90-0644 V

92. Joan Johnson on behalf of Tiffany Johnson, Deceased, Mobile, Alabama, Claims Court Number 90-0645 V
93. Beverly Perry, Kenmore, New York, Claims Court Number 90-0646 V
94. Anna Greider on behalf of Clara G. Thiel, Runnemede, New Jersey, Claims Court Number 90-0648 V
95. Victoria Kargacos on behalf on Jeffery Kargacos, San Diego, California, Claims Court Number 90-0665 V

Dated: November 19, 1990.

John Kelso,

Acting Administrator.

[FR Doc. 90-27640 Filed 11-23-90; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Impact of Potential Oil Spills in the Arctic Ocean on Alaska Natives

AGENCY: Office of the Secretary, Interior.

ACTION: Request for information.

SUMMARY: Section 8302 of the Oil Pollution Act of 1990, Public Law 101-360, directs the Secretary of the Interior, in consultation with the Governor of Alaska, to conduct a study of the issues associated with the recovery of damages, contingency plans, and coordinated actions in the event of an oil spill in the Arctic Ocean, and to transmit a report to the Congress on the study's findings and conclusions.

This notice invites interested persons to identify issues to be included in the report and requests information on these issues. To facilitate public input, topics proposed to be covered in the report have been identified below in "Supplementary Information."

DATES: Written comments and other pertinent information should be submitted no later than December 20, 1990.

ADDRESSES: Written comments and other information should be submitted to the Regional Environmental Officer, Office of Environmental Affairs, U.S. Department of the Interior, 1689 C Street, room 119, Anchorage, AK, 99501-5126.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Gates, Regional Environmental Officer, U.S. Department of the Interior, Anchorage, AK 907-271-5011.

SUPPLEMENTARY INFORMATION: Section 8302 of the Act recognizes that potential sources of oil pollution in the Beaufort and Chukchi Seas include transshipment of Canadian oil via tankers, and exploration, development, production, and transportation activities on Outer Continental Shelf (OCS) lease areas. The Act recognizes that the Beaufort and Chukchi Seas are important to Alaska Natives for subsistence resources and that an oil spill, if not properly contained and removed, could significantly affect those resources. The subject report, which will be based on existing information, will summarize Alaska Native concerns regarding oil spills and oil-spill cleanup activities in the Beaufort and Chukchi Seas. In addition, the report will summarize existing and potential oil exploration, development, production, and transportation activities in Canada and the United States that could result in an oil spill in the Beaufort or Chukchi Seas. The report will also summarize oil-spill prevention, oil-spill contingency plans, oil-spill response organizations, research on oil-spill response technologies for the Beaufort and Chukchi Seas, and potential recovery of damages for oil-spill related injuries to subsistence resources.

Interested persons are encouraged to comment on these subjects as well as to provide specific information on the topics described below. Copies of regulations, policies, and other documents referenced by commenters should be provided to the Regional Environmental Officer in Anchorage.

- Communities and subsistence resources potentially at risk from an oil spill in the Beaufort and Chukchi Seas.
- Specific Alaska Native concerns regarding the effects of oil spills and oil-spill cleanup activities in the Beaufort and Chukchi Seas.
- Potential sources and quantities of crude-oil pollution from existing and proposed United States and Canadian onshore and offshore oil exploration, development, production, and transportation activities.
- Oil-spill prevention measures associated with oil exploration, development, production, and transportation activities in the United States and Canada.
- Canadian and United States oil-spill contingency plan requirements and contingency plans and coordinated actions for the activities described in the previous item, including public- and private-sector plans.
- Current and planned research (including funding levels) on oil-spill response technologies for the Beaufort and Chukchi Seas.
- International, national, state, or local laws, regulations, or policies available to compensate for loss of subsistence resources to Alaska Natives and liability limitations.

A **Federal Register** notice will be published on the availability of the final report.

Dated: November 19, 1990.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 90-27656 Filed 11-23-90; 8:45 am]

BILLING CODE 4310-RG-M

Bureau of Land Management

[AK-070-01-4230-10; F-86888]

Lease of Public Land; PAH River Flats, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice extends the public comment period in notice document 90-23925 appearing on page 41276, in the issue of Wednesday, October 10, 1990.

DATES: Comments must be received by January 10, 1991.

ADDRESSES: Comments must be submitted to the Kobuk District Manager, 1150 University Avenue, Fairbanks, Alaska 99709-3844.

FOR FURTHER INFORMATION CONTACT: Betsy Bonnell, (907) 474-2336.

Dated: November 8, 1990.

Helen M. Hankins,

Kobuk District Manager.

[FR Doc. 90-27593 Filed 11-23-90; 8:45 am]

BILLING CODE 4310-JA-M

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for Small-Anthered Bittercress for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the small-anthered bittercress (*Cardamine micranthera*). This perennial herb historically occurred in Stokes and Forsyth Counties, North Carolina, and Patrick County, Virginia. Presently, the small-anthered bittercress is known from a few small streams in the Dan River drainage in Stokes County, North Carolina, and Patrick County, Virginia. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before January 25, 1991 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, room 224, Asheville, North Carolina 28801. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the above address (704/259-0321; FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of time and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is the small-anthered bittercress (*Cardamine micranthera*). The areas of emphasis for recovery actions are the tributaries of the Dan River in North Carolina and Virginia. Habitat protection, reintroduction, and preservation of genetic material are major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 16, 1990.

Richard G. Biggins,

Acting Field Supervisor.

[FR Doc. 90-27591 Filed 11-23-90; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers

Date: November 20, 1990.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2) the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4) are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC

MFA Incorporated, 615 Locust Street, Columbia, MO 65201

615 Locust Street, Columbia, MO 65201

Ann Simpson, 615 Locust Street, Columbia, MO 65201.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-27652 Filed 11-23-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31758]

Maine Coast Railroad Corp.—Trackage Rights Exemption—Maine Central Railroad Co. and Springfield Terminal Railway Co.

Maine Central Railroad Company (MEC), as owner, and Springfield Terminal Railway Company, as lessee, have agreed to grant overhead trackage rights to Maine Coast Railroad Corporation over MEC's line between milepost 33.79, at Hardings, ME, and milepost 27.5, at Brunswick, ME, a distance of approximately 6.2 miles. The trackage rights were to become effective on November 13, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: James E. Howard, Kirkpatrick & Lockhart, 84 State Street, Boston, MA 02109.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: November 15, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-27650 Filed 11-23-90; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-No. 11)]

Intrastate Rail Rate Authority—Kentucky

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional certification.

SUMMARY: The State of Kentucky has filed its application for recertification with the Commission. Pursuant to *State Intrastate Rail Rate Authority*, 5 I.C.C. 2d 680, 685 (1989), the Commission provisionally recertifies the State of Kentucky to regulate intrastate rail rates, classifications, rules, and practices. After completing its review, the Commission will issue a decision approving recertification or taking other appropriate action.

DATES: This provisional recertification will be effective on November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

Decided: November 20, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-27834 Filed 11-21-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31760]

Andrew M. Muller, Jr.—Continuance in Control Exemption—Reading Blue Mountain and Northern Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts Andrew M. Muller, Jr., from the requirements of 49 U.S.C. 11343 to continue in control of Reading Blue Mountain & Northern Railroad Company [RBM&N] when RBM&N becomes a rail common carrier through the acquisition and operation of certain rail lines of Consolidated Rail Corporation, subject to standard labor protective conditions. RBM&N will connect with Blue Mountain and Reading Railroad Company, a Class III rail common carrier already controlled by Muller. The exemption is related to the notices of exemption in Finance Docket Nos. 30305 (Sub-No. 2) and 31759.

DATES: This exemption is effective on November 26, 1990. Petitions to reopen must be filed by December 17, 1990.

ADDRESSES: Send pleadings referring to Finance Docket No. 31760 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: William P. Quinn, 1600 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: November 16, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-27853 Filed 11-23-90; 8:45 am]

BILLING CODE 7035-01-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Bankruptcy Rules

AGENCY: Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Advisory Committee on Bankruptcy Rules to consider future revisions to the Bankruptcy Rules. The meeting will be open to public observation.

DATES: January 17-18, 1991.

ADDRESSES: The Ritz-Carlton Hotel, 33533 Ritz-Carlton Drive, Laguna Niguel, CA 92677.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, Telephone (202) 633-6021.

Dated: October 18, 1990.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 90-27643 Filed 11-23-90; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 45-90]

Privacy Act of 1974; Systems of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and Office of Management and Budget Circular No. A-130, the Department has completed a review of its Privacy Act systems of records to identify minor changes that will more accurately describe these records. As a result, five Department components are republishing systems of records to make minor changes. In addition, the Executive Office for United States Attorneys is publishing a revised Appendix of United States Attorney Office Locations.

For public convenience, we have italicized the changes to the system decriptions which are printed below following the Table of Contents.

Comments, if any, may be addressed to Patricia E. Neely, Staff Assistant, Facilities and Administrative Services Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 529, IND Bldg.).

Dated: November 2, 1990.

Harry H. Flickinger,

Assistant Attorney General for Administration.

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JUSTICE/ATR-002

SYSTEM NAME:

Congressional and White House Referral Correspondence Log File.

SYSTEM LOCATIONS:

U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former members of Congress, and citizens whose correspondence is *received directly or* referred by *members of Congress or* Congressional or White House staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index record to correspondence from *citizens, present and former* members of the Congress and White House staff.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the establishment and maintenance of this system exists under 44 U.S.C. 3101 and 5 U.S.C. 301.

PURPOSE(S):

The purpose of this system is to enable Antitrust Division personnel to monitor responses and identify other material related to citizen inquiries and inquiries or referrals by members or committees of the Congress and by the White House staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined the release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA): A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Paper documents are stored in *looseleaf binders and* file folders; abbreviated or summarized information is stored in a computerized tracking system.

RETRIEVABILITY:

Inquiry and response documents are retrieved by date or through manual and automated indexes which are accessed by name, subject matter, control number, etc., Summary data on inquiries received prior to March 7, 1983, is retrieved from the manual index cards; as of March 7, 1983, a summary data is retrieved from magnetic disks and tapes. Summary data consists of data elements as Congressional Member or constituent name, subject matter, date of inquiry, date assigned, date of response, etc.

SAFEGUARDS:

Information contained in the system is unclassified. During working hours access to the system is controlled and monitored by Antitrust division personnel in the area where the system is maintained; during non-duty hours all doors to such area are locked. In addition only Antitrust Division personnel who have a need for the information contained in the system have the appropriate password for access to the system.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Legislative Unit: Antitrust Division: U.S. Department of Justice: 10th & Constitution Avenue, NW., Washington, DC 20530

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General; Antitrust Division; Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

RECORD ACCESS PROCEDURES:

Requests for access for a record from this system shall be written and clearly identified as "Privacy Access Request". The request should include the name of the member of Congress or White House staff originating a request or referral and the date thereof. Requester should indicate a return address.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should state clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Source of information maintained in the system are those records reflecting inquiries or referrals of citizen correspondence by *present and former* members of Congress or White House staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/CRM-012

SYSTEM NAME:

Organized Crime and Racketeering Section, General Index File and Associated Records.

SYSTEM LOCATION:

U.S. Department of Justice; Criminal Division, Organized Crime and Racketeering Section; 10th Street and Constitution Avenue NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have been prosecuted or are under investigation for potential or actual criminal prosecution as well as persons allegedly involved in organized criminal activity and those alleged to be associated with the subject.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of alphabetical indices bearing individual names and the associated records to which they relate, arranged either by subject matter or individual identifying number, of all incoming correspondence, cases, matters, investigations, and memoranda assigned, referred, or of interest, to the

Organized Crime and Racketeering Section. The records in this system concern matters primarily involving organized crime and include, but are not limited to, case files; investigative reports; intelligence reports; subpoena and grand jury files; records of warrants and electronic surveillances; records of indictment, prosecution, conviction, parole, probation, or immunity; legal papers; evidence; exhibits; items classified confidential, secret, and top secret; and various other files related to the Sections activities and it ongoing investigations, prosecutions, cases, and matters. Records concerning subject matters described in this system may also be contained in JUSTICE/CRM-001.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 44 U.S.C. 3101 and the Presidential Directive on the Federal Drive Against Organized Crime, issued May 5, 1966 (Weekly Compilation of Presidential Documents, Vol. 2, W. No. 18 (1966)). In addition, this system is maintained to assist in implementing and enforcing the criminal laws of the United States, particularly those codified in title 18, United States Code. This system is also maintained to implement the provisions codified in 28 CFR 0.55 particularly subsection (g).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system of records may be disseminated as a routine use of such record as follows: (1) In any case in which there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, the record in question maybe disseminated to the appropriate federal, state, local, or foreign agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law; (2) in the course of investigating the potential or actual violation of any law, whether civil, criminal, or regulatory in nature, or during the course of a trial or hearing or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local, or foreign agency, or to an individual, or organization, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, trial, or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant; (3) a record relating to a case or matter may be disseminated in an appropriate federal, state, local, or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice; (4) a record relating to a case or matter may be disseminated to a federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing; (5) a record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings; (6) a record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement, or that involves a case or matter within the jurisdiction of an agency, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter; (7) a record relating to a person held in custody pending or during arraignment, trial, sentence, or extradition proceedings, or after conviction or after extradition proceedings, may be disseminated to a federal, state, local, or foreign prison, probation, parole, or pardon authority, or to any other agency or individual concerned with the maintenance, transportation, or release of such a person; (8) a record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement; (9) a record may be disseminated to a federal, state, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency; (10) a record may be disseminated to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter; (11) a record may be disseminated to the public, news media, trade association, or organized groups, when the purpose of the dissemination is educational or informational, such as descriptions of crime trends or distinctive or unique modus operandi, provided that the record does not contain an information identifiable to a specific individual other than such modus operandi; (12) a record maybe disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in apprehending and/or returning a fugitive to a jurisdiction which seeks his return; (13) a record that contains classified national security information and material may be disseminated to persons who are engaged in historical research projects, or who have previously occupied policy making provisions to which they were appointed by the President, in accordance with the provisions codified in 28 CFR 17.60.

Information may be released to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Information *may* be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record; and *a record may be released* to the National Archives and Records *Administration and to the General Services Administration* in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records in this sytem are stored on various documents, tapes, disc packs, and punch cards, some of which are contained in files, on index cards, or in related type materials.

RETRIEVABILITY:

The system is accessed by name but may be grouped for the convenience of the user by subject matter, e.g., parole file, photograph file, etc.

SAFEGUARDS:

Materials related to the system are maintained in appropriately restricted areas and are safeguarded and protected in accordance with applicable Department rules.

RETENTION AND DISPOSAL:

Currently there are no provisions for the disposal of the records in the system.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General; Criminal Division, U.S. Department of Justice; 10th Street and Constitution Avenue NW., Washington, DC 20530,

NOTIFICATION PROCEDURE:

Inquiry concerning the system should be addressed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

The major part of this system is exempted from this requirement under 5 U.S.C. 552a(j)(2), (k)(1), or (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record contained in this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request". Include in the request the name of the individual involved, his birth date and place, or any other identifying number or information which may be of assistance in locating the record, the name and of the case or matter involved, if known, and the name of the judicial district involved, if known. The requestor will also provide a return address for transmitting the information. Access requests will be directed to the system manager listed above. Records in this system are exempt from the access provisions of the Act in accordance with the applicable exemption notice.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Records in this system are exempt from the contesting provisions of the Act in accordance with the applicable exemption notice.

RECORD SOURCE CATEGORIES:

1. Federal, state, local, or foreign government agencies concerned with the administration of criminal justice and non-law enforcement agencies both public and private; 2. Members of the public; 3. Government employees; 4. Published material; 5. Witnesses and informants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G), (H), and (I), (e)(5), and (8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and have been published in the Federal Register.

JUSTICE/JMD-016

SYSTEM NAME:

Employee Assistance Program Treatment and Referral Records, JUSTICE/JMD-016.

SYSTEM LOCATION:

Justice Management Division, Department of Justice, 10th St. & Constitution Avenue, NW, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Offices, Boards and Divisions and, upon occasion, of the Bureaus of the Department (as listed at 28 CFR 0.1); United States Attorney organizations; and the Office of Justice Programs of the Department of Justice who have sought counseling or been referred to or for treatment through the EAP. To the limited degree that treatment and referral may be provided to family members of these employees, these individuals, too, may be covered by the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records of employees (and in limited cases, employee family members) who have sought or been referred to the EAP for treatment or referral. Examples of data found in such records include: Notes and documentation of internal EAP counseling, records of treatment and counseling referrals, records of employee attendance at treatment and counseling programs, prognosis or treatment information, documents received from supervisors or personnel on work place problems or performance, home addresses and/or phone numbers, insurance data, supervisors' phone number, addresses of treatment facilities or individuals providing treatment, leave records, written consent forms and abeyance agreements (see below), information on confirmed unjustified positive drug tests, results from EAP treatment drug tests and identification data, such as sex, job title and series, and date of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd, *et seq.* and 290ee, *et seq.*; 42 CFR Sec. 2, *et seq.*; Executive Order 12564, 5 U.S.C. 3301 and 7901; 44 U.S.C. 3101 and Pub. L. No. 100-71, Sec. 503 (July 11, 1987).

PURPOSE:

These records are to be used by EAP personnel in the execution of the counseling and rehabilitation function. They document the nature and effects of employee problems and counseling by the EAP and referral to, and progress and participation in, outside treatment and counseling programs and the rehabilitation process. These records may also be used to track compliance with agreements made to mitigate discipline based upon treatment (abeyance agreements).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures permitted by the Privacy Act itself,[1] 5 U.S.C. 552a(b), permissive disclosures, without individual consent, are as follows:

(a) To report, under State law, incidents of suspected child abuse or neglect to appropriate State or local authorities.

(b) To the extent necessary to prevent an imminent and potential crime which directly threatens loss of life or serious bodily injury.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information to the system manager identified above. The request should follow the record access procedure, listed above, and should state clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Freedom of Information Act/ Privacy Act Request."

RECORD SOURCE CATEGORIES:

Records are generated by EAP personnel, referral counseling and treatment programs or individuals, the employee who is the subject of the record, personnel office and the employee's supervisor. In the case of drug abuse counseling, records may also be generated by the staff of the Drug-Free Workplace Program and the Medical Review Officer.

[1] To the extent that release of alcohol and drug abuse records is more restricted than other records subject to the Privacy Act, JMD will follow such restrictions. *See* 42 U.S.C. 290dd and 290ee.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored in paper folders in locked file cabinets in accordance with 42 CFR 2.16.

RETRIEVABILITY:

Records are indexed and retrieved by identifying number or symbol, cross-indexed to employee names.

SAFEGUARDS:

Records are kept in a secure room in locked file cabinets. Only the EAP Administrator or a designated staff member will access or disclose the records.

RETENTION AND DISPOSAL:

Records are retained for three years after the individual ceases contact with the counselor unless a longer retention period is necessary because of pending administrative or judicial procedings. In such cases, the records are retained for six months after the case is closed. Records are destroyed by shredding or burning.

SYSTEM MANAGER AND ADDRESS:

Director, Employee, Assistance Programs, Justice Management Division, Department of Justice, 10th St. & Constitution Avenue, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address all inquiries to the system manager.

RECORD ACCESS PROCEDURES:

Make all requests for access in writing to the system manager identified above. Clearly mark the envelope and letter "Freedom of Information Act/Privacy Act Requests." Provide the full name and notarized signature of the individual who is the subject of the record, the dates during which the individual was in counseling, any other information which may assist in identifying and locating the record, and a return address.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USA-999

SYSTEM NAME:

Appendix of United States Attorneys' office locations: (Written requests for access to records in any of the following U.S. Attorneys' offices except the District of Columbia may be addressed to: FOIA/Privacy Unit, Patrick Henry Building, 601 D Street NW., Room 6410, Washington, D.C. 20530.

Requests for access to records in the District of Columbia may be addressed to: FOIA/Privacy, United States Attorney's Office for the District of Columbia, Judiciary Center Building, 555 4th Street NW., Washington, D.C. 20001.

Systems are located as listed below:

Alabama, N.
200 Federal Building
1800 Fifth Avenue North
Birmingham, Alabama 35203
Alabama, M.
500 Federal Building & Courthouse
15 Lee Street
Montgomery, Alabama 36104
Alabama, S.
169 Dauphin Street, Suite 200
Mobile, Alabama 36602
Alaska
Fed. Bldg. & U.S. Courthouse
Rm. C-253
222 West 7th Ave., #9
Anchorage, Alaska 99513
Arizona
4000 U.S. Courthouse
230 First Avenue
Phoenix, AZ 85025
Arkansas, E
331 P.O. & Courthouse Bldg.
600 West Capitol
Little Rock, Arkansas 72203
Arkansas, W
6th & Rogers
U.S. Post Office & Courthouse Bldg.
Fort Smith, Arkansas 72901
California, N
450 Golden Gate Avenue, *Rm. 16201*
San Francisco, Calif. 94102
California E
3305 Federal Building
650 Capitol Mall
Sacramento, Calif. 95814
California, C
312 N. Spring Street, *Rm. 1306* Los Angeles, Calif. 90012
California, S
940 Front Street
Rm. 5-N-19
U.S. Courthouse
San Diego, Calif. 92189
Colorado
1961 Stout Street
Suite 1200—Drawer 3615
Federal Office Bldg.
Denver, Colorado 80294
Connecticut
United States Courthouse
141 Church Street
New Haven, Connecticut 06508
Delaware
J. Caleb Boggs Fed. Bldg.
844 King Street, Rm. 5110
Wilmington, Del. 19801
D.C.
Judiciary Center Bldg.
555 4th Street NW.
Washington, D.C. 20001
Florida, N
315 South Calhoun St.
Suite 510
Tallahassee, Florida 32301-1841
Florida, M
Robert Timberlake Bldg., Rm. 400
500 Zack Street
Tampa, Florida 33602
Florida, S
155 South Miami Avenue
Miami, Florida 33130
Georgia, N
Room 1800 Richard Russell Bldg.
75 Spring Street,
Atlanta, Georgia 30335
Georgia, M
Old. P.O. Bldg., Rm 303
Mulberry & 3rd Streets
Macon, Georgia 31202
Georgia, S
U.S. Courthouse, Room 237
125 Bull Street
Savannah, Georgia 31412
Guam
Suite 502-A *Pacific News Building*
238 Archibishop Flores St.
Agana, Guam 96910
Hawaii
Rm. C-242, PJKK Federal Bldg.
Box 50183, 300 Ala Moana Blvd.
Honolulu, Hawaii 96850
Idaho
Rm. 328 Federal Building
Box 037, 550 W Fort Street
Boise, Idaho 83724
Illinois, N
Everett McKinley Dirksen Bldg.
Rm. 1500 S. 219 S. Darborn Street
Chicago, Illinois 60604
Illinois, S
Rm. 330
750 Missouri Avenue
East St. Louis, Illinois 62201
Illinois, C
Rm. 312 *Paul Findley Federal Bldg.*
600 East Monroe Street
Springfield, Illinois 62701
Indiana N
4th Floor, Federal Building
507 State Street
Hammond, Ind. 46320
Indiana S
U.S. Courthouse, *Fifth Floor*
40 E. Ohio Street
Indianapolis, Ind. 46204
Iowa, N
425 2nd Street *S.E.*, Suite 950
The Center
Cedar Rapids, Iowa 52401
Iowa, S
115 U.S. Courthouse
E 1st & Walnut Streets
Des Moines Iowa 50309
Kansas
385 Federal Building
444 Quincy Street
Topeka, Kansas 66683
Kentucky, E
Fourth Floor
Federal Building
Limestone & Barr Streets
Lexington, Kentucky 40507
Kentucky, W
Bank of Louisville Bldg.
510 West Broadway, 10th Floor
Louisville, Kentucky 40202
Louisiana, E
Hale Boggs Fed. Bldg.
501 Magazine St., Rm. 210
New Orleans, LA 70130
Louisiana, M
339 Florida St., Sixth Floor
Baton Rouge, LA 70801

Louisiana, W
401 Edwards Street
Suite 1000
Shreveport, LA 71101-6133
Maine
East Tower—6th Floor
100 Middle Street Plaza
Portland, Maine 04101
Maryland
8th Floor U.S. Courthouse
101 W. Lombard Street
Baltimore, MD 21201
Massachusetts
1107 John W. McCormack Fed. Bldg.
USPO & Courthouse
Boston, Mass 02109
Michigan E
817 Federal Building
231 W. Lafeyette
Detroit, Michigan 48226
Michigan, W
Gerald R. Ford Federal Building & U.S. Courthouse
110 Michigan St., N.W. Room 300
Grand Rapids, Michigan 49503
Minnesota
234 U.S. Courthouse
110 South 4th Street
Minneapolis, Minn. 55401
Mississippi N
Rm. 265 Federal Building
911 West Jackson Avenue
Oxford, Miss. 38655
Mississippi S
245 East Capitol St., Rm 324
Jackson, Miss. 39201
Missouri, E
Rm. 414, U.S. Court & Custom House
1114 Market Street
St. Louis, MO 63101
Missouri, W
549 U.S. Courthouse
811 Grand Avenue
Kansas City, MO 64106
Montana
316 N. 26th St.
Federal Bldg., Rm. 5043
Billings, Montana 59101
Nebraska
Room 8000, USPO & Courthouse, *Edward Zorinsky Federal Bldg.*
215 N 17th Street
Omaha, Nebraska 68101
Nevada
701 E. Bridger Ave.
Suite 800
Las Vegas, Nevada 89101
New Hampshire
55 Pleasant Street, Rm. 439
Fourth Floor, Federal Bldg.
Concord, New Hampshire 03301
New Jersey
Federal Building
970 Broad Street, Rm. 502
Newark, N.J. 07102
New Mexico
625 Silver, S.W., 4th FL
Albuquerque, New Mex. 87102
New York, N
900 Federal Building
100 South Clinton Street
Syracuse, N.Y. 13260
New York, S
One St. Andrews Plaza
New York, N.Y. 10007
New York, E
U.S. Courthouse
225 Cadman Plaza East
Brooklyn, N.Y. 11201
New York, W
502 U.S. Courthouse
68 Court Street
Buffalo, N.Y. 14202
N. Carolina, E
Fourth Floor, Federal Building
310 New Bern Avenue
Raleigh, N.C. 27611
N. Carolina, M
L. Richardson Preyer Federal Building
324 West Market Street
Greensboro, N.C. 27402
N. Carolina, W
Rm 306, *U.S.* Courthouse
100 Otis Street
Asheville, N.C. 28802
N. Dakota
219 Federal Building
655 1st Avenue, North
Fargo, N.D. 58102
Ohio, N
Suite 500
1404 East Ninth Street
Cleveland, Ohio 44114
Ohio, S
Room 200
85 Marconi Boulevard
Columbus, Ohio 43215
Oklahoma, N
3600 U.S. Courthouse
333 West Fourth Street
Tulsa, Okla 74103
Oklahoma, E
333 Federal Courthouse & Office Bldg.
Fifth & Okmulgee
Muskogee, Okla 74401
Oklahoma, W
Room 4434
U.S. Courthouse & Fed. Office Bldg.
Oklahoma City, Okla 73102
Oregon
312 U.S. Courthouse
620 S.W. Main Street
Portland, Oregon 97205
Penn. E
3310 U.S. Courthouse
Independence Mall West
601 Market Street
Philadelphia, PA 19106
Penn. M
Suite 309, Federal Building
Washington & Linden Streets
Scranton, PA 18501
Penn. W
633 U.S.P.O. & Courthouse
7th Avenue & Grant Street
Pittsburgh, PA 15219
Puerto Rico
Rm. 101, Fed. Office Bldg.
Carlos E. Chardon Avenue
Hato Rey, P.R. 00918
Rhode Island
Westminister Square Building
10 Dorrance Street, *Tenth Floor*
Providence, R.I. 02903
South Carolina
Federal Building
1100 Laurel Street
Columbia, S.C. 29201
S. Dakota
185 Fed. Bldg., & U.S. Courthouse
400 S. Phillips Avenue
Sioux Falls, S.D. 57102
Tennessee, E
509 Main Street
Knoxville, TN 37901
Tennessee, M
Room 879, U.S. Courthouse
801 Broadway
Nashville, TN 37203-3870
Tennessee, W
1026 Fed. Office Bldg.
167 North Main Street
Memphis, TN 38103
Texas, N
310 U.S. Courthouse
10th & Lamar Streets
Ft. Worth, TX 76102
Texas, S
Courthouse & Federal Bldg.
515 Rusk Avenue, 3rd Floor
Houston, TX 77002
Texas, E
700 North Street, Suite 102
Beaumont, TX 77701
Texas, W
727 E. Durango Blvd.
Suite A-601
San Antonio, TX 78206
Utah
U.S. Courthouse, Room 476
350 South Main Street
Salt Lake City, UT 84101
Vermont
Federal Building
11 Elmwood Avenue, 6th Floor
Burlington, VT 05401
Virgin Islands
Federal Bldg., & U.S. Courthouse
Veterans Drive, Rm. 280
Charlotte Amalie
St. Thomas, V.I. 00802
Virginia, E
1101 King Street
Suite 502
Alexandria, VA 22314
Virginia, W
Room 456, Poff Federal Bldg.
210 Franklin Road, SW.
Roanoke, VA 24011
Washington, E
851 U.S. Courthouse
West 920 Riverside
Spokane, WA 99201
Washington, W
3600 Seafirst 5th Ave., Plaza
3600 Fifth Avenue
Seattle, WA 98104
West Virginia, N
Room *238*, Federal Building
1125-1141 Chapline Street
Wheeling, WV 26003
West Virginia, S
Room *3201*, Federal Building
500 Quarrier Street
Charleston, WV 25301
Wisconsin, E
330 Federal Building
517 East Wisconsin Avenue
Milwaukee, WI 53202
Wisconsin, W
120 N. Henry Street, Room 420
Madison, WI 53703
Wyoming
J.C. O'Mahoney Fed. Building
Room 4002, 2120 Capitol Avenue
Cheyenne, WY 82001
North Mariana Islands

c/o U.S. Attorney's Office
6th Floor, Naura Bldg.
P.O. Box 377
Saipan, CM 96950

JUSTICE/FBI 001

SYSTEM NAME:

National Crime Information Center (NCIC).

SYSTEM LOCATIONS:

Federal Bureau of Investigation: J. Edgar Hoover Bldg., 10th and Pennsylvania Avenue NW., Washington, D.C. 20535.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Wanted Persons: 1. Individuals for whom Federal warrants are outstanding.

2. Individuals who have committed or have been identified with an offense which is classified as a felony or serious misdemeanor under the existing penal statutes of the jurisdictions originating the entry and felony or misdemeanor warrant has been issued for the individual with respect to the offense which was the basis of the entry. Probation and parole violators meeting the foregoing criteria.

3. A "Temporary Felony Want" may be entered when a law enforcement agency has need to take prompt action to establish a "want" entry for the apprehension of a person who has committed, or the officer has reasonable grounds to believe has committed, a felony and who may seek refuge by fleeing across jurisdictionary boundaries and circumstances preclude the immediate procurement of a felony warrant. A "Temporary Felony Want" shall be specifically identified as such and subject to verification and support by a proper warrant within 48 hours following the initial entry of a temporary want. The agency originating the "Temporary Felony Want" shall be responsible for subsequent verification or re-entry of a permanent want.

4. Juveniles who have been adjudicated delinquent and who have escaped or absconded from custody, even though no arrest warrants were issued. Juveniles who have been charged with the commission of a delinquent act that would be a crime if committed by an adult, and who have fled from the state where the act was committed.

5. Individuals who have committed or have been identified with an offense committed in a foreign country, which would be a felony if committed in the United States, and for whom a warrant of arrest is outstanding and for which act an extradition treaty exists between the United States and that country.

6. Individuals who have committed or have been identified with an offense committed in Canada and for whom a Canada-Wide Warrant has been issued which meets the requirements of the Canada-U.S. Extradition Treaty, 18 U.S.C. 3184.

B. Individuals who have been charged with serious and/or significant offenses.

C. Missing Persons: 1. A person of any age who is missing and who is under proven physical/mental disability or is senile, thereby subjecting himself or others to personal and immediate danger.

2. A person of any age who is missing under circumstances indicating that his disappearance was not voluntary.

3. A person of any age who is missing under circumstances indicating that his physical safety is in danger.

4. A person who is missing and declared unemancipated as defined by the laws of his state of residence and does not meet any of the entry criteria set forth in 1, 2, or 3 above.

D. Individuals designated by the U.S. Secret Service as posing a potential danger to the President and/or other authorized protectees.

E. Unidentified Persons: 1. Any unidentified deceased person. 2. Any person who is living and unable to ascertain his/her identity (e.g., infant, amnesia victim). 3. Any unidentified catastrophe victim. 4. Body parts when a body has been dismembered.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Stolen Vehicle File: 1. Stolen vehicles. 2. Vehicles wanted in conjunction with felonies or serious misdemeanors. 3. Stolen vehicle parts, including certificates of origin or title.

B. Stolen License Plate File: 1. Stolen or missing license plate.

C. Stolen/Missing Gun File: 1. Stolen or missing guns. 2. Recovered guns, when ownership of which has not been established.

D. Stolen Article File.

E. Wanted Persons File: Described in "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: A. Wanted Persons."

F. Securities File: 1. Serially numbered stolen, embezzled, counterfeited, missing securities.

2. "Securities" for present purposes of this file are currency (e.g., bills, bank notes) and those documents or certificates which generally are considered to be evidence of debt (e.g., bonds, debentures, notes) or ownership of property (e.g., common stock, preferred stock), and documents which represent subscription rights, warrants and which are of those types trades in the securities exchanges in the United States, except for commodities futures. Also included are warehouse receipts, travelers checks and money orders.

G. Stolen Boat File

H. Computerized Criminal History File: A cooperative Federal-state program for the interstate exchange of criminal history record information for the purpose of facilitating the interstate exchange of such information among criminal justice agencies.

I. Missing Person File: Described in "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: C. Missing persons."

J. U.S. Secret Service Protective File: Described in "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: D."

K. Identification records regarding persons enrolled in the United States Marshals Service Witness Security Program who have been charged with serious and/or significant offenses: Described in "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: B."

L. Foreign Fugitive File: Indentification data regarding persons who are fugitives from foreign countries, who are described in "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: A. Wanted Persons, 5."

M. Canadian Warrant File: Identification data regarding Canadian wanted persons who are described in "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: A. Wanted Persons, 6."

N. Unidentified Person File: Described in "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM: E. Unidentified Persons."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with 28 U.S.C. 534; Department of Justice Appropriation Act, 1973, Pub. L. 92-544, 86 Stat. 1115, Securities Acts Amendment of 1975, Pub. L. 94-29, 89 Stat. 97; and Exec. Order No. 10450, 3 CFR (1974).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data in NCIC files is exchanged with and for the official use of authorized officials of the Federal Government, the States, cities, penal and other institutions, and certain foreign governments. The data is exchanged through NCIC lines to Federal criminal justice agencies, criminal justice agencies in the 50 States, the District of Columbia, Puerto Rico, U.S. Possessions and U.S. Territories. Additionally, data contained in the various "want files," i.e., the stolen vehicle file, stolen license plate file, stolen missing gun file, stolen article file, wanted person file, securities file and boat file may be accessed by the Royal Canadian Mounted Police. Criminal history data is disseminated to non-criminal justice agencies for use in connection with licensing for local/state employment or other uses, but only where such dissemination is authorized by Federal or state statutes and approved by the Attorney General of the United States.

Data in NCIC files, other than the Computerized Criminal History File, is disseminated to (1) a nongovernmental agency or subunit thereof which allocates a substantial part of its annual budget to the administration of criminal justice, whose regularly employed peace officers have full police powers pursuant to state law and have complied with the minimum employment standards of governmentally employed police officers as specified by state statute; (2) a noncriminal justice governmental department of motor vehicle or driver's license registry established by a statute, which provides vehicles registration and driver record information to criminal justice agencies; (3) a governmental regional dispatch center, established by a state statute, resolution, ordinance or Executive order, which provides communications services to criminal justice agencies; and (4) the national Automobile Theft Bureau, a nongovernmental nonprofit agency which acts as a national clearinghouse for information on stolen vehicles and offers free assistance to law enforcement agencies concerning automobile thefts, identification and recovery of stolen vehicles.

Disclosures of information from this system, as described above, are for the purpose of providing information to authorized agencies to facilitate the apprehension of fugitives, the location of missing persons, the location and/or return of stolen property, or similar criminal justice objectives.

Information on missing children, missing adults who were reported missing while children, and unidentified living and deceased persons may be disclosed to the National Center for Missing and Exploited Children (NCMEC). The NCMEC is a nongovernmental, nonprofit, federally funded corporation, serving as a national resource and technical assistance clearinghouse focusing on missing and exploited children. Information is disclosed to NCMEC to assist it in its efforts to provide technical assistance and education to parents and local governments regarding the problems of missing and exploited children, and to operate a nationwide missing children hotline to permit members of the public to telephone the Center from anywhere in the United States with information about a missing child.

In addition, information may be released to the news media and the public pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

To a Member of Congress or staff acting upon the *member's* behalf whom the *member* or staff requests the information on behalf of and at the request of the individual who is the subject of the record; *and,*

To the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the NCIC system is stored electronically for use in a computer environment.

RETRIEVABILITY:

On-line access to data in NCIC is achieved by using the following search descriptors. 1. Vehicle file:

(a) Vehicle identification number;

(b) License plate number;

(c) NCIC number (unique number assigned by the NCIC computer to each NCIC record). 2. License Plate File: (a) License plate number; (b) NCIC number. 3. Gun file: (a) Serial number of gun; (b) NCIC number. 4. Article File: (a) Serial number of article; (b) NCIC number. 5. Wanted Person File, U.S. Secret Service Protective File, Foreign Fugitive File, and Canadian Warrant File: (a) Name and one of the following numerical identifiers, date of birth, FBI Number (number assigned by the Federal Bureau of Investigation to an arrest fingerprint record). Social Security number (it is noted the requirements of the Privacy Act with regard to the solicitation of Social Security numbers have been brought to the attention of the members of the NCIC system). Operator's license number (drivers number). Miscellaneous identifying number (military number or number assigned by Federal, state, or local authorities to an individual's record). Origination agency case number. (b) Vehicle or license plate known to be in the possession of the wanted person. (c) NCIC number (unique number assigned to each NCIC record). 6. Securities File: (a) Type, serial number, denomination of security; (b) Type of security and name of owner of security; (c) Social Security number of owner of security; (d) NCIC number. 7. Boat File: (a) Registration document number; (b) Hull serial number; (c) NCIC number. 8. Computerized Criminal History File: (a) Name, sex, race and date of birth; (b) FBI number; (c) State identification number; (d) Social Security number; (e) Miscellaneous number. 9. Missing Person File: Same as "Wanted Person" File, plus the age, sex, race, height and weight, eye and hair color, of the missing individual. 10. Unidentified Person File: Age, sex, race, height and weight, eye and hair color, of the unidentified individual.

SAFEGUARDS:

Data stored in the NCIC is documented criminal justice agency information and access to that data is restricted to duly authorized criminal justice agencies. The following security measures are the minimum to be adopted by all criminal justice agencies having access to the NCIC.

Computerized Criminal History File. These measures are designed to prevent unauthorized access to the system data and/or unauthorized use of data obtained from the computerized file.

1. Computer Center: a. The criminal justice agency computer site must have adequate physical security to protect against any unauthorized personnel gaining access to the computer equipment or to any of the stored data. b. Since personnel at these computer centers can have access data stored in the system, they must be screened thoroughly under the authority and supervision of an NCIC control terminal agency. (This authority and supervision may be delegated to responsible criminal justice agency personnel in the case of a satellite computer center being serviced through a stated control terminal agency.) This screening will also apply to non-criminal justice maintenance or technical personnel. c. All visitors to these computer centers must be accompanied by staff personnel at all times. d. Computers having access to the NCIC must have the proper computer instructions written and other built-in controls to prevent criminal history data from being accessible to any terminals other than authorized terminals. e. Computers having access to the NCIC must maintain a record of all transactions against the criminal history filed in the same manner the NCIC

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computer logs all transactions. The NCIC identifies each specific agency entering or receiving information and maintains a record of those transactions. This transaction record must be monitored and reviewed on a regular basis to detect any possible misuse of criminal history data. f. Each State Control terminal shall build its data system around a central computer, through which each inquiry must pass for screening and verification. The configuration and operation of the center shall provide for the integrity of the data base.

2. Communications: a. Lines/channels being used to transmit criminal history information must be dedicated solely to criminal justice, i.e., there must be no terminals belonging to agencies outside the criminal justice system sharing these lines/channels. b. Physical security of the lines/channels must be protected too guard against clandestine devices being utilized to intercept of inject system traffic.

3. Terminal Devices Having Access to NCIC: a. All agencies having terminals on this system must be required to physically place these terminals in secure locations within the authorized agency. b. The agencies having terminals with access to criminal history must have terminal operators screened and restricted access to the terminal to a minimum number of authorized employees. c. Copies of criminal history data obtained from terminal devices must be afforded security to prevent any unauthorized access to or use of the data. d. All remote terminals on NCIC Computerized Criminal History will maintain a hard copy of computerized criminal history inquiries with notations of individual making request for record (90 days).

RETENTION AND DISPOSAL:

Unless otherwise removed, records will be retained in files as follows:

1. Vehicle File: a. Unrecovered stolen vehicle records (including snowmobile records) which do not contain vehicle identification numbers (VIN) therein, will be purged from file 90 days after *date of entry*. Unrecovered stolen vehicle records (including snowmobile records) which contain VIN's will remain in file for the year of entry plus

4. Unrecovered vehicles wanted in conjunction with a felony will remain in file for 90 days after entry. In the event a longer retention period is desired, the vehicle must be reentered. c. Unrecovered stolen VIN plates, certificates or origin or title, and serially numbered stolen vehicles engines or transmissions will remain in file for the year of entry plus 4.

(Job No. NC1–65–82–4, Part E. 13 h.(1))

2. License Plate File: Unrecovered stolen license plates not associated with a vehicle will remain in file for one year after the end of the plate's expiration year as shown in the record.

(Job No. NC1–65–82–4, Part E. 13 h.(2))

3. Gun file: a. Unrecovered weapons will be retained in file for an indefinite period until action is taken by the originating agency to clear the record. b. Weapons entered in file as "recovered" weapons will remain in file for the balance of the year entered plus 2.

(Job No. NC1–65–82–4, Part E. 13 h.(3))

4. Article File: Unrecovered stolen articles will be retained for the balance of the year entered plus one year.

(Job No. NC1–65–82–4, Part E. 13 h.(4))

5. Wanted Person File: Person not located will remain in file indefinitely until action is taken by the originating agency to clear the record (except "Temporary Felony Wants", which will be automatically removed from the file after 48 hours).

(Job No. NC1–65–87–114, Part E. 13 h.(7))

6. Securities File: Unrecovered, stolen, embezzled, counterfeited or missing securities will be retained for the balance of the year entered plus 4, except for travelers checks and money orders, which will be retained for the balance of the year entered plus 2.

(Job No. NC1–65–82–4, Part E. 13h. (5))

7. Boat File: Unrecovered stolen boats will be retained in file for the balance of the year entered plus 4. Unrecovered stolen boat records which do not contain a hull serial number will be purged from file 90 days after date of entry.

(Job No. NC1–65–82–4, Part E. 13h. (6))

8. Missing Persons File: Will remain in the file until the individual is located or, in the case of unemancipated persons, the individual reaches the age of emancipation as defined by law of his state.

(Job No. N 1–65–87–11, Part E. 13h. (8))

9. Computerized Criminal History File: When an individual reaches age of 80.

(Job No. NC1–65–76–1)

10. U.S. Secret Service Protective File: Will be retained until names are removed by the U.S. Secret Service.

11. Foreign Fugitive File: Person not located will remain in file indefinitely until action is taken by the originating agency to clear the record.

12. Canadian Warrant File: Person and located will remain in file indefinitely until action is taken by the originating agency to clear the record.

13. Unidentified Person File: Will be retained for the remainder of the year of entry plus 9.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, J. Edgar Hoover Building, *10th* and Pennsylvania Avenue NW., Washington, DC 20535.

NOTIFICATION PROCEDURES:

Same as the above.

RECORD ACCESS PROCEDURE:

It is noted the Attorney General is exempting this system from the access and contest procedures of the Privacy Act. However, the following alternative procedures are available to requester. The procedures by which an individual may obtain a copy of his computerized Criminal History are as follows:

If an individual has a criminal record supported by fingerprints and that record has been entered in the NCIC CCH File, it is available to that individual for review, upon presentation of appropriate identification and in accordance with applicable State and Federal administrative and statutory regulations.

Appropriate identification includes being fingerprinted for the purpose of insuring that he is the individual that he purports to be. The record on file will then be verified as his through comparison of fingerprints.

Procedure 1. All requests for review must be made by the subject of his record through a law enforcement agency which has access to the NCIC CCH File. That agency within statutory or regulatory limits can require additional identification to assist in securing a positive identification.

2. If the cooperative law enforcement agency can make an identification with fingerprints previously taken which are on file locally and if the FBI identification number of the individual's record is available to that agency, it can make an on-line inquiry of NCIC to obtain his record on-line or, if it does not have suitable equipment to obtain an on-line response, obtain the record from Washington, DC by mail. The individual will then be afforded the opportunity to see that record.

3. Should the cooperating law enforcement agency not have the individual's fingerprints on file locally, it is necessary for that agency to relate his prints to an existing record by having his identification prints compared with those already on file in the FBI or possibly, in the State's central identification agency.

CONTESTING RECORD PROCEDURES:

The subject of the requested record shall request the appropriate arresting agency, court, or correctional agency to initiate action necessary to correct any stated inaccuracy in his record or provide the information needed to make the record complete.

RECORD SOURCE CATEGORIES:

Information contained in the NCIC system is obtained from local, State, Federal and international criminal justice agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G), (H), (e)(8) (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(3). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register.**

JUSTICE/FBI–002

SYSTEM NAME:

The FBI Central Records System.

SYSTEM LOCATION:

a. Federal Bureau of Investigation, J. Edgar Hoover Building, 10th and Pennsylvania Avenue, NW., Washington, DC 20535; b. *56* field divisions (see Appendix); c. 16 Legal Attaché (see Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals who relate in any manner to official FBI investigations including, but not limited to subjects, suspects, victims, witnesses, and close relatives and associates who are relevant to an investigation.

b. Applicants for and current and former personnel of the FBI and persons related thereto who are considered relevant to an applicant investigation, personnel inquiry, or other personnel matters.

c. Applicants for and appointees to sensitive positions in the United States Government and persons related thereto who are considered relevant to the investigation.

d. Individuals who are the subject of unsolicited information, who offer unsolicited information, request assistance, and make inquiries concerning record material, including general correspondence, *and* contacts with other agencies, businesses, institutions, clubs; the public and the news media.

e. Individuals associated with administrative operations or services including pertinent functions, contractors and pertinent persons related thereto.

(All manner of information concerning individuals may be acquired in connection with and relating to the varied investigative responsibilities of the FBI which are further described in "CATEGORIES OF RECORDS IN THE SYSTEM." Depending on the nature and scope of the investigation this information may include, among other things, personal habits and conduct, financial information, travel and organizational affiliation of individuals. The information collected is made a matter of record and placed in FBI files)

CATEGORIES OF RECORDS IN THE SYSTEM

The FBI Central Records Systems—The FBI utilizes a central records system of maintaining its investigative, personnel, applicant, administrative, and general files. This system consists of one numerical sequence of subject matter files, an alphabetical index to the files, and a supporting abstract system to facilitate processing and accountability of all important mail placed in files. This abstract system is both a textual and an automated capability for locating mail. Files kept in FBI field offices are also structured in the same manner, except they do not utilize an abstract system.

The FBI *277* classifications used in its basic filing system which pertain primarily to Federal violations over which the FBI has investigative jurisdiction. However, included in the *277* classifications are personnel, applicant, and administrative matters to facilitate the overall filing scheme. These classifications are as follows (the word "obsolete" following the name of the classification indicates the FBI is no longer initiating investigative cases in these matters, although the material is retained for reference purposes):

1. Training Schools; National Academy Matters: FBI National Academy Applicants. Covers general information concerning the FBI National Academy, including background investigations of individual candidates.

2. Neutrality Matters. Title 18, United States Code, Sections 956 and 958–962; Title 22, United States Code, Sections 1934 and 401.

3. Overthrow or Destruction of the Government. Title 18, United States Code, Section 2385.

4. National Firearms Act, Federal Firearms Act; State Firearms Control Assistance Act; Unlawful Possession or Receipt of Firearms. Title 26, United States Code, Sections 5801–5812; Title 18, United States Code, Sections 921–928; Title 18, United States Code. Sections 1201–1203.

5. Income Tax. Covers violations of Federal income tax laws reported to the FBI. Complaints are forwarded to the Commissioner of the Internal Revenue Service.

6. Interstate Transportation of Strikebreakers. Title 18, United States Code, Section 1231.

7. Kidnapping. Title 28, United States Code, Sections 1201 and 1202.

8. Migratory Bird Act. Title 16, United States Code, Section 43; Title 16, United States Code, Section 703 through 718.

9. Extortion. Title 18, United States Code Sections 876, 877, 875, and 873.

10. Red Cross Act. Title 18, United States Code, Sections 706 and 917.

11. Tax (Other than Income) This classification covers complaints concerning violations of Internal Revenue law as they apply to other than alcohol, social security and income and profits taxes, which are forwarded to the Internal Revenue Service.

12. Narcotics. This classification covers complaints received by the FBI concerning alleged violations of Federal drug laws. Complaints are forwarded to the headquarters of the Drug Enforcement Administration (DEA), or the nearest district office of DEA.

13. Miscellaneous. Section 125, National Defense Act, Prostitution; Selling Whiskey Within Five Miles of An Army Camp. 1920 only. Subjects were alleged violators of abuse of U.S. flag, fraudulent enlistment, selling liquor and operating houses of prostitution within restricted bounds of military reservations. Violations of Section 13 of the Selective Service Act (Conscription Act were enforced by the Department of Justice as a war emergency measure with the Bureau exercising jurisdiction in the detection and prosecution of cases within the purview of that Section.

14. Sedition. Title 18, United States Code, Sections 2387, 2388, and 2391.

15. Theft from Interest Shipment. Title 18, United States Code, Section 859; Title 18, United States Code, Section 660; Title 18 United States Code, Section 2117.

16. Violations of Federal Injunction (obsolete). Consolidated into Classification 69, "Contempt of Court".

17. Fraud Against the Government *Department of Veterans Affairs, Department of Veterans Affairs Matters.* Title 18, United States Code, Section 287, 289, 290, 371, or 1001, and Title 38, United States Code, Sections 787(a), 787(b), 3405, 3501, and 3502.

18. May Act. Title 18, United States Code, Section 1384.

19. Censorship Matter (obsolete). Pub. L. 77th Congress.

20. Federal Grain Standards Act (obsolete) 1920 only. Subjects were alleged violators of contracts for sale. Shipment of Interstate Commerce, Section 5, U.S. Grain Standards Act.

21. Food and Drugs. This classification covers complaints received concerning alleged violations of the Food, Drug and Cosmetic Act; Tea Act; Import Milk Act; Caustic Poison Act; and Filled Milk Act. These complaints are referred to the Commissioner of the Food and Drug Administration of the field component of that Agency.

22. National Motor Vehicle Traffic Act, 1922–27 (obsolete). Subjects were possible violators of the National Motor Vehicle Theft Act. Automobiles seized by Prohibitions Agents.

23. Prohibition. This classification covers complaints received concerning bootlegging activities and other violations of the alcohol tax laws. Such complaints are referred to the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, or field representatives of the Agency.

24. Profiteering 1920–42. (obsolete). Subject are possible violators of the Lever Act—Profiteering in food and clothing or accused company was subject of file. Bureau conducted investigations to ascertain profits.

25. Selective Service Act; Selective Training and Service Act. Title 50, United States Code, Section 462; Title 50 United States Code, Section 459.

26. Interstate Transportation of Stolen Motor Vehicle; Interstate Transportation of Stolen Aircraft. Title 18, United States Code, Sections 2311 (in part), 2312, and 2313.

27. Patent Matter. Title 35, United States Code, Sections 104 and 105.

28. Copyright Matter. Title 17, United States Code, Sections 104 and 105.

29. Bank Fraud and Embezzlement. Title 18, United States Code, Sections 212, 213, 215, 334, 655–657, 1004–1006, 1008, 1009, 1014, and 1306; Title 12, United States Code, Section 1725(g).

30. Interstate Quarantine Law, 1922–25 (obsolete). Subjects alleged violators of Act of February 15, 1893, as amended, regarding interstate travel of persons afflicted with infectious diseases. Cases also involved unlawful transportation of animals, Act of February 2, 1903. Referrals were made to Public Health Service and the Department of Agriculture.

31. White Slave Traffic Act. Title 18, United States Code, Section 2421–2424.

32. Identification (Fingerprint) Matters. This classification covers general information concerning Identification (fingerprint) matters.

33. Uniform Crime Reporting. This classification covers general information concerning the Uniform Crime Reports, a periodic compilation of statistics of criminal violations throughout the United States.

34. Violation of Lacy Act. 1922–43. (obsolete) Unlawful Transportation and shipment of black bass and fur seal skins.

35. Civil Service. This classification covers complaints received by the FBI concerning Civil Service matters which are referred to the Office of Personnel Management in Washington or regional offices of that Agency.

36. Mail Fraud. Title 18, United States Code, Section 13341.

37. False Claims Against the Government. 1921–22. (obsolete) Subjects submitted claims for allotment, vocational training, compensation as veterans under the Sweet Bill. Letters were generally referred elsewhere (Veterans Bureau). Violators apprehended for violation of Article No. 1, War Risk Insurance Act.

38. Application for Pardon to Restore Civil Rights. 1921–35. (obsolete) Subjects allegedly obtained their naturalization papers by fraudulent means. Cases later referred to Immigration and Naturalization Service.

39. Falsely Claiming Citizenship. (obsolete) Title 18, United States Code, Sections 911 and 1015(a)(b).

40. Passport and Visa Matter. Title 18, United States Code, Sections 1451–1546.

41. Explosives (obsolete). Title 50, United States Code, Sections 121 through 144.

42. Deserter; Deserter, Harboring. Title 10, United States Code, Sections 808 and 885.

43. Illegal Wearing of Uniforms; False Advertising or Misuse of Names, Words, Emblems or Insignia; Illegal Manufacturer, Use, Possession, or Sale of Emblems and Insignia; Illegal Manufacture, Possession, or Wearing of Civil Defense Insignia; Miscellaneous, Forging or Using Forged Certificate of Discharge from Military or Naval Service; Miscellaneous, Falsely Making or Forging Naval, Military, or Official Pass; Miscellaneous, Forging or Counterfeiting Seal of Department or Agency of the United States, Misuse of the Great Seal of the United States or of the Seals of the President or the Vice President of the United States; Unauthorized Use of "Johnny Horizon" Symbol; Unauthorized Use of Smokey Bear Symbol. Title 18, United States Code, Sections 702, 703, and 704; Title 18, United States Code, Sections 701, 705, 707, and 710; Title 36, United States Code, Section 182; Title 50, Appendix, United States Code, Section 2284; Title 46, United States Code, Section 249; Title 18, United States Code, Sections 498, 499, 506, 709, 711, 711a, 712, 713, and 714; Title 12, United States Code, Sections 1457 and 1723a; Title 22, United States Code, Section 2518.

44. Civil Rights; Civil Rights, Election Laws, Voting Rights Act, 1965, Title 18, United States Code, Sections 241, 242, and 245; Title 42, United States Code, Section 1973; Title 18, United States Code, Section 243; Title 18, United States Code, Section 244, Civil Rights Act—Federally Protected Activities; Civil Rights Act—Overseas Citizens Voting Rights Act of 1975.

45. Crime on the High Seas (Includes stowaways on boats and aircraft). Title 18, United States Code, Sections 7, 13, 1243, and 2199.

46. Fraud Against the Government: (Includes Department of Health, Education and Welfare; Department of Labor (CETA), and Miscellaneous Government Agencies) Anti-Kickback Statute; Department Assistance Act of 1950; False Claims, Civil; Federal-Aid Road Act; Lead and Zinc Act; Public Works and Economic Development Act of 1965; Renegotiation Act, Criminal; Renegotiation Act, Civil; Trade Expansion Act of 1962; Unemployment Compensation Statutes; Economic Opportunity Act. Title 50, United States Code, Section 1211 et seq.; Title 31, United States Code, Section 231; Title 41, United States Code, Section 119; Title 40, United States Code, Section 489.

47. Impersonation. Title 18, United States Code, Section 912, 913, 915, and 916.

48. Postal. Violation (Except Mail Fraud). This classification covers inquiries concerning the Postal Service and complaints pertaining to the theft of mail. Such complaints are either forwarded to the Postmaster General or the nearest Postal Inspector.

49. Bankruptcy Fraud. Title 18, United States Code, Sections 151–155.

50. Involuntary Servitude and Slavery. U.S. Constitution, 13th Amendment; Title 18, United States Code, sections 1581–1588, 241, and 242.

51. Jury Panel Investigations. This classification covers jury panel investigations which are requested by the appropriate Assistant Attorney General as authorized by 28 U.S.C. 533 and AG memorandum #781, dated 11/9/72. These investigations can be conducted only up-on such a request and consist of an indices and arrest check, and only in limited important trials where defendant could have influence over a juror.

52. Theft, Robbery, Embezzlement, Illegal Possession or Destruction of Government Property. Title 18, United States Code, Sections 641, 1024, 1660, 2112, and 2114. Interference With Government Communications, Title 18, U.S.C., Section 1632.

53. Excess Profits On Wool. 1918 (obsolete). Subjects possible violator of Government Control of Wool Clip of 1918.

54. Customs Laws and Smuggling. This classification covers complaints received concerning smuggling and other matters involving importation and entry of merchandise into and the exportation of merchandise from the United States. Complaints are referred to the nearest district office of the U.S. Customs Service or the Commissioner of Customs, Washington, DC.

55. Counterfeiting. This classification covers complaints received concerning alleged violations of counterfeiting of U.S. coins, notes, and other obligations and securities of the Government. These complaints are referred to either the Director, U.S. Secret Service, or the nearest office of that Agency.

56. Election Laws. Title 18, United States Code, Sections 241, 242, 245, and 591–607; Title 42, United States Code, Section 1973; Title 28, United States Code, Sections 9012 and 9042; Title 2, United States Code, Sections 431–437, 439, and 441.

57. War Labor Dispute Act (obsolete). Pub. L. 89–77th Congress.

58. *Corruption of Federal Public Officials.* Title 18, United States Code, Sections 201–203, 205–211; Pub. L. 89–4 and 89–136.

59. World War Adjusted Compensation Act of 1924–44. (obsolete) Bureau of Investigation was charged with the duty of investigating alleged violations of all sections of the World War Adjusted Compensation Act (Pub. L. 472, 69th Congress (H.R. 10277)) with the exception of Section 704.

60. Anti-Trust, Title 15, United States Code, Sections 1–7, 12–27, and 13.

61. Treason or Misprision of Treason. Title 18, United States Code, Sections 2381, 2282, 2389, 2390, 756, and 757.

62. Administrative Inquiries. Misconduct Investigations of Officers and Employees of the Department of Justice and Federal Judiciary; Census Matters (Title 13, United States Code, Sections 211–214, 221–224, 304, and 305) Domestic Police Cooperation; Eight-Hour-Day Law (Title 40, United States, Code, Sections 321, 332, 325a, 326); Fair Credit Reporting Act (Title 15, United States Code, Sections 1681q and 1681r); Federal Cigarette Labeling and Advertising Act (Title 15, United States Code, Section 1333); Federal Judiciary Investigations; Kickback Racket Act (Title 18, United States Code, Section 874); Lands Division Matter, other Violations and/or Matters; Civil Suits—Miscellaneous; Soldiers' and Sailors' Civil Relief Act of 1940 (Title 50, Appendix, United States Code, Sections 510–590); Tariff Act of 1930 (Title 19, United States Code, Section 1304); Unreported Interstate Shipment of Cigarettes (Title 15, United States Code, Sections 375 and 376); Fair Labor Standards Act of 1938 (Wages and Hours Law) (Title 29, United States Code, Sections 201–219); Conspiracy (Title 18, United States Code, Section 371 (formerly Section 88, Title 18, United States Code); effective September 1, 1948).

63. Miscellaneous—Nonsubversive. This classification concerns correspondence from the public which does not relate to matters within FBI jurisdiction.

64. Foreign Miscellaneous. This classification is a control file utilized as a repository for intelligence information of value identified by country. More specific categories are placed in classification 108–113.

65. Espionage. Attorney General Guidelines on Foreign Counterintelligence; Internal Security Act of 1950; Executive Order 11905.

66. Administrative Matters. This classification covers such items as supplies, automobiles, salary matters and vouchers.

67. Personnel Matters. This classification concerns background investigations of applicants for employment with the FBI and folders for current and former employees.

68. Alaskan matters (obsolete). This classification concerns FBI investigations in the Territory of Alaska prior to its becoming a State.

69. Contempt of Court. Title 18, United States Code, Sections 401, 402, 3285, 3691, 3692; Title 10, United States Code. Section 847; and Rule 42, Federal Rules of Criminal Procedure.

70. Crime on Government Reservation. Title 18, United States Code, Sections 7 and 13.

71. Bills of Lading Act. Title 49, United States Code, Section 121.

72. Obstruction of Criminal Investigations: Obstruction of Justice, Obstruction of Court Orders. Title 18, United States Code. Sections 1503 through 1510.

73. Application for Pardon After Completion of Sentence and Application for Executive Clemency. This classification concerns the FBI's background investigation in connection with pardon applications and request for executive clemency.

74. Perjury. Title 18, United States Code, Sections 1621, 1622, and 1623.

75. Bondsmen and Sureties. Title 18, United States Code, Section 1506.

76. Escaped Federal Prisoner. Escape and Rescue; Probation Violator, Parole Violator Parole Violator, Mandatory Release Violator. Title 18, United State Code, Sections 751–757, 1072; Title 18, United States Code. Sections 3651–3656; and Title 18, United States Code. Sections 4202–4207, 5037, and 4161–4166.

77. Applicants (Sepcial Inquiry, Departmental and Other Government Agencies, except those having special classifications). This classification covers the background investigations conducted by the FBI in connection with the aforementioned positions.

78. Illegal Use of Government Transportation Requests. Title 18, United States Code, Section 287, 495, 508, 641, 1001 and 1002.

79. Missing Persons. This classification covers the FBI's Identification Divsion's assistance in the locating of missing persons.

80. Laboratory Research Matters. At FBI Headquarters this classification is used for Laboratory research matters. In field office files this classification covers the FBI's public affairs matters and involves contact by the FBI with the general public, Federal and State agencies, the Armed Forces, Corporations, the news media and other outside organizations.

81. Gold Hoarding. 1933–45. (obsolete) Gold Hoarding investigations conducted in accordance with an Act of March 9, 1933 and Executive Order issued August 28, 1933. Bureau instructed by Department to conduct no further investigations in 1935 under the Gold Reserve Act of 1934. Thereafter, all correspondence referred to Secret Service

82. War Risk Insurance (National Life Insurance (obsolete)). This classification covers investigations conducted by the FBI in connection with civil suits filed under this statute.

83. Court of Claims. This classification covers requests for investigations of cases pending in the Bourt of Claims from the Assistant Attorney General in charge of the Civil Division of the Department of Justice.

84. Reconstruction Finance Corporation Act (obsolete). Title 15, United States Code, Chapter 14.

85. Home Owner Loan Corporation (obsolete). This classification concerned complaints received by the FBI about alleged violations of the Home Owners Loan Act, which were referred to the Home Owners Loan Corporation. Title 12 United States Code, Section 1464.

86. Fraud Against the Government—Small Business Administration. Title 15, United States Code, Section 645; Title 18, United States Code, Sections 212, 213, 215, 216, 217, 657, 658, 1006, 1011, 1013, 1014, 1906, 1907, and 1909.

87. Interstate Transportation of Stolen Property (Heavy Equipment—Commercialized Theft). Title 18, United States Code, Sections 2311, 2314, 2315 and 2318.

88. Unlawful Flight to Avoid Prosecution, Custody, or Confinement; Unlawful Flight to Avoid Giving Tes'imony. Title 18, United States Code, Sections 1073 and 1074.

89. Assaulting or Killing a Federal Officer, Crimes Against Family Members, Congressional Assassination Statute, Title 18, United States Code, Sections 1111, 1114, 2232.

90. Irregularities in Federal Penal Institutions. Title 18, United States Code, Sections 1791 and 1792.

91. Bank Burglary; Bank Larcency; Bank Robbery. Title 18, United States Code, Section 2113.

92. Racketeer Enterprise Investigations. Title 18, United States Code. Section 3237.

93. Ascertaining Financial Ability. This classification concerns requests by the Department of Justice for the FBI to ascertain a person's ability to pay a claim, fine or judgment obtained against him by the United States Government.

94. Research matters. This classification concerns all general correspondence of the FBI with private individuals which does not involve any substantive violation of Federal law.

95. Laboratory Cases (Examination of Evidence in Other Than Bureau's Cases). The classification concerns non-FBI cases where a duly constituted State, county or a municipal law enforcement agency in a criminal matter has requested an examination of evidence by the FBI Laboratory.

96. Alien Applicant (obsolete). Title 10, United States Code, Section 310.

97. Foreign Agents Registration Act. Title 18, United States Code, Section 951; Title 22, United States Code, Sections 611–621; Title 50, United States Code, Sections 851–857.

98. Sabotage. Title 18, United States Code, Sections 2151–2156; Title 50, United States Code, Section 797.

99. Plant Survey (obsolete). This classification covers a program wherein the FBI inspected industrial plants for the purpose of making suggestions to the operations of those plants to prevent espionage and sabotage.

100. Domestic Security. This classification covers investigations by the FBI in the domesitc security field, e.g., Smith Act violations

101. Hatch Act (obsolete). Pub. L. 252, 76th Congress.

102. Voorhis Act, title 18, United States Code, Section 1386.

103. Interstate Transportation of Stolen Livestock, Title 18, United States Code, Sections 667, 2311, 2316 and 2317.

104. Servicemen's Dependents Allowance Act of 1942 (obsolete). Pub. L 625, 77th Congress, Sections 115–119.

105. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

106. Alien Enemy Control; Escaped Prisoners of War and Internees, 1944–55 (obsolete). Suspects were generally suspected escaped prisoners of war, members of foreign organizations, failed to register under the Alien Registration Act. Cases ordered closed by Attorney General after alien enemies returned to their respective countries upon termination of hostilities.

107. Denaturalization Proceedings (obsolete). This classification covers investigations concerning allegations that an individual fraudulently swore allegiance to the United States or in some other manner illegally obtained citizenship to the U.S., Title 8, United States Code, Section 738.

108. Foreign Travel Control (obsolete). This classification concerns security-type investigations wherein the subject is involved in foreign travel.

109. Foreign Political Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign political matters broken down by country.

110. Foreign Economic Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign economic matters broken down by country.

111. Foreign Social Conditions. This classification is a control file utilized as a repository for intelligence information concerning foreign social conditions broken down by country.

112. Foreign Funds. This classification is a control file utilized as a repository for intelligence information concerning foreign funds broken down by country.

113. Foreign Military and Naval Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign military and naval matters broken down by country.

114. Alien Property Custodian Matter (obsolute). Title 50, United States Code, Sections 1 through 38. This classification covers investigations concerning ownership and control of property subject to claims and litigation under this statute.

115. Bond Default; Bail Jumper. Title 18, United States Code, Sections 3146–3152.

116. Department of Energy Applicant; Department of Energy, Employee. This classification concerns background investigations conducted in connection with employment with the Department of Energy.

117. Department of Energy, Criminal. Title 42, United States Code, Sections 2011–2281; Pub. L. 93–438.

118. Applicant, Intelligence Agency (obsolute). This classification covers applicant background investigations conducted of persons under consideration for employment by the Central Intelligence Group.

119. Federal Regulation of Lobbying Act. Title 2, United States Code, Sections 261–270.

120. Federal Tort Claims Act, Title 28, United States Code, Sections 2671 to 2680. Investigations are conducted pursuant to specific request from the Department of Justice in connection with cases in which the Department of Justice represents agencies sued under the Act.

121. Loyalty of Government Employees (obsolute). Executive Order 9835.

122. Labor Management Relations Act, 1947. Title 29, United States Code, Sections 161, 162, 176–178 and 186.

123. Section inquiry, States Department, Voice of America (U.S. Information Center) (Pub. L. 402, 80th Congress) (obsolute). This classification covers loyalty and security investigations on personnel employed by or under consideration for employment for Voice of America.

124. European Recovery Program Administration), formerly Foreign Operations Administration, Economic Cooperation Administration or E.R.P., European Recovery Programs; A.I.D., Agency for International Development (obsolete). This classification covers security and loyalty investigations of personnel employed by or under consideration for employment with the European Recovery Program. Pub. L. 472, 80th Congress.

125. Railway Labor Act; Railway Labor Act—Employer's Liability Act Title 45, United States Code, Sections 151–163 and 181–188.

126. National Security Resources Board, Special Inquiry (obsolete). This classification covers loyalty investigations on employees and applicants of the National Security Resources Board.

127. Sensitive Positions in the United States Government, Pub. L. 266 (obsolete). Pub. L. 81st Congress.

128. International Development Program (Foreign Operations Administration) (obsolete). This classification covers background investigations conducted on individuals who are to be assigned to duties under the International Development Program.

129. Evacuation Claims (obsolete). Pub. L. 886, 80th Congress.

130. Special Inquiry. Armed Forces Security Act (obsolete). This classification covers applicant-type investigations conducted for the Armed Forces security agencies.

131. Admiralty Matter. Title 46, United States Code, Sections 741–752 and 781–799.

132. Special Inquiry, Office of Defense Mobilization (obsolete). This classification covers applicant-type investigations of individuals associated with the Office of Defense Mobilization.

133. National Science Foundation Act, Applicant (obsolete). Pub. L. 507, 81st Congress.

134. Foreign Counterintelligence Assets. This classification concerns individuals who provide information to the FBI concerning Foreign Counterintelligence matters.

135. PROSAB (Protection of Strategic Air Command Bases of the U.S. Air Force (obsolete). This classification covered contacts with individuals with the aim to develop information useful to protect bases of the Strategic Air Command.

136. American Legion Contact (obsolete). This classification covered liaison contracts with American Legion offices.

137. Informants. Other than Foreign Counterintelligence Assets. This classification concerns individuals who furnish information to the FBI concerning criminal violations on a continuing and confidential basis.

138. Loyalty of Employees of the United Nations and Other Public International Organizations. This classification concerns FBI investigations based on referrals from the Office of Personnel Management wherein a question or allegation has been received regarding the applicant's loyalty to the U.S. Government as described in Executive Order 10422.

139. Interception of Communications (Formerly, Unauthorized Publication or Use of Communications). Title 47, United States Code, Section 605; Title 47, United States Code, Section 501; Title 18, United States Code, Sections 2510–2513.

140. Security of Government Employees; Fraud Against the Government, Executive Order 10450.

141. False Entries in Records of Interstate Carriers. Title 47, United States Code, Section 220; Title 49, United States Code, Section 20.

142. Illegal Use of Railroad Pass. Title 49, United States Code, Section 1.

143. Interstate Transport of Gambling Devices. Title 15, United States Code, Sections 1171 through 1180.

144. Interstate Transportation of Lottery Tickets. Title 18, United States Code, Section 1301.

145. Interstate Transportation of Obscene Materials. Title 18, United States Code, Sections 1462, 1464 and 1465.

146. Interstate Transporation of Prison-Made Goods. Title 18, United States Code, Sections 1761 and 1762.

147. Fraud Against the Government—Department of Housing and Urban Development, Matters. Title 18, United States Code, Sections 657, 709, 1006, and 1010; Title 12, United States Code, Sections 1709 and 1715.

148. Interstate Transportation of Fireworks. Title 18, United States Code, Section 836.

149. Destruction of Aircraft or Motor Vehicles. Title 18, United States Code, Sections 31–35.

150. Harboring of Federal Fugitives, Statistics (obsolete).

151. (Referral cases received from the Office of Personnel Management under Pub. L. 298). Agency for International Development; Department of Energy; National Aeronautics and Space Administration; Nation Science Foundation; Peace Corps; Action; U.S. Arms Control and Disarmament Agency; World Health Organization; International Labor Organization; International Communications Agency. This classification covers referrrals from the Office of Personnel Management where an allegation has been received regarding an applicant's loyalty to the U.S Government. These referrals refer to applicants from Peace Corps; Department of Energy, National Aeronautics and Space Administration, Nuclear Regulatory Commission, United States Arms Control and Disarmament Agency and the International Communications Agency.

152. Switchblade Knife Act. Title 15, United States Code, Sections 1241–1244.

153. Automobile Information Disclosure Act. Title 15, United States Code. Sections 1231–1233.

154. Interstate Transportation of Unsafe Refrigerators. Title 15, United States Code, Sections 1211–1214.

155. National Aeronautics and Space Act of 1958. Title 18, United States Code, Section 799.

156. Employee Retirement Income Security Act. Title 29, United States Code, Sections 1021–1029, 1111, 1131, and 1141; Title 18, United States Code, Sections 644, 1027, and 1954.

157. Civil Unrest. This classification concerns FBI responsibility for reporting information on civil disturbances or demonstrations. The FBI's investigative responsibility is based on the Attorney General's Guidelines for Reporting on Civil Disorders and Demonstrations Involving a Federal Interest which became effective April 5, 1976.

158. Labor-Management Reporting and Disclosure Act of 1959 (Security Matter) (obsolete). Pub. L. 86–257, Section 504.

159. Labor-Management Reporting and Disclosure Act of 1959 (Investigative Matter). Title 29, United States Code, Sections 501, 504, 522, and 530.

160. Federal Train Wreck Statute. Title 18. United States Code, Section 1992.

161. Special Inquiries for White House, Congressional Committee and Other Government Agencies. This classification covers investigations requested by the White House. Congressional committees or other Government agencies.

162. Interstate Gambling Activities. This classification covers information acquired concerning the nature and scope of illegal gambling activities in each field office.

163. Foreign Police Cooperation. This classification covers requests by foreign police for the FBI to render investigative assistance to such agencies.

164. Crime Aboard Aircraft. Title 49, United States Code, Sections 1472 and 1473.

165. Interstate Tranamission of Wagering Information. Title 18, United States Code, Section 1065.

166. Interstate Transportation in Aid of Racketeering. Title 18, United States Code, Section 1952.

167. Destruction of Interstate Property. Title 15, United States Code, Sections 1281 and 1282.

168. Interstate Transportation of Wagering Paraphernalia. Title 18, United States Code, Section 1953.

169. Hydraulic Brake Fluid Act (obsolete); 76 Stat. 437, Pub. L. 87–637.

170. Extremist Informants (obsolete). This classification concerns individuals who provided information on a continuing basis on various extremist elements.

171. Motor Vehicle Seat Belt Act (obsolete). Pub. L. 88–201, 80th Congress.

172. Sports Bribery. Title 18, United States Code, Section 244.

173. Public Accommodations. Civil Rights Act of 1964 Public Facilities; Civil Rights Act of 1964 Public Education;

Civil Rights Act of 1964 Employment; Civil Rights Act of 1964. Title 42, United States Code, Section 2000; Title 18, United States Code. Section 245.

174. Explosives and Incendiary Devices; Bomb Threats (Formerly Bombing Matters; Bombing Matters, Threats). Title 18, United States Code, Section 844.

175. Assaulting, Kidnapping or Killing the President (or Vice President) of the United States. Title 18, United States Code, Section 1751.

176. Anti-riot Laws. Title 18, United States Code, Section 245.

177. Discrimination in Housing. Title 42, United States Code, Sections 3601–3619 and 3631.

178. Interstate Obscene or Harassing Telephone Calls. Title 47, United States Code, Section 223.

179. Extortionate Credit Transactions. Title 18, United States Code, Section 891–896.

180. Desecration of the Flag. Title 18, United States Code, Section 700.

181. Consumer Credit Protection Act. Title 15, United States Code, Section 1611.

182. Illegal Gambling Business; Illegal Gambling Business, Obstruction; Illegal Gamling Business Forfeiture. Title 18, United States Code, Section 1955; Title 18, United States Code, Section 1511.

183. Racketeer, Influence and Corrupt Organizations. Title 18, United States Code, Sections 1961–1968.

184. Police Killings. This classification concerns investigations conducted by the FBI upon written request from local Chief of Police or duty constituted head of the local agency to actively participate in the investigation of the killing of a police officer. These investigations are based on a Presidential Directive dated June 3, 1971.

185. Protection of Foreign Officials and Officials Guests of the United States. Title 18, United States Code, Sections 112, 970, 1116, 1117 and 1201.

186. Real Eastate Settlement Procedures Act of 1974. Title 12, United States Code, Section 2602; Title 12, United States Code, Section 2606, and Title 12, United States Code, Section 2607.

187. Privacy Act of 1974, Criminal. Title 5, United States Code, Section 552a.

188. Crime Resistance. This classification covers FBI efforts to develop new or improved approaches, techniques, systems, equipment and devices to improve and strengthen law enforcement as mandated by the Omnibus Crime Control and Safe Streets Action of 1968.

189. Equal Credit Opportunity Act. Title 15, United States Code, Section 1691.

190. Freedom of Information/Privacy Acts. This classification covers the creation of a correspondence file to preserve and maintain accurate records concerning the handling of requests for records submitted pursuant to the Freedom of Information—Privacy Acts.

191. False Identity Matters. (obsolete) This classification covers the FBI's study and examination of criminal elements' efforts to create false identities.

192. Hobbs Act—Financial Institutions; Commercial Institutions; Armored Carrier. Title 18, United States Code, Section 1951.

193. Hobbs Act—Commercial Institutions (obsolete). Title 18, United States Code, Section 1951; Title 47, United States Code, Section 506.

194. Hobbs Act—Corruption of Public Officials. Title 18, United States Code, Section 1951.

195. Hobbs Act—Labor Related. Title 18, United States Code, Section 1951.

196. Fraud by Wire. Title 18, United States Code, Section 1343.

197. Civil Actions or Claims Against the Government. This classification covers all civil suits involving FBI matters and most administrative claims filed under the Federal Tort Claims Act arising from FBI activities.

198. Crime on Indian Reservations. Title 18, United States Code, Sections 1151, 1152, and 1153.

199. Foreign Counterintelligence—Terrorism. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

200. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

201. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

202. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

203. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

204. Federal Revenue Sharing. This classification covers FBI investigations conducted where the Attorney General has been authorized to bring civil action whenever he has reason to believe that a pattern or practice of discrimination in disbursement of funds under the Federal Revenue Sharing status exists.

205. Foreign Corrupt Practices Act of 1977. Title 15, United States Code, Section 78.

206. Fraud Against the Government—Department of Defense, Department of Agriculture, Department of Commerce, Community Services Organization, Department of Transportation. (See classification 46 (supra) for a statutory authority for this and the four following classifications.)

207. Fraud Against the Government—Environmental Protection Agency, National Aeronautics and Space Administration, Department of Energy, Department of Transportation.

208. Fraud Against the Government—General Services Administration.

209. Fraud Against the Government—Department of Health, and Human Services (Formerly, Department of Health, Education, and Welfare).

210. Fraud Against the Government—Department of Labor.

211. Ethics in Government Act of 1978, Title VI (Title 28, Sections 591–596).

212. Foreign Counterintelligence—Intelligence Community Support. This is an administrative classification for the FBI's operational and technical support to other Intelligence Community agencies.

213. Fraud Against the Government—Department of Education.

214. Civil Rights of Institutionalized Persons Act (Title 42, United States Code. Section 1997).

215. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

216. thru 229. Foreign Counterintelligence Matters. (Same authority as 215)

230. thru 240. FBI Training Matters.

241. DEA Applicant Investigations.

242. Automation Matters.

243. Intelligence Identities Protection Act of 1982.

244. Hostage Rescue Team.

245. Drug Investigative task Force.

246 thru 248. Foreign Counterintelligence Matters. (Same authority as 215)

249. Environmental Crimes—Investigations involving toxic or hazardous waste violations.

250. Tampering With Consumer Products (Title 18, U.S. Code, Section 1395)

251. Controlled Substance—Robbery;—Burglary (Title 18, U.S. Code, Section 2118)

252. Violent Crime Apprehension Program (VICAP). Case folders containing records relevant to the VICAP Program, in conjunction with the National Center for the Analysis of Violent Crime Record System at the FBI Academy; Quantico, Virginia.

253. False Identification Crime Control Act of 1982 (Title 18, U.S. Code, Section 1028—Fraud and Related Activity in Connection With Identification Documents, and Section 1738—Mailing Private Identification Documents Without a Disclaimer)

254. Destruction of Energy Facilities (Title 18, U.S. Code, Section 1365) relates to the destruction of property of nonnuclear energy facilities.

255. Counterfeiting of State and Corporate Securities (Title 18, U.S. Code, Section 511) covers counterfeiting and forgery of all forms of what is loosely interpreted as securities.

256. Hostage Taking—Terrorism (Title 18, U.S. Code, Section 1203) prohibits taking of hostage(s) to compel third party to do or refrain from doing any act.

257. Trademark Counterfeiting Act (Title 18, United States Code, Section 2320) covers the international trafficking in goods which bear a counterfeited trademark.

258. Credit Card Fraud Act of 1984 (Title 18, United States Code, Section 1029) covers fraud and related activities in connection with access devices (credit and debit cards).

259. Security Clearance Investigations Program. (Same authority as 215)

260. Industrial Security Program. (Same authority as 215)

261. Security Officer Matters. (Same authority as 215)

262. Overseas Homicide (Attempted Homicide—International Terrorism. Title 18. United States Code. Section 2331.

263. Office of Professional Responsibility Matters.

264. Computer Fraud and Abuse Act of 1986. Electronic Communications Privacy Act of 1986. Title 18, United States Code, Section 1030; Title 18, United States Code. Section 2701.

265. Acts Terrorism in the United States—International Terrorist. (Followed by predicate offense from other classification.)

266. Acts of Terrorism in the United States—Domestic Terrorist. (Followed by predicate offense from other classification.)

267. Drug-Related Homicide. Title 21 U.S. Code, Section 848(e).

268. Engineering Technical Matters—FCI.

269. Engineering Technical Matters—Non-FCI.

270. Cooperative Witnesses.

271. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

272. Money Laundering. Title 18, U.S. Code, Sections 1956 and 1957.

273. Adoptive Forfeiture Matter—Drug. Forfeiture based on seizure of property by state, local or other Federal authority.

274. Adoptive Forfeiture Matter—Organized Crime. (Same explanation as 273.)

275. Adoptive Forfeiture Matter—White Collar Crime. (Same explanation as 273.)

276. Adoptive Forfeiture Matter—Violent Crime/Major Offenders Program. (Same explanation as 273.)

277. Adoptive Forfeiture Matter—Counterterrorism Program. (Same explanation as 273.)

Records Maintained in FBI Field Divisions—FBI field divisions maintain for limited periods of time investigative, administrative and correspondence records, including files, index cards and related material, some of which are duplicated copies of reports and similar documents forwarded to FBI Headquarters. Most investigative activities conducted by FBI field divisions are reported to FBI Headquarters at one or more stages of the investigation. There are, however, investigative activities wherein no reporting was made to FBI Headquarters, e.g., pending cases not as yet reported and cases which were closed in the field division for any of a number of reasons without reporting to FBI Headquarters.

Duplicate records and records which extract information reported in the main files are also kept in the various divisions of the FBI to assist them in their day-to-day operation. These records are lists of individuals which contain certain biographic data, including physical description and photograph. They may also contain information concerning activities of the individual as reported to FBIHQ by the various field offices. The establishment of these lists is necessitated by the needs of the Division to have immediate access to pertinent information duplicative of data found in the central records without the delay caused by a time-consuming manual search of central indices. The manner of segregating these individuals varies depending on the particular needs of the FBI Division. The information pertaining to individuals who are a part of the list is derivative of information contained in the Central Records System. These duplicative records fall into the following categories:

(1) Listings of individuals used to assist in the location and apprehension of individuals for whom legal process is outstanding (fugitives):

(2) Listings of individuals used in the identification of particular offenders in cases where the FBI has jurisdiction. These listings include various photograph albums and background data concerning persons who have been formerly charged with a particular crime and who may be suspect in similar criminal activities; and photographs of individuals who are unknown but suspected of involvement in a particular criminal activity, for example, bank surveillance photographs:

(3) Listings of individuals as part of an overall criminal intelligence effort by the FBI. This would include photograph albums, lists of individuals known to be involved in criminal activity, including theft from interstate shipment, interstate transportation of stolen property, and individuals in the upper echelon of organized crime:

(4) Listings of individuals in connection with the FBI's mandate to carry out Presidential directives on January 8, 1943, July 24, 1950, December 15, 1953, and February 16, 1976, which designated the FBI to carry out investigative work in matters relating to espionage, sabotage, and foreign counterintelligence. These listings may include photograph albums and other listings containing biographic data regarding individuals. This would include lists of identified and suspected foreign intelligence agents and informants:

(5) Special indices duplicative of the central indices used to access the Central Records System have been created from time to time in conjunction with the administration and investigation of major cases. This duplication and segregation facilitates access to documents prepared in connection with major cases.

In recent years, as the emphasis on the investigation of white collar crime, organized crime, and hostile foreign intelligence operations has increased, the FBI has been confronted with increasingly complicated cases, which require more intricate information processing capabilities. Since these complicated investigations frequently involve massive volumes of evidence and other investigative information, the FBI uses its computers, when necessary to collate, analyze, and retrieve investigative information in the most accurate and expeditious manner possible. *It should be noted that this computerized investigative information, which is extracted from the main files or other commercial or governmental sources, is only maintained as necessary to support the FBI's investigative activities.* Information from these internal computerized subsystems of the "Central Records

System" is not accessed by any other agency. All disclosures of computerized information are made in printed form in accordance with the routine uses which are set forth below.

Records also are maintained on a temporary basis relevant to the FBI's domestic police cooperating program, where assistance in obtaining information is provided to state and local police agencies.

Also, personnel type information, dealing with such matters as attendance and production and accuracy requirements is maintained by some divisions.

(The following chart identifies various listings or indexes maintained by the FBI which have been or are being used by various divisions of the FBI in their day-to-day operations. The chart identifies the list by name, description and use, and where maintained; i.e. FBI Headquarters and/or Field Office. The number in parentheses in the field office column indicates the number of field offices which maintain these indices. The chart indicates, under "status of index," those indexes which are in current use (designated by the word "active") and those which are no longer being used, although maintained (designated by the word "inactive"). There are 27 separate indices which are classified in accordance with existing regulations and are not included in this chart. The following indices are no longer being used by the FBI and are being maintained at FBIHQ pending receipt of authority to destroy: Black Panther Party Photo Index; Black United Front Index; Security Index; and Wounded Knee Album.)

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Administrative Index (ADEX)	Consists of cards with descriptive data on individuals who were subject to investigation in a national emergency because they were believed to constitute a potential or active threat to the internal security of the United States. When ADEX was started in 1971, it was made up of people who were formerly on the Security Index, Reserve Index, and Agitator Index. This index is maintained in two separate locations in FBI Headquarters. ADEX was discontinued in January 1978.	Inactive	Yes	Yes (29).
Anonymous Letter File	Consists of photographs of anonymous communications and extortionate credit transactions, kidnapping, extortion and threatening letters.	Active	Yes	No.
Associates of DEA Class 1 Narcotics Violators Listing.	Consists of a computer listing of individuals whom DEA has identified as associates of Class 1 Narcotics Violators.	Active	Yes	Yes (56).
Background Investigation Index—Department of Justice.	Consists of cards on persons who have been the subject of a full field investigation in connection with their consideration for employment in sensitive positions with Department of Justice, such as U.S. Attorney, Federal judges, or a high level Department position.	Active	Yes	No.
Background Investigation Index—White House, Other Executive Agencies, and Congress.	Consists of cards on persons who have been the subject of a full field investigation in connection with their consideration for employment in sensitive positions with the White House, Executive agencies (other than the Department of Justice) and the Congress.	Active	Yes	No.
Bank Fraud and Embezzlement Index.	Consists of individuals who have been the subject of "Bank Fraud and Embezzlement" investigation. This file is used as an investigative aid.	Active	No	Yes (1).
Bank Robbery Album	Consists of photos of bank robbers, burglars, and larceny subjects. In some field offices at will also contain pictures obtained from local police departments of known armed robbers and thus potential bank robbers. The index is used to develop investigative leads in bank robbery cases and may also be used to show to witnesses of bank robberies. It is usually filed by race, height, and age. This index is also maintained in one resident agency (a suboffice of a field office).	Active	No	Yes (47).
Bank Robbery Nickname index.	Consists of nicknames used by known bank robbers. The index card on each would contain the real name and method of operation and are filed in alphabetical order.	Active	No	Yes (1).
Bank Robbery Note File	Consists of photographs of notes used in bank robberies in which the suspect has been identified. This index is used to help solve robberies in which the subject has not been identified but a note was left. The note is compared with the index to try to match the sentence structure and handwriting for the purpose of identifying possible suspects.	Active	Yes	No.

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Bank Robbery Suspect Index	Consists of a control file or index cards with photos, if available, of bank robbers or burglars. In some field offices these people may be part of the bank robbery album. This index is generally maintained and used in the same manner as the bank robbery album.	Active	No	Yes (33).
Car Ring Case Photo Album	Consists of photos of subjects and suspects involved in a large car theft ring investigation. It is used as an investigative aid.	Active	No	Yes (3).
Car Ring Case Photo Album and Index.	Consists of photos of subjects and suspects involved in a large car theft ring investigation. The card index maintained in addition to the photo album contains the names and addresses appearing on fraudulent title histories for stolen vehicles. Most of these names appearing on these titles are fictitious. But the photo album and card indexes are used as an investigative aid.	Active	No	Yes (1).
Car Ring Case Toll Call Index	Consists of cards with information on persons who subscribe to telephone numbers to which toll calls have been placed by the major subjects of a large car theft ring investigation. It is maintained numerically by telephone number. It is used to facilitate the development of probably cause for a court-approved wiretap.	Active	No	Yes (2).
Car Ring Theft Working Index	Contains cards on individuals involved in car ring theft cases on which the FBI Laboratory is doing examination work.	Active	Yes	No.
Cartage Album	Consists of photos with descriptive data of individuals who have been convicted of theft from interstate shipment or interstate transportation of stolen property where there is a reason to believe they may repeat the offense. It is used in investigating the above violations.	Active	No	Yes (3).
Channelizing Index	Consists of cards with the names and case file numbers of people who are frequently mentioned in information reports. The index is used to facilitate the distributing or channeling of informant reports to appropriate files.	Active	No	Yes (9).
Check Circular File	Consists of fliers numerically in a control file on fugitives who are notorious fradulent check passers and who are engaged in a continuing operation of passing checks. The fliers which include the subject's name, photo, a summary of the subject's method of operation and other identifying data is used to alert other FBI field offices and business establishments which may be the victims of bad checks.	Active	Yes	Yes (43).
Computerized Telephone Number File (CTNF) Intelligence.	Consists of a computer listing of telephone numbers (and subscribers' names and addresses) utilized by subjects and/or certain individuals which come to the FBI's attention during major investigations. During subsequent investigations, telephone numbers, obtained through subpoena, are matched with the telephone numbers on file to determine connections or associations.	Active	Yes	No.
Con Man Index	Consists of computerized names of individuals, along with company affiliation, who travel nationally and internationally while participating in large-dollar-value financial swindles.	Active	Yes	No.
Confidence Game (Flim Flam) Album.	Consists of photos with descriptive information on individuals who have been arrested for confidence games and related activities. It is used as an investigative aid.	Active	No	Yes (4).
Copyright Matters Index	Consists of cards of individuals who are film collectors and film titles. It is used as a reference in the investigation of copyright matters.	Active	No	Yes (1).
Criminal Intelligence Index	Consists of cards with name and file number of individuals who have become the subject of an antiracketeering investigation. The index is used as a quick way to ascertain file numbers and the correct spelling of names. This index is also maintained in one resident agency.	Active	No	Yes (2).
Criminal Informant Index	Consists of cards containing identity and brief background information on all active and inactive informants furnishing information in the criminal area.	Active	Yes	No.

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
DEA Class 1 Narcotics Violators Listing.	Consists of a computer listing of narcotic violators—persons known to manufacture, supply, or distribute large quantities of illicit drugs—with background data. It is used by the FBI in their role of assisting DEA in disseminating intelligence data concerning illicit drug trafficking. This index is also maintained in two resident agencies.	Active	Yes	Yes (59).
Deserter Index	Contains cards with the names of individuals who are known military deserters. It is used as an investigative aid.	Active	No	Yes (4).
False Identities Index	Contains cards with the names of deceased individuals whose birth certificates have been obtained by other persons for possible false identification uses and in connection with which the FBI laboratory has been requested to perform examinations.	Inactive	Yes	No.
False Identities List	Consist of a listing of names of deceased individuals whose birth certificates have been obtained after the person's death, and thus whose names are possibly being used for false identification purposes. The listing is maintained as part of the FBI's program to find persons using false identities for illegal purposes.	Inactive	No	Yes (31).
False Identity Photo Album	Consists of names and photos of people who have been positively identified as using a false identification. This is used as an investigative aid in the FBI's investigation of false identities.	Inactive	No	Yes (2).
FBI/Inspector General (IG) Case Pointer System (FICPS).	Consists of computerized listing of individual names of organizations which are the subject of active and inactive fraud investigations, along with the name of the agency conducting the investigation. Data is available to IG offices throughout the federal government to prevent duplication of investigative activity.	Active	Yes	No.
FBI Wanted Persons Index	Consists of cards on persons being sought on the basis of Federal warrants covering violations which fall under the jurisdiction of the FBI. It is used as a ready reference to identify those fugitives.	Active	Yes	No.
Foreign Counterintelligence (FCI).	Consists of cards with identity background data on all active and inactive operational and informational assets in the foreign counterintelligence field. It is used as a reference aid on the FCI Asset program.	Active	Yes	No.
Fraud Against the Government Index.	Consists of individuals who have been the subject of a "fraud against the Government" investigation. It is used as investigative aid.	Active	No	Yes (1).
Fugitive Bank Robbers File	Consists of fliers on bank robbery fugitives filed sequentially in a control file. FBI Headquarters distributes to the field offices fliers on bank robbers in a fugitive status for 15 or more days to facilitate their location.	Active	Yes	Yes (43).
General Security Index	Contains cards on all persons that have been the subject of a security classification investigation by the FBI field office. These cards are used for general reference purposes.	Active	No	Yes (1).
Hoodlum License Plate Index	Consists of cards with the license plates numbers and descriptive data on known hoodlums and cars observed in the vicinity of hoodlum homes. It is used for quick identification of such person in the course of investigation. The one index which is not fully retrievable in maintained by a resident agency.	Active	No	Yes (3).
Identification Order Fugitive Flier File.	Consists of fliers numerically in a control file. When immediate leads have been exhausted in fugitive investigations and a crime of considerable public interest has been committed, the fliers are given wide circulation among law enforcement agencies throughout the United States and are posted in post offices. The fliers contain the fugitive's photograph, fingerprints, and description.	Active	Yes	Yes (49).

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Informant Index	Consists of cards with the name, symbol numbers, and brief background information on the following categories of active and inactive informants, top echelon criminal informants, security informants, criminal information, operational and informational assets, extremist informants (discontinued), plant informant—informants on and about certain military bases (discontinued), and potential criminal informants.	Active	No	Yes (54).
Informants in Other Field Offices, Index of.	Consist of cards with names and/or symbol numbers of informants in other FBI field offices that are in a position to furnish information that would also be included on the index card.	Active	No	Yes (15).
Interstate Transportation of Stolen Aircraft Photo Album.	Consists of photos and descriptive data on individuals who are suspects known to have been involved in interstate transportation of stolen aircraft. It is used as an investigative aid.	Active	No	Yes (1).
IRS Wanted List	Consists of one-page fliers from IRS on individuals with background information who are wanted by IRS for tax purposes. It is used in the identification of persons wanted by IRS.	Active	No	Yes (11).
Kidnapping Book	Consists of data, filed chronologically, on kidnappings that have occurred since the early fifties. The victims' names and the suspects, if known, would be listed with a brief description of the circumstances surrounding the kidnapping. The file is used as a reference aid in matching up prior methods of operation in unsolved kidnapping cases.	Active	Yes	No.
Known Check Passers Album	Consists of photos with descriptive data of persons known to pass stolen, forged, or counterfeit checks. It is used as an investigative aid.	Active	No	Yes (4).
Known Gambler Index	Consists of cards with names, descriptive data, and sometimes photos of individuals who are known bookmakers and gamblers. The index is used in organized crime and gambling investigations. Subsequent to GAO's review, and at the recommendation of the inspection team at one of the two field offices where the index was destroyed and thus is not included in the total.	Active	No	Yes (5).
La Cosa Nostra (LCN) Membership Index.	Contains cards on individuals having been identified as members of the LCN index. The cards contain personal data and pictures. The index is used solely by FBI agents for assistance in investigating organized crime matters.	Active	Yes	Yes (55).
Leased Line Letter Request Index.	Contains cards on individuals and organizations who are or have been the subject of a national security electronic surveillance where a leased line letter was necessary. It is used as an administrative and statistical aid.	Active	Yes	No.
Mail Cover Index	Consists of cards containing a record of all mail covers conducted on individuals and groups since about January 1973. It is used for reference in preparing mail cover requests.	Active	Yes	No.
Military Deserter Index	Consists of cards containing the names of all military deserters where the various military branches have requested FBI assistance in locating. It is used as an administrative aid.	Active	Yes	No.
National Bank Robbery Album	Consists of fliers on bank robbery suspects held sequentially in a control file. When an identifiable bank camera photograph is available and the case has been under investigation for 30 days without identifying the subject, FBIHQ sends a flier to the field offices to help identify the subject.	Active	Yes	Yes (42).
National Fraudulent Check File.	Contains photographs of the signature on stolen and counterfeit checks. It is filed alphabetically but there is no way of knowing the names are real or fictitious. The index is used to help solve stolen check cases by matching checks obtained in such cases against the index to identify a possible suspect.	Active	Yes	No.

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
National Security Electronic Surveillance Card File.	Contains cards recording electronic surveillances previously authorized by the Attorney General and previously and currently authorized by the FISC; current and previous assets in the foreign counterintelligence field; and a historical, inactive section which contains cards believed to record nonconsented physical entries in national security cases, previously toll billings, mail covers and leased lines. The inactive section also contains cards reflecting previous Attorney General approvals and denials for warrantless electronic surveillance in the national security cases.	Inactive	Yes	No.
Night Depository Trap Index	Contains cards with the names of persons who have been involved in the theft of deposits made in bank night depository boxes. Since these thefts have involved various methods, the FBI uses the index to solve such cases by matching up similar methods to identify possible suspects.	Active	Yes	No.
Organized Crime Photo Album	Consists of photos and background information on individuals involved in organized crime activities. The index is used as a ready reference in identifying organized crime figures within the field offices' jurisdiction.	Active	No	Yes (13).
Photospread Identification Elimination File.	Consists of photos of individuals who have been subjects and suspects in FBI investigations. It also includes photos received from other law enforcement agencies. These pictures can be used to show witnesses of certain crimes.	Active	No	Yes (14).
Prostitute Photo Album	Consists of photos with background data on prostitutes who have prior local or Federal arrests for prostitution. It is used to identify prostitutes in connection with investigations under the White Slave Traffic Act.	Active	No	Yes (4).
Royal Canadian Mounted Policy (RCMP) Wanted Circular File.	Consists of a control file of individuals with background information of persons wanted by the RCMP. It is used to notify the RCMP if an individual is located.	Active	No	Yes (17).
Security Informant Index	Consists of cards containing identity and brief background information on all active and inactive informants furnishing information in the criminal area.	Active	Yes	No.
Security Subjects Control Index.	Consists of cards containing the names and case file numbers of individuals who have been subject to security investigations check. It is used as a reference source.	Active	No	Yes (1).
Security Telephone Number Index.	Contains cards with telephone subscriber information subpoenaed from the telephone company in any security investigation. It is maintained numerically by the last three digits in the telephone number. It is used for general reference purposes in security investigations.	Active	No	Yes (1).
Selective Service Violators Index.	Contains cards on individuals being sought on the basis of Federal warrants for violation of the Selective Service Act.	Active	Yes	No.
Sources of Information Index	Consist of cards on individuals and organizations such as banks, motels, local government that are willing to furnish information to the FBI with sufficient frequency to justify listing for the benefit of all agents. It is maintained to facilitate the use of such sources.	Active	No	Yes (10).
Special Services Index	Contains cards of prominent individuals who are in a position to furnish assistance in connection with FBI investigative responsibility.	Active	No	Yes (28).
Stolen Checks and Fraud by Wire Index.	Consists of cards on individuals involved in check and fraud by wire violations. It is used as an investigative aid.	Active	No	Yes (1).
Stop Notices Index	Consists of cards on names of subjects or property where the field office has placed a stop at another law enforcement agency or private business such as pawn shops in the event information comes to the attention of that agency concerning the subject or property. This is filed numerically by investigative classification. It is used to insure that the agency where the stop is placed is notified when the subject is apprehended or the property is located or recovered.	Active	No	Yes (43).

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Surveillance Locator Index	Consists of cards with basic data on individuals and businesses which have come under physical surveillance in the city in which the field office is located. It is used for general reference purposes in antiracketeering investigations.	Active	No	Yes (2).
Telephone Number Index—Gamblers.	Contains information on persons identified usually as a result of a subpoena for the names of subscribers to particular telephone numbers or toll records for a particular phone number of area gamblers and bookmakers. The index cards are filed by the last three digits of the telephone number. The index in used gambling investigations.	Active	No	Yes (2).
Telephone Subscriber and Toll Records Check Index.	Contains cards with information on persons identified as the result of a formal request or subpoena to the phone company for the identity of subscribers to particular telephone numbers. The index cards are filed by telephone number and would also include identity of the subscriber, billing party's identity, subscriber's address, date of request from the telephone company, and file number.	Active	No	Yes (1).
Thieves, Couriers and Fences Photo Index.	Consists of photos and background information on individuals who are or are suspected of being thieves, couriers, or fences based on their past activity in the area of interstate transportation of stolen property. It is used as an investigative aid.	Active	No	Yes (4).
Toll Record Request Index	Contains cards on individuals and organizations on whom toll records have been obtained in national security related cases and with respect to which FBIHQ had to prepare a request letter. It is used primarily to facilitate the handling of repeat requests on individuals listed.	Active	Yes	No.
Top Burglar Album	Consists of photos and background data of known and suspect top burglars involved in the area of interstate transportation of stolen property. It is used as an investigative aid.	Active	No	Yes (4).
Top Echelon Criminal Informer Program (TECIP) Index.	Consists of cards containing identity and brief background information on individuals who are either furnishing high level information in the organized crime area or are under development to furnish such information. The index is used primarily to evaluate, corroborate, and coordinate informant information and to develop prosecutive data against racket figures under Federal, State, and local statutes.	Active	Yes	No.
Top Ten Program File	Consists of fliers, filed numerically in a control file, on fugitives considered by the FBI to be 1 of the 10 most wanted. Including a fugitive of the top 10 usually assures a greater national news coverage as well as nation-wide circulation of the flier.	Active	Yes	Yes (49).
Top Thief Program Index	Consists of cards of individuals who are professional burglars, robbers, or fences dealing in items likely to be passed in interstate commerce or who travel interstate to commit the crime. Usually photographs and background information would also be obtained on the index card. The index is used as an investigative aid.	Active	No	Yes (97).
Truck Hijack Photo Album	Contains photos and descriptive data of individuals who are suspected truck hijackers. It is used as an investigative aid and for displaying photos to witnesses and/or victims to identify unknown subjects in hijacking cases.	Active	No	Yes (4).
Truck Thief Suspect Photo Album.	Consists of photos and background data on individuals previously arrested or are currently suspects regarding vehicle theft. The index is used as an investigative aid.	Active	No	Yes (3).
Traveling Criminal Photo Album.	Consists of photos with identifying data of individuals convicted of various criminal offenses and may be suspects in other offenses. It is used as an investigative aid.	Active	No	Yes (1).
Veterans Administrative (VA)/ Federal Housing Administration Matters (FHA) Index.	Consists of cards of individuals who have been subject of an investigation relative to VA and FHA matters. It is used as an investigative aid.	Active	No	Yes (1).
Wanted Fliers File	Consists of fliers, filed numerically in a control file, on badly wanted fugitives whose apprehension may be facilitated by a flier. The flier contains the names, photographs, aliases, previous convictions, and a caution notice.	Active	Yes	Yes (46).

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Wheeldex	Contains the nicknames and the case file numbers of organized crime members. It is used in organized crime investigations.	Active	No	Yes (1).
White House Special Index	Contains cards on all potential White House appointees, staff members, guests, and visitors that have been referred to the FBI by the White House security office for a records check to identify any adverse or derogatory information. This index is used to expedite such check in view of the tight timeframe usually required.	Active	Yes	No.
Witness Protection Program Index.	Contains cards on individuals who have been furnished a new identity by the U.S. Justice Department because of their testimony in organized crime trials. It is used primarily to notify the U.S. Marshals Service when information related to the safety of a protected witness comes to the FBI's attention.	Active	Yes	No.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Records Act of 1950, Title 44, United States Code, chapter 31, section 3101; and title 36, Code of Federal Regulations, chapter XII, require Federal agencies to insure that adequate and proper records are made and preserved to document the organization, functions, policies, decisions, procedures and transactions and to protect the legal and financial rights of the Federal Government, title 28, United States Code, section 534, delegates authority to the Attorney General to acquire, collect, classify, and preserve identification, criminal identification, crime and other records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records, both investigative and administrative, are maintained in this system in order to permit the FBI to function efficiently as an authority, responsive component of the Department of Justice. Therefore, information in this system is disclosed to officials and employees of the Department of Justice, and/or all components thereof, who have need of the information in the performance of their official duties.

Personal information from this system may be disclosed as a routine use to any Federal agency where the purpose in making the disclosure is compatible with the law enforcement purpose for which it was collected, e.g., to assist the recipient agency in conducting a lawful criminal or intelligence investigation, to assist the recipient agency in making a determination concerning an individual's suitability for employment and/or trustworthiness for employment and/or trustworthiness for access clearance purposes, or to assist the recipient agency in the performance of any authorized function where access to records in this system is declared by the recipient agency to be relevant to that function.

In addition, personal information may be disclosed from this system to members of the Judicial Branch of the Federal Government in response to a specific request, or at the initiation of the FBI, where disclosure appears relevant to the authorized function of the recipient judicial office or court system. An example would be where an individual is being considered for employment by a Federal judge.

Information in this system may be disclosed as a routine use to any state or local government agency directly engaged in the criminal justice process, e.g., police, prosecution, penal, probation and parole, and the judiciary, where access is directly related to a law enforcement function of the recipient agency e.g. in connection with a lawful criminal or intelligence investigation, or making a determination concerning an individual's suitability for employment as a state or local law enforcement employee or concerning a victim's compensation under a state statute. Disclosure to a state or local government agency, (a) not directly engaged in the criminal justice process or (b) for a licensing or regulatory function, is considered on an individual basis only under exceptional circumstances, as determined by the FBI.

Information in this system pertaining to the use, abuse or traffic of controlled substances may be disclosed as a routine use to federal, state or local law enforcement agencies and to licensing or regulatory agencies empowered to engage in the institution and prosecution of cases before courts and licensing boards in matters relating to controlled substances, including courts and licensing boards responsible for the licensing or certification of individuals in the fields of pharmacy and medicine.

Information in this system may be disclosed as a routine use in a proceeding before a court or adjudicative body, e.g., the Equal Employment Opportunity Commission and the Merit Systems Protection Board, before which the FBI is authorized to appear, when (a) the FBI or any employee thereof in his or her official capacity, or (b) any employee in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (c) the United States, where the FBI determines it is likely to be affected by the litigation, is a party to litigation or has an interest in litigation and such records are determined by the FBI to be relevant to the litigation.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector if deemed necessary to elicit information or cooperation from the recipient for use by the FBI in the performance of an authorized activity. An example would be where the activities of an individual are disclosed to a member of the public in order to elicit his/her assistance in our apprehension or detection efforts.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy, to the extent the information is relevant to the protection of life or property.

Information in this system may be disclosed to legitimate agency of a foreign government where the FBI determines that the information is relevant to that agency's responsibilities, and dissemination serves the best interests of the U.S. Government, and where the purpose in making the disclosure is compatible with the purpose for which the information was collected.

Relevant information may be disclosed from this system to the news media and general public where there exists a legitimate public interest, e.g., to assist in the location of Federal fugitives, to provide notification of arrests, and where necessary for protection from imminent threat of life or property. This would include releases of information in accordance with 28 CFR 50.2.

A record relating to an actual or potential civil or criminal violation of the copyright statute, Title 17, United States Code, or the trademark statutes, Titles 15 and 17, U.S. Code, may be disseminated to a person injured by such violation to assist him/her in the institution or maintenance of a suit brought under such titles.

The FBI has received inquiries from private citizens and Congressional offices on behalf of constituents seeking assistance in locating individuals such as missing children and heirs to estates. Where the need is acute, and where it appears FBI files may be the only lead in locating the individual, consideration will be given to furnishing relevant information to the requester. Information will be provided only in those instances where there are reasonable grounds to conclude from available information the individual being sought would want the information to be furnished, e.g., an heir to a large estate. Information with regard to missing children will not be provided where they have reached their majority.

Information contained in this system, may be made available to a Member of Congress or staff acting upon the member's behalf when the member of staff requests the information in behalf of and at the request of the individual who is the subject of the record.

A record from this system of records may be disclosed as a routine use to *the National Archives and Records Administration and General Services Administration* in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906, to the extent that legislation governing the records permits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The active main files are maintained in hard copy form and some inactive records are maintained on microfilm. Investigative information which is maintained in computerized form may be stored in memory, on disk storage, on computer tape, or on a computer printed listing.

RETRIEVABILITY:

The FBI General Index must be searched to determine what information, if any, the FBI may have in its files. Index records, or pointers to specific FBI files, are created on all manner of subject matters, but the predominant type record is the name index record. It should be noted the FBI does not index all individuals who furnish information or all names developed during the course of an investigation. Only that information considered pertinent, relevant, or essential for future retrieval, is indexed. In certain major cases, individuals interviewed may be indexed to facilitate the administration of the investigation. The FBI has automated that portion of its index containing the most recent information—15 years for criminal related matters and 30 years for intelligence and other type matters. Automation will not change the "Central Records System"; it will only facilitate more economic and expeditious access to the main files. Searches against the automated records are accomplished on a "batch off-line" basis for certain submitting agencies where the name search requests conform to FBI specified formats and also in an "on-line" mode with the use of video display terminals for other requests. The FBI will not permit any organization, public or private, outside the FBI to have direct access to the FBI indices system. All searches against the indices data base will be performed on site within FBI space by FBI personnel with the assistance of the automated procedures, where feasible. Automation of the various FBI field office indices *was completed in 1989.* This automation initiative has been on a "day-one" basis. This indices system points to specific files within a given field office. Additionally, certain complicated investigative matters may be supported by specialized computer systems or by individual microcomputers. Indices created in these environments are maintained as part of the particular computer system and accessible only through the system or through printed listings of the indices. *Full text retrieval is used in a limited number of cases as an investigative technique. It is not part of the normal search process and is not used as a substitute for the General Index or computer indices mentioned above.*

The FBI will transfer historical records to the National Archives consistent with 44 U.S.C. 2103. No record of individuals or subject matter will be retained for transferred files; however, a record of the file numbers will be retained to provide full accountability of FBI files and thus preserve the integrity of the filing system.

SAFEGUARDS:

Records are maintained in a restricted area and are accessed only by agency personnel. All FBI employees receives a complete background investigation prior to being hired. All employees are cautioned about divulging confidential information or any information contained in FBI files. Failure to abide by this provision violates Department of Justice regulations and may violate certain statutes providing maximum severe penalties of a ten thousand dollar fine or 10 years imprisonment or both. Employees who resign or retire are also cautioned about divulging information acquired in the jobs. Registered mail is used to transmit routine hard copy records between field offices. Highly classified records are hand carried by Special Agents or personnel of the Armed Forces Courier Service. Highly classified or sensitive privacy information, which is electronically transmitted between field offices, is transmitted in encrypted form to prevent interception and interpretation. Information transmitted in teletype form is placed in the main files of both the receiving and transmitting field offices. Field offices involved in certain complicated investigative matters may be provided with on-line access to the duplicative computerized information which is maintained for them on disk storage in the FBI Computer Center in Washington, D.C., and this computerized data is also transmitted in encrypted form.

RETENTION AND DISPOSAL:

As the result of an extensive review of FBI records conducted by NARA, records evaluated as historical and permanent will be transferred to the National Archives after established retention periods and administrative needs of the FBI have elapsed. As deemed necessary, certain records may be subject to restricted examination and usage, as provided by 44 U.S.C. section 2104.

FBI record disposition programs relevant to this System are conducted in accordance with the FBI Records Retention Plan and Disposition Schedule which was approved by the Archivist of the United States and the U.S. District Court, District of Columbia.

Investigative, applicant and administrative records which meet the destruction criteria will be destroyed after 20 or 30 years at FBI Headquarters and after 1, 5, 10 or 20 years in FBI Field Offices. Historical records will be transferred to the National Archives after 30 or 50 years, contingent upon investigative and administrative needs. The administrative indices and listings described within this System were appraised separately and disposition authority established. (Job No. NC1–65–82–4 and amendments)

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation; Washington, DC 20535.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURES:

A request for access to a record from the system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request". Include in the request your full name, complete address, date of birth, place of birth, notarized signature, and other identifying data you may wish to furnish to assist in making a proper search of our records. Also include the general subject matter of the document or its file number. The requester will also provide a return address for transmitting the information. Requests for access to information maintained at FBI Headquarters must be addressed to the Director, Federal Bureau of Investigation, Washington, DC 20535. Requests for information maintained at FBI field divisions or Legal Attaches must be made separately and addressed to the specific field division or Legal Attache listed in the appendix to this system notice.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the Director, Federal Bureau of Investigation, Washington, DC 20535, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

The FBI, by the very nature and requirement to investigate violations of law within its investigative jurisdiction and its responsibility for the internal security of the United States, collects information from a wide variety of sources. Basically, it is the result of investigative efforts and information furnished by other Government agencies, law enforcement agencies, and the general public, informants, witnesses, and public source material.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3), (d), (e)(1)(2) and (3), (e)(4)(G) and (H), (e)(8) (f), (g), of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e)

Appendix of Field Divisions and Legal Attaches for the Federal Bureau of Investigation Field Divisions; Justice/FBI–999

5th Floor, 445 Broadway, Albany, NY 12201.
POB 25186, Albuquerque, NM 87125.
POB 100560, Anchorage, AK 99510.
POB 1683, Atlanta, GA 30370.
7142 Ambassador Road, Baltimore, MD 21207.
2122 Building, Birmingham, AL 35203.
John F. Kennedy Federal Office Building, Boston, MA 02203.
111 West Huron Street, Buffalo, NY 14202.
6010 Kenley Lane, Charlotte, NC 28217.
219 S. Dearborn St., Chicago, IL 60604.
POB 1277, Cincinnati, OH 45201.
1240 E. 9th St., Cleveland, OH 44199.
POB 137, Columbia, SC 29202.
1801 W. Lamar, Dallas, TX 75202
POB 1229, Denver, CO 80201.
POB 2118, Detroit, MI 48231.
700 E. San Antonio Ave., El Paso, TX 79901.
POB 50164, Honolulu, HI 96850.
POB 61369, Houston, TX 77208.
POB 1186, Indianapolis, IN 46206.
100 W. Capitol St., Jackson, MS 39269.
POB 8928, Jacksonville, FL 32239.
POB 2449, Kansas City, MO 64142.
POB 10368, Knoxville, TN 37919.
POB 16032, Las Vegas, NV 89101.
POB 21470, Little Rock, AR 72221–1470.
11000 Wilshire Blvd., Los Angeles, CA 90024.
POB 2467, Louisville, KY 40201.
167 N. Main St., Memphis, TN 38103.
POB 592418, Miami, FL 33159.
POB 2058, Milwaukee, WI 53201.
392 Federal Building, Minneapolis, MN 55401.
POB 2128, Mobile, AL 36652.
POB 1158, Newark, NJ 07101.
POB 2058, New Haven, CT 06521.
POB 51930, New Orleans, LA 70151.
POB 1425, New York, NY 10008.
POB 3828, Norfolk, VA 23514.
POB 54511, Oklahoma City, OK 73154.
POB 548, Omaha, NE 68101.
600 Arch St., Philadelphia, PA 19106.
201 E. Indianola, Phoenix, AZ 85012.
POB 1315, Pittsburgh, PA 15230.
POB 709, Portland, OR 97207.
POB 12325, Richmond, VA 23241.
POB 13130, Sacramento, CA 95813.
POB 7251, St. Louis, MO 63177.
125 S. State St., Salt Lake City, UT 84138.
POB 1630, San Antonio, TX 78296.
880 Front St., San Diego, CA 92188.
POB 36015, San Francisco, CA 94102.
POB BT, San Juan, PR 00936.
915 2nd Ave., Seattle, WA 98174.
POB 3646, Springfield, IL 62708.
POB 172177, Tampa, FL 33602.
Washington Field Office, Washington, DC 20535.
Federal Bureau of Investigation Academy, Quantico, VA 22135.
Legal Attaches: (Send c/o the American Embassy for the Cities indicated).
Bern, Switzerland.
Bogota, Colombia (APO, Miami 34038).
Bonn, Germany (Box 310, APO, New York 09080).
Bridgetown, Barbados (Box B, FPO, Miami 34054).
Brussels, Belgium (APO, New York 09667).
Canberra, Australia (APO, San Francisco 96404–0001).
Hong Kong, B.C.C. (FPO, San Francisco 96659–0002).
London, England (Box 2, FPO, New York 09509).
Manila, Philippines (APO, San Francisco 96528).
Mexico City, Mexico (POB 3087, Laredo, TX 78044–3087).
Montevideo, Uruguay (APO, Miami 34035).
Ottawa, Canada.
Panama City, Panama (Box E, APO, Miami 34002).
Paris, France (APO, New York 09777).
Rome, Italy (APO, New York 09794).
Tokyo, Japan (APO, San Francisco 96503).

JUSTICE

SYSTEM NAME:

Bureau Mailing Lists.

SYSTEM LOCATION

Federal Bureau of Investigation, J. Edgar Hoover Bldg. 10th and Pennsylvania Ave., NW., Washington, DC 20535, *56* field divisions and *16* Legal Attaches (see Appendix to 002)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested receipt of Bureau material and who meet established criteria (basically law enforcement or closely related areas). With regard to lists maintained in field divisions or Legal attaches, individuals and organizations who may be in position to furnish assistance to the FBI's law enforcement efforts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address and business affiliation, if appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S. Code, Section 301 and Title 44, U.S. Code, Section 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For mailing of FBI material whenever necessary. For example, various fugitive publications are furnished to local law enforcement agencies.

In addition, information may be released to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would consitute an unwarranted invasion of personal privacy;

To a Member of Congress or staff acting upon the member's behalf when the member or staff requests the information on behalf of and at the request of the individual who is the subject of the record; *and,*

To the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized. In field divisions *some* mailing lists are maintained on addressograph.

RETRIEVABILITY:

ID number in computer, alphabetically for addressograph.

SAFEGUARDS:

Computer records are maintained in limited access space of the Technical Services Division.

RETENTION AND DISPOSAL:

Field offices revise the lists as necessary and/or on an annual basis. The records are destroyed when administrative needs are satisfied (Job No. NC1–65–82–4, Part E. 13 i.)

SYSTEM MANAGER(S) AND ADDRESS:

Director, FBI, Washington, D.C. 20535

NOTIFICATION PROCEDURE:

Director, FBI, Washington D.C. 20535.

RECORD ACCESS PROCEDURE:

Inquiry addressed to Director, FBI, Washington, D.C. 20535.

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

The mailing list information is based either on information supplied by the individual or public source data.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/FBI–004

SYSTEM NAME:

Routine Correspondence Handled By Preprinted Form.

SYSTEM LOCATION:

Federal Bureau of Investigation: J. Edgar Hoover Bldg., 10th and Pennsylvania Ave., NW., Washington, DC 20535.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Routine correspondence from citizens not requiring *an original* response.

CATEGORIES OF RECORDS IN THE SYSTEM:

Original correspondence and 3 x 5 index card.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S. Code, Section 301 and Title 44, U.S. Code, Section 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Internal reference use of record of such correspondence.

In addition, information may be released to the news media and the public pursuant 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; to a

Member of Congress or staff acting upon the *member's* behalf when the *member* or staff requests the information on behalf of and at the request of the individual who is the subject of the record; *and,* to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Filing of original correspondence plus 3 x 5 index card.

RETRIEVABILITY:

Correspondence alphabetically and chronologically; index card alphabetically.

SAFEGUARDS:

Maintained by FBI personnel; locked file cabinets during nonduty hours.

RETENTION AND DISPOSAL:

Original correspondence retained 90 days and destroyed: 3 x 5 index cards maintained one year and destroyed. (GRS #14, Item 3)

SYSTEM MANAGER(S) AND ADDRESS:

Director, FBI, Washington, DC 20535

NOTIFICATION PROCEDURE:

Director, FBI, Washington, DC 20535

RECORD ACCESS PROCEDURES:

Inquiry directed to Director, FBI, Washington, DC 20535

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

Incoming citizen correspondence.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/FBI–005

SYSTEM NAME:

Routine Correspondence Prepared Without File *Copy.*

SYSTEM LOCATION:

Federal Bureau of Investigation; J. Edgar Hoover Bldg., 10th and Pennsylvania Ave., NW., Washington, DC 20535.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Citizens who correspond with the FBI.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copy of routine response and *citizen's* original letter.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S. Code, Section 301 and Title 44, U.S. Code, Section 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Temporary record of routine inquiries without substantive, historical or record value for which no record is to be made in central FBI files.

In addition, information may be released to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific

information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

To a Member of Congress or staff acting upon the *member's* behalf when the *member* or staff requests the information on behalf of and at the request of the individual who is the subject of the record; *and,*

To the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file folders. Pertinent information from correspondence is temporarily stored on magnetic tape and disks.

RETRIEVABILITY:

Paper records are retrieved by name and date of correspondence. Automated records are retrieved by name, locality, and date.

SAFEGUARDS:

Access to all records is limited to FBI personnel. Paper records are maintained in locked file cabinets. Access to automated records is restricted through the use of password.

RETENTION AND DISPOSAL:

Paper records retained 90 days and destroyed through confidential trash disposal (GRS #14, Item 3). A one-year retention period has been established for the automated records. (Job No. N1–65–87–5)

SYSTEM MANAGER(S) AND ADDRESS:

Director, FBI, Washington, DC 20535.

NOTIFICATION PROCEDURE:

Director, FBI Washington, DC 20535.

RECORD ACCESS PROCEDURE:

Inquiry directed to Director, FBI, Washington, DC 20535.

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

Incoming citizen correspondence.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/FBI 006

SYSTEM NAME:

Electronic Surveillance (Elsur) Indices.

SYSTEM LOCATION:

Federal Bureau of Investigation, J. Edgar Hoover Bldg., 10th and Pennvylvania Ave., NW., Washington, DC 20535. Those field offices which have sought conducted electronic surveillances also maintain an index. See appendix to System 022.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been the targets of direct electronic surveillance coverage by FBI in a court order; those whose communications have been monitored/intercepted by an FBI electronic surveillance installation; those who won, lease, or license premises subjected to electronic surveillance coverage sought by the FBI in a court order.

CATEGORIES OF RECORDS IN THE SYSTEM:

The ELSUR Index is comprised of three types of 3 x 5 cards: 1. Principal cards identify, by true name or best known name, all interceptees (targets) identified in an application filed by the FBI in support of an affidavit seeking a court order to conduct an electronic surveillance; 2. Proprietary Interest cards identify entities and/or individuals who own, lease, license or otherwise hold a possessory interest in locations subjected to an electronic surveillance sought by the FBI in a court order; and, 3. Overhear cards identify, by true name or best known name, individuals and/or entities who have been reasonably identified by a first name or initial and a last name a being a party to a communication monitored/intercepted by the FBI.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The ELSUR Index was initiated in October, 1966, at the recommendation of the Department of Justice and relates to electronic surveillances conducted/sought by the FBI since 1/1/60. The authority for the maintenance of these records is Title 5, Section 301, USC, which grants the Attorney General the authority to issue rules and regulations prescribing how Department of Justice information can be employed. Title 18, U.S.C., Section 3504, also sets forth recordkeeping requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Elsur Indices are utilized: (1) To respond to judicial inquiries about possible electronic surveillance coverage of witnesses, defendants, or attorneys involved in Federal court proceedings, and (2) To enable the Government to certify whether a person regarding whom court-order authority is being sought for electronic coverage has ever been so covered in the past. The actual users of the indices are always employees of the FBI.

In addition, information may be released to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

Member of Congress or staff acting upon the *member's* behalf when the *member* or staff requests the information on behalf of and at the request of the individual who is the subject of the record; *and,* to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2908 to the extent that legislation governing the records permits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained manually on 3 x 5 cards.

RETRIEVABILITY:

Names/facilities are indexed and filed alphabetically. Telephone numbers and other such serial or identification numbers targeted are indexed and filed numerically. Locations targeted are indexed by address and filed by street name.

SAFEGUARDS:

The index is maintained in a restricted access room at all times. The entrance is equipped with a special locking device and alarm system for off-duty hours when the index is not in use.

RETENTION AND DISPOSAL:

Until advised to the contrary by the Department, the courts or Congress, these indices will be maintained indefinitely. The indices have been declared permanent by NARA. (Job No. NC1–65–82—4, Part E. 2. t.)

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, Washington, DC 20535.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURES:

Inquiry addressed to Director, FBI., Washington, D.C. 20535.

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

Category of Individual.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and (8), (f), (g) and (m) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/FBI–007

SYSTEM NAME:

FBI Automated Payroll System.

SYSTEM LOCATION:

Federal Bureau of Investigation: J. Edgar Hoover Bldg., 10th and Pennsylvania Avenue NW., Washington, DC 20535.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(A) Current employees of the Federal Bureau of Investigation (FBI), (B) Resigned employees of the FBI are retained in the automated file for the current year for the purpose of clearing all pay actions and providing for any retroactive actions that might be legislated.

CATEGORIES OF RECORDS IN THE SYSTEM:

System contains full record for each employee reflecting all elements relative to payroll status, plus accounting records and authorization records through which payrolls are issued and by which payrolls are issued and by which payrolls are audited. For example, this system contains the employees' Social Security Number, time and attendance data, and place assignment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

System is established and maintained in accordance with Federal pay requirements, and all legislative enactments, Office of Personnel Management regulations, General Accounting Office rulings and decisions. Treasury Department regulation, and Office of Management and Budget regulations relative thereto, Title 5, U.S. Code, Section 301 and Title 44, U.S. Code, Section 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Biweekly issuance of payroll and related matters. Quarterly issuance of State Tax Report and Federal Insurance Contributions Act Report. Resign and End-of-Year Federal Tax Records (W–2's), Bi-weekly, quarterly, fiscal and annual Budget and Accounting Reports. Appropriate information is made available to the Internal Revenue Service. *Social Security Administration (to compute future entitlement to Social Security payments and Medicare/Medicaid benefits), Thrift Board (to report Thrift Savings Plan contributions so the Thrift Board can compute future annuities), and state and city tax bureaus.*

In addition, information may be released to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

To a Member of Congress or staff acting upon the *member's* behalf when the *member* or staff requests the information on behalf of and at the request of the individual who is the subject of the record; *and,*

To the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored electronically on magnetic tapes and disks for use in a computer environment.

RETRIEVABILITY:

Information is retrieved by Social Security Number. (The authority to solicit an employee's Social Security Number is based on Title 26, Code of Federal Regulations, Section 31.6011(b)–2(b).)

SAFEGUARDS:

Information contained in the system is relative to the individual employee's payroll status and is considered confidential to that employee and to official business conducted for that employee's pay and accounting purposes. It is safeguarded and protected in accordance with the FBI's Computer Center's regulations that permit access and use by only authorized personnel.

RETENTION AND DISPOSAL:

Master payroll and accounting records are stored electronically and retained for a period of three years. Federal tax files are retained for four years. Auxiliary files pertinent to main payroll functions are retained for periods varying from three pay periods to three years, depending on support files needed for any retroactive or audit purposes. (GRS # 2; GSA Reg. 3; GSA Bulletin FPMR B–47, "Archives and Records"; and Job No. NC1–65–82–4, Part E. 13 c. (1))

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, Ninth and Pennsylvania Avenue, NW., Washington, DC 20535.

NOTIFICATION PROCEDURES:

Same as the above.

RECORD ACCESS PROCEDURES:

A request of access to information may be made by an employee through his supervisor or by a former employee by writing to the Federal Bureau of Investigation, 9th and Pennsylvania Avenue, NW., Washington, DC. 20535, Attention Payroll Office.

CONTESTING RECORD PROCEDURES:

Contest of any information should be set out in detail and a check of all supportive records will be made to determine the factual data in existence, which is predetermined by source documents and accounting procedures governing pay matters.

RECORD SOURCE CATEGORIES:

Source of information is derived from personnel actions, employee authorizations, and time records which are issued and recorded in accordance with regulations governing Federal pay.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Justice/FBI–008

Bureau Personnel Management System (BPMS).

SYSTEM LOCATION:

Federal Bureau of Investigation, J. Edgar Hoover Building, 10th and Pennsylvania Avenue, NW., Washington, DC 20535.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal Bureau of Investigation employees and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains personnel information which includes information

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set forth on (1) Standard Form 50—Notification of Personnel Action, (2) SF 176–T–Federal Employee Group Life Insurance Plan, (3) FBI form 12–60 in lieu of SF 1126—Notification of Pay Change, (4) SF 2801 and CSC 1084—Application for and additional information in support of retirement, respectively, (5) SF 2809—Federal Employment Health Benefit Plan and (6) various intra-agency forms and memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained pursuant to regulations set forth in the Federal Personnel Manual. Title 5, U.S. Code, Section 301 and Title 44, U.S. Code, Section 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The *BPMS* is used (1) to prepare the Notification of Personnel Action, copies of which are furnished to the Office of Personnel Management, (2) to prepare Standard Form 52B—Request for Personnel Action, (3) to generate lists of employees which are used internally by authorized personnel for recordkeeping, planning, and decision making purposes, and (4) as a source for the dissemination of information (A) to federal, state and local agencies and to private organizations pursuant to service record inquiries and (B) pursuant to credit inquiries. In response to proper credit inquiries from credit bureaus and financial institutions, the FBI will verify employment and furnish salary and length of service).

In addition, information may be released to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; Member of Congress or staff acting upon the *member's* behalf when the *member* or staff requests the information on behalf of and at the request of the individual who is the subject of the record; *and*, to the National Archives *and* Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in *BPMS* is stored by disc and magnetic tape.

RETRIEVABILITY:

Information is retrieved (1) on-line through intelligent workstations and terminals by keying the name or Social Security Number of the employee and (2) off-line through data base retrievals.

(It is noted the authority to solicit an employee's Social Security Number is based on Title 26, Code of Federal Regulations, Section 31.6011(b)–2(b).)

SAFEGUARDS:

Areas housing the system and access terminals are located in secure buildings available to authorized FBI personnel and escorted maintenance and repair personnel only. Access terminals are operational only during normal daytime working hours at which time they are constantly attended.

RETENTION AND DISPOSAL:

Electronically stored records for employees and former employees are maintained indefinitely in a vault under the control of a vault supervisor. Pursuant to regulations set forth in the Federal Personnel Manual a copy of the Notification of Personnel Action is made a part of the employees' personnel file.

The automated records are disposable when administrative needs have expired. (Job No. NC1–65–82–4, Part E. 13c. (1)).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, John Edgar Hoover Building, 10th Street and Pennsylvania Avenue, N.W., Washington, DC 20535.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Include in the request the name and return address of the requestor. Access requests will be directed to the Director, Federal Bureau of Investigation.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the Director. FBI stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are present and former FBI employees and employee personnel files.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT.

None.

JUSTICE/FBI–009

SYSTEM NAME:

Identification Division Records System.

SYSTEM LOCATION:

Federal Bureau of Investigation: J. Edgar Hoover Bldg., 10th and Pennsylvania Avenue NW., Washington, DC 20537–9700.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals fingerprinted as a result of arrest or incarceration.

B. Persons fingerprinted as a result of Federal employment applications, military service, alien registration and naturalization purposes and individuals desiring to have their fingerprints placed on record with the FBI for personal identification purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Criminal fingerprint cards and related criminal justice information submitted by authorized agencies having criminal justice responsibilities.

B. Civil fingerprint cards submitted by Federal agencies and civil fingerprint cards submitted by persons desiring to have their fingerprints placed on record for personal identification purposes.

C. Identification records sometimes referred to as "rap sheets" which are compilations of criminal history information pertaining to individuals who have criminal fingerprint cards maintained in the system.

D. An alphabetical name index pertaining to all individuals whose fingerprints are maintained in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established, maintained and used under authority granted by 28 U.S.C. 534, 15 U.S.C. 78q, 7 U.S.C. 12a, and Pub. L. 92–544 (86 Stat. 1115), and Pub. L. 99–399. The authority is also codified in 28 CFR 0.85 (b) and (j).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The FBI operates the Identification Division Records System to perform identification and criminal history record information functions, for Federal, State, local, and foreign criminal justice agencies, and for noncriminal justice agencies, and other entities where authorized by Federal statute, State statue pursuant to Pub. L. 92–544 (86 Stat. 1115). Presidential executive order, or regulation of the Attorney General of the United States. In addition, identification assistance is provided in disasters and for other humanitarian purposes.

Information may be released to the news media and the public *pursuant to* 28 CFR 20.33(a)(4), 20.33(c), and 50.2, *unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;* to a Member of Congress or staff acting upon the *member's* behalf when the *member* or staff requests the information on behalf of and at the request of the individual who is the subject of the record; *and*, to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the system is stored manually in file cabinets either in its natural state or on microfilm. In addition, some of the information is stored in computerized data storage devices.

RETRIEVABILITY:

(1) Information in the system is retrievable by technical fingerprint classification and positive identification is effected only by comparison of unique identifying characteristics appearing in fingerprint impressions submitted for search against the fingerprint cards maintained within the system.

(2) An auxiliary means of retrieval is through alphabetical name indexes which contain names of the individuals, their birth date, other physical descriptors, and the individuals technical fingerprint classification and FBI numbers, if such have been assigned.

SAFEGUARDS:

Information in the system is unclassified. Disclosure of information from the system is made only to authorized recipients upon authentication and verification of the right to access the system by such persons and agencies. The physical security and maintenance of information within the system is provided by FBI rules, regulations and procedures.

RETENTION AND DISPOSAL:

(1) The Archivist of the United States has approved the destruction of records maintained in the criminal file when the records indicated individuals have *reached* 80 years of age, and the destruction of records maintained in the civil file when the records indicate individuals have reached 75 years of age. (Job. No. NC1–65–76–1 and NN–171–16)

(2) Fingerprint cards and related arrest data in the system are destroyed seven years following notification of the death of an individual whose records is maintained in the system. (Job No. 351–S190)

(3) Fingerprint cards submitted by State and local criminal justice agencies are *removed from the system and* destroyed upon the request of the submitting agencies. The destruction of a fingerprint card under this procedure results in the deletion from the system of all arrest information related to that fingerprint card.

(4) Fingerprint cards and related arrest data are removed from the Identification Division Records System upon receipt of Federal court orders for expunctions when accompanied by necessary identifying information. Recognizing lack of jurisdiction of local and State courts over an entity of the Federal Government, the Identification Division Records System, as a matter of comity, destroys fingerprint cards and related arrest data *submitted by* local and State criminal justice agencies upon receipt of orders of expunction directed to such agencies by local and State courts when accompanied by necessary identifying informations.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, 10th and Pennsylvania Avenue NW., Washington, DC 20535.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORD ACCESS PROCEDURE:

The Attorney General has exempted the Identification Division Records System from compliance with subsection (d) of the Act. However, pursuant to 28 CFR 16.30–34, and Rules and Regulations promulgated by the Department of Justice on May 20, 1975 at 40 FR 22144 (Section 20.34) for Criminal Justice Information Systems, an individual is permitted access to his identification record maintained in the Identification Division Records System and procedures are furnished for correcting or challenging alleged deficiencies appearing therein.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

See Categories of Individuals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (4)(G) and (H), (5) and (8); (f); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

JUSTICE/FBI–011

SYSTEM NAME:

Employee Health Records.

SYSTEM LOCATION:

Federal Bureau of Investigation, Administrative Services Division, Health Service, J. Edgar Hoover Bldg., 10th and Pennsylvania Avenue, NW., Washington, DC 20535 and the following field offices: New York, Newark, Philadelphia, Chicago, Los Angeles, San Francisco, and FBI Academy, Quantico, Virginia. Addresses for field offices can be found in the appendix of Field Offices for the Federal Bureau of Investigation in System notice Justice/FBI 002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the FBI.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of visits to health facilities relating to sickness, injuries or accidents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The head of each agency is responsible, under 5 U.S.C. 7902, for keeping a record of injuries and accidents to its employees and for reducing accidents and health risks. These records are maintained under the general authority of 5 U.S.C. 301 so that the FBI can be kept aware of the health related matters of its employees and more expeditiously identify them.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are maintained by the FBI to identify matters relating to the health of its present and former employees. Information is available to employees of the FBI whose job function relates to identifying and resolving

health matters of former and current personnel of the FBI.

In addition, information may be released to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

A clinical record is created to maintain an employee health record and SF 510, "Nursing Notes". The information is maintained manually in a file folder.

RETRIEVABILITY:

By name.

SAFEGUARDS:

These records are maintained by FBI personnel during working hours and in locked file cabinets during non-working hours. Security guards further restrict access to the building to authorized personnel.

RETENTION AND DISPOSAL:

Remaining index cards will be destroyed 6 years after date of last entry (GRS #1, Item 19). The folder containing the health record and nursing notes will be maintained in the Health Unit for 5 years after the last entry. Thereafter, the contents of the folder will be transferred to the Employee Medial Folder, an appendage of the Official Personnel Folder.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, 9th and Pennsylvania Avenue, NW., Washington, DC 20535.

NOTIFICATION PROCEDURE:

Written inquiries, including name, address and social security number, to determine whether this system of records contains records about an individual may be addressed to Director, Federal Bureau of Investigation, 9th and Pennsylvania Avenue, NW., Washington, DC 20535, and/or individually to the field offices which maintain similar records.

RECORD ACCESS PROCEDURES:

CONTESTING RECORD PROCEDURES:

Written inquiries, including name, date of birth and social security number, requesting access or contesting the accuracy of records may be addressed to: Director, Federal Bureau of Investigation, 9th and Pennsylvania Avenue, NW., Washington, DC 20535, and the above-mentioned field offices at addresses referred to in system notice Justice/FBI 002.

RECORD SOURCE CATEGORIES:

Employees of the Federal Bureau of Investigation originate their own records. Nursing Notes appear on SF 510.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/FBI-015

SYSTEM NAME:

National Center for the Analysis of Violent Crime (NCAVC).

SYSTEM LOCATION:

Federal Bureau of Investigation, Training Division, FBI Academy, Behavioral Science Unit, Quantico, Virginia 22135.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals who relate in any manner to official FBI investigations into violent crimes including, but not limited to, subjects, suspects, victims, witnesses, close relatives, medical personnel, and associates who are relevant to an investigation.

B. Individuals who are the subject of unsolicited information or who offer unsolicited information, and law enforcement personnel who request assistance and/or make inquiries concerning records.

C. Individuals who are the subject of violent crime research studies including, but not limited to, criminal personality profiles, scholarly journals, and news media references.

CATEGORIES OF RECORDS IN THE SYSTEM:

The National Center for the Analysis of Violent Crime will maintain in both manual and automated formats case investigation reports on all forms of solved and unsolved violent crimes. These violent crimes include, but are not limited to, acts or attempted acts of murder, kidnapping, incendiary arson or bombing, rape, physical torture, sexual trauma, or evidence of violent forms of death. *Less than ten percent of the records which are analyzed may not be directly related to violent activities.*

A. Violent Criminal Apprehension Program (VICAP) case reports submitted to the FBI by a duly constituted Federal, State, county, or municipal law enforcement agency in any violent criminal matter. VICAP reports include but are not limited to, crime scene descriptions, victim and offender descriptive data, laboratory reports, criminal history records, court records, news media references, crime scene photographs, and statements.

B. Violent crime case reports submitted by FBI headquarters or field offices.

C. Violent crime research studies, scholarly journal articles, textbooks, training materials, and news media references of interest to VCAVC personnel.

D. An index of all detected trends, patterns, profiles and methods of operation of known and unknown violent criminals whose records are maintained in the system.

E. An index of the names, addresses, and contact telephone numbers of professional individuals and organizations who are in a position to furnish assistance to the FBI's NCAVC operation.

F. An index of public record sources for historical, statistical and demographic data collected by the U.S. Bureau of the Census.

G. An alphabetical name index pertaining to all individuals whose records are maintained in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. Section 3101; 41 CFR Subpart 101–11.2 and 28 U.S.C. Section 534.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

As currently envisioned, the NCAVC will be administered by the FBI through its Training Division's Behavioral Science Unit Located at the FBI Academy, Quantico, Virginia. Its primary mission is to consolidate research, training, and operational support activities for the express purposes of providing expertise to any legitimate law enforcement agency confronted with unusual, bizarre, and/or particularly vicious or repetitive violent crimes.

Records described above are maintained in this system to permit the FBI to function efficiently as an authorized, responsive component of the Department of Justice. Therefore, the information in this system is disclosed to officials and employees of the Department of Justice, and/or all components thereof, who need the information to perform their official duties.

Information in this system may be disclosed as a routine use to any Federal, State, local, or foreign government agency directly engaged in the criminal justice process where access is directly related to a law enforcement function of the recipient agency in connection with the tracking identification, and apprehension of persons believed to be engaged in repeated or exceptionally violent acts of criminal behavior.

Information in this system may be disclosed as a routine use in a proceeding before a court or adjudicative body, e.g., the Equal Employement Opportunity Commission and the Merit System Protection Board, before which the FBI is authorized to appear, when (a) the FBI or any employee thereof in his or her official capacity, or (b) any employee in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (c) the United States, where the FBI determines it is likely to be affected by the litigation, is a party to litigation or has an interest in litigation and such records are determined by the FBI to be relevant to the litigation.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector pursuant to an appropriate legal proceeding or, if deemed necessary, to elicit information or cooperation from the recipient for use by the FBI in the performance of an authorized activity. An example could be where the activities of an individual are disclosed to a member of the public to elicit his/her assistance in FBI apprehension or detection efforts.

Information in this system may be disclosed as a routine use to an organization or individual in the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy and to the extent the information is relevant to the protection of life or property.

Relevant information may be disclosed from this system to the news media and general public where there exists a legitimate public interest. Examples would include: to obtain public or media assistance in the tracking, identifying, and apprehending of persons believed to be engaged in repeated acts of violent criminal behavior; to notify the public and/or media of arrests; to protect the public from imminent threat to life or property where necessary; and to disseminate information to the public and/or media to obtain cooperation with violent crime research, evaluation, and statistical programs.

Information in this system may be disclosed as is necessary to appropriately respond to congressional inquiries on behalf of constituents.

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906 to the extent that legislation governing the record permits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the system is stored manually in locked file cabinets, either in its natural state or on microfilm, at the NCAVC in Quantico, Virginia. The active main files are maintained in hard copy form and some inactive records are maintained on microfilm.

In addition, some of the information is stored in computerized data storage devices at the NCAVC and FBI Computer Center in Washington, DC. Investigative information which is maintained in computerized form may be stored in memory on disk storage on computer tape, or on computer printed listings.

RETRIEVABILITY:

On-line computer access to NCAVC files is achieved by using the following search descriptors:

A. A data base which contains the names of individuals, their birth dates, physical descriptions, and other identification numbers such as FBI numbers, if such have been assigned.

B. Summary variables contained on VICAP reports submitted to the NCAVC as previously described.

C. Key words citations to violent crime research studies, scholarly journal articles, textbooks, training materials, and media references.

SAFEGUARDS:

Records are maintained in restricted areas and accessed only by FBI employees. All FBI employees receive a complete pre-employment background investigation. All employees are cautioned about divulging confidential information or any information contained in FBI files. Failure to abide by this provision violates Department of Justice regulations and may violate certain statutes providing maximum severe penalties of a ten thousand dollar fine or 10 years' imprisonment or both. Employees who resign or retire are also cautioned about divulging information acquired in the job.

Registered mail is used to transmit routine hard copy records between field offices. Highly classified records are hand carried by Special Agents or personnel of the Armed Forces Courier Service. Highly classified or sensitive privacy information, which is electronically transmitted between field offices and to and from FBI Headquarters, is transmitted in encrypted form to prevent interception and interpretation.

Information transmitted in teletype form between the NCAVC in Quantico, Virginia and the FBI Computer Center in Washington, DC, is encrypted prior to transmission at both places to ensure confidentiality and security of the data.

FBI field offices involved in certain complicated, investigative matters may be provided with on-line access to the computerized information which is maintained for them on disc storage in the FBI Computer Center in Washington, DC. This computerized data is also transmitted in encrypted form.

RETENTION AND DISPOSAL:

Records are proposed for destruction after 50 years or upon termination of the program, whichever is earlier. The disposition schedule is pending with NARA as Job No. N1–65–88–13.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, 10th and Pennsylvania Avenue, NW., Washington, DC 20535.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORDS ACCESS PROCEDURES:

Requests for access to records in this system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request." The request must provide the full name, complete address, date of birth, place of birth, and notarized signature of the individual who is the subject of the record requested. The request should also include the general subject matter of the document or its file number—along with any other known information which may assist in making a search of the records. The request must also provide a return addressing for transmitting the information. Access requests should be addressed to the Director, Federal Bureau of Investigation, Washington, D.C. 20535.

CONTESTING RECORD PROCEDURE:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the Director, Federal Bureau of Investigation, Washington, D.C. 20535. The request should state clearly and concisely (1) the reasons for contesting the information, and (2) the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

The FBI, by the very nature of its responsibilities to investigate violations of law within its investigative jurisdiction and ensure the internal security of the United States, collects information from a wide variety of sources. Basically, information is obtained, as a result of investigative efforts, from other Government agencies, law enforcement agencies, the general public, informants, witnesses, and public source material.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3), (d), (e)(1), (e)(4)(G) and (H), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e).

JUSTICE/INS–005

SYSTEM NAME:

Position Accounting/Control System (PACS).

SYSTEM LOCATION:

Central Office, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Immigration and Naturalization Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Position data: Position number; category code; organization code; position title; pay plan; series; grade; description; accounting classification code; active/inactive code; fund control number; amount authorized; hours authorized; new program element code; input control number; input transaction code; SF–52 date; announcement date and number; Entered on Duty (EOD) date; date last classified; date Position Management Committee (PMC) approved; date position last audited or reviewed; date of transaction; position appeal date, if any; union coverage code appealed to code; position freeze code; competitive level code; remarks code.

B. Payroll data; Social Security Account Number (SSAN); pay period number; payroll subobject code; last pay period amount and hours; cumulative amount and hours; accrual amount and hours; prior month YTD amount and hours; payroll current/prior/manual (C/P/M) code.

C. Personnel data; position number; organization code; position title; pay plan; series; grade; description; accounting classification code; incumbent's name, Social Security Account Number, next Quality Step Increase (QSI) date; nature of action; transaction date; FLSA exemption code; and effective date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 103 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103); Delegation of Authority to Departments (5 U.S.C. 301); Position Management Systems and Employment Ceilings. Bureau of the Budget Circular No. A–64 (June 28, 1965; January 2, 1970).

PURPOSE(S):

Information in this system is used for reports to INS managers of position authorization and cost data by geographic area, organizational unit, program activity, and budget allocation, including the composition of the INS work force (on-board strength and vacancies); status of each vacancy; turnover and occupancy rate statistics; aggregate position data by grade level, organization unit, program activity, type of position, etc.; actual costs for each position and projected position costs for the next fiscal year; and authorization of positions through funds control and periodic review mechanisms.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

B. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff request the information on behalf of and at the request of the individual who is the subject of the record.

C. To the National Archives and Records Administration and the General Services Administration records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are maintained on magnetic disk and tape at the Department of Justice Data Management Service. All other records are maintained as paper documents at the Central Office, 425 I Street NW., Washington, DC. and four regional personnel offices.

RETRIEVABILITY:

Records are retrieved by position number, organization code, accounting classification code, or program element code.

ACCESS CONTROLS:

Access to the system is restricted to employees of the immigration and Naturalization Service responsible for position accounting and management. Biweekly reports are distributed only to authorized INS personnel. Remote terminals for additional access are located in areas restricted to authorized INS personnel.

SAFEGUARDS:

The data in the automated system of records is safeguarded and protected in accordance with Department of Justice and INS rules and procedures. Paper forms are stored in metal file cabinets which are locked outside of normal duty hours.

RETENTION AND DISPOSAL:

Records are deleted from the automated data base within 60 days after termination of the position authorization. Employee personnel information in the automated data base is deleted when the position becomes vacant. The data base is updated biweekly to maintain accurate, current information on position status and characteristics.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Commissioner, Management.

NOTIFICATION PROCEDURE:

Inquires should be addressed to the Associate Commissioner, Management, Immigration and Naturalization Service, 425 I Street NW., Washington, DC. 20536.

RECORD ACCESS PROCEDURES:

In all cases, requests for access to a record shall be in writing, by mail or in person. If request for access is made by mail, the envelope and letter shall be clearly marked "Privacy Access Request." The requester shall include a description of the subject matter and, if known, the relating file number. To identify a record relating to an individual, requester should provide the individual's full name, date and place of birth, employee identification number and, if known, position number. The requester shall also provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Any individual desiring to contest or amend information maintained in the system should direct his request to the Associate Commissioner, Management. The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Position management data is obtained from official records in INS personnel offices. Payroll data is obtained from the computerized Department of Justice Payroll System (JUSTICE/OMF—003). Personnel management data is obtained from the Department of Justice Personnel System (JUNIPER).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/INS–006

SYSTEM NAME:

Alien Address Reports.

SYSTEM LOCATION:

Immigration and Naturalization Service (INS), Central Office. 425 I Street NW, Washington, DC 20536.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Aliens required to report addresses: nonimmigrants; aliens lawfully admitted for permanent residence; aliens granted political asylum; refugees and other conditional entrants.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index and copies of Form I–53. Alien Address Report Card *for the year 1980. The annual January requirement was terminated effective January 1, 1981.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 103.265 and 290 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103, 1305, and 1380).

PURPOSE(S):

The records in this system are used by officers and employees of INS and other components of the Department of Justice in the administration and enforcement of the immigration and nationality laws, including the processing of applications for benefits under those laws, detecting violations of the laws, and referrals for prosecution; and for compilation of reports of statistical and demographic information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To the appropriate agency, whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting a violation or potential violation of law or charged with enforcing or implementing the statute or rule, regulation, or order issued pursuant thereto, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

B. To other Federal agencies for the purpose of conducting national intelligence and security investigations.

C. To other Federal agencies in connection with refugee assistance programs.

D. To one or more private firms for the purpose of entering data, sorting, analyzing, coding, microfilming, or otherwise refining records in the system. Such firms will be required to maintain Privacy Act safeguards with respect to such records.

E. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of the individual who is the subject of the record.

F. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

G. to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

INS Central Office maintains a microfilm file of 1980 I–53 reports. All I–53's reports received by INS prior to 1980 are filed in the subject's alien file, a system or records entitled "The Immigration and Naturalization Service (INS) Alien File (A-File) and Central Index System (CIS), JUSTICE/INS–001."

RETRIEVABILITY:

Records in the system are indexed and retrievable by name of the individual.

SAFEGUARDS:

Records are safeguarded in accordance with Department of Justice rules and procedures. INS offices are located in building, under security guard, and access to premises is by official identification. Access to automated systems is controlled by restricted passwords for use of remote terminals in secured areas.

RETENTION AND DISPOSAL:

Original input forms are destroyed in accordance with procedures approved by NARA after microfilming and computer data entry is completed, verified, and accepted, or three years after the year of receipt, whichever is earlier. Copies of the index and reports for each year are kept for three years by INS.

SYSTEM MANAGER AND ADDRESS:

Associate Commissioner, Information Sytems, INS, Central Office, 425 I Street, NW., Washington, DC 20536.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager. To enable INS to identify whether the system contains a record relating to an individual, the requester must provide the individual's full name, date of birth; and place of birth; and, if known, the alien registration number.

RECORD ACCESS PROCEDURE:

A person desiring access to a record shall submit his request in writing to the agency official designated under "Notification procedure" above. He must also identify the record by furnishing the information listed under that procedure. If a request to access a record is made by mail, the envelope and letter shall be clearly-marked "Privacy Act Request," and a return address must be provided for transmitting any information to him.

CONTESTING RECORD PROCEDURE:

A person desiring to contest a record shall submit a request in writing to the agency official designated under "Notification procedure" above. The requestor must also identify the record by furnishing the information listed under that caption and clearly state which record(s) is being contested, the reason(s) for contesting, and the proposed amendment(s) to the record(s). If a request to contest a record is made by mail, the envelope and letter shall be clearly marked "Privacy Act Request," and a return address must be provided for transmitting any information.

RECORD SOURCE CATEGORIES:

Information in the system is obtained from requests and petitions filed by the

petitioners: public and private adoption agencies and social workers; and Federal, State, local and foreign government agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsection (d) of the Privacy Act. This exemption applies to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(1). Regulations have been promulgated in accordance with the requirements of 5 U.S.C. 553 b), (c) and (e) and have been published in the Federal Register.

JUSTICE/INS-008

SYSTEM NAME:

Bond Accounting and Control System (BACS).

SYSTEM LOCATION:

Immigration and Naturalization Service regional offices: (1) Burlington, Vermont; (2) Fort Snelling, Twin Cities, Minnesota; (3) Dallas, Texas; and (4) *Laguna Niguel*, California. Addresses of offices are listed in JUSTICE/INS–999 as published in the Federal Register, or in the telephone directories of the respective cities listed above under the heading "United States Government, Immigration and Naturalization Service."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have posted a bond with INS and the beneficiaries of posted bonds.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information which allows identification of active bonds posted with INS such as: bond number, obligor's name and address, alien beneficiary's name and alien file number, type of bond, location and date bond was posted, and other data related to bonds.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 103 (8 U.S.C. 1103) in implementing the authorities set forth in Section 213 (8 U.S.C. 1183) and Section 293 (8 U.S.C. 1353) of the Immigration and Nationality Act.

PURPOSE(S):

Information in this system will be used by employees of INS to control and account for collateral received to support an immigration bond. The system will allow prompt location of related files and other records and will enable INS to make timely responses to inquiries about these records.

The information in the system can be used to generate various documents (such as voucher disbursements) required for normal accounting procedures and to generate statistical and historical reports pertaining to immigration bonds posted, cancelled or breached.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To other Federal, state, or local law enforcement agencies for investigative purposes or collection of breached bonds.

B. To a member of Congress or staff upon the member's behalf when the member or staff acting requests the information on behalf of and at the request of the individual who is the subject of the record.

C. To the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored on magnetic disks.

RETRIEVABILITY:

Records may be retrieved by any of the following: Alien's name, alien's file number, obligor's name, bond-receipt control number, breach control number, or location and date bond was posted.

SAFEGUARDS:

Records are safeguarded in accordance with Department of Justice rules and procedures. INS offices are located in buildings under security guard, and access to premises is by official identification. All records are stored in spaces which are locked outside of normal office hours. Access to this automated system is obtained through remote terminals which are located in secured areas and require the use of restricted passwords.

RETENTION AND DISPOSAL:

Records are deleted from magnetic disks one year (or earlier) after the bond is disbursed and the file closed.

SYSTEM MANAGER(S) AND ADDRESS:

The Associate Regional Commissioner, management, at the regional office having jurisdiction over the area in which the beneficiary alien resides. See the caption "System locations."

NOTIFICATION PROCEDURES:

Inquiries should be addressed to the system manager.

RECORD ACCESS PROCEDURE:

In all cases, requests for access to a record shall be in writing. Written requests may be submitted by mail or in person at an INS office. If a request for access is made by mail, the envelope and letter shall be clearly marked "Privacy Access Request." To identify a record relating to an individual, a requester should provide: The individual's full name, alien file number, and location and date bond was posted. The requester shall provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Any individual desiring to contest or amend information maintained in the system should direct his request to the regional INS office in which he believes the record concerning him may exist. The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Information contained in this system or records is supplied on INS forms by individuals who have posted a bond with the INS and by the beneficiaries of posted bonds.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/INS-009

SYSTEM NAME:

Alien Status Verification Index.

SYSTEM LOCATION:

Central, Regional, District, and other files control offices of the Immigration and Nationalization Service (INS) in the United States as detailed in JUSTICE/INS–999. Remote access terminals will also be located in state employment security offices (SESA's) and other Federal, State, and local agencies nationwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by provisions of the immigration and nationality laws of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an index of aliens and other persons on whom INS has a record as an applicant, petitioner, beneficiary, or possible violator of the Immigration and Nationality Act. Records are limited to index and file locator data including name, alien registration number (or "A-file" number), date and place of birth, social security account number, date, coded status transaction data *and* immigration status classification.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 290, of the Immigration and Nationality Act, as amended (8 U.S.C. 1360).

PURPOSE:

This system of records is used to verify an alien's *immigration* status.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To a Federal, State, or local government agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

B. To other Federal, State, or local government agencies for the purpose of verifying information in conjunction with the conduct of a national intelligence and security investigation or for criminal or civil law enforcement purposes.

C. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

D. To a Member of Congress or staff acting upon the Member's behalf when the Member of staff request the information on behalf of and at the request of the individual who is the subject of the record.

E. To the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic disk and tape.

RETRIEVABILITY:

Records are indexed and retrievable by name and date and place of birth, or by name and social security account number, by name and A-file number.

SAFEGUARDS:

Records are safeguarded in accordance with Department of Justice rules and procedures. Access is controlled by restricted password for use of remote terminals in secured areas.

RETENTION AND DISPOSAL:

Centralized index records stored on magnetic disk and tape are updated periodically and maintained for the life of the related record.

SYSTEM MANAGER AND ADDRESS:

The Associate Commissioner, Information Systems, Immigration and Naturalization Service, Central Office, 425 I Street NW., Washington, D.C., is the sole manager of the system.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to the system manager listed above.

RECORD ACCESS PROCEDURES:

In all cases, requests for access to a record from this system shall be in writing. If a request for access is made by mail the envelope and letter shall be clearly marked "Privacy *Act* Request." The requester shall include the name, date and place of birth of the person whose record is sought and if known, the alien file number. The requester shall also provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Any individual desiring to contest or amend information maintained in the system should direct has request to the System Manager or to the INS office that maintains the life. The request should state clearly what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Basic information contained in this system is taken from Department of State and INS applications and reports on the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/INS-012

SYSTEM NAME:

Deportable Alien Control System (DACS).

SYSTEM LOCATION:

Central, Regional, District, and other offices of the Immigration and Naturalization Service (INS) in the United States as detailed in JUSTICE/INS–999

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Aliens alleged to be deportable by INS.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system is a computer data base that contains biographic information about deportable aliens such as name, date and country of birth; United States and foreign addresses; file number, charge, amount of bond, hearing date, case assignment, scheduling date, section(s) of law under which deportability/excludability is alleged; data collected to support the INS position on deportability/excludability, including information on any criminal or subversive activities; date, place, and type of last entry into the United States; attorney/representative's identification number; family data, and other case-related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103, 1251, and 1252.

PURPOSE(S):

The system provides INS with an automated data base which assists in the arrest, deportation, or detention of aliens in accordance with immigration and nationality laws. It also serves as a docket and control system by providing management with information concerning the status and/or disposition of deportable aliens.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To clerks and judges of Federal courts exercising jurisdiction over the deportable aliens in determining grounds for deportation.

B. To other Federal, State, and local government law enforcement and regulatory agencies and foreign governments, including the Department of Defense and all components thereof, the Department of State, the Department of Treasury, the Central Intelligence Agency, the Selective Service System, the United States Coast Guard, the United Nations, and INTERPOL, and individuals and organizations during the course of investigation in the processing of a matter or during a proceeding within the purview of the immigration and nationality laws to elicit information required by INS to carry out its functions and statutory mandates.

C. Where there is an indication of a violation or potential violation of law (whether civil, criminal or regulatory in

nature), to the appropriate agency (whether Federal, State, local or foreign), charged with the responsibility of investigating or prosecuting such violations, or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

D. Where there is an indication of a violation or potential violation of the immigration and nationality laws, or of a general statute within INS jurisdiction or of a regulation, rule, or order issued pursuant thereto, to a court, magistrate, or administrative tribunal in the course of presenting evidence, and to opposing counsel during discovery.

E. Where there is an indication of a violation or potential violation of the law of another nation (whether civil or criminal), to the appropriate foreign government agency charged with enforcing or implementing such laws and to international organizations engaged in the collection and dissemination of intelligence concerning criminal activity.

F. To other Federal agencies for the purpose of conducting national intelligence and security investigations.

G. To a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

H. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in a data base on magnetic disks.

RETRIEVABILITY:

These records are retrieved by name and/or date of birth, A-file number, or by alien's Bureau of Prisons number, when applicable.

SAFEGUARDS:

INS offices are located in buildings under security guard, and access to premises is by official identification. Access to terminals is limited to INS employees with user identification numbers. Access to records in this system is by restricted password and is further protected by secondary passwords.

RETENTION AND DISPOSAL:

Deportable alien case control and detention records are *marked closed and retained for statistical purposes through the end of the fiscal year. Closed cases are archived and stored in the database separate from the active cases.* A retention and disposition schedule for the case summary and detention history records is currently being negotiated and will be submitted to the Archivist of the United States for approval.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Detention and Deportation, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above.

RECORDS ACCESS PROCEDURE:

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) Officer at the nearest INS Office, or the INS office maintaining the desired records (if known) by using the list of Principal Offices of the Immigration and Naturalization Service Appendix, JUSTICE/INS–999, published in the **Federal Register**. Clearly mark the envelope and letter "Privacy Act Request." Provide the A-file number and/or the full name and date of birth, with a notarized signature of the individual who is the subject of the record, and a return address.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information in the record to the FOIA/PA Officer at one of the addresses identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Privacy Act Request." The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE CATEGORIES:

Basic information is obtained from "The Immigration and Naturalization Service (INS) Alien File (A File) and Central Index System, (CIS), JUSTICE/INS–001A." Information may also come from the alien, the alien's attorney/representative, INS officials, other Federal, State, local, and foreign agencies and the courts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/DEA–INS–111

SYSTEM NAME:

Automated Intelligence Records System (Pathfinder).

SYSTEM LOCATION:

U.S. Department of Justice, Drug Enforcement Administration, 1405 Eye Street, NW, Washington, D.C. 20537 and El Paso Intelligence Center (EPIC), El Paso, Texas 79902.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Those individuals who are known, suspected, or alleged to be involved in (a) narcotic trafficking, (b) narcotic-arms trafficking, (c) alien smuggling or transporting, (d) illegally procuring, using, selling, counterfeiting, reproducing, or altering identification documents relating to status under the immigration and nationality laws, (e) terrorist activities (narcotic, arms or alien trafficking/smuggling related), (f) crewman desertions and stowaways, (g) arranging or contracting a marriage to defraud the immigration laws; and (h) facilitating the transportation of narcotics proceeds: (2) In addition to the categories of individuals listed above, those individuals who (a) have had citizenship or alien identification documents put to fraudulent use or have reported them as lost or stolen, (b)arrive in the United States from a foreign territory by private aircraft, and (c) are informants or witnesses (including non-implicated persons) who have pertinent knowledge of some circumstances or aspect of a case or suspect may be the subject of a file within this system: and (3) In the course of criminal investigation and intelligence gathering, DEA and INS may detect violation of non-drug or non-alien related laws. In the interests of effective law enforcement, this information is retained in order to establish patterns of criminal activity and to assist other law enforcement agencies that are charged with enforcing other segments of criminal law. Therefore, under certain limited circumstances, individuals known, suspected, or alleged to be involved in non-narcotic or non-alien criminal activity may be the subject of a file maintained within this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

In general, this system contains computerized and manual intelligence information gathered from DEA and INS investigative records and reports. Specifically, intelligence information is gathered and collated from the following DEA and INS records and reports: (1) DEA Reports of Investigation (DEA–6), (2) DEA and INS Intelligence Reports, (3) INS Air Detail Office Index (I–92A). (4) INS *Operational Activities Special Information System (OASIS).* (5) INS Marine Intelligence Index, (6) INS Fraudulent Document Center Index, (7) INS Terrorist Index, (8) INS Reports of Investigation and Apprehension (I–44, I–213, G–166) and (9) U.S. Coast Guard Vessel 408 file. In addition, data is obtained from commercially available flight plan information concerning individuals known, suspected or alleged to be involved in criminal smuggling activities using private aircraft.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This sytem has been established in order for DEA and INS to carry out their law enforcement, regulatory, and intelligence functions mandated by the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1236), Reorganization Plan No. 2 of 1973, the Single Convention on Narcotic Drugs, (18 UST 1407), and Sections 103.265, and 290 and Title III of the Immigration and Nationality Act, as amended (8 U.S.C. 1103, 1305, 1360, 1401 et seq.). Additional authority is derived from Treaties, Statutes, Executive Orders and Presidential Proclamations which DEA and INS have been charged with administering.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system will be used to produce association and link analysis reports and such special reports as required by intelligence analysts of DEA and INS. The system will also be used to provide "real-time" responses to queries from Federal, state, and local agencies charged with border law enforcement responsibilities.

Information from this system will be provided to the following categories of users for law enforcement and intelligence purposes provided a legitimate and lawful "need to know" is demonstrated: (a) Other Federal law enforcement agencies, (b) state and local law enforcement agencies, (c) foreign law enforcement agencies with whom DEA and INS maintain liaison, (d) U.S. intelligence and military intelligence agencies involved in border criminal law enforcement, (e) clerks and judges of courts exercising appropriate jurisdiction over subject matter maintained within this system, and (f) Department of State; (g) various Federal, State, and local enforcement committees and working groups including Congress and senior Administration officials; (h) The Department of Defense and military departments; (i) The United Nations; (j) The International Police Organization (Interpol); (k) to individuals and organizations in the course of investigations to elicit information; (l) to the Office of Management and Budget, upon request, in order to justify the allocation of resources; (m) to respondents and their attorneys for purposes of discovery, formal and informal, in the course of an adjudicatory, rulemaking, or other hearing held pursuant to the Controlled Substances Act of 1970; and (n) in the event there is an indication of a violation or potential violation of law whether civil, criminal, regulatory, or administrative in nature, the relevant information may be referred to the appropriate agency, whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulations, or order issued pursuant thereto.

Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA): A record from a system of records may be disclosed as a routine use to the NARA and GSA records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual subsets of the Pathfinder Information System are maintained on standard index cards and manual folders. Standard security formats are employed. *The records are stored on computer at the DOJ computer center, Washington, D.C.*

RETRIEVABILITY:

Access to individual records can be accomplished by reference to either the manual indices or the automated information system. Access is achieved by reference to personal identifiers, other data elements or any combination thereof.

SAFEGUARDS:

The Pathfinder System of Records is protected by both physical security methods and dissemination and access controls. Fundamental in all cases is that access to intelligence information is limited to those persons or agencies with a demonstrated and lawful need to know for the information in order to perform assigned functions.

Physical security when intelligence files are attended is provided by responsible DEA and INS employees. Physical security when files are unattended is provided by the secure locking of material in approved containers or facilities. The selection of containers or facilities is made in consideration of the sensitivity or National Security Classification as appropriate, of the files, and the extent of security guard and/or surveillance afforded by electronic means.

Protection of the automated information system is provided by physical, procedural, and electronic means. The master file resides in the DEA Office of Intelligence Secured Computer System and is physically attended or safe-guarded on a full time basis. Access or observation to active telecommunications terminals is limited to those with a demonstrated need to know for retrieval information. Surrepititious access to an unattended terminal is precluded by a complex authentication procedure. The procedure is provided only to authorized DEA and INS employees. Transmission from DEA Headquarters to El Paso, Texas is accomplished via a dedicated secured line.

An automated log of queries is maintained for each terminal. Improper procedure results in no access and under certain conditions completely locks out the terminal pending restoration by the master controller at DEA Headquarters after appropriate verification. Unattended terminals are otherwise located in locked facilities after normal working hours.

The dissemination of intelligence information to an individual outside the Department of Justice is made in accordance with the routine uses as described herein and otherwise in accordance with conditions of disclosure prescribed in the Privacy Act. The need to know is determined in both cases by DEA and INS as a prerequisite to the release of information.

RETENTION AND DISPOSAL:

Records maintained within this system are retained for fifty-five (55) years.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Administrator, Office of Intelligence, Drug Enforcement Administration, 1405 Eye Street, NW, Washington, D.C. 20537 and Associate Commissioner, *Enforcement,* Immigration and Naturalization Service, 425 Eye Street, NW, Washington, D.C. 20536.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to Freedom of Information Section, Drug Enforcement Administration, 1405 Eye Street, NW, Washington, D.C. 20537.

RECORD ACCESS PROCEDURE:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Commercially available flight plan information source; Confidential informants; DEA intelligence and investigative records/reports; INS investigative, intelligence and statutory mandated records/reports; records and reports of other Federal, state and local agencies; and reports and records of foreign agencies with whom DEA maintains liaison.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e), (1), (2), and (3), (e)(4)(g), (H) and (I), (e) (5) and (8), (f), (g), and (h) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

[FR Doc. 90-27384 Filed 11-23-90; 8:45 am]

BILLING CODE 4410-01

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-90-164-C]

Cyprus Minerals Co.; Petition for Modification of Application of Mandatory Safety Standard

Cyprus Minerals Company, P.O. Box 3299, Englewood, Colorado 80155, has filed a petition to modify the application of 30 CFR 75.803 (fail safe ground check circuits on high-voltage resistance grounded systems) to its Eagle No. 5 Mine (I.D. No. 05-01370) located in Moffat County, Colorado. The petition is filed under section 101(c) of the Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a fail safe ground check circuit monitor continuously the grounding circuit.

2. As an alternate method, petitioner proposes to use contactors which will open when either the ground or pilot check wire is broken.

3. In support of this request, petitioner states that:

(a) Only pumps and permanent belt drives will be affected by this petition;

(b) Contactors will be built into equipment starters, properly separated and isolated from the other components of the unit, and will be rated for the full load rating of the circuit breaker;

(c) The ground check relays will trip the contactor coil circuit;

(d) A local reset will be provided to be activated for restart after a ground check trip;

(e) Closing of the contactor after a ground check trip will not be automatic but will be under the control of the operator.

4. Petitioner states that the alternate method will at all times provide the same measure of protection for the miners as the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 26, 1990. Copies of the petition are available for inspection at that address.

Dated: November 15, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-27682 Filed 11-23-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-163-C]

Jackson Branch Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Jackson Branch Coal Company, Box 447, Elkhorn City, Kentucky 41522 has filed a petition to modify the application of 30 CFR 75.1701-1 (canopies or cabs) to its No. 30 Mine (I.D. No. 15-16194) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that canopies be installed on the mine's electric face equipment at certain heights.

2. Due to changes in the coal seam, the use of canopies would result in a diminution of safety because canopies would:

(a) Dislodge roof support;

(b) Decrease the operator's visibility; and

(c) Create discomfort to the operator.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 26, 1990. Copies of the petition are available for inspection at that address.

Dated: November 15, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-27683 Filed 11-23-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-161-C]

Saginaw Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Saginaw Mining Company, P.O. Box 218, St. Clairsville, Ohio 43950 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Saginaw Mine (I.D. No. 33-00941) located in Belmont County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that seals be examined on a weekly basis.

2. Due to deteriorating roof conditions, the seals in the Main West and 1-South sections of the mine cannot be safety examined. To require weekly examinations of the seals would expose miners to hazardous conditions.

3. As an alternate method, petitioner proposes to establish a checkpoint at a specific location where tests from methane and the quantity of air would be measured.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 26, 1990. Copies of the petition are available for inspection at that address.

Dated: November 15, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-27684 Filed 11-23-90; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) notice is hereby given of a public meeting to be held in the Ashlawn South room, Lower Mezzanine Level of the Washington Vista International, Washington, DC.

DATES: Thursday, December 13, 1990, 8 a.m.-12 p.m.; Friday, December 14, 1990, 8 a.m.-12 p.m.

STATUS: The meeting is to be open to the public.

MATTERS TO BE DISCUSSED: The purpose of this public meeting is to enable the Commission members to discuss progress on the research agenda, findings received from prior hearings, and budget and administrative matters.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., suite 300, Washington, DC 20005, (202) 724-1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to title IV-F of the Job Training Partnership Act (Pub. L. 97-300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Minutes of the meeting will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., suite 300, Washington, DC 20005.

Signed at Washington, DC, this 19th day of November.

Carol J. Romero,

Deputy Director, National Commission for Employment Policy.

[FR Doc. 90-27680 Filed 11-23-90; 8:45 am]

BILLING CODE 4510-23-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meeting

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Commission.

Date and Time: Monday, December 17, 1990, 9 a.m. to 5:30 p.m., Tuesday, December 18, 1990, 9 a.m. to 5:30 p.m.

Place: Peabody Court Hotel, 612 Cathedral Street, Baltimore, Maryland 21201.

Type of Meeting: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on Acquire Immune Deficiency Syndrome, 1730 K Street, NW., suite 815, Washington, DC 20006 (202) 254-5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: The Commission will discuss issues relating to HIV disease in African American communities, and receive a technical briefing on health care financing issues.

Interpreting services are available for deaf people. Please call our TDD number (202) 254-3816 to request services no later than December 11, 1990.

Maureen Byrnes,

Executive Director.

[FR Doc. 90-27673 Filed 11-23-90; 8:45 am]

BILLING CODE 6820-CN

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE (NCLIS)

White House Conference Advisory Committee (WHCAC), Chairs Meeting

Date and Time: Dec. 6th, 1990 (Thursday) 9 a.m. to 9 p.m. Dec. 7th, 1990 (Friday) 9 a.m. to 1 p.m.

Place: Ramada Renaissance Techworld, 999 9th Street, NW., Washington, DC 20001, Ph. 1 202 898-9000.

Status: All meetings are open.

Matters to be Discussed: White House Conference on Library and Information Services (WHCLIS); Chairs Committee Meeting:

Dec. 6, 1990.
9-9:30 a.m.
Introductions; WHCAC Chairman's Report.
9:30-10 a.m.
Review of WHCLIS and WHCAC Issues; WHCAC Chairman Presides.
10 a.m.-1 p.m.
Discussion of Subcommittee Issues.
1-2 p.m.
(Working Lunch).
2-5 p.m.
Discussion of Subcommittee Issues.
7-9 p.m.
(Working Dinner).
Dec. 7, 1990.
9-Noon
Subcommittee Reports.
12-12:30 p.m.
Public Comment Time.
12:30-1 p.m. (Working Lunch).
Future Meeting Dates.
Old and New Business.
1 p.m.
Adjourn.

Persons appearing before, or submitting only written statements to the Advisory Committee, are asked to hand over to the Committee prior to presenting testimony, 25 copies of their prepared statement. This will insure that ample copies are available for the members of the Advisory Committee, the attending press and the observers.

To request further information or to make special arrangements for handicapped individuals, contact Mark Scully (1 202) 254-5100, no later than one week in advance of the meeting.

Dated: November 19, 1990.

Mary Alice Hedge Resxetar,

Designated Federal Official for WHCAC, NCLIS.

[FR Doc. 90-27608 Filed 11-23-90; 8:45 am]

BILLING CODE 7527-01-M

NATIONAL SCIENCE FOUNDATION

Program Solicitation; Private Sector Partnerships To Improve Science and Mathematics Education

This document is one of a series of targeted program solicitations inviting proposals directed toward problems and opportunities of high priority within mathematics, science and technology education. This solicitation is particularly intended to encourage efforts to broaden the content of science and mathematics education by incorporating scientific and

technological inputs from the private sector.

These solicitations are intended to supplement, not supplant, the current guidelines and announcements that describe the broad range of interests of NSF's Division of Teacher Preparation and Enhancement (NSF publication 87–10) and Division of Materials Development, Research, and Informal Science Education (NSF 88–29).

Submission Deadline:

Formal Proposals: February 15, 1991, August 15, 1991.

National Science Foundation
Directorate for Science
and Engineering Education
Division of Teacher Preparation
& Enhancement
Private Sector Partnerships Program
Contact: Dr. Donald E. Snads, Section Head, Networks and Teacher Preparation, (202) 357–7751

Private Sector Partnerships Introduction

The National Science Foundation encourages and supports the participation of private sector organizations and technical personnel in projects to improve science and mathematics education. The Private Sector Partnerships program seeks to focus such private sector resources on the improvement of science and mathematics education through partnerships with schools, school districts, community colleges, four-year colleges and universities, and other educational organizations. The essential feature of this program is the active participation in the educational process of private business and industry and their technically educated people.

Carefully developed partnerships can make industrial technical knowledge and experience available for the enhancement of science education. To encourage technology-based organizations from the private sector, and the scientists, mathematicians, and engineers they employ, to form these partnerships with educational organizations, the National Science Foundation invites proposals for partial funding of partnership projects.

The primary focus of projects proposed under this solicitation must be the blending of the scientific, technical, organizational, and management skills of the non-educational world with the knowledge and pedagogical expertise of educators. Thus full involvement of private sector people and organizations in both planning and executing the proposed project will be required.

Partnerships to improve education have intrinsic value in focusing attention upon the needs of education, securing resources, and mobilizing action. More specifically, practicing scientists, mathematicians, engineers, and researchers can bring to education a view of the demands and opportunities of the workplace of tomorrow. They can impart to teachers and students the utility of science and mathematics. Their insights and enthusiasm can impress students with the wonders of science. Perhaps most important, these practitioners are potential mentors and role models.

In addition to the ideas and skills each partner brings to this program, the private sector is expected to participate through such contributions as direct financial support, materials and equipment, use of facilities and computer resources, and paid internships for teachers.

Scope and Funding of Partnerships

Projects may be targeted toward any aspect of science and mathematics education in the primary, middle, and secondary grades. Of particular interest to this solicitation are those which include significant participation by classroom teachers. Priority will be given to projects that are innovative, that have the potential to be replicated, or that serve the special needs of underrepresented groups. Examples of needs that may be addressed by a proposal are:

- Improving the preparation in science and mathematics of prospective elementary and middle school teachers;
- Improving elementary and middle school science and mathematics teaching;
- Facilitating the entry into teaching careers of undergraduate students majoring in mathematics, science, or engineering;
- Preparing professional mathematicians, scientists, and engineers for new careers in teaching;
- Promoting involvement in science and mathematics of students from population segments traditionally underrepresented in technically-based activities, e.g., females, minorities, and persons with disabilities;
- Intervening with at-risk students to encourage and promote interest in science, and to correct deficiencies;
- Integrating current applications of science and mathematics into course content;
- Enhancing the "hands on" or laboratory component of science education.

Proposals are solicited also for a limited set of activities in post-secondary science and mathematics education. Examples of topics of special interest at this level are:

- Preparing non-baccalaureate-bound students for technical careers;
- Developing science or mathematics "literacy" courses for students in non-technical majors;
- Promoting adult education for the "scientific literacy" needed for responsible citizenship.

Funding may be requested for one to four years. The maximum award over the life of a project will be $400,000, including indirect costs; the average award is expected to be about $200,000.

The program emphasizes the formation of new partnerships that will be self-sustaining; consequently, it generally will not be possible to provide funds for the continuation of previously supported projects. Neither is the program able to provide seed money to for-profit organizations or individuals for the development of commercial products.

Projects funded under this initiative are expected to meet the scientific and pedagogical standards of other NSF programs that might support similar work (with or without the private sector involvement). Examples of such programs are Teacher Enhancement, Teacher Preparation, and Materials Development. If the principal activities of a project fit one of these areas, the proposal might better be submitted directly to that NSF program, even though the project has private sector involvement. A preliminary proposal or a discussion with an NSF program officer can help to determine the most appropriate placement of a proposal.

Proposal Format

Proposals submitted in response to this program solicitation should be prepared and submitted in accordance with the guidelines provided in the NSF brochure, Grants for Research and Education in Science and Engineering (GRESE), NSF 90–77, August 1990.

Number the pages (including forms) beginning with the Table of Contents as Page 1 serially at the bottom; use the headings in the following checklist; single space all typed pages; use photocopies of the forms in the back of this solicitation for all required forms; staple the complete report at upper left corner (do not use plastic or other binders). The copy bearing the official signatures should be printed on only one side of the paper.

1. Information About Principal Investigators/Project Directors

Submit one copy only of NSF Form 1225 with your proposal. Place this on top of the cover page of the copy that bears the original signatures. While providing the information requested on the form is voluntary, submission of the form is required by NSF.

2. Cover Sheet

Use NSF Form 1207 (3/89). Enter "Private Sector Partnerships" in the box at the upper right. The submitting organizations may be two- or four-year colleges; universities; state, regional, or local governmental agencies (including school systems); professional societies; science museums; research institutes; private foundations; private industry; and other for-profit or non-profit organizations engaged in or concerned about science, mathematics or technology education. The Project Director likewise may be from any such institution.

To gain maximum benefit from the participation of industrial or other private sector scientists, mathematicians, and engineers, they should be involved from the initial planning stage. It would therefore be desirable to have such an individual as an "Additional Project Director" if the Project Director is from an educational institution.

One copy of the cover sheet must be signed by the proposed project director and by an authorized institutional representative.

3. Proposal Data Sheet, Private Sector Partnerships Program

Use NSF Form 1267 (8–90). Provide your best estimates of the information requested. Use the following codes to designate the program content areas:

11 Astronomy
61 Biology
12 Chemistry
31 Computer Science
59 Engineering
49 Environmental Sciences
88 Geography
42 Geological Sciences
69 Life Sciences
21 Mathematics
DB Mathematics Education
13 Physics
79 Psychology
DD Science Education
89 Social Sciences
99 Other (Specify on Form)

4. Table of Contents

Pagination should begin with 1 at the Table of Contents and continue in sequence to the end of the biographies of project directors (Section 11).

5. Project Summary

Describe in 200 words or less what the project is about, what the major activities will be, why, by whom, when, how many will be affected, and the desired outcomes.

6. Narrative

The narrative should include the following components in order. While the number of pages for each item is not fixed, the total narrative *must not* exceed fifteen unreduced single-spaced 8 ½" x 11" pages (exclusive of the project director biographical material and the supplemental information).

Needs

List the project's needs. Widely distributed studies and statistics documenting national science and mathematics education needs should be mentioned only very briefly since they are well known to NSF staff and reviewers, but the basis for determining the local needs that the partnership will address should be described in more detail.

Goals and Objectives

The goals should consist of a few broad statements appropriate to the needs addressed by the proposal. List a number of objectives that will lead to the achievement of each goal.

Project Plan

Describe in detail the activities proposed to achieve each objective. Indicate clearly the roles of the various members of the partnership. Give quantitative data appropriate to the project design, such as the number of participants expected in a workshop, the number and type of teaching materials to be prepared, or the number of teachers to be placed into internships in industry.

To ensure maximum effectiveness for NSF funds, projects should have the potential for broad impact, directly or indirectly. The number of teachers and students affected directly by the project itself is important and should be commensurate with the budget. Also important is the potential for replication of projects activities in other locations. Dissemination plans for project findings, conclusions, and materials should be included.

Any substantial effort devoted to development of teaching materials must be justified by an explanation of why existing materials are not satisfactory. If new materials are to be developed, describe the steps planned to ensure their soundness both pedagogically and in technical content. To attain effective utilization of new materials when completed, teachers and administrators representative of those settings in which they are expected to be used should be involved in their preparation.

Scientific and Educational Merit

Explain briefly the relationship of the scientific, mathematical, and technical content of the proposed project to the purposes of this solicitation. Also explain briefly why the particular teaching strategies were chosen.

Private Sector Involvement

Describe the intellectual partnership that will be formed, and state explicitly the role of the private sector. Summarize the involvement of scientists, mathematicians, engineers, and other professionals in science-related occupations with students and teachers. Describe the administrative mechanisms that will be used to organize and manage the project. List financial and in-kind support on the "Cost-Sharing Statement" form.

Calendar

Provide a calendar of proposed dates on which major activities of the project will begin and end. Keep in mind that approximately six months are required for NSF review and processing of proposals.

Evaluation

Describe the procedures planned to determine the extent to which the project was successful in meeting its goals and objectives. The means by which internal evaluation of attainment of various goals and objectives will be carried out should be shown.

Documentation and Dissemination

Describe the manner in which the results of the project will be documented and materials prepared for possible dissemination to other persons or groups.

Continuation

Describe clearly how the project and the partnerships will be continued after cessation of NSF support. Specify amounts of money needed and potential sources of support.

7. Budget

Use NSF Form 1030 (1–87). Complete a separate budget sheet for each full year of the project, beginning from the proposed starting date, followed by a cumulative budget for the whole project. Label each sheet "Year— " "Cumulative Budget" at the bottom right corner.

Separate detailed annual and cumulative budgets are needed for any subcontracts included on line G–5.

Attach budget explanation sheets to the form 1030 for each year. These sheets should explain the budget, not repeat it. Show where the numbers came

from. Indicate how many months each person included in the budget will be working on the project. Show how fringe benefit and indirect costs are calculated; be sure to exclude equipment and participant costs from the basis for indirect costs. Explain the derivation of amounts comprising multiple factors (e.g., $60 /day×10 days×50 participants=$30,000).

Private Sector Partnerships proposal budgets should not include more than a very limited amount (generally less than $10,000) for permanent equipment. Equipment needs beyond that should be obtained through members of the partnership or other sources.

The budget should include travel funds to permit the Project Director, or a designee, to attend a two-day meeting of Project Directors each year of the project. The meetings will likely be held in the Washington DC area.

An NSF program officer should be called to determine the current limits that apply to the payment of salaries from grants, consultant rates, and stipends to participants. Indirect costs on Private Sector Partnerships grants may not be charged on equipment purchases or on participant support.

8. Cost Sharing

Use NSF Form 1239 (8–90). The NSF column of this form should derive from NSF Form 1030 for each year and for the cumulative total.

List the financial commitments, either cash or in-kind contributions, from the members of the partnership. The total should at least equal the requested NSF funding. In-kind contributions can include such items as cost of teacher released time, waiver of all or part of otherwise approvable overhead, salary value of time spent on partnership activities, or value of contributed equipment, materials, or services.

On a separate page, provide a brief explanation of the partners' contributions, including whether they are in-kind, cash, or both; if both, specify how much is each.

9. Current and Pending Support

It is important that the NSF staff be able to judge the availability of personnel to carry out the project. Use NSF Form 1239 to show all current and pending externally-funded support to the director or other senior personnel. Both academic year and summer commitments should be shown for each year of the project. Pending Support includes proposals which have been approved, but for which funds have not yet been received, and proposals which have been submitted but not yet acted upon.

10. Summary of Results of Prior NSF Support

Use NSF Form 1268 (11–89). Information must be provided on any project funded by NSF within the last five years on which any Project Director on this proposal was a Project Director. List Project Director, project title, NSF project number, amount of NSF funding, and project duration. Briefly (one page maximum) summarize the project activities, accomplishments, and findings. Use a separate page for each project.

11. Biographies of Project Directors

Provide biographical information (two pages maximum) for each Project Director.

12. Supplemental Information

Although the narrative must be self-contained and make the full case for support, up to fifteen pages of supplemental information may be included in the formal proposal. Examples are letters of support and commitment, institutional information, samples of previously prepared teaching materials, etc. Letters of commitment should be quite explicit, containing such information as nature, breadth and scope, duration, estimated dollar value, etc. All supplemental items should be on 8½" x 11" single sheets; anything of other size should be copied onto standard paper.

Proposal Submission

Fifteen copies of each proposal, including one copy bearing original signatures, should be mailed to: Proposal Processing Unit—room 223, Attention: Private Sector Partnerships, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Only one (1) copy of NSF Form 1225, Information about Principal Investigator/Project Director, should be sent, attached to the original signed proposal.

Processing may be expedited by sending one additional copy (not the official signed copy) of the proposal to Dr. Donald S. Douglas or Dr. Donald E. Sands, Private Sector Partnerships Program, room 504, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Proposals submitted in response to this solicitation must be:

(1) Received by NSF no later than February 15, 1991 or August 15, 1991; or

(2) Postmarked no later than four days prior to the due date; or

(3) Sent via commercial overnight mail no later than two days prior to the due date.

Review and processing require approximately six months.

Proposal Review

All formal proposals will be evaluated according to standard NSF merit review processes by a combination of experts from the private sector, schools, colleges and universities, and various other scientific, governmental, or educational organizations. In the experience of the NSF staff, successful proposals are characterized by clarity. The needs are well established, the activities are described clearly and specifically address the needs. Proposals that are unnecessarily long, that are difficult to follow, or that are couched in specialized jargon generally do not fare well in the review process.

To ensure that the reviewers can compare proposals fairly and meaningfully, the projects should be formulated with the following elements in mind and the proposals should follow the indicated format. The basis of the review will be the following four general criteria:

1. Utility or Relevance of the Project

Needs: Are the needs, problems, or issues the project addresses important? Documented? Specifically related to science, mathematics, engineering, technology, education? Appropriate for this NSF program? Too narrow or too broad? Well-suited to the project personnel's skills and experience? Already solved elsewhere? Rarely should the statement of needs exceed 250 words.

Goals and Objectives: Are the goals and objectives clear and well-defined? Relevant to NSF and the Private Sector Partnerships program? Responsive to the identified needs? Are the objectives measurable?

2. Intrinsic Merit

Scientific and Educational Merit: Is the scientific, technological, and mathematical content appropriate for the target audience? Educational approach sound and reflective of the best current pedagogical research? Planned outcomes of sufficient importance to warrant NSF funding? Project likely to produce significant new techniques, insights, or materials?

3. Performance Competence

Activities: Is the plan of activities clearly described? Logically directed toward the goals and objectives? A rational outgrowth of good planning by a suitable mix of individuals? Well-suited to the target populations of teachers, students, or others? Effectively laid out for the whole length of the project? Detailed enough to support the proposed budget? Designed to produce definitive and useful models for replication elsewhere? Likely to produce lasting improvements? Sustainable after termination of NSF support? Cognizant of similar projects from which it might draw information?

Evaluation: How will the attainment of goals and objectives be measured? What are the criteria and standards that will be evaluated? Individual activities be assessed for effectiveness? Participant reaction and conclusions be determined and recorded? Objective evaluation of project success be conducted?

Calendar: Are the time periods indicated by the calendar realistic for the activities to be conducted successfully? Does the schedule fit with other local factors, such as academic year calendars? Show evidense that all the partners have committed time to the project?

Project Personnel and Activity Participants: Are the project directors well qualified? Other project personnel suited for their tasks? Expected activity participants (e.g., teachers in in-service programs, students in mentored projects) appropriate for the project? Participant selection procedure defined and logical?

Project Director Involvement: Are the Project Director or Co-Project Directors likely to be overloaded and unable to devote the required time to this project? Will the designated project directors actively lead the project, or are they only nominal?

Budget and Cost Sharing: Is the budget generally commensurate with the project scope and expected outcomes? Carefully planned and presented? Realistic? Properly balanced between NSF funds and other financial contributions, both case and in-kind? Are the commitments of the partners explicit and oriented to the project's objectives?

Supplemental Information: Does the supplemental information confirm statements and plans in the project design? Relate to the project design? Give evidence of the ability and willingness of partners to participate as stated in the project design?

4. Effects on the Infrastructure of Science and Engineering

Documentation and Dissemination: Is provision made for documentation of findings, conclusions and details of successful activities in a way suitable for sharing with others? Are new teaching materials developed to a stage where they can be easily replicated? Will there be effective dissemination of project findings and materials to other persons or groups with similar needs?

Education Improvement: Will the project contribute to better understanding or improvement of the quality, distribution, or effectiveness of the Nation's scientific and engineering education?

Private Sector Involvement: Since the primary purpose of this program is to enlist private sector scientists, engineers, and mathematicians, and other professionals in science-related fields in improving science, technology, and mathematics education, the nature and extent of their involvement in the proposed project is crucial. Are they major elements in the project? Bringing appropriate skills and experiences to the project? Contributing to content? An integral part of planning and execution? In personal contact with teachers or students? Suitable role models for students? Fully committee to their designated roles? What is the frequency and duration of their interactions with students or teachers? Are the interactions well thought out, with opportunities for open-ended exploration of individual interests?

Additional Information

General inquiries should be directed to:

Dr. Donald S. Douglas or Dr. Donald E. Sands, Private Sector Partnerships Program, Directorate for Education and Human Resources, National Science Foundation, 1800 G Street, NW., room 504, Washington, DC 20550, Telephone (202) 357–7751, FAX (202) 357–7009, BITNET ddouglas@nsf.gov or dsands@nsf.gov.

Notification of Action

Notification of final action on these proposals will normally be mailed within six months. Anonymous copies of reviewers' written evaluations of projects will be included with the notification of final action. To allow time for this proposal evaluation process, proposed projects should not be planned to begin earlier than six months after submission of the proposal.

Upon completion of the project a Final Project Report (NSF Form 98A), including the part IV Summary, will be required. Applicants should review this form prior to proposal submission so that appropriate tracking mechanisms are included in the proposal plan to ensure that complete information will be available at the conclusion of the project.

Grant Administration

Grants awarded as a result of this solicitation are administered in accordance with the terms and conditions of NSF GC–1, "Grant General Conditions," or FDP–II, "Federal Demonstration Project General Terms and Conditions," depending on the grantee organization. Copies of these documents are available at no cost from the NSF Forms and Publications Unit, phone (202) 357–7668, or via e-mail (Bitnet:pubs@nsf or Internet:pubs@note.nsf.gov). More comprehensive information is contained in the NSF Grant Policy Manual (NSF 88–47, July 1988), for sale through the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

If the submitting institution has never received an NSF award, it is recommended that appropriate administrative officials become familiar with the policies and procedures in the NSF Grant Policy Manual which are applicable to most NSF awards. If a proposal is recommended for an award, the NSF Division of Grants and Contracts will request certain organizational, management, and financial information. These requirements are described in chapter II of the NSF Grant Policy Manual.

Donald E. Sands,

Section Head, Networks and Teacher Preparation.

[FR Doc. 90–27597 Filed 11–23–90; 8:45 am]

BILLING CODE 7555–01–M

PATENT AND TRADEMARK OFFICE

[Docket No. 901195–0295]

Extension of Existing Interim Orders

AGENCY: Patent and Trademark Office.

ACTION: Extension of existing interim orders issued under section 914 of the Semiconductor Chip Protection Act of 1984 (SCPA), 17 U.S.C. 914.

SUMMARY: The Assistant Secretary and Commissioner of Patents and Trademarks has determined that the existing interim orders issued under section 914 should be extended.

DATES: All extended orders are hereby extended until July 1, 1991.

ADDRESSES: Address correspondence to Assistant Commissioner for External Affairs, United States Patent and Trademark Office, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs,

United States Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The Commissioner of Patents and Trademarks has been delegated the task of determining when and under what conditions interim protection in the United States will be extended under section 914 of the SCPA to owners of foreign "mask works," the series of related images representing a three-dimensional pattern in the layers of a semiconductor chip. In international parlance, mask works are also known as "integrated circuit layout designs" or as "topographies." To be eligible for interim mask work protection, it must be established that a foreign government is making good faith efforts and reasonable progress toward establishing a regime of protection substantially similar to that established under the SCPA, and that U.S. mask works are not subject to unauthorized distribution or commercial exploitation in the country concerned.

In November 1987, the Congress extended the President's authority to issue interim orders until July 1, 1991. Public Law No. 100-159 (1987). In doing so, Congress expressed its belief that "this process (under section 914) is promoting the protection of U.S. mask works abroad." H. Rpt. 100-388, 100th Cong., 1st Sess. (1987).

Interim orders have been issued extending protection to 19 States. See 54 FR 50793 (December 11, 1989).

Discussion and Findings of the Commissioner

Representative Robert W. Kastenmeier, Chairman of the House Judiciary Subcommittee on Courts, Intellectual Property and the Administration of Justice, has stated that the transitional provisions in section 914 were "intended to encourage the rapid development of a new worldwide regime for the protection of semiconductor chips." 133 Cong. Rec. E1283 (daily ed. April 6, 1987). When the SCPA was enacted in 1984, and when the President's authority under section 914 was extended in 1987, it was contemplated that the then-draft World Intellectual Property Organization (WIPO) "Treaty on Intellectual Property in Respect of Integrated Circuits" would provide the basis for a multilateral regime of protection for semiconductor chip layout designs. *Id.*

When the interim orders were last extended in December 1989, the Commissioner noted that substantial compromises were reached at the May 1989 diplomatic conference for conclusion of the WIPO treaty. The Commissioner stated that these compromises had produced a treaty with levels of protection below the international norms reflected in the laws of the countries that have enacted chip protection legislation.

Separate negotiations to establish a multilateral standard of chip protection are under way within the framework of the Uruguay Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT), which is to conclude in December 1990. In negotiations within the Trade Related Aspects of Intellectual Property Rights (TRIPS) subgroup of the Uruguay Round, the United States is seeking to establish a standard providing higher levels of chip protection than those contained in the WIPO treaty.

In the early months of 1991, the Congress must consider whether to extend the President's interim authority under section 914. Congress should take into account the fact that the WIPO treaty does not provide an acceptable multilateral basis for protection for chip layout designs. The results of the TRIPS negotiations, and their implications for the creation of a viable multilateral regime, should also be considered.

The Commissioner set forth his views on extension of section 914 in his July 1990 Report on the Operation of Section 914 of the Semiconductor Chip Protection Act of 1984 (Report), submitted to Congress in consultation with the Register of Copyrights. The Commissioner stated:

> Our continuing experience in the administration of section 914, when coupled with our negotiations on multilateral agreements designed to promote international comity with respect to the protection of mask works, continue to point out the balanced level of protection set in the SCPA. * * * (T)he procedures implemented under section 914 continue to have an important role in the administration of the SCPA and the internationalization of standards for chip protection.

Report at 34.

If Congress decides that extension of section 914 is justified, the duration of such authority must also be considered. In the Report, the Commissioner urged an indefinite extension, stating that "the flexibility of such procedures has helped promote the rapid growth of sound and balanced foreign laws on chip protection that do not create trade problems." *Id.*

In the meantime, the Commissioner has determined that the interim orders for all countries now subject to protection under section 914 should be extended until the expiration of statutory authority to grant such orders; that is, until July 1, 1991. Many of these countries have enacted laws providing protection on a level substantially similar to that of the SCPA, and the Commissioner notes with approval that legislation providing such protection is nearing completion in all other countries subject to section 914 orders.

No evidence has been presented that nationals, domiciliaries or sovereign authorities of any country subject to interim protection orders are engaged in the misappropriation, unauthorized distribution, or unauthorized commercial exploitation of mask works.

Order Extending the Expiration Date for Interim Protection Orders Issued Under Chapter 9 of Title 17, United States Code

In accordance with the authority vested in me by Amendment 2 to Department Organization Order 10-14 regarding 17 U.S.C. 914, I find that the Governments of Australia, Austria, Belgium, Canada, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, Switzerland and the United Kingdom have made and are making good faith efforts toward providing protection for U.S. mask works. I find further that nationals, domiciliaries and sovereign authorities of those countries, and persons controlled by them, are not engaged in the misappropriation, unauthorized distribution or unauthorized commercial exploitation of mask works. I find further that the extension of the expiration dates for interim orders will promote the purposes of the Semiconductor Chip Protection Act of 1984 and international comity with respect to the protection of mask works.

Accordingly, the existing interim orders for all of the aforementioned countries are extended and shall terminate on July 1, 1991.

Dated: November 8, 1990.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 90-27654 Filed 11-23-90; 8:45 am]

BILLING CODE 3510-16-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 35-25191]

Filings

November 21, 1990.

Notice is hereby given that the following filings(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 10, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Co. (70-7811)

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, CNG Tower, Pittsburgh, Pennsylvania 15222-3199, has filed an amendment to its declaration under sections 6(a) and 7 of the Act and rule 50(a)(5) thereunder.

On November 13, 1990, the Commission issued a notice (HCAR) No. 25189) ("November 13th Notice") of a proposal by Consolidated to issue and sell, through December 31, 1991, up to $250 million principal amount of convertible subordinated debentures ("Debentures") maturing in not more than thirty years. The Debentures would be convertible into shares of Consolidated's common stock $2.75 par value. Consolidated has now amended its declaration to (1) change the Debentures' call provisions from three years to five years or less, and (2) provide the holders of the Debentures the right to have Consolidated, subject to certain conditions, repurchase the Debentures for cash.

The Debentures will be issued under a new closed-end indenture ("Indenture"), not allowing for any further series of debentures thereunder, between Consolidated and a bank, as trustee. The Indenture will contain provisions making the Debentures subordinate to all senior indebtedness of Consolidated, including all currently outstanding and future series of debentures issued or to be issued under the current indentures of Consolidated.

It is anticipated that the Debentures will be offered and sold at par with annual interest rate determined by the market for similar convertible debt. Such interest is anticipated to be approximately 300 to 350 basis points lower than for senior debt of comparable terms but without the conversion feature. The conversion price per share for the Debentures would be set at an initial premium of approximately 20-25% over market.

Consolidated would have the right to call the Debentures at par plus a declining premium beginning five years or less after the date of issue. Beginning in the eleventh year after issuance, the outstanding Debentures would be retired through equal annual sinking fund payments so as to retire 75% of the outstanding issue at maturity. Consolidated will also have the noncumulative option to make additional sinking fund payments equal to the mandatory sinking fund payments. In addition, Consolidated may provide the holders of the Debentures the right to have Consolidated purchase for cash, at par plus accrued interest (if any), such of the Debentures as may be presented to it on the tenth anniversary of the date of the initial issuance.

The proceeds from the sale of the Debentures will be added to the treasury funds of Consolidated and subsequently used to finance, in part, capital expenditures of Consolidated and Consolidated's subsidiaries.

Consolidated requests an exception from the requirements of rule 50 pursuant to subsection 50(a)(5) thereunder for the issuance and sale of the Debentures. Consolidated was authorized in the November 13th Notice to begin negotiations, under an exception from the requirements of rule 50 under subsection 50(a)(5) thereunder, with underwriters for the public offering of the Debentures.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-27841 Filed 11-23-90; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980, as Amended by Public Law 99-591; Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as amended by Public Law 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, Edney Building 4B, Chattanooga, Tn 37402; (615) 751-2523.

Type of Request: Regular submission.

Title of Information Collection: Questionnaire and request for inclusion on the list of contractors/dealers participating in the Residential Energy Services Program Heat Pump Option.

Frequency of Use: On occasion.

Type of Affected Public: Businesses or other for-profit, small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 50.

Estimated Total Annual Burden Hours: 12.5.

Estimated Average Burden Hours Per Response: .25.

Need For and Use of Information: The information is needed to help determine whether heat pump contractors/dealers may be listed as participating in the

Heat Pump Option of the Residential Energy Services Program.

Louis S. Grande,

Vice President, Information Services Senior Agency Official.

[FR Doc. 90-27590 Filed 11-23-90; 8:45 am]

BILLING CODE 6120-02-M

DEPARTMENT OF TRANSPORTATION

Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS-109, implemented by Regulation ER-1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market in the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 90-3-50, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the six-month period beginning October 1, 1990, we have projected non-fuel costs based on the year ended June 30, 1990 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels, including those for the month of August, as reported to the Department.

These projections register the beginning of the dramatic increase in fuel prices precipitated by the August Mid East crisis. Future SFRL revisions, of course, will capture the additional increases in fuel costs.

By Order 90-11-29 cargo rates may be adjusted by the following adjustment factors over the October 1979 level:

Atlantic	1.2695
Western Hemisphere	1.2606
Pacific	1.5495

FOR FURTHER INFORMATION CONTACT:
Keith A. Shangraw (202) 366-2439.

By the Department of Transportation:

Dated: November 16, 1990.

Jeffrey N. Shane

Assistant Secretary for Policy and International Affairs.

[FR Doc. 90-27661 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Fitness Determination of Sea Air Shuttle Corporation d/b/a Virgin Islands Seaplane Shuttle

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—Order 90-11-34, Order to show cause.

SUMMARY: The Department of Transporation is proposing to find that Sea Air Shuttle Corporation d/b/a Virgin Islands Seaplane Shuttle is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act and to receive in transfer the commuter air carrier authority issued to Virgin Islands Seaplane Shuttle, Inc., by Order 82-5-20.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than December 4, 1990.

FOR FURTHER INFORMATION CONTACT:
Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: November 16, 1990

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 90-27660 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-62-M

Privacy Act of 1974: Systems of Records; Hazardous Materials Incident Telephonic Report System; and Hazardous Materials Incident Written Report System; and Hazardous Materials Information Request System

The Department of Transportation herewith publishes a notice describing three systems of records maintained in connection with the collection and dissemination of information related to the release of hazardous materials during transportation (including transportation by pipeline).

Any person or agency may submit written comments on this notice to the Privacy Act Officer (DRP-6), Research and Special Programs Administrative, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Comments to be considered must be received by December 17, 1990.

If no comments are received, the proposed notice will become effective on the above-mentioned date. If comments are received, the comments will be considered and, where adopted, the document will be republished with the changes.

Issued in Washington, DC, November 15, 1990.

Paul T. Weiss,

Deputy Assistant Secretary for Administration.

DOT/RSPA 09

SYSTEM NAME:

Hazardous Materials Incident Telephonic Report System.

SYSTEM LOCATION:

U.S. Department of Transportation, The John A. Volpe National Transportation Systems Center Kendal Square, Cambridge, MA 02142

CATEGORIES OF THE INDIVIDUALS COVERED BY THE SYSTEM:

Individuals included in the system are those making telephonic reports, either as a private citizen or as a representative of the company involved, to the National Response Center (NRC) operated by the USCG or to the EPA or to the USCG Office of Marine Safety, Security & Environmental Protection (OMSSEP) of certain releases of hazardous materials. The system may also contain information on individuals affected by reported incidents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of telephonic reports of incidents involving the release of hazardous materials or environmental pollutants received by the NRC acting on behalf of the Research and Special Programs Administration (RSPA), the USCG, and/or the EPA, or made by or to the EPA or the OMSSEP (USCG).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended and reauthorized by Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*); Hazardous Materials Transportation Act (49 U.S.C. 1801 *et seq.*); Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671 *et seq.*); Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001 *et seq.*); Clean Water Act (33 U.S.C. 1251 *et seq.*); Deepwater Ports Act (33 U.S.C. 1501 *et seq.*); Outer Continental Shelf Land Act (43 U.S.C. 1331 *et seq.*).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To disclose pertinent information to Federal, state, and local governmental agencies responsible for responding to incidents involving the release of hazardous materials to assist in efforts to protect life, health, safety, and environmental conditions; to enforce related Federal, state, and local regulations; or to evaluate or develop regulatory programs.

To disseminate information on the transportation of hazardous materials to industrial, commercial, educational, scientific, research, or private entities to assess trends, risks, consequences, or other potentialities associated with the release of hazardous materials during transportation, or to analyze factors affecting hazardous materials incidents.

To disseminate information to the public media for use in informing the public of issues related to the transportation of hazardous materials. The general routine uses in the prefatory statement apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic media.

RETRIEVABILITY: RECORDS ARE RETRIEVABLE BY ALL ENTERED FIELDS INCLUDING THE NAMES OF INDIVIDUALS INCLUDED IN THE RECORD.

SAFEGUARDS:

Access to all computer files is controlled through user-name/password access procedures. The computer on which data is recorded is maintained in an access-controlled room in an access-controlled building.

RETENTION AND DISPOSAL:

Records are retained permanently on magnetic disk or tape.

SYSTEM MANAGER AND ADDRESS:

For records collected by the Office of Hazardous Materials Transportation, RSPA, pursuant to 49 CFR 171.15: Information Systems Manager, Office of Hazardous Materials Transportation (DHM-63), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

For records collected by the Office of Pipeline Safety, RSPA, pursuant to 49 CFR 191.5 or 49 CFR 195.52: Information Resources Manager, Office of Pipeline Safety (DPS-21), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Inquiries should be directed to the appropriate system manager at the given address.

RECORD ACCESS PROCEDURES:

Contact the appropriate system manager at the given address for information on procedures for gaining access to records.

CONTESTING RECORDS PROCEDURES:

Same as record access procedures.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the individuals covered by this system; companies; Federal, state, and local governmental agencies; and other entities reporting releases of hazardous materials that occurred during transportation or that affect the environment.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOT/RSPA 10

SYSTEM NAME:

Hazardous Materials Incident Written Report System.

SYSTEM LOCATIONS:

U.S. Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590;

U.S. Department of Transportation, The John A. Volpe National Transportation Systems Center, Kendall Square, Cambridge, MA 02142.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals included in the system are those affected by releases of hazardous materials during transportation (including transportation by pipeline) whose names and other personal information may have been included in narrative descriptions of the incident.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of incidents involving the release of hazardous materials during transportation (including transportation by pipeline) submitted by the carrier pursuant to 49 CFR 171.16, 191.9, 191.15, 195.54, and 195.58.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Hazardous Materials Transportation Act (49 U.S.C. 1801 *et seq.*); Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671 *et seq.*); Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001 *et seq.*).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To disclose pertinent information to Federal, state, and local governmental agencies responsible for oversight of incidents involving the release of hazardous materials to assist in efforts to protect life, health, and safety; to enforce related Federal, state, and local regulations; or to evaluate or develop regulatory programs.

To disseminate information on the transportation of hazardous materials to industrial, commercial, educational, scientific, research, or private entities to assess trends, risks, consequences, or other potentialities associated with the release of hazardous materials during transportation, or to analyze factors affecting hazardous materials incidents.

To disseminate information to the public media for use in informing the public of issues related to the transportation of hazardous materials.

The general routine uses in the prefatory statement apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic disk. Duplicate paper or microfilm copies are also retained by RSPA in file cabinets.

RETRIEVABILITY:

Computer records are retrievable by all entered fields including the name of individuals included in the record. Paper and microfilm copies are not retrievable by individual name or other personal identifier except through use of the search capabilities of the computer records.

SAFEGUARDS:

Access to all computer files is controlled through user-name/password access procedures. The computer on which data is recorded is maintained in an access-controlled room in an access-controlled building. Paper and microfilm copies are stored in a room locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are retained permanently on magnetic disk or tape. Paper or microfilm copies are also retained permanently.

SYSTEM MANAGER AND ADDRESS:

For records collected by the Office of Hazardous Materials Transportation, RSPA, pursuant to 49 CFR 171.16: Information Systems Manager, Office of

BEST COPY AVAILABLE

Hazardous Materials Transportation (DHM-63), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

For records collected by the Office of Pipeline Safety, RSPA, pursuant to 49 CFR 191.9, 191.15, 195.54, or 195.58: Information Resources Manager, Office of Pipeline Safety (DPS-21), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Inquiries should be directed to the appropriate system manager at the given address.

RECORD ACCESS PROCEDURES:

Contact the appropriate system manager at the given address for information on procedures for gaining access to records.

CONTESTING RECORDS PROCEDURES:

Same as record access procedures.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by individuals acting on behalf of the carriers that experience releases of hazardous materials during transportation (including transportation by pipeline).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOT/RSPA 11

SYSTEM NAME:

Hazardous Materials Information Requests System.

SYSTEM LOCATIONS:

U.S. Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590; U.S. Department of Transportation, The John A. Volpe National Transportation Systems Center, Kendall Square, Cambridge, MA 02142.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals included in the system are those requesting information from the Hazardous Materials Information Systems (HMIS) or requesting the Research and Special Programs Administration (RSPA) publication, *Emergency Response Guidebook*.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of requests for information from governmental, commercial, or public media entities, or from private citizens.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Hazardous Materials Transportation Act (49 U.S.C. 1801 *et seq.*); Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671 *et seq.*); Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001 *et seq.*)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to requests for information maintained on the hazardous Materials Information System; to control the handling of such responses; and to provide statistical information on the offices' responsibility for responding to such requests.

To disseminate information concerning the availability of the *Emergency Response Guidebook* or revisions to it to interested parties in order to ensure that users of the *Guidebook* have the most current available guidance information.

The general routine uses in the prefatory statement apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic disk. Duplicate paper copies of recent reports are retained by RSPA offices in file folders.

RETRIEVABILITY:

Computer records are retrievable by all entered fields including the names of individuals included in the record. Paper copies are not retrievable by individual name or other personal identifier except through use of the search capabilities of the computer records.

SAFEGUARDS:

Access to all computer files is controlled through user-name/password access procedures which limit access to the files to authorized agency personnel and to contract personnel whose duties directly involve the creation and use of these files. The computer on which data is recorded is maintained in an access-controlled room in an access-controlled building. Paper copies are stored in a room locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are retained permanently on magnetic disk or tape. Paper copies are retained according to need in a room locked during non-duty hours, and disposed of as appropriate.

SYSTEM MANAGER AND ADDRESS:

For records maintained by the Office of Hazardous Materials Transportation, RSPA: Information Systems Manager, Office of Hazardous Materials Transportation (DHM-63), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

For records maintained by the Office of Pipeline Safety, RSPA: Information Resources Manager, Office of Pipeline Safety (DPS-21), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Inquiries should be directed to the appropriate system manager at the given address.

RECORD ACCESS PROCEDURES:

Contact the appropriate system manager at the given address for information on procedures for gaining access to records.

CONTESTING RECORDS PROCEDURES:

Same as record access procedures.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by individuals, companies, and other entities requesting information from the HMIS or copies of the *Emergency Response Guidebook*.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Narrative Statement for the Department of Transportation, Research and Special Programs Administration

The Department of Transportation (DOT), on behalf of the Research and Special Programs Administration (RSPA), proposes to establish under the Privacy Act of 1974 three systems of records, the Hazardous Materials Incident Telephonic Report System, DOT/RSPA 09; the Hazardous Materials Incident Written Report System, DOT/RSPA 10; and the Hazardous Materials Information Requests System, DOT/RSPA 11.

The Hazardous Materials Incident Telephonic Report System, DOT/RSPA 09, contains records maintained by the RSPA pertaining to telephonic reports made to the National Response Center (NRC), pursuant to the requirements of 49 CFR 171.15, 191.5, and 195.52. The NRC, which is operated by the U.S. Coast Guard (USCG), DOT, acts on behalf of the RSPA to receive telephonic reports of certain incidents involving the release of hazardous materials during transportation, including transportation by pipeline. The telephonic reports are recorded electronically and transmitted daily to the RSPA's computer facilities at the RSPA's John A. Volpe National Transportation Systems Center in Cambridge, Massachusetts. The reports collected and transmitted by the NRC and incorporated into this system of records include reports made to the NRC as required by the U.S. Coast Guard pursuant to Section 306(a) of the Outer Continental Shelf Land Act (43 U.S.C. 1331 *et seq.*) and Section 18(b) of the Deepwater Ports Act of 1974 (33 U.S.C. 1501 *et seq.*) and as required by the Environmental Protection Agency (EPA) pursuant to Section 311(b)(5) of the Clean Water Act (33 U.S.C. 1251 *et seq.*) and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended and reauthorized by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*). The reports collected by the NRC are also supplemented by reports made directly to or originating within the EPA regional offices. Additional verification data are collected by EPA regional offices and incorporated into the system of records. The RSPA acts on behalf of itself, the USCG, and the EPA in maintaining a permanent computerized record of reports of hazardous materials releases for use by all of the agencies. The reports are used by Federal, state, and local officials to respond to incidents affecting health, safety, the public well-being, or the environment; to assist in the analysis of hazardous materials incidents; and to assist in regulatory programs. The reports are also used by industry, commercial, public, and private entities to analyze and evaluate safety factors associated with the transportation of hazardous materials. The USCG and the EPA are preparing additional Privacy Act notifications describing systems of records that are partially co-extensive with this system.

Although most persons reporting such incidents will be acting on behalf of a commercial or governmental entity, private citizens can use the reporting system to inform the responsible governmental agencies of hazardous materials incidents. In making such a report, a private citizen will be asked to provide his or her name, address, and telephone number of facilitate further contact if necessary. Some reports may also contain pertinent information about individuals affected by the reported incident as part of a brief narrative description of the incident.

The Hazardous Materials Incident Written Report System, DOT/RSPA 10, contains records maintained by the RSPA pertaining to written reports of incidents involving the release of hazardous materials during transportation, including transportation by pipeline, submitted pursuant to 49 CFR 171.16, 191.9, 191.15, 195.54, and 195.58. The records are maintained on a computer at the John A. Volpe National Transportation System Center in Cambridge, Massachusetts, and on paper or microfilm at the RSPA headquarters office in Washington, DC. The records are used by Federal, state, and local officials to monitor incidents affecting the safety of the general public; to assist in the analysis of hazardous materials incidents; and to assist in regulatory programs. The reports are also used by industry, commercial, public, and private entities to analyze and evaluate safety factors associated with the transportation of hazardous materials.

The reports are submitted by persons acting as representatives of commercial entities. Some reports may contain pertinent information about individuals affected by the reported incident as part of a narrative description of the incident.

The Hazardous Materials Information Requests System, DOT/RSPA 11, contains records maintained by the RSPA pertaining to requests for information contained in the Hazardous Materials Information System, including as a special sub-category requests for the RSPA publication, *Emergency Response Guidebook*. The records are maintained on a computer at the John A. Volpe National Transportation Systems Center in Cambridge, Massachusetts, and on paper at the RSPA headquarters office in Washington, D.C. The records are used by RSPA employees to respond to requests for information or, under particular circumstances, to inform requestors of revised versions of requested materials; to control the responses to such requests for information; and to provide statistical information on the offices' responsibility for responding to such requests.

Although most persons requesting such information will be acting on behalf of a commercial or governmental entity, private citizens can request information from the RSPA and therefore the names, addresses, and telephone numbers of private citizens may be recorded in the record system.

The authority to maintain these three systems of records is contained in 49 U.S.C. 1801 *et seq.*, 49 U.S.C. 1671 *et seq.*, and 49 U.S.C. 2110 *et seq.*

The information in these systems will be used in accordance with the stated routine uses and will not unduly impact individual privacy rights.

Information in these systems will be processed in both hard copy and computerized environments, or, in the case of the Hazardous Materials Incident Telephonic Report Systems, solely in a computerized environment. A description of the steps taken to safeguard these records is given under the appropriate heading in the attached copy of the system notice for each system prepared for publication in the **Federal Register**.

The purpose of this report is to comply with Office of Management and Budget (OMB) Circular A-130, Appendix 1, Federal Agency Responsibilities for Maintaining Records About Individuals, dated December 12, 1985.

[FR Doc. 90-27662 Filed 11-23-90; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Intent To Prepare Environmental Impact Statement for Proposed Development at Lambert-St. Louis International Airport, St. Louis, MO

AGENCY: Federal Aviation Administration, Central Region, Kansas City, MO.

ACTION: Notice of intent.

SUMMARY: The Federal Administration is issuing a Notice of Intent that an Environmental Impact Statement will be prepared for the proposed development at Lambert-St. Louis International Airport, St. Louis, Missouri.

FOR FURTHER INFORMATION CONTACT: Dr. John L. Tatschl, Federal Aviation Administration, Airports Division, 601 E. 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-6614.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500-1508), the Federal Aviation Administration (FAA) will prepare an Environmental Impact Statement for the proposed development planned for the next 10 to 20 years at Lambert-St. Louis International Airport, St. Louis, Missouri. The proposed development includes, but is not limited to, the following: Construction of four parallel runways, terminal expansion, relocation of the Air Traffic Control Tower, reconstruction and expansion of existing terminal area parking garage, relocation of segments of Lindberg Boulevard and Interstate Highway 70, terminal access roadway relocation and

expansion, and relocation of the Air National Guard, TWA Hangar, General Aviation, and Air Cargo Facilities. The Environmental Impact Statement will address environmental considerations of the proposed actions and of numerous alternatives to the proposed action. The document will address direct and indirect environmental impacts, both beneficial and detrimental to the natural and human environment.

The Federal Aviation Administration will utilize the scoping process as outlined in the CEQ guidelines. This process will determine potentially significant issues related to the proposed airport development. To initiate the formal scoping process, interested individuals, governmental agencies, and private organizations will be invited in the near future to submit information and comments on this proposed action for consideration by the Federal Aviation Administration for incorporation into the Environmental Impact Statement. Concerned individuals and agencies will be asked to express their views either by writing or by participating in a future scoping meeting. Adequate notice will be published in local area newspapers and the local media at a later date to inform interested parties of the exact place and time of any scoping meetings. The purpose of public scoping meetings are: (1) To provide a description of the proposed action, (2) to identify potential impacts and issues that should be included in the Environmental Impact Statement, and (3) to identify other coordination and permit requirements associated with the proposed action. Questions and comments regarding the scope of the environmental analysis should be directed to: Dr. John Tatschl, Federal Aviation Administration, Central Region Office 601 E. 12th Street, Federal Office Building, Kansas City, Missouri, 64106, (816) 426–5614.

George A. Hendon,
Manager, Airports Division.

[FR Doc. 90–27679 Filed 11–23–90; 8:45 am]
BILLING CODE 4910–01–M

Title XIII Standard Premium Insurance Policy; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing notice to advise the public that it is holding a public meeting for all interested parties on the revised title XIII draft premium "insurance policy". The meeting will provide for an exchange of public comments on the standard "insurance policy" in order to explore the range of practical parameters required to assure general industry acceptance.

ADDRESSES: The meeting will be held at the facilities of Air Transport Association of America headquarters, 5th floor at 1709 New York Ave., NW., Washington, DC.

DATES: The meeting will be held on December 7, 1990, at 10 a.m.

SUPPLEMENTARY INFORMATION: Under Title XIII of the Federal Aviation Act, 49 U.S.C. app. 1532, 1302 of the Federal Aviation Act, the Federal Aviation Administration (FAA) provides War Risk hull and liability insurance for commercial air carrier operations when commercial insurance cannot be obtained on reasonable terms should a mission be judged to be in the interest of the United States by the President. Such a Presidential Determination authorized the issuance of FAA War Risk insurance for air carrier operations in the Middle East.

The dramatic increase in insurance rates for the Middle East air service has amplified the need to have a standard FAA premium War Risk insurance policy which most carriers can consistently accept in full and maintain compliance with the insurance requirements of their lenders and lessors. The Office of Aviation Policy and Plans (APO) is developing such a standard "insurance policy" which will be completely independent of any "commercial policy" and provide coverage for any carrier within the scope of title XIII. The standard "insurance policy" shall provide reasonable and adequate alternate coverage during the emergencies for which the title XIII program is intended. Copies of the draft "insurance policy" are available upon request.

FOR FURTHER INFORMATION CONTACT: Requests for the draft "insurance policy" and any comments, observations or questions you may have regarding it before the meeting may be directed to Douglas A. Thieman, at (202) 267–3315.

John M. Rogers,
Director, Office of Aviation Policy and Plans.

[FR Doc. 90–27678 Filed 11–23–90; 8:45 am]
BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition; Determination

Noticed is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the "Special Exhibition Celebrating the Opening of the Permanent Korean Gallery in the Asian Art Museum of San Francisco" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the Asian Art Museum of San Francisco, San Francisco, California, beginning on or about November 26, 1990 to on or about December 20, 1991, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: November 20, 1990.

Alberto J. Mora,
General Counsel.

[FR Doc. 90–27833 Filed 11–23–90; 8:45 am]
BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619–6975, and the address is U.S. Information Agency, 301 Fourth Street SW., room 700, Washington, DC 20547.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by December 26, 1990.

Dated: November 19, 1990.

By direction of the Secretary.

Frank E. Lalley,
Director, Office of Information Resources Policies.

Reinstatement

1. Veterans Benefits Administration.
2. Monthly Statement of Wages Paid to Trainee.
3. VA Form 28–1917.
4. The form is used by employees who train veterans under the VA Vocational Rehabilitation Program to report wages which these employers paid each veteran during the preceding month. The information is used to determine the correct rate of subsistence allowance which may be paid to a trainee in an established and approved on-the-job training or apprenticeship program.
5. Monthly.
6. Individuals or households; businesses or other for-profit; small businesses or organizations.
7. 3,600 responses.
8. ½ hour.
9. Not applicable.

[FR Doc. 90–27628 Filed 11–23–90; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 227
Monday, November 26, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 7, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90-27764 Filed 11-20-90; 5:11 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 14, 1990.

PLACE: 2033 K St., N.W., Washington, DC, 6th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90-27765 Filed 11-20-90; 5:11 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 14, 1990.

PLACE: 2033 K St., NW., Washington, DC 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90-27766 Filed 11-20-90; 5:11 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 14, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90-27767 Filed 11-20-90; 5:11 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, December 4, 1990.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Quarterly Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90-27866 Filed 11-21-90; 3:44 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, December 4, 1990.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 90-27869 Filed 11-21-90; 3:44 pm]

BILLING CODE 6351-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, November 27, 1990.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Asarco, Inc.*, Docket No. SE 88-82-RM, etc. (Issues include whether the judge erred in dismissing proceedings because the Secretary of Labor refused to comply with an order requiring production of documents that she asserts are privileged.)

It was determined by a unanimous vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay 1-800-877-8339 (Toll Free).

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 90-27786 Filed 11-21-90; 1:12 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 2:30 p.m., Wednesday November 28, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed amendment to Regulation D (Reserve Requirements of Depository Institutions) to index the low reserve tranche for transactions account, the reserve requirement exemption amount, and the reporting cutoff level of 1990.

Discussion Agenda

2. Proposed 1991 Federal Reserve Board budget.

3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 21, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 90-27831 Filed 11-21-90; 1:14 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 3:00 p.m., Wednesday, November 28, 1990, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 21, 1990.
Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 90-27832 Filed 11-21-90; 1:14 pm]

BILLING CODE 6210-01-M

DEPARTMENT OF JUSTICE

United States Parole Commission

TIME AND DATE: 1:00 p.m., Monday, December 3, 1990.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Case Operations, Program Coordinator and Administrative Sections.
3. Discussion regarding clarification of the severity rating for the offense of bribery.
4. Discussion of the U.S. Parole Commission phase down.
5. Presentation by Professor Jonathan Turley regarding the aging prison population.
6. Discussion regarding the expansion of the electronic monitoring.

Consent Agenda

The following matter has been placed on the consent agenda and will be considered at the open meeting only if a Parole Commissioner requests that it be discussed at meeting:

1. Amending the Procedures Manual to define "public information" for routine disclosure and to conform Commission policy to that of the Bureau of Prisons.

AGENCY CONTACT: Linda Wines Marble, Director, Case Operations and Program Development, United States Parole Commission, (301) 492-5962.

Dated: November 20, 1990.
Michael A. Stover,
General Counsel, U.S. Parole Commission.

[FR Doc. 90-27829 Filed 11-21-90; 1:13 pm]

BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE

United States Parole Commission

TIME AND DATE: 9:00 a.m. to 12:00 p.m., Monday, December 3, 1990.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 9 cases decided by the National Commissioners pursuant to a reference under 28 CFR § 2.17. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey Kostbar, Case Analysts, National Appeals Board, United States Parole Commission, (301) 492-5968.

Dated: November 20, 1990.
Michael A. Stover,
General Counsel, U.S. Parole Commission.

[FR Doc. 90-27830 Filed 11-21-90; 1:13 pm]

BILLING CODE 4410-01-M

Corrections

Federal Register
Vol. 55, No. 227
Monday, November 26, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 357

[Docket No. 81N-0022]

RIN 0905-AA06

Weight Control Drug Products for Over-the-Counter Human Use

Correction

In proposed rule document 90-25483 beginning on page 45788 in the issue of Tuesday, October 30, 1990, make the following corrections:

1. On page 45790, in the third column, in the second full paragraph, in the eighth line, "by" should read "but".

2. On page 45792, in the first column, in the ninth full paragraph, in the sixth line, "phenylpropanolamine" was misspelled.

3. On the same page, in the third column, in the third full paragraph, on the first and second lines, "21 CFR 25.24(C)(6)" should read "21 CFR 25.24(c)(6)".

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1145

Technical Amendments

Correction

In rule document 90-26687 beginning on page 47337 in the issue of Tuesday, November 13, 1990, make the following correction:

PART 1145–[CORRECTED]

On page 47338, in the second column, in the autority citation for part 1145, in the second line, "1707a" should read "10707a".

BILLING CODE 1505-01-D

federal register

Monday
November 26, 1990

Part II

Department of the Interior

Bureau of Indian Affairs

Cancellation of Environmental Impact Statements Within Fort Apache Indian Reservation, AZ, and Goshute Indian Reservation, UT; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Cancellation of Environmental Impact Statement for Proposed Construction of Bureau of Indian Affairs Route 48 on Fort Apache Indian Reservation, Navajo County, AZ

AGENCY: Bureau of Indian Affairs (BIA), Department of the Interior.

ACTION: Notice of Cancellation of an Environmental Impact Statement (EIS).

SUMMARY: This notice advises the public that the Bureau of Indian Affairs intends to cancel all work on the EIS for Fort Apache Indian Reservation Route 48 as requested by Tribal Resolution 09–90–210. The EIS was in DRAFT stage. The Notice of Intent was published in the **Federal Register** on January 22, 1990.

DATES: Effective immediately.

ADDRESSES: Comments should be addressed Wilson Barber, Jr., Area Director, Bureau of Indian Affairs, Phoenix Area Office, Branch of Roads, P.O. Box 10, Phoenix, Arizona 85002.

FOR FURTHER INFORMATION CONTACT: Same as above.

SUPPLEMENTARY INFORMATION: None.

Dated: November 13, 1990.

Stanley Speaks,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 90–27598 Filed 11–23–90; 8:45 am]

BILLING CODE 4310–02–M

Cancellation of Environmental Impact Statement for Proposed Construction of an Industrial and Hazardous Waste Incineration Facility and Greenhouse Complex on Goshute Indian Reservation, Juan County, UT.

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice of Cancellation of an Environmental Impact Statement (EIS).

SUMMARY: This notice advises the public that the Bureau of Indian Affairs intends to cancel all work on the EIS for a 200 acre lease site Indian Reservation for a proposed industrial and hazardous waste incineration facility and greenhouse complex on Goshute Indian Reservation. The Notice of Intent was published in the Federal Register on September 18, 1989.

DATES: Effective immediately.

ADDRESSES: Comments should be addressed to Wilson Barber, Jr., Area Director, Bureau of Indian Affairs, Phoenix Area Office, Branch of Roads, P.O. Box 10, Phoenix, Arizona 85002.

FOR FURTHER INFORMATION CONTACT: Same as above.

SUPPLEMENTARY INFORMATION: None.

Dated: November 13, 1990.

Stanley Speaks,

Acting Assistant Secretary—Indian Affairs

[FR Doc. 90–27599 Filed 11–23–90; 8:45 am]

BILLING CODE 4310–02–M

federal register

Monday
November 26, 1990

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 227

Listing of Steller Sea Lions as Threatened Under the Endangered Species Act; Final Rule

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
50 CFR Part 227
[Docket No. 900387-0282]
RIN 0648-AB13

Listing of Steller Sea Lions as Threatened Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS is listing the Steller (northern) sea lion (*Eumetopias jubatus*) throughout its range as threatened under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* (ESA) and is establishing protective measures similar to those contained in the previous emergency rule (April 5, 1990; 55 FR 12845). More comprehensive protective regulations and critical habitat designation are being considered in a separate, forthcoming rulemaking. NMFS adopted this dual rulemaking approach in order to expedite the final listing of the Steller sea lion. This listing decision is based on review and analysis of comments on the proposed listing (July 20, 1990; 55 FR 29793) and at public hearings. It is being taken because of significant declines in the Steller sea lion population. The number of Steller sea lions observed on certain rookeries in Alaska has declined by 63% since 1985 and by 82% since 1960. Declines are occurring in previously stable areas. Significant declines have also occurred on the Kuril Islands, USSR.

EFFECTIVE DATES: December 4, 1990.

ADDRESSES: The complete file for this rule is available for review at the Office of Protected Resources and Habitat Programs (F/PR) NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert Kaufman, Protected Species Management Division, Silver Spring, MD, 301-427-2319.

SUPPLEMENTARY INFORMATION:

Background

On November 21, 1989, the Environmental Defense Fund and 17 other environmental organizations petitioned NMFS to publish an emergency rule listing the Steller sea lion as an endangered species and to initiate a rulemaking to make the listing permanent. Under section 4 of the ESA, NMFS determined that the petition presented substantial information indicating the action may be warranted and requested comments (February 22, 1990; 55 FR 6301). On April 5, 1990 (55 FR 12845), NMFS issued an emergency interim rule listing the Steller sea lion as threatened and requested comments. The emergency listing is effective for 240 days and expires on December 3, 1990.

In March 1990, NMFS appointed a Steller sea lion recovery team, which held its first meeting on April 27, 1990. The team is responsible for drafting a recovery plan and providing recommendations to NMFS on necessary protective regulations for the Steller sea lion.

NMFS also is conducting several research projects, including populations surveys, assessment of sea lion health and fitness, a stock identification study, analysis of fisheries data, and blood and tissue analyses.

NMFS proposed listing the Steller sea lion as a threatened species under the ESA on July 20, 1990 (55 FR 29793). The proposed rule contained protective regulation similar to those of the emergency rule. On July 20, 1990, NMFS also issued an advanced notice of purposed rulemaking (55 FR 29792), requesting public comments to assist NMFS in its efforts to develop separate, more comprehensive protective regulations and critical habitat designation.

NMFS has taken this dual-track rulemaking approach because it wants to avoid a lapse between the expiration of the emergency interim listing and the final listing. There is not sufficient time to issue a proposed rule with comprehensive protective regulations including a proposed critical habitat designation, solicit public comments, provide an opportunity for public hearings, conduct the required regulatory and economic analyses, and issue a final rule by December 3, 1990. Further, NMFS believes it is preferable to consider the information provided in the recovery plan prior to publishing comprehensive proposed protective regulations. Therefore, the Service is listing the Steller sea lion as a threatened species now with a limited set of protective measures and will propose more comprehensive protective regulations and critical habitat in a separate rulemaking.

Comments on the Proposed Rule

NMFS received 13 comments in response to the July 20, 1990 notice of proposed rulemaking: Four comments were received from environmental groups, four comments were received from state and local governments, two comments were received from Native Alaskan interest groups, one comment was received from a fishing industry group, one comment was received from a private individual, and one comment was received from the Steller Sea Lion Recovery Team. Additional comments were received at public hearings held in Anchorage, Cordova, and Kodiak, Alaska. These comments, which are discussed below, address the following issues: Listing classification, buffer zones, incidental take, shooting prohibition, subsistence, enforcement, exceptions, additional protective measures, research/experimentation, and public hearings.

Listing Classification

Nearly half the commenters addressed the listing classification issue. Several commenters believed that the species should be listed as endangered rather than threatened based on the dramatic and continuing declines in abundance in Alaska. One commenter noted that the Alaska population of Steller sea lions declined by 86 percent over the last 29 years and 63 percent in the last 5 years. This commenter added that the evidence indicates that the decline is continuing and accelerating, resulting in extinction in several years. Another commenter stated that the most recent population data show that the geographic extent of the decline is increasing as well.

NMFS believes that a population decline is a sufficient basis for listing a species as threatened or endangered. In the case of the Steller sea lion, NMFS believes that the available information supports a threatened classification rather than an endangered classification. There is not sufficient information to consider animals in different geographic regions as separate populations; therefore the status of the entire species must be considered.

Total counts of sea lions at rookeries and haulout sites throughout most of Alaska and the USSR in 1989 were about 56,000, indicating a total population size in this area of at least one third more than this number. There are areas where Steller sea lion abundance is stable or not declining significantly. Furthermore, preliminary results from the 1990 Steller sea lion survey show that about 25,000 adult and juvenile sea lions were counted, similar to the 1989 count. These results indicate that the population has not declined further in areas where the decline had been significant, and that the 1989 counts were not anomalous. NMFS does not believe that the species currently is in danger of extinction throughout all or a significant portion of its range (i.e., endangered). NMFS will continue to monitor the Steller sea lion population. If the decline continues at the rate in the past decade and continues to spread, NMFS will reconsider the listing classification.

Two commenters concurred with the "threatened" listing but stated that this classification should be extended to the entire range of the species, including California populations of the Steller sea lion. One of these commenters referred to the comment on the emergency listing that documented a decline of 90 percent in the species' population in California.

The emergency interim rule applied to the entire range of the Steller sea lion, as does the final rule. Although the California populations are included, specific protective measures for Steller sea lions in California (such as buffer areas) are not. NMFS and the Recovery Team are reviewing the status of the species throughout its range and the need for additional protective measures. In a separate rulemaking, NMFS will propose more comprehensive protective regulations and critical habitat.

One commenter expressed concern about classifying the Steller sea lion as threatened before identifying the reason for the population decline. The commenter suggested that NMFS conduct additional research on the probable causes of the decline prior to reclassification of the species.

The available data support a listing of threatened throughout the range of the Steller sea lion. NMFS believes that a demonstrated decline can justify a listing of species and that precise knowledge of the reasons for the decline is not a prerequisite. Each of the five factors described in section 4(a)(1) of the ESA, which can cause a species to be threatened or endangered, is discussed in detail below. NMFS has determined that the Steller sea lion is a threatened species and that it is likely that this condition is caused by a combination of the factors specified under section 4(a)(1) of the ESA. NMFS is sponsoring research projects to determine the cause of the population decline. The results of this research will be considered when NMFS proposes comprehensive protective regulations and critical habitat designation.

Buffer Zones

NMFS received eight comments on buffer zones. One commenter concurred with the list of the buffer zones designated in the proposed rule. Six commenters indicated that the buffer zones should be designated in other areas not covered in the emergency rule. Two of these commenters stated that buffer zones should be established around all rookeries in the species' range and that the size should be increased to include surrounding feeding areas (i.e., up to 60 miles (96.6 kilometers) from a rookery). One of these commenters also stated that NMFS should prohibit overflights over all buffer zones. Two other commenters requested that buffer zones be established around major rookeries off the California coast, including Farallon Island National Wildlife Refuge and Ano Nuevo Island. The last two commenters recommended that additional rookeries, not yet showing population declines, be protected by 0.5-nautical mile (0.9 kilometers) buffer zones. One of these commenters recommended that NMFS consider issuing prohibitions or guidelines on aircraft activity near rookeries. Of the six commenters that supported strengthening of the buffer zone provisions, two commenters stated that buffer zones should be established for all haulouts. A third commenter wants NMFS to establish buffer zones for haulouts when Steller sea lions are on them.

NMFS believes that additional buffer zones may be needed to provide adequate protection to the Steller sea lion until more comprehensive regulations are in place. Because the area of major decline continues westward beyond Kiska Island, and includes sea lion rookeries on Buldir, Agattu, and Attu Islands, NMFS adds rookeries located on those islands to the list of locations where 3 mile (4.8 kilometers) (at-sea and 0.5 mile (0.8 kilometers) on-land buffer zones are in effect. Additional modifications to the buffer zone provisions will be considered when NMFS proposes more comprehensive protective regulations and critical habitat after considering the recommendations of the Recovery Team, the Marine Mammal Commission and the public.

One commenter requested that NMFS reduce the size of the buffer zone on Adak Island. This commenter claimed that the rookery is smaller than listed and that small vessels do not have an adverse impact on Steller sea lions even at 1 nautical mile (1.8 kilometers).

The NMFS believes keeping the three nautical mile (5.5 kilometers) buffer zone around the rookery on Adak Island will be necessary to provide protection to the Steller sea lion without having significant effects on marine user groups. If current research indicates that modifications to the listed buffer zones are warranted, NMFS will implement such changes. Individuals may obtain exemptions where an "activity will not have any significant adverse affect on Steller sea lions, the activity has been conducted historically or traditionally in the buffer zones, and there is no readily available or acceptable alternative to or site for the activity."

Incidental Takings

Five commenters recommended that the incidental take quota be reduced. Two of the commenters stated that the quota should be based on biological considerations and suggested that the quota be set at 1 percent of the index count of Steller sea lions (not including pups) in a region. One of these commenters recommended that this formula also apply to Alaskan waters east of 141° W longitude and to waters off of Washington, Oregon, and California, regions not covered by the proposed rule. Another commenter, noting that the proposed quota was more than 2.5 times higher than the worst-case estimate of the actual incidental take, stated that the proposed quota was meaningless and should be reduced. This commenter added that the incidental take in non-fishing activities (e.g., oil exploration) should be prohibited. One commenter stated that the incidental take quota should be reduced to zero, that the quota should be apportioned geographically, and that the quota should take into account the age and sex structures of the takes. Two of the commenters suggested that NMFS investigate mechanisms to reduce the incidental take in fisheries.

NOAA scientists currently are evaluating methods for establishing and monitoring incidental take quotas for Steller sea lions. This effort is one component of the long-range management strategy that is anticipated to be implemented when the Marine Mammal Exemption Program expires in 1993. NMFS also will determine whether fishing practices or gear can be used to reduce or eliminate incidental takes associated with fishing. NMFS will address fishing gear and practices in the forthcoming rulemaking dealing with comprehensive protective regulations. As part of the rulemaking process for the comprehensive conservation program, NMFS will consider modifications of the quota including location, age and sex.

Shooting Prohibition

All five commenters that addressed the shooting prohibition concurred with NMFS's proposal. Two of the commenters, however, recommended that the prohibition be extended to harbor seals and California sea lions; one of the commenters recommended that the prohibiton be extended to harbor seals only. The commenters argue that the extension is necessary to prevent inadvertent shooting of Steller

sea lions because the three species are similar in appearance and often swim in the same areas. One of the commenters added that the prohibition would be easier to enforce if it were extended to the other two species.

NMFS agrees that the inadvertent shooting of Steller sea lions is a potential problem and will examine the extension of the shooting prohibition to California sea lions and harbor seals when it proposes comprehensive protective regulations.

One commenter stated that the regulatory language regarding the shooting prohibition was unclear, claiming that "within 100 yards" (91.4 meters) could be interpreted to mean either that the individual firing a weapon could not be within 100 yards (91.4 meters) of a Steller sea lion or that the projectile could land within 100 yards (91.4 meters) of a Steller sea lion.

NMFS believes that the intent of the regulatory language regarding the shooting prohibition is clear. To prevent misinterpretation of the regulation, NMFS issues the following clarification: 50 CFR 227.12(a)(1) prohibits the discharge of a firearm where the projectile will strike or land within 100 yards (91.4 meters) of a Steller sea lion. NMFS believes that this clarification is sufficient and that no change in the regulatory language is required.

Two commenters recommended that NMFS develop non-lethal deterrents and evaluate their effectiveness at reducing damage to fishing catch and gear and their possible impacts on animals.

NMFS agrees with the commenters that non-lethal deterrents should be developed for use by fishery vessel operators and crews. At this time, however, NMFS is not aware of any methods that have been proven to be effective at deterring marine mammals from interacting with fishing activities.

Subsistence

Five commenters addressed the taking of Steller sea lions for subsistence purposes. Two commenters stated that subsistence harvesting is a minimal contributor to the population decline of sea lions. One of these commenters expressed concern that the traditions and livelihood of Native Alaskans would be adversely affected if subsistence harvesting were regulated. One commenter disagreed with the subsistence exception in the proposed rule, recommending that the subsistence take be included in an overall quota that would include incidental takes and that NMFS regulate the subsistence harvest.

NMFS agrees that the subsistence harvest is minimal and probably has not contributed to the population decline of Steller sea lions. Although the actual level of the subsistence harvest is unknown, it is estimated to be fewer than 100 animals annually. Based on the available information NMFS believes that it would be more appropriate to address the regulation of subsistence harvesting when NMFS develops the comprehensive protective regulations.

One commenter expressed concern that the creation of buffer zones could threaten traditional subsistence harvest activities because a number of traditional harvest sites are located within the boundaries of buffer zones. This commenter noted that exemptions could be difficult to obtain and feared that the burden of proof would be placed on Alaskan Natives. The commenter recommends that NMFS establish clear criteria for providing for subsistence harvesting in buffer zones. In the long run, the commenter suggests that NMFS establish a more flexible regulatory structure that provides protection for Steller sea lions without placing undue restrictions on subsistence harvest activities.

NMFS recognizes the possible adverse impacts of the listing on traditional activities that are not contributing to the decline of Steller sea lions. This rule includes an exception to the shooting prohibition for subsistence harvesting and an exemption process for traditional activities in buffer zones. Conflicts between buffer zones and traditional hunting sites will be handled on a case-by-case basis through the exemption process. Because subsistence hunting is a traditional activity, hunters have to demonstrate that no alternative sites are readily available and that the hunting will not adversely affect the rookery. The regulation, however, does not include a blanket exemption for subsistence because NMFS believes that alternative hunting sites may be available in some cases and that it is necessary to minimize avoidable human contact at and near rookeries. NMFS will further consider the interrelationship between buffer zones and subsistence harvesting when it develops comprehensive protective regulations.

Another commenter concurred with the regulatory exception for subsistence harvesting but requested NMFS to examine the subsistence harvest and determine whether the harvest is being conducted in a non-wasteful manner.

NMFS agrees that subsistence harvesting of Steller sea lions should be conducted in a non-wasteful manner. Examination of this issue, however, could not be addressed in the final listing without delaying its publication.

Enforcement

Three commenters expressed concern that enforcement of the provisions in the emergency interim rule was inadequate. Two of these commenters specifically addressed enforcement of the shooting prohibition while the other commenter addressed incidental takes and enforcement of buffer zones. One commenter recommended that intentional kills should be a priority for the observer program. Another commenter suggested that NMFS expand the observer program for incidental takes.

NMFS agrees that enforcement is a critical component of these regulations and retains the expanded observer program established under the emergency listing. Foreign processors and domestic groundfish vessels 125 feet (38 meters) or more in length now carry observers during all of their operations in the Exclusive Economic Zone (EEZ) of the Bering Sea and in the Gulf of Alaska. Groundfish vessels of 60 to 124 feet (18 to 38 meters) in length carry observers during 30 percent of their operations in each quarter. Three additional fisheries in Alaska that are classified as Category I under the MMPA, Prince William Sound set and drift gillnet for salmon and South Unimak (Unimak and False Passes) drift gillnet for salmon, had observer coverage during the 1990 fishing season and are scheduled to have coverage in the 1991 fishing season contingent upon final publication of the Revised List of Fisheries. NMFS also is retaining the observer authority of the emergency rule by allowing the NMFS Alaska Regional Director to place an observer on any fishing vessel. If additional information indicates that the current observer program requires modification, such modification could be implemented under the authority of this rule. NMFS also is evaluating the observer program as part of the development of a long-range management strategy for implementation of the Marine Mammal Protection Act Amendments of 1988.

Exceptions

Three commenters addressed the exceptions provided under the proposed rule. One of these commenters stated that the criteria for several of the exceptions were vague and/or unjustified and that the lack of specificity could pose enforcement problems. The commenter expressed concern over the following exception provisions: Taking for the protection of the animal or public health or the non-lethal removal of a nuisance animal, entrance into buffer zones by governmental agencies for national defense or the conduct of other legitimate activities, emergency situations, and exemptions. In addition, the commenter recommended that NMFS modify the exemption application procedure to include public comments, to place the burden of proof on the applicant, and increase the stringency of the adverse impact criterion from "will not have a *significant* adverse impact" to "will not have *any* adverse impact."

NMFS believes that the exceptions established in 50 CFR 227.12(b) paragraph (1) through (4) are appropriate, necessary, and well defined. The first provision parallels section 109(b) of the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* (MMPA), which, among other things, allows the taking of beached and stranded animals for rehabilitation purposes, an activity that may benefit the species. NMFS believes that local officials need the authority to protect the safety of their citizens when necessary. Only a very small number of animals are likely to be taken for the protection of the public health and welfare or by the non-lethal removal of "nuisance animals," and this provision is not likely to have any affect on the population. NMFS believes the second provision is necessary to allow government functions, such as Coast Guard activities, NOAA's nautical charting responsibilities and wildlife surveys, to continue. None of these activities is expected to significantly affect the sea lion population. Further, Federal agencies must consult under section 7(a)(2) of the ESA on any action that may affect Steller sea lions to ensure that the action is not likely to jeopardize its continued existence.

NMFS believes that the exemption criteria and process established by this rulemaking will adequately protect the designated rookeries. NMFS does not expect many exemptions and believes that exemptions are necessary to account for unforeseen circumstances. Furthermore, the criteria narrowly define conditions under which NMFS can grant an exemption. Since the emergency listing became effective on April 5, 1990, NMFS has acted on two exemption applications. In one case the exemption was granted because the applicant very clearly met all three criteria: The activity has been on-going since 1930, disturbance of the rookery has not been a problem, and there are no reasonable or feasible alternatives to the site. In the other case, in which a tourist lodge's application for entry into the Marmot Island buffer zone to view and photograph Steller sea lions was denied, NMFS ruled that alternative sites and alternative "wilderness experience" activities were available. These examples demonstrate that the exemption procedure is unlikely to reduce the protection afforded by the establishment of buffer zones.

Two commenters expressed concern that vessels would not have access to safe anchorages located in buffer zones during storms.

NMFS shares the commenters' concern that vessels have access to safe anchorage during storms. NMFS notes that both the proposed and final rules contain an exception to the buffer zone entry prohibition in case of emergency situations; 50 CFR 227.12(b)(4) states that approach restrictions into buffer zones does not apply when "compliance with that provision presents a threat to the health, safety, or life of a person or presents a significant threat to the vessel or property." The emergency situation provision would permit a vessel operator to enter a buffer zone for the purpose of securing the vessel at a safe anchorage during a storm.

Additional Protective Measures

Over half of the commenters believed that additional protective regulations are needed and that the interim protective measures under the emergency rule are inadequate. Most of these commenters implicated trawl fisheries as a major contributor to the decline in the Steller sea lion population by depleting the Steller sea lion's prey species. Additional recommendations included limiting trawling to daylight hours, prohibiting the use of gill nets around rookeries, prohibiting fishing for pollock when they are carrying roe, and reducing the overall quota of groundfish. One commenter added that the rapid decline in the Steller sea lion population required immediate action and that NMFS should develop an interim management and conservation plan in the absence of final comprehensive protective regulations.

NMFS agrees with the commenters that more comprehensive protective measures may be required. However, NMFS does not want to delay the listing of the species while proposed protective regulations are being developed and evaluated. NMFS will, therefore, propose more comprehensive protective regulations and critical habitat in a separate rulemaking as indicated in the preamble to the proposed rule. This rule includes the limited protective regulations specified in the proposed rule. NMFS, however, believes that these limited regulations (e.g., buffer zones, shooting prohibition) will be adequate in the near-term.

Research/Experimentation

Six commenters recommended that NMFS sponsor research to determine the cause of the Steller sea lion's population decline and to develop appropriate conservation measures and a management plan. Several of the commenters suggested that NMFS focus on the relationship between fishery practices and the Steller sea lion population. Another commenter supported research to assess the impact of toxic pollutants on the population decline. One commenter recommended that NMFS implement experimental conservation measures that test hypotheses on the causes of the population decline.

NMFS agrees that more information is needed to determine the cause(s) of the decline. NMFS is undertaking research to determine important feeding locations by using satellite monitored tags attached to female sea lions. These studies also should provide information on locations of at-sea mortalities. Studies to determine stock differentiation will continue. Resource surveys on the density of sea lion prey species are proposed. Satellite linked telemetry will be used to determine sea lion feeding areas for comparison to the findings from these surveys. The behavior of sea lions in relation to commercial fishing activities and the association between feeding sea lions and principal fishing areas will be examined. NMFS also will evaluate the impact of the protective measures (i.e., shooting prohibition, buffer zones) established by this rule.

Public Hearings

Two commenters requested that NMFS hold public hearings on the rulemaking. One of the commenters stated that public hearings were necessary because many affected individuals were unlikely to submit written comments in response to the publication of the proposed listing in the **Federal Register**. The other commenter indicated that public hearings were justified given the importance of fisheries to the local economy and the importance of the Steller sea lion to the community.

NMFS agreed with the commenters that the public hearings were appropriate given the importance of the rulemaking to the community. In response, NMFS held three public hearings: One on October 16, 1990 in Anchorage and, on October 18, 1990,

hearings were held in Kodiak and Cordova, Alaska.

Summary of the Status of the Species

The Steller (northern) sea lion, *Eumetopias jubatus*, ranges from Hokkaido, Japan, through the Kuril Islands and Okhotsk Sea, Aleutian Islands and central Bering Sea, Gulf of Alaska, southeast Alaska, and south to central California. There is not sufficient information to consider animals in different geographic regions as separate populations. The centers of abundance and distribution are the Gulf of Alaska and Aleutian Islands, respectively. Rookeries (breeding colonies) are found from the central Kuril Islands (46 °N latitude) to Ano Nuevo Island, California (37 °N latitude); most large rookeries are in the Gulf of Alaska and Aleutian Islands. More than 50 Steller sea lion rookeries and a greater number of haulout sites have been identified.

During the 1985 breeding season, 66,000 animals were counted on Alaska rookeries from Kenai Peninsula to Kiska Island, compared to 140,000 counted in 1956–60. A 1988 Status Report concluded that the population size in 1985 was probably below 50 percent of the historic population size in 1956–60 and below the lower bound of its optimum sustainable population level under the MMPA. A comparable survey conducted in 1989 showed that the number observed on rookeries from Kenai to Kiska declined to 25,000 animals. This indicates a decline of about 62 percent from 1956–60 to 1989 in this area. Preliminary results from the 1990 Steller sea lion survey show that about 25,000 adult and juvenile sea lions were counted, similar to the 1989 count. These results indicate that the population has not declined further in areas where the decline had been significant, and that the 1989 counts were not anomalous. The counts are not an estimate of total numbers of animals but include only those animals on the beach (excluding pups) at the time of the survey. As such, they can be used to indicate trends in abundance, rather than to estimate total species abundance. Copies of the 1988 Status Report and a 1989 Update are available (see **ADDRESSES**).

Species abundance estimates during the late 1970's ranged from 245–290,000 adult and juvenile animals. A current total population estimate is not available. However, counts at rookeries and haulout sites throughout most of Alaska and the USSR in 1989, plus estimates from surveys conducted in recent years at locations not counted in 1989, provide a minimum number for the species during 1989. The summaries of these counts and estimates are:

Alaska	53,000
WA, OR and CA	4,000
British Columbia	6,000
USSR	3,000
	66,000

Summary of Factors Affecting the Species

An endangered species is any species in danger of extinction throughout all or a significant portion of its range and a threatened species is any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the ESA. These factors as they apply to Steller sea lions are discussed below.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Steller sea lions breed on islands in the North Pacific Ocean, generally far from human habitations. There is no evidence that the availability of rookery space is a limiting factor for this species. As the number of animals continues to decline, rookeries are being abandoned and available rookery space is increasing. However, activities that result in disturbance, prey availability or other factors may be affecting the suitability of the available habitat.

The feeding habitat of Steller sea lions in Alaska may have changed. State of Alaska biologists found that populations in the Gulf of Alaska during the 1980's had slower growth rates, poorer physical fitness (lower weights, smaller girth), and lowered birth rates. Some data show a high negative correlation between the amount of walleye pollock caught and sea lion abundance trends in the eastern Aleutians and central Gulf of Alaska. It is possible that a reduction in availability of pollock, the most important prey species in most areas, is a contributing factor in the decline in the number of Steller sea lions in western and central Alaska.

B. *Over-utilization for commercial, recreational, scientific, or educational purposes.* Between 1963–72, over 45,000 Steller sea lion pups were commercially harvested in the eastern Aleutian Islands and Gulf of Alaska. This harvest may explain the declines in these areas through the 1970's. The actual level of subsistence harvest of Steller sea lions is unknown, but is probably less than 100 animals annually, primarily at St. Paul Island in the Pribilofs during fall and winter months. This taking is not of sufficient magnitude to contribute to the overall decline. A small number have also been taken for public display and scientific research purposes.

C. *Disease or predation.* Sharks, killer whales and brown bears are known to prey on Steller sea lion pups. Mortality from sharks and bears is not believed to be significant. When sea lion abundance was high, the level of mortality from killer whales was probably not significant, but as sea lion numbers decline, this mortality may exacerbate the decline in certain areas.

Disease resulting in reproductive failure or death could be a source of increased mortality in Steller sea lion populations, but it probably does not explain the massive declines in numbers. Antibodies to two types of pathological bacteria (*Leptospira* and *Chlamydia*), a marine calicivirus (San Miguel Sea Lion Virus), and seal herpesvirus were found in the blood of Steller sea lions in Alaska. Leptospires and San Miguel sea lion viruses may be associated with reproductive failures and deaths in California sea lions and North Pacific fur seals. *Chlamydia* has not been studied previously in sea lions, but is known from studies of Pribilof Island fur seals. None of these agents is thought to be a significant cause of mortality in Steller sea lions.

D. *The inadequacy of existing regulatory mechanisms.* Some protection for the Steller sea lion is provided under the MMPA, which prohibits the taking of Steller sea lions, with certain exceptions, including an interim exemption for commercial fishing. Once 1,350 Steller sea lions have been killed incidental to commercial fishing, section 114 of the MMPA requires NMFS to prescribe emergency regulations to prevent, to the maximum extent practicable, any further taking. Intentional lethal takes are prohbited. In addition, section 114(g) of the MMPA provides that regulations may be prescribed to prevent taking of a marine mammal species in a commercial fishery if it is determined that such taking is having, or is likely to have, a significant adverse impact on that marine mammal population stock.

E. *Other natural or manmade factors affecting its continued existence.* Steller sea lions are taken incidental to commercial fishing operations in the Gulf of Alaska and the Bering Sea. Between 1973 and 1988, U.S. observers on foreign and joint venture vessels operating in these areas reported 3,661 marine mammals taken. Steller sea lions accounted for 90 percent of this observed total. Based on these observed takes and an extrapolation to unobserved fishing, the total number of Steller sea lions incidentally killed by the foreign and joint venture commercial trawl fisheries during 1973–1988 is estimated at 14,000. Since 1985, however, the level and rate of observed incidental take has decreased to the point where, by itself, it is not sufficient to account for the most recently observed declines.

Observer programs under the MMPA, and for the groundfish fisheries of Alaska under the Magnuson Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.* (Magnuson Act), will assist NMFS in determining whether the incidental take of Steller sea lions during commercial fishing operations or other observable activities are factors in the decline in the number of these animals in Alaska.

There are reports of fishermen and other people shooting adult Steller sea lions at rookeries, haulout sites, and in the water near boats, but the magnitude of this mortality is unknown. These activities also have the potential for disruption of breeding activities and use of rookeries and haulout sites.

Determination

NMFS has determined that the available evidence indicates the Steller sea lion is likely to become an endangered species within the foreseeable future and that the threatened classification is appropriate. Although the precise causes of the decline have not been determined, it is likely that the current condition is caused by a combination of the factors specified under section 4(a)(1) of the ESA.

The number of Steller sea lions observed on certain rookeries in Alaska declined by 63 percent since 1985 and by 82 percent since 1960. The decline has spread from the eastern Aleutian Islands, where it began in the early 1970's, east to the Gulf of Alaska and west to the previously stable central Aleutian Islands. Declines are occurring in previously stable areas and on the Kuril Islands, USSR. Despite this well documented decline, NMFS does not believe that an endangered listing is appropriate at this time. Total counts of sea lions at rookeries and haulout sites throughout most of Alaska and the USSR in 1989 were about 56,000, which would indicate a total population size in this area of at least one-third more than this number. NMFS must consider the status of the entire species, including areas where Steller sea lion abundance is stable or not declining significantly, because there is not sufficient information to consider animals in different geographic regions as separate populations. Furthermore, preliminary results from the 1990 Steller sea lion survey show that about 25,000 adult and juvenile sea lions were counted, similar to the 1989 count. These results indicate that the population has not declined further in areas where the decline had been significant, and that the 1989 counts were not anomalous. Therefore, NMFS does not believe that the species currently is in danger of extinction throughout all or a significant portion of its range (i.e., endangered), and is listing the species as threatened.

Final Protective Regulations

Until more comprehensive regulations are developed, NMFS is adopting protective measures similar to those in the emergency interim rule, as follows:

1. *Prohibit shooting near sea lions.* Although the NMPA prohibits intentional lethal take of Steller sea lions in the course of commercial fishing, fishermen have not been prohibited from harassing sea lions that are interfering with their gear or catch by shooting at or near them. Since these practices may result in inadvertent mortalities, NMFS is prohibiting the discharge of a firearm within 100 yards (91.4 meters) of a Steller sea lion.

Exceptions to the shooting provisions include: For activities authorized by a permit issued in accordance with the endangered species permit provisions of 50 CFR part 222, subpart C; for government officials taking Steller sea lions in a humane manner, if the taking is for the protection or welfare of the animal, the protection of the public health and welfare, or the nonlethal removal of nuisance animals; and for the taking of Steller sea lions for subsistence purposes under section 10(e) of the ESA.

2. *Establish Buffer Zones.* NMFS is establishing a buffer zone of 3 nautical miles (5.5 kilometers) around the principal Steller sea lion rookeries in the Gulf of Alaska and the Aleutian Islands. Rookeries in southeastern Alaska, east of 141° W longitude, have not experienced the declines reported in central and western Alaska and no buffer zones are established for these areas. No vessels will be allowed to operate within the 3-mile (5.5 kilometers) buffer zones, with certain exceptions. Similarly, no person will be allowed to approach on land closer than one-half (½) mile (0.8 kilometers) or within sight of a listed Steller sea lion rookery. On Marmot Island, no person will be allowed to approach on land closer than one and one-half (1½) miles (2.4 kilometers) from the eastern shore. Marmot Island was previously the largest Steller sea lion rookery in Alaska and the eastern beaches are used throughout the year by the sea lions.

The purposes of the buffer zones include: Restricting the opportunities for individuals to shoot at sea lions and facilitating enforcement of this restriction; reducing the likelihood of interactions with sea lions, such as accidents or incidental takings in these areas where concentrations of the animals are expected to be high; minimizing disturbances and interference with sea lion behavior, especially at pupping and breeding sites; and, avoiding or minimizing other related adverse effects.

Exceptions to the buffer zone restrictions include: activities authorized by permits issued in accordance with the endangered species permit provisions of 50 CFR part 222, subpart C; for government officials taking Steller sea lions in a humane manner, if the taking is for the protection or welfare of the animal, the protection of the public health and welfare, or the nonlethal removal of nuisance animals; for government officials conducting activities necessary for national defense or the performance of other legitimate governmental activities; and for emergency situations that present a threat to the health, safety or life of a person or a significant threat to a vessel or property. Further, a mechanism is provided to allow the Director, Alaska Region, NMFS to issue exemptions for traditional or historic activities that do not have a significant adverse effect on sea lions and for which there is no readily available and acceptable alternative. Notice of all such exemptions will be published in the **Federal Register**. There is no overall exception to the buffer zone restrictions for subsistence taking of Steller sea lions; and exemption issued by the Regional Director will be needed.

3. *Establish Incidental Kill Quota.* When the MMPA was amended in 1988 to require emergency regulations once 1,350 Steller sea lions were incidentally killed in any year, the population numbers were based, in part, on 1985 data. In four study areas in Alaska, Steller sea lions declined by an average of 63 percent from 1985 to 1989. Therefore, NMFS is prohibiting the incidental killing of more than 675 Steller sea lions on an annual basis in Alaskan waters and adjacent areas of the EEZ west of 141° W longitude. In association with the emergency rule, NMFS instituted a more efficient monitoring system. Foreign processors and domestic groundfish vessels 125 feet (38 meters) or more in length now carry observers during 100 percent of their operations in the EEZ of the Bering Sea and in the Gulf of Alaska. Groundfish

vessels of 60 to 124 feet (18 to 38 meters) in length carry observers during 30 percent of their operations in each quarter. Three additional fisheries in Alaska that are classified as Categroy I under the MMPA, the Prince William Sound set and drift gillnet fishery for salmon and the South Unimak (Unimak and False Passes) drift gillnet fishery for salmon, had coverage during the 1990 fishing season and are scheduled to have coverage during the 1991 season, if they remain in Category I in the 1991 Revised List of Fisheries. The total incidental take of sea lions will be estimated monthly during the course of the fishing season, based on the in-season observer reports. In order to continue to monitor this quota, NMFS is retaining the observer authority of the emergency rule by allowing the respective Regional Director to place an observer on any fishing vessel. If data indicate that the quota is being approached, the Assistant Administrator for Fisheries, NOAA, will issue emergency rules to close areas to fishing, allocate the remaining quota among fisheries, or take other action to ensure that commercial fishing operations do not exceed the quota.

Critical Habitat

The ESA requires that critical habitat be specified to the maximum extent prudent and determinable at the time the species is proposed for listing. NMFS intends to propose critical habitat at the earliest possible date as a part of the comprehensive protective regulations. NMFS will consider physical and biological factors essential to the conservation of the species that may require special management consideration or protection. These habitat requirements include breeding rookeries, haulout sites, feeding areas and nutritional requirements. In describing critical habitat, NMFS will take into consideration terrestrial habitats adjacent to rookeries and their need for protection from development and other uses, such as logging or mining.

Additional Conservation Measures

In addition to protective regulations, conservation measures for species that are listed as endangered or threatened under the ESA include recognition, recovery actions, designation and protection of critical habitat, and Federal agency consultation. NMFS has established a Recovery Team to assist in developing a Recovery Plan for the Steller sea lion. This plan will help guide the recovery efforts of NMFS and other agencies and organizations.

Section 7(a)(2) of the ESA requires that each Federal agency insure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat. Federal actions most likely to affect the Steller sea lion include approval and implementation of fishery management plans and regulations under the Magnuson Act; permitted activities on land near rookeries and haulout sites, such as timber, mineral and oil development; and, leasing activities associated with offshore oil and gas exploration and development on the Outer Continental Shelf.

Once the Steller sea lion is listed as threatened, it is, by definition, considered depleted under the MMPA, and additional restrictions apply under that Act, such as a prohibition on taking for public display purposes.

Classification

Section 4(b)(1) of the ESA restricts the information that may be considered when assessing species for listing. Based on this limitation and the opinion in *Pacific Legal Foundation* v. *Andrus*, 657 F. 2d 829 (6th cir., 1981), NMFS has categorically excluded all listing actions under the ESA from environmental assessment requirements of the National Environmental Policy Act (48 FR 4413; February 6, 1984).

As noted in the Conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the listing status of species. Therefore, the economic analysis requirements of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act are not applicable to the listing process.

NMFS is waiving part of the 30-day delay between the publication of a final rule and its effective date under 5 U.S.C. 553(d). There will be very few new regulatory requirements applicable to the public as a result of this final rule because it is very similar to the emergency rule which has listed the Steller sea lion as a threatened species since April 10, 1990. Because that emergency rule expires on December 3, 1990, it would be contrary to the public interest to delay the effective date of this final rule beyond December 4; any such delay could be detrimental to the Steller sea lion because it would cause a hiatus in the protection of the species under the ESA. Therefore, NMFS finds there is good cause to waive the 30-day delay in the effective date under section 553(d)(3), and is making this rule effective December 4, 1990.

List of Subjects in 50 CFR Part 227

Endangered and threatened wildlife.

For the reasons set out in the preamble, 50 CFR part 227 is amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.4, a new paragraph (f) is added to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(f) Steller (northern) sea lion (*Eumetopias jubatus*).

3. In subpart B, a new section is added to read as follows:

§ 227.12 Steller sea lion.

(a) *Prohibitions*—(1) *No discharge of firearms.* Except as provided in paragraph (b) of this section, no person subject to the jurisdiction of the United States may discharge a firearm at or within 100 yards (91.4 meters) of a Steller sea lion. A firearm is any weapon, such as a pistol or rifle, capable of firing a missile using an explosive charge as a propellant.

(2) *No approach in buffer areas.* Except as provided in paragraph (b) of this section:

(i) No owner or operator of a vessel may allow the vessel to approach within 3 nautical miles (5.5 kilometers) of a Steller sea lion rookery site listed in paragraph (a)(3) of this section;

(ii) No person may approach on land not privately owned within one-half statutory miles (0.8 kilometers) or within sight of a Steller sea lion rookery site listed in paragraph (a)(3) of this section, whichever is greater, except on Marmot Island; and

(iii) No person may approach on land not privately owned within one and one-half statutory miles (2.4 kilometers) or within sight of the eastern shore of Marmot Island, including the Steller sea lion rookery site listed in paragraph (a)(3) of this section, whichever is greater.

(3) *Listed sea lion rookery sites.* Listed Steller sea lion rookery sites consist of the rookeries in the Aleutian Islands and the Gulf of Alaska listed in Table 1.

TABLE 1. LISTED STELLER SEA LION ROOKERY SITES [1]

Island	From		To		NOAA chart	Notes
	Lat.	Long.	Lat.	Long.		
1. Outer I.	59°20.5 N	150°23.0 W	59°21.0 N	150°24.5 W	16681	S quadrant.
2. Sugarloaf I.	58°53.0 N	152°02.0 W			16580	Whole island.
3. Marmot I.	58°14.5 N	151°47.5 W	58°10.0 N	151°51.0 W	16580	SE quadrant.
4. Chirikof I.	55°48.5 N	155°39.5 W	55°48.5 N	155°43.0 W	16580	S quadrant.
5. Chowiet I.	56°00.5 N	156°41.5 W	56°00.5 N	156°42.0 W	16013	S quadrant.
6. Atkins I.	55°03.5 N	159°18.5 W			16540	Whole island.
7. Chernabura I.	54°47.5 N	159°31.0 W	54°45.5 N	159°33.5 W	16540	SE corner.
8. Pinnacle Rock	54°46.0 N	161°46.0 W			16540	Whole island.
9. Clubbing Rks (N)	54°43.0 N	162°26.5 W			16540	Whole island.
Clubbing Rks (S)	54°42.0 N	162°26.5 W			16540	Whole island.
10. Sea Lion Rks	55°26.0 N	163°12.0 W			16520	Whole island.
11. Ugamak I.	54°14.0 N	164°48.0 W	54°13.0 N	164°48.0 W	16520	E end of island.
12. Akun I.	54°17.5 N	165°34.0 W	54°18.0 N	165°31.0 W	16520	Billings Head Bight.
13. Akutan I.	54°03.5 N	166°00.0 W	54°05.5 N	166°05.0 W	16520	SW corner, Cape Morgan.
14. Bogoslof I.	53°56.0 N	168°02.0 W			16500	Whole island.
15. Ogchul I.	53°00.0 N	168°24.0 W			16500	Whole island.
16. Adugak I.	52°55.0 N	169°10.5 W			16500	Whole island.
17. Yunaska I.	52°42.0 N	170°38.5 W	52°41.0 N	170°34.5 W	16500	NE end.
18. Seguam I.	52°21.0 N	172°35.0 W	52°21.0 N	172°33.0 W	16480	N coast, Saddleridge Pt.
19. Agligadak I.	52°06.5 N	172°54.0 W			16480	Whole island.
20. Kasatochi I.	52°10.0 N	175°31.0 W	52°10.5 N	175°29.0 W	16480	N half of island.
21. Adak I.	51°36.5 N	176°58.5 W	51°38.0 N	176°59.5 W	16460	SW point, Lake Point.
22. Gramp rock	51°29.0 N	178°20.5 W			16460	Whole island.
23. Tag I.	51°33.5 N	178°34.5 W			16460	Whole island.
24. Ulak I.	51°20.0 N	178°57.0 W	51°18.5 N	178°59.5 W	16460	SE corner, Hasgox Pt.
25. Semisopochnoi	51°58.5 N	179°45.5 E	51°57.0 N	179°46.0 E	16440	E quadrant, Pochnoi Pt.
Semisopochnoi	52°01.5 N	179°37.5 E	52°01.5 N	179°39.0 E	16440	N quadrant, Petrel Pt.
26. Amchitka I.	51°22.5 N	179°28.0 E	51°22.0 N	179°25.0 E	16440	East Cape.
27. Amchitka I.	51°32.5 N	178°50.0 E			16440	Column Rocks.
28. Ayugadak Pt.	51°45.5 N	178°24.5 E			16440	SE coast of Rat Island.
29. Kiska I.	51°57.5 N	177°21.0 E	51°56.5 N	177°20.0 E	16440	W central, Lief Cove.
30. Kiska I.	51°52.5 N	177°13.0 E	51°53.5 N	177°12.0 E	16440	Cape St. Stephen.
31. Walrus I.	57°11.0 N	169°56.0 W			16380	Whole island.
32. Buldir I.	52°20.5 N	175°57.0 E	52°23.5 N	175°51.0 E	16420	Se point to NW point.
33. Agattu I.	52°24.0 N	173°21.5 E			16420	Gillion Point.
34. Agattu I.	52°23.5 N	173°43.5 E	52°22.0 N	173°41.0 E	16420	Cape Sabak.
35. Attu I.	52°57.5 N	172°31.5 E	52°54.5 N	172°28.5 E	16420	Cape Wrangell.

[1] Each site extends in a clockwise direction from the first set of geographic coordinates along the shoreline at mean lower low water to the second set of coordinates; or, if only one set of geographic coordinates is listed, the site extends around the entire shoreline of the island at mean lower low water.

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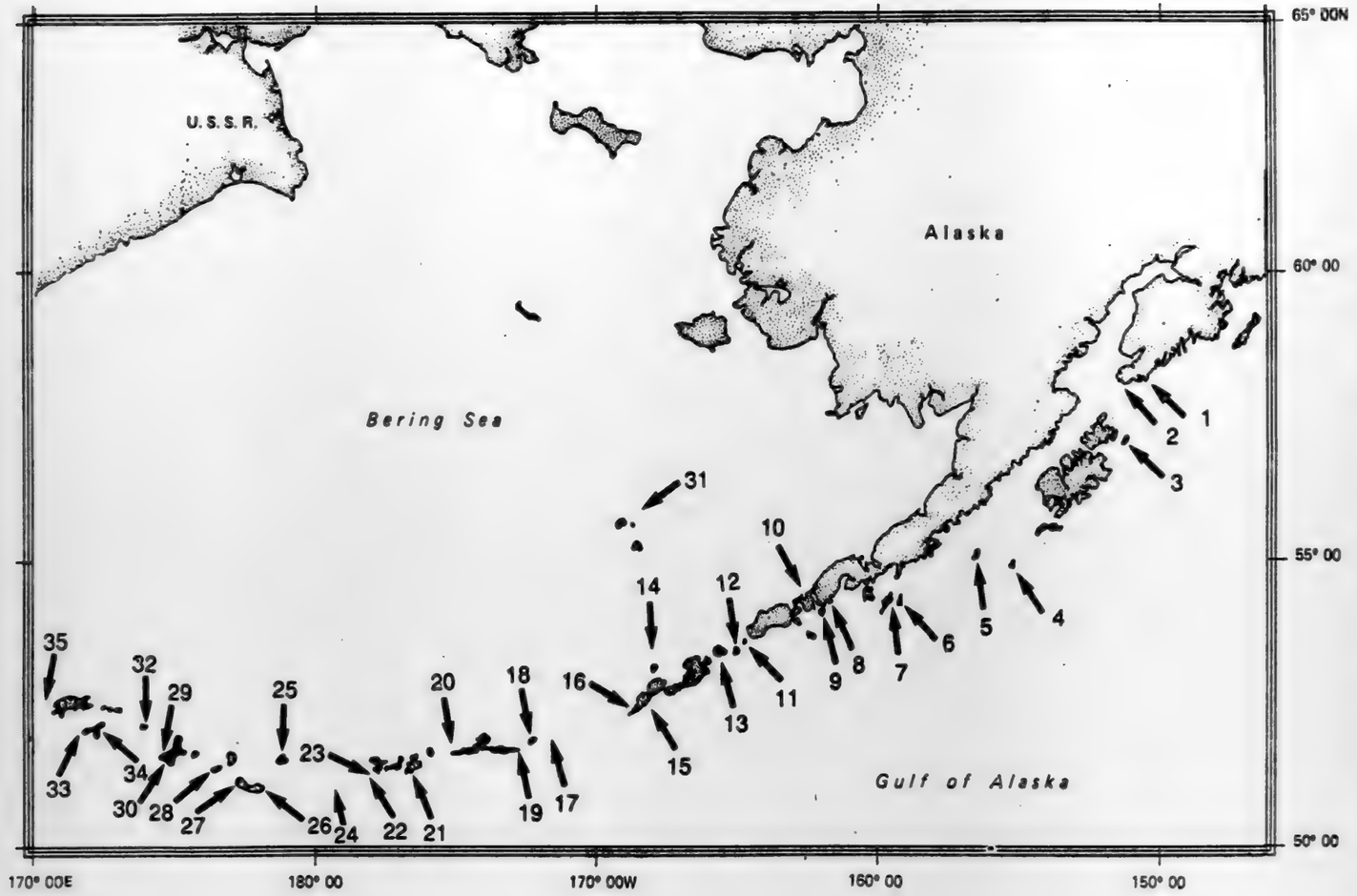

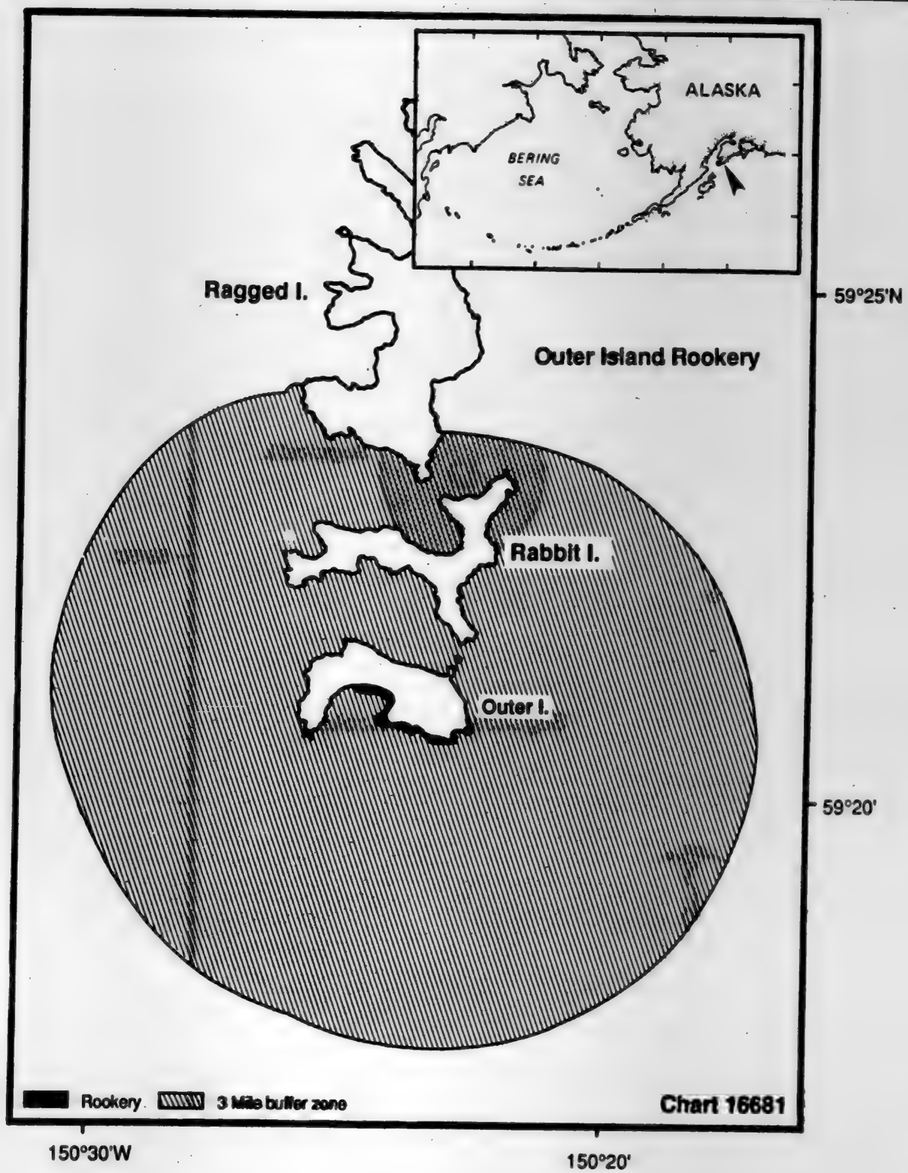

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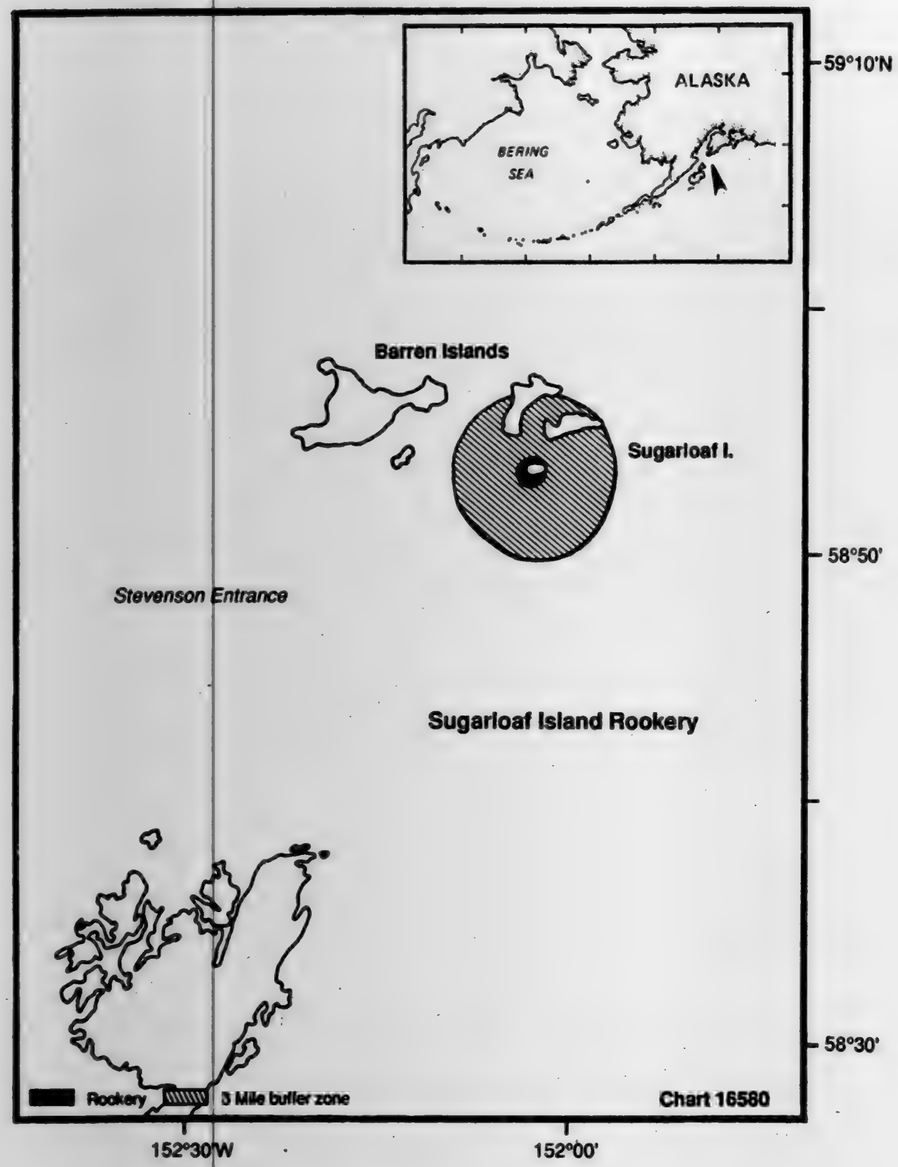
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BERING SEA
59°10'N
Barren Islands
Sugarloaf I.
58°50'
Stevenson Entrance
Sugarloaf Island Rookery
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Rookery
3 Mile buffer zone
Chart 16580
152°30'W
152°00'

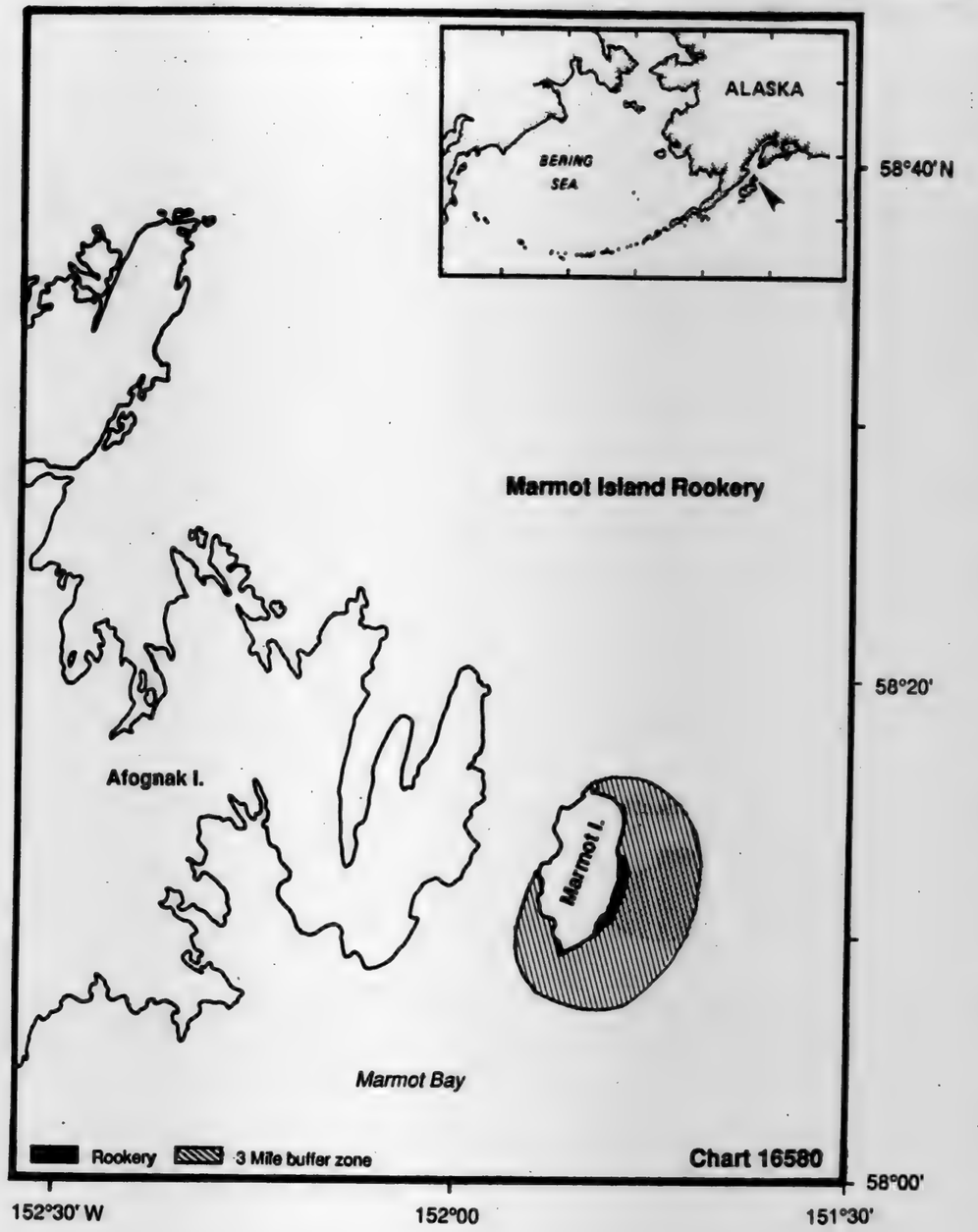
ALASKA
BERING SEA
58°40'N
Marmot Island Rookery
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Afognak I.
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Marmot Bay
Rookery
3 Mile buffer zone
Chart 16580
58°00'
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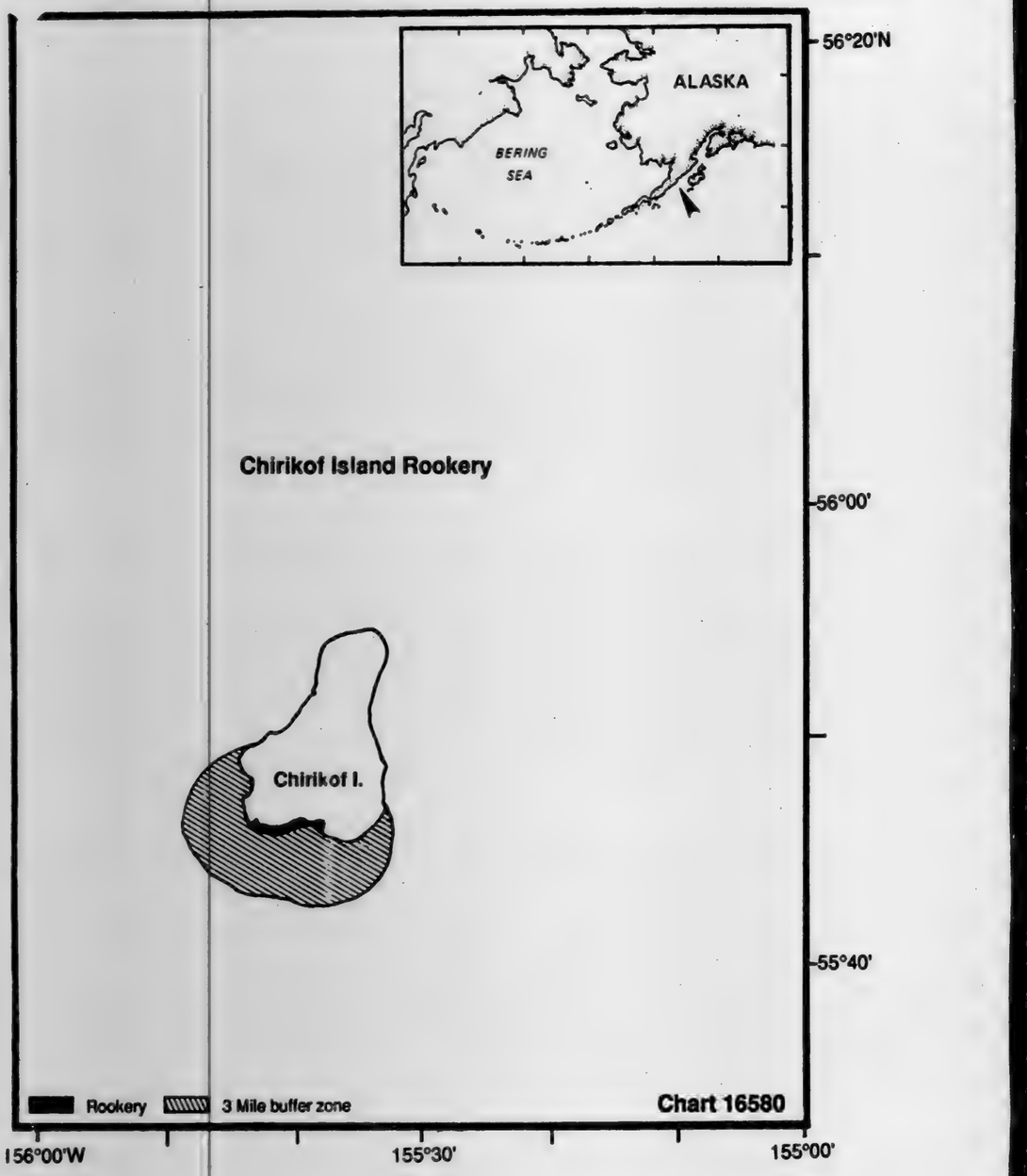
ALASKA
BERING SEA
56°20'N
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Chirikof Island Rookery
Chirikof I.
Rookery
3 Mile buffer zone
Chart 16580
156°00'W
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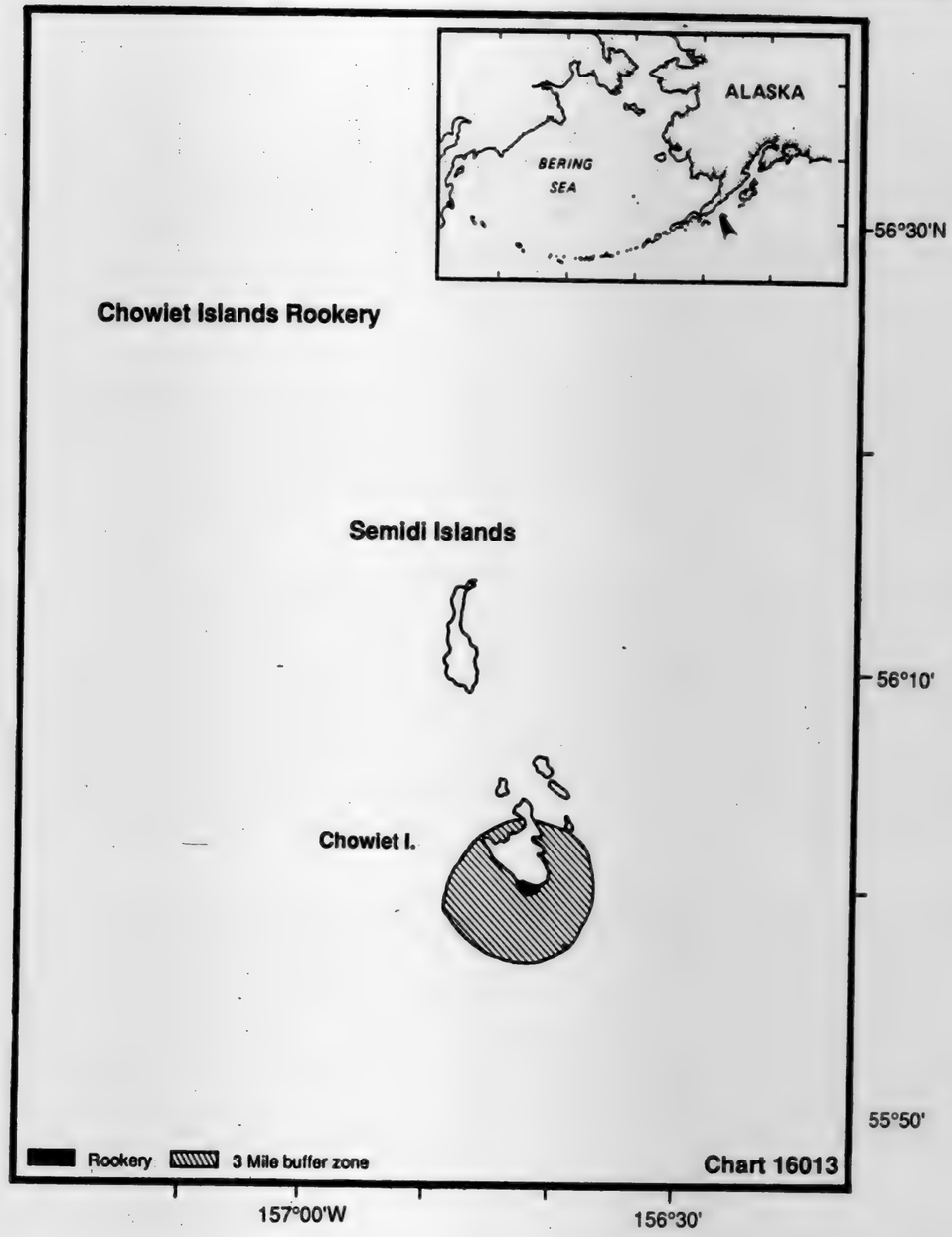
ALASKA
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Chowiet Islands Rookery
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3 Mile buffer zone
Chart 16013
157°00'W
156°30'

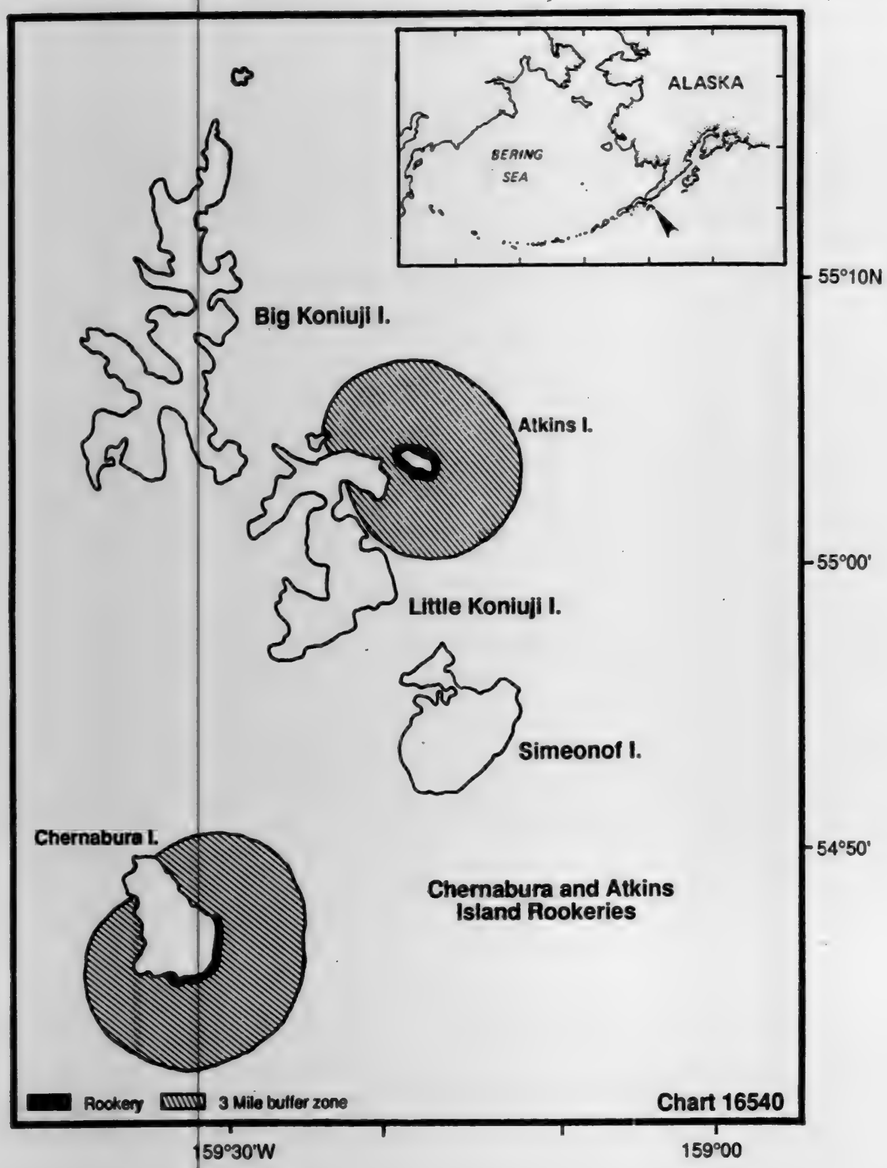
ALASKA
BERING SEA
55°10N
Big Koniuji I.
Atkins I.
55°00'
Little Koniuji I.
Simeonof I.
Chernabura I.
54°50'
Chernabura and Atkins Island Rookeries
Rookery
3 Mile buffer zone
Chart 16540
159°30'W
159°00

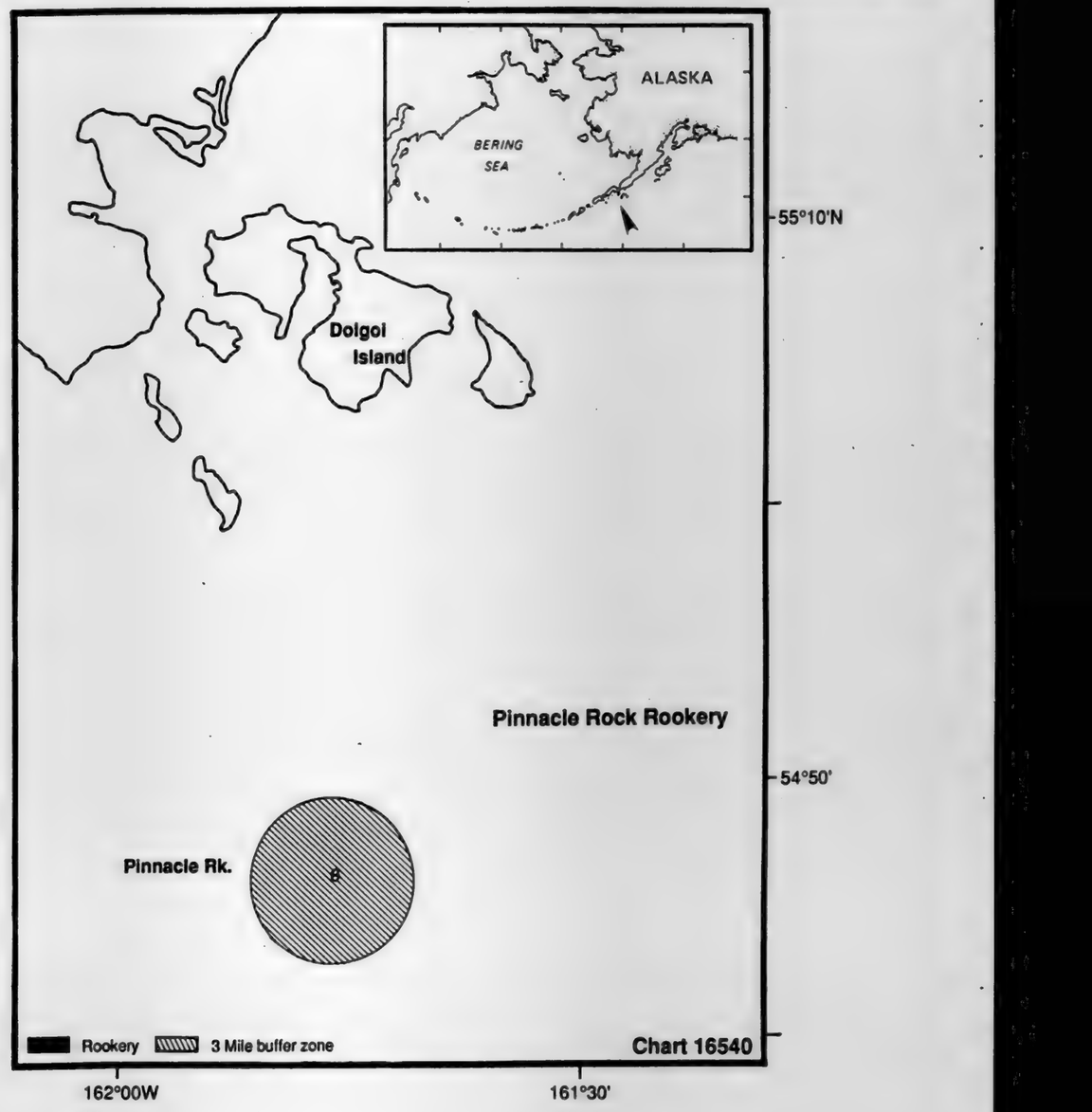
ALASKA
BERING SEA
55°10'N
Dolgoi Island
Pinnacle Rock Rookery
54°50'
Pinnacle Rk.
Rookery
3 Mile buffer zone
Chart 16540
162°00W
161°30'

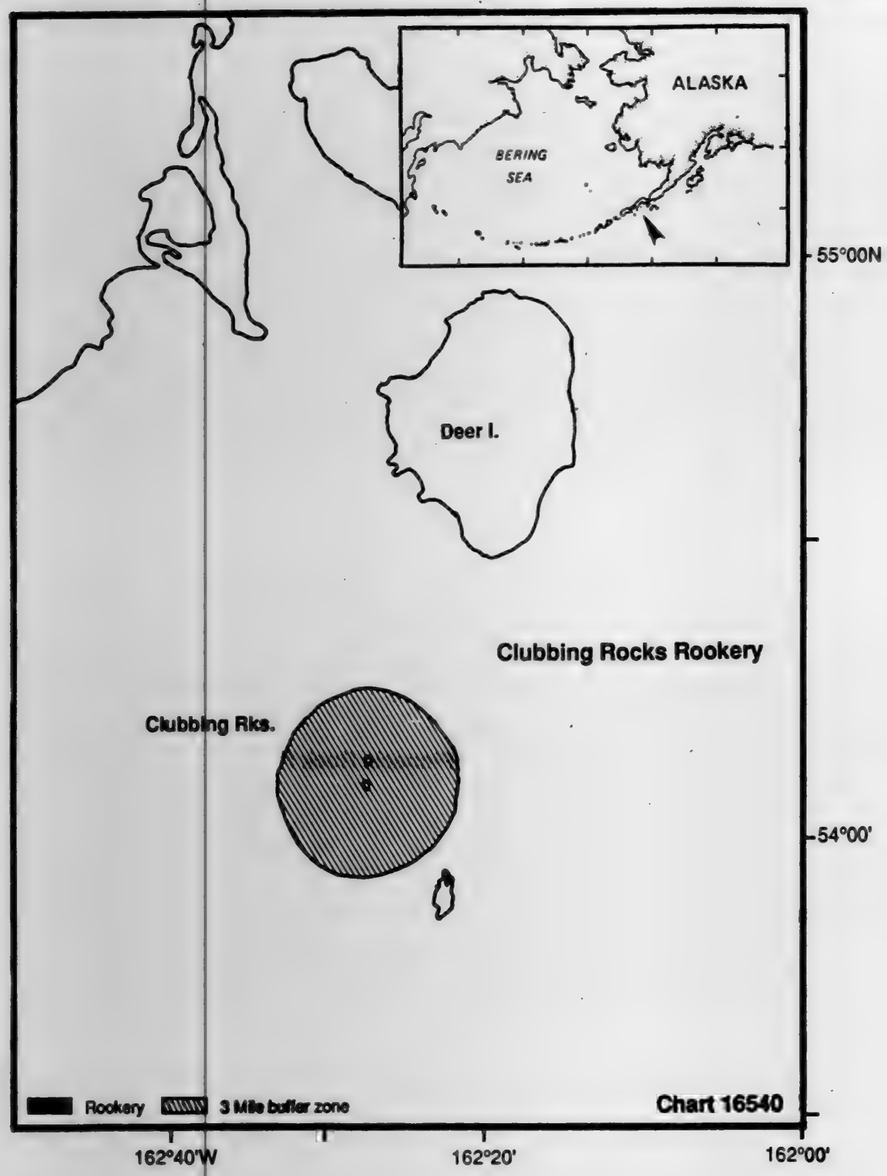
ALASKA
BERING SEA
55°00N
Deer I.
Clubbing Rocks Rookery
Clubbing Rks.
54°00'
Rookery
3 Mile buffer zone
Chart 16540
162°40'W
162°20'
162°00'

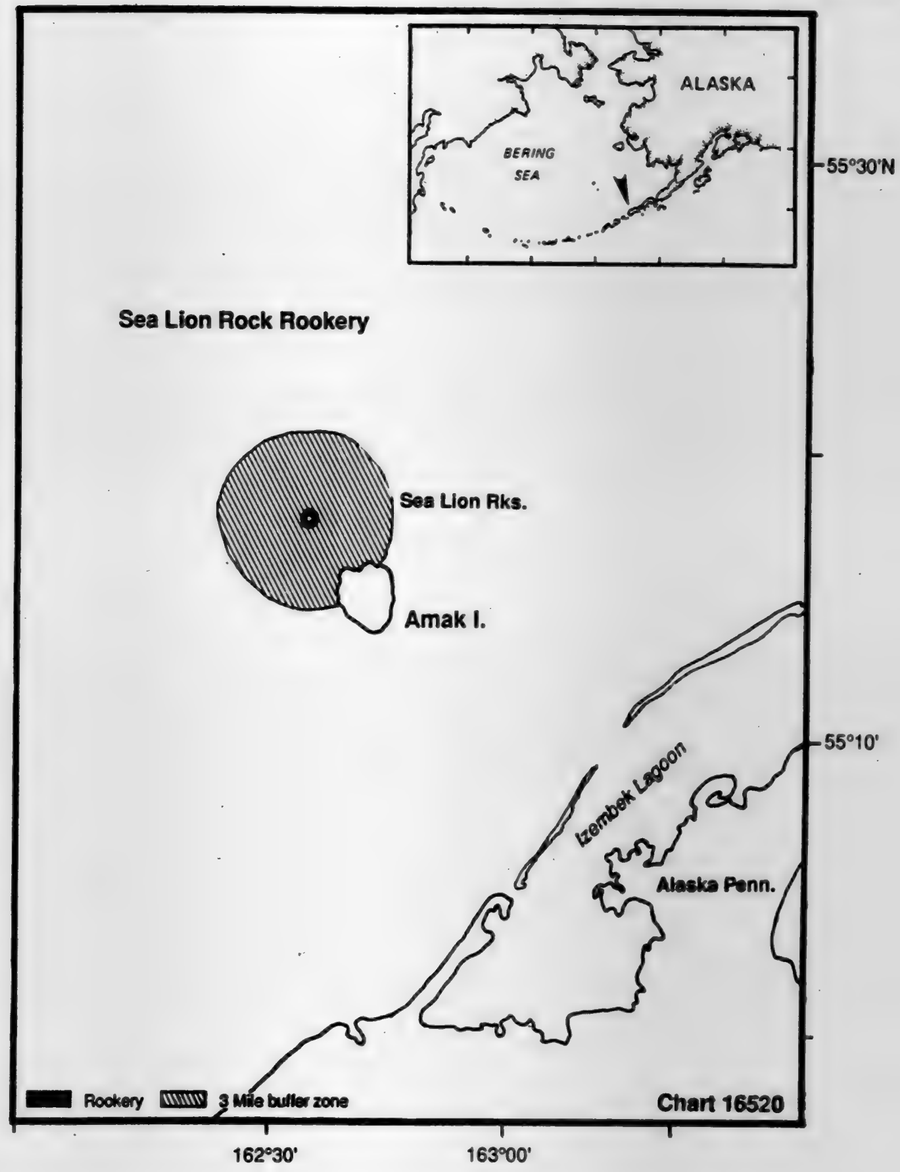
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BERING SEA
55°30'N
Sea Lion Rock Rookery
Sea Lion Rks.
Amak I.
55°10'
Izembek Lagoon
Alaska Penn.
Rookery
3 Mile buffer zone
Chart 16520
162°30'
163°00'

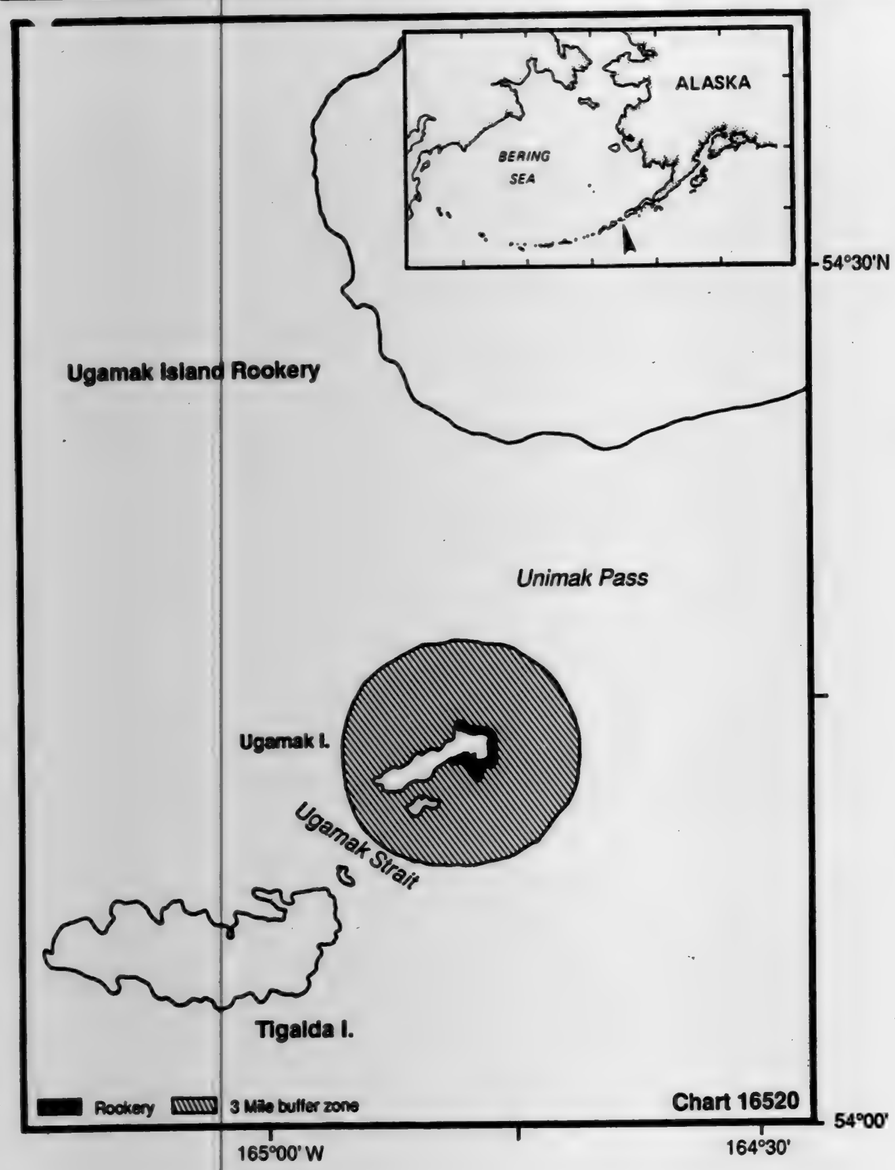
ALASKA
BERING SEA
54°30'N
Ugamak Island Rookery
Unimak Pass
Ugamak I.
Ugamak Strait
Tigalda I.
Rookery
3 Mile buffer zone
Chart 16520
54°00'
165°00' W
164°30'

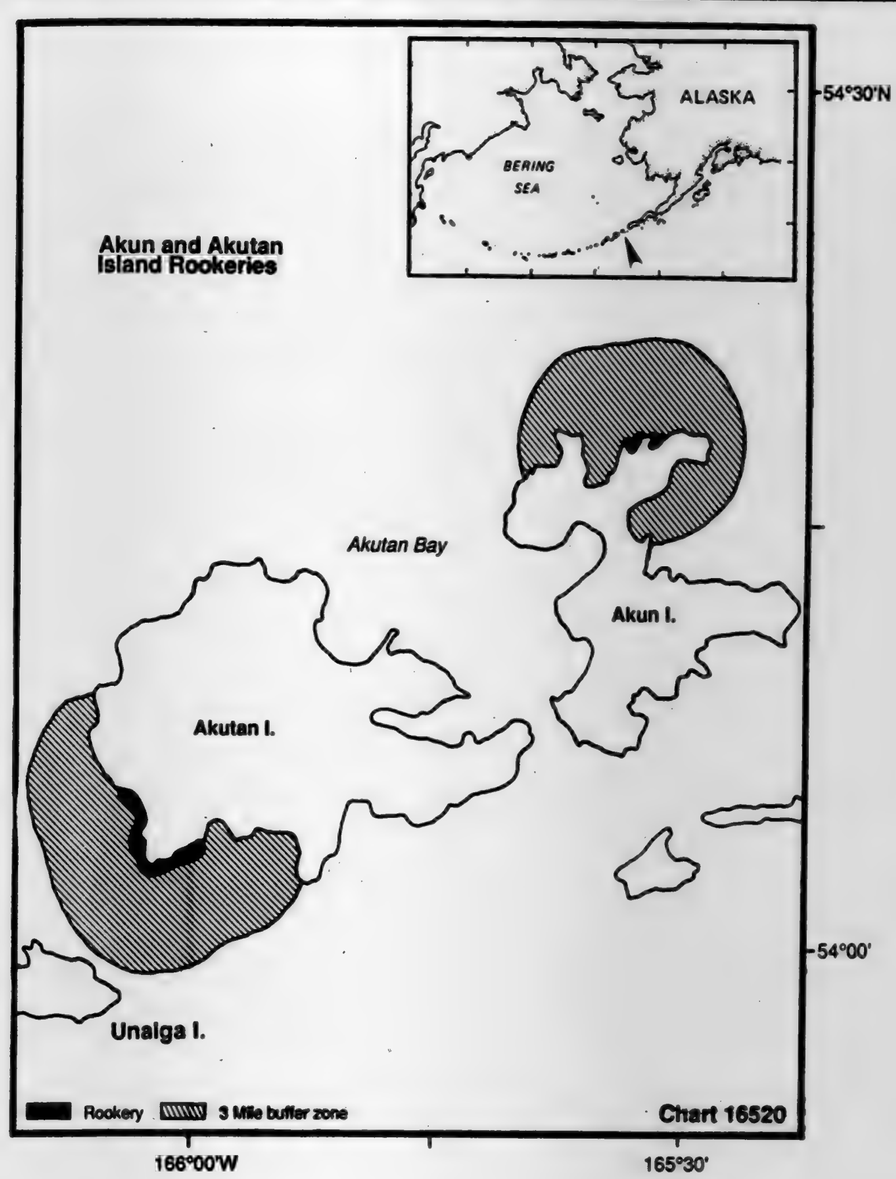
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BERING SEA
54°30'N
Akun and Akutan Island Rookeries
Akutan Bay
Akun I.
Akutan I.
54°00'
Unaiga I.
Rookery
3 Mile buffer zone
Chart 16520
166°00'W
165°30'

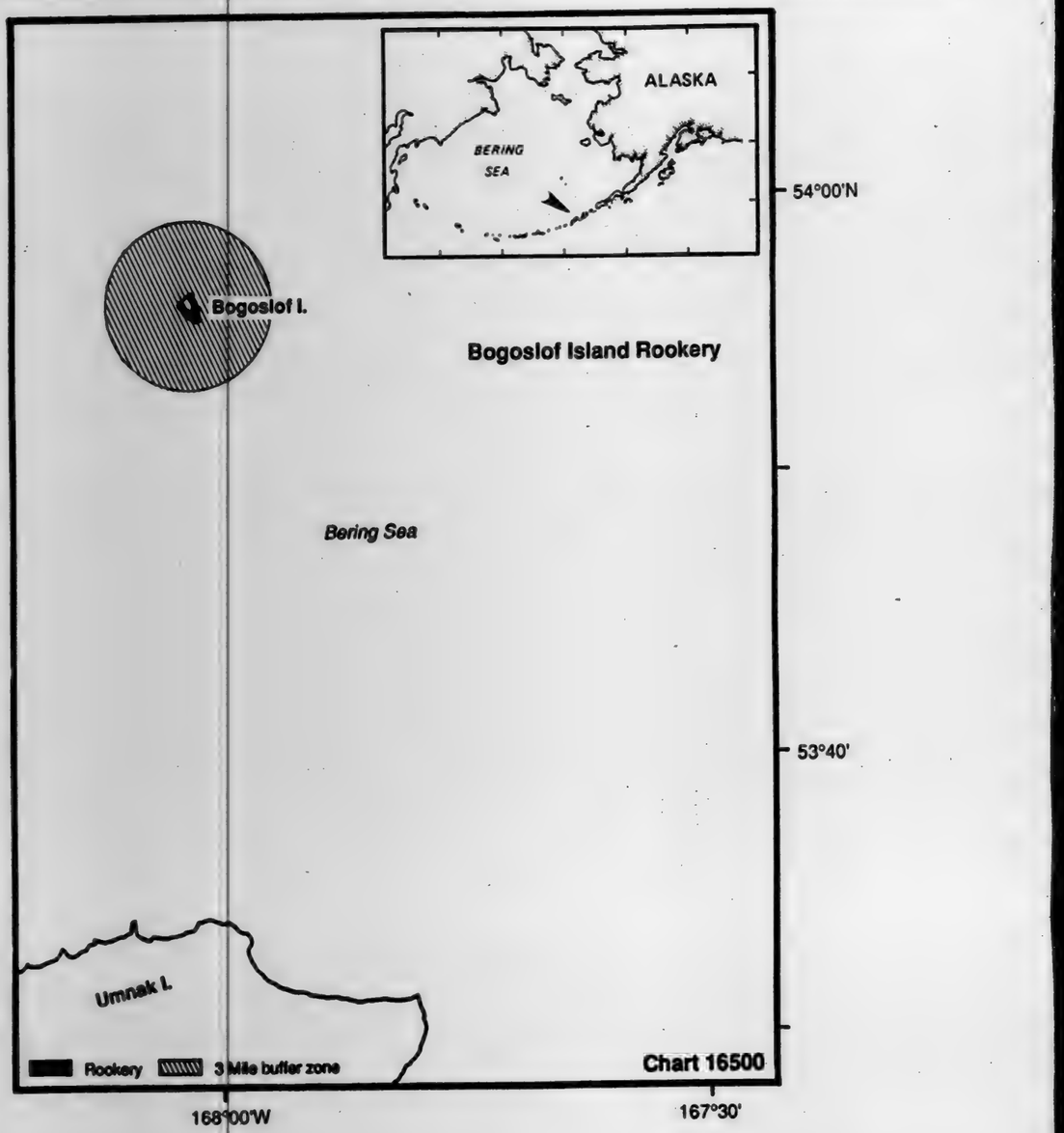
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54°00'N
Bogoslof I.
Bogoslof Island Rookery
Bering Sea
53°40'
Umnak I.
Rookery
3 Mile buffer zone
Chart 16500
168°00'W
167°30'

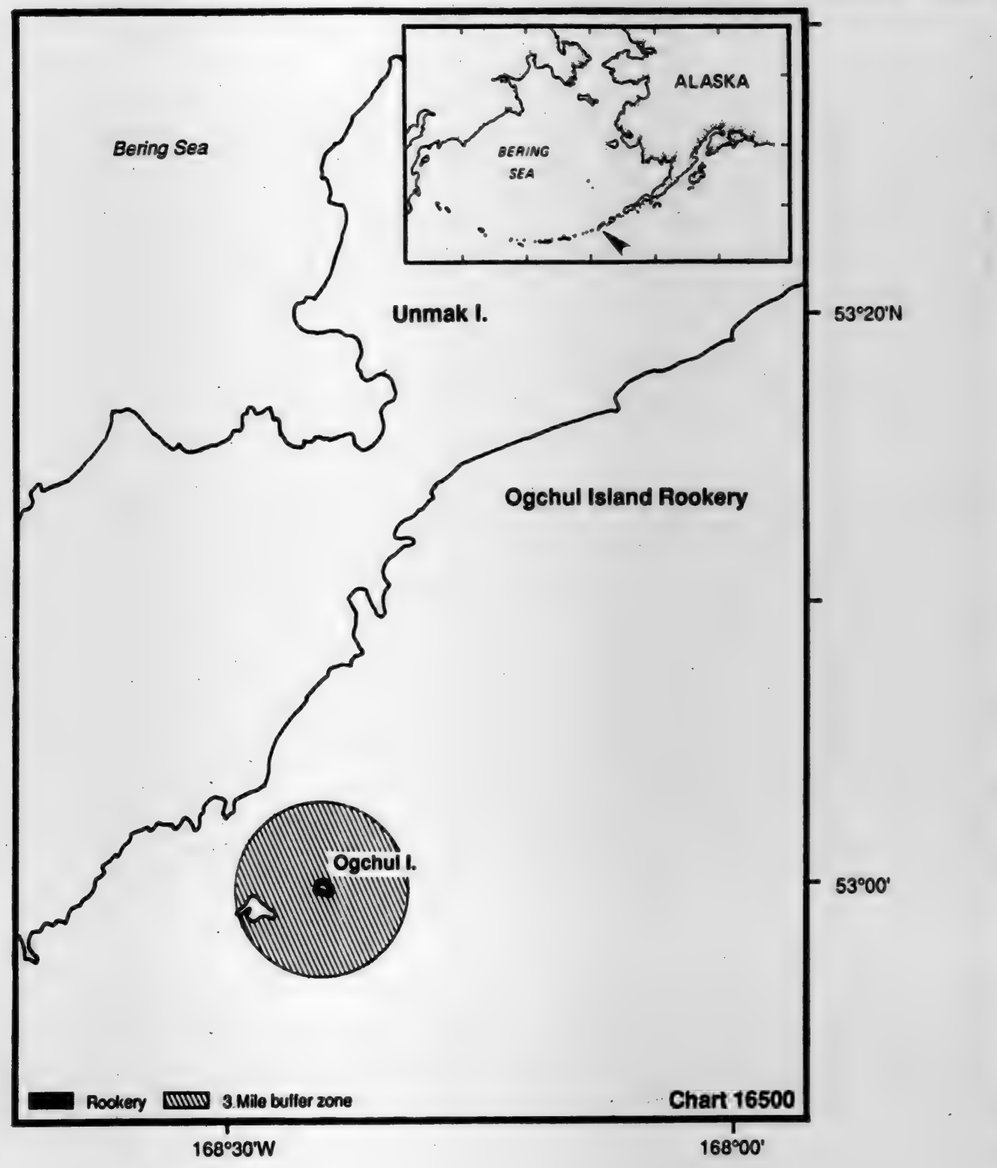
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BERING SEA
Bering Sea
Unmak I.
53°20'N
Ogchul Island Rookery
Ogchul I.
53°00'
Rookery
3 Mile buffer zone
Chart 16500
168°30'W
168°00'

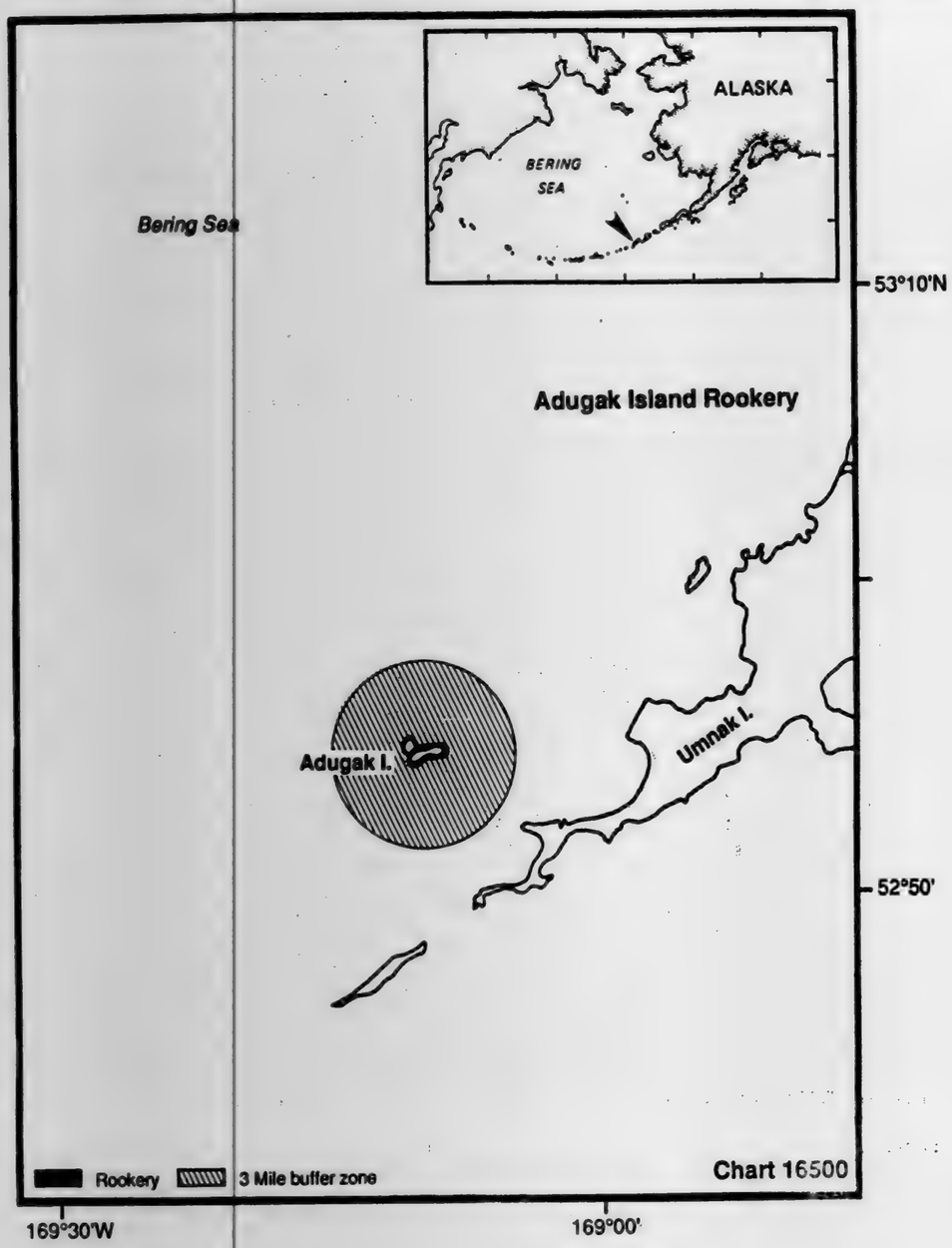
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Bering Sea
53°10'N
Adugak Island Rookery
Umnak I.
Adugak I.
52°50'
Rookery
3 Mile buffer zone
Chart 16500
169°30'W
169°00'

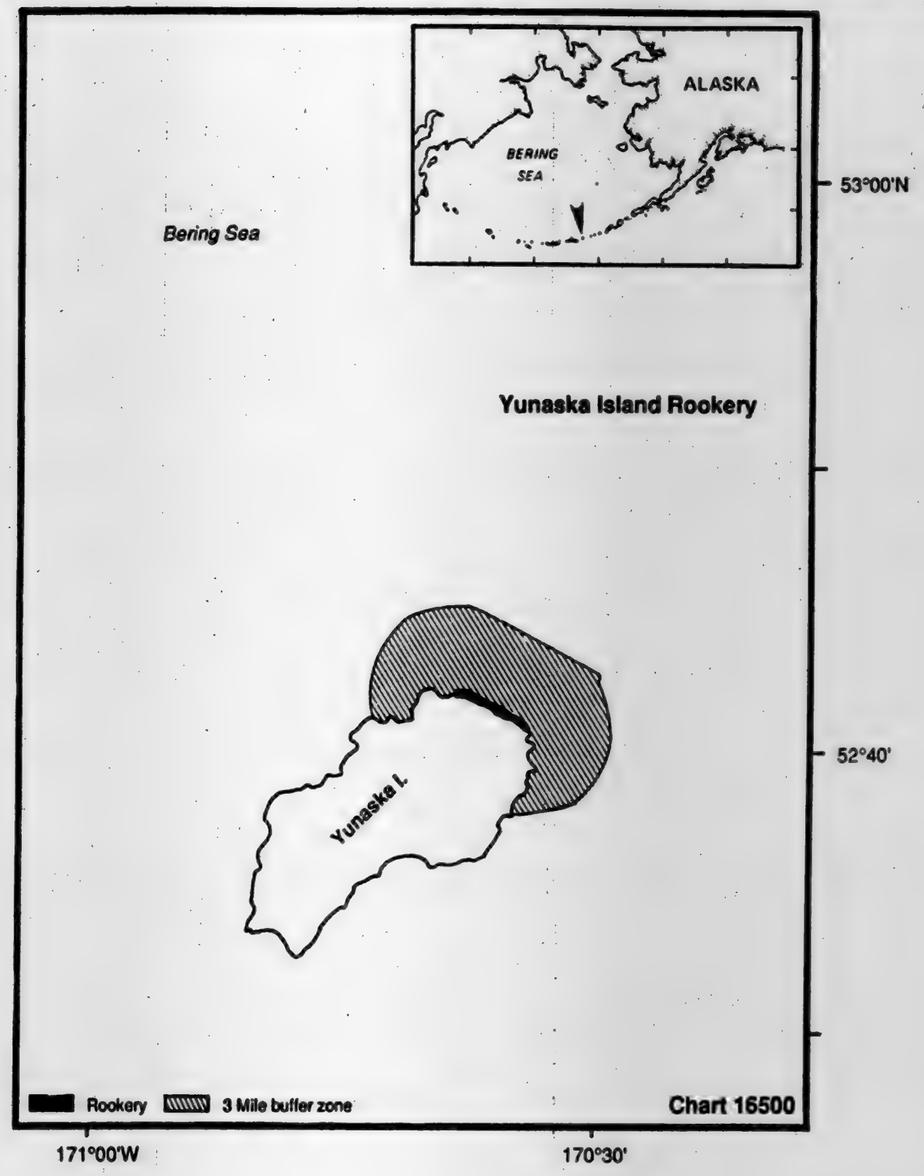
ALASKA
BERING SEA
Bering Sea
53°00'N
Yunaska Island Rookery
Yunaska I.
52°40'
Rookery
3 Mile buffer zone
Chart 16500
171°00'W
170°30'

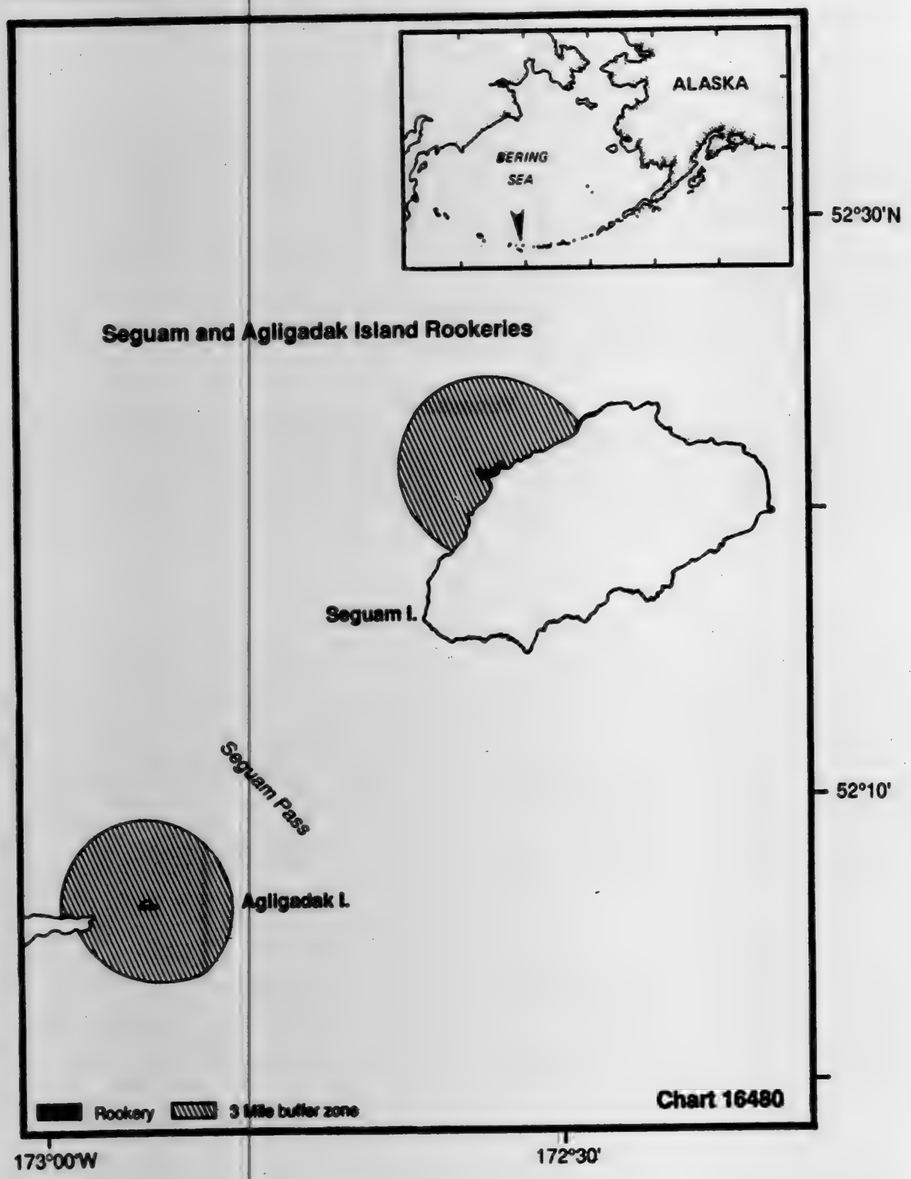
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52°30'N
Seguam and Agligadak Island Rookeries
Seguam I.
Seguam Pass
52°10'
Agligadak I.
Rookery
3 Mile buffer zone
Chart 16480
173°00'W
172°30'

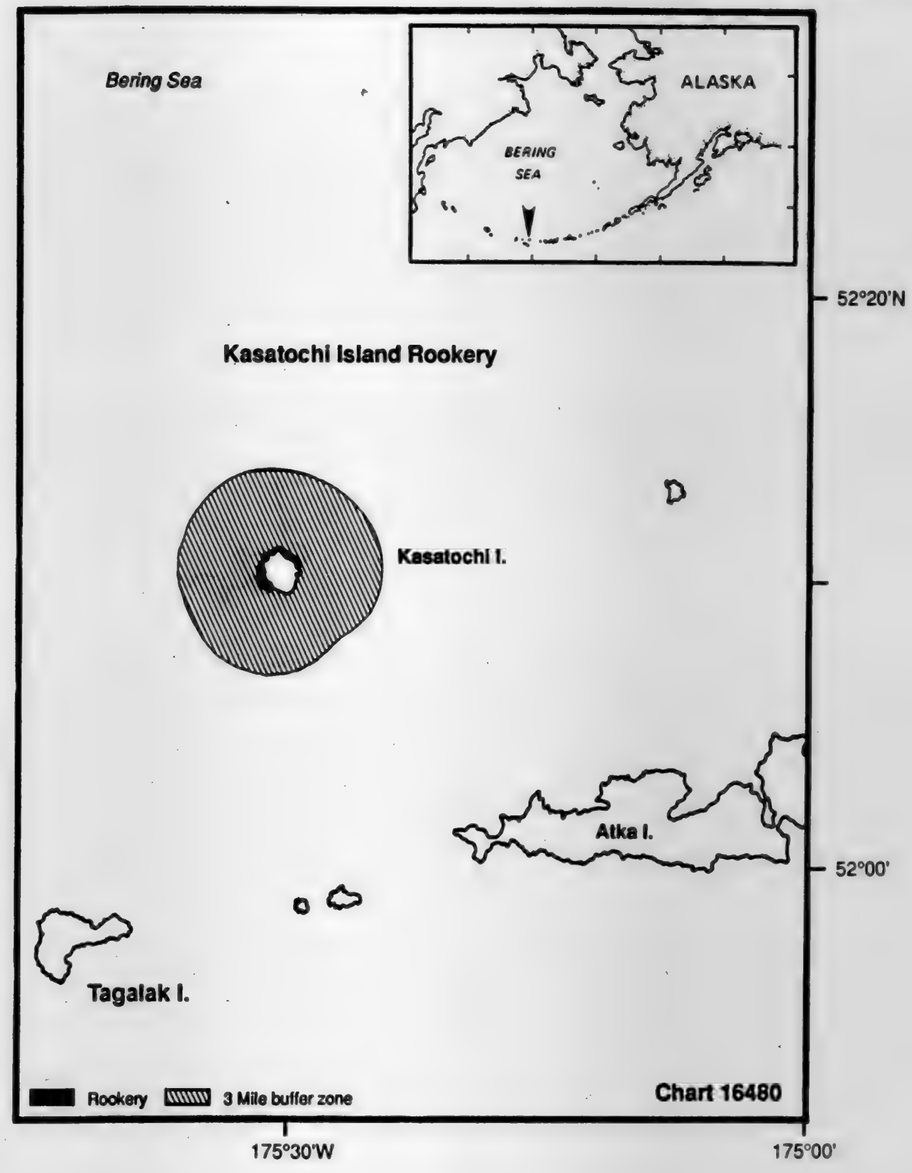
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ALASKA
BERING SEA
52°20'N
Kasatochi Island Rookery
Kasatochi I.
Atka I.
52°00'
Tagalak I.
Rookery
3 Mile buffer zone
Chart 16480
175°30'W
175°00'

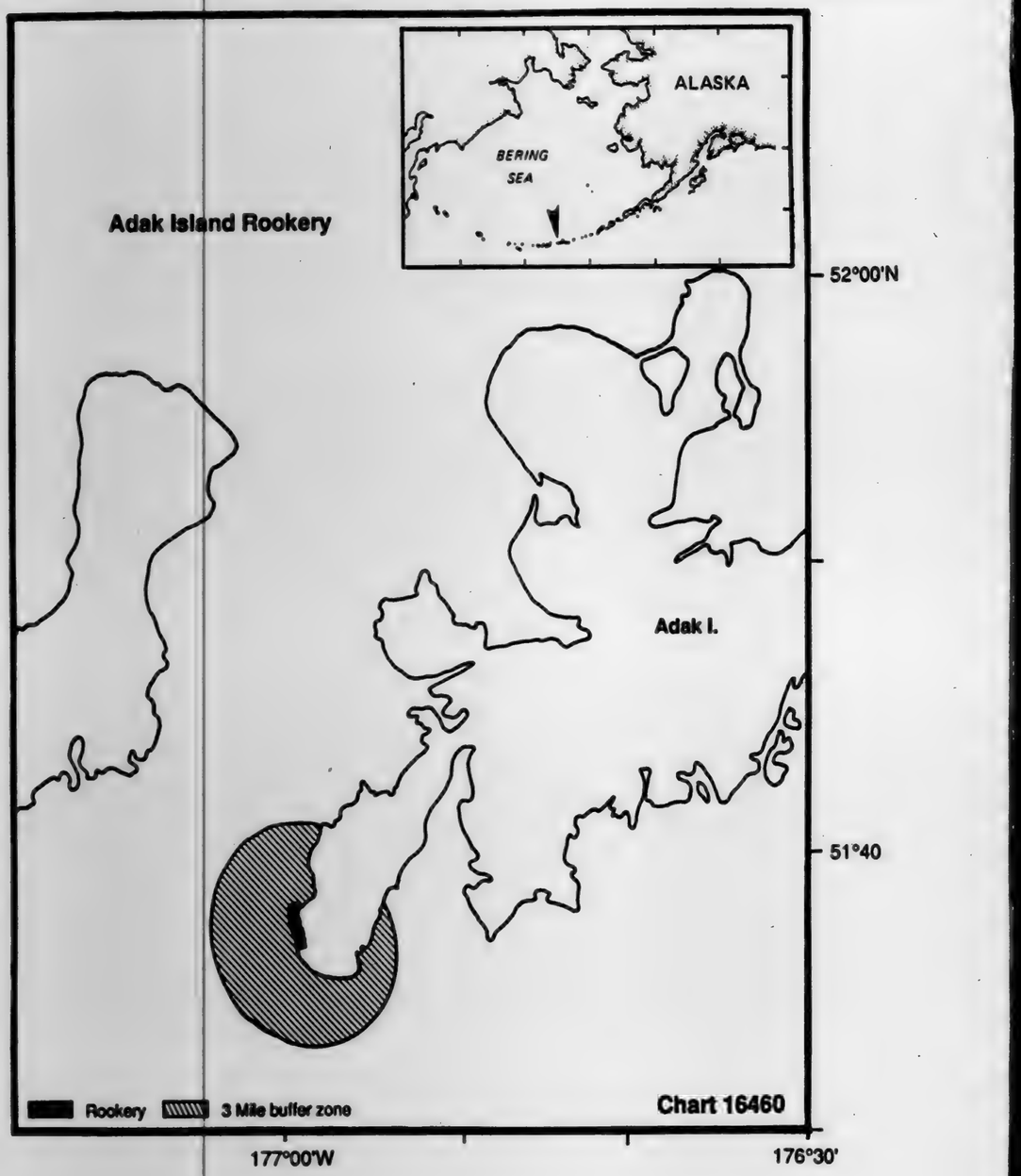
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BERING SEA
Adak Island Rookery
52°00'N
Adak I.
51°40
Rookery
3 Mile buffer zone
Chart 16460
177°00'W
176°30'

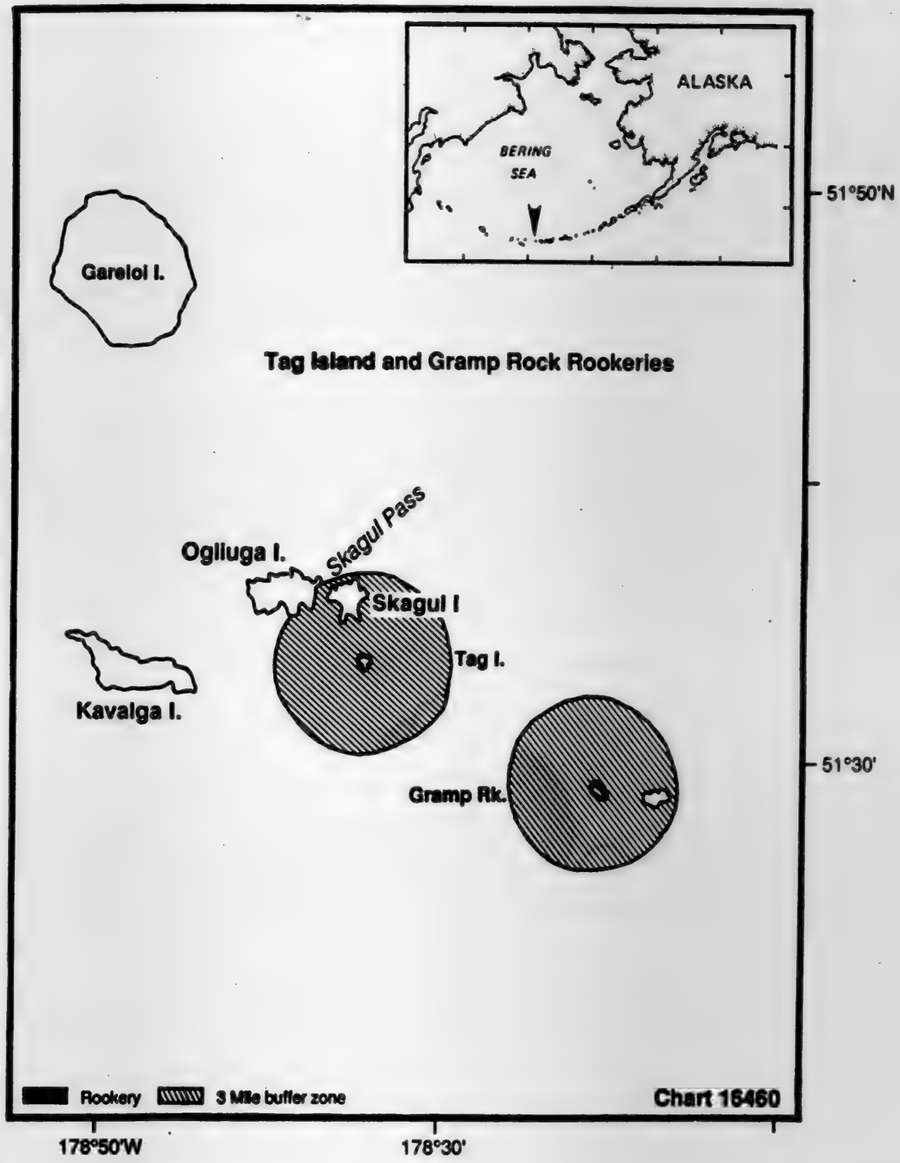
ALASKA
BERING SEA
51°50'N
Gareloi I.
Tag Island and Gramp Rock Rookeries
Ogliuga I.
Skagul Pass
Skagul I
Tag I.
Kavalga I.
Gramp Rk.
51°30'
Rookery
3 Mile buffer zone
Chart 16460
178°50'W
178°30'

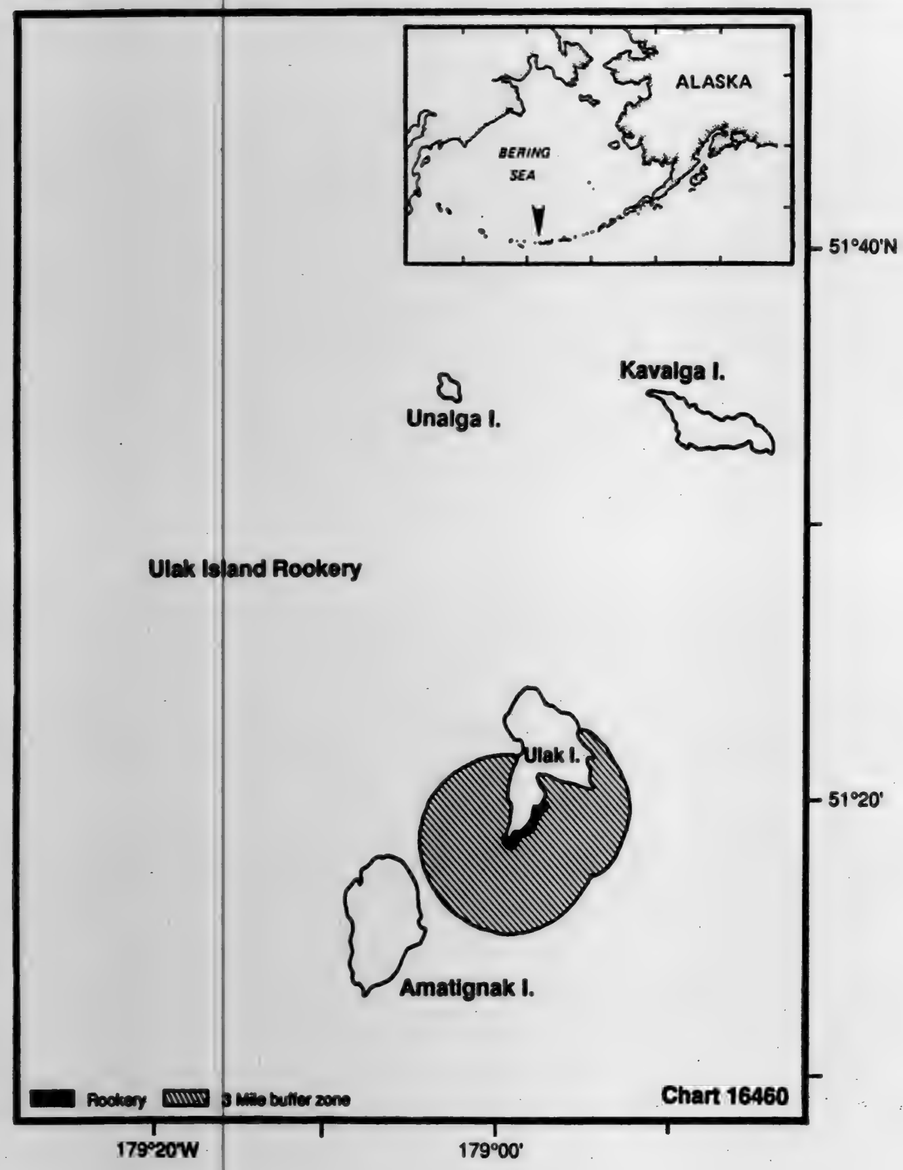

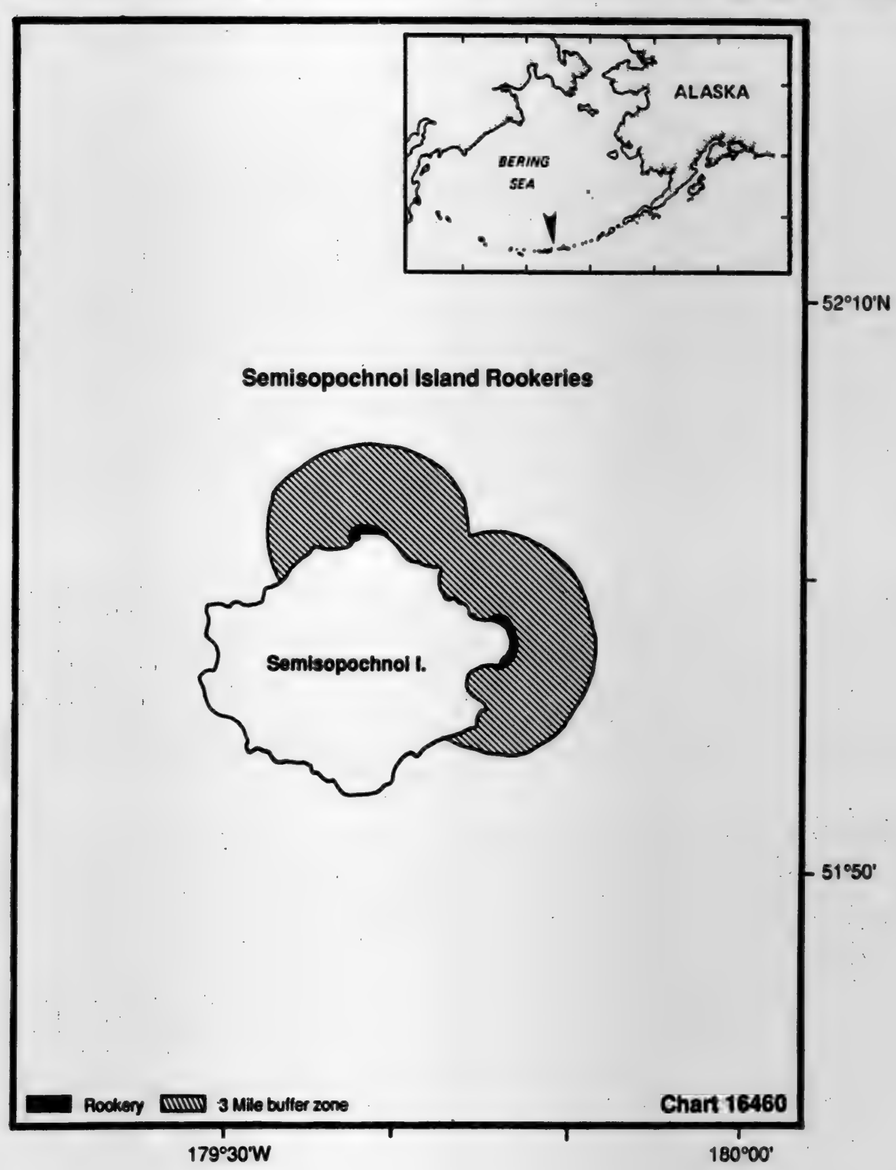

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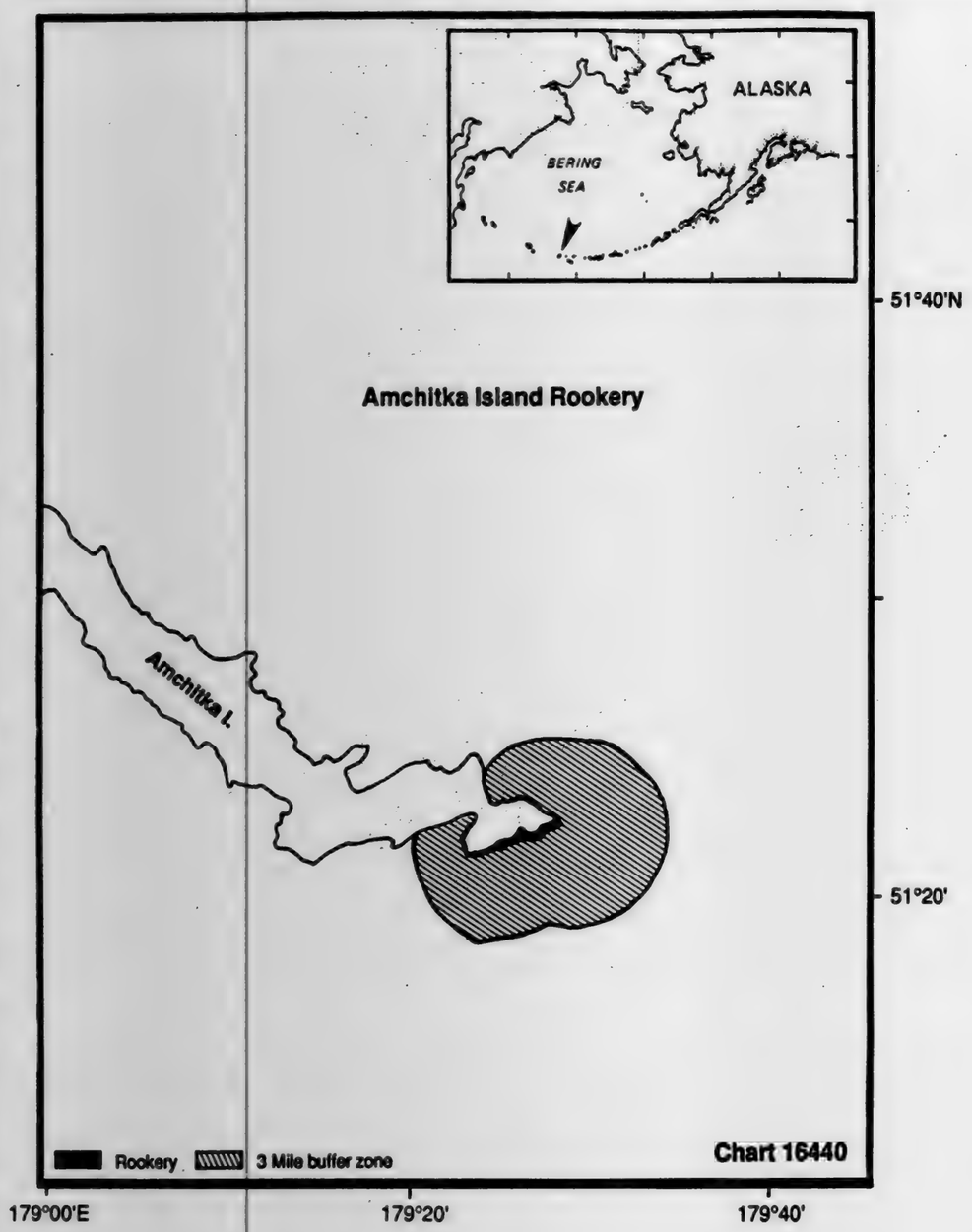
ALASKA
BERING SEA
51°40'N
Amchitka Island Rookery
Amchitka I.
51°20'
Rookery
3 Mile buffer zone
Chart 16440
179°00'E
179°20'
179°40'

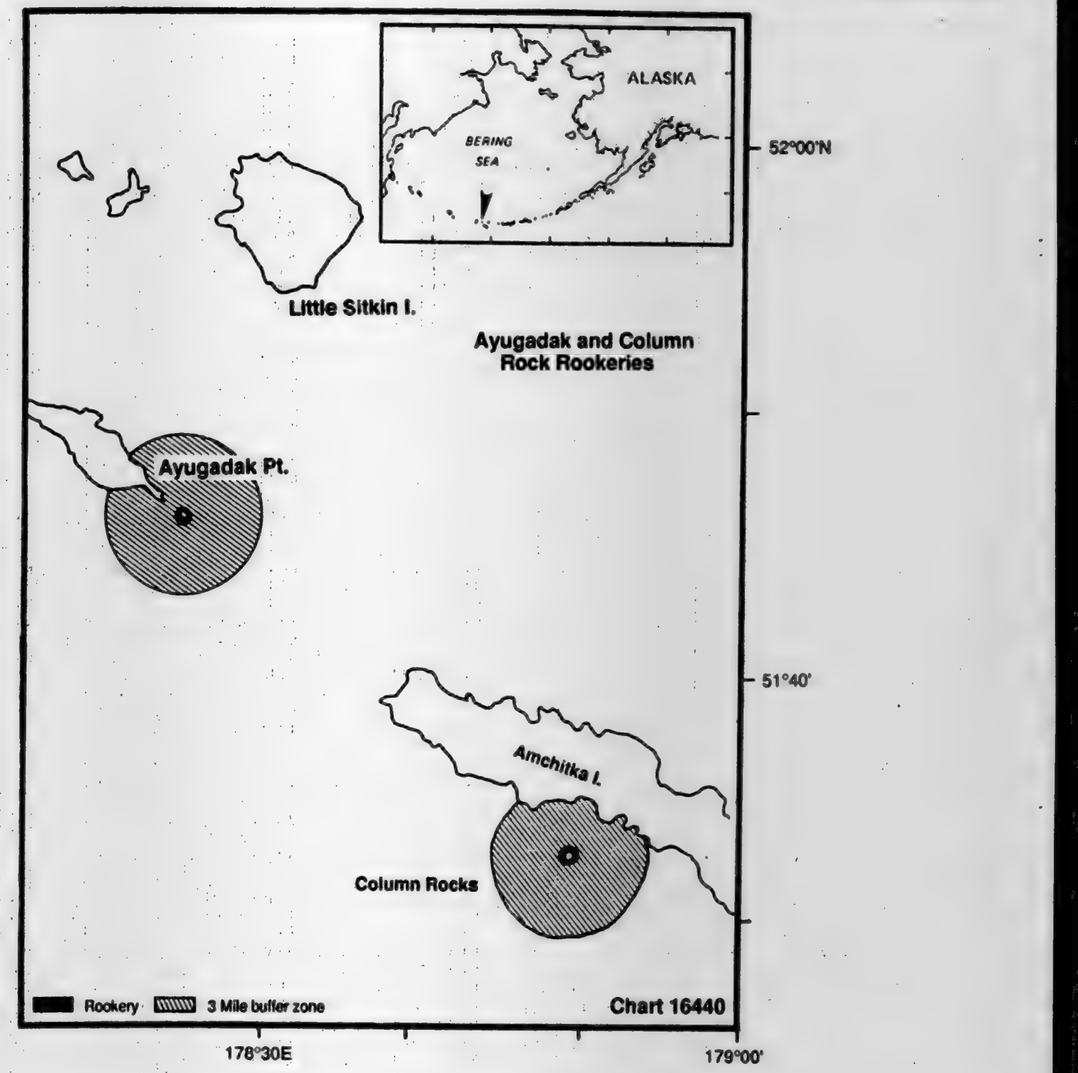
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Little Sitkin I.
Ayugadak and Column Rock Rookeries
Ayugadak Pt.
51°40'
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Column Rocks
Rookery
3 Mile buffer zone
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178°30E
179°00'

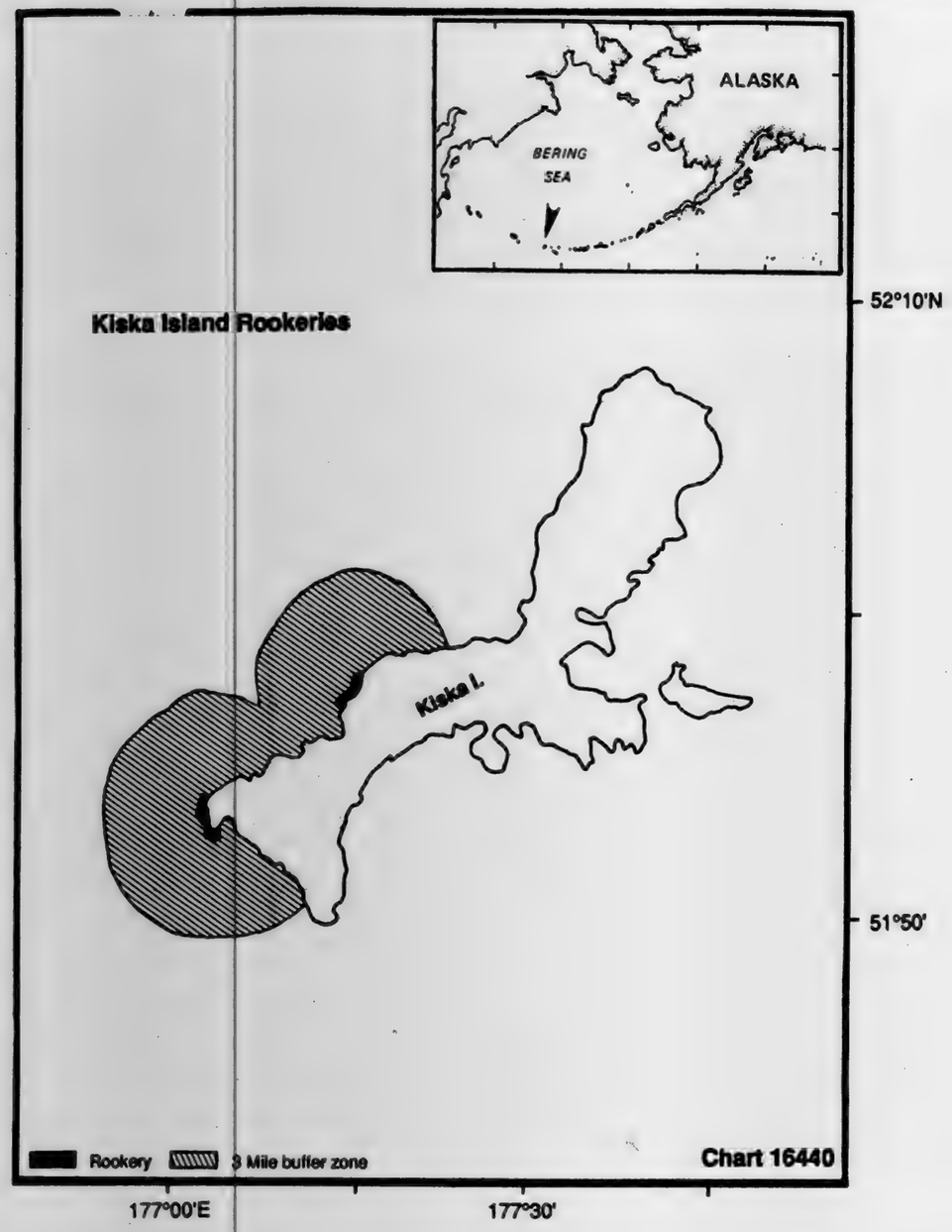
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52°10'N
Kiska Island Rookeries
Kiska I.
51°50'
Rookery
3 Mile buffer zone
Chart 16440
177°00'E
177°30'

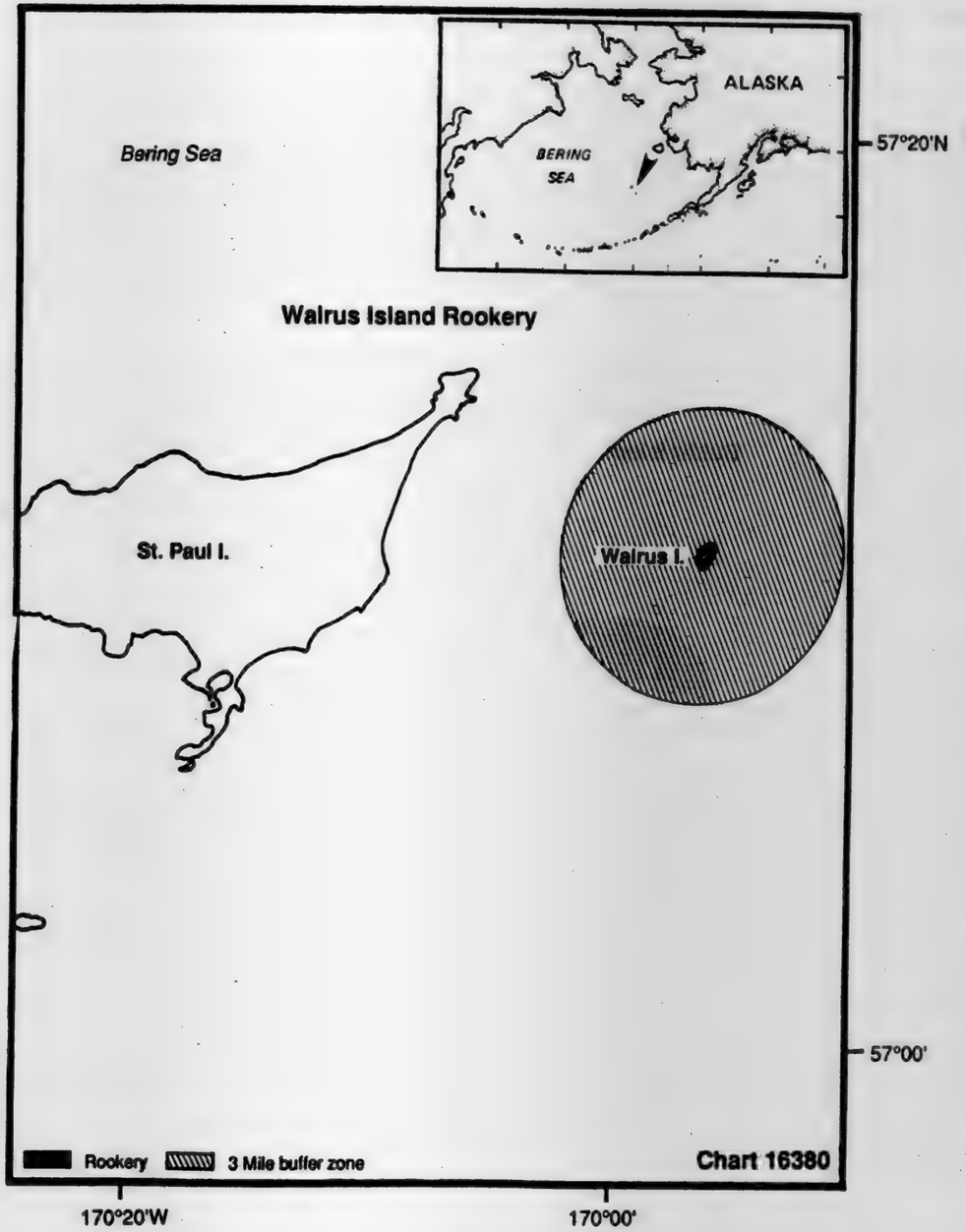
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BERING SEA
57°20'N
Walrus Island Rookery
St. Paul I.
Walrus I.
57°00'
Rookery
3 Mile buffer zone
Chart 16380
170°20'W
170°00'

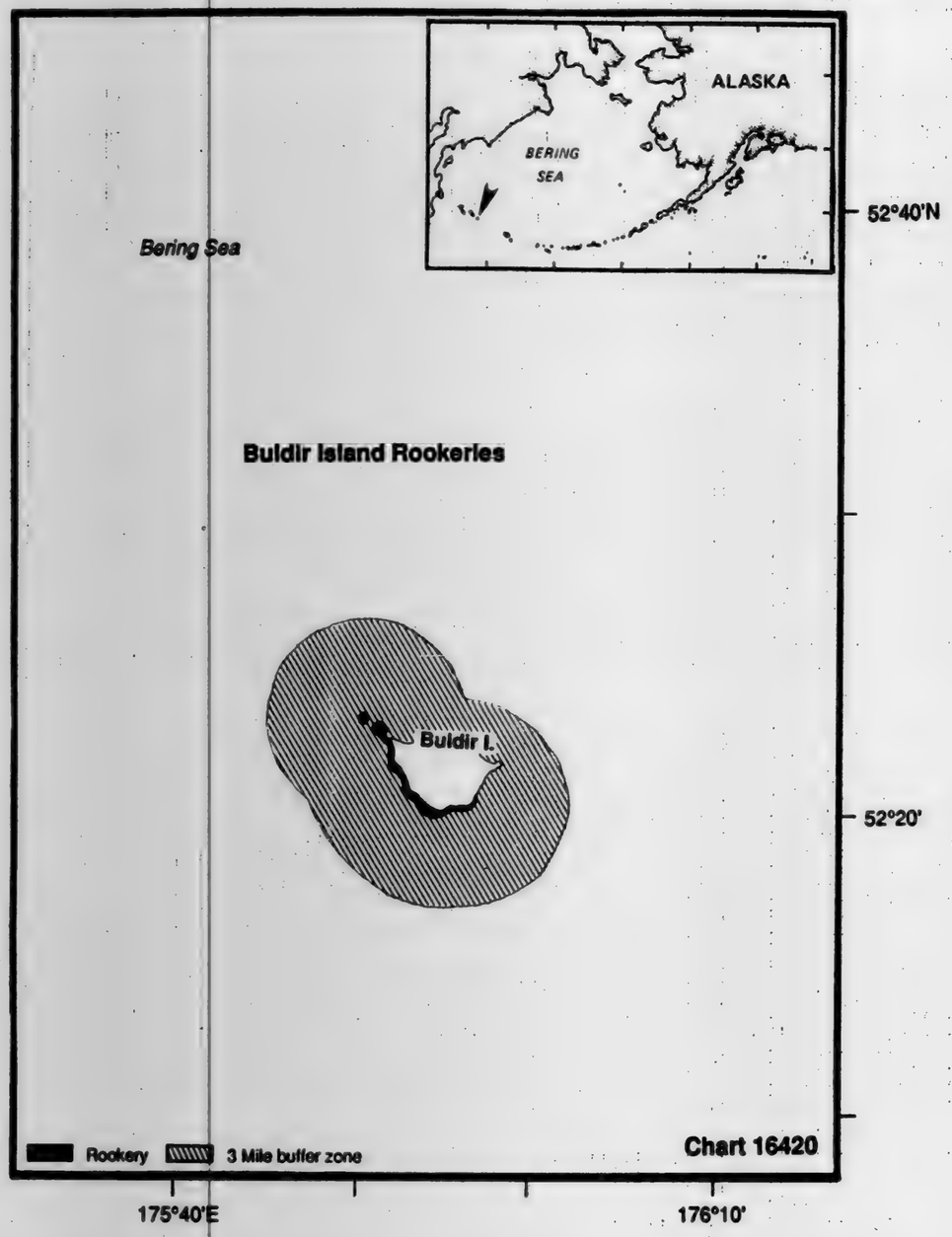
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BERING SEA
Bering Sea
52°40'N
Buldir Island Rookeries
Buldir I.
52°20'
Rookery
3 Mile buffer zone
Chart 16420
175°40'E
176°10'

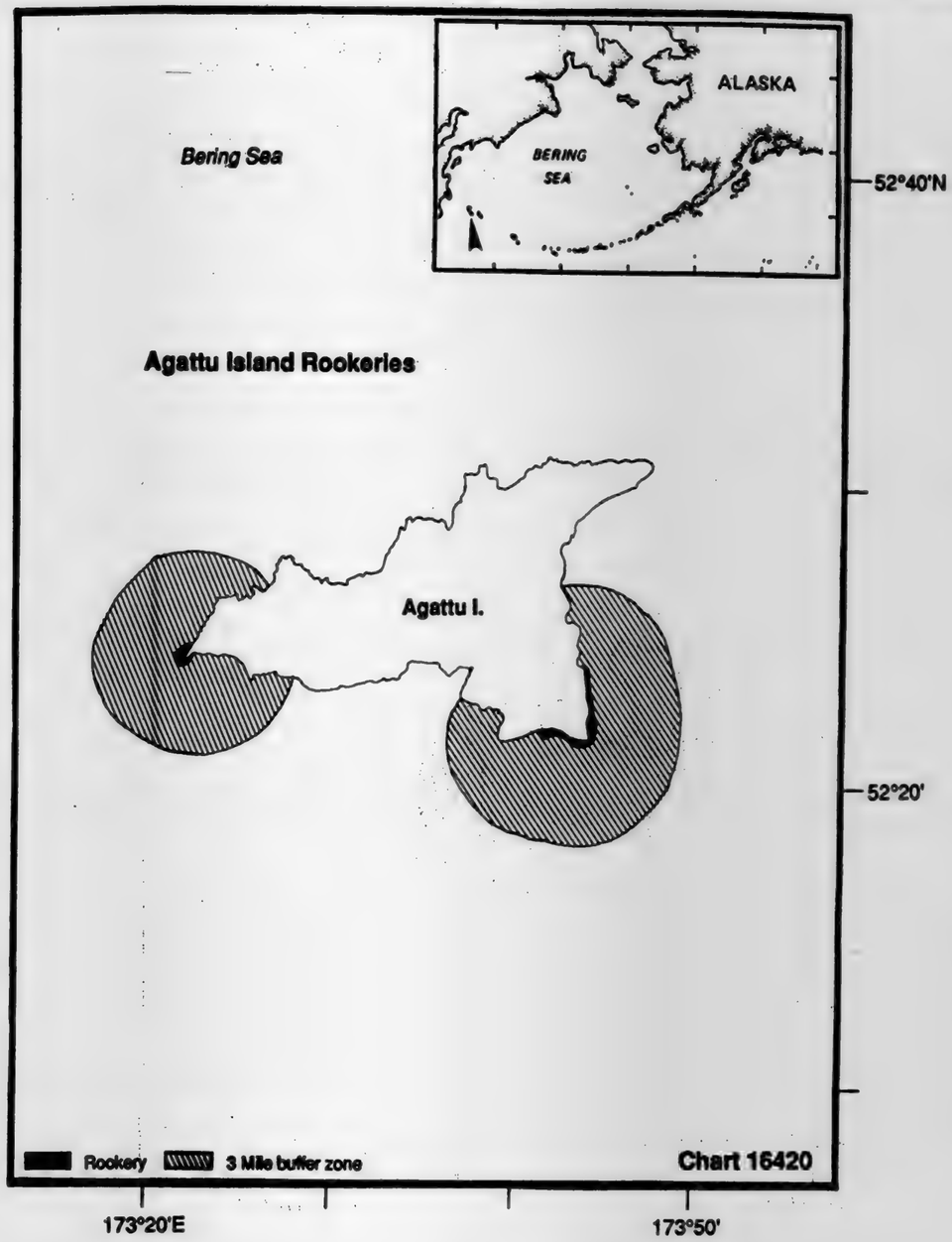
ALASKA
BERING SEA
Bering Sea
52°40'N
Agattu Island Rookeries
Agattu I.
52°20'
Rookery
3 Mile buffer zone
Chart 16420
173°20'E
173°50'

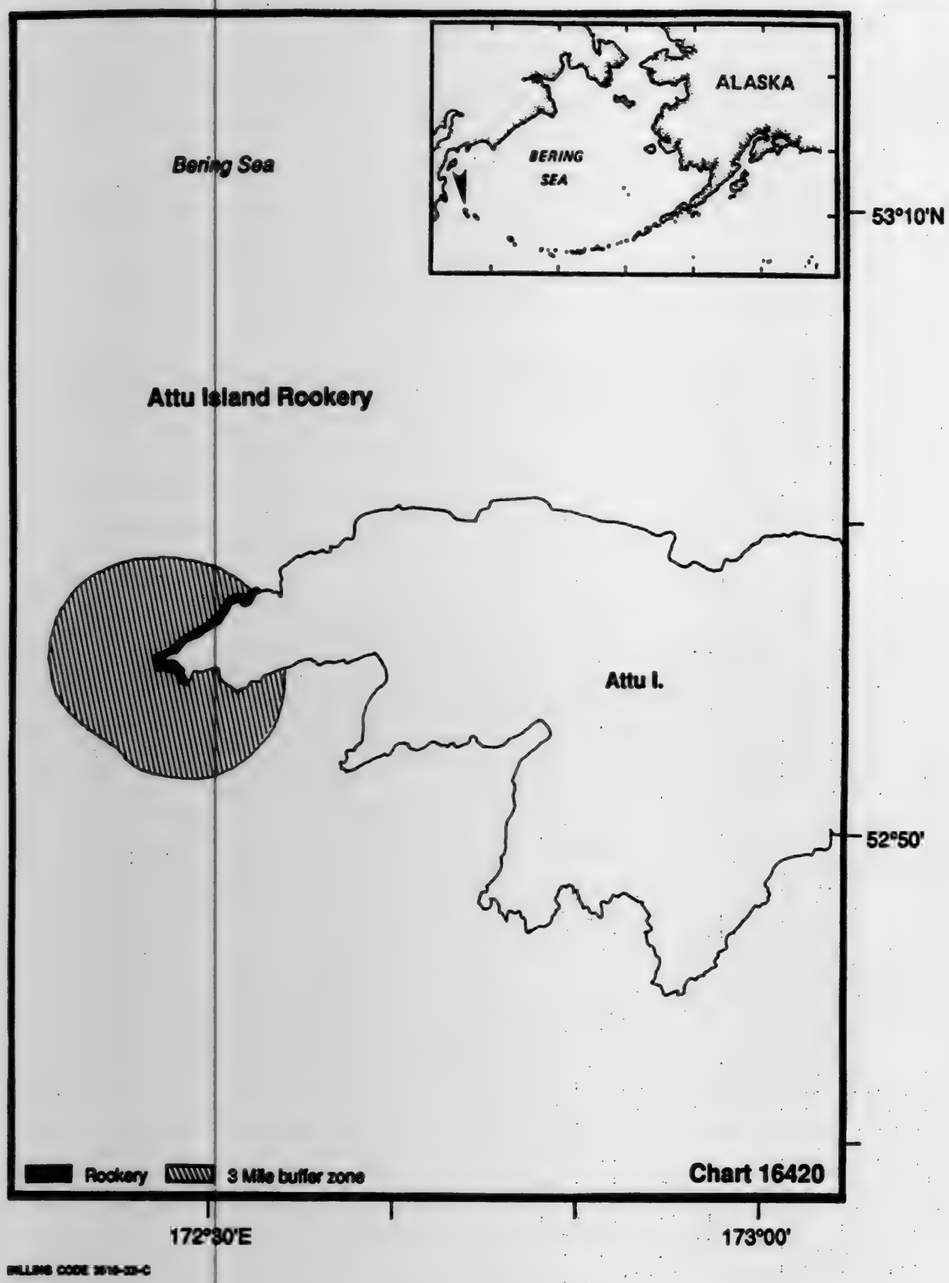

BILLING CODE 3510-22-C

(4) *Quota.* If the Assistant Administrator determines and publishes notice that 675 Steller sea lions have been killed incidentally in the course of commercial fishing operations in Alaskan waters and adjacent areas of the U.S. Exclusive Economic Zone (EEZ) west of 141° W longitude during any calendar year, then it will be unlawful to kill any additional Steller sea lions in this area. In order to monitor this quota, the Director, Alaska Region, National Marine Fisheries Service, may require the placement of an observer on any fishing vessel. If data indicate that the quota is being approached, the Assistant Administrator will issue emergency rules to establish closed areas, allocate the remaining quota among fisheries, or take other action(s) to ensure that commercial fishing operations do not exceed the quota.

(b) *Exceptions*—(1) *Permits.* The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under paragraph (a) of this section in accordance with and subject to the provisions of 50 CFR part 222, subpart C—Endangered Fish or Wildlife Permits.

(2) *Official activities.* Paragraph (a) of this section does not prohibit or restrict a Federal, state or local government official, or his or her designee, who is acting in the course of official duties from:

(i) Taking a Steller sea lion in a humane manner, if the taking is for the protection or welfare of the animal, the protection of the public health and welfare, or the nonlethal removal of nuisance animals; or

(ii) Entering the buffer areas to perform activities that are necessary for national defense, or the performance of other legitimate governmental activities.

(3) *Subsistence takings by Alaska natives.* Paragraph (a)(1) of this section does not apply to the taking of Steller sea lions for subsistence purposes under section 10(e) of the Act.

(4) *Emergency situations.* Paragraph (a)(2) of this section does not apply to an emergency situation in which compliance with that provision presents a threat to the health, safety, or life of a person or presents a significant threat to the vessel or property.

(5) *Exemptions.* Paragraph (a)(2) of this section does not apply to any activity authorized by a prior written exemption from the Director, Alaska Region, National Marine Fisheries Service. Concurrently with the issuance of any exemption, the Assistant Administrator will publish notice of the exemption in the **Federal Register**. An exemption may be granted only if the activity will not have a significant adverse affect on Steller sea lions, the activity has been conducted historically or traditionally in the buffer zones, and there is no readily available and acceptable alternative to or site for the activity.

(c) *Penalties.* (1) Any person who violates this section or the Act is subject to the penalties specified in section 11 of the Act, and any other penalties provided by law.

(2) Any vessel used in violation of this section or the Endangered Species Act is subject to forfeiture under section 11(e)(4)(B) of the Act.

Dated: November 9, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

[FR Doc. 90-27600 Filed 11-23-90; 8:45 am]

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federal register

Monday
November 26, 1990

Part IV

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice of Approved Tribal-State Compact

DEPARTMENT OF THE INTERIOR

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved tribal-state compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100-497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purposes of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved a Tribal-State Compact between the Upper Sioux Indian Community and the State of Minnesota executed on 4/6/90.

DATES: This action is effective November 26, 1990.

ADDRESSES: Office of Legislative Affairs, Bureau of Indian Affairs, Department of the Interior, MS-4641, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joel Starr, Bureau of Indian Affairs, Washington, DC (202) 208-5706.

Dated: November 19, 1990.

Stan Speaks,

Assistant Secretary—Indian Affairs.

[FR Doc. 90-27635 Filed 11-23-90; 8:45 am]

BILLING CODE 4310-02-M

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Federal Register

Vol. 55, No. 227

Monday, November 26, 1990

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It maybe used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641.

The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.R. 29/Pub. L. 101–588
Antitrust Amendments Act of 1990. (Nov. 16, 1990; 104 Stat. 2879; 2 pages) Price: $1.00

H.R. 996/Pub. L. 101–589
Excellence in Mathematics, Science and Engineering Education Act of 1990. (Nov. 16, 1990; 104 Stat. 2881; 34 pages) Price: $1.25

H.R. 1602/Pub. L. 101–590
Trauma Care Systems Planning and Development Act of 1990. (Nov. 16, 1990; 104 Stat. 2915; 16 pages) Price: $1.00

H.R. 2840/Pub. L. 101–591
Coastal Barrier Improvement Act of 1990. (Nov. 16, 1990; 104 Stat. 2931; 12 pages) Price: $1.00

H.R. 3000/Pub. L. 101–592
Fastener Quality Act. (Nov. 16, 1990; 104 Stat. 2943; 11 pages) Price: $1.00

H.R. 3338/Pub. L. 101–593
To direct the Secretary of the Interior to convey all interest of the United States in a fish hatchery to the State of South Carolina, and for other purposes. (Nov. 16, 1990; 104 Stat. 2954; 21 pages) Price: $1.00

H.R. 3977/Pub. L. 101–594
Antarctic Protection Act of 1990. (Nov. 16, 1990; 104 Stat. 2975; 4 pages) Price: $1.00

H.R. 4009/Pub. L. 101–595
Federal Maritime Commission Authorization Act of 1990. (Nov. 16, 1990; 104 Stat. 2979; 21 pages) Price: $1.00

H.R. 4323/Pub. L. 101–596
Great Lakes Critical Programs Act of 1990. (Nov. 16, 1990; 104 Stat. 3000; 13 pages) Price: $1.00

H.R. 4487/Pub. L. 101–597
National Health Service Corps Revitalization Amendments of 1990. (Nov. 16, 1990; 104 Stat. 3013; 24 pages) Price: $1.00

H.R. 4721/Pub. L. 101–598
To designate the Federal building located at 340 North Pleasant Valley Road in

Winchester, Virginia, as the "J. Kenneth Robinson Postal Building". (Nov. 16, 1990; 104 Stat. 3037; 1 page) Price: $1.00

H.R. 4886/Pub. L. 101-599
To improve navigational safety and to reduce the hazards to navigation resulting from vessel collisions with pipelines in the marine environment, and for other purposes. (Nov. 16, 1990; 104 Stat. 3038; 4 pages) Price: $1.00

H.R. 5140/Pub. L. 101-600
School Dropout Prevention and Basic Skills Improvement Act of 1990. (Nov. 16, 1990; 104 Stat. 3042; 6 pages) Price: $1.00

H.R. 5237/Pub. L. 101-601
Native American Graves Protection and Repatriation Act. (Nov. 16, 1990; 104 Stat. 3048; 11 pages) Price: $1.00

H.R. 5308/Pub. L. 101-602
Fort Hall Indian Water Rights Act of 1990. (Nov. 16, 1990; 104 Stat. 3059; 6 pages) Price: $1.00

H.R. 5487/Pub. L. 101-603
To authorize the Secretary of the Interior to acquire certain lands to be added to the Fort Raleigh National Historic Site in North Carolina. (Nov. 16, 1990; 104 Stat. 3065; 1 page) Price: $1.00

H.R. 5732/Pub. L. 101-604
Aviation Security Improvement Act of 1990. (Nov. 16, 1990; 104 Stat. 3066; 23 pages) Price: $1.00

H.R. 5909/Pub. L. 101-605
Florida Keys National Marine Sanctuary and Protection Act. (Nov. 16, 1990; 104 Stat. 3089; 7 pages) Price: $1.00

S. 169/Pub. L. 101-606
Global Change Research Act of 1990. (Nov. 16, 1990; 104 Stat. 3096; 9 pages) Price: $1.00

S. 555/Pub. L. 101-607
De Soto Expedition Trail Commission Act of 1990. (Nov. 16, 1990; 104 Stat. 3105; 5 pages) Price: $1.00

S. 606/Pub. L. 101-608
Consumer Product Safety Improvement Act of 1990. (Nov. 16, 1990; 104 Stat. 3110; 15 pages) Price: $1.00

S. 677/Pub. L. 101-609
To amend the Arctic Research and Policy Act of 1984 to improve and clarify its provisions. (Nov. 16, 1990; 104 Stat. 3125; 2 pages) Price:$1.00

S. 1430/Pub. L. 101-610
National and Community Service Act of 1990. (Nov. 16, 1990; 104 Stat. 3127; 61 pages) Price: $1.75

S. 2287/Pub. L. 101-611
National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991. (Nov. 16, 1990; 104 Stat. 3188; 21 pages) Price:$1.00

S. 2566/Pub. L. 101-612
Smith River National Recreation Area Act. (Nov. 16, 1990; 104 Stat. 3209; 15 pages) Price: $1.00

S. 2857/Pub. L. 101-613
National Institutes of Health Amendments of 1990. (Nov. 16, 1990; 104 Stat. 3224; 7 pages) Price: $1.00

S. 2709/Pub. L. 101-614
National Earthquake Hazards Reduction Program Reauthorization Act. (Nov. 16, 1990; 104 Stat. 3231; 13 pages) Price: $1.00

S. 2936/Pub. L. 101-615
Hazardous Materials Transportation Uniform Safety Act of 1990. (Nov. 16, 1990; 104 Stat. 3244; 35 pages) Price: $1.25

S. 2946/Pub. L. 101-616
Transplant Amendments Act of 1990. (Nov. 16, 1990; 104 Stat. 3279; 8 pages) Price: $1.00

S. 3069/Pub. L. 101-617
Environmental Research Geographic Location Information Act. (Nov. 16, 1990; 104 Stat. 3287; 2 pages) Price: $1.00

S. 3084/Pub. L. 101-618
Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990. (Nov. 16, 1990; 104 Stat. 3289; 36 pages) Price: $1.25

S. 3176/Pub. L. 101-619
National Environmental Education Act. (Nov. 16, 1990; 104 Stat. 3325; 15 pages) Price: $1.00

S.J. Res. 206/Pub. L. 101-620
Calling for the United States to encourage immediate negotiations toward a new agreement among Antarctic Treaty Consultative Parties, for the full protection of Antarctica as a global ecological commons. (Nov. 16, 1990; 104 Stat. 3340; 2 pages) Price: $1.00

H.R. 4559/Pub. L. 101-621
Red Rock Canyon National Conservation Area Establishment Act of 1990. (Nov. 16, 1990; 104 Stat. 3342; 5 pages) Price: $1.00

Note: In the List of Public Laws printed in the Federal Register on November 15, 1990, H.R. 4299 was printed incorrectly. It should read as follows:

H.R. 4299/Pub. L. 101-537
To authorize a study of the fishery resources of the Great Lakes, and for other purposes. (Nov. 8, 1990; 104 Stat. 2370; 6 pages) Price: $1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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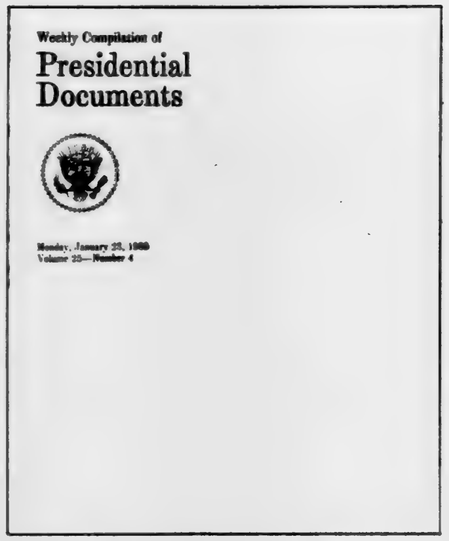

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 714]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from November 23 through November 29, 1990. Consistent with program objectives, such action is needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges for the specified week. This action was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATE: Regulation 714 (7 CFR part 907) is effective for the period from November 23 through November 29, 1990.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–8139.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatability.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,070 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented 89 percent of the total production in 1989–90. District 2 is located in the southern coastal area of California and represented 9 percent of 1989–90 production; District 3 is the desert area of California and Arizona, and it represented slightly less than 1 percent; and District 4, which represented slightly less than 1 percent, is northern California. The Committee's estimate of 1990–91 production is 79,350 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 89,000 cars during the 1989–90 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic fresh (regulated) market is a preferred market for California-Arizona navel oranges while the export market continues to grow. The Committee estimates that about 65 percent of the 1990-91 crop of 79,350 cars will be utilized in fresh domestic channels (51,250 cars), with the remainder being exported fresh (12 percent), processed (21 percent), or designated for other uses (2 percent). This compares with the 1989–90 total of 54,000 cars shipped to fresh domestic markets, about 61 percent of that year's crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to producers. Producers benefit from increased returns and improved market conditions.

Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual producers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to producers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance producer revenue. Prices for navel oranges tend to be relatively

inelastic at the producer level. Thus, even a small variation in shipments can have a great impact on prices and producer revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to producers, particularly smaller producers.

The Committee adopted its marketing policy for the 1990–91 season on July 10, 1990. The Committee revised its marketing policy at district meetings as follows: (1) Districts 1 and 4 on September 25, 1990, in Visalia, California; (2) District 3 on October 2, 1990, in Tempe, Arizona; and (3) District 2 on October 9, 1990, in Redlands California. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Pello. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on November 20, 1990, in Newhall, California, to consider the current and prospective conditions of supply and demand and recommended, with nine members voting in favor, one opposing, and one abstaining, that 1,500,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions, and weather and transportation conditions.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1990–91 marketing policy. The recommended amount of 1,500,000 cartons is the same as that specified for all districts in the Committee's October 9 revised shipping schedule. Of the 1,500,000 cartons, 1,420,000 cartons are allotted for District 1 and 80,000 cartons are allotted for District 3. Handlers in Districts 2 and 4 are not regulated as they have not yet begun to ship.

During the week ending on November 15, 1990, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,418,000 cartons compared with 1,540,000 cartons shipped during the week ending on November 16, 1989. Export shipments totaled 147,000 cartons compared with 184,000 cartons shipped during the week ending on November 16, 1989. Processing and other uses accounted for 263,000 cartons compared with 381,000 cartons shipped during the week ending on November 16, 1989.

Fresh domestic shipments to date this season total 2,621,000 cartons compared with 3,883,000 cartons shipped by this time last season. Export shipments total 198,000 cartons compared with 566,000 cartons shipped by this time last season. Processing and other use shipments total 486,000 cartons compared with 1,078,000 cartons shipped by this time last season.

The average f.o.b. shipping point price for the week ending on November 15, 1990, was $10.20 per carton based on a reported sales volume of 1,104,000 cartons compared with last week's average of $10.20 per carton on a reported sales volume of 436,000 cartons. The season average f.o.b. shipping point price to date is $10.20 per carton. The average f.o.b. shipping point prices for the week ending on November 16, 1989, was $8.60 per carton; the season average f.o.b. shipping point price at this time last year was $9.17.

The Department's Market News Service reported that, as of November 20, demand for California-Arizona navel oranges was "good" for first grade sizes 40 to 88, "light" for choice sizes 40 to 56, and "moderate" for all other grades and sizes. The market for all grades and sizes was reported as "about steady."

At the meeting, Committee members reported that maturity of the navel orange crop is still quite variable throughout the producing districts. Several Committee members reported that, despite the continued problems with maturity, packinghouses were finding a significant amount of fruit to ship. The majority of Committee members also indicated that demand at this time was slow. Committee members discussed the pros and cons of implementing volume regulation at this time. One Committee member favored open movement while the majority of Committee members favored the issuance of general maturity allotment.

According to the National Agricultural Statistics Service, the 1989–90 season average fresh equivalent on-tree price for California-Arizona navel oranges was $4.05 per carton, 64 percent of the season average parity equivalent price of $6.34 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1990–91 season average fresh on-tree price is estimated at $4.33 per carton, about 66 percent of the estimated fresh on-tree parity equivalent price of $6.56 per carton. It is currently estimated that there is a less than one percent probability that the 1990–91 season average fresh on-tree price will exceed the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of navel oranges that may be shipped during the period from November 23 through November 29, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the 1990–91 season was published in the September 6, 1990, issue of the **Federal Register** (55 FR 36653). That rule provided interested persons the opportunity to comment until October 9, 1990, on the need for regulation during the 1990–91 season, the proposed shipping schedule, and other factors relevant to the implementation of such regulations.

Nevertheless, pursuant to 5 U.S.C. 553, it is found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice on this action, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until November 20, 1990, and this action needs to be effective for the regulatory week which begins on November 23, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective

time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Sections 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.1014 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.1014 Navel Orange Regulation 714.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from November 23 through November 29, 1990, is established as follows:

District 1 cartons/% (000)	District 2 cartons/% (000)	District 3 cartons/% (000)	District 4 cartons/% (000)	Total cartons (000)
1,420.0/94.7		80.0/5.3		1,500

Dated: November 21, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–27866 Filed 11–23–90; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 910

[Lemon Reg. 745]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona lemons that may be shipped to domestic markets during the period from November 25 through December 1, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh lemons with the demand for such lemons during the period specified. This action was recommended by the Lemon Administrative Committee (Committee), which is responsible for local administration of the lemon marketing order.

EFFECTIVE DATES: Regulation 745 (7 CFR part 910) is effective for the period from November 25 through December 1, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), Room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,000 lemon producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

The California-Arizona lemon industry is characterized by a large number of growers located over a wide area. The Committee's estimate of the 1990–91 production is 42,140 cars (one car equals 1,000 cartons at 38 pounds net weight each), compared to 37,881 cars during the 1989–90 season. The production area is divided into three districts which span California and Arizona. The Committee estimates District 1, central California, 1990–91 production at 6,800 cars compared to the 4,158 cars produced in 1989–90. In District 2, southern California, the crop is expected to be 24,700 cars compared to the 24,292 cars produced last year. In District 3, the California desert and Arizona, the Committee estimates a production of 10,640 cars compared to the 9,436 cars produced last year. According to the National Agricultural Statistics Service, 1990–91 lemon production is expected to total 40,200 cars, 8 percent above the 1989–90 season and 1 percent more than the crop utilized in 1988–89.

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona lemons. Based on its crop estimate of 42,140 cars, the Committee estimates that about 42.5 percent of the 1990–91 crop will be utilized in fresh domestic channels (17,900 cars), compared with the 1989–90 total of 16,600 cars, about 44 percent of the total production of 37,881 cars in 1989–90. Fresh exports are projected at 20.1 percent of the total 1990–91 crop utilization compared with 22 percent in 1989–90. Processed and other uses would account for the residual 37.4 percent compared with 34 percent of the 1989–90 crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 910 are intended to provide benefits to growers and consumers. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of lemons in the market throughout the marketing season and to avoid unreasonable fluctuations in supplies and prices.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the lemon marketing order are required by the Committee from handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

The Committee submitted its marketing policy for the 1990–91 season to the Department on June 19. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Rodriguez. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on November 20, 1990, in Newhall, California, to consider the current and prospective conditions of supply and demand and, by a 12 to 1 vote, recommended that 290,000 cartons is the quantity of lemons deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, the preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1990–91 marketing policy. This recommended amount is 15,000 cartons below the estimated projections in the Committee's current shipping schedule.

During the week ending on November 17, 1990, shipments of lemons to fresh domestic markets, including Canada, totaled 275,000 cartons compared with 304,000 cartons shipped during the week ending on November 18, 1989. Export shipments totaled 169,000 cartons compared with 175,000 cartons shipped during the week ending on November 18, 1989. Processing and other uses accounted for 315,000 cartons compared with 324,000 cartons shipped during the week ending on November 18, 1989.

Fresh domestic shipments to date for the 1990–91 season total 4,874,000 cartons compared with 4,684,000 cartons shipped by this time during 1989–90 season. Export shipments total 2,391,000 cartons compared with 2,536,000 cartons shipped by this time during the 1989–90. Processing and other use shipments total 4,205,000 cartons compared with 2,828,000 cartons shipped by this time during 1989–90.

For the week ending on November 17, 1990, regulated shipments of lemons to the fresh domestic market were 275,000 cartons on an adjusted allotment of 276,000 cartons which resulted in net undershipments of 1,000 cartons. Regulated shipments for the current week (November 18 through November 24, 1990) are estimated at 265,000 cartons on an adjusted allotment of 266,000 cartons. Thus, undershipments of 1,000 cartons could be carried over into the week ending on December 1, 1990.

The average f.o.b. shipping point price for the week ending on November 17, 1990, was $10.30 per carton based on a reported sales volume of 284,000 cartons compared with last week's average of $10.03 per carton on a reported sales volume of 313,000 cartons. The 1990–91 season average f.o.b. shipping point price to date is $14.33 per carton. The average f.o.b. shipping point price for the week ending on November 18, 1989, was $12.46 per carton; the season average f.o.b. shipping point price at this time during 1989–90 was $14.33 per carton.

The Department's Market News Service reported that, as of November 20, the demand for lemons is "moderate" and the market for lemons is "steady." At the meeting, several Committee members indicated that the market has stabilized somewhat. Some members of the Committee indicated that inventory buildup continues on second grade (115's and smaller fruit) and on first grade (165's and smaller) fruit. Another Committee member commented that there is "good action" on (140's and larger) first grade fruit. Several Committee members One Committee member stated that volume regulations cause a significant economic impact on both small growers and handlers and therefore, favored open movement. The Committee, by a 12 to 1 vote, recommended volume regulation for the week ending December 1, 1990.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the California-Arizona 1990–91 season average fresh on-tree price is estimated at $8.83 per carton, 106 percent of the projected season average fresh on-tree parity equivalent price of $8.35 per carton. The California-Arizona 1989–90 season average fresh on-tree price is estimated at $9.02, 121 percent of the projected season average fresh on-tree parity equivalent price of $7.47 per carton.

Limiting the quantity of lemons that may be shipped during the period from November 25 through December 1, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of lemons to market.

Based on considerations of supply and market conditions, it is found that this action will tend to effectuate the declared policy of the Act.

Based on the above information, the Administrator of the AMS has determined that issuance of this rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until November 20, 1990, and this action needs to be effective for the regulatory week which begins on November 25, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Sections 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

2. Section 910.1045 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.1045 Lemon regulation 745.

The quantity of lemons grown in California and Arizona which may be handled during the period from November 25 through December 1, 1990, is established at 290,000 cartons.

Dated: November 21, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–27885 Filed 11–23–90; 8:45 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

7 CFR Parts 1714, 1717, 1724, 1726, 1767, 1784, 1786, and 1787

Electric and Telephone Programs, Redesignation of Regulations

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule, redesignation.

SUMMARY: The Rural Electrification Administration (REA) is undertaking a project to simplify, clarify, and update Agency regulations. This project, when complete, will provide a more logical arrangement of Agency regulations to assist borrowers and others. One component of this project is to redesignate certain regulations and combine other regulations in order to have all policies, procedures, and requirements related to a subject in one regulation in the Code of Federal Regulations. On September 27, 1990, REA began this project by publishing the redesignation of several rules at 55 FR 39393. The project is continued with the rule published here.

EFFECTIVE DATE: This final rule is effective November 27, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Blaine D. Stockton, Jr., Assistant Administrator—Management, Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 382–9552.

SUPPLEMENTARY INFORMATION: REA is amending 7 CFR chapter XVII by updating headings for reserved subparts in parts 1714, 1717, 1724, and 1726; by combining old parts 1784—Discounted Prepayments on REA, Notes, 1786—Prepayment of REA Guaranteed Federal Financing Bank Loans, and 1787—REA Privatization Demonstration Program into subparts of new part 1786—Prepayment of REA Guaranteed and Insured Loans to Electric and Telephone Borrowers; and by adding and reserving part 1767—Accounting Requirements for REA Electric Borrowers.

This action is simply a redesignation of these regulations with no change to substance. Therefore, no period for public comment is required. Changes to regulatory text are merely to update cross references and combine existing information from old parts into subparts of the new regulation.

For the information of interested parties, a distribution table follows for the parts, subparts, and sections redesignated:

Distribution Table

Old part or section	*New part or section*
1784	1786 subpart C
1784.1	1786.50
1784.2	1786.51
1784.3	1786.52
1784.4	1786.53
1784.5	1786.54
1784.6	1786.55
1784.7	1786.56
1784.8	1786.57
1784.9	1786.58
1784.10	1786.59
1784.11	1786.60
1784.12	1786.61
1786	1786 subpart B
1786.1	1786.25
1786.2	1786.26
1786.3	1786.27
1786.4	1786.28
1786.5	1786.29
1786.6	1786.30
1786.7	1786.31
1786.8	1786.32
1786.9	1786.33
1786.10	1786.34
1786.11	1786.35
1786.12	1786.36
1786.13	1786.37
1786.14	1786.38
1787	1786 subpart D
1787.1	1786.75
1787.2	1786.76
1787.3	1786.77
1787.4	1786.78
1787.5	1786.79
1787.6	1786.80
1787.7	1786.81
1787.8	1786.82
1787.9	1786.83
1787.10	1786.84
1787.11	1786.85
1787.12	1786.86

List of Subjects

7 CFR Parts 1714, 1724, 1726

Electric power, Loan programs—energy, Rural areas.

7 CFR Part 1717

Electric power, Investments, Loan programs—energy, Reporting and recordkeeping requirements.

7 CFR Part 1784

Electric power, Loan programs—communications, Loan programs—energy, Rural areas, Telephone.

7 CFR Parts 1786 and 1787

Alaska, Electric power, Federal Financing Bank, Loan programs—communications, Loan programs—energy, Rural areas, Telephone.

Therefore, under the authority of the Administrator, Rural Electrification Administration, REA amends 7 CFR chapter XVII as follows:

PART 1714—[AMENDED]

1. The authority citation for part 1714 continues to read as follows:

Authority: 7 U.S.C. 901–950b, Rural Electrification Act of 1936, as amended (Re Act); Pub. L. 99–591, Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

Subpart D—Alternate Loan Application Procedures for Distribution Borrowers

2. The heading for subpart D of part 1714 is revised to read as set forth above.

PART 1717—[AMENDED]

3. The authority citation for part 171 continues to read as follows:

Authority: 7 U.S.C. 901–950b; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development 7 CFR 2.72.

4. The subpart headings for subparts A, B, and C of part 1717 are removed, and the subparts are reserved.

PART 1724—[AMENDED]

5. The authority citation for part 1724 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*

6. Part 1724 is amended by adding headings to reserved subparts A through D as follows:

Subpart A—General [Reserved]

Subpart B—Architectural Services [Reserved]

Subpart C—Engineering Services [Reserved]

Subpart D—Electric System Planning [Reserved]

PART 1726—[AMENDED]

7. The authority citation for part 1726 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*

8. Part 1726 is amended by adding headings to reserved subparts A through F as follows:

Subpart A—General [Reserved]

Subpart B—Purchase of Materials and Equipment [Reserved]

Subpart C—Construction [Reserved]

Subpart D—Contract Closeout Procedures [Reserved]

Subpart E—Procurement Procedures [Reserved]

Subpart F—Modifications to REA Standard Contracts [Reserved]

PART 1786—[AMENDED]

9. The authority citation for part 1786 continues to read as follows:

Authority: 7 U.S.C. 901–950b; Title I, Subtitle B, Pub. L. 99–509; title I Pub. L. 100–202; Pub. L. 100–203; Title VI, Pub. L. 100–460; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small community and Rural development, 7 CFR 2.72.

PART 1786—PREPAYMENT OF REA GUARANTEED AND INSURED LOANS TO ELECTRIC AND TELEPHONE BORROWERS

10. The heading for part 1786 is revised to read as set forth above.

11. Sections in parts 1784, 1786, and 1787 are redesignated, a new subpart A is added and reserved, and new subpart headings are added to read as follows:

Old designation	*New designation*
	Part 1786.
	Subpart A—General [Reserved].
	1786.1—1786.24 [Reserved]
	Subpart B—Prepayment of REA Guaranteed Federal Financing Bank Loans
1786.1–1786.14	1786.25–1786.38
	1786.39–1786.49 [Reserved]
	Subpart C—Special Discounted Prepayments on REA Direct/Insured Loans
1784.1–1784.12	1786.50–1786.61
	1786.62–1786.74 [Reserved]
	Subpart D—REA Privatization Demonstration Prepayment Program for the State of Alaska
1787.1–1787.12	1786.75–1786.86

12. In newly designated part 1786 all references to "Part" or "part" are changed to read "subpart".

13. All internal references in newly designated part 1786 are revised as set forth in the redesignation table.

14. The first sentence of paragraph (a) of newly designated § 1786.30 is revised to read as follows:

§ 1786.30 Processing procedure.

(a) *Priority of Processing.* The determination of the order or method in which applications or portions of applications will be processed by REA pursuant to this subpart rests solely within the discretion of the Administrator. * * *

* * * * *

15. The heading of paragraph (a) of newly designated § 1786.80 is revised to read as follows:

§ 1786.80 Qualifications.

(a) *Borrowers.* * * *

* * * * *

PARTS 1784 AND 1787—[REMOVED]

16. Parts 1784 and 1787 are removed.

PART 1787—ACCOUNTING REQUIREMENTS FOR REA ELECTRIC BORROWERS [RESERVED]

17. Part 1787 is added and reserved to read as set forth above.

Dated: November 15, 1990.

Gary C. Byrne,

Administrator.

[FR Doc. 90–27694 Filed 11–26–90; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

8 CFR Part 292

[Attorney General Order No. 1452–90]

Representation and Appearance

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Final rule.

SUMMARY: These revisions to 8 CFR 292.1 permit first and second year law students in clinical programs at accredited law schools to appear in immigration proceedings under certain specified circumstances. Such appearances shall be at the discretion of the deciding official and under professional supervision. This amendment expands the former regulation which authorized such appearances for third year law students only. In addition, law graduates not yet admitted to the bar may continue to represent clients in immigration proceedings with certain new limitations. A law graduate may appear under supervision of a licensed attorney or accredited representative, and only within the context of pro bono representation. As with law students, a law graduate is permitted to appear at the discretion of the deciding official.

The purpose of these revisions is to expand the pool of competent, properly supervised representatives for individuals who might not otherwise obtain such representation.

EFFECTIVE DATE: December 27, 1990.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 756–6470.

SUPPLEMENTARY INFORMATION: The revisions allow law students and law graduates under certain specified conditions to represent individuals before the Immigration and Naturalization Service, the Board of Immigration Appeals, and Immigration Judges.

The goal of the regulatory change is to expand competent, properly supervised pro bono representation for individuals in immigration proceedings. This rule will increase the available number of representatives, while maintaining supervision over those individuals who are not yet admitted to the bar. Law students participating in a legal aid program or clinic conducted by the law school may not appear in immigration proceedings under the direct supervision of a faculty member or attorney, provided such representation is without remuneration.

Proposed regulations pertaining to law student representation were developed by the Executive Office for Immigration Review and were published in the **Federal Register** on March 22, 1990 (55 FR 10620), for public comment. The following is a description and brief discussion of the comments received.

Twenty comments were received regarding the appearance of first and second year law students. Seventeen were strongly in favor of the rule as proposed, and enthusiastic about the increased availability of representation for the poor.

One commenter suggested that law students who participate in a legal aid clinic which is not associated with a law school be included in the rule. After consideration, this suggestion was rejected, since it was felt that faculty or attorney participation within the school program will ensure the most appropriate supervision of student representatives. However, law graduates may appear while participating in an independent legal aid program, provided they are supervised by a licensed attorney or accredited representative.

Three negative comments were received regarding the appearance of first and second year law students. Only one was against the practice outright. One commenter suggests that the rule is "designed to be an expedient to accommodate financial considerations." The commenter did not offer an alternative for providing representation to those aliens who cannot afford to pay for representation. The suggestion was rejected, as it is clear that the focus of this rule is to provide representation to those whose financial means would otherwise not allow it.

Fifteen comments were received regarding representation by law graduates. Fourteen were strongly against the proposed rule eliminating law graduates as a class of representatives. While all the commenters agreed that unsupervised representation could lead to ineffective representation, the commenters stated that safeguards such as proper supervision and the discretion of the deciding official in allowing which representatives to appear would resolve any potential problems in this regard.

The commenters were further concerned that the elimination of representation by law school graduates would deprive those aliens needing pro bono representation from the very people who are most likely to participate in such programs.

The majority of commenters agreed that law school graduates should appear only within the context of pro bono representation. This would eliminate a need to set an arbitrary time limit on law graduates, as a law graduate without admission to the bar who wished to continue as a representative in a paid capacity could seek accredited status.

After considering the comments, the proposed rule eliminating the provision allowing law graduates without bar admission to practice was modified. The final rule will allow law graduates to appear in immigration proceedings under proper supervision, provided such appearance is without remuneration.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291.

List of Subjects in 8 CFR Part 292

Aliens, Immigration, Representation.

Accordingly, part 292 is amended as follows:

PART 292—REPRESENTATION AND APPEARANCES

1. The authority citation for part 292 continues to read as follows:

Authority: 8 U.S.C. 1103, 1362.

2. Section 292.1 is amended by revising paragraph (a)(2) to read as follows:

§ 292.1 Representation of others.

(a) * * *.

(2) *Law students and law graduates not yet admitted to the bar.* A law student who is enrolled in an accredited law school, or a law graduate who is not yet admitted to the bar, provided that:

(i) He or she is appearing at the request of the person entitled to representation;

(ii) In the case of a law student, he or she has filed a statement that he or she is participating, under the direct supervision of a faculty member or an attorney, in a legal aid program or clinic conducted by the law school, and that he or she is appearing without direct or indirect remuneration;

(iii) In the case of a law graduate, he or she has filed a statement that he or she is appearing under the supervision of a licensed attorney or accredited representative and that he or she is appearing without direct or indirect remuneration; and

(iv) The law student's or law graduate's appearance is permitted by the official before whom he or she wishes to appear (namely an Immigration Judge, district director, officer-in-charge, regional commissioner, the Commissioner, or the Board). The official or officials may require that a law student be accompanied by the supervising faculty member or attorney.

* * * * *

Dated: November 15, 1990.

Dick Thornburgh,

Attorney General.

[FR Doc. 90–27717 Filed 11–26–90; 8:45 am]

BILLING CODE 4531–26–M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 305

[Docket No. 900131–0031]

Variance in Cost of Grant Projects

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The purpose of this amendment to EDA's rule at 13 CFR 305.89 is to conform the rule's language to long-standing grant award terms and conditions. EDA's participation in a project is stated as dollar figure in the "Grant Agreement". That document also contains an estimate of total project costs. For the past several years the dollar amount and grant percentage figure have been identical (*i.e.*, dividing the EDA dollars by the estimated total project costs will result in the stated percentage). However, in prior years the percentage figure, in some cases, was higher than the figure arrived at by dividing the EDA Funding by total estimated project costs. This lack of consistency has led to confusion in situations where total project costs were less than originally estimated ("underrun" situations).

This amendment is designed to eliminate the confusion by defining a new term, "grant rate percentage", and explaining how EDA participation will be calculated in "underrun" situations.

In essence, the procedure restates existing EDA policy that, in underrun situations, both EDA and the grantee's share of project costs will be reduced proportionately (i.e., in the same ratio as they committed funds to the project).

DATES: *Effective Date:* November 27, 1990. Submit comments by January 28, 1991.

ADDRESSES: Send comments to Joseph M. Levine, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., room 7001, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Joseph M. Levine, (202) 377-4687.

SUPPLEMENTARY INFORMATION: EDA is amending 13 CFR 305.89 to delete paragraphs (a) and (b) and replace them with language explaining that grant awards will provide for payment by EDA of the grant rate percentage, or the stated grant dollar amount, whichever is less. In no event will the grant rate percentage be exceeded.

Under Executive Order 12291, the Department must judge whether a regulation is "major" within the meaning of section 1 of the order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation; or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, neither a preliminary nor final Regulatory Impact Analysis has been or will be prepared.

This rule is exempt from all requirements of 5 U.S.C. 553 including notice and opportunity to comment and delayed effective date, because it relates to public property, loans, grants, benefits and contracts.

No other law requires that notice and opportunity for comment be given for this rule.

However, because the Department is interested in receiving comments from those who will benefit from the amendment, this rule is being issued as interim final. Public comments on the interim rule are invited and should be sent to the address listed in the "ADDRESSES" section above.

Comments received by January 28, 1991, will be considered in promulgating a final rule.

Since a notice and an opportunity for comment are not required to be given for the rule under section 553 of the APA (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96-511).

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 13 CFR Part 305

Community development; Community facilities; Grant program—community development; Indians; Loan programs—community development.

PART 305—PUBLIC WORKS AND DEVELOPMENT FACILITIES PROGRAM

1. The authority citation for part 305 continues to read as follows:

Authority: Section 701, Pub. L. 89-136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

2. Section 305.89 is revised to read as follows:

§ 305.89 Variance in cost of grant projects.

(a) If the total eligible costs are equal to or exceed the amount stated in the "Grant Agreement", the grant disbursement will be the amount identified in the "Grant Agreement".

(b) If the total eligible project costs are less than the amount stated in the "Grant Agreement", the grant disbursement will be determined by multiplying the total eligible project costs by the "grant rate percentage".

(c) The "grant rate percentage" is determined by dividing the total estimated project costs stated in the "Grant Agreement" into the amount of EDA funding provided in the grant.

(d) For example, if the "Grant Agreement" provides that EDA will provide $50,000 for a project estimated to cost $100,000, the grant rate is 50% ($50,000 divided by $100,000). If the actual eligible project costs were $100,000, EDA would provide $50,000. If the actual project costs were $120,000 EDA would still provide $50,000. If the actual eligible project costs were only $80,000, EDA would provide $40,000 (50% × $80,000).

Dated: November 13, 1990.

L. Joyce Hampers,

Assistant Secretary for Economic Development.

[FR Doc. 90-27769 Filed 11-26-90; 8:45 am]

BILLING CODE 3510-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-269-AD; Amdt 39-6788]

Airworthiness Directives; Boeing Model 707/720 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 707/720 series airplanes, which requires the implementation of a corrosion prevention and control program. This amendment is prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes. These incidents have jeopardized the airworthiness of the affected airplanes. This condition, if not corrected, could result in degradation of the structural capabilities of the affected airplanes.

DATES: Effective December 31, 1990.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 31, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington, 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., 5th Floor, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Shardul R. Panchal, Airframe Branch, Seattle Aircraft Certification Office, ANM-120S, telephone (206) 227-2870. Mailing address: 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to all Boeing Model 707/720 series airplanes, which requires the implementation of a corrosion control program, was published as a Supplemental Notice of Proposed Rulemaking (NPRM) in the Federal Register on August 2, 1990 (55 FR 31393).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. The Supplemental NPRM was published simultaneously with similar Supplemental NPRM's on this subject relating to Boeing Model 727, 737, and 747 series airplanes. The comments received in response to all of these NPRM's were similar; however, in some cases, comments were submitted with respect to one model and not the others. Nevertheless, because the comments and the FAA's responses to those comments may be helpful in providing additional guidance in understanding the FAA's intent in this action, all of the comments and the FAA's responses are discussed in the preambles of each of the final rules resulting from those NPRM's.

Several commenters objected generally to several of the requirements proposed in the Supplemental Notice of Proposed Rulemaking (NPRM) because they are contrary to the requirements for controlling corrosion recommended by the Airworthiness Assurance Task Force (AATF), of which FAA representatives are members. The FAA considers that these objections may be based on a misunderstanding of the AATF's role in the development of this AD. The AATF, as an advisory committee, has provided invaluable assistance to the FAA in providing guidance with respect to the technical content of the corrosion prevention and control program, and the FAA has adopted its recommendations in this regard in total. However, with respect to the means of implementing and ensuring compliance with the program, as discussed in detail below, the FAA has gone beyond the recommendations in order to ensure that operators will be aware of the specific actions for which they will be held accountable, and to enable the FAA to take appropriate action to ensure compliance. In accordance with the Federal Advisory Committee Act, the FAA is required to make independent determinations with regard to these matters, and it would be inappropriate to adopt recommendations which are determined to be indefinite as to timing and responsibility.

The Air Transport Association (ATA) of America, on behalf of its member operators, commented that a better approach for this corrosion AD would have been to follow the example of the Supplemental Structural Inspection Document (SSID) AD (reference AD 85-12-01-R1, Amendment 39-5439, (51 FR 36002, October 8, 1986)). The ATA regards that AD as preferable in that it provides operators the flexibility to make minor adjustments without seeking FAA approval. The FAA does not concur. Although both the SSID AD and this AD action are similar in that they involve complex revisions to the operators' maintenance programs, they differ in several significant ways. The SSID program is not a self-contained method for addressing aging fleet problems; it serves as sampling and monitoring tool to provide the FAA with information needed to issue additional AD's defining corrective action when problems are discovered. On the other hand, the corrosion prevention and control program required by this AD is intended to be self-contained and, in addition to information gathering, addresses the nature of corrective action necessary when problems are discovered. The purpose of this program is to maintain corrosion levels at Level 1 or better, whereas the purpose of the SSID AD was simply to detect fatigue problems so that additional corrective action could be required: This difference necessitates the greater complexity and detail of this AD action in defining terms of compliance. Further, fatigue cracking, which is addressed by the SSID program, is a problem generally experienced similarly by airplanes, regardless of operational environment and, therefore, it is appropriate to address that problem through follow-on ADs applicable to the entire fleet. Since corrosion, on the other hand, is highly dependent upon the operational environment, it is appropriate to address it through individualized adjustments to an operator's corrosion prevention and control program.

Several operators commented that the rule removes the PMIs from their primary role as the single point of FAA oversight for the operators' maintenance program. The FAA does not concur. The PMIs will continue to serve as FAA's critical link with the operators. Their oversight responsibilities in this AD, as in other AD's, will not be minimized by the requirements of this AD; however, engineering support will be provided by the Seattle Aircraft Certification Office (ACO).

The manufacturer commented that references to the Boeing Corrosion Prevention and Control Program document (hereinafter referred to as the "Boeing document") should be corrected to read, "Revision A." The FAA concurs. Revision A provides further clarification and editorial changes to the Boeing Document and includes the optional appendices which are not subject to the requirements of this AD. The final rule has been revised accordingly.

Several commenters noted that proposed paragraph A. should be revised to indicate that the appendices to the Boeing Document are optional. The FAA does not concur that any additional revision to the final rule is necessary. The Boeing Document clearly indicates that the appendices are provided as options or for guidance.

One commenter stated that, since the Boeing Document does not require repair of level 1 or 2 corrosion prior to further flight, this AD action is an over-reaction in requiring operators to do so. The commenter recommended that Level 1 and 2 corrosion be, "repaired on a timely basis." Another commenter requested that the phrase, "all structure (found corroded or cracked * * *)," be changed to read "all primary or all significant structure," in proposed paragraph A. This commenter also requested that the terms "corrosion and cracks," as stated in paragraph A., be defined further. The FAA concurs in part with these comments. It appears that the commenters are concerned that paragraph A. as proposed would require corrective actions beyond those which are currently required for findings of corroded or cracked structure. Upon reevaluation, the FAA has determined that the unsafe condition to which this AD is addressed is the inadequacy of existing corrosion control programs to detect corrosion in a timely manner; there is no basis at this time for concluding that existing maintenance practices are inadequate to address corrosion once it is found. Therefore, with regard to corrective action for specific findings of cracks and corrosion, the FAA intends that existing sound maintenance practices, as already required under FAR part 43, continue to be followed. Accordingly, including a requirement for such repair or other corrective action in this AD is unnecessary, and that requirement has been deleted from the final rule. A Note has been added to inform the public of the need to comply with part 43 in addressing cracks and/or corrosion found as result of the inspections required by this AD. Further, the Note following proposed paragraph A., relating to repairs done in accordance with SFAR 36, has been deleted as unnecessary.

Several commenters requested that proposed paragraph A. be revised to

permit adoption of a corrosion control program that is "equivalent to that defined in" the Boeing Document in order to avoid the necessity for obtaining FAA approval of deviations from the specific program defined in the Document. The FAA does not concur. In order to ensure equivalency, the FAA has determined that it is necessary for it to review proposed deviations; allowing operator discretion in determining equivalency would essentially preclude the FAA from taking appropriate action to ensure compliance if it subsequently determines that the operator's program is not equivalent.

One commenter noted that the non-destructive inspection (NDI) acceptable methods specified in the Note in proposed paragraph A. should include the manufacturer's non-destructive testing manuals; this would eliminate confusion generated by the wording in the Note stating, "standards and procedures used must be acceptable to the Administrator in accordance with FAR 43.13." The FAA does not concur that additional clarification is necessary. FAR 43.13 currently allows the use of the manufacturer's non-destructive testing manuals.

One commenter remarked that the Note in proposed paragraph B., which would require FAA review and approval of data submitted to substantiate that Level 3 corrosion is not typical of the operator's fleet, was in direct contradiction to the Boeing Document. This commenter stated that the process of FAA reviewing isolated cases may take too long, while the remainder of the operator's fleet may be in jeopardy. The FAA does not concur. As discussed above, in order to ensure the adequacy of operators' determinations, it is necessary for the FAA to review and approve them; without such approval, an operator could not be held accountable for an improper determination that a Level 3 corrosion finding was non-representative. Further, the FAA has committed to responding to Level 3 corrosion as expeditiously as possible to avoid adversely affecting safety. Finally, assuming the adequacy of proposed adjustments and their substantiation, the FAA's role will be limited to general oversight, and the associated workload should not be excessive. Therefore, delays are not inherent in this review and approval process.

The manufacturer implied that proposed paragraph B., which addresses findings of Level 3 corrosion, is unnecessary in that such findings must be reported in accordance with FAR 121.703 and corrective actions (such as schedule adjustments) must be adopted in accordance with proposed paragraph G. Other commenters also suggested that the reporting requirements of proposed paragraph B. are redundant of those of FAR 121.703. The FAA does not concur. With regard to the reporting requirement, the purpose and content of the reports required by this paragraph are different from the general requirement of FAR 121.703; reports under this paragraph are intended to provide the FAA with information regarding not just the specific finding of corrosion, but the status of the operator's fleet and schedule adjustments. With regard to the requirement for schedule adjustments, the urgency associated with findings of Level 3 corrosion is such that the FAA considers it necessary to review and approve the operator's plans to identify any other such corrosion in its fleet; without such approval, an operator could not be held accountable for failing to inspect the remainder of its fleet expeditiously.

Numerous commenters requested that proposed paragraph B.1. be revised to change the word "found" to read "determined," and to change the word "finding" to read "determination." These changes would give operators additional time to consult with the manufacturer before commencement of the 7-day compliance period for additional actions. The FAA concurs. The FAA recognizes that some time may pass between discovery of corrosion and the determination that it is Level 3 corrosion, and that additional time will then be needed either to inspect the remainder of the operator's fleet or to develop a plan for such inspections. Therefore, it is appropriate that the compliance time start at the time the determination is made. However, the FAA will monitor the time experienced by operators between the discovery and determination of Level 3 corrosion to ensure that operators continue to respond with the necessary urgency. The FAA considers the degree of urgency associated with findings of Level 3 corrosion to be equivalent to that associated with findings of unsafe conditions warranting the issuance of emergency ADs. Therefore, if it is found that timely determinations are not being made, the FAA may propose further rulemaking to address this concern. Paragraph B.1. of the final rule has been revised to reflect that the 7-day compliance time commences upon the determination of Level 3 corrosion.

One commenter noted that the requirements of proposed paragraph B.1.a., which would require operators to submit a report of Level 3 corrosion findings to the FAA and to inspect the affected area on all Model 707/207 aircraft in the operator's fleet within 7 days, would ground operators with large fleets. The FAA does not concur. The requirements of paragraph B.1.a. were intended as an option for operators with small fleets. Operators with large fleets have the option of accomplishing the requirements of paragraph B.1.b. (which involves submitting a proposal for adjustment to the schedule for performing tasks in that area on remaining aircraft in the fleet, or submitting data substantiating that the Level 3 corrosion found is an isolated case).

Several commenters requested that the requirements of proposed paragraph B. to address the remainder of the operator's fleet upon a finding of Level 3 corrosion be narrowed to apply only to other "affected" airplanes of the operator's fleet. The FAA does not concur. As with the operator's determinations of appropriate schedule adjustments, the FAA considers it necessary to review and approve the operator's determination that airplanes are not "affected;" without such approval, an operator could not be held accountable for an incorrect determination.

One commenter questioned whether proposed paragraph B.1.a. would require an operator to inspect the remainder of its fleet within 7 days if the FAA rejected its proposed schedule adjustments submitted in accordance with paragraph B.1.b. The FAA considers the proposed language to be clear. Paragraph B.1.a. and B.1.b. provide distinct options to the operator. If the operator chooses to submit proposed schedule adjustments which the FAA subsequently determines to be inadequate, the FAA may then impose adjustments in accordance with paragraph B.2.; however, the operator would not be required to comply with the 7-day requirement of paragraph B.1.a.

One commenter requested that the words "Level 3 corrosion" be added to proposed paragraph B.1.a. to clarify that the reporting requirement is for Level 3 corrosion only, and not for all corrosion. The FAA concurs. The final rule has been revised accordingly.

Two commenters requested clarification regarding the requirement of proposed paragraph B.1.b.(1) to submit proposed adjustments to the schedule for "implementing the program." The FAA concurs. The final rule has been revised to refer to the adjusted schedule for "performing the tasks" in the relevant area, which more accurately reflects the subject of the adjusted schedule.

Several commenters suggested that proposed paragraphs B.1.b. (1) and (2) lack sufficient guidance as to what constitutes sufficient "substantiating data," or what constitutes an acceptable "adjustment to a maintenance program." Without this information, they were concerned that they would not be able to make submissions that would be acceptable to the FAA. The FAA does not concur. The data necessary to substantiate proposed schedule adjustments is the same as that relied upon by the operator in the exercise of sound engineering judgment when developing those proposals. Substantiating data that supports the operator's proposed schedule should include age of equipment, number of flight hours, conditions in the operational environment, and other pertinent data to support the operator's proposal. If the data substantiates that schedule adjustments are unnecessary to ensure timely detection of Level 3 corrosion on certain or all airplanes in the remainder of the operator's fleet, then the FAA would approve the operator's proposal not to make such adjustments.

Another commenter requested that the words "Level 3" in proposed paragraph B.1.b.(2) be replaced with the phrase, "corrosion of potential urgent airworthiness concern." The commenter stated that this would eliminate confusion resulting from different definitions of "Level 1, 2, and 3" corrosion. The FAA does not concur. It is not the FAA's intent to introduce different definitions of these terms and, in accordance with paragraph A. of the AD, the definitions contained in the Boeing Document are required to be incorporated into the operator's maintenance program. The sole purpose of paragraph B.1.b.(2) is to provide the FAA with a means to ensure the correctness of an operator's determination that severe corrosion is not typical.

Several operators requested that proposed paragraph B.2. be deleted because it would allow the Seattle ACO to impose its own program, rather than responding to the operator's proposed adjustments. Another commenter requested that proposed paragraph B.1.b.(2) be revised to include a provision whereby operators would have the opportunity to negotiate with the FAA in the event the FAA rejects the operator's substantiating data. The FAA does not concur. As discussed above, where an operator presents proposed adjustments and substantiating data showing that those adjustments will establish an acceptable level of safety, the FAA will approve the proposal. However, if the FAA determines that the proposed adjustments are inadequate, it may impose different adjustments, in accordance with paragraph B.2. Prior to doing so, it would necessarily discuss the practicability of any such adjustments with the operator. Ultimately, however, the FAA must retain the authority to determine what adjustments are necessary to ensure that an acceptable level of safety is maintained.

Several commenters contended that proposed paragraph B.3. (requiring operators to revise the maintenance program within 7 days to include adjustments approved by the FAA when Level 3 corrosion is found) was unnecessary because the one-time inspection required by paragraph B.1.b.(1) would not require an adjustment to the operator's maintenance program; therefore, the requirements of paragraph B.3. could be fulfilled by those of proposed paragraph G. The FAA does not concur. The purposes of paragraphs B. and G. are different: Paragraph B. is intended to address the short-term problem of ensuring that other Level 3 corrosion is found expeditiously, whereas paragraph G. is intended to address the longer-term problem of ensuring that maintenance programs are changed to prevent the occurrence of severe corrosion in the future. A revision to the FAA-approved maintenance program is the only means to enable the FAA to take appropriate action to ensure compliance with the adjustments to the program.

Several commenters stated that the 7-day compliance time required by proposed paragraph B.3. is unrealistic because of the amount of time required to revise work cards, to obtain approval for a revised program from the PMI, and to publish revised manuals. Commenters requested that additional time, ranging from 15 days to 10 weeks, be allowed for incorporating the changes into the maintenance program. The FAA concurs in part. As discussed previously, the FAA regards Level 3 corrosion findings as being the equivalent of unsafe conditions for which emergency AD action is appropriate. That type of AD frequently requires action on the entire fleet within 10 days or fewer. Therefore, in general, the FAA does not consider the 7-day requirement to be unreasonable. Nevertheless, the purpose of the requirement of paragraph B.3. is to enable the FAA to take appropriate action to ensure compliance with the schedule adjustments. The FAA has determined that enforceability will not be affected so long as the operator revises its maintenance program prior to the accomplishment of the first task specified in the adjusted schedule. Therefore, the final rule has been revised to require an operator to revise its maintenance program prior to time specified in the adjusted schedule for accomplishing the first task. Of course, operators are permitted to perform tasks prior to the time specified in the schedule.

Several commenters requested that the words "at least (quarterly)" be inserted in the reporting requirement of proposed paragraph D. to provide flexibility to the operators in complying with this requirement. The FAA concurs; adding the suggested wording will in no way change the intent of the reporting requirement. The final rule has been revised accordingly.

On commenter viewed the requirements of proposed paragraph E., concerning FAA approval of the schedule for certain changes in the repeat inspection/task intervals, as overly restrictive, which may prove to be counter-productive by focusing resources on areas of lower priority. The FAA does not concur. The purpose of this paragraph is to prevent those operators that currently have rigorous corrosion control programs from downgrading them. Since those programs are presumably based on the operator's service experience, and since the Boeing Document presents a program based on average fleetwide experience, it may be that the Boeing Document would not provide an acceptable level of safety for that operator. The alternate means of compliance provision in paragraph H. of the final rule provides the opportunity for any operator to submit an alternative procedure to the FAA that would provide an acceptable level of safety.

One commenter requested that the rule be revised to permit the PMI, rather than the Manager of the Seattle ACO, to approve (1) Extensions to the compliance time of proposed paragraph C., (2) increases in the repeat inspection intervals in proposed paragraph E., (3) the operator's schedule for performing tasks on newly acquired airplanes (as required by proposed paragraph F.2.), and (4) proposed corrective actions if corrosion is found to exceed Level 1 (as required by proposed paragraph G.1.). The FAA does not concur. The PMI's serve as FAA's critical link with the operators, and their oversight responsibilities will not be minimized in

this AD action. However, the staff of the ACO provides the engineering support necessary to evaluate whether extensions to compliance times, increases in repeat inspection intervals, schedules for newly acquired airplanes, and proposed corrective actions will maintain an acceptable level of safety.

Several commenters stated that proposed paragraph F., concerning adding airplanes to an air carrier's operations specifications, was unnecessary and should be deleted. As an alternative, one commenter suggested a pro-rated implementation process wherein the old program would be merged into the new program. The FAA does not concur. Paragraph F. is necessary to ensure that newly acquired airplanes are inspected within a period of time commensurate with their likely exposure to corrosion. Since this AD merely requires the adoption of a corrosion control program and, apart from paragraph F., does not dictate the order in which individual airplanes are to be inspected, it is possible that, without this paragraph, newly acquired airplanes may simply "go to the end of the line" under the new owner's program even if they were likely candidates for severe corrosion. Regarding airplanes that have previously been operated under maintenance programs complying with this AD, since each operator's program will reflect its own operating environment, the only conservative approach is to require the first inspection by the new owner to be conducted in accordance with the more restrictive of the two operators' programs.

Another commenter requested that proposed paragraphs F.2. be deleted entirely and that all newly acquired airplanes be phased-in in accordance with proposed paragraph F.1. The FAA does not concur. Paragraph F.1. and F.2. are exclusive of one another. If an airplane has been operated under an FAA-approved maintenance program, then it would follow the requirements of paragraph F.1. If an airplane has never been operated under a FAA-approved maintenance program, then it would follow the requirements of paragraph F.2. Assuming it has been operated under an equivalent corrosion control program adopted in accordance with the requirements of another airworthiness authority, that fact would obviously be critical in substantiating a proposed schedule under paragraph F.2. If it has not been operating under such a program, its corrosion status must be determined before it is added to the operator's operations specifications.

One commenter requested that the words "first (task)" in proposed paragraph F.1. be changed to "initial" for purposes of clarity and consistency with paragraph F.2. The FAA concurs. This editorial change serves to clarify the rule. The final rule has been changed accordingly.

Several commenters recommended that proposed paragraph G. be deleted since Level 2 corrosion is not an airworthiness concern. One commenter further stated that the Seattle ACO should not even be involved in this non-airworthiness issue. Another operator commented that the FAA does not have the manpower to be responsive to the workload that will be generated by the requirements of proposed paragraphs G.1. and G.2. The FAA does not concur with these commenters. As defined in the Boeing Document, Level 2 corrosion, while not urgent, is an airworthiness concern and, to the extent that corrosion control programs must be revised to prevent its recurrence, the FAA has determined that those revisions must be subject to FAA engineering review (via the Seattle ACO) to ensure the adequacy of the corrective actions. Assuming the adequacy of proposed corrective actions, the FAA's role will be limited to general oversight, and the associated workload should not be excessive.

One commenter requested that the words "* * * and is determined to be representative of the operators fleet" be added to proposed paragraph G. to permit operators to forego program adjustments when a single finding is not representative of the operator's fleet. The FAA does not concur. As previously explained in the preamble to the Supplemental NPRM, if corrosion is not representative, then a means to reduce corrosion to Level 1 or better will have already been implemented in accordance with paragraph A. of the AD, and no further corrective action may be necessary. For example, if a finding of corrosion is attributable to a particular spill of mercury or other unique event, or if corrosion is found on an airplane recently acquired from another operator, the means specified in the existing program may be adequate for controlling corrosion in the remainder of the operator's fleet. Similarly, if an operator has already implemented means to reduce corrosion in an area based on previous findings, no additional corrective action may be necessary. In reviewing the reports submitted in accordance with paragraph D. of the AD, the FAA will monitor the effectiveness of the operators' means to reduce corrosion. If the FAA determines that an operator has failed to implement adequate means to reduce corrosion to Level 1 or better, appropriate action will be taken to ensure compliance with this paragraph. To clarify the FAA's intent in this regard, paragraph G.1. has been revised to read: "Within 60 days after such a finding, if corrective action is necessary to reduce future findings of corrosion to Level 1 or better, such proposed corrective action must be submitted for approval to the Manager, Seattle ACO."

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes discussed above. These changes will neither increase the economic burden on any operator, nor increase the scope of the rule.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

There are approximately 400 Model 707/720 series airplanes of the affected design in the worldwide fleet. It is estimated that 74 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 manhours per area to accomplish the required actions. There are 126 areas called out in the Boeing Document and, for an average labor cost of $40 per manhour, the total cost to inspect each airplane is estimated to be $80,640. Based on these figures, the total cost impact of the AD on U.S. operators for the estimated 6-year average inspection cycle is $5,967,360.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 707/720 series airplanes, certificated in any catgegory. Compliance required as indicated, unless previously accomplished.

Note: This AD references Boeing Document Number D6-54928, "Aging Airplane Corrosion Prevention and Control Program, Model 707/720," Revision A, dated July 28, 1989, for inspection procedures, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

To control corrosion, accomplish the following:

A. Within one year after the effective date of this AD, revise the FAA-approved maintenance program to include the corrosion control program specified in Boeing Document Number D6-54928, "Aging Airplane Corrosion Prevention and Control Program Model 707/720," Revision A, dated July 28, 1989, (hereinafter referred to as "the Document").

Note: All structure found corroded or cracked as a result of an inspection conducted in accordance with this paragraph must be addressed in accordance with FAR part 43.

Note: Where non-destructive inspection (NDI) methods are employed, in accordance with section 4.1 of the Document, the standards and procedures used must be acceptable to the Aministrator in accordance with FAR 43.13.

Note: Procedures identified in the Document as "optional" are not required to be accomplished by this AD.

B. 1. If, as a result of any inspection conducted in accordance with the program required by paragraph A. above, Level 3 corrosion is determined to exist in any area, accomplish one of the following within 7 days after such determination:

a. Submit a report of any findings of Level 3 corrosion to the Manager of the Seattle Aircraft Certification Office (ACO) and inspect the affected area on all Model 707/720 aircraft in the operator's fleet; or

b. Submit for approval to the Manager of the Seattle ACO one of the following:

(1) Proposed adjustments to the schedule for performing the tasks in that area on remaining airplanes in the operator's fleet, which are adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for those adjustments; or

(2) Data substantiating that the Level 3 corrosion found is an isolated occurrence and that no such adjustments are necessary.

Note: Notwithstanding the provision of section 1.1. of the Document that would permit corrosion that otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

Note: As used throughout this AD, where documents are to be submitted to the Manager of the Seattle ACO, the document should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO. The Seattle ACO will not respond to the operator without the PI's comments or concurrence.

2. The FAA may impose adjustments other than those proposed, upon a finding that such adjustments are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

3. Prior to the compliance time specified for the first task required in the adjusted schedule approved under paragraph B.1. or B.2. of this AD, revise the FAA-approved maintenance program to include those adjustments.

Note: The reporting requirements of this paragraph and of paragraph D., below, do not relieve operators from reporting corrosion as required by FAR 121.703.

C. To accommodate unanticipated scheduling requirements, it is acceptable for a repeat inspection inverval to be increased by up to 10% but not to exceed 6 months. The cognizant FAA Principal Inspector (PI) must be informed, in writing, of any extension.

Note: Except as provided in this paragraph, notwithstanding section 3.1., paragraph 4, of the Document, all extensions to any compliance time must be approved by the Manager of the Seattle ACO.

D. Report forms for Level 2 corrosion and a follow-up report for Level 3 corrosion must be submitted at least quarterly in accordance with section 5.0 of the Document.

E. If the repeat inspection or task intervals of an operator's existing corrosion inspection program are shorter than the corresponding intervals in section 4.3 of the Document, they may not be increased without specific approval of the Manager of the Seattle ACO.

F. Before any airplane that is subject to this AD can be added to an air carrier's operations specifications, a program for the accomplishment of tasks required by this AD must be established in accordance with the following:

1. For airplanes that have previously been operated under an FAA-approved maintenance program, the initial task on each area to be accomplished by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

2. For airplanes that have not previously been operated under an FAA-approved maintenance program, each initial task required by this AD must be accomplished either prior to the airplane's being added to the air carrier's operations specifications, or in accordance with a schedule approved by the Manager, Seattle ACO.

G. If corrosion is found to exceed Level 1 on any inspection after the initial inspection, the corrosion control program for the affected area must be reviewed and means implemented to reduce corrosion to Level 1 or better.

1. Within 60 days after such a finding, if corrective action is necessary to reduce future findings of corrosion to Level 1 or better, such proposed corrective action must be submitted for approval to the Manager, Seattle ACO.

2. Within 30 days after the corrective action is approved, revise the FAA-approved maintenance program to include the approved corrective action.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The requirements shall be done in accordance with Boeing Document Number D6-54928, "Aging Airplane Corrosion Prevention and Control Program, Model 707/720," Revision A, dated July 28, 1989. The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport

BEST COPY AVAILABLE

Airplane Directorate, Northwest Mountain Region, 1601 Lind Avenue SW., 5th Floor, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8301, Washington, DC.

This amendment becomes effective December 31, 1990.

Issued in Renton, Washington, on November 5, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27800 Filed 11-26-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-268-AD; Amdt. 39-6787]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 727 series airplanes, which requires the implementation of a corrosion prevention and control program. This amendment is prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes. These incidents have jeopardized the airworthiness of the affected airplanes. This condition, if not corrected, could result in degradation of the structural capabilities of the affected airplanes.

DATES: Effective December 31, 1990.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 31, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., 5th floor, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, Seattle Aircraft Certification Office, ANM-120S, telephone (206) 227-2772. Mailing address: 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to all Boeing Model 727 series airplanes, which requires the implementation of a corrosion control program, was published as a Supplemental Notice of Proposed Rulemaking (NPRM) in the Federal Register on August 2, 1990 (55 FR 31396).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. The Supplemental NPRM was published simultaneously with similar Supplemental NPRM's on this subject relating to Boeing Model 707/720, 737, and 747 series airplanes. The comments received in response to all of these NPRM's were similar; however, in some cases, comments were submitted with respect to one model and not the others. Nevertheless, because the comments and the FAA's responses to those comments may be helpful in providing additional guidance in understanding the FAA's intent in this action, all of the comments and the FAA's responses are discussed in the preambles of each of the final rules resulting from those NPRM's.

Several commenters objected generally to several of the requirements proposed in the Supplemental Notice of Proposed Rulemaking (NPRM) because they are contrary to the requirements for controlling corrosion recommended by the Airworthiness Assurance Task Force (AATF), of which FAA representatives are members. The FAA considers that these objections may be based on a misunderstanding of the AATF's role in the development of this AD. The AATF, as an advisory committee, has provided invaluable assistance to the FAA in providing guidance with respect to the technical content of the corrosion prevention and control program, and the FAA has adopted its recommendations in this regard in total. However, with respect to the means of implementing and ensuring compliance with the program, as discussed in detail below, the FAA has gone beyond the recommendations in order to ensure that operators will be aware of the specific actions for which they will be held accountable, and to enable the FAA to take appropriate action to ensure compliance. In accordance with the Federal Advisory Committee Act, the FAA is required to make independent determinations with regard to these matters, and it would be inappropriate to adopt recommendations which are determined to be indefinite as to timing and responsibility.

The Air Transport Association (ATA) of America, on behalf of its member operators, commented that a better approach for this corrosion AD would have been to follow the example of the Supplemental Structural Inspection Document (SSID) AD [reference AD 84-21-05, Amendment 39-4820, (49 FR 38931, October 2, 1984)]. The ATA regards that AD as preferable in that it provides operators the flexibility to make minor adjustments without seeking FAA approval. The FAA does not concur. Although both the SSID AD and this AD action are similar in that they involve complex revisions to the operators' maintenance programs, they differ in several significant ways. The SSID program is not a self-contained method for addressing aging fleet problems; it serves as a sampling and monitoring tool to provide the FAA with information needed to issue additional AD's defining corrective action when problems are discovered. On the other hand, the corrosion prevention and control program required by this AD is intended to be self-contained and, in addition to information gathering, addresses the nature of corrective action necessary when problems are discovered. The purpose of this program is to maintain corrosion levels at Level 1 or better, whereas the purpose of the SSID AD was simply to detect fatigue problems so that additional corrective action could be required. This difference necessitates the greater complexity and detail of this AD action in defining terms of compliance. Further, fatigue cracking, which is addressed by the SSID program, is a problem generally experienced similarly by airplanes, regardless of operational environment and, therefore, it is appropriate to address that problem through follow-on ADs applicable to the entire fleet. Since corrosion, on the other hand, is highly dependent upon the operational environment, it is appropriate to address it through individualized adjustments to an operator's corrosion prevention and control program.

Several operators commented that the rule removes the PMIs from their primary role as the single point of FAA oversight for the operators' maintenance program. The FAA does not concur. The PMIs will continue to serve as FAA's critical link with the operators. Their oversight responsibilities in this AD, as in other AD's, will not be minimized by the requirements of this AD; however, engineering support will be provided by the Seattle Aircraft Certification Office (ACO).

The manufacturer commented that references to the Boeing Corrosion Prevention and Control Program document (hereinafter referred to as the "Boeing Document") should be corrected to read, "Revision A." The FAA concurs. Revision A provides further clarification and editorial changes to the Boeing Document and includes the optional appendices which are not subject to the requirements of this AD. The final rule has been revised accordingly.

Several commenters noted that proposed paragraph A. should be revised to indicate that the appendices to the Boeing Document are optional. The FAA does not concur that any additional revision to the final rule is necessary. The Boeing document clearly indicates that the appendices are provided as options or for guidance.

One commenter stated that, since the Boeing Document does not require repair of Level 1 or 2 corrosion prior to further flight, this AD action is an over-reaction in requiring operators to do so. The commenter recommended that Level 1 and 2 corrosion be, "repaired on a timely basis." Another commenter requested that the phrase, "all structure [found corroded or cracked * * *]," be changed to read "all primary or all significant structure," in proposed paragraph A. This commenter also requested that the terms "corrosion and cracks," as stated in paragraph A., be defined further. The FAA concurs in part with these comments. It appears that the commenters are concerned that paragraph A. as proposed would require corrective actions beyond those which are currently required for findings of corroded or cracked structure.Upon reevaluation, the FAA has determined that the unsafe condition to which this AD is addressed is the inadequacy of existing corrosion control programs to detect corrosion in a timely manner; there is no basis at this time for concluding that existing maintenance practices are inadequate to address corrosion once it is found. Therefore, with regard to corrective action for specific findings of cracks and corrosion, the FAA intends that existing sound maintenance practices, as already required under FAR part 43, continue to be followed. Accordingly, including a requirement for such repair or other corrective action in this AD is unnecessary, and that requirement has been deleted from the final rule. A Note has been added to inform the public of the need to comply with part 43 in addressing cracks and/or corrosion found as result of the inspections required by this AD. Further, the Note following proposed paragraph A., relating to repairs done in accordance with SFRA 36, has been deleted as unnecessary.

Several commenters requested that proposed paragraph A. be revised to permit adoption of a corrosion control program that is "equivalent to that defined in" the Boeing Document in order to avoid the necessity for obtaining FAA approval of deviations from the specific program defined in the Document.

The FAA does not concur. In order to ensure equivalency, the FAA has determined that it is necessary for it to review proposed deviations; allowing operator discretion in determining equivalency would essentially preclude the FAA from taking appropriate action to ensure compliance if it subsequently determines that the operator's program is not equivalent.

One commenter noted that the non-destructive inspection (NDI) acceptable methods specified in the Note in proposed paragraph A. should include the manufacturer's non-destructive testing manuals; this would eliminate confusion generated by the wording in the Note stating, "standards and procedures used must be acceptable to the Administrator in accordance with FAR 43.13." The FAA does not concur that additional clarification is necessary. FAR 43.13 currently allows the use of the manufacturer's non-destructive testing manuals.

One commenter remarked that the Note in proposed paragraph B., which would require FAA review and approval of data submitted to substantiate that Level 3 corrosion is not typical of the operator's fleet, was in direct contradiction to the Boeing Document. This commenter stated that the process of FAA reviewing isolated cases may take too long, while the remainder of the operator's fleet may be in jeopardy. The FAA does not concur. As discussed above, in order to ensure the adequacy of operator's determinations, it is necessary for the FAA to review and approve them; without such approval, an operator could not be held accountable for an improper determination that a Level 3 corrosion finding was non-representative. Further, the FAA has committed to responding to Level 3 corrosion as expeditiously as possible to avoid adversely affecting safety. Finally, assuming the adequacy of proposed adjustments and their substantiation, the FAA's role will be limited to general oversight, and the associated workload should not be excessive. Therefore, delays are not inherent in this review and approval process.

The manufacturer implied that proposed paragraph B., which addresses findings of Level 3 corrosion, is unnecessary in that such findings must be reported in accordance with FAR 121.703 and corrective actions (such as schedule adjustments) must be adopted in accordance with proposed paragraph G. Other commenters also suggested that the reporting requirements of proposed paragraph B. are redundant of those of FAR 121.703. The FAA does not concur. With regard to the reporting requirement, the purpose and content of the reports required by this paragraph are different from the general requirement of FAR 121.703; reports under this paragraph are intended to provide the FAA with information regarding not just the specific finding of corrosion, but the status of the operator's fleet and schedule adjustments. With regard to the requirement for schedule adjustments, the urgency associated with findings of Level 3 corrosion is such that the FAA considers it necessary to review and approve the operator's plans to identify any other such corrosion in its fleet; without such approval, an operator could not be held accountable for failing to inspect the remainder of its fleet expeditiously.

Numerous commenters requested that proposed paragraph B.1. be revised to change the word "found" to read "determined," and to change the word "finding" to read "determination." These changes would give operators additional time to consult with the manufacturer before commencement of the 7-day compliance period for additional actions. The FAA concurs. The FAA recognizes that some time may pass between discovery of corrosion and the determination that it is Level 3 corrosion, and that additional time will then be needed either to inspect the remainder of the operator's fleet or to develop a plan for such inspections. Therefore, it is appropriate that the compliance time start at the time the termination is made. However, the FAA will monitor the time experienced by operators between the discovery and determination of Level 3 corrosion to ensure that operators continue to respond with the necessary urgency. The FAA considers the degree of urgency associated with findings of Level 3 corrosion to be equivalent to that associated with findings of unsafe conditions warranting the issuance of emergency ADs. Therefore, if it is found that timely determinations are not being made, the FAA may propose further rulemaking to address this concern. Paragraph B.1. of the final rule has been

revised to reflect that the 7-day compliance time commences upon the determination of Level 3 corrosion.

One commenter noted that the requirements of proposed paragraph B.1.a., which would require operators to submit a report of Level 3 corrosion findings to the FAA and to inspect the affected area on all Model 727 aircraft in the operator's fleet within 7 days,would ground operators with large fleets. The FAA does not concur. The requirements of paragraph B.1.a. were intended as an option for operators with small fleets. Operators with large fleets have the option of accomplishing the requirements of paragraph B.1.b. (which involves submitting a proposal for adjustment to the schedule for performing tasks in that area on remaining aircraft in the fleet, or submitting data substantiating that the Level 3 corrosion found is an isolated case).

Several commenters requested that the requirements of proposed paragraph B. to address the remainder of the operator's fleet upon a finding of Level 3 corrosion be narrowed to apply only to other "affected" airplanes of the operator's fleet. The FAA does not concur. As with the operator's determinations of appropriate schedule adjustments, the FAA considers it necessary to review and approve the operator's determination that airplanes are not "affected;" without such approval, an operator could not be held accountable for an incorrect determination.

One commenter questioned whether proposed paragraph B.1.a. would require an operator to inspect the remainder of its fleet within 7 days if the FAA rejected its proposed schedule adjustments submitted in accordance with paragraph B.1.b. The FAA considers the proposed language to be clear. Paragraphs B.1.a. and B.1.b. provide distinct options to the operator. If the operator chooses to submit proposed schedule adjustments which the FAA subsequently determines to be inadequate, the FAA may then impose adjustments in accordance with paragraph B.2.; however, the operator would not be required to comply with the 7-day requirement of paragraph B.1.a.

One commenter requested that the words "Level 3 corrosion" be added to proposed paragraph B.1.a. to clarify that the reporting requirement is for Level 3 corrosion only, and not for all corrosion. The FAA concurs. The final rule has been revised accordingly.

Two commenters requested clarification regarding the requirement of proposed paragraph B.1.b.(1) to submit proposed adjustments to the schedule for "implementing the program." The FAA concurs. The final rule has been revised to refer to the adjusted schedule for "performing the tasks" in the relevant area, which more accurately reflects the subject of the adjusted schedule.

Several commenters suggested that proposed paragraphs B.1.b. (1) and (2) lack sufficient guidance as to what constitutes sufficient "substantiating data," or what constitutes an acceptable "adjustment to a maintenance program." Without this information, they were concerned that they would not be able to make submissions that would be acceptable to the FAA. The FAA does not concur. The data necessary to substantiate proposed schedule adjustments is the same as that relied upon by the operator in the exercise of sound engineering judgment when developing those proposals. Substantiating data that supports the operator's proposed schedule should include age of equipment, number of flight hours, conditions in the operational environment, and other pertinent data to support the operator's proposal. If the data substantiates that schedule adjustments are unnecessary to ensure timely detection of Level 3 corrosion on certain or all airplanes in the remainder of the operator's fleet, then the FAA would approve the operator's proposal not to make such adjustments.

Another commenter requested that the words "Level 3" in proposed paragraph B.1.b.(2) be replaced with the phrase, "corrosion of potential urgent airworthiness concern." The commenter stated that this would eliminate confusion resulting from different definitions of "Levels 1, 2, and 3" corrosion. The FAA does not concur. It is not the FAA's intent to introduce different definitions of these terms and, in accordance with paragraph A. of the AD, the definitions contained in the Boeing Document are required to be incorporated into the operator's maintenance program. The sole purpose of paragraph B.1.b.(2) is to provide the FAA with a means to ensure the correctness of an operator's determination that severe corrosion is not typical.

Several operators requested that proposed paragraph B.2. be deleted because it would allow the Seattle ACO to impose its own program, rather than responding to the operator's proposed adjustments. Another commenter requested that proposed paragraph B.1.b.(2) be revised to include a provision whereby operators would have the opportunity to negotiate with the FAA in the event the FAA rejects the operator's substantiating data. The FAA does not concur. As discussed above, where an operator presents proposed adjustments and substantiating data showing that those adjustments will establish an acceptable level of safety, the FAA will approve the proposal. However, if the FAA determines that the proposed adjustments are inadequate, it may impose different adjustments, in accordance with paragraph B.2. Prior to doing so, it would necessarily discuss the practicability of any such adjustments with the operator. Ultimately, however, the FAA must retain the authority to determine what adjustments are necessary to ensure that an acceptable level of safety is maintained.

Several commenters contended that proposed paragraph B.3. (requiring operators to revise the maintenance program within 7 days to include adjustments approved by the FAA when Level 3 corrosion is found) was unnecessary because the one-time inspection required by paragraph B.1.b.(1) would not require an adjustment to the operator's maintenance program; therefore, the requirements of paragraph B.3. could be fulfilled by those of proposed paragraph G. The FAA does not concur. The purposes of paragraphs B. and G. are different: Paragraph B. is intended to address the short-term problem of ensuring that other Level 3 corrosion is found expeditiously, whereas paragraph G. is intended to address the longer-term problem of ensuring that maintenance programs are changed to prevent the occurrence of severe corrosion in the future. A revision to the FAA-approved maintenance program is the only means to enable the FAA to take appropriate action to ensure compliance with the adjustments to the program.

Several commenters stated that the 7-day compliance time required by proposed paragraph B.3. is unrealistic because of the amount of time required to revise work cards, to obtain approval for a revised program from the PMI, and to publish revised manuals. Commenters requested that additional time, ranging from 15 days to 10 weeks, be allowed for incorporating the changes into the maintenance program. The FAA concurs in part. As discussed previously, the FAA regards Level 3 corrosion findings as being the equivalent of unsafe conditions for which emergency AD action is appropriate. That type of AD frequently requires action on the entire fleet within 10 days or fewer. Therefore, in general, the FAA does not consider

the 7-day requirement to be unreasonable. Nevertheless, the purpose of the requirement of paragraph B.3. is to enable the FAA to take appropriate action to ensure compliance with the schedule adjustments. The FAA has determined that enforceability will not be affected so long as the operator revises its maintenance program prior to the accomplishment of the first task specified in the adjusted schedule. Therefore, the final rule has been revised to require an operator to revise its maintenance program prior to time specified in the adjusted schedule for accomplishing the first task. Of course, operators are permitted to perform tasks prior to the time specified in the schedule.

Several commenters requested that the words "at least [quarterly]" be inserted in the reporting requirement of proposed paragraph D. to provide flexibility to the operators in complying with this requirement. The FAA concurs; adding the suggested wording will in no way change the intent of the reporting requirement. The final rule has been revised accordingly.

One commenter viewed the requirements of proposed paragraph E., concerning FAA approval of the schedule for certain changes in the repeat inspection/task intervals, as overly restrictive, which may prove to be counter-productive by focusing resources on areas of lower priority. The FAA does not concur. The purpose of this paragraph is to prevent those operators that currently have rigorous corrosion control programs from downgrading them. Since those programs are presumably based on the operator's service experience, and since the Boeing Document presents a program based on average fleetwide experience, it may be that the Boeing Document would not provide an acceptable level of safety for that operator. The alternate means of compliance provision in paragraph H. of the final rule provides the opportunity for any operator to submit an alternative procedure to the FAA that would provide an acceptable level of safety.

One commenter requested that the rule be revised to permit the PMI, rather than the Manager of the Seattle ACO, to approve (1) extensions to the compliance time of proposed paragraph C., (2) increases in the repeat inspection intervals in proposed paragraph E., (3) the operator's schedule for performing tasks on newly acquired airplanes (as required by proposed paragraph F.2.), and (4) proposed corrective actions if corrosion is found to exceed Level 1 (as required by proposed paragraph G.1.). The FAA does not concur. The PMI's serve as FAA's critical link with the operator, and their oversight responsibilities will not be minimized in this AD action. However, the staff of the ACO provides the engineering support necessary to evaluate whether extensions to compliance times, increases in repeat inspection intevals, schedules for newly acquired airplanes, and proposed corrective actions will maintain an acceptable level of safety.

Several commenters stated that proposed paragraph F., concerning adding airplanes to an air carrier's operations specifications, was unnecessary and should be deleted. As an alternative, one commenter suggested a pro-rated implementation process wherein the old program would be merged into the new program. The FAA does not concur. Paragraph F. is necessary to ensure that newly acquired airplanes are inspected within a period of time commensurate with their likely exposure to corrosion. Since this AD merely requires the adoption of a corrosion control program and, apart from paragraph F., does not dictate the order in which individual airplanes are to be inspected, it is possible that, without this paragraph, newly acquired airplanes may simply "go to the end of the line" under the new owner's program even if they were likely candidates for severe corrosion. Regarding airplanes that have previously been operated under maintenance programs complying with this AD, since each operator's program will reflect its own operating environment, the only conservative approach is to require the first inspection by the new owner to be conducted in accordance with the more restrictive of the two operators' programs.

Another commenter requested that proposed paragraph F.2. be deleted entirely and that all newly acquired airplanes be phased-in in accordance with proposed paragraph F.1. The FAA does not concur. Paragraph F.1. and F.2. are exclusive of one another. If an airplane has been operated under an FAA-approved maintenance program, then it would follow the requirements of paragraph F.1. If an airplane has never been operated under an FAA-approved maintenance program, then it would follow the requirements of paragraph F.2. Assuming it has been operated under an equivalent corrosion control program adopted in accordance with the requirements of another airworthiness authority, that fact would obviously be critical in substantiating a proposed schedule under paragraph F.2. If it has not been operating under such a program, its corrosion status must be determined before it is added to the operator's operations specifications.

One commenter requested that the word "first [task]" in proposed paragraph F.1. be changed to "initial" for purposes of clarity and consistency with paragraph F.2. The FAA concurs. This editorial change serves to clarify the rule. The final rule has been changed accordingly.

Several commenters recommended that proposed paragraph G. be deleted since Level 2 corrosion is not an airworthiness concern. One commenter further stated that the Seattle ACO should not even be involved in this nonairworthiness issue. Another operator commented that the FAA does not have the manpower to be responsive to the workload that will be generated by the requirements of proposed paragraphs G.1. and G.2. The FAA does not concur with these commenters. As defined in the Boeing Document, Level 2 corrosion, while not urgent, is an airworthiness concern and, to the extent that corrosion control programs must be revised to prevent its recurrence, the FAA has determined that those revisions must be subject to FAA engineering review (via the Seattle ACO) to ensure the adequacy of the corrective actions. Assuming the adequacy of proposed corrective actions, the FAA's role will be limited to general oversight, and the associated workload should not be excessive.

One commenter requested that the words "* * * and is determined to be representative of the operators fleet" be added to proposed paragraph G. to permit operators to forego program adjustments when a signle finding is not representative of the operator's fleet. The FAA does not concur. As previously explained in the preamble to the Supplemental NPRM, if corrosion is not representative, then a means to reduce corrosion to Level 1 or better will have already been implemented in accordance with paragraph A. of the AD, and no further corrective action may be necessary. For example, if a finding of corrosion is attributable to a particular spill of mercury or other unique event, or if corrosion is found on an airplane recently acquired from another operator, the means specified in the existing program may be adequate for controlling corrosion in the remainder of the operator's fleet. Similarly, if an operator has already implemented means to reduce corrosion in an area based on previous findings, no additional corrective action may be necessary. In reviewing the reports

submitted in accordance with paragraph D. of the AD, the FAA will monitor the effectiveness of the operators' means to reduce corrosion. If the FAA determines that an operator has failed to implement adequate means to reduce corrosion to Level 1 or better, appropriate action will be taken to ensure compliance with this paragraph. To clarify the FAA's intent in this regard, paragraph G.1. has been revised to read: "Within 60 days after such a finding, if corrective action is necessary to reduce future findings of corrosion to Level 1 or better, such proposed corrective action must be submitted for approval to the Manager, Seattle ACO."

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes discussed above. These changes will neither increase the economic burden on any operator, nor increase the scope of the rule.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

There are approximately 1,710 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,143 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 manhours per area to accomplish the required actions. There are 125 areas called out in the Boeing Document, and for an average labor cost of $40 per manhour, the total cost impact to inspect each airplane would be $80,000. Based on these figures, the total cost impact of the AD on U.S. operators for the estimated 6-year average inspection cycle is $91,440,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 727 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

Note: This AD references Boeing Document Number D6-54929, "Aging Airplane Corrosion Prevention and Control Program, Model 727," Revision A, dated July 28, 1989, for inspection procedures, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

To control corrosion, accomplish the following:

A. Within one year after the effective date of this AD, revise the FAA-approved maintenance program to include the corrosion control program specified in Boeing Document Number D6-54929, "Aging Airplane Corrosion Prevention and Control Program, Model 727," Revision A, dated July 28, 1989 (hereinafter referred to as "the Document").

Note: All structure found corroded or cracked as a result of an inspection conducted in accordance with this paragraph must be addressed in accordance with FAR Part 43.

Note: Where non-destructive inspection (NDI) methods are employed in accordance with section 4.1 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR 43.13.

Note: Procedures identified in the Document as "optional" are not required to be accomplished by this AD.

B. 1. If, as a result of any inspection conducted in accordance with the program required by paragraph A., above, Level 3 corrosion is determined to exist in any area, accomplish one of the following within 7 days after such determination:

a. Submit a report of any findings of Level 3 corrosion to the Manager of the Seattle Aircraft Certification Office (ACO) and inspect the affected area on all Model 727 aircraft in the operator's fleet; or

b. Submit for approval to the Manager of the Seattle ACO one of the following:

(1) Proposed adjustments to the schedule for performing the tasks in that area on remaining airplanes in the operator's fleet, which are adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for those adjustments; or

(2) Data substantiating that the Level 3 corrosion found is an isolated occurrence and that no such adjustments are necessary.

Note: Notwithstanding the provision of section 1.1. of the Document that would permit corrosion that otherwise meets the definition of Level 3 corrosion (*i.e.*, which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

Note: As used throughout this AD, where documents are to be submitted to the Manager of the Seattle ACO, the document should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO. The Seattle ACO will not respond to the operator without the PI's comments or concurrence.

2. The FAA may impose adjustments other than those proposed, upon a finding that such adjustments are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

3. Prior to the compliance time specified for the first task required in the adjusted schedule approved under paragraph B.1. or B.2. of this AD, revise the FAA-approved maintenance program to include those adjustments.

Note: The reporting requirements of this paragraph and of paragraph D., below, do not relieve operators from reporting corrosion as required by FAR section 121.703.

C. To accommodate unanticipated scheduling requirements, it is acceptable for a repeat inspection interval to be increased by up to 10% but not to exceed 6 months. The cognizant FAA Principal Inspector (PI) must be informed, in writing, of any extension.

Note: Except as provided in this paragraph, notwithstanding Section 3.1., paragraph 4, of the Document, all extensions to any compliance time must be approved by the Manager of the Seattle ACO.

D. Report forms for Level 2 corrosion and a follow-up report for Level 3 corrosion must be submitted at least quarterly in accordance with Section 5.0 of the Document.

E. If the repeat inspection or task intervals of an operator's existing corrosion inspection program are shorter than the corresponding intervals in Section 4.3 of the Document, they may not be increased without specific approval of the Manager of the Seattle ACO.

F. Before any airplane that is subject to this AD can be added to an air carrier's operations specifications, a program for the accomplishment of tasks required by this AD must be established in accordance with the following:

1. For airplanes that have previously been operated under an FAA-approved maintenance program, the initial task on each area to be accomplished by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

2. For airplanes that have not previously been operated under an FAA-approved maintenance program, each initial task required by this AD must be accomplished either prior to the airplane's being added to the air carrier's operations specifications, or in accordance with a schedule approved by the Manager, Seattle ACO.

G. If corrosion is found to exceed Level 1 on any inspection after the initial inspection, the corrosion control program for the affected area must be reviewed and means implemented to reduce corrosion to Level 1 or better.

1. Within 60 days after such a finding, if corrective action is necessary to reduce future findings of corrosion to Level 1 or better, such proposed corrective action must be submitted for approval to the Manager, Seattle ACO.

2. Within 30 days after the corrective action is approved, revise the FAA-approved maintenance program to include the approved corrective action.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The requirements shall be done in accordance with Boeing Document Number D6-54929, "Aging Airplane Corrosion Prevention and Control Program, Model 727," Revision A, dated July 28, 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, Northwest Mountain Region, 1601 Lind Avenue SW., 5th floor, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8301, Washington, DC.

This amendment becomes effective December 31, 1990.

Issued in Renton, Washington, on November 5, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27803 Filed 11-26-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-270-AD; Amdt. 39-6789]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 737 series airplanes, which requires the implementation of a corrosion prevention and control program. This amendment is prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes. These incidents have jeopardized the airworthiness of the affected airplanes. This condition, if not corrected, could result in degradation of the structural capabilities of the affected airplanes.

DATES: Effective December 31, 1990.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 31, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., 5th floor, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, Seattle Aircraft Certification Office, ANM-120S, telephone (206) 227-2775. Mailing address: 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to all Boeing Model 737 series airplanes, which requires the implementation of a corrosion control program, was published as a Supplemental Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on August 2, 1990 (55 FR 31398).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. The Supplemental NPRM was published simultaneously with similar Supplemental NPRM's on this subject relating to Boeing Model 707/720, 727, and 747 series airplanes. The comments received in response to all of these NPRM's were similar; however, in some cases, comments were submitted with respect to one model and not the others. Nevertheless, because the comments and the FAA's responses to those comments may be helpful in providing additional guidance in understanding the FAA's intent in this action, all of the comments and the FAA's responses are discussed in the preambles of each of the final rules resulting from those NPRM's.

Several commenters objected generally to several of the requirements proposed in the Supplemental Notice of Proposed Rulemaking (NPRM) because they are contrary to the requirements for controlling corrosion recommended by the Airworthiness Assurance Task Force (AATF), of which FAA representatives are members. The FAA considers that these objections may be based on a misunderstanding of the AATF's role in the development of this AD. The AATF, as an advisory committee, has provided invaluable assistance to the FAA in providing guidance with respect to the technical content of the corrosion prevention and control program, and the FAA has adopted its recommendations in this regard in total. However, with respect to the means of implementing and ensuring compliance with the program, as discussed in detail below, the FAA has gone beyond the recommendations in order to ensure that operators will be aware of the specific actions for which they will be held accountable, and to enable the FAA to take appropriate action to ensure compliance. In accordance with the Federal Advisory Committee Act, the FAA is required to make independent determinations with regard to these matters, and it would be inappropriate to adopt recommendations which are determined

to be indefinite as to timing and responsibility.

The Air Transport Association (ATA) of America, on behalf of its member operators, commented that a better approach for this corrosion AD would have been to follow the example of the Supplemental Structural Inspection Document (SSID) AD [reference AD 84-21-06-R1, Amendment 39-5613 (53 FR 6794, March 3, 1988)]. The ATA regards that AD as preferable in that it provides operators the flexibility to make minor adjustments without seeking FAA approval. The FAA does not concur. Although both the SSID AD and this AD action are similar in that they involve complex revisions to the operators' maintenance programs, they differ in several significant ways. The SSID program is not a self-containing method for addressing aging fleet problems; it serves as a sampling and monitoring tool to provide the FAA with information needed to issue additional AD's defining corrective action when problems are discovered. On the other hand, the corrosion prevention and control program required by this AD is intended to be self-contained and, in addition to information gathering, addresses the nature of corrective action necessary when problems are discovered. The purpose of this program is to maintain corrosion levels at Level 1 or better, whereas the purpose of the SSID AD was simply to detect fatigue problems so that additional corrective action could be required. This difference necessitates the greater complexity and detail of this AD action in defining terms of compliance. Further, fatigue cracking, which is addressed by the SSID program, is a problem generally experienced similarly by airplanes, regardless of operational environment and, therefore, it is appropriate to address that problem through follow-on ADs applicable to the entire fleet. Since corrosion, on the other hand, is highly dependent upon the operational environment, it is appropriate to address it through individualized adjustments to an operator's corrosion prevention and control program.

Several operators commented that the rule removes the PMIs from their primary role as the single point of FAA oversight for the operator's maintenance program. The FAA does not concur. The PMIs will continue to serve as FAA's critical link with the operators. Their oversight responsibilities in this AD, as in other AD's, will not be minimized by the requirements of this AD; however, engineering support will be provided by the Seattle Aircraft Certification Office (ACO).

The manufacturer commented that references to the Boeing Corrosion Prevention and Control Program document (hereinafter referred to as the "Boeing Document") should be corrected to read, "Revision A." The FAA concurs. Revision A provides further clarification and editorial changes to the Boeing Document and includes the optional appendices which are not subject to the requirements of this AD. The final rule has been revised accordingly.

Several commenters noted that proposed paragraph A. should be revised to indicate that the appendices to the Boeing Document are optional. The FAA does not concur that any additional revision to the final rule is necessary. The Boeing Document clearly indicates that the appendices are provided as options or for guidance.

One commenter stated that, since the Boeing Document does not require repair of Level 1 or 2 corrosion prior to further flight, this AD action is an over-reaction in requiring operators to do so. The commenter recommended that Levels 1 and 2 corrosion be, "repaired on a timely basis." Another commenter requested that the phrase, "all structure [found corroded or cracked * * *]," be changed to read "all primary or all significant structure," in proposed paragraph A. This commenter also requested that the terms "corrosion and cracks," as stated in paragraph A., be defined further. The FAA concurs in part with these comments. It appears that the commenters are concerned that paragraph A. as proposed would require corrective actions beyond those which are currently required for findings of corroded or cracked structure. Upon reevaluation, the FAA has determined that the unsafe condition to which this AD is addressed is the inadequacy of existing corrosion control programs to detect corrosion in a timely manner; there is no basis at this time for concluding that existing maintenance practices are inadequate to address corrosion once it is found. Therefore, with regard to corrective action for specific findings of cracks and corrosion, the FAA intends that existing sound maintenance practices, as already required under FAR part 43, continue to be followed. Accordingly, including a requirement for such repair or other corrective action in this AD is unnecessary, and that requirement has been deleted from the final rule. A Note has been added to inform the public of the need to comply with part 43 in addressing cracks and/or corrosion found as result of the inspections required by this AD. Further, the Note following proposed paragraph A., relating to repairs done in accordance with SFAR 36, has been deleted as unnecessary.

Several commenters requested that proposed paragraph A. be revised to permit adoption of a corrosion control program that is "equivalent to that defined in" the Boeing Document in order to avoid the necessity for obtaining FAA approval of deviations from the specific program defined in the Document. The FAA does not concur. In order to ensure equivalency, the FAA has determined that it is necessary for it to review proposed deviations; allowing operator discretion in determining equivalency would essentially preclude the FAA from taking appropriate action to ensure compliance if it subsequently determines that the operator's program is not equivalent.

One commenter noted that the non-destructive inspection (NDI) acceptable methods specified in the Note in proposed paragraph A. should include the manufacturer's non-destructive testing manuals; this would eliminate confusion generated by the wording in the Note stating, "standards and procedures used must be acceptable to the Administrator in accordance with FAR 43.13." The FAA does not concur that additional clarification is necessary. FAR 43.13 currently allows the use of the manufacturer's non-destructive testing manuals.

One commenter remarked that the Note in proposed paragraph B., which would require FAA review and approval of data submitted to substantiate that Level 3 corrosion is not typical of the operator's fleet, was in direct contradiction to the Boeing Document. This commenter stated that the process of FAA reviewing isolated cases may take too long, while the remainder of the operator's fleet may be in jeopardy. The FAA does not concur. As discussed above, in order to ensure the adequacy of operators' determinations, it is necessary for the FAA to review and approve them; without such approval, an operator could not be held accountable for an improper determination that a Level 3 corrosion finding was non-representative. Further, the FAA has committed to responding to Level 3 corrosion as expeditiously as possible to avoid adversely affecting safety. Finally, assuming the adequacy of proposed adjustments and their substantiation, the FAA's role will be limited to general oversight, and the associated workload should not be excessive. Therefore, delays are not inherent in this review and approval process.

The manufacturer implied that proposed paragraph B., which addresses findings of Level 3 corrosion, is unnecessary in that such findings must be reported in accordance with FAR 121.703 and corrective actions (such as schedule adjustments) must be adopted in accordance with proposed paragraph G. Other commenters also suggested that the reporting requirements of proposed paragraph B. are redundant of those of FAR 121.703. The FAA does not concur. With regard to the reporting requirement, the purpose and content of the reports required by this paragraph are different from the general requirement of FAR 121.703; reports under this paragraph are intended to provide the FAA with information regarding not just the specific finding of corrosion, but the status of the operator's fleet and schedule adjustments. With regard to the requirement for schedule adjustments, the urgency associated with findings of Level 3 corrosion is such that the FAA considers it necessary to review and approve the operator's plans to identify any other such corrosion in its fleet; without such approval, an operator could not be held accountable for failing to inspect the remainder of its fleet expeditiously.

Numerous commenters rquested that proposed paragraph B.1. be revised to change the word "found" to read "determined," and to change the word "finding" to read "determination." These changes would give operators additional time to consult with the manufacturer before commencement of the 7-day compliance period for additional actions. The FAA concurs. The FAA recognizes that some time may pass between discovery of corrosion and the determination that it is Level 3 corrosion, and that additional time will then be needed either to inspect the remainder of the operator's fleet or to develop a plan for such inspections. Therefore, it is appropriate that the compliance time start at the time the determination is made. However, the FAA will monitor the time experienced by operators between the discovery and determination of Level 3 corrosion to ensure that operators continue to respond with the necessary urgency. The FAA considers the degree of urgency associated with findings of Level 3 corrosion to be equivalent to that associated with findings of unsafe conditions warranting the issuance of emergency ADs. Therefore, if it is found that timely determinations are not being made, the FAA may propose further rulemaking to address this concern. Paragraph B.1. of the final rule has been revised to reflect that the 7-day compliance time commences upon the determination of Level 3 corrosion.

One commenter noted that the requirements of proposed paragraph B.1.a., which would require operators to submit a report of Level 3 corrosion findings to the FAA and to inspect the affected area on all Model 737 aircraft in the operator's fleet within 7 days, would ground operators with large fleets. The FAA does not concur. The requirements of paragraph B.1.a. were intended as an option for operators with small fleets. Operators with large fleets have the option of accomplishing the requirements of paragraph B.1.b. (which involves submitting a proposal for adjustment to the schedule for performing tasks in that area on remaining aircraft in the fleet, or submitting data substantiating that the Level 3 corrosion found is an isolated case).

Several commenters requested that the requirements of proposed paragraph B. to address the remainder of the operator's fleet upon a finding of Level 3 corrosion be narrowed to apply only to other "affected" airplanes of the operator's fleet. The FAA doe not concur. As with the operator's determinations of appropriate schedule adjustments, the FAA considers it necessary to review and approve the operator's determination that airplanes are not "affected;" without such approval, an operator could not be held accountable for an incorrect determination.

One commenter questioned whether proposed paragraph B.1.a. would require an operator to inspect the remainder of its fleet within 7 days if the FAA rejected its proposed schedule adjustments submitted in accordance with paragraph B.1.b. The FAA considers the proposed language to be clear. Paragraphs B.1.a. and B.1.b. provide distinct options to the operator. If the operator chooses to submit proposed schedule adjustments which the FAA subsequently determines to be inadequate, the FAA may then impose adjustments in accordance with paragraph B.2.; however, the operator would not be required to comply with the 7-day requirement of paragraph B.1.a.

One commenter requested that the words "Level 3 corrosion" be added to proposed paragraph B.1.a. to clarify that the reporting requirement is for Level 3 corrosion only, and not for all corrosion. The FAA concurs. The final rule has been revised accordingly.

Two commenters requested clarification regarding the requirement of proposed paragraph B.1.b.(1) to submit proposed adjustments to the schedule for "implementing the program." The FAA concurs. The final rule has been revised to refer to the adjusted schedule for "performing the tasks" in the relevant area, which more accurately reflects the subject of the adjusted schedule.

Several commenters suggested that proposed paragraph B.1.b. (1) and (2) lack sufficient guidance as to what constitutes sufficient "substantiating data," or what constitutes an acceptable "adjustment to a maintenance program." Without this information, they were concerned that they would not be able make submissions that would be acceptable to the FAA. The FAA does not occur. The data necessary to substantiate proposed schedule adjustments is the same as that relied upon by the operator in the exercise of sound engineering judgment when developing those proposals. Substantiating data that supports the operator's proposed schedule should include age of equipment, number of flight hours, conditions in the operational environment, and other pertinent data to support the operator's proposal. If the data substantiates that schedule adjustments are unnecessary to ensure timely detection of Level 3 corrosion on certain or all airplanes in the remainder of the operator's fleet, then the FAA would approve the operator's proposal not to make such adjustments.

Another commenter requested that the words "Level 3" in proposed paragraph B.1.b.(2) be replaced with the phrase, "corrosion of potential urgent airworthiness concern." The commenter stated that this would eliminate confusion resulting from different definitions of "Level 1, 2, and 3" corrosion. The FAA does not concur. It is not the FAA's intent to introduce different definitions of these terms and, in accordance with paragraph A. of the AD, the definitions contained in the Boeing Document are required to be incorporated into the operator's maintenance program. The sole purpose of paragraph B.1.b.(2) is to provide the FAA with a means to ensure the correctness of an operator's determination that severe corrosion is not typical.

Several operators requested that proposed paragraph B.2. be deleted because it would allow the Seattle ACO to impose its own program, rather than responding to the operator's proposed adjustments. Another commenter requested that proposed paragraph B.1.b.(2) be revised to include a

critical in substantiating a proposed schedule under paragraph F.2. If it has not been operating under such a program, its corrosion status must be determined before it is added to the operator's operations specifications.

One commenter requested that the word "first [task]" in proposed paragraph F.1. be changed to "initial" for purposes of clarity and consistency with paragraph F.2. The FAA concurs. This editorial change serves to clarify the rule. The final rule has been changed accordingly.

Several commenters recommended that proposed paragraph G. be deleted since Level 2 corrosion is not an airworthiness concern. One commenter further stated that the Seattle ACO should not even be involved in this non-airworthiness issue. Another operator commented that the FAA does not have the manpower to be responsive to the workload that will be generated by the requirements of proposed paragraphs G.1. and G.2. The FAA does not concur with these commenters. As defined in the Boeing Document, Level 2 corrosion, while not urgent, is an airworthiness concern and, to the extent that corrosion control programs must be revised to prevent its recurrence, the FAA has determined that those revisions must be subject to FAA engineering review (via the Seattle ACO) to ensure the adequacy of the corrective actions. Assuming the adequacy of proposed corrective actions, the FAA's role will be limited to general oversight, and the associated workload should not be excessive.

One commenter requested that the words " * * * and is determined to be representative of the operators fleet" be added to proposed paragraph G. to permit operators to forego program adjustments when a single finding is not representative of the operator's fleet. The FAA does not concur. As previously explained in the preamble to the Supplemental NPRM, if corrosion is not representative, then a means to reduce corrosion to Level 1 or better will have already been implemented in accordance with paragraph A. of the AD, and no further corrective action may be necessary. For example, if a finding of corrosion is attributable to a particular spill of mercury or other unique event, or if corrosion is found on an airplane recently acquired from another operator, the means specified in the existing program may be adequate for controlling corrosion in the remainder of the operator's fleet. Similarly, if an operator has already implemented means to reduce corrosion in an area based on previous findings, no additional corrective action may be necessary. In reviewing the reports submitted in accordance with paragraph D. of the AD, the FAA will monitor the effectiveness of the operator's means to reduce corrosion. If the FAA determines that an operator has failed to implement adquate means to reduce corrosion to Level 1 or better, appropriate action will be taken to ensure compliance with this paragraph. To clarify the FAA's intent in this regard, paragraph G.1. has been revised to read: "Within 60 days after such a finding, if corrective action is necessary to reduce future findings of corrosion to Level 1 or better, such proposed corrective action must be submitted for approval to the Manager, Seattle ACO."

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes discussed above. These changes will neither increase the economic burden on any operator, nor increase the scope of the rule.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

There are approximately 595 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 232 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per area to accomplish the required actions. There are 121 areas called out in the Boeing Document and, for an average labor cost of $40 per manhour, the total cost to inspect each airplane is estimated to be $38,720. Based on these figures, the total cost impact of the AD on U.S. operators for the estimated 6 years average inspection cycle is $8,983,040.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by reading the following new airworthiness directive:

Boeing: Applies to all Model 737 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

Note: This AD references Boeing Document Number D6-38528, "Aging Airplane Corrosion Prevention and Control Program, Model 737," Revision A, dated July 28, 1989, for inspection procedures, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

To control corrosion, accomplish the following:

A. Within one year after the effective date of this AD, revise the FAA-approved maintenance program to include the corrosion control program specified in Boeing Document Number D6-38528, "Aging Airplane Corrosion Prevention and Control Program, Model 737," Revision A, dated July 28, 1989, (hereinafter referred to as "the Document").

Note: All structure found corroded or cracked as a result of an inspection conducted in accordance with this paragraph must be addressed in accordance with FAR part 43.

Note: Where non-destructive inspection (NDI) methods are employed, in accordance with section 4.1 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR 43.13.

provision whereby operators would have the opportunity to negotiate with the FAA in the event the FAA rejects the operator's substantiating data. The FAA does not concur. As discussed above, where an operator presents proposed adjustments and substantiating data showing that those adjustments will establish an acceptable level of safety, the FAA will approve the proposal. However, if the FAA determines that the proposed adjustments are inadequate, it may impose different adjustments, in accordance with paragraph B.2. Prior to doing so, it would necessarily discuss the practicability of any such adjustments with the operator. Ultimately, however, the FAA must retain the authority to determine what adjustments are necessary to ensure that an acceptable level of safety is maintained.

Several commenters contended that proposed paragraph B.3. (requiring operators to revise the maintenance program within 7 days to include adjustments approved by the FAA when Level 3 corrosion is found) was unnecessary because the one-time inspection required by paragraph B.1.b.(1) would not require an adjustment to the operator's maintenance program; therefore, the requirements of paragraph B.3. could be fulfilled by those of proposed paragraph G. The FAA does not concur. The purposes of paragraphs B. and G. are different: Paragraph B. is intended to address the short-term problem of ensuring that other Level 3 corrosion is found expeditiously, whereas paragraph G. is intended to address the longer-term problem of ensuring that maintenance programs are changed to prevent the occurrence of severe corrosion in the future. A revision to the FAA-approved maintenance program is the only means to enable the FAA to take appropriate action to ensure compliance with the adjustments to the program.

Several commenters stated that the 7-day compliance time required by proposed paragraph B.3. is unrealistic because of the amount of time required to revise work cards, to obtain approval for a revised program from the PMI, and to publish revised manuals. Commenters requested that additional time, ranging from 15 days to 10 weeks, be allowed for incorporating the changes into the maintenance program. The FAA concurs in parts. As discussed previously, the FAA regards Level 3 corrosion findings as being the equivalent of unsafe conditions for which emergency AD action is appropriate. That type of AD frequently requires action on the entire fleet within 10 days or fewer. Therefore, in general, the FAA does not consider the 7-day requirement to be unreasonable. Nevertheless, the purpose of the requirement of paragraph B.3. is to enable the FAA to take appropriate action to ensure compliance with the schedule adjustments. The FAA has determined that enforceability will not be affected so long as the operator revises its maintenance program prior to the accomplishment of the first task specified in the adjusted schedule. Therefore, the final rule has been revised to require an operator to revise its maintenance program prior to time specified in the adjusted schedule for accomplishing the first task. Of course, operators are permitted to perform tasks prior to the time specified in the schedule.

Several commenters requested that the words "at least [quarterly]" be inserted in the reporting requirement of proposed paragraph D. to provide flexibility to the operators in complying with this requirement. The FAA concurs; adding the suggested wording will in no way change the intent of the reporting requirement. The final rule has been revised accordingly.

One commenter viewed the requirements of proposed paragraph E., concerning FAA approval of the schedule for certain changes in the repeat inspection/task intervals, as overly restrictive, which may prove to be counter-productive by focusing resources on areas of lower priority. The FAA does not concur. The purpose of this paragraph is to prevent those operators that currently have rigorous corrosion control programs from downgrading them. Since those programs are presumably based on the operator's service experience, and since the Boeing Document presents a program based on average fleetwide experience, it may be that the Boeing Document would not provide an acceptable level of safety for that operator. The alternate means of compliance provision in paragraph H. of the final rule provides the opportunity for any operator to submit an alternative procedure to the FAA that would provide an acceptable level of safety.

One commenter requested that the rule be revised to permit the PMI, rather than the Manager of the Seattle ACO, to approve (1) extensions to the compliance time of proposed paragraph C., (2) increases in the repeat inspection intervals in proposed paragraph E., (3) the operator's schedule for performing tasks on newly acquired airplanes (as required by proposed paragraph F.2.), and (4) proposed corrective actions if corrosion is found to exceed Level 1 (as required by proposed paragraph G.1.). The FAA does not concur. The PMI's serve as FAA's critical link with the operators, and their oversight responsibilities will not be minimized in this AD action. However, the staff of the ACO provides the engineering support necessary to evaluate whether extensions to compliance times, increases in repeat inspection intervals, schedules for newly acquired airplanes, and proposed corrective actions will maintain an acceptable level of safety.

Several commenters stated that proposed paragraph F., concerning adding airplanes to an air carrier's operations specifications, was unnecessary and should be deleted. As an alternative, one commenter suggested a pro-rated implementation process wherein the old program would be merged into the new program. The FAA does not concur. Paragraph F. is necessary to ensure that newly acquired airplanes are inspected within a period of time commensurate with their likely exposure to corrosion. Since this AD merely requires the adoption of a corrosion control program and, apart from paragraph F., does not dictate the order in which individual airplanes are to be inspected, it is possible that, without this paragraph, newly acquired airplanes may simply "go to the end of the line" under the new owner's program even if they were likley candidates for severe corrosion. Regarding airplanes that have previously been operated under maintenance programs complying with this AD, since each operator's program will reflect its own operating environment, the only conservative approach is to require the first inspection by the new owner to be conducted in accordance with the more restrictive of the two operator's programs.

Another commenter requested that proposed paragraph F.2. be deleted entirely and that all newly acquired airplanes be phased-in in accordance with proposed paragraph F.1. The FAA does not concur. Paragraph F.1. and F.2. are exclusive of one another. If an airplane has been operated under an FAA-approved maintenance program, then it would follow the requirements of paragraph F.1. If an airplane has never been operated under an FAA-approved maintenance program, then it would follow the requirements of paragraph F.2. Assuming it has been operated under an equivalent corrosion control program adopted in accordance with the requirements of another airworthiness authority, that fact would obviously be

Note: Procedures identified in the Document as "optional" are not required to be accomplished by this AD.

B. 1. If, as a result of any inspection conducted in accordance with the program required by paragraph A., above, Level 3 corrosion is determined to exist in any area, accomplish one of the following within 7 days after such determination:

a. Submit a report of any findings of Level 3 corrosion to the Manager of the Seattle Aircraft Certification Office (ACO) and inspect the affected area on all Model 737 aircraft in the operator's fleet; or

b. Submit for approval to the Manager of the Seattle ACO one of the following:

(1) Proposed adjustments to the schedule for performing the tasks in that area on remaining airplanes in the operator's fleet, which are adequate to ensure that any other Level 3 corrosion is detected in a timely manner; along with substantiating data for those adjustments; or

(2) Data substantiating that the Level 3 corrosion found is an isolated occurrence and that no such adjustments are necessary.

Note: Notwithstanding the provision of Section 1.1. of the Document that would permit corrosion that otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

Note: As used throughout this AD, where documents are to be submitted to the Manager of the Seattle ACO, the document should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO. The Seattle ACO will not respond to the operator without the PI's comments or concurrence.

2. The FAA may impose adjustments other than those proposed, upon a finding that such adjustments are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

3. Prior to the compliance time specified for the first task required in the adjusted schedule approved under paragraph B.1. or B.2. of this AD, revise the FAA-approved maintenance program to include those adjustments.

Note: The reporting requirements of this paragraph and of paragraph D., below, do not relieve operators from reporting corrosion as required by FAR section 121.703.

C. To accommodate unanticipated scheduling requirements, it is acceptable for a repeat inspection interval to be increased by up to 10% but not to exceed 6 months. The cognizant FAA Principal Inspector (PI) must be informed, in writing, of any extension.

Note: Except as provided in this paragraph, notwithstanding Section 3.1., paragraph 4, of the Document, all extensions to any compliance time must be approved by the Manager of the Seattle ACO.

D. Report forms for Level 2 corrosion and a follow-up report for Level 3 corrosion must be submitted at least quarterly in accordance with Section 5.0 of the Document.

E. If the repeat inspection or task intervals of an operator's existing corrosion inspection program are shorter than the corresponding intervals in Section 4.3 of the Document, they may not be increased without specific approval of the Manager of the Seattle ACO.

F. Before any airplane that is subject to this AD can be added to an air carrier's operations specifications, a program for the accomplishment of tasks required by this AD must be established in accordance with the following:

1. For airplanes that have previously been operated under an FAA-approved maintenance program, the initial task on each area to be accomplished by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

2. For airplanes that have not previously been operated under an FAA-approved maintenance program, each initial task required by this AD must be accomplished either prior to the airplane's being added to the air carrier's operations specifications, or in accordance with a schedule approved by the Manager, Seattle ACO.

G. If corrosion is found to exceed Level 1 on any inspection after the initial inspection, the corrosion control program for the affected area must be reviewed and means implemented to reduce corrosion to Level 1 or better.

1. Within 60 days after such a finding, if corrective action is necessary to reduce future findings of corrosion to Level 1 or better, such proposed corrective action must be submitted for approval to the Manager, Seattle ACO.

2. Within 30 days after the corrective action is approved, revise the FAA-approved maintenance program to include the approved corrective action.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The requirements shall be done in accordance with Boeing Document Number D6-38528, "Aging Airplane Corrosion Prevention and Control Program, Model 737," Revision A, dated July 28, 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, Northwest Mountain Region, 1601 Lind Avenue SW., 5th floor, Renton, Washington; or at the Office of the Federal Register, 1101 L Street NW., room 8301, Washington, DC.

This amendment becomes effective December 31, 1990.

Issued in Renton, Washington, on November 5, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27801 Filed 11-26-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-271-AD; Amdt. 39-6790]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 747 series airplanes, which requires the implementation of a corrosion prevention and control program. This amendment is prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes. These incidents have jeopardized the airworthiness of the affected airplanes. This condition, if not corrected, could result in degradation of the structural capabilities of the affected airplanes.

DATES: Effective December 31, 1990.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 31, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., 5th floor, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8301, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Yarges, Airframe Branch, Seattle Aircraft Certification Office, ANM-120S, telephone (206) 227-2773. Mailing address: 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to all Boeing Model 747 series airplanes, which requires the implementation of a corrosion control program, was published as a Supplemental Notice of Proposed Rulemaking (NPRM) in the Federal Register on August 2, 1990 (55 FR 31401).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. The Supplemental NPRM was published simultaneously with similar Supplemental NPRM's on this subject relating to Boeing Model 707/720, 727, and 737 series airplanes. The comments received in response to all of these NPRM's were similar; however, in some cases, comments were submitted with respect to one model and not the others. Nevertheless, because the comments and the FAA's responses to those comments may be helpful in providing additional guidance in understanding the FAA's intent in this action, all of the comments and the FAA's responses are discussed in the preambles of each of the final rules resulting from those NPRM's.

Several commenters objected generally to several of the requirements proposed in the Supplemental Notice of Proposed Rulemaking (NPRM) because they are contrary to the requirements for controlling corrosion recommended by the Airworthiness Assurance Task Force (AATF), of which FAA representatives are members. The FAA considers that these objections may be based on a misunderstanding of the AATF's role in the development of this AD. The AATF, as an advisory committee, has provided invaluable assistance to the FAA in providing guidance with respect to the technical content of the corrosion prevention and control program, and the FAA has adopted its recommendations in this regard in total. However, with respect to the means of implementing and ensuring compliance with the program, as discussed in detail below, the FAA has gone beyond the recommendations in order to ensure that operators will be aware of the specific actions for which they will be held accountable, and to enable the FAA to take appropriate action to ensure compliance. In accordance with the Federal Advisory Committee Act, the FAA is required to make independent determinations with regard to these matters, and it would be inappropriate to adopt recommendations which are determined to be indefinite as to timing and responsibility.

The Air Transport Association (ATA) of America, on behalf of its member operators, commented that a better approach for this corrosion AD would have been to follow the example of the Supplemental Structural Inspection Document (SSID) AD [reference AD 84-21-02-R1, Amendment 39-6430, (55 FR 1005, January 11, 1990)]. The ATA regards that AD as preferable in that it provides operators the flexibility to make minor adjustments without seeking FAA approval. The FAA does not concur. Although both the SSID AD and this AD action are similar in that they involve complex revisions to the operators' maintenance programs, they differ in several significant ways. The SSID program is not a self-contained method for addressing aging fleet problems; it services as a sampling and monitoring tool to provide the FAA with information needed to issue additional AD's defining corrective action when problems are discovered. On the other hand, the corrosion prevention and control program required by this AD is intended to be self-contained and, in addition to information gathering addresses the nature of corrective action necessary when problems are discovered. The purpose of this program is to maintain corrosion levels at Level 1 or better, whereas the purpose of the SSID AD was simply to detect fatigue problems so that additional corrective action could be required. This difference necessitates the greater complexity and detail of the AD action in defining terms of compliance. Further, fatigue cracking, which is addressed by the SSID program, is a problem generally experienced similarly by airplanes, regardless of operational environment and, therefore, it is appropriate to address that problem through follow-on ADs applicable to the entire fleet. Since corrosion, on the other hand, is highly dependent upon the operational environment, it is appropriate to address it through individualized adjustments to an operator's corrosion prevention and control program.

Several operators commented that the rule removes the PMIs from their primary role as the single point of FAA oversight for the operators' maintenance program. The FAA does not concur. The PMIs will continue to serve as FAAs critical link with the operators. Their oversight responsibilities in this AD, as in other AD's, will not be minimized by the requirements of this AD; however, engineering support will be provided by the Seattle Aircraft Certification Office (ACO).

The manufacturer commented that references to the Boeing Corrosion Prevention and Control Program document (hereinafter referred to as the "Boeing Document") should be corrected to read, "Revision A." The FAA concurs. Revision A provides further clarification and editorial changes to the Boeing Document and includes the optional appendices which are not subject to the requirements of this AD. The final rule has been revised accordingly.

Several commenters noted that proposed paragraph A. should be revised to indicate that the appendices to the Boeing Document are optional. The FAA does not concur that any additional revision to the final rule is necessary. The Boeing Document clearly indicates that the appendices are provided as options or for guidance.

One commenter stated that, since the Boeing Document does not require repair of Level 1 or 2 corrosion prior to further flight, this AD action is an over-reaction in requiring operators to do so. The commenter recommended that Level 1 and 2 corrosion be, "repaired on a timely basis." Another commenter requested that the phrase, "all structure [found corroded or cracked * * *]." be changed to read "all primary or all significant structure," in proposed paragraph A. This commenter also requested that the terms "corrosion and cracks," as stated in paragraph A., be defined further. The FAA concurs in part with these comments. It appears that the commenters are concerned that paragraph A, as proposed would require corrective actions beyond those which are currently required for findings of corroded or cracked structure. Upon reevaluation, the FAA has determined that the unsafe condition to which this AD is addressed is the inadequacy of existing corrosion control programs to detect corrosion in a timely manner; there is no basis at this time for concluding that existing maintenance practices are inadequate to address corrosion once it is found. Therefore, with regard to corrective action for specific findings of cracks and corrosion, the FAA intends that existing sound maintenance practices, as already required under FAR part 43, continue to be followed. Accordingly, including a requirement for such repair or other corrective action in this AD is unnecessary, and that requirement has been deleted from the final rule. A Note has been added to inform the public of the need to comply with part 43 in

addressing cracks and/or corrosion found as result of the inspections required by this AD. Further, the Note following proposed paragraph A., relating to repairs done in accordance with SFAR 36, has been deleted as unnecessary.

Several commenters requested that proposed paragraph A. be revised to permit adoption of a corrosion control program that is "equivalent to that defined in" the Boeing Document in order to avoid the necessity for obtaining FAA approval of deviations from the specific program defined in the Document. The FAA does not concur. In order to ensure equivalency, the FAA has determined that it is necessary for it to review proposed deviations; allowing operator discretion in determining equivalency would essentially preclude the FAA from taking appropriate action to ensure compliance if it subsequently determines that the operator's program is not equivalent.

One commenter noted that the non-destructive inspection (NDI) acceptable methods specified in the Note in proposed paragraph A. should include the manufacturer's non-destructive testing manuals; this would eliminate confusion generated by the wording in the Note stating, "standards and procedures used must be acceptable to the Administrator in accordance with FAR 43.13." The FAA does not concur that additional clarification is necessary. FAR 43.13 currently allows the use of the manufacturer's non-destructive testing manuals.

One commenter remarked that the Note in proposed paragraph B., which would require FAA review and approval of data submitted to substantiate that Level 3 corrosion is not typical of the operator's fleet, was in direct contradiction to the Boeing Document. This commenter stated that the process of FAA reviewing isolated cases may take too long, while the remainder of the operator's fleet may be in jeopardy. The FAA does not concur. As discussed above, in order to ensure the adequacy of operator's determinations, it is necessary for the FAA to review and approve them; without such approval, an operator could not be held accountable for an improper determination that a Level 3 corrosion finding was non-representative. Further, the FAA has committed to responding to Level 3 corrosion as expeditiously as possible to avoid adversely affecting safety. Finally, assuming the adequacy of proposed adjustments and their substantiation, the FAA's role will be limited to general oversight, and the associated workload should not be excessive. Therefore, delays are not inherent in this review and approval process.

The manufacturer implied that proposed paragraph B., which addresses findings of Level 3 corrosion, is unnecessary in that such findings must be reported in accordance with FAR 121.703 and corrective actions (such as schedule adjustments) must be adopted in accordance with proposed paragraph G. Other commenters also suggested that the reporting requirements of proposed paragraph B. are redundant of those of FAR 121.703. The FAA does not concur. With regard to the reporting requirement, the purpose and content of the reports required by this paragraph are different from the general requirement of FAR 121.703; reports under this paragraph are intended to provide the FAA with information regarding not just the specific finding of corrosion, but the status of the operator's fleet and schedule adjustments. With regard to the requirement for schedule adjustments, the urgency associated with findings of Level 3 corrosion is such that the FAA considers it necessary to review and approve the operator's plans to identify any other such corrosion in its fleet; without such approval, an operator could not be held accountable for failing to inspect the remainder of its fleet expeditiously.

Numerous commenters requested that proposed paragraph B.1. be revised to change the word "found" to read "determined," and to change the word "finding" to read "determination." These changes would give operators additional time to consult with the manufacturer before commencement of the 7-day compliance period for additional actions. The FAA concurs. The FAA recognizes that some time may pass between discovery of corrosion and the determination that it is Level 3 corrosion, and that additional time will then be needed either to inspect the remainder of the operator's fleet or to develop a plan for such inspections. Therefore, it is appropriate that the compliance time start at the time the determination is made. However, the FAA will monitor the time experienced by operators between the discovery and determination of Level 3 corrosion to ensure that operators continue to respond with the necessary urgency. The FAA considers the degree of urgency associated with findings of Level 3 corrosion to be equivalent to that associated with findings of unsafe conditions warranting the issuance of emergency ADs. Therefore, if it is found that timely determinations are not being made, the FAA may propose further rulemaking to address this concern. Paragraph B.1. of the final rule has been revised to reflect that the 7-day compliance time commences upon the determination of Level 3 corrosion.

One commenter noted that the requirements of proposed paragraph B.1.a., which would require operators to submit a report of Level 3 corrosion findings to the FAA and to inspect the affected area on all Model 747 aircraft in the operator's fleet within 7 days, would ground operators with large fleets. The FAA does not concur. The requirements of paragraph B.1.a. were intended as an option for operators with small fleets. Operators with large fleets have the option of accomplishing the requirements of paragraph B.1.b. (which involves submitting a proposal for adjustment to the schedule for performing tasks in that area on remaining aircraft in the fleet, or submitting data substantiating that the Level 3 corrosion found is an isolated case).

Several commenters requested that the requirements of proposed paragraph B. to address the remainder of the operator's fleet upon a finding of Level 3 corrosion be narrowed to apply only to other "affected" airplanes of the operator's fleet. The FAA does not concur. As with the operator's determinations of appropriate schedule adjustments, the FAA considers it necessary to review and approve the operator's determination that airplanes are not "affected"; without such approval, an operator could not be held accountable for an incorrect determination.

One commenter questioned whether proposed paragraph B.1.a. would require an operator to inspect the remainder of its fleet within 7 days if the FAA rejected its proposed schedule adjustments submitted in accordance with paragraph B.1.b. The FAA considers the proposed language to be clear. Paragraph B.1.a. and B.1.b. provide distinct options to the operator. If the operator chooses to submit proposed schedule adjustments which the FAA subsequently determines to be inadequate, the FAA may then impose adjustments in accordance with paragraph B.2.; however, the operator would not be required to comply with the 7-day requirement of paragraph B.1.a.

One commenter requested that the words "Level 3 corrosion" be added to proposed paragraph B.1.a. to clarify that the reporting requirement is for Level 3 corrosion only, and not for all corrosion. The FAA concurs. The final rule has been revised accordingly.

Two commenters requested clarification regarding the requirement of proposed paragraph B.1.b.(1) to submit proposed adjustments to the schedule for "implementing the program." The FAA concurs. The final rule has been revised to refer to the adjusted schedule for "performing the tasks" in the relevant area, which more accurately reflects the subject of the adjusted schedule.

Several commenters suggested that proposed paragraphs B.1.b. (1) and (2) lack sufficient guidance as to what constitutes sufficient "substantiating data," or what constitutes an acceptable "adjustment to a maintenance program." Without this information, they were concerned that they would not be able to make submissions that would be acceptable to the FAA. The FAA does not concur. The data necessary to substantiate proposed schedule adjustments is the same as that relied upon by the operator in the exercise of sound engineering judgment when developing those proposals. Substantiating data that supports the operator's proposed schedule should include age of equipment, number of flight hours, conditions in the operational environment, and other pertinent data to support the operator's proposal. If the data substantiates that schedule adjustments are unnecessary to ensure timely detection of Level 3 corrosion on certain or all airplanes in the remainder of the operator's fleet, then the FAA would approve the operator's proposal not to make such adjustments.

Another commenter requested that the words "Level 3" in proposed paragraph B.1.b.(2) be replaced with the phrase, "corrosion of potential urgent airworthiness concern." The commenter stated that this would eliminate confusion resulting from different definitions of "Level 1, 2, and 3" corrosion. The FAA does not concur. It is not the FAA's intent to introduce different definitions of these terms and, in accordance with paragraph A. of the AD, the definitions contained in the Boeing Document are required to be incorporated into the operator's maintenance program. The sole purpose of paragraph B.1.b.(2) is to provide the FAA with a means to ensure the correctness of an operator's determination that severe corrosion is not typical.

Several operators requested that proposed paragraph B.2. be deleted because it would allow the Seattle ACO to impose its own program, rather than responding to the operator's proposed adjustments. Another commenter requested that proposed paragraph B.1.b.(2) be revised to include a provision whereby operators would have the opportunity to negotiate with the FAA in the event the FAA rejects the operator's substantiating data. The FAA does not concur. As discussed above, where an operator presents proposed adjustments and substantiating data showing that those adjustments will establish an acceptable level of safety, the FAA will approve the proposal. However, if the FAA determines that the proposed adjustments are inadequate, it may impose different adjustments, in accordance with paragraph B.2. Prior to doing so, it would necessarily discuss the practicability of any such adjustments with the operator. Ultimately, however, the FAA must retain the authority to determine what adjustments are necessary to ensure that an acceptable level of safety is maintained.

Several commenters contended that proposed paragraph B.3. (requiring operators to revise the maintenance program within 7 days to include adjustments approved by the FAA when Level 3 corrosion is found) was unnecessary because the one-time inspection required by paragraph B.1.b.(1) would not require an adjustment to the operator's maintenance program; therefore, the requirements of paragraph B.3. could be fulfilled by those of proposed paragraph G. The FAA does not concur. The purposes of paragraphs B. and G. are different: Paragraph B. is intended to address the short-term problem of ensuring that other Level 3 corrosion is found expeditiously, whereas paragraph G. is intended to address the longer-term problem of ensuring that maintenance programs are changed to prevent the occurrence of severe corrosion in the future. A revision to the FAA-approved maintenance program is the only means to enable the FAA to take appropriate action to ensure compliance with the adjustments to the program.

Several commenters stated that the 7-day compliance time required by proposed paragraph B.3. is unrealistic because of the amount of time required to revise work cards, to obtain approval for a revised program from the PMI, and to publish revised manuals. Commenters requested that additional time, ranging from 15 days to 10 weeks, be allowed for incorporating the changes into the maintenance program. The FAA concurs in part. As discussed previously, the FAA regards Level 3 corrosion findings as being the equivalent of unsafe conditions for which emergency AD action is appropriate. That type of AD frequently requires action on the entire fleet within 10 days or fewer. Therefore, in general, the FAA does not consider the 7-day requirement to be unreasonable. Nevertheless, the purpose of the requirement of paragraph B.3. is to enable the FAA to take appropriate action to ensure compliance with the schedule adjustments. The FAA has determined that enforceability will not be affected so long as the operator revises its maintenance program prior to the accomplishment of the first task specified in the adjusted schedule. Therefore, the final rule has been revised to require an operator to revise its maintenance program prior to time specified in the adjusted schedule for accomplishing the first task. Of course, operators are permitted to perform tasks prior to the time specified in the schedule.

Several commenters requested that the words "at least [quarterly]" be inserted in the reporting requirement of proposed paragraph D. to provide flexibility to the operators in complying with this requirement. The FAA concurs; adding the suggested wording will in no way change the intent of the reporting requirement. The final rule has been revised accordingly.

One commenter viewed the requirements of proposed paragraph E., concerning FAA approval of the schedule for certain changes in the repeat inspection/task intervals, as overly restrictive, which may prove to be counter-productive by focusing resources on areas of lower priority. The FAA does not concur. The purpose of this paragraph is to prevent those operators that currently have rigorous corrosion control programs from downgrading them. Since those programs are presumably based on the operator's service experience, and since the Boeing Document presents a program based on average fleetwide experience, it may be that the Boeing Document would not provide an acceptable level of safety for that operator. The alternate means of compliance provision in paragraph H. of the final rule provides the opportunity for any operator to submit an alternative procedure to the FAA that would provide an acceptable level of safety.

One commenter requested that the rule be revised to permit the PMI, rather than the Manager of the Seattle ACO, to approve (1) extensions to the compliance time of proposed paragraph C., (2) increases in the repeat inspection intervals in proposed paragraph E., (3) the operator's schedule for performing tasks on newly acquired airplanes (as

required by proposed paragraph F.2.), and (4) proposed corrective actions if corrosion is found to exceed Level 1 (as required by proposed paragraph G.1.). The FAA does not concur. The PMI's serve as FAA's critical link with the operators, and their oversight responsibilities will not be minimized in this AD action. However, the staff of the ACO provides the engineering support necessary to evaluate whether extensions to compliance times, increases in repeat inspection intervals, schedules for newly acquired airplanes, and proposed corrective actions will maintain an acceptable level of safety.

Several commenters stated that proposed paragraph F., concerning adding airplanes to an air carrier's operations specifications, was unnecessary and should be deleted. As an alternative, one commenter suggested a pro-rated implementation process wherein the old program would be merged into the new program. The FAA does not concur. Paragraph F. is necessary to ensure that newly acquired airplanes are inspected within a period of time commensurate with their likely exposure to corrosion. Since this AD merely requires the adoption of a corrosion control program and, apart from paragraph F., does not dictate the order in which individual airplanes are to be inspected, it is possible that, without this paragraph, newly acquired airplanes may simply "go to the end of the line" under the new owner's program even if they were likely candidates for severe corrosion. Regarding airplanes that have previously been operated under maintenance programs complying with this AD, since each operator's program will reflect its own operating environment, the only conservative approach is to require the first inspection by the new owner to be conducted in accordance with the more restrictive of the two operators' programs.

Another commenter requested that proposed paragraph F.2. be deleted entirely and that all newly acquired airplanes be phased-in in accordance with proposed paragraph F.1. The FAA does not concur. Paragraph F.1. and F.2. are exclusive of one another. If an airplane has been operated under an FAA-approved maintenance program, then it would follow the requirements of paragraph F.1. If an airplane has never been operated under an FAA-approved maintenance program, then it would follow the requirements of paragraph F.2. Assuming it has been operated under an equivalent corrosion control program adopted in accordance with the requirements of another airworthiness authority, that fact would obviously be critical in substantiating a proposed schedule under paragraph F.2. If it has not been operating under such a program, its corrosion status must be determined before it is added to the operator's operations specifications.

One commenter requested that the word "first [task]" in proposed paragraph F.1. be changed to "initial" for purposes of clarity and consistency with paragraph F.2. The FAA concurs. This editorial change serves to clarify the rule. The final rule has been changed accordingly.

Several commenters recommended that proposed paragraph G. be deleted since Level 2 corrosion is not an airworthiness concern. One commenter further stated that the Seattle ACO should not even be involved in this non-airworthiness issue. Another operator commented that the FAA does not have the manpower to be responsive to the workload that will be generated by the requirements of proposed paragraphs G.1. and G.2. The FAA does not concur with these commenters. As defined in the Boeing Document, Level 2 corrosion, while not urgent, is an airworthiness concern and, to the extent that corrosion control programs must be revised to prevent its recurrence, the FAA has determined that those revisions must be subject to FAA engineering review (via the Seattle ACO) to ensure the adequacy of the corrective actions. Assuming the adequacy of proposed corrective actions, the FAA's role will be limited to general oversight, and the associated workload should not be excessive.

One commenter requested that the words "* * * and is determined to be representative of the operators fleet" be added to proposed paragraph G. to permit operators to forego program adjustments when a single finding is not representative of the operator's fleet. The FAA does not concur. As previously explained in the preamble to the Supplemental NPRM, if corrosion is not representative, then a means to reduce corrosion to Level 1 or better will have already been implemented in accordance with paragraph A. of the AD, and no further corrective action may be necessary. For example, if a finding of corrosion is attributable to a particular spill of mercury or other unique event, or if corrosion is found on an airplane recently acquired from another operator, the means specified in the existing program may be adequate for controlling corrosion in the remainder of the operator's fleet. Similarly, if an operator has already implemented means to reduce corrosion in an area based on previous findings, no additional corrective action may be necessary. In reviewing the reports submitted in accordance with paragraph D. of the AD, the FAA will monitor the effectiveness of the operators' means to reduce corrosion. If the FAA determines that an operator has failed to implement adequate means to reduce corrosion to Level 1 or better, appropriate action will be taken to ensure compliance with this paragraph. To clarify the FAA's intent in this regard, paragraph G.1. has been revised to read: "Within 60 days after such a finding, if corrective action is necessary to reduce future findings of corrosion to Level 1 or better, such proposed corrective action must be submitted for approval to the Manager, Seattle ACO."

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes discussed above. These changes will neither increase the economic burden on any operator, nor increase the scope of the rule.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

There are approximately 284 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 65 airplanes of U.S. registry will be affected by this AD, that it will take approximately 40 manhours per area to accomplish the required actions. There are 118 areas called out in the Boeing document and, for an average labor cost of $40 per manhour, the total cost to inspect each airplane is estimated to be $188,800. Based on these figures, the total cost impact of the AD on U.S. operators for the estimated 6 year average inspection cycle is $12,272,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 747 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

Note: This AD references Boeing Document Number D6-36022, "Aging Airplane Corrosion Prevention and Control Program, Model 747," Revision A, dated July 28, 1989, for inspection procedures, compliance times, and reporting requirements. In addition, this AD specified inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

To control corrosion, accomplish the following:

A. Within one year after the effective date of this AD, revise the FAA-approved maintenance program to include the corrosion control program specified in Boeing Document Number D6-36022, "Aging Airplane Corrosion Prevention and Control Program, Model 747," Revision A, dated July 28, 1989 (hereinafter referred to as "the Document").

Note: All structure found corroded or cracked as a result of an inspection conducted in accordance with this paragraph must be addressed in accordance with FAR part 43.

Note: Where non-destructive inspection (NDI) methods are employed, in accordance with section 4.1 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR 43.13.

Note: Procedures identified in the Document as "optional" are not required to be accomplished by this AD.

B. 1. If, as a result, of any inspection conducted in accordance with the program required by paragraph A., above, Level 3 corrosion is determined to exist in any area, accomplish one of the following within 7 days after such determination:

a. Submit a report of any findings of Level 3 corrosion to the Manager of the Seattle Aircraft Certification Office (ACO) and inspect the affected area on all Model 747 aircraft in the operator's fleet; or

b. Submit for approval to the Manager of the Seattle ACO one of the following:

(1) Proposed adjustments to the schedule for performing the tasks in that area on remaining airplanes in the operator's fleet, which are adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for those adjustments; or

2. Data substantiating that the Level 3 corrosion found is an isolated occurrence and that no such adjustments are necessary.

Note: Notwithstanding the provision of section 1.1. of the Document that would permit corrosion that otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

Note: As used throughout this AD, where documents are to be submitted to the Manager of the Seattle ACO, the document should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO. The Seattle ACO will not respond to the operator without the PI's comments or concurrence.

2. The FAA may impose adjustments other than those proposed, upon a finding that such adjustments are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

3. Prior to the compliance time specified for the first task required in the adjusted schedule approved under paragraph B.1. or B.2. of this AD, revise the FAA-approved maintenance program to include those adjustments.

Note: The reporting requirements of this paragraph and of paragraph D., below, do not relieve operators from reporting corrosion as required by FAR Section 121.703.

C. To accommodate unanticipated scheduling requirements, it is acceptable for a repeat inspection interval to be increased by up to 10% but not to exceed 6 months. The cognizant FAA Principal Inspector (PI) must be informed, in writing, of any extension.

Note: Except as provided in this paragraph, notwithstanding section 3.1., paragraph 4, of the Document, all extensions to any compliance time must be approved by the Manager of the Seattle ACO.

D. Report forms for Level 2 corrosion and a follow-up report for Level 3 corrosion must be submitted at least quarterly in accordance with section 5.0 of the Document.

E. If the repeat inspection or task intervals of an operator's existing corrosion inspection program are shorter than the corresponding intervals in section 4.3 of the Document, they may not be increased without specific approval of the Manager of the Seattle ACO.

F. Before any airplane that is subject to this AD can be added to an air carrier's operations specifications, a program for the accomplishment of tasks required by this AD must be established in accordance with the following:

1. For airplanes that have previously been operated under an FAA-approved maintenance program, the initial task on each area to be accomplished by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

2. For airplanes that have not previously been operated under an FAA-approved maintenance program, each initial task required by this AD must be accomplished either prior to the airplane's being added to the air carrier's operations specifications, or in accordance with a schedule approved by the Manager, Seattle ACO.

G. If corrosion is found to exceed Level 1 on any inspection after the initial inspection, the corrosion control program for the affected area must be reviewed and means implemented to reduce corrosion to Level 1 or better.

1. Within 60 days after such a finding, if corrective action is necessary to reduce future findings of corrosion to Level 1 or better, such proposed corrective action must be submitted for approval to the Manager, Seattle ACO.

2. Within 30 days after the corrective action is approved, revise the FAA-approved maintenance program to include the approved corrective action.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The requirements shall be done in accordance with Boeing Document Number D6-36022, "Aging Airplane Corrosion Prevention and Control Program, Model 747," Revision A, dated July 28, 1989. This incorporation by reference was approved by the Director

of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, Northwest Mountain Region, 1601 Lind Avenue SE., 5th floor, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8301, Washington, DC

This amendment becomes effective December 31, 1990.

Issued in Renton, Washington, on November 5, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-27802 Filed 11-26-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771, 772, 773, 774, 786, and 799

[Docket No. 90645-0274]

RIN 0694-AA12

General License G-TEMP; Temporary Exports

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: General license GTE authorizes temporary exports for certain purposes such as exhibition, demonstration, inspection and testing, and requires prompt return to the country of export. On October 3, 1989, the Bureau of Export Administration published a proposed rule in the **Federal Register** (54 FR 40681) to redesignate that license as General License G–TEMP and amend it by removing the registration requirement and by establishing guidelines for the use of the general license. Having received and considered comments, the Bureau of Export Administration is issuing a final rule to implement General License G–TEMP.

This final rule removes the registration requirement and establishes guidelines for the use of the general license. One effect of removing the registration requirement would be that parties abroad who were not eligible to register under the former General License GTE would be able to use G–TEMP as authorization for a permissive reexport in accordance with the appropriate provisions of the regulations. This rule permits news media personnel to take their equipment to all destinations and permits shipments of kits consisting of parts that would be eligible for export as one-for-one replacement parts under General License GLR.

EFFECTIVE DATE: This rule is effective November 27, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, Washington, DC 20230, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Background

The Department received comments from 11 firms and associations. In general, public comments acknowledged that the proposed rule represents a substantial improvement in providing exporters with greater flexibility in making temporary exports of controlled commodities. However, several commenters expressed reservations that the proposed G–TEMP still contains limitations that would significantly restrict its usefulness. The limitations expressed by the commenters are as follows:

Tools of trade; one month limitation: The proposed rule specified that temporary exports of commodities and software may accompany an individual departing the U.S., or the commodities and software may be shipped unaccompanied within one month before or after the individual's departure. Commenters pointed out that, on an extended trip, a piece of equipment may not be needed until a later date, usually after 30 days. This final rule removes the one month after departure restriction.

Tools of trade; note 9 computers to country groups QWY and the People's Republic of China: The proposed rule specified that personal computers that do not exceed the limits of Advisory Note 9 to Export Control Commodity Number (ECCN) 1565A may be taken as tools of trade to Country Groups QWY and the People's Republic of China. Commenters requested expanding this provision to permit Note 12 computers to Country Groups QWY and Note 17 computers to the People's Republic of China under tools of trade. On June 29, 1990 (55 FR 26855), BXA published a revision to ECCN 1565A that decontrolled computers with a Processing Data Rate (PDR) of 275 mbps or less, substantially above the former Advisory Note 9 level of 54 PDR. This change should allow adequate computing capability under General License G–DEST. As a result, the Advisory Note 9 provision has been deleted in this final rule.

Temporary exhibition and demonstration in country groups T or V: The proposed rule specified that commodities and software may be exported for demonstration and exhibition purposes in Country Groups T or V (excluding the People's Republic of China), provided that the goods are not demonstrated or exhibited at any one site for more than 30 days after debugging and installation, unless authorized by the Office Export Licensing (OEL). Comenters claim that the "one-month" restriction on exhibit at any one location was too short to support legitimate marketing activities abroad. This final rule expands the 30 day requirement to 120 days, after debugging and installation.

Broadcast material: The proposed rule allowed video tape containing program material recorded in the country of export to be publicly broadcast in another country and also allows for blank tape to be used for recording program material abroad. One commented suggested expanding this provision to include audio tape (both programmed and blank). Since audio tape is only controlled to Country Groups S and Z, it may be exported to all other country groups under General License G–DEST. This final rule retains the existing provision on broadcast material.

Assembly in Mexico: The proposed rule allowed commodities to be exported and returned under HTSUS numbers 9802.00.60 and 9802.00.80 after processing, assembly, or incorporation into end products by companies, factories, or facilities participating in Mexico's in-bond industrialization program (Maquilladora), provided that all resulting end-products (or the commodities themselves) are returned to the U.S. Some commenters believe that specifying tariff numbers creates an undue hardship since the Mexican Maquilladora laws generally require return to the U.S. regardless of the tariff number involved. This final rule removes the restriction of specifying HTSUS numbers, provided that the commodities to be exported to Mexico are under appropriate Customs entries that require the commodities to be returned to the United States. However the Department is currently reviewing the existing Mexican in-bond industrialization program and the appropriateness of restricting eligible commodities to the specific HTSUS numbers. If warranted, the Department will address the Mexican in-bond

industrialization program in a future rule.

News media provision: The proposed rule stated that "accredited" news media personnel may take commodities and software that are necessary for news-gathering purposes to Country Groups QSWYZ or the People's Republic of China, provided that the commodities are retained under ownership of the news gathering firm, remain in the physical possession of the news media personnel, and are removed with the personnel at the end of the trip, and on condition that such exports from the U.S. be registered with U.S. Customs at the time of both exit and reentry. The proposed rule also allowed temporary news media exports to be made to Country Groups T and V under the Tools of Trade provision in § 771.22(b)(1) if owned by the exporter. Commenters stated that the ownership of equipment provision places an undue restriction on exporter by news gathering firms. This final rule removes the ownership requirement and imposes an "effective control" requirement. Commenters were also concerned with the "physical possession" requirement because taken literally, it would impose impractical requirements on news media personnel. This final rule clarifies this provision by providing a definition that requires an effective measure to prevent unauthorized access, instead of actual physical possession at all times. One commenter requested a clarification on how to comply with the proposed Customs registration requirement for Country Groups QWY and the PRC, as defined in paragraph (b)(8)(ii). This final rule amends paragraph (b)(8)(ii) (news media registration requirements), by requiring the U.S. exporter to provide a copy of their packing list (or other similar identification of the equipment) that specifies the destination and estimated dates of departure and the return of the equipment to the Office of Export Enforcement. Commenters also questioned the need for news media personnel to be employees of the news gathering firms, as opposed to independent contract personnel, when exporting news media equipment to Country Groups T and V under the tools of trade provision. This final rule modifies the proposed rule by clarifying that "accredited" contract personnel may be used, provided that the news gathering firms designate an employee to be responsible for the equipment.

Restrictions on temporary shipment (reexports) to country groups S and Z: The proposed rule prohibited the export of commodities and software to Country Groups S and Z, except as permitted under paragraph (b)(8) (news media) of the rule. Some commenters believe that restrictions on exports to Country Groups S and Z under the proposed G–TEMP are inconsistent with other provisions of the EAR. The Department disagrees. This restriction does not prevent foreign exporters from using one-for-one replacements under General License GLR, it just prevents reexports of kits. Foreign exporters may still utilize the 10% de minimus under § 776.12 (Parts and Components). Any further leeway here would undermine the intent of the current trade embargoes to Country Groups S and Z. This final rule retains the existing provisions in paragraph (c)(1)(i) (Country groups S and Z prohibition), but revises paragraph (b)(2) (replacement part kits) to exclude Country Groups S and Z from eligibility.

Commodity retrictions to Country Groups QWY and the People's Republic of China: The proposed rule, with few exceptions, prohibited the export of commodities and software identified by the code letters "A", "B", or "M" to Country Groups QWY and the People's Republic of China. One commenter complained that the proposed rule only allowed very low-level items to Country Groups QWY and the PRC, imposes a severe burden on foreign reexporters who use U.S. controlled equipment for servicing products legally shipped to proscribed countries, and is inconsistent with the provisions of General License GLR. This final rule expands the eligible commodities by creating a new paragraph (c)(1)(ii)(B) to allow equipment necessary to commission or service goods in accordance with paragraph (b)(1), and creates a new paragraph (c)(1)(ii)(C) to allow the export of parts in kits in accordance with paragraph (b)(2).

Vessel and aircraft restriction: The proposed rule applied destination restrictions to any vessel, aircraft, or territory under ownership, control, lease, or charter by any country in Country Groups QSWYZ and the PRC, or any national thereof. The intent of this provision was to place restrictions on temporary exports to and for use on aircraft and vessels controlled by Country Groups QSWYZ and the PRC. Commenters viewed the restriction as a control on the shipment on board such carriers for temporary use at the other end of the voyage. This final rule amends the provision by clarifying that restriction on exports to such vessels and aircraft apply to use on board, not to the carriage of goods to the temporary location.

Records: The proposed rule required that the disposition of commodities exported under G–TEMP be documented by the Customs Entry Number or any other evidence of disposition. Some commenters thought that it would be difficult in all cases to obtain the Customs Entry Number on returned goods and suggested that other commercial documents such as freight bills and invoices be allowed as evidence of return to the U.S. While the proposed G–TEMP did not preclude use of other documents as evidence of disposition, it is generally silent regarding adequate alternatives. This final rule modifies the provision by allowing alternative evidence of return. i.e., freight bills and commercial invoices.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule contains collection of information requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections were approved by the Office of Management and Budget (OMB) under control numbers 0694–0010 and 0694–0029. The proposed rule, published on October 3, 1989 (54 FR 40681) estimated the public reporting burden for these collections of information to average 25 minutes per response for 0694–0010 and 15 minutes per response for 0694–0029. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005 and 0694–0019. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing these burdens, to Office of Security and Management, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project (0694–0010 and 0694–0029), Washington, DC 20503.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be

given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function. The rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is being issued in final form. However, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 771, 772, 773, 774, 786, and 799

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR parts 771, 772, 773, 786 and 799 is revised to read as follows:

Authority: Public Law 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985) and Pub. L. 100–418 of August 23, 1988; Pub. L. 95–223 of December 28, 1977, (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986). Secs. 203, 205, Pub. L. 95–223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704); Executive Order 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

2. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: Public Law 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985 and Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985). Secs. 203, 205, Pub. L. 95–223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704); Executive Order 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

PARTS 771, 772, 773, 774, 786 AND 799—[AMENDED]

§ 771.1 [Amended]

3. In § 771.1, the second sentence is revised to read: "No written authorization is required for using a general license and no document is issued by Commerce as a precondition to use a general license."

4. Section 771.22 is revised to read as follows:

§ 771.22 General license G–TEMP; temporary exports.

(a) *Scope.* A general license designated G–TEMP is established authorizing the export commodities and software for temporary use abroad (including use in international waters) subject to the conditions and exceptions set forth below. Commodities shipped under this general license must be returned to the country from which they were exported as soon as practicable but, except in circumstances described below, no later than one year from the date of export. This requirement does not apply if the commodities are consumed or destroyed in the normal course of authorized temporary use abroad or an extension or other disposition is permitted by the Export Administration Regulations or in writing by the Office of Export Licensing.

(b) *Eligibility commodities.* The following commodities are eligible to be shipped under General License G–TEMP:

(1) *Tools of trade.* Usual and reasonable kinds and quantities of commodities and software for use by employees of the exporter in a lawful enterprise or undertaking of the exporter. Eligible commodities and software may include such equipment as is necessary to commission or service goods, provided that the equipment is appropriate for this purpose and that all goods to be commissioned or serviced have been legally exported from the United States, legally reexported, or made in a foreign country incorporating U.S. origin parts in accordance with the requirements of § 776.12 of this subchapter. The commodities and software must remain under the effective control of the exporter or the exporter's employee. The shipment of commodities and software may accompany the individual departing from the United States or may be shipped unaccompanied within one month before the individual's departure from the United States, or at any time after departure. Notwithstanding the restriction in § 771.22(c), equipment necessary to commission or service goods, may be taken as tools of trade to Country Group Q, W, Y and the People's Republic of China.

(2) *Kits consisting of replacement parts.* Kits consisting of replacement parts may be exported under this provision to all destinations, except Country Groups S and Z, provided that:

(i) The parts would qualify for shipment under General License GLR if exported as one-for-one replacements;

(ii) The kits remain under effective control of the exporter or an employee of the exporter; and

(iii) All parts in the kits are returned, except that one-for-one replacements may be made in accordance with the requirements of General License GLR and the defective parts returned.

(3) *Exhibition and demonstration Country Groups T and V.* Commodities and software for exhibition or demonstration in Country Groups T or V (excluding the People's Republic of China) may be exported under this provision provided that the exporter maintains ownership of the commodities and software while they are abroad and provided that the exporter, an employee of the exporter, or the exporter's designated sales representative retains effective control over the commodities and software while they are abroad. The commodities may not be used for their intended purpose while abroad, except to the minimum extent required for effective demonstration. The commodities and software shall not be exhibited or demonstrated at any one site more than 120 days after installation and debugging, unless authorized by the Office of Export Licensing. However, prior to or after an exhibition or demonstration, the commodities and software may be placed in a bonded warehouse or a storage facility provided that the exporter retains effective control over disposition of the commodities and software, pending movement to another site, return to the U.S., or approval for other disposition. The export documentation for this type of transaction shall show the U.S. exporter as ultimate consignee, in care of the person who will have control over the commodities and software abroad.

(4) *Inspection and calibration.* Commodities to be inspected, tested, calibrated or repaired abroad.

(5) *Containers.* Containers for which another general license is not available and that are necessary for export of commodities. However, General License G–TEMP does not authorize the export of the container's contents, which must be separately authorized for export under either a general or validated license.

(6) *Broadcast material.* (i) Video tape containing program material recorded in the country of export to be publicly broadcast in another country.

(ii) Blank video tape (raw stock) for use in recording program material abroad.

(7) *Assembly in Mexico.* Commodities to be exported to Mexico under Customs entries that requires return to the United States after processing, assembly, or incorporation into end products by companies, factories, or facilities participating in Mexico's in-bond industrialization program (Maquilladora), provided that all resulting end-products (or the commodities themselves) are returned to the United States. (*See* § 771.22(c)(3).)

(8) *News media.* Commodities necessary for news-gathering purposes (and software necessary to use such commodities) that accompany "accredited" news media personnel, (*i.e.*, persons with credentials from a news gathering or reporting firm) to Country Groups Q, S, W, Y, or Z, or the People's Republic of China if the commodities:

(A) Are retained under "effective control" of the exporting news gathering firm;

(B) Remain in the physical possession of the news media personnel. The term physical possession for purposes of this paragraph (b)(8), news media, is defined as maintaining effective measures to prevent unauthorized access (i.e., securing equipment in locked facilities or hiring security guards to protect the equipment); and

(C) Are removed with the news media personnel at the end of the trip.

(ii) When exporting under this provision from the U.S., the exporter shall send a copy of the packing list or similar identification of the exported commodities, to the Office of Export Enforcement, P.O. Box 7138, Washington, DC 20044, or any of its field offices, specifying the destination and estimated dates of departure and return. The Office of Export Enforcement (OEE) may spot check returns to assure that General License G–TEMP is being used properly.

(iii) Commodities necessary for news-gathering purposes that accompany news media personnel to all other destinations shall be exported under and in accordance with paragraph (b)(1), tools of trade, of this section if owned by the exporter/firm (Note: paragraphs (b)(1), tools of trade and (b)(8)(iii), news media, of this section do not preclude independent "accredited" contract personnel, who are under control of news gathering firms while on assignment, from utilizing these provisions, provided that the news gathering firm designate an employee of the contract firm to be responsible for the equipment) or shall be exported under and in accordance with § 771.6, General License Baggage if they are personal property of the individual news media personnel.

(c) *Special restrictions—*(1) *Destinations.* (i) No commodity or software may be exported under this general license to Country Group S or Z except as permitted by paragraph (b)(6), news media, of this section;

(ii) No commodity or software identified by the code letter "A", "B", or "M" following the Export Control Commodity Number on the Commodity Control List may be exported under this general license to Country Group Q, W, or Y, or the People's Republic of China except:

(A) Commodities and software exported under paragraph (b)(8), news media, of this section;

(B) Commodities and software necessary to commission or service goods exported under (b)(1), tools of trade, of this section; and

(C) Commodities exported as parts in kits, consistent with the requirements of paragraph (b)(2), kits consisting of replacement parts, of this section.

(iii) These destination restrictions apply to temporary exports to and for use on any vessel, aircraft or territory under ownership, control, lease, or charter by any country in Country Groups Q, S, W, Y and Z, and the People's Republic of China, or any national thereof.

(2) *Commodities.* The following commodities may not be exported to any destination under this general license;

(i) Supercomputers;

(ii) Commodities that will be used outside of the countries listed in Supplement No. 2 to part 773 of this subchapter either directly or indirectly in any sensitive nuclear activity as described in § 778.3 of this subchapter.

(iii) Electronic, mechanical or other devices, as described in § 776.13(a) of this subchapter, primarily useful for surreptitious interception of wire or oral communications; and

(iv) Commodities listed in Supplement No. 1 to part 773 of this subchapter, except that commodities identified in the footnotes thereto as available for shipment to certain countries under the Distribution License procedure may be shipped to those same countries under General License G–TEMP.

(3) *Use or disposition.* No commodity or software may be exported under this general license if:

(i) An order to acquire the commodity has been received before shipment;

(ii) The exporter has prior knowledge that the commodity will stay abroad beyond the terms of General License G–TEMP; or

(iii) The commodity or software is for lease or rental abroad.

(d) *Return or disposal of commodities.* All commodities and software exported under this General License G–TEMP shall, if not consumed or destroyed in the normal course of authorized temporary use abroad, be returned as soon as practicable but no later than one year after the date of export, to the United States or other country from which the commodities and software were exported under G–TEMP, or shall be disposed of or retained by one of the following ways:

(1) *Authorization under Form BXA–699P.* If the U.S. exporter wishes to sell or otherwise dispose of the commodities or software abroad, except as permitted by this general license, he shall request authorization therefore by submitting Form BXA–699P, Request to Dispose of Commodities or Technical Data Previously Exported, to the Office of Export Licensing at the address listed in § 771.2(h). (*See* § 774.3 of this subchapter for more information on reexport authorizations.) Such request shall comply with all applicable provisions of the Export Administration Regulations covering exports directly from the United States to the proposed destination. The request shall also be supported by any documents that would be required in support of an application for export license for shipment of the same commodities directly from the United States to the proposed destination. The Office of Export Licensing will advise the exporter of its decision.

(2) *Use of validated license.* An outstanding validated export license may also be used to dispose of commodities or software covered by General License G–TEMP provided that the outstanding license authorizes direct shipment from the United States of the same commodity or software to the same new ultimate consignee in the new country of destination.

(3) *Use of the permissive reexport,* as defined in § 774.2 of this subchapter

(4) *Authorization to retain abroad beyond one year.* If the exporter wishes to retain a commodity(ies) or software abroad beyond the 12 months authorized in § 771.22(b), he shall request such authorization by submitting Form BXA–699P, Request to Dispose of Commodities or Technical Data Previously Exported, 90 days prior to the

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expiration of the 12-month period. The request shall be sent to the Office of Export Licensing at the address listed in § 771.22(c)(2) and should include the name and address of the exporter, the date the commodities or software were exported, a brief product description, and the justification for the extension. If the Office of Export Licensing approves the extension request, the exporter will receive authorization for a one-time extension not to exceed six months. The Office of Export Licensing normally will not allow an extension for commodities or software that have been abroad more than 12 months, nor will a second six-month extension be authorized. Any request for retaining the commodities or software abroad for a period exceeding 18 months must be made in accordance with the requirements of paragraph (d)(1) of this section.

(e) *Records.* In accordance with the provisions of § 787.13 of this subchapter, the exporter shall retain and make available for inspection, upon demand, by the Bureau of Export Administration all records of each export under this general license as well as the Customs Entry Number or any other evidence of the disposition of the commodities exported, i.e., freight bills or commercial invoices.

(Approved by the Office of Management and Budget under Control Numbers 0694-0010 and 0694-0029)

§ 772.8 [Amended]

5. In § 772.8(c)(1), the reference "General License *GTE*" is revised to read "General License G-TEMP" (both places).

§ 773.3 [Amended]

6. In § 773.3(j)(5), the parenthetical portion after the first sentence is removed.

7. Section 774.2 is amended by redesignating footnotes 4 and 5 as footnotes 5 and 6; and by revising paragraph (a)(1), as follows:

§ 774.2 Permissive reexports.[2]

* * * * *

(a) * * *

(1) May be exported directly from the United States to the new country of destination under General License G-DEST, G-TEMP [4], G-COM, G-COCOM, GFW, G-CEU, GCG, G-NNR, G-FTZ, GUS or BAGGAGE.

* * * * *

§ 786.6 [Amended]

8. In § 786.6(a)(1)(ii) and (a)(2), the reference to "GTE" is revised to read "G-TEMP".

Supplement 1 to § 799.2

9. In Supplement No 1 to § 799.2, Interpretation 21, the reference to "GTE" is revised to read "G-TEMP" (Each place is appears).

Dated: November 21, 1990.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 90-27853 Filed 11-26-90; 8:45 am]

BILLING CODE 3510-DT-M

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1 * * *

2 See § 774.9 for effect on foreign laws.

3 * * *

4 Commodities legally exported from the United States may be reexported to a new country(ies) of destination under General License G-TEMP provided the restrictions described in § 771.22 are met and the commodities and software are returned to the country from which the reexport occurred.

5 * * *

6 * * *

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 3]

Citizenship of Responsible Officers and Sponsors; Exchange-Visitor Program; Correction

AGENCY: United States Information Agency.

ACTION: Final rule; correction.

SUMMARY: The Agency issued a final rule on November 8, 1990 at 55 FR 46943. Because of an administrative error a part of one sentence was deleted. Also, there is a spelling error. This notice corrects the errors.

EFFECTIVE DATE: November 8, 1990.

ADDRESSES: Merry Lymn, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 619-6829.

Dated: November 19, 1990.

Alberto J. Mora,

General Counsel.

PART 514—[AMENDED]

Accordingly, the United States Information Agency is amending 22 CFR 514.1 by correctly revising the definition of "Sponsor" to read as follows:

§ 514.1 Definitions.

* * * * *

Sponsor means any reputable United States federal, state or local government agency or recognized international agency or organization of which the United States is a member and has offices in the United States or a reputable organization which is a "citizen of the United States", as that term is defined by this regulation, which makes application as prescribed to the Director of the United States Information Agency for designation of a program under its sponsorship as an Exchange-Visitor Program and whose application is approved. Other corporations or organizations which are not citizens of the United States may not be designated as a sponsor. A sponsor must certify its citizenship to the Agency using the following language:

I hereby certify that I am an officer of (Name of organization) with the title of (specify); that I am authorized by the (Board of Directors, Trustees, etc.) to sign this certification and bind (Name of organization); and that a true copy certified by the (Board of Directors, Trustees, etc.) of such authorization is attached. I further certify that (Name of organization) is a citizen of the United States as that term is defined at 22 CFR 514.1. (Name of organization) agrees that its inability to substantiate its representation of citizenship made in this certification will result in the immediate withdrawal of its designation and the immediate return of or accounting for all IAP-66 forms transferred to it. I also understand that false certification may subject me to criminal prosecution under 18 U.S.C. 1001, which reads:

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Signed in ink by

_____

(Name)

(Title)

Subscribed and sworn to before me this _____ day of ____, 19____

_____

Notary Public

* * * * *

[FR Doc. 90-27716 Filed 11-26-90; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 383

[DoD Directive 5128.1]

Assistant Secretary of Defense (Production and Logistics)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: As part of the DoD effect to streamline and reduce the number of DoD-level acquisition related issuances, DoD Directive 4405.6, "Delegation of Authority to the Assistant Secretary of Defense (Acquisition and Logistics)," has been canceled and combined with DoD Directive 5128.1, "Assistant Secretary of Defense (Production and Logistics)" (32 CFR part 383).

EFFECTIVE DATE: August 17, 1990.

ADDRESSES: Office of the Director, Administration and Management, Organizational and Management Planning, Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, telephone (703) 697-1142.

SUPPLEMENTARY INFORMATION:

List of subjects in 32 CFR Part 383

Organization and functions.

Accordingly, 32 CFR part 383 is amended to read as follows:

PART 383—[AMENDED]

1. The authority citation for part 383 continues to read as follows:

Authority: 10 U.S.C. 136.

2. Section 383.4 is amended by adding new paragraphs (z) and (aa) to read as follows:

§ 383.4 Functions.

* * * * *

(y) * * *

(z) Oversight and direction of the DoD commissary system.

(aa) Oversight and direction of industrial base preparedness, production and manufacturing processes.

3. The appendix is amended by revising paragraph 29 by adding a new paragraph 30. and adding a flush sentence at the end of the Appendix to read as follows:

Appendix—Delegation of Authority

* * * * *

29. Exercise all responsibilities and authority of the Secretary of Defense under title 10, United States Code, section 2701, *et seq.*, regarding conduct of the Defense Environmental Restoration Program.

30. Execute the authorities delegated to the Secretary of Defense in the Department of Commerce (DoC) Defense Priorities and Allocations System (DPAS) Delegation 1. This may be redelegated to appropriate DoD Components or to other Government Agencies as authorized in the delegation.

The ASD(P&L) may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above or prohibited by law or regulation.

Dated: November 20, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-27794 Filed 11-26-90; 8:45 am]

BILLING CODE 3810-01-M

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32 CFR Part 383a

[DoD Directive 5105.55]

Defense Commissary Agency (DeCA)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Defense Commissary Agency (DeCA) has has established by the Secretary of Defense under the authority provided by title 10, United States Code. It has been determined that DoD commissaries can operate more efficiently and effectively when consolidated as a single commissary agency. Accordingly, commissary operations formerly performed by the Army, Navy, and Air Force have been brought together to form the new agency. The DeCA will operate under the direction, authority, and control of the Assistant Secretary of Defense (Production and Logistics).

EFFECTIVE DATES: November 9, 1990.

ADDRESSES: Office of the Director, Administration and Management, Organizational and Management Planning, Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Mr. R. Kennedy, telephone (703) 697-1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 383a

Organization and functions.

Accordingly, title 32 of the Code of Federal Regulations, chapter I, subchapter R, is amended to add part 383a.

PART 383a—DEFENSE COMMISSARY AGENCY (DeCA)

Sec.

383a.1 Purpose.
383a.2 Applicability.
383a.3 Mission.
383a.4 Organization.
383a.5 Responsibilities and functions.
383a.6 Relationships.
383a.7 Authority.
383a.8 Administration.

Appendix to Part 383a—Delegations of Authority

Authority: 10 U.S.C. 136.

§ 383a.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under title 10, United States Code, this part establishes the Defense Commissary Agency (DeCA) and the Defense Commissary Board (DCB), with responsibilities, functions, and authorities as prescribed herein.

§ 383a.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments; the Chairman, Joint Chiefs of Staff and Joint Staff; the Unified and Specified Commands; the Inspector General of the Department of Defense (IG, DoD); the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as "DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

§ 383a.3 Mission

(a) The mission of the DeCA is to:

(1) Provide an efficient and effective worldwide system of commissaries for the resale of groceries and household supplies at the lowest practical price (consistent with quality) to members of the Military Services, their families, and other authorized patrons, while maintaining high standards for quality, facilities, products, and service.

(2) Provide a peacetime training environment for food supply logisticians needed in wartime and, as circumstances dictate, troop issue subsistence support to military dining facilities consistent with Service needs.

(b) The mission of the DCB is to serve as a forum for the discussion of issues about the commissary services provided by the DeCA and to make related policy recommendations to the Assistant Secretary of Defense (Production and Logistics) (ASD(P&L)).

§ 383a.4 Organization.

(a) The DeCA is established as an Agency of the Department of Defense under the direction, authority, and control of the ASD(P&L). It shall consist of a Director of such subordinate organizational elements as are established by the Director.

(b) The DCB is established as a committee reporting to the ASD (P&L). Its membership shall consist of the following:

(1) The Director, DeCA, who shall serve as Chair.

(2) A representative of the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)).

(3) A representative of the Chairman, Joint Chiefs of Staff (CJCS).

(4) One military officer and one enlisted representative from each of the Military Services appointed by the Secretaries of the Military Departments.

(5) The Director, DeCA, may invite other representatives to attend DCB meetings, as appropriate.

(b) The Director shall designate an Executive Secretary for the Board.

§ 383a.5 Responsibilities and functions.

(a) The Director, Defense Commissary Agency (DeCA), shall:

(1) Organize, direct, and manage the DeCA and all assigned resources; procure assigned items; and administer, supervise, and control all programs and activities assigned to the DeCA.

(2) Plan, program, budget, design, manage, and ensure the execution of the commissary facilities' construction, modification, and repair programs.

(3) Provide and operate facilities under standards consistent with those used for commercial food stores.

(4) Develop and administer plans and programs to provide peacetime training for military personnel, as appropriate.

(5) Develop and administer plans and programs to provide troop issue subsistence support to appropriate dining facilities, tactical field exchanges for deployed mission support, and management of subsistence war readiness materiel in peacetime and wartime, as required.

(6) Provide advice to the ASD(P&L) on DoD policies about the operation of commissaries and related matters.

(7) Plan and direct use of commissary stocks to support mobilization, as required.

(8) Establish and administer a civilian career management program to include referral services and development programs for commissary management personnel.

(9) Perform such other functions as the ASD(P&L) may direct.

(b) The Defense Commissary Board (DCB) shall meet periodically, and not less than annually. For the purpose of providing advice, it shall:

(1) Consider issues about DeCA operations, services, and resources and make recommendations about DeCA practices, problems, policies, and programs.

(2) Facilities the exchange of information among the Director, DeCA, and the Military Departments.

(3) Make recommendations on the integration and prioritization of the commissary construction program.

(4) Perform such other advisory functions as ASD(P&L) may direct.

(c) The Assistant Secretary of Defense (Production and Logistics) (ASD(P&L)) shall:

(1) Recommend to the Secretary and the Deputy Secretary of Defense and the USD(A) policies and resources for the administration of the DeCA and its programs.

(2) Provide policy guidance and management direction to the Director, DeCA.

(3) Establish standards and issue guidelines for military commissary operations, including, but not limited to, the following areas:

(i) Funding.

(ii) Commissary establishment/disestablishment.

(iii) Pricing and surcharges.

(iv) Categories of items.

(v) Reporting requirements and preparation of "The DoD Commissary Operations Report" (RCS DD-FMP(A)1187).

(4) In coordination with CJCS, make arrangements for Commanders of Unified Commands to assume temporary operational control of commissaries in wartime or periods of heightened alert.

(d) The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) shall be responsible for advising the ASD(P&L) on commissary policy to ensure that it is consistent with policies on recruitment and retention.

(e) The Comptroller of the Department of Defense (C, DoD) shall advise the ASD(P&L) on accounting, budgeting, funding, cash management, debt management, and pricing and surcharge policy for the DeCA.

(f) The Secretaries of the Military Departments shall provide such facilities, physical security, logistics, and administrative support as required for effective operation of the military commissary program as agreed to by the DeCA and cognizant component Commands under inter-Service support and servicing agreements.

§ 383a.6 Relationships.

(a) In the performance of assigned responsibilities and functions, the Director, DeCA, shall:

(1) Have free and direct access to, and communicate with, the DoD Components and other Executive Departments and Agencies concerning commissary activities, as necessary.

(2) Maintain appropriate liaison with other DoD Components, Agencies of the Executive branch, forcing governments, and private sector organizations for the exchange of information on programs and activities in the field of assigned responsibilities.

(3) Use established facilities and services of the Department of Defense and other Federal Agencies, whenever practicable, to avoid duplication and to achieve an appropriate balance of modernization, efficiency, economy, and customer support.

(4) Consult and coordinate with other governmental and nongovernmental agencies on matters related to the mission assigned to the DeCA.

(b) The Secretaries of the Military Departments and Heads of other DoD Components shall:

(1) Provide assistance to the Director, DeCA, in carrying out the responsibilities and functions relating to military commissaries.

(2) Coordinate with the Director, DeCA, on programs and activities that include or are related to military commissaries.

§ 383a.7 Authority.

The Director, DeCA is hereby delegated authority to:

(a) Enter into and administer contracts, directly or through a Military Department, a DoD contract administration services component, or other Government Department or Agency, in accordance with applicable laws, DoD regulations, the FAR and the DFARS for supplies, equipment, and services required to accomplish the mission of the DeCA.

(b) Prescribe procedures, standards, and practices for the Department of Defense governing he execution of assigned responsibilities and functions.

(c) Enter into agreements with the Military Departments or other Government entities, as required for the effective performance of the military commissary program.

(d) Obtain reports, information, advice, and assistance from other DoD Components consistent with the policies and criteria of DoD Directive 7750.5 [1], as may be necessary for the performance of assigned functions and responsibilities.

(e) Establish new DeCA facilities or use existing facilities of the Military Departments, as deemed necessary, for improved effectiveness and economy.

(f) Exercise the operational and administrative authorities contained in the Appendix to this part.

§ 383a.8 Administration.

(a) The Director and Deputy Director(s) of the DeCA shall be appointed by the Secretary of Defense.

(b) The DeCA shall be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(c) The Military Departments shall assign military personnel to the DeCA in accordance with approved authorizations and procedures for assignment to joint duty.

(d) Programming, budgeting, funding, procuring, auditing, accounting, pricing, and reporting activities of the DeCA shall be in accordance with established DoD policies and procedures.

(e) Appropriated funds shall be used to finance the operating costs of the DeCA with the exception of operating costs authorized for payment from trust revolving funds. A stock fund will be used to finance all inventories procured for resale.

Appendix to Part 383a—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Director, DeCA is hereby delegated authority as required in the administration and operation of the DeCA to:

1. Establish advisory committees and employ part-time advisers, as approved by the Secretary of Defense, for the performance of DeCA functions pursuant to 10 U.S.C. 173 Public Law 92-463, "Federal Advisory Committee Act"; and DoD Directive 5105.4 [1] "Department of Defense Federal Advisory Committee Management Program," September 5, 1989.

2. Designate any position in the DeCA as a "sensitive" position, in accordance with 5 U.S.C. 7532; Executive Orders 10450, 12333, and 12356; and DoD Directive 5200.2 [2], "DoD Personnel Security Program," December 20, 1979, as appropriate.

3. Authorize and approve overtime work for DeCA civilian personnel in accordance with 5 U.S.C. chapter 55, subchapter V, and applicable OPM regulations.

4. Authorize and approve:

a. Travel of DeCA civilian personnel in accordance with Joint Travel Regulations, Volume 2, "DoD Civilian Personnel."

b. Temporary duty travel for military personnel assigned or detailed to the DeCA in accordance with Joint Federal Travel Regulations, Volume 1, "Uniformed Service Members."

c. Invitational travel to persons serving without compensation whose consultative, advisory, or other highly specialized technical services are required in a capacity that is directly related to or in connection with, DeCA activities, pursuant to 5 U.S.C. 5703.

5. Approve the expenditure of funds available for travel by military personnel assigned or detailed to the DeCA for expenses regarding attendance at meetings of technical, scientific, professional, or other similar organizations in such instances when the approval of the Secretary of Defense, or designee, in required by law (37 U.S.C. 412 and 5 U.S.C 4110 and 4111). This authority cannot be redelegated.

6. Develop, establish, and maintain in active and continuing Records Management Program, pursuant to 44 U.S.C. 3102 and DoD Directive 5015.2 [3], "Records Management Program," September 17, 1980.

7. Establish and use imprest funds for making small purchases of material and services, other than personal services, for the DeCA when it is determined more advantageous and consistent with the best interests of the Government, in accordance with DoD Directive 7360.104 [4], "Disbursing Policies," January 17, 1989.

8. Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals, as required for the effective administration and operation of the DeCA, consistent with 44 U.S.C. 3702.

9. Establish and maintain appropriate property accounts for the DeCA and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for DeCA property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

10. Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DeCA, pursuant to DoD Directive 5200.8 [5], "Security of Military Installations and Resources," July 29, 1980.

11. Establish and maintain, for the functions assigned, a publications system for the promulgation of common supply and service regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD 5025.1-M [6] "Department of Defense Directives System Procedures," April 1981.

12. Enter into support and service agreements with the Military Departments, other DoD Components, Government Agencies, and foreign governments, as required for the effective performance of DeCA functions and responsibilities.

13. Lease property under the control of the DeCA, under terms that will promote the national defense or that will be in the public interest, pursuant to 10 U.S.C. 2667.

14. Exercise the powers vested in the Secretary of Defense by 5 U.S.C. 301, 302(b), 3101, and 5107 on the employment, direction, and general administration of DeCA civilian personnel.

15. Fix rates of pay of wage-rate employees exempted from the Classification Act of 1949 by 5 U.S.C. 5102 on the basis of rates established under the Combined Federal Wage System. In fixing such rates, the Director, DeCA, shall follow the wage schedule established by the DoD Wage Fixing Authority.

16. Administer oaths of office to those entering the Executive branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with 5 U.S.C. 2903, and designate in writing, as may be necessary, officers and employees of the DeCA to perform this function.

17. Establish a DeCA Incentive Awards Board, and pay cash awards to, and incur necessary expenses for the honorary recognition of, civilian employees of the Government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or affect the DeCA, in accordance with 5 U.S.C. 4503, OPM regulations, and DoD Directive 5120.15 [7], "Authority for Approval of Cash Honorary Awards for DoD Personnel," August 13, 1985.

18. Maintain an official seal and attest to the authenticity of official DeCA records under that seal.

The Director, DeCA may redelegate these authorities as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

Dated: November 20, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-27793 Filed 11-26-90; 8:45 am]

BILLING CODE 3810-01-M

[1] See footnote 1 to paragraph 1 of this appendix.

[2] See footnote 1 to paragraph 1 of this appendix.

[3] See footnote 1 to paragraph 1 of this appendix.

[4] See footnote 1 to paragraph 1 of this appendix.

[5] See footnote 1 to paragraph 1 of this appendix.

[6] See footnote 1 to paragraph 1 of this appendix.

[7] See footnote 1 to paragraph 1 of this appendix.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3851-3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision for the Kings County and San Bernardino County Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves revisions to the California State Implementation Plan (SIP). The California Air Resources Board (ARB) submitted these revisions to EPA on March 26, 1990, for inclusion in the SIP. This notice affects the Kings County and the San Bernardino County Air Pollution Control Districts (APCD). These revisions consist of administrative and noncontroversial rules. EPA is approving these revisions because they retain or strengthen the existing SIP.

EFFECTIVE DATE: This action will be effective on January 28, 1991, unless notice is received on or before

December 27, 1990, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be sent to: Colleen W. McKaughan, Environmental Protection Agency, Region 9, Attn: Air and Toxics Division, State Implementation Plan Section (A–2–3), 1235 Mission Street, San Francisco, CA 94103.

Copies of the rules and EPA's Evaluation reports are available for public inspection during normal business hours at the EPA Region 9 office in San Francisco. For information on a rule concerning a specific county, you may contact the ARB or the appropriate office listed below.

California Air Resources Board, Rule Evaluation Section, Stationary Source Section, 1219 K Street, Sacramento, CA 95814.

Kings County Air Pollution Control District, 330 Campus Drive, Hanford, CA 93230.

San Bernardino County Air Pollution District, 15428 Civic Drive, Suite 200, Victorville, CA 92392.

Public Information Reference Unit, U.S. Environmental Protection Agency, 401 "M" Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen (A–2–3), State Implementation Plan Section, Air and Toxics Division, Environmental Protection Agency, Region 9, 1235 Mission Street, San Francisco, CA 94103, tel: (415) 556–5244 or FTS: 556–5244.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 1990, the ARB officially submitted to EPA a set of revisions to the California SIP. This notice addresses noncontroversial and administrative rules from the March 26, 1990 SIP submittal. Below is a listing of the rules addressed in this notice followed by a brief description of each rule revision.

Description of Rules

Kings County APCD

Rule 417 Exceptions
Rule 417.1 Agricultural Burning

San Bernardino County APCD

Rule 101 Title
Rule 102 Definition of Terms
Rule 103 Description of the District Boundaries
Rule 104 Reporting of Source Test Data and Analyses
Rule 105 Authority to Arrest
Rule 106 Increments of Progress

EPA Evaluation

Kings County APCD

Rule 417, *Exceptions*, has been revised to add wildland vegetation management without altering the stringency of the control requirements within rule. The revised rule also contains editorial changes.

Rule 417.1, *Agricultural Burning*, add definitions to agricultural burning. The new definitions are "Prescribed Burning" and 'Wildland Vegetation Management Burning." The definition of "agricultural wastes" consists of an editorial change for clarification, without changing the meaning of the definition. Also, control requirements for Wildland Vegetation Management Burning have been added to this rule and apply to all burning which comes under the definition of wildland vegetation management burning.

San Bernardino County APCD

Rule 101, *Title*, consists of an editorial change without changing the meaning of the rule.

Rule 102, *Definition of Terms*, consists of revising several definitions that were previously approved. Also, 21 new definitions are being added. The new definitions are as follows: Agricultural Burning, Boundaries of the District, Certified Vapor Recovery System, District Director, Excavation, Excess Organic Liquid Drainage, Executive Officer, Existing Facility, Gasoline Storage and Dispensing Facility, Gasoline Vapors, Modified Facility, Operator, Owner, Rebuilt Equipment, Registered Motor Vehicle, Retail Gasoline Station, San Bernardino County Air Pollution Control District, Switch Loading, Tank Replacement, Throughput, and Vapor Recovery System. This rule contains no appendix D or Ract deficiencies. This rule strengthens the existing SIP by adding these new definitions and clarifying others.

It has also been made more enforceable because the currently approved SIP rule contains some undefined terms which could be open to alternate interpretation. Meeting all of these criteria, San Bernardino Rule 102 should be approved under section 110 and part D of the Clean Air Act. Two definitions are not being acted on in this notice as they will be acted on in a separate **Federal Register** notice.

Revisions to Rule 103, *Description of the District Boundaries*, consist of editorial changes without changing the meaning of the rule.

In Rules 104, *Reporting of Source Test Data and Analyses*, 105, *Authority to Arrest*, and 106, *Increments of Progress*, the phrase "Air Pollution Control Officer" is being replaced with "Executive Officer". This is an editorial change and does not alter the stringency of the rule.

EPA Action

EPA's review of these revised rules finds them consistent with the Clean Air Act, 40 CFR part 51, and EPA policy. EPA is approving these rule revisions because they either maintain or strengthen the existing SIP. Therefore, EPA is taking final action to approve these rules under section 110 of the Clean Air Act.

Nothing in this action should be construed as permitting or allowing or establishing precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment action and anticipates no adverse comments. This action will be effective January 28, 1991, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective January 28, 1991.

Regulatory Process

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate

circuit by January 28, 1991. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Particulate matter, and Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 28, 1990.

John Wise,

Acting Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart F—California

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.220 is amended by adding paragraph (c)(179) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(179) Revised regulations for the following APCD's were submitted on March 26, 1990, by the Governor's designee.

(i) Incorporation by reference.

(A) Kings County Air Pollution Control District.

(*1*) Amended Rules 417 and 417.1 adopted on February 28, 1989.

(B) San Bernardino County Air Pollution District.

(*1*) Amended Rules 101, 102 (except fugitive liquid leak and fugitive vapor leak), 103, 104, 105, and 106 adopted on December 19, 1988.

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[FR Doc. 90–27792 Filed 11–26–90; 8:45 am]

BILLING CODE 6560–50–M

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48 CFR Part 1536

[FRL–3863–8]

Acquisition Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule clarifies the applicability of the Federal Acquisition Regulation's provisions on construction contracts with architect-engineer firms regarding their applicability to subcontractors. Under the rule, subcontractors performing treatability studies will not be prohibited from award on the construction of a project. Other subcontractors will also not be prohibited from award on the construction of a project unless their work substantially affects the course of the design. For prime contractors, and subcontractors whose input substantially affects the course of the design work, approval by the Responsible Associate Director in the EPA Procurement and Contracts Management Division is necessary before they may be awarded the construction contract.

EFFECTIVE DATE: This rule is effective November 27, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph Nemargut, Jr. at (202) 382–5019 (FTS 382–5019).

SUPPLEMENTARY INFORMATION:

A. Background

This regulation was published as a proposed rule on August 15, 1990 (55 FR 33337) with comments due by September 14, 1990. One comment was received.

The commenter supported the policies being proposed by the rule but suggested that wording be modified for clarity and to ensure it is applied consistently. The EPA agrees and has made minor editorial changes to address these comments.

B. Executive Order 12291

OMB Bulletin No. 85–7, dated December 14, 1984, establishes the requirements for Office of Management and Budget (OMB) review of agency procurement regulations. This regulation does not fall within any of the categories cited in this Bulletin requiring OMB review.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not propose any information collection requirements, which would require the approval of OMB under 44 U.S.C. 3501, et seq.

D. Regulatory Flexibility Act

The EPA certifies this rule does not exert a significant economic impact on a substantial number of small entities. The rule merely clarifies the applicability of the FAR and provides factors for consideration in granting approvals under FAR 36.209.

List of Subjects in 48 CFR Part 1536

Government procurement, Construction and Architect-Engineer Contracts.

For the reasons set out in the preamble, chapter 15 of title 48 Code of Federal Regulations is amended as follows:

PART 1536—[AMENDED]

1. The authority citation for part 1536 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1536.209 is revised to read as follows:

1536.209 Construction contracts with architect-engineer firms.

(a) The provisions of FAR 36.209 do not apply to subcontractors performing treatability studies.

(b) The provisions of FAR 36.209 also do not apply to subcontractors whose input during the design phase does not substantially affect the course of the design work.

(c) Approval under FAR 36.209 is not required for subcontractors under paragraph (a) or (b) of this section. Approval for all other subcontractors and prime contractors may be granted by the Responsible Associate Director (RAD). In reviewing requests for approval, the RAD shall consider factors such as the availability of other firms to perform the necessary construction or Superfund remedial action work, the estimated cost to the Government, and the policy of the Agency to promote the use of innovative technology.

Dated: November 14, 1990.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 90–27813 Filed 11–26–90; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 91050–0019]

Foreign Fishing; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) prohibits fishing for groundfish in the Gulf of Alaska with trawl gear other than pelagic trawl gear from November 20, 1990, through December 31, 1990. This action is necessary to limit the prohibited species catch of Pacific halibut established for

trawl gear to the allowances provided for by regulations implementing the Fishery Management Plan for the Gulf of Alaska Groundfish Fishery (FMP). It is intended to carry out the management objectives of the North Pacific Fishery Management Council.

DATES: This notice is effective at 12 noon, Alaska local time (A.l.t.) on November 21, 1990, through midnight, A.l.t., December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Jessica Gharrett, Resource Management Specialist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: The FMP, which governs groundfish fishing in the U.S. exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act, is implemented by rules appearing at 50 CFR 611.92 and part 672. Special consideration is given to the conservation of Pacific halibut (halibut), a valuable species sought in another U.S. fishery, but caught as bycatch in the groundfish fishery. Pacific halibut are managed under authority of the International Pacific Halibut Commission; however, bycatches by U.S. fishermen are controlled through prohibited species catch (PSC) mortality limits (§ 672.20(f)). The apportionment of the halibut PSC mortality limits established for trawl gear for the 1990 fishing year is 2,000 metric tons (mt) (§ 672.20(f)(3)(i)).

If, during the year, the Regional Director determines that the catch of halibut by operators of vessels using trawl gear and delivering their catch to joint venture processing (JVP) vessels, or operators of domestic annual processing (DAP) vessels using trawl gear and delivering their catch to U.S. fish processors or processing their catch on board will reach their proportional share of halibut provided for under § 672.20(f)(2) or (f)(3), the Regional Director will publish a notice in the **Federal Register** prohibiting fishing by vessels with trawl gear other than pelagic trawl gear for the rest of the year by JVP or DAP vessels in the area to which the PSC apportionment applies.

The Regional Director has determined that, in the Gulf of Alaska, the DAP trawl groundfish fishery has reached the PSC mortality limit of Pacific halibut apportioned to this fishery for the entire 1990 fishing year (2,000 mt). Therefore, the Regional Director prohibits fishing by DAP vessels with trawl gear other than pelagic trawl gear in the Gulf of Alaska from 12:00 noon A.l.t., November 21, 1990 through midnight, A.l.t., December 31, 1990.

Classification

Unless this notice takes effect promptly, the apportionment of the halibut PSC mortality limits established for trawl gear through December 31, 1990, will be exceeded. NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

This action is taken under § 672.20(f), and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 21, 1990.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–27845 Filed 11–21–90; 2:21 pm]

BILLING CODE 3510–22–M

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50 CFR Part 675

[Docket No. 91045–0006]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of prohibition of retention of groundfish.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), is prohibiting further retention of arrowtooth flounder by vessels fishing in the Bering Sea and Aleutian Islands Area and is requiring that arrowtooth flounder be treated in the same manner as prohibited species from 12 noon, Alaska local time, November 21, 1990, through December 31, 1990. This action is necessary to prevent the total allowable catch for arrowtooth flounder in the Bering Sea and Aleutian Islands Area from being exceeded before the end of the year. The intent of this action is to ensure optimum use of groundfish while conserving arrowtooth flounder stocks.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), November 21, 1990, through midnight, A.l.t., December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Resource Management Specialist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Bering Sea/Aleutian Islands Groundfish Fishery (FMP) governs the groundfish fishery in the Exclusive Economic Zone within the Bering Sea and Aleutian Islands (BSAI) Management Area under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council and is implemented by regulations at 50 CFR 611.93 and part 675.

Section 675.20(a)(2) of the implementing regulations establishes an optimum yield (OY) range of 1.4 to 2.0 million metric tons (mt) for all groundfish species in the BSAI Management Area. Total allowable catches (TACs) for target species and the "other species" category are specified annually within the OY range and apportioned by subarea under § 675.20(a)(2).

The initial 1990 TAC specified for arrowtooth flounder in the BSAI was 8,500 mt, all of which was apportioned to domestic annual processing (DAP) (55 FR 1434, January 16, 1990). At the same time, an initial apportionment of 33 mt from the reserve was made to joint venture processing (JVP) under authority of § 675.20(b)(1) as an amount of arrowtooth flounder deemed likely to be harvested incidentally during JVP directed fishing for yellowfin sole and other flatfish. These actions brought the combined arrowtooth flounder TAC in the BSAI for domestic annual harvest (DAH) to 8,553 mt. On June 24, 1990, 700 mt were reapportioned from DAP to JVP arrowtooth flounder (55 FR 26208, June 27, 1990), leaving the combined DAH arrowtooth flounder TAC in the BSAI at 8,533 mt. On October 24, 1990, 2,000 mt were apportioned from the reserve to DAH for a new TAC of 10,533 mt (55 FR 45609, October 30, 1990).

Under § 675.20(a)(9), the Regional Director has determined that the TAC for arrowtooth flounder of 10,533 mt will be reached on November 21, 1990. Therefore, under § 675.20(a)(9) and § 675.20(c), he is prohibiting further retention of arrowtooth flounder by vessels in the BSAI and is requirng that arrowtooth flounder be treated in the same manner as prohibited species from noon, A.l.t., November 21, 1990, through midnight, A.l.t., December 31, 1990.

Classification

This action is taken under § 675.20(a)(9) and (c) and is in compliance with executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: November 21, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–27844 Filed 11–21–90; 2:21 pm]

BILLING CODE 3510–22–M

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50 CFR Part 685

[Docket No. 900947–0247]

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this emergency interim rule amending current regulations promulgated under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). This action is necessary to ensure adequate monitoring of conditions in the fishery and collection of data on interactions between the fishery and marine mammals or endangered and threatened species. Current regulations do not provide a sound basis for assessing the effects of the rapidly growing longline fishery on pelagic species stocks, on other fisheries for the stocks taken by longlining, or on protected species of marine animals.

EFFECTIVE DATE: The emergency rule is effective from 0001 hours local time November 27, 1990, through 2400 hours local time February 24, 1991.

ADDRESSES: Copies of the environmental assessment may be obtained from, and comments should be addressed to E.C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, California 90731.

Comments on the information collection requirements should be sent to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, Terminal Island, California (213–514–6660), or Alvin Katekaru, Pacific Area Office, Southwest Region, Honolulu, Hawaii (808–955–8831).

SUPPLEMENTARY INFORMATION: The FMP was approved by the Secretary and implemented at a time when there were few problems apparent in the domestic fisheries for pelagic species. While the domestic fisheries were reasonably well established, they tended to operate within 50 nautical miles of shore. There was a substantial amount of recreational and small-scale commercial fishing for pelagic species, but the longline fishery, which operated farther from shore, was in a slow decline. Since 1987, there has been a dramatic increase in the longline fishery based in Hawaii. The longline in Hawaii. The longline fleet has grown from 37 vessels in 1987 to more than 100 vessels in mid-1990. More vessels are expected to enter the fishery later this year, shifting to Hawaii from declining longline fisheries for swordfish and tuna in the Atlantic and Gulf of Mexico. Total landings by the longline fleet in 1989 accounted for about half of the value of all commercial landings in Hawaii, up from about 5 percent in 1985. The biggest increase has been in landings of swordfish, which were less than 30,000 pounds in 1985, then rose to 500,000 pounds in 1989, and reached more than 2.5 million pounds in the first half of 1990. The Hawaii fishery is now the largest domestic supplier of swordfish to U.S. markets. The success of the fishery in Hawaii is expected to spread to other Pacific island areas such as Guam, the Northern Mariana Islands, and American Samoa.

With the growth of the longline fishery have come concerns about the impacts of this rapid growth. First, there is concern that the large increase in landings could adversely affect the stocks of fish being harvested. The available data do not provide a sound basis for assessing the status of pelagic species stocks, either on an oceanwide or a localized basis. In the past it has generally been believed that the fisheries in the fishery management area under the FMP could not have a measurable effect on the stocks. However, total landings were relatively low at that time. The current level of landings is significantly higher and could affect the stocks, at least on a localized basis.

Increased data collection and analysis and sampling of the catches to obtain biological data are crucial for determining what effect the sharply increased catches are having on the stocks.

Second, there is concern that the intense fishing by longliners may have adverse effects on other fisheries. It is believed that many, if not all, pelagic species migrate through the Exclusive Economic Zone (EEZ) and are vulnerable to harvest only when in the range of the fleet. While the new longline vessels are large and have the capability to travel far from the islands, the smaller troll and handline vessels do not have that capability. If the longline catches are interceptions of fish destined for waters important to other gear types, then the gain to longliners could be at the expense of these other fisheries. Available data do not provide a basis for determining whether there are any such impacts. As a result, it is not possible to determine whether fishery conservation and management measures should be implemented to ensure an optimum mix of fishing opportunities and harvests among the established and growing fisheries. Additional data collection and analysis are critically needed for such evaluations.

Third, there have been unconfirmed allegations of interaction between the longline fishery and protected species, including Hawaiian monk seals and sea birds, in the northwestern Hawaiian Islands (NWHI). In consultations under the Endangered Species Act between the Western Pacific Fishery Management Council (Council) and NMFS in development of the FMP, NMFS concluded that the FMP management elements were not likely to jeopardize the continued existence of any listed species, but noted that strengthening the reporting requirements might have some benefit. The true nature and extent of interactions are not known, as there have not been requirements either for domestic vessels to report interactions nor for U.S. vessels to carry observers to document whether interactions occur.

To address these concerns, the Council voted (with one dissenting vote) to ask the Secretary to issue an emergency rule to establish permit, reporting, and observer requirements for domestic longline vessels. First, any vessel of the United States using or intending to use longline gear in the fishery management area, or intending to transit the fishery management area and subsequently land or transship any fish taken by longline gear, would have to first obtain a permit from the Director, Southwest Region, NMFS (Regional Director). This would establish the potential universe of fishery participants to be monitored to determine total effort, landings, value of landings, species composition of the landings, area of catch, and other vital information.

Second, each permitted harvesting vessel must maintain and submit to the Regional Director a daily fishing logbook which will be provided by the Regional Director. Information to be recorded includes catch and effort data as well as data on interactions with protected species. The logbook forms are to be mailed to the Pacific Area Office,

Southwest Region, NMFS, within 72 hours of the end of a fishing trip unless picked up by an authorized agent or officer.

Third, no longline vessel could fish within a 50 nautical mile study zone around French Frigate Shoals, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Island, or Kure Atoll, unless the operator or owner has provider the Regional Director with an opportunity to place an observer aboard the vessel to document whether there are any interactions with protected species and if so, the particulars of the interactions. The observers would collect more detailed information than would be expected of the vessel operator in the interactions section of the required logbooks and may take biological data and samples as feasible without interfering with the vessel's fishing operation.

There are two principal reasons the Council proposed this action on an emergency basis. There is concern that the fishery is extremely unstable, as evidenced by the sudden and dramatic growth in size of the fleet and total effort and landings. Existing data collection and data reporting programs are not adequate to provide a basis for identifying actual or potential management problems, especially if additional vessels enter the fishery as expected. Fishery data are needed to establish the level at which the fishery can be sustained over the long term. In addition, the precarious condition of the Hawaiian monk seal population makes it imperative that accurate and site-specific data on interactions be collected immediately so that if interactions are in fact occurring, the effects of such interactions can be evaluated and solutions to any problems can be identified. While there is relatively little fishing in the vicinity of the NWHI in the summer months, increased activity is expected in the autumn in response to normal seasonal shifts in availability of swordfish in that area.

Therefore, in the Council's view, it is crucial that this rule go into effect on an emergency basis. The Council intends to follow this emergency rule with an amendment to the FMP that would institute these measures on a permanent basis. The Secretary agrees with the Council's request.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law. This rule is implemented for 90 days under section 305(e) of the Magnuson Act and may be extended for and additional 90 days with the agreement of the Council. He has determined that continuing the regulations now in force would result in delayed availability of data crucial for determining whether overfishing may be occurring or whether adverse effects are being suffered by any species of protected animals. Either condition would have serious economic and ecological implications.

NOAA prepared an environmental assessment (EA) for this action. The Assistant Administrator concluded that there will be no significant impact on the human evironment. A copy of the EA is available from the Southwest Region (see **ADDRESSES**).

The Assistant Administrator also finds that the reasons justifying promulgation of this rule on an emergency basis make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days, the effective date of these emergency regulations, under the provision of section 553 (b) and (d) of the Administrative Procedure Act. The rule is intended to be in place by November 27, 1990, before the anticipated seasonal shift of the fishery to the NWHI area.

The emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8 (a)(1) of that Order. This rule is being reported to the Director of the Office of Management and Budget (OMB) with an explanation of why it is not possible to follow the regular procedures of that Order.

The Council has requested that the State of Hawaii and the Territories of American Samoa and Guam concur with a finding that the proposed action is consistent to the maximum extent practicable with their respective coastal zone management programs. The State of Hawaii concurred; responses have not yet been received from either American Samoa or Guam.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. Requests for approval to collect this information have been approved by OMB.

This rule proposes a system of permits, logbooks and observers be implemented to ensure the collection, processing and analysis of data needed for sound management decisions.

The permit system will enable NMFS to track the number of active vessels in the fishery. This permit application information will also be used in subsequent economic analyses to determine the potential nature and distribution of impacts of alternative management measures. The public reporting burden for this collection-of-information is estimated to average 15 minutes per application, including the time to review the form and compile the information to complete the form and submit it to NMFS. This collection-of-information has been approved by OMB, OMB Control Number *0648–0204*.

The logbook recordkeeping is the second collection-of-information proposed by this rule. Vessels obtaining permits will be monitored to ensure compliance with logbook recordkeeping. Logbooks will provide detailed information about catch and effort needed for fishery stock assessments and for estimating the impacts of different management approaches. The public reporting burden for this collection-of-information is estimated to average 60 minutes per trip, including the time to complete the daily log sheet, submit log forms to NMFS, and notify NMFS prior to and return from a trip. This collection-of-information has been approved by OMB, OMB Control Number *0648–0214*.

The third collection-of-information proposed by this rule stems from the establishment of an observer program. Placing observers aboard longline and bottomfish vessels in the NWHI will ensure the collection, processing and analysis of data needed for sound management decisions. Vessel operators intending to fish within a 50 nautical mile study zone around French Frigate Shoals, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Island, or Kure Atoll, will notify the Regional Director so that NMFS will have the opportunity to place an observer aboard the vessel. Observers will ensure the collection of data and document whether there are adverse interactions with protected species and the particulars of the interactions. The public reporting burden for this collection-of-information is 2 minutes for the pre-trip notification and 3 minutes for the pre-return notification, for a combined total of 5 minutes. This includes the time to review and compile the information. This collection-of-information has been approved by OMB, OMB control Number *0648–0214*.

Send comments on the reporting burden estimates or any other aspect of the collection-of-information, including suggestions for reducing the burden, to OMB (see **ADDRESSES**).

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

This emergency rule does not contain policies with known federalism implications sufficient to warrant preparation of the federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 685

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 29, 1990.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 685 is amended as follows:

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 685.2, the following definitions are added in alphabetical order, effective from 0001 hours local time November 27, 1990, through 2400 hours local time February 24, 1991, to read as follows:

§ 685.2 Definitions.

* * * * *

Fishing trip means a period of time between landings when fishing is conducted.

* * * * *

Longline gear means a type of fishing gear consisting of a main line suspended horizontally in the water column either anchored, floating, or attached to a vessel and from which branch or dropper lines with hooks are attached.

* * * * *

Official number means the documentation number issued by the U.S. Coast Guard or the certificate number issued by a State or Territory or by the U.S. Coast Guard for an undocumented vessel (50 CFR 620.2).

Protected species means an individual animal, sub-population, population or species covered by the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, or the Migratory Bird Treaty Act.

* * * * *

Sexual harassment means any unwelcome sexual advance, request for sexual favors, or other verbal and physical conduct of a sexual nature which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

2a. In § 685.2, the existing definition for "*Fishery management area*" is suspended effective from 0001 hours local time November 27, 1990, through 2400 hours local time February 24, 1991, and a new definition for "*Fishery management area*" is added in alphabetical order, effective from 0001 hours local time November 27, 1990, through 2400 hours local time February 24, 1991, to read as follows:

§ 685.2 Definitions

* * * * *

Fishery management area means the Exclusive Economic Zone off the coasts of Hawaii, American Samoa, Guam, and U.S. possessions in the western Pacific. The outer boundary of the fishery management area north of Guam extends to those points which are equidistant between Guam and the island of Rota in the Commonwealth of the Northern Mariana Islands. This definition does not include the EEZ off the coasts of the Commonwealth of the Northern Mariana Islands.

* * * * *

3. In § 685.4, paragraphs (a) and (b) are suspended effective from 0001 hours local time November 27, 1990, through 2400 hours local time February 24, 1991, and new paragraphs (c) and (d) are added to be effective from 0001 hours local time November 27, 1990, through 2400 hours local time February 24, 1991, to read as follows:

§ 685.4 Recordkeeping and reporting.

* * * * *

(c) *Logbooks.* The operator of any vessel subject to this part must:

(1) Maintain, on board the vessel, an accurate and complete daily fishing log for each entire fishing trip on forms supplied by the Regional Director. All information specified on the form must be recorded within 24 hours of the completion of the fishing day.

(2) Submit a copy of the forms to NMFS, Pacific Area Office, 2570 Dole Street, Honolulu, Hawaii 96822, within 72 hours of the date of landing unless the daily fishing log forms have been collected by a designee of the Regional Director;

(3) Make the daily fishing log available for immediate inspection upon request of an authorized officer, or of any employee of NMFS authorized by the Regional Director to make such an inspection.

(d) *Fishing information.* The daily fishing log will include the following information:

(1) Name of vessel;

(2) Permit number of vessel;

(3) Date, time and latitude and longitude of the location at which the set of the longline is begun;

(4) Date, time and latitude and longitude of the location at which hauling of the longline is begun;

(5) Number of hooks set;

(6) Number of lightsticks used;

(7) Number of fish and tuna by species caught and kept per day;

(8) Number of fish and tuna by species caught and released per day;

(9) Number by species of protected species (not including marine birds) sighted in the area of the gear per day;

(10) Number by species of protected species released or lost alive and not apparently injured;

(11) Number by species of protected species released or lost alive but apparently injured;

(12) Number by species of protected species released or lost dead;

(13) Signature of the vessel captain; and

(14) Date of signature.

4. In § 685.5, new paragraphs (e), (f), (g), (h), (i), (j), (k), and (l) are added to be effective from 0001 hours local time November 27, 1990, through 2400 hours local time February 24, 1991, to read as follows:

§ 685.5 Prohibitions.

* * * * *

(e) Use any vessel to fish with longline gear in the management area, unless a permit has been issued for that vessel under § 685.9;

(f) Possess on board a vessel in the fishery management are billfish and associated species that were taken with longline gear unless a permit has been issued for that vessel under § 685.9;

(g) Falsify or fail to make, keep, maintain, or submit any logbook or logbook form or other record or report, required under § 685.4;

(h) Fail to affix and maintain vessel markings, required under § 685.10;

(i) Fail to notify the Regional Director of intent to fish for pelagic species with longline gear within 50 nautical miles off those Northwestern Hawaiian Islands listed in § 685.11;

(j) Refuse to carry an observer when directed to do so by the Regional Director or a designee of the Regional Director as required under § 685.11;

(k) Fail to notify the Coast Guard at least 24 hours in advance of the estimated time, date, and place of landings, required under § 685.11;

(l) Forcibly assault, impede, intimidate, interfere with, influence, attempt to influence, or harass (including sexual harassment) an observer by conduct which has the

purpose or effect of unreasonably interfering with the observer's work performance, or which creates an intimidating, hostile or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

5. In subpart A, new §§ 685.9, 685.10, and 685.11 are added to be effective from 0001 hours local time November 27, 1990, through 2400 hours local time February 24, 1991, to read as follows:

§ 685.9 Permits.

(a) *General.* Any vessel of the United States if it uses longline gear to fish for billfish and associated species within the fishery management area; transships within the fishery management area billfish and associated species taken by longline gear; or lands in Hawaii, American Samoa, or Guam billfish and associated species taken by longline gear, must have a permit issued under this section.

(b) *Application.* (1) An application for a permit under this section must be submitted to NMFS, Pacific Area Office, 2570 Dole Street, Honolulu, Hawaii 96822, by the vessel owner or operator at least 15 days before the date the applicant desires to have the permit be effective.

(2) Each application must be submitted on a form which may be obtained from NMFS, Pacific Area Office. Each application must be signed by the vessel owner or operator and contain at least the following information:

(i) Applicant's name and a telephone number where the applicant may be reached for further information;

(ii) Owner's name, mailing address, and telephone number;

(iii) Operator's name, mailing address, and telephone number;

(iv) The name of the vessel;

(v) The primary fishing area of the vessel;

(vi) The current or most recent permit number for the vessel for the longline fishery;

(vii) The expiration date of the current or most recent permit;

(viii) The vessel's U.S. Coast Guard documentation number or State registration number;

(ix) Radio call sign of the vessel;

(x) Home port of the vessel;

(xi) Gross registered tonnage of the vessel;

(xii) Registered length of the vessel;

(xiii) Beam of the vessel;

(xiv) Fuel capacity of the vessel;

(xv) Average cruising speed of the vessel;

(xvi) Maximum range of the vessel;

(xvii) Engine horsepower;

(xviii) Age of the vessel;

(xix) Date vessel purchased;

(xx) Purchase price;

(xxi) Number of crew;

(xxii) Fish hold capacity (in tons);

(xxiii) Type of refrigeration and capacity (in tons);

(xxiv) Quantity of longline gear used by the vessel; and

(xxv) Signature of the applicant.

(c) *Fees.* No fee is required for a permit under this section.

(d) *Change in application information.* Any change in the information specified in paragraph (b)(2) of this section must be reported to the Regional Director 10 days before the effective date of the change. Failure to report such changes invalidates the permit.

(e) *Issuance.* (1) Within 15 days after receipt of a properly completed application, the Regional Director will determine whether to issue a permit.

(2) If an incomplete or improperly completed permit application is filed, the Regional Director will notify the applicant in writing of the deficiency. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* Permits issued under this section expire at 2400 hours local time on February 24, 1991.

(g) *Alteration.* Any permit that has been altered, erased, or multilated is invalid.

(h) *Replacement.* Permits may be issued to replace lost or mutilated permits. An application for a replacement permit is not considered a new application.

(i) *Transfer.* Permits issued under this section are not transferable or assignable to other vessels. A permit is valid only for the vessel for which it is issued.

(j) *Display.* Any permit issued under this section must be on board the vessel at all times while the vessel is fishing for billfish and associated species by means of longline gear or is engaged in the transshipment of pelagic species taken by longline gear. The permit shall be subject to inspection upon request of any authorized officer.

(k) *Penalties.* Any person committing or vessel used in the commission of a violation of the Magnuson Act or any regulation issued under the Magnuson Act, is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Magnuson Act, to part 621 of this chapter, to 15 CFR part 904 (Civil Procedures) and to any other applicable law.

§ 685.10 Vessel identification.

(a) Display of official number. (1) Each fishing vessel subject to this part must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft.

(2) The official number must be affixed to each vessel subject to this part in block Arabic numerals at least 18 inches (45.7 cm) in height for fishing vessels of 65 feet (19.8 m) in length or longer, and at least 10 inches (25.4 cm) in height for all other vessels. Markings must be legible and of a color that contrasts with the background.

(3) The official number must be clearly legible and in good repair; and

(4) No part of the vessel, its rigging, or its fishing gear shall obstruct the view of the official number from an enforcement vessel or aircraft.

§ 685.11 Observers.

(a) The operator of a fishing vessel subject to this part shall inform the Regional Director at least 72 hours (not including weekends and holidays) before leaving port of his or her intent to fish within 50 nautical miles off French Frigate Shoals, Gardner Pinnacles, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands and Kure Island of the Northwestern Hawaiian Islands. The operator shall provide this notice by contacting NMFS, Pacific Area Office, telephone (808) 955-8831, 2570 Dole Street, Honolulu, Hawaii. The notice must include the name of the vessel, the name of the operator, the intended departure date and location, and a telephone number at which the operator or his agent may be contacted during the business day (8 a.m. to 5 p.m.) to indicate whether an observer will be required on the subject fishing trip.

(b) All fishing vessels subject to this section must carry an observer when directed to do so by the Regional Director or a designee of the Regional Director.

(c) NMFS will advise the vessel operator of any observer requirement within 72 hours of receipt of the notice, and if an observer is required, will establish with the operator the time and place of embarkation of the observer.

(d) The operator of a fishing vessel carrying an observer shall contact the U.S. Coast Guard, by radio or otherwise, at the 14th District Honolulu, Hawaii, or Pacific Area, San Francisco, California

at least 24 hours before landing, and report the estimated time and date and the port at which the permitted vessel will land billfish and associated species.

(e) All observers must be provided with sleeping, toilet and eating accommodations at least equal to that provided to a full crew member. A mattress or futon on the floor or a cot is not acceptable in place or a regular bunk. Meal and other galley privileges must be the same for the observer as for other crew members.

(f) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing common facilities must be established and approved by NMFS prior to the vessel's departure from port.

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Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 275

[Amdt. No. 325]

Food Stamp Program; Quality Control Claims Adjustments for State Agency Investments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes changes to Food Stamp Program regulations based on the provisions of the Hunger Prevention Act of 1988 (Pub. L. 100–435), enacted September 19, 1988. That Act requires the Secretary to review a State agency's plans for new dollar investments in program management activities that are intended to reduce the quality control (QC) payment error rate when determining whether to settle, adjust, compromise, or waive the State agency's QC payment error rate liability.

Accordingly, this action proposes the method by which a State agency's new dollar investments in program management activities will be evaluated in determining whether to settle, adjust, compromise, or waive QC liability claims.

DATES: Comments on this proposed rulemaking must be received on or before January 28, 1991, to be assured of consideration.

ADDRESSES: Comments should be submitted to Duane Maddox, Branch Chief, Quality Control Branch, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, Alexandria, VA 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday), at 3101 Park Center Drive, Alexandria, VA, room 906.

FOR FURTHER INFORMATION CONTACT: Mr. Maddox at the above address or by telephone at (703) 756–3474.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Secretary's Memorandum No. 1512–1

The Department has reviewed this action under Executive Order 12291 and Secretary's Memorandum No. 1512–1. It has been determined that the action will not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Additionally, this action will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this action has been classified as "not major."

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in 7 CFR part 3015, subpart V and related Notice (48 FR 29115 June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, Stat. 1164, September 19, 1980; 5 U.S.C. Secs. 601 through 612). Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The requirements will affect the State and local agencies which administer the Program.

Paperwork Reduction Act

This rulemaking does not contain recordkeeping and reporting requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. Sec 3507).

Background

In accordance with section 13 of the Food Stamp Act of 1977, as amended, 7 U.S.C. 2022 and 7 CFR 271.3(b) of the Food Stamp Program regulations, the Secretary of Agriculture has the authority to determine the amount of and settle and adjust any claim and to compromise or deny all or part of any claim arising under the provisions of the Food Stamp Act of 1977, as amended. When a State agency's quality control (QC) payment error rate exceeds certain tolerance levels, the Food and Nutrition Service (FNS) establishes a claim against the State agency based on the excessive error rate (7 U.S.C. 2025(c); 7 CFR 275.23(e)). Section 601 of the Hunger Prevention Act of 1988 (Pub. L. 100–435) amended section 13(a)(1) of the Food Stamp Act to require the Department to review a State agency's new dollar investments in program management activities that are intended to reduce the payment error rate when FNS makes a determination to settle, adjust, compromise, or waive a claim resulting from an excessive payment error rate. In order to secure Department review, the State agency would be required to propose a settlement of all or a portion of an outstanding claim that would be based upon reinvestment as an offset against outstanding liabilities. The Secretary and the State agency could then agree to a dollar for dollar offset of new monies invested in program improvement for quality control liabilities. The consideration of new dollar investments in the claim settlement process is effective with the Fiscal Year 1986 QC review period. This proposed rule would amend 7 CFR 275.23(e) to add a new paragraph (8.) This paragraph will address the Department's implementation of the provisions of the Hunger Prevention Act of 1988 concerning the review of new dollar investments in program management activities in connection with the settlement of QC liabilities.

As discussed in the legislative history (House Report No. 100–828, page 30) the new dollar investments to be considered under this provision are to be unmatched, i.e., 100 percent State agency funding. Further, they are to be funds allocated for activities that would not otherwise be taken by the State agency as part of normal program administration, thus precluding the consideration of activities a State agency is otherwise required to undertake under the Act and regulations. Finally, the waiver of the claim or part of the claim is not to be made for corrective action or good faith efforts per se.

In accordance with the legislative history, the Department is proposing to limit consideration of new dollar investments to those State agency investments that are 100 percent State agency funded. In conjunction with that, the Department is also proposing that activities that have previously been funded with Department matching funds would not be eligible for consideration under this provision unless the State agency is able to provide the justifications discussed later in this preamble for consideration of investments that represent continuation of previous activities.

The Department's proposal will affect States that wish to settle all or a portion of a claim rather than appeal or pay the total liability. Each State agency that wishes to have its new dollar investments considered in the claim settlement process would submit a request to the Department that will include: Its planned program management activities, the anticipated expenditures which would be offset against the liability, and the anticipated impact on the State agency's error rate. The description of the anticipated impact must include, at a minimum, an identification of the types of error expected to be affected by the activity and an estimate of the reduction in the error rate, by type of error and when the reduction should be observed. The request shall also include an explanation by the state agency as to how and when it will demonstrate the effect on errors, and how and when it will document its expenditures. For example, a State agency could refer to its annual payment error rate to show the activity had been successful in reducing errors. The State agency must also demonstrate in its request that the expenditures for the new program management activity will not replace already ongoing efforts or in any other way result simply in a reallocation of resources. If the same or similar activities had been proposed or undertaken in the past, the State agency shall demonstrate, in detail, why its current proposal under the investments provision should be considered a new activity and what new outcomes are anticipated.

These dollar investments are intended to reduce the degree of error. Therefore, in evaluating a State agency's submittal, FNS would consider whether the planned program activity was directly related to error reduction and whether the proposed expenditures were for activities which were not ongoing and which were beyond those minimally required by regulation and the State agency's Plan of Operation. For example, expenditures made to establish a new issuance system would not be related to certification error reduction and thus would not be considered a suitable investment under the provisions of this proposal. As another example, under 7 CFR 272.4 (d) State agencies are already required to establish a training program for eligibility workers. Training must be provided to all eligibility workers prior to their initial assumption of duties and subsequently on an as-needed basis. Therefore, expenditures on a basic training program would also not be considered a suitable investment under this proposal, although additional or special training efforts beyond those already required could qualify.

As State investments are one aspect of corrective action, a State agency may propose under this provision a new item from its Corrective Action Plan (CAP) document provided that money has not yet been spent on the activity and that it meets all the requirements specified in this proposal. Once accepted by the Department under this proposal, the activity would be reviewed under the provisions of this rule rather than the rules covering the CAP document.

If demonstration projects or other efforts would require waivers of existing rules, they would not be acceptable activities under this proposal.

The claims settlement process is separate and part from the good cause determination and the appeals process. Under this proposal, State agencies may submit requests for review of new dollar investments once any claim has been established. However, nothing in this rule would preclude a State agency's offer (or a Food and Nutrition Service proposal) to settle a claim, in whole or in part, at any time and on any terms. If a good cause determination or appeal is pending, agreement by the State and the Department to the reinvestment proposal will include agreement on the validity of that portion of the claim represented by the reinvestment proposal or on the entire claim if a comprehensive settlement is proposed.

It is clear from Section 601 of the Hunger Prevention Act and the legislative history (JR Report No. 100–828, p. 30) that the decision of whether to waive all or part of QC liability claim rests solely with the Secretary. As the decision to waive a claim is at the discretion of the Secretary, any decision made pursuant to this provision is final and would not be subject to appeal within the Department. Once a decision has been made to authorize a waiver of a State agency's QC liability claim, such claim shall first be suspended and then waived after implementation and successful accomplishment of the State's proposed activity, or when the Department determines that the lack of successful accomplishment was beyond the State agency's control.

It is also clear from the legislative history that if the State agency fails to spend the funds on the planned activity, the settlement reduction in the QC liability due to planned State agency program investment could be withdrawn by the Secretary and the amount would become due pursuant to a payment plan contained in the settlement agreement. As noted above, the Secretary's decision is final. Therefore, since the waiver of the claim is based on the initiation and completion of new program management activities, the Department is proposing to require a State agency agreeing to a settlement which includes program investment under this provision to submit reports on its implementation, expenditures, and the effectiveness of the planned activity.

In developing this proposal, the Department has addressed two issues raised by the overall goal of error reduction through State agency program investment. First, the proposed rule aims to ensure that investment money is spent in accordance with the plan proposed by the State. This will protect the public's interest in an effective payment accuracy improvement system. Second, the proposed rule describes situations that may lead to a withdrawal of the settlement reduction in QC liability due to the failure of the State to implement the program investment as planned. This will provide State agencies notice of conditions under these which settlement reductions in QC liability under these proposed rules may be withdrawn and allow State agencies to realistically assess the benefits and burdens of such programs.

This proposed rule addresses the first issue of implementation of the State agency investment plan by requiring a description of a State agency investment procedure. The Department is proposing the each State agency that has all or part of a claim suspended shall submit periodic reports on a schedule established by the Department. These reports shall contain detailed descriptions of the activity and expenses, and explanations of the

activity's effect on errors and any discrepancies between planned and actual effects. The Department is particularly interested in receiving comments concerning documentation that should be required by the Department to substantiate State agency program investment activities.

The proposed rule also addresses the second issue of withdrawal of settlement reductions in QC liability if the State agency does not reduce its errors as stated in the plan (see HR Report No. 100–828, p. 30) and cannot document to the Department's satisfaction that it made every reasonable attempt to implement and to accomplish the activity as planned. The Department is proposing to require such documentation because the legislative history provides that good faith efforts are not sufficient justification for a waiver of the liability claim. Withdrawal of the settlement reduction could also occur if the State agency cannot document that it spent the money as planned.

Whether the Department would actually withdraw the settlement reduction, even when a State expended the planned new funds, would depend upon a State's spending the money in accordance with the agreed-upon plan and whether the State agency reduced errors as specified in the plan (HR Report No. 100–828, p. 30). The Department proposes not to withdraw a reduction if the failure to reduce errors is due solely and clearly to factors totally outside the State agency's control. When FNS and the State agency agree to an investment plan, the State agency becomes responsible for achieving the stated goal as specified in the plan. In order for a State agency to offset additional QC liabilities by increasing the cost of ongoing reinvestment activity, the State agency would be required to submit a new investment plan.

The Department proposes to withdraw a settlement reduction in QC liability due to a State agency program investment plan in situations such as the following:

(1) The State agency does not spend the money as agreed. For example, a State agency may have a proposed hiring an additional 100 eligibility technicians with specialized training in computer matching procedures and analytical techniques. In fact, the State agency may have actually hired 100 new eligibility workers without seeking or obtaining any special qualifications. The Department may withdraw the reduction and require payment under the settlement agreement because the change in the activity's operation was under the State agency's control.

(2) The State agency implements the plan as agreed, but does not spend all the money. For example, the Department approves a proposed plan for a million dollars in State agency new dollar investments and suspends one million dollars of a claim. The State agency implements the plan as agreed, but only spends $800,000 of the suspended claim monies. The Department may then withdraw the reduction and require payment of the unspent $200,000 under the settlement agreement.

(3) The State agency spends the money as planned, but errors are not reduced as specified in the plan. In this situation, the Department would pay particular attention to the underlying cause of the State agency's failure to reduce errors. For example, the State agency proposes producing and sending pamphlets on Food Stamp Program regulations to applicants pending approval of their applications. The pamphlets are sent out, but the errors do not decline because the State agency inadvertently included a misstatement in the pamphlets. Since the content of the pamphlets was within the control of the State agency, the Department would withdraw the reduction.

The Department proposes not to withdraw a reduction if an investment activity's failure is due solely and clearly to factors totally outside the State agency's control. For example, a State agency may implement an activity exactly as agreed, but the errors do not decline as anticipated by the settlement agreement. If the State agency explains to the Department's satisfaction why the State agency had no control over the cause of the failure, the Department would not withdraw the reduction in QC liability.

The Department is particularly interested in receiving comments upon these proposed criteria for withdrawal of the reduction in QC liability for failure to carry out the investment plan. The Department proposes to charge interest on the suspended QC liability amount if it subsequently withdraws the reduction. Interest would be charged in accordance with section 602 of the Hunger Prevention Act of 1988, which amended section 13 (a) (1) of the Food Stamp Act of 1977. The Department has not yet published an implementing rule on this subject.

In view of the facts that: (1) A reduction in QC liability due to State agency program investment would be part of an administrative settlement agreement disposing of all or part of a QC liability claim for a particular review period; (2) the State agency had the opportunity to challenge the full claim prior to entering the settlement agreement and (3) determinations made under these proposed rules are in the sole discretion of the Secretary, the proposed rules make it clear that State agencies may not appeal to the Secretary a decision to withdraw a reduction in QC liability because of State agency failure to implement and accomplish a planned activity or to adequately document to the Department's satisfaction why an activity was unsuccessful. The Department would simply begin to collect the settlement amount withdrawn in accordance with an agreed upon procedure contained in the settlement agreement.

If a State agency decides to submit a proposal, the State agency would be accepting liability for the amount of the claim being suspended at the time of the Department's approval. Thus if the Department subsequently withdrew the reduction in the QC liability because the State agency failed to initiate or to accomplish the planned activity, there would be no administrative appeal available.

Implementation

As mandated in the Hunger Prevention Act of 1988, the provision for review of new dollar investments in determining whether to waive all or part of a QC liability claim is retroactive to Fiscal Year 1986. State agencies would be elibigle to submit requests for such waivers for Fiscal Year 1986 and all fiscal years after 1986. For Fiscal Year 1986, 1987, and 1988, the Department may consider a State agency's request to waive more than one year's claim based on the State agency's submittal of new proposed dollar investments that satisfactorily address the types of errors for each year under consideration.

List of Subjects in 7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 275 is proposed to be amended as follows:

PART 275—PERFORMANCE REPORTING SYSTEM

1. The authority citation for part 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

2. In § 275.23, a new paragraph (e)(8) is added to read as follows:

§ 275.23 Determination of State agency program performance.

* * * * *

(e) *State agencies' liabilities for payment error rates.* * * *

(8) *Suspension and waiver of liabilities for investments in program management activities.* In connection with the settlement of all or a portion of a QC liability for FY 1986 and subsequent QC review periods, the Department may suspend and subsequently waive all or part of a State agency's payment error rate liability claim based on the State agency's dollar for dollar offsetting investment in new program management activities intended to reduce efforts measured by the QC system. A State agency may submit a request to the Department for review of planned investments in program management activities as part of a proposed settlement of all or a portion of a QC liability at any time during the QC liability claim process.

(i) The State agency's investment plan activity or activities must meet the following conditions to be accepted by the Department:

(A) The new program management activity must represent a new expenditure. The proposed activity must also represent an addition to the minimum program administration required by law for State agency administration including corrective action. If the activity is similar to an earlier State agency initiative, the State agency would have to demonstrate that there are significant changes in the initiative such that the proposed initiative could be considered a new one and that there are no remaining Federal funds earmarked for the activity. Therefore, basic training of eligibility workers or a continuing corrective action from a Corrective Action Plan shall not be acceptable.

(B) Investments must be funded in full by the State agency, without any matching Federal funds.

(C) The activity or activities must be directly related to error reduction, with specific objectives regarding the amount of error reduction, type of error, and date by which errors will be reduced. For this reason, a new issuance system or a demonstration project (or other effort) which requires waivers of existing rules shall not be acceptable.

(D) The activity or activities must be effective in reducing errors. Therefore, good faith efforts shall not be acceptable.

(ii) The request shall include:

(A) A statement of the amount of money that is a quality control liability that is to be offset by reinvestment in program improvements;

(B) A detailed description of the planned program management activity;

(C) Planned expenditures, including time schedule and anticipated cost breakdown;

(D) Anticipated impact of the activity, identifying the types of errors expected to be affected and an estimate of the reduction anticipated for each type of error;

(E) An explanation of how and when the State agency will demonstrate he activity's impact on errors;

(F) An explanation of how and when the State agency will document its expenditures; and

(G) Documentation that the funds would not replace or be for already ongoing efforts, nor simply result in a reallocation of resources.

(iii) The Department's decision to suspend all, part, or none of the QC liability claim under this paragraph is final and not subject to further appeal within the Department. A decision to suspend all or part of a State agency's QC liability claim will result in suspension of the claim for the specified amount, pending satisfactory State agency implementation of the initiative.

(iv) Each State agency which has all or part of a claim suspended under this provision shall submit periodic documented reports according to a schedule specified by the Department. At a minimum, these reports shall contain:

(A) A detailed description of the expenditure of funds, including the source of funds and the actual goods and services purchased or rented with the funds;

(B) A detailed description of the actual activity, including all ways in which the activity's actual operation differed from the planned activity; and

(C) A detailed explanation of the activity's effect on errors, including an explanation of any discrepancy between the planned effect and the actual effect.

(v) The Department may withdraw the reduction in QC liability if:

(A) The State agency's reports do not document that it spent the investment funds as specified in the investment plan;

(B) The State agency's reports do not document that it implemented and accomplished the activity as specified in the investment plan; or

(C) The State agency does not reduce errors as specified in the investment plan, unless the failure is due solely and clearly to factors outside the State agency's control.

(vi) If the reduction in QC liability is withdrawn, the Department shall charge interest on the unpaid liability, in accordance with section 602 of the Hunger Prevention Act of 1988, which amended section 13(a)(1) of the Food Stamp Act of 1977.

(vii) The Department's determination to withdraw a reduction in QC liability is not appealable.

Dated: November 16, 1990.

Betty Jo Nelsen,

Administrator, Food and Nutrition Service.

[FR Doc. 90–27723 Filed 11–26–90; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Notice No. 90–28; Docket No. 26385]

RIN 2120–AD87

OMB Control Number Assignment Re: Request for Data and Information; Passenger Facility Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of OMB Control Number assignment.

SUMMARY: Notice is hereby given that OMB Control Number 2120–0548 has been assigned to "Notice of Request for Data and Information; Passenger Facility Charges," which was published November 14, 1990 (55 FR 47483). That notice requested data and information which may be helpful in implementing a provision of the Aviation Safety and Capacity Expansion Act of 1990 which authorizes public agencies to collect an airport passenger facility charge.

FOR FURTHER INFORMATION CONTACT: Lowell Johnson, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3831.

This notice is published pursuant to the Paperwork Reduction Act and 5 CFR 1320.

Issued in Washington, DC on November 21, 1990.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

[FR Doc. 90–27798 Filed 11–26–90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-107-88]

RIN 1545-AM60

Normalization: Inconsistent Procedures and Adjustments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: In response to numerous questions, the regulations proposed in this notice provide guidance on the application of the normalization requirements of sections 167(l) and 168(i)(9) of the Internal Revenue Code to utility companies that file consolidated federal income tax returns. The proposed regulations establish the extent to which certain ratemaking procedures and adjustments that are based on tax savings attributable to the filing of a consolidated return will be treated as inconsistent with the normalization requirements. These regulations provide that, in order to comply with the normalization requirements, a utility's ratemaking tax expense must be determined as though it filed a separate return. At the same time, however, the proposed regulations provide that in certain circumstances it will not violate the normalization requirements to exclude from rate base a utility's share of the tax savings attributable to the filing of a consolidated return.

DATES: Written comments must be received by January 28, 1991. A public hearing on these proposed regulations has been scheduled for 10 a.m. on February 8, 1991. Persons wishing to speak at this hearing must deliver outlines of their comments by January 25, 1991. These regulations are proposed to be effective for rate orders that become final on or after December 20, 1990.

ADDRESSES: Send comments and requests to speak at the public hearing to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (PS-107-88), room 4429, Washington, DC 20044. If desired, comments and requests to speak may be hand-delivered to the Internal Revenue Service, Attn: CC:CORP:T:R (PS-107-88), room 4429, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in the IRS Auditorium, Seventh floor, 7400 Corridor of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Martin Schaffer, (202) 566-3553 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This notice proposes to add new §§ 1.167(l)-1(h)(7) and 1.168(i)-1 to part 1 of title 26 of the Code of Federal Regulations (CFR). The final regulations will be added to part 1 of title 26 of the CFR in accordance with the Internal Revenue Service's specific regulatory authority under 26 U.S.C. 167(l) and 26 U.S.C. 168(i)(9)(B)(iii), as well as its general regulatory authority under 26 U.S.C. 7805.

Any public utility taking advantage of accelerated depreciation in determining its federal income tax liability must use "normalization" accounting in calculating the rates to be charged to its customers and in maintaining its regulated books of account. These proposed regulations provide guidance on the proper application of the normalization requirements to a public utility filing a consolidated income tax return.

Accelerated depreciation was introduced by Congress as a means of encouraging capital formation by taxpayers by permitting earlier deductions for the cost of capital items. The reduction in current tax liability due to accelerated depreciation creates a deferral of taxes owed, and the difference between a company's federal income tax liability calculated using accelerated depreciation and the tax liability it would have were it to use the straight-line method of depreciation is, in effect, an interest-free loan from the Treasury. As with other loans, this difference is not permanent and must be "repaid" in the later years of the asset's life when a slower depreciation method would have provided larger deductions because the accelerated method has used up all available basis. Flow-through accounting, in effect, takes the principal amount of this congressionally-mandated loan away from a utility and flows it through to the utility's current customers.

In 1969, Congress enacted section 167(l) of the Code to prohibit the use of flow-through accounting. (Section 167(l) corresponds to sections 168(f)(2) and 168(i)(9)(A) under the Accelerated Cost Recovery System (ACRS), as modified by the Tax Reform Act of 1986.) In general, any utility taking advantage of accelerated depreciation must use normalization accounting for ratemaking purposes. Under normalization, a utility must calculate its ratemaking tax expense using depreciation that is no more accelerated than its ratemaking depreciation. Normalization also requires a utility to treat as a reserve the difference between its tax liability as computed using accelerated depreciation and the tax liability the utility would have were the tax to be computed using its ratemaking depreciation method (typically straight-line).

The purpose of these normalization requirements is to prevent the flow through to utility ratepayers of the reduction in current taxes stemming from the use of accelerated depreciation. The normalization rules require a utility to treat the reduction as a deferred tax expense that is collected from current customers through utility rates, and thus is available to utilities as cost-free investment capital until it must be paid to the Treasury. See H.R. Rep. No. 643, 97th Cong., 2d Sess. 6 (1982).

Under normalization accounting, ratepayers may receive a benefit from a utility's use of accelerated depreciation in calculating its federal income tax liability. The normalization rules do not prevent a regulatory agency from passing through to ratepayers the benefit of cost-free capital over the period for which the taxes are deferred. In other words, a utility commission may establish rates that reflect the capital cost savings resulting from accelerated depreciation by excluding the reserve for deferred taxes from the base to which the utility's rate of return is applied (or by treating the deferred taxes as cost-free capital in determining the rate of return allowed).

In response to various ratemaking procedures, Congress enacted the predecessor of section 168(i)(9)(B) (section 168(e)(3)(C) under ACRS, before its modification by the Tax Reform Act of 1986). See S. Rep. No. 1038, 96th Cong., 2d Sess. 11 (1980). Section 168(i)(9)(B)(i) provides that the normalization requirements of section 168(i)(9)(A) are not met if the taxpayer, for ratemaking purposes, uses a procedure or adjustment that is inconsistent with these requirements. Section 168(i)(9)(B)(ii) specifies certain procedures and adjustments that are to be treated as inconsistent for purposes of section 168(i)(9)(B)(i). (Congress amended section 167(l) to include the rules of section 168(i)(9)(B).)

Recognizing that it could not foresee all possible ratemaking procedures that might undermine the purpose of the normalization rules, Congress granted the Secretary broad regulatory authority in section 168(i)(9)(B)(iii) to identify such procedures. (The Secretary has similarly broad authority under section 167(l)(5), which directs the Service to issue regulations if, for any reason, the application of any of the provisions of section 167(l) to any public utility property does not carry out the purposes of that section.)

Over the last several years, the Service has faced the question of whether the calculation of ratemaking tax expense on a consolidated group basis is inconsistent under section 168(i)(9)(B)(i) with the normalization requirements, or, if not, whether it should be treated as inconsistent by exercise of the Service's broad regulatory authority under sections 167(l)(5) and 168(i)(9)(B)(iii). When computed on a consolidated group basis, ratemaking tax expense is reduced to reflect the savings from filing a consolidated return with affiliated companies having net operating losses.

Under one variation—the "consolidated tax savings adjustment"—the ratemaker first determines the utility's total tax expense on a separate return basis and then reduces it by the utility's share of the consolidated tax savings. Under another variation, the ratemaker computes an "effective tax rate" by dividing the tax liability of the group by the sum of the taxable income. The ratemaker then applies this "effective tax rate" to the utility's taxable income to compute its current tax expense. One state court has held that consolidated tax savings adjustments are not inconsistent with the normalization rules, so long as the adjustment does not exceed the utility's current tax expense. See *Continental Telephone Co. of Pennsylvania* v. *Pennsylvania Public Utility Commission*, 120 Pa. Commw. 25, 548 A.2d 344 (1988), appeal denied, 521 Pa. 613, 557 A.2d 345 (1989).

A related issue that has also arisen is whether a utility may, consistent with the requirement to normalize, reduce rate base (rather than ratemaking tax expense) by its share of the consolidated tax savings.

In May 1989, Notice 89-63 announced that the Service had opened a regulations project to give guidance on the application of the normalization requirements to public utilities filing consolidated federal income tax returns. Notice 89-63 stated that the regulations would address the extent to which the use of "effective tax rates" or "consolidated tax savings adjustments" will be treated as inconsistent with the normalization rules. These proposed regulations are the result of that project.

Explanation of Provisions

Overview

The proposed regulations provide that it is a violation of the normalization requirements to determine a utility's ratemaking tax expense, either current or deferred, by taking into account the income, losses, deductions, or credits of other taxpayers with which it files a consolidated return. To comply with the normalization rules, a utility must compute its ratemaking tax expense as if it filed a separate return. The proposed regulations provide, however, that it is not a violation of the normalization rules for a utility that files a consolidated return to reduce its rate base by its share of the cumulative net tax savings attributable to the filing of a consolidated return for certain tax years. The proposed regulations provide the method, based on provisions of the consolidated return regulations, for determining a utility's share of the consolidated group's cumulative net tax savings. As with the requirements under § 1.167(l)-1(h), these requirements do not apply to the determination of state tax expense for ratemaking purposes.

Detailed Explanation

Under the authority of sections 167(l) and 168(i)(9)(B)(iii), sections 1.167(l)-1(h)(7) and 1.168(i)-1 of the proposed regulations provide that a utility must compute its ratemaking tax expense as if it filed a separate return. Thus, for example, the proposed regulations provide that it is inconsistent with normalization for ratemaking tax expense to be reduced on account of the losses of another corporation with which the utility files a consolidated return. Similarly, it is inconsistent with normalization to calculate ratemaking tax expense, either current or deferred, using an effective tax rate determined by taking into account the losses of any other corporation. Any rate order that becomes a "final determination" (within the meaning of section 1.46-6(f)(8)(iii) of the regulations) on or after December 20, 1990 violates the normalization requirements if it provides for a ratemaking tax expense calculated by taking into account the income, losses, deductions, or credits of any other corporation with which the utility files a consolidated return. Such a violation will result in the denial of accelerated depreciation deductions on public utility property.

Section 1.168(i)-1 of the proposed regulations does not address the treatment under the normalization rules of reductions in a utility's tax liability resulting from expenses of the utility itself, even if these expenses are not taken into account in determining cost of service. Thus, for example, if a utility is not permitted to include in its cost of service the cost of an abandoned power plant, a particular advertising expense, or any other cost a ratemaking authority considers to be imprudent, the proposed regulations do not prohibit a reduction in ratemaking tax expense to reflect the concomitant reduction in its tax liability on account of these expenses. The Service invites comments on the proper treatment of these items under the normalization rules.

Consolidated Tax Savings May Be Treated As No-cost Capital

The effect of the proposed regulations is to require utility customers to pay, through cost of service, the same tax expense they would pay if the utility filed a separate return. In some cases, this requirement will permit the utility to collect from customers an amount of tax expense that, because the utility joins in filing a consolidated return with an affiliate generating net operating losses, exceeds the amount the group must remit to the Treasury. This reduction in the group's tax liability, though, might not be permanent. When the loss affiliate becomes profitable (and therefore would be in a position to use its earlier net operating losses had it not joined with the utility in filing a consolidated return), the group as a whole will be liable for more tax for the year than if the members had not filed a consolidated return.

Consolidated tax savings are similar to the deferred taxes arising from the allowance of accelerated depreciation on public utility property in that the temporary tax savings available to the utility is cost-free capital from the time it is collected from ratepayers until the time the affiliate becomes profitable. The Service has concluded that it is not inconsistent with the normalization requirements for a regulatory commission to share the benefit of this cost-free capital with ratepayers through a reduction in the utility's capital costs reflected in its rates.

Consistent with the analogous provisions of § 1.167(l)-1(h)(6) of the current regulations, which permit reduction of rate base by the amount of the deferred tax reserve, § 1.168(i)-1(c) of the proposed regulations permits the exclusion from a utility's rate base (or, alternatively, the treatment as no-cost capital) of an amount not in excess of the utility's share of the consolidated tax savings as determined under the proposed regulations. This exclusion of amounts from the utility's rate base is permitted notwithstanding any

implication to the contrary in § 1.167(l)–1(h)(6)(i) of the current regulations.

Section 1.168 (i)–1(c) of the proposed regulations does not require the exclusion of any amount from a utility's rate base, or the treatment of any amount as no-cost capital; it simply provides an upper limit. As with the deferred tax reserve resulting from accelerated depreciation, ratemakers may decide how much of the benefit of the consolidated tax savings to pass through.

The Service understands that, although practice varies, most state utility commissions have set rates in a way that does not take consolidated tax savings into account, either in determining ratemaking tax expense or in determining rate base or cost of capital. The Service intends that issuance of these proposed regulations will not disturb this existing practice during the period prior to the issuance of final regulations. Specifically, under the proposed regulations any rate order that becomes final on or after December 20, 1990, that takes consolidated tax savings into account in computing ratemaking tax expense will violate the normalization rules. In addition, the Service intends that commissions should not conclude that they may, consistent with the normalization rules, change their practice to reduce rate base by consolidated tax savings during the period in which the Service is considering public comments on the provisions of the proposed regulations permitting rate base reduction. Accordingly, the provisions of the proposed regulations permitting rate base reduction generally will not be effective until issuance of final regulations.

Therefore, in determining the maximum amount by which rate base is to be reduced (or the maximum amount that may be treated as no-cost capital) the proposed regulations do not allow consideration of consolidated tax savings arising in tax years ending prior to the date that is 30 days after final regulations incorporating the provisions of these proposed regulations are published, or, if sooner, January 1, 1992. Furthermore, notwithstanding the general effective date of these proposed regulations, the provisions permitting reduction of rate base by consolidated tax savings (or treatment of consolidated tax savings as no-cost capital) apply only to rate orders that become final or or after the date that is 30 days after the date that final regulations are published, or, if sooner, January 1, 1992. Thus, any rate order that becomes final prior to this date, but on or after December 20, 1990 will violate normalization if it reduces rate base by consolidated tax savings or treats consolidated tax savings as no-cost capital.

In addition, the proposed regulations do not permit consolidated tax savings to be excluded from rate base (or treated as no cost capital) for any year for which rates were determined under a method that flowed through the consolidated tax savings as a reduction to ratemaking tax expense. Thus, for example, if consolidated tax savings are considered in computing ratemaking tax expense for any tax year by reason of a rate order that became final prior to December 20, 1990, these consolidated tax savings may not be excluded from rate base.

The Service invites comments regarding the appropriateness of these effective date rules.

In general, a utility's share of the tax savings attributable to the filing of a consolidated return ("cumulative net tax savings") is the difference between its cumulative share of the consolidated group's tax liability and the cumulative tax liability the utility would have were it to file a separate return for the current year and all previous years. The proposed regulations provide the method for determining a utility's share of a group's consolidated tax savings. This amount is determined on a cumulative basis; it must be reduced when the group's tax liability increases because a former loss affiliate becomes profitable.

The method in the proposed regulations for determining a utility's share of consolidated tax savings is based on a method for allocating tax liability among members of a consolidated group for purposes of calculating earnings and profits that is provided in §§ 1.1502–33 (d)(2)(i) and 1.1552–1 (a)(2) of the consolidated return regulations. This approach ensures appropriate treatment of deferred intercompany transactions, as well as losses, of the consolidated group, and it is most likely familiar to taxpayers affected by the proposed regulations.

To determine its cumulative net tax savings, a utility must first determine its share of the consolidated group's tax savings for each tax year beginning with the "election year." (Flexibility is provided by allowing the selection of the election year, but in no instance may the election year be earlier than the first tax year ending on or after the date that is 30 days after the date final regulations are published, or, if sooner, January 1, 1992. The utility's share (which may be negative) of the consolidated tax savings for any tax year is determined by subtracting its share of the consolidated group's tax liability for the year, determined in accordance with §§ 1.1551–1 (a)(2) and 1.1502–33 (d)(2)(i), from its tax liability for the year calculated as if it had filed a separate return for that year and all previous years. Under these rules, no adjustment is made for payments by the utility under a tax sharing agreement. Comments are invited on any adjustments that might be necessary where there are minority interests in a nonutility affiliate.

Operation of § 1.1502–33(d)(2)(i)

Under § 1.1502–33 (d)(2)(i), the tax liability of a consolidated group is first allocated among the members of the group in proportion to their relative separate return tax liabilities, as provided in § 1.1552–1(a)(2). (For this purpose, separate return tax liability is determined as if a separate return were filed for the current year only, and thus does not take into account NOL's from other years.) However, in situations in which one member of the group generates losses in one year that are used to reduce the group's tax liability, but becomes profitable in a subsequent year, tax liability as allocated under § 1.1552–1(a)(2) must be adjusted so that the cummulative amount of tax liability allocated to the loss member does not exceed the amount that would have been its cummulative tax liability if it had not joined in the consolidated return. The loss member's excess liability is allocated to the other members of the group that benefitted from the losses. Section 1.1502–33(d)(2)(i) provides the mechanism for making these adjustments.

Under § 1.1502–33 (d)(2)(i)(*a*), the amount of group tax liability allocated to any member for a tax year is equal to the member's proportionate share of the group's liability based on the member's separate return tax liability under § 1.1552–1(a)(2). It may not, however, exceed the excess of (1) the total of the tax liabilities of the member on a separate return basis for all tax years to which the election under § 1.1502–33 (d)(3) applies, and for which the member joined in the filing of a consolidated return of the group (including the current tax year) computed as if it had actually filed separate returns for all of these years, over (2) the total of the portions of the group tax liability allocated to the member for all previous tax years to which the election applies. The proposed regulations provide that any tax year ending on or after the date that is 30 days after final regulations are published, or, if sooner, January 1, 1992, may be treated as the first year to which an election applies for purposes of this rule.

Any tax liability of a group that cannot be allocated to a member that previously generated losses because of this limitation must be allocated to the other members that benefitted from these losses, thus increasing their share of the group's tax liability above the amount that would be allocated under § 1.1552–1(a)(2). Under § 1.1502–33(d)(2)(i)(*b*), any excess tax liability that would be allocated to a member of a group but for § 1.1502–33(d)(2)(i)(*a*) must be allocated among the other members in direct proportion to (and limited to) the reduction in tax liability resulting to the other members. The reduction for any member is the excess, if any, of (1) the total of its tax liabilities on a separate return basis for all tax years to which the election under § 1.1502–33(d)(3) applies and for which it joined in the filing of a consolidated return of the group (including the current tax year) computed as if it had actually filed separate returns for all these years, over (2) the total of the portions of the tax liability of the group allocated to the member for all tax years to which the election applies (including, for the current year, only the amount allocated under § 1.1552–1(a)(2)).

This allocation of excess tax liability may have the effect of increasing a utility's share of the group's tax liability above the amount that would have been its tax liability for the current year if it had not filed a consolidated return. This difference can be viewed as a recapture of the utility's share of previous consolidated tax savings. Accordingly, if the utility's share of the group's tax savings is excluded from its rate base (or, alternatively, is treated as no-cost capital), the maximum amount permitted to be excluded from rate base must be reduced to reflect this repayment of tax savings from prior years.

The proposed regulations provide an example to illustrate the exclusion of consolidated tax savings from rate base as permitted under the regulations.

Special Analyses

The Commissioner of Internal Revenue has determined that these proposed rules are not major rules as defined in Executive Order 12291, and that a Regulatory Impact Analysis therefore is not required. Furthermore, it has been certified that these rules, if issued, will not have a significant economic impact on a substantial number of small entities. Therefore, an initial Regulatory Flexibility Analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held at 10 a.m. on February 8, 1991, in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

Drafting Information

The project attorney is Martin Schaffer of the Office of Assistant Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service. However, various personnel from the Service and the Treasury Department participated in the development and drafting of these regulations.

List of Subjects in 26 CFR 1.61–1 Through 1.281–4

Deductions, Exemptions, Income tax, Taxable income.

Proposed Amendments to the Regulations

Accordingly, title 26, part 1, of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * § 1.167(l)–1(h)(7) also issued under 26 U.S.C. 167(l), and § 1.168(i)–1 also issued under 26 U.S.C. 168(i)(9)(B)(iii).

Par. 2. Section 1.167(l)–1 is amended by adding a new paragraph (h)(7) to read as follows:

§ 1.167(l)–1 Limitations on reasonable allowance in case of property of certain public utilities.

* * * * *

(h) * * *

(7) *Application of normalization requirements to utilities filing consolidated returns.* Notwithstanding § 1.167(l)–(a)(1) of the regulations, in order to use a normalization method of accounting, any corporation that owns public utility property and that is a member of a consolidated group must comply with the requirements of § 1.168(i)–1.

Par. 3. New § 1.168(i)–1 is added to read as follows:

§ 1.168(i)–1 Normalization rules.

(a) *In general.* Under section 168(f)(2), section 168 does not apply to any public utility property (within the meaning of section 167(l)(3)(A)) if the taxpayer does not use a normalization method of accounting. Sections 167(l)(3)(G) and 168(i)(9) describe the requirements of a normalization method of accounting Section 167(l)(5) directs the Secretary to issue regulations if, for any reason, the application of any of the provisions of section 167(l) to any public utility property does not carry out the purposes of that section. Section 168(i)(9)(B)(iii) provides that the Secretary may by regulation prescribe the procedures and adjustments that are to be treated as inconsistent with the requirements of a normalization method of accounting. Under this authority, any corporation that owns public utility property and that is a member of a consolidated group (a "utility") will be considered to use a normalization method of accounting only if its federal income tax expense for determining cost of service for ratemaking purposes ("ratemaking tax expenses") is computed as if it filed a separate federal income tax return. Any procedure or adjustment that results in the flow-through of tax savings arising from the filing of a consolidated return will be treated as inconsistent with a normalization method of accounting. See paragraph (b) of this section. The procedures and adjustments described in paragraph (c) of this section, however, which exclude the cumulative amount of these savings from the base to which the utility's rate of return is applied ("rate base"), will not be treated as inconsistent with a normalization method of accounting. This section is effective for rate orders that become final determinations within the meaning of § 1.46–6(f)(8)(iii) of the regulations on or after December 20, 1990.

(b) *Flow-through of consolidated tax savings treated as inconsistent with normalization.* Except as provided in paragraph (c) of this section, it is inconsistent with a normalization method of accounting to compute a utility's ratemaking tax expense or the amount treated as no-cost capital or the amount of the rate base by taking into account the income, losses, deductions, or credits, of any other member of the consolidated group of which it is a member. Thus, for example, it is consistent with a normalization method of accounting to reduce ratemaking tax expense on account of the losses or loss carryovers of another member of the

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utility's consolidated group. Similarly, it is inconsistent with a normalization method of accounting to determine either the current or deferred portion of ratemaking tax expense using an effective tax rate determined by taking into account the losses or credits of other members of the utility's consolidated group, or otherwise to reduce cost of service for ratemaking purposes to take into account the current tax savings resulting from the losses or credits of other members of the utility's consolidated group.

(c) *Exclusion from rate base permitted*—(1) *In general.* It is not inconsistent with the requirements of a normalization method of accounting to treat as no-cost capital (or, alternatively, to exclude from rate base) under this section an amount not in excess of the cumulative amount of the utility's allocable shares of the federal income tax savings attributable to the filing of a consolidated return for the tax year and all prior tax years, beginning with the election year selected under paragraph (c)(3) of this section ("cumulative net tax savings"). (This amount is in addition to the deferred tax reserve, which also may be applied to reduce rate base or be treated as cost-free capital.) If the cumulative net tax savings is less than zero, no adjustment is made to rate base. However, exclusion from rate base or treatment as no-cost capital is not permitted for the utility's share of the consolidated tax savings for any year for which rates were determined under a method that takes consolidated tax savings into account in a computing ratemaking tax expense. Thus, if consolidated tax savings are taken into account in computing ratemaking tax expense for any tax year by reason of a rate order that became final prior to December 20, 1990, the utility's share of the consolidated tax savings for that year may not be excluded from rate base or treated as no-cost capital. This paragraph (c) applies only to treatment of consolidated tax savings pursuant to a rate order that becomes final on or after the date that is 30 days after the date that final regulations are published, or, of sooner, January 1, 1992.

(2) *Allocable share of tax savings.* For any tax year, a utility's allocable share (which may be negative) of tax savings attributable to the filing of a consolidated return is equal to—

(i) Its federal income tax liability for the year, determined as if it actually filed a separate return for that tax year and all previous and subsequent tax years, minus

(ii) Its allocable share of the consolidated group's tax liability for the year, determined in accordance with §§ 1.1552–1(a)(2) and 1.1502–33(d)(2)(i).

(3) *Selection of election year.* For purposes of applying the allocation rules of §§ 1.1552–1(a)(2) and 1.1502–33(d)(2)(i), any tax year ending on or after the date that is 30 days after the date that final regulations are published, or, if sooner, January 1, 1992, may be treated as the year of the election referred to in § 1.1502–33(d)(2)(i).

(4) *Use of test periods.* In determining cost of service for future periods based on an historical test period, the amount of consolidated tax savings for future periods may be projected, and thus changes from the test period in the amount excluded from rate base (or treated as no-cost capital) under this section may also be projected. Any projections, however, must be reasonable. For example, a projection may not take into account an extraordinary event, such as the termination or acquisition of a business, unless it is evident that such an event will occur.

(d) *Example*—(1) This example illustrates the following series of calculations necessary to determine the maximum amount that may be treated as no-cost capital or by which rate base may be reduced. First, the group's consolidated tax liability for the year is allocated among the members in proportion to their separate return liabilities (determined as though separate returns were filed for the current year only). Second, the amount allocated to each member is limited to ensure that this amount does not cause the cumulative total amount of group tax liability allocated to the member for all years to exceed the amount that would have been the member's cumulative total tax liability if it had actually filed a separate return for all years. Any part of the group's consolidated tax liability for the year that cannot be allocated to a member because of this limit is apportioned among the other members, to produce each member's final allocation of the group's consolidated tax liability for the year. The utility's final allocation is then subtracted from the amount that would have been the utility's separate return tax liability for the current year if the utility had actually filed separate returns for all years. This difference is the utility's share of the consolidated tax savings for the year. The utility's cumulative share of the consolidated tax savings may be used to reduce rate base or be treated as cost-free capital. (This amount is in addition to the deferred tax reserve, which also may be applied to reduce rate base or be treated as cost-free capital.)

(2) In this example, regulated public utility *U* files a consolidated return with its nonregulated affiliates *X* and *Y*. The year 1991 has been selected as the year of election, and a 34 percent tax rate has been assumed. Line references are to the tables below.

1991

Allocation under § 1.1552–1(a)(2). Under § 1.1552–1(a)(2), the group's consolidated tax liability for the year is allocated among the members in proportion to their separate return tax liabilities. For purposes of this allocation, a member's separate return tax liability is computed as though if filed a separate return for the current year, without regard to other years. The following information and calculations are required to make this allocation. *U*'s separate taxable income for the year, as defined in § 1.1502–12 and determined using accelerated depreciation, is 60. *X* has a loss of 50, and *Y* has separate taxable income of 45. (Line A.1). The group's consolidated taxable income (as defined in § 1.1502–11) and tax liability are 55 and 18.7 (34 percent of 55), respectively. (Lines A.2 and A.3). The separate taxable incomes of *U*, *X*, and *Y*, for purposes of § 1.1552–1(a)(2)(ii), are 60, a loss of 50, and 45, respectively. (Line A.4). Thus, the separate return tax liabilities of *U*, *X*, and *Y* are 20.4, 0, and 15.3, respectively. (Line A.5). The group's tax liability of 18.7 is then allocated among the members in proportion to their separate return tax liabilities, resulting in an allocation under § 1.1552–1(a)(2) of 10.69 to *U*, 0 to *X*, and 8.01 to *Y*. (Line A.6).

(A) *Allocation under § 1.1552–1(a)(2).*

	U	X	Y	Group
(1) Separate taxable income (as defined in § 1.1502–12) (using accelerated depreciation)	60	(50)	45	
(2) Consolidated taxable income (as defined in § 1.1501–11)				55
(3) Consolidated tax liability				18.7
(4) Separate taxable income for purposes of § 1.1552–1(a)(2) calculation	60	(50)	45	
(5) Separate return tax liability as calculated in § 1.1552–1 (a)(2)	20.4	0	15.3	
(6) Allocation of consolidated tax liability under § 1.1552–1 (a)(2)	10.69	0	8.01	

Allocation under § 1.1502–33(d)(2)(i). Under § 1.1502–33(d)(2)(i), the first step is to ensure that the amount allocated to each member under § 1.1552–1(a)(2) for the current year does not cause the cumulative total amount of group tax liability allocated to the member for all years (beginning with the year treated as the year of election) to exceed the amount that would have been the member's cumulative total tax liability if it had actually filed a separate return for all years. Thus, the maximum amount that may be allocated to any member for the year is the excess of the cumulative total of the member's tax liabilities on a separate return basis (determined as though the member had actually filed separate returns for all years, beginning with the year treated as the year of election), as determined in § 1.1502–33(d)(2)(i)(*a*)(*1*) (line B.2), over the total portions of group tax liability allocated to the member for all previous years, as determined in § 1.1502–33(d)(2)(i)(*a*)(*2*) (line B.3). Because the current year, 1991, is treated as the year of election, the amounts shown on line B.3 are all 0. The excess for each member (line B.2 minus line B.3), which for 1991 is the same as the member's separate return liability for 1991, is shown on line B.4. It is the maximum amount that may be allocated to the member. This amount is compared with the amount allocated under § 1.552–1(a)(2) (line B.1), and the lesser of the two amounts is the amount allocated under § 1.1502–33(d)(2)(i)(*a*) to the member. (Line B.5). For 1991, these two amounts are the same. Thus for 1991, the amount allocated to each member under § 1.1552–1(a)(2) is not limited under the first step.

(B) *Allocation under § 1.1502–33(d)(2)(i).*

	U	X	Y	Group
(1) Allocation under § 1.1552–1 (a)(2) (from line A.6)	10.69	0	8.01	
(2) Cumulative total of tax liabilities on separate return basis as though separate returns filed for all years (as determined in § 1.1502–33 (d)(2)(i)(*a*)(*1*))	20.4	0	15.3	
(3) Total portions of group tax liability allocated to member for all previous years (as determined in § 1.1502–33(d)(2)(i)(*a*)(*2*))	0	0	0	
(4) Excess of cumulative total of separate return liabilities over amounts allocated for all previous years (line B.2 minus line B.3) (as determined in 1.1502–33(d)(2)(i)(*a*)) (limit on amount that may be allocated to a member)	20.4	0	15.3	
(5) Initial allocation (lesser of line B.1 and line B.4)	10.69	0	8.01	

Apportionment of excess. The second step under § 1.1502–33(d)(2)(i) is to apportion among the other members any amount of the group's consolidated tax liability that may not be allocated to a member because of the limit determined under the first step. This excess is determined by subtracting the total of the amounts allocated under § 1.1502–33(d)(2)(i)(*a*) (line C.2) from the consolidated tax liability (line C.1). Because the amount allocated under § 1.1552–1(a)(2)(ii) is not limited under the first step for 1991, the two amounts are the same (18.7), and the difference (line C.3) is 0. Thus, there is no excess tax liability to be apportioned under the second step.

(C) *Apportionment of excess.*

	U	X	Y	Group
(1) Consolidated tax liability (from line A.3)				18.7
(2) Total of amounts allocated in line B.5				18.7
(3) Amount of consolidated tax liability that cannot be allocated because of limit in line B.4 (line C.1 minus line C.2)				0

Cumulative consolidated tax savings. Each member's current year consolidated tax savings is equal to the excess of its separate return tax liability for the year, determined as if separate returns had actually been filed for all years (line D.1), over the amount of the consolidated group's tax liability finally allocated to the member for the year (line D.2). Thus, the amount finally allocated to each member (line D.2) is subtracted from the member's separate return tax liability shown on line D.1 (20.4, 0, and 15.3, for *U*, *X*, and *Y*, respectively) to produce its consolidated tax savings for the year (9.71, 0, and 7.29). (Line D.3). Each member's cumulative consolidated tax savings is equal to the consolidated tax savings for the year added to the cumulative consolidated tax savings for the preceding year. (Line D.4). Because 1991 is treated as the year of election, the cumulative consolidated tax savings is the same as the consolidated tax savings for 1991. The maximum amount that may be treated as cost-free capital to *U* (or by which *U*'s rate base may be reduced) under the rules of this section is 9.71 for 1991.

(D) *Cumulative consolidated tax savings.*

	U	X	Y	Group
(1) Separate return tax liability for current year determined as though separate returns filed for all years (see § 1.1502–33(d)(2)(i)(*a*)(*1*))	20.4	0	15.3	
(2) Final allocation (line B.5 plus any excess group tax liability apportioned under C)	10.69	0	8.01	
(3) Consolidated tax savings (line D.1 minus line D.2)	9.71	0	7.29	
(4) Cumulative consolidated tax savings (line D.3 plus line D.4 from preceding year)	9.71	0	7.29	

1992

Allocation under § 1.1552–1(a)(2). Under § 1.1552–1(a)(2), the group's consolidated tax liability for the year is allocated among the members in proportion to their separate return liabilities. The following information and calculations are required to make this allocation. *U*'s separate taxable income for year, as defined in § 1.1502–12, and determined using accelerated depreciation, is 75. *X* and *Y* have separate taxable incomes of 30 and 50, respectively. (Line A.1). The group's consolidated taxable income and tax liability are 155 and 52.7 (34 percent of 155), respectively. (Lines A.2 and A.3). The separate taxable incomes of *U*, *X*, *Y*, for purposes of § 1.1552–1(a)(2)(ii), are 75, 30, and 50, respectively. (Line A.4). Thus the separate return tax liabilities of *U*, *X*, and *Y*, are 25.5 10.2, and 17, respectively. (Line A.5). Note that *X*'s separate return tax liability does not take into account *X*'s net operating loss from the preceding year, because, for this purpose, separate return tax liability is determined as if a separate return were filed only for the current year, and not for preceding years also. The group's tax liability of 52.7 is then allocated among the members in proportion to their separate return tax liabilities, resulting in an allocation under § 1.1552–1(a)(2) of 25.5, 10.2, and 17, to *U*, *X*, and *Y*, respectively. (Line A.6).

(A) *Allocation under § 1.1552–1(a)(2).*

	U	X	Y	Group
(1) Separate taxable income (as defined in § 1.1502–12) (using accelerated depreciation)	75	30	50	
(2) Consolidated taxable income (as defined in § 1.1502–11)				155
(3) Consolidated tax liability				52.7
(4) *Separate taxable income for purposes of § 1.1552–1(a)(2) calculation*	75	30	50	
(5) Separate return tax liability as calculated in § 1.1552–1(a)(2)	25.5	10.2	17	
(6) Allocation of consolidated tax liability under § 1.1552–1(a)(2)	25.5	10.2	17	

Allocation under § 1.1502–33(d)(2)(i). Under the first step of § 1.1502–33(d)(2)(i), the maximum amount that may be allocated to any member for the year is the excess of the cumulative total of the member's tax

liabilities on a separate return basis (determined as though the member had actually filed separate returns for all years, beginning with the year treated as the year of election), as determined in § 1.1502-33(d)(2)(i)(a)(1) (line B.2), over the total portions of group tax liability allocated to the member for all previous years, as determined in § 1.1502-33(d)(2)(i)(a)(2) (line B.3). The cumulative totals of the members' tax liabilities (1991 and 1992) are 45.9, 0, and 32.3, for *U*, *X*, and *Y*, respectively. Note that the total for *X* takes into account the fact that, if *X* had filed a separate return for both years, a deduction for a net operating loss carryover from 1991 would have been allowed for 1992, so that *X* would have had no liability for either year. The portion of group tax liability that was allocated to each member for 1991 is shown on line B.3. The excess (line B.2 minus line B.3) is shown on line B.4. It is the maximum amount that may be allocated to each member. This amount is compared with the amount allocated under § 1.552-1(a)(2) (line B.1), and the lesser of the two amounts is allocated under § 1.1502-33(d)(2)(i)(a) to the member. (Line B.5). Note that the amount allocated to *X* under § 1.1502-33(d)(2)(i)(a) is thus 0, rather than 10.2, the amount allocated under § 1.1552-1 (a)(2).

(B) *Allocation under § 1.1502-33(d)(2)(i).*

	U	X	Y	Group
(1) Allocation under § 1.1552-1(a)(2) from line A.5)	25.5	10.2	17	
(2) Cumulative total of tax liabilities on separate return basis as though separate returns filed for all years (as determined in § 1.1502-33 (d)(2)(i)(a)(1))	45.9	0	32.3	
(3) Total portions of group tax liability allocated to member for all previous years (as determined in § 1.1502-33 (d)(2)(i)(a)(2))	10.69	0	8.01	
(4) Excess of cumulative total of separate return liabilities over amounts allocated for all previous years (line B.2 minus line B.3) (as determined in § 1.1502-33 (d)(2)(i)(a)) (limit on amount that may be allocated to a member)	35.21	0	24.29	
(5) Initial allocation (lesser of line B.1 and line B.4)	25.5	0	17	

Apportionment of excess. The second step under § 1.1502-33(d)(2)(i) is to apportion among the other members any amount of the group's consolidated tax liability that may not be allocated to a member because of the limit determined under the first step. This excess is determined by subtracting the total of the amounts allocated under § 1.1502-33(d)(2)(i) (line C.2.), which is 42.5, from the consolidated tax liability, which is 52.7 (line C.1). The difference (line C.3) is 10.2, the amount that could not be allocated to *X* because of the limit in step 1. This excess must be apportioned between *U* and *Y* in proportion to their relative reductions in tax liability for 1991 and 1992 as a result of filing a consolidated return, as determined in § 1.1502-33(d)(2)(i)(b). These reductions are equal to the excess of the cumulative total of separate return liabilities, determined as if separate returns had been filed for both 1991 and 1992, (line C.4), over the total of the portions of tax liability of the group allocated for both years (line C.5). These reductions, which are shown on line C.6, are 9.71 and 7.29 for *U* and *Y*, respectively. The total of these reductions is 17. (Line C.7). *U*'s and *Y*'s shares of this total reduction are 57 percent and 43 percent, respectively. (Line C.8). Thus the amounts of excess tax liability apportioned to *U and Y* are 5.83 and 4.37, respectively. (Line C.9).

(C) *Apportionment of excess.*

	U	X	Y	Group
(1) Consolidated tax liability (from line A.3)				52.7
(2) Total of amounts allocated in line B.5				42.5
(3) Amount of consolidated tax liability that cannot be allocated because of limit in line B.4 (line C.1 minus line C.2)				10.2
(4) Cumulative total of separate return liabilities, computed as though separate returns filed for all years (as determined in § 1.1502-33 (d)(2)(i)(b)(1)) (same as line B.2)	45.9		32.3	
(5) Total of the portions of tax liability of group allocated to member for all years (as determined in § 1.1502-33 (d)(2)(i)(b)(2)	36.19		25.01	
(6) Reduction in tax liability to other members (as determined in § 1.1502-33 (d)(2)(i)(b)) (line C.5 minus line C.4)	9.71		7.29	
(7) Total reduction in tax liability (sum of numbers on line C.6)				17
(8) Each member's share of total reduction (line C.6 divided by line C.7)	0.57		0.43	
(9) Apportionment of excess tax liability (line C.3 multiplied by line C.8)	5.83		4.37	

Cumulative consolidated tax savings. Each member's current year consolidated tax savings is equal to the excess of its separate return tax liability for the year, determined as if separate returns had actually been filed for all years (line D.1), over the amount of the consolidated group's tax liability finally allocated to the member for the year (line D.2). Thus, the amount finally allocated to each member (line D.2) is subtracted from the member's separate return tax liability shown on line D.1 (25.5, 0, and 17, for *U*, *X*, and *Y*, respectively) to produce its consolidated tax savings for the year. Thus, *U*'s and *Y*'s consolidated tax savings of the year are negative 5.83 and negative 4.37, respectively, representing a partial recapture of the benefit that *U* and *Y* received from filing a consolidated return in 1991. (Line D.3). Each member's cumulative consolidated tax savings is equal to the consolidated tax savings for the year added to the cumulative consolidated tax savings for the preceding year. Thus, *U*'s cumulative consolidated tax savings is 9.71 minus 5.83, or 3.88, while *Y*'s is 7.29 minus 4.37, or 2.92. (Line D.4). The maximum amount that may be treated as cost-free capital to *U* (or by which *U*'s rate base may be reduced) under the rules of this section is 3.88 for 1991.

(D) *Cumulative Consolidated Tax Savings.*

	U	X	Y	Group
(1) Separate return tax liability for current year determined as though separate returns filed for all years (see § 1.1502-33(d)(2)(i)(a)(1))	25.5	0	17	
(2) Final allocation (line B.5 plus line C.9)	31.33	0	21.37	
(3) Consolidated tax savings (line D.2 minus line D.1)	(5.83)	0	(4.37)	
(4) Cumulative consolidated tax savings (line D.3 plus line D.4 from preceding year)	3.88	0	2.92	

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

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BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010-AB60

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Mineral Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: This notice proposes an amendment to rules governing civil penalty assessment under section 24(b) of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1350(b)). This change is designed to implement a revised authority for the Secretary of the Department of the Interior (DOI) to assess civil penalties for failure to comply with regulations governing oil and gas and sulphur operations in the OCS. This action will enable the Minerals Management Service (MMS) to assess a civil penalty without first providing notice and time for corrective action in cases where the failure constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.

DATES: Comments must be received or postmarked by January 28, 1991.

ADDRESSES: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street, Herndon, Virginia 22070-4817; Attention: Gerald D. Rhodes.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella, (703) 787-1600.

SUPPLEMENTARY INFORMATION: The MMS regulations at 30 CFR part 250 address requirements for oil and gas and sulphur operations under a lease in the OCS. Included in these regulations are provisions in § 250.200, Remedies, which address the assessment of civil penalties. The provisions for civil penalties were developed pursuant to section 24(b) of the OCSLA (43 U.S.C. 1350(b)) which, prior to the August 18, 1990, amendment to the OCSLA, stated:

> If any person fails to comply with any provision of this subchapter, or any term of a lease, license, or permit issued pursuant to this subchapter, or any regulation or order issued under this subchapter, after notice of such failure and expiration of any reasonable period allowed for corrective action, such person shall be liable for a civil penalty * * *.

This provision in the OCSLA required that prior to assessment of a civil penalty, a person who was determined to be in violation of a requirement be provided with notice of failure to comply and given time to take corrective action. On August 18, 1990, the section 8201 of the Oil Pollution Act of 1990 (Pub. L. 101-380) amended the OCSLA to redesignate previous section 24(b) as paragraph (1) of the new section 24(b), raise the maximum civil penalty assessment from $10,000 to $20,000 per day, require the Secretary of DOI, not less than every 3 years, to raise the daily limit for assessment of civil penalties in accordance with the Consumer Price Index, and provide that:

> If a failure described in paragraph (1) constitutes or constituted a treat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment, a civil penalty may be assessed without regard to the requirement of expiration of a period allowed for corrective action.

This proposed rule would modify the regulations at 30 CFR 250.200 to provide that the Reviewing Officer shall proceed with civil penalty proceedings if (1) a failure to comply with any provision of the OCSLA, any provison of a lease, license, or permit issued pursuant to the OCSLA, or any provision of any regulation issued under the OCSLA continued beyond any notice of failure and the expiration of any resonable period allowed for corrective action or (2) such failure constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit or the marine, coastal, or human environment. This would replace the existing provision which only allows the assessment of a civil penalty if the violation continued beyond a notice of failure and the expiration of a reasonable time for corrective action.

The new maximum civil penalty is established by law at a level of $20,000 per day. This level had been $10,000 per day prior to passage of the August 18, 1990, amendment to the OCSLA. The August 18, 1990, amendment also requires that the maximum daily civil penalty be adjusted by regulation not less than every 3 years. To establish the maximum daily penalty in regulation so that it may be periodically adjusted, the regulation at 30 CFR 250.206 is proposed to be amended to specify the current maximum penalty of $20,000 per day as specified in the statute.

Provisions with regard to other aspects of the civil penalty procedure and with regard to procedures for hearings are not proposed to be changed.

Author: This document was prepared by John V. Mirabella, Offshore Rules and Operations Division, Minerals Management Service.

Executive Order (E.O.) 12291

The MMS experience has shown that in the vast majority of cases, lessees conduct their activities in a manner that does not constitute a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment. The economic effect of this rule was estimated based on the number and magnitude of civil penalties in 1981 and 1982 since civil penalty procedures were similar to procedures that could be employed under the proposed amendment. The estimated economic effect was calculated assuming that the number of civil penalties will change in proportion to changes in drilling and production activity in the OCS and that the amount of each civil penalty will increase in proportion to the increase in statutory maximum levels. Based on these assumptions, the economic impact of the new rule is estimated to be $960,690 annually. Accordingly, DOI has determined that this rule will have only a limited economic effect on the economy and is not a major rule under E.O. 12291; therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The DOI has determined that this rule will not have a significant economic effect on small entities since offshore activities are complex undertakings generally engaged in by enterprises that are not considered small entities.

Paperwork Reduction Act

The collection of information contained in this rule has been submitted to the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.* Information collection requirements contained in existing rules and approved under existing number 1010-0038 will be collected until approval of collection under this amended rule has been approved.

Public reporting burden for this collection of information is estimated to average 80 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this

collection of information, including suggestions for reducing this burden, to the Information Collection Clearance Officer; Minerals Management Service; Mail Stop 2300; 381 Elden Street; Herndon, Virginia 22070–4817, and the Office of Management and Budget; Paperwork Reduction Project 1010–0038; Washington, DC 20503.

Takings Implication Assessment

The DOI certifies that the rule does not represent a Government action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment has not been prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-rights-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: October 5, 1990.

Barry Williamson,

Director, Minerals Management Service.

For the reasons set forth above, 30 CFR part 250 is proposed to be amended as follows:

PART 250—[AMENDED]

1. The authority for 30 CFR part 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. In § 250.200, redesignate paragraph (c) as paragraph (d) and revise it, revise paragraph (b), and add a new paragraph (c) to read as follows:

§ 250.200 Remedies.

* * * * *

(b) The Reviewing Officer shall proceed with provisions of paragraph (c) of this section upon determining that there is sufficient evidence that a violation probably occurred and that:

(1) The violation continued beyond any notice of such failure and the expiration of any reasonable period allowed for corrective action, or

(2) The violation constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment.

(c) The Reviewing Officer shall notify, in writing, the person alleged to have committed the violation (hereinafter referred to as "party") of the following:

(1) The alleged violation, citing the applicable provision of the Act, or the applicable term of a lease, license, or permit issued pursuant to the Act, or the applicable provision of a regulation or order issued under the Act upon which the action is based;

(2) The amount of penalty that appears to be appropriate in the event it is determined that the party is responsible for the alleged violation based upon the material then available to the Reviewing Officer;

(3) The party's right to examine the material in the case file and to have a copy of all written documents provided upon request, except those which would, in a civil proceeding, disclose or lead to the disclosure of a confidential informant; and

(4) The fact that, subject to the provisions in § 250.201 of this part, the party has the right to a hearing before the Reviewing Officer prior to any finding of fact regarding the alleged violation.

(d) A party has the right to be represented by counsel, qualified to practice before the Department of the Interior under 43 CFR part 1, at all stages of the proceedings. After receiving notification that a party is represented by counsel, the Reviewing Officer shall direct all further communications to the counsel.

3. In § 250.206, revise paragraph (a)(1) to read as follows:

§ 250.206 Civil penalties.

(a)(1) If the Reviewing Officer determines that a civil-penalty is to be assessed, the penalty shall not exceed $20,000 for each day of the continuation of the violation. For violations described in § 250.200(b)(1), the penalty shall be assessed for each day the violation continues after notice and a reasonable period for corrective action. For violations described in § 250.200(b)(2), the penalty shall be assessed for each day the violation continues after it first occurred.

* * * * *

[FR Doc. 90–27795 Filed 11–26–90; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AE58

Loan Guaranty; Lender Participation Fees

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its loan guaranty regulations (38 CFR part 36) by requiring lenders to pay fees to participate in VA's Automatic Lending Program. These fees will defray in part the expenses incurred by VA in overseeing its activities of lenders.

DATES: Comments must be received on or before January 28, 1991. Comments will be available for public inspection until February 5, 1991. VA proposes to make these regulations effective 30 days after publication of the final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Secretary of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments will be availbale for public inspection in room 132, Veterans Service Unit, at the above address between the hours of 8 a.m and 4:30 p.m., Monday through Friday (except holidays) until February 5, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Acting Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 233–3555.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. chapter 37, VA guarantees a portion of the loan made to an eligible veteran to acquire or refinance a home, condominium, or manufactured home, or to install certain energy conservation features or other home improvements. The guaranty is a promise by the Government to pay a portion of the veteran's indebtedness in the event of a loan default and eventual termination through foreclosure or other proceedings.

Lenders participating in the Loan Guaranty Program may process loans in one of two ways: either on the "prior approval" basis or the "automatic" basis. Loans which are processed on the prior approval basis are forwarded by the lender to VA for underwriting approval before closing. Loans processed on the automatic basis are underwritten entirely by the originating lender and reported to VA after they are closed.

Lenders need no special approval to process loans on the prior approval basis. However, to process loans on the automatic basis, lenders must be either "supervised" or have approval of the Secretary of VA.

38 U.S.C. 1802(d) provides that housing loans may be automatically guaranteed by VA only if made: (1) By any Federal land bank, national bank, State bank, private bank, building and loan association, insurance company, credit union, or mortgage and loan company, that is subject to examination and supervision by an agency of the United States or of any State, or (2) by any State, or (3) by any lender approved by the Secretary of Veterans Affairs, pursuant to standards established by the Secretary.

Lenders recognized for automatic processing under 38 U.S.C. 1802(d)(1) and (d)(2) are referred to as supervised lenders, because they are subject to examination and supervision by Federal or State agencies. The majority of VA guaranteed loans now being made, however, are originated by nonsupervised lenders, and specific approval by VA is needed for these lenders to process loans on the automatic basis. The standards which nonsupervised lenders must meet to be approved are set forth in VA's DVB (now VBA) Circular 26–88–11. VA is currently in the process of incorporating these standards into regulations.

VA has been granting nonsupervised lenders authority to process loans on the automatic basis since 1975. To obtain this authority lenders must meet specific qualifying criteria in such areas as experience, minimum assets, and lines of credit. Since 1975, approximately 1,000 nonsupervised lenders have been granted automatic underwriting authority. In 1988, the qualifying criteria were changed to allow more lenders to participate in the program. The number of lenders granted automatic authority has steadily increased, and at present approximately 100 requests for actions are received each month from lenders applying for automatic authority or those already in the Automatic Lending Program (ALP). The actions processed include applications for automatic authority, requests for reconsideration, approval of new underwriters or regional underwriting centers, expansion of authority, and approval of agent relationships. Also, lenders are required, on a yearly basis, to submit annual audited financial statements to demonstrate that they meet minimum working capital requirements.

On August 17, 1990, VA published in the **Federal Register** (55 FR 33724) proposed amendments which set forth in regulatory form the standards nonsupervised lenders must meet to be approved to process loans on the automatic basis. VA proposed to incorporate these standards into its regulations at 38 CFR 36.4225 for the manufactured home loan program and at 38 CFR 36.4348 for loans for conventionally built homes. Please refer to the August 17, 1990, **Federal Register** for a complete discussion of the proposed regulations.

VA proposes to further amend 38 CFR 36.4225 and 36.4348 to provide for the payment of fees by lenders participating in the Automatic Lending Program. To partially defray the expenses incurred in administering this program, VA proposes to charge participating lenders the following fees: $500 for new applications; $200 for reinstatement of lapsed or terminated automatic authority; $100 for each underwriter approval, $100 for each agent approval; $100 for each regional office approval; and a minimum fee of $100 for any other VA administrative action pertaining to a lender's participation in ALP. In addition, lenders will be required to remit annual recertification fees as follows: $200 for recertification of home offices; $100 for recertification of regional offices; and $100 for each agent renewal. The agent approval and annual renewal fees will apply to both supervised and non-supervised lenders. Lender participation fees will be incorporated into VA Regulations at 38 CFR 36.4225(d) for the manufactured home loan program and at 38 CFR 36.4348(d) for conventionally built homes. Nonpayment of fees will become a reason for withdrawal of automatic authority under 38 CFR 36.4226 and 38 CFR 36.4349.

The fees are primarily based on VA's cost in processing the actions involved in operating the Automatic Lending Program. In some cases these fees are identifical to fees charged lenders by the Department of Housing and Urban Development (HUD) for participating in the Federal Housing Authority's Direct Endorsement Program. In other cases because of dissimilarities in the program the fees are different. For example, HUD has a $100 fee for branch office approval and an annual branch office recertification fee of $100. VA does not approve branches but does charge a $100 approval and a $100 annual fee for regional underwriting centers.

The Secretary hereby certifies that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The fees VA proposes to charge lenders are not large amounts and should have a minimal impact on small entities. These fees would be charged on either a one-time or infrequent basis for each lender. These fees are also very small in comparison with the operating income and expenses of home mortgage lenders. Furthermore, the fees are similar to those charged lenders by the Department of Housing and Urban Development for participating in the Federal Housing Authority's Direct Endorsement Progam.

The Secretary has also determined that the proposed regulatory amendments are not a "major rule" within the meaning of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumers or individual industries, nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing Loan programs—housing and community development, Manufactured homes, Veterans.

These amendments are proposed under the authority granted the Secretary by 38 U.S.C. 210(c), 1803(c)(1), and 1812(g).

Approved: October 15, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 36, Loan Guaranty, is proposed to be amended as follows:

PART 36—[AMENDED]

Section 36.4225 and 36.4348 are added to read as follows:

§ 36.4225 Authority to close manufactured home loans on the automatic basis.

(a) Supervised lenders of the classes described in 38 U.S.C. 1802(d)(1) and (2) are authorized by statute to process VA guaranteed manufactured home loans on the automatic basis. This category of lenders includes any Federal land bank, national bank, State bank, private bank, building and loan association, insurance company, credit union or mortgage and loan company that is subject to examination and supervision by an agency of the United States or of any State or by any State.

(b) Nonsupervised lenders of the class described in 38 U.S.C. 1802(d)(3) must apply to the Secretary for authority to process manufactured home loans on the automatic basis. The following minimum requirements must be met:

(1) *Minimum Assets.* A minimum of $50,000 of working capital must be maintained. Working capital is defined as the excess of current assets over current liabilities. Current assets are defined as cash or other assets that could readily be converted into cash within 1 year on the normal accounting or business cycle. Current liabilities are defined as obligations that would be paid within a year on a normal accounting or business cycle. The lender's latest financial statements (profit and loss statements and balance sheets), audited and certified by a CPA (certified public accountant), must accompany the application. If the date of the financial statement precedes that of the application by more than 6 months, the lender-applicant must also attach a copy of its latest internal quarterly report. In addition, the lender-applicant must agree that if the application is approved, the applicant will provide within 120 days following the end of each of its fiscal years and audited financial statement to the Director, Loan Guaranty Service, for review.

(2) *Experience.* The firm must have been actively engaged in originating manufactured home loans for at least the last 2 years. Alternately, each principal officer of the firm who is actively involved in managing origination functions must have a minimum of 2 recent years' total experience in the field of VA manufactured home mortgages in managerial functions in either the present company of employment or in companies other than that of his or her present employment. In either case, every principal officer (president and vice presidents) must submit a resumé of his or her experience in the mortgage lending field. Should the secretary and/or treasurer participate in the management of origination functions, they too must submit a resumé and meet the minimum experience requirement if the company does not meet the experience requirement. Should the lender or any of its directors or officers ever have been suspended by any Federal Agency or Department or any of its directors or officers have been a director or officer of any other lender or corporation that was so suspended, or if the lender-applicant ever had a servicing contract with an investor terminated for cause, a statement of the facts must also be submitted. Lender-applicants will submit individual requests for each branch office they wish to have approved. The parent organization must agree to accept full responsibility for the actions of branch offices.

(3) *Underwriter.* If it is proposed that all loans to be made by the lender will be submitted to its home office for approval or rejection, the lender must have at least one full-time designated underwriter in its home office. If the loans will be approved or rejected by branch managers, the lender must have at least one full-time designated underwriter in each branch. In either event, the designated underwriters must be identified and a resume on each submitted to VA. The underwriters should have at least 3 years of experience in consumer installment finance. If changes in underwriting personnel occur, the lender must notify VA.

(4) *Lines of Credit.* The identity of the source(s) of warehouse lines of credit must be revealed to VA and the applicant must agree that VA may contact the named source(s) for the purpose of verifying the information.

(5) *Secondary Market.* If the lender-applicant customarily sells the manufactured home loans it originates, it must provide a listing of all permanent investors to whom the loans are sold, including the investor's address, telephone number and names of persons to contact.

(6) *Liaison.* The lender-applicant must designate one employee to act as liaison on its behalf with VA. If possible, the lender-applicant should select employees other than VA approved underwriters to act as liaison. Officers from branch or regional offices should also be appointed to act as liaison with local VA offices. The lender must notify VA of any changes in liaison personnel.

(7) *Courtesy Closing.* The lender-applicant must certify to VA that it will not close loans on an automatic basis as a courtesy or accommodation for other mortgage lenders whether or not such lenders are themselves approved to close on an automatic basis. The lender must agree that the processing of forms other than the initial credit application will not be delegated to the dealer or developer.

(8) *Subsidiaries/Affiliates.* A lender approved for automatic processing may not close manufactured home loans on the automatic basis involving any dealership or manufacturer in which it has a financial interest or which it owns, is owned by, or with which it is affiliated. This restriction may be eliminated for lenders that can provide documentation which demonstrates to VA's satisfaction that the lender and the manufacturer and/or dealer are separate entities that operate independently of each other, and the percentage of all VA manufactured home loans originated by the lender during at least a 1-year period on which payments are past due 90 days or more is no higher than the national average for the same period for all mortgage loans.

(9) *Lender Agents.* A lender using an agent to perform a portion of the work involved in originating and closing a VA guaranteed loan on an automatic basis must take full responsibility by certification or corporate resolution for all acts, errors and omissions of the agent and its employees. Any such acts, errors or omissions will be treated as those of the lender and appropriate sanctions may be imposed against the lender and its agent.

(10) *Minimum Use of Automatic Authority.* If approved, lenders must use their automatic authority to the maximum extent possible. Any lender with automatic authority who submits a loan on the prior approval basis will be required to submit an explanation from the designated underwriter as to why the loan was not closed automatically. Such a statement will not be needed for loans that must be processed on the prior approval basis; e.g., joint loans.

(11) *Probation.* Lender-applicants meeting the requirements of this section will be approved to close loans on an automatic basis for a 1-year probationary period. Poor underwriting and/or consistently careless processing by the lender during the probationary period will be a basis for withdrawal of automatic authority.

(12) *Quality Control System.* In order to be approved as a nonsupervised lender for automatic processing authority, the lender must implement a written quality control system which ensures compliance with VA requirements. The lender must agree to furnish findings under its system to VA on demand. The elements of the quality control system must include the following:

(i) *Underwriting Policies.* Each office of the lender shall maintain copies of VA Credit Standards and all available VA underwriting guidelines.

(ii) *Corrective Measures.* The system should ensure that effective corrective measures are taken promptly when deficiencies in loan originations are identified by either the lender or VA. Any cases involving major discrepancies which are discovered under the system must be reported to VA.

(iii) *System Integrity.* The quality control system should be independent of the loan production function.

(iv) *Scope.* The review of underwriting decisions and certifications must include compliance with VA underwriting requirements, sufficiency of documentation and soundness of underwriting judgments.

(c) A lender approved to close loans on the automatic basis who subsequently fails to meet the requirements of this section must report the circumstances surrounding the deficiency and the remedial action to be taken to cure it to VA.

(Authority: 38 U.S.C. 210(c), 1803(c)(1), and 1812(g))

(d) To participate in VA's automatic program, nonsupervised lenders of the class described in 38 U.S.C. 1802(d)(3) shall pay fees as follows:

(1) $500 for new applications;

(2) $200 for reinstatement of lapsed or terminated automatic authority;

(3) $100 for each underwriter approval.

(4) $100 for each agent approval;

(5) $100 for each regional underwriting office approval;

(6) A minimum fee of $100 for any other VA administrative action pertaining to a lender's participation in ALP;

(7) $200 annually for certification of home offices;

(8) $100 annually for certification of regional offices; and

(9) $100 annually for each agent renewal.

(e) Supervised lenders of the classes described in 38 U.S.C. 1802 (d)(1) and (d)(2) participating in VA's Loan Guaranty Program shall pay fees as follows:

(1) $100 fee for each agent approval; and

(2) $100 annually for each agent renewal.

(Authority: 38 U.S.C. 1812(g))

§ 36.4348 Authority to close loans on the automatic basis.

(a) Supervised lenders of the classes described in 38 U.S.C. 1802(d) (1) and (2) are authorized by statute to process VA guaranteed home loans on the automatic basis. This category of lenders includes any Federal land bank, national bank, State bank, private bank, building and loan association, insurance company, credit union or mortgage and loan company that is subject to examination and supervision by an agency of the United States or of any State or by any State.

(b) Nonsupervised lenders of the class described in 38 U.S.C. 1802(d)(3) must apply to the Secretary for authority to process loans on the automatic basis. The following minimum requirements must be met:

(1) *Minimum Assets.* A minimum of $50,000 of working capital must be maintained. Working capital is defined as the excess of current assets over current liabilities. Current assets are defined as cash or other assets that could readily be converted into cash within 1 year on the normal accounting or business cycle. Current liabilities are defined as obligations that would be paid within a year on a normal accounting or business cycle. The lender's latest financial statements (profit and loss statements and balance sheets), audited and certified by a CPA (certified public accountant), must accompany the application. If the date of the financial statement precedes that of the application by more than 6 months, the lender-applicant must also attach a copy of its latest internal quarterly report. In addition, the lender-applicant must agree that if the application is approved, the applicant will provide within 120 days following the end of its fiscal year an audited financial statement to the Director, Loan Guaranty Service for review.

(2) *Experience.* The firm must have been actively engaged in originating VA mortgages for at least 3 recent years. Alternately, each principal officer of the firm who is actively involved in managing origination functions must have a minimum of 3 recent years' total experience in the field of VA mortgages in managerial functions in either the present company of employment or in companies other than that of his or her present employment. In either case, every principal officer (president and vice presidents) must submit a resume of his or her experience in the mortgage lending field. Should the secretary and/or treasurer participate in the management of origination functions, they too must submit a resume and meet the minimum experience requirement if the company does not meet the experience requirement. Should the lender or any of its directors or officers ever have been suspended by any Federal Agency or Department or any of its directors or officers have been a director or officer of any other lender or corporation that was so suspended, or if the lender-applicant ever had a servicing contract with an investor terminated for cause, a statement of the facts must also be submitted.

(3) *Underwriter.* The senior officer of the firm must nominate and recommend a full-time qualified employee(s) to act in the firm's behalf as underwriter(s) to personally review and make underwriting decisions associated with the submission of loans to VA which will be closed on the automatic basis. Nominees for underwriter must have a minimum of 3 years' experience in mortgage lending in reviewing credit and making underwriting decisions, with at least 2 recent years in connection with loans submitted to VA for guaranty. This experience must have been with an institutional investor originating for its own portfolio or purchasing this type of loan, or with an originator selling this type of loan to investors.

(4) *Lines of Credit.* The lender-applicant must have one or more lines of credit aggregating at least $1 million. The identity of the source(s) of warehouse lines of credit must be revealed to VA and the applicant must agree that VA may contact the named source(s) for the purpose of verifying the information.

(5) *Secondary Market.* If the lender-applicant customarily sells loans it originates, it must have a minimum of two permanent investors. These may consist of the Government National Mortgage Association (GNMA) and other Government agencies, including State housing agencies, and the Federal National Mortgage Association (FNMA).

(6) *Lender Processing.* The lender-applicant must agree that all prospective VA loans will be reviewed at its home or main office prior to closing and the decision to make or reject the loan will be made at that office by an approved underwriter, unless VA authorizes that company to operate through regional underwriting offices.

(7) *Liaison.* The lender-applicant must designate one employee and an alternate to act as liaison on its behalf with VA. If possible, the lender-applicant should select employees other than VA approved underwriters to act as liaison with VA.

(8) *Courtesy Closing.* The lender-applicant must certify to VA that it will

not close loans on an automatic basis as a courtesy or accommodation for other mortgage lenders, whether or not such lenders are themselves approved to close on an automatic basis, without the express approval of VA. However, a lender with automatic authority may close loans for which information and supporting credit data have been developed on its behalf by a duly authorized agent.

(9) *Lender Agents.* A lender using an agent to perform a portion of the work involved in originating and closing a VA guaranteed loan on an automatic basis must take full responsibility by certification or corporate resolution for all acts, errors and omissions of the agent and its employees. Any such acts, errors or omissions will be treated as those of the lender and appropriate sanctions may be imposed against the lender and its agent.

(10) *Subsidiaries/Affiliates.* A lender approved for automatic processing may not close loans on the automatic basis for any builder, real estate broker, or other entity in which it has a financial interest or which it owns, is owned by, or with which it is affiliated. However, when the only relationship that exists between a lender and a builder is a construction loan, the lender may close the permanent mortgage on an automatic basis. This restriction may be eliminated for lenders that can provide documentation which demonstrates to VA's staisfaction that the lender and builder or other affiliate are separate entities that operate independently of each other, and the percentage of all VA loans based on the affiliate's production originated by the lender during at least a 1-year period on which payments are past due 90 days or more is no higher than the national average for the same period for all mortgage loans.

(11) *Minimum Use of Automatic Authority.* If approved, lenders should use their automatic authority to the maximum extent possible. Any lender with automatic authority who submits a loan on the prior approval basis will be required to submit an explanation from VA approved underwriter as to why the loan was not closed automatically. Such a statement will not be needed for loans that must be processed on the prior approval basis; e.g., joint loans.

(12) *Probation.* Lender-applicants meeting the requirements of this section will be approved to close loans on an automatic basis for a 1-year probationary period. Poor underwriting and/or consistently careless processing by the lender during the probationary period will be a basis for withdrawal of automatic authority.

(13) *Quality Control System.* In order to be approved as a nonsupervised lender for automatic processing authority, the lender must implement a written quality control system which ensures compliance with VA requirements. The lender must agree to furnish findings under its system to VA on demands. The elements of the quality control system must include the following:

(i) *Underwriting Policies.* Each office of the mortgage shall maintain copies of VA Credit Standards and all available VA underwriting guidelines.

(ii) *Corrective Measures.* The system should ensure that effective corrective measures are taken promptly when deficiencies in loan originations are identified by either the lender or VA. Any cases involving major discrepancies which are discovered under the system must be reported to VA.

(iii) *System Integrity.* The quality control system should be independent of the mortgage loan production function.

(iv) *Scope.* The review of underwriting decisions and certifications must include compliance with VA underwriting requirements, sufficiency of documentation and soundness of underwriting judgments.

(v) *Appraisal Quality.* For lenders approved for the Lender Appraisal Processing Program (LAPP), the quality control system must specifically contain provisions concerning the adequacy and quality of real property appraisals. While the lender's quality control personnel need not be appraisers, they should have basic familiarity with appraisal theory and techniques so that they can select appropriate cases for review if discretionary sampling is used, and prescribe appropriate corrective action(s) in the appraisal review process when discrepancies of problems are identified. Copies of the lender's quality control plan or self-policing system evidencing appraisal related matters must be provided to the VA office of jurisdiction.

(c) A lender approved to close loans on the automatic basis who subsequently fails to meet the requirements of this section must report the circumstances surrounding the deficiency and the remedial action to be taken to cure it to VA.

(Authority: 38 U.S.C. 210(c), 1803(c)(1))

(d) To participate in VA's Automatic Lending Program (ALP), nonsupervised lenders of the class described in 38 U.S.C. 1802(d)(3) shall pay fees as follows:

(1) $500 for new applications;

(2) $200 for reinstatement of lapsed or terminated automatic authority;

(3) $100 for each underwriter approval;

(4) $100 for each agent approval;

(5) $100 for each regional underwriting office approval;

(6) A minimum fee of $100 for any other VA administrative action pertaining to a lender's participation in ALP;

(7) $200 annually for certification of home offices;

(8) $100 annually for certification of regional offices;

(9) $100 annually for each agent renewal.

(e) Supervised lenders of the classes described in 38 U.S.C. 1802 (d)(1) and (d)(2) participating in VA's Loan Guaranty Program shall pay fees as follows:

(1) $100 fee for each agent approval; and

(2) $100 annually for each agent renewal.

(Authority: 38 U.S.C. 1812(g))

[FR Doc. 90-27632 Filed 11-26-90; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR part 52

[FRL 3864-3]

Approval and Promulgation of Air Quality Implementation Plans; California

In the matter of California State Implementation Plan Revision, Bay Area Air Quality Management District, Fresno County Air Pollution Control District, South Coast Air Quality Management District.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) that were adopted by the Bay Area Air Quality Management District (AQMD) on March 4, 1987 and May 4, 1988, by the Fresno County Air Pollution Control District (APCD) on December 1, 1987, and by the South Coast AQMD on March 4, 1988.

The California Air Resources Board (CARB) submitted these revised rules to EPA on February 7, 1989. All of these rules consist of regulations that control emissions from organic liquids, primarily gasoline. EPA has evaluated each of the regulations in this notice and is proposing to approve those revisions because they meet the requirements of the Clean Air Act (CAA) (section 110 and/or part D), 40 CFR part 51, appendix D (as specified in the document entitled, "Issues Relating to VOC Regulation Cut Points, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register**"), and EPA policy.

DATES: Comments may be submitted to EPA up to December 27, 1990.

ADDRESSES: Comments may be sent to: Colleen McKaughan, State Implementation Plan Section A-2-3, Air and Toxics Division, Environmental Protection Agency, Region 9, 1235 Mission Street, San Francisco, CA 94103.

Copies of the rules and of EPA's Evaluation Report for each rule are available for inspection during normal business hours at EPA, Region 9. All of the rules are also available from the California Air Resources Board. Rules of specific districts are available at the districts which adopted them. Addresses are given below.

California Air Resources Board, Rule Evaluation Section, Stationary Source Division, 1219 K Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Fresno County Air Pollution Control District, 1221 Fulton Mall, Fresno, CA 93775.

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731.

FOR FURTHER INFORMATION CONTACT: John Estrem, State Implementation Plan Section (A-2-3), Air and Toxics Division, Environmental Protection Agency, Region 9, 1235 Mission Street, San Francisco, CA 94103, (415) 556-5291; FTS 556-5291.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the CAA that included the Bay Area AQMD, Fresno County APCD, and the South Coast AQMD (43 FR 8962). Because it was not possible for these Districts to reach attainment by the statutory attainment date of December 31, 1982, California requested, and EPA approved, extensions of the attainment date for ozone in these Districts to December 31, 1987. On May 26, 1988, EPA notified the Governor of California that the Bay Area, Fresno and South Coast Districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP call). The South Coast and Fresno Ozone Attainment Plans were subseqently disapproved by EPA on January 22, 1988 (53 FR 1780) and March 16, 1990 (55 FR 7878), respectively. The SIP approved versions of the rules in this notice, except for Bay Area AQMD's Rule 8-5, were specified in EPA's SIP call as being deficient and requiring revision to conform to EPA policy.

The State of California submitted rule revisions for incorporation into its SIP on February 7, 1989. Four of those revisions are proposed for approval in this notice. The revisions in this notice consist of regulations that control emissions from organic liquids, such as gasoline, for the primary purpose of achieving the National Ambient Air Quality Standard (NAAQS) for ozone. The emissions from organic liquids consist mainly of volatile organic compounds, (VOCs), which, when released into the atmosphere, lead to the formation of ozone and ultimately smog. A list of the regulations by district appears below. EPA's evaluation and proposed action follow the list.

List of Regulations

Bay Area AQMD:
- Regulations 8, Rule 5 (Rule 8-5), *Storage of Organic Compounds*
- Regulations 8, Rule 7 (Rule 8-7), *Gasoline Dispensing Facilities*

Fresno County APCD:
- Rule 412, *Bulk Gasoline and Other Organic Liquid Loading Facilities*

South Coast AQMD:
- Rule 461, *Gasoline Transfer and Dispensing*

Discussion

VOC rules which apply to ozone nonattainment areas must be fully enforceable and strengthen or maintain the existing federally enforceable State Implementation Plan (SIP) in order to be approved by EPA. In addition, all VOC rules must satisfy the CAA requirements set forth in section 110 and part D, comply with EPA requirements in 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans), and satisfy EPA policies such as those in appendix D (November 24, 1987; 52 FR 45105), and in the document entitled, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register**". (Reference in this notice to appendix D deficiencies will actually refer to the "Clarifications to Appendix D" document.)

EPA also requires that all SIP revisions for areas designated as ozone nonattainment contain, as a minimum, regulations that provide for the implementation of reasonably available control technology (RACT) for major stationary sources of VOC emissions. For this purpose, EPA has prepared a series of Control Technique Guideline (CTG) documents which specify the minimum requirements that a rule must contain in order to be approved into the SIP. The CTG documents applicable to this notice are EPA-450/2-77-026, *Control of Hydrocarbons From Tank Truck Gasoline Loading Terminals* and EPA-450/2-77-035, *Control of Volatile Organic Emissions From Bulk Gasoline Plants.* Though not an official CTG, EPA further references the document, *Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations,* U.S. EPA, Office of Air Quality Planning and Standards, November 1975. EPA has evaluated the rules in this notice to determine if they meet the above requirements.

The Bay Area AQMD Rule 8-5, "*Storage of Organic Compounds,*" includes the following changes: Expands the applicability of the rule to include organic liquids with vapor pressures between 0.5 and 1.5 psia; eliminates the equivalency provisions which allowed the Air Pollution Control Officer discretion to approve new control equipment; requires that all vapor control systems be at least 95 percent efficient (by weight); requires that records be kept for storage containers with capacities between 20,000 and 40,000 gallons; and sets a maximum allowable time interval between District certification of tank vapor seals. The rule additionally includes new definitions, tightens the guidelines for certain exemptions, specifies certain inspection procedures, and includes a table which itemizes all organic liquids and compounds which are subject to this rule. The rule, as amended, contains no appendix D or other EPA policy deficiencies and therefore it is being proposed for approval under section 110 and part D of the Clean Air Act.

The revisions to Bay Area AQMD Rule 8-7, "*Gasoline Dispensing Facilities,*" consist of the following: Changes the Phase I and Phase II exemption cutoff from 180,000 gallons to 60,000 gallons capacity; requires that facilities equipped only with Phase II vapor control install Phase I vapor control as well; adds definitions of "vapor tight" and "gasoline dispensing facility"; and requires that all gasoline tanks greater than 260 gallons capacity, unless otherwise exempted, utilize both Phase I and Phase II vapor recovery.

Rule 8–7 does, however, contain two Appendix D deficiencies. The first is the exemption of storage tanks which are used primarily for the fueling of implements of husbandry. EPA allows exemption of such storage tanks if they are used exclusively for the fueling of husbandry equipment and if they are 550 gallons in capacity or less. The second deficiency is the newly added definition of "Vapor Tight." EPA requires that the determination of vapor tight be made with a specified and approved test method. The District, however, has written the definition in such a way that the determination of vapor tight can be made based on a visual inspection alone. Such a method is not enforceable by EPA. However, it is EPA's understanding that the Bay Area Air Quality Management District did not intend to provide an alternative procedure, but rather to indicate that, in fact, the visual procedure is routinely employed to supplement the normal procedure of using an approved test method. EPA expects the definition of "vapor tight" to be corrected by the District in the near future.

EPA is therefore proposing to approve Rule 8–7 into the SIP under section 110 of the CAA because, despite the above noted deficiencies, the reduced throughput cutoff exemption for Phase I and Phase II vapor controls is expected to significantly reduce VOC emissions within the District. It is also anticipated that the emissions reduction achieved by restricting the allowed exemptions will more than offset the possible increased emissions due to exempting tanks used for husbandry which are greater than 550 gallons in capacity. However, because of the appendix D deficiencies noted above, EPA is not proposing to approve Rule 8–7 into the SIP under part D.

Fresno County APCD Rule 412, "*Bulk Gasoline and Other Organic Liquid Loading Facilities*," requires that organic loading facilities with throughputs of less than 20,000 gallons/day be required to utilize vapor recovery systems. The rule also requires that all transfer equipment be vapor tight and leak free and that only bottom loading be utilized for the transfer of organic liquids. The rule's appendix D deficiencies consist mainly of its failure to require any recordkeeping provisions and in its definition of a vapor leak, which does not conform to EPA's guidance.

EPA proposes that Fresno Rule 412 be approved into the SIP under section 110 of the CAA because, despite these deficiencies, the expanded applicability of the rule, which includes all facilities with throughputs less than 20,000 gallons/day (all gasoline bulk plants as defined by EPA), is expected to greatly reduce VOC emissions within the District. The emissions reduction achieved will more than offset the deficiencies noted above. However, because of the appendix D deficiencies noted above, EPA is not proposing that Rule 412 be approved into the SIP under part D.

The South Coast AQMD's amended Rule 461, "*Gasoline Transfer and Dispensing*," adds several specific equipment and procedural requirements for Phase I and Phase II vapor control systems, such as: Restrictions on hatch openings; dry break fittings to prevent above ground leaks; and vapor tight gaskets and seals for various components. The rule also itemizes specific Phase II equipment defects subject to a violation under the requirements of this rule. The proposed rule requires that all vapor recovery equipment be clearly marked with the name of the certified manufacturer and that each facility utilizing a Phase II vapor recovery system conspicuously post operating instructions and warning signs regarding the breathing of fumes. The rule also eliminates most of the previously contained vapor control exemptions, such as that for some small capacity storage containers and some outlying communities of the South Coast AQMD.

The rule's revisions fail to specify any recordkeeping requirements or provide that the exemption for storage tanks servicing husbandry equipment shall apply only to those tanks which exclusively service such equipment and which are less than 550 gallons capacity. EPA, however, does not consider these deficiencies significant compared to the overall reduction in VOC emissions expected from the adoption of this rule. Since only certain small capacity tanks are exempted, the failure to specify any recordkeeping requirements will not significantly impede the determination of applicability to this rule. It is also anticipated that the emissions reductions achieved by limiting the allowed exemptions will more than offset the possible increased emissions due to exempting tanks used for husbandry which are greater than 550 gallons in capacity. However, because of these appendix D deficiencies, EPA is not proposing to approve Rule 461 into the SIP under part D.

EPA has evaluated these rules to determine whether they meet the requirements of the Clean Air Act (section 110 and/or part D), 40 CFR part 51, appendix D (as specified in the document entitled, "Issues Relating to VOC Regulation Cut Points, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 Federal Register"), and EPA policy. EPA has also determined whether the revisions to these rules strengthen and maintain the existing SIP. All of the rules being proposed for approval in this notice limit the emissions of organic vapors during the storage and/or transfer of organic liquids, such as gasoline. These revisions include, but are not limited to: Additional and revised definitions; expanded applicability of vapor control; elimination of certain exemptions; elimination of equivalent control allowances, and increased recordkeeping requirements.

The Bay Area AQMD Rule 8–5 is proposed for approval under both section 110 and part D of the Clean Air Act (CAA) because it significantly strengthens the existing SIP and because it contains no appendix D or other EPA policy deficiencies. The Bay Area AQMD Rule 8–7, The Fresno County APCD Rule 412, and the South Coast AQMD Rule 461 are proposed for approval only under section 110 of the CAA because, although they strengthen the existing SIP, the rules contain appendix D or other EPA policy deficiencies. These deficiencies, however, are expected to allow only minor additional emissions relative to the anticipated emissions reductions due to the increased controls required by the new rules.

Proposed Action

EPA is proposing the approval of the following rules under section 110 of the Clean Air Act:

Bay Area AQMD:
- Regulation 8, Rule 5 (Rule 8–5), *Storage of Organic Compounds*
- Regulation 8, Rule 7 (Rule 8–7), *Gasoline Dispensing Facilities*

Fresno County APCD:
- Rule 412, *Bulk Gasoline and Other Organic Liquid Loading Facilities*

South Coast AQMD:
- Rule 461, *Gasoline Transfer and Dispensing*

In addition, EPA is proposing the approval of the following rule under both part D and section 110 of the Clean Air Act:

Bay Area AQMD:
- Regulation 8, Rule 5 (Rule 8–5) *Storage of Organic Compounds*

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under 5 U.S.C. section 605(b), I certify that these VIP revisions will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Reporting and Recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: November 16, 1990.

John Wise,

Acting Regional Administrator.

[FR Doc. 90–27814 Filed 11–26–90; 8:45 am]

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40 CFR Part 52

[FRL–3864–4]

Approval and Promulgation of Air Quality Implementation Plans; California

In the matter of California State Implementation Plan Revision, Fresno County Air Pollution Control District, Madera County Air Pollution Control District, South Coast Air Quality Management District.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to disapprove revisions to the California State Implementation Plan (SIP) that were adopted by the Fresno County Air Pollution Control District (APCD) and the Madera County Air Pollution Control District on December 1, 1987 and January 5, 1988, respectively, and by the South Coast Air Quality Management District (AQMD) on April 1, 1988.

The California Air Resources Board (CARB) submitted these new and revised rules to EPA on February 7, 1989. All of these rules consist of regulations that control emissions from organic liquids, primarily gasoline. EPA has evaluated each of the regulations in this notice and is proposing to disapprove these revisions because they do not meet the requirements of the Clean Air Act (CAA) (section 110 and/or part D), or of appendix D (as specified in the document entitled, Issues Relating to VOC Regulation Cut Points, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register**).

DATES: Comments may be submitted to EPA up to December 27, 1990.

ADDRESSES: Comments regarding this proposal may be sent to: Colleen McKaughan, State Implementation Plan, Section A–2–3, Air and Toxics Division, Environmental Protection Agency, Region 9, 1235 Mission Street, San Francisco, CA 94103.

Copies of the rules and of EPA's Evaluation Report for each rule are available for inspection during normal business hours at EPA, Region 9. All of the rules are also available from the California Air Resources Board. Rules of specific districts are available at the districts which adopted them. Addresses are given below.

California Air Resources Board, Rule Evaluation Section, Stationary Source Division, 1219 K Street, Sacramento, CA 95814.

Fresno County Air Pollution Control District, 1221 Fulton Mall, Fresno, CA 93775.

Madera County Air Pollution Control District, 135 West Yosemite Avenue, Madera, CA 93637.

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731.

FOR FURTHER INFORMATION CONTACT: John Estrem, State Implementation Plan Section A–2–3, Air and Toxics Division, Environmental Protection Agency, Region 9, 1235 Mission Street, San Francisco, CA 94103, (415) 556–5291; FTS 556–5291.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the CAA that included Fresno County APCD, Madera County APCD and the South Coast AQMD (43 FR 8962). Because it was not possible for the Fresno and South Coast Districts to reach attainment by the statutory attainment date of December 31, 1982, California requested, and EPA approved, extensions of the attainment date for ozone in those Districts to December 31, 1987. Madera County did not receive an extension of the attainment deadline to 1987 because, as a rural ozone area (an area with ozone National Ambient Air Quality Standard (NAAQS) violations, but without an urbanized area of 200,000 population (1970 census), EPA policy does not require a demonstration of attainment and maintenance as a criterion for SIP approval. On May 26, 1988, EPA notified the Governor of California that the Fresno and South Coast Districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP call). The South Coast and Fresno Ozone Attainment Plans were subsequently disapproved by EPA on January 22, 1988 (53 FR 1780) and March 16, 1990 (55 FR 7878), respectively. The rules in this notice submitted by Fresno County APCD are specified in EPA's SIP call as being deficient and requiring revision to conform to EPA policy. Although it was not included in EPA's SIP call, Madera County, as a designated nonattainment area for ozone, is nevertheless required to meet the provisions of part D of the CAA. There is, as yet, insufficient emissions data to determine whether the South Coast Rule 1149 will come under EPA's SIP call criteria. However, as with Madera County, the South Coast AQMD must also meet the provisions of part D of the CAA for all of its rules.

The State of California submitted rule revisions for incorporation into its SIP on February 7, 1989. Three of those revisions are proposed for disapproval in this notice. The revisions addressed in this notice consist of regulations that control emissions from organic liquids, such as gasoline, for the primary purpose of achieving the National Ambient Air Quality Standard (NAAQS) for ozone. The emissions from organic liquids consist mainly of volatile organic compounds (VOCs), which, when released into the atmosphere, lead to the formation of ozone and ultimately smog. A list of the regulations by district appears below. EPA's evaluation and proposed action follow the list.

List of Regulations

Fresno County APCD:
- Rule 411, *Gasoline Transfer into Storage Containers*

Madera County APCD:
- Rule 417, *Gasoline Transfer into Stationary Containers;* Rule 419, *Organic Liquid Loading*

South Coast AQMD:
- Rule 1149, *Storage Tank Degassing*

Discussion

VOC rules which apply to ozone nonattainment areas must be fully

enforceable and maintain or strengthen the existing federally enforceable State Implementation Plan (SIP) in order to be approved by EPA. In addition, all VOC rules must satisfy the CAA requirements set forth in Section 110 and part D, comply with EPA requirements in 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans), and satisfy EPA policies such as those in appendix D (November 24, 1987; 52 FR 45105), and in the document entitled, "Issues Relating To VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register." (Reference in this notice to appendix D deficiencies will actually refer to the "Clarifications to appendix D" document.)

EPA also requires that all SIP revisions for areas designated as ozone nonattainment contain, as a minimum, regulations that provide for the implementation of reasonably available control technology (RACT) for major stationary sources of VOC emissions. For this purpose, EPA has prepared a series of Control Technique Guideline (CTG) documents which specify the minimum requirements that a rule must contain in order to be approved into the SIP. The CTG documents applicable to this notice are EPA–450/2–77–026, *Control of Hydrocarbons From Tank Truck Gasoline Loading Terminals* and EPA–450/2–77–035, *Control of Volatile Organic Emissions From Bulk Gasoline Plants*. Though not an official CTG, EPA further references the document entitled, "*Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations*, U.S. EPA, Office of Air Quality Planning and Standards, November, 1975." EPA has evaluated the rules in this notice to determine if they meet the above requirements. The Fresno, Madera and South Coast rule evaluations are given below in order by District and rule number.

The submitted Fresno County APCD Rule 411, "*Gasoline Transfer into Stationary Storage Containers*," strengthens the existing rule by eliminating the vapor control exemption for vehicles which exclusively service low-throughput exempted bulk plants, as well as the vapor control exemption for those same vehicles servicing retail gasoline stations. However, Fresno Rule 411 contains appendix D and CTG deficiencies, such as: It does not require that all gasoline vapor recovery systems be CARB-certified; it does not include a definition of "vapor tight"; it does not specify that above ground storage containers be equipped with pressure-vacuum valves; it does not specify EPA Reference Method 21 for the determination of a leak, or EPA Reference Method 27 for the determination of the leak tightness of gasoline delivery vehicles; and it fails to specify and recordkeeping requirements. For these reasons, EPA is proposing to disapprove Fresno Rule 411 under both section 110 and Part D of the Clean Air Act.

The revised Madera County APCD Rule 417, "*Gasoline Transfer into Stationary Storage Containers*," strengthens the existing SIP by limiting the exemption of certain gasoline storage containers from vapor control to those containers having a capacity of 2,000 gallons or less and that were installed prior to July 1, 1975. The rule also limits the exemption of vehicles from vapor controls to those which exclusively service exempt tanks, requires that all equipment be maintained in good working order, and that certain exemptions will not apply unless the facility is in full compliance of the rule.

Madera Rule 417, however, contains several appendix D and CTG deficiencies. For example, the newly added definitions of "vapor tight" and "leak free" are vague and allow for the possibility of alternate interpretations. The rule also fails to require that all gasoline vapor recovery systems be CARB-certified or to include test methods for the testing of "vapor tight" equipment and gasoline delivery vehicles. The rule fails to include some general operational and maintenance procedures, such as: that gasoline will not be spilled, stored in open containers, or disposed of into sewers. Because the proposed rule does not significantly strengthen the SIP and because several of the rule provisions are not federally enforceable due to a lack of test methods and specific definitions of "vapor tight" and "leak free", EPA is proposing to disapprove Madera Rule 417 under both section 110 and part D of the Clean Air Act.

The changes to Madera Rule 419, "*Organic Liquid Loading*," consist of: adopting a standard District organization format; including the requirement, "* * * under design conditions * * *" with respect to the venting of vapors to the vapor collection and/or destruction system; and the addition of incineration as an option for vapor destruction.

While the changes to Madera Rule 419 strengthen the existing SIP somewhat, the deficiencies in Rule 419 are many. In particular, the rule fails to require that gasoline vapor recovery systems be CARB-certified, that compliance records be maintained, that the total amount of allowed emissions be limited to no more than 80 mg VOC per liter of gasoline transferred, or to specify any test methods. Since the proposed rule is nearly identical in its requirements to the existing SIP, and since it contains significant appendix D and CTG deficiencies, EPA is proposing to disapprove Madera Rule 419 under both section 110 and part D of the Clean Air Act.

The South Coast Rule 1149, "*Storage Tank Degassing*," is a new rule which sets certain vapor control standards for previously uncontrolled emission sources. The rule requires vapor controls during the degassing of above ground tanks greater than 150,000 liters (39,630 gallons) storing organic liquids with vapor pressures greater than 2.6 psi and for tanks smaller than 150,000 liters, but larger than 75,000 liters (19,815), storing organic liquids with vapor pressures greater than 3.9 psi. Additionally, vapor controls are required for the degassing of underground storage tanks greater than 500 gallons capacity and storing organic liquids with vapor pressures greater than 3.9 psi. Specific control strategies are suggested, such a liquid balancing, negative pressure displacement, or a refrigerated vapor condenser.

Rule 1149 contains several appendix D deficiencies which make it unenforceable by EPA. The rule does not specify that tank owners or operators maintain records of the vapor pressures of the stored liquids, nor does it specify test methods to determine compliance with the rule. Without strict recordkeeping provisions, EPA would be unable to determine whether or not a facility was required to meet the provisions of the rule and without specific test methods, EPA would be unable to determine whether or not a facility was meeting the provisions of the rule. The rule also requires that use of any vapor control equipment not specified in the rule must be at least "90% efficient in reducing VOC emissions * * *", but it does not specify that use of any vapor control equipment specified in the rule must meet any control efficiency. With these deficiencies, it is unclear whether the SIP would, in fact, be strengthened with the approval of this rule. For these reasons, EPA is proposing to disapprove Rule 1149 under both section 110 and part D of the Clean Air Act.

In summary, all of the rules being considered in this notice limit the emissions of organic vapors during the storage and/or transfer of organic liquids, primarily gasoline. The revisions to these rules consist mainly of new definitions and the elimination of certain exemptions. Fresno County APCD Rule 411, Madera County Rules 417 and 419, and South Coast AQMD rule 1149 are all proposed for disapproval under both section 110 and part D of the CAA because they contain significant appendix D or other EPA policy deficiencies. Although Fresno Rule 411 attempts to strengthen the existing SIP by eliminating certain exemptions, the rule deficiencies create significant enforceability problems. The Madera County APCD Rules 417 and 419, in addition to containing appendix D and CTG deficiencies, do not significantly strengthen, or even change, the existing SIP. And although the South Coast AQMD Rule 1149 is a new rule which requires vapor controls on previously uncontrolled emission sources, the rule does not include specific test methods and recordkeeping requirements. EPA has evaluated these rules and found that they do not meet all the requirements of the Clean Air Act (part D and/or section 110), appendix D (as specified in the document entitled, "Issues Relating to VOC Regulation Cut Points Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 Federal Register"), 40 CFR part 51, and/or EPA Policy. PA has also determined that they do not strengthen the existing California SIP.

Proposed Action

EPA is proposing to disapprove the following rules under both section 110 and Part D of the Clean Air Act:

Fresno County APCD
- Rule 411, *Gasoline Transfer into Storage Containers*

Madera County APCD:
- Rule 417, *Gasoline Transfer into Stationary Containers* Rule 419, *Organic Liquid Loading*

South Coast AQMD:
- Rule 1149, *Storage Tank Degassing*

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

This action imposes no new regulations on the subject Districts. Therefore, under 5 U.S.C. section 605(b), I certify that these SIP revisions will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Reporting and Recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: November 16, 1990.

John Wise,

Acting Regional Administrator

[FR Doc. 90–27815 Filed 11–26–90; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 901199–0299]

Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed 1991 initial specifications of groundfish and prohibited species catch allowances; request for comments.

SUMMARY: NOAA proposes 1991 initial specifications of total allowable catches (TACs) and apportionments of the TAC for each category of groundfish in the Bering Sea and Aleutian Islands (BSAI) area. This action is necessary to solicit public comments on preliminary determinations of the initial specifications of TAC and apportionments of groundfish that may be harvested in the BSAI area in 1991. The intended effect of this notice is to provide the Secretary of Commerce (Secretary) with the best available information on which to base final 1991 initial specifications of TAC and apportionments and to provide opportunity for public participation in this decision-making process.

DATE: Comments will be received on or before December 27, 1990.

ADDRESSES: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668, or be delivered to Federal Building Annex, suite 6, 9109 Mendenhall Mall Road, Juneau, Alaska. The preliminary Stock Assessment and Fishery Evaluation (SAFE) Report may be requested from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter, Fishery Management Biologist, NMFS, 907–586–7229, or Hal Weeks, Groundfish Plan Coordinator, North Pacific Fishery Management Council, 907–271–2809.

SUPPLEMENTARY INFORMATION: Groundfish fisheries in the BASI area, governed by Federal regulations at 50 CFR 611.93 and part 675, implement the Fishery Management Plan for Bering Sea/Aleutian Island Groundfish (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) and approved by the Secretary under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The FMP and implementing regulations require the Secretary, after consultation with the Council, to specify each calendar year the TAC for each target species and the "other species" category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (§ 675.20(a)(2)). The regulations further require the Secretary annually to publish preliminary TACs and the apportionments of each TAC and solicit public comment on these amounts for a period of 30 days (§ 675.20(a)(7)). Table 1 and this notice satisfy this requirement. After considering all timely comments and after consultation with the Council, the Secretary will publish the final annual TACs for 1991 and initial apportionments as soon as practicable after December 15, 1990.

TABLE 1.—PRELIMINARY 1991 TOTAL ALLOWABLE CATCH (TAC) AND APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA [1]

Species	TAC	Initial TAC [2]	DAP [3]	JVP [4]	DAH [5]	TALFF [6]
Pollock:						
BS	1,280,000	1,088,000	1,088,000	0	1,088,000	0
AI	100,000	85,000	85,000	0	85,000	0
Pacific cod	227,000	192,950	192,950	0	192,950	0
Sablefish:						
BS	2,700	2,295	2,295	0	2,295	0
AI	4,500	3,825	3,825	0	3,825	0
Atka mackerel	21,000	17,850	17,850	0	17,850	0
Yellowfish sole	207,650	176,502	12,750	163,752	176,502	0
Rock sole	60,000	51,000	51,000	0	51,000	0
Greenland turbot	7,000	5,950	5,950	0	5,950	0
Arrow tooth flounder	10,000	8,500	8,500	0	8,500	0
Other flatfish	60,150	51,128	10,200	40,928	51,128	0
Pacific Ocean perch:						
BS	6,300	5,355	5,355	0	5,355	0
AI	6,600	5,610	5,610	0	5,610	0
Other rockfish:						
BS	500	425	425	0	425	0
AI	1,100	935	935	0	935	0
Squid	500	425	425	0	425	0
Other species	5,000	4,250	4,250	0	4,250	0
Total	2,000,000	1,700,000	1,495,320	204,680	1,700,000	0

[1] Amounts are in metric tons and apply to entire Bering Sea (BS) and Aleutian Islands (AI) area unless otherwise specified.
[2] Initial TAC (ITAC) = 0.85 of TAC; initial reserve = TAC − ITAC = 300,000.
[3] DAP = domestic annual processing.
[4] JVP = joint venture processing.
[5] DAH = DAP + JVP.
[6] TALFF = total allowable level of foreign fishing.

The specified TACs for each species are based on the best available biological and socioeconomic information. The Council, its Advisory Panel, and the Scientific and Statistical Committee annually review biological information about the condition of groundfish stocks in the BSAI area. This information is compiled by the Council's BSAI groundfish Plan Team and presented in the SAFE Report. The Plan Team annually produces this report as the first step in the process of specifying TACS. The SAFE Report contains a review of the latest scientific analyses; estimates of each species' biomass, maximum sustainable yield (MSY), acceptable biological catch (ABC), and other biological parameters; and summaries of the economic condition of groundfish fisheries off Alaska. The most recent SAFE Report is dated November 1989. Stock assessments based on biological survey work done during the summer of 1990 will be used in a new edition of the SAFE Report, published by and available from the Council in November 1990. Estimated ABCs for the 1991 fishing year will be based on these latest stock assessments. For purposes of this notice, the ABCs adopted by the Council for the 1990 fishing year are used as ABCs for the 1991 fishing year and are the best available scientific information.

Procedure for Estimating ABC

Calculation of ABC varies among species depending on the quality of available data and prior knowledge of a species' stock status. The Plan Team has adopted three steps for estimating ABCs. First, the exploitable biomass of a stock is estimated. Second, the ABC for a stock is calculated by multiplying an exploitation rate times the estimated exploitable biomass. Various exploitation rates or fishing mortality rates (F) may be used in this calculation. For example, the exploitation rate that would produce maximum sustainable yield (F_{MSY}) may be used when the stock is known to be in good condition, high in abundance, and not in danger of drastic declines. When particular caution is indicated, the more conservative $F_{0.1}$ harvest strategy is used to determine an exploitation rate. This strategy determines a level of F at which the marginal increase in yield per recruit due to an increase in F is 10 percent of the marginal yield per recruit in a newly exploited fishery. Recruitment refers to the growth of juvenile fish into the adult or exploitable population. Generally, the $F_{0.1}$ harvest strategy produces a more conservative exploitation rate than F_{MSY}. Another alternative is to use historical exploitation rates when historical fishery data indicate that a stock is not adversely affected by such rates. Finally, an empirical estimation of ABC based on historical catch levels may be used when information is insufficient to estimate the biomass of a stock. Details of this and other calculation procedures are discussed in the November 1989 SAFE Report, available from the Council at the previously cited address.

A summary of ABCs for each species for 1990 and other biological data from the November 1989 SAFE Report is provided in the preliminary SAFE Report for 1991. Before the Council's December 1990 meeting, the Plan Team will revise the November 1989 SAFE Report at its November 1990 meeting and produce a final SAFE Report for 1991 with ABC recommendations. In December 1990, the Council will develop TAC recommendations to the Secretary based on the ABCs and adjusted for other biological and socioeconomic considerations. The TACs may be further adjusted so that their sum does not exceed the maximum optimum yield allowed by the FMP.

For purposes of this notice, the Council recommended the TACs and apportionments in Table 1 and based them on the best available biological and socioeconomic information. Because there are no new data, the Council approved, for purposes of public comment, the same preliminary ABC estimates, TACs, and apportionments for the 1991 fishing year as those published in the final notice of initial specifications for the 1990 fishing year (55 FR 1434, January 16, 1990).

Apportionment of TAC

As required by § 675.20(a)(3), the amount of groundfish in each species TAC initially is reduced by 15 percent. The sum of these 15 percent amounts is the reserve. The reserve is not designated by species or species group and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, provided that such reapportionments do not result in overfishing.

The initial TAC (ITAC) for each target species and the "other species" category at the beginning of the year (equal to 85 percent of TAC) is then apportioned between the domestic annual harvest (DAH) category and the total allowable level of foreign fishing (TALFF). Each DAH amount is further apportioned between two categories of U.S. fishing vessels. The domestic annual processing (DAP) category includes U.S. vessels that process catch on board or deliver it to U.S. fish processors. The joint venture processing (JVP) category includes U.S. fishing vessels working in joint ventures with foreign processing vessels authorized to receive catches in the U.S. exclusive economic zone.

In consultation with the Council, the initial amounts of DAP and JVP are determined by the Director, Alaska Region, NMFS (Regional Director). The initial DAP and JVP amounts for each target species and the "other species" category equal the actual DAP and JVP of the previous year plus any additional amounts the Regional Director projects will be used by the U.S. fishing industry during the coming year, subject to available TAC and accommodation of DAP. This projection is based on the latest reliable information that is available, including industry surveys, market data, and the stated intentions of U.S. fishing industry representatives (§ 675.20(a)(4)).

The preliminary TACs, ITACs, reserve, and initial apportionments of groundfish in the BSAI area for 1991 are given in Table 1 of this notice. For purposes of this notice and the reasons stated above, the TACs and apportionments in Table 1 are the same as those published in Table 1 of the final notice of initial specifications for groundfish for 1990 (55 FR 1434, January 16, 1990).

Amendment 16 to the FMP (proposed rule published September 18, 1990, at 55 FR 38347) requires one quarter of the preliminary DAP, JVP, and TALFF (Table 2) to be made available on an interim basis for harvest at the beginning of the fishing year (January 1) until superseded by final notice of initial specifications.

TABLE 2.—INTERIM 1991 INITIAL TOTAL ALLOWABLE CATCH (ITAC) AND APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLAND AREA [1]

Species	Interim ITAC [2]	Interim DAP [3]	Interim DAH [4]	Interim DAH[5]
Pollock:				
BS	272,000	272,000	0	272,000
AI	21,250	21,250	0	21,250
Pacific cod	48,238	48,238	0	48,238
Sablefish:				
BS	574	574	0	574
AI	956	956	0	956
Atka mackerel	4,462	4,462	0	4,462
Yellowfin sole	44,126	3,188	40,938	44,126
Rock sole	12,750	12,750	0	12,750
Greenland turbot	1,488	1,488	0	1,488
Arrowtooth flounder	2,125	2,125	0	2,125
Other flatfish	12,782	2,550	10,232	12,782
Pacific Ocean perch:				
BS	1,339	1,339	0	1,339
AI	1,402	1,402	0	1,402
Other rockfish:				
BS	106	106	0	106
AI	234	234	0	234
Squid	106	106	0	106
Other species	1,062	1,062	0	1,062
Total	425,000	373,830	51,170	425,000

[1] Amounts, are in metric tons and apply to entire Bering Sea (BS) and Aleutian Islands (AI) area unless otherwise specified.
[2] Amounts are 25 percent of ITAC amounts in Table 1.
[3] DAP = domestic annual processing; amounts are 25 percent of ITAC amounts in Table 1.
[4] JVP = joint venture processing; amounts are 25 percent of ITAC amounts in Table 1.
[5] DAH = DAP + JVP; amounts are 25 percent of ITAC amounts in Table 1.

If the TACs and apportionments in Table 1 of this notice are adopted by the Council and the Secretary as the final specifications for 1991, then an initial apportionment from reserve to JVP would be needed to prevent wastage of other groundfish species taken as bycatch in the JVP fishery targeting on yellowfin sole and other flatfish. Such an apportionment was made in the final notice of initial groundfish specifications for 1990 (see Table 3 at 55 FR 1434).

These preliminary specifications are subject to change as a result of public comment, analysis of the current biological condition of the groundfish stocks, results of a November 1990 survey of domestic processing intentions in 1991, and consultation with the Council at its meeting scheduled for December 3–7, 1990.

Prohibited Species Catch (PSC) Limits

Crab and Pacific Halibut

Amendment 16 to the FMP (proposed rule published September 18, 1990 at 55 FR 38347) establishes PSC limits for red king crab and *Chionoecetes bairdi* Tanner crab in specific zones of the Bering Sea subarea and for Pacific halibut throughout the BSAI area. The proposed PSC limits are:

—200,000 red king crabs applicable to Zone 1,
—1 million *C. bairdi* Tanner crabs applicable to Zone 1,
—3 million *C. bairdi* Tanner crabs applicable to Zone 2,
—4,400 mt catch of Pacific halibut (primary PSC limit) applicable to Zones 1 and 2H, and

—5,333 not catch of Pacific halibut (secondary PSC limit) applicable to the entire BSAI area.

Amendment 16 apportions each PSC limit into PSC allowances that are assigned to each of five specified fisheries. The Council adopted the provisional apportionments proposed in Table 3 of this notice, based on the currently anticipated bycatch of crabs and Pacific halibut during the 1991 fishing year. These estimates may be revised in December 1990 when the 1990 bycatch performance is better known and fishing patterns in 1991 can be better anticipated.

TABLE 3—PRELIMINARY 1991 PROHIBITED SPECIES CATCH ALLOWANCES

Fisheries	Zone 1	Zone 2	Zones 1+2H Primary	BSAI-wide Secondary
Red king crab, animals:				
DAP flatfish	21,007			
DAP rocksole	150,584			
DAP turbot	3			
DAP other	5,982			
JVP flatfish	22,424			
C. bairdi Tanner crab, animals:				
DAP flatfish	55,543	364,920		
DAP rocksole	557,077	288,275		
DAP turbot	0	224,520		
DAP	295,910	1,886,864		
JVP flatfish	91,470	235,421		
Pacific halibut, metric tons:				
DAP flatfish			57	69
DAP rocksole			562	681
DAP turbot			363	440
DAP other			2,519	3,053
JVP flatfish			899	1,090

Amendment 16 to the FMP also requires that appropriate PSC amounts (see Table 4) be made available on an interim basis for harvest at the beginning of the fishing year (January 1) until superseded by final notice of initial specifications.

TABLE 4.—INTERIM 1991 PROHIBITED SPECIES CATCH ALLOWANCES [1]

Fisheries	Zone 1	Zone 2	Zones 1+2H Primary	BSAI-wide Secondary
Red king crab, animals:				
DAP flatfish	5,252			
DAP rocksole	37,646			
DAP turbot	1			
DAP other	1,496			
JVP flatfish	5,606			
C. bairdi Tanner crab, animals:				
DAP flatfish	13,886	91,230		
DAP rocksole	139,269	72,069		
DAP turbot	0	56,130		
DAP other	73,978	471,716		
JVP flatfish	22,868	58,855		
Pacific halibut, metric tons:				
DAP flatfish			14	17
DAP rocksole			140	170
DAP turbot			91	110
DAP other			630	763
JVP flatfish			225	272

[1] Amounts are 25 percent of those in Table 3.

Seasonal Apportionments of PSC Limits

Amendment 16 to the FMP also authorizes establishing seasonal apportionments of bycatch PSC allowances among the fisheries to which bycatch has been apportioned. No preliminary seasonal apportionments are proposed in this notice; however, the Council may recommend them during the December 1990 meeting. The public is invited to submit comments about appropriate seasonal apportionments as part of the final specification process.

Groundfish PSC Limits

No PSC limits for groundfish species are specified in this notice. Authority to specify annual PSC limits for groundfish species or species groups for which the TAC can be completely harvested by domestic fisheries is provided at § 675.20(a)(6). In practice, these PSC limits apply only to JVP fisheries for species which have a zero JVP apportionment. All anticipated JVP incidental catches of groundfish could be accommodated from the reserve. If the specifications proposed in this notice are made final, amount apportioned from reserve would be similar to the apportionments in Table 3 of the final notice of initial specifications for groundfish for 1990 (55 FR 1434). Apportionment of groundfish from the reserve for this purpose would reduce waste by allowing incidental catches to be retained and used because any target species or "other species" category of groundfish that has a zero amount specified for JVP must be treated in the same manner as a prohibited species and discarded. No directed JVP fishing will be allowed on amounts of grondfish provided for bycatch purposes. No PSC allowances are proposed for foreign fisheries since no allocations are recommended for foreign directed fishing.

Pollock Split Season

The Council has proposed Amendment 14 to the FMP that allows the TAC of pollock for each subarea of the BSAI area to be allocated between two seasons (i.e., the roe season, January 1 through April 15 and the non-roe season, June 1 through December 31). The pollock TAC would be dividied into seasonal allowance after subtraction of reserves as provided under § 675.20(a)(3). Amendment 14 currently is under Secretarial review to determine its consistency with the Magnuson Act and other applicable law. A notice of proposed rulemaking explaining he provisions of Amendment 14 and requesting public comment was published September 14, 1990 (55 FR 37907). Assuming Secretarial approval and implementation of Amendment 14 before the beginning of the 1991 fishing year, the Council adopted provisional allowances of the pollock TAC of 25 percent to the roe season and 75 percent to the non-roe season. The Council will also consider two other options at its December 1990 meeting: 40 percent of the pollock TAC during the roe season and 60 percent during the non-roe season, or 60 percent of the pollock TAC during the roe season and 40 percent during the non-roe season. This seasonal allocation would be the same in the Bering Sea subarea and the Aleutian Islands subarea.

Under Amendment 14, the Council and the Secretary would consider the following nine factors when setting seasonal allowances of the pollock TAC:

1. Estimated monthly pollock catch and effort in prior years;
2. Expected changes in harvesting and processing capacity and associated pollock catch;
3. Current estimates of, and expected changes in, pollock biomass and stock conditions, conditions of marine mamal stocks, and biomass and stock conditions of species taken as bycatch in directed pollock fisheries;
4. Potential impacts of expected seasonal fishing for pollock on pollock stocks, marine mammals, and stocks and species taken as bycatch in directed pollock fisheries;
5. The need to obtain fishery data during all or part of the fishing year;
6. Effects on operating costs and gross revenues;
7. The need to spread fishing effort over the year, minimize gear conflicts, and allow participation by various elements of the groundfish fleet and other fisheries;
8. Potential allocative effects among users and indirect effects on coastal communities; and
9. Other biological and socioeconomic information that affects the consistency of seasonal pollock harvests with the goals and objectives of the FMP.

These factors were not rigorously considered by the Council at its meeting of September 24–29, 1990, because of the absence of current fishery data. Public comment is solicited especially on the effects of the provisional seasonal allowances with respect to these nine factors. If Amendment 14 is implemented as proposed, the pollock TAC for 1991 in each subarea is specified as indicated in Table 1 of this notice, and the Council reaffirms its provisional 25/75 apportionment for each subarea, then the pollock TAC for 1991 would be divided into the seasonal allowances listed in Table 5.

TABLE 5—PROVISIONAL ALLOCATION OF POLLOCK TAC BY SEASON [1]

Subarea	TAC [2]	ITAC [3]	Roe season [4]	Non-Roe season [5]
Bearing Sea	1,280,000	1,088,000	272,000	816,000
Aleutian Islands	100,000	85,000	21,250	63,750

[1] Amounts are in metric tons.
[2] TAC=total allowable catch.
[3] Initial TAC (ITAC)=0.85 of TAC; 0.15 of TAC is apportioned to reserve.
[4] January 1 through April 15.
[5] June 1 through December 31.

Sablefish Gear Allocation

Sablefish TACs for the Bering Sea and Aleutian Islands subareas are divided between users of trawl and longline fishing gears provided under Amendment 13 to the FMP and implemented by final rule published December 6, 1989 (54 FR 50386). Longline fishing gear is defined at § 675.2 as a stationary, byoyed, and anchored line with hooks or pots (other than king or Tanner crab pots) attached. Gear allocations of TACs are specified at § 675.24(a) and (b) in the following proportions:

Bearing Sea subarea: trawl gear—50 percent; longline gear—50 percent, and *Aleutian Islands subarea:* trawl gear—25 percent; longline gear—75 percent.

If the specifications in Table 1 are adopted for the 1991 fishing year, trawl gear and fixed-gear catch limits of sablefish in each subarea are equivalent shares of the TACs and ITACs listed in Table 6.

TABLE 6.—PRELIMINARY GEAR SHARES OF SABLEFISH TAC

Subarea	Gear	Percent of TAC	Share of TAC (mt)	share of ITAC (mt) [1]
Bering Sea	Trawl	50	1,350	1,147
Bering Sea	Longline	50	1,350	1,147
Aleutian Islands	Trawl	25	1,125	956
Aleutian Islands	Longline	75	3,375	2,869

[1] Initial TAC (ITAC)=0.85 of TAC, rounded to the nearest whole mt; 0.15 of TAC is apportioned to reserve. The sum of both ITAC gear shares in a subarea is equal to the ITAC for that subarea in Table 1 (adjusted for rounding error).

Other Matters

This action is authorized under 50 CFR 611.93(b) and 675.20, complies with Executive Order 12291.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 675

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 20, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries National Marine Fisheries Service.

[FR Doc. 90-27808 Filed 11-21-90; 12:10 pm]

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Notices

Federal Register
Vol. 55, No. 228
Tuesday, November 27, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 45-90]

Foreign-Trade Zone 122—Nueces County, TX, Corpus Christi Customs Port of Entry; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Corpus Christi Authority, grantee of Foreign-Trade Zone 122, requesting authority to expand its zone in Nueces County, Texas, within the Corpus Christi Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 14, 1990.

On September 5, 1985, the Port received authority from the Board to establish a foreign-trade zone (5 sites—393 acres) in Nueces County, Texas (Board 310, 50 FR 38020, 9/19/85). The main site (50 acres) is at the Port of Corpus Christi complex in Nueces County, adjacent to the City of Corpus Christi.

The grantee requests authority to expand the main site to include additional sections of the Port terminal complex along the Ship Channel (560 acres). No manufacturing approvals are being sought at this time. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Houston, Texas 77057-3012 and Colonel Brink P. Miller, District Engineer, U.S. Army Engineer District Galveston, PO Box 1229, Galveston, Texas 77553-1229.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 10, 1991.

A copy of the application is available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Government Plaza, 400 Mann Street, suite 305, Corpus Christi, Texas 78401.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, room 4213, Washington, DC 20230.

Dated: November 20, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90-27848 Filed 11-26-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-401-601]

Brass Sheet and Strip From Sweden; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On October 17, 1989, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on brass sheet and strip from Sweden. The review covers one manufacturer/exporter of this merchandise and the period August 22, 1986 through February 29, 1988.

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioners and the respondent, we held a public hearing. Based on the comments received and the correction of certain clerical errors, we have changed the margin for Metallverken AB from 6.03 percent to 5.64 percent.

EFFECTIVE DATE: November 27, 1990.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On October 17, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 42533) the preliminary results of its administrative review of the antidumping duty order on brass sheet and strip from Sweden (52 FR 6998, March 6, 1987). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by the review are shipments of brass sheet and strip from Sweden. During the review period, such merchandise was classifiable under item numbers 612.3960, 621.3982, and 621.3986 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 7409.21.00 and 7409.29.00. The TSUSA and HTS item numbers are provided for convenience and for Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of this merchandise to the United States, Metallverken AB, and the period August 22, 1986 through February 29, 1988.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner and the respondent we held a public hearing on November 30, 1989. We received comments from the petitioner and the respondent.

Comment 1: Petitioner maintains that the Department erred in not comparing sales of the same grade (alloy). Petitioner contends that, when identical matches did not exist, the Department considered gauge to be more important than grade for product comparison purposes. Petitioner maintains that in

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the brass industry, grade designations reflect chemical composition which affect cost of production. Therefore, grade should be the major criterion for product comparison selections. In its final analysis, the Department should revise its product comparisons and consider, in order of importance, grade, gauge, and width.

Department's Position: In our preliminary results of review, we inadvertently ranked gauge as more important than grade in making product comparisons. In the final results, we have adjusted our criteria to reflect grade as more critical than gauge in making comparisons.

Comment 2: Petitioner maintains that the Department, in making its product comparisons where contemporaneous sales did not exist, correctly compared sales of different grades and made an adjustment for differences in chemical composition. However, the Department failed to make an additional adjustment for differences in fabrication costs between U.S. and home market merchandise.

Department's Position: We agree and have made an adjustment for fabrication costs as well as an adjustment for chemical composition, where appropriate.

Comment 3: Petitioner contends that when the Department compared U.S. sales of grade 1060 with home market sales of grade 1063, it failed to recognize that Metallverken sells two varieties of grade 1063 in the home market, regular and polishing quality. Petitioner maintains that both grade 1060, sold in the U.S., and grade 1063 of polishing quality, sold in the home market, feature special surface finishing. Therefore, these grades are most similar for comparison purposes.

Department's Position: From the information submitted by the respondent, the Department was unable to distinguish grade 1063 polishing quality brass from grade 1063 regular brass. In addition, Metallverken has stated for the record that it did not sell grade 1063 polishing quality brass. Therefore, we compared U.S. sales of grade 1060 to all home market sales of grade 1063 as best information available.

Comment: Petitioner argues that the Department erred in allowing Metallverken's claim for an adjustment for quantity differences. Petitioner maintains that Metallverken has neither established that its prices were a function of quantities sold nor established that its prices were a function or costs incurred.

Department's Position: In our fair value investigation, we concluded that Metallverken met the requirements of our regulations by demonstrating that the quantity discounts were warranted on the basis of savings which resulted from larger production volumes. Metallverken has provided the same basis for this claim in this review. Since we verified and accepted this claim during the fair value investigation, we have accepted Metallverken's claim for an adjustment for differences in quantities in this review.

Comment 5: Petitioner contends that the Department erred in its calculation for value added to U.S. merchandise after importation. Petitioner argues that the use of transfer prices, rather than the cost of manufacture in the calculation of profit, will most likely result in an understatement of Metallverken's further processing profit amount. Petitioner suggests that, in the absence of cost of manufacture data, the Department use the best information otherwise available in our final analysis.

Department's Position: In general, we prefer to use cost of manufacture data in our calculation of profit for value added analyses. However, we did not realize until late in our preliminary analysis that we lacked specific cost of manufacture data. As a result, the Department relied on transfer prices as the only information available.

Comment 6: Petitioner argues that the Department erred in accepting Metallverken's home market credit expense claim since Metallverken based its claim on its standard terms of payment rather than actual experience. Therefore, Metalverken's claim should be denied by the Department for the final results of review.

Department's Position: While Metallverken did not furnish actual terms of payment for its home market sales, Metallverken stated in its questionnaire response that most of its customers pay within the standard time period. Therefore, we are satisfied that Metallverken's standard terms of payment form the appropriate basis for a credit adjustment.

Comment 7: Petitioner maintains that the Department erred in using Metallverken's reported interest rate, instead of the subsidiary's rate, to calculate its exporter's sales price (ESP) and purchase price credit expense adjustments. Petitioner contends that, since Metallverken's U.S. subsidiary incurred a credit expense on these sales, the Department should have used the subsidiary's short-term cost of borrowed funds in its credit expense calculations.

Department's Position: In the preliminary results of review, the Department used the subsidiary's interest rate in its credit calculations. In the final results of review, we have continued to use the subsidiary's interest rate in calculating credit on ESP and purchase price transactions.

Comment 8: Petitioner argues that the Department should not have allowed Metallverken's home market inland freight claim since Metallverken based its claim on standard costs instead of actual costs.

Department's Position: In our fair value investigation, we accepted Metallverken's standard costs because verification in the investigation established that standard costs reflected actual costs. Therefore, we have accepted Metallverken's standard costs for this adjustment.

Comment 9: Petitioner argues that the Department should not have accepted Metallverken's reported zero amounts for certain movement charges on U.S. sales. Petitioner suggests that the Department use the best information otherwise available in those instances where Matallverken failed to provide the information.

Department's Position: We agree. In the final results of review, we have calculated an average amount for these expenses as the best information otherwise available in those cases where movement charges were not reported.

Comment 10: Metallverken asserts that the Department erred in its comparison of certain U.S. sales of alloy SM 1060 to home market sales of allloy SM 1063. According to Metallverken, the Department applied the July 1986 metal cost differential to all home market sales, regardless of the month in which the U.S. sale or its home market comparison sale actually occurred.

Department's Position: We agree and have corrected these final results to reflect the cost differential for the month of the U.S. sale.

Comment 11: Metallverken believes that, for purposes of determining the difference indirect expenses in the U.S. and home market, the Department should also include the indirect selling expenses incurred by the U.S. subsidiary.

Department's Position: We agree and have included the subsidiary's selling expenses in the calculation of the ESP offset.

Comment 12: Metallverken requests that, when determining the comparison home market sale for U.S. sales, the Department add a fourth width group, comprised of merchandise 15 inches and over in width.

Department's Position: We disagree. In the preliminary results of review, the Department used the width groups that

were established during the original fair value investigation. Metallverken did not request this change until after publication of the preliminary results of review. Therefore, we consider Metallverken's request untimely.

Comment 13: Metallverken states that its questionnaire response incorrectly identified a number of purchase price sales as ESP sales. Metallverken explains that these transactions consist of sales make prior to importation into the United States, with full prior knowledge of Metallverken that the sales were to identified, unrelated purchasers in the United States.

Department's Position: We disagree. Since the merchandise was warehoused in the United States by Metallverken's subsidiary, the sales in question are ESP sales. The mere fact that sales were made prior to important does not make them purchase price sales under section 772(b) of the Tariff Act. Therefore, we have made no change in classification of Metallverken's ESP sales in these final results of review.

Comment 14: Metallverken requests that certain modifications be made to the ESP and purchase price sales lists, such as deletion of sales where entries have been liquidated and deletion of sales outside the period of review. For the latter, Metallverken is concerned that the sales in question will be covered in the next administrative review, and, therefore, deletion of these sales in this review is necessary to avoid "double counting."

Department's Position: Metallverken did not identify these sales until after publication of the preliminary results of review. In addition to this untimely identification, the manner in which Metallverken listed these transactions in its case brief was inadequate to ensure accurate deletion by the Department. Therefore, we are including them in this review. Metallverken will have an opportunity to identify these sales as part of the next review, which is currently underway.

Comment 15: Metallverken requests that the Department make certain data base corrections. Metallverken states that its questionnaire response inadvertently identified charges for air freight shipments twice and certain purchase price transactions twice. Metallverken also claims that, because it either did not furnish, or incorrectly furnished, information with respect to dates of payment, ocean freight and duty, it has supplied the correct data in its case brief.

Department's Position: We have corrected the amounts reported for ocean freight and duty. We have also deleted those purchase price transactions that clearly were reported twice. However, we are not making corrections with regard to payment dates. Prior to the publication of our preliminary results of review, Metallverken was asked to supply the missing payment dates and failed to do so. Metallverken did not supply the missing data until the submission of its case brief. Consequently, in the final results, we have continued to use the average time between shipment date and payment date as best information otherwise available where we lacked data.

Final Results of Review

As a result of our review of the comments received, we have determined that a weighted-average margin of 5.64 percent exists for Metallverken AB.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) to the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required for all shipments of Swedish brass sheet and strip. Because Metallverken is now known as Outokumpu Rolled Products AB, these cash deposit requirements shall apply to shipments by Outokumpu. For any further entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipment occurred after February 29, 1988, and who is unrelated to Metallverken or Outokumpu, a cash deposit of 5.64 percent shall be required. These deposit requirements are effective for all shipments of Swedish brass sheet and strip entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until the publication of the final results of the next adminstrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 19 CFR 353.22(1990).

Dated: November 16, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-27849 Filed 11-26-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-047]

Elemental Sulphur From Canada; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke in Part

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke in part.

SUMMARY: In response to a request by a respondent, the Department of Commerce has conducted an administrative review of the antidumping finding on elemental sulphur from Canada. The review covers one exporter of this merchandise and the period December 1, 1988 through November 30, 1989. The Department intends to revoke in part the antidumping finding with respect to InterRedec Sulphur Corporation.

Interested parties are invited to comment on these preliminary results and intent to revoke in part.

EFFECTIVE DATE: November 27, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 1990, the Department of Commerce (the Department) published in the Federal Register (55 FR 43152) the final results of its last administrative review of the antidumping finding on elemental sulphur from Canada (38 FR 35655, December 17, 1973). A respondent, InterRedec Sulphur Corporation, requested in accordance with 19 CFR 353.22 that we conduct an administrative review. We published a notice of initiation on February 16, 1990 (55 FR 5840). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of elemental sulphur from Canada. During the review period such merchandise was classifiable under item 415.4500 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under Harmonized Tariff System (HTS) item 2501.01.00. The TSUSA and HTS item numbers are provided for

convenience and Customs purposes. The written description remains dispositive.

The review covers one exporter of Canadian elemental sulphur to the United States, InterRedec Sulphur Corporation, and the period December 1, 1988 through November 30, 1989. We will publish in a separate notice the results for other exporters which requested an administrative review for the period.

Preliminary Results of the Review and Intent To Revoke in Part

As a result of our review, we preliminarily determine that the following margin exists for the period December 1, 1988 through November 30, 1989:

Exporter	Margin (percent)
InterRedec Sulphur Corp	[1]0

[1] No shipments during the period; margins from last review in which there were shipments.

InterRedec has had sales at not less than fair value for at least three years. Therefore, we intend to revoke the antidumping finding on Canadian elemental sulphur in part with respect to InterRedec. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise produced by InterRedec and exported to the United States entered, or withdrawn from warehouse, for consumption, on or after December 1, 1989. Should this partial revocation become final, as provided in 19 CFR 353.25(a)(2)(iii), InterRedec has agreed in writing to an immediate suspension of liquidation and reinstatement of the finding if circumstances develop which indicate that Canadian elemental sulphur exported to the United States by InterRedec is being sold at less than fair value.

Parties to the proceeding may request disclosure within 5 days of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Case briefs from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs, limited to issues raised in the case briefs may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on this exporter directly to the Customs Service.

For any shipments of this merchandise produced or exported by the remaining known producers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for those firms. For any future entries of this merchandise from a new producer and/or exporter, not covered in this or prior administrative reviews, whose first shipment occurred after November 30, 1989, and who is unrelated to the reviewed firms or any previously reviewed firm, no cash deposit will be required. These deposit requirements are effective for all shipments of Canadian elemental sulphur entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review, intent to revoke in part, and notice are in accordance with section 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)), 19 CFR 353.22, and 19 CFR 353.25.

Dated: November 16, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-22850 Filed 11-26-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-807]

Initiation of Antidumping Duty Investigations; Oscillating Fans and Ceiling Fans From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the Department of Commerce (the Department), we are initiating antidumping duty investigations to determine whether imports of oscillating fans and ceiling fans from the People's Republic of China (the PRC) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the International Trade Commission (ITC) of this action so that it may determine whether there is a reasonable indication that industries in the United States are materially injured, or are threatened with material injury, by reason of imports from the PRC of oscillating fans and ceiling fans. If these investigations proceed normally, the ITC will make its preliminary determinations on or before December 17, 1990. If those determinations are affirmative, we will make preliminary determinations on or before April 9, 1991.

EFFECTIVE DATE: November 27, 1990.

FOR FURTHER INFORMATION CONTACT: Bradford Ward or Steven Lim, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-5288 or 377-4087, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On October 31, 1990, we received a petition filed by Lasko Metal Products, Inc., of West Chester, Pennsylvania. Petitioner alleges that imports of oscillating fans and ceiling fans are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that there is a reasonable indication that industries in the United States are materially injured, or are threatened with material injury, by reason of imports from the PRC of oscillating fans and ceiling fans.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industries producing the products that are subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file a written notification with the Assistant Secretary for Import Administration.

United States Price and Foreign Market Value

Petitioner alleges that the PRC is a nonmarket economy country within the meaning of section 773(c) of the Act. Accordingly, petitioner based foreign market value (FMV) on constructed value using factors of production valued in market economy countries as well as various price-to-price methodologies described below.

A. Oscillating Fans

Petitioner utilized three methodologies to calculate alleged dumping margins for oscillating fans from the PRC. Method (1) bases the United States price (USP) on price quotations from manufacturers of oscillating fans in the PRC and bases FMV on petitioner's own factors of production, valued in Thailand, Taiwan, and the United States. Method (2) bases USP on the average unit import value for Chinese-origin oscillating fans and FMV on the average unit import value of oscillating fans originating in Thailand. Method (3) bases USP on the average unit import value for Chinese-origin oscillating fans and FMV on the average unit wholesale price of oscillating fans in Thailand. he petition alleges dumping margins ranging from 15.7 to 165 percent.

The Department is not utilizing methods (2) and (3) in our petition analysis because they rely on import values obtained from "basket" Harmonized Tariff Schedule (HTS) subheadings. Products listed under this subheading include subject and non-subject merchandise. The remaining methodology alleges dumping margins ranging from 15.7 percent to 25.4 percent.

B. Ceiling Fans

Petitioner utilized four methodologies to calculate alleged dumping margins for ceiling fans from the PRC. Method (1) bases USP on price quotations from an exporter of Chinese-origin ceiling fans and FMV on petitioner's own factors of production, valued in Taiwan and the United States. Method (2) bases USP on price quotations from an exporter of Chinese-origin ceiling fans and FMV on price quotations in Thailand from a Thai producer of ceiling fans. Method (3) bases USP on the average price quotation of an exporter of Chinese-origin ceiling fans and FMV on the average unit import value for Thai-origin ceiling fans. Method (4) bases USP on the average unit import value for Chinese-origin ceiling fans and FMV on the average unit import value for Thai-origin ceiling fans. The petition alleges dumping margins ranging from 10.9 percent to 21.4 percent.

The Department is not utilizing method (1) in our petition analysis because the factor valuation information that was presented relies predominantly on costs in Taiwan and the United States. Accordingly, method (1) is less representative of the values of ceiling fans than methods (2), (3), and (4) which are based on actual prices and/or narrowly defined HTS subheadings. The remaining methodologies allege dumping margins ranging from 10.9 percent to 21.4 percent.

Initiation of Investigation

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioner supporting the allegations.

In accordance with 19 CFR 353.52(b)(1) and our longstanding practice, we reviewed the PRC's per capita gross national product (GNP) and the percentage of its labor force in agricultural and non-agricultural production to select those economies most comparable to that of the PRC. Based on a comparison of these and other factors, there were many surrogate countries more comparable in economic development to the PRC than Thailand, Taiwan, and the United States which petitioner used to value the factors of production. We requested that petitioner explain why it had valued the factors of production in Thailand, Taiwan, and the United States and why those countries were appropriate surrogates for the PRC. On November 14, 1990, petitioner supplemented its petition by explaining why its original valuation of the factors of production was reasonable for purposes of initiation. More importantly, petitioner explained that other countries could not be used because of a lack of available data and/or a lack of production of comparable merchandise. (Petitioner did provide constructed values for certain fans using a limited number of factors valued in Pakistan and the Philippines. These constructed values varied only slightly from the originally-submitted constructed values and resulted in slightly higher alleged dumping margins.)

Accordingly, we have accepted those comparisons submitted in the petition as described above in the "United States Price and Foreign Market Value" section of this notice. Those comparisons meet the minimal sufficiency requirements set forth in 19 CFR 353.13(a). The petition and subsequent submissions by the petitioner allege the basis on which an antidumping duty order may be imposed and contain information reasonably available to the petitioner supporting the allegations. Therefore, in accordance with section 732 of the Act, we are initiating antidumping duty investigtions to determine whether imports of oscillating fans and ceiling fans from the People's Republic of China are being, or are likely to be, sold in the United States at less than fair value. If our investigations proceed normally, we will make our preliminary determinations by April 9, 1991. In approximately 45 days we will present questionnaires soliciting information necessary to make those determinations to the Embassy of the People's Republic of China.

Scope of Investigations

Petitioner has alleged, and we have determined for purposes of these initiations, that the products covered by these investigations constitute two separate classes or kinds of merchandise; we will thus conduct two separate investigations of these products and calculate two separate antidumping rates. The two separate "classes or kinds" are: (1) Oscillating fans; and (2) ceiling fans.

Oscillating fans are electric fans that direct a flow of air using a fan blade/motor unit that pivots back and forth on a stationary base ("oscillates"). Oscillating fans incorporate a self-contained electric motor of an output not exceeding 125 watts.

Ceiling fans are electric fans that direct a downward flow of air using a fan blade/motor unit. Ceiling fans incorporate a self-contained electric motor of an output not exceeding 125 watts. Ceiling fans are designed for permanent or semi-permanent installation.

Window fans and industrial or commercial ventilator fans are not included in these investigations.

The appropriate HTS subheading under which oscillating fans are classified is 8414.51.0090. The appropriate HTS subheading under which ceiling fans are classified is 8414.51.0030. HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged an nonproprietary information. We will allow the ITC access to all privileged and business pripretary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 17, 1990, whether there is a reasonable indication that industries in the United States are materially injuried or are threatened with material injury by reason of imports from the People's Republic of China of oscillating fans and ceiling fans. If these determinations are negative, the investigations will be

terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: November 20, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-27851 Filed 11-26-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-807]

Preliminary Negative Countervailing Duty Determination: Silicon Metal From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that no benefits which constitute countervailable subsidies are being provided to manufacturers, producers, or exporters in Brazil of silicon metal as described below. If this investigation proceeds normally, we will make a final determination on or before February 4, 1990.

EFFECTIVE DATE: November 27, 1990.

FOR FURTHER INFORMATION CONTACT: Mi-Yong Kim or Ross Cotjanle, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-0189 or (202) 377-3534, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that *de minimis* benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters of silicon metal in Brazil. We preliminarily determine that the following programs confer subsidies:

- Income Tax Exemption for Export Earnings
- Preferential Working Capital Financing for Exports Provided by the Department of Foreign Commerce of the Central Bank of Brazil (CACEX)

We determine the estimated net subsidy to be 0.36 percent *ad valorem* for all manufacturers, producers, or exporters in Brazil of silicon metal. Since this rate is *de minimis*, and therefore not countervailable, our preliminary countervailing duty determination is negative.

Case History

Since the publication of the notice of initiation in the **Federal Register** (55 FR 38729, September 20, 1990), the following events have occurred.

On September 25, 1990, we issued a questionnaire to the Government of Brazil (GOB) in Washington, DC, concerning petitioners' allegations. On October 16, 1990, we presented the GOB with a supplemental questionnaire. At the GOB's request, the due date for the questionnaire responses was extended until November 2, 1990. On November 2, 1990, we received responses from the GOB and six companies: Camargo Correia Metais S.A. (CCM); Companhia Brasileira Carbureto de Calcio (CBCC); Companhia Ferroligas Minas Gerais (Minas Ligas); Eletroila S.A.; Ligas de Aluminio S.A. (LIASA); and RIMA Electrometalurgia S.A. (RIMA).

On November 7, 1990, we issued a supplemental/deficiency questionnaire and received responses on November 14, 1990. In this response, the GOB stated that Cia Industrial Fluminense (CIF) ceased production of silicon metal in 1989.

On September 27, 1990, one of the respondents, CCM, alleged that petitioners lacked standing. For further discussion of this issue, see the *Standing* section, below.

On October 3, 1990, the petition was amended to include the following interested parties as petitioners: Oil, Chemical and Atomic Workers, Local 3-89; International Union of Electronics, Electrical, Machine, and Furniture Workers, AFL-CIO Local 693; Textile Processors, Service Trades, Health Care Professional and Technical Employees International Union, Local 60; United Steelworkers of America, Local 5171; United Steelworkers of America, Local 8538; and United Steelworkers of America, Local 12646.

On October 9, 1990, petitioners submitted additional information on programs on which we did not initiate. We determined that the additional information submitted by petitioners did not provide sufficient information to warrant initiation on these programs. Our reasoning is outlined in a memorandum to the file.

On October 11, 1990, the U.S. International Trade Commission preliminarily found that imports of silicon metal from Brazil materially injure, or threaten material injury to, a U.S. industry (55 FR 42079, October 17, 1990).

Scope of Investigation

The merchandise covered by this investigation is silicon metal containing at least 96.00 percent but less than 99.99 percent of silicon by weight. The subject merchandise is used primarily as an alloying agent from aluminum and in the chemical industry as a precursor to silicons. Silicon metal is currently provided for in subheadings 2804.69.10 and 2804.69.50 of the *Harmonized Tariff Schedule* (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this investigation. The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The Department's written description of the merchandise under investigation remains dispositive.

Standing

As stated in the *Case History* section above, CCM alleges that petitioners lack standing. CCM cites *Suramerica de Aleaciones Laminadas, C.A.* v. *U.S.*, Slip. Op. 90-79 at 32 (CIT Aug. 22, 1990) in which the Court of International Trade held that the Department cannot presume industry support for a petition. The Department has appealed this decision to the Court of Appeals for the Federal Circuit because there is nothing in the Act, its legislative history, or our regulations which requires petitioners to affirmatively establish that they have the support of a majority of their industries. In many cases, such a requirement would be so onerous as to preclude access to import relief under the countervailing and antidumping duty laws. Therefore, consistent with our past practice, we have preliminarily determined that petitioner does not lack standing. See *Frozen Concentrated Orange Juice from Brazil: Final Determination of Sales at Less than Fair Value* (52 FR 8324, March 17, 1987); *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, February 28, 1987); and, *Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish From Canada* (51 FR 10041, March 24, 1986).

Analysis of Programs

We received a response from the GOB and six producers or exporters (CCM, CBCC, Minas Ligas, Eletroila, LIASA, and RIMA). We did not receive a response from CIF. For CIF, we used as the best information available, the highest calculated rate for each program found to be countervailable in this investigation.

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the respondents have fully cooperated in the questionnaire process and the Department has no precise evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

For purposes of this preliminary determination, the period for which we are measuring subsidies ("the review period") is calendar year 1989, which corresponds to the most recently completed fiscal year for all of the respondent companies.

Based upon our analysis of the petition and the responses to our questionnaires, we preliminary determine the following:

I. Programs Preliminarily Determined To Be Countervailable

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of silicon metal under the following programs:

A. *Income tax exemption for export earnings.* Under this program, exporters of silicon metal are eligible for a lower income tax rate on that portion of their profits attributable to exports. Companies using this program calculate the fraction of profit eligible for this lower rate as the ratio of export revenue to total revenue. Because this program provides a lower income tax rate which is limited to exporters, we preliminarily determine that it is countervailable.

The nominal corporate tax rate in Brazil in 1989 was 30 percent for profits attributable to domestic sales and three percent for profits attributable to export sales. Additionally, Brazilian tax law permits companies to reduce their income taxes by investing up to 26 percent of their tax liability in special companies and funds designated by the GOB. This tax credit effectively reduces the normal corporate tax rate. The five silicon metal exporters that claimed this reduction on their tax returns filed in 1989 invested in the specified companies and funds, and their effective tax rate was lower than the nominal rate during the review period.

We calculated the benefit for each company by subtracting the tax actually paid from the tax that would have been paid by that firm absent the lower tax rate for export profits. In order to calculate the tax that would have been paid, we multiplied total taxable profit by the 30 percent corporate tax rate and then deducted the 26 percent of tax liability derived from domestic profits which was invested in the specially designated companies and funds. We then divided each company's benefit by its total exports. Next, we weight-averaged the benefit by each company's proportionate share of total exports of the subject merchandise to the United States. On this basis, we preliminarily determie the benefit from this program to be 0.25 percent *ad valorem* for all manufacturers, producers, and exporters of silicon metal in Brazil.

CCM stated that they did not benefit from the preferential tax rate for export earnings because their taxable profit was not attributable to sales revenue. However, they did not provide an explanation for their claim. Therefore, as best information available, we used the highest calculated company rate as CCM's rate, which is 0.43 percent *ad valorem*.

According to the response, on December 28, 1989, by Law No. 7988, the tax rate on income attributable to export sales increased to 18 percent for the 1990 tax year. On April 12, 1990, by Law No. 8034, the tax rate or income attributable to export sales increased by 30 percent for the 1991 tax year, thereby taxing all income at the same rate.

B. *Preferential working capital financing for exports provided by the Department of Foreign Commerce of the Central Bank of Brazil (CACEX).* Under this program, the CACEX provides short-term working capital financing to exporters at preferential rates. The loans have a term of one year or less.

On May 2, 1985, Resolution 1009 made CACEX working capital financing available through commercial banks at prevailing market rates, with interest due at maturity. It authorized the Central Bank of Brazil to pay the lending institution an "equalization fee," or rebate of up to 15 percentage points, which the lending institution could pass on to the borrowers. On December 1, 1988, by Resolution 1538, CACEX reduced the equalization fee to 7.5 percentage points.

In addition, CACEX short-term loans are exempt from the "Imposto Sobre Operacoes Financieras" (IOF) tax. The IOF tax is a general tax of 1.5 percent imposed on the principal of all financial transactions in Brazil.

Since the interest charged on CACEX financing under Resolution 1009 and 1538 is at prevailing market rates, this program would not be countervailable absent the equalization fee and the exemption from the IOF.

Therefore, the benefit from these loans is equal to the equalization fee plus the 1.5 percent IOF. Because this program provides financing at preferential rates only to exporters, we preliminarily determine that it is countervailable. During the period of review, four exporters made interest payments on CACEX loans.

To calculate the benefit from CACEX loans on which interest was paid during the review period, we followed the short-term loan methodology which has been applied consistently in our past determinations and which is described in more detail in the Subsidies Appendix attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 49 FR 18006 (April 26, 1984); *see also, Alhambra Foundry* v. *United States*, 626 F. Supp. 402 (CIT, 1985).

We consider the benefit from a short-term loan to occur when the borrower makes an interest payment. For CACEX loans on which interest was paid during the period of review, we multiplied the interest rate differential plus the amount of the IOF tax exemption by the loan principal. We divided the benefit by each firm's total exports. We then weight-averaged the benefit by each company's proportionate share of total exports on the subject merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 0.06 percent *ad valorem* for all manufacturers, producers, and exporters of silicon metal in Brazil.

According to the response, on August 30, 1990, Resolution 1744 terminated this program.

II. Programs Preliminarily Determined To Be Not Used

Based on the responses, we preliminarily determine that manufacturers, producers, or exporters of silicon metal in Brazil did not apply for, claim or receive benefits during the review period for exports of silicon metal to the United States under the following programs:

A. *Provision of electricity at preferential rates to silicon metal producers located in Minas Gerais.* CEMIG, the state-owned electrical utility in Minas Gerais, provides reduced power rates in exchange for

reduced power usage during peak periods. According to the response, CEMIG did not grant power rate reductions to any companies in the silicon metal industry; no silicon metal producers in Minas Gerais received or petitioned to receive reductions in power rates; and all silicon metal producers in Minas Gerais purchase power at the country-wide tariff rate applicable to their usage classification. Therefore, we preliminarily determined that none of the companies under review utilized this program during the period of review.

B. *Benefits provided by the Commission for granting of fiscal benefits to special export programs (BEFIEX).* BEFIEX allows Brazilian exporters, in exchange for export commitments, to take advantage of several types of benefits, such as import duty reductions, an increased IPI export credit premium, and tax exemptions or tax credits. According to the response of the GOB, none of the companies under review utilized this program during the period of review.

C. *Export financing provided by the Fundo de Financiamento a Exportacao (FINEX).* Resolutions 68 and 509 of the Conselho Nacional do Comercio Exterior (CONEX) provide that CACEX may draw upon the resources of FINEX to subsidize short- and long-term loans for both Brazilian exporters (Resolution 68) and foreign importers (Resolution 509) of Brazilian goods. CACEX pays the lending banks an "equalization fee" that makes up the difference between the subsidized interest rate and the prevailing commercial rate. CACEX also provides the lending bank with a "handling fee" equal to two percent of the loan principal in order to encourage foreign bank participation in the program. According to the response of the GOB, none of the companies under review utilized this program during the period of review.

III. Programs Preliminarily Determined To Be Terminated

We preliminarily determine that the following programs were terminated prior to the period of our review:

A. *Financing for the storage of merchandise destined for export (Resolution 330 of the Central Bank of Brazil).* According to the response of the GOB, this program was terminated on August 21, 1984, by Resolution 950.

B. *Export promotion financing provided under the Programa de Financiamento a Producao para a Exportacao (PROEX).* According to the response of the GOB, this program was terminated on July 2, 1985, by National Bank for Economic and Social Development ("BNDES") Resolution 613.

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Critical Circumstances

Petitioner alleges that "circumstances" exist with respect to imports of silicon metal from Brazil. Section 703(e)(1) of the Act provides that critical circumstances exist if there is a reasonable basis to believe or suspect that:

(A) The alleged subsidy is inconsistent with the Agreement, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Because we preliminarily determined that no benefits which constitute counteravailable subsidies are being provided to manufacturers, producers, or exporters in Brazil of silicon metal, no subsidies exist which are inconsistent with the Agreement. Therefore, in accordance with section 703(e)(1) and (2) of the Act, we preliminarily determine that critical circumstances do not exist with respect to all manufacturers, producers, or exporters of silicon metal from Brazil.

Suspension of Liquidation

Due to the fact that the estimated net subsidy rate is *de minimis*, we are not directing the U.S. Customs Service to suspend liquidation on entries of silcicon metal from Brazil at this time.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38, we will hold a public hearing, if requested, not later than 10 days after the date of publication of our preliminary determination. Such a hearing will be held at 10 a.m. on Tuesday, January 22, 1991, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than January 9, 1991. Ten copies of the business proprietary version and five copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than January 16, 1991. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with section 355.38 of the Commerce Department's regulations and will be considered if received within the time limits specified above.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: November 19, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-27852 Filed 11-26-90; 8:45 am]

BILLING CODE 3510-DS-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review of Final Determination clarifying Scope of Antidumping and Countervailing Duty Order—Abolishment of End Use Certification Procedure—made by the Department of Commerce, International Trade Administration, Import Administration, respecting Oil Country Tubular Goods from Canada, filed by Stelco, Inc. with the United States section of the Binational Secretariat on November 5, 1990.

SUMMARY: On November 5, 1990, Stelco, Inc., filed a request for panel review with the United States section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the Final Determination Clarifying Scope of Antidumping and Countervailing Duty Orders—Abolishment of End Use Certification Procedure—respecting Oil Country Tubular Goods from Canada made by the International Trade Administration, Import Administration, Import Administration File Numbers A-122-506 and C-122-505. The Binational Secretariat has assigned Case Number USA-90-1904-02 to this Request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a request for panel review if filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules").* These rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The rules were amended by amendments to the rules of procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary of the responsible section of the FTA Binational Secretariat to publish a notice that a first request for panel review has been received. A first request for panel review was filed with the United States section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on November 5, 1990, requesting panel review of the final determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first request for panel review (the deadline for filing a Complaint is December 5, 1990);

(b) A party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a notice of appearance in accordance with Rule 40 within 45 days after the filing of the first request for panel review (the deadline for filing a notice of appearance is December 20, 1990); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: November 20, 1990.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 90-27786 Filed 11-26-90; 8:45 am]

BILLING CODE 3510-GT-M

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award's Panel of Judges

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app., notice is hereby given that there will be a closed meeting of the Panel of Judges of the Malcolm Baldridge National Quality Award on Wednesday, December 12, 1990. The Panel of Judges is composed of nine members prominent in the field of quality management and appointed by the Director of the National Institute of Standards and Technology. The purpose of this meeting is for the judges to critique their subcommittee reports on the 1990 selection process, and to prepare their report to the Board of Overseers. The discussions concerning the 1990 Award applications will reveal trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene December 12, 1990, at 6 p.m. and adjourn at approximately 9:30 p.m. on December 12, 1990. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the J.W. Marriott Hotel, 1331 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Associate Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2036.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on May 11, 1990 that the meeting of the Panel of Judges will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with section 552b(c)(4) of title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: November 20, 1990.

John Lyons,

Director.

[FR Doc. 90-27828 Filed 11-26-90; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Michael Galgano From an Objection by the New York Department of State

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Secretary's decision in the Michael Galgano Consistency Appeal.

On July 6, 1988, Michael Galgano (Appellant), filed with the Secretary of Commerce a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's (Department) implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an Objection by the New York Department of State (State) to Appellant's consistency certification for a U.S. Army Corps of Engineer's (Corps) permit to construct a timber bulkhead

with backfill in Meyers Pond, Town of Southampton, Suffolk County, New York.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II).

Section 307(c)(3)(B). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122. The Appellant requested that the Secretary override the State's Objection based on Ground I.

Upon consideration of the information submitted by Appellant, the State, and several Federal agencies, the Secretary held that Appellant's project to construct a timber bulkhead with backfill is not consistent with the objectives of the CZMA. Accordingly, the Secretary declines to override the State's Objection to Appellant's consistency certification. The Secretary's decision precludes the Corps from issuing to the Appellant a permit to construct the timber bulkhead with backfill.

FOR FURTHER INFORMATION CONTACT: Kirsten Erickson, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., room 603, Washington, DC 20235, (202) 673–5200.

(Federal Domestic Assistance Catalogue No. 11.419 Coastal Zone Management Program Assistance)

Dated: November 20, 1990.

Thomas A. Campbell,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 90–27770 Filed 11–26–90; 8:45 am]

BILLING CODE 3510–08–M

Coastal Zone Management, Federal Consistency Appeal by Davis Heniford From an Objection by the State of South Carolina

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

On September 25, 1990, Davis Heniford (Appellant) filed with the Secretary of Commerce (Secretary) a notice of appeal pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.*, and the Department of Commerce's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the State of South Carolina (State) to the Appellant's consistency certification for a U.S. Corps of Engineers (Corps) permit to fill 2.5 acres of wetlands for the purpose of constructing a shopping center in Loris, South Carolina.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II).

Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the State's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that (1) the proposed activity furthers one or more of the national objectives or purposes contained in section 302 or 303 of the CZMA, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with the State's coastal management program. 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within thirty days of the publication of this notice and should be sent to Margo E. Jackson, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., suite 603, Washington DC 20235. Copies of comments should also be sent to H. Stephen Snyder, Director of Planning and Certification, South Carolina Coastal Council, 4130 Faber Place, suite 300, Charleston, South Carolina 29405.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the State and the Office of the Assistant General Counsel for Ocean Services, NOAA.

FOR ADDITIONAL INFORMATION CONTACT: Margo E. Jackson, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., suite 603, Washington, DC 20235 (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: November 20, 1990.

Thomas A. Campbell,

General Counsel.

[FR Doc. 90–27771 Filed 11–26–90; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

November 21, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 29, 1990.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6495. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased by application of swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 52437, published on December 21, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

November 21, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of December 15, 1989 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

Effective on November 29, 1990, the directive of December 15, 1989 is amended further to increase the limts for the following categories, as provided under the terms of the current bilateral agreement between the Government of the United States and Macau:

Category	Adjusted 12-Mo limit [1]
Group I: 200-239, 300-369, 600-670 and 800-899, as a group.	80,377,489 square meters equivalent.
Sublevels in group I: 333/334/335/833/834/835.	177,113 dozen of which not more than 87,192 dozen shall be in Categories 333/335/833/835.
338	218,758 dozen.
339	925,552 dozen.
340	215,806 dozen.
341	139,191 dozen.
347/348/847	536,379 dozen.
633/634/635	375,051 dozen.
640	83,039 dozen.
641/840	142,407 dozen.
642/842	83,152 dozen.
647,648	392,675 dozen.
Group II: 400-469, as a group	1,433,266 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–27845 Filed 11–26–90; 8:45 am]

BILLING CODE 3510–DR–M

Amendment and Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Pakistan

November 21, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Issuing a directive to the Commissioner of Customers amending and adjusting limits.

EFFECTIVE DATE: November 21, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6498. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Pakistan have agreed to amend the bilateral to convert the current designated consultation level for Category 369–S to a specific limit at an increased level. The amended level is being increased further by application of swing and carryforward, reducing the limit for Category 334 to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of United States (*see* **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 48293, published on November 22, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 21, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of November 16, 1989 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

Effective on November 21, 1990, you are directed to adjust and amend the limits for cotton textile products in the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Pakistan:

Category	Adjusted and amended 12-mo limit [1]
334	41,614 dozen.
369–S [2]	452,000 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

[2] Category 369–S: only HTS number 637.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–27847 Filed 11–26–90; 8:45 am]

BILLING CODE 3510–DR–M

CONSUMER PRODUCT SAFETY COMMISSION

Privacy Act of 1974; Announcement of System of Records

AGENCY: Consumer Product Safety Commission.

ACTION: Announcement of System of Records.

DATES: Comments must be received on or before January 28, 1991.

ADDRESSES: Comments should be sent to the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207. Telephone: (301) 492–6980.

SUPPLEMENTARY INFORMATION: The Consumer Product Safety Commission is establishing a system of records within its Division of Personnel Management to manage the investigative reports on Commission employees or applicants for Commission employment that may be received from the Office of Personnel Management or other federal agencies.

These records are not covered by any existing government-wide system of records under the Privacy Act. The records will be used for internal management purposes by the Commission.

The system of records will become effective January 28, 1991, unless comments are received which justify a contrary determination.

The President of the Senate, the Speaker of the House of Representatives, and the Office of Management and Budget have been notified of this system.

Dated: November 20, 1990

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

CPSC-20

SYSTEM NAME:

Personnel Security File—CPSC-20.

SYSTEM LOCATION:

Division of Personnel Management, Directorate for Administration, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Consumer Product Safety Commission, and applicants for employment with the Consumer Product Safety Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of name checks, inquiries, and investigations furnished by the Office of Personnel Management to determine suitability for employment with, or continued employment by, the Consumer Product Safety Commission. Information in records may include date and place of birth, citizenship, marital status, military status, and social security status. These records contain investigative information regarding an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for any violations of law; information from present and former supervisors, co-workers, associates, educators; credit and National Agency checks; and other information developed from the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450; 5 U.S.C. 301.

PURPOSE(S):

The records in this system of records are used by the Director, Division of Personnel Management and the Personnel Security Officer, Labor and Employee Relations Branch, to determine whether the employment of an applicant, or retention of a current employee, is in the interest of the Commission and to determine whether to grant an employee access to non-public information or restricted areas.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To request from a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information, data relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance to an employee, or other administrative action concerning an employee.

2. To the Office of Personnel Management in their role as an investigating agency, and in their role as the agency responsible for conducting a continuing assessment of agency compliance with federal personnel security and suitability program requirements.

3. To the Office of Personnel Management for use in other personnel matters.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed alphabetically by name.

SAFEGUARDS:

Records are maintained in a safe-type combination lock file cabinet in the custody of the Personnel Security Officer, Labor and Employee Relations Branch, Division of Personnel Management, Directorate for Administration. Access is limited to the Personnel Security Officer, Labor and Employee Relations Branch, and the Director, Division of Personnel Management.

RETENTION AND DISPOSAL:

Records are maintained at the Consumer Product Safety Commission for at least two years from the date of any final decision placed in the record.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Security Officer, Labor and Employee Relations Branch, Division of Personnel Management, Directorate for Administration, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/ Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, D.C. 20207.

RECORD ACCESS PROCEDURES:

Same as notification. The Freedom of Information/Privacy Act Officer will forward the request to the agency which conducted the investigation, which will make the final determination.

CONTESTING RECORD PROCEDURES:

Same as access.

RECORD SOURCE CATEGORIES:

Office of Personel Management reports and reports from other federal agencies.

[FR Doc. 90-27836 Filed 11-26-90; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Supplement to the Draft Environmental Impact Statement; Biological Aerosol Test Facility, New Alternative Action To Construct and Operate a Consolidated Life Sciences Test Facility

AGENCY: Department of the Army, Department of Defense.

ACTION: Notice of Availability of Supplement to the Draft Environmental Impact Statement: Biological Aerosol Test Facility, New Alternative Action to Construct and Operate a Consolidated Life Sciences Test Facility at Dugway Proving Ground, Utah.

1. Summary

The Department of the Army, as Executive Agency for the Department of Defense (DOD), is responsible for research, development, testing, and evaluation of equipment and procedures for biological defense. Initially, the Army proposed construction of a Life Sciences Laboratory (LSL) operating at biosafety level three (BL-3) with a separate BL-4 capable Biological Aerosol Test Facility (BATF) to operate only at BL-3 level. Following public comment and additional internal evaluation, the Army concluded that a biological aerosol test capability limited to BL-3 would meet all Army requirements. Further evaluation concluded that consolidating construction of the BL-3 aerosol testing capability with the proposed LSL would meet the Army's testing requirements.

This consolidated facility is designated the LSTF in the SDEIS. This new alternative action, as part of the Biological Defense Research Program, will provide the necessary support for DOD activities in testing and evaluating protective equipment, detection devices, and decontamination techniques for biological threat materials. The facility will provide environmental analytical support for smoke/obscurant and chemical simulant field operations. This action is a new alternative to the proposed action, of the Draft EIS, presented in the **Federal Register** (53 FR 3768, February 9, 1989).

2. Alternatives

Other alternatives that were considered include the proposed action of the Draft EIS; "no action," i.e., continued use of present facilities at DPG; construction and operation of a BATF elsewhere; use of other existing facilities with DOD; use of biological simulants instead of pathogenic micro-organisms; construction and operation of a separate BATF at a BL-3 containment lev l; and construction of the BATF at an alternative site on DPG. The Supplement to the Draft EIS concludes that considering the nature of the work, the training regimen, personal safety interests, medical review of employees health status, and the available medical support, neither construction nor operation of the LSTF poses an unacceptable risk to the onsite workers. Similarly, there is no reasonably foreseeable risk to the public or to the environment.

3. The Supplement to the Draft Environmental Impact Statement

Biological Aerosol Test Facility, New Alternative Action to Construct and Operate a Life Sciences Test Facility at Dugway Proving Ground, Utah is available for public review and comment. A copy of the document may be obtained by contacting Mr. Richard Whitaker at commercial telephone (801) 831-2116, or by writing to the following address: Commander, U.S. Army Dugway Proving Ground, STEDP-PA, Dugway, UT 84022-5000. Written comment should be submitted to the same address. Public meetings are to be scheduled in Tooele and Salt Lake City, Utah. Specific meeting times and places will be published in various newspapers. Comments to be considered in preparation of the final Environmental Impact Statement must be received not later than 60 days from the date this Notice of Availability is published in the **Federal Register**.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OSSA (I, L&E).

[FR Doc. 90-27812 Filed 11-26-90; 8:45 am]

BILLING CODE 3710-08-M

Availability of the Finding of No Significant Impact for the Handling of Waste Brines From the Johnston Atoll Chemical Agent Disposal System (JACADS)

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the Notice of Availability of the Finding of No Significant Impact of the proposed action to temporarily store and then ship to the U.S. for disposal the hazardous brines produced by the destruction of chemical agents and munitions in the Johnston Atoll Chemical Agent Disposal System (JACADS). The Army proposes to undertake this brine storage and shipment as an interim measure pending full operation of the Brine Reduction Area. The Brine Reduction Area is expected to be fully operational by approximately April 1991, after installation of an upgraded Pollution Abatement System. The Army also considered the no-action alternative which has been discussed in prior environmental documents that are available from the office listed below.

The Army has prepared an environmental assessment evaluating the proposed action. Reasons that the proposed action would not cause significant environmental impact include the following: no major construction would be involved nor would any new land be disturbed; the brines contain detectable levels of heavy metals but are not noxious, flammable, or otherwise inherently dangerous; water resource impacts would be minimal even if accidental spills of brines occurred during handling; hazardous brines would be shipped in single-wall, 316 stainless steel International Standardization Organization (ISO) Tanks with polyvinylchloride liners. Brines, in these Environmental Protection Agency-approved containers, would be shipped to the U.S. where they would be either dried and disposed of in licensed landfills or disposed of as liquids at licensed deep-well injection sites.

SUPPLEMENTARY INFORMATION: In the summer of 1990, the Army began destroying chemical agents and munitions currently stored at Johnston Atoll about 800 statute miles southwest of the Hawaiian Islands. Agents being destroyed are the nerve agents GB and VX, and the blistering agent HD. The agents are contained in bombs, rockets, projectiles, mines, and one-ton containers and will undergo thermal destruction in JACADS. The destruction process generates various types of waste, including brines, which result from scrubbers of the pollution abatement systems and brine reduction area. The brines consist mainly of inorganic salts and may contain detectable levels of heavy metals such as arsenic, barium, cadmium, chromium, lead, mercury selenium, and silver. Those brines, which have sufficiently high levels of heavy metals so as to be considered hazardous waste under the Resource Conservation and Recovery Act (RCRA), would be placed in portable ISO Tanks. The Army proposes to ship the brine in these portable tanks to the continental United States, where the brines would be disposed of in a licensed landfill or a licensed deep-well injection site. The ocean transportation would be by barge to Honolulu where the portable tanks would be transferred to a container ship for transportation to Long Beach, California. From Long Beach, some of the brines would be transported about 200 miles by truck to a disposal site at Kettleman Hills. The remainder would be shipped about 45 miles by truck to Azusa, California and from there about 1,450 miles by rail to the waste injection disposal site near Corpus Christi, Texas. Shipment from Johnston Island would be monthly and is proposed to commence on or around December 27, 1990. This proposal is consistent with the RCRA-established limit on storage of the brines in the ISO Tanks. Because of the RCRA limit on ISO Tank storage, agent destruction operations at JACADS might have to be suspended if brine shipment does not commence by January 4, 1990.

The proposed action would involve only minor new construction and increases in the work force so related impacts also should be minor. The final disposal of the brines, whether by deep-well injection or by landfill after drying operations which include concentrating in an evaporation pond, would take place in a licensed facility. The brines would meet the waste acceptance criteria for those facilities and as such would not be expected to result in significant impacts. The impacts would not be discernible from those that are already occurring at the disposal facilities since the brines would be combined with similar and compatible waste from other generators at the

disposal facilities. Hence, the impacts of the disposal operations at these facilities would be minor.

No significant impacts would be expected from routine operations. Minor spills could occur at any of the brine transfer points. These would be cleaned up using routine procedures. No special precautions would be required at Johnston Island, along the transport corridors, or at disposal sites beyond those normally needed to maintain occupational, health, and safety standards. Spills of hazardous brines during handling would likely be the highest consequence nonroutine events. These could occur at any point between the origin and the final U.S. disposal sites and would be expected to have only minor, short-term, and localized impacts.

The proposed action of temporary storage of hazardous brines on Johnston Island and eventual shipment to the U.S. for disposal does not constitute a major federal action normally requiring the preparation of an environmental impact statement. Based on the analysis provided in the environmental assessment, the Army determines that this action will not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* Therefore, an environmental impact statement is not required.

Pursuant to Army Regulation 200–2, no federal actions will take place in furtherance of this proposal until the close of the public comment period. The Army will accept comments from the public on this proposal until December 27, 1990, and will then indicate whether the record still supports a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Office of the Program Manager for Chemical Demilitarization, attn: SAIL–PMM (Colonel Carestia), Aberdeen Proving Ground, Maryland 21010–5401; telephone (301) 671–3337.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 90–27787 Filed 11–26–90; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 27, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: James O'Donnell (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from James O'Donnell at the address specified above.

Dated: November 20, 1990.

James O'Donnell,

Acting Director, for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: New.

Title: Performance Report for Student Literacy Corps Program.

Frequency: Annually.

Affected Public: Non-profit institutions.

Reporting Burden:

Responses: 209.

Burden Hours: 1254.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: Grantees who participate in the Student Literacy Corps Program submit this report to the Department. The Department uses the information to assess the accomplishment of project goals and objectives, and to aid in effective program management.

[FR Doc. 90–27724 Filed 11–26–90; 8:45 am]

BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Office of Information Resources Management, invites comments on the proposed information collection request as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by December 21, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: James O'Donnell (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden and (6) Abstract. Because an expedited review is requested, the additional information to be requested in this collection is included in the section on "*Additional Information*" in this notice.

Dated: November 20, 1990.

James O'Donnell,

Acting Director for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Expedited.

Title: Grant Application under the Education of the Handicapped Act.

Abstract: This form will be used by State educational agencies to apply for funding under the Education of the Handicapped Act, as amended. The Department uses the information to make grant awards.

Additional Information: An expedited review is requested due to Congress passing Public Law 101–476, the Education of the Handicapped Act Amendments of 1990, which added a requirement in section 610(b). Due to time restraints, this request is needed to allow grants to be awarded in FY 1991. This form contains the Standard Form SF–424 Federal Assistance Face Sheet and SF–424A Budget Information. The proposed changes to the program narrative are the following:

1. Under section entitled, "A. New Grants," a sentence would be added as follows:

Note also that, in the Education of the Handicapped Act Amendments of 1990, Congress directed the Secretary, where appropriate, to require applicants to address the needs of infants, toddlers, children and youth with disabilities from minority backgrounds.

2. Under section entitled, "3. Approach," add a new section:

(d) Describe, where appropriate, how the proposed project will address, in whole or in part, the needs of infants, toddlers, children and youth with disabilities from minority backgrounds.

Frequency: Annually.

Affected Public: State or Local Governments.

Reporting Burden:

Responses: 2,710.

Burden Hours: 97,820.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

[FR Doc. 90–27725 Filed 11–26–90; 8:45 am]

BILLING CODE 4000-01-M

President's Board of Advisors on Historically Black Colleges and Universities; Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda for a forthcoming meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE AND TIME: December 11, 1990, 9 a.m. until 5:30 p.m.

ADDRESSES: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Robert K. Goodwin, Executive Director, White House Inititative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., room 3682, ROB–3, Washington, DC 20202–5120, telephone (202) 708–8867.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established in accordance with Executive Order 12677, signed April 28, 1989. The Board is established to provide advice and make recommendations on developing an annual plan to increase the participation by historically Black colleges and universities in federally sponsored programs and on how to increase the private sector's role in strengthening historically Black colleges and universities. The Board is also responsible for developing alternative sources of faculty talent, particularly in the fields of science and technology; and for providing advice on how historically Black colleges and universities can achieve greater financial security through the use of improved business, accounting, management, and development techniques.

The proposed agenda for the first business meeting of the Board will be the official swearing in of Board Members, the discussion of the current and proposed public and private sector strategies to strengthen historically Black colleges and universities, and remarks by special guest.

Records are kept of all Board meetings and are available for public inspection at the White House Initiative, U.S. Department of Education, ROB–3, room 3682, Washington, DC from the hours of 8:30 a.m. to 5 p.m., Monday through Friday.

Dated: November 15, 1990.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90–27708 Filed 11–26–90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action to Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Wednesday, December 5, 1990, at the offices of the Organization for Economic Cooperation and Development (OECD), 2, rue Andre Pascal, Paris, France, beginning at 9:30 p.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the aforesaid location on that date.

The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the agenda
2. Summary Record of SEQ Meeting of October 22, 1990
3. Current Emergency Response Situation
   —The Emergency Response Potential of IEA/OECD Countries in December 1990 (Draft Report by the

SEQ to the Governing Board Meeting of December 12, 1990)
—Questionnaire B (QuB) Import Data for Period to January 1991
—Short-term Oil Product Imbalance Issues
4. Emergency Response Reviews of IEA Countries
—Emergency Response Review of Germany
—Calendar for Emergency Response Reviews
5. Emergency Reserve Situation of IEA Countries
—Emergency Reserve and Net Import Situation of IEA Member Countries on July 1, 1990
6. Quarterly Oil Forecast—4Q90/3Q91
7. Emergency Data System
—QuA/QuB Data Quality and their Correspondence to Objectives and Use of QuA/QuB Data in IEA Emergency Preparedness
—Base Period Final Consumption 3Q89–2Q90
—Monthly Oil Statistics (MOS) to August 1990
—MOS to September 1990
8. Any Other Business
—Standing Group on the Oil Market Meeting of December 4, 1990
—Short-Term Work Schedule of the SEQ.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the meeting is open only to representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of Congress, representatives of the IEA, representatives of members of the SEQ, representatives of the Commission of the European Communities, and invitees of the IAB, or the IEA.

Issued in Washington, DC, November 21, 1990.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 90-27837 Filed 11-26-90; 8:45 am]

BILLING CODE 6450-01-M

Office of the Deputy Secretary

Alternative Fuels Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: United States Alternative Fuels Council.

Date and Time: Wednesday, December 12, 1990, 9 a.m.–4 p.m.

Location: Russell Building, room 253, Washington, DC 20510.

Contact: Mark Bower, Office of Policy, Planning and Analysis, U.S. Department of Energy, Mail Stop PE-50, Washington, DC 20585, Phone: (202) 586-3991.

Purpose of the Council: To provide advice to the Interagency Committee on Alternative Motor Fuels to help:

1. "coordinate Federal agency efforts to develop and implement a national alternative motor fuels policy."
2. "ensure the development of a long-term plan for the commercialization of alcohols, natural gas, and other potential alternative motor fuels."
3. "ensure communication among representatives of all Federal agencies that are involved in alternative motor fuels projects or that have an interest in such projects."
4. "provide for the exchange of information among persons working with, or interested in working with, the commercialization of alternative motor fuels."

Alternative Fuels Council Agenda Outline December 12, 1990

9 a.m.–10:30 a.m.
Discussion of Alternative Fuel Policies: Part I
Chair: Robert W. Hahn
11 a.m.–12:30 p.m.
Discussion of Alternative Fuel Policies: Part II
Chair: Charles R. Imbrecht
12:30 a.m.–2 p.m.
Lunch
2 p.m.–3 p.m.
Future Activities of the U.S. Alternative Fuels Council
Chair: Robert W. Hahn
3 p.m.–4 p.m.
Agenda for Next Meeting, Dates of Future Meetings, and Public Comment Period
Chair: Charles R. Imbrecht
4
Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed with the Council either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda items should contact Mark Bower at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairpersons of the Council are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, room 1E190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on November 21, 1990.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 90-27838 Filed 11-26-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-391-000, et al.]

Mid-Continent Area Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directrate Filings

November 19, 1990.

Take notice that the following filings have been made with the Commission:

1. Mid-Continent Area Power Co.

[Docket No. ER89-391-000]

Take notice that on November 15, 1990, the Mid-Continent Area Power Pool ("MAPP") filed on behalf of the investor-owned public utility members of MAPP supplemental and amendatory information regarding proposed revisions to several of the Pool rate schedules for the purpose of incorporating formula rates. The schedules affected include Schedule B (Seasonal Participation Power), Schedule C (Emergency and Scheduled Outage Energy Service), Schedule E (Economy Energy), Schedule G (Operational Control Energy), Schedule H (Peaking Power), Schedule I (Short Term), Schedule K (System Participation Power), and Schedule M (General Purpose Energy) which is being added. MAPP requests a retroactive effective date on May 1, 1989 for the rate change.

Comment date: December 3, 1990, in accordance with Standard Paragarph E at the end of this notice.

2. Union Electric Co.

[Docket No. ER91-115-000]

Take notice that Union Electric Company, (Union Electric) on November 13, 1990, tendered for filing a Letter Agreement and Attachment to Exhibit B, to the Wholesale Service Agreement of February 13, 1989 between City of Farmington, Missouri, and Union Electric.

Union Electric states the purpose of the Letter Agreement and Attachment to Exhibit B is to provide for a new delivery point between the parties.

Comment date: December 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Delmarva Power & Light Co.

[Docket No. ER91-116-000]

Take notice that Delmarva Power & Light Company (Delmarva) on November 13, 1990, tendered for filing proposed Supplement No. 5 to its FERC Rate Schedule No. 38. This Supplement, filed with the approval and concurrence of The City of Dover, Delaware (Dover), is being made to coordinate with similar internal accounting changes with respect to intra-pool installed capacity accounting between members of the Pennsylvania, New Jersey, and Maryland Interconnection (PJM).

Copies of this filing were served upon the City of Dover, the Mayor of the City of Dover and the Delaware Public Service Commission.

Comment date: December 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. CIE—AMP-Ohio Interconnection Agreement

[Docket No. ER91-119-000]

Take notice that on November 13, 1990, the Cleveland Electric Illuminating Company filed, on behalf of the above listed parties to the CEI—AMP-Ohio Agreement an initial rate schedule between the Cleveland Electric Illuminating Company and American Municipal Power-Ohio Inc.

This Agreement provides for Short Term Power supplied by CEI. The parties have requested an effective date of October 1, 1990 for this schedule.

Comment date: December 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Central Vermont Public Service Corp.

[Docket No. ER91-111-000]

Take notice that Central Vermont Public Service Corporation (CVPS) on November 13, 1990, tendered for filing two agreements pursuant to which it has agreed to purchase from and sell power to New York Power Authority (NYPA) for resale to other utilities. CVPS states that with respect to its purchases from NYPA for resale to other utilities it is serving as a contracting agent for the purchase of Ontario Hydro power and energy by Vermont utilities. Central Vermont states that it has agreed to purchase the power and energy from the New York Power Authority (NYPA) for resale to the Vermont utilities, but that it imposes no additional charge for the purchase and resale and does not bill the utilities for the energy. The utilities instead are billed directly by Vermont Electric Power Company.

CVPS also states that it has sold system power and energy to NYPA for resale to Ontario Hydro pursuant to the agreement at rates that reflect less than its full allowed costs.

CVPS requests that the Commission waive its notice of filing requirements to allow the rate schedules to become effective retroactively as of September 1, 1989 and June 1, 1990.

Comment date: December 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER91-120-000]

Take notice that New England Power Company (NEP) on November 13, 1990, filed an executed Interconnection Agreement (Agreement) between NEP and L'Energia, Inc.

NEP requests waiver of the Commission's notice requirements so that the Agreement can be made effective May 9, 1990, the date of the Agreement. As good cause for the request for waiver, NEP states that it has begun construction of the Interconnection Facilities in reliance on the Agreement and in order to accommodate the developer.

Comment date: December 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Mid-Continent Area Power Pool

[Docket No. ER91-114-000]

Take notice that the Mid-Continent Area Power Pool, on November 13, 1990, tendered for filing Amendment No. 21 to the Mid-Continent Area Power Pool Agreement (Amendment).

Specifically, Amendment No. 21:

Adds Paragraph 3.34 to Article III—Definitions, to define the term "Contractor."

Revises Paragraphs 9.01 and 9.03 of Article IX to assure membership on the Executive Committee of representatives from the Participant allocated the largest portion of the MAPP Annual Budget and of other Participants allocated 20% or more of said Budget.

Eliminates the provision in Paragraph 15.01 of Article XV for selecting a Participant as Contractor.

Revises Paragraph 15.02 of Article XV by removing the Management Committee approval of the selection and retention of the MAPP Center Manager.

Clarifies Paragraph 15.07 of Article XV to name only the Contractor as responsible for the services required by the MAPP Committees.

Comment date: December 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Co.

[Docket No. ER91-109-000]

Take notice that on November 13, 1990, Southern California Edison Company (Edison) tendered for filing the Edison-Vernon Firm Transmission Service Agreement (Agreement) for Vernon's Purchases from the State of California, Department of Water Resources (CDWR) which has been executed by Edison and the City of Vernon, California (Vernon).

Under the agreement, Edison agrees to make firm transmission service available to Vernon in 1991–1993 from Vincent Substation to Vernon's Point of Delivery, during certain hours, for Vernon's purchase of capacity and associated energy from CDWR. Edison will be providing firm transmission service for up to 67 megawatts of capacity and associated energy from CDWR during the months of January, February, March, April, November, and December and 98 megawatts of capacity and associated energy during the months of May through October.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 3, 1990, in accordance with Standard Paragraph E end of this notice.

9. Central Vermont Public Service Corp.

[Docket No. ER91-112-000]

Take notice that on Central Vermont Public Service Corporation (CVPS) on November 13, 1990, tendered for filing as an initial rate schedule a contract and supplement thereto under which CVPS had agreed to sell an entitlement of up to 3.5 MW of the Vermont Yankee generating unit to Vermont Marble Company. The contract provides that Vermont Marble may designate between 1 MW and 3.5 MW of the entitlement in each month, on 45 days notice. CVPS states that the price for the transaction was negotiated by CVPS and Vermont Marble and reflects the parties' agreement concerning the split of the savings realized from the transaction. CVPS states that the average price under the agreement was at less than CVPS' fully allocated cost for Vermont Yankee.

CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedule to become effective as of May 1, 1990.

Comment date: December 3, 1990, in accordance with Standard Paragraph E end of this notice.

10. Central Vermont Public Service Corp.

[Docket No. ER91-113-000]

Take notice that Central Vermont Public Service Corporation (CVPS) on November 13, 1990, tendered for filing agreements for the sale of incremental

capacity and energy to Johnson Water and Light Department and Hyde Park to sell to CVPS all of their entitlements other than CVPS system contract power and NYPA power; and for CVPS to sell to Johnson and Hyde Park incremental service to meet all of their needs in excess of those met by CVPS system contract and NYPA power. The agreements also provide that the price Johnson and Hyde Park will pay will pay will be no higher than the price they would have paid for service if the contracts were not in effect.

CVPS requests the Commission to waive its notice of filing requirements to permit the agreements to become effective as of May 1, 1990.

Comment date: December 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

11. Central Vermont Public Service Corp.

[Docket No. ER91-117-000]

Take notice that Central Vermont Public Service Corporation (CVPS) on November 13, 1990, tendered for filing a one-year extension of a Purchase Agreement between CVPS and New England Power Company (NEP). The Agreement provides for the sale of a portion of the Central Vermont entitlement in the capacity and net electrical output of the Vermont Yankee Nuclear Power plant to NEP.

CVPS requests the Commission to waive its notice of filing requirements to permit the Agreement to become effective as of November 1, 1990.

Comment date: December 3, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27731 Filed 11-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-3-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

November 20, 1990.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on November 14, 1990, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, as set forth in the revised tariff sheets:

Algonquin states that it is filing revised tariff sheets 28 Rev Sheet No. 211, 24 Rev Sheet No. 214 and 5 Rev Sheet No. 220 pursuant to Section 10 of Rate Schedule STB, Section 9 of Rate Schedule SS-III and Section 4 of Rate Schedule ATAP to track changes in the underlying services, Texas Eastern Transmission Corporation's ("Texas Eastern") Rate Schedules SS-2, SS-3 and FT-1, respectively. On October 31, 1990 in Docket No. RP91-119 *et al.*, Texas Eastern filed to motion into effect its suspended rates in the subject Docket to be effective December 1, 1990. Accordingly, Algonquin is making the instant filing to track such changes.

Algonquin states that the proposed effective date of 28 Rev Sheet No. 211, 24 Rev. Sheet No. 214 and 5 Rev Sheet No. 220 is December 1, 1990 to coincide with Texas Eastern's filing.

The effect, at December 1, 1990, under Rate Schedule STB is, to increase the Firm Demand by $0.2180 per MMBtu, and increase the Withdrawal rate by $0.0046 per MMBtu. In addition, the demand-2 unit rate has been eliminated in favor of a one part demand rate structure. The effect is to decrease the demand-2 rate from $0.1637 to $0.0000 per MMBtu while increasing the demand-1 unit rate by $7.055 per MMBtu. Under Rate Schedule SS-III the effect is to increase the Firm Demand rate by $0.4070 per MMBtu, increase the FDDQ Withdrawal rate by $0.0462 per MMBtu and increase the Non-FDDQ Withdrawal rate by $0.1582 per MMBtu. Under Rate Schedule ATAP the effect of the changes is to increase the Commodity Maximum rate by $0.1848 per MMBtu, increase the Commodity Minimum rate by $0.0957 per MMBtu and increase the Interruptible Commodity rate by $0.2530 to $0.8083 per MMBtu.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 27, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27738 Filed 11-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-45-002; RP88-46-005]

Arkla Energy Resources, a Division of Arkla, Inc.; Proposed Changes in FERC Gas Tariff

November 20, 1990.

Take notice that on November 16, 1990, Arkla Energy Resources ("AER"), a division of Arkla, Inc., tendered for filing changes in its FERC Gas Tariff, Volume Nos. 1, 1-A and 3 to be effective November 1, 1990. AER states that this filing is in compliance with the Commission's Order Approving Settlements in the above-referenced dockets, which was issued on October 30, 1990. The specific tariff sheets filed by AER are listed in Appendix A.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before November 28, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27735 Filed 11-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-11-001]

Arkla Energy Resources, a Division of Arkla, Inc., Proposed Changes in FERC Gas Tariff

November 20, 1990.

Take notice that on November 16, 1990, Arkla Energy Resources ("AER"), a division of Arkla, Inc., tendered for filing minor housekeeping changes in its FERC Gas Tariff, Volume Nos. 1 and 1-A. AER states that this filing is to amend the tariff sheets filed on October 23, 1990, in this docket to incorporate the rates approved by the Commission's Order Approving Settlements in Docket Nos. RP88-45-000 and RP88-46-000 issued on October 30, 1990. AER does not propose any change to its original filing in Docket No. RP91-11-000 with regard to its proposed recovery of take-or-pay buyout and buydown expenses, incurred in order to resolve disputed claims arising out of AER's alleged failure to take gas or to pay for gas not taken.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990).) All such protests should be filed on or before November 29, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27739 Filed 11-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-2-32-000]

Colorado Interstate Gas Co.; Filing

November 20, 1990.

Take notice that Colorado Interstate Gas Company ("CIG") submitted for filing six copies of affected tariff sheets from Original Volume No. 1, Original Volume No. 2, and Original Volume No. 3 of its FERC Gas Tariff, increasing by 0.16 cent/Mcf the presently effective Gas Research Institute ("GRI") rate from 1.30 cent/Mcf to 1.46 cent/Mcf effective January 1, 1990.

CIG notes that pursuant to the Commission's order issued September 18, 1990, in Docket No. TA91-1-32-001 and RP90-166-001, CIG sought a waiver of the Commissions regulations permitting the "as billed" flow-through in its quarterly purchased gas adjustment filings of demand and commodity costs incurred under certain producer contracts. Since the Commission has yet to act on CIG's filing in Docket Nos. TA91-1-32-001 and RP90-166-001, CIG will conform its GRI filing, where necessary, to be consistent with such action.

CIG states that copies of this filing are being served on all jurisdictional customers and interested state commissions, and are otherwise available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 28, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27744 Filed 11-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-26-000]

El Paso Natural Gas Co.; Tariff Filing

November 20, 1990.

Take notice that on November 16, 1990, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in accordance with sections 21 and 22, Take-or-Pay Buyout and Buydown Cost Recovery, of El Paso Natural Gas Company's ("El Paso") Second Revised Volume No. 1 and First Revised Volume No. 1-A FERC Gas Tariffs, respectively, El Paso tendered for filing and acceptance certain tariff sheets that reflect a revision to the Monthly Direct Charge and Throughput Surcharge based on additional buyout and buydown costs not included in any of El Paso's previous filings to recover certain buyout and buydown costs and adjustments to previous filings.

El Paso states that it has also tendered alternative tariff sheets in the event El Paso's motion filed November 7, 1990 at Docket No. RM91-2-000, *et al.*, requesting modification of Order No. 528 is denied.

Pursuant to section 21.6 of El Paso's Volume No. 1 Tariff, El Paso is required to file with the Commission certain information supporting the buyout and/or buydown amounts paid. Accordingly, El Paso states that it is submitting concurrently, under separate cover letter, the schedules reflecting such information for which El Paso has requested confidential treatment.

El Paso respectfully requested that the Commission grant such waivers of its applicable rules and regulations as may be necessary to permit the tendered tariff sheets to become effective December 1, 1990. In the event El Paso's motion filed November 7, 1990 at Docket No. RM91-2-000, *et al.*, is denied, El Paso respectfully requested that the Commission grant such waivers of its applicable rules and regulations as may be necessary to permit certain of the tendered tariff sheets to become effective December 7, 1990.

El Paso states that copies of the filing were served upon all interstate pipeline system sales customers and shippers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 29, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27746 Filed 11-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR91-3-000]

Five Flags Pipe Line Co.; Petition for Rate Approval

November 19, 1990.

Take notice that on November 14, 1990, Five Flags Pipe Line Company filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum firm reservation charge of $7.46 per MMBtu per month and a firm commodity charge of $0.0992 per MMBtu and a maximum interruptible rate of $0.3445 per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978.

Five Flag's petition states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and operates solely within the state of Florida. Five Flag's previous maximum interruptible transportation rate for section 311(a)(2) service was approved by the Commission June 4, 1987 in Docket No. ST87-452-000.

Pursuant to § 284.123 (b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before December 5, 1990. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27734 Filed 11-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-37-010, RP89-82-001, CP90-408-001, CP75-104-008]

High Island Offshore System; Compliance Filing

November 19, 1990.

Take notice that on November 14, 1990, High Island Offshore System (HIOS) filed with the Federal Energy Regulatory Commission (Commission) the following revised tariff sheets that it states are in compliance with the Commission's October 30, 1990 order in the above referenced proceeding.

First Revised Volume No. 1

First Revised Sheet No. 1
Original Sheet No. 1A
Third Revised Sheet No. 8
Origional Sheet No. 8A
First Revised Sheet No. 9
Original Sheet No. 74
Original Sheet No. 75
Original Sheet No. 76
Original Sheet No. 76A
Original Sheet No. 76B

The Commission's October 30 order approves an uncontested settlement that provides for an experimental program of firm transportation capacity brokering on the HIOS system, and specifies the terms and conditions applicable to the brokering program. HIOS states that it accepts the certificate amendment and tenders the required tariff sheets within the 15-day period prescribed in ordering paragraph (B) of the Commission's Ocrober 30 order.

HIOS requests that Third Revised Sheet No. 8, which contains the settlement rates, be made effective December 1, 1990, and requests that the Commission's 30-day notice requirement be waived with respect to that sheet.

HIOS states that First Revised Sheet No. 9 is proposed to become effective when HIOS accepts the certificate amendment. HIOS states that the proposed effective date is Nobember 14, 1990. All of the other tariff sheets are proposed to be effective December 14, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR § 385.214, 385.211 (1990). All such protests should be filed on or before November 27, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 90-27733 Filed 11-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-65-004]

The Inland Gas Co., Inc.; Report of Refunds

November 20, 1990.

Take notice that the Inland Gas Company, Inc. (Inland) on May 21, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds, made pursuant to a Commission order dated March 19, 1990, which directed Inland to make cash refunds 10 days after acceptance of its revised tariff sheets, which occurred on May 4, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989)). All such protests should be filed on or before November 28, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27737 Filed 11-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-5-001]

Natural Gas Pipeline Co. of America; Changes in Tariff

November 20, 1990.

Take notice that on November 14, 1990 Natural Gas Pipeline Company of America (Natural) submitted for filing as part of its FERC Gas Tariff, First Revised Volume No. 1A, Substitute Original Sheet No. 120 to be effective November 1, 1990.

Natural states the purpose of this filing is to comply with the Commission's October 31 order which approved Natural's unauthorized gas penalty subject to conditions.

The condition required National to retain unauthorized gas not claimed after one hundred twenty days at no cost to itself and to develop a method to pass any benefit of retained volumes to both sales and transportation customers.

Natural states that it proposes to treat the retained volumes as a purchase and to credit the assigned cost of the purchase to Account 495, Other Gas Revenues. Other Gas Revenues is a credit to the cost of service for purposes of determining Natural's jurisdictional rates for sales and transportation services. Natural requested waiver, to the extent if any is required, of the Commission's order and Regulations to permit the approval of this procedure for accounting for unauthorized gas retained.

Natural states that a copy of the filing was mailed to Natural's jurisdictional customers, intervenors, and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before November 28, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27736 Filed 11-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-27-000]

Northwest Alaskan Pipeline Co.; Tariff Changes

November 20, 1990.

Take notice that on November 16, 1990, Northwest Alaskan Pipeline Company ("Northwest Alaskan"), 295 Chipeta Way, Salt Lake City, Utah 84158-0900, tendered for filing in Docket No. RP91-27 Twenty-Seventh Revised Sheet No. 5 to its FERC Gas Tariff Original Volume No. 2.

Northwest Alaskan states that it is submitting Twenty-Seventh Revised Sheet No. 5 reflecting an increase in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. ("Pan-Alberta") and resold to three of Northwest Alaskan's four U.S. purchasers, Northern Natural Gas Company ("Northern"), Panhandle Eastern Pipe Line Company ("Panhandle") and Pacific Interstate Transmission Company ("PIT") under Rate Schedules X-1, X-2, and X-4, respectively, and a decrease in total demand charges to Natgas U.S. Inc. ("Natgas") under Rate Schedule X-3. The increase in total demand charges for Northwest Alaskan's three customers results primarily from an increase in demand charges from Pan-Alberta and from foreign exchange rate fluctuations.

Northwest Alaskan states that it is submitting Twenty-Seventh Revised Sheet No. 5 pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and Northern, Panhandle, Natgas and PIT, and pursuant to Rate Schedules X-1, X-2, X-3, and X-4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (January 1, 1991 through June 30, 1991) the demand charges and demand charge adjustments which Northwest Alaskan will charge during that period.

Northwest Alaskan requests that Twenty-Seventh Revised Sheet No. 5 become effective January 1, 1991.

Northwest Alaskan states that a copy of this filing has been served on Northwest Alaskan's customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before November 29, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27740 Filed 11-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR91-2-000]

Rhone-Poulenc Pipeline Co.; Petition for Rate Approval

November 20, 1990.

Take notice that on October 26, 1990, Rhone-Poulenc Pipeline Co. filed, pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.277 per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Rhone-Poulenc's petition states that it owns and operates an intrastate pipeline located in Southwest Wyoming. The primary purpose of this pipeline is to gather and transport gas for its parent, Rhone-Poulenc of Wyoming Co. from a gas processing plant operated in Wyoming by Exxon Company, U.S.A. to an existing interconnection with Colorado Interstate Gas Company.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before December 5, 1990. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27742 Filed 17-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-29-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Tariff Filing

November 20, 1990.

Take notice that on November 16, 1990, Tennessee Gas Pipeline Company, (Tennessee) tendered revised tariff sheets to its Third Revised Volume No. 1 and alternate sets of Volume No. 2 to its FERC Gas Tariff to be effective December 16, 1990.

Tennessee states that this filing is made to revise its tariff provisions which provide for customer funding of certain transition costs related to gas purchase contract settlement payments made by Tennessee to its producer-suppliers. These revisions are necessary to comply with the Commission's directives in Order No. 528, issued in response to the DC Circuit's decision in *Associated Gas Distributors* v. *FERC*, 893 F.2d 349 (DC Cir. 1989), *reh'g and suggestion for reh'g en banc denied*, 898 F.2d 809 (1990), *cert. denied sub nom., The Berkshire Gas Co.* v. *Associated*

BEST COPY AVAILABLE

Gas Distributors, U.S. ——, —— 59 U.S.L.W. 3271 (October —— 1990).

Tennessee states that its preferred alternative is the tariff sheets listed on Appendix A attached to the filing which provide that Tennessee will direct bill 37% of the transition costs, absorb 37%, and establishes a volumetric surcharge to recoup the remaining 26%. The direct bill will apply to customers who are or were taking service under Tennessee's Rate Schedules CD, G and GS. Each of those customers' percentage share of the direct billed costs will be 50% of the lesser of (1) the customer's allocation percentage under the purchase deficiency method approved by the Commission in Docket Nos. RP86-119, *et al.* or (2) the ratio of the customer's AQL in effect on July 1, 1988 to the sum of all customers' AQLs in effect on that date. To complete the recovery of transition costs filed for by Tennessee on or before November 30, 1990, the customers will continue making the same payments as they are currently making or, for customer currently making no payments, the completion of such recovery will be through a lump sum payment. Any transition cost recovery filed for after November 30, 1990 will be recovered over a two-year amortization period based on an annuity method computed every six-months.

The volumetric surcharge will apply to all units of throughout on Tennessee's system, except those volumes which would otherwise be subject to a volumetric surcharge more than once. The transition costs assigned for volumetric recovery will be recouped over a three-year amortization period. Subsequently, incurred costs would be recovered through incremental three-year surcharges.

Tennessee states that its alternative tariff sheets reflect the direct billing of 50% of the transition costs and the absorption by Tennessee of the remaining 50%. The direct bill will apply to each customer under Tennessee's Rate Schedules CD, G and GS and will be allocated among those customers based on the ratio of each customer's AQL in effect on July 1, 1988 to the sum of all customer's AQLs in effect on that date. The direct billed costs will be recovered over a two-year amortization period based on an annuity method. The direct billing charge will be adjusted every six months to reflect additional charges.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990).) All such protests should be filed on or before November 28, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27747 Filed 11-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-115-014]

Texas Gas Transmission Corp.; Report of Refunds

November 20, 1990.

Take notice that Texas Gas Transmission Corporation (Texas Gas) on September 17, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds, made in accordance with the provisions of Article I of the Stipulation and Agreement filed in the proceeding and approved by Commission Letter Orders of November 24, 1989 and July 10, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989). All such protests should be filed on or before November 28, 1990. Protests will be considered by the Commission in determining the appropriate action to be take, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27761 Filed 11-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-42-004]

Transwestern Pipeline Co.; Revised Refund Report

November 20, 1990.

Take notice that on November 13, 1990, Transwestern Pipeline Company (Transwestern) filed with the Federal Energy Regulatory Commission (Commission) a revised refund report.

Transwestern states that it filed a refund report on October 12, 1990, pursuant to Ordering Paragraph (B) of the Commission's August 28, 1990 order in the above referenced proceeding. Transwestern states that subsequent to the filing of the refund report, Transwestern discovered that the principle refund amount of $696,150 has been collected in the direct bill proceedings (Docket Nos. TM90-3-42-000 and TM90-4-52-000) and should have been refunded on a straight percentage basis (after being adjusted for refunds associated with Rate Schedules SG-1, SG-2, RW-1, and Industrial customers) as approved in the Commission's May 11, 1988, July 29, 1988 and July 31, 1989 orders in Docket Nos. CP88-000, *et al.*

Transwestern is requesting a waiver of the requirements of the August 28, 1990 order for the making of refunds and the filing of the revised report.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC, 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before November 28, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27745 Filed 11-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-4-42-003]

Transwestern Pipeline Co.; Filing of Refund Report

November 19, 1990.

Take notice that on November 5, 1990, Transwestern Pipeline Company (Transwestern) filed pursuant to Ordering Paragraph (C) of the Commission's September 18, 1990 order in the above reference proceeding its report verifying that it has made the refunds required by the September 18 order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before November 27, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27732 Filed 11-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-25-000]

United Gas Pipe Line Co.; Complaint and Request for Immediate Refund

November 20, 1990.

Take notice that on November 14, 1990, Texas Eastern Transmission Corporation (Texas Eastern) pursuant to rule 206 of the Federal Energy Regulatory Commission (Commission) rules of practice and procedure, 18 CFR 385.206, and the Commission's August 3, 1990 order, filed with the Commission a compliant directed to United Gas Pipe Line Company (United).

Texas Eastern complains that United has assessed a penalty and refused to make refunds of approximately $8.2 million to Texas Eastern for alleged unauthorized overrun service in December 1989 in contravention with its own tariff and relevant Commission orders. Texas Eastern also complains that United has assessed an annual unauthorized overrun penalty of approximately $5.6 million.

Texas Eastern states that it requested the delivery of sales gas commencing on December 23, 1989 from United up to its firm contract demand of 300,000 Mcf per day, and that United began selling gas to Texas Eastern. Texas Eastern states that at the time United stated that it would not consider the sales "authorized", nor would United waive any penalty associated with those sales. Texas Eastern states that United based its refusal to authorize the overrun service on the fact that Texas Eastern's monthly D-2 nomination was zero Mcf.

Texas Eastern states that it did not consent to the penalty at the time it requested the sales service. Texas Eastern states that United billed Texas Eastern a $5 per Mcf penalty, amounting to approximately $8.2 million in the aggregate, and that it paid the penalty amount under protest. Texas Eastern further notes that on November 7, 1990 United billed Texas Eastern an additional annual unauthorized penalty of approximately $5.6 million.

Texas Eastern requests that the Commission order United to refund the penalty amount of approximately $8.2 million with interest accrued since the date of payment and order that the annual unauthorized penalty of approximately $5.6 million has not been properly billed pursuant to United's FERC Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 20, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room. Answers to the complaint shall be due on or before December 20, 1990.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27743 Filed 11-26-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-76-NG]

Cascade Natural Gas Corp.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy Department of Energy.

ACTION: Notice of an order granting long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Cascade Natural Gas Corporation authorization to import a total of 42.2 Bcf of natural gas from Canada over a period of ten years, at a daily rate of up to 12,000 Mcf. The gas would be purchased from Mobil Oil Canada, Ltd. and delivered at the international border near Sumas, Washington, No new pipeline construction in the United States is required.

A copy of this order is available for inspection and copying in thie Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 30585, (202) 586-9476. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., November 20, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary Office of Fossil Energy.

[FR Doc. 90-27839 Filed 11-26-90; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No 90-75-NG]

Ocean State Power; Order Granting Authorization To Import and Export Canadian Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import and export Canadian natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Ocean State Power authorization to import and export up to a total of 36.5 Bcf of Canadian natural gas over a two-year term beginning on the date of the first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal Holdiays.

Issued in Washington, DC, November 20, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-27840 Filed 11-26-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59100; FRL-3841-2]

Renewal for the Biotechnology Science Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA announces the renewal for the Biotechnology Science Advisory Committee following consultation with the Committee Management Secretariat, General Services Administration. EPA has determined that renewal of this advisory committee is in the public interest in connection with the performance of duties imposed on the Agency by law. The charter which continues this advisory committee for 2 more years, unless otherwise terminated, will be filed with the appropriate Congressional committees and the Library of Congress. The committee will operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations issued in implementation of the Act.

FOR FURTHER INFORMATION CONTACT: Elizabeth Milewski, Executive Secretary, Biotechnology Science Advisory Committee, TS-788, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 382-f900.

Dated: November 16, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 90-27818 Filed 11-26-90; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3863-9]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Cab-O-Sil Division, Cabot Corporation, Tuscola, IL

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of final decision on exemption petition.

SUMMARY: Notice is hereby given by the USEPA that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA) has been granted to Cab-O-Sil Division, Cabot Corporation (Cabot), of Tuscola, Illinois, for continued use of Well No. 2. As required by 40 CFR part 148, Cabot has demonstrated, to a reasonable degree of certainty, that there will be no migration of hazardous constitutents from the injection zone for as long as the waste remains hazardous. This final decision allows the continued underground injection by Cabot of specific restricted hazardous wastes, including hydrochloric acid and wastewaters contaminated with hydrochloric acid which are hazardous because they are corrosive (i.e., Ph is less than or equal to 2.0, hence its waste code is D002 under 40 CFR 261), a multi-source leachate (Code F039) contaminated with small amounts of 1,1-dichloroethylene, 1,2-dichloroethylene, methylene chloride, phenol, tetrachloroethylene, and trichloroethylene from a closed waste storage impoundment, and low concentrations of residual, spent acetone (Code F003) rinsed from laboratory glassware cleaned with solvent, into a Class I hazardous waste injection well, specifically identified as Well No. 2, at the Tuscola facility. This decision constitutes a final USEPA action for which there is no administrative appeal.

BACKGROUND: Cabot submitted a petition on April 14, 1988, requesting exemption for its two injection wells located in Tuscola, Illinois, from the land disposal restrictions for hazardous wastes. USEPA personnel reviewed all data pertaining to the petition, including, but not limited to, well construction, regional and local geology, seismic activity, penetrations of the confining zone, and the mathematical models submitted by Cabot to demonstrate that no migration from the injection zone would occur. The USEPA has determined that the geological setting at the site as well as the construction and operation of Well No. 2 are adequate to prevent fluid migration out of the injection zone within 10,000 years, as required under 40 CFR Part 148. The injection zone at this site includes the upper part of the Franconia, all of the Potosi and Eminence, and the lower part of the Oneota Dolomite between the depths of 5,400 and 4,442 feet. The immediately overlying confining zone is the Shakopee Dolomite between 4,442 and 4,124 feet. The confining zone is separated from the lowermost source of underground drinking water at a depth of 2,750 feet by sequences of permeable and less permeable sedimentary rocks which provide additional protection from fluid migration into underground sources of drinking water. A fact sheet containing a complete summary of the decision now being finalized was published in the **Federal Register** of August 24, 1990.

A public notice of the proposed decision was issued on August 10, 1990, pursuant to 40 CFR 124.10, and a public hearing was subsequently held in Tuscola on September 10, 1990. The public comment period expired on September 24, 1990. A number of comments were received and all comments have been considered in making the final decision. Condition 6 of the proposed exemption required that the petitioner must restore the mechanical integrity of Well No. 1 before the exemption becomes final. Since this condition has not been met and the absence of mechanical integrity on the part of Well No. 1 does not pose a threat during operation of Well No. 2, the condition has been deleted, but the exemption has been limited to Well No. 2. When a demonstration of the mechanical integrity of Well No. 1 has been made, an exemption can be granted for the operation of that well, provided all other factors remain the same.

After considering all comments received, the USEPA has determined that its reasons for granting the exemption as set forth in the original fact sheet remain valid; accordingly, a final exemption is granted with specific conditions listed in this notice. A responsiveness summary has been prepared for distribution to all commentors and those who signed in at the public hearing.

Conditions

For this exemption to be effective, Cabot must meet the following conditions:

(1) The monthly average injection rate must not exceed 400 gallons per minute.

(2) The concentrations of the constituents included in the injected leachate will not exceed the amounts listed as proposed maximum allowable concentrations in Table 8-6 in the petition document;

(3) Injection shall occur only into the Franconia, Potosi, and Eminence Dolomites and the Gunter Sandstone;

(4) The injection zone shall consist of the Franconia, Potosi, Eminence, and Oneota Dolomites and the Gunter Sandstone, found between 5,400 and 4,442 feet in Cabot's Well No. 2; and

(5) Cabot must be in full compliance with all conditions of its permits and other conditions relating to the exemption found in 40 CFR Parts 148.23 and 148.24.

DATES: This action is effective as of November 6, 1990.

FOR FURTHER INFORMATION CONTACT: Harlan Gerrish, Lead Petition Reviewer, USEPA, Region V, telephone (312) 886-2939. Copies of the petition and all pertinent information relating thereto are on file and are part of the Administrative Record. It is recommended that you contact the lead reviewer prior to reviewing the Administrative Record.

Dale S. Bryson,

Director, Water Division.

[FR Doc. 90-27812 Filed 11-26-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Inquiry Into Practices Affecting Shipping in the United States/Japan Trade: Harbor Management Fund; Extension of Time

On October 24, 1990, the Commission published a notice (55 FR 42893), inviting interested persons to submit information, views, or comments by November 20, 1990, with respect to the effect of the Harbor Management Fund on ocean shipping services used in the import or export of goods to or from the United States and Japan.

The time for submission of the comments has now been extended to December 10, 1990.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-27728 Filed 11-26-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200016-016.

Title: Port of New Orleans/Coastal Cargo Company Terminal Agreement.

Parties: Board of Commissioners of the Port of New Orleans, Coastal Cargo Company.

Synopsis: The Agreement extends the term of the basic lease agreement for an additional 3-year term ending November 17, 1993, and increases the monthly rental payment.

Agreement No.: 224-200005-004.

Title: The Port Authority of New York and New Jersey/Maher Terminals, Inc. Terminal Agreement.

Parties: The Port Authority of New York and New Jersey (Authority), Maher Terminals, Inc. (Maher).

Synopsis: The Agreement amends the basic agreement to provide that the Authority's investment in certain terminal improvement work being performed by Maher be increased and to extend the time for the performance of certain improvement work and berth deepening.

By Order of the Federal Maritime Commission.

Dated: November 20, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-27726 Filed 11-26-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-009735-026.

Title: Steamship Operators Intermodal Committee Agreement.

Parties:
American President Lines, Ltd.
Atlantic Container Line
Columbus Line, Inc.
Companhia de Navegacao Martima Netumar
Crowley Maritime Corporation
Evergreen International (U.S.A.) Corporation
Farrell Lines, Incorporated
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Sea-Land Service, Inc.
Yang Ming Marine Line Corporation
Wilhelmsen Lines USA Inc.
Zim Container Service

Synopsis: The proposed amendment would revise and restate the basic Agreement among the parties, which provides for a voluntary discussion agreement with emphasis on intermodal transportation technology and special aspects of matters pertaining to containerized cargo handling and transportation equipment, employment and interchange of equipment among users and suppliers thereof, and requirements peculiar to the movement of hazardous cargo.

Agreement No.: 212-010320-022.

Title: Brazil/U.S. Gulf Ports Agreement.

Parties:
Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
American Transport Lines, Inc.
Empresa Lineas Maritmas Argeninas S.A.
A. Bottacchi S.A. de Navegacion C.F.I.I.

Synopsis: The proposed amendment would extend the special carrying adjustments for wheels for automobiles and certain neo-bulk-type commodities through December 31, 1991. It would also extend the alternate coast port service provisions through December 31, 1991.

Agreement No.: 217-011304-001.

Title: FMG/PDN/CSAV/NACL Space Charter Agreement.

Parties:
Flota Mercante Grancolombiana
Promotora De Navegacion
Compania Sud Americana de Vapores
North American Caribbean Line Ltd.

Synopsis: The proposed Agreement would expand the geographic scope of the Agreement to cover Caribbean ports, as well as all ports in South America.

By Order of the Federal Maritime Commission.

Dated: November 20, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-27727 Filed 11-26-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Barclays PLC and Barclays Bank PLC, London, England; Proposal To Act as Agent in the Private Placement of All Types of Securities and Purchase and Sell All Types of Securities on Order of Customers as Riskless Principal

Barclays PLC and Barclays Bank PLC, both of London, England (collectively referred to as "Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), for prior approval to engage *de novo* through its subsidiary, Barclays de Zoete Wedd Securities, Inc., New York, New York ("Company"), in acting as agent in the private placement of all types of securities and acting as riskless principal in buying and selling all types of securities on the order of customers. Applicant proposes to conduct these activities throughout the United States.

Company is currently authorized to conduct the following activities under section 4(c)(8) of the BHC Act: (1) Underwriting and dealing in securities eligible to be underwritten and dealt in by U.S. member banks, and providing investment or financial advice in connection with these activities; (2) securities brokerage activities; (3) futures commission merchant ("FCM") activities; and (4) underwriting and dealing in, to a limited extent, debt and equity securities. *See Canadian Imperial Bank of Commerce/The Royal Bank of Canada/Barclays PLC/Barclays Bank PLC*, 76 Federal Reserve Bulletin 158 (1990) ("*Canadian Imperial/RBC/Barclays*").

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with the Board's approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." 12 U.S.C. 1843 (c) (8). The Board has previously determined that acting as agent in the private placement of all types of securities and acting as riskless principal in buying and selling all types of securities on the order of customers are closely related and proper incidents to banking. *Banking Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989) ("*Bankers Trust* Order"); *J.P. Morgan & Company Incorporated*, 76 Federal Reserve Bulletin 26 (1990) ("*J.P. Morgan* Order").

Applicant has proposed to act as agent in the private placement of all types of securities and to act as riskless principal in buying and selling securities on the order of customers, subject to the prudential limitations set forth in the *Bankers Trust* Order as modified by the *J.P. Morgan* Order. Applicant has proposed to modify these limitations to account for its status as a foreign bank, in accordance with prior Board orders. *Toronto Dominion Bank*, 76 Federal Reserve Bulletin 573 (1991); *Canadian Imperial/RBC/Barclays*.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." 12 U.S.C. 1843(c)(8). Applicant contends that permitting Company to engage in the proposed activities would result in increased competition, greater convenience to customers, and increased efficiency in the provision of financial services.

Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), which prohibits the affiliation of a member bank with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Applicant asserts that, in accordance with the Board's determination in the *Bankers Trust* Order and *J.P. Morgan* Order, the proposed private placement and riskless principal activities, when conducted subject to certain limitations, do not constitute the underwriting of or dealing in securities.

In publishing the proposal for comment the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act or the Glass-Steagall Act.

Any comments or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 16, 1990. Any request for a hearing on this application must be accompanied, as required by § 262.3(e)) of the Board's Rules of Procedure (12 CFR 262.3(e)), by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, November 20, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27773 Filed 11-26-90; 8:45 am]

BILLING CODE 6210-01-M

Blackshear Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225-14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 17, 1990.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Blackshear Bancshares, Inc.*, Blackshear, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Blackshear Bank, Blackshear, Georgia.

2. *Button Gwinnett Bancorp, Inc.*, Norcross, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Button Gwinnett Savings Bank, FSB, Norcross, Georgia.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Phelps County Bank Employee Stock Ownership Plan*, Rolla, Missouri; to acquire an additional 33 percent of the voting shares of Phelps County Bancshares, Inc., Rolla, Missouri, for a total of 66 percent, and thereby indirectly acquire Phelps County Bank, Rolla, Missouri.

Board of Governors of the Federal Reserve System, November 20, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27774 Filed 11-26-90; 8:45 am]

BILLING CODE 6210-01-M

NCNB Corp.; Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 17, 1990.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NCNB Corporation*, Charlotte, North Carolina; to engage *de novo* through its subsidiary, NCNB Capital Markets, Inc., Charlotte, North Carolina, in acting as adviser, agent and broker in connection with the leasing of real and personal property, and originating and holding leases of real and personal property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 20, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27775 Filed 11-26-90; 8:45 am]

BILLING CODE 6210-01-M

Valley Bancorp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 17, 1990.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Valley Bancorporation*, Appleton, Wisconsin; to acquire Western Federal Savings and Loan Association, Sparta, Wisconsin, and thereby engaged in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the State of Wisconsin.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Whitcorp Financial Company*, Leoti, Kansas; to engage directly in the sale of general insurance in Leoti, Kansas, a town with a population of less than 5,000, pursuant to § 225.25(b)(8)(iii)(A); to acquire Securities Investment Company, Lamar, Colorado, and thereby engaged in the sale of credit-related insurance pursuant to § 225.25(b)(8), and acquiring consumer loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 20, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27776 Filed 11-26-90; 8:45 am]

BILLING CODE 6210-01-M

Valley Bancorporation Thrift and Sharing Plan, et al.; Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the ntoice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in

writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than December 11, 1990.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Valley Bancorporation Thrift and Sharing Plan*, Appleton, Wisconsin; to acquire 20 percent of the voting shares of Valley Bancorporation, Appleton, Wisconsin, and thereby indirectly acquire Valley Bank, Madison, Wisconsin; Valley Bank, Appleton, Wisconsin; Valley Bank, Northeast, Green Bay, Wisconsin; Valley Bank, Janesville, Janesville, Wisconsin; Valley Bank Southwest, Spring Green, Wisconsin; Valley Bank, Menomonie, Menomonie, Wisconsin; Valley Bank, Southeast, Hartland, Wisconsin; Valley Bank Thiensville Mequon, Thiensville, Wisconsin; Valley Bank of Shawano, N.A., Shawano, Wisconsin; Valley First National Bank, Rhinelander, Wisconsin; Valley Bank, Kewaskum, Wisconsin; Valley Bank of Oshkosh, Oshkosh, Wisconsin; Valley First National Bank of Beaver Dam, Beaver Dam, Wisconsin; Valley Bank, South Central, N.A., Watertown, Wisconsin; Valley First National Bank of Ripon, Ripon, Wisconsin; and Valley Bank, Milwaukee, Wisconsin.

Board of Governors of the Federal Reserve System, November 20, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27777 Filed 11-26-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Technical Advisory Committee for Diabetes Translation and Community Control Programs; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following committee meeting

Name: Technical Advisory Committee for Diabetes Translation and Community Control Programs.

Time and Date: 8 a.m.-4:30 p.m., Wednesday, December 12, 1990.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with advising the Director, CDC, regarding priorities and feasible goals for translation activities and community control programs designed to reduce morbidity and mortality from diabetes and its complications. The Committee advises regarding policies, strategies, goals and objectives, and priorities; identifies research advances and technologies ready for translation into widespread community practice; recommends public health strategies to be implemented through community interventions; advises on operational research and outcome evaluation methodologies; identifies research issues for further clinical investigation; and advises regarding the coordination of programs with Federal, voluntary, and private resources involved in the provision of services to people with diabetes.

Matters to be Discussed: The Committee will discuss scientific findings and the mechanisms for transfer of these findings into practice. The Committee will also begin to develop long range goals and objectives and discuss current issues related to diabetes morbidity and mortality. Division of Diabetes Translation (DDT) staff will provide updates on major projects and program initiatives currently underway within the Division.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Frederick G. Murphy, Program Analyst, DDT, Center for Chronic Disease Prevention and Health Promotion, CDC, 1600 Clifton Road, NE, Mailstop F-46, Atlanta, Georgia 30333, telephone 404/639-1771 or FTS 236-1771.

Dated: November 20, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90-27828 Filed 11-26-90; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

[BPD-717-N]

Medicare and Medicaid Programs; ICD-9-CM Coordination and Maintenance Committee Meeting

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) Coordination and Maintenance Committee. The public is invited to participate in the discussion of the topic areas.

DATES: The meeting will be held on Friday, December 7, 1990, from 9 a.m. to 4 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held in the multipurpose room of the Altmeyer Building of the Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235.

FOR FURTHER INFORMATION CONTACT: Laura Green, (301) 966-9364.

SUPPLEMENTARY INFORMATION: The ICD-9-CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health care facilities in reporting both diagnoses and surgical procedures for Medicare, Medicaid, and all other health-related DHHS programs. The work of the ICD-9-CM Coordination and Maintenance Committee will allow this coding system to continue to be an appropriate reporting tool for use in Federal programs.

The Committee is composed entirely of representatives from various Federal agencies interested in the International Classification of Diseases (ICD) and its modification, updating, and use of Federal programs. It is co-chaired by the National Center for Health Statistics (NCHS) and the Health Care Financing Administration (HCFA).

The Committee holds public meetings to present proposed coding changes and other educational issues. The meetings provide an opportunity for input concerning these issues to representatives of organizations active in medical coding, as well as physicians, medical record administrators, and other members of the public. The Committee encourages the public to participate in these meetings. After considering the comments presented at the public meetings, the Committee makes recommendations concerning the proposed changes to the Director of NCHS and the Administrator of HCFA for their approval.

At this meeting, the Committee will discuss: positron emission tomography, teleradiotherapy of 1 to 25 MEV protons, dilation of the duodenum, harvesting and retrieval of ovum (egg) and implantation of embryo into fallopian tube, total body scan, monoclonal antibodies, hepatatis C, HIV infection manifestations, ultraviolet skin damage, acute exacerbation of chronic bronchitis, Kaposi's sarcoma, pneumococcal pneumonia, chronic fatigue syndrome, acute ischemic heart disease without myocardial infarction, and other topics.

(Catalog of Federal Domestic Assistance Program No. 93.714, Medical Assistance Program; No. 93.773, Medicare—Hospital Insurance Program; No. 93-774, Medicare—Supplementary Medical Insurance)

Dated: November 9, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90-27824 Filed 11-26-90; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Final Special Consideration for Grants for Geriatric Education Centers

The Health Resources and Services Administration (HRSA) announces the final special consideration for fiscal year (FY) 1991, Grants for Geriatric Education Centers under the authority of section 789(a) of the Public Health Service Act as amended by Public Law 100-607.

Section 789(a) of the PHS Act authorizes the award of grants to accredited health professions schools as defined by section 701(4), or programs for the training of physician assistants as defined by section 701(8), or schools of allied health as defined in section 701(10). Applicants conducting projects to be administered in other types of public or nonprofit private entities may be considered for geriatric education center grants under section 301 of the PHS Act. Applicants must be located in the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, or the Federated States of Micronesia.

Grants may be awarded to support the development of collaborative arrangements involving several health professions schools and health care facilities. These arrangements, called Geriatric Education Centers (GECs), are established to facilitate training of medical, dental, optometric, pharmacy, podiatric, nursing, clinical psychology, health administration and appropriate allied health and public health faculty, students, and practitioners in the diagnosis, treatment, and prevention of diseases and other health problems of the aged.

Projects supported under these grants may address any combinations of the statutory purposes listed below:

(a) Improve the training of health professionals in geriatrics;

(b) Develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

(c) Expand and strengthen instruction in methods of such treatment;

(d) Support the training and retraining of faculty to provide such instruction;

(e) Support continuing education of health professionals and allied health professionals who provide such treatment; and

(f) Establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

Grant supported projects may be designed to accomplish the statutory purposes in a variety of ways, emphasizing multidisciplinary, as well as discipline-specific, approaches to the development of geriatric education resources. For example:

- Health professions schools within a single academic health center, or a consortium of several eduational institutions, may share their educational resources and expertise through a Geriatric Education Center to extend a broad range of multidisciplinary educational services outward to other institutions, faculty, facilities and practitioners within a geographic area defined by the appliant.
- Educational institutions that have limited geriatric education resources and which traditionally have had linkages to a geographic area where substantial geriatric education needs exists, may seek to establish a geriatric education center. Such a center could be designed to enhance and expand the capability of collaborating professional schools to provide geriatric education resources in the geographic area in need.
- Projects may support the development of Geriatric Eduation Centers designed to focus on multidisciplinary geriatric education emphasizing high priority services and high risk groups among the elderly, minority aging, or other special concerns.

Review Criteria

The following criteria will be considered in the review of applications:

(1) The degree to which the proposed project adequately provides for the project requirements described in 42 CFR 57.4004;

(2) The extent to which the rationale and specific objectives of the project are based upon a needs assessment of the status of geriatrics training in the institutions to be assisted and/or the geographic area to be served;

(3) The ability of the project to achieve the project objectives within the proposed geographic area;

(4) The adequacy of educational facilities and clinical training settings to accomplish objectives;

(5) The adequacy of organizational arrangements involving professional schools and other organizations necessary to carry out the project;

(6) The adequacy of the qualifications and experience in geriatrics of the project director, staff and faculty;

(7) The administrative and managerial ability of the applicant to carry out the proposed project in a cost-effective manner, and;

(8) The potential of the project to continue on a self-sustaining basis.

Funding Preference and Funding Priorities for Fiscal Year 1991

The following funding preference and funding priorities will be used in FY 1991. This funding preference and these funding priorities were implemented in FY 1989 after public comment and are extended in FY 1991.

Funding Preference

In determining the order of funding of competing applications which have been recommended for approval, a funding preference will be given to approved applications for projects which will offer training involving four or more health professions, one of which must be allopathic or osteopathic medicine.

Funding Priorities

A funding priority will be given to:

1. Applications which identify minority faculty or scholars with expertise in minority aging who will have substantial roles in carrying out the project. (Only individuals already employed or recruited may be included.)

2. Applications which document formal linkages with predominantly minority educational institutions or health facilities for the purpose of carrying out specific aspects of the project. (Formal linkages may include subcontracts, clinical teaching affiliations, letters of understanding, etc.)

3. Applications proposing to provide for a high degree of areawide collaboration.

A proposed special consideration was published in the **Federal Register** of September 28, 1990 (FR 55 39324) for public comment. No comments were received during the 30-day comment period. This special consideration will be retained as proposed.

Special Consideration for Fiscal Year 1991

Special consideration will be given to applications which provide didactic and

clinical training experience concerning geriatric rehabilitation.

The *Catalog of Federal Domestic Assistance* number assigned to this program has been changed from 13.989 to 93.989. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: November 20, 1990.

John Kelso,

Acting Administrator.

[FR Doc. 90-27772 Filed 11-26-90; 8:45 am]

BILLING CODE 4190-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-90-3171]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

The Notices list the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 9, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Housing Owner's Certification and Application for Tenant Assistance Payments, Schedule of Tenant Assistance Payments Due, Schedule of Section 8 Special Claims, Special Claims Worksheet.

Office: Housing.

Description of the Need for the Information and its Proposed Use: These forms are used by owners to request monthly housing assistance payments for eligible families, to limit the number of Section 8 units to those families whose incomes are less than 50 percent of the area median, and to restrict admission of ineligible tenants.

Form Number: HUD-52670, HUD-52670A, and HUD-52672A thru D.

Respondents: Individuals or Households and Businesses or other For-Profit.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collections	352,045		1		.452		159,124

Total Estimated Burden Hours: 159,124.

Status: Revision.

Contact: Brenda K. Gronewold, HUD, (202) 708-4162, Scott Jacobs, OMB, (202) 395-6880.

Date: November 9, 1990.

Proposal: Survey of State-Assisted Section 236 Non-Insured Projects.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The survey will collect basic data for each Section 236 non-insured project to determine which are eligible for low-income housing and which are not. The Department will use this information to develop programmatic guidelines and budgetary requirements.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: One-Time.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
	13		1		38		494

Total Estimated Burden Hours: 494.

Status: New.

Contact: Kevin East, HUD, (202) 708-2300, Scott Jacobs, OMB, (202) 395-6880.

Dated: November 9, 1990.

[FR Doc. 90-27752 Filed 11-26-90; 8:45 am]

BILLING CODE 4210-01-M

Office of Policy Development and Research

[Docket No. N-90-3170]

Commission on Regulatory Barriers to Affordable Housing; Meeting

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of open meeting.

SUMMARY: The Commission was established on March 14, 1990 in accordance with the provisions of the Commission's charter and the Federal Advisory Committee Act (FACA). The Commission was created to advise the Secretary on the nature and impact upon costs, of Federal, State and local regulations governing the construction of housing and to present its findings as well as advisory recommendations as to possible remedial Federal, State, and local actions that can be taken to eliminate excessive, duplicative or unnecessary regulations that increase the cost of housing.

Commission meetings have been held in Washington, DC on May 31 and September 26, and in Chicago, IL on August 1. Regional public hearings were held in Trenton, NJ on July 11, in Chicago, IL on July 31 and August 1, in San Francisco, CA, on September 12 and 13, and in Washington, DC, on September 25, 1990. The purpose of these hearings was to solicit testimony on the nature and extent of regulatory barriers to affordable housing reform.

TIME AND PLACE: The Commission will meet on Friday, December 14, 1990 from 9:30 a.m. to approximately 4:30 p.m. The meeting will take place at the Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC. This is an open meeting.

AGENDA: The Commission expects to discuss the structure of a final report and address proposed recommendations for the report.

PUBLIC PARTICIPATION: The public is invited to submit written comments on any aspect of the Commission's mandate or activities. The last 30 minutes of the meeting will be set aside for oral comments and questions.

FOR FURTHER INFORMATION CONTACT: David Engel, Office of Policy Development and Research, room 8140, Department of Housing and Urban Development, 451 Seventh Street, SW., Wasington, DC 20410. Telephone: (202) 755-4370. (This is not a toll-free number.)

Dated: November 16, 1990.

John C. Weicher,

Assistant Secretary for Policy Development and Research, United States Department of Housing and Urban Development.

[FR Doc. 90-27753 Filed 11-26-90; 8:45 am]

BILLING CODE 4210-10-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-320-1-4212-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0153), Washington, DC 20503, telephone number (202) 395-7340.

Title: Conveyance of Federally-Owned Mineral Interest, 43 CFR Part 2720.

OMB approval number: (1004-0153).

Abstract: The information collected is used to determine an applicant's eligibility for benefits and whether all statutory requirements have been met.

Bureau form number: None.

Frequency: Once.

Description of respondents: Owners of land surface whose ownerships overlie federally-owned mineral interests.

Estimated completion time: 10 hours each report.

Annual Responses: 50.

Annual Burden Hours: 500.

Bureau Clearance Officer: (Alternate) Gerri Jenkins, 202-653-8853.

Dated: November 9, 1990.

Vincent J. Hecker,

Acting Assistant Director, Land and Renewable Resources.

[FR Doc. 90-27713 Filed 11-26-90; 8:45 am]

BILLING CODE 4310-84-M

[NV-930-91-4212-16; Nev-061603; N-22848, N-24788, N-32326, N-40267, N-40271, N-40272, N-40279, N-40280]

Correction; Termination of Desert Land Classifications; Nevada

November 15, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: This notice makes a second correction to a termination notice published in 55 FR 30984 as Document No. 90-17599 on July 30, 1990.

EFFECTIVE DATE: July 30, 1990.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, 702-785-6526.

SUPPLEMENTARY INFORMATION: The termination notice published in 55 FR 30984 as Document No. 90-17599 on July 30, 1990, is hereby corrected as follows:

1. The legal description under T. 4 N., R. 55 E., sec. 7 should read: Lots 1-8, NE¼, E½SW¼, E½NW¼, SE¼.

2. The total acreage figure should read: 2163.66.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 90-27714 Filed 11-26-90; 8:45 am]

BILLING CODE 4310-HC-M

[NV-030-01-4370-12]

Helicopters and Motorized Vehicles Used in Gathering Wild Horses and Burros; Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of hearing.

SUMMARY: A Public Hearing will be held on Monday, December 10, 1990, at 10: a.m., in the Carson City District Office Conference Room, 1535 Hot Springs Road, suite 300, Carson City, Nevada.

The purpose of the hearing is to obtain public input on the Bureau of Land Management's use of helicopters and motorized vehicles in the management of wild horses and burros.

FOR FURTHER INFORMATION CONTACT: Jim Gianola, Carson City District, Bureau of Land Management, 1535 Hot

Springs Road, suite 300, Carson City, Nevada, 89706, telephone (702) 885-6100.

Dated this 13th day of November, 1990.

James W. Elliott,

District Manager, Carson City District.

[FR Doc. 90-27378 Filed 11-26-90; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 754123

Applicant: Robert Kullman, Woodmere, NY

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. D. Parker, Eldansberg Farms, Constantia, South Africa, for the purpose of enhancement of survival of the species.

PRT 752165

Applicant: Andres De Cabo, Coral Gables, Florida

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Frank Bowker, Grahamstown, South Africa, for the purpose of enhancement of survival of the species.

PRT 752162

Applicant: Eduardo Gomez De Molina, Miami, FL

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Frank Bowker, Grahamstown, South Africa, for the purpose of enhancement of survival of the species.

PRT 754530

Applicant: William Fetner Lange, Kerrville, TX

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. D. Parker, Elandsberg Farms, Constantia, South Africa, for the purpose of enhancement of survival of the species.

PRT 753988

Applicant: Milwaukee County Zoo, Milwaukee, WI

The applicant requests a permit to import six captive born Amazon River turtles (=tartaruga) (*Podocnemis expansa*) from the Belem Zoo, Museo, Paraense Emilio Goeldi, Belem, Brazil, for display and breeding purposes.

PRT 753641

Applicant: The Rare Feline Breeding Cen. Inc., Center Hill, FL

The applicant requests a permit to export one male and one female captive born Clouded leopard (*Neofelis neubiosa*) to Mr. Peter James, Welwyn, Herts, United Kingdom, for captive propagation purposes.

PRT 752739

Applicant: Houston Zoological Gardens, Houston, TX

The applicant requests a permit to export one captive born female Sooty Mangabey (*Cercocebus torquatus atys*) to Pensynor Wild Animal Park, West Glamorgan, S. Wales, Unitd Kingdom, for purposes of propagation and exhibition.

PRT 753826

Applicant: Roger Williams Park Zoo, Providence, RI

The applicant requests a permit to import blood samples and skin biopsies taken from approximately 45 wild Cotton-top tamarins (*Saguinus oedipus*), to be collected in a cooperative program with the Instituto Nacional de los Recursos Naturales Renovables y del Ambiente, Coloso, Colombia, for research purposes.

PRT 747674

Applicant: Barbara Hoffman, Gibsonton, FL

The applicant requests a permit to export and reimport two male and two female tigers (*Panthera tigris*), three female leopards (*Panthera pardus*), and one male snow leopard (*Panthera uncia*) for entertainment purposes. The applicant will educate the public regarding these species' ecological roles and conservation needs during each performance. All of the cats were born in captivity in the United States and may be exported and reimported in the future for the same types of entertainment exhibitions.

Documents and other information submitted with these applications, are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.) room 430, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, 4401 N. Fairfax Drive, room 432, Arlington, VA 22203.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: November 20, 1990.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 90-27755 Filed 11-26-90; 8:45 am]

BILLING CODE 4310-55-M

Marine Mammal Annual Report Availability, Calendar Year 1989

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of calendar year 1989 Marine Mammal Annual Report.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has issued the 1989 annual report on administration of the marine mammals under its jurisdiction, as required by section 103(f) of the Marine Mammal Protection Act of 1972. The report covers the period January 1 to December 31, 1989, and was submitted to the Congress on October 26, 1990. By this notice, the public is informed that the 1989 report is available and that interested individuals may obtain a copy by written request to the Service.

ADDRESSES: Written requests for copies should be addressed to: Publications Unit, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop 130—Arlington Square, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. James G. Geiger, Chief, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop 820—Arlington Square, 1849 C Street, NW., Washington, DC 20240, (703) 358-1718.

SUPPLEMENTARY INFORMATION: The Service is responsible for eight species of marine mammals under the jurisdiction of the Department of the Interior, as assigned by the Marine Mammal Protection Act of 1972. These species are polar bear, sea and marine otters, walrus, manatees (three species) and dugong. The report reviews the Service's marine mammal-related activities during the report period. Administrative actions discussed include appropriations, marine mammals in Alaska, endangered and threatened marine mammal species, law enforcement activities, scientific research and public display permits, certificates of registration, research,

Outer Continental Shelf environmental studies and international activities.

This notice was prepared by Jeffrey L. Horwath, Wildlife Biologist, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: November 15, 1990.

Bruce Blanchard,

Acting Director.

[FR Doc. 90-27712 Filed 11-26-90; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Meeting; Advisory Committee on Microenterprise

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of an A.I.D. Advisory Committee on Microenterprise public meeting on Tuesday, December 4, 1990, in the Grand Hotel, Georgetown, Washington, DC (202-429-0100). The Advisory Committee will review the current issues being dealt with by the Agency for International Development's microenterprise programs and will review plans for Committee meetings over the coming two years.

The December 4 public meeting will begin at 9:30 a.m. and adjourn at 1 p.m. The meeting is open to the public. Any interested person may attend, file written statements with the Committee before or after the meeting, or present oral statements in accordance with procedures established by the Committee and as time permits.

Dr. Ross E. Bigelow, Deputy Director, Office of Small, Micro and Informal Enterprise, Bureau for Asia and Private Enterprise, is designated as the A.I.D. representative at the meeting. Those who plan to attend the December 4 meeting, or who wish more specific information concerning this meeting, should contact Dr. Bigelow, at 202-647-2727.

Dated: November 16, 1990.

Ross E. Bigelow,

Federal Representative, A.I.D. Advisory Committee on Microenterprise.

[FR Doc. 90-27711 Filed 11-26-90; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984, Semiconductor Research Corporation

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("Act"), the Semiconductor Research Corporation ("SRC"), on October 17, 1990, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies have been added to SRC: The Aluminum Company of America (Alcoa) as a member, Los Alamos National Laboratory and Sandia National Laboratories as associate members, and Mission Research Corporation and Advanced Technology Applications, Inc. as affiliate members. Perkin-Elmer Corporation withdrew as a member of SRC. No other changes have been made in either the membership of planned activities of SRC.

On January 7, 1985, SRC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 30, 1985, 50 FR 4281. The most recent notification of SRC membership changes published in the **Federal Register** with a then current and complete membership list was filed by SRC on October 25, 1989, and published by the Department on November 29, 1989, 54 FR 49123-24. Subsequent notifications filed on February 20, 1990, May 16, 1990, and July 18, 1990, were published on April 5, 1990 (55 12750), June 13, 1990 (55 FR 23989), and August 15, 1990 (55 FR 33388-390), respectively, disclosing only membership changes.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-27715 Filed 11-26-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. 9622(i), and Department Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed Consent Decree in *United States* v. *Town of North Hempstead,* Civil Action No. 90-3486, was lodged, together with the complaint, in the United States District Court for the Eastern District of New York on October 10, 1990. The proposed Decree, if entered, will resolve the liability of the Town of North Hempstead (the "Town") under section 106 of the CERCLA, 42 U.S.C. 9606, if the Town satisfactorily performs the remedial work outlined in the Decree at the Port Washington Landfill Superfund Site (the "Site") in Nassau County, New York. The proposed Decree, if entered, will also resolve the liability of the Town under section 107 of the CERCLA, 42 U.S.C. 9607, for certain costs that will be incurred in connection with EPA's oversight of the remedial activities performed by the Town. In addition, the proposed decree provides a mechanism for resolving the Town's liability for certain other costs that have been incurred by EPA in response to the alleged release or threatened release of hazardous substances at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of publication of this notice, written comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Town of North Hempstead,* Department of Justice No. 90-11-2-514.

The proposed Decree may be examined at the office of the United States Attorney, One Pierrepont Plaza, Eleventh floor, Brooklyn, New York, 11201; at the Region II office of the United States Environmental Protection Agency, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278; and at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202-347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $17.25 (25 cents per page reproduction costs) payable to Consent Decree Library.

George Van Cleve,

Deputy Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 90-27716 Filed 11-26-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-90-168-C]

Beech Nut Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Beech Nut Mining, Inc., P.O. Box 901, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 2 Mine (I.D. No. 15-16943) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors as outlined in the petition.

3. In support of this request, petitioner states that:

(a) No methane has been detected in the mine;

(b) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(c) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips; and

(d) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 27, 1990. Copies of the petition are available for inspection at that address.

Dated: November 15, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-27707 Filed 11-26-90; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Advisory Committee on International Exhibition; Renewal

In accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101-6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959 (a)(4)), notice is hereby given that renewal of the Federal Advisory Committee on International Exhibitions has been approved by the Chairman of the National Endowment for the Arts for a period of two years from the date this Charter is renewed. This committee will make recommendations on the selection of significant, contemporary American visual art, for presentation internationally in the context of major exhibitions, including multinational festivals, periodic exhibitions, and other major cultural events. The committee will also advise on the significance of participation by the United States Government in both existing and new exhibition opportunities and venues outside the United States.

The committee will report its recommendations to the Chairman of the Arts Endowment, for transmittal by the Chairman or the Chairman's designee to the Director of the United States Information Agency (USIA) or the Director's designee.

The function of this advisory committee cannot be performed by the USIA, the Arts Endowment, an existing advisory committee or other means, such as public hearing. Neither agency nor any existing advisory committee possesses sufficient expertise regarding major international art exhibition venues or breadth of representation to offer such advice. Other means, such as public hearings, are not suitable for obtaining the necessary advice. Therefore, the renewal and use of this advisory committee is in the public interest.

This charter has been filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and over the USIA and with the Library of Congress.

Dated: November 15, 1990.

Yvonne Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-27787 Filed 11-26-90; 8:45 am]

BILLING CODE 7537-01-M

Education Advisory Committee; Meeting

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that the following meeting of the Education Advisory Committee be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506; telephone (202) 786-0322.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 786-0322.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to advise the Chairman and the Deputy Chairman of the National Endowment for the Humanities on efforts to strengthen general education programs in colleges and universities. Advice will be sought about general education requirements, faculty incentives to improve the teaching of undergraduates, and ways to involve trustees, administrators, and faculty in a cooperative effort to improve teaching and learning. The meeting will be held December 17, 1990, from 10 a.m. to 3 p.m. in room M-14 of the Old Post Office Building. The meeting will be open to the public.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 90-27804 Filed 11-26-90; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued revisions to three guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.84, Revision 27, "Design and Fabrication Code Case Acceptability, ASME Section III, Division 1," and Regulatory Guide 1.85, Revision 27, "Materials Code Case Acceptability, ASME Section III, Division I," list those code cases that are generally acceptable to the NRC staff for implementation in the licensing of light-water-cooled nuclear power plants. Revision 8 to Regulatory Guide 1.147, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1," lists those code cases that are generally acceptable to the NRC staff for implementation in the inservice inspection of light-water-cooled nuclear power plants. These three guides are periodically revised to update the listing of acceptable code cases and to include the results of public comment and additional staff review.

Comments and suggestions in connection with (1) Items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publication Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060 OR (202) 275-2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Authority: 5 U.S.C. 552(a).

Issued at Rockville, Maryland, this 14th day of November 1990.

For the Nuclear Regulatory Commission.

Themis P. Speis,

Deputy Director for Research, Office of Nuclear Regulatory Research.

[FR Doc. 90-27789 Filed 11-26-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

Boston Edison Co. for the Pilgrim Nuclear Power Station; Environmental Assessment

Introduction

The Pilgrim Nuclear Power Station (PNPS or the plant) is currently licensed for operation for 40 years commencing with the issuance of the construction permit. The license expires on August 26, 2008. By letter dated February 28, 1986, and as supplemented on July 13, 1989, Boston Edison Company (BECo or the licensee) requested that the license expiration date for the plant be extended to June 8, 2012 or 40 years after the date of the issuance of the "low-power" operating license. The currently effective Facility Operating License (DPR-35) was issued on June 1, 1972 and authorizes operation at full power, not to exceed 1998 megawatts thermal.

Need for the Proposed Action

The granting of this request would allow the licensee to operate the plant for approximately 3 years and 9 months beyond the current license expiration date, thus recapturing the construction period. This extension would also permit the plant to operate for the full 40-year design basis lifetime, consistent with previously stated Commission policy (Memorandum dated August 16, 1982, from William J. Dircks, Executive Director for Operations, to the Commissioners) and as evidenced by the issuance of over 30 similar extensions to other licensees.

Environmental Impacts of the Proposed Action

The anticipated impact of the plant on the environment was evaluated in the Staff's Final Environmental Statement (FES) for PNPS dated May 10, 1972, and in the FES for Pilgrim Unit 2, dated September 1974. Since that time its impact on the environment has been observed and recorded. In order to arrive at a finding on the acceptability of the plant's impact on the environment the following considerations will be evaluated in this assessment:

1. Radiological Impacts of the Hypothetical Design Basis Accident
2. Radiological Impacts of Annual Releases
3. Environmental Impact of Uranium Fuel Cycle
4. Non-Radiological Impacts
5. Plant Modifications
6. Conclusion on Environmental Impacts.

Each of these considerations is sequentially discussed below:

1. Radiological Impacts of the Hypothetical Design Basis Accident (DBA)

The offsite exposure from releases due to postulated accidents has been analyzed by the licensee in the PNPS Final Safety Analysis Report (FSAR). The results of these analyses were within the bounds of 10 CFR part 100 and thus acceptable. This type of analysis is a function of four parameters: (1) The types of accidents postulated, (2) the radioactivity release calculated for each accident, (3) the assumed meteorological conditions, and (4) population distribution versus distance from the plant. The staff has concluded that neither the types of accidents nor the calculated radioactivity releases will change through the proposed amendment term. Furthermore, the site meteorology as defined in the FSAR is essentially a constant and consideration herein is therefore unwarranted. Thus, the one parameter that is dependent of the proposed license amendment is the population size and distribution, as it could vary with time. A 1988 study projected population changes through the year 2012. There are no significant land-use changes expected during the amendment term that could affect offsite dose calculations. The results of the 1988 study and those of the other studies are presented in Enclosure 1, Projected Permanent Populations of Towns within the Pilgrim Station EPZ derived from KLD Associates' letter of October 2, 1990.

None of the projected changes in population between the years 2008 and 2012, the added term of the proposed license amendment, will significantly impact any accident analysis previously calculated. Furthermore, the current exclusion area boundary, low population zone and nearest population center distance are not likely to be significantly changed through the amendment term from those originally and currently used by the PNPS. Accordingly, we conclude that the proposed license amendment will not significantly change previous conclusions on the potential environmental effects of offsite releases from postulated accidents.

The staff stated in their proposed no significant hazards consideration determination (51 FR 15393) dated April 23, 1986, that the change in expiration date to June 8, 2012 is consistent with current NRC policy and the originally engineered design life of the plant, *i.e.*, 40 years of operation. Due to design conservatism, maintenance and surveillance programs, inspection programs and the Plant Technical Specifications, the proposed additional 3 years and 9 months of operation will have no significant impact on safety. That is, regardless of the age of the facility, the above mentioned programs and Technical Specifications ensure that components, systems and structures will be refurbished or replaced to maintain their requisite safety function.

2. Radiological Impacts of Annual Releases

a. Onsite Doses

The PNPS occupational (onsite) exposure trend and comparative magnitude with the industry's average boiling water reactor (BWR) site, based on average annual exposures in terms of person-rem per 5-year period, is taken from the licensee's February 28, 1986 letter. The data in regards to both total dose and average dose per worker, indicate that the licensee has implemented a successful program under 10 CFR part 50, appendix I "As Low as Reasonably Achievable" (ALARA) guidelines. Given the licensee's continued implementation of its improved ALARA program and their excellent performance as noted in the interim Systematic Assessment of Licensee Performance (SALP) report dated October 4, 1990, we conclude that their projected exposures of about 350 person-rem, cumulative, will serve as an upper limit in future years of normal operation, *i.e.*, non-reload years and years without major maintenance such as fuel pool modifications. During the proposed amendment term, it is assumed that the PNPS will operate with an approximately 24-month-long fuel cycle. This would result in a maximum of two refueling outages during the proposed amendment term using projected exposures of 550 and 150 person-rem for years with and without typical refueling outages. PNPS estimates an average exposure of 350 person-rem per year during the requested extension period. The expected exposures for the plant are in accordance with 10 CFR part 20 and Regulatory Guide 8.8.

b. Offsite Doses

Appendix I guidelines on ALARA were briefly discussed above in regard to on-site doses; however, these guidelines also apply to releases that could cause offsite doses. In addition, routine releases to the environment are governed by 10 CFR 20.1(c), which states that such releases should be as low as reasonably achievable. Appendix I is more explicit in that it establishes radioactive design/dose objectives for liquid and gaseous offsite releases including iodine/particulate radionuclides.

Based on the continued operation of the plant's existing liquid and gaseous radwaste systems, we conclude that the anticipated offsite doses during the period covered by the proposed license amendment would remain a fraction of 10 CFR Part 50, appendix I limits.

The staff concludes that the releases from the plant, both onsite and offsite, have remained within the bounds of the FES and have complied with the applicable portions of 10 CFR parts 20 and 50 as discussed above. As a consequence, we would expect releases during the proposed license extension period to remain within these bounds.

3. Environmental Impact of the Uranium Fuel Cycle

The PNPS reactor contains 580 fuel assemblies. The Final Environmental Statement (FES) for PNPS, dated May 1972, assumed that one-quarter of these fuel assemblies would be replaced during annual refueling outages. No estimate of the total number of fuel assemblies to be used during the 40-year operating plant life was made in the FES. However, an estimate can be made. If one quarter of the fuel was expected to be replaced every year for 40 years, the total number of fuel assemblies replaced would be 5800 (580 fuel assemblies, divided by 4, times 40 years, equals 5800 assemblies replaced during the 40-year operating life of PNPS).

However, due to a combination of improved fuel designs and extended outages, actual fuel cycle lengths at PNPS have varied from approximately 20 months to 46 months. This has reduced the demand for fissile uranium. In the future, PNPS will be utilizing a 24-month cycle which will again reduce the need for additional fuel relative to the initial FES. Thus, the 40-year fuel use assumed in the FES, has been reduced by the use of improved fuel design and longer operating cycles. The total number of fuel assemblies to be used and stored if the amendment request is granted is now estimated to be approximately 4000. This is a reduction of 1800 fuel assemblies over the 40-year life of PNPS, including the additional 3 years, 9 months operating time requested.

The environmental impacts, both radiological and non-radiological, attributable to transportation of fuel and waste to and from plant sites, with respect to normal conditions of transport and possible accidents in transport have been assessed in several generic environmental impact statements. These assessments represent the contribution of such transportation to annual environmental costs including dose per reactor year to exposed transportation workers and to the general public. These annual environmental costs, which are displayed in Table S-4 of the Commission's regulations, 10 CFR 51.52, would not be changed by the extended period of operation.

Based on the above, the staff concludes that there are no significant changes in the environmental impact related to the uranium fuel cycle due to the proposed extended operation of PNPS.

4. Non-Radiological Impacts

For 15 years (1970–1985) environmental programs and monitoring have been conducted at the Pilgrim Station site. These non-radiological studies and their results are documented in various reports issued to the Nuclear Regulatory Commission (NRC), Environmental Protection Agency (EPA) and Massachusets Division of Water Pollution Control (DWPC). They include: Applicant's Environmental Report (September 1970), Final Environmental Statement (FES, September 1974), 316 Demonstration (July 1975), Supplemental Assessment in Support of the 316 Demonstration (September 1977), Marine Ecology Studies Final Report (July 1978), and Marine Ecology Semi-Annual Reports Nos. 1–25 (1972–1984).

The FES of 1974 is directed at the construction and operation of Pilgrim Station Unit 2. Its environmental impact statements include both Unit 1 and Unit 2 assessments, although Unit 2 construction was cancelled at 1981. Therefore, the FES of 1974 is conservative on the high side for assessing only Unit 1 non-radiological environmental impacts. Assessment of non-radiological impacts was based on different factors depending on the type of impact, including fixed life-of-plant, plant design considerations, renewable resource loss or loss/degradation of habitat. Impacts on the terrestrial ecology of the 517 acre tract of land were determined to be acceptable (FES, 2–14). The reports cited above following the 1974 FES, covering the period from 1975 to 1984, provide a great deal of additional data generally supporting the earlier impact assessments of the FES.

Entrainment and impingment losses have been assessed as small compared to the standing crops of susceptible organisms in the Station vicinity (FES, pp. 5–26 through 5–30). Thermal and chemical discharge impacts on marine biota have been documented, but on a spatial and population basis were acceptable as not causing significant harm (FES, pp. 5–35 through 5–40). The intake structure has been reviewed for causing impingement and entrapment impacts (FES, p. 5–26) but the mean impingement rate of approximately two fish per hour is low, despite periodic instances of high impingement events for selected species. The use of chlorine in biofouling control was considered (FES, p. 5–40) and judged to have a negligible impact on the Cape Cod Bay ecosystem at a discharge concentration of 0.1 ppm.

Impacts on two very important commercial fisheries, the Irish moss and lobster fisheries, have analyzed (FES, p. 5–39). Both of these commercial fisheries have been samples for several years utilizing reference and surveillance station methodology, as well as inplant sampling for lobster larvae and Irish moss spores. Data taken during operational years have shown no consistent decline in productivity directly attributable to Station operation.

Two large gas bubble disease mortalities of Atlantic menhaden occurred in 1973 (FES, pp. 5–36 through 5–38) and 1975 in the Station discharge canal and vicinity. Both of these incidents, and a few other occasions when gas bubble disease symptoms were noted in selected species, were not considered to be of significant harm to the respective fishes' population. No additional mortalities due to gas bubble disease have been observed at Pilgrim Station from 1976 to 1985.

The NRC concluded in the FES (p. 10–1) that Pilgrim Station (including Unit 2) would not significantly impact the productivity of Cape Cod Bay regarding aquatic biological resources because of the Bay's recuperative capacity. This conclusion was based on NRC analyses of intake velocity, larval entrainment, fish impingement, chlorination and exposure time to elevated temperatures as detailed in the FES of 1974. Losses of biota associated with these impacts were determined not to be irreversible or irretrievable resource commitments.

The latest (1983–1988) Pilgrim Station National Pollutant Discharge Elimination System (NPDES) Permit (#MA0003557) recognizes (Section I.A.1.i) compliance of the circulating water intake system design with Section 316 of the Clean Water Act. Sections I.A.7.b and d require that the permittee conduct monitoring to determine continued compliance of thermal discharge, entrainment, and impingement effects. Based on this monitoring, the Station has been found to meet thermal impact requirements, and to have relatively low entrainment and impingement losses compared to other comparable power plants. Maintenance of these conformances is assured through an annually-reviewed environmental monitoring and surveillance program regulated via the Station NPDES Permit by the USEPA and Mass. DWPC.

The Station uses sodium hypochlorite for macrofouling and microfouling control in salt water circulation systems. The NPDES Permit allows chlorine to be discharged to Cape Cod Bay at a maximum concentration of 0.1 ppm total residual. This dicharge concentration is consistent with that evaluated in the FES (p. 5–40) to be adverse only to those organisms confined within the circulating water system (CWS) and salt service water system (SSWS). In 1983, the Pilgrim Station NPDES Permit was modified to allow for hypochlorite to be continuously injected at a rate not to exceed 0.25 ppm maximum daily average in the SSWS. It was determined that due to a dilution factor by the CWS of approximately 30:1, the concentration of total residual chlorine to be discharged to Cape Cod Bay would still not exceed the permissible limit of 0.1 ppm total residual chlorine.

Environmental protection and mitigation measures required by the Station's NPDES Permit in regard to intake and thermal discharge effects include: (1) Returning all live aquatic organisms trapped on intake screens to ambient temperature water, far enough away to avoid reimpingement (Section I.A.1.j); (2) Reducing large intake impingement and thermal-related mortalities by requiring monitoring for and notification of substantial events and, for each event, requiring a written report to include a discussion of precautions to be taken to avoid similar impingement or thermal mortality events (Section I.A.7.a); and (3) Maintaining a barrier net in the distal end of the discharge canal to prevent fish entry on a year-round basis (Section I.A.2.f).

Protection of Historic Properties (36 CFR Part 800)

In accordance with the requirements of 36 CFR Part 800 "Protection of Historic Properties," Boston Edison reviewed the "State Register of Historic Places/1988," published by the Massachusetts Historic Commission, for the current listings of historic sites surrounding Pilgrim Nuclear Power Station (PNPS). Representatives of the Pilgrim Society, the Plymouth Historical Commission, the Massachusetts Historical Commission, the Plymouth Chamber of Commerce, and the U.S. Department of the Interior were contacted regarding information about the sites and to assure us the listings are complete.

The State Register lists 131 historic sites located in Plymouth in an area generally contiguous to Plymouth Rock, which is approximately 4½ miles from Pilgrim Station. They are mostly in designated historic districts containing multiple, individually owned and occupied houses. Others are individual sites or houses, the most notable being Plymouth Rock, Cole's Hill Ground, and the National Monument to the Forefathers. It should be noted that with the exception of three sites; Cole's Hill, the Old County Courthouse, and Plymouth Rock, all Plymouth locations listed in the State Register were designated as historic sites after Pilgrim began operation.

Since December 1972, when Pilgrim started commercial operation, there is no known evidence of deterioration of any of these historic sites due to the operation of Pilgrim Station.

A similar assessment regarding protection of historical sites was noted in the FES issued by the AEC for Pilgrim Unit 2 dated September 1974. Section 2.3 "Historic Significance" states:

> According to the Massachusetts Historical Commission State Survey Director, none of the nearby historic sites will be impacted by construction of Unit 2. The staff agrees that no areas valued for their natural significance will be affected by the construction or operation of Unit 2 of the related transmission line corridor. The Conservative Commission of the Town of Plymouth agrees with this view.

In addition, the Pilgrim Unit 2 Environmental Report, Amendment 6, dated September 1976 provides the following in Section 2.3.1 "Review and Consultations:

> The Pilgrim Station site has been considered in accordance with the National Historical Preservation Act. In this regard, on April 25, 1968, Harold L. Price, Director of Regulation, AEC, requested George B. Hartzog, Jr., Director, National Park Service,

to obtain comments from the Advisory Council on Historical Preservation relative to the effects of Pilgrim Station on the general area of Plymouth Rock and Forefathers' Faith Monument. In a letter dated May 20, 1988, Robert R. Garvey, Executive Secretary of the Advisory Council on Historical Preservation, considered the effect of the Pilgrim site upon these National Register properties. It was concluded that: "The probable effect upon these properties cannot be judged to be sufficiently adverse to warrant Council comment."

Using the aforementioned assessments and the 1986 criteria of 36 CFR 800.9: "Criteria of effect and adverse effect," it is concluded that operation of Pilgrim Nuclear Power Station for the requested 3 years and 9½ months license extension will cause no adverse effect or induce any detrimental impact on the historic sites located in Plymouth.

The above is a summary of potential and real non-radiological, environmental impacts that have been reviewed and addressed by Boston Edison Company, NRC, USEPA, and Mass. DWPC. The reviews have been of the various impact statements and environmental reports submitted to the regulators by Boston Edison between 1970 and 1985. The impacts have been addressed in NRC Technical Specification and NPDES (EPA) Permit conditions, and mitigative actions by Boston Edison. In conclusion, the requested legal plant life expectancy extension of 3 years 9-½ months will not alter the validity of previous findings and assessments, or pose any additional significant biological resource impacts.

5. Plant Modifications

Many modifications and design changes have taken place at the plant since original construction. Those that involve an unreviewed safety question or require a change to the Technical Specifications are submitted to the NRC for prior review and approval. This review includes a determination of the environmental effects of the proposed change. As provided by our regulations, other changes may be implemented by the licensee without prior NRC approval. The licensee must first perform a safety evaluation for any such changes, subject to NRC inspection and audit. The licensee also submits such changes to the staff in an Annual Report, which is reviewed by the staff. A complete detailed description of all the changes including a summary of the safety evaluation is included in the annual update of the Final Safety Analysis Report (FSAR). The staff reviews the FSAR updates to verify that the changes did not require prior NRC review and approval. In general, these changes improve plant reliability and do not adversely impact the environment. While it is recognized that the requested license extension will possibly result in further routine design changes and modifications similar in nature to those already conducted, it is not anticipated that these would have any adverse impact on the environment.

6. Conclusion on Environmental Impacts

Based on the above, we conclude that the proposed extension will not have any significant impact on the environment.

Alternative to the Proposed Action

The alternative to the issuance of the proposed license extension would be the cessation of Pilgrim Station's operation on August 26, 2008. This would result in a large loss of capacity which would necessitate the replacement of equivalent electric power resources. The most viable option would be the purchase of additional capacity from other utilities, or extensive pre-planning before-the-fact, and construction of equivalent or additional generating capability.

Even considering significant changes in the economics of either option, operation of Pilgrim Station for an additional 3 years, 9-½ months would only require incremental yearly costs. These costs would be substantially less than the purchase of replacement power or the installation of new electrical generating capacity. Furthermore, the overall cost per year of the facility would decrease, since the large capital outlay would be average over a greater number of years.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the FES in relation to the operation of the plant.

Agencies and Persons Consulted

The Commission made a proposed determination that the amendment involves no significant hazards consideration which was published in the **Federal Register** (51 FR 15393) on April 23, 1986.

Basis and Conclusion for not Preparing an Environmental Impact Statement

The conclusions of the May 1972 and September 1974 (Unit 2) Final Environmental Statements remain valid and operation of the plant has demonstrated that its impact on the environment has been within the bounds predicated by the FES. The staff has reviewed the proposed license amendment relative to the requirements set forth in 10 CFR part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed license amendment will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, an environmental impact statement need not be prepared for this action.

Dated at Rockville, Maryland, this 20th day of November 1990.

For the Nuclear Regulatory Commission.

Curtis J. Cowgill III,

Acting Director, Project Directorate I–3, Division of Reactor Projects—I/II.

ENCLOSURE 1.—PROJECTED PERMANENT POPULATIONS OF TOWNS WITHIN THE PILGRIM STATION EPZ

	1995 MISER project	2000 KLD project	2005 KLD project	2010 KLD project	2012 KLD project
Plymouth	47,980	53,234	59,063	65,531	68,178
Kingston	10,746	12,825	15,380	18,355	19,700
Carver	8,152	9,359	10,693	12,157	12,773
Duxbury	16,212	18,078	20,253	22,581	23,539
Marshfield	2,053	2,266	2,514	2,776	2,883
Total within EPZ	85,143	95,760	107,903	121,400	127,073

Notes:
1. The projected populations for 1995 were calculated by the Massachusetts Institute for Social and Economic Research (MISER) of the University of Massachusetts at Amherst.
2. Projections to later years were estimated by extending the trends of annual growth rates into the future.
3. Roy Williams of MISER indicated that MISER is currently extending their population projections into the 21st century.
4. The entire towns of Plymouth, Kingston and Duxbury lie within the Pilgrim EPZ. It is estimated that 58 percent of the population in Carver, and 8 percent of the Marshfield population reside within the EPZ. The above figures are those within the EPZ.

[FR Doc. 90–27790 Filed 11–26–90; 8:45 am]
BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 26th meeting on December 12–14, 1990, room P–110, 7920 Norfolk Avenue, Bethesda, MD, 8:30 a.m. until 5 p.m. each day. The entire meeting will be open to the public.

The purpose of the meeting will be to review and discuss the following topics:

- The Committee will meet with the Commissioners to discuss items of mutual interest (tentative).
- The Committee will be briefed by representatives of the Division of High-Level Waste Management (DHLWM) on the results of their reviews of the study Plans for characterization of volcanic features and mineralogy, petrology, and chemistry of transport pathways (tentative).
- The Committee will discuss the NRC staff's Study Plan, review plan, and staff plan for reviewing the Site Characterization progress reports.
- The Committee will begin to consider 10 CFR part 60, high-level waste repository subsystem performance requirements regarding their conformance with the EPA high-level waste standards.
- The Committee will hear reports from its working groups on mixed wastes, Carbon-14, and human intrusion.
- Discuss and begin preparation for ACNW presentation at Waste Management 1991 Symposium, Tucson, AZ, February 26, 1991.
- The Committee will consider a draft NRC staff Technical Position on Regulatory Considerations in Design and Construction of the Exploratory Shaft Facility (tentative).
- The Committee will discuss anticipated and proposed Committee activities, meeting agenda, administrative, and organizational matters, as appropriate. The members will also discuss matters and specific issues which were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley, (telephone 301/492–4516) prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: November 20, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90–27779 Filed 11–26–90; 8:45 am]
BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 6–8, 1990, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on October 17, 1990.

Thursday, December 6, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, MD

8:30 a.m.–8:45 a.m.: chairman's remarks (open)—The ACRS Chairman will make opening remarks and comment briefly regarding items of current interest.

8:45 a.m.–12 noon: FTOL conversions for the Palisades Nuclear Plant and the Dresden Nuclear Power Station, unit 2 (open/closed)—The Committee will review and report on the proposed conversions of provisional operating licenses to full term operating licenses for the Palisades Nuclear Plant and the Dresden Nuclear Power Station, Unit 2. Representatives of the NRC staff and the licensees will participate, as appropriate.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the operation of these plants.

1:30 p.m.–3:30 p.m.: certification of standard plant designs—level of design detail (open)—The Committee will review and comment on the NRC proposal regarding the level of design detail required to certify standardized nuclear power plant designs.

Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

3:45 p.m.–5:15 p.m.: new standard technical specifications (open)—A briefing will be given by representatives of the NRC staff on activities to develop new standard technical specifications for nuclear power stations licensed by the NRC.

5:15 p.m.–6:30 p.m.: preparation of ACRS reports to the NRC (open)—The Committee will discuss proposed reports to the NRC regarding containment design criteria for future nuclear plants, and the preliminary design approval for the Westinghouse SP/90 Standardized Nuclear Plant.

Friday, December 7, 1990

8:30 a.m.–11 a.m.: operating experience and events (open)—A briefing and discussion will be held regarding recent operating experience and events at nuclear power plants, including: experience relating to problems with the operability of safety systems caused by the egress of noncondensible gas; events at the Brunswick plant relating to loss of offsite power and a main steamline isolation valve closure at full power; and a malfunction of the feedwater regulating system and subsequent failure of the reactor core isolation cooling system at the Pilgrim plant.

11 a.m.–12 noon: Future ACRS activities (open)—The Committee will discuss anticipated ACRS subcommittee activities, items proposed for consideration by the full Committee, and the scope and content of the forthcoming ACRS annual report to the U.S. Congress on the NRC Safety Research Program and budget.

1 p.m.–2:15 p.m.: high-level radioactive waste disposal (open)—A briefing and discussion will be held with a representative of the Radioactive Waste Management Board of the National Research Council regarding the National Academy of Sciences/National Research Council report on "Rethinking High-Level Radioactive Waste Disposal."

2:30 p.m.–3:30 p.m.: NRC safety research on severe accident scaling methodology (open)—A briefing and discussion will be held with Dr. N. Zuber, NRC staff, regarding development of a scaling methodology for direct containment heating experiments.

3:30 p.m.–6 p.m.: preparation of ACRS reports to the NRC (open)—The Committee will discuss proposed ACRS reports to the NRC regarding additional certification issues for evolutionary light-water reactors, and containment design criteria for future plants.

Saturday, December 8, 1990

8:30 a.m.–9 a.m.: election of ACRS officers (open/closed)—The Committee will elect ACRS officers for CY 1991.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

9 a.m.–11:30 a.m.: preparation of ACRS reports to the NRC (open)—The Committee will discuss proposed reports to NRC regarding items considered during this meeting and matters which were not completed at previous meetings as time and availability of information permit.

11:30 a.m.–12 noon: appointment and assignments of ACRS members (open/closed)—The Committee will discuss the status of appointment of candidates for membership on the Committee and selection of ACRS members for related assignments.

Portions of this session will be closed as necessary to discuss information the release of which would represent an unwarranted invasion of personal privacy and internal personnel rules and practices of the agency.

1 p.m.–2:30 p.m.: miscellanous (open)—The Committee will complete discussion of items considered during this meeting and items of an administrative nature as appropriate.

Procedures for the conduct of an participation in ACRS meetings were published in the **Federal Register** on October 2, 1990 (55 FR 40249). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss Proprietary Information applicable to the matters being considered (5 U.S.C. 552b(c)(4)), information the release of which would represent an unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) and information that involves the internal personnel rules and practices of the agency (5 U.S.C. 552b(c))(2)).

Further information regarding topics to be discussed, whether the meting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time alloted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 7:45 a.m. and 4:30 p.m.

Dated: November 20, 1990.

John C. Hoyle,

Advisory, Committee Management Officer.

[FR Doc. 90–27780 Filed 11–26–90; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on December 12, 1990, in the Delaware Room at the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 12, 1990—8:30 a.m. until the Conclusion of Business

The Subcommittee will discuss the status of the NRC staff's program on interfacing systems loss of coolant accident (ISLOCA).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff members named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Paul Boehnert (telephone 301/492–8558) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 19, 1990.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 90–27781 Filed 11–26–90; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Planning and Procedures; Cancelled

The Subcommittee meeting on Planning and Procedures scheduled for December 4, 1990, 3 p.m., room P–422, 7920 Norfolk Avenue, Bethesda, MD has been cancelled.

Dated: November 20, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90–27782 Filed 11–26–90; 8:45 am]

BILLING CODE 7590–01–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, December 11–12, 1990, at the Madison Hotel, 15th & M Streets, Northwest, Washington, DC.

The Subcommittee on Hospital Productivity and Cost-Effectiveness will meet in Executive Chambers 1, 2 and 3 at 9 a.m. on Tuesday, December 11, 1990. The Subcommittee on Diagnostic and Therapeutic Practices will convene its meeting at 9 a.m. on Tuesday, December 11, at 9 a.m. in Drawing Rooms 3 and 4.

The Full Commission will meet on Wednesday, December 11, 1990 at 9 a.m. in Executive Chambers 1, 2 and 3.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc 90–27627 Filed 11–26–90; 8:45 am]

BILLING CODE 6820–SW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–28627; International Series Release No. 194; File No. SR–CBOE–90–17]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to Listing of Index Warrants Based on the Financial Times-Stock Exchange 100 Index

On June 21, 1990, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list warrants based on the Financial Times-Stock Exchange 100 Index ("FT–SE 100" or "Index").

The proposed rule change was published for comment in Securities Exchange Act Release No. 28225 (July 18, 1990), 55 FR 30770. No comments were received on the proposal.

The Exchange proposes to list index warrants [3] based on the FT–SE 100 Index, a broad-based, internationally recognized, capitalization-weighted stock index based on the prices of 100 of the most highly capitalized and actively traded British stocks traded on the International Stock Exchange of the United Kingdom and the Republic of Ireland ("ISE").[4] The Index is updated each minute from 9 a.m. to 5 p.m. (London time).[5]

The CBOE proposes to trade FT–SE 100 warrants pursuant to its rules governing the trading of stocks, warrants and other securities.[6] Among other things, these rules permit the CBOE to list index warrants based on established market indexes, both foreign and domestic.

Specifically, consistent with the order approving these rules ("Index Warrant Approval Order"), the Exchange represents that the FT–SE 100 warrant issues will conform to the index warrant listing guidelines.[7] The listing guidelines of the CBOE require that:

(1) The issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the Exchange's size and earnings requirements;

(2) The term of the warrants shall be for a period ranging from one to five years from the date of issuance; and

(3) The minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

The Exchange also represents that the FT–SE 100 warrants will be direct obligations of their issuer subject to cash settlement during their term, and either exercisable throughout their life (*i.e.*, American-style) or exercisable only on their expiration date (*i.e.*, European-style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the FT–SE 100 Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the FT–SE 100 Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Because the index warrants are derivative in nature and closely resemble index options, the Exchange will impose several safeguards designed to meet the investor protection concerns raised by the trading of FT–SE 100 warrants. First, the Exchange proposes to apply its options suitability standards to Index warrant recommendations. Second, discretionary orders in Index warrants must be approved on the day entered by a Senior Registered Options Principal ("SROP") or a Registered Options Principal ("ROP"). Third, the Exchange has recommended that the FT–SE 100 warrants only be sold to options approved accounts. Fourth, the Exchange, prior to commencement of trading of FT–SE 100 warrants, will distribute a circular to its membership calling attention to the specific risks associated with warrants on the FT–SE 100.

Finally, the ensure that there is an adequate mechanism for sharing surveillance information with respect to the Index's component stocks, the CBOE has entered into a Memorandum of Understanding with The Securities

[1] 15 U.S.C. 78S(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] Warrants on a stock index are securities that incorporate certain characteristics of both stocks and options. Like stock, they are issued by a corporation that serves as guarantor of the warrant obligation. Like a stock index option, however, an index warrant is based on the performance of an underlying index and has a fixed expiration date. Index warrants are also cash-settled and, as with options, the risk to a buyer is known and limited.

[4] The Index is composed of stocks of companies from 29 different industry groups, no one of which dominates the Index, and the percentage weighing of the five largest issues, as of October 31, 1989, accounted for approximately 21.38% of the Index's value. The total capitalization of the Index, as of October 30, 1989, was $521.6 billion. In addition, over the period January 1989 through June 1989, the average daily trading volume of each component stock was above 160,000 shares. The Index is administered by the FT–SE 100 Index Steering Committee, a committee composed of representatives from various U.K. financial institutions. The Steering Committee is responsible for, among other things, establishing rules to determine review, and modify the composition of the Index as well as how the Index is calculated.

[5] The Index is calculated by taking the summation of the multiple of the market price for each stock in the Index times the number of shares of that stock outstanding. This sum total is then divided by another number, termed the "divisor," to produce the Index value. The market price for each constituent stock is calculated by taking the mid-point between the highest bid and lowest offer for each stock. The divisor of the Index is continuously adjusted to reflect changes in market capitalization. The Index is published daily in the Financial Times and is available real-time on Reuters, Telerate and other market information systems which disseminate information on a minute-by-minute basis. For additional information regarding the calculation and composition of the Index, see letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to Joanne T. Medero, General Counsel, Commodity Futures Trading Commission "CFTC"), dated January 8, 1990 ("FT–SE 100 letter"), at 4–5.

[6] *See* Securities Exchange Act Release No. 28556 (October 19, 1990) (order approving File No. SR–CBOE–90–06).

[7] *See* CBOE Rule 31.5 (E).

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Association ("TSA"), the self-regulatory organization responsible for regulating the U.K. equity securities market.[8] The Memorandum will allow the CBOE to obtain trading data and other market-based information from the TSA regarding the component securities of the FT–SE 100 Index.[9] The Exchange believes that this Memorandum is an appropriate and sufficient informational sharing arrangement for surveilling trading in FT–SE 100 warrants on the Exchange.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[10] Specifically, the Commission believes that the FT–SE 100 warrants are innovative securities instruments that can provide investors with a means by which to hedge investments in the U.K. equity market, and act as a surrogate instrument for trading in the U.K. securities market.[11] In particular, the FT–SE 100 warrants will benefit U.S. investors by allowing them to obtain differential rates of return on a capital outlay if the FT–SE 100 moves in a favorable direction within a specified time period. Of course, if the FT–SE 100 moves in the wrong direction or fails to move in the right direction, the warrants will expire worthless and the investors will have lost their entire investment. Thus, the trading of warrants on the FT–SE 100 Index will provide investors with a valuable hedging vehicle that should reflect accurately the overall movement of the U.K. equity market.

The Commission also believes that the FT–SE 100 warrants are consistent with the guidelines set forth in the Index Warrant Approval Order. Because the FT–SE 100 is a broad-based index of actively traded, well-capitalized stocks, the trading of cash-settled warrants on the FT–SE 100 on the CBOE does not raise unique regulatory concerns.[12] The Commission notes that the CBOE rules and procedures that address the special concerns attendant to the secondary trading of index warrants will be applicable to the FT–SE 100 warrants. In particular, by imposing the special suitability, disclosure, and compliance requirements noted above, the CBOE has addressed adequately potential public customer problems that could arise from the derivative nature of FT–SE 100 warrants. Moreover, the CBOE plans to distribute a circular to its membership calling attention to the specific risks associated with warrants on the FT–SE 100 and, pursuant to the CBOE listing guidelines, only substantial companies capable of meeting their warrant obligations will be eligible to issue FT–SE 100 warrants.

In light of the fact that the FT–SE 100 is a foreign index, the Commission believes that an adequate surveillance sharing agreement between the CBOE and TSA is a necessary prerequisite to deter and detect potential manipulation or other improper or illegal trading involving the warrants. To address this concern, the CBOE entered into a Memorandum of Understanding with TSA providing for the sharing of market information related to the trading of FT–SE 100 warrants on the CBOE.[13] This Memorandum obligates the CBOE and TSA to use their best efforts to obtain and provide information necessary for them to fulfill their respective regulatory responsibilities. Accordingly, the Commission believes the Memorandum between the CBOE and TSA is adequate to provide an oversight framework regarding potential manipulation or other trading abuses between the markets with respect to the trading of FT–SE 100 warrants.

Finally, the Commission believes that trading in the FT–SE 100 warrants will not have an adverse impact on U.S. financial markets. In fact, the Commission believes the FT–SE 100 warrants will benefit U.S. investors by affording them an opportunity to better hedge against stock market fluctuations in the United Kingdom.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [14] that the proposed rule change (SR–CBOE–90–17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Dated: November 19, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–27729 Filed 11–26–90; 8:45 am]

BILLING CODE 8010–01–M

[8] See Memorandum of Understanding Concerning the Provision of Information for the Purpose of Regulation and Enforcement between the CBOE and TSA dated August 1, 1990 ("Memorandum"). TSA is the self-regulatory organization responsible for regulating the U.K. equity securities market. All ISE members must be members of TSA. TSA also includes members which may not be active on the ISE.

[9] Specifically, the Memorandum provides for the exchange of information concerning any security traded through the facilities of the CBOE, any security underlying a derivative instrument traded though the facilities of the CBOE, and any derivative instrument based upon or including a security traded through the facilities of the CBOE. Accordingly, the Memorandum allows for the provision of information relating to the FT–SE 100 warrants or any securities underlying the FT–SE 100 warrants.

[10] 15 U.S.C. 78f(b)(5) (1984).

[11] Pursuant to section 0(b)(5) of the Act the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[12] The Commission previously has examined the FT–SE 100 in the context of an application by the London International Financial Futures Exchange for certification that its futures contracts meet CFTC requirements to permit the contract's offer and sale to U.S. citizens. At that time, the Commission found that the FT–SE 100 was not readily susceptible to manipulation because of the representative nature of the various industry segments included in the Index, the weighted value of the Index's component stocks, and the substantial capitalization and trading volume of the component stocks. See FT–SE 100 letter, *supra* note 5.

[13] See *supra* notes 8 and 9 and accompanying text.

[14] 15 U.S.C. 78s(b)(2) (1982).

[15] 17 CFR 200.30–3(a)(12) (1989).

[Extension, Rule 17Ac3–1(a) and Form TA–W, File No. 270–96]

Requests Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17Ac3–1(a) (17 CFR 240.17Ac3–1(a)) and Form TA–W under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et. seq.*), which prescribed filing requirements for transfer agents desiring to withdraw from registration as transfer agents. A total of approximately 30 respondents incur a cumulative total of 15 annual burden hours to comply with the rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0151), room 3208, New Executive Office Building, Washington, DC 20503.

November 20, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–27822 Filed 11–26–90; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

November 20, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

American Reliance Group, Inc.
Common Stock, $.01 Par Value (File No. 7–6395)
Eco Corporation
Common Stock, Without Par Value (File No. 7–6396)
Ionics Incorporated
Common Stock, $1 Par Value (File No. 7–6397)
Michael Anthony Jewelers, Inc.
Common Stock, $.001 Par Value (File No. 7–6398)
Baroid Corporation
Common Stock, $.10 Par Value (File No. 7–6399)
Tremont Corporation
Common Stock, $.01 Par Value (File No. 7–6400)
Centura Banks, Inc.
Common Stock, No Par Value (File No. 7–6401)
Oak Industries Incorporated
Common Stock, $1 Par Value (File No. 7–6402)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 12, 1990, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–27842 Filed 11–26–90; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

November 20, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12F–1 thereunder for unlisted trading privileges in the following securities:

American Medical Holdings, Inc.
Common Stock, $.01 Par Value (File No. 7–6403)
Societe Generale Warrants Limited, N.V.
CAC 40 Paris Stock Exchange Index Put Warrants Expiring November 14, 1992 (File No. 7–6404)
Allied Irish Banks, plc
American Depository Receipts (representing 6 ordinary shares of 1R 25p) (File No. 7–6405)
Chambers Development Company, Inc.
Class A Common Stock, $.50 Par Value (File No. 7–6406)
Conner Peripherals, Inc.
Common Stock, No Par Value (File No. 7–6407)
Ecology & Environment, Inc.
Common Stock, $.01 Par Value (File No. 7–6408)
Keystone International, Inc.
Common Stock, $1.00 Par Value (File No. 7–6409)
Koger Properties, Inc.
Common Stock, $.10 Par Value (File No. 7–6410)
Signet Banking Corporation
Common Stock, $5.00 Par Value (File No. 7–6411)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 12, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–27843 Filed 11–26–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28529; File No. SR–Phlx–90–19]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Execution of Orders Transmitted to the Exchange by Means of the PACE System

On July 23, 1990, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–Phlx–90–19) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") that amends supplementary material to rule 229, which governs the execution of orders in the Philadelphia's Automated Communications and Execution ("PACE") system. The amendments relate to the order delivery and execution process in the PACE system and are meant to improve reporting and reduce the burdens on processing mechanisms.

On November 9, 1990, the Phlx submitted an amendment to the filing making some technical corrections to clarify how the PACE system will execute certain orders that might be executed outside the primary market high-low range for the day on the PACE system and how the system will execute round-lot limit orders up to 500 shares and partial round lot limit orders up to 599 shares.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 28521 (October 5, 1990), 55 FR 42129. The Commission received no comments on the proposal. This order approves the proposal.

In its filing with the Commission, the Phlx stated that the proposed rule change will result in more efficient executions and reporting of transactions. The Exchange proposed the following amendments to the supplementary material to Exchange Rule 229.

Paragraph .05

Previously, only round-lot market orders up to 500 shares and partial round-lot orders ("PRL's") up to 599 shares were eligible for automated execution through the PACE system. The amended rule will allow a Phlx specialist to establish an eligible order size greater than 500 shares for PACE system automated execution.

Paragraph .06

This section provided for execution of market orders (round-lots, odd-lots and PRL's up to 1,099 shares) at the New York market opening price. The amended rule provides for execution of market orders of a size greater than 1,099 shares and up to 5,000 shares at the New York market opening price if received at least three minutes prior to such opening.

Paragraph .07(a)

Previously, this section provided that the PACE system would execute market orders (round-lots of 500 shares and PRL's up to 599 shares) entered after the opening at the PACE quote. Because the PACE quote is composed of the best bid/ask quote among the American, Boston, Cincinnati, Midwest, New York, Pacific or Philadelphia Stock Exchanges, or the Intermarket Trading System/ Computer Assisted Execution System ("ITS/CAES") quote, as appropriate, the automated execution of a round-lot market order at the PACE quote may occur at a price outside the New York market high-low range for the day. In its filing Phlx stated that certain users of the system wish to avoid such a result. In an effort to accommodate such users, Phlx modified the criteria so that users may opt for automated execution of all orders up to 599 shares at the PACE quote except for those that would be executed at a price outside the New York market high-low range for the day. Phlx specialists will manually execute and guarantee a price at or within the New York market high-low range for the latter orders.

Paragraph 7(b)

This section previously provided that market orders (round-lots of 600 to 1,000 shares and PRL's of 601 to 1,099 shares) entered after the opening shall not be subject to the execution parameters set forth in Rule 229 and shall be executed in accordance with other applicable rules of the Exchange. The amended rule extends such provisions to cover orders of a size greater than 1,099 shares that the specialist agrees to accept.

Paragraph 10(a)

This section provided that round-lot limit orders up to 500 shares and the round lot portion of PRL limit orders up to 599 shares be executed based on an accumulation of volume (1,000 shares) at the limit order price on any exchange eligible to compose the PACE quote. The amended rule provides for execution of such orders based on accumulation of volume (1,000 shares) at the limit order price or better on the New York market. In addition, Phlx stated that because stocks selling below $1.00 have different trading characteristics than those trading at higher prices, generally are traded in fractional increments of sixteenths, are not eligible for ITS, and usually have greater sizes for which bids and offers are available, the PACE system will not execute limit orders in such stocks under the same volume formula as other stocks and, instead, will execute these orders under the standards set forth in paragraph .10(b), which provides criteria for the execution of larger size limit orders.

In addition, Phlx noted that because each stock has unique trading characteristics, specialists establish order size eligibility of either 2,500 shares or 5,000 shares on a stock-by-stock basis. To provide for more precise eligibility standards, Phlx proposed three tiers of order size eligibility: Tier I: 1 to 599 shares; Tier II: 600 to 3099 shares; Tier III: 4000 to 5000 shares. The PACE system will execute orders in each tier under the terms of rule 229. Except under unusual circumstances, the specialist must remain committed to his or her order size eligibility elections for at least six months thereby providing stability and continuity to the list of issues in the program. Under exceptional or extraordinary circumstances, the Floor Procedure Committee may grant a specialist's withdrawal from the program.

Paragraph .17

Finally, Phlx proposed to add a new Paragraph .17, which states that "[o]rders received by 4 p.m. Eastern Time as determined electronically by the PACE system are eligible for execution. Orders received after such time will be rejected and returned to the order entry firm." The purpose of this provision is to clarify the treatment of orders that are entered by PACE users near the close.

Phlx stated in its filing that it believes that by providing a more balanced and competitive order delivery and execution process for participants in the PACE system, the resulting efficiency will translate into improved reporting and reduced burdens on processing mechanisms, such as the PACE system. Thus, Phlx believes, implementation of the changes will be consistent with section 11A(a)(1) of the Act which encourages the use of new data processing and communication techniques that create the opportunity for more efficient and effective market operations and assures economically efficient execution of securities transactions.

The Commission believes that the proposed rule change is consistent with the Act, particularly section 6(b)(5), which provides in part that the rules of the exchange are designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that File No. SR–Phlx–90–19, be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: November 20, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–27823 Filed 11–26–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17860; 812–7495]

Shearson Lehman Brothers Equity Portfolios, Shearson Lehman Brothers Income Portfolios, SLH Investment Portfolios Inc.; Application

November 19, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Shearson Lehman Brothers Equity Portfolios, Shearson Lehman Brothers Income Portfolios and SLH Investment Portfolios Inc. (each an "Applicant" and collectively the "Applicants").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 22(d) and Rule 22d–1.

SUMMARY OF APPLICATION: Applicants seek an order amending prior orders (Investment Company Act Release No. 16086 (October 27, 1987); Investment Company Act Release No. 16087 (October 27, 1987); and Investment Company Act Release No. 16464 (July 1, 1988)) (the "Prior Orders"), which permit the Applicants to assess a contingent deferred sales charge (a "CDSC") on specified redemptions of shares and to waive the CDSC in specified situations. The requested order, if granted, would permit the Applicants (a) to assess a CDSC different from that described in the Prior Orders in connection with certain redemptions of the Applicants's shares purchased by retirement plans qualified under section 401(k) of the Internal Revene Code of 1986 ("Covered Plans") and (b) to waive the CDSC On certain other redemptions of the Applicants' shares purchased by the Covered Plans.

FILING DATES: The application was filed on March 16, 1990 and amended on August 24, 1990 and September 28, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request by writing to the SEC's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on Decmber 14, 1990, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 31 West 52nd Street, New York, NY 10019..

FOR FURTHER INFORMATION CONTACT: Eva Marie Carney, Staff Attorney, at (202) 504–2274 or Max Berueffy, Branch Chief, at (202) 272–3016.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each Applicant is an open-end, diversified, management investment company registered under the Act. Shearson Lehman Brothers Income Portfolios and Shearson Lehman Brothers Equity Portfolios are each organized as a business trust under the laws of the Commonwealth of Massachusetts. SLH Investment Portfolios Inc., which is currently doing business under the name "Shearson Lehman Brothers Investment Portfolios," is a corporation formed under the laws of the State of Maryland. Shares of all the portfolios currently offered by Applicants (a "Portfolio") are distributed by Shearson Lehman Brothers Inc. ("SLB"), through its Shearson Lehman Brothers Division ("Shearson"). SLB is an indirect wholly owned subsidiary of American Express Company ("American Express"). Affiliates and/or divisions of SLB serve as the investment adviser, the administrator, the custodian and the transfer agent of the Portfolios.

2. The Applicants assess and, in certain circumstances, waive a CDSC in accordance with the terms and conditions of the Prior Orders. The Applicants impose a CDSC on a redemption of shares of any Portfolio that causes the current value of the shares of the Portfolio held by a shareholder to fall below the total dollar amount of payments for the purchase of portfolio shares made by the shareholder during the preceding five years. The amount of the CDSC depends on the number of years since the shareholder made the purchase payment from which an amount is being redeemed. The CDSC is equal to 5% in the first year and decreases by 1% per year thereafter, so that a redemption in the sixth year following purchase is not subject to the CDSC.

3. In accordance with the terms of the Prior Orders, the Applicants currently waive the CDSC on certain redemptions, such as (1) redemptions in the circumstance of death or disability of a shareholder, (2) involuntary redemptions effected pursuant to each Applicant's right to liquidate shareholder accounts of a de minimis aggregate net asset value, (3) redemptions of shares in connection with distributions from certain qualified retirement plans, and (4) redemptions of shares by employees of American Express and its subsidiaries, including SLB, and individuals and plans related to those employees. The Applicants also offer a one-time only reinvestment privilege whereby a shareholder who redeems shares of a Portfolio subject to the CDSC and reinvests the proceeds of the redemption within 30 days after the redemption will receive a credit against the amount of the CDSC paid.

4. The Applicants now propose to assess a different CDSC on "Section 401(k) Plans" purchasing shares of the Portfolios under a new program to be offered by Shearson, tentatively called the "Shearson 401(k) Solution Program" (the "Program"), and to waive that CDSC under specified circumstances. In general, the Program is designed to assist employers or plan sponsors (each an "Employer Sponsor") in the creation and operation of section 401(k) Plans, which are employer-sponsored, individual account retirement plans for employees, qualified under section 401(k) of the Internal Revenue Code of 1986, as amended (the "Code"). Any section 401(k) Plan whose participants or employees are currently permitted to invest in the Portfolios will be given the opportunity to be covered by the Program.

5. Under the Program, each section 401(k) Plan covered by the Program (a "Covered Plan") will be permitted to designate up to four Portfolios (each an "Eligible Portfolio") as investment alternatives for its employee participants. The Employer Sponsor of a Covered Plan will be provided with a pre-selected trustee and recordkeeper. A Covered Plan will have a single shareholder account in each Eligible Portfolio and employees' transactions in Eligible Portfolio shares will be processed in the aggregate by the Applicants' transfer agent through daily purchases or redemptions of these shares. The transfer agent will submit account statements and confirmations to the Covered Plan's trustee.

6. The trustee, which will be the legal owner of the assets of a Covered Plan, will establish a co-mingled interest-bearing trust fund account to accept the monthly aggregated individual account contributions of all participating employees. These contributions will be invested in the specified Eligible Portfolio after the trustee receives specific investment instructions from the Covered Plan's recordkeeper. The trustee will also distribute from the co-mingled trust fund account all required disbursements for a particular Covered Plan, but only after the trustee receives specific instructions from the Plan's recordkeeper. The trustee will provide its services for a predetermined or stated fee to be paid by the Employer Sponsor of a Covered Plan.

7. The recordkeeper of a Covered Plan will provide a wide range of services to the Plan, including directing the trustee to invest contributions and to make distributions monthly based on instructions received from the individual participants, and performing the recordkeeping and sub-accounting procedures necessary to track the interest in an Eligible Portfolio of each participating employee. Like the trustee, the recordkeeper of a Covered Plan will receive a pre-determined or stated fee to be paid by the Employer Sponsor.

8. Redemptions of Eligible Portfolio shares made by a Covered Plan during a period of ten years from the date of the Covered Plan's first purchase of shares of an Eligible Portfolio would be subject to a 3 percent CDSC, regardless of the

number of years that have elapsed since the Covered Plan purchased the shares being redeemed. No redemption of Eligible Portfolio shares by a Covered Plan after the end of this ten-year period would be subject to a CDSC. Redemptions by non-Covered Plans will continue to be subject to the CDSC described in the Prior Orders.

9. The Applicants proposed to waive the CDSC on the following redemptions of shares by a Covered Plan (the "Waiver"): (a) redemptions of shares of an Eligible Portfolio in connection with lump-sum or other distributions made by a Covered Plan as a result of (i) the retirement of an employee participating in the Covered Plan, (ii) the termination of employment of a participating employee, (iii) the death or disability of a participating employee, (iv) the attainment of age 59½ by a participating employee, and (v) the hardship of a participating employee to the extent permitted under section 401(k) of the Code; and (b) redemptions of shares of an Eligible Portfolio in connection with a loan made by a Covered Plan to a participating employee.

10. The Applicants observe that because a section 401(k) investor is typically a relatively large (in terms of number of shares held) and active investor that over time will redeem shares quite frequently, the Program will provide an important benefit. They state that, to the extent the Covered Plans follow a trend noted by SLB of effecting a greater number of redemptions of shares during the first two years as a shareholder than in later years, the benefits of the Program may be magnified, because in its absence Covered Plans would be subject to a higher CDSC during those years than in future years.

11. On the basis of past experience with section 401(k) Plans, SLB expects that substantially all Covered Plan transactions involving Eligible Portfolio shares will fall within the six CDSC waiver categories. The principal types of transactions with respect to which a CDSC would not be waived under the Applicants' proposal are redemptions of Eligible Portfolio shares to effectuate a Covered Plan's complete withdrawal from the Program or to change investment vehicles from the Portfolios to some other form of investment. The Applicants believe it is appropriate and logical to deny a Covered Plan an important benefit of the Program—waiver of the CDSC—when the Covered Plan seeks to withdraw from the Program or seeks to replace the Portfolios with another investment vehicle.

12. The Applicants represent that if they were to impose on a Covered Plan's redemption a graduated CDSC as described in the Prior Orders, the Applicants' transfer agent would be required to "track" not only the purchases and redemptions of the Covered Plan, but also the purchases and redemptions of the individual Plan participants. To avoid this administrative burden, the Applicants have determined instead to impose a flat rate CDSC on all Covered Plan redemptions not included in the Waiver and that occur over a period of ten years from the date of the Covered Plan's first purchase of shares of an Eligible Portfolio. The Applicants state that they have chosen 3 percent as the amount of the rate simply because that rate reflects the average, as well as the mean, of the rates applied under the Applicants' existing graduated CDSC. Regarding their choice of a ten-year term the Applicants assert that requiring a Covered Plan to remain in the Program for a period longer than the five year term fixed in the Prior Orders is particularly appropriate in light of SLB's observation that section 401(k) Plans tend to be longer-term investors than individual investors. Additionally, the Applicants submit that the proposed CDSC should not be viewed as having a term twice as long as that applicable to other investors purchasing Eligible Portfolio shares because, given the significant differences in the manner of application of the two charges, the CDSC described in the Prior Orders would, in many instances, effectively extend for a greater priod of time than would the CDSC applicable to Covered Plans under the Applicants' proposal.

Applicants' Legal Analysis

1. The Applicants seek an exemption covering the assessment of the proposed CDSC and the Waiver pursuant to section 6(c) of the Act. That section authorizes the Commission to exempt conditionally or unconditionally any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act, if, and to the extent that, the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. The Applicants submit that the CDSC they propose to impose on those limited number of categories of Covered Plan redemptions not included in the proposed waiver, which differs in term, rate, and manner of application from the CDSC described in the Prior Orders, is consistent with the provisions of proposed Rule 6c-10 under the Act.

3. The applicants submit that the Waiver is consistent with the policies underlying section 22(d) of the Act, which prohibits an investment company registered under the Act from selling its redeemable securities other than at the current public offering price described in the company's prospectus. The Applicants submit that the Waiver will not result in any of the abuses at which section 22(d) was directed, and will not harm Applicants or their respective shareholders or unfairly discriminate among shareholders or purchasers.

4. The Applicants assert that the Waiver is appropriate because the cost associated with selling shares of Eligible Portfolios to Covered Plans may not be as great as they would be if shares were sold to the individual employees participating in the Covered Plans; Shearson believes it may be able to achieve economies of scale in connection with the sale of shares of the Eligible Portfolios by marketing the Program to, and communicating directly with, various employer sponsors of Covered Plans rather than the individual employee participants in those Plans. The applicants also assert that the Waiver will be implemented in a manner that will protect the interests of the Applicants' shareholders, because the Applicants, in implementing the Waiver, will fulfill the requirements of Rule 22d-1 under the Act. Finally, the Applicants believe the Waiver is appropriate for public policy reasons. Applicants submit that waiving the charge on redemption of shares purchased through section 401(k) Plans, under the circumstances described in the application, is fully consistent with the Code's provisions granting favored tax treatment to contributions to, and accumulations under, such plans.

5. The Applicants specifically request that any exemption that Commission may grant here cover not only the Eligible Portfolios, but also any additional series or classes of shares that the Applicant may offer in the future on substantially the same basis as shares of the Eligible Portfolios are now offered.

Applicants' Conditions for Relief

The Applicants agree to the following express conditions to the requested order if it is granted:

1. Each Applicant will comply with the provisions of Rule 22d-1 under the Act in its present form and as it may be revised in the future; and

2. Each Applicant will comply with the provisions of Proposed Rule 6c-10 under the Act, as it is currently stated and as it may be reproposed, adopted or modified in the future.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-27730 Filed 11-26-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2464, Amdt. #2]

Georgia; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated October 29, 1990 to the President's major disaster declaration of October 19 to establish the incident period as begining October 11 and continuing through October 29, 1990.

All other information remains the same, i.e., the termination date for filing application for physical damage is December 19, 1990, and for economic injury until the close of business on July 19, 1991.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 7, 1990.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 90-27760 Filed 11-26-90; 8:45 am]

BILLING CODE 80-25-01

[Declaration of Economic Injury Disaster Loan Area #7170]

North Carolina; Declaration of Disaster Loan Area

Dare and Hyde Counties and the contiguous counties of Beaufort, Tyrrell, and Washington in the State of North Carolina constitute an Economic Injury Disaster Loan Area due to the collapse of the Herbert C. Bonner Bridge which occurred on October 26, 1990. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on August 6, 1991 at the following address or other locally announced locations—Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th floor, Atlanta, GA 30308

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: November 8, 1990.

June M. Nichols,

Acting Administrator.

[FR Doc. 90-27761 Filed 11-26-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2467; Amdt. #1]

South Carolina; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with amendments dated October 25 and October 28, 1990 to the President's major disaster declaration of October 22 to include the countries of Edgefield, Florence, and Orangeburg in the State of South Carolina as a disaster area as a result of damages caused by severe storms and flooding, and to establish the incident period as beginning on October 11 and continuing through October 28, 1990.

In addition, applications for economic injury loan from small businesses located in the contiguous counties of Bamberg, Berkeley, Colleton, Dillion, Dorchester, Georgetown, Greenwood, Marion, McCormick, and Williamsburg in the State of South Carolina may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the termination date for filing applications for physical damage is December 21, 1990, and for economic injury until the close of business on July 21, 1991.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 7, 1990.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 90-27762 Filed 11-26-90; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Omaha, will hold a public meeting from 8:30 a.m. to 12:00 noon on Friday, November 30, 1990, at the U.S. Small Business Administration, 11145 Mill Valley Road, Omaha, Nebraska, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Glenn Davis, District Director, U.S. Small Business Administration, 11145 Mill Valley Road, Omaha, Nebraska 68154, telephone (402) 221-3620.

Dated: November 20, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-27757 Filed 11-26-90; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Las Vegas, will hold a public meeting from 3 p.m. to 4:30 p.m. on Friday, December 7, 1990, at the U.S. Small Business Administration, 301 E. Stewart Avenue, Downtown Station, Post Office Building, 3rd floor, Las Vegas, Nevada, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Elizabeth Sutton, Secretary to the District Advisory Council, U.S. Small Business Administration, 301 E. Stewart Avenue, P.O. Box 7527, Las Vegas, Nevada 89125, telephone (213) 894-2977 or FTS 598-6611.

Dated: November 16, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-27756 Filed 11-26-90; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council; Public Meeting

The U.S. Small Business Administration Region VIII Advisory Council, located in the geographical area of Richmond, will hold a public meeting from 9 a.m. to 2 p.m. on Tuesday, December 18, 1990, at the Holiday Inn Downtown, 301 West Franklin Street, Richmond, Virginia, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Dratin Hill, Jr., District Director, U.S. Small Business Administration, PO Box 10126, Federal Building, Richmond, Virginia 23240, phone (804) 771-2741.

Dated: November 14, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-27758 Filed 11-26-90; 8:45 am]

BILLING CODE 8025-01-M

National Advisory Council; Public Meeting

The U.S. Small Business Administration National Advisory Council will hold a public meeting from 8:30 a.m. Thursday, December 6 to 11 a.m. Friday, December 7, 1990 at the Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC, to discuss such matters as may be presented by members and the staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jean M. Nowak, Director, Office of Advisory Councils, U.S. Small Business Administration, 1441 L Street, NW., room 503E, Washington, DC 20416, telephone (202) 653-6748.

Dated: November 16, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-27759 Filed 11-26-90; 8:45 am]

BILLING CODE 8025-01-M

Filing of Application for Transfer of Control of a Licensed Small Business Investment Company (SBIC)

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to § 107.601 of the SBA Regulations (13 CFR 107.601 (1990)) governing SBIC's for the transfer of control of UNCO Ventures, Inc., 909 Fannin Street, Houston, TX 77010 (UNCO), a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*).

Currently 909 Corporation, 1331 Lamar, # 675, Houston, TX 77010, is the sole stockholder of the licensee.

Under the Purchase and Sale Agreement, the stock of UNCO will be sold to Genesis Fund, Ltd., 520 Post Oak Blvd., Houston, TX 77027.

The purchaser is a limited partnership, organized under the laws of the State of Texas. It has two general partners: Stuart Schube and Ronnie Walter Cunningham, both of the same address as Genesis Fund. Together both General Partners control Genesis Fund. Genesis Fund operates as a private venture capital fund.

There are no current, nor have there been any prior, affiliations between the proposed new owners and UNCO or any of the port folio concerns of UNCO.

There are no other general partners of Genesis Fund. In regard to the limited partners of Genesis Fund, no limited partner, either individually or collectively, has any control over Genesis Fund.

The proposed new officers and directors are:

John Gatti, President and Director
Thomas F. Woodley, Vice President
Martha J. Stevenson, Asst. Secretary
Stuart Schube, Director
Ronnie Water Cunningham, Vice President, Director
Rita H. Shor, Secretary and Treasurer
Genesis Fund LP General Partner, 100% owner

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed new owners and management, and the probability of successful operations of UNCO under their management and control, including adequate profitability and financial soundness, in accordance with the Act and the SBA Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit to SBA, in writing, comments on the transfer of control. Any such communication should be addressed to the Associate Administrator for Investment, 1441 "L" Street, N.W., Washington, DC 20416.

A copy of this Notice shall be published in a newspaper of general circulation in the Houston TX area.

(Catalog of Federal Domestic Assistance program No. 59.011, Small Business Investment Companies)

Dated: November 13, 1990.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 90-27763 Filed 11-26-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Draft National Plan for Aviation Human Factors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of draft national plan.

SUMMARY: This notice announces the availability of a draft of the National Plan for Aviation Human Factors. The National Plan is a joint effort of the National Aeronautics and Space Administration (NASA) and FAA/DOT, with assistance from the Department of Defense (DoD). It is intended as a comprehensive long-range technical agenda that will guide agency research planning and inter-agency coordination.

DATES: Comments should be submitted on or before January 28, 1991.

ADDRESSES: Send all comments on the draft National Plan to: Federal Aviation Administration, Chief Scientific and Technical Advisor for Human Factors (AXR-3), 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: H. Clayton Foushee, Chief Scientific and Technical Advisor for Human Factors (AXR-3), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; commercial telephone (202) 267-7125 or FTS 267-7125.

SUPPLEMENTARY INFORMATION: The draft National Plan for Aviation Human Factors is comprised of Volume I, Executive Summary and Overview (40 pages), and Volume II, Technical Agenda (850 pages). Any person may order a draft of this publication from the National Technical Information Service (NTIS) by calling the NTIS Sales Desk at (703) 487-4650. To obtain a paper copy or microfiche copy of the National Plan, please select one of the following order options:.

(1) For Volumes I and II as a set, ask for PB91-100321 at $77.50;

(2) For Volume I only, ask for PB91-100339 at $17.00;

(3) For Volume II only, ask for PB91-100347 at $74.00. NTIS attaches a $3.00 handling fee per order for regular service and offers options for accelerated service, such as overnight and second-day delivery.

(4) To obtain Volumes I and II of the plan on high density diskettes (two diskettes of text in 5.0 WordPerfect and two diskettes of graphics in MacDraw 2), ask for PB91-505032 at $80.00.

Comments Invited

Interested parties are invited to submit comments on the draft National Plan. All comments should be submitted to the address above. Although comments are requested by the date specified above, they may be submitted at any time, since the National Plan is not a proposed regulatory action.

Background

Public concern over human error in aviation has been increasing steadily. As a result, FAA and NASA, working in conjunction with the aviation community, have decided to increase their efforts to address human performance issues in aviation. The National Plan for Aviation Human Factors is the first step toward a major program augmentation and is part of the DOT National Transportation Policy. Its purpose is four-fold: (1) To identify the technical efforts necessary to address the most operationally significant human issues in aviation and acquire the necessary resources to respond to these issues; (2) To allocate resources efficiently by coordinating research programs at various Government laboratories; (3) To communicate research needs to academia and industry; and (4) To promote the means by which human factors knowledge is transferred to Government and the operational community. It is published in two volumes. Volume I presents an overview of the National Plan and a summary of the technical agenda, while Volume II contains detailed descriptions of the technical agenda. The National Plan has not been finalized and will be continually revised. It is being released, initially in draft form, so that the aviation and research communities can more effectively participate in the planning process.

Issued in Washington, DC, on November 21, 1990.

H. Clayton Foushee,

Chief Scientific and Technical Advisor for Human Factors.

[FR Doc. 90-27798 Filed 11-26-90; 8:45 am]

BILLING CODE 4910-13-M

Air Transportation Personnel Training and Qualifications Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Transportation Personnel Training and Qualifications Advisory Committee will be held on Thursday, December 13, 1990, at 9 a.m.

DATES: The meeting will be held on December 13, 1990, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in the MacCracken Room (10th floor), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-9683.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Air Transportation Personnel Training and Qualifications Advisory Committee to be held on December 13, 1990, from 9 a.m. to 5 p.m. at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. The agenda for this meeting will include the following: (1) A discussion of the action plans for the working groups established at the October 17 meeting; and (2) reports by the Federal Aviation Administration on the status of recommendations made by the Joint Task Force on Flight Crew Performance.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contracting the person listed under the heading "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, DC, on November 21, 1990.

John S. Kern,

Air Transportation Personnel Training and Qualifications Advisory Committee.

[FR Doc. 90-27805 Filed 11-26-90; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

Approval of Applicant as Trustee; Bank One, Columbus, National Association

Notice is hereby given that Bank One, Columbus, National Association, with offices at 762 Brookedge Plaza Drive, Columbus, Ohio, has been approved as Trustee pursuant to Public Law 100-710 and 46 CFR part 221.

Dated: November 21, 1990.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 90-27835 Filed 11-26-90; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. 90-4P-12; Notice 2]

Mazda Research & Development of North America, Inc; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Mazda Research & Development of North America, Inc. (Mazda), of Ann Arbor, Michigan, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.120, Federal Motor Vehicle Safety Standard No. 120, "Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars". The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on June 26, 1990, and an opportunity afforded for comment (55 FR 26528).

Paragraph S5.1.2 of Standard No. 120 states that:

> Except in the case of a vehicle which has a speed attainable in 2 miles of 50 mph or less, the sum of the maximum load ratings of the tires fitted to an axle shall be not less than the gross axle weight rating (GAWR) of the axle system as specified on the vehicle's certification label required by 49 CFR part 567. If the certification label shows more than one GAWR for the axle system, the sum shall be not less than the GAWR corresponding to the size designation of the tires fitted to the axle. If the size designation of the tires fitted to the axle does not appear on the certification label, the sum shall be not less than the lowest GAWR appearing on the label. When a tire listed in appendix A of Standard No. 109 is installed on a multipurpose passenger vehicle, truck, bus, or trailer, the tire's load rating shall be reduced by dividing by 1.10 before calculating the sum.

Mazda manufactured 14,807 B2200 and B2600i (4×2) models which did not comply with Paragraph S5.1.2. These vehicles were produced between September 7, 1989 and May 25, 1990 and were equipped with tire placards bearing the incorrect English equivalent (as opposed to metric) cold inflation pressure information. The correct English equivalent cold inflation pressure is 35 psi; the inflation pressure listed on these placards is 34 psi. Therefore, the load rating on these tires is reduced. Based on Mazda's calculation, the load rating is reduced by dividing 1.096 before calculating the sum instead of being reduced by dividing by 1.10. Mazda reported that all other information listed on the tire placard is correct. Based on NHTSA's calculation, the load rating on these tires would be reduced by 1.090 rather than the 1.096 calculated by Mazda. The agency believes that its factor of 1.090 is the correct one, based on the recommended methodology provided by The Tire and Rim Association (TRA) Load Formula for "P" Type tires.

Mazda argued that this noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. The noncompliance is a technical noncompliance of S5.1.2 of FMVSS No. 120 only, *i.e.*, the P205/75R14 tires fitted to the affected vehicles are capable of sustaining loads in excess of 1256 kg (2770 pounds) listed on the "tire

placard." (In actuality, on the vehicle's certification label).

2. When calculating the GAWR–R for the metrically designed P205/75R14 tires as a function of the listed metric inflation pressure (i.e., 2.4 kg cm raised to the power of negative two or 240 kpa) no noncompliance with S5.1.2 results.

3. The load capacity of the P205/75R14 tire, as listed in the TRA Handbook, is 695 kgs at 240 kpa (1532 pounds, 35 psi). Using TRA's (the source of the rim and tire information for these vehicles) empirically derived formula (non-linear) for the tire load, the tire load at an inflation pressure of 34 psi (235 kpa) is 668 kgs (1516 pounds). Thus, the GAWR–R of this tire at 34 psi is 1376 kgs (3033 pounds) before applying the 10 percent safety factor specified by S5.1.2. The GAWR–R required to be listed on the "tire placard" (actually, the certification label) is 1251 kgs (2757 pounds) in this instance after applying the 10 percent safety factor. Mazda has listed 1256 kgs or "2768" pounds (the correct value is 2770 pounds) which results in a safety factor of 9.6 percent. Mazda regards the 0.4 percent or 0.004 difference in safety factor to be insignificant and inconsequential with the respect to vehicle safety.

(Note: Based on its own calculation from the TRA Load Formula for "P" Type Tires, NHTSA has derived values that are somewhat different. The tire load at an inflation pressure of 34 psi (234.43 kpa) is 685 kg or 1510 pounds. Thus the GAWR–R of this tire at 34 psi is 1370 kgs or 3020 pounds before applying the 10 percent safety factor specified by S5.1.2. The GAWR–R required to be listed on the certification label would then be 1246 kgs or 2746 pounds after applying the 10 percent safety factor. Mazda's listing of 1256 kgs or 2770 pounds then results in a safety factor of 9.0 percent, rather than the 9.6 percent calculated by Mazda.)

4. The agency, by denying this petition, would be conferring a greater degree of significance to the 10 percent safety factor than was intended or justified. The preamble to the Final Rule (36 F.R. 19505, Docket Nos. 71–19–NO6 and 75–32–NO2) regarding this issue stated that the GAWR of an axle system should be reduced by approximately 10 percent. Mazda considers a safety factor of 9.6 percent to be approximately 10 percent.

5. Vehicle owners or operators are mostly likely to refer to the tire sidewall for proper cold inflation pressure and tire load capability information. The P205/74R14 tired fitted to the affected vehicles list the correct cold inflation pressure and tire load capacity in both metric and English units.

6. Common tire inflation gauges are graduated in both metric (Kpa) and English (psi) units, thus providing a means by which the vehicle owner or operator can verify the correct inflation pressure regardless of the source of this information (tire sidewall or tire placard).

No comments were received on the petition.

After reviewing the petition and Standard No. 120, NHTSA finds that Mazda effectively reduced the tires' load rating by dividing by 1.096 (properly 1.090 based on NHTSA's calculation) rather than the required 1.10. However, this difference of 0.004 (0.010 based on NHTSA's calculation) is small. The real-world effect is that the Mazda tires could experience an overload of 11 pounds (5.5 pounds per tire) according to Mazda's calculation, or 24 pounds (12 pounds per tire) based on NHTSA's. This is the difference between the GAWR–R of the vehicles (2770 pounds) provided as a result of the error, and the actual GAWR–R of 2757 pounds (2746 pounds based on NHTSA's calculation) given the stated tire inflation pressure of 34 psi. At either of these weights, the error is insignificant.

Accordingly, in consideration of the foregoing, petitioner has met its burden of persuasion and it is hereby found that the noncompliance herein described is inconsequential as it relates to motor vehicle safety. The petition by Mazda Research & Development of North America, Inc., is hereby granted. The agency wishes to make clear that this finding applies to the particulars of this petition only, and should not be interpreted as condoning or excusing noncompliances from the performance aspects of this or any other standard.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on November 21, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90–27825 Filed 11–26–90; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Docket No. 101–05]

Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury

Date: November 16, 1990.

By virtue of the authority vested in me as Secretary of the Treasury, including the authority vested in me by 31 U.S.C. 321(b), it is ordered that:

1. The Deputy Secretary shall report directly to the Secretary.

2. The Assistant Secretary (Policy Management) and Counselor to the Secretary shall report directly to the Secretary, except that with respect to supervision of the Executive Secretariat the Assistant Secretary (Policy Management) and Counselor to the Secretary shall report through the Deputy Secretary to the Secretary.

3. The following officials shall report through the Deputy Secretary to the Secretary and shall exercise supervision over those officers and organizational entities set forth on the attached organizational chart:

Under Secretary (International Affairs)
Under Secretary (Finance)
General Counsel
Assistant Secretary (Enforcement)
Assistant Secretary (Legislative Affairs)
Assistant Secretary (Management)
Assistant Secretary (Public Affairs and Public Liaison)
Assistant Secretary (Tax Policy)
Inspector General
Treasurer of the United States
Comptroller of the Currency
Commissioner of Internal Revenue
Director, Office of Thrift Supervision

4. The Tax Legislative Counsel, the International Tax Counsel and the Benefits Tax Counsel provide counsel directly to the Assistant Secretary (Tax Policy), but are supervised by the General Counsel as part of the Department's Legal Division.

5. The Deputy Secretary is authorized, in that official's own capacity and that official's own title, to perform any functions the Secretary is authorized to perform and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary.

6. The Under Secretaries, the General Counsel, and the Assistant Secretaries are authorized to perform any functions the Secretary is authorized to perform. Each of these officials will ordinarily perform under this authority only functions which arise out of, related to, or concern the activities or functions of, or the laws administered by or relating to, the bureaus, offices, or other organizational units over which the incumbent has supervision. Each of these officials shall perform under this authority in their own capacity and their own title and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary. Any action heretofore taken by the Deputy Secretary or any of these officials in the incumbent's own title is hereby affirmed and ratified as the action of the Secretary.

7. The following officials shall, in the order of succession indicated, act as Secretary of the Treasury in case of the death, resignation, absence or sickness of the Secretary and other officers succeeding the incumbent, until a successor is appointed, or until the absence of sickness shall cease:

a. Deputy Secretary;

b. Under Secretary (International Affairs);

c. Under Secretary (Finance);

d. Assistant Secretary (Policy Management) and Counselor to the Secretary;

e. General Counsel; and

f. Assistant Secretaries, appointed by the President with Senate confirmation; in the order designated by the Secretary.

8. Secretary Order 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury," dated October 27, 1989, is superseded as of this date. To the extent that any provision of any other Order of the Department is inconsistent with any provision of this Order, the provisions of this Order shall govern.

Nicholas F. Brady,

Secretary of the Treasury.

BILLING CODE 4810–31–M

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THE DEPARTMENT OF THE TREASURY

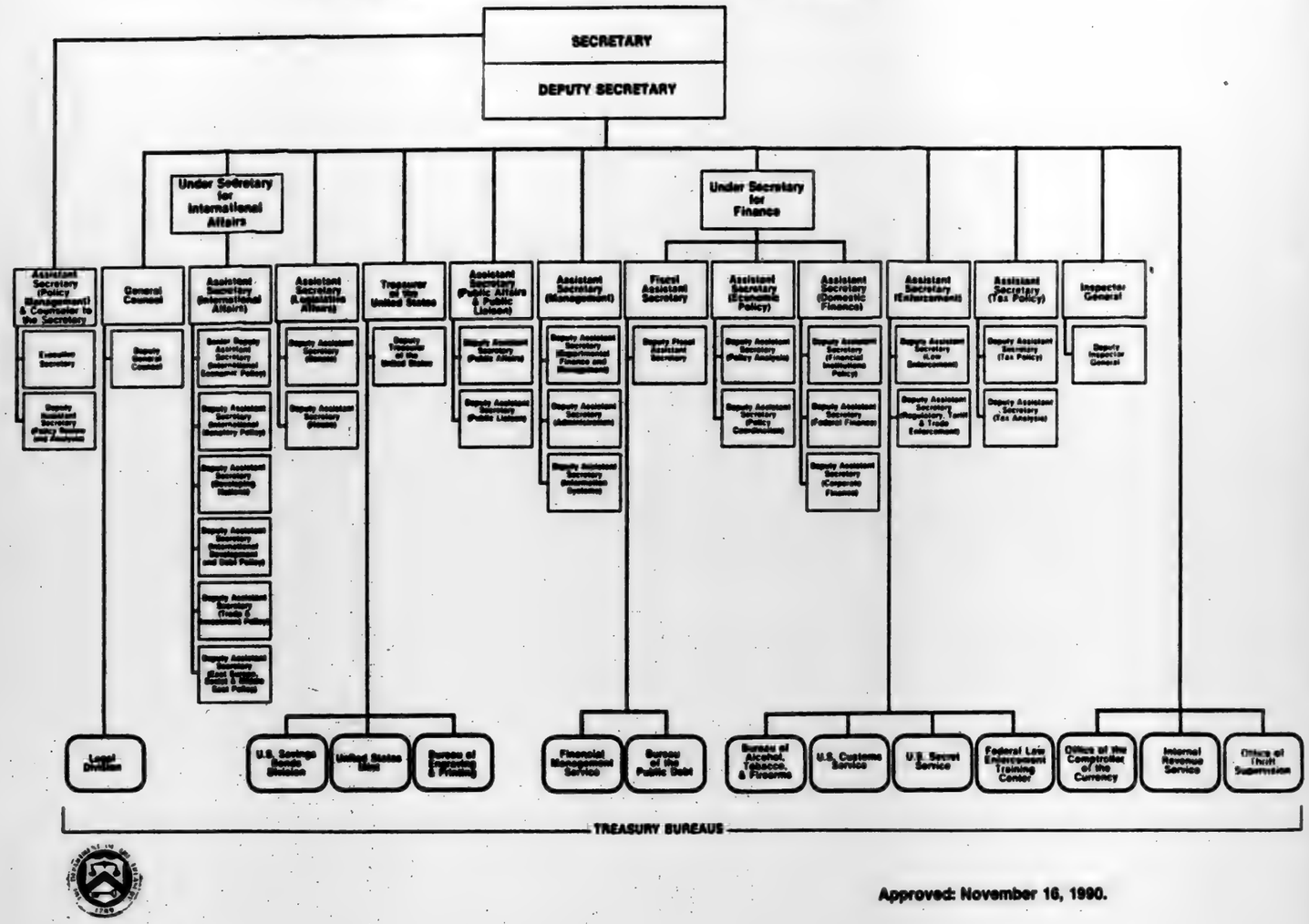

Approved: November 16, 1990.

[FR Doc. 90-27785 Filed 11-26-90; 8:45 am]
BILLING CODE 4810-31-C

Public Information Collection Requirements Submitted to OMB for Review

November 20, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1037.
Form Number: None.
Type of Review: Extension.
Title: Limitation on Passive Activity Losses and Credits—Definition of Activity.

Description: The IRS needs this information to ascertain that taxpayers have made a proper timely election to treat an undertaking as a separate activity.

Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 15,000.

Estimated Burden Hours Per Response: 6 minutes.

Frequency of Response: First taxable year ending after August 1989 (or amended return for that year) or first taxable year that taxpayers owns activity.

Estimated Total Reporting Burden: 1,500 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 90-27720 Filed 11-26-90; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

November 20, 1990.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0087.
Form Number: 1040-ES, 1040-ES (NR), 1040-ES (Espanol).
Type of Review: Resubmission.
Title: Estimated Tax for Individuals (3 forms): (1) U.S. Citizens and Residents; (2) For Nonresident Aliens; and (3) For Use in Puerto Rico (in Spanish).
Description: Form 1040-ES is used by individuals (including self-employed to make estimated tax payments if their estimated tax due is $500 or more. IRS uses the data to credit taxpayers' accounts and to determine if the estimated tax has been properly computed and timely paid.
Respondents: Individuals or households.
Estimated Number of Respondents: 14,563,250.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—1 hour, 25 minutes
Learning about the law or the form—20 minutes
Preparing the form—1 hour, 16 minutes
Copying, assembling, and sending the form to IRS—10 minutes
Frequency of Response: Quarterly.
Estimated Total Recordkeeping/Reporting Burden: 107,866,570.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 90-27721 Filed 11-26-90; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

November 20, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0135.
Form Number: None.
Type of Review: Extension.
Title: Required Records for Smelting and Refining Warehouses.
Description: Each manufacturer engaged in smelting or refining must file an annual statement with the Regional Director, Regulatory Audit, showing any material change in the character of the metal-bearing materials smelted or refined, or changes in the method of smelting or refining. Also, the records must show the receipt and disposition of each shipment.
Estimated Number of Respondents: 14.
Estimated Burden Hours Per Response/Recordkeeping: 48 hrs., 39 mins.
Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 680 hours.
Clearance Officer: Kathryn Kormos (202) 566-4019, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 90-27783 Filed 11-26-90; 8:45 am]
BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

November 20, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to

OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: New.
Form Number: ATF F 5800.27, ATF REC 5300/27.
Type of Review: New collection.
Title: Federal Firearms and Ammunition Tax Deposit.
Description: The tax deposit is completed by those owing Federal excise tax on the manufacture or importation of firearms and/or ammunition. The deposit is required by statute. ATF uses the form to correctly identify the taxpayer and to correctly credit the taxpayer's liability.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1,852.
Estimated Burden Hours Per Response/ Recordkeeping: 3 minutes.
Frequency of Response: Semi-monthly or monthly.
Estimated Total Recordkeeping/ Reporting Burden: 1,215 hours.
OMB Number: New.
Form Number: ATF F 5300.28, ATF REC 5300/28.
Type of Review: New collection.
Title: Application for Registration for Tax Free Transactions Under 26 USC 4221 (Firearms and Ammunition).
Description: 26 USC 4222 establishes the requirement for registration for those who wish to sell or buy firearms or ammunition tax-free. This form (ATF F 5300.28) implements this requirement
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 2,024.
Estimated Burden Hours Per Response/ Recordkeeping: 45 minutes.
Frequency of Response: One time only.
Estimated Total Recordkeeping/ Reporting Burden: 1,519 hours.
Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 90-27709 Filed 11-26-90; 8:45 am]
BILLING CODE 4810-31-M

Fiscal Service

[Dept. Circ. 570, 1990 Rev., Supp. No. 3]

Surety Companies Acceptable on Federal Bonds; Underwriters Indemnity Company

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under title 31, sections 9304 to 9308, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1990 Revision, on page 27368 to reflect this addition:

Company name: Underwriters Indemnity Company.
Business address: 8 Greenway Plaza, Suite 400, Houston, Texas 77046.
Underwriting limitation c/: $180,000.
Surety licenses c/: TX, NM, MS, WY.
Incorporated in: Texas.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (FTS/202) 287-3921.

Dated: November 19, 1990.
Mitchell A. Levine,
Assistant Commissioner, Comptroller, Financial Management Service.
[FR Doc. 90-27708 Filed 11-26-90; 8:45 am]
BILLING CODE 4810-35-M

Office of Thrift Supervision

[No. 90-382]

Regulatory Review Procedures

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice.

SUMMARY: On April 21, 1988, the Federal Home Loan Bank Board (the "Board"), predecessor to the Office of Thrift Supervision (the "Office"), adopted procedures for withdrawing proposed regulations when the rulemaking had not been completed within a certain period of time. 53 FR 13158 (April 21, 1988). The Office has determined that these procedures are no longer necessary and, by this action, is removing them.

EFFECTIVE DATE: November 27, 1990.

FOR FURTHER INFORMATION CONTACT: Mary H. Gottlieb, Paralegal Specialist, (202) 906-7135, Regulations & Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: In 1988, the Board adopted procedures requiring that any proposed rule be automatically withdrawn if the comment period had been closed for six months and the Board had taken no action regarding it during that same six month period. The six month period could be extended, provided that notice of any such extension was published in the Federal Register. A confirming notice in the Federal Register would identify any proposed regulations automatically withdrawn through this process.

At the time the procedures were put in place, the Board had many proposals before it, a number of which had been pending for a significant period of time. The Board established a process for withdrawing outstanding proposed regulations in order to address the uncertainty in the thrift industry created by outstanding proposals that had not been finalized and to eliminate the inefficient practice of allowing proposals to remain pending for unlimited periods of time when no immediate action toward finalizing them was contemplated.

Pursuant to the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 183, all rules, regulations, resolutions, agreements, contracts, orders, directives, decisions, enforcement proceedings, legal actions, formal examinations and investigations, and other determinations of the Board and the Federal Savings and Loan Insurance Corporation not transferred to the Federal Deposit Insurance Corporation or the Federal Housing Finance Board, which were in force and effect on the day prior to the enactment of FIRREA, remain in effect and enforceable by the Office until such time as they are modified, canceled or repealed by the Office. FIRREA, tit. IV, section 401(h),

103 Stat. 357. The Office has determined that the regulatory procedures adopted in April, 1988 by the Board are among those items transferred by FIRREA and that it is necessary to inform the public of the removal of such procedures by publishing notice in the Federal Register.

Today, fewer regulatory projects are underway, and the Office carefully tracks the development of final rules after the close of comment periods. The Office's recent experience suggests that the imposition of an artificial deadline should not substitute for the agency's management of each rulemaking. Preparation of a final rule may take much less than six months in some cases, but the increased complexity of some of the regulatory projects underway may mean that those projects require significantly longer timetables for completion. Accordingly, the review process is hereby removed.

Finally, today's action represents a policy governing agency procedures and is therefore exempt from the Administrative Procedure Act.

Authority: 5 U.S.C. 553(b)(A).

Dated: November 20, 1990.

By the Office of Thrift Supervision.

Timothy Ryan,
Director.
[FR Doc. 90-27750 Filed 11-26-90; 8:45 am]
BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 228
Tuesday, November 27, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, November 27, 1990.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report:

The staff will brief the Commission on various compliance matters.

For a Recorded Message Containing the Latest Agenda Information, Call: 301-492-5709

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Dated: November 21, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90-27944 Filed 11-23-90; 1:05 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, November 29, 1990.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Voluntary Standards Report.

The staff will brief the Commission on CPSC voluntary activities from April 1, 1990 through September 30, 1990.

For a Recorded Message Containing the Latest Agenda Information, Call: 301-492-5709

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Dated: November 21, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90-27945 Filed 11-23-90; 1:05 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:30 a.m., Friday, November 30, 1990.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: FY 1991 Operating Plan.

The staff will brief the Commission on issues related to the Opening Plan for Fiscal Year 1991.

For a Recorded Message Containing the Latest Agenda Information, Call: 301-492-5709

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90-27946 Filed 11-23-90; 1:05 pm]

BILLING CODE 6355-01-M

FEDERAL ENERGY REGULATORY COMMISSION

November 21, 1990.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), U.S.C. 552B:

DATE AND TIME: November 28, 1990, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* **Note**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydor

927th Meeting—November 28, 1990, Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 2832-016, Boise-Kuna Irrigation District, Nampa & Meridian Irrigation District, New York Irrigation District, Wilder Irrigation District and Big Bend Irrigation District

CAH-2.
Project No. 10859-022, City of Fredericksburg, Virginia
Project No. 7498-014, Commonwealth Hydroelectric, Inc.

CAH-3.
Project No. 10645-002, City of Richmond, Virginia

CAH-4.
Project No. 4656-004, Boise-Kuna Irrigation District, New York Irrigation District, Nampa & Meridian Irrigation District, Wilder Irrigation District and Big Bend Irrigation District

CAH-5.
Project No. 5251-016, City of Forth Smith, Arkansas

CAH-6.
Docket Nos. UL87-16-004 and UL87-17-004, Niagara Mohawk Power Corporation

CAH-7.
Docket No. UL87-30-002, Sheffield Car Company

CAH-8.
Docket No. UL89-32-001, Swans Falls Corporation

Consent Agenda—Electric

CAE-1.
Docket No. RM87-26-001, Final Rule, Revision of Rate Schedule Filings Under Sections 205 and 206 of the Federal Power Act

CAE-2.
Docket Nos. ER90-525-002 and ER90-526-002, New England Power Company

CAE-3.
Docket No. ER90-349-001, Northern States Power Company (Minnesota)
Docket No. ER90-406-001, Northern States Power Company (Wisconsin)

CAE-4.
Docket No. EL89-11-001, Vermont Yankee Nuclear Power Corporation
Docket No. ER89-312-001, Vermont Yankee Nuclear Power Corporation

CAE-5.
Docket No. EL89-55-001, New England Power Company

CAE-6.
Docket Nos. EF85-2011-005 and EF85-2021-005, United States Department of Energy—Bonneville Power Administration

CAE-7.
Docket Nos. ER89-265-000 and EL89-26-000, Arizona Public Service Company

CAE-8.
Docket Nos. EL89-34-000, ER86-107-005, ER87-327-002, ER88-397-001 and ER90-355-000, Pacific Gas and Electric Company

CAE-9.
Docket No. ER90-283-000, Cambridge Electric Light Company

CAE-10.
Docket Nos. EC90-18-000 and ES90-46-000, Ocean State Power and Ocean State Power II

CAE-11.
Docket No. QF85-232-004, Archbald Power Corporation

CAE-12.
Docket No. RM90-9-000, Modification of Regulations on Form No. EIA-714, Annual Electric Power System Report

Consent Agenda—Oil and Gas

CAG-1.
Docket No. RP91-15-000, Transwestern Pipeline Company

CAG-2.
Docket No. RP91-71-000, Questar Pipeline Company

CAG-3.
Docket No. RP91-13-000, Equitrans, Inc.

CAG-4.
Docket No. RP90-119-004, Texas Eastern Transmission Corporation

CAG-5.
Docket No. RP90-108-005, Columbia Gas Transmission Corporation
Docket No. RP90-107-007, Columbia Gulf Transmission Company

CAG-6
Docket No. TM91-3-26-000, Natural Gas Pipeline Company of America

CAG-7.
Docket No. TM91-2-28-000, Natural Gas Pipeline Company of America

CAG-8.
Docket No. TM91-5-28-000, Panhandle Eastern Pipe Line Company

CAG-9.
Docket No. TM91-4-28-000, Panhandle Eastern Pipe Line Company

CAG-10.
Docket No. TM91-3-30-000, Trunkline Gas Company

CAG-11.
Docket Nos. TQ91-1-56-000, and TM91-2-56-000, Valero Interstate Transmission Company

CAG-12.
Docket Nos. TQ91-2-25-000 and TM91-2-25-000, Mississippi River Transmission Corporation

CAG-13.
Docket Nos. TA91-1-53-000, and 001, K N Energy, Inc.

CAG-14.
Docket No. TM91-2-42-000, Transwestern Pipeline Company

CAG-15.
Docket No. TQ91-1-41-000, Paiute Pipeline Company

CAG-16.
Docket No. TQ91-1-25-000, Mississippi River Transmission Corporation

CAG-17.
Docket No. TQ91-1-15-000, Mid Louisiana Gas Company

CAG-18.
Docket No. TQ91-1-28-000, Panhandle Eastern Pipe Line Company

CAG-19.
Docket No. TQ91-1-23-000, CNG Transmission Corporation

CAG-20.
Docket No. RP90-152-000, CNG Transmission Corporation

CAG-21.
Docket Nos. TA91-1-32-000, RP90-166-001 and TM91-1-32-002, Colorado Interstate Gas Company

CAG-22.
Docket No. TA91-1-35-000, West Texas Gas, Inc.

CAG-23.
Docket Nos. TQ91-1-8-001, 002, TM91-1-8-001, 002, TF91-1-8-001 and 002, South Georgia Natural Gas Company

CAG-24.
Docket Nos. TQ91-1-7-002, TM91-1-7-001 and TF91-1-7-001, Southern Natural Gas Company

CAG-25.
Docket No. RP89-165-004, Panhandle Eastern Pipe Line Company

CAG-26.
Docket No. PR90-10-000, Llano, Inc.

CAG-27.
Docket Nos. PR90-1-002 and 001, Nycotex Gas Transport

CAG-28.
Docket No. RP90-120-001, Gas Research Institute

CAG-29.
Docket No. TM91-2-28-003, Panhandle Eastern Pipe Line Company

CAG-30.
Docket No. TM91-3-28-003, Panhandle Eastern Pipe Line Company

CAG-31.
Docket No. TM91-2-33-002, El Paso Natural Gas Company

CAG-32.
Docket Nos. RP88-259-037, RP89-136-020 and CP89-1227-006, Northern Natural Gas Company, Division of Enron Corp.

CAG-33.
Docket Nos. RP85-194-009 and RP86-49-002, Panhandle Eastern Pipe Line Company

CAG-34.
Docket Nos. RP90-119-002 and RP86-67-037, Texas Eastern Transmission Corporation

CAG-35.
Docket Nos. CP88-651-000, 001, 002, 003 and 004, Northwest Pipeline Corporation

CAG-36.
Docket Nos. RP87-7-000, *et al.* and CP86-391-000, *et al.*, Transcontinental Gas Pipe Line Corporation

CAG-37.
Docket Nos. RP88-252-007 and CP89-617-004, Panhandle Eastern Pipe Line Company

CAG-38.
Docket No. CP89-1740-000, Northwest Pipeline Corporation

CAG-39.
Docket No. CP90-9-000, TPC Transmission, Inc.

CAG-40.
Docket Nos. ST83-627-000, 001 and ST87-2586-000, TEX/CON Gas Pipeline Company

CAG-41.
Docket No. GP86-26-001, Northern Pump Company, Danner No. A-1 Well

CAG-42.
Docket No. CP88-47-000, Sandstone Resources, Inc. v. Columbia Gas Transmission Corporation

CAG-43.
Docket No. CP89-817-004, Panhandle Eastern Pipe Line Company

CAG-44.
Docket No. CP90-187-001, Oklahoma-Arkansas Pipeline Company

CAG-45.
Docket No. CP88-1851-003, Altamont Gas Transmission Company

CAG-46.
Docket No. CP87-358-002, Tennessee Gas Pipeline Company
Docket No. CP87-428-002, CNG Transmission Corporation

CAG-47.
Docket No. CP87-75-002, Tennessee Gas Pipeline Company

CAG-48.
Omitted

CAG-49.
Docket Nos. CP88-725-001 and 002, United Gas Pipeline Company and Trunkline Gas Company

CAG-50.
Docket No. CP84-252-000, et al., Trans-Appalachian Pipeline, Inc.

CAG-51.
Docket No. CP90-691-001, Great Lakes Gas Transmission Company

CAG-52.
Docket Nos. CP88-111-002, CP90-1162-000 and CP90-1163-000, Great Lakes Gas Transmission Limited Partnership and Great Lakes Gas Transmission Company

CAG-53.
Docket No. CP89-1680-001, Columbia Gas Transmission Corporation and Texas Gas Transmission Corporation

CAG-54.
Docket No. CP91-38-000, Algonquin Gas Transmission Company

CAG-55.
Docket Nos. CP90-1593-000 and CP90-2097-000, Northern Natural Gas Company

CAG-56.
Docket No. CP88-180-010, Texas Eastern Transmission Corporation
Docket No. CP88-185-004, Algonquin Gas Transmission Company

CAG-57.
Docket No. CP90-664-000, Columbia Gas Transmission Corporation and Commonwealth Gas Pipeline Corporation

CAG-58.
Docket Nos. CP89-362-000, 001, CP89-363-000 and 001, North Country Pipeline Corporation

CAG-59.
Docket No. CP91-132-000, Colorado Interstate Gas Company

CAG-60.
Docket No. CP91-161-000, Texas Eastern Transmission Corporation

CAG-61.
Docket No. CP91-255-000, Colorado Interstate Gas Company

CAG-62.
Docket Nos. TQ-91-3-4-000 and TM91-3-4-001, Granite State Gas Transmission, Inc.

CAG-63.
Docket Nos. CP91-393-000 and CP91-394-000, Colorado Interstate Gas Company

CAG-64.
Docket No. IS90-11-001, Amerada Hess Pipeline Company
Docket No. IS90-12-001, ARCO Pipe Line Company

Docket No. IS90-13-001, BP Pipeline (Alaska) Inc.
Docket No. IS90-14-001, Exxon Pipeline Company
Docket No. IS90-15-001, Mobil Alaska Pipline Company
Docket No. IS90-16-001, Phillips Alaska Pipeline Corporation
Docket No. IS90-17-001, Unocal Pipeline Company

Hydro Agenda

H-1.
Project No. 3189-014, Rock Creek Limited Partnership. Order on initial decision concerning minimum flows.

Electric Agenda

E-1.
Docket No. EF90-2061-000, United States Department of Energy—Bonneville Power Administration. Order on rate filing.

Miscellaneous Agenda

M-1.
Docket No. RM90-11-000, Streamlining Commission Procedures for Review of Staff Action. Final Rule.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1.
Docket No. PL89-2-005, Interstate Natural Gas Pipeline Rate Design. Notice of public conference on generic interstate natural gas pipeline rate design issues.

II. Producer Matters

PF-1.
Reserved

III. Pipeline Certificate Matters

PC-1.
Docket No. CP89-2067-001, Southern Natural Gas Company. Order on requests for rehearing and stay concerning service to Air Products.

PC-2.
Docket No. CP90-1391-000, *Arcadian Corporation v. Southern Natural Gas Company*. Order on complaint.

PC-3.
Docket No. CP90-1478-000, Northern Border Pipeline Company. Order on petition for declaratory order.

Lois D. Cashell,
Secretary.
[FR Doc. 90-27900 Filed 11-23-90; 1:02 pm]
BILLING CODE 6717-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Thursday, November 29, 1990, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Final amendments to Part 348 of the Corporation's rules and regulations, entitled "Management Official Interlocks," which final rule would conform Part 348 to changes made in the Depository Institution Management Interlocks Act as those changes pertain to the scope of the regulation and as it relates to advisory directors, certain types of savings associations and savings and loan holding companies, emergency acquisitions of savings associations, interlocks involving diversified savings and loan holding companies, and the extension of the grandfather period under the statute.

Memorandum and resolution re: Proposed amendments to Part 333 of the Corporation's rules and regulations, entitled "Extension of Corporate Powers," which interim rule provides that a savings association that has converted to a state savings bank charter and retains membership in the Savings Association Insurance Fund will continue to be subject to the same activity and investment restrictions and loan to one borrower limits that were applicable to a savings association prior to its conversion.

Memorandum and resolution re: Proposed amendment to the Corporation's rules and regulations in the form of a new Part 334, entitled "Contracts Adverse to Safety and Soundness of Insured Depository Institutions," which would implement section 225 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 by prescribing regulations to prevent any depository institution insured by the Corporation from contracting for goods, products or services in a way that would adversely affect the safety and soundness of that institution.

Memorandum and resolution re: Final amendments to part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which amendments would ensure that limits are placed on the amount of purchased mortgage servicing rights that State nonmember banks and savings associations can recognize for regulatory capital purposes.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: November 21, 1990.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 90-27875 Filed 11-23-90; 9:12 am]
BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Thursday, November 29, 1990, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Memorandum re: Renewal of Contract Support for 1991 (Case No. FA-90-0043)
Reports of the Office of Inspector General:
Audit Report re:
Denver Consolidated Office, Cost Center-603 (Memo dated September 24, 1990)
Audit Report re:
Bank Termination Audit, Knoxville Consolidated Office (Memo dated October 15, 1990)
Audit Report re:
Continental Illinois National Bank and Trust Company of Chicago, Chicago, Illinois (Memo dated October 11, 1990)
Audit Report re:
First Federal Savings & Loan Association of Lake Charles, Lake Charles, Louisiana, Assistance Agreement, Case Number C-311c (Memo dated September 28, 1990)
Audit Report re:
Audit of Division of FSLIC Operations' Assistance Monitoring Activities Related to the Citizens Federal Savings and Loan Association, Miami, Florida, Assistance Agreement, Case Number C-279c (Memo dated October 4, 1990)
Audit Report re:
Raritan Valley Savings and Loan Association, East Brunswick, New Jersey, Assistance Agreement, Case Number C-329c (Memo dated October 10, 1990)
Audit Report re:
Audit of the F Street Petty Cash Fund (Memo dated October 19, 1990)
Audit Report re:
Audit of Virginia Square Rental Income (Memo dated October 19, 1990)
Audit Report re:
Audit of Procurement and Management of Appraisals—Knoxville Consolidated Office (Memo dated October 16, 1990)

Application for Federal deposit insurance: Main Street Savings Bank, F.S.B., a proposed new federal savings bank to be located at 940 Main Street, Conyers, Georgia.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: November 21, 1990.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 90-27876 Filed 11-23-90; 8:45 am]
BILLING CODE 6714-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Monday, December 3, 1990.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Marine Accident Report: Capsizing and Sinking of the Self-Elevating Lifeboat M/V TITAN, Gulf of Mexico, June 26, 1989.

NEWS MEDIA CONTACT: Ted Lapatkiewicz, 382-6600.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: November 21, 1990.

Bea Hardesty,
Federal Register Liaison Officer.
[FR Doc. 90-27874 Filed 11-21-90; 4:13 pm]
BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 26, December 3, 10, and 17, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of November 26

There are no meetings scheduled for the Week of November 26

Week of December 3—Tentative

Friday, December 7

10:00 a.m.
Briefing on Level of Design Detail for Part 52 (Public Meeting)
11:30 a.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

Week of December 10—Tentative

Thursday, December 13

9:00 a.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)
10:30 a.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

Week of December 17—Tentative

Monday, December 17

8:30 a.m.
Collegial Discussion of Items of Commissioner Interest (Public Meeting)
10:00 a.m.
Briefing on EEO Program (Public Meeting)

Tuesday, December 18

10:00 a.m.
Briefing by DOE on Status of Civilian High Level Waste Program (Public Meeting)

Wednesday, December 19

11:30 a.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting (Recording)—(301) 492-0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: November 21, 1990.

William M. Hill, Jr.,
Office of the Secretary.
[FR Doc. 90-27909 Filed 11-23-90; 1:03 pm]
BILLING CODE 7590-01-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1435]

TIME AND DATE: 10 a.m. (EST), November 28, 1990.

PLACE: TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on October 23, 1990.

ACTION ITEMS:

New Business

A—Budget and Financing

A1. Financial Statements for Fiscal Year 1990.

B—Purchase Awards

B1. Negotiated Contract with Ecolochem, Inc., for Lease of Boiler Makeup Water Treatment System for Widows Creek Power Plant (Negotiation GZ-89155B).
B2. Indefinite Quantity Term Agreements to Provide Labor and Equipment for Repair, Modification, and New or Maintenance Construction Work for National Fertilizer and Environmental Research Center.
B3. Indefinite Quantity Term Agreement for Offsite Laundry Decontamination Services for Browns Ferry, Sequoyah, and Watts Bar Nuclear Plants and Power Service Shops (Proposal MA-45356B).

C—Power

C1. Renewal Power Contract with Lenoir City, Tennessee.
C2. Revision of Growth Credit Program.
C3. Delegation of Authority to Modify Industrial Power Contract Term Provisions.

E—Real Property Transactions

E1. Sale of Noncommercial, Nonexclusive Permanent Easement Affecting 0.10 Acre of Tellico Reservoir Shoreline in Monroe County, Tennessee.
E2. Abandonment of Easement Affecting 23.9 Acres of Wilson Reservoir Land in Colbert and Lawrence Counties, Alabama.
E3. Land Exchange Affecting 0.75 Acre of Former TVA Land, Apalachia Reservoir, in Polk County, Tennessee.

F—Unclassified

F1. Filing of Condemnation Cases.
F2. Delegation of Authority to Execute Personal Services Contract No. TV-82944V with Access, Incorporated.
F3. Delegation of Authority to Execute Personal Services Contract No. TV-82913V with Coopers & Lybrand.
F4. Revision to TVA Code II Expression of Staff Views.
F5. Delegation of Authority to Execute Supplement to Personal Services Contract No. TV-85787A with Merz and McLellan Consulting Engineers.
F6. Delegation of Authority to Execute Supplement to Personal Services Contract No. TV-79561T with The Hartford Steam Boiler Inspection and Insurance Company.
F7. Delegation of Authority to Execute Personal Services Contract with BCP Technical Services, Inc.
F8.
(1) Delegation of Authority to Execute Supplement to Personal Services Contract No. TV-72163A with Bechtel Corporation.
(2) Delegation of Authority to Execute Personal Services Contract with Bechtel Corporation.
F9.
(1) Delegation of Authority to Execute Personal Services Contract with United Engineers & Constructors Inc.
(2) Delegation of Authority to Execute Personal Services Contract with Fluor Daniel, Inc.
F10.
(1) Delegation of Authority to Execute Supplement to Personal Services Contract No. TV-75528A with Digital Engineering, Inc.
(2) Delegation of Authority to Execute Personal Services Contract with Digital Engineering, Inc.

Information Items

1. Appointment of Mary Sharpe Hayes to the Board of Directors of the TVA Retirement System.
2. Supplement to Personal Services Contract No. TV-72963A with Equifax Services, Inc.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager, Media Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479-4412.

Dated: November 21, 1990.

William L. Osteen, Jr.,

Associate General Counsel and Assistant Secretary.

[FR Doc. 90-27912 Filed 11-23-90; 1:04 pm]

BILLING CODE 8120-03-M

Corrections

Federal Register
Vol. 55, No. 228
Tuesday, November 27, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 90N-0200]
RIN 0905-AA06

Warning Statements Required for Over-the-Counter Drugs Containing Water-Soluble Gums as Active Ingredients

Correction

In proposed rule document 90-25482 beginning on page 45782 in the issue of Tuesday, October 30, 1990, make the following corrections:

1. In the following places, "carrageenan" was misspelled:

a. On page 45782, in the second column, in the second complete paragraph, in the eighth line;

b. On page 45783, in the first column, in the fourth full paragraph, in the seventh line; and

c. On the same page in the same column, in the footnote, in the last line.

2. On page 45784, in the first column, in the sixth entry under **References**, in the second line, "Fiberholdig" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-197-AD]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

Correction

In proposed rule document 90-26014 beginning on page 46219 in the issue of Friday, November 2, 1990, make the following correction:

§ 39.13 [Corrected]

In § 39.13 on page 46220, in the first column, in the seventh line, "E1337" should read "E3137".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-198-AD]

Airworthiness Directives; British Aerospace Model BAe/DH/HS/BH/125 Series Airplanes Equipped With Aircraft Products Company (APC) Warming Oven, Part Numbers 255B-LH-28/115, 255B-RH-28/115, and 255-352

Correction

In proposed rule document 90-26015 beginning on page 46220 in the issue of Friday, November 2, 1990, make the following corrections:

1. On page 46221, in the second column, in the fourth line the section heading should read as set forth below.

§ 39.13 [Corrected]

2. On the same page, in the same column, in paragraph A1 of § 39.13, in the third line, "25-54-9768A&B," should read "25-54-9758A&B,".

BILLING CODE 1505-01-D

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federal register

Tuesday
November 27, 1990

Part II

Department of Agriculture

Cooperative State Research Service

Competitive Research Grants Program (National Research Initiative Competitive Grants Program) for FY 1991; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Competitive Research Grants Program (National Research Initiative Competitive Grants Program) for Fiscal Year 1991; Solicitation of Applications

Applications are invited for competitive grant awards under the Competitive Research Grants Program (hereinafter referred to as the National Research Initiative Competitive Grants Program (NRICGP)) administered by the Office of Grants and Program Systems, Cooperative State Research Service, for fiscal year 1991.

The authority for this program is contained in section 2(b) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(b)). Under this program, subject to the availability of funds, the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the Department of Agriculture. Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual. Proposals from scientists at non-United States organizations will not be considered for support.

Section 639 of Public Law No. 101-308, an Act Making Appropriations for Rural Development, Agriculture and Related Agencies programs for the fiscal year ending September 30, 1991, and for other purposes, prohibits Cooperative State Research Service (CSRS) from using the funds available for the NRICGP for fiscal year 1991 to pay indirect costs on research grants awarded competitively that exceed 14 per centum of the total direct costs under each award.

Applicable Regulations

Regulations applicable to this program include the following: (a) The regulations governing the Competitive Research Grants Program, 7 CFR part 3200 which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; and (b) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015.

Specific Research Areas to be Supported in Fiscal Year 1991

CSRS is soliciting research proposals in the following areas related to agriculture, forestry and human nutrition:

Natural Resources and Environment ($13.272M)

Nutrition, Food Quality and Health ($3.792M)

Animal Systems ($18.960M)

Plant Systems ($33.960M)

The need and opportunities for research in the above areas have been underscored as a means of providing the scientific and technological advances urgently needed for meeting major challenges now facing agriculture in the United States. Many agricultural and scientific communities, among them the Board on Agriculture of the National Research Council, the State Experiment Station Committee on Organization and Policy, users communities, USDA agencies, and professional and scientific groups have called for an increased investment in competitively awarded research as a means of providing the new knowledge necessary for improving our national agricultural competitiveness and economic performance, human health and environmental stewardship.

Research is needed which will form a broad base of knowledge for addressing cost-effective prevention and solution of problems associated with agricultural production; for developing means to protect natural resources and wildlife; for optimizing economic factors, crop quality and productivity of land use; for protecting health and safety; and for adding value to all stages of agricultural products. Increased understanding of how plants, animals, pests and pathogens of agricultural significance reproduce, grow, develop and interact with their environment will be necessary for devising alternative methods for dealing with weeds and pests, for improving water quality, and for coping with projected changes in climate and environment. Additionally, understanding factors affecting food quality and safety and human nutrition will lead to improved human health.

Natural resources and the environment. The need has been recognized for obtaining the knowledge necessary for devising innovative techniques for prudently managing and utilizing our nation's natural resources and for addressing environmental concerns such as increased UVB radiation and possible global climate changes. Accordingly, the area of National Resources and the Environment has been developed as an important component of the NRI. Contained in this research area are two new program areas, Water Quality and Forest/Rangeland/Crop Ecosystems, as well as Plant Responses to the Environment, a CRGO program area begun in FY90. Research opportunities in Forest Biology will be provided in the above three program areas, as well as in all program areas found in the Plant Systems research area. The program area, Improved Utilization of Wood and Fiber, will also be included in Natural Resources and the Environment for FY91.

Nutrition, food quality and health. In response to the increased awareness of the dependency of optimal health on optimum nutrition and food quality, research emphasis on nutritional requirements for optimal health will be continued. A research program area will be initiated in food safety, specifically focussed on research questions involving bacteria responsible for food-borne illness.

Animal systems. Research across a broad range of animal science areas is needed for the enhancement of animal production efficiency, as well as for addressing such areas as modification of animal products. Accordingly, two new program areas are provided: (1) Animal Molecular Genetics and (2) Cellular and Molecular Basis of Disease. These new program areas expand the program previously found in the FY90 solicitation as Animal Molecular Biology. Program areas in reproductive biology and growth and development of animals of agricultural importance will continue.

Plant systems. The National Research Initiative has developed new thrust and scope for the Plant Systems Area. The Plant Gnome program area will be a new research opportunity in mission-oriented research targeted to understanding the structure, control and technology for studying agriculturally important genes. This program area is part of the USDA Plant Genome Project. A new research area, Energy and Metabolism, will contain and expand the two former CRGO programs, Photosynthesis and Nitrogen Fixation/Metabolism. Other former CRGO programs in the FY1990 Plant Sciences (Plant Pathology/Weed Science; Plant Genetic Mechanisms and Plant Molecular Biology; Plant Growth and Development; and Plant Pest Science) will be subsumed and expanded in Plant Systems.

While basic guidelines are provided to assist members of the scientific community in assessing their interest in the program areas and to describe areas where new information is vitally needed, the guidelines are not meant to establish boundaries or to discourage the creativity of potential applicants. The USDA encourages submission of innovative projects that are "high-risk", as well as innovative proposals with potential for more immediate application. In all instances, innovative research will be given high priority.

Organisms of agricultural significance should be used to accomplish the research objectives. Use of other organisms as experimental model systems must be justified in terms of research goals, the program area and the long-term objectives of the USDA.

Types of Proposals

Research projects: Research will be supported which is fundamental or mission-linked performed by individual investigators or multidisciplinary teams from any State agricultural experiment station, college, University, other research institution or organization, Federal agency, private organization, or corporation. As part of the NRI effort to strengthen the national agricultural research base, proposals are specifically encouraged from individuals at small and mid-sized institutions previously unsuccessful in obtaining competitively-awarded research grants.

Postdoctoral research awards to individuals: USDA encourages individuals who (1) have earned a doctoral degree after January 1, 1988 or will have earned a degree no later than June 15, 1991; (2) are citizens of the United States; (3) obtained commitments from an established investigator to provide all necessary facilities and space necessary for conduct of the research and (4) have interests in research that falls within this solicitation to apply for a grant. The proposal should initiate the individual's independent program, rather than supplement or augment research programs in the laboratory of the established investigator. While submission of individual postdoctoral proposals is encouraged, it must be noted that no preference is given to such individuals in determining awards.

Workshops, symposia or conferences that bring together scientists to identify research needs, update information, or advance an area of research are recognized as integral parts of research efforts. Support for a limited number of such meetings covering subject matter encompassed by this solicitation will be considered for partial or, if modest, total support. These proposals should be submitted to appropriate program areas listed below. Applicants considering submission under this category are strongly advised to consult the appropriate NRICGP staff before preparation and submission of the proposal.

Individuals and eligible entities, whether or not they meet the above criteria, are welcome to submit proposals and their proposals will be evaluated objectively under the applicable award criteria. Interested potential applicants should contact the appropriate program staff for further information.

The following specific program areas and guidelines are provided as a base from which proposals may be developed:

Natural Resources and the Environment

Research in the area of natural resources and the environment is needed to address contemporary issues of importance not only for agriculture but for society as a whole. Biological systems are markedly influenced by the environment. Further, the impact of possible environmental changes on sustainability and economic viability of agriculture and forestry, and the need to enhance the stewardship of natural resources minimize negative environmental consequences require expanded knowledge in diverse scientific disciplines. To garner such knowledge, research will be supported in the following topic and program areas:

21.0 Water Quality

It has become clear that non-point runoff of water contaminants and pollutants, including pesticides and other organics, inorganic nutrients, animal wastes, excess salts and metals has become a major landscape problem. The goal of this new program area is to support research on basic mechanisms which affect water quality. Results from such research will be used as a basis for enhancing the quality of water in agricultural and forest ecosystems, as well as for improving run-off or groundwater leaving these ecosystems. Studies are needed in the disciplines of soil chemistry and biophysics; uptake, transport, and degradation of water contaminants; and ecology of landscape elements affecting water quality. Studies are specifically encouraged which examine the interactions of wetland, riparian or buffer ecosystems with those of agricultural or forest systems resulting in modification of factors affecting water quality. It is recognized that questions in these areas will require collaboration of several investigators and/or a multidisciplinary approach.

Specific justification relating the proposed research to water quality problems will be required in each proposal. Studies on Soils and Microorganisms and Plant/Water Contaminant Interactions (described below) will be applicable to wetland, forest, or agricultural ecosystems. The following specific research areas and guidelines are provided as a base from which proposals may be developed:

Soils and microorganisms. This area will support research on mechanisms of soil and microbial interactions as affecting accumulation, persistence, degradation, disappearance and transport of water contaminants and pollutants, including pesticides and other organics, inorganic nutrients (including nitrogen and phosphorus), excess salts and metals. Proposals should emphasize studies that will enhance basic knowledge of the biological and physico-chemical mechanisms affecting these phenomena specifically relating to water quality. The problem areas include, but are not necessarily limited to:

(a) Physical properties and processes of soils (including litter or surface sediments) under both aerobic and anaerobic conditions, and including surface chemistry of soil components, adsorption, diffusion and mass flow of contaminants and their accessibility to microorganisms and plant roots;

(b) Basic biochemical, genetic and molecular mechanisms of microbial uptake, transformation, sequestration and detoxification of pesticides and other organics, nutrients and metals; and

(c) Ecology of microbes involved in the above processes.

Plant/water contaminant interaction. This area will support research on:

(a) Basic biochemical, genetic and molecular mechanisms of whole plant uptake, transport, transformation, sequestration and detoxification of water contaminants;

(b) Cellular, morphological and developmental adaptation of plants as related to water contaminants (i.e., anatomy, physiology, biochemistry, root morphology and rhizosphere interactions); and

(c) Basic studies involving tolerant species that accumulate contaminants as a means for improvement of water quality.

Wetland, riparian and forest ecosystems. This area will support research on mechanistic studies of biogeochemical or physiological/ecological processes in wetland, riparian, or buffer ecosystems (natural or constructed) as related to disposal, treatment, storage and/or reduction of contaminated water from agricultural, forest or urban ecosystems with respect to non-point source runoff (i.e., the use of these ecosystems to treat municipal waste-water is not included in this solicitation). These studies should include, where appropriate, input/output

budgets and estimates of contaminants retention or treatment capacity.

Support will not be provided for research addressing screening and survey projects; technology development; genetic engineering of organisms for water quality enhancement; municipal waste-water treatment; and animal and human health issues.

Scientists should be aware that a complementary Water Quality Program exists within CSRS Special Grants. For more information, contact the Proposal Services Branch at the address listed elsewhere in this solicitation. Applicants should submit proposals to the most appropriate program; submission of duplicate or overlapping proposals to both programs is discouraged.

22.0 Atmosphere and global climate change

A strong scientific basis is needed for understanding the impact of potential atmospheric and global climate change. As a part of the USDA commitment to the US Global Change Research Program, research in two program areas will provide: An understanding of plant responses to environment and the implications associated with global change; and development of research capacity to collect critical information relevant to stratospheric ozone depletion for evaluation of its biological implications for global change.

22.1 Plant responses to the environment. Environmental stress is a major deterrent to agricultural and forest productivity. It is also clear that, in the area of atmospheric and global climate change, there is a lack of basic understanding of how plants perceive and respond to both normal and altered environmental signals. The goal of this program area is to understand the fundamental mechanisms of plant (including forest species) responses to natural and anthropogenic perturbations (long or short term). Perturbations may include: Water, temperature, light (including UV–B), nutrient, and atmospheric chemical composition (including carbon dioxide, ozone, sulfur dioxide and the greenhouse gases). Research is encouraged which examines interactions between multiple stresses. Studies should address mechanisms at the ecophysiological, cellular or molecular levels to explain organismal responses. Projects that link two or more levels of organization toward an understanding of plant responses to stress are encouraged. Examples of research to be supported include:

(a) the interactions of single or multiple environmental factors and how they affect the physiological status of plant processes;

(b) Expression and regulation of genes that are involved in plant responses to environmental perturbations; and

(c) Identification of biochemical, cellular, morphological, and phenological changes that take place in plants in response to changing environmental signals.

Ecosystem studies specifically directed toward understanding response to the environmental parameters listed above are also appropriate for this program area; other ecosystem studies should be submitted to the Forest/Rangeland/Crop Ecosystem program area (23.0).

22.2 Monitoring Systems for Ultraviolet. Description of the research to be supported and receipt date of proposals for this targeted program area will be published at a later date.

23.0 Forest/rangeland/crop ecosystems

The goal of this program area is to further the understanding of underlying biological and ecological processes in ecosystems that have potential to contribute to enhanced plant productivity and to the well-being of vegetation communities. Structure and function of ecosystems are related to many complex processes of interactions and interdependences among plant species, other organisms, and the physical factors operating within the system. Alterations and changes caused by human influence contribute to complex perturbations of these systems yet a lack of understanding of the innate intricacies of ecosystems may present barriers to optimizing agricultural and forest production. Therefore, discerning how major landscapes function on the ecophysiological, populational, community, and biogeochemical levels will provide critical knowledge for enhancement of agricultural and forest practices.

Within this context, studies that include the developmental, structural or functional attributes controlling component ecosystem processes as well as whole ecosystem responses are to be considered. Proposals that explore the implications of alternative management systems on ecosystem processes are also encouraged. It is recognized that simulation modelling may be useful for integration of research results. Studies are encouraged in but not limited to the following areas:

(a) Influence of abiotic and biotic factors on carbon, nutrient, water, and energy flow in ecosystems and on the mechanisms that control such fluxes;

(b) Soil physical and chemical properties and processes that affect water and nutrient availability;

(c) Responses of vegetation communities and soil food webs to management practices, disturbance and environmental change (includes successional and mycorrhizal studies); and

(d) Interspecific antagonisms and interactions among plants in relationship to management practices.

Because of limited funding, large whole ecosystem manipulations are not expected to receive support. Applicants who propose studies of wetland or riparian ecosystems, or those interested in the ecosystem as it relates to water or soil contamination or water quality, should direct proposals to the Water Quality program area (21.0). Studies that focus only on the mechanisms of plant response to abiotic or biotic factors should be directed to the Plant Responses to the Environment program area (22.1) or the Plant Pest Interactions topic area (51.0).

24.0 Improved utilization of wood and wood fiber

Improved wood utilization practices depend upon a continually advancing scientific foundation of basic research in wood properties and fundamental concepts of wood science. This program area encourages basic research that addresses critical barriers to improved wood utilization, providing the scientific base from which new research and development can proceed. The program area will place emphasis on the following:

Wood Chemistry and Biochemistry represents an important area where new basic information is vitally needed and which has important potential for expanding wood utilization. Basic questions that need to be addressed include principles governing the biological, physical or chemical reactions in wood and woodbase materials. Examples of research subjects of interest include conversion to products; deterioration mechanisms; new wood treatment chemistry; lignocellulosic polymer modification; surface chemistry; and fundamental studies in adhesives.

Physical/Mechanical Properties of Wood and Basic Wood Processing Technology constitutes an area of investigation in which an improved base of scientific knowledge can ensure future development of new materials, products and processes. Research is encouraged that furthers an understanding of basic mechanisms associated with the structure, physical properties, and basic processing characteristics of wood and wood-base materials. Examples of such research include, but are not limited to, anatomy and ultrastructure; wood formation; viscoelasticity; heat and mass transfer phenomena; lignocellulosic modification; particle/fiber consolidation; surface and defect evaluation methods; non-destructive property evaluation; and materials science principles.

Structure Wood Engineering relates to the structural performance of wood and wood-base materials as individual components and in systems. Significant improvements in the use of wood will depend on the development of an expanded scientific base of knowledge. The goal of research in this area is to stimulate innovate approaches in the structural use of wood. Examples of relevant research include: Reliability-based design; performance modeling and behavior of wood/non-wood composites; new approaches in fasteners and connectors; moisture and environmental effects; and basic failure mechanisms.

Forest Engineering Research that emphasizes impact of engineering practices upon the safety of forest operation and the ergonomics of forest system components will also be considered in this program area. Examples of such research include studies of engineering-system-related stand regeneration; engineering characteristics of trees, stand, and soils; and systems for controlling and monitoring equipment. Research on the development of equipment, instrumentation and control systems should contain a significant portion of work involving effects of equipment and instrumentation on wood quality or wood products.

Nutrition, food quality and health

The health of the U.S. citizen depends on the quality and quantity of the country's food supply and the nutrients consumed by individuals. Research will be supported which will contribute to the improvement of human nutritional status by increasing our understanding of requirements of nutrients. Data generated from these studies will form the scientific basis for dietary recommendations as well as for new developments by the food industry in response to the needs engendered by those recommendations. Safety of food products is of paramount importance to the producer, processor, distributor, and consumer. In response to this need, a new program area supporting research in food safety, particularly focusing on the pathogenesis, prevention and control of food-borne disease-causing microorganisms, will be initiated.

31.0 Human nutrient requirements for optimal health

The need to understand the interplay between optimal nutrition and optimal health serves as an impetus for research which will improve our understanding of nutrient requirements in the normal healthy human population. The primary objectives of this program area is to support research that will help to fill gaps in our knowledge of human nutrient requirements and factors influencing them.

Examples of research which will be emphasized include:

(a) Bioavailability of nutrients;

(b) The interrelationship of nutrients;

(c) Nutrient requirements of healthy individuals across all age groups;

(d) Mechanisms underlying the relationship between diet and health maintenance, such as the effect of nutrients on the immune system; and

(e) The cellular and molecular mechanisms underlying nutrient requirements, including the modulation of gene expression by nutrients.

Support will not be provided for research addressing nutrient requirements and disease states, demonstration or action projects, or for surveys of the nutritional status of population groups. In addition, the use of animals as model systems must be justified.

Proposals dealing with processing techniques in food technology should be clearly oriented toward determining human nutrient requirements. Proposals that concern utilization or production of a food commodity should emphasize the relationship to specific human nutrient requirements.

This program area has subsumed those projects previously considered for funding under the former CRGO program 7.0 Human Nutrition.

32.0 Food safety

The primary objective of this program area is to increase our understanding of the disease-causing bacteria which contaminate food with the goal of decreasing food-borne illnesses. Proposals will be solicited for research on the mechanisms of pathogenesis, prevention and control of food-borne disease causing bacteria, especially those growing at refrigeration temperatures.

Animal systems

Research across a broad range of animal science areas is urgently needed for the future enhancement of animal production efficiency as well as to address such areas as the modification of animal products. The critical need for a better understanding of the biology of animal production performance necessitates this broad approach. To accomplish this, research will be supported under the following categories:

(a) Animal reproductive biology;

(b) Cellular growth and developmental biology of animals;

(c) Animal molecular genetics; and

(d) Cellular and molecular basis of animal disease.

Emphasis should be given to innovative approaches to research questions related to animals primarily raised for food or fiber or that otherwise contribute significantly to the agricultural enterprise of the country. The use of experimental model systems should be justified relative to the objectives of the specific research program area.

41.0 Reproductive biology and animals

Suboptimal reproductive performance in animals of agricultural importance is a major factor limiting more efficient production of animal food products. New knowledge in this area is required to solve the problem of increased cost of animal production and to decrease the impact of consequent high costs of animal food products to the consumer. The primary objective of this program area is therefore to increase our knowledge of reproductive biology in animals of agricultural importance with the goal of increasing reproductive efficiency.

This program area will consider for support innovative research on:

(a) Mechanisms affecting embryo survival, endocrinological control of embryo development, mechanisms of embryo-maternal interactions, and embryo-implantation;

(b) Factors controlling ovarian function including follicular development, corpus luteum formation and function, and ovulation;

(c) Factors controlling male reproductive function;

(d) Gamete physiology, including cogenesis and spermatogenesis, gamete maturation, mechanisms regulating gamete survival in vivo or in vitro; and

(e) Parturition, postpartum interval to conception, and neonatal survival.

This program area also encourages research on the mechanisms controlling animal responses to physical and biological stresses that impinge upon reproductive efficiency. Research should contribute to an understanding of the causes, consequences and avoidance of stress, rather than merely describing the

physiological effects of stress on reproductive efficiency.

This program area will consider projects previously submitted to the former CRGO program, 8.0 Animal Sciences (Reproductive Physiology).

42.0 Cellular growth and developmental biology of animals

Suboptimal growth and development are limiting factors in animal productivity, yet basic information regarding developmental processes in animals of agricultural importance is largely lacking. The primary objective of this program area is to increase our understanding of the biological mechanisms underlying animal growth, development, and lactation. Increased knowledge in these areas would be useful in increasing protein and decreasing fat in food products of animal origin, improving production, improving control and manipulation of muscling, growth, metabolism, tissue partitioning, and mammary function.

The following categories of research should be emphasized:

(a) Cell proliferation and differentiation;

(b) Genetic mechanisms underlying growth and development;

(c) Metabolic regulators such as growth factors;

(d) Synthesis and degradation of protein and lipid at the cellular or tissue level;

(e) Metabolic and nutritional aspects of growth and development including rumen microfloral development;

(f) Developmental biology of the immune system; and

(g) Cellular and molecular aspects of the effect of environmental stress on growth and development.

This program area subsumes those projects previously considered for funding under the former CRGO program, 10.0 Molecular and Cellular Mechanisms of Animal Growth and Development. Proposals dealing essentially with aspects of reproduction should be submitted to Reproductive Biology of Animals (41.0). Proposals addressing research on infectious agents (bacteria, fungi, parasites, and viruses) should be submitted to the Molecular and Cellular Basis of Disease program area (44.0).

43.0 Animal molecular genetics

A lack of basic information about the genes and gene products of food and fiber animals currently exists. The primary objective of this program area is to increase our understanding of the structure, organization, function, regulation, and expression of genes in agriculturally important animals. Increased knowledge in this area would aid in improving animal productivity and efficiency, genetic localization of economically important production traits, marker assisted selection, and transgenics.

The following areas of research should be emphasized:

(a) Identification, isolation, characterization of genes, gene products, and their regulatory mechanisms;

(b) Identification of DNA segregation markers;

(c) Interactions between nuclear and organellar genes and the molecular basis of genetic replication; and

(d) Development and application of methods to modify the animal genome.

This program area subsumes those projects previously considered for funding under the former CRGO program, 9.0 Animal Molecular Biology subsections (a) through (f).

44.0 Molecular and cellular basis of animal disease

A major limiting factor in agriculture is the lack of basic information about both infectious and noninfectious causes of disease in food and fiber animals. In order to sustain animal health and well-being and to prevent animal disease, the primary objective of this program area is to increase our understanding of disease mechanisms, especially at the molecular and cellular level. Host-agent interactions and defense mechanisms of the host animal are also of interest. Increased knowledge in this area would result in decreased contamination of food products of animal origin, decreased use of antimicrobial agents and more effective immunizations and diagnostic methods to provide assistance with preventive herd health management schemes.

The following categories of reseach represent areas of emphasis of the program area: (a) Mechanisms that alter the normal physiologic state at the molecular and cellular level to produce disease resulting from both biotic and abiotic causes; (b) genetic and cellular mechanisms of disease resistance, *e.g.* molecular immunology and immunogenetics; (c) disease mechanisms, *e.g.* molecular pathogenesis; (d) both host and microbial factors influencing colonization of mucosal surfaces; and (e) host-environment interactions that lead to disease. Interdisciplinary research is encouraged on complex predisposing factors leading to disease.

This program area also solicits proposals addressing research on the molecular, cellular, and genetic mechanisms involved in the following components of *Brucella abortus* infection in cattle:

(a) The mechanisms by which *B. abortus* induces disease and persists as an infectious agent;

(b) The basis of the immune response to *B. abortus* resulting in protective immunity;

(c) Antigens to permit differentiation among non-infected, vaccinated and *B. abortus* infected cattle; and

(d) Agents to produce long-lived protective immunity.

While the major emphasis is directed to cellular and molecular aspects of disease pathogenesis, rigorous studies at the organismal level are also encouraged. Investigators should address questions of importance to the mechanisms by which disease occurs or may be prevented. Proposals which are directed to deficiencies of host defense systems and interactions of the environment and host to cause predisposition to disease are also invited.

Proposals involving reagent development *per se* will not be considered for support. In addition, proposals involving free-living insects that are not intermediate hosts and vectors of animal diseases will not be considered.

This program area has subsumed those projects previously considered for funding under the former CRGO program, 9.0 Animal Molecular Biology (g) genetic mechanisms of interaction of animals with deleterious microorganisms or infectious agents and the subsection on Brucellosis.

Plant systems

Additional knowledge in a broad range of plant sciences is critical for improvement of crop and forest quality, productivity and sustainability, and for addressing the environmental impact of agricultural practices. Research which will obtain innovative insights into plant systems will be supported in the following program areas:

(a) Plant pest interactions;
(b) Genomes, genetics and diversity;
(c) Plant growth and development;
(d) Energy and metabolism;
(e) Alocohol fuels;
(f) Ecosystems; and
(g) Soybean research.

51.0 Plant pest interactions

Damage resulting from plant pests is a major factor in reducing crop and forest productivity. In some situations, plant pests can be controlled by chemical pesticides, but chemical application may result in negative environmental consequences. It is widely acknowledged that understanding plant pest interactions significantly improves our ability to develop successful and environmentally safe control strategies. But despite considerable successful research on plant responses to pests, there is still great opportunity and need to further our understanding of plant defenses, and the basic biology of stress-causing organisms and biotic agents which suppress pests.

The goal of this topic area is to support research on biotic stresses encountered by plants during interactions with other plants, including weeds; pathogens such as viruses, bacteria, and nematodes; and arthropods such as insects and mites. The research supported in this topic area will focus on the identification of novel strategies that are both effective and compatible with social and environmental concerns. Within this context, research which emphasizes the following is encouraged: (a) How plant-pest interactions are established; (b) mechanisms of plant response to biotic stresses; (c) mechanisms of pest response to host defenses and (d) genetics of these interactions. (Applications using molecular genetics as a tool to clarify plant-pest relations are appropriate to this program area. Proposals focused on mapping of plant resistance genes or traits should be directed to the Plant Genome program area, 52.1).

Additionally, the program recognizes that fundamental research in the area of biological control will provide the critical information necessary for development of alternatives to pesticides. Therefore, research which emphasizes how damage from pests can be reduced, including basic studies on biological control organisms, is encouraged.

Host plants, pests, or components of natural control may be studied separately or as an interactive unit. However, all proposals should indicate how the anticipated information will further our understanding of plant-pest interactions and the cause, consequence or mechanism of stress avoidance in crop plants and forest species.

Research at the molecular, cellular, organismal or population level will be considered for those program areas described below.

51.1 Pathogens. Emphasis will be placed on crop and forest stresses arising from interactions with biological agents such as fungi, bacteria, viruses, viroids, and microplasm-like organisms. Studies focussing on the three way interactions of a pathogen, its host, and other host-associated microorganisms are also appropriate.

51.2 Insects (includes mites). In addition to the aforementioned subject areas related directly to insect-plant relations, studies of the basic biology of insects in the following areas are encouraged:

(a) Behavioral physiology;
(b) Chemical ecology;
(c) Endocrinology;
(d) Population dynamics;
(e) Genetics;
(f) Behavioral ecology;
(g) Pathology;
(h) Predator/parasite-insect relationships; and
(i) Toxicology including basic pesticide resistance studies. Proposed studies in these areas must include a justification for how anticipated results will be relevant to a reduction in plant stress.

51.3 Nematodes. Emphasis will be placed on understanding the basic biology of plant parasitic and entomophagous nematodes and their interactions with host organisms. Applicants may propose to study the nematode away from the host if there is significant justification.

51.4 Weeds. Emphasis will be placed on crop and forest stresses arising from interactions with other plants. This program area will emphasis studies on how stressful interactions are established between plants, how plants react to stresses generated by such interactions, how such interactions are influenced by environmental and other factors inherent to the interacting organisms, and how the interactions reduce plant productivity and usefulness to man.

To provide adequate scientific evaluation of applications, proposals submitted under these program areas will be reviewed by the peer review panel whose collective expertise is most appropriate to the scientific content of each proposal.

This topic area will consider research projects previously submitted to the former CRGO programs 1.1 Plant Pathology/Weeds and 11.0 Plant Pest Science—Insects and Nematodes.

52.0 Genomes, genetics and diversity

Significant impact on agricultural productivity can be achieved by understanding the molecular and cellular processes of plants and their inheritance, and translating these processes into desirable plant performance. In the topic area of Genomes, Genetics and Diversity, research which will promote the genetic improvement of crop plants and forest species will be given high priority. Research on agriculturally important genes will be encouraged in two programs areas. The Plant Genome program area will support mission-oriented studies to produce low density maps, localized high-density maps, and development of methods with high potential applicability to crop improvement. The Genetic Mechanisms and Molecular Biology program area will focus on obtaining basic information about plant genes and genetic processes. Specific information about the two program areas follow:

52.1 Plant Genome. Grants will be awarded to support mission oriented research in the area of the plant genome. This grant program area is part of the USDA Plant Genome Research Project. The Plant Genome Research Project was established in order to develop new or improved crop plants and forest species and to maintain germplasm resources, thereby promoting stability and profitability of plant production and improvement of quality of food, fiber, and feed. To accomplish these goals, the Plant Genome program area will foster and coordinate research leading to identification, characterization, alteration, and rapid and precise manipulation of genes controlling traits of agricultural importance.

Following the discovery of scientific principles of heredity, application of genetic principles has enabled the rapid improvement of many useful crop varieties. In conventional plant breeding, sexual hybridization and selection techniques have offered the chief means of genetic improvement, leading to substantial increases in yield, acquisition of pest resistance, and exploitation of other genetic traits of economic importance. However, many traits are controlled by multiple genes, limiting the rate at which improved varieties can be bred. Linkage maps carrying molecular markers are needed to facilitate breeding of traits controlled by multiple loci. Furthermore, in some commodities the application of current plant breeding methods may be approaching the point of diminishing returns because the desired genes do not exist within plant populations that can be hybridized. Genes that encode traits of potential economic importance are present in the plant population as a whole, but efficient means need to be developed to identify and isolate the responsible genes and transfer them to agriculturally important crop plants. The objective of the USDA Plant Genome Research program area is to facilitate full exploitation of the available gene pool for crop improvement. This can be accomplished by supporting high quality research designed to develop information and research tools that will

equip the plant breeder and other plant scientists for present and future challenges.

Potential applicants are advised that the Plant Genome is a mission-oriented, targeted program area. As such, the program area is seeking proposals that are not only of high scientific quality but are of high potential applicability to crop improvement as well. The use of non-cultivated plants as experimental model systems must be justified with regard to applicability to agriculture and forestry. Consistent with the provisions of 7 CFR 3200.15(d), priority will be given to proposals that plan timely dissemination of information, mapping data, and materials to a clearly identified community of users, as well as to the scientific community as a whole. Proposals from single investigators as well as proposals which draw on the expertise of scientists with training in different relevant areas will be appropriate for submission to this program area. The specific areas of emphasis listed below offer exceptional opportunity for advancing agriculture and forestry.

(a) Construction of genetic and/or physical maps. It is recognized that the application of genomic strategies to problems in agriculture requires the development of tools. Accordingly, the objective of this section of the program area is to construct maps for crop and forest species to the point where they are useful to breeders for crop improvement and to other biologists to study fundamental plant science. There are no prescribed priorities for specific commodities or for any particular types of maps to be constructed. The applicant should determine the nature of the map to be constructed (e.g., genetic or physical, high density or low density) for the particular species of interest. An assessment of the present state of the species' genome map, available genetic materials, the rationale for choice of the mapping population, and the future applications of the map for plant breeding or other research should be described in the proposal. It is not anticipated that any complete plant nuclear genome sequencing project will be supported under this area.

Construction of low resolution maps (i.e., those with a goal of containing gaps no larger than 25 centimorgans) will suffice for many plant breeding and research applications. High resolution maps (i.e., with gaps no larger than 1–5 centimorgans) will likely be limited in the number that will be funded, depending on the relationship of physical and genetic distances in the particular species. Strong justification will be needed in terms of a high density map's immediate and future scientific impact. For construction of genome maps with molecular markers at low or high density, a time frame of three years will usually be appropriate, unless unusual aspects of the particular species' genome produce difficulties that justify a longer-term effort.

Proposals for mapping should describe communication or involvement with scientists (such as plant breeders, geneticists, physiologists, or biochemists) who will use the mapping tools which are to be created. Interaction of laboratories engaged in mapping with the users of the technology is essential to ensure early and efficient application of the tools developed.

(b) Detailed mapping and sequencing of specific regions of the genome. The identification and isolation of genes involved in specific genetic traits of economic significance is an important application of genome mapping. The goal is to provide support for investigators to use the available tools, such as existing physical and genetic maps, cytogenetic stocks, alien addition lines, near-isogenic lines, mutants, transposons, and molecular markers to locate, identify, and isolate specific genes that are important to agriculture and forestry. Economically important traits are complex and will likely require experimental approaches drawn from many disciplines.

No priorities for specific commodities or genetic traits to be addressed have been established. The applicants should identify genes that affect the economic value of a specific commodity or are relevant to yield and agricultural productivity. In order to justify the project duration, investigators should describe the genetic tools presently available and the biological properties of the particular species of interest with respect to their impact on the length of time required to identify, locate, and isolate an interesting gene.

(c) Development of new mapping and cloning strategies. Research to produce new methods and materials that can be applied to genome mapping, genome manipulation, gene isolation, or gene transfer is encouraged. The biology of the plant and its genome exhibits some fundamental differences from other eukaryotic systems and may require unique technical strategies. These differences include the polyploid nature of many plant genomes, the existence of the chloroplast genome and a large mitochondrial genome, the presence of the cell wall, the meristematic control of plant growth, and additional complex biosynthetic pathways. At the same time, plant systems offer unique advantages because of the ability to produce inbreds and interspecific sexual and somatic hybrids, the relative simplicity of introducing genes into many plant species, the possibility of regenerating plants from single cells, and the ease of cultivating large segregating populations. Studies leading to the development of mapping, gene cloning, gene introduction, and sequencing technologies that are designed to overcome technical obstacles due to the complexity of plant systems, or studies that are designed to take advantage of unique features of the plant systems will be supported. Proposals that present innovative approaches to technology development are encouraged.

52.2 *Plant genetic mechanisms and molecular biology.* The goal of this program area is to encourage new approaches for the development of genetically superior varieties of crop and forest species. One of the major limiting factors for the application of biotechnology to agriculture is the lack of basic information about genes. Studies addressing the basic cellular, molecular, and genetic processes which contribute new information required for the development of novel approaches to crop and forest improvement will be given high priority. This program area will emphasize, but is not limited to, research in the following categories:

(a) Identification, isolation, and characterization of genes and gene products;

(b) Relationships between gene structure and function;

(c) Regulatory mechanisms of gene expression;

(d) Interactions between nuclear and organellar genes, and between extrachromosomal and chromosomal genes;

(e) Mechanisms of recombination, transposition, and chromosomal replication;

(f) Molecular, biochemical, and cellular processes controlling regeneration of whole plants from single cells;

(g) Alteration and use of germplasm resources; and

(h) Development of molecular and cellular methods for identifying or altering plant characteristics or genes which are important targets for genetic manipulation.

This program area will consider research projects previously submitted to the former CRGO program 2.0 Plant Genetic Mechanisms and Plant Molecular Biology.

53.0 Plant growth and development

Optimal growth and development are essential for optimal productivity of agriculturally important crop plants and forest species. A basic understanding of developmental processes in these plants is largely lacking, but new experimental approaches are being developed through advances in molecular and cellular biology. The goal of this program area is to further the understanding of the fundamental mechanisms that underlie the regulation of the plant life cycle including seed germination, differentiation, organogenesis, flowering, fertilization, embryogenesis, fruit development, senescence, and dormancy. This program area will emphasize, but is not limited to, studies on: (a) Developmental regulation of gene expression; (b) photomorphogenesis; (c) cell biology including membrane biology, organelle development, and cell wall structure and properties; (d) biochemistry of primary and secondary metabolism related to plant growth and development; (e) hormonal regulation of growth and development; and (f) analysis and control of growth patterns. Proposals emphasizing the use of emerging experimental techniques for the investigation of these processes are encouraged.

54.0 Energy and metabolism

54.1 Photosynthesis. The process by which solar energy is transformed to chemical energy in photosynthesis is unique to plants and central to life. Not only do agricultural production concerns of crop and forest yield, efficiency, quality, and response to biological and physical stress hinge upon the complex processes of photosynthesis, but carbon dioxide, a raw material of photosynthesis and oxygen, which is released in the process, are gases which affect the atmosphere and climate. Investigations of the multiple mechanisms determining the control of photosynthetic genes and those by which plants absorb and assimilate carbon dioxide, capture and transform solar energy, synthesize, metabolize and partition carbohydrates will offer tools to be used in solving problems ranging from agricultural production to global climatic change.

Research is needed, but not limited to, the following areas:

(a) Analyses of nuclear and chloroplast genomes and regulatory steps controlling both expression of photosynthetic genes;

(b) Photosynthetic energy conversion, including mechanisms of early events in photon capture, charge separation;

(c) Formation, structure, and function of photosynthetic membranes;

(d) Photosynthetic carbon assimilation, including mechanisms of carbon dioxide transport, fixation, the biochemistry and molecular biology of photosynthetic and related biosynthetic pathways, including photorespiration;

(e) Control of photosynthate partitioning, translocation and utilization;

(f) Mechanisms controlling senescence of the photosynthetic apparatus; and

(g) Mechanisms controlling photosynthetic processes in leaves, plants and canopies.

54.2 Nitrogen fixation/metabolism. The high levels of nitrogen required by crops must be supplied to soils in the form of compounds usable to plants, such as ammonia and nitrate which are then assimilated by plants. These compounds are supplied, for the most part, either by application of fertilizers or by the action of microorganisms which "fix" atmospheric nitrogen. Fertilizer application can be costly in terms of energy costs and effects on the quality of surface and ground water. Only certain groups of crop and forest plants are capable of forming the bacterial-plant symbiosis capable of the more cost-effective, environmentally-sound biological nitrogen fixation. Development of alternative crop production methods for supplying nitrogen is desired. As a basis for developing such alternatives, a broad understanding is sought of the means by which nitrates and ammonia are degraded in the soil, as well as how nitrogen is fixed biologically. Furthermore, enhancement of crop yield, quality, nutritive value and development of novel plant products, will depend upon elucidation of mechanisms by which plants take up, transplant and metabolize nitrogen compounds.

Innovative research is solicited which uses disciplinary approaches of biochemistry, molecular biology, microbiology, genetics, physiology, cellular and developmental biology and ecology. Multidisciplinary approaches are encouraged. Problem areas include, but are not limited to:

(a) Nitrification and denitrification;

(b) Ecology and competitive interactions of nitrogen-fixing organisms;

(c) Factors controlling symbiont specificity;

(d) Mechanisms regulating infection and nodulation of the root by symbiotic nitrogen-fixing organisms;

(e) Mechanisms of nitrogen-fixation in free-living, associative and symbiotic organisms;

(f) Mechanisms of and influencing uptake and transport of nitrogen in the plant,

(g) Plant metabolism of nitrogenous compounds.

55.0 Alcohol fuels research

Proposals will be considered for research relating to the physiological, microbiological, biochemical, and genetic processes controlling the biological conversion of agriculturally important biomass material to alcohol fuels and industrial hydrocarbons. The scope of this program area includes studies on factors that limit efficiency of biological production of alcohol fuels and the means for overcoming these limitations.

Forest/rangeland/crop ecosystems. The goal of the programs area is to further the understanding of underlying biological and ecological processes in ecosystems that have potential to contribute to enhanced plant productivity and to the well-being of vegetation communities. Interested applicants are directed to the complete program area description under the Natural Resources and the Environment (23.0).

Soybean research. Proposals dealing with fundamental research on soybeans should emphasize research that fits the scientific disciplines of the appropriate program areas noted above. Proposals addressing soybean research will be reviewed and evaluated by the peer panel whose collective expertise is most appropriate to the scientific content of the proposal under consideration; a separate peer review panel will not be assembled for the purpose of reviewing these proposals.

How to Obtain Application Materials

Please note that potential applicants who are on the Competitive Research Grants mailing list, who sent applications in fiscal year 1990, or who recently requested placement on the list for fiscal year 1991, will automatically receive copies of this solicitation, and the Grant Application Kit. All others may request copies from: Proposal Services Branch, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, Washington, DC 20250–2200; telephone: (202) 401–5049.

How to Prepare a Proposal and What to Submit

Contained in the Grant Application Kit are instructions for proposal preparation.

An original and 14 copies of each proposal submitted are requested. This

number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Renewal proposals should include a clearly identified progress report and any reprints or preprints of publications resulting from the funded research. Resubmissions of unsuccessful proposals should clearly indicate what changes have been made in the proposal.

Each copy of each proposal must include a Form CSRS–661, "Grant Application" which is included in the Grant Application Kit. Propcsers should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. Each project description is expected to be complete in itself. It should be noted that reviewers are not required to read beyond 15 pages of the project description to evaluate the proposals. Proposals beyond this limit may not be reviewed or may be returned. Appendices should be limited to materials that are pertinent to the proposal and should not be used as a way to circumvent the page limit. The vitae of key project personnel should be limited to three (3) pages, including a list of publications for the last five (5) years.

All copies of a proposal must be mailed in one package. Due to the volume of proposals received, proposals submitted in several packages are very difficult to identify. Also, please see that each copy of each proposal is stapled securely in the upper lefthand corner. DO NOT BIND. Information should be typed on one side of the page only. Every effort should be made to ensure that the proposal contains all pertinent information when initially submitted. Prior to mailing, compare your proposal with the "Application Requirements" checklist contained in the Grants Application Kit.

Due to limited budget, the same investigator is not likely to receive more than one award from the NRICGP within the same fiscal year. Therefore, in order to minimize the time spent for preparation and review of proposals, submission of more than one proposal from the same principal investigator to the NRICGP in the same fiscal year is strongly discouraged. Applicants may not submit the same research proposal to more than one program area within the NRICGP in the same fiscal year. Duplicate proposals, essentially duplicate proposals, or predominantly overlapping proposals will be returned without review.

Where and When to Submit Grant Applications

Proposals submitted to the research program areas in this notice will be assigned by the staff of the NRICGP to the most appropriate peer review panel. If necessary, further information may be obtained from the responsible Program Director at the telephone numbers given below. Each research grant application must be submitted to: National Research Initiative Competitive Grants Program, c/o Proposal Services Branch, Cooperative State Research Service, U.S. Department of Agriculture, room 303 Aerospace Center, Washington, DC 20250–2200. Proposals which will be hand-carried or delivered by overnight express service, should be addressed to: National Research Initiative Competitive Grants Program, c/o Proposal Service Branch, Cooperative State Research Service, room 303 Aerospace Center, 901 D Street SW., Washington, DC, 20024. To be considered for funding during fiscal 1991 proposals must be postmarked by the following dates and received in time to permit adequate peer panel review:

Postmark dates	Program codes	Program areas	Contacts
Jan. 14, 1991	51.1	Pathogens	401–4310
	51.2	Insects	401–5114
	51.3	Nematodes	401–5114
	51.4	Weeds	401–4310
Jan. 22, 1991	31.0	Human Nutrient Requirements.	401–6234
Jan. 28, 1991	52.1	Plant Genome.	401–4871
	52.2	Plant Genetic Mech. & Molecular Biol.	401–5042
	54.1	Photosynthesis.	401–6030
Feb. 4, 1991	43.0	Animal Molecular Genetics.	401–4399
Feb. 11, 1991	55.0	Alcohol Fuels	401–4310
Feb. 18, 1991	24.0	Wood Utilization.	401–7002
Feb. 25, 1991	41.0	Reproductive Biology of Animals.	401–6234
	44.0	Mol. & Cell. Basis of Animal Disease.	401–4399
Mar. 4, 1991	23.0	Forest/ Rangeland/ Crop Ecosystems.	401–5114
Mar. 11, 1991	53.0	Plant Growth and Development.	401–5042
	22.1	Plant Responses to the Environment.	401–4871
Mar. 18, 1991	21.0	Water Quality	401–4871
	54.2	Nitrogen Fixation.	401–6030
Mar. 25, 1991	42.0	Cellular Growth & Dev. Biology of Animals.	401–6234
Apr. 8, 1991	32.0	Food Safety	401–4399

Special Instructions

The NRICGP should be indicated in Block 7 and the applicable program area and program code should be indicated in Block 8 of Form CSRS–661 provided in the Grant Application Kit. Select one program area only. A final determination of the program area will be made by the program staff and/or appropriate peer panel.

Supplementary Information

The Competitive Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.206. For reasons set forth in the Final rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and Local officials. In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this notice have been approved under OMB Document Nos. 0524–0022.

The award of any grant under the NRICGP during FY 1991 is subject to the availability of funds. One copy of each proposal that is not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Done at Washington, DC this 21st day of November, 1990.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 90–27806 Filed 11–26–90; 8:45 am]

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Tuesday, November 27, 1990

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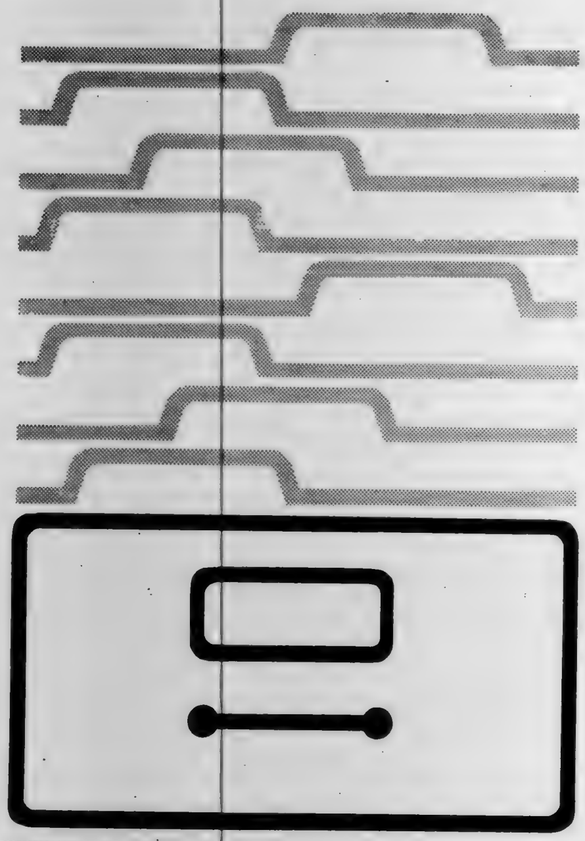

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1990

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The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

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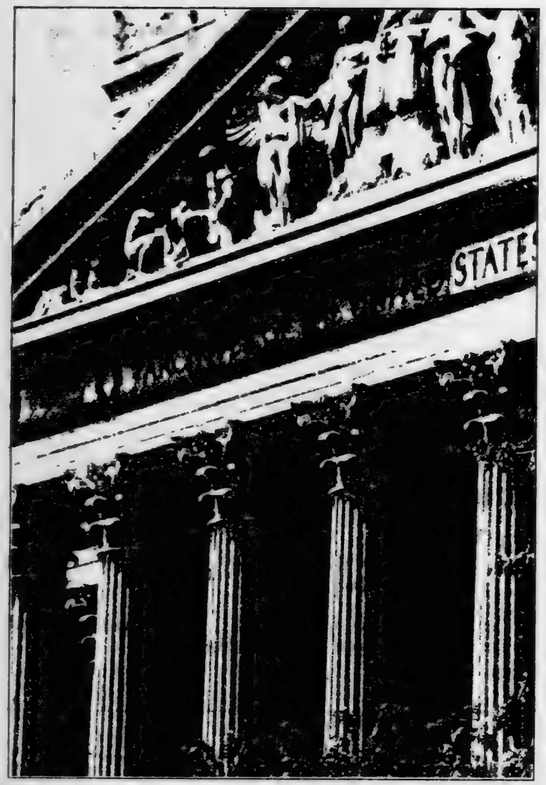

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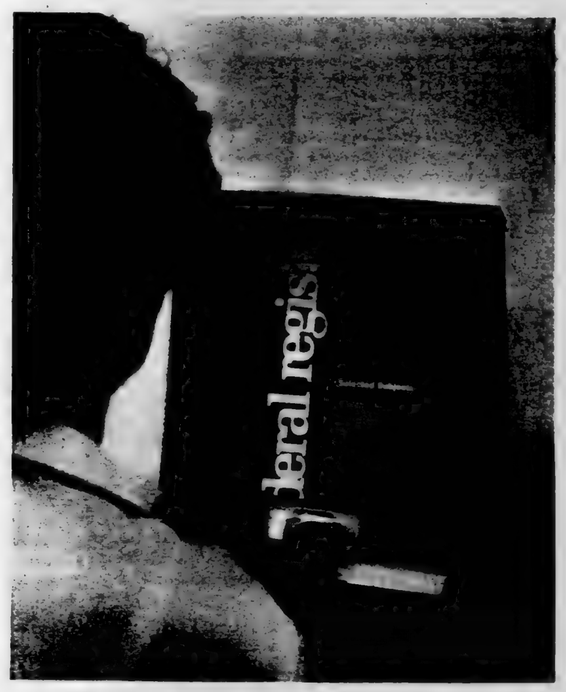

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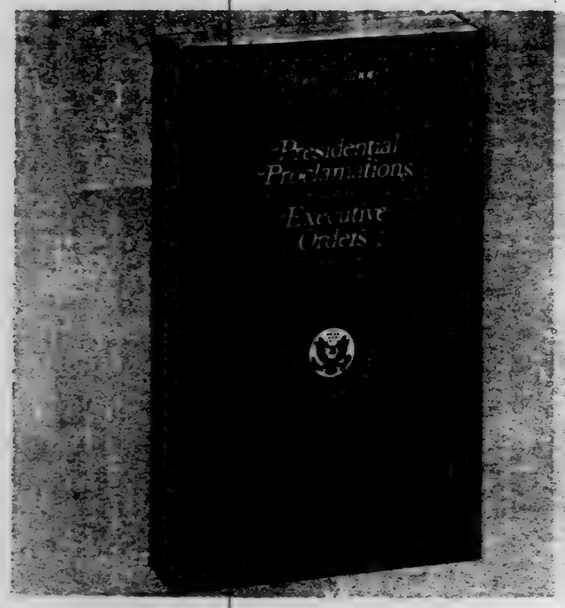

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Rules and Regulations

Federal Register
Vol. 55, No. 229
Wednesday, November 28, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9E3769/R1071; FRL-3796-3]

Pesticide Tolerances for Methidathion; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: In FR doc. 90-13692 in the Federal Register of June 14, 1990, the following correction is made on page 24083: In § 180.298(c) in the table, correct "Carabola" to read "Carambola."

DATES: Effective November 28, 1990.

FOR FURTHER INFORMATION CONTACT: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

Dated: September 20, 1990.

Douglas D. Campt,
Director, Office of Pesticide Programs.

[FR Doc. 90-27820 Filed 11-27-90; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-423; RM-6878]

Radio Broadcasting Services; Riviera Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Lappin Communications-Florida, Inc., substitutes Channel 232C3 for Channel 232A at Riviera Beach, Florida, and modifies its license for Station WMXQ(FM) to specify operation on the higher powered channel. Channel 232C3 can be allotted to Riviera Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.4 kilometers (8.3 miles) north, in order to avoid a short-spacing to a construction permit for Station WCVU(FM), Channel 233C, Naples, Florida. The coordinates for this allotment are North Latitude 26-54-21 and West Longitude 80-03-42. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 7, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-423, adopted November 5, 1990, and released November 21, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 232A and adding Channel 232C3 at Riviera Beach.

Federal Communications Commission.

Beverly McKittrick,
Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27857 Filed 11-27-90; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-490; RM-6751, RM-7164]

Radio Broadcasting Services; Hilo and Kealakekua, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 268C for Channel 221A at Kealakekua, Hawaii, and modifies the license of Station KOAS(FM) to specify operation on the higher class channel, at the request of Kona Broadcasting Systems, Inc. See 54 FR 47687, November 16, 1989. In addition, this action allots Channel 240C2 to Hilo, Hawaii, as that community's sixth local FM service. Channel 268C can be substituted for Channel 221A at Kealakekua in compliance with the Commission's minimum distance separation requirements. The coordinates are North Latitude 19-43-07 and West Longitude 155-54-38. Channel 240C2 can be allotted to Hilo in compliance with the Commission's minimum distance separation requirements. The coordinates are North Latitude 19-43-30 and West Longitude 155-05-24. With this action, this proceeding is terminated.

DATES: Effective January 7, 1991, the window period for filing applications at Hilo, Hawaii, will open on January 8, 1991, and close on February 7, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-490, adopted November 5, 1990, and released November 21, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Channel 240C2 at Hilo, and by removing Channel 221A and adding Channel 268C at Kealakekua.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27858 Filed 11-27-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-542; RM-6462; RM-6662]

Radio Broadcasting Services; Lebanon, Molalla and Tillamook, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Spotlight Media Corporation, substitutes Channel 279C for Channel 279C1 at Lebanon, Oregon, and modifies its license for Station KIQY to specify the higher powered channel. Channel 279C can be allotted to Lebanon in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) southwest of the community to accommodate petitioner's desired transmitter site. The coordinates for Channel 279C are North Latitude 44-30-17 and West Longitude 122-57-30. The counterproposal of Erasmo Carbajal and Cliff Zauner to allot Channel 281A to Molalla, Oregon, and substitute Channel 282C2 for Channel 281C2 at Tillamook, Oregon, is dismissed. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 7, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-542, adopted November 5, 1990, and released November 21, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 279C1 and adding Channel 279C at Lebanon.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-27859 Filed 11-27-90; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register

Vol. 55, No. 229

Wednesday, November 28, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Reg. B; EC-1]

Equal Credit Opportunity; Proposed Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation B (Equal Credit Opportunity). The commentary applies and interprets the requirements of Regulation B and is a substitute for individual staff interpretations of the regulation. The proposed revisions address the definition of adverse action and state law preemption.

DATES: Comments must be received on or before January 28, 1991.

ADDRESSES: Comments should refer to Docket No. EC-1 and be sent to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to Room B-2222 of the Eccles Building between 8:45 and 5:15 p.m. weekdays or the guard station in the Eccles Building courtyard entrance on 20th Street NW (between Constitution Avenue and C Street NW.) any time. All comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room B-1122 of the Eccles Building, between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: In the Division of Consumer and Community Affairs, Adrienne D. Hurt, Senior Attorney, or Jane Ahrens, Staff Attorney, at (202) 452-2412; for the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551

SUPPLEMENTARY INFORMATION:

(1) General

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691-1691f, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, receipt of public assistance, or the exercise of rights under the Consumer Credit Protection Act. This statute is implemented by the Board's Regulation B (12 CFR part 202).

The Board has published an official staff commentary (12 CFR part 202 (Supp. I)) to interpret the regulation. The commentary provides guidance to creditors in applying the regulation to specific transactions, and its updated periodically to address significant questions that arise.

(2) Proposed Revisions

Following is a brief description of the proposed revisions to the commentary:

Section 202.2—Definitions

2(c) Adverse action

Comment 2(c)(2)(ii)-2 would be added to clarify the Board's long-standing position that a notice of adverse action need not be provided in instances where a creditor takes action regarding a current delinquency or default on an account. Notification in accordance with section 202.9 of the regulation generally is required, however, for action on an account based on a past delinquency or default on that account.

One of the purposes of an adverse action notice is to inform an accountholder of the reason for an adverse change on a credit account because the reason may not be immediately evident. When an account is to be terminated because the accountholder is currently delinquent or in default on that account, the accountholder presumably is aware of the fact and the formal notification procedure of section 202.9 is unnecessary. When a termination is based on a past delinquency, on the other hand, the reason for the creditor's action may not be readily apparent to the accountholder. An adverse action notice must be given in such a case.

Section 202.11—Relation to State Law

11(a) Inconsistent state laws

Comment 11(a)-2 would be added to reflect a preemption determination relating to Ohio law that took effect on July 23, 1990 (55 FR 29566).

List of Subjects in 12 CFR Part 202

Banks; Banking; Civil rights; Consumer protection; Credit; Federal Reserve System; Marital status discrimination; Minority groups; Penalties; Religious discrimination; Sex discrimination; Women.

PART 202—[AMENDED]

Pursuant to authority granted in section 703 of the Equal Credit Opportunity Act (15 U.S.C. 1691b), the Board proposes to amend the official staff commentary to Regulation B (12 CFR part 202 Supp. I) as follows:

1. The authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 1691-1691f

2. In section 202.2, comment 2(c)(2)(ii)-2 would be added to read as follows:

Section 202.2—Definitions

2(c) Adverse action

* * * * *

Paragraph 2(c)(2)(ii)

* * * * *

2. *Current delinquency or default.* The term adverse action does not include a creditor's termination of an account when the accountholder is currently in default or delinquent on that account. Notification in accordance with section 202.9 of the regulation generally is required, however, if the creditor's action is based on a past delinquency or default on the account.

* * * * *

3. In section 202.11, comment 11(a)-2 would be added to read as follows:

Section 202.11—Relations to State Law

11(a) Inconsistent state laws

* * * * *

2. *Preemption determination—Ohio.* Effective July 23, 1990, the board has determined that the following provision in the state law of Ohio is preempted by the federal law:

• Section 4112.021(B)(1)—Unlawful discriminatory practices in credit transactions. This provision is preempted to the extent that it bars asking or favorably considering the age of an elderly applicant; prohibits the consideration of age in a credit scoring system; permits without limitation the consideration of age in real estate

transactions; and limits the consideration of age in special-purpose credit programs to certain government-sponsored programs identified in the state law.

* * * * *

Board of Governors of the Federal Reserve System, November 21, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27893 Filed 11-27-90; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 226

[Reg. Z; TIL-1]

Truth in Lending; Proposed Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z and is a substitute for individual staff interpretations. The proposed revisions address several issues, including renewals of home equity lines, credit card substitution, and renewable balloon payment mortgages.

DATES: Comments must be received on or before January 28, 1991.

ADDRESSES: Comments should refer to Docket No. TIL-1 and be sent to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or delivered to the guard station in the Eccles Building Courtyard on 20th Street NW. (between Constitution Avenue and C Street NW.) any time. All comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office Room B-1122 of the Eccles Building between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: The following attorneys in the Division of Consumer and Community Affairs, at (202) 452-3667 or (202) 452-2412: Jane Ahrens, Sharon Bowman, Leonard Chanin, Adrienne Hurt, Thomas Noto, Kurt Schumacher, Mary Jane Seebach, John Wood. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson, at (202) 452-3544.

Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) General

The Truth in Lending Act (15 U.S.C. 1601 *et seq.*) governs consumer credit transactions and is implemented by the Board's Regulation Z (12 CFR part 226). Effective October 13, 1981, an official staff commentary (TIL-1, supp. I to 12 CFR part 226) was published to interpret the regulation. The Commentary is designed to provide guidance to creditors in applying the regulation to specific transactions and is updated periodically to address significant questions that arise. It is expected that the proposed update will be adopted in final form in March 1991 with optional compliance until the uniform effective date of October 1, 1991, for mandatory compliance.

(2) Proposed Revisions

The following is a description of the proposed revisions to the commentary:

Subpart A—General

Section 226.4—Finance Charge

4(a) Definition

Comment 4(a)-2 would be revised to explain that a tax imposed on a creditor by a state is a finance charge if the creditor separately imposes the charge on the consumer in connection with a credit transaction (instead of absorbing the charge as a cost of doing business), even if the creditor is authorized by the state to pass the charge on to the consumer.

Subpart B—Open-End Credit

Section 226.5a—Credit and Charge Card Applications and Solicitations

5a(b) Required Disclosures

5a(b)(2) Fees for Issuance or Availability

Comments 5a(b)(2)-1 and 5a(b)(2)-2 would be revised to clarify that disclosures presented in the tabular format should not include certain membership fees and fees for enhancements. 5a(c) Direct-Mail Applications and Solicitations.

Comment 5a(c)-1 would be revised to correct an error. Under section 226.5a(b)(1)(ii), for direct-mail applications and solicitations, an accurate variable annual percentage rate is one in effect within 60 days before mailing.

Comment 5a(c)-2 currently indicates that a single application form can be used both in direct mailings and in public locations as "take-ones," provided the card issuer meets certain conditions. One of the conditions is that the form not include the disclosures referred to in section 226.5a(e)(1) (ii) and (iii) (the printing date, the statement that the credit terms are accurate as of that date and subject to change thereafter, the statement that the consumer should contact the issuer for updated information, and a toll-free telephone number or a mailing address). The comment would be revised to give card issuers more flexibility, in that the disclosures identified above could either be omitted or included, provided the issuer adheres to certain requirements relating to the accuracy of the credit terms in each case.

5a(e) Applications and Solicitations Made Available to General Public

5a(e)(1) Disclosure of Required Credit Information

Comment 5a(e)(1)-2 would be revised by making a technical correction. Currently the comment states that the disclosures specified in section 226.5a(e)(1)(i), (ii), and (iii) may appear either in or outside the table containing the credit term disclosures. Since the disclosures referred to in section 226.5a(e)(1)(i) are themselves the credit term disclosures, the comment would be revised to refer only to section 226.5a(e)(1) (ii) and (iii).

Section 226.5b—Requirements for Home Equity Plans

Existing comments 5b-2 through 5b-5 would be redesignated as comments 5b-3 through 5b-6, respectively. New comment 5b-2 would be added to provide guidance on when changes to a home equity plan are governed by the change in terms rules in section 226.9(c), and when changes constitute a new plan requiring completely new disclosures.

5b(d) Content of Disclosures

5b(d)(4) Possible Actions by Creditor

Paragraph 5b(d)(4)(iii)

A technical change would be made to comment 5b(d)(4)(iii)-1 to provide guidance concerning the ability of creditors to retain the right to freeze a line of credit if the maximum annual percentage rate is reached. This provision is added in light of the recent amendment to section 226.5b(f)(3)(i) (55 FR 38310, September 18, 1990; correction notice at 55 FR 39538, September 27, 1990). That amendment permits a creditor to provide in its initial agreement that further advances will be prohibited or the credit limit reduced when the maximum annual percentage rate is reached.

5b(d)(5) Payment Terms

Paragraph 5b(d)(5)(iii)

Comment 5b(d)(5)(iii)-4 would be revised to clarify the treatment of reverse mortgages with shared appreciation features. The comment would correct a cross reference. A reverse mortgage with an appreciation feature is not a variable rate plan if the underlying interest rate is fixed. As discussed in the commentary to section 226.6(a)(2), a plan is variable rate only if the rate may change. Under open-end credit, the rate is not affected by a shared appreciation feature.

5b(d) (8) Fees Imposed by Third Parties to Open a Plan

Comment 5b(d)(8)-2 would be revised to clarify that while a creditor must always state the total of third party fees, the total sum need not include costs for property insurance if the creditor discloses that such insurance is required. The comment also would clarify that an itemization of third party fees provided in response to a consumer's request must contain the disclosure about property insurance. (The creditor either may disclose the amount of the premium or state that property insurance is required.)

5b(f) Limitations on Home Equity Plans

Paragraphs 5b(f)(3)(i) and (vi)

Comments 5b(f)(3)(i)-1 and 5b(f)(3)(vi)-1 would be revised in light of the recent amendments to section 226.5b(f)(3)(i) and 226.5b(f)(3)(vi). These amendments permit a creditor to provide in its initial agreement that further advances will be prohibited or the credit limit reduced when the maximum annual percentage rate is reached.

Section 226.6—Initital Disclosure Statement

6(e) Home Equity Plan Information

Comment 6(e)-4 would be revised to clarify that when disclosures are the same for the draw and repayment phase, creditors need not explicitly state that the information applies to both phases, as long as this fact is clear.

Section 226.9—Subsequent Disclosure Requirements

9(c) Change in Terms

Paragraph 9(c)(1) Written Notice Required

Section 226.9(c)(1) requires creditors to provide a notice whenever any term required to be disclosed under section 226.6 is changed. Section 226.6(e)(7) requires creditors to give certain variable-rate and payment examples for home equity plans, unless the disclosures provided with the application were in a form the consumer could keep and included representative payment examples covering the payment option chosen by the consumer.

Comment 9(c)(1)-6 would be revised to clarify that if the index is changed, the maximum annual percentage rate is increased, or a variable rate feature is added to a fixed rate plan, the creditor must give the maximum rate information required by section 226.5b(d)(12)(x) and historical example required by section 226.5b(d)(12)(xi), unless these disclosures are unchanged from those given earlier. A parenthetical referencing section 226.30 is included to alert creditors to the fact that comment 30-11 permits a creditor to increase the maximum rate on a home equity plan only for the period after the original maturity. The comment also would clarify that if the minimum payment requirement is changed, the creditor must give the payment disclosures required by section 226.5b(d)(5)(iii) (and, in variable rate plans, the disclosures required by section 226.5b(12)(x) and (d)(12)(xi)) unless the disclosures given earlier contained representative examples covering the new minimum payment requirement. As provided under section 226.5b(f)(3)(iv) (discussing beneficial changes), a creditor may offer the consumer the option of making lower payments without giving a change in terms notice.

Section 226.12—Special Credit Card Provisions

12(a) Issuance of Credit Cards

Comment 12(a)(2)-2 currently indicates that a card issuer may replace one card with an unsolicited substitute card in a number of instances, including where credit features are added or changed. The comment would be revised to explain that certain replacements are not considered permissible substitutions for purposes of section 226.12(a). The proposed revision provides that certain additions or changes may so alter an underlying credit card account relationship that the unsolicited replacement of the card on the original account by a new card cannot be deemed to be a substitution, and is impermissible. Such a situation would occur, for example, if a second credit account is established that will be accessed by the same card and for which the creditor must give initial disclosures to the cardholder.

Section 226.16—Avertising

16(d) Additional Requirements for Home Equity Plans

Comment 16(d)-4 would be revised to clarify that creditors may state, for example, "no closing costs" in cases where property insurance may be required as long as the creditor includes a disclosure that such insurance may be required. Such treatment would address the concern that, in many cases, insurance already is being carried on the property, and would parallel the treatment of such insurance in other parts of the regulation.

Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

17(a) Form of Disclosures

Paragraph 17(a)(1)

There have been occasional requests (particularly by creditors using multi-purpose disclosure forms) to allow disclosure of the assumability of non-residential mortgage transactions. Comment 17(a)(1)-5 would be revised to indicate that a creditor may disclose in the segregated disclosures ("federal box") whether or not a secured credit transaction is assumable (even if the transaction is not a residential mortgage transaction).

17(c) Basis of Disclosures and Use of Estimates

Paragraph 17(c)(1)

Comment 17(c)(1)-11 would be revised to provide additional guidance on when a renewable loan with a balloon payment (formerly referred to as a "renegotiable-rate" mortgage instrument) should be disclosed as a long-term variable-rate loan as opposed to a short-term balloon loan. The comment would provided that such loans should be disclosed as variable-rate transactions when the creditor is either unconditionally obligated to renew the loan or is obligated to renew subject only to conditions within the consumer's control. The proposed comment provides examples of conditions within the consumer's control and those outside the consumer's control. As an example of applying the analysis, the Federal National Mortgage Association (FNMA) seven-year expendable balloon product (which provides that the creditor need not renew if the rate would be more than 5% higher than the initial loan rate) would be disclosed as a balloon payment loan and not as a variable-rate transaction.

Section 226.19—Certain Residential Mortgage Transactions

19(b) Certain Variable-Rate Transactions

Comment 19(b)–3 provides factors to determine whether or not a transaction involves an "intermediary agent or broker," which affects the timing rules for certain disclosures. The factors look to whether there is a relationship between the creditor and the broker in which the creditor has knowledge of and exercises control over the broker's actions. The third factor describing the amount of work completed by the broker would be revised to recognize that a large amount of work performed by a broker may not necessarily evidence this sort of relationship. For example, for purposes of this factor, a broker's submission of a completed loan package to a creditor may not indicate a close relationship between the two if such a practice is customary in a particular area.

Comment 19(b)–5 would be revised to parallel the proposed revisions to comment 17(c)(1)–11 describing renewable balloon-payment mortgage instruments.

Section 226.20—Subsequent Disclosure Requirements

29(a) Refinancings

Comment 20(a)–3 would be revised to reflect the name change for describing a renewable balloon-payment mortgage (formerly referred to as a "renegotiable-rate" mortgage) in proposed comments 17(c)(1)–11 and 19(b)–5.

20(c) Variable-Rate Adjustments

An issue concerning the accuracy of adjustments made to variable-rate loans has arisen in recent months. Concern has been raised that some creditors may not be adjusting such loans consistent with the terms of the underlying legal obligation, resulting in inaccurate interest rate and payment adjustments. Just as rate and payment adjustments must reflect the terms of the legal obligation, the subsequent disclosures under Regulation Z, required for certain variable-rate transactions, must reflect the terms of the legal obligation. Section 226.20(c) requires disclosures to be provided to consumers in cases where the interest rate is adjusted in variable-rate transactions subject to section 226.19(b), including disclosures about the new interest rate and payment. Comment 20(c)–3 would be added to reiterate that the general requirement of section 226.17(c)(1), that disclosures reflect the terms of the legal obligation between the parties, applies to the disclosures for variable rate transactions required under section 226.20(c). Thus, for example, disclosures about the new interest rate and payment must be based on the index type and index value specified in the legal obligation.

Subpart D—Miscellaneous

Section 226.28—Effect on State Laws

28(a) Inconsistent Disclosure Requirements

Comment 28(a)–15 would be added to reflect the Board's recent determination of the effect of the Truth in Lending Act and Regulation Z on certain provisions of the law of Wisconsin dealing with disclosures for home equity plans and the right of a creditor to accelerate the outstanding balance when a nonapplicant spouse terminates a plan. The notice of this determination was published at 55 FR 31815 (August 6, 1990).

Section 226.30—Limitation on Rates

Comment 30–1 would be revised to reflect the name change for describing a renewable balloon-payment mortgage (formerly referred to as a "renegotiable-rate" mortgage) in proposed comment 17(c)(1)–11.

List of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Rate limitations, Truth in Lending.

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows, while language that would be deleted is set off with brackets.

(3) Text of Proposed Revisions

Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board proposes to amend the official staff commentary to Regulation Z (12 CFR part 226 Supp. I) as follows:

PART 226—[AMENDED]

1. The authority citation for part 226 continues to read:

Authority: Truth in Lending Act, 15 U.S.C. 1604 and sec. 2, Pub. L. 100–583, 102 Stat. 2960; sec. 1204(c), Competitive Equality Banking Act, 12 U.S.C. 3806.

Subpart A—General

Section 226.4—Finance Charge

2. Comment 4(a)–2 would be amended by adding a second bullet after the first bullet to read as follows:

4(a) Definition

* * * * *

2. Costs of doing business. * * *

• A tax imposed by a state on a creditor is a finance charge if the creditor separately imposes the charge on the consumer, even if the state permits the creditor to pass the tax on the consumer.

* * * * *

Subpart B—Open-End Credit

Section 226.5a—Credit and Charge Card Applications and Solicitations

3. Comments to 5a(b)(2) would be amended by revising the third sentence in comment 5a(b)(2)–1, and by revising comment 5a(b)(2)–2 to read as follows:

5a(b) Required Disclosures

* * * * *

5a(b)(2) Fees for Issuance or Availability

1. *Membership fees.* * * * Such a fee ►should◄ [need] not be disclosed ►in the table◄ if membership results merely in eligibility to apply for an account.

2. *Enhancements.* Fees for optional services in addition to basic membership privileges in a credit or charge card account (for example, travel insurance or card-registration services) ►should◄ [need] not be disclosed ►in the table◄ [under this paragraph] if the basic account may be opened without paying such fees.

* * * * *

4. Comments to 5a(c) would be amended by revising the second sentence in comment 5a(c)–1, and by revising the third sentence and adding a new sentence after the third sentence in comment 5a(c)–2 to read as follows:

5a(c) Direct-Mail Applications and Solicitations

1. *Accuracy.* * * * (An accurate variable annual percentage rate is one in effect within [30] ►60◄ days before mailing.)

2. *Mailed publications.* * * * In addition, a card issuer may use a single application form as a "take-one" (in racks in public locations, for example) and for direct mailings, if the card issuer complies with the requirements of section 226.5a(c) even when the form is used as a "take-one"—that is, by [providing current information and] presenting the required ►section 226.5a(b)◄ disclosures in a tabular format [and eliminate the information required under section 226.5a(e)(1)(ii) and (iii)]. ►When used in a direct mailing, the credit term disclosures must be accurate as of the mailing date whether or not the section 226.5a(e)(1)(ii) and (iii) disclosures are included; when used in a take-one, the disclosures must be accurate for as long as the take-one forms remain available to the public if the section 226.5a(e)(1)(ii) and (iii) disclosures are omitted. (If those disclosures are included in the take-one, the credit term disclosures need only be accurate as of the printing date.)◄

* * * * *

5. Comment 5a(e)(1)–2 would be revised to read as follows:

5a(e) Applications and Solicitations Made Available to General Public

* * * * *

5a(e)(1) Disclosure of Required Credit Information

* * * * *

2. *Form of disclosures.* The disclosures specified in section 226.5a(e)[(i),](ii)[,] and (iii) may appear either in or outside the table containing the required credit disclosures.

* * * * *

6. Comments 5b–2 through 5b–5 would be redesignated as comments 5b–3 through 5b–6, respectively, and new comment 5b–2 would be added to read as follows:

Section 226.5b—Requirements for Home Equity Plans

* * * * *

2. *Changes to home equity plans entered into on or after November 7, 1989.* Section 226.9(c) applies if, by written agreement under section 226.5b(f)(3)(iii), a creditor changes the terms of a home equity plan before its scheduled expiration, for example, by renewing a plan on different terms. A new plan results, however, if the plan is renewed (with or without changes to the terms) after the scheduled expiration. The new plan is subject to all open-end credit rules, including sections 226.5b, 226.6, and 226.15.◄

* * * * *

7. Comment 5b(d)(4)(iii)–1 would be amended by revising the fourth sentence to read as follows:

5b(d) Content of Disclosures

* * * * *

5b(d)(4) Possible Actions by Creditor

* * * * *

Paragraph 5b(d)(4)(iii)

1. *Disclosure of conditions.* * * * As an alternative to disclosing the conditions in this manner, the creditor may simply describe the conditions using the language in section 226.5b(f)(2)►, 226.5b(f)(3)(i) (regarding freezing the line when the maximum annual percentage rate is reached),◄ and 226.5b(f)(3)(vi) or language that is substantially similar.

* * *

* * * * *

8. Comment 5b(d)(5)(iii)–4 would be amended by revising the second sentence in the fourth bullet to read as follows:

5b(d)(5) Payment Terms

* * * * *

Paragraph 5b(d)(5)(iii)

* * * * *

4. *Reverse mortgages* * * *

* * * * The appreciation feature must be disclosed in accordance with ►this◄ section [226.5b(d)(12)].

* * * * *

9. Comment 5b(d)(8)–2 would be amended by revising the first sentence, and by adding a new sentence after the fourth sentence to read as follows:

5b(d)(8) Fees Imposed by Third Parties to Open a Plan

* * * * *

2. *Itemization of third-party fees.* In all cases creditors must state the total of third-party fees as a single dollar amount or a range ►except that the total need not include costs for property insurance if the creditor discloses that such insurance is required◄. * * * ►Any itemization provided upon the consumer's request must include the disclosure about property insurance (either the amount of the premium or the fact that property insurance is required).◄

* * * * *

10. Comment 5b(f)(3)(i)–2 would be amended by revising the first sentence, and by adding a new sentence after the first sentence to read as follows:

5b(f) Limitations on Home-Equity Plans

* * * * *

Paragraph 5b(f)(3)(i)

1. *Changes provided for in the agreement.* A creditor may provide in the initial agreement [for] ►that further advances will be prohibited or the credit line reduced during any period in which the maximum annual percentage rate is reached. A creditor also may provide for other◄ specific changes to take place upon the occurrence of specific events. * * *

* * * * *

11. Comment 5b(f)(3)(vi)–1 would be amended by revising the first sentence and by adding a new sentence after the first sentence to read as follows:

Paragraph 5b(f)(3)(vi)

1. *Suspension of credit privileges or reduction of credit limit.* A creditor may prohibit additional extensions of credit or reduce the credit limit in the circumstances specified in ►this section of◄ the regulation. ►In addition, as discussed under section 226.5b(f)(3)(i), a creditor may contractually reserve the right to take such action when the maximum annual percentage rate is reached.◄ * * *

* * * * *

Section 226.6—Initial Disclosure Statement

12. Comment 6(e)–4 would be amended by revising the third sentence to read as follows:

6(e) Home Equity Plan Information

* * * * *

4. *Disclosures for the repayment period.* * * * To the extent the corresponding annual percentage rate, the information in footnote 12, and any other required disclosures are the same for the draw and repayment phase, the creditor need not repeat such information, as long as [the disclosure clearly states] ►it is clear◄ that the information applies to both phases.

* * * * *

Section 226.9—Subsequent Disclosure Requirements

13. Comment 9(c)(1)–6 would be amended by revising the heading, by revising the first, and by adding three new sentences after the first sentence to read as follows:

9(c) Change in Terms:

* * * * *

9(c)(1) Written notice required.

* * * * *

6. [*Home-equity plans.*] ►*Changes to home-equity plans.*◄ [If a creditor renews the draw period for a home equity plan] ►Section 226.9(c) applies when, by written agreement under section 226.5b(f)(3)(iii), a creditor changes the terms of a home equity plan before its scheduled expiration, for example, by renewing a plan◄ on terms different from those of the original plan[, the requirements of section 226.9(c) apply to such a change]. ►In disclosing the change:

• If the index is changed, the maximum annual percentage rate is increased (to the limited extent permitted by section 226.30), or a variable-rate feature is added to a fixed-rate plan, the creditor must include the disclosures required by section 226.5b(d)(12)(x) and (d)(12)(xi), unless these disclosures are unchanged from those given earlier.

• If the minimum payment requirement is changed, the creditor must include the disclosures required by section 226.5b(d)(5)(iii) (and, in variable-rate plans, the disclosures required by section 226.5b(d)(12)(x) and (d)(12)(xi)) unless the disclosures given earlier contained representative examples covering the new minimum payment requirement. (See the commentary to section 226.5b(d)(5)(iii), (d)(12)(x), and (d)(12)(xi) for a discussion of representative examples.)◄ * * *

* * * * *

Section 226.12—Special Credit Card Provisions

14. Comment 12(a)(2)–2 would be amended by adding two sentences at the end of the third bullet to read as follows:

12(a) Issuance of credit cards.

* * * * *

Paragraph 12(a)(2)

* * * * *

2. *Substitution—examples.*

* * * * *

• * * *

If, however, in changing the credit or other features available on the account, a new open-end credit card account is opened (which would require initial disclosures to be given), the unsolicited replacement of one card with another is not a permissible substitution. For example, if a retail card issuer replaces its credit card with a co-branded bank card and the creditors maintain two separate accounts, the replacement card cannot be provided to

consumers without solicitation since the addition of the bank card account would require initial disclosure under § 226.6.

* * * * *

Section 226.16—Advertising

15. Comment 16(d)–4 would be amended by adding two new sentences after the second sentence to read as follows:

16(d) Additional Requirements for Home Equity Plans

* * * * *

4. *Misleading terms prohibited.* * * * ►In the case of property insurance, however, a creditor may state, for example, "no closing costs" even if property insurance may be required, as long as the creditor also provides a statement that such insurance may be required. (See the commentary to this section regarding fees to open a plan.)◄

* * * * *

Subpart C—Closed End Credit

16. Comment 17(a)(1)–5 would be amended by adding a bullet after the thirteenth bullet to read as follows:

Section 226.17—General Disclosure Requirements

17(a) Form of disclosures

Paragraph 17(a)(1).

* * * * *

5. *Directly related.* * * *

• A statement whether or not a subsequent purchaser of the property securing an obligation may be permitted to assume the remaining obligation on its original terms.

* * * * *

17. Comment 17(c)(1)–11 would be amended by revising the first bullet to read as follows:

17(c) Basis of disclosures and use of estimates

Paragraph 17(c)(1)

* * * * *

11. *Other variable-rate transactions.* * * *

• [Renegotiable-rate mortgage instruments that involve a series of short-term loans secured by a long-term obligation.] ►Renewable balloon-payment instruments◄ where the [lender is] ►creditor is unconditionally◄ obligated to renew the short-term loan[s] at the consumer's option ►(or is obligated to renew subject to conditions within the consumer's control) and at◄ [. At] the time of renewal, the [lender] ►creditor◄ has the option of increasing the interest rate. Disclosures must be [given for the longer term of the obligation] ►based on the payment authorization (unless the specified term of the obligation with renewals is shorter)◄, with all disclosures calculated on the basis of the rate in effect at the time of consummation of the transaction. ►Examples of conditions within a consumer's control include requirements that a consumer be current in payments or continue to reside in the mortgaged property. In contrast, setting a limit on the rate at which the creditor would be obligated to renew or reserving the right to change the credit standards at the time of renewal are examples of conditions outside a consumer's control. Thus, for example, language in the obligation allowing the creditor to obtain a credit report at the time of renewal to verify the continuation of the consumer's credit standing would not affect disclosure of the transaction as a long term variable-rate obligation. If the obligation permits the creditor to apply a new credit standard at the time of renewal, however, the transaction must be disclosed as a short-term balloon-payment loan.◄

* * * * *

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

18. Comment 19(b)–3 would be amended by revising the third bullet and the paragraph following that bullet to read as follows:

19(b) Certain Variable-Rate Transactions.

* * * * *

3. *Intermediary agent or broker.* * * *

• The amount of work (such as document preparation) the creditor expects to be done by the broker on an application based on the creditor's prior dealings with the broker and on the creditor's requirements for accepting applications ►, taking into consideration the customary practice of brokers in a particular area◄. The more [preparation] ►work◄ that the creditor expects the broker to do on an application, ►in excess of what is usually expected of a broker in that area,◄ the less likely it is that the broker would be considered an "intermediary agent or broker" of the creditor.

An example of an "intermediary agent or broker" is a broker who, customarily within a brief period of time after receiving an application, inquires about the credit terms of several creditors with whom the broker does business and submits the application to one of them. The broker is responsible for only a small percentage of the applications received by that creditor. During the time the broker has the application, it might request a credit report and an appraisal ►(or even prepare an entire loan package if customary in a particular area)◄.

* * * * *

19. Comment 19(b)–5 would be amended by revising the first bullet to read as follows:

5. *Examples of variable-rate transactions.* * * *

• [Renegotiable-rate mortgage instruments that involve a series of short-term loans secured by a long-term obligation.] ►Renewable balloon-payment instruments◄ where the [lender] ►creditor◄ is ►unconditionally◄ obligated to renew the short-term loan[s] at the consumer's option ►(or is obligated to renew the subject to conditions within the consumer's control) and at◄ [. At] the time of renewal, the [lender] ►creditor◄ has the option of increasing the interest rate. ►(See the commentary to section 226.17(c)(1) on examples of variable-rate transactions for discussion of conditions within a consumer's control in connection with renewable balloon-payment loans.)◄

* * * * *

Section 226.19 [Amended]

20. In section 226.19, under "References," in the paragraph designated "1981 changes," the phrase "ection 226.20—Subsequent Disclosure Requirements" at the end of the paragraph would be deleted, and a new heading "Section 226.20—Subsequent Disclosure Requirements" would be added, directly below that paragraph.

Section 226.20—Subsequent Disclosure Requirements

21. Comment 20(a)–3 would be amended by revising the second sentence to read as follows:

20(a) Refinancings

* * * * *

3. *Variable rate.* * * * For example, a [renegotiable rate] ►renewable balloon-payment◄ mortgage that was disclosed as a variable-rate transaction is not subject to new disclosure requirements when the variable-rate feature is invoked.

* * * * *

22. Comment 20(c)–3 would be added to read as follows:

* * * * *

20(c) Variable-Rate Adjustments

* * * * *

3. *Legal obligation.* The disclosures required under this section must reflect the terms of the parties' legal obligation, as required under section 226.17(c)(1).

* * * * *

Subpart D—Miscellaneous

Section 226.28—Effect on State Laws

23. Comment 28(a)–15 would be added to read as follows:

28(a) Inconsistent disclosure requirements

* * * * *

15. *Preemption determination—Wisconsin.* Effective October 1, 1991, the Board has determined that the following provisions in the state law of Wisconsin are preempted by the federal law:

• Section 422.308(1)—the disclosure of the annual percentage rate in cases where the amount of the annual percentage rate disclosed to consumers under the state law differs from the amount that would be disclosed under federal law, since in those cases the state law requires the use of the same term as the federal law to represent a different amount than the federal law.

• Section 708.505(5)—the provision permitting a creditor to include in an open-end home equity agreement authorization to declare the account balance due and payable upon receiving notice of termination from a non-obligor spouse, since such provision is

inconsistent with the purpose of the federal law.◄

* * * * *

Section 226.30—Limitation on Rates

24. Comment 30–1 would be amended by revising the second sentence in the fourth bullet to read as follows:

1. *Scope of coverage.* * * *

• * * * (Contrast with the [renegotiable-rate] ►renewable balloon-payment◄ instrument described in comment 17(c)(1)–(11.)

* * * * *

Board of Governors of the Federal Reserve System, November 21, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–27894 Filed 11–27–90; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AE57

Vocational Training Program for Certain Pensioners

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendments.

SUMMARY: The Veterans' Benefits Amendments of 1989 changes the age requirement for the participation of certain veterans receiving VA pension in an evaluation of their potential for training and employment from under age 50 to under age 45. In addition, the law precludes a change in the veteran's rating as permanently and totally disabled unless the veteran is employed for twelve consecutive months. The intended effect of these proposed regulatory changes is to implement statutory changes which affect the vocational training program.

DATES: Comments must be received on or before December 28, 1990. All comments received will be available for public inspection until January 7, 1991. It is proposed that this change be made effective December 18, 1989, the date of enactment.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding these changes to the Secretary of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until January 7, 1991.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–6496.

SUPPLEMENTARY INFORMATION: Under the vocational training program for certain pensioners, veterans under age 50 who were awarded pension during the program period beginning February 1, 1985, were required to participate in an evaluation of their ability to participate in a vocational training program. The vocational training program is designed to help recipients of VA pension benefits who have vocational potential to train for and secure suitable, stable employment and thereby remove the need for these benefits. Pub. L. 101–237 lowers the age of veterans awarded pension who are required to participate in this evaluation from under 50 to under 45. The law also precludes any change in a veteran's evaluation as permanently and totally disabled because of his or her ability to secure suitable employment which uses the training and other services provided by VA unless the veteran maintains this employment for twelve consecutive months. The employment which the veteran secures must be obtained not later than one year after the date the veteran's eligibility for counseling under the program expires.

VA has determined that these proposed regulations do not contain a major rule as that term is defined in Executive Order 12291, Federal Regulations. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

These regulatory amendments are retroactively effective. These are interpretive rules which implement statutory provisions. Moreover, VA finds that good cause exists for making these rules, like the section of the law which they implement, retroactively effective to the date of enactment. A delayed effective date would be contrary to statutory design; would complicate implementation of this provision of law; and might result in a denial of a benefit to a veteran who is entitled by law to that benefit.

The Secretary certifies that these amendments will not, if promulgated have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA) 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these rules are therefore exempt from the initial and final flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the amendments only affect the rights of individual beneficiaries. No new regulatory burdens are imposed on small entities by these amendments.

(The Catalog of Federal Domestic Assistance number is 64.116.)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 8, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

Subpart I—[Amended]

1. The authority citation for subpart I continues to read as follows:

Authority: Pub. L. 98–543, 38 U.S.C. 210 and chapter 15, sections specifically cited.

§ 21.6015 [Amended]

2. In § 21.6015, paragraphs (a) and (b)(1), remove the numbers "50" where they appear and add, in their place, the numbers "45", and add the following to the authority citation in paragraph (a): ", Pub. L. 100–687, Pub. L. 101–237", and the following to the authority citation in paragraph (b)(2): ", Pub. L. 101–237".

§§ 21.6050 and 21.6059 [Amended]

3. In § 21.6050, paragraph (a), remove the numbers "50" where they appear and add, in their place, the numbers "45"; and remove the words "a pension" where they appear and add, in their place, the word "pension".

4. In §§ 21.6050 and 21.6059, remove the numbers "50" and add, in their place, the numbers "45" in the following places:

(a) Section 21.6050, paragraphs (c)(1), (c)(2) and (e)

(b) Section 21.6059, paragraphs (c)(1) and (d)

5. In addition to the amendments set forth above, in §§ 21.6050 and 21.6059, the following is added to the authority citation in the paragraphs set forth below: ", Pub. L. 101–237".

(a) Section 21.6050, paragraphs (a), (c)(2) and (e)

(b) Section 21.6059, paragraphs (c)(4) and (d)

§ 21.6420 [Amended]

6. In § 21.6420, the authority citation to the introductory text is revised, paragraph (a)(1) is revised, an authority citation is added to paragraph (a)(2), and paragraph (d) and its authority citation are added to read as follows:

§ 21.6420 Coordination with the Adjudication Division

* * * * *

(Authority: 38 U.S.C. 524, Pub. L. 101-237)

(a) *Evaluation*

(1) The date an evaluation being provided a veteran under age 45, who is required to participate in such evaluation, is suspended because of unsatisfactory conduct or cooperation; and

(2) * * *

(Authority: 38 U.S.C. 524, Pub. L. 101-237)

* * * * *

(d) *Information to determine if the veteran's permanent and total disability rating is protected under § 3.343.* The information provided by the case manager includes:

(1) The employment was within the scope of the vocational goal identified in the veteran's individualized written plan of vocational rehabilitation, or in a related field, and the employment secured by the veteran requires the use of the training or services furnished under the rehabilitation plan.

(2) Employment was secured not later than one year after the date the veteran's eligibility for counseling expired. A veteran's eligibility for counseling expires on the date employment services are terminated by VA or the veteran completes rehabilitation to the point of employability and terminates program participation, whichever is later; and

(3) The veteran maintained his or her employment for 12 consecutive months.

(Authority: 38 U.S.C. 524, Pub. L. 101-237)

[FR Doc. 90-27879 Filed 11-27-90; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 142

[WH-FRL-3850-9]

National Primary Drinking Water Regulations Implementation Primary Enforcement Responsibility

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is today giving notice that it is reconsidering the language of 40 CFR 142.17(a)(2), which concerns EPA's initiation of proceedings that could lead to the withdrawal of State primary enforcement responsibility ("primacy") for the Public Water System Supervision program under the Safe Drinking Water Act ("SDWA"), 42 U.S.C. 300f et. seq. This provision was adopted in a notice of final rulemaking published on December 20, 1989 (54 FR 52126). The Agency proposes to retain the language for this provision adopted in that final rulemaking but solicits comment on whether this language should be revised.

DATES: Written comments must be submitted by December 27, 1990, to the address noted immediately below.

ADDRESSES: Written comments should be submitted to Ms. Murlene Lash (WH-550E), State Programs Division, Office of Drinking Water, U.S. EPA, 401 M Street Washington, DC. 20460. Supporting documents for this rulemaking are available for review during normal business hours at U.S. EPA, room 1003 East Tower, 401 M Street SW., Washington, DC 20460; telephone (202) 382-5522.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, toll-free (800) 426-4791, or in Washington, DC at (202) 382-5533, or Carl Reeverts, Deputy Director, State Programs Division, Office of Drinking Water, EPA (WH-550E), 401 M Street SW., Washington, DC 20460; telephone (202) 382-5522.

SUPPLEMENTARY INFORMATION:

A. Background

40 CFR part 142, subpart B sets out requirements for States to obtain primacy for the Public Water System Supervision program, as authorized by section 1413 of the SDWA. EPA first promulgated these regulations on January 20, 1976. On December 20, 1989, EPA published amendments to these regulations (54 FR 52126).

The December, 1989 final rule amending the part 142 regulations was prompted by a recognition that the operation and scope of the PWSS program have changed considerably since the regulations were first promulgated. In addition, the SDWA Amendments of 1986 made significant changes to the scope and content of the drinking water program (see 54 FR 52127). The rinal rule established for the first time explicit procedures that States will need to follow to revise their approved primacy programs to adopt the requirements of new or revised EPA drinking water regulations. There are a large number of such new or revised regulations that EPA has promulgated or will be promulgating pursuant to the 1986 SDWA Amendments. In addition, among other things, the rule modified the language of the provision in part 142 that concerns EPA's initiation of procedures that could lead to the withdrawal of primacy status for States that EPA determines are not continuing to meet the requirements for primacy (see § 142.17(a)(2)).

Portions of the final rule are the subject of a petition for review filed by the National Wildlife Federation in the D.C. Circuit Court of Appeals (*National Wildife Federation* v. *Reilly*, No. 90-1072, filed February 13, 1990). Among other things, NWF challenges on both procedural and substantive gounds the revision to the language on program withdrawals in § 142.17(a)(2). On procedural grounds, NWF alleges that the Agency provided insufficient opportunity for the public to comment on the revision to § 142.17(a)(2), in violation of requirements of the Administrative Procedure Act ("APA"). As to substance, NWF contends that EPA was without statutory authority to promulgate a revision making explicit that it is within EPA's discretion whether to initiate proceedings to withdraw a State's PWSS primacy program.

EPA does not believe that the APA requires additional public notice and opportunity for comment on the revision to § 142.17(a)(2). Also, the Agency believes that this revision was fully authorized and appropriate under the SDWA, as explained below. Nevertheless, to ensure the fullest possible public input on the issues involved, EPA has decided to allow additional opportunity to comment in this case. EPA therefore is re-opening consideration of § 142.17(a)(2), and is today soliciting public comment on the change to this provison made in the December, 1989 regulation amendments.

B. Discussion of Withdrawals Provision

EPA today proposes to retain the same language in § 142.17(a)(2) that was promulgated in the December, 1989 final primacy rule revisions. This provision clearly states that it is within EPA's discretion whether to initiate procedures that could lead to withdrawal of a State's primacy program when the Administrator determines that the State program fails to continue to meet federal requirements for primacy. This provision is authorized by SDWA secton 1413, which affords discretion to the Administrator in matters concerning program withdrawals (see section 1413(b)). Although the language is revised, EPA does not view the effect of the revised regulation to be different from that of the prior regulation (§ 142.12(b)(2)), which EPA has always interpreted and applied as providing this discretion to the Administrator. The Agency's purpose in revising this language was to clarify the discretionary nature of EPA's program withdrawal authority.

That the SDWA affords this discretion to the Administrator is supported by its legislative history. The legislative history emphasizes Congress's intent to encourage States to assume primacy for public water systems and to foster a close working partnership between EPA and each State in operating the public drinking water program (see, *e.g.*, H.R. Rep. No. 1185, 93d Cong., 2d Sess. 21 (1974), noting importance of federal-State cooperation). EPA's discretion on the initiation of withdrawals is consistent with the scheme in that it allows the Agency to take into account, among other things, the significance of the particular violation of primacy requirements and the amount of time needed for the State to resolve any violation and again meet all primacy requirements.

The discretionary nature of this provision allows EPA to work with a State that is acting in good faith to rectify the deficiencies in its program without having the Agency spend needless time and resources on withdrawal proceedings. It would be inefficient to initiate program withdrawal proceedings if it appears that a State will soon resolve the problems with its program. In this sense, the discretionary nature of EPA's authority on withdrawals, as clarified in the revision to § 142.17(a)(2), is fully consistent with the regulatory provision added in December, 1989 that allows EPA to grant States extensions of up to two years of the deadline for adopting the requirements of new or revised federal drinking water regulations (see § 142.12(b) (2) and (3)). It also might be inappropriate to initiate program withdrawal proceedings if it appears that the State program deficiencies are of a minor or technical nature.

The revised language of § 142.17(a)(2) also contains two further changes to the previous regulation. First, the term "determines" has been substituted for "indicates." Specifically, the previous regulation stated that the Administrator shall notify the State when information "indicates" that the State no longer meets primacy requirements. Under the new regulation, the Administrator may initiate program withdrawal proceedings when the Administrator "determines" that the State no longer meets primacy requirements. EPA substituted this term to clarify and emphasize that a finding that a State no longer meets the requirements for primacy is a decision that rests within the discretion of the Administrator.

A second change to § 142.17(a)(2) made in December, 1989 was the addition of language providing that the Administrator may initiate program withdrawal proceedings when he determines that a State no longer meets primacy requirements, "and the State has failed to request or has been denied an extension under § 142.12(b)(2) of the deadlines for meeting those requirements, or has failed to take other corrective actions required by the Administrator * * *" As to the latter clause concerning corrective actions, the Agency does not intend this language to mean that the Administrator would initiate withdrawal proceedings only where he has first ordered corrective actions and the State has failed to comply. Rather, the Administrator may initiate withdrawal proceedings if the Administrator has ordered corrective actions and the State has failed to comply.

Notwithstanding the discretion afforded to EPA on withdrawal decisions, the Agency intends to take vigorous action to ensure that States maintain the requirements for primacy by initiating program withdrawal proceedings where appropriate, particularly where a State is not acting in good faith to revise its approved primacy program to meet new EPA requirements.

The Agency's reasons for adopting the changes to § 142.17(a)(2) made in December, 1989 are further explained in its brief in the *NWF* v. *Reilly* litigation, which is included in the public record for today's proposed rulemaking. Also included in the record are the briefs filed by NWF, for review by persons who wish to comment on the issues NWF has raised over the revisions to § 142.17(a)(2).

C. Request for Comments

The Agency invites all interested persons to submit comments within 30 days on all aspects of this proposal to retain the current language of § 142.17(a)(2). After carefully considering all public comments, EPA will decide whether to retain or further change the language of this provision. If EPA decides to change the language, the Agency may also make conforming changes to other parts of § 142.17 at the same time.

It should be noted that, during the period before finalization of today's proposal, § 142.17(a)(2) as currently promulgated will remain in effect.

List of Subjects in 40 CFR Part 142

Administrative practices and procedures, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply, Indians.

Dated: November 21, 1990.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, title 40, chapter I, part 142 of the Code of Federal Regulations is proposed to be amended as follows:

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. Section 142.17 is amended by revising paragraph (a)(2) to read as follows:

§ 142.17 Review of State programs and procedures for withdrawal of approved primacy programs.

(a) * * *

(2) When, on the basis of the Administrator's review or other available information, the Administrator determines that a State no longer meets the requirements set forth in § 142.10, and the State has failed to request or has been denied an extension under § 142.12(b)(2) of the deadlines for meeting those requirements, or has failed to take corrective actions required by the Administrator, the Administrator may initiate proceedings to withdraw primacy approval. The Administrator shall notify the State in writing of EPA's intention to initiate withdrawal proceedings and shall summarize in the notice the information available that indicates that the State no longer meets such requirements.

* * * * *

[FR Doc. 90-27920 Filed 11-27-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket No. 90-29]

Amendment to Rules of Practice and Procedure; Interest in Reparation Proceedings

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The proposed rule in this proceeding, published October 29, 1990 (55 FR 43386), would amend Rule 253 of the Commission's Rules of Practice and Procedure, 46 CFR 502.253, *Interest in reparation proceedings.* The Rule currently limits payment of interest to proceedings involving misrating of cargo and arising under section 10(b) of the Shipping Act of 1984 and section 2 of the Intercoastal Shipping Act, 1933. The proposed amendment would make Rule 253 applicable to the computation of interest on awards of reparation granted under the Shipping Act of 1984 and the Shipping Act, 1916 on the basis of the average rate on six-month U.S. Treasury bills. Under the Intercoastal Shipping Act, 1933, interest would be computed on the average of the prime rate charged by major banks as published by the Board of Governors of the Federal Reserve System. Comments on the Notice of Proposed Rulemaking are now due on November 28, 1990. The International Association of Non-Vessel Operating Common Carriers has requested that time for filing comments be extended, citing the difficulty of consulting with a large number of parties, especially over the Thanksgiving holiday. This notice extends the time for filing comments to December 21, 1990.

DATES: Comments due December 21, 1990.

ADDRESSES: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001 (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573–0001 (202) 523–5740.

Joseph C. Polking,

Secretary.

[FR Doc. 90–27923 Filed 11–27–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–567, RM–7468]

Radio Broadcasting Services; Marquette, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Iron Mountain-Kingsford Broadcasting Company, proposing the allotment of Channel 231A to Marquette, Michigan, as that community's third FM service. Canadian concurrence will be requested for this allotment at coordinates 46–33–00 and 87–23–36.

DATES: Comments must be filed on or before January 14, 1991 and reply comments on or before January 29, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Thomas G. Shack, Jr., 1901 L Street, NW., suite 200, Washington, DC 20036, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–567, adopted November 5, 1990, and released November 21, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–27860 Filed 11–27–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–566, RM–7421]

Radio Broadcasting Services; Petal and Newton, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed jointly by Thomas William Hickman III (("Hickman") and Newton Broadcasting Company, Inc. ("NBCI"). Hickman proposes the substitution of Channel 292C3 for 292A at Petal, Mississippi, and modification of the license for Station WMFM (FM) to specify operation on Channel 292C3. NBCI requests the substitution of Channel 250A for Channel 292A at Newton, Mississippi, and modification of the license for Station WMYQ(FM) to specify operation on Channel 250A. The coordinates for Channel 292C3 are 31–32–00 and 89–10–44. The coordinates for Channel 250A are 32–19–46 and 89–10–08.

DATES: Comments must be filed on or before January 14, 1991, and reply comments on or before January 29, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Thomas William Hickman, III, 2571 Old Richton Road, Petal, Mississippi 39465
Paul Reynolds, 415 North College Street, Greenville, Alabama 36037, (Consultant to the petitioners
Newton Broadcasting Co., Inc., Station WMYQ(FM), Highway 80 West, Quitman, Mississippi 39355.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–566, adopted November 5, 1990, and released November 21, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–27861 Filed 11–27–90; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 55, No. 229
Wednesday, November 28, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Alabama Advisory Committee; Public Meeting and Agenda

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a factfinding meeting conducted by the Alabama Advisory Committee to the Commission will convene at 9 a.m. on December 12 and recess at 5 p.m.; reconvene at 7 p.m. and recess at 9 p.m.; reconvene at 9 a.m. on December 13 and recess at 5 p.m.; reconvene at 7 p.m. and recess at 9 p.m.; reconvene at 9 a.m. on December 14, and recess at 5 p.m.; reconvene at 9 a.m. on December 15 and adjourn at 5 p.m., at the Goodwin Theater, Wallace Community College, 3000 Range Line, Selma, Alabama 36701. The purpose of the meeting is to receive information for a project on race relations in Selma.

Persons desiring additional information, or planning a presentation to the Committee, should Melvin L. Jenkins, Director of the Central Regional Division (816) 426-5253, (TDD 816—426-5009), Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 23, 1990.

Wilfredo J. Gonzalez,
Staff Director.

[FR Doc. 90-27942 Filed 11-27-90; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Certificate of Origin.

Form Number: SF 370-1; OMB-0648-0040.

Type of Request: Request for revision of a currently approved collection.

Burden: 32 respondents; 1203 reporting hours; average hours per response—.33 hours.

Needs and Uses: The information collected is supplied by foreign fishermen, exporters, or brokers to meet the requirements of the Marine Mammal Protection Act, section 101(a)(2). The collection must accompany any yellowfin tuna entering the United States to determine the origin of the tuna.

Affected Public: Individuals, business or other for-profit, Federal agencies or employees, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 23, 1990.

Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-27880 Filed 11-27-90; 8:45 am]
BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration.

Title: Quality Assurance Survey: Matchmaker Trade Delegations.

Form Numbers: Agency—ITA-4100P, OMB—.

Type of Request: New collection.

Burden: 240 respondents; 40 reporting hours.

Average Hours per Response: 10 minutes.

Needs and Uses: The International Trade Administration's U.S. and Foreign Commercial Service (US&FCS) stages Matchmaker trade delegations. The average delegation has 20 delegates. An evaluation is submitted by participants at the close of the event, but much of the data is estimates. A one-year follow-up would allow delegates sufficient time to evaluate representation candidates and to establish distribution systems for most territories. The information collected by US&FCS will be used for program evaluation and strategic planning. It will enable the staff to better direct the limited resources available and to administer the Matchmaker program more effectively and efficiently, determining if the targeted industry groups are being reached.

Affected Public: Businesses or other for profit; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Donald Arbuckle 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 21, 1990.

Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-27881 Filed 11-27-90; 8:45 am]
BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration.

Title: Quality Assurance Survey: Catalog/Video-Catalog Exhibition.

Form Numbers: Agency—ITA-4107P, OMB—.

Type of Request: New collection.

Burden: 1,000 respondents; 167 reporting hours.

Average Hours per Response: 10 minutes.

Needs and Uses: The International Trade Administration's U.S. and Foreign Commercial Service (US&FCS) develops and operates catalog and video-catalog exhibition projects. The average Catalog Exhibition includes 150 U.S. company participants each of which sends material for display and promotion to 10-20 overseas sites. A Video-Catalog Exhibition normally includes from 15-30 company participants whose video presentation is combined into an overall tape in various language versions and also includes participant company full product catalogs for display and promotion in from 10-60 overseas sites. Each hosting overseas post, at the conclusion of the promotional event, conveys to participants a list of visitors and any trade interest leads expressed by those visitors respecting individual U.S. firm presentations or product catalogs. This survey will allow participants to comment on the effectiveness with which the program serves their overseas marketing objectives. The information will be used by US&FCS for program evaluation and strategic planning. It will enable the staff to better direct the limited resources available and to administer these exhibition programs more effectively and efficiently, determining if the targeted industry groups are being reached.

Affected Public: Businesses or other for-profit; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Donald Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 2030.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 21, 1990.

Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-27882 Filed 11-27-90; 8:45 am]
BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration.

Title: Quality Assurance Survey: Information Products and Services

Form Numbers: Agency—ITA-4108P, OMB—.

Type of Request: New collection.

Burden: 1,340 respondents; 223 reporting hours.

Average Hours per Response: 10 minutes.

Needs and Uses: The International Trade Administration's U.S. and Foreign Commercial Service (US&FCS) provides various information products and services, such as World Traders Data Reports, Agent Distributor Service Reports, and Comparison Shopping Service Reports. The information collected will be used by US&FCS for program evaluation and strategic planning. The inforamtion will enable staff to more effectively and efficiently administer these programs, allocate resources, and control program quality. Without accurate evaluation by users, program managers cannot assess if these products and services are meeting program goals.

Affected Public: Businesses or other for profit; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Donald Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: November 21, 1990.

Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-27883 Filed 11-27-90; 8:45 am]
BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration.

Title: Quality Assurance Survey: Agent Distributor Service (ADS).

Form Numbers: Agency—ITA-4109P, OMB—.

Type of Request: New collection.

Burden: 825 respondents; 138 reporting hours.

Average Hours per Response: 10 minutes.

Needs and Uses: The International Trade Administration's U.S. and Foreign Commercial Service (US&FCS) provides over 3,000 Agent Distributor Service (ADS) Reports. Without an evaluation, there is no way to determine the degree of actual success. A ten-month follow-up would allow users sufficient time to evaluate representation candidates and to establish distribution systems for most territories. The information collected will be used by US&FCS for program evaluation and strategic planning. It will enable the staff to better direct the limited resources available, to control program quality, and to administer the ADS program more effectively and efficiently.

Affected Public: Businesses or other for profit; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Donald Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

BEST COPY AVAILABLE

Dated: November 21, 1990.
Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.
[FR Doc. 90-27984 Filed 11-27-90; 8:45 am]
BILLING CODE 3510-CW-M

Bureau of the Census

[Docket No. 901192-0293]

Annual Wholesale Trade Survey; Determination

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

DETERMINATION: In accordance with title 13, United States Code, sections 182, 224, and 225, I have determined the Census Bureau needs to collect data covering year-end inventories, annual sales, and purchases to provide a sound statistical basis for the formation of policy by various governmental agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar wholesale trade surveys conducted each year since 1978. It provides on a comparable classification basis annual sales and purchases for 1990 and inventories for 1989 and 1990. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Dale W. Gordon or Edward Murphy on (301) 763-3916.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on subjects covered by the major censuses authorized by title 13, United States Code. This survey will provide continuing and timely national statistical data on wholesale trade for the period between Economic Censuses. The next Economic Census will be conducted for 1992.

The data collected in this survey will be within the general scope and nature of those inquiries covered in the Economic Censuses.

The Census Bureau will require selected firms operating merchant wholesale establishments in the United States (with sales size determining the probability of selection) to report in the 1990 Annual Wholesale Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submission within 30 days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

This survey has been submitted to the Office of Management and Budget, in accordance with the Paperwork Reduction Act, Public Law 96-511, as amended, and was cleared under OMB Control No. 0607-0195. We will provide copies of the form upon written request to the Director, Bureau of the Census, Washington, DC 20233.

CONCLUSION: Based upon the foregoing determination, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: November 21, 1990.
Barbara Everitt Bryant,
Director, Bureau of the Census.
[FR Doc. 90-27943 Filed 11-27-90; 8:45 am]
BILLING CODE 3510-07-M

National Oceanic and Atmospheric Administration

Western Pacific Crustacean Fisheries; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments; correction of closing date for receiving comments; correction of closing date for receiving comments.

SUMMARY: In a notice of availability of Amendment 6 to the Western Pacific Crustacean Fishery Management Plan published November 2, 1990 (55 FR 46236), an incorrect date for receiving comments was inadvertently given. Therefore, NOAA is issuing this document to correct the closing date for receiving comments to read December 20, 1990.

DATES: Comments on Amendment 6 should be submitted on or before December 20, 1990.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, NMFS, Terminal Island, California, (213) 514-6660; or Alvin Katekrau, NMFS, Pacific Area Office, Honolulu, Hawaii, (808) 955-8831

ADDRESSES: All comments should be sent to E.C. Fullerton, Regional Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, California 90731.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 21, 1990.
Richard H. Schaefer,
Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.
[FR Doc. 90-27947 Filed 11-27-90; 8:45 a.m.]
BILLING CODE 3510-22-M

Western Pacific Precious Corals; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments; correction of closing date for receiving comments.

SUMMARY: In a notice of availability of Amendment 2 to the Precious Corals Fishery Management Plan published November 2, 1990 (55 FR 46236), an incorrect date for receiving comments was inadvertently given. Therefore, NOAA is issuing this document to correct the closing date for receiving comments to read December 20, 1990.

DATES: Comments on Amendment 2 should be submitted on or before December 20, 1990.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, NMFS, Terminal Island, California, (213) 514-6660; or Alvin Katekrau, NMFS, Pacific Area Office, Honolulu, Hawaii, (808) 955-8831.

ADDRESSES: All comments should be sent to E.C. Fullerton, Regional Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, California 90731.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 21, 1990.
Richard H. Schaefer,
Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.
[FR Doc. 90-27948 Filed 11-27-90; 8:45 am]
BILLING CODE 3510-22-M

Atlantic Sea Scallop Fishery; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: The New England Fishery Management Council (Council) will hold public hearings to receive comments on Amendment 4 to the Atlantic Sea Scallop Fishery Management Plan (FMP). The amendment proposes to change the primary scallop-management strategy from a meat-count management system to an effort-control program for the principal resource areas of Georges Bank and the Mid-Atlantic.

DATES: Comments should be submitted on or before December 31, 1990, to the address below. See **"SUPPLEMENTARY INFORMATION"** for dates, times and locations of the hearings.

ADDRESSES: Written comments should be sent to Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906. Clearly mark the outside of the envelope "Sea Scallop Amendment 4."

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, (617) 231-0422.

SUPPLEMENTARY INFORMATION: Amendment 4 has been in development for over 2 years to address a number of problems with meat-count controls and to establish a better means of reaching the FMP's yield-per-recruit and other biological objectives. Although recruitment to both the Georges Bank and Mid-Atlantic stocks has been moderate to excellent in recent years, fishing mortality has been high and the recruiting age classes have been fished down soon after entry into the fishery. Fishing at the current rate is expected eventually to drive the stocks to low levels, since it is unlikely that exceptional recruitment will continue. The Council is considering several alternative proposals for inclusion in Amendment 4.

The Council's preferred alternative would contain a moratorium on entry in the Atlantic sea scallop fishery based on participation in 1988 and 1989, and other possible criteria. Three management areas would be established by the Amendment: Gulf of Maine, Georges Bank and Mid-Atlantic, and an area off North Carolina. Amendment 4 would substitute a comprehensive effort-control program designed to achieve a target quota for the current meat-count system in the Georges Bank/Mid-Atlantic resource area. The effort controls include mandatory layover days, crew-size restrictions, and trip limits. A number of separate alternatives for the Gulf of Maine and North Carolina fishery will be discussed, including annual target quotas and retention of the meat count.

A full complement of management alternatives will be presented at the public hearings along with the Council's preferred alternative. The alternatives include retention of the meat-count with liberal effort controls, closed-area systems, and an individual transferable vessel-allocation system.

The hearings are scheduled as follows:

1. December 4, 1990, 7 p.m.—Carteret Community College-Joslyn Hall, 3505 Arendell Street, Morehead City, NC;
2. December 5, 1990, 7 p.m.—Holiday Inn, 1815 W. Mercury Boulevard, Hampton, VA;
3. December 6, 1990, 7 p.m.—The Grand Hotel, 1045 Beach Drive, Cape May, NJ;
4. December 10, 1990, 10 a.m.—Seaport Inn (formerly Skipper's Inn), 110 Middle Street, Fairhaven, MA;
5. December 11, 1990, 7 p.m.—Holiday Inn, High Street, Route 1A, Ellsworth, ME;
6. December 12, 1990, 7 p.m.—Holiday Inn, 300 Woodbury Avenue (Portsmouth Traffic Circle), Portsmouth, NH.

Dated: November 21, 1990.
Richard H. Schaefer,
Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.
[FR Doc. 90-27949 Filed 11-27-90; 8:45 am]
BILLING CODE 3510-22-M

COMMISSION ON AGRICULTURAL WORKERS

Hearing

AGENCY: Commission on Agricultural Workers.

ACTION: Announcement of hearing.

SUMMARY: The Commission on Agricultural Workers will hold the second of three hearings in California on December 6 and 7 in Coachella, California.

The Commission, established by the Immigration Reform and Control Act (IRCA) of 1986 under section 304 is charged with evaluating the Special Agricultural Worker (SAW) provisions of IRCA and with reviewing several specific aspects relating to the demand for and supply of agricultural labor. The Commission will hear testimony on these issues with specific reference to California and Arizona. The following agricultural counties will be the special focus of this hearing: Los Angeles, San Bernardino, Orange, Riverside, San Diego, and Imperial in California and Yuma, La Paz and Maricopa in Arizona. The hearing will be open to the public.

DATES: 1:30 p.m. December 6, 1990 and 1:30 p.m. December 7, 1990.

ADDRESSES: Coachella Water District Auditorium, South Highway 111 Coachella, California.

FOR FURTHER INFORMATION CONTACT: Beth Bickley, Telephone: (202) 673-5348.

Dated: November 23, 1990.
Richard R. Peterson,
Acting Executive Director.
[FR Doc. 90-27926 Filed 11-29-90; 8:45 am]
BILLING CODE 6820-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records Notices

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Addition of a new record system.

SUMMARY: The Office of the Secretary of Defense proposes to add a new record system to its inventory of systems of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a). The new record system notice is set forth below.

DATES: The new system will be effective December 28, 1990, unless comments are received which result in a contrary determination.

ADDRESSES: Mr. Dan Cragg, OSD Privacy Act Officer, OSD Records Management and Privacy Act Branch, Room 5C315, The Pentagon, Washington, DC 20301-1155. Telephone (703) 697-2501 or Autovon 227-2501.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

50 FR 22090, 29 May 1985 (DoD Compilation, changes follow)
50 FR 47087, 14 Nov 1985
51 FR 11807, 7 Apr 1986
51 FR 17508, 13 May 1986
51 FR 44666, 11 Dec 1986
52 FR 23334, 19 Jun 1987
53 FR 15666, 4 May 1988
53 FR 27894, 25 Jul 1988
54 FR 33756, 16 Aug 1989
54 FR 43314, 24 Oct 1989
55 FR 17655, 26 Apr 1990
55 FR 20180, 15 May 1990
55 FR 21429, 24 May 1990
55 FR 35449, 30 Aug 1990

The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on November 21, 1990, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Dated: November 23, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 04.0

SYSTEM NAME:

DoD Bone Marrow Donor Program.

SYSTEM LOCATION:

Primary system: Naval Medical Research Institute, Bethesda, MD 20814–5055

Decentralized segments: See listing of National Marrow Donor Program (NMDP) Collection Centers at the end of this notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense military and civilian personnel and their dependents who have volunteered for and been accepted as potential bone marrow donors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Donor registration and consent forms (or a notation in writing if the consent was obtained telephonically) including consent for testing, and consent to donate a blood sample for HLA (human leukocyte antigen) typing; a consent to donate platelets; a consent to donate bone marrow, if compatible with a patient; a consent to undergo anesthesia if selected to donate marrow; report of physical examination of the donor to include complete medical history and the results of laboratory and other tests (X-ray, electrocardiogram, virology, etc.), and examining physician's report to the donor center; information pertinent to the collection process including post-hospitalization follow-up; donor's written consent to be returned to the registry for further donations. Data items include: Name, Social Security Number, a bar-coded Donor Identification Number (DIN), and HLA type; donor's address, place of work, home and work telephone numbers; names, addresses and telephone numbers of donor's relatives and friends; donor's race/ethnicity; hospital and hospital provider number, city and State; date and time of marrow recovery and transplantation; name of transplant center.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136 and Executive Order 9397.

PURPOSE(S):

To tissue type as many donors as possible for inclusion in the national registry of marrow donors in order to offer patients requiring bone marrow transplants access to as many potential donors as possible for the purpose of obtaining a compatible match.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the National Coordinating Center for the purpose of obtaining a marrow match. Information released will consist of DIN, donor's race, date of birth and sex only.

Name, address, Social Security Account and date of birth to the National Coordinating Center for the purpose of obtaining insurance coverage for the donor; name and address only for the purpose of direct informational mailing (in such a way that the individual is not linked to his or her donor identification number or HLA-type).

To a NMDP-approved civilian medical facility in only those cases where required medical examination and/or actual marrow procurement is performed.

The "Blanket Routine Uses" published at the beginning of OSD's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING/ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders and on microcomputers.

RETRIEVABILITY:

Hard copy is filed by donor's name. Electronic records may be accessed by search on any information field. Retrievable fields are donor's name, Social Security Number or Donor Identification Number, HLA type, date of birth, sex, and racial/ethnic group.

STORAGE:

Records are accessed by authorized personnel with an official need-to-know who have been trained for handling Privacy Act data. Hard copy records are maintained in locked cabinets in restricted access areas. Computer files are accessed on a password-protected stand-alone microcomputer system with mechanical locks for additional protection.

RETENTION AND DISPOSAL:

Each record will be maintained 25 years beyond the known death of the marrow recipient. Paper records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, Room 3D366, the Pentagon, Washington, DC 20301–1200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves must address written inquiries to the Assistant Secretary of Defense (Health Affairs), Office of Proessional Affairs and Quality Assurance, Room 3D366, The Pentagon, Washington, DC 20301–1200, where a log of thse requests will be maintained.

The request should contain the full name and individual's Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records must address written inquiries to the Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, Room 3D366, The Pentagon, Washington, DC 20301–1200.

The request should contain the individual's full name, Social Security number, and, if applicable, the name of the medical facility from the list appended hereto where examinations, tests, bone marrow collection, and follow-up procedures were conducted.

CONTESTING RECORDS PROCEDURES:

The Office of the Secretary of Defense rules for accessing records and for contesting contents and appealing initial determinations are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR part 286b; or may be obtained from the system manager.

RECORDS SOURCE CATEGORIES:

Information is obtained from record subjects and attending medical specialists.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

National Marrow Donor Program Collection Centers

Alta Bates-Herrick Hospital, Bone Marrow Transplant Program, 3001 Colby Street, Berkeley, CA 94705.

Baylor University Medical Center, Bone Marrow Transplant Program, Sammons Tower, Suite 410, 3500 Gaston Avenue, Dallas, TX 75246.

Children's Hospital Medical Center, Division of Hematology/Oncology, Bone Marrow Donor Program, Elland & Bethesda Avenues, Cincinnati, OH 45229.

City of Hope National Medical Center, Blood Transfusion Services, 1500 E. Durate Road, Duarte, CA 91010.

Cleveland Clinic Foundation, 9500 Euclid Avenue, Cleveland, OH 44106.

Dana Farber Cancer Institute, Dana 1838, 44 Binney Street, Boston, MA 02115.

Dartmouth/Hitchock Medical Center, Hematology/Oncology Department, Vail Building, Room 56, P.O. Box HB–7923, Hanover, NH 03756.

Emory Clinic, Department of Hematology, 1365 Clifton Road, Northeast, Atlanta, GA 30322.

Georgetown University Hospital, Lombardi Cancer Reserach Center, Bone Marrow Transplantation Program, 3800 Reservoir Road, Northwest, Washington, DC 20007.

Genesee Hospital, 224 Alexander Street, Rochester, NY 14607, HCA Wesley Medical Center, 3243 East Murdock, Suite 300, Wichita, KS 67208.

Hahnemann University Hospital, Broad & Vine Street, 8102 N.C.B., Philadelphia, PA 19102.

The Johns Hopkins Oncology Center, Bone Marrow Transplant Program, 600 North Wolfe Street, Baltimore, MD 21205.

Kaiser Health Center—East, 3414 North Kaiser Center Drive, Portland, OR 97227.

Kansas City Internal Medicine, 6420 Prospect Avenue, T101, Kansas City, MO 64132.

LSU Medical School, Department of Medicine, 1524 Tulane Avenue, New Orleans, LA 70112.

Medical College of Wisconsin, Department of Medicine, Milwaukee County Medical Complex, 8700 West Wisconsin Avenue, Milwaukee, WI 53233.

Memorial Sloan-Kettering Cancer Center, 1275 York Avenue, New York, NY 10021.

Mercy General Hospital, 3939 "J" Street #300, Sacramento, CA 95819.

Methodist Hospital of Indiana, Inc., Bone Marrow Transplantation Program, 1701 North Senate Boulevard, Indianapolis, IN 46202.

Montefiore Hospital, Hematology/Oncology Unit, 3459 Fifth Avenue, Pittsburgh, PA 15213.

The Ohio State University, Bone Marrow Transplant Program, 10 North Doan Hall, 410 West Tenth Avenue, Columbus, OH 43210–1228.

Ohio State University Hospital, 410 West Tenth Avenue, N1025 Doan Hall, Columbus, OH 43210.

Pacific Presbyterian Hospital, Division of Bone Marrow Transplant, 2351 Clay Street, Suite 414, San Francisco, CA 94115.

Poudre Valley Hospital, Bone Marrow Transplant Program, 1024 LeMay Avenue, Fort Collins, CO 80524.

St. Frances Hospital, Cancer Care Associates, 6035 South Canton, Tulsa, OK 74136.

Scripps Clinic Research Foundation, Weingart Center for Bone Marrow Transplantation, 10666 North Torrey Pines Road, Maildrops MS–312, LaJolla, CA 92037.

Stanford University Medical Center, Bone Marrow Transplant Program, 300 Pasteur Drive, Room H–1353, Stanford, CA 94305–5298.

Tufts New England Medical Center, Bone Marrow Transplant Program, 750 Washington Street, 245, Boston, MA 02111.

UCLA Center for Health Science, Bone Marrow Transplant Program, 10833 LeConte, Room 42–121, Los Angeles, CA 90024.

UCSD Medical Center, Bone Marrow Transplant Program, 225 Dickinson Street, H–811K, San Diego, CA 92103.

United Blood Services, 1515 University Avenue, P.O. Box 25445, Albuquerque, NM 87125.

University of California Medical Center, Hematology Services, P.O. Box 0324, Room A–502, 400 Parnassus, San Francisco, CA 94143.

University of Connecticut Medical Center, Department of Hematology/Oncology, Bone Marrow Transplantation Program, 263 Farmington Avenue, Farmington, CT 06032.

University of Florida, College of Medicine, Bone Marrow Transplant Program, Box J277 JHMHC, Gainesville, FL 32610

University of Iowa Hospitals & Clinics, Division of Hematology/Oncology, Adult Bone Marrow Transplant Program, Iowa City, IA 52242.

University of Minnesota Hospital & Clinic, Bone Marrow Transplant Program, Box 803, UMHC, Harvard Street at East River Road, Minneapolis, MR 55455.

University of Nebraska Medical Center, 42nd & Dewey Avenue, Omaha, NE 68105.

University of Oklahoma, Hematology Section, Health Sciences, P.O. Box 26901, Oklahoma City, OK 73190.

University of Wisconsin Hospitals & Clinics, Hematology H4/540, Bone Marrow Transplant Program, 600 Highland Avenue, Madison, WI 53792.

Virginia Mason Clinic, Medical Oncologist, 925 Seneca, PO Box 900, Seattle, WA 98111.

Wake Forest University Cancer Center, Section of Hematology/Oncology, 300 South Hawthorne Road, Winston Salem, NC 27103.

Wayne State Univ/Harper Grace Hospitals, School of Medicine, Division of Hematology/Oncology, P.O. Box 02188/John R., Detroit, MI 48201.

[FR Doc. 90–27934 Filed 11–27–90; 8:45 am]

BILLING CODE 3810–01–M

Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, January 8, 1991; Tuesday, January 15, 1991; Tuesday, January 22, 1991; and Tuesday, January 29, 1991 at 10 a.m. in room 1E801, The Pentagon, Washington DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b.(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20301.

Dated: November 23, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–27829 Filed 11–27–90; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 13 December 1990.

Time: 1530–1730.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board (ASB) Issue Group on CSI will meet in conjunction with a Information Mission Area (IMA), Corrective Active Plan (CAP), and In Progress Reviews (IPR) to review progress of the implementation of CAP issues that were derived from the ASB study "Software in the Army". Representatives from HQDA Staff elements and MACOMs will be presented by Deputy Directors, Division Chiefs of the Office of the Director of Information Systems

for Command, Control, Communications and Computers (ODISC4). This meeting will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90-28011 Filed 11-27-90; 8:45 am]

BILLING CODE 3710-08-M

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the Department of the Treasury and the Department of Defense

AGENCY: Defense Logistics Agency, DOD.

ACTION: Computer matching program between the Department of the Treasury and the Department of Defense (DoD).

SUMMARY: The DoD, as the matching agency under the Privacy Act of 1974, as amended, (5 U.S.C. 552a), is hereby giving construction notice in lieu of direct notice to the record subjects of a computer matching program between the Department of the Treasury and DoD that their records are being matched by computer. The record subjects are delinquent debtors of the Bureau of the Public Debt, Department of the Treasury, who are current or former Federal employees or military members receiving Federal salary or benefit payments and indebted and delinquent in their payment of debts owed to the United States Government under certain programs administered by the Bureau of the Public Debt so as to permit the Bureau of Public Debt to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective December 28, 1990 and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 400 Army-Navy Drive, Room 205, Arlington, VA 22202-2884. Telephone (703) 614-3027.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the Department of the Treasury and DoD has concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection from defaulters of obligations held by the Bureau of Public Debt under the Debt Collection Act of 1982. The match will yield the identity and location of the debtors within the Federal government so that the Bureau can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between the Department of the Treasury and DoD is available to the public upon request. Requests should be submitted to the address caption above or the Debt Collection Officer, Bureau of Public Debt, Department of the Treasury, Washington, DC 20239-0001

Set forth below is a public notice of the establishment of the computer matching program required by paragraph (e)(12) of the Privacy Act.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on November 15, 1990, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985). This matching program is subject to review by OMB and Congress and shall not become effective until that review period of 30 days has elapsed.

Dated: November 23, 1990.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program Between the Bureau of Public Debt, Department of the Treasury, and the Department of Defense for Debt Collection

A. Participating Agencies

Participants in this computer matching program are the Bureau of Public Debt, Department of the Treasury and the Defense Manpower Data Center (DMDC), Department of Defense (DoD). The Bureau of Public Debt is the source agency, i.e., the agency disclosing the records for the purpose of the match. DMDC is the specific recipient or matching agency, i.e., the agency that actually performs the computer matching.

B. Purpose of the Match

The purpose of the match is to identify and locate the Bureau's delinquent debtors who are current or former Federal employees or military members receiving any Federal salary or benefit payments and indebted and delinquent in their repayment of debts owed to the United States Government under certain programs administered by the Bureau of Public Debt so as to permit the Bureau to pursue and collect the debt by voluntary repayments or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

C. Authority for Conducting the Match

The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97-365), 31 U.S.C. chapter 37, subchapter I (General) and subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716—3718 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, Assistant Secretaries of Defense, Appointment Powers and Duties; section 206 of Executive Order 11222; 4 CFR chapter II, Federal Claims Collection Standards (General Accounting Office—Department of Justice); 5 CFR 550.1101—550.1108 Collection by Offset from Indebted Government Employees (OPM); 31 CFR part 5, subpart B (Treasury).

D. Records To Be Matched

The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. The Bureau of Public Debt will use the record systems identified as Treasury/BPD.002, entitled "United States Savings Type Securities," last published in the Federal Register March 1, 1988, at 53 FR 6252. Not reflected in that publication were changes published January 22, 1988, at 53 FR 1885 and July 13, 1989, at 54 FR 29632; and Treasury/BPD.003, entitled "United States Securities (Other than Savings Type Securities) last published in the Federal Register March 1, 1988, at 53 FR 6252. Not reflected in that publication were changes published January 22, 1988, at 53 FR 1885 and July 13, 1989, at 54 FR 29632; and Treasury/DO.002, entitled "Treasury Payroll Information System," last published in the Federal Register March 1, 1988, at 53 FR 6255.

2. DMDC will use the record system identified at S322.11 DLA-LZ, entitled "Federal Creditor Agency Debt Collection Data Base," last published in the Federal Register at 52 FR 37495 on October 7, 1987.

The categories of records in the Treasury record systems are delinquent debtors. The categories of records in the DoD system consists of active and retired military members, including the Reserve and Guard, and the OPM government-wide Federal active and retired civilian records. Both record systems contain an appropriate routine use disclosure provision required by the Privacy Act permitting the disclosure of the affected personal information between the Department of the Treasury and DoD. The routine uses are compatible with the purpose for collecting the information and establishing and maintaining the record systems.

E. Description of Computer Matching Program

A magnetic computer tape provided by the Bureau will contain data elements of the debtor's name, SSN, internal account number and total amount owed on approximately 3,400 delinquent debtors. The DMDC computer database file contains approximately 10 million records of active duty and retired military members, including the Reserve and the Guard, and the OPM government-wide Federal civilian records of current and retired Federal employees. DMDC will match the SSN on the Bureau's tape by computer against the DMDC database. Matching records, hits based on SSNs, will produce data elements of the individual's name, SSN, service or agency, and current work or home address.

F. Individual Notice and Opportunity To Contest

Due process procedures will be provided by the Bureau to those individuals matched (hits) consisting of the Bureau's verification of debt; 30-day written notice to the debtor explaining the debtor's rights; provision for debtor to seek the Bureau's review of the debt (or in the case of the salary offset provision, opportunity for a hearing before an individual who is not under the supervision or control of the agency); and opportunity for the individual to enter into a written agreement satisfactory to the Bureau for repayment. Only when all of the steps have been taken will the Bureau disclose pursuant to a routine use to effect an administrative or salary offset. Unless the individual notifies the Bureau otherwise within 30 days from the date of the notice, the Bureau will conclude that the data provided to the individual is correct and will take the next necessary action to recoup the debt. Failure to respond to the notice will be construed as acquiescence on the part of the debtor as to the correctness of the notice and justification for taking the next step to collect the debt under the law.

G. Inclusive Dates of the Matching Program

This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this Federal Register notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated on an annual basis, unless OMB or the Treasury Department request a match twice a year. Under no circumstances shall the matching program be implemented before this 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between the Department of the Treasury and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

H. Address for Receipt of Public Comments or Inquiries

Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202-2884. Telephone (703) 614-3027.

[FR Doc. 90-27930 Filed 11-27-90; 8:45 am]

BILLING CODE 3810-01-M

Privacy Act of 1974; Internal Computer Matching Program Between the Washington Headquarters Services and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice of an internal Department of Defense computer matching program between the Washington Headquarters Services (a field activity of the Office of the Secretary of Defense) and the Defense Manpower Data Center (a field activity of the Defense Logistics Agency).

SUMMARY: The Defense Manpower Data Center (DMDC), as the matching agency under the Privacy Act of 1974, as amended, (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between the Washington Headquarters Services (WHS) and the DMDC that their records are being matched by computer. The record subjects are delinquent debtors who are current or former Federal employees or military members receiving Federal salary or benefit payments and indebted and delinquent in their repayment of debts owed to the United States Government under certain programs administered by Defense agencies so as to permit WHS to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective December 28, 1990 and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202-2884. Telephone (703) 614-3027.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the WHS and DMDC has concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to disclose personal data between the agencies for debt collection from defaulters of obligations held by various Defense agencies under the Debt Collection Act of 1982. The match will yield the identity and location of the debtors within the Federal government so that WHS can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned.

It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between WHS and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Systems Accountant, WHS Directorate for Budget and Finance, Room 3B287, The Pentagon, Washington, DC 20301–1155.

Set forth below is a public notice of the establishment of a computer matching program required by subsection (e)(12) of the Privacy Act and paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on November 15, 1990, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: November 23, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Internal Computer Matching Program Between Washington Headquarters Services and the Defense Manpower Data Center of the Department of Defense

A. Participating Agencies

Participants in this internal Defense computer matching program are the WHS Directorate for Budget and Finance of the Department of Defense and the Defense Manpower Data Center of the Department of Defense. The WHS is the source agency, i.e., the agency disclosing the records for the purpose of the match. The DMDC is the specific recipient agency or matching agency, i.e., the agency that actually performs the computer matching.

B. Purpose of the Match

The purpose of the match is to identify and locate DoD delinquent debtors who are current or former Federal employees or military members receiving any Federal salary or benefit payments that are indebted and delinquent in their repayment of debts to the United States Government under certain programs administered by the various Defense agencies so as to permit WHS to pursue and collect the debt by voluntary repayments or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

C. Authority for Conducting the Match:

The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. chapter 37, subchapter I (General) and subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716–3718 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (salary offset); 10 U.S.C. 136, Assistant Secretaries of Defense, Appointment Powers and Duties; section 206 of Executive Order 11222; 4 CFR chapter II, Federal Claims Collection Standards (General Accounting Office—Department Justice); 5 CFR 550.1101–550.1108 Collection by Offset from Indebted Government Employees (OPM); 32 CFR part 90 Collection of Indebtedness Due the United States (DoD).

D. Records To Be Matched

The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. WHS will use the record system identified as DWHS B46.0, entitled "DoD Creditor Agency Accounts Receivable System", last published in the **Federal Register** at 55 FR 35448, August 30, 1990.

2. DMDC will use the record systems identified as S322.10 DMDC, entitled "Defense Manpower Data Center Data Base", last published in the **Federal Register** at 55 FR 42755, October 23, 1990, and S322.11 DLA-LZ, entitled "Federal Creditor Agency Debt Collection Data Base", last published in the **Federal Register** at 52 FR 37495, October 7, 1987.

The category of records in the WHS system is delinquent debtors. The categories of records in the DMDC system consists of active and retired military members, including the Reserve and Guard, OPM government-wide Federal active and retired civilian records, postal service employees, non-appropriated fund employees and Social Security death records.

This computer match is internal within the DoD. The DoD is considered a single agency for routine use disclosure purposes under the Privacy Act. All routine uses published in DoD record system notices are for disclosure of records outside the DoD for a use that is compatible with the purpose for which the information was collected and maintained by the DoD. The exchange of records for this match between WHS and DMDC is permitted under the exception of subsection (b)(1) of the Privacy Act, i.e., to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties. Therefore, there is no requirement that either record system notice have a routine use for the match. nevertheless, the exchange of the records is compatible with the purposes for which the information was collected and maintained in both systems.

E. Description of the Computer Matching Program

WHS will supply DMDC with delinquent debt records in floppy disk format. Upon receipt of the floppy disk file of debtor accounts, DMDC as the recipient matching agency, will perform a computer match using name and all nine digits of the social security number of the WHS file against a DMDC computer data base. DMDC will match debt records consisting of SSN, name, and debt amount with records of DoD active duty, retired, reserve, civilian employees and members, civil service retirees and employees, postal service employees, non-appropriated fund employees, civil service, and Social Security death records.

The WHS DoD Creditor Agency Accounts Receivable System contains approximately 1,000 records of former agency personnel who are indebted for various reasons. The data base contains name, SSN, address, debt amount and reason, and a history of debt collection activity for each individual. This information is in turn made available for transmission to DMDC. The DMDC computer data base consists of ten million records of Federal employees and military members. Information provided to WHS consists of social security number, name, date of birth, employing agency, pay grade, salary, sex, and home or work addresses as available.

F. Individual Notice and Opportunity To Contest

Due process procedures will be provided by the affected DoD creditor agency to those individuals matched (hits) consisting of the creditor agency's verification of debt; 35-day written notice to the debtor explaining the debtor's rights; provision for the debtor to examine and copy the agency's documentation of the debt; provision for debtor to seek the agency's review of the debt (or in the case of the salary offset provision, opportunity for a hearing before an individual who is not under the supervision or control of the agency); and opportunity for the individual to enter into a written agreement satisfactory to the creditor agency for repayment. Only when all of the steps have been taken will the creditor agency disclose pursuant to a routine use to effect an administrative or salary offset. Unless the individual notifies the creditor agency otherwise within 35 days from the date of the notice, the agency will conclude that the data provided to the individual is correct and will take the next necessary action to recoup the debt. Failure to respond to the notice will be construed as acquiescence on the part of the debtor as to the correctness of the notice and justification for taking the next step to collect the debt under the law.

G. Inclusive Dates of the Matching Program

This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then the computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated on a semiannual basis, unless OMB or the Treasury Department requests matching more often. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between WHS and DMDC, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

H. Address for Receipt of Public Comments or Inquires

Director, Defense Privacy Office, 400 Army Navy Drive, Room 205, Arlington, VA 22202–2884. Telephone (703) 614–3027.

[FR Doc. 90–27931 Filed 11–27–90; 8:45 am]
BILLING CODE 3810–01–M

Department of the Navy

Privacy Act of 1974; Amendment of System of Records

AGENCY: Department of the Navy (U.S. Marine Corps), DOD.

ACTION: Amend record system.

SUMMARY: The U.S. Marine Corps proposes to amend one record system in its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. § 552a).

DATES: The proposed action will be effective without further notice December 28, 1990, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Mrs. B.L. Thompson, Head, FOIA/PA Section, MI–3, Headquarters, U.S. Marine Corps, Washington, DC 20380–0001. Telephone (703) 614–4008 or Autovon 224–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps record system notices for records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a) were published in the **Federal Register** as follows:

50 FR 22674 May 29, 1985 (DoD Compilation, changes follow)
51 FR 35548 Oct 6, 1986
51 FR 45932 Dec 23, 1986
52 FR 22670 Jun 15, 1987
53 FR 49588 Dec 8, 1988
54 FR 14377 Apr 11, 1989
55 FR 32948 Aug 13, 1990

The specific changes to the record system being amended are set forth below, followed by the system notice, as amended, published in its entirety. The proposed amendments are not within the purview of the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(r) which requires the submission of an altered system report.

Dated: November 23, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

MIN00001

SYSTEM NAME:

Personnel Security Eligibility and Access Information System (50 FR 22694, May 29, 1985)

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete the entry and substitute with "Primary system—Headquarters, U.S. Marine Corps, Washington, DC 20380–0001 and Marine Corps Security Guard Battalion, Building 2007, Marine Corps Base, Quantico, VA 22134–5020.

Secondary system—Local activity or detachment to which individual is assigned. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of record system notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete the entry and substitute with "Members of the Marine Corps, Marine Corps Reserve, former members, applicants for enlistment or commissioning, members serving in the Marine Corps Security Guard Program, Marine Corps civilian employees, and those whose status or position effects the security, order or discipline of the Marine Corps."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete the entry and substitute with "Files contain reports of personnel security investigations, criminal investigations, counterintelligence investigations, checklists, correspondence, records and information pertinent to an individual's acceptance and retention, personnel security clearance and access, and continuing assignment to personnel reliability programs, Marine Security Guard program, and other high risk or

compartmented information programs requiring personnel quality control."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete the entry and substitute with "5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013; and Executive Order 9397."

PURPOSE(S):

Add the following paragraphs to the entry "To provide a record of information collected on individuals regarding their continuing performance and reliability while serving in the Marine Corps Security Guard program.

To provide records to facilitate decisions regarding the reassignment and/or removal of Marine Security Guards from the Marine Security Guard program."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete the first, second, and fourth paragraphs.

At end of entry add "The Marine Corps' 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation of system notices also apply to this record system."

* * * * *

RETENTION AND DISPOSAL:

Delete the entry, and substitute with "Maintained at activity where assigned until separation or removal from sensitive position. Three years thereafter, records are transferred to Federal Records Center for permanent retention."

SYSTEM MANAGER(S) AND ADDRESS:

Delete the entry and substitute with "Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, Washington, DC 20380–0001.

Commanding Officer, Marine Security Guard Battalion, (State Department), Quantico, VA 22134–5020.

Decentralized system managed by local activities and detachments. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of record system notices."

NOTIFICATION PROCEDURE:

Delete the entry and substitute with "Individuals seeking to determine whether information about themselves is contained in this record systems should address written inquiries to the Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, Washington, DC 20380–0001; Commanding Officer, Marine Security Guard Battalion, (State Department), Quantico, VA 22134–5020; or the security office where individual is assigned. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of record system notices.

The letter should contain full name, Social Security Number, status, address and notarized signature of the requester.

The individual may visit Headquarters, U.S. Marine Corps, Arlington Annex (Federal Office Building #2), Arlington, VA, or the Marine Security Guard Battalion, Building 2007, Marine Corps Base, Quantico, VA for assistance or visit any detachment or activity for access to locally maintained records. Prior written notification of personal visits are required to ensure that all parts of the records will be available at the time of the visit. Proof of identity will be required and will consist of a military identification card, driver's license or similar picture-bearing identification."

RECORD ACCESS PROCEDURES:

Delete the entry and substitute "Individuals seeking access to records about themselves should address written inquiries to the Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, Washington, DC 20380–0001; Commanding Officer, Marine Security Guard Battalion, (State Department), Quantico, VA 22134–5020; or the security office where individual is assigned. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of record system notices.

Written requests should contain full name, Social Security Number, status, address and notarized signature of the requester."

CONTESTING RECORD PROCEDURES:

Delete the entry and substitute with "The Department of the Navy rules for contesting contents and appealing initial agency determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete the entry and substitute with "Officials and employees of the Marine Corps, Departments of the Navy and Defense and other departments and agencies of the Executive Branch of government; medical reports; correspondence from financial and other commercial enterprises; correspondence from private citizens; investigations to determine suitability for security clearances and sensitive assignments; correspondence, investigations and reports relating to disciplinary proceedings; official correspondence and other reports concerning the individual."

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete the entire entry and substitute with "Parts of this system may be exempt under 5 U.S.C. 552a(k) (2), (3), and (5) as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager."

MIN00001

SYSTEM NAME:

Personnel Security Eligibility and Access Information System

SYSTEM LOCATION:

Primary system—Headquarters, U.S. Marine Corps, Washington, DC 20380–0001 and the Marine Corps Security Guard Battalion, Building 2007, Marine Corps Base, Quantico, VA 22134–5020.

Secondary system—local activity or detachment to which individual is assigned. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Marine Corps, Marine Corps Reserve, former members, applicants for enlistment or commissioning, members serving in the Marine Corps Security Guard program, Marine Corps civilian employees, and those whose status or position effects the security, order or discipline of the Marine Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain reports of personnel security investigations, criminal investigations, counterintelligence investigations, checklists, correspondence, records and information pertinent to an individual's acceptance and retention, personnel security clearance and access, and continuing assignment to personnel reliability programs, Marine Security Guard program, and other high risk or compartmented information programs requiring personnel quality control.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations, 10 U.S.C. 5013; and Executive Order 9397.

PURPOSE(S):

To provide a record of individuals eligible for assignment to personnel reliability programs and other high risk or compartmental information programs requiring personnel quality control.

To provide a record of information collected on individuals regarding their continuing performance and reliability while serving in the Marine Security Guard program.

To provide records to facilitate decisions regarding the reassignment and/or removal of Marine Security Guards from the Marine Security Guard program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To officials and employees of other agencies of the Executive Branch of the government, upon request, in the performance of their official duties.

The Marine Corps "Blanket Routine Uses" that appear at the beginning of the Marine Corps' compilation of record system notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and index cards. Some information is contained in automated files or on computer tapes.

RETRIEVABILITY:

Retrieved alphabetically by last name of individual or by Social Security Number.

SAFEGUARDS:

Stored in locked safes or cabinets. File areas are accessible only to authorized persons who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Maintained at activity where assigned until separation or removal from sensitive position. Three years thereafter, records are transferred to Federal Records Center for permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, Washington, DC 20380–0001.

Commanding Officer, Marine Security Guard Battalion, (State Department), Quantico, VA 22134–5020.

Decentralized system managed by local activities and detachments. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of record system notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record systems should address written inquiries to the Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, Washington, DC 20380–0001; Commanding Officer, Marine Security Guard Battalion, (State Department), Quantico, VA 22134–5020; or the security office where individual is assigned. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of record system notices.

The letter should contain full name, Social Security Number, status, address and notarized signature of the requester.

The individual may visit Headquarters, U.S. Marine Corps, Arlington Annex (Federal Office Building #2), Arlington, VA, or the Marine Security Guard Battalion, Building 2007, Marine Corps Base, Quantico, VA for assistance or visit any detachment or activity for access to locally maintained records. Prior written notification of personal visits are required to ensure that all parts of the records will be available at the time of the visit. Proof of identity will be required and will consist of a military identification card, driver's license or similar picture-bearing identification.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves should address written inquiries to the Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, Washington, DC 20380–0001; Commanding Officer, Marine Security Guard Battalion, (State Department), Quantico, VA 22134–5020; or the security office where individual is assigned. Official mailing addresses are published as an appendix to the Department of the Navy's compilation of record system notices.

Written requests should contain full name, Social Security Number, status, address and notarized signature of the requester.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for contesting contents and appealing initial agency determinations by the individual concerned are published in Secretary of the Navy Instruction 5221.5; Marine Corps Order P5211.2; 32 CFR Part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Officials and employees of the Marine Corps, Departments of the Navy and Defense and other departments and agencies of the Executive Branch of government; medical reports; correspondence from financial and other commercial enterprises; correspondence from private citizens; investigations to determine suitability for security clearances and sensitive assignments; correspondence, investigations and reports relating to disciplinary proceedings; official correspondence and other reports concerning the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k) (2), (3), and (5) as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager.

[FR Doc. 90–27933 Filed 11–27–90; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board Task Force on the Department of Energy National Laboratories; Closed Meeting

Pursuant to the provisions of the Federal Avisory Committee Act (Pub. L. 92–463; 86 Stat. 770, as amended), notice is hereby given of the following advisory committee task force meeting:

Name: Secretary of Energy Advisory Board Task Force on the Department of Energy National Laboratories.

Date and time: Wednesday, December 12, 1990, 10 a.m.–5 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Contact: Dr. Robert M. Simon, Designated Federal Officer, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–7092.

Purpose: The Task Force will provide advice to the Secretary of Energy on the research, development, energy, and national defense responsibilities, activities, and operations of the Department of Energy's (DOE) National Laboratories and the Department's management of those laboratories.

Tentative Agenda

Wednesday, December 12, 1990

10 a.m. Closed Meeting to discuss future missions and roles of the defense-oriented DOE National Laboratories.

Closed Meeting: Pursuant to section 10(d) of the Federal Advisory Committee Act Pub. L. 92–463, as amended (5 U.S.C. app. II(1982)), this advisory committee meeting concerns

matters listed in 5 U.S.C. 552b(c)(1), and (3) and, accordingly, the meeting will be closed to the public.

Issued: Washington, DC, on November 23, 1990.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 90-27960 Filed 11-27-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP89-637-001, et. al.]

ANR Pipeline Co. et al., Intent to Prepare an Environmental Assessment for the Proposed ANR Phase II Project and Request for Comments on Environmental Issues

November 23, 1990.

In the matter of Great Lakes Gas Transmission Company Docket No CP90-1726-000; Texas Gas Transmission Corporation, Docket Nos. CP90-688-000; CP90-688-001; CNG Transmission Corporation, Docket Nos. CP89-638-000, CP89-638-001, CP89-638-002; Transcontinental Gas Pipe Line Docket Nos. CP90-687-000, CP90-687-001.

Summary

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) on the facilities proposed in the above-referenced dockets for the *ANR Phase II project.*

Within the ANR Phase II project, ANR Pipeline Company (ANR), Great Lakes Gas Transmission Company (Great Lakes), Texas Gas Transmission (Texas Gas), CNG Transmission Corporation (CNG), and Transcontinental Gas Pipe Line Corporation (Transco) are seeking certificates of public convenience and necessity under section 7(c) of the Natural gas Act (NGA) to construct and operate a total of 315.17 miles of pipeline, 138,130 horsepower of compression at 15 compressor stations, and 7 new or modified meter stations, and appurtenant facilities in the states of Minnesota, Wisconsin, Louisiana, Kentucky, Illinois, Indiana, Ohio, Pennsylvania, New Jersey, New York, and Virginia.

By this notice the FERC staff is requesting comments on the scope of the analysis that should be conducted for the EA. All comments will be reviewed prior to completion of the EA and significant issues will be addressed. Comments should focus on potential environmental effects, alternatives to the proposal (including alternative routes), and measures to mitigate adverse environmental impact. Written comments must be submitted by December 31, 1990, in accordance with the instructions provided at the end of this notice.

Project Background and Purpose

The ANR Phase II Project is being viewed as a discrete part of the ANR Project. ANR (and other applicants) filed for the overall ANR Project on January 17, 1989, as part of the Commission's Northeast open season proceeding. Because some portions of the overall project were complete and provided service to specific entities, they could proceed independently. The first phase (the ANR Phase I Project), was studied in the Commission staff's *Eagle Point/NEP Project EA.*

On June 26, 1990, the Commission issued an "Order Issuing Certificates" that approved the ANR Phase I Project. That order was amended in the "Order Granting Rehearing and Issuing Certificate" issued July 17, 1990. An explanation of the procedural history of the ANR Project is contained in the "Background" section of the June 26, 1990 order.

On February 2, 1990, ANR along with several other applicants filed applications to proceed with the ANR Phase II Project. The ANR Phase II Project would be used to transport about 380,558 thousand cubic feet per day (Mcfd) of natural gas, of which 14,200 Mcfd would be Canadian natural gas and 366,358 Mcfd would be domestic natural gas. This natural gas would be transported for use by various local distribution companies, an electric generator, cogeneration facilities and others in the Northeast and Midwest.

ANR and Trunkline Gas Company also plan to sue the Lebanon Extension that was constructed under section 311 of the Natural Gas Policy Act to transport under the Natural Gas Act some of the gas associated with this project. The Lebanon Extension will not be analyzed in this EA.

Proposed Facilities

In order to accomplish the proposed natural gas transportation services, the applicants have proposed the facilities identified below.

Tables 1 and 2 provide a detailed description of the proposed pipelines and aboveground facilities that would be constructed by each applicant and indicate the county and state affected. Figure 1 identifies the geographic location of all facilities.[1]

On July 11, 1990, Great Lakes filed an application under Docket No. CP90-1726-000 that proposes to construct a total of 7.5 miles of pipeline. See figure 2.

On February 2, and October 23, 1990, ANR filed applications under Docket Nos. CP89-637-001 and CP89-637-005, respectively, that propose to construct 29.1 miles of pipeline, 2,200 horsepower of compression at a new compressor station, two meter stations, and appurtenant facilities. See figure 3.

On February 2, and September 4, 1990, Texas Gas filed applications under Docket Nos. CP90-688-000 and CP90-688-001, respectively, that propose to construct a total of 109.81 miles of pipeline, 4,650 horsepower of compression at two existing compressor stations, one meter station, and appurtenant facilities. See figure 4.

On January 17, 1989, February 2, 1990, and August 31, 1990, CNG filed applications under Docket Nos. CP89-638-000, CP89-638-001, and CP89-638-002, respectively, that propose to construct a total of 131.7 miles of pipeline, 94,580 horsepower of compression at six new and three existing compressor stations, one meter station, and appurtenant facilities. See figure 5.

On February 2, and September 6, 1990, Transco filed applications under Docket Nos. CP90-687-000 and CP90-687-001, respectively, that propose to construct a total of 37.06 miles of pipeline, 36,700 horsepower of compression at one new and two existing compressor stations, three meter stations, and appurtenant facilities. See figure 6.

Construction Procedures

The proposed facilities would be constructed and operated in accordance with all applicable regulations. These include: 49 CFR part 192, "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 18 CFR 2.69 "Guidelines to be followed by Natural Gas Pipeline Companies in the Planning Clearing, and Maintenance of Rights-of-Way;" and other applicable Federal, state, and local regulations and permit requirements.

The proposed new pipeline construction would begin with the clearing and grading of construction rights-of-way, between 75 and 100 feet, to prepare a relatively level strip to accommodate construction equipment.

[1] The figures referred to in this notice are not being printed in the **Federal Register** but have been included in the mailing to all those receiving this notice. Copies are also available from the Commission's Public Reference branch at (202) 208-1371.

Pipeline loops within or adjacent to existing rights-of-way would require less clearing of new right-of-way. Staging areas for some larger wetland, stream, railroad, and road crossings, usually require wider construction rights-of-way. Rotary-wheel ditching machines, backhoes, or rippers would be used to excavate a trench deep enough to provide a minimum depth of cover in soils, normally 30 to 36 inches, required by the U.S. Department of Transportation. Blasting would be required when areas of unrippable rock are encountered.

After trenching, pipe segments would be strung along the right-of-way, bent to conform to the contours of the trench, welded together, coated, and lowered into the trench. The trench would be backfilled using previously excavated materials if these are suitable for contract with the pipeline. If not, material would be brought in to pad the trench. Topsoil that was conserved would be replaced at approximately its original position. The right-of-way would be restored to its original contours as much as practicable, and reseeded, limed, fertilized, and mulched in accordance with erosion and sedimentation control plans.

Special construction methods would be used to cross wetlands, rivers, and streams to provide stable work areas for the construction, equipment, to reduce sedimentation, to restore the vegetation, and to prevent changes in natural drainage patterns. Small streams would be trenched using a backhoe, clam dredge, dragline, or similar equipment. For major river crossings, such as the Allegheny River in Armstrong County, Pennsylvania, floating excavation equipment may be required to dig the trench. Blasting may be necessary for streams and rivers with rock bottoms.

Expanded work areas required for major river construction would be located back from the waterline. Construction methods for crossing small wetlands would be similar to those used on dry land.

Construction in large wetland areas would involve using the "push-pull" technique, i.e., after the trench is dug, the pipe joints are welded together in one area, flotation devices are attached to the welded pipe, and the floating pipeline is pushed or pulled into place. When the floats are removed, the pipe settles to the bottom of the trench, the trench is backfilled, and the original wetland contours are restored.

Environmental Issues

Based on preliminary analyses of the applications, the pipeline routes, the compressor station sites, and the other aboveground facility locations in the environmental information provided by the applicants, the staff has identified the following issues which will be addressed in the EA:

Soils and Geology
- —Erosion control and revegetation.
- —Effects on crop production and farmland.
- —Effects of blasting and geologic hazards.
- —Impact on exploitable mineral resources.

Water Resources—
- Effects on ground and surface water supplies.
- —Impact on stream water quality.

Vegetation
- —Impact on wetlands.
- —Short- and long-term effects to vegetation.

Wildlife14—Impact on fisheries.
- —Impact on threatened or endangered species.

Cultural Resources—Effect of the project on properties listed on or eligible for the National Register of Historic Places.

LandUse/Aesthetics—Impact on homes, businesses, and future development.

Air and Noise
- —Impact of additional compression on air quality and noise levels.
- —Air quality and noise levels during construction.

Pipeline Safety
- —Possibility of pipeline rupture.
- —Blasting in populated areas.

Specific Areas of Concern
- —Nicolet National Forest (WI)—ANR
- —Moshannon State Forest (PA)—CNG
- —Susquehannock State Forest (PA)—CNG
- —Sproul State Forest (PA)—CNG
- —Elk State Forest (PA)—CNG
- —Bucktail State Park/Natural Area (PA)—CNG
- —Kettle Creek State Park (PA)—CNG
- —State Game Land No. 34 (PA)—CNG
- —Quehanna Wild Area and Quehanna Trail (PA)—CNG
- —Graffenburg Reservoir (NY)—CNG
- —Pennsylvania Game Commission Wildlife Propagation Area (PA)—CNG
- —State Game Land No. 168 (PA)—Transco
- —Appalachian Trail (PA)—Transco
- —Tiadaghton State Forest (PA)—Transco

Alternative sites, route modifications, and specific mitigating measures will also be considered in the EA. Comments are solicited on any additional topics of environmental concern to residents and others in the project area. After comments from this notice are received and analyzed and the various issues investigated, the staff will prepare an EA for the ANR Phase II Project.

Comment Procedure

A copy of this notice and request for comments are environmental issues has been sent to Federal, state, and local environmental agencies, parties in this proceeding, public interest groups, libraries, newspapers, and other interested individuals.

Comments on the scope of the EA should be filed as soon as possible but not later than December 31, 1990. All written comments must reference Docket No. CP89-637-001, *et al.*, and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of the comments should also be sent to Mr. Kenneth Frye, Project Manager, Federal Energy Regulatory Commission, room 7312M, 825 North Capitol Street, NE., Washington, DC 20426. Comments recommending that the FERC staff address specific environmental issues should be supported with a detailed explanation of the need to consider such issues.

The EA will be based on the staff's independent anaylsis of the proposal and, together with the comments received, will comprise part of the record to be considered by the Commission in this proceeding.

Organizations and individuals receiving this Federal notice have been selected to ensure public awareness of this project and public involvement in the review process under the National Environmental Policy Act. The EA will be sent automatically to the appropriate Federal and state agencies and the FERC service list for comment. However, to reduce printing and mailing costs and related logistical problems, the EA will only be distributed to those other organizations, local agencies, and individuals who return the attached request form.

The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Additional information about the proposal, including detailed route maps for specific locations, is available from

Mr. Kenneth Frye, telephone (202) 208–2298.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27901 Filed 11-27-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2545-017 Idaho]

Washington Water Power Co.; Availability of Environmental Assessment

November 21, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application requesting authorization to convey a lease or easement of lands within the Spokane River Project boundary to the City of Post Falls, Idaho, for developing a city park. The proposed park would be located on the Spokane River in Kootenai County, Idaho. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, staff concludes that approval of the amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's Office at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27902 Filed 11-27-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-35-000]

Entex, a Division of Arkla, Inc. et al. v. United Gas Pipe Line Co., Respondent; Complaint and Offer of Settlement

November 21, 1990.

Take notice that on November 16, 1990, Extex, a division of Arkla, Inc., Louisiana Gas Service Company and New Orleans Public Service Inc. (Complainants) filed a complaint pursuant to section 5(a) of the Natural Gas Act, 15 U.S.C. 717d(a), and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, against United Gas Pipe Line Company (United). Complainants allege that, subsequent to December 31, 1990, the rates to be charged by United will not be just and reasonable under sections 4 and 5 of the Natural Gas Act because those rates will not reasonably reflect the greatly reduced level of costs actually being experienced by United.

Complainants allege that United is currently charging rates established pursuant to a November 1988 Base Settlement in Docket No. RP85-209-000, *et al.* Complainants further allege that the Base Settlement and the Commission's just and reasonable finding with respect to the Settlement rates will expire on December 31, 1990. According to Complainants, United has indicated that it intends to continue to charge the Base Settlement rates through October 1991. Complainants allege that United has eliminated approximately $156 million from its cost of service since the Base Settlement rates took effect in October 1988 and that United is collecting revenues through the settlement rates which greatly exceed its current actual cost of service. Complainants contend that the continued collection of the Base Settlement rates beyond December 31, 1990 would be unfair, unjust and reasonable.

Complainants have further submitted an Offer of Settlement pursuant to Rule 602 (18 CFR 385.602), which Complainants allege will establish just and reasonable rates to be effective on an interim basis for the period January 1, 1991 through the earlier of (1) the effective date of United's next general rate filing under section 4 of the NGA, or (2) the effective date of an order of the Commission issued under section 5 of the NGA following formal hearings on the instant complaint in the event that United does not file rates under section 4 to become effective before such order issues. Complainants request that the Commission approve the Offer of Settlement effective January 1, 1991.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 21, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room. Answers to this complaint shall be due on or before December 21, 1990.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27903 Filed 11-27-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6965-007 Idaho]

Canyon Creek Power Co.; Surrender of Exemption

November 21, 1990

Take notice that Canyon Creek Power Company, exemptee for the Canyon Creek Project No. 6965, to be located on Canyon Creek in Shoshone County, Idaho, has requested surrender of its exemption, stating that the project is not economical at the current price of power. The project would have consisted of an existing 6-foot-long dam and proposed project works including a 1,200-foot-long penstock, a powerhouse containing a 550-kW generating unit, a tailrace, and a transmission line.

The exemptee filed the request on October 25, 1990, and the exemption for Project No. 69765 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on or after next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27904 Filed 11-27-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP-89-248-006]

Mississippi River Transmission Corp.; Report of Refunds

November 21, 1990.

Take notice that Mississippi River Transmission Corporation (MRT) on September 4, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) its report of refunds reflecting credit billings made on August 10, 1990, in accordance with Commission Letter Order dated June 27, 1990.

MRT states that a copy of the refund report was mailed to each of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989). All such protests should be filed on or before November 29, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27905 Filed 11-27-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-49-000 and CP89-1582-000]

National Fuel Gas Supply Corp.; Informal Settlement Conference

November 21, 1990.

Take notice that an informal settlement conference will be convened in this proceeding on December 12, 1990, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the Gas Inventory Charge proposal in Docket No. CP89-1582-000 and the comparability issues in Docket No. RP88-49-000, as provided in Article XVI of the settlement offer filed on July 19, 1990, by National Fuel Gas Supply Corporation, in Docket Nos. RP88-136-000, *et al.*, and approved by Commission order issued November 1, 1990, 53 FERC ¶ 61,157 (1990).

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(c), is invited to attend Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations. See 18 CFR 385.214.

For additional information, please contact Warren C. Wood at (202) 208-2091 or Sandra J. Delude at (202) 208-2161.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27906 Filed 11-27-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-33-010]

Northern Border Pipeline Co.; Report of Refunds

November 21, 1990.

Take notice that Northern Border Pipeline Company (Northern Border) on October 25, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund and Voluntary Retroactive Adjustment Report made in accordance with Northern Border's March 9, 1990 "Revised Stipulation and Agreement in Settlement of Proceedings."

Northern Border states that copies of the refund and voluntary retroactive adjustment report have been sent to all shippers reported on the schedule and have been served on all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with rules 211 and 214 of the commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989). All such protests should be filed on or before November 29, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27907 Filed 11-27-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1841-002]

Northern Natural Gas Co.; Application

November 21, 1990.

Take notice that on November 20, 1990, Northern Natural Gas Company (Northern), Division of Enron Corp., whose main office is located at 1400 Smith Street, Houston, Texas 77002, filed in the above referenced docket, pursuant to § 157.7 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.7), its application to amend a previously issued certificate of public convenience and necessity requesting authorizations to allow Northern to make route modifications for certain facilities proposed by Northern and approved by the Commission in Docket No. CP89-1841-000. Northern also requests clarification regarding a provision of an Ordering paragraph of the Commission's June 18, 1990 Order in such docket. Northern states, that because of the nature of the authorizations requested and the importance of the subject facilities to its customer, Madison Gas and Electric Company (MG&E), that it is requesting expedited issuance of this notice a shortened comment period.

Northern states therein that, for portions of the facilities approved by the Commission's June 18, 1990 Order in Docket No. CP89-1841-000, it has encountered very strong landowner concerns regarding the previously approved route. Specifically, on two portions of the proposed 25 mile 16-inch lateral from a point on Northern's existing line near Monticello, Wisconsin to a point of interconnection with the facilities of MG&E in the vicinity of Madison, Wisconsin, Northern has encountered strong landowner resistance to the approved route. As a result of extensive negotiations with landowners over the past several months, Northern is proposing to an alternate route for the two contested portions of the route.

The southern route modification affects approximately 1.1 miles of the original route and involves relocating the proposed pipeline to the east of the original route to locations preferable to the owners of the affected parcels of land. The northern route modifications affect approximately 7.0 miles of the original route and involve relocating the proposed pipeline to the west of the original route so that the line can be laid parallel to and near the existing Chicago, Madison, and Northern Railroad tracks. Northern states that these route modifications are strongly supported by the affected landowners and their representatives, MG&E and the Public Service Commission of Wisconsin.

Northern states that approval of these route modifications will enable Northern to avoid protracted and rancorous condemnation proceedings and other civil actions and will, therefore, enable Northern to complete construction of the Madison Lateral and begin rendering service to MG&E much sooner than if the previously approved route must be followed. In addition, Northern is seeking clarification of the provisions of Ordering Paragraph (I)7 of the June 18, 1990 Order which provides that Northern will not operate construction equipment in agricultural fields prior to May 15 of any year to minimize soil compaction. Northern seeks clarification that this provision applies to the period after the spring thaw and before May 15.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before November 30, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Those parties whom have previously filed need not file again.

Lois D. Cashell,

Secretary.

[FR Doc. 90-27908 Filed 11-27-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-95-NG]

CanWest Gas Supply U.S.A., Inc.; Application for Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for blanket authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on November 6, 1990, of an application filed by CanWest Gas Supply U.S.A., Inc. (CanWest), for blanket authorization to import and/or export between the United States and Canada up to 200 Bcf of natural gas a year for a two-year term beginning on the date of first import or export. CanWest requests authority to import/export the natural gas at any point on the U.S./Canadian border where existing pipeline facilities are located. No new construction would be involved. CanWest also states it will submit quarterly reports to FE detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., December 28, 1990.

ADDRESSES:

Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC, 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Program, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, FE-53, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-9394.

Lot Cooke, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-32, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: CanWest is a corporation organized in the State of Delaware with its principal place of business in Vancouver, British Columbia, Canada, which is owned by CanWest U.S.A., Inc., a holding company incorporated in the State of Delaware, with its principal place of business also in Vancouver, British Columbia. CanWest U.S.A., Inc., is in turn owned by CanWest Gas Supply Inc., a company incorporated under the laws of the Province of British Columbia.

The natural gas imported by CanWest would be produced primarily but not exclusively from the Province of British Columbia. The proposed imported natural gas would be sold on a short-term basis to U.S. pipelines, distribution companies, marketers, and commercial and industrial end-users.

The proposed export authority would enable CanWest to make natural gas available on a short-term or spot-market basis to Canadian purchasers, including, but not limited to, pipelines, local distribution companies, electric utilities and industrial customers. In addition, natural gas may also be exported as part of transactions involving the initial importation of Canadian volumes to the United States and the subsequent exportation of such volumes to Canada for redelivery and ultimate consumption in the United States.

The specific terms of each import and export arrangement would be negotiated on an individual basis at market responsive prices. CanWest would act on its own behalf or for the account of others and would import and/or export natural gas using existing facilities. All parties should be aware that DOE, in order to maximize the flexibility of the requested authorization, may grant an aggregate import/export volume over the two-year term.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. The applicant asserts that there is no current need for the domestic gas proposed to be exported, that this import/export arrangement will be competitive and therefore is in the public interest. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), (42 U.S.C. 4321, *et seq.*), requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulation in 10 CFR part 590, Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of CanWest's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 20, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-27951 Filed 11-27-90; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 91-04 Certification Notice—72]

Enron Power Enterprise Corp.; Filing Certification of Compliance; Coal Capability of New Electric Powerplant

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended, ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternative fuel as a primary energy source (section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Enron Power Enterprise Corp. Wellesley, MA	11-06-90	Combine cycle	146	Milford, MA.

Amendments to the FUA on May 21, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Copies of this self certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC on November 20, 1990.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 90-27952 Filed 11-27-90; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 91-05 Certification Notice—73]

Sumas Energy, Inc.; Filing Certification of Compliance; Coal Capability of New Electric Powerplant

AGENCY: Office of Fossil Energy, Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has filed a self certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Sumas Energy, Inc., Redmond, WA	11-08-90	Combine cycle	67	Sumas, WA

Amendments to the FUA on May 21, 1987, (Public Law 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Copies of this self certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC, on November 20, 1990.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 90-27953 Filed 11-27-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180835; FRL 3838-4]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 19 States as listed below, and 10 crisis exemptions were also initiated by the various States. These exemptions were issued during the months of June, July, and August except for one issued in May. They are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arizona Commission of Agriculture and Horticulture for the use of cyromazine on head lettuce to control serpentine leafminers; August 2, 1990, to June 15, 1991. (Susan Stanton)

2. Arizona Office of State Chemist for the use of avermectin B_1 on head lettuce to control American serpentine leafminer; August 13, 1990, to December 31, 1990. (Libby Pemberton)

3. California Department of Food and Agriculture for the use of avermectin B_1 on head lettuce to control American serpentine leafminer; August 13, 1990, to December 31, 1990. (Libby Pemberton)

4. California Department of Food and Agriculture for the use of fenamiphos on plums and prunes to control nematodes; August 21, 1990, to August 20, 1991. (Libby Pemberton)

5. Florida Department of Agriculture and Consumer Services for the use of triflumizole on Spathiphyllum to control Cylindrocladium stem and petiole rot; July 5, 1990, to June 30, 1991. (Susan Stanton)

6. Florida Department of Agriculture and Consumer Services for the use of fosetyl-aluminum (Aliette) on head and leaf lettuce to control metalaxyl-resistant downy mildew; August 17, 1990, to May 31, 1991. (Susan Stanton)

7. Idaho Department of Agriculture for the use of bifenthrin on hops to control hop aphids; June 1, 1990, to September 15, 1990. (Jim Tompkins)

8. Idaho Department of Agriculture for the use of imazalil on sweet corn seed to control damp-off and dieback diseases; August 17, 1990, to August 14, 1991. (Susan Stanton)

9. Idaho Department of Agriculture for the use of avermectin B_1 on pears to control pear psylla; August 17, 1990, to September 31, 1990. (Libby Pemberton)

10. Indiana Department of Agriculture for the use of fluazifop-p-butyl on mint to control grassy weeds; August 28, 1990, to December 31, 1990. (Jim Tompkins)

11. Kansas Board of Agriculture for the use of bifenthrin on field corn to control mites; August 9, 1990, to September 1, 1990. (Jim Tompkins)

12. Louisiana Department of Agriculture for the use of bromoxynil on rice to control broadleaf weeds; May 31, 1990, to August 1, 1990. (Jim Tompkins)

13. Michigan Department of Agriculture for the use of fosetyl-aluminum (Aliette) on head and leaf lettuce to control downy mildew; July 20, 1990, to November 1, 1990. (Susan Stanton)

14. Michigan Department of Agriculture for the use of chlorothalonil on asparagus to control purple spot disease; July 18, 1990, to November 1, 1990. Michigan had initiated a crisis exemption for this use. (Susan Stanton)

15. Michigan Department of Agriculture for the use of triadimefon (Bayleton) on asparagus to control asparagus rust; July 27, 1990, to November 1, 1990. Michigan had initiated a crisis exemption for this use. (Susan Stanton)

16. Minnesota Department of Agriculture for the use of 2,4-D on cultivated wild rice to control common water plantain; August 17, 1990, to August 31, 1990. (Jim Tompkins)

17. Montana Department of Agriculture for the use of esfenvalerate on wheat and barley to control Russian wheat aphid; August 3, 1990, to November 1, 1990. Montana had initiated a crisis exemption for this use. (Libby Pemberton)

18. Nebraska Department of Agriculture for the use of bifenthrin on field corn to control mites; August 10, 1990, to September 15, 1990. Nebraska had initiated a crisis exemption for this use. (Jim Tompkins)

19. Nevada Department of Agriculture for the use of cypermethrin on onions to control thrips; July 13, 1990, to September 1, 1990. (Robert Forrest)

20. North Dakota Department of Agriculture for the use of propiconazole on oats to control crown rust; July 13, 1990, to July 31, 1990. (Jim Tompkins)

21. North Dakota Department of Agriculture for the use of mancozeb on sunflowers to control sunflower rust; June 27, 1990, to August 31, 1990. EPA completed a rebuttable presumption against registration (RPAR) on this chemical; the final determination is ongoing. (Jim Tompkins)

22. Oklahoma Department of Agriculture for the use of DCNA (Botran) on peanuts to control sclerotinia blight; August 3, 1990, to October 31, 1990. (Susan Stanton)

23. Oregon Department of Agriculture for the use of bifenthrin on hops to control hop aphids; June 1, 1990, to September 15, 1990. (Jim Tompkins)

24. Oregon Department of Agriculture for the use of glyphosate on wheat to control annual volunteer rye; July 5, 1990, to July 15, 1990. (Susan Stanton).

25. South Carolina Department of Fertilizer and Pesticide Control, Clemson University for the use of fenamiphos on kiwi to control nematodes; August 30, 1990, to August 29, 1991. (Libby Pemberton)

26. Texas Department of Agriculture for the use of DCNA (Botran) on peanuts to control sclerotinia blight; August 8, 1990, to October 21, 1990. (Susan Stanton)

27. Texas Department of Agriculture for the use of propiconazole on irrigated peanuts to control southern blight; August 22, 1990, to November 1, 1991. (Jim Tompkins)

28. Washington Department of Agriculture for the use of hexakis on hops to control two-spotted spider mites; July 10, 1990, to September 15, 1990. (Robert Forrest)

29. Washington Department of Agriculture for the use of esfenvalerate on dry harvested cranberries to control adult black vine weevils; July 13, 1990, to September 30, 1990. (Libby Pemberton)

30. Washington Department of Agriculture for the use of bifenthrin on hops to control hop aphids; June 1, 1990, to September 15, 1990. (Jim Tompkins)

31. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of propiconazole on fresh market celery to control late blight; July 19, 1990, to August 31, 1990. Wisconsin had initiated a crisis exemption for this use. (Jim Tompkins)

Crisis exemptions were initiated by the:

1. Illinois Department of Agriculture on July 17, 1990, for the use of propiconazole on seed corn to control foliar diseases. This program has ended. (Jim Tompkins)

2. Indiana State Chemist Office on July 17, 1990, for the use of propiconazole on corn grown for seed to control foliar diseases. This program has ended. (Jim Tompkins)

3. Kansas State Plant Board on July 17, 1990, for the use of bifenthrin on field corn to control mites. This program has ended. (Jim Tompkins)

4. Maine Department of Agriculture, Food, and Rural Resources on July 9, 1990, for the use of cryolite on potatoes to control Colorado potato beetles. This program has ended. (Libby Pemberton)

5. Michigan Department of Agriculture on July 25, 1990, for the use of propiconazole on seed corn to control foliar diseases. This program has ended. (Jim Tompkins)

6. Nebraska Department of Agriculture on July 27, 1990, for the use of bifenthrin on field corn to control mites. This program has ended. (Jim Tompkins)

7. New Mexico Department of Agriculture on July 12, 1990, for the use of bifenthrin on field corn to control mites. This program has ended. (Jim Tompkins)

8. Texas Department of Agriculture on July 6, 1990, for the use of bifenthrin on field corn to control mites. This program has ended. (Jim Tompkins)

9. Wisconsin Department of Agriculture, Trade, and Consumer Protection on July 11, 1990, for the use of propiconazole on celery to control late blight. This program has ended. (Jim Tompkins)

10. Wisconsin Department of Agriculture, Trade, and Consumer Protection on July 19, 1990, for the use of propiconazole on organic seed corn to control foliar diseases. This program has ended. (Jim Tompkins)

Authority: 7 U.S.C. 136.

Dated: October 26, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90-27686 Filed 11-27-90; 8:45 am]

BILLING CODE 6560-50-F

[PP 7G3561/T601; FRL 3803-9]

Mepiquat Chloride; Renewal of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for residues of the plant growth regulator mepiquat chloride in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire June 30, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-1800.

SUPPLEMENTARY INFORMATON: EPA issued a notice, which was published in the **Federal Register** of September 21, 1988 (53 FR 36635), stating that a temporary tolerance had been established for residues of the plant growth regulator mepiquat chloride (N,N-dimethylpiperidinium chloride) in or on the raw agricultural commodities grapes at 1.0 part per million (ppm) and the processed fractions of raisins at 6.0 ppm, raisin waste at 26 ppm, and pomace, wet and dry, at 3.0 ppm. EPA issued a related food and feed additive regulation which was published in the **Federal Register** of September 27, 1990 (55 FR 39408), renewing 40 CFR 185.2275 and 40 CFR 186.2275 to permit the plant growth regulator mepiquat chloride (N,N-dimethylpiperidinium chloride) in raisins at 6.0 parts per million (ppm), raisin waste at 26 ppm, and grape pomace (wet and dry) at 3.0 ppm. These tolerances were renewed in response to pesticide petition (PP) 7G3561, submitted by BASF Corp., Agricultural Chemicals Group, P.O. Box 13528, Research Triangle Park, NC 27709.

The company has requested a 1-year renewal of the temporary tolerances to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 7969-EUP-24, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active herbicide to be used must not exceed the quantity authorized by the experimental use permit.

2. BASF Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire June 30, 1991. Residues not in excess of this amount remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: November 7, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-27817, Filed 11-27-90; 8:45 am]

BILLING CODE 6560-50-F

[PP 7G3561/T802; FRL 3804-1]

Triasulfuron; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for residues of the herbicide triasulfuron in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire December 31, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the Federal Register of April 26, 1989 (54 FR 18020), announcing the establishment of temporary tolerances for residues of the herbicide triasulfuron (3-(6-methoxy-4-methyl-1,3,5-triazin-2-yl)-1-[2-(2-chloroethoxy)-phenylsulfonyl]urea) in or on the raw agricultural commodities wheat and barley grain at 0.02 part per million (ppm); wheat and barley straw at 2.0 ppm; wheat and barley forage at 5.0 ppm; kidney or cattle, goats, hogs, horses, and sheep at 0.2 ppm; and meat, fat, and meat byproducts, excluding kidney of cattle, goats, hogs, horses, and sheep at 0.1 ppm and milk at 0.02 ppm. These tolerances were issued in response to pesticide petition (PP) 7G3551, submitted by Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419-8300.

These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit 100-EUP-90, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active herbicide to be used must not exceed the quantity authorized by the experimental use permit.

2. Ciba-Geigy Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire December 31, 1991. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: November 6, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-27816 Filed 11-27-90; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3805-2]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), notice is hereby given that a proposed administrative cost recovery settlement concerning the Morrison Drum Site ("The Site") near Hermann, Missouri was issued by the Agency on March 30, 1990. The settlement resolves an Agency claim under section 107 of CERCLA against St. Louis County, Missouri ("the settling party"). The settlement requires the settling party to pay response costs in the amount of approximately $58,000 to the Hazardous Substances Superfund.

For thirty (30) days following the date of the publication of this notice, the agency will accept written comments relating to the settlement. The agency's response to any comments received will be available for public inspection at the EPA Region VII Office, located at 726 Minnesota Avenue in Kansas City, Kansas 66101, and at the local repository for site information: St. Louis County Government Center, County Counselor's Office, 41 South Central, Clayton, Missouri 63105, telephone (314) 889-2042.

DATES: Comments must be submitted on or before December 28, 1990.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection during weekday business hours at the EPA Region VII Office at 726 Minnesota Avenue in Kansas City, Kansas 66101. A copy of the proposed settlement may be obtained from Linda McKenzie, Regional Docket Clerk, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone: 913-551-7477.

Comments on the proposed settlement should reference the Morrison Drum Site, near Hermann, Missouri and EPA Docket No. VII-90-F-0013 and should be addressed to Ms. McKenzie at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Gerhardt Braeckel, Assistant Regional Counsel, EPA Region VII, Office of Regional Counsel, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone: 913-551-7471.

Dated: November 19, 1990.

Alan L. Wehmeyer,

Acting Director, Waste Management Division, U.S. EPA Region VII.

[FR Doc. 90-27921 Filed 11-27-90; 8:45 am]

BILLING CODE 6560-50-M

EXPORT-IMPORT BANK

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by Public Law 98-181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Tuesday, December 11, 1990, from 9:30 a.m. to 12 noon. The meeting will be held at Eximbank in room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

AGENDA: The meeting agenda will include a discussion of the following topics: Financial and Budget Status Report, Congressional Report, Issues Subcommittee Overview, Small Business Subcommittee Report, International Issues Subcommittee Report, External Delegated Authority Subcommittee Report, Foreign Content Subcommittee Report, Summary and Conclusions of Subcommittee Reports, and other topics.

PUBLIC PARTICIPATION: The meeting will be open to public participation; and the last 15 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, room 935, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566-8871, not later than December 10, 1990. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to December 6, 1990, the Office of the Secretary, room 935, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 566-8871 or TDD: (202) 535-3912.

FURTHER INFORMATION: For further information, contact Joan P. Harris, room 935, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566-8871.

Joan P. Harris,

Corporate Secretary.

[FR Doc. 90-28036 Filed 11-27-90; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 19, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0289.

Title: Section 76.601, Performance Tests.

Action: Extension.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 4,186 recordkeepers; 15 hours average burden per recordkeeper; 62,790 hours total annual burden.

Needs and Uses: Section 76.601 requires that cable television system operators conduct signal leakage measurements at least once each calendar year. The results of these measurements are to be maintained at the operator's local business office and are to be made available for inspection by the Commission on request. These annual systems performance tests do not apply to cable systems with fewer than 1,000 subscribers except for systems that use any frequency spectrum other than that allocated to over-the-air broadcasting. The data is used by FCC staff in field inspections to ensure that there are no signal leakage problems which could cause interference with over-the-air radio frequencies involving safety-of-life functions, i.e., police, fire, forestry, aeronautical, and amateur radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90-27862 Filed 11-27-90; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1830]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

November 26, 1990.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and coping in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3800). Oppositions to these petitions must be filed [December 14, 1990]. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions as expired.

Subject: Policy and Rules Concerning Rates for Dominant Carriers (CC Docket No. 87-313)
Number of petitions filed: 27

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Weed and Mount Shasta, California) (MM Docket No. 88-28, RM Nos. 5896 & 6345)
Number of petitions filed: 1

Subject: Amendment of § 73.202(b), Table of Allotments FM Broadcast Stations. (Royston, Georgia) (MM Docket No. 89-523, RM-6929)
Number of petitions filed: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Hayward, Wisconsin) (MM Docket No. 89-620, RM-7125)
Number of petitions filed: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Rockledge, Florida) (MM Docket No. 90-130)
Number of petitions filed: 1

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-28048 Filed 11-27-90; 8:45 am]

BILLING CODE 6712-01-M

BEST COPY AVAILABLE

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; American West African Freight Conference

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–007680–079

Title: American West African Freight Conference.

Parties:

Barber West Africa Line
Farrell Lines, Inc.
Maersk Line
Societe Ivoirienne de Transport Maritime, SITRAM
Societe Navale et Commerciale Delmas-Vieljeux (Delmas AAEL)
Torm West Africa Line
Westwind Africa Line

Synopsis: The proposed amendment would add a new paragraph 7.6(c) to provide for a maximum assessment for members of a conference group, who for any calendar year carry two percent or less of the total amount of cargo carried by the group and provide no direct service between the United States and West Africa.

Agreement No.: 212–009847–022.

Title: U.S. Atlantic Coast/Brazil Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro
Companhia de Navegacao Maritimea Netumar
American Transport Lines, Inc.

Synopsis: The proposed amendment would extend the alternate coast service provisions of the Agreement through December 31, 1991.

Agreement No.: 212–009848–024.

Title: U.S. Gulf Ports/Brazil Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
American Transport Lines, Inc.

Synopsis: The proposed amendment would extend the alternate coast service provisions of the Agreement through December 31, 1991.

Agreement No.: 212–010027–028.

Title: Brazil/U.S. Atlantic Coast Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro
Companhia de Navegacao Maritima Netumar
American Transport Lines, Inc.
Empresa Lineas Maritimas Argentinas S.A.
A. Bottacchi S.A. de Navegacion C.F.I.I.
Van Nievelt, Goudriaan and Co. B.V.

Synopsis: The proposed amendment would extend the special pool deductions for certain neo-built-type commodities and for wheels for automobiles through 1991. It would provide for two pool periods in 1991, the first beginning January 1, 1991 and ending March 31, 1991, and the second beginning April 1, 1991, and ending December 31, 1991, and it would add a special carrying adjustment for all cargo for the first pool period. The amendment also makes provision in 1991 for a pool share and sailings obligation for Columbus Line, should Columbus withdraw its currently pending resignation now effective December 31, 1990. The amendment would further provide that if Columbus does not withdraw its resignation, its 1991 pool share shall be divided proportionally among the remaining non-national lines, effective January 1, 1991.

By Order of the Federal Maritime Commission.

Dated: November 23, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–27925 Filed 11–27–90; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; City of Los Angeles/Nippon Yusen Kaisha Terminal Agreement, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200420–001.

Title: City of Los Angeles/Nippon Yusen Kaisha (NYK) Terminal Agreement.

Parties:

City of Los Angeles
Nippon Yusen Kaisha

Synopsis: The Agreement amends the basic agreement to change the terms for certain construction costs in contact bids for terminal facility improvements.

Agreement No.: 224–200229–002.

Title: Manchester Terminal Corporation/Scott Marine Services, Inc. Terminal Agreement.

Parties:

Manchester Terminal Corporation
Scott Marine Services, Inc.

Synopsis: The Agreement amends the basic agreement to delete provisions providing for a facility use charge for bagged agricultural products.

Agreement No.: 224–010809–001.

Title: Tampa Port Authority/Holland America Westours, Inc. Terminal Agreement.

Parties:

Tampa Port Authority
Holland America Westours, Inc.

Synopsis: The Agreement amends the basic agreement to reduce the minimum annual vessel calls from 28 calls to 15 calls.

Agreement No.: 224–200443.

Title: Maryland Port Administration/Ceres Marine Terminals, Inc. Terminal Agreement.

Parties:

Maryland Port Administration
Ceres Marine Terminals, Inc. (Ceres)

Synopsis: The Agreement provides Ceres the use of certain portions of the North Locust Point Marine Terminal for a term of 3 years.

By Order of the Federal Maritime Commission.

Dated: November 23, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–27924 Filed 11–27–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Barclays PLC, London, England; Barclays Bank PLC, London, England; Proposal to Underwrite and Deal in Certain Securities to a Limited Extent

Barclays PLC, London, England, and Barclays Bank PLC, London, England (collectively "Applicant"), have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) (the "BHC Act"), § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for prior approval to engage through Barclays de Zoete Wedd Securities, Inc., New York, ("Company"), in underwriting and dealing, to a limited extent, in all types of equity securities, except securities issued by open-end investment companies, on a world-wide basis.

Company is currently authorized to engage (i) In underwriting and dealing in government obligations and money market instruments, pursuant to § 225.25(b)(16) of the Board's Regulation Y (12 CFR 225.25(b)(16); (ii) in underwriting and dealing in debt securities, pursuant to Board order, *Canadian Imperial Bank of Commerce, The Royal Bank of Canada, Barclays PLC, and Barclays Bank PLC*, 76 Federal Reserve Bulletin 158 (1990) ("*Canadian Imperial*"); (iii) in providing investment or financial advice, pursuant to § 225.25(b)(4) of the Board's Regulation Y (12 CFR 225.25(b)(4)); and (iv) in acting as a futures commission merchant, pursuant to §§ 225.25(b)(18) and (b)(19) of the Board's Regulation Y (12 CFR 225.25(b)(18) and (b)(19)).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to acquire their provision in a specialized form. *National Courier Ass'n* v. *Board of Governors*, 516 F. 2d 1229, 1337 (DC Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 Federal Register 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Applicant has applied to underwrite and deal in equity securities in accordance with the Board's prior orders approving those activities for a number of bank holding companies.

Canadian Imperial

Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagal Act prohibits the affiliation of a member bank with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. With regard to the proposed equity securities underwriting and dealing activities, Applicant states that, consistent with section 20, it would not be "engaged principally" in such activities on the basis of the restriction on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary previously approved by the Board. See Board's Order dated September 21, 1989, 75 Federal Reserve Bulletin 751 (1989).

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the BHC Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any views or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than December 21, 1990. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(E)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented in a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, November 21, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–27895 Filed 11–27–90; 8:45 am]

BILLING CODE 6210–01–M

Sun Financial Corp.; Correction

This notice corrects a previous Federal Register notice (FR Doc. 90–26672) published at page 47392 of the issue for Tuesday, November 13, 1990.

Under the Federal Reserve Bank of St. Louis, the entry for Sun Financial Corporation, Earth City, Missouri, should be amended to add:

1. *Sun Financial Corp.*, Earth City, Missouri, to engage through its subsidiary bank, Farmers State Bank of Ellington, Ellington, Missouri, in acting as principal, agent, or broker for insurance (including home mortgage redemption insurance) that is (a) Directly related to an extension of credit by the bank holding company or any of its subsidiaries; and (b) limited to ensuring the repayment of the outstanding balance due on the extension of credit in the event of the death, disability, or involuntary unemployment of the debtor. See § 225.25(b)(8)(i) of the Board's Regulation Y (12 CFR 225.25(b)(8)(i)).

Comments on this application must be received by December 17, 1990.

Board of Governors of the Federal Reserve System, November 21, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–27896 Filed 11–27–90; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Renewals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the

renewal of certain FDA advisory committees by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463 (5 U.S.C. app. 2)).

DATES: Authority for these committees will expire on the date indicated below unless the Secretary formally determines that renewal is in the public interest.

Name of committee	Date of expiration
Allergenic Products	July 9, 1992.
Cardiovascular and Renal Drugs	Aug. 27, 1992.
Endocrinologic and Metabolic Drugs	Aug. 27, 1992.
Oncologic Drugs	Sept. 1, 1992.
Anti-Infective Drugs	Oct. 7, 1992.
Dermatologic Drugs	Oct. 7, 1992.
Biological Response Modifiers	Oct. 28, 1992.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: November 20, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-27855 Filed 11-27-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90F-0344]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polymaleic acid and its sodium salt to control mineral scale during production of beet and cane sugar juice and liquor.

FOR FURTHER INFORMATION CONTACT: Vincent Zenger, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532-2188, has filed a petition (FAP OA4228), proposing that § 173.45 *Polymaleic acid and its sodium salt* (21 CFR 173.45) be amended to provide for the safe use of polymaleic acid (CAS Reg. No. 26099-09-2) and its sodium salt (CAS Reg. No. 70247-90-4) to control mineral scale during production of beet and cane sugar juice and liquor at higher levels than the maximum currently permitted under the regulation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 19, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-27954 Filed 11-27-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90P-0352]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Cumberland Farms, Inc., to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 26, 1991.

FOR FURTHER INFORMATION CONTACT: Frederick E. Boland, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0117.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Cumberland Farms, Inc., 777 Dedham St., Canton, MA 02021, and Route 130, Cumberland Blvd., Burlington, NJ 08016.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 4-fluid ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog."

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 180,000 quarts (170,334 liters) of the test product. The product will be manufactured at Cumberland Farms, Inc., 777 Dedham St., Canton, MA 02021, and Route 130, Cumberland Blvd., Burlington, NJ 08016, and distributed in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 26, 1991.

Dated: November 15, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-27955 Filed 11-27-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90P-0365]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Foremost Dairies-Hawaii, House Foods Hawaii Corp., to market test a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 26, 1991.

FOR FURTHER INFORMATION CONTACT: Howard A. Anderson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0349.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Foremost Dairies-Hawaii, House Foods Hawaii Corp., 2277 Kamehameha Highway, Honolulu, HI 96819.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 8 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog".

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 15,000 quarts (14,194 liters) of the test product. The test product is to be manufactured at Foremost Dairies-Hawaii, 2277 Kamehameha Highway, Honolulu, HI 96819, nnd distributed in Hawaii.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 26, 1991.

Dated: November 16, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-27956 Filed 11-27-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90N-0401]

Interpharm, Inc.; Withdrawal of Approval of Abbreviated New Drug Applications for Clonidine Hydrochloride Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of three abbreviated new drug applications (ANDA's) for Clonidine Hdrochloride Tablets held by Interpharm, Inc., Three Fairfield Ave., Plainfield, NY 11803 (Interpharm). Interpharm has requested that FDA withdraw approval of these ANDA's because the applications contain discrepancies between the product tested for bioequivalence and the information submitted in the applications.

EFFECTIVE DATE: November 28, 1990.

FOR FURTHER INFORMATION CONTACT: Margaret F. Sharkey, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: Recently, FDA became aware of the difference between the product tested for bioequivalence and the statements submitted in support of the approval of the following ANDA's held by Interpharm:

1. ANDA 71-252; for clonidine hydrochloride tablets, 0.1 milligram (mg).
2. ANDA 71-253; for clonidine hydrochloride tablets, 0.2 (mg).
3. ANDA 71-254; for clonidine hydrochloride tablets, 0.3 (mg).

FDA asked Interpharm to remove the products from the market and to request that FDA withdraw approval of the applications. Interpharm complied with the request. The firm recalled the products to the retail level and, on July 3, 1990, Interpharm requested that approval of the three ANDA's be withdrawn.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of abbreviated new drug applications 71-252, 71-253, and 71-254, and all amendments and supplements thereto, is hereby withdrawn, effective November 28, 1990.

Dated: November 19, 1990.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 90-27885 Filed 11-27-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90N-0376]

Martec Pharmaceutical, Inc., et al.; Withdrawal of Approval of Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 84 abbreviated new drug applications (ANDA's). The holders of the ANDA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: December 28, 1990.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8038.

SUPPLEMENTARY INFORMATION: The holders of the ANDA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

ANDA no.	Drug	Applicant
70-120	Propranolol Hydrochloride Tablets, USP, 10 milligrams (mg)	Mariec Pharmaceutical, Inc., 106 West 11th Street, Kansas City, MO 64105.
70-121	Propranolol Hydrochloride Tablets, USP, 20 mg	Do.
70-122	Propranolol Hydrochloride Tablets, USP, 40 mg	Do.
70-124	Propranolol Hydrochloride Tablets, USP, 80 mg	Do.
70-348	Verapamil Hydrochloride Injection, 2.5 mg/milliliter (mL)—2 mL	Lyphomed, 2045 North Cornell Ave., Melrose Park, IL 60160.
71-713	Oxazepam Capsules, USP, 10 mg	Mylan Pharmaceuticals Inc., P.O. Box 4310, 781 Chestnut Ridge Rd., Morgantown, WV 26505.
71-714	Oxazepam Capsules, USP, 15 mg	Do.
71-715	Oxazepam Capsules, USP, 30 mg	Do.
72-013	Clorazepate Dipotassium Tablets, 3.75 mg	Lederle Laboratories, North Middletown Rd., Pearl River, NY 10965.
72-014	Clorazepate Dipotassium Tablets, 7.5 mg	Do.
72-015	Clorazepate Dipotassium Tablets, 15 mg	Do.
72-117	Propranolol Hydrochloride Tablets, 10 mg	Do.
72-118	Propranolol Hydrochloride Tablets, 20 mg	Do.
72-119	Propranolol Hydrochloride Tablets, 40 mg	Do.
72-120	Propranolol Hydrochloride Tablets, 80 mg	Do.
73-402	Diazepam Tablets, USP, 10 mg	Mariec Pharmaceutical Inc.
80-223	Servisone (Prednisone) Tablets, 5 mg	Lederle Laboratories, Inc.
83-062	Chlorpheniramine Maleate Tablets, 4 mg	Perrigo Co., P.O. Box 1968, Greenville, SC 29602.
83-299	Propoxyphene Hydrochloride Capsules, USP, 65 mg	Mylan Pharmaceuticals Inc.
84-734	MISTURA (Naphazoline Hydrochloride) Ophthalmic Solution, 0.1%	Lederle Laboratories, Inc.
84-787	MISTURA (Naphazoline Hydrochloride) Ophthalmic Solution, 10%	Do.
84-798	Chlorpromazine Hydrochloride Tablets, USP, 100 mg	Do.
84-800	Chlorpromazine Hydrochloride Tablets, USP, 50 mg	Do.
84-801	Chlorpromazine Hydrochloride Tablets, USP, 25 mg	Do.
84-802	Chlorpromazine Hydrochloride Tablets, USP, 200 mg	Do.
84-921	Hydroxocobalamin Injection, USP	LyphoMed, Inc.
85-100	Propoxyphene Hydrochloride with Acetaminophen Tablets, USP, 65 mg/650 mg	Lederle Laboratories, Inc.
85-496	Aristocort K (Triamcinolone Acetonide) Cream	Lederle Laboratories, Inc.
85-952	Theophylline Elixir, 80 mg/15 mL	Perrigo Co.
86-357	Imipramine Hydrochloride Tablets, USP, 25 mg	Lederle Laboratories, Inc.
86-266	Imipramine Hydrochloride Tablets, USP, 50 mg	Do.
86-269	Imipramine Hydrochloride Tablets, USP, 10 mg	Do.
86-299	Meprobamate Tablets, 400 mg	Do.
86-743	Amitriptyline Hydrochloride Tablets, USP, 50 mg	Do.
86-744	Amitriptyline Hydrochloride Tablets, USP, 10 mg	Do.
86-745	Amitriptyline Hydrochloride Tablets, USP, 75 mg	Do.
86-746	Amitriptyline Hydrochloride Tablets, USP, 25 mg	Do.
86-747	Amitriptyline Hydrochloride Tablets, USP, 100 mg	Do.
86-855	Isosorbide Dinitrate Tablets (Sub), USP, 5 mg	Do.
86-858	Isosorbide Dinitrate Tablets (Oral), USP, 5 mg	Do.
86-861	Isosorbide Dinitrate Tablets (Sub), USP, 2.5 mg	Do.
86-862	Isosorbide Dinitrate Tablets (Oral), USP, 10 mg	Do.
86-874	Diphenhydramine Hydrochloride Capsules, USP, 25 mg	Do.
86-875	Diphenhydramine Hydrochloride Capsules, USP, 50 mg	Do.
86-876	Chlordiazepoxide Hydrochloride Capsules, USP, 10 mg	Do.
86-877	Dicyclomine Hydrochloride Capsules, USP, 10 mg	Do.
86-878	Dicyclomine Hydrochloride Capsules, USP, 20 mg	Do.
86-891	Nitroglycerin Capsules Sustained Release, 2.5 mg	Do.
86-892	Chlordiazepoxide Hydrochloride Capsules, USP, 5 mg	Do.
86-893	Chlordiazepoxide Hydrochloride Capsules, USP, 25 mg	Do.
86-894	Nitroglycerin Capsules Sustained Release, 6.5 mg	Do.
86-917	Probenecid Tablets, USP, 500 mg	Do.
86-937	Diphenhydramine Hydrochloride Elixir, USP, 12.5 mg/5 mL	Do.
86-940	Chlorthiazide Tablets, USP, 250 mg	Do.
86-941	Chlorpheniramine Maleate Tablets, USP, 4 mg	Do.
86-942	Procainamide Hydrochloride Capsules, USP, 250 mg	Do.
86-943	Procainamide Hydrochloride Capsules, USP, 500 mg	Do.
86-950	Diphenoxylate/Atropine Sulfate Tablets, USP, 2.5 mg/0.025 mg	Do.
86-952	Procainamide Hydrochloride Capsules, USP, 375 mg	Do.
86-954	Probenecid with Colchicine Tablets, USP, 500 mg/0.5 mg	Do.
86-958	Chlorpromazine Hydrochloride Oral Solution Concentrate, 100 mg/mL	Do.
86-966	Prednisone Tablets, USP, 5 mg	Do.
86-984	Ergoloid Mesylates Tablets (Sub), USP, 0.5 mg	Do.
87-037	Chlordiazepoxide Hydrochloride Capsules, USP, 10 mg	Do.
87-141	Acetaminophen with Codeine Tablets, 300 mg/30 mg	Do.
87-142	Propoxyphene Hydrochloride with Aspirin, Phenacetin and Caffeine Capsules	Do.
87-181	Amitriptyline Hydrochloride Tablets, USP, 50 mg	Do.
87-231	Chlordiazepoxide Hydrochloride Capsules, USP, 25 mg	Do.
87-234	Chlordiazepoxide Hydrochloride Capsules, USP, 5 mg	Do.
87-366	Amitriptyline Hydrochloride Tablets, USP, 10 mg	Do.
87-367	Amitriptyline Hydrochloride Tablets, USP, 25 mg	Do.
87-368	Amitriptyline Hydrochloride Tablets, USP, 100 mg	Do.
87-369	Amitriptyline Hydrochloride Tablets, USP, 75 mg	Do.
87-370	Amitriptyline Hydrochloride Tablets, USP, 150 mg	Do.
87-511	Spironolactone with Hydrochlorothiazide Tablets, 25 mg/25 mg	Do.
87-634	Spironolactone Tablets, USP, 25 mg	Do.
87-649	Sulfisoxazole Tablets, USP, 500 mg	Do.
87-709	Reserpine/Hydralazine Hydrochloride/Hydrochlorothiazide Tablets, USP, 0.1 mg/25 mg/15 mg.	Do.
87-843	Dipyridamole Tablets Film Coated, USP, 25 mg	Do.
88-362	Dipyridamole Tablets Film Coated, USP, 50 mg	Do.
88-363	Dipyridamole Tablets Film Coated, USP, 75 mg	Do.
88-935	Methotrexate Sodium for Injection, 20 mg/vial	LyphoMed, Inc.
88-936	Methotrexate Sodium for Injection, 50 mg/vial	Do.
88-937	Methotrexate Sodium for Injection, 100 mg/vial	Do.

The agency has determined under 21 CFR 25.24(d)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the new drug applications listed above, and all supplements thereto, is hereby withdrawn, effective December 28, 1990.

Dated: November 19, 1990.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 90-27886 Filed 11-27-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90M-0335]

Depuy®; Premarket Approval of the Posterior Cruciate Retaining Configuration of the New Jersey LCS® Total Knee System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by DePuy, Warsaw, IN, for premarket approval, under the Medical Device Amendments of 1976, of the Posterior Cruciate Retaining configuration of the new jersey LCS® Total Knee System. After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 26, 1990, of the approval of the application.

DATES: Petitions for administrative review by December 28, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas J. Callahan, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1036.

SUPPLEMENTARY INFORMATION: On January 11, 1990, DePuy, Warsaw, IN 46580, submitted to CDRH an application for premarket approval of the Posterior Cruciate Retaining configuration of the new jersey LCS® Total Knee System. The device is indicated for noncemented use in skeletally mature individuals undergoing primary surgery for rehabilitating knees damaged as a result of noninflammatory degenerative joint disease (NIDJD) or any of its composite diagnoses of osteoarthritis, posttraumatic arthritis, and psoriatic arthritis.

The Posterior Cruciate Retaining configuation of the new jersey LCS® Total Knee System consists of three components intended to replace the femoral, tibial, and patellar surfaces of the knee joint.

On June 1, 1990, the Orthopedic and Rehabilitation Devices Panel, and FDA advisory committee, reviewed and recommended approval of the application. On September 26, 1990, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Thomas J. Callahan (HFZ-410), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3))) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 28, 1990, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the

Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: November 16, 1990.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 90-27867 Filed 11-27-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicare and Medicaid Programs; Meeting of the Advisory Council on Social Security

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Advisory Council on Social Security.

DATES: The meeting will be open to the public on December 13, 1990 from 9 a.m. to 8:30 p.m.; and on December 14, 1990, from 9 a.m. to 4:30 p.m.

ADDRESSES: Diplomat Room, Omni Shoreham, 2500 Calvert Street, NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Olga Nelson, Administrative Officer, Advisory Council on Social Security, Room 638 G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington DC 20201, 202-245-0217.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every four years. The Council examines issues affecting the Social Security retirement, disability, and survivors insurance programs, as well as the Medicare and Medicaid programs, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- The adequacy of the Medicare program to meet the health and long-term care needs of our aged and disabled populations, the impact on Medicaid of the current financing structure for long-term care, and the need for more stable health care financing for the aged, the disabled, the poor, and the uninsured;
- Major Old-Age, Survivors, and Disability Insurance (OASDI) financing issues, including the long-range financial status of the program, relationship of OASDI income and outgo to budget-deficit reduction efforts under the Balanced Budget and Emergency Deficit Control Act of 1985, and projected buildups in the OASDI trust funds; and
- Broad policy issues in Social Security, such as the role of Social Security in overall U.S. retirement income policy.

The Council is composed of 12 members: G. Lawrence Atkins, Robert M. Ball, Philip Briggs, Lonnie R. Bristow, Theodore Cooper, John T. Dunlop, Karen Ignagni, James R. Jones, Paul O'Neill, A.L. "Pete" Singleton, John J. Sweeney, and Don C. Wegmiller. The chairperson is Deborah Steelman.

The Council is to report to the Secretary and Congress by Spring 1991.

II. Agenda

The Council will discuss issues relating to health care financing policy.

The agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Programs Nos. 13.714 Medical Assistance Program; 13.733 Medicare-Hospital Insurance; 13.774 Medicare-Supplementary Medical Insurance; 13.802, Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.805 Social Security-Survivor's Insurance)

Dated: November 13, 1990.

Anna D. LaBelle,

Executive Director, Advisory Council on Social Security.

[FR Doc. 90-28068 Filed 11-27-90; 8:45 am]

BILLING CODE 4120-03-M

Office of Human Development Services

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) for approval of an information collection for the Administration for Native American's Objective Evaluation Report.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Angela Antonelli, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3002, 725 17th Street, NW., Washington, DC 20503 (202) 395-7316.

Information on Document

Title: Objective Evaluation Report.
OMB No.: 0980-0144
Description: The Objective Evaluation Report, a component of the Administration for Native Americans' management information and evaluation system, is one of the two required reports which provide the basic information on the progress of projects receiving federal financial assistance grants under the Native American Programs Act of 1974 (the Act) as amended.

The Objective Evaluation Report is a self-evaluation through which the grantee reports on achievement of the objectives funded and indicates results and benefits of the project. This is a major source of information needed by the Administration for Native Americans to fulfill the requirements of section 811 of the Act for reports and evaluations.

Annual Number of Respondents	200
Annual Frequency	1
Average Burden Hours Per Response	4
Total Burden Hours	800

Dated: November 21, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 90-27910 Filed 11-27-90; 8:45 am]

BILLING CODE 4130-01-M

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) for approval of an information collection for the Administration for Native Americans' Objective Progress Report.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Angela Antonelli, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3002, 725 17th Street NW., Washington, DC 20503, (202) 395-7316.

Information on Document

Title: Objective Progress Report.
OMB No.: 0980-0155.
Description: The Objective Progress Report, a component of the Administration for Native Americans' (ANA) management information and evaluation system, is one of the two required reports which provide the basic information on the progress of projects receiving federal financial assistance grants under the Native American Programs Act of 1974 as amended.

The Objective Progress Report provides a means through which information about projects, significant for management and policy development, may be systematically and regularly converted into ANA's Program Information and Evaluation System (PIES). This system is used to produce summary reports and is the information source for analytic studies of the projects funded by ANA. It also provides the only history of, and specific project contents for, ANA grants. Many requests are received to produce such information from the public, constituents, other federal agencies, and the Congress.

Annual Number of Respondents	200
Annual Frequency	3
Average Burden Hours Per Response	3
Total Burden Hours	1,800

Dated: November 21, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 90-27911 Filed 11-27-90; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48601-D has been received covering the following lands:

Copper River Meridian, Alaska

T. 5S., R. 1 E.,
Sec. 4, NW1/4SW1/4.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this notice have been paid. The required rentals and royalties accruing from June 1, 1990, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48601-D as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective June 1, 1990 subject to the terms and conditions cited above.

Dated: November 16, 1990.

Ruth Stockie,

Chief, Branch of Mineral Adjudication.

[FR Doc. 90-27889 Filed 11-27-90; 8:45 am]

BILLING CODE 4310-JA-M

[CO-050-4212-13]

Realty Action—Chaffee County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, COC-51088, addressing a proposal to exchange private land for public land in Chaffee County, Colorado.

SUMMARY: The following described private land has been offered to the BLM:

New Mexico Principal Meridian

T. 50 N., R. 8 E.
Sec. 10, metes and bounds description (also described as lots 3-17 & lots 21-24 of the unapproved Cedar Gate Subdivision).

Totaling 83.9 acres in Chaffee County, Colorado.

In exchange, the following described public land has been selected by the proponent:

New Mexico Principal Meridian

T. 50 N., R. 8 E.,
Sec. 7, NE¼NE¼;
Sec. 31, SE¼NE¼.

Sixth Principal Meridian

T. 15 S., R. 78 W.,
Sec. 17, SW¼NW¼, SE¼SW¼;
Sec. 18, W½SE¼, NE¼SE¼;
Sec. 31, S½NE¼.

Totaling 300 acres in Chaffee County.

The purpose of the exchange is to acquire recreational land for the Arkansas Headwaters Recreational Area on the Arkansas River for rafting and fishing below Browns Canyon.

The public land parcels are scattered, some with legal access lying north and west of Poncha Springs and west of Nathrop, Colorado.

DATES: Comments will be accepted until January 9, 1991.

ADDRESSES: Known interested parties will be mailed a notice on this proposal. All persons may submit comments to the District Manager, Bureau of Land Management, P.O. Box 2200, Canon City, Colorado 81215-2200. Please refer to case file COC-51088 for any comments submitted.

FOR FURTHER INFORMATION CONTACT: Mark Pyle, Realty Specialist, Bureau of Land Management, Royal Gorge Resource Area, P.O. Box 2200, Canon City, Colorado 81215-2200; Phone: (719) 275-0631.

SUPPLEMENTARY INFORMATION: The public land being disposed of near Poncha Springs are two land locked forty acre parcels. The eighty acre parcel west of Nathrop borders the Forest Service and a large ranch. The remaining parcels west of Nathrop are near a rural subdivision area and/or adjacent to Colorado State Land.

The private land being acquired is one parcel lying on and between the Arkansas River and Colorado State Highway No. 291 south of Browns Canyon. This parcel will provide needed access for recreational activities below the Hecla Junction rafting take-out.

The publication of this notice segregates the public lands described above from the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, for a period of 2 years from the date of first publication.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 90-27890 Filed 11-27-90; 8:45 am]

BILLING CODE 4310-JE-M

[CO-050-4212-13]

Realty Action—Lake County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, COC-51085, addressing a proposal to exchange private land for public land in Lake County, Colorado.

SUMMARY: The following described private land has been offered to the BLM:

Sixth Principal Meridian

T. 9 S., R. 80 W.,
Sec. 14, NE¼NW¼.

Totaling 40 acres in Lake County.

In exchange, the following described public land has been selected by the proponent:

Sixth Principal Meridian

T. 9 S., R. 80 W.,
Sec. 14, NW¼SW¼.
Totaling 40 acres in Lake County.

The purpose of the exchange is to consolidate public ownership along the East Fork of the Arkansas River and to exchange an isolated parcel of public land.

DATES: Comments will be accepted until January 9, 1991.

ADDRESSES: Known interested parties will be mailed a notice on this proposal. All persons may submit comments to the District Manager, Bureau of Land Management, P.O. box 2200, Canon City, Colorado 81215–2200. Please refer to case file COC–51085 for any comments submitted.

FOR FURTHER INFORMATION CONTACT: Mark Pyle, Realty Specialist, Bureau of Land Management, Royal Gorge Resource Area, P.O. box 2200, Canon City, Colorado 81215–2200; Phone: (719) 275–0631.

SUPPLEMENTARY INFORMATION: The public land being disposed of lies west of Leadville, Colorado. The parcel is bordered on two sides by rural residential subdivision. The proponent will develop the parcel into additional rural residential use.

The offered land is bordered on three sides by public land and will provide additional riparian habitat.

The publication of this notice segregates the public lands described above from the public land laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, for a period of 2 years from the date of first publication.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 90–27891 Filed 11–27–90; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

[CA–940–90–4520–12]

Filing of Plats of Survey; California

November 19, 1990.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATES: Filing was effective at 10 a.m. on the date of submission to the California State Office Public Room.

FOR FURTHER INFORMATION CONTACT: Clifford Robinson, Branch Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, Sacramento, CA 95825, 916–978–4775.

Humbolt Meridian, California

T. 18N., R. 2E.,—Dependent resurvey and subdivision of sections 4 and 5, (Group No. 1033) accepted October 3, 1990, to meet certain administrative needs of the U.S. Forest Service, Six Rivers National Forest.

T. 16N., R. 2E.,—Dependent resurvey and subdivision of section 30, and metes-and-bounds survey of tracts 37 through 41, (Group No. 971) accepted October 1, 1990, to meet certain administrative needs of the U.S. Forest Service, Six Rivers National Forest.

T. 4N., R. 6E.,—Dependent resurvey and metes-and-bounds survey of tracts 37–55, (Group No. 922) accepted August 7, 1990, to meet certain administrative needs of the U.S. Forest Service, Trinity National Forest.

T. 17N., R. 2E.,—Dependent resurvey and metes-and-bounds survey, (Group No. 1013B) accepted August 13, 1990, to meet certain administrative needs of the U.S. Forest Service, Six Rivers National Forest.

T. 17N., R. 6E.,—Dependent resurvey and metes-and-bounds survey of tracts 37, 38 and 39, (Group No. 972) accepted June 6, 1990, to meet certain administrative needs of the of the U.S. Forest Service, Klamath National Forest.

T. 6N., R. 2E.,—Dependent resurvey and survey, (Group No. 993) accepted May 18, 1990, to meet certain administrative needs of the Bureau of Indian Affairs and the Bureau of Land Management, Ukiah District, Arcata Resource Area.

Mount Diablo Meridian, California

T. 31N., R. 8E.,—Dependent resurvey and subdivision of certain sections, (Group No. 934) accepted June 19, 1990, to meet certain administrative needs of the U.S. Forest Service, Lassen National Forest.

T. 11N., R. 9E., and T. 11N., R. 10E.,—Dependent resurvey and survey of the subdivision of section 12 (T. 11N., R. 9E.,) and the dependent resurvey and subdivision of section 18 (T. 11N., R. 10E.,), (Group No. 1018) accepted August 18, 1990, to meet certain administrative needs of the Bureau of Land Management, Bakersfield District, Folsom Resource Area.

T. 16N., R. 9E.,—Supplemental plat of the East ½ section 18, accepted July 30, 1990, to meet certain administrative needs of the Bureau of Land Management, Bakersfield District.

T. 40N., R. 9E.,—Dependent resurvey and subdivision of certain sections, (Group No. 976) accepted May 15, 1990, to meet certain administrative needs of the U.S. Forest Service, Modoc National Forest.

T. 28N., R. 11E.,—Dependent resurvey, (Group No. 994) accepted April 17, 1990, to meet certain administrative needs of the U.S. Forest Service, Plumas National Forest.

T. 7N., R. 12E.,—Dependent resurvey, subdivision of section 4, and metes-and-bounds survey, (Group No. 1058) accepted June 19, 1990, to meet certain administrative needs of the Bureau of Land Management, Bakersfield District, Folsom Resource Area.

T. 12N., R. 18E.,—Dependent resurvey, (Group No. 940) accepted July 31, 1990, to meet certain administrative needs of the U.S. Forest Service, Lake Tahoe Basin Management Unit.

T. 13N., R. 10W.,—Supplemental plat of the SW¼ section 8, accepted June 13, 1990, to meet certain administrative needs of the Bureau of Land Management, Ukiah District, Clearlake Resource Area.

T. 16N., R. 10W.,—Dependent resurvey, (Group No. 1050) accepted June 14, 1990, to meet certain administrative needs of the U.S. Forest Service, Mendocino National Forest.

T. 44N., R. 11W.,—Dependent resurvey and metes-and-bounds survey of tracts 37 through 50, (Group No. 981) accepted October 3, 1990, to meet certain administrative needs of the U.S. Forest Service, Klamath National Forest.

T. 22N., R. 13W.,—Dependent resurvey and survey, (Group No. 988) accepted June 19, 1990, to meet certain administrative needs of the Bureau of Indian Affairs and the Covelo Indian community.

T. 16S., 10E.,—Dependent resurvey, (Group No. 1068) accepted October 3, 1990, to meet certain administrative needs of the Bureau of Land Management, Bakersfield District, Hollister Resource Area.

T. 2S., R. 18E. and T. 2S., R. 19E.,—Dependent resurvey, (Group No. 1008) accepted May 18, 1990, to meet certain administrative needs of the U.S. Forest Service, Stanislaus National Forest.

T. 2S., R. 28E.,—Dependent resurvey and survey, (Group No. 1038) accepted May 31, 1990, to meet certain administrative needs of the U.S. Forest Service, Inyo National Forest.

San Bernardino Meridian, California

T. 10N., R. 1W.,—Supplemental plat of the NE¼ of section 8, accepted August 13, 1990, to meet certain needs of the Bureau of Land Management, California Desert District, Barstow Resource Area.

T. 8S., R. 21E. and T. 9S., R. 21E.,—Dependent resurvey and subdivision of certain sections, (Group No. 912) accepted April 27, 1990, to meet certain needs of the Bureau of Land Management, California Desert District, Palm Springs Resource Area.

All of the above listed surveys are now the basic record for describing the lands for all authorized purposes. The surveys will be placed in the open files in the BLM, California State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fee.

Patricia L. Porter,

Chief, Public Information Section.

[FR Doc. 90–27892 Filed 11–27–90; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Tetlin/Northway, Alaska Federal Lands Hunting Announcement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: By emergency order of the Federal Subsistence Board and in accordance with 50 CFR 100.23(v), caribou hunting on Federal public lands south of the Alaska Highway within the Alaska State Game Management Unit 12 is open to residents of Tetlin and Northway during the period of November 19–December 15, 1990. The bag limit is 1 caribou by Federal registration permit only. This opening will provide a subsistence opportunity for qualified subsistence users while still ensuring a healthy caribou population.

DATES: The emergency opening is effective from November 19, 1990–December 15, 1990.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service, Subsistence Office, 1011 East Tudor Road, Anchorage, Alaska 99503, telephone (907) 267–1461; or Tetlin National Wildlife Refuge, P.O. Box 155, Tok, Alaska 99780, telephone (907) 883–5312.

SUPPLEMENTARY INFORMATION: As empowered by 50 CFR 100.23(v), the Federal Subsistence Board (Board) has opened Federal public lands south of the Alaska Highway in Game Management Unit 12 to the hunting of caribou from November 19, 1990–December 15, 1990, by those residents of the communities of Tetlin and Northway. A Federal registration permit, obtainable from the Tetlin National Wildlife Refuge is required. The bag limit is one (1) caribou. Federal public lands south of the Alaska Highway in Game Management Unit 12 will be closed to caribou hunting after these dates until the U.S. Fish and Wildlife Service of the Federal Subsistence Board announces another opening.

Title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture grant a preference in favor of subsistence uses of fish and wildlife resource on public lands. On November 19, 1990, the Board took emergency action to open the Federal subsistence season and bag limit restrictions for caribou in Game Management Unit 12. This opening by announcement is provided for by regulation and ensures the opportunity for subsistence uses of wildlife by rural residents of Alaska.

The Nelchina and Mentasta caribou herds have pushed north of the Mentasta mountains, spreading into the upper Tanana basin (including all of Tetlin National Wildlife Refuge). They are as far north as the Alaska Highway between mileposts 1284 and 1244, extend east to the Canadian border, and are in the vicinity of Tetlin and Northway.

For the first time in over 10 years, the Nelchina/Mentasta caribou moved into the area during the winter of 1983–84 and the State opened a season. The animals reappeared in increasing numbers during 1987–88 and in 1988–89. Last year was the first year the caribou crossed the Alaska Highway on the north and the Canadian Border on the east. The State held a hunt during 1988–89 by special permit to residents of Northway and Tetlin; and expanded the hunt once caribou crossed the Alaska Highway to the east. A harvest level of between 100–150 caribou is expected this year.

This opening will protect the caribou population from illegal hunting as well as provide a subsistence preference for local subsistence users.

Rowan W. Gould,

Acting Chairman, Federal Subsistence Board; Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 90–27883 Filed 11–27–90; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

ACTION: Notice.

SUMMARY: Notice is hereby given of intent to make assistance awards with State Geological Surveys, universities and other organizations, on a cost sharing basis to conduct geologic research under the coastal geology research program.

The purpose of the program is to enhance cooperative geologic research on the physical processes i.e., framework of coastal regions, sediment transport, sea level rise, geomorphic evolution effecting a variety of coastal regions, by fostering a close working relationship between the U.S. Geological Survey, and the State Geological Surveys, Universities and other recipients.

FOR FURTHER INFORMATION CONTACT: S. Jeffress Williams, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 914, Reston, VA 22092, (703) 648–6511.

SUPPLEMENTARY INFORMATION: The Coastal Geology Program is focused on increasing our scientific understanding of the physical processes affecting the Nation's coastal and wetlands environments. Field investigations, conducted in cooperation with various Federal and State agencies as well as university research scientists, are currently underway in Louisiana, Alabama, Mississippi, and southern Lake Michigan. The objective of these investigations is to characterize the geologic and geomorphic framework of these regions and to decipher the critical process affecting their coastal and wetlands environments.

Additional investigations will begin in western Louisiana, east Texas, and the Great Lakes region. The studies in Louisiana and Texas will focus on coastal erosion, whereas those in the Great Lakes region will concentrate on processes causing wetlands deterioration. In addition, work will be begin on assembling and field testing a video recording system capable of monitoring coastal conditions in remote sites and under adverse storm conditions while unattended for long periods of time. The work will follow pioneering efforts undertaken at Oregon State University and will potentially be applicable to current and future coastal studies in all the regions of the Nation. Initial field testing will probably take place in Florida and the Great Lakes region.

Authority for this program is contained in the Dept. of the Interior, U.S. Geological Survey Fiscal Year 1991 Appropriations Bill.

Applications Forms

The Program Announcement is expected to be available on or about January 15, 1991. Applications may be submitted by all interested parties, but cost sharing is strongly encouraged. Prospective applicants are requested to state in writing their interest in the research. Letters should be addressed to Kathy Craig, Contracting Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 205A, Reston, VA 22092, (703) 648–7357.

(Catalog of Federal Domestic Assistance 15.808)

Dated: November 14, 1990.

William F. Gr[illegible],

Acting Assistant Director for Administration.

[FR Doc. 90–27888 Filed 11–27–90; 8:45 am]

BILLING CODE 4310–31–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-305]

Apples: Certain Conditions of Competition Between the U.S. and Canadian Industries

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt on October 16, 1990, of a request from the Committee on Finance, United States Senate, the Commission instituted investigation No. 332-305, Apples: Certain Conditions of Competition Between the U.S. and Canadian Industries, under section 332(g) of the Tariff Act of 1930 (17 U.S.C. 1332(g)). As requested by the Committee, the Commission will, to the extent possible, develop information regarding the apple growing industries and the apple markets in the United States and Canada. The Committee requested that the Commission submit its report not later than August 1, 1991.

EFFECTIVE DATE: November 19, 1990.

FOR FURTHER INFORMATION CONTACT: For information on other than the legal aspects of the study, contact Frederick W. Ruggles (202-252-1325) (after 1/11/91—202-205-3325) or David Ingersoll (202-252-1309) (after 1/11/91—202-205-3309), Agriculture Division, Office of Industries, U.S. International Trade Commission. For information on the legal aspects of the study, contact William Gearhart (202-252-1039) (after 1/11/91—202-205-3091), Office of the General Counsel, U.S. International Trade Commission. Hearing-impaired persons can obtain information on this study by contacting our TDD terminal on (202) 252-1810 (after 1/11/91—202-205-1810).

Background

In its letter, the Committee stated that it was requesting that the Commission conduct the investigation "for the purposes of assessing current and proposed practices and policies of the Canadian Government with respect to the apple industry, particularly the proposed national supply management program for apples in Canada." As requested by the Committee, the Commission will seek to provide in its report, to the extent possible, the following information:

(1) The purpose, nature, quantity, and use of the policies and practices of the Canadian national and provincial governments affecting apples, including:

(a) Rebates provided to retailers by Canadian marketing organizations;

(b) Advertising allowances offered to retailers by marketing organizations or national or provincial agencies;

(c) Payments to growers under the Agricultural Stabilization Act (ASA), the National Tripartite Price Stabilization Program, and the British Columbia Farm Income Insurance Program when average prices fall below benchmark costs, and how the benchmark prices are set; and

(d) Other import, price, and supply proposals being considered by the National Farm Products Marketing Council.

(2) The volume and value of U.S. imports of fresh apples from Canada over the last 5 years, with special emphasis on how such imports have concentrated in individual regional markets throughout the United States;

(3) An analysis of the competitive factors in each industry, including a comparison, by market regions wherever obtainable, of sales prices of U.S. and Canadian apples in the U.S. and Canadian markets, and an analysis of each country's costs of production;

(4) A comparison of the quality of U.S. and Canadian apples destined for the fresh apple market;

(5) A comparison of the consumption and utilization trends in Canada and the United States for apples destined for the fresh and processed market; and

(6) A comparison of total Canadian and U.S. apple production by region and province over the last 5 years.

Written Submissions

Interested persons are invited to submit written statements concerning the investigation. Written submissions to be considered by the Commission should be received by the close of business on May 3, 1991. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Issued: November 21, 1990.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 90-27935 Filed 11-27-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-319]

Investigation

In the matter of Certain Automotive Fuel Caps and Radiator Caps and Related Packaging and Promotional Materials.

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 23, 1990, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Stant, Inc., 1620 Columbia Avenue, Connersville, Indiana 47331-9990. Supplements to the complaint were filed on November 8, 1990, and November 19, 1990. The complaint as supplemented alleges violations of subsections (a)(1)(B)(i) and (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain automotive fuel caps and radiator caps by reason of alleged infringement of U.S. Letters Patents 4,091,955, 4,177,931, 4,083,209, 4,765,505, 4,676,390, and 3,878,965, of certain packaging and promotional literature for fuel caps and radiator caps, including parts catalogues, by reason of alleged infringement of U.S. Registered Trademarks Nos. 814,866 and 1,507,054, and of certain promotional literature, including parts catalogues, by reason of alleged infringement of U.S. Registered Copyright Nos. TX 1,783,598, TX 2,134,460, TX 2,344,359, TX 2,876,401, and TX 2,851,757, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complaint requests that the Commission institute an investigation and, after a full investigation, issue permanent general exclusion orders and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

FOR FURTHER INFORMATION CONTACT: Gary M. Hnath, Esq. or Linda C. Odom, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on November 20, 1990, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine

(a) Whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain automotive fuel caps and radiator caps by reason of infringement of claims 1-9 of U.S. Letters Patent 4,091,955, claims 1-12 of U.S. Letters Patent 4,177,931, claims 1-17 of U.S. Letters Patent 4,083,209, claims 1-15 of U.S. Letters Patent 4,765,505, claims 1-36 or 38-42 of U.S. Letters Patent 4,676,390, or claims 1-9 of U.S. Letters Patent 3,878,965;

(b) Whether there is a violation of subsection (a)(1)(C) in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain fuel caps and radiator caps, or promotional literature and packaging for fuel caps and radiator caps, including parts catalogues, by reason of infringement of U.S. Registered Trademark Nos. 814,866 or 1,507,054;

(c) Whether there is a violation of subsection (a)(1)(B)(i) in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain promotional literature, including parts catalogues, by reason of infringement of U.S. Registered Copyright Nos. TX 1,783,598, TX 2,134,460, TX 2,344,359, TX 2,876,401, or TX 2,851,757; and

(d) Whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this Notice of Investigation shall be served:

(a) The complainant is: Stant Inc., 1620 Columbia Avenue, Connersville, Indiana 47331-9990.

(b) The respondents are the following companies alleged to be in violation of section 337, and the parties upon which the complaint is to be served:

Gin Seng Industrial Co., Ltd., No. 115, Lane 288, Sec. 1 An-Ho Road, Tainan 70901 Taiwan.

Chieftain-Uniworld Corp. d/b/a Chieftain Automotive Products, 20 Revco Road, North Augusta, South Carolina 29841.

Transworld Products, Inc., 11005 West 60th Street, suite 310, Shawnee Mission, Kansas 66203.

(c) Gary M. Hnath, Esq., and Linda C. Odom, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., room 401, Washington, DC 20436, shall be the Commission investigative attorneys; and

(3) For the investigation so instituted, Janet D. Saxon, Chief, Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the Notice of Investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR § 210.21. Pursuant to §§ 201.16(d) and (210.21(a) of the Commission's Rules, 19 CFR §§ 201.11(d) 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint and this Notice of Investigation. Extensions of time for submitting responses to the complaint and Notice of Investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice, and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order, or a cease and desist order, or both, directed against such respondent.

Issued: November 20, 1990.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 90-27940 Filed 11-27-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-461 (Final)]

Gray Portland Cement and Cement Clinker From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-461 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of gray portland cement and cement clinker, provided for in subheading 2523.10.00, 2523.29.00, and 2523.90.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LFTV). Commerce is scheduled to make its final LTFV determination on or before March 15, 1991, and the Commission will make its final injury determination within 45 days after receipt of Commerce's final determination (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: November 15, 1990.

FOR FURTHER INFORMATION CONTACT: Brian Walters (202-252-1198), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments

who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of gray portland cement and cement clinker from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on May 18, 1990, by the Ad Hoc Committee of Southern California Producers of Gray Portland Cement, of Washington, DC. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (55 FR 28465, July 11, 1990).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the later entry for good cause shown by the person desiring to file the entry.

Public Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order and Business Proprietary Information Service List

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later then twenty-one (21) days after the application of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on March 1, 1991, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on March 21, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Request to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 11, 1991. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a perhearing conference to be held at 9:30 a.m. on March 14, 1991, at U.S. International Trade Commission Building. Pursuant to § 207.22 of the Commission's rules (19 CFR 207.22) each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is March 14, 1991. If prehearing briefs contain business proprietary information, a nonbusiness proprietary version is due March 15, 1991.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

Prehearing briefs submitted by parties must conform with the provisions of §207.22 of the Commission's rules (19 CFR 207.22) and should include all legal arguments, economic analyses, and factual materials relevent to the public hearing. Posthearing briefs submitted by parties must conform with the provisions of §207.24 (19 CFR 207.24) and must be submitted not later than the close of business on March 27, 1991. If posthearing briefs contain business proprietary information, a nonbusiness proprietary version is due March 28, 1991. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigation on or before March 27, 1991.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than April 1, 1991. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs. A nonbusiness proprietary version of such additional comments is due April 2, 1991.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to §207.20 of the Commission's rules (19 CFR 207.20)

Issued: November 21, 1990.
By order of the Commission.

[FR Doc. 90–27936 Filed 11–17–90; 8:45 am]
BILLING CODE 7020–02–M

[Investigation No. 337–TA–316]

Commission Determination Not To Review Initial Determination Dismissing Respondent Maple Technologies From the Investigation

In the matter of Certain Power Transmission Chains, Chain Assemblies, Components Thereof, and Products Containing Same.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) dismissing respondent Maple Technologies (Maple) from the above-captioned investigation.

ADDRESSES: Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: George Thompson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436; telephone 202–252–1090.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–252–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation effective August 15, 1990. On October 15, 1990, the presiding ALJ issued an ID (Order No. 8) pursuant to Commission interim rule 210.50(a) dismissing Maple from the complaint and notice of investigation. Maple is an unincorporated subsidiary of respondent Tesma International, Inc. (TESMA).

No petitions for review of the ID or government agency comments were received.

Authority: This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53 (19 CFR 210.53).

Issued: November 20, 1990.
By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 90–27937 Filed 11–27–90; 8:45 am]
BILLING CODE 7020–02–M

[Investigation No. 332–304]

Red Tart Cherries: Economic and Competitive Factors Affecting the U.S. Industry

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of a public hearing.

EFFECTIVE DATE: November 19, 1990.

SUMMARY: Following receipt on October 17, 1990, of a request from the Committee on Ways and Means, U.S. House of Representatives, the Commission instituted investigation No. 332–304, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of reporting on the economic and competitive conditions affecting the red tart cherry industry.

More specifically, the Committee has requested that the Commission should, to the extent possible, develop information pertinent to the red tart cherry industry in the United States, including, but not limited to, the following factors:

(1) The competitive factors affecting the domestic red tart cherry industry, competition from imports of red tart cherries and red tart cherry products;

(2) The effect that the European Community's restriction on imported red tart cherries and red tart cherry products has had, and may continue to have, on world trade of red tart cherries and red tart cherry products; and

(3) The extent to which unfair trade practices and barriers to trade by other competing countries are impeding the marketing abroad of domestically produced red tart cherries and red tart cherry products.

The Committee requested that the Commission submit its report not later than July 16, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen Burket (202–252–1318) (after 1/4/92—202–205–3318) or David Ingersoll (202–252–1309) (after 1/4/91—202–205–3309), Agriculture Division, Office of Industries, U.S. International Trade Commission. Hearing-impaired persons can obtain information on this study by contacting our TDD terminal on (202) 252–1810 (after 1/4/91—202–205–1810).

Public Hearing

A public hearing in connection with this investigation will be held beginning at 9:30 a.m. on March 12, 1991, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. All persons have the right to appear by counsel or in person, to present information, and to be heard. Reqeusts to appear at the hearing should be filed in writing with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, not later than the close of business (5:15 p.m.) on February 26, 1991. The deadline for filing prehearing briefs (original and 14 copies) is March 5, 1991. The deadline for filing post hearing briefs is the close of business on March 26, 1991.

Written Submissions

Interested persons may submit written statements concerning the investigation. To be assured of consideration, written statements (original plus 14 copies) must be received by the close of business (5:15 p.m.) March 26, 1991. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform to the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Issued: November 21, 1990.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 90–27942 Filed 11–27–90; 8:45 am]
BILLING CODE 7020–02–M

[Investigation No. 337–TA–320]

Investigation

In the matter of Certain Rotary Printing Apparatus Using Heated Ink Composition, Components Thereof, and Systems Containing Said Apparatus and Components.

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1137.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 23, 1990, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Markem Corporation, 150 Congress Street, Keene, New Hampshire 03431. An amendment to the complaint was filed on November 14, 1990. The complaint, as amended, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain rotary printing apparatus using heated ink composition, components thereof, and systems containing said appartus and components, by reason of alleged infringement of claims 1–4 and 6 of U.S. Letters Patent 4,559,872; and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on November 20, 1990, *ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain rotary printing apparatus using heated ink composition, components thereof, and systems containing said apparatus and components, by reason of alleged infringement of claims 1, 2, 3, 4 or 6 of U.S. Letters Patent 4,559,872, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Markem Corporation, 150 Congress Street, Keene, New Hampshire 03431.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Dato Pack Europa, S.A., Sant Vicenc, 51, 08208-Sabadell, (Barcelona) Spain.
Franklin Manufacturing Corp., 692 Pleasant Street, Norwood, Massachusetts 02062.
Professional Sales Associates, Inc., 705 Rockland Road, Lake Bluff, Illinois 60044.
Dato Coding Systems, Inc., Oakland Commerce Center, 3221 N.W. 10th Terrace, suite 507, Ft. Lauderdale, Florida 33307.
Imaje, S.A., ZA De L'Armailler, B.P. 330, Bourg Les Valence, France 26503.

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401Q, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to such respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: November 20, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–27939 Filed 11–27–90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–290 (Modification Proceeding)]

Commission Decision To Provisionally Accept Complainants' Petition To Modify Commission Relief

In the matter of Certain Wire Electrical Discharge Machining Apparatus and Components Thereof.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined pursuant to 19 CFR 211.57 to provisionally accept Complainants' Emergency Petition for Modification of ITC Relief and to certify the petition to the Chief Administrative Law Judge for designation of a presiding administrative law judge (ALJ), who is to hold a hearing and issue, as expeditiously as practicable, a recommended determination in accordance with 19 CFR 211.57(b) concerning whether wire electrical discharge machining apparatus (wire EDMs) imported or sold with modified assemblies are being, or are likely to be, retrofitted with replacement nozzles of the design used in the prior assemblies, thereby putting into service wire EDMs imported or sold by respondents that utilize the prior, infringing assemblies. The RD is to include a recommendation from the presiding ALJ regarding whether the present remedial orders should be modified.

ADDRESSES: Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436; telephone: 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Craig L. McKee, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436; telephone 202–252–1117. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–252–1810.

SUPPLEMENTARY INFORMATION: On January 23, 1989, Elox Corporation (Elox) and A.G. fur Industrielle Elektronik (AGIE) filed a complaint under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) alleging violation of section 337 in the importation and sale of certain wire EDMs that infringed U.S. Letters Patent 3,928,163 (the '163 patent) owned by AGIE. The Commission instituted an investigation of the complaint and issued a notice of investigation that was published in the **Federal Register** on March 8, 1989 (54 FR 9906). The respondents named in the notice of investigation were Sodick Co., Ltd., Sodick, Inc., KGK Co., KGK International Co., Maruka Machinery Co., Ltd., Maruka Machinery Corporation of America, Yamazen Co., Ltd., Yamazen USA, Inc., and Bridgeport Machines, Inc. The investigation was terminated with respect to Maruka Machinery Co., Ltd. and Maruka Machinery Corporation of America pursuant to a consent order and consent order agreement between complainants Elox and AGIE and respondents Maruka Japan and Maruka USA. The remaining respondents hereinafter are referred to as the Sodick respondents.

On December 7, 1989, the presiding ALJ issued an initial determination (ID) finding a violation of section 337 in the investigation. Specifically, she found that each respondent had infringed claims 1, 7, 9, 20, and 22 of the '163 patent, each of which claims she found to be valid and enforceable. She further found that it was "unnecessary to reach or discuss the question of whether any respondent also induced infringement by another or contributed to infringement of any other of the claims by another. If those issues were reached, it would be found that some respondents, by importing and selling replacement parts specially made for use with Sodick's wire EDM machine, contributed to infringement of at least one claim of the '637 [sic] patent." ID at 54.

The Sodick respondents filed a petition for review of the ID. Complainants Elox and AGIE and the Commission investigative attorney (IA) filed responses in opposition to the petition for review.

The Commission determined to review only those portions of the ID involving the issues of claim construction, anticipation, obviousness, infringement under the doctrine of equivalents, unenforceability for inequitable conduct, and domestic industry, and not to review the remainder of the ID. Complainants, respondents, and the IA filed briefs regarding the issues under review, remedy, the public interest, and bonding.

Upon review, the Commission concluded that there was a violation of section 337 in the importation, sale for importation, or sale in the United States of wire EDMs. The Commission affirmed the ALJ's determination on the issues of claim construction, anticipation, obviousness, infringement under the doctrine of equivalents, and unenforceability for inequitable conduct, and modified the ALJ's determination on the issue of domestic industry.

The Commission also determined that a limited exclusion order and cease and desist orders directed to four U.S. respondents were the appropriate form of relief. The limited exclusion order prohibited the entry of infringing wire EDMs, in assembled or unassembled form, manufactured by Sodick. The Commission further noted that the ALJ did not make determinations on the issues of contributory and induced infringement and, given complainants' failure to seek review of the final ID on those issues, it determined not to issue a limited exclusion order covering replacement parts—specifically, wire guides and guide nozzles. On May 8, 1990, the Commission's order became final at the expiration of the Presidential review period.

Complainants Elox and AGIE filed an emergency petition for modification of ITC relief on May 21, 1990, requesting modification of Commission relief to prevent respondents from circumventing the Commission's existing limited exclusion order and cease and desist orders. Specifically, complainants asserted that wire EDMs imported or sold with modified assemblies may be easily retrofitted with replacement nozzles of the design used in the prior assemblies, thereby putting into service Sodick wire EDMs with the prior, infringing assemblies. Complainants maintained that the availability of the Sodick wire EDMs with the modified wire guide and flushing assemblies constituted a changed circumstance under Commission interim rule 211.57(a). Consequently, complainants argued that supplementation of the existing remedial orders to prohibit importing, selling, or otherwise dealing in the prior nozzles and related components for the prior assemblies is warranted.

On May 9, 1990, Judge Milton I. Shadur of the U.S. District Court for the Northern District of Illinois issued a preliminary injunction effectively preventing circumvention of the Commission's remedial orders by the importation of wire EDMs incorporating the modified assemblies. On October 5, 1990, the preliminary injunction expired.

The Commission has determined to provisionally accept complainants' petition. The proceeding has been certified to the Chief ALJ for designation of a presiding ALJ. The presiding ALJ is to conduct adversary proceedings, as necessary, to take evidence, make findings of fact and conclusions of law, and issue, as expeditiously as practicable, an RD as to whether Sodick wire EDMs imported or sold with modified assemblies are being, or are likely to be, retrofitted with replacement nozzles of the design used in the prior assemblies, thereby putting into service Sodick wire EDMs with the prior, infringing assemblies.

Notice of the RD will be published in the **Federal Register**. The parties to the original investigation, interested members of the public, and other federal agencies will be permitted to file written comments on the RD within 10 days after publication of the notice.

After reviewing the RD, all information obtained in the modification proceeding, and pertinent information on the record of investigation No. 337–TA–290, the Commission will determine whether the exclusion order and/or the four cease and desist orders should be modified.

Authority: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in interim rule 211.57 (19 CFR § 211.57).

Written Submissions

In accordance with 19 CFR 211.57(b), the petition, the Commission's order instituting the modification proceeding, and this notice shall be served on each former party to the original investigation and, within thirty (30) days after service of the petition, any party served may file an answer to it.

Issued: November 16, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–27938 Filed 11–27–90; 8:45 a.m.]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub No. 2)]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Decision.

SUMMARY: The Interstate Commerce Commission makes minor adjustments to its methodology for calculating the labor component of the index underlying the quarterly Rail Cost Adjustment Factor (RCAF) in order to incorporate three new forms of payment not previously included. The Commission is accepting comments from any interested party concerning the revised methodology.

DATES: Written comments are due on December 18, 1990.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 290 (Sub No. 2) to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 275-7354 or Leslie J. Selzer (202) 275-7627 (TDD for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, (202) 289-4357/4359 (assistance for the hearing impaired is available through TDD services (202) 275-1721).

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

Authority: 49 U.S.C. 10321 and 10707a, 5 U.S.C. 553.

Decided: November 16, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc 90-27928 Filed 11-27-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31785]

Exemption, St. Louis Southwestern Railway Co.—Trackage Rights Exemption—Missouri Pacific Railroad Co.

Missouri Pacific Railroad Company has agreed to grant overhead trackage rights to St. Louis Southwestern Railway Company over its line of railroad between Big Sandy, TX, and MP Jct, at or near Dallas, TX, a distance of approximately 95.3 miles. The trackage rights were to become effective on or after November 22, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John MacDonald Smith, St. Louis Southwestern Railway Company, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: November 21, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-27927 Filed 11-27-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31770]

The Golden Cat Railroad Corp. (Delaware)—Acquisition and Operation Exemption—The Golden Cat Railroad Corp. (Illinois)

The Golden Cat Railroad Corporation (GCDE), a noncarrier Delaware corporation, has filed a notice of exemption to acquire and operate the "Delta Branch" line, now owned and operated by an Illinois corporation of the same name (GCIL). The line extends between milepost 149.5, at or near Delta, MO, and milepost 160.3, at or near Newman Spur, MO, a distance of approximately 10.8 miles.

GCDE will operate as a common carrier over the line. Cape County Development, Inc., doing business as The Jackson & Southern Railroad (JSR), will perform physical rail service for GCDE over the line on a nonexclusive basis as it has done for GCIL previously. JSR will not assume the status of a rail common carrier.

Any comments must be filed with the Commission and served on: Suzanne L. Saxman, D'Ancona & Pflaum, 30 North LaSalle Street, suite 2900, Chicago, IL 60602.

GCDE shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 7, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-27651 Filed 11-27-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than December 10 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 10, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 5th day of November 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/Workers/Firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Andres Sportswear (workers)	Fall River, MA	11/05/90	10/20/90	25,019	Sportswear
Ansewn Shoe Co. (company)	Bangor, ME	11/05/90	10/25/90	25,020	Shoes.
Brooklyn Steel & Tube Corp. (workers)	Brooklyn, NY	11/05/90	10/20/90	25,021	Tubing.
Brush Fuses, Inc. (USWA)	Des Plaines, IL	11/05/90	10/26/90	25,022	Fuses.
Campbell Container Co. (workers)	Moorestown, NJ	11/05/90	10/11/90	25,023	Soup Cans
Chamberlain Corp. (workers)	Chicago, IL	11/05/90	10/21/90	25,024	Weapons.
Cluett Arrow Co. (workers)	Bremen, GA	11/05/90	09/21/90	25,025	Shirts.
Custom-Bilt Machinery (workers)	Chicago, IL	11/05/90	09/03/90	25,026	Rotary Trimmers
Cytemp Specialty Steel Div. (USWA)	Pittsburgh, PA	11/05/90	10/25/90	25,027	Steel.
Eagle Shirtmakers (ACTWU)	Mahanoy City, PA	11/05/90	09/21/90	25,028	Shirts.
Electri Cord (workers)	Westfield, PA	11/05/90	10/21/90	25,029	Power Cords.
G.A.F (workers)	Linden, NJ	11/05/90	10/19/90	25,030	Soap & Detergents.
Gary Co., Inc. (workers)	Gallatin, TN	11/05/90	10/24/90	25,031	Shirts.
Gen. Motors-Fisher Guide Div. (workers)	Trenton, NJ	11/05/90	10/23/90	25,032	Auto Parts.
Haynes & Shirley Drilling, Inc. (workers)	Electra, TX	11/05/90	10/12/90	25,033	Oil & Gas.
Heidor Industries (UTWA)	Morristown, NJ	11/05/90	10/22/90	25,034	Pool Liners.
Intl Shoe Machine Corp. (workers)	St. Charles, NO	11/05/90	10/16/90	25,035	Shoes.
Isotronics, Inc. (workers)	New Bedford, MA	11/05/90	10/12/90	25,036	Micro Packages.
Kop-Coat, Inc. (workers)	Newark, NJ	11/05/90	10/26/90	25,037	Paint Coatings.
Kubar Bearings (workers)	Troy, NY	11/05/90	10/23/90	25,038	Ball Bearings.
Lebanon Foundry & Machine Co. (USWA)	Lebanon, PA	11/05/90	10/25/90	25,039	Castings.
Level Line Inc. (workers)	Lakewood, NJ	11/05/90	10/20/90	25,040	Building Supplies.
Lewistown Specialty Yarns, Inc. (workers)	Lewistown, PA	11/05/90	10/18/90	25,041	Yarn.
Lucas Machine Div. (workers)	Boston, MA	11/05/90	10/26/90	25,042	Sportswear.
Ma-Zel Sportswear (ILGWU)	Boston, MA	11/05/90	10/26/90	25,043	Sportswear.
McClanahan Lumber, (workers)	Forks, WA	11/05/90	10/19/90	25,044	Lumber.
National Broach & Machine (USWA)	Mt. Clemens, MI	11/05/90	10/25/90	25,045	Machines.
NorVal, Inc. (ILA)	Philadelphia, PA	11/05/90	10/15/90	25,046	Cement.
Pantasote, Inc. (UTWAO)	Passaic, NJ	11/05/90	10/22/90	25,047	Plastic Packaging.
Quinault Shingle & Lumber Co. (workers)	Amanda Park, WA	11/05/90	10/22/90	25,048	Lumber.
R&J Janitorial Serv. (workers)	Salem, VA	11/05/90	10/23/90	25,049	Component Parts.
Ringling Mfg., (workers)	Ringling, OK	11/05/90	11/05/90	25,050	Apparel.
SESA Fluorsper, Inc. (workers)	Eagle Pass, TX	11/05/90	10/19/90	25,051	Fluorsper.
Shenango, Inc. (USWA)	Neville Island, PA	11/05/90	10/25/90	25,052	Ingot Moulds.
Simon-Horizon, inc. (company)	Tyler, TX	11/05/90	10/24/90	25,053	Oil & Gas.
Simon-Horizon, inc. (company)	Houston, TX	11/05/90	10/24/90	25,054	Oil & Gas.
Simon-Horizon, inc. (company)	Midland, TX	11/05/90	10/24/90	25,055	Oil & Gas.
Simon-Horizon, inc. (company)	Denver, CO	11/05/90	10/24/90	25,056	Oil & Gas.
Simon-Horizon, inc. (company)	Oklahoma City, OK	11/05/90	10/24/90	25,057	Oil & Gas.
Simon-Horizon, inc. (company)	Dallas, TX	11/05/90	10/24/90	25,058	Oil & Gas.
Simon-Horizon, inc. (company)	Lubbock, TX	11/05/90	10/24/90	25,059	Oil & Gas.
Skagit Mfg (GMP)	Sedro Woolley, WA	11/05/90	10/26/90	25,060	Oil & Gas.
Valley Wood (workers)	Valley, WA	11/05/90	10/03/90	25,061	Lumber.

[FR Doc. 90-27913 Filed 11-27-90; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 10, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 10, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 13th day of November 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
Art San (Workers)	Neptune, NJ	11/13/90	10/31/90	25,062	Swimwear.
Bunker Hill Mining Co. (U.S.) inc. (Wkrs)	Kellogg, ID	11/13/90	10/31/90	25,063	Zinc Metal.
Campbell's Sportswear (Workers)	Woodburg, TN	11/13/90	10/31/90	25,064	Blouses.
Clarostat Mfg. Co., Inc. (Workers)	Richmond, ME	11/13/90	11/01/90	25,065	Components.
DataCard Corp. (Workers)	Minneapolis, MN	11/13/90	10/30/90	25,066	Data.
Enthone-OMI, (Workers)	Nutley, NJ	11/13/90	10/12/90	25,067	Metal.
Fairfield Jersey, Inc. (ILGWU)	Paterson, NJ	11/13/90	11/02/90	25,068	Fabrics.
Gates Mills, Inc. (Workers)	Johnstown, NY	11/13/90	09/21/90	25,069	Gloves.
Inseiman Drilling Fluids (Workers)	Ardmore, OK	11/13/90	10/30/90	25,070	Drilling Fluids.
Karg Brothers, Inc. (Workers)	Johnstown, NY	11/13/90	09/21/90	25,071	Cow Hides.
Kelmark, Inc. (ILGWU)	South River, NJ	11/13/90	10/31/90	25,072	Sportswear.
Lewis Bolt & Nut Co. (IUE)	Minneapolis, MN	11/13/90	11/01/90	25,073	Bolt and Nuts.
Made Well Dress, Co. (ILGWU)	Orange, NJ	11/13/90	11/01/90	25,074	Dresses.
National Semiconductor (Workers)	Puyallup, WA	11/13/90	10/24/90	25,075	Computers.
Orval Kent Food Co. (Workers)	Philadelphia, PA	11/13/90	10/28/90	25,076	Seafood.
Paterson Laundry & Dye Work (ILGWU)	Paterson, NJ	11/13/90	11/02/90	25,077	Fabrics.
Private Label Enterprises, Corp. (ILGWU)	Kearny, NJ	11/13/90	11/01/90	25,078	Jackets.
Qualitex Inc. (ACTWU)	Johnston, RI	11/13/90	10/30/90	25,079	Threads.
Standard Motor Products (Workers)	New York, NY	11/13/90	10/17/90	25,080	Auto Parts.
Texaco Prod., Inc. (Workers)	Skellytown, TX	11/13/90	11/05/90	25,081	Oil and Gas.
United Technologies Auto., Inc. (IAM)	Kenton, OH	11/13/90	10/26/90	25,082	Auto Coil and Wires.
V'Lora Swimwear, Inc. (ILGWU)	Bloomfield, NJ	11/13/90	11/01/90	25,083	Swimwear.
Whirlpool Corp. Marion Div. (Workers)	Marian, OH	11/13/90	10/27/90	25,084	Ovens and Dryers.
Wynwear Co (Workers)	Brooklyn, NY	11/13/90	11/03/90	25,085	Garments.

[FR Doc. 90-27914 Filed 11-27-90; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program: Certification Relating to Reduced Credits

Section 3302(c)(2) of the Federal Unemployment Tax Act (FUTA) provides for the repayment, through reduced credits, of outstanding balances of repayable advances made to States under Title XII of the Social Security Act. States that meet specific criteria under subsections (c), (f), or (g) of section 3302 may have the credit reduction limited or not applied. The certification to the Secretary of the Treasury of States subject to the credit reduction for 1990 and States that qualify for credit reduction relief is published below.

Dated: November 15, 1990.

Mary Ann Wyrsch,

Director, Unemployment Insurance Service.

November 13, 1990.

The Honorable Nicholas F. Brady,
Secretary of the Treasury, Washington, DC.

Dear Secretary Brady: This is to verify the States which have an outstanding balance of repayable advances under Title XII of the Social Security Act and to notify you of my determination as to the status of the States with regard to the reduction in credit provisions of section 3302(c)(2) of Federal Unemployment Tax Act [FUTA].

Pursuant to delegation of authority to me, I have determined that employers in one State are subject to a reduction in FUTA offset credit for taxable year 1990:

Michigan

Under certain conditions, subsection (f) of Section 3302 of the FUTA limits or caps the FUTA tax credit reduction in a year to an amount which does not exceed the greater of 0.6 percent of wages subject to FUTA or the percentage reduction that was in effect for the preceding taxable year. To qualify for a cap in taxable year 1990, the Secretary of Labor (or her delegate) must determine that a State has taken no action in the 12 months ending on September 30, 1990, unless required under State law in effect before August 13, 1981, which has resulted or will result in:

(1) a reduction in the State's unemployment tax effort, or

(2) a net decrease in the solvency of the State unemployment compensation system and, further, that:

(3) the State unemployment tax rate for the calendar year equals or exceeds the average benefit cost ratio for calendar year 1989, and

(4) the outstanding balance of advances to the State on September 30 of calendar year 1990 was not greater than the outstanding balance for such State on September 30, 1987.

Pursuant to delegation of authority to me, I have determined that under these criteria Michigan qualifies for the cap, but is not subject to reduced FUTA credits for 1990 because it also qualifies for avoidance of the offset credit reduction under subsection (g) of Section 3302 as noted below.

Subsection (g) of Section 3302 give a State the option of repaying on or before November 9 a portion of its outstanding loans each year through transfer of a specified amount from its account in the Unemployment Trust Fund (UTF) to the Federal Unemployment Account (FUA) in the UTF. The transfer to FUA would be in lieu of a reduced credit in the Federal tax paid by the employers in the State. The State must meet, as determined by the Secretary of Labor (or her delegate), the following criteria in order to avoid the offset credit reduction for 1990:

(1) make repayments to FUA during the one-year period ending on November 9, 1990, of an amount not less than the sum of all loans made to the State in the one-year period ending on such November 9, plus the potential additional taxes due by reason of the reduced credit applicable to taxable year 1990;

(2) have or will have sufficient funds remaining after such repayments to pay benefits for at least three months from November 1 of the same year without receiving another Title XII advance; and

(3) have taken action by amendment of the State law, after the date of the first advance is taken into account, to increase the net solvency of its UI system, and such net increase equals or exceeds the potential additional taxes for such taxable year.

Pursuant to delegation of authority to me, I have determined that Michigan qualifies under these criteria and thus its employers are not subject to reduced FUTA credits for 1990.

Finally, please note that the State of New Jersey was omitted from the October 31, 1990,

certifications required by sections 3304(c) and 3303(b), FUTA, for the "normal" and "additional" tax credits. This is because Section 3304(c) of the FUTA requires that the Secretary shall not certify a State if that State's law no longer contains the provisions specified in section 3304(a). An issue under Section 3304(a) currently exists with New Jersey. The omission of the State of New Jersey does not yet constitute a withholding of the certifications. The Secretary will notify you directly if New Jersey is certified or if the certifications are actually withheld.

Sincerely,

Mary Ann Wyrsch,

Director, Unemployment Insurance Service.

[FR Doc. 90-27915 Filed 11-27-90; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-90-169-C]

BethEnergy Mines, Inc.; Petition for Modification of Application of Mandatory Safety Standard

BethEnergy Mines, Inc., box 143 Eighty Four, Pennsylvania 15330 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its No. 84 Mine (I.D. No. 36-00958) located in Washington County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers be kept at least 150 feet from pillar workings.

2. Petitioner operates permissible longwall face equipment with an a.c. power system limited to 1000 volts. In order to supply such power to a longwall system from a power system limited to 1000 volts, the following problems arise:

(a) The ampacity requirements at 1000 volts are such that very large and heavy cables are required. These large, heavy cables can cause congested work space, handling problems, which may present a hazard;

(b) Poor voltage regulation resulting in motor overheating and lack of torque to be supplied to the face conveyor; and

(c) At 1000 volts, the interrupting limits of the available circuit breakers are approached resulting in a diminished safety factor.

3. As an alternate method, petitioner proposes to use 4160 volt alternating current to operate the permissible face equipment with specific equipment and conditions as outlined in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1990. Copies of the petition are available for inspection at that address.

Dated: November 19, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-27916 Filed 11-27-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-165-C]

Cyprus Empire Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Cyprus Empire Coal Corporation, P.O. box 68, Craig, Colorado 81625 has filed a petition to modify the application of 30 CFR 75.800 (high voltage circuits; circuit breakers) to its Eagle No. 5 Mine (I.D. No. 05-01370) located in Moffat County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that high-voltage circuits entering the underground area of any coal mine be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained. Such breakers must be equipped with devices to provide protection against undervoltage grounded phase, short circuit, and overcurrent.

2. As an alternate method, petitioner proposes to use contactors to obtain the required protection.

3. In support of this request, petitioner states that only permanent belt drives and pumps will be affected by this petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1990. Copies of the petition are available for inspection at that address.

Dated: November 19, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-27917 Filed 11-27-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-167-C]

Valley Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Valley Coal Company, P.O. Box 86, Alverda, Pennsylvania 15710-0086 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Leonard Run Mine (I.D. No. 36-08089) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries, and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use air in the belt haulage entries to ventilate active working places.

(a) In support of this request, petitioner states that an early warning fire detection system would be installed with carbon monoxide (CO) sensors in all belt entries utilized as intake aircourses. The CO system would be capable of giving warning of a fire for four hours should the power fail;

(b) A visual alert signal would be activated when the CO level is 10 parts per million (ppm) above the ambient level and an audible signal would sound at 15 ppm above the ambient level. All persons would be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The CO monitoring system would initiate the fire alarm signals at an attended surface location where there is two-way communication. This responsible person would notify the working sections and other personnel who may be endangered when the established alarm levels are reached.

BEST COPY AVAILABLE

(c) The CO monitoring system would be visually examined at least one each shift when the belts are in operation and tested for functional operation weekly to ensure the monitoring system is functioning properly. The CO sensors would be calibrated monthly with known concentrations of CO and air mixtures; and

(d) If at any time the CO monitoring system has been deenergized for reasons such as routine maintenance or failure of a sensor unit, the belt conveyor may continue to operate provided the affected portion of the belt conveyor entry would be continuously patrolled and monitored for CO by a qualified person using a hand-belt CO detecting device.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1990. Copies of the petition are available for inspection at that address.

Dated: November 19, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-27918 Filed 11-27-90; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Establishment

The Assistant Director for Education and Human Resources has determined that the establishment of Proposal Review Panel for Undergraduate Science, Engineering, and Mathematics Education (USEME) is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of committee: Proposal Review Panel for Undergraduate Science, Engineering, and Mathematics Education (USEME)

Purpose: To provide advice and recommendations on the merit of proposals or applications submitted to the USEME Program for financial support.

Balanced membership plan: Membership will be selected on an "as needed" basis in response to specific proposals/applications/sites to be reviewed. Members will be selected for their demonstrated scientific, engineering, and mathematics expertise so as to represent a reasonable balance of capability in the various subfields of the proposals to be reviewed. Consideration will also be given to achieving institutional and geographic balance, and to enhancing representation for women, minority, younger and disabled scientists.

Responsible NSF official: Dr. Robert Watson, Director, Division of Undergraduate Science Engineering Materials Education. National Science Foundation, room 636, 1800 G Street, NW., Washington, DC 20550 (202) 357-9644

Dated: November 21, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-27967 Filed 11-27-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 5, 1990 through November 15, 1990. The last biweekly notice was published on November 14, 1990 (55 FR 47564).

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 28, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is

available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket No. STN 50-530 Palo Verde Nuclear Generating Station (PVNGS), Unit 3, Maricopa County, Arizona

Date of amendment request: November 14, 1990

Description of amendment request: The proposed amendment request would postpone the performance of certain 18 month Surveillance Requirements (SR) until the upcoming refueling outage for Unit 3 to avoid a plant shutdown. The affected Technical Specifications are SR 4.8.2.1.d and SR 4.8.4.1.a.2 regarding battery capacity and molded case circuit breakers, respectively.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility

in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

STANDARD 1 - Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification change does not involve a significant increase in the probability or consequences of an accident previously evaluated because:

Station Batteries

The 125 volt batteries are subject to periodic surveillance testing to verify electrolyte level, specific gravity, cell voltage and general condition of the batteries. The capacity of all batteries was demonstrated to be greater than required during performance of the 18 month surveillance test of station batteries (32ST-9PK03) conducted during the 1989 refueling outage.

Battery	Min. Voltage Required	Min Voltage Required
3EPKAF11	109.79	112.2
3EPKBF12	109.58	115.56
3EPKCF13	108.58	117.9
3EPKDF14	106.39	116.1*

*Actual test voltage was 112.2 without cells 4 and 6. Subsequently, cells 4 and 6 have been replaced and credit to the battery is given for two cells at 1.95 vdc, the lowest value for any cell at the end of the discharge.

The capacity of the batteries is expected to increase through year 12, 80% of its life. Since these batteries are approximately seven years old, the capacity is projected to be greater during the 1991 tests than during the 1989 tests. Weekly and quarterly surveillance testing of the batteries provides assurance that the batteries are adequately maintained to perform their required function.

Molded Case Circuit Breakers

A review of the historical data on surveillance testing of "TED", "TJD", and "TEB", breakers was performed to assess past performance. These breakers are surveillance tested because they provide backup protection to the primary overcurrent device for containment penetrations. The reliability of these breakers has been established by successful completion of the "Molded Case Circuit Breaker Surveillance Test" (32ST-9ZZ74) in all units.

Breaker Type	Unit	Date
TED	1	09/14/89
TED	2	11/09/89
TED	3	04/28/89
TJD	1	03/08/90
TJD	2	04/10/90
TJD	3	04/28/89
TEB	1	01/30/89
TEB	2	07/21/89
TEB	3	04/04/89

The surveillance tests were performed during 1989 and 1990 with only one of the subject "TJD" breakers failing, no failures were recorded for the TED or TEB breakers during this period. The breaker failed to meet specifications during the test and was replaced. The replacement breaker was successfully tested. Because of the failure of the 10% representative sample, a second 10% surveillance test was generated and successfully performed.

Due to the loads being fed from Motor Control Circuit Breakers types TED, TJD, and TEB, they cannot be tested while the unit is on line.

Summary

Based on this evaluation and past surveillance testing of the circuit breakers and weekly and quarterly testing of the 125 volt batteries the proposed amendment will not involve a significant increase in the probability of an accident previously evaluated.

The 125 volt batteries are maintained in a fully charged condition and have sufficient stored energy to operate all necessary circuit breakers and to provide an adequate amount of energy for all required emergency loads for two hours after loss of AC power.

The subject breakers provide the backup protection for primary devices in a redundant scheme of two overcurrent devices in series. The primary overcurrent devices for the circuits with the "TED" breaker are 15 amp fuses. The primary overcurrent protection for the circuit with the "TJD" breaker is provided by a "TED" breaker, which has a 25 amp trip element. The "TED" and "TJD" provide the backup overcurrent protection with 250 amp trip elements. In a fault situation, the backup breakers would not react unless the primary device failed to clear the fault.

Therefore, the proposed amendment will not involve a significant increase in the consequences of an accident previously evaluated.

STANDARD 2 - Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification change will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not alter the current design or operation of the facility. The change allows an extension of certain surveillance intervals to permit performance of surveillance requirements during the next refueling outage currently scheduled to being on March 16, 1991. The extensions beyond those allowed by Technical Specification 4.0.2.a will not constitute a significant increase over the original test interval as they would constitute an increase of less than 20% of the allowable surveillance interval. Since there are no changes in the way the facility is being operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced by the proposed change. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

STANDARD 3 - Involve a significant reduction in a margin of safety.

The proposed Technical Specification change does not involve a significant reduction in a margin of safety. The proposed change to extend the time span for certain surveillance requirements to permit their performance during the next refueling outage (to begin in March 1991) will not constitute a significant increase (less than a 20% increase) beyond the allowable test interval.

The 125 volt batteries are subject to periodic surveillance testing to verify their general condition to ensure they are maintained in a fully charge condition and have sufficient stored energy to operate all necessary circuit breakers and to provide an adequate amount of energy for all required emergency loads for two hours after loss of AC power.

The subject breakers only provide the backup protection for primary devices in a redundant scheme of two overcurrent devices in series. In a fault situation, the backup breakers would not react unless the primary device failed to clear the fault. The past history on surveillance testing of the subject breakers establishes a good reliability of these circuit breakers and an extension of the testing interval would have little or no affect on the margin of safety.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Arthur C. Gehr, Esq., Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85073

NRC Project Director: James E. Dyer, Acting

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: November 5, 1990

Description of amendment request: The proposed Technical Specifications (TS) changes are requested in response to the Nuclear Regulatory Commission's Generic Letter (GL) 88-17, "Loss of Decay Heat Removal," dated October 17, 1988. One of the actions requested in the GL was for licensees to identify any TS for their facility that would restrict or limit the safety benefits of the actions identified in the GL and to request appropriate TS changes. High flow in the Shutdown Cooling (SDC) system during reduced Reactor Coolant System (RCS) inventory could result in air ingestion into the RCS. The air in the RCS could lead to vortexing in the SDC system pumps; thus, resulting in damage or failure of the pumps and subsequent loss of decay heat removal capability.

The proposed changes to TS 3.9.8.1 for Units 1 and 2 will delete the flow rates currently specified for Mode 6 (Refueling) operation. The current flow requirement for Mode 6 operation is equal to or less than 3000 gpm, or equal to or less than 1500 gpm when the RCS is drained to a level below mid-plane of the hot leg. The current flow requirements are applicable for the above conditions regardless of the decay heat level of the core. The proposed deletion of the specified flow rates will allow operation at lower flow rates when the RCS is at intermediate inventory levels. The reduced flow rates will decrease the likelihood of air ingestion into the RCS resulting in SDC pump vortexing which could lead to pump failure and subsequent loss of the decay heat removal capability.

The licensee also proposes changes to the TS Bases 3/4.9.8 to support the deletion of the specified flow rates for SDC during Mode 6 operation. The Bases also indicate that shutdown cooling flow must provide sufficient heat removal to match core decay heat generation and maintain the core exit temperature within the Mode 6 limit.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92.

The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information:

[1]involve a significant increase in the probability or consequences of an accident previously evaluated;

Previously evaluated accidents which could be impacted by SDC flow changes include a (1) boron dilution event, and a (2) loss of coolant flow. Sufficient flow for mixing will continue to be provided and the assumptions and conclusions of the Boron Dilution Event analysis presented in the FSAR [Final Safety Analysis Report] (Section 14.3) will be preserved. Also, two SDC loops will continue to provide the level of protection previously established by the safety analysis when there is less than 23 feet of water above the core, thereby ensuring that a single failure of the operating SDC loop will not result in a complete loss of decay heat removal capability.

This change will allow a variable SDC flow to be established when the RCS is partially drained to prevent vortexing. The established flow will provide SDC System performance commensurate with its design functions of removing decay heat and maintaining RCS temperature [less than or equal to] 140° F in MODE 6. Further, this change will provide a net improvement in SDC System reliability by reducing the probability of common mode failure due to vortexing during partially drained RCS conditions. Therefore, this change will not increase the probability or the consequences of an accident previously evaluated.

[2]create the possibility of a new or different type of accident from any accident previously evaluated;

This change does not represent a significant change in the configuration or operation of the plant. Specifically, no new hardware is being added to the plant as part of the proposed change, no existing equipment is being modified, nor are any significantly different types of operations being introduced. Variable flow of SDC is currently allowed in MODE 5 and will be similarly controlled in MODE 6.

The SDC System will still be operated in the same manner as before with the exception that the LPSI [Low Pressure Safety Inspection] pump flow will be throttled to match decay heat removal requirements. The system will maintain the same capacity for decay heat removal as before. No new or different kinds of accidents than any previously evaluated are being created. This change will actually help prevent a possible common mode failure of both LPSI pumps caused by vortexing and air entrainment while at partially drained conditions.

[3]involve a significant reduction in a margin of safety.

This change will ensure that the margin of safety is maintained. The system configuration will remain the same, and it will be operated in a manner less likely to cause vortexing. The system's capability for decay heat removal and mixing will be maintained, as will system redundancy. Administrative control minimum flow in MODE 6 is consistent with the philosophy of control currently applied in MODE 5 and promoted in Generic Letter 88-17, Enclosure 2, Section 3.5.2. Therefore, the proposed change will not reduce the margin of safety associated with this system.

The staff has reviewed and agrees with the licensee's analysis of the significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick Maryland.

Attorney for licensee: Jay E. Silbert, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: July 11, 1990

Description of amendment request: The proposed amendment would modify the Palisades Plant Technical Specifications (TS) section 4.1.1.a.4 to change the testing requirements of the Pressurizer Power Operated Relief Valves (PORV) from ASME Section XI category C to category B.

Currently the Palisades PORV's are identified in the TS as ASME Section XI, subsection IWV, Category C valves. Based on a recent engineering evaluation, Consumers Power Company has determined that this designation is technically incorrect in that this ASME category designation applies to self actuating valves, such as relief or check valves, whereas the PORV's are actuated via an external signal. The correct designation for the PORV's is ASME Category B as defined in ASME Section XI, Subsection IWV, paragraph IWV-3413. The testing requirements for category B valves are defined in Table IWV-3700-1, "Inservice Testing Requirements".

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee provided an analysis that addressed the above three standards in the amendment application. Consumers Power Company has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Palisades Plant in accordance with these changes would:

1. not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change affects only the required inservice testing schedule for the PORV's. Currently, both PORV's are tested at each refueling outage. The change in ASME category of the PORV's from C to B will result

in each PORV being stroke tested using the valve solenoid once each quarter if the Primary Coolant System (PCS) has been placed in cold shutdown and depressurized. In addition, each PORV and its actuating circuit will be tested during each refueling outage in accordance with Plant surveillance procedure requirements. This testing schedule is more conservative than currently required; thus, the probability or consequences of an accident previously evaluated are not increased.

2. not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will affect only the testing schedule of the PORV's. The PORV's are part of the overpressure protection system for the PCS. The overpressure protection system is designed to protect against overpressure events such as the inadvertent initiation of high pressure safety injection, the starting of a charging pump, or an uncontrolled heatup of the PCS during shutdown cooling. Because testing of the PORV's and their associated circuitry will be done when the PCS is at cold shutdown and depressurized, the safety function of the overpressure protection system is not compromised. In addition, during the testing of the PORV's, alternate vent paths are available to the operator should it be necessary to prevent or relieve a PCS pressure buildup. The paths include the reactor head vent system, the pressurizer manway, or manual actuation of the PORV.

3. not involve a significant reduction in the margin of safety.

The margin of safety as defined in the basis statements for Plant Technical Specifications and the Palisades Updated Final Safety Analysis Report (UFSAR) will not be reduced. Testing of the PORV's and their associated circuitry will occur only with the PCS in cold shutdown and depressurized. Testing of the PORV's as Category B valves will be performed within the requirements of Technical Specification 3.1.8, "Overpressure Protection Systems" which establishes the minimum operability requirements for the overpressure protection system. In addition, testing of the PORV's each quarter and each refueling is more conservative than currently required.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; and does not involve a reduction in the required margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Robert Pierson.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: October 4, 1990

Description of amendment request: The proposed amendment would revise the Palisades Technical Specification 5.3.1, Design Features Primary Coolant System. Under the proposed change, this technical specification will be revised to reference the Primary Coolant System description contained in Final Safety Analysis Report (FSAR) Section 4.2, "Design Basis"; and, the references to specific codes and addenda that currently exist will be removed. Technical Specification 5.3.1 currently states that the Primary Coolant System shall be designed and constructed in accordance with the ASME Boiler and Pressure Vessel Code, Section III, including all addenda through the Winter of 1965, and the ASA Code for Pressure Piping, B31.1. Under the proposed change, Technical Specification 5.3.1 will stipulate that the Primary Coolant System (PCS) is designed and maintained in accordance with the code requirements specified in Section 4.2 of the FSAR.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided an analysis that addressed the above three standards in the amendment application. Consumers Power Corporation has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Palisades Plant in accordance with these changes would:

(1) not involve a significant increase in the probability or consequences of an accident previously evaluated. Assurance of PCS integrity has been provided in the Palisades design through the use of Codes during design, fabrication, construction, inspection, testing, and classification. The proposed change does not diverge from existing Code requirements. The change merely replaces the reference to specific Codes and addenda that is currently contained in Technical Specification 5.3.1 with a reference to the Codes and addenda listed in FSAR Section 4.2. Therefore, the probability or consequences of an accident have not been adversely affected.

(2) not create the possibility of a new or different kind of accident from any accident previously evaluated. There are no changes to the accident analysis assumptions as a result of the requested change. The change merely replaces the reference to specific Codes and addenda that is currently contained in Technical Specifications 5.3.1 with a reference to the Codes and addenda listed in FSAR Section 4.2. The changes does not modify or alter existing Code requirements. Applicable Code requirements and design criteria will continue to be maintained in the FSAR following implementation of the proposed changes. As a result, a new or different kind of accident is not created by the proposed change.

(3) not involve a significant reduction in the margin of safety. The PCS safety margin is provided through adherence to design criteria (i.e. temperature, pressure, service life, cyclic loads, material properties, etc.), and is assured through the use of design specifications and Code. The proposed change does not diverge from existing Code requirements, it merely relocates the reference to specific Codes and addenda to the FSAR. The PCS margin of safety will be maintained following implementation of the proposed change through continued use of design specifications and applicable design Codes. Consequently, adequate operating margins have been assured and there is no significant decrease in the margin of safety.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; and, does not involve a reduction in the required margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Robert Pierson.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: May 18, 1990

Description of amendment request: The amendment revises the Technical Specification to allow extension of Fermi-2 full power operation beyond the normal end of cycle during the current operating cycle. The extension of the cycle will be achieved by reducing the final feedwater temperature and increasing the core flow.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided an analysis that addressed the above three standards in the amendment application.

(1) All proposed operation with increased core flow and reduced feedwater temperature during the cycle extension does not involve a significant increase in the probability or consequences of an accident previously evaluated because:

a) The cause of the event and frequency of occurrences of the transient and accidents currently defined in the UFSAR have not been altered by the proposed cycle extension. In fact, the probability of occurrence of some of the events have been significantly reduced. Some examples are the Rod Withdrawal error and Rod Drop Accident as control rods are planned to be fully withdrawn during the cycle extension,

b) The sequence of events, systems required to mitigate the event and the required operator actions currently defined in the UFSAR have not been altered. The event responses for some events have changed. However, the Technical Specification operating limits ensure the consequences of the events are not increased, and

c) Core and System Performance of the limiting transients and accident currently defined in the UFSAR have been reanalyzed with NRC approved methodologies. The results of the analyses as described in Section 2.1 above have shown that the consequences of the limiting events have not been significantly increased. The Technical Specification changes proposed will ensure the consequences of these events are not increased.

(2) The proposed operation with increased core flow and reduced feedwater temperature during the cycle extension does not create the possibility of a new or different kind of accident from any accident previously evaluated because:

a) There is no change in the plant design required to operate in the proposed cycle extension mode, and

b) Increasing core flow involves normal plant operating practices and does not require a significant change in operating procedures. Planned feedwater temperature reduction involves the elimination or reduction (by diversion through bypass lines) of the extraction steam flow or feedwater flow of one or more feedwater heaters. These operations are the same as what may be undertaken for feedwater heater maintenance purposes which was considered in establishing the existing transient and accident analyses. Therefore, no new possible transient which could result from the methods of feedwater temperature reduction or increasing core flow are created.

(3) The proposed operation with increased core flow and reduced feedwater temperature during the cycle extension does not involve a significant reduction in safety margin because the proposed operating condition has been analyzed with NRC approved methodologies as described in Section 2.1 to show that no significant reduction in safety margin results. The results of the evaluation have shown that all safety criteria are met with the following modifications to the plant Technical Specification:

a) Modifications to the plant operating minimum critical power ratio (MCPR) limit ensure the transient response of the limiting anticipated operational occurrences will be above the MCPR safety limit of 1.07 thereby maintaining the current margin to safety during the short-term cycle 2 extension period,

b) An addition of the high flow clamp to the rod block monitor instrumentation ensures the response of any potential rod withdrawal error event initiated in the increased core flow condition will remain the same as that currently analyzed in cycle 2 to maintain the current margin.

c) The increase of high recirculation flow rod block setpoint continues to ensure the expanded operating domain for cycle 2 extension will be protected. Therefore, the margin to safety remains with this Technical Specification change, and

d) The increase of the motor generator scoop tube setpoints ensures the flow runout transient response will be above the 1.07 MPCR safety limit. Therefore, the margin to safety is maintained.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Robert Pierson.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: October 9, 1990

Description of amendment request: The proposed change to Arkansas Nuclear One, Unit 2 (ANO-2) Technical Specification Table 3.6-1 deletes the exclusion of Type C leakage tests for containment isolation check valves.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application. The licensee stated that the changes do not involve a significant hazards consideration for the following reasons:

Criterion 1 - Does not involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

This change enhances the requirements for local leak rate testing and therefore does not involve a significant increase in the probability of an accident previously evaluated. By performing a Type C local leak rate test on the check valves, the consequences of an accident are reduced by assuring that these valves serve to limit radioactive releases to the atmosphere.

Criterion 2 - Does not create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The addition of the requirement to perform Type C local leak rate testing on the containment isolation check valves adds a previous requirement to the Technical Specifications. Therefore this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Dose Not Involve a Significant Reduction in the Margin of Safety.

Adding the requirement to perform local leak rate testing on the containment penetration check valves ensures that the valves will function to reduce containment leakage and limit radioactive releases. This change therefore maintains the margin [of] safety.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists. The proposed amendment most closely [m]atches example (ii).

A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with its conclusion. Therefore, the staff proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: October 9, 1990

Description of amendment request: The proposed amendment request would revise Arkansas Nuclear One, Unit No. 2 (ANO-2) Technical Specification 3/4.8.1, A.C. Sources, and the Bases for this specification. This change would reduce the rapid loading of the diesel generators and reduce the number of tests associated with the actions for inoperable equipment. Editorial changes and changes to improve reliability are also being proposed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application. The licensee stated that the changes do not involve a significant hazards consideration for the following reasons:

Criterion 1 - Does Not Involve a Significant Increase in the probability or Consequences of an Accident Previously Evaluated.

The proposed change reduces the number of cold starts from ambient conditions and additional testing requirements. This will increase diesel generator reliability and therefore does not involve an increase in the probability or consequences of an accident previously evaluated.

The changes in the prerequisites for the hot restart test meet the intent of a diesel generator at normal operating temperature. The editorial changes involve no intent change. Providing a range for load requirements and annotating the test such that momentary variations do not invalidate the test will ensure that the test is performed as intended. Bypassing of diesel generator trips is dependent on [Safety Injection Actuation Signal] SIAS signal and not [Loss of Offsite Power] LOOP events. Therefore these changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed changes serve to improve the reliability of the diesel generators by reducing the frequency of cold starts from ambient conditions and additional testing beyond that required for demonstration of availability. This improvement in reliability does not create the possibility of a new or different kind of accident from any previously evaluated.

The changes in the prerequisites for the hot restart test meet the intent of a diesel generator at normal operating temperature. The editorial changes involve no intent change. Providing a range for load requirements and annotating the test such that momentary variations do not invalidate the test will ensure that the test is performed as intended. Bypassing of diesel generator trips is dependent on SIAS signal and not LOOP events. Therefore no reduction in the margin of safety is incurred.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists. The proposed amendment most closely matches example (vii).

A change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with its conclusion. Therefore, the staff proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: October 17, 1990

Description of amendment request: The proposed change to Arkansas Nuclear One, Unit No. 2 (ANO-2) Technical Specification 3/4.7.8, Hydraulic Shock Suppressors (Snubbers) would allow the currently required visual inspection due between August 8, 1990, and February 6, 1991, to be delayed until the end of the 1991 Refueling Outage; in no case later than May 7, 1991.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application. The licensee stated that the changes do not involve a significant hazards consideration for the following reasons:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed one-time change to the inaccessible snubber visual inspection will not significantly alter the level of snubber protection at ANO as the failure was due to an installation error not a service induced failure. Inspections were performed to verify that this is not a one of 403 snubbers. Therefore these changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

Accidents which might be caused by the possible failure of one or more snubbers during the extended inspection interval are the same as those previously evaluated. Therefore the possibility of a new or different kind of accident from any previously evaluated is not created.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change would not involve a significant reduction in the margin of safety since the one time change in the inspection interval will have no significant effect on the overall level of snubber protection for ANO-2.

The failure mechanism was isolated to the failed snubber.

Other inaccess[i]ble snubbers were examined for similar installation errors and found to be correctly installed. Therefore, the probability of a similar failure during the extension period is extremely remote.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists. The proposed amendment most closely matches example (vi)[:] A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan, e.g., a change resulting from the application of a small refinement of a previously used calculational model or design method.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with its conclusion. Therefore, the staff proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: October 9, 1990

Description of amendment request: The proposed changes to Arkansas Nuclear One, Units Nos. 1 and 2 (ANO-1 and ANO-2) Technical Specification would delete specific references to staff positions and Plant Safety Committee (PSC) compositions in each units' Section 6.0, "Administrative Controls." Additionally, removal of the requirement for the PSC to review minor procedure changes that have no safety impact is being requested.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application. The licensee stated that the changes do not involve a significant hazards consideration for the following reasons:

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The replacement of the [Plant Safety Committee] PSC composition requirements and changes to titles of certain senior management personnel are administrative in nature. The proposed change does not affect assumptions contained in plant safety analyses, the physical design or operation of the plant, nor are TS that preserve safety analysis assumptions affected.

The same level or expertise applied to the PSC review function will exist with the approval of the proposed change. There will be no loss in PSC effectiveness due to the proposed change. Therefore, there is no increase in the probability or consequences of previously analyzed accidents due to the proposed change.

Only those procedures with "intent" changes could effect the safety of the plant. These procedure changes will still require PSC review and therefore the probability or consequences of previously analyzed accidents will be unchanged.

2. This change would not create the possibility of new or different kind of accident from any previously evaluated.

The proposed changes are administrative. No physical alter[]ations of plant configuration or changes to setpoints or operating parameters are proposed. The level of position qualifications are not reduced in the TS. The same quality of PSC review is maintained and unaltered by this proposed change. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. This change would not involve a significant reduction in the margin of safety.

The proposed changes are administrative and does not relate to or modify the safety margins defined in and maintained by the Technical Specifications. The change does not alter ANO's commitment to maintain a management structure that contributes to the safe operation and maintenance of the plant. No position qualifications are being reduced in the Technical Specifications. The level and quality of PSC review is maintained since there will be no change in the collective talents on the PSC. The safety significant scope of independent review conducted by the PSC will be unchanged. Therefore, this proposed change will not involve a significant reduction in the margin of safety.

The NRC has provided guidance concerning examples of amendments which are not likely to involve significant hazards considerations. The proposed changes most closely resemble Example (i): A purely administrative change to TS: for example, a change to achieve consistency throughout the TS, correction of an error, or a change in nomenclature.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with its conclusion. Therefore, the staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499 South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: September 5, 1990

Description of amendment request: The amendment would modify Technical Specification (TS) 4.0.2 to remove the provision that limits the combined time interval for three consecutive surveillances to less than 3.25 times the specified interval.

Guidance regarding this proposed TS change was provided to all power reactor licensees and applicants by Generic Letter 89-14, dated August 21, 1989. The proposed change would maintain the present maximum allowance of 25 percent for extending surveillance intervals.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

1. The proposed change does not involve a significant increase in probability or consequences of an accident previously evaluated because the proposed change does not involve a physical change or change the design or operation of a system or component at STPEGS.

The 3.25 limit of Technical Specification 4.0.2 was not used in the UFSAR for any Chapter 15 accident analysis. Therefore, removal of this limit from Technical Specification 4.0.2 cannot increase the probability or consequences of a previously evaluated accident.

Experience at STPEGS has shown that an extended surveillance interval will not impose a significant risk in terms of equipment reliability. Other periodic tests, walkdowns, and operational verifications provide another method of assuring continued operability. If a component or system does not pass a surveillance test, redundant and backup equipment is available to perform the safety function.

Therefore, the proposed change does not significantly increase the probability or consequences of a previously evaluated accident.

2. The proposed change does not create the possibility of a new or different accident from any accident previously evaluated. Surveillances performed at STPEGS must continue to use a maximum interval of the surveillance limit plus 25 percent of the limit. The 25 percent limit will ensure that the expected reliability of equipment is not significantly reduced beyond that obtained from the specified surveillance interval.

The design of STPEGS remains unchanged and no physical modification or alteration to the plant or operation of the plant occurs with the proposed change. The proposed change does not modify the surveillance interval. Therefore, the proposed change does not create the possibility of a new or different accident.

3. The proposed change will not involve a significant reduction in a margin of safety. Removal of the 3.25 limit has a positive effect of safety because a surveillance can be delayed when the plant is in an operational transient or when other surveillances be inoperable. This safety benefit outweighs any benefit derived by limiting any three consecutive surveillances to the 3.25 limit.

The NRC staff has reviewed the licensee's no significant hazards consideration determination. Based on the review, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Rooms Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: George F. Dick, Jr., Acting

Indiana Michigan Power Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of amendment request: October 29, 1990

Description of amendment request: This amendment request would change Technical Specification (TS) 3.4.4.9, "Pressure/Temperature Limits," to limit the maximum heatup rate to 60° F/hr and to provide revised heatup and cooldown pressure-temperature (P-T) limit curves. The maximum heatup rate is currently limited to 100° F/hr. The low temperature overpressurization protection (LTOP) setpoint would also be revised to be 152° F from its current value of 170° F. These changes are to reflect the results of the Unit 1 reactor vessel Capsule U analysis, Westinghouse Report No. WCAP-12483 per the requirements of Regulatory Guide 1.99 Rev. 2.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

Criterion 1

Heatup and cooldown limit curves are calculated using the most limiting value of the reference nil-ductility temperature (RT_{NDT}) for the reactor vessel. Previously RT_{NDT} was dependent on the phosphorus and copper content. With the issuance of Regulatory Guide 1.99, Rev. 2, the phosphorus content no longer needs to be considered; instead, the nickel content must be considered when calculating the RT_{NDT}. Our reactor vessel Capsule U analysis (WCAP-12483) submitted in our letter AEP:NRC:0894M dated June 22, 1990, provided revised calculated RT_{NDT} values for both the base metal and the weld metal. Table 5-8 of WCAP-12483 shows, for the various surveillance materials, a comparison of the transition temperature (WRT_{NDT}) increases seen during the tests to the increases predicted using the methods of NRC Regulatory Guide 1.99, Rev. 2. This comparison shows that, for the plant B-4406-3 material (longitudinally), the transition temperature increase resulting from irradiation to 1.88×10^{19} n/cm^2 is 9° F greater than that predicted by the guide, which includes a 2 sigma allowance for the shift prediction of 34° F. For the weld metal, the transition temperature increase was 37° F less than that predicted by the guide. The actual value of the change in the transition temperature is, for the base metal, slightly above the value calculated using the regulatory guide and slightly below for the weld.

The LTOP system provides protection against exceeding the vessel ductility limits, as expressed by the pressure-temperature limits in 10 CFR 50, Appendix G, during cold shutdown, heatup and cooldown operations. As per Generic Letter 88-11, the implementation of Reg. Guide 1.99, Rev. 2 requires that the LTOP setpoints be re-evaluated. We have performed this re-evaluation and calculated the revised LTOP setpoint based on the plant-specific Westinghouse Owners Group methodology and the Unit 1 Capsule U analysis. WCAP-12483. The recalculated LTOP setpoint was determined to be 435 psig for the PORVs, with an enable temperature of 152° F.

Therefore, we have concluded that the above changes represent the application of a small refinement to a previously used calculation model or design methods, and should not result in a significant increase in the probability or consequences of an accident previously analyzed.

We have made one editorial change in this submittal. Specifically, on T/S page 3/4 4-25 we are requesting that the maximum heatup rate be changed to be consistent with the heatup rate specified on T/S page 3.4 4-27. This constitutes a purely administrative change to achieve consistency throughout the technical specifications, and therefore should not result in a significant increase in the probability or consequences of an accident previously analyzed.

Criterion 2

The proposed T/S changes concerning the heatup and cooldown curves and LTOP setpoint do not involve any physical modifications to the plant. The changes will involve changes to the plant's operation procedures; however, as noted in Criterion 1, the changes are based on the results of the reactor vessel Capsule U analysis, which followed the latest NRC guidance, Reg. Guide 1.99, Rev 2. Therefore, we have concluded that the above changes represent the application of a small refinement to a previously used calculation model or design method to conform to a revised NRC regulation and does not create the possibility of a new or different kind of accident from any previously analyzed or evaluated.

Criterion 3

The heatup and cooldown curves and the revised LTOP setpoint were developed based on the results of the reactor vessel Capsule U analysis (WCAP-12483) which was submitted in our letter AEP:NRC:0894M dated June 22, 1990. The new heatup and cooldown curves were also developed using the criterion noted in Reg. Guide 1.99, Rev. 2

As per the requirements of Generic Letter 88-11, the LTOP setpoints have been re-evaluated and revised as part of implementation of Reg. Guide 1.99 Rev. 2. The LTOP setpoints were revised based on the plant-specific Westinghouse Owners Group methodology and Capsule U analysis.

As noted in Criterion 1, there was a slight change in the NDT temperature of the base metal and the weld metal. However, both materials exhibited an average charpy upper shelf energy greater than 50 ft-lb at 32 EEPY at a fluence of 1.88×10^{19} n/cm.

Capsule U received a fluence of 1.88×10^{19} n/cm^2. The calculated cumulative fluence at the vessel inner surface is 1.41×10^{19} n/cm^2 at the end of 32 EFPY.

The staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert Pierson.

Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: December 12, 1989 as modified June 1, 1990 and October 26, 1990.

Description of amendments request: These proposed amendments modify the licensee's original submittal dated August 25, 1989 which was published in the Federal Register on November 15, 1989 (54 FR 47606). The changes made by the licensee are in response to staff comments on the original submittal.

The proposed amendments would revise Section 6.0 (Administrative Controls) of the TS to reflect changes to the responsibilities of the Plant Nuclear Safety Review Committee (PNSRC) and the Nuclear Safety and Design Review Committee (NSDRC). The amendments will reflect title changes and improve the overall consistency and clarity of the existing TS. TS 6.1.2 is being added which places an additional restriction on the Cook Nuclear Plants by requiring the Shift Supervisor or a designated individual during his absence to be responsible for the control room command function.

Proposed changes to TS 6.2.2.b and Table 6.2.1 are being made in order to comply with the requirements of 10 CFR 50.54(m). The proposed TS will require at least one licensed Senior Operator to be in the control room when the facility is in Modes 1, 2, 3 and 4, and will meet the minimum license operator staffing requirement that three Senior Operators be on site.

A footnote has been added to TS 6.2.2.c and 6.2.2.e. This change would allow up to two hours for the unexpected absence of an individual qualified in radiation protection procedures and the unexpected absence of the minimum composition of fire brigade members.

The proposed changes to TS 6.3.1, 6.4.1, 6.5.2.3, 6.5.2.9, 6.5.2.10.a, 6.5.2.10.b, and 6.5.2.10.c involve necessary title changes (e.g., "Plant Health Physics Supervisor" to "Plant Radiation Protection Manager").

The proposed changes to TS. 6.5.1.2, 6.5.1.3, 6.5.1.5 affect the qualifications, structure, and quorum of the PNSRC. The proposed change to TS 6.5.1.2 is to add the minimum qualifications that the PNSRC members and alternate members must meet. Members and alternate will meet or exceed the minimum qualifications of ANSI N18.1-1971, Section 4.4. This change would establish the PNSRC as a more independent advisory organization to the Plant Manager, instead of requiring the Plant Manager's direct involvement in the work activities of the NPSRC. This change requires that TS 6.5.1.3 be revised since the PNSRC Chairman would no longer appoint the alternate members. Proposed changes to TS 6.5.1.5 clarify the requirements for a quorum of the PNSRC.

The proposed changes to TS 6.5.1.6.a, b and c clarify the subject areas that the PNSRC will review. Specifically, the PNSRC will only perform reviews of subjects that could affect plant nuclear safety or involve an unreviewed safety question.

The proposed change to TS 6.5.1.7.c will require the Vice President Nuclear Operations to be notified, in addition to the NSDRC, of any disagreements between the PNSRC and the Plant Manager.

A proposed change to TS 6.5.2.8.h, i, and j (TS 6.5.2.8.g and h on the proposed revised pages) clarifies the NSDRS audit requirements on fire protection.

The proposed TS 6.5.3, "Technical Review and Control," has been added to the administrative controls section to ensure that activities affecting nuclear safety will continue to be adequately controlled and that technical reviews will be performed once these activities are removed from the PNSRC responsibilities.

Proposed changes to TS 6.8.1 and TS 6.7.1 clarify the action to be taken for reportable events and the proposed change to Specification 6.8.2 specifies that temporary changes shall be reviewed prior to implementation.

An additional requirement to include documentation of all challenges to the PORV's is proposed to be added to the monthly reactor operating report (TS 6.9.1.10).

The proposed amendment would also make some minor editorial changes that do not change intent or meaning of the TS.

Basis for proposed no significant hazards consideration determination: According to 10 CFR 50.92, a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated,
2. create the possibility of a new or different kind of accident from any accident previously evaluated, or
3. involve a significant reduction in a margin of safety

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

Criterion 1

The changes requested in this letter affect only the Administrative Controls section of the TS. We believe the revised Administrative Controls will enhance the safe operation of the Cook Nuclear Plants.

Therefore, we believe these changes will not involve a significant increase in the probability or consequences of a previously evaluated accident.

Criterion 2

These changes are purely administrative in nature. Plant systems, components, and operation will not be altered by these changes. Therefore, we believe this change will not create the possibility of a new or

different kind of accident than has previously been evaluated.

Criterion 3

Since these changes are administrative in nature, they will not impact the ability of the plant systems and components to perform their safety function. Therefore, we believe these changes will not involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the determination of significant hazards consideration by providing certain examples (48 FR 14869) of amendments considered not likely to involve a significant hazards consideration. The first example is that of a purely administrative change to the TS: for example, a change to achieve consistency throughout the TS; correction of an error; or a change in nomenclature. We believe that the changes requested in this letter are of the type specified in this example. Since these changes are administrative in nature, they do not reduce a margin of safety, do not increase the probability or consequences of a previously evaluated, and do not introduce the possibility or a new accident.

Therefore, we believe these changes do not involve a significant hazards consideration as defined by 10 CFR 50.92.

The staff has reviewed the licensee's no significant hazards consideration analyses and concurs with their conclusions. As such, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert Pierson.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: October 15, 1990

Description of amendment request: The proposed amendment would change Technical Specification 3.22, Feedwater Trip System, by adding an Exception that specifically addresses operation of the auxiliary feedwater system during plant startup and shutdown.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment is administrative in nature. It makes no change in existing plant equipment, equipment configuration or procedures. The licensee has evaluated the consequences of continued emergency/auxiliary feedwater flow to a steam generator that has experienced steam line break while in hot standby. This evaluation concluded that the associated cooldown of the primary system will not cause a return to power. Further, containment overpressure will not occur because there would be an insufficient amount of feedwater delivered to the faulted steam generator.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Operation of the emergency/auxiliary feedwater system uses existing piping and valves. The proposed change merely provides specific recognition to a normal plant operating configuration used below 2% reactor power.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

As discussed above, operation of the emergency/auxiliary feedwater system in the manner proposed does not change any safety margin.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based on this review, the staff believes that the licensee has adequately justified their proposed change to the plant Technical Specifications. The staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, 255 Franklin Street, Boston, Massachusetts 02110

NRC Acting Project Director: Curtis J. Cowgill, III

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: April 2, 1990

Description of amendment request: The proposed amendment would delete the present Specification 3.5.F.1 because it is redundant to Specifications 3.5.A and 3.5.B. Specification 3.5.F.1 states that "Any combination of inoperable components in the Core and Containment Cooling Systems shall not defeat the capability of the remaining operable components to fulfill the core and containment cooling functions." Specifications 3.5.A and 3.5.B describe the Limiting Conditions for Operation (LCOs) for the Core and Containment Cooling Systems which, in conjunction with the definition of "operable" in Specification 1.0.J, are designed to ensure that inoperable components do not defeat the capability of the Core and Containment Cooling (ECC) Systems to fulfill their function. The proposed amendment, therefore, eliminates this duplication.

In addition, the proposed amendment would amplify Specifications 3.5.F to specify new LCOs and add surveillance requirements regarding the minimum ECC System availability with the reactor in the cold condition. The new LCOs are similar to the requirements in the Standard Technical Specifications and would require that: (1) at least two low pressure ECC Subsystems be operable whenever irradiated fuel is in the reactor, the reactor is in the cold condition, and work is being performed which has the potential for draining the reactor vessel; (2) at least one of the low pressure ECC Subsystems be operable whenever irradiated fuel is in the reactor, the reactor is in the cold condition, and no work is being performed with the potential for draining the reactor vessel; (3) the ECC Subsystems are not required to be operable provided that the reactor vessel head is removed, the cavity is flooded, the spent fuel pool gates are removed, and spent fuel pool water level is in accordance with Specification 3.10.C; and (4) if these requirements cannot be satisfied, core alterations and all operations with the potential for draining the reactor vessel be suspended, and at least one subsystem be restored to operable status within 4 hours or Secondary Containment integrity be established in 8 hours.

The proposed new surveillance requirements for the cold condition would be added as Specification 4.5.F and would: (1) specify the operability test requirements for the low pressure core cooling pumps which would conducted every three months; (2) require a monthly test of the motor operated valves; (3) require verification once per shift that the suppression pool water level is greater than or equal to 10.33 ft. whenever the ECC Subsystem pumps are aligned to the suppression pool; and (4) require verification once per shift that a minimum of 324 inches of water is available in the Condensate Storage Tanks whenever the Core Spray System pump(s) is aligned to them.

A proposed change to Specification 3.7.A.1 (Containment Systems) would delete the cross-reference to Specification 3.5.F.2 and add a phrase which would indicate that the suppression chamber volume and temperature requirements are applicable when the reactor is critical or whenever the reactor coolant temperature is greater than 212° F and irradiated fuel is in the reactor vessel.

Corresponding changes to the Bases Sections 3.5.F, 4.5 and 3.7 and to the Table of Contents have also been included in the proposed amendment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92.

The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change to Specification 3.5.F.1 deletes a duplicate requirement for ECC System operability. This proposed change does not involve modification of any existing equipment, systems, or components; nor does it relax any administrative controls or limitations imposed on existing plant equipment. The proposed change does not impact previously evaluated accidents; nor does it affect safe plant operation.

The proposed changes which introduce new specifications for ECC System availability in the cold condition constitute an additional limitation beyond what is presently in the technical specifications. The new specifications require that two low pressure ECC Subsystems be operable whenever irradiated fuel is in the reactor, the reactor is in the cold condition, and the potential exists for draining the reactor vessel; thus ensuring the availability of adequate coolant inventory makeup in case of an inadvertent draindown of the reactor vessel. Therefore, the proposed change does not increase the probability or consequences of a previously evaluated accident.

The proposed change to Specification 3.7.A.1 eliminates a cross-reference and substitutes the actual requirements. Therefore, there is no actual change to the specification and no change to the potential or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from those previously evaluated. The proposed change to Specification 3.5.F.1 and 3.7.A.1 do not result in a change in the actual requirements. In addition; the proposed changes to 3.5.F and 4.5.F more clearly define the requirements for ECC System operability and ECC System availability and testing when in the cold condition. The proposed changes do not involve modification to any of the plant's systems, equipment, or components; nor do they introduce any new failure modes. The proposed changes are consistent with current plant operating practices and do not allow plant operation in any unanalyzed configuration. Therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in the margin of safety. The proposed change to Specification 3.5.F.1 deletes a duplicate requirement for ECC System operability. The existing limiting conditions for operability (Sections 3.5.A and 3.5.B) and associated surveillance requirements (Sections 4.5.A and 4.5.B) already reflect the operability requirements during plant operation and are unchanged by this proposed amendment. Therefore, there is no reduction in the margin of safety.

The proposed additions to Specifications 3.5.F and 4.5.F introduce new specifications for ECC System availability and testing requirements in the cold condition which provide a slight increase in the margin of safety. These new specifications, which also reflect current plant practices, formally prohibit operation with the potential for draining the reactor vessel when coolant inventory makeup is not available. The changes do not involve any plant modifications, nor do they affect the FSAR analysis regarding the emergency core cooling systems. The proposed change to Specification 3.7.A.1 will clarify the requirement but results in no technical change. Therefore, there is no reduction in the margin of safety associated with these changes.

The staff has reviewed and agrees with the licensee's analysis of the significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: October 12, 1990

Description of amendment request: The proposed amendment would change the Ginna Technical Specifications by eliminating the steam flow/feed flow mismatch reactor trip once the new digital feedwater control system has been installed replacing the existing analog system.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis:

The existing analog steam generator (SG) feedwater control system at the Ginna plant will be replaced by a new digital feedwater control system identical to the design and software currently in operation at the Prairie Island Nuclear Power Plant, Units 1 and 2, operated by Northern States Power Company.

The new digital system utilizes three SG narrow range level signals (as opposed to one in the existing analog system) and are processed by the new system computer

referred to as the median signal selector (MSS). The MSS negates faulty level signals that have failed thereby demonstrating a superior means of feedwater flow control over the existing analog system. The MSS also eliminates the need for the steam flow/feed flow mismatch reactor trip in that a failed instrument channel will not cause control system action which may initiate a plant transient that requires protective action. The MSS together with three steam generator narrow range level protection channels provide compliance with the IEEE Std. 279-1971 control and protection interaction criteria.

The accident analyses for steam generator low level protection continues to be satisfied through the steam generator low-low level reactor trip, and no requirement for the steam flow/feed flow mismatch reactor trip is necessary.

Consequently, the elimination of this reactor trip does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) alter the safety function of the feedwater control system which results in a significant reduction in any safety limits associated with the feedwater control system.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff agrees with the licensee's analysis.

Based upon the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Acting Project Director: Curtis J. Cowgill, III

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: August 31, 1990, and supplemented November 1, 1990.

Description of amendment request: Proposed Change No. 151, submitted by Amendment Application No. 188, proposes to revise Technical Specification (TS) Section 3.3, "Safety Injection and Containment Spray Systems," Section 3.5.5, "Containment Isolation Instrumentation," and Section 4.2, "Safety Injection and Containment Spray System." The licensee has proposed this change to improve the existing Technical Specifications by making the specifications more complete, using the Westinghouse Standard Technical Specifications (STS) for the format and basis to the degree practical. The licensee's proposed revision to the Technical Specifications were noticed previously in the **Federal Register** on October 3, 1990 (55 FR 40476). By letter dated November 1, 1990, the licensee supplemented its amendment application to revise the proposed action statement related to the component cooling water (CCW) system. The licensee's original amendment application dated August 31, 1990, proposed an action statement that would allow one of the two CCW heat exchangers to be out of service for up to 31 days. Based on the results of a probabilistic risk assessment that the licensee recently completed, the licensee now believes that a seven day action statement would be more appropriate. Therefore, the licensee has revised its previous submittal with regard to Specification 3.3.7, "Component Cooling Water System," to request a seven day action statement.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has provided the following no significant hazard consideration determination in accordance with 10 CFR 50.91(a):

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No

This revision to PCN-151 incorporates a seven day action statement time limit for removal from service of a Component Cooling Water (CCW) heat exchanger. The existing Technical Specifications do not provide a specific action statement applicable to the CCW heat exchangers. The Standard Technical Specifications for Westinghouse plants generally provide a 72 hour action statement time limit, during which time single failure assumptions are relaxed. Amendment Application No. 188, Proposed Change No. 151, provided STS action statements to reduce the need to apply the provisions of Technical Specification 3.0.3. Both heat exchangers are on a common CCW header, and only one is required to support the CCW cooling load. The alignment for operation with a single CCW heat exchanger is described in the proposed Technical Specification. The alignment assures the CCW outlet valve is de-energized in the open position and therefore, is not subject to inadvertent closure. The STS 72 hour action statement permits an exemption from single failure. The extension of the 72 hour action statement to seven days is not considered to significantly increase the probability or consequences of an accident, since the single active component, the CCW heat exchanger outlet valve, will be de-energized in the open position.

A Probabilistic Risk Assessment (PRA) was performed to evaluate the significance of increasing the action statement time limit by determining the increase in the risk or core damage. The PRA evaluated those accidents which are relevant to a loss of CCW due to a failure of a single operating heat exchanger while the other heat exchanger is removed from service. The initiating events consider a loss of CCW, small break LOCAs, large [break] LOCAs and [less than] 3/8> diameter RCS leakage. The results of the PRA study indicated the increase in the risk of core damage was about 0.7%. This would represent a small portion of the total risk of core damage, and therefore it has been concluded that the incorporation of a seven day action statement for the CCW heat exchanger does not cause a significant increase in the probability of an accident, or the consequences of an accident.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The incorporation of a seven day action statement time limit for the CCW heat exchangers will not introduce new factors into the operation of SONGS 1 which could cause a new type of accident. The CCW system will be aligned to a single heat exchanger during the time the action statement time limit is in effect. The alignment required by the proposed specification assures that the heat exchanger removed from service is properly isolated in accordance with established operating procedures, and therefore does not introduce a new or different alignment of equipment which has not been previously evaluated.

The PRA was performed to evaluate the significance of the extension of the action statement time limit, and considered the affect on risk of core damage due to a loss of the CCW system during the time period one heat exchanger would be isolated. The significant events which depend upon the operation of the CCW system were considered in this analysis. The most significant effect of the change would be the small increase in risk (about 0.7%) due to a loss of CCW. This result was based on the evaluation of events which depend on the operation of the CCW system. Therefore, the incorporation of a seven day action statement time limit has been evaluated for the relevant accident scenarios and does not create the possibility of a new accident.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

The PRA evaluated the significance in the increase in the risk of core damage due to the incorporation of a seven day action statement time limit for the CCW heat exchangers. It was determined that the total contribution to the total risk of core damage was approximately 0.7%. This is not considered significant, as it represents an increase of about 1.4E-6/year over the risk for the STS 72 hour action statement time limit. Additionally, the CCW heat exchanger in service will be aligned with the CCW outlet valve de-energized open to prevent an inadvertent loss of CCW. Therefore we have concluded that the margin of safety is not significantly reduced by the proposed change.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and, based on that review, it appears that the three criteria are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: James E. Dyer, Acting

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: November 7, 1990

Description of amendment request: Proposed Change No. (PCN) 234, submitted by Amendment Application No. 190, requests a schedule extension for completing actions associated with Item Nos. 5 and 18 of the Cycle 11 full term operating license (FTOL) projects. NRC order dated January 2, 1990, confirmed the licensee's schedules for completing FTOL projects during the Cycle 11 and Cycle 12 outages, and modified Operating License No. DPR-13 for San Onofre Nuclear Generating Station, Unit No. 1, accordingly. This action was noticed in the **Federal Register** on January 11, 1990 (55 FR 1113). The existing schedule for completing Cycle 11 FTOL projects, Item No. 5, "RHR Overpressure Protection," indicates that the licensee will propose a change to the Technical Specification (TS) requirements related to this item prior to starting the Cycle 11 outage. PCN-234 requests an extension of this schedule to allow the licensee to submit the proposed TS change prior to plant restart from the Cycle 11 outage. The existing schedule for completing Cycle 11 FTOL projects, Item No. 18, "Containment Venting," indicates that the licensee will implement revised TS requirements applicable to this item prior to plant restart from the Cycle 11 outage. PCN-234 requests an extension of this schedule since it is not likely that the NRC will complete its review and issue the requested TS change for Item No. 18 in time to support licensee implementation prior to Cycle 11 operation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has provided the following no significant hazards consideration determination as required by 10 CFR 50.91(a):

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

Item 5, OMS

The current schedule for NRC approval of the Overpressure Mitigating System (OMS) related technical specifications, as stated in Item 5 of Attachment 1 to the NRC Order, is prior to the Cycle 11 refueling outage. SCE has committed to submit the amendment application to revise OMS related technical specifications to the NRC prior to restart from the Cycle 11 refueling outage. This proposed change extends the schedule for Item 5 to allow reasonable time for NRC review and approval of the OMS related changes.

The proposed schedular extension of the OMS technical specification changes does not impact the operation of the OMS, because currently implemented administrative controls ensure that the OMS will function as required. Therefore, the operation of the facility in accordance with this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Item 18, Containment Venting

Amendment Application No. 170 and its Supplement address the following subjects:

- Limiting of the opening angle for the containment ventilation isolation valves.
- Leakage limits for penetrations subject to Local Leak Rate Testing (LLRT) at intervals of less than two years.
- Reduction of the containment personnel airlock test pressure from 10 psig to 3 psig.
- Limiting Conditions for Operation (LCOs) for the containment personnel airlock.
- LCOs to limit the amount of time the containment ventilation isolation valves are open during Modes 1, 2, 3 and 4.

The limitation on the opening angle for the containment ventilation isolation valves has been accomplished by installing devices on the valve which physically limit their opening angle. The revision to the Technical Specifications proposed by Amendment Application No. 170 will update the Technical Specifications to note that the valves have limiting devices.

The leakage limits for penetrations subject to an LLRT at intervals of less than two years, which are proposed by Amendment Application No. 170, will improve the Technical Specifications. These penetrations are used relatively infrequently. By imposing more stringent leakage limits on these specific penetrations, degradation will be detected and corrected more quickly. The existing Technical Specifications limit the combined overall leakage of all penetrations subject to Type B testing and all containment isolation valves subject to Type C testing. This provision includes the penetrations in Amendment Application No. 170. The changes proposed by Amendment Application No. 170 will not affect the existing combined overall leakage limits. Because the overall leakage rate will not be affected by Amendment Application No. 170, operation of the plant without Amendment Application No. 170 implemented will not create any additional hazards. The existing combined leakage limitation will control leakage to within acceptable, previously analyzed limits.

Amendment Application No. 170 also proposes a reduction in the containment airlock test pressure from 10 psig, which is currently in the technical specifications, to 3 psig. The test pressure in the existing technical specification is higher, and therefore inherently more conservative, than that proposed by Amendment Application No. 170.

The limiting conditions for operation regarding the containment personnel airlock which are proposed by Amendment Application No. 170 provide limited time to allow repairs to be made to avoid unnecessary plant shutdowns. Presently, if excessive leakage is detected through the airlock, plant shutdown is initiated without allowing for a repair period.

The final change proposed by Amendment Application No. 170 will incorporate LCOs which limit the amount of time the containment ventilation isolation valves can be open during power operation. Opening of these valves during power operation is presently being limited through

administrative controls. The administrative controls limit operation in the same manner as that proposed in Amendment Application No. 170. The administrative controls will remain in effect until Amendment Application No. 170 is approved).

For the reasons stated in the discussions above, for each of the changes proposed by Amendment Application No. 170, operation of the facility in accordance with this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

Item 5, OMS

The administrative controls currently implemented ensure that the OMS will provide adequate overpressure protection for the RCS and the RHR system. OMS related technical specification changes, once approved, will replace the administrative controls, and there will be no impact on the function of OMS. The schedular extension, discussed in item 1 above, has no impact on the operation of OMS. The current administrative controls ensure that OMS will continue to perform its safety functions.

Item 18, Containment Venting

This proposed change reschedules approval of Amendment Application No. 170 to allow the plant to restart from the Cycle 11 refueling outage without Amendment Application No. 170 implemented. As discussed in the response to Question 1 above, each of the changes proposed by Amendment Application No. 170 is being conservatively controlled either through existing Technical Specifications or existing administrative controls.

Therefore, operation of the facility in accordance with this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No

Item 5, OMS

As stated above, the proposed schedular extension of Item 5 of Attachment 1 to the NRC Order has no impact on the ability of OMS to perform its safety function, because the administrative controls currently implemented ensure satisfactory overpressure protection for both the RCS and the RHR system.

Item 18, Containment Venting

This proposed change will reschedule approval and implementation of Amendment Application No. 170 until after Cycle 11. As discussed in the response to Question 1, each of the changes proposed by Amendment Application No. 170 is currently being addressed in a conservative manner either by the existing technical specifications or by administrative controls.

Therefore, operation of the facility in accordance with this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and it appears that the three criteria have been met. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: James E. Dyer, Acting

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: November 8, 1990

Description of amendment requests: The proposed change revises Technical Specification (TS) 3/4.7.1.1, "Safety Valves"; TS Table 3.7-1, "Steam Line Safety Valves Per Loop"; TS Table 3.7-2, "Maximum Allowable Linear Power Level-High Trip Setpoint With Inoperable Steam Line Safety Valves During Operation With Both Steam Generators"; and the corresponding Bases section. The proposed changes are needed to delete ambiguity, clarify the main steam safety valve design requirements, and correct typographical and numerical errors.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability o consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

RESPONSE: No.

The proposed change to Table 3.7-2, "Maximum Allowable Linear Power Level-High Trip Setpoint With Inoperable Steam Line Safety Valves During Operation With Both Steam Generators," slightly decreases the current reduced allowable values. The proposed change reflects a recent amendment to the Allowable Value of the Linear Power Level-High Trip in Table 2.2-1, "Reactor Instrumentation Trip Setpoints Limits." The proposed Bases changes are editorial in nature and do not alter any accident analyses assumptions. The proposed changes to the LCO and Action Statements of TS 3/4.7.1.1, "Safety Valves," and to Table 3.7-1, "Steam Line Safety Valves per Loop," are also editorial revisions required for consistency with the proposed Bases. Therefore, operation of the facility in accordance with this proposed change does not constitute an increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

RESPONSE: No.

The proposed change will slightly reduce the allowable values in Table 3.7-2. The change does not involve any plant modifications or a change in plant operation. The proposed changes to TS 3/4.7.1.1, Table 3.7-1, and the Bases are editorial in nature and do not entail a plant modification or a change in plant operation. Therefore, the proposed change does not create the possibility of a new of different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

RESPONSE: No.

The proposed change corrects the values of Table 3.7-2. These corrections further decrease the reduced allowable values when main steam safety valves are inoperable. The proposed changes to TS 3/4.7.1.1, Table 3.7-1, and the Bases are editorial in nature, and do not affect the plant's margin of safety. Therefore, the proposed change does not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's no significant hazards determination and agrees with the licensee's analysis. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: James E. Dyer, Acting

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: September 7, 1990

Description of amendment request: The proposed amendment would revise Technical Specification 3.1.3.2 and associated Bases to add an Action Statement covering situations where more than one digital rod position indicator (DRPI) per bank is inoperable. This new Action Statement would avoid unnecessary plant shutdowns per Technical Specification 3.0.3, yet would be consistent with the overall protection afforded by related specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of no significant hazards considerations using the Commission's standards.

The proposed change does not involve a significant hazards consideration because operation of Callaway Plant with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The potential for the new Action Statement to impact the safety analyses of the plant lies only in the area of operator-exacerbated reactivity events due to a loss of RCCA position indication. RCCA events such as:

(a) One or more dropped RCCAs within the same group (FSAR Section 15.4.3)

(b) Dropped RCCA bank (FSAR Section 15.4.3)

(c) RCCA ejection (FSAR Section 15.4.8)

are not impacted since the new Action Statement does not involve a design change that would affect the probability of these events occurring nor their consequences. As such, the events of interest are:

(i) Uncontrolled RCCA bank withdrawal from a subcritical or low power startup condition (FSAR Section 15.4.1)

(ii) Uncontrolled RCCA bank withdrawal at power (FSAR Section 15.4.2)

(iii) Statically misaligned RCCA (FSAR Section 15.4.3)

(iv) Withdrawal of a single RCCA (FSAR Section 15.4.3)

The first two events are Condition II transients that have been analyzed using a positive reactivity insertion rate that is greater than that for the simultaneous withdrawal of the two control banks having the maximum combined worth at maximum speed. Whether these events are caused by a failure in the rod control system or by operator error has no effect on the positive reactivity insertion rate assumed in these analyses. The protection systems assumed in the analysis of these events (power range neutron flux-high and low settings and OT-Delta T) are unaffected since this amendment does not involve a design change. Therefore, the new Action Statement would have no effect on the analysis of these events and the DNBR design basis would still be met.

The most severe misalignment situations with respect to DNB arise from cases in which one RCCA is fully inserted, or where bank D is fully inserted to its insertion limits with one RCCA fully withdrawn. For these cases, as discussed in FSAR Section 15.4.3, the DNBR remains above the safety analysis limit values. The new Action Statement proposed herein does not alter these results.

The compensatory actions associated with this new Action Statement, placing the control rods under manual control and limiting rod motion, address concerns associated with automatic rod motion due to the rod control system and with inadvertent operator contribution to these events.

The worst case event of the above, the withdrawal of a single RCCA, is a Condition III event. It has been analyzed in FSAR Section 15.4.3 assuming that the operators ignore RCCA position indication or that multiple rod control system failures occur. No single electrical or mechanical failure in the rod control system could cause the accidental withdrawal of a single RCCA from a partially inserted bank at full power operation. The operator could deliberately withdraw a single RCCA in the control bank; this feature is necessary in order to retrieve a rod, should one be accidentally dropped. This new Action Statement does not change the plant design; therefore, there would be no change in the probability of this event being induced by unlikely, simultaneous electrical failures (see further discussion in FSAR Section 7.7.2.2). Further, whether indication is lost, as is the case covered by this new Action Statement, or disregarded does not change the method of analysis or the outcome of this event.

(2) Create the possibility of a new or different kind of accident from any previously evaluated. This is based on the fact that no design changes are involved. The new Action Statement provides sufficient time for troubleshooting while avoiding unnecessary plant shutdowns per Technical Specification 3.0.3. The compensatory actions require that rod position be inferred from flux maps, that RCS temperature be monitored and recorded, and that rod position changes be limited to the extent possible via other reactivity control mechanisms such as boration and dilution. The new Action Statement is consistent with the overall protection afforded by related Specifications. For example, Action Statements 3.1.3.1.c and 3.1.3.1.d, which are associated with known control rod misalignments, rod control urgent failure alarms, or other electrical problems, do not invoke compensatory measures as restrictive as 3.0.3. In fact, Action Statement 3.1.3.1.d allows operation with one or more inoperable rods (due to rod control urgent failure alarm or other electrical problem in the rod control system) for up to 72 hours. The situation addressed in this amendment application is one in which indication is lost, with compensatory actions taken during the 24 hour allowed outage time (AOT); however, there are no known misalignments or rod control operability concerns.

(3) Involve a significant reduction in a margin of safety. The proposed change will not result in a decrease in the minimum DNBR given in Bases Section 2.1.1 and reported in the FSAR. Bases Section 3/4.1.3 states that the Specifications of this section ensure that:

(a) acceptable power distribution limits are maintained,

(b) the minimum SHUTDOWN MARGIN is maintained, and

(c) the potential effects of rod misalignment on associated accident analyses are limited.

The compensatory actions require that rod position be determined indirectly via the movable incore flux detectors and that RCS temperature be monitored and recorded. This addresses a) and b) above. Also, rod control is placed in manual and rod motion is limited. This addresses c) above. Asymmetric power distributions can also be detected by the excore neutron flux detectors and core exit thermocouples.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; and does not involve a reduction in the required margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The staff, therefore, proposes to determine that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: October 11, 1990, as supplemented October 12, 1990

Description of amendment requests: The proposed amendments would add specific exceptions to the qualification requirements of ANS-3.1 (12/79 Draft), which is cited in Technical Specification 6.1.B. ANS-3.1 (12/79 Draft) establishes the requirements of the plant staff, and requires that the individual fulfilling the function of the "Operations Manager" hold a current Senior Reactor Operator (SRO) license.

In the past, the licensee designated the Superintendent - Operations as the equivalent position for the Operations Manager in the staffing organization, and therefore required that position to be filled by a person holding an SRO license. However, requiring the Superintendent - Operations to maintain an SRO license makes it difficult for that individual to perform certain management functions. Therefore, to relieve the Superintendent - Operations of this burden and yet still satisfy the requirement for an Operations Manager, the licensee proposes to create a position, directly subordinate to the Superintendent - Operations, that has cognizance over the plant operating shifts. This position would be designated as the Supervisor - Shift Operations, and the individual holding this position would be required to maintain a current and active SRO license.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has determined that the proposed changes will not involve a significant hazards consideration as follows:

(1) The changes to Technical Specification 6.1.B will not result in a significant increase in the probability or consequences of an accident previously evaluated. These changes only redesignate the staff organization position of the individual which is assigned to perform the "Operations Manager's" functions as described in ANS-3.1 (12/79 Draft) without changing the required levels of training and qualification for that individual. The responsibility and authority of the "Operations Manager" will remain as the individual immediately superior to the operating shift supervisors. The changes will not have any [e]ffect on the operation of the plant or any plant components or equipment.

(2) The changes to Technical Specification 6.1.B will not create the possibility of a new or different kind of accident. These changes only redesignate the staff organization position of the individual which is assigned to perform the "Operations Manager's" functions as described in ANS-3.1 (12/79 Draft) without changing the required levels of training and qualification for that individual. The responsibility and authority of the "Operations Manager" will remain as the individual immediately superior to the operating shift supervisors. The changes will not have any [e]ffect on the operation of the plant or any plant component or equipment.

(3) The changes to Technical Specification 6.1.B will not result in a significant reduction in the margins of safety. These changes only redesignate the staff organization position of the individual which is assigned to perform the "Operations Manager's" functions as described in ANS-3.1 (12/79 Draft) without changing the required levels of training and qualification for that individual. The responsibility and authority of the "Operations Manager" will remain as the individual immediately superior to the operating shift supervisors. The changes will not have any [e]ffect on the operation of the plant or any plant components or equipment.

Therefore, pursuant to 10 CFR 50.92, based on the above consideration[s], it has been determined that these changes will not involve a significant hazards consideration.

The staff has reviewed the licensee's no significant hazards determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Previously Published Notices of Consideration of Issuance of Amendments to Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Unit 1, Rockingham County, New Hampshire

Date of amendment request: October 19, 1990

Brief description of amendment request: This amendment revises Technical Specification Surveillance Requirements 4.8.2.1d, 4.8.2.1e, and 4.8.2.1f by deleting the phrase "during shutdown" from these Surveillance Requirements. The design of vital DC systems at Seabrook Station incorporate two 100% capacity battery banks in each train. Technical Specification 3.8.3.2, DC Sources - operating currently allows one battery bank to be inoperable for up to 30 days. Removing one of the battery banks from service while at power does not degrade the system capabilities to a level less than that currently allowed by this Technical Specification. Additionally, in accordance with Technical Specification requirements, the alternate battery and charger in the same train and both battery banks and chargers in the opposite train will be OPERABLE during the performance of this testing.

Date of publication of individual notice in **Federal Register:** November 5, 1990 (55 FR 46593)

Expiration date of individual notice: December 5, 1990.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260, and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: May 18, 1990, revised October 30, 1990 (TS 280)

Brief Description of amendment request: This proposed amendment will: (1) revise Table 3.2.B and Limiting Conditions for Operation 3.5.B.11, 3.5.E.1, 3.5.F.1, 3.5.G.1, 3.6.D.1 and the bases section for 3.6.D/4.6.D to clarify equipment operability requirements when the reactor is in the cold shutdown condition, (2) revise the maximum operating power level allowed with an inoperable RPT system(s) from 65 percent to 30 percent power, and (3) correct two typographical errors in Table 3.2.B.

Date of publication of individual notice in **Federal Register:** November 15, 1990

Expiration date of individual notice: December 15, 1990

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Notice of Issuance of Amendment to Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: August 9, 1990

Brief description of amendment: The changes make minor corrections and improvements to Pilgrim's Administrative technical specifications consistent with current Standard Technical Specifications.

Date of issuance: November 5, 1990

Effective date: November 5, 1990

Amendment No.: 132

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 3, 1990 (55 FR 40457) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 5, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Commonwealth Edison Company, Docket Nos. 50-254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois

Date of application for amendment: August 31, 1990

Brief description of amendment: Revision of Technical Specifications to change the safety limit Minimum Critical Power Ratio (MCPR) from 1.07 to 1.06 to accommodate the use of GE 8x8NB fuel.

Date of issuance: November 6, 1990

Effective date: November 6, 1990

Amendment No.: 127

Facility Operating License No. DPR-29: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 3, 1990 (55 FR 40464) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 6, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: March 26, 1990

Brief description of amendment: This amendment revised License Condition (9) of the license, and would remove fire protection Technical Specifications 3/4.3.7.9, 3/4.7.7.1 through 3/4.7.7.8, 3/4.7.8 and 6.2.2.e and the corresponding Section 3/4 Bases and revise Technical Specifications 6.2.2.6 and 6.5.1.6

Date of issuance: November 14, 1990

Effective date: November 14, 1990

Amendment No.: 62

Facility Operating License No. NPF-43. The amendment revises the Operating License and the Technical Specifications

Date of initial notice in **Federal Register:** September 5, 1990 (55 FR 36339)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 14, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: May 31, 1988, as supplemented April 26, June 5 and August 1, 1990

Brief description of amendments: The amendments incorporate limits on allowable primary-to-secondary leakage, delete a requirement that an assessment be made as to whether operations may safely continue for leak rates less than the limit, and delete a redundant reporting requirement.

Date of issuance: November 13, 1990

Effective date: November 13, 1990

Amendment Nos.: 185, 185, 182

Facility Operating License Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 5, 1990 (55 FR 36340) The Commission's related evaluation of the amendments is

contained in a Safety Evaluation dated November 13, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of application for amendment: June 21, 1990

Brief description of amendment: The amendment modifies the Appendix A Technical Specifications (TSs) relating to Containment Isolation Valves (CIVs). Specifically, the amendment modifies Table 3.6-1, Containment Penetrations, to specify a maximum stroke time of 60 seconds vice 10 seconds for valves 2CHS-AOV200A, B, and C associated with penetration No. 28.

Date of issuance: November 13, 1990

Effective date: November 13, 1990

Amendment No.: 35

Facility Operating License No. NPF-73. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 17, 1990 (55 FR 38176) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 13, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: May 22, 1990

Brief description of amendment: The amendment modified TS 3.1.2.10 to allow the use of high pressure injection for emergency RCS makeup during decay heat removal operations, as recommended by Generic Letter 88-17.

Date of issuance: November 1, 1990

Effective date: November 1, 1990

Amendment No.: 138

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 11, 1990 (55 FR 28475) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 1, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: August 22, 1989, as supplemented July 5, 1990

Brief description of amendment: The amendment changed the allowable minimum setpoint value on the Pressurizer Code Safety Valves as specified in Technical Specification (TS) 3.4.2 and 3.4.3 from 1% to 3%. It also changed the minimum setpoint value for the Main Steam Line Code Safety Valves from 1% to 3% as specified in TS Table 3.7-5. Under these TS revisions, if the setpoint for either type of safety valve was found outside a 271% tolerance band, the setpoint would be adjusted to within 271% of the lift setting specified in the TS.

Date of issuance: November 1, 1990

Effective date: 30 days after the date of issuance

Amendment No.: 110

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 4, 1989 (54 FR 40923) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 1, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: February 16, 1990, as revised May 31, 1990, and June 22, 1990.

Brief description of amendment: The amendment extends the date for installing a neutron flux monitor for improved accident monitoring from the fourth refueling outage (October 1990) to the fifth refueling outage (April 1992).

Date of issuance: November 7, 1990

Effective date: November 7, 1990

Amendment No: 72

Facility Operating License No. NPF-29. Amendment revises the Operating License.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30295)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 7, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: June 8, 1990, as revised August 15, 1990.

Brief description of amendment: The amendment revises the TS and Bases to reflect the Advance Nuclear Fuels Corporation 8x8 and 9x9-5 fuel used in the fuel Cycle 5 Reload.

Date of issuance: November 15, 1990

Effective date: November 15, 1990

Amendment No: 73

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30297) The licensee's revised application did not significantly alter the action previously noticed or affect the description of the action published in the initial notice. The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated October 2, 1990 (55 FR 40428), and a Safety Evaluation dated November 15, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: March 9, 1990, as supplemented September 24, 1990

Brief description of amendment: This amendment provides greater operational flexibility at lower power by expanding the Axial Shape Index (ASI) limits for the Departure from Nucleate Boiling (DNB) and Local Power Density (LPD) Limiting Conditions for Operation (LCOs) and the LPD Limiting Safety System Setpoints (LSSS) (Technical Specification Figure 2.2-2), the LPD LCO (Technical Specification Figure 3.2-2), and the DNB LCO (Technical Specification Figure 3.2-4).

Date of Issuance: November 9, 1990

Effective Date: November 9, 1990

Amendment No.: 106

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 4, 1990 (55 FR 12591) The September 24, 1990 letter provided supplemental information which did not alter the staff's initial determination of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 9, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954 2003.

GPU Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, (TMI-2), Dauphin County, Pennsylvania

Date of application for amendment: June 30, 1989, revised January 22 and August 31, 1990

Brief description of amendment: The amendment modifies Appendix A Technical Specifications revising the administrative requirements associated with periodic audits of the unit's activities.

Date of Issuance: November 6, 1990

Effective date: November 6, 1990

Amendment No.: 39

Facility Operating License No. DPR-73. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 8, 1990 (55 FR 32327)

The August 31, 1990 submittal provided additional clarifying information and did not change our initial no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 6, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: December 18, 1989, as supplemented July 30, 1990.

Brief description of amendments: The amendments change the Appendix A Technical Specifications by deleting the organizational titles from the requirements for membership on the Plant Operations Review Committee and the Nuclear Safety Review Board. Instead, the composition of the two committees is defined in terms of qualification for membership.

Date of issuance: November 14, 1990

Effective date: November 14, 1990

Amendment Nos.: 20 and 10

Facility Operating License Nos. NPF-76 and NPF-80. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 4, 1990 (55 FR 12594) and October 3, 1990 (55 FR 40467). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 14, 1990.

No significant hazards consideration comments received: No.

Local Public Document Rooms Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: December 21, 1988

Description of amendment request: The amendment added a note to Technical Specification 3/4.4.1.3 to specify that the recirculation loop flow is the summation of the flows from all of the jet pumps associated with a single recirculation loop.

Date of issuance: November 8, 1990

Effective date: November 8, 1990

Amendment No.: 54

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 3, 1990 (55 FR 40467) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendment: May 29, 1990 and October 19, 1990

Brief description of amendment: The amendments revised the Technical Specifications in accordance with the guidance specified in NRC Generic Letter 89-01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls of Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or to the Process Control Program."

Date of issuance: November 13, 1990

Effective date: January 2, 1991

Amendment Nos.: 48 and 11

Facility Operating License Nos. NPF-39 and NPF-85. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 27, 1990 (55 FR 26291) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 13, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: September 19, 1990

Brief description of amendment: The amendment revises the Technical Specifications to remove Containment Isolation Valves UH-37 and UH-38 from Tables 3.6-1 and Table 4.4-1 (page 5 of 7).

Date of issuance: November 8, 1990

Effective date: November 8, 1990

Amendment No.: 105

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 3, 1990 (55 FR 40472) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

BEST COPY AVAILABLE

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: December 24, 1987, and supplemented by letters dated February 26, 1990, June 20, 1990, June 28, 1990 and September 19, 1990.

Brief description of amendments: These amendments changed Turbine Overspeed Protection surveillance requirements and the associated bases via revision of the Salem Unit No. 2 Technical Specifications (TSs) and added similar technical specifications to the Salem Unit No. 1 TSs. Salem Unit 1 previously had no technical specifications addressing turbine overspeed protection. The amendments changed the surveillance test frequency of the turbine stop valves, control valves, hot-reheat stop valves, and hot-reheat intercept valves. Instead of having a specific turbine valve test frequency, the licensee will use a turbine valve testing frequency determined by the methodology presented in Westinghouse Topical Report WCAP-11525, "Probabilistic Evaluation of the Reduction in the Turbine Valve Test Frequency," that meets the established NRC acceptance criteria for the probability of a missile ejection incident of less that 1.0 X 10 per year.

The June 20, 1990, June 28, 1990, and September 19, 1990 supplemental letters did not increase the scope of the original amendment request and did not affect the staff's original no significant hazards determination.

Date of issuance: November 13, 1990

Effective date: Units 1 and 2 are effective as of the date of issuance to be implemented within 60 days of the date of issuance.

Amendment Nos. 115 and 97.

Facility Operating License Nos. DPR-70 and DPR-75: These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register: April 4, 1990 (55 FR 12599) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 13, 1990.**

No significant hazards consideration comments received: No

Local Public Document Room location: **Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079**

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: June 5, 1990, as supplemented by letters dated September 26 and September 28, 1990.

Brief description of amendment: The amendment deletes License Condition 3.L and incorporates its requirements in the Technical Specifications.

Date of issuance: November 8, 1990

Effective date: This license amendment is effective the date of issuance and must be fully implemented no later than 30 days from date of issuance.

Amendment No.: 136

Provisional Operating License No. DPR-13: The amendment deleted License Condition 3.L and revised the Technical Specifications.

Date of initial notice in **Federal Register: June 27, 1990 (55 FR 26283) The** supplementary information submitted by letters dated September 26 and September 28, 1990, provided information to facilitate the preparation and coordination of replacement pages for the Technical Specifications and, therefore, did not alter the action that was originally proposed and noticed in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: **Main Library, University of** California, P.O. Box 19557, Irvine, California 92713.

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: June 11, 1990

Brief description of amendment: The amendment revises Technical Specification 4.0.2 to remove the 3.25 limit for extending three consecutive surveillance intervals. This revision is in accordance with the guidance provided by Generic Letter 89-14, "Line Item Improvements in Technical Specifications - Removal of the 3.25 Limit on Extending Surveillance Intervals."

Date of issuance: November 8, 1990

Effective date: November 8, 1990

Amendment No.: 137

Provisional Operating License No. DPR-13: **The amendment revised the Technical Specifications.**

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30312) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: **Main Library,** University of California, P.O. Box 19557, Irvine, California 92713.

TU Electric Company, Docket No. 50-445, Comanche Peak Steam Electric Station, Unit 1, Somervell County, Texas

Date of amendment request: May 18, 1990, as supplemented by letter dated July 9, 1990

Brief description of amendment: The amendment changes the setpoints in Tables 2.2-1 and 3.3-3 to permit the use of an analog panel front-installed meter for calibration of High and Low setpoints for power range neutron flux meters and corrects a bias in the steam generator water level Low-Low and High-High setpoints.

Date of Issuance: November 6, 1990

Effective date: November 6, 1990

Amendment No.: 2

Facility Operating License No. NPF-87. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register: August 8, 1990 (55 FR 32332)** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 6, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room Location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: May 18, 1990 (TS 242)

Brief description of amendments: The amendments revise Browns Ferry Technical Specification requirements for the Residual Heat Removal Service Water (RHRSW) and Emergency Equipment Cooling Water (EECW) systems.

Date of issuance: November 5, 1990

Effective date: November 5, 1990

Amendment Nos.: 178, 179, and 147

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: **Amendments revise the Technical Specifications.**

Date of initial notice in **Federal Register:** July 11, 1990 (55 FR 28482)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 5, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2 Hamilton County, Tennessee

Date of applications for amendments: January 24, April 25, May 15, and October 2, 1990 (TS 89-27)

Brief description of amendment: This amendment modified the Sequoyah Nuclear Plant, Unit 2, Technical Specifications (TSs). The changes revise the definition section; the Specifications 2.2.1, 3/4.3.1.1, and 3/4.3.2.1; and the associated bases for the revised specifications to reflect reactor protection system (RPS) upgrades and enhancements which were implemented on Unit 2 during the current Unit 2 Cycle 4 refueling outage.

The specific TSs which were revised are the following: (1) add definition 1.6.c and an acronym for Rated Thermal Power; (2) add or revise parameters in Tables 2.2-1, 3.3-1, 3.3-2, 3.3-3, 3.3-4, 3.3-5, 4.3-1, and 4.3-2; (3) add footnotes or action statements in Tables 3.3-1, 3.3-3, and 3.3-5; and (4) delete outdated footnotes and unused action statements in Tables 3.3-3, 3.3-4, 4.3-1 and 4.3-2. These changes reflect rack drift allowables for the Eagle-21 digital process protection system; the incorporation of the environmental allowance modifier, the trip time delay feature, and the median signal selector; the removal of the resistance temperature detector bypass manifolds; the addition of a new steamline break protection logic; the implementation of engineered safety features actuation system enhancements; and the deletion of out-of-date footnotes and unused action statements. The basis for this amendment is discussed in the enclosed Safety Evaluation.

The proposed changes for the Unit 1 TSs were approved in Amendment 141 for Unit 1 in the staff's letter dated May 16, 1990.

Date of issuance: October 31, 1990

Effective date: October 31, 1990

Amendment No.: 132

Facility Operating Licenses No. DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 21, 1990 (55 FR 6119)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: May 4, 1990 and October 2, 1990 (TS 90-13)

Brief description of amendments: The amendments modify Section 3/4.5.1, Accumulators, of the Sequoyah Nuclear Plant, Units 1 and 2, Technical Specifications (TSs). The changes revise the requirements in TS 3/4.5.1.1, Cold Leg Injection Accumulators, (1) to delete Action Statements "c" and "d" and the associated footnote and (2) to modify Surveillance Requirement (SR) 4.5.1.1.2 by adding a footnote to allow one level and one pressure channel to be inoperable and maintain cold leg accumulator operability. The staff requested the licensee to withdraw its application to delete the prescriptive statement in SR 4.5.1.1.1.a.1 as to how to verify accumulator level and pressure.

Date of issuance: November 2, 1990

Effective date: November 2, 1990

Amendment Nos.: 147 and 133

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 13, 1990 (55 FR 24005) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 2, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: May 16, 1990, as supplemented August 31, 1990

Brief description of amendments: The amendments delete the operability requirement for one pressurizer safety valve in Mode 5 (cold shutdown). The requirement to have one pressurizer safety valve operable in Mode 4 (hot shutdown) remains unchanged.

Date of issuance: November 01, 1990

Effective date: November 01, 1990

Amendment Nos.: 141, 124

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 19, 1990 (55 FR 38607) The August 31, 1990 letter provided supplemental information which did not alter the staff's initial determination of no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 01, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Dated at Rockville, Maryland, this 20th day of November 1990.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation

[Doc. 90-27791 Filed 11-27-90; 8:45 am]

BILLING CODE 7590-01-D

OFFICE OF PERSONNEL MANAGEMENT

Request for Expedited Review of OPM 2809, OPM 2809-EZ-1,2, and DPRS 2809 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Expedited notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces the Expedited Review by OMB for a revised clearance of an information collection, OMB Form 2809—Health Benefits Enrollment Change Form, OPM Form 2809-EZ-1,2—Health Benefits Enrollment Change Forms, and DPRS 2809—Request to Change FEHB Enrollment or to Receive Plan Brochures for Spouse Equity and Temporary Continuation of Coverage Enrollees. OPM uses OPM Form 2809, OPM Forms 2809-EZ-1,2, and DPRS 2809 to specify the opportunities and conditions under which a retiree, survivor annuitant, former spouse of a retiree, or a temporary continuation of coverage enrollee is eligible to enroll or to change enrollment in the Federal Employees' Health Benefits Program (FEHBP). Depending on the circumstances, one of four forms is completed by the person who is enrolling or changing enrollment in the program. These forms are all used to

effect FEHB enrollment or enrollment change. OMB has been requested to review and approve the application forms and instructions on an expedited basis no later than three (3) days after receipt.

Since these forms perform the same function and only differ in format, we have consolidated the burden hours. Approximately 295,500 forms are completed annually, each requiring approximately 30 minutes to complete for a total public burden of 147,750 hours. For copies of this proposal, call C. Ronald Trueworthy on (202) 606–2261.

DATES: Comments on this proposal should be received by December 1, 1990.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, room 6410, 1900 E Street NW., Washington, DC 20415.

and

Joseph Lackey, OPM Desk Officer, OIRA, Office of Management and Budget, New Executive Office Building NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606–0623.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

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FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

FEHB

OPEN SEASON

DPRS-2809

OMB Number XXXXXX

Request to Change FEHB Enrollment or to Receive Plan Brochures for Spouse Equity and Temporary Continuation of Coverage Enrollees

Read the enclosed instructions before completing this form.

Return form to NFC, DPRS Billing Unit, P.O. Box 61760, New Orleans, LA 70161-1760

Do not take any action to maintain your present coverage.

Section I. Action. Mark the appropriate block to indicate the action you are requesting. Please mark only ONE block.

☐ **Change Enrollment.** I want to change my FEHB enrollment and do not need to review further information. I have marked the block in Section II to indicate the plan I have selected OR entered the enrollment code and plan name for a prepaid plan.

☐ **Receive Plan Brochures.** I need to review additional information before making an Open Season election. Please send me the brochure(s) for the plan(s) I have marked in Section 2 or entered in the blocks for prepaid plans. A list of the prepaid plans is included in the comparison booklet. I understand that I may choose a total of 5 brochures.

Section II. Enrollment Codes and Plan Names. Mark the appropriate blocks.

Fee-for-Service *Open* Enrollment

461 ☐ Alliance—High—Self Only
462 ☐ Alliance—High—Self and Family
464 ☐ Alliance—Stnd—Self Only
465 ☐ Alliance—Stnd—Self and Family
471 ☐ APWU—Self Only
472 ☐ APWU—Self and Family
101 ☐ Blue Cross/Blue Shield—High—Self Only
102 ☐ Blue Cross/Blue Shield—High—Self and Family
104 ☐ Blue Cross/Blue Shield—Stnd—Self Only
105 ☐ Blue Cross/Blue Shield—Stnd—Self and Family
311 ☐ GEHA—Self Only
312 ☐ GEHA—Self and Family
451 ☐ Mail Handlers—High—Self Only
452 ☐ Mail Handlers—High—Self and Family
454 ☐ Mail Handlers—Stnd-Self Only
455 ☐ Mail Handlers—Stnd—Self and Family
321 ☐ NALC—Self Only
322 ☐ NALC—Self and Family
YY1 ☐ NTEU—Self Only
YY2 ☐ NTEU—Self and Family
361 ☐ Postmasters—High—Self Only
362 ☐ Postmasters—High—Self and Family
364 ☐ Postmasters—Stnd-Self Only
365 ☐ Postmasters—Stnd—Self and Family

Fee-for-Service *Limited* Enrollment

Enrollee must be a full member of the sponsoring organization to enroll in these plans.

Y21 ☐ BACE—Self Only
Y22 ☐ BACE—Self and Family
401 ☐ Foreign Service—Self Only
402 ☐ Foreign Service—Self and Family
YP1 ☐ NAPUS—Self Only
YP2 ☐ NAPUS—Self and Family
431 ☐ Panama Canal Area—Self Only
432 ☐ Panama Canal Area—Self and Family
381 ☐ Rural Carriers—Self Only
382 ☐ Rural Carriers—Self and Family
441 ☐ SAMBA—Self Only
442 ☐ SAMBA—Self and Family
Y71 ☐ Secret Service—Self Only
Y72 ☐ Secret Service—Self and Family

Prepaid Plans

Enrollment Code	Name of Plan

Section III. Address Correction.

☐ I need to correct my address. The changes are indicated in the box below.

Section IV. Authorization. You must sign and date this form. Enter the daytime area code and telephone number where you can be contacted to answer questions.

Signature

Date

Area Code and Telephone Number

1990 SPOUSE EQUITY AND TEMPORARY CONTINUATION ENROLLEE
Information and Instruction Sheet
For Completing DPRS Form 2809

Carefully read the following instructions before completing your request form.

The enclosed Direct Premium Remittance System (DPRS) Form 2809 has been designed for speedy processing. It has been personalized with your name and social security number. This form should not be used by anyone other than the addressee and *must* be signed by the addressee.

Your personalized DPRS Form 2809 allows you to:

1. Change your current health benefits plan.
2. Request plan brochures to help you in selecting a health plan.

If you decide not to make an enrollment change this year, you don't need to complete the DPRS form. Please read both the form and the accompanying plan comparison booklet to make sure your current health benefits plan and option of coverage, especially prepaid plans, will still be available to you in 1991. ***If your plan is not listed, you must change your health benefits enrollment.*** For example, some of the fee-for-service plans that will not be participating in the FEHBP after midnight December 31, 1990, are:

AFGE	NFFE
GEBA	NAGE
Postal Supervisors	

If you are currently enrolled in one of these plans or a prepaid plan that is not listed, you must select another plan during this Open Season period (November 13 through December 10, 1990) to be assured of continued health benefits coverage.

Important. You should also carefully review the 1991 premium cost shown in the plan comparison booklet for your plan and option of coverage. There are only limited opportunities which permit you to change your enrollment outside of the Open Season. If you do not change your enrollment during the Open Season, you may not be eligible to change later, even if you do not wish to pay an increased premium cost for your enrollment.

Section I, Action. You may select either item 1 or item 2 below, but not both. Read the instructions carefully before making any decisions.

How to Change Health Plan Enrollment
Your account must be current before a change will be processed.

Section I, Action. Mark the Change of Enrollment block.

Section II, Enrollment Codes and Plan Names. Mark one block only in the Fee-for-Service Open Enrollment or Fee-for-Service Limited Enrollment columns, *or* enter the enrollment code and name of plan in the Prepaid Plan column. A list of the Prepaid Plans is included in the comparison booklet.

Enrollee must be a full member of the sponsoring organizations to be eligible for the Fee-for-Service Limited Enrollment plans.

Section III, Address Correction. If your address is incorrect on the enclosed form, go to Section III. Enter the changes in the space provided. Mark a line through the erroneous information of your preprinted address. The address you provide here will be used by DPRS to mail all future correspondence, including health benefits information.

Section IV, Authorization. Sign and date the form. Enter the daytime area code and phone number where you can be contacted to answer questions concerning the information on this form.

Return the form in the envelope provided. You will receive an acknowledgement letter confirming your change of enrollment.

Additional Help. If you need assistance in completing your form, you may call the DPRS Billing Unit for Open Season Information from 7:45 a.m. to 4:00 p.m. This is a Toll Call if you are calling long distance. The Open Season number is 1-504-255-5991.

Late Authorization. If you request plan brochures during the Open Season, you will be granted at 31 days in which to review the brochures and return your enrollment change request to us.

Effective Dates of Open Season Changes. ***All enrollment changes will be effective January 1, 1991.*** If your change is processed before January 1, 1991, the coupons received in January will reflect the new premium. Otherwise, the new premium will be reflected in the coupons sent to you after the change is processed, retroactive to January 1991.

Identification Cards. These cards are issued by the health plans, not DPRS. It may take up to 3 months after DPRS has processed your Open Season change for you to receive your new identification card. Should you or your family require medical attention after January 1, but before you receive your new identification card, you may use the acknowledgement letter we send you as proof of your new coverage.

Acknowledgement Letters. If you made a change in your enrollment during the Open Season, a letter acknowledging your change will be mailed to you. You should keep this acknowledgement letter to use as verification of your new enrollment effective January 1, 1991.

Privacy Act Statement. The information you provide on the Health benefits registration Form is needed to document you enrollment in the Federal Employees Health Benefits Program under Chapter 89, Title 5, U.S. Code. This information will be shared with the health insurance carrier you select, so that they may (1) identify your enrollment in their plan, (2) verify your and/or you family's eligibility for payment of a claim for health benefits services or supplies, and (3) coordinate payment of claims with other carriers with whom you might also make a claim for payment of benefits. This information may be disclosed to other Federal agencies or Congressional offices which may have a need to know it in connection with your application for a job, license, grant or other benefit. It may also be shared and is subject ot verification, via paper, electronic media, or through the use of computer matching programs with national, state, local or other charitable or social security administrative agencies to determine and issue benefits under their programs, in adation, to the extent the information indicates a violation of civil or criminal law, it may be shared with an appropriate Federal, state, or local law enforcement agency. The law does not require you to supply all the information requested on the form, but doing so will assist in the prompt processing of your enrollment.

Public Burden Statement We think this form takes an average 10 minutes to complete, including the time for reviewing instructions, getting the needed data, and reviewing the completed form. Send comments regarding our estimate or nay other aspect of this form, including suggestions for reducing completion time, to the Office of Management and Budget, Paperwork Reduction Project (3206-0141), Washington, D.C. 20503.

1990 SPOUSE EQUITY AND TEMPORARY CONTINUATION ENROLLEE
Information and Instruction Sheet
For Completing DPRS Form 2809
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Your personalized DPRS Form 2809 allows you to:

1. Change your current health benefits plan.
2. Request plan brochures to help you in selecting a health plan.

If you decide not to make an enrollment change this year, you don't need to complete the DPRS form. Please read both the form and the accompanying plan comparison booklet to make sure your current health benefits plan and option of coverage, especially prepaid plans, will still be available to you in 1991. ***If your plan is not listed, you must change your health benefits enrollment.*** For example, some of the fee-for-service plans that will not be participating in the FEHBP after midnight December 31, 1990, are:

AFGE	NFFE
GEBA	NAGE
Postal Supervisors	

If you are currently enrolled in one of these plans or a prepaid plan that is not listed, you must select another plan during this Open Season period (November 13 through December 10, 1990) to be assured of continued health benefits coverage.

Important. You should also carefully review the 1991 premium cost shown in the plan comparison booklet for your plan and option of coverage. There are only limited opportunities which permit you to change your enrollment outside of the Open Season. If you do not change your enrollment during the Open Season, you may not be eligible to change later, even if you do not wish to pay an increased premium cost for your enrollment.

Section I, Action. You may select either item 1 or item 2 below, but not both. Read the instructions carefully before making any decisions.

How to Change Health Plan Enrollment
Your account must be current before a change will be processed.

Section I, Action. Mark the Change of Enrollment block.

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Section III, Address Correction. If your address is incorrect on the enclosed form, go to Section III. Enter the changes in the space provided. Mark a line through the erroneous information of your preprinted address. The address you provide here will be used by DPRS to mail all future correspondence, including health benefits information.

Section IV, Authorization. Sign and date the form. Enter the daytime area code and phone number where you can be contacted to answer questions concerning the information on this form.

Return the form in the envelope provided. You will receive an acknowledgement letter confirming your change of enrollment.

How to Receive Additional Plan Information

Section I, Action. Mark the Receive Plans Brochures block.

Section II, Enrollment Codes and Plan Names. ***You may choose up to 5 plan brochures.*** Mark the block for each plan brochure you wish to receive in the Fee-for-Service Open Enrollment or Fee-for-Service Limited Enrollment columns, *or* enter the enrollment code and name of plans in the Prepaid Plan column. A list of the Prepaid Plans is included in the comparison booklet.

Section III, Address Correction. If your address is incorrect on the enclosed form, go to Section III, and enter the changes in the space provided. Mark a line through the erroneous information of your preprinted address. The address you provide here will be used by DPRS to mail all future correspondence, including health benefits information.

Section IV, Authorization. Go to Section IV. Sign and date the form. Enter the daytime area code and phone number where you can be contacted to answer questions concerning the information on this form.

Return the form in the envelope provided. Upon receipt of your form, we will mail to you a package with the brochures you requested and a form for your use if you wish to make an enrollment change.

Do not complete this section of the form if you are changing your enrollment and wish to obtain a brochure of your new plan for the upcoming year. Your new plan will send you a brochure when we notify them of your enrollment.

Additional Help. If you need assistance in completing your form, you may call the DPRS Billing Unit for Open Season Information from 7:45 a.m. to 4:00 p.m. This is a Toll Call if you are calling long distance. The Open Season number is 1-504-255-5991.

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Privacy Act Statement. The information you provide on the Health benefits registration Form is needed to document you enrollment in the Federal Employees Health Benefits Program under Chapter 89, Title 5, U.S. Code. This information will be shared with the health insurance carrier you select, so that they may (1) identify your enrollment in their plan, (2) verify your and/or you family's eligibility for payment of a claim for health benefits services or supplies, and (3) coordinate payment of claims with other carriers with whom you might also make a claim for payment of benefits. This information may be disclosed to other Federal agencies or Congressional offices which may have a need to know it in connection with your application for a job, license, grant or other benefit. It may also be shared and is subject ot verification, via paper, electronic media, or through the use of computer matching programs with national, state, local or other charitable or social security administrative agencies to determine and issue benefits under their programs, in adation, to the extent the information indicates a violation of civil or criminal law, it may be shared with an appropriate Federal, state, or local law enforcement agency. The law does not require you to supply all the information requested on the form, but doing so will assist in the prompt processing of your enrollment.

Public Burden Statement We think this form takes an average 10 minutes to complete, including the time for reviewing instructions, getting the needed data, and reviewing the completed form. Send comments regarding our estimate or nay other aspect of this form, including suggestions for reducing completion time, to the Office of Management and Budget, Paperwork Reduction Project (3206-0141), Washington, D.C. 20503.

[FR Doc. 90-27796 Filed 11-27-90; 8:45 am]
BILLING CODE 6325-01-C

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-17861; File No. 812-7588]

Application for Order; College Retirement Equities Fund, et al.

November 20, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: College Retirement Equities Fund ("CREF"), Teachers Insurance and Annuity Association of America ("TIAA"), TIAA–CREF Investment Management, Inc. (the "Management Company"), and TIAA–CREF Individual & Institutional Services, Inc. (the "Service Company").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to section 17(d) of the 1940 Act and rule 17d–1 thereunder approving certain transactions.

SUMMARY OF APPLICATION: Applicants seek an order approving the proposed restructuring described below whereby CREF will "externalize" the investment advisory, administrative, and distribution services which are now provided for CREF internally. These services will be performed by the Management Company and the Service Company, respectively, both of which are newly created, wholly controlled subsidiaries of TIAA.

FILING DATE: The application was filed on September 7, 1990 and amended on November 16, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on December 17, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit, or, in case of an attorney-at-law, by certificate. Request notification of the date of hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Peter C. Clapman, Esq., TIAA–CREF, 730 Third Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Barry D. Miller, Senior Staff Attorney, at (202) 272–3012, or Heidi Stam, Assistant Chief, Office of Insurance Products and Legal Compliance, at (202) 272–2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 738–1400).

Applicants' Representations

1. CREF is a non-profit membership corporation subject to the Not-For-Profit Corporation Law of New York State. It was established by a special act of the New York State Legislature which became effective on March 18, 1952, and was formed for the purpose of providing retirement benefits suited to the needs of teachers and other employees of nonproprietary and non-profit educational and research organizations. CREF achieves this purpose by issuing variable annuity certificates funded by its investment portfolios, which currently consist of a Stock Account, Money Market Account, Bond Market Account, and Social Choice Account (collectively, the "Accounts"). CREF is also subject to supervision and regulation by the New York State Superintendent of Insurance and by the insurance regulatory authority of certain other states and jurisdictions.

2. CREF is registered as an open-end diversified management investment company under the 1940 Act and the variable annuity certificates (the "Certificates") it issues are registered under the Securities Act of 1933 (the "Securities Act"). CREF is also registered as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act"), and is a member of the National Association of Securities Dealers, Inc. ("NASD"), solely in connection with the distribution of the Certificates. It is also registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act") in connection with the management of its investment Accounts. As a membership corporation, CREF has no "shareholders" in the traditional sense. Rather, it is controlled as a technical matter by a group of seven individuals known as "members." To date, CREF's members' principal function has been to elect CREF's Trustees.

3. TIAA was established in 1918 as a non-profit corporation under the New York State Insurance Law to provide retirement benefits and financial security for the types of institutions and employees served by CREF. TIAA offers fixed annuities and insurance benefits funded by its general account. All of the stock of TIAA is held by an entity designated "TIAA Board of Overseers", itself a New York not-for-profit membership corporation organized and existing solely for the purpose of holding TIAA's stock and performing related functions. TIAA is regulated as an insurance company by New York State and other jurisdictions.

4. CREF and TIAA are legally distinct entities. However, officers of TIAA generally are also officers of CREF. In addition, the individuals comprising the members of CREF also comprise the members of TIAA Board of Overseers.

5. CREF and TIAA, as companion entities, comprise the principal retirement system for the nation's education and research communities. As of January 1, 1990, there were approximately one-million individuals and institutions accumulating benefits in the TIAA–CREF system, and another 200,000 retired individuals receiving benefits from the TIAA–CREF system. Owners of the Certificates or TIAA contracts are referred to herein as "Participants."

6. The Management Company and the Service Company (collectively, the "Subsidiaries") were formed on September 4, 1990, as Delaware non-stock membership corporations wholly controlled by TIAA. Neither of the Subsidiaries has any current operations. It is intended that the Subsidiaries will be exempt from federal and state taxation. The Management Company will provide investment advisory services to CREF. It will register as an investment adviser under the Advisers Act. The Service Company will provide services relative to the distribution of the Certificates and the administration of CREF. The Service Company will register as a broker-dealer under the 1934 Act and become a member of the NASD. The Service Company may also be registered as a broker-dealer in a number of states.

7. All services for CREF relating to the rendering of investment advice, the administration of CREF, and the distribution of the Certificates are currently provided at cost pursuant to an expensive reimbursement agreement with TIAA (the "Agreement"). Under the Agreement, TIAA makes all disbursements in connection with the operation of CREF. These services are performed by individuals whose time is allocated for expense purposes between TIAA and CREF.

In connection with these services, certain daily deductions are made from the net assets of the Accounts. TIAA receives amounts daily from CREF corresponding to these deductions. The rates of these deductions are revised from time to time, based solely on estimates of expenses anticipated to be incurred, with the objective of keeping the deductions as close as possible to actual expenses. As soon as is practicable after the end of each quarter, the amount necessary to correct any differences between the deductions and the expenses actually incurred will be determined. This amount will be deducted or credited, as the case may be, between CREF and TIAA in equal daily installments over the remaining days in the quarter. Currently, members of the Boards of Trustees of CREF who are employees of CREF or TIAA annually review and approve the Agreement and the arrangements relative to investment advisory, administrative, and distribution services.

8. Subject to the direction and control of CREF's Board of Trustees, certain personnel manage the investment and reinvestment of the assets of CREF's investment Accounts. Accounts are only charged for services rendered in managing their respective assets.

9. The duties of CREF investment advisory personnel include research, making recommendations concerning investment strategies to the Finance Committee of the Board, and placing orders for the purchase and sale of securities. These personnel also provide for all portfolio accounting, custodial, and related services for the Accounts.

For investment advisory services provided to the Accounts, an amount currently is deducted each valuation day from the net assets of the Stock Account at an annual rate of 0.11%; from the net assets of the Money Market Account at an annual rate of 0.08%; and from the net assets of the Bond Market Account and the Social Choice Account at an annual rate of 0.12%, of the average daily net assets of each Account.

10. Certain personnel provide all services related to the administration of CREF. Administrative services are basically all services not related to the management of the investments of the Accounts or distribution of the Certificates including, but not limited to, the allocated portion of items such as fees and expenses paid to the Trustees, salaries, rent, postage, etc. For administrative services, a deduction currently is made each evaluation day from the net assets of each Account at an annual rate of 0.21% of the average daily net assets of each Account.

11. The Certificates are offered on a continuous basis and are distributed by registered representatives of CREF. Compensation paid for services relating to the distribution of the Certificates is based on salary; no commissions are paid. For expenses related to the distribution of the certificates, a deduction is currently made each valuation day from the net assets of each account at an annual rate of .02% of the average daily net assets of each Account. Pursuant to Commission order, this deduction will not exceed .25% of the average daily net assets of an Account.

12. The restructuring is being undertaken for two principal reasons. First, CREF is seeking to simplify its regulatory compliance obligations by more clearly segregating functional responsibilities of individuals performing services for CREF. Both broker-dealer and investment adviser regulation frequently overlap with investment company regulation in the case of an entity like CREF which performs distribution and advisory services internally. In particular, recordkeeping and reporting requirements are often duplicative, and identification and supervision of personnel involved in a function regulated by the 1934 Act or the Advisers Act, in addition to the 1940 Act, creates administrative burdens and expense with no added benefit to Participants. Thus, although CREF has complied with all SEC and NASD requirements related to supervision, registration, and regulation of distribution and advisory personnel, and with other requirements related to its investment advisory and distribution activities, it has determined that administration and supervision of these activities can be achieved most effectively and efficiently if those activities were carried out through separate entities.

Second, and more specifically related to distribution activities, is the fact that broker-dealer regulation frequently conflicts with the practical realities of investment company operation. Difficult questions relating to the status of CREF personnel as "associated persons," fingerprinting requirements, calculation of the NASD's annual assessment, and the status of CREF under the net capital and customer protection rules have had to be addressed. The impact of this anomalous situation is perhaps greatest on CREF's investment flexibility. CREF has received assurances from the NASD with respect to certain investment issues that have arisen as a result of its unusual structure; however, CREF believes that having to seek such assurances, as these types of issues arise on a frequent basis, is inefficient and creates expenses and administrative dislocation that could be avoided by reliance on an external entity.

CREF also believes that the proposed restructuring will have additional benefits. For example, it is expected that Participants will more easily understand CREF's corporate structure after the effectiveness of this restructuring. It also is expected that the proposed restructuring will result in more efficient administration and, therefore, that supervisory practices will be enhanced.

13. The proposed restructing is the result of lengthy consideration by CREF. CREF has considered alternative approaches, such as registering TIAA as the broker-dealer or investment adviser, or having TIAA serve as administrator for CREF, or creating subsidiaries of CREF. Concerns about maintaining the tax-exempt status of the TIAA–CREF pension system and creating an unnecessarily complicated structural framework have led CREF to conclude that the approach described herein is the most prudent.

14. Applicants propose that the investment advisory, administrative, and distribution services now being performed internally by CREF be provided to CREF by two newly formed external entities. These entities are non-profit membership corporations which will be wholly controlled by their sole member, TIAA. The sole purpose of the Subsidiaries is to provide services to CREF; there is no current intention for these entities to provide services for any unaffiliated entities. The Subsidiaries will, however, provide services for any new Accounts CREF establishes in the future.

15. The Management Company will be responsible for managing the portfolios of all of CREF's Accounts. The personnel associated with the Management Company will consist of the same personnel who currently manage CREF's Accounts and are deemed associated with CREF's investment adviser operation.

16. The Service Company will be structured and operated in a manner designed to qualify it for treatment as a "$2,500" broker-dealer under the net capital rule, rule 15c3–1 under the 1934 Act, as well as for other simplified regulatory requirements generally accorded broker-dealers whose securities activities are limited to the sale and redemption of redeemable shares of registered investment companies or units in insurance company separate accounts. The Service Company will be responsible for all services related to the distribution of the Certificates. It will also be responsible for all administrative services for CREF. The personnel currently engaged in distributing the Certificates as registered

representatives and registered principals, respectively, of CREF will be registered representatives and registered principals of the Service Company, with organizational structure, supervisory personnel and esponsibilities virtually unchanged.

17. Under the proposed restructuring, the services provided to CREF will be unchanged and uninterrupted, and expenses will be deducted from CREF's assets in a manner similar to the current procedure. Moreover, expenses will continue to be deducted at cost and no element of profit will inure to the benefit of either fo the Subsidiaries or to TIAA. Compensation paid for services to the Subsidiaries will be based on salary; no commissions will be paid for distribution or any other services. TIAA will make all disbursements and pay all operating expenses for the Subsidiaries (other than direct investment expenses such as brokerage commissions), and will serve as a common paymaster for personnel of the Subsidiaries as well as TIAA, just as it currently does for CREF.

18. Applicants believe that the changes described herein, in reality, only affect the corporate structure of CREF's service providers and not their operating methods (*e.g.*, personnel will not even have to change the location of their offices); will present virtually no administrative disruption; and will create administrative efficiencies by simplified regulatory compliance. Therefore, Applicants believe that the restructing will not result in an increase in the deductions made from CREF's assets for investment advisory, administrative, and distribution services.

19. After the restructuring, CREF will operate solely as a registered investment company, and will no longer be subject to two additional layers of regulation, as it will deregister as an investment adviser, and will deregister as a broker-dealer and terminate its membership in the NASD.

20. The relationships created by the restructuring will be defined in a series of agreements among the Applicants. The amounts deducted each day from CREF's assets for the various services will be credited to the Subsidiaries. Amounts will be credited to the Management Company for investment management services pursuant to an agreement for advisory services between it and CREF. Amounts will be credited to the Service Company for distribution and administrative services pursuant to a principal underwriting and administrative services agreement between it and CREF. Both of these agreements will be reviewed annually by CREF's Board of Trustees, and approved as being in the best interests of CREF's Participants by a majority of CREF Trustees who are not "interested persons" of CREF within the meaning of section 2(a)(19) of the 1940 Act. The principal underwriting and administrative services agreement will be ratified in the manner required by section 15 of the 1940 Act. The Management Company will operate as a non-profit corporation and will provide all investment management services on an at cost basis. Therefore, according to Applicants, the Management Company is not deemed an "investment adviser" for purposes of the 1940 Act, and the advisory agreement is not subject to section 15 of the 1940 Act.

The Subsidiaries will, in turn, enter into expense reimbursement agreements with TIAA. Pursuant to those agreements, TIAA will pay all expenses and make all disbursements on behalf of the Subsidiaries, and will receive credit from them in the amounts each is credited as receiving as daily deductions from CREF's assets pursuant to their respective agreements with CREF.

All these agreements will provide (just as the current expense reimbursement agreement provides) that at the end of each calendar quarter the amounts of the payments made will be "trued up" to reflect the actual expenses incurred.

Applicants' Legal Analysis

21. Applicants acknowledge that TIAA could be deemed an affiliated person of CREF by virtue of the common identity of the members of CREF and the members of TIAA Board of Overseers, as well as because of the common identity of many of their executive officers. As TIAA may be deemed to be affiliated with CREF, and TIAA will be affiliated with the Subsidiaries, the proposed restructuring and the agreements effecting it may be deemed to involve "a joint enterprise or other joint arrangement" in contravention of section 17(d) and rule 17d–1.

22. Applicants believe that the terms of CREF's proposed restructuring satisfy the standards set forth in rule 17d–1 in that the proposed restructuring is consistent with the provisions, policies, and purposes of the 1940 Act and the participation of CREF and each of the Accounts is on a basis no different from or less advantageous than that of the other parties involved and is in the best interest of its Participants. The restructuring will simplify and clarify CREF's regulatory status, thereby resulting in greater investment flexibility and reduced recordkeeping and other requirements generally not imposed upon other registered investment companies. It is also expected to enhance the internal supervisory system of CREF and the Subsidiaries, as well as the ability of CREF's Board of Trustees to fulfill its fiduciary duties, by clarifying individual responsibilities and regulatory requirements.

23. Applicants also believe that CREF's participation is beneficial to Participants and does not put CREF, or any of its Accounts, at a disadvantage with respect to, or involve overreaching by, any of the other parties. Applicants contend that because they are not-for-profit entities with the singular purpose of effectuating and promoting the TIAA–CREF retirement system, the potential for such overreaching is neither logical nor conceivable.

24. The proposed restructuring proffers a definite benefit upon CREF participants. For example, the continuing "at cost" expenses of the services provided, as well as the maintenance of the existing and familiar service delivery structure, provide significant benefits to Participants. Moreover, when the additional advantages of the restructuring described above are fully considered, the "joint enterprise" confers even greater benefits to Participants.

25. The Commission has, in the past, granted exemptive relief on a number of occasions to permit the externalization of advisory, distribution, and administrative services. In many of these instances, sponsors of the external entities which would provide the formerly internalized services stood to profit from the externalization, and the transactions involved transfers of stock and/or other assets, and, in some cases, the possibility of higher costs for the investment company.

26. CREF's proposed restructuring, however, raises none of these concerns; CREF is not transferring any economic benefit away from its Participants to private entities which may be controlled by insiders or affiliates or which may transfer ownership of the shares elsewhere. The only change in the relationship between CREF and its Participants is that different entities will be performing investment advisory, distribution, and administrative services for CREF. Such services will continue to be furnished at cost to Participants, and CREF will maintain its not-for-profit status. No insider, affiliate, or outside entity will obtain any economic gain from CREF's restructuring, and no Participant will lose any potential economic gain.

27. CREF's Board of Trustees, including a majority of the Trustees who were not "interested persons" within the meaning of the 1940 Act, considered and reviewed the relative benefits to each Account and to Participants as a whole from the proposed restructuring. The Board determined that, in fact, the arrangement represented the best approach for CREF to take.

28. The Commission has previously issued an order on a prior application by CREF which granted CREF significant exemptive relief under the 1940 Act. *See* Release No. IC–17116 (Aug. 22, 1989) (the "Order"). The Order was based in part on the terms of a settlement agreement entered into on December 21, 1988 (the "Settlement Agreement"), by CREF, TIAA, and certain intervenors in the proceeding ordered by the Commission on CREF's prior application. Among other things, the Order granted relief to allow CREF to rely on certain general exemptions from the requirements of the 1940 Act available to issuers of variable annuity contracts, and granted certain relief from the redeemability provisions of the 1940 Act.

29. CREF made certain representations and undertakings in connection with the Settlement Agreement. Several of these representations and undertakings involve obligations which remain ongoing. To the extent these obligations continue, and to the extent these obligations would apply to the Management Company and/or the Service Company as successors to functions for which CREF itself has responsibility, each of those entities represents that it will be bound by the terms of the Settlement Agreement and the Order as if each of them were signatories to the Settlement Agreement.

30. In addition to the relief requested in this application, and notwithstanding the changes to CREF's method of operation described in this application, Applicants submit that the relief granted in the Order should remain in force subsequent to CREF's restructuring. As Applicants have demonstrated above, the restructuring goes merely to the form of the entities providing certain services for Participants and not to the actual services being provided or to any change in CREF's purpose or function. Accordingly, the corporate structural changes described herein for which relief is being sought do not, Applicants believe, represent material changes from the facts cited in the prior application as they relate to the basis for the granting of relief with respect to that application. Therefore, it is requested that any order issued by the Commission on this application specifically refer to the continuing effectiveness of the relief granted in the Order.

Applicants' Condition

Applicants agree that issuance of the requested order is expressly conditioned upon the following:

1. Upon issuance of the notice of this application, Applicants will forward a copy of such notice to each of the signatories to the Settlement Agreement within two days of the issuance of such notice.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–27872 Filed 11–27–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17862; 812–7605]

Western Life Insurance Co., et al.

November 20, 1990.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Western Life Insurance Company ("Western"), Variable Account D of Western Life Insurance Company ("Variable Account"), and AMEV Investors, Inc.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of mortality and expense risk charges from the assets of the Variable Account under certain flexible premium deferred annuity contracts.

FILING DATE: October 5, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on December 17, 1990 and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC, 20549. Applicants, 500 Bielenberg Drive, Woodbury, Minnesota 55125.

FOR FURTHER INFORMATION CONTACT: L. Bryce Stovell, Staff Attorney, at (202) 504–2272, or Heidi Stam, Assistant Chief, at (202) 272–2060, Office of Insurance Products and Legal Compliance (Division of Investment Management).

Applicants' Representations

1. Western was organized under Minnesota law as a stock life insurance company and is the depositor, for purposes of the 1940 Act, for the Variable Account. The Variable Account was organized under Minnesota law as an insurance company separate account and is registered under the 1940 Act as a unit investment trust. AMEV Series Funds, Inc. (the "Fund") is the underlying investment medium for the Variable Account and is registered under the 1940 Act as an open-end management investment company. AMEV Investors, Inc., a registered broker-dealer, is the Variable Account's principal underwriter.

2. Applicants intend to offer to the public certain flexible premium deferred variable annuity contracts (the "Contracts"). Holders of these Contracts will direct Contract payments to one of several sub-accounts of the Variable Account. These payments then will be invested by the sub-accounts into redeemable shares of one of the corresponding portfolios of the Fund, thereby making such redeemable shares the Variable Account's principal assets.

3. Western will assume certain risks, described below, in connection with its sale of the Contracts. Accordingly, Western proposes to compensate itself for assuming these risks by deducting from the assets of the Variable Account a daily asset charge for mortality and expense risks.

4. Western will assume several mortality risks under the Contracts. First, Western will assume a mortality risk arising from its agreement to pay a death benefit prior to the annuity date. The death benefit, if paid in a lump sum, will be the greater of: (a) The sum, subject to certain adjustments, of all net purchase payments made, (b) the investor's account value, or (c) the account value, subject to certain adjustments, as of the anniversary immediately preceding the date that the annuitant reaches his 75th birthday. Second, Western will assume a mortality risk arising from its agreement not to impose upon the aforementioned death benefit any contingent deferred

sales charge if the death occurs before age 75. Third, Western also will assume a mortality risk arising from its agreement, under annuity options involving life contingencies, to: (a) Base such annuities on an annuity table that is at least as favorable to annuitants as the Contract tables, and (b) pay annuities to each annuitant for life.

5. In addition to mortality risks, Western will assume an expense risk because the administrative charges may be insufficient to cover actual administrative expenses. In this regard Western will agree not to raise, for the duration of the Contracts, its daily net asset value charge of .1% for administrative expenses. Western represents that this charge is not expected to be greater than the average expected cost of the administrative services to be provided during the period of the guarantee. However, Western also represents that the guarantee exposes it to the risk of bearing any higher costs for the administrative services in question.

6. Due to the foregoing, Western proposes to set the mortality and expense risk daily charge against Variable Account assets at an aggregate rate of 1.25% per annum, with approximately .8% allocated to cover the mortality risks and approximately .45% allocated to cover the expense risk.

7. Applicants state that they have reviewed publicly available information regarding products of other companies taking into consideration such factors as guaranteed minimum death benefits, guaranteed annuity purchase rates, minimum initial and subsequent purchase payments, other contract charges, the manner in which charges are imposed, market sector, investment options under the contracts, and availability to individual qualified and non-tax-qualified plans. Based upon this review, Applicants have concluded that the mortality and expense risk charge proposed here is within the rang of industry practice for comparable annuity contracts.

8. Applicants will maintain at their principal office a memorandum setting forth in detail the variable annuity products analyzed and the methodology, and results of, Applicants' comparative review. Applicants will make this memorandum available to the SEC and its staff upon request.

9. No front-end sales charge will be imposed when purchase payments are applied under the Contracts. However, a contingent deferred sales charge will be assessed against certain withdrawn or surrendered payments. This charge will be 7% in the first year and then will grade down evenly at annual intervals to 0% after seven years from the date of the payment in question.

10. The contingent deferred sales charge may be insufficient to cover all costs relating to the distribution of the Contracts. If a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the contingent deferred sales charge. In such circumstances a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts. Notwithstanding the foregoing, Western has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Variable Account and Contract owners.

11. The basis for the conclusion regarding financing arrangements that is stated above is set forth in a memorandum which will be maintained by Western at its principal office and will be made available to the SEC and its staff upon request.

12. Western also represents that the Variable Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under rule 12b-1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-27873 Filed 11-27-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Shawano County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Shawano County, Wisconsin.

FOR FURTHER INFORMATION CONTACT:

Robert Cooper, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705; Telephone: (608) 264-5940.

Carol Cutshall, Wisconsin Department of Transportation, Office of Environmental Analysis, 4802 Sheboygan Avenue, Madison, Wisconsin 53705; Telephone: (608) 267-4473.

James F. Oeth, Donohue & Associates, Inc., 6325 Odana Road, Madison, Wisconsin 53791; Telephone: (608) 271-1004.

William Nicholson, Wisconsin Department of Transportation, Highway 29 Project Management Team, 1681 Second Avenue South, P.O. Box 8021, Wisconsin Rapids, Wisconsin 54495; Telephone: (715) 421-8365.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve State Trunk Highway 29 (STH 29) from near Bonduel to the east Shawano County Line, a distance of about 12 miles. The purpose of this project is to provide traffic improvements and enhance economic development for this primarily rural area. A 1988 Feasibility Study determined that improvements to STH 29 would have a good benefit-cost ratio and provide more efficient movement of goods and services through this important regional corridor.

The existing roadway is a 2-lane facility. Engineering studies are underway to determine whether this section of STH 29 should be developed initially as an expressway or as a freeway. The EIS will assess the need, location, and environmental issues of alternatives, including: (1) No build; (2) existing corridor with a relocated corridor to bypass the community of Angelica; (3) relocated corridor north of existing STH 29; and (4) relocated corridor south of existing STH 29. Major issues identified to date include impacts to farmlands and farming operations, residential displacements, wetland impacts, and impacts to potential historic houses.

An agency coordination meeting was held in Shawano, Wisconsin, on the morning of October 24, 1990, for interested agencies. A Public Informational Meeting was held in the afternoon and evening of October 24, 1990, for members of the general public. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies who have expressed or are known to have interest in this proposal. A public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to Donohue & Associates, Inc., 6325 Odana Road, Madison, Wisconsin 53719, by December 16, 1990.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: November 16, 1990.

Robert W. Cooper,

District Engineer.

[FR Doc. 90-27893 Filed 11-26-90; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: November 21, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB number: 1545-1031.
Form number: 8697.
Type of review: Revision.
Title: Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.
Description: Taxpayers required to account for all or part of any long-term contract entered into after February 28, 1986, under the percentage of completion method must use Form 8697 to compute and report interest due or to be refunded under Internal Revenue Code section 460(b)(3). IRS uses Form 8697 to determine if the interest has been figured correctly. Taxpayers may compute interest using the actual method (Part I) or the Simplified Marginal Impact Method (Part II).
Respondents: Individuals or households, Businesses or other for-profit.
Estimated number of respondents: 5,000.
Estimated burden hours per response/recordkeeping:

	Part I	Part II
Recordkeeping	8 hrs., 22 mins	9 hrs., 5 mins.
Learning about the law or the form	2 hrs., 5 mins	1 hr., 35 mins.
Preparing, copying, assembling, and sending the form to IRS.	2 hrs., 19 mins	1 hr., 49 mins.

Frequency of response: Annually.
Estimated total reporting burden: 63,270 hours.
Clearance officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90-27870 Filed 11-27-90; 8:45 am]

BILLING CODE 4830-01-M

Office of the Comptroller of the Currency

Privacy Act of 1974, as Amended; Proposed New System of Records

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed new system of records concerning use of OCC-provided telephone systems and services.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974, the Office of the Comptroller of the Currency (the "OCC") gives notice of the establishment of a new system of records entitled the Telephone Usage Information System, Treasury/Comptroller .315 ("TUIS"). The TUIS is being established to enable the OCC to enhance its ability to assess employee use of OCC-provided telephone systems and services.

DATES: Comments must be received no later than December 28, 1990. If no comments are received, the system of records will become effective January 28, 1991.

ADDRESSES: Comments should be sent to Communications Division, 5th Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219; Attn: Jackie England. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Jeanne Covington, Attorney, Legal Advisory Services Division, (202) 447-1883, Office of the Comptroller of the Currency.

SUPPLEMENTARY INFORMATION: The OCC is establishing the TUIS to enhance its ability to assess employee use of OCC-provided telephone systems and services. The information in the TUIS may be used for traffic studies, cost projections or other management purposes.

The TUIS will contain Call Detail Reports generated by the telephone systems that the OCC currently uses. A Call Detail Report may identify calls to individual telephone numbers and, in some instances, to individual users. In addition, a Call Detail Report may identify the originating number from which long distance and local calls are made. The TUIS will also contain telephone assignment records and the results of administrative inquiries to determine responsibility for the placement of specific local or long distance calls.

Treasury/Comptroller .315

SYSTEM NAME:

Telephone Usage Information System (TUIS)—Treasury/Comptroller.

SYSTEM LOCATION:

Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219. In addition, components of the TUIS are geographically dispersed throughout six OCC district offices, at the following locations:

Northeastern District—1114 Avenue of the Americas, Suite 3900, New York, NY 10036.

Southeastern District—Marquis One Tower, Suite 600, 245 Peachtree Center Ave., NE, Atlanta, GA 30303.

Central District—One Financial Place, Suite 2700, 440 South LaSalle St., Chicago, IL 60605.

Midwestern District—2345 Grand Ave., Suite 700, Kansas City, MO 64108.

Southwestern District—1600 Lincoln Plaza, 500 North Akard St., Dallas, TX 75201-3394.

Western District—50 Fremont St., Suite 3900, San Francisco, CA 94105.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (generally OCC employees and contractor personnel) who make telephone calls and individuals who receive telephone calls placed from or charged to OCC telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

The TUIS will contain records relating to the use of OCC telephones to place local or long distance calls, whether through commercial systems, the Federal Telephone System (FTS) or similar systems; records indicating assignment of telephone numbers to employees; records of any charges billed to OCC telephones; records relating to location of OCC telephones; and the results of administrative inquiries to determine responsibility for the placement of specific local or long distance calls.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1, 12 U.S.C. 93a, 12 U.S.C. 481, 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Records and information contained in these records may be disclosed, as is necessary:

(1) To employees of the OCC to determined their individual responsibility for telephone calls;

(2) To a telecommunications company providing telecommunications support to permit servicing the account;

(3) To respond to any Congressional inquiry undertaken at the request of an individual covered by the system;

(4) To respond to a request for discovery or for the appearance of a witness, to the extent that information that is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding;

(5) In a proceeding before a court or adjudicative body to the extent that information or records are relevant and necessary to the proceeding;

(6) In the event that the material in this system indicates a violation of law, whether civil or criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto; in such circumstances, the relevant records may be used by the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto; and

(7) To furnish another Federal agency information to effect an interagency salary offset, or an interagency administrative offset, or to furnish a debt collection agency information for debt collection services. Current mailing addresses acquired from the Internal Revenue Service are routinely released to debt collection agencies for collection services, but shall not be disclosed to other governmental agencies.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in a computer data base and on magnetic media, or on hard copy print-outs stored in file cabinets.

RETRIEVABILITY:

Records are retrieved by employee name or identification number, by name of recipient of telephone call, or by telephone numbers.

SAFEGUARDS:

Access to records in electronic storage systems is restricted by user identification procedures and passwords that limit access to authorized employees of the OCC. Computer discs and hard copy printouts will be stored in file cabinets accessible by authorized personnel only. File cabinets will be locked after regular hours.

RETENTION AND DISPOSAL:

Records are disposed of as provided in National Archives and Records Administration General Records Schedule 12.

SYSTEM MANAGERS AND ADDRESSES:

Deputy Director, Telecommunications, Systems Support Division, Office of the Comptroller of the Currency, 835 Brightseat Road, Landover, MD 20785. District Offices—The District Administrator for each district is responsible for assuring the accuracy and routine maintenance of TUIS records applicable to the district.

NOTIFICATION PROCEDURE:

Individuals who wish to be notified if they are named in the system or to gain access to records maintained in the system must submit a signed, written request to the System Manager at the address listed, or to the appropriate District Administrator. The request must contain the requester's name, address, and at least two items of secondary identification (date of birth, social security number, employee identification number, dates of employment, or similar information), and must state that the requester wishes to be notified if he or she is named in the TUIS, or to gain access to records maintained in the TUIS. Inquiries may be required to include a notarized statement attesting to identity.

RECORD ACCESS PROCEDURE:

See Notification Procedure, above.

CONTESTING RECORD PROCEDURE:

See Notification Procedure, above.

RECORD SOURCE CATEGORIES:

Telephone assignment records, Call Detail Reports, and results of administrative inquiries relating to assignment of responsibility for placement of specific local or long distance calls.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: November 19, 1990.

Linda M. Combs,

Assistant Secretary of the Treasury (Management).

[FR Doc. 90-27871 Filed 11-27-90; 8:45 am]

BILLING CODE 4810-33-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 229
Wednesday, November 28, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, December 3, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 23, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-27981 Filed 11-23-90; 4:27 pm]

BILLING CODE 6210-01-M

POSTAL RATE COMMISSION

Amended Notice of Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: FR Doc. 90-25681 Filed 10-25-90, page 43438.

PREVIOUSLY ANNOUNCED DATE OF MEETING: November 26, 1990—10 a.m. and 2 p.m.

CHANGE: Cancelled.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 90-28025 Filed 11-26-90; 1:18 pm]

BILLING CODE 7715-FW-M

Corrections

Federal Register
Vol. 55, No. 229
Wednesday, November 28, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

Correction

In notice document 90-27314 beginning on page 48272 in the issue of Tuesday, November 20, 1990, make the following correction:

On the beginning page, in the third column, under **SUPPLEMENTARY INFORMATION**, item number 2 should begin "EIA-176," instead of "EIA-178".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 166

[Docket No. 90P-0025]

Margarine; Standard of Identity to Permit Use of Any Form of Marine Oil Affirmed as GRAS or Approved as a Food Additive for This Use

Correction

In proposed rule document 90-20522 beginning on page 35439, in the issue of Thursday, August 30, 1990, in the first column, under **DATES:**, the last two lines should read "proposal shall become effective 60 days after date of publication of the final rule in the **FEDERAL REGISTER** "

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 25; Notice 62]

RIN 2127-AB21

Consumer Information Regulations; Uniform Tire Quality Grading Standards

Correction

In rule document 90-26962 beginning on page 47765 in the issue of Thursday, November 15, 1990, make the following corrections:

1. On page 47765, in the third column, under **DATES**, the first phrase should read "These amendments are effective December 17, 1990;" instead of "These amendments are effective 30 days after the publication of the final rule;".

2. On page 47772, at the end of the second column, the first line of the equation should read "(Y1 - Yo)".

3. On the same page, in the third column, in the fourth line, "X1" should read "Y1".

BILLING CODE 1505-01-D

federal register

Wednesday
November 28, 1990

Part II

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Notice of Proposed Comprehensive Plan for Fiscal Year 1991

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Office of Juvenile Justice and Delinquency Prevention Proposed Comprehensive Plan for Fiscal Year 1991

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of Proposed Comprehensive Plan for Fiscal Year 1991.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing for public comment this Notice of its Proposed Comprehensive Plan for Fiscal Year 1991.

DATES: Comments must be submitted on or before January 14, 1991.

ADDRESSES: Comments may be mailed to Robert W. Sweet, Jr., Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Catherine Doyle, Program Analyst, (202) 307–0751. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 204(b)(5)(A), 42 U.S.C. 5614(b)(5)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.* (hereinafter JJDP Act), the Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing for public comment a Proposed Comprehensive Plan describing the funding activities which OJJDP intends to carry out during Fiscal Year 1991. The Proposed Comprehensive Plan includes activities specified in part C and part D of title II of the JJDP Act (42 U.S.C. 5651–5665a and 42 U.S.C. 5667–5667a). Taking into consideration comments on the Proposed Comprehensive Plan, the Administrator will develop and publish a final plan describing the particular funding activities which OJJDP intends to carry out during Fiscal Year 1991, under parts C and D of title II of said Act.

The 1984 Amendments to the JJDP Act established in OJJDP a Missing and Exploited Children's Program (Title IV, Missing Children's Assistance Act). Programs and activities proposed for funding under the Missing and Exploited Children's Program are not included in this proposed Program Plan for Fiscal Year 1991. A statement of Missing Children's Program priorities will be published in the **Federal Register** for public comment as required by section 406(a) of the JJDP Act, 42 U.S.C. 5776(a).

Introduction

The United States faces a formidable problem in combating juvenile delinquency in this decade. We must accelerate our efforts to prevent, treat, and control delinquency.

OJJDP is the primary Federal agency for addressing juvenile crime and related issues. Established by Congress in 1974 through the Juvenile Justice and Delinquency Prevention Act (JJDP Act), the Office exists to promote State and local solutions for the problems of the juvenile justice system and to provide national leadership in juvenile justice program development, demonstration, research, and evaluation.

The Administrator of OJJDP is authorized to prescribe regulations consistent with the Act to award, administer, modify, extend, terminate, monitor, evaluate, reject or deny all grants and contracts from and applications for, funds made available under Title II of the JJDP Act [section 201(b) JJDP Act, 42 U.S.C. 201(b)]. The Adminstrator reports to the Attorney General through the Assistant Attorney General who heads the Office of Justice Programs (OJP). The Administrator advises the President through the Attorney General as to all matters relating to federally assisted juvenile delinquency programs and Federal policies regarding juvenile delinquency (section 204(b)(1), 42 U.S.C. 5614(b)(1)).

America's juvenile justice system as we know it will reach its century mark at the end of this decade. The first independent juvenile court was established in Illinois in 1899. Since then, ninety years of juvenile justice policy have produced a number of advances in dealing with troubled youth. Yet today, many communities need assistance to address juvenile crime effectively.

During its 15-year history, OJJDP has brought about, in a partnership with State and local governments, laudable progress in improving the juvenile justice system throughout America. As mandated by the JJDP Act, three major systemic problems have been addressed and substantial progress made: Deinstitutionalization of status offenders, removal of juveniles from adult jails and lockups, and separation of juveniles from adults during incarceration.

Without neglecting the need to continue this progress, and to monitor continuing compliance with the JJDP Act mandates, OJJDP program resources can now be redirected toward solutions of other problems of the system. Every effort must be made to promote the use of state-of-the-art methods to improve all aspects of the juvenile justice system, and to stimulate increased efforts to prevent delinquency. OJJDP will continue its mission to provide direction, coordination, leadership, and resources to State and local juvenile justice systems and the related youth service delivery network.

New programs reflecting current issues and problems will be initiated in the coming year, as funds permit. These new programs will be designed to have maximum impact upon the major goals of the JJDP Act. OJJDP coordinates its planning with the National Institute of Justice, the Bureau of Justice Assistance, the Office for Victims of Crime, and the Bureau of Justice Statistics, with policy coordination by the Assistant Attorney General for the Office of Justice Programs (Section 102(a)(5) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3712(a)(5)).

Continued emphasis will be placed on achieving and maintaining compliance with the statutory mandates through the State Formula Grants Program. Efforts to upgrade the skills of juvenile justice professionals and youth service providers; to identify, develop, and demonstrate effective service models; and to upgrade and expand essential juvenile justice data bases will also continue. Reducing delinquency and providing constructive interventions for troubled youth are high priorities. The evaluation of all programs will also continue to be a major priority as required by the JJDP Act.

In every aspect, OJJDP's Program Plan for Fiscal Year 1991 will be carried out with the expectation that we can, should, and will improve life for America's communities, families and youth. They deserve our best efforts.

Fiscal Year 1991 Program Planning Activities

The OJJDP program planning process for Fiscal Year 1991 is closely coordinated with the Assistant Attorney General and the Bureau components of OJP. In addition the following steps are taken:

- Internal review of existing programs by OJJDP staff
- Review of information and data from OJJDP grantees and contractors
- Review of information contained in State comprehensive plans
- Review of comments made by youth services providers, juvenile justice practitioners, and researchers in program development seminars conducted in conjunction with the 1991 Program Plan
- Consideration of suggestions made by juvenile justice policy makers concerning State and local needs, and,
- Consideration of all comments received during the period of public comment on this proposed Program Plan.

During this 45-day period of public comment, OJJDP will continue development of its Fiscal Year 1991 Program Plan in close coordination with the Assistant Attorney General and the Bureau components of the Office of Justice Programs.

Discretionary Program Activities

Discretionary Grant Continuation Policy

OJJDP has listed those part C and D projects currently funded and subject to continuation funding in Fiscal Year 1991. Continuation funding consideration for current discretionary grant programs for new project periods will be based upon several factors. These include: Availability of funds, the extent to which the projects respond to the applicable requirements of the JJDP Act, responsiveness to the OJJDP and OJP Fiscal Year 1991 Program Plan priorities, compliance with performance requirements of prior grant years, compliance with OJP fiscal and regulatory requirements, and any special conditions of award. Continuation funding for a new budget period within an existing project period depends upon grantee compliance with established conditions of eligibility for additional budget period funding.

With the exception of Part D and training programs funded under part C, section 244, all programs recommended for continuation funding for a new project period must be found to be of outstanding merit by a majority of peer reviewers in order to be eligible for an award without competition. Training programs otherwise eligible for continuation award without competition, will require both peer review and a written determination by the Administrator that the applicant is uniquely qualified to provide the proposed training services and that other qualified sources are not capable of providing such services.

Proposed Programs

The programs listed below are arrayed in accordance with the OJP priorities:

—Intermediate Sanctions/User Accountability
—Gangs and Violence
—Evaluations
—Prevention and Education
—Multi-Jurisdictional Task Forces
—Community Based Policing
—Community Based Programs
—Drug Testing
—Victims
—Obscenity/Child Pornography
—Cross-Cutting Initiatives

The following are brief summaries of each of the proposed new and continuation programs planned for Fiscal Year 1991. The specific programs to be funded within each category are proposed programs and are subject to change.

Intermediate Sanctions/User Accountability

$925,000

New Programs

Boot Camps for Juvenile Offenders; Constructive Intervention and Early Support: The guideline for this initiative was issued in fiscal year 1990, and the deadline for submission of applications was October 30, 1990. The funding for this new program will, therefore, occur in fiscal year 1991. The purpose of the program is to develop and test boot camps that are focused on adjudicated, non-violent, juvenile offenders who are under 18 years of age. The program will: Serve as a criminal sanction; promote strong ethical and moral values such as honesty, personal integrity, positive self-image, and responsibility towards others and for one's own actions; increase academic achievement; provide discipline through physical conditioning and team work; include activities and resources to reduce drug and alcohol abuse among juvenile offenders; encourage participants to become productive law-abiding citizens; promote literacy by using intensive, systematic phonics; and instill a work ethic among juvenile offenders. Up to three sites will be funded under this initiative.

Continuations

Restitution: This program promotes restitution as a viable disposition by providing training, technical assistance, and information about restitution to courts and juvenile justice practitioners. This project provides training, technical assistance, and guideline information to juvenile courts, and to other juvenile justice agencies for the development, implementation, and improvement of restitution programs. The project fosters expansion of restitution as an accountability-based juvenile justice disposition. Over several years of operations Restitution Education, Specialized Training and Technical Assistance has retained expert personnel, conducted numerous training events, and developed instructional materials for the initiation, management and evaluation of juvenile restitution programs. The most recent award will support a state-of-the art assessment of the latest developments, and training or technical assistance needs, in the field of juvenile restitution. It will also provide for an update and revision of the *1987 National Directory of Juvenile Restitution Programs.*

Gangs and Violence

$3,500,000

New Programs

City of Portland, Oregon Comprehensive Gang Demonstration Project: The Conference Report covering the appropriations for the United States Department of Justice dated October 20, 1990 (Congressional Record, H 10677) provides for at least $500,000 in funding of the City of Portland's "comprehensive demonstration project targeted for youth affected by street gangs in the Portland Metropolitan area" with the State of Oregon providing $1,500,000 in matching funds to support this effort.

Continuations

National Youth Gang Suppression and Intervention Project: The purpose of this program is to develop effective, comprehensive approaches to suppress, control, and treat criminality among chronic and emerging youth gangs. It will focus on community-based programs to "take back the streets" and school zones from drug dealers in high crime areas. The program has (1) identified and assessed selected programmatic approaches; (2) developed models based on the existing approaches; and, (3) is in the process of developing training and technical assistance materials to transfer the models. Fiscal Year 1991 funding will support training and technical assistance to selected sites. In addition, if resources are obtained from other agencies, the models will be tested in selected sites.

Teens, Crime and the Community: Teens in Action in the 1990s: This is a continuation of a program funded to a national crime prevention agency. The initiative is designed to reduce teen victimization by actively engaging teens in helping to improve their schools. The program will be expanded to include teen victimization programs for rural and Native American populations, and institutions in the juvenile justice system. The program will also provide training, technical assistance, program replication and dissemination materials to significantly increase the capacity of

schools and other institutions to prevent juvenile victimization.

Targeted Outreach With a Gang Prevention and Intervention Component: This program is designed to enable local Boys and Girls Clubs to prevent youth from entering gangs and to intervene with gang members who are very early in their careers in an effort to divert them from gangs. The National Office of Boys and Girls Clubs will provide training and technical assistance to 30 local Clubs to prevent juveniles from entering gangs and to three local clubs to help them develop the capacity to intervene with gang youth. These efforts will be demonstrated during Fiscal Year 1991 and information about the programs will be disseminated to other clubs and to the field in general as experience is gained in implementing these models.

Youth Gang Intervention Training: The objectives of the training program are: (1) To provide a process for community leaders to recognize the benefits of cooperatively developing a strategy to effectively address the problems resulting from gang/drug activities; (2) to promote an awareness and recognition of (a) the problem of gangs and drugs; (b) justice system practices; (c) behavior patterns of gangs and gang members; and (d) current system practices and demonstration projects; (3) to provide strategies and techniques for public and private interagency partnerships dealing dynamically with community gang/drug related problems; (4) to clarify and document the legal roles, responsibilities and issues relating to an interagency approach to the prevention, intervention and suppression of the illegal activities of youth gangs; (5) to encourage leadership and innovation in the management and resolution of gang/drug problems; and (6) to develop or improve the response capacity to gang/drug issues through an effective interagency model which fosters the matching of resources to demands.

School Safety: The purpose of this program is to provide training and technical assistance on school safety to elementary and secondary schools, as well as to identify methods to diminish crime, violence, and illegal drug use in schools and on school campuses with special emphasis on outreach to ethnic minorities and gang-related crime. The National School Safety Center (NSSC) maintains a library and clearinghouse with specialized information; does research on school safety issues and develops publications and training programs that are utilized by educators, law enforcement officers, lawyers, judges, other juvenile and criminal justice personnel and key civic, professional and governmental leaders throughout the Nation. NSSC makes site visits to local schools and school districts to assist with a wide variety of problems, from safety of the physcial plant to determining whether there is gang activity at a location. School safety plans are also developed for cites. NSSC also maintains and directs a national school safety information network representing 50 states and the District of Columbia and is affiliated with most associations in the field, making their expertise sought after at a variety of national meetings where they either provide training to practitioners or participate in policy development. OJJDP will work with NSSC over the next two years to facilitate transition of the Center into a mode of self-sufficiency.

Schools and Jobs are Winners: This is a gang prevention program in Philadelphia focusing on high school students in grades ten and eleven who are in gangs; have family members who belong to gangs; are involved with drugs or alcohol usage; were abused or neglected; or were arrested by police. The project will also include funding by the Private Industry Council of Philadelphia. The goals of the project are to prevent high school students from dropping out of school and joining gangs, by providing educational, recreational and social services; and by providing supportive services to families of at-risk youths and extremely disadvantaged youths. The objectives of the program are to prevent youths from involvement in gang related, anti-social activities; to reduce the alcohol and drug usage by these youths; to increase the potential for these youths to remain in school; to reduce the incidence of police involvement with these youths; and to provide supportive services to the youths' families so that they can achieve in school and in their jobs.

Program Evaluation

$1,400,000

New Programs

Evaluation of the Cities in Schools Partnership Plan Phase V Program: This effort is designed to evaluate the national drop-out prevention model that is being implemented by Cities in Schools, Inc. Cities in Schools, Inc. provides training and technical assistance to local communities to enable them to adapt and implement the Cities in Schools model. The model focuses on social service, employment, mental health and other resources on high risk youth in the school setting. Individualized plans are developed for each youth and needed remedial education, social and other services are provided to the youths and their families. The Office of Juvenile Justice and Delinquency Prevention, United States Department of Labor, and the United States Department of Education will jointly design and fund this evaluation effort.

Independent Evaluations: It is the intention of the Office to initiate a contract or other appropriate arrangement to conduct independent evaluations of OJJDP funded programs. This will establish a concerted, continuous effort to learn, in the following order of priority: Efficacy, cost-effectiveness, and impact of the discretionary programs. Reported findings, including strengths, weaknesses and other assessment data will be made available to all concerned. The following criteria will determine the sequence of programs selected for evaluation: (1) Continuations in order of number of years of funding and total expenditure; (2) new action programs being tested to serve as possible models, and (3) new and continuing programs requiring decisions regarding continuation.

Impact Evaluation of Youth Gang Intervention Training: An independent impact evaluation will be funded as part of the Interagency agreement developed with the Federal Law Enforcement Training Center.

Evaluation of Law-Related Education's Impact on Delinquency Prevention: The OJJDP National Training and Dissemination Program for Law-Related Education (LRE) has been regularly funded by OJJDP. Each year the program is reported as having a definitive delinquency prevention effect if used properly in the class-room.

A "Request for Proposals" to study the impact of LRE on delinquency prevention will be completed and disseminated in the coming months. The study will examine the effects of LRE in different class-room settings and in juvenile justice correctional settings to conclusively determine whether teaching about the law and the legal and political processes can reduce delinquent behavior. This study would necessarily be multi-year in coverage to ensure that all methodological problems and issues are addressed.

Evaluation of the Juvenile Firesetter/Arson Program: The Juvenile Firesetter/Arson program continuation, which is described in the Prevention and Education section of this plan, calls for the funding of test sites. In addition to jointly funding these test sites, OJJDP and the Federal Emergency Management Administration's Fire Administration will jointly fund an evaluation of the implementation of the program in the test sites. A solicitation will be issued requesting applications from an independent evaluator to conduct the evaluation.

Prevention and Education

$6,676,666

New Programs

Satellite Pre-School and Early Elementary Schools for Privatized Public Housing: This program is designed to address the need for early childhood education for children who reside in public housing. Addressing their educational needs will increase the possibility of success for these children and reduce the chances that these youths will drift into a life of crime and/or drug and alcohol abuse. As envisioned, the proposed program will look very much like the old one-room school house. The program will serve the needs of public housing resident children from nursery school up through the fourth grade of elementary education. The model would build upon programs like the Chicago-based program developed by Marva Collins. It would include a focus on individual attention for the youth, high motivation materials and approaches that focus on traditional values. It is hoped that this program could be linked to a private business and foundation's efforts that would provide a continuum of educational and employment services to the public housing youth into the later elementary, junior and senior school years. For example, efforts would be made to establish programs like the "I Have a Dream" program which provides scholarships to a class of elementary school youth. This program will be coordinated with the Department of Health and Human Services and the Department of Education.

Improving Literacy Skills of Institutionalized Juvenile Delinquents: Juvenile delinquents in correctional institutions have a serious need to develop basic reading and writing skills. This program will improve the literacy levels of juvenile residents in these facilities while creating a national network of trained reading teachers and volunteers available to juvenile correctional facilities. This program will include training, technical assistance, and development of curricula for use by staff of detention and correction facilities. The program should improve correctional education and the delivery of appropriate services to incarcerated juveniles. This program will be coordinated with the Department of Education.

Improving Conditions of Confinement: Training for Juvenile Corrections Staff: OJJDP will initiate a comprehensive training program for juvenile corrections staff through an interagency agreement (IAA) with the National Institute of Corrections (NIC). The program will be designed to develop a core curriculum or adapt existing curriculum to provide training for juvenile corrections administrators and mid-level management personnel in such areas as drug testing and gang activity. The development of a core curriculum for juvenile corrections training would entail a national assessment of juvenile corrections training needs to be conducted by the NIC, development of the curriculum to address the needs, curriculum review by OJJDP and a Corrections Training Review Panel, field testing and implementation. Although the NIC has in place correctional training programs that are generic enough to meet some juvenile correctional needs, they need to provide an opportunity for additional juvenile program staff participation. The IAA with the NIC will insure that beyond the development of the core curriculum and implementation of the training, additional opportunities will be made available for juvenile corrections personnel. It is anticipated that the juvenile corrections core training will be conducted both at the NIC Academy and along with the more issue-oriented training done regionally.

Family Strengthening: This program initiative will be directed toward the development and support of programs which strengthen and maintain the family unit in order to prevent or treat juvenile delinquency. It will begin with research to analyze how families function effectively, including such factors as parent-child dynamics, nurturing, and family-community involvement, that may be correlated with delinquency prevention. As part of this initiative, OJJDP will sponsor a National Conference on Strengthening the Family.

Continuations

Juvenile Court Training: The primary purpose of this project is to allow the National Council of Juvenile and Family Court Judges to continue and refine the training presently offered and to provide technical assistance. The training objectives are to supplement law school curricula, provide judges with current information on developments in juvenile and family case law and options for sentencing and treatment. Specifically, emphasis will be placed in the areas of drug testing, gangs and violence, intermediate sanctions, as well as responding to the problems of unemployability, illiteracy and family dysfunction. This project will provide foundation training both to newly elected or appointed judges and to experienced judges who have been newly assigned to the juvenile or family court bench.

Technical Assistance to the Juvenile Courts: The National Center for Juvenile Justice (NCJJ) is the research division of the National Council of Juvenile and Family Court Judges. Serving as a direct resource for the members of the Council, the NCJJ provides valuable technical assistance to juvenile court practitioners. Modes of assistance include off-site consultation, cross-site consultation, and on-site consultation. The work force for this project includes staff at the Center, along with juvenile court judges who are members of the Council. The general areas around which assistance is provided include: Court administration and management, program development, court decision making, legal opinions, due process, and case law. Emphasis will be placed on intermediate sanctions such as boot camps, and on appropriate dispositional alternatives for handling juveniles involved in gang activity.

Juvenile Justice Training for Court Personnel: This program provides specialized workshops to help juvenile justice court personnel improve their skills in processing juveniles through the justice system. The National Center for State Courts, Institute for Court Management conducts education and training programs for juvenile justice practitioners and others involved in the administration and management of the courts. The purpose of these education and training programs is to improve the management and administration of the courts in the U.S. through education and research. NCSC/ICM has conducted numerous studies of the juvenile courts. This program will focus upon the completion of an assessment of juvenile court management staff training needs as a basis for development of a broader based program design to significantly upgrade skills of juvenile court staff.

National Juvenile Firesetter/Arson Control and Prevention Program: The purpose of this program is to develop models and provide training and technical assistance to communities to prevent juvenile firesetting and arson. An assessment report, policies and procedures manual and training curriculum have been developed. During the next funding phase of the program, four sites will be identified to implement

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the model program. Training and technical assistance will be provided to these selected sites. Under a separate solicitation, an evaluator will be selected, though a competitive process, to evaluate the program.

Training and Technical Assistance for Juvenile Detention and Corrections: This project will continue to provide technical assistance and training to juvenile correctional and detention agencies. It will also provide a national forum on juvenile corrections to include juvenile court judges and probation officers; develop a resource guide designed to increase literacy among youth involved in the juvenile justice system, assist in the development of standards for all juvenile justice facilities and produce a second edition, *Guideline for the Development of Policies and Procedures: Juvenile Detention Facilities.* Emphasis will be placed on intermediate sanctions for handling juveniles involved in drug related offenses and gang activity.

Law-Related Education (LRE): Since 1978, the Office of Juvenile Justice and Delinquency Prevention has funded a national law-related education (LRE) effort. The Law-Related Education National Training and Dissemination Program involves five national LRE projects and programs which operate in 47 States. The purpose of this program is to provide training and materials to State and local school jurisdictions to encourage and guide them in establishing LRE delinquency prevention programs in the curricula of grades kindergarten through 12 and in juvenile justice settings. Emphasis will be placed on drug abuse prevention programs in primary, middle and secondary schools. The major components of the program are: Coordination and management, training and technical assistance, preliminary assistance to future sites, public information, program development, and assessment.

Student Initiated Drug Prevention Training: This program is a drug prevention program that uses peer counseling and professional athletes to combat peer pressure and to influence other youngsters to refrain from abusing alcohol and drugs. It operates in three phases: A training session is held for school personnel and parents to introduce them to the Super Teams concept and familiarize them with the various elements of a five-day training session to be held for participating youngsters. In the second phase the youngsters are taken on a retreat and receive five days of intensive training on peer counseling techniques; pressures of adolescence; and drug prevention methodologies; and receive information on the effects of drug and alcohol abuse and AIDS. Students pledge to be drug free and seek out and recruit other members to join the program when they return to school. Phase III is the on-going program back at the school where students take the lead in developing school-wide activities for other youngsters, conducting a "rap room" and providing peer counseling, and working with feeder schools in the area to prevent inappropriate behavior by younger children. During the next year, the program will be documented for replication and a training manual will be developed to support dissemination.

Career Development: The program gives high-risk youths an opportunity to assess their interest in and potential for careers in the criminal justice system and the National Park Service. The purpose of Law Enforcement Exploring is to educate and involve youths in police or other justice system operations, to interest them in possible law enforcement careers, and to build understanding between youths and law enforcement personnel. An added program component in Fiscal Year 1990 was the introduction of youths to career opportunities in the National Park Service. The youths participating in the Exploring program render hands-on assistance to their host agencies or organizations (state and local police departments, U.S. Park Service, U.S. Customs, etc.). The youths also receive hands-on training from their host agencies.

Juvenile Corrections Industries Venture Program: The purpose of this program is to assist juvenile corrections agencies in establishing joint ventures with private businesses and industries in order to provide new opportunities for vocational training of juvenile offenders. An assessment of corrections ventures programs will be completed by January 30, 1991. The next stage of funding will permit the development of a corrections ventures model, a policies and procedures manual and training and technical assistance materials.

Partnership Plan, Phase V: This program is a continuation of a national school drop-out prevention model that is being implemented by Cities In Schools, Inc. (CIS). CIS provides training and technical assistance to States and local communities to enable them to adapt and implement the CIS drop-out prevention model. The model focuses social, employment, mental health and other resources on high-risk youths and their families at the school level. Individualized plans are developed for each youth, and needed remedial, education, social and other services are provided to the youths and their families. This program is jointly funded by OJJDP, the United States Departments of Labor, Health and Human Services and Commerce.

Juvenile Justice Training for Prosecutors: The project's activities include designing and implementing policy development workshops for chief prosecutors, and for juvenile unit chiefs in district attorney offices, to support their role in juvenile court processing of delinquent offenders. Materials will be collected for the preparation of a training manual on policy issues pertaining to the prosecution of juvenile offenders and the project will continue to issue a newsletter. To date, NDAA has presented three workshops designed to expand prosecutor involvement in juvenile justice. All three were rated highly successful by the participants. The project will address juveniles involved in serious and violent crime, as well as drug and gang related activity, with emphasis on intermediate sanctions such as drug testing and restitution.

Multi-Jurisdictional Task Forces

$800,000

Continuations

Serious Habitual Offender Comprehensive Action Program (SHOCAP): SHOCAP is an information and case management program on the part of police, probation, prosecutor, social service, school, and corrections authorities that enables the juvenile justice system to focus additional attention on juveniles who repeatedly commit serious crimes, with particular attention given to providing relevant case information for more informed sentencing dispositions. The training and technical assistance provider is assisting 20 jurisdictions with the implementation of this model by providing intensive training and follow-up technical assistance. The provider also serves as a clearinghouse for information on the model which non-participating jurisdictions can access.

Community Based Policing

$1,137,000

New Programs

Incarceration of Minorities: A limited number of demonstration grants will be awarded to develop, test, and disseminate information on programs designed to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, or jails and lockups who are members of ethnic and minority groups where such proportion exceeds the proportion such groups represent in the general population.

The purpose of the program is to help jurisdictions identify the extent and nature of overrepresentation of minorities in the juvenile justice system and thereby develop practical guidelines for responding to the problem from police arrest through disposition. The overall goal of the program is to provide State and local practitioners and professionals with the necessary skills and information to adopt and implement model processes for determining if the juvenile justice system handles juveniles differently based on minority status, and identify resources and strategies to respond to problems identified.

Training in Cultural Differences for Law Enforcement Officials: The purpose of this program is to provide law enforcement officials at the most crucial levels of interaction with juveniles with specialized training relative to racial, cultural and ethnic issues. The program will be designed to enhance the sensitivities of juvenile probation officers, police officers and judges regarding, *inter alia*, racial, cultural and ethnic values and differences which impact on those officials' effectiveness. The end-product will be an expertly designed curriculum which can be adapted for use in a broad range of juvenile justice training programs. In developing the training modules, the grantee will work consultatively with several current OJJDP grantees that have training components, such as the Federal Law Enforcement Training Center, the National Family and Juvenile Court Judges Association, the National Institute of Corrections, and the American Probation and Parole Association.

Continuation

Juvenile Justice Training for Law Enforcement Personnel: This project provides technical assistance and training to promote a better understanding of the juvenile justice system to national, state and local law enforcement agencies. Five training programs are offered through this project. They include: Police Operations Leading to Improved Children and Youth Services (POLICY) which has two components: POLICY I introduces law enforcement executives to management strategies to integrate juvenile services into the mainstream of their operations, while POLICY II helps mid-level managers build on these strategies and demonstrates step-by-step methods to improve police productivity in the juvenile justice area. This program provides law enforcement officers with state-of-the-art approaches for building a case against those individuals charged with child abuse, sexual exploitation, and the abduction of missing children. Managing Juvenile Operations provides a series of training programs for police executives which demonstrates simple, yet effective methods to increase departmental efficiency and effectiveness by integrating juvenile services into the mainstream of police activity. School Administrators for Effective Police, Probation, and Prosecutors Operations Leading to Improved Children and Youth Services (SAFE POLICY) brings together the chief executives of schools, law enforcement, prosecution, and probation to promote interagency cooperation and coordination in dealing with youth-related problems.

Community Based Programs

$2,400,000

New Programs

The Native American Alternative to Incarceration Venture (NAATIV): This effort will be designed to build upon the OJJDP'S currently funded study of juvenile justice on Native American reservations that is being conducted by the American Indian Law Center in Albuquerque, New Mexico. A planning process will be developed that will utilize the findings of the study to develop programs that respond to the high levels of incarceration of Native American youths by developing sound, culturally relevant alternatives to incarceration which can then be implemented and tested on a number of Native American reservations. This fiscal year's funding will only support the planning process; implementation and testing would occur in fiscal year 1992.

Anti-Drug Abuse Prevention—Technical Assistance Voucher Project: This project will provide technical assistance to 15–25 neighborhood-based organizations which have established anti-drug abuse projects to enhance their capacity to serve high-risk youth and serious juvenile offenders. Neighborhood groups will apply to the grantee for vouchers ranging from $1,000–$10,000 depending on their needs. They will present their own plans and design for the requested technical assistance, which will be evaluated and refined by the grantee. This method of technical assistance delivery will allow these neighborhood groups to secure technical assistance inexpensively from sources that are compatible with both their programs and their specific community characteristics.

Continuations

Reaching At-Risk Youth in Public Housing: Boys and Girls Clubs of America have established seven Boys and Girls Clubs in Public Housing across the nation under the existing cooperative agreement with OJJDP. These programs are designed to provide needed services to the high-risk youth who live in public housing, thereby preventing their involvement in delinquency, drug and alcohol abuse and gang involvement. During Fiscal Year 1991 additional sites will be established and training and technical assistance will be made available to other Boys and Girls Clubs and public housing authorities who wish to establish clubs. Also, as part of this program the Boys and Girls Clubs developed a curriculum on their targeted public housing outreach program for the Federal Bureau of Investigation's Drug Reduction Coordinators (DRC). Following an intensive training session, the DRCs are now working with the Boys and Girls Clubs in 58 jurisdictions to establish Clubs in public housing or to assist other Boys Clubs activities in these communities.

Intensive Community-Based Aftercare Program: This program is designed to develop a juvenile aftercare model which can be tested in the juvenile justice system. Under this program an assessment has been completed and a final draft assessment report has been submitted to OJJDP. By mid-January the model juvenile aftercare program, which builds on the assessment material, will be developed and related policies and procedures will be completed. This next stage of funding will permit the completion of training and technical assistance materials, and enable the testing of the training materials in one or two sites. Depending on availability of resources, the model may be tested in fiscal year 1992.

Promising Approaches for the Prevention, Intervention and Treatment of Illegal Drug and Alcohol Use Among Juveniles: The purpose of this program is to provide communities with the necessary skills and information to adopt and implement promising approaches for the prevention, intervention and treatment of chronic juvenile drug and alcohol abuse. Under this program, an assessment of promising prevention, intervention, treatment and aftercare programs has been completed. Several components of program models for each category have been completed, as well as the related

training and technical assistance materials. The additional funding in fiscal year 1991 will permit the completion of all the components for the respective community-based models and the related training and technical assistance. If funds can be obtained from other Federal agencies, OJJDP will proceed to test the models.

Research on the Causes and Correlates of Delinquency and Non-Delinquency: This longitudinal cohort study by three coordinated projects, now in its fifth and scheduled final year, has been directed to improving the knowledge base regarding positive, delinquent, or drug using behaviors of juveniles in the context of the family, school and individual. Factors will be identified that promote as well as inhibit involvement in delinquency, leading to effective design of intervention activities. A summation report is planned for use by program developers and operational leaders.

Drug Testing

$75,000

Continuations

Drug Screening and Testing: This program, funded for 18 months, addresses illegal drug use among high-risk youths. It has been designated as a program priority area and is intended to expand upon two OJJDP-sponsored initiatives (Drug Testing Guidelines for the Juvenile Justice System and Drug Identification Program for Juvenile Probation and Aftercare) by the American Probation & Parole Association (APPA) and the Council of State Governments. Program goals and objectives include: Developing a comprehensive drug identification, screening and testing program for juvenile justice to include training curricula for juvenile justice policy makers, administrators, and direct service professionals. Upon review of the final publication, consideration will be given to national dissemination and a conference on drug testing.

Drug Control: This interagency agreement with the Department of Education supports developing, implementing, and evaluating a comprehensive drug information/rehabilitation training program for counselors of State vocational rehabilitation agencies. The goal of this program is to enhance referrals and, ultimately, to employ eligible youths, ages 14–18, who have been drug dependent. This program is in response to President Bush's "War on Drugs" and the prevailing interest to be proactive in rehabilitating youth with a history of drug dependency.

Victims

$1,725,000

Continuations

Advocacy for Abused and Neglected Children: The National Court Appointed Special Advocates Association (NCASAA) provides training and technical assistance to local and statewide programs. It assists in program development, advocates for the best interest of abused and neglected children, publicizes the CASA concept which helps recruit volunteers, develops management systems and standards to improve local CASA operation, provides a resource library and resource services, gathers and publishes information about the needs of the CASA network and operation, develops cooperative relationships with other national and regional organizations, and performs a variety of related services in furtherance of its goal of assuring that every child who needs one has a CASA. There are now 412 CASA programs in 47 States, with 15,000 volunteers. There are twelve statewide programs mandated and state-funded, and 23 state associations and networks offering support services to their state's program. NCASAA is the only national organization whose sole purpose is to expand the quantity and quality of CASA programs in the United States.

Permanent Families for Abused and Neglected Children: This is a national project to prevent unnecessary foster care placement of abused and neglected children, to reunify the families of children already in care, and to ensure permanent adoptive homes when reunification is impossible. The purpose of this project is to ensure that foster care is utilized only as a last resort and temporary solution for children. Accordingly, the project is designed to ensure that government's responsibility to children in foster care is duly acknowledged by all appropriate disciplines. The project will continue to call upon judges, social service personnel, citizen volunteers, attorneys, and others to recognize and resolve the problems of children in foster care. Project activities include national training programs for judges, social service personnel, citizen volunteers and others in the Reasonable Efforts Provision of Public Law 96–272, training in selected Lead States, and development of model questions to guide risk assessment.

Victims and Witneses Development Program: This project aims to help local juvenile justice agencies and other human service providers develop model programs and services for victims and witnesses of juvenile crime. Developmental materials, such as an assessment report, policies, and procedures manual and training curriculum have been developed. In the next funding phase, the model program will be tested in four sites. The sites will receive training and technical assistance, and on-site monitoring visits by the technical assistance provider. The sites will provide caseload data on their clients, services and implementation experiences across sites. The data, in combination with the information collected during the monitoring visits, will comprise a process evaluation of the program.

The Investigation and Prosecution of Child Abuse: This program is designed to provide training and technical assistance to prosecutors and related professionals on the issue of child abuse prosecution. The project also serves as a clearinghouse of child abuse prosecution issues.

Obscenity/Child Pornography

$250,000

New Programs

National Public/Private Child and Family Protection Law Center: This public/private national law center will assist state and local public officials, legislators, law enforcement, prosecutors, courts, parents and children to prevent the escalating child sexual exploitation and child pornography. The Center will do this by conducting legal research, drafting model legislation and providing training and technical assistance to law enforcement, social service providers, prosecutors, policy-makers and legislators on the issues of prosecution and prevention of child sexual exploitation, child prostitution and child pornography.

Cross-Cutting Initiatives

$4,588,719

New Programs

Fellowship Program: Acting through the National Institute for Juvenile Justice and Delinquency Prevention, OJJDP will begin a Fellowship Program which will provide grants of varying amounts to individuals for independent scholarly study in the field of juvenile delinquency while in residence at OJJDP. The areas of study may include developing new knowledge, evaluating existing or proposed juvenile justice system policies and practices, or developing state-of-the-art information in areas specified under Section 243(1) of the JJDP Act, 42 U.S.C. 5653(1).

The OJJDP Fellowship Program includes: the Visiting Fellowship, the Graduate Research Fellowship, and the Summer Research Fellowship. Each fellowship program selection will be based on a competitive review and evaluation of proposals for independent study on policy-relevant issues in the juvenile justice field for specific populations (juvenile justice practitioners, new Ph.D.s, graduate students, and senior researchers). Each fellowship application will be expected to meet the criteria specified in the procedures and requirements of the OJJDP Fellowship Program. Fellowships will vary in length and amount.

Field-Initiated Programs: OJJDP is proposing a program designed to increase the capacity of State and local governments, public and private youth-serving agencies, and neighborhood organizations or community groups to prevent delinquency, develop and use alternatives to the juvenile justice system, and improve the administration of juvenile justice. The Program to Prevent Juvenile Delinquency will provide competitive awards to researchers, practitioners, and policy makers who have innovative ideas to address areas that do not fall within the scope of other Fiscal Year 1991 grant programs funded by OJJDP. The award of these grants will be closely coordinated with the Assistant Attorney General of the Office of Justice Programs. Any grant funded under this program will follow a regular review cycle of concept paper to proposal application to peer review and competitive selection.

Model Program Identification and Dissemination: The Office will actively identify and package promising or proven program models. Every effort will be made to provide them to State and local jurisdictions. Additionally they will be incorporated into OJJDP's technical assistance and training activities. As part of this effort, the OJJDP Administrator has restablished OJJDP's program of "Recognition of Outstanding Juvenile Justice Programs." The National Coalition of State Juvenile Justice Advisory Groups has agreed to participate with State Advisory Groups in developing the nominating process and in recommending programs for OJJDP recognition.

Comparative Research on Recidivism Reduction in Juvenile Delinquency and Substance Abuse Treatemnt Programs: This research program will conduct a special study of juvenile delinquency and substance abuse treatment programs. Programs which include instruction in strong ethical and moral vlaues such as honesty, integrity, respect for authority, and responsibility for one's actions, will be examined and compared with programs lacking or with minor inclusion of this component. Public and private programs will be included in the study and examplary programs identified.

Continuations

National Juvenile Court Data Archive: The purpose of this program is to collect, process, analyze, and disseminate available data concerning cases handled by the Nation's juvenile courts. The Archive provides direct assistance to jurisdictions in analyzing their juvenile court data, yielding better case flow management and more effective allocation of resources. Specific emphasis will be given to the collection and analysis of data involving gang-related offenders within the court system, and minority offenders, in terms of resources expended and the types of dispositions, such as intermediate sanctions.

Children in Custody Census: This biennial census of public and private juvenile detention and correctional facilities is conducted by the Census Bureau to describe the subject facilities in terms of their resident populations as well as their programs and physical characteristics.

Juveniles Taken Into Custody: This continuing statistical program provides an annual report to the Congress giving a detailed summary and analysis of the most recent data available regarding the numbers and characteristics of juveniles taken into custody during the preceding fiscal year, including data on ethnic background and gang membership.

Research on the Juvenile Justice Systems in American Indian and Alaskan Native Communities: This project will study and describe the juvenile justice systems and procedures and particularly the treatment of accused juveniles in the communities which have law enforcement functions. It will also determine the amount of financial resources available to support community-based alternatives to incarceration. Final-Finally, it will study the extent to which deinstitutionalization of status offenders and removal of juveniles from adult secure institutions are applied.

Information Center: This program provides support services to OJJDP in preparing and disseminating information on all aspects of juvenile delinquency. It also responds to information requests from the juvenile justice field.

Insular Area Support: The purpose of this program is to provide supplemental financial support to the Virgin Islands, Guam, American Samoa, Palau and the Commonwealth of the Northern Mariana Islands in accordance with Section 224 of the JJDP Act, as amended.

Non-Participating State Initiative: The purpose of this program is to make funds available to non-participating States in accordance with Section 223(d) of the JJDP Act, as amended.

OJJDP Technical Assistance Support Contract: The purpose of this project is to provide technical assistance and support to the Office of Juvenile Justice and Delinquency Prevention, the National Institute for Juvenile Justice and Delinquency Prevention, OJJDP grantees, and the Coordinating Council on Juvenile Justice and Delinquency Prevention in all research, program development, evaluation training, and research utilization activities.

National Coalition of State Juvenile Justice Advisory Groups: The National Coalition of State Juvenile Justice and Delinquency Prevention Advisory Groups was established in 1983 to create an organization that would support and facilitate the purposes and functions of state juvenile justice and delinquency prevention groups. In 1984 Congress also required the National Coalition to prepare and submit an Annual Report to the President, the Congress and the OJJDP Administrator that reviews Federal policies regarding juvenile justice and delinquency prevention. The coalition is also required to disseminate information, data, standards, and advanced techniques.

Robert W. Sweet, Jr.,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

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Wednesday
November 28, 1990

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Single Family Property Disposition; Demonstration Program for Sale of Properties to Nonprofits and Governmental Entities; Final Notice of Demonstration Program

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-90-3102; FR-2835-N-02]

Single Family Property Disposition; Demonstration Program for Sale of Properties to Nonprofits and Governmental Entities

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final notice of demonstration program.

SUMMARY: This Notice announces the effective date of a demonstration program announced on August 9, 1990 (55 FR 32562), and invites proposals for the sale of HUD-acquired single family properties to private nonprofit organizations and governmental entities for resale to low- and moderate-income families. The purpose of the demonstration is to test the cost-effectiveness of an alternative way of reducing the inventory of HUD-acquired properties consistent with the need to preserve neighborhoods and promote homeownership opportunities.

EFFECTIVE DATE: November 28, 1990. HUD field offices will accept proposals for the acquisition of properties for six months following the date of this publication. Approved participants may continue to acquire properties in their approved demonstration neighborhood for up to one year from the date of this publication, provided the demonstration cap of 1500 properties nationwide is not exceeded.

FOR FURTHER INFORMATION CONTACT: Marion F. Connell, Single Family Property Disposition Division, room 9172, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; (202) 708-0740 or, for hearing and speech-impaired, (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this Notice with respect to proposals for the acquisition of properties have been reviewed and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, and have been assigned OMB Control No. 2502-0444. The information collection requirements with respect to data on the ultimate owner-occupant purchasers have been assigned OMB Control No. 2502-0059, and on the costs of rehabilitation, OMB Control No. 2502-0111.

I. Background

Title II of the National Housing Act (the Act) authorizes HUD to insure mortgages for single family residences through the Federal Housing Administration (FHA) single family mortgage insurance program. The mortgages are insured through revolving funds, which provide the money to pay insurance claims to lenders on defaulted mortgage loans. The funds are replenished by mortgage insurance premiums, income from the investment of moneys held by the funds, and proceeds from the sales of homes that HUD acquires, either by foreclosures or voluntary transfers, following default on the mortgages.

The disposition program for single family properties acquired by HUD in exchange for payment of an insurance claim is authorized by section 204(g) of the Act. Generally, the objective of the property disposition program is to reduce the inventory of HUD-acquired properties in a manner that ensures maximum net return to the mortgage insurance funds but is consistent with the need to preserve and maintain residential areas and communities. This objective, combined with the Secretary's priority of expanding homeownership and affordable housing opportunities and the national housing goal of a decent home and a suitable living environment for every American family, as set out in section 2 of the Housing Act of 1949, prompted the Department to announce this demonstration program on August 9, 1990 (55 FR 32562). The demonstration will explore a method of reducing the inventory of HUD-acquired properties, while stabilizing, preserving, and improving neighborhoods and providing a source of affordable homeownership opportunities for low- and moderate-income owner-occupants.

Under the demonstration, HUD field offices will review proposals from State and local governmental entities and private nonprofit organizations to purchase properties, on an all-cash basis, from the HUD-acquired inventory for ultimate resale to low- and moderate-income families. HUD anticipates that the program may become a permanent part of the single family property disposition program. HUD will conduct an evaluation of the demonstration commencing approximately six months from the date of this Notice. If the results of the evaluation indicate that the purposes of the demonstration have been accomplished, the Department will determine whether to continue the program on a permanent basis and issue a final rule.

For purposes of evaluating the impact on homeownership opportunities for low- and moderate-income buyers, the initial purchasers will be required to provide HUD with information on the family income, racial identity, sex, national origin, and household size of each owner-occupant. In addition, HUD will collect data on the rehabilitation costs for each property, how those costs are financed, and the ultimate sales price and terms of financing for the properties when resold.

HUD received 27 public comments on the August 9, 1990 Notice. Generally, the commenters favored the demonstration program. Two comments, however, were highly critical of the program, stating that the purchase price of the properties, even with a discount, and the costs of rehabilitation are too high for most governmental entities and nonprofits. One commenter believes that the program can work only if the properties are sold for 10 percent of the fair market value established by HUD or are given to applicants that will rehabilitate them and resell to low- and moderate-income buyers. The other commenter also criticized the requirement to purchase several properties, stating that this magnified the problems created by the all-cash sales and rehabilitation requirements. The commenter expressed the opinion that "FHA profiteering schemes" involving HUD appraisers and other personnel, rehabilitation contractors, realtors, and mortgagees were responsible for the destabilization of the neighborhoods targeted by the demonstration.

The Department recognizes that abuses and neglect in the past have contributed to major losses to the FHA insurance funds, as well as to the decline of neighborhoods across the country. However, the Department has instituted various initiatives to correct these past practices, such as improved accounting procedures, management accountability, and monitoring. In addition, the Department has vigorously pursued wrongdoers, and has sought and will continue to seek criminal convictions where warranted.

In a statement before the Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking, Housing and Urban Affairs on June 6, 1990, HUD Secretary Jack Kemp reported on the status of FHA, and proposed a strategy designed to strengthen FHA while still achieving the basic goal of providing homeownership opportunities for low- and moderate-income homebuyers. As one part of the strategy, the Secretary proposed making administrative changes in the property disposition program, and further stated the need to achieve substantial savings by cutting the losses on foreclosures to improve the capital position of FHA during the 1990s. The Secretary asserted that the goal of the Administration is to restore FHA to actuarial soundness and financial strength.

Because of the need to protect the FHA insurance funds for future homebuyers, the Department must recoup as much as possible on properties on which it has paid an insurance claim. Selling propertites at 10 percent of fair market value or giving them away would frustrate the commitments the Secretary has made to restore FHA to financial soundness. It would also thwart the purpose of the demonstration to test the cost-effectiveness of an alternative way of reducing the inventory of HUD-acquired properties. The number of favorable comments on the demonstration program from governmental entities and nonprofit organizations leads the Department to conclude that there is interest in the program and that the goals of the demonstration may be achieved through partnerships with community-based groups committed to those goals.

Today's Notice announces the Department's responses to the public comments on specific aspects of the demonstration program. Interested applicants should read today's Notice in conjunction with the August 9, 1990 Notice for a complete representation of the program.

II. Public Comments

Eligible Properties

The August Notice of the demonstration announced that eligible properties for the demonstration will be limited to 1,500 vacant HUD-acquired single-family properties nationwide. The properties will be located in communities that have experienced economic downturns, resulting in a high number of foreclosures that have led to significant concentrations of vacant HUD-acquired properties in neighborhoods. The Notice announced that buyers would be expected to purchase a sufficient number of these properties in an area to achieve the objective of the demonstration.

Eligible properties must be located in a neighborhood with the following characteristics:

(1) A high concentration of HUD-acquired properties;

(2) A vacancy period that is longer than the average vacancy period for the area;

(3) An economically declining area, marked by severe, long-term unemployment; and

(4) A soft real estate market, with declining prices and values of residential property in the target neighborhood.

There is no minimum time that a property must have been in HUD's inventory before being eligible for sale through this demonstration. It is sufficient that the property is located in a neighborhood with the characteristics described above.

Properties built before 1978 are subject to section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4186), as implemented by HUD at 24 CFR part 35. Before a property is sold, HUD will inspect, and treat if necessary, all intact and non-intact painted interior and exterior surfaces for defective paint surfaces (*i.e.*, cracking, scaling, chipping, peeling, or loose paint). Unless the initial purchaser certifies that no children under seven years of age will occupy the property, the purchaser must cause the unit to be tested for lead-based paint on chewable surfaces before closing. (Chewable surfaces are all chewable, protruding painted surfaces up to five feet from the floor or ground that are readily accessible to children under seven.) Testing must be conducted by a State or local health or housing agency, by an inspector certified by a State or local health or housing agency, or by an organization recognized by HUD. Lead content must be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm^2 or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint is identified on chewable surfaces, the entire interior or exterior chewable surface must be covered or the paint surface removed in accordance with the methods described in 24 CFR 35.24(b)(2)(ii). HUD will not allow the occupancy or resale of properties until proof of treatment, if necessary, has been submitted. Where testing reveals the presence of lead-based paint requiring abatement and the purchaser concludes that the cost of abatement would be beyond its means, the purchaser may cancel that part of the transaction relating to the affected property.

Properties listed on the National Register of Historic Places or located in a Historic District will be sold with appropriate deed restrictions. Properties located within a runway clear zone will be available for sale after it has been first offered to the airport authority, but purchasers will be required to sign an acknowledgement that they were given notice of the location. HUD will identify those properties that are located in areas with special flood hazards. Properties will be subject to review under 24 CFR Part 50, as appropriate.

Five commenters stated that the number of properties should not be limited to 1,500 nationwide. The Department is aware that homeownership opportunities for low- and moderate-income buyers are limited, but believes that the Secretary's duty to protect the FHA insurance fund requires that the effectiveness of the demonstration be evaluated before making more properties available. The Department will assess the effectiveness of the program and determine whether to expand this approach to providing affordable homeownership opportunities and stabilizing neighborhoods where a significant concentration of HUD-acquired properties exists.

The August 9, 1990 Notice did not place a limit on the minimum number of properties that must be bought by an applicant. This was the subject of several comments, all of which suggested that applicants should be required to acquire a minimum number, since only by purchasing a sufficient number of properties in an area could the objective of stabilizing, preserving, and improving the neighborhood be achieved. The Department agrees, and will require a minimum of five properties to be purchased by each applicant participating in the demonstration. Pricing discounts offered through this program are justified, in part, by the fact that the initial acquisition will be for a number of properties and in some instances will involve only one closing.

One commenter noted that some state housing finance agencies (HFAs) are prohibited by their enabling legislation from owning real estate, and suggested that they be allowed to acquire properties on consignment for rehabilitation and sale. Otherwise, the demonstration program requirement that governmental entities or nonprofit organizations purchase the properties for rehabilitation and resale to low- and moderate-income buyers would prevent those HFAs from participation. The Department is aware of this restriction on some HFAs, but believes that permitting the sale by consignment would be too uncertain for a demonstration program involving only 1,500 properties. The Department encourages affected HFAs to arrange for

another entity to take title to properties on their behalf and cooperate in administering a local program that would identify the ultimate low- or moderate-income buyers. This method has been used successfully for several years in the Urban Homesteading Program when similar circumstances exist.

Two commenters suggested that HUD include properties for demolition, making way for new construction in economically depressed neighborhoods. The commenters stated that since some properties have been condemned, it is not economically feasible to rehabilitate them, and new construction in those neighborhoods would be a sign of hope and vitality. Properties may not be acquired for demolition under this demonstration. The purpose of the program is to provide affordable homeownership opportunities for low- and moderate-income families as well as to stabilize and improve neighborhoods where concentrations of HUD-acquired properties are located. HUD properties may be purchased at fair market value for demolition, but such transactions will not be considered part of the demonstration. Jurisdictions wishing to acquire properties for demolition may use their Community Development Block Grant (CDBG) funds for that purpose.

HUD received two comments that generally opposed the creation of new "target neighborhoods," and suggested that HUD use the CDBG areas already in place to facilitate coordination with the local and Federal governments to address the problem. Two other commenters stated that the program should be available to all localities, whether or not all criteria for target neighborhoods are met, and three commenters would like the definition of neighborhood to include rural areas or smaller cities where properties are dispersed throughout the community rather than concentrated in neighborhoods. Finally, another commenter asked for a clearer definition of "neighborhood."

HUD believes that all criteria listed in the August Notice should be met. The demonstration program was designed to serve areas where a clearly defined set of circumstances prevails. It is not intended to serve scattered site acquisitions or all locations where HUD has an inventory of single family properties. By nature, demonstration programs have a specific purpose that may or may not be expanded, depending on future evaluation.

For purposes of this demonstration, a "neighborhood" is an area delineated by the applicant and designated for its program to upgrade residential structures that will be occupied by low- and moderate-income occupants. In determining the size of its demonstration neighborhood, the applicant should take into account the level of investment required as well as the resources available to have an impact in the area. A CDBG or Zip Code area may or may not be appropriate for this designation. Smaller areas may be more appropriate.

One commenter expressed a concern abut the impact of the demonstration on local property values, especially if the adjusted sales prices on properties become the comparables for future appraisals in a neighborhood. The Department does not anticipate that the demonstration will have an adverse effect on property values in a neighborhood. Rather, the purpose of the program is to stabilize, preserve, and improve those neighborhoods that are already experiencing a decline in property values. HUD believes the demonstration will have a positive impact on future sales and property values.

Four commenters asked that applicants participating in the demonstration be given the right of first refusal on properties available for the program. Before making property available to the general public for competitive sales, the Department will notify successful applicants of any properties entering the HUD-acquired inventory within their approved demonstration neighborhood for the duration of the demonstration, unless this provision is waived by the applicant or the applicant does not have current capacity to expand its project. HUD will notify the participant when a property becomes available for the demonstration, and the participant must notify HUD within 10 days of the notice whether it plans to purchase the property. If HUD does not receive a commitment to purchase within the 10 days, the property will be listed for competitive sale. (Properties may not become "available" for the demonstration program until first offered for disposition under other program regulations. However, the Department anticipates that most properties for the demonstration program will be those that have been on the market for a substantial period of time.)

Finally, a commenter requested that HUD make available all data it has to help prospective buyers evaluate the suitability of the demonstration program for their communities. HUD will make available to applicants any data that it generally collects and disseminates to program participants. In some instances, applicants may need to contact more than one HUD field office for information from Community Planning and Development or Economic and Market Analysis staff. However, facts and data about communities should also be available from local governments or public libraries.

Purchase Price

The August Notice described certain adjustments that an applicant may make to HUD's estimated fair market value of the properties in determining the purchase price. The first adjustment (9 percent) represents the real estate sales commission and estimated closing costs normally paid by HUD when a property is sold under the competitive sales program. A second adjustment is based on the savings to HUD of the daily costs of carrying the property in its inventory. The average per-day holding cost, which is currently $18.25, may be multiplied by the number of days the property is likely to remain in inventory. The final adjustment represents the estimated future decline of the property's value as a result of vandalism, general deterioration, and the impact on property values in the neighborhood caused by the concentration of vacant HUD-acquired properties.

Several comments were received with regard to these adjustments, ranging from suggestions for a straight 25 percent discount of appraised value to give-aways. One commenter suggested using a sliding scale pricing system based on volume and impact. Other comments concerned appraisals. The commenters generally believed buyers should have the option to obtain separate appraisals, with any difference between HUD's appraisal and the one obtained by the buyer to be negotiated.

The Secretary has a duty to protect and replenish the insurance funds from which mortgagees' claims have been paid, and therefore must balance the financial interest of the fund against the reason for price adjustments based on local circumstances. Giving the properties away or using a discount figure to be applied under all circumstances would not be in the best interests of the FHA insurance funds. The Department has determined, however, that further guidance on the adjustments is necessary.

With regard to the adjustment of the purchase price representing real estate sales commissions and estimated closing costs normally paid by HUD as the seller, the Department will allow up to 12 percent, depending on the amount customarily paid by HUD in the particular jurisdiction.

The Department does not have data on its daily holding costs by jurisdiction, and will apply the national average of $18.25 per day to the adjustment representing daily costs of carrying the properties in inventory. However, if a field office has compelling evidence that its holding costs are routinely higher than the national average, this may be an additional consideration used in the calculation for the adjustment, if such consideration can be documented by the field office.

The price adjustment related to the estimated future decline of a property's value due to vandalism, general deterioration, and impact on neighborhood property values may be determined by a well-documented submission by the applicant or may be established by the field office, except in any case the adjustment may not exceed 10 percent of the estimated fair market value.

For applicants that propose to buy ten or more properties in a single closing, the Department is willing to deduct at the time of closing reasonable and customary closing costs normally paid by the buyer and the cost of obtaining financing in consideration of such a high volume purchase. Finders' fees and sales commissions may not be included as a cost of obtaining financing.

Applicants may obtain their own appraisals of properties from an independent appraiser using nationally recognized appraisal standards, which field offices may consider in determining fair market value. However, the cost of appraisals obtained by applicants will not be reimbursed as a customary closing or financing cost. If the difference between the two appraisals is substantial, HUD may consider obtaining another appraisal.

Rehabilitation

A requirement of the demonstration program, announced in the August Notice, is that initial purchasers of the properties must commit to provide all necessary rehabilitation to the properties within a reasonable time after closing.

Several commenters asked whether the rehabilitation of properties before ultimate resale to owner-occupants would have to meet local or state codes, FHA standards, or some other standard. Other commenters suggested that a deadline be set for the completion of rehabilitation.

The Department agrees that there should be standards for the rehabilitation, and will require that, within one year of closing and before occupancy, FHA minimum property standards be met. Any applicable local standards for decent, safe, and sanitary housing must be met within two years of closing, or sooner if required by the jurisdiction, to ensure the stabilization of the neighborhood in a timely manner.

One commenter stated that buyers should be allowed to use CDBG funds for rehabilitation costs, with the ultimate owner-occupant assuming the cost as a low-interest loan. After the rehabilitation loan is amortized, the commenter suggested, the acquisition cost could be recaptured at the same monthly payment with zero interest. Another commenter believes the Department should match rehabilitation costs dollar for dollar when the net proceeds of the sale are greater than $10,000 per property, with HUD's matching share payable on sale.

HUD has no authority to use FHA insurance funds as a grant or loan program for rehabilitation of properties. However, the demonstration program places no restrictions on the use of CDBG funds or other other HUD program funds for rehabilitation, but participants in the demonstration program cannot be given a preference for such funding. Applicants would be expected to arrange for any rehabilitation funding separate and apart from the demonstration program. The demonstration program also does not place any restrictions on financing agreements between buyers and ultimate owner-occupants, other than preferring that they be at below-market terms.

Finally, two commenters asked whether the wage and reporting requirements of the Davis-Bacon Act will apply to rehabilitation. These provisions do not apply to the rehabilitation of properties no longer owned by the Federal government at the time of the rehabilitation. Since all rehabilitation will be performed after title has transferred from the Secretary to the buyers, the provisions of Davis-Bacon will not apply.

Eligible Buyers

Eligible buyers of properties for the demonstration are State and local governmental entities and private nonprofit organizations. The prospective purchasers will be required to demonstrate not only an interest in furthering the underlying purpose of the program, but also a past history of providing housing for low- and moderate-income families. Purchasers must have the financial resources to complete the purchase and rehabilitation of the properties, as well as the capacity to provide, or assist in locating, a source of financing for the ultimate owner-occupants, preferably at below-market terms.

The August Notice announces that proposals will be accepted on a first-come, first-served basis. The Department would like to clarify that proposals will be reviewed and acted upon as received. In the event there are more proposals than can be approved, HUD will select the proposals that will have a substantial impact, will target sales to families with less than 80 percent of median income, and will result in the least cost to the insurance fund.

The Department received a copy of a resolution passed by the Legislature of the United States Virgin Islands requesting that the demonstration program include the Virgin Islands. HUD neglected to define the term "State" in the August Notice, and appreciates this comment pointing out this omission. For purposes of the demonstration, a "State" includes the several States, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, to the extent HUD-acquired properties are located in those areas.

One commenter suggested that preference be given to local governments, followed by State governments and nonprofits, to ensure greater participation of local neighborhood organizations. The commenter stated that preference to local governments would also help to ensure that rehabilitation is done correctly and that the properties are then sold to the target groups. Another commenter asked that nonprofits assisting disabled persons in homeownership be given a priority.

The Department does not believe that preferences should be given one category of buyer over another. However, the Department agrees that the participation by local neighborhood organizations and support of local governments is important, and encourages nonprofit organizations to consult with neighborhood organizations and local governments regarding their proposals. Evidence of local government support will strengthen proposals from nonprofit organizations.

Ultimate Owner-occupants

The August Notice provided that, for purposes of the demonstration, low- and moderate-income buyers are families or individuals whose incomes do not exceed the higher of: (1) The median

family income for the area, or (2) the national median income. The Notice also stated that HUD may grant an exception of up to 115 percent of median income where justified by the purchaser of the field office.

With regard to the income restrictions for ultimate owner/occupants, one commenter stated that HUD should consider using its standard 80 percent of the area median income, adjusted for family size. Other commenters suggested that HUD should consider raising the income eligibility level to 150 percent of median, while others would prefer that there be no income guidelines to promote an economic mix for the neighborhoods.

While the Department agrees that it is often desirable to attract an economic mix of residents to a neighborhood, one of the purposes of this demonstration is to provide affordable homeownership opportunities to low- and moderate-income persons. Therefore, the ultimate resale of demonstration properties must be to persons in that income category. However, the Department has revisited the issue of the definition of low- and moderate-income buyers. For purposes of this demonstration, low- and moderate-income families or individuals will be defined as those whose incomes, adjusted for family size, do not exceed 80 percent of median income for the area, as determined by the Secretary under section 3(b)(2) of the United States Housing Act of 1937. The Secretary's income limits are updated annually and are available from the Housing Management Division in HUD field offices. This change is being made to be consistent with other HUD program definitions, and to avoid rendering some owner-occupants in this demonstration ineligible for HUD's rehabilitation programs targeted to low- and moderate-income buyers.

As indicated in the section on eligible buyers, the August Notice stated that, in the event there are more proposals than can be approved, one selection factor would be for proposals that target sales to families with less than median income. This factor will be changed to favor proposals that target sales to families with less than 80 percent of median income.

Several commenters stated that the demonstration should allow for lease-purchase plans as a means of sale of low- and moderate-income buyers. HUD has no objection to the use of lease-purchase plans for the transfer of properties to ultimate owner-occupants. However, contracts for final purchase must be executed within 24 months of the property transfer from HUD to the initial buyer. Extensions of this time frame may be granted, at the discretion of the field office, in unusual circumstances.

HUD received three comments with regard to the availability of FHA-insured financing for the low- and moderate-income buyers. FHA-insured financing will be available to the ultimate owner-occupants of demonstration properties, provided the buyer and property meet all requirements for such financing.

One commenter suggested that HUD provide short-term, low-interest loans to ultimate owner-occupants for downpayments and closing costs. HUD recognizes that this is too often a burden for low- and moderate-income buyers, but FHA currently has no authority to provide such loans. Assistance may be available to low- and moderate-income buyers through other HUD programs or local government homeownership programs. The use of lease-purchase plans may also be helpful in such situations.

Several commenters expressed a concern that properties may be sold to investor-owners, stating that neighborhoods with vacant and abandoned houses do not need more absentee landlords. Demonstration properties may not be resold to investor-owners. In the contract of sale between the Department and the initial buyer, the buyer will be required to commit to resell to low- and moderate-income buyers. HUD will monitor occupancy after resale to ensure that properties are occupied by the low- and moderate-income buyers. Initial buyers who are concerned about the ultimate owner-occupant reselling to investor-owners within a certain period of time may make use of deed restrictions with reverter provisions prohibiting resale to persons other than low- or moderate-income occupants. However, HUD would expect that such restrictions are limited to five years after the first owner-occupant buys the property.

Finally, one commenter was concerned about the cost of relocating families who may be occupants of the demonstration properties when transferred from HUD to the initial buyer. The Department assumes that the commenter was referring to the applicability of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601–4655), which requires that relocation assistance be provided to persons who are displaced as a result of acquisition, rehabilitation, or demolition for a program receiving Federal assistance. The Department does not anticipate that persons will be displaced as a result of the demonstration program, since all properties will be vacant at the time of the transfer from HUD to the initial buyer.

Proposals

The August Notice stated that proposals to purchase properties must contain at a minimum the following information:

1. *Location and number of properties*—The proposal must demonstrate that the properties are located in a neighborhood that meets the criteria for target neighborhoods and that the number of properties proposed to be purchased is sufficient to make an impact on the condition of the neighborhood.

2. *Purchaser*—The proposal must demonstrate that the purchaser meets the requirements for eligible buyers. Proposals from nonprofit organizations must contain proof of nonprofit status and a current audited financial statement, as well as background information on the experience of the organization in providing housing for low- and moderate-income families. Proposals must also set forth the method of financing the purchase and rehabilitation of the properties. Proposals must also describe the rehabilitation that will be undertaken and its estimated cost.

3. *Ultimate purchasers*—The proposal must state the plan for ultimate resale of the properties to low- and moderate-income buyers and the schedule for implementing the plan. The plan should include, to the extent known, the ultimate purchasers to be targeted, the outreach program to be used, and any assistance in financing for the ultimate buyers, preferably at below-market terms. The outreach program should include the purchaser's plan to conduct an affirmative marketing program, including special outreach activities, to attract persons least likely to apply to purchase a unit because of their race, color, religion, sex, and national origin.

Each proposal must contain a certification that the purchaser will not discriminate because of race, color, religion, sex, handicap, familial status, or national origin in the sale, advertising, of any financing or properties purchased under the proposal, in compliance with the Fair Housing Act, as implemented at 24 CFR parts 100–110.

Three commenters stated that buyers should be required to show support by the local government. The commenters believe that it is reasonable to ask how the demonstration will complement existing and community development programs. Such a requirement would ensure discussion of the impact of the program on other local programs.

As indicated in the discussion above on Eligible Buyers, HUD will not require that proposals include evidence of local government support. However, the Department agrees that demonstrations should complement local programs, and encourages buyers to elicit local government support. A showing of such support will strengthen a proposal.

One commenter stated that approval of proposals should be by HUD Headquarters but implemented by field offices. Another stated that HUD should process proposals within 30 days, and the closing should be within 60 days after acceptance. The commenter also suggested that after a buyer has had one proposal accepted, it should not be required to submit its qualifications in subsequent proposals.

Applicants must submit proposals to HUD field offices, where they will be reviewed. Field offices will make recommendations to Headquarters within 15 days of receipt, and Headquarters will make a final recommendation to the Deputy Assistant Secretary for Single Family Housing within 15 days of receipt from the field office. Applicants will be notified of HUD's final decision within 45 days of initial submission of the proposal. Closings will be held within 60 days or less of HUD's approval of a proposal. Applicants with approved proposals need not resubmit evidence of qualification in subsequent proposals, provided the subsequent proposal contains a certification that there has been no change in the qualifications previously submitted.

A commenter stated that it may be difficult to show financing is available at the proposal stage, since financing is sometimes hard to obtain without site control. The commenter suggests that HUD provide interim financing. FHA has no authority to provide interim financing, but will accept in the proposal a commitment letter from a lender demonstrating that financing is available on terms compatible with ultimate low- and moderate-income ownership of the properties involved if the proposal is approved by HUD. This level of commitment can generally be obtained without site control if the rest of the financial package is in place. Properties designated by a proposal for initial inclusion in the demonstration will be held off the market at the point when the field office recommends approval of the application to Headquarters.

Another commenter objected to the requirement that an affirmative marketing program include special outreach activities to attract persons least likely to apply because of their race, color, religion, sex, and national origin. The commenter stated that while it supports requirements that all potential purchasers be made aware of housing opportunities, it opposes "race conscious programs even when those programs purport to support integration." The commenter suggested that rather than special outreach activities that target special groups, HUD should require a plan that incorporates the fair housing advertising guidelines at 24 CFR part 109.

The commenter is correct that marketing of demonstration properties must incorporate fair housing advertising guidelines at 24 CFR part 109. However, those guidelines do not restrict affirmative advertising efforts designed to attract persons who would not ordinarily be expected to apply, when such efforts are pursuant to an affirmative marketing program. One of the Secretary's priorities is enforcing fair housing for all persons. In keeping with this priority, the Department expects that outreach programs will include affirmative marketing plans designed to reach groups least likely to apply. (For assistance in designing such a plan, applicants should consult 24 CFR part 200, subpart M.)

HUD will provide technical assistance to program participants to the extent resources are available. Participants are not restricted from engaging technical assistance from other sources.

Certification Regarding Lobbying

On February 26, 1990, at 55 FR 6736, the Department joined in the issuance of a governmentwide interim rule advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans, for $100,000 or more, of a new prohibition regarding the use of appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. In general, this rule prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited if paid with appropriated funds. Applicants should refer to the governmentwide rule for the language for the certification and disclosure. As indicated in this certification and disclosure, the law provides substantial monetary penalties for failure to file the required certification or disclosure. The certification must be included in the applicant's proposal.

III. Other Matters

The collection of information requirements for the proposal to be submitted for this demonstration were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980, and were approved by OMB and assigned OMB control number 2502–0444. Collection of information requirements for data on the ultimate owner-occupants of properties and rehabilitation costs have been approved and assigned OMB control numbers 2502–0059 and 2502–0111.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that this demonstration program may have a potential significant impact on the formation, maintenance, and general well-being of families to the extent that the program will provide expanded homeownership and affordable housing opportunities for low- to moderate-income families. These opportunities will have a positive impact on families by improving their housing and enabling them to remain together and to live in decent, safe, and sanitary housing.

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this Notice will not have federalism implications and, thus, are not subject to review under that Order. The demonstration program will reduce the inventory of HUD-acquired properties while preserving and maintaining residential areas and communities, as well as expanding homeownership and affordable housing opportunities to low- and moderate-income families.

Dated: November 16, 1990.

Arthur J. Hill,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

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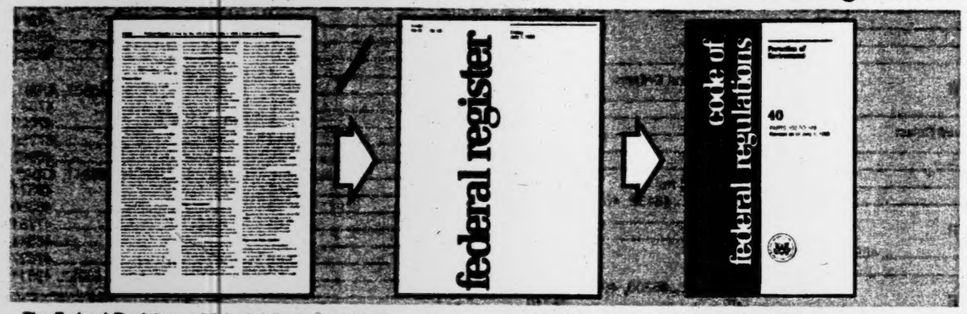

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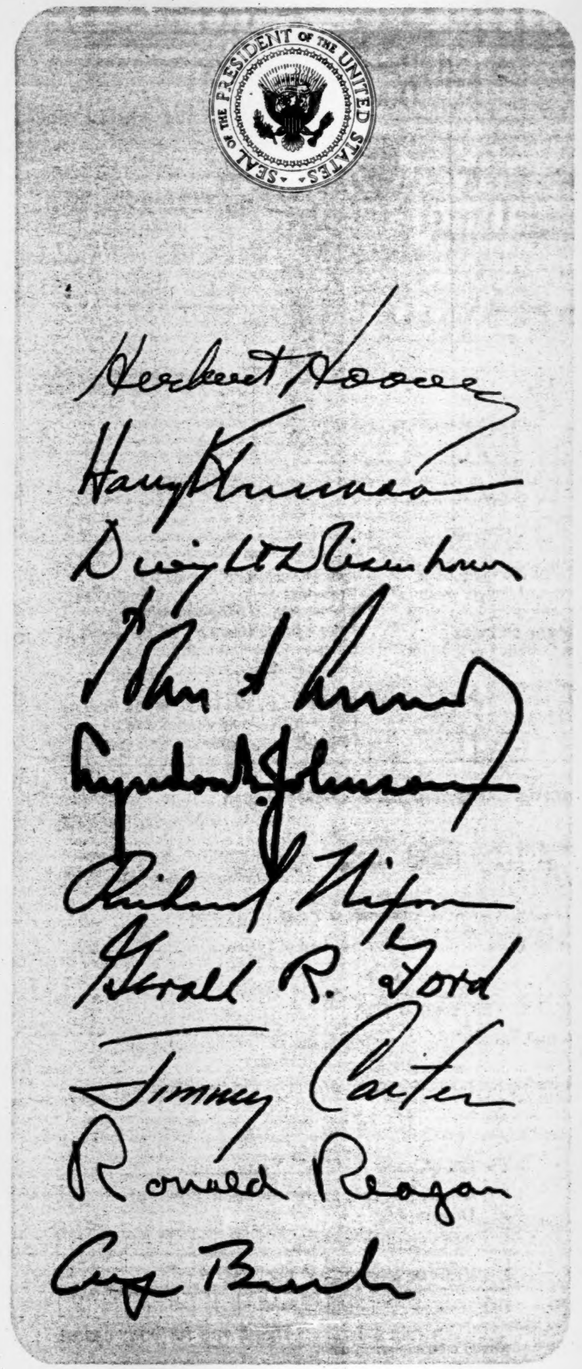

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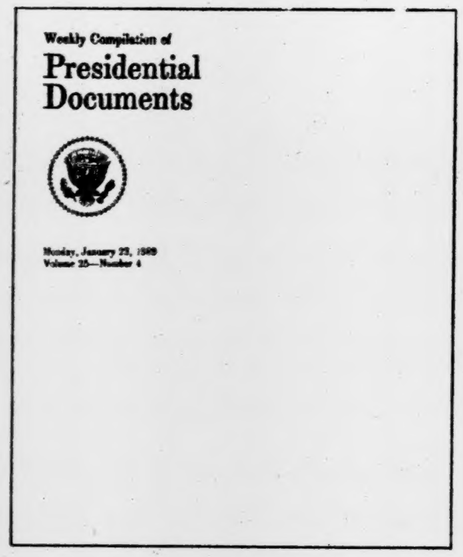

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